

SENATE APPORTIONMENT COMMISSION
PUBLIC HEARING

HELD AT: The Jefferson Building
Redistricting Office
205 Jefferson Street, Room 1310
Jefferson City, Missouri

THURSDAY, MARCH 8, 2012
10:30 A.M.

REPORTED BY:

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1 SENATE COMMISSIONERS

- 2
- 3 Doug Harpool, Chairman
- 4 Marc Ellinger, Vice Chairman
- 5 Nick Myers, Secretary (Via Telephone)
- 6 Jean Paul Bradshaw II
- 7 Nicole Colbert-Botchway (Via Telephone)
- 8 Steve Ehlmann
- 9 Lowell Pearson
- 10 Trent Skaggs (Via Telephone)
- 11 Todd Patterson (Via Telephone)
- 12

Commissioners Not Present:

13
14 W. Mitchell Elliott

15 Representatives from Office of Administration:

16
17 Matt Hesser

1 P R O C E E D I N G S

2 CHAIRMAN HARPOOL: All right. We'll convene
3 this meeting of the Senate Reapportionment Commission.
4 This is a public hearing. The topic of this public
5 hearing is the tentative map.

6 We have present five of our
7 commissioners in person. We have, on the phone, four
8 commissioners. Why don't the commissioners present in
9 person introduce themselves. We'll start at my left.

10 COMMISSIONER EHLMANN: Steve Ehlmann,
11 St. Charles County.

12 COMMISSIONER BRADSHAW: Jean Paul Bradshaw,
13 Jackson County.

14 CHAIRMAN HARPOOL: Doug Harpool,
15 Greene County.

16 VICE CHAIRMAN ELLINGER: Marc Ellinger,
17 Cole County.

18 COMMISSIONER PEARSON: Lowell Pearson,
19 Boone County.

20 CHAIRMAN HARPOOL: Then those on the phone,
21 would you please introduce yourselves? Start with
22 Nicole.

23 COMMISSIONER COLBERT-BOTCHWAY: Nicole
24 Colbert-Botchway, St. Louis.

25 CHAIRMAN HARPOOL: And then Nick.

1 COMMISSIONER MYERS: This is Nick Myers,
2 Newton County.

3 CHAIRMAN HARPOOL: Todd.

4 COMMISSIONER PATTERSON: Todd Patterson,
5 Jackson County.

6 CHAIRMAN HARPOOL: And Trent.

7 COMMISSIONER SKAGGS: Trent Skaggs,
8 Clay County.

9 CHAIRMAN HARPOOL: And I think we have one
10 commissioner that was not able to be here today.

11 As you can see, a court reporter is taking a
12 record and will make a transcript, and we will have
13 available to us word for word the testimony presented
14 today.

15 As I told you, if you want to testify, please
16 complete a witness appearance form. You will testify
17 in the order that they're handed to me, and first is my
18 former colleague, Doyle Childers. And Doyle, I didn't
19 mean to besmirch you by associating you in some way
20 with me in the past. We just happen to be elected the
21 same years. Different parties, different districts.

22 MR. CHILDERS: Thank you, Mr. Chairman. The
23 main issue that I wanted to bring up was that -- having
24 served in the House and the Senate for a number of
25 years and still work around the Capitol in a lobbying

1 capacity, but in my travels around through the
2 building, this morning is the posted time for the
3 session. It starts at 10:00, and it's third reading
4 time, which is a critical -- those of you who are
5 familiar with the legislative process know third
6 reading is a very important vote on whether a bill
7 passes or fails. And the issue I heard from different
8 individuals there was "I would like to go over to that,
9 but with third reading, I really can't be gone during
10 this vote."

11 A further complication is this is the last
12 day before the spring break, so a number of people have
13 rather tight schedules. And legislation which passes
14 before spring break has a much better opportunity for
15 success than it does later in the session.

16 So that is just a very simple thing to say
17 there are a number of people that indicated that they
18 might have an interest in being here, but because of
19 the timing, it was very difficult, and that's why I
20 came to just mention that that is a complicating factor
21 of getting really full information at this hearing.

22 CHAIRMAN HARPOOL: Thank you. We have --
23 we're in the middle of a 15-day comment period, and we
24 have and are receiving written comments via internet
25 and otherwise and mail, and please share with any of

1 those people that if they have input, they should feel
2 free to provide that input either by internet or by
3 mail or by fax. The Redistricting Office can accept
4 all. And even if they want to videotape testimony and
5 send it over here, they can even do that. But I
6 appreciate that concern. Would you relay that
7 information to them?

8 MR. CHILDERS: I'll relay that back. And I
9 assume that -- you say this whole thing is up so they
10 can see any information that's out there?

11 CHAIRMAN HARPOOL: Yeah. And the transcript
12 of what happens today -- they will be able to know.

13 Matt, I assume we're still posting the
14 transcripts on the internet?

15 MR. HESSER: We are.

16 CHAIRMAN HARPOOL: All right.

17 VICE CHAIRMAN ELLINGER: Mr. Childers, are
18 you here representing anyone?

19 MR. CHILDERS: No, I'm not.

20 VICE CHAIRMAN ELLINGER: Okay. Thank you.

21 CHAIRMAN HARPOOL: Any other questions?

22 Thank you.

23 Edward Greim.

24 MR. GREIM: Thank you, Mr. Chairman. My name
25 is Edward Greim of the law firm of Graves, Bartle,

1 Marcus, and Garrett.

2 And good morning to all the commissioners. I
3 know a few of you, and I just -- on behalf of my
4 clients, who I'll name here in a moment, I just want to
5 thank all of you for your service on this panel and the
6 time that you've put in over the last couple of weeks.

7 I'm here on behalf of Beverly Ehlen,
8 Mike Chester, Robert Wood, Steve Hunter, Dr. John
9 Lilly, Mr. Mark Muller, and Sharon Hayes. I filled out
10 a witness sheet using my own name, but in fact, I'm
11 here as a representative of the individuals I just
12 named.

13 At the outset, I want to make it clear that I
14 represent these individuals in another capacity as
15 well, and that is as plaintiffs in a lawsuit filed in
16 US District Court for the Western District of Missouri.
17 It is a civil rights lawsuit, and it does not name any
18 of the commissioners as defendants. Instead, it seeks
19 to enjoin the implementation of the tentative plan that
20 was filed just about a week ago or a little longer.

21 So we're not here to take issue with the
22 commissioners. However, we are here to take issue with
23 the map. The lawsuit was filed with the expectation,
24 no hearings having been scheduled at that time, that
25 the Commission was done with its deliberations.

1 Chairman Harpool graciously has e-mailed me a few times
2 and made clear that comments will still be taken, and
3 so we're here in that spirit today.

4 I'll say we're also pleasantly surprised --
5 we were pleasantly surprised to learn yesterday that
6 the hearing was going to be taking place this morning.
7 I do want to, just for the record, echo the comments of
8 the previous witness about the timing of the hearing.
9 I suppose beggars can't be choosers, and we're happy to
10 have this opportunity, but I would note that our review
11 of the notice yesterday disclosed that -- at least on
12 the metadata that the creating date of the notice
13 itself was sometime after 12:00 p.m. Nonetheless, I
14 think everybody who could be here today and could make
15 it down to Jefferson City in time will be here.

16 I want to now turn to our substantive
17 concerns with the tentative plan and just a couple of
18 comments. We -- first of all -- first and foremost, we
19 believe that the tentative plan is unconstitutional
20 under the Equal Protection clause of the United States
21 Constitution. It's almost embarrassing to be talking
22 this way in front of -- I know there's several lawyers
23 and distinguished lawyers on the panel, and they're
24 well aware of the constitution and of the law. I know
25 that the panel was also advised by one of the ablest

1 lawyers and maybe the best constitutional lawyer in
2 Missouri, the Solicitor General, James Layton.

3 Obviously --

4 COMMISSIONER SKAGGS: I want note, you also
5 have some non-attorneys on the committee that can also
6 figure this out as well, so I just want to make that
7 note.

8 CHAIRMAN HARPOOL: Right.

9 MR. GREIM: Well, it's everybody's
10 constitution, and we all -- yeah. We all should know,
11 and I presume that the entire panel, lawyers and
12 non-lawyers, are fully aware of all this, and
13 especially with the guidance from some individuals.
14 And of course, the panel was free to consider or
15 disregard the advice of counsel, and as we've alleged
16 in our lawsuit, the panel disregarded the advice, in
17 one instance, of the Solicitor General.

18 But let me now turn to the constitutional
19 issue. And first of all, I think the panel is familiar
20 with the case of Reynolds versus Simms. That's a
21 United States Supreme Court case from several decades
22 ago. And that made clear that the one person, one vote
23 principle is going to apply in legislative
24 redistricting.

25 There's been dozens of cases -- Supreme Court

1 cases after that time, and so we know a little bit more
2 about what that means in practice. We know, and I
3 think the panel was advised, that ten percent is sort
4 of an important number in this context. Ten percent --
5 the ten percent refers to the deviation between the
6 most underpopulated and the most overpopulated
7 districts.

8 In this case, that number is about 9.5 or 9.6
9 percent. It's under 10 percent, and so that means that
10 a particular set of rules will apply to the map as a
11 whole. It means that that deviation and other
12 substantial deviations are -- can be permissible, but
13 they must meet legitimate state redistricting
14 objectives, and they must be non-arbitrary, and they
15 must be non-discriminatory.

16 Invidious discrimination is not allowed even
17 under 10 percent. The reason 10 percent is important
18 is that the burden is on plaintiffs in a lawsuit to
19 show that invidious discrimination occurred and that
20 arbitrary and not permissible criteria were used.

21 And so in this case, that's what we allege.
22 We allege that the districts that are the most
23 diverse -- that diverge the most in terms of population
24 fall into a pattern; that urban districts are the most
25 underpopulated, and rural districts are the most

1 overpopulated. That means that the distracting of
2 votes of residents in the rural districts count for
3 less and are weighted less than the votes of citizens
4 in the urban districts.

5 The pattern is most pronounced in the
6 Kansas City area in Jackson County with Districts 7, 9,
7 and 11 being the three most underpopulated districts in
8 Missouri. The neighboring District 21, which is --
9 starts from Lafayette and kind of moves into the
10 Boonslick area, being the most overpopulated and then
11 also heavily overpopulated, the 12th, which is --
12 borders Kansas City on the north, and the 31st, which
13 borders it on the south.

14 A similar pattern is less pronounced but also
15 is in St. Louis where the 26th District is
16 overpopulated, and few of the underpopulated districts
17 are further into the urban core.

18 And then finally, it's pretty obvious that in
19 Greene County and Christian County, the 30th and the
20 20th Districts, for no apparent reason having to do
21 with population, voters were moved from the 30th into
22 the 20th which surrounds it. It envelops the 30th,
23 making the 30th a virtual island -- an actual island
24 and thereby over weighting the votes of the urban
25 residents within the 30th and under weighing the votes

1 of the rural residents in the surrounding area of the
2 20th. That's another example.

3 A final example is the creative switching of
4 district numbers between the west county St. Louis
5 where the 7th District was eliminated, east central
6 Missouri where a new 10th District was created from
7 pieces of several other even numbered districts, and
8 the old 10th District in far western Jackson County,
9 the urban core of Kansas City, where the 7th was
10 reassigned.

11 Just in brief, this further shows the intent
12 and the effect of this plan in over weighting the
13 interest of urban regions and under weighting the
14 interests of rural regions in that voters in the 10th
15 could easily have been given the 7th or perhaps some
16 other odd number, and they could have elected their own
17 representative this November.

18 Instead, the 10th designation was moved from
19 the urban core of Kansas City where it's been for a
20 long time -- it was moved out to east central Missouri
21 and a urban core term-limited senator, Senator Jolie
22 Justus, would then be representing the 10th.

23 The 7th would be able to elect a new person
24 to backfill Senator Justus, so for at least the next
25 two years, we'll have a situation where either the

1 urban areas are over represented with an extra senator
2 or under some people's theories of what happens when we
3 do a cross-state switching of numbers like this, maybe
4 Senator Justus represents no one, and the 10th District
5 sits there and tries to rely upon the good will of
6 senators who used to represent parts of that district
7 but who now have districts that expanded in other
8 directions.

9 So essentially, those are the three major
10 ways of which this plan is unconstitutional. I brought
11 copies with me of a chart which breaks down the
12 population numbers, ranks them by overpopulation and
13 underpopulation, and characterizes them as rural,
14 urban, or suburban. I also have a copy of our
15 complaint, which was filed in Federal Court, and I've
16 got a copy of my prior letter to this panel. I'm
17 prepared to offer those exhibits right now. Although,
18 I'm not aware of the procedure that's used.

19 CHAIRMAN HARPOOL: We will -- you'll give
20 copies of each of them to Mr. Hesser. They will be
21 attached as exhibits to your testimony and will be made
22 part of the transcript or at least the official record
23 and available for review.

24 MR. GREIM: I'll do it when we're all done,
25 Mr. Hesser.

1 One other thing I'd like to do, and I won't
2 introduce this. I think it's probably already a public
3 record, but I invited you, Chairman Harpool, sometime
4 over the weekend, to give me some more comments. I
5 think you had indicated to me that you believe there
6 were some factual misstatements and some mistakes in a
7 letter that we sent to the Commission last week
8 requesting a hearing. And I asked you again for some
9 comments. You gave me some comments, and I understand
10 not in capacity as a lawyer for anyone --

11 CHAIRMAN HARPOOL: If you want to attach that
12 e-mail to the record and make it part of the record,
13 just please do so.

14 MR. GREIM: I'm happy to do that, but what I
15 would like to do is also respond to a few comments that
16 were made by you, and I do this only because I know we
17 can't have hearing after hearing, and the more we have
18 a back and forth, the better.

19 CHAIRMAN HARPOOL: We're going to ask some
20 questions, here, so that would be a good back and
21 forth, if you want to take questions.

22 MR. GREIM: I'm happy to take questions,
23 but -- well, perhaps I'll do that, and if there's
24 anything that's not addressed, then I'll cover this.

25 CHAIRMAN HARPOOL: Let me ask you about your

1 issue on Jackson County being underpopulated. From
2 which rural county should we move population into
3 Jackson County in order to increase the population of
4 the Jackson County district?

5 MR. GREIM: Well, the Commission has
6 essentially three choice: You've got three rural
7 counties that reigned Jackson County, you've got the
8 17th under the current plan -- and this assumes that we
9 start with the current plan and make fixes to it. I
10 mean, there's other options, which is, you know, you
11 could have gone back to the Appellant Commission plan.
12 We understand that that was proposed by some
13 commissioners and rejected by you or some of the
14 Democrat commissioners.

15 But let's stick with this plan. I'll stick
16 with your question.

17 CHAIRMAN HARPOOL: I'll not take the time to
18 correct your misunderstandings. Go ahead.

19 MR. GREIM: And I would like to, at some
20 point -- I think this should all be out in the public.
21 But essentially, any of the surrounding districts could
22 have people moved to Jackson County. For example --

23 CHAIRMAN HARPOOL: Let's say we take
24 population from Cass County, a rural area, and move it
25 into the 8th District and then reallocate population.

1 All right? Let's say we do that, and we move 20,000
2 voters from Cass County into Jackson County, how does
3 that help rural representation in the state if you take
4 20,000 rural voters and put them in a district where
5 they're going to get outvoted by Jackson County voters
6 that are going to be 150,000 Jackson County voters
7 versus 20,000 Cass voters? Tell me how that helps
8 rural representation in the state.

9 MR. GREIM: Right, and this is one of the
10 issues you raised in your e-mail to me of last night.
11 You know, I think the problem here we're misconceiving
12 the constitutional injury to rural voters when we talk
13 about things like deluding someone by attaching them to
14 another area.

15 So let's take the 31st or the 21st. For
16 example, you could move voters from Lafayette into some
17 version of the 11th District. What that does is --
18 granted, the people who are moved into the 11th are now
19 voting with individuals who are the sort of suburban or
20 rural part of Jackson County, so they've got that
21 community of interest. But it does reach over to cover
22 some more urban areas.

23 But what it also means is that now the votes
24 of everybody else in the 21st District count. They're
25 not having to vote with too many other people just to

1 elect one representative. And so --

2 CHAIRMAN HARPOOL: So we take the rest of the
3 14th and make the rest of the rural voters in that
4 county -- in that 21st have more influence, but we take
5 20,000 rural voters and put them in a district where
6 they lose any influence?

7 MR. GREIM: I don't think you can make that
8 assumption that they would lose influence.

9 And the other thing I'd point to is under the
10 14th Amendment, it's not a communities of interest type
11 of analysis. That is a -- it's a legitimate state
12 objective, or it can be, but it cannot trump the 14th
13 Amendment and the principle of one person, one vote.

14 CHAIRMAN HARPOOL: So we're below the 10
15 percent?

16 MR. GREIM: You're below the 10 percent
17 limit, but --

18 CHAIRMAN HARPOOL: And a community of
19 interest would overcome an allegation of invidious
20 discrimination.

21 MR. GREIM: It wouldn't if you have done --
22 if you used communities of interest in a way to
23 invidiously discriminate against rural voters and have
24 basically several rural districts be overpopulated.

25 CHAIRMAN HARPOOL: Well, let me ask you on

1 your other issues with regard to the 12th, the 21st,
2 and the 31st, they're all rural areas with similar
3 interests, right?

4 MR. GREIM: Well, I'm not sure that we can
5 say that those three areas have similar interests. We
6 can say that they're all rural, but among them, they
7 may have unique interests. Again, the 14th
8 Amendment --

9 CHAIRMAN HARPOOL: So not all rural interests
10 are the same?

11 MR. GREIM: Well, and nor does the 14th
12 Amendment require them to be the same. What it -- what
13 the 14th Amendment looks to is how are we
14 discriminating against different regions.

15 CHAIRMAN HARPOOL: So when you categorize all
16 rural districts and then compare them to the size of
17 all urban districts, you recognize that not all those
18 rural districts that are categorized necessarily have
19 the same or similar interests?

20 MR. GREIM: We -- that could very well be
21 true, but that's not the correct analysis for purposes
22 of constitutionality. And again, I'm afraid --

23 CHAIRMAN HARPOOL: Have rural voters been
24 deemed a suspect class for equal protection analysis?

25 MR. GREIM: Commissioner Harpool, suspect

1 class does not come into play when we're talking about
2 the use of impermissible and arbitrary criteria for
3 purposes of --

4 CHAIRMAN HARPOOL: Under an equal protection
5 analysis, it would.

6 MR. GREIM: Right, but we don't -- we're not
7 in suspect class analysis. We're under 10 percent.
8 We're just not.

9 CHAIRMAN HARPOOL: So let's talk about the
10 20th and the 30th. All right. The 20th is rural
11 Greene County and Christian County, and the 30th is the
12 city limits of Springfield plus a little bit of
13 population. Is the city of Springfield a community of
14 interest that the state has an interest in protecting?

15 MR. GREIM: Not necessarily.

16 CHAIRMAN HARPOOL: Could it be?

17 MR. GREIM: Not necessarily.

18 CHAIRMAN HARPOOL: Could it be?

19 MR. GREIM: It could be, but --

20 CHAIRMAN HARPOOL: Is it within the
21 discretion of this Commission to decide that it is?

22 MR. GREIM: This Commission could decide
23 that, but again, the Commission cannot disregard the
24 quality and population issue. It cannot do that.

25 MR. HARPOOL: But again, the population

1 deviation between those two districts is below the 10
2 percent.

3 MR. GREIM: Correct.

4 CHAIRMAN HARPOOL: Which means that to
5 overturn, it would require proof of invidious
6 discrimination?

7 MR. GREIM: Correct.

8 CHAIRMAN HARPOOL: I want to talk about the
9 number switch if I could. Is there any county in the
10 10th whose voters did not get the opportunity to elect
11 a state senator in 2010?

12 MR. GREIM: No.

13 CHAIRMAN HARPOOL: So whoever all of those
14 voters in the new 10th elected four years ago, they
15 will have the benefit of that senator's service for the
16 full four-year term in which they elected them,
17 correct?

18 MR. GREIM: Not correct.

19 CHAIRMAN HARPOOL: Okay. Where is that not
20 correct?

21 MR. GREIM: Well, here's the --

22 CHAIRMAN HARPOOL: Where in the 10th is there
23 a county that didn't elect a senator in 2010?

24 MR. GREIM: The issue is this: Each of those
25 senators will now have new districts, and so the

1 argument that you are making, Commissioner Harpool, is
2 that each piece of a district that was cobbled together
3 to make the 10th, that the individuals who are now in
4 the new 10th simply rely on their old person they
5 elected who now has a new district and now has new
6 constituents, so what you're saying is that they should
7 be -- they should have to be part of a larger district,
8 much larger probably, than 10 percent.

9 CHAIRMAN HARPOOL: Just try answering my
10 question this time. Did every voter in the 10th elect
11 someone to a four-year term as their senator in 2010?

12 MR. GREIM: And I answered that question.
13 The answer is yes.

14 CHAIRMAN HARPOOL: And that term will not
15 expire until 2014 when then the residents of the new
16 10th will be electing new senator to represent the new
17 district, correct?

18 MR. GREIM: The term doesn't expire. Their
19 district changes though in the meantime.

20 CHAIRMAN HARPOOL: Well, there won't be an
21 election in their district in the meantime, will there?

22 MR. GREIM: There won't. The only --

23 CHAIRMAN HARPOOL: And none of those senators
24 will run for reelection in the next two years.

25 MR. GREIM: That's right, but the problem is

1 those senators, during that two-year period, now have
2 districts that go in different directions, and I think
3 we can -- if we compare the two maps, we can see, you
4 know, for example, the 26th District used to have
5 Warren County.

6 Well, now the senator for the 26th District
7 has an additional part of St. Louis County, so what
8 you're asking the people of Warren County to do is to
9 rely on a senator who's now stretched out into another
10 part of St. Louis and to try to get someone's attention
11 who has a much, much broader constituency in the
12 interim. That's the problem with that argument.

