

IN THE CHANCERY COURT FOR THE TWENTIETH JUDICIAL
DISTRICT OF TENNESSEE

TELISE TURNER, GARY
WYGANT, and FRANCIE HUNT,

Plaintiffs,

vs.

Case No. 22-0287-IV

BILL LEE, Governor,
TRE HARGETT, Secretary of State,
MARK GOINS, Tennessee Coordinator
of Elections; all in their official
capacity only,

Defendants.

VIDEO DEPOSITION OF:

DOUG HIMES

December 16, 2022

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Also present: Mr. Charles Powell, videographer

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1 The video deposition of DOUG
2 HIMES, taken on behalf of the PLAINTIFFS, at 9:12
3 A.M., on the 16th day of December, 2022, pursuant to
4 the Tennessee Rules of Civil Procedure, to be used
5 for ALL PURPOSES, in the above-styled cause, before
6 Katy Beres Melcher, Court Reporter, at John Sevier
7 State Office Building, Nashville, Tennessee in
8 accordance with the following stipulation.

11
12 S T I P U L A T I O N

13
14 The formalities as to notice,
15 caption, certificate, transmission, et cetera, are
16 expressly waived.

17 It is agreed that Katy Beres
18 Melcher, being a Licensed Court Reporter for the
19 State of Tennessee may swear the witness remotely.

20
21
22 *** *** ***

1 THE VIDEOGRAPHER: Here begins the
2 deposition of Doug Himes in the matter of
3 Telise Turner, Gary Wygant, and Francie Hunt
4 versus Bill Lee, Governor; Tre Hargett,
5 Secretary of State; Mark Goins, Tennessee
6 Coordinator of Elections; all in their official
7 capacity only. Today's date is December 16th,
8 2022. Time on the video monitor is 9:12 a.m.

9 Counsel, please identify yourselves and
10 state whom you represent.

11 MR. TIFT: Scott Tift representing the
12 Plaintiffs.

13 MR. VARELA: Pablo Varela representing the
14 Defendants.

15 MR. SWATLEY: Jacob Swatley representing
16 the Defendants.

17 THE VIDEOGRAPHER: Will the court reporter
18 please swear the witness.

19 - - -

20
21 DOUG HIMES,
22 having been first duly sworn, testified as follows:

23 EXAMINATION BY MR. TIFT:

24 Q All right. Good morning, Mr. Himes.

25 A Good morning.

1 Q We've done this before once in a different
2 capacity, so I know you have given a deposition
3 before. That's usually my first question. We had a
4 deposition with you as a fact witness a few months
5 ago. I assume you recall that, correct?

6 A Yes, I do.

7 Q Okay. So, I'll go back over the ground
8 rules quickly, but you watched a depo Tuesday. You
9 were in one a few months ago, and you did a good job
10 with these, so I'm not too concerned.

11 But, of course, the overarching one
12 is, is just you giving verbal responses and you and
13 me doing our best to not talk over each other so
14 that our court reporter can get everything down. We
15 may have to remind each other throughout. And --
16 but I know you have been good at that before. But
17 can we agree to make every effort to use verbal
18 responses and not talk over each other?

19 A Yes, sir.

20 Q All right. And of course, we can take a
21 break at any time. I don't expect this to be that
22 long of a depo. Um, I don't think it will be as
23 long as Tuesday's as a frame of reference. But, of
24 course, we can take a break at any time. Just let
25 me know.

1 I'll inevitably ask some questions
2 confusingly. If you are confused by the question at
3 all, the question doesn't make sense, the question
4 sounds silly, like, just let me know. Tell me to
5 rephrase it, you don't understand it, whatever,
6 okay? Agree that you will do that if you don't
7 understand the question?

8 A Yes.

9 Q Okay. And if you do answer the question,
10 I'll assume that understood. Does that sound good?

11 A That's fair.

12 Q Okay. Um, you're used to this question
13 that sometimes throws people off, but have you taken
14 any medicine or any other substance that would
15 affect your memory or ability to testify honestly
16 today?

17 A No, sir.

18 Q Okay. Okay. We are here interviewing --
19 interviewing. Deposing you as one of the two
20 experts named by the Defendants. Um, and the first
21 thing I would like to do is, I think, close off one
22 line of questioning, which is, you may recall this
23 lawsuit deals with both claims about House map and
24 the Senate map. Plaintiffs' experts produced an
25 expert on both. You have not produced a report on

1 the Senate claims at all. Am I correct in
2 understanding that you are not offering any expert
3 opinions about the Senate map?

4 A That is correct.

5 Q Okay. All right. Well, on that
6 understanding, I'm not going to ask you about the
7 Senate period, okay?

8 Okay. So, let's -- the converse of
9 that is this whole deposition we are talking about
10 the House Redistricting Map. It was enacted,
11 enacted in 2022, effective for these 2022 elections
12 that have just happened. And when I refer to the
13 enacted map, I am referring to the House enacted map
14 that was enacted in, in early 2022. Can we agree
15 that when either of us calls something the enacted
16 map, that's the map we are referring to?

17 A Yes. And I think in the last deposition
18 we had, we sometimes just had to clarify at times.
19 I may refer to as -- I may refer to it as PC598,
20 which is the public chapter number.

21 Q Okay. And that's -- 598, that's good. So
22 PC598 or the enacted map are referring to the House
23 map that was passed in 2022. And I think last time
24 we also occasionally referred to previous decades
25 enacted maps, and we just specified we were talking

1 about the decade. And if we didn't, we were still
2 on the current decade. So, I think we are on the
3 same page terminology wise. But again, we'll
4 clarify it for each other if we get off track on
5 that. Sound good?

6 A Agreed.

7 Q Okay. Um, in your role as expert, did you
8 do any work to determine if the enacted map splits
9 as few counties as necessary to comply with Federal
10 Constitutional requirements?

11 MR. VARELA: Object to the form.

12 THE WITNESS: I did not look at the
13 enacted plan PC598 to determine whether it
14 complied with, with State Constitutional
15 requirement on county splitting.

16 BY MR. TIFT:

17 Q Okay.

18 A I think you mentioned Federal.

19 Q Right. Well, so my question is: Did you
20 do any work as an expert to determine if the enacted
21 map splits as few counties as necessary to comply
22 with Federal requirements in the Constitution?

23 A I reviewed the enacted map based on all
24 the criteria that the House has put in place and
25 reviewed it in that sense for its overall compliance

1 with the State and Federal Constitutions.

2 Q Okay. And, and did you take any
3 affirmative action as an expert to look back at the
4 map and see if there could have been fewer county
5 splits while still complying with one person, one
6 vote and the Federal Equal Rights clause?

7 A I did not on the enacted plan.

8 Q Okay. Did you -- well, let me say, do you
9 still have access to mapping software?

10 A Yes.

11 Q I assume you still have access to
12 Maptitude?

13 A Yes.

14 Q And I guess everyone has access to Dave's
15 Redistricting, correct? Or let me say it a
16 different way, do you still have access to Dave's
17 Redistricting?

18 A If I wanted to use Dave's Redistrict
19 Builder, they are publicly available.

20 Q Okay. And so, did you use any of those
21 softwares or any other to work with the enacted map
22 as an expert and see if there -- if you could create
23 a map with fewer county divides that was still
24 Constitutionally compliant?

25 MR. VARELA: Object to the form.

1 THE WITNESS: Did I use the -- to look to
2 see if PC598 on the issue of could it have
3 fewer splits?

4 BY MR. TIFT:

5 Q Correct.

6 A As in this expert report?

7 Q Correct.

8 A I did not.

9 Q Okay. Did you go back to the
10 redistricting software -- well, not -- let me --
11 I'll start that over. Did you use any mapping
12 software to take the enacted map and see if you
13 could revise it in ways that reduce the number of
14 county splits?

15 A I did not and I wouldn't use the two
16 publicly available ones.

17 Q Okay. So should I limit my questions to
18 Maptitude if you were going to be doing that?

19 A I, I, your -- Mr. Cervas, I guess, has
20 used um, um, what's it called? I've lost -- Dave's
21 Redistricting.

22 Q Correct.

23 A The only time I would look at that would
24 be to look at his plans, um, and I would want to
25 make sure that I could move those -- you can export

1 them and import them into a more professional GIS
2 program.

3 Q Right.

4 A And of those, that's Maptitude or RGIS,
5 which is the [inaudible] version of Maptitude.

6 Q Right.

7 A So, to now analyze any map that was done
8 on one of those publicly available ones, you would
9 want to put them into a professional program.

10 Q Okay. So, as an expert, have you used
11 Maptitude to take the enacted map and see if you
12 could create a map with fewer county splits that was
13 still, in your opinion, Constitutionally compliant?

14 MR. VARELA: Object to the form.

15 THE WITNESS: I have not.

16 BY MR. TIFT:

17 Q Okay. Have you used Maptitude, um -- I'll
18 start that over. As an expert, have you made any
19 attempt to create a new map that has fewer county
20 splits than the enacted map?

21 MR. VARELA: Object to the form.

22 THE WITNESS: I have not tried to draw a
23 new 99 District House Map.

24 BY MR. TIFT:

25 Q Okay. Have you tried to, in your expert

1 capacity, tried to draw any new maps, whether full
2 99 county or parts of the state?

3 MR. VARELA: Object to the form.

4 THE WITNESS: I have not drawn any new
5 maps for this report, if that's what you're
6 asking.

7 BY MR. TIFT:

8 Q That's --

9 A For the expert report?

10 Q Correct.

11 A I have not tried to recreate PC598.

12 Q Okay. Nor have you tried to create any
13 new maps?

14 MR. VARELA: Object to the form.

15 THE WITNESS: Agree.

16 BY MR. TIFT:

17 Q You said -- sorry. You said to recreate
18 598 so --

19 A Or to -- sorry. Or to do a replacement
20 for 598, anything new.

21 Q Okay. So, you haven't as an expert done
22 any affirmative map making to create new maps?

23 MR. VARELA: Object to the form.

24 THE WITNESS: No.

25 MR. TIFT: Can you expand on your form

1 objection? What's wrong with that question.

2 MR. VARELA: Vague.

3 MR. TIFT: Okay.

4 BY MR. TIFT:

5 Q All right. Go on with your answer.

6 A No. I have only used Maptitude to look at
7 the alternative suggestions made by Mr. Cervas.

8 Q Okay. Um, okay. Probably worth talking
9 at the start, at the start about making sure we are
10 talking about the same thing when we talk about
11 county splits. When I'm talking about county
12 splits, what I am meaning is where a portion of the
13 county is paired with an additional county or more
14 to form a district. Do you agree that's what a
15 county split is for the purpose of this litigation?

16 A Yes.

17 Q Okay. Um, so, as a -- as the expert here,
18 did you do any affirmative work to determine if the
19 enacted map splits as few counties as possible to
20 comply with one person, one vote and the Federal
21 Constitution's Equal Rights Clause?

22 A As I, as I have stated, I have not tried
23 to redraw or draw a new House plan for this expert
24 report.

25 Q Okay. And even separate from drawing a

1 new plan, have you done any work to, let's say,
2 confirm that the enacted map does divide or split
3 the fewest counties possible --

4 MR. VARELA: Object to the form.

5 BY MR. TIFT:

6 Q -- while still complying with the Federal
7 Constitution?

8 A I have not for this, purposes of this
9 report.

10 Q Okay. Separate from the enacted map, as
11 expert in this case, did you do any work to
12 determine if the General Assembly could have created
13 a map with fewer county splits that was still
14 compliant with the Federal Constitution?

15 MR. VARELA: Object to the form.

16 THE WITNESS: For this expert report?

17 BY MR. TIFT:

18 Q Yes.

19 A No.

20 Q Do you have an opinion on whether the
21 enacted map splits as few counties as possible -- as
22 necessary to comply with one person, one vote and
23 the Federal Constitution's Equal Rights Clause?

24 A I have an opinion that's in the report
25 that Chapter 598 is compliant with all the

1 Constitutional provisions, both State and Federal,
2 and the districting criteria of the House of
3 Representatives.

4 Q Right. I see that and that's not my
5 question. My question is, do you have an expert
6 opinion on whether the enacted map split as few
7 counties as necessary to comply with the Federal
8 Constitutional requirements?

9 A I guess as I have answered, I haven't
10 looked to draw for this expert report purposes a map
11 that split fewer counties.

12 Q Okay. And I hear that you haven't done
13 that, but you are an expert because experts proffer
14 expert opinions. And so, I'm saying, do you have an
15 opinion on whether the enacted map split the fewest
16 counties necessary to comply with the Federal
17 Constitutional requirements?

18 A I think you are asking me to opine on
19 something that I haven't looked at doing for the
20 purposes of this report.

21 Q Which is fine. Does that mean you don't
22 have an opinion on it?

23 A I guess my opinion would be that I haven't
24 seen in the alternatives a plan that's more
25 compliant with the Constitutional provisions.

1 Q Okay. And I'm entitled through this
2 deposition to know the expert opinions of the
3 State's expert. So I'm trying to figure out, does
4 the State's expert, you, have an opinion on whether
5 the enacted plan created as few county splits as
6 necessary to comply with the Federal Constitution?

7 A I guess what I would say to you is, it's
8 hard for me to have an opinion without seeing
9 something that proposes to do that. Is it possible
10 to split fewer counties? Perhaps.

11 Q Okay. Um, so, so is it right to say that
12 your opinion is that it is perhaps possible that
13 there could be fewer, fewer county splits under the
14 current demographics while still complying with the
15 Federal Constitution?

16 A Possible, yes.

17 Q Okay. Do you have an opinion as an expert
18 on whether the General Assembly did seek to create
19 as few county splits as necessary to comply with the
20 Federal Constitution?

21 MR. VARELA: Object to the form.

22 THE WITNESS: For the purposes of this
23 expert report, I don't have an opinion on that.

24 BY MR. TIFT:

25 Q Okay. Um, as the State's expert, do you

1 have an opinion on whether the General Assembly
2 sought to cross as few county lines as necessary to
3 comply with the Federal one-person, one-vote
4 requirement?

