

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ALABAMA
3 SOUTHERN DIVISION

4 LAKEISHA CHESTNUT, an individual; *
5 MARLENE MARTIN, an individual; * 2:18-cv-00907-KOB
6 BOBBY DUBOSE, an individual; * November 8, 2019
7 RODNEY LOVE, an individual; KAREN * Birmingham, Alabama
8 JONES, an individual; JANICE * 9:00 a.m.
9 WILLIAMS, an individual; RODERICK *
10 CLARK, an individual; JOHN HARRIS, *
11 an individual, *
12 Plaintiffs, *
13 vs. *
14 JOHN H. MERRILL, in his official *
15 capacity as Alabama Secretary of *
16 State, *
17 Defendant. *
18 *****

13 TRANSCRIPT OF BENCH TRIAL
14 VOLUME V
15 BEFORE THE HONORABLE KARON O. BOWDRE
16 CHIEF UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

(In open court.)

THE COURT: Will the defendant call your next witness?

MR. DAVIS: Your Honor, the defendant calls Dr. Trey

Hood.

M. V. Hood, III,

having been first duly sworn by the Courtroom Deputy Clerk, was examined and testified as follows:

THE COURTROOM DEPUTY CLERK: Please state your name for the record.

THE WITNESS: M. V. Hood, III.

THE CLERK: And spell your first and last name for the record.

THE WITNESS: M, period, V, period, H-O-O-D, I-I-I.

THE COURTROOM DEPUTY CLERK: Thank you.

MR. DAVIS: Ready?

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. DAVIS:

Q Good morning, Dr. Hood.

A Good morning.

Q You go by Trey, do you not?

A That's fine.

Q Okay.

A Yes, I do.

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1 Q Dr. Hood, you've been retained by the defendants as an
2 expert in this case, correct?

3 A Correct.

4 Q And what is your field?

09:04:27 5 A I'm a political scientist at the University of Georgia.

6 Q In front of you, Dr. Hood, you'll see a copy of
7 Defendant's Exhibit 11. And is that a copy of the report that
8 you submitted in this case?

9 A Yes.

09:04:43 10 Q And did you attach a copy of your CV to that report?

11 A Yes.

12 MR. DAVIS: Your Honor, we submit Dr. Hood as an
13 expert in political science and for the matters discussed in
14 his report.

09:05:03 15 MS. KHANNA: No objection, Your Honor.

16 THE COURT: Thank you. Recognized as an expert.

17 BY MR. DAVIS:

18 Q Dr. Hood, I'll refer you to page 4 of your report, please.

19 And as part of your analysis in this case, did you assess
09:05:26 20 the level of African-American majorities in the districts in
21 plaintiffs' illustrative plans?

22 A I did.

23 Q And how did you perform that analysis?

24 A I had block-level data that had census data attached to it
09:05:44 25 relating to the racial makeup of each census block. And I

1 simply aggregated them into the districts as presented by
2 Mr. Cooper's plans.

3 Q And what measurement did you use for African-American
4 voting strengths?

09:06:00 5 A So I used single-race black non-Hispanic as my metric.

6 Q What measurement do you commonly use in your academic
7 research, Dr. Hood?

8 A That would be the exact same measure I would use in my
9 academic research.

09:06:14 10 Q Single-race black?

11 A Single-race black non-Hispanic.

12 Q Are you aware of any research, Dr. Hood, in this case or
13 elsewhere which shows that persons who identify as any-part
14 black vote cohesively with persons who identify as single-race
09:06:31 15 black?

16 A I'm not. Again, I typically separate individuals in that
17 subset into another category.

18 Q And, Dr. Hood, I've put on the screen a copy of your Table
19 1. Would you walk us through and tell us about the results of
09:06:48 20 your analysis?

21 A Sure. These -- the first column to the left is simply
22 Mr. Cooper's calculations based on his report for CD 7 and 2
23 for his hypothetical plans. And you can also see the enacted
24 districts as they stand right there.

09:07:09 25 Q Okay.

1 A And then the columns to the right are for CD 2 and 7 for
2 my racial calculations for those districts for each one of the
3 four hypothetical plans Mr. Cooper drew.

4 Q Okay. And when you performed the analysis using the
09:07:28 5 single-race measurement, were African-Americans a majority of
6 voting age population in Districts 2 and 7 in each of
7 plaintiffs' illustrative plans?

8 A No.

9 Q Where were they not?

09:07:42 10 A Hypothetical 1 and 2. Excuse me. Sorry. Hypothetical 3
11 and 4 there's at least one of the districts in Mr. Cooper's
12 plan that's not majority black voting age population.

13 Q Now, Dr. Hood, there was testimony earlier in this case
14 from one of plaintiffs' experts, Dr. McCrary, who referred to
09:08:06 15 the so-called one-drop rule. Are you familiar with that?

16 A Yes.

17 Q And what is the one-drop rule?

18 A Well, I mean, it was -- it was a metric put in place by
19 the state a long time ago for racial discrimination
09:08:25 20 essentially. So if you were any-part black, you were
21 essentially considered to be black.

22 Q And that rule was -- was that rule discriminatory in
23 origin?

24 A Yes. Certainly.

09:08:37 25 Q Would it be appropriate to adopt such a policy for use in

1 the social sciences?

2 A Well, I wouldn't adopt that rule, no.

3 Q I refer you now, Dr. Hood, to page 5 of your report,
4 which, again, is Defendant's Exhibit 11.

09:09:01 5 Did you perform a core retention analysis of plaintiffs'
6 illustrative districts?

7 A I did, yes. For each one of the hypothetical plans.

8 THE COURT: And by hypothetical plan, is that the same
9 as the plaintiffs' illustrative plan number-wise? I mean, I'm
09:09:26 10 trying to make sure that I understand that we're comparing
11 apples and apples. And Hypothetical 1 is not what --

12 MR. DAVIS: I can answer your question, Judge, and I
13 think the answer is yes. But let me ask a question of Dr. Hood
14 to make sure it's appropriately in the record.

09:09:43 15 THE COURT: Okay.

16 BY MR. DAVIS:

17 Q Dr. Hood, when you say hypothetical plans, do you mean the
18 four plans that Bill Cooper has submitted in this case as a way
19 of suggesting how Alabama might draw two majority black
09:09:54 20 districts?

21 A Yes.

22 Q Okay.

23 THE COURT: And are we talking about the original
24 plans or the revised plans from Mr. Cooper?

09:10:06 25 BY MR. DAVIS:

1 Q Did you assess the plans as submitted in Dr. Cooper's
2 original report, Dr. Hood, or did you assess the plans that he
3 had tweaked in a supplemental report?

4 A I don't know that I had access to the supplemental report.
09:10:24 5 I believe these are the original.

6 MR. DAVIS: The revised illustrative plans, Your
7 Honor, had not been prepared at the time of our expert
8 designations.

9 THE COURT: Okay.

09:10:36 10 BY MR. DAVIS:

11 Q Dr. Hood, is it your understanding that when Mr. Cooper
12 revised three of the four illustrative plans that he was making
13 minor adjustments in Jefferson County?

14 A That's my understanding, yes.

09:10:47 15 Q And that was to ensure, was it not, that Congresswoman
16 Terri Sewell's residence was, in fact, included in District 7?

17 A That was my understanding, yes.

18 Q Would that materially change your analysis in any way?

19 A I don't believe so, no.

09:11:02 20 Q Now, tell us what a core retention analysis is, Dr. Hood.

21 A So a core retention analysis asks the question for a given
22 congressional district or a district of any kind how many of
23 the residents in the new district were carried over from the
24 previous district? So in this case, I'm comparing the
09:11:23 25 illustrative for hypothetical plans Mr. Cooper drew to the

1 enacted plan that was put in place in 2011.

2 Q Okay. And are you assessing -- I think you just said
3 this, but I want to be clear. Are you assessing how much
4 geography of District 1 in this plan is included in the
09:11:40 5 geography of District 1 in that plan, or how many of the
6 people?

7 A This is population based.

8 Q Population?

9 A Voting age population to be more specific.

09:11:51 10 Q And how did you perform this analysis? What data did you
11 use?

12 A Well, again, I had block-level census data files, and I
13 had the district allocation numbers for each block for the
14 hypothetical or the illustrative plans and the enacted plans.

09:12:01 15 Q Okay.

16 A So I just compared each one of the blocks -- of course, I
17 didn't do this manually. But I'm looking to see where Block 1
18 was in the enacted plan and where it ended up in the
19 hypothetical or the illustrative plan.

09:12:19 20 Q Okay. So let's look at your Table 2, Dr. Hood. And I see
21 there District 1. And if I go along that row under the heading
22 Hypothetical 1, I see the number 58.42. What does that number
23 58.42 tell us about District 1 in Hypothetical Plan 1?

24 A Well, it means specifically that 58.42 percent of the
09:12:43 25 population in Hypothetical District 1 resided in Enacted

1 District 1 previously.

2 Q Okay. So Mr. Cooper's plan includes 58.42 percent of the
3 persons who reside within District 1, or at least who did as of
4 the 2010 census?

09:12:59 5 A Correct.

6 Q Okay. And did you draw any conclusions from performing
7 this analysis?

8 A Well, district core retention levels are fairly high for
9 six of the seven districts. For District 2, though, district
09:13:16 10 core retention levels for these illustrative plans are fairly
11 low; 28.34 percent in Hypothetical 1; 39.50 percent
12 Hypothetical 2; 29.19 in Hypothetical 3; and 28.46 in
13 Hypothetical 4.

14 Q Okay. So would it be fair to say, if you look, say, at
09:13:44 15 District 5, that if the Alabama Legislature switched from its
16 enacted plan to one of Mr. Cooper's plan, it would be
17 preserving almost entirely the core of District 5?

18 A Virtually, yes.

19 Q Okay. And it would be preserving a very small amount of
09:14:01 20 the core of District 2?

21 A Correct.

22 Q Okay. So does this suggest to you, Dr. Hood, that in
23 order to enact one of Mr. Cooper's hypothetical or illustrative
24 plans, that that -- that would require losing a lot of the core
09:14:21 25 of District 2?

1 A Yes. From this analysis, that would be the conclusion.

2 Q That would suggest that it would not take merely minor
3 tweaks in the plan in order to draw a second majority black
4 district?

09:14:33 5 A Fairly large population movements would be required.

6 Q Now, look at page 6 of your report, Dr. Hood. And you
7 performed, did you not, an analysis of population shifts?

8 A Yes.

9 Q How is that different from the core retention analysis?

09:14:51 10 A Well, in some ways, it's similar. But here I'm looking at
11 racial groups that are being moved in and out of particular
12 districts.

13 If you were to draw a hypothetical plan, say, 1, as
14 compared to the enacted plan, it's a little more detail here.

09:15:10 15 Q Okay. And actually, on the next page, on page 7 of your
16 report, I see Table 3. And first off, use this if you want to
17 answer this question, but just tell us how you did the
18 population shift analysis.

19 A Okay. Well, again, I'm using the same block-level
09:15:28 20 population data. Again, this has racial data appended to these
21 files. So it's the same set of files I'm using for the
22 analysis.

23 And here I'm just looking to see, again, racially speaking
24 where people are being moved in and out of these districts in
09:15:49 25 order to create one of these hypothetical plans.

1 THE COURT: Okay. So Table 2 just looked at the shift
2 of -- or the maintaining of the core for population in general?

3 THE WITNESS: Yes. Yes, Your Honor.

4 THE COURT: And then Table 3 is breaking it down by
09:16:06 5 race?

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: Okay.

8 BY MR. DAVIS:

9 Q Okay. Did you see any relationship, Dr. Hood, in who
09:16:15 10 Mr. Hood was moving in and out of districts and race?

11 A Yes. There is definite patterns here. And I did some
12 statistical testing, as well, for these tables. And that's
13 reported in the footnotes.

14 Q Yeah. You know, I want to try asking that last question
09:16:34 15 again. You understood what I meant and you answered it well,
16 but it was a horrible question.

17 Was there a pattern, Dr. Hood, in your opinion, between
18 race and the people that Mr. Hood -- that Mr. Cooper was moving
19 in and out of the districts?

09:16:47 20 A Yes. There's definitely a pattern.

21 Q Okay. And what is that pattern?

22 A Well, it varies, but, for instance, if you look at Table
23 3, so this would be illustrative or Hypothetical Plan 1, as
24 compared to the benchmark plan.

09:17:03 25 So, again, I just did this for Districts 2 and 7 for each

1 one of these plans.

2 If you look at District 2, if you look at the column that
3 says moved out of district, 20 percent of those residents in
4 the current District 2 that were moved were black residents
09:17:24 5 versus almost 75 percent of those that were moved out of the
6 district who were white residents.

7 Of those moved into the district, the majority,
8 53.1 percent, were black versus 42.8 percent who were white.

9 Again, I applied a very simple and straightforward
09:17:44 10 statistical test to these tables. It's called the chi-square
11 test. It's very old. It's been around a long time. And it
12 asks the questions -- in this case, are race and population
13 movement independent of one another? I can definitively reject
14 that null hypothesis in this case and say that race and
09:18:07 15 population movement are related.

16 Q Okay.

17 A Statistically speaking.

18 Q Now, you said the chi-square test?

19 A Chi-square.

09:18:14 20 Q And that's C-H-I like the Greek letter Chi?

21 A C-H-I dash square.

22 And it's footnoted in the report.

23 Q And you did a similar analysis, did you not, for all of
24 the hypothetical plans?

09:18:28 25 A I did.

1 Q Yes. And those are presented -- well, did you find a
2 similar pattern or a connection between race and population
3 movements in each of Mr. Cooper's illustrative plans?

4 A Yes. The overall patterns there, the degree to which it
09:18:46 5 may be present, varies by hypothetical plan.

6 Q Dr. Hood, on page 11 of your report, you looked, did you
7 not, at turnout rates in Alabama?

8 A I did.

9 Q How did you perform that analysis?

09:19:08 10 A This was a set of data I received from the Alabama
11 Secretary of State's office. So these are voter registration
12 and history files.

13 So I'm looking at turnout as a percentage of registrants
14 in this case. And I had data for the 2010 through 2018
09:19:28 15 election cycles.

16 And, again, in Alabama, it's requested that registrants
17 record their race. And so we're not estimating that. I'm
18 using this from the voter file again -- race of registrant,
19 that is. So we can compare turnout rates by race -- white,
09:19:48 20 black in this case.

21 Q I'll refer you to Table 7, Dr. Hood, which is on page 11
22 of your report. And tell us about your conclusions.

23 A Well, a little bit about the table. Again, these are
24 white and black turnout rates for Alabama. Again, these are
09:20:06 25 statewide turnout rates, I want to emphasize, for the 2010,

1 '12, '14, '16, and '18 election cycles. So I have it broken
2 down for each cycle. And then I have a difference measure over
3 there. And then at the bottom I have some different mean
4 figures, the average across all elections cycles, the average
09:20:25 5 for midterm election cycles, and the average for presidential
6 election cycles.

7 So with the exception of one election cycle, which was
8 2012, there is a gap between black and white turnout rates in
9 Alabama. Maybe it's best to look at the mean numbers down at
09:20:41 10 the bottom.

11 Across all elections that I analyze election cycles, the
12 black white turnout rate gap is 4.8. For midterm elections
13 it's 5.6, and for presidential elections it's 3.6.

14 THE COURT: And that gap goes which way?

09:21:02 15 THE WITNESS: There's more white turnout than black
16 turnout, Your Honor, with the exception of the 2012
17 presidential election.

18 THE COURT: I want to make sure that -- we've had a
19 lot of jokes this week about how lawyers aren't mathematicians
09:21:17 20 or not good at math -- and I want to make sure I'm looking at
21 these numbers correctly.

22 THE WITNESS: Okay.

23 THE COURT: The percentage you have for -- for
24 example, we'll just take 2010. The 52.4 percent white, is that
09:21:34 25 the 52.4 percent of the white registered voters turned out to

1 vote? Is that what that number reflects?

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: Okay. I just wanted to make sure that my
4 very non-math mind was following that and understood that.

09:21:50 5 Thank you.

6 THE WITNESS: And it is the -- I usually footnote the
7 calculations in the report. So if you have any questions, it's
8 usually footnoted.

9 THE COURT: All right. Thank you.

09:22:00 10 THE WITNESS: I think it's footnote 21 in this case.

11 THE COURT: Okay. Thank you.

12 BY MR. DAVIS:

13 Q Dr. Hood, if there is a gap between white turnout and
14 black turnout in a particular election, is that relevant
09:22:17 15 information when you're assessing whether a district that is
16 close to 50 percent black voting age population will, in fact,
17 result in the election of the candidate of choice of the
18 African-American voters?

19 A Yes. And certainly in this case in Alabama I think it's
09:22:34 20 been established probably that there are high levels of
21 racially polarized voting. To the extent to which that's the
22 case, it's very important to look at the racial composition of
23 the district.

24 Q And to be clear, again, you're not saying this is the gap
09:22:51 25 in turnout in any particular congressional district?

1 A These are statewide turnout numbers.

2 Q Statewide results?

3 A Yes.

4 Q I am going to refer you now to page 14 of your report.

09:23:17 5 There's a section in your report, Dr. Hood, that's headed
6 Black Voting Patterns. What analysis were you performing here?

7 A I was asked to analyze black voting patterns in Alabama
8 and in other states, as well. And in order to do that, I
9 chose, of course, Alabama, and I also looked at 20 other states
09:23:41 10 that had a black population of at least 10 percent or greater.
11 And those states are listed on page 14 under Section 6.

12 Q Okay. Did the states that you reviewed include southern
13 states?

14 A All the southern states.

09:23:57 15 Q Okay.

16 A Or at least the way I defined the south.

17 Q And did it include northern states?

18 A Yes.

19 Q So there I see under black voting patterns about the third
09:24:07 20 line under this district you say these states are Arkansas,
21 Connecticut, Delaware, Florida, et cetera. And that's a
22 listing of all the states that you reviewed?

23 A Yes.

24 Q And these are states where African-Americans are
09:24:21 25 10 percent or more of the total population?

1 A Yes.

2 Q Okay. And what did you find when you looked at these
3 voting patterns?

4 A Well, I guess a little more background. I looked at two
09:24:32 5 different data sources for this -- the national exit polls that
6 occur on election day typically after general election cycles
7 in the U.S.; and also another data source, the CCES, the
8 Cooperative Congressional Election Study, which is a very
9 common form of -- which is a very common survey that's used in
09:24:55 10 a lot of research in political science.

11 So I'm not estimating these voting patterns. I'm using
12 these survey data to make these inferences.

13 And, again, I think I went -- it looks like I went from
14 2008 to 2018 on this analysis.

09:25:15 15 Q Let's look at the results when you were reviewing the
16 national exit polls, Dr. Hood. I'll refer you to Table 9 on
17 page 15 of your report.

18 A So there were three different offices that I was able to
19 analyze using the national exit polls -- President, Governor,
09:25:41 20 and Senate again for 2008 through 2018. And those figures are
21 compiled in Table 9. There are more detailed tables for each
22 year in office by state in the appendix of the report. So this
23 is sort of a summary table here.

24 What you find consistently are very high levels of black
09:26:06 25 support for Democratic candidates both in these comparison

1 states and in Alabama. So Table 10 is the same thing just for
2 Alabama.

3 Q Okay. So looking at the top table, Table 9, I see in the
4 year 2008 under President, 95.6 percent?

09:26:18 5 A Correct.

6 Q What does -- 95.6 percent of what? And what does that
7 mean?

8 A 95.6 percent of African-Americans in these comparison
9 states voted for the Democratic candidate for president in
09:26:32 10 2008.

11 Q Okay. So that's of the 21 states where African-Americans
12 are 10 percent or more of the population, Table 10 singles out
13 Alabama, and Table 9 is averaging up the results from the other
14 20 states?

09:26:46 15 A Correct. Right. So Alabama is not part of the average in
16 Table 9, just to be clear.

17 Q Right. Overall, what's the result for all races,
18 Dr. Hood?

19 A Across -- again, this is 135 different races in different
09:27:06 20 states. The black support rate for Democratic candidates from
21 this data set was 91.1 percent.

22 Q And what did you find for the state of Alabama again when
23 you looked at the national exit polls?

24 A Again, there are far fewer comparison points just simply
09:27:22 25 for Alabama. But the support rate in Alabama was 94.3 percent

1 for Democratic candidates.

2 Q Now, if you will turn the page, Dr. Hood, I'm going to put
3 Tables 11 and 12 up on the screen.

4 These are on page 16 of the report, Defendant's
09:27:48 5 Exhibit 11. And are these the results from the CCES data?

6 A Yes.

7 Q And what did you find?

8 A Very similar patterns; very high rates of support for
9 Democratic candidates among African-Americans either in the
09:28:07 10 comparison states or in Alabama.

11 Q Okay.

12 A It's 91.5 percent in the comparison states across all
13 these races versus 90.9 percent in Alabama.

14 Q Okay.

09:28:20 15 A And in this particular analysis, I was able to include
16 some data from U.S. House races, as well, in addition to
17 President, Senate, and Governor.

18 Q Is there any significant difference that you saw,
19 Dr. Hood, in African-American support for Democratic candidates
09:28:39 20 in Alabama and African-American support for Democratic
21 candidates in other states?

22 A It's very similar.

23 Q And that includes states outside the south?

24 A Correct.

09:28:51 25 Q Throughout the country?

1 A Right. As long as they have an African-American
2 population of 10 percent or greater.

3 Q Dr. Hood, this actually goes back to some of the
4 population shift analysis, and I forgot to ask this: You
09:29:06 5 mentioned at one point when you're looking at the relationship
6 between race and the people that Mr. Cooper was moving in and
7 out of districts, and you say that the relationship is
8 statistically significant, correct?

9 A Correct, in that case.

09:29:20 10 Q What does that mean, statistically significant?

11 A Well, using the specific Chi-square test that I was
12 talking about, statistically significant in that case means
13 that there's a relationship between population movement and
14 race. Now, that's where it ends with that particular test. I
09:29:40 15 can't make any inferences beyond that.

16 The null hypothesis in that case would be that there's no
17 relationship between race and population movement, that those
18 factors are independent of one another. But that's not what I
19 found.

09:30:00 20 Q I'd like to go back now, Dr. Hood, to page 13 of your
21 report.

22 I've put Table 8 on the screen from page 13 of your
23 report. Can you tell me what you were looking at here?

24 A So I'm looking at population in Mr. Cooper's study area as
09:30:34 25 he defined it. Again, these are whole counties. I'm not using

1 partial counties for this particular analysis. But I'm looking
2 at what's happening with the black voting age population in
3 2010 as compared to 2017, which is the last year that I had
4 data that was usable for this comparison.

09:30:55 5 MS. KHANNA: Objection, Your Honor. I believe this
6 goes to the post-2020 considerations that we've already agreed
7 are not relevant in this case.

8 MR. DAVIS: Your Honor, it is in the section of his
9 report titled Post-2020 Considerations, but we think the fact
09:31:12 10 that there are shifts in population is relevant to our mootness
11 argument.

12 We're not suggesting that -- we're only suggesting that
13 the fact -- I think as Dr. Hood would testify if you allow it,
14 that there's loss of population in some areas and gain of
09:31:28 15 population in others that would show that the illustrative
16 districts could not, in fact, be passed as they are after 2020,
17 meaning in our view it's moot.

18 THE COURT: Well, that's not the question of the
19 mootness that I've asked to be briefed. There's more of a
09:31:49 20 legal issue that we discussed yesterday.

21 I think that we all can acknowledge, or at least I hope we
22 can, that the 2020 census may well be very different from the
23 2010 census, and that it will be the 2020 census that will
24 determine how districts will be drawn in reapportionment or
09:32:17 25 redistricting then.

1 So I didn't let the plaintiffs get into the -- I think
2 2018 was when I stopped them. So I think I'll stop you with
3 2017.

4 MR. DAVIS: I will move on.

09:32:31 5 THE COURT: Okay. Thank you.

6 MS. KHANNA: Thank you, Your Honor.

7 BY MR. DAVIS:

8 Q Dr. Hood, when you looked at the black support of
9 Democratic candidates, did you find overall that
09:32:55 10 African-Americans supported Democratic candidates over
11 90 percent in every state you reviewed?

12 A Well, it wasn't always over 90 percent. That was the
13 average figure.

14 Q The average overall, of all the elections you reviewed was
09:33:09 15 over 90 percent?

16 A Yes. Yes.

17 Q And that's in Alabama and outside Alabama?

18 A Right. So black support for Democratic candidates is
19 fairly monolithic is the way I would put it, which is not a
09:33:21 20 surprise, given -- I hadn't studied all these states, but
21 certainly I studied the south quite a bit, and these patterns
22 were not a surprise to me. But they are documented here.

23 Q Now, look at page 17 of your report, Dr. Hood. And
24 Section 7 is titled Racial Comparison. Tell me what you were
09:33:44 25 looking at here.

1 A So I'm comparing black and white citizens on a number of
2 sociodemographic characteristics. I think there were nine in
3 all, if I recall correctly. Most of these data are coming from
4 the Census Bureau, some of it from the Centers For Disease
09:34:03 5 Control, some of it from the Bureau of Labor Statistics. So
6 they're all government agencies.

7 So I'm looking at various disparity rates between black
8 and white citizens in Alabama and again in these 20 comparison
9 states that have a black population of at least 10 percent.

09:34:22 10 Q Okay. So let's look at Table 13, which is from page 18 of
11 your report, Dr. Hood. And we're not going to do this for each
12 category you reviewed, but using this as an example, tell us
13 what data you used, how you assessed this, and what your
14 findings were.

09:34:43 15 A Okay. So these are education levels, and these data come
16 from the American Community Survey, which is the census run by
17 the Census Bureau. And this is from 2017, specifically.

