

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CINDY BARBERA,
 CARLENE BECHEN, RONALD BIENDSEIL,
 RON BOONE, VERA BOONE, ELVIRA BUMPUS,
 EVANJELINA CLEERMAN, SHEILA COCHRAN,
 LESLIE W. DAVIS III, BRETT ECKSTEIN,
 MAXINE HOUGH, CLARENCE JOHNSON,
 RICHARD KRESBACH, RICHARD LANGE,
 GLADYS MANZANET, ROCHELLE MOORE,
 AMY RISSEEUW, JUDY ROBSON, GLORIA ROGERS,
 JEANNE SANCHEZ-BELL, CECELIA SCHLIEPP,
 and TRAVIS THYSSEN,

Plaintiffs,

TAMMY BALDWIN, GWENDOLYNNE MOORE,
 and RONALD KIND,

Intervenor-Plaintiffs,

v. File No. 11-CV-562

Members of the Wisconsin Government
 Accountability Board, each only in
 his official capacity:
 MICHAEL BRENNAN, DAVID DEININGER,
 GERALD NICHOL, THOMAS CANE,
 THOMAS BARLAND, and TIMOTHY VOCKE,

[Caption Continued]
VIDEOTAPE DEPOSITION
RONALD KEITH GADDIE, Ph.D.
 Milwaukee, Wisconsin
 January 20, 2012
 Peggy S. Christensen, RPR, CRR, CCP
 Registered Professional Reporter

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and KEVIN KENNEDY, Director and General Counsel for the Wisconsin Government Accountability Board,

Defendants,

F. JAMES SENSENBRENNER, JR.,
 THOMAS E. PETRI, PAUL D. RYAN, JR.,
 REID J. RIBBLE, and SEAN P. DUFFY,

Intervenor-Defendants.

VOCES DE LA FRONTERA, INC.,
 RAMIRO VARA, OLGA WARA,
 JOSE PEREZ, and ERICA RAMIREZ,

Plaintiffs,

v. Case No. 11-CV-1011
 JPS-DPW-RMD

Members of the Wisconsin Government
 Accountability Board, each only in
 his official capacity:
 MICHAEL BRENNAN, DAVID DEININGER,
 GERALD NICHOL, THOMAS CANE,
 THOMAS BARLAND, and TIMOTHY VOCKE,
 and KEVIN KENNEDY, Director and
 General Counsel for the Wisconsin
 Government Accountability Board,

Defendants.

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VIDEOTAPE DEPOSITION OF RONALD KEITH GADDIE, PH.D. 1/20/2012

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<p>(The original exhibits were attached to the original transcript. Copies of Exhibits 56, 58-60 and 62-81 were provided to counsel. A copy of Exhibit 57 was provided to counsel at the time of the deposition by the witness. A copy of the envelope for Exhibit 61 was provided to counsel.)</p>		

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<u>R E Q U E S T S</u>		
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<p>(The original deposition transcript was filed with Attorney Douglas M. Poland)</p>		

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1	VIDEOTAPE DEPOSITION of RONALD KEITH GADDIE, Ph.D., a witness of lawful age, taken on behalf of the Defendants, wherein Alvin Baldus, et al., are Plaintiffs, and Members of the Wisconsin Government Accountability Board, et al., are Defendants, pending in the United States District Court for the Eastern District of Wisconsin, pursuant to subpoena, before Peggy S. Christensen, a Registered Professional Reporter and Notary Public in and for the State of Wisconsin, at the offices of Reinhart Boerner Van Deuren S.C., Attorneys at Law, 1000 North Water Street, Suite 1700, in the City of Milwaukee, County of Milwaukee, and State of Wisconsin, on the 20th day of January 2012, commencing at 9:09 in the forenoon.
<u>A P P E A R A N C E S</u>	
18	DOUGLAS M. POLAND, Attorney, for GODFREY & KAHN, S.C., Attorneys at Law, One East Main Street, Suite 500, Madison, Wisconsin 53703, appearing on behalf of Plaintiffs Alvin Baldus, et al.
22	PETER G. EARLE, Attorney, for LAW OFFICE OF PETER EARLE, LLC, Attorneys at Law, 839 North Jefferson Street, Suite 300, Milwaukee, Wisconsin 53202, appearing by telephone on behalf of Plaintiffs Voces De La Frontera, Inc., et al.

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<u>A P P E A R A N C E S</u> (Continued)	
2	JACQUELINE BOYNTON, Attorney at Law, Caro Tower, 2266 North Prospect Avenue, Suite 505, Milwaukee, Wisconsin 53202, appearing on behalf of Plaintiffs Voces De La Frontera, Inc., et al.
6	MARIA S. LAZAR, Assistant Attorney General, for STATE OF WISCONSIN DEPARTMENT OF JUSTICE, 17 West Main Street, Madison, Wisconsin 53703, appearing on behalf of the Defendants.
9	DANIEL KELLY, Attorney, for REINHART BOERNER VAN DEUREN S.C., Attorneys at Law, 1000 North Water Street, Suite 2100, Milwaukee, Wisconsin 53202, appearing on behalf of the Defendants.
13	<u>Also present:</u> Joseph W. Handrick Government Relations Specialist Reinhart Boerner Van Deuren S.C.
16	Todd S. Campbell, CLVS Campbell Legal Video Company 417 Heather Lane, Suite B Fredonia, WI 53021 (262) 447-2199

8

1 (Exhibit No. 56 marked for
2 identification)
3
4 RONALD KEITH GADDIE, Ph.D.,
5 called as a witness, being first duly sworn,
6 testified on oath as follows:
7
8 EXAMINATION
9 By Mr. Poland:
10 Q Good morning, Dr. Gaddie. How are you?
11 A Doing well, sir. Thank you.
12 Q Dr. Gaddie, you're appearing here this morning
13 because you have submitted expert reports and you
14 intend to testify as an expert witness in the
15 trial of this case; correct?
16 A Yes.
17 Q Did you receive a subpoena for your appearance at
18 this deposition today?
19 A Yes.
20 Q I'm going to hand you a copy of a document that
21 the court reporter has marked as Exhibit No. 56
22 and ask you to take a look at that, please. Have
23 you seen Exhibit 56 before, Dr. Gaddie?
24 A Yes.
25 Q And when did you receive Exhibit 56?

9

1 A Let's see. I received an electronic copy of this
2 earlier this week. Probably Wednesday, I believe.
3 Q I'm going to hand you a copy of another document.
4 We've previously marked this as Exhibit No. 51. I
5 don't have the officially marked copy but
6 counsel -- and I'll give counsel a minute here to
7 look at it to make sure it is what I say it is.
8 For the record, this is a document that's
9 been marked as Exhibit 51. It was marked at the
10 deposition of Dr. Morrison. Have you seen
11 Exhibit No. 51 before?
12 A Yes, I believe so.
13 Q When did you previously see Exhibit 51?
14 A This would have been probably about a month ago.
15 Q And you see that there are requests for some
16 information pertaining to work that you performed
17 in this case; correct?
18 A Yes.
19 Q As a result of your review and receipt of
20 Exhibit 51, did you provide any materials to
21 either Mr. Kelly, Ms. Lazar, or any of the
22 attorneys who are representing the defendants in
23 this case?
24 A Yes. I returned information to Mr. Hodan, copied
25 to Mr. Kelly, I believe, but definitely to

10

1 Mr. Hodan in response to the data requests you
2 made regarding my analysis.
3 Q All right. Now I'm going to hand you a copy of
4 another document. This one unfortunately I do not
5 have extra copies of, and so I'm going to have to
6 work with you here on this.
7 I'm going to hand you a copy of a document
8 that's been marked as Exhibit No. 52 and ask you
9 to take a look at that, please. Have you seen
10 Exhibit 52 before?
11 A I have seen portions of it, yes.
12 Q Does Exhibit 52 contain documents that you had
13 given to Mr. Hodan in response to the letter
14 that's been marked as Exhibit 51?
15 A Yes.
16 Q Can you identify for the record where those
17 materials appear in Exhibit 52?
18 A This would be Tabs 3, 4 and 5.
19 MS. LAZAR: Doug, do you want to
20 see mine to make it easier?
21 MR. POLAND: If you wouldn't mind.
22 MS. LAZAR: That's fine.
23 MR. POLAND: Thanks.
24 Q Can you identify the material that is behind
25 Exhibit -- I'm sorry, tab 3 of Exhibit 52, please?

11

1 A Tab 3 indicates incumbent pairings resulting from
2 the Assembly and Senate remap.
3 Q Was that a document that you had printed from an
4 electronic file that was in your possession?
5 A I provided an electronic file to counsel and then
6 it was printed, yes.
7 Q I understand. Then can you identify what's behind
8 tab 4, please, of Exhibit 52?
9 A Tab 4 is a core retention report for the Wisconsin
10 Assembly generated in early December.
11 Q And then can you identify what's behind tab number
12 5, please.
13 A This is a core retention report for the Wisconsin
14 Senate generated at the same time.
15 Q And what software did you use to generate these
16 reports?
17 A These were generated on autoBound.
18 MR. POLAND: Maria, I'll hand this
19 back to you then. If you could hand that
20 back to me, and if we need to look at that
21 again, I'll give this copy back to you.
22 Q In addition to the materials that were attached to
23 Exhibit No. 52, did you provide any other
24 materials to Mr. Hodan on or around between
25 December 22nd and December 28th?

12

1 A Not that I recall.
2 Q Now I'd like you to take a look at Exhibit 56
3 which is your subpoena. I would like you to turn
4 to the page that states Exhibit A at the top.
5 A Yes.
6 Q Do you see there on that page and then continuing
7 onto the next page there are seven enumerated
8 paragraphs setting forth categories of documents?
9 A Yes.
10 Q And did you look for all of these categories of
11 documents in the materials you had in your
12 possession?
13 A Yes.
14 Q And you've produced some materials today; is that
15 correct?
16 A Yes.
17 MR. POLAND: I would like to have
18 this flash drive marked.
19 (Exhibit No. 57 marked for
20 identification)
21 Q Dr. Gaddie, I'm handing you a flash drive that's
22 been marked with an exhibit sticker 57. Can you
23 identify that exhibit for the record, please?
24 A Yes. This is one of six flash drives that I
25 loaded with electronic documents yesterday to be

13

1 turned over by counsel.
2 Q And when you say six, were they -- they were all
3 copies of the same -- strike that question.
4 When you say six, did all six flash drives
5 have the same information on them?
6 A This is one of six complete copies of the
7 information, yes, so all of these should have the
8 same complete information on them.
9 Q Is there anything that was requested either in
10 Exhibit 51, which is the December 22nd letter, or
11 in Exhibit 57, which is the subpoena, pertaining
12 to your work in this case that has not either been
13 turned over and attached to Exhibit 52, which is
14 Mr. Kelly's December 8th -- 28th letter, or
15 contained on the flash drive that we've just
16 marked as Exhibit 57?
17 A I've turned over everything I have in response to
18 this.
19 Q Okay, terrific. This is a little hard to do
20 because you don't have a copy of the directory of
21 the flash drive up in front of you like I do
22 because I have it loaded onto my computer, but can
23 you just generally describe for me the files that
24 are on the flash drive?
25 A There are going to be numerous and various files

14

1 on there. The most recent file created would be a
2 Word file that contains several pages of e-mails
3 that I pulled in relation to this case that were
4 in my possession. There will be -- On the root
5 directory there will be probably about 110
6 different files, Excel files, possibly Word files,
7 SPSS files, Syntax files, PDFs. Then there will
8 be multiple directories, including information
9 that I relied upon in the creation of my own
10 reports and also the information that was provided
11 in support of Professor Mayer's reports.
12 There will also be a file full of -- there
13 should either be a file filled with -- on the root
14 directory there will be the variety of filings and
15 pleadings in this case. So, again, it's all
16 information that came into my possession.
17 Q And I see there are a number of different folders,
18 and let me just ask you generally about each of
19 these, again recognizing you don't have the
20 directory up in front of you.
21 There is a folder that is labeled Wisc_Mayer.
22 Can you tell me generally what is contained in
23 that folder?
24 A If you can open it up for me, if you don't mind.
25 Q I don't mind at all. If you would prefer, if it

15

1 would make it easier for us to load this onto a
2 laptop so you can look at it as we're talking
3 about it, we could do that as well.
4 A It's always good to have information in front of
5 me rather than guessing.
6 Q Why don't we go ahead and do that, then.
7 A Thank you.
8 MS. LAZAR: You want to take a
9 break off the record to set that up?
10 MR. POLAND: Sure. That's fine.
11 Let's go off the record.
12 MR. CAMPBELL: The time is 9:18.
13 We are going off the record.
14 (Recess)
15 MR. CAMPBELL: The time is 9:33.
16 We are back on the record.
17 Q Dr. Gaddie, you now have a copy of the flash drive
18 that you provided today open on the computer in
19 front of you; is that correct?
20 A Yes.
21 Q I would like to ask you just some general
22 questions about the material that's on the
23 flash drive.
24 A Yes.
25 Q There are a number of folders that I note that are

16

1 on the flash drive; correct?
2 A Yes.
3 Q And one of them is entitled Wisc, then there is an
4 underline space, and then Mayer, M-a-y-e-r. Do
5 you see that?
6 A Yes.
7 Q What is -- Just generally speaking now, what is in
8 that folder?
9 A These are copies of exhibits, report and vitae of
10 Professor Mayer, a map of a proposed District 8,
11 and Word files with notations on the Mayer report.
12 Q So the files, generally speaking, again that are
13 in this particular folder on the flash drive
14 pertain to the work that Dr. Mayer has done in
15 this case; is that correct?
16 A Yes.
17 Q And your evaluation in part, I'm not suggesting
18 this encompasses everything that you've done
19 relating to Dr. Mayer's opinions, but at least in
20 part it encompasses your review of those
21 materials?
22 A In part.
23 Q Another file folder that's on there says
24 Wisconsin2, and there is no space between those
25 two. It's just Wisconsin2. Can you identify

17

1 generally what's within that file folder?
2 A Just give me a moment here. Yes. These are
3 largely submissions and filings in this case, in
4 this litigation, up to about December 2nd. There
5 are also some information on Assembly Districts 8
6 and 9 with tract overlays, identifying the census
7 tracts that overlay those Assembly districts.
8 Q I note that there is an Excel spreadsheet,
9 correct, that says Tract Data for ADs 8 and 9.
10 That's the file name?
11 A Yes.
12 Q Where did that data come from in that spreadsheet?
13 A I had used data provided to me. I contacted
14 counsel requesting this information. It was
15 provided back to me. I would assume it probably
16 came from -- I believe this may have come to me
17 from Mr. Handrick but I don't recall. I contacted
18 Reinhart about getting this information, and it
19 was transmitted on to me.
20 Q If I hover my cursor over that, I can see the
21 metadata that's associated with that file and I
22 see it says author A. Foltz.
23 A Okay.
24 Q Do you know who A. Foltz is?
25 A That would be Adam Foltz.

18

1 Q Do you know whether this data came from
2 Adam Foltz?
3 A Again, it may have, yes. I would assume so.
4 Q I note the date that it was modified it says
5 December 3rd, 2011. Is it your recollection that
6 it was on or about December 3rd of 2011 that you
7 would have received this data?
8 A Yes.
9 Q All right. I would like to go back up then to the
10 main directory of this flash drive. I call it a
11 flash drive; I know Maria has called it a thumb
12 drive. If I refer to a thumb drive or flash
13 drive, you'll know what I'm talking about?
14 A We are clear, yes.
15 Q There is another folder that is labeled
16 Wisconsin2010. Can you tell me what that folder
17 generally contains?
18 A These are Excel files, SPSS data files, and there
19 may be -- one of these may be an SPSS Syntax file,
20 I'm not certain, of information about the
21 Wisconsin electorate that I developed back in
22 April of 2011. This is mainly electoral data and
23 data that I used in conjunction with my work in
24 advising counsel at Michael Best in the
25 redistricting process.

19

1 Q So we can essentially divide the work that you've
2 done with respect to redistricting in Wisconsin
3 generally into two categories. One category is
4 the work that you performed with the Michael Best
5 firm as the legislation was being developed;
6 correct?
7 A Yes.
8 Q And then you were also performing work as a
9 testifying expert in this particular litigation;
10 correct?
11 A Yes.
12 Q Again as I hover my cursor over some of these
13 files I can see some of the metadata on them and I
14 note, as an example, there is an Excel spreadsheet
15 on here, the file name says VTDS2010ED_wCounty.
16 And the metadata says author Ryan Squires. Do you
17 know who Ryan Squires is?
18 A No.
19 Q I'd like to go back up to the main directory
20 again of the flash drive, and I see there is
21 another file folder, and that's labeled
22 Wisconsin_redistricting. Do you have that open?
23 A Yes, I do.
24 Q Can you tell me, generally speaking -- It looks
25 like there are only about five or so, six files

20

1 that are in this directory. Can you tell me
2 generally what this contains?
3 A This appears to contain Professor Mayer's expert
4 report and supporting documentation for the other
5 plaintiff in this matter.
6 Q So this pertains to the Voces de la Frontera?
7 A I believe so, yes.
8 Q Back up to the main directory. And I see now
9 there is another folder, it says WisconsinFiles,
10 and there appear a large number of files that look
11 predominantly to be Excel spreadsheets with a few
12 Word files in it. Can you tell me what is in this
13 particular folder?
14 A These are data files that were developed in April
15 during the redistricting for analysis in support
16 of the development of the districts. Mainly these
17 are reconstituted election databases for Assembly
18 districts in Milwaukee County.
19 Q All right. And then the last file folder name
20 that I see on this directory says WisconsinStuff.
21 Can you tell me what is in that file?
22 A Okay. In this file what we have are data that
23 were developed in May and June, and again this is
24 additional data that was developed and used mainly
25 to develop measures of potential political change

21

1 in the maps, or measures of compactness and core
2 retention, and here are four proposed maps. These
3 were all four working maps and not for the final
4 map that was passed by the Assembly and Senate.
5 Q All right. And then if we go back up to the main
6 directory, I think that I've hit on all of the
7 titles of the folders that are on this flash
8 drive. Have I missed any that you can see?
9 A Let me take a second to review.
10 Q Yeah.
11 A No, sir. That's it.
12 Q All right. There are a number of other files that
13 are not -- that are just there on the main
14 directory; they're not put into any of the file
15 folders. Can you tell me, generally speaking are
16 those miscellaneous files that just couldn't be
17 categorized or what do they represent?
18 A Well, these represent additional files that may
19 not have made their way into a folder. I took the
20 time to go through all of my computers to make
21 sure that I captured everything that I had done
22 this year with Wisconsin.
23 Several of these are PDF files that are
24 district map files that I pulled in crafting my
25 expert report. Some are databases that were

22

1 either assembled or accessed or used in creating
2 the expert report.
3 Indeed much of this information, especially
4 if it's dated after November 23rd, would be
5 information that was either compiled or was
6 created in support of my expert report.
7 Q And you mentioned November 23rd. Why does that
8 date have significance?
9 A November 23rd is the day that the Reinhart
10 law firm contacted me about being retained as an
11 expert witness in this matter.
12 Q Did you use -- For the materials that are on this
13 flash drive that you used in conjunction with your
14 work for Michael Best & Friedrich with the
15 redistricting process to pass the statute, is any
16 of that information information that you've relied
17 on for your opinions that you're expressing in
18 this lawsuit?
19 A No.
20 Q So everything that -- All of the opinions you're
21 expressing in this lawsuit are based only on
22 information that you would have created on or
23 after November 23rd?
24 A Yes.
25 Q Or I should say or obtained as well, in the

23

1 situation where it came from someone else and you
2 relied on it?
3 A As far as I know. If there was some piece of
4 information I relied on that's before then, I'll
5 identify it and I will let you know.
6 Q Okay, great. And just to circle back, we now
7 have -- in our possession we have everything that
8 you have relied on or considered to prepare your
9 opinions in this case; correct?
10 A Yes.
11 Q All right, terrific. I'd like to turn to your
12 expert report in this case, and we actually have
13 marked that previously as a deposition exhibit so
14 we don't need to mark it again. Do you have a
15 copy of your report?
16 A I have a copy right here.
17 MR. POLAND: For the record, it's
18 Exhibit 30. Does anybody need a copy?
19 Peter?
20 MR. EARLE: Which one is that?
21 MR. POLAND: It's Exhibit 30.
22 MR. EARLE: Oh, his report?
23 MR. POLAND: Dr. Gaddie's report.
24 MS. BOYNTON: I've got it.
25 MR. EARLE: She's got it.

24

1 MR. POLAND: Anyone need one?
2 MR. EARLE: I'll just keep it.
3 MR. POLAND: Hang onto it. Let me
4 get myself organized here.
5 Q Dr. Gaddie, I would like you to turn to page 3 of
6 your expert report. Again, for the record, this
7 is Exhibit No. 30. And you express an opinion in
8 your paragraph 3 on equal population treatment;
9 correct?
10 A Yes.
11 Q All right. Now, you have a statement, this is the
12 top of page 3 in the first full paragraph where
13 you say, "The 1992 Assembly plan met a 1 percent
14 standard." Do you see that?
15 A Yes.
16 Q What do you mean by a 1 percent standard there?
17 A Well, what I mean is that the population deviation
18 range is within a range of 1 percent of the ideal.
19 Q Now, you used the term "standard." What do you
20 mean by standard?
21 A It's just a word that we dropped in. Plus or
22 minus -- a 10 percent standard means you're within
23 a 10 point range. A 1 percent standard means
24 you're within a 1 percent range. It's not meant
25 to imply any specific legal meaning.

25

1 Q Okay. Or something that's generally accepted in
2 the field in which you practice?
3 A There is no de minimis population deviation.
4 Q In terms of any kind of a generally accepted
5 standard?
6 A 1 percent is very tight but it's a threshold.
7 It's meeting a 1 percent threshold.
8 Q And what does the threshold represent?
9 A Well, what I mean is that the population deviation
10 has fallen within 1 percent of the ideal
11 population.
12 Q Okay. You had used the term "threshold," and
13 that's just why I was wondering if there is some
14 kind of a threshold or something special about
15 1 percent that has some kind of significance for a
16 political scientist.
17 A It is a very low population deviation.
18 Q So population deviations can, in some
19 circumstances, be higher than 1 percent?
20 A Yes.
21 Q And in some circumstances they're lower than
22 1 percent?
23 A Yes.
24 Q So if we look, for example, you identify, and I
25 think this is also set forth in one of your

26

1 tables, but you identify that under the 1992 plan
2 there you've got a population deviation that you
3 identify for the Assembly of 0.5 -- I'm sorry,
4 that's the Senate -- of 0.91 percent; correct?
5 A Yes.
6 Q And then for the Senate in 1992 it was
7 0.52 percent; right?
8 A Yes.
9 Q All right. Now if we jump down to the population
10 deviation that you identify for Act 43, you
11 express the opinion that the population deviation
12 falls within a range of 0.76 percent; correct?
13 A Yes.
14 Q And then the Senate population deviation is
15 0.62 percent; correct?
16 A Yes.
17 Q All right. Now perfect equality is not required;
18 correct?
19 A Perfect equality is not required of state
20 legislative maps. The expectation is that we will
21 make districts as equal as practicable.
22 Q And that means that there is a variation that is
23 permitted, as we talked about it a minute ago;
24 correct?
25 A Yes. Substantial deviations have to be justified

27

1 by some affirmative policy, but, yes, there will
2 be deviations.
3 Q Turning to paragraph 4 in your report, you have --
4 in the first paragraph of that you identify the
5 size of African-American and Hispanic populations
6 in Wisconsin; correct?
7 A Yes.
8 Q And then also Milwaukee County?
9 A Yes.
10 Q Where did you get those numbers from?
11 A U.S. census.
12 Q Did you take them right from the U.S. census?
13 A I took them directly from the census at
14 census.org, U.S. -- www.census.gov, yes.
15 Q Did you work at all with Dr. Peter Morrison to
16 obtain any of those numbers?
17 A No.
18 Q Have you worked with Dr. Morrison before?
19 A I have worked with Dr. Morrison before.
20 Q And in this case have you worked with
21 Dr. Morrison?
22 A No.
23 Q Dr. Morrison hasn't given you any of his data or
24 his opinions or information for you to use and
25 consider in expressing your opinions in this case?

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1 A No.
 2 Q In what other cases have you worked with
 3 Dr. Morrison?
 4 A Dr. Morrison and I testified in U.S. v. Village of
 5 Port Chester in 2007, Southern District of
 6 New York.
 7 Professor Morrison and I also worked together
 8 on the Illinois congressional redistricting
 9 litigation. I did not testify in that case but
 10 Professor Morrison did.
 11 Q That was this year?
 12 A This year, yes.
 13 Q That's their Committee for a Fair and Balanced Map
 14 case?
 15 A I guess, yes.
 16 Q What about in the Fletcher case in Maryland, did
 17 you --
 18 A Yes, yes. Fletcher, yes.
 19 Q Did you testify in the Fletcher case?
 20 A That was a paper trial. It was all expert report.
 21 Q So you did --
 22 A Affidavit.
 23 Q So you submitted an affidavit and expert report in
 24 the Fletcher case?
 25 A Yes.

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1 Q Did you submit any expert report or affidavit in
 2 the Illinois case?
 3 A No. As I indicated, I did not testify in that
 4 case at all, did not submit a report.
 5 Q No report either?
 6 A Right.
 7 Q Were you asked to provide a report in that case?
 8 A No.
 9 Q Have you worked -- Other than the three times that
 10 you've just mentioned and testified to, have you
 11 worked with Dr. Morrison previously in a
 12 litigation context?
 13 A Not that I recall.
 14 Q Outside of the context of litigation have you
 15 worked with Dr. Morrison before?
 16 A We've never collaborated. I think I have a paper
 17 of his under review of my journal.
 18 Q And when you say your journal, what do you mean?
 19 A *Social Science Quarterly*. I'm sorry, the journal
 20 I edit.
 21 Q What is the paper that you have under
 22 consideration right now?
 23 A Again, it is only -- I have not had the chance to
 24 examine. Peter had indicated he was going to
 25 submit something in the submission system. I have

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1 not had the chance to check with the staff and see
 2 what it is. I assume it's something about
 3 demographics.
 4 Q That is a peer reviewed journal; correct?
 5 A Yes, double blind peer review journal.
 6 Q And what does it mean to have a double blind peer
 7 review journal?
 8 A A double blind peer review journal means that the
 9 reviewers will not know the identity of the
 10 submitting author, the submitting author will not
 11 know the identity of the reviewers, in order to
 12 maintain the integrity of the review process and
 13 give honest feedback to the author to go through
 14 revision and to allow the editor to make decisions
 15 regarding revision on the paper or publication of
 16 it.
 17 Q And what's the purpose behind having a double
 18 blind peer review process for articles that are
 19 published in *Social Science Quarterly*?
 20 A Well, the purpose of the peer review process is to
 21 remove bias from the selection of papers from
 22 publication and to ensure the integrity and the
 23 quality of the content in the articles that are
 24 submitted, to ensure that the articles that are
 25 submitted meet a standard of peer evaluation. In

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1 other words, make sure we're not publishing stuff
 2 that is errant or wrong.
 3 Q In your opinion is it necessary to have that type
 4 of a process to make sure that you're not
 5 publishing papers that are errant or wrong?
 6 A I think it is important to have a double blind
 7 peer review process, yes.
 8 Q Dr. Gaddie, have you studied the Hispanic
 9 districts in Milwaukee County that are at issue in
 10 this case?
 11 A I have not studied the districts that have been
 12 implemented, no.
 13 Q By that I mean Assembly Districts 8 and 9. Is it
 14 your understanding that Assembly Districts 8 and 9
 15 are the Hispanic districts that I'm talking about?
 16 A Yes.
 17 Q All right. Do you know which aldermanic districts
 18 are encompassed by Assembly Districts 8 and 9?
 19 A No.
 20 Q Do you know who represents the citizens living in
 21 those aldermanic districts?
 22 A No.
 23 Q Do you know the ethnicity of the aldermen who
 24 represent those districts?
 25 A No.

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1 Q Now I'd like you to turn to page 5 of your report,
 2 which is Exhibit 30, for the record. And on
 3 page 5, looking at the second full paragraph, it
 4 starts off with "Delayed voting." This is part of
 5 your report that addresses the delayed voting
 6 effects; correct?
 7 A Yes.
 8 Q All right. Now, you state there that Wisconsin is
 9 one of 19 states that allows for recalls; correct?
 10 A Yes.
 11 Q All right. And so here in this paragraph you are
 12 addressing the effect of the recall elections on
 13 delayed voting; correct?
 14 A Yes.
 15 Q Now, it's true, isn't it, that people who are
 16 moved to a new district by Act 43 will not vote in
 17 the 2012 general election in the same district
 18 that they voted in the recall election; correct?
 19 A Yes.
 20 Q So they will have voted in 2011 in one district
 21 but not in 2012 for officials in that same
 22 district; right?
 23 A Yes.
 24 Q And that means that there are people who will
 25 remain in that district and not be moved, that

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1 they will have voted twice in the span of a little
 2 bit more than a year, while others will have only
 3 voted once; correct?
 4 A Yes.
 5 Q Now, we do want to minimize that disparity as much
 6 as we can; isn't that correct?
 7 A We being?
 8 Q We being the Legislature wants to minimize that
 9 disparity as much as possible?
 10 A I don't know. I don't speak for the Legislature.
 11 Q What about in terms of the integrity of the voting
 12 system or the constitutionality of the provisions
 13 that entitles people the right to vote?
 14 A Are you asking me my personal belief as a
 15 philosophical question?
 16 Q I am asking your opinion as an expert testifying
 17 in this case.
 18 A If you're asking my opinion as an expert
 19 testifying in this case, my opinion is that that
 20 is a policy decision that's made by the
 21 Legislature.
 22 Q So you don't have an opinion to express as an
 23 expert testifying in this case that it's a best
 24 practice to minimize the disparity in the number
 25 of times people vote?

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1 A In terms of a best practice -- in terms of a best
 2 redistricting practice for states like this?
 3 Q Correct.
 4 A If your goal is to minimize the impact on voters
 5 and to place that criteria above all others, yes,
 6 it's a best practice.
 7 It is -- Again, we're just speaking
 8 philosophically here. I am not a lawmaker. It is
 9 not my purview to make this choice for the people
 10 of Wisconsin, but, as I have testified in the
 11 past, less disfranchisement is better than more.
 12 Less voter delay is better than more in the state
 13 of Wisconsin. I said that ten years ago, and I
 14 stand by it here.
 15 Q Talking here specifically now, not just about
 16 disenfranchisement but talking about the number of
 17 times people are voting, if you've got a single
 18 district and some voters are voting twice within
 19 that district within the span of a little more
 20 than a year and other people are voting only once,
 21 isn't that a disparity that should be minimized as
 22 much as possible?
 23 A Again, I see this as being a value question. If
 24 the -- The solution to this problem is to have all
 25 Senators run, half for a two-year term and half

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1 for a four-year term. If you want to minimize
 2 this impact, what you will do is you will do what
 3 a variety of states do and have four-year Senates
 4 with staggered terms and you will have half the
 5 Senate stand for a limited term of two years so
 6 that no one has to deal with delayed voting.
 7 That's the answer to your question. That's the
 8 solution.
 9 Q And Wisconsin does not have that; correct?
 10 A No, but I think Wisconsin would be served by it.
 11 Q What is your understanding of the constitutional
 12 requirements in Wisconsin for when the Senate
 13 elections occur?
 14 A I am not certain of the constitutional
 15 requirements. I know that there -- Could you
 16 restate the question, please?
 17 Q Sure.
 18 A Or just repeat it, please.
 19 Q What does the Wisconsin Constitution require in
 20 terms of the periods to which Senators are elected
 21 in Wisconsin?
 22 A I cannot --
 23 MR. KELLY: Objection, form, but
 24 you may answer.
 25 A I cannot recite for you the specific Wisconsin

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1 statutory or constitutional requirement.
2 Q Is it true that in Wisconsin we have elections for
3 our State Senate every four years?
4 A It is true that Senators stand for four-year
5 terms, yes.
6 Q And so there is a provision in the Constitution
7 that elections for Senators will occur every four
8 years, for those Senators who are elected?
9 A Again, every Senator stands for a four-year term
10 but Senate elections are held every two years
11 because of the staggered terms, yes.
12 Q Okay. But that's the structure that is
13 encompassed within the Wisconsin Constitution;
14 correct?
15 A Yes.
16 Q I'd like you to look at paragraph 6 of your expert
17 report on page 5.
18 A Yes.
19 Q You state -- On treatment of political
20 subdivisions, you state there, "Cities and
21 counties are creatures of the state (Dillon's
22 Rule)." Do you see that?
23 A Yes.
24 Q What is Dillon's Rule?
25 A Dillon's Rule is an articulation -- Judge Dillon,

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1 Q No, that it is on the basis of one-person,
2 one-vote.
3 A Apportionment?
4 Q No, no, Dillon's Rule.
5 A Dillon's Rule is not based upon one-person,
6 one-vote. Dillon's Rule is part of the foundation
7 of defining the county as a lesser creature than
8 the individual for the purpose of equal
9 protection.
10 Q Okay. I'm sorry, then maybe I misunderstood.
11 A It's one of the tenets of federalism. There is a
12 very nice discussion of this in Nice and
13 Fredericksen's book "The Politics of
14 Intergovernmental Relations," 1992, St. Martin's
15 Press.
16 Q Maybe I misunderstood. I thought you had
17 testified before that you had connected Dillon's
18 Rule with the standard of one-person, one-vote.
19 A No, Dillon's Rule is part of the rationale for
20 determining that a county is not entitled to the
21 same protection of representation as a person.
22 Q All right.
23 A Okay.
24 Q All right, I understand.
25 A Yeah.

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1 I don't recall the first name, either late 19th,
2 early 20th Century -- that cities and counties
3 don't have special standing equivalent to that of
4 a state or a person because they are creatures of
5 the state. They can be merged, subdivided,
6 combined or eliminated. The Court's home rule
7 limits the ability to apply Dillon's Rule to the
8 complete elimination of a municipality, but
9 municipalities are creatures of the state and have
10 different standing under the Constitution than
11 people.
12 Q Where was that rule formulated?
13 A Oh, my gosh. It comes out of a federal opinion.
14 I'd have to go back and check.
15 Q Is that a rule that you've observed applied to
16 Wisconsin, as well as other states?
17 A I can't speak specifically to Wisconsin, but other
18 states in general, yes. Dillon's Rule is part of
19 the foundation of the argument that one-person,
20 one-vote stands above apportionment representation
21 to counties in the application of redistricting,
22 for example.
23 Q And where have you observed that to be the case?
24 A What, that people rather than counties are the
25 basis for apportioning power?

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1 Q Now you have a table in your report, Table 5,
2 where you set out county and municipal splits
3 under Act 43; correct?
4 A Yes.
5 Q Now, you don't identify the municipalities that
6 are split in the Assembly and Senate districts by
7 name; correct?
8 A Correct.
9 Q So you've got aggregate numbers there?
10 A Yes.
11 Q And I note that Act 43 for Assembly municipal
12 splits has increased over the 2002 Court drawn
13 plan; correct?
14 A Yes.
15 Q So there are 62 municipalities split under Act 43
16 versus only 50 under the 2002 Court drawn plan;
17 correct?
18 A Yes.
19 Q And then Senate municipal splits there are 37 for
20 Act 43, whereas there were only 24 under the 2002
21 Court drawn plan; correct?
22 A Yes.
23 Q So we could go through and compare those numbers;
24 right?
25 A Yes.

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1 Q All right. Did you personally look at all of the
2 municipalities that were split by Act 43?
3 A No.
4 Q Who compiled that information for you?
5 A Well, the -- actually the information on these
6 splits, as I note here, should have been -- as I
7 recall, the splits were compiled on the web at the
8 Legislative Reference Bureau. The prior split
9 information I took from the *Baumgart* decision.
10 The municipal splits were also compiled -- I
11 believe municipal splits should also be compiled
12 in data that I have given to you in discovery, and
13 those were either provided to me from the
14 legislative staff or by Mr. Diez who has done some
15 data work for me, Diez, Diez.
16 Q Oh, Mr. Diez?
17 A Yeah, Mr. Diez. So these data came from
18 compilation which was provided to me by one of
19 those sources.
20 Q All right. Did you personally go through and
21 look, either on a map or in some other way, at
22 each of the municipalities that was split?
23 A No.
24 Q Were you asked to perform that work at all in this
25 case?

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1 A To look at all of the municipalities that were
2 split? No.
3 Q Correct. Were you asked to look at any of the
4 municipalities that were split in terms of the way
5 that they were split?
6 A I was asked to go back and take a look at the
7 treatments of Racine, Kenosha, and Madison for
8 purposes of analysis that appear in my
9 supplemental report.
10 Q And that is limited to congressional districts;
11 correct?
12 A No. I believe that's also in the context of the
13 Assembly.
14 Q All right. And we'll get to that in a minute,
15 then.
16 Were you asked to look at the splits of any
17 municipalities other than Racine, Kenosha and
18 Madison?
19 A Not that I recall, no.
20 Q Were you asked to look at the split of the city of
21 Marshfield?
22 A No.
23 Q Do you know why -- Do you know whether Marshfield
24 was split?
25 A No.

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1 Q Do you know why it was split, if it was?
2 A Not knowing if it was split, I don't know why it
3 was split, no.
4 Q And what about the city of Beloit, do you know
5 whether Beloit was split?
6 A I don't know.
7 Q And so, again, not knowing whether it was split,
8 you wouldn't know why it was split?
9 A Correct.
10 Q Do you know in the case of the municipalities that
11 were split, Racine, Kenosha and Madison, do you
12 know who made the decisions to split those?
13 A No.
14 Q I'd like you to turn to page 8 of your report,
15 paragraph 9.
16 A Yes.
17 Q And in paragraph 9 you address incumbent pairings;
18 correct?
19 A Yes.
20 Q You note 11 Assembly pairings comparing 22
21 incumbents?
22 A Yes.
23 Q Do you know who made the decisions on incumbent
24 pairings?
25 A No.

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1 Q So you don't know from your work in this case who
2 decided which incumbents to pair; is that correct?
3 A No, I don't.
4 Q In paragraph 10 you address the congressional
5 districts; correct?
6 A Yes.
7 Q All right. Now, in that discussion that you have
8 there, you do set out all of the different
9 congressional districts that are split by counties
10 and by municipalities; correct?
11 A Yes.
12 Q All right. So why did you have a discussion of
13 the municipalities split by congressional
14 districts and not by Assembly districts?
15 A Well, in the context of the congressional
16 districts, because there were relatively few
17 districts within which indicate the pairings, it
18 was relatively efficient to report this, this
19 information.
20 Q So in terms of comparison with the Assembly
21 districts, would it not have been efficient to
22 report the Assembly districts with this?
23 A What I need to do is offer you a small bit of
24 context. I was working to finish this report
25 while I was in trial in another case and finishing

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1 a report for the Fletcher case in Maryland. As it
2 happened, I had a window at the end of that case
3 to finish up the work on the congressional report
4 and was able to summarize these up and write them
5 up. So it was simply a matter of the convenience
6 of the time to be able to report these splits.
7 Q I see. So the congressional districts were
8 reported, the splits were reported in this way
9 because to report the Assembly districts would
10 have taken significantly more time than you had to
11 work with?
12 A At the time I had, yes.
13 Q Have you gone back since then and done any kind of
14 an analysis of the Assembly district splits that
15 is not reflected in your report?
16 A Other than the discussion that's in my rebuttal
17 report, no.
18 Q Dr. Gaddie, do you set forth in your expert report
19 the cases in which you've testified in previous
20 numbers of years dating back to 2001? Let me just
21 ask you, I'm going to have you turn to page 22 of
22 your report.
23 A Okay. Of my report or my vitae?
24 Q Of your -- Well, that's right, it's page 22 of
25 your vitae which is attached to your report,

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1 Exhibit 30, for the record.
2 A Yes.
3 Q And so you identify a number of cases on pages 22
4 and 23 where you have testified previously;
5 correct?
6 A Correct.
7 Q Are all of these cases redistricting cases? For
8 the litigation. I know some of them are hearings
9 and aren't --
10 A Right. No, no, it's -- some of the -- nearly all
11 of these cases in some way or another will involve
12 redistricting. Some are reached -- cases brought
13 for the purpose of crafting maps. Some are
14 Section 2 claims, but the one -- but all of these
15 in some form or fashion involve either
16 redistricting or minority representation
17 opportunities.
18 Q In the Illinois case where you actually did not
19 testify or submit a report --
20 A Yes.
21 Q -- who were you retained by?
22 A In Illinois I was retained by the -- by counsel
23 for the congressional Republicans.
24 Q What about the Fletcher case in Maryland, who were
25 you retained by in that case?