13 CHAIRMAN HARPOOL: Well, but the districts
14 that elected them, isn't that the one they are to
15 serve?

16 MR. GREIM: Well, they're to serve the
17 district in which they're now sitting. I mean, this
18 goes to the issue of does someone follow a number --

19 CHAIRMAN HARPOOL: On what do you base that?
20 Where is there a case that says they quit representing
21 the people that elected them when, arbitrarily,
22 district numbers are changed due to population changes,
23 and they're to quit and ignore those people that
24 elected them and then only worry about the new people
25 in the district that they haven't even run for election

1 in?

2 MR. GREIM: Okay. First of all, there's a
3 couple of things built into your question.

4 CHAIRMAN HARPOOL: I mean, is there a case
5 you're quoting?

6 MR. GREIM: No. I'll quote you the
7 Constitution in a moment, but there's a problem there.
8 First of all, no one's arguing that they're going to
9 quit. I mean, the people may make a good faith pledge
10 that they'll still try to consider Warren County even
11 though they've also now got, you know, deeper into
12 St. Louis County. So I'm not saying that they're going
13 to be forced to quit. We're instead looking at the
14 practical problem of representing a much broader area,
15 trying to keep your mind on somebody else who is not
16 going to, you know, vote on you the next time around.
17 And so there's really nothing cementing your obligation
18 of those individuals, especially when you've got a
19 whole new region that will be electing you in a couple
20 years. That's the first point.

21 But let me now turn to the Constitution. If
22 you look at the residency references for senators in
23 the Constitution, there's no case directly on point,
24 but it appears much more likely that a court is going
25 to hold that a senator does essentially follow their

1 number. And that principle is going to apply here as
2 well. And here's where that comes from: The residency
3 requirement is defined in terms of where you must have
4 lived for one year before the day before your election.
5 Okay?

6 And so as of that time, you look to see
7 whether you're a resident of the district that you're
8 running in, the exception being if it's a newly created
9 district. So there's that provision.

10 The second provision is that if you remove
11 yourself from your district, then the office becomes
12 vacant, although it appears that the General Assembly
13 is the only body that is competent under our
14 Constitution to make that decision. But the point is
15 here that districts moving around don't necessarily
16 mean that the incumbent is stuck and they represent
17 whatever district they happen to find themselves in at
18 that point. Instead, they follow the number under the
19 plan of our Constitution.

20 CHAIRMAN HARPOOL: How is what we have done
21 different that what the court-adopted map did in the
22 80s or the 90s or in the year 2000?

23 MR. GREIM: Well, I can't address what the
24 court-adopted maps did in the past. I just -- I'm just
25 not prepared to do that today. But I can say that --

1 CHAIRMAN HARPOOL: You are aware that
2 Senator Kennedy from St. Louis once had his district
3 changed, and technically, his number was moved all the
4 way across the state?

5 MR. GREIM: Right, but there was also no
6 constitutional challenge to that, so I don't think we
7 can assume that that must have been constitutional.
8 And I believe Solicitor General Layton raised that
9 question with the Commission.

10 CHAIRMAN HARPOOL: Is it possible to write a
11 map that doesn't move a boundary line to a point that
12 someone's -- the same situation arises?

13 MR. GREIM: It's certainly possible to avoid
14 the switching of numbers back across the state. Now,
15 in terms of moving a boundary line so that two
16 incumbents happen to be together or where there's no
17 incumbent in a specific area, it may not be possible.
18 I don't know. I don't know the answer to that
19 question.

20 CHAIRMAN HARPOOL: Does it matter whether a
21 number is moved to the next district over or moved
22 across the state --

23 MR. GREIM: Here are the --

24 CHAIRMAN HARPOOL: -- for your legal
25 analysis?

1 MR. GREIM: Here are the three things that
2 are important --

3 CHAIRMAN HARPOOL: For your legal analysis,
4 does it matter if the district were to be moved two
5 counties over or seven counties over?

6 MR. GREIM: Here's what matters,
7 Commissioner Harpool: The three things combine
8 together or conspire to create the constitutional
9 injury in a case like this.

10 CHAIRMAN HARPOOL: So does it matter if the
11 number of your county -- of the district is moved two
12 counties over or all the way across the state for
13 purposes of the legal analysis you've provided us?

14 MR. GREIM: If you're going to limit me to
15 only that --

16 CHAIRMAN HARPOOL: You're going to be able to
17 give me the three things you want to give, but I need
18 an answer to that question --

19 MR. GREIM: Right.

20 CHAIRMAN HARPOOL: -- because I keep hearing
21 "moved all the way across the state," and if the legal
22 analysis is you can't move it at all, then let's say
23 that.

24 MR. GREIM: No. The legal analysis is not
25 that you can't -- that could not be correct. Okay?

1 And by extension, which is what you're wanting me to
2 say and I'll freely admit this, the number of miles
3 that something is moved is not the test, nor is there a
4 certain number of miles.

5 CHAIRMAN HARPOOL: Go ahead and make your
6 point.

7 MR. GREIM: Sure. Okay. Now, the actual
8 analysis is are individuals in the entire district
9 being represented by someone who none of them elected
10 and who none of them will be able to vote on for
11 reelection for when, in fact, there was a possibility
12 of giving those people an election immediately after
13 the redistricting. And so that's the issue we have
14 here. It's different, by the way, from -- if you're
15 familiar with our lawsuit, there's some intervenors who
16 want to come in, tikeman (phonetic spelling)
17 intervenors. It's different from the injury that
18 they're asserting, which is seemingly unavoidable, or
19 at least probably unavoidable in many redistrictings.

20 CHAIRMAN HARPOOL: For the record, your law
21 firm has filed a lawsuit. Am I correct that the
22 Hanaway Ashcroft Law Firm is also co-counsel with you
23 in that suit?

24 MR. GREIM: Correct.

25 CHAIRMAN HARPOOL: Any other questions of

1 this witness?

2 VICE CHAIRMAN ELLINGER: Doesn't matter. I
3 can go first. I'll go first.

4 CHAIRMAN HARPOOL: Mr. Ellinger.

5 VICE CHAIRMAN ELLINGER: Good morning,
6 Mr. Greim.

7 MR. GREIM: Good morning.

8 VICE CHAIRMAN ELLINGER: Let me ask a few
9 questions, and I don't want to -- I'm going to try to
10 not cover the ground that the Chairman has so ably
11 covered here.

12 Let me talk a little -- let me ask you a few
13 questions about the one man, one vote requirement that
14 you brought up. We have used census data to draw these
15 districts. You understand that?

16 MR. GREIM: Yes.

17 VICE CHAIRMAN ELLINGER: Do you believe that
18 census data is the proper and appropriate method to
19 draw districts?

20 MR. GREIM: Yes, and I think the
21 Supreme Court has so held.

22 VICE CHAIRMAN ELLINGER: Okay. Are you aware
23 of any cases the Supreme Court has addressed the
24 question of felons being included in census data?

25 MR. GREIM: I'm not.

1 VICE CHAIRMAN ELLINGER: Are you aware of any
2 cases the Supreme Court has dealt with voters -- or
3 folks that are under the age of 18 being included in
4 census data for purposes of one man, one vote?

5 MR. GREIM: I'm not.

6 VICE CHAIRMAN ELLINGER: And you do
7 understand that felons in Missouri are not allowed to
8 vote, correct?

9 MR. GREIM: Yes.

10 VICE CHAIRMAN ELLINGER: So if there's a
11 large percentage of felons in a district, they are not
12 counted as voters, correct?

13 MR. GREIM: I'm not sure of the answer to
14 that question.

15 VICE CHAIRMAN ELLINGER: Can they vote?

16 MR. GREIM: They can't vote.

17 VICE CHAIRMAN ELLINGER: So one man, one
18 vote, by definition, requires someone who can vote,
19 correct?

20 MR. GREIM: Yeah. I think there is probably
21 an answer to this question in the case law, but I'm not
22 aware of this Commission having considered the felon
23 issue or the under 18 issue. We'd be happy to look at
24 that and provide comments if the Commission is able to
25 tell us that it has done so.

1 VICE CHAIRMAN ELLINGER: You're aware of
2 the -- you discussed the urban/rural split. You
3 believe that urban districts are underpopulated and
4 rural districts are overpopulated; is that correct?

5 MR. GREIM: Yes, sir.

6 VICE CHAIRMAN ELLINGER: How many urban
7 districts are there in the state of Missouri?

8 MR. GREIM: Well, I'd have to refer to my
9 spreadsheet, but I can actually give you that answer.
10 It'll take me a moment, and I will be able to do this.
11 I count nine urban districts and approximately eight
12 suburban districts.

13 VICE CHAIRMAN ELLINGER: Okay. What criteria
14 do you use to determine what an urban district is?

15 MR. GREIM: Simply its location.

16 VICE CHAIRMAN ELLINGER: "Simply its
17 location," that doesn't answer my question. What is
18 the criteria to define an urban district?

19 MR. GREIM: Right. You simply have to use
20 your knowledge of the state and your knowledge of the
21 areas, and you know, for example, the 11th in
22 Jackson County has some areas in the far northeastern
23 corner which are rural or suburban, but then if you get
24 back over closer to Interstate 435, it's urban. But
25 most of the people in the 11th would be over in the

1 urban area, so you have to do that. I mean, that's the
2 best you can do. There's no people -- it does not -- a
3 district is not urban up to its boundary and then
4 you've crossed over into pastures.

5 VICE CHAIRMAN ELLINGER: Tell me what the
6 urban districts are. You just counted nine of them.
7 Tell me what numbers the urban districts are.

8 MR. GREIM: The urban districts are the 14th,
9 the 5th, 7th, 9th, and 11th, the 30th, the 13th, and
10 the 4th. I hope I got to nine.

11 VICE CHAIRMAN ELLINGER: That's eight.

12 MR. GREIM: Okay. Let me try again; the
13 14th, the 1st, the 5th, 7th, 9th, 11th, 30th, 13th, and
14 4th. That should be nine.

15 VICE CHAIRMAN ELLINGER: That's nine. You
16 missed the 1st the first time you did it.

17 MR. GREIM: Okay.

18 VICE CHAIRMAN ELLINGER: Okay. Which
19 districts do you define as suburban districts?

20 MR. GREIM: Okay. I wasn't marking those,
21 but I'll -- just take one second.

22 VICE CHAIRMAN ELLINGER: You made the
23 differentiation, so I --

24 MR. GREIM: I did. I did, and I'll be able
25 to give you the answer. Okay. As suburban, I've

1 marked 24th, the 2nd, 23rd, 15th, 34th, 17th, 8th, and
2 the 22nd.

3 VICE CHAIRMAN ELLINGER: That's eight I
4 count?

5 MR. GREIM: Yes.

6 VICE CHAIRMAN ELLINGER: So you've counted
7 nine urban districts, eight suburban districts. Are
8 all the rest rural districts?

9 MR. GREIM: The rest are rural districts.

10 VICE CHAIRMAN ELLINGER: Is that how you
11 would define them; as rural districts?

12 MR. GREIM: We would, and there are some
13 districts, for example, the 19th, which is Boone and
14 Cooper County -- I mean, obviously, the middle part of
15 Columbia is not -- it's not rural. It could be
16 considered urban, at least the middle part of Columbia,
17 but then it sprawls into Cooper County and much of
18 Boone, which is rural. So we're trying to characterize
19 districts, but in some places, they nip a corner of a
20 metro area or they have a place like Columbia which has
21 a section in the middle which is more urban.

22 VICE CHAIRMAN ELLINGER: Do you define urban
23 to be a population density?

24 MR. GREIM: I think you could. I'm sorry. I
25 interrupted you.

1 VICE CHAIRMAN ELLINGER: Well, I want to know
2 what the -- you defined nine districts as urban. What
3 is the standard you use to define those districts.
4 Unless you're using the obscenity standard, which you
5 know it when you see it, you've got to have more
6 criteria than, "Well, I think these are urban."

7 MR. GREIM: Right.

8 VICE CHAIRMAN ELLINGER: I think these are
9 suburban. What's the definition? Is it density? Is
10 how tall the buildings are? Is it how much blighted
11 area there is? What is the criteria you use to define
12 urban?

13 MR. GREIM: Right. I mean, look, the best I
14 can tell you is this: You know, we're all Missourians.
15 We all know our state. There are areas that are
16 definitely urban and areas that are definitely not.
17 We're not into such fine distinctions here that we need
18 to measure density and show dots on a map and draw a
19 line and say, "This is clearly an urban area. This is
20 clearly not." It's just the character of the area, and
21 that's the best I can do. I mean, higher density would
22 be urban. Lower density would be rural. You know,
23 that's probably the most important thing.

24 VICE CHAIRMAN ELLINGER: Well, to a person in
25 Mercer County or Worth County, very small, very rural,

1 by all definitions populated, St. Charles is an urban
2 area.

3 MR. GREIM: Right.

4 VICE CHAIRMAN ELLINGER: Right? But you
5 qualify it as suburban.

6 MR. GREIM: We have, but actually, it makes
7 no difference in our analysis if it's considered urban
8 or rural because if you look at the worst districts in
9 terms of positive deviation and negative deviation,
10 they're all urban or rural. The first suburbans that I
11 see are several places down; St. Louis County and --
12 the 8th and Jackson County, which we both classified --
13 I'm sorry, the 24th, St. Louis County, and the 8th in
14 Jackson County, which are several spots down. At that
15 point, we're down into the low threes in terms of
16 deviation.

17 VICE CHAIRMAN ELLINGER: But when you look at
18 rural districts, there are rural districts that are
19 below the ideal population, correct?

20 MR. GREIM: Well, there's only -- yeah.
21 The -- well, actually, you say "below the ideal." I
22 mean, basically, you look at the average, and then you
23 just go from there, so 18 are above the average, 16 are
24 below, and so you can't go all the way down to the
25 person who's .07 off and say everybody from there up is

1 all urban. Everyone on the other side is all rural.
2 So yes, once you get down into the lower numbers,
3 there's a mix. The pattern is at the very worst
4 deviations from the average.

5 VICE CHAIRMAN ELLINGER: There are also urban
6 districts that are overpopulated, correct?

7 MR. GREIM: Yeah. I'd have the same answer
8 that I just gave.

9 VICE CHAIRMAN ELLINGER: But there are urban
10 districts overpopulated, yes?

11 MR. GREIM: Sure.

12 VICE CHAIRMAN ELLINGER: And there are rural
13 districts that are underpopulated, correct?

14 MR. GREIM: Yes, but not severely.

15 VICE CHAIRMAN ELLINGER: And there are
16 districts in between?

17 MR. GREIM: But not severely in either case.
18 The most severe break down into urban and rural with
19 exactly one exception, the 28th District.

20 VICE CHAIRMAN ELLINGER: Well, the 25th
21 District's 5,000 folks short, right?

22 MR. GREIM: Correct. It's --

23 VICE CHAIRMAN ELLINGER: And you define that
24 as a rural district, correct?

25 MR. GREIM: We do. We do define -- it's 2.9

1 percent short.

2 VICE CHAIRMAN ELLINGER: Okay. And there
3 are -- the 14th District, which you, I believe, defined
4 as an urban district, is almost 4,000 over, correct?

5 MR. GREIM: Right. Again, it's only 2.2.4
6 percent off. It's less than half the deviation of the
7 most serious ones.

8 VICE CHAIRMAN ELLINGER: So you're only
9 focused on deviation when you make this analysis?
10 Population is irrelevant as far as real numbers?
11 Deviation is the only thing you're looking at?

12 MR. GREIM: Well, that's correct. We look at
13 the deviation from the standard -- from the average,
14 which is how the court has said that you define the one
15 man, one vote violations.

16 VICE CHAIRMAN ELLINGER: Are you familiar
17 with Article 3, Section 7 of the Missouri Constitution?

18 MR. GREIM: I am.

19 VICE CHAIRMAN ELLINGER: Okay. You and
20 Mr. Harpool engaged in a bit of a discussion about
21 taking population from Lafayette County and putting it
22 into the 11th District. Do you recall that
23 conversation?

24 MR. GREIM: Yes.

25 VICE CHAIRMAN ELLINGER: Do you understand

1 Article 3, Section 7 to say that rural counties that
2 are not multi-districts should be preserved as a whole
3 body?

4 MR. GREIM: Well, in fact, what you have to
5 do is if you've got a multi-district county that
6 borders other counties, you could slip over the line
7 one time, and it could go into a rural county.

8 VICE CHAIRMAN ELLINGER: So you're allowed to
9 split a rural county? That's your opinion?

10 MR. GREIM: You are.

11 VICE CHAIRMAN ELLINGER: And do you have any
12 case law to support that position?

13 MR. GREIM: I can't name a case. I just
14 refer to the Constitution itself, which says --

15 VICE CHAIRMAN ELLINGER: Tell me the language
16 in the Constitution that says you can split a
17 non-multi-district county.

18 MR. GREIM: It might be in 3, 7. It might be
19 in a neighboring one, but if you've got a
20 multi-district county, you can go into a neighboring
21 county one time from that spot.

22 VICE CHAIRMAN ELLINGER: You talked about
23 invidious discrimination. Define invidious
24 discrimination for me.

25 MR. GREIM: It's simply discrimination that's

1 not based on a legitimate state redistricting
2 objective.

3 VICE CHAIRMAN ELLINGER: Does it require an
4 intent component?

5 MR. GREIM: It requires intent and effect,
6 although intent can be presumed with the proper
7 showing.

8 VICE CHAIRMAN ELLINGER: Do you have any
9 evidence or any knowledge that there was an intent to
10 support this so-called invidious discrimination?

11 MR. GREIM: Yes. We look at the clear
12 pattern in the deviations between the two sets --

13 VICE CHAIRMAN ELLINGER: Let me interrupt
14 you, Mr. Greim. I didn't ask for effect. I'm asking
15 for direct evidence of intent -- direct evidence of
16 intent, not inferences, not shifting burdens. Direct
17 evidence.

18 MR. GREIM: I heard you, but actually, I
19 believe you asked me for evidence of intent. If you
20 want direct evidence of intent --

21 VICE CHAIRMAN ELLINGER: Do you have any
22 direct evidence of intent?

23 MR. GREIM: If direct evidence is something
24 out of the mouths of one or more commissioners, we
25 don't because very few commissioners have spoken about

1 their thought process. We do know this,
2 Commissioner Ellinger, I believe you addressed a set of
3 senators at some point after the fact and talking about
4 the 7th and the 10th switch, at least my understanding,
5 and we've alleged, is that you said that this was a
6 demand made by the Democratic members of the Commission
7 and that it was required to move forward. And also
8 that they would not start with the appellate -- second
9 appellate map.

10 Now, we believe that the switching of the
11 numbers is one way in which the urban and rural
12 discrimination was effected, and so we think that goes
13 to intent. We cannot -- until we put each and every
14 one of you under oath, and I hope it does not come to
15 that, we're not going to be able to have direct
16 evidence of what you were thinking.

17 VICE CHAIRMAN ELLINGER: If the numbers were
18 switched in a different manner, say instead of 7 and 10
19 being switched, say 10 stayed in Kansas City, and let's
20 say, hypothetically, on our tentative map, the 10th
21 became the 26th and what is the 26th on the map became
22 the 7th, would that solve the question of invidious
23 discrimination, in your opinion?

24 MR. GREIM: It wouldn't completely solve it,
25 but it may bring us down to a point where we're not

1 having it, and here's where I draw the conclusion: The
2 26th used to include Warren County, and I believe,
3 although I don't know, that Warren County is probably a
4 pretty substantial portion of the population of the
5 10th. It was a pretty substantial portion of the
6 population of the old 26th, and so -- excuse me -- if
7 the new district was now called the 26th, at least a
8 substantial portion of that district would have the
9 incumbent that it voted for.

10 In fact, part of the new 26th would have one
11 of the incumbents that they voted for, at least over in
12 St. Louis County, and the people in the 26th would be
13 able to elect a new representative. The people in the
14 26th would have somebody immediately who represented a
15 neighboring county, and so it seemed to solve much of
16 the problem. Of course, we still have a remaining
17 problem that happens every time you have redistricting,
18 which is that someone who's on the edge of a district
19 may find themselves switched over from even to odd or
20 in a new district for a few years. But that alone is
21 not what we're saying is invidious discrimination.

22 VICE CHAIRMAN ELLINGER: Well, and you must
23 have known where I was going next, so I want to make
24 sure I understand this. The simple fact of switching
25 counties from district to district is not

1 discrimination, correct?

2 MR. GREIM: No. I would say no. Now, if it
3 was done with some sort of a pattern, we might be
4 there, but we're only looking at this one switch.

5 VICE CHAIRMAN ELLINGER: Well, Putnam County
6 was in the 18th District. It's now in the
7 12th District. Is that invidious discrimination?

8 MR. GREIM: No. That one example would not
9 be.

10 VICE CHAIRMAN ELLINGER: But now, somebody in
11 Unionville might think it's a disastrous and incredibly
12 discriminatory towards them, right?

13 MR. GREIM: Well, now we're moving away
14 from -- what we mean when we're talking about
15 discrimination under the 14th Amendment, we're talking
16 more about communities of interest. That's different,
17 and that's not what our claim is, so yes. At some
18 point, if you move away from our claim to boundary
19 shifting and people being grouped with people they
20 don't want to be with, we move away from invidious
21 discrimination, and we move into the political process,
22 which is what this Commission does.

23 VICE CHAIRMAN ELLINGER: But a person in
24 Putnam County is going to be represented by a senator
25 that they never voted for, right?

1 MR. GREIM: Correct. And we're not saying --

2 VICE CHAIRMAN ELLINGER: But that's okay?

3 That's okay?

4 MR. GREIM: Well, in some cases, it has to be
5 okay. I mean, we readily concede that. It's the set
6 of factors here that I discussed earlier, the three
7 factors, that set this apart.

8 VICE CHAIRMAN ELLINGER: Well, what about,
9 like, in Douglas County where two years ago they voted
10 for a senator, and now they're going to vote for a
11 senator again? Do they get extra representation?