18 So the column to the left I'm looking at the percentage of
19 citizens in each one of these racial categories, blacks and
09:35:06 20 whites, who obtained at least a high school degree or
21 equivalent.

22 And in the column to the right, I'm looking at least a
23 college education -- a B.S. degree or higher.

24 Q And what is the column on the far right, for example, that
09:35:22 25 just says difference?

1 A So literally that's just the subtraction between the white
2 column and the black column.

3 Q Okay.

4 A So to run through an example, maybe, using Alabama high
09:35:34 5 school or equivalent, 87.7 percent of the white population in
6 Alabama has a high school or equivalency degree versus
7 81.6 percent of black citizens in Alabama. So the arithmetic
8 there is just 6.1 percent, the literal difference between those
9 two.

09:35:59 10 Q And what patterns did you find, if any, in the other
11 states that you reviewed?

12 A Well, the difference measure varies by state. Certainly
13 you can just look down the column and see that.

14 And the question I'm not really -- I'm not really asking
09:36:16 15 the question is, is the difference measure larger or smaller in
16 Alabama versus these other states, just whether or not a
17 disparity exists between blacks and whites on these various
18 sociodemographic characteristics in these other states and in
19 Alabama, as well. And the answer is, yes.

09:36:35 20 So in this case, the positive difference measure would
21 mean that there's a disparity between black and white education
22 rates.

23 Q Okay.

24 A And you can see there's a positive number all the way down
09:36:48 25 the column.

1 THE COURT: Positive number meaning what?

2 THE WITNESS: The disparity rate -- in this particular
3 case, there are more whites who have a high school or
4 equivalency degree than blacks.

09:37:01 5 BY MR. DAVIS:

6 Q So if we're going to summarize your Table 13, you found,
7 did you not, that according to the data you reviewed, which
8 includes census and other data, that there is a gap between the
9 number of white citizens in Alabama or white persons in Alabama
09:37:18 10 who have a high school degree or greater and African-Americans
11 in Alabama who have a high school diploma or equivalent?

12 A Yes.

13 Q Okay. And did you --

14 A There's a similar gap for all these other 20 states.

09:37:28 15 Q You found --

16 A It's not the exact same figure, necessarily, but there's a
17 similar gap.

18 Q Yeah. The amount of the gap may vary, but you found such
19 a gap in each state that you reviewed, did you not?

09:37:43 20 A Correct.

21 Q Okay. Now, we're not going to take up court time,
22 Dr. Hood, going in detail of the other categories you looked
23 at. But if you would, flip through your report and just tell
24 the Court what other categories -- what other socioeconomic
09:37:59 25 categories you reviewed.

1 A So in addition to education levels, I looked at food stamp
2 provision, median household income, per capita income, poverty
3 rate, home ownership rates, unemployment rates, and infant
4 mortality rates.

09:38:23 5 Q Dr. Hood, was there any category in any state you reviewed
6 where you did not find a gap?

7 A No.

8 Q That's true in Alabama and in all of the states that you
9 reviewed, correct?

09:38:40 10 A Correct. All these factors.

11 Q So that would include states that were below the Mason
12 Dixon line and states above the Mason Dixon line?

13 A Correct.

14 Q Dr. Hood, you mentioned in your report that in 2011
09:39:03 15 Alabama was subject to the retrogression standard of Section 5
16 of the Voting Rights Act, correct?

17 A Correct.

18 Q Dr. Hood, if a district is 65 percent African-American
19 voting age population, would you agree that at least in most
09:39:22 20 cases it is likely that the African-American voters would be
21 able to elect their candidate of choice?

22 A Yes, I would agree with that.

23 Q Is that likelihood 100 percent iron-clad guarantee in
24 every election?

09:39:35 25 A No.

1 Q Would you agree that if the voting age population is
2 dropped to 50.1 percent, that the likelihood has been somewhat
3 lessened that African-Americans would be able to elect their
4 candidate of choice?

09:39:53 5 A In that case, the probability would have been decreased,
6 yes.

7 MR. DAVIS: Your Honor, may I have a moment?

8 THE COURT: Yes, you may.

9 MR. DAVIS: Your Honor, I pass the witness.

09:40:18 10 THE COURT: Cross-examination?

11 MS. KHANNA: Yes, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. KHANNA:

14 Q Good morning, Dr. Hood.

09:40:38 15 A Good morning.

16 Q It's good to see you again.

17 A You, too.

18 Q Dr. Hood, at the top of page 3 of your report, which is
19 marked Defendant's Exhibit 11, you write that, I have been
09:40:55 20 asked by counsel for the defendant to provide a response to
21 reports by plaintiffs' experts, Mr. William Cooper, and
22 Professor Maxwell Palmer. Did I read that correctly?

23 A Yes.

24 Q And you provided no response to the expert report of
09:41:10 25 Dr. Peyton McCrary regarding the history of voting-related

1 racial discrimination in Alabama; is that correct?

2 A That's correct.

3 Q And while you do respond to Mr. Cooper's expert report, at
4 no point do you offer an opinion that plaintiffs are unable to
09:41:24 5 satisfy the first *Gingles* precondition; is that correct?

6 A Well, I raised questions about that, yes.

7 Q Do you ever opine on whether or not plaintiffs have
8 satisfied the first *Gingles* precondition?

9 A Not directly.

09:41:38 10 Q And you do not dispute Mr. Cooper's conclusion that there
11 are racial disparities across key indicators of socioeconomic
12 well-being in Alabama generally and in the Black Belt region
13 specifically?

14 A Well, I document those myself. I may have used different
09:41:56 15 variables, but I can't argue with that.

16 Q Now, you mentioned in the scope of your report that you
17 were asked by counsel to provide a response to Dr. Palmer's
18 initial report, as well; is that right?

19 A Yes.

09:42:08 20 Q And Dr. Palmer's initial report concluded that voting is
21 racially polarized in Congressional Districts 1, 2, 3, and 7
22 individually and combined; is that right?

23 A Well, I'll take your word for that.

24 Q Is that your recollection?

09:42:25 25 A Yes, that's my recollection.

1 Q And you provide no opinion regarding the existence of
2 racially polarized voting in Alabama, correct?

3 A Correct.

4 Q And, in fact, you performed no analysis at all of racially
09:42:38 5 polarized voting in Alabama generally or in any region of
6 Alabama?

7 A That's correct.

8 Q Are you familiar with ecological inference, which is the
9 method that Dr. Palmer used to evaluate racially polarized
09:42:51 10 voting?

11 A Yes.

12 Q And you have used that method before in other cases in
13 order to analyze racially polarized voting; is that right?

14 A Yes.

09:42:58 15 Q And, in fact, in one of your previous reports in a
16 different case you stated that, It is my contention that of the
17 current statistical tools that can be employed to aid in vote
18 dilution analyses, the EI technique provides the most reliable
19 and realistic estimates of voter choice; is that correct? Do
09:43:19 20 you recall that?

21 A I recall saying something like that, yes.

22 Q And you stand by that?

23 A Yes, of course.

24 Q But you offer no EI analysis here?

09:43:27 25 A I do not.

1 Q And at no point in your report do you refute Dr. Palmer's
2 conclusion that African-Americans in the areas he examined are
3 politically cohesive; is that right?

4 A Correct.

09:43:41 5 Q And at no point in your report do you refute Dr. Palmer's
6 conclusion that African-American voters and white voters in the
7 areas he examined consistently prefer different candidates?

8 A Correct. I mean, that's just another way of saying
9 there's racially polarized voting.

09:43:58 10 Q That's right.

11 A Right.

12 Q And at no point in your report do you refute Dr. Palmer's
13 conclusions that the candidates preferred by white voters in
14 the areas he examined usually defeat the candidates preferred
09:44:10 15 by black voters?

16 A Right. They don't offer an opinion on that.

17 Q So also in the background section on page 3 of your
18 report, you provide a review of redistricting in Alabama; is
19 that right?

09:44:31 20 A A paragraph, yes.

21 Q And you note in that section that, In 2011 the map drawers
22 in Alabama saw to ensure that the proposed plan would not be
23 rejected under the retrogression standard enunciated in Section
24 5. Did I read that correctly?

09:44:49 25 A Yes.

1 Q And you did not participate in Alabama's redistricting
2 process following the 2010 census, correct?

3 A That's correct.

4 Q And it's fair to say that any documents or data that you
09:44:59 5 relied upon in drafting your report is listed in your report in
6 the footnote usually; is that right?

7 A Certainly, yes.

8 Q And at no point does your report indicate that you
9 received information from the map drawers of the 2011 plan,
09:45:12 10 correct?

11 A That's correct.

12 Q And, in fact, you never conferred with the map drawers of
13 the 2011 plan in preparing your report?

14 A That is correct.

09:45:18 15 Q And you reviewed the state's preclearance submission in
16 preparing your report?

17 A Yes.

18 Q And isn't it a fact that you can't recall any sort of
19 analysis from the preclearance submission of whether an
09:45:38 20 increase in black voting age population from 58.33 to 60.55 in
21 CD 7 was necessary in order to maintain the ability of minority
22 voters in CD 7 to elect their preferred candidates?

23 A I believe I said at deposition I could not recall any kind
24 of specific statistical analysis.

09:45:58 25 Q And you don't recall any today, as well?

1 A Right. That's not changed. I was just clarifying.

2 Q Thank you.

3 And certainly you have performed no analysis to determine
4 whether an increase in the black voting age population in CD 7
09:46:12 5 was necessary in order to comply with Section 5 and maintain
6 the ability to elect for African-Americans?

7 A That's correct.

8 Q So in the next section, in Section 4 of your report, you
9 discuss Mr. Cooper's illustrative plans; is that right?

09:46:34 10 A Yes.

11 Q And the first aspect you examined is the racial
12 composition of Mr. Cooper's illustrative districts, correct?

13 A Correct.

14 Q And on page 4, you state that it is your understanding
09:46:50 15 that the Alabama reapportionment office defines black as only
16 those individuals who identify as single-race non-Hispanic
17 black?

18 A That's my understanding, yes.

19 Q And that understanding is based solely on information you
09:47:06 20 received from counsel for the defendant in this case; is that
21 right?

22 A As recorded in the report, yes.

23 Q In what -- oh, in your own report.

24 A Yes, as recorded in my report, yes.

09:47:16 25 Q And you received no document from counsel confirming that

1 the Alabama reapportionment office, in fact, defined black in
2 that manner; is that right?

3 A That's correct.

4 Q Are you aware that Dr. Johnson has referenced a different
09:47:31 5 metric for calculating who should count as African-American in
6 this case?

7 A I'm aware of that, yes.

8 Q And you've seen Mr. Cooper's reply report or rebuttal
9 report in this case; is that right?

09:47:45 10 A Yes.

11 Q And you're aware that Mr. Cooper has stated his
12 understanding that, in fact, the Alabama Legislature had relied
13 on a single-race black category that includes Hispanics in the
14 2011 redistricting documents and previous Alabama litigation.
09:48:02 15 Do you recall seeing that?

16 A Yes. I mean, that's what he states. I guess there's a
17 dispute about who used what at this point. That wasn't the
18 information I received.

19 Q Fair enough. Yeah. I wasn't asking if you --

09:48:14 20 A Okay.

21 Q -- agreed with it. I just wanted to make sure that you
22 recalled that.

23 You have no specific information other than what your
24 counsel told you -- or rather what defendant's counsel told you
09:48:26 25 that contradicts the statements made by Mr. Cooper; is that

1 right?

2 A Except for that information I received through counsel,
3 no.

4 Q So -- you said you reviewed Alabama's preclearance
09:48:41 5 submission in drafting your report; is that right?

6 A Yes.

7 Q And on page 3 of your report, you cite to page 424 of that
8 preclearance submission when discussing the black voting age
9 population of CD 7; is that right?

09:48:59 10 A According to footnote 3, yes.

11 Q All right. Can we please call up Plaintiffs' Exhibit 83,
12 page 424?

13 So Plaintiffs' Exhibit 83 is the exhibits to Alabama's
14 preclearance submission. And I believe this is the page that
09:49:19 15 you were referring to in -- in footnote 3 of your report; is
16 that right?

17 A It's been quite a while, but this looks familiar.

18 Q Okay. Now, you note on page 3 of your report that in the
19 2011 plan the map drawers increased the BVAP of CD 7 from
09:49:39 20 58.33 percent to 60.55 percent. Am I reading that correctly
21 from page 3 of your report?

22 A Yes.

23 Q And those are the same numbers reflected here on the
24 screen on PX-83 page 424 in the submission drafted by the state
09:49:55 25 of Alabama to the U.S. Department of Justice; is that right?

1 A Correct.

2 Q But you used the definition obtained by counsel in
3 calculating the percentages in Table 1 of your report, which is
4 on page 4 of your report; is that right?

09:50:12 5 A Correct. So as I've said, the definition in Table 1 is
6 single-race non-Hispanic black, which is also the definition I
7 used in social science research.

8 Q So if we look at your Table 1 on page 4 of your report,
9 based on your calculation, using single-race non-Hispanic
09:50:43 10 black, you report the black voting age population of District 7
11 under the 2011 plan as 60.34. Do you see that?

12 A Yes.

13 Q And that's a different BVAP number than reported in the
14 state of Alabama's preclearance submission for that same
09:51:02 15 district under the 2011 plan; is that right?

16 A Yes. Slightly different. Yes.

17 Q And, in fact, it's different than the BVAP reported by you
18 in just the previous page of your report, in the background
19 section of your report?

09:51:20 20 A Right. Which is taken from the preclearance submission.

21 Q There's about a two-tenths of a percentage point between
22 those two metrics, right?

23 A Correct.

24 THE COURT: And where did you get your data for the
09:51:35 25 BVAP of District 7 in 2011?

1 THE WITNESS: Well, those -- that was from
2 calculations I made, Your Honor. I think I was using
3 Mr. Cooper's data files, the block equivalency files.

4 Now, I may have -- I'm trying to reconstruct what I did.
09:51:54 5 I may have added to those block equivalency files. I may have
6 gone back to the census and merged the demographic data back
7 in, from what I remember.

8 BY MS. KHANNA:

9 Q And just to clarify, Dr. Hood, I'm not asking about any of
09:52:10 10 Mr. Cooper's illustrative plans right now. I'm talking solely
11 about the enacted 2011 plan and your calculation of the BVAP in
12 that plan. And if I understand you correctly, your calculation
13 of the BVAP in that plan is lower than the BVAP reported by the
14 state of Alabama; is that right?

09:52:30 15 A Yes.

16 Q Does the fact that that number is lower, does it give you
17 reason to believe that Mr. Cooper's statement that the state of
18 Alabama actually used black Hispanics in its count of
19 African-Americans for preclearance purposes, does it give you
09:52:46 20 reason to believe that that statement is true?

21 A Not on its face. I would have to look into it.

22 Q But there's some discrepancy there that would require some
23 further investigation; is that right?

24 A I think that's fair.

09:52:56 25 Q And you did not perform any analysis to determine why the

1 number reported in the preclearance report is different than
2 the number reported on Table 1 of your report; is that right?

3 A That's correct.

4 Q Dr. Hood, I believe you testified on direct that you're
09:53:28 5 not aware of any evidence or studies that would show that
6 African-Americans who are single-race non-Hispanics black vote
7 cohesively with African-Americans who might have other minority
8 affiliations as well; is that right? I apologize if I
9 misstated that. You can correct me.

09:53:50 10 A I think that's pretty close. I mean, what I am trying to
11 say is that typically -- at least in the social sciences when
12 I'm doing this type of research, you know, we look at people
13 who have identified by one racial category who are non-Hispanic
14 to do the analysis, if that makes sense.

09:54:10 15 THE COURT: So you rely on self-identification of race
16 by people in -- when you're doing your studies of them?

17 THE WITNESS: Yes. I mean, certainly any census data
18 is self-identification. We have allowed -- the Census Bureau
19 is allowing the individual to identify with the racial and
09:54:31 20 ethnic categories that they want to.

21 THE COURT: Okay. And if -- I don't know if this is
22 true or not -- but if the voter registration document only
23 allowed a choice of -- I don't know -- hypothetically, white,
24 black, other, would you be using those who identified as black?

09:55:00 25 THE WITNESS: Yes. Yes, Your Honor.

1 THE COURT: Okay.

2 THE WITNESS: Yes.

3 BY MS. KHANNA:

4 Q And if I understand your position correctly, before you
09:55:13 5 would countenance the inclusion of, for example, black
6 Hispanics, someone who is both black and Hispanic at the same
7 time in the metric of black voting age population, you would
8 need to see some kind of evidence of cohesion between blacks
9 and Hispanics; is that right?

09:55:31 10 A Well, I would just say that if -- again, just to back up
11 for a second. Black is a racial category. Hispanic is an
12 ethnicity. So you can be both black and Hispanic.

13 Now, in my own research in political science, anyone that
14 identifies themselves as Hispanic, I count as Hispanic, whether
09:55:54 15 they identify as white, black, Asian, American Indian. However
16 they identify racially, I identify them as Hispanic because
17 they have said ethnically they're Hispanic. So I think that --
18 hopefully that answers that.

19 I would not categorize someone who said they were a black
09:56:13 20 and Hispanic as black. I would categorize them as Hispanic.

21 Q I understand.

22 A And I have done that consistently for more than 20 years I
23 think, so...

24 Q And I believe you testified both in your report and on
09:56:26 25 direct that before you would ever categorize or consider

1 categorizing someone who is both black and Hispanic as
2 African-American, you would need to see some evidence of
3 cohesion between those racial and ethnic groups; is that right?

09:56:43 4 A Well, I think that's one reason you don't classify -- or I
5 don't classify them as black versus Hispanic. Again, I would
6 keep them in the Hispanic category. Now, you can do an
7 analysis and say, How are Hispanics voting? You know, that's a
8 different question, though.

9 Q Dr. Hood, you are aware that Dr. Palmer's study of
09:57:03 10 racially polarized voting relied on voting registration data,
11 right?

12 A Yes.

13 Q And you provide no basis in your report to refute
14 Dr. Palmer's analysis of the extent to which African-Americans
09:57:16 15 vote cohesively; is that right?

16 A That's correct.

17 Q You would agree that unlike the census form, Alabama's
18 voter registration form specifically instructs individuals to
19 choose only one race or ethnicity; is that right?

09:57:26 20 A That is correct.

21 Q They're not -- they can't check both black and Hispanic on
22 that form, or they're not instructed to?

23 A They're not supposed to, I guess is the way to put it.

24 Q So it's entirely possible that someone who is both black
09:57:38 25 and Hispanic would mark both boxes on the census form, and then

1 when following the instructions on Alabama's voter registration
2 form, would choose only black?

3 A It's possible.

4 Q And the same goes for someone who self-identifies as both
09:57:55 5 black and white on the census form, that person may well choose
6 just black on their voter registration form following a
7 different set of instructions; is that right?

8 A It's possible, yes.

9 Q And you would agree that there's really no way to figure
09:58:09 10 out what percentage of individuals self-identified as bi-racial
11 or black and Hispanic on the census form also self-identified
12 as black on their voter registration form; is that right?

13 A I think we can agree on that, yes. There's no way to
14 determine that.

09:58:24 15 Q So as I just mentioned and as we already discussed, you
16 state on page 4 of your report that you're unaware of any
17 research that would indicate that black citizens exhibit
18 cohesive voting patterns with people who are both black and
19 Hispanic, correct?

09:58:41 20 A Correct.

21 Q Are you aware of any analysis presented by plaintiffs
22 indicating that Alabama's relatively small Hispanic and
23 multi-race population exhibits cohesive voting patterns with
24 black citizens?

09:58:55 25 A I am not aware, no.

1 Q Could we please pull up Dr. Palmer's report, which is
2 Plaintiffs' Exhibit 79 on page 17?

3 Now, Dr. Hood, you reviewed Dr. Palmer's report before
4 drafting your own report; is that right?

09:59:11 5 A That is correct.

6 Q In fact, you were specifically tasked with responding to
7 Dr. Palmer's report; is that right?

8 A That is correct.

9 Q Now, this is Table 1 of Dr. Palmer's report reflecting his
09:59:21 10 county-wide racially polarized voting analysis. And Dr. Palmer
11 explained in his report that the other category on the very far
12 right-hand side includes Hispanics, Asians, native Americans,
13 and people who did not identify race on their voter
14 registration forms. Do you recall that?

09:59:41 15 A Yes.

16 Q And that -- he also noted in his report that approximately
17 3 percent of the population fell into that other category?

18 A I mean, I believe that's right. It's been quite a while
19 since I looked at it.

09:59:53 20 Q Okay. Now, you would agree that according to Dr. Palmer's
21 analysis, the point estimates of the other vote share here
22 indicate that a majority of the other category votes in favor
23 of the African-American preferred candidate; is that right?

24 A Well, the point estimate, yes. If you look at the
10:00:10 25 credible interval, though, it drops below 50 percent. For

1 instance, U.S. President, the point estimate is 62.7, but the
2 range is 30.6 to 91.8.

3 Q And you were -- sorry.

4 A So we're really not sure.

10:00:27 5 Q And you weren't in the courtroom when Dr. Palmer
6 testified, were you?

7 A I just got here yesterday.

8 Q I know. For the record.

9 And so Dr. Palmer agreed that in the county-level analysis
10:00:41 10 there was just too few data points, too few numbers to make the
11 confidence interval more narrow.

12 If we could turn to Table 3 of this same report on page
13 19. This is Dr. Palmer's precinct-level analysis of
14 Congressional District 1. You see here that according to
10:01:04 15 Dr. Palmer's analysis over 70 percent of the other category
16 votes in favor of the African-American preferred candidate in
17 CD 1?

18 A Yes.

19 Q And all of the confidence intervals exceed 50 percent; is
10:01:19 20 that right? Except for, looks like one, which is 49.3?

21 A For lieutenant governor, yes.

22 Q Could we please turn to Table 4 on the next page?

23 And here we see even a higher percentage of the other
24 category voting in favor of the African-American preferred
10:01:37 25 candidate in CD 2; is that right?

1 A Yes.

2 Q And here the point estimates are well above 60 percent at
3 the very least; is that right?

4 A Yes.

10:01:49 5 Q Let's go to Table 5 on the next page.

6 We see a similar story in Congressional District 3, where
7 the vast majority of people in the other category are voting
8 alongside the African-American group for the African-American
9 preferred candidate. Would you agree with that?

10:02:08 10 A Yes.

11 Q And can we please turn to Table 6 on the next page?

12 Similar story in CD 7. Would you agree? We see --

13 A Well, except for Governor, it looks like. Otherwise,
14 similar story, yes.

10:02:28 15 Q Okay. If we turn to Table 7 on the next page.

16 This table reflects Dr. Palmer's precinct level-analysis
17 of racial voting patterns in the focus area as a whole. You
18 would agree, Dr. Hood, wouldn't you, that according to
19 Dr. Palmer's analysis, over 86 percent of the other category
10:02:48 20 votes cohesively with African-Americans for the
21 African-American preferred candidate?

22 A According to that table, yes.

23 Q And you provide no response to Dr. Palmer's analysis of
24 racial voting patterns in this table or any other pattern; is
10:03:04 25 that right?

1 A Correct.

2 THE COURT: We're still talking about the population
3 that -- or voting age population that's roughly 3 percent,
4 correct?

10:03:15 5 MS. KHANNA: Yes, Your Honor.

6 THE COURT: Okay.

7 BY MS. KHANNA:

8 Q Dr. Hood, is it your position that anyone who is both
9 black and Hispanic should not be considered African-American?

10:03:35 10 A Well, they can personally identify however they want to.
11 I'm just talking about the way I conduct social science
12 research.

13 Again, I take anyone who's identified ethnically as
14 Hispanic and consider them to be Hispanic in my own research.

10:03:54 15 Q And you take a similar approach to anyone who
16 self-identifies as both black and another race; is that right?

17 A Yes.

18 Q If they identify as both black and white, they are
19 neither? What are they, as far as --

10:04:09 20 A Well, they would be in the other category --

21 Q Okay.

22 A -- like Dr. Palmer had.

23 Q Now --

24 A I would create another category for those individuals.

10:04:17 25 Q Okay. So in your own academic literature, you have

1 referred to President Barack Obama as this country's first
2 black president, haven't you?

3 A I'm sure I have at some point.

4 Q And you would agree that President Obama had a black
10:04:34 5 father and a white mother; is that correct?

6 A Yes.

7 Q But according to your definition that you advance in your
8 report in this case, as a statistical matter, President Obama
9 would not qualify as an African-American in your studies; is
10:04:47 10 that right?

11 A Not according to that definition, no.

12 Q Dr. Hood, you would agree that at least one of the reasons
13 that African-Americans vote cohesively is because they share a
14 common history of discrimination; is that right?

10:05:01 15 A Yes, that's part of it.

16 Q Dr. Hood, you are aware that Mr. Cooper used the AP black
17 category from the census to determine the black voting age
18 population in his illustrative district; is that right?

19 A Yes.

10:05:24 20 Q And it's fair to say that you are not aware of what metric
21 courts use in voting rights cases to determine who is
22 considered black when looking at illustrative districts; is
23 that right?

24 A I guess it could vary potentially.

10:05:39 25 Q Are you aware one way or the other what metric courts tend

1 to use?

2 A No.

3 Q And you have no reason to dispute Mr. Cooper's statement
4 that courts in Section 2 cases generally use the AP black
10:05:55 5 metric; is that right?

6 A Well, I don't necessarily know that that's true or false I
7 guess is what I would say.

8 Q You have no reason to dispute it one way or the other?

9 A I don't have any information one way or the other.

10:06:07 10 Q So, Dr. Hood, you would agree that even using your
11 preferred definition of black to mean single-race non-Hispanic
12 black, Districts 2 and 7 are both over 50 percent black voting
13 age population in Mr. Cooper's illustrative plan 1; is that
14 right?