5 A As an expert on this, I can only point to
6 the report where I listed a potential reason for
7 each of the splits that the General Assembly did.
8 And at the end of the day, I believe the deviation
9 was 9.90, the overall deviation.

10 Q Okay. And that's not my question. My
11 question is, do you have an opinion on whether the
12 General Assembly in passing the enacted map sought
13 to create as few county line splits as necessary to
14 comply with one person, one vote?

15 A And for the purposes of this expert
16 report, I don't think I would have an opinion on the
17 intent of what the General Assembly did.

18 Q Okay. Um, did you review the transcripts
19 of the public hearings that led to the enacted maps
20 in your role as expert?

21 A I am aware of the public hearings on the
22 House Select Committee on redistricting.

23 Q Okay. And are you aware of them just
24 because you were there and participating, or have
25 you gone back and looked at the transcripts or the

1 videos?

2 A I have watched them since the meetings
3 have happened, not necessarily in preparation for
4 this report.

5 Q Okay. And so, as the State's expert aware
6 of those public hearings, do you recall any publicly
7 made statements at these hearings wherein the
8 Legislature claimed that they sought to create as
9 few county splits as necessary to comply with
10 Federal Constitutional requirements?

11 MR. VARELA: Object to the form.

12 THE WITNESS: I don't believe there were
13 any comments to that effect.

14 BY MR. TIFT:

15 Q Okay. Um, and do you have an opinion as
16 an expert in this case on whether the General
17 Assembly sought to cross as few county lines as
18 necessary to comply with the Federal Constitution's
19 prohibitions against the dilution of minority vote?

20 A I don't think I have an opinion on that.

21 Q Okay. Um, I guess this would be a good
22 point to just take a sidestep and ask what have you
23 reviewed for your -- in drafting your expert report,
24 in your expert capacity, what did you review? What
25 documents or info did you review as expert?

1 A Sure. I looked at the State and Federal
2 Constitutional Requirements, the Guidelines of the
3 House of Representatives, the Practices of the House
4 of Representatives.

5 Q You got to slow down a little for our
6 court reporter.

7 A Sorry. The Practices of the House of
8 Representatives. I looked at the, um, Affidavits of
9 myself and Mr. Cervas for the -- was it the TRO
10 Hearing? Is that what he had way back?

11 Q Temporary Injunction, yes.

12 A For that hearing. I've looked at -- I
13 guess I'll look through here. I have looked at...

14 Q Actually, if you are looking through, why
15 don't you just list out each document --

16 A Sure.

17 Q -- that you have got in front of you.

18 A So, in front of me, I have the expert
19 report of Douglas Himes, the Affidavit of Doug
20 Himes, the Affidavit of Jonathan Cervas, the
21 Affidavit of Doug Himes. There's two of them. The
22 Report of Plaintiffs' Expert regarding Tennessee
23 State House Reapportionment, Expert Report of Sean
24 Trende, and the Rebuttal Report of Plaintiffs'
25 Expert Regarding Tennessee State House

1 Reapportionment. And I would have also looked at
2 some of the Case Law around redistricting.

3 MR. SWATLEY: Scott, real quick, I'm
4 sorry. You're not expecting anyone else, are
5 you, to join you here?

6 MR. TIFT: I don't think so.

7 MR. SWATLEY: Okay.

8 MR. TIFT: Can we go off the record for a
9 second?

10 THE VIDEOGRAPHER: Going off the record.
11 Time on the monitor is 9:31.

12 [9:31 A.M., a recess was had
13 until 9:32 A.M..]

14 THE VIDEOGRAPHER: Back on record. Time
15 on the monitor is 9:32.

16 BY MR. TIFT:

17 Q Okay. I think we just listed all the
18 documents; is that correct, that you have in front
19 of you?

20 A That is correct.

21 Q Okay. And then a notepad, of course.

22 Okay. So, it sounds like you did not
23 review the public hearing testimony in, like,
24 specifically in advance of writing your report; is
25 that correct?

1 A That is correct.

2 Q Okay. Okay. Mr. Himes, I assume you said
3 you looked at some Case Law. I assume that the
4 Lockert decisions are among the Case Law you looked
5 at; would that be accurate?

6 A That, that is accurate.

7 MR. TIFT: Okay. I'm going to move to
8 admit Lockert, what we call Lockert I, the 1982
9 Lockert Decision as deposition Exhibit 1.

10 MR. VARELA: No objection.

11 (The above-referred to
12 document was thereupon
13 marked HIMES Exhibit No.
1, and is attached
hereto.)

14 BY MR. TIFT:

15 Q I'll give this to you.

16 A All right.

17 Q Okay. You have, of course, reviewed the
18 Lockert cases multiple times and even summarized
19 some of them in your report, correct?

20 A That is correct.

21 Q Okay. I'd like you to turn to what's --
22 this is a Westlaw version printed up. To what's
23 Westlaw's Page No. 12.

24 A All right.

25 Q Okay. On the right column, um, there's

1 numbered paragraphs and at number 3, number 3 ends,
2 "we hold that the plan adopted must cross as few
3 county lines as is necessary to comply with the
4 federal constitutional requirements." Do you see
5 that?

6 A I do.

7 Q And you are familiar with that holding?

8 A I'm familiar with Lockert I.

9 Q Okay. And so, I understand from what we
10 have just discussed that you don't have an opinion
11 about whether the enacted plan crossed as few county
12 lines as is necessary to comply with Federal
13 Constitution requirements?

14 A If the -- I -- the opinion that the Public
15 Chapter 598 is Constitutionally compliant.

16 Q Which I understand and you have made quite
17 clear but that's not the question. The question is,
18 earlier I asked if you have an expert opinion about
19 whether the enacted plan adopted -- crossed as few
20 county lines as necessary to comply with the Federal
21 Constitutional requirements, and I understood your
22 testimony to be, no, you don't have an expert
23 opinion on that.

24 MR. VARELA: Object to the form.

25 THE WITNESS: I think that is -- I think

1 that is what I said, that I don't have a
2 singular opinion about one factor -- one factor
3 making the plan Constitutionally compliant.

4 BY MR. TIFT:

5 Q Okay.

6 A Is that --

7 Q Well, I don't think it quite answers my
8 question, because my question is just very simply,
9 do you as an expert have an opinion about whether
10 the enacted plan split as few counties as necessary
11 to comply with the Federal Constitutional
12 requirements?

13 A I would say that splitting 30, it does
14 comply with the Constitutional, Federal
15 Constitutional requirements of one person, one vote.

16 Q Okay. And, again, that's not my question.

17 A Okay.

18 Q We are looking at what our Supreme Court
19 has said about what the Supreme Court's -- what the
20 Constitution provision means.

21 A Right.

22 Q And, so, I'm not asking about Federal
23 Constitutional compliance. I'm asking if you have
24 an expert opinion about whether the enacted map
25 split as few counties as necessary to comply with

1 the Federal Constitution?

2 A I don't know if I have an opinion that it
3 split the fewest number of counties. It split 30,
4 which is the upper limit in Lockert II.

5 Q Okay. So you don't have an opinion about
6 whether the enacted plan crossed as few county lines
7 as necessary to comply with the Federal
8 Constitutional requirements?

9 A For the purpose of this expert report, I
10 didn't attempt to draw a plan that crossed fewer
11 county lines.

12 Q Right. And so you don't have an opinion
13 on that?

14 A I don't have an opinion, since I didn't
15 try to, to draft a plan.

16 Q Okay. And you don't have an opinion on
17 whether a plan could have been drafted that crossed
18 as few lines as necessary to comply with the Federal
19 Constitution?

20 MR. VARELA: Object to the form.

21 THE WITNESS: I suppose I have an opinion
22 on the alternative plans that have been
23 submitted having not complying fully with the
24 Constitutional requirements and guidelines and
25 practices of the House.

1 BY MR. TIFT:

2 Q Right. And you have made that clear. But
3 what I want to make clear is you don't have an
4 opinion on whether a plan could have been created
5 that crossed fewer county lines while still
6 complying with Federal Constitutional requirements?

7 MR. VARELA: Same objection.

8 THE WITNESS: I would -- it's
9 theoretically possible.

10 BY MR. TIFT:

11 Q Okay. And you agree that the Lockert
12 cases don't create a bright line exact number of
13 counties that are the fewest that can be divided,
14 correct?

15 MR. VARELA: Object to the form.

16 THE WITNESS: So, I think the way I read
17 the Lockerts together, I agree with that
18 statement, that the upper limit of 30, in my
19 mind, is a little bit like the 10 percent
20 overall deviation standard that it's something
21 that is there as a, as a point but it does not
22 necessarily insulate you one way or another.

23 Could you split a plan with 33 counties?
24 You might very well be able to do that. Could
25 you split a plan with 25? Well, I think under

1 the Lockert upper limit of 30, I think that
2 would give you a little bit more protection,
3 but it may not be insulated. So that's sort of
4 my understanding of how these cases work
5 together.

6 BY MR. TIFT:

7 Q Right.

8 A With the upper limit at 30. Um, and then,
9 the way that the House has treated with Lockert
10 decisions from 1990 onward.

11 Q Right. And you would agree that any given
12 decade with the whole new set of census data and
13 population moving, you could plausibly have fewer or
14 more county splits as a result of population change
15 every decade, correct?

16 MR. VARELA: Object to the form.

17 THE WITNESS: I agree. It's a new puzzle
18 every 10 years.

19 MR. TIFT: Okay. I'm going to ask that
20 this be admitted as Exhibit 2. This is the
21 first couple pages of Tennessee Code Annotated
22 3-1-103.

23 MR. VARELA: No objection.

24
25 - - -

(The above-referred to document was thereupon marked HIMES Exhibit No. 2, and is attached hereto.)

BY MR. TIFT:

Q And I'll just state for the record, it's only the first two pages, because the other 200 pages are just a long list of census blocks.

A They are that.

Q Okay. Looking at TCA 3-1-103 in front of you, subsection (b)(5) you see states that no more than 30 counties are split to attach to other counties or parts of counties to form multi-county districts. Do you recognize that?

A I do.

Q And you're familiar with that provision?

A I am.

Q Okay. And you agree that provision, that no more than 30 counties can be split is not the same as a provision saying that each plan should have as few county lines crossed as necessary, correct?

MR. VARELA: Object to the form.

THE WITNESS: I agree that the TCA 3-1-103 (b)(5) does not say fewest counties.

1 BY MR. TIFT:

2 Q Okay. It also doesn't say as few county
3 lines as necessary to comply with Federal
4 Constitutional requirements, right?

5 A (b)(5) doesn't say to comply with the
6 Federal Constitution, but some of the other criteria
7 want us to comply or want the House to comply with
8 the Federal Constitution.

9 Q Right. And I'm just making the straight
10 forward point --

11 A Sure.

12 Q -- that (5) here and the language we have
13 quoted from Lockert are, are different language,
14 correct?

15 MR. VARELA: Object to the form.

16 THE WITNESS: So, yeah. So, (5) does not
17 say what Lockert I says verbatim, but it is, it
18 is, uh, what, uh, the General Assembly, the
19 House of Representatives has used as the
20 interpretation of the Lockert line of cases.

21 BY MR. TIFT:

22 Q Right. And I believe you have referred to
23 this in your report and in your public testimony as
24 section (5) of the TCA section sort of setting a max
25 number of county splits, correct?

1 MR. VARELA: Object to the form.

2 THE WITNESS: Yes. It's the House's
3 intent or the General Assembly's intent not to
4 exceed 30.

5 BY MR. TIFT:

6 Q Right. And this language in TCA 3-1-103
7 isn't addressing whether there could be fewer splits
8 or setting a minimum number of splits, right?

9 MR. VARELA: Object to the form.

10 THE WITNESS: It is not.

11 BY MR. TIFT:

12 Q Have you reviewed any documents or other
13 information in preparing your expert report that you
14 contend demonstrates that the General Assembly did
15 seek to divide as few counties as possible to comply
16 with the Federal Constitutional requirements?

17 MR. VARELA: Object to the form.

18 THE WITNESS: Could you rephrase that?

19 BY MR. TIFT:

20 Q Yeah, I thought about three different
21 stumbling over my words there. In all the -- in
22 whatever you have reviewed in your capacity as an
23 expert, have you reviewed any documents or
24 information that you contend demonstrate the General
25 Assembly sought to split as few counties as

1 necessary to comply with the Federal Constitutional
2 requirements?

3 MR. VARELA: Object to the form.

4 THE WITNESS: I have not -- I don't think
5 I have seen any documentation that suggests
6 that, that 598 is the fewest counties.

7 BY MR. TIFT:

8 Q Right.

9 A Is that what you are asking?

10 Q And I'm not even asking necessarily the
11 fewest counties, but have you seen any evidence you
12 would point to that shows that the General Assembly
13 sought to cross as few county lines as necessary to
14 comply with the Federal Constitutional requirements?

15 MR. VARELA: Same objection.

16 THE WITNESS: Again, I could only say
17 that, that the hearings, um, and the, the,
18 discussions at the hearings was that this is
19 Constitutionally compliant. I don't recall
20 anything that would suggest that it was the
21 fewest counties or if 30 was the magic number
22 this time.

23 BY MR. TIFT:

24 Q Okay. And do you have an opinion just,
25 just looking at the enacted map itself, the map on

1 its face in a vacuum with no other knowledge, just
2 looking at the map itself as someone who is
3 experienced with map drawing, do you have an opinion
4 whether the map itself demonstrates that the General
5 Assembly in creating this map crossed as few county
6 lines as necessary to comply with the Federal
7 Constitution?

8 MR. VARELA: Object to the form.

9 THE WITNESS: I guess looking at these
10 guidelines and looking at the map, it wouldn't
11 -- it doesn't surprise me or there's nothing
12 that jumps out at me that there's 30 splits in
13 this particular map.