12 MR. GREIM: No. They just get a more
13 frequent election. They don't have two people
14 representing them.

15 VICE CHAIRMAN ELLINGER: Are you familiar
16 with the Larios case?

17 MR. GREIM: Yes.

18 VICE CHAIRMAN ELLINGER: Do you believe that
19 anything that was done in this tentative plan dealt
20 with protection of incumbents?

21 MR. GREIM: I haven't done that analysis.
22 It's possible, but that's not the testimony I'm
23 providing here today.

24 VICE CHAIRMAN ELLINGER: You understand that
25 protection of incumbents would be a potential

1 constitutional violation, correct?

2 MR. GREIM: If it's done in a discriminatory
3 manner, yes.

4 VICE CHAIRMAN ELLINGER: And you've talked a
5 lot about the second appellate map. I've heard you
6 mention it a number of times.

7 MR. GREIM: Right.

8 VICE CHAIRMAN ELLINGER: Do you believe that
9 the second appellate map is constitutional?

10 MR. GREIM: I believe it is. It's one of
11 probably many other constitutional possibilities, but
12 you know, we're looking at that map. We're still
13 analyzing it. I think it's constitutional. I think
14 the court could probably, in a preliminary injunction
15 setting given our time exigencies, it could put it in
16 place. But it might be that there's even better maps
17 that could be drawn, probably is.

18 VICE CHAIRMAN ELLINGER: And many of these
19 concerns that you've raised dealing with urban and
20 rural discriminations, splits in counties, and moving
21 of counties also all existed in the second appellate
22 map, correct?

23 MR. GREIM: Well, I disagree. There is no
24 pattern of urban and rural discrimination in the second
25 appellate map. There is some shifting of lines and

1 things like that but not like what we're talking about
2 with this map here.

3 VICE CHAIRMAN ELLINGER: And there is some
4 question as to whether the splitting of rural counties
5 is authorized.

6 MR. GREIM: Is authorized at all?

7 VICE CHAIRMAN ELLINGER: Yes.

8 MR. GREIM: I disagree. I don't think that
9 that's correct. I think that you could split a rural
10 county in order to make sure that the entire
11 district -- in order to meet the Federal Equal
12 Protection requirements.

13 VICE CHAIRMAN ELLINGER: What was the basis
14 that the Senate original appellate map was thrown out?

15 MR. GREIM: Well, the original map was
16 withdrawn or whatever you want to call it by the
17 appellate commission, but in that case, for example, in
18 Kansas City, they went into different counties, so
19 this -- what's labeled as the 7th on the tentative map
20 I believe went up into Clay County and down into
21 Cass County. That's clearly unauthorized by within the
22 Constitution.

23 VICE CHAIRMAN ELLINGER: So you can't go into
24 three counties?

25 MR. GREIM: Well, you can only go into one

1 county, and in fact, there's a slight exception with
2 St. Louis County and city because of the geography.

3 VICE CHAIRMAN ELLINGER: Are you being paid
4 for your testimony today?

5 MR. GREIM: Yeah. I will be paid.

6 VICE CHAIRMAN ELLINGER: Who is paying you?

7 MR. GREIM: I will not disclose that.

8 VICE CHAIRMAN ELLINGER: Have you been
9 retained by any elected official to present prepared
10 testimony today?

11 MR. GREIM: No, I have not.

12 VICE CHAIRMAN ELLINGER: Are you being paid
13 by any elected official to prepare testimony or present
14 testimony today?

15 MR. GREIM: I will not answer that question.

16 VICE CHAIRMAN ELLINGER: I don't have any
17 other questions.

18 CHAIRMAN HARPOOL: Let me just ask about one
19 thing. Doesn't the second appellate map have one more
20 urban district than the tentative map?

21 MR. GREIM: Well, I've -- Mr. Chairman, you
22 have represented that to me. I've got a chart that
23 lists the numbers of urban, suburban, and rural
24 districts, and I just don't know the answer to that
25 question. It's possible that it does.

1 CHAIRMAN HARPOOL: Well, if it does, then it
2 would even make the bias toward the urban area worse
3 than the tentative map we've adopted.

4 MR. GREIM: The issue is not -- again, it's
5 not one of proportional representation of how many --
6 you know, how many does St. Louis get? How many does
7 Kansas City get? How many do the urban areas get? How
8 many do the rural areas get? That's not how we do it.
9 Instead, we look at the population of each district to
10 make sure that they're as close -- as nearly equal in
11 population as can be. And then we see if a pattern
12 emerges in the discrimination. We're not making a
13 proportional representation sort of claim.

14 CHAIRMAN HARPOOL: Do you know of any legal
15 basis in which we could apportion senate districts
16 based on economic output?

17 MR. GREIM: No.

18 CHAIRMAN HARPOOL: Mr. Bradshaw.

19 COMMISSIONER BRADSHAW: Good morning. I just
20 want to follow up on one thing that
21 Commissioner Ellinger just asked. And I -- believe me,
22 I'm sensitive to your concerns about answering this
23 question. You've got a bunch of lawyers here, and we
24 kind of understand these issues, but I just want to
25 understand. You're declining to identify who will be

1 paying you for today because you just choose not to or
2 because you believe that's information that's
3 privileged? Because my understanding is that that sort
4 of information is not necessarily privileged, and you
5 don't have to give us that. You're not in a court.
6 You're not under oath and that sort of thing. But just
7 understand, your declining to give us that information;
8 is that correct?

9 MR. GREIM: I am.

10 COMMISSIONER BRADSHAW: I want to come back
11 to this rural/urban -- it's been talked about a lot, so
12 I won't spend a lot of time on it, but I'm having a
13 little hard time understanding your distinction between
14 rural and urban.

15 And I do so because I understand you said
16 well, you can look at the state, if you know the state.
17 I grew up in Springfield. I was the Republican chair
18 of the Greene County Central Committee. My dad
19 represented the 30th District for a dozen years. I
20 don't see it as an urban district.

21 If you want to -- if you're going to call the
22 districts in the City of St. Louis or in the City of
23 Kansas City as urban districts, it's hard for me to see
24 describing Springfield and throwing that into the same
25 pot when you're deciding whether the character of that

1 district is going to be used to decide that there's
2 some sort of discrimination against rural and urban
3 districts. Can you explain to me why it is you would
4 put Springfield in that same category when drawing
5 those distinctions?

6 MR. GREIM: Yes. First of all, the heart of
7 Springfield is not the same as downtown St. Louis or
8 downtown Kansas City where we have our offices. It's
9 different, and it doesn't feel as urban. Yet, the
10 population density, which Mr. Ellinger mentioned, is
11 higher than in the surrounding area.

12 If you look at the voting data for those
13 areas, you'll see that there are -- they're sort of a
14 more urban, younger group of people living there,
15 more -- there's some professors, and there's more
16 Democrat voters in that area. So it has the
17 characteristics of urban areas, at least in Missouri,
18 but I would concede it's not like the urban core of
19 St. Louis, the 4th and 5th District, or you know, the
20 top of the 7th District of Kansas City.

21 COMMISSIONER BRADSHAW: And as we look at,
22 for example, north Missouri and a good portion of what
23 would be the 12th and at least part of the 18th, having
24 spent a lot of time practicing law with some cases up
25 in that area, extremely low density, and even though

1 you may -- no one would argue that those are rural
2 areas, nor would anyone argue that good portions of
3 southwest Missouri, outside of Springfield and Joplin,
4 are rural areas. But would you concede that the
5 character of those areas are quite different, both
6 culturally and also with respect to population density?

7 MR. GREIM: The character of, like, the boot
8 heel compared to northwest Missouri?

9 COMMISSIONER BRADSHAW: I'm talking about
10 southwest Missouri, but you can use the boot heel just
11 as an equal substitute.

12 MR. GREIM: Yeah. I mean, I would say that
13 the character is different, but I don't think I would
14 say that, you know, the interests are all different. I
15 mean, I think when people come to Jefferson City to
16 make laws and form coalitions, sometimes coalitions are
17 surprising, but I think often, there is sort of a rural
18 versus urban debate that forms up here, even though
19 when those people go home to their constituents, going
20 home to, you know, Poplar Bluff or something is
21 different from going home to Maryville.

22 COMMISSIONER BRADSHAW: And I can tell you
23 from personal experience following my dad around for a
24 dozen years when I was in school, I had the opportunity
25 to see him work. I can tell you that Springfield's

1 interests were much more aligned with some of, not all,
2 but some of the rural areas as opposed to being an
3 urban district where their interests were in line with
4 Kansas City or St. Louis.

5 But can you understand why we're having a
6 hard time? Because it seems to me, understandably,
7 you're having a hard time laying out for us, other than
8 we're all from Missouri and we know what's rural and
9 what's urban.

10 If we're going to -- and I think -- I wrote
11 it down. One of the comments you made, and I can't
12 remember whether it was to Chairman or Vice Chairman's
13 questions, you didn't want to get into such fine
14 distinctions. But you understand we're trying to
15 decide whether the map we're drawing violates
16 constitutional principles of -- related to one man, one
17 vote, the 14th Amendment. We need something harder.

18 I mean, it seems to me you're having a hard
19 time as well articulating exactly what we're looking
20 for when we decide is one group being discriminated
21 against versus another group. The lines are just not
22 that right. Would you agree?

23 MR. GREIM: Well, I would agree that they're
24 right enough for you to make a decision here. You
25 know, just looking at our map, looking at our

1 districts, we might quibble about, you know, parts of
2 some districts, whether they're really urban or whether
3 they're more suburban or whatever. But I think that
4 the pattern in this case is clear enough.

5 You know, we're not debating about the
6 character of the top counties where the population
7 deviation is the worst. And frankly, Jackson County is
8 responsible, you know, for the top half of those
9 problems on the negative side. So yes, in some -- some
10 of these distinctions aren't relevant here because the
11 pattern is obvious enough, but I concede that the urban
12 character of Springfield, as we discussed, is not as
13 strong as the urban character of the 7th, but I don't
14 think somebody would call the 30th District a rural or
15 a suburban district. I just -- I don't think it can be
16 characterized that way.

17 Seemingly, just looking at the size of the
18 district, it's about as dense as the 7th District,
19 which is the urban core of Kansas City. But anyway, I
20 understand. I mean, we don't have precise definition
21 of urban versus rural. My point is you don't need that
22 precise of a definition to remedy the clear pattern
23 that exists when you line these districts up.

24 COMMISSIONER BRADSHAW: Now, when you -- you
25 all -- you filed on behalf of your clients. You filed

1 a Federal Court suit. We've had a chance to look at
2 it. It repeats some of the same themes you've talked
3 about this morning and was in your letter to us. And
4 in there, there was a chart of negative deviation in
5 underpopulated -- you identified as part of your
6 argument that there's this overstatement of
7 representation to urban areas because of the negative
8 deviation.

9 In that same lawsuit, you talk in much more
10 positive terms about the, what we call Appellate 2 or
11 the second appellate map. But just to clear up one
12 brief thing, you said earlier that you weren't sure if
13 it had been withdrawn or whatever. We all know the
14 Supreme Court said it was a nullity because the
15 first -- they didn't have the authority to issue the
16 map, correct?

17 MR. GREIM: I was talking about the first
18 appellate map when I said that.

19 COMMISSIONER BRADSHAW: Well, the first
20 appellate map was declared unconstitutional.

21 MR. GREIM: Right.

22 COMMISSIONER BRADSHAW: And then the second
23 one declared a nullity, correct? To be clear, it
24 wasn't just withdrawn.

25 MR. GREIM: No. No. And I didn't mean --

1 maybe we were mixed up. I didn't mean to suggest it
2 was withdrawn.

3 COMMISSIONER BRADSHAW: Okay.

4 MR. GREIM: Certainly, the Court said that
5 there was no authority to issue it.

6 COMMISSIONER BRADSHAW: I just wanted to make
7 sure -- yeah. I just wanted to make sure the record is
8 clear.

9 MR. GREIM: Right.

10 COMMISSIONER BRADSHAW: But anyway, with
11 respect to this -- in there, part of the relief you
12 have asked for in the fourth point is that the court,
13 that means the Federal Court in Kansas City, order that
14 the defendant, that being Secretary of State Carnahan,
15 conduct the primary and general elections this year
16 using the state senate districts approved by the
17 non-partisan commission in the second non-partisan
18 plan. Now, when you refer to "non-partisan
19 commission," that's really the Court of Appeals group
20 that was appointed, correct?

21 MR. GREIM: Correct. It is non-partisan.

22 COMMISSIONER BRADSHAW: And so in that, you
23 advocate using the second non-partisan plan, correct?

24 MR. GREIM: Yeah. We proposed that as a
25 preliminary remedy for the court.

1 COMMISSIONER BRADSHAW: Okay. Well, a
2 preliminary remedy for conducting the 2012 elections?

3 MR. GREIM: Yes.

4 COMMISSIONER BRADSHAW: And in that -- so in
5 that chart, you identify the six districts of most
6 negative deviation. One of those is Springfield,
7 correct?

8 MR. GREIM: Correct.

9 COMMISSIONER BRADSHAW: Three of them are
10 Jackson County; the 7th, 9th, and 11th, correct?

11 MR. GREIM: Correct.

12 COMMISSIONER BRADSHAW: Are you aware that
13 the second appellate district also had -- if you were
14 going to rank its six most underpopulated areas that
15 the second appellate district also had three districts
16 that were in the top six, if you will, from
17 Jackson County?

18 MR. GREIM: It had numbers 3, 4, and 5,
19 although the degree of underpopulation was less
20 pronounced than in the new map.

21 COMMISSIONER BRADSHAW: It may have been less
22 pronounced, but it was among the six most?

23 MR. GREIM: Yes.

24 COMMISSIONER BRADSHAW: So if we -- say the
25 two plans agree that Jackson County was going to

1 fall -- three of the Jackson County districts would
2 fall in that category. You've got Springfield. The
3 other two you've got are St. Louis, which the St. Louis
4 district was also among the six most underpopulated in
5 the appellate, and then you've got a rural district.
6 So while you may disagree with the extent of the
7 deviation, the maps aren't that far apart in terms of
8 which districts they identified as those that would be
9 less populated.

10 MR. GREIM: Actually, I believe that they are
11 pretty far apart. For example, if we look at the most
12 underpopulated under the court invalidated map, the
13 most underpopulated is now --

14 COMMISSIONER BRADSHAW: Pardon me. I'm not
15 talking about -- I'm talking about Appellate 2, not
16 Appellate 1.

17 MR. GREIM: Yes, and that's what I'm talking
18 about, Appellate 2. The most underpopulated is a --
19 now, instead of being an urban district, it's suburban,
20 which is Jefferson County and west St. Louis County.
21 The second most -- and that's only 3.87 percent below.

22 The second most is a rural county,
23 Livingston, Pettis, Lafayette. That's 3.8. The third
24 most is the 10th in Jackson. We know what that is.
25 The fourth is the 8th, but it's reconstituted to be

1 suburban and even rural because it goes into Lafayette.
2 That's one of the ideas I mentioned a second ago. The
3 fifth is Jackson, and it's more the middle of Jackson.
4 It's urban. And the sixth is rural. It is several
5 counties in the middle -- the south part of the state,
6 and that's -- we're already down into the twos, 2.78
7 percent. So the maps are quite different in terms of
8 what they do with the negative deviation counties.

9 COMMISSIONER BRADSHAW: You've got the 9th,
10 10th, and 11th, correct?

11 MR. GREIM: Correct.

12 COMMISSIONER BRADSHAW: Those are all
13 Jackson County.

14 MR. GREIM: Well, the 8th goes into -- it's
15 actually eastern Jackson, and it goes into Lafayette.

16 COMMISSIONER BRADSHAW: But the bulk of the
17 population would be Jackson County?

18 MR. GREIM: Well, I'm not certain of that.
19 I'm sure that more than half of it is, but it's eastern
20 Jackson County going into Lafayette, which is one of
21 the fixes that we sort of suggested for this map.
22 Although, I haven't started from this map to show you
23 what you might do.

24 COMMISSIONER BRADSHAW: Going to Appellate 2,
25 do you know how many districts qualify as

1 minority/majority districts in the Appellate 2 map?

2 MR. GREIM: No.

3 COMMISSIONER BRADSHAW: If I told you that
4 three would be at 55 percent or above, would that
5 surprise you?

6 MR. GREIM: No.

7 COMMISSIONER BRADSHAW: Do you think that's
8 an important consideration for this committee to
9 consider the number of minority majority districts that
10 are created?

11 MR. GREIM: The committee has to make sure
12 that the map complies with the Voting Rights Act.

13 COMMISSIONER BRADSHAW: And do you know how
14 many minority majority districts 55 percent or over are
15 in the tentative map that this Commission has approved?

16 MR. GREIM: No.

17 COMMISSIONER BRADSHAW: Okay.

18 MR. GREIM: Although, we'd be very
19 interested -- if the Commission believes that the
20 second appellate map fails under the Voting Rights Act,
21 then that would be important.

22 COMMISSIONER BRADSHAW: I would say that this
23 committee -- we're not here to render legal opinions.

24 I will tell you that I think all the commissioners
25 listened very carefully to testimony that was

1 presented.

2 And I think to address one issue that you've
3 raised suggesting that perhaps we hadn't taken enough
4 testimony, we adopted all the testimony in the record
5 from the first hearing, so both having read that and
6 some of the people who came and testified in one or
7 more of the public hearings we held beforehand, that is
8 very important to the minority community to see
9 substantial minority majority districts created and not
10 to lose what had previously -- what was previously in
11 the 2001 plan.

12 So that certainly was a consideration of, I
13 think, all the members of this Commission to ensure
14 that appropriate minority majority representation was
15 there and that slightly over 50 percent isn't enough
16 because of -- at least according to testimony we've
17 heard, and I don't -- I mean, do you have anything to
18 offer that counters this that because of turnout rates
19 within the minority community that simply looking at
20 something that's barely over 50 percent is not going to
21 be adequate to meet minority majority requirements? Do
22 you have anything to suggest that that would be
23 incorrect?

24 MR. GREIM: Well, let me, first of all, say
25 I'm not here to give an analysis on the Voting Rights

1 Act of the second appellate map. I know that there's a
2 range of expert opinion on exactly what numbers you use
3 and what the safe number is for majority minority. Is
4 it over 50 percent? Do you look at Hispanics? Do you
5 look at voting age, population? All those things come
6 into play, and so we're aware of that.

7 But one thing I want to suggest is that, you
8 know, in the lawsuit, you know, federal courts want to
9 use a map that reflects the will of the state that
10 doesn't have other constitutional problems. So that's
11 why it was necessary to turn to that map. However, the
12 issue before the Commission now is not, you know, does
13 the second appellate map have any problems? If so, we
14 go with this map. That's why we're still here in this
15 15-day period.

16 The federal lawsuit was filed because it
17 wasn't clear that there would be something like this
18 happening. But now that we have the opportunity, I
19 think other ideas could be explored, maybe fixes even
20 to the appellate map that would address any concerns
21 that the Commission had, maybe even using it as a basis
22 for a new map instead of lurching over to the tentative
23 plan, which is unconstitutional on its own.

24 COMMISSIONER BRADSHAW: But just to be clear,
25 you have advocated -- you've signed the pleading that

1 suggests to the court that the second appellate map is
2 the one that ought to be used.

3 MR. GREIM: As a preliminary remedy, yes.

4 COMMISSIONER BRADSHAW: And you would agree
5 that minority majority districts are a consideration
6 that's an appropriate consideration for this
7 Commission?

8 MR. GREIM: It has to be. It has to be,
9 under -- I mean, I should say more precisely compliance
10 with the Voting Rights Act is what the Commission
11 should consider.

12 COMMISSIONER BRADSHAW: Now, switch gears
13 again just a little bit. Once again, a consistent
14 theme that I've heard, and I've heard this from a
15 number of people that have written but also certainly
16 in the lawsuit that you filed, is the idea that perhaps
17 a non-partisan system, at least as you describe it,
18 using the courts is somehow preferable to the
19 bipartisan system that is -- that we participated in
20 here.

21 MR. GREIM: We take no opinion on that. And
22 I don't know that the lawsuit actually states that.

23 COMMISSIONER BRADSHAW: The lawsuit
24 repeatedly refers to the plan -- the court plan as the
25 preferred plan as a non-partisan approach, in fact, to

1 the point of abandoning referencing it as a court and
2 calling it a non-partisan commission. So just to be
3 clear, you -- because we consider this to be part of
4 the public record that we consider as well. You're --
5 it's not your position that the court plan or that
6 process is preferable to the process that we've engaged
7 in here, are you?

8 MR. GREIM: Our Constitution provides for
9 both plans. It starts here, and then if there's a
10 deadlock, it goes there, but rather than looking at who
11 drafted it, we would want to look at the content of the
12 plan. And so I think the appellate commission is also
13 commonly called the non-partisan commission, so that's
14 a term that we used.

15 COMMISSIONER BRADSHAW: It's not referred
16 that way anyplace else in the Constitution, for
17 example?

18 MR. GREIM: Well, but it's commonly referred
19 to in that manner.

20 COMMISSIONER BRADSHAW: The same way
21 Springfield is commonly referred to as an urban area?

22 MR. GREIM: Well, it's not wither it's
23 commonly referred to as an urban area. It's its
24 character for purposes of the 14th Amendment.

25 COMMISSIONER BRADSHAW: And just to clarify,

1 I want to make sure I'm clear on one thing. You're not
2 suggesting that we can't consider communities of
3 interest when making our determination of where a line
4 should appropriately be drawn?

5 MR. GREIM: Well, you have to draw a line
6 between permissible considerations and then required
7 considerations. The 14th Amendment and equal
8 population trumps everything else. There's wiggle room
9 below 10 percent.

10 COMMISSIONER BRADSHAW: And when you say
11 "equal population," you're not talking about absolutely
12 every district has to have 176,145 people?

13 MR. GREIM: No, it does not, but that is the
14 goal, and then permissible state considerations can
15 justify deviations from it.

16 COMMISSIONER BRADSHAW: And if nine percent,
17 which we've found isn't permissible, where is the line
18 drawn? What's the permissible percentage in your
19 opinion?