10:06:27 15 A That is correct.

16 Q And even using your definition of black, you would agree
17 that Districts 2 and 7 are both over 50 percent black voting
18 age population in Mr. Cooper's Illustrative Plan 2; is that
19 right?

10:06:41 20 A That is correct.

21 Q We'll move on to your discussion of district core
22 retention.

23 Now, you defined core retention as the percentage of a
24 district's population that is held over from the previous
10:07:01 25 version of that district, correct?

1 A Correct.

2 Q And you note in your report that core retention is one of
3 the stated redistricting criteria in the legislature's adopted
4 guidelines governing the redistricting process. Do you see
10:07:16 5 that?

6 A Yes.

7 Q And you relied on those guidelines in drafting your
8 report?

9 A I certainly looked at them, yes.

10:07:20 10 Q And I believe on page 6, footnote 10 of your report, you
11 cite to the document marked Chestnut Defense 0267 in referring
12 to those guidelines; is that right?

13 A Yes.

14 Q And you write there that, This criterion was a stated
10:07:40 15 objective of the 2011 congressional plan; is that correct?

16 A Yes.

17 Q Can we please call up Plaintiffs' Exhibit 83, page 267,
18 and you'll see here that the Bates number here is Chestnut
19 Defense 0267.

10:08:03 20 Is this the page that you're referring to when you were
21 drafting your report?

22 A Well, that is the page number that's listed there.

23 Q And there you'll see at the bottom in 7D it says, The plan
24 will attempt to preserve the cores of existing districts. Do
10:08:27 25 you see that?

1 A Yes.

2 Q I also want to call out paragraph 7 at the top. Here it
3 says, The following redistricting policies are embedded in the
4 political values, traditions, customs, and usages of the state
10:08:40 5 of Alabama and shall be observed to the extent that they do not
6 violate or subordinate the foregoing policies prescribed by the
7 Constitution and laws of the United States and of the state of
8 Alabama. Did I read that correctly?

9 A Yes.

10:08:56 10 Q And we can delete those out now.

11 And also included in Section 7 is avoiding contests
12 between incumbents. You see that in 7A?

13 A Correct. Correct.

14 Q Right? And we also see another paragraph about
10:09:16 15 communities of interest in 7B, is that right?

16 A Correct.

17 Q Could we turn back a few pages to the first page of
18 this -- of this part of the document, to page 260 of
19 Plaintiffs' Exhibit 83?

10:09:29 20 This is the -- the first page of the guidelines that you
21 were referring to, Dr. Hood. Would you agree with me that
22 based on the first paragraph that these guidelines actually
23 apply to the 2000 redistricting cycle and not the 2010
24 redistricting cycle?

10:09:47 25 A That's what it says.

1 Q Were you aware of that at the time you wrote this report?

2 A No.

3 Q Can we please pull up Plaintiffs' Exhibit 84?

4 So, Dr. Hood, have you -- did you review this document in
10:10:16 5 preparing your report?

6 A I may have. I'm not certain.

7 Q You don't cite to this document in any of the footnotes in
8 your report; is that right?

9 A I believe that's correct.

10:10:27 10 Q And I'll represent to you that these are the
11 reapportionment committee's adopted guidelines for the 2011
12 cycle.

13 If we can please turn to page 3 of Plaintiffs' Exhibit 84.
14 There at the bottom we see the same language from Section 7
10:10:46 15 that we saw in the previous version; is that right?

16 A Yes.

17 Q If we could turn to the next page.

18 Here we see the criterion for avoiding incumbent contests?

19 A Right.

10:11:02 20 Q We see a paragraph on communities of interest. Do you see
21 that?

22 A Yes.

23 Q And it's actually a different paragraph, a different
24 definition than the previous version.

10:11:16 25 But nothing in that section mentions core preservation; is

1 that correct?

2 A I don't see it.

3 Q And if I told you that the word core did not appear once
4 in the guidelines that governed the 2011 redistricting process,
10:11:31 5 would that affect your opinion of whether that criterion, in
6 fact, was a stated objective of the 2011 congressional plan?

7 A Well, if it wasn't stated, it wasn't stated.

8 Q Dr. Hood, you would agree that whether based on the
9 guidelines or anything else, the attempt to preserve cores of
10:11:52 10 existing districts may not trump compliance with the Voting
11 Rights Act, correct?

12 A Well, in footnote 10, I state that essentially.

13 Q In footnote 10 you say, quote, I am not arguing that this
14 criterion overrides all redistricting criteria, as it certainly
10:12:12 15 does not; is that right?

16 A Right. That's what I am referring to.

17 Q Right. And so specifically I'm saying it does not -- you
18 would agree that it does not and cannot trump compliance with
19 Section 2 of the Voting Rights Act, correct?

10:12:23 20 A That's correct.

21 Q In determining the district core retention of plaintiffs'
22 illustrative plans, you compare each of those illustrative
23 plans to the enacted 2011 plan; is that right?

24 A Yes.

10:12:38 25 Q And you report how each illustrative district fares on

1 your measure of core retention?

2 A Yes.

3 Q But you did not report how the 2011 plan fares on your
4 measure of core retention relative to the previous districts,
10:12:55 5 correct?

6 A That's correct.

7 Q And you performed no analysis of the core retention of the
8 2011 plan, as compared to the previous 2001 plan?

9 A That's correct.

10:13:02 10 Q So you determine on page 5 of your report that plaintiffs'
11 illustrative plans to a large extent do, in fact, preserve the
12 cores of districts under the enacted plan with the exception of
13 one district; is that right?

14 A Yes.

10:13:19 15 Q I believe you testified on direct, as well, that district
16 core retention is fairly high for six of the seven districts;
17 is that right?

18 A Yes.

19 Q And that includes District 1, correct?

10:13:31 20 A Yes.

21 Q The only exception to that -- your conclusion in that
22 regard was District 2, according to your report; is that right?

23 A Correct.

24 Q Dr. Hood, you're familiar with the *Gingles* preconditions,
10:13:46 25 are you not?

1 A Yes.

2 Q You would agree that the first *Gingles* precondition
3 requires Section 2 plaintiffs to actually draw a new
4 minority-majority district where previously there was not one;
10:13:57 5 is that right?

6 A Yes.

7 Q And you understand that plaintiffs here claim that the
8 Alabama congressional plan should contain a second
9 majority-minority district, as opposed to its current
10:14:07 10 configuration, which includes only one such district?

11 A Correct.

12 Q And you understand that plaintiffs' illustrative plans
13 propose that District 2 be transformed from a non
14 majority-minority district into a majority-minority district,
10:14:24 15 correct?

16 A Yes.

17 Q So by your own calculation in Table 1, CD 2 under the
18 enacted plan had a BVAP of 28.26 percent, correct?

19 A Yes.

10:14:38 20 Q And it's fair to say that is decidedly not a majority
21 black district?

22 A I think my calculation was 27.76.

23 Q Fair enough. 27.76?

24 A Yes.

10:14:52 25 Q Under your metric?

1 A Right.

2 Q Still not a majority-minority district, correct?

3 A Correct.

4 Q And by your calculation, at least three of plaintiffs'

10:15:07 5 illustrative plans redraw CD 2 to have a BVAP of over

6 50 percent; is that right?

7 A Yes.

8 Q And you have performed no analysis whatsoever to determine

9 whether it would be possible to draw an additional

10:15:25 10 majority-minority district in the congressional plan while

11 retaining a higher percentage of the core of the 2011 version

12 of the district than plaintiffs' illustrative plans do,

13 correct?

14 A I did not perform that analysis.

10:15:37 15 Q And you would agree that you can't create a second

16 majority-minority district, as *Gingles 1* requires plaintiffs to

17 do, without shifting a fair bit of population in that district

18 as compared to the 2011 plan, correct?

19 A There would have to be quite a bit of population shifting,

10:15:55 20 yes.

21 Q You've been involved in Section 2 cases before?

22 A Yes.

23 Q Isn't it true that you can't recall a single case in which

24 a proposed majority-minority district has been rejected because

10:16:08 25 it was considered to inadequately retain the core of the

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1 enacted plan?

2 A I think that's a fair statement, yes.

3 Q And you expressed no opinion in your report about whether
4 the African-American population is, in the 2011 plan, cracked
10:16:25 5 among CDs 1, 2, and 3, do you?

6 A No, I don't.

7 Q And you express no opinion in your report about whether
8 the African-American population is packed within CD 7 under the
9 2011 plan, correct?

10:16:37 10 A Correct.

11 Q Moving on to your analysis of population shifts.

12 Now, here you provide an analysis of population shifts in
13 plaintiffs' illustrative plans relative to the 2011 plan,
14 correct?

10:17:03 15 A Correct.

16 Q You provide no analysis of population shifts in the 2011
17 plan relative to the 2001 plan, do you?

18 A No.

19 Q So it's fair to say that the reason you performed this
10:17:21 20 particular analysis comparing the illustrative plans to the
21 2011 plan is because if a remedy map were granted in this case,
22 the Court would be starting from the 2011 enacted plan; is that
23 right?

24 A I think that's fair. I thought that was the best
10:17:38 25 comparison point.

1 Q And are you aware, Dr. Hood, that the Court has already
2 decided that it will not be issuing a remedy plan regardless of
3 whether the current plan violates Section 2?

4 A I am aware of that, yes.

10:17:49 5 Q So you calculate that in plaintiffs' illustrative plans a
6 majority of the individuals that moved into District 2 are
7 African-American, correct?

8 A Yes.

9 Q And a majority of the individuals moved out of District 2
10:18:09 10 are white?

11 A Yes. As compared to the enacted plan.

12 Q And District 2 is plaintiffs' proposed new
13 majority-minority district, correct?

14 A Correct. When you say -- can I ask a clarification?

10:18:25 15 Q Oh, absolutely.

16 A So when you a majority-minority, are we saying majority
17 black? Is that fair?

18 Q I'm using those terms interchangeably. Thank you for
19 clarifying.

10:18:33 20 A Okay.

21 Q But is it your understanding that Mr. Cooper's
22 illustrative plans propose that District 2 be drawn as a
23 majority BVAP district?

24 A Okay. I'm -- I just wanted to make sure we had the same
10:18:55 25 terminology.

1 THE COURT: And she changed the terminology on you --

2 BY MS. KHANNA:

3 Q I changed it on you.

4 THE COURT: -- didn't she?

10:19:01 5 BY MS. KHANNA:

6 Q Majority-minority district in this context refers to a
7 majority black district --

8 A Okay.

9 Q -- as far as my questions are concerned.

10:19:08 10 A Okay. That's fine.

11 Q And maybe you already answered this, but section --
12 District 2 is, in fact, that proposed majority-minority
13 district as far as plaintiffs' maps are concerned, correct?

14 A Correct.

10:19:22 15 Q And, as we've already discussed, Section 2 plaintiffs are
16 required to propose a new majority-minority district under the
17 first *Gingles* precondition, correct?

18 A Correct.

19 Q Dr. Hood, you do not know whether it would be possible to
10:19:37 20 draw a second majority-minority district without the racial
21 pattern you observe, correct?

22 A Well, there are many permutations that might be possible.
23 I was looking at the four permutations provided by the
24 plaintiffs -- by Mr. Cooper specifically.

10:19:55 25 Q But you do not know, as you testified today or in drafting

1 your report, whether it would be possible to draw a second
2 majority-minority district without the racial pattern that you
3 observe; is that right?

4 A I don't know definitively, because, again, there are many,
10:20:11 5 many possibilities out there.

6 THE COURT: That wasn't your job, was it?

7 THE WITNESS: No, Your Honor.

8 BY MS. KHANNA:

9 Q You also don't know whether it would be possible to draw a
10:20:33 10 second majority-minority district in a manner in which race and
11 population movements are entirely unrelated; is that right?

12 A Again, I'll say it hypothetically could be possible.

13 Q But you didn't perform any such analysis here?

14 A No.

10:20:48 15 Q You didn't even attempt such an analysis here, correct?

16 A Well, I wasn't asked to do that.

17 Q Okay. I'm going to -- let's hypothetically assume we have
18 a district with 100 voting age individuals.

19 A Okay.

10:21:06 20 Q Let's assume that 28 of those voting age individuals are
21 black and 72 of those individuals are white. So far so good?

22 A Okay. I'm with you.

23 Q Now, that's time one. That's District 1 time one, right?

24 Let's assume that time two, we have that same district, that
10:21:29 25 district has now been redrawn, and the redrawn version has the

1 same number of voting age individuals -- still 100 -- except
2 now 51 of those individuals are black and 49 are white.

3 A Okay.

4 Q You with me?

10:21:44 5 A I'm -- so far.

6 Q Now, let's assume that the process -- how you got from
7 between time one and time two, let's assume the process was
8 perfectly consistent with traditional districting principles.

9 It's a perfect circle of a district, there was no counties
10 split, everything at the end -- everything is as clean as it
11 ever can possibly be in any hypothetical world. But it just so
12 happens at the end of this process, 51 of the voting age
13 individuals are black and 49 are white. Sound good?

14 A Okay.

10:22:21 15 Q Is there any mathematical way for this transformation from
16 a 100-person district with 28 black voters to a 100-person
17 district with 51 black voters to occur without having a
18 majority of the voting age population move into the district be
19 black?

10:22:40 20 MR. DAVIS: Your Honor, before he responds, I would
21 like to object. Thank goodness my expert's a lot smarter than
22 I am. There would be too many numbers for me to follow without
23 there being something up on the board.

24 If Dr. Hood is comfortable answering, I will sit down and
10:22:54 25 withdraw my objection. But this is an awful lot of numbers to

1 try to keep in a person's head.

2 THE COURT: Can you answer that question?

3 THE WITNESS: Can you say it one more -- the
4 question -- the question part one more time?

10:23:08 5 BY MS. KHANNA:

6 Q So let's assume that the districts are always 100 people?

7 A I'm with you.

8 Q You're with me on that?

9 A Just read the --

10:23:14 10 THE COURT: I think he may have the numbers.

11 BY MS. KHANNA:

12 Q Is there any mathematical way for this district -- for
13 this transformation from a district with 28 black voters to a
14 district with 51 black voters to occur without having a
10:23:29 15 majority of the individuals moved into the district be black?

16 A Well, I would say in answer that, to some degree, there
17 would have to be blacks citizens shifted into that hypothetical
18 district to create a black majority. And there would have to
19 be white citizens shifted out of that district to, again,
10:23:52 20 create that black majority.

21 I mean, that's the way I would answer that.

22 Q There's no mathematical way for it to be otherwise,
23 correct? If you are going to go from a district where 28 out
24 of 100 black voters to a district with 51 out of 100 black
10:24:06 25 voters?

1 A In terms of whose -- so are we asking -- are we at the
2 point now where we are having to say you would have to shift in
3 more black voters and shift out more white voters?

4 Q Yes.

10:24:22 5 A Something like that would have to occur to reach those
6 numbers.

7 Q Now, you conclude in your report that race and population
8 movement are related in plaintiffs' illustrative plans; is that
9 right?

10:24:37 10 A Correct.

11 Q You would agree that in order to draw a majority-minority
12 district in Alabama one is -- one would have to consider race
13 to some extent, correct?

14 A Correct.

10:24:46 15 Q And you expressed no opinion as to whether race actually
16 predominated in the drawing of any of the illustrative plans,
17 correct?

18 A That is correct.

19 Q Now, in the next section of your report regarding district
10:25:11 20 functionality, you expressed concern about whether plaintiffs'
21 proposed majority-minority districts will actually provide
22 African-Americans the opportunity to elect their preferred
23 candidates, correct?

24 A That's fair.

10:25:26 25 Q And you've heard the term functional analysis before as it

1 applies to majority-minority districts?

2 A Yes.

3 Q And a functional analysis determines whether a
4 hypothetical district could function as a minority opportunity
10:25:39 5 to elect district if it were put into place; is that right?

6 A That's the idea behind it, yes.

7 Q So if a district could, in fact, function as a minority
8 opportunity district, then that means, while there's no
9 guarantee that it's possible, that the minority group in the
10:25:55 10 district that comprises the majority would be able to elect
11 their candidate of choice?

12 A There's no guarantee. It's a hypothetical.

13 Q It's an opportunity is what it is, correct?

14 A Right. But the functional part is a hypothetical.

10:26:10 15 Q It's a hypothetical -- a functional analysis is, in fact,
16 an actual analysis that experts can perform to help answer this
17 question of what the opportunity to elect would be?

18 A Well, I'm not saying that the analysis is hypothetical.

19 I'm saying it's based on a hypothetical set of circumstances.

10:26:26 20 Q Because nobody can look in the future and tell you exactly
21 what will happen in the next election, right?

22 A Exactly. That's what I am saying.

23 Q And you did not perform any functional analysis of any of
24 the illustrative districts in Mr. Cooper plan, correct?

10:26:40 25 A Correct.

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1 Q So what you did do in on page 11 of your report is analyze
2 voter turnout statewide in Alabama; is that right?

3 A Correct.

4 Q And you say that you did this to draw some inferences
10:26:53 5 about the functionality of plaintiffs' illustrative districts,
6 correct?

7 A Correct.

8 Q So you note that the implication of your statewide look at
9 voter turnout is that a bare voting age majority of a racial
10:27:07 10 group may not be able to actually function as such electorally
11 speaking. Did I read that correctly?

12 A Yes.

13 Q You never actually examined turnout in plaintiffs'
14 illustrative districts, do you?

10:27:18 15 A No.

16 Q You just look at the state as a whole?

17 A That's correct.

18 Q And you look at the percentage of each racial group's
19 registered voters who turned out, correct?

10:27:29 20 A That is how turnout is measured, yes.

21 Q You did not look at each racial group's percentage of the
22 voters who turned out as a whole?

23 A No.

24 Q So you note on Table 7 that five of the six elections this
10:27:57 25 decade -- for five of those six elections that you analyzed,

1 white registrants turned out in higher proportions than black
2 registrants; is that right?

3 A Yes.

4 Q By an average of around 5 percent?

10:28:10 5 A Yeah. 4.8. Yes.

6 Q There was one election for which that was not true,
7 correct?

8 A That is correct.

9 Q That was the 2012 presidential election?

10:28:19 10 A Yes.

11 Q In which black turnout was .9 percentage points higher
12 than white turnout?

13 A That is correct.

14 Q So in that instance, not only was the margin between white
10:28:32 15 and black voting narrowed, it was flipped?

16 A That's correct.

17 Q And that was the presidential election between
18 Presidential Obama and Mitt Romney; is that right?

19 A Correct.

10:28:42 20 Q You would agree that it's possible that having a viable
21 black candidate on the ballot would, in fact, drive higher
22 black turnout?

23 A Certainly possible, yes.

24 Q You would agree there are many factors that can affect
10:28:55 25 turnout rates in given district in a given election, correct?

1 A There are a multitude of factors that affect turnout.

2 Q That would include enthusiasm for the election, correct?

3 A Correct.

4 Q And it would include the possibility that one's preferred
10:29:05 5 candidate might actually have a chance at winning, correct?

6 A The perception of that, yes.

7 Q Now, at the beginning of this section of your report, you
8 note that none of plaintiffs' experts have produced any
9 analysis to determine if these illustrative districts could,
10:29:24 10 indeed, function as black opportunity to elect districts. Do
11 you see that?

12 A Right.

13 Q And you are aware that subsequently Dr. Palmer in his
14 reply report did provide such an analysis; is that right?

10:29:36 15 A Correct.

16 Q And Dr. Palmer calculated black turnout as a percentage of
17 total turnout in plaintiffs' illustrative Districts 2 and 7; is
18 that right?

19 A From what I remember, yes.

10:29:47 20 Q And he also measured the racial breakdown of the actual
21 voters in the 2018 election in plaintiffs' illustrative
22 Districts 2 and 7. Do you recall that?

23 A Yes.

24 Q You would agree the issue you raised earlier in your
10:30:02 25 report regarding how to determine who gets counted as black

1 does not apply to any of Dr. Palmer's analyses, correct?

2 A Right. I believe he is using black as defined by those
3 who check the box "black" on the voter registration form.

4 Q And you don't have any qualms with Dr. Palmer's
10:30:20 5 calculations in his functionality analysis, correct?

6 A No.

7 Q You would agree that Dr. Palmer's analysis and his
8 rebuttal report shows that the African-American preferred
9 candidates are winning and would win in both Districts 2 and 7
10:30:35 10 in all the illustrative plans, correct?

11 A According to his calculations, yes.

12 Q And you would agree that, based on what he's reported in
13 his rebuttal report, Dr. Palmer's analysis shows that Districts
14 2 and 7 in the illustrative plans would function as
10:30:48 15 African-American opportunity districts, correct?

16 A According to his calculations, yes.

17 Q Now, on page 14 of your report, you discuss -- you have a
18 section entitled Black Voting Patterns that you also discussed
19 with counsel on direct, correct?

10:31:09 20 A Correct.

21 Q And, basically, what you do here is you examine survey
22 data to see the levels at which African-Americans vote for the
23 Democratic party both inside and outside of Alabama?

24 A That's correct.

10:31:21 25 Q And you agree, based on your findings here, that

1 African-Americans in Alabama vote cohesively, correct?

2 A Yes.

3 Q And you provide no analysis of the extent of white
4 crossover voting in any of these jurisdictions, correct?

10:31:38 5 A That's not what I was asked to do.

6 Q You would agree --

7 A But the answer is, yes, I didn't.

8 Q You would agree that the extent to which white voters vote
9 for or against minority preferred candidates likely varies
10:31:50 10 across all of the jurisdictions that you looked at?

11 A There's variance, yes.

12 Q In many cases significance variance?

13 A Well, I didn't perform that analysis.

14 Q You didn't look at white crossover voting at all?

10:32:02 15 A That is correct.

16 THE COURT: Would this be an okay time for a break, or
17 are you almost finished?

18 MS. KHANNA: I can finish with this section on black
19 voting patterns and then maybe take a break, if that's all
10:32:20 20 right.

21 THE COURT: Okay.

22 MS. KHANNA: Actually, no, I apologize, Your Honor. I
23 think now we can take a break. Thank you.

24 THE COURT: Okay. We will come back at 10:50.

10:32:29 25 (Recess.)

1 THE COURT: You may continue with cross.

2 MS. KHANNA: Thank you, Your Honor.

3 BY MS. KHANNA:

4 Q Dr. Hood, before the break, we were talking about the
10:53:58 5 section of your report entitled Black Voting Patterns, correct?

6 A Correct.

7 Q And you conclude in the section that African-American
8 voters both inside and outside of Alabama have almost
9 monolithic voting patterns; is that correct?

10:54:16 10 A Yes.

11 Q You offer no opinion based on this analysis as to why
12 these voting patterns exist, do you?

13 A No.

14 Q Dr. Hood, as a political scientist, wouldn't you agree
10:54:27 15 that groups tend to vote for candidates that they perceive to
16 be protective of their interests?

17 A I think that's certainly a part of it, yes.

18 Q In fact, there's research that suggests that
19 African-Americans tend to vote for Democratic party candidates
10:54:40 20 because they perceive that party to be aligned with their
21 interests, correct?

22 A Yes.

23 Q And white voters similarly tend to vote for candidates
24 they believe to be protective of their interests, correct?

10:54:51 25 A I think that's part of the calculus.

1 Q And, in fact, research has shown that there was an
2 association between resentment of minority races and voting for
3 President Trump; is that correct?

4 A Yes.

10:55:12 5 I mean, now, if we want to go off into that area, we can.
6 Racial resentment's a pretty complicated construct. What
7 you're saying is correct.

8 I've also seen people that have high racial resentment
9 scores be more than apt to vote for black conservative
10:55:29 10 candidates. So it can cut both ways. In fact, my own research
11 says that.

12 Q Speaking of your own research, on page 2 of your report,
13 you state you are an expert in American politics, specifically
14 in the area of electoral politics, racial politics, election
10:55:48 15 administration, and southern politics; is that right?

16 A Yes.

17 Q And one of the articles listed in your CV, I believe it's
18 on page 51 of Defendant's Exhibit 11, but we don't have to call
19 it up.

10:56:09 20 It's called "Black mobilization and Republican growth in
21 the south. The more things change, the more they stay the
22 same." Do you recall that article?

23 A Okay. What page on my vitae is it on, if you can tell me
24 that?

10:56:40 25 THE COURT: Are you referring to his CV?

1 MS. KHANNA: Yes, Your Honor. I'm just trying to find
2 the right page.

3 Q Looks like it's on page 10 -- Roman numeral X at the very
4 top of your CV.

10:57:11 5 A Okay.

6 Q Do you recall that article?

7 A That's a conference paper.

8 Q It's a conference paper that you wrote?

9 A Yes.

10:57:16 10 Q And is it fair to say that in that paper you discuss
11 partisan change in the south after enactment of the Voting
12 Rights Act?

13 A Well, I would really refer to the book I wrote rather than
14 a conference paper -- on the same topic.

10:57:30 15 Q But are there any opinions in that conference paper that
16 you don't stand by today?

17 A I wouldn't say that, but I haven't looked at that
18 conference paper in eons.

19 Q Okay.

10:57:42 20 THE COURT: When was that paper presented, for the
21 record?

22 THE WITNESS: Was it presented at a conference?

23 THE COURT: When?

24 THE WITNESS: Oh, when? 2010 is what it says, Your
10:57:52 25 Honor.

1 THE COURT: Thank you. And was that kind of an
2 excerpt out of a book you had written?

3 THE WITNESS: Well, that work grew into a book.

4 THE COURT: Grew into a book, okay. What is the book?

10:58:05 5 THE WITNESS: So the book is listed -- it should be on
6 the first page of my vitae. *The Rational Southerner*.

7 BY MS. KHANNA:

8 Q Dr. Hood, in the course of both the article and the book,
9 you discuss partisan change in the south after enactment of the
10:58:27 10 Voting Rights Act; is that correct?