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1 A I was retained by counsel for the Fannie Lou Hamer
2 Foundation. Fannie Lou Hamer Coalition, excuse
3 me.
4 Q What is that coalition?
5 A It's a group of black plaintiffs that brought a
6 case against the State of Maryland contending that
7 compact crafting of congressional districts
8 resulted in the creation of an additional
9 majority-minority opportunity district in the
10 state of Maryland.
11 Q Who was in control of the Legislature in Maryland
12 that drew the map that was being challenged?
13 A That's the Democrats.
14 Q You mentioned another case that you had worked
15 with Dr. Morrison in, a case in New York from
16 2007. That's identified in your CV on page 22,
17 U.S. versus Village of Port Chester, New York;
18 correct?
19 A Yes.
20 Q Who were you retained by to testify in that case?
21 A I was retained by counsel for the village.
22 Q What were counsel for the village challenging in
23 that plan?
24 A Counsel for the village weren't challenging
25 anything. They were defending the village's

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1 at-large election system.
2 Q And who was challenging the election system in
3 that case?
4 A It was the U.S. Department of Justice.
5 Q Are there any other statewide redistricting cases
6 that are identified on pages 22 and 23 of your CV?
7 A Yes. If we go down to below the briefing, the
8 U.S. Commission, all of these cases are statewide
9 cases.
10 Q So we have the Larios versus Cox case; correct?
11 A Correct.
12 Q And who were you retained by in the Larios case?
13 A Georgia Republican Party. Plaintiffs.
14 Q What about Sessions versus Perry?
15 A Sessions v. Perry, I was retained by the
16 attorney general of Texas.
17 Q What were you retained to do in that case?
18 A There were two functions in that case. We were
19 retained to give feedback on proposed
20 congressional districts in the -- proposed
21 congressional districts in the 2003 redistricting
22 of Texas and then also to provide expert testimony
23 at trial if the case came to trial and to assist
24 with preclearance.
25 Q Who are formulated the districts that were at

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1 issue?
2 A Those districts -- actually, that's one of the fun
3 mysteries of Texas politics is those districts
4 were formulated by the Legislature, passed by the
5 Legislature, signed by Governor Perry. The
6 formulation, it has been alleged -- there have
7 been allegations that have abounded about the
8 extent of the role of Tom DeLay in that, but I
9 never witnessed Mr. DeLay anywhere near the
10 redistricting, but he was clearly involved in
11 making it happen.
12 Q Moving down, Armstrong versus Taylor, an Oklahoma
13 case in 2002 --
14 A Yes.
15 Q -- that was a redistricting case as well?
16 A Yes. It was -- we were -- we had reached an
17 impasse in passing a congressional redistricting
18 plan in the state of Oklahoma.
19 Q And who were you retained by in the Armstrong
20 case?
21 A I was retained by counsel for the state House of
22 Representatives.
23 Q Who was in control of the state House of
24 Representatives?
25 A Democrats.

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1 Q Then below that, the Jensen case was from
2 Wisconsin, and that was part of the 2002
3 redistricting litigation; correct?
4 A Correct.
5 Q Who were you retained by in the Jensen case?
6 A I was retained by counsel for -- by counsel for
7 the Republicans in the Legislature, for the
8 Speaker of the House and the Senate Minority
9 Leader.
10 Q And Dr. Mayer was involved in that case as well;
11 correct?
12 A Yes.
13 Q And then the Jepsen case below was from
14 New Mexico; correct?
15 A Correct.
16 Q Who were you retained by in that case?
17 A I was retained by counsel for Governor Gary
18 Johnson.
19 Q And then the Balderas case of Texas, 2001?
20 A In that instance -- Balderas and Del Rio v. Perry
21 are basically the same litigation. Retained by
22 counsel for the congressional Republicans.
23 Q Now you also have submitted a rebuttal report in
24 this case; correct?
25 A Yes.

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1 MR. POLAND: I don't think that
2 we've marked that yet as an exhibit.
3 MS. LAZAR: Not to my recollection,
4 but I could be wrong.
5 MR. POLAND: I think you are right,
6 Maria.
7 (Exhibit No. 58 marked for
8 identification)
9 MR. KELLY: Are you doing okay?
10 THE WITNESS: Yeah.
11 MR. KELLY: Keith?
12 THE WITNESS: Yeah.
13 MR. KELLY: You just give me a sign
14 when you need a break.
15 THE WITNESS: What time is it?
16 MR. KELLY: A quarter after 10:00.
17 THE WITNESS: Okay. Let's just
18 keep going.
19 MR. POLAND: Do you need to take a
20 break?
21 THE WITNESS: No, I'm good,
22 Counsel. We may need to take a break in a
23 bit, but let's just keep going. We're good.
24 Q Dr. Gaddie, I'm handing you a copy of a document
25 that we've had marked as Exhibit No. 58. I'd like

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1 you to take a look at it, and then when you're
2 ready identify it for the record, please.
3 A Yes.
4 Q And I'm going to ask you to hold onto it. We'll
5 move through that here. Can you identify it for
6 the record, please?
7 A Yes. This is the rebuttal report that I submitted
8 on January 13.
9 Q You mentioned -- You testified before that you
10 were retained around November 23rd; is that
11 correct?
12 A Yes.
13 Q Who retained you?
14 A I was contacted by Patrick Hodan and Dan Kelly
15 from the Reinhart firm.
16 Q Were you contacted by e-mail? Telephone?
17 A Telephone. I was playing golf with one of my
18 sons.
19 Q Had you previously had any conversations with
20 anyone about testifying in this case?
21 A No.
22 Q Had you spoken with Mr. Hodan or Mr. Kelly before?
23 A During the remap ten years ago, I had had some
24 interactions with them, but my main contact was
25 with counsel at Michael Best.

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1 Q You're talking about ten years ago during the
2 2002 --
3 A Ten years ago, yes.
4 Q Had you had any contact with Mr. Kelly or
5 Mr. Hodan in the intervening ten years, between
6 the time of the 2002 redistricting litigation and
7 when they called you on the golf course on
8 November 23rd?
9 A No.
10 Q Before November 23rd, outside of Mr. Kelly and
11 Mr. Hodan, had you spoken with anybody about the
12 possibility of testifying as an expert in this
13 case?
14 A Well, when I had been retained by Michael Best to
15 consult on the remap, the possibility of my
16 defending the map was one factor that had come up.
17 So the prospect of my defending this map had
18 always existed.
19 Q What were the conversations that you had at that
20 time about that topic?
21 A Nothing specific.
22 Q How was it raised?
23 A Well, again I'm having to recall back to my
24 retention, but my retention was to provide counsel
25 advice on measures and items for analysis in

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1 support of the creation of the map. But having
2 worked with Michael Best ten years ago in
3 litigation, there was always the prospect that if
4 this map went to court that I might be called upon
5 to defend it.
6 Q That was one of the expectations you had going
7 into the engagement with Michael Best then; is
8 that correct?
9 A In terms of anticipating it eagerly, no. In terms
10 of it being a possibility, yes.
11 Q When Mr. Kelly and Mr. Hodan contacted you, what
12 did they tell you they wanted you to do?
13 A They wanted me to be able to testify in defense of
14 the map, that they wanted me to be able to develop
15 an expert report in defense of the map and to be
16 able to testify in court.
17 Q And that was -- When you say map, you mean both
18 for the congressional districts and the Assembly
19 and Senate districts?
20 A Act 43 and 44, yes.
21 Q We've already established I think any of the
22 materials that you would have received from
23 Mr. Kelly and Mr. Hodan have been provided to us;
24 correct?
25 A Yes.

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1 Q Do you have a separate engagement letter or
2 agreement with Mr. Hodan and Mr. Kelly?
3 A I have one somewhere, yes.
4 Q Do you know whether that's something that's been
5 provided?
6 A I don't know if it's been provided or not. It's
7 hard copy. It is in a file somewhere in my study
8 at my house.
9 Q Turning back to your rebuttal report.
10 A Yes.
11 Q You provided this in rebuttal to Dr. Mayer's
12 expert report; correct?
13 A Largely, yes.
14 Q Your paragraph 1, you have some corrections to
15 your initial report; correct?
16 A Yes.
17 Q All right. Do you have any other corrections to
18 your initial report that you know about as you sit
19 here today that are not identified in your
20 rebuttal report?
21 A As I sit here today, no. Should I come across
22 any, I will immediately correspond with counsel in
23 writing and have that communicated to you.
24 Q Just to make sure, though, there is nothing in
25 your initial report that you know today to be

55

1 incorrect?
2 A Sitting here today, there is nothing in here I
3 know to be incorrect.
4 Q Turning to the second paragraph where you identify
5 the movement of district lines in Act 44, the
6 congressional map, this is limited to Act 44 in
7 this discussion in your rebuttal report; correct?
8 A The discussion about the movement of district
9 lines?
10 Q Yes.
11 A Yes.
12 Q All right. So it doesn't address the movement of
13 district lines for Assembly or Senate districts;
14 right?
15 A Correct.
16 Q Now you have a comparison to the state of Iowa
17 that you discuss; correct?
18 A Yes.
19 Q Now it's true, isn't it, that Iowa has some
20 special redistricting laws that restrict how you
21 can redistrict and what can be considered;
22 correct?
23 A Yes.
24 Q Now, there are conditions that apply to Iowa
25 redistricting that don't apply to Wisconsin;

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1 correct?
2 A Yes.
3 Q So, for example, Iowa requires districts to be
4 composed of entire counties to the extent that's
5 possible; right?
6 A Correct.
7 Q And that's not a requirement in Wisconsin;
8 correct?
9 A Correct.
10 Q In terms of movement of people, that also has an
11 effect that you have to move a lot of people
12 around in Iowa; correct?
13 A Not necessarily.
14 Q And why not, because you have to redistrict along
15 county lines?
16 A Well, Iowa is largely made up of relatively low
17 population, rural counties, and a variety of
18 smaller urban centers. You don't have to move
19 40 percent of the state around in order to satisfy
20 equalizing populations, even if you use whole
21 counties.
22 Q Have you done studies of Iowa's redistricting
23 before?
24 A I have -- I'm aware of Iowa's redistricting. I
25 mean it's -- most political scientists are, yes.

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1 Q Have you ever submitted a report in a
2 redistricting case that involved Iowa
3 redistricting?
4 A No.
5 Q Have you -- Either in any peer reviewed paper or
6 any other journal, have you ever done any analysis
7 of Iowa's redistricting process?
8 A No.
9 Q Can you identify for me any other differences in
10 Iowa law and the Wisconsin redistricting law that
11 could lead to Iowa moving around more people than
12 would need to be moved in Wisconsin?
13 A Specific differences, no. I mean Iowa does act
14 under a commission for the crafting of their
15 districts. They do use a whole county requirement
16 for the crafting of congressional districts and
17 they have a related whole county requirement for
18 the treatment of their state Legislature, and that
19 treats the partitioning of counties as well. If I
20 recall, I would have to reach back and try and
21 recall what I've read out of the Iowa statute and
22 the Iowa Constitution. There is an expectation
23 that districts will be contiguous and of a
24 reasonably compact form.
25 Q Which are fairly standard redistricting criteria

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1 in many states, including Wisconsin; correct?
2 A Yes.
3 Q California also has a nonpartisan redistricting
4 process; correct?
5 A They have a commission, yes. They've just started
6 using it.
7 Q There are some special restrictions in California
8 that don't apply to Wisconsin; correct?
9 A Well, again, I would have to go back and review
10 the California case.
11 Q All right. Do you know, for example, that
12 Article 21 of the California Constitution states
13 that the place of residence of an incumbent cannot
14 be considered in redistricting?
15 A Well, this is also a criterion in Iowa as I
16 recall, but yes.
17 Q In Wisconsin the place of the residence of the
18 incumbents may be considered; correct?
19 A There is no prohibition against considering it,
20 correct.
21 Q And that is, in fact, something that is looked at
22 in Wisconsin during the redistricting process, do
23 you know?
24 A Considering that we engage in our analysis to
25 identify where they are, I would assume it's of

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1 some consideration, yes.
2 Q Now, in paragraphs 4 and 5 you are looking at
3 Dr. Mayer's analyses of compactness; correct?
4 A Yes.
5 Q And you criticize Dr. Mayer for not using enough
6 different measures of compactness?
7 A Yes. In this specific instance of his analysis,
8 Professor Mayer hones in on one particular type of
9 compactness measure. Previously in his same
10 report he's presented four types of compactness
11 measures. In 2002 he presented nine compactness
12 measures. In most redistricting around the
13 United States we typically will look at at least
14 two, usually at two, because different compactness
15 measures capture different aspects of compactness.
16 Q It's true, isn't it, that there is no agreement
17 that any particular measure of compactness is most
18 appropriate?
19 A Exactly. You should -- Compactness first of all
20 should be considered in the context of the entire
21 map. That's the purpose of these measures.
22 Second, it is good to look at at least two
23 measures, and the two most common are the small
24 circle and the perimetered areas or, as
25 Professor Grofman termed it, measures of

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1 circultude and measures of fillitude, to what
2 extent does a district look like a circle or to
3 what extent does a district fill in a circle.
4 Q Is there any specific measure of compactness that
5 you believe is the best one to use?
6 A Arithmetically I've got a preference for the
7 perimetered area measure because it's more
8 sensitive. Perimetered area is most appropriate,
9 indeed it's a superior measure, for big, square
10 states. So if you're in Wyoming or Colorado or
11 New Mexico or Nevada, the perimetered area measure
12 is a superior measure. In states like Wisconsin,
13 Maryland, we like to use both.
14 Q Now you performed a linear regression that you
15 referred to in paragraph 5 of your rebuttal
16 report; correct?
17 A Correct.
18 Q And Table 4 captures some of that analysis;
19 correct?
20 A Correct.
21 Q Now, in Table 4 you use only two variables;
22 correct?
23 A Two independent variables, yes.
24 Q Two independent variables, right. And what are
25 the independent variables that you use?

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1 A There is -- Each one of these is a nominal measure
2 indicating the presence or absence of an incumbent
3 of either party in the district. So is there a
4 Democratic incumbent or not, is there a Republican
5 incumbent or not.
6 Q Now, are there any excluded variables that might
7 be important in determining compactness?
8 A Well, considering that the -- Off the top of my
9 head, I don't know. The purpose here was to
10 engage in a test of the difference in compactness,
11 control for the incumbency of -- the party of the
12 incumbent in the district.
13 The thing with compactness of districts is
14 there are effects of artistry, what the line
15 drawers do, and then there are effects of
16 geography, what the shape of the state does. I am
17 not certain how I would capture at a district
18 level effects of the state influences.
19 And with regard to the effect of artistry,
20 it's going to be seen in the outcome and in the
21 decisions that are made by the person crafting the
22 map.
23 So what I'm doing here is I'm attempting to
24 test for the relationship between the artistry of
25 the map, the compactness of the districts as

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1 drawn, and the incumbency of the individual -- of
2 the party of the incumbents put in those
3 districts.
4 Q All right. And in your regression you do identify
5 the adjusted R²s; correct?
6 A Yes.
7 Q So you've got 0.006 under the Smallest Circle
8 Score; correct?
9 A Uh-huh.
10 Q And under the Convex Hull 0.059; right?
11 A Yes.
12 Q And then under the Posby-Popper 0.044?
13 A Yes.
14 Q And Equal Circle 0.053; right?
15 A Yes.
16 Q Now these are pretty low R² values, aren't they?
17 A Yes, they are.
18 Q And this signifies your regression equation does
19 not fit the data very well; correct?
20 A Correct.
21 Q Might it make a difference if you had considered
22 using rural versus urban areas as variables?
23 A So you're saying if I, for example -- well, so
24 putting in a dummy control for the rural area or
25 putting in an arithmetic control for the square

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1 mileage of the district or something like that?
2 Q Considering population in rural areas, population
3 in urban areas, taking those into account as
4 variables as well.
5 A I suppose one could.
6 Q Okay. Might it make a difference, do you think,
7 to the outcome of your analysis?
8 A I don't know.
9 Q What about if a district borders a body of water,
10 could that make a difference in the outcome of
11 your analysis?
12 A Well, again, if the district borders a body of
13 water, it might. But, again, it depends on which
14 measure and it depends on the extent to which you
15 can capture the proportion of the district that is
16 on that border, influencing the total border of
17 the individual district.
18 While I suppose one could, the principal
19 purpose of this test was to see if there was any
20 relationship between party -- the incumbent and
21 the party and the compactness of the districts.
22 That was the purpose of the test.
23 The purpose was not to explain compactness in
24 general but to see if there was a significant
25 relationship between either party's incumbents and

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1 the relative compactness of their districts.
 2 Q Without respect for controlling for any other
 3 possible variable or effect; correct?
 4 A Again, the only purpose here was to perform this
 5 specific test. It could have also been performed
 6 using a difference of means test. This was a more
 7 efficient way of testing the relationship in my
 8 opinion.
 9 Q Would the compactness of a previous district
 10 affect the compactness score under the four
 11 analyses that you've set forth in your Table 4?
 12 A It's possible that they might be correlated. But,
 13 again, this is going to depend upon a variety of
 14 factors. It is going to depend upon the degree of
 15 continuity in the district. It could depend upon
 16 the change in the criteria applied to the crafting
 17 of the district. There could be a variety of
 18 unique choices that were made by mapmakers that
 19 could influence different districts at different
 20 points.
 21 Again, the one thing we do know is that there
 22 are 99 Assembly incumbents and all of them got put
 23 somewhere. So what this analysis does is it tests
 24 the incumbency of the party of the incumbents,
 25 where they're placed, the compactness of the

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1 districts, where they're placed with the open
 2 seats as the reference point.
 3 Q I think you said the one thing that we do know.
 4 We actually could find out a lot more if we wanted
 5 to and include it within a regression analysis;
 6 correct?
 7 A One can always add more variables.
 8 Q Does omitting independent variables that might be
 9 causal factors affect your coefficient estimates
 10 or introduce any bias into your analysis?
 11 A In this instance I don't know.
 12 Q Isn't it true that if you did include some other
 13 independent variables, the influence of the two
 14 variables that you did include could be very
 15 different?
 16 A It could change. It could remain the same.
 17 Q You just haven't looked?
 18 A I have not looked.
 19 Q I'd like to turn back to paragraph 7 of your
 20 delayed voting analysis. That is on -- I guess we
 21 don't have page numbers, but it begins on -- well,
 22 paragraph 7.
 23 A If I can make one correction at this point?
 24 Q Yeah, of course.
 25 A Paragraph 7 should have been called paragraph 6.

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1 Paragraph 8 should have been called paragraph 7.
 2 I have a numbering error that I would like to make
 3 known for the record.
 4 Q That's fine.
 5 A I appreciate it. I'll agree to call it 7 for
 6 right now.
 7 Q Yeah, let's just call it that for now since that's
 8 what it says.
 9 A Very good.
 10 Q Now here we're back to talking about delayed
 11 voting which is a topic that you did address in
 12 your initial report and we discussed a few minutes
 13 ago; correct?
 14 A Correct.
 15 Q Now you say that delayed voting is not unusual,
 16 and that's at the very beginning of the paragraph
 17 that's numbered 7; correct?
 18 A Yes.
 19 Q And you note that it occurs in other states. I
 20 believe if you turn to the next page, you identify
 21 a number of states where that occurs; correct?
 22 A Yes.
 23 Q So one of those states is California; right?
 24 A Correct.
 25 Q And we just talked about California a few minutes

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1 ago?
 2 A Yes.
 3 Q We've talked about the fact that there is a
 4 Citizens Redistricting Commission in California?
 5 A Yes.
 6 Q And that uses different criteria -- or some
 7 different criteria than Wisconsin uses for its
 8 redistricting; correct?
 9 A The fact that they use a commission and the fact
 10 that they don't consider incumbents are two
 11 criteria we agreed to, yes.
 12 Q Now do you know whether they attempt to minimize
 13 delayed voting in California?
 14 A I don't know.
 15 Q Do you know how they refer to their delayed voting
 16 in California?
 17 A No.
 18 Q All right. Have you heard them use the term
 19 deferrals before?
 20 A No.
 21 Q Now, the goal should be to minimize the number of
 22 people subjected to delayed voting; correct?
 23 A The goal. The goal of the redistricting?
 24 Q Or a goal.
 25 A Well --

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1 Q It should be a goal to minimize the number of
2 people subjected to delayed voting; correct?
3 A Well, again, are you asking me my personal opinion
4 or are you asking me about the obligation of the
5 Legislature? Because my personal opinion, my
6 opinion, if the Court were crafting a map, is
7 definitely they should minimize delayed voting.
8 Again, with regard to the Legislature, they make
9 their choices.
10 Q Now you have a statement in your rebuttal report
11 where you refer to maps that Dr. Mayer advocated
12 in the redistricting litigation in 2002; correct?
13 A That's correct.
14 Q And you say that they had a proportionally greater
15 delayed voting than under Act 43?
16 A That's correct.
17 Q Now it's true, isn't it, that the maps that were
18 advocated by the Republicans in 2002 had an even
19 greater delayed voting effect than the Democrats'
20 plan?
21 A No. That is not the case.
22 Q All right. I'd like you to look at paragraph 8.
23 A Yes, sir.
24 Q And here you're addressing the core retention
25 under Act 43; correct?

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1 A Yes.
2 Q Now you perform an analysis here. You start
3 referring to it in your second full paragraph.
4 You state, "if one examines the nine Democratic
5 incumbent districts with the lowest core
6 retention, explanations exist for their low
7 cores." Do you see that statement?
8 A Yes.
9 Q Now what are the explanations that you identify
10 for their low cores?
11 A Well, again if we take the use again in three
12 sets, I'll direct you to paragraph 8.1. There is
13 a recrafting of the districts there that combine
14 the urban areas of Racine and Kenosha into a
15 Senate district and into a set of Assembly
16 districts and the rural areas of Racine and
17 Kenosha Counties were reoriented to create
18 predominantly rural districts.
19 So we have an effort to maintain the whole
20 integrity of the municipalities around Kenosha,
21 running up into Racine, and there is -- in doing
22 so what you achieve is a concentration of
23 influence of minority voters.
24 If we look at Milwaukee County under
25 paragraph 8.2, we have a variety of districts that

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1 are underpopulation, mainly the African-American
2 districts that are on the north side of the river.
3 In order to bring districts up to population,
4 there is going to be a ripple effect that's going
5 to happen. So while you are going to have
6 stronger core retention on the districts that are
7 closest to the lake, as you move out into the
8 African-American community, maintaining these
9 African-American opportunities, the core retention
10 of those districts is going to be lower than the
11 districts that they've given population up to.
12 As you continue to move out in this
13 direction, because you're dealing with a rolling
14 series of districts with underpopulation, the
15 consequence is going to be that when you reach the
16 edge of Milwaukee County and you hit the suburbs,
17 these districts are also -- are going to be
18 reoriented and are going to have lower core
19 retentions as well.
20 So the effort to maintain and bring up to
21 population the African-American districts and also
22 the districts 7, 8 and 9 down under Senate 3 south
23 of the river, the treatment of these districts is
24 associated with the low core retention.
25 If we're looking at the treatment of

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1 Assembly 8 and 9, the reorientation of the
2 districts from east-west to north-south affects
3 core retention on both of those districts, in
4 terms of creating the two majority Hispanic
5 districts that are down south of the river.
6 So you have efforts to treat the
7 majority-minority districts, bringing them up to
8 population, that are associated with the low core
9 retention.
10 Then if we go out to Dane County, we go to
11 Madison. Madison, which previously had six entire
12 districts -- parts of six districts coming into
13 it, now has four entire districts drawn into it
14 and portions of a fifth and you have an open seat
15 created out in Dane County. These types of
16 changes, to put whole district -- whole Assembly
17 districts inside city of Madison and the creation
18 of an open seat in a growth area in Dane County
19 are going to necessarily result in low core
20 retention.
21 Q Turning back to the Hispanic districts in
22 Milwaukee, 8 and 9.
23 A Yes.
24 Q You said if their orientation had remained
25 east-west that they would have had higher core

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1 retention; is that correct?
2 A More than likely, yes.
3 Q So making their orientation more north-south would
4 have lowered the core retention; is that correct?
5 A Yes.
6 Q You also talked about Racine and Kenosha and
7 maintaining the integrity of the municipalities.
8 A Uh-huh.
9 Q Do you know whether the integrity of the
10 municipalities was retained under Act 43?
11 A That's my understanding, yes.
12 Q Do you know why there was a -- do you know,
13 does -- strike that question.
14 Does Act 43 draw districts around Racine and
15 Kenosha in a different way than they had been
16 drawn by the Court in 2002?
17 A Yes.
18 Q Do you know why there was a decision made to
19 change the districts in the way that they were
20 changed?
21 A No.
22 Q Now you perform an analysis of core retention
23 where you eliminate the nine Democratic incumbent
24 districts with the lowest core retention; correct?
25 A Correct.

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1 Q Why do you discard them from the analysis?
2 A Well, again the question was posed to me by
3 counsel, if you were to take these districts where
4 you have this explanation for their low core
5 retentions, how do the remaining districts,
6 Democratic and Republican, compare in terms of
7 core retention. So I performed that analysis, and
8 that is the result that is in -- that appears in
9 Table 8.
10 Q Do you think that's a valid analysis to perform?
11 A If the -- yes. If there are -- if there are
12 rationales that exist for the treatment of cores
13 that reflect some policy -- the application of
14 some policy by the Legislature, some goal of
15 mapmakers, certainly equalizing population and
16 maintaining or creating majority-minority
17 opportunities fits this criteria. It is a valid
18 exclusion.
19 Q Is this an exclusion that you've ever made before
20 in any of the work that you've ever done?
21 A I have done work before where we have gone through
22 and -- I have never done an exclusion from a core
23 analysis where we've done this, no. The question
24 was posed to me, what would it look like if we did
25 this. Having been posed the question, I provided

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1 the answer. Having sought the answer, I'm obliged
2 to reveal it.
3 If these cases -- If these districts are laid
4 aside based upon these explanations, the
5 significant difference in core retention by party
6 does disappear. And we're excluding both
7 Democratic and Republican seats.
8 But it is an answer to a specific question
9 that was directed to me. Having answered the
10 question, performed analysis, I'm obliged to
11 disclose it.
12 Q Is this an analysis that you would use to support
13 your opinions in this case?
14 A Well, in this case, because there are valid
15 explanations for these differences in the core
16 retention, I stand by them as differences. These
17 are applications of either legal necessity,
18 equalizing population, maintaining majority-
19 minority opportunities or they reflect the
20 application of a neutral principle like
21 maintaining the integrity of municipalities in the
22 redistricting process. To that extent they do
23 stand as explanations for why these core retention
24 differences exist. It is an explanation for the
25 difference.

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1 Q Why didn't you exclude districts with the largest
2 core retention?
3 A Well, again if I had -- well, I guess if we did
4 the ones with the largest core retention, the
5 relationship disappears also. But I was asked
6 what happens when you look at these choices. Or
7 the explanations for these choices, what happens
8 when you look at them, what is the impact on core
9 retention. I was answering a specific question
10 that was directed to me by counsel.
11 Q Do you know why they asked you to stop with only
12 nine districts?
13 A I wasn't asked to look at nine districts. I was
14 asked to look at these areas and what happened in
15 these areas. What happens with the treatment of
16 majority-minority districts in these three Senate
17 district areas, what happens in Dane County, what
18 happens in the area around Racine and Kenosha.
19 Q And these are all urban areas; correct?
20 A Yes, they are.
21 Q Urban areas tend to vote more heavily Democrat,
22 don't they?
23 A Yes. And I believe if you look you'll notice that
24 there were 59 Republican districts and 39
25 Democratic districts in the analysis in Table 7.

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1 There are 54 Republican districts and 26
 2 Democratic districts in the analysis in Table 8.
 3 So we're not dealing with nine districts, we're
 4 dealing with 19.
 5 Q But only nine were eliminated from the analysis?
 6 A No, 19 were eliminated from the analysis.
 7 Q Actually I'm not following you there when you say
 8 that. All right, let me go back to that.
 9 A If I've said 9, it should say 19. Where does it
 10 say 9?
 11 Q If you turn to paragraph 8 and you look at the
 12 second full paragraph, it states, "However" --
 13 this is a quote. "However, if one examines the
 14 nine Democratic incumbent districts with the
 15 lowest core retention, explanations exist for
 16 their low cores."
 17 A Right. But again, if you're going to look at the
 18 explanation, you can't just look at the district
 19 itself. We need to look at the accompanying
 20 districts, the districts that are next to it.
 21 There are nine districts that existed with
 22 low cores. They existed in these areas. If we're
 23 going to look at the policy choice that was made
 24 or the map move that was made, we have to look at
 25 the impact not just on those districts but also on

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1 the adjacent districts, so that's why it's 19
 2 districts.
 3 If we look at the total description, you'll
 4 see that there are five seats in section 8.1 that
 5 are discussed, there are eight districts in
 6 section 8.2, and there are eight districts in
 7 section 8.3. Now, two of these districts are
 8 going -- two, three, four of these districts will
 9 drop out of the analysis because they're open
 10 seats and therefore don't have an incumbent core
 11 retention, and that gives us a total of 19.
 12 Q Now you state, going back to paragraph 8, and this
 13 is the third full paragraph, you state that some
 14 disparities in the core retention of Democratic
 15 incumbent districts are explained by what appear
 16 to be specific decisions in crafting of the map;
 17 correct?
 18 A Yes.
 19 Q What are the specific decisions that you're
 20 referring to?
 21 A As I described previously, it appears to be the --
 22 part of it has to do with the treatment of the
 23 majority-minority districts in Milwaukee, the
 24 placement of whole districts inside Madison, and
 25 then the creation of districts wholly in Kenosha

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1 and Racine and then rural districts outside
 2 Kenosha and Racine in the counties in that area.
 3 Those appear to be -- those are the specific
 4 choices that I'm looking at that appear to be the
 5 case. When I look there, that's what I see.
 6 Q And those are decisions that were made by the
 7 Republicans drawing the map; correct?
 8 A I assume it was made by the mapmakers, yes.
 9 Q You were part of at least some of the process of
 10 creating the maps; isn't that correct?
 11 A What I did is -- I guess we have to define what
 12 you mean by process. I never created a district.
 13 I never saw a whole map. I never placed my finger
 14 on the mouse of a GIS. Most of my work was
 15 analyzing data or developing measures to be
 16 applied by the redistricting staff and by the
 17 Legislature in their process.
 18 Q Did you participate at least in part in working
 19 with the people who were drawing some of the
 20 districts that are identified in your rebuttal
 21 report?
 22 A Yes. I interacted with the staff, yes.
 23 Q There were other possible ways of drawing those
 24 districts; correct?
 25 A I suppose.

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1 Q Do you know who made the decision to draw these
 2 specific districts identified in your rebuttal
 3 report in the way that they were made?
 4 A No.
 5 (Mr. Hodan entered the proceedings)
 6 MR. POLAND: This would be a good
 7 place to take a break if you need a break.
 8 THE WITNESS: If you need a break,
 9 Counsel, I'm good.
 10 MR. POLAND: Let's take a break.
 11 THE WITNESS: Okay.
 12 MR. CAMPBELL: The time is 10:49.
 13 We're going off the record.
 14 (Recess)
 15 (Mr. Hodan exited the proceedings)
 16 MR. CAMPBELL: The time is 11:09.
 17 We are back on the record.
 18
 19 EXAMINATION
 20 By Mr. Earle:
 21 Q Dr. Gaddie, I'm Peter Earle. I represent some of
 22 the consolidated plaintiffs in this case. I have
 23 a narrow set of questions I want to ask you about
 24 your initial report and how you came to write that
 25 report that way, and then I'll take a break and

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1 Mr. Poland will continue and I'll come back later
2 with more questions. Okay?
3 A Very good.
4 Q So I just want to understand the sequence as best
5 I can. And that is you were retained on
6 November 23, 2010 to prepare a -- November 23,
7 2011 to prepare a report in this case; correct?
8 A Yes.
9 Q And your assignment was to defend the map in
10 Act 43; right?
11 A I don't think it was put quite that way but I
12 have -- I am writing a report in support of the
13 map that is in Act 43, yes.
14 Q Well, I wrote down like in my notes four or five
15 times that you used the word defend earlier today.
16 A Okay. Defend, very good, yes.
17 Q Because you were distinguishing between your role
18 in defending the map in your report --
19 A Yes.
20 Q -- from your work in drawing the map or
21 contributing to the map in your contract with
22 Michael Best & Friedrich earlier; correct?
23 A Mr. Earle, for the purpose of this conversation, I
24 will stipulate to the word defend. Your
25 inflection is impressive and will not show up in

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1 the transcript but it conveys a power that I had
2 not considered. But, yes, I was retained to
3 defend the map and that is the purpose of this
4 report.
5 Q I thought I was simply reflecting your physical
6 inflections as you just said that.
7 A Very well.
8 Q Okay, good.
9 A Whatever works.
10 Q Whatever works for you, good. All right. So
11 you've seen the pleadings in this case; right?
12 A I have -- I'm aware of the pleadings. I have not
13 examined all of them, but, yes, I have seen them.
14 Q But you're aware of what the allegations are in
15 the complaint?
16 A Yes.
17 Q And that includes the Voces de la Frontera
18 complaint?
19 A I believe so, yes.
20 Q And you're aware of the answer that was filed by
21 the defendants in response to the complaint;
22 correct?
23 A I can't recite it sitting here but I'm aware that
24 there is an answer that was given, yes.
25 Q And you have it on your thumb drive, don't you?

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1 A Yes.
2 Q And you reviewed it, didn't you?
3 A Yes. Several weeks ago, yes.
4 Q Okay. Now, going back to your assignment in
5 defending the maps in Act 43, what were you told
6 your job was to do? How were you to defend the
7 maps?
8 A What I was asked to do was to craft a report that
9 would basically describe and explain the map on a
10 variety of dimensions that we usually use in
11 assessing maps for the purpose of redistricting.
12 And if you look at this report, it bears a
13 strong resemblance to the report that I filed ten
14 years ago in a litigation here in Wisconsin when
15 we were engaged in a beauty pageant to attempt to
16 select an Assembly and Senate map for the state of
17 Wisconsin. A description of the districts on a
18 variety of traditional redistricting criteria,
19 equal population, so on and so forth.
20 Q But you were aware of what the allegations against
21 Act 43 were in the complaint when you were told
22 that you were to defend the maps in Act 43;
23 correct?
24 A Yes.
25 MR. EARLE: Okay. So I'm going to

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1 mark this. Let me give you the right one
2 here. This is the -- we'll mark this
3 whatever number we are at.
4 It's the Answer and Affirmative Defenses
5 to the Voces De La Frontera Plaintiffs'
6 Original Complaint for Declaratory and
7 Injunctive Relief under the Voting Rights
8 Act of 1965.
9 (Exhibit No. 59 marked for
10 identification)
11 COURT REPORTER: It's number 59.
12 Q Now, Dr. Gaddie, I've shown you Exhibit No. 59.
13 Why don't you take your report, which is Exhibit
14 No. 30, and we'll pull those two documents next to
15 each other because I want to go through the
16 allegations in the complaint and the answers of
17 the defendant, and I want to see where in your
18 initial report you defend against those
19 allegations. Okay? Do you follow me?
20 A Yes.
21 Q Good. Let's go to -- We'll start with paragraph
22 17 which is on page 7 of the answer there. Why
23 don't you take a look at that paragraph. You
24 don't have any problem with that allegation;
25 correct?

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1 A Can you identify the paragraph again, please?
 2 Q 17. It's at the bottom of page 7.
 3 A Under background?
 4 Q Uh-huh.
 5 A That looks correct, yes.
 6 Q Okay. Let's go to paragraph 18.
 7 A Yes.
 8 Q You don't have any problem with the allegations in
 9 that paragraph; correct?
 10 A No.
 11 Q Okay. So there is nothing in your report that
 12 challenges paragraph number 18?
 13 A Well, these two paragraphs are setting into fact
 14 information from the census regarding Latino
 15 percentage in Assembly District 8 and population,
 16 the Latino population in the City of Milwaukee,
 17 correct.
 18 Q Let's go to paragraph 19. Is there anything in
 19 paragraph 19 that you dispute in your report in
 20 Exhibit No. 30?
 21 A Exhibit No. 30 referring to my report, correct?
 22 Q Yes. That is, yes.
 23 A There is nothing in my report that disputes
 24 paragraph 19.
 25 Q Nor would you dispute paragraph 19; correct?

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1 A I cannot endorse nor dispute, no.
 2 Q So in all of the work you did in this case as an
 3 expert for the defendants and as a consultant to
 4 the folks who were drawing the map, you don't have
 5 enough information to determine whether the area
 6 of most rapid growth of Milwaukee's Latino
 7 community was on the near south side concentrated
 8 in the area of the Assembly district?
 9 A Well, I know this is the case. It's just not in
 10 my report.
 11 Q Okay. So let's be clear then. Given your
 12 knowledge, the sum total of your knowledge from
 13 all of the work you've done in relationship to
 14 redistricting in Wisconsin, in Milwaukee, you
 15 don't have any dispute with the allegations in
 16 paragraph 19; correct?
 17 A No.
 18 Q Good. Okay. Let's go to paragraph 20. Is there
 19 anything in paragraph 20 that you dispute in your
 20 report or you dispute based on your knowledge of
 21 the case?
 22 A Give me a moment to review the paragraph and the
 23 answer and I'll answer.
 24 Q Sure.
 25 A Thank you. Paragraph 20?