20 MR. GREIM: Well, first of all, I don't have
21 an opinion about where we cut off the percentages
22 because once we get below 10 percent, the court, then,
23 begins to look at, you know, why is the deviation here?
24 Is there a pattern of invidious discrimination?
25 There's not a subset of the law that looks at under

1 nine and under seven. However, the Larios case, the
2 Court found it interesting that they walked right up to
3 the line and in fact were off by two or three percent,
4 but we walk right up to the line here as well.

5 COMMISSIONER BRADSHAW: And with respect to
6 invidious discrimination, then, you -- that's your
7 concern, not really the deviation but whether the
8 deviation was a result of invidious discrimination.

9 MR. GREIM: I think that's -- I would agree
10 with the second part of your sentence. I wouldn't
11 suggest that they're a conflict though. I mean, the --
12 we shouldn't have deviations, is the first point. The
13 second point is that we're allowed to have them, but
14 they can't be for discriminatory purposes -- with the
15 intent of discrimination, so our concern is really both
16 of them, but we need both of them to state a
17 constitutional plan.

18 COMMISSIONER BRADSHAW: That's all I have.

19 CHAIRMAN HARPOOL: Thank you, sir.

20 COMMISSIONER PEARSON: Thank you, Mr. Greim,
21 for being here. I'm Lowell Pearson.

22 I want to explore, briefly, this issue of
23 urban, suburban, and rural. You've been questioned
24 about that at length, so my question is more about the
25 process by which you came to this conclusion. Did you

1 do that yourself? Is that your opinion?

2 MR. GREIM: Yes.

3 COMMISSIONER PEARSON: Did you do that in
4 consultation with anyone?

5 MR. GREIM: I'm not going to disclose it
6 because I -- I'll tell you, some of this involved
7 drafting a lawsuit, and so I -- because we've got that
8 going on, I'm not going to disclose my work product.
9 But I'll at least tell you that I did it myself. I
10 consulted with others, and I won't disclose the other
11 people.

12 COMMISSIONER PEARSON: Yeah. And I'm not
13 trying to invade that.

14 MR. GREIM: Sure.

15 COMMISSIONER PEARSON: I would assume that
16 you did that, perhaps, in consultation with other
17 lawyers in your firm or -- who are involved in the
18 case. Can you confirm that?

19 MR. GREIM: Yes. Several people were
20 involved.

21 COMMISSIONER PEARSON: Are any of those
22 people demographers?

23 MR. GREIM: No.

24 COMMISSIONER PEARSON: Are any -- do any of
25 those people have any training in the study of

1 populations?

2 MR. GREIM: No, but I don't think it's
3 necessary, given the fact we've got 34 districts and
4 that the patterns are so obvious.

5 COMMISSIONER PEARSON: So the answer is no?

6 MR. GREIM: Correct.

7 COMMISSIONER PEARSON: Do you have any
8 training in demography?

9 MR. GREIM: No.

10 COMMISSIONER PEARSON: Do you have any
11 training in population studies of any type?

12 MR. GREIM: No, just a political science
13 degree from Mizzou.

14 COMMISSIONER PEARSON: I've got one of those,
15 too, from a different school.

16 So were you assisted by a statistician in
17 developing this urban, rural, and suburban matrix that
18 you've created?

19 MR. GREIM: Well, I think that would be the
20 wrong field if we really cared about a certain district
21 and had a real good faith dispute that the 20th or the
22 32nd was -- whether it's rural or not, but no. And
23 I'll stipulate that I did not rely on a demographer or
24 statistician, but I don't think that there is really a
25 dispute about the top six or so that are the basis of

1 our claim that I think the Commission should be
2 concerned about.

3 COMMISSIONER PEARSON: In the science of
4 studying populations, are you aware of any commonly
5 accepted definition of the word urban?

6 MR. GREIM: No.

7 COMMISSIONER PEARSON: Same question as to
8 suburban.

9 MR. GREIM: No.

10 COMMISSIONER PEARSON: Same question as to
11 rural.

12 MR. GREIM: No. I would actually refer the
13 Commission to the Larios case that Mr. Ellinger
14 mentioned where those terms are used with respect to
15 the state of Georgia, and I don't believe there was
16 expert testimony there about the nature of Macon or
17 Augusta or whatever, but those were, nonetheless,
18 applied by the Court.

19 COMMISSIONER PEARSON: I recognize you're in
20 a bit of a difficult position because of this lawsuit,
21 and let me just explore that just a little bit. We
22 haven't seen your spreadsheet that you want to submit
23 into the record, but is your view -- the definition of
24 urban, suburban, and rural the same for purposes of
25 your testimony today as it is in the pleading in the

1 lawsuit?

2 MR. GREIM: Yes.

3 COMMISSIONER PEARSON: Let me switch gears to
4 the number switching issue briefly. If I understood
5 what you said in response to earlier questioning, you
6 cant cite us any case that says it applies a
7 bright-line standard as to when switching of numbers is
8 constitutional or is not constitutional; is that
9 correct?

10 MR. GREIM: That's right. There's no
11 Missouri authority, and there is authority from other
12 jurisdictions that looks at different factors and
13 things, but I don't --

14 COMMISSIONER PEARSON: But no bright-line
15 test?

16 MR. GREIM: There's no bright-line test.

17 COMMISSIONER PEARSON: With this Commission,
18 if it decided -- looked at the map and said, "Boy,
19 there's a real mishmash of numbers, and over time,
20 they've moved around the state," and it wanted to add a
21 certain scheme to the numbering and, just for purposes
22 of my question, started in the upper left hand corner
23 and made that District No. 1 and moved across and made
24 that No. 2, and you know, took 34 and turned it into
25 District No. 3, could it do that, constitutionally?

1 MR. GREIM: Let me say this: Some states
2 actually do that, and they actually say that districts
3 should be numbered starting at the top and just going
4 across. I think the problem with doing it sort of in
5 the middle with staggered terms is that there is a very
6 good chance that you're going to put somebody in a
7 tough spot, and so I suppose if the Commission wanted
8 to start -- renumber everything and that that was
9 really the purpose, was keeping numbers in a row, you
10 might be able to do that.

11 The problem is what's the state interest
12 there? You know, is that a compelling reason if
13 somebody is, you know, basically assigned to someone
14 that they didn't vote for that's term limited, it has
15 all the problems that are occurring in the 10th.

16 COMMISSIONER PEARSON: I tried to write --
17 Commissioner Harpool, our chairman, asked you this
18 question. I tried to write down your answer. I think
19 I got it right. He was asking you about the
20 constitutional problem with the switching of the
21 numbers. And what I wrote down as you answer was
22 something to the effect of are individuals being
23 represented by someone they didn't elect when that
24 could have been avoided? Does that reflect your view
25 of the constitutional standard we should apply?

1 MR. GREIM: No. No.

2 COMMISSIONER PEARSON: And if not, what is
3 the standard?

4 MR. GREIM: That's not the full -- and let me
5 put it this way: With the -- with our Count II of our
6 petition, which is based solely on the switching, the
7 injury is really sort of three fold, and I think you
8 got part of it there, and I'm going to do my best to
9 state it again here, and maybe I skipped part of it
10 before or something.

11 COMMISSIONER PEARSON: Fair enough.

12 MR. GREIM: Okay. So the issue here is that
13 there are people in the 10th who -- no single person in
14 the 10th would have elected the representative -- or
15 the senator who would be representing them for the next
16 two years. They would have no opportunity to vote on
17 her two years from then, so there's check -- Democratic
18 check of the next election.

19 And the other problem is that they've got --
20 there was readily available an opportunity with the
21 number from the 7th, that district that was basically
22 eliminated to make a new district where people were
23 moving up north and west. There was an opportunity to
24 let them actually vote on someone right away to
25 represent that new district. And so all those issues

1 together state the injury.

2 COMMISSIONER PEARSON: Okay. So I've got
3 three factors that you just cited: No single person in
4 the 10th voted for the human being who will be
5 representing that district for two years; is that
6 right?

7 MR. GREIM: Correct.

8 COMMISSIONER PEARSON: Second, they won't
9 have an opportunity to vote for two years, correct?

10 MR. GREIM: Correct.

11 COMMISSIONER PEARSON: And third, there was
12 another alternative.

13 MR. GREIM: Correct.

14 COMMISSIONER PEARSON: So do all -- in your
15 view, do all three of those factors have to exist for
16 there to be a constitutional violation?

17 MR. GREIM: You know, I'm not prepared to say
18 whether all three factors are necessary, but I would
19 say that all three factors are sufficient, and that's
20 the issue before this Commission.

21 COMMISSIONER PEARSON: Okay. So let me
22 explore the first factor, that no single person
23 elected. Let's take a hypothetical example where there
24 was a number switching, but it was in districts that
25 are adjacent, and there would be some commonality but

1 not perfect commonality.

2 MR. GREIM: Correct.

3 COMMISSIONER PEARSON: How do you analyze
4 that?

5 MR. GREIM: Well, again, if we're going to
6 look at each criteria separately, I'm saying that
7 they're sufficient, not that they're necessary, but
8 I'll kind of assume that it would be necessary for
9 purposes of answering your question.

10 So in that case, we've got the core of a
11 districts still existing, and we've got people on the
12 edge who are moved over, and now they're with a new
13 district that maybe doesn't elect someone right away,
14 so perhaps they've got to wait two extra years.
15 Sometimes people call these vote delay claims, which is
16 not what we're bringing.

17 And so in that case, it's true, they don't
18 get to vote on their new person right away because
19 they've just been sort of shifted over to that
20 district. But there, the reality -- what we have to
21 bow to is that some boundary changes are necessary
22 every time.

23 Sometimes we've got even touching odds, and
24 sometimes that's where the line shift has to occur.
25 And so that by itself is probably not a violation, but

1 again, what if we saw a pattern of that? And so that's
2 why I can't -- I can tell you that if it happened once
3 in that one spot without any other facts, probably
4 that's okay. The Court's not going to invalidate that.
5 If there's a pattern of it, we might start to see a
6 problem.

7 COMMISSIONER PEARSON: Just a couple more
8 questions. It's clear your argument is that -- the two
9 issues you've identified, the numbering and the pattern
10 of population, in combination create the thesis of your
11 lawsuit. Would you see a constitutional violation --
12 let me ask -- let's ask it this way: If the number
13 switching between the 10th and the 7th had not
14 occurred, would you consider the tentative map
15 constitutional or unconstitutional?

16 MR. GREIM: Well, it would still be
17 unconstitutional because you'd still have the
18 population deviations. I mean, that's Count I.

19 COMMISSIONER PEARSON: So they stand -- the
20 two issues you've raised stand alone in your mind?

21 MR. GREIM: Well, let me make it clear.
22 We've got Count I, which is a population problem. Now,
23 further evidence of the discriminatory intent is the
24 number switching. But let's say the number switching
25 didn't occur at all. We would have one less example of

1 the invidious discrimination, but we would still have
2 it.

3 Now, Count II, at that point, might fall
4 away. We wouldn't have a Count II if there had been no
5 number switching. We walked through what that scenario
6 could have looked like, and there's different ways it
7 could have happened. We could have had a 7th where the
8 10th is. We could have had that be the 26th. I guess
9 we could have had it even be the 2nd. But at that
10 point, we're losing part of our three injuries, and so
11 I don't really have an opinion as to how many of those
12 three legs we must lose before Count II goes away.

13 COMMISSIONER PEARSON: Thank you very much
14 for answering my questions.

15 I have nothing else, Mr. Chairman.

16 COMMISSIONER SKAGGS: Mr. Chairman, I have a
17 couple of questions. This is Trent.

18 CHAIRMAN HARPOOL: Let's let Trent on the
19 phone, if we could.

20 VICE CHAIRMAN ELLINGER: Okay.

21 CHAIRMAN HARPOOL: Go ahead, Trent.

22 COMMISSIONER SKAGGS: Okay. And I hate to
23 beat a dead horse here, but I think it's pretty
24 important on the rural/urban issues on the districting,
25 and we've kind of talked about it kind of at a 30,000

1 foot level, so I'd kind of like to actually look
2 specifically at some of those districts that you're
3 saying are urban versus suburban. And I'm just trying
4 to, again, understand the definition because without
5 understanding the definition, it's hard for us to do
6 anything with some of your concerns.

7 If I heard you correctly, you said the 11th
8 is considered an urban district while the 17th is
9 considered a suburban district; is that correct?

10 MR. GREIM: Let's see. You're correct on the
11 11th. Yeah. The 17th is -- we're considering a
12 suburban district. Now, you could consider the 17th
13 urban, at least parts of it, the southern parts of the
14 17th. It doesn't really effect our analysis though.
15 It's really right at -- almost at 0.0 percent. It's at
16 0.4 percent.

17 COMMISSIONER SKAGGS: Well, but it does
18 because, again, you're counting districts for urban
19 versus suburban versus rural, and so to that point, it
20 does make a difference, and so that's what I'm trying
21 to understand, is why, in your initial analysis, again,
22 you said that it's kind of a gut reaction, and you know
23 it when you see it, and so I'm trying to understand why
24 the 11th would be -- in your initial analysis, would be
25 considered urban while the 17th would be considered

1 suburban.

2 MR. GREIM: Okay. Well, first of all, let me
3 just correct one thing. I mean, I counted up the
4 numbers at the request of the Commission here, but our
5 analysis is not based on comparing numbers of urban to
6 numbers of suburban districts. Instead, it's based on
7 the population within those districts. So that's the
8 first point.

9 The second point, you know --

10 COMMISSIONER SKAGGS: But that still goes
11 back to the definition of how you're going to -- how
12 are you defining the urban, suburban and in your
13 initial testimony, saying that the 11th is urban, and
14 the 17th is suburban, so I just want to take a case
15 study here of these two districts and try to understand
16 your definition.

17 MR. GREIM: Sure. I mean, the 11th -- I'm
18 just looking at it on the map, and I'm just sort of
19 answering as I go here. But the eastern part of the
20 11th where most of its people are going to live where
21 it comes down and touches Interstate 70, goes over to
22 Interstate 435 -- you know, at that point, where we're
23 in the east bottoms of Kansas City, we're in
24 Independence, we're in a dense area that was probably
25 considered suburban, you know, early in the last

1 century, but now it's very fair to say that area is
2 urban. It's Democrat. It has all the characteristics
3 of --

4 COMMISSIONER SKAGGS: It's Democrat? Is that
5 what makes it urban versus suburban?

6 MR. GREIM: No. No. That's one thing to
7 look at though, and that's one thing that the Court
8 looked at in the Larios case.

9 COMMISSIONER SKAGGS: So Democrat or
10 Republican is one of the ways you can find urban versus
11 suburban?

12 MR. GREIM: That's one -- that can be one
13 characteristic --

14 COMMISSIONER SKAGGS: Okay.

15 MR. GREIM: -- but not the only one and not
16 the decisive one and not the defining one.

17 COMMISSIONER SKAGGS: Okay.

18 MR. GREIM: So going back to the 11th, as you
19 move up to the -- not many people live there, but the
20 northward bend of the river around, like, Sibley or so,
21 that area is really rural with some kind of new
22 developments --

23 COMMISSIONER SKAGGS: Unincorporated
24 Jackson County.

25 MR. GREIM: Right. But not many people live

1 there, so we stretch out. We take Highway 24 all the
2 way to where it meets with Lafayette County. So you
3 know, part of the 11th is not urban. It just -- it
4 cannot be considered urban, but that's going to be true
5 of other districts as well.

6 If you look at the 17th District, it starts
7 in an area that's definitely -- the very bottom of it
8 at least, is urban, but then it's quickly suburban, and
9 very shortly, you're out in fields and small, little
10 areas that are --

11 COMMISSIONER SKAGGS: Where's that at?

12 MR. GREIM: -- surrounded by --

13 COMMISSIONER SKAGGS: Where's that on the
14 17th?

15 MR. GREIM: Sure. I was moving up -- I know
16 you can't follow my eyes --

17 COMMISSIONER SKAGGS: I've got the map in
18 front of me. I'm from Clay County, so I'm quite
19 familiar. So where in the 17th is that big, open
20 field? Because the area in Kansas -- the area I'm
21 looking at on the 17th, you know, 70 percent of the
22 17th is in Kansas City.

23 MR. GREIM: Correct. And much of
24 Kansas City -- like, if you go above Highway 152 and go
25 to that area -- right, and you go to that area that is

1 surrounded by 435, there's some development within that
2 area, but there's a lot that's undeveloped. And then
3 you move over to the area between 435 and --

4 COMMISSIONER SKAGGS: But all of the 17th is
5 incorporated within some city, correct?

6 MR. GREIM: Right. But --

7 COMMISSIONER SKAGGS: Is all the 11th
8 incorporated?

9 MR. GREIM: No, it's not.

10 COMMISSIONER SKAGGS: So you have some
11 unincorporated in Jackson County?

12 MR. GREIM: Right. But whether something is
13 incorporated or not --

14 COMMISSIONER SKAGGS: Well, it means that
15 there's a municipality or not, so the areas are so
16 small in which they don't even have municipalities, so
17 they're represented by the county government.

18 So go back up to the 17th. The 17th gets 70
19 percent of it from Kansas City. Gladstone, Missouri,
20 North Kansas City are closer to downtown Kansas City
21 than the majority of the 10th and the 9th district and
22 the majority of the 11th, so again, I'm just trying to
23 understand your definition of urban versus rural.

24 MR. GREIM: Right. And again, it can't be --
25 I mean, so you know Clay County, and I'm from

1 Excelsior Springs, so I know that area, you know, as
2 well, you know, we would -- you know, the area along
3 the bottom of the 17th, once you move away from where
4 the Interstate crosses over, very quickly, you've got
5 bottom land, and you can see the buildings in
6 Kansas City right there. You know, you can see the
7 buildings from Orrick.

8 But you're not in -- you might be closer to
9 downtown Kansas City than parts of the 7th, but there's
10 no one living there. There's just -- there's small,
11 little groupings. That area's rural, and that would be
12 true for even parts of the 17th that are enclosed by
13 435 and 291. You just have to --

14 COMMISSIONER SKAGGS: I guess my only point
15 is it seems to me that your definitions are pretty
16 arbitrary, and it's hard for us to do anything with
17 just some arbitrary definitions because if you're going
18 to count the 11th as an urban district, then you would
19 have to equally count the 17th. I mean, all of the
20 17th is incorporated in some major city. Whereas in
21 the 11th, not even all of the 11th is even
22 incorporated. And so I just -- again, I'm having a
23 real difficulty understanding your definitions.

24 Let me ask you one other question. I'm
25 also -- again, I'm not an attorney, but I'm trying to

1 understand. You filed a lawsuit in Federal Court; is
2 that correct?

3 MR. GREIM: Yes.

4 COMMISSIONER SKAGGS: And the Commission --
5 it was in our 15-day review cycle per the Constitution
6 that we have a tentative map.

7 MR. GREIM: Correct.

8 COMMISSIONER SKAGGS: So help me understand
9 how you have standing when we are still in the process,
10 and there isn't an official map.

11 MR. GREIM: Well, first of all, I did not
12 come here to talk about justiciability, standing, and
13 whatnot.

14 COMMISSIONER SKAGGS: Sure. Sure. I'm just
15 trying to understand. I'm trying to wrap my mind
16 around it as a commissioner.

17 MR. GREIM: I'm happy to tell you that. I
18 mean, first of all, there was no -- you know, the
19 hearings that are to be held under the Constitution,
20 and I think it says that they shall be held if they're
21 going to be necessary or as may be necessary, that
22 should happen in the 15-day period. And strangely,
23 there were no hearings scheduled. And in fact, we
24 didn't learn about this hearing until after business
25 hours last night. And I'm not sure that there was

1 24-hour notice for this. We're happy to be here now.

2 But you know, the lawsuit was filed because
3 it appeared that the tentative map --

4 COMMISSIONER SKAGGS: When was it -- how many
5 days ago was the lawsuit filed?

6 MR. GREIM: On Friday.

7 COMMISSIONER SKAGGS: On Friday?

8 MR. GREIM: Right.

9 COMMISSIONER SKAGGS: So it was filed last
10 Friday, which still would have been only about halfway
11 through the process?

12 MR. GREIM: Right. But you would think that
13 by halfway through the process, if there was going to
14 be a hearing date scheduled, that certainly, it would
15 have been scheduled. And that's what was concerning.

16 COMMISSIONER SKAGGS: But still, where's the
17 standing? That doesn't give you standing.

18 MR. GREIM: Well, I'm not going to argue law
19 with you, but it was sufficiently ripe because there's
20 no indication that this Commission's going to do
21 anything other than simply adopt its tentative plan.
22 Now we're having a hearing today. We're discussing
23 these issues, and we still hope that the Commission
24 changes its mind and adopts -- changes the tentative
25 plan and adopts something that's constitutional.

1 But the other issue here is that, through no
2 fault of the Commission's, it had a very short window
3 to work with. The end of the filing period is coming
4 up very shortly. And so there's not very much time at
5 all for anyone to work with here. And so that's why
6 the lawsuit was filed. It needed to be filed. It was
7 ripe when filed.

8 If the Commission votes to adopt the
9 tentative plan, there'll be no further issues with
10 that, and my understanding before this hearing was
11 scheduled for today was that that vote was going to
12 take place either Friday or Monday.

13 COMMISSIONER SKAGGS: Again, I'm clearly not
14 an attorney, but it just seems to me that if we're
15 working on a plan, and we're still within our 15-day
16 window, it doesn't seem to me that you're dealing in
17 good faith when we're working on a plan.

18 So thank you, Mr. Chairman.

19 CHAIRMAN HARPOOL: You're welcome. I believe
20 that Commissioner Ehlmann has a question or two.

21 COMMISSIONER EHLMANN: Thank you,
22 Mr. Chairman.

23 Let me make sure, first of all, I've got the
24 facts right. You said that 13 and 14 were urban?

25 MR. GREIM: Yes.

1 COMMISSIONER EHLMANN: So 13 and 14 are
2 urban. The 23rd is suburban?

3 MR. GREIM: Correct.

4 COMMISSIONER EHLMANN: Okay. And of course,
5 I don't know if you're aware of the fact, but 10 years
6 ago, a court actually flipped the 13 and 14 numbers.
7 When I was in the Senate, the 13th was actually the
8 14th, which is why I had to make sure I had it right
9 here on the map. But they did that -- a court actually
10 did that flip 10 years ago.