11 A I certainly do.

12 Q And you specifically discuss the partisan realignment that
13 happened in the south among black and white voters after the
14 Voting Rights Act, correct?

10:58:36 15 A That is correct.

16 Q Isn't it correct that once African-Americans were re-
17 enfranchised in the mid-1960s due to the Voting Rights Act,
18 African-American southerners fairly quickly realigned to the
19 Democratic party in the south?

10:58:51 20 A I think that's almost a quote from me.

21 Q It is, in fact, a quote.

22 A Okay. I'm glad I'm not going crazy.

23 Q No. You're paying attention.

24 They were an almost uniformly Democratic electorate from
10:59:04 25 the time they were re-enfranchised, correct?

1 A From what my research shows, yes.

2 Q Prior to that realignment, white southerners had
3 overwhelmingly preferred or voted for the Democratic party; is
4 that right?

10:59:15 5 A In the south, yes. Now, again, there was only one
6 party --

7 Q And you --

8 A -- the Democratic party.

9 Q That's right. Before that time.

10:59:24 10 A Correct.

11 Q And you observe in your research that after the Voting
12 Rights Act white southerners subsequently realigned to
13 affiliate with the Republican party; is that right?

14 A A very slow secular -- when I say the word "secular," I
10:59:38 15 mean slow overtime change. I'm not talking about religion
16 there.

17 A very slow secular realignment began in the mid-1960s
18 among white southerners, yes.

19 Q And you also observe in your research that this
10:59:55 20 realignment is primarily a function of racial and political
21 dynamics, is that correct?

22 A Yes.

23 Q And that is the story from 1960s through today; is that
24 right?

11:00:01 25 A I think we went through 2008.

1 Q So you would agree that prior to the Voting Rights Act of
2 1965, many African-Americans couldn't participate in elections,
3 period, right?

4 A In the south, yes.

11:00:15 5 Q They were disenfranchised?

6 A That's correct.

7 Q And you observed in your article that the transformation
8 we just discussed was in part due to the Voting Rights Act,
9 correct?

11:00:23 10 A Certainly, yes.

11 Q Specifically, your research states that the increasingly
12 liberal orientation of the National Democratic Party on the
13 issue of Civil Rights affected white southerners, correct?

14 A Correct.

11:00:37 15 Q And you also state that, in fact, the VRA was a milestone
16 in the development of the Republican party in the south; is
17 that correct?

18 A Correct.

19 Q There was also a transition at the national level at this
11:00:54 20 time where the Democratic party became more liberal on the
21 issue of civil rights for African-Americans, and the Republican
22 party became more conservative on that same issue during that
23 time; is that correct?

24 A That's correct.

11:01:09 25 Q Specifically, the Republican party was increasingly viewed

1 as the party of racial conservatism; is that correct?

2 A Yes.

3 Q Black mobilization led directly to the transition of
4 whites in the Republican party -- into the Republican party in
11:01:25 5 the south; is that correct?

6 A That's what our research finds, yes.

7 Q And your research also finds that Republican party growth
8 also resulted in black mobilization; is that correct?

9 A In the deep south. It's countercyclical. Not in the rim
11:01:42 10 south.

11 Q In fact, President Johnson said after the passage of the
12 1964 Civil Rights Act, that the Democratic party had lost the
13 south for a generation; is that right?

14 A I believe that's correct. I don't -- I don't know that we
11:01:54 15 quote that in the book.

16 Q Okay. And you would agree that that has -- seems to have
17 come to fruition?

18 A Seems to, yes.

19 THE COURT: Is there any particular part of the Voting
11:02:15 20 Rights Act that seems to have more of an effect than another?

21 THE WITNESS: Well, I would say we're not really
22 imputing motives necessarily in terms of why someone decides to
23 join one party or the other.

24 I mean, what the Voting Rights Act did, though, was to
11:02:32 25 re-enfranchise African-Americans in the south. So now there's

1 a new political power block, and that's what started this
2 change, if that makes -- that makes sense.

3 THE COURT: Okay. Thank you.

4 THE WITNESS: Literally the mobilization of
11:02:48 5 African-Americans into the electorate.

6 THE COURT: Uh-huh.

7 THE WITNESS: So...

8 BY MS. KHANNA:

9 Q Dr. Hood, the final section of your report is entitled
11:02:58 10 Racial Comparisons. And you testified about that section on
11 direct; is that right?

12 A Yes.

13 Q And you note on page 17 of your report, The key question
14 being examined is not whether disparity rates in Alabama are
11:03:12 15 higher or lower than the comparison states, but whether the
16 same pattern of black and white disparities also exists in
17 other states. Did I read that correctly?

18 A Yes.

19 Q This key question as you put it, that was a question posed
11:03:29 20 to you by counsel for the defendant, correct?

21 A The defendant -- counsel for the defendant asked me to
22 analyze this question, yes.

23 Q You would agree that, based on your understanding of
24 Section 2, that is not the key question under Section 2; is
11:03:44 25 that correct?

1 A Correct.

2 THE COURT: Was that the key question of your entire
3 report?

4 THE WITNESS: No, Your Honor; just this section.

11:03:53 5 THE COURT: Thank you.

6 BY MS. KHANNA:

7 Q In fact, as of the time that you wrote your report, you
8 didn't know what relevance this question had to the Section 2
9 case; is that right?

11:04:03 10 A Again, I answered this question because I was asked to
11 answer the question.

12 Q You did not know the relevance to Section 2 at the time
13 you wrote your report?

14 A Well, I'm aware of the Senate factors and such. Again, I
11:04:17 15 was asked to answer this question, and I did.

16 Q When you were asked about, well, how is this relevant to
17 Section 2 during your deposition, you did not know; is that
18 correct?

19 A I believe so, yes.

11:04:28 20 MR. DAVIS: Your Honor, we haven't designated Dr. Hood
21 as an expert on the law or Section 2 requirements.

22 THE COURT: I understand.

23 BY MS. KHANNA:

24 Q Dr. Hood, you mentioned earlier that you have been
11:04:41 25 involved in Section 2 cases before; is that correct?

1 A Yes.

2 Q You've never provided an analysis -- of similar to this
3 racial comparison's analysis in any other expert report you
4 have written in any other Section 2 case; is that right?

11:04:55 5 A That's correct.

6 Q You would agree that there is, in fact, a significant
7 racial disparity in the socioeconomic indicators you looked at
8 in Alabama, including education, employment, and health; is
9 that right?

11:05:09 10 A Yes.

11 Q You'd also agree that the fact that racial disparities may
12 exist in one state does not mean that the racial disparities
13 present in Alabama do not impact the ability by
14 African-Americans to participate in the electoral process; is
11:05:25 15 that correct?

16 A That's correct.

17 Q Regardless of whether those disparities exist in other
18 states, it does not suggest that the racial disparities in
19 Alabama don't impact the opportunity to elect for
11:05:41 20 African-Americans; is that correct?

21 A Correct.

22 Q Dr. Hood, on page 2 of your report you list all of the
23 cases in which you offered expert testimony during the past
24 four years; is that right?

11:05:57 25 A Yes.

1 Q And one of those cases you list is the *Bethune Hill vs*
2 *Virginia State Board of Elections* case, correct?

3 A Correct.

4 Q And isn't it right that the court rejected your analysis
11:06:08 5 in that case as vague and unsubstantiated?

6 A I will certainly let the Court's opinion speak for itself.

7 Q You do recall that, though, correct?

8 A Something like that.

9 Q You also list the *Northeast Ohio Coalition vs. Husted*,
11:06:23 10 correct?

11 A Correct.

12 Q And isn't it a fact that the Court in that case found your
13 testimony, in large part, irrelevant to the issues before the
14 Court, and also reflected methodological errors that undermined
11:06:38 15 your conclusions? Do you recall that?

16 A If you're representing that's what the Court said, then
17 yes.

18 Q You also listed *V.C. vs. Perry*, correct?

19 A Correct.

11:06:44 20 Q And in that case, the Court found your testimony also had
21 significant methodological oversights, correct?

22 A Actually, I don't think it's listed here, but I did
23 testify in that trial.

24 Q Now, you've testified in other cases other than those
11:07:04 25 listed on page 2; is that right?

1 A Right. This is the last four years.

2 Q Okay. You testified in a case called *Common Cause vs.*
3 *Billups*. Do you recall that?

4 A Yes. Yes.

11:07:14 5 Q And your testimony was, in fact -- you were excluded from
6 testifying as an expert in that case because the Court deemed
7 your method as not reliable; is that right?

8 MR. DAVIS: Your Honor, I object. I know it's fine to
9 play gotcha with another witness. But the sides have
11:07:33 10 stipulated to each other's expertise. He's already in as an
11 expert.

12 MS. KHANNA: Your Honor, I'm not questioning whether
13 or not he should be excluded under *Daubert*, but I do believe
14 that his history, including the testimony that he says is
11:07:42 15 relevant to his expertise in this case, does go to the weight
16 and credibility that this Court should afford the expert.

17 THE COURT: I think I am capable of making that
18 decision.

19 MS. KHANNA: Thank you, Your Honor.

11:07:55 20 Thank you, Dr. Hood.

21 THE WITNESS: Thank you.

22 MS. KHANNA: No further questions.

23 THE COURT: Any redirect, Mr. Davis?

24 MR. DAVIS: Yes, Your Honor.

11:08:02 25 REDIRECT EXAMINATION

1 BY MR. DAVIS:

2 Q Dr. Hood, when you're retained as an expert, do you just
3 show up and submit a report on any topic you want, or do you
4 wait for guidance from the attorneys who hire you?

11:08:33 5 A I usually wait to see what they want me to look into.

6 Q So if a court did find something irrelevant, that's
7 probably -- you're just submitting a report on what you were
8 asked to address, correct?

9 A Correct.

11:08:44 10 Q You've been around a lot of redistricting cases, is it
11 fair to say?

12 A Some, yes.

13 Q Some. In your experience, do they often involve a lot of
14 districts, and a lot of maps, and a lot of reports, and a lot
11:09:15 15 of charts?

16 A I'd say too many.

17 Q I would, too.

18 Would it be surprising to you if, in fact, there were
19 sometimes inconsistencies in the way the same party measured
11:09:33 20 demographics? They might in this chart cite to one category,
21 in this cite to another?

22 A That can happen, yeah.

23 Q What I've put on the screen, Dr. Hood, is Table 3 from
24 Dr. Max Palmer's report.

11:09:54 25 MR. DAVIS: Your Honor, since I brought up this page,

1 I don't recall the exhibit number for that.

2 THE COURT: Uh-oh. We need to have the exhibit
3 number.

4 MS. KHANNA: Plaintiffs' Exhibit 79.

11:10:05 5 MR. DAVIS: Plaintiffs' Exhibit 79.

6 THE COURT: Thank you. Plaintiffs' Exhibit 79. And
7 this is Table 3. Do we know what page it might be on?

8 MR. DAVIS: It is page 19 of his report, Your Honor.

9 THE COURT: Okay. Thank you.

11:10:17 10 BY MR. DAVIS:

11 Q This is one of the tables that you were asked about,
12 Dr. Hood. You see the reported for different elections, the
13 percentage voting for black candidate of choice, a black,
14 white, and other, correct?

11:10:34 15 A Correct.

16 Q Okay. If a person identifies as Native American, which
17 category would they appear on?

18 A I'm assuming they're going in the other category here.

19 Q And Hispanic?

11:10:44 20 A Other.

21 Q And Asian?

22 A Other.

23 Q And someone who doesn't check anything because they don't
24 think it's anybody's business?

11:10:50 25 A Other.

1 Q So can you look at this other category and conclude that
2 one of these racial categories votes a particular way?

3 A Not necessarily.

4 Q You -- and it's not your fault, Dr. Hood, if the state
11:11:13 5 back in 2011 included the wrong version of the guidelines in
6 their preclearance submission.

7 Were you aware that Senator -- former Senator Gerald Dial
8 testified in this trial that even though the new guidelines may
9 not include the words preserve core of districts, that, in
11:11:30 10 fact, the language does reflect that philosophy?

11 A Yes.

12 Q I want to put this on the screen first. This is Exhibit
13 D-1, Dr. Hood.

14 THE COURT: Defendant's Exhibit 1, page...

11:11:53 15 MR. DAVIS: Defendant's Exhibit 1 -- it's a ten-page
16 -- and the version I have does not have the page numbers.

17 But this particular map is a 2000 --

18 THE COURT: Can you pull it down so we can see how
19 it's identified at the top? Okay.

11:12:09 20 MR. DAVIS: It's the 2011 districts.

21 THE COURT: Okay.

22 MR. DAVIS: And what I am going to hand --

23 THE COURT: For the record, that is 3017.

24 MR. DAVIS: Thank you. And I'm going to hand
11:12:22 25 Dr. Hood, with Your Honor's permission, the similar maps for

1 the 2002 districts, the 1992 districts.

2 THE COURT: Are these all from Exhibit 1?

3 MR. DAVIS: All from Defendant's Exhibit 1.

4 MS. KHANNA: And, Your Honor --

11:12:39 5 THE COURT: And with your permission, I will try to
6 make sure we have the page numbers referenced as he discusses
7 each one.

8 MR. DAVIS: Thank you.

9 THE COURT: Okay.

11:12:47 10 MS. KHANNA: Your Honor, I would just object because
11 it's beyond the scope of his report. At no time did Dr. Hood
12 ever consider this in -- his expert analysis in his report.

13 THE COURT: You questioned him about whether he did.
14 So I think having raised some question about the completeness
11:13:10 15 of his report because he didn't, that he should be allowed to
16 at least respond to that.

17 MS. KHANNA: Yes, Your Honor.

18 THE COURT: I assume that's --

19 MR. DAVIS: Your Honor, this is the question I would
11:13:23 20 like to ask him. He was asked by plaintiffs' counsel if
21 Alabama seemed to have abandoned the traditional district
22 principle of preserving the core of districts since -- if there
23 was some problem with that.

24 I'd like him to look at a few plans and to see if it
11:13:40 25 appears, just from the shape of the districts, if in his

1 opinion, Alabama has disregarded the traditional districting
2 principle of reserving the core of districts.

3 THE COURT: Okay.

4 MR. DAVIS: So I have been helpfully handed a better
11:13:53 5 version that includes page numbers.

6 THE COURT: Good. Thank you.

7 MR. DAVIS: Defendant's Exhibit 1, 2011 congressional
8 districts, Chestnut Defense 3017; 2002 congressional districts,
9 3018; '92 congressional districts, 3019; 1980 districts,
11:14:45 10 3019.1; and 1970 districts, 3020.

11 And may I hand these to the witness, Your Honor?

12 THE COURT: You may.

13 BY MR. DAVIS:

14 Q And, Dr. Hood, as you look at these districts going back
11:15:21 15 to the '70s, do you have an opinion as to whether Alabama
16 appears to care about the traditional districting principles of
17 preserving the core of districts?

18 A Well, again, population has to be equalized across
19 redistricting cycles. That's the chief goal always.

11:15:45 20 But with that in mind, looking at these districts from
21 1970 to 2011, they're fairly remarkable in the sense that they
22 have, for the most part, stayed in the same place. Of course,
23 the boundaries are shifting some. But they look remarkably
24 similar.

11:16:03 25 Q They have to shift some, do they not?

1 A Certainly. I mean, you have to equalize population.

2 Q So does the pattern seem to hold, even going from the
3 2000 cycle to the 2010 cycle?

4 A Well, yes. There's a lot of geographic congruity between
11:16:23 5 those two.

6 Q Thank you.

7 Now, you did not replicate or test Dr. Palmer's polarized
8 voting analysis, did you?

9 A Correct.

11:16:34 10 Q You weren't asked to?

11 A Correct.

12 Q And when Dr. Palmer says that African-American voting
13 appears -- that African-Americans appear to vote cohesively in
14 Alabama, your own research suggests the same, does it not?

11:16:48 15 A Correct.

16 Q You were asked if a history of -- a shared history of
17 discrimination is a factor that may lead to African-American
18 vote cohesiveness, correct?

19 A Correct.

11:17:05 20 Q Aren't there a lot of issues that lead to a voter
21 supporting a particular political party?

22 A There can be quite a few, yes.

23 Q Now, your research that showed ties to the Voting Rights
24 Act, does that tell us why any voter today supports the
11:17:23 25 Democratic or the Republican party?

1 A Not necessarily.

2 Q Okay.

3 A Again, that goes back 50 years now.

4 Q Right. Some of us -- some voters weren't alive at the
11:17:38 5 time or weren't voting at the time the Voting Rights Act was
6 passed, were they?

7 A Some voters literally weren't alive either.

8 Q Have you seen research that suggests that religion and
9 matters of faith may drive political choices in some
11:17:54 10 circumstances?

11 A Yes. I mean, there was another realignment among white
12 southerners in the late '70s, early '80s, along religious
13 lines. So that's another component. Economic issues, as well.
14 Foreign policy.

11:18:09 15 So there are a lot of things that can figure into the
16 calculus of which party to support or not support.

17 Q And you were asked if groups -- if African-Americans vote
18 as a group or who is perceived to be in their interests.
19 Actually, groups don't vote, do they? Individuals vote.

11:18:32 20 A Right.

21 Q And as a social scientist, can you say that any individual
22 or collection of individuals are voting the way they do today
23 because of the passage of the Voting Rights Act?

24 A I think that would be a difficult causal inference to
11:18:47 25 draw.

1 Q And you said that your research didn't address motives at
2 all?

3 A We do not look at motives, no, just what happens.

4 Q Are you familiar with the language that's often used
11:19:02 5 dividing states into red states, blue states, and purple
6 states?

7 A Yes.

8 Q What do they mean?

9 A Well, typically what they're talking -- I can't remember
11:19:11 10 what election cycle this grew out of. But some media group
11 adopted this. So a red state would be a Republican state, a
12 blue state a Democratic state, and a purple state sort of a
13 swing state, a battleground state.

14 Q What's Alabama?

11:19:28 15 A I would say it's red.

16 Q A lot of --

17 A Maybe here I would say crimson.

18 THE COURT: You're right. He is so right. Thank you.

19 I have wondered why all along Alabama wasn't designated as
11:19:42 20 a crimson state instead of a red one, but I guess there are
21 some folks that like the blue and orange that might argue with
22 that.

23 Sorry. I haven't said much today. I had to perk up a
24 little bit here.

11:19:57 25 BY MR. DAVIS:

1 Q Would you agree that a lot of voters in Alabama, like
2 other southern states, are fairly conservative in their
3 political philosophy?

4 A Certainly white voters are, yes.

11:20:08 5 Q And would you agree that a voter's views on issues, a
6 variety of issues and not just those related to race, can lead
7 a person to support a particular political party?

8 A Certainly. In the current party alignment, of course, the
9 Republican party is the home for conservatives, and the
11:20:28 10 Democratic party is the home for liberal adherence, so...

11 Q And, of course, you're not casting judgment on anyone's
12 choice of which party to support, are you?

13 A No.

14 Q Would you agree that the major political parties are more
11:20:46 15 polarized today than they were in previous decades?

16 A Well, from political science research, yes, certainly so.

17 Q Is that only on issues related to race?

18 A No. It's all issues essentially.

19 Q Have you seen any evidence in this case from the charts
11:21:15 20 the way Alabama reported districts, that Alabama uses the
21 any-part black category routinely?

22 A I haven't seen evidence of that, no.

23 Q Would you agree, Dr. Hood -- well, let's take a
24 hypothetical district. And I'm not going to cite numbers
11:21:46 25 because I can't keep up in my head.

1 But let's say Alabama drew a congressional district, and
2 it turned out to be close to 50 percent African-American. And
3 then it could, by switching one county for another, result in a
4 district that was over 50 percent African-American. In that
11:22:06 5 event, Alabama might be able to switch from a one
6 majority-minority district plan to a two majority-minority
7 district plan without major shifts in population. Would you
8 agree with that?

9 A Probably so under that hypothetical scenario.

11:22:22 10 Q Okay. Did your analysis show that, at least in this case,
11 going from one majority black district to two would require
12 some pretty major restructuring in the southern half of the
13 state?

14 A Yes.

11:22:39 15 Q It would require putting entirely different areas of the
16 state together that haven't traditionally been put in the
17 districts?

18 A Right. The districts geographically would like quite a
19 bit different, especially in the southern part of the state.

11:23:08 20 MR. DAVIS: May I have a moment, Judge?

21 THE COURT: Certainly.

22 MR. DAVIS: That's all, Your Honor.

23 Thank you, Dr. Hood.

24 THE WITNESS: Thank you.

11:23:18 25 THE COURT: Any recross?

1 MS. KHANNA: One moment, Your Honor. Briefly, Your
2 Honor.

3 RECROSS-EXAMINATION

4 BY MS. KHANNA:

11:23:37 5 Q Dr. Hood, I believe you testified on redirect that a lot
6 of issues -- there are a lot of issues that lead to a voter
7 supporting a political party; is that correct?

8 A There could be more than one, yes.

9 Q Based on your research, can you say that race is not one
11:23:51 10 of them?

11 A No, certainly not.

12 Q And, in fact, in the book that you discussed when we
13 talked earlier, you state, We argue that a complete
14 understanding of southern party politics requires a full
11:24:08 15 appreciation for the role that race has played and continues to
16 play in the region; is that correct?

17 A Yes.

18 MS. KHANNA: Thank you, Dr. Hood.

19 THE WITNESS: Thank you.

11:24:19 20 FURTHER REDIRECT EXAMINATION

21 BY MR. DAVIS:

22 Q And in that statement, were you assessing what it took to
23 understand southern history over time, or how to address the
24 reason a particular voter votes the way they do today?

11:24:37 25 A That was a historical analysis.

1 MR. DAVIS: Thank you.

2 THE COURT: Anything else?

3 MS. KHANNA: No, Your Honor. Thank you.

4 THE COURT: All right. Thank you.

11:24:46 5 Thank you, Dr. Hood. You may step down.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Do you want to start on your next witness
8 now, or do you want to break for lunch early and then come back
9 and start? I'm at y'all's mercy today.

11:25:02 10 MR. WALKER: I'd be just as happy to break so that he
11 can be presented in one go, if that suits Your Honor.

12 THE COURT: That suits me fine. So we'll come back at
13 12:30.

14 (Recess.)

12:33:36 15 THE COURT: You may be seated and you may call your
16 next witness.

17 MR. WALKER: Your Honor, I am going to use with this
18 witness some larger pictures that are more clear of what he has
19 in his report, and I would like to give you a copy of it.

12:34:01 20 THE COURT: Okay. Thank you.

21 DOUGLAS JOHNSON,
22 having been first duly sworn by the courtroom deputy clerk, was
23 examined and testified as follows:

24 THE COURTROOM DEPUTY CLERK: Please state your name
12:34:13 25 for the record.

1 THE WITNESS: Douglas Mark Johnson.

2 THE COURTROOM DEPUTY CLERK: And spell your first and
3 last names for the record.

4 THE WITNESS: D-O-U-G-L-A-S; and J-O-H-N-S-O-N.

12:34:40 5 DIRECT EXAMINATION

6 BY MR. WALKER:

7 Q Good afternoon. It's Dr. Douglas Johnson, is it not?

8 A Yes.

9 Q Okay. And I've got -- I placed in front of you a copy of
12:34:50 10 Defendant's Exhibit 13, which is a copy of your report. Would
11 you look at that, please?

12 A Yes.

13 Q Okay. And please turn to paragraphs 2 through 9, and I'll
14 ask you: Are those the -- your qualifications to testify as a
12:35:10 15 political scientist and your experience as a political
16 scientist?

17 A Yes.

18 Q Okay.

19 MR. WALKER: Your Honor, the parties have stipulated
12:35:19 20 that the experts in this case are qualified to testify to the
21 matters in their reports, and so I tender Dr. Johnson.

22 MS. KHANNA: No objection.

23 THE COURT: He's received as an expert.

24 BY MR. WALKER:

12:35:32 25 Q Look at paragraph 11, please, and tell the Court what you

1 were asked to do in this report, please.

2 A I was asked to review Mr. Cooper's work and to show my
3 opinions of them; in particular, looking at whether the
4 illustrative maps follow traditional redistricting principles
12:35:53 5 or whether race predominated in the drawing of those maps.

6 Q You used the term "traditional redistricting principles,"
7 and I, by habit, may sometimes lapse into the term I use, which
8 is "traditional redistricting criteria."

9 But can we understand that we're referring to the same
12:36:12 10 thing by those two terms?

11 A Yes.

12 Q Okay. Thank you.

13 Dr. Johnson, there's been a lot of testimony throughout
14 this trial about whether it's appropriate to use -- which
12:36:27 15 measure of the black population is appropriate to use when
16 drawing single-member districts such as Mr. Cooper has done.
17 And one is single-race black, and the other is any-part black.

18 And would you explain to the Court, please, the
19 differences between those and which one is appropriate to use
12:36:49 20 when you're drawing single-member districts such as Dr. Cooper
21 has done? And you may wish to refer to paragraphs 11 and 12 of
22 your report for that purpose.

23 THE COURT: And just for clarification, the report has
24 two paragraph 11s, I believe.

12:37:04 25 MR. WALKER: It does have two paragraph 11s. And this

1 would be the paragraph 11 -- thank you, Your Honor -- after
2 Roman Numeral III, Opinions and Analysis.

3 THE WITNESS: So the challenge is that the census
4 allows people to choose multiple categories. It started with
12:37:24 5 introduction of the Hispanic ethnicity question, and then a
6 separate race question.

7 And then starting with the 2000 census, the Census Bureau
8 now allows people to mark in the decennial census as many
9 ethnic and racial categories as they want.

12:37:43 10 BY MR. WALKER:

11 Q For example?

12 A For example, they can mark Hispanic, black,
13 African-American, Asian American, white, as many of those as
14 they self-identify as being a part of.