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1 Q Uh-huh. You're okay with paragraph 20?
 2 A I'm okay with paragraph 20.
 3 Q We won't be arguing with you at trial about
 4 paragraph 20?
 5 A No, Mr. Earle, you will not.
 6 Q Good, good. How about paragraph 21? I'm going to
 7 read paragraph 21. "On July 20, 2011, the
 8 Wisconsin Legislature adopted a redistricting plan
 9 in which the 8th Assembly District was assigned a
 10 reapportioned total population of 57,246, of which
 11 37,750 are Latino, for a Latino population
 12 percentage of 65.9 percent." So far that
 13 sentence, we don't have any dispute about that;
 14 correct?
 15 A Correct.
 16 Q "The redistricting plan also assigned to the
 17 adjacent 9th Assembly District a reapportioned
 18 total population of 57,233, of which 34,647 are
 19 Latino, for a Latino population percentage of
 20 60.53 percent." We're okay with that one too?
 21 A Yes.
 22 Q Okay. "This division of the Latino community into
 23 two separate adjacent assembly districts dilutes
 24 the voting strength of the citizen voting age
 25 Latino voters well below 45 percent of all

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1 eligible voters in each district, thereby denying
 2 the Latino community an effective voting majority
 3 in either district." Do you agree with that
 4 statement?
 5 A I don't know.
 6 Q You don't know?
 7 A I don't know.
 8 Q Okay. So you will not be able to provide any
 9 testimony at trial that says that statement is
 10 incorrect?
 11 A I cannot confirm or deny the -- I cannot confirm
 12 or deny the validity of that statement.
 13 Q And nowhere in your report do you address whether
 14 that statement is flawed in any way?
 15 A I do not address that statement in my report
 16 anywhere.
 17 Q And you're not going to testify at trial that that
 18 statement is flawed in any way; correct?
 19 A I will not be addressing that statement at trial.
 20 Q Okay. "The division of the Latino community into
 21 two separate adjacent but diluted assembly
 22 districts also divides the Latino community's
 23 established business district in a way that
 24 fractures the cohesiveness of the community and
 25 ignores natural community boundaries." Do you

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1 agree with that statement?
2 A Again, I don't know. I have not looked at that
3 question. I cannot confirm the validity of that
4 statement and I cannot deny it.
5 Q And you won't be providing any testimony at trial
6 that contradicts that statement; is that correct?
7 A I will not be addressing this statement at trial.
8 Q And nothing in your report addresses that
9 statement either; correct?
10 A There is nothing in my report that addresses that
11 statement.
12 Q Good. Let's go to paragraph 22. "The data from
13 the April 2010 census and the annual American
14 Community Survey indicate that the current
15 population of the Latino community on Milwaukee's
16 near south side in the Vicinity of the
17 reapportioned 8th and 9th Assembly Districts as
18 adopted by the Legislature is now" large --
19 "sufficiently large and geographically compact to
20 allow for one Assembly District with an effective
21 voting majority of voting age Latinos who are
22 United States citizens." Do you disagree with
23 that statement?
24 A Again, I don't know.
25 Q Okay. So I understand, you will not be making any

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1 statements or providing any testimony at trial
2 that contradicts paragraph 22 in any way?
3 A I will not affirm or contradict that paragraph.
4 Q And nothing in your report that you submitted on
5 December 13, 2011, contradicts that statement as
6 well; right?
7 A There is nothing in my report that confirms or
8 contradicts that statement.
9 Q Okay. Paragraph 23, "Over the course of the last
10 decade, the political and electoral conduct of
11 Latino voters on Milwaukee's near south side in
12 the vicinity of the recently reapportioned 8th and
13 9th Assembly Districts demonstrates that the
14 Latino community is politically cohesive." Do you
15 agree with that statement?
16 A I generally agree with that statement.
17 Q In fact, you wrote a note that's on your
18 thumb drive that says you think that the Latino
19 community is remarkably politically cohesive?
20 A That's correct.
21 Q Thank you. Paragraph 24, "Over the course of the
22 last decade, the political" -- oh, did I just read
23 that one?
24 MS. LAZAR: No.
25 Q I'm sorry, okay. 24, "Over the course of the last

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1 decade, the political and electoral conduct of
2 non-Latino Caucasian voters on Milwaukee's near
3 south side in the vicinity of the recently
4 reapportioned 8th and 9th Assembly Districts
5 demonstrates the existence of a pattern of
6 ethnically polarized voting, in that said
7 nonLatino Caucasian voters usually vote as a
8 block, in the absence of special circumstances, to
9 defeat the preferred candidates of the Latino
10 voters." Do you agree with that statement?
11 A I don't know.
12 Q Okay. And is it accurate to say that you will not
13 be providing any testimony at trial that
14 contradicts that statement?
15 A I will not be addressing this -- I will not be
16 providing any testimony at trial that either
17 affirms or denies ethnically polarized voting in
18 the area, vicinity, of the 8th and 9th Assembly
19 Districts.
20 Q And you didn't address it in your report either;
21 right?
22 A I did not.
23 Q Okay. But you consulted with the lawyers at
24 Michael Best about that subject, didn't you?
25 A Yes.

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1 Q Okay. Paragraph 25, "Milwaukee's Latino community
2 bears the socioeconomic effects of historic
3 discrimination in employment, education, health,
4 and other areas, and their depressed socioeconomic
5 status hinders their ability to participate in the
6 electoral process on equal basis with other
7 members of the electorate." Do you agree with
8 that statement?
9 A Again, I don't know. I cannot confirm or deny
10 that statement.
11 Q Do you have an impression as you think whether
12 that's true or not, being a person who has
13 testified in multiple cases involving Latino
14 voters around the country?
15 A Well, again if you look in my general testimony
16 trail, what we're dealing with here are aspects of
17 the Senate factors clearly. My testimony trail
18 has been that there is an impact on voter
19 mobilization that Latino voters can bear as a
20 consequence of employment, discrimination,
21 education, health and other issues, but also the
22 political science literature on this demonstrates
23 that there is variability from community to
24 community in terms of its impact and the ability
25 of Hispanic voters to mobilize. So in the context

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1 of Milwaukee, I don't know.
2 Q 26, "The State of Wisconsin employs voting
3 practices and procedures such as photographic
4 identification requirements which will
5 disproportionately affect Latino citizens and
6 thereby further hinder the ability of Latino
7 citizens to participate in the electoral process
8 on an equal basis with other members of the
9 electorate." Do you have an opinion about that
10 statement?
11 A Again, I don't know what the impact is of photo
12 identification in the city of Milwaukee or in the
13 state of Wisconsin.
14 Q And you won't be providing any testimony about
15 that at trial?
16 A No. I will not be providing any testimony about
17 photo identification.
18 Q Why did you choose not to address any of these --
19 strike that. Let me rephrase the question.
20 Why did you choose not to address the
21 paragraphs that you do not have an opinion about
22 that we just discussed in your report?
23 A My retention as an expert was to deal with those
24 issues of the remap in this litigation that are
25 not part of the voting rights claim. I was not

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1 retained to provide testimony or analysis with
2 regard to the Section 2 claims in this case.
3 There are other experts that are doing that.
4 Q And who is -- what is -- okay.
5 MR. EARLE: I'll stop here and
6 we'll come back and visit with you a little
7 later when we get to the documents that you
8 brought.
9 THE WITNESS: Very good.
10
11 EXAMINATION (Continuing)
12 By Mr. Poland:
13 Q Dr. Gaddie, it's going to come back to me now.
14 Have you taken a look at any of the other rebuttal
15 reports that were tendered in this case?
16 A Let's see. I did -- rebuttal reports. You mean
17 rebuttal reports from --
18 Q That were just issued at the same time you issued
19 yours on February 13th, just a week ago, as a
20 matter of fact.
21 A Other than I did have -- I'm trying to remember if
22 I've -- I glanced over Professor Mayer's rebuttal
23 report but I have not read it in depth. And
24 beyond that, I have not examined other rebuttal
25 documents in this case yet, as I indicated I was

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1 in litigation in New Mexico through the end of
2 last week and this week I started teaching. So --
3 Q Did you receive a copy of Dr. Mayer's rebuttal
4 report?
5 A Yes.
6 Q Who sent that to you?
7 A That was forwarded to me by counsel.
8 Q Do you know when that was sent to you, do you
9 recall?
10 A It would have been sent upon their receipt.
11 Again, as I indicated, it's been very busy. I
12 would have to go back and look.
13 Q Understood. Sometime within the last week, it's
14 safe so say, since the rebuttal report --
15 A Yes. Subsequent to his giving it to you and you
16 all sending it forward, yes.
17 MR. POLAND: I'm going to go ahead
18 and mark this as Exhibit No. 60.
19 (Exhibit No. 60 marked for
20 identification)
21 Q Dr. Gaddie, I'm handing you a copy of what's been
22 marked as Exhibit No. 60.
23 A Thank you.
24 MR. EARLE: You've got to give
25 these out. It's less to carry home.

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1 Q I'm going to give you a minute to take a look at
2 it. Have you seen Exhibit No. 60 before?
3 A Yes.
4 Q And this is a copy of Dr. Mayer's rebuttal report;
5 correct?
6 A Yes.
7 Q You mentioned that you did glance at this rebuttal
8 report before?
9 A Yes. I've looked it over. I've not read it in --
10 I have not sat down and given it the careful,
11 detailed text reading that one might hope to give,
12 but I have looked at it. I have seen the report.
13 Q Okay. I'd like to take you to page 4 of
14 Dr. Mayer's rebuttal report. That's the Roman
15 section -- it's section Roman numeral I, Recall
16 Elections.
17 A Yes.
18 Q Did you get a chance to glance at that section of
19 Dr. Mayer's rebuttal report?
20 A I'm looking at it now. I have glanced at it. I
21 am seeing it now, yes.
22 Q From the time that you glanced at it before and
23 you're taking a look at it now, is there anything
24 in Dr. Mayer's rebuttal report here in that
25 particular section that you disagree with?

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1 MS. LAZAR: Objection. You can
2 object too.
3 MR. KELLY: Objection. Thank you.
4 Objection. To the extent that you're asking
5 for his opinion about the material in this
6 rebuttal report, I think that Dr. Gaddie
7 ought to be afforded the time to read it
8 thoroughly and consult any other materials
9 that he needs to consult in order to form an
10 opinion on whether he disagrees with what's
11 in this report.
12 Subject to that objection, if you
13 believe you can answer the question, you may.
14 But do take all the time necessary for you to
15 consult the materials you need to consult to
16 answer and spend the time on the specific
17 areas of this report that Mr. Poland is going
18 to be asking you about so you can get to a
19 point where you can form an opinion to a
20 reasonable degree of scientific certainty.
21 Q You can answer the question.
22 A Okay. Can you state the question again, please?
23 MR. POLAND: Could you read it
24 back?
25 (The following question was read:
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1 "Q. From the time that you glanced
2 at it before and you're taking
3 a look at it now, is there
4 anything in Dr. Mayer's
5 rebuttal report here in that
6 particular section that you
7 disagree with?"
8 Q And just for the record, to be clear about it, I
9 was talking about that Roman numeral I, that first
10 section.
11 A Okay. So this would be the section that begins on
12 page 4 --
13 Q Correct.
14 A -- and continues through page 9?
15 Q Correct.
16 A Okay. With the understanding that any opinion
17 that I might render will be subject to further
18 extension based upon more careful study,
19 Professor Mayer contends that the absolute number
20 of individuals who are disfranchised or engaging
21 in deferred voting is greater now than in 1992,
22 and that is factually correct; however, there has
23 been a change in the denominator of the state in
24 that there are more people in Wisconsin as well.
25 This also means that any population deviation in
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1 the state, for example, will be numerically larger
2 than it was twenty years ago, yet it would still
3 be a deviation of the same proportion, of the same
4 size. The share of the electorate potentially
5 impacted is going to be the same.
6 So with regard to comparisons, we can make
7 number-to-number comparisons. We can also make
8 proportion-to-proportion comparisons. And when we
9 make proportion-to-proportion comparisons, we are
10 no longer making apple-to-orange comparisons. So
11 it is a question of whether it is the number or
12 the proportion or both that matters, and that is
13 really an issue for the Court to deal with.
14 We experts can count things and enumerate
15 things and put them into comparative context, but
16 it will be up to the Court to decide what this
17 means.
18 That being said, he contends that the
19 argument for considering the recall is
20 disingenuous, and let me just -- first of all, I
21 want to state this briefly. Ken Mayer and I are
22 professional friends. We get along well. There
23 is language that comes into these that some people
24 read as being somehow greater or more inflammatory
25 than it is. I don't think disingenuous is
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1 necessarily the appropriate word here but it's
2 contextual.
3 The reason that I believe the recall is
4 relevant is that the injury to the individual in
5 the disfranchisement is that they'll have no
6 opportunity to make a vote or a selection for a
7 person for an extended period of time. They have
8 no opportunity to express a preference in
9 election.
10 Recall elections are elections that result in
11 the selection of lawmakers, period. They are an
12 exercise of the franchise. And the thing that I
13 see in Wisconsin that's remarkable in this whole
14 process is that the electorate has seen fit to
15 exercise that franchise to correct against a
16 government that they disagree with.
17 So the use of the recall demonstrates that
18 this disfranchisement issue, if it's a concern for
19 the electorate, can be overcome. The electorate
20 took steps to recall officials, put candidates on
21 the ballot and cast ballots, and in the process
22 they have reexercised their franchise.
23 You cannot lay aside that use of the
24 franchise in arguing that these people have
25 somehow been disfranchised by this process.
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1 They've exercised that franchise and they did it
2 to effect in electing two -- in tossing out two
3 Senators from the majority and electing two from
4 the minority party. So my argument for the
5 consideration of the recall ballot in
6 rebenchmarking the disfranchisement number is a
7 function of the reality of the political
8 environment. It's what happened.
9 Now, again, the Court will have to decide, is
10 this exercise of the franchise legitimate towards
11 that goal. If they deem that it isn't, my
12 corrected number doesn't stand. If they deem that
13 it is, you have to consider that in considering
14 the impact, that disfranchisement in Wisconsin, we
15 have empirical evidence it can be corrected
16 against, that the electorate can exercise its
17 will, despite disfranchisement. That's why that's
18 in there, and that's where my disagreement is with
19 Professor Mayer.
20 Q Dr. Gaddie, it's true, isn't it, that there is a
21 qualitative difference between a general election
22 or an election, whether it's held in the fall or
23 the spring, that is scheduled, people know when
24 it's going to occur and a recall election which
25 can happen fairly quickly and can come up at any

1 time; correct?
2 MR. KELLY: Objection, form. If
3 you're interested in the specific objection,
4 I'll tell you.
5 MR. POLAND: No, that's fine.
6 MR. KELLY: If you believe you can
7 answer, you may.
8 A I think I'm going to pass on this one.
9 Q Okay. And why can't you answer the question?
10 A Well, again, having -- any answer I would give, I
11 would be supposing. If you want me to suppose, I
12 can.
13 Q I'm asking for any opinion that you have on my
14 statement.
15 A Okay. We have regularly scheduled elections,
16 regularly schedules primaries, regularly scheduled
17 general elections. The difference with a recall
18 is that the election might occur at a different
19 period of time than a regularly scheduled
20 election. There are circumstances that will
21 affect the exact timing of the election. So, for
22 example, if you do or do not have primary
23 opponents, this will affect the scheduling of the
24 election. The timing of the election will be
25 affected in part by when the recall is initiated.

1 That being said, the recall elections here in
2 Wisconsin have been treated by the national media
3 as a tremendous exercise of democracy and a voter
4 mobilization and it appears you all are headed
5 towards another big one sometime this summer or
6 fall, a statewide recall election, which are rare.
7 I doubt -- the factors that influence
8 attention towards elections are not just timing or
9 prior notice. It's media attention. It's
10 spending. It's one of the things we know. Voters
11 are more prone to vote or to vote and come back
12 and vote again when more money is put into the
13 environment, something Professor Mayer knows very
14 well given his expertise and my expertise.
15 This is -- While these other factors matter,
16 spending, media attention, saliency of the
17 election, the controversy of the issues
18 surrounding it are also important, and we have had
19 the Wisconsin recalls held up as being the
20 inspiration for the Occupy Movement and on par
21 with the Arab Spring by the national media and by
22 the local activists. These are not the
23 circumstances that predicate a low participation,
24 low salience, low attention election.
25 Q You mentioned statewide elections coming this

1 summer; correct?
2 A Yes.
3 Q And what were you referring to there?
4 A Well, I can't help but notice in the news that a
5 large number of signatures were turned in to
6 recall the governor.
7 Q Now the governor is elected and serves four-year
8 terms; correct?
9 A Correct.
10 Q So if there was a recall election held in 2012, do
11 you think that we could push back the regularly
12 scheduled gubernatorial election for another four
13 years?
14 MR. KELLY: Objection, form.
15 A What does your Constitution say?
16 Q It has to be governed by the Constitution;
17 correct?
18 A Correct. My understanding of recall is you're
19 removing somebody from a term of office and
20 electing somebody to finish the balance of the
21 term of office.
22 Q And you need to vote in accordance with the
23 Constitution, when the Constitution says you have
24 to have that election?
25 A Yes.

1 Q I'd like you to turn to page 9 --
2 A Yes.
3 Q -- of Dr. Mayer's rebuttal report. In section II
4 he states there, Act 43 -- this is the heading
5 that I'm reading from now for the record.
6 Actually, you know what, I'm going to stop there
7 because we need to change the videotape, and this
8 is probably a good time to do that.
9 A Okay.
10 THE WITNESS: Are we off the
11 record?
12 MR. POLAND: We are off the record.
13 MR. CAMPBELL: Just one moment,
14 please. The time is 11:39. We are going off
15 the record. This concludes disk number 1 in
16 the deposition of Dr. Gaddie.
17 (Recess)
18 (Mr. Kelly exited the proceedings)
19 MR. CAMPBELL: We are on the
20 record. The time is 11:51. This marks the
21 beginning of disk number 2 of the deposition
22 of Dr. Gaddie.
23 Q Dr. Gaddie, just before we broke we were looking
24 at Exhibit 60 which is Dr. Mayer's rebuttal
25 report, and I wanted to ask you about Roman

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1 are packed?
2 A No.
3 (Mr. Kelly entered the proceedings)
4 Q Is that anything that you were asked to look at
5 for the purpose of this case?
6 A For the purposes of this case, no.
7 Q Is it your understanding that Professor Grofman
8 will be addressing that issue?
9 A That's my understanding.
10 MR. EARLE: Dan, you missed the
11 confessional liability.
12 MR. KELLY: I always miss the good
13 parts.
14 THE WITNESS: They promised me
15 10 percent.
16 MR. POLAND: We are on the record.
17 I'll just remind everyone of that.
18 THE WITNESS: Let the record show I
19 was speaking in mirth. I apologize to the
20 Court and to the reporter.
21 MR. POLAND: That part won't make
22 it into our designations apparently.
23 Q Dr. Gaddie, I would like to draw your attention to
24 section III of Dr. Mayer's rebuttal report.
25 A Yes.

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1 numeral section II, the caption of which is Act 43
2 Packs African-Americans into Districts with
3 Unnecessarily High Concentrations. Do you see
4 that?
5 A Yes.
6 Q Have you had a chance to glance at Roman numeral
7 section II in Dr. Mayer's rebuttal report?
8 A Yes. I've just looked at it, yes.
9 Q And do you have -- Do you agree with any of the
10 statements that Dr. Mayer makes in that section?
11 MS. LAZAR: We would make the
12 continuing objection that this is a document
13 just being presented to Dr. Gaddie and that
14 he has not had time to form opinions. Based
15 on that, you may answer.
16 A What's interesting about this is Professor Mayer
17 asserts the districts are packed. I don't know if
18 they're packed or not. What we have here is a
19 referencing in review of previous literature that
20 notes that there is no one threshold for
21 determining a packed or diluted district, per se.
22 so --
23 Q Let me ask you this: Do you expect at trial to be
24 expressing any opinions on whether any of the
25 African-American districts created under Act 43

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1 Q And the caption for that is Act 43 Does not Create
2 an Effective Majority-Latino Assembly District.
3 A Yes, I see that.
4 Q Do you see that section?
5 A Yes.
6 Q Is that a section that you've previously had an
7 opportunity to glance at?
8 A I have glanced at it. I have not read it in great
9 detail, no.
10 Q Having -- Just with what you've glanced at and
11 understanding the objections that Ms. Lazar and
12 Mr. Kelly have raised, is there -- are there
13 statements in that section that you disagree with?
14 A Again, having not read it in sufficient detail to
15 agree or disagree, again, this particular issue is
16 beyond the purview of my analysis for this trial
17 and I believe is being dealt with by other
18 experts.
19 Q All right. There is a statement that Dr. Mayer
20 makes right off the bat in section III where he
21 says, "Dr. Gaddie claims that Act 43 creates two
22 majority-Latino districts, the 8th and the 9th,
23 with Latino voting age populations of 60.5 percent
24 and 54 percent, respectively." Do you see that
25 statement?

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1 A Yes.
2 Q And Dr. Mayer then says, "these figures ignore the
3 crucial eligible voting age population." Do you
4 see that?
5 A Yes.
6 Q All right. Is that a correct statement by
7 Dr. Mayer, that those figures ignore eligible
8 voting age population?
9 A That is technically correct. It is only a VAP
10 measure. It is not a citizen VAP measure. It is
11 not a citizen VAP measure excluding other
12 ineligible voters. It is only a voting age
13 population measure.
14 Q Will you be expressing any opinion at trial as to
15 whether it's appropriate or inappropriate to
16 consider the eligible voting age population when
17 looking at majority-Latino Assembly districts?
18 A I am not going to be commenting on voting age
19 population matters, no.
20 Q All right, then let's then take a look at section
21 IV.
22 A What page is that, Counsel?
23 Q It's page 16.
24 A Thank you.
25 Q And section IV of Dr. Mayer's rebuttal report has

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1 a caption at the top, The Number of Municipal
2 Splits Does Not Reflect the Arbitrary Fracturing
3 of Communities of Interest." Do you see that
4 heading to section IV?
5 A Yes, I do.
6 Q Is this a section that you've glanced at
7 previously?
8 A I have glanced at it, yes.
9 Q Are there statements in section IV of Dr. Mayer's
10 rebuttal report that you disagree with?
11 MR. KELLY: Objection. Incorporate
12 the same objections we've made previously
13 with respect to the ability to analyze all of
14 the statements in this section, confer with
15 the necessary resources and take the time to
16 form an opinion to a scientific degree of
17 certainty. Subject to that objection, you
18 may answer if you believe you can.
19 A I can neither endorse nor refute his
20 interpretation at this time.
21 Q Are the issues that Dr. Mayer addresses here
22 issues that you anticipate expressing an opinion
23 about at trial?
24 A I do not.
25 MR. POLAND: All right. You can

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1 set Exhibit 60 aside. I think this is a good
2 place for us -- unless Peter has any
3 follow-up on that, I think this is a good
4 place for us to take a break for lunch.
5 MR. KELLY: I just got back.
6 MR. POLAND: Let's go off the
7 record.
8 MR. CAMPBELL: The time is 11:57.
9 We are going off the record.
10 (Lunch recess)
11 (Stenographic record made - not
12 videotaped)
13 MR. KELLY: Prior to our -- Prior
14 to going back on the record, this is Dan
15 Kelly, we discovered that in the flash drive
16 that we produced for Dr. Gaddie there was
17 inadvertently included three files that
18 contained work product information. Any
19 communication is protected by Federal Rule of
20 Civil Procedure 26(b)(4)(C).
21 Counsel for the other parties,
22 Mr. Poland and Ms. Boynton and Mr. Earle,
23 graciously agreed that I could remove those
24 three files from each of the thumb drives
25 that we distributed and they agreed to remove

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1 that material from any of their electronic
2 medium to which they forwarded that.
3 There had been hard copies printed off
4 of that material. That has now been placed
5 in an envelope that says Doug Poland on it
6 with a Godfrey & Kahn sticker, and perhaps
7 the court reporter would be so good as to
8 place a notation on there that it is sealed
9 material, and therefore should there ever be
10 a dispute about whether that should have been
11 produced or whether it should be usable,
12 there will be a record of that material that
13 exists so that we can return to that.
14 Agreed?
15 MR. POLAND: Yes, agreed. A couple
16 of other things. Should we mark it as an
17 exhibit?
18 MR. KELLY: I think that would be a
19 good idea.
20 MR. POLAND: Yeah, let's do that.
21 (Exhibit No. 61 marked for
22 identification)
23 MR. EARLE: Why don't we also
24 identify what the document designation was.
25 I have Meyer_2, Meyer_notes, and

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1 Meyer_notes1.
 2 MR. KELLY: I think underscore 1,
 3 but yes.
 4 MR. EARLE: Underscore 1, okay.
 5 MR. KELLY: Yes, that's correct.
 6 Good. Thank you very much.
 7 MR. POLAND: Actually if I could,
 8 just a couple questions about it.
 9 Q (By Mr. Poland) Dr. Gaddie, we've put hard copy
 10 printouts into the folder that Mr. Kelly
 11 described. We've marked it as Exhibit No. 61.
 12 Would you describe for me -- Without telling me
 13 what the contents are of the documents that
 14 Mr. Kelly has just described, can you tell me
 15 generally what those documents are?
 16 A They are a set of -- they are a set of notes and
 17 hypothetical approaches to developing potential
 18 cross-examination of Professor Mayer's work.
 19 Q When did you make those notes?
 20 A Actually only one of those sets of notes belong to
 21 me. And that was created immediately after the
 22 arrival of the initial Mayer report.
 23 Q And who did the other two sets of notes belong to?
 24 A The other two sets of notes were created by a
 25 nontestifying litigation consultant in this

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1 matter. They were accidentally copied to me. I
 2 haven't read them, but I'm aware of what they are.
 3 MR. POLAND: Okay. And so, Dan,
 4 without -- I don't know whether we will raise
 5 a challenge to the objection that you've
 6 asserted or the privilege that you've
 7 asserted over the three documents that are in
 8 Exhibit 61, but for the record we have
 9 deleted from the flash drives that were given
 10 to us this morning, or at least I have and I
 11 believe Mr. Earle as well, those three files
 12 have been deleted.
 13 In addition, we had forwarded them on to
 14 Dr. Mayer, but I have confirmed with
 15 Dr. Mayer that he deleted them permanently
 16 and he did not look at them.
 17 MR. KELLY: Excellent. Thank you.
 18 I appreciate your courtesies on this.
 19 MR. EARLE: Sure.
 20 MR. POLAND: All right. Now we get
 21 to start. Why don't we go off the record.
 22 (Discussion held off record)
 23 (Videotape proceedings resumed)
 24 MR. CAMPBELL: The time is 1:15.
 25 We are back on the record.

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EXAMINATION (Continuing)

1
 2 By Mr. Earle:
 3 Q Dr. Gaddie, back after lunch. I hope you had a
 4 nice lunch.
 5 A Yes. Likewise.
 6 Q Okay. I'm going to ask you just a very few
 7 questions before Mr. Poland proceeds. And I want
 8 to ask you about, focusing on your work before
 9 your retention to defend the Act 43. And I want
 10 to talk to you, did you have any thoughts about
 11 the 8th Assembly District and the participation of
 12 the Latino community in the redistricting process?
 13 A Yes, and some of these thoughts are reflected in a
 14 brief memoranda that's in the discovery documents
 15 that were provided, which I believe you're aware
 16 of.
 17 When looking at the creation of the
 18 8th Assembly District and the adjacent
 19 9th Assembly District, my first concern was would
 20 there be sufficient turnout to allow the district
 21 to perform on behalf of the cohesive Hispanic
 22 community in that district, that there would be a
 23 sufficient population there to allow that
 24 community the equal opportunity to elect.
 25 In approaching these thoughts, you know, the

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1 first thing that I looked to was the general
 2 record of the district. Is this a district that
 3 had been electing a representative of the
 4 community that was a representative of choice of
 5 the community, and there is a record of this
 6 district performing on behalf of Hispanic voters.
 7 And then I was curious about this ability to
 8 control the election, to have that equal
 9 opportunity to elect in a subsequent district, and
 10 the problem that -- there were two problems that
 11 we ran into, or rather two challenges might be the
 12 best way to put it, which is that because the
 13 Census Bureau changed their approach to the
 14 compilation of citizen voting age population data,
 15 moved it away from the old one-in-six long form
 16 data that was compiled at the census block group
 17 level, to the use of the American Community Survey
 18 data which has a larger predictive error around
 19 it, we didn't have CVAP data available to us for
 20 the purpose of analysis back in April, because I
 21 came in and I asked, you know, do we have CVAP
 22 data and I was informed we don't have CVAP data
 23 available. So --
 24 Q Let me just ask you, in April you asked to see if
 25 there was CVAP data available?

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1 A I inquired as to CVAP data, yes.
2 Q And you did this because you recognized that CVAP
3 data was important to assess the ability to draw a
4 district with an effective voting majority of
5 Latinos?
6 A Yes.
7 Q And you would agree that that's basically
8 fundamental to this process; correct?
9 A Yes. If I could have one request of the Census
10 Bureau, it would be that in the next census that
11 they go back to the one-in-six form or some other
12 mechanism to allow us to get a more precise
13 estimation of CVAP so that we don't run into these
14 kind of problems that we're having all over the
15 country.
16 Q But to pursue that a little bit further so I
17 understand clearly --
18 A Yes.
19 Q -- we're talking about -- When did you first start
20 consulting with Michael Best?
21 A The first time I came in, I was retained in -- I
22 got my retention letter in April.
23 Q April.
24 A And then traveled to Madison around tax day and
25 was working in residence for a few days with staff

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1 there.
2 Q So between April and mid-July when Act 43 was
3 enacted, you were consulting with Michael Best &
4 Friedrich and the Legislature of Wisconsin to help
5 them draw this redistricting plan; right?
6 A Yes. I was retained in that period.
7 Q And you specifically looked at the 8th Assembly
8 District and the 9th Assembly District; correct?
9 A Yes. I looked at these areas.
10 Q And you looked specifically at the question of
11 whether it is possible to draw a map with an
12 effective Latino voting majority in the vicinity
13 of the 8th Assembly District?
14 A That's correct.
15 Q And you recognized the importance of CVAP data for
16 that purpose?
17 A Yes.
18 Q And you advised your clients with whom you were
19 consulting of your view that it was important to
20 look at CVAP data for purposes of drawing this
21 map?
22 A Yes.
23 Q Okay.
24 A That being said, yes. I was also doing work in
25 other jurisdictions, and in all of these

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1 jurisdictions the same problem was being
2 encountered, that we didn't have CVAP -- we didn't
3 have CVAP data that people had a lot of confidence
4 in. The map drawers did not feel comfortable with
5 CVAP. We ran into it in Illinois, on both sides
6 of the aisle in Illinois. I was working with the
7 state of Georgia on their redistricting and their
8 Section 5 Preclearance proposal, and this issue of
9 CVAP that people had confidence in kept coming up.
10 Q We'll deal with this qualification that you put on
11 there about "people having confidence in."
12 A Yes.
13 Q What you're talking about here is in the 2000
14 census citizenship data was available; correct?
15 A In 2000 citizenship data was available, yes.
16 Q 2010 census citizenship data was not included;
17 correct?
18 A Exactly.
19 Q So we have, as an alternative, the ACS data;
20 correct?
21 A Correct.
22 Q And that's from 2006 to 2010; correct?
23 A And at the time the 2010 release had not come
24 through yet, so we had 2005 through 2009.
25 Q Okay. Now, there came a point in time where you

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1 provided to the lawyers at Michael Best, or
2 perhaps it was Jim Troupis, the name of somebody
3 at MALDEF; correct?
4 A Yes. I have provided that name to Jim Troupis and
5 also to Eric McLeod. Well, actually I did not
6 provide that name to Eric McLeod. I provided that
7 name to Jim Troupis and that name --
8 Q Nina Perales?
9 A Correct.
10 Q Do you know Nina Perales?
11 A I have known Nina Perales for about 11 years, yes.
12 Q Okay. And why did you provide that name?
13 A Because the inquiry -- because the conversation
14 had come up how can we get input from national
15 Latino organizations on how to proceed with
16 redistricting in Milwaukee, and I said, well, I
17 know the national litigation coordinator. Let me
18 give you her number.
19 MR. EARLE: According to my records
20 that is May 8th. I can't find it. I marked
21 it. I put that star on the wrong folder.
22 MR. POLAND: They're in
23 chronological order.
24 MR. EARLE: Sorry. We'll just mark
25 that in a second. Here, I did have it. I'm

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1 sorry. It's a different string. Okay.
2 Let's mark this.
3 (Exhibit No. 62 marked for
4 identification)
5 Q I'm showing you what we've marked as Exhibit --
6 COURT REPORTER: 62.
7 Q -- 62. You've seen this obviously before?
8 A Yes. Yes.
9 Q You're real good friends with Jim Troupis?
10 A No, not especially.
11 Q How about with Joe Handrick?
12 A I would say that Joe Handrick and I are friends,
13 yes.
14 Q Buddies?
15 A I don't know about that. We're friends. We
16 disagree on a lot of stuff but we get along well.
17 Q You correspond on Facebook?
18 A Oh, yeah.
19 Q Exchange tips on good restaurants?
20 A Yep. I would assume that's all in his Facebook
21 more than likely.
22 Q Do you -- So I guess I want to understand the
23 context here. Drawing your attention to the
24 exhibit, on May 8th of this chain you send an
25 e-mail to Jim Troupis and you say, "Hi Jim - Below

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1 is the number for Nina Perales, national
2 litigation coordinator for MALDEF. Let me know
3 when you need me to come up again."
4 A Yes.
5 Q Okay. Had Jim Troupis asked you for information?
6 A Jim had -- I had a phone call from Jim and a
7 voicemail message, so I had e-mailed him back.
8 Q And you and Jim discussed the importance of
9 getting Latino organizations to endorse the map?
10 A I don't know about that. We discussed the
11 importance of getting good input to draw a good
12 district.
13 Q Did you discuss the importance of getting Latino
14 organizations to participate in the process so
15 that the Republicans could say that they were
16 being responsive to a group of voters?
17 A It's possible we might --
18 MR. KELLY: Object. Wait a minute.
19 Objection, form.
20 MR. EARLE: I like the flourish.
21 A I don't recall. Perhaps we did.
22 Q Perhaps you did. Well, let's focus on that a
23 little bit.
24 A Okay.
25 Q All right. I mean there was a strategic aspect to

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1 the component of your work as a consultant;
2 correct?
3 A There is always a strategic component, yes.
4 Q And that strategic component would fall within the
5 rubric of being strategic politically; correct?
6 A The nature of my retention didn't include
7 strategic advisement. If they ask me a strategic
8 question, I'll give them an answer.
9 Q You were asked strategic questions in this matter;
10 correct?
11 A It does happen, yes.
12 Q And you were asked strategic questions with
13 regards to the Latino community in the
14 8th Assembly District; correct?
15 A Correct.
16 Q And part of the strategic discussions were how to
17 get at least the appearance of Latino support for
18 the map; correct?
19 A I don't know if it was characterized that way, but
20 getting the involvement of local and national
21 organizations is important.
22 Q And you wanted to facilitate getting MALDEF
23 involved?
24 A I was asked to facilitate them getting in touch
25 with MALDEF.

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1 Q Okay. Did you ever talk with Nina Perales?
2 A I've talked with Nina a great deal. I'm going to
3 see Nina next Saturday.
4 Q Did you talk -- well, I'll ask a more artful
5 question. Did you ever talk with Nina Perales
6 about the 8th Assembly District in Milwaukee?
7 A Specifically I don't recall. We -- Nina and I
8 were encountering each other in Illinois a good
9 bit, and I mentioned -- I did mention to her that
10 there were folks in Wisconsin that wanted to talk
11 with her. But that's the extent of it, and I got
12 permission to forward her number on.
13 Q Okay. Before we go to this exhibit, did you --
14 well, I'm assuming this. Correct me if I'm wrong.
15 I'm assuming that in the course of your
16 discussions with the folks at Michael Best and
17 Jim Troupis and Joe Handrick, you told them that
18 it was important to make sure that the maps
19 allowed for the maximum effective voting majority
20 of Latinos possible; correct?
21 A What I told them was that they needed to take
22 every step to ensure that they created districts
23 that would be able to perform on behalf of the
24 Latino community.
25 My specific recommendation after looking at

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1 data on voter turnout in the area was that I could
2 not ascertain if there was a circumstance where
3 any district created down there would guarantee a
4 majority of the electorate would be Latino.
5 Q Okay.
6 A The estimates I had of Latino participation were
7 sufficiently low that I didn't have confidence
8 that a maximized district, whatever that might be,
9 would be sufficient to guarantee that Latinos by
10 themselves could control the electoral process and
11 the outcome, so I recommended that they go to the
12 community and ask what it wanted.
13 Q When did you do that ascertainment, attempt at an
14 ascertainment?
15 A There is analysis -- The final recommendation was
16 made in July, but I had -- if you look in the body
17 of the materials I turned over, there were a
18 variety of small databases that are
19 reconstitutions of elections for different
20 Assembly districts in Milwaukee. These were
21 referenced by me to ascertain the degree of
22 minority voter turnout across these various
23 constituencies under different elections
24 throughout -- over the last decade.
25 So in the process of performing that

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1 analysis, as I was looking at reconstitutions of,
2 specifically of general election turnout across
3 several elections, I wasn't seeing a scenario
4 where I could be confident that the Hispanic
5 turnout was large enough that if cohesive it could
6 trump against a cohesive white vote voting in the
7 opposite direction.
8 So I had told the mapmakers at the time, as
9 you move forward in this process, and I believe
10 when I was up in June I may have talked about this
11 also, this was my consistent theme was, I can't
12 tell you that at 69 or 64 or 60 or 57 percent that
13 that district is going to be certain to perform so
14 you need to go to the community and ask it what it
15 wants.
16 MR. EARLE: Okay. All right.
17 Could we mark that for just a second so I
18 could come back to that question in a second?
19 What I would like to do is I'd like
20 to -- Doug, if it's okay with you, I could go
21 a little further with this. Is that all
22 right?
23 MR. POLAND: Absolutely, yes.
24 Q What I would like to do is get you on the thumb
25 drive. I want you to identify for me those data

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1 documents or spreadsheets that you used in that
2 ascertainment process and identify those with some
3 specificity.
4 A Can I have something to write on so I can make
5 note and I'll just hand it off to you?
6 MS. LAZAR: Here is a notepad.
7 THE WITNESS: Thank you very much.
8 MS. LAZAR: Do you have a pencil?
9 THE WITNESS: Yes.
10 Q I'm going to depend on you to walk me through your
11 thumb drive. Okay?
12 A Okay. Let's see. Let me --
13 Q I've clicked on Wisc at the top of it.
14 A Okay, very good. Open up that big Wisc -- oh,
15 hold on. Yes, open up that big Wisc file.
16 Q The big Wisc file, okay.
17 A Now let me make sure that none of these data are
18 in the subfolders real quick. And we will -- if
19 they are, we will start with the subfolders and
20 then continue on to the main drive. Okay.
21 There is a subfolder marked WisconsinFiles.
22 Q Okay, got it.
23 A Mr. Earle, if you'll give me a moment. It's been
24 a long time since I looked at this information.
25 Q Sure. Take your time.

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1 A Thank you very much.
2 Q Better to be accurate than rushed.
3 A Thank you. These files that are -- the first
4 thing, let me clarify. Anything marked XLS is an
5 Excel file. Anything marked with the extension
6 FMT is a formatting file developed by the EI
7 software, which Professor Mayer and I have both
8 made use of in the past.
9 Q Which is that? What is the --
10 A Anything that's dot FMT should be a formatting
11 file from an EI estimation.
12 Q And there seems to be one of those for every
13 Excel?
14 A Yes, correct. These were pulled straight out of
15 the EI folder that I had for when this analysis
16 was performed.
17 If you look at all of these files that are
18 dated -- I'm going to open one of these files up.
19 I'll tell you which one I'm opening so you can
20 accompany me on the journey. There is a file
21 marked -- let's look at Wisc2008B08.
22 Q Okay. Let me go down there. Wisc2002 -- I've got
23 a whole bunch of 2002s.
24 A It's way down.
25 Q Down near the bottom?

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1 A Yeah.
2 Q 2008BO -- what is it?
3 A 8.
4 Q 8?
5 A Yes, B08.
6 Q Okay.
7 A Okay. Now --
8 MR. POLAND: Is that the Excel file
9 you're referring to?
10 THE WITNESS: Yes, yes.
11 A Now, this I believe may be -- this may be -- I
12 would have to go back and check, but this may be
13 an estimation, a database that was used for
14 estimation of black voter cohesion because each
15 one of these columns, A, B, C and D, represent the
16 number of persons of voting age inside a voting
17 precinct in column A.
18 Q This file, just so we're clear, was created on
19 April 15th, 2011 at 6:27 p.m., correct, according
20 to the metadata?
21 A Yes, yes.
22 Q And it was created by an author with the name
23 CAS Build. What's CAS Build?
24 A CAS Build, that's that College of Arts and
25 Sciences.

