

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

4 BOBBY SINGLETON, et al., *
5 Plaintiffs, * 2:21-cv-1291-AMM
6 vs. * January 4, 2022
7 * Birmingham, Alabama
8 * 9:00 a.m.

9 JOHN MERRILL, in his official *
10 capacity as Alabama Secretary *
11 of State, et al., *
12 Defendants. *

13 *****

14 EVAN MILLIGAN, et al., *
15 Plaintiffs, * 2:21-cv-1530-AMM

16 vs. *

17 JOHN MERRILL, in his official *
18 capacity as Alabama Secretary *
19 of State, et al., *
20 Defendants. *

21 *****

22 MARCUS CASTER, et al., *
23 Plaintiffs, * 2:21-cv-1536-AMM

24 vs. *

25 JOHN MERRILL, in his official *
capacity as Alabama Secretary *
of State, et al., *
Defendants. *

TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING
VIA ZOOM CONFERENCE
VOLUME I

BEFORE THE HONORABLE ANNA M. MANASCO,
THE HONORABLE TERRY F. MOORER,
THE HONORABLE STANLEY MARCUS

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P R O C E E D I N G S

(In open court.)

JUDGE MARCUS: Good morning, ladies and gentlemen. I am not sure we have everyone here. Judge Manasco, I see you are here. Judge Moorer?

JUDGE MOORER: I'm here.

JUDGE MARCUS: Okay. Good morning to all of you. And we are about to commence the three cases, the two consolidated cases Milligan versus Merrill and Singleton v. Merrill, which is before the three-judge panel, and the Caster case, Caster v. Merrill, which is before Judge Manasco.

Let me ask you at the outset, counsel, if you would be kind enough to state your appearances on the record. First for the Singleton plaintiffs.

MR. BLACKSHER: Judge?

JUDGE MARCUS: I'm sorry. We are having trouble hearing you, Mr. Blacksher. The sound is kind of reverberating. Am I the only one? Judge Manasco, were you having difficulty, as well?

JUDGE MANASCO: I was. There's a lot of feedback.

JUDGE MARCUS: Yes. Mr. Blacksher, can you hear us okay?

THE COURTROOM DEPUTY CLERK: When you have multiple people in a room, you want to mute everybody unless you're speaking, and that will help on the reverb. If you are

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1 speaking, then you can unmute.

2 JUDGE MARCUS: Right. Mr. Blacksher, you will have to
3 unmute yourself just to state your appearance. Mr. Blacksher
4 is muted, Frankie. Is there some way we can communicate with
09:02:56 5 him and ask him to unmute himself?

6 MR. PENN: This is Myron Penn for the Singleton
7 plaintiffs.

8 JUDGE MARCUS: Good morning, Mr. Penn. We hear you
9 just fine. I just wanted to make sure that all of you,
09:03:14 10 including Mr. Blacksher, are able to hear, as well as see us as
11 we proceed.

12 Mr. Blacksher, can you hear us okay now?

13 MR. BLACKSHER: I can hear you, Your Honor.

14 JUDGE MARCUS: The only problem we're having,
09:03:33 15 Mr. Blacksher, is that when you speak, the sound reverberates.
16 It may be that are there other people in the room, or are you
17 perhaps too close to the microphone? We're not hearing you,
18 Mr. Blacksher, because you're muted. Let me go through the
19 other counsel in the mean time.

09:04:07 20 MR. BLACKSHER: Hello. Can you hear me now?

21 JUDGE MARCUS: I hear you just fine.

22 MR. BLACKSHER: Okay. Apparently we need to be
23 unmuted on at least one microphone in this room and muted in
24 the others, and we're working on it right now.

09:04:24 25 JUDGE MARCUS: Okay. And for the Merrill -- we

1 know --

2 MR. WHATLEY: Your Honor, also for the Singleton
3 plaintiffs is Joe Whatley and Henry Quillen from Whatley
4 Callis.

09:04:37 5 JUDGE MARCUS: Okay.

6 MR. HARE: Eli Hare, as well for Singleton plaintiffs.

7 JUDGE MARCUS: Okay. And for Milligan?

8 MR ROSS: Your Honor, Deuel Ross for the Milligan
9 plaintiffs.

09:04:52 10 JUDGE MARCUS: And finally for Caster.

11 MR. ROUCO: Your Honor, Richard Rouco on behalf of the
12 Caster plaintiffs. I think there are others on for.

13 JUDGE MARCUS: Fine. Ms. Khanna, you can hear us
14 okay, as well?

09:05:08 15 MS. KHANNA: I can. Abba Khanna for the Caster
16 plaintiffs, also Lali Madduri and Dan Osher for the Caster
17 plaintiffs, as well.

18 JUDGE MARCUS: Also I should tell you, Ms. Khanna, at
19 the very end you were kind of reverberating, as well. So as we
09:05:25 20 proceed throughout the day and in the days ahead, if anyone has
21 any problem seeing or hearing us, please let us know, and we'll
22 take whatever time we need to make sure that everybody is
23 properly tuned in.

24 Mr. Davis, welcome. Mr. LaCour, welcome. Mr. Walker? I
09:05:50 25 don't see Mr. Walker. There you are. Good morning, as well,

1 Mr. Walker.

2 MR. WALKER: Good morning, Your Honor.

3 JUDGE MARCUS: Frankie, is there a reason we're
4 getting this kind of reverberation for counsel? We have had it
09:06:09 5 now for a variety of the lawyers.

6 THE COURTROOM DEPUTY CLERK: No, sir. Not that I know
7 of. Is everybody on a hard line that's having issues? Can you
8 check to make sure that if more than one person is in the room
9 that everybody is muted.

09:06:34 10 JUDGE MARCUS: So you need to stay muted unless you're
11 actually speaking. That's the key element here, Frankie?

12 THE COURTROOM DEPUTY CLERK: Yes. Yes, sir.

13 JUDGE MARCUS: Okay. With that, let me begin by --

14 JUDGE MANASCO: Judge Marcus, I think we still have
09:06:52 15 people in the waiting room who need to be admitted. There may
16 be additional counsel wishing to state an appearance, so if our
17 courtroom deputy could admit them, please, that would be great.

18 JUDGE MARCUS: Let me know, Judge Manasco, when we
19 have everyone.

09:07:07 20 JUDGE MANASCO: I see now that the waiting room is
21 empty. So as long as whomever just joined us can state their
22 appearance, then I think we are good to go.

23 JUDGE MARCUS: So we have counsel for Singleton,
24 counsel for Milligan, counsel for the state, counsel for
09:07:24 25 McClendon and Pringle, counsel for Caster.

1 Have I missed anybody?

2 Okay. With that, one thing that we thought we might do at
3 the outset was to receive those exhibits being offered by each
4 of the parties about which there is no objection.

09:07:48 5 So with that, we thought we would start first with the
6 Milligan exhibits, and we're working off of the second amended
7 exhibit list, the joint pretrial stip. I know there have been
8 some additional exhibits that were offered, et cetera, that
9 we'll get to. But working off that list, Milligan exhibits, if
09:08:16 10 I have this -- if I have this right, on the Milligan exhibits
11 -- and, Mr. Ross, you can correct me if I have got this wrong
12 -- Milligan 1 through 46 are being offered without objection.
13 Do I have that right?

14 MR. ROSS: I believe so, Your Honor. I'm just double
09:08:45 15 checking. I'm sorry.

16 JUDGE MARCUS: That's all right. I just thought we
17 would cut to the chase and admit the exhibits that everyone had
18 agreed to and were stipulated to.

19 So on the Milligan ones, my records reflect that Milligan
09:09:00 20 1 through 46 were being offered without objection.

21 MR. ROSS: Yes, Your Honor. And Milligan 49 and 50
22 are also being offered without objection.

23 JUDGE MARCUS: And I am going to get -- I will take
24 them piece by piece. 1 to 46 seeing no objection. Again, I
09:09:17 25 take it there are no objections from Mr. Davis from the state

1 or Mr. Walker?

2 MR. DAVIS: That's correct, Judge. We have no
3 objection to 1 through 46.

4 JUDGE MARCUS: Okay. They're received in evidence.

09:09:33 5 47 and 8 there were objections to, so we will reserve on
6 those and take them up when they come up.

7 Milligan 49 and Milligan 50 were being offered, as well,
8 without objection, correct? Mr. Ross?

9 MR. DAVIS: Correct, Your Honor.

09:09:54 10 JUDGE MARCUS: And there were objections to 47 and 48
11 -- Milligan 47 and 48. Does that cover for your exhibits,
12 Mr. Ross?

13 MR. ROSS: Yes, Your Honor. I don't know if the Court
14 wanted to wait until later to address the state's objections to
09:10:19 15 those two exhibits or --

16 JUDGE MARCUS: Yeah. I thought we would wait until we
17 reach the point in the proceeding when you actually want to
18 offer it. And at that point, we will be able to hear the
19 objections, and we will probably reserve and give you rulings
09:10:35 20 later with regard to that.

21 But so the record is clear, M-1 through 46 and 49 and 50
22 are received without objection.

23 Let's turn to the Singleton exhibits, if we can. And
24 should we turn to you, Mr. Blacksher, with regard to these?

09:11:00 25 MR. QUILLEN: This is Mr. Quillen. I will handle the

1 Singleton exhibits.

2 JUDGE MARCUS: Okay. As I have it, Singleton 1 to 31
3 were offered without objection. Do I have that right?

4 MR. QUILLEN: That's correct.

09:11:17 5 JUDGE MARCUS: All right. Does anyone have any
6 objection to Singleton 1 to 31? Seeing none, Singleton 1 to 31
7 all received in evidence.

8 I note that there was an objection to Singleton 32, 33,
9 and 34. If I have that right, Mr. Quillen?

09:11:39 10 MR. QUILLEN: Yes.

11 JUDGE MARCUS: And we will reserve on those. And when
12 you want to offer them, we will be able to address any
13 arguments with regard to those exhibits.

14 The next group was Singleton 35 to Singleton 41 inclusive.
09:11:56 15 I understand there are no objections to those, as well. Do I
16 have that right, Mr. Quillen?

17 MR. QUILLEN: Yes, Your Honor.

18 JUDGE MARCUS: And then there were objections to
19 Singleton 42 and 43. So we will reserve on those.

09:12:12 20 Singleton 44 and 45, there were no objections, correct?

21 MR. QUILLEN: Correct, Your Honor.

22 JUDGE MARCUS: All right. Seeing none, we'll receive
23 Singleton 44 and 45 into the record without objections.

24 I understand, as well, that there were no objections to
09:12:30 25 Singleton's 46 to 50 inclusive. Do I have that right,

1 Mr. Quillen?

2 MR. QUILLEN: In the second amended exhibit list,
3 there is no Singleton 46 to 50. We do have some additional
4 exhibits that were objected to and because of the way that the
09:12:57 5 defendant -- the exhibit list got put together, they're not
6 numbered consecutively. They're numbers 51, 52, 60, and 61.

7 JUDGE MARCUS: Let me see if I have this right.

8 We've received 1 to 31, 35 to 41. Are you not offering 46
9 to 50? Am I working off the wrong list?

09:13:25 10 MR. QUILLEN: It's -- there are two sets of numbers.
11 There's the -- I was referring to the set of numbers from the
12 second amended exhibit list.

13 JUDGE MARCUS: Right.

14 MR. QUILLEN: In the binder that we sent the Court,
09:13:40 15 though, there are additional exhibits, but -- and there's a
16 cross reference between the way they're numbered in the binder.
17 At the beginning of each binder, there's a cross reference
18 between the way they're numbered in the binder and the way that
19 they are numbered on the second amended exhibit list.

09:13:57 20 JUDGE MARCUS: That's perhaps where my confusion came
21 up. But if I have it right, you are offering 46 to 50. That
22 was the Singleton plan 2 population summary. That was 46. The
23 Singleton plan 2 population summary AP 47, the Singleton plan 2
24 population summary VAP 48, the Singleton plan 2 district
09:14:32 25 statistics 49, and the Singleton plan 2 communities of interest

1 splits 50. You were offering those, were you not?

2 MR. QUILLEN: Yeah. We are. And those are the
3 numbers that you'll -- those are the tab numbers where you will
4 find them in our binder. If the cross-references to those
09:14:53 5 actually refer to some exhibits that have already been
6 received. For example, Number 46 is actually S-26 on the
7 second amended exhibit list. 47 and 48 are Defendants'
8 Exhibits 121 and 122, which I believe are going to come in
9 without objection when you come to those, and 49 through 50 are
09:15:21 10 S-27 and S-28, which have been already admitted without
11 objection.

12 JUDGE MARCUS: Okay. So I have got it. I just want
13 to make sure that -- does anyone have any objection to these
14 exhibits as they have been numbered by Mr. Quillen?

09:15:36 15 Seeing none, Mr. Quillen, they are received in evidence.

16 Now, as I understand it and help me with the cross
17 references, exhibits Singleton 51, there was an objection to,
18 and 52, there was an objection to, as well.

19 I have those reading off of your exhibit list now, those
09:16:03 20 were D. R. A. Singleton Congressional Plan 2. That was 51.
21 And 52 was D. R. A. Singleton Congressional Plan 2 statistics.
22 Do I have those right?

23 MR. QUILLEN: That's correct.

24 JUDGE MARCUS: And I take it there are objections to
09:16:20 25 those?

1 MR. QUILLEN: There are objections to those.

2 JUDGE MARCUS: And that objection was it wasn't
3 submitted timely?

4 MR. QUILLEN: That was timely submitted.

09:16:27 5 JUDGE MARCUS: Okay. Beyond that, then, I have
6 reading off your exhibit list, 53 to 59 inclusive. You're
7 offering those, or have they already been received?

8 MR. QUILLEN: They have already been received or will
9 be received as defendants' exhibits.

09:16:47 10 JUDGE MARCUS: Okay. So we do not have to receive
11 them separately?

12 MR. QUILLEN: That's right. Yeah. You have -- by
13 admitting 1 to 31, 35 to 41, and 44 to 45, you have admitted
14 all of the ones that are on -- that are, you know, have the S
09:17:08 15 prefix that need to be admitted. And everything else that we
16 need to be admitted is going to be admitted -- has been
17 admitted as a Milligan exhibit or is going to be admitted
18 without objection as a defendants' exhibit.

19 JUDGE MARCUS: I have got you. Thank you.

09:17:25 20 Let's turn, if I can, Mr. Davis, Mr. Walker, to your
21 exhibits, most of which did not trigger any objections.

22 As I understand it, Defendants' 1 to 9 are being offered
23 without objection, correct?

24 MR. DAVIS: That's right, Judge. Only one set of
09:17:49 25 plaintiffs objected to any of our exhibits, but they did not

1 object to 1 through 9.

2 JUDGE MARCUS: Okay. So Defendants' 1 through 9 are
3 received into evidence.

4 As I understand it, there were objections by one plaintiff
09:18:05 5 to Defendants' 10 through 18. Do I have that right, Mr. Davis?

6 MR. DAVIS: Yes, Your Honor.

7 JUDGE MARCUS: Okay. We will wait until to take that
8 up when you're ready to offer them into evidence, Mr. Davis,
9 then you could offer it. We'll hear the objections and proceed
09:18:24 10 accordingly.

11 The next --

12 MR. ROSS: Your Honor?

13 JUDGE MARCUS: Yeah.

14 MR. ROSS: I'm sorry. If I may, the Milligan
09:18:31 15 plaintiffs would like to drop some of our objections to some of
16 the defendants' exhibits to hopefully speed things along.

17 JUDGE MARCUS: Let's do that right now so we can
18 receive them.

19 MR. ROSS: Your Honor, with the understanding that
09:18:42 20 these witnesses will not be testifying at the P.I. hearing, we
21 are dropping our objections to D-10 through 14. And I believe
22 that we also are dropping an objection to the Hinaman
23 transcript, which is D-144 and 145, as well.

24 JUDGE MARCUS: All right. So we're clear then,
09:19:06 25 Mr. Davis, we will receive without objection Defendants' 10

1 through 14 inclusive and Defendants' Exhibit 144 and 145.

2 So the objections that remain, Mr. Davis, are only
3 Defendants' 15 to 18 inclusive, and you feel free to offer them
4 at the appropriate point in your case.

09:19:32 5 The next set of exhibits, if I have it right, Defendants'
6 19, 20, 21, all the way through Defendants' Exhibit 26 are
7 being offered without objection, correct?

8 MR. DAVIS: That's what I have as well, Judge.

9 JUDGE MARCUS: Okay. Does anyone have any objection
09:20:03 10 to those exhibits being offered by the Secretary of State?
11 Seeing none, these are received. That's Defendants' 19 through
12 26 inclusive, Mr. Davis. They are in evidence.

13 As I understand it, there were objections to Defendants'
14 exhibits 27 to 30. Do I have that right?

09:20:26 15 MR. DAVIS: Yes, Judge.

16 JUDGE MARCUS: Okay. And we can take that up when the
17 objection is interposed at the time that you offer them.

18 Defendants' 31 through -- by my count, 91 did not trigger
19 any objection. Do I have that right?

09:20:53 20 MR. DAVIS: I don't believe so, Judge. I have notes
21 that Mr. Ross and his colleagues have objected to 49, 68, and
22 72, as well. Mr. Ross?

23 MR. ROSS: That's correct, Your Honor.

24 JUDGE MARCUS: All right. So the plaintiffs object to
09:21:12 25 Defendants' 49. And give me the other two.

1 MR. DAVIS: 68 and 72.

2 JUDGE MARCUS: Okay. We'll hold those in abeyance.

3 And other than that, everything else is received right through

4 Defendants' 91. Do I have that right, Mr. Davis?

09:21:34 5 MR. DAVIS: You do, Judge.

6 JUDGE MARCUS: Okay. Then beyond that, as I

7 understand it, there were objections to Defendants' 92 to 97.

8 Do I have that right?

9 MR. DAVIS: Yes, Judge.

09:21:52 10 JUDGE MARCUS: All right. Again, same thing. We will

11 wait on those until you offer them. We'll take up the

12 objections at that point.

13 98 and 99 had no objections, correct?

14 MR. DAVIS: Correct.

09:22:04 15 JUDGE MARCUS: We will receive. Again, if anyone has

16 an objection, please let us know.

17 Hearing none, Defendants' 98 and 99 are received in

18 evidence.

19 As I understand it, Mr. Davis, there were objections to

09:22:22 20 Defendants' 100 to 106 inclusive.

21 MR. DAVIS: Correct.

22 JUDGE MARCUS: All right. We will reserve on them in

23 the same manner.

24 Then 107 through 137, I have no objection interposed. Do

09:22:42 25 I have that right?

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1 MR. DAVIS: You do, Judge.

2 JUDGE MARCUS: All right. We will receive Defendants'
3 107 through 137 inclusive in evidence.

4 Then I have an objection noted for Defendants' 138, 139,
09:22:55 5 140, and 141.

6 MR. DAVIS: Correct.

7 JUDGE MARCUS: Okay. We will reserve on that.
8 There's no objection to Defendants' 142, correct?

9 MR. DAVIS: Correct.

09:23:07 10 JUDGE MARCUS: Without objection, Defendants' 142 is
11 received in evidence.

12 Defendants' 143, 44, 45, and 46 inclusive triggered an
13 objection. Do I have that right, Mr. Davis?

14 MR. DAVIS: You do, Judge.

09:23:24 15 JUDGE MARCUS: All right. So we will reserve on
16 those.

17 Defendants' 147 to 151 inclusive, no objections, correct?

18 MR. DAVIS: I believe there is an objection to
19 Exhibit 150. Is that what you have, Mr. Ross?

09:23:40 20 MR. ROSS: That's right. And, Your Honor, I believe
21 that just to be clear, we dropped our objection to 144 and 145,
22 and so those are --

23 JUDGE MARCUS: Okay. So Defendants' 144 and 145 are
24 received. The only objection in there is 143. And the other
09:24:00 25 one you were objecting -- to the other two, Mr. Ross, so I have

1 it right?

2 MR. ROSS: Yes, Your Honor. As we were going through
3 the list, I think at the end we probably will have a few more
4 we're dropping objections to. We're just --

09:24:13 5 JUDGE MARCUS: All right. So with regard to 147, 148,
6 149, 150, 151, where are we on those, Mr. Davis?

7 MR. DAVIS: My notes show that the Milligan plaintiffs
8 have objected to 150. So 147, 148, and 149, there are no
9 objections.

09:24:33 10 JUDGE MARCUS: 147 through 149 are received without
11 objection. Your objection, Mr. Ross, to 150, will be taken up
12 at the appropriate point.

13 What about 151? There was no objection to that? Do I
14 have that right?

09:24:49 15 MR. DAVIS: You do, Judge.

16 JUDGE MARCUS: 151. I have that right, Mr. Ross?

17 All right. We will receive 151.

18 As I understand it, Defendants' 152 to 158 have all
19 triggered objections. Am I correct about that?

09:25:08 20 MR. DAVIS: Yes, Judge.

21 JUDGE MARCUS: All right. Mr. Ross, same thing, with
22 regard to 152 to 158. We will reserve until they are offered.

23 159, 160, 161. I take it there are no objections to
24 those, Mr. Davis?

09:25:24 25 MR. DAVIS: Correct, Judge.

1 JUDGE MARCUS: All right. Then seeing and hearing
2 none, we will receive those into evidence.

3 Then there was Defendants' 162, 163, and 164.

4 I take it those were offered -- those triggers objections,
09:25:46 5 did they not?

6 MR. DAVIS: They did.

7 JUDGE MARCUS: All right. Those were Milligan
8 objections, correct?

9 MR. DAVIS: Correct. All the objections were Milligan
09:25:54 10 objections.

11 JUDGE MARCUS: All right. After 164, we have 165
12 through 171. Were there any objections to those?

13 MR. DAVIS: There was at least initially to 171,
14 although I am not sure if that's still the case. Mr. Ross?

09:26:15 15 JUDGE MARCUS: I am not sure. Mr. Ross, did you
16 object to 171? That was the transcript or portion of the
17 transcript of the Chestnut trial. If I have it right, those
18 were the testimonies of former Congressmen Byrne and Bonner?

19 MR. ROSS: Yes, Your Honor. We are dropping those
09:26:33 20 objections. And then we also would like to drop objections to
21 four other exhibits.

22 JUDGE MARCUS: So I take it then these exhibits, there
23 are no objections to.

24 MR. ROSS: Yes, Your Honor.

09:26:49 25 JUDGE MARCUS: Do you want to read these numbers into

1 the record, Mr. Davis, so the record is clear?

2 MR. DAVIS: Yes, Your Honor. As I understand it,
3 there no objections to 165 through 171.

4 JUDGE MARCUS: Without objection, they are received in
09:27:01 5 evidence.

6 Mr. Ross, were there others that you wanted to draw an
7 objection to?

8 MR. ROSS: Your Honor, we are dropping our objections
9 to D-72, D-138, D-155, and D-164.

09:27:15 10 JUDGE MARCUS: All right. So Defendants' 72,
11 Defendants' 138, Defendants' 155, and Defendants' 164,
12 Mr. Davis, are all received in evidence.

13 MR. DAVIS: Thank you, Judge.

14 JUDGE MARCUS: I take it just so that I'm clear, 171
09:27:35 15 was the last of your exhibits.

16 MR. DAVIS: That's correct, Your Honor.

17 JUDGE MARCUS: Let me make just one other observation
18 to all of you. It may be in the course of the trial that you
19 will have other exhibits you are going to want to offer. This
09:27:49 20 is not to preclude you from other pieces of evidence that you
21 may want to offer. We'll be able to address them should it
22 arise at the time.

23 Having said all of that, I wanted to turn it over to Judge
24 Manasco to address the Caster exhibits. I only have one
09:28:13 25 preliminary question for Caster counsel. Perhaps I should

1 address it to you, Ms. Khanna?

2 MS. KHANNA: Yes, Your Honor.

3 JUDGE MARCUS: Your exhibits, some of them were
4 offered and received from the Milligan plaintiffs. Some of
09:28:35 5 them were not offered or received. But I only raise this
6 because when we discussed this earlier, we had asked the
7 question about your reports. Were they being offered just in
8 the Caster case, or are they being offered -- and I guess this
9 question really goes to Milligan -- Milligan counsel -- in the
09:29:02 10 Milligan case, as well? I just wasn't sure about that, that
11 question.

12 MS. KHANNA: Yes, Your Honor. Our reports and our
13 evidence are being offered solely in our case as far as we are
14 concerned. I believe in the joint submission that we submitted
09:29:16 15 to the Court, we allowed the different plaintiffs, groups, to
16 adopt pieces of evidence or findings of fact from other --
17 offered by other plaintiffs' groups. But that would be up to
18 the Milligan plaintiffs if they want to adopt certain portions
19 of our evidence.

09:29:31 20 JUDGE MARCUS: Sure. Mr. Ross, did you want to
21 comment about that? And then I will turn to Judge Manasco.

22 MR. ROSS: Yes, Your Honor. That is our understanding
23 is that we were reserving the right to adopt aspects of the
24 Caster plaintiffs' case.

09:29:46 25 JUDGE MARCUS: My question is a very precise and

1 specific one. It went to the Caster expert reports and
2 rebuttals. You offered and we received in evidence some
3 exhibits that were appended to some of those reports, but not
4 like the underlying -- there was a report from Cooper and a
09:30:09 5 rebuttal from Cooper. I believe there was a report and a
6 rebuttal from a Bridgett King. Those have not been offered in
7 the Milligan case. Do I have that right?

8 MR. ROSS: Not yet, Your Honor, but we would be happy
9 to move them into evidence now if there's no objection from the
09:30:27 10 defendants.

11 JUDGE MARCUS: All right. Is there any objection to
12 that, Mr. Davis?

13 MR. DAVIS: No, Judge. And, you know, the way we see
14 it, this is -- we know there are three different cases, but all
09:30:41 15 of this evidence is going to be heard by all of you. So even
16 if a Singleton plaintiff says something that the Caster or the
17 Milligan groups of plaintiffs find helpful to their case, we
18 think that they can cite it. And likewise, if a Caster witness
19 says something we think helps us defend against the Singleton
09:30:57 20 case, we intend to cite it when we get to our proposed findings
21 of fact and conclusions of law.

22 JUDGE MARCUS: I understand. That's perfect. I just
23 so -- I want to zero in very specifically, Mr. Ross and
24 Ms. Khanna, if you would help me.

09:31:12 25 As I understand it, Caster 1 was a declaration that was

1 the Cooper report, that's the one dated 10 December 21. Are
2 you offering that as well in your case, Mr. Ross?

3 MR. ROSS: Yes, Your Honor. We would like to adopt
4 their -- all their plaintiffs' expert reports.

09:31:32 5 JUDGE MARCUS: Okay. So that was -- the expert
6 reports, if you could just point them out for me for the help
7 of us in the Milligan case, Ms. Khanna, I have Caster Exhibit 1
8 is being offered or really by Mr. Ross, as well, in Milligan.
9 The second report or the rebuttal report was which one?

09:32:01 10 MS. KHANNA: That would be Caster Plaintiffs' Exhibit
11 -- give me one second, please -- I think it's 59.

12 JUDGE MARCUS: Yeah. That's the rebuttal report dated
13 December 20th. You are offering that one, as well, Mr. Ross?
14 Right?

09:32:17 15 MR. ROSS: Yes, Your Honor.

16 JUDGE MARCUS: Without objection, that is received.
17 And there were two other reports, Ms. Khanna, that you
18 had?

19 MS. KHANNA: Yes.

09:32:28 20 JUDGE MARCUS: One from Bridgett King and one from
21 Palmer?

22 MS. KHANNA: That's right. Those are exhibits 79 and
23 80 for the Caster plaintiffs. Mr. Palmer is 79. Dr. --
24 Dr. Palmer is 79, and Dr. King is 80.

09:32:40 25 JUDGE MARCUS: You are offering those, as well,

1 Mr. Ross?

2 MR. ROSS: Yes, Your Honor.

3 JUDGE MARCUS: All right. Without objection, they are
4 received in evidence.

09:32:52 5 MS. KHANNA: Your Honor, I forgot to mention Caster
6 Plaintiffs' Exhibit 81 is also Dr. King's rebuttal report.

7 JUDGE MARCUS: And I take it, Mr. Ross, that's being
8 offered, as well?

9 MR. ROSS: Yes, Your Honor.

09:33:03 10 JUDGE MARCUS: Without objection, that's received in
11 evidence. Thank you. Let me turn it over, Judge Manasco, to
12 you, with regard to the balance of the Caster exhibits.

13 JUDGE MANASCO: Great. Thank you, Judge Marcus. Good
14 morning, everyone.

09:33:18 15 All right. It looks like from the amended exhibit list
16 that Caster Plaintiffs' Exhibits 1 through 93 and 94 through
17 104 are offered without objection; is that correct?

18 MS. KHANNA: I believe that's correct, except that 94
19 is the sole exhibit to which there is an objection. So it
09:33:42 20 would be 1 to 93 and 95 to 104, which I believe are offered
21 without objection. And I believe the state is interposing an
22 objection to 94.

23 JUDGE MANASCO: Got it. Okay. Thank you. Mr. Davis;
24 is that correct?

09:33:54 25 MR. DAVIS: That's right, Your Honor.

1 JUDGE MANASCO: Okay. And, Mr. Walker, is that
2 reflective of any objections from the intervenors, as well?

3 MR. DAVIS: He responded in the affirmative, Judge.
4 He's with me. But we're having trouble with two computers in
09:34:15 5 here making sure you can hear both of us.

6 JUDGE MANASCO: Great. Understood. I know how that
7 goes.

8 Okay. Then hearing no objection, Caster Plaintiffs' 1
9 through 93 and 95 through 104 are received into evidence, and
09:34:31 10 we'll take up the objection to 94 at the appropriate time.

11 MS. KHANNA: Thank you, Your Honor.

12 JUDGE MANASCO: Thank you. And looking at defendants'
13 list, I have 1 through 170 have no objections; is that correct?

14 MS. KHANNA: No objection from the Caster plaintiffs,
09:34:50 15 correct.

16 JUDGE MANASCO: Great. Okay. Then without objection,
17 1 through 170, Defendants' 1 through 170 are received into
18 evidence.

19 I have a note that Defendants' 171 has an objection from
09:35:05 20 the Milligan plaintiffs; is that correct?

21 MR. DAVIS: The Milligan plaintiffs did lodge an
22 objection to 171. I do not believe the Caster plaintiffs did
23 so. I will let Ms. Khanna speak to that.

24 MS. KHANNA: The Caster plaintiffs have not lodged any
09:35:25 25 objections to any of the defendants' exhibits. I believe all

1 of the objections that are there are Milligan or Singleton.

2 JUDGE MANASCO: The only one I have is 171 for
3 Milligan. Mr. Ross; is that correct?

4 MR. ROSS: Yes, Your Honor. That was one of the ones
09:35:37 5 that we had dropped an objection to. I believe it was Chestnut
6 testimony.

7 JUDGE MANASCO: Yes. Okay. So with no objection
8 then, Defendants' 1 through 171 are admitted.

9 MR. DAVIS: Thank you, Judge.

09:35:54 10 JUDGE MANASCO: Judge Marcus, that's it for Caster.

11 JUDGE MARCUS: Thank you. A few other housekeeping
12 matters.

13 In terms of the timing, we expect to generally start each
14 day at 9:00 o'clock Central Standard Time. That would be 10:00
09:36:12 15 Eastern Standard Time. And run through noon Central Standard
16 Time. Break for one hour for lunch from 12:00 to 1:00 Central
17 Standard. That would be 1:00 to 2:00 Eastern Standard. Then
18 pick up at 1:00 o'clock and go to about 5:30 Central Standard
19 Time.

09:36:39 20 We have, of course, a court reporter who is taking it all
21 down and providing daily copy. So we will probably just to
22 make it easier for our court reporter break more or less every
23 90 minutes, every hour and a half, between an hour and a half
24 or two, depending on where you are with your direct and your
09:37:07 25 cross-examinations.

1 But as we proceed, Christina, if at any point you need to
2 break, you just let us know if you need to break sooner than
3 that. And if for any reason any of you have a problem and need
4 to take a break, you just let me know, and we will be happy to
09:37:29 5 accommodate each and all of you in that regard.

6 Finally, as I understood it from the earlier submissions
7 and discussions, no one was seeking to make an opening
8 statement in any of the cases, so we would proceed directly
9 with the presentation of evidence.

09:37:53 10 Do I have that correct? Okay. Seeing no objection to
11 that, we will proceed in that manner.

12 I also understand from our discussions that the Singleton
13 plaintiffs were going to go first on the constitutional claim.
14 Milligan was going to follow on the constitutional claim, and
09:38:20 15 then Milligan and Caster were going to proceed with the Section
16 2 claim, and then finally, the defendant was going to present
17 its defense to the whole kit and caboodle. That would be both
18 for the Secretary of State and for the individual intervening
19 defendants in the case.

09:38:47 20 If I have misunderstood that, please let me know.

21 Okay. With that, let me turn to counsel for Singleton.
22 And just let us know if you would the witnesses you are going
23 to be calling live and the order in which you're going to be
24 calling them.

09:39:11 25 MR. BLACKSHER: Your Honor, can you hear me?

1 JUDGE MARCUS: I hear you just fine. Thank you.

2 MR. BLACKSHER: Okay. I wasn't sure.

3 Yes. We are going to call two witnesses. The first
4 witness is Senator Bobby Singleton. And the second witness
09:39:25 5 will be our expert Dr. Natalie Davis. That's the sum total of
6 our witnesses.

7 JUDGE MARCUS: Okay. With that, then, counsel, are
8 you ready to proceed?

9 MR. PENN: Yes, Your Honor, I am attorney Myron Penn
09:39:42 10 for the Singleton plaintiffs. We do have our first witness
11 available, Judge.

12 JUDGE MARCUS: Terrific. Let's proceed, then.
13 Mr. Singleton?

14 THE WITNESS: Yes, sir, Your Honor.

09:39:51 15 BOBBY SINGLETON,
16 having been first duly sworn, was examined and testified as
17 follows:

18 JUDGE MARCUS: Thank you. Welcome, and you may
19 proceed, counsel.

09:40:02 20 MR. PENN: Thank you, Your Honor, and panel.

21 DIRECT EXAMINATION

22 BY MR. PENN:

23 Q Senator Singleton, if you would, please state your name
24 for the record.

09:40:08 25 A Bobby Singleton.

1 Q And where do you live, Senator Singleton?

2 A Greensboro, Alabama.

3 Q And do you hold an elective office right now?

4 A Yes, I do.

09:40:17 5 Q And what office do you hold?

6 A Alabama State Senator District 24.

7 Q And what leadership positions, if any, do you have in the
8 state Senate of Alabama right now, Senator?

9 A I serve as the Senate minority leader.

09:40:30 10 Q And for what district again is that?

11 A 24.

12 Q And what counties is that comprised of?

13 A It's the western cluster of the state of Alabama. Parts
14 of Tuscaloosa County, Hale, Greene, Sumter, Choctaw, Pickens,
09:40:48 15 Marengo counties.

16 Q And is this your first elected office?

17 A No.

18 Q Please give us some history about your politics, Senator?

19 A Well, I have been involved in politics for a long time,
09:40:59 20 Mr. Penn. And I started out, you know, as just community
21 activist, helping other people get elected. I ran for city
22 council in 1984. I was unsuccessful. And I got involved in
23 the Dillard vs. Crenshaw case where we then got three
24 single-member districts in Hale County at that time. And I ran
09:41:25 25 again in the year of 2000. And I won the city council seat in

1 2000. I served until 2002. After 2002, I ran for the House of
2 Representatives. In 2002, and I served there until 2004, when
3 Senator Charles Steel who served as the 24th district senator
4 stepped down from his post, and there was a special election in
09:41:49 5 2005, and I won that seat, and I have been serving the Alabama
6 Senate since 2005.

7 Q And do you live in the same district that you represent
8 now?

9 A Very much, yes.

09:42:00 10 Q Have you always lived there all your life?

11 A Very much. For one little stint, I lived in Jefferson
12 County in the early '90s to the mid '90s. And then I moved
13 back home. And I have been living there ever since.

14 Q Is it safe to say you know the temperature or the
09:42:16 15 sentiment of the people that live in your district, and
16 actually your hometown and home community?

17 A Oh, I am very active with my people. I know the
18 temperature. Not only just in my home community, but across my
19 district, across the Black Belt area. I worked many of cases
09:42:33 20 in the Black Belt managing cases, assisting, volunteering,
21 getting involved. So I am very familiar with the Alabama Black
22 Belt in the state of Alabama politics.

23 Q If you would, with your being in the legislature for the
24 numbers of years you have been there, Senator, can you describe
09:42:51 25 the racial and the political make up of the Alabama Legislature

1 since you have been there, especially now?

2 A Well, in the Alabama Legislature, there's 105 members, as
3 you know. 35 members are senators and the -- there is the
4 others -- I'm sorry. There are 140 members. 105 are House
09:43:12 5 members and 35 are Senate. And we look at it, break down, you
6 have 27 African-Americans in the House. You have one white.
7 And you have one black Republican that's elected now.

8 In the Senate, there are seven black senators and one
9 white senator, black -- white Democrat, yes.

09:43:35 10 Q Gotcha. And in the Legislature with the different
11 leadership positions you have had, have you served on the
12 reapportionment committee in any of those years?

13 A Yes, I have.

14 Q Okay. How many years have you served on the
09:43:48 15 reapportionment committee?

16 A This is my second term serving in the reapportionment
17 committee. I served in the 2010 restricting, and I am serving
18 now in the 2020 redistricting process.

19 Q With your being on the reapportionment committee for 2021,
09:44:02 20 did you have any input in drawing the congressional plan?

21 A No, not at all.

22 Q The one that was passed you had no involvement in that --

23 A Not at all.

24 Q -- process?

09:44:09 25 A Not at all.

1 Q Who did?

2 A Well, to my understanding, it was only done by the
3 congressional people delegation themselves, along with possibly
4 the chairman of the committee, along with the lawyer,

09:44:23 5 Mr. Walker, Mr. Hinaman, Mr. Pringle, and Mr. McClendon. Those
6 are the only people that I know would have been involved in it.

7 Q Senator, with your having been serving on the
8 reapportionment committee, do you have any idea of why you were
9 not involved in the drawing of the congressional plan?

09:44:40 10 A Everything seemed to have been so secretive. We weren't
11 given an opportunity to see maps or even -- they weren't
12 presented to us even when they met with the congressional
13 delegation. I spoke with none of the congressional people
14 about it. And so we only got wind of the map on the date it
09:44:59 15 was presented when they called the committee together. That
16 was the first time we saw the map as a whole.

17 Q So you are one of the sponsors of what is considered the
18 whole county plan concept; is that right?

19 A Absolutely.

09:45:13 20 Q In the Legislature?

21 A Yes.

22 Q Okay. When did you first become aware of the whole county
23 plan, Senator?

24 A It was late August, early September. I was presented to
09:45:23 25 it by Jim Blacksher who sent me a copy and asked me just to

1 look at it and see what I thought about it.

2 Q After looking at it, why did you decide to support it?

3 A You know, really when I looked at the map, looking at the
4 numbers, I call it just a beautiful map. It was -- it just
09:45:42 5 popped out at you. When I looked at it, and the first thing I
6 thought about it was wow, you know, we can win this. This is
7 doable. And I got back with Mr. Blacksher and asked him to
8 send me more numbers on it. He sent me numbers on it.

9 When I started looking at the trend of the votes and how
09:46:00 10 we have been electing officials in those areas and I saw how
11 Democrats were performing, and I said, this map can perform.
12 And we can basically win this. So I was excited about it and
13 was willing to look at it. And what it does is really get us
14 away from the old gerrymandering piece of what we have right
09:46:20 15 now from the 2011 plan.

16 Q How so?

17 A What it does is provide whole counties, put communities of
18 interest together. It allows us to be in the whole county
19 plan. And what it does, it stopped the packing. Because right
09:46:32 20 now you look at the 2011 plan, they're just packing a lot of
21 black folk into one district, and we can only have one voice.
22 But this give us an opportunity for Jefferson County, along
23 with the couple of other counties like Hale, Perry, Bibb to
24 perform and also Tuscaloosa all the way to Montgomery to be
09:46:51 25 able to perform in another opportunity district. I feel really

1 good about this map.

2 Q You mentioned opportunity district. You didn't mention a
3 majority district of minorities. What is your -- what's the
4 difference between the two, Senator, and why is the opportunity
09:47:06 5 district more appealing to you if that's what you are saying?

6 A Well, what it is, is that I think that it gives us an
7 opportunity to have a voice in Congress. The opportunity
8 districts are not necessarily, say, a minority-majority
9 African-American district, but it gives us an opportunity with
09:47:23 10 the number of African-Americans there to make the difference in
11 that district. And we can easily elect African-Americans along
12 with other white Democrats or other crossover votes that we
13 feel real comfortable about it. Even without the crossover
14 votes, the numbers in terms of the registered voters of
09:47:42 15 African-American that are in those districts, I feel very
16 confident that we could perform well in those districts.

17 Q And in comparison to the prior districts, which is from
18 2011, I believe?

19 A Yes.

09:47:54 20 Q What is the -- just visually, what is the difference
21 between those two maps, Senator, between the 2011 district, and
22 the 2021 proposed the whole county plan that you sponsored?

23 A Well, when you look at the 2011, you look at a number of
24 splits in those districts. Montgomery has about three splits
09:48:14 25 in it. Jefferson County has a couple of two or three splits in

1 it. And it doesn't bring those communities together. And when
2 you look at it, the Black Belt is joined in with Jefferson
3 County, Tuscaloosa, all the way back across. What this
4 opportunity district gives us an opportunity for the voice of
09:48:32 5 the Black Belt to be heard. We feel very strong about our
6 representation now. Congresswoman Sewell does a great job for
7 us. But we feel an extra voice in Congress that can
8 concentrate there on the Black Belt area can give us that other
9 voice.

09:48:46 10 And what it does is take away the gerrymandering from the
11 2011 and put us in the whole counties, allow those communities
12 of interest to thrive together, people work and flow together.
13 I just think it's the best for the state of Alabama and the
14 trends that we're going there.

09:49:04 15 Q What is the importance in your opinion, Senator, of what's
16 called community of interest?

17 A Well, communities of interest, when you look at it, I live
18 in Hale County. And Tuscaloosa is the largest -- next largest
19 city to me. And Tuscaloosa use us in their metro statistical
09:49:22 20 area. So they use our data to be able to get grants, to help
21 along with economic development, and all of that is a part of
22 their planning when they look at the whole western cluster of
23 Alabama from Tuscaloosa.

24 So does Birmingham do the same thing, in terms of Bibb
09:49:37 25 County and other counties that are there, to using those

1 statistics. So all of those communities are communities of
2 interest. So we work the flow, we shop there, and we all have
3 interest in those communities and how the tax payers dollars
4 are being spent in those communities.

09:49:53 5 Q The whole county plan concept that you proposed in
6 support, Senator?

7 A Yes.

8 Q Proposes two opportunity districts; is that correct?

9 A Yes, correct.

09:50:01 10 Q Okay. What confidence do you have that those two
11 opportunity districts will be able to perform as crossover
12 voter community districts?

13 A Well --

14 Q When I say crossover, I mean, you know, someone other than
09:50:13 15 the minority voters that vote in that district?

16 A Well, when I look at the trend, I look at Jefferson
17 County. Jefferson County has always gone blue. I can go
18 back four or five different elections --

19 Q When you say blue, you mean?

09:50:18 20 A Democrat.

21 Q Gotcha.

22 A I can go back four or five different election cycles. I
23 can look at Obama, '08, it went -- I look at all the counties
24 that we have in there. They all perform democratic, and I look
09:50:38 25 at the numbers to where the African-American registered voter,

1 and I know there they have to be some other white folks in
2 there, also. Because they performed at the 56 to 60 percent
3 percentile in terms of democratic votes. And when I look at
4 that, these districts perform well in those areas. So I feel
09:50:58 5 very confident that we can have an opportunity to be able to
6 win in those particular districts.