12:37:52 15 Q How many of them are there?

16 A Well, when the -- all the different combinations come
17 together, the Census Bureau reports a data for each individual
18 combination. And there are 255 possible racial categories that
19 the census tabulates.

12:38:08 20 And, of course, 255 or so is, you know, far too many to be
21 useful in any kind of analysis. If you're breaking out, you
22 know, voting cohesion studies, or anything like that, 255
23 fields would be useless.

24 Q Yeah.

12:38:28 25 A So what people debate, what economics debate is whether to

1 look -- what grouping of those to put together.

2 If you go with the any-part black, it counts as black, as
3 Mr. Cooper tends to focus on, although he uses different
4 measures, as well, in his report. But if anyone marks any
12:38:49 5 black or African-American category, regardless of what else
6 they put, do you count them? Or do you only count what we call
7 the single-race black where they only mark black, and we just
8 focus on those.

9 So when the Census Bureau decided to -- was directed by
12:39:11 10 Congress to allow people to choose multiple categories, the
11 Department of Justice got together with the Office of
12 Management and Budget and put out guidelines for the purpose of
13 redistricting. And, technically, it's mainly focused on the
14 jurisdictions that were preclearance jurisdictions back then,
12:39:29 15 but, of course, it became guidelines for everyone because
16 everyone's covered by Section 2.

17 They put out guidelines saying how to group these
18 different groups. And they said the primary way to look at
19 them is -- it's controversial. It was fought over, but their
12:39:45 20 guidance was if someone marks Hispanic, you count them as
21 Hispanic. It doesn't matter what else they mark. They go down
22 as Hispanic. And for the primary groupings, you would ignore
23 anything else they would mark.

24 If someone marks white in one of the other categories
12:40:01 25 other than Hispanic, then they are counted as that other

1 category -- African-American, Asian American, whatever it is.
2 And the white is ignored.

3 If they mark African-American and Asian American, or any
4 other combination of non-white non-Hispanic groups, then they
12:40:17 5 go into a multi-race category.

6 So once you follow those different guidelines, you end up
7 with the groupings listed on page 5 that -- so we're taking
8 those -- the giant pool of categories and narrowed it down to
9 eight essentially useful categories.

12:40:37 10 They also gave guidance saying kind of secondarily that
11 they will -- you know, where they find it relevant, they will
12 also look at single-race or any-part black, and they kept the
13 door open to that. But this is their primary data, which was
14 also reflected when Department of Justice went to the Census
12:40:59 15 Bureau and said, We need citizen voting age population data
16 broken down by a census block group.

17 So the Census Bureau releases the citizens voting age data
18 by a tract, which are units that roughly have about 4,000
19 people in them. So they're not very small. There are big
12:41:18 20 neighborhoods.

21 And the Department of Justice -- oh, and when people like
22 me ask the bureau to give us more detailed data, the bureau
23 said, no, it's not statistically reliable at smaller
24 geographies. We can't put out that data.

12:41:31 25 When people like me asked, they said, no. When the

1 Department of Justice asks, they do it. And so they did put it
2 out at the block group level.

3 And in that case, they only followed the primary method.
4 You can't get single-race black data that includes Hispanics in
12:41:41 5 the citizen voting age special tabulations from the Department
6 of Justice. It only has non-Hispanic black and non-Hispanic
7 black and African-American combined.

8 Q For the CVAP?

9 A For the CVAP, yes.

12:42:02 10 So it's both the primary focus and their guidance, and the
11 only data available in the Department of Justice's citizen
12 voting age population.

13 And I went to -- and I spoke at multiple conferences of
14 the National Conference of State Legislatures where DOJ would
12:42:17 15 be there, and the Census Bureau would be there. And we would
16 have these debates in 2010 and going into early 2011. And the
17 DOJ was very clear about their primary guidance.

18 THE COURT: Okay. So just to make sure I am clear on
19 the DOJ's primary guidance. It is what?

12:42:34 20 THE WITNESS: It is --

21 BY MR. WALKER:

22 Q Dr. Johnson, look at the eight categories.

23 A Right.

24 Q And please let the Court which one is the correct
12:42:42 25 category.

1 A Yeah. So in -- for the focus here where we're looking at
2 black or African-American in these districts, the DOJ guidance
3 would be non-Hispanic black, plus non-Hispanic black and white.
4 So very close to single-race black non-Hispanic with a -- the
12:43:02 5 people who marked black and white also included in there.

6 THE COURT: Okay. So --

7 THE WITNESS: So single race is the closest.

8 THE COURT: So you're looking at these eight
9 categories that are in paragraph -- second paragraph 11, and
12:43:18 10 it's on page 5 of your report; is that right?

11 THE WITNESS: Correct.

12 THE COURT: Okay. And so the category to use in
13 determining the African-American/black population is
14 non-Hispanic black plus non-Hispanic black and white?

12:43:40 15 THE WITNESS: Correct. Yeah.

16 In the Maptitude data that Mr. Cooper and I both use, or
17 the software that we use for mapping, the company actually
18 processes the census data for all their clients, and they
19 actually call this category DOJ black.

12:43:56 20 THE COURT: DOJ black. Okay.

21 What is CVAP? I missed that.

22 THE WITNESS: It's citizen voting age population.

23 THE COURT: Okay. All right. I got that.

24 THE WITNESS: Yeah.

12:44:06 25 THE COURT: I'm sorry.

1 THE WITNESS: It's not as prominent in this case as it
2 generally is. I suspect given the growth of the Latino
3 population in the next round of redistricting, it will be much
4 more prominent.

12:44:17 5 BY MR. WALKER:

6 Q That's prominent in California where you do a lot of work,
7 I suppose?

8 A Yes. Anywhere that has large non-citizen populations,
9 that tends to be more of the focus.

12:44:26 10 Q Dr. Johnson, looking at the list of the eight categories
11 in the second paragraph 11 on page 5, which category did
12 Mr. Cooper use to populate his districts?

13 A The numbers he reports are not in this list. He used the
14 all-part or -- I'm sorry -- any-part black. So if someone
12:44:47 15 marked black and anything else, he counted them when he
16 compiled his data for the illustrative maps.

17 And he talks about his view, that's the historic way and
18 could very well be true. I haven't looked back.

19 But as his data points out, 20 years ago in 1990, even in
12:45:04 20 2000, the number of Hispanics and Asian Americans in the state
21 was really small. So that difference between any-part black
22 and the single-race black was probably minuscule.

23 Now, of course, as Mr. Cooper himself puts out in the
24 data, the Latino population has grown very fast. The Asian
12:45:27 25 population has grown. And now we see it in the two reports.

1 The margins on these illustrative districts are so narrow
2 that those few people who mark African-American and Asian
3 American, or African-American and white, they make the
4 difference by whether or not you cross that 50 percent
12:45:46 5 threshold.

6 Q Well, let me ask you about that. And I will represent to
7 you that I am showing you a chart --

8 MR. WALKER: Your Honor, this is a chart from
9 Document 102, page 8. It happens to be --

12:46:00 10 THE COURT: Plaintiffs' or defendant's?

11 MR. WALKER: It's the plaintiffs' pretrial brief.

12 The reason I'm using it is I came with my own charts, but
13 Mr. Cooper had made some adjustments that didn't get carried
14 over to my charts. So there were minor adjustments, and we
12:46:16 15 didn't contest them. But there is a correct chart. So I'm
16 using it for that purpose.

17 THE COURT: Wait. This is from plaintiffs' brief?

18 MR. WALKER: Yes, ma'am.

19 THE COURT: Okay.

12:46:27 20 MR. WALKER: I'm just using the chart.

21 THE COURT: For the record, do we know the CMECF
22 document number?

23 MR. WALKER: 102.

24 THE COURT: Okay. All right. Thank you. Just wanted
12:46:39 25 to make sure we've got it straight.

1 And whose chart is that? And where did it come from?

2 MR WALKER: They've cited it to some of their exhibits
3 there just below the chart, Your Honor.

4 THE COURT: Okay.

12:47:01 5 MR. WALKER: And we don't contest these numbers.

6 THE COURT: All right.

7 MR. WALKER: Except that we do, but for different
8 reasons.

9 THE COURT: Okay.

12:47:20 10 BY MR. WALKER:

11 Q Dr. Johnson, if you'd look at the chart, and tell me if
12 Mr. Cooper had used what you said Maptitude refers to as DOJ
13 black, would all of Mr. Cooper's plans have two majority black
14 districts? And you may want to look at your paragraph 14 of
12:47:44 15 your report.

16 A No, they would not.

17 Q What would happen?

18 A Revised Plans 3 and 4 drop below -- it's weird to see your
19 hand up here next to me.

12:48:02 20 Q Oh, I'm sorry. Go ahead.

21 A So the Revised Plans 3 and 4 would no longer have a second
22 majority black district.

23 Q So explain that with regard to each plan, please.

24 A So I have the numbers here. So in paragraph 14, I talk
12:48:18 25 about -- that's on page 6 of my report -- the voting age

1 population in District 7 of Illustrative Plan 3.

2 So we're here on the chart he's reporting 50.34 percent.
3 It drops down to 49.9. And the voting age population District
4 2 in Illustrative Plan 4 is only 49.8.

12:48:42 5 So even though they're really small numbers of people
6 marking multiple categories in these areas, the margins on how
7 he's drawing these districts are so razor thin that it trips
8 them below the 50 percent threshold.

9 MR. ROUCO: I thought it said 49.8.

12:49:13 10 THE WITNESS: Correct.

11 MR. ROUCO: Not 49.08.

12 MR. WALKER: Oh. 49.8. I'm sorry.

13 THE COURT: It's that math again.

14 BY MR. WALKER:

12:49:20 15 Q And the other one was 49?

16 A .9.

17 Q .9. I wrote them down both wrong. My bad.

18 Let's take the numbers that Mr. Cooper used at face value,
19 okay? And assume that those are -- were the correct numbers to
12:49:48 20 use. Would you still have any problems with the districts that
21 he drew, in terms of demonstrating the possibility of complying
22 with the *Gingles* 1's requirement?

23 A Yes. The Census Bureau loves the fact that census data
24 often gets treated as perfect and cited as being perfect. But,
12:50:08 25 you know, when we all step back and think about it, we know

1 it's not, you know.

2 There's no margin of error in the decennial census because
3 of the way math works. You can't calculate a statistical
4 margin of error. But we've all heard about, you know, every
12:50:23 5 census has an undercount. Let's discuss every census it that
6 has an over count of different groups.

7 And so even at the point the census is taken, there's
8 error in it. And when the data comes out eight months later,
9 you know, people have moved. That area has grown.

12:50:42 10 So we know that there's changes. And we know that things
11 change over time. So whenever I see just, you know, 50.1 or
12 bare, bare majority numbers, it always makes me nervous that --

13 Q And by bare majority numbers, are you referring to the
14 numbers that are displayed -- that Mr. Cooper put into his
12:51:03 15 Districts 2 and 7 in Plans 1 through 4?

16 A Exactly. They're an example. And I see this fairly often
17 as people talk about -- in my work in redistricting.

18 But like him claiming 50.3, that's an awful big reliance
19 on the data being perfect with almost no margin for error.

12:51:24 20 Q And is it your testimony that the margins that Mr. Cooper
21 has given to his Districts 2 and 7 in Plans 1 through 4 are
22 well within the probable error of the census?

23 A Certainly.

24 Q Yeah.

12:51:40 25 A You know, there's no doubt, you know, and especially

1 nine years later. But when we're looking at the time of
2 adoption, we want to be sure that the district's going to meet
3 the threshold and perform, both when it's adopted and in the
4 elections that are going to take place over that decade.

12:51:54 5 And so having a .3 margin is razor thin. And it's kind of
6 a coin toss whether that city is actually majority
7 African-American or not.

8 Q In your work with redistricting, would you be comfortable
9 representing to a court districts with margins such as these as
12:52:14 10 evidence of compliance with the *Gingles* 1 requirement?

11 A No. It would be -- maybe it's not 50/50. Maybe it's
12 52/48 percent that it is or isn't in compliance. But those are
13 very narrow margins for a court to rely on.

14 Q If a district is drawn with a 60 percent -- let's say
12:52:37 15 about 60 percent BVAP, would that guarantee black success every
16 time?

17 A No. There's -- nothing guarantees success every time in
18 any election.

19 Q Does that give you a reasonable opportunity that a
12:52:53 20 minority will be able to elect a candidate of their choice as a
21 district -- as that district changes over the decade?

22 A It gives a much more solid belief that it is going to stay
23 majority African-American, or meet that threshold throughout
24 the decade, and certainly at the time of adoption.

12:53:18 25 Q Let's move from population numbers to compactness. And

1 I'll show you a map or actually a figure. This is from
2 Defendant's Exhibit 13 on page 7, and it's four views of
3 District 1; that is, it's each one of the District 1s drawn by
4 Mr. Cooper.

12:53:46 5 And, first of all, what are the ways in which compactness
6 can be measured?

7 A There are lots of measurements out there of compactness.
8 I think there's now eight of them built into the redistricting
9 software that we use.

12:54:03 10 A couple of years ago, actually, the U.S. Mathematics
11 Association had a whole panel at their annual conference on new
12 mathematical ways to measure compactness and redistricting.

13 And all of the math formulas have strengths and
14 weaknesses. And really what they're all trying to do is
12:54:26 15 numerically measure what we can all see in the maps.

16 The famous phrase in redistricting literature, as someone
17 wrote, The best compactness test remains the interocular test,
18 which is just a professor saying, I'll know it when I see it.
19 And each one has its own focus, and each one has its own flaws.

12:54:46 20 What really we're trying to measure, and what all of them
21 are trying to measure is are we bypassing one group of people
22 to get to another group of people? Are we wrapping around one
23 area and not putting them in because we don't like them in our
24 district for some reason in order to get to another group of
12:55:02 25 people that we prefer to have in our district? And that really

1 is the heart of what people really mean when they say
2 gerrymandering.

3 Q So the more you bypass one group of people to get to
4 another group of people, the less compact the district becomes?

12:55:17 5 A Exactly.

6 Q Okay. And would that be a description of the original
7 Shaw District?

8 A Yes, exactly.

9 Q Could you describe, if you could, the shape of the
12:55:28 10 original Shaw District?

11 THE COURT: First, what is the Shaw District?

12 BY MR. WALKER:

13 Q Sorry. Sorry. Would you explain to the Court what the
14 original Shaw District was?

12:55:36 15 A Sure. So there were a string of U.S. Supreme Court cases
16 about the -- really defined racial gerrymandering in a going
17 too far approach; decide the voting rights where we didn't go
18 far enough in cases.

19 And so the Shaw cases came out in North Carolina where one
12:55:57 20 of the plaintiffs I think are -- one of the parties was named
21 Shaw. And this is where Justice O'Connor wrote that
22 appearances matter.

23 And the Shaw District was a freeway. It was literally the
24 four lanes or eight lanes of the freeway. And then at
12:56:14 25 different off ramps, the district would stretch out and grab

1 African-American pockets of population. And then it would go
2 back to the freeway up to the next town and stretch off. And
3 so they --

4 Q And that went on for quite some distance, did it not?

12:56:29 5 A Yeah, it did. It was going through kind of rural North
6 Carolina and picking up different towns along the way until it
7 got to the necessary population and percentages.

8 And what the Court said was -- that's where the rule that
9 race can't be the predominant factor came from. Is looking at
12:56:45 10 appearances -- this looks really weird. Is it a sign that
11 something's wrong? Do we need to investigate this and see was
12 race a predominant factor, or does something else explain this?

13 I actually was part of drawing one of the ugliest
14 districts ever drawn which was Arizona's first district in 2001
12:57:07 15 that literally used the Colorado River through the Grand Canyon
16 to connect two parts of the district. It was ugly. We made a
17 lot of posters after that where people said gerrymandering.
18 But the reality was -- and that was ugly and that totally met
19 Justice O'Connor's rule of if this looks ugly, we need to
12:57:26 20 investigate.

21 Well, what it was, was the Hopi Nation was completely
22 surrounded by the Navajo Nation. And we had hours and hours
23 and thousands of pages of testimony from both groups saying
24 they didn't get along. And the Hopi wanted to be in a
12:57:41 25 different district so that they could get federal funding. So

1 that neck had a purpose that was very community of interest
2 driven.

3 So lack of compactness isn't a conviction. It's a trigger
4 for a deeper investigation to see is there some other factor,
12:57:58 5 traditional criteria or traditional principle that would
6 justify this district.

7 Q And I want to ask you whether or not you see a lack of
8 compactness in these maps. But I realize I forgot to ask you
9 something when we were talking about numbers and percentages
12:58:12 10 and the risk presented by relatively low percentages of
11 African-Americans in a district that purports to be a *Gingles*
12 1 district. And can you give a recent example from Mississippi
13 of that?

14 A Yes. This was just actually in the news this morning is
12:58:29 15 that Mississippi had a state senate district that was drawn to
16 be 51 percent African-American in 2011, and it consistently
17 elected a white Republican.

18 Q So it was drawn to be a majority African-American
19 district, and it consistently elected the Republican candidate?

12:58:51 20 A Exactly.

21 Q And in Mississippi, do African-Americans identify
22 typically with the Republican party?

23 A No. Their voting patterns are very similar to what has
24 been set up in the record in this case.

12:59:00 25 Q So there's a very high degree of congruence between race

1 and party identification in Mississippi as in Alabama?

2 A That's my understanding.

3 Q And African-Americans in Mississippi --

4 Ms. KHANNA: Objection, Your Honor. This is beyond
12:59:09 5 the scope of his report. I don't remember him testifying about
6 Mississippi at all.

7 BY MR. WALKER:

8 Q I will withdraw those questions and ask if you just want
9 to tell us about the example of the risk of a low margin as
12:59:24 10 illustrated in Mississippi?

11 A Sure.

12 MS. KHANNA: Objection, Your Honor. Again, that
13 example is not provided anywhere in his report.

14 THE COURT: I believe that's because it was something
12:59:34 15 in the news today; is that correct?

16 THE WITNESS: Right. I had not followed the case
17 closely until the election was just held. But it was a lawsuit
18 that overturned the 51 percent seat as not sufficient and
19 imposed a remedy district that's 57 percent. And then just
12:59:49 20 today the news came out that the African-American won that seat
21 by 4 percent, so moving it from 51 -- when the lawsuit moved it
22 from 51 to 57, that gave a 4 percent --

23 THE COURT: Do you remember the name of that lawsuit?

24 THE WITNESS: I'm horrible with lawsuit names. I'm
13:00:05 25 sorry.

1 THE COURT: I can relate.

2 THE WITNESS: It's the Mississippi State Senate.

3 THE COURT: Okay.

4 THE WITNESS: Case.

13:00:09 5 THE COURT: Thank you. *Thomas V. Bryant?*

6 MR. WALKER: I believe that's it, Your Honor.

7 THE COURT: Let the record reflect that Alex Davis
8 came forward with that name. I've hired smart law clerks.

9 BY MR. WALKER:

13:00:33 10 Q So you have before you this page that has all four
11 districts together on it. And then behind those, you have
12 expanded views of each district. And what I would like for you
13 to do, please, Dr. Johnson, is look at each one of these, and
14 I'll show you -- this is illustration 1, the Illustrative Plan
13:00:55 15 1, the District 1 from that, and that that's Defendant's
16 Exhibit 13 on page 25, and ask you if you see any problems with
17 this district, in terms of compactness and your definition of
18 compactness?

19 A Yes. So as you look at this map, the pink is District 1.
13:01:12 20 The white area is the other districts. And over in Mobile on
21 the left-hand side, the white is Mr. Cooper's new proposed
22 district coming into Mobile County.

23 And the kind of brownish lines on there are the county
24 borders, obviously. You have Henry and Houston. And where you
13:01:30 25 don't see a thick black line, the district border is following

1 the county border.

2 And so we come across the south, and when you get into
3 Mobile County, you can see the thick black line appear with all
4 the zigs and zags and jigs and jogs as the district crosses
13:01:48 5 using the I-10 bridge as it's contiguity, and then comes down
6 in essentially the smallest geographic edge he could along --

7 Q Am I pointing to the right place? The slender neck?

8 A Yes. Yes -- along the bay side of the city of Mobile.

9 Because he's avoiding picking up the Mobile voters in District

13:02:11 10 1. He's keeping all those voters in the heart of Mobile out.

11 Q What voters?

12 A The voters in the heart of Mobile who are mostly

13 African-American.

14 Q Okay.

13:02:20 15 A He's keeping them -- he's going around them and keeping
16 them out of the district to then get around and pick up the
17 south and west parts of the city of Mobile and the areas -- the
18 outlying areas to the west and south of the city, which are,
19 again, largely white voters he's putting into District 1.

13:02:39 20 Q Does it appear to you that he has gone around one group of
21 people to get to another group of people in drawing this
22 district?

23 A Exactly. He's going around one group to get to another.

24 And the only apparent justification that he can give for that

13:02:56 25 is race.

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1 Q Let me show you an expansion of Illustrative Plan 2 and
2 ask you: Does this also illustrate that Mr. Cooper went around
3 one group of people to get to another group of people?

4 A Yes. In Illustrative Map 2 that we're looking at now,
13:03:15 5 he's actually cutting through both Baldwin and Mobile counties.
6 He's picking up -- or he's picking up almost all of Baldwin
7 County except for some far north areas that are actually
8 relatively heavily African-American, and then, again, coming
9 down and using the Interstate 10 bridge and a very, very narrow
13:03:36 10 connector along the bay on the east side of the city to go
11 around those African-Americans in Mobile in another very jagged
12 zigs and zags approach that has no, you know, basis or reason
13 other -- given other than the race of the residents in those
14 areas in order to get around Mobile and again pick up the
13:04:00 15 southwest city residents and the rural residents who are
16 largely white in District 1.

17 Q He could have put all of Mobile County into District 2,
18 could he not have?

19 A I presume.

13:04:15 20 Q What would be the consequence of that?

21 A District 2 would not have been majority African-American.

22 Q Let me show you Illustrative Plan 3 and ask for your
23 opinion of District 1 in that plan. Does it also illustrate
24 that he went around one group of people to get to another group
13:04:33 25 of people?

1 A Exactly. Again, it's the kind of hooking around the city
2 using the I-10 freeway bridge across. And then at the bay
3 front edge of the city -- again, he's getting as little
4 territory of the city as possible on the bay front, and then
13:04:52 5 wrapping around picking up the south and west parts of the city
6 which are more white after going around that more
7 African-American parts of the area.

8 Q And, finally, Illustrative Plan 4, again, your testimony,
9 please?

13:05:06 10 A I give him points for creativity on this one. In this
11 case, he's using more of a fishhook. Instead of coming across
12 and going around the population with District 1, in this case,
13 it's his remedy district coming around and fishhook around
14 District 1 aiming at the same population of heavily
13:05:28 15 African-Americans in the Mobile area.

16 But in this case, he's connecting them -- instead of
17 coming down along the county line, he's coming down along the
18 state line. In those areas, they look whiter out in the rural
19 areas, but that's just one VTDY. He's just picking the minimum
13:05:48 20 number of VTDs with as few people as he can to get around to
21 the populated area in the city.

22 Q So just to be clear on this map, which is from the
23 Defendant's Exhibit 13, page 26, within mobile County, the
24 white area is District 2, and that's actually the area where
13:06:02 25 the relatively high concentration of African-American

1 population?

2 A Yes. The area along the state line is isn't heavily
3 African-American, but he's just getting as few people as he can
4 to hook around and get in to where the population is that that
13:06:16 5 fishhook contains, which is almost entirely in the
6 African-American neighborhoods of Mobile.

7 MR. WALKER: And, Your Honor, just because I wasn't as
8 scrupulous about this -- the maps, the expanded maps that I
9 have shown were from Defendant's Exhibit 13, pages 25 and 26.

13:06:33 10 THE COURT: Got it. Thank you.

11 BY MR. WALKER:

12 Q Not to beat a dead horse, Dr. Johnson, but let's do the
13 same thing with exhibit -- with the proposed District 2s.

14 And I'm showing you Defendant's Exhibit 13, page 8, which
13:06:59 15 are the four views of Defendant's Exhibit 2. And I'll ask you
16 to look at each one of these and say whether or not you think
17 it's compact.

18 And let me stop there. Your testimony was that in all
19 four of the versions of District 1 that we just looked at,
13:07:17 20 Mr. Cooper went around one group of people to get to another
21 group of people; is that correct?

22 A Yes.

23 Q And does it follow that you have an opinion as to whether
24 those districts are compact?

13:07:27 25 A Exactly, yeah. By definition, they would not be compact.

1 Q And, now, if you would give us your testimony as to
2 Illustrative District 1 version of District 2, please.

3 A Yeah. So these are the mere image or the puzzle pieces
4 that fit into the districts we were just looking at. And they
13:07:51 5 highlight how the map again is coming down into Mobile County.

6 In the case of Illustrative Map 1, it's getting the north
7 end of the county and then coming down into that heavily
8 African-American area mostly in Mobile and the surrounding
9 cities and picking up the African-American neighborhoods; not
13:08:12 10 picking up the whole city, just the African-American parts of
11 those cities and putting them into District 2.

12 And my -- my analysis has all been fairly heavily focused
13 on highlighting what's going on in Mobile. But you can see in
14 this map in Illustrative 1, he's also got these jigs and jogs
13:08:29 15 going through Marengo County. So, again, he hasn't given any
16 explanation or justification other than the --

17 MS. KHANNA: Objection, Your Honor. Outside the scope
18 of his report. There is no analysis on Marengo county.

19 MR. WALKER: I don't recall if -- if Ms. Khanna says
13:08:50 20 there's no analysis on Marengo County, I will go with that.