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1 who turned out to vote in that election. And then
2 the final column is indicating the proportion of
3 the vote for the prevailing candidate.
4 So this is a general election result from
5 the '08, for district -- for -- it should be a
6 general election result for District 8 in the
7 Assembly.
8 Q Okay. So where it said -- where the number is 8,
9 is that the 8th Assembly District?
10 A Yes.
11 Q So why don't you run what those numbers are. What
12 are they again? What's the 8th Assembly District
13 again, very precisely?
14 A What is in this?
15 Q Yes.
16 A Okay. Column A should represent the VAP inside a
17 voting precinct.
18 Q And so there is 1,528. What's that mean?
19 A Are we on the same document? Because I've got --
20 Q What do you have?
21 A In row 1 I've got 1,554.
22 MR. POLAND: Mr. Earle I believe is
23 on row 8.
24 A Oh, on row 8. I'm sorry. Yeah, 1,528, yes, sir.
25 Q Okay. And that means -- okay. That number, what

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1 Q Okay. So that's your physical location?
2 A Well, no, it's -- I have a laptop that I used to
3 run this analysis on which was an old laptop I had
4 from the university that subsequent to replacement
5 they just tell us to keep them, so that is -- the
6 generosity of the University of Oklahoma knows no
7 limits evidently. You can keep old computers.
8 Q Do you want us to seal this part of the
9 transcript?
10 A No. That's quite all right. I'm still getting
11 along well with my dean right now.
12 Yes, so anything, that would be the user name
13 off that computer, that is off of the laptop that
14 I would use to -- it's a Dell much like this one.
15 Q Okay. So just so I understand, anywhere we see
16 the authorship of a document by CAS Build, that
17 means it came off of your laptop?
18 A Exactly.
19 Q Okay.
20 A So the first column is the VAP inside the
21 district. The second column is the estimated --
22 okay. Is the estimated black VAP in the
23 constituency. This is the black VAP from the
24 census in the district. The third column, C,
25 represents the proportion of the number of the VAP

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1 does that number represent exactly?
2 A That should be the VAP, the voting age population,
3 inside that voter turnout district.
4 Q Okay. All right. And how many other documents --
5 how does this relate to your conclusion or your
6 concern about having enough Hispanic turnout to
7 control the district?
8 A Okay. Again --
9 Q Based on Latino participation?
10 A This file I directed you to simply is a
11 demonstrative of what's here. Now as I'm looking
12 here -- bear with me. I will be answering your
13 question but I have to give you this clarification
14 to get there.
15 Q Sure, okay.
16 A Which is that if you look at these files, if we
17 look at these files, all of which are Wisc then a
18 four-year number, a B with a two digit number
19 after, these are all African-American turnout
20 estimations that I was doing inside districts in
21 Milwaukee.
22 Q Okay.
23 A Now, then --
24 Q So did you do something like that for the Latino
25 community?

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1 A That's what I'm going to be directing you to, sir.
2 Q Okay.
3 A Now if you sort the files by name and you
4 scroll -- Let me make sure I have this sorted
5 correct.
6 Q Okay.
7 A Okay. Sort them by name so that they're in
8 alphabetical order from the top to the bottom.
9 Q Okay.
10 A You will -- Let's see if there are any Hispanic
11 estimations in here. If not, the Hispanic
12 estimates are elsewhere in the drive.
13 Though as you look through, if you look at
14 the mnemonic devices, you'll see that there are
15 elections and years estimating the black vote
16 relationship inside certain districts. There are
17 some databases that go to voter turnout for
18 statewide races that I would have to open these up
19 and look but they may be for all the City of
20 Milwaukee or all of Milwaukee County. But if you
21 scroll down, let's go to Wisc2002H08.
22 Q H. I see H08. Got it.
23 A Yes, sir. Okay. Now if we open this one up,
24 column A again is the number -- let's go to row 8.
25 There are 1,528 individuals in this voting

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1 precinct.
2 Q Where is this? So number 1, the 1,558 -- the
3 1,554 voters, it's row 1. What does row 1
4 signify?
5 A Row 1 is simply a precinct. I'm going to explain
6 to you why there is limited labeling on this data
7 as soon as I explain what's in here. Again, bear
8 with me. We are on a journey rather than a
9 wander.
10 Q Hopefully it takes us somewhere.
11 A That's my hope. Go to row 8.
12 Q Okay.
13 A This is the same precinct that we talked about
14 previously in the previous data file. So you'll
15 notice it has 1,528 under its voting age
16 population column in column A. .69 is the Hispanic
17 share of the VAP.
18 Q Wait, I have .67.
19 A On row 8?
20 Q Oh, row 8.
21 A Yes, sir.
22 Q Okay. Row 8 is 1,528?
23 A Yes.
24 Q Okay. And I have .74.
25 MR. POLAND: I have .69 on mine.

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1 THE WITNESS: Thank you.
2 MR. POLAND: This is Wisc2002H08,
3 correct?
4 THE WITNESS: Yes, sir.
5 Q Oh, 2002. I'm sorry.
6 A Yeah.
7 Q I'm in 2010.
8 A Okay.
9 MR. EARLE: I can't find it. Doug,
10 where are we? Oh, I see the numerical. 2002
11 is way down near the bottom. 2004.
12 MR. POLAND: 2002H08. That's it
13 right there.
14 Q I think I'm there now, Doctor.
15 A Very good, Counselor. Okay. So we are in row 8.
16 Q Of Wisc2002H08; right?
17 A Yes. Okay. So there is a count of the number of
18 persons of voting age population in column A.
19 Column B is the proportion Hispanic among the VAP.
20 Column C is the proportion of VAP that turned out
21 and cast ballots. Column D is the proportion of
22 the vote for the prevailing candidate.
23 As you can see, this is effectively an
24 unopposed district that has a write-in candidate.
25 Now let me explain what's going on around this.

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1 There are no precinct labels because the
2 version of EI that I'm working off of can only --
3 will only handle four pieces of data. Okay? This
4 is -- As it was originally designed, this is a
5 fairly closed and proprietary system and you can
6 only input into the software those data you need
7 to execute the estimation of turnout and of voter
8 preference among the minority group of reference.
9 So that's why there are no precinct markers on
10 here to tell you what precinct the data come from.
11 In addition to that, it will accept no
12 variable labels at the top in its input or the
13 software would crash, which is why there is no
14 indication of what information is in which column.
15 But if you are -- When you are speaking to your
16 expert, if you tell him that column A is M, column
17 B is X, column C is T and column D is V on every
18 one of these databases as constructed, and these
19 are the four factors that the EI considers in
20 being numbers of the potential electorate, X being
21 racial composition, T being the turnout proportion
22 and vote being the vote share for the prevailing
23 candidate or the candidate of interest, it should
24 allow him to input these data and run the
25 analysis. Okay?

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1 When you run this analysis, there are two
 2 types of output you're going to get. The initial
 3 piece of output is going to give you information
 4 on the voter turnout share for the minority group
 5 of interest and for all other voters.
 6 So if I were to run this, I would get an
 7 estimate of the voter turnout with an error term
 8 associated with it for Hispanic voters and for all
 9 other voters in the constituency.
 10 If I were to take the second stage, assuming
 11 I had a competitive election, rather than this
 12 election which is effectively a one-person
 13 contest, it would also give me a measure of voter
 14 polarization between the minority voting group and
 15 other voters in the estimation.
 16 Q Did you do that?
 17 A Could I do that?
 18 Q Did you do it?
 19 A Yeah, I did do that. Well, I mean I didn't do a
 20 polarization analysis in here, and indeed for most
 21 of these -- for most legislative contests in this
 22 area there was no competition so there was no way
 23 to estimate.
 24 Q I think you got jumbled up in my question there.
 25 A Yes, sir.

1 that across the board for the Latino community
 2 here in Milwaukee in the old 8th Assembly
 3 District?
 4 A Yes.
 5 Q Okay. Did you make any attempt to correlate that
 6 turnout rate to the new proposed Assembly
 7 district?
 8 A No.
 9 Q Why not?
 10 A I was never called upon to make an assessment of
 11 the final map. I never saw -- I never saw data
 12 from the final map until I was retained in this
 13 litigation, other than being in possession of -- I
 14 think I might have a copy of the map, of the
 15 district, but I was never called upon to do
 16 analysis.
 17 Q But in sum, you told the lawyers at Michael Best
 18 and the other folks working for the Legislature
 19 that comparatively the Hispanic community of
 20 Milwaukee in the old 8th Assembly District had
 21 very low voter turnout; correct?
 22 A It had low voter turnout, correct.
 23 Q It has the lowest of all, didn't it?
 24 A More than likely, yeah.
 25 Q So the white turnout in those districts -- in that

1 Q Let me just tease that out a little bit. You
 2 assessed turnout in the 8th Assembly District, in
 3 the old 8th Assembly District over various years
 4 according to this, and you've created a chart like
 5 this for each of those years; correct?
 6 A Well, a database like this is created for each
 7 year. Again, as we go through, I cannot recall
 8 right now what if any exogenous elections I
 9 created it for but if I did I --
 10 Q Define that word. You got me on that word there,
 11 exon --
 12 A There are two types of elections we concern
 13 ourselves with in voting rights litigation,
 14 endogenous elections which are elections for the
 15 office of interest. Exogenous elections are
 16 elections that take in the same constituency or
 17 maybe even go beyond it but are for a different
 18 office. So an election for attorney general is an
 19 exogenous election. An election for Assembly in
 20 the district is an endogenous election.
 21 Q But you can gather information about the Hispanic
 22 voter turnout in those other elections as well;
 23 correct?
 24 A Correct.
 25 Q And I guess the question I have is you assessed

1 district would be higher; correct?
 2 A That's my opinion, yes.
 3 Q Okay. And how much higher?
 4 A White turnout rates, again I'm drawing from
 5 memory, depending upon the contest, whether it was
 6 a contest in the district or an exogenous contest
 7 inside the constituency boundaries, the turnout
 8 rate of white voters compared to the turnout rate
 9 of Hispanic voters could be anywhere from two to
 10 four times as high.
 11 Q How about in the area south of the old
 12 8th Assembly District?
 13 A The old 9th?
 14 Q Yeah.
 15 A Again, similar discrepancies in terms of Hispanic
 16 and white turnout.
 17 Q Are there any -- Rather than -- we won't go
 18 through every one of these, because your
 19 conclusion --
 20 A Yes.
 21 Q -- is supported by what you found in all of these
 22 different spreadsheets; correct?
 23 A Correct.
 24 Q Are there any other spreadsheets or sets of data
 25 contained on the thumb drive beyond those that

1 you've identified in this folder that also support
2 this analysis?
3 A Give me a moment to look. The endogenous analyses
4 are all inside the Wisconsin files folder that
5 we've been discussing. Now give me a moment to
6 review the larger folder very quickly.
7 There are a set of files on the main drive,
8 and again what I'll suggest you do is sort the
9 data by name, alphabetically.
10 Q Okay. Got it.
11 A Scroll down to the bottom, and you will see a set
12 of files that start Wisc06gov, 06H08, 06H08.
13 Q Wisc06gov08, yeah, I see it.
14 A Yeah. Wisc2010gov08, Wisc2010H08. There is some
15 sort of analysis like this in here. Wisc2010gov08
16 should be an estimate of gubernatorial election
17 voter turnout inside Assembly 8 using the same --
18 and the same technique to extract the exact
19 turnout.
20 Q And, again, the Hispanic community had the
21 lowest comparative turnout rate, correct, in the
22 8th Assembly District?
23 A Yes.
24 Q Any others? Well, let me ask -- well, I want that
25 question out there but we'll get an answer to that

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1 question, but I would add to that question as
2 well, and compound it perhaps, can you point me to
3 any summary of all of this data?
4 A No.
5 Q There is no summary?
6 A There is no summary.
7 Q Okay. So was that it?
8 A That's it.
9 Q Okay. Okay. Thank you.
10 A You're welcome.
11 Q Now you prepared --
12 MR. EARLE: Let's mark this.
13 (Exhibit No. 63 marked for
14 identification)
15 Q Do you recognize that document?
16 A Yes.
17 Q Is this a document you prepared?
18 A Yes, I did.
19 MS. LAZAR: That's been marked as
20 Exhibit 63?
21 COURT REPORTER: Yes.
22 MS. LAZAR: Thank you.
23 Q Now, you created Exhibit 63 -- actually what's the
24 one I want -- on July 16th, 2011 at 1:38 p.m.; is
25 that correct?

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1 A I may have created it earlier because it's
2 possible what I did was I opened it up, looked at
3 it, saved it, and the nature of my Apple is that
4 it saves over with the most recent date. But I
5 did create this document and the last time that I
6 saved it completed was July 17, yes.
7 Q What is your most precise estimation as to when
8 this document was created?
9 A I don't recall, but these conclusions reflect my
10 assessment of the situation in creating districts
11 on the south side of Milwaukee for the Latino
12 community.
13 Q Could you have created this -- Did you create this
14 document in some proximity to your analysis of the
15 spreadsheets of Hispanic voter turnout?
16 A It's possible. I just don't recall.
17 Q Well, I mean for my purposes it's important to
18 know this.
19 A I understand. I understand.
20 Q And all of the other documents on this thumb drive
21 have metadata associated with it except for a very
22 small number.
23 A Uh-huh.
24 Q This document doesn't have any metadata associated
25 with it, other than the creation date. Is there a

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1 reason for that?
2 A Yeah, because I created this on my Mac Pro book.
3 MR. EARLE: Okay. I would make a
4 request to counsel that we be provided with
5 the metadata from the Mac Pro book as to when
6 this document was created.
7 Q Would you be able to provide that information to
8 counsel?
9 A We can try, yes. We -- I of course will
10 cooperate, yes.
11 Q And, I mean, I'm not a Mac person. Mac Pro
12 book -- Mac documents contain metadata?
13 A I have no idea. I don't -- I don't worry about
14 activating or concealing metadata obviously. But,
15 no, we'll look and pull it up and try and figure
16 it out for you.
17 Q Okay. Because from your Mac laptop you can tell
18 the date that you created the document on there;
19 right? It will say created; right?
20 A I guess. I've never bothered to check. Again, we
21 will check and we will respond.
22 Q Okay. All right. Drawing your attention to
23 paragraph number 5, could you read that into the
24 record for me?
25 MR. KELLY: Before you go further

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1 on that, Mr. Earle, if you would -- to the
2 extent you have requests for him to follow
3 up, if you wouldn't mind reducing that to
4 writing just so we are able to respond
5 appropriately.
6 MR. EARLE: Okay. I think we can
7 also mark it on the transcript at the front,
8 document requests, but, yes, I will do that.
9 MR. KELLY: Thank you.
10 (Discussion held off record)
11 Q Yeah, would you read into the record paragraph
12 number 5?
13 A Certainly. "Two Hispanic community groups came
14 out in support of the districts. Are any groups
15 coming out in opposition? If not, strong credence
16 should be paid to these communities in their
17 desire for representation. Basically, it is
18 possible to craft two districts there, in a highly
19 compact space. If this is how the community wants
20 to slice things up, the legislature is being
21 responsive to a group of voters who are members of
22 a potentially suspect class."
23 Q You wrote that?
24 A Yes.
25 Q "Two Hispanic community groups came out in support

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1 of the districts."
2 A Yes.
3 Q Okay. What is that based on?
4 A I don't recall.
5 Q What two groups?
6 A I don't recall.
7 Q How did you know?
8 A Again, it's -- at the time that this was being
9 written, I was in an environment where I was
10 paying much closer attention to what was going on.
11 I don't remember.
12 Q Is there a way we could figure that out?
13 A I don't know.
14 Q Okay. You're in Oklahoma.
15 A I doubt it.
16 Q Okay. You're in Oklahoma. You're not here;
17 right?
18 A Right.
19 Q So obviously if you had information that two
20 Hispanic groups came out in support of the
21 districts that are being proposed in Act 43, that
22 would, by necessity, have had to have been
23 communicated to you by somebody; right?
24 A Unless I was here in the state when I came across
25 that information.

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1 Q Okay.
2 A But it was either communicated to me in Oklahoma
3 or it's something I picked up on on one of my
4 trips up here.
5 Q It's not something Joe Handrick told you anything
6 about?
7 A No. Not that I recall.
8 Q Jim Troupis didn't tell you anything about this?
9 A Not that I recall.
10 Q Eric McLeod didn't tell you anything about this?
11 A Again, I don't remember.
12 Q Okay. But you talked with each of those people
13 about the 8th Assembly District on the phone
14 frequently; right?
15 A Those were my most frequent contacts, yes.
16 Q Okay.
17 A Actually my contacts with Mr. Troupis were
18 actually fairly rare. Except for that e-mail
19 contact and a couple of phone conversations, most
20 of my communication was either with Mr. McLeod or
21 with Mr. Handrick or with Mr. Foltz or with
22 Mr. Ottman, depending upon the circumstance.
23 Q Who were you most frequently in contact with?
24 A Mr. McLeod.
25 Q And how often did you talk to Mr. McLeod?

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1 A I don't recall.
2 Q In a typical -- Well, during this period of time
3 where you were assessing Hispanic voter turnout
4 and you did all of these charts, how many times
5 did you talk to Mr. McLeod?
6 A Well, again, at the time that I'm doing a lot of
7 this analysis, which is in -- and I would have to
8 go back and look at my travel and see when exactly
9 I was up here. You have some indications of my
10 travel in the documents we've even provided. I
11 was up here in April, I was up here in June, for
12 certain I was up for several days both times, so
13 all of that communication would have just been
14 verbal, face-to-face.
15 Q Okay. Now the next thing you did in this
16 paragraph number 5 is you asked a question, "Are
17 any groups coming out in opposition?"
18 A Right.
19 Q Why did you ask that question?
20 A Again, because the Legislature needs to take into
21 consideration the communications of the
22 communities, ascertain what those concerns are
23 before they make their choices and attempt to
24 reflect the community's will in a matter like
25 this.

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1 Q You don't think Mr. McLeod knew that?
2 A I would assume so, but we say lots of things to
3 each other that we all know.
4 Q Who were you asking this question to?
5 A I don't recall. This may have been for myself.
6 Q Well, who was this document given to?
7 A I don't know if it was ever communicated -- I
8 don't think it was ever -- It was never
9 transmitted to anybody. This is a set of notes I
10 kept for myself for conversation when I dealt with
11 the client.
12 Q Did anybody at any point in time give you any
13 information whatsoever about what the groups in
14 Milwaukee thought about redistricting in that
15 area?
16 A No.
17 Q You never received any e-mails from anybody about
18 activity in the Latino community about what was
19 going on?
20 A Not that I recall, no. There was one e-mail I
21 received that was sent by Adam Foltz in relation
22 to the litigation -- or in relation to I believe
23 it was the City of Milwaukee district,
24 redistricting over the council districts, and I
25 believe it's included in the document -- in the

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1 discovery response that we've provided to you.
2 That I do recall.
3 Q And you recall that Mr. Troupis was a little taken
4 aback that the -- that that community organization
5 wanted 70 percent in the aldermanic district?
6 A I don't recall, but -- I don't recall Jim Troupis'
7 reaction.
8 Q Did anybody ever talk to you about whether
9 70 percent was a reasonable percentage of --
10 population percentage for a proposed district
11 given turnout issues, citizenship issues and so
12 forth?
13 A I don't remember that number, no.
14 Q Is 70 percent a reasonable number given all of
15 those issues, since you're an expert?
16 A If 70 percent can allow you to create a district
17 that will assure majority control, and assuming
18 that's the only way that the minority group can
19 elect a candidate of choice, I suppose that may be
20 what you have to do.
21 However, when I look at these districts on
22 the south side based upon this turnout data, there
23 are two competing pieces of information at work.
24 The one piece of information is that I didn't see
25 any scenario where you could get the percentage up

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1 high enough to assure majority Hispanic turnout
2 based upon the estimates that I had developed.
3 On the other hand, we have the fact that
4 District 8 was electing a representative of
5 choice, despite the fact that there was not
6 evidence that it was a majority Hispanic
7 electorate electing that representative.
8 So that's why, when you look at this
9 document, I'm kicking it back to the community.
10 The community needs to figure out what it wants to
11 do. The Legislature should consult with the
12 community and then act.
13 Q I'm going to follow up on that in a little bit
14 more detail, but I guess --
15 A Okay.
16 Q -- I guess -- well, let's just go to the next
17 sentence then. It says, "If not" -- this is what
18 you're talking about, you want to take it back to
19 the community. "If not, strong credence should be
20 paid to these communities in their desire for
21 representation." Correct, that's what you're
22 trying to say there?
23 A Right.
24 Q And you told that to Eric McLeod; right?
25 A I probably did, yeah.

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1 Q You told that to Joe Handrick --
2 (Discussion held off record)
3 Q You told that to Joe Handrick?
4 A Yeah.
5 Q Okay. And you would have expected that the folks
6 in charge of drawing these maps would have reached
7 out to that community and inquired about what the
8 community thought?
9 A I suppose so, yes.
10 Q And that would include all the identifiable groups
11 that had spoken on issues related to
12 redistricting?
13 A Yeah. I mean part of the redistricting process is
14 we go to communities and we talk to communities of
15 interest and then we attempt to implement maps.
16 Q And if there were in that community a high profile
17 group named The Latino Redistricting Committee
18 that purported to be a coalition of every
19 community organization within the area, would you
20 expect your clients to reach out to that group?
21 A I would expect my clients to pay attention to that
22 group. Do they necessarily act on its
23 recommendation? I don't know. That's their
24 determination. But I would expect them to be
25 aware of it.

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1 Q And you would expect them to get input from that
2 group; right?
3 A That's what we do. That's what we do when we go
4 to communities.
5 Q And to fail to do that would be kind of a
6 deviation from the norm of what a redistricting
7 process ought to be about; correct?
8 A Well, again now we're back to -- we're back to the
9 value of what it ought to be. You know, we --
10 folks like Ken Mayer and I, we love for stuff to
11 look like good government. We love for stuff to
12 look like the textbook example, but a lot of
13 redistrictings, community outreach is often
14 pro forma, if it happens at all. In the state of
15 Illinois, the redistricting maps were produced
16 24 hours -- in 24 hours with no community input to
17 speak of and then enacted into law.
18 Q Not a very good thing, huh?
19 A Well, again, it is a political process. But,
20 you know, in this instance all I can do is make
21 recommendations. My recommendations were largely
22 confined to the development of measures,
23 statistical analysis and assessments. I couldn't
24 reach a definitive -- I could not reach a
25 conclusive -- I could not reach a conclusion for

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1 them to set a threshold for Hispanic performance,
2 so at that point, rather than saying, yeah, you
3 need to put this at 68 percent or 62 percent or
4 57 percent, my recommendation is to go to the
5 community, go to the political process, which is
6 what legislating is, and get the answer there.
7 If I could have ascertained a performance
8 threshold, I would have recommended it. I
9 couldn't ascertain one.
10 Q Would you have recommended a proposed map that
11 took the old 8th Assembly District and reduced its
12 HCVAP by 10 percent?
13 Let me be more precise with the question.
14 Hypothetical set of questions. I want you to
15 assume that the old 8th Assembly District had an
16 HCVAP on the eve of redistricting, 2010 data,
17 using ACS, of something over 50 percent, say
18 53 percent, 52, 53 percent, in that range. Okay?
19 And I want you to assume that the new 8th Assembly
20 District reduced that to 40.9 percent.
21 A Okay.
22 Q Is that something that you would recommend,
23 without any community input from the people
24 affected in that community?
25 A Again, the only circumstance under which I -- the

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1 only circumstance under which I could recommend
2 that type of reduction is that there is sufficient
3 white crossover voting to assure that the Hispanic
4 community continues to elect its candidate of
5 choice and that it's not currently a majority
6 turnout district when it goes to vote.
7 That being said, you -- there are concerns
8 when you engage in substantial reductions of
9 minority voting age population that impede the
10 equal opportunity to elect.
11 Q And if I added information to that hypothetical
12 that the new areas that were added to the new 8th
13 and which caused the reduction in the HCVAP were
14 from a community that had a history of some racial
15 tension and a history of electing only white
16 candidates, would that raise your concerns?
17 A Well, again that's -- that is a step beyond the
18 areas of concern that I typically address in my
19 analysis. I would want to see whether or not the
20 voting patterns in that new constituency would
21 still afford an equal opportunity to elect.
22 Q Okay. Now the next sentence you have here says,
23 "Basically, it is possibly" but you meant
24 possible?
25 A Yes.

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1 Q -- "to craft two districts there in a highly
2 compact space." Is that right?
3 A Yes.
4 Q Okay. Now, the information you were given had
5 boundaries around a configuration of the 8th and
6 9th where, for example, I think there was one
7 drawing that had it horizontally configured and
8 another drawing that had it vertically configured;
9 correct?
10 A Correct.
11 Q Okay. And was it Adam Foltz that gave you those
12 maps?
13 A I can't remember if it was -- if they're Assembly
14 maps, they would have had to have been given to me
15 by Adam Foltz, yes.
16 Q So he pretty much, he had the third Senate
17 district kind of drawn out there?
18 A Right.
19 Q And then he had the 8th and 9th with at least two
20 different configurations; correct?
21 A Correct.
22 Q Do you recall whether you saw any other third or
23 fourth configurations within those boundaries?
24 A The only two configurations I can recall seeing
25 are a north-south and an east-west. If there were

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1 other configurations, I don't know.
2 Q And in the north-south, the external boundaries of
3 the 8th and 9th combined were identical to the
4 external boundaries of the 8th and 9th in the
5 horizontal configuration; correct?
6 A I don't recall, but they're very close, yes.
7 Q I mean bottom line was there was no variation of
8 the outside boundaries of the combined 8th and 9th
9 on any map that you saw; isn't that right?
10 A Again, I cannot recall if it was precisely the
11 same but they are very close in terms of the
12 external boundary.
13 Q Well, did you ask them, why do we have to have the
14 outside boundaries exactly the same?
15 A No.
16 Q Did you ask them whether it was possible to alter
17 the configuration to maximize Latino voting so you
18 didn't have to pay attention to the outside
19 boundaries?
20 A Again, what I indicated to them was, because I
21 couldn't set a threshold at which I thought a
22 district could perform, that they had to go back
23 to the community and consult on that, so I never
24 asked them if they had maximized or not.
25 Q Well, what did they say to you when you told them

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1 these things? I mean did they say *We're going to*
2 *do that* or *We don't want to do that*, or what did
3 they say?
4 A They acknowledged my input.
5 Q But did they react to it in any way?
6 A Well, you know, at that point because I could not
7 tell them definitively which way they needed to go
8 with the map, I assumed they went on to the
9 community, went on to the leadership of the
10 Legislature and sought input on how to proceed. I
11 don't know. I don't know what they did next.
12 Q Did they explain to you why they wanted to have
13 the outside boundaries of the 8th and 9th in that
14 particular configuration and constrain all
15 statistical analysis within that universe?
16 A No.
17 Q Were you curious?
18 A No.
19 Q Why wouldn't you be curious about something like
20 that?
21 A In the scope -- I was analyzing elections to
22 ascertain if there were voting rights needs that
23 needed to be addressed in the crafting of these
24 districts. With the data I had available, I came
25 to the conclusion that, well, first of all you

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1 needed to maintain the majority Hispanic
2 opportunity. That being said, I was not sure how
3 highly concentrated it needed to be because I had
4 two conflicting pieces of information. I have
5 data that indicate to me that there is not
6 majority Hispanic turnout so there was crossover
7 voter occurring to allow Hispanic control of the
8 district. But I have evidence of performance of
9 the district that it's electing candidates of
10 choice.
11 So at that point I gave them the input I
12 could based upon what I had available in terms of
13 information and knowledge and then left them to go
14 to other sources of information and other sources
15 of input to design the districts. I sent them
16 back to the community.
17 Q Did they indicate to you that they were going to
18 go back to the community?
19 A I don't recall. I assume they did.
20 Q You said there was evidence of crossover voting
21 that allowed the community to select the candidate
22 of their choice. You're speaking about the
23 repeated election of Pedro Colón?
24 A For example, yes.
25 Q Okay. And I assume you were including within that

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1 the election of JoCasta Zamarripa?
2 A Yes.
3 Q What evidence do you have of crossover voting?
4 A Well, the evidence of crossover voting is it has
5 to be assumed. The reason why is if I have
6 estimates that most of the voting electorate is
7 not Hispanic but Hispanic preferences were
8 prevailing, in primaries or in general elections,
9 the balance of the vote has to come from the rest
10 of the electorate, by definition.
11 Q Was there anybody else on any of those ballots
12 that was not a Hispanic?
13 A No.
14 Q So if a person is voting in that district, they
15 only have one choice to vote for?
16 A Effectively. But, again, if we look at
17 reconstituted elections in the area and, you know,
18 we were working with a limited amount of data at
19 the time, when I'm looking at the reconstitution
20 of general elections, for example looking at
21 overall turnout, again an exogenous election, an
22 election that is not a good candidate for
23 analyzing racial polarization, we're seeing low
24 levels of Hispanic turnout, we're seeing
25 Democratic candidates prevailing, so there has to

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1 be some sort of voting going on in coalition. You
2 have white voters that are -- in much of the city
3 of Milwaukee that are regularly voting Democratic.
4 We see the same thing on the north side of
5 Milwaukee as well.
6 Based on the data I had available, I reached
7 that conclusion, and again sent them to talk to
8 the community. There is no -- there are no
9 endogenous elections I can study in District 8 to
10 ascertain racially polarized voting. So I went to
11 those sources of data I had available at the time
12 to attempt to reach a set of conclusions to give
13 these mapmakers guidance, and my guidance was to
14 send them back to the community.
15 Q Your conclusion that there is crossover voting is
16 entirely based on assumptions you've drawn from
17 the situation, from looking at the election
18 outcomes; correct?
19 A Well, I mean it's an empirical -- the nature of
20 the turnout versus the ballots versus the
21 outcomes, there has to be crossover voting going
22 on.
23 But again these are not -- I will readily
24 concede these are not minority versus Anglo
25 contests. They are not contests that are taking

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1 place in an environment where these types of
2 issues might be illuminated or highlighted. Okay?
3 And I don't have -- these are largely
4 noncompetitive circumstances in the district or
5 they're exogenous elections outside the district.
6 And barring additional data, the only conclusion I
7 could reach was to direct them back to the
8 community.
9 Q Okay. The last sentence.
10 A Yes.
11 Q It says, "If this is how the community wants to
12 slice things up, the legislature is being
13 responsive to a group of voters who are members of
14 a potentially suspect class."
15 A Right.
16 Q You wrote that; right?
17 A Yeah.
18 Q And you told that to Adam Foltz?
19 A I don't know if I told that to Adam Foltz or not.
20 I don't know if I used those words in talking to
21 him.
22 Q You told him the substance of that sentence.
23 Wait, strike that.
24 Let's narrow the universe of who you might
25 have told this to. It would have been either

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1 Adam Foltz or Eric McLeod or Joe Handrick;
2 correct?
3 A Correct.
4 Q And one of those three people you said words to
5 the effect that if the community wants to slice
6 things up that way, then the Legislature is being
7 responsive to them and they are a potential
8 suspect class; right?
9 A I didn't say they were a potential suspect class.
10 That's my own notation. And, again, I've never
11 liked the term "suspect class" because it conveys
12 the wrong concept. We have a group of individuals
13 who are treated in a suspect fashion under the law
14 potentially discriminated against. Okay?
15 Therefore afforded special consideration and legal
16 protection in this type of environment. That's
17 why I wanted them to go back to the community, is
18 that if you're dealing with voter rights issues,
19 talk to the community. In addition to everything
20 else, you talk to the community.
21 Q Now I get this message from you. I mean it's
22 clear to me that you, as a consultant, valued the
23 idea that the community be involved in this
24 process and that the community be involved in a
25 meaningful way; correct?

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1 A Yes.
2 Q Okay. And I share that concern. My clients share
3 that concern. And part of that is why we're here.
4 I can tell from the passion of your testimony
5 about that, because you've come back to that over
6 and over and over again over the last 20 minutes
7 or so, that this was something that was front
8 and center in your mind as you looked at the
9 8th Assembly District; right?
10 A That was my conclusion, yes.
11 Q So I just want to be very clear that the record
12 is clear that you made this really clear to
13 Eric McLeod and Adam Foltz and Joe Handrick that
14 this was a priority; right?
15 A Because I could not set for them a level at which
16 they should set these majority-minority districts
17 to perform, they should consult with the
18 community. That was my recommendation. That was
19 my final conclusion and it is what I recommended.
20 MR. KELLY: Just so the record is
21 clear, the reason he keeps coming back to
22 that is because you keep asking him about it.
23 MR. EARLE: Well, this is -- that's
24 an unusual objection.
25 MR. KELLY: It is. But it stands.

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1 MR. EARLE: Well, it doesn't serve
2 a purpose other than an assertion of your
3 view into the record, but that's okay.
4 MR. KELLY: Let's call it a
5 brushback and you can continue.
6 MR. EARLE: Call it what?
7 MR. KELLY: A brushback.
8 MR. EARLE: A brushback, okay. You
9 take exception to the implication, but we'll
10 debate that off the record, how is that?
11 MR. KELLY: That's just fine with
12 me.
13 MR. EARLE: Good. How about we
14 debate it in the courtroom with the judge.
15 MR. KELLY: Perhaps. It depends on
16 where you go from here.
17 MR. EARLE: Okay.
18 MR. KELLY: That's why it's a
19 brushback.
20 MR. EARLE: Thank you.
21 Q The last piece of this, and then I'll turn it back
22 over to Mr. Poland. And that is the first clause
23 of that sentence says, "if this is how the
24 community wants to slice things up." I'm
25 interested in that specific language. We're

1 talking about slicing things up within the outside
2 boundaries of the 8th and 9th Assembly Districts
3 as designated by Adam Foltz; correct?
4 A I am thinking more in the context of the larger
5 Senate district, the pod I think was the term
6 you'll hear popping around this state, that holds
7 these two districts and the adjoining district.
8 The Latino community, Hispanic community in
9 Milwaukee is geographically centered in this
10 general area. So in creating district -- and the
11 community is too large for one district. So in
12 creating districts for that community, how they
13 want to slice things up, how they want to boundary
14 them, how they want to divide things up, whichever
15 proxy term we want to use, yes. If you give the
16 community what they want and it is a district that
17 allows them to continue in this process of
18 electing candidates of choice, they're being
19 responsive.
20 Q All right. I guess I'm just about done. One last
21 little, if you were to take -- if you were to look
22 at this de novo and you have this community as it
23 is demographically situated and as it is
24 demographically delineated for you, you would
25 agree that it's wise to start first with a -- if

1 you can, a set of boundaries that encompasses a
2 compact -- geographically compact district with an
3 effective voting majority first and then draw out
4 from that; correct?
5 A That's Gingles prong one.
6 Q But you start with a district that is compact and
7 has an effective voting majority if that's
8 possible; correct?
9 A You start with the map. You see if you have a
10 cohesive and compact group there, and then you
11 craft a district.
12 Q And then you work out from that; right? So if
13 there is a residual population of Latino voters,
14 that you deal with that after that; correct?
15 A One could, yeah.
16 MR. EARLE: Okay. I'm done. Thank
17 you. I appreciate your candor.
18
19 EXAMINATION (Continuing)
20 By Mr. Poland:
21 Q Dr. Gaddie, we talked a little bit both this
22 morning and then during the time that Mr. Earle
23 was asking his questions of you about your
24 engagement initially to work with Mr. McLeod and
25 the team at Michael Best & Friedrich --

1 A Yes.
2 Q -- in helping them to conduct analysis to work on
3 Act 43 and Act 44; correct?
4 A Yes.
5 Q All right. And you mentioned that you were
6 retained in the April timeframe; is that correct?
7 A I believe. I would have to go back and check, but
8 I believe that I got my retention letter in April.
9 I was contacted earlier than that, but I was
10 retained I believe in March or April, yes.
11 Q And that's what I was about to ask you about. Do
12 you recall when it was that you were initially
13 contacted about working on that project?
14 A Probably late February or maybe a bit earlier, but
15 it was sometime during the winter. There had been
16 correspondence, in part because there had been the
17 assumption I was working with them but I hadn't
18 received retention yet, so I think there was
19 actually an e-mail about that.
20 MR. POLAND: Let's mark this as, is
21 it 64?
22 (Exhibit No. 64 marked for
23 identification)
24 Q Dr. Gaddie, I've handed you a copy of a document
25 that the court reporter has marked as Exhibit 64.

1 I want to point your -- It looks like it's an
2 e-mail chain. I'll point out for you, as we go
3 through these documents you're going to see Bates
4 numbers on the documents.
5 A Yes.
6 Q I assume you're familiar with what a Bates number
7 is.
8 A Remind me.
9 Q Okay. A Bates number is a number that's affixed
10 to a document when it's produced in litigation.
11 A Oh, okay, yes.
12 Q So if you look in the lower right-hand corner of
13 Exhibit 64, you'll see a Bates number there
14 Troupis and then there is a number in there 088.
15 A Right.
16 Q It just indicates it was produced to the
17 plaintiffs by the Legislature in response to a
18 subpoena that we had served out. I would like to
19 draw your attention to the middle portion of this
20 e-mail chain in Exhibit 64.
21 A Yes.
22 Q You see there is an e-mail from Jim Troupis to
23 Joe Handrick, and he says, "Keith Gaddie is on
24 board now." Do you see that?
25 A Right.

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1 Q And that's dated January 24th, 2011; correct?
2 A Yes.
3 Q Did you have a discussion with Mr. Troupis on or
4 about January 24th?
5 A Jim I don't recall. I remember I was initially
6 contacted about coming in -- I'm trying to
7 remember if I was initially contacted by
8 Joe Handrick or Jim Troupis. I don't recall. But
9 it was during the winter that I was contacted
10 about coming in again. I think Troupis may have
11 contacted with me. I may have spoken with him,
12 but I may have spoken to Handrick at the same
13 time. I just don't recall.
14 Q And you said coming in again. By that is that a
15 reference back to the 2002 redistricting
16 litigation?
17 A Yes.
18 Q And you worked with Mr. Troupis and Mr. Handrick
19 in the 2002 redistricting litigation; correct?
20 A Yes.
21 MR. EARLE: What was the last
22 number? Where were we at? Where were we at?
23 MR. POLAND: That was Exhibit
24 No. 64.
25 Q After that conversation that you would have had

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1 with Mr. Troupis or Mr. Handrick that resulted in
2 Mr. Troupis telling Mr. Handrick in January that
3 you were on board, do you recall the next time
4 that you spoke with anyone about working on the
5 redistricting?
6 A No. There may have been communications between
7 then. I seem to recall a contact in February,
8 but, again, I don't recall.
9 MR. POLAND: That's fine. Mark
10 this as 65.
11 (Exhibit No. 65 marked for
12 identification)
13 Q Dr. Gaddie, I'm handing you a document that the
14 court reporter has marked as Exhibit No. 65.
15 A Yes.
16 Q And you'll see at the top there is -- well,
17 actually just for the record at the bottom again
18 it comes from -- the Bates stamp on it is Troupis
19 and it's document number 29. It appears to be an
20 e-mail chain between you and Mr. Troupis; correct?
21 A Yes.
22 Q All right. In the middle again of this e-mail
23 chain dated February 14th there is a cc to
24 Mr. McLeod as well; correct?
25 A Correct.

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1 Q And it identifies -- or Mr. Troupis says that
2 there will be a consulting letter that will be
3 sent to you; correct?
4 A Correct.
5 Q And it will be coming from Mr. McLeod?
6 A Correct.
7 Q All right. Now had you worked with Mr. McLeod
8 before this time?
9 A Yes. Mr. McLeod had been at Michael Best during
10 the previous redistricting.
11 Q So you had worked with Mr. McLeod back in 2002 as
12 well?
13 A Yes.
14 Q Up at the top of this e-mail chain there is a
15 reference to Bernie's cell number. Is that --
16 well, and then it says Bernie Grofman underneath.
17 A Yes.
18 Q All right. Was it your suggestion that
19 Mr. Grofman be brought in to work on the
20 redistricting?
21 A No. They were -- Mr. Troupis and Mr. McLeod were
22 planning on bringing Mr. Grofman in but didn't
23 know how to get in touch with him, and I have a
24 good friend who is one of Bernie's former grad
25 students who is a member of my editorial board. I

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1 thought I'd check and see if he had Bernie's cell
2 but we couldn't find it.
3 Q Had Mr. Grofman worked on the 2002 redistricting
4 in Wisconsin?
5 A Yes. He was a rebuttal witness called at trial,
6 as I recall.
7 Q Have you worked with Mr. Grofman in any other
8 litigation other than in 2002?
9 A I don't think we have, no.
10 Q Did Mr. Grofman participate in any way in the
11 redistricting? And I'll distinguish that from the
12 litigation we're involved in now.
13 A Not that I know of.
14 Q Did you speak with Mr. Grofman at all from the
15 time that you were retained in last year, in the
16 January, February, March timeframe, up until the
17 time that the legislation was passed in August?
18 A I don't think I've talked to Bernie Grofman since
19 2006.
20 Q And that means -- it continues up to this day as
21 well?
22 A As far as I know, yeah. There may be a passing
23 encounter at a professional conference or
24 something, but the last time I saw Bernie and had
25 any substantive conversation with him would have

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1 been in the spring of 2006.
2 Q Do you recall that there was a time where you had
3 members of the Milwaukee media that were calling
4 you about redistricting?
5 A I had one call from Milwaukee media inquiring as
6 to redistricting, yes.
7 Q And that was after the redistricting?
8 A No, no, it was before.
9 Q It was before; correct?
10 A Yes.
11 Q And it was one media inquiry?
12 A One media inquiry from the Journal, Journal
13 Sentinel, local paper.
14 Q What was that --
15 A Yes.
16 Q -- media inquiry?
17 A It was a call -- I had a voicemail, nothing more.
18 It was a call wanting to ask -- My name had been
19 given to them by someone at UW on redistricting.
20 I can't remember who. So I called them back and
21 said, I'm anticipating being retained in the
22 redistricting and I passed on to them some other
23 names. I think I may have passed on
24 Professor Mayer's name. I don't recall.
25 Q So that inquiry, as you understand it, was not

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1 asking you about your participation in
2 redistricting but some general questions about
3 redistricting?
4 A Correct.
5 Q Now, there did come a point in time when you did
6 get a formal retainer agreement from Mr. McLeod;
7 correct?
8 A Correct.
9 MR. POLAND: Let's mark this.
10 (Exhibit No. 66 marked for
11 identification)
12 Q Dr. Gaddie, I've handed you a document that's been
13 marked as Exhibit No. 66. Can you identify this
14 document for the record, please?
15 A Yes. This is my retention agreement from
16 April 11th.
17 Q I note for the record that the document begins
18 with the Bates number MBF 33 through 35. Could
19 you turn to the last page of Exhibit 66, please.
20 A Yes.
21 Q All right. And is that your signature on
22 Exhibit 66?
23 A Yes, it is.
24 Q And it's dated April 11th, 2011; correct?
25 A Correct.