7 Q And so when you are talking about opportunity districts,
8 you are not looking at majority districts per se as in a
9 majority-minority district, where it's 50 percent minority
09:51:15 10 versus other races?

11 A You're looking at.

12 Q What are you looking at in that term when you are talking
13 about opportunity districts, Senator, if you will elaborate?

14 A What I am looking at is the opportunity for us to have --
09:51:26 15 because when I looked at the percentage of African-Americans
16 that are in those districts and I look at the voting trend of
17 those African-Americans and how they perform at the boxes
18 they're performing in, we do very, very well in those boxes in
19 those areas. And with what I have seen in the past with -- and
09:51:46 20 based on the candidates. You take Doug Jones and how that race
21 went, and he performed at 60 -- the 68 percentile in some of
22 those districts. Even if you look at James Fields, you go back
23 to his race against Governor Ivey. He performed at the
24 56 percent level, and his name ID wasn't very well in those
09:52:07 25 areas.

1 So we saw where the performance of African-Americans and
2 those people who would cross over and help him, we performed
3 very well in those areas if we can get our votes turned out.

4 Q So, in other words, what's that -- I guess the United
09:52:22 5 Negro College statement -- you're not looking a handout, just
6 hand?

7 A Looking for a hand.

8 Q For an opportunity?

9 A Looking for an opportunity.

09:52:29 10 Q Do others in the black community support the whole county
11 plan, Senator?

12 A Yes. You know, I think it's a mixed -- it's a bag of
13 mixed motions there. There are people who feel that the safe
14 district that what we have right now, that we do have a safe
09:52:42 15 district that has at least a 60 percent, you know,
16 African-American population that gives us that voice that gives
17 us a sustained voice. But when I look at that and I see that
18 how we have to go and draw that district, that it gerrymands
19 (sic), we want to get away from that, because we have been
09:52:58 20 accusing other folks of gerrymandering all these years. So I
21 want to be able to get away from that so we can have a
22 performance level to where we can elect other people outside of
23 just one person. So I believe that the districts that we have
24 today that we are presenting under the Singleton plan gives us
09:53:18 25 the best opportunity for the future to be able to maintain

1 representation in Washington so that we can have a voice.

2 Q It is my understanding, obviously, that there were public
3 hearings regarding the reapportionment process --

4 A Yes.

09:53:31 5 Q -- throughout the state; is that correct?

6 A There was.

7 Q And during those hearings, you hear support for your whole
8 county plan concept?

9 A Yes, I did. Our -- many of the people who came up to talk
09:53:42 10 about the whole county plan and how they want to support it.

11 And not just only through the hearings. I was hearing people
12 in the streets and other community activists. Once they got an
13 opportunity to look at the map, even without looking at the
14 numbers, I am telling you, it is just a beautiful map that it

09:53:58 15 pops out at you that when you look at -- and when people who
16 understands it, and they look at it and they say, wow, we can
17 win that. We have an opportunity to win that six and seven
18 congressional district. And so I'm getting a lot of support,
19 people are calling me and saying thank you for filing this

09:54:14 20 lawsuit, thank you for moving forward with it. We think that
21 we can do a great job. And we just got to get the vote
22 turnout.

23 Q I'm sorry to cut you off. But at those hearings, you saw
24 support from black voters?

09:54:25 25 A And white voters.

1 Q And white voters?

2 A Yes. Black and white voters, yes.

3 Q And did you have any opposition at any of those hearings
4 or from what you may have heard?

09:54:36 5 A Yes. Yes, I did.

6 Q Okay. What oppositions did you hear to your whole county
7 plan?

8 A There were people who thought safe districts for
9 African-Americans to get elected should not be below
09:54:49 10 55 percent. You know, they look at the percentile and thought
11 that we should have a minority-majority district. And I just,
12 you know, feel that if we do exactly what they're saying, we
13 just going back to the old gerrymandering. We can't draw the
14 county districts without gerrymandering again. I think what
09:55:05 15 gives us the best opportunity is what we presented here today
16 before this Court.

17 And I'm just getting so much overwhelming support out
18 there in the community from -- from the members like Senator
19 Hank Sanders who called me to thank me about it. House leader,
09:55:24 20 minority leader Anthony Daniels who supports it. John Zipper
21 (phonetic), who is a member of the Greene County Board of
22 Education over there in Greene County, the head of the hospital
23 board that said that, hey, they thought this was the best thing
24 that they have seen in a long time, in terms of giving us
09:55:41 25 representation, just to name a few people. You know, Senator

1 Rodger Smitherman, one of my cohorts in the Senate who
2 definitely helped sponsor this bill. I had at least four
3 sponsors Senator Smitherman, Senator Beasley, Senator Figures,
4 and Senator Sanders 48 who believed in this map also.

09:56:04 5 Q And with that said, at the hearing, it's my understanding
6 -- correct me if I am wrong. But at the hearing is when you
7 announced that you were interested in actually sponsoring the
8 whole county plan concept before the people after hearing what
9 their desires were; is that fair?

09:56:19 10 A That is absolute.

11 Q Isn't it true also that Senator Smitherman said the same
12 thing at the hearing?

13 A Yes.

14 Q Isn't it also true that you said you would defer to him
09:56:28 15 since he was the senior senator and let him sponsor it and you
16 would cosponsor it?

17 A Yes.

18 Q Is it true that he said, hey, we can work together and
19 work hand in hand?

09:56:37 20 A He did.

21 Q Sponsoring this bill?

22 A He did. He did. We were both excited about this map.
23 This map just -- it just pops out at you as something that's
24 doable, and we know that the trend shows clearly that we have
09:56:52 25 an opportunity to make this happen.

1 Q There is one gentleman that you know well I am sure named
2 Albert Turner, Jr., who had been a county commissioner in the
3 Black Belt area whose dad was a well-known Civil Rights leader
4 at the time who predicted early on that you would never sponsor
09:57:11 5 or support anything that would be in the low -- or any plan
6 that's got 40 something percent voting age population, black
7 population because he didn't think it would ever pass. What do
8 you say to that knowing Mr. Turner?

9 A Well, you know, I understand Mr. Turner when he first said
09:57:30 10 that being the first time that he was hearing it. He and I had
11 not talked. And Mr. Turner wanted, you know, he's one of those
12 who wanted to see something safe and know that what we have is
13 there. But after speaking to Mr. Turner today -- if you ask
14 him today, then Mr. Turner would not have that same feeling,
09:57:48 15 because he and I had the opportunity to sit down. I was able
16 to show him the trends of the voting from the past elections,
17 show how those --

18 MR. DAVIS: Your Honor, I want to object to this
19 portion of the testimony. I am not sure this is responsive.
09:58:00 20 But also I know that the Court has a little more leeway to hear
21 hearsay evidence and preliminary injunction, but I think if
22 they need this evidence in, they need to call Mr. Turner, Jr.,
23 in to talk about his views and how they have changed. The
24 evidence before the Court is that Mr. Turner, Jr., opposed
09:58:16 25 those plans.

1 JUDGE MARCUS: Mr. Penn?

2 MR. PENN: Judge, that's fine. We will.

3 JUDGE MARCUS: Why don't we get on with it and just
4 frame the questions sharply, and we will proceed.

09:58:26 5 MR. PENN: Thank you, Judge.

6 BY MR. PENN:

7 Q Senator, with your being at the hearings, did you -- after
8 everyone voiced their position on being supportive of the --
9 your whole county plan, the ones who did, do you feel that the
09:58:44 10 reapportionment committee chairman adhered to the request and
11 the desires of the folks who support the whole county plan?

12 A No.

13 Q Why is that, Senator? Why do you feel that way?

14 A Because we never saw anything on any of those documents
09:58:56 15 that was put into evidence. There was a court reporter at all
16 of the hearings who was taking down all the information. None
17 of it ever came back to the committee at all for consideration.
18 So therefore I felt there was never any seriousness taken on
19 behalf of what the people had stated.

09:59:17 20 Q Let me bring your attention to one thing that I noticed,
21 Senator, and Document 67, which was the defendants' reply and
22 opposition to the preliminary injunction motion that we filed
23 where I think it was footnote 9 on page 33, if I am not
24 mistaken. My numbers in my --

09:59:38 25 JUDGE MARCUS: Mr. Penn, let me stop you. You are

1 talking about the Defendants' Exhibit 67? Docket entry 67?

2 MR. PENN: No, Your Honor.

3 JUDGE MARCUS: What exactly are you talking about?

4 MR. PENN: Document 67 that was filed. I am not sure
09:59:54 5 exactly what the exhibit number is. But it was the
6 Document 67.

7 JUDGE MARCUS: This was the brief of the defendant?

8 MR. PENN: That is correct, Judge.

9 JUDGE MARCUS: This is a brief in opposition to your
10:00:04 10 motion for preliminary injunction?

11 MR. PENN: Correct.

12 JUDGE MARCUS: And injunctive relief.

13 MR. PENN: Yes.

14 JUDGE MARCUS: Thank you.

10:00:10 15 MR. PENN: Thank you, Judge, for the clarification.

16 BY MR. PENN:

17 Q And on the footnote 9, they mentioned that you actually
18 voted in favor of the guidelines, the districting guidelines
19 that had been proposed to the reapportionment committee, that
10:00:24 20 you voted in favor of it. If you would, please tell the -- our
21 distinguished panel why is it that you voted in favor of it
22 even though the reapportionment committee did not adhere to, in
23 your opinion, the wishes of some of the people who support the
24 whole county plan?

10:00:40 25 A Well, when it was presented to us, I thought that, you

1 know, the guidelines were something that we could -- we could
2 work with. It was fair. But in the execution of it, they just
3 never followed their guidelines. They continued to follow the
4 congressional district, the old pattern of 2011. And so even
10:00:59 5 though they tried to work with the whole county, but we still
6 stuck and packed all of the blacks in the district such as the
7 2011 plan. So even though there may have been an agreement
8 with it, but at the end of the day, you know, it forced me to
9 vote against those plans that they provided even later because
10:01:18 10 they did not follow the guidelines.

11 Q So, in other words, as far as you are concerned, you
12 followed the guidelines, but they did not?

13 A Correct.

14 Q Is that fair to say?

10:01:25 15 A Correct.

16 Q Okay. Let me -- one last thing -- well, a couple of
17 things.

18 One, you mentioned that many of the people in support of
19 the whole county plan voiced their support for it?

10:01:35 20 A Yes.

21 Q You mentioned Hank Sanders?

22 A Yes.

23 Q Who else -- what other members of -- you mentioned other
24 state senators that were in support of it. What other
10:01:45 25 community leaders in your district can you recall, Senator,

1 that were supportive that voiced it, and really, anyone? I
2 mean, whether they were senators or public officials, but more
3 importantly, just regular people, regular voters?

4 A Well, I had a lot of regular voters who was on line
10:02:02 5 looking at it. And I also had community leaders, mayors. I
6 have had a couple of mayors. I know the mayor of my city of
7 Greensboro who thought that it was a good and fair map. I
8 talked to the probate judge in Greene County who thought that
9 it was a good and fair map.

10:02:21 10 So I was just hearing from across the district that people
11 thought it was a good map and they thought that even though if
12 they didn't know the numbers that absolutely went with it, when
13 they saw the map, they thought it was something that was fair
14 and something that was doable with the committee.

10:02:36 15 Q Okay. And with your being from the Black Belt community,
16 Senator, you said you grew up there?

17 A Yes.

18 Q You said you grew up there, you were born there, lived
19 there all your life. You now represent much of it. Tell me
10:02:47 20 the importance of the community of interest aspect of the Black
21 Belt community and why, if you think they should have its own
22 Congressman for that area, why that's important to you and your
23 people?

24 A You know, the Black Belt of Alabama is one of the poorest
10:03:03 25 regions in the state of Alabama. You know, we have some of the

1 lack of hospitals, schools. We have a lot of land mass. Taxes
2 are very low. Tax -- there's no taxable entities there. Jobs
3 are not there a lot. We just need a voice to speak up for the
4 Black Belt as a whole.

10:03:25 5 We need to make sure that those communities of interest,
6 you know, have that voice in Congress to be able to say that,
7 you know, we want better amenities in our community. We want
8 to build assets in our community also, just to make sure that
9 while we are connected to Birmingham and other areas in this
10:03:45 10 plan here now, while we are here, most of the emphasis goes to
11 the largest cities. And properly so. Possibly. But at the
12 end of the day, we need to make sure there's a voice that speak
13 loudly and clear about those things that are going on in the
14 Black Belt and to be able to have an opportunity to vote on
10:04:04 15 those things so that we can be able to have that voice.

16 MR. PENN: Judge and distinguished panel, I think at
17 this time, I will pass the witness. Thank you, sir.

18 JUDGE MARCUS: Thank you, Mr. Penn.

19 Let me turn first to Milligan counsel, Mr. Ross? Any
10:04:29 20 questions? Any cross-examination for the Milligan folks?

21 MR. ROSS: No, Your Honor.

22 JUDGE MARCUS: All right. Ms. Khanna, I will ask you,
23 I don't suppose you do have any questions. But I wanted to
24 just at least give you that opportunity if there was anything
10:04:48 25 you wanted to address with this witness.

1 MS. KHANNA: Thank you, Your Honor. No questions from
2 us.

3 JUDGE MARCUS: All right. Thank you. Mr. Davis?

4 MR. DAVIS: Thank you, Judge.

10:05:00 5 CROSS-EXAMINATION

6 BY MR. DAVIS:

7 Q Good morning, Senator Singleton.

8 A Good morning, Mr. Davis.

9 Q Senator, I am in the Attorney General's Office. I
10:05:06 10 represent Secretary of State John Merrill in this lawsuit that
11 you filed.

12 I'm getting a little confused about what it is you want
13 out of this case. One of the last pleadings that was filed on
14 your behalf said you weren't necessarily seeking a whole county
10:05:21 15 plan. Are you or are you not seeking a requirement that
16 Alabama keeps its counties whole?

17 A Yes, I am.

18 Q Okay. You produced three different maps in this last
19 legislative session, correct?

10:05:39 20 A Correct.

21 Q Did you ask any Republicans on the reapportionment
22 committee to help you in drawing those maps?

23 A No.

24 Q Did you ask to be involved in drawing the map that was
10:05:50 25 ultimately presented to the reapportionment committee?

1 A Yes.

2 Q When?

3 A I was -- I was at every hearing except two. And I -- I
4 spoke to Mr. Walker and Mr. Hinaman and asked when will the
10:06:06 5 committee get involved, that we wanted to get involved. We
6 wanted to set the record clear. And my thing to them was let's
7 all get together and let's draw these maps. And we may be able
8 to not be here in court today if we can all get on the same
9 page.

10:06:19 10 Q Did you participate in any conversations with any member
11 -- any current member of Alabama's congressional delegation?

12 A No.

13 Q Did you ask to be?

14 A I didn't even know when they was meeting with them. I
10:06:33 15 wanted to be a part of it, yes.

16 Q Is it true that any member of the reapportionment
17 committee could participate in the public hearings that were
18 held around the state?

19 A Yes.

10:06:44 20 Q Do you know if they did so?

21 A Yes, they did. There were other members, yes.

22 Q And any member who chose to participate in those public
23 hearings was there and could hear witnesses discuss the whole
24 county plan, correct?

10:06:57 25 A Correct.

1 Q Senator, in your complaint, you say in paragraph 19 that
2 throughout the state's history, the most important traditional
3 districting principle for drawing Alabama's congressional
4 districts has been preserving whole counties. Do you recall
10:07:19 5 that being part of your complaint?

6 A Yes.

7 Q Okay. What is your basis for alleging that keeping
8 counties whole is the most important districting principle for
9 congressional districts?

10:07:34 10 A Well, number one, it's applied to our state constitution,
11 and number two, it has been a tradition in the past prior to
12 the '90s. And so when this first district was drawn to give
13 African-Americans a voice was one of the first times that we've
14 seen the big splits that we got, in terms of that gerrymandered
10:07:55 15 peace to be able to give African-Americans a voice. While we
16 all supported that back in the '90s, but as you go on and you
17 see the trends of voting, it gives us pause to say that we
18 could do better than what we have done now. And so election
19 cycles go on and you just see where you can do better. And so
10:08:15 20 being able to have it in a whole counties give us that better
21 opportunity than splitting a lot of counties unnecessarily.

22 Q Okay. The question was why whole counties is more
23 important than other traditional criteria. And if I understood
24 you right, one of the things you mentioned was you said there
10:08:31 25 was a tradition of keeping counties whole before the '90s,

1 correct?

2 A Yes.

3 Q Okay. Well, haven't we also in Alabama historically
4 preserved the core of districts in drawing congressional plans?

10:08:44 5 A Repeat that again.

6 Q Sure. I'm talking about other traditional districting
7 criteria that has also been important in drawing congressional
8 plans. And haven't we traditionally preserved the core of
9 districts?

10:08:58 10 A You have. But I just think whole counties is much
11 important to me. You asked myself, yes.

12 Q Okay. And I won't argue with your opinion and what you
13 think is more important at all. But haven't we also
14 traditionally avoided putting incumbents in the same districts?

10:09:16 15 A Yes, we tried, yeah. But we have done it in the past.
16 But we tried, yes.

17 Q But we've -- that's something that Alabama has tried to do
18 not just in congressional plans, but in its State House and
19 State Senate plans, as well?

10:09:29 20 A Correct.

21 Q Yeah. And haven't we also tried to observe communities of
22 interest in our various plans?

23 A That's a little iffy here and there, yes. Depends on who
24 you are talking to about the community of interest, yes.

10:09:47 25 Q Okay. Well, let's look at your map. I am going to share

1 my screen. I am going to do my best to do so. And I am going
2 to share what is Singleton Exhibit 35. Now, that's the whole
3 county map that you have championed, right?

4 A Yes, indeed.

10:10:10 5 Q Okay. And this is the plan you want?

6 A I would like to have it, yes, sir.

7 Q All right. You live in Hale County, correct?

8 A Yes, sir.

9 Q And that's here. That would be in District 6 in your map?

10:10:23 10 A Correct.

11 Q All right. That's also part of the district that you
12 represent in the state Senate?

13 A Yes.

14 Q Okay. Is Hale County part of a community of interest with
10:10:35 15 Jefferson County?

16 A It very well could -- it's part of the community interest
17 with Bibb, and I think Bibb is connected to Jefferson because
18 what they use as metro statistical area, so, yes, we make that
19 connection, yes.

10:10:51 20 Q Okay. Well, what is it that makes -- what do voters in
21 Hale County have in common with voters in Jefferson County that
22 makes them part of the community of interest?

23 A You know, there's a lot. There are poor folks in
24 Jefferson County. You know, there's a lack of health care in
10:11:07 25 Jefferson County. There's a lack of health care in Hale

1 County. There are bad schools in Jefferson County, bad schools
2 in Hale County. There are bad roads in Jefferson County, bad
3 roads in Hale County. So all of these have the same interest
4 of voting. So we basically have some of the same things that
10:11:21 5 we have interest of.

6 Q Are the voters in Hale County part of a community of
7 interest with voters in Mountain Brook and Vestavia?

8 A Probably not.

9 Q Are voters in Hale County part of a community of interest
10:11:37 10 with voters in Mobile County?

11 A I have not looked at that to that extent being that they
12 were so far -- far distance.

13 Q Well, you have -- the voters in Hale County wouldn't go to
14 Mobile County for shopping, for example, would they?

10:11:52 15 A Well, sometimes, depends on whether a good sale going on.

16 Q Okay.

17 A But, no. But we come to Jefferson. We go to Tuscaloosa.
18 So those are just natural flows back to Birmingham. Lots of
19 people work in Birmingham from Hale County. People work in
10:12:07 20 Tuscaloosa from Hale County. They come back up in Bibb County
21 from Hale County. So because of the lack of work in some of
22 those areas, we do have to flow back into Jefferson,
23 Tuscaloosa, and other areas for work.

24 Q Okay. Now, Senator, I am going to share a current map.
10:12:37 25 That's the map that the Alabama Legislature just passed in

1 November, right?

2 A Yes.

3 Q Okay. And this is Defense Exhibit 55.

4 Do you contend that this map is a racial gerrymander,

10:12:51 5 Senator?

6 A I do.

7 Q Well, what makes this a racial gerrymander in your view?

8 Why are you calling it a racial gerrymander?

9 A Because it still takes the core of what the 2011 map --

10:13:06 10 even though you tried to do whole counties, you go into

11 Jefferson, you split into Jefferson. And I think that it just

12 continues to just pack African-Americans in one area, when it

13 could be divided out to get two districts.

14 Q Okay. Let's break that down. Do you contend that

10:13:29 15 splitting counties makes it a racial gerrymander?

16 A Well, not just totally splitting counties, because I think

17 the courts allow us to split counties where it's necessary.

18 But in this case, is it necessary to do that in Jefferson? And

19 just to go in and pull out when you can make Jefferson whole.

10:13:46 20 That's not necessary.

21 Q All right. Are you familiar with the map that was passed

22 in the '90s, the congressional map?

23 A In the '90s?

24 Q Right. The '92 map?

10:13:59 25 A I -- yeah, I kind of -- well, hadn't really -- it didn't

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1 really change the core of that look from the first map the '90s
2 up until today. So it basically follows the same trend, yes.

3 Q Yeah. Here is exhibit -- this is Singleton Exhibit 67.

4 And this is, oh, probably about the third page of that exhibit.

10:14:25 5 So this is the 99 -- 1992 map, Senator. Do you have an
6 understanding as to how this map came into being?

7 A Not a thorough understanding.

8 Q Okay. If I told you that this was the result of
9 litigation in the Wesch case and this was a map that ordered by
10:14:46 10 a three-judge court, does that sound familiar to you?

11 A Yes.

12 Q Do you contend that this map ordered by a three-judge
13 federal court was a racial gerrymander?

14 A I think that -- yes. And I think that once it was
10:14:58 15 rendered, I think the Court looks back on it now and see that
16 it is.

17 Q Okay. At the time, do you think they had any intention of
18 harming any voters?

19 A I don't know -- I don't know what the judges' intentions
10:15:11 20 were.

21 Q All right. And I am going to flip up still on Singleton
22 Exhibit 67 to the 2002 map. Do you contend that this 2002 map
23 was a racial gerrymander?

24 A Yes. When you look up at the top of that map that little
10:15:32 25 peace sign, fingers out reaching out over to get -- some people

1 in one area reaching out to draw -- I think it is a racial
2 gerrymander, yes.

3 Q Who was in the majority in the legislature in 2002,
4 Senator?

10:15:44 5 A Probably Democrats.

6 Q Do you know who sponsored the 2002 plan?

7 A I think that was a Buskey plan, if I'm not mistaken.

8 Q I don't know who drew it. And I may have asked a poor
9 question. I want to share now -- this has not been marked as
10:16:07 10 an exhibit. And I think this is something the Court can take
11 judicial notice of. This is a copy of Act 2002-57 by Senator
12 Sanders. That's Senator Hank Sanders, correct, Senator
13 Singleton?

14 A Yes.

10:16:24 15 Q Who was Senator Hank Sanders?

16 A Senator Hank Sanders was from Selma, represented the 23rd
17 District. And he was the chairman of the education budget
18 committee at that time.

19 Q Do you contend that Senator Sanders -- well, I want to
10:16:42 20 show you so you can see and show for the record when I flip
21 down to the second page. Act 2002-57 says it is an act to
22 repeal and reenact Section 17-20-1 so as to redistrict the
23 state's congressional districts, and the last page of this act
24 shows that it was signed by the presiding officer of the
10:17:10 25 Senate, Speaker of the House, and by the Governor on

1 January 31, 2002.

2 Senator, Hank Sanders wasn't exactly known for sponsoring
3 legislation intended to harm African-American voters, was he?

4 A No.

10:17:25 5 Q No? Do you contend that Hank Sanders' bill was a racial
6 gerrymander in 2002?

7 A I think that what Hank Sanders did was did what they
8 thought was safe, to make sure that we at least had a voice,
9 that whether it was gerrymandering or not because it was first
10:17:44 10 then presented in trying to make -- that we maintain that
11 voice, and that's what they were doing. I don't know what was
12 -- he was thinking personally, but this is just my observation
13 of what I see.

14 Q Senator, did you support the plan that Senator Hatcher
10:18:10 15 introduced in the Legislature?

16 A I think we probably did, yeah.

17 Q All right. Let me show you a page from Defense Exhibit 2,
18 which is one of the reports from our experts Tom Bryan, and
19 this is Page 45 of Defense Exhibit 2. And Senator Singleton, I
10:18:41 20 tell you, this is a map of an outline of the Hatcher plan. You
21 can see the blue lines there that shows -- that distinguishes
22 District 1 from District 2 from District 7, et cetera?

23 A Yeah. It's kind of busy. There's a lot going on there.

24 Q Yeah. And that's one of the things I want to show you.
10:19:01 25 Inside those districts, what this -- what Mr. Bryan did, our

1 expert, he presented a map, and these are outlines of voting
2 precincts that are color coded based on how concentrated the
3 African-American population is within those districts. So you
4 see these green areas, dark green areas are precincts that have
10:19:23 5 a lot of African-American voters, and the light green have
6 between 40 percent and 60 percent African-American voters, and
7 the red and orange have fewer African-American voters within
8 those precincts.

9 Would you call this Hatcher plan a racial gerrymander?

10:19:38 10 MR. ROSS: Objection. Objection, Your Honor. It
11 calls for a legal conclusion.

12 MR. DAVIS: Well, Your Honor, he has been calling our
13 plan a racial gerrymander. I want to test that.

14 JUDGE MARCUS: The objection is overruled. We will
10:19:49 15 take it for his state of mind. Overruled.

16 BY MR. DAVIS:

17 Q Senator Singleton, does this Hatcher map qualify as a
18 racial gerrymander by your definition?

19 A I have not looked at the Hatcher map that closely to look
10:20:01 20 at it. This is really the Hatcher map came up in the Senate on
21 the day we didn't have a chance to even see its map prior to
22 him presenting it on that day. And it was presented so fast.
23 This is the second time that I possibly have ever seen it. So
24 without even looking at the numbers and all, I -- I don't have
10:20:19 25 a real conclusion on that.

1 Q Okay. I want to focus in a little bit on this area of
2 Jefferson County that's included in District 7. Do you have
3 any opinion as to whether this map separates voters on the
4 basis of race with the way that Jefferson County is split?

10:20:38 5 A Without looking at the numbers, I don't know, but if I
6 look at those splits, it possibly could happen.

7 Q One of the plaintiffs -- and I believe it was the Milligan
8 plaintiffs, Senator -- presented a report from an expert, a
9 Mr. Bagley, I'm sure it's probably Dr. Bagley. And he quotes
10 you with the comment that he says you made about the 2011 plan.
11 I am going to pull that up so you can see it. This is Milligan
12 Exhibit 5.

13 And on the bottom of page 15 of Dr. Bagley's report,
14 Milligan Exhibit 5, look at this last line of text, and they're
10:21:34 15 talking about the 2011 plan. And Dr. Bagley says, quote,
16 Senator Bobby Singleton observed flatly, I think it's political
17 packing, talking about the 2011 plan. Is that something you
18 said? Do you recall?

19 A The 2011 plan?

10:21:53 20 Q Correct.

21 A Yes, I think I probably did say that, yes.

22 Q Okay.

23 A Political packing.

24 Q I want to share now your complaint. And I am going to go
10:22:14 25 -- this is docket entry 15, your amended complaint, Senator.

1 And I want to go to paragraph 67 of that complaint. I
2 apologize for making it easy by scrolling thorough it so fast.
3 I meant to have it at the right spot.

4 I apologize, Senator. I wrote down the wrong paragraph
10:22:47 5 number, but I have the quote down here. Says somewhere in this
6 complaint you say, District 6 and 7 have more than enough white
7 crossover voting to prevent meeting the third *Gingles*
8 precondition, racial crossover voting is sufficient to defeat
9 the candidate of choice of African-American voters. Is that
10:23:09 10 your position, Senator, that District 6 and 7 in your whole
11 county map have more than enough crossover voting to prevent
12 meeting the third *Gingles* precondition?

13 MR. PENN: Judge, I object. That calls for a legal
14 conclusion.

10:23:23 15 JUDGE MARCUS: Mr. Davis?

16 MR. DAVIS: Well, Your Honor, I mean, that's -- it's
17 just whether there's enough white crossover -- let me try to
18 reframe the question to avoid that issue.

19 JUDGE MARCUS: All right.

10:23:34 20 BY MR. DAVIS:

21 Q Do you think there is enough white crossover voting,
22 Senator, in your District 6 and 7 that African-Americans would
23 be able to elect their candidate of choice?

24 A I believe so.

10:23:46 25 Q Okay. And what is your basis for that?

1 A When I look at the trend of votes from the past elections.

2 MR. DAVIS: Your Honor, I am not going to -- I am
3 going to go on mute to confer for a moment.

4 JUDGE MARCUS: You take your time. Thank you.

10:24:55 5 MR. DAVIS: Thank you for your indulgence, Your Honors
6 and Senator Singleton. Senator, a few more questions.

7 BY MR. DAVIS:

8 Q You also presented two other maps that do split counties,
9 correct?

10:25:03 10 A I think there may have been one that split a county.

11 Q Okay. Do you stand by those, or do you stand by what you
12 said today that you want counties kept whole, period?

13 A We basically want counties whole where it's possible. We
14 understand that there may be some necessary splits. And you
10:25:26 15 may have to get that in some areas. So.

16 Q All right.

17 A Yeah.

18 Q Now, the transcript will show whether or not I heard this
19 correctly. So maybe I misunderstood.

10:25:38 20 Did you say in your direct testimony that you cannot draw
21 majority black congressional districts without racial
22 gerrymandering?

23 A No. I didn't just say that. Mr. Miller -- he asked me
24 about Mr. Miller, what Mr. Miller wanted. And I said that in
10:25:56 25 order to do that, we may find ourselves doing racial

1 gerrymandering just to be able to get it, not that we can't.

2 Q Okay.

3 MR. DAVIS: Thank you, Senator.

4 And, Your Honor, that's all the questions that we have for

10:26:13 5 Senator Singleton at this time.

6 JUDGE MARCUS: Thank you, Mr. Davis.

7 Mr. Penn, redirect?

8 MR. PENN: Thank you, Judge. Just a couple of

9 follow-up questions, Senator.

10:26:21 10 REDIRECT EXAMINATION

11 BY MR. PENN:

12 Q Mr. Davis mentioned something about the 2002 plan
13 legislates that was presented by Senator Hank Sanders, who you
14 mentioned for as a political leader in the west Alabama area?

10:26:33 15 In that regard, does it matter who drew the plan then?

16 A To my knowledge, it doesn't.

17 Q Does that change your concept of the whole county plan and
18 what you are trying to accomplish with this proposal that you
19 presented this time?

10:26:47 20 A No, it doesn't.

21 Q The other question I have is, as far as Mr. Randy Hinaman,
22 have you heard that name before?

23 A Yes, I have.

24 Q Who is Randy Hinaman, Senator?

10:26:56 25 A He is the demographer for the state of Alabama

1 reapportionment committee.

2 Q So when you met with him, what did you discuss?

3 A When I met with him, we didn't discuss anything about the
4 congressional districts.

10:27:10 5 Q You didn't have a conversation about the congressional
6 districts, did you?

7 A The only discussion he had with me about my individual
8 Senate district.

9 Q Was not about congressional districts at all; is that
10:27:21 10 right?

11 A Correct.

12 Q Who is responsible for drawing congressional districts for
13 the state of Alabama, Senator?

14 A The Alabama Legislature.

10:27:27 15 Q Are you aware he did meet with congressional leaders about
16 these maps?

17 A To my understanding, yes.

18 Q Do you think there's anything -- do you have a problem
19 with that, that he met with congressional leaders drawing their
10:27:39 20 own districts rather than the people or the folks who are at
21 these hearings who voice their concerns, or even the
22 legislators who are members of the reapportionment committee
23 have no voice? Do you have a problem with that?

24 A I have a problem with that. And I spoke with Mr. Dorman
10:27:51 25 Walker along with the two chairmans, Mr. Hinaman may not have

1 been in the room, and said to them that, you know, as a
2 minorities on this community, we wanted to be a part of the
3 whole process. When they meet with anyone, talk to anyone, we
4 wanted to be a part of that process, and we weren't.

10:28:10 5 MR. PENN: Thank you, Senator.

6 Your Honor, that's all I have at this time. Unless there
7 are other questions. I pass the witness again.

8 JUDGE MARCUS: Thank you, Senator Singleton, and you
9 are excused.

10:28:18 10 MR. DAVIS: Your Honor, I beg your pardon. I do have
11 follow-up questions to that last line if I may.

12 JUDGE MARCUS: You may indeed.

13 Senator, if you'll just stick around for another moment.

14 THE WITNESS: I am here, Your Honor.

10:28:30 15 JUDGE MARCUS: Question or two. Thank you very much.

16 RECROSS-EXAMINATION

17 BY MR. DAVIS:

18 Q Senator, whoever drafted the plan, all 140 members of the
19 Alabama Legislature got to vote on that plan up or down, right?

10:28:41 20 A Correct.

21 Q And any member of the Legislature, including those on the
22 reapportionment committee, could have drawn and introduced
23 their own plan?

24 A Correct.

10:28:50 25 Q Okay. And you could have presented another plan to the

1 reapportionment committee, could you not?

2 A Correct.

3 Q So every member of the Alabama Legislature had the
4 opportunity to produce any plan they chose and to vote on any
10:29:04 5 plan presented?

6 A Yeah. But why serve as a member of the committee when you
7 are not a part of the whole process? The only thing we got was
8 to be able just to vote after they had put it together.

9 Q But you could have presented your own plan to the
10:29:17 10 reapportionment committee, could you not?

11 A Could have, but I wanted to be a part of that process.

12 MR. DAVIS: Thank you, Senator.

13 THE WITNESS: Thank you.

14 JUDGE MARCUS: Any re-redirect Mr. Penn?

10:29:27 15 MR. PENN: No, Your Honor, that's all we have.

16 JUDGE MARCUS: All right. Thank you, Senator.

17 I take it, Mr. Penn, the next witness for --

18 JUDGE MANASCO: I think somebody might have just --

19 Judge Marcus, I think somebody might have just tried to address
10:29:44 20 the Court.

21 JUDGE MARCUS: I'm sorry.

22 Judge Moorner, he is on mute. I was unable to hear you,
23 sir.

24 JUDGE MOORER: I'm sorry. Judge Marcus, before
10:29:59 25 Senator Singleton steps down, I have one or two questions.

1 JUDGE MARCUS: Sure.

2 JUDGE MOORER: Senator Singleton, this is Judge

3 Moorer. Can you hear me?

4 THE WITNESS: Yes, sir.

10:30:10 5 JUDGE MOORER: Senator Singleton, do you know if
6 Representative Sewell was consulted in the drafting of the
7 ultimate plan that was adopted by the Legislature?

8 THE WITNESS: To my understanding, she was.

9 JUDGE MOORER: All right. The other question that I
10:30:28 10 have is: Under your whole county plan, it may be that a
11 minority may not be elected in either or both of the districts
12 that you think give a real opportunity for minorities to be
13 elected. But does your whole county plan also, whether a
14 minority is elected or not, bring the interest of the
10:31:06 15 constituency to the forefront to such an extent that whoever is
16 elected cannot ignore the interest of the minority community?

17 THE WITNESS: Correct.

18 JUDGE MOORER: And do you believe that it does that
19 better than the ultimate plan that the Legislature adopted?

10:31:25 20 THE WITNESS: I think if you look at the one that the
21 Legislature adopts is gives -- what they will think is a safe
22 district. But the one we have proposed to you give us an
23 opportunity in two districts, so I do think that it brings the
24 interest of those people to the forefront.

10:31:45 25 JUDGE MOORER: Better than the plan that was

1 ultimately adopted?

2 THE WITNESS: Yes. Yes.

3 JUDGE MOORER: From your participation in the process,
4 did you conclude at the outset that the plan that was
10:32:02 5 ultimately adopted was in essence a foregone conclusion
6 regardless of the other alternatives that you offer?

7 THE WITNESS: Absolutely.

8 JUDGE MOORER: All right. I don't have anything else.

9 JUDGE MARCUS: Thank you, Mr. Penn. Any follow-up
10:32:29 10 questions?

11 MR. PENN: No, Your Honor.

12 JUDGE MARCUS: Mr. Davis, any follow-up questions?

13 MR. DAVIS: No. Thank you, Judge.

14 MR. WALKER: Judge.

10:32:43 15 JUDGE MARCUS: I'm sorry, Mr. Walker, any follow-up
16 questions?

17 MR. WALKER: I'm sorry for that disruption, Judge.

18 JUDGE MARCUS: That's all right.

19 CROSS-EXAMINATION

10:32:53 20 BY MR. WALKER:

21 Q Senator Singleton, you acknowledge, don't you, that under
22 the whole county plan that you propose there is a possibility
23 that after an election there could be no black Congress people
24 elected; is that right?

10:33:06 25 A I don't acknowledge that, no. I think we can win those

1 districts.

2 Q I understand you think you can win. But we all know that
3 there are always political upsets. Are you confident that
4 under the plan that you're proposing, which has no majority
10:33:26 5 black districts, that black Congress people will be elected
6 from Alabama -- black candidates will be elected from Alabama
7 to the Congress?

8 A I'm confident that we can win this district, yes.

9 Q And that's based on your analysis of the trends in voting?

10:33:45 10 A Yes.

11 Q As you see them. Anything else?

12 A And just living in the districts, working the district,
13 understanding the people, understanding, you know, the whole
14 process. This is not about some political analytics or
10:34:01 15 anything. This is just the gut and being on the ground working
16 with people, yes.

17 Q So no political analytics undergird your opinion?

18 A No.

19 Q Thank you, sir.

10:34:13 20 A No more than numbers from reelections.

21 MR. WALKER: Thank you, sir.

22 JUDGE MARCUS: Thank you. Mr. Penn, any follow-up
23 questions to Mr. Walker's questions?

24 MR. PENN: No, Your Honor. We stand on

10:34:25 25 Mr. Singleton's testimony.

1 JUDGE MARCUS: All right. Thank you. Seeing nothing
2 further for Senator Singleton, Senator, thank you very much for
3 coming down here today, and you are excused.

4 Mr. Penn, I take it your next witness is your expert,
10:34:42 5 Dr. Davis.

6 MR. PENN: Dr. Davis, yes, Your Honor. If you will
7 give me a second --

8 THE COURT: We will take a short break at this point
9 for everyone and for our reporter.

10:34:51 10 By my count, it's 10:35 or almost 10:35 your time. We
11 will take a 15-minute break, and we will get started again.

12 Thank you. We'll take a short break at this point.

13 (Recess.)

14 JUDGE MARCUS: Good morning. Do we have everybody?
10:51:30 15 Ready to proceed?

16 Judge Manasco, Judge Moorer, you can hear us okay?

17 JUDGE MOORER: Yes, sir.

18 JUDGE MANASCO: I can. Thank you.

19 JUDGE MARCUS: Okay. We're ready, then, I guess --
10:51:43 20 are we ready -- are all the parties ready? I want to make sure
21 we have counsel for Caster. Do we have counsel for the state,
22 Mr. Davis?

23 MR. LACOUR: Judge Marcus, I'll be handling the
24 cross-examination.

10:51:59 25 JUDGE MARCUS: Mr. LaCour, okay. So from your end,

1 you are ready to proceed?

2 MR. LACOUR: Yes, Your Honor.

3 JUDGE MARCUS: Thank you. And I think Mr. Ross, the
4 Milligan people are ready to proceed as well?

10:52:12 5 MR. ROSS: Yes, Your Honor.

6 JUDGE MARCUS: Thank you all. And, Mr. Penn, you may
7 proceed with your next witness. Thank you.

8 MR. BLACKSHER: Your Honor, it's Jim Blacksher. I
9 will be examining Dr. Davis. We call Dr. Natalie Davis.

10:52:23 10 DR. NATALIE DAVIS,

11 having been first duly sworn, was examined and testified as
12 follows:

13 JUDGE MARCUS: If you would state your name for the
14 record, and we will proceed with the examination.

10:52:42 15 THE WITNESS: Natalie Davis.

16 JUDGE MARCUS: Thank you. Mr. Blacksher, thank you.

17 DIRECT EXAMINATION

18 BY MR. BLACKSHER:

19 Q Professor Davis, would you give us a brief overview of
10:52:53 20 your professional background?

21 A I am recently retired from Birmingham-Southern College. I
22 taught there for 38 years. I am a political scientist and am
23 -- my title now is emeritus status. Howell Heflin, professor
24 of political science. I have earned a Ph.D. in political
10:53:21 25 science in 1976 from the University of North Carolina at Chapel

1 Hill. I am generally viewed as an expert on southern politics
2 in general, but Alabama politics in particular.

3 My expertise has to do with understanding Alabama
4 politics, and also spending a good deal of my professional time
10:53:50 5 surveying, polling, analyzing, Alabama elections and process in
6 the political world.

7 I also was a candidate once for political office. And I
8 understand it from a more pragmatic point of view.

9 Q What candidacy was that?

10:54:12 10 A Rain in 1996 for the U.S. Senate and was defeated.

11 Q In the primary?

12 A In the primary, correct.

13 Q The Democratic primary?

14 A Exactly. I have been a democratic activist having served
10:54:26 15 on the state Democratic Executive Committee, the Democratic
16 National Committee, but all of that ended in 2000, and since
17 then, I have not played any active role in Alabama politics.

18 I have been called upon to comment on elections and
19 provided election night analysis for all of the local TV
10:54:49 20 stations. I have also done some national media work, and
21 annually I usually analyze the State of the State address on
22 public television.

23 I own two consulting firms, one a public opinion firm,
24 where I conduct statewide and local elections. And the other
10:55:11 25 firm Voir Dire, Inc., or voir dire, depending on where you

1 live, is a jury consulting firm. And in that activity and
2 work, I routinely survey venues. I conduct focus groups and
3 mock trials.

4 Q Thank you, Dr. Davis.

10:55:38 5 MR. BLACKSHER: If it please the Court, we move to
6 have professor Davis qualified as an expert in southern history
7 -- southern politics in general and in Alabama politics in
8 particular.

9 JUDGE MARCUS: Any objection or challenge to her
10:55:55 10 qualifications from the state, Mr. LaCour, or from Pringle and
11 McClendon?

12 MR. LACOUR: No objection, Your Honor.

13 JUDGE MARCUS: Does anyone have any objections?
14 Seeing none, Dr. Natalie Davis is qualified in the areas of
10:56:12 15 southern history, politics, and Alabama politics.

16 With that, you may proceed, counsel. Thank you.

17 BY MR. BLACKSHER:

18 Q Professor Davis, did you prepare the expert reports that
19 are marked as Singleton Plaintiffs' Exhibits 2 and 3?

10:56:29 20 A I did.

21 Q Can you describe the role of counties in Alabama politics
22 and political culture?

23 A Well, counties are the political unit of analysis, in the
24 sense that they collect for administrative purposes and
10:56:51 25 political purposes the people who live there. We elect county

1 judges, county commissioners, county members of the school
2 board, and, in fact, the elections are reported by county by
3 the Secretary of State.

4 We -- not only are counties important administratively --
10:57:24 5 driver's licenses and so on -- but they also cluster
6 individuals around a sense of community. I remember that when
7 I ran for office in 1996, the advice I received actually from
8 Howell Heflin first was that my first stop needed to be at the
9 county courthouse. It was important that county officials knew
10:57:51 10 who I was, am, and that's true of all candidates, whether it's
11 a local jurisdiction issue or a local election or a broader
12 one, like a congressional district race.

13 Counties are important. They put us together. I mean,
14 county sheriffs. Just think of all of the things that we do
10:58:14 15 because we live in a particular county -- pay different taxes
16 and all the rest that I just mentioned.

17 So from my perspective, if you want to understand
18 politics, you better know what's going on in a county.
19 Political parties organize by county so that it is -- you
10:58:34 20 qualify for election at the county level. All of these things
21 come together, and I just don't know -- I understood the
22 argument about that, and we can come back to it -- communities
23 of interest. But for all practical purposes, you understand
24 politics, you better understand the county.