21 THE COURT: All right.

22 MR. WALKER: I'll withdraw that part of his testimony.

23 BY MR. WALKER:

24 Q Look, if you would, please, at Exhibit -- Defendant's
13:09:05 25 Exhibit 13, page 31, which shows Illustrative Map 2, please.

1 And does that also, within Mobile County and Baldwin County,
2 illustrate a lack of compactness in the drawing of that
3 district?

13:09:29 4 A Yes. Exactly. It's stretching through the north kind of
5 African-American -- heavily African-American part of Baldwin
6 County, and then the largely unpopulated Delta area in order to
7 use a narrow, narrow neck to get down into the African-American
8 neighborhoods in the Mobile area, in the city of Mobile area
9 that are being added in while bypassing all those populations
13:09:50 10 that they went -- you know, that they narrowly squeezed
11 through.

12 Q And the same with Illustrative Map -- I mean Illustrative
13 Map 3, District 2.

14 A Yes. This is, again, highlighting the area that District
13:10:08 15 2's picking up and forcing District 1 to wrap around as he
16 draws his districts, and just barely gets to that -- by his own
17 numbers, 50 percent, and by my numbers doesn't quite get to
18 that 50 percent number.

19 Q Okay. And, finally, Illustrative Map 4, District 2, a
13:10:28 20 hook or whatever it is?

21 A Rights. Again, this really -- the blue really shows the
22 fishhook through Mobile County. And it really highlights the
23 tip of the fishhook is that very densely, heavily populated
24 part of the city that is the goal that he's trying to get into
13:10:45 25 District 2 in all four of these maps just using various

1 different creative necks and arms to squeeze in there while
2 bypassing the more white population that he doesn't want to put
3 in there.

4 Q And so do you have an opinion of whether District 2 in all
13:11:03 5 four versions of the districting plan presented by Mr. Cooper,
6 does District 2 meet your definition of compactness?

7 A No, it does not.

8 Q Okay.

9 MR. WALKER: And, Your Honor, those maps were from
13:11:19 10 Defendant's Exhibit 13, page 8 -- excuse me -- and then
11 Defendant's Exhibit 13, pages 31 and 32.

12 THE COURT: Thank you.

13 BY MR. WALKER:

14 Q Mr. Johnson, go through the stack that I have got -- we're
13:11:38 15 going to skip over some of that. I think we have made our
16 point.

17 And go to this map (indicating), which is Defendant's
18 Exhibit 13, page 35.

19 A Okay.

13:11:48 20 Q And I'll ask you to explain this map to the Court, please.

21 A So this is zoomed in on Illustrative Map 2. And this is
22 that neck that comes down to the north part of Baldwin County
23 and down into Mobile County, the neck of District 2.

24 The colors that are shown here are highlighting the
13:12:11 25 African-American percentage. And I'm using the all-part

1 African-American because those are numbers Mr. Cooper said he
2 was looking at or using when he drew his maps.

3 And so the red census blocks are where African-Americans
4 are 75 percent or more of the voting age population. By that,
13:12:31 5 all parts count -- or any parts count. The yellow are 65 to
6 75 percent of the population is African-American. And the
7 green is 50 percent to 65 percent.

8 So the greens, yellows, and reds are where the
9 African-Americans are the majority. And then the blues --

13:12:48 10 Q Let me stop you there and ask you a question.

11 A Oh. Sure.

12 Q Does this tell you the percentage of ethnicity in a given
13 census block? Is that what it tells you?

14 A Exactly.

13:12:59 15 Q Okay. But it doesn't tell you the number of people who
16 live in an area?

17 A Correct.

18 Q Okay. So this area of west Mobile that I'm looking at, as
19 we read this map, what it tells us is that's primarily a white
13:13:14 20 area, but it doesn't tell us anything about the level of
21 population in that area?

22 A Exactly. The only population numbers you can tell are --
23 the areas that are colored in as white, we know those are zero
24 population.

13:13:29 25 Q Okay.

1 A But other than that, we don't know whether it's one person
2 or a thousand people in a given census block.

3 Q So looking at this map from Defendant's Exhibit 13, page
4 35, what, in summary, does it show?

13:13:42 5 A It shows how, in Illustrative Map 2, District 2 is coming
6 through, and you can see the mostly red and yellow and green
7 areas in the north part of Baldwin County, coming through that
8 neck, and then using mostly unpopulated territory to come down
9 south to get into where the -- the dense concentration of red,
13:14:06 10 yellow, and green census blocks are in the city.

11 Q And where you have the word Mobile, does that mean the
12 city of Mobile -- the densely populated city of Mobile is in
13 that area?

14 A Yes. That's that geographic center of the city.

13:14:19 15 Q Let me show you a map that's from Defendant's Exhibit 13,
16 page 36, and ask you to explain this to the Court, please.

17 A So this is the same color scheme and same demographics
18 being shown. In this case though, it's Illustrative Map 4.
19 This is the fishhook map.

13:14:40 20 So you can see District 2 coming along through -- granted
21 the white areas -- the purple meaning less than 25 percent
22 black or African-American. But, again, as we were just
23 discussing, they're very sparsely populated out along the state
24 line hooking down along the south edge and then up into Mobile
13:15:01 25 to capture that same pocket of green, yellow, and red census

1 blocks.

2 Q One more. This is from Defendant's Exhibit 13, page 34.

3 If you'll explain this one, and then we'll move on.

4 A Yes. So this is that same map we just looked at. This is

13:15:22 5 the tip of the fishhook coming up into Mobile.

6 So the black line is the district border. And, again, you

7 can see the colored-in census blocks. And it really shows how

8 closely aligned the district borders are to those majority

9 black or African-American census blocks.

13:15:46 10 Q Thank you. Excuse me, Dr. Johnson. Next I want to show

11 you this map from Defendant's Exhibit 13, page 14, and ask you

12 what it shows?

13 A So this is showing an overlay of the 2011 adopted map with

14 the 2001 benchmark or predecessor map.

13:16:16 15 So the colors -- the pink, blue, green, yellow, and

16 brown -- are the districts as adopted in 2011. And the thick

17 black lines are the 2001 district lines.

18 So this is showing how kind of at a glance you can see how

19 closely aligned the two districts were -- or I'm sorry -- the

13:16:39 20 two maps were.

21 Q So when the legislature adopted the 2011 congressional

22 map, does it appear that the legislature was conscious of and

23 sought to preserve the cores of existing districts?

24 A Certainly.

13:16:54 25 Q Why would the legislature want to do that? What's the

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1 value, in terms of democracy and the functioning of democracy,
2 in preserving the cores of existing districts?

3 A It gets to actually what other districts have talked about
4 already, which is most, if -- certainly a lot, if not most, of
13:17:14 5 the issues that members of Congress and other elected officials
6 deal with are long-term problems; you know, trying to expand
7 the bridge, trying to deal with education issues in a district,
8 trying to bring economic development to an area, trying to
9 build a new freeway.

13:17:34 10 All of these major issues that members of Congress deal
11 with all the time, these are long-term issues. And so by
12 preserving the core of the districts, you keep the
13 relationships that are working on those issues. The member of
14 Congress knows the local officials. They know the, you know,
13:17:52 15 civil servants who are working on these projects. And they
16 have their own expertise on that issue.

17 You have had other witnesses talking about their detailed
18 knowledge of the economic engines of each of their districts
19 and what needs to be done to improve the economic needs in each
13:18:12 20 district.

21 So when we say preserving the cores of a district, or, you
22 know, when the U.S. Supreme Court cites that as a traditional
23 criteria, it's a very -- you know, I'm a demographer -- it's a
24 very generic vanilla demographer's term.

13:18:28 25 But what they're talking about is maintaining all that

1 history and all that work that's going on in those
2 relationships that exist so that they can continue to work
3 going forward.

4 Q I believe you were in the courtroom -- you may have been
13:18:42 5 in the courtroom yesterday when Representative Byrne testified
6 about the importance of getting a bridge across the Mobile Bay.
7 Is that something that he could handle in a two-year term?

8 MS. KHANNA: Objection, Your Honor. Beyond the scope
9 of his report.

13:18:56 10 THE COURT: Sustained.

11 BY MR. WALKER:

12 Q Look, if you will, at Defendant's Exhibit 13, page 15, and
13 tell the Court what this map is, please.

14 A So the black lines on here are, again, the same as in the
13:19:15 15 previous map. They are the 2001 map lines that were in place
16 before the 2011 redistricting.

17 But the color shadings in this case have been replaced now
18 with the Illustrative Map 3 drawn by Mr. Cooper. So now you
19 can see the difference between those thick black lines, and the
13:19:34 20 colors underneath show much more extensive changes that have
21 been drawn into this map compared to the previous map.

22 Q Does it appear that this -- at least in Illustrative Map 3
23 that Mr. Cooper showed regard for the cores of existing
24 districts?

13:19:57 25 A Definitely not.

1 Q Okay. And do you know whether the Supreme Court has
2 stated that the cores of existing districts is a conditional
3 redistricting principle or criteria?

4 A Multiple times. The best known was in *Karcher v.*

13:20:19 5 *Daggett* -- K-A-R-C-H-E-R, V --

6 Q Which, as I recall, was a congressional redistricting
7 case?

8 A Yes, I believe so. And then that's been cited in
9 subsequent cases, as well.

13:20:29 10 Q I am now showing you Defendant's Exhibit 13, page 20.

11 What does this map show, please, Dr. Johnson?

12 A So, this is Mr. Cooper's map showing the area that he put
13 together into the District 2 and District 7 in his illustrative
14 maps.

13:20:53 15 So the thick black line that you see kind of weaving
16 through the central and south part of the state, that's the
17 outer border of the combination of those two districts combined
18 over all of his maps. And the color shading that I'm pretty
19 sure has been discussed before, this is the African-American
13:21:15 20 percentage of the county as a whole for each of the counties in
21 the state.

22 And then highlighted in the bottom left with the purple
23 arrow is this weird pocket that he includes. And that's the
24 arrow I added. The pocket is in his map. It's the kind of
13:21:35 25 south and west edge of Mobile and the areas outside it which

1 are heavily white that he went around in every one of his maps.

2 So when he overlays all four, that pocket is left out.

3 Q In every one of his maps, that pocket is left out?

4 A Exactly.

13:21:51 5 Q Would that affect the population count for the districts
6 to which that pocket would have been assigned?

7 A Yes. That small area has -- I spelled it out in my
8 report, I think 94,000 people in it. And when you put it into
9 the rest of the outlined area, it's so much more heavily white
13:22:12 10 that it actually drops the African-American percentage of the
11 area as a whole by about 2 percent.

12 Q Thank you.

13 I'd like to show you -- ask you to look at, please,
14 Dr. Johnson, paragraphs 28 and 29 of your report. And I will
13:22:34 15 show you Figure 10 from your report, which is Defendant's
16 Exhibit 13, page 16. Again, Figure 10. And ask you to explain
17 this to the Court, please.

18 A So this is looking at the percentage of the population
19 that was moved into new districts between the -- compared to
13:23:01 20 the 2001 map. So this is numerically showing what we were just
21 looking at in the overlay maps.

22 And you can see the adopted 2011 map at the far left,
23 where it says 10.4 percent, the short bar, shows the state
24 really made minimal changes. You know, the 70-something
13:23:24 25 thousand people had to be added into District 7 because it was

1 short of what the population needed according to the 2010
2 census.

3 Q Did you say 70,000?

4 A I think it was 70,000 -- yes. Oh, here in paragraph 31 is
13:23:42 5 the specific number. It's 79,467.

6 Q About 500 less than 80,000?

7 A Yes, exactly. So some people had to move. That district
8 was short. Other districts were over. So that's why we
9 restrict is people have to move.

13:24:01 10 So the adopted map kind of was minimal changes you might
11 describe it, and only 10 percent of the state's population
12 moved.

13 Then the other bars you can see how much more population
14 moved. 25 to 31 percent of the state's population were changed
13:24:19 15 from their old district to the new district, which means new
16 relationships, getting to know new representatives, having to
17 educate the new representative on the issue of their areas,
18 and, to some degree, start over in whatever projects each
19 community had going with their old representative, and
13:24:38 20 hopefully convincing the new representative to be just as
21 interested in the project as the old representative was. You
22 use that buy-in that you had before.

23 Q Well, if the state, when it drew the maps in 2011 only
24 needed to move 10.4 percent of the population, and in the
13:24:59 25 process of that had to repopulate Representative Sewell's

1 district, which was almost 800,000 -- I mean, excuse me --
2 80,000 people short of ideal population, why did Mr. Cooper
3 need to move in his Illustrative Plan 1, 30 percent of the
4 state's population; and in Illustrative Plan 2, 25.3 percent of
13:25:21 5 the state's population; and in Illustrative Plan 3,
6 28.8 percent of the state's population; and in Illustrative
7 Plan 4, 30.9 percent of the state's population?

8 A Well, this is the core of the whole of my report where I
9 kind of walk through all these other criteria of looking for an
13:25:40 10 explanation. Was he trying to make the map more compact? Was
11 he trying to respect cities and other communities of interest
12 better than the adopted map? Was he trying to retain the core?
13 Was he trying to follow any of the traditional redistricting
14 principles in drawing the lines a different way and in moving
13:25:59 15 all these additional people?

16 And, you know, you can't check any of those boxes. None
17 of those traditional criteria explain it. The only thing that
18 explains it is race.

19 Q So Mr. Cooper seemed to indicate in his testimony that it
13:26:15 20 was important to try to keep counties whole. Did he keep
21 Mobile County whole in any of his plans?

22 A No.

23 Q Did he respect communities of interest in Mobile County in
24 his plans?

13:26:27 25 A No.

1 Q Did he respect communities of interest between Mobile and
2 Baldwin County in his plan?

3 MS. KHANNA: Objection, Your Honor. There's no
4 testimony about the communities of interest in his report.

13:26:40 5 MR. WALKER: That's not correct. There is.

6 BY MR. WALKER:

7 Q Dr. Johnson, if you can find the report I'm looking for,
8 feel free to speak up.

9 A Yeah. So on page 22, paragraph 44, where I summarize it,
13:27:43 10 I list -- page 22, paragraph 44, it's subpoint B, as in boy, I
11 list out the traditional redistricting principles I look at,
12 and I find that Mr. Cooper does not justify the changes based
13 on any of them, including respecting communities of interest
14 such as counties, cities, and VTDs.

13:28:02 15 THE COURT: Which subparagraph of paragraph 44 is
16 that?

17 THE WITNESS: B, as in boy.

18 THE COURT: Thank you. You may proceed.

19 MR. WALKER: I beg your pardon?

13:28:32 20 THE COURT: You may proceed.

21 MR. WALKER: Thank you, Your Honor.

22 BY MR. WALKER:

23 Q So you looked at -- we've talked about communities of
24 interest. We've talked about compactness. We've talked about
13:28:45 25 contiguity.

1 Is his plan any more or less contiguous than -- do all the
2 districts in his plan link up or connect to each other?

3 A Technically, yes. They all are geographic contiguous. Is
4 that the extreme definition? As I mentioned, in three of these
13:29:08 5 maps he's only using the I-10 bridge for contiguity, but...

6 Q Maybe threadbare, but it's contiguous?

7 A Yes.

8 Q Does he have significantly less or even less in all of his
9 plans splits of cities, counties, and VTDs than the state did
13:29:26 10 in its 2010 plan?

11 A I didn't find any disagreements with his counts where he
12 talks about he had the same number -- or I think in some of the
13 maps he said he had one or fewer splits. The one or fewer
14 split claims are a little extreme because what he's counting is
13:29:46 15 up in Jackson County.

16 MS. KHANNA: Objection, Your Honor. Not in his
17 report.

18 BY MR. WALKER:

19 Q Dr. Johnson, do you talk about VTD splits in the reports?
13:29:59 20 I think it's in the same paragraphs that we just looked at that
21 says respecting communities of interest such as counties,
22 districts, and VTDs?

23 MS. KHANNA: Your Honor, Dr. Johnson is providing a
24 lot of color on -- well, he did -- on new criticisms of
13:30:14 25 Mr. Cooper's plans that are just not included in his report.

1 It's very difficult to rebut something that you are learning
2 for the first time at trial.

3 MR. WALKER: Dr. Johnson was deposed, and they were
4 free to ask any question they wanted about any part of this
13:30:28 5 exhibit.

6 MS. KHANNA: Based on his report.

7 THE COURT: Did you ask him what VTDs did you mean?

8 MS. KHANNA: No. We did not ask him whether or not he
9 had additional criticisms other than what's in his report. And
13:30:42 10 if he did, I think that would still be beyond the scope of his
11 report.

12 THE COURT: Did you ask what VTDs he was referring to
13 on page 22?

14 MS. KHANNA: We certainly discussed VTD at his
13:30:54 15 deposition.

16 THE COURT: Did he discuss Jackson County?

17 MS. KHANNA: Not that I recall.

18 MR. WALKER: I don't actually recall whether he did.
19 We will withdraw the comment about Jackson County if that helps
13:31:05 20 us move forward, Your Honor.

21 THE COURT: Okay.

22 BY MR. WALKER:

23 Q Let me just bring this to a close.

24 Does respect for communities of interest explain the
13:31:15 25 difference in the districts that Mr. Cooper drew and the

1 state's 2011 districts?

2 A No.

3 Q Does compactness explain that difference?

4 A No.

13:31:28 5 Q Does contiguity explain that difference?

6 A No.

7 Q Does minimizing splits explain that difference?

8 A No.

9 Q Does protecting incumbents explain that difference?

13:31:41 10 A No.

11 Q Or preserving the cores of existing districts?

12 A No.

13 Q So what are we left with?

14 A The only explanation is that race is the predominant

13:31:51 15 factor in Mr. Cooper's maps.

16 Q Thank you much, Dr. Johnson.

17 MR. WALKER: Your Honor, I pass the witness.

18 THE COURT: If we could -- I need to take a short

19 break. I have got a phone call I need to return.

13:32:05 20 We'll come back at -- let's just go on and say 1:45.

21 MS. KHANNA: Yes, Your Honor.

22 MR. WALKER: Thank you, Your Honor.

23 (Recess.)

24 THE COURT: You may proceed.

13:47:40 25 MS. KHANNA: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MS. KHANNA:

3 Q Good afternoon, Dr. Johnson.

4 A Good afternoon.

13:47:44 5 Q Your task in this case was to review the expert report and
6 illustrative maps submitted by Mr. Cooper and to share your
7 opinions of them; is that correct?

8 A Along with looking at the data, yes.

9 Q And you provide no response to Dr. Palmer's initial report
13:48:02 10 on racially polarized voting in Alabama?

11 A Correct.

12 Q And you have no reason to dispute Dr. Palmer's conclusions
13 on functionality in his rebuttal report, correct?

14 A I don't think I even read them.

13:48:15 15 Q And you did not dispute any part of Mr. Cooper's analysis
16 of socioeconomic disparities between blacks and whites in
17 Alabama?

18 A Correct.

19 Q And you have no reason to dispute any of the conclusions
13:48:28 20 in Dr. McCrary's report relating to the history of
21 discrimination in voting?

22 A Correct.

23 Q On page 4 of your report, you discuss what you believe to
24 be the proper metric of African-American; is that right?

13:48:47 25 A Proper in that it's the Department of Justice guidelines,

1 yes.

2 Q And your preferred metric, as reflected in your report, is
3 made without reference to any understanding you had about what
4 Alabama actually uses when it tabulates black voting age
13:49:10 5 population, correct?

6 A Right. I was not relying on what the state had done.

7 Q And is it fair to say that your metric, metric that you
8 advance is different than the metric that Dr. Hood advances?

9 A Slightly different, yes.

13:49:26 10 Q Is it your opinion that Dr. Hood's position -- sorry. Is
11 it your position that Dr. Hood is using the wrong metric?

12 A Well, depends on his purposes. If he's trying to evaluate
13 the *Gingles* majority test, then, yeah, it would be the wrong
14 metric. It may be the right metric for his purposes.

13:49:49 15 Q But you do not argue that Dr. -- that Mr. Cooper is, in
16 fact, using the wrong metric to calculate BVAP, do you?

17 A I'm sorry?

18 Q How about this: Is it your position that Mr. Cooper is
19 using the wrong metric according to the DOJ guidelines for
13:50:08 20 assessing black voting age population?

21 A Yes; that he's using the wrong measure. And when you use
22 the right measure, the two lesser maps don't meet the
23 50 percent threshold.

24 Q So in your report, don't you say in paragraph -- on page
13:50:26 25 5, footnote 3 that both the DOJ guidance and the OMB guidance

1 provide the option to follow Mr. Cooper's approach?

2 A I don't know about -- I wouldn't describe it as an option.
3 It's a secondary analysis that DOJ reserves the right to do if
4 they find it's justified in using that instead of the original
13:50:51 5 approach. And, again, as I mentioned, when you get into
6 citizen voting age cases, you can't do the secondary method
7 because that data is not available.

8 Q And the cases in which you're talking about that often get
9 into the issues of citizen voting age population, those are
13:51:07 10 cases that are often involving large Latino populations; is
11 that correct?

12 A Some of them are not so large, but, yes, they tend to
13 involve Latino or Asian American communities.

14 Q And oftentimes where the minority group at issue is either
13:51:23 15 exclusively or includes the Latino population; is that correct?

16 A It also comes into play in Asian-America jurisdictions,
17 but in addition to Latinos areas.

18 Q The vast majority of your work has been in California and
19 the American southwest; is that correct?

13:51:37 20 A Yes.

21 Q Where there are significant Latino populations and Asian
22 populations; is that correct?

23 A Certainly Latino in just about all of them, and Asian in
24 many of them.

13:51:46 25 Q Certainly relative to southern Alabama, larger populations

1 of those minority groups?

2 A Certainly larger in Latino -- you have some pockets of
3 fairly large Asian American population here. But, yes, not --
4 Alabama doesn't have percentages that California does, for
13:52:03 5 example.

6 Q Fair enough. So you refer to the DOJ guidelines in your
7 report; is that correct?

8 A Yes.

9 Q Can we please pull up Plaintiffs' Exhibit 125?

13:52:17 10 So Plaintiffs' Exhibit 125 is the DOJ's guidance
11 concerning redistricting under Section 5 of the Voting Rights
12 Act; is that correct?

13 A Yes.

14 Q And it's dated in February of 2011, right?

13:52:32 15 A Yes.

16 Q And this is the document that you cite in your report
17 discussing how to allocate African-American population?

18 A Yes. There are earlier versions, and there's an OMB
19 guidance too, but they're all essentially the same.

13:52:46 20 Q Well, this is the version that would have governed the
21 redistricting process in 2011, correct?

22 A Yes; along with Department of Justice speeches.

23 Q So does this version refer to Department of Justice
24 speeches?

13:53:04 25 A No.

1 Q It's the written document actually published by the
2 Department of Justice, correct?

3 A Yes. When I refer to speeches, the head of the Section 5
4 unit comes to the National Conference of the State Legislature
13:53:15 5 redistricting seminars, and we talk about these guidelines and
6 how they would be interpreted and implemented.

7 Q So you have heard some speeches from DOJ officials before,
8 right?

9 A Yes, many times.

13:53:25 10 Q So you would agree that the standard for determining
11 racial categories in the Section 5 context is the standard to
12 be applied in the Section 2 case, as well; is that right?

13 A In my experience, they tend to be the same standard.
14 There may be some legal intricacies that are more lawyerly than
13:53:50 15 my work, but, yes, generally, they would correspond.

16 Q If we could turn to page 4 of this document. I won't ask
17 you to read the very fine print on this whole thing. Although
18 I think it's -- there we go.

19 But you do see the heading called The Use of the 2010
13:54:17 20 Census Data --

21 A Yes.

22 Q -- in the middle of the page?

23 And you would agree that that is where the DOJ guidance
24 discusses the various racial categories on the census, correct?

13:54:28 25 A In this register, yes.

1 Q And at no point in this DOJ guidance does the DOJ list the
2 eight categories of race data that your report lists, correct?

3 A I don't remember if it would be here or in the OMB
4 guidance.

13:54:49 5 Q Okay. But it's not listed here. We will take a look at
6 that in a second.

7 A Okay.

8 Q Is that fair?

9 A I -- it's not listed on the page you're showing. I don't
13:54:57 10 know if it's on another page or not.

11 Q Can I -- can we show the next page, as well?

12 You agree it's not listed in the section called, The Use
13 of 2010 Census Data?

14 A Well, actually in the third column, it does -- it doesn't
13:55:23 15 list them. It describes them.

16 Q In your interpretation, you believe that those eight
17 categories come from the text of this document?

18 A Well, no. Here it's describing them. It's summarizing
19 the OMB guidance.

13:55:38 20 Q Okay. If we can go back to the page 4 of the document.
21 So you did mention that the DOJ guidelines refer to a separate
22 document issued by the OMB, correct?

23 A Yes.

24 Q And that's a lot of acronyms. The OMB, for the record, is
13:56:01 25 what office?

1 A Office of Management and Budget.

2 Q Okay. And in this document toward the -- in the third
3 column toward the bottom, you'll see that DOJ specifically
4 cites to footnote 1 of the *Georgia v. Ashcroft* opinion; is that
13:56:18 5 correct?

6 A Yes.

7 Q And they do that in the discussion of how to allocate
8 multi-race responses, correct?

9 A They're talking about their secondary approach would be
13:56:48 10 allocating those numbers off.

11 Q They're -- you said secondary approach. But I'm just
12 looking at the beginning of the paragraph. The department will
13 then move to the second step in its application of the census
14 data.

13:57:00 15 Are you referring to that second step as a secondary
16 approach?

17 A Yes.

18 Q Okay. Are you familiar with the *Georgia v. Ashcroft*
19 opinion?

13:57:11 20 A I'm aware of it. I couldn't quote it to you.

21 Q Luckily, I can.

22 In fact, Mr. Cooper actually cites to that exact same
23 footnote in *Georgia v. Ashcroft* in his rebuttal report -- or
24 actually in his initial report, correct?