14 And part of that would be based on not
15 only these guidelines that have a sort of a no
16 more than 30, as we have talked about, but also
17 knowing that in the past three redistricting
18 cycles in the 90s there were 29 and 30 in the
19 two plans that were operative there. In the
20 2000 round, there were 30 splits. And in the
21 last round, the 2010 round, there were 28
22 splits.

23 So, it does not surprise me and nothing
24 would suggest to me that that wasn't a correct
25 map or a map that wasn't, um, Constitutional

1 just based on the 30 splits, looking at it.

2 BY MR. TIFT:

3 Q Right. And you ended up referencing a
4 good number of things outside of the map itself.
5 But just looking at the map itself as someone who
6 understands census data and redistricting, does the
7 map on its face demonstrate to you that as few
8 county lines as necessary -- does the map itself
9 reveal to you -- eh, I'll start over. Just looking
10 at the map itself, as someone who is an expert in
11 redistricting, does the map itself demonstrate that
12 the General Assembly crossed as few county lines as
13 necessary to comply with Federal Constitutional
14 requirements?

15 MR. VARELA: Object to the form.

16 THE WITNESS: Just looking at a map like
17 that, you wouldn't -- you would have to -- you
18 would have to try to draw -- you would have to
19 see if you could do fewer than 30.

20 BY MR. TIFT:

21 Q Okay.

22 A Looking at the map itself, it looks like
23 a, you know, good map.

24 Q Right. And you haven't tried to see if
25 you could create fewer than 30, correct?

1 MR. VARELA: Object to the form.

2 THE WITNESS: As we have discussed for the
3 purposes of this report, I did not try to
4 re-create or do a new map of the 99 House
5 districts.

6 BY MR. TIFT:

7 Q Okay. So, have you ever tried to create a
8 map with fewer than 30 splits?

9 MR. VARELA: Object to the form.

10 THE WITNESS: That's a question I'm not
11 going to be able to answer.

12 BY MR. TIFT:

13 Q Okay. I think your lawyer needs to make an
14 objection if that's the case.

15 MR. VARELA: I'm making the objection that
16 if it calls for any information that might
17 indicate communications between him as the
18 attorney for the House and his client, that he
19 not answer that question.

20 BY MR. TIFT:

21 Q Okay. But as an expert, you have made no
22 affirmative effort to determine if there could have
23 been fewer than 30 county splits, correct?

24 A For the purpose of this expert report, I
25 have not tried to draw a House plan with splits less

1 than the number in 598.

2 Q Okay. And in your head, you are walling
3 off activities that you did when you were acting in
4 your capacity as counsel to the Committee and ethics
5 counsel, correct?

6 A I think that, that is a correct
7 assumption, because this is, I feel, the expert part
8 of this report, I feel like the work I would have
9 done for the Committee, either work product of
10 myself or at the direction of the members of the
11 General Assembly, I would -- I think we would assert
12 a privilege on that.

13 Q Okay. Um, and at this point, I mean, do
14 you consider yourself an expert in the process of
15 redistricting?

16 A Yes.

17 Q Okay. And as an expert in redistricting,
18 do you have any belief about whether the House map
19 could have been drawn on the 2020 data to include
20 fewer county splits than the enacted map while still
21 being Constitutionally compliant?

22 MR. VARELA: Object to the form.

23 THE WITNESS: So, the basis of this expert
24 report and the only thing that I looked at
25 other than 598 would be the multiple

1 alternatives that Mr. Cervas prepared. Um, in
2 looking at those, you know, the conclusion in
3 the report was none of them are more compliant
4 than 598.

5 Um, he submitted two additional
6 alternatives after that. Um, and on total,
7 none of them are more compliant than 598. Um,
8 13C is probably the best attempt. You know,
9 tomorrow is a year after the House met to do
10 adopt a redistricting plan. But even 13C, a
11 year later, isn't a plan that is superior to
12 598.

13 BY MR. TIFT:

14 Q Okay. And that wasn't my question at all.
15 My question was, you certainly have been doing this
16 for over 30 years. You have worked with Tennessee's
17 counties three, maybe four, cycles in different
18 capacities starting as your time as the Legislature
19 intern. You have a lot of knowledge about Tennessee
20 redistricting, about working with census data, about
21 how the counties divide; you would agree?

22 A Agreed.

23 MR. VARELA: Object to the form.

24 BY MR. TIFT:

25 Q And I'm asking, informed by this body of

1 knowledge you have, do you have a belief sitting
2 here whether fewer counties could have been split in
3 the plan that was ultimately enacted while still
4 complying with the Constitutional requirements?

5 MR. VARELA: Object to the form.

6 THE WITNESS: I think it's theoretically
7 possible. But in the 30 years of experience
8 that I personally have working with the House
9 or Representatives and redistricting, it's a
10 balancing act of all these criteria.

11 BY MR. TIFT:

12 Q Right.

13 A So, whether a plan could be drawn, I would
14 like to see it, and then see how it works with the
15 criteria and practices of the House.

16 Q Right. But your belief is that it could
17 be possible. I think is what you said, right?

18 MR. VARELA: Object to the form.

19 THE WITNESS: I think, yes, it's possible
20 theoretically that you could draw a House map
21 with fewer splits. But whether it would be
22 compliant with the other Constitutional
23 provisions, the practices of the House, the
24 criteria, would it make it a slightly better
25 plan? I don't know.

1 BY MR. TIFT:

2 Q Let me ask this. This is a hypothetical
3 question. I understand that you were concerned with
4 core preservation and incumbency protection to some
5 extent. But if those two factors don't exist, so
6 core retention and incumbency protection are not
7 factors, with your experience over these 30 plus
8 years doing maps, do you believe that there could be
9 fewer than 30 county splits if you are not concerned
10 about those two factors?

11 MR. VARELA: Object to the form.

12 THE WITNESS: If you didn't consider those
13 two factors, I think 13C, um, is, um, a little
14 bit of an illustration of something that may
15 have fewer splits. I would also point out
16 though that 13C has a higher overall deviation
17 than the plan that was enacted. So, I don't
18 think that's an insignificant factor for 13C.

19 BY MR. TIFT:

20 Q Sure. And I didn't even ask you about
21 13C. What I asked you is, if you were drawing maps
22 in this cycle and were not considering core
23 preservation or incumbency, would you agree that you
24 probably could have had fewer county splits if the
25 only concerns were one person, one vote and the

1 Federal Constitutional requirements?

2 MR. VARELA: Same objection.

3 THE WITNESS: Yeah, I think it's
4 theoretically possible.

5 BY MR. TIFT:

6 Q Okay. But you don't even have a -- you
7 don't have a gut or a hunch despite all your
8 experience about whether you could have fewer county
9 splits without considering core preservation and
10 incumbency protection?

11 MR. VARELA: Same objection.

12 THE WITNESS: I think as an illustration
13 of a possibility would be 13C.

14 BY MR. TIFT:

15 Q Okay. Okay. I would have thought that,
16 you know, with all the experience you have, you
17 would sort of have a gut about, yeah, if I'm not
18 worrying about core preservation, if I'm not
19 worrying about incumbency protection, then it
20 becomes easier to have fewer splits?

21 MR. VARELA: Objection.

22 BY MR. TIFT:

23 Q But it sounds like you don't have a gut on
24 that?

25 A Well, I think it's -- I think it's

1 possible theoretically, but I also think that the
2 process for one of these for a plan to pass, at the
3 end of the day is going to require practically 50
4 people to vote affirmatively for it in the House and
5 17 in the Senate. So, there's going to be some
6 consideration of factors of all these factors. And
7 it's hard not to consider some of the incumbency and
8 core preservation. But trying to divorce, it still
9 has to have a, to be able to pass.

10 Q Okay. All right. Yeah, I would have
11 thought, you know, with several factors removed, you
12 might have a stronger gut about, yeah, you probably
13 could reduce splits if you're not worried about
14 those things, but it sounds like you don't?

15 MR. VARELA: Object to the form.

16 THE WITNESS: I think -- I think I said
17 it's theoretically possible, and I think 13C
18 illustrates a plan that could possibly do it,
19 but it does have a higher overall deviation.

20 BY MR. TIFT:

21 Q Okay. It has the same deviation that the
22 General Assembly has approved in several other
23 cycles, right, [inaudible] .96.

24 MR. VARELA: Object to the form.

25 THE WITNESS: Oh, yeah. It is -- I don't

1 think it's dissimilar than some of the past
2 cycles deviations, but I think, again, just
3 like, you know, the census data changing every
4 year, every 10 years, you have to look at each
5 one of those decades a little differently, as
6 well.

7 BY MR. TIFT:

8 Q I've got to ask you to place humility to
9 the side for a second. Do you think -- can you
10 think of anyone that you know of who has more
11 experience on redistricting the House of
12 Representatives in the State of Tennessee than you,
13 living person?

14 A Living, I think Ellen Tewes, the former
15 Director of Legal Services, who thankfully is still
16 living and well, has an incredible bout of
17 experience.

18 Q Okay. Anybody else?

19 A Um, I, I don't know if I know anyone else
20 that would have the level -- and I assume when you
21 say experience, folks that not only have the legal
22 knowledge but also have the capability of drawing a
23 plan themselves.

24 Q Correct.

25 A No. That would be Ellen Tewes. I don't

1 know of anyone else.

2 Q How do you spell her last name?

3 A It's T-E-W-E-S. She was the Director of
4 the Office of Legal Services until 2009.

5 MR. TIFT: Okay. Okay. Let's put your
6 report in the record. I'm going to ask the
7 court reporter to mark as Exhibit No. 3 the
8 Expert Report of Douglas Himes.

9 MR. VARELA: No objection.

10 (The above-referred to
11 document was thereupon
12 marked HIMES Exhibit No.
3, and is attached
hereto.)

13 BY MR. TIFT:

14 Q Okay. This is the report that you wrote,
15 expert report, for this case, correct?

16 A Yes.

17 Q Okay. Um, who wrote the first draft of
18 the report?

19 A I wrote this report.

20 Q Okay. And you wrote the -- you wrote all
21 the legal section, as well?

22 A I wrote this report.

23 Q Um, who did you work with on the legal
24 team in any revisions or review of the report? By
25 legal team, I mean the lawyers in this case, whether

1 it's Mr. Varela, Mr. Swatley?

2 A I think --

3 MR. VARELA: I'm just going to --

4 THE WITNESS: Oh, sorry.

5 MR. VARELA: Just the only objection is I
6 think if the question is eliciting any kind of
7 communications between the legal team and Doug
8 Himes, specific communication, that that would
9 be privileged. But other than, if you want to
10 ask your question.

11 MR. TIFT: Well, counsel's communications
12 with a testifying expert aren't privileged.

13 MR. VARELA: I thought you were asking for
14 something else, but go ahead.

15 BY MR. TIFT:

16 Q Yeah, I'm talking about on this report,
17 who did you work with? If you did. If you worked
18 with anybody on the legal team for revisions or
19 review?

20 A I think Alex Rieger.

21 Q Okay. Um, did any of your staff in your
22 regular day job assist with the report in any way?

23 A I don't have any staff.

24 Q Well, what about the people that assist
25 with redistricting? The GIS people, the list of

1 people we discussed at your last depo, did any of
2 those give any feedback or help in any way on the
3 report?

4 A No, they didn't.

5 Q Did anyone other than you and any people
6 on the current legal team have any involvement with
7 this report?

8 A I think Alex did and I think that was
9 about the extent of it.

10 Q Okay.

11 A I think.

12 Q How would you define your expertise in
13 terms of being an expert in this case? What are you
14 an expert on?

15 A I would say that I'm an expert in
16 Tennessee redistricting, specifically the Tennessee
17 House of Representatives, um, and I guess to some
18 extent the United States Congressional District
19 based on 30 years of experience working on
20 redistricting with the Tennessee House primarily on
21 their redistricting plan, um, also serving on the
22 NCSL's Redistricting and Election Committee -- it
23 has had different names over the years -- since
24 1998.

25 Working with the US Census Bureau,

1 um, at one time a State liaison with them and having
2 multiple training over the years with Maptitude both
3 in Tennessee and at their home office in Newtown,
4 Connecticut. And with NCSL serving as the staff
5 chair or co-chair, I think in 2014, participating in
6 various panels with NCSL over those -- since 1998.

7 Contributing for multiple years the
8 Office of Legal Services wrote the Equal Protection
9 chapter of the NCSL Red Book, which has come up.
10 Participating as just a reader of that as they
11 prepared it and worked in the office. And finally,
12 for the 2010 Red Book, I wrote the case summary for
13 the Moore versus State case from 2014, and that case
14 summary is in the 2010 Red Book.

15 Q Okay. Um, and do you consider yourself an
16 expert on the Voting Rights Act?

17 A I am -- I wouldn't -- so, I have
18 familiarity with the Voting Rights Act as it
19 complies -- or as it affects the Tennessee House of
20 Representatives and Tennessee's nine congressional
21 districts. Have I ever been through a Voting Rights
22 lawsuit? They predated me to the greatest extent;
23 though, I did participate in the end of the
24 litigation in the 1990s on the House plans that
25 resulted in Plan B taking effect for the 2000

1 election cycle. It's the rural West Tennessee line
2 of cases. I think I prepared the maps for the --
3 that went up to the US Supreme Court after the Sixth
4 Circuit decision so.

5 Q Okay. And do you consider yourself an
6 expert on the Constitution -- Federal Constitution's
7 Equal Rights clause as applied to redistricting?

8 A I believe I have great familiarity with
9 all the Federal provisions as applied to Tennessee
10 House of Representatives in the congressional cases,
11 congressional districts.

12 Q Okay. Then, would you also consider
13 yourself an expert on the portions of the Tennessee
14 Constitution that relate to redistricting?

15 A For the purposes of redistricting, I would
16 say that I have, again, great familiarity with the
17 Articles in the Tennessee Constitution that apply to
18 redistricting.