11 And not to beat a dead horse, here, or
12 anything, but it does seem that this whole grouping
13 between urban and rural is really significant to your
14 theory on this entire matter; is that correct?

15 MR. GREIM: Correct.

16 COMMISSIONER EHLMANN: And so then it
17 wouldn't matter how many districts are declared urban
18 as opposed to suburban?

19 MR. GREIM: Well, when you say, okay, it
20 wouldn't matter how many are suburban as compared to
21 urban, it -- under a different fact pattern, it might
22 matter, but it does not matter under this particular
23 map.

24 COMMISSIONER EHLMANN: Under what?

25 MR. GREIM: Under this particular map.

1 COMMISSIONER EHLMANN: Okay. So it doesn't
2 matter if you have -- it doesn't matter how many urban
3 districts you have?

4 MR. GREIM: Well, let me put it this way: If
5 the population deviations -- I suppose there is a way
6 in which the number of districts could matter as well,
7 but we only have 34 districts.

8 COMMISSIONER EHLMANN: Right.

9 MR. GREIM: So now, if we had -- if this was
10 a House case, we might be able to actually see enough
11 problems where we're losing -- you know, you can
12 actually see --

13 COMMISSIONER EHLMANN: The more districts you
14 can show the deviation, the better case you have?

15 MR. GREIM: No, that's not what I'm saying.
16 What I'm saying is that --

17 COMMISSIONER EHLMANN: No, I know. That's
18 what I'm saying.

19 MR. GREIM: Okay.

20 COMMISSIONER EHLMANN: Do you agree or
21 disagree?

22 MR. GREIM: Well, yeah. The more severe the
23 deviations --

24 COMMISSIONER EHLMANN: Okay. Well, let me
25 just take you on a -- ask a few questions about the

1 13th and the 23rd. Okay? And also, a reference here,
2 somewhere in your testimony, I wrote it down, you said
3 some places just feel urban. Okay? And the first
4 thing I would say that, it made me think of back when I
5 was an undergraduate history major, turned in one of
6 the first papers I had turned in, and I wrote in there
7 that "I feel" something. I feel that somebody should
8 have done this. And the professor wrote on the
9 margins, he said, "Poets feel. Historians think."
10 Okay?

11 So when you think about the 13th and the
12 23rd, I would suggest to you, and you can disagree, but
13 you know, the 23rd is where I live now. It's where I
14 grew up. When I was in high school, we played in the
15 North County Conference, which included almost all of
16 the 13th and the 23rd, so I would suggest I'm somewhat
17 familiar with the area. Both areas are very, very old
18 in the sense that St. Charles was founded in 1779, and
19 I think Florissant was founded a year or two before or
20 a year or two after.

21 Both districts have rural elements because
22 they both have significant flood plain areas --

23 MR. GREIM: Yes.

24 COMMISSIONER EHLMANN: -- where there's
25 actually farmers there. I would suggest to you that

1 the older parts of St. Charles where I grew up are not
2 significantly different, in terms of the size of the
3 houses, density, or anything else, with
4 Glasgow Village, which is in the 13th.

5 I would suggest that in the 23rd, you have
6 neighborhoods that were built in the 50s, neighborhoods
7 that were built in the 60s, 70s, 80s, and right on into
8 the recent times. So I don't see the difference at
9 all, except some would suggest, when you talk about an
10 urban feel, the only thing I can think of -- and I'm
11 not suggesting this, but I think someone else could.
12 What makes you feel urban when you're in the 13th is it
13 has about four times the percentage of African
14 Americans as the 23rd. Is that really what we've come
15 down to here in classifying this? Does the number of
16 African Americans in a district give it an urban feel?

17 MR. GREIM: Well, I mean, that's an
18 interesting question. That's not what we're
19 suggesting, and I don't --

20 COMMISSIONER EHLMANN: I can't think of any
21 other thing that would make one feel urban in the 13th
22 and not in the 23rd.

23 MR. GREIM: Right. I mean, that's your --

24 COMMISSIONER EHLMANN: I mean, I'm asking
25 you. Is there something else that you can point to, a

1 real difference between those two districts
2 historically, in terms of density, in terms anything
3 except the percentage of minorities?

4 MR. GREIM: Right.

5 COMMISSIONER EHLMANN: Is that what makes it
6 urban in your opinion?

7 MR. GREIM: Well, first of all, those things
8 can definitely coincide. I mean, the percentage of
9 minorities in a district is very important for purposes
10 of constitutional analysis. It's not a prohibited
11 consideration.

12 COMMISSIONER EHLMANN: Important in terms of
13 the Civil Rights Act. Is it important in terms urban
14 versus rural under the Missouri Constitution?

15 MR. GREIM: If -- I would say this: I would
16 say that a more densely populated area that has
17 different interests than a more rural area. In our
18 state -- in Missouri at least --

19 COMMISSIONER EHLMANN: But in this case, I
20 don't think there is a difference in the density. In
21 fact, I think average density is less in some places.

22 MR. GREIM: Well, right. I mean, in some
23 places, but a more densely populated area with heavy
24 infrastructure that has all the characteristics --

25 COMMISSIONER EHLMANN: That's my point. The

1 13th isn't more densely populated than the 23rd.

2 MR. GREIM: Well, but, Commissioner, I mean,
3 part of the problem is if you look at the 13th as a
4 whole, you know, obviously part of it's very close to
5 the confluence. You have a huge amount of bottom land,
6 so if you average it out --

7 COMMISSIONER EHLMANN: And you also do in the
8 23rd.

9 MR. GREIM: Right. And if you average it out,
10 then you know, maybe you'd have some surprising numbers
11 there. But the 13th borders directly on St. Louis
12 city. It borders on major thoroughfares. You know,
13 you stated that there is a -- that there is many
14 African Americans living there, and in Missouri at
15 least, in our cities, there are great concentrations of
16 African Americans living in urban areas. That's a fact
17 that all these commissions deal with.

18 COMMISSIONER EHLMANN: There's great
19 concentrations of African Americans in the boot heel
20 too. How are you going to classify the 25th?

21 MR. GREIM: Well, that's -- Commissioner, I
22 didn't say that that was the only factor.

23 COMMISSIONER EHLMANN: Thank you.

24 MR. GREIM: Again, you go to the density.

25 CHAIRMAN HARPOOL: Any other questions on the

1 phone?

2 COMMISSIONER MYERS: Mr. Chairman?

3 CHAIRMAN HARPOOL: Yes?

4 COMMISSIONER MYERS: This is Nick Myers.

5 CHAIRMAN HARPOOL: Proceed, Nick.

6 COMMISSIONER MYERS: Mr. Greim, can you hear
7 me?

8 MR. GREIM: I can. I can.

9 COMMISSIONER MYERS: Okay. Can you hear me
10 now?

11 MR. GREIM: I could hear you before. Go
12 ahead.

13 COMMISSIONER MYERS: You said today when you
14 introduced yourself that you're here today representing
15 clients?

16 MR. GREIM: Yes.

17 COMMISSIONER MYERS: -- in a lawsuit.

18 MR. GREIM: I'm sorry?

19 VICE CHAIRMAN ELLINGER: Nick, you're
20 breaking up.

21 COMMISSIONER MYERS: Can you hear me now?

22 CHAIRMAN HARPOOL: Yes.

23 MR. GREIM: Yes.

24 COMMISSIONER MYERS: Okay. You also said
25 that you represent clients in a lawsuit having to do

1 with the tentative plan.

2 MR. GREIM: Right.

3 COMMISSIONER MYERS: I'm just -- I'm not an
4 attorney. I'm just a rural CPA in the city of Joplin,
5 so I need to ask you a couple of questions here.

6 All of the clients you represent at today's
7 hearing are also your clients in the lawsuit?

8 MR. GREIM: Yes.

9 COMMISSIONER MYERS: Are any of the clients
10 in the suit not your clients --

11 MR. GREIM: Commissioner Myers, I can't hear
12 you, but I'll tell you that they're the same group.
13 There's -- no one is in one and not in the other.

14 COMMISSIONER MYERS: The folks you're
15 representing today, that includes everybody you're
16 representing in the lawsuit on the tentative plan?

17 MR. GREIM: Correct.

18 COMMISSIONER MYERS: Thank you. I appreciate
19 that.

20 That's all, Mr. Chairman.

21 CHAIRMAN HARPOOL: All right. Any -- yeah.
22 Vice Chairman Ellinger.

23 VICE CHAIRMAN ELLINGER: Thank you,
24 Mr. Chairman.

25 Mr. Greim, I'd like you to take a look at the

1 map and look at, predominantly, the St. Louis area.

2 Okay?

3 MR. GREIM: Okay.

4 VICE CHAIRMAN ELLINGER: You talked a little
5 bit about how urban areas are over -- are
6 underpopulated and rural areas are overpopulated,
7 correct?

8 MR. GREIM: Right. Not all, but yes.

9 VICE CHAIRMAN ELLINGER: Not all, but okay.
10 Looking at the St. Louis area, there are a total of --
11 and depending on how large you draw the net, the most I
12 can get is three underpopulated urban/suburban areas in
13 the St. Louis region. Do you see that? 13, 4, and 22,
14 and that's about as wide as it can draw a net and still
15 call it the St. Louis area; would you agree with that?

16 MR. GREIM: Yes.

17 VICE CHAIRMAN ELLINGER: And there are eight
18 districts in that same St. Louis area that are
19 overpopulated, correct? 14, 24, 5, 1, 15, 2, 23, 26.

20 MR. GREIM: Let's see. I would say --

21 VICE CHAIRMAN ELLINGER: And again, it's how
22 broad you draw the line, obviously.

23 MR. GREIM: I would say the first that we
24 have is the 24th.

25 VICE CHAIRMAN ELLINGER: 14th.

1 MR. GREIM: The second that we -- I'm just
2 moving down in terms of severity. The 24th, which is
3 just a 3.11 percent, the 2nd, which is at 2.8 percent,
4 and then there's several that get into very small
5 numbers, but the 14th, we're at 2.24 percent.

6 VICE CHAIRMAN ELLINGER: The 26th is at --

7 MR. GREIM: The 1st is at 1.96 percent, and
8 then now we're getting down into pretty close to the
9 average, but we've got a big group of counties that are
10 down here.

11 VICE CHAIRMAN ELLINGER: The 13th is the most
12 underpopulated of all the St. Louis area districts,
13 correct? It's minus 6963, yes?

14 MR. GREIM: Just one second. Yes.

15 VICE CHAIRMAN ELLINGER: And the 26th is the
16 most overpopulated of the St. Louis area districts.
17 It's at plus 6688, right?

18 MR. GREIM: Correct.

19 VICE CHAIRMAN ELLINGER: So those are pretty
20 close -- the upper ends are pretty close?

21 MR. GREIM: The upper -- okay. If we're
22 going to isolate St. Louis --

23 VICE CHAIRMAN ELLINGER: I'm only talking
24 about St. Louis.

25 MR. GREIM: Right. Yeah. I mean, 3.8

1 percent is pretty close to minus 3.95 percent.

2 VICE CHAIRMAN ELLINGER: So really, the
3 question of urban discrimination versus rural areas has
4 almost no impact in the analysis of St. Louis.
5 St. Louis is not where your problem is at, is it?

6 MR. GREIM: Yeah. I think that most of the --
7 one way to look at this is sort of a pushing out of
8 people from an urban area, and that happened the most
9 on the Kansas City side.

10 VICE CHAIRMAN ELLINGER: So is we were
11 looking at the St. Louis region as a standalone -- and
12 I know we're not, but just work with me here, sir --
13 it's okay. You might want to tinker with some lines,
14 but it's, as a statement, okay from this
15 over/underpopulation?

16 MR. GREIM: Well, remember, when we say "it's
17 okay," what we're talking -- when we're under 10
18 percent, we're talking about a pattern, and so if there
19 were no other problems and -- you know, that would
20 probably ripple through, but let's just say everything
21 else was zeroed out and all we saw was, you know, the
22 13th District being the very first one that's
23 underpopulated in St. Louis, you know, and there was no
24 other pattern, I think we'd be okay. I really do.

25 VICE CHAIRMAN ELLINGER: Okay. So really,

1 when you're talking about fixing -- I use that term
2 loosely -- but fixing the urban/rural split, you're
3 really focused more on Jackson County, being the
4 underpopulated area, and arguably, Springfield, and
5 some rural districts that really tend to more encompass
6 that side of the state?

7 MR. GREIM: Well, I think we can't leave
8 out -- because it does break into our top six. I think
9 we have to worry something about the chain reaction
10 flowing from 13 and then 26, which is -- goes into west
11 county. Something is amiss there. But yeah,
12 largely -- other than that issue, you're largely right.
13 Where we've got to roll up our sleeves would be
14 Kansas City and Springfield.

15 VICE CHAIRMAN ELLINGER: 13 and 26, if you
16 combine them, are less than -- they're, what, seven and
17 a half percent deviation?

18 MR. GREIM: Right, which is --

19 VICE CHAIRMAN ELLINGER: I mean, way below
20 even -- any case -- I haven't found any case that, when
21 you get that close, it's been able to find invidious
22 discrimination, have you?

23 MR. GREIM: Well, what happens is that a lot
24 of times, people are fixing them, or they're just not
25 having patterns that emerge like this when they're

1 below 10 percent.

2 VICE CHAIRMAN ELLINGER: And if you look at a
3 map and you look at the most overpopulated rural
4 districts, this is your -- my understanding is your
5 complaint is rural versus urban/suburban.

6 MR. GREIM: Rural versus urban, knowing that,
7 you know, the way our cities are, that sometimes you've
8 got some gaps and some bottom land and things like
9 that, but yes.

10 VICE CHAIRMAN ELLINGER: If you look at a
11 map, you find that there's very little of that -- of
12 significant underpopulation of urban areas in
13 St. Louis, but you have significant underpopulation in
14 urban areas in Kansas City and Jackson County, right?

15 MR. GREIM: Well, you say "very little." I
16 mean, the sixth worst, which is still pretty bad, is
17 the 13th, and the fourth worst, which is pretty bad, is
18 the 26th, which goes now pretty -- even into west
19 county St. Louis. So I'd say there's still a problem
20 there, but in terms of number of districts that are
21 screwed up or that have a problem, we're really more
22 looking at Kansas City and Springfield.

23 VICE CHAIRMAN ELLINGER: So we -- again, by
24 and large, we're -- we would be okay if we fixed the
25 problems in the rest of the state and left St. Louis as

1 it is? We'd be okay for purposes of your lawsuit?

2 MR. GREIM: I don't know that. I don't know
3 that. I can't say that because I don't know what the
4 fix would look like. I can tell you what the --

5 CHAIRMAN HARPOOL: Wouldn't be good for the
6 person paying your fee either, would it, if you said
7 that?

8 VICE CHAIRMAN ELLINGER: If you fixed every
9 rural problem except for the St. Louis area, do you
10 believe that your lawsuit would, in substance, be
11 complied with and there would be no more claim?

12 MR. GREIM: Well, I --

13 VICE CHAIRMAN ELLINGER: Or would you pin it
14 all on two districts?

15 MR. GREIM: No. I'd want to see what the fix
16 was, and I'd want to see how that affects the other
17 counties. I'd like to say yes because then you -- you
18 know, maybe the pattern would go away if you fixed
19 those, but I don't know that it would.

20 VICE CHAIRMAN ELLINGER: If I gave you carte
21 blanche to fix the map and said, "You can't touch
22 St. Louis," and you made every fix you wanted in the
23 rest of the state, but you couldn't touch St. Louis,
24 would you be okay with it? You have control.

25 MR. GREIM: Well, I probably would touch

1 St. Louis.

2 VICE CHAIRMAN ELLINGER: I'm saying that you
3 can't. That's the caveat.

4 MR. GREIM: Well, I don't know. I can't
5 answer that question.

6 VICE CHAIRMAN ELLINGER: Won't answer the
7 question is a better answer.

8 MR. GREIM: No. The answer is I cannot
9 because once we deal with Jackson County and
10 Springfield, we're going to have some pushing back out
11 into those other areas, and then I -- I mean, I guess
12 if you say -- if I can't fix St. Louis, does the
13 lawsuit go away? I guess I can just say I don't know.
14 I mean, we'd still have a serious population deviation
15 there.

16 CHAIRMAN HARPOOL: As you know, we've been
17 criticized by several in the St. Louis area as to being
18 unfair to that area. Do you agree that of the
19 districts that are in St. Louis city or County, there
20 are only two that are underpopulated?

21 MR. GREIM: Let's see, the 13th --

22 CHAIRMAN HARPOOL: And the 4th.

23 MR. GREIM: Yeah. They're severely -- I
24 mean, there's others that are -- have some issues. I
25 mean, the 22nd is --

1 CHAIRMAN HARPOOL: No. No. I'm talking the
2 ones in St. Louis city or County.

3 MR. GREIM: Okay. Oh, yes. St. Louis city
4 or County only, yes, that's right.

5 CHAIRMAN HARPOOL: There's just two that are
6 below the average?

7 MR. GREIM: That's right.

8 CHAIRMAN HARPOOL: And how many are there
9 that are above the average?

10 MR. GREIM: They're significantly below that.

11 CHAIRMAN HARPOOL: How many are there that
12 are above the average?

13 MR. GREIM: That are significantly above the
14 average --

15 CHAIRMAN HARPOOL: I believe my question is:
16 How many are there that are above the average?

17 MR. GREIM: Well, let's see. Total above the
18 average, we've got the 26th, we've got the 24th, we
19 have the 2nd.

20 VICE CHAIRMAN ELLINGER: That's St. Charles
21 County.

22 CHAIRMAN HARPOOL: 2nd is St. Charles County.

23 MR. GREIM: Okay. I'm sorry. I keep
24 forgetting. You want only city and County. 26th, the
25 24th. Of course, those are not wholly within those

1 counties.

2 CHAIRMAN HARPOOL: The 24th is.

3 VICE CHAIRMAN ELLINGER: The 24th is wholly
4 within St. Louis.

5 MR. GREIM: Oh, yes. Okay. Okay. The
6 14th --

7 VICE CHAIRMAN ELLINGER: You know, I might be
8 able to help you and say 1, 5, 14, 15, and 24 are all
9 wholly within St. Louis County, and they're all above
10 the population number.

11 MR. GREIM: Okay.

12 VICE CHAIRMAN ELLINGER: The 26th has part of
13 St. Louis County, and it's also above.

14 So depending on how you count that,
15 Mr. Chairman, it's five or six.

16 CHAIRMAN HARPOOL: And the essence of your
17 lawsuit is that our map already favors urban areas over
18 rural areas, correct?

19 MR. GREIM: Yes.

20 CHAIRMAN HARPOOL: Correct?

21 MR. GREIM: Correct.

22 VICE CHAIRMAN ELLINGER: I had a couple other
23 questions. I apologize.

24 CHAIRMAN HARPOOL: Go ahead. I didn't mean
25 to interrupt. Sorry.

1 VICE CHAIRMAN ELLINGER: That's okay.

2 You also -- we also had some discussion, I
3 believe, with Mr. Skaggs -- Commissioner Skaggs about
4 urban and suburban up in the 17th, but if you look at a
5 number of the other districts, you know, use the 7th
6 District, which you've talked about extensively as
7 being the urban core -- I wrote those words down -- the
8 urban core of Kansas City.

9 MR. GREIM: Yes.

10 VICE CHAIRMAN ELLINGER: Do you recall saying
11 that?

12 MR. GREIM: I did. Yes, it is.

13 VICE CHAIRMAN ELLINGER: Okay. So if you
14 look at that map of the 7th District, geographically,
15 80 percent of that district is south of
16 Interstate 435/470. Do you see that?

17 MR. GREIM: I do.

18 VICE CHAIRMAN ELLINGER: Is that the urban
19 core of Kansas City? The area south of 435 and 470, is
20 that the urban core of Kansas City? Yes or no?

21 MR. GREIM: Okay. If you're only referring
22 to that part of the 7th, I would say that most of the
23 area below 435 isn't. Although, if you're very close
24 to the state line where a lot of people live and you
25 cross under 435, you are still in a dense area.

1 The urban core where a lot of people live is
2 moving straight up that finger that goes up to
3 downtown. And I live in the middle of it.

4 VICE CHAIRMAN ELLINGER: So Grandview, which
5 is a city of some population down there, is that the
6 urban core of Kansas City?

7 MR. GREIM: I would say -- I don't know if I
8 would say urban core, but I'd say it's in the urban
9 area of Kansas City.

10 VICE CHAIRMAN ELLINGER: Is Chesterfield the
11 urban core of St. Louis?

12 MR. GREIM: No. I wouldn't say Chesterfield
13 is.

14 VICE CHAIRMAN ELLINGER: Yes or no?

15 MR. GREIM: No.

16 VICE CHAIRMAN ELLINGER: Okay. I've been to
17 Grandview. I've been to Chesterfield. I have a fair
18 knowledge of both. Do you have a fair knowledge of
19 both?

20 MR. GREIM: I think so.

21 VICE CHAIRMAN ELLINGER: Where do you think
22 the larger amount of employment is; Grandview or
23 Chesterfield?

24 MR. GREIM: Which -- do you mean which city
25 has more jobs?

1 VICE CHAIRMAN ELLINGER: Yes.

2 MR. GREIM: I don't know. I don't know. I
3 mean, I would guess Chesterfield does.

4 VICE CHAIRMAN ELLINGER: Which city has more
5 large office building development; Grandview or
6 Chesterfield?

7 MR. GREIM: I would guess that Chesterfield
8 does.

9 VICE CHAIRMAN ELLINGER: And yet,
10 Chesterfield is not urban, and Grandview is?

11 MR. GREIM: Yeah. I would say -- I would say
12 Grandview is urban. I would say Chesterfield is
13 suburban, but I know there's a lot of growth there.