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1 Q And is that -- And this is a document that
2 Mr. McLeod sent to you?
3 A Actually he handed it to me. I was here.
4 Q When you say here, you mean in Wisconsin?
5 A In Madison.
6 Q Oh, all right.
7 A In Madison.
8 MR. EARLE: Close enough. Not
9 close enough for Doug tonight.
10 MR. POLAND: Not on a day like
11 today, no.
12 Q Was your presence in Madison on April 11th, 2011,
13 the first time that you traveled to Wisconsin to
14 meet with anybody physically about the
15 redistricting in 2011?
16 A Yes.
17 Q And you were in Madison for a number of days at
18 that time?
19 A Yes.
20 Q Where were you physically when Mr. McLeod handed
21 Exhibit 66 to you?
22 A Mr. McLeod handed me the exhibit -- handed me the
23 exhibit that is 66 in the lobby of Michael Best's
24 office on the, sixth or seventh floor, seventh
25 floor.

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1 Q Now, did all of the work that you did when you
 2 were in Wisconsin on the redistricting, did that
 3 occur in Michael Best's offices in Madison?
 4 A A lot of it occurred in Michael Best's offices.
 5 Sometimes I would continue working in my hotel
 6 room over at the Governor's Club, over at the
 7 Madison Concourse.
 8 Q Concourse, yeah. And you recall being present in
 9 Madison at least two times; is that correct?
 10 A Yes. Again, I'm -- probably more than two. I
 11 would have to go back and review but two for
 12 certain.
 13 Q And April would have been the first time that you
 14 were in Madison working on redistricting; correct?
 15 A Yes.
 16 Q Do you recall the last time that you were in
 17 Madison working on redistricting as opposed to the
 18 litigation?
 19 A Again I would have to go back and check my travel
 20 records, but it should have been in June, I
 21 believe.
 22 Q When you worked in the Michael Best offices, where
 23 specifically were you working?
 24 A There were a set of rooms -- there is a room on
 25 the seventh floor, a secured room, that has the

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1 geographic information systems that were being
 2 used to redistrict. Occasionally I would use a
 3 conference -- I would also use a conference room
 4 that was separate from that so that I could work
 5 in quiet.
 6 Q Now my understanding from some previous testimony
 7 we've obtained in this case is that there were
 8 three computers that were in a room. I'm not sure
 9 which floor it was on.
 10 A Right.
 11 Q That had the autoBound software on them and had
 12 the pertinent data apparently.
 13 A Yes.
 14 Q Are you familiar with that room?
 15 A Yes.
 16 Q Did you have access to those computers and work on
 17 those computers?
 18 A No.
 19 Q Who was present working in that room with you when
 20 you were there?
 21 A Present working in that room would be Mr. Foltz,
 22 Mr. Ottman and Mr. Handrick.
 23 Q Were you ever in that room at Michael Best &
 24 Friedrich when anyone other than Mr. Foltz,
 25 Mr. Ottman or Mr. Handrick was there?

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1 A There were moments -- there were instances where I
 2 would be in there where there was counsel present,
 3 Mr. McLeod, possibly another attorney from the
 4 firm whose name I can't recall.
 5 Q Maybe Mr. Taffora?
 6 A Might have been.
 7 Q All right.
 8 A Again, I don't recall. Mr. Troupis on one
 9 occasion.
 10 Q Was anyone -- Were any members of the Legislature
 11 ever in the room with you when you were there?
 12 A On one occasion the president of the Senate was in
 13 there.
 14 Q That would be Senator Fitzgerald?
 15 A Fitzgerald, yes. Senator Fitzgerald.
 16 Q Any other legislators ever present that you
 17 recall?
 18 A Not that I recall.
 19 Q You testified earlier this morning, I think it was
 20 in response either to one of my questions or one
 21 of Mr. Earle's, that you never put your hand on a
 22 mouse, never -- well, that's all I remember was
 23 never put your hand on a mouse. Did you do any
 24 work on any of the computers in that room --
 25 A No.

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1 Q -- in any other way?
 2 A No.
 3 Q So you didn't actually do any assignments of
 4 census blocks to districts, anything like that?
 5 A No.
 6 Q All right. Did you ever -- Were you ever asked to
 7 comment on whether certain census blocks should be
 8 put into certain districts?
 9 A No.
 10 Q Were you ever asked about whether lines or
 11 boundaries for certain districts should be drawn
 12 in a certain way?
 13 A In terms of configuring specific districts, no.
 14 Q What about generally?
 15 A Well, when you're consulting on a redistricting,
 16 you'll talk about the application of principles,
 17 and one of the consequences of following
 18 municipality boundaries in Wisconsin is that you
 19 will occasionally pick up noncongruities, for
 20 example, or you may end up with a relatively
 21 noncompact edge even though you're following a
 22 municipal boundary.
 23 You know, so one thing I asked was if when
 24 we're looking at these districts, you know, are
 25 you following a principle here that -- what are

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1 you doing? What are you doing here? You're
2 following this little boundary, that's why we have
3 this rip tear. But in terms of specifically
4 consulting on how to best design particular seats,
5 no.
6 Q You just used the term rip tear. And what do you
7 mean by that?
8 A That's just a jagged edge on a district. It looks
9 like a torn sheet of paper.
10 Q Is a rip tear indicative of anything?
11 A When you have a rippled edge, it can contribute to
12 noncompactness on some compactness measures.
13 Q When you were at Michael Best & Friedrich in
14 April, did you look at any draft maps or proposed
15 maps at that time?
16 A I've seen parts of maps. I never saw a whole map.
17 Q All right. Do you recall what parts that you saw?
18 A I saw, well, configurations on Districts 8 and 9
19 clearly, configurations on Districts 10, 11 and
20 12, 16, 17, 18. Milwaukee County more generally.
21 I saw maps of parts of the state, but most of
22 my review that was going on was in this context
23 of trying to assure minority -- trying to give
24 them input on assuring minority access in
25 Milwaukee County.

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1 Q At the time that you were at Michael Best in
2 April, did you see configurations of those
3 districts that you just mentioned?
4 A I mean, yes, I did.
5 Q And I'm speaking specifically of April as opposed
6 to later in time.
7 A Yes. They were working with configurations of
8 districts.
9 Q And it's your understanding that they were working
10 with census blocks rather than wards; correct?
11 A That's my understanding, yes.
12 Q Do you know how redistricting had been
13 accomplished in the past in Wisconsin in terms of
14 drawing districts, whether it had been done with
15 census blocks?
16 A Well, again we always assume the census block is
17 the smallest building block. I do know that in
18 the past Wisconsin has reboundaried its wards,
19 then drawn districts.
20 Q Do you know why that process was not followed with
21 the 2011 redistricting?
22 A No, I don't.
23 Q Did anybody ever tell you why?
24 A No.
25 Q Did you ever ask anybody why?

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1 A No.
2 Q All right. I'd like you to look at Exhibit 66 on
3 the first page. And if you look under the Scope
4 of Engagement and Expectations, do you see there,
5 and I'm looking at that first paragraph, it
6 states, "we expect your duties to include service
7 as an independent advisor on the appropriate
8 racial and/or political make-up of legislative and
9 congressional districts in Wisconsin." Do you see
10 that?
11 A Where are you again? I'm sorry.
12 Q Sure.
13 A Oh, yes, yes. I found it. Yes.
14 Q Okay. Did you render any advice to Michael Best &
15 Friedrich on racial make-up of legislative and
16 congressional districts in Wisconsin?
17 A Well, the -- yes. What I told them is that they
18 needed to be certain to maintain the existing
19 minority opportunities. That being said, you have
20 this dramatic growth of the African-American
21 population on the north side of Milwaukee. So my
22 advice to them was draw compact districts,
23 cognizant of the desires of the legislators and
24 the community, take care not to pack the districts
25 too highly but not to cut them too low that they

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1 wouldn't perform.
2 But again, when I looked at the African-
3 American voter turnout, the performance of
4 elections in that part of Milwaukee County, again
5 it was evident to me that African-Americans should
6 be able to control these districts, so my advice
7 to them was draw compact districts and try not to
8 pack any of them.
9 Q Did you ever advise anyone at Michael Best &
10 Friedrich in conjunction with your representation
11 that there were opportunities to increase the
12 number of African-American districts?
13 A Well, when you look at the map and you look at
14 what happens when you start equalizing
15 populations, it appears to be almost inevitable
16 that you're going to place a sixth majority
17 African-American district on the north side of
18 Milwaukee. So six districts seemed to be the
19 baseline. That seemed to be what the new baseline
20 was going to be, this is what was going to happen.
21 On the one hand, I did not want them to pack
22 these districts too high. I didn't want them
23 putting them in the high 60s or the 70s where they
24 would be accused of packing African-American
25 voters. On the other hand, I didn't want them to

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1 set the districts too low so that they might not
2 have an equal opportunity to elect.
3 Q Did you look at -- Did you ever look into whether
4 a seventh African-American district could actually
5 be drawn?
6 A No.
7 Q Were you ever asked to?
8 A No.
9 Q Did you ever ask anyone whether you should?
10 A No.
11 MR. KELLY: Doug, when it would
12 make sense, perhaps we could take a break.
13 MR. POLAND: Let me just finish on
14 this document.
15 MR. KELLY: Sure.
16 MR. POLAND: It should just be a
17 couple minutes.
18 Q Now, also with the reference to acting as an
19 advisor on the appropriate racial make-up, that
20 also extended to the Latino districts as well?
21 A Yes.
22 Q All right. And that was the testimony --
23 Mr. Earle was just asking you questions about
24 that?
25 A Yes.

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1 Q Now there also was a question about serving as an
2 independent advisor on the political make-up of
3 legislative and congressional districts in
4 Wisconsin; correct?
5 A Correct.
6 Q Did you render advice to Michael Best & Friedrich
7 on political make-up of legislative and
8 congressional districts?
9 A The scope of my advice on political make-up was
10 limited to instructing them on the construction of
11 measures that could be used to explain the
12 political change in the make-up of districts or to
13 ascertain the extent to which the partisan balance
14 of the districts might have been shifted.
15 So this consisted largely of efforts to
16 attempt to construct measures of -- measures of
17 normal votes from prior statewide electoral data
18 and from Assembly and State Senate data.
19 Q And why were you asked to provide that kind of
20 service?
21 A Well, again, you know one of the things we like to
22 do in redistricting is to go back and do a back
23 end check on the impact of a map.
24 So if they -- There were two functions here.
25 One was to do a back end check on the impact of

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1 the map in terms of the change in the political
2 make-up of districts, but also districts have to
3 be voted on by lawmakers and lawmakers want to
4 know how their constituency has changed
5 electorally. By having a set of measures or
6 proxies available that could be explained to them,
7 you can go to a lawmaker and explain the impact of
8 a change in the district.
9 Q And that's part of the political impact that
10 goes -- that's part of any redistricting effort;
11 correct?
12 A Yes.
13 Q Now the next paragraph down.
14 A Yes.
15 Q There is a sentence, the second sentence in says,
16 "Said work contemplates services of a character
17 and quality that are adjunct to our services as
18 lawyers and you shall perform said work at our
19 direction." Did you take direction from
20 Mr. McLeod and Michael Best & Friedrich in the
21 type of work that you were doing?
22 A Well, again I took instruction from them on the
23 type of work that I would do, informed them of
24 what I thought needed to be done and then I did
25 it.

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1 Q You were not sort of given free reign to just go
2 out and do whatever you wanted. They asked you to
3 do specific things; is that correct?
4 A They asked me what I thought needed to be done and
5 then got them to approve what needed to be done
6 and then did it.
7 Q Was there ever anything that you recommended to
8 them should be done that they declined to have you
9 do?
10 A Not that I recall.
11 Q Everything that you suggested should be done, they
12 said go ahead and do it?
13 A In the scope of my activities, yes.
14 Q Yes.
15 A Yes.
16 Q All right. The next sentence says, "all
17 communications between you and MB&F, as well as
18 communications with the Senate and Assembly, and
19 work performed by you in connection with the
20 Representation, shall be confidential and made
21 solely for the purpose of assisting counsel in
22 rendering legal service." Do you see that?
23 A Yes.
24 Q Did you ever communicate with anyone in the
25 Senate?

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1 A Communicate with anyone in the Senate?
2 Q Correct. It says, "all communications between you
3 and MB&F, as well as communications with the
4 Senate and Assembly."
5 A No.
6 Q All right. So you never communicated with anybody
7 in the Wisconsin State Senate?
8 A No member, no.
9 Q Okay. And did you ever communicate with anybody
10 in the Wisconsin State Assembly about your work in
11 redistricting?
12 A No. I was present at one meeting where
13 Mr. Handrick met with Speaker Fitzgerald, but I
14 engaged in no communication. I stood in the
15 corner of the room and did my best impersonation
16 of a potted plant.
17 Q And that's the time that you're referring to
18 before when Senator Fitzgerald was present?
19 A No, this was Speaker Fitzgerald.
20 Q Speaker Fitzgerald, okay.
21 A Yes.
22 Q So where were you when you were with Mr. Handrick
23 and Speaker Fitzgerald?
24 A This would have been in the speaker's office.
25 Q Was this during the time that the redistricting

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1 effort was going on before the legislation was
2 passed?
3 A Yes.
4 Q All right. Did you do any work in the speaker's
5 office?
6 A No.
7 Q You'd simply accompanied Mr. Handrick over to
8 Speaker Fitzgerald's office?
9 A Yes.
10 Q All right. The next full paragraph down, the very
11 last sentence of that paragraph reads, "Any work
12 papers or materials prepared by you, or under your
13 direction, belong to the Senate pursuant to the
14 Representation, and every page must be sealed or
15 otherwise stamped 'Attorney/Client Work-Product
16 Privilege Confidential.'" Do you see that? It's
17 the last full --
18 A Yes, yes, I'm there. Yes.
19 Q Okay. Did you -- Were you ever asked to return
20 any work papers or materials to the Senate?
21 A No.
22 Q All right. Were you asked to return any of your
23 work materials to Michael Best & Friedrich?
24 A No.
25 Q I'm talking outside the context of responding to a

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1 subpoena.
2 A Correct. No.
3 Q So at the time that your work was -- or strike
4 that question.
5 Did there ever come a time where you
6 understood your work as a redistricting consultant
7 to Michael Best & Friedrich had ended?
8 A Honestly, I don't know.
9 Q And to draw your attention down to the next
10 paragraph under Term and Payment for Services,
11 you'll note that that paragraph states that your
12 engagement will conclude upon written notice by
13 either party and then it's defined as the
14 termination date. Do you see that?
15 A Yes.
16 Q Was your -- Did you ever receive any kind of a
17 written notice from Mr. McLeod that your
18 engagement had terminated?
19 A No.
20 Q And you were paid for your work obviously as a
21 redistricting consultant; correct?
22 A Yes. Michael Best is current.
23 Q All right. And the last -- it's not the last
24 paragraph, it's two paragraphs below, there is a
25 statement that "While you will be a consultant for

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1 Michael Best & Friedrich," or it says MB&F, "the
2 Senate and Assembly, for whom your services are
3 being procured, are solely responsible for payment
4 of your services pursuant to a retainer that has
5 been established. In no event shall MB&F be
6 responsible for payment of your services. In the
7 event the retainer is exhausted, the remaining
8 amount due shall be paid directly by the Senate
9 and Assembly." Do you see that?
10 A Yes.
11 Q Did you ever receive any payment from the Senate
12 or from the Assembly?
13 A No. All of my payment came from Michael Best &
14 Friedrich.
15 MR. POLAND: Let's take a break
16 now.
17 MR. KELLY: Good.
18 MR. CAMPBELL: The time is 2:47.
19 We are going off the record. This concludes
20 disk number 2 of the deposition of Dr. Ronald
21 Gaddie.
22 (Recess)
23 (Mr. Kelly exited the proceedings)
24 MR. CAMPBELL: The time is
25 3:01 p.m. We are on the record. This marks

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1 the beginning of disk number 3 of the
2 deposition of Dr. Ronald Gaddie.
3 Q Dr. Gaddie, I did have one other question for you
4 on Exhibit 66 we were just looking at. This falls
5 under the heading Scope of Engagement and
6 Expectations on the first page. The very -- or
7 the second-to-the-last sentence -- no, I'm sorry,
8 the last sentence of that first full paragraph
9 says, "These consulting services may include, as
10 well, testifying on the results of your work." Do
11 you see that?
12 A Yes.
13 Q Were you ever asked to testify on the results of
14 your work that you performed as part of the
15 redistricting process?
16 A No.
17 Q Do you have a separate engagement agreement for
18 your work in the litigation?
19 A Yes. I have an engagement letter from Reinhart.
20 Q Is that among the documents that is -- that was
21 produced to us today?
22 A I don't believe so. It is -- My copy is sitting
23 somewhere in my study at home.
24 MR. POLAND: Maria, do you know,
25 was that --

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1 I'm going to ask you to take a look at that and
2 I'll have some questions for you about it.
3 A Yes.
4 Q All right. Have you seen Exhibit 67 before?
5 A Yes. This is an e-mail from me to Joe Handrick,
6 and it's part of an e-mail thread, and I believe
7 this also appears in the documents that I've
8 provided you.
9 Q I'd like you to look at the bottom of the page and
10 continuing to the next page. It appears to be an
11 e-mail from Mr. Handrick to you dated Tuesday,
12 April 19th. The subject is Milwaukee County
13 elections. Do you see that?
14 A Uh-huh.
15 Q And Mr. Handrick has a reference there, he says,
16 "We looked at different combos today." Do you
17 know what combos he's talking about?
18 A Let me read the e-mail and see if I can get some
19 context.
20 Q Please do. Please do.
21 (Discussion held off record)
22 MR. EARLE: He doesn't want to buy
23 a pig in a poke.
24 MR. POLAND: Yeah, yeah. I think
25 that's right.

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1 MS. LAZAR: I know from just this
2 morning when I had heard that Dr. Gaddie had
3 said he had not produced that, that was one
4 of the things he didn't give you, and I
5 thought you had made a request, but if you
6 can add that to your list, we can make sure
7 you get that.
8 MR. POLAND: We can add that to our
9 requests, sure.
10 MS. LAZAR: Because I do remember
11 this morning that you mentioned you had not
12 produced it on the drive.
13 THE WITNESS: Right.
14 Q And it's -- Your understanding is it's that
15 engagement agreement or retention agreement you
16 have from the Reinhart firm as opposed to
17 Exhibit 66 that is governing your work in this
18 litigation; is that correct?
19 A Yes.
20 MR. POLAND: Let's go ahead and
21 mark this as 67.
22 (Exhibit No. 67 marked for
23 identification)
24 Q Dr. Gaddie, I'm handing you a copy of a document
25 the court reporter has marked as Exhibit No. 67.

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1 MR. EARLE: It wasn't about this.
2 THE WITNESS: That's all right,
3 Counselor. I thought you were talking about
4 European vacation.
5 MR. EARLE: No, no. This was
6 completely unrelated to your deposition.
7 THE WITNESS: That's okay.
8 MR. EARLE: Sorry about that.
9 A Okay. This appears to be in reference to an
10 effort to create a partisan normal vote measure or
11 a partisan baselining measure to use to apply to
12 different districts to ascertain their political
13 tendency.
14 Q And why would you have been engaging in a partisan
15 baselining analysis in April of 2011?
16 A Well, I'll refer you back to my retention letter
17 in Exhibit 66 which indicates that I will act as
18 an independent advisor on the appropriate racial
19 and/or political make-up of legislative and
20 congressional districts, providing advice based on
21 certain statistical and demographic information
22 and on election data or information. This fits
23 under that role.
24 As I indicated before, there is a need, if
25 you want to try and explain to a lawmaker or

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1 indeed if you want to go back and look at an
 2 entire map and ascertain its political performance
 3 or the impact of redistricting, you have to use
 4 election data to get there. So that's what this
 5 e-mail exchange is about. It's about creating
 6 measures to achieve that goal.
 7 Q So this is for the purpose of going through and
 8 formulating districts in Acts 43 and 44; correct?
 9 A I don't know if it's for the purpose of
 10 formulating districts. It might be for the
 11 purpose of assessing districts that have been
 12 formulated. But the goal is to develop measures
 13 of Democratic Party or Republican Party
 14 performance that could then be applied to
 15 districts that have been drafted.
 16 Q Right. Now turning your attention to your
 17 follow-up e-mail to Mr. Handrick on Wednesday,
 18 April 20th, you state, "I went ahead and ran the
 19 regression models for 2006, 2008, and 2010 to
 20 generate open seat estimates on all of the
 21 precincts." Do you see that?
 22 A Yes.
 23 Q All right. Do you know which precincts you're
 24 talking about?
 25 A I'm talking about the almost 6,400 precincts in
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1 the state of Wisconsin.
 2 Q So it did extend statewide. It wasn't limited to
 3 just those areas of the state where you had seen
 4 districts that had been drawn; correct?
 5 A Correct.
 6 Q The next sentence you state, they. Do you mean
 7 the?
 8 A The.
 9 Q "The expected GOP open seat assembly vote using
 10 the equations correlates at .96 with the 2004-2010
 11 composite, and at a .93 level with the 2006-2010
 12 state constitutional office composite." Do you
 13 see that statement?
 14 A Yes.
 15 Q What does that mean?
 16 A Okay. Let me first of all state for the record
 17 with a smile on my face and a smile on the faces
 18 in the rest of the room that this actually is
 19 English. Okay.
 20 Q You use that line on your students; right?
 21 A Yeah. Well, actually I'm sure the other political
 22 scientists that are involved in this process can
 23 look at this and tell you exactly what it means in
 24 the same English.
 25 What this means -- what happened is we --
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1 there are several approaches you can take at
 2 attempting to create partisan baseline measures,
 3 or partisan normal vote measures, and one approach
 4 would be to simply take a body of statewide
 5 elections and either sum all the votes for all the
 6 parties and then divide by the total number of the
 7 votes to get percentages in reconstituted
 8 districts. Another thing that you might be able
 9 to do is you can take the averages of the
 10 percentages.
 11 Now this is going to create some small
 12 variations because some contests may be higher
 13 turnout versus lower turnout. You could attempt
 14 to use most relevant state elections and exclude
 15 presidential and U.S. Senate contests, for
 16 example, and only put the focus on constitutional
 17 offices in doing this, so there are a variety of
 18 ways you could simply take the body of existing
 19 votes and generate performance measures or normal
 20 vote, what we call normal vote measures.
 21 Now there are -- the other way you could do
 22 this is you could take vote data for elections for
 23 the actual office, regress those results using
 24 linear regression onto a variety of your other
 25 voting predictors, onto your other statewide
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1 elections, while also introducing a control
 2 variable for the presence or absence of incumbents
 3 from either party. Okay? This would -- this
 4 approach is an approach that I actually used for
 5 baselining competition in my 2000 book on open
 6 seat elections. It was used by Andrew Gelman and
 7 Gary King to estimate party incumbency advantages,
 8 for example. Professor Mayer used a variant on
 9 this approach to create his partisan baselining
 10 approach in the trial ten years ago.
 11 When I came in, the first thing I told these
 12 guys about partisanship is we're going to measure
 13 this every way and just so we can see what the
 14 structure of partisanship is in this state.
 15 So we pulled all of the precinct data, and I
 16 started running these analyses. And in addition
 17 to this vote averaging approach, in addition to
 18 this regression approach, I also ran a factor
 19 analysis, which is an effort to attempt to find
 20 latent concepts in large amounts of data, and what
 21 I discovered in the factor analysis is pretty much
 22 all the elections from 2004 forward in the state
 23 of Wisconsin all load on a single left-right
 24 dimension. If you're strong Republican in one
 25 area, you're strong on all offices. If you're
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1 strong Democrat in one office, you're strong
2 Democrat in all offices in these geographic areas,
3 that there is an incredibly high correlation.
4 In fact, among the materials you have is an
5 Excel sheet. There is a huge, gigantic
6 correlation matrix of all the elections statewide,
7 and I believe the Assembly elections are in there
8 too, from 2002 forward, I believe, that shows the
9 degree of correlation of all these contests with
10 each other, and the latter half of the decade it
11 doesn't matter what you're running for in
12 Wisconsin, the Republican areas are Republican,
13 the Democratic areas are Democratic. Very strong
14 singular partisan structure of politics in
15 Wisconsin.
16 The linear regression equation accounts for
17 some of the nuance of the relationships between
18 the Assembly vote and these different elections.
19 And one thing we could also do, when it says
20 in here that the equation correlates at a .96 with
21 the '04-2010 composite, what this means is that I
22 took the regression equation coefficients,
23 controlled out for incumbency, much like
24 Professor Mayer does in his analysis in '02, like
25 I do in my book "Election to Open Seats in the
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1 U.S. House," like Andrew Gelman and Gary King did
2 in their 1990 article in *The American Journal of*
3 *Political Science*, generate an expected Democratic
4 or expected Republican vote in every precinct for
5 the Assembly, for the Senate, and see how it
6 correlated with those composites, and the
7 correlations were incredibly high.
8 Q All right.
9 A Again, so the reason I did this was, before I told
10 these guys, you can use a composite of elections,
11 I wanted to make sure that they got elections that
12 were representative of Assembly and Senate voting
13 behavior. I wanted to make sure they got
14 elections that resembled Assembly and Senate
15 behavior accounting for the incumbency advantage,
16 or the presence or absence of incumbents. I
17 wanted to make sure it looked like a district
18 would look like under its most competitive
19 circumstances for the constituency. And then
20 before they went to all of the trouble of having
21 to compute a complex regression equation, explain
22 to lawmakers what that might be or to anybody else
23 what it might be, if I could ascertain if there
24 was a proxy that strongly correlated with the
25 regression analysis, I could counsel them to
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1 simply use the election proxies instead of using
2 the more sophisticated regression equation result.
3 So this e-mail kind of sums up what was a
4 large amount of analysis in one paragraph. What
5 this was was an effort to ascertain, when you look
6 at a precinct and you're changing the precinct
7 from one constituency to another and you have a
8 new district where the people that were on the
9 ballot are different, how Democratic does it look.
10 That's all this does. That's what this does.
11 Q Now, you testified that there was a giant Excel
12 spreadsheet. Did you say that is among the
13 materials that you had produced?
14 A Yes.
15 Q All right.
16 A Yes. When you print it off, it will be about
17 80 pages. You won't be able to miss it. Or if
18 you can get a very wide carriage printer, you
19 might be able to print it off on a single sheet.
20 THE WITNESS: Can I get some more
21 water, please?
22 Q You note in the e-mail, you say, both of these
23 numbers are running a little strong relative to
24 one cluster of precincts. Then you say I'll look
25 and see if they are up north.
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1 A Yeah.
2 Q Do you remember whether that's something that you
3 did?
4 A I don't.
5 Q Don't remember, all right. Do you have any
6 general recollection of whether you were ever able
7 to confirm whether that cluster of precincts was,
8 in fact, up north?
9 A No.
10 Q The next paragraph down you say, "at this point,
11 if you asked me, the power of the relationships
12 indicates that the partisanship proxy you were
13 using (all races) is an almost perfect proxy for
14 the open seat vote, and the best proxy you'll come
15 up with." Do you see that language?
16 A Yes.
17 Q Okay. And what do you mean by that?
18 A Okay. Remember, a proxy is a substitute for the
19 real factor. When we're looking at districts,
20 we're looking at elections. Incumbency introduces
21 biases. Here in Wisconsin I think it's like a
22 4 percent partisan bias, something like that.
23 Because -- Let's suppose we have a seat with
24 an incumbent and a seat without an incumbent and
25 each one has an Assembly election. The party of
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1 the incumbent is presumably going to do a little
2 stronger in the district where they have an
3 incumbent than in an open seat. So I can't really
4 take -- Let's suppose I move precincts from the
5 open seat into that incumbent seat. I can't
6 really take those open seat Assembly votes, add
7 them, compare them to the percentage for the
8 incumbent running for the same party, get an
9 accurate estimation of the partisanship and the
10 competitiveness of the district. So we attempt to
11 create a substitute measure. Statewide elections
12 are held in all precincts, they're held in all
13 constituencies, so one thing that we often do is
14 we do what we call reconstituted elections, or
15 proxy elections, where we'll take one election or
16 a composite of elections, like I described
17 previously, and attempt to create some measure of
18 partisan competitiveness, an expected vote or what
19 we call a normal vote, what the vote would usually
20 do without an incumbent in the district.
21 The problem with using this approach by
22 itself is you make the assumption that any
23 idiosyncrasies of the statewide elections make
24 them still behave like elections in open seats.
25 It also means that you've made the assumption that

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1 characteristics of voters when they vote in an
2 Assembly contest or a Senate contest are like when
3 they vote for attorney general or governor. So
4 running the regression equation where we test the
5 relationship between the Assembly vote in every
6 precinct and all of these statewide elections at
7 the precinct level, while controlling for the
8 presence or absence of incumbents for either
9 party, allows us to develop an estimated value of
10 party competition. That estimated value we can in
11 turn correlate against these indices we've
12 developed, and if the indices are creating an
13 estimated vote that's very close to what the
14 regression equation said and there is a high
15 degree of correlation, that means that we can
16 simply use that proxy vote. It's easier to
17 compute, takes less time, and it's easier to
18 explain to people who are not political
19 scientists.
20 Q Do you know what your analysis was used for?
21 A No.
22 Q It could be used certainly to predict outcomes
23 under various make-ups of different Assembly and
24 Senate districts; correct?
25 A Sure.

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1 Q You then make a reference to a polarization
2 analysis. Do you see that?
3 A Well, yeah. This is -- What I'm talking about
4 there is at this point I'm trying to figure out
5 what's going on in the majority-minority
6 districts, in part because I don't have a lot of
7 endogenous elections. So at this point I'm trying
8 to come up with a way to approach the turnout
9 estimations that I had discussed with Mr. Earle
10 previously. That's what that's in reference to.
11 Q Tweaking the polarization analysis refers back to
12 the analysis you were going through with
13 Mr. Earle?
14 A Trying to figure how to get into it and how to
15 approach it, yeah.
16 Q Dr. Gaddie, among the materials that you produced
17 today, did you include the invoices that you'd
18 provided to Mr. McLeod for your consulting
19 services?
20 A No, but I can get those. Did I? No, but we can
21 provide those.
22 Q Okay.
23 A I'm trying to remember if we did or not. We've
24 provided my most recent invoice for Reinhart I
25 know, but, yeah, we can get those.

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1 MR. POLAND: Let's just go ahead
2 and mark this.
3 (Exhibit No. 68 marked for
4 identification)
5 Q Dr. Gaddie, I'm handing you a document that's been
6 marked as Exhibit 68, and I'll just note that it
7 came from the production that we received from
8 Michael Best & Friedrich.
9 A Yes.
10 Q This is an invoice that you provided to
11 Mr. McLeod; correct?
12 A Correct.
13 Q All right. And if you'd turn to the back page of
14 Exhibit 68, you'll see a reference to a period of
15 April 9th through April 30th. Do you see that?
16 A Yes.
17 Q Was this the first invoice that you submitted to
18 Mr. McLeod?
19 A Yes.
20 Q Do you know the complete number of invoices you
21 would have submitted to Mr. McLeod?
22 A Probably four. Three or four.
23 Q And this reflects that you performed 49.1 hours
24 during the month of April; correct?
25 A Correct.

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1 MR. POLAND: We're at 69. Let's go
2 ahead and mark this.
3 (Exhibit No. 69 marked for
4 identification)
5 Q Dr. Gaddie, I'm handing you a document that's been
6 marked as Exhibit No. 69.
7 MR. POLAND: Maria, I only have one
8 copy of this, and I'm not quite sure why.
9 Are you all right?
10 MR. EARLE: I'm fine.
11 MS. LAZAR: Okay.
12 Q Can you identify Exhibit No. 69 for me?
13 A Yes.
14 Q And what is Exhibit 69?
15 A This is a query that I sent to Jim and Eric in
16 regard to another matter. This disfranchisement
17 issue in the Wisconsin Senate, I had an inquiry to
18 me from a member of the Oklahoma Senate regarding
19 this issue, because we have the same staggered
20 term issue, and I said that I would contact the
21 counsel that I had been working with up in
22 Wisconsin and attempt to get guidance.
23 Q All right. So this did not pertain to your work
24 that you performed as part of the redistricting?
25 A No.

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1 Q You were not asked to look at a disenfranchisement
2 issue as part of the Wisconsin redistricting?
3 A No.
4 Q All right. I'll just mark these now. I have one
5 or two other invoices. If we mark them now, then
6 you won't need to produce anything more.
7 A Okay.
8 MR. POLAND: Exhibit 70.
9 (Exhibit No. 70 marked for
10 identification)
11 Q Dr. Gaddie, I'm handing you a document that's been
12 marked as Exhibit No. 70. And can you identify
13 this for the record, please?
14 A Yes. This is my May 1 to May 31 billing that was
15 transmitted -- it was dated June 3rd because --
16 I'm not sure why it would have --
17 Q Well, it was for your work in May; correct?
18 A Yeah, yeah, exactly. So actually I was preparing
19 to -- that's right. I was trying to remember when
20 we went out of the country with the kids, but this
21 was right before that. Yeah, yeah, this is my
22 billing for May.
23 Q Okay. And this was the second invoice that you
24 provided to Mr. McLeod?
25 A Yes.

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1 (Exhibit No. 71 marked for
2 identification)
3 Q Dr. Gaddie, I'm handing you --
4 MR. EARLE: Wait a minute.
5 MR. POLAND: Did you mark that,
6 Peter?
7 MR. EARLE: No. Maybe -- I don't
8 think I did actually. Some of these are
9 strung.
10 MR. POLAND: Yeah, I know. There
11 are a number of e-mail chains here. We may
12 see some overlap as we look through these
13 documents simply because there are e-mail
14 chains.
15 Q Dr. Gaddie, I note that there is -- on Exhibit 70
16 there appear --
17 COURT REPORTER: 71.
18 Q Exhibit 71, my mistake, it appears to be two
19 separate e-mails, and I note that it appears you
20 are only a recipient of the first of these two
21 e-mails, correct, or you're only identified as
22 being a participant on the second of the two
23 e-mails; correct?
24 A Correct.
25 Q All right. And so on June 6th it appears that

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1 Mr. Foltz is sending an e-mail to you,
2 Mr. Troupis, Mr. McLeod, ccs to Mr. Ottman and
3 Mr. Handrick; correct?
4 A Correct.
5 Q All right. Now, Mr. Foltz says, "Team, Please
6 take a look at the attached press release from
7 Voces De La Frontera regarding Milwaukee's
8 aldermanic districts. They are lobbying for a
9 third Hispanic aldermanic district and increasing
10 the Hispanic voting age population in the already-
11 proposed Hispanic districts." Do you see that?
12 A Yes.
13 Q Now we don't have the press release that is
14 attached to this. Do you recall seeing the Voces
15 press release on or about June 6th?
16 A I think it was this link that went through to
17 wispolitics. I doubt that I looked at this. This
18 is about the time that I was headed out of the
19 country with my kids to go to the Caribbean.
20 MR. EARLE: I would have thought
21 you would have postponed the trip to check
22 wispolitics out.
23 THE WITNESS: I don't have any
24 overhead.
25 Q The next sentence goes on to say, "In a 15 seat

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1 city plan the ideal population for an aldermanic
2 district is 39,656, compared to 57,444 per
3 assembly district." Do you see that?
4 A Yes.
5 Q What importance does that statement by Mr. Foltz
6 have?
7 A Well, it means that the ideal population for the
8 Assembly district is going to be about, somewhere
9 in the neighborhood of about 40 percent larger.
10 Q And why would Mr. Foltz be making a statement like
11 that in an e-mail he's sending to you?
12 A I don't know. You would have to ask Mr. Foltz.
13 Q Had you had any conversations with Mr. Foltz about
14 this particular e-mail that he sent?
15 A Not that I recall.
16 Q If you jump down past the link that you pointed
17 out, you see that Mr. Foltz asks, "Any thoughts on
18 how this could tie into our current thought
19 process regarding the south side?" Do you see
20 that?
21 A Yes.
22 Q And is that an issue that you gave any thought to?
23 A Well, again my thoughts with regard to this ^
24 outside I've already completely communicated.
25 Q All right. But specifically with respect to what

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1 Mr. Foltz is asking here --
2 A Yes.
3 Q -- did you give any thought to the question that
4 he's posing specifically in this e-mail?
5 A I don't recall engaging in it, no.
6 Q Now, there were other recipients of this e-mail as
7 well. Mr. Troupis; correct?
8 A Yes.
9 Q Did you speak to Mr. Troupis at all in regard to
10 this question that Mr. Foltz is posing in his
11 e-mail?
12 A Not in regard to this question in this e-mail.
13 Q All right. What about Mr. McLeod?
14 A Not that I recall, no.
15 Q Mr. Ottman?
16 A No.
17 Q Mr. Handrick?
18 A No.
19 Q Was there a separate conversation that you had
20 with any of these people on or about June 6th with
21 respect to the south side of Milwaukee?
22 A There is not one that I recall.
23 Q Now if you look down below that e-mail, there is
24 an e-mail from Mr. Troupis and it is to Mr. Foltz
25 and Mr. McLeod, ccs to Mr. Ottman and

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1 Mr. Handrick, but you were not copied on that;
2 correct?
3 A Right.
4 Q All right. This is an e-mail chain, and so I
5 would assume that this was attached to the e-mail
6 above forwarded on to you. Do you recall seeing
7 this previously?
8 A No. This is the first time I've seen it. The one
9 that says "ATTORNEY CLIENT PRIVILEGED-LITIGATION
10 PREPARATION"?
11 Q Yes.
12 A Okay. No, this is the first time I've seen this.
13 Q Okay. Now you see Mr. Troupis says, "The problem
14 here is that the group want," and I think he means
15 wants "70 percent." Do you see that statement?
16 A Yes.
17 Q All right. Do you know what group it is that
18 Mr. Troupis is referring to?
19 A No.
20 MS. LAZAR: I would make an
21 objection here. This e-mail is one that's
22 dated after the June 6th e-mail that was sent
23 to Professor Gaddie, so therefore -- and he's
24 indicated he did not see it.
25 If you want to ask him questions about

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1 it, that's fine, but this is not one that was
2 sent to or given to Mr. Gaddie at any point
3 in time.
4 THE WITNESS: Yeah.
5 Q Ms. Lazar is absolutely correct, and so I will
6 retract my previous question and we can strike
7 your answer from the record, where I asked you the
8 question was this forwarded to you, because
9 Ms. Lazar is correct.
10 A Yeah, actually, if I can correct, June 8th is my
11 anniversary which occurred while I was at sea, and
12 I remember because we were at dinner at the
13 captain's table and we had been at sea since
14 Saturday, so this entire exchange happened while I
15 was out of the country and had limited to no
16 e-mail communication. I probably didn't see this
17 e-mail until I returned to the United States and
18 to Oklahoma probably about a week later.
19 Q All right. I understand. And again, just to put
20 on the record, Ms. Lazar's objection is absolutely
21 correct, that Mr. Troupis' e-mail is June 7th and
22 that is after the date that the first e-mail was
23 sent to you.
24 A Yes.
25 Q Mr. Troupis says the group wants 70 percent. Do

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1 you know -- and I'm asking you a question of
2 whether you know. Do you know what he's referring
3 to in that statement?
4 A Do I know?
5 Q Yes.
6 A No.
7 Q All right. Did you ever talk to Mr. Troupis about
8 a group wanting 70 percent?
9 A No, and at this stage in this process I had ceased
10 to encounter Jim Troupis. I don't think we've
11 had a face-to-face conversation since a date
12 predating this communication. I don't think I've
13 seen Jim Troupis since May, or April.
14 Q Had you spoken with Mr. Troupis on the phone on or
15 about this time?
16 A Again, I was out of the country and not using my
17 cell phone, so I wouldn't have, no.
18 (Discussion held off record)
19 Q Dr. Gaddie, in Exhibit 71 there is a header up at
20 the top, it's just below the Gmail logo, and it
21 says "The Hispanic Community Speaks in Milwaukee."
22 Do you see that?
23 A Uh-huh. Yes.
24 Q Do you know what that particular header refers to?
25 A No.