19 Q And then, also, I guess, would you
20 consider yourself an expert on any Tennessee
21 Statutes that apply to redistricting?

22 A Yes, I would say that is true.

23 Q Um, and you agree that core preservation
24 is not a Federal Constitutional requirement, right?

25 MR. VARELA: Object to the form.

1 THE WITNESS: I agree.

2 BY MR. TIFT:

3 Q Is core preservation a Federal
4 Constitutional requirement?

5 A I didn't -- was that?

6 Q He objected to the last one.

7 A Oh, I think --

8 Q Is core preservation a Federal
9 Constitutional requirement?

10 A It is not.

11 Q Okay. Is incumbency protection a Federal
12 Constitutional requirement?

13 A It is not.

14 Q Okay. Um, in your understanding, um, of
15 sort of the -- we may have to talk through this to
16 get to the right language, but sort of the order of
17 operations or the order of authorities between
18 Constitution statutes and practices, do you agree
19 that the Federal Constitutional is the top legal
20 requirements in the land?

21 A I agree.

22 Q And you agree that the Tennessee
23 Constitution is the top legal requirement within
24 Tennessee State Law?

25 MR. VARELA: Object to the form.

1 THE WITNESS: I agree.

2 BY MR. TIFT:

3 Q Okay. And then, do you agree that, um,
4 after the Tennessee -- after the respected
5 Constitution, statutes are next in order of priority
6 for legal requirements?

7 A I agree.

8 Q And then, do you agree that after
9 statutes, practices would be the next priority in
10 terms of -- at least in terms of Tennessee
11 redistricting?

12 MR. VARELA: Object to the form.

13 THE WITNESS: I, I agree with the proviso
14 that the guidelines that appear in the statute
15 and the practice of the House are the criteria
16 that's used by the Tennessee House of
17 Representatives as envisioned in Article II,
18 Section 4 of the Tennessee Constitution.

19 BY MR. TIFT:

20 Q Right. But you agree that the Legislature
21 could pass a statute, for instance, that prohibited
22 core preservation?

23 MR. VARELA: Object to the form.

24 THE WITNESS: Could you -- sorry. The
25 Legislature could pass a statute that?

1 BY MR. TIFT:

2 Q That prohibited core preservation.

3 A That prohibited it?

4 Q Right.

5 A So it would be a non-criteria?

6 Q Correct.

7 A Yes.

8 Q And the Legislature could pass a statute
9 that prohibited incumbency protection?

10 A Yes.

11 Q But the Legislature can't pass a statute
12 that reverses any provision of the Constitution?

13 A They can't pass a provision that reverses
14 a provision of the Constitution, but they can enact
15 a statute that defines the rights that they have
16 been given in the Constitution.

17 Q Right. But for instance, the Legislature,
18 absent a Constitutional amendment, the Legislature
19 can't pass a statute that reverses the language on
20 county splitting from the Constitution?

21 MR. VARELA: Object to the form.

22 THE WITNESS: I would, I would again, just
23 point to Article II, Section 4 and the language
24 in Article 2, Section 4 about the General
25 Assembly's ability to redistrict based on

1 criteria that they set, um --

2 BY MR. TIFT:

3 Q Let me ask it in a different way. Just a
4 basic legal concept that the Legislature can't pass
5 a statute that overturns a Constitutional provision?

6 A Not unless the Constitution envisions it
7 itself.

8 Q Right. Um, and in terms of -- we've got
9 Exhibit 2, that TCA provision. It should still be
10 in front of you somewhere.

11 A I'm sorry. What are we -- oh, the TCA.

12 Q Exhibit 2. Um, and so there's -- in
13 Subsection B, "It is the intention of the General
14 Assembly that" you agree that there's six provisions
15 listed?

16 A Yes, I agree.

17 Q Okay. And core preservation is not one of
18 these six factors listed in the statute, correct?

19 MR. VARELA: Object to the form.

20 THE WITNESS: It is not in the statute.

21 BY MR. TIFT:

22 Q Okay. And incumbency protection is not in
23 the statute, correct?

24 MR. VARELA: Object to the form.

25 THE WITNESS: It is not in the statute.

1 BY MR. TIFT:

2 Q Okay. And if you turn to Page 16 of your
3 expert report --

4 A Uh-huh.

5 Q -- you'll see that you wrote, "The
6 Tennessee House of Representatives balances the
7 requirements of six guidelines and two practices as
8 criteria in redistricting. Specifically, they are."
9 Can you identify for me which six of these are
10 guidelines and which two are practices?

11 A The first six are guidelines and the last
12 two are practices.

13 Q Okay. And you agree the first six are
14 memorialized in the statute and the final two are
15 not?

16 MR. VARELA: Object to the form.

17 THE WITNESS: I agree.

18 BY MR. TIFT:

19 Q Okay. What do you mean when you say
20 guideline versus practice? What do those words mean
21 to you?

22 A Sure. So, the guidelines have been pretty
23 consistent over the 30 years I have been involved in
24 redistricting. And those guidelines are those top
25 six or the six, uh, the six guidelines are in TCA

1 3-1-103 B. Those are the guidelines that the
2 redistricting committees have always adopted as
3 guidelines for redistricting.

4 The two practices have been the two
5 practices that the committees have always
6 traditionally used in the process, um, which is the
7 preservation of cores, the minimizing of incumbent
8 pairing.

9 Together the eight, I think envision
10 the criteria that Article II, Section 4 allows the
11 General Assembly or, in this case, the House to
12 utilize in redistricting.

13 Q Okay. And even just, I mean, nitty-gritty
14 verbiage or syntax, I was trying to pin down what
15 guideline versus practice means to you. It's just
16 the difference one's in statute and one's not?

17 A They are all criteria. It's -- in the
18 statute is an intent statement. So, it's not a
19 mandate. It's an intent that there are the -- and
20 there is, as we have discussed, could you some
21 decade have a plan that had 33 county splits in it
22 or 34 county splits? Maybe so. So, these are the
23 intent that these are the criteria in total, the
24 guidelines and the practices that we are going to
25 use during the redistricting process of the House.

1 Q And are you aware whether the Committee
2 that posted guidelines, you know, so the public can
3 see what's involved, whether the all eight criteria
4 were posted or just the six guidelines?

5 A The committees, since I don't think we had
6 a website in --

7 Q Right.

8 A The last few decades we did post the
9 six -- the guidelines of the six factors, the six
10 guidelines, have been posted consistently in some
11 form but very minor changes in the language over the
12 years, either posting or distributed on paperback.
13 Before we had posting, we would have had those.

14 Q Right. And I believe that the two
15 practices were not posted on the website; would you
16 agree?

17 A I agree with that.

18 Q And that's core preservation and
19 incumbency protection?

20 A Yes, I agree with those. They are
21 internal practices of the House, and the Committee
22 has been involved in redistricting.

23 MR. TIFT: I think we're at about an hour.
24 Should we take a break?

25 MR. VARELA: Yeah.

1 THE VIDEOGRAPHER: Going off record. Time
2 on the monitor is 10:13.

3 [10:13 A.M., a recess was had
4 until 10:26 A.M..]

5 THE VIDEOGRAPHER: Back on record. Time
6 on the monitor is 10:26.

7 BY MR. TIFT:

8 Q All right. Is there anything you want to
9 go back to that we talked about in the first hour
10 update, correct, change, further flush out?

11 A Um, no, sir, not that I believe.

12 Q Okay. I always ask in case -- I don't
13 want somebody to have it eating at them that they
14 wished they had said, you know, flush something out.
15 So, I am not fishing for anything there. I just
16 like to set that opportunity each time.

17 Okay. I don't believe I saw in your
18 report a statement to the effect of, I was hired for
19 the purpose of X. So, can you walk me through in
20 your understanding what you were hired to do as
21 expert?

22 A I don't know if I would use the word
23 hired, um, more than just asked.

24 Q Okay.

25 A To review the Plaintiff's Expert Report as

1 compared to Public Chapter 598 on the House. Let me
2 say specifically that, the House of Representatives.

3 Q Right. Because we already noted you
4 didn't deal with the Senate plan at all, right?

5 A Yeah.

6 Q Um, and when you say asked more than
7 hired, I guess, are you being paid separately as an
8 expert from your regular State paycheck?

9 A I am not.

10 Q Okay. And is your State paycheck your
11 primary source of income?

12 A It is.

13 Q Okay. And so, you said you were asked to
14 review Plaintiff's Expert Report and Public Chapter
15 598; is that correct?

16 A That's correct.

17 Q In your understanding, were you asked to
18 do any other tasks in your expert capacity?

19 A Just what is, I think, in this report,
20 which is, reviewing the, the alternative plans that
21 had been submitted and Mr. Cervas' Report and Mr.
22 Cervas' Affidavits and also just 598.

23 Q Okay. And so, you were not asked to do
24 any new map drawing to explore other potential maps,
25 correct?

1 A I was not.

2 Q Okay. Um, and you weren't asked to opine
3 on whether the enacted map crossed as few lines as
4 necessary to comply with Federal Constitutional
5 requirements?

6 MR. VARELA: Object to the form.

7 THE WITNESS: I was not.

8 BY MR. TIFT:

9 Q Okay. I know you were involved in several
10 decades some of these lawsuits, but did I get it
11 correct; you were not around for the Lockert cases?
12 Those were before your time here, right?

13 A Yes.

14 Q No offense.

15 A That's all right. They were before my
16 time.

17 Q Okay. Let's look in your report at Page
18 15. Okay. About the third full -- I think third
19 full sentence under "Tennessee House Redistricting,"
20 you write, "The Tennessee House of Representatives
21 has consistently followed longstanding Tennessee
22 redistricting criteria while making an honest and
23 good faith effort to enact fair and Constitutional
24 redistricting plans." Do you see that sentence?

25 A Yes, sir.

1 Q What do you base that on?

2 A I base that sentence on the experience
3 that I have working with the Tennessee House of
4 Representatives Redistricting Committees in the
5 2000, 2010, and 2020 post-census redistrictings.

6 Q Okay. So, you base that on your -- sort
7 of the fact side of your experience of working on
8 redistricting for the last several cycles?

9 A The professional side and the lack for the
10 most part of any challenges, um, and -- or
11 successful challenges if there was a challenge,
12 which is pretty rare.

13 Q Sure. Although you were involved with the
14 rural west cases where there was a successful
15 challenge, correct?

16 A It was -- I did not draft any of the plans
17 involved at all, the back end of that.

18 Q Okay. And you base this statement, it
19 sounds like, on the interactions you have had with
20 legislators during the process, as well, correct?

21 MR. VARELA: Object to the form.

22 THE WITNESS: I think it was -- it's based
23 on the outcome of what the committees of the
24 General Assembly over the years have, have
25 passed.

1 BY MR. TIFT:

2 Q Okay. Um, is there any work you did as an
3 -- wearing your expert hat where you analyzed
4 whether the Tennessee House of Representatives has
5 consistently, you know, followed redistricting
6 criteria in an honest and good faith effort? Like,
7 did you undertake any analysis to try to support
8 that statement as an expert?

9 A I think I'd just reiterate the success
10 that those plans have had in both passing and the
11 lack of legal challenges and/or successful legal
12 challenges to them and to the quality of the
13 legislators that worked on the different committees.

14 Q Okay. And it's fair to say you can't keep
15 yourself from remembering and knowing the
16 interactions you have had with legislators each
17 decade in the redistricting process, right?

18 MR. VARELA: Object to the form.

19 THE WITNESS: Could you just maybe
20 rephrase that a little bit differently?

21 BY MR. TIFT:

22 Q Right. Despite the fact that you are an
23 expert, you still remember interactions you have had
24 with legislators during redistricting over the
25 years, correct?

1 A Of course.

2 Q Right. And would you agree that that
3 knowledge helps you decide whether you believe an
4 honest and good faith effort has been undertaken?

5 A Of course.

6 Q Um, is your belief that the process has
7 been honest and in good faith effort informed by,
8 you know, the various iterations of maps you have
9 done over the years and how they have evolved to the
10 final map and sort of the feedback you have gotten
11 on them?

12 MR. VARELA: Object. To the extent that
13 it calls for any kinds of communications with
14 his client, I'm going to ask him to not answer.

15 THE WITNESS: So, I think I can only
16 generally say that over the 30 years that the
17 committees, whether they be democrat committees
18 in the 2000s or republican committees in the
19 2010 or 2020 have been composed of some of the
20 best members that I could ever hope to work
21 with that have taken the charge of
22 redistricting seriously and have applied,
23 generally speaking, the factors and the
24 criteria that the House uses in, in coming up
25 with a fair and Constitutional plan.

1 BY MR. TIFT:

2 Q And I'm not asking about your
3 conversations. But you agree that each of the
4 cycles that you have been heavily involved with sort
5 of the maps you have been working on have evolved,
6 and there's been different drafts that members have
7 given input on, correct?

8 MR. VARELA: Object to the form.

9 THE WITNESS: So again, just generally
10 speaking -- and I don't -- so generally
11 speaking, this wouldn't be -- I don't think
12 this is an expert opinion. This is more of a
13 -- are you asking me as a -- in a factual way?

14 BY MR. TIFT:

15 Q Well, it's in your expert report as your
16 opinion for the Court that the House has
17 consistently followed criteria while making an
18 honest and good faith effort to enact fair and
19 Constitutional districting maps. So, I'm entitled
20 to know on what basis you make that statement.

21 A Okay.

22 Q And I'm curious. I believe you have
23 testified as a fact witness that this cycle and
24 other cycles the first map you ever draw is not the
25 one that's enacted. It sort of evolves as you work

1 on it and get feedback from members, correct?