10:58:56 25 Q Do the major parties, the Democratic party, Republican

1 party organize at the county level?

2 A They absolutely do. There are county committeemen. You
3 actually elect county committeemen and women. You have
4 fund-raising activities put on by local county political
10:59:22 5 parties. And so it's a given that organization Get Out the
6 Vote, the stats that go with previous elections with respect to
7 counties, all of those are respected. And so when you're
8 designing a plan politically, you go county by county, what's
9 possible, what's not possible.

10:59:43 10 Q Do ordinary citizens identify themselves by the county
11 that they reside in?

12 A Yeah. I think they tend to first say, well, I live in
13 Birmingham, or I live in Mobile. But beyond that, in polling,
14 for example, the first question we ask in a statewide poll is,
11:00:06 15 what county do you live in, because then we can begin to put
16 counties together and figure out what's going on statewide.

17 Q Is it important that elected officials, county elected
18 officials have a good relationship with the member of Congress
19 who represents them?

11:00:30 20 A Well, sure. You want a direct relationship with your
21 member in Congress. And you want to be able to say, this is
22 what's going on in our county, this is what we need, please
23 help us. And that gives that member of Congress a way to
24 communicate with the rest of the Washington political and
11:00:55 25 administrative government.

1 You know, it -- one of the things about Alabama is that
2 historically members of Congress were known more for
3 constituent service than they were for having a national
4 profile. And if you think about Senator Shelby, for example,
11:01:24 5 what kind of federal funding and federal relief has he been
6 able to bring to Alabama? This has been true historically, and
7 members of Congress the same way. One of the problems with
8 splitting a county is you may have two members of Congress who
9 are politically at odds. Therefore, it's very difficult for
11:01:48 10 the county to act in unison, in terms of county needs.

11 Q When you say politically at odds?

12 A Well, sure, one is a Democrat and one is a Republican. So
13 sometimes they can't come together.

14 Q What if they're both Democrats or both Republican and have
11:02:09 15 different constituencies outside the county?

16 A That can be a problem, as well. To the extent that there
17 are ideological differences between those two persons, then
18 something that touches ideology is going to be hard for to get
19 an agreement on.

11:02:23 20 Q Professor Davis, in the legislative session in which the
21 current plan was enacted last October, at least one of the
22 Republican members of Congress asked to have a change made
23 between Escambia County and Monroe County. I think it was
24 Representative Moore. And one of the arguments that he made as
11:02:55 25 presented in the talking points by Dorman Walker was that he

1 didn't need -- he had too many counties to provide his -- was
2 going to overburden his staff because they had to service these
3 counties. What is he talking about, servicing these counties?

11:03:20 4 A Well, again, constituent service has been a mark of
5 representation in Alabama. But if you trade one constituency
6 for another, then you either jeopardize support in the other
7 counties, or that one county -- in this case Monroe County --
8 is not going to get what it needs. Or I should say it may not
9 get what it needs.

11:03:48 10 Q Did you analyze the opportunity districts -- Districts 6
11 and 7?

12 A I did.

13 Q In the Singleton whole county plan?

14 A I did.

11:03:58 15 Q And how did you analyze, and what did you conclude?

16 A I went to -- we looked at 12 elections -- statewide
17 elections. We did not look at the two times that congresswoman
18 Sewell ran and won with big numbers and then from that point on
19 really didn't have opposition. And so we looked at 12
11:04:29 20 different elections and found that if you applied the Secretary
21 of State's voting results for the counties in the whole county
22 plan, you find that in the whole county plan District 6 and
23 whole county plan District 7, the Democrat would have won the
24 district.

11:04:55 25 Slim margins in a couple. Large margins in others. I'm

1 looking for the results so we have to talk about them.

2 Q Are the election returns that you're referring to appended
3 to your expert report, Exhibit 2?

4 A Yes. And you're helping me to find them, I know.

11:05:21 5 Q It's quite all right. We don't need to refer to them.

6 A Great. All right. Go ahead. I'm sorry.

7 Q I think Senator Singleton referred to the election
8 between -- for lieutenant governor between James Fields and Kay
9 Ivey?

11:05:41 10 A Right.

11 Q That had the smallest margin of democratic victory in
12 those counties of any, didn't it?

13 A Yeah, that was in 2014. James fields, an
14 African-American, ran statewide. He had little money, no --
11:05:58 15 virtually no name recognition out of I think Cullman County.

16 Q Cullman County?

17 A And while the newly elected Lieutenant Governor Ivey took
18 63 percent of the vote statewide, in the both the Sixth and
19 Seventh Districts, the Sixth in particular, it was a slim
11:06:27 20 margin, but Fields beat Ivey.

21 Q In the Sixth and Seventh Singleton plan Districts?

22 A Yes, in the whole county plan. All of this is whole
23 county. The interesting thing about trying to revisit these
24 elections is that we have the actual data, again, provided by
11:06:48 25 the Secretary of State's office.

1 And so while one of the defendants' experts has -- uses
2 modeling to develop results, we could actually look at the
3 numbers and see what happened or what would have happened, what
4 did happen.

11:07:05 5 Q You don't have to estimate what the returns would be?

6 A That's right.

7 Q If you have the returns on paper?

8 A That's exactly right.

9 Q And to the extent that the state's expert was trying to
11:07:16 10 predict how these districts might perform in the future, he
11 still has reference, doesn't he, to his performance in the
12 past?

13 A That's correct.

14 Q Is there any other way to predict the future when it comes
11:07:30 15 to political predictions of how a particular district will
16 perform?

17 A You know, every election is unique. There's no question
18 about that. Every election. But every election relies upon
19 what happened previously. And so whether it's targeting or
11:07:47 20 whether it's just kind of understanding politics for that area,
21 you do rely on history.

22 Modeling is a major effort in political science. And I
23 understand that. But when you have -- you are not operating in
24 the dark here. We know what happens.

11:08:12 25 Q How much confidence do you have that Districts 6 and 7 in

1 the whole county plan will provide black voters the opportunity
2 to elect candidates of their choice?

3 A I have -- I have very strong confidence. And let me start
4 by saying that, you know, you can look at -- you can look at
11:08:39 5 redistricting in terms of outcomes. We are -- we want to have
6 two black members of Congress. Or you can look at it in terms
7 of opportunity. We want a process that assures that black
8 voters have the opportunity to elect a candidate of their
9 choice.

11:09:03 10 And the whole county plan does that. It does it by first
11 assuring itself that the democratic nominee is going to be
12 supported by black voters. And from what -- from the knowledge
13 we have and experience we have about the black vote in this
14 state, we know that that's -- that the primary is going to
11:09:28 15 result in a candidates that's been selected by black voters.

16 Q Would that apply to the primary elections in Districts 6
17 and 7 in the whole county plan?

18 A In the whole county plan, absolutely. But what we know is
19 that -- that's probably not enough to assure that outcome.
11:09:50 20 What has to happen is that there has to be a percentage of the
21 white vote that crosses over and votes with the democratic
22 nominee. History, the statistics tell us that's the case.

23 The defendants' experts that predict anywhere from 10 to
24 19 percent of a crossover vote, that materialized in these
11:10:17 25 previous elections, and it will materialize in the future.

1 So you combine the black vote with the sufficient number
2 of white vote, and you are going to get 50 percent plus one of
3 the total vote cast in a general election.

4 Q What about Jefferson County in particular? Is there a
11:10:35 5 lasting history of white support for democratic candidates in
6 Jefferson County?

7 A There is. And in Jefferson County -- Jefferson County is
8 a blue county. It has been blue for probably since the mid to
9 late '80s, mid '90s. It -- all the judges are Democrats. All
11:10:57 10 the county commissioners with -- well, that's not true. Not
11 all the county commissioners.

12 Q County commissioners run for districts?

13 A That's right. Any county-wide officials are Democrats.
14 So we know what Jefferson County is going to do, because it's
11:11:15 15 done it election after election after election.

16 Q So in your opinion, what are the main differences between
17 the plan that was enacted by the Legislature in 2021 and the
18 Singleton whole county plan?

19 A Well, the 2021 plan, the enacted plan, does a couple of
11:11:36 20 things. One is it does assure that one black person will be
21 elected and that will be in the Seventh District.

22 It splits Jefferson County in a way that is unfair to
23 black voters who live in Jefferson County.

24 Three-fourths of black voters -- black population is moved
11:11:59 25 out of Jefferson -- out of the Sixth, what was the Sixth and

1 moved into the Seventh. So that splits the county in a way
2 that is unfair to black voters. There's no question about
3 that.

4 It is a racial gerrymander, the current enacted plan,
11:12:18 5 because it really does pack black voters into one district.

6 Three-quarters of black voters have no say about Jefferson
7 County, except to combine their needs with the needs of other
8 black voters in the Seventh. And I would argue that they're
9 very different. Jefferson County is urban. The other
11:12:46 10 districts -- the other counties tend to be rural.

11 That's an important marker. What the whole county plan
12 does is just that. It brings the folks who live in Jefferson
13 County together for political and for cultural purposes. And
14 it's whole. It is -- it is -- it serves the interest of
11:13:12 15 parsimony. It is simple. It is clear to understand. And it
16 works. And it will make it likely -- very likely that two
17 Democrats will be elected rather than one.

18 And I would say one other thing between -- as far as the
19 difference between the 20 -- the bill passed by the -- sorry --
11:13:32 20 the Act passed by the Legislature and this one is that the
21 enacted plan essentially disenfranchises white Democrats. They
22 really don't have a say in the -- in either the democratic plan
23 in either the Seventh or the Sixth district. But in the whole
24 county plan, they're important. And in that sense, it serves
11:14:08 25 the interest of what I would call an important part of the

1 democratic process, and that is political competition.

2 Q Did you review -- I know you did review the -- because we
3 gave it to you -- the exhibit that shows pictures of all the
4 maps of congressional plans going all the way back to 1822 in
11:14:38 5 Alabama?

6 A Yeah. And I'd say I reviewed them carefully, but go
7 ahead.

8 Q So is there any other -- is there any other feature of
9 those plans other than whole counties that predominates in your
11:14:56 10 opinion?

11 A Well, I mean, obviously, they have sliced and diced the
12 area that encompasses the Seventh District that -- just look at
13 the map. All right. The little finger is gone in the current
14 -- in the enacted plan, but not really. And, you know,
11:15:19 15 splitting census tracks or precincts, all that kind of stuff,
16 it just seems to be so artificial and so obviously a
17 gerrymander.

18 The value of whole plan -- and they didn't do it for other
19 -- except for the Sixth and Seventh, they didn't do it for
11:15:36 20 other districts. They may be a little bit here and there. But
21 there was reason to split Jefferson County when its population
22 exceeded one-eighth or one-seventh of the state. But really
23 there's no reason to split it now. It's less than that.

24 And someone who lives in Jefferson County, I'd like it all
11:16:05 25 together.

1 MR. BLACKSHER: Pass the witness, Your Honor.

2 JUDGE MARCUS: Thank you. Let me ask counsel for
3 Milligan, any questions for this witness?

4 All right. Counsel for Caster? Any questions for this
11:16:19 5 witness?

6 All right. Seeing none, let me turn, Mr. LaCour, to you
7 on behalf of the Secretary of State.

8 MR. LACOUR: Absolutely. Thank you, Your Honor.

9 CROSS-EXAMINATION

11:16:31 10 BY MR. LACOUR:

11 Q Dr. Davis, it's good to see you again. I am Edmund
12 LaCour. I represent the Secretary of State in this litigation.
13 And I hope you have been well.

14 A I hope you are, too.

11:16:42 15 Q Thank you. A few questions for you about your testimony
16 today and as well as the statements that you have offered and
17 the two declarations.

18 Starting, first, with your initial report, which I believe
19 is Singleton Exhibit 2 right at the outset in the first
11:16:59 20 paragraph, you've stated that, quote, the whole county plan
21 introduced in SB-10 is an optimal redistricting plan. What
22 makes it optimal in your view?

23 A Well, for one thing, it does consolidate the voters in
24 Jefferson County, and I think that's an important part of the
11:17:23 25 plan. It also represents the tradition of Alabama, which is

1 whole county. We do things by county.

2 It also consolidates the black vote inside Jefferson
3 County. And it -- under the enacted plan, black voters in
4 Jefferson County are used to racially gerrymander the Seventh
11:17:52 5 District. Under the whole county plan, there is more respect
6 for the ability of black voters to choose a candidate of their
7 choice.

8 Q Okay. So would the plan still be optimal if it only
9 produced one congressional district where it was likely that
11:18:11 10 black voters would have the opportunity to elect the candidate
11 of their choice?

12 A I'm not sure I understand. Are you talking about --

13 Q Well, I guess I'm trying to figure out is it the fact that
14 counties are kept together what makes it optimal? Is it the
11:18:29 15 fact that two candidates supported by a large number of black
16 voters are likely to be elected that makes it optimal, or is it
17 some combination of the two?

18 A Yeah. I think it's both of those things. And I would add
19 that it represents a better stake in the democratic process.

11:18:51 20 Q Okay. And would the plan be even more optimal if it was
21 likely that three Democrats would be elected to Congress
22 instead of just two?

23 A That's hard to say, but as -- you know, yeah, I would say
24 so only to the extent that that would mean the congressional
11:19:17 25 delegation would be four to three. And I think that's better

1 than six to one or five --

2 Q Would it be more optimal still if that delegation was four
3 Democrats and three Republicans if the plan could produce that?

4 A I don't want to get to the opposite of what we have now.

11:19:45 5 And so I don't know how to answer that question. I am for
6 political competition. And I think that realistically two is
7 about all that Democrats could hope for. And if -- if blacks
8 represent about 28 percent, 27 percent of the population, that
9 seems like a fair distribution.

11:20:16 10 Q Okay. And if there was a plan that allowed black voters
11 to elect a candidate of their choice and white Democrats in
12 another district to elect the candidate of their choice, would
13 that plan be equally optimal to the whole county plan?

14 A Help me again with the question. Are you saying if the
11:20:37 15 whole county plan came up with white Democrats being elected as
16 opposed to black Democrats? Is that the question?

17 Q If one district was likely to allow for black voters to
18 elect the candidate of their choice, and another district was
19 likely to allow white Democrats to elect the candidate of their
11:20:58 20 choice, would that be as optimal as the whole county plan?

21 A Again, Mr. LaCour, are you talking about inside the whole
22 county plan as it's -- in SB-10 or just a general question?

23 Q More generally?

24 A White Democrat over a black Democrat?

11:21:16 25 Q I would say more generally. Would you agree with me

1 there's more than one way to draw a whole county plan?

2 A Oh, I'm sure there is.

3 Q So if there was hypothetically a different whole county
4 plan where white Democrats were to the most powerful group
11:21:33 5 within one district and black Democrats had the opportunity to
6 elect the candidate of their choice in the other district,
7 would that also be optimal?

8 A Not compared to the whole county plan being offered, the
9 Singleton plan.

11:21:49 10 Q Okay. And why would that be?

11 A Because we need to be sure that the voices of black voters
12 are heard. If a majority of black voters nominate a white
13 Democrat, I'd say that's fine. The odds are they will elect a
14 candidate of their choice who is black.

11:22:11 15 Q All right. And just more generally, when you say optimal,
16 you mean like optimal for whom?

17 A Political process. For politics in our state.

18 Q And are you aware of any legal requirements, state or
19 federal law that requires Alabama Legislature to enact a plan
11:22:36 20 that is optimal in that sense?

21 A I don't know.

22 Q Would --

23 A I know that racial gerrymandering is unconstitutional.

24 Q Now, would a plan that led to the election of seven
11:22:53 25 Republicans be optimal for the Republican party?

1 A Say it again.

2 Q If there was a plan that led to the likely election of
3 seven Republicans, would that be an optimal plan for the
4 Republican party?

11:23:09 5 A No.

6 Q And why not?

7 A Well, why have elections? You know, if you want to go
8 back to the old adage of the primary is tantamount to election,
9 well, I guess so. But I don't subscribe to that. I think
11:23:31 10 interparty the possibility that everybody has a shot at winning
11 is a good thing.

12 Q Okay. We were discussing earlier that there are
13 potentially other ways to draw whole county plans. Are you
14 aware that there are some whole county plans that can be drawn
11:23:50 15 that are likely to elect only one Democrat?

16 A I really don't -- I really haven't looked at other plans.

17 Q If there were such a plan, should Alabama still keep
18 counties whole even if doing so doesn't produce two crossover
19 districts, like the whole county plan does?

11:24:10 20 A You know, I -- I don't know. I don't think so. Because,
21 again, if you assume that the population of Alabama has got
22 room for two African-Americans, two blacks, then I would prefer
23 it.

24 Q Okay. And then comparing -- and, again, these are all
11:24:31 25 hypotheticals, but if there was a whole county plan with one

1 45 percent Black Voting Age Population district, and no other
2 district with even 40 percent Black Voting Age Population,
3 would that be better than a plan that has just one, 54 percent
4 Black Voting Age district that ends up splitting a few counties
11:24:57 5 to get there?

6 A You know, I really don't think so. I think that, you
7 know, my -- my view of politics is that there is room to have
8 two elected representatives to Congress who are supported by
9 black voters and you can do it and you should do it because it
11:25:23 10 does bring together people who would otherwise not have the
11 chance to come together and elect the candidate of the choice
12 of black voters.

13 Q Okay. Now, you have referred to Alabama's tradition of
14 keeping counties whole, correct?

11:25:37 15 A Right.

16 Q And are you aware of any legal requirement that the state
17 do so for congressional districts?

18 A No, I don't think so.

19 Q Okay. Do you know what the last plan was in which every
11:25:51 20 county was kept whole?

21 A I think you would have to go back to 19 -- well, '60, I
22 guess. I'm not sure.

23 Q That sounds right to me.

24 A It's all about Jefferson County, and that's why it had to
11:26:12 25 be split. So for a couple of cycles, a couple of censuses,

1 Jefferson County was the only county that was split.

2 Q Uh-huh.

3 A And then St. Clair came on, and there were two counties
4 that were split. But for the rest of the state, everything was
11:26:32 5 whole county.

6 Q And you're familiar with the constitutional principle of
7 one person one vote, correct?

8 A Yes.

9 Q Is striving for equal representation among each of the
11:26:44 10 congressional districts traditional districting criterion, as
11 well?

12 A I think equal population certainly is.

13 Q Okay. And the Legislature for several districting cycles
14 now has sought to minimize population deviation among the
11:27:03 15 districts, correct?

16 A That's correct.

17 Q So is it your position that the state's interest in
18 keeping counties whole should trump the state's interest in
19 ensuring tighter compliance with one person one vote principle?

11:27:18 20 A I believe there is room for deviations greater than zero,
21 and I don't know that the line has been set in the -- I guess
22 -- I don't know constitutional law. But I think I know that
23 the tenet decision suggests that that zero deviation did not
24 need to happen.

11:27:42 25 Q And because -- so then accepting that the state has the

1 ability to deviate some, it's your position that they should,
2 that they should prioritize keeping the counties together over
3 the other traditional criteria of maintaining one person one
4 vote?

11:28:03 5 A I think you can serve both of those things. I don't -- I
6 mean, obviously, a huge deviation would violate that. But we
7 have to decide what is acceptable in order to both preserve
8 counties and preserve the ability of black voters to elect the
9 candidate of their choice.

11:28:27 10 Q You'd agree that the enacted map keeps most counties
11 whole, correct?

12 A Well, it's all about the Sixth and Seventh Districts,
13 isn't it?

14 Q Well, my question, though, is there are not more than a
11:28:47 15 few county splits, correct?

16 A Right.

17 Q So they've struck a balance to say we're going to go as
18 close as we can to one person one vote even though that's going
19 to require us to split a few counties, correct?

11:29:05 20 A Well, they went to zero, in terms of deviation. And in my
21 judgment, all of the decisions about redistricting -- I
22 shouldn't say all. A huge majority of the decisions regarding
23 redistricting had to do with the Seventh District and
24 preserving that district as a majority -- a minority-majority
11:29:35 25 district. And to do that, you know, you squeezing as many

1 black voters as you can, and that creates all these splits.
2 And so then you have splits for the Sixth District as a result
3 of that.

4 You know, I think the reasons which go back to the Voting
11:29:59 5 Rights Act may have been good reasons for doing what has been
6 done. But the law changed. And the process should have
7 changed to accommodate the law.

8 Q I'd like to touch on that a little bit.

9 So I think you had said in your supplemental report on
11:30:21 10 page 4 that, quote, such concentration may have been justified
11 in the past, referring to the concentration of voters in
12 District 7?

13 A Right.

14 Q Correct?

11:30:33 15 A Correct.

16 Q Do you know when that concentration was no longer
17 justified?

18 A I think after the Reno decision.

19 Q So then by 1993, the Legislature had an obligation to undo
11:30:58 20 that district?

21 A Well, it certainly had an obligation not to gerry --
22 racially gerrymander it.

23 Q And --

24 A I think that there was a consensus that we should keep
11:31:22 25 things as they are, and this idea that you shouldn't have

1 incumbents running against each other dominated all the
2 thinking. Those two things. And as a result, they said, well,
3 let's just leave it. And they left it for two more censuses
4 and now this one, if I have my years correct.

11:31:42 5 Q When a Legislature generally engages in redistricting
6 process, do they usually start with a blank slate or start with
7 the previously enacted map?

8 A I'm guessing they use the old map. But I don't really
9 know that.

11:32:01 10 Q Okay. And are you aware that under the current guidelines
11 that governed in the 2021 redistricting process, that retention
12 of the core of districts was one of the guidelines that the
13 Legislature adopted?

14 A Not directly. I've been hearing this morning, but...

11:32:29 15 Q And incumbency protection was also?

16 A Right.

17 Q Those guidelines, correct?

18 A Right. And I have a problem about that. But.

19 Q But I think you have said this is also your supplemental
11:32:46 20 report Singleton Exhibit 3, page 4, quote, one of the
21 guidelines is not to put incumbents in the same district, so in
22 many ways, the current plan is an incumbent protection plan,
23 closed quote.

24 Am I getting that right?

11:33:00 25 A You got it.

1 Q So that -- is it your view that incumbency protection
2 explains why the Legislature enacted the 2021 map?

3 A Well, it explains a piece of it, sure. You know, leave
4 things as they are. Don't put incumbents together results in
11:33:26 5 racial gerrymandering.

6 The -- and I guess if you went to a whole county plan, you
7 risk having Terri Sewell run against Gary Palmer. And neither
8 of them would like to do that, I am sure. Why have elections
9 if you're just going to keep things as they are and have
11:33:53 10 incumbents get reelected time after time? What do you need an
11 election for?

12 Q Can incumbency protection sometimes benefit a district's
13 constituents?

14 A It can, yes.

11:34:09 15 Q I think you touched earlier on the importance of members
16 of Congress having good relationships with county officials,
17 correct?

18 A Right.

19 Q So would ensuring that members of Congress continue to
11:34:22 20 represent the same counties and more or less the same
21 constituents help promote that interest?

22 A I think generally speaking, yes.

23 Q Okay. Does -- elected officials generally learn more
24 about their districts its needs the longer they've served,
11:34:40 25 correct?

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1 A If they choose to.

2 Q And do members of Congress tend to accrue more influence
3 in Congress the longer they serve?

4 A Yes.

11:34:51 5 Q And thus more senior members of Congress might be better
6 able to serve their districts than a more junior member, would
7 that be fair?

8 A Yes, to some extent. But let me just add something to
9 this.

11:35:12 10 When you have a district which is as split racially in
11 Jefferson County as it is, if you went to the whole county
12 plan, you have a problem in that -- let me go back.

13 Under the current plan, both the previous and the enacted,
14 the member of Congress, a Republican, can totally ignore the
11:35:37 15 black community.

16 I don't think that's morally right or ethically right.
17 But it doesn't serve the interest of democracy. It's more
18 stable. And it certainly can deliver to communities like
19 Mountain Brook and Vestavia and so on. But it doesn't deliver
11:35:58 20 to Bessemer or to the city of Birmingham. And I think that's
21 the problem with -- the old plan up until this current election
22 coming up, and, perhaps the new plan.

23 Q I think about --

24 MR. LACOUR: Your Honor, one moment. I apologize.

11:36:32 25 JUDGE MARCUS: Take your time.

1 BY MR. LACOUR:

2 Q So if a member of Congress were able to deliver for his
3 district, for example, if the member of Congress in the First
4 District were to deliver something that's very beneficial to
11:37:00 5 the port in Mobile, is that something that would benefit black
6 and white voters?

7 A I think so.

8 Q Are you aware of any evidence that Republican legislators
9 more specifically Republican members of Congress are ignoring
11:37:22 10 the interest of black voters?

11 A I think when it comes to issues of -- you talking about
12 state legislators or members --

13 Q Members of Congress.

14 A I think when it comes to issues that impinge upon federal
11:37:42 15 spending, on taxes, on some social issues, not all, I would say
16 that Republican members of Congress do not represent the best
17 interests of the black community.

18 Q Do you think Representative Sewell represents the interest
19 of white Republicans in District 7?

11:38:09 20 A I don't know her voting record. But I'm guessing that she
21 votes typically with the Republicans probably more than most.
22 And so things like tax cuts for the wealthy folks in her
23 district, probably is not in their interest.

24 Q Okay. Now, coming back to the 2021 map, you say it's a
11:38:47 25 racial gerrymander because it packs black voters. Is your

1 opinion based solely on the shape of District 7?

2 A No. I mean, again, going back to Jefferson County,
3 75 percent of the black population is moved from Jefferson
4 County -- well, is in the Seventh District. I mean, that's an
11:39:16 5 important piece of the puzzle. Without Jefferson County, the
6 Seventh District under the current plan would be in terrible
7 shape for Terri Sewell. That's why the whole county plan makes
8 a whole lot more sense.

9 Q So that's because there is a split in Jefferson County
11:39:45 10 that gathers in a substantial majority of the black voters?

11 A Yeah. It's a lot of voters. It's a lot of people. It's
12 not just based on voters. It's population. And it really
13 takes them out of the Jefferson County mix. I just find it
14 difficult to understand why that makes sense.

11:40:11 15 Q And we talked earlier about the 1992 map. Is it your
16 position that was a racial gerrymander, as well?

17 A Yeah, but under Section 2 of the Voting Rights Act, it was
18 justified.

19 Q Okay. And those that followed -- I think in your initial
11:40:40 20 report Singleton Exhibit 2 page 8, I think you said the 2021
21 map is, quote, keeping things as they are, closed quote, and
22 that's what makes a racial gerrymander?

23 A Yes.

24 Q Okay. So it's based on the effects of the lines at the
11:41:05 25 end of the day; is that fair?

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1 A Well, I think you start from -- as you said earlier, you
2 start from the map you have, and then you play with it because
3 population shifts, size of the district shifts, and all the
4 rest. But you kind of do it the same way.

11:41:24 5 Q The 2001 plan was enacted by a Democratic majority in the
6 Alabama Legislature, correct?

7 A That's right.

8 Q And is it true that this map in 2008 led to the election
9 of three Democrats to Congress, I believe Bobby Bright, Parker
11:41:43 10 Griffith, and Artur Davis?

11 A Bobby Wright, Artur Davis, and who was the third one?

12 Q And I think Parker Griffith with the Fifth District,
13 Huntsville?

14 A Oh, in Huntsville? Yes.

11:42:00 15 Q Yes.

16 A And that was in 2001?

17 Q That was in -- the map would have been enacted 2001. I
18 believe 2008 was when all three of them were sent to D.C. on
19 behalf of the state of Alabama. Does that sound about right?

11:42:16 20 A Yeah. I think that's right.

21 Q Did that map provide white Democrats any voting power?

22 A Sure, it did.

23 Q Okay.

24 A Bobby Wright became a Republican as I recall.

11:42:32 25 Q And was the 2001 plan more optimal than the 2021 plan?

1 A I don't -- I have to look at a map, to be honest.

2 Q Let me see if I can pull up the 2021 map or the -- and the
3 2001 map for that matter.

4 A You know we went through one-party democratic politics,
11:43:08 5 one-party state. And then we had a transition period. And in
6 2010, the transition to a one-party Republican state took
7 place, so we were in that potential for a two-party
8 competition.

9 Q Okay. So I'm going to -- and hopefully this is --

11:43:29 10 A And Parker decided to run for statewide, and that was the
11 end.

12 Q So this is the 2021 map. We will take a quick look at
13 that. And then I will turn back the clock.

14 A Wait. This is the enacted plan or the?

11:43:43 15 Q This is the enacted plan here. I am going to go back as a
16 point of reference. I will go back to the 2001 plan, which is
17 right here. So I guess it's hard to -- it's 2002 congressional
18 districts because they would have been running in these
19 districts in 2002.

11:44:03 20 A Uh-huh.

21 JUDGE MARCUS: Mr. LaCour, let me interrupt you for a
22 second. Can you tell us just so the record is clear what
23 exhibits these are, that is to say HB-1 the 2021 plan enacted
24 and the 2002 as enacted? I think just so the record's clear,
11:44:24 25 we know exactly which district -- which exhibits we're

1 referring to.

2 MR. LACOUR: Yes, Your Honor. I apologize. This is
3 Singleton Exhibit 22. This is the exhibit that Singleton
4 plaintiffs have submitted that includes pictures of every one
11:44:41 5 of Alabama's historic map.

6 JUDGE MARCUS: Singleton 22 includes the '21 map
7 adopted and the 2002 plan as it existed?

8 MR. LACOUR: That's correct. We're looking at page 51
9 right now, which is the 2000 -- the map that -- the map that
11:44:59 10 candidates ran under in 2002.

11 BY MR. LACOUR:

12 Q So is there anything, then, that is?

13 A Can you show me 2021 again?

14 Q Absolutely. Scroll --

11:45:17 15 A Bring it down just a little. Up. Sorry. No, I meant I
16 want to get to the Fifth District.

17 Q We'll go look at the Fifth.

18 A Good.

19 Q And we'll go back to 2001. Fairly similarly looking Fifth
11:45:42 20 District, correct?

21 A So one county was added, what, south of Madison? Maybe it
22 was -- anyway, it doesn't make that much difference. But in
23 2002, opportunities for Democrats were much greater. And if
24 you again look at the Seventh and look at that little finger
11:46:03 25 that goes up into the sixth, it just seems gerrymandering.

1 Q Okay. Stop sharing this for now.

2 Let's see. Now, returning to 1992 very briefly. Is it
3 fair to say that a plan with two, 50 percent Black Voting Age
4 Population districts would not have been approved by the
11:46:35 5 Department of Justice?

6 A I think at that time you needed a minority-majority of 65
7 or maybe 63 or something like that, yeah.

8 Q And are you aware of any plan from the early '90s that
9 would have drawn two districts of at least 65 percent Black
11:46:56 10 Voting Age Population?

11 A No.

12 Q Okay. I want to clarify something that you had stated
13 about I think the 1980 plan. This is pages 6 and 7 of your
14 initial report.

11:47:12 15 I may just share the screen because it's a longer passage.

16 I think we're now looking at -- there it is. 6 and 7.
17 Starting here -- so the -- hold on. I want to make sure I'm
18 getting the right -- okay.

19 So you stated in the plan adopted in 1980 only Jefferson,
11:48:21 20 St. Clair counties were split. What is revealed here was the
21 intention of preserving the whole county tradition except for
22 Jefferson County. The population size may have dictated the
23 need to split Jefferson then, but the way in which it was split
24 concentrated black voters in such a way as to segregate them
11:48:36 25 moving from the Sixth Congressional District to the Seventh

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1 Congressional District. The result -- the result was to
2 concentrate and compact the Black Voting Age Population. The
3 goal of electing one black to Congress was accomplished.

4 Now, to clarify, is it your position that the goal of
11:48:54 5 electing one black representative to Congress was accomplished
6 through the map enacted following the 1980 census or following
7 the 1990 census?

8 A Oh, following -- wait a minute. No. I think that the --
9 if I remember what I wrote, that the 1970 plan and 1980 plan
11:49:27 10 was done because of the population issue.

11 Q Okay.

12 A But then by the 1992 plan had to do with the Voting Rights
13 Act.

14 Q Okay. So you're not suggesting that the 1980 plan
11:49:44 15 succeeded in electing one black to Congress?

16 A I don't think so.

17 Q Now, following up, we were talking a little bit about core
18 retention, which I think in your report you state at page 4,
19 quote, the 2011 plan that the most should violate the concept
11:50:14 20 of core retention it was/is an effort to isolate the black vote
21 and concentrated in the Seventh Congressional District. You
22 also state on page 4 that the enacted plan takes 75 percent of
23 the black population in Jefferson County and allocates it to
24 the Seventh District, and you describe that as, quote,
11:50:35 25 disruption of the core vote of Jefferson County.

1 To be clear, when you are talking about core retention
2 District 7, your baseline is not the previous congressional
3 district, right?

4 A That's correct.

11:50:47 5 Q I just wanted to be clear about that.

6 And okay. And then we touched on this briefly. I guess
7 we have looked at the 2021 map. And you conclude that one of
8 the only purposes of the 2021 Act was suppressing the
9 opportunity for black voters living in Jefferson County but
11:51:15 10 outside the seventh electing the candidate of their choosing,
11 correct?

12 A That's right.

13 Q We looked briefly at the 2021 map before. And is it fair
14 to say perhaps your main concern with it is how Jefferson
11:51:33 15 County was split, right?

16 A Right.

17 Q Okay. I'd like to next pull up a current map and just see
18 if you have similar concerns about this map. One moment. And
19 it says Caster Exhibit 18.

11:51:55 20 And can you see this?

21 A Yeah. This is -- this is the 2021 plan?

22 Q This is not the 2021 plan. This is a plan that has been
23 submitted by plaintiffs in one of the other cases. It's an
24 alternative plan that Bill Cooper has represented is
11:52:20 25 52.15 percent any part black in District 2 and 55.49 percent

1 any part black in District 7.

2 So if we will zoom in briefly into Jefferson County, based
3 on your opinions about the 2021 map that was enacted, does it
4 appear that this map --

11:52:52 5 MR. ROSS: Your Honor?

6 JUDGE MARCUS: Yes, Mr. Ross?

7 MR. ROSS: Outside the scope of her opinions in the
8 state of her earlier testimony on direct.

9 JUDGE MARCUS: Mr. LaCour?

11:53:02 10 MR. LACOUR: Your Honor, we think this is quite
11 important to see if her views are consistent and tell whether
12 she views the enacted map to be a racial gerrymander because it
13 does not elect more than one Democrat or if she would have
14 similar views about any map that splits counties in similar
11:53:31 15 ways.

16 JUDGE MARCUS: I didn't mean to cut you off,
17 Mr. LaCour.

18 MR. LACOUR: I think it goes to credibility and also
19 the constitutionality of the map that we have enacted.

11:53:44 20 JUDGE MARCUS: The objection is overruled. You may
21 proceed with your question.

22 MR. LACOUR: Thank you.

23 JUDGE MARCUS: State it again just so the record is
24 clear. I think it fairly goes to test this witness's expertise
11:54:00 25 in the field that she's testifying about. You may proceed, but

1 if you would put the question again clearly to Dr. Davis again.

2 MR. LACOUR: Yes, Your Honor.

3 BY MR. LACOUR:

4 Q So, Dr. Davis, let's start with District 7. In
11:54:20 5 particular, where District 7 enters Jefferson County, does this
6 bear some resemblance to enacted District 7 in your view?

7 A Does this what?

8 Q Would this version of District 7 bear some resemblance to
9 the enacted version of District 7?

11:54:42 10 A Yes. Yes.

11 Q And does it also appear to include a large percentage of
12 Jefferson County's black population within District 7 and leave
13 other members -- other black Alabamians in Jefferson County in
14 District 6 in a similar way that you have identified for the
11:55:11 15 enacted version?

16 A Yes.

17 Q Of District 7?

18 A Yes.

19 Q Okay. And then I want to scroll down a little to another
11:55:20 20 county split. Looking here at District 2. You see it ventures
21 down into Mobile County and appears to pick up a good portion
22 of the city of Mobile.

23 In your view, would that be suggestive of racial
24 gerrymandering?

11:55:45 25 A I'd have to see the stats for this District 2. But,

1 again, going back to Jefferson County, it pretty much does the
2 same thing and also takes part of Tuscaloosa County, which is
3 black, the city, and I mean, it does the very same thing that
4 the enacted plan does.

11:56:13 5 And going to Montgomery County, where under the whole
6 county plan, Montgomery stays intact. It -- again, it's an
7 effort to pull and concentrate black voters in the Second and
8 then in the Seventh. It's an outcome-based plan. There's no
9 question. And I am not as both my experience and my research
11:56:43 10 tell me is not the best idea. I don't -- I am not interested
11 in outcomes. I'm interested in process.

12 Q Okay. Then I will quickly run through a couple other
13 plans with similar questions. Stop sharing this for the
14 moment.

11:57:07 15 And let me find this other exhibit. Next we have Caster
16 Exhibit 23. This is a different plan also submitted by the
17 Caster plaintiffs.

18 Similar question: It looks somewhat similar to the
19 illustrative plan 1 that you were just talking about, correct?

11:57:54 20 A Exactly.

21 MR. ROSS: Your Honor, if I -- I realize.

22 JUDGE MARCUS: I'm sorry. I'm trouble hearing you,
23 Mr. Ross. I'm sorry.

24 MR. ROSS: Your Honor, I was just raising the same
11:58:10 25 objection that this is outside the scope, and to the extent it

1 goes to her credibility, I understand, but she has no basis for
2 testifying about the Cooper maps or any of the other maps
3 except the whole county plan.

4 JUDGE MARCUS: You may ask the question, but let's
11:58:32 5 move along on this, Mr. LaCour.

6 MR. LACOUR: Absolutely.

7 JUDGE MARCUS: I take it the witness has not before
8 this moment had a chance to review these. You might ask her
9 that.

11:58:42 10 MR. LACOUR: Yes, Your Honor.

11 BY MR. LACOUR:

12 Q Dr. Davis, have you had a chance to review either of the
13 illustrative plan 1 that I showed you a moment ago or
14 illustrative plan 2 that we're looking at right now?

11:58:56 15 A No, I have not.

16 JUDGE MARCUS: So you want to ask her a question just
17 about how it looks; is that correct, Mr. LaCour?

18 MR. LACOUR: Basically, Your Honor, to the extent that
19 I think the look of the 2021 map has featured heavily -- it's a
11:59:22 20 racial gerrymander.

21 JUDGE MARCUS: You may get right at it if you would
22 like. Just ask the question directly.

23 MR. LACOUR: Thank you, Your Honor.

24 BY MR. LACOUR:

11:59:30 25 Q So, Dr. Davis, if you look here, we have a couple of

1 county splits in District 2; is that correct? We have got the
2 Mobile split here, Montgomery split there, and a split of
3 Houston County that gets into Dothan right there. Do you see
4 those?

11:59:48 5 A I see them, yes.

6 Q And based on the principle you applied in evaluating the
7 2021 enacted map in which you have opined that it is a racial
8 gerrymander, does anything about these splits here suggest in
9 your mind that this district would also constitute a racial
12:00:17 10 gerrymander?

11 A I would have to see the numbers for every county, but I
12 continue to think and believe that the whole county plan is
13 preferable to any of these.

14 Q I'd like to show you what is a map from a -- basically a
12:00:43 15 different illustration of this particular map prepared by Tom
16 Bryan. This is Defendants' Exhibit 4. This is Tom Bryan's
17 supplemental report. And hold on for just one moment. So I
18 will represent to you that what this illustrates is that same
19 map that we were looking at a moment ago except as you see in
12:01:29 20 the -- in the box towards the bottom.

21 A I can't see that.

22 JUDGE MARCUS: I think, Mr. LaCour, you are going to
23 have to move the exhibit up a little bit. It's cut off in the
24 middle of 7 and 3.

12:01:40 25 MR. LACOUR: Okay.

1 JUDGE MARCUS: The screen.

2 MR. LACOUR: Let me.

3 THE WITNESS: To make it smaller.

4 BY MR. LACOUR:

12:01:47 5 Q Okay. So is this showing it now?

6 A Yes.

7 Q Okay. So the green represents areas that are heavily --
8 very high percentage of Black Voting Age Population by voter
9 district. If we zoom in here to District 2 where District 2
12:02:11 10 comes down into Mobile County, it would appear that District 2
11 is picking up a substantial portion of black voters out of
12 Mobile city; is that correct?

13 A Are you asking me?

14 Q Yes.

12:02:25 15 A Looks like it. I don't know.

16 Q And all right. Well, I will move a little more quickly on
17 this now.

18 I will look at one additional map.

19 JUDGE MARCUS: One quick question I have for you,
12:02:50 20 Mr. LaCour. We were going to break for lunch about noon. I'm
21 not going to cut you off in the middle of a thread, so feel
22 free to finish it up, but I don't want to get too deep into it.

23 MR. LACOUR: Absolutely, Your Honor. I think that
24 will be fine. Close to wrapping it up.

12:03:07 25 JUDGE MARCUS: You tell me when is a convenient place

1 to break for you.

2 MR. LACOUR: I think I will be done with my
3 cross-examination shortly.

4 JUDGE MARCUS: Do you want to finish it up, or do you
12:03:16 5 want to break now?

6 MR. LACOUR: If we could wrap it up, I think that
7 would work for me.

8 JUDGE MARCUS: Go ahead. You may proceed.

9 MR. LACOUR: Thank you.

12:03:24 10 BY MR. LACOUR:

11 Q Now, pulling up -- this is going to be a set of
12 illustrative maps that were prepared. We will hone in on one
13 of them. Plan A here. Are you able to see that?

14 A Yes.

12:03:51 15 JUDGE MARCUS: Do you want to mark, tell us what you
16 are showing her?

17 MR. LACOUR: Yes, Your Honor. We're looking here at
18 Milligan Exhibit 3. ECF page 7. These are the illustrative
19 plans prepared by Milligan expert Moon Duchin.

12:04:06 20 BY MR. LACOUR:

21 Q And, again, does it appear to you, Dr. Davis, that there
22 are split counties here that resemble in some ways the splits
23 that are evidence of a racial gerrymander in your view in the
24 2021 enacted map?

12:04:33 25 MR. ROSS: Objection, Your Honor.

1 JUDGE MARCUS: The objection is sustained as to the
2 form of the question.

3 BY MR. LACOUR:

4 Q Dr. Davis, looking at District 7, which the light blue
12:04:50 5 district here, going into Jefferson County, does that split
6 look anything to you like the split that is present in the 2021
7 enacted map in District 7?

8 A Well, the difference is the Jefferson County in 2021 plan
9 is split in half roughly. This plan looks like it's in three
12:05:18 10 places. So if you think the whole county plan is the best
11 plan, it's not a good division of Jefferson County.

12 Q And to the extent that District 7 picks up a substantial
13 portion of black voters and places them into District 7, would
14 it be your view that the voters placed into other districts are
12:05:55 15 -- I'm trying to think of finding the exact language you used
16 in your report. But I apologize. I think in your report as
17 Singleton Exhibit 2, page 9 of your report, you said that the
18 current District 7 has the purpose of suppressing the
19 opportunity of black voters living in Jefferson County but
12:06:28 20 outside the Seventh District to elect a candidate of their
21 choosing. To the extent that District 7 in this plan does
22 something similar, would it also be suppressing the opportunity
23 for black voters living in Jefferson County but outside the
24 Seventh District to elect the candidate of their choosing?

12:06:49 25 MR. ROSS: Objection, Your Honor.

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1 JUDGE MARCUS: Yes. You may be heard, Mr. Ross.
2 Proceed with your argument.

3 MR. ROSS: Sorry, Your Honor. So I -- we object again
4 it's outside the scope of her prior testimony, and she's never
12:07:05 5 seen these maps. She doesn't know the basis for -- you know, I
6 don't know the basis for her testimony. She doesn't know the
7 racial composition of the maps. And it calls for legal
8 conclusions.

9 JUDGE MARCUS: The objection is sustained. So you
12:07:20 10 understand why, Mr. LaCour. You're asking her whether or not
11 this plan which is in -- which is one of the illustrative plans
12 offered by one of the sets of plaintiffs had the purpose of
13 suppressing the black vote. She's never seen it before. The
14 objection is sustained as to the form of the question.