14 VICE CHAIRMAN ELLINGER: Looking at the 34th
15 District as an example, you call that a suburban
16 district, right?

17 MR. GREIM: Yes.

18 VICE CHAIRMAN ELLINGER: Isn't the majority
19 of that district rural, undeveloped land?

20 MR. GREIM: Well, geographically, yes, but we
21 have a small urban area in St. Joe at the top of
22 Buchanan County.

23 VICE CHAIRMAN ELLINGER: How many thousand
24 people live in St. Joe?

25 MR. GREIM: Maybe 60,000 or something like

1 that.

2 VICE CHAIRMAN ELLINGER: Okay.

3 MR. GREIM: We've got -- then we've got the
4 outlying areas that are not part of St. Joe city.
5 We've got all of the part of Kansas City, you know, the
6 southern part of Platte County where there's
7 substantial growth all the way up to the airport, which
8 is about halfway up into Platte County. We've got
9 subdivisions being built in that whole area, and then
10 we've got an urban -- or a rural area sort of closest
11 to the county lines of Buchanan and Platte.

12 VICE CHAIRMAN ELLINGER: So you've got two
13 pockets of population in that district, correct?

14 MR. GREIM: Right, but southern Platte is
15 more suburban, and those two counties together almost
16 exactly make a district.

17 VICE CHAIRMAN ELLINGER: They do. That's
18 correct. I agree with that. So you've got a pocket of
19 suburban outside of Kansas City, a big rural area, and
20 a pocket of urban, suburban, whatever you want to call
21 it in St. Joe, right?

22 MR. GREIM: Right.

23 VICE CHAIRMAN ELLINGER: So that makes that a
24 suburban county?

25 MR. GREIM: I think the -- I think the

1 predominant nature of that district is suburban, but
2 again, it's right down at the -- there's no pattern
3 there. It's right down where two counties together
4 make a district, and it -- there's no -- it doesn't
5 demonstrate any kind of a substantial deviation from
6 the norm.

7 VICE CHAIRMAN ELLINGER: And how do you
8 define -- you talk about a suburban district. How do
9 you define a suburban district? What are the factors?
10 Is it population density? Is it the type of density?
11 Is it the type of housing? What is it that you use to
12 define suburban?

13 MR. GREIM: You know, it's simply -- again,
14 it's something that's in between rural and urban.
15 It's -- it can be pretty dense. It can be something
16 like Chesterfield, which is where a lot of growth is in
17 St. Louis. It can be something like Lee's Summit where
18 a lot of growth is in Kansas City.

19 But for purposes of this analysis, we're not
20 seeing, with the exception of the 26th in St. Louis,
21 which goes into suburban areas, there, those -- all of
22 those counties are primarily in the, sort of, low
23 positives in terms of overpopulation. There's no
24 pattern that emerges with those. And you can -- you
25 can change them to urban. You could change them to

1 rural, and no pattern is going to emerge. The very
2 worst offenders, the top six on both sides, are more
3 clearly urban on the hand or rural on the other.

4 VICE CHAIRMAN ELLINGER: Can I just ask you a
5 real quick question? Because I'm curious about it.
6 I've heard you use "top six" 15 times now.

7 MR. GREIM: Sure.

8 VICE CHAIRMAN ELLINGER: I've heard of top
9 five. I've heard of top 10. I've heard of the
10 worst -- six is a really weird number just to pick
11 arbitrarily as the worst offender.

12 MR. GREIM: Sure.

13 VICE CHAIRMAN ELLINGER: Is there a reason
14 you picked six as opposed to the top five or the top
15 two or the top 10? Is there a reason six seems to be
16 your magic number?

17 MR. GREIM: Well, I welcome your enthusiastic
18 and very inquisitive question, and there is, actually.
19 If you go over to the negative side and you basically
20 go from the roughly four percent or higher deviation --

21 VICE CHAIRMAN ELLINGER: Anything above four
22 percent, you consider that it is at least suspect,
23 correct?

24 MR. GREIM: Well, no. I'm not saying that.
25 I'm just saying let's look at areas that, if we -- you

1 know, between four and five percent is getting in
2 between eight and ten percent. Ten percent is the
3 line.

4 VICE CHAIRMAN ELLINGER: What do you have
5 there in between four and five percent? Tell me which
6 districts.

7 MR. GREIM: Okay. So we have St. Louis
8 County, which is minus 3.95 percent.

9 VICE CHAIRMAN ELLINGER: St. Louis County is
10 not a district.

11 MR. GREIM: I'm sorry, the 13th. I'm reading
12 the wrong column. The 13th District --

13 VICE CHAIRMAN ELLINGER: Is less than four
14 percent --

15 MR. GREIM: Right.

16 VICE CHAIRMAN ELLINGER: -- so we don't
17 include it.

18 MR. GREIM: No. No. We do because it's very
19 close.

20 VICE CHAIRMAN ELLINGER: Oh, okay. So we're
21 really not using four percent. Maybe we'll use 3.8,
22 3.9 if it suits us a little better, right?

23 MR. GREIM: No. I mean, there's no reason to
24 use sarcasm. I mean, we're within five-hundredths, and
25 that's pretty close. I mean, I'm not going to

1 arbitrarily cut that off. And we could go lower, but
2 our --

3 VICE CHAIRMAN ELLINGER: Did you say
4 five-hundredths?

5 MR. GREIM: See, here's the problem --

6 VICE CHAIRMAN ELLINGER: So is it 3.5 percent
7 to 3.5 percent?

8 MR. GREIM: No.

9 VICE CHAIRMAN ELLINGER: Is that your gap?

10 MR. GREIM: No. Here's the problem, okay.
11 The problem is that the districts that have the worst
12 deviation -- the highest deviation from the mean are
13 the ones that have the pattern. And we're not saying
14 that there's a bright-line. But --

15 VICE CHAIRMAN ELLINGER: Well, you suggested
16 four percent, so let's stick with four percent.

17 MR. GREIM: We're fine with that.

18 VICE CHAIRMAN ELLINGER: Let's not go up and
19 down.

20 MR. GREIM: Sure.

21 VICE CHAIRMAN ELLINGER: Let's stick with
22 four percent. Stick with your prima facia answer. I
23 used to have a Latin professor that said, "Always go
24 with your prima facia answer."

25 MR. GREIM: Right.

1 VICE CHAIRMAN ELLINGER: So let's stick with
2 four percent. There is no district with a four percent
3 deviation in the entire St. Louis metropolitan area, is
4 there?

5 MR. GREIM: Well, again, I'm --

6 VICE CHAIRMAN ELLINGER: It's a yes or no
7 question.

8 MR. GREIM: Well, okay. If you would --
9 you're sticking with four percent, not me, because I'm
10 saying --

11 VICE CHAIRMAN ELLINGER: It was your number
12 originally.

13 MR. GREIM: No. No. Here's the problem. I
14 said we'd go with four percent, and 3.95 percent was
15 close to that, so that's why we're using the 13th. And
16 we've got six on that side, and I just moved over to
17 the positive side and chose the top six on that side.

18 VICE CHAIRMAN ELLINGER: Because you wanted
19 six?

20 MR. GREIM: Well, I --

21 VICE CHAIRMAN ELLINGER: Because it worked
22 to -- it worked to include something in St. Louis. If
23 you do top five --

24 MR. GREIM: Right.

25 VICE CHAIRMAN ELLINGER: -- St. Louis doesn't

1 get counted, right?

2 MR. GREIM: Well, for purposes --

3 VICE CHAIRMAN ELLINGER: So from your
4 clients' perspective, it's an enormous advantage to
5 make sure St. Louis County is part of the problem
6 because ultimately, that gets you a fix in St. Louis
7 County, doesn't it?

8 MR. GREIM: You know, here's the problem with
9 that argument: Our issue is not trying to loop
10 something from St. Louis County in. I mean, the
11 Commission that's trying to take input from the
12 citizens of Missouri could presume bad intentions or
13 anything that it wants to about people that come to
14 testify.

15 However, if you want to take the highest
16 percentages from roughly four percent up and you want
17 to match districts, which is how you calculate the
18 deviation, you take the worst district and -- the most
19 underpopulated and the most overpopulated, you
20 calculate the difference, and that's how you get your
21 number. And then you just work down comparing
22 districts. And so that's what we've done.

23 I started with the negative deviation, and
24 I've gone over and paired those up. And that's what we
25 did. I mean, the pattern does not hold for the very

1 low numbered districts, but it does hold for the worst
2 cases of deviation, which is where the injury is the
3 highest.

4 VICE CHAIRMAN ELLINGER: You know, I think
5 part of the problem we're all struggling with this
6 situation is you've declined to identify who is paying
7 you, which I understand is your right to decline, but
8 that makes your drawing of numbers that become very
9 arbitrary question the biased nature of your testimony.
10 If four percent's a good number, then let's use four
11 percent. But then as soon as it excludes St. Louis,
12 well, we'll get a little -- we've got to go a little
13 more than four percent because I've got to protect
14 somebody.

15 Well, if you want to tell us who your client
16 is and they're not somebody that has an interest in the
17 St. Louis area, that would lend credence to picking
18 that number. But by declining to say that, that calls
19 that little adjustment that you want to make and then
20 that tails to another little adjustment that you want
21 to make on the other side -- it calls all that into
22 question.

23 MR. GREIM: Well, you know, the panel is free
24 to take that position, and it may wish to not consider
25 any of this because I won't identify who has paid me to

1 be here. I have identified my clients in the lawsuit
2 and the people I'm testifying on behalf of here today.
3 But the panel -- if it chooses to see bias and do that,
4 I suppose it can. However, I'm here in good faith to
5 talk about what the facts are, and we can disagree on
6 the facts, I suppose. That's your right to do.

7 VICE CHAIRMAN ELLINGER: So if we draw the
8 line at four percent, it's 10 districts, right?

9 MR. GREIM: I'm sorry?

10 VICE CHAIRMAN ELLINGER: If we draw the line
11 at four percent, it's five up and five down?

12 MR. GREIM: You know, here's the problem --
13 here's the problems: I said four percent, and I made
14 it very clear, when I've had a chance to respond, that
15 it's close to four percent.

16 VICE CHAIRMAN ELLINGER: Close to four
17 percent?

18 MR. GREIM: And I don't understand why we
19 keep going back to four percent -- that I suggested
20 there was a bright-line.

21 VICE CHAIRMAN ELLINGER: Let me ask you a
22 little bit about the Larios case real quick, and then
23 I'll be done. Two quick questions. In Larios, there
24 was -- in the opinion of the Court in Larios, they --
25 dealing with the regionalism issue, which is -- I

1 understand, fundamentally, the main basis of your
2 complaint is the regionalism issue, correct?

3 MR. GREIM: Yes.

4 VICE CHAIRMAN ELLINGER: They relied
5 specifically and extensively quoted Linda Meggers, who
6 was the quote, principle drafter of the House plan, and
7 they relied on her comments of things like, "We knew
8 that at a minimum, rural Georgia was going to lose
9 seven seats, and my job was to keep from doing that."
10 Do you recall that language?

11 MR. GREIM: Yes. Yes.

12 VICE CHAIRMAN ELLINGER: And the Court
13 actually spent a lot of time quoting all these
14 different folks that said things of that nature and
15 said that looking at that really makes it clear there
16 was invidious discrimination.

17 MR. GREIM: Yes.

18 VICE CHAIRMAN ELLINGER: Do you have any
19 analogous evidence to those quotes?

20 MR. GREIM: Right. Well, first of all, it's
21 interesting because the very people who would have that
22 information are asking me, which is interesting. But I
23 would say short of asking all the commissioners about
24 what they discussed with each other outside of these
25 meetings, I can't really respond to that question.

1 But I would say this: I don't think that
2 Larios rests on the severe instances and the admission
3 that people made in that particular case. If the
4 Commission believes that so long as it doesn't come out
5 and say something like that on the record, it's okay,
6 then it's free to do so.

7 VICE CHAIRMAN ELLINGER: And I would point
8 out in Larios, dealing with this particular issue, they
9 picked a bright-line test. They said four percent, not
10 close to four percent, not slightly under four percent.
11 They said four percent.

12 MR. GREIM: Well, then --

13 VICE CHAIRMAN ELLINGER: And they said, and I
14 quote, "Every" -- "Every single district that was
15 underpopulated by four percent was located in rural
16 Georgia or inner-city Atlanta, and every overpopulated
17 district was located in the suburban parts of the
18 state." So if you look at the four percent bright-line
19 test, is every district that falls in that four percent
20 up and down in an urban area that's in the negative,
21 and is every district that's in the positive a rural
22 district?

23 MR. GREIM: Well, first of all, there is no
24 four percent bright-line test. The Larios court
25 applied a four percent number, but if this Commission

1 believes in good faith that there's a four percent test
2 and is willing to go with that, then so be it. Then
3 that's what it will do. But there's nothing in Larios
4 to suggest that there is some constitutional turning
5 point at four percent or that a district that's minus
6 3.95 percent somehow falls outside it.

7 VICE CHAIRMAN ELLINGER: Or 3.7 percent or
8 3.2 percent or 2. -- I mean, you could draw the line
9 wherever you want, can't you?

10 MR. GREIM: Well, as we've discussed in other
11 cases involving redistricting, the lack of a
12 bright-line does not mean the concepts are unworkable,
13 and so you know, essentially, we found that the
14 severest on each side, starting at around four percent,
15 not minus 3.95 percent, shows a very distinctive
16 pattern, that that's invidious discrimination, and I
17 expect that in discovery we'll learn more about some
18 other evidence of intent, other than this strong
19 circumstantial evidence that we already have here
20 today.

21 VICE CHAIRMAN ELLINGER: And I will tell you,
22 as a commissioner, there was, to my knowledge, and I
23 don't want to speak for any other commissioner, no
24 discussion of discriminating against anyone in the
25 rural area or discriminating for anyone in an urban

1 area or discriminating for an incumbent or against an
2 incumbent. There was no discussion of intent to
3 discriminate. Obviously, it's your right to take
4 discovery, and I think what you'll find is discovery
5 will verify what I just told you. But if you use four
6 percent, you cannot meet the Larios test, can you?

7 MR. GREIM: Well, there is no Larios test at
8 four percent. I mean, that's just -- that's a
9 misreading of the case. And I'd also just request all
10 the commissioners to -- I'm not sure what we're
11 considering public records but that all communications
12 about this, the deals that were made here -- and
13 perhaps they will show that there is no -- that there
14 was no discussion overtly, in writing, or orally about
15 this, that they be preserved for purposes of the
16 lawsuit.

17 VICE CHAIRMAN ELLINGER: I have no further
18 questions. Mr. Chairman, thank you for your leniency
19 with me.

20 CHAIRMAN HARPOOL: I've been practicing law
21 30 years, and when I started practicing, lawyers had
22 evidence before they filed their lawsuit.

23 Mr. Bradshaw.

24 COMMISSIONER BRADSHAW: I just have a couple
25 questions, but I will say that -- you know, I know you

1 and your firm and have tremendous respect for you guys.

2 Your clients have suggested that we acted
3 discriminatorily, so if we ask questions about that,
4 it's because none of us are aware that we acted in such
5 a way, and we're trying to understand so that we can
6 make the proper decision on our final vote of what we
7 want to do. So it's important for us to understand
8 that, and it's important, since none of us are aware of
9 any statements that were made that would suggest any
10 discrimination toward rural areas or in favor of urban
11 areas, we need to understand whether you have that or
12 whether you're simply relying on the circumstantial
13 evidence that you've talked about, so I'll leave with
14 that statement.

15 I just have two really short questions. I
16 know you've answered for a long time now. When we look
17 at -- let's just be honest about when we look at these
18 top six, three of them are from Jackson County.

19 MR. GREIM: Right.

20 COMMISSIONER BRADSHAW: And just so I
21 understand, your view is you fix that problem by going
22 into an adjacent rural county and fill up that
23 difference going that direction, correct?

24 MR. GREIM: Yes. You'd have to go somehow
25 and then readjust within Jackson.

1 COMMISSIONER BRADSHAW: And it's your view
2 that if we consider what we believe to be communities
3 of interest and whether that's inappropriate to put
4 there is not sufficient, why?

5 MR. GREIM: And it's interesting because we
6 talk about preserving communities of interest, but that
7 concept could easily morph into defining our
8 communities of interest in these regional terms that
9 Larios has a problem with. And so I think there's a
10 balancing act that the Commission has to do. I don't
11 think that you have to divide communities of interest
12 by leaving Jackson County.

13 In another redistricting case, we talk a lot
14 about how parts of eastern Lafayette are not very
15 different from parts of, you know, northeastern Jackson
16 and so certainly consistent with communities of
17 interest. The populations can still be evened out. I
18 think I'd put it this way: That consideration does not
19 require the substantial population deviations that we
20 see.

21 COMMISSIONER BRADSHAW: But it's a legitimate
22 thing for us to think about?

23 MR. GREIM: To think about, yes. To trump
24 the equal population, no.

25 COMMISSIONER BRADSHAW: In your opinion?

1 MR. GREIM: Well, all of this is our opinion
2 until a court rules.

3 COMMISSIONER BRADSHAW: Yeah. And I also
4 suggest that -- you also whether there's -- and you've
5 already talked about why, but just to be clear, you
6 discount whether there's a constitutional -- a Missouri
7 constitutional limitation on our going across the line.
8 You've explained why, but just -- you don't believe
9 there's a constitutional prohibition there, correct?

10 MR. GREIM: No, but I think you could also go
11 up into Clay County or something if you had to.

12 COMMISSIONER BRADSHAW: Which would result in
13 splitting Clay County three different ways, correct?

14 MR. GREIM: Right. But I think -- I think
15 that there's no constitutional requirement that
16 Jackson County be formed up of districts that don't
17 leave Jackson County.

18 COMMISSIONER BRADSHAW: That's all I have.

19 CHAIRMAN HARPOOL: Anything else for this
20 witness?

21 COMMISSIONER PEARSON: Two questions.

22 CHAIRMAN HARPOOL: Yes, sir.

23 COMMISSIONER PEARSON: One of your
24 plaintiffs, Mr. Greim, is a resident of Jasper County;
25 is that right?

1 MR. GREIM: I believe so. I'm still new to
2 matching up all my plaintiffs.

3 COMMISSIONER PEARSON: I think that's right.

4 MR. GREIM: Yeah. Mr. Hunter is from Jasper.

5 COMMISSIONER PEARSON: So let's just take the
6 scenario that you were just discussing with
7 Mr. Bradshaw about perhaps extending one or more of the
8 Jackson County districts into Clay or Lafayette and
9 making the Kansas City districts, therefore, more
10 populace.

11 MR. GREIM: Okay.

12 COMMISSIONER PEARSON: How would that benefit
13 the plaintiff residing in Jasper County directly?

14 MR. GREIM: Well, sure. And I didn't mean to
15 suggest that that was the only fix. I was suggesting
16 that's one thing you could do. Clearly, something has
17 to be done with all of these severe population
18 deviations. I mean, and it might involve something
19 with the 30th and the 20th, but that's what I told
20 Commissioner Ellinger. It's not simply a question of
21 drawing a new line somewhere in Kansas City and then
22 we're off and we're done. You probably have to do
23 something down there as well. I'm just not prepared to
24 start with your map and walk you through things that --
25 you know, on the fly that I would suggest.

1 COMMISSIONER PEARSON: Okay. I have no
2 further questions.

3 CHAIRMAN HARPOOL: When you use the word
4 "severe population deviations," you're talking about a
5 deviation below the prima facia validity test of the
6 federal rules, right?

7 MR. GREIM: But above even the numbers in
8 Larios.

9 CHAIRMAN HARPOOL: All right. Thank you,
10 sir.

11 COMMISSIONER MYERS: Mr. Chairman, this is
12 Nick Myers. Can I ask one brief question?

13 CHAIRMAN HARPOOL: Yes, sir.

14 COMMISSIONER MYERS: Mr. Greim, Jasper county
15 is in the 32nd Senatorial District?

16 MR. GREIM: Yes.

17 COMMISSIONER MYERS: What's the population
18 deviation of the 32nd Senatorial?

19 MR. GREIM: 4.12 percent overpopulated.

20 COMMISSIONER MYERS: So the contention is
21 that the rural --

22 CHAIRMAN HARPOOL: Do you consider Joplin to
23 be rural?

24 MR. GREIM: I would consider the 32nd
25 District as a whole to be rural.

1 COMMISSIONER MYERS: Thank you, Mr. Chairman
2 and Mr. Greim.

3 CHAIRMAN HARPOOL: Thank you, sir. We do
4 appreciate your input. We are thinking people. We
5 analyze issues, and we've done so among ourselves, and
6 we appreciate the opportunity to bounce ideas and
7 theories off you.

8 MR. GREIM: If I could make a final remark,
9 Commissioner Harpool.

10 CHAIRMAN HARPOOL: Can't promise that it will
11 be final, but you can make another remark.

12 MR. GREIM: Okay. Well, I want to make it
13 clear that -- I want to make it clear that the -- in
14 bringing the lawsuit and in bringing the equal
15 protection claim, the plaintiffs don't mean to suggest
16 that any of the commissioners are bad or careless
17 people. And intent to engage in invidious
18 discrimination is simply an allegation that someone has
19 intended to lead to a result that you can't do. It
20 doesn't mean that you intend to hurt people or take
21 away their rights. And I want to make that clear on
22 the record, but we thank you all for your service.

23 CHAIRMAN HARPOOL: Thank you.

24 VICE CHAIRMAN ELLINGER: Thank you.

25 COMMISSIONER PEARSON: Thank you for your

1 time.

2 CHAIRMAN HARPOOL: Do you guys need a break,
3 or do you want to press on?

4 THE COURT REPORTER: Can I have just a
5 second?

6 CHAIRMAN HARPOOL: You may.

7 VICE CHAIRMAN ELLINGER: Why don't we take a
8 couple minute break?

9 THE COURT REPORTER: Thank you.

10 (A BREAK WAS TAKEN.)