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1 Q Do you know whether it had referred to the
2 press release from Voces de la Frontera?
3 A I don't know.
4 MR. POLAND: Let's mark this as
5 Exhibit 72.
6 (Exhibit No. 72 marked for
7 identification)
8 Q Dr. Gaddie, I'm handing you a copy of a document
9 that has been marked as Exhibit 72.
10 A Yes.
11 Q And I know, like me, you're in your mid-40s and
12 your eyes are starting to not work as well as they
13 once did.
14 A I should have brought the stronger reading
15 glasses.
16 Q Yes, I could use them myself. I want to ask you
17 about the title of this document. Up at the
18 top -- For the record, it's a document, the Bates
19 number is Foltz 001065. Up at the top it appears
20 to say -- have a file name that says
21 Milwaukee_Gaddie_4_16_11_V1_B. Do you see that?
22 A Yes.
23 Q Can you identify this document for the record?
24 A Yes, I can. This is a spreadsheet that -- I
25 believe this should be in my discovery or a

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1 variant on this is. I cannot make out the numbers
2 in the second -- the headings in the second, third
3 and fourth column. They are just too tiny for me
4 to make out.
5 But what this document is is it's an
6 indication of the party of incumbents in different
7 Assembly seats in the Milwaukee Assembly
8 throughout the 2000 oughts, and the reason I
9 needed this is this would provide me with the
10 incumbency control that I needed to develop the
11 partisanship measures while controlling for
12 incumbency that we discussed at length a few
13 moments ago.
14 So, you know, I had asked Adam and Tad as to
15 this data for the Assembly and the Senate and this
16 is the format that it came back in, and the color
17 coding is simply a shortcut to indicate which
18 party is in control of a district.
19 Q All right. You mentioned that you believed this
20 is a spreadsheet that is contained within your
21 production today?
22 A Either that or -- it should be, yes. It may not
23 be titled the same, but these data should be in
24 one of the documents that I have presented to you.
25 There are 420 files in there, so I'm pretty

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1 confident this information is in there.
2 Q Okay.
3 A Yeah.
4 (Discussion held off record)
5 MS. LAZAR: Do you need a break?
6 THE WITNESS: No, I'm fine. Do you
7 gentlemen need a break, because I'm good.
8 MR. POLAND: No, no.
9 THE WITNESS: Okay.
10 MR. POLAND: I'm trying to
11 eliminate duplicative e-mail tracts in some
12 of these printouts. Let's go ahead and mark
13 this as 72.
14 COURT REPORTER: 73.
15 MR. POLAND: 73.
16 (Exhibit No. 73 marked for
17 identification)
18 Q Dr. Gaddie, I'm handing you a document that I've
19 had marked as Exhibit No. 73. I'll ask you to
20 take a look at it. When you're ready, if you can
21 identify it for me, please.
22 A Yes. This is an e-mail from Tad Ottman addressed
23 to me directing me to look at proposed amendment
24 configurations for Assembly Districts 8 and 9.
25 Q All right. And you see that Mr. Ottman is asking

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1 you to take a look at the amendment that was
2 adopted; correct?
3 A Yes. Yes.
4 Q All right. And there is a link there to an
5 interactive map. Do you see that?
6 A Yes.
7 Q Do you recall whether you did actually look at the
8 amendments?
9 A Yes, I did, because I believe I e-mailed back
10 indicating that I would attempt to call back
11 later.
12 Q And do you recall whether you did, in fact, call
13 back later?
14 A I believe I did.
15 Q All right. And who did you speak with?
16 A I'm trying -- Honestly, I don't recall. It was
17 probably Mr. Troupis since Jim had requested that
18 I take a look at this material.
19 Q Do you know why Mr. Troupis wanted you to look at
20 this material?
21 A I don't remember, but if we can clean something up
22 from my prior testimony?
23 Q Sure.
24 A This e-mail does confirm that I had a
25 communication from Tad Ottman regarding

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1 communication from -- that there were Hispanic
2 groups that supported the map, so that would
3 clarify my source of information with regard to
4 that.
5 Q All right.
6 A And indeed I believe it's from the same date.
7 Q July 7th -- this is July 17th.
8 A Yes.
9 Q Correct?
10 A Yes. So thank you for letting me clear that up.
11 Q No, of course. And if you need to correct
12 anything at any time, let me know. That's fine.
13 A I appreciate that.
14 Q And what was your discussion with Mr. Troupis
15 about the amendment?
16 A The information -- in general my recommendation
17 was that I was not comfortable with the two
18 57 percent Hispanic VAP districts.
19 You know, as I've indicated before, we had no
20 indication that you could have a district that
21 could necessarily perform based upon having
22 majority Hispanic voter turnout. So on the one
23 hand if they had concerns, if this was an area of
24 concern, the district -- the plan that had a more
25 heavily concentrated Hispanic majority district

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1 with the 50 percent HVAP district would be
2 preferable. On the other hand, if they had strong
3 community support to create the two districts of
4 this sort and the community thought they could
5 perform that they could go either way.
6 My feeling was that you couldn't create any
7 district that would put you over the top
8 sufficiently but if they had a concern about it
9 that they could go with the one district that
10 maintained a more heavily concentrated Hispanic
11 majority while creating the other district that --
12 I think the metaphor they use down in Chicago is
13 sort of like a snowsuit, that the majority would
14 grow into it and would come to turn it into a
15 performing district.
16 Q And the districts that you're looking at at this
17 point in time are fixed in their boundaries;
18 correct?
19 A Honestly, I don't recall.
20 Q The discussion that you were having with
21 Mr. Troupis was with respect to boundaries that
22 had been proposed certainly during the hearing
23 that Mr. Ottman is referring to; correct?
24 A They're certainly all entirely within Senate
25 District 3, yes. Again, if not identical, very

223

1 close.
2 Q And just to be clear for the record, we're talking
3 about Assembly Districts 8 and 9; correct?
4 A Yes.
5 Q See if this refreshes your memory at all from
6 looking at this now. The two different Hispanic
7 groups that Mr. Ottman is referring to in this
8 e-mail, do you recall now what they were?
9 A No.
10 Q Did you have any discussions with Mr. Troupis
11 about them at all?
12 A No.
13 MR. POLAND: Let's mark this as 74.
14 (Exhibit No. 74 marked for
15 identification)
16 Q Mr. Gaddie, I'm handing you a document that the
17 court reporter has marked as Exhibit No. 74. And
18 this is an e-mail exchange between you and
19 Mr. Troupis on July 17th; correct?
20 A Correct.
21 Q All right. Is this the conversation that you were
22 talking about just a minute ago?
23 A Yes.
24 Q All right. Now, the subject line that Mr. Troupis
25 put in his e-mail says "MUST TALK TODAY IF

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1 POSSIBLE." Do you see that?
2 A Yes.
3 Q Do you know why it was so urgent for Mr. Troupis
4 to talk to you on Sunday, July 17th?
5 A I don't know why Jim thought it was urgent, but he
6 wanted to talk about this that day.
7 Q All right. Didn't tell you why it was an urgent
8 matter to him?
9 A I have no idea.
10 Q All right. As you recall was there anything
11 happening on or around that time of July 17th that
12 might have made it an urgent matter for him?
13 A I don't recall.
14 (Exhibit No. 75 marked for
15 identification)
16 Q Dr. Gaddie I'm handing you a document that's been
17 marked as Exhibit No. 75.
18 A Thank you.
19 Q Again, there are multiple e-mail chains. We're
20 going to see many of the same e-mails.
21 A Right.
22 Q The one that I wanted to bring to your attention
23 is at the very top of this page on Exhibit 75.
24 It's an e-mail from you to Mr. Troupis and you're
25 sending a link to an article or something online,

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1 ashlandcurrent.com, and then there is -- it states
2 "democracy-campaign-offers-alternative-
3 redistricting-plan." Do you see that?
4 A Yes.
5 Q Do you know why you were sending that link to
6 Mr. Troupis?
7 A Honestly, I don't recall. It must be something I
8 came across that day that I thought Jim would want
9 to see.
10 Q Do you remember looking for anything online
11 relating to the Wisconsin redistricting plans at
12 that time to discuss with Mr. Troupis?
13 A It's entirely possible I did, but I don't recall.
14 Q Do you know whether this kind of an article or
15 whatever you had the link to is something that you
16 might have downloaded and kept?
17 A Probably not. If I kept it, I would have produced
18 it.
19 Q It would be on here if you had kept it?
20 A Yes, sir.
21 Q All right. Do you know, by the way, have you
22 heard of an organization called Democracy
23 Campaign?
24 A Honestly, I don't recall. It's familiar, but I
25 can't remember what it was and I cannot remember

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1 what was behind that link.
2 (Exhibit No. 76 marked for
3 identification)
4 Q I'm handing you what's been marked as Exhibit 76.
5 Again, a good amount of this document contains
6 e-mails we've already seen.
7 A Yes.
8 Q I want to call your attention to the very top
9 e-mail. This is from you to Mr. Troupis at
10 2:06 p.m., and what I want to call your
11 attention to is the attachment here,
12 Assembly_Labels_v1(2).pdf.
13 A Yes.
14 Q Do you see that? What is that?
15 A I don't recall.
16 Q I note, if you take Exhibit 75 that we looked at
17 just a moment ago, I note that that was something
18 that you sent to Mr. Troupis at 2:02 p.m.
19 A Yes.
20 Q Then you're sending this to Mr. Troupis at
21 2:06 p.m. Do you see that?
22 A Yes.
23 Q So within four minutes; correct?
24 A Right.
25 Q Do you know if you were on the phone with

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1 Mr. Troupis at this time?
2 A Judging by the time line, I might have been. I
3 just don't remember. It was six months ago,
4 Counselor.
5 Q I understand.
6 A Yeah.
7 Q Did Mr. Troupis ask you to send him this PDF
8 that's attached to your e-mail in Exhibit 76?
9 A I would assume so.
10 Q Is the labeling format of the attachment, the name
11 of it, any convention that you used to your
12 recollection?
13 A Well, judging by the nature of it, it appears to
14 be something that was downloaded and it's possible
15 that it may have been downloaded again, in which
16 case on my Mac rather than writing over the
17 download it would have simply ascribed this (2) to
18 the end. It would have appended to the end of the
19 name, and I assume I just grabbed it as the
20 download and forwarded it back on. I do not
21 remember what it is.
22 Q There is also a -- In the Re line there is a
23 subject line that says "Revised timing." Did you
24 see that?
25 A Yes.

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1 Q Do you know what that refers to?
2 A That originates with Mr. Troupis' e-mail, I think.
3 Oh, revised timing? Timing in terms of calling
4 him back. Revised timing was communicating with
5 Jim.
6 Q I understand, yeah.
7 A That's in reference to attempting to make phone
8 contact.
9 (Exhibit No. 77 marked for
10 identification)
11 Q Dr. Gaddie, I'm handing you a copy of a document
12 that's been marked as Exhibit 77. Take a minute
13 to look at that. Can you identify Exhibit 77 for
14 the record, please?
15 A Yes. This is a set of e-mails later the same day
16 picking up on the same e-mail chain, and there are
17 two communications. One is an e-mail from Jim to
18 me with information about the 2002 baseline map,
19 and then the second is an e-mail back to him
20 regarding my availability to talk on Monday.
21 Q Now the e-mail that Mr. Troupis sent to you on
22 Sunday, July 17th at 7:50 p.m. says, "Keith, The
23 maps in 2002 had a single assembly district above
24 50 percent HVAP and that was 58.34 percent. The
25 neighboring district was 22 .97 percent." Do you

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1 see that?
2 A Right. Yes.
3 Q Do you recall this conversation with Mr. Troupis?
4 A Yeah, I recall requesting this specific
5 information from him. My file box for the '02
6 remap is way at the back of the storage facility
7 and I had not pulled it out and I could not recall
8 the information from the 2000 census on the
9 baseline map so I had contacted Jim wanting to
10 know what the HVAP was for 9 and for 8. Excuse
11 me, yeah, I wanted to know the HVAP for 8 and the
12 most closest neighboring Hispanic district under
13 the '02 map.
14 Q And why were you asking him for this specific
15 information?
16 A Well, in part, and again it goes back to this
17 concern over baselining and the setting of
18 thresholds for performance, and they're asking me
19 about recommendations for what was essentially a
20 twin 57 district. I was a bit concerned at
21 setting two districts below a level that had been
22 set by the Court at -- by the Court nine years
23 prior, so I wanted to know what that number was
24 because that had been a historic performing
25 district, even if it wasn't majority Hispanic

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1 turnout, and I really was not comfortable with
2 advancing two districts, neither of which met the
3 threshold that had been set by the Court the
4 decade before. So I wanted to know what that
5 number was as I made my assessment and made my
6 recommendation.
7 Q So this is a recommendation that is after the time
8 that the proposed districts had already been
9 submitted to the joint committee for hearing;
10 correct?
11 A I don't know. I guess so.
12 Q Did you ever speak with Mr. Troupis the next day
13 as indicated in your e-mail to Mr. Troupis later
14 that evening?
15 A I don't remember.
16 Q You don't recall if Mr. Troupis called you back?
17 A It's entirely possible he did. I just don't
18 remember. I had a 9:00 a.m. conference call.
19 That probably was on the Illinois redistricting or
20 on Georgia. I just don't remember.
21 (Exhibit No. 78 marked for
22 identification)
23 Q Dr. Gaddie, I'm handing you a copy of a document
24 that's been marked as Exhibit 78.
25 A Thank you.

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1 Q Can you identify Exhibit 78 for me, please?
2 A Yes. This is a billing for June and for July sent
3 to Michael Best & Friedrich on August 1st.
4 Q Do you know if this was the final invoice that you
5 submitted?
6 A It probably was. I don't -- If there was any work
7 beyond this, I don't remember it. I don't think I
8 invoiced anything after this.
9 Q And --
10 A I would hate to tell you yes and you have another
11 bill in there. I think this is the last one.
12 Q I don't have any other bills in here. I'd be
13 happy to tell you that.
14 A This is the last one then. I mean I could go to
15 my logs and confirm it for you, but this should be
16 the last one.
17 Q All right. And again, you haven't received any
18 sort of a communication from Mr. McLeod
19 terminating the retention under the agreement that
20 you signed with him; correct?
21 A That's correct.
22 Q Dr. Gaddie, have you been made aware at all of any
23 developments in the redistricting in which the
24 Government Accountability Board has identified
25 census blocks conflicting with municipal

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1 boundaries?
2 A I am aware that this discussion is going on, yes.
3 Q Okay. When did you first become aware of that?
4 A Very recently. I've really only heard it
5 discussed since I arrived -- at any length since I
6 arrived here in Milwaukee.
7 Q When did you arrive in Milwaukee?
8 A Yesterday.
9 Q So within the past 24 hours or so you became aware
10 of it?
11 A Yes.
12 Q How did you become aware of it?
13 A Conversations with counsel.
14 MS. LAZAR: And I would caution
15 that we would object if you start asking as
16 to what those conversations entailed. You
17 may ask whether we had them and what the
18 topic was, but as to specific details, I
19 don't believe you have the right to go into
20 our privilege there and I would object.
21 MR. POLAND: Okay. I may ask some
22 questions about the subject matter.
23 MS. LAZAR: That's fine.
24 MR. POLAND: But what's -- and,
25 Maria, what's the basis of your objection?
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1 MS. LAZAR: My objection is I'm
2 just cautioning you that if you start asking
3 what counsel advised Professor Gaddie
4 regarding the census block issue there would
5 be an objection on privilege. The fact that
6 those discussions were had and the subject of
7 that is fine. This is just a prewarning, and
8 I apologize. I shouldn't have done that.
9 MR. POLAND: No, I understand. No,
10 no. I will -- if I ask questions, I'll take
11 it slowly and I'll inform Dr. Gaddie that he
12 ought to wait for you to interpose an
13 objection before he responds to questions.
14 MR. EARLE: Can I ask a clarifying
15 question of Maria?
16 MS. LAZAR: Sure.
17 MR. POLAND: Of course.
18 MR. EARLE: So you're saying that
19 there is a retainer of Dr. Gaddie by the
20 G.A.B. on issues related to the anomalies?
21 MS. LAZAR: I'm stating that there
22 is a privilege with respect to our testifying
23 expert witness and that this issue has
24 arisen. Professor Gaddie was retained to be
25 our expert witness at trial. If this issue
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1 comes up, as it is now going to apparently,
2 his retainer would cover that.
3 You can inquire as to whether this was
4 an issue prior to November 23rd, but after
5 that Professor Gaddie was retained by our
6 counsel, outside counsel Reinhart.
7 MR. EARLE: Let me just ask another
8 clarifying question. You're saying that
9 there exists -- that you have engaged in
10 privileged conversations with Dr. Gaddie
11 about the anomalies?
12 MS. LAZAR: I'm not saying that.
13 I'm saying if you get close to there, that if
14 you start inquiring as to what discussions
15 were had with Professor Gaddie to prepare for
16 this deposition and if some of them involved
17 the census block issues, that's privileged.
18 That was preparation for this deposition.
19 MR. EARLE: I want to separate
20 that. So just so I'm clear --
21 MS. LAZAR: Okay.
22 MR. EARLE: Okay. You're not
23 asserting the existence of privileged
24 conversations about anomalies.
25 MS. LAZAR: No. Maybe I need to
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1 step back. My objection was just a
2 preobjection to warn you not to go into an
3 area of preparation discussion with
4 Professor Gaddie that was had yesterday
5 and/or any other time.
6 What I'm telling you is those
7 conversations are privileged and you're not
8 allowed to inquire into those. You can ask
9 about the subject matter of those. That's
10 what I was cautioning.
11 I didn't know where you were going,
12 Doug, so you have to go where you want to go
13 and then I'll make my objections.
14 MR. EARLE: Okay. Because, I mean,
15 what I want to try to avoid having here is a
16 situation where we have a hypothetical
17 privilege on a conversation that
18 hypothetically may have happened.
19 MS. LAZAR: Right. That's why --
20 MR. EARLE: And it never, in fact,
21 happened and then we have a whole --
22 you know, we have a cat chasing its tail.
23 MS. LAZAR: Exactly. That's why --
24 MR. EARLE: So you're not setting
25 us up for a cat chasing its tail here?
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1 MS. LAZAR: No, not yet. What I'm
2 saying is I should probably not have made my
3 objection until you stated your question. I
4 was giving you a warning ahead of time, and I
5 shouldn't have done that. So proceed, and
6 then I will object if it need be. Thank you.
7 MR. POLAND: That's fine. Let's
8 mark this as Exhibit 79.
9 (Exhibit No. 79 marked for
10 identification)
11 Q Dr. Gaddie, I'm handing you a copy of an exhibit
12 that's been marked as Exhibit 79. Have you seen a
13 copy of Exhibit 79 before?
14 A No.
15 Q All right. So as you sit here today, this is the
16 first time you've seen this document?
17 A Yes.
18 Q Have you been asked at all -- or actually let me
19 draw your attention to a couple of statements in
20 here first. I would like you to look at the very
21 first paragraph so we get some context here.
22 You'll see that paragraph states, "Through the
23 conversations we have been having with local
24 election officials, as well as state and local
25 geographic information specialists, new issues

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1 have been brought to our attention that directly
2 impact the Government Accountability Board's
3 (G.A.B.) Redistricting Initiative. Several
4 practical implementation concerns have arisen
5 regarding census blocks conflicting with actual
6 municipal boundaries." Do you see that statement?
7 A Yes.
8 Q So the first time you had heard anything about
9 that particular topic was when you arrived in
10 Milwaukee yesterday?
11 A Yes.
12 Q I'd like you to turn the page, please. And I'd
13 like you to look at the second full paragraph.
14 MS. LAZAR: On which page?
15 MR. POLAND: The second page.
16 MS. LAZAR: Okay. Thank you.
17 Q On that page it states, "From information gathered
18 from localities thus far related to the 2010
19 redistricting, there appears to be consensus that
20 the TIGER data from the 2010 census was more
21 accurate in terms of geography (roads, waterways)
22 than it was in 2000. However, it still contains
23 substantial inaccuracies with administrative
24 boundaries, specifically municipal boundaries and
25 school district boundaries. Municipal boundary

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1 inaccuracies are usually due to either projection
2 issues (the correct boundaries appeared in the
3 wrong place) or annexations that were not included
4 in the TIGER 2010 data." Do you see that?
5 A Yes.
6 Q Was that anything that was encountered at all
7 during the time that you were engaged in the
8 redistricting in the spring of 2011?
9 A I have no idea.
10 Q Nothing you would have discussed with anybody at
11 that time?
12 A No.
13 Q All right. I'd like you to look down at the
14 bottom of page 2, and that whole paragraph has a
15 lengthy discussion. I'd like to read to you the
16 last three sentences that are in that paragraph.
17 It says, "Obviously, this situation also
18 creates the likelihood of a shift in the
19 population for the City of Janesville and Town of
20 Harmony under Act 43, which specifically
21 attributed certain census blocks to incorrect
22 municipalities. Please see the attached map for a
23 visual representation of the discrepancy. This
24 situation is repeated in many other counties, if
25 not all counties." Do you see that?

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1 A Yes.
2 Q Has anyone advised you about census blocks being
3 attributed to -- I'm sorry, Act 43 attributing
4 census blocks to incorrect municipalities?
5 MS. LAZAR: In what timeframe are
6 you referencing there?
7 MR. POLAND: At any time.
8 A This was all news to me until 24 hours ago.
9 Q Do you know, have you been asked to look at this
10 in the meantime, this issue, consider this issue?
11 A No.
12 Q Do you know whether this could affect any of the
13 opinions that you've given in this case?
14 A For my purposes and for the purpose of
15 redistricting, census data are deemed accurate. I
16 start with that assumption. So any analysis I've
17 done off of the census data, I start with the
18 assumption that they are accurate. So I cannot
19 change my opinions based upon this. This is a
20 problem I have not studied. I don't understand
21 it. Even given this problem, I still don't know
22 if that affects it because the census data are
23 deemed accurate.
24 Q You simply don't know whether any of the problems
25 that are identified in Exhibit 79 might or might

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1 not affect analyses that you've given in this
2 case?
3 A Exactly.
4 Q You would need to have adequate time to study the
5 problems, study underlying documents, data,
6 et cetera?
7 A And have an authoritative source reconcile what
8 problems, if any, arise from this. But, again,
9 the census data are deemed accurate. We know --
10 There is a fiction we operate under that census
11 data are accurate. We draw districts nearly two
12 years after the -- a year to two years after the
13 census when there have been population changes,
14 demographic changes, but we work inside this
15 fiction that the data are accurate, even though
16 there are undercounts, even though there are
17 people who are missed, maybe even people who get
18 counted twice, but we work under the assumption
19 that these are the best available data that are
20 deemed accurate.
21 So for my purposes, I have to stand with the
22 census data, for the purposes of the work I've
23 done in my report. It's the most accurate data
24 available.
25 Q I'd like you to turn to page 4. I'd like you to

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1 look at the very top, Use of Corrective Words in
2 SVRS.
3 A Yes.
4 Q Do you see it says, "Approximately 21 counties
5 thus far have asked that we use their corrected
6 wards and/or municipal boundaries in SVRS, rather
7 than the census-based lines we are getting from
8 the Legislature, to ensure that the lines are
9 placed accurately and thus voters show up on the
10 correct poll lists. Because wards are the
11 building blocks for all the other representational
12 districts, if we use the corrected wards, this
13 also corrects the municipal boundaries, county
14 supervisor, aldermanic, State Senate, State
15 Assembly, and Congressional districts. It is not
16 possible to maintain census based legislative
17 districts simultaneously with corrected wards, as
18 the lines would conflict with each other." Do you
19 see that?
20 A Yes.
21 Q All right. I wanted that for context, and then
22 the next paragraph. "Acts 43 and 44 define the
23 State Senate, State Assembly, and Congressional
24 districts at the census block level. The
25 corrected wards and municipal boundaries deviate

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1 from the census blocks, therefore using the
2 corrected districts could be interpreted as
3 violating the statute. However, the statute must
4 be violated in practice in order to give a voter
5 the correct ballot." Do you see that?
6 A Yes.
7 Q All right. Do you know whether, in fact, Acts 43
8 and 44 might have to be revised as a result of the
9 problems that are noted in this memorandum?
10 MS. LAZAR: Objection, calls for a
11 legal conclusion. Subject to that, you may
12 answer.
13 A I have no idea.
14 (Exhibit No. 80 marked for
15 identification)
16 Q Dr. Gaddie, I'm handing you a copy of a document
17 that's been marked as Exhibit 80.
18 A Counsel, we're going to take a break real quick.
19 Q Sure.
20 MR. CAMPBELL: The time is 4:03.
21 We are going off the record.
22 (Recess)
23 MR. CAMPBELL: The time is 4:16.
24 We are back on the record.
25 Q Dr. Gaddie, I have a very simple question for you

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1 about Exhibit 80. Is this a document that you
2 have ever seen before?
3 A No.
4 MR. POLAND: All right. That's all
5 the questions that I have right now.
6
7 EXAMINATION (Continuing)
8 By Mr. Earle:
9 Q I just have a few. Dr. Gaddie, I'd like that list
10 of restaurants before I start asking.
11 A You have my word the questions you ask will in no
12 way affect my restaurant recommendations.
13 Q Thank you. I'll try to be brief. Just some very
14 quick housekeeping things. I suppose is it
15 accurate to say that your work as an expert
16 witness cycles decennially?
17 A I thought it would. The previous cycle started in
18 late '01 and I finished my last trial in 2007.
19 But, yes, it is largely work at the beginning of
20 the decade.
21 Q Approximately what percentage of your total annual
22 income is attributable to consulting and expert --
23 and forensic expert work, testimony in
24 redistricting cases, as opposed to your salary as
25 a professor?

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1 A Well, in addition to doing this type of work, I
2 have done work doing consultation in public
3 opinion polling, market research. With a
4 consulting partner of mine I helped develop a
5 customer loyalty management program for a little
6 company called U.S. Food Service who is the second
7 biggest distributor of food to food restaurants in
8 the United States. In a given year the consulting
9 in either voting rights, redistricting or
10 corporate and market research --
11 Q Let me break it into three categories since you
12 framed it that way.
13 A Okay. Well, the corporate market research work
14 might generate between \$20,000 and \$50,000 a year.
15 Q That's the corporate marketing work?
16 A Yeah, although there is not any right now.
17 Q Okay. And the redistricting?
18 A As little as 4,000 or 5,000, as much as a couple
19 of hundred thousand dollars in a given year. Then
20 there are other sources of income, of course, my
21 income from the university, my salary, royalties
22 from books, work like that.
23 Q So if you just kind of averaged across all of that
24 on a typical year, let's say on a ten -year cycle,
25 if you averaged across a ten-year cycle, what

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1 percentage of your total income would you
2 attribute to redistricting as opposed to these
3 other sources?
4 A Maybe a third at most.
5 Q A third, okay. And you consulted in the
6 Osceola -- how do you pronounce that?
7 A Osceola.
8 Q Osceola.
9 A Yes.
10 Q Osceola County case; right?
11 A Yes.
12 Q And that involved Latino redistricting issues?
13 A Yes, it did.
14 Q Do you see that case as somewhat similar to the
15 Milwaukee situation?
16 A Potentially, although in Osceola County we were
17 dealing with the need to create a new Latino
18 remedy, predominantly a Puerto Rican remedy, in
19 Osceola County just south of Orlando where none
20 previously existed.
21 Q You were creating a new single member district?
22 A Creating a new single member district, yes.
23 Q Just some verbiage. In off-record chatter amongst
24 us here you indicated some -- you talked a little
25 bit about immigration issues and how prejudice has

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1 penetrated in some areas the politics of our
2 communities.
3 A Yeah.
4 Q And we shared a sense that that was a regrettable
5 thing, and I think you were rather articulate in
6 your presentation in that regard. In our town, in
7 Milwaukee, I represent Voces de la Frontera, which
8 is an immigrant rights group, and so Voces is very
9 sensitive -- the membership of Voces and the
10 leadership of Voces is very sensitive to how
11 immigrant issues and citizenship issues and
12 individual rights are characterized in the
13 process. Would you agree that the use of the word
14 illegal is objectionable?
15 A It can be if it's used to engage in a sweeping
16 generalization of the entire immigrant community.
17 Q Do you believe that there are more neutral words
18 that can be used to describe individuals who don't
19 have legal status in this country?
20 A The term I prefer is undocumented.
21 Q Okay. And you understand that the Latino
22 community itself has a preference about this;
23 correct?
24 A Yes.
25 Q And just a couple more just general loose ends,

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1 and then we'll go to one last thing. You're aware
2 that there are some cases that have referred to a
3 70 percent threshold for a Latino population in an
4 electoral district as a rule of thumb; correct?
5 A I'm sure there probably have been.
6 Q And just simply based on your knowledge of the
7 demographics of Latino concentrations, and I want
8 you to assume a community that's predominantly
9 Hispanic and Central American as opposed to
10 Puerto Rican, that given the citizenship issues
11 and the kinds of averages you see around the
12 country in that population and registration rates,
13 or turnout rates and things like this, it's
14 reasonable to suppose that a 70 percent total
15 percentage of the population is a reasonable
16 target in the absence of concrete CVAP data;
17 correct?
18 A Again, Mr. Earle, what I would indicate is I'm
19 certain you've been through my entire testimony
20 trail and one thing you know is that I've always
21 been hesitant to assume a rule of thumb. I mean,
22 you know, we talk about rules of thumb,
23 65 percent, 70 percent as maybe being packing but
24 then we realize that the setting of a threshold
25 for performance, as I've said throughout the day

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1 today, is contextual. So assuming 70 percent
2 could assume too much. It could also assume too
3 little. It depends on the circumstances of the
4 case.
5 Q Okay. Fair enough. Almost done. I'm going to
6 give you another exhibit. I'm trying to nail down
7 the timing of this exhibit. Maybe we can work
8 together to figure out the sequence.
9 MR. EARLE: Mark this one here.
10 (Exhibit No. 81 marked for
11 identification)
12 MR. EARLE: What did we mark that?
13 MR. POLAND: It's number 81.
14 Q Have you ever seen this Exhibit 81 before?
15 A Yeah.
16 Q The printout, I'm talking about.
17 A The printout? I mean, the content of it, I
18 have -- I have not seen this printed out but I
19 recognize the content.
20 Q Okay. Let's put the content aside for a second.
21 I just want to ask you some general questions.
22 The last point being the first one, and that is
23 that no one had shown you material that's been
24 produced in this litigation that involve
25 communications with you; correct?

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1 A I mean other than e-mail. I mean other than the
2 e-mails that we have produced so far, yes.
3 Q Right. Let's start with this one. No one has
4 shown you this document before, this piece of
5 paper?
6 A This piece of paper, no.
7 Q Okay. Did anyone tell you that your Facebook
8 communications had been produced?
9 A Actually I knew they had been produced, yes.
10 Q How did you know that?
11 A I just happened to talk with -- I happened to talk
12 with Joe.
13 Q And Joe told you that they had been produced?
14 A Yeah.
15 Q When did that happen?
16 A That was yesterday.
17 Q Yesterday? Okay. Did Joe review with you what
18 the content of those Facebook communications were?
19 A No.
20 Q What else was said between you with regards to the
21 production of the Facebook?
22 A Well, that it had been produced.
23 Q Did Joe characterize the circumstances under which
24 it was produced?
25 A No.

250

1 Q Okay. Did you -- Did he refresh your recollection
2 as to the substance of the content?
3 A No.
4 Q Did you ask him any questions about it?
5 A No. I just went back and looked at my Facebook.
6 Q Oh, so you actually went back and looked?
7 A Yeah.
8 Q Okay. And when you went back and looked, I
9 suppose, not having seen this document, you had to
10 figure out where it was; correct?
11 A I just -- yeah.
12 Q So how did you find it?
13 A I looked on my Facebook.
14 Q Did you find anything else other than what's on
15 this document when you looked at your Facebook?
16 A This thread looks familiar. It may go back
17 further in time, but this looks like our -- this
18 looks like our exchange, yes.
19 Q Well, did you find anything else that's not on
20 this document when you went back and looked?
21 A I mean I went back and I looked and it takes me to
22 the bottom. I looked and I saw what was there. I
23 don't know if this represents the entire thread or
24 not.
25 Q Okay. To what extent can I rely on this as being

251

1 a complete disclosure of your entire thread with
2 Joe Handrick?
3 A Can I review?
4 Q Sure.
5 A Okay. Some of this conversation is taking
6 place -- Joe and I don't typically communicate
7 this way. The odds are that we were both online
8 and just got chatting, and the nature of the
9 Facebook feed is it simply picks up from wherever
10 you left off.
11 Q I gather that because there is some discontinuity
12 between components of it. We'll get into that in
13 a second.
14 A Okay. Yeah, and that's not that unusual. There
15 is some chatter in here, looking at the media
16 coverage, what's going on with the recalls. Then
17 later Joe was headed to New Orleans. I gave him a
18 restaurant recommendation. Then there was a
19 question about whether or not I had been contacted
20 about the suit.
21 Q Yeah. Why don't we take it chronologically then.
22 A Right.
23 Q I just wanted to make sure that this was as
24 reasonably complete and it comports with your
25 recollection, because I assume when you went back

252

1 to your computer and you reviewed your Facebook --
2 A Yes.
3 Q -- you looked at the whole string and you're
4 telling us -- so your testimony here is that this
5 string isn't missing anything from what you saw on
6 Facebook when you pulled the whole string?
7 A Again, not that I recall, no. Yeah.
8 Q Good. We'll start at the beginning.
9 A Okay.
10 Q And the very first message is from you to Joe and
11 you say, "Happy 4th!"
12 A Okay.
13 Q Right?
14 A Yes.
15 Q And you say, "Can you call me this week and give
16 me a sense of where we are?"
17 A Yes.
18 Q What is that in reference to?
19 A Okay. Well, this is probably around July 4th, and
20 I'm probably trying to get a sense of what is
21 going on with regard to the redistricting process.
22 As I indicated, I had other work going on in
23 other states, and it's always good to know where
24 your clients are so that you can ascertain what
25 their needs are.

253

1 Q Sure, okay. And Joe responds to you "will do"?
2 A Uh-huh.
3 Q He'll call you about that; right?
4 A Yes.
5 Q Okay. And then you respond, "The media coverage
6 is fun. Seems that Kessler has discovered the
7 virtue of commissions ..."
8 A Yes.
9 Q What does that refer to?
10 A It's a glib reference to Representative Kessler
11 who I think I had seen on television talking about
12 the need for -- either on television or looking at
13 a media on the need to move to a commission based
14 apportionment in Wisconsin, although I can't
15 recall.
16 Q Is there -- is there a nuanced inference in the
17 way this sentence is structured?
18 A No. It's just being glib.
19 Q It's being glib, okay.
20 A Yeah.
21 Q Do you know Fred Kessler?
22 A I've met him once or twice, yes. Don't know him.
23 We would never know each other by sight but I have
24 met him.
25 Q Now that seems to be the 4th of July string;

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1 correct?
2 A Yes.
3 Q All right. There is a string below that that
4 starts with you saying, "These folks are probably
5 feeling fairly insecure. You ought to tune in
6 Rachel Maddow... she's convinced that this is the
7 beginning of the great Obama Comeback."
8 A Yes.
9 Q Okay. So now we're --
10 MR. EARLE: What?
11 (Discussion held off record)
12 Q Oh, I'm sorry, you said Rachel Madcow?
13 A It should be Maddow.
14 Q Okay. It should be Maddow, okay.
15 A Yes.
16 Q And so this is -- Then you have one more sentence.
17 "How do these returns look to you so far? Can you
18 go 6-6?"
19 A Yes.
20 Q So this looks like you're talking about election
21 night on the recall; correct?
22 A It is, yes. Joe was -- Joe had been posting on
23 Facebook tracking the recalls, and I had been
24 following his page that night.
25 Q Okay. So that would put us at August 6th?

255

1 A Yes.
2 Q Okay. And Joe responds, "will lose 1 for sure.
3 So far, so good on the other 5. But city wards
4 still outstanding." All right?
5 A Uh-huh.
6 Q And then you respond, "Looks like a long night...
7 if Hopper is the best hope."
8 A Right.
9 Q What does that mean?
10 A Honestly, I don't recall. I assume I'm referring
11 to some candidate running in one of the recalls.
12 Q And what is the hope for? The best hope for what?
13 A I don't know. This is a glib exchange between two
14 people online.
15 Q Did you have a preferential view of how this
16 should turn out?
17 A No.
18 Q No?
19 A Nope.
20 Q Okay. So that seems to be the end of that string;
21 correct?
22 A Yes.
23 Q And then the next one says Joe Handrick, and I
24 think we have to go to the top of the page and it
25 seems to be overprinted there. It says -- and

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1 we've only got part of it. It says, "one of the
2 professional protesters has been following Vos
3 around and poured a beer over his head last night.
4 They seem to be ramping up their confrontations
5 and testing how far the police will let them go."
6 Did I read that correctly?
7 A Yes.
8 Q That's Joe Handrick to you; right?
9 A Yes.
10 Q And you respond, "That's assault. Even in
11 Wisconsin;" right?
12 A Yes.
13 Q So we can tie that, the date of that exchange
14 to --
15 A Right.
16 Q -- whenever the news report was of
17 Representative Vos getting the beer poured on
18 his head?
19 A Right.
20 Q Then the next one -- Now, is this next one part of
21 that chain, the restaurant in New Orleans?
22 A I think it's picking up later. I don't remember
23 when Joe went, but there is a gap in here.
24 Q There is a gap, okay.
25 A Yeah.