12:07:43 15 MR. LACOUR: Thank you, Your Honor.

16 That may change gears briefly. Let me just confirm that
17 there's nothing else in my outline that I need to address.

18 JUDGE MARCUS: Take your time.

19 MR. LACOUR: I think that's all there is for me.
12:08:15 20 Thank you, Dr. Davis.

21 JUDGE MARCUS: Okay. We will take a break now. I
22 have 1:08 Eastern Time. 12:08 Central Standard Time. So we
23 will reconvene at 1:15 Central Standard Time. So we will give
24 you a little bit more than an hour.

12:08:36 25 Dr. Davis, thanks for your time, and we will ask you to be

1 back, as well if you could by 1:15 Central Standard Time so we
2 can proceed with the cross-examination and then any other
3 cross-examination and the redirect.

4 Thank you all very much. We will be in recess until 1:15.

12:09:05 5 MR. BLACKSHER: I'm not sure there will be any further
6 cross-examination I wanted to point out, Your Honor.

7 JUDGE MARCUS: I'm sorry.

8 MR. BLACKSHER: I don't -- I don't think there's going
9 to be any further cross-examination of this witness. I just
12:09:17 10 wanted to suggest that.

11 JUDGE MARCUS: Oh, okay. I only said that on the if
12 perhaps counsel for Milligan or counsel for Caster may have
13 some questions. Since the questions Mr. LaCour asked went into
14 maps that were offered and received in evidence by both
12:09:39 15 Milligan and Caster, I think in fairness if they wanted to, I
16 wanted to give them the opportunity to be heard. They may
17 choose to say nothing, in which case, we will turn to you with
18 any redirect, and that will be it for Dr. Davis.

19 MR. BLACKSHER: Thank you, sir.

12:09:56 20 JUDGE MARCUS: Thank you, all. Let me just so we know
21 -- Mr. Ross, did you plan to ask any questions of the witness,
22 or does counsel for Caster have any questions for this witness
23 on cross?

24 MR. ROSS: We may ask a few questions, Your Honor,
12:10:09 25 just to clarify the issues that were raised as you said.

1 JUDGE MARCUS: I understand. Ms. Khanna?

2 MS. KHANNA: And counsel for Caster does not. We do
3 not intend to participate in the Singleton proceedings at all
4 since -- given our jurisdictional argument.

12:10:24 5 JUDGE MARCUS: All right. Thank you so very much. We
6 will be in recess until 1:15 Central Standard Time.

7 (Recess.)

8 JUDGE MARCUS: Good afternoon. I take it the parties
9 are ready to proceed.

13:14:38 10 Before, Mr. Ross, I take it, we will go forward with your
11 examination, I wanted to bring to the lawyers' attention a note
12 that I received from the court reporter.

13 She had indicated that in some instances, she was having
14 some difficulty because one parties or maybe the witnesses were
13:15:02 15 speaking a little bit too quickly or cutting each other off, so
16 please just take your time since we're doing this remotely, and
17 we want to make sure we get the record exactly correct.

18 The other point that she made that I wanted to bring to
19 your attention as you proceed is that when you are unmuted, all
13:15:30 20 noises are picked up, and so if you're listening, you're
21 unmuted, and you are using your mouse to scroll, that noise
22 apparently is picked up and resonates.

23 So with that, we're ready to proceed. I take it,
24 Mr. Ross, you wanted to ask the witness some questions?

13:15:56 25 MR. ROSS: Yes, Your Honor.

1 JUDGE MARCUS: Good afternoon again, Doctor. Thanks
2 for staying with us. Mr. Ross has some questions for you as we
3 proceed.

4 With that, counsel, the floor is yours.

13:16:14 5 MR. ROSS: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. ROSS:

8 Q Good afternoon, Dr. Davis. My name is Deuel Ross. I am
9 from the NAACP Defense Fund. I am here on behalf of the
13:16:23 10 Milligan plaintiffs. I just have a few questions for you.

11 Mr. LaCour showed you several perhaps. Do you recall?

12 A Yes. Yes.

13 Q Okay. And before today, you had never seen any of these
14 illustrative maps before, right?

13:16:37 15 A I -- I don't think so. They were provided, I think, in
16 some of the materials that were given me, but I really didn't
17 read them.

18 Q Okay. And you have no information about what efforts were
19 made in drawing those maps, correct?

13:16:53 20 A Absolutely not.

21 Q Okay. And you have no information about the data upon
22 which those maps relied, correct?

23 A That's correct.

24 Q Okay. And you're not a mapping expert, right?

13:17:04 25 A Absolutely not.

1 Q Okay. And Mr. LaCour asked you a bit about redistricting
2 and preclearance in the 1990s. Do you recall that?

3 A Yes.

4 Q And your report did not cover redistricting or
13:17:18 5 preclearance in the '90s, right?

6 A No, only to the extent that I said I think that the
7 redistricting in the '90s reflected the need to establish a
8 minority-majority district.

9 Q Okay. And your report didn't analyze whether it's
13:17:43 10 65 percent Black Voting Age Population district or another 50
11 or some other percentage Black Voting Age Population was
12 required for preclearance; is that right?

13 A No. I did mention that in that first map that was drawn
14 in 1992, it was an assumption of 65 percent minority-majority
13:18:05 15 population.

16 Q But you didn't do any separate analysis to confirm whether
17 65 percent was necessary or not in the '90s, right?

18 A No, not at all.

19 Q Okay. And you didn't do any analysis using racially
13:18:20 20 polarized -- excuse me -- strike that. You didn't do a
21 racial-polarization analysis to determine whether or not a
22 particular percentage was necessary today, correct?

23 A No.

24 Q Okay. Thank you.

13:18:35 25 MR. ROSS: No further questions.

1 JUDGE MARCUS: Okay. If there are no other
2 cross-examination, we will go back to redirect, Mr. Blacksher.

3 MR. BLACKSHER: We have no redirect, Your Honor.

4 JUDGE MARCUS: Judge Moorer, Judge Manasco, any
13:18:51 5 questions for Dr. Davis?

6 JUDGE MANASCO: None from me.

7 JUDGE MOORER: I have none.

8 JUDGE MARCUS: I have just one, Dr. Davis.

9 I was just curious about when you were being asked about
13:19:05 10 incumbency protection, and it was observed that incumbency
11 protection is actually included within the Alabama
12 redistricting guidelines, you said, if I heard it right, I have
13 a problem with that. Those were, I think, the words you used.
14 I was curious if you could explain that.

13:19:32 15 THE WITNESS: What I meant by that is that if you
16 honor that guideline, I think you do some harm to the
17 democratic process by making it clear that -- we all know that
18 incumbency has its advantages. So I want those advantages to
19 be less impactful than they are. And by eliminating even the
13:20:14 20 opportunity for two incumbents to run against each other, I
21 think you do harm to the process -- to the democratic process.

22 JUDGE MARCUS: Thank you very much.

23 Any follow-up questions, Mr. Blacksher, Mr. Ross, or
24 Mr. LaCour?

13:20:31 25 MR. BLACKSHER: None for us, Your Honor.

1 MR. LACOUR: None from the defendant, Your Honor.

2 JUDGE MARCUS: Mr. Ross?

3 MR. ROSS: None from us, Your Honor.

4 JUDGE MARCUS: Seeing nothing further, Dr. Davis, we
13:20:43 5 thank you much for taking your time in coming down here today.
6 I think we are finished with your testimony, and you are
7 excused.

8 THE WITNESS: Thank you, Your Honor.

9 JUDGE MARCUS: With that, let me turn it back to you,
13:21:00 10 Mr. Blacksher. Did you have any other evidence that you had
11 wanted to adduce at this point?

12 MR. BLACKSHER: Not that the exhibits are in to the
13 extent possible. And at this point, we do not intend to try at
14 this point to introduce the few exhibits on the Singleton list
13:21:24 15 that there have been objections to. That would come later, if
16 at all. And we have no further witnesses. So we pass the
17 baton to the next set of plaintiffs.

18 JUDGE MARCUS: All right. Thank you so much.

19 Mr. Ross, I take it we will turn to you, then, on behalf
13:21:44 20 of the Milligan plaintiffs dealing with the constitutional
21 equal protection claim.

22 MR. ROSS: Yes, Your Honor. But our first witness is
23 our client, Mr. Milligan, and Ms. Carter, my colleague, will
24 begin.

13:22:04 25 JUDGE MARCUS: Thanks very much.

1 MS. CARTER: Good afternoon. Brittany Carter.

2 JUDGE MARCUS: Do we have --

3 MS. CARTER: Brittany Carter -- hello. Can you hear
4 me?

13:22:16 5 JUDGE MARCUS: I can hear you just fine and welcome.

6 Let me just swear the witness. Let me ask --

7 Mr. Milligan, if you would be kind enough to raise your right
8 hand.

9 EVAN MILLIGAN,

13:22:27 10 having been first duly sworn, was examined and testified as
11 follows:

12 JUDGE MARCUS: We can't hear you. I think you may be
13 muted.

14 THE WITNESS: I do.

13:22:42 15 JUDGE MARCUS: Thanks very much. Welcome. If you
16 could state your name for the record, please.

17 THE WITNESS: Evan William Milligan.

18 JUDGE MARCUS: Thank you. And, Ms. Carter, you may
19 proceed. Thank you.

13:22:53 20 BY MS. CARTER: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MS. CARTER:

23 Q Mr. Milligan, where were you born?

24 A Houston, Texas.

13:23:02 25 Q What year were you born?

1 A 1981.

2 Q What race do you identify as?

3 A Black African-American.

4 Q Where did you grow up?

13:23:16 5 A I spent the first five years of my life in Houston, Texas.

6 Then we moved to Birmingham for about two years. And then the

7 rest of my childhood was spent in Montgomery County, Alabama.

8 Q And do you currently live in Montgomery, Alabama?

9 A I do.

13:23:33 10 Q How long have you lived there?

11 A In total, about 29, 30 years, not counting time spent

12 attending college in Birmingham. About a year and a half

13 studying abroad in South Africa. And the time I spent

14 attending law school in New York.

13:23:51 15 Q What schools did you attend while growing up in

16 Montgomery?

17 A I attended Zelia Stephens Early Childhood Center for

18 pre-K, which is located on the campus of Alabama State

19 University. Second grade at Dannelly Elementary. Third

13:24:09 20 through sixth grade at Forest Avenue Magnet Elementary.

21 Seventh Grade at St. Jude Middle School. Eight and Ninth

22 grades at Baldwin Magnet Junior high School, and 10th through

23 12th grade at the Sydney Lanier Academic Motivational Program.

24 Q Where did you go to college?

13:24:27 25 A Birmingham-Southern College.

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1 Q And what's your professional background?

2 A I've worked primarily in the non-profit sector here in
3 Alabama. I mainly with groups that work around Civil Rights
4 issues, community development, and then in my current capacity,
13:24:45 5 I'm working as executive director of Alabama Forward, which is
6 a coalition of non-profit groups working to make voting systems
7 here in Alabama as fair and accessible as possible.

8 Q As executive director of Alabama Forward, what do you do?

9 A So I am involved in supervising our small staff team and
13:25:06 10 providing sub grants, technical assistance and training,
11 through our membership of about 28 non-profit organizations
12 working around this state. All of those groups work towards,
13 you know, different primary missions, but the things that
14 brings us into -- brings them into membership is a commitment
13:25:26 15 to making the electorate diverse and/or participating in voter
16 engagement, voter education, voter protection. So we provide
17 resources to that end.

18 Q Does your work give you an understanding of black
19 communities -- interests affecting black communities in
13:25:44 20 Alabama?

21 A I would say it does. Our memberships spans the state, and
22 it includes organizations working out of policy level at a
23 grass roots level throughout the state. And then in my career
24 prior to this job, my first full-time job really after college
13:26:02 25 I worked as a community organizer with the Federation of

1 Childcare Centers of Alabama, which is a childcare advocacy and
2 community development group. I worked there for three and a
3 half years, and then spent a total of six years working with
4 the equal justice initiative in a variety of capacities that
13:26:18 5 allowed me to provide assistance to incarcerated clients, do
6 research around the connections between slavery and segregation
7 and current contemporary issues. So I have spent most of my
8 career having a chance to get to know not only advocates,
9 serving black communities across the state, but also, you know,
13:26:40 10 the community members themselves.

11 Q What congressional district do you live in?

12 A I live in District 7.

13 Q What congressional districts represent Montgomery County?

14 A So under the current map, Districts 2, 3, and 7 represent
13:26:57 15 the county. And under the map that was just adopted this past
16 fall, it would be split between Districts 2 and 7.

17 Q As far as you know, what neighborhoods in Montgomery
18 County are separated into District 2 and away from District 7?

19 A It's really interesting. From what I can tell, there's a
13:27:20 20 split between 2 and 7 that occurs above interstate 85. And
21 then as far as on the -- I guess the vertical axis of the
22 split, it occurs at some point between Narrow Lane Road and
23 Zelda Road, so, you know, a little past the intersection of
24 interstates 85 and 65, maybe five miles east of there.

13:27:51 25 Q And what is your understanding of Alabama's redistricting

1 process for congressional districts?

2 A So what I -- what I witnessed this past cycle was that the
3 apportionment committee, the legislation apportionment
4 committee is comprised of state House representatives and state
13:28:16 5 senators from both parties who are responsible for writing and,
6 you know, publishing the redistricting guidelines that will --
7 that they will be prioritizing during that round of
8 redistricting.

9 And once the census data is released this year, was
13:28:36 10 obviously released this past August, they work with a map
11 making consultant or someone that works on their staff to
12 interpret that census data and begin the process of
13 constructing maps. As they do that, they're also receiving
14 information from members of the Legislature and also members of
13:28:54 15 the general public. And that public feedback was collected
16 during a two-week period that they spent holding public
17 hearings, both virtually and at community colleges around the
18 state. They also have held one at I believe at the state House
19 in one of the offices there. And during that period, they
13:29:18 20 collected statements in person, as well as via e-mail, proposed
21 maps from citizens and advocates.

22 At the conclusion of that period, they then went and, you
23 know, prepared maps which was released -- the proposed maps
24 that emerged from that committee that the committee voted in
13:29:38 25 favor of were released first to the public to my knowledge

1 shortly before the beginning of the special session that the
2 Governor called for redistricting, which began towards the end
3 of October of last year.

4 They began that session, I believe, on a Thursday, and it
13:29:55 5 was concluded by that next Wednesday. Over the course of that
6 session, there was some House and Senate subcommittee hearings.
7 And at the House committee hearings, my colleague Khadidah and
8 I provided some in-person testimony really asking about how
9 racial-polarization analysis was incorporated into the maps
13:30:18 10 that had been proposed by the committee. And just trying to
11 make sure that they were aware of our concern about that
12 information.

13 Q So you mentioned it a little bit, but what was the extent
14 of your participation in the process?

13:30:33 15 A So we -- I participated in public forums, education forums
16 that were organized by a coalition of groups, including the
17 organization I work with, Alabama Forward, as well as the
18 NAACP, the Legal Defense -- I'm sorry -- Legal Defense Fund,
19 Alabama Values, and also the League of Women Voters.

13:31:01 20 So we -- those events were focused on the general public.
21 And they allowed us to explain the importance of just general
22 -- members of the general public becoming as informed as
23 possible about the importance of redistricting and how it
24 impacts their daily lives, really understand some of the
13:31:20 25 principles of our redistricting.

1 I also participated in media briefings and media facing
2 events. I explained some of the work that we were doing within
3 our network of organizations and some of the public education
4 activities we were supporting. I helped to manage and
13:31:37 5 facilitate a bi-weekly briefing that was held among members of
6 the network of organizations that worked with us and our former
7 members and also nonmembers.

8 This began on April 30th and took place every two weeks on
9 Friday morning at 10:00. It was about an hour-long meeting
13:31:56 10 where we would, you know, share information related to people's
11 experiences and needs related to doing redistricting trainings
12 at the local level, if people knew about other speaking --
13 speakers that were providing information, or, you know,
14 whatever we were learning about when the census data would be
13:32:15 15 released. We were able to help each other stay abreast of that
16 in those settings.

17 Then we also submitted testimony to the apportionment
18 committee on the last Thursday of the public hearings. I
19 believe that was September the 16th, I think. That provided
13:32:33 20 two proposed state House and state Senate maps. And then also
21 spoke about congressional maps that we had seen at that point.

22 Q So to your knowledge, did the Legislature conduct
23 racial-polarization analysis?

24 A To my knowledge, no. When I asked -- when I attended the
13:32:55 25 House subcommittee hearing meeting to ask about that, I

1 received a pretty ambiguous answer. And I asked in response if
2 there was a timeline for which the public would be provided any
3 of the research that the committee had been doing or was
4 planning to do with regards to racial polarization and also
13:33:18 5 given an ambiguous answer then as something if I remember
6 correctly, we don't know now, but, you know, we'll share what
7 we find, or something to that extent. But it wasn't a firm
8 answer or an explanation of who was conducting the study or,
9 you know, really if they were actually conducting a
13:33:37 10 racial-polarization analysis.

11 Q And did anyone, to your knowledge, ever share what they
12 found?

13 A No. And that came up when I was watching the -- the
14 deliberation on the floor of the House and the Senate, you
13:33:53 15 know, over the Internet. I saw representatives have a
16 discussion about that. And there was no information presented
17 then or reference to a completed study.

18 Q Okay. In the testimony that you said you offered, whether
19 by e-mail or in person, did you support any alternative plans
13:34:11 20 in those -- in any of those testimonies?

21 A I did. To that point, from the network of organizations
22 that we were working most closely with, the congressional plan
23 that had emerged was the whole county plan that was initially
24 introduced to us by the leaders of the state chapter of the
13:34:30 25 League of Women Voters.

1 Our team had tried to, you know, using Maptitude and
2 Dave's Redistricting -- by our team, I'm talking about my
3 co-worker and some of the -- some of the other folks that had
4 taken map-making training courses, had attempted to make a
13:34:50 5 congressional map that would provide two districts that were
6 majority black or majority non-white, and weren't able to do so
7 successfully.

8 So when -- at that point, during that last day of the
9 public hearing, to my knowledge, the apportionment committee
13:35:12 10 would basically cut off receiving information from the public
11 at that point. And I didn't know that. What I later learned
12 was we could continue to provide information up until the
13 beginning of the special session.

14 So operating under the understanding that the reception
13:35:27 15 would be cut off at the end of that business day, our team
16 conferred and said the only map that we've seen that provides a
17 window to two plurality districts is this -- is this whole
18 county plan map, so we spoke favorably of the map in the e-mail
19 and in terms of its relevance to producing those two districts
13:35:49 20 that would allow black residents an opportunity to elect the
21 candidate of their choice.

22 Q And did you know at the time of submitting that testimony
23 that it was possible to draw two majority black districts?

24 A No. As I stated, we had attempted to do so, and were not
13:36:08 25 able to do so.

1 Q And once you learned that it was -- well, how did you
2 learn that it was possible to draw two majority black
3 districts?

4 A So I mentioned that we were, you know, participating in
13:36:21 5 public education events with that network of organizations.
6 And there was actually a pretty -- you know, there was a
7 conversation among our advocates and folks that were
8 participating in that around if we would be able to land in one
9 place in terms of supporting one of the maps. And prior to one
13:36:45 10 of the meetings, I was able to really read a letter that was
11 submitted to the apportionment committee by a group of Civil
12 Rights advocate organizations that featured maps prepared by
13 LDF and also a reference to a racial-polarization study that
14 they had -- they had hired a researcher to conduct.

13:37:09 15 And that was my first time actually seeing that data and
16 being able to look at the maps and have a better understanding
17 of what was really possible with our demographic data. And
18 that convinced me that that was the -- of the maps that I had
19 seen and the maps that we had attempted to draft, those were
13:37:25 20 the maps that most closely aligned with -- with our
21 organization's concerns with regards to the voting rights of
22 non-white voters, particularly black voters throughout the
23 state.

24 Q Mr. Milligan, why did you decide to participate in the
13:37:44 25 redistricting process?

1 A Well, we're working to really inspire new participants in
2 civic engagement in Alabama. The state has been, you know,
3 losing a lot of the -- the folks that are born in the state
4 over the last ten years have, you know, for the majority of
13:38:06 5 that decade were leaving the state, and for Georgia, for the
6 surrounding southern neighbors. And we want to inspire people
7 to stay in the state, to commit to their communities.

8 Particularly younger Alabamians, non-white Alabamians.
9 Understanding all of our civic institutions and, you know,
13:38:26 10 democratic processes are important to provide a realistic
11 inspirational message to those folks. And redistricting is a
12 critical part of that.

13 I was learning about it a lot myself and was really taken
14 aback just by, you know, how much census data and redistricting
13:38:46 15 shapes everything that I do every day and opportunities that
16 are available to my children.

17 And so just playing that public education role was very
18 important in making sure that our organizers who are a part of
19 our network who are very concerned about it, making sure that
13:39:04 20 they had resources that they needed to do grass roots
21 engagement, and public education was also important to me.

22 Q Why is it important that black voters have a second
23 district?

24 A It's important, first and foremost, because based on the
13:39:22 25 racial-polarization data that I was able to review, our state,

1 unfortunately, has not arrived at a point where -- where we
2 have rates of cross-racial voting that can reliably sustain --
3 sustain the election of a non-white candidate in districts
4 where you have, you know, a close -- a close margin between
13:39:49 5 white and non-white voters.

6 And so because we have not arrived at a point where that's
7 a reliable occurrence, then having that second majority-black
8 district ensures that black voters, particularly in central and
9 southwestern Alabama have an opportunity to elect a candidate
13:40:10 10 of their choice, and that their votes, you know, aren't
11 discounted, so to speak.

12 And I'm concerned about this because I've spent all of my
13 career, you know, traveling and spending time in these
14 communities. I was raised in a multi-generational household,
13:40:33 15 so my great-grandparents that I was raised with were from
16 Lowndes County which is the neighboring county west of Alabama.
17 And that gave me access to the way that they spoke, the way
18 they dressed, their types of clothing and just their whole --
19 just their whole way of life and way of thinking, which has
13:40:54 20 always given me an appreciation for the more rural parts of the
21 state because I guess it connects me to those folks that I grew
22 up with in my household.

23 And I think there is a direct correlation between the lack
24 of agency that black voters feel, you know, in Montgomery and
13:41:10 25 in places where you see the splitting of the districts. And

1 what folks feel throughout the Black Belt and throughout the
2 southwest part of the state in terms of the black communities
3 located there. And the black district would provide more
4 buy-in for those communities and more of an incentive to make,
13:41:28 5 you know, longer term commitments, and even see themselves as
6 leaders of those communities to the highest levels.

7 Q In your lifetime, do you know of any black person who has
8 been elected to Congress outside of District 7?

9 A I don't. The Congress members I remember who are black
13:41:46 10 have been Representative Hilliard, Davis, and Sewell, all black
11 representatives from District 7.

12 Q Mr. Milligan, you tell us where the black community
13 resides in Montgomery County?

14 A Sure. So currently, all over the county. Honestly,
13:42:06 15 there's -- the county -- the city is 60 -- I believe
16 60.5 percent black African-American. And so at, you know, in
17 any of the zip codes, there are pockets of neighborhoods or
18 entire neighborhoods that are majority black.

19 And that's very different from, you know, the Montgomery
13:42:28 20 where I grew up. Historically, black communities were
21 concentrated either immediately south or west of the downtown
22 area and a little north of there, or in rural pockets on the
23 rural borders of the county on the northern end that would have
24 been Madison Park. On the eastern end, the Mount Meigs area.
13:42:53 25 On the southern end, you would be looking at Hope Hull,

1 Pintlala. And on the western end, the Old Selma Road area
2 would be those rural counties. I'm sorry. The rural parts of
3 the county.

4 But again, as time as grown on and, you know, as Redlining
13:43:09 5 and -- was challenged and economic opportunities made it more
6 possible for families to move over throughout the county,
7 again, that population has spread throughout the county.

8 Q As far as you know, what does the black community in
9 Montgomery County share in common?

13:43:28 10 A I would say there's a central -- there's a commitment to
11 really the center of the city, in terms of downtown and the
12 river front area, and the areas that are immediately just
13 adjacent to there.

14 So for the black community, Alabama State University,
13:43:49 15 which is located just south of downtown, is a central gathering
16 place.

17 I mentioned, you know, I attended Zelia Stephens Early
18 Childhood, for example, in the late '80s, mid '80s. My mother
19 went there in the '50s. My daughter attends there now. And so
13:44:06 20 that's a school where 100 percent of the student body and
21 faculty are African-American. And that's just one example of
22 ASU's fingerprint within the community at large.

23 The Acadome there is used for, you know, cultural events
24 ranging from funerals to high school graduations for the public
13:44:26 25 schools, all of which are predominantly black schools, with the

1 exception of the magnet schools.

2 And then also concerts, public speaker events. And then,
3 you know, also the college's role as a source of education and
4 employment for many African-Americans throughout the city.

13:44:46 5 Then north of ASU, you have, you know, downtown proper, so
6 historically black communities like Centennial Hill which were
7 the home of Civil Rights leaders, the King family, the
8 parsonage for Dexter Avenue Church is there. Significant Civil
9 Rights institutions are located throughout downtown, as well
13:45:11 10 as, you know, employment with the local and the state and the
11 federal government agencies. Since Montgomery is the capital,
12 those are also sources of employment for many African-Americans
13 throughout the city.

14 The two federal military installations, as well as Alabama
13:45:26 15 National Guard headquarters located just west and east of
16 downtown are also significant because there are black service
17 members some of whom settled in Montgomery after their tenure
18 of service ended when they were introduced to it because of
19 their military service. But others who grew up in the area who
13:45:45 20 also became service members. They continue to use the military
21 installations for recreational events or to shop at the grocery
22 store there, you know, and recreational activities.

23 The parks, the river front amphitheater for concerts, as
24 well as downtown being a central place for Thanksgiving
13:46:09 25 activities. Alabama State has maintained the -- for over

1 80 years I think at this point, has maintained a Thanksgiving
2 football game and parade. And so there are black families that
3 really come back to the city generations you will see on Dexter
4 Avenue enjoying that parade.

13:46:32 5 And then some of the city's oldest and largest black
6 churches are located in downtown or in the surrounding adjacent
7 areas.

8 So I think wherever black Montgomerians are living, there
9 are ways that they're connecting with that downtown area and
13:46:49 10 those surrounding communities at some point in their life.

11 Q Do you have ties to the black community in the Black Belt?

12 A I do. I mentioned my family's connection to Lowndes
13 County. So that was my maternal grandmother and
14 great-grandparents who were raised there. So, you know, it was
13:47:09 15 -- that was something that's connected me to the land and given
16 me a sense of cultural legacy, cultural identity. We still
17 maintain a cemetery that holds our loved ones on my mother's
18 side of the family there in Lowndesboro.

19 And really throughout my career, that's, you know, that's
13:47:26 20 a personal connection. Before I get to the career part, I will
21 also mention that connection that I share is something that I
22 noticed among my peers growing up. I can't count the number of
23 people who have a similar Lowndes County connection or a
24 connection to another more rural part of the Black Belt. I
13:47:45 25 would offer the unique part about my family is we were smaller,

1 and our connection, you know, is more historic. There aren't
2 active cousins or grandparents down there now receiving us when
3 we visit. In contrast, my peers have first cousins, second
4 cousins, or elders in their family that they're still visiting
13:48:05 5 in those counties.

6 And then I will say professionally, a lot of my work, my
7 organizing skills and my training as far as knowing how to
8 listen to clients and listen to community members came from
9 time that I spent working with FOCAL and with EJI in Black Belt
13:48:22 10 counties. FOCAL had a program called the Southern Rural Black
11 Women's Initiative. And we -- that is a program that, you
12 know, all of its members or the participants are based in Black
13 Belt counties. And so I was able to spend time interviewing
14 women in those counties that we honored at hall of fame
13:48:42 15 banquets and really getting to know their stories, stories of
16 their children, as well as while at EJI, we started a project
17 called the Black Belt education project where we went to all of
18 the Black Belt counties, talked to the superintendents and
19 different principals to sponsor high school students coming to
13:49:00 20 Montgomery to spend a day or half day at the EJI office
21 interacting with staff.

22 And that required us to again, you know, go to Perry
23 County, Hale County, and all the places and make sure that they
24 understood what EJI was and why that -- why that trip would be
13:49:16 25 valuable to the students. Booking the trips, making sure we

1 were able to get funds for the buses. And just interacting
2 with the students, you know, when they came. Some of those
3 students went on to go to college and go to law school and
4 credited that trip as being inspirational for their decision to
13:49:34 5 do so.

6 So the Black Belt has been, you know, pretty central to me
7 throughout my life, both personally and professionally.

8 Q As far as you know, what does Montgomery County share in
9 common with those Black Belt counties?

13:49:48 10 A I would say the socioeconomic challenges that black
11 communities are facing in Montgomery County are shared
12 throughout the Black Belt at large. And, you know, to be
13 clear, Montgomery County is a part of the Black Belt. It's a
14 more urban part. So our rural neighbors to the east and west,
13:50:10 15 when it comes to concerns about infectious disease or, you
16 know, K through -- the quality of education -- public education
17 at K-12 level, availability of job training, public
18 transportation, access to health care, food deserts and access
19 to quality -- to quality produce, those are conversations and
13:50:34 20 challenges that are shared by community members throughout
21 central Alabama and the southwestern part of the state in the
22 area that we refer to as the Black Belt.

23 So at that level, I would say, you know, the sense of
24 frustration and sometimes isolation from opportunity is a
13:50:51 25 common thread.

1 And also the idioms and ways of speaking, quilting and
2 sewing, traditions, music traditions, whether it's blues or
3 four-part harmony Gospel, different traditions of story
4 telling, family reunions, those are things that, you know, I
13:51:09 5 guess in a more positive way are shared by black communities
6 throughout that part of the state.

7 Q Do you have any sense of whether that's also true for
8 black people in Mobile County?

9 A I would say it has been from my experience one of the
13:51:27 10 things that I -- that FOCAL when I was working there after
11 college, you know, other -- aside from going to Mobile for --
12 for as, you know, playing in marching band tournaments while at
13 high school, my time spent in Mobile was really provided to me
14 by FOCAL because I would go down there to work with child care
13:51:49 15 advocates and child care providers. And particularly in the
16 Prichard area above the city of Mobile proper, and really
17 seeing the pace of life, you know, physically, just in terms of
18 optics, people on horse back, folks raising chickens further
19 out from the city center, that layered directly on to what I
13:52:10 20 was seeing Washington County, Wilcox, Dallas, and more rural
21 parts of Montgomery County that I was describing, also Macon
22 County, east of Montgomery County.

23 So just, you know, the pace of life, the tone of the -- of
24 life and what I experienced was very similar. But also, again,
13:52:25 25 those socioeconomic concerns, the conversations and the

1 trainings we were doing around, you know, access to child care
2 for working families. Same -- the same trainings, the same
3 conversations, the same comments raised by participants in
4 those trainings in that Mobile area, as compared to the other
13:52:46 5 parts of the Black Belt and Montgomery County that I covered at
6 the time.

7 And then the last thing I would say is in the way that
8 there are sort of anchor cities throughout the Black Belt. So
9 Selma can be that for, you know -- or Demopolis or like that
13:53:01 10 whereas the smaller towns, their transition stage might be to
11 do most of their shopping or to move to one of those -- one of
12 those cities as a transition from more rural life. Montgomery
13 is certainly that for many people throughout the central part
14 of the state.

13:53:18 15 Mobile plays that role, and Prichard plays that role for
16 the southwestern part of the state. So the same way that I
17 mentioned my peers having that connection to their Black Belt
18 relatives, in Montgomery County, I observed colleagues that I
19 have worked with throughout my life, people that I have met
13:53:36 20 personally through school who had that relationship with rural
21 relatives and throughout the Black Belt when they may have
22 grown up in Mobile County.

23 Q Thank you, Mr. Milligan.

24 MS. CARTER: No further questions at this time. I
13:53:52 25 pass the witness.

1 JUDGE MARCUS: Thank you. Cross-examination. Who is
2 going to conduct the cross for the defendants?

3 MR. WALKER: Your Honor, this is Dorman Walker. The
4 video says Jim Davis because we have to use his computer for
13:54:10 5 technical reasons here. But I am not Jim Davis. I am Dorman
6 Walker representing the intervenor defendants, Senator
7 McClendon, and Representative Pringle.

8 JUDGE MARCUS: We are happy to have you. Fire away.

9 MR. WALKER: Thank you.

13:54:27 10 CROSS-EXAMINATION

11 BY MR. WALKER:

12 Q Mr. Milligan, you just heard my introduction and know who
13 I am.

14 I would like to ask you a few questions. I don't think we
13:54:34 15 will be long.

16 You were talking about concerns of the black community in
17 Montgomery County and in Mobile County. And I think also in
18 the Black Belt counties that included -- and correct me if I
19 quote you wrong -- concerns about socioeconomic problems, about
13:54:56 20 health care and health care delivery, food deserts, infection
21 rates, COVID infection rates, child care for working families,
22 and I think you probably listed some other. But that's -- did
23 I get your testimony correct?

24 A Yes, sir. Generally speaking, yes, sir.

13:55:18 25 Q Okay. And is there any county in Alabama where those are

1 not issues that people are concerned about?

2 A I would say I've spent most of my career covering those
3 counties. And the unique feature that I would see when
4 compared to other counties is the sense of isolation from
13:55:40 5 opportunity.

6 So whereas there may be, you know, part -- other counties
7 where we will see folks as you're suggesting raising those
8 concerns, I've seen a unique sense of almost being islanded off
9 from opportunities in those areas that I feel like is parallel
13:56:00 10 or similar in a unique way.

11 Q But would you agree with me that in counties all across
12 the state there are concerns about equitable income
13 distribution and other socioeconomic issues, health care, and
14 rates of health care delivery in rural counties everywhere in
13:56:20 15 Alabama, about food deserts in downtown Birmingham as well as
16 in Winston County, about infection rates, and crowded hospitals
17 and the lack of space for people who need it, and a real
18 pressing problem across the state in child care for working
19 families? Would you agree with me?

13:56:40 20 A I would say that there's -- there are shared concerns, and
21 then there are also you look at the similarities between the
22 way people are articulating the root causes of those concerns.
23 So that would be another trend that I would say is more
24 consistent in the areas that I'm speaking about today, because
13:57:00 25 if we have a conversation with those families, they start

1 sharing stories about, you know, grandparents who didn't have
2 access to health care because of segregation rules at the time,
3 or they start sharing stories about the sharecropping days of
4 their family members. So the historical thread that informs
13:57:20 5 their understanding of the root causes of their problems in
6 ways that at times the state government has enabled those
7 problems, or failed to adequately respond to them, I think
8 would be a pretty unique feature for the Black Belt Montgomery
9 County and the part of Mobile County that I'm referring to.

13:57:39 10 Q Well, would you agree that those concerns that you have
11 talked about for black residents of members of the Black Belt
12 would be concerns that they share also with black residents of
13 Mississippi and of Georgia and of South Carolina?

14 A Well, the Black Belt actually extends from east Texas all
13:57:59 15 the way to South Carolina, and I guess parts of Virginia.

16 But to the extent that we don't have, you know, federal
17 voting -- multi-state voting districts, but we're kind of
18 talking about commonalities between communities within our
19 state, I would think that the comparison of communities within
13:58:18 20 the borders of Alabama would be the most relevant to the
21 discussion today.

22 Q Right. But what I asked you was: Aren't those issues
23 also shared by black Mississippians and Georgians and South
24 Carolinians?

13:58:32 25 A Unfortunately, I would -- I would offer that, you know,

1 numerous communities throughout the country share some of those
2 same experiences.

3 Q Including black -- I'm sorry. I didn't mean to interrupt
4 you.

13:58:44 5 A No, no.

6 Q Including -- my turn?

7 A Yes, sir.

8 Q All right. Thank you. Including black communities and
9 say Detroit or Chicago; is that correct, same issues?

13:58:58 10 A No. I would -- I would disagree. I think that when
11 you're looking at urban poverty in the Midwest and, you know,
12 and urban centers around the country, we can't just copy and
13 paste contemporary discussions with -- onto the historical
14 development of those communities.

13:59:17 15 What we have uniquely here in Alabama that I think is
16 actually an opportunity for us to knowledge it, it's as unique
17 as the types of accents and the types of cultural traditions
18 that we have in our communities that have been forged over
19 decades of close continuous relationship of different community
13:59:36 20 members. And so we have an opportunity to look at patterns
21 that have been shaped by conditions that have been unbroken
22 over time. And I think it is more unique than just a simple
23 comparison of this community is poor and has a high rate of
24 violence or infectious disease, and so do they.

13:59:55 25 I think when we look at the statistical outcomes over time

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1 and the stories that those individual families tell, we see
2 more commonalities there.

3 Q I want to ask you some questions about the statement that
4 you submitted that's M-17. I will pull it up if you want to
14:00:13 5 look at it. But in paragraph 6, you said the black community
6 dispersed throughout Montgomery is a community of interest. Do
7 you recall that statement?

8 A Yes, sir.

9 Q Would you agree that there is also in Montgomery County a
14:00:28 10 black and white community of interest composed of black and
11 white people who do things together?

12 A I'm not sure I understand how you are defining community
13 of interest.

14 Q Well, I guess that goes back to how you defined it. In
14:00:43 15 your statement, you talk about a number of things that seem to
16 be the backbone of your concept of a black community of
17 interest; that is, participation in state government, or
18 participation in the military, or participation in -- you
19 mentioned evening games at Crampton Bowl or participation in
14:01:08 20 ASU, which is an HBCU; is that correct, historically black
21 college or institution?

22 A Yes, sir.

23 Q And you talk about participation at Valiant Cross Academy,
24 which is as I understand it an independent school for black
14:01:24 25 males; is that correct?

1 A Yes, sir.

2 Q But there are also things that parallel that, that whites
3 and blacks together throughout the city do that I would guess
4 for the same reasons create a community of interest. For
14:01:38 5 example, you went through our city's magnet program?

6 A Right.

7 Q At Forest Avenue and Bellinger Hill and LAMP. And that --
8 those would have been communities of interest of black and
9 white families together, would I be correct?

14:01:53 10 A Well, I don't know that I understand it in the same way
11 because communities, you know, there's a residential component
12 to a community of interest. And that was one of the things
13 that was somewhat of a unique experience for me, because when I
14 was a part of that first wave of students who attended the
14:02:14 15 magnet programs, the --

16 Q Uh-huh.

17 A -- and at the time there -- some of those programs were
18 housed within traditional neighborhood schools.

19 And I always happened to live in the neighborhood that was
14:02:26 20 like associated with Forest Avenue. I lived around the street
21 from it or associated with Lanier. And so I lived in the
22 residence that my non-magnet -- the community where they live,
23 whereas many as of my peers in my actual classes lived in
24 outside of that specific community. So my cultural proximity
14:02:45 25 and my understanding of what was going on in our neighborhood

1 surrounding the school was very different than my peers who
2 lived in a different area or much further east away from those
3 schools.

4 So I think there's a residence part that plays a role, and
14:03:02 5 also a cultural part that plays a role in describing
6 communities of interest, and culture is facilitated by
7 involvement often in institutions in ritual and traditional
8 ceremonies. I don't think it's only defined by participation
9 in a -- you know, in a job or at a school, for example.

14:03:22 10 Q Right. But when you were at Forest Avenue when you were
11 at Bellinger, when you were at LAMP, you were attending school
12 every day with white children as well as black children and
13 children of other ethnicities cities; is that correct, and
14 presumably made friends with them?

14:03:40 15 A Yes, sir.

16 Q I am assuming? And participated on sports teams with
17 them, I am assuming or maybe not?

18 A Marching band.

19 Q Or marching band and rooted for sports teams?

14:03:52 20 A Right.

21 Q And all across the city, those sports teams would be seen
22 playing at our city's soccer fields and volley ball fields and
23 baseball and softball fields; is that correct?

24 A I would say it's, you know, there were -- there was
14:04:09 25 competition among those teams. But let's just look at the

1 rates of demographically speaking the students that are
2 enrolled in Montgomery public school now compared to when I was
3 in those schools. They were much more -- if we're talking
4 about white and black in the '80s and '90s, that same school
14:04:26 5 system was much more of a biracial sort of experience than it
6 currently is.

7 And I think that reflects the very sort of concern that I
8 am trying to articulate as those schools have, you know, and
9 the city as a whole has it has become more black and
14:04:43 10 institutions have become more black, you actually have a larger
11 footprint throughout the city of black communities and a shared
12 community of interest that would sort of undermine the
13 rationale national for cutting the city into two and three
14 districts for congressional representation.

14:05:04 15 Q Let me ask you then about Mobile. Would you agree that
16 Mobile is a unique city, a unique county, that it has a unique
17 culture and heritage?

18 A I would.

19 Q Okay. And in other words, it's shaped in ways that the
14:05:24 20 rest of the state is not by the Colonial history of the Spanish
21 and the French presence, correct?

22 A Yes. I would say that it -- in all of American history,
23 it has a unique story.

24 Q Yeah. And it is Mardi Gras in a few of the other Coastal
14:05:42 25 counties, which are not generally celebrated in the rest of

1 Alabama but are really very, very important to the people of
2 that area, do you know?

3 A Sure.

4 Q Yeah. And they also have uniquely access to the Gulf and
14:05:55 5 to the Delta and to the hunting, fishing, and sporting
6 opportunities that arise there, correct?

7 A Sure.

8 Q And they also have -- they work in the shipyards there,
9 and all of those are activities that do you know blacks and
14:06:12 10 whites do together; is that not correct?

11 A I would assume so.

12 Q Okay. And so would you agree that there is a black and
13 white community of interest in Mobile County?

14 A Well, again, I would just go back to the way I responded
14:06:30 15 to your question about Montgomery County that there are also
16 shared family and cultural and historical features that bind
17 those black communities in Prichard and Mobile County to their
18 relatives throughout the Black Belt in a way that's unique.
19 And I've tried to explain that about, you know, how I've
14:06:55 20 experienced that professionally and personally, both in Mobile
21 and Montgomery County.

22 Q Wouldn't that also be true for someone who grew up in
23 Montgomery who has ties in the Black Belt who is white?

24 A I would -- I think the distinction, though, is if we're
14:07:16 25 thinking about roots of the socioeconomic challenges that I was

1 describing, I don't know that the story of a random white
2 Montgomerian with Black Belt roots is going to track on to the
3 story of the random black Montgomerian with Black Belt roots in
4 the same way. I'm pretty confident that if we find a black
14:07:38 5 Mobile resident with Black Belt roots there would be
6 similarities in their stories to those of the black
7 Montgomerian with Black Belt roots in a way that is much
8 closer.

9 Q As you understand communities of interest, are there any
14:07:55 10 communities of interest -- I'm sorry. Something just happened
11 here. Oh, I think -- are there -- as you understand
12 communities of interest, are there any communities of interest
13 that contain both black and white citizens in Montgomery or in
14 central Alabama?

14:08:11 15 A I don't -- I don't know that I have studied it and that I
16 can, you know, I can comment on that with any -- with a real
17 sense of confidence right now.

18 I think, for example, there are the nuns in Vendenburg
19 (phonetic) in southern Wilcox County. There's an order of
14:08:34 20 Mennonite nuns that's worked there for decades, right? And
21 there's, I don't know, I think they're sponsored by a parish
22 out in Rochester, New York. I don't know how many nuns have
23 come through there for training. They're predominantly white
24 women who have worked there. They work very intimately and
14:08:51 25 closely with black families in one of the poorest parts of this

1 country, let alone this state.

2 And if we were to say, you know, are they a part of the
3 community of interest when we're talking about the Black Belt?
4 I think we could -- I think -- I don't mean to set up some sort
14:09:09 5 of litmus test that is only open to, you know, according to
6 race. But I do think that racial experiences are shaping a lot
7 of the features that I'm trying to describe, particularly
8 because of the unique experiences of Alabamians.