11 CHAIRMAN HARPOOL: All right. Let's go back
12 on the record.

13 The next witness is Senator Schmitt.

14 SENATOR SCHMITT: Lucky me after that long
15 line of questioning.

16 CHAIRMAN HARPOOL: Yeah. You won't get two
17 hours with us.

18 SENATOR SCHMITT: I don't think I'll need it.

19 Thank you, Mr. Chairman, members of the
20 Commission. State Senator Eric Schmitt from St. Louis
21 County. And I just want to say from the outset, I do
22 appreciate the willingness to have this hearing and the
23 time that you've put into this. It is not an easy task
24 by any means, in particular, in really unprecedented
25 conditions given the fact that there was a prior

1 commission, then an appellate commission, and then a
2 reappointment. So by no means do I think your job was
3 an easy one.

4 I am here, though, as someone that was born
5 and raised in St. Louis County and now have the honor
6 of representing, really, the heart of the St. Louis
7 County area.

8 And the testimony is very similar to the same
9 testimony that I gave -- Commissioner Harpool was there
10 on the first commission, and then again to the judges,
11 which is to say that St. Louis County -- the 1.7
12 percent population loss combined with the population
13 loss that the city has seen does not justify the loss
14 of a senate seat, and I've said publicly before that if
15 there is a community of interest in the fact that
16 45 percent of the state's GDP is derived from that
17 region, every senator's voice really matters, as
18 regional politics plays an important role in what we do
19 here.

20 But that, of course, is not a legal basis for
21 drawing the map, but I do believe very strongly that
22 given those numbers does not justify moving a seat out
23 of St. Louis County. In fact, the map that was
24 proposed by a bipartisan group of senators that
25 included all of the Republicans and Democrats for the

1 city, St. Louis County, and Jefferson County and the
2 two St. Charles senators -- because St. Charles has
3 grown, there's pretty much no dispute that it deserves
4 two senate seats of its own -- agreed on a map that, I
5 think, took into account where the shifts really were.

6 Currently -- and when I say "currently," I
7 mean under the 2000 map, there are about six and a half
8 senators from St. Louis County in that the 26th pulls
9 in population from St. Louis County. I think if you
10 were doing this to accurately reflect where the
11 population really has gone, it would look a lot like
12 the map that was proposed and what Appellate 2 looked
13 like, which is to say that a St. Louis County district
14 would, then, pull in from another part of another
15 county. And given the fact of Jefferson County's rapid
16 growth, it seemed logical to pull in part of
17 Jefferson County's population to make up the
18 difference. That seemed to be a more appropriate way.

19 And in fact, in those maps, the districts in
20 north St. Louis County, which had been losing
21 population, they had -- they were above the standard
22 deviation. Districts that were growing in west and
23 southwest St. Louis County were below, in order to
24 reflect what those trends probably would look like in
25 the next ten years so that you're close to the zero

1 deviation as possible at the end of the next decade.

2 That was part of what we did, and also to
3 take into account communities of interest. Obviously,
4 splitting Webster Groves and Kirkwood doesn't make a
5 lot of sense to me, but there are a lot of instances of
6 that in St. Louis County. And so I am here today as
7 somebody from that region who believes that maintaining
8 that regional number for its delegation is really
9 important. And certainly, the numbers didn't justify
10 the loss of a senate seat.

11 So I'll be happy to answer any questions.

12 CHAIRMAN HARPOOL: Senator, I've got just a
13 couple of brief questions.

14 You don't express concern about the
15 particular district you've been given; your concern is
16 about the loss as a whole?

17 SENATOR SCHMITT: That's right.

18 CHAIRMAN HARPOOL: You heard way more
19 testimony than you probably wanted to hear and many
20 more questions than you wanted to hear, but the two
21 districts in the St. Louis city/County that are
22 underpopulated on the tentative map have a total
23 underpopulation of 12,550. The districts that are over
24 population, and I'm not counting the 26th because as
25 you say, it's in two different counties, have an

1 overpopulation of 13,965. So since we're facing a
2 lawsuit saying that our urban districts are too small
3 and our rural districts are too big and the St. Louis
4 districts are almost exactly average, can we legally
5 really move another district into St. Louis County
6 without making the lawsuit even a better challenge?

7 SENATOR SCHMITT: Well, without having
8 reviewed the lawsuit and the counts or the merits of
9 it, my contention is that if you look at the real
10 numbers, which I think was about a 42,000 person loss
11 between the city and St. Louis County, when an average
12 senate district is 170,000 people, I just don't think
13 that justifies shifting an entire seat out. The more
14 appropriate -- I would argue the more appropriate thing
15 to do would have been to pull in population from
16 another county.

17 CHAIRMAN HARPOOL: We did. We pulled in
18 Franklin.

19 SENATOR SCHMITT: Well, when -- you have
20 Franklin County pulling into St. Louis County in the
21 26th.

22 CHAIRMAN HARPOOL: Right.

23 SENATOR SCHMITT: Whereas, your tentative map
24 actually -- if you would have maintained that portion
25 that's in St. Louis County as the 26th and pulled into

1 22, you would have -- I don't think it would have
2 messed up the numbers too much.

3 CHAIRMAN HARPOOL: What's the difference
4 between whether we pull population from 22 to give
5 St. Louis another -- that district or we pull it in
6 from -- is it Franklin County -- Franklin County to
7 make that district?

8 SENATOR SCHMITT: My understanding of the
9 justification -- well, if you're talking about
10 communities of interest, clearly, a Franklin County
11 centered seat is different than a west St. Louis County
12 centered seat. I mean, I don't think there's really
13 any debate about that. My understanding of the
14 rationale for the loss of the St. Louis County based
15 seat was the loss of population. And my argument here
16 to you today is that there wasn't enough population
17 loss to justify that.

18 CHAIRMAN HARPOOL: You know that the size of
19 the senate districts went up?

20 SENATOR SCHMITT: Yes.

21 CHAIRMAN HARPOOL: So in order to keep the
22 same number of seats, each of the seats had to have
23 more population than they had last time.

24 SENATOR SCHMITT: Yeah, which is achievable
25 by Appellate 2 and achievable by --

1 CHAIRMAN HARPOOL: If you take population
2 from Jefferson County --

3 SENATOR SCHMITT: Correct.

4 CHAIRMAN HARPOOL: -- instead of
5 Franklin County.

6 SENATOR SCHMITT: Correct. Or -- but I mean,
7 the alternative, of course, is to pull in St. Louis
8 County population into a more rural county district.

9 CHAIRMAN HARPOOL: Do you think
10 Jefferson County -- it's big enough to have its own
11 senator, correct?, population wise?

12 SENATOR SCHMITT: I don't know the population
13 of Jefferson County. I'm sure -- yes. I'm sure that
14 it is.

15 CHAIRMAN HARPOOL: Are you aware that under
16 Appellate 2, Jefferson County didn't have its own
17 senator, and its county was split between two other
18 senate districts, but there was no senate district only
19 within Jefferson County?

20 SENATOR SCHMITT: That's right, but I don't
21 think there is now -- well, the way I would answer
22 that, I suppose, is Jefferson County was still the
23 population base of that newly formed senate district in
24 Appellate 2. Jefferson County is split currently, and
25 I don't think -- you know, having a Jefferson County

1 based senator, which is what that district would have
2 looked like -- I don't think it would have prejudiced
3 Jefferson County.

4 CHAIRMAN HARPOOL: We're trying to --

5 SENATOR SCHMITT: In fact, I would also make
6 the argument that because of the rapid growth in
7 northern Jefferson County, in Arnold, those areas, made
8 it more likely for that population to be pulled into
9 the more suburban St. Louis County districts than the
10 Franklin County alternative.

11 CHAIRMAN HARPOOL: We were trying to give
12 each multidistrict county a district wholly within
13 itself, and that's not something achieved by the second
14 judicial map, and --

15 SENATOR SCHMITT: Well, not that this is
16 dispositive, but of course, Senator McKenna signed off
17 on the map that very closely resembled Appellate 2, and
18 his family has represented Jefferson County for a
19 number of years. I'm not arguing that that is --

20 CHAIRMAN HARPOOL: His father was a dear
21 friend of mine. I will tell you that the map you all
22 submitted, in my opinion, had all kinds of legal
23 problems and adversely impacted the rest of the state.
24 But I respect you guys' effort, and we considered it,
25 and we didn't --

1 SENATOR SCHMITT: We tried to do a very
2 difficult job, which I know you guys have had --

3 CHAIRMAN HARPOOL: And I've -- I do think
4 everybody on this Commission wants -- we understand how
5 hard politicians work to build relationships. We
6 understand that. I've served with Steve Ehlmann, and I
7 served with Bill McKenna, and I understand how hard
8 those people work, but we have a job to do, and it's
9 not an easy job. And I think there's six appellate
10 judges in the state now who will testify it's not an
11 easy job to do.

12 SENATOR SCHMITT: That's probably right.

13 CHAIRMAN HARPOOL: But we do respect the
14 impact of that on people's lives and on their careers.
15 We're trying. Okay?

16 Other questions of this senator?

17 VICE CHAIRMAN ELLINGER: If I may?

18 CHAIRMAN HARPOOL: Uh-huh.

19 VICE CHAIRMAN ELLINGER: Senator Schmitt,
20 thanks for coming. Appreciate it.

21 I have a few questions I'd like to ask you
22 real quick. And one of them I think
23 Commissioner Harpool, our chairman, eloquently
24 addressed, but I want to make sure I'm clear. We heard
25 a lot of testimony that the problem with this map is

1 that urban areas are overrepresented and rural areas
2 are underrepresented. You got to sit through a whole
3 bunch of that. We add a full -- and retain a full
4 senate seat inside St. Louis county. Currently,
5 St. Louis and St. Louis city combined have seven and a
6 half seats. If we were to make that eight even seats,
7 do you think that would exacerbate the
8 overrepresentation of urban areas versus rural areas,
9 which is already being alleged in a lawsuit?

10 SENATOR SCHMITT: I don't think I'm in a
11 position to make a -- to give a legal opinion on what
12 that would do based on the lawsuit.

13 VICE CHAIRMAN ELLINGER: You talked a little
14 bit about the loss of population in St. Louis County
15 and St. Louis city, and I think it's 46,042. Something
16 like that.

17 SENATOR SCHMITT: Right.

18 VICE CHAIRMAN ELLINGER: I mean, by
19 everyone's agreement, it lost population.

20 SENATOR SCHMITT: Correct.

21 VICE CHAIRMAN ELLINGER: But that's not the
22 sole basis by which we evaluate whether senate seats
23 are -- how senate seats are apportioned because the
24 state as a whole grew also, didn't it?

25 SENATOR SCHMITT: Yes.

1 VICE CHAIRMAN ELLINGER: Do you know what
2 rate the state of Missouri grew at?

3 SENATOR SCHMITT: I should probably remember
4 this from the congressional redistricting that we went
5 through last year, but I probably couldn't tell you
6 offhand.

7 VICE CHAIRMAN ELLINGER: It's seven percent.

8 SENATOR SCHMITT: Seven percent.

9 VICE CHAIRMAN ELLINGER: So the average
10 population of the state grew by seven percent.
11 St. Louis city and St. Louis County dropped, if you
12 combine it, by about three and a half percent. That's
13 really a 10 percent plus spread. The 46,000 people
14 that were lost because of actually lost population
15 plus -- if St. Louis city and County would have just
16 grown at the same rate as the rest of the state,
17 nothing more, nothing less, they would have added
18 90,000 people. So really, the net detrimental effect
19 is not 46,000 people. It's 136,000 people, which is
20 nearly a whole senate -- 75 percent of a senate
21 district, maybe 80 percent. I better check my math.
22 It's a very, very large percent of a whole senate
23 district that the combination of loss and failure to
24 grow resulted in. Does that make sense?

25 SENATOR SCHMITT: I understand the argument

1 you're making. What I would say is that if you look at
2 the numbers, though, of how many people are in a new
3 senate district, you certainly can make the case, and I
4 would make the case, that you could maintain the same
5 number of St. Louis senate -- St. Louis area senators
6 if you simply would have pulled in another county.

7 So I understand that other parts of the state
8 are growing at a greater rate than St. Louis County,
9 but if you still look at the actual numbers, there's a
10 very clear justification. And I think, in fact, under
11 Missouri law, looking at core districts from a previous
12 map are an important consideration in drawing a new
13 map, and I don't -- and I think Appellate 2 did a
14 better job of that than the tentative map.

15 VICE CHAIRMAN ELLINGER: You used a unique
16 term that I haven't heard before, so I'd like to
17 inquire, if you don't mind. You said "St. Louis area
18 senators."

19 SENATOR SCHMITT: Sure.

20 VICE CHAIRMAN ELLINGER: What is the
21 St. Louis area?

22 SENATOR SCHMITT: Well, I would include the
23 St. Louis area -- sometimes St. Charles County is in
24 the St. Louis area. They're not in the St. Louis area,
25 but St. Charles County, I think, is unique in that

1 there, too, because of its population almost at, I
2 think, 360,000. You can -- you get right to two senate
3 seats. The St. Louis area traditionally has meant
4 St. Louis city, St. Louis County, and I think, given
5 the growth of Jefferson County, I would make an
6 argument that Jefferson County is part of the St. Louis
7 region.

8 VICE CHAIRMAN ELLINGER: And western --
9 excuse me -- eastern Franklin County, particularly
10 northeastern Franklin County, has grown very rapidly
11 also, hasn't it?

12 SENATOR SCHMITT: It has. It has.

13 VICE CHAIRMAN ELLINGER: And that county,
14 which I think has a population of about 100,000 people,
15 the great majority of that population is from
16 Washington to Union over to the St. Louis County line.
17 It's in a very tight area.

18 SENATOR SCHMITT: I think you have more --
19 just as somebody that's grown up there, I think you
20 have more commuter traffic, I should say maybe, from,
21 like, say Arnold into south county than you do from
22 Franklin County into downtown or St. Louis County. I
23 think that's probably a little more prevalent, and that
24 was part of our consideration on where do you go to
25 pick up the population? Jefferson County, over the

1 last 10 years, has become much more a part of the
2 St. Louis region, I would say, because of its growth,
3 particularly in the northern portion of the county.

4 VICE CHAIRMAN ELLINGER: You know, one of the
5 problems that St. Louis city and County face, in all
6 candor, is if you took the combined population of the
7 city and the county 10 years ago and you divided it by
8 the ideal senate seat, which is 164,565 people, it's
9 8.3 senate seats. If you that same division today,
10 it's 7.48. I mean, it's a big difference. It's --

11 SENATOR SCHMITT: Again, but --

12 VICE CHAIRMAN ELLINGER: It's --
13 three-quarters of a senate seat disappeared, and what
14 you got, for lack of a better term, is 7.42 senate
15 seats, almost exactly -- I mean, almost to -- you have
16 to get out decimals -- pretty far decimals to even get
17 to it, to the thousandths of a degree. It's the same
18 number of districts that you should have under an ideal
19 map.

20 SENATOR SCHMITT: I think that depends on how
21 you're characterizing what would be the St. Louis
22 regional seat then. I think you're including the 26th
23 pulling into St. Louis County.

24 VICE CHAIRMAN ELLINGER: I'm only including
25 the part of the 26th that's in St. Louis.

1 SENATOR SCHMITT: Yeah. And what I'm saying
2 is I think the -- and not just the -- and I appreciate
3 and respect the work that you guys have put into this,
4 and I know it's not easy, but I think the appellate
5 panel in Appellate 2, even though, you know, it is what
6 it is because of what happened with Appellate 1, they
7 saw fit or saw a justification for the St. Louis region
8 to maintain the same number by pulling into
9 Jefferson County. So I don't think it's such a -- it's
10 a wild, crazy idea. I think it is justified by the
11 numbers.

12 VICE CHAIRMAN ELLINGER: And when you talk
13 about the St. Louis region, again, you don't talk about
14 MSA, and I hear a lot of people talk about MSA when
15 they talk about St. Louis.

16 SENATOR SCHMITT: MSA?

17 VICE CHAIRMAN ELLINGER: Metropolitan
18 statistical area.

19 SENATOR SCHMITT: Okay.

20 VICE CHAIRMAN ELLINGER: Folks -- I live here
21 in Jefferson City. We think of the St. Louis region as
22 having 2.6 million people, and that's a lot more than
23 St. Louis County and St. Louis city.

24 SENATOR SCHMITT: Well --

25 VICE CHAIRMAN ELLINGER: That's a lot more

1 than northern Jefferson County. I mean, you have to
2 pick up St. Charles County --

3 SENATOR SCHMITT: Well, if we were --

4 VICE CHAIRMAN ELLINGER: -- you have to pick
5 up Lincoln, you have to pick up Franklin. It's a big
6 area.

7 SENATOR SCHMITT: I think that also includes
8 St. Clair and Madison Counties, too.

9 VICE CHAIRMAN ELLINGER: It does. It does.
10 It crosses the river.

11 SENATOR SCHMITT: I don't think we can pull
12 them in to maintain a senate seat.

13 VICE CHAIRMAN ELLINGER: No. But if you look
14 at it from a Missouri side, I think anybody can tell
15 you that those counties, Lincoln, Franklin,
16 St. Charles, and Jefferson, have a whole lot more in
17 common with St. Louis than they do with the Lake of the
18 Ozarks or Springfield or north Missouri. They really
19 are all St. Louis area counties; would you tend to
20 agree with that?

21 SENATOR SCHMITT: What were the counties that
22 you mentioned again?

23 VICE CHAIRMAN ELLINGER: Lincoln,
24 St. Charles, Franklin, and Jefferson, the counties that
25 border St. Louis.

1 SENATOR SCHMITT: I guess it depends on the
2 catch area you want to pull in. I do think there is a
3 marked difference between rural Lincoln County and
4 Kirkwood or even Washington, Missouri and
5 Webster Groves. So I do think -- I just -- the
6 justification for northern Jefferson is more precise, I
7 think, than Franklin pulling into St. Louis County
8 because of the population shifts south into that
9 northern Jefferson County area, including Arnold.

10 VICE CHAIRMAN ELLINGER: Well, there's
11 also -- we talk about population shift into Franklin,
12 too.

13 SENATOR SCHMITT: There is some. In fact --

14 VICE CHAIRMAN ELLINGER: Pacific straddles
15 the border.

16 SENATOR SCHMITT: And again -- which is one
17 of the reasons why you had some of the more
18 underpopulated districts in south and western St. Louis
19 County to anticipate -- and I think this was true in
20 Appellate 2, to anticipate that continued population
21 shift probably south and west into St. Louis County, so
22 that at the end of the next decade, you were closer to
23 the mean.

24 VICE CHAIRMAN ELLINGER: But the shift, just
25 so I'm clear, is not into St. Louis County? It's out

1 of St. Louis County?

2 SENATOR SCHMITT: Well, I think there's a lot
3 of shifting within St. Louis County.

4 VICE CHAIRMAN ELLINGER: But St. Louis County
5 lost population.

6 SENATOR SCHMITT: Well, St. -- clearly -- I
7 grew up in north county, so St. Charles County clearly
8 has grown because of a lot of north county folks that
9 have moved in, particularly the 23rd District. So I
10 think there is a shift away from St. Louis County, as
11 reflected by the 1.7, which is the first decade, you
12 know, that there's been a population loss. My
13 contention would be it is way too early, maybe in the
14 next census, if that trend continued and the numbers
15 just don't add up. But I think this is one census too
16 early to remove a seat from the St. Louis region.

17 VICE CHAIRMAN ELLINGER: So we see loss in
18 St. Louis County. We see gain in Jefferson, Franklin,
19 and St. Charles, and your suggestion is to
20 underpopulate districts in St. Louis County because you
21 think the census is a bit of an anomaly?

22 SENATOR SCHMITT: No. I think St. Charles
23 County takes care of itself on its own. The numbers
24 are pretty clean. What my suggestion is that it makes
25 more sense to pull in Jefferson County into whatever

1 the 27th was in Appellate 2 or the old 7th. That made
2 more sense to keep communities of interest as far as
3 what that suburban St. Louis County looked like.

4 VICE CHAIRMAN ELLINGER: So you'd be okay
5 with the 80-some thousand people we have in St. Louis
6 County that are currently in the 26th -- you'd be okay
7 with marrying them up with the 100,000 people in
8 northern Jefferson County? That would be okay with
9 you?

10 SENATOR SCHMITT: I think what -- I think
11 what you're saying is -- and I just want to make sure I
12 understand --

13 VICE CHAIRMAN ELLINGER: Yeah.

14 SENATOR SCHMITT: -- that the west county
15 portion of the 26th pulling in population from northern
16 Jefferson County?

17 VICE CHAIRMAN ELLINGER: Completely filling
18 it out of Jefferson County, making it a -- you know,
19 it's a 60/40, give or take, Franklin County, St. Louis
20 County district, a little closer than that, but you'd
21 call it a 60/40 split, make it into 60 percent
22 Jefferson County, 40 percent St. Louis County?

23 SENATOR SCHMITT: Commissioner, I apologize
24 for not knowing the exact numbers.

25 VICE CHAIRMAN ELLINGER: Ballpark.

1 SENATOR SCHMITT: Looking at the map, that
2 would look like how Appellate 2 dealt with that western
3 St. Louis County area, by pulling it in. That's --

4 VICE CHAIRMAN ELLINGER: And just as a real
5 quick clarification, I think you made it clear through
6 your comments, but I want to make sure. You've not
7 retained Mr. Greim, have you?

8 SENATOR SCHMITT: No.

9 VICE CHAIRMAN ELLINGER: And you're not
10 paying for Mr. Greim's testimony?

11 SENATOR SCHMITT: I am not.

12 VICE CHAIRMAN ELLINGER: Thank you.

13 CHAIRMAN HARPOOL: Other questions of this
14 witness?

15 COMMISSIONER BRADSHAW: Nothing for me.

16 SENATOR SCHMITT: Thank you.

17 CHAIRMAN HARPOOL: On the telephone?
18 Questions? I hear none.

19 Thank you, Senator.

20 SENATOR SCHMITT: Thank you for your time.

21 CHAIRMAN HARPOOL: I apologize you had to sit
22 for as long as you did, but maybe you learned
23 something. I'm not sure you did, but it's possible.