2 A Yeah, from the previous deposition we
3 talked about -- there's not, as we talked in that
4 deposition, there's not, there's not a whole lot of
5 maps. There's a concept that develops as the
6 process goes, goes through as it in the expert
7 report --

8 Q Right.

9 A -- talks about that process of a concept.
10 And it's reworked as it goes through the Committee
11 process and through the development --

12 Q Right.

13 A -- the Select Committee and then as a
14 bill. It can change on the floor --

15 Q Right.

16 A -- of the House and it has in the past.

17 Q And, and your knowledge of that process,
18 having been part of it, is part of what informs your
19 belief that the Legislature has used a good faith
20 and honest effort to comply, correct?

21 MR. SWATLEY: Objection to the extent it
22 calls for --

23 MR. TIFT: Sorry, I'm going to interject
24 for a second.

25 MR. SWATLEY: That's fine.

1 MR. TIFT: I need one attorney to defend
2 the --

3 MR. SWATLEY: That's fine.

4 MR. VARELA: I object to the form. Don't
5 think it was calling for communications but to
6 the extent it does --

7 MR. TIFT: Okay.

8 MR. VARELA: -- priveledged.

9 BY MR. TIFT:

10 Q So, does your knowledge of that
11 redistricting process over the years help inform
12 your belief that the Legislature has consistently
13 made an honest and good faith effort to enact fair
14 and Constitutional redistricting maps?

15 A Yes.

16 Q Okay. Um, still on Page 15 I think.
17 Yeah, the end of the paragraph we were just reading.

18 A Uh-huh.

19 Q I guess the second half of the sentence
20 says that -- well, let me read my underline first.
21 Hold on a second. Okay. Let me just read the whole
22 sentence. I was trying to read a part of it. It
23 didn't make sense. So, I'll go up to, "For reasons
24 stated." So, your sentence here says:

25 "For reasons stated in this report,

1 Chapter 598 remains the only redistricting plan
2 presented to the House Select Committee on
3 Redistricting, the House Public Service and
4 Employees Subcommittee, the House State
5 Government Committee, the House of
6 Representatives, the Senate, the Governor of
7 Tennessee, and this Court that complies with
8 all state and Federal Constitutional and
9 statutory requirements as well as long-standing
10 Tennessee redistricting criteria."

11 Did I read that correctly?

12 A Yes.

13 Q And so, this is referring to what I keep
14 calling the enacted plan, and you have mentioned
15 will also be referring to as Chapter 598?

16 A That's correct.

17 Q Okay. And so, it's your opinion that the
18 enacted plan does comply with all State and Federal
19 Constitutional statutory requirements?

20 A Yes.

21 Q Okay. I just want to break that down.
22 So, it's your opinion that the enacted plan complies
23 with any one-person, one-vote requirements from the
24 Federal Constitution?

25 A Yes.

1 Q And it's your expert opinion that the
2 enacted plan complies with the Federal Constitution
3 Equal Rights Clause?

4 A Yes.

5 Q And it's your expert opinion that the
6 enacted plan complies with Tennessee Constitution's
7 county splitting provision?

8 A Yes.

9 Q And it's your expert opinion that the
10 enacted plan complies with the Voting Rights Act?

11 A Yes.

12 Q And it's your expert opinion that the
13 enacted plan complies with the long-standing
14 Tennessee redistricting criteria?

15 A Generally, yes.

16 Q Okay. Okay. Let's turn to Page 17.
17 Here's a section captioned, "Tennessee House
18 Redistricting Process." Um, and it goes through in
19 sort of detail how the normal process happens, as
20 well as how the most recent process happened. Do
21 you agree?

22 A I agree.

23 Q Okay. And on what factual basis did you
24 write this section? You know, where did you get the
25 facts of the typical process and what happened this

1 year?

2 A My knowledge of the process having worked
3 for the General Assembly Select Committee and my
4 historical knowledge having worked with the past
5 committees.

6 Q Did you, did you review your previous
7 deposition in this case for your role as expert
8 witness?

9 A I have reviewed it after it was taken but
10 not for the, for the -- not for this expert report.

11 Q Okay. Did you need to review it in order
12 to capture the facts that are in this section about
13 Tennessee House Redistricting Process?

14 A No, sir. I believe this is similar to
15 what we discussed in the deposition.

16 Q Okay. And so, this is just informed by
17 your personal experience as part of the
18 redistricting process?

19 A Both that and there's still some
20 information on the website from the 2010 process;
21 although, it's a little harder to find now. But
22 there is still the same structurally website out
23 there, some information on it.

24 Q Okay. On the issue of core retention, do
25 you agree that every redistricting process involves

1 some loss of core, some loss of district cores?

2 A Without a doubt.

3 Q Okay. Because the population moves, so
4 there have to be changes?

5 A Correct.

6 Q Okay. Are you aware from your experience
7 over the years or at NCLR, for whatever reason, of
8 what sort of a national average is of core retention
9 percentage in any given State's redistricting
10 process?

11 A Are you asking do I know how many State's
12 have core retention as a, as a --

13 Q No, no.

14 A -- or are you just asking what a typical
15 one might be?

16 Q Right. I could imagine a presentation at
17 the conferences you go to --

18 A Yeah.

19 Q -- that says, you know, if we look at all
20 50 states, your average core retention is X percent.
21 Like, are you aware of any statistic like that?

22 A I am not aware of any.

23 Q Okay. Let's turn to Page 19. Um, I'm
24 looking at footnote 4.

25 A Uh-huh.

1 Q Um, and basically, I want you to break
2 down what you are telling us here in footnote 4. I
3 don't feel the need to read it aloud, but could you
4 walk through 4 and explain to me what you are saying
5 in here.

6 A Yeah, I'll do my best. This -- obviously,
7 this isn't a Voting Rights Act case, but saying
8 that, you know, when looking at majority-minority
9 districts and how to measure a majority-minority
10 district, there are different racial categories that
11 can be used, whether it's African American, Asian,
12 American Indian, whatever the demographic. Um, and
13 that has changed over the decades of what could be
14 used or should be used, and I think that's still up
15 for some debate in the Federal courts, what the
16 right metric is.

17 We in the Tennessee House have
18 traditionally used a single-race category of black
19 alone. Considering that African Americans represent
20 really the only minority population in Tennessee
21 sufficiently compact enough to form a
22 majority-minority district. So, we have in
23 Tennessee used the single-race category black alone.

24 There's nothing wrong with using a
25 multi-race category for African American, any part

1 African American. And Dave's Redistricting, for
2 example, uses a multi-race, multi-race category to
3 determine a percentage of voting age population of a
4 single race.

5 So footnote 4 is just illustrating
6 that Mr. Cervas' alternative plans have been used on
7 a format that's calculating voting age population
8 using multi-race category. Um, the House of
9 Representatives is using a single-race category.
10 And to compare, um, from kind of a retrogression
11 standpoint, from decade after decade, we have
12 consistently used that.

13 That is not to say that we wouldn't
14 use a multi-race category. And it's not to say that
15 Mr. Cervas' report is wrong for using a multi-race
16 category. It's just explaining the different.

17 Q Got it. Specifically, the AP Blk
18 category, what's your understanding of who is or
19 isn't generically in that category?

20 A So, if you were going to use the
21 multi-race category 18+ AP Black, it's somebody that
22 responds black to a census questionnaire as their
23 race and in combination with anything else.

24 Q Okay. But in terms of -- when you say
25 multi race, AP Black wouldn't include someone who

1 only identifies as Hispanic or only identifies as
2 Asian. It's just people who list part of their
3 identity as black; is that correct?

4 A Right.

5 Q Okay.

6 A They -- yes, you would have to identify --
7 you can answer it multiple ways. It's up to you.
8 If you check black, you are going to be picked up in
9 that category.

10 Q For instance, just to go to a noted
11 example, so President Obama with white mother,
12 African-American father, if he lists, you know, both
13 sides of that as his identity, he would not be in
14 just the 18+ Blk but would be in 18+ AP Blk; is that
15 right?

16 A That's right. He would be identified not
17 in a single race. He wouldn't -- if he -- assuming
18 he didn't identify just as African American, if he
19 chose multiple races, he would not be in the
20 single-race identification.

21 Q Okay. And if I understand correctly what
22 you are saying here is for the comparison's sake
23 because Dr. Cervas' maps use the AP Blk, that's what
24 you used here for comparison's sake. Is that what
25 I'm understanding?

1 A Yeah. I've tried to -- he's used the AP
2 Blk, so I have used that when I have scored his
3 alternatives. If he -- his district gets to
4 50 percent plus one person any part African
5 American, it will be considered for the purpose of
6 just a review a majority-minority district, assuming
7 it's a one-race district.

8 Q And so, it sounds like in the body of your
9 report for scoring Dr. Cervas' reports you use 18+
10 AP Blk, but then the attachment or appendix one page
11 reviews is using just 18+ Blk; is that right?

12 A The single page attachments are using the
13 same standards the House did, which is just single
14 race African American. But each one is footnoted in
15 the footnote how it would score using any part of
16 black multi-race category.

17 Q Okay. And so, to the extent any numbers
18 you are listing in the report are different from the
19 one pagers, it's just that different metric?

20 A It's a different metric but it's explained
21 in the footnote.

22 Q Okay.

23 A So, it's not -- again, it's not to say one
24 is better than the other. It's just to compare and
25 keep it standard with the way the House would have

1 looked at it.

2 Q And I always stumble over this. Does it
3 -- I think you usually use majority-minority, but I
4 feel like we have often flipped them, also. Do you
5 know if majority-minority or minority-majority is a
6 term that I should be using?

7 A I unfortunately flip them after 30 years
8 of doing this from time to time, but
9 majority-minority is, I think, the appropriate way
10 to refer to them.

11 Q Okay.

12 A If I have referred to them opposite of
13 that, I have meant majority-minority.

14 Q Okay. Got it. Your report in multiple
15 spots points out non-contiguous issues with
16 Dr. Cervas' first five maps, correct?

17 A In this report, yes, yes.

18 Q And I know you have reviewed what he has
19 done since then. I mean, do you agree that all the
20 non-contiguities were zero population
21 non-contiguities?

22 A So, in the first expert report, all of the
23 non-contiguous places that were not in the right
24 district had zero population. In his Rebuttal
25 Report, that's not the case. There's non-contiguity

1 problems that do include population.

2 Q Okay. And we'll get to that in a little
3 bit. Um, but for the first five in his primary
4 report, they were all zero population, correct?

5 A That's correct.

6 Q Okay. And do you agree that in his sort
7 of amended sites that he corrected those
8 non-contiguities?

9 A I did not go back and check. I took him
10 at his word that he would have corrected those.

11 Q Okay. Um, would you agree that it's not
12 uncommon even in the legislative process to have to
13 make some technical corrections to the map before
14 they get to the final enacted stage?

15 A I don't know if I would agree with that.

16 Q Okay.

17 A It's unusual --

18 Q Okay.

19 A -- to have a mistake given the technology
20 and the ability to check for non-contiguous pieces.
21 It does happen. It's a mistake but it's, it's
22 unusual.

23 Q Okay. And I know you often, um, when
24 Dr. Cervas's first five maps have fewer
25 majority-minority district than the enacted map, you

1 point that out, but I don't see you pointing it out
2 when they have the same number or more. Do you
3 agree that his 14a has 15 districts where the BVAP
4 is over 50 percent?

5 A So, so there's two that have fewer.

6 Q Correct.

7 A And then, which number did you say?

8 Q Number 14a.

9 A 14a.

10 Q Has 15 majority-minority districts. I
11 don't know if you agree.

12 A I would have reviewed this. I know it
13 doesn't have fewer. It has at least as many.

14 Q Okay.

15 A But I don't recall -- I don't have with me
16 a printout of each districts' majority-minority or
17 each districts' ethnic and racial percentage.

18 Q Got it.

19 A But I agree with you that there are at
20 least 13.

21 Q Okay. And whenever there weren't at least
22 13 majority-minority districts, you did note that in
23 report, correct?

24 A Yes.

25 Q Okay. Okay. Let's jump to Page 38.

1 Okay. I wanted to look at footnote 12 here. Can
2 you walk me through what the -- what this footnote
3 is representing or, yeah, just explain this footnote
4 to me.

5 A So footnote 12 is a footnote of the
6 sentence on Page 38, "Each split is justified by a
7 legitimate redistricting objective such as a
8 population, the Voting Rights Act, or other criteria
9 utilized by the Tennessee House of Representatives
10 for state House redistricting."

11 And then, the footnote in that,
12 footnote 12, starts Chapter 598's split counties and
13 justifications. And then, it lists by county each
14 of the 30 counties that were split and
15 justifications for each of those splits based on,
16 um, the redistricting guidelines, practices, and/or
17 Constitutional requirements.

18 Q And how did you determine the
19 justifications listed?

20 A By looking at Chapter 598 and the
21 associated data, um, and looking at the 2012 plan.
22 And what it appeared like when it comes to a core
23 issue, um, incumbents, where the incumbents resided,
24 just the population shifting and where the districts
25 contracted, where the General Assembly chose to

1 eliminate a district and move it, um, and part of it
2 just the puzzle of Northeast Tennessee, part of the
3 splitting up there is just because of the way the
4 geography is.

5 Q Okay. And so, is this an analysis you did
6 while you were working on the report or is this
7 something from back when you were working on
8 redistricting?

9 A This is something I prepared for this
10 report.

11 Q Okay. And you personally may have
12 knowledge of if, for instance, a legislator asked
13 you to divide a county or not, but to the extent you
14 have that knowledge, that's not reflected in here,
15 correct?

16 MR. VARELA: Object to the form. I'll
17 also object to any communication between the
18 deponent and his clients as counsel, and I
19 would instruct him not to answer.

20 BY MR. TIFT:

21 Q Let me rephrase. I don't want you to tell
22 me anything a legislator said to you for the purpose
23 of this question. But you agree that you are aware
24 of what feedback you got from legislators as the map
25 was coming into its final form, correct?

1 A Yes. I would be aware of what I was told.

2 Q Right.

3 A But this is something I have done for this
4 report.

5 Q Right. And so, any request, if you
6 received any requests from any legislators about
7 splitting or not splitting a county, those requests
8 are not reflected in this footnote, correct?