9 These black residents that I am describing, they didn't
14:09:28 10 ask for Jim Crow segregation. They didn't ask for Redlining.
11 They didn't ask for some of the, you know, enforcement of
12 certain laws that has been predominantly -- well,
13 disproportionately impacting their relatives. These aren't
14 things that people ask for. They became racialized because of
14:09:46 15 the decisions of policy makers.

16 And so, you know, I think that that is the most salient
17 point because the state has had the most power with respect to
18 shaping some of these communities. And these are communities
19 that have endured and have continued to add to the population
14:10:03 20 of the state, despite this treatment.

21 And I think the least that we can do is acknowledge the
22 unique qualities they share in common.

23 Q I am going to share with you the declaration of Dr. Moon
24 Duchin, and that is Exhibit M-3, and ask you to look, if you
14:10:32 25 will, sir, at her four proposed maps. And we'll just look at

1 the first two right here. Can you see A and B there?

2 A Yes, sir.

3 Q In both of these, they take part of Mobile County in the
4 western part of the state and create a district that runs nine
14:10:55 5 counties over to the Georgia border; is that correct?

6 A Yes, sir, I think that's what I'm looking at.

7 Q Okay. All right. And also in C and D just, so you can
8 see all of the -- all four of the plans, the same thing. Start
9 in Mobile County, take part of Mobile County, and run all the
14:11:18 10 way over to Russell County and Barbour County and Henry County
11 and Houston County on the Georgia border; is that correct?

12 A Yes, sir.

13 Q Let me ask you: Does a black resident of Mobile County
14 have more in common with her white neighbor than she does with
14:11:40 15 a black resident of Phenix City in Russell County?

16 A I don't know that I can answer the question that you're
17 posing to me in a way that would hold any weight because I
18 think it depends on the person.

19 And then let me -- can I just ask for clarification? Are
14:12:07 20 those maps that -- can you give me some background on where the
21 maps that I am looking at came from?

22 Q Oh, I'm sorry. These are alternative maps that are being
23 used by the Milligan plaintiffs to demonstrate ways in which
24 two majority black districts could be drawn, and thereby the
14:12:29 25 Milligan plaintiff Dr. Moon Duchin, and these were four

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1 illustrative maps that she presented.

2 A Oh, okay.

3 Q I apologize.

4 A Okay.

14:12:40 5 Q Have you answered my question?

6 A Yes, sir. I just wanted to clarify that before -- so I
7 was saying that I would say the -- the historical reality of
8 unique racialized experiences among black Alabamians is a point
9 that, you know, I wouldn't concede whether we're talking about
14:13:06 10 -- particularly when we're looking at central Alabama in the
11 area of the state where the plantation economy and so many of
12 those experiences that follow that period of time have been so
13 well-documented and are, you know, continuing to shape the
14 realities of these families.

14:13:25 15 So you're asking me: Can a black person in Mobile share
16 something in common with a white person in Mobile? For sure.
17 Blood transfusions, they might both love a certain show,
18 whatever the case is.

19 But I think the other question is: Can they share
14:13:42 20 something very deep and relevant and common with their
21 neighbors throughout the Black Belt with their relatives in
22 similar living conditions as those Black Belt counties, which
23 may extend as far as the Georgia line. And I think that is
24 also true. And where we're looking at numbers of people and
14:14:01 25 communities, I think that that is something that we really need

1 to take into consideration.

2 Q I think we're almost done. I want to ask you one last
3 question.

4 A Yes, sir.

14:14:13 5 Q In the statement that you committed, which was M-17, in
6 paragraph 16, I will read it to you.

7 JUDGE MARCUS: Let me stop you for a second, counsel.
8 I take it you don't need these illustrative maps anymore?

9 MR. WALKER: I do not. Thank you, Your Honor.

14:14:33 10 JUDGE MARCUS: Thanks so much.

11 MR. WALKER: Okay. Stop share.

12 JUDGE MARCUS: Thank you.

13 BY MR. WALKER:

14 Q Paragraph 16 says, Khadidah Stone and I submitted e-mail
14:14:44 15 testimony to the reapportionment committee on Thursday,
16 September 16, 2021, the last Thursday of the hearings. Do you
17 recall that statement?

18 A Yes, sir.

19 Q And at that time, the e-mail statement that you submitted
14:14:58 20 to the reapportionment committee advocated for the Singleton
21 plan with no majority-black districts. That's correct?

22 A Yes, sir.

23 Q And now you're advocating instead for the creation of two
24 majority black districts; is that correct?

14:15:12 25 A Yes, sir. Yes, sir.

1 Q Okay. Thank you.

2 MR. WALKER: That's all I have.

3 JUDGE MARCUS: Thank you very much, counsel. Let me
4 ask you: Did Mr. Davis have any cross-examination on behalf of
14:15:23 5 the Secretary?

6 MR. WALKER: He does not, Your Honor.

7 JUDGE MARCUS: Thank you so much, then. I guess we
8 will go back to redirect examination. Ms. Carter.

9 MS. CARTER: Yes. Your Honor, may I have a few
14:15:36 10 minutes before redirect?

11 JUDGE MARCUS: You sure may. Why don't we take a
12 five-minute break, and we will come back. Thank you. Does
13 that do it for you? Does that give you enough time?

14 MS. CARTER: Yes, sir, I believe so.

14:15:48 15 JUDGE MARCUS: Thanks. We will take a five-minute
16 break. It's 2:15. We will come back about 2:20 or so.
17 Thanks.

18 (Recess.)

19 JUDGE MARCUS: Is everybody hooked up and ready to
14:22:41 20 proceed? I just wanted to make sure Mr. Walker -- Mr. Walker,
21 are we all set?

22 MR. WALKER: We are all set, Your Honor. Thank you.

23 JUDGE MARCUS: Thank you, Mr. Walker. And thank you,
24 Ms. Carter. You may proceed with your redirect.

14:22:58 25 REDIRECT EXAMINATION

1 BY MS. CARTER:

2 Q I have a few more questions for you. You mentioned
3 earlier it was important for there to be a second district in
4 order for the black community in the Black Belt to have
14:23:09 5 representations for their concerns, right?

6 A Right.

7 Q Was it your testimony that Montgomery County is a
8 community of interest?

9 A No. I didn't say that. Not I mean -- I -- well, hold on.
14:23:25 10 I don't think I said that. I think there was a statement that
11 the gentleman brought out, but I don't think I said that
12 affirmatively today.

13 Q Was it your --

14 A I was referring to the black community in Montgomery
14:23:39 15 County.

16 Q Okay. Thank you. Sorry. Speaking over you for a minute
17 there. Was it your testimony that the black community in
18 Montgomery County shares things in common?

19 A Right.

14:23:49 20 Q Was it your testimony that you want to keep Montgomery
21 County whole?

22 A My testimony today?

23 Q Yes, that Montgomery County would be kept whole along with
24 the Black Belt counties?

14:24:07 25 A Oh. Yes.

1 Q And do you agree that if Montgomery County was kept whole
2 that black and white communities would be in the same district?

3 A Yes.

4 MS. CARTER: No further questions, Your Honor. Thank
14:24:22 5 you.

6 JUDGE MARCUS: All right. If there's nothing further
7 for Mr. Milligan -- oh, yes, I'm sorry. Mr. Blacksher.

8 MR. BLACKSHER: I have a couple of quick questions.

9 JUDGE MARCUS: Sure. You take your time.

14:24:38 10 RECROSS-EXAMINATION

11 BY MR. BLACKSHER:

12 Q Mr. Milligan, I am Jim Blacksher, one of the lawyers for
13 the Singleton plaintiffs.

14 A Yes, sir.

14:24:44 15 Q You said that you attempted to draw some congressional
16 plans as well as House and Senate plans, right?

17 A Yes, sir.

18 Q And I heard you mention Dave's Redistricting map. What is
19 that?

14:24:57 20 A It's an online tool that takes whatever the most recent
21 census data is and allows people to build maps of voting
22 district maps for free. So it's a free tool.

23 Q Whereas Maptitude is not free?

24 A Right. Yes, sir. You have to pay for a Maptitude
14:25:22 25 license.

1 Q Okay. And were you using Dave's, or were you using
2 Maptitude when you were trying to draw a map?

3 A So we -- there were in our network of people who were
4 attempting to do this, there were people who were using both.

14:25:41 5 Q Okay. Did any of the people that were using it that you
6 were aware of find Dave's Redistricting map to be unreliable in
7 any way?

8 A There was some discussion about the reliability of its
9 numbers and also reliability with respect to I think at the
14:26:04 10 precinct level, yes, sir. But the co-worker that I referred to
11 who was submitting the maps to the apportionment committee
12 utilized Maptitude.

13 Q Okay. All right.

14 MR. BLACKSHER: That's all I have, Your Honor.

14:26:22 15 JUDGE MARCUS: Thank you. Anything further,
16 Ms. Carter?

17 MS. CARTER: No, Your Honor. Nothing further.

18 JUDGE MARCUS: All right. Seeing nothing further,
19 Mr. Milligan, we thank you. You are excused.

14:26:35 20 THE WITNESS: Thank you.

21 JUDGE MARCUS: And the Milligan plaintiffs can proceed
22 with their next witness.

23 MS. EBENSTEIN: Good afternoon, Your Honor. This is
24 Julie Ebenstein for the Milligan plaintiffs.

14:26:53 25 JUDGE MARCUS: Good afternoon to you. Who would be

1 the next witness, Ms. Ebenstein?

2 MS. EBENSTEIN: Dr. Kosuke Imai.

3 JUDGE MARCUS: Is he on?

4 THE WITNESS: Yes, I am here.

14:27:06 5 DR. KOSUKE IMAI,

6 having been first duly sworn, was examined and testified as
7 follows:

8 JUDGE MARCUS: Thank you. And if you would state your
9 name for the record and spell it, please.

14:27:21 10 THE WITNESS: My name is Kosuke Imai, K-O-S-U-K-E,
11 I-M-A-I.

12 JUDGE MARCUS: Thank you very much. And you may
13 proceed, counsel.

14 DIRECT EXAMINATION

14:27:32 15 BY MS. EBENSTEIN:

16 Q Dr. Imai, where do you work?

17 A Harvard University.

18 Q And what's your position at Harvard University?

19 A I am a professor in the Government Department and also in
14:27:44 20 the Statistics Department of Harvard University.

21 Q Where did you earn your academic degrees?

22 A I earned a master's degree in statistics from Harvard, and
23 I also earned a Ph.D. in political science also from Harvard.

24 Q Could you briefly describe your previously held academic
14:28:06 25 divisions?

1 A Yes. After I finished Ph.D. at Harvard, I started
2 teaching at Princeton University as a lecturer first, and then
3 assistant professor, associate professor, and eventually as a
4 professor before moving to Harvard three years ago.

14:28:22 5 Q And as a professor, what are your primary areas of
6 research or scholarship?

7 A My primary area of research is intersection of statistics
8 and political science. And at Princeton, I was playing a
9 leading role in building interdisciplinary program of
14:28:43 10 Statistics and Machinery Learning. At Harvard, I have a joint
11 appointment in both political science, the Government
12 Department, and Statistics Department, which is a first such
13 appointment in the history of Harvard. So really my research
14 is in between these two disciplines.

14:28:58 15 And particular I have two areas of research that I focus
16 on. The first is causal inference research, which is basically
17 about developing statistical methods for determining cause and
18 effect. And the second area of my research is computational
19 social science, which is about developing new algorithms to
14:29:22 20 helping solve complicated problems in today's society and
21 social sciences.

22 In the area of causal inference research, I developed
23 statistical methods estimating the causal effects of different
24 policies, public policies, and this is very important for
14:29:40 25 scientific evaluation of public policy because you have to be

1 able to figure out whether or not the particular policies have
2 intended effects or not. And so some of the methods that I
3 have been developed, have been used for the program that --
4 variation of -- variety of policies that's in the real world.

14:30:03 5 In the second area of research, which is the computational
6 social science research, this is emerging area of discipline
7 where the availability of data about the society and
8 individuals and citizens have really lead to the explosion of
9 methodologies, but also as a way to utilize data to improve the
14:30:25 10 public policies.

11 So in this area, I developed a set of computational
12 algorithms to help improve the public policy and evaluate the
13 impact on in the real world, decision making, because often
14 times, the decisions are made in the area of public policy by
14:30:42 15 humans. So you want to know like what type of impact the
16 algorithmic recommendation might have in these areas. So
17 that's sort of the two areas of research. One is causal
18 inference, and the other is the computational social science
19 research.

14:30:58 20 Q Thank you. In your research related to computational
21 social science, is that research publicly available?

22 A Yes. One of the most important missions I have as a
23 academic researcher is to make the methods that I develop
24 widely available for free. So the reason why I do that is, you
14:31:18 25 know, obviously, any citizens and researchers may not be able

1 to implement the cutting edge methods on their own, and so I
2 developed open-source software packages that are freely
3 downloadable, and anyone can basically have access and run them
4 on their computer, personal computer.

14:31:42 5 And so this is an important thing for me just also for the
6 sake of scientific transparency. You want to make sure that
7 other researches have access to the code you have written and
8 the data you used so that research projects that I conducted
9 can be duplicated by others and also accessible to the public.

14:32:11 10 So I've developed more than 20 open-source software packages,
11 and that's all available on the websites.

12 Q Dr. Imai, have you published peer-reviewed articles?

13 A Yes, I have.

14 Q And could you provide us with a few examples if those
14:32:24 15 relate to redistricting?

16 A Sure. So I have published a book, which is came from the
17 Princeton University Press. It's a textbook to computational
18 social science, *Quantitative Social Science* in general, and
19 that's been widely adopted or by the many universities across
14:32:44 20 the world.

21 In the three journals, I have more than 60 papers that's
22 being published mostly in political science and statistics
23 journals. And the most relevant papers for redistricting is
24 concerning the development of new simulation algorithms for
14:33:05 25 generating the redistricting plans, and that's been published

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1 in one -- in the *Journal of Computational and Geographical*
2 *Statistics*, and others in science advances and statistics and
3 policy in a few other journals.

14:33:23 4 Q Thank you. Is your research and scholarship widely cited
5 in your field?

6 A Yes. I -- I'm actually one of the most highly cited
7 researches in the area of quantitative social science.
8 Clarivate Analytics, which is the premier organization that
9 tracks the citation counts of political sciences, they've named
14:33:43 10 me as one of the highly cited researchers in the cross field,
11 which is basically the interdisciplinary fields for the last
12 four years when such honor has been given.

13 Q And do you review the work of other political scientists
14 or statisticians?

14:34:00 15 A Yes. I routinely review the manuscripts that are
16 submitted to peer-reviewed journals for publication. I
17 probably get, you know, maybe a couple hundred such requests
18 every year. I can't do them all, so I usually do 50 or 60 a
19 year. I serve as the co-editor of *Journal of Causal Inference*,
14:34:25 20 which is a interdisciplinary journal that publishes statistical
21 methods and other mathematical methods on cause and effect.
22 And I also serve on the editorial board of several journals in
23 political science and statistics and serve as an associated
24 editor making the direct decisions on acceptance and rejection
14:34:47 25 of these papers.

1 Q Thank you. Have you received awards for your research in
2 political science or statistics?

3 A I have received some awards. Several of them includes
4 best paper, best software awards from academic societies. I
14:35:07 5 was also the inaugurate recipient of the outstanding research
6 for the young researcher that has received their Ph.D. terminal
7 degree within the ten years. So a few years back when I was
8 still young, I received that honor. Yes, so several, you know,
9 awards that's on my CV.

14:35:32 10 One thing that I wanted to -- I'm very excited about is
11 actually one of my papers was selected for special reading
12 session in the *Royal Statistical Society*. The *Royal*
13 *Statistical Society* in England every year selects couple of
14 papers for special reading session where you go and present
14:35:50 15 your work. And there was a discussion discusses your work, and
16 there's also always some audience. This year will be a Zoom,
17 but I will be going there virtually and presenting my work
18 there.

19 Q Are you a member of any professional associations that
14:36:06 20 relate to political science or statistics?

21 A I am a member of American Political Science Association as
22 well as American Statistical Association. Those are the two
23 premier academic organizations in North America for
24 disciplines. I am also a member of Society for Political
14:36:24 25 Methodology, which is a reading society that brings people like

1 myself to develop statistical methods that's applicable to the
2 programs in political science and politics. And I served as
3 the president of that society for two years from 2017 to 2019.

4 Q How were you selected for that role?

14:36:47 5 A I was selected by the members of the society as the
6 president.

7 Q And have you submitted expert reports in litigation
8 before?

9 A I have submitted two reports to the redistricting cases
14:37:00 10 that's pending for the Ohio State Supreme Court.

11 Q You --

12 A In addition to the one I submitted to this one.

13 Q Thank you.

14 MS. EBENSTEIN: Your Honor, at this time, we would
14:37:15 15 proffer Dr. Imai as an expert in computational social science,
16 causal inference research, and quantitative redistricting
17 analysis.

18 JUDGE MARCUS: Any objection?

19 MR. SMITH: Your Honor, Brent Smith for the defendant,
14:37:27 20 no objection from us at this stage of the proceedings.

21 JUDGE MARCUS: All right. We will -- anyone else want
22 to interpose any objection? Hearing none, we will accept
23 Dr. Imai as an expert in the three fields that Ms. Ebenstein
24 had listed -- computational social science research,
14:37:49 25 quantitative redistricting, and causal inference research.

1 With that, you may proceed. Thank you.

2 MS. EBENSTEIN: Thank you, Your Honor.

3 BY MS. EBENSTEIN:

4 Q And, Dr. Imai, I would just remind you to speak slowly so
14:38:03 5 that the court reporter can capture everything that you are
6 saying.

7 A Okay. Yes.

8 JUDGE MARCUS: I will stop you at that point to
9 underscore this for everyone. We're located in a variety of
14:38:14 10 different places, and so it's tougher for the court reporter to
11 take everything down.

12 THE WITNESS: Yeah.

13 JUDGE MARCUS: Accurately. So we'd be much
14 appreciative if something I had really mentioned earlier today
14:38:28 15 for everyone that we speak as slowly as we can so that she can
16 get it all down and get it accurate.

17 Thanks, and you may proceed, Ms. Ebenstein.

18 MS. EBENSTEIN: Thank you, Your Honor.

19 BY MS. EBENSTEIN:

14:38:43 20 Q Dr. Imai, briefly, what were you asked to do in this case?

21 A Thank you for the opportunity to present my analysis.

22 So I was asked to conduct a simulation analysis to
23 determine whether or not race played a role in determining the
24 district boundaries on the enacted plan.

14:39:04 25 Q How did you go about doing that investigation?

1 A As I just mentioned, I conducted the simulation analysis
2 by generating a large number of alternative redistricting plans
3 that one could have drawn under the specified rules, and then
4 comparing those alternative redistricting plans, we see enacted
14:39:26 5 plan.

6 Q How many sets of simulations did you perform to undertake
7 your analysis?

8 A So for each of the three analyses that I have done, I
9 conducted -- I generated 10,000 redistricting maps.

14:39:38 10 Q And did you form an opinion as a result of your analysis?

11 A Yes, I did.

12 Q What is that opinion in general?

13 A Yes. So the most important finding that I obtained is
14 that race played a predominant role in determining district
14:39:58 15 boundaries under the enacted plan beyond the creation of one
16 majority-minority district.

17 And the enacted plan does this by packing a
18 disproportionate number of black voters from Montgomery County
19 to into the District 7, which is the one majority-minority
14:40:17 20 district, and then by doing so, reduces the number of black
21 voters in District 2. Thereby diluting the voting power of
22 black voters.

23 Q And just to be clear before we get started with your
24 report, could you explain to us your definition of a
14:40:33 25 majority-minority district in this instance?

1 A Here, I'm defining majority-minority district, which I am
2 going to call MMD the rest of my testimony. As defined as the
3 district that has 50 percent or more of black population of
4 Black Voting Age Population. That's important.

14:40:55 5 Q Thank you.

6 And did you prepare a report or declaration in this case?

7 A Yes, I did.

8 Q Just to make sure we're all on the same major page, do you
9 have copies of your report in front of you marked Plaintiffs'
14:41:08 10 Exhibit M-1, and that's ECF 88-1 and M-6, 88-6?

11 A Yes.

12 Q Okay. Thank you. You testified a moment ago that you
13 created district map simulations. What is the purpose of using
14 simulations to assess districting maps?

14:41:26 15 A Yeah. So the purpose of the simulation analysis is to
16 generate a set of alternatives -- large set usually. So in my
17 case 10,000, a large set of alternative plans one could have
18 drawn and their specified set of rules.

19 Q Have you?

14:41:45 20 A Sorry.

21 Q Go ahead?

22 A Yeah. Compare the enacted plan -- by comparing the
23 enacted plan with the alternative set of plans, you can analyze
24 what factors played role in determining enacted plan.

14:41:58 25 Q And in your view, what are the benefits of using

1 simulations in comparison to other methods for assessing
2 redistricting plans?

3 A Yeah. So there's several advantages of simulation
4 analysis. I want to list three main benefits: The first
14:42:18 5 benefit and perhaps, you know, most obvious one is that in the
6 traditional redistricting analysis, one would compare, say,
7 enacted plan from Alabama with other plans from other states.
8 I mean, you might say, well, the Alabama plan are more or less
9 biased compared to these other plans.

14:42:39 10 But as you might imagine, the problem of this comparison
11 is that different states are different. Like they have very
12 different political geography. They may have used different
13 redistricting rules. The number of congressional districts
14 might also be different. So you are basically comparing apples
14:42:57 15 and oranges, and you can't really isolate the particular
16 factors you're trying to investigate.

17 Now, you could say, okay, what about comparing the enacted
18 plan with the previous plans of the same state? It's the same
19 state, you know, not New York. It's Alabama. But the problem,
14:43:17 20 of course, is that a population change over time. The
21 redistricting rules could also change.

22 So those changes is going to contaminate the analysis. In
23 contrast, simulation plan uses the same set of political
24 geography, the current political geography, in my case, the
14:43:37 25 2020 census data and as well as the current set of rules of the

1 same state.

2 So we will be able to hold the old political geography and
3 the rule as constant, and then try to isolate the particular
4 factors at play.

14:43:53 5 Now, this leads to the second advantage of simulation
6 analysis. The second advantage -- this might be a little
7 intuitive -- but it's transparency, okay? So you might think,
8 well, the algorithms are a little bit complicated. That's
9 black box. You don't know what's happening. But it's actually
14:44:12 10 -- I would argue it's actually very transparent, right? The
11 reason why I say it's transparent is that you specify set of
12 rules that goes into the algorithm. You tell the algorithm to
13 follow these set of rules, which are usually determined by the
14 state. And then see what type of plans could be drawn.

14:44:30 15 So in that sense, you know, the sense that the -- I
16 specify exact set of rules, and that's been made clear, and any
17 researchers who use simulation analysis should make those
18 inputs clear. It's very transparent, and output only depends
19 on the inputs. So what inputs goes in, once input is
14:44:50 20 determined, the algorithm will determine the output. That's
21 the second advantage of the simulation analysis is the
22 transparency.

23 So compare this with a scenario where you tell humans to
24 draw alternative plans. And that will be difficult because it
14:45:05 25 could be affected by a variety of factors. The humans might

1 know something about the neighborhood, or those could live in a
2 particular neighborhood, and even if they're not consciously
3 using those factors, it might still affect the decisions to
4 draw boundaries.

14:45:24 5 So the algorithm provides much more transparent way of
6 drawing or chart of -- set of redistricting plans.

7 The third advantage of the simulation analysis is related
8 to the first two. So because you can specify exactly what
9 factors should affect the algorithm generation of redistricting
10 plans, you can isolate each factor. So I could add one factor
11 or take out one, or I could change one factor a little bit to
12 see how those changes will affect the characteristics of the
13 plans that could have been drawn. And that way you can isolate
14 each factor of interest without -- while controlling all other,
14:46:12 15 you know, rules and factors and the political geography at the
16 same time. So these three are the key benefits.

17 So the first one is the ability to control for political
18 geography and the rules. The second one is transparency. And
19 the third one is the ability to isolate different factors.

14:46:32 20 So those are three key benefits of simulation analysis.

21 Q And what method did you use to generate the simulated
22 plans?

23 A So I used algorithm that belongs to a family of so called
24 Monte Carlo methods.

14:46:47 25 Q What is a Monte Carlo method?

1 A Monte Carlo methods has a very important mathematical
2 property. And that mathematical properties is that algorithm
3 that belongs to this family has a mathematical guarantee that
4 it will generate a new representative sample of redistricting
14:47:09 5 plans or simulated plans under -- under the specified set of
6 rules. Okay, so the key here is that it representativeness.
7 So the reason why this is very important is that as you might
8 imagine, the number of ways to draw district boundaries, even
9 under a set of certain rules is a huge number. It's not
14:47:33 10 billion. It's not trillion. It's way beyond that.

11 So it's impossible for me or for any computer to actually
12 enumerate each single one of possible plans under set of rules
13 that you are interested in. So the only way to understand,
14 okay, what are the characteristics of possible plans under
14:47:57 15 certain rules is to obtain representative samples. This is
16 very similar to survey sampling. You know, instead of doing
17 conducting the census, the Census Bureau the decennial every
18 ten years, Census Bureau would conduct American community
19 survey every year. But that sample size is much smaller than
14:48:20 20 talking to every single person who live in the U.S.

21 So the -- as long as the sample is representative, we can
22 still characterize the U.S. population. And it's a same idea
23 here. Even though the population of the possible plans are too
24 numerous to enumerate, we can obtain a small fraction of
14:48:41 25 representative sample and analyze the characteristics of the

1 redistricting grounds.

2 Q Thank you. And let's discuss the constraints and inputs
3 that you used. How did you determine which criteria to use in
4 your simulation?

14:48:54 5 A So I reviewed the guideline provided by the state in the
6 apportionment committee.

7 Q And how do you isolate a single factor for investigation
8 within those guidelines?

9 A So the fact that I was most interested in and I was asked
14:49:11 10 to evaluate was race. So I started a simulation by first
11 looking at the other -- other parts of the guideline, other
12 rules.

13 So there are five sets of rules that I am going to -- I
14 imposed on my algorithm in my simulation analysis. So there
14:49:36 15 are five rules. And three of them I am going to describe it as
16 hard constraint. The hard constraint in a sense that every
17 single simulated plan that I generate satisfy that criteria.

18 Two other ones I am going to call this soft constraint,
19 okay? So soft constraint is more like a preference. So the
14:49:56 20 algorithm prefers certain type of plans.

21 So for the three hard constraints I imposed, the first one
22 is quantitating. So every district that I generate is
23 contiguous. The second constraint, the hard constraint, I
24 imposed is that no incumbency pairing. So this means that each
14:50:21 25 district should not have multiple incumbents. So this is to --

1 this just like the inactive plan. So the enacted plan doesn't
2 pair incumbrance within each district. So none of my plans,
3 also that's so.

4 The third one is the population equality. So according to
14:50:39 5 the guideline, you're supposed to minimize the population
6 difference across redistricting plans.

7 Here, I set the maximum population deviation to be
8 .5 percent, okay? So this is a little bit different from
9 typical congressional plans where they often impose the
14:50:58 10 population difference up to like one person across different
11 districts.

12 Why .5 percent? So .5 percent is about 3,500 people in
13 the case of Alabama. Why is that? Because my dataset is --
14 this is standard sort of practice in redistricting research is
14:51:18 15 that the precinct levels. It's not at the census bloc level.
16 It is at the precinct level, which is the larger unit. This is
17 -- the precinct is the smallest unit for which the elector data
18 is available. Also this is usually in most redistricting
19 research that's what we use.

14:51:35 20 So at the precinct level, the .5 percent is a very good,
21 you know, strict population threshold compared to other type of
22 analysis you might see in literature.

23 So and most importantly, 3,500 people, that's the maximum
24 deviation is now going to hardly any material impact on the
14:52:00 25 congressional analysis.

1 So those are three hard constraints. They're continuity,
2 no incumbency pairing, and the population equality.

3 And the two soft constraints are compactness and the
4 number of county splits.

14:52:16 5 So here I used a soft constraints because compactness is a
6 continuum measure. And there are several measures in the
7 literature, but, you know, there's -- it's not a binary
8 dichotomous whether it's compact or not compact. There's a
9 range of compactness that one can consider. So what I tried to
14:52:34 10 do is to tell the algorithm to prefer a more compact plan with
11 all else equal. So all else equal just prefer more compact
12 plan.

13 And I as a result, the most of the simulated plans I have
14 generated, there are 10,000 of them for each set of simulations
14:53:01 15 I am going to describe later, they're a more compact than the
16 enacted plan. I reach on average in most cases many of my
17 summations are more compact than enacted plan.

18 The second soft constraint is the number of county splits.
19 So here the guideline tells you to minimize the number of
14:53:21 20 county spreads with subject to some other constraint.

21 I did the exact same thing. So, again, this is a
22 continuum, so the number of county splits could be one, two,
23 three, four, five. Under the enacted plan, there are six
24 counties being split. So I made sure that I basically pulled
14:53:39 25 the algorithm to prefer the plans with the fewer county splits

1 all else equal.

2 So and as a result, none of my -- all my simulated 10,000
3 plans have fewer or equal number of county splits than enacted
4 plan.

14:53:59 5 So I know it's going long, but basically, I imposed the
6 five constraints. One is contiguity, next one is incumbency
7 pairing, third is population equality and compactness, and
8 number of county splits.

9 Q Thank you. Did you consider any partisan constraints in
14:54:22 10 your simulations?

11 A No. So this is the beauty of the simulation algorithm. I
12 did not consult any partisan information. So any partisan
13 information didn't go into the algorithm. So we know that.
14 That's the beauty of the transparency part of the simulation
14:54:41 15 analysis.

16 Q And did you impose a constraint to consider the core of
17 existing districts?

18 A No. So the main trends of the core of the previous
19 districts I understand is a part of the guideline. The reason
14:54:58 20 why I did not incorporate that constraint is the following: So
21 if you basically tell algorithms to keep the core of the
22 previous districts, basically that whatever the submitted plans
23 you get will inherit all the properties that -- all the factors
24 that influence the previous plan.

14:55:19 25 So since I did not analyze the previous plan, I have no

1 idea what factors went into determining the previous plans. It
2 could be party, race, or other factors that could influence the
3 previous plan.

4 So I decided not to include the core preservation
14:55:39 5 constraint in order to isolate. So if you remember that the --
6 the strengths of the simulation analysis, the key advantage is
7 the transparency and the ability to isolate the particular
8 factors.

9 If impose the core constraint, then I inherit all the
14:55:58 10 factors that, you know, impact -- that influenced how the
11 districts are drawn in the previous plan. So I have no way of
12 isolating a particular factor that I am interested in -- in
13 this case, race, from the -- from my own analysis.

14 And so for this reason, I decided to not to incorporate
14:56:19 15 the core preservation criteria.

16 Q Okay. Thank you.

17 Now, let's turn to your results. First looking at your
18 race-blind simulation, why do you run the first set of
19 simulations without data on race?

14:56:34 20 A Yes. So the first analysis, which as confirmation I call
21 it race-blind simulation, is the analysis that -- simulation
22 analysis where race is not used at all. So the only five
23 criteria that I described a moment ago were used, but no race,
24 no party, nothing else is used.

14:56:56 25 So the reason why used this analysis as a first step, so

1 this is not the main purpose. But this is a first step is to
2 confirm that race was, indeed, a factor in determining the
3 district boundaries of the enacted plan. So that's the first
4 step analysis I conducted.

14:57:16 5 Q Okay. Thank you.

6 MS. EBENSTEIN: And if I could ask my colleague Eric
7 to bring up Figure 1, which is docket 88-1 at 10.

8 JUDGE MARCUS: And this was which exhibit just so the
9 record is clear?

14:57:30 10 MS. EBENSTEIN: This is Milligan's Exhibit 1.

11 JUDGE MARCUS: So this is a piece of Milligan 1?

12 MS. EBENSTEIN: That's correct, Your Honor.

13 JUDGE MARCUS: Thank you.

14 BY MS. EBENSTEIN:

14:57:40 15 Q Dr. Imai, could you please explain I guess first what a
16 boxplot is and what this particular boxplot represents?

17 A So this figure compares the Black Voting Age Population
18 proportions. So I am going to call this BVAP under the enacted
19 plan and compare that with the same BVAP for each district
14:58:05 20 under the simulated plan.

21 So the enacted plan is indicated by red square that you
22 see on the screen. And there are seven districts in Alabama as
23 you know. So on the X axis, you have seven numbers correspond
24 to the district number.

14:58:22 25 So, for example, the District 7, you see that a red dot is

1 up around 55 percent, which means that under the enacted plan,
2 District 7 has about 55 percent BVAP proportion, the Black
3 Voting Age proportion.

4 So in addition to the enacted plan, I also present here
14:58:47 5 that the distribution of the simulated plan, 10,000 simulated
6 plans that I generated using the five criteria that I
7 mentioned. So here because I have 10,000 of them, I can't
8 give, you know, give each plan a dot. That would be a
9 disaster. So what I am going to use is something called the
14:59:09 10 boxplot, which you see often in statistics. So let's look at
11 District 3.

12 And so you see a big box. And that is containing --
13 that's a range of the BVAP proportion of 50 percent of
14 simulated plans were contained. So out of 10,000 plans that I
14:59:33 15 generated, 5,000 of them have the District 3 BVAP proportion of
16 the chain about, you know, 12, 13 to 25 percent. Okay. So
17 half of that simulated data is in there. So you can see that
18 red dot is right edge of the box, which indicates that, you
19 know, the simulated plan are reasonably similar in terms of
14:59:56 20 BVAP percentage for District 3 to the simulated plan. So
21 there's nothing strange going on here.

22 Now, from the box, there are two lines sticking out. So
23 one is going upwards, and the other one is going down. And
24 these lines have a cute name whiskers. And these it presents
15:00:16 25 the range of the simulated data that known to be normal or

1 ordinary. So any dot whether it's enacted or simulated that's
2 beyond these two lines two sets of lines are considered as
3 statistical outlier according to the standard definition in
4 statistics.

15:00:36 5 So as you can see in the case of District 3, the enacted
6 plan is right in the middle -- right in the box, and hence it's
7 not an outlier.

8 The horizontal line that was in the box that you see is
9 basically median. So that's -- you know, midpoint of the
15:00:58 10 simulated plan.

11 Okay. Now, let's look at the District 7, where you see
12 that enacted plan deviates significantly from the simulated
13 plan. Simulated you see the little box that's kind of squished
14 around 40 percent. So that means that half of the simulated
15:01:17 15 data is around 40 percent. Really concentrated.

16 Now, there are some other simulated data that's black dots
17 that's going down all the way to 20 percent, but almost all the
18 data is around 40 percent. Compared to that, enacted plan is
19 much higher, much higher Black Voting Age, you know, BVAP
15:01:37 20 proportion that's 55 percent. And none of the simulated plan
21 comes even close.

22 Okay. So what does that mean? That means if you remember
23 that simulated plan are generated, you know, these are the set
24 of plans one could have drawn, the representative step. One
15:01:54 25 could have drawn if you follow the five set of criteria I just

1 mentioned. But not using the race at all. Then the District 7
2 should be rounding on the simulated range. However, what we
3 see is the 7 is right up, you know, way above the simulated
4 plan, which indicates that race was used in drawing the
15:02:20 5 district boundary of District 7. You can also see this if you
6 go to the District 2. District 2 enacted plan have about
7 30 percent, the red dots is around the 30 percent, which is
8 significantly lower than most of the simulated plan which is
9 about 37, 38 percent ranging from perhaps 33 to 42. So that's
15:02:44 10 also outlier. So in this case for District 2 is an enacted
11 plan that has much lower BVAP percentage than simulated plan
12 that were generated without any consideration of race.

13 If you look at all the other districts 1, 3, 4, 5, 6,
14 they're all within the range. They're not statistical outlier.
15:03:05 15 So in this analysis, what you can see is that two districts, 2
16 and 7, are statistical outlier. And this is how simulation
17 analysis can become conducted. Let's generate a set of
18 redistricting plans without looking at the race, and then see
19 if that's really different from enacted plan in terms of racial
15:03:27 20 composition. If it is, we know that race is used as a primary
21 factor in determining the district boundaries.

22 Q And what conclusions do you draw as a result of these
23 findings?

24 A So this as I mentioned, inactive plan, used the race as a
15:03:50 25 primary factor. In determining the district boundaries,

1 especially District 2 and 7. And by the way, I am sure you
2 have already understand this, but this is not a surprising
3 finding. This is just a confirmatory analysis. This is my
4 first step of analysis to confirm that race was indeed used in
15:04:13 5 deciding the district boundaries of the enacted plan. And
6 because if that's not the case then, you know, it will be a
7 totally different story.

8 So that's the first step of analysis I conducted.

9 Q Was that finding that race was likely used as a factor in
15:04:30 10 drawing District 7 surprising for you?

11 A No. Especially in light of the fact that the state, you
12 know, created this District 7 in their own approach to comply
13 with the Voting Rights Act.

14 Q And did -- we can take down this boxplot. Thank you,
15:04:50 15 Dr. Imai. Did you make any localized findings about the lines
16 drawn in the enacted plan?

17 A Yes. So another interesting thing about simulation
18 analysis is that not just looking at this overall Black Voting
19 Age Population proportion, you can also look at the ways in
15:05:10 20 which the enacted plan splits the county or takes certain part
21 of the county into a particular district.

22 So I looked at the Jefferson County and the Montgomery
23 County, which are two important counties and have a high large
24 number of black voters.

15:05:35 25 Q And based on your simulations, what did you find in those

1 two counties?

2 A Yeah. So let's start with Jefferson County. So the
3 enacted plan splits the Jefferson County, as you know, and
4 takes the Birmingham area and include it into District 7.

15:05:54 5 District 7 is the majority-minority district.

6 Now, the simulation plan that one that doesn't use race at
7 all often keeps the Jefferson County as a whole. So more than
8 half, I think 52 or 53 percent of them keeps the Jefferson
9 County as a whole, and even when it splits, it includes parts
10 of the -- only part of Jefferson County into District 7. It
11 does so by taking much bigger proportion of Jefferson County,
12 not just the Birmingham area.

13 And as a result, the number of black voters that are
14 included from the Jefferson County into the District 7 is
15 overwhelmingly black under the enacted plan, when compared to
16 the simulated plan.

17 For -- yeah sorry.

18 Q Go ahead. Sorry about that.

19 A So that's sort of -- so, again, you can see the race was
15:06:54 20 used as a way to split the Jefferson County and include part of
21 much of the Birmingham into the District 7.

22 Similarly, I looked at the Montgomery County. And this is
23 also interesting. So in case of Montgomery County, almost all
24 the simulation plan kept the Montgomery as a whole. I think
15:07:21 25 it's like 97 percent. 97 percent of 10,000 simulated plans

1 that comprise the five criteria that I just described. It kept
2 Montgomery County as a whole. And more so the case, it don't
3 include that into District 7. In fact, the more so the case,
4 you assign it to known MMD district. Most likely in to the
15:07:44 5 District 2, and that's why you sort of see the District 2 BVAP
6 proportion is much lower on the enacted plan. And sometimes to
7 District 6.

8 So, again, here, the enacted plan splits the Montgomery
9 County, particularly the city of Montgomery. And include the
15:08:03 10 part of Montgomery, city of Montgomery into District 7,
11 simulated plan. Most of them don't do that. And assign the
12 Montgomery County to the other -- other district, not the
13 District 7.

14 Q Thank you. Based on your analysis that did not use racial
15:08:20 15 data, did you form an opinion on whether race was a predominant
16 factor in drawing the enacted plan?

17 A Yes. My analysis provides clear evidence that race was
18 used as a primary factor in determining district boundaries
19 under the enacted plan.

15:08:36 20 Q Did you then conduct simulations that did consider race
21 data?

22 A Sure. Yes, I did.

23 Q Okay. Let's discuss that now.

24 Can you describe that simulation for the Court, please?

15:08:49 25 A So this second analysis is the very important analysis

1 that I conducted. As I mentioned, the first analysis is the
2 confirmatory, and so this is just to establish that race was
3 used.

4 Now, the question is: How race was used?

15:09:06 5 So the second analysis, what I call one-MMD analysis
6 simulation. MMD stands for, again, majority-minority district.
7 And so this simulation generates one MMD, one majority-minority
8 district using the race as information.

9 So why did I do that? I'm simply following the state's
15:09:33 10 approach to just create the one MMD in order to comply with
11 Voting Rights Act. I don't take any opinion or position on
12 whether that's a good thing to do or whether one could draw a
13 second MMD, okay. So I'm simply following here the approach
14 the state took to create one MMD. It is in the racial
15:10:00 15 information. It is in racial information.

16 Now, this -- for that rest of the district, so there's one
17 MMD and six others, I am going to use the same exact approach
18 that I used in the prior analysis, so that is race-blind. So I
19 create one MMD and then set that aside. And I create the other
15:10:24 20 six districts without using any race information at all. Okay?

21 So this analysis I will now repeat so I have again I have
22 10,000 redistricting plans. I have exactly one MMD. And the
23 rest of the districts are generated without any information
24 about race.

15:10:44 25 So why do I do that? Well, this analysis allows me to

1 isolate whether or not the race was used in determining the
2 district boundaries beyond the purpose of creating one MMD,
3 okay?

4 So that's why I used race only to create one MMD and then
15:11:08 5 do race-blind simulation for the rest in order to figure out
6 whether or not race was used beyond the purpose of creating one
7 MMD.

8 Q Dr. Imai, did you put any additional constraints on the
9 use of race in the simulation?

15:11:27 10 A No.

11 Q Did you specify a range for the BVAP of this MMD?

12 A Yeah. So you have to define MMD. So what I did is when
13 I'm generating one MMD, I made sure that that MMD has the BVAP
14 range between 50 and 51 percent.

15:11:52 15 Q Does -- did your simulation include restraints on where to
16 draw that MMD?

17 A No. So the algorithm is only told to create one MMD. I
18 didn't tell the algorithm where it should be or that it's done
19 in the South -- or nothing. And I just told them that, you
15:12:13 20 know, told the algorithm to create one MMD. And just to remind
21 you that I also maintain all five other criteria that I
22 described earlier. So the only difference from the first
23 analysis is that I just added this one MMD creation to the
24 race-blind analysis.

15:12:32 25 Q Did the simulated method cover any similarities in where

1 the MMD was drawn?

2 A Yeah. So this is one of the amazing things that I found
3 in this one-MMD simulation analysis. When I say amazing, I
4 mean that because I've analyzed for my own research different
15:12:53 5 states using a simulation method for my own identical research.
6 And I have never seen anything like this. And what I found is
7 that if you tell algorithm to just find one MMD, right, only
8 one, between the range 50, 51 percent, it always find in the
9 same similar place, which is basically corresponding to the
15:13:16 10 District 7 on the enacted plan.

11 So even though I didn't tell the algorithm where that MMD
12 should go, algorithm always, almost always find it in the
13 District 7. In particular, what was striking to me was that no
14 way the algorithm actually formed the district at one MMD,
15:13:37 15 which caused, you know -- to the District 7 under the enacted
16 plan, and in particular the way that Jefferson County was
17 split. So under the enacted plan, it takes much of the
18 Birmingham -- City of Birmingham into the District 7.
19 Algorithm does something very similar. Not exactly the same,
15:13:57 20 but similarly as often -- almost always splits the Jefferson
21 County, and then bring in the Birmingham, much of the
22 Birmingham into District 7.

23 Now, algorithm also does like the enacted plan splits the
24 Tuscaloosa County and then take the southern part of Tuscaloosa
15:14:16 25 and then fold it into the District 7, as well.

1 So those two parts when I generated is one MMD complete
2 independent, right? Every one is independent. It always did
3 -- almost always did make those county split choices.

4 Now, the key difference, however, between the enacted plan
15:14:37 5 and simulated plan was the way that the Montgomery County was
6 treated.

7 Q And let's turn to that now, Dr. Imai. If we could pull up
8 Figure 4, this is Milligan Plaintiffs' Exhibit 1 docket 88-1 at
9 14.