24 All right. Senator Lembke.

25 By the way, if anyone wishes to testify, they

1 need to complete one of these forms and present it to
2 me. Senator Lembke is the last form that has thus far
3 been presented to me.

4 SENATOR LEMBKE: Thank you, Mr. Chairman and
5 members of the Commission.

6 First of all, I want to thank you that you
7 had this hearing, and it was rather intriguing the last
8 couple of hours. I haven't sat in on one of these
9 hearings before, and I was enlightened as far as the
10 amount of work that goes in and the effort of what you
11 guys are actually really looking at, so I really
12 enjoyed the back and forth between yourself and
13 Mr. Greim.

14 And matter of fact, I prepared some remarks
15 that I wanted to make, but I think I'm going to deviate
16 from those, pun intended.

17 CHAIRMAN HARPOOL: If you have them in
18 writing and want to submit them to us, then you may go
19 ahead and testify.

20 SENATOR LEMBKE: Yeah. Yeah. I'm just going
21 to make a couple of very brief points and then be
22 available for any questions that you have for me.

23 You know, I just would ask that you consider
24 the idea that compromise is better than litigation.
25 Many of us -- and this is self-serving, but you know,

1 many of us had been left, you know, in limbo and not
2 because of, you know, any work that you have or have
3 not done, but it's just the fact. And now we're
4 looking at a couple of weeks left, you know, of filing,
5 deciding, you know, whether we have a district, in some
6 cases, or what district we'll be able to run in or what
7 the district is going to look like.

8 You know, I would ask the Commission to
9 consider the second judicial map -- the appellate map.
10 I thought that that map was balanced, and again, not
11 taking into all the different variables that you guys
12 have just talked about over the last, you know, couple
13 of hours that I sat and listened, I just want to get
14 real parochial here for one second.

15 When I think about south county and south
16 city and the people that I have actually represented
17 for the last four years and when you think about the
18 current 1st District and you think about the people
19 that live in south city where my wife and I lived for a
20 year and the people that live in south county and those
21 people that live in the Oakville area and those people
22 that live in south city, there is a commonality about
23 those people. Okay? You know, whether they're
24 Republicans or Democrats, okay, they all -- those
25 communities of interest are really represented in the

1 way that the 1st District is currently. Okay?

2 And I would just submit to the Commission
3 when -- and I know this isn't easy for you to do
4 because you're from different areas of the state, and
5 you represent different people, but when you look at an
6 individual that lives in Oakville and an individual
7 that lives in Maplewood under this tentative map, I
8 would submit that, even though this is in what you'd
9 consider an urban district, if you're using those
10 terms, that these people really do have very differing
11 communities. And they don't have a lot in common,
12 other than they live, you know, in the St. Louis area,
13 I guess you could say.

14 But when you think about, you know, their
15 school districts, when you think about just make up of
16 the communities, they really do differ. And when I --
17 I think when you look at what the Commission did in
18 relation to the changes to the 1st in relation to the
19 15th, there are some things that are very simple that
20 could be done that I don't believe would effect any
21 other districts that surround them. And that has to do
22 with the area, you know, down around Sunset Hills and
23 that area that was taken from the 1st, so it's part of
24 Sunset Hills, part of Crestwood, and the area that was
25 in the 15th that's now in the tentative 1st, which is

1 the -- was in Webster Groves and the Maplewood area,
2 which were in the 15th.

3 So those -- I really -- I guess my question
4 would be: I don't understand those changes. You know,
5 it seems that with just those two districts in mind,
6 that that could be changed back, and I don't know if it
7 affects the -- I don't believe it would affect the
8 numbers, but it certainly would affect those
9 communities of interest and the people that the senator
10 from the 15th would represent and you know, the next
11 senator from the 1st. So that's all I have for you.

12 CHAIRMAN HARPOOL: Appreciate very much your
13 input, and we'll certainly look at those specific
14 issues, and as you know, this hasn't been easy, but
15 we'll do that.

16 SENATOR LEMBKE: I appreciate that.

17 CHAIRMAN HARPOOL: You know, we're really
18 trying to get a map that's not settled by litigation.
19 As you know, the appellate second map was attacked by a
20 suit filed by a conservative radio host, and now a
21 group of conservatives have attacked our map, and I'm
22 trying to figure out how, as a Democrat, I can make
23 these two conservative groups quit fighting with each
24 other so we can just let the citizen's commission map
25 go through. Got any ideas?

1 SENATOR LEMBKE: Well, I can say that
2 conservatives are very good with fighting with each
3 other.

4 CHAIRMAN HARPOOL: I was always told I was
5 too conservative to be a Democrat, and so maybe I'm a
6 good fighter. I don't know.

7 I want to make a personal comment. I've read
8 in the paper that you may not seek reelection because
9 you're dissatisfied with the district. That's your
10 decision. I respect your decision. That certainly was
11 never the intent of anybody on this panel. As the
12 person who ran in a district that was far more
13 Republican than the district you're being handed as a
14 Democrat, go knock on the doors and talk to the people.
15 All right?

16 SENATOR LEMBKE: Yeah. I'm pretty good at
17 that. I appreciate that, Mr. Chairman.

18 CHAIRMAN HARPOOL: I know you are.
19 Any other questions?

20 COMMISSIONER EHLMANN: I have a few.

21 CHAIRMAN HARPOOL: Yes, sir, Mr. Ehlmann.

22 COMMISSIONER EHLMANN: Yeah. Senator, my
23 experience with south county and south city is that
24 school districts really tell you more about the
25 community than the municipalities; would you agree with

1 that?

2 SENATOR LEMBKE: I would agree with that,
3 yes.

4 COMMISSIONER EHLMANN: And I guess that's --
5 Sunset Hills, what is that, Lindbergh?

6 SENATOR LEMBKE: Yes.

7 COMMISSIONER EHLMANN: And a lot of your
8 other district is Lindbergh?

9 SENATOR LEMBKE: Lindbergh and Melville.

10 COMMISSIONER EHLMANN: And Webster Groves is
11 its own school district, and it's never been part of
12 your district. It's always been part of the 15th, I
13 think.

14 SENATOR LEMBKE: Correct.

15 COMMISSIONER EHLMANN: But you think that
16 would -- that change would be an improvement?

17 SENATOR LEMBKE: I do. I do, yeah.

18 COMMISSIONER EHLMANN: Okay. Thank you.

19 VICE CHAIRMAN ELLINGER: Go ahead.

20 COMMISSIONER PEARSON: Thank you, Senator,
21 for being here. I'm just trying to understand a little
22 bit about the community there. Talk -- because I'm not
23 from south county. Talk to me a little bit about the
24 commonality of interest between Kirkwood and, say,
25 Webster Groves.

1 SENATOR LEMBKE: Well, other than that they
2 have a great rivalry --

3 COMMISSIONER PEARSON: That I do know,
4 Thanksgiving Day football.

5 SENATOR LEMBKE: Yeah. It's interesting.
6 The church that my wife and I and our family attend is
7 in Webster Groves, and so a lot of our parishioners are
8 from that area and from Webster Groves. It's a small
9 church, only about 60, but I can tell you that just
10 with the relationships that I've developed there, I
11 think that Kirkwood and Webster Groves have a lot in
12 common. And you know, they are communities that have
13 real identities, and so yeah, I think they -- that's
14 why I think they've always fit well within the 15th,
15 you know, that the same senator would represent those
16 two areas, so yeah. And the idea of splitting those up
17 under this tentative map, the senator from the 15th
18 would represent Kirkwood, and then I would represent --
19 excuse me. The senator from the 1st would represent,
20 you know, most of Webster Groves.

21 COMMISSIONER PEARSON: All right. And
22 that's, historically, never been the way it's been; do
23 I understand that?

24 SENATOR LEMBKE: To my knowledge, yes.

25 COMMISSIONER PEARSON: And what about

1 Maplewood? Talk to me a little bit about the
2 relationship there between, say, Maplewood and
3 Kirkwood. Is there any commonality there?

4 SENATOR LEMBKE: You know, to be real honest
5 with you, Commissioner, I don't know a lot about
6 Maplewood. I would think that Maplewood would have
7 more in common with, like, Brentwood or parts of
8 Brentwood, but certainly closer to, you know, Kirkwood
9 and Webster Groves than it would with Oakville, you
10 know. It's in south county.

11 COMMISSIONER PEARSON: Oakville is down
12 south?

13 SENATOR LEMBKE: Yeah, very far south county.
14 I mean, almost Jefferson County.

15 COMMISSIONER PEARSON: All right. Thank you.
16 I appreciate you helping me with that.

17 CHAIRMAN HARPOOL: Mr. Ellinger.

18 VICE CHAIRMAN ELLINGER: A couple of very
19 quick comments, Senator. Thanks again for testifying.
20 Appreciate it.

21 To follow a little bit with the discussion
22 Mr. Ehlmann -- Commissioner Ehlmann and
23 Commissioner Pearson said, if those kind of proposed
24 changes were made and that is to kind of get down there
25 and pick up Sunset Hills and that area and then -- out

1 of the 15th and move Webster Groves into the 15th to
2 make up for the population -- and I haven't looked at
3 the numbers. I don't know if that's an exact -- close
4 enough to exact match or not, but in that general
5 concept --

6 COMMISSIONER PEARSON: Mr. Greim will tell
7 us.

8 VICE CHAIRMAN ELLINGER: -- would that
9 generally fix your concerns with the map?

10 SENATOR LEMBKE: It would for the --
11 certainly, again, I was getting parochial. I mean, for
12 most people that I have currently been elected to
13 represent, I think that that would make the 1st, you
14 know, a district that would be kind of a south county
15 district.

16 VICE CHAIRMAN ELLINGER: And the 1st, I
17 think, is -- let's see. You guys are -- your district
18 currently is slightly over population, just by a little
19 bit?

20 SENATOR LEMBKE: I believe so, yes.

21 VICE CHAIRMAN ELLINGER: And the 15th is also
22 slightly over by population, so switching folks around
23 between those two districts would not have an impact on
24 this mythical under or overrepresentation that we've
25 heard so much about, would it?

1 SENATOR LEMBKE: I don't believe so, and I
2 would think that if you looked at the 15th going back
3 and taking, you know, the Maplewood and the
4 Webster Groves, you're probably talking about a very
5 close number as far as what the population there in
6 Sunset Hills is.

7 VICE CHAIRMAN ELLINGER: And I heard
8 Senator Schmitt testify somewhat, and you were in the
9 room for that, so you heard about making sure there was
10 sufficient representation of the St. Louis area. Do
11 you recall that testimony?

12 SENATOR LEMBKE: Uh-huh.

13 VICE CHAIRMAN ELLINGER: And obviously, you
14 heard a lot more testimony than you probably wanted to
15 between -- back and forth with Mr. Greim about the
16 underrepresentation of rural areas and
17 overrepresentation of urban areas. You heard that?

18 SENATOR LEMBKE: I did.

19 VICE CHAIRMAN ELLINGER: Do you share those
20 two concerns?

21 SENATOR LEMBKE: You know, the -- that's part
22 of what was fascinating to me about the discussion --
23 the two-hour discussion that you had with Mr. Greim. I
24 mean, I never really thought about it, to be real
25 honest with you, as far as the idea of being

1 underrepresented or overrepresented.

2 Again, I believe that, if you look at the St.
3 Louis area and the importance of -- and maybe we think
4 we're too important. I don't know. But you know, I
5 think it is important for us to have that senate seat
6 that we're losing. But again, I haven't had to sit in
7 your seats, you know, as far as how the job goes, and I
8 think that as St. Louis goes, to a great extent -- and
9 I know that, you know, things are changing, things are
10 evolving, you know, but and so goes the state and the
11 revenues.

12 And I serve on Appropriations, and we've got
13 a \$500 million hole this year, and you know, we've got
14 to do things to, you know, generate more jobs and
15 revenue, and you know, so those are -- I know those
16 aren't things that go in your equation, but I think
17 it's important for the St. Louis region to be properly
18 represented.

19 VICE CHAIRMAN ELLINGER: I know some of the
20 St. Louis County area. I'm not as familiar with your
21 area of the county as I am with some other parts of it,
22 but is the south part of the county, particularly your
23 current district, albeit it's changing, is it growing
24 or is it losing population; do you know?

25 SENATOR LEMBKE: I'm trying to remember. I

1 think that we're pretty static.

2 VICE CHAIRMAN ELLINGER: Pretty static?

3 SENATOR LEMBKE: Yeah.

4 VICE CHAIRMAN ELLINGER: Not growing?

5 SENATOR LEMBKE: I mean -- yeah. I mean,
6 that area is landlocked. You know, I mean, you really
7 don't -- and it's pretty well developed, mainly out in
8 the southern part of -- that Oakville area again, if I
9 can make reference to that. There's still, you know,
10 areas to build, and they're building homes and you
11 know, so there is area there, but beyond that --

12 VICE CHAIRMAN ELLINGER: Real quick, have you
13 retained Mr. Greim?

14 SENATOR LEMBKE: I have not.

15 VICE CHAIRMAN ELLINGER: Are you paying for
16 Mr. Greim's testimony?

17 SENATOR LEMBKE: I am not.

18 VICE CHAIRMAN ELLINGER: Do you know who is?

19 SENATOR LEMBKE: I'm very jealous about my
20 own money and that of supporters.

21 VICE CHAIRMAN ELLINGER: Do you know who is?

22 SENATOR LEMBKE: I do not.

23 VICE CHAIRMAN ELLINGER: Okay. I have no
24 further questions, Mr. Chairman. Thanks again,
25 Senator.

1 SENATOR LEMBKE: Thank you.

2 CHAIRMAN HARPOOL: Any other questions of
3 this witness? Okay. I see none.

4 Thank you, sir.

5 SENATOR LEMBKE: Thank you.

6 CHAIRMAN HARPOOL: If you want to leave
7 written comments, you may. You don't have to if you
8 feel you've covered what you wanted to.

9 SENATOR LEMBKE: Thank you.

10 CHAIRMAN HARPOOL: All right. I have no
11 other witness forms. Anybody here want to testify?
12 Does anyone know of anyone else which wishes to present
13 public testimony? It appears there are no others.
14 We're nicer to non-lawyers that are not litigating
15 currently.

16 COMMISSIONER MYERS: Mr. Chairman, this is
17 Nick Myers.

18 VICE CHAIRMAN ELLINGER: I think I heard
19 something. Was that Nick on the phone?

20 COMMISSIONER MYERS: This is Nick Myers. I
21 have a couple --

22 CHAIRMAN HARPOOL: Thank you, Nick.

23 COMMISSIONER MYERS: -- letters here that I
24 faxed to Mr. Hesser; one from the --

25 CHAIRMAN HARPOOL: Nick, let me cover that.

1 We have a letter from the Chamber of Commerce of
2 Springfield that has been distributed as a comment to
3 us by e-mail, but a copy of that is also available for
4 us here.

5 Nick, do you want to -- since it's been
6 distributed, do you want to have it attached to the
7 transcript, or do you want to just know that it's been
8 distributed?

9 COMMISSIONER MYERS: I'd like to have it
10 attached to the transcript. There's also a letter from
11 Missouri State University that I --

12 CHAIRMAN HARPOOL: All right. That also has
13 been distributed from Cliff Smart, the interim
14 president, and we'll attach that.

15 COMMISSIONER MYERS: Most of his comment,
16 here, is on behalf of the Missouri State University --

17 CHAIRMAN HARPOOL: We have a copy of that.
18 Right.

19 COMMISSIONER MYERS: -- the city of
20 Springfield is one separate senatorial district.

21 CHAIRMAN HARPOOL: Right.

22 COMMISSIONER MYERS: That's all,
23 Mr. Chairman.

24 CHAIRMAN HARPOOL: All right. Any other
25 comments? Any other business?

1 VICE CHAIRMAN ELLINGER: What -- a couple
2 very quickly, Mr. Chairman. I know that the purpose of
3 this hearing, as it's laid out in the Constitution and
4 I think Mr. Greim testified to, is to hear any
5 objections that may be presented.

6 CHAIRMAN HARPOOL: Yes.

7 VICE CHAIRMAN ELLINGER: I would request that
8 we close the record on this hearing and establish that
9 all objections to the maps have now been heard, and we
10 go into deliberations at this point.

11 CHAIRMAN HARPOOL: Well, I think the public
12 comment period technically has to stay open until
13 March 9 --

14 VICE CHAIRMAN ELLINGER: Which is tomorrow.

15 CHAIRMAN HARPOOL: -- which is tomorrow at
16 5:00.

17 MR. HESSER: I think we have it listed on the
18 website as 5:30 tomorrow.

19 CHAIRMAN HARPOOL: 5:30? All right. So --

20 VICE CHAIRMAN ELLINGER: Mr. Chairman, I
21 would move at 5:30 tomorrow afternoon we close the
22 public comment period.

23 CHAIRMAN HARPOOL: Is there second for that?

24 COMMISSIONER BRADSHAW: Second.

25 CHAIRMAN HARPOOL: Let's just confirm with

1 Mr. Hesser. Are we convinced that March 9 at 5:30 a
2 full 15-day comment period has been afforded from the
3 time that the tentative plan was submitted to the
4 Secretary of State?

5 MR. HESSER: We believe that to be correct.
6 I could go back and recalculate that if you need me to.

7 CHAIRMAN HARPOOL: And I will -- the public
8 may not know this, but we have received dozens and
9 dozens --

10 VICE CHAIRMAN ELLINGER: Hundreds.

11 CHAIRMAN HARPOOL: -- hundreds probably, of
12 comments from the public, so we have every reason to
13 believe the public is aware of the process and is
14 complying, but that is correct. The 15-day period will
15 close at 5:30, and you want to deem that any objection
16 to the map be closed at that time?

17 VICE CHAIRMAN ELLINGER: That's correct.
18 That was my motion, and I think there was a second,
19 wasn't there?

20 CHAIRMAN HARPOOL: There was a second by
21 Mr. Bradshaw.

22 All in favor say aye?

23 (All Commissioners responded in the
24 affirmative.)

25 CHAIRMAN HARPOOL: Opposed, no? Ayes have

1 it. We will do so.

2 MR. GREIM: Commissioner, I have a question,
3 if that's possible, a procedural question only.

4 CHAIRMAN HARPOOL: Well, let me -- we will
5 meet and debate the tentative map and consider
6 amendments to the tentative map and ultimately make a
7 final vote on the tentative map. We expect that final
8 hearing to be held at 10:00 Monday in this office. It
9 will be published as a meeting -- open meeting. We may
10 close a portion of that meeting to discuss issues with
11 the lawyer and some other things, but it will be a
12 meeting.

13 I did check on the break, and this meeting
14 hearing today was announced and published as an open
15 meeting more than 24 hours prior to the commencement of
16 the meeting, so we were, again, in compliance with the
17 Sunshine Law. There were -- some people questioned
18 that, and I investigated it, and it is true.

19 VICE CHAIRMAN ELLINGER: Mr. Chairman, I'd
20 like to thank the staff for the work they've gone
21 through, particularly, one, getting this meeting set
22 up, and dealing with the amount of comments that we
23 have received on this map. Thank you all very much for
24 the good work you all have done.

25 CHAIRMAN HARPOOL: Yes. My e-mail is full.

1 I know that.

2 COMMISSIONER BRADSHAW: Mr. Chairman, I'd
3 like to make one comment, too. With respect to the
4 timing of the meeting because I know I've had a couple
5 of inquiries about it. Any delay in that was because
6 between the 10 members of this Commission and trying to
7 sort out schedules of who was available when and given
8 the short time frame we all had to work within, this
9 was really the only time that worked.

10 CHAIRMAN HARPOOL: Absolutely, it was.

11 All right. Did you want to ask a question?

12 MR. GREIM: Yes. My only question was in
13 terms of the public comments, I understand we could
14 probably Sunshine those. Would there be a way to, if
15 they're all being gathered, to receive those relatively
16 soon?

17 CHAIRMAN HARPOOL: I really would have to
18 talk to staff about that.

19 Mr. Hesser, is there a place online that the
20 public could go and see all the public comments that
21 have been posed?

22 MR. HESSER: We have not posted them yet. We
23 could do that on the web page. We could either post
24 those -- you know, on the web page, there'll be a link
25 for each of the meetings of this Commission. We opened

1 it under the meeting on the 22nd. We could either post
2 them there, or we could post them under today's meeting
3 area.

4 CHAIRMAN HARPOOL: I think the answer to
5 question -- our intent is to post them on the Internet.

6 VICE CHAIRMAN ELLINGER: Yes.

7 MR. HESSER: I'm just going to follow your
8 guidance.

9 CHAIRMAN HARPOOL: Do we have enough room to
10 do that on the Internet?

11 MR. HESSER: Certainly.

12 VICE CHAIRMAN ELLINGER: I would suggest we
13 post them. That way, they're available to anyone who
14 wants to see them.

15 CHAIRMAN HARPOOL: Yeah. That's fine.

16 MR. HESSER: I guess my next procedural
17 question is: Do you want to wait until the time period
18 closes?

19 CHAIRMAN HARPOOL: Well, I think you can post
20 them as you can. I mean, you have a lot to do.

21 MR. HESSER: So we'll post with an as-of date
22 and gather them on a day-by-day basis and post them
23 as-of the close of today?

24 VICE CHAIRMAN ELLINGER: Whatever is
25 convenient with for you all.

C E R T I F I C A T E

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I, Allison A. Brown, Certified Court Reporter #1205,
within and for the State of Missouri, do hereby certify
that I was personally present at the proceedings had in
the above-entitled cause at the time and place set
forth in the caption sheet hereof; that I then and
there took down in stenomask verbatim reporting the
proceedings had and afterwards transcribed and that the
foregoing is a full, true, and correct transcript the
proceedings had at such time and place.

IN WITNESS WHEREOF, I have hereunto set my hand on this
16th day of March 2012.

ALLISON A. BROWN, CCR #1205
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