9 MR. VARELA: Objection to privilege.

10 BY MR. TIFT:

11 Q Nothing that any legislator did or didn't
12 say to you is reflected in this footnote, correct?

13 A I don't know how this -- this reflects
14 what I prepared for this report. I'm not sure how
15 any -- honestly, I'm not sure how any conversation
16 with a legislator would change what was written for
17 this footnote.

18 Q Okay. And whether any legislative request
19 would change anything in this footnote, you agree
20 this footnote does not reflect any feedback that you
21 got from a legislator about any of these counties,
22 correct?

23 MR. VARELA: Same objection. Scott, I
24 think I know what you are trying to get at with
25 the communication piece, but I will contend

1 that things not said are also communication.
2 So, for that reason, I would make a similar
3 objection, if that's what you are trying to get
4 at.

5 BY MR. TIFT:

6 Q Okay. Well, and I -- at least in my
7 previous question, I did say this footnote --
8 neither requests things said or not said to you by
9 legislators. This is purely a footnote that you
10 came up with through analysis as an expert?

11 A That's correct.

12 Q Okay. Go to the next page where the
13 Conclusion is.

14 A Sure.

15 Q Okay. The first sentence of your
16 Conclusion states, "Based on my knowledge,
17 experience, and expertise in Tennessee
18 redistricting, Chapter 598 remains the only plan
19 presented to the General Assembly or this Court that
20 complies with all Federal and state redistricting
21 requirements and criteria." Did I read that
22 correctly?

23 A You did.

24 Q All right. And am I correct in
25 understanding that the only thing you are opining as

1 an expert on in this sentence is plans that were
2 actually presented to the legislature through public
3 hearings?

4 MR. VARELA: Object to the form.

5 THE WITNESS: Not only the General
6 Assembly but all the Cervas alternatives.

7 BY MR. TIFT:

8 Q Oh, right. Because you say "or this
9 Court." So, any plan submitted to the assembly
10 including the enacted plan, or Dr. Cervas' plans,
11 what you are saying here is -- I'm going to start
12 this over. So, am I correct in understanding that
13 your expert opinion is focused on the plans that
14 were presented -- publicly known plans presented, as
15 well as Dr. Cervas' reports and that the enacted
16 plan is the only one that complies with all the
17 requirements?

18 A Yes. If you also include the ones from
19 that initial Affidavit to of Dr. Cervas, those
20 orange and apple ones, that none of those are more
21 compliant, or the ones the General Assembly had
22 submitted by the public or the democratic caucus.

23 Q Okay. And you just used the phrase "more
24 compliant." Are there any plans that you would
25 point to in that universe of plans that you consider

1 compliant, just not more compliant?

2 A Yeah. Of all the plans that -- other than
3 598, 13c is illustrative of one that is -- well,
4 it's the only one that I think has -- doesn't have
5 Constitutional deficiencies, but in itself isn't
6 compliant with the criteria, which I would suggest
7 are Constitutional factors as well, core
8 preservation and incumbency, and has a higher
9 overall deviation.

10 Q Okay. So, do you consider that plan
11 compliant or not compliant, 13c?

12 A I would consider it better but not --
13 better of all the other ones that Mr. Cervas did,
14 but I, in my opinion, would say it isn't compliant.

15 Q Okay.

16 A And it certainly isn't better than 598.

17 Q Okay. And which factors do you cite that
18 in your opinion make 13c noncompliant?

19 A Well, it's the incumbency. There's 27
20 incumbents paired in 11 districts. Core
21 preservation wasn't considered, um, and the plan has
22 an overall deviation that is higher than the
23 deviation that Chapter 598, um, had.

24 Q Is that the limit of the noncompliant
25 points?

1 A Those are the hesitations I would have
2 with that plan.

3 Q Okay. But you're not just hesitating.
4 You, you consider those factors each to be factors
5 that make 13c noncompliant?

6 A Yes, I think it is noncompliant. It's the
7 best of, of the lot, but it still doesn't comply
8 with the criteria in balance like 598 does.

9 Q Okay. And in this Conclusion, am I
10 correct that you do not express any opinion about
11 whether another map could have been generated and
12 passed that is Constitutionally compliant while
13 splitting fewer counties?

14 MR. VARELA: Object to the form.

15 THE WITNESS: That is not part of this
16 Conclusion.

17 BY MR. TIFT:

18 Q Right. And you have told me already
19 you're not expressing an expert opinion about
20 whether there could have been a compliant plan with
21 fewer county splits, correct?

22 MR. VARELA: Object to the form.

23 THE WITNESS: That's correct.

24 BY MR. TIFT:

25 Q Or I guess you had said it seems

1 technically possible but that's the extent of your
2 opinion?

3 A I think -- yes. I think what I said was
4 it's theoretically possible to perhaps split a few
5 counties, but you would still want to look at that
6 in total, not single out one factor but look at all
7 the factors and see what that results in. Because
8 if it results in a higher overall deviation, that
9 may not be something that would make it better.

10 Q Right. And you haven't engaged in any
11 exercise to do so, to sort of look for a compliant
12 plan with fewer county splits?

13 A I have not -- as I have said, I have not
14 drawn for this report a plan, a new House plan.

15 Q Okay. In reviewing Dr. Cervas' proposed
16 maps, all of them, you know, earlier in the year the
17 affirmative report and then the Rebuttal Report, did
18 you engage in any formal voting rights analysis
19 about those plans? Voting Rights Act, I don't know
20 if I said Voting Rights Act. Did you engage in any
21 Voting Rights Act analyses on any of Dr. Cervas'
22 plans?

23 A Well, I certainly would look at the voting
24 age population percentages in the urban districts
25 where Chapter 598, previously the 2012 redistricting

1 plan, where majority-minority districts were
2 located. Um, and knowing the demographic changes in
3 the different areas of the State to check to see if
4 they were maintained. Um, you know, it's a pretty
5 basic analysis.

6 And I think 13a, there was not a
7 majority-minority district in rural West Tennessee,
8 which seems to be something that traditionally we
9 have had in rural West Tennessee, at least since the
10 rural West line of cases.

11 Q And you agree as a matter of redistricting
12 that when you are first drawing a map, you should
13 first draw it race neutral?

14 MR. VARELA: Object to the form.

15 THE WITNESS: Race should never
16 predominate a redistricting plan.

17 BY MR. TIFT:

18 Q Right. For the Dr. Cervas plans, for any
19 of those in your expert capacity, have you gone
20 through a racially polarized voting analysis?

21 A I have not.

22 Q Okay. And for any of those plans, have
23 you gone through a block voting analysis?

24 A I have not.

25 Q Okay. Um, you have reviewed Dr. Cervas'

1 filings, correct?

2 A Yes.

3 Q And you attended his deposition on
4 Tuesday, correct?

5 A Yes.

6 Q What was -- what's your opinion of him as
7 a colleague in the field?

8 MR. VARELA: Object to the form.

9 THE WITNESS: I think Mr. Cervas is a nice
10 gentleman. I'm not sure he has as much
11 experience in redistricting. Um, I think it's
12 not a good, a good idea to use a
13 non-professional GIS program to draft maps.

14 BY MR. TIFT:

15 Q Okay. Let's talk about y'all's respective
16 experience. Both of you were the primary map
17 drawers for statewide legislative House in the 2020
18 cycle, correct?

19 A I don't know if that is necessarily true.

20 Q Okay. Well, you heard his testimony that
21 he was appointed by the Court to draft the New York
22 Senate and Congressional maps this cycle, that he
23 did so, and that the maps were approved and voted
24 on, correct?

25 MR. VARELA: Object to the form.

1 THE WITNESS: I understood from my
2 observation of that that he employed someone to
3 draw maps for him.

4 BY MR. TIFT:

5 Q Well, you also have a staff that helps you
6 with the maps, correct?

7 MR. VARELA: Object to the form.

8 THE WITNESS: That's not accurate in the
9 sense that I draw -- I draw the maps myself.

10 BY MR. TIFT:

11 Q And you have a GIS staff that works with
12 you and has Maptitude access, as well, correct?

13 A They do. They do not draw maps.

14 Q Um, so you question the New York Court's
15 decision to hire Dr. Cervas to apport to district
16 the New York Senate and Congress?

17 MR. VARELA: Object to the form.

18 THE WITNESS: I don't know if I have an
19 opinion. I don't know enough about where New
20 York was or who they had to consider to be
21 their expert.

22 BY MR. TIFT:

23 Q Okay. Um, you agree that Dr. Cervas was
24 also hired by a bipartisan commission of the
25 Pennsylvania Legislature to redraw one of their

1 chambers according to his testimony, correct?

2 A That's what it -- that's what it sounded
3 like, yes.

4 Q And you understood that that map passed
5 unanimously, bipartisanly and has been upheld in
6 court according to his testimony?

7 A Again, I don't know that I heard him say
8 that he actually drafted a map, that he took parts
9 of ideas and parts of maps that were [inaudible] to
10 bipartisan caucuses in order to come up with a
11 product.

12 Q And you also heard him testify that he
13 worked with Bernard Grofman to draft maps in three
14 other Federally-appointed cases, correct?

15 A I heard him say that, yes.

16 Q And so, is it, is it your opinion that,
17 um, working under a Court or a legislature for five
18 different redistrictings is not sufficient
19 experience to make him a redistricting expert?

20 MR. VARELA: Object to the form.

21 THE WITNESS: It -- I would -- I would
22 suggest that it might make someone -- it could
23 make someone an expert. I'm not sure that I
24 heard that he drafted maps. And in the work
25 with Professor Grofman, I wasn't sure if he was

1 the drafter or what role he necessarily played.

2 BY MR. TIFT:

3 Q Okay. Um, and have you written any
4 peer-reviewed papers on redistricting?

5 A I have not written a peer-reviewed paper
6 on redistricting.

7 Q Okay. And have you ever been certified as
8 an expert witness in a Federal -- in any kind of
9 lawsuit?

10 A No, I have not.

11 Q Okay. Um, so, as an expert in
12 redistricting, is it your opinion that Dr. Cervas is
13 not an expert in redistricting?

14 MR. VARELA: Object to the form.

15 THE WITNESS: I would question a
16 designation like that.

17 BY MR. TIFT:

18 Q Okay. And your questioning is based on
19 your understanding that he worked with an assistant
20 to draft the map instead of drafting it by himself?

21 A I would -- partially the fact that -- I
22 didn't hear him say that he drafted maps. I think
23 the use of Dave's Redistricting contributes to the
24 non-contiguous problems. And, um, other than being
25 employed for this lawsuit, I don't think there's

1 much knowledge about the Tennessee, um, criteria
2 that we use or our Constitution.

3 Q Um, let's say the, um, if a, um -- if
4 counsel in another redistricting case were, um,
5 reached out to you to ask that you testify against
6 Dr. Cervas from being appointed as a special master
7 in another state, would you testify against him
8 based on your belief that he lacks the
9 qualifications?

10 MR. VARELA: Object to the form.

11 THE WITNESS: I have -- I have no interest
12 in, in being in -- working as an expert or
13 working on redistricting outside of Tennessee.

14 BY MR. TIFT:

15 Q Okay. All right. But so, in general, Dr.
16 Cervas' work in redistricting under Court
17 appointment and Legislative hire in five different
18 redistrictings to you doesn't qualify him as an
19 expert on redistricting?

20 MR. VARELA: Object to the form.

21 THE WITNESS: I would have reservations.

22 BY MR. TIFT:

23 Q Okay. So, is he qualified or not?

24 MR. VARELA: Object to the form.

25 THE WITNESS: I don't think it's my

1 decision. Is that...

2 BY MR. TIFT:

3 Q Well, you're an expert on redistricting.
4 I'm asking you --

5 A He's not an expert in Tennessee
6 redistricting.

7 Q For what reasons?

8 A I think based on the non-contiguous issues
9 pervading -- is that the right word? Going through,
10 I'll use that. Going through not only the first set
11 of maps but the second report to the Rebuttal
12 Report, the seemingly continued use of relying on
13 someone else to draft maps, and, um, a
14 misunderstanding it seemed of the concept of
15 majority-minority districts, which is included in
16 his Rebuttal Report. I think those are some of the
17 reasons.

18 A reliance on average deviation,
19 which has never been used in any Tennessee
20 redistricting suit, which has only recently been put
21 into the Red Book as an alternative definition for
22 mean deviation. Um, again, just some of the, some
23 of the reasons. I will say that I enjoyed meeting
24 Mr. Cervas, and I think he's a nice person and I'm
25 obviously not --

1 Q Sure. So would you submit -- I mean, do
2 you think that every Court that's hired him to do
3 redistricting made a mistake?

4 MR. VARELA: Object to the form.

5 THE WITNESS: If I were in the position
6 of, of the Court in New York, I may have not
7 hired Mr. Cervas if I had seen the work product
8 that he has performed here.

9 BY MR. TIFT:

10 Q Okay. All right. So the New York Court
11 got it wrong, it sounds like. Did all the other
12 appointing courts get it wrong, also?

13 MR. VARELA: Object to the form.

14 THE WITNESS: I'm not suggesting the New
15 York Court got it wrong. They may have -- I
16 think it was mentioned there were technical
17 problems, and they fixed their technical
18 problems as they went through. It sounded like
19 he employed quite a few people to help him with
20 that. So, at the end of the day, they made a
21 product that is fine, but I'm not -- obviously,
22 I'm not in New York. I'm not an expert in New
23 York redistricting.

24 BY MR. TIFT:

25 Q Um, has counsel in this case, um, did

1 y'all discuss whether or not you consider Dr. Cervas
2 worthy to be an expert in this case?