13:57:29 25 A I don't recall off top of my head.

1 Q Do you want me to show you? Do you believe me?

2 A It's up to you. Yes.

3 Q We'll just pull up Plaintiffs' Exhibit 1, please, at page
4 5.

13:57:48 5 And here this is Dr. Cooper's initial -- sorry --
6 Mr. Cooper's -- I just promoted him -- Mr. Cooper's initial
7 report. And you see in his footnote on page 5, he says, It is
8 my understanding that following the U.S. Supreme Court decision
9 in *Georgia v. Ashcroft* that the any-part definition is the
13:58:05 10 appropriate census classification to use in most Section
11 2 cases? Correct?

12 A That's what it says.

13 Q Okay. And --

14 THE COURT: Is that based on a footnote in that
13:58:17 15 *Ashcroft* case -- *Georgia v. Ashcroft* case?

16 MS. KHANNA: Yes. And I'm happy to pull up the
17 footnote, if that's easier.

18 THE COURT: No. But if it's a footnote, that's not a
19 holding or a determination in the case, is it?

13:58:42 20 MS. KHANNA: That may well be, Your Honor. But I
21 believe that the questions that I am posing of Dr. Johnson are
22 what his understandings of the guidelines are. And the
23 guidelines do specifically cite to a footnote in the *Georgia v.*
24 *Ashcroft* opinion.

13:58:55 25 BY MS. KHANNA:

1 Q In fact, if we can go back to the guidelines, Plaintiffs'
2 Exhibit 125, page 4.

3 And we already saw that the *Georgia v. Ashcroft* opinion is
4 specifically cited here, footnote 1.

13:59:13 5 MS. KHANNA: And actually, Heather, can you pull up
6 the *Georgia v. Ashcroft* opinion?

7 THE COURT: Are we going to look at the holding of the
8 case, or are we going to look at a footnote?

9 MS. KHANNA: We're going to look at the actual
13:59:30 10 footnote to which the DOJ guidelines cite.

11 And if we can scroll down -- I apologize. I don't have
12 the pdf number -- to footnote 1. Here we go.

13 BY MS. KHANNA:

14 Q Footnote 1 here you'll see, Dr. Johnson, the Court notes
13:59:55 15 that Georgia and the United States in this case had different
16 figures depending on, quote, whether the total number of blacks
17 included those people who self-identify as both black and a
18 member of another minority group such as Hispanic.

19 Do you see that?

14:00:12 20 A Yes.

21 Q Okay. And I'll just direct your attention to the kind of
22 second half of that footnote where it says, moreover.

23 Moreover, the United States does not count all persons who
24 identify themselves as black. It counts those who say they are
14:00:32 25 black and those who say that they are both black and white. But

1 it does not count those who say they are both black and a
2 member of another minority group. Using the United States'
3 numbers may have more relevance if the case involves a
4 comparison of different minority groups.

14:00:51 5 And then it cites to some cases there.

6 Here, however, the case involves an examination of only
7 one minority group's effective exercise of the electoral
8 franchise. In such circumstances, we believe it is proper to
9 look at all individuals who identify themselves as black.

14:01:09 10 Did I read that correctly?

11 A I believe so.

12 Q And that's the footnote cited by DOJ; is that correct?

13 A Yes.

14 Q You also mentioned the OMB guidance, as well. If we could
14:01:25 15 pull up Plaintiffs' Exhibit 126.

16 And this is the OMB bulletin that you cite in your report,
17 is it not?

18 A Yes.

19 Q And if we could please turn to page 3 of this document.

14:01:45 20 Here at the top we see a section entitled, Guidance on
21 Aggregation and Allocation of Multiple Race Responses For Use
22 in Civil Rights Monitoring and Enforcement. Correct?

23 A Yes.

24 Q Okay. And at the bottom we see a section entitled,
14:02:00 25 Allocation Guidance. It's Roman Numeral II.

1 A Yes.

2 Q And there it is says that, Federal agencies will use the
3 following rules to allocate multiple race respondents for use
4 in Civil Rights monitoring and enforcement. Do you see that
14:02:17 5 paragraph?

6 A Yes.

7 Q And it lists several bullet points underneath that. That
8 third bullet point there says, Responses that include two or
9 more minority races are allocated as follows: If the
14:02:34 10 enforcement action is in response to a complaint, allocate to
11 the race that the complainant alleges the discrimination is
12 based on.

13 Do you see that?

14 A Yes.

14:02:47 15 Q So you would agree that according to the OMB guidance that
16 you cite in your report, if the minority group upon which the
17 complaint is based is African-American, then individuals who
18 identify themselves as black and one or more other minority
19 races should be assigned to the African-American category,
14:03:05 20 correct?

21 THE COURT: Excuse me. Is this an enforcement action
22 in response to a complaint?

23 MS. KHANNA: Is this present case an enforcement
24 action? No, it is a -- but it is the guidance that Dr. Johnson
14:03:25 25 has said is relevant in deciding what the appropriate metric is

1 in this case.

2 THE COURT: I'm confused. Is this the guidance that
3 you were relying on?

4 THE WITNESS: No. Since this is not the methodology
14:03:38 5 that we use in developing databases for redistricting.

6 THE COURT: All right.

7 THE WITNESS: And it's not -- it's not the methodology
8 that the Department of Justice asked the Census Bureau to
9 follow when it asked the Census Bureau to calculate the
14:03:53 10 citizens voting age population.

11 BY MS. KHANNA:

12 Q I'm going to turn your attention to your report,
13 Defendant's Exhibit 13, page 5, footnote 3.

14 I believe the Court just asked you if that OMB guidance
14:04:08 15 was the guidance you were relying on. Do you not cite that
16 exact OMB document in your footnote 3 on your report?

17 A Yes.

18 Q So it is, in fact, the guidance that your report is
19 relying upon, correct?

14:04:19 20 A Not the sentence you're reading there about the
21 enforcement action.

22 Q Can you -- and you would agree that the DOJ guidelines
23 that you also cite in your report refer to that same OMB
24 document, correct?

14:04:34 25 THE COURT: I don't think he's disputing the document.

1 I think he's disputing that one sentence that you pointed out
2 to him that appears to apply to an enforcement action.

3 BY MS. KHANNA:

4 Q Can we go back to Plaintiffs' 126? Let's start from the
14:05:07 5 first page. So this is a four-page document, and this is the
6 document that you cite in your report, and it's the document
7 that DOJ relies upon, as far as you're concerned in its
8 guidelines, correct?

9 A That's my understanding.

14:05:20 10 Q Can you take -- and take your time. Take a look at the
11 four-page document and tell me what it is that you cite it for.

12 A Well, I refer to it because it's referred to in the DOJ
13 guidance. And I would note right in that DOJ guidance is their
14 initial method is not the method you're reading here from the
14:05:39 15 OMB process.

16 So their initial method in the DOJ guidance that I'm
17 reading is not what's listed in that enforcement action
18 paragraph. It's to allocate them as I have described.

19 Q So when you cite the OMB guidance, this document in your
14:05:54 20 report, you're actually not citing it for any particular
21 proposition stated in the OMB guidance?

22 A It's -- as you saw in the DOJ guidance, it's all rolled
23 together, so they tend to get cited together. And that's where
24 the data -- the data we compile comes from is that guidance
14:06:14 25 from DOJ, which focuses on what DOJ says is their initial

1 method of reviewing these cases.

2 And, yes, this is in as a second method as an option. And
3 it really highlights -- you know, this goes to the key point
4 I'm bringing up of Mr. Cooper's plans -- that the debate over
14:06:34 5 whether we include or not include African-Americans who also
6 marked Asian, who also marked Hispanic, who also marked Native
7 American which way that debate goes decides whether his maps
8 work -- if they meet the threshold because his margins are so
9 narrow. And that --

14:06:54 10 Q I appreciate your testimony. That's not exactly what I
11 asked. I'm really just trying to find out what you are relying
12 on for what you determined to be the proper metric of BVAP.
13 That's about three or four pages of report. And so I just want
14 to completely understand. You are relying on the DOJ
14:07:10 15 guidelines that we've already looked at, correct?

16 A Yes.

17 Q And those guidelines cite *Georgia v. Ashcroft*, footnote 1?

18 A In their secondary approach.

19 Q And what you're referring to as the secondary approach is,
14:07:34 20 in fact, DOJ's second step of its approach, correct?

21 A Sure.

22 Q You could see how maybe those are different things, a
23 first step and a second step?

24 A I am not a lawyer, so I'll let you -- I will let the
14:07:48 25 lawyers debate that.

1 Q Dr. Johnson, you would agree that Mr. Cooper's approach is
2 not wrong under the DOJ guidance read as a whole, correct?

3 A I would say it fails under one approach and barely passes
4 under the other approach.

14:08:34 5 Q Because you are reviewing the DOJ guidance as two separate
6 approaches rather than an initial step and a second step,
7 correct?

8 A I'm not sure I see the difference there.

9 Q You would agree that Mr. Cooper's approach is not wrong
14:08:52 10 under the U.S. Supreme Court's guidance in *Georgia v. Ashcroft*,
11 footnote 1?

12 A From what we've just looked at, it seems to follow that.
13 I have -- I don't know -- I'm not enough of an expert to know
14 how much of the Voting Rights Act reauthorization -- I know it
14:09:14 15 reversed some of the *Georgia v. Ashcroft* precedents, but I
16 don't know if it reversed that part or not.

17 Q On page 5 of your report, in paragraph 5, you state that,
18 Of the Alabama residents who marked black, African-American on
19 their 2010 census form, 11,026 or 1.2 percent of them also
14:09:35 20 marked some either other category. Mr. Cooper counts them all
21 in his BVAP figures, but his report provides no analysis or
22 even anecdotes that these 11,026 people vote cohesively with
23 those who meet the traditional Department of Justice definition
24 of African-American for redistricting purposes.

14:09:55 25 Did I read that correctly?

1 A Yes.

2 Q And that 11,026 number that you cull out, that includes
3 people who are both black and white, correct?

4 A Yes.

14:10:08 5 Q But according to you, those people should, in fact, be
6 counted as African-American in this Section 2 analysis,
7 correct?

8 A Yes.

9 Q Regardless of whether blacks and whites vote cohesively
14:10:23 10 with one another?

11 A Under the DOJ guidance, correct.

12 Q And, in fact, we know from racial voting patterns in the
13 area that blacks and whites don't vote cohesively with one
14 another?

14:10:35 15 A People who are black and people who are white. We don't
16 have any data on people who self-identified both.

17 Q But regardless, is it your opinion that we should be
18 including both people black and white in that figure?

19 A I follow DOJ's guidance on that.

14:10:53 20 Q I want to make sure, because you talk about an 11,026 that
21 I think you're suggesting Mr. Cooper should have not included,
22 but that number includes people that you think should be
23 included in the determination of BVAP, correct?

24 A I didn't break them out, so I don't know the number in
14:11:13 25 there, but some fraction of 11,000.

1 And, again, we're back to the margins on these districts
2 are so narrow that 11,000 people swings them over or under the
3 *Gingles* threshold -- G-I-N-G-L-E-S.

14:11:42 4 Q Well, I won't cross-examine you on whether it's pronounced
5 *Gingles* or *Jingles*.

6 THE COURT: I won't either.

7 BY MS. KHANNA:

8 Q Is it fair to say that neither the DOJ guidance that we
9 looked at -- Plaintiffs' Exhibit 125 -- or the OMB guidance
14:12:03 10 ever mentions the word cohesive or cohesion in its discussion
11 about how to allocate the races?

12 A You're right. They don't mention it directly. But
13 obviously it would be part of their review if they're looking
14 to see if a cohesive voting block is experiencing polarized
14:12:25 15 voting. They would want to know if -- by definition they would
16 need to know if it's cohesive.

17 Q You state in your report that, Even if the those
18 multi-race, multi-ethnic voters really do vote cohesively with
19 African-American voters, a 1 percent error in the census
14:13:01 20 numbers would mean that Illustrative Maps 3 and 4 have zero
21 majority African-American districts. An illustrative map would
22 have only one. In pursuit of a stated goal to create two
23 districts where African-Americans could elect their preferred
24 candidates, the illustrative maps could end up with zero such
14:13:19 25 districts.

1 Did I read that correctly?

2 A Which paragraph are you reading?

3 Q I am looking at -- did I not refer you to a number?

4 A No.

14:13:31 5 Q Paragraph 15, I think, starting on page 6. And I believe
6 I started reading on --

7 A Correct.

8 Q -- the third to the last line.

9 So isn't it a fact that there is no statistical margin of
14:13:51 10 error for the census?

11 A The margin of error can't be statistically measured.
12 There is an error.

13 Q It cannot be calculated?

14 A Correct.

14:14:02 15 Q And you have not provided any estimate that the
16 statistical - or any calculation -- or reason to believe that
17 the statistical margin or error for the census is 1 percent, or
18 .1 percent, or 3 percent, correct?

19 A I have not cited the studies because they're --

14:14:22 20 Q Because the number can't be calculated?

21 A Yeah. There are estimates out there. The Census Bureau
22 itself puts out estimates of what it thinks the undercount is
23 of different groups and what the over count is of other groups.
24 But they're all specific to those studies.

14:14:38 25 There's no statistical number. And this is the key to

1 statistics is we have statistically measurable error, and then
2 we have systematic error. And so we know there's systematic
3 error. We just don't know how big.

14:14:53 4 Q And you have chosen 1 percent not based on any particular
5 study or reason to believe that that would be the right
6 calculation in a world where you could calculate it?

7 A It's an often cited sample number when you're talking
8 about the overall error in the census. Lots of people throw
9 out 1 percent as a general rule, because we know it's pretty
14:15:10 10 good. It better be. We use it for every opinion poll and
11 every other study in the country. But we also know that
12 there's some error.

13 We know that -- for example, for African-Americans and
14 Latinos, most undercount estimates are around 2 or 3 percent.
14:15:29 15 College students are actually over counted.

16 So 1 percent is a fairly reasonable guess. But, again,
17 we're looking at systematic here. We can't confirm it.

18 Q And you don't have any citation for that, correct?

19 A No. I didn't put any in my report.

14:15:43 20 Q Dr. Johnson, you are not aware of any instance in which
21 any type of error in the decennial census was determined to
22 have an effect on whether a district could be considered a
23 majority-minority district, are you?

24 A I'm not aware of any federal case where the remedy
14:16:02 25 district -- or the illustrative district was so close that it

1 would have mattered.

2 Q It would not surprise you to learn that there are, in
3 fact, a number of majority black districts across the country
4 that are less than 52 percent BVAP, would it?

14:16:17 5 A I mean, there are three in California less than 33 percent
6 BVAP.

7 Q There's three majority-minority districts in California
8 that are less than 33 percent BVAP?

9 A There are three voting rights driven districts in Los
14:16:32 10 Angeles that are less than 33 percent that are -- that
11 consistently elect African-Americans.

12 Q Thank you.

13 So you would agree that there probably are majority black
14 districts that are less than 52 percent minority voting age
14:16:46 15 population, correct?

16 A I know the three from California off the top of my head.

17 Q Which are far less than 52 percent, correct?

18 A Yes. And also don't meet the *Gingles* threshold.

19 Q But as you just testified, they do provide opportunities
14:17:06 20 to elect for minority voters, correct?

21 A Yes. One of them recently failed, but historically they
22 have.

23 Q Dr. Johnson, you are familiar with the *Gingles 1* standard
24 as articulated by the U.S. Supreme Court?

14:17:21 25 A Yes.

1 Q You applied it in your analysis in this case and others?

2 A And in my work almost daily.

3 Q So you're familiar with the *Bartlett v. Strickland* case
4 defining the numerical threshold for that standard?

14:17:41 5 A Yes.

6 Q Can we please pull up *Bartlett v. Strickland*? If we could
7 turn to page 8 of the document?

8 You'll see the highlighted portion on your screen.

9 Provides the majority my -- actually why don't you read it
14:18:04 10 because I'm tired of reading?

11 A The majority-minority rule relies on an objective,
12 numerical test: Do minorities make up more than 50 percent of
13 the voting age population in the relevant geographic area?
14 That rule provides straightforward guidance to courts and to
14:18:21 15 those officials charged with drawing district lines to comply
16 with Section 2.

17 Q Dr. Johnson, this does not say that the objective
18 numerical test is 50 percent minus an estimate or guess at the
19 level of error in the census, does it?

14:18:37 20 A No. It says what I read.

21 Q And it doesn't say that the objective numerical test is
22 50 percent plus whatever specific percentage in that area would
23 provide a functional opportunity based on analysis of turnout
24 and voter registration in the area? Does it?

14:18:55 25 A No. It says what I read.

1 Q Because you would agree with me that it would hardly
2 provide straightforward guidance to courts and officials
3 charged with drawing district lines if different people were to
4 provide guesses at a supposed error that you just testified
14:19:12 5 can't be calculated, correct?

6 A No. I wouldn't agree with everything wrapped into that
7 statement.

8 Q So I asked whether or not the *Bartlett v. Strickland* test
9 incorporates in this language an error rate in the census, and
14:19:31 10 you, I believe, testified it does not?

11 A No. I said that it did not -- that written in here was
12 not the line that you had read.

13 Q Fair enough. Written in the language that I read --
14 written in the highlighted language. It says nothing about a
14:19:45 15 census error, correct?

16 A It talks about more than 50 percent, a number that has to
17 be measurable, and the Court would have to be confident of that
18 number.

19 An error -- you know, it's not the total population rule,
14:20:04 20 you know. It's not this artificial one person thing.

21 It's pretty clear to me that that language says the
22 50 percent number needs to be a reliable number. We can't be
23 50/50 it is. We can't be -- you know, we can't be 52/48 that
24 it is 50 percent. It doesn't apply to me that we should guess
14:20:27 25 or be that close. When we know there's error in the data, we

1 want to be safe.

2 Q So your understanding is that this language implies that
3 we should guess at the census error rate which cannot be
4 calculated?

14:20:38 5 A No.

6 Q And that that would be straightforward guidance?

7 MR. WALKER: Your Honor, if I may. This is a matter
8 that we will be glad to brief to the Court.

9 THE COURT: Sustained.

14:20:46 10 MR. WALKER: It's not appropriate to continue to ask
11 this witness about that.

12 THE COURT: It's a legal matter. I think it's
13 appropriate for the Court, not for the witness.

14 MS. KHANNA: Understood, Your Honor.

14:20:57 15 BY MS. KHANNA:

16 Q To be clear, Dr. Johnson, you performed no analysis
17 whatsoever of the effectiveness of the illustrative districts
18 in Mr. Cooper's plans, correct?

19 A Correct.

14:21:12 20 Q You had performed no analysis about the extent to which
21 they would actually provide an opportunity to elect minority
22 preferred candidates?

23 A Correct.

24 Q And you are not asserting any opinion on the effectiveness
14:21:25 25 of those districts, are you?

1 A Correct. I've seen lots of districts like this drawn and
2 seen what they've done, but I did not write that up in my
3 report.

4 Q You certainly provide no analysis to that effect, correct?

14:21:40 5 A Correct.

6 Q So, Dr. Johnson, I believe you testified on direct that
7 Plaintiffs' illustrative plans fail to comply with the
8 traditional districting criterion of compactness, correct?

9 A Yes.

14:21:57 10 Q And that's based on your visual review of the districts?

11 A And just about any measure of that southern district, in
12 particular.

13 Q So you would agree, wouldn't you, that under *Gingles 1*
14 plaintiffs must establish that the minority community is

14:22:19 15 sufficiently numerous and geographically compact to comprise a
16 majority of the voting age population in a new congressional
17 district, correct?

18 A Yes.

19 Q And you would agree that the compactness aspect of the
14:22:30 20 first *Gingles* precondition refers to the compactness of the
21 minority population, not the compactness of any given district,
22 correct?

23 A No. I disagree with that.

24 Q So your understanding of the *Gingles 1* standard is that it
14:23:12 25 looks at -- it does not look at the compactness of the minority

1 population, but looks at the compactness of a minority
2 district?

3 A The remedy district -- or the illustrative district --
4 sorry -- the illustrative district would need to be
14:23:28 5 geographically compact to meet the language of the *Gingles*.

6 Q I guess we'll save that legal dispute for another day.

7 You looked at the Reock scores of the illustrative plans
8 on page 10 of your report; is that right?

9 A Yes.

14:24:03 10 Q And in your opinion, there are no thresholds in the Reock
11 score that would classify a district as objectively compact or
12 objectively non-compact; is that correct?

13 A Not built into the test itself. The jurisdictions often
14 set a floor.

14:24:19 15 Q But you don't actually have a threshold that you apply,
16 correct?

17 A Well, it would vary based on the jurisdiction. The scores
18 are heavily driven by the shape of the jurisdiction. So you
19 couldn't set -- it would be impossible to set an effective
14:24:33 20 universal Reock score. It has to be done jurisdiction by
21 jurisdiction.

22 Q I believe you testified on direct about an instance in
23 which the Hopi and the Navajo didn't get along, and, therefore,
24 it made sense they would be drawn into different districts.

14:24:50 25 Did I understand that correctly?

1 A Yes. That was -- the request given their history was to
2 be drawn in different districts.

3 Q Given their history?

4 A Yes.

14:24:59 5 Q And so if two groups -- your opinion was that in those two
6 Native American nations didn't get along it made sense to draw
7 them in different districts; is that correct?

8 MR. WALKER: Object, Your Honor.

9 THE COURT: Sustained.

14:25:10 10 BY MS. KHANNA:

11 Q Dr. Johnson, you would agree that when you're drawing a
12 plan to add a new majority-minority district, that plan will
13 often look different from the prior plan because of that
14 change?

14:25:28 15 A Are you citing something I said up here or something I
16 wrote?

17 Q I'm asking you a question.

18 A I'm sorry. What was the question?

19 Q You would agree that when you are drawing a plan to add a
14:25:45 20 new majority-minority district, that plan will often look
21 different from the prior plan because of that change?

22 A The degree of difference will vary depending on the
23 situation, but obviously it will be a different plan, so
24 something would be different.

14:26:01 25 Q You would be putting a new district into an area where it

1 wasn't before, so, yes, it would look different from the prior
2 plan, correct?

3 A Not necessarily.

4 Q Do you recall having your deposition taken in this case?

14:26:25 5 A Yes.

6 Q If we could call up Dr. Johnson's deposition page 120.

7 You see at the bottom on line 18 you were asked: When you
8 draw a plan and add a new majority-minority district, does that
9 plan or that district often look different from the prior plan
14:26:42 10 because you're adding a majority-minority district?

11 If you could turn to the next page. Your answer was:
12 Yes. You're putting a new district into an area where it
13 wasn't before, so yes.

14 Is that what you testified to?

14:26:53 15 A Yes. What I was referring to now is that you don't
16 necessarily need to put a new district. It can sometimes be a
17 small adjustment to an existing district.

18 Q Understood. If the plan adds a majority-minority district
19 that wasn't there before, core retention in that district will
14:27:15 20 be less; is that correct?

21 A Usually. Depends on how it's drawn.

22 Q And you would agree that if we were to look at some of the
23 plans that you have drawn over the course of your career, it is
24 likely we would find that in those plans that have added a new
14:27:31 25 majority-minority seat that wasn't there before, the core

1 retention of the surrounding districts will have decreased,
2 correct?

3 A I am sure there is examples of that. I mean, it all goes
4 back to whether you're having to erase a part of the map and
14:27:49 5 draw something all new or just slightly adjust one of the
6 existing districts, or if you're adding a whole new district to
7 the state, like Arizona when they -- when you add a whole
8 another congressional district.

9 Q I believe you testified on direct to a legal case --
14:28:04 10 THE COURT: Just a minute. Would that also be the
11 same if you're losing a district, as opposed to adding a
12 district?

13 THE WITNESS: You would get very funny core retention
14 numbers because one of the old districts would now go to zero
14:28:20 15 because it doesn't exist anymore.

16 So there you would have to carefully review what you're --
17 what my numbers would say about core retention. And you have
18 to exclude that one piece and only look at the other seven, I
19 guess, or whatever the remaining number are.

14:28:39 20 BY MS. KHANNA:

21 Q And, Dr. Johnson, I believe you testified with counsel on
22 direct about a case called *Karcher v. Daggett*. That's a case
23 you brought up; is that right?

24 A Yes.

14:28:48 25 Q That's a 1983 one person one vote case. Is that what you

1 recall?

2 A I remember. I cite it for the core constituency. I don't
3 remember the details of it versus another case.

4 Q Well, in that case, the Court cites core retention of the
14:29:03 5 government interest that might justify population deviations.
6 Does that sound familiar?

7 A Yes. That's how the Supreme Court defines all traditional
8 criteria is things beyond the federal laws, obviously, which I
9 intend to separate federal laws are not traditional criteria.
14:29:21 10 They kind of top everything.

11 And then the traditional criteria are essentially things
12 the courts have approved as appropriate justifications for
13 deviation.

14 Q You would agree that a congressional plan cannot have any
14:29:33 15 population deviation outside of one person deviation; is that
16 correct?

17 A There are exceptions to that, but they're pretty rare.

18 Q All right. Dr. Johnson, you present the opinion that race
19 predominated in Mr. Cooper's illustrative plans; is that right?

14:29:53 20 A Yes. In the absence of any other explanation, that's the
21 only remaining explanation left standing.

22 Q So you base your determination on Mr. Cooper's
23 explanations about what he did and did not consider; is that
24 right?

14:30:05 25 A I'm not aware of any other available information to base

1 it on.

2 Q You weren't in the courtroom on Monday when Mr. Cooper
3 testified about what he considered and didn't consider in
4 drawing illustrative plans, were you?

14:30:18 5 A No.