15:14:57 10 What were some of the key differences between the enacted
11 plan and the simulated plans when it came to the treatment of
12 Montgomery County?

13 A So the enacted plan takes many more black voters into the
14 District 7, okay? Whereas the simulated plan takes much less
15:15:18 15 black voters into the District 7.

16 And then this figure shows that.

17 So this figure shows that Black Voting Age Population who
18 live in Montgomery who are included in District 7, that's the
19 MMD, one MMD that I generated and also enacted plan has.

15:15:42 20 Enacted plan has 39,000 people from the Montgomery County
21 and then folded into District 7. That's indicated by red
22 dashed line, the line on the right. So about 39,000 people who
23 live in Black Voting Age Population who live in Montgomery
24 County are included in District 7 in order to create one MMD.

15:16:10 25 In contrast, let's look at the simulated plan, which is

1 the gray histogram I have in the graph. It turns out that more
2 than half, more than 60 percent, I think 62 percent to be more
3 precise, 62 percent of 10,000 simulated plans that I created
4 doesn't use any part of the Montgomery County at all. So
15:16:38 5 that's indicated by the big spike at zero. So no black voter
6 or actually nobody from the Montgomery County whether you are
7 black or white are included in the one MMD that I generated.
8 More than 60 percent at the time.

9 Even when simulated plan decides to split the Montgomery
15:17:02 10 County and includes some part of the Montgomery County into the
11 District 7, it takes much fewer number of black voters than
12 enacted plan. So remember enacted plan has the 39,000 people.
13 The simulated plan as you can see from the histogram most of
14 the simulated plans takes less than 4,000 people. Some 4,000
15:17:30 15 Black Voting Age Population into the District 7.

16 So this is -- you don't need a statistician to tell you
17 this is a statistically significant difference, but it's a big
18 difference, all right. So most of the simulated plan only
19 takes a small number of black voters and include it in the
15:17:50 20 District 7, related to the enacted plan which packs the 39,000
21 voters into the District 7.

22 Q Thank you, Dr. Imai, just to make sure the points are
23 clear. Do most of the simulations split Montgomery County at
24 all?

15:18:06 25 A Right. So most of the simulation -- sorry --

1 JUDGE MARCUS: As he is proceeding, Ms. Ebenstein, if
2 you can find a convenient time to take a short break for our
3 court reporter, you tell me when that time comes. But I think
4 we want to take a break pretty soon.

15:18:27 5 MS. EBENSTEIN: Of course, Your Honor. We probably
6 just need three or four minutes to finish up this session.

7 JUDGE MARCUS: Sure. Sure.

8 MS. EBENSTEIN: Thank you.

9 THE WITNESS: So what was the question?

15:18:37 10 BY MS. EBENSTEIN:

11 Q Whether most of the one-MMD simulations split Montgomery
12 County at all?

13 A So the majority of the simulated plans don't split the
14 Montgomery County at all, and in fact, assigns the whole county
15:18:53 15 to District 2.

16 Q And in the plans that the simulated plans that do split
17 Montgomery County, what part of the population is included in
18 District 7?

19 A Very small part of the Montgomery County. And on the
15:19:09 20 western edge of the Montgomery County.

21 Q Dr. Imai, based on your analysis, does Montgomery County
22 need to be split at all to comply with the population equality
23 requirements?

24 A No. So many of my simulated plans don't have to use any
15:19:26 25 part of Montgomery County at all.

1 Q And does Montgomery County need to be split to avoid
2 incumbent pairing?

3 A No, because all my simulated plans, 10,000 of them, have
4 no incumbency pairing.

15:19:39 5 Q Does Montgomery County need to be split to attain the
6 measure of compactness or better that was in the enacted plan?

7 A No, because my simulated plan are at least as compact as
8 the enacted plan.

9 Q And does Montgomery County need to be split to create six
15:19:57 10 or fewer county splits?

11 A It's better not to split a county if you want to minimize
12 the number of county splits. So if not necessary, you don't
13 want to split. And I have shown that in order to create one
14 MMD, you don't have to do that.

15:20:12 15 Q And does Montgomery County need to be split to form one
16 majority-black district?

17 A No. So many of my simulated plan don't use any part of
18 Montgomery County at all, and they still create one MMD.

19 Q And before we take a break, if you could just provide what
15:20:32 20 conclusions you drew from the decision to split Montgomery
21 County in the enacted plan?

22 A Yes. So this analysis used the race information only to
23 create one MMD. But I still found that beyond the purpose of
24 creating one MMD, race was still used as a primary factor in
15:20:54 25 determining the district boundaries of particularly District 2

1 and District 7.

2 And the enacted plan does so by taking the western part of
3 the city of Montgomery and then packing the black voters from
4 there, a disproportionate number of them into District 7.

15:21:14 5 Q Thank you, Dr. Imai.

6 MS. EBENSTEIN: If we can take down Figure 4. And,
7 Your Honor, this might be a good breaking point.

8 JUDGE MARCUS: Okay. Why don't we take a 15-minute
9 break. It's 3:20 or so Central Standard Time. So we will get
10 together about 3:35 or so.

11 Thank you. We will take just a short break at this time.

12 (Recess.)

13 JUDGE MARCUS: Do we have counsel for the Secretary of
14 State and for the intervening defendants?

15:35:32 15 MR. SMITH: Yes, Your Honor. Counsel for the
16 Secretary of State is here.

17 MR. WALKER: For the intervenors.

18 JUDGE MARCUS: Are the parties ready to proceed?
19 Ms. Ebenstein?

15:35:45 20 MS. EBENSTEIN: Yes, Your Honor.

21 BY MS. EBENSTEIN:

22 Q Dr. Imai, if we could turn to Figure 5. This is a
23 Milligan's Exhibit M-1, Doc 88-1 of 15.

24 Could you explain what Figure 5 represents?

15:36:04 25 A Yeah. So the Figure 5 shows in terms of maps which part

1 of the Montgomery County are included in the MMD one
2 majority-minority district under both enacted plan and then the
3 simulated plan.

4 First, look at the map on the right, which has -- I think
15:36:24 5 on the right -- which has the brown color. This is simply
6 showing the Black Voting Age Population percentage. So the
7 darker the colors are on each unit is precinct. So the darker
8 the colors are, the higher the BVAP proportion is, the more
9 black voters lives there.

10 You see the white line in cutting through the Montgomery
11 County, this is the district boundary of under the enacted
12 plan. So on the left of the white line, that's the part of the
13 Montgomery County the enacted plan includes into one MMD.

14 So one thing you notice is that large portion, many
15:37:16 15 precincts on the western side of the city of Montgomery which
16 has very high percentage of Black Voting Age Population are
17 included in the District 7 under the enacted plan.

18 On the left who is a blue map, it's the same Montgomery
19 County map, except now I'm using the blue to highlight how
15:37:37 20 likely each precinct in the Montgomery County is to be included
21 in District 7 under the simulated plan.

22 So here the darker the color, the darker blue means the
23 higher probability. Many more simulated plan out of the 10,000
24 simulated plans that I created will include these precincts
15:37:59 25 into the District 7.

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1 And one thing you notice immediately is that the color is
2 much lighter. There's no precinct that has very dark blue.
3 This is consistent with what I showed you before the break
4 where that the District 7 under the simulated plan, the one MMD
15:38:21 5 does not need to use most of the Montgomery County at all. In
6 fact, 62 percent of the simulated 10,000 simulated plans did
7 not use any part of the Montgomery County at all. That's why
8 the color is lighter because overall it is lower. When it does
9 split the Montgomery County, when the simulation algorithm does
15:38:44 10 split Montgomery County and take part of the Montgomery County
11 into District 7, it does so in a very interesting way.

12 So slightly darker blue precincts are the two precincts
13 that are border of Montgomery County. And these two precincts,
14 if you the compare their color on the right map, the one with
15:39:09 15 the brown color, you see that's also much lighter color. That
16 means that these two precincts, which are most likely to be
17 included even though the overall probability is still pretty
18 low are likely to be included in District 7 are very low
19 percentage of Black Voting Age Population. In fact, these
15:39:29 20 precincts are about 30 percent of Black Voting Age Population.

21 In contrast, the -- in fact, these two -- I guess you can
22 also count the third one -- are three precincts are just
23 outside of the city of Montgomery. Some slight small but
24 really outside the city of Montgomery, very low Black Voting
15:39:53 25 Age Population precincts.

1 In contrast, the enacted plan takes the much bigger part
2 of the Montgomery County. In fact, it goes inside of the city
3 of Montgomery and takes almost half of it and in particular the
4 precinct that has very high Black Voting Age Population, which
15:40:11 5 is indicated by dark brown color. Some of these precincts have
6 90 percent or higher Black Voting Age Population proportion.

7 So what this graph -- what this figure shows you is the
8 main finding that I presented earlier that the simulation plan
9 doesn't need this large portion of the Montgomery County, in
15:40:37 10 particular city of Montgomery in order to create one MMD. Most
11 of the time, 62 percent to be exact, it doesn't use any part of
12 Montgomery County at all. When it does, 38 percent of the
13 time, it does so by just taking the border -- most of the time
14 taking the border precinct that has -- that's just outside of
15:41:00 15 the city of Montgomery, and it has much lower BVAP proportion.

16 Q And based on that finding, what conclusions did you draw
17 about the decision in the enacted plan of where to split
18 Montgomery County?

19 A So based on this, and if you remember that I used the race
15:41:20 20 only in order to create one MMD, so based on my analysis, I
21 conclude -- my analysis provides the evidence that the -- where
22 the decision to split Montgomery County and include part of the
23 Montgomery County into the MMD was not necessary. And the way
24 it's split, the way that the enacted plan takes the rest of the
15:41:49 25 part of the city of Montgomery and included it in District 7,

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1 my analysis provides evidence that race data exist in that
2 decision and obviously in this case beyond the creation of one
3 MMD.

4 Q And when you say it's not necessary, just to be clear, was
15:42:08 5 it necessary for the enacted plan to take these precincts with
6 high BVAP into District 7 to comply with the population
7 equality requirements?

8 A No. All -- you know, compliant in terms of population
9 constraint.

10 Q And was it necessary to avoid pairing incumbents?

11 A No. No. Because all my plans don't pair incumbent.

12 Q Was it necessary to obtain the measure of compactness
13 equal to a better than the enacted plan?

14 A No, because my plans are least as compact as the enacted
15:42:44 15 plan.

16 Q And was it necessary to create the six or fewer county
17 splits?

18 A No, because splitting the county is going to increase the
19 number of county splits.

15:42:53 20 Q And I believe you said a moment ago, but was it necessary
21 in order to create one MMD?

22 A No, because many of my plans don't need to use Montgomery
23 County at all and not need to split in order to create one MMD.

24 Q Thank you, Dr. Imai.

15:43:11 25 MS. EBENSTEIN: If we could take down Figure 5 and

1 turn to Figure 6, which is Milligan Plaintiffs' Exhibit 1,
2 Docket 88-1 at 16.

3 BY MS. EBENSTEIN:

4 Q Dr. Imai, let's discuss the effect of the difference in
15:43:28 5 Montgomery that it had on district -- on other districts in the
6 plan.

7 Could you please explain what District 6 represents?

8 Sorry. What Figure 6 represents?

9 A Sure. So already I showed you that disproportionate
15:43:42 10 number of black voters from Montgomery County was packed into
11 District 7. This figure shows the impact of that decision on
12 the other districts, which I generated without using the race.

13 In particular, I am going to look at the impact on
14 District 2, which has for more than 90 percent of my
15:44:02 15 simulations has the second highest voting Black Voting Age
16 Population proportion.

17 So I am going to call it District 2, even though small
18 percentage of them or this different district that had the
19 second highest BVAP proportion.

15:44:18 20 So what you see here is the BVAP proportion of District 2
21 under the enacted plan as well as under the simulated plan. So
22 under the enacted plan, that's District 2 has about 30 percent
23 of BVAP proportion.

24 In contrast under the simulated plan as you can see is
15:44:42 25 large spikes around 35 percent, the average BVAP for the

1 District 2 is 35 percent.

2 This clearly shows under the summary on 39, close to
3 40 percent you see a small similar spikes there. And so this
4 clearly shows that by packing the large number of black voters
15:45:06 5 into the District 7, it's lowering the BVAP proportion of the
6 District 2, so taking away those by splitting the city of
7 Montgomery and taking the western part into District 7 because
8 most of the simulated plans would take the same set of black
9 voters and then assign it to District 2.

15:45:26 10 So by taking this least voters into 7, you are lowering --
11 the enacted plan is lowering the BVAP proportion of the
12 District 2 thereby diluting the voting power of black voters
13 there.

14 Q Thank you. If we could take that figure down. And,
15:45:44 15 Dr. Imai, just taking the information in Figure 5 and Figure 6
16 together, what conclusions did you draw about the decision on
17 whether and where to split Montgomery County and the effect
18 that it has in districts other than the MMD?

19 A Yes. So the enacted plan splits the Montgomery County in
15:46:08 20 particular the city of Montgomery County into two pieces.
21 Cracking the community of -- the city of Montgomery and takes
22 the western part of the highly, you know, the precincts that
23 has very high percentage of black population into the District
24 7. This decision was not necessary to create one MMD because
15:46:29 25 most of the simulated plans don't do that. By doing so, by

1 cracking the city of Montgomery, the enacted plan reduces the
2 BVAP proportion of the District 2 by 4.4 percent, and these
3 differences -- combination of standards of this degree are
4 significant.

15:46:52 5 Q Thank you. If we could take down those figures and turn
6 briefly, Dr. Imai, to your rebuttal report. That's Milligan
7 Plaintiffs' Exhibit 688-6. What analysis were you asked to do
8 for this report?

9 A For this report, as asked by the counsel for the
15:47:14 10 plaintiffs, to conduct the same one-MMD simulation so the
11 simulation was exactly one majority-minority district and add
12 additional constraint that two communities of interest are
13 encouraged to be kept together in that same district. So the
14 difference between one-MMD simulation I just showed you and
15:47:37 15 this one will be just this additional constraint that two sets
16 of counties that were given to be kept together.

17 Q And what were those two sets of counties?

18 A I understand from the counsel for the plaintiffs that the
19 one of the experts for the defendants expressed opinion that
15:48:02 20 the Baldwin and Mobile counties to be kept together as one
21 community of interest. And I also understand from the counsel
22 that the set of counties that constitute the Black Belt,
23 there's opinions that they also may constitute a community of
24 interest. So those two sets of counties. I basically told the
15:48:25 25 algorithm to keep them together in the same district whenever

1 possible.

2 Q Do you have any -- did you do any additional research, or
3 do you have any independent opinion on whether those counties
4 form a community of interest or any other areas form a
15:48:41 5 community of interest?

6 A No. I do not take any positions on this or no opinion on
7 this.

8 Q Let's briefly turn to Figure 1-88-6 at 5 to review your
9 results when taking into account those two identified
15:48:59 10 communities of interest.

11 A Okay. So here I focus on the last graph that I showed you
12 just moments ago for one-MMD simulation. So it's the same
13 figure.

14 Looking at how the decision to split the Montgomery and to
15:49:15 15 pack black voters into District 7 affects the District 2, the
16 BVAP proportion of District 2. And you see similar results
17 again, enacted plan District 2 BVAP is about 30 percent.

18 Now, by taking into account for the communities of
19 interest these two specific communities of interest that I were
15:49:36 20 given, the average BVAP proportion for the District 2 is
21 higher, so it's now 36 percent or so compared to 34 before. So
22 actually increased under the simulated plan, increased the
23 average proportion of the BVAP for District 2, and you also see
24 many more plans that achieves the higher percentage of BVAP for
15:50:06 25 under the simulated plan.

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1 As a result, the difference between the simulated plan and
2 the enacted plan is now much larger so previously was
3 4.4 percent, I think. Now it's exceeding 6 percentage point.
4 And so that this shows that -- again, this is advantage of
15:50:25 5 simulation analysis is to be able to assess what factor how --
6 you know, adding a factor in this case community of interest
7 how that's going to change the conclusion of redistricting
8 evaluation. And in here, what we see is that adding these two
9 particular definitions of community of interest increases the
15:50:47 10 difference between enacted and simulated plan that is under the
11 simulated plan with people in District 2 could have achieved
12 much higher BVAP proportion than the enacted plan.

13 Q Thank you very much, Dr. Imai, for your testimony today.
14 One final question: If you could just please summarize the
15:51:10 15 opinions you formed based on your three sets of simulations and
16 your research for the Court?

17 A Yes. So my analysis shows that the race played a
18 predominant role in determining the district boundaries under
19 enacted plan beyond the purpose of creating one
15:51:32 20 majority-minority district. The enacted plan does so by
21 packing a disproportionate number of black voters from the
22 Montgomery County into the District 7.

23 The consequence of doing that, that particular decision
24 the way that's being -- the county is split and including the
15:51:54 25 District 7 is to reduce the Black Voting Age Population of

1 District 2. And this conclusion does not change, even if we
2 account for the community -- particular community of interest
3 that I was given.

4 Q Thank you, Dr. Imai.

15:52:18 5 MS. EBENSTEIN: Your Honor, could I have one moment to
6 confer with co-counsel?

7 JUDGE MARCUS: You sure can.

8 MS. EBENSTEIN: Thank you. Your Honor, we have no
9 further questions for Dr. Imai today. Thank you.

15:53:01 10 JUDGE MARCUS: Thanks very much.

11 Who is going to proceed with the cross-examination of
12 Mr. Imai for the Secretary of State?

13 MR. SMITH: Your Honor, Brenton Smith representing the
14 Secretary of State. I will be conducting Dr. Imai's cross.

15:53:17 15 JUDGE MARCUS: All right. And I take it, Mr. Walker
16 will he have some after you?

17 MR. SMITH: I'm not sure. We're in separate rooms.
18 He may, but I will be going first at least.

19 JUDGE MARCUS: That's okay. We will proceed in any
15:53:30 20 order you and he would like. So we will begin with Mr. Smith
21 cross-examination.

22 MR. SMITH: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. SMITH:

15:53:37 25 Q Good afternoon, Dr. Imai.

1 A Good afternoon.

2 Q Can you hear me okay?

3 A Yes. Yes, I can.

4 Q Great. So, Dr. Imai, I want to start with a few

15:53:46 5 background questions about this type of analysis.

6 So you mentioned that you had submitted an expert report
7 in a case before the Ohio Supreme Court; is that right?

8 A That's correct.

9 Q Now, is that case a racial gerrymandering case like this
15:54:02 10 one, or is it a partisan gerrymandering case?

11 A My understanding is it's partisan gerrymandering case.

12 Q Are you aware of whether the sort of simulation analysis
13 that you have conducted in this case has ever been used in any
14 other cases considering racial gerrymanders?

15:54:18 15 A Simulation analysis in general, or like what specific
16 analysis you're asking?

17 Q I'm asking whether the type of methodology you used here,
18 the generating simulations has been used to analyze racial
19 gerrymanders in any other cases that you're aware of?

15:54:40 20 A I don't recall the specific cases, but I know that -- I
21 don't have the name in front of me, but I know that the
22 simulation analysis has been used for racial gerrymandering
23 case.

24 Q So for racial gerrymandering, not partisan gerrymandering;
15:54:58 25 is that right?

1 A I think so.

2 Q All right. So, Dr. Imai, the methodology used in this
3 case, it produced 10,000 simulated plans under three slightly
4 different sets of constraints; is that right?

15:55:11 5 A That's correct.

6 Q But in your reports, visual representations of those plans
7 are not included; is that also right?

8 A Not in the report.

9 Q So when you're comparing your simulated plans to the
15:55:28 10 enacted plan, you are comparing summary data; isn't that right?

11 A Well, you mean in the report or in the actual analysis?

12 Q Let me withdraw that question and try with rephrase it.

13 A Okay.

14 Q I think that was a poorly asked question.

15:55:48 15 So you haven't produced any visual of maps. So in
16 comparing the enacted plan to your simulated plans, we are
17 looking at groups of data, but not comparing sort of two maps
18 side by side; is that right?

19 A Right. So I am not comparing a particular, you know, one
15:56:05 20 of a 10,000 map with the enacted plan. I am not doing that,
21 that's correct.

22 Q Right. Okay. So we can't look at your simulated maps and
23 compare them to the enacted plan just to show any differences
24 there might be; is that right?

15:56:21 25 A Oh, of course you can.

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1 Q How so?

2 A I mean, I generate 10,000 maps, so you can look at any one
3 of them individually if you like. But the whole point of
4 generating, you know, 10,000 maps is to characterize the
15:56:41 5 population. So there's, you know, so many ways under the same
6 set of constraints to draw possible maps. So instead of
7 looking at each one of them, which is virtually impossible, you
8 take a representative sample of the population of the maps and
9 then, you know, compare that characteristics of these maps to
15:57:01 10 the enacted plan. But you could -- I mean, visually, you know,
11 I do sometimes because just to make sure that plans are, you
12 know, generated properly. And so I do look at some of the
13 maps. But the analysis itself is based on a sample of, you
14 know, representative sample plans compared with the enacted
15:57:29 15 plan.

16 Q Sure. But you haven't provided the visual maps as part of
17 your report here; isn't that right?

18 A Right. Because I won't be able to print out 10,000 of,
19 you know, maps.

15:57:39 20 Q Sure.

21 A But I could have included I guess if, you know, one map or
22 two maps, or three maps. But it's just that because a
23 representative sample, just like when you do survey, you don't
24 care about particular three people you interviewed, you care
15:57:57 25 about, you know, here in my analysis, I'm focused on what's the

1 characteristics of the maps that you might draw under the
2 different set of constraints. So for that analysis, I focus on
3 the sample, you know, analyzing the sample as opposed to taking
4 a look at each one of them.

15:58:14 5 Q Thank you, Dr. Imai.

6 Dr. Imai, you reference BVAP throughout your reports,
7 right?

8 A Yes.

9 Q And are you using census data for that BVAP data?

15:58:29 10 A Yes. Based on the census data, yes.

11 Q And do you know how that census data defines race, whether
12 it includes individuals who identify as black and some other
13 race or only black?

14 A Yeah. So this one is any part BVAP.

15:58:45 15 Q Okay. And, now, Dr. Imai, turning to your report, at

16 paragraph 15, I'm going to read the second sentence there.
17 Redistricting simulation algorithms generate a representative
18 sample of all possible plans that satisfy a specified set of
19 criteria; is that right?

15:59:12 20 A That's right. Well, the set of -- the algorithms that I
21 used, yes.

22 Q So the plans that you generate are the entire universe of
23 representative plans. Is that what that means?

24 A No. It's a representative sample of the entire universe.

15:59:29 25 Entire universe is too big. It's actually larger than the

1 number of atoms in the universe. So I only take a sample from
2 that. But it's a representative sample, so it's not biased in
3 any way.

4 Q And so you say further down in the paragraph that if a
15:59:45 5 proposed plan treats racial groups in a different way when
6 compared to that ensemble of simulated plans, quote, this
7 serves as empirical evidence that the proposed plan was likely
8 drawn using race as a predominant factor. Did I read that
9 correctly?

16:00:02 10 A Yes. Beyond the set of factors that I specified.

11 Q And so, Dr. Imai, what do you mean by predominant?

12 A What do I mean by predominant? Do you -- should I give
13 statistical definition or should I give -- what are you -- I
14 guess I'm trying to understand the.

16:00:30 15 Q Well, the conclusions I think you're drawing are that race
16 was a predominant factor and that's what you offer here. So I
17 am trying to understand how you understand?

18 A Okay, okay.

19 Q What predominant is?

16:00:43 20 A Yeah. That makes sense. Thanks. So by predominant, what
21 I mean is that if the set of factors were used if that's the
22 only factors that were used in drawing the enacted plan, right,
23 so, you know, I listed five different constraints that I
24 imposed in my simulation algorithm, and then, you know, race
16:01:08 25 for creating one MMD, if that's the only -- the set of

1 constraints that the map drawer followed, then the set of maps
2 that I generated represents the sample -- sample --
3 representative sample of the plans that one could have drawn
4 under those plans. But to the extent that enacted plan
16:01:32 5 deviates in the racial dimension from those set of
6 representative sample maps, that means that the race was used
7 to determine district boundaries of the enacted plan.
8 Statistically speaking statistical evidence. So when I say
9 predominant law, that's summarizing the statistical evidence
16:01:51 10 that I presented that if this was only used for the creation of
11 one MMD, you didn't see that enacted plan the way they split
12 the Montgomery and the way they included the western part of
13 the city of the Montgomery into District 7. You didn't see
14 that statistically.

16:02:10 15 So my use of predominant law is that is a way to summarize
16 the statistical evidence that I presented.

17 Q How?

18 A How race played at all.

19 Q Thank you, Dr. Imai. If I heard you correctly, I think
16:02:28 20 you said that that's the case if the factors that you consider
21 are the same factors that the map drawer considered. Did I
22 understand you correctly?

23 A Well, yeah. I shouldn't have said map drawer as a person
24 like I guess map drawing process. If the factors -- so the
16:02:47 25 whole point of the simulation analysis is to be able to specify

1 exactly what factors are being considered. Obviously, if a
2 human map drawer is doing, it's a little bit difficult to do
3 that like what exactly the factors and, you know, it might be
4 difficult.

16:03:03 5 And so but what I did is that I basically told the
6 algorithm to consider a set of factors, right? So on that map,
7 nothing else matters. The algorithm, the simulated plans are
8 not inference anything other than I used as input to the
9 algorithm. So that's what I mean.

16:03:26 10 So if that makes sense.

11 Q Thank you, Dr. Imai.

12 What if the map drawer considered factors that your
13 methodology does not?

14 A I don't know. I don't know what factors map drawers
16:03:43 15 consider. So, you know, I sort of misspoke. All I meant was
16 that algorithm like I told the set of factors to consider by
17 the algorithm. And to the extent that, you know, that
18 determines the simulated plans, and if the enacted plan
19 deviates from that in the race dimension, then race was used
16:04:07 20 beyond the purpose of what I specified in my algorithm which
21 was to create one MMD.

22 Q How about if we frame it in terms of redistricting rules?
23 You opine, I think, in paragraph 17 that simulation methods can
24 also incorporate each state's redistricting rules; is that
16:04:25 25 right?

1 A That's right.

2 Q And did you incorporate Alabama's redistricting rules in
3 this case?

4 A Which rule?

16:04:34 5 Q Well, did you incorporate all of Alabama's redistricting
6 rules?

7 A If you don't specify which one, I cannot really -- you
8 know, I can tell you which one I incorporated. And I can
9 answer any questions that you have about other, you know,
16:04:54 10 rules, other constraints that you might be interested in.

11 Q Sure. Well, let me back up.

12 You considered Alabama's reapportionment committee
13 redistricting guidelines, didn't you, Dr. Imai?

14 A I was given -- actually, I have it here -- guidelines, and
16:05:13 15 I have reviewed it, yes.

16 Q All right. And, Dr. Imai, in paragraph 18 of your report,
17 I think you list all of the properties that your simulated
18 plans have. Is that where you list the constraints?

19 A Paragraph 18.

16:05:30 20 Q Of your report. I'm sorry.

21 A Oh, okay. I'm getting -- paragraph 18.

22 Q Yes. Of page 7?

23 A Page 7. Yeah. I was looking at the index. Page 7.

24 Okay. Thank you. Just to make sure I have it here.

16:05:57 25 Okay. Yeah. Okay. I got it.

1 Q All right. Dr. Imai, I am going to try to share my
2 screen.

3 A Okay.

4 Q And you should see the redistricting guidelines, I
16:06:17 5 believe.

6 A Yes.

7 JUDGE MARCUS: Can you tell us what exhibit number
8 that is, counsel?

9 MR. SMITH: Yes, Your Honor. This is Milligan
16:06:27 10 Exhibit 28.

11 JUDGE MARCUS: Thank you.

12 BY MR. SMITH:

13 Q And, Dr. Imai, these are the reapportionment committee
14 redistricting guidelines that you considered, right?

16:06:36 15 A That's correct.

16 Q Okay. I would like to first direct your attention to 2(a)
17 and (b) here. So 2(a) says, Districts shall comply with the
18 United States Constitution, including the requirement that they
19 equalize total population. Did I read that correctly?

16:06:56 20 A That's correct.

21 Q And subsection (b) there reads, Congressional districts
22 shall have minimal population deviation. Did I read that
23 correctly?

24 A That's correct.

16:07:05 25 Q Dr. Imai, I think you mentioned in your direct that you're

1 aware that some congressional plans try to observe a plus or
2 minus one person threshold in drawing congressional plans; is
3 that right?

4 A That's right.

16:07:19 5 Q So you're familiar with that requirement?

6 A That's right.

7 Q But you didn't adopt that requirement in this case, right?

8 A Right.

9 Q So you used instead a population deviation of plus or
16:07:33 10 minus 0.5 percent?

11 A Of the target population, yeah.

12 Q So, Dr. Imai, half a percent deviation in Alabama, you say
13 is about 3,500 voters?

14 A Right.

16:07:44 15 Q So if District 7 is plus 0.5 percent over, if it's 3,500
16 voters overpopulated, and if District 2 is 3,500 voters
17 underpopulated, that leads to a total deviation of about 7,000
18 voters, right?

19 A That's correct.

16:08:02 20 Q So a plus or minus 0.5 percent deviation is a 1 percent
21 total deviation, wouldn't you agree?

22 A That's right, yeah.

23 Q So if you have got a 1 percent population deviation versus
24 a 1 person population deviation, wouldn't it be easier to keep
16:08:20 25 counties whole?

1 A Repeat -- which way is easier.

2 Q I'm sorry?

3 A Which way is easier.

4 Q If you have more population deviation, wouldn't it be
16:08:33 5 easier to avoid splitting counties?

6 A Why is that?

7 Q Well, if you have more population to work with, if you're
8 not trying to get down to a plus or minus one person, if
9 instead you are working with about 7,000 voters, wouldn't it be
16:08:49 10 easier to avoid going into another county to equalize to the
11 plus or minus one person level?

12 A Depends on other criteria. So it's -- I cannot -- you
13 know, I cannot say that one is easier than other. It depends
14 on all how the precincts are shaped and how the, you know,
16:09:12 15 county boundaries are located. So I don't think it's --
16 mathematically I don't think it's easy to say which one is
17 easier.

18 Q Would you consider a 1 percent total population deviation
19 to be significant?

16:09:26 20 A What do you mean by significant? I'm confused.

21 Q In drawing a plan, would you consider 1 percent deviation
22 in each district to lead to any differences in the district
23 that might be significant to a map drawer?

24 A Oh, for the official map? Is that what you're --

16:09:48 25 Q Yes. Or for any map drawn.

1 A Well, for the purpose of simulation analysis, as I said
2 earlier, that .5 percent is not going to change my conclusion
3 at all. But if you want to come up with, you know, a map
4 that's actually going to be used in direction, then obviously
16:10:14 5 that has to do -- well, I'm not a lawyer, so I am not going to
6 be able to say what population deviation should be used. But
7 it might be a different, you know, .5 percent may not be the
8 threshold that's used to -- in the actual official map drawing.

9 But for the sake of simulation analysis, I need you to
16:10:38 10 remember that the purpose of the simulation analysis really
11 characterize -- really understand what law is creating a
12 particular plan or what, you know, what rule is -- how rules
13 impact the type of districts you're drawing. For that purpose,
14 it's been known that in academic research literature,
16:10:58 15 25 percent is way more sufficient way more stricter standard
16 than necessary. Actually, I'm being very conservative relative
17 to other analysis you would see in academic research
18 literature.

19 Q What about 0.5 percent -- I'm sorry. Withdrawn.

16:11:21 20 Dr. Imai, I would like to move down to subsection J.

21 A Okay.

22 Q And you can see here that subsection J lists some
23 redistricting policies that in the words of the guidelines are
24 embedded in the political values, traditions, customs, and
16:11:50 25 usages of the state of Alabama; is that right?

1 A That's correct.

2 Q And the guidelines further state that these shall be
3 observed essentially to the extent that they can legally be
4 done they legally can be; is that right?

16:12:01 5 A Uh-huh.

6 Q Dr. Imai, I would like to run through each of these
7 subsections and ask you whether you considered it in putting
8 together your simulation?

9 A Okay.

16:12:13 10 Q J subsection (i) states, The contest between incumbents
11 will be avoided whenever possible. Did you observe this
12 criteria?

13 A Yes. I instructed the algorithm not to pair incumbents.

14 Q All right. And then j(ii) has to do with contiguity,
16:12:37 15 contiguity by water is allowed, but point to point contiguity
16 and long-lasso contiguity is not. Did you observe this
17 criteria?

18 A What do I mean by observe?

19 Q Your -- are all of the districts in your simulated plans
16:12:54 20 contiguous?

21 A Yes. But the contiguity, the definition of contiguity,
22 you know, can be -- I don't know. How do I say this? Yeah.
23 Yeah. I guess to the best of my ability, I guess that's what I
24 have said because the shape file has, you know, I rely on
16:13:21 25 census shape files. And, yeah, so anyway, yeah. To the best

1 of my ability, I ensured that contiguity is ensured. All
2 districts are contiguous.

3 Q Well, let me ask you this, Dr. Imai: What definition of
4 contiguity did you use?

16:13:40 5 A The definition of contiguity is, you know, based on --
6 based on the shape file. So to the extent that shape file is
7 accurate, my -- the districts that I observe, I generated are
8 contiguous. And I obtained the shape file from the census, so.

9 Q So but you don't know whether they are contiguous by the
16:14:06 10 point to point contiguity method, for example?

11 A I have to check that, yeah.

12 Q Or what about the long-lasso contiguity method? You're
13 not sure about that, either?

14 A Yeah, no. No. Well, not 100 percent sure. I think they
16:14:29 15 are, but, yeah, but I'm not 100 percent sure.

16 Q Okay. I would like to look at J --

17 A I guess if I may.

18 Q Sure.

19 A You know, the data -- so the reason why I hesitated a
16:14:44 20 little bit was that, you know, data is always complicated
21 geographical data. And so as academic researcher, I am
22 hesitant to say, you know, every data I analyze has no problem.
23 That's all. So to my ability, to my best of my ability,
24 district that I generate are contiguous according to these
16:15:10 25 definitions. That's -- that would be my answer, if that makes

1 sense.

2 Q Thank you, Dr. Imai.

3 Turning to j(iii), this criteria deals with respecting
4 communities of interest, neighborhoods, and political
16:15:25 5 subdivisions; isn't that right?

6 A That's right.

7 Q And other than the two individual communities identified
8 in your rebuttal report, do your simulations provide any
9 constraint for respecting communities of interest?

16:15:38 10 A No.

11 Q Why not?

12 A I am not aware of it. I am not -- I wasn't given any
13 other definition of community of interest, and I don't study
14 community of interest, so I have no knowledge of deciding what
16:15:55 15 community of interest should be provided -- should be provided
16 to the algorithm.

17 Q You would agree, would you not, Dr. Imai, that this is a
18 rule that the reapportioning committee follows in conducting
19 redistricting?

16:16:10 20 A I assume so. That's a guideline.

21 Q Could observing a community of interest be sort of a
22 confounding variable on your simulations? Could it explain
23 something that you have attributed to another factor?

24 A Can you clarify what you mean by confounding?

16:16:34 25 Q So you say that -- well, your conclusion depends on race.

1 So you conclude that certain splits, certain compositions of
2 districts were made on the basis of race?

3 A Uh-huh.

4 Q But your algorithm hasn't made any -- or your methodology
16:16:46 5 hasn't made any allowance for communities of interest. Is it
6 possible that respecting communities of interest could explain
7 something that your simulations are attributing to race?

8 A Right. So the -- my conclusion is that, you know, my
9 finding is that race played a predominant role beyond the set
16:17:09 10 of factors that I considered in the algorithms. So that
11 includes creation of one MMD, as well as two specifics
12 definitions of community of interest I were given.

13 So beyond those factors, race played a role.

14 Q So but you would agree, would you not, Dr. Imai, that you
16:17:32 15 did not consider all the factors that the reapportionment
16 committee itself is supposed to consider according to its
17 rules?

18 A I'm not aware of those factors, and those factors if they
19 exist weren't part of my algorithms, that's correct.

16:17:45 20 Q So it may be the case that the Legislature knows that
21 certain areas share common interests and are a community of
22 interests, but your method did not consider that, right?

23 A Well, that -- I didn't consider it because that
24 information wasn't provided to me. But I could consider it if
16:18:01 25 you give me a specific definition of, you know, other

1 communities of interest definitions, then I could consider it
2 and then see if that changes the conclusion.

3 Q As it stands today, the analysis that you performed did
4 not do that, right?

16:18:19 5 A Yeah. So the analysis I included in the rebuttal report
6 only uses those two specific definitions of communities of
7 interest that I was given, yes, that's correct.

8 Q Right. Dr. Imai, turning to j(v), Legislature shall try
9 to minimize the number of counties in each district. Did you
16:18:38 10 observe this criteria?

11 A Yes.

12 Q How so?

13 A So in the algorithm as I explained, this was categorized
14 as soft constraint. I basically instructed the algorithm to
16:18:53 15 prefer a redistricting plan all else equal that has a fewer
16 number of counties split by the districts.

17 Q But did you say county splits, Dr. Imai?

18 A Yes.

19 Q Is there a difference between minimizing the number of
16:19:13 20 county splits and minimizing the number of counties in each
21 district?

22 A Well, that a single county can be split multiple times.

23 Q I think I'm asking a more basic question than that.

24 I understand that you minimize the number of county
16:19:33 25 splits.

1 A Uh-huh.

2 Q But what this criteria says is that it's trying to
3 minimize the total number of counties in each district. Do you
4 understand those to be different things?

16:19:42 5 A Okay. How different is that? I guess? Can you explain?
6 Sorry.

7 Q Well, okay. So let's say that District 2 has ten counties
8 in it in the enacted plan?

9 A Uh-huh.

16:20:04 10 Q And two county splits?

11 A Uh-huh.

12 Q Is that different than if your district in your simulated
13 plans on average have 15 counties in them, but only one county
14 split?

16:20:15 15 A So that -- so, again, I'm not aware. So I don't want to
16 interpret this statement because, you know, it can be
17 interpreted different ways because what do you mean by in each
18 district, right? So like which district? Or is it some of the
19 districts -- like some of the numbers across districts? Does
16:20:44 20 it -- should we double count -- no double count? But that
21 difference in the definition, maybe that's what you're trying
22 to get at, doesn't really materially affect my conclusion
23 because the District 7 has three splits, both enacted and
24 simulated plan focusing on District 7 because that's the main
16:21:11 25 finding. And the only difference if both splits the Jefferson

1 County as well as Tuscaloosa County in the very similar way as
2 I stated. And the only really difference is whether you split
3 Montgomery County or not. So this definition, which could be
4 perhaps interpreted different ways by different people. Again,
16:21:34 5 I am not a lawyer, so I am not going to take any particular
6 stance on this. But it is not going to affect the conclusion
7 of my analysis.

8 Q Let me reframe like this, Dr. Imai. Let's assume that the
9 Legislature prefers a district with seven counties to a
16:21:53 10 district that has eight counties. Does your simulation make
11 any adjustment for that?

12 A If that was given as a criteria, then I can adjust my
13 simulation analysis and rerun it.

14 Q But you haven't included that in the simulation as it's
16:22:13 15 been run; isn't that right?

16 A Well, that wasn't given as a criteria to me, so, yeah, I
17 didn't do that.

18 Q Well, Dr. Imai, what I read j(iv) here to say is that the
19 Legislature shall try to minimize the number of counties in
16:22:29 20 each district. Do you understand that to mean something other
21 than the total number of counties?

22 A Total number of counties. Can you provide the definition?
23 I want to be careful because I don't know exactly definition of
24 what you're trying to get at. Sorry. I may be confused.

16:22:50 25 Q Well, Dr. Imai, I think --

1 A The number of counties in each district, that number is
2 defined for each district; is that right? So then the question
3 is what are you going to do with that, right? Because you
4 can't have minimize seven different things.

16:23:08 5 Q Okay. So just to clarify, Dr. Imai, you haven't made any
6 accommodation that would ensure your districts have as few
7 counties in them as possible; is that right?

8 A I don't understand the question because like, okay, maybe
9 the way -- maybe I can explain what I did and then that --
16:23:31 10 because that's what it is. So if that interpretation is
11 different from your interpretation, then that, you know, that's
12 what it is, because I don't quite understand the different
13 interpretation you are trying to get at. Sorry.

14 Q I think let's just move on. It's -- let's move past this.

16:23:48 15 A If you can clarify, so I used -- these are total number of
16 counties that are being split by districts as a way to, you
17 know, measure this number of counties in each district. So
18 that may or may not be the same as the definition that you're
19 trying to provide, but I couldn't really understand the
16:24:08 20 difference there. But what I did, though, because it's a total
21 number of counties that were split by the districts. And then,
22 you know, another point I would like to make is that that
23 decision doesn't really affect the conclusion -- main
24 conclusion of the analysis.

16:24:28 25 Q So your testimony, Dr. Imai, is that not considering some

1 of these redistricting guidelines does not affect your
2 analysis?

3 A Well, different constraints will not affect the analysis
4 possibly. You don't know until you do it, right? So there is,
16:24:50 5 you know, you provide a set of inputs, and then the algorithm
6 will give you based on those inputs. And if you are asking
7 like what would happen if I changed the inputs, like I don't
8 know because I haven't done that. All I can tell you is that
9 given the inputs that I provided in my report, this is the
16:25:12 10 results that I got.

11 Q Dr. Imai, let's move on to $j(v)$.

12 A Okay.

13 Q And this criteria says, the Legislature shall try to
14 preserve the cores of existing districts, right?

16:25:25 15 A Right.

16 Q And did you observe this criteria in your simulations?

17 A Yes. As I mentioned, I did incorporate this particular
18 guideline.

19 Q So you did not consider this; is that right?

16:25:38 20 A That's correct.

21 Q Why not?

22 A Yeah. So as I explained, for the purpose of the analysis,
23 okay, so this is like my -- the goal -- I'm trying to analyze
24 whether or not race played a role in creating the districts
16:25:58 25 under the enacted plan.

1 In order to do that, I need to isolate other factors. So
2 I need to isolate, you know, I want to just look at how the
3 race played a role. So I need to isolate other factors.

4 If I impose this constraint, all the factors that went
16:26:14 5 into the previous plan is going to be carried over, and it's
6 going to affect my analysis. As a result, I will not be able
7 to isolate the role the race played in, you know, in drawing
8 the district boundaries under the enacted plan.

9 Q Dr. Imai?

16:26:35 10 A That's why -- I haven't analyzed the previous plans, so I
11 have no knowledge of what factors went in there.

12 Q So, Dr. Imai, is it right that if your methodology
13 considered what the previous plans looked like, the cores of
14 existing districts, that you would not be able to tell what was
16:26:55 15 caused as a result of those existing districts and as a result
16 of race?

17 A I would have a difficult time isolating the role of the
18 race if I put this constraint.

19 As I said, many factors may have gone into the previous
16:27:14 20 plan, which I haven't analyzed. And so that will -- you know,
21 I will inherit all of that into my analysis, which basically,
22 you know, basically reduces -- get rid of the whole advantage
23 of simulation analysis is the power to isolate these different
24 factors, so that's why I didn't do this.

16:27:38 25 Q Dr. Imai, would it be possible to set a limiting

1 constraint so that your simulations preserves 80 percent of the
2 cores of previous districts?

3 A Yeah. I could -- I could do that. I could incorporate
4 that constraint, add that to my simulation algorithm, yes.

16:27:58 5 Q But that's not something that you have done?

6 A No.

7 Q Here?

8 A No. If someone provides -- if someone wants to
9 incorporate the specific definition of core, then, yes, the
16:28:12 10 algorithm can handle that.

11 Q And so instead, though, your algorithm starts from a blank
12 slate; is that fair?

13 A Yes. That's -- blank slate meaning like, yeah, from
14 scratch.

16:28:26 15 Q Right. Right.