3 A Just my observation of the -- of these
4 documents and attending that deposition.

5 Q Okay. So, you had no discussions with
6 counsel about Dr. Cervas' qualifications?

7 A I'm not one of the -- I'm not one of
8 the -- I'm not defending this lawsuit.

9 Q Sure.

10 A So what they decide --

11 Q Not what I asked. What I asked is if you
12 had any conversations with them about Dr. Cervas'
13 qualifications.

14 A I don't think that we have had anything
15 that's, anything that's as detailed of what we just
16 went through.

17 Q Sure.

18 A Maybe just a surprise.

19 Q Expand. What do you mean?

20 A Just a, just a seemingly lack of -- I
21 think just a lack of the grasp of some of the issues
22 involved in redistricting. This is hard. I don't
23 want to be...

24 Q I get it. You're a nice guy. But you're
25 also in a pretty important litigation here --

1 A No, I'm --

2 Q -- claiming to be a redistricting expert.

3 A No, and I'm not --

4 Q Let me finish. Claiming to be an expert
5 and claiming that the Plaintiffs' expert despite
6 appointment by multiple Courts and a Legislature is
7 not qualified to opine on redistricting. I assume
8 counsel for the State is going to move to exclude
9 him, and so as long as I'm talking to a
10 redistricting expert, I need to understand, you
11 know, the full contours of your opinion that he's
12 not an expert?

13 A Do you want to turn to the rebuttal and
14 get to --

15 Q We'll get to the rebuttal in a second.
16 Maybe we have exhausted your general points at this
17 point.

18 A Yeah.

19 Q Okay. But y'all have not -- you haven't
20 discussed with counsel an anticipated Motion to
21 Compel or, or your position on a Motion to Exclude
22 him as an expert?

23 A No.

24 MR. TIFT: Okay. So let's move to that
25 rebuttal, if I can find it. All right. I'll

1 ask this be marked as Exhibit 4, the Rebuttal
2 Report of Dr. John Cervas.

3 MR. VARELA: No objection.

4 (The above-referred to
5 document was thereupon
6 marked HIMES Exhibit No.
4, and is attached
hereto.)

7 BY MR. TIFT:

8 Q Okay. So, it sounds like you have
9 reviewed this report, correct?

10 A I have looked at it, yes, sir.

11 Q Okay.

12 A And I apologize for talking over you
13 during that.

14 Q Oh.

15 A I'm sorry.

16 Q It happens in every deposition. Um, okay.
17 Um, tell me how you went about reviewing this
18 report, and specifically were you just reading it?
19 Did you click any of the links to look at the maps?

20 A Yes. When I received the report, I took a
21 look at the report, and I read through the report.
22 Looked at the -- went to the links of the maps in
23 Dave's and then exported the CSV file from Dave's to
24 put into Maptitude just so I could get a cleaner
25 look at it. As I said, Dave's is limited in its

1 ability to pick up non-contiguous districts but
2 Maptitude is not, nor is the Esri product. Um, so I
3 would put it in there to take a look at it that way
4 and just to generally compare it. He had incumbent
5 data for these, so I was able to look at where the
6 incumbents are to kind of score on that, as well.

7 Q Okay. Are you aware of how much the --
8 your Maptitude license costs?

9 A I believe we spend 2,000 a year for it per
10 license. Per license I think it's 2000.

11 Q All right.

12 A I believe that's right. Um, and we have,
13 I don't know, 9 to 11 licenses, maybe.

14 Q Okay.

15 A Most of those are not actively being used.
16 Um, the Senate chose not to use Maptitude for
17 redistricting.

18 Q Right. Right. The Senate used Esri, I
19 believe.

20 A Yeah.

21 Q Okay. Why don't you walk me through any
22 concerns you have with the Rebuttal Report.

23 A Sure. Just from the planned standpoint,
24 um, 13C, which we have discussed in some, I guess,
25 some time, it has a higher overall deviation than

1 Chapter 598. Um, it diminishes the core
2 preservation, and it pairs, as I mentioned, 27
3 incumbents in 11 districts. In general, 13d is a
4 plan that has both non-contiguous census blocks with
5 population and double splits Sullivan County.

6 Q I'm sorry. I didn't hear. Double splits
7 what county?

8 A Sullivan County. And you can see that in
9 the report. You don't...

10 Q Okay. For both -- well, sorry. I was
11 asking for all your concerns. Do you have other
12 concerns to list to me from -- whether it's the maps
13 or the report overall?

14 A Just since I mentioned it earlier, I think
15 it's footnote 3 on Page 2. It says:

16 Mr. Himes seems to be confusing two
17 different measures. In his report, he says,
18 Plan 13a substantially decreases the number of
19 majority-minority districts from 13 to 11. Um,
20 however, the number he cites refer to districts
21 that are 50%+1 Black Voting Age Population.
22 Map 13b has 15 districts where 50%+1 of the
23 population is Non-White (majority-minority).
24 Maps 13.5a, 13.5b, and 14a actually have 17
25 majority-minority districts. The Enacted Plan

1 has 15.

2 And I would just point out that, that a
3 majority-minority district is not a district where
4 the Non-White population is under majority voting
5 age. That is not a majority-minority district,
6 and I think that is not an accurate statement of
7 what a majority-minority district is.

8 And I'm not sure when he is scoring his
9 own plans there whether or not those are including
10 districts that have just under -- just have a white
11 voting age population under 50 or if it is actually
12 truly a majority-minority. As I said, I only scored
13 them on did they have 13. So, I would just note
14 that footnote.

15 Q Right. And are you, are you aware of case
16 law within the Voting Rights Act huge body of case
17 law analyzing whether or not -- often they are
18 called coalition districts, where you do have
19 majority of minority members, although from
20 different minorities, and there's current legal
21 question within the courts about whether that is or
22 is not a majority-minority district?

23 A I would agree that there's cases about
24 opportunity districts and about coalition districts.
25 I would, I would say there's no -- I don't believe

1 there's discussion -- whether or not they are a
2 majority-minority district, they are not a
3 majority-minority district based on current Supreme
4 Court precedent. That's not what they are.

5 But are they something else? Maybe.
6 Are they significant and are they good to have in a
7 plan? I think they are. But that's not a
8 majority-minority district.

9 Q Okay. What other concerns, if any, do you
10 have about the Rebuttal Report?

11 A Um, I think you've -- those are the
12 primary issues with the plans, and I only mentioned
13 the one thing because we talked about it.

14 Q Do you agree that both Map 13c and Map 13d
15 held Districts 80 and 73, the same as the enacted
16 map?

17 A They did do that. I believe they did that
18 -- as to the enacted map for District 73 and 80.

19 Q Correct.

20 A Okay, yes. I wanted to make sure.

21 Q And you agree the Maps 13c and d do not
22 cross the Shelby County border, correct?

23 A They do not. They are 13 District Shelby
24 County plans.

25 Q And you agree that both 13c and 13d do not

1 cross the Montgomery County border?

2 A They do not.

3 Q Okay. And in your report, we can look at
4 it, but you had concerns about Districts 20 and 24,
5 the Bradley, Meigs, Polk County districts?

6 A Right.

7 Q And, um, you agree that Map 13d maintains
8 those two districts the same as the enacted plan,
9 right?

10 A It appears to.

11 Q Okay. You didn't check?

12 A I didn't check --

13 Q Okay.

14 A -- it verbatim. I know that some of these
15 lines are exactly like the lines from 2012, so I
16 would -- that appears to be the right line.

17 Q Okay. And then, the same with District
18 38, which is sort of a northern border district that
19 encompasses about four or five counties, you know
20 which one I'm referring to?

21 A Yes, the Upper Cumberland Plateau
22 District.

23 Q Right. And you agree that 13d maintains
24 that district as the enacted map?

25 A It does not.

1 Q Okay.

2 A I did look at that one.

3 Q Okay.

4 A And the only reason I looked at that is
5 because you can see on this that there's a split of
6 Macon County with the naked eye, and that is not the
7 enacted map or the map from 2012.

8 Q Is that the purple to green?

9 A That's the purple or pink. That's this
10 here. There's a little split right there. It's
11 easier to see on a bigger map obviously but there's
12 a split there.

13 Q Okay.

14 A Now, I don't know how he's judging core
15 retention. I think it says it's 100 percent. I
16 don't know how -- how that factor or what program
17 that is. But it's, you know, I could say it's
18 possible, whatever he is using. I wouldn't say that
19 that's inaccurate, that he said it's 100 percent. I
20 don't think he says it's the same but it's not the
21 same.

22 And there's also a split difference
23 in Fentress County in that district, as well. And
24 the only reason I looked at this one is because I
25 saw visually the one in Macon. And that Fentress is

1 this purple to green here.

2 Q Right.

3 A There's a difference in that boundary.

4 Q So, that boundary was already split, but
5 you're saying the split is different?

6 A The split is different, yes.

7 Q All right.

8 A So, it's, it's not the same. But for
9 however he scored it, it may be what he said.

10 Q Okay. Um, and then, did you mention -- I
11 may have misunderstood. Did you mention a double
12 split somewhere?

13 A Yeah. It's the double split in 13d is in
14 Sullivan County, which is in the Northeast corner of
15 the state. And I'll show you here. It's very --
16 it's two yellow districts, but Sullivan goes -- you
17 can see the line of Sullivan, and then it also goes
18 across the north of the state to Hawkins County.

19 Um, Sullivan is big enough to have
20 two complete districts. This concept splits it,
21 double splits it. Instead of doing two complete
22 districts, it attaches part with Carter and Washing
23 -- or Carter and Johnson, I believe. And then, the
24 other part going to the west is attached to Hawkins.
25 So it's, it's not maintaining the number of

1 districts that should be in Sullivan County.

2 Q Got it. Okay.

3 A And the non-contiguity issues are in
4 Dickson County, which is --

5 Q That's immediately to the west of
6 Davidson?

7 A That's right. You can't see on this. But
8 if you pulled up Dave's and just saw it on your
9 computer, you would see one of them, but you have to
10 zoom in to find the other.

11 Q Okay. And you, I would assume, would
12 agree that one county non-contiguity can be
13 corrected pretty quickly pretty easily, correct?

14 MR. VARELA: Object to the --

15 A Yeah.

16 BY MR. TIFT:

17 Q Yeah. Is that the only non-contiguity
18 that you noticed in 13d?

19 A I believe so. And non-contiguous
20 contiguity of these census blocks can be complicated
21 with population depending on the population. I
22 think in this case, it probably would be okay, but
23 it would be something you would check to make sure
24 you don't raise your deviation any more.

25 Q Right. And is that non-contiguity in

1 Dickson County, did you see it in that 13c, also, or
2 just in 13d?

3 A 13d.

4 Q Any other points you would criticize from
5 the Rebuttal Report?

6 A I mean, I wouldn't -- there's a lot of
7 information about compactness in some of these
8 reports, in this Rebuttal Report than the original
9 report. Compactness has never been a criteria that
10 we have used in Tennessee. Um, so I'm not sure the
11 necessity to use that.

12 Maptitude actually has some of these
13 tests in the version. Um, I don't use it because
14 it's not something that we use. As I mentioned,
15 average deviation, which is normally, I think, known
16 as mean deviation.

17 MR. TIFT: Right.

18 Probably close to two hours. Should we
19 take a break?

20 MR. VARELA: Sure.

21 MR. SWATLEY: Yeah.

22 THE VIDEOGRAPHER: Going off record. The
23 time on THE monitor 11:33.

24 [11:33 A.M., a recess was had
25 until 11:46 A.M..]

1 THE VIDEOGRAPHER: Back on record. Time
2 on the monitor is 11:46.

3 BY MR. TIFT:

4 Q Okay. Mr. Himes, we're back. I'll ask
5 the same kind of question. Anything from earlier
6 today you want to circle back on, talk more about?

7 A No, sir.

8 Q Okay. Just as a prelude, I'm going to ask
9 some questions just like last time that I expect
10 your counsel is going to object to, tell you not to
11 answer. It's their prerogative but I need them in
12 the record, okay? Um, so, have you ever tried to
13 create a House map based on the 2020 census results
14 with fewer than 30 county splits?

15 MR. VARELA: Object to the form and object
16 to the extent that it calls for any kind of
17 communications. I instruct the witness not to
18 answer.

19 BY MR. TIFT:

20 Q Have you ever created a House map based on
21 the 2020 census results with fewer than 30 county
22 splits?

23 MR. VARELA: Same objection.

24 BY MR. TIFT:

25 Q Have you ever had a conversation with any

1 legislator where the legislator asked you to
2 prioritize core preservation over any other
3 redistricting factor?

4 MR. VARELA: Object to privilege.

5 Instruct the witness not to answer.

6 BY MR. TIFT:

7 Q Have you ever had any conversation with
8 the legislator where the legislator asked you to
9 prioritize incumbency protection over any other
10 redistricting criteria?

11 MR. VARELA: Objection to privilege. I
12 instruct the witness not to answer.

13 BY MR. TIFT:

14 Q Um, have you had conversations with any
15 legislator where the legislator asked you to split a
16 county to create an opportunity for two individuals
17 to run in the same district?

18 MR. VARELA: Object to privilege.

19 BY MR. TIFT:

20 Q I've got to re-ask that because I said it
21 wrong. Have you ever had conversations with any
22 legislator where the legislator asked you to split a
23 county to create an opportunity for two individuals
24 to run for a House seat from the same county?

25 MR. VARELA: Objection, privileged. I

1 instruct the witness not to answer.

2 BY MR. TIFT:

3 Q Um, all right. Let's look back at your
4 report, Exhibit 3, Page 5. Okay. The first --
5 well, I guess it's the second full sentence on here,
6 you state, "My job as counsel is to assist the
7 Committee in drawing a House redistricting map that
8 complies with State and Federal law and that
9 ultimately will be adopted by the General Assembly."
10 Did I read that correctly?

11 A Yes, that's what it says.

12 Q Okay. And, so it's no question, like, one
13 of your job responsibilities during redistricting
14 time is to assist the Committee in drawing a map
15 that is compliant; is that correct?