6 Q And you agree that Mr. Cooper says in his report that race
7 was not his predominant consideration?

8 A Of course he does.

9 Q And he testified in open court under oath to that same
14:30:32 10 effect, or I can represent to you that he testified since you
11 weren't here to hear him.

12 A Okay.

13 Q Would you be surprised to learn that no Court has ever
14 rejected Mr. Cooper's Section 2 illustrative plans on the basis
14:30:45 15 of race predominating?

16 MR. WALKER: Objection, Your Honor. She is asking the
17 witness to vouch for Mr. Cooper, which is simply not
18 appropriate.

19 MS. KHANNA: Your Honor, I believe this witness'
14:30:52 20 testimony is based entirely on whether or not Mr. Cooper's
21 explanations are what he deems to be credible. And I think
22 that Mr. Cooper's explanation --

23 THE COURT: I think the question of credibility is
24 left for the Court. I observed and heard Mr. Cooper's
14:31:09 25 testimony. He did not.

1 BY MS. KHANNA:

2 Q I want to turn to the maps that your counsel showed you.

3 And I am going to have to use the Elmo. I'm not sure if I can.

4 THE COURT: It's not so terribly hard.

14:31:27 5 MS. KHANNA: I just didn't know if I had the power.

6 THE COURT: You've got the power.

7 MS. KHANNA: I've got the power.

8 Thank you, Your Honor.

9 BY MS. KHANNA:

14:31:34 10 Q So this is from Defendant's Exhibit 13, page 35. This is
11 the blowup map that your counsel talked with you about; is that
12 right?

13 A Yes.

14 Q I appreciate my assistant's help.

14:31:54 15 MR. SPIVA: I told her I'd be her Vanna White.

16 THE COURT: All right, good.

17 BY MS. KHANNA:

18 Q And this is a portion -- a blown-up portion of
19 Illustrative Plan 2; is that correct?

14:32:04 20 A Yes.

21 Q And I believe you testified on direct that this, what you
22 call a foot, reflects a racial predominance; is that correct?

23 A Yes.

24 Q You would agree that there are pockets of high density
14:32:27 25 African-American or rather high BVAP populations right outside

1 this district, say in Citronelle, or at the very bottom of this
2 district, that green square right there (indicating)?

3 A Actually, once you get outside of the core area, the
4 numbers of people per census block get very low. And the other
14:32:50 5 piece is that this map is showing census block by census block.

6 And to his credit, Mr. Cooper was at least staying in the
7 VTD level of geography. So one of the problems of these maps
8 is you can't see how many people are in each block. So I don't
9 know and I have significant doubt that the red and yellow
14:33:09 10 pockets that are a little ways outside the district have any
11 significant number of people in them or that they're in a VTD,
12 they would be majority African-American.

13 Q And you would agree that Dr. Cooper -- sorry -- Mr. Cooper
14 did follow VTD lines in drawing this map, correct?

14:33:24 15 A As he discussed, he had to split the VTDs along the bay
16 front as he squeaked along the edge there. But otherwise, yes.

17 Q In fact, you mentioned that there might not be too much
18 population out here in the rural area like over here
19 (indicating); is that correct?

14:33:41 20 A I'm sorry. I didn't see where you're pointing. You're
21 pointing on the Elmo.

22 Q In the Citronelle area. You said there might not be too
23 much population there?

24 A Well, Citronelle has people. It's a city. But the
14:33:55 25 question is how many people are in that one census block that

1 pops up as red in that field of purple.

2 Q You don't know, correct?

3 A I don't know. But the odds are its not much, or he
4 probably would have grabbed it.

14:34:09 5 Q That's probably true for some of these predominantly white
6 areas that are in the relatively rural part; is that correct?

7 A Yeah. I already discussed the white areas along the state
8 border are very sparsely populated.

9 Now, that's not true in Mobile where we're in the city and
14:34:24 10 actually incorporated areas that are fairly densely populated.

11 Q You would agree that in this portion of District 2
12 Mr. Cooper does include large pockets of white areas as well;
13 is that correct?

14 A There are some that he could not get around.

14:34:42 15 THE COURT: And just to be clear for the record. When
16 we're talking about white areas, what are we referring to when
17 looking at this map?

18 BY MS. KHANNA:

19 Q Well, I can clarify the way I was using the term, and
14:34:59 20 maybe you can clarify if you were using a similar definition?

21 THE COURT: Well, this is his map, so I would like to
22 hear from Dr. Johnson as to what the white portions of the map
23 represent.

24 THE WITNESS: Sure. So I understand the confusion
14:35:14 25 definitely.

1 The areas shown on the map in the color white are
2 unpopulated areas that have no people in them. I believe what
3 we are discussing is the areas where the demographic of the
4 block is white unless it's shown as purple or dark blue.

14:35:27 5 THE COURT: Okay. And how would we know the
6 difference between a white color on the map that's unpopulated
7 and an area where white people populate the map?

8 THE WITNESS: So where the white people live are shown
9 as purple and blue. And then the area that's colored white
14:35:55 10 is -- it's mainly Delta, but it's -- no one lives there at all.

11 THE COURT: Thank you.

12 BY MS. KHANNA:

13 Q I'm glad to learn that we're both using the same
14 definition of white.

14:36:08 15 THE COURT: I just wanted to make sure that the record
16 reflects that.

17 MS. KHANNA: Yes. I appreciate that, Your Honor. And
18 I realize that there could be some confusion.

19 BY MS. KHANNA:

14:36:15 20 Q You would agree that -- this is Illustrative Plan 2; is
21 that correct?

22 A Yes.

23 Q You would agree that if we were looking at, say,
24 Illustrative Plan 1, that plan would include something along
14:36:27 25 these lines, some things -- a line that is more west than the

1 District 2 line in Illustrative Plan 2?

2 A Yes. If you go back to the -- the zoomed-in blue maps you
3 can see Exhibit 13, page 31. Oh, I was going to the next one.
4 It's the blue map showing -- yeah.

14:37:03 5 Q Actually, I'm going to look at Defendant's Exhibit 13,
6 page 7, and I believe what we were just discussing was
7 Illustrative Plan 1 and how it actually extends more west into
8 those predominantly white areas. Would you agree with that?

9 A Yes. Instead of coming south to get the rest of the
14:37:29 10 population, it doesn't come as far south, it goes west.

11 Q And in so doing, it has more predominantly white areas in
12 that portion of that extension, correct, into Mobile County?

13 A On the very fringe. I don't know if it's more white than
14 the southern tip of Illustrative 2. I presume in each case --
14:37:53 15 the end of the district tends to be where you're just get
16 getting to the final population count and doing as well as you
17 can.

18 So I presume in the four maps, since the numbers came out
19 fairly similar, the demographics are fairly similar, regardless
14:38:05 20 of whether you took the southern tip of Illustrative 2 or the
21 western edge of Illustrative 1.

22 Q You don't know if this part has more white population than
23 this part, is that what you are saying?

24 A Correct. Again, we're in the density of the population at
14:38:20 25 issue.

1 Q But you don't actually provide a racial schematic analysis
2 of Illustrative Plan 1 at all; is that right?

3 A No, I didn't. No.

4 Q And you would agree -- sorry. You would agree that
14:38:40 5 looking at your Defendant's Exhibit 13, page 7, those four
6 maps, Illustrative Plan 2 shows perhaps the narrowest and
7 longest extension into Mobile County; is that correct?

8 A It's a hotly contested debate between Illustrative 2 and
9 then the fishhook in Illustrative 4.

14:39:02 10 Q Both of which you present analyses of in your report,
11 correct?

12 A Yes.

13 Q And you provide no analysis -- racial schematic analysis
14 of Illustrative Plan 1 or Illustrative Plan 2; is that correct?

14:39:13 15 A You mean Illustrative 1 or 3?

16 Q Exactly. Thank you for correcting the record. You
17 provide no racial schematic analysis of Illustrative Plan 1 or
18 Illustrative Plan 3; is that correct?

19 A Correct. As you've done, it's easy enough to flip between
14:39:30 20 the amount of maps that I did do and just compare where the
21 lines go.

22 Q Dr. Johnson, you would agree that all of Mr. Cooper's
23 plans comply with the equal population principle?

24 A Yes.

14:39:51 25 Q And you would agree that Mr. Cooper's plans keep the same

1 number of counties whole as the 2011 plan, and in some cases
2 preserve more whole counties than in the 2011 plan, correct?

3 A No. I think the county splits that he claims to reduce is
4 he takes one -- Jackson County from having two splits to just
14:40:16 5 one split in it. So I don't think he's reducing the number of
6 counties split.

7 THE COURT: That's if we look at his maps as a whole,
8 as opposed to just Districts 1 and 2?

9 THE WITNESS: Correct. Yeah. Districts 1 and 2 are
14:40:33 10 definitely splitting more counties -- at least District 1 is
11 splitting more counties in his map than it does in the adopted.
12 BY MS. KHANNA:

13 Q Maybe I can make this clearer and quicker.

14 Do you have any reason -- you have no reason to dispute
14:40:48 15 Mr. Cooper's analysis on the number of county and VTD splits
16 for each of his illustrative plans; is that correct? As
17 reported in his report; is that correct?

18 A One of them's fairly ticky-tack. I didn't go into detail
19 about it, but -- the numbers are close enough that clearly the
14:41:08 20 number of county splits doesn't just -- improving -- improving
21 the number of county splits doesn't justify the massive changes
22 he's making because he didn't -- even by his own numbers, he
23 didn't make that big of an improvement.

24 But whether it's one or zero, I didn't go into, even
14:41:25 25 though that Jackson County thing is a bit of an overriding

1 legislative decision just to have a fun number to put in his
2 report.

3 Q I am going to repeat my question.

4 THE COURT: I think that's something that the Court
14:41:36 5 can count, even if it is counting numbers.

6 BY MS. KHANNA:

7 Q You provided no such analysis of that split in either your
8 report or your deposition when discussing the number of county
9 splits; is that correct?

14:41:51 10 A Right. It didn't go to the point of my report which is
11 does -- is that a traditional criteria that would justify how
12 he drew these lines, and explain how it's a basis other than
13 race. And it does not.

14 Q You would agree that Mr. Cooper's illustrative plans are
14:42:07 15 contiguous, correct?

16 A As we discussed, just barely. But, yes, they do meet the
17 technical definition of contiguous.

18 Q And you would agree his illustrative plans do not pair any
19 incumbents as based on the revised plans; is that correct?

14:42:22 20 A Yes, as revised.

21 Q And you do not dispute Mr. Cooper's claim that he follows
22 VTD lines; is that correct?

23 A I agree with his description that generally he does.

24 There are a couple of exceptions. But I agree with how he
14:42:38 25 describes it.

1 Q As he reports?

2 A Yes.

3 Q Dr. Johnson, on page 3 of your report, you list other
4 cases in which you've testified as an expert; is that correct?

14:42:53 5 A Yes.

6 Q On one case that does not appear on that list is one that
7 just happened this summer called *Common Cause v. Lewis* in which
8 you testified?

9 MR. WALKER: Your Honor, I'm sorry. I didn't mean to
14:43:04 10 interrupt my colleague. But I do want to make an objection
11 when it's appropriate.

12 THE COURT: Do you know what she's going to ask, or
13 should we let her ask her question and then you can object?

14 MR. WALKER: I'm pretty sure what I know what she's
14:43:20 15 going to ask. She is going to ask about some cases that he has
16 participated in.

17 And I would make the same objection that my colleague
18 Mr. Davis made when earlier she asked about cases that Dr. Hood
19 had participated in. The point being that the parties have
14:43:37 20 stipulated to the expertise of these expert witnesses.

21 MS. KHANNA: Your Honor, I believe on direct
22 Mr. Walker specifically asked about previous cases that
23 Dr. Johnson has testified in, whether he would or would not
24 point out various flaws or would present various arguments in a
14:43:59 25 Section 2 case. And I believe he's certainly opened the door

1 to question Dr. Johnson on opinions he's had in other cases on
2 these similar topics.

3 MR. WALKER: Your Honor, I believe that I -- I may
4 recall incorrectly. But my recollection is that I very
14:44:19 5 generally said, Do these paragraphs indicate cases in which you
6 have testified? And he said, yes. And I think we moved on.

7 MS. KHANNA: Well --

8 THE COURT: I don't remember any significant
9 conversation about prior testimony.

14:44:36 10 MS. KHANNA: I believe he asked Dr. Johnson whether or
11 not he would present an analysis in a certain way to a Court in
12 a Section 2 case, whether he would have provided those numbers.

13 THE COURT: Well, if there's a case that occurred
14 after his report, I think we could easily update his report
14:45:00 15 with a reference to a more recent case. Is that what you're
16 trying to do?

17 MS. KHANNA: Yes, Your Honor.

18 THE COURT: Okay. Do you want to ask him if he's
19 testified more recently than his report which was submitted --
14:45:17 20 I don't know if it's got a date on it or not.

21 MR. WALKER: Your Honor, if I may get a point of
22 clarification.

23 THE COURT: Okay. His report was dated May 6th, 2019.
24 So are you asking him about something subsequent to the report?

14:45:35 25 MS. KHANNA: Yes, Your Honor.

1 MR. WALKER: If she wants a stipulation that he
2 participated in a case, we would agree to that.

3 If she wants to talk about that in a way that attacks his
4 expertise, we would say that the parties have agreed to the
14:45:51 5 expertise of the experts. And that and consistent with the
6 ruling Your Honor made earlier today about with Dr. Hood under
7 the same circumstance, that that line of inquiry should be
8 foreclosed.

9 THE COURT: Okay. Well, I'd like to know if he
14:46:08 10 testified in another case more recently. So I'd like to have
11 an answer to that question, if I may. Is that what you're
12 asking him?

13 MS. KHANNA: That would be the first question I was
14 going to ask, Your Honor, yes.

14:46:22 15 BY MS. KHANNA:

16 Q Dr. Johnson, is it -- you did testify this summer in a
17 case in North Carolina called *Common Cause v. Lewis*; is that
18 correct?

19 A Yes.

14:46:30 20 Q Do you recall how the Court -- whether the Court rejected
21 your testimony in that case?

22 A I recall.

23 Q You recall that it did?

24 A No, it did not.

14:46:43 25 Q Do you recall whether the Court stated that you testified

1 as a live witness in four cases previously, and the courts in
2 all four cases have rejected your analysis?

3 MR. WALKER: Objection, Your Honor.

4 MS. KHANNA: Your Honor, he just said the Court did
14:47:02 5 not reject his analysis, and I'm correcting him or attempting
6 to impeach him.

7 MR. WALKER: She's attempting to impeach his
8 expertise, but the parties have stipulated to the expertise.

9 MS. KHANNA: Your Honor, I would just like to renew
14:47:17 10 the argument about the weight and credibility of the expert's
11 testimony. We are not trying to exclude his testimony, but we
12 believe this is relevant to the weight and credibility of his
13 testimony, particularly since it's a case not included in his
14 report.

14:47:26 15 THE COURT: That was why I wanted to know the name of
16 it. Thank you. That's all I need.

17 MS. KHANNA: Thank you, Your Honor.

18 Thank you, Dr. Johnson.

19 THE COURT: Redirect, Mr. Walker?

14:47:45 20 MR. WALKER: A very little bit, Your Honor. More than
21 one question, but a very little bit.

22 REDIRECT EXAMINATION

23 BY MR. WALKER:

24 Q Dr. Johnson, you were asked about the primary method that
14:48:04 25 DOJ uses and then a secondary method that it uses.

1 Does DOJ ever skip the primary method and go to the second
2 method?

3 A No.

4 Q It always uses the primary method? That's why it's called
14:48:18 5 the primary method?

6 A Yeah, or the initial method, yes.

7 Q Okay. Now, would you agree with me that for the Voting
8 Rights Act to work for all of this to matter, when an election
9 is held enough African-Americans have got to show up at the
14:48:38 10 polls for African-Americans to have a reasonable opportunity to
11 elect their candidate of choice?

12 A Yes.

13 Q And do Dr. Cooper's plans, his proposed District 1s,
14 embedded in those is the assumption that persons who identify
14:48:58 15 as part black and part something else, that those people vote
16 together with people who identify as DOJ black?

17 A Right. My entire understanding is the reason to bring a
18 challenge is to get a remedy.

19 Q Yeah. And if that assumption fails, if people who do not
14:49:21 20 identify or who -- people who identify as part black and part
21 something else do not vote cohesively with DOJ black, then I
22 believe it's your testimony that in at least two of the
23 districts, there's no majority black district; is that correct?

24 A Correct.

14:49:41 25 Q Okay. You were asked some questions about compactness.

1 And the *Gingles 1* requirement is to demonstrate that the
2 African-American population is significant -- is sufficiently
3 populous and geographically compact to be able to draw a
4 district; is that correct?

14:50:15 5 A Exactly.

6 Q So if the African-American population of Alabama were
7 spread across the state, that population would not be
8 sufficiently compact to be able to draw a district. Would that
9 be correct?

14:50:31 10 A I think that's exactly the point both the *Gingles* and, I
11 think it was LULAC in Texas. That was the whole point of that
12 case.

13 Q So the point is, I think, that you've got to have a
14 population that's in an area of reasonable compactness so that
14:50:51 15 you can draw a district around it; is that correct?

16 A Exactly. I suppose --

17 Q Well, just -- yeah. Is that correct?

18 A Yes.

19 Q Okay. But in addition, traditional districting criteria
14:51:03 20 require that districts be compact, do they not?

21 A It is certainly one of the traditional goals of
22 redistricting.

23 Q So the minority population has to be compact enough that
24 you can fit it inside one district, and that district itself
14:51:18 25 has to meet the traditional districting criteria of compactness

1 without race predominating; is that correct? Is that your
2 understanding?

3 A Yes. I suppose once you got there you could have a
4 non-compact arm for some other reason as long as that wasn't
14:51:34 5 what was getting --

6 Q As long as race is not predominant?

7 A Yeah.

8 Q As long as you were not bypassing one group of people to
9 get to another group of people?

14:51:42 10 A Exactly.

11 Q And that's what Dr. Cooper did; is that correct?

12 A Yes.

13 Q That's all I have. Thank you.

14 THE COURT: Any recross?

14:51:51 15 MS. KHANNA: Nothing further, Your Honor.

16 THE COURT: All right. Thank you. Dr. Johnson, you
17 may step down.

18 Anything else from defense?

19 MR. WALKER: Your Honor, I get to say defense rests.

14:52:01 20 THE COURT: Mr. Davis had jumped up, as well. I'm
21 surprised Ms. Howell didn't also jump up to say --

22 MR. DAVIS: I was too.

23 THE COURT: They all rest.

24 Anything else from the plaintiff?

14:52:11 25 MR. SPIVA: Your Honor, we just want to submit two

1 proposed exhibits as rebuttal, but we don't have a witness.

2 We've shown -- you have an objection or -- oh, I should
3 tell you what they are.

4 It's simply the House resolution regarding President
14:52:29 5 Trump's tweets and the vote roll call.

6 THE COURT: Okay.

7 MR. SPIVA: It's concerning the testimony yesterday
8 from Congress Byrne.

9 I'm sorry. I didn't know you were waiting for me.

14:53:30 10 MR. DAVIS: I wasn't sure you were finished.

11 MR. SPIVA: I was done. I just wanted to tell you
12 what they were, yeah.

13 THE COURT: Do they have numbers?

14 MR. SPIVA: Well, I was going to -- the discussion we
14:53:38 15 were having is should I write it on there, or would the Court
16 prefer that we first, you know, do them electronically.

17 They would be PX-130, which we're proposing as the
18 resolution itself, Your Honor, and then the roll call vote from
19 the -- which -- I guess is from the congressional record is --
14:53:57 20 I mean, the vote from the congressional record would be PX-131.

21 THE COURT: Okay. Mr. Davis, have you seen those?

22 MR. DAVIS: We have seen them.

23 THE COURT: Do you have any objections to them?

24 MR. DAVIS: We do. We don't understand the relevance
14:54:12 25 of this. If the relevance is how a particular congressman

1 voted, only one testified that day, and they could have asked
2 him about it then. I think they did, and that provided
3 sufficient testimony.

4 THE COURT: Well, I think he testified about it
14:54:25 5 yesterday, and wasn't -- the resolution wasn't shown to him,
6 and so Congressman Byrne refused to commit, not having the
7 resolution to see. I think that was his testimony that, you
8 know --

9 MR. SPIVA: Yes, Your Honor.

14:54:45 10 THE COURT: -- there are a lot of resolutions, and
11 they often cover a lot of things. And until he could read it,
12 he wasn't going to commit to how he voted on it.

13 MR. SPIVA: Right. He couldn't remember how he voted,
14 I think was his testimony.

14:54:57 15 THE COURT: Well, I think he also had questions about
16 the resolution itself. But the record will be clear on that
17 when we get it.

18 So I understand that's why it's being offered.

19 MR. DAVIS: Offered just to show how he voted, but,
14:55:12 20 well --

21 THE COURT: Or to show what the resolution was and how
22 he voted on it, and I guess in essence to impeach his
23 recollection of the resolution.

24 MR. DAVIS: Without him here, I don't see the
14:55:25 25 relevance of any Trump tweet. We do object on grounds of

1 relevancy, Your Honor.

2 THE COURT: I will overrule. I understand it's being
3 offered as impeachment, and it's a little unusual. I don't
4 know that I would allow it in a jury trial without the
14:55:40 5 opportunity of the person to rebut it.

6 But I think Congressman Byrne's testimony is what it was,
7 and this record is what it is.

8 So, I mean --

9 MR. SPIVA: Thank you, Your Honor.

14:55:54 10 THE COURT: So I will allow those two exhibits in.

11 MR. SPIVA: Should I hand up a copy at this point?
12 I've got copies of it. That's why -- I don't know how many
13 copies the Court requires.

14 THE COURT: We'll need one official and I guess one
14:56:11 15 for me.

16 MR. SPIVA: Okay.

17 THE COURT: Assuming that defense already has one.

18 MR. SPIVA: If you don't mind my scribbles on it, I'll
19 just put the exhibit number on both of them.

14:56:23 20 THE COURT: I'm not the keeper of the exhibits.
21 Ms. Kecia is.

22 MR. SPIVA: Ms. Kecia, do you mind my scribbles?

23 THE COURTROOM DEPUTY CLERK: I don't. As long as I
24 can make the numbers out.

14:56:34 25 MR. SPIVA: Yeah. There are two sets of them. 130,

1 131. 130, 131. Thank you.

2 MR. DAVIS: Mr. Spiva, what were those exhibit
3 numbers, please?

4 MR. SPIVA: Oh, yes. I labeled the resolution itself
14:56:47 5 as PX-130, and the roll call vote is PX-131.

6 I won't note that Ms. Howell is one step ahead of you, you
7 know, but...

8 MR. DAVIS: That is not unusual.

9 THE COURT: Okay. Anything else from the plaintiff,
14:57:06 10 then? Is that the extent of your rebuttal?

11 MR. SPIVA: That is the extent of our rebuttal.

12 THE COURT: Okay. Great.

13 MR. SPIVA: We -- if Your Honor wants closings, we did
14 prepare one, but if -- you know, it's up to you.

14:57:21 15 THE COURT: Defense wants to close?

16 MR. WALKER: Your Honor, we're happy to if you want
17 to. But we would defer to have the opportunity --

18 THE COURT: Ms. Howell wants to.

19 MR. WALKER: Ma'am?

14:57:31 20 THE COURT: Ms. Howell wants to.

21 MR. WALKER: We would prefer to have the opportunity
22 to look at the record and give you our arguments in a brief.

23 THE COURT: Well, I think we talked about yesterday
24 allowing y'all to do that on certain points, and I kind of
14:57:45 25 outlined those.

1 If there are other things that y'all want to emphasize --
2 how much time, Mr. Spiva?

3 MR. SPIVA: About 25 minutes, Your Honor. For our
4 side it would be given by my much more eloquent and concise
14:58:03 5 partner actually, so -- and --

6 THE COURT: I don't know that I want to sit for
7 25 minutes. I mean, I think y'all have done a really good job
8 presenting your case, both sides, from the very beginning. You
9 gave me very good pretrial briefs.

14:58:28 10 And I really think it may be more effective to have
11 written summations, particularly after you have the benefit of
12 the transcript, if you want those. And as we discussed
13 yesterday, if after reading those and digesting everything that
14 I have heard this week, and studying it a bit more and -- oh, I
14:58:58 15 can't wait to get into this over the holiday break, which looks
16 like that will be when it will be.

17 If I have additional questions, we can reconvene for oral
18 argument, which, when I have them, is more oral
19 questioning-and-answer session. I think that would be more
14:59:21 20 helpful and effective to me.

21 MR. SPIVA: That makes sense, Your Honor. And I was
22 joking about the eloquence. I mean, she is more eloquent than
23 I am. But it's focused on the legal issues. So I just wanted
24 to make sure that was clear.

14:59:35 25 THE COURT: Oh, yeah. I understand. She can make

1 that argument at the bar tonight, or on the way home, or
2 whatever.

3 But I think at this point, the other plan would be just a
4 lot more helpful and effective for me. Okay?

14:59:53 5 MR. SPIVA: All right. Thank you.

6 THE COURT: Case closed. We talked about it last
7 night -- yeah.

8 MR. SPIVA: The exhibits?

9 THE COURT: Yeah. I want those. What did we decide?

15:00:10 10 A week?

11 MR. SPIVA: Yeah --

12 THE COURTROOM DEPUTY CLERK: That was two weeks.

13 THE COURT: Okay. All right.

14 MR. DAVIS: Is it one week or two?

15:00:21 15 THE COURT: That's what we were discussing.

16 We can do this off the record.

17 (Discussion off the record.)

18 (Whereupon, the above proceedings were concluded at
19 3:10 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Christina K Decker

11-15-19

Christina K. Decker, RMR, CRR

Date

Federal Official Court Reporter

ACCR#: 255