16 A Yeah. But if I may add one thing. Is that okay? Or is
17 that...

18 Q Sure.

19 A So even though I started from the blank slate in my
16:28:44 20 one-MMD analysis, in my testimony, I mentioned that it was
21 remarkable to see that one MMD, you know, overlaps in a great
22 deal with District 7 on the enacted plan, which I assume that
23 also means that overlaps significantly with the District 7 on
24 the previous plan. So even though I didn't tell the algorithm
16:29:08 25 where to create the MMD, when I told the algorithm to get one

1 MMD, it went there, and in the key difference was the
2 Montgomery.

3 Q So, Dr. Imai, doesn't ignoring some of these factors,
4 cores of districts, communities of interest, et cetera, doesn't
16:29:28 5 that guarantee that your simulated plans may not capture a true
6 representative sample?

7 A So the captures -- I have a mathematical theorem that says
8 it captures -- you present a plan under the set of criteria
9 that I specified. If you change the set of criteria, then, you
16:29:47 10 know, the population of the plans are changed so no longer my
11 sample is guaranteed to be representative of that new
12 population, if that makes sense.

13 So the representativeness is all relative to what factors
14 are used for the simulation.

16:30:05 15 Q Thank you, Dr. Imai. I am going to take these guidelines
16 down.

17 And then, Dr. Imai, I am going to direct your attention to
18 page 9 of your report.

19 A Okay.

16:30:20 20 Q Milligan Exhibit 1, M-1.

21 You say in paragraph 26 that you show, quote, the way in
22 which the enacted plan deviates from the simulated plan implies
23 that race was a predominant factor in drawing the district
24 boundaries of the enacted plan. Did I read that correctly?

16:30:48 25 A Yes.

1 Q What do you mean by implies, Dr. Imai?

2 A Presents empirical evidence for that.

3 Q Okay. And, Dr. Imai, this conclusion would apply not only
4 to the enacted plan, right, but any comparison plan that was
16:31:11 5 compared to your simulations?

6 A I don't want to say that because it depends on the purpose
7 of the analysis if that -- I guess I'm not understanding
8 exactly what you're trying to ask. Sorry.

9 Q So let's say an enacted plan that's different than the
16:31:35 10 plan that actually is enacted, and you still did the
11 comparison. You did the comparison exactly the same. Wouldn't
12 your conclusions apply to that plan, as well?

13 A I -- I feel uncomfortable speculating that because like on
14 this, I have a plan in front of me. It's really hard for me to
16:31:54 15 know whether, you know, I don't want to sort of draw conclusion
16 about something like a hypothetical. I feel uncomfortable
17 doing that.

18 Q Let me back up. I think I have asked a poor question.

19 A Yeah.

16:32:07 20 Q So what you conclude or what you present here is that if a
21 plan deviates from your simulated plans, that implies race was
22 a predominant factor; is that right?

23 A In this particular setting. In this particular, you know,
24 my analysis setting. I just feel uncomfortable speculating if
16:32:31 25 there is another plan that looks very different, how do I, you

1 know.

2 Q Sure. Okay.

3 A It really depends on, I don't know. If that makes sense.
4 Because, you know, and also, yeah, so it depends like you have
16:32:47 5 to carefully select what the inputs you want to use for
6 simulation in order to -- because simulation analysis is done
7 for a particular purpose. And so, you know, I just want to --
8 yeah, refrain myself from making that conclusion on that, if
9 that's okay, like a hypothetical question.

16:33:08 10 Q Sure. Let's move on, Dr. Imai. I am going to share my
11 screen again. And this is M-1. This is a copy of your report.
12 And I am going to go to page 10 and Figure 1?

13 A Okay.

14 Q And I would like to zoom out a little. I am going to ask
16:33:36 15 you a few questions about this figure.

16 A Sure.

17 Q So any of the dots on this figure are an outlier, right?

18 A Yeah. That's considered as an outlier under the standard
19 statistical definition.

16:33:50 20 Q And, Doctor, further down in paragraph 28, you conclude
21 that race was a predominant factor in the enacted plan as a
22 result of its BVAP outlier status as illustrated in this
23 figure; isn't that right?

24 A That's right.

16:34:07 25 Q Dr. Imai, what's the highest BVAP in this district in this

1 dataset that isn't an outlier?

2 A Oh, I didn't -- I don't have that exact number with me.

3 I'm sorry. But -- it's between somewhere 40 and 50.

4 Q Well, we can approximate from the graph, right? So

16:34:28 5 District 2's top whisker, what would you say that approximately
6 to the BVAP of that point would be, maybe 43 percent?

7 A Yeah, maybe something like that. Yeah.

8 Q And none of the boxes that you talked about that have most
9 of the data in them, none of those boxes break 40 percent BVAP,
16:34:49 10 right?

11 A For the District 2, you mean.

12 Q For any of the districts.

13 A Box, so, yes, District 7 is slightly on it -- maybe -- but
14 yeah.

16:35:01 15 Q But even if 7 is on it, it's like right --

16 A Yeah. That's correct, yeah.

17 Q So -- and it looks like even the highest outlier for CD 7
18 is -- I don't know, maybe 47 or 48 percent? Do you think
19 that's fair?

16:35:17 20 A That's right. Yeah, that's probably fair, yeah.

21 Q So if CD 7 had a BVAP that was above 50 percent, would it
22 be an outlier?

23 A Again, I -- I'm -- I don't like to speculate hypothetical
24 because, you know, if you change one district, everything else
16:35:40 25 can change, but, yeah.

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1 Q Well, I think your conclusions in this report are anything
2 that doesn't appear in this graph is an outlier and, therefore,
3 race predominated; isn't that a fair summary?

4 A You are saying if hypothetically you observe something at
16:36:07 5 50 percent?

6 Q Let's say that there's a district for CD 7 that's at
7 50.1 percent. Would that be an outlier?

8 A Oh, if the enacted plan you mean?

9 Q No. I am talking about hypothetical plan for CD 7 that
16:36:22 10 has a BVAP of 50.1 percent, would that be an outlier?

11 A Yes, statistical outlier. So maybe I know what you are
12 trying to say. Should I say something there what I mean by
13 outlier or?

14 Q Let me ask a couple of follow-up questions. So you would
16:36:39 15 agree it's an outlier, right?

16 A Now it depends on what you mean by outlier. So I want to
17 clarify the definition of the outlier that I mean so that.

18 Q Sure. Go ahead.

19 A So statistical outlier doesn't necessarily mean that, you
16:36:54 20 know, because it's all statistical, it's probabilistic. It
21 doesn't mean it never happens. It could happen. So you can
22 see even if you simulated from the actual distribution, there
23 are black dots, those are simulated plans. So those outliers
24 do happen. It doesn't mean it can never happen, right? But
16:37:18 25 it's very unlikely to happen because there's 10,000 dots there.

1 I am not showing it so that the dots that are showing in the
2 figure there aren't many. There are very, very few of total
3 10,000.

4 So when I say statistical outlier, I am not saying it's
16:37:39 5 impossible ever to get anything like that. There is always a
6 chance. You never know until you actually enumerate every
7 single map in the population. I'm saying highly, highly
8 unlikely. So that's what I mean by statistical outlier. It's
9 highly unlikely result.

16:37:59 10 Q Let me reframe this way, Dr. Imai.

11 A Okay.

12 Q Is any data point that's not in the box or on the whisker
13 considered an outlier?

14 A Yes. It's considered a statistical outlier according to
16:38:11 15 the standard definition of statistics.

16 Q Okay. Then, Dr. Imai, let's look at District 7.

17 A Okay.

18 Q And the upper whisker, we can't see exactly where it ends,
19 but the outlier started about 41 or 42 percent.

16:38:25 20 A That's right.

21 Q So we can infer from that that that's where the whisker
22 end; is that fair?

23 A That's fair.

24 Q So if there were another outlier dot at 50.1 percent, if
16:38:37 25 there was another data point there, would it be an outlier

1 based on this graph?

2 A Under this simulation, yes, but, you know, under different
3 simulation, it may not be.

4 Q Okay. Dr. Imai, for District 2, it looks like the upper
16:38:53 5 bound of the whisker cuts off like we said about 43 percent; is
6 that right?

7 A Yeah, that's right.

8 Q And there is one data point above it that's an outlier at
9 maybe 44; is that right?

16:39:05 10 A Yeah, that's about right, yeah.

11 Q If there were another data point that was at
12 50.01 percent, would it be an outlier on this graph?

13 A That's right.

14 Q And if those districts had a BVAP of 50.01 percent, would
16:39:28 15 you conclude that race predominated in their drawing based on
16 your simulations?

17 A Yeah. To this set of criteria, right? So beyond this set
18 of criteria that I considered, yes.

19 Q And, Dr. Imai, I would like to look at -- so Districts 1,
16:39:48 20 3, 4, 5, and 6?

21 A Uh-huh.

22 Q These all fall on the box or the whisker, right, of the
23 district?

24 A Yeah, more or less, yes.

16:40:00 25 Q So they're not outliers?

1 A Right. According to the commission of definition, it's
2 not -- they're not statistical outliers.

3 Q So your analysis would support that race did not
4 predominant in the drawing of those districts; isn't that
16:40:12 5 right?

6 A So I want to be a little bit careful here, because even
7 though I presented this graph for each district, as you know,
8 like if you change one district boundary, that changes another
9 district boundary. So I have -- like I want to always
16:40:31 10 interpret this type of graph, this boxplot type of graph in its
11 entirety, because everything is interconnected. If you change
12 one district boundary, another district boundary change.

13 And so in this case, I'm more confident of saying race
14 predominated because if you look at the Jefferson County and if
16:40:54 15 you look at the Montgomery County, you see exactly how the
16 district boundaries are drawn under the enacted map and how
17 that compares with the simulated plans. So you know exactly
18 where these outlier is coming from. Like, as I explained in my
19 presentation, therefore, this 6, 7, it's coming from both in
16:41:19 20 this case. In this case, it's both coming from the splitting
21 of the Jefferson County and packing the Birmingham voters in
22 the Birmingham, as well as the splitting of the Montgomery
23 County and then packing into that District 7.

24 And for the District 2, the reason why it's low is because
16:41:36 25 the Montgomery County split and then packed that -- the rest of

1 part of the city of the Montgomery County is packed into the
2 District 7. So that -- District 2 is right below right south
3 of the, you know, southeast of District 7. So by taking the
4 Montgomery County, part of the Montgomery County, which is part
16:41:56 5 of -- is part of the District 2, which is under the simulated
6 plan, that's why it's lower.

7 So because I know all of that, like I wouldn't just look
8 at this and say it's an outlier. It's a predominant -- I would
9 look at these maps making sure I understand where these
16:42:15 10 differences come from. And then as a totality of evidence,
11 statistical evidence, I concluded that my, you know, evidence
12 shows that race predominated in determining this boundary, if
13 that makes sense. I still don't like to just mechanically
14 decide whether just because it's about the 9 or -- because it's
16:42:38 15 just -- it's a standard definition, but not like an absolute --
16 you don't want to make the conclusion from a statistical
17 analysis just based on one number or one graph.

18 Q Thank you, Dr. Imai. So if I understood you correctly,
19 this graph on its own you would not consider to be evidence of
16:43:00 20 anything without considering the totality of the circumstances;
21 is that right?

22 A Yeah. Definitely. It's part of the evidence, obviously.
23 It's the first place I go to. Then I want to understand, you
24 know, the reason why this is happening. And the simulation
16:43:14 25 analysis is powerful because you can actually look at how the

1 simulation algorithm splits certain counties and things like
2 that.

3 Q Thank you, Dr. Imai. I am going to take that down for at
4 least a couple of minutes.

16:43:31 5 So, Dr. Imai, in paragraph 29 you say, quote, as a result
6 of the high percentage of BVAP in District 7, the BVAP of
7 District 2 and skip a little is much lower than?

8 A Uh-huh.

9 Q That under vast majority of simulated plans. Did I
16:43:54 10 summarize that right?

11 A Yeah, that's correct.

12 Q Why is CD 2 -- why is the Second District's BVAP, quote, a
13 result of CD 7's BVAP?

14 A Because Montgomery County is split by the enacted plan.
16:44:10 15 An the enacted plan includes, you know, big part of the western
16 part of the city of Montgomery, which is -- has a very high
17 percentage of black population. And in the precinct that the
18 enacted plan includes into the District 7, it's like some of
19 them are above 90 percent. But under the simulated plan,
16:44:36 20 usually that district is assigned to the District 2. And so by
21 taking part of the Montgomery and then putting it in District
22 7, it lowers the BVAP population under the -- for the District
23 2.

24 Q Dr. Imai --

16:44:52 25 A In this case, there was the direct trade off there.

1 Q Okay. So, Dr. Imai, there is a trade off in BVAP between
2 District 2 -- District 2 and District 7; is that right?

3 A Well, I mean, the decision affecting -- I shouldn't have
4 maybe said trade off, but the decision to include the part of
16:45:09 5 the Montgomery into the District 7 has a direct consequence on
6 the BVAP for the District 2.

7 Q Okay.

8 A Just the geographically there together, and on the
9 simulated plan, they assign most the Montgomery County to, you
16:45:25 10 know, the simulated plan, it assigns to the District 2.

11 Q Thank you, Dr. Imai. So now I want to talk about the
12 Jefferson County split that you talk about in your report.

13 A Okay.

14 Q Is there any feature of the methodology that you use that
16:45:43 15 might contribute to the lack of simulated plans that split
16 Jefferson County?

17 A That's a question to be analyzed.

18 So I would -- if I want to answer that question, I would
19 try, you know, I will -- maybe you have a hypothesis. Maybe I
16:46:03 20 will come up with a hypothesis. And then I would take that
21 constraint out, or I would add the constraint and then see if
22 the results change. One thing I can tell you is what I did is
23 when I did the one-MMD simulation, so this is race-blind, but
24 when I did the one-MMD simulation, it did split the Jefferson
16:46:26 25 County like the very similar in the way that the enacted plan

1 did. So now if you want to -- all I did there is to add the
2 constraint that this should be one MMD, and adding that
3 constraint made the algorithm split the Jefferson County
4 instead of keeping that as a whole.

16:46:46 5 Q So, Dr. Imai, I am only talking about the race-blind --

6 A Oh, okay, I am sorry.

7 Q -- portion of the analysis right now and your analysis of
8 how Jefferson County is split based on that analysis.

9 And if I understood you correctly, are you saying you
16:47:00 10 don't know if there's any feature of your methodology that
11 might avoid splitting Jefferson County inherently?

12 A Inherent. Well, oh, I see -- okay. Yeah. So what I know
13 from this simulation is, you know, beyond the five constraints,
14 right, I imposed to the algorithm, there was another factor
16:47:28 15 that was in play to, you know, to split under the enacted plan,
16 split the Jefferson County, whereas under the simulated plan,
17 it didn't. And that one factor is race.

18 Q Dr. Imai, what about as a function of compactness? In the
19 pursuit of compactness, might your methodology avoid splitting
16:47:56 20 Jefferson County?

21 A So if I take away the compactness constraint from what I
22 did, it's possible that the Jefferson County will be split.
23 But I haven't done that. I imposed the compactness constraint
24 so I wouldn't know what would happen if I take away the -- you
16:48:16 25 know, if I tell the algorithm don't worry about compactness.

1 It might split. And probably you're right. But I don't know.

2 Like I want to see how that would work.

3 Q So, Dr. Imai, you don't know as a general matter whether
4 the methodology you have used is or is not less likely to split
16:48:35 5 urban areas in general?

6 A Oh, there's no -- yeah. Yeah. Why would that be? I
7 don't -- I, you know -- I'm not sure. Like -- yeah. I -- I
8 don't want to make those general statements because, again, it
9 depends on like what state you are analyzing, what do you mean

16:48:59 10 by -- what factors -- you know, entering, adding to the -- you
11 know, to the algorithm. So it's very like, you know, given the
12 set of algorithm, I can tell you what I found, but it's hard
13 for me to answer the hypothetical question of what if you add
14 additional constraint or what if I take away a constraint,
16:49:24 15 because I haven't done that analysis, so I can't tell you what
16 I might find. And I don't want to speculate.

17 Q Dr. Imai, let me ask you this just to confirm. Do you
18 primarily in your race-blind section use the Sequential Monte
19 Carlo method?

16:49:41 20 A Yes, that's correct.

21 Q Dr. Imai, I would like to share my screen.

22 A Okay.

23 Q And show you this document has not been marked as an
24 exhibit yet. Dr. Imai, do you recognize this document based on
16:49:58 25 the header here?

1 A It's a paper that I have written.

2 Q And what's the title of this paper?

3 A Sequential Monte Carlo for sampling balanced and compact
4 redistricting plans.

16:50:09 5 Q And Sequential Monte Carlo is the same method that you
6 have used here, right?

7 A That's right.

8 Q Dr. Imai, I would like to go to page 6 of this document,
9 which is -- actually let me stop at page 5.

16:50:30 10 The heading of Section 3.3 of this paper talks about
11 compactness, right?

12 A Okay. Yes.

13 Q And it discusses the Polsby-Popper score. Is that a score
14 you used in your analysis in this case?

16:50:49 15 A In my evaluation, I look at both Polsby-Popper and also
16 the edge-removal criteria of compactness.

17 Q Okay. So, Dr. Imai, going down to about this point of the
18 article, I am going to read a couple of sentences.

19 Additionally, given the high density of voting units in urban
16:51:14 20 areas, plans which cut fewer edges will tend to avoid drawing
21 district lines through the heart of these urban areas. This
22 has the welcome side effect of avoiding splitting cities and
23 towns, and in doing so, helping to preserve communities of
24 interest, another common redistricting consideration. Did I
16:51:33 25 read those sentences correctly?

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1 A Uh-huh.

2 Q Dr. Imai, don't those sentences say that observing these
3 compactness measures will inherently avoid drawing district
4 lines or what -- inherently avoid drawing district lines
16:51:46 5 through urban areas?

6 A Well, it's amount of degrees. It says tend to. It's all
7 probabilistic it says, yes, tend to. Tend to avoid.

8 Q So as a feature of the SMC methodology, your methodology
9 will avoid splitting urban areas in the interest of
16:52:09 10 compactness; isn't that right?

11 A It's not so much of the feature of methodology per se,
12 it's the feature of this particular measure. And that's why in
13 the -- in my analysis, I don't just rely on this measure. I
14 make sure that the districts are compact using Polsby-Popper,
16:52:28 15 which is another standard measure of compactness. You know, as
16 you know, there are many compactness measures in the literature
17 and relying on, you know, one -- you know, each method may have
18 advantage and disadvantages, so that's why I use two of the
19 most, you know, most widely-used methods to make sure the -- my
16:52:51 20 plans, simulated plans are more compact than the enacted plan.

21 Q Both of the methods that you used in this case are the
22 same methods discussed in this article; isn't that right?

23 A Yes.

24 Q Okay.

16:53:06 25 MR. SMITH: Your Honor, I would like to move to admit

1 this as an impeachment exhibit. I think it would be D-172.

2 JUDGE MARCUS: Is there an objection, Ms. Ebenstein?

3 MS. EBENSTEIN: No, Your Honor. No objection as long
4 as it's entered in its entirety.

16:53:22 5 MR. SMITH: That's fine by us.

6 JUDGE MARCUS: You are offering the entire exhibit of
7 the Sequential Monte Carlo draft dated August 10, '21. Do I
8 have that right?

9 MR. SMITH: That is right, Your Honor.

16:53:36 10 JUDGE MARCUS: This is not the first draft. This is
11 what's called, this draft, the August 10 draft?

12 MR. SMITH: That appears to be correct. This appears
13 to be the August 10, 2021 draft.

14 JUDGE MARCUS: Without objection, Defendants' 172 is
16:53:48 15 received.

16 MR. SMITH: Thank you, Your Honor.

17 JUDGE MARCUS: I'm sorry. Did you have any other
18 questions for Dr. Imai?

19 MR. SMITH: I do, Your Honor. I'm sorry, Your Honor.

16:54:07 20 JUDGE MARCUS: Sure.

21 MS. EBENSTEIN: Your Honor, could I clarify that that
22 was admitted for impeachment for the purposes it was used and
23 not for additional unknown purposes?

24 JUDGE MARCUS: Well, I want to be clear on what's
16:54:17 25 going on here. Mr. Smith used it to impeach, in which case, he

1 would certainly mark it for identification as Defendants' 172.
2 But I understood him to be doing something else in addition to
3 using it for purposes of impeachment. He was offering it as
4 substantive evidence I think. Did I have that right,
16:54:39 5 Mr. Smith?

6 MR. SMITH: Well, Your Honor, I think it's sort of --
7 by impeaching, it is substantive evidence.

8 JUDGE MARCUS: No. It's not necessarily substantive.
9 You can impeach him with a box of Wheaties. It doesn't mean
16:54:52 10 the box of Wheaties is admissible in its own terms. If you
11 want to use it for purposes of impeachment, then D-172 is
12 marked for identification but not received into evidence. If
13 you are offering it substantively on its own terms and into
14 evidence, that's something else. I'm just trying to find out
16:55:13 15 what it is precisely you're seeking to do with 172. Simply
16 impeach or something more?

17 MR. SMITH: Simply impeach, Your Honor.

18 JUDGE MARCUS: All right. We have marked it,
19 Ms. Ebenstein, as an exhibit for identification.

16:55:28 20 MS. EBENSTEIN: Thank you, Your Honor.

21 JUDGE MARCUS: Simply to impeach the witness.

22 BY MR. SMITH:

23 Q Dr. Imai, you would agree, wouldn't you, that if a
24 methodology avoided splitting urban areas, then any plan that
16:55:58 25 splits an urban area is more likely to look like an outlier

1 under that methodology, correct?

2 A Not necessarily.

3 Q Why not?

4 A It's all deductive, and my plans are also as compact as
16:56:19 5 the enacted plan with a different measure, Polsby-Popper to be
6 exact.

7 Q Okay. Dr. Imai, in paragraph 32, you draw a conclusion
8 based on Jefferson County. But the enacted plan packs many
9 more black residents of Jefferson County in District 7 than
16:56:44 10 9,992 of the 10,000 simulated plans; is that right?

11 A Yes.

12 Q And, Dr. Imai, all of your simulated plans you consider
13 those to be a representative sample of plans that could be
14 passed while following the criteria that you considered; isn't
16:57:02 15 that right?

16 A That's right.

17 Q So at least eight of your simulated plans included
18 portions of Jefferson County in District 7 with the BVAP that
19 was as high or higher than the enacted plan, right?

16:57:13 20 A Out of 10,000 maps? Yes.

21 Q Do you know how -- in how many of those simulated plans
22 Jefferson County was split between District 7 and another
23 district?

24 A How many of the -- sorry. Can you repeat the question
16:57:34 25 again? Sorry.

1 Q Sure. Do you know in your simulated plans in how many of
2 your simulated plans Jefferson County was split between
3 District 7 and another district?

4 A I think less than 50 percent.

16:57:51 5 Q But you don't know a precise number or a more precise
6 percentage?

7 A I -- oh, no. Yeah. So -- sorry. Yeah. So -- now I
8 know. I didn't want to say for sure -- so 53 percent. So more
9 than half of the simulated plan did not split counties. So,
16:58:18 10 yeah, it's like 46, 47 that's split of Jefferson County.

11 Q Okay. Dr. Imai, moving to your race-blind analysis of
12 Montgomery County. You say in paragraph 33, and I believe it's
13 the last sentence, It is clear that the enacted plan packs
14 black voters who live in the western part of the city of the
16:58:46 15 Montgomery into District 7 while leaving District 2 with fewer
16 black voters. Did I read that correctly?

17 A Yep.

18 Q What do you mean by packs?

19 A I include them into District 7 beyond the purpose of
16:59:00 20 creating one MMD.

21 Q Okay. And a couple of lines up in that paragraph, you say
22 that you find that over 97 percent of the simulated plans do
23 not split Montgomery County at all; isn't that right?

24 A Right. But this is race -- you are talking about
16:59:17 25 race-blind measurements there, right?

1 Q Yeah.

2 A That's right, yeah.

3 Q So that means with 3 percent do split Montgomery County,
4 right?

16:59:24 5 A Right.

6 Q Dr. Imai, what's 3 percent of 10,000 plans?

7 A 30.

8 Q 30?

9 A Well, 300.

16:59:37 10 Q Well, is it 30 or is it 300?

11 A Wait. 30. Is that right?

12 Q I believe, Dr. Imai, that 3 percent of 10,000 plans is
13 300?

14 A Yeah. Okay. Sorry. It's been a long day. Sorry about
16:59:58 15 that.

16 Q Yeah. So, in other words, 300 of your simulated plans
17 also split Montgomery County; isn't that right?

18 A That's out of 10,000.

19 Q You don't provide in this section any population
17:00:14 20 comparison like you do for the Jefferson County split; isn't
21 that right?

22 A Population comparison. Can you tell me exactly what
23 you're asking for?

24 Q So you include some figures for the Jefferson County split
17:00:28 25 when you talk about it. You don't do anything similar to that

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1 for the Montgomery County split in the race-blind section,
2 right?

3 A Oh, just there's because so few statistics. Again, this
4 is speaking statistically. You know, 3 percent is small. I
17:00:44 5 understand, you know, 300 sounds big, but it's out of 10,000.
6 And if you want to draw from that statistical analysis,
7 3 percent is small. So I didn't include that figure.

8 Q And, Dr. Imai, in paragraph 34, you conclude that the
9 split of Montgomery, quote, was unnecessary to satisfy the
17:01:04 10 other redistricting criteria, right?

11 A Yeah. The other -- redistricting criteria that I
12 incorporated in my analysis. I just want to make sure that's
13 clear.

14 Q Right. But as we talked about before, you didn't consider
17:01:16 15 all the criteria that were in the committee guidelines, right?

16 A Well, for this race-blind analysis, there's, you know, the
17 five criteria are the ones that I considered.

18 Q So 300 of your simulated plans split Montgomery without
19 considering that the 2011 plan did the same, right?

17:01:34 20 A Out of 10,000, yes, that's 3 percent. As we calculated
21 correctly now.

22 Q Thank you, Dr. Imai.

23 Now, I would like to move sort of to the one-MMD
24 simulation section of your report.

17:01:50 25 MS. EBENSTEIN: Your Honor, if we are moving on to a

1 new section, perhaps we could take a quick three to five-minute
2 break if you wouldn't mind?

3 JUDGE MARCUS: Sure. We will take a five-minute break
4 at this point.

17:02:01 5 Let me -- before we do though ask Mr. Smith sort of an
6 estimate. How much more do you think you have on cross?

7 MR. SMITH: Your Honor, I would guess probably
8 20 minutes to half an hour.

9 JUDGE MARCUS: Okay. I ask you that not to limit you
17:02:18 10 in any way, particularly to find out whether we will actually
11 get to redirect today. It doesn't look like it, and I wanted
12 to ask one additional question. I wasn't sure whether
13 Mr. Walker was planning to cross-examine, as well.

14 MR. SMITH: I am not sure.

17:02:38 15 MR. WALKER: Your Honor, this is Dorman Walker. I
16 don't have any plans to cross-examine.

17 JUDGE MARCUS: Okay. So we have about 20 minutes or
18 so, maybe a little bit more to finish up the cross. We will go
19 until 5:30. So I don't think we will get to the redirect
17:02:56 20 unless you think it will be pretty short.

21 Let's do this. We will take a five-minute break and pick
22 up the thread, Mr. Smith, with your cross.

23 Thank you.

24 (Recess.)

17:09:33 25 JUDGE MARCUS: Mr. Smith, you may proceed with your

1 cross.

2 MR. SMITH: Thank you, Your Honor.

3 BY MR. SMITH:

4 Q Dr. Imai, I think you testified on direct that in doing
17:09:44 5 the MMD analysis you were following the state's approach to
6 create one MMD in order to comply with the VRA. Did I get that
7 right?

8 A That's my understanding, from counsel for the plaintiffs.

9 Q So why do you believe that's the state's approach? Let me
17:10:05 10 withdraw. Do you have any independent basis to believe that
11 that was the state's approach?

12 A Oh, okay. No.

13 Q Okay. Dr. Imai, in your MMD section, all of your
14 districts are or -- all of your MMD districts are between 50 to
17:10:20 15 51 percent BVAP, right?

16 A That's correct.

17 Q And all of your simulated MMDs split Jefferson County in a
18 similar way like the enacted plan, right?

19 A Yeah. It's not exactly the same, but similarly.

17:10:32 20 Q Similar, right?

21 A Yeah.

22 Q And same for Tuscaloosa County?

23 A Yeah. So that was all the, you know, surprising findings
24 for me.

17:10:38 25 Q So where your simulated MMDs differ from the enacted

1 District 7 is Montgomery, right?

2 A That's correct.

3 Q And so, Dr. Imai, in paragraph 37 of your report and,
4 again, this is M-1, you state that even in 37.8 percent of --
17:11:05 5 you state that 37.8 percent of plans split Montgomery County,
6 right?

7 A That's correct.

8 Q And then, Dr. Imai, I am going to try and pull your report
9 up again. Look at Figure 4 on page 14.

17:11:27 10 A Okay.

11 Q And so, Dr. Imai, the red dotted line, that's where the
12 BVAP in Montgomery is for District 7, right?

13 A For the -- yeah, the enacted plan.

14 Q The enacted plan, right?

17:11:40 15 A That's correct.

16 Q And so the bar there at the bottom looks like it's
17 somewhere between 5 and 10 percent, wouldn't you say?

18 A I think for sure -- I have got the exact number in the
19 report. Or maybe not. Yeah. Not -- I think that on

17:12:04 20 6 percent, but I'm not 100 percent sure.

21 Q Okay. Let's say 6 percent?

22 A Yeah. More of a chain -- I think you're right, a little
23 bit above 5.

24 Q So 6 -- approximately 6 percent of your plan of your
17:12:20 25 simulated MMDs include the same Montgomery BVAP as the enacted

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1 plan, right?

2 A That's correct.

3 Q And 6 percent of 10,000, that's about 600 of your
4 simulated plans, right?

17:12:30 5 A That's right.

6 Q No worries.

7 And, now, Dr. Imai, I would like to scroll down to Figure
8 5, which is on the next page?

9 A Right.

17:12:44 10 Q And so this is on the left shows out -- shows what
11 percentage of your plans in your simulated MMD which precinct
12 they were most likely to pick up, right?

13 A Uh-huh, that's correct.

14 Q And on the right, it has those precincts color coded based
17:13:02 15 on the BVAP percentage, right?

16 A That's correct.

17 Q Why do you think your simulated plans avoid picking up the
18 higher BVAP precincts in Montgomery even when they're already
19 splitting the county?

17:13:15 20 A Because I think in order to, you know, you don't need that
21 many -- well, why -- sorry. Can you clarify what you mean by
22 why?

23 Q Well, Dr. Imai, I'm not sure if I can.

24 Do you think there is a particular reason why your
17:13:37 25 simulated plans avoid the precincts further into Montgomery

1 County most of which intend to be higher BVAP?

2 A They might be, but I don't know. I haven't memorized
3 exactly why, or I can say from this analysis is that enacted
4 plan does in a way that most of the simulated plan doesn't.

17:13:55 5 Q Do you think your methodology may be avoiding splitting
6 Montgomery County because it's an urban area?

7 A Oh, I see. Again, I cannot speculate, right. So that in
8 terms of the Polsby-Popper measure, if you're, you know, if you
9 are concerned about the edge-removal measure, in terms of the
17:14:23 10 Polsby-Popper, it's also, you know, my simulated plans are more
11 compact than the enacted plan. But I didn't have anything
12 about how Auburn, like how Auburn is -- I didn't tell
13 simulation that, you know, the Auburn area should be split or
14 not split.

17:14:42 15 Q Dr. Imai, again, so this MMD plan you have a BVAP target
16 of 50 to 51 percent, right?

17 A Uh-huh. That's correct. Sorry.

18 Q Do you think, then, your methodology is less likely to
19 pick up these high BVAP precincts in order to comply with the
17:15:03 20 top mark of that range?

21 A If that part of the population -- that part of city of
22 Montgomery, the black -- that has high BVAP proportion is
23 necessary, in order to create one MMD, then it could have. But
24 this analysis shows it was not necessary.

17:15:24 25 Q Okay. Dr. Imai, in paragraph 40, you conclude that the

1 enacted plan places black voters who live in Montgomery into
2 District 7 in a manner that as you put it suggests race was a
3 predominant factor in drawing district boundaries; is that
4 right?

17:15:41 5 A That's correct.

6 Q And like we said, your simulated MMD districts
7 intentionally use a 50 to 51 percent BVAP target, right?

8 A Intentionally, yes, I use that, too, as well as the input
9 factors in this analysis.

17:16:06 10 Q So given that you had a particular BVAP target in mind, if
11 the enacted District 7 were similar to your simulated MMDs,
12 wouldn't that be better evidence that race was a predominant
13 factor in the enacted plan?

14 A Can you repeat that question again? Sorry. I just want
17:16:24 15 to make sure I understand that.

16 Q Sure. So, Dr. Imai, given that you had a specific racial
17 target in mind, the BVAP of 50 to 51 percent?

18 A Uh-huh.

19 Q If the enacted District 7 were similar to your MMDs,
17:16:40 20 wouldn't that be better evidence that race was a predominant
21 factor in the enacted plan?

22 A If the -- you mean MMD I simulated or --

23 Q Yes.

24 A I'm not understanding what evidence -- hypothetical
17:17:03 25 evidence, or is that exact evidence or hypothetical evidence?

1 I'm not just not understanding.

2 Q Let me back up a little.

3 A Okay.

4 Q You had a 50 to 51 percent BVAP target in mind, right?

17:17:15 5 A That's right. That's what I used, yes.

6 Q So in drawing your simulated plans, your MMD had a BVAP
7 target, right?

8 A Yeah. You asking where that target comes from or?

9 Q No.

17:17:28 10 A Okay.

11 Q I'm asking.

12 A I used that target, yes.

13 Q And you used that target intentionally, right?

14 A Yeah. Everything is intentional in this simulation, yes.

17:17:38 15 Q So given that that's the case, given that you
16 intentionally considered race in the drawing of your MMD,
17 wouldn't it be the case that if the enacted District 7 looked
18 like your MMD, that would be better evidence that race
19 predominated?

17:17:53 20 A Why is that? Because I'm looking at the beyond the
21 purpose for creating one MMD. And that's the purpose of the
22 analysis. So I don't understand why the similarity of the --
23 are you talking about similarity in terms of Jefferson and
24 Tuscaloosa or?

17:18:14 25 Q I'm just going to move along, Dr. Imai, if that's okay?

1 A Sorry.

2 Q So, Dr. Imai, in paragraph 1, and I'll actually scroll
3 down to it here.

4 You are analyzing the second highest district level BVAP,
17:18:35 5 right?

6 A That's right.

7 Q And from that drawing conclusions about enacted District
8 7, right?

9 A That's correct. Well, most District 7 and District 2.
17:18:45 10 The second highest, yeah.

11 Q Sure. Excuse me?

12 A They're connected.

13 Q And so you conclude here that simulated plans have on
14 average -- your simulated plans on average, the second highest
17:19:01 15 district level BVAP is 4.4 percentage points higher than the
16 enacted plan; is that right.

17 A That's right.

18 Q Do you know what the BVAP is in the enacted District 7?

19 A District 7 was 55 on the enacted plan. On the enacted
17:19:24 20 plan, right?

21 Q Right. Yes. On the enacted plan.

22 A On the enacted plan, yeah, that's 55.

23 Q And as we discussed before, you had a target of between 50
24 to 51 percent?

17:19:34 25 A Right.

1 Q For your MMD, right?

2 A Right.

3 Q Dr. Imai, what's the percentage point difference between
4 55 percent and 51 percent?

17:19:42 5 A That's 4 percent.

6 Q And what about between 55 and 50?

7 A Say that again.

8 Q What's the percentage point difference between 55 percent
9 and 50 percent?

17:19:57 10 A Oh, 5.

11 Q And so if you average those, you would get four-and-a-half
12 percentage points, right?

13 A Uh-huh.

14 Q So isn't the difference that you have here just the
17:20:07 15 function of setting a limit for BVAP on your MMDs?

16 A Again, I don't want to speculate what would happen. If
17 you are asking what would happen if I set that number
18 differently instead of 50 and 51, which, you know, 50 is
19 obviously that -- you don't have to be majority but 50 at
17:20:28 20 least, and 51 I -- my understanding from the counsel is that
21 for the plaintiff is that that's the percentage that performs.
22 And so I don't want to speculate, you know, because if you
23 increase say 52 or 53, you don't know where that additional
24 black voters have to come from. It could be Montgomery, or it
17:20:50 25 could be somewhere else. And.

1 Q So, Dr. Imai, is it your testimony that you don't know
2 whether the average 4.4 percentage point difference arises as a
3 matter of your MMD's constraints cracking the enacted District
4 7?

17:21:08 5 A If your question is, is this the consequence of setting 51
6 versus other numbers like 52, 3, 4, I don't know what happened
7 if I change it differently. Again, the simulation algorithm,
8 you know, I cannot -- I don't want to speculate what would
9 happen if I give different inputs. I mean, such an analysis is
17:21:32 10 possible to conduct, but I wasn't asked to do that, so...

11 Q Understood, Dr. Imai. And I want to kind of move on to a
12 different topic.

13 You stated at the outset that none of your analyses use
14 any partisan information; isn't that right?

17:21:46 15 A That's correct.

16 Q And I believe appendix E1 provides all the data you
17 considered in formulating this report; is that right?

18 A Yeah. It was the data that was -- part of the dataset I
19 analyzed, yes.

17:22:08 20 Q So, Dr. Imai, in paragraphs 20 and 21 here, they both
21 reference the use of precinct level election returns received
22 from the Alabama Secretary of State's office. Did you consider
23 election returns in the preparation of your report?

24 A I did not use them as part of the simulation algorithm.
17:22:31 25 So all the inputs that were given as simulation were stated in

1 the report. So the -- sorry. The party -- partisan
2 information was not used.

3 Q So, Dr. Imai, it says here that you used precinct level
4 returns as a data source. Is that not the case?

17:22:53 5 A It was in the dataset, so that's why I state it here just
6 for the sake of transparency, because when you build the
7 precinct level files, it's often, you know, come from the
8 election data. So it's part of the dataset, but that viable --
9 whatever the -- is -- was not used in simulation at all, as I
17:23:18 10 stated in that report.

11 Q Dr. Imai, in paragraph 21, this last sentence that goes
12 between pages 24 and 25, it says, Since absentee and
13 provisional vote is reported at the county level, the county
14 level absentee and provisional votes for each candidate were
17:23:35 15 distributed to the precincts in the county, proportional to the
16 share of the candidate's vote total in the county that was
17 reported from each precinct.

18 Did I read that correctly?

19 A Uh-huh.

17:23:44 20 Q Is that something --

21 A Yes.

22 Q Is that something that you did?

23 A You mean I personally did or?

24 Q Yes.

17:24:00 25 A Well, so election data comes with the -- the precinct data

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1 covers the election data. So in order to, you know, put
2 together that precinct file data, you have to do something with
3 this election data. And so this is part of that, you know,
4 standard I guess the work flow data work flow. When you
17:24:20 5 analyze redistricting plans, it's the standard part of the data
6 ingestion. You crack them at the precinct level, and then this
7 is a standard way of issuing certain type of votes.

8 Q Dr. Imai, where did you consider votes in your report?

9 A So I did not consider anything about the partisan
17:24:50 10 information in my report.

11 Q Okay. Dr. Imai, I'd like for you -- let me stop sharing
12 my screen -- I would like to move on to your rebuttal report,
13 which is I believe Exhibit M-6, Milligan 6. And in this
14 report, you purport to keep two communities of interest whole,
17:25:21 15 right?

16 A Oh, at the -- yes, two sets of counties, yes.

17 Q So in addition to the MMD analysis before, you used
18 before, your methodology discourages splitting Mobile County
19 from Baldwin County, right?

17:25:38 20 A Right. So it encourages those two counties to be together
21 in the same district.

22 Q And it discourages splitting the counties that you have
23 identified as the Black Belt, right?

24 A Well, I didn't -- I didn't identify these counties I was
17:25:49 25 given by the counsel for the plaintiffs.

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1 Q Well, okay. So it discourages using the counties that you
2 have listed as the Black Belt here based on that premise,
3 right?

4 A Yes. Based on the instruction by the Plaintiffs' counsel.

17:26:06 5 Q Do these constraints come before or after your methodology
6 generates the MMD?

7 A Can you define what you mean by before or after?

8 Q Dr. Imai, does your methodology consider keeping these
9 counties together when it is also putting together the MMD, or
17:26:31 10 does that come later?

11 A Oh, I see. I see. It comes later.

12 Q You said it comes later?

13 A That's right.

14 Q So your MMD might split the Black Belt before this
17:26:45 15 constraint ever comes into play, right?

16 A It's possible, yes. Yes. It's possible.

17 Q So, in other words, your MMD that generated under these
18 plans would look similar if not identical to that generated in
19 your earlier MMD analysis, right?

17:27:11 20 A So, yeah, so -- yes. I could have done the analysis --
21 well, to create the one MMD while -- well, encouraging these
22 districts to be together. I could have done that analysis, but
23 I didn't do that. I created one MMD, and then, you know, when
24 I did the race-blind for the rest, I incorporated these two
17:27:43 25 communities of interest.

1 Q So, Dr. Imai, I'm asking what you actually did. So does
2 the MMD that you generated in this section look similar to the
3 MMDs generated in your initial report that split Jefferson
4 County in a way similar to the enacted plan that split
17:27:58 5 Tuscaloosa? Is that the case?

6 A That's correct.

7 Q Do you know whether that MMD includes any counties that
8 you have used here in the definition of the Black Belt?

9 A It might. I -- I don't have that number -- I don't think
17:28:20 10 I have that number in the report nor on the top of my head, so,
11 you know, some of the counties are way outside. So, for
12 example, like Montgomery sometimes right there's this small
13 percentage that part of the Montgomery is split into MMD. So
14 in that case, right, so that small percentage that county is
17:28:47 15 split into MMD. The other counties, I don't know.

16 Q So, Dr. Imai, in this section, although you intend to keep
17 the Black Belt and -- the Black Belt whole in Mobile County and
18 Baldwin whole, the generation of MMD might itself split the
19 Black Belt; is that fair?

17:29:05 20 A It's possible, yes.

21 Q Okay. Dr. Imai, the counties that you list here as the
22 Black Belt, do you express any opinion as to whether those
23 counties are, in fact, part of the Black Belt?

24 A No.

17:29:17 25 Q Do you express any opinion as to whether those counties

1 are, in fact, a community of interest?

2 A No.

3 Q Did you consider any resources that would support defining
4 those counties as a community of interest?

17:29:29 5 A No.

6 Q Did you consider any resources that would support using
7 that definition of the Black Belt?

8 A No.

9 Q So if you were presented with a different definition of
17:29:40 10 the Black Belt, that wouldn't be necessarily surprising to you;
11 is that right?

12 A Right. I mean, yeah. I guess. Depends on what you mean
13 by surprising. But it's, yeah, I'm not sure -- if you, you
14 know, if you give me the counties on the north, then I can -- I
17:30:02 15 would be surprised. Right. So, again, I don't have a special
16 knowledge of particular subject here, so.

17 Q Well, Dr. Imai, let me share my screen and show you what's
18 been marked. This is Caster Exhibit 1.

19 A Okay.

17:30:20 20 Q There is the report of Bill Cooper. And I'm going to go
21 to I think page 7. Dr. Imai, here on page 7 footnote 6,
22 Mr. Cooper uses the term -- he defines, the term Black Belt as
23 referring to the following counties: Barbour, Bullock, Dallas,
24 Greene, Hale, Lowndes, Macon, Marengo, Montgomery, Perry,
17:30:51 25 Sumter, and Wilcox. Did I read that correctly?

1 A Uh-huh. Yes, you did.

2 Q And so that's fewer counties than you considered in the
3 Black Belt set that you used; is that right?

4 A Oh, is that right? I didn't keep track of the difference.
17:31:06 5 But, yeah.

6 Q Well, Doctor, I will represent to you by my count, your
7 report defines the Black Belt as including 23 counties, whereas
8 Mr. Cooper's here includes 13?