16 A That's correct.

17 Q It's a pretty important responsibility
18 during redistricting, correct?

19 A Yes.

20 Q Okay. And you did, in fact, draw the map
21 with the assistance of the Committee and input from
22 the Committee that became the enacted map, correct?

23 MR. VARELA: Objection to privilege. To
24 the extent that it calls for privilege, don't
25 answer, but otherwise...

1 THE WITNESS: I worked on the plan that
2 worked its way through the Select Committee,
3 the sub-Committee, the full Committee, the full
4 House, the Senate, and the Governor that became
5 Chapter 598.

6 BY MR. TIFT:

7 Q Right. But you were the map drawer for
8 that process, correct?

9 A Yes.

10 Q All right. In fact, you just made the
11 point that you don't use assistance. You were the
12 map drawer, correct?

13 A Yes.

14 Q Okay. So, it's your job to work with the
15 Committee to create a compliant map, and you're the
16 one who drew the map that became the enacted map,
17 right?

18 A Yes.

19 Q Okay. And you're now the State's expert
20 witness to defend the map that you drew, that you
21 drew as one of your primary job responsibilities,
22 correct?

23 A Yes.

24 Q And the primary source of your income
25 every day is from the State itself, correct?

1 A That is correct.

2 Q Um, have any legislators or Government
3 employees talked to you about serving as an expert
4 in this case?

5 MR. VARELA: Object to the form.

6 THE WITNESS: Government employees?

7 BY MR. TIFT:

8 Q Legislators or Government employees
9 outside of counsel in this case.

10 A Because they are the -- did ask. Um, am I
11 revealing a conversation if I were to hypothetically
12 say, no, I don't think if -- it's sort of -- I feel
13 like when I worked at the Ethics Commission, you
14 couldn't confirm or deny whether or not --

15 MR. VARELA: This goes to objection to
16 communications also being --

17 MR. TIFT: Well, I think this is a
18 different situation, because communications
19 with Mr. Himes about being an expert are just
20 like a party talking to their testifying
21 expert. They are not privileged.

22 MR. VARELA: Okay.

23 THE WITNESS: That's fair.

24 BY MR. TIFT:

25 Q So, have any legislators --

1 A No.

2 Q -- or Government employees --

3 A No.

4 Q -- talked to you about --

5 A No.

6 Q -- being an expert in this case?

7 A No. It's clearly no, no.

8 Q Okay.

9 A Just the Attorney General's Office.

10 Q Okay. I know you're trying to make a
11 point, but when you say no five times while I'm
12 talking, it's hard for her to write it down.

13 A I apologize.

14 Q Um, have any legislators or Government
15 employees talked to you about this lawsuit at all?

16 MR. VARELA: Object to the form.

17 THE WITNESS: Other than the Attorney
18 General's Office, um, no one has sought me out
19 to talk to me about this lawsuit.

20 BY MR. TIFT:

21 Q Okay. By answering that way, you beg the
22 question, have you, have you spoken with any
23 Government employees outside of the counsel of
24 record about this lawsuit?

25 A I would say that the communications I have

1 with the members of the General Assembly and their
2 staff is privileged.

3 Q Okay. And does your counsel object to a
4 privileged basis?

5 MR. VARELA: I am objecting on a
6 privileged based if you are something about
7 that, yeah.

8 BY MR. TIFT:

9 Q Um, have any legislators or Government
10 employees outside of counsel of record given you any
11 encouragement about this lawsuit along the lines of,
12 you know, I hope we win that suit, you know, hope it
13 goes well, any sort of encouragement?

14 MR. VARELA: Object to the form.

15 THE WITNESS: Are you asking me about
16 conversations that would have had -- that a
17 member would have had specifically with me as
18 their lawyer?

19 BY MR. TIFT:

20 Q I'm asking you since this lawsuit was
21 filed, have any legislators or Government employees
22 outside of counsel of record, um, spoken to you
23 about the lawsuit and encouraged, you know, given
24 you encouragement about the lawsuit?

25 A I think I would have a hard time talking

1 about any conversations that I had --

2 MR. VARELA: I'm going to object to
3 privilege.

4 THE WITNESS: -- as counsel to members and
5 staff.

6 MR. VARELA: Object to privilege.

7 MR. TIFT: Is he being instructed not to
8 answer?

9 MR. VARELA: Not to answer.

10 BY MR. TIFT:

11 Q Have any legislators or Government
12 employees told you they hope the State wins this
13 lawsuit?

14 MR. VARELA: Same objection.

15 MR. TIFT: Um...

16 MR. VARELA: Same instruction.

17 BY MR. TIFT:

18 Q Who have you talked to about this lawsuit
19 outside of the lawyers of counsel of record?

20 MR. VARELA: Same objection, same
21 instruction. But to the extent that there's
22 anyone else, he can answer that question.

23 THE WITNESS: Um, I don't think I can
24 answer as to the work in conversations that I
25 have had with the members of the General

1 Assembly and their staff. Um, but my wife has
2 to hear an awful lot about redistricting.

3 BY MR. TIFT:

4 Q I'm sure she does.

5 A But she's also a staff member of the
6 General Assembly, but she does hear a lot about
7 redistricting.

8 MR. VARELA: Again, the same objection.
9 If there's privilege, don't answer. If there's
10 people outside of that scope --

11 THE WITNESS: My mom has to hear a lot
12 about redistricting in Tennessee over the last
13 30 years.

14 BY MR. TIFT:

15 Q Okay. Have you expressed to your mom any
16 concern about the, you know, enacted plan being
17 upheld?

18 A None at all.

19 Q Is there anyone outside of your mom who is
20 not a Government employee or legislator who you have
21 talked to about the lawsuit?

22 A I can't -- I don't recall talking to
23 anybody specifically. Probably would have come up
24 at NCSL meeting just with other people that do this,
25 just that we have a lawsuit. But nothing

1 specifically.

2 Q Is that the San Diego conference that you
3 went to recently?

4 A NCSL in San Diego. Probably would have
5 talked about it in Denver with the people who do
6 this sort of work, as well. It's a small community.
7 It just, you know, do you have a lawsuit? Yeah, we
8 got a lawsuit. What's it about? You know, what
9 it's about. And that's about it.

10 Q So, with any of those, to your memory, did
11 you, you know, express any concerns to them about,
12 you know, sort of, well, if we have one weakness,
13 it's probably this? Or any statements to them about
14 what you would consider the weaknesses of the
15 enacted plan?

16 MR. VARELA: Object to the form.

17 THE WITNESS: Well, no, I wouldn't -- I
18 don't consider that the enacted plan has a
19 weakness, so I wouldn't express that.

20 BY MR. TIFT:

21 Q Okay. And so, I guess your answer is, no,
22 you didn't talk to anybody about sort of what you
23 perceive is the strengths and weaknesses of the
24 State's case?

25 A I would have -- I would have -- when

1 asked, I assume I would have said it's about county
2 splitting or, you know, the other half of this is
3 about consecutive numbering. But I would not have
4 expressed a weakness in Chapter 598.

5 Q Okay. When you say "would not have"
6 that's different than saying you didn't. Did you
7 not express --

8 A Yes.

9 Q -- concerns about section 598 with anyone
10 outside of the objective people?

11 MR. VARELA: Object to the form.

12 THE WITNESS: I'm not trying to be -- I'm
13 just -- I don't recall ever saying there was a
14 weakness with Chapter 598. And I don't believe
15 there is a weakness with Chapter 598, so I
16 don't recall ever saying there was.

17 BY MR. TIFT:

18 Q Okay. Do you recall expressing any
19 weaknesses about the Senate side of the case?

20 MR. VARELA: Object to the form.

21 THE WITNESS: Um, I am not an expert in
22 the Senate side. I don't work on the Senate
23 plans. I'm not offering an opinion as an
24 expert on the Senate plans. I'm not employed
25 by the Senate. I'm a House employee and I

1 don't have an opinion on the Senate.

2 BY MR. TIFT:

3 Q Okay. Again, that wasn't what I asked at
4 all. I asked did you express any thoughts,
5 concerns, weaknesses, strength about the Senate
6 claims in this lawsuit to, you know, friends,
7 colleagues at these meetings?

8 MR. VARELA: Object to the form. But also
9 object if any of those communications are
10 privileged with clients, I instruct him not to
11 answer.

12 BY MR. TIFT:

13 Q I'm not asking you to talk about clients.
14 I understand that there's people all over the
15 country that come together for these meetings. And
16 like at all conferences, you chat, and y'all chatted
17 about this lawsuit to some extent. So, I'm saying,
18 did you chat about the Senate claims at all, and do
19 any sort of comments to them about strong claim,
20 weak claim, problem here, no problem here?

21 A I would --

22 MR. VARELA: Object to the form.

23 THE WITNESS: Sorry. As to the Senate
24 plan, I would have mentioned that part of the
25 lawsuit on the House was the Senate and what

1 it's about, but I would not have mentioned
2 anything else because it's not, it's not
3 honestly a concern of mine as a House
4 redistricting, um, House employee and as
5 counsel to the House Redistricting Committee.

6 BY MR. TIFT:

7 Q Sure. And when I go to a Union lawyers
8 conference, it's not part of my Union job something
9 that's going on in the Supreme Court, but we might
10 chat about it. So, that's why I'm trying to really
11 focus in on whether it's your job or not, if you
12 talked about the Senate claim with colleagues,
13 people there at these conferences, I'm trying to get
14 to the substance of those conversations.

15 Like, did you talk about the Senate
16 claim? And if you did, did you express any concerns
17 along the lines of, well, it's not consecutively
18 numbered. That seems like a problem. Or it looks
19 great or here's the rationale. Like, any sort of
20 substance about pros or cons in the Senate plan, do
21 you recall discussing those with anyone at a meeting
22 like that?

23 MR. VARELA: Object to the form.

24 THE WITNESS: I can't say I -- I would
25 have -- I think I naturally believe if I were

1 asked about a lawsuit, I would say what the
2 lawsuit is about. But I wouldn't get into the
3 Senate details because that's not something I'm
4 thinking about, and I'm not sure that they
5 would care to hear that much about either part
6 of it. Um, my sense would be if we went into a
7 bit of detail, it would only be about what the
8 House, what the House claim is.

9 BY MR. TIFT:

10 Q Okay. And I'm sorry. But you keep
11 saying, I would have or wouldn't have, and I'm
12 asking about what you did do. So, like, do you have
13 any memory of discussing the Senate plan with people
14 at these conferences?

15 A I think -- I feel certain that I would
16 have talked about the lawsuit.

17 Q You don't remember talking about the
18 lawsuit; you just assume you probably did?

19 A Yes.

20 Q Okay. But you have no specific memory of
21 talking about any of the lawsuit at these
22 conferences?

23 A I feel fairly certain that I would have
24 been asked about it. I wouldn't be able to tell you
25 necessarily who I would have talked to, but I feel

1 like it would have come up in conversation.

2 Q Okay. And literally, all that I can get
3 from you is what you know and remember. So I'm just
4 asking, do you remember any conversations? Not do
5 you speculate they probably happened. Just, do you
6 remember any conversations about the lawsuit?

7 A I don't remember any specific
8 conversations about it.

9 Q Okay. All right. Do you know of any
10 facts out there, documents, conversations, that
11 would demonstrate that the legislature chose to
12 prioritize the population deviation over adding any
13 additional county splits to the enacted plan?

14 MR. VARELA: Object to privileged
15 information. I'm going to instruct the witness
16 not to answer.

17 BY MR. TIFT:

18 Q And I'll ask the same basic question, but
19 I asked it that way and it was objected, but as the
20 expert who has access to publicly available
21 documents and whatever you were given for the sake
22 of just this question, walling off what the State
23 says is privileged, can you point to any evidence
24 that the State or the General Assembly prioritized
25 population deviation over reducing in county splits

1 further in the enacted plan?

2 A No, I don't believe I can.

3 MR. TIFT: Tentatively, I'm done. I want
4 to read these four pages one last time. We can
5 go off the record.

6 MR. VARELA: Do you want to take a break
7 for about five minutes?

8 MR. TIFT: Yeah.

9 MR. VARELA: That's fine.

10 MR. TIFT: I'm just going to sit here and
11 read.

12 THE VIDEOGRAPHER: Going off the record.
13 The time on the monitor is 12:03.

14 [12:03 P.M., a recess was had
15 until 12:07 P.M..]

16 THE VIDEOGRAPHER: Back on record. Time
17 on the monitor is 12:07.

18 MR. TIFT: I have no further questions.
19 Thanks for your time.

20 MR. VARELA: And we don't have any
21 questions so.

22 MR. TIFT: All right.

23 THE VIDEOGRAPHER: This concludes the
24 deposition. Time on the monitor is 12:08.

25 (12:08 P.M.)

1 FURTHER THIS DEPONENT SAITH NOT:

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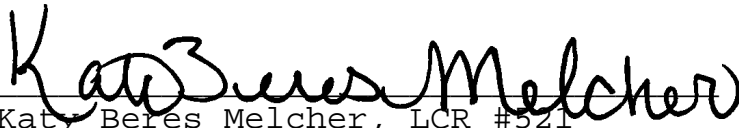
STATE OF TENNESSEE)

COUNTY OF WILLIAMSON)

I, Katy Beres Melcher, a Licensed Court Reporter within and for the State at Large, do hereby certify that the foregoing proceedings were taken at the time and place set forth in the caption thereof; that the proceedings of said were stenographically reported by me in shorthand; and that the foregoing pages constitute a true and correct transcription of said proceedings to the best of my ability.

I further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the outcome of this action.

WITNESS MY SIGNATURE, this 20th day of December, 2022.


Katy Beres Melcher, LCR #521

LCR Expires: 6/30/2024

E R R A T A

I, Doug Himes, having read the foregoing deposition taken December 16th, 2022, do hereby certify said testimony is a true and accurate transcript, with the following changes, if any:

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Doug Himes

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My Commission Expires: _____