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1 Q So Joe -- you write to Joe --
2 A There is a gap in time. I knew that Joe was going
3 down or he had posted he was going down, so I sent
4 him a restaurant recommendation.
5 Q And this is one of the restaurants you're going to
6 recommend to all of us as well?
7 A Yes. It's very good.
8 Q It's a good restaurant?
9 A Yes.
10 MR. POLAND: For the record, I
11 pulled it up on my computer since I saw this
12 link. It looks good.
13 MR. EARLE: Well, we appreciate
14 that. Everybody reading this transcript will
15 know where to go in New Orleans.
16 MR. POLAND: Absolutely.
17 MS. LAZAR: You'll have to
18 pronounce it again because Cafe --
19 MR. EARLE: Yeah, why don't you --
20 THE WITNESS: Atchafalaya, as in
21 the Atchafalaya basin.
22 Q (By Mr. Earle) The court reporter will get a
23 spelling on that, I'm sure.
24 A A-t-c-h-a-f-a-l-a-y-a.
25 Q Thank you for that. I reserved the right to do

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1 this examination because I wanted to get the good
2 stuff.
3 A For that you have to come.
4 Q All right. And then we have the final string
5 here.
6 A Yes.
7 Q Joe Handrick writes to you, "in academia
8 plagiarism is a bad thing, but on Facebook it's
9 encouraged. So I'll be stealing your post of the
10 Perry photo with his double-fisted hand gesture."
11 A Yes.
12 Q What is that about?
13 A Oh, I had probably posted some photograph of
14 Rick Perry up on my page. I'm not a big fan of
15 Governor Perry, so it's always nice to catch him
16 in a comic moment.
17 Q And the double-fisted hand gesture was a comic --
18 A It's from one of the debates, yes.
19 Q I think you have quite a bit to select from in
20 that regard, I think.
21 A Indeed.
22 Q Indeed, yes. So you tell Joe to go for it and you
23 ask him how his trip to New Orleans was; correct?
24 A Yes.
25 Q All right. Then this next one is Joe to you, and

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1 he's telling you that excellent. I assume it's
2 referring to his trip to New Orleans?
3 A Yes.
4 Q Then he asks you, "did the people at michael best
5 contact you about the recent hispanic suit? The
6 basis of it is that the legislature should use
7 'voting age citizen hispanics' as the basis of
8 drawing hispanic seats instead of 'voting age
9 hispanics.'"
10 A Correct.
11 Q And you respond, "Nope. But if they want us to
12 adjust for citizens, it makes our job easier."
13 A Yes.
14 Q Okay. What does that mean?
15 A It's an interesting observation. There is a
16 debate going on about the possible approach of
17 citizen apportionment of legislative districts,
18 representative districts, and under --
19 Q Let me ask a foundational question before you get
20 to the substance of it.
21 A Yeah.
22 Q Because I want you to start, if you could start
23 with what your job is.
24 A Right.
25 Q Okay. I mean let's say what your job is, because

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1 you have a job here that you're trying to do and
 2 that makes the job easier.
 3 A Yeah.
 4 Q So tell me what the job is, and then tell me why
 5 it makes the job easier.
 6 A Okay. Well, the first thing is that I didn't take
 7 this as being actual substantive advice towards
 8 doing the job, but if the need existed to craft a
 9 district that was citizen based, using citizen
 10 apportionment, you could probably only draw one
 11 Latino majority district in Milwaukee.
 12 The thing about citizen apportionment is, if
 13 you're going to use citizen-based apportionment,
 14 that district is going to be substantially more
 15 populated than other districts that don't have the
 16 presence of large numbers of undocumented
 17 individuals or large numbers of documented
 18 individuals who are not citizens.
 19 Now citizen apportionment is a thing that
 20 I've been thinking about a great deal for about
 21 the last nine -- for about the last year. I had
 22 offered brief testimony in a case in Irving, City
 23 of Lepak -- Lepak v. City of Irving --
 24 Q I'm familiar with the case.
 25 A -- in which I provided a very narrow report

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1 regarding the distribution of citizen populations,
 2 adult populations and voters in an Irving district
 3 formula for the city.
 4 And subsequent to that I was invited to write
 5 an article for one of Stanford's Law Reviews on
 6 issues and topics in redistricting and decided to
 7 approach this topic of citizen-based
 8 apportionment, using citizen populations instead
 9 of total populations to apportion, and got to
 10 thinking about this issue and the issues of
 11 representation and representative role, and on the
 12 one hand if we have to do a citizen-based
 13 apportionment, we could only draw one district,
 14 and so that makes the task of crafting the remedy
 15 easier. There is only one way to do it.
 16 The problem is, with citizen-based
 17 apportionment, it throws total population,
 18 one-person, one-vote, largely out of whack. It
 19 imposes representative burdens on lawmakers from
 20 these districts that are substantially more
 21 populated, and it doesn't consider other aspects
 22 of the representative task.
 23 So the paper that I'm presenting next week at
 24 Stanford, I'm positioning myself in opposition to
 25 strict citizen-based apportionment for the purpose

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1 of one-person, one-vote and coming down in favor
 2 of total population apportionment.
 3 I don't like this notion of citizen
 4 apportionment. I didn't take a stand on it in
 5 Lepak and, having had the chance to think it
 6 through, I've been able to arrive where I am, but
 7 I was working on this paper in this timeframe, so
 8 that's what I'm referencing.
 9 Q Okay. Let me take little pieces of this at a time
 10 then, and we'll take a look at your answer. The
 11 job that you're referring to here is, the job that
 12 becomes easier, is creating a district on the
 13 south side of Milwaukee; right?
 14 A Right.
 15 Q When you're doing it on the basis of citizenship;
 16 right?
 17 A Right.
 18 Q And you would agree that post-Bartlett you have to
 19 have an effective voting majority to make prong
 20 one; right?
 21 A Agreed.
 22 Q And in the context of Latinos, that means
 23 citizenship; right?
 24 A Yes.
 25 Q So to a large extent if you are trying to create

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1 an effective voting majority of Latinos that
 2 satisfies section 2, you need to seriously
 3 consider citizenship; correct?
 4 A Agreed.
 5 Q Now Joe responds to you by saying, "the claim is
 6 that there are so many illegals, that a district
 7 that is 60 percent voting age hisp is not enough
 8 because it is only 40 percent in reality. The
 9 group filing this suit wants just 1 hisp district
 10 that is 65 percent or more VAhisp. I'm going to
 11 blind cc you on an e-mail."
 12 A Right.
 13 Q Okay. Now that's where the string ends.
 14 A Right.
 15 Q So is it accurate to say you cut off the
 16 conversation at that point on Facebook?
 17 A Yes.
 18 Q Okay. I won't dwell with the word illegals. I'll
 19 just ignore that at this point but I will try to
 20 discover or understand what that blind cc e-mail
 21 is. I need to know that.
 22 A Okay.
 23 Q How can you help me with that?
 24 A If I had it, I'd produce it or if I have it I will
 25 produce it. I don't recall getting it, but I will

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1 be glad to go back and check.
2 Q Okay. We know that the timing of this is by the
3 filing of this suit, correct, because Joe says to
4 you the recent Hispanic suit.
5 A Actually I do respond. I say, "Loving watching
6 your Badgers put it to State Penn."
7 (Mr. Kelly entered the proceedings)
8 Q Where is that?
9 A It's the next page.
10 Q Oh, I'm sorry. I missed that. Okay. Well, that
11 marks it. That marks it. We know the date that
12 the Badgers whooped the Nittany Lions.
13 A Yes.
14 MR. EARLE: Well, good. Can we
15 mark this as a request and we'll add it to
16 our follow-up for additional documents. The
17 exhibit was marked as?
18 MS. LAZAR: 81.
19 MR. POLAND: 81.
20 MR. EARLE: 81, all right.
21 Q And I had one more thing. I lost it. Hold on a
22 second. Let's go back to your testimony about you
23 being a potted plant. Do you remember?
24 A Yeah. Yeah.
25 Q Yeah, yeah. Why did you go with Joe to

265

1 A It was not an extensive meeting. It was literally
2 a meet-and-greet, two minutes. He walked in, we
3 shook hands, said hello, I was asked to explain to
4 him how this measure would work, I explained it to
5 him, and that was it.
6 Q Was the trip to the speaker's office the same day?
7 A I don't believe so.
8 Q The same trip?
9 A I believe so, yes.
10 Q Did that trip occur before the speaker met with
11 the members to explain the map?
12 A I don't know.
13 Q Was Vos, Representative Vos, in the room?
14 A I don't know. I don't recall.
15 Q Were any other legislators in the room besides --
16 A I don't remember any other legislators in the
17 room.
18 Q Did Joe take any notes?
19 A Not that I recall.
20 Q Did you take any notes?
21 A No.
22 Q Did the speaker take any notes?
23 A No.
24 MR. EARLE: I have one other thing,
25 and it slipped my mind. Can we just go off

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1 Speaker Fitzgerald's office?
2 A It was early in the evening, it had been a full
3 day, Joe needed to go speak to the speaker about
4 some aspect of the map, so I accompanied him and
5 went over to the speaker's office and then just
6 sat off to the side while they consulted.
7 Q And what aspect of the map were they talking
8 about?
9 A I don't remember.
10 Q How about that meeting when you were over at
11 Michael Best --
12 A Yes.
13 Q -- with Scott Fitzgerald?
14 A Yes.
15 Q What was the substance of the conversation?
16 A My one interaction with the Senate president was
17 to explain to him the nature of the partisan
18 measure and how he could use it to explain to
19 members the impact on changes in the map.
20 Q So that conversation occurred prior to
21 Scott Fitzgerald making a presentation to the
22 members?
23 A I believe so, yes.
24 Q And it was in preparation for his speaking to the
25 members?

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1 the record? Do you have something?
2 MR. POLAND: I have one follow-up
3 from something that you asked about.
4 MR. EARLE: Why don't you go ahead
5 and do that while I gather something. I have
6 one other thing.
7
8 EXAMINATION (Continuing)
9 By Mr. Poland:
10 Q Quick follow-up question. You've testified a
11 couple of times, Dr. Gaddie, including once in
12 response to a question Mr. Earle asked you about
13 only being able to draw one district. By that I
14 assume you mean one majority Latino district in
15 Milwaukee; is that correct?
16 A Well, again the -- I'm going to -- I need to
17 clarify the context of that.
18 Q Yeah.
19 A Citizen apportionment, as I was indicating here,
20 means that only citizens would count towards the
21 popular apportionment, toward the one-person,
22 one-vote count. If you have a constituency with a
23 large number of noncitizen residents, they
24 wouldn't be counted toward the one-person,
25 one-vote count, so presumably that would be

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1 difficult to accomplish on the south side of
2 Milwaukee. But as I've also indicated, that
3 approach to apportionment is one that I do not
4 support.
5 Q Right. I understand. I believe that you had
6 testified earlier also in terms of your work with
7 Michael Best & Friedrich on Act 43 your view was
8 that you could only create one majority Latino
9 district on the south side of Milwaukee too;
10 correct?
11 A You could create two majority districts but you
12 could only create one that was going to be at or
13 above the level of the district that had been
14 created ten years before.
15 Q And that's within the overall outside boundaries
16 of Assembly Districts 8 and 9 as drawn in Act 43;
17 correct?
18 A In the general area inside Senate District 3,
19 Assembly Districts 8, 9, and also that area around
20 District 7, yes.
21 Q So that's even extending outside of the boundaries
22 of 8 and 9 as they were adopted?
23 A Yes.
24 Q So you did look -- When you conducted that
25 analysis, you did look outside the boundaries of

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1 8 and 9 as they're composed under Act 43?
2 A Well, I have a general sense of the scope of the
3 spread of the Latino community on the south side,
4 and again I don't want through my testimony to say
5 that I precluded the inclusion of any precinct
6 that occurred outside of 8 and 9 or insisted any
7 district drawn be inside the boundaries of 8 and
8 9. I'm just saying in that general vicinity where
9 those districts are located the numbers that are
10 there can't support any more than what's been
11 done.
12 Q And the analysis that you conducted to reach that
13 conclusion is reflected in the materials that
14 you've produced to us here today?
15 A Yes.
16 Q All right. I just have two quick follow-up
17 questions on process. Do you have the exhibit
18 that has the envelope or that consists of the
19 envelope?
20 A Yes.
21 Q Just very quickly, did you consider the memos that
22 are -- Can you give me the exhibit number there?
23 A Exhibit No. 61.
24 Q Okay. And there are three documents in there.
25 Did you consider any of the three documents that

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1 are inside the envelope that's been marked as
2 Exhibit 61 or the information in them in forming
3 any of your opinions in this case?
4 A No.
5 Q All right. And do those memos that are within
6 Exhibit 61 contain any assumptions that you relied
7 on in forming your opinions in this case?
8 A Well, again, as I noted, only one of those
9 memoranda are mine. The other two I have not
10 read. I don't know.
11 MR. POLAND: Okay. I don't have
12 any other questions.
13
14 EXAMINATION (Continuing)
15 By Mr. Earle:
16 Q Okay. I think we're just about done. If you
17 could take Exhibits 63 and 73.
18 A Yes, sir.
19 Q Just a few timing nuances I want to tie down.
20 A That's fine. Give me a moment to locate these.
21 Q Sure.
22 A Thank you. 63 and 73, Counselor?
23 Q Yes.
24 A Thank you.
25 MS. LAZAR: And then when you

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1 complete I'd like to go off the record for a
2 few minutes and discuss a matter and then
3 we'll go back on and finalize.
4 A Sorry, we jump. 63 had gotten out of order. Yes.
5 Q Now subsequent to my prior examination of you,
6 Exhibit 73 refreshed your recollection. You
7 clarified the testimony.
8 A Right.
9 Q Exhibit 73 is dated Sunday, July 17, 2011 at
10 11:40 a.m.
11 A Yes.
12 Q I think the record indicates that was a pretty
13 busy day for you.
14 A Yes, it was.
15 Q As we've asked you more questions, has your memory
16 been triggered as to why that was, that it was
17 such a busy day?
18 A I would assume that the Legislature was coming up
19 on a decision to implement the map, to enact
20 legislation. From the timing of this document,
21 evidently I had drafted these to organize my
22 thoughts in order to speak to Jim Troupis.
23 Q The sentence in the third paragraph that refreshed
24 your recollection, Tad Ottman is telling you,
25 "There was testimony by 2 different Hispanic

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1 groups"?

2 A Yes.

3 Q So this preceded -- Is it accurate for me to

4 conclude that this communication from Tad Ottman

5 preceded you drafting paragraph 5 of Exhibit 63?

6 A It could be reasonable, yeah. It's a reasonable

7 assumption.

8 Q And did you participate in any discussions with

9 Tad Ottman or Adam Foltz or Joe Handrick or

10 Eric McLeod or Jim Troupis or anybody else about

11 the strategic importance of having MALDEF involved

12 at that hearing that was coming up at that point

13 in time, and I'm talking about this period of time

14 in Exhibit 73.

15 A So the question is did I engage in any

16 conversation with any of these individuals about

17 the strategic importance of having MALDEF

18 involved?

19 Q Yes.

20 A It's possible.

21 Q Did you speak with Alonzo Rivas?

22 A Alonzo Rivas. Refresh my memory.

23 Q He's the regional counsel for MALDEF in Chicago.

24 A The one -- the one person in the regional office

25 who I have had communication with from MALDEF is

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1 Elisa Alfonzo.

2 Q When did that happen?

3 A Let's see. Elisa and I were actually -- we met

4 and conversed in the context of the Illinois

5 redistricting down in Springfield. This would

6 have been sometime in late May, perhaps.

7 I had a contact from her more recently

8 seeking contact information for Jim Troupis up

9 here. This would have been well after the passage

10 of the map.

11 Q When was that conversation? Was that in the last

12 month?

13 A It was in the last two months, yeah.

14 Q Last two months?

15 A Yes.

16 Q And was that by e-mail or was that a verbal

17 communication?

18 A Telephone call.

19 Q Telephone call, okay.

20 A Yes.

21 Q Were there any e-mail between you about that?

22 A I don't recall. What I did was I passed on -- I

23 passed on to her a contact number for Jim and for

24 counsel up here, and that was the end of my

25 communication.

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1 Q Did she tell you why she wanted to talk to

2 Jim Troupis?

3 A No.

4 Q So let's see if we can narrow it down. Two months

5 is --

6 A It was subsequent to my retention.

7 Q Subsequent to your retention?

8 A By Reinhart.

9 Q Okay. In the last two months, so we're now at

10 January 20th. So you're looking at sometime in

11 January or December or late November?

12 A After Christmas.

13 Q It was after Christmas, okay. So now we're back

14 to -- so it would be January, then, right, or was

15 it between Christmas and New Year's?

16 A I don't know if it was between Christmas or

17 New Year's. It was close to New Year's. That

18 much I do recall. I don't know if it was before

19 or after.

20 Q Can you kind of close your eyes and think and see

21 if there is an event that's associated with it?

22 A No, because she called me -- she called me, I was

23 in my study, the Christmas presents were open, the

24 Christmas decorations were still up, but I hadn't

25 been to New Mexico for trial yet.

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1 Q When did the New Mexico trial start?

2 A It's sometime between Christmas and January 7 --

3 Q Okay.

4 A -- would be my guess.

5 Q Okay. And that's the only other contact since

6 your retention with Elisa Alfonzo?

7 A That's right. That's my recollection, yes.

8 Q Did she ever tell you -- talk to you about

9 Milwaukee?

10 A She mentioned to me she wanted to talk to them

11 about Milwaukee. I don't know any detail beyond

12 that.

13 Q Okay. So when she called you for his number --

14 A Well, Wisconsin, yeah.

15 Q Wisconsin?

16 A Yeah.

17 MR. EARLE: Good. Let me see. I

18 think that does it. Thank you.

19 MR. POLAND: I don't have anything

20 further.

21 MS. LAZAR: We're going to go off

22 the record. We'll come back. I might have

23 two or three follow-ups.

24 MR. CAMPBELL: The time is 4:54.

25 We are going off the record.

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1 (Recess)
2 MR. CAMPBELL: The time is 4:58,
3 and we are back on the record.
4
5 EXAMINATION
6 By Mr. Kelly:
7 Q Dr. Gaddie, do you recall being examined by
8 Mr. Earle this afternoon?
9 A Yes.
10 Q Mr. Earle is our resident thespian. He was quite
11 animated when he was talking with you about what
12 your role in this case was, and do you recall him
13 emphasizing that you were hired to defend the map?
14 A There was great emphasis on the word, yes.
15 MR. EARLE: What did you call it,
16 brush, what was the --
17 MR. KELLY: Thespian?
18 MS. LAZAR: The brushoff.
19 MR. KELLY: The brushoff.
20 MR. EARLE: The brushoff, yes.
21 You're headed toward a brushoff.
22 MR. KELLY: You feel perfectly free
23 to do a brushoff whenever you think it's
24 appropriate.
25 Q Dr. Gaddie, would you defend a map that you

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1 believed had constitutional infirmities?
2 A No.
3 MR. POLAND: Object to the form of
4 the question.
5 Q Why not?
6 A Well, actually I can point to instances where I
7 have not, but the reason being -- I was approached
8 in 2001 about defending the Georgia Legislature's
9 maps in the Ashcroft case, and I took a look at
10 the maps and knew that I could not defend these
11 maps and I refused to defend them. Then two years
12 later we walked into court and challenged them and
13 had them thrown out.
14 More recently in this litigation in Illinois
15 I had been retained in a role similar to my role
16 up here and I couldn't testify in court in the
17 nature of the challenges that were being made
18 because the nature of the challenges weren't going
19 to satisfy a legal standard. I did not -- I
20 couldn't walk into court and attempt to challenge
21 those maps based upon my analysis of the maps. If
22 I thought there was a constitutional defect with
23 these maps, I would say so.
24 In the Texas redistricting I got pulled from
25 testifying because the nature of the law, the

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1 issues involving the Ashcroft case, had created
2 problems in understanding the retrogression
3 baseline and there was this issue of whether or
4 not nonmajority-minority districts could be used
5 to satisfy the baseline or could be protected
6 under it and it was an ambiguous area that hadn't
7 been satisfied in the law yet, and I could not
8 walk in and testify that Texas was free and clear
9 of their voting right issues and it shows up in my
10 deposition at the time, so I actually got pulled
11 from that case.
12 If there was a problem -- if there was a
13 problem in the creation of these maps, that was
14 happening in the creation, I would have cautioned
15 against it and it would be showing up in my
16 materials.
17 Q Dr. Gaddie, why do people retain you as an
18 expert as opposed to any of the other political
19 scientists and others who are experts in this
20 field?
21 MR. POLAND: Object to the form of
22 the question and foundation.
23 MR. EARLE: Join.
24 A I don't know. You don't typically solicit
25 business in this industry. What happens is you

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1 get called.
2 My interactions with Wisconsin began when the
3 state contacted me, or the state's attorneys
4 contacted me about this redistricting. As a
5 general rule we don't go out and go looking for
6 work. It comes to you.
7 In the state of Oklahoma, because I live
8 there, I have a standing offer to the Legislature
9 to assist, and I did not work on the redistricting
10 there but they did hire a former doctoral student
11 of mine as redistricting coordinator in one of the
12 chambers. I had no role in those maps, but I did
13 consult with counsel in defense of State Senate
14 maps when they were challenged in a litigation.
15 It's my own state. It's part of what I do.
16 But if I had not been able to defend those
17 maps, I wouldn't have taken the job.
18 Q You mentioned that you don't solicit work, work
19 comes to you. Setting aside matters of humility
20 and humbleness, why do people call you?
21 MR. POLAND: Object to the form of
22 the question, again foundation.
23 A Again, Counselor, I don't know. I guess they're
24 happy with the product, and even -- sometimes you
25 walk in and you tell a client to settle, you tell

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1 them they're going to lose, and they don't always
2 like it, and there have been instances where they
3 have attempted to go ahead and we've made a good
4 run at attempting to defend in a case but it's
5 evident they were going to lose. And, you know,
6 it's -- you can't always tell from your clients.
7 Q In your line of work is it important that your
8 opinion maintain credibility?
9 A Yes.
10 Q What do you do to maintain the credibility of your
11 opinion when people ask you to testify to
12 something that you don't necessarily agree with?
13 A Well, I can't testify to things that I don't agree
14 with, and the other thing is if you make a mistake
15 you may have to admit it, and unfortunately I've
16 made my share of mistakes and have had to admit
17 them.
18 But, you know, if not, you direct them to
19 other -- you direct them to other counsel or to
20 other experts who can do what they need to be done
21 because there is that obligation to your client.
22 If you cannot serve them, the least you can do is
23 give them a reference.
24 Q Dr. Gaddie, would it be fair to say that with
25 respect to any of the issues that you've been

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1 examined on today, that if you agreed with the
2 ideas, the principles or statements that were
3 proposed to you, that you would give your honest
4 opinion?
5 A Yes, and then I suspect I would probably get my
6 walking papers, which would be fine.
7 Q And during your deposition today and in the
8 opinions that you've submitted have you given your
9 honest opinion on the issues submitted to you?
10 A Yes.
11 MR. KELLY: Thank you.
12 MR. POLAND: Follow --
13 MR. EARLE: Go ahead.
14
15 RE-EXAMINATION
16 By Mr. Poland:
17 Q Dr. Gaddie, your confidence in your opinions is
18 only as good as the completeness and correctness
19 of the information on which they're based;
20 correct?
21 A Correct.
22 Q Are any of the opinions that you've expressed in
23 this litigation based at all on any of the facts
24 that you obtained during your role as a
25 redistricting consultant in the spring?

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1 A I have -- My role as an expert is defined by the
2 work that I've done as an expert, not by my work
3 as a consultant this spring.
4 Q If you learned that any of the information that
5 was provided to you when you were acting as a
6 consultant to the redistricting over the winter
7 and the spring and early summer part of 2011 was
8 inaccurate in some way, would that cause you to
9 reconsider any of the opinions that you've
10 rendered in this case?
11 A If it alters the outcome of the analysis, it could
12 lead to a change of opinion, yes.
13 MR. POLAND: Thank you. Nothing
14 further.
15
16 RE-EXAMINATION
17 By Mr. Earle:
18 Q Just a few. Claude Pepper ran for the Senate in
19 Florida once and he lost and his opponent won by
20 campaigning on the fact that his sister was a
21 known thespian.
22 A Yeah. That was George --
23 Q And the public immediately stood up against him
24 for that reason so --
25 A Well, that was George Smathers.

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1 Q Yes, it was.
2 A Yes.
3 Q George Smathers, yes.
4 A He also indicated that --
5 Q He was a known homo sapien?
6 A And Claude was known to masticate at the dinner
7 table, yes.
8 Q He matriculated.
9 A Matriculated, yes. He matriculated at Harvard,
10 yeah. The Red Record of Red Claude Pepper.
11 Q Yes, right.
12 A Yes.
13 MR. POLAND: I will note for the
14 record that Peter's questions are more
15 entertaining than mine.
16 Q But anyways, now you indicated that in response
17 to -- never mind. You indicated that if you had
18 an opinion about this case it would appear in the
19 record and you would -- and -- it would appear in
20 your materials and you would say it; right?
21 A Yes.
22 Q And you said that it was your opinion that under
23 the circumstances you had before you as far as the
24 8th Assembly District was that the -- your clients
25 should consult with, meaningfully consult with the

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1 Latino community; correct?
2 A Correct.
3 Q And you're not changing that testimony at all;
4 right?
5 A Right.
6 Q And if your clients didn't do that, you would
7 disagree with the fact that they didn't do that
8 under those circumstances; correct?
9 A Correct.
10 Q And just so I'm clear, as I understood your
11 testimony, you're not defending Act 43 as it
12 pertains to the 8th Assembly District; isn't that
13 right?
14 MR. KELLY: Objection, form.
15 A My expert report does not in any way address
16 Act 43 as it pertains to the 8th Assembly
17 District.
18 Q Okay.
19 A The only reference is to make note of the
20 demographic composition of the district.
21 Q Okay. And those are carefully parsed words, am I
22 accurate?
23 MR. KELLY: Objection, form.
24 Q No, no, because I'm following up. Because
25 that's -- I'm not disputing that, but that's not

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1 quite what my question was. My question is --
2 because I'm using very specific words, so I'd like
3 you to answer the question with response to the
4 words that I use. You're not defending Act 43 as
5 it applies to the 8th Assembly District. Isn't
6 that an accurate statement?
7 MR. KELLY: Objection. Objection,
8 form.
9 Q You get to answer.
10 A Okay. My role in defending -- You have to allow
11 me my predicate, Counselor. My role in defending
12 this map is defined by the actions in my expert
13 report.
14 My expert report, to the extent it deals with
15 Assembly District 8, does two things. It makes
16 note of the concentration of the voting age
17 population among Latinos in the district. It
18 makes note at various points, either in the report
19 or the rebuttal report, of aspects or features of
20 the core retention, but it does not address the
21 variety of issues that you and I detailed in my
22 earlier examination.
23 MR. EARLE: Fair enough. Fair
24 enough. Okay. I'm done. Thank you.
25 THE WITNESS: Very good.

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1 MR. KELLY: So am I.
2 THE WITNESS: Are we off the
3 record?
4 MR. CAMPBELL: We're going off the
5 record. This concludes the video deposition
6 of Dr. Ronald Gaddie. The time is 5:08 p.m.
7 (Adjourning at 5:09 p.m.)
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1 STATE OF WISCONSIN)
) ss.
2 COUNTY OF DANE)
3 I, PEGGY S. CHRISTENSEN, a Registered
4 Professional Reporter and Notary Public duly
5 commissioned and qualified in and for the State of
6 Wisconsin, do hereby certify that pursuant to
7 subpoena, there came before me on the 20th day of
8 January 2012, at 9:09 in the forenoon, at the offices
9 of Reinhart Boerner Van Deuren S.C., Attorneys at
10 Law, 1000 North Water Street, Suite 1700, in the City
11 of Milwaukee, County of Milwaukee, and State of
12 Wisconsin, the following named person, to wit:
13 RONALD KEITH GADDIE, Ph.D., who was by me duly sworn
14 to testify to the truth and nothing but the truth of
15 his knowledge touching and concerning the matters
16 in controversy in this cause; that RONALD KEITH
17 GADDIE, Ph.D. was thereupon carefully examined upon
18 his oath and his examination reduced to typewriting
19 with computer-aided transcription; that the videotape
20 deposition is a true record of the testimony given by
21 the witness; and that reading and signing was not
22 waived.
23 I further certify that I am neither
24 attorney or counsel for, nor related to or employed
25 by any of the parties to the action in which this

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1 deposition is taken and further that I am not a
2 relative or employee of any attorney or counsel
3 employed by the parties hereto or financially
4 interested in the action.

5 In witness whereof I have hereunto set my
6 hand and affixed my notarial seal this 23rd day of
7 January 2012.

8
9

10 _____
Notary Public, State of Wisconsin
Registered Professional Reporter
Certified Realtime Reporter

11

12 My commission expires
13 August 19, 2012

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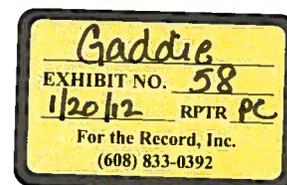


**A hard copy of this flash drive will be hand-delivered to the clerk.

REBUTTAL REPORT OF RONALD KEITH GADDIE, Ph.D.

Submitted in
Baldus, et al., v. Brennan, et al. 2:2011cv00562 (E. D. Wisc.)

January 13, 2012



1. Corrections to Report of December 13 2011

In Table 9, the incumbent core shares for members sharing the pairing in Senate district 21 were transposed. The correct numbers appear below. The correction does not alter the Senate core retention calculations in Table 8 of the report.

Senate 21	Wirch-D, 22	+4.46%	42.03%
	Wanggaard-R, 21	-3.25%	57.97%

I reviewed and recalculated my largest core retention numbers for the Assembly map. The largest core retention is 66.30%.

In three Assembly districts, errant incumbent core retention values were reported. In district 49, the incumbent core retention is 95.8% (rather than 95.69%); in Assembly district 56, the incumbent core retention is 65.20% (rather than 63.66%); and in Assembly district 78, the incumbent core retention is 32.10% (rather than 26.90%). The corrected statistics for incumbent cores that appear in Table 8 of my initial report are:

	All Assembly Members	Assembly Dem. Inc. (N = 39)	Assembly Rep. Inc. (N = 59)	Assembly Ind. Inc. (N = 1)
Average	61.72%	54.74%	65.88%	88.33%
Low	8.55%	8.55%	17.74%	88.33%
High	99.91%	99.91%	97.67%	88.33%

2. Movement of District Lines in Act 44, the Congressional Map

The most recent Wisconsin congressional remap under Act 44 maintains an average core of 84.33%. The number of persons moved in Wisconsin in 2011 under Act 44 is just under 892,000 -- 15.67% of the state.

Sometimes states achieve population equality in their districts by only moving around a few thousand people. For example, mapmakers and stakeholders may agree to maintain the status quo. But, just because a least change approach can fix the population deviation in a map, it does not necessarily follow that the 'least-change' described by Professor Nordheim must be the approach used by the map drawers. It also does not follow that partisan gerrymandering is at work when a legislature, court, or commission moves more people than 'necessary'.

Consider a state where the redistricting process is held in high regard by political scientists -- Iowa. In Iowa, a commission handles redistricting subject to a variety of criteria, including the mandate to use counties as district building blocks. In 1992, Iowa crafted a congressional plan

with five districts. Ten years later, the state remapped, to comply with one-person, one-vote requirements. Table 1 (below) shows the deviations from ideal for the Iowa map before redistricting, which summed to 181,419 persons. But, when Iowa's commission determined its final map, 1,226,004 persons were in a district moved away from the core of their old district (see also Maps 1a and 1b). Iowa's commission moved forty percent of the state's residents into districts where they would have a new congressional representative.

3. Compactness in Act 44, the Congressional Map

Professor Nordheim reports five compactness scores for the previous congressional districts and the districts from Act 44. An examination of his compactness data indicates that there is a positive correlation between the old and new district compactness across all five measures.

For two of the measures (the Polsby-Popper score and the Circumference/Perimeter) the relationship is significant at better than a .05 level; for the other three scores, the correlation is significant at better than a .10 level. The changes in compactness are not statistically significant from the old map to the Act 44 map. A paired-samples t-test of the district compactness for the 2002 and 2011 maps showed no significant difference on any of the five compactness measures from the old map to Act 44.

4. Professor Mayer reports that, of the ten least compact districts on the smallest circumscribing circle (SCC) score, six are Democratic districts and four are Republican districts. These districts are not identified in the report, but an examination of his compactness reports indicates the ten worst districts on the SCC score are districts 1, 37, 64, 93, 76, 70, 13, 84, 62, and 33. The SCC is one of four compactness scores that Mayer examines – and, considering his 2002 expert report in *Jensen v. Panzer* (in which he examined nine compactness measures) notes that it is inappropriate to rely on just one compactness measure.¹

When one looks at the other compactness scores² of the ten districts that rank in the bottom ten on the smallest circle score, just two – districts 1³ and 64 – also rank in the bottom ten on the convex hull, perimeter to area, and equal circle scores (Table 2). Indeed, three of the districts he identified as the least compact, also rank among the top half of compact districts on the other three compactness measures (districts 13, 62, and 84), and two rank in the top three quartiles for compactness on at least two measures (districts 76 and 93).

The same divergence occurs at the other end of the SCC compactness distribution (Table 3). Of the twenty most compact districts on the SCC noted by Professor Mayer, nine are among the

¹ Professor Nordheim correctly notes that different measures of compactness capture different information about the shapes of districts. Compactness measures are designed to summarize information about attributes of maps – and political scientists and the courts recognize that compactness is measured in the context of an entire map.

² All compactness scores in this analysis were drawn from data and documents provided by Professor Mayer.

³ District 1 presents a special challenge and will always rank as relatively low on compactness scores, because it is the Door Peninsula.

twenty most compact on the Convex Hull measure (districts 8, 21, 27, 30, 31, 65, 80, 82, 98); two (districts 44 and 58) do not rank in the top half and district 44 ranks in the bottom quintile.

Seven are also among the twenty most compact on the Polsby-Popper (PTA) measure (districts 8, 21, 28, 30, 55, 80, 82); five districts (districts 31, 44, 53, 58, 78) do not rank in the top half, and districts 44 and 78 rank among the least ten compact. District 27 ranks 50th of 99 districts.

Seven of the districts identified are also among the twenty most compact on the equal circle score (districts 8, 21, 30, 55, 82); seven districts (districts 27, 44, 53, 58, 65, 73, 78) do not rank in the top half (and districts 44 and 78 rank among the least five compact).

Professor Mayer's critique relies on emphasizing one measure of compactness, the smallest circle score. When other measures of compactness are examined, these districts are not consistently the most (or least) compact districts in the Assembly.⁴

5. There is no significant relationship between the party of an incumbent and the compactness of the district where the incumbent is placed. Professor Mayer's initial analysis attempts to suggest a relationship between the compactness of the assembly districts in Act 43 and the party of the incumbent. In Table 4, linear regression analysis is used to test the statistical significance and direction of the relationship between party incumbents in a district and compactness. The results show no statistically significant relationship between the presence of incumbents of either party, and district compactness, on any of the four measures of compactness presented by Professor Mayer.

7. Delayed voting is not unusual. And, in Wisconsin, it is not excessive.

⁴ Measures of compactness are generally correlated. The SCC score has the weakest correlation to the other measures of compactness provided in his report.

	SCC	PTA	Convex Hull	CircumTest	Total Perimeter	Dist. Area
SCC		.317**	.475**	.237*	-0.008	0.112
PTA			.664**	.974**	-0.086	0.151
Convex Hull				.700**	-0.065	0.087
CircumTest					-0.072	0.16
Total Perimeter						.902**
N=99						

**Correlation is significant at the 0.01 level (2-tailed).

*Correlation is significant at the 0.05 level (2-tailed).

Professor Mayer criticizes the delayed voting effect of the Senate districts in Act 43. I previously noted in my initial report that 299,688 persons (5.27% of all persons in Wisconsin) lived in a Senate district where delayed voting would occur. When one accounts for the 164,843 persons who reside in delayed-voting districts where a recall was also conducted in 2011, only 134,845 will be subject to the six-year voting delay. As a matter for comparison, I note that, in 2002, four maps were advocated by Professor Mayer to the Court for possible adoption. As indicated in Table 5, all four of these maps had proportionally greater delayed voting in the Wisconsin Senate than under Act 43. And, despite a six percent increase in Wisconsin's population during the decade, two plans advocated by Professor Mayer actually had greater numbers of voters affected by delayed voting?

In my initial report, I noted that nineteen states including Wisconsin have delayed voting effects in their state Senates,⁵ and I reported data from Oklahoma showing higher numeric and proportional delayed voting (just under 8.0% of the state).

Delayed voting data from six states for this redistricting cycle – Wisconsin, Oklahoma, Oregon, Ohio, Missouri, and California -- appear in Table 6. Of six states examined, the range of persons moved into districts and experiencing delayed voting varies from a low of 115,769 in Oregon to a high of 3,972,984 in California. In percentage terms, the low is 3.02% in Oregon and the high is 10.66% in California. Wisconsin had the third-lowest raw number of persons in delayed voting studied (just behind Oklahoma), and the second-lowest percent of the state experiencing delayed voting (behind Oregon).⁶

8. Difference of Means Test for Core Retention in the Senate and Assembly under Act 43.

The application of a difference of means test for the level of incumbent core retention for the Senate indicates that there is no significant difference in the core retention by Democratic versus Republican incumbent senators ($t = .252$, unequal variances assumed; see Table 7).

In the Assembly, there is a significant difference between the average core retention for the Democratic versus Republican incumbents ($t = -2.049$, unequal variances assumed). However, if one examines the nine Democratic incumbent districts with the lowest core retention, explanations exist for their low cores.

Some disparities in the core retention of Democratic incumbent districts are explained by what appear to be specific decisions in the crafting of the map. Examples occur in three areas of the map: southeastern Wisconsin surrounding the cities of Kenosha and Racine; in and around the City of Milwaukee; and in the city of Madison and Dane County.

⁵ Alaska, Arizona, California, Colorado, ~~Georgia, Idaho, Illinois~~, Kansas, Louisiana, Michigan, Minnesota, Montana, Nevada, New Jersey, North Dakota, Oregon, Rhode Island, and Washington also have election recall. Virginia has a recall petition, but the recall is made via a recall trial (similar to an impeachment) rather than a vote of the people.

⁶ There is a 17-person discrepancy in the number of persons in the Oklahoma disfranchisement split in the data presented in Table 6 versus the data in my initial report. This discrepancy arises from my initial calculations.

8.1 Kenosha-Racine: Five districts around Kenosha and Racine have an average largest core retention of 52.6%. There is one incumbent pairing (district 61) and one open seat (district 65). Just under 64% of district 66 is at the core of district 61.

The districts concentrate African-American and Hispanic voters as a minority 'influence' in Senate 22 (Assembly 64, 65, 66). The new senate district now encompasses all of City of Kenosha and most of the City of Racine, while Senate district 21 largely encompasses the rural townships of Racine and Kenosha counties.

<u>District</u>	<u>Largest Core</u>	<u>Incumbent Core</u>
Assembly 61	63.9%	63.9%* 36.1%**
Assembly 63	40.4%	40.4%
Assembly 64	48.9%	48.9%
Assembly 65	50.2%	Open seat
Assembly 66	59.7%	59.7%

*Core from the previous 66th Assembly district.

**Core from the previous 65th Assembly district.

8.2 Milwaukee County: Change surrounding the design of the majority minority districts in Milwaukee county is associated with lower core constituency retention in several districts.

In Senate district 3, the core retention is 76.6% -- just below average for all senate districts in Act 43. Senate district three is 47.5% Hispanic population and 7.2% African American population. The predecessor district was just over 45.1% Hispanic population.

Assembly districts 7, 8, and 9 are wholly in Senate district 3. Unlike the encompassing senate district, all of the districts have lower core retention rates. The average largest core retention is 45.3%, with a range of 30.9% to 55.3%; the average incumbent core is 33.4%, with a range of 13.9% to 55.3%. Two incumbents are paired in Assembly district 7.

An examination of the pre- and post-redistricting maps shows that the orientation of Assembly districts 7, 8, and 9 are changed from the 2002 map so that they run north-south beside each other, rather than east to west. This change is implemented to craft the majority Hispanic districts 8 and 9, while also crafting district 7 to maintain the Hispanic influence in Senate District 3.

<u>District</u>	<u>Largest Core</u>	<u>Incumbent Core</u>
Assembly 7	30.9%	30.9%* 13.9% **
Assembly 8	55.3%	55.3%
Assembly 9	49.9%	No incumbent

*Core from the previous 7th Assembly district.

**Core from the previous 9th Assembly district.

Assembly districts 11 and 12 have largest core (and incumbent core) retention values of 47.8% and 51.9%, respectively, and were -6.3% and -3.8% from the district ideal population before redistricting. These districts are adjacent to districts 10, 16, and 18, which were, respectively, -10.5%, -8.6%, and -15.8% under the ideal population. All of these districts are majority-African American districts. Districts 11 and 12, already under population, shed additional population from their cores to accommodate repopulating districts 10, 16, and 18 (The core retention numbers for those districts are: for district 10, 66.3%; for 16, 68.5%; and for district 18 61.4%.

African-American Core 1

<u>District</u>	<u>Largest Core</u>	<u>Incumbent Core</u>
Assembly 11	47.8%	47.8%
Assembly 12	51.9%	51.9%

The subsequent movement of 11 and 12 to the north and west further move Assembly districts 22, 23, and 24. These districts have a range of largest core retention between 36.9% and 48.8%, and a range of incumbent core retention from 35.7% to 47.7%. These districts are contained in Senate district 8, which has a largest core (and incumbent core) retention of 73.3%. The Assembly districts within the Senate district are largely rearranged from territory originally shared within old Senate 8. Most of Senate 8's core loss is to majority-black Senate district 4 (33,182 persons).

<u>District</u>	<u>Largest Core</u>	<u>Incumbent Core</u>
Assembly 22	48.8%	35.7%
Assembly 23	36.9%	36.1%
Assembly 24	47.74%	47.7%

8.3 Madison and Dane County: In Madison, the city was previously divided among six Assembly districts. The new map places four whole districts within the city of Madison (48, 76, 77, 78), and the remainder in a fifth district. Two open Dane seats are created in the process, in Assembly district 80 and also a new open seat to the southeast of Madison, Assembly district 47.

<u>District</u>	<u>Largest Core</u>	<u>Incumbent Core</u>
Assembly 77	41.2%	36.1%
Assembly 78	34.9%	32.1%
Assembly 79	50.1%	31.4%
Assembly 80	46.5%	Open seat
Assembly 81	57.6%	57.6%
Assembly 42	54.9%	54.9%
Assembly 47	46.6%*	Open seat
Assembly 48	50.6%**	50.6%**

*From previous 48th Assembly district.

**From previous 81st Assembly district.

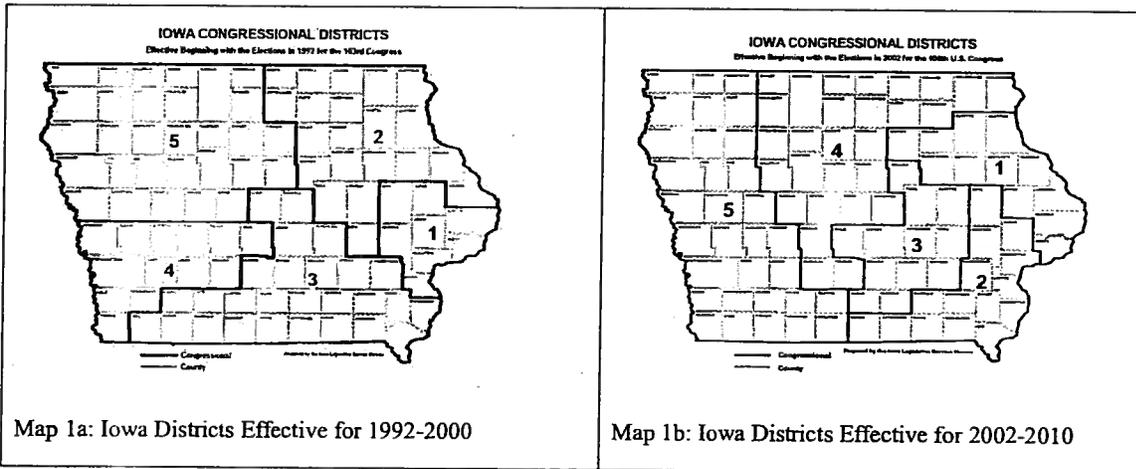
8.4 In Table 8, the Assembly districts examined in sections 10.1, 10.2, and 10.3 are excluded from the difference of means test applied to incumbent core retentions in Table 7. The difference between the Democratic and Republican average incumbent cores is not statistically significant.

Tables and Figures

Table 1: Equalizing Populations in Iowa, 2002

District Number, 1992	Deviation from 2000 census ideal, 1992 map	District Number, 2002	How many persons not from largest core in new district?
1	18,572	1	229,038
2	16,408	2	174,391
3	47,642	3	210,704
4	72,137	4	355,874
5	26,660	5	255,997
Sum, total persons deviating from ideal:	181,419	Sum of persons moved from core of old district with a different representative after redistricting	1,226,004

Source: Computed from 2000 US Census



Source: <http://www.legis.state.ia.us/Redist/Redist.html>

Table 2: The Ten Least-Compact Districts on the Smallest Circle Score, as they Rank on Other Compactness Measures

District	Smallest Circle Score (SCC)	SCC Rank	Convex Hull	Convex Hull Rank	Polsby-Popper (PTA) Score	PTA Rank	Equal Circle	Equal Circle Rank
1	0.10	99	0.50	99	0.08	94	0.28	94
37	0.11	98	0.64	87	0.14	87	0.41	85
64	0.12	97	0.51	98	0.08	93	0.28	93
93	0.13	96	0.74	56	0.18	75	0.45	73
76	0.13	95	0.65	85	0.24	54	0.52	54
70	0.14	94	0.66	83	0.16	83	0.43	82
13	0.14	93	0.89	4	0.26	45	0.57	39
84	0.15	92	0.80	30	0.29	36	0.6	28
62	0.15	91	0.80	29	0.34	24	0.66	14
33	0.15	90	0.69	76	0.18	77	0.45	74

Table 3: The Twenty Most-Compact Districts on the Smallest Circle Score, as they Rank on Other Compactness Measures

District	Smallest Circle Score (SCC)	SCC Rank	Convex Hull	Convex Hull Rank	Polsby-Popper (PTA) Score	PTA Rank	Equal Circle	Equal Circle Rank
65	0.45	1	0.85	9	0.25	48	0.52	52
36	0.44	2	0.80	25	0.32	29	0.6	27
71	0.44	3	0.81	21	0.27	42	0.53	45
78	0.41	4	0.76	45	0.07	95	0.27	96
73	0.39	5	0.77	37	0.26	47	0.52	51
39	0.38	6	0.77	38	0.33	27	0.59	30
8	0.36	7	0.88	5	0.44	5	0.66	12
21	0.35	8	0.92	1	0.55	2	0.78	1
82	0.35	9	0.90	2	0.44	4	0.68	6
40	0.34	10	0.81	22	0.33	26	0.58	32
27	0.33	11	0.82	18	0.25	50	0.52	53
44	0.33	12	0.66	82	0.06	97	0.26	97
80	0.33	13	0.82	19	0.35	20	0.62	22
98	0.33	14	0.85	10	0.28	40	0.55	42
28	0.32	15	0.75	47	0.36	18	0.62	21
30	0.32	16	0.88	6	0.57	1	0.77	2
58	0.32	17	0.74	51	0.15	84	0.4	86
31	0.31	18	0.83	15	0.23	55	0.53	49
53	0.31	19	0.76	46	0.18	74	0.44	77
55	0.31	20	0.80	26	0.44	7	0.7	3

Table 4: Party, Incumbency, and Compactness

Smallest Circle Score	b	s.e. _b	t	Convex Hull	b	s.e. _b	t
Intercept	.265	.019	13.721	Intercept	.742	.022	33.973
Republican Inc.	-.015	.020	-.732	Republican Inc.	.019	.023	.814
Democratic Inc.	-.033	.021	-1.552	Democratic Inc.	-.028	.024	-1.178
Adjusted R ²	0.006			Adjusted R ²	0.059		
N	99			N	99		
Polsby-Popper/PTA	b	s.e. _b	t	Equal Circle	b	s.e. _b	t
Intercept	.254	.028	9.042	Intercept	.512	.031	16.732
Republican Inc.	.025	.030	.831	Republican Inc.	.033	.032	1.011
Democratic Inc.	-.026	.030	-.867	Democratic Inc.	-.029	.033	-.867
Adjusted R ²	0.044			Adjusted R ²	0.053		
N	99			N	99		

Table 5: Delayed Voting In Select Maps Proposed to the Court in 2001

	#Persons	% of State*
Democratic Map A	303,951	5.67%
Democratic Map B	301,604	5.62%
SB 463	298,749	5.57%
Democratic Map C	282,772	5.27%
*2000 census		

Table 6: Delayed Voting in Six States, 2012 Apportionment Cycle

State	Votes in 2012	% Delayed	Odd-to-Even	Even-to-Odd	Unchanged	Total Pop.
Oregon	Even	3.02%	132,720	<u>115,769</u>	3,582,585	3,831,074
Wisconsin	Even	5.27%	313,540	<u>299,688</u>	5,073,758	5,686,986
Ohio	Even	7.48%	807,835	<u>862,773</u>	10,728,669	11,536,504
Oklahoma	Odd	7.98%	<u>299,511</u>	304,977	3,146,863	3,751,351
Missouri	Odd	9.89%	<u>592,586</u>	674,786	4,721,555	5,988,927
California	Odd	10.66%	<u>3,972,984</u>	3,895,767	29,385,205	37,253,956

Source: Data compiled by John Diez/Magellan Strategies BR, January 11 2012.

Table 7: Difference of means test, Incumbent Core Retention

Senate	Mean (s _d)	s.e.	Assembly	Mean (s _d)	s.e.
Republican (n=17)	.7764 (.1299)	.031	Republican (n=59)	.6588 (.2246)	.029
Democratic (n=16)	.7885 (.1449)	.036	Democratic (n=39)	.5474 (.2592)	.042
	t = 0.252 (p = .803)			t = -2.195 (p = .031)	

Table 8: Difference of means test, excluding districts discussed in sections 8.1, 8.2, and 8.3

Assembly	Mean (s _d)	s.e.
Republican (n=54)	.6746 (.2264)	.031
Democratic (n=26)	.6146 (.2821)	.055
	t = -.948 (p = .349)	

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CINDY BARBERA, CARLENE
BECHEN, RONALD BIENDSEIL, RON BOONE, VERA
BOONE, ELVIRA BUMPUS, EVANJELINA
CLEEREMAN, SHEILA COCHRAN, LESLIE W.
DAVIS III, BRETT ECKSTEIN, MAXINE HOUGH,
CLARENCE JOHNSON, RICHARD KRESBACH,
RICHARD LANGE, GLADYS MANZANET,
ROCHELLE MOORE, AMY RISSEEUW, JUDY
ROBSON, GLORIA ROGERS, JEANNE SANCHEZ-
BELL, CECELIA SCHLIEPP, TRAVIS THYSSEN,

Plaintiffs,

TAMMY BALDWIN, GWENDOLYNNE MOORE
and RONALD KIND,

Intervenor-Plaintiffs,

v.

Members of the Wisconsin Government Accountability
Board, each only in his official capacity:
MICHAEL BRENNAN, DAVID DEININGER, GERALD
NICHOL, THOMAS CANE, THOMAS BARLAND, and
TIMOTHY VOCKE, and KEVIN KENNEDY, Director
and General Counsel
for the Wisconsin Government Accountability Board,

Defendants,

F. JAMES SENSENBRENNER, JR., THOMAS E. PETRI,
PAUL D. RYAN, JR., REID J. RIBBLE,
and SEAN P. DUFFY,

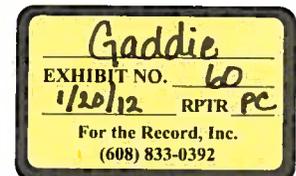
Intervenor-Defendants.

(caption continued on next page)

RULE 26 EXPERT REBUTTAL REPORT OF DR. KENNETH R. MAYER

Civil Action
File No. 11-CV-562

Three-judge panel
28 U.S.C. § 2284



VOCES DE LA FRONTERA, INC., RAMIRO VARA,
OLGA WARA, JOSE PEREZ, and ERICA RAMIREZ,

Plaintiffs,

v.

Case No. 11-CV-1011
JPS-DPW-RMD

Members of the Wisconsin Government Accountability Board, each only in his official capacity:
MICHAEL BRENNAN, DAVID DEININGER, GERALD NICHOL, THOMAS CANE, THOMAS BARLAND, and TIMOTHY VOCKE, and KEVIN KENNEDY, Director and General Counsel for the Wisconsin Government Accountability Board,

Defendants.

My name is Ken Mayer. I submitted an expert report in this lawsuit on December 14, 2011. I have been asked by counsel representing the plaintiffs in this lawsuit (the "Plaintiffs") to analyze and provide expert opinions in rebuttal to opinions expressed by certain of the defendants' experts in the above-captioned case. Specifically, I have been asked to evaluate and provide opinions in rebuttal to those expressed by Peter A. Morrison and Ronald Keith Gaddie in their December 14, 2011 reports.

My rebuttal opinions, which are based on the technical and specialized knowledge that I have gained from my education, training and experience, are premised on widely accepted and reliable methods of analysis and application of traditional redistricting criteria, and are based on my review and analysis of the following information and materials, which are in addition to those that I identified in my December 14, 2011 report, and to the materials cited at the end of this report:

- Declaration and Expert Report of Peter A. Morrison, Ph.D., December 14, 2011;

- Expert Report of Ronald Keith Gaddie, Ph.D., December 14, 2011;
- Deposition of Joseph Handrick, December 20, 2011, and exhibits;
- Deposition of Adam Foltz, December 21, 2011, and exhibits;
- Deposition of Tad Ottman, December 22, 2011, and exhibits;
- Documents produced in response to subpoena to Joseph Handrick;
- Documents produced in response to subpoena to Adam Foltz;
- Documents produced in response to subpoena to Tad Ottman;
- Letter of Daniel Kelly, dated December 28, 2011, and attached materials; and
- American Community Survey 2006-2010, and 2010.

Introduction

Professor Gaddie's report primarily consists of a description of the redistricting plan adopted in Act 43. He does, however, make the following arguments about specific elements of Act 43:

(1) the number of voters disenfranchised because they are moved from even-numbered to odd-numbered state Senate districts – and therefore lose their vote in the 2012 elections – should be reduced because of the extraordinary recall elections held in nine districts during the Summer of 2011.

(2) Act 43 creates an acceptable number of majority-minority African American districts, and one majority-minority Latino Assembly district.

(3) the aggregate number of municipal splits throughout Wisconsin – local jurisdictions that are divided into multiple Assembly and Senate districts – is in line with the aggregate number of municipal splits throughout Wisconsin in the 1992 and 2002 Court-drawn redistricting plans.

As I explain below, each of these arguments is flawed theoretically, statistically, practically, or all three.

I. Recall Elections are Irrelevant to the Question of Disenfranchisement

As I noted in my initial report, Act 43 moves 299,704 persons from even-numbered Senate districts to odd-numbered Senate districts. Professor Gaddie does not dispute that Senators from even-numbered districts were last elected in 2008, and the seats are subject to election again in 2012. Persons currently in even-numbered districts have the right to vote in the 2012 Senate elections. By moving these people from their current even-numbered districts into odd-numbered districts, Act 43 deprives these people of their right to vote in 2012. Their next opportunity to vote in a Senate election will not occur until 2014. In every redistricting cycle, it is inevitable that some people will be disenfranchised when legislative elections are staggered as Senate elections are in Wisconsin, but the number should be kept as small as possible. Gaddie recognizes this when he correctly notes that “the delayed voting issue is considered significant and is closely related to the fundamental principles of fairness and equality that underlie the dominant principles of population equality and racial fairness (Gaddie Report, pages 4-5). Yet he provides no justification for the disenfranchisement of such an extraordinary number of people, and the resulting denial of the right to vote in every four years for state Senator.

In defending the remarkable numbers of disenfranchised voters, Gaddie claims that the *percentage* of voters harmed by the loss of their 2012 vote (5.26%) is consistent with the percentage disenfranchised by the 1992 redistricting map, which was drawn by a Federal Court. The use of percentages, however, obscures two crucial facts about Act 43. First, it ignores the fact that the absolute number of disenfranchised voters in 2012 (299,704) is significantly larger, by 16.6 percentage points, than the absolute number of disenfranchised voters in 1992 (257,000).

The fact that the population of the state has grown slightly in the previous 20 years is not an adequate justification to excuse the disenfranchisement of an additional 43,000 people.

Moreover, it is apparent that the authors of Act 43 – whoever they are – used the 5.25% standard as a “safe harbor” that permits them to burden the same percentage of voters in the current process (Adam Foltz testimony at July 13, 2011 Legislative Hearing, p.31). But as with the 2002 redistricting map –which was also drawn by a Federal Court – it is possible to draw a map with significantly less disenfranchisement. That map disenfranchised only 177,163 persons, a level 45 percentage points smaller than the number created in Act 43. The authors of Act 43 could easily have chosen to disenfranchise fewer voters by using this standard instead. It is thus clear that minimizing the number of disenfranchised voters was not a factor in Act 43. Rather, Act 43 was, according to the testimony of the individuals who say they drew the map, designed with other goals in mind. The collateral damage of such a process is that tens of thousands of Wisconsinites unnecessarily lose their right to vote in the 2012 Senate elections.

Professor Gaddie further claims that the disenfranchisement created via Act 43 is not really disenfranchisement, since voters moved from even to odd districts had an opportunity to vote in the recall elections held in the Summer of 2011. There were, he claims, 164,843 disenfranchised persons who lived in districts where recall elections were held. Thus, he concludes, the actual number of persons who will go 6 years without voting in a Senate election is not 299,704, but $299,704 - 164,843 = 134,861$.

This argument is transparently disingenuous. Recall elections are not a substitute for the regular elections that occur at fixed intervals. Rather, recall elections are unpredictable, can be forced upon a recalcitrant electorate by a fraction of the population that signs recall petitions, are held at irregular intervals, involve a different strategic context than the regular Fall elections, and

have dramatically lower turnout than Fall elections.¹ Moreover, the exercise of one constitutional right – the right of recall under the state Constitution – cannot provide a basis to deny another constitutional right, the right to vote every four years for state Senator.

Given the timing of the legislature’s consideration of Act 43 and the rulings by the Government Accountability Board, the “recall exception” can only be an after-the-fact rationalization of the disenfranchisement caused by Act 43. The record to date, including the single public hearing held by a Joint Committee of the Wisconsin legislature on July 13, 2011, and the depositions of the persons who consulted, makes no reference whatsoever to the relationship between the recall elections and the number of persons moved from even to odd Senate districts. Given the timing of the disenfranchisement moves in the map drawing process and the recall efforts, it is difficult to see how the two could have been related.

The Government Accountability Board certified the first of the nine recall petitions on May 23, 2011, less than two months before the legislature passed the redistricting map on July 19th (in the Assembly) and July 20th (in the Senate). The last recall petitions were certified on June 8, although lawsuits filed by *all nine* Senators facing recalls delayed the final certification decision until July 8, when a Dane County Circuit Court judge ruled that all the recalls could proceed. In contrast, the redistricting effort conducted by the legislature began as early as December 2010, when office space was provided to legislative staffers within the law offices of Michael, Best & Friedrich (Ottman Dep., page 135).

Further evidence of the unusual nature of the recalls comes from the voting results.

Exhibit 1 shows the total number of votes cast in each recall election as well as the total number

¹ In Wisconsin, a recall against a legislator is triggered when a number of eligible voters in that district equal to 25% of the number of votes cast for Governor in that district in the most recent election sign a recall petition. The number of signatures required in the 9 recall efforts ranged from 13,537 (22nd District) to 20,343 (8th District). Recall petitions may not be filed until an incumbent has been in office for at least one year (Wisconsin Constitution, Art. 12, sec. 12; Wisconsin Statutes 9.10).

of votes cast in the 2008 elections in which the incumbents were last elected. In every case, turnout dropped, even in the districts where the incumbent had run unopposed in 2008 (which results in lower turnout through the phenomenon of “roll-off” in which many voters simply do not record a preference, mostly because they do not share the unopposed candidate’s partisanship). Overall, turnout dropped by more than a third, even though the elections took place in a highly charged environment framed by the protests at the Wisconsin Capitol, and an openly expressed goal of overturning (or defending) the 19-14 Republican majority.² The turnout drop off in the recall exceeds the drop that occurs between presidential election years and off-years. In 2008 state senate elections, there was an average of 78,998 votes cast in the sixteen even numbered districts. In 2010, that number dropped by 26.6% in the odd-numbered districts up that year to 62,410. In the recall elections, the average number of votes dropped to 53,976.

Finally, whatever the validity the of “recall exception” on the question of disenfranchisement, it vanishes in the face of the simple fact that tens of thousands of voters in even numbered districts who voted in the Summer 2011 recall elections were almost immediately moved to their new districts (the effective date of Act 43 was specified as August 23, 2011), where they would lose their right to vote in 2012. In effect, many of the votes in the recall elections were cast by persons moved out of the district within a few weeks. This means that the citizens who were not moved from even to odd-numbered districts were committed to an election in which many of the voters no longer resided in the district; and those voters who moved had less say in who represented them in the new district, since they could not have voted for the incumbent in that district.³ Further, the candidates who won the recall elections were

² Two Republican incumbents, Dan Kapanke and Randy Hopper, were defeated by their Democratic challengers, resulting in a reduced Republican majority of 17-16.

³ In further attempting to defend the number of disenfranchised voters, Professor Gaddie makes an inapposite comparison to Oklahoma, where he lives, which without context has no bearing on whether the number of voters

immediately redistricted into new districts, some of which (especially the 21st) have relatively low core population retention from the old districts. In effect, immediately after the election both voters and incumbents were reshuffled into new districts.⁴ This is one of the fundamental reasons core population retention is such an important redistricting principle, since it helps preserve the legitimacy of the decisions made in the previous election.

Ultimately, the recall elections occurred in a very specific constitutional and political context that differed substantially from the fixed elections held every four years:

- all nine candidates who faced recalls attempted to stop the recall elections through litigation⁵
- the campaign was unusually chaotic, with both parties running “fake” or “placeholder” candidates to force primaries in the other party that would further delay the date of the final recall and give incumbents more time to campaign⁶
- turnout in the recall elections was, on average, 35% lower than the 2008 elections, even though two of the Senators who faced recalls ran unopposed in the previous election (Exhibit 1)

disenfranchised in Wisconsin is defensible. To give just a few examples of the differences that render the comparison irrelevant, the population of Oklahoma is significantly smaller than the population of Wisconsin, 3,751,351, compared to 5,686,986; the Oklahoma Senate has 48 members, each of whom represents 78,153, compared to Wisconsin, where there are 33 Senators each of whom represents 172,333. As a general principle, smaller districts tend to require larger shifts and deviations, as a shift of the same number of people will produce larger percentages in the smaller jurisdictions. Moreover, there has been no judicial finding that the 8% disenfranchisement in that state is permissible, nor any federal court action that is reviewing the question.

⁴ The new 21st Senate district, for example, has core population retention of only 58%. There were 72,431 persons moved from the 22nd into the 21st.

⁵ Wisconsin Government Accountability Board, “Statement Regarding Dismissal of Recall Lawsuits,” July 8, 2011 (available online at <http://gab.wi.gov/node/1939>)

⁶ Doris Hajewski, “Democrats to Force Primaries,” *Milwaukee Journal Sentinel*, June 11, 2011 (online at <http://www.jsonline.com/news/statepolitics/123688454.html>); Tom Tolan, “Can ‘Fake’ Democrats Really Pull an Upset?” *Milwaukee Journal Sentinel*, June 25, 2011 (online at <http://www.jsonline.com/news/statepolitics/124547974.html>)

- there is no evidence in the record, to date, that the authors of the map considered the recall elections in any way in making any choices about disenfranchisement; indeed, the timeline suggests that they could not have.

In short, a vote in a recall election is not a meaningful substitute for the right to vote in a regularly scheduled Fall election.

Professor Gaddie reaches to 1992 for his benchmark, ignoring 2002. More significantly, he has ignored the 1983 process and the decision by this Court (though a different three-judge panel) that the disenfranchisement of just 173,976 voters – by the renumbering of Senate districts – constituted a constitutional violation. In fact, the current panel stated in its October 21, 2011 decision denying the state’s motion to dismiss that: “If the plaintiffs are correct that the redistricting law disenfranchises 300,000, then their claim for relief appears much more than speculative at this stage of the proceeding.” Neither the defendants nor their experts have yet to provide any justification for the massive relocation and disenfranchisement. Two facts are indisputable: First, Act 43 disenfranchises almost 300,000 people. Second, it need not have. Under any number of alternatives, the number of people disenfranchised would have been, and could have been, dramatically fewer.

II. Act 43 Packs African Americans into Districts with Unnecessarily High Concentrations

At the time the 2002 Federal Court drew its plan in the previous redistricting cycle, the conventional wisdom was that an effective majority-minority district required a supermajority minority voting age population (usually between 55% and 65%; see Cameron, Epstein, and O’Halloran 1996), in order to offset the disadvantages in participation that usually occurred among minority voters as compared to white voters. The percentages necessary to achieve an equal opportunity to elect candidates of choice depend on voting patterns of minority and white

voters, and whether minority groups have faced historical barriers to participation. Brace, Grofman, Handley and Niemi(1988) noted that many federal courts used 65% minority population, or 60% minority voting age population, as a standard that provided minorities with an effective opportunity to elect candidates of choice in Voting Rights litigation in the 1970s and 1980s.

A body of academic work over the past 10-15 years has concluded that “high concentrations [of minority voters] may be unnecessary to secure minority electoral opportunities. The basic question, then, is whether the marginal gain in the probability of electing a black Democrat from a majority-minority district is sufficient to offset the marginal loss of influence in other districts” (Cameron, Epstein, and O’Halloran 1996, p. 805). Grofman, Handley, and Lublin (2001, 1391) have noted that there is no single threshold that applies in all cases. Depending on other factors, a bare numerical majority may be more than is necessary to insure equal voting opportunity in some cases, and a 65% majority might be too low (especially in majority Latino districts). In *Page v. Bartels*, 248 F. 3d 175 (2001), the 3rd District Court of Appeals allowed a redistricting plan that reduced concentrations of minority voters substantially below 50% (see also Hirsch 2002).

The thrust of this academic work and jurisprudence suggests that lower concentrations of African American voters is possible, while still preserving vital communities of interest and providing African American voters the opportunity to elect candidates of choice.

III. Act 43 Does not Create an Effective Majority-Latino Assembly District

Professor Gaddie claims that Act 43 creates two majority-Latino districts, the 8th and the 9th, with Latino voting age populations (VAP) of 60.5% and 54.0%, respectively. However, these figures ignore the crucial *eligible* voting age population. In the case of Latino populations,

that value is much smaller because a significant percentage of Latinos are not citizens and thus cannot vote. If these percentages are adjusted to account for the significant non-citizenship rate, the purported majorities disappear. At the same time, other configurations could have created – indeed, should have created – an Assembly district that complied with the Voting Rights Act by providing Latino-Americans a real opportunity to elect candidates of their choice.

In my December 14th report, I calculated a non-citizenship rate of 35.75% for Latinos in Wisconsin, based on statewide figures from the 2008 American Community Survey. Alternatively, we can also use a figure calculated directly by the Bureau of the Census, of 42% Latino noncitizens in the city of Milwaukee, using the 2005-2009 5-year ACS data. Either way, the results are comparable.

As I demonstrated in my initial report, the number of noncitizen Latinos of voting age must be subtracted from the overall Latino VAP to determine the number of eligible Latino voters. Simple VAP percentages overstate the appearance of effective influence of any minority group, but especially Latinos.

Exhibit 2 shows the results of these calculations, for multiple noncitizen rate estimates from the ACS. In part A, the claimed 60.5% Latino VAP in district 8 is reduced to 49.62% of voting eligible Latino voters, and the 54% Latino VAP in district 9 is reduced to an eligible Latino VAP of 43.02%. Using the 42% noncitizen rate from the 5-year ACS reduces the eligible Latino majorities in districts 8 and 9 to, respectively, 47.07% and 40.53%. None of these figures is sufficient to create an effective majority-Latino district. Given the historically low registration figures for Latinos, the actual concentrations of voting eligible Latino voters would have to be well above 50% to insure that Latino voters have a meaningful opportunity to elect candidates of

their choice, and that their votes are not diluted by more numerous and more likely to vote non-Latino white voters.

We need not rely on my own calculations to reach this conclusion. Defendant's expert Peter Morrison's report effectively concedes the point that Act 43 fails to create a majority-Latino district. In table 3 of his report (Morrison report, p. 9), Morrison shows the results of his estimates of the growth in the percentage of Hispanic Voting Age citizens in Assembly districts 8 and 9. In 2010, he estimates the Hispanic voting age citizen concentration at 40.9% in AD 8 and 33.7% in AD9, nowhere near the levels necessary to create a truly effective Latino majority district. These percentages, he forecasts, will grow by approximately 1 percentage point per year.

The implications of his own analysis are clear: under Act 43, Latinos will not constitute a majority in any district until at least November 2018, where the concentration in AD8 is forecast to reach 50.9%. Although this is a mathematical majority, it is highly unlikely to constitute an effective majority, given the historically lower participation and registration rates among Latinos. Moreover, this "majority" is forecast to occur only 16 months before the 2020 decennial census. Projections so far into the future are not a valid foundation for creating a district with far less than an effective majority, supported only by an assumption that populations will reach a bare (but still not effective) majority at the end of the decade.

Far from concentrating minority voting power and influence, Act 43 *dilutes* it. In the absence of a neutral non-racial explanation, that choice appears deliberate.

There was – and remains – an alternative that meets the command of the Voting Rights Act. My proposed map of Assembly district 8 has a Latino citizen voting age concentration of

60.06%, which is an appropriate level necessary in order to constitute an effective majority, given the significantly lower participation in the Latino community.

At the same time, there are several reasons why Dr. Morrison's results should not be taken at face value. He bases his demographic projections on an unspecified "demographic accounting model" (Morrison Report, p. 8) that is neither explained nor adequately justified. In supplemental information supplied by Dr. Morrison, he appears to be using mortality data for 5-year cohorts of Latinos, based on data from the federal Centers for Disease Control and Prevention (Supplemental Information, December 28, 2011, exhibit 1). Still, he has not provided sufficient data to permit an adequate evaluation of his methods, or to allow for a replication of his results.

Furthermore, there are numerous discrepancies in the numbers that Dr. Morrison uses in his report. He combines Census data (based on actual enumeration) with American Community Survey data (based on samples), without clearly specifying which of his calculations use which data. At times he uses one year ACS data, while at other times he uses data from the 5-year sample, as well as Census data, even in the same table (Morrison report, Table 2). He does not show how he has calculated some key values.

Morrison's calculations of citizen and noncitizen Latino populations in Assembly Districts 8 and 9 are not explained. The manner in which he has presented the data –switching between ACS and Census data, and between 1 and 5 year ACS data – makes any validation effort difficult. However, it is possible to identify potential differences between the ACS data and the more accurate Census data by estimating the total Latino voting age population (VAP) in districts 8 and 9 (as established by Act 43), and comparing these totals to the Census data for districts 8 and 9. In order to do this, I inferred that Dr. Morrison's method was to identify the

Census tracts within the borders of districts 8 and 9, and count the number of Latinos, voting age Latinos, and citizen voting age Latinos. I attempted to replicate this method, allocating populations in census tracts not wholly including in the districts by area (which is a method Dr. Morrison uses in a different context)

These calculations show the differences between the ACS estimates and Census figures for quantities that are common to both datasets (recall that the Census does not include any information on citizenship). According to the ACS, the Latino population in district 8 is 34,779. According to the Census, the voting age Latino population is 37,750. The fact that these numbers are so different – the ACS figure is 11% lower than the actual Census figure – shows the possible errors that can occur relying on ACS data to make inferences at lower levels of aggregation. Here, the preference is to use data from higher levels of aggregation, such as city and county non-citizenship rates, and apply them to the more accurate Census data. In fact, my methodology of combining the ACS non-citizen percentages calculated at high levels of aggregation – such as at the city or county level – to the Census data at the district level is recognized as providing more accurate estimates of the total citizen voting age population (Chapa et al, 2011, p. 9).

Although Morrison does not identify the non-citizenship rate for Latino voting age persons in Table 2, it is possible to impute his rate by using the actual Latino VAP in districts 8 and 9 and Morrison's estimates of the number of Latino voting age citizens in those districts. When the calculation is performed, the non-citizenship rate estimates turn out to be 53.0% in district 8 and 53.9% in district 9. The notable feature of these estimates is that they are dramatically different from the citywide noncitizen rate of 42%, using the five year ACS data.

No matter what numbers are used, however, there are no circumstances under Act 43 in which the concentration of voting age citizen Latinos in district 8 achieves even a bare majority. As I noted above, while there is no single percentage that applies in every case, for Latinos we know that the concentration of voting age population must be substantially larger than 50% in order to provide for an *effective* majority of eligible Latino voters. Morrison's Latino citizen voting age population in Assembly district 8 – 40.9% – is clearly nowhere close to a majority, and even using the Census data for Latino voting age population and the citywide non-citizenship rate of 42% fails to produce a mathematical majority (a concentration of 47.07%, from Exhibit 2), much less an effective Latino majority.

In exhibit 3 I show the demographics of the previous Assembly district 8 according to the 2010 Census (column 1), and the demographics of district 8 as created by Act 43. The growth in the Latino population between 2002 and 2010 had increased the concentration of Latino voting age population to 65.5%, and the Latino citizen voting age population to 52.4% in the existing Assembly District 8. Although Wisconsin is not covered by Section 5 of the Voting Rights Act, in a covered jurisdiction such a change in district demographics could very well be considered retrogression prohibited under the Act.

Finally, I demonstrated that Latinos are less likely to participate in elections, with lower registration rates (in part due to the number of noncitizens). The barriers to participation are likely to grow even stronger in the coming elections, because of the disproportionate impact of Wisconsin's newly enacted voter ID law. Under the new law, persons wishing to vote must display a Wisconsin drivers license, a state issued photo ID, a current military or student ID, or a passport. Previous work has shown that minorities – especially African Americans and Latinos – are far less likely than whites to have either the required ID or the documents necessary to obtain

them (Pawasarat 2005). I have made an open records request for the statewide drivers license and photo ID records for Wisconsin. I have not yet received this data, but I reserve the right to amend my opinions and conclusions based on the analysis I plan to perform on the data.

In short, Act 43 dilutes the voting power of Latinos by reducing their concentration in the newly drawn District 8 from the previous district 8.

IV. The Number of Municipal Splits Does Not Reflect the Arbitrary Fracturing of Communities of Interest

Professor Gaddie argued in his report that the number of “splits” – defined as the number of municipal areas (such as counties, cities, towns, and villages) that are divided into separate Assembly or Senate districts – is consistent with the decisions of this Court in both 1992 and 2002. The 1992 map had 199 county and municipal splits, while the 2002 map had 167 (again demonstrating that it is possible to draw a map with a minimal number of splits). Act 43, by contrast, contains 203 splits, more than the 1992 map and nearly 22% more splits than the 2002 map. Once again, the authors of the map provided no justification or explanation for the number of splits, many of which were clearly unnecessary (as I explain below).

In any case, an exclusive focus on the aggregate number of splits obscures the negative consequences of specific splits. Here, I focus on two cases: the fact that the City of Beloit (which had been in a single Assembly district since the 1980s) is split into two Assembly districts by Act 43; and the City of Marshfield, which had been in a single Assembly district since at least the 1960s, but which was split into separate Assembly *and* Senate districts via Act 43, and the incumbents who had represented the city were drawn into different districts that did not include it.

It is clear that neither of these splits was necessary. Marshfield has a population of 19,118 according to the 2010 Census, or about one-third of the population of an ideal Assembly District. The city of Beloit has a population of 36,966 according to the 2010 Census. Both cities could have easily been contained in a single Assembly district.

In addition to the fact of the municipal split, both cities also constitute communities of interest, with distinctive industrial, geographic, and social commonalities. The largest employer in the area is the Marshfield Clinic and associated St. Josephs Hospital. Beloit is an industrial town on the Wisconsin-Illinois border, and is one of the more diverse communities in the state: 17% of the population is Latino, and 15% African American (making it the third largest concentration of African Americans in the state, after Milwaukee and Racine).

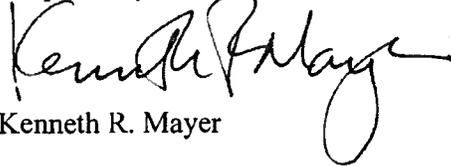
Why were these cities and communities split? No explanation has been provided (Ottman deposition, pages 230,232; Handrick deposition, pages 243,246; Foltz deposition, pages 208, 218-219).

V. Conclusion

The redistricting plan implemented by Act 43 departs in important respects from traditional redistricting principles. There are even questions about the accuracy of the population figures, given the discrepancies between the district geographies and the location of actual voters as recorded in the Statewide Voter Registration District. Act 43, despite the assertions of Professor Gaddie, in fact disenfranchises nearly 300,000 people by denying them their constitutional right to vote in the 2012 Senate elections. At the same time, Act 43 falls short in terms of respecting communities of interest and the rights of minorities, by on the one hand unnecessarily packing African Americans into districts with needlessly high concentrations, and simultaneously diluting the voting power of Latinos, by failing to create any districts with

sufficient concentrations of Latino voters to assure an equal opportunity to election candidates of their choice. And no explanation has been provided for the easily avoidable splits of cities that had for decades been part of a single Assembly district.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kenneth R. Mayer". The signature is fluid and cursive, with a large loop at the end of the last name.

Kenneth R. Mayer

Dated: January 13, 2012.

Sources

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Exhibit 1 – Voting in 2011 Recall Elections

District	Recall Votes Cast	2008 Votes Cast	Decrease from 2008	Notes
2	47,011	60,900	22.8%	Uncontested in 2008
8	73,520	99,328	26.0%	
10	64,359	98,967	35.0%	
12	55,242	85,125	35.1%	
14	50,908	54,486	6.6%	Uncontested in 2008
18	55,128	83,622	34.1%	
22	46,251	82,444	43.9%	
30	33,445	78,176	57.2%	
32	59,917	87,881	31.8%	
total	485,781	730,929	33.5%	

Exhibit 2

Act 43 - Effective Latino Voting Majorities in Assembly Districts 8 and 9

A - using 35.75% noncitizenship rate

	Total Population	Voting Age Population (VAP)	Latino Population	Latino VAP	Latino VAP Pct.	Non-Latino VAP	Latino Eligible Voters	Eligible Latino VAP %
District 8	57,246	38,009	37,750	23,004	60.5%	15,005	14,780	49.62%
District 9	57,233	38,630	34,647	20,871	54.0%	17,759	13,410	43.02%

B - Using 42.0% noncitizenship rate

	Total Population	Voting Age Population (VAP)	Latino Population	Latino VAP	Latino VAP Pct.	Non-Latino VAP	Latino Eligible Voters	Eligible Latino VAP %
District 8	57,246	38,009	37,750	23,004	60.5%	15,005	13,342	47.07%
District 9	57,233	38,630	34,647	20,871	54.0%	17,759	12,105	40.53%

Exhibit 3 – Comparison of Assembly district 8

	2002 AD-8 based on 2010 data and 06- 10 ACS Data	2011 Act 43 AD-8 Based on Morrison Data
Total Population	54,616	57,246
Total Voting Age Population (VAP)	35,888	38,021
Total Latino VAP	23,507 (65.5%)	23,004 (60.5%)
Total Latino Citizen VAP	13,634	10,816
% Latino CVAP	52.41%	40.9%
Total Latino Population	38,056	37,750
Total Latino %	69.7%	65.9%

1. No configuration will have enough Hispanic turnout to guarantee control of the district based only on Hispanic votes. That being said, there is ample evidence of white crossover voting that both districts should perform.
2. Despite reservations about the ACS, what happens if we put the tract-level citizenship estimates onto these districts? What is the Hispanic CVAP?
3. The proposed district 9 under Amendment 2 looks remarkably, statistically, like district 8 in 2002. That district did elect a representative of choice.
4. How compact are these two districts? How do they rate on compactness compared to the rest of the map? To their predecessor districts?
5. Two Hispanic community groups came out in support of the districts. Are any groups coming out in opposition? If not, strong credence should be paid to these communities in their desire for representation. Basically, it is possible to craft two districts there, in a highly compact space. If this is how the community wants to slice things up, the legislature is being responsive to a group of voters who are members of a potentially suspect class.