9 MS. EBENSTEIN: Your Honor, I would like to object to
17:31:28 10 this line of questioning. The Cooper Report is something
11 Dr. Imai has never seen. We have a definition of Black Belt in
12 the stipulations. This is out -- this new definition of Black
13 Belt that Dr. Imai hasn't seen is outside the scope of his
14 report.

17:31:45 15 JUDGE MARCUS: Mr. Smith?

16 MR. SMITH: I'm just testing the foundation of his
17 premises and whether he might consider a different definition
18 or how that might play, and that was my last question on this
19 point for what it's worth.

17:31:56 20 JUDGE MARCUS: Let's move on.

21 BY MR. SMITH:

22 Q Dr. Imai, I am not going to ask you any questions about
23 Mr. Cooper's map here, but it is sort of handy as a visual aid,
24 and so that's all I am going to use it for at this stage. You
17:32:14 25 keep Mobile and Baldwin together as one of your constraints in

1 the rebuttal report, right?

2 A Yeah. I was instructed that -- that two counties, you
3 know, along with the experts, and from that counsel for the
4 plaintiffs, and my understanding is that one of the experts for
17:32:32 5 the defendants thought that as a community of interest, those
6 two counties.

7 Q And, Dr. Imai, you also include as part of your -- as part
8 of your -- well, excuse me. As part of your definition of the
9 Black Belt or the set of counties that you use as the Black
17:32:50 10 Belt, Dr. Imai, you include each of Washington County, Clarke
11 County, Monroe County, and Escambia County, right?

12 A Yeah. I'm just checking to make sure. But that's
13 correct, yeah.

14 Q But, Dr. Imai, doesn't that isolate Mobile and Baldwin
17:33:10 15 County by themselves so they're not contiguous to any other
16 Alabama counties?

17 A If those all four kept together -- well, I guess it could
18 escape from the north on the west.

19 Q How so?

17:33:26 20 A If you go -- oh, no, no. Choctaw, that's also included.
21 So if you are right. So if you keep all those five counties
22 together. But this is soft constraint. So it was discouraged,
23 but obviously it may split once.

24 Q So under your soft constraint?

17:33:52 25 A Yeah.

1 Q It's not that it is impossible to split the Black Belt,
2 it's just discouraged?

3 A Right. Try to reduce the number of splits, right. So
4 fewer splits of those communities as possible.

17:34:03 5 Q But?

6 A But if you have to split, you have to split because the
7 population constraint, you know, is 50 percent. You don't want
8 to create the district who has fewer population than the, you
9 know, the range that I specify.

17:34:22 10 Q And so in order to include Mobile and Baldwin County in a
11 district, it appears it's necessary to split the Black Belt,
12 right?

13 A That's correct. Yeah. If necessary to split those four,
14 of five, I guess if you reached it.

17:34:38 15 Q Is that also the case for these southeastern counties that
16 aren't included in your definition of the Black Belt but are
17 isolated as a result of that definition?

18 A So, yes, those are also -- yeah. So those are not part of
19 the definition I was given. And, yeah, those are, you know,
17:35:00 20 have to be -- have to go somewhere. And often I think the, you
21 know, the District 2 under the -- under the simulated plan.

22 Q Dr. Imai, I just have a few more questions.

23 So between your initial and rebuttal reports, you
24 generated a total of 30,000 simulated plans, right?

17:35:21 25 A That's correct.

1 Q And of those 30,000 simulated plans, 20,000 of them
2 included an MMD by design, right?

3 A That's right. One MMD by design.

4 Q How many of your 30,000 simulated plans included two MMDs?

17:35:39 5 A None. Because I didn't tell the algorithm to create a
6 second MMD.

7 Q Dr. Imai, if none of your 30,000 simulated plans included
8 two MMDs, wouldn't that indicate that race predominated in a
9 comparison plan that did include two MMDs?

17:36:02 10 MS. EBENSTEIN: I'm sorry. Objection.

11 If I am understanding the question correctly, it's outside
12 the scope of the one MMDs that Dr. Imai just testified he
13 simulated.

14 JUDGE MARCUS: I am not sure I understand the
17:36:15 15 question. So let's begin by having you rephrase it, Mr. Smith,
16 and then we will see whether it's objectionable or not.

17 MR. SMITH: Sure, Your Honor.

18 JUDGE MARCUS: I don't understand the question as you
19 put it.

17:36:27 20 MR. SMITH: Sure. I will reframe.

21 BY MR. SMITH:

22 Q Dr. Imai, none of your 30,000 simulated plans included two
23 MMDs, right?

24 A That's correct.

17:36:37 25 Q So then a plan that does include two MMDs would be an

1 outlier, right?

2 MS. EBENSTEIN: Object -- sorry.

3 JUDGE MARCUS: Do we have an objection?

4 MS. EBENSTEIN: I would object.

17:36:48 5 JUDGE MARCUS: There is an objection, and it is
6 sustained as to the form of the question.

7 MR. SMITH: Your Honor, may I have a moment to consult
8 with my colleagues?

9 JUDGE MARCUS: You sure can.

17:37:02 10 MR. SMITH: Thank you.

11 Your Honor, I pass the witness.

12 JUDGE MARCUS: All right. Thank you.

13 We're beyond -- by my count, it's about 5:37 Central
14 Standard Time.

17:37:59 15 Mr. Walker, I wasn't sure whether you were planning to ask
16 questions or not. I know Ms. Ebenstein is planning to have
17 some redirect.

18 Either way, it would be my intention to break at this
19 point unless you had really only a few. I will give you
17:38:18 20 whatever time you need, but we have gone beyond, and it's been
21 a long day. So you tell me what your pleasure is, and we will
22 proceed.

23 MR. WALKER: Your Honor, I do not intend to ask any
24 questions.

17:38:28 25 JUDGE MARCUS: Okay. So why don't we break at this

1 point. We will adjourn until tomorrow morning at 9:00 o'clock
2 Central Standard Time. That would be 10:00 o'clock Eastern
3 Standard Time. And, Ms. Ebenstein, you will be able to proceed
4 with your redirect examination.

17:38:49 5 Just one question: In terms of timing, one, how long do
6 you expect to be; and, two, are there other witnesses that the
7 Milligan plaintiffs are planning to call in support of the
8 equal protection claim? And if so, how many?

9 MS. EBENSTEIN: Your Honor, I would want a moment to
17:39:13 10 go through my notes, but I expect my redirect will be half an
11 hour or 45 minutes. And we do intend to call an additional
12 expert witness in support of our equal protection claim.

13 JUDGE MARCUS: And which expert would that be tomorrow
14 morning?

17:39:29 15 MS. EBENSTEIN: That would be Dr. Williamson.

16 JUDGE MARCUS: Thank you very much. Thank you all for
17 your patience with us. We'll see you back here at 9:00 a.m.
18 tomorrow morning.

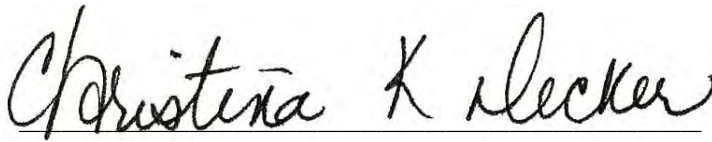
19 Dr. Imai, I will ask you to remain available so that we
17:39:43 20 can proceed with redirect of you at 9:00 a.m. That would be
21 Central Standard Time. I take it you are in Cambridge, so it
22 would be 10:00 a.m. Eastern Standard Time.

23 Thank you all. We are adjourned.

24 (Whereupon, the above proceedings were concluded at
25 5:39 p.m.)

CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.



01-04-2022

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ACCR#: 255

Date

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

4 BOBBY SINGLETON, et al., *
5 Plaintiffs, * 2:21-cv-1291-AMM
6 vs. * January 5, 2022
7 * Birmingham, Alabama
8 * 9:00 a.m.

9 JOHN MERRILL, in his official *
10 capacity as Alabama Secretary *
11 of State, et al., *
12 Defendants. *

13 *****

14 EVAN MILLIGAN, et al., *
15 Plaintiffs, * 2:21-cv-1530-AMM

16 vs. *
17 *
18 JOHN MERRILL, in his official *
19 capacity as Alabama Secretary *
20 of State, et al., *
21 Defendants. *

22 *****

23 MARCUS CASTER, et al., *
24 Plaintiffs, * 2:21-cv-1536-AMM

25 vs. *
*
JOHN MERRILL, in his official *
capacity as Alabama Secretary *
of State, et al., *
Defendants. *

TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING
VIA ZOOM CONFERENCE
VOLUME II

BEFORE THE HONORABLE ANNA M. MANASCO,
THE HONORABLE TERRY F. MOORER,
THE HONORABLE STANLEY MARCUS

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P R O C E E D I N G S

(In open court.)

JUDGE MARCUS: We will go forward with the redirect examination of Milligan's expert, Dr. Imai. Thanks very much.

MS. EBENSTEIN: Thank you, Your Honor.

REDIRECT EXAMINATION OF DR. KOSUKE IMAI

BY MS. EBENSTEIN:

Q Good morning, Dr. Imai.

A Good morning.

Q Do you recall yesterday Mr. Smith asked you whether you appended visual representations of your 30,000 simulated plans to your report?

A So the 37 -- which -- do you have a figure number or?

Q No, just whether you included visual representations of each of your simulated plans?

A Oh. Yeah. Yes, I remember that.

Q And you didn't include those plans; is that correct?

A No. Not in my report.

Q Okay. But do you recall providing counsel with all of the data the VTD files and the code that you used?

A Yes.

Q To generate your simulations?

A Yes, I do.

Q Okay. I will represent to you that we shared that data with defendants on December 13th, a few days after the

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1 submission of your report.

2 Could your simulations have been reproduced using the VTD
3 files and the code that you provided us?

4 A Yes. It can be produced exactly. And the instruction has
09:03:05 5 been given in that -- in the file that I shared -- it was
6 shared.

7 Q And you testified yesterday about the importance of
8 transparency and the value you place on open-source publicly
9 available code that anybody can run; is that right?

09:03:21 10 A That's correct. So all the packages that are necessary
11 for reproducing the results of my analysis are based on
12 open-source package, which means every package has the code
13 that's open and freely available for download.

14 Q And had the defendants requested the data in a different
09:03:41 15 format or any other data that you used, I assume that you would
16 have provided that, as well; is that right?

17 A Yes, of course. But I have never received such a request.

18 Q Okay. You testified yesterday that you have submitted
19 reports in a case in Ohio; is that right?

09:03:58 20 A Yes, that's correct.

21 Q And that that's a political gerrymandering case; is that
22 right?

23 A That's right.

24 Q The principles and methods for your simulations analysis,
09:04:09 25 would they be just as reliable when used for racial

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1 gerrymandering as they would be for partisan gerrymandering?

2 A Yes. There are complex many parts so depending on state
3 and rules and, you know, the context that needs to be taken
4 into account. But the ability to isolate the factor, which is
09:04:31 5 the one of the benefits of simulation analysis I emphasized
6 yesterday still remains the case, so whether it's partisanship
7 or race or some other factor we can always try to isolate a
8 particular factor of interest is in a simulation method, and
9 that's one of the most important strengths.

09:04:51 10 Q And I assume you would have brought the same specialized
11 skill and rigor to your analysis, whether you are looking at
12 partisan gerrymandering or racial gerrymandering; is that
13 right?

14 A Yes.

09:05:03 15 Q Mr. Smith asked you yesterday about some of the guidelines
16 factors and those are included in Milligan Plaintiffs'
17 Exhibit 38, 88-23. I'm going to go through some of the factors
18 that he discussed with you. First on incumbency, I believe you
19 testified that you placed more than one incumbent on each of
09:05:28 20 your congressional districts in your simulated plans?

21 A Yes. Most one incumbent in each.

22 Q You testified about the hard constraints, so every single
23 one of your 30,000 simulated plans only had one incumbent in
24 each district, right?

09:05:40 25 A At most one. So one is -- I think one representative

1 decided to run for the Senate. So that that -- you know,
2 one person is not included, so one district may have zero
3 incumbent, but at most one, no -- you know, no multiple
4 incumbents.

09:05:58 5 Q Okay. And turning to the guideline on population
6 deviation, do you recall defendants' counsel asking you about
7 the .5 percent population deviation in your simulations?

8 A Yes.

9 Q And could you explain why .5 population deviation is
09:06:19 10 methodologically sound when you use VTDs as the building blocks
11 for your plans?

12 A Yes. Pressing so much larger units than the census
13 blocks. So it makes sense to have the tolerance that's larger.
14 And in the academic literature, the precincts are the basic
09:06:35 15 units of at least the analysis. The analyzation of the
16 redistricting plan is a variation. It's not -- the goal is not
17 to provide official plan that may require lower terms. So in
18 order to understand the characteristics of the population of
19 alternative plan I could have drawn in the set of rules, we
09:06:59 20 know that the .5 percent the maximum population tolerance is
21 more than enough.

22 Q And when --

23 JUDGE MARCUS: One request, counsel, before we
24 proceed. Let me ask you again for our reporter to go really
09:07:16 25 slowly and take your time.

1 THE WITNESS: Yes.

2 JUDGE MARCUS: Thank you, counsel. You may proceed.

3 MS. EBENSTEIN: Thank you, Your Honor.

4 BY MS. EBENSTEIN:

09:07:25 5 Q Dr. Imai, would you expect that population equality or use
6 of census blocks if that was even possible would have changed
7 any of your opinions in your report?

8 A No. It has no major impact, no substantive impact on the
9 conclusion of my analysis.

09:07:42 10 Q And your use of population deviation was a hard
11 constraint, so that applied to every single one of the
12 districts in each of the 30,000 plans; is that right?

13 A That's correct.

14 Q Okay. Moving on to contiguity. Did you use census data
09:07:59 15 to generate your simulated maps?

16 A Yes.

17 Q And as far as you know, does the state use census data to
18 draw their maps?

19 A Yes.

09:08:10 20 Q And, in fact, I will note for you that the guidelines
21 require the use of census data for the state to draw their
22 maps.

23 So if there were any issues with the census data when it
24 comes to contiguity, would that occur in the state's enacted
09:08:27 25 map, as well as in your simulated plan?

1 A It may. You know, it depends on the problem, I suppose.
2 But any map drawing process whether it's simulation or human,
3 if there's a problem in the underlying data, it could affect
4 the resulting map.

09:08:51 5 Q Okay. Moving on to compactness, if my colleague Eric is
6 online, if he could briefly turn to Defendants' -- sorry --
7 Plaintiffs' Exhibit M-1, 88-1 at 23, Figure 8, there at the top
8 of the screen. I don't believe we looked at this yesterday,
9 but it's included on page 23 of your initial report. Could you
09:09:16 10 review how you -- what this figure represents, including how
11 you measured compactness?

12 A Right. So the compactness is a concept that has competing
13 measurements in the academic literature. And, you know, the
14 most commonly used measures are the two I used here. So one is
09:09:37 15 Polsby-Popper score, and one is the fraction of edges kept, and
16 the fraction of edges kept is something that counsel Smith
17 mentioned yesterday from the working paper that I wrote. And
18 each measure has its own advantage and disadvantages.

19 For example, Polsby-Popper score can be affected greatly
09:10:02 20 by the shape of particular precinct or census block, whatever
21 the building units are. And so if you live in a coastal area,
22 Polsby-Popper score might be higher -- sorry -- much lower less
23 compact even though it's just a coast line that's not very
24 smooth.

09:10:21 25 So for this reason it's very important to use multiple

1 measures of compactness score when you are evaluating whether
2 or not your simulated plans or other plans are compact. So
3 based on this figure, what you can see is that two measures
4 essentially give the same answer. So whether you use the
09:10:40 5 Polsby-Popper score or the fraction of edges kept, the -- on
6 average, the simulated plans, which is the dark histogram is
7 more compact than active. So these scores the higher the
8 number is the more compact. So the one on the right, if the
9 numbers are higher, more compact. So you can see that based on
09:11:04 10 the Polsby-Popper score the simulated plan, most of them have
11 higher compactness score than the enacted plan and then same
12 collusion holds in the fraction of edges kept.

13 From this, I concluded that the simulated plan on average
14 more compact than the enacted plan.

09:11:23 15 Q Okay. Thank you. We can take that figure down.

16 Moving on to county boundary splits. Do you recall
17 Mr. Smith asking you about the treatment of counties and county
18 splits?

19 A Yes.

09:11:41 20 Q How do you interpret the criteria for county splits when
21 generating your simulation analysis?

22 A So according to the guideline, it's supposed to minimize
23 number of counties within each district. That's I think what
24 the guideline states.

09:12:00 25 Q Okay. And did you implement that criterion as you

1 understood it?

2 A Well, the way I implemented it in the algorithm is two
3 ways. So one, is to just to -- this is a mechanical part of
4 the algorithm, which tries to make sure that the district
09:12:22 5 boundaries for the county boundaries whenever you can. So this
6 is -- I can describe more details, but basically sequential
7 Monte Carlo algorithm basically imposes that. Then the second
8 step is I added additional constraints just to make sure to
9 reduce the number of county splits that, you know, make sure
09:12:43 10 that the algorithm prefers all else equal the plans that have
11 fewer county splits. And as a result in the appendix of my
12 expert report, I show that county splits is much lower under
13 the simulated plan.

14 Q Okay. If the map drawer testified that where possible he
09:13:03 15 tried to deal in whole counties and keep counties whole, does
16 that sound similar to what you did when you were accounting for
17 this guideline?

18 A You know, I think -- I mean, algorithm, so it's -- in a
19 sense, it's a little bit different from the human. Algorithm
09:13:22 20 look at, you know, the sort of entire state and make sure that,
21 you know, other factors are not compromised by doing so. But
22 you know, I -- I try to represent mathematically as much as
23 possible that what the guidelines -- I interpreted what the
24 guideline advised.

09:13:44 25 Q Okay. Thank you.

1 And moving on to the core of existing guidelines. You are
2 clear in your report and your direct testimony that you did not
3 consider the cores of existing guidelines; is that right?

4 A No.

09:13:57 5 Q And if race predominated in the design of prior plans,
6 would recognizing cores and preserving cores that racial
7 predominance -- sorry. Let me rephrase that. If race
8 predominated in the design of prior plans?

9 A Uh-huh.

09:14:14 10 Q And you were to adhere to preserving the cores of prior
11 plans, would that mask the effect of race in the current plan?

12 A Yes, that's possible because I would note -- I would have
13 no way of separating the race as a factor, like isolating the
14 impact of race from what went into the prior plan.

09:14:35 15 Q Okay. And Mr. Smith asked you yesterday about whether
16 preserving cores could be operationalized by preserving
17 80 percent of the previous district. Are you aware of any
18 guideline that requires preserving 80 percent or any other
19 threshold of previous districts?

09:14:55 20 A No.

21 Q Okay. Mr. Smith asked you a series of questions about
22 your race-blind simulation. If we could just have on the
23 screen Plaintiffs' Exhibit M-1, 88-1 at 10 which is Figure 1 in
24 the boxplot that we discussed yesterday. Which districts in
09:15:22 25 this boxplot do you consider outliers?

1 A The clearest outlier is 7.

2 Q And are there any other outliers here?

3 A The 2 is also outlier according to the, you know, standard
4 definition in statistics.

09:15:37 5 Q Okay. And this is in your race-blind simulation, correct?

6 A That's correct.

7 Q Okay. Does this finding in your race-blind simulation
8 reflect any judgment about whether or not it's proper to draw a
9 particular district, a particular way after the map is adjusted
10 to have one MMD?

11 A No. So this is completely race-blind. So the conclusion
12 on the holds with respect to -- the comparison was race-blind
13 simulation simulated plans.

14 Q Okay. And your race-blind analysis does not incorporate
09:16:11 15 the state's guideline, which gives priority to compliance with
16 the Voting Rights Act; is that right?

17 A Right. It doesn't. And that was purpose was, you know,
18 of this race-blind simulation was just to establish as a first
19 step whether race played a predominant factor.

09:16:25 20 Q And a few questions about your one-MMD simulation before I
21 move back to the race-blind simulation.

22 Your one-MMD analysis tried to account for the fact that
23 the state draws one MMD to comply with the VRA; is that right?

24 A That's correct.

09:16:39 25 Q And your simulation found that even in drawing one MMD

1 that looked like the state's MMD, District 7 included a BVAP
2 population beyond what was necessary to create a majority-black
3 district; is that right?

4 A That's right.

09:16:53 5 Q But I believe you said yesterday your analysis did not
6 consider whether the VRA might require two majority-minority
7 districts; is that right?

8 A No. No.

9 Q And you didn't perform any analysis of maps that include
09:17:07 10 two majority-minority districts, right?

11 A No.

12 Q So your analysis wouldn't tell us anything about whether
13 or not containing two MMDs is an outlier or not compared to
14 simulations constrained under two MMDs?

09:17:22 15 A No.

16 Q Moving back to the race-blind analysis, and we can take
17 that boxplot off the screen.

18 If you have your report in front of you in case you would
19 like to reference it. Mr. Smith asked you questions about your
09:17:38 20 race-blind analysis with regard to Jefferson County. And he
21 referenced paragraph 32 of your report. That's M-1, 88-1 at
22 12. And this paragraph is still in your analysis about your
23 race-blind simulations; is that right?

24 A That's right.

09:17:54 25 Q Mr. Smith noted that at least eight of the 10,000

1 race-blind simulated plans included more voters from Jefferson
2 County in District 7 than the enacted plan; is that right?

3 A Yeah. I think so. I'm not 100 percent sure. I don't
4 recall exact number he cited.

09:18:13 5 Q Okay. I will refer you to paragraph 32 of your report,
6 where he did accurately cite the number that you gave.
7 Statistically does the inclusion of the Black Voting Age
8 Population from Jefferson in eight of the 10,000 race-blind
9 simulated plans affect whether the enacted plan was an outlier?

09:18:34 10 A Yes.

11 Q How does it affect whether the race-blind simulated plan
12 was an outlier?

13 A So according to the standard, you know, statistical
14 criteria, the .08 percent, the fact that only the .08 percent
09:18:52 15 of simulated plans packs as many residents of Jefferson County.
16 To this extent, that phenomena is a statistical outlier, that
17 creates a statistical outlier.

18 Q Okay. So it impacts it in showing that it is, in fact,
19 a statistical outlier.

09:19:05 20 A Yes, it is -- yeah. Sorry about that.

21 Q Okay. Moving on to your conclusions about Montgomery
22 County in your race-blind simulation. And this is reflected in
23 the following paragraph, 33 of your report. What is the
24 likelihood that Montgomery County would split at all in a
09:19:25 25 race-blind simulation?

1 A Over 97 percent.

2 Q Over 90 percent that it would stay whole or?

3 A Stay whole. Sorry. Less than 3 percent would be the
4 property that's being split.

09:19:40 5 Q And statistically, does Mr. Smith's observation that 300
6 of the 10,000 race-blind simulations split Montgomery County
7 change your observation that the treatment of Montgomery County
8 was an outlier in the race-blind analysis?

9 A No.

09:19:58 10 Q Does this outcome in the race-blind analysis already
11 reported in your report change your overall opinion in this
12 case at all?

13 A No. According to the standards of statistical criteria,
14 this difference is statistically sound.

09:20:16 15 Q And just to be clear, in the 97,000 simulated plans in
16 which Montgomery County remained whole -- sorry -- 9,700
17 simulated plans in which Montgomery County remained whole, in
18 9,400 of those plans, the whole county was assigned to District
19 2 or 6; is that right?

09:20:36 20 A That's correct.

21 Q Is it accurate to say that in your race-blind simulation
22 and without consideration of race obviously, Montgomery County
23 is highly unlikely to be included in District 7?

24 A Yes.

09:20:50 25 Q Okay. Just a few more questions. If you could turn to --

1 I don't think we need it on the screen. But in your one-MMD
2 analysis, Milligan Plaintiffs' Exhibit 1, Docket 88-1 at 14,
3 this is Figure 4 that we discussed yesterday regarding the
4 district with the second highest BVAP.

09:21:17 5 Counsel noted that 6 percent of the one-MMD simulated
6 plans included the same number of black voters in CD 2 as the
7 enacted plan; is that right?

8 A That's correct.

9 Q And does counsel's observation that 6 percent of the
09:21:33 10 one-MMD simulated plans include 39,000 black voters in District
11 2, as you have already reported or already included in your
12 report, does that change your finding at all that the enacted
13 plan's inclusion of those voters is a statistical outlier?

14 A No.

09:21:51 15 Q Have your findings with regard to the BVAP in the second
16 highest BVAP district changed at all after Mr. Smith
17 highlighted those for you?

18 A Excuse me. Sorry. Can you repeat the question?

19 Q That's all right. My questions are quite long. Have your
09:22:05 20 opinions in this report changed at all since yesterday?

21 A Oh. No.

22 Q Okay. One more line of questions. You selected the 50 to
23 51 percent BVAP range for your one-MMD simulation. Based on
24 the definition of majority and counsel's representation to you
09:22:24 25 that such a district would perform, is that what you said

1 yesterday?

2 A That's right. So the 50 percent is the, you know, about
3 50 percent is the definition of majority. And then 51 percent
4 was provided by the counsel as the number that the proportion
09:22:39 5 that would perform that is the black voters' candidate, the
6 candidate of their choice.

7 Q And you made no judgment about a district of 51 percent
8 BVAP was preferable to a district of 55 percent BVAP; is that
9 right?

09:22:52 10 A No. I did not conduct any analysis myself, and I don't
11 possess any opinion on this.

12 Q Mr. Smith asked you whether selecting 51 percent versus
13 55 percent BVAP accounted for the fact that your one-MMD
14 simulation in District 2 had an average after about five points
09:23:14 15 higher than the BVAP in District 2 of the enacted plan. Do you
16 recall that conversation?

17 A I recall that. Yeah. I recall that conversation.

18 Q But in both your initial and your rebuttal reports, the
19 simulations showed that the BVAP in the simulated District 2
09:23:31 20 was as high as nearly 40 percent; is that right?

21 A That's correct.

22 Q And any particular -- sorry. Go ahead?

23 A Yeah. Just the maximum number -- I assume that's what you
24 are referring to.

09:23:41 25 Q Yes.

1 A Yes.

2 Q And in particular, when you accounted for the communities
3 of interest as defined in the stipulations between the parties
4 in your rebuttal report, many of your simulations were in the
09:23:56 5 37 to 39 percent BVAP range for the second highest BVAP
6 district usually District 2; is that right?

7 A Right. 37, 38, you know, there are many more plans in
8 that range than the one-MMD simulation in the initial report.

9 Q And would the 4 percent difference in the District 7 BVAP
09:24:18 10 between your simulated plans and the enacted plans, so the
11 difference between 51 and 55 percent, would that account for
12 the 9.6 percent difference between the enacted plan and the --
13 the highest number of BVAP in the simulated plans in the
14 enacted plan?

09:24:35 15 A No.

16 Q And would that 4 percent difference account for the
17 9.8 percent difference between your simulated plans that
18 considered the community of interest and the enacted plan?

19 A No.

09:24:54 20 MS. EBENSTEIN: I think those are all the questions I
21 have, Your Honor, if you could just give me one moment to
22 confer with my colleague.

23 JUDGE MARCUS: Take your time.

24 MS. EBENSTEIN: Thank you, Your Honor. Those are all
09:25:17 25 the questions that we have for Dr. Imai.

1 JUDGE MARCUS: Judge Manasco, Judge Moorer, any
2 questions for this witness?

3 JUDGE MANASCO: None from me.

4 JUDGE MOORER: None from me.

09:25:31 5 JUDGE MARCUS: I have just one question for you,
6 Dr. Imai, about something that you just said in response to a
7 question that was put to you this morning. Ms. Ebenstein was
8 asking you about population deviation.

9 THE WITNESS: Yes.

09:25:54 10 JUDGE MARCUS: And you explained that you used a
11 deviation of plus or minus .5 percent in your calculus. I have
12 that right, correct?

13 THE WITNESS: That's correct, Your Honor.

14 JUDGE MARCUS: And then she asked you in substance
09:26:10 15 whether that deviation of plus or minus 5 percent would have
16 any effect on your calculus and the conclusions.

17 I think the way the question was put, she said nothing
18 would change if you used one person deviation rather than plus
19 or minus 5 percent. Do you remember when she asked you that
09:26:41 20 question?

21 THE WITNESS: So -- well, I guess --

22 JUDGE MARCUS: I just want to know -- I guess -- all I
23 want to know is whether using plus or minus .5 percent changes
24 your analysis in any way or your conclusion in any way.

09:27:04 25 THE WITNESS: It would not affect my conclusion. It

1 will -- you know, it will change the maps that I would generate
2 if I want to impose that constraint using the much finer grain
3 data census block, or sometimes you would have to even split
4 the census block that just the population. But it will not
09:27:25 5 affect any of my substantive conclusions.

6 JUDGE MARCUS: Wouldn't affect them in any way? I'm
7 just talking about the conclusions that you recited.

8 THE WITNESS: Right. Conclusion, no. And I could
9 explain that if that's preferable.

09:27:40 10 JUDGE MARCUS: Sure. Please. Feel free to.

11 THE WITNESS: Right. So the reason is that the
12 .5 percent -- plus minus .5 percent is about 3,500 people.
13 That's the maximum deviation. Many of the simulated plans
14 don't go that far. So it's much smaller differences than, than
09:28:00 15 that. In addition, the usual deviation is not concentrated on
16 one part of the districts. So it's usually spread out across.
17 You can think of it like across the edge of the boundary. So
18 any, you know, my conclusion about, for example, Montgomery
19 County, it would be unaffected because, one, the maximum
09:28:21 20 deviation possible, even though many of the simulations are
21 much lower population difference than 3,500 people wouldn't be,
22 you know, enough to change that conclusion that Figure 1 will
23 shift maybe slightly, but it won't change greatly. And it
24 won't certainly change the statistical conclusion.

09:28:43 25 And also, you know, most of the analysis I have conducted

1 and many other clinical researchers in the discipline conducted
2 at the precinct level, using a precinct level for congressional
3 redistricting. We -- you know, we have established that that's
4 a small enough unit to draw decisive conclusions on this type
09:29:06 5 of analysis.

6 JUDGE MARCUS: Thank you. Any follow up based on what
7 I asked either, Mr. Smith or Ms. Ebenstein?

8 MR. SMITH: Your Honor, not based on what you asked,
9 but I do have a few recross I would like to ask.

09:29:19 10 JUDGE MARCUS: That's fine so long as it bears
11 directly on what is new or different that was brought out. We
12 don't mean to have re-redirect that covers the same ground
13 unless there's something different or new that she brought out.

14 With that caveat, fire away.

09:29:35 15 MR. SMITH: Certainly, Your Honor. Thank you.

16 RECROSS-EXAMINATION

17 BY MR. SMITH:

18 Q Good morning, Dr. Imai.

19 A Good morning.

09:29:41 20 Q Dr. Imai, I have just a few questions for you.

21 Ms. Ebenstein asked you about the core retention factor.

22 Do you recall that?

23 A Yes.

24 Q And if I heard your answer correctly, I think you said
09:29:55 25 that if race -- if you took core retention into account and if

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1 race predominated in prior plans, that would mask the use of
2 race in the current plans; is that right?

3 A That could.

4 Q So, in other words, Dr. Imai, because you did not take
09:30:12 5 into account the core retention guideline, you can't say for
6 sure whether core retention might explain the racial makeup of
7 any of the districts in the enacted plan; isn't that right?

8 MS. EBENSTEIN: Your Honor, I will object that that
9 misstates his testimony.

09:30:27 10 JUDGE MARCUS: Why don't you just rephrase the
11 question, Mr. Smith?

12 MR. SMITH: Sure, Your Honor.

13 BY MR. SMITH:

14 Q Dr. Imai, if the use of the core retention factor masks --
09:30:42 15 if using that factor in your analysis would mask the use of
16 race in the current plan, then you can't say for sure based on
17 your simulations whether that factor might explain in fact the
18 BVAP of those districts, right?

19 A So if I understand the question correctly, whether or not
09:31:02 20 the race affected the previous plan is the reason why I find
21 the race predominance predominates the decision of district
22 boundaries on the enacted plan. Is that the question? Or are
23 you asking whether if I incorporate the core restriction,
24 whatever that might be, whether the results will change?

09:31:32 25 Q That is what I am asking, Dr. Imai.

1 A The latter?

2 Q Yes. The second. The second.

3 A Okay. So if -- again, I don't know what would happen if I
4 incorporate the core constraint because I have not -- I was not
09:31:46 5 given and I could not find any definition of core, so I was --
6 I didn't do that analysis. I can't. I don't want to
7 overstate, you know, what would happen. I mean the
8 hypothetical analysis.

9 But the reason why I didn't include that was as I stated
09:32:03 10 is because if, you know, I incorporated the core constraint,
11 that means that I would not be able to isolate the race.

12 Q Dr. Imai, can your analysis tell us whether core retention
13 explains the demographics of any of the enacted districts?

14 A Retention. So in order to do that, I would have to know
09:32:30 15 the definition of core constraint. Like if I want to use a
16 simulation to know whether the core retention explains some of
17 my finding, I would -- I would need the definition of core, and
18 I would incorporate that in my analysis, right, and then see
19 what happens. But the reason why I didn't do that is because I
09:32:52 20 wanted to isolate the effect of race.

21 Q Dr. Imai, I am not asking whether you could or not. I'm
22 asking: Does your analysis tell us whether core retention
23 actually explains the demographics of the districts?

24 A Actually explains. No. Because that was not goal of my
09:33:10 25 analysis.

1 Q Thank you, Dr. Imai.

2 Dr. Imai, if a plan drawn that purported to observe the
3 same criteria that you observed ended up with two
4 majority-minority districts, wouldn't that strongly suggest
09:33:29 5 that race predominated in the drawing of that plan?

6 A That plan -- what do you mean by -- sorry. What do you
7 mean by that plan? Like which plan?

8 Q If a plan was drawn that purported to observe the
9 districting criteria that you observed and that plan that was
09:33:55 10 drawn ended up with two majority-minority districts, wouldn't
11 that strongly suggest that race actually predominated in the
12 drawing of that plan with two majority-minority districts?

13 A I'm sorry. I don't feel comfortable talking about the
14 hypothetical plan that I don't have in front of me, because in
09:34:15 15 order to evaluate, you know, any plan, I would need to know
16 exactly what the plan is. And I like to refrain from making
17 any speculative claims about what would I do if I have some
18 plan that's -- that -- don't know what it is.

19 MR. SMITH: Your Honor, may I have one moment to
09:34:42 20 consult with my colleagues?

21 JUDGE MARCUS: Sure.

22 MR. SMITH: Your Honor, nothing further.

23 JUDGE MARCUS: Thank you. Ms. Ebenstein, anything
24 further by way of re-redirect?

09:35:07 25 MS. EBENSTEIN: Your Honor, if I might ask one

1 question on re-redirect.

2 FURTHER REDIRECT EXAMINATION

3 BY MS. EBENSTEIN:

4 Q Could I ask that Dr. Imai answer the question from
09:35:16 5 Mr. Smith as he first understood it about core districts, which
6 I believe was: If racial predominance from past plans was
7 carried over into the current plan, would you observe that as
8 racial predominance in the current plan?

9 A In my analysis?

09:35:37 10 Q Yes.

11 A In my analysis that I reported.

12 Q That you have done so far?

13 A Yes. Yes, because I did not consider the core constraint.
14 So any -- any -- the -- my analysis would be able to detect,
09:35:52 15 you know, any way in which the race played a role, including
16 potentially from the previous plan.

17 Q Thank you.

18 MS. EBENSTEIN: Your Honor, no additional re-redirect
19 questions.

09:36:05 20 JUDGE MARCUS: All right. If there is nothing
21 further, then, we thank you very much, Dr. Imai, and you are
22 excused.

23 THE WITNESS: Thank you very much.

24 JUDGE MARCUS: And I -- I take it we will be going on
09:36:16 25 to the next Milligan witness.

1 MR. ROSBOROUGH: Yes, Your Honor.

2 MS. CARTER: Yes, Your Honor.

3 JUDGE MARCUS: I'm sorry?

4 MS. EBENSTEIN: And I believe my colleague will be
09:36:28 5 taking direct of that witness.

6 JUDGE MARCUS: All right. That would be
7 Mr. Rosborough, correct?

8 MS. EBENSTEIN: Yes, sir.

9 JUDGE MARCUS: Welcome, Mr. Rosborough, and your
09:36:39 10 witness that you are calling now is whom?

11 MR. ROSBOROUGH: Good morning, Your Honor, Milligan
12 plaintiffs called Dr. Ryan Williamson.

13 JUDGE MARCUS: Dr. Williamson, if you would raise your
14 right hand.

09:36:49 15 RYAN WILLIAMSON,
16 having been first duly sworn, was examined and testified as
17 follows:

18 JUDGE MARCUS: Thank you very much. If you would
19 state your name for the record, please.

09:37:02 20 THE WITNESS: Ryan Williamson.

21 JUDGE MARCUS: Thank you, and counsel, you may
22 proceed.

23 MR. ROSBOROUGH: Thank you, Your Honor.

24 DIRECT EXAMINATION

09:37:09 25 BY MR. ROSBOROUGH:

1 Q Good morning, Dr. Williamson. How are you today?

2 A Good morning. I am doing well. Thank you.

3 Q Good. Dr. Williamson, can you please tell the Court your
4 current professional position?

09:37:19 5 A I am currently an assistant professor of political science
6 at Auburn University.

7 Q And how long have you held that position?

8 A I have been serving in this role since the fall of 2018,
9 so about three-and-a-half years.

09:37:34 10 Q Where do you currently live?

11 A I currently live in Lee County, Alabama.

12 Q And how long in total have you lived in Alabama?

13 A Well, I have lived in Lee County since I began in Auburn
14 in 2018. My family moved to Prattville, Alabama, in Autauga
09:37:57 15 County when I was a small child. I received all of my K-12
16 education in Autauga County. After that, I went to the
17 University of Alabama at Birmingham, where I received my
18 undergraduate degrees. So I have spent the overwhelming
19 majority of my life in the state of Alabama.

09:38:12 20 Q And, Dr. Williamson, can you please describe your
21 educational background?

22 A Sure. As I mentioned, I received my undergraduate degree
23 from the University of Alabama at Birmingham in political
24 science. After that, I went on to the University of Georgia,
09:38:28 25 where I received my doctorate in political science.

1 Q And what was the focus of your doctoral studies?

2 A My doctoral studies focused broadly on American politics,
3 but more specifically my dissertation examined the role that
4 rules, laws, and institutional norms played in shaping things
09:38:49 5 like election outcomes.

6 Q And what type of course work did you engage in as part of
7 your doctoral studies?

8 A Substantively, I took a number of courses on things like
9 campaign politics, electoral politics, legislative process,
09:39:07 10 American political development. But I also studied political
11 methodology pretty extensively. I took courses on research
12 design, probability theory, ordinary least squares, maximum
13 likelihood estimation, geospatial data analysis, Bayesian
14 analysis. I also participated in the interuniversity
09:39:29 15 consortium for political and social research where I took
16 courses on advanced regression and multidimensional scaling, so
17 I have also studied Statistical Methods For Social Sciences
18 quite extensively.

19 Q Do you have any professional experience after your
09:39:46 20 doctoral degree other than your current position at Auburn?

21 A Yes. Between finishing my doctorate and beginning at
22 Auburn University, I served as a congressional fellow with the
23 American Political Science Association serving in the U.S.
24 Senate committee on rules and administration, which had
09:40:06 25 jurisdiction over things like federal election administration.

1 And my portfolio included things like the administration of
2 elections, electoral reforms, and things of that nature.

3 Q Dr. Williamson, can you describe your teaching experience
4 over the past few years?

09:40:25 5 A Yes. I have taught a broad range of courses from
6 introductory freshman level courses to master's and Ph.D. level
7 courses focusing on American politics, things like state
8 politics, voting behavior and representation, election
9 administration, policy reform, electoral institutions, but I'm
09:40:49 10 also responsible for teaching the research methods courses,
11 course for the master's in public administration program at
12 Auburn University.

13 Q How would you describe the focus of your -- or focuses of
14 your academic research?

09:41:05 15 A My research broadly, if I had to describe it succinctly,
16 would just be I examine how rules influence outcomes. I focus
17 on things like the role of institutions, different practices
18 across the 50 states, and how they are implemented and how they
19 affect things like the competitiveness of elections, who
09:41:28 20 decides to run, who ultimately wins, things of that nature.

21 Q And what, if any, is your quantitative analysis
22 experience?

23 A I've engaged in a broad range of quantitative analyses.
24 All of my nearly 30 publications include some level of
09:41:48 25 quantitative analysis, whether that is descriptive or

1 prediction based, i.e. through regressions, or things of that
2 nature.

3 Q What experience, if any, do you have regarding
4 redistricting?

09:42:03 5 A I, as I already mentioned, I -- redistricting was a part
6 of my portfolio while I was serving in the Senate.
7 Redistricting was one component of my dissertation. But beyond
8 that, I have published about six peer-reviewed academic
9 articles in some of the leading outlets in the field like the
09:42:25 10 *Journal of Politics*, the *Election Law Journal*, *State Politics*
11 *and Policy Quarterly* that focus on how different redistricting
12 practices influence election outcomes.

13 Q And as part of these publications, have you performed any
14 quantitative analysis in the redistricting context?

09:42:43 15 A Yes. As I mentioned, nearly all of my publications have
16 some level of quantitative analysis. I think there's only one
17 that doesn't include some empirical investigation. And that is
18 just descriptively the evolution of redistricting over time.

19 Q And do any of these analyses touch on Alabama?

09:43:06 20 A Yes. All of the publications that I have on
21 redistricting, save one, which specifically investigates New
22 York, look at all 50 states, and Alabama is included in that
23 investigation.

24 Q Dr. Williamson, have you led any trainings regarding
09:43:26 25 redistricting?

1 A Yes. As a part of the relationship Auburn has with the
2 National Association of Election Officials also referred to as
3 The Election Center, which has a continuing education program
4 for election professionals, I lead a number of trainings on
09:43:43 5 things like the constitutional law of elections, the evolution
6 of elections. But specifically, I have led an advanced
7 training specifically on redistricting and gerrymandering.

8 Q And, Dr. Williamson, have you received any awards or
9 grants related to your work?

09:44:03 10 A Yes. Regarding teaching, I've received multiple teaching
11 awards at both the University of Georgia while I was there, and
12 I was a finalist for a university-wide teaching award at Auburn
13 University. Regarding my research, I have received nearly
14 \$90,000 in grants from various organizations to support my
09:44:25 15 research.

16 MR. ROSBOROUGH: Your Honor, at this time, I'm
17 proffering Dr. Williamson as an expert in quantitative
18 redistricting analysis.

19 JUDGE MARCUS: Any objection or challenge, Mr. Davis?

09:44:38 20 MR. DAVIS: No objection and no challenge, Your Honor.
21 Although I would like to make a slight reservation of rights
22 that is not unique to Dr. Williamson at all. For all of the
23 experts for the various groups of plaintiffs, when we stipulate
24 to their qualifications as an expert, we mean it for purposes
09:44:54 25 of the preliminary injunction hearing. As the case progresses,

1 we expect there to be -- there may be more expert reports, and
2 we would reserve our rights to challenge any of those experts
3 later in the case. But we're stipulating for purposes of this
4 hearing that he should be admitted as an expert.

09:45:09 5 JUDGE MARCUS: All right. Anyone else want to be
6 heard on Dr. Williamson's qualifications?

7 Seeing none, the Court will qualify Dr. Williamson for the
8 purposes of this preliminary injunction hearing as an expert in
9 quantitative redistricting analyses. With that, you may
09:45:30 10 proceed.

11 MR. ROSBOROUGH: Thank you, Your Honor.

12 BY MR. ROSBOROUGH:

13 Q Dr. Williamson, what were you asked to analyze in this
14 case?

09:45:37 15 A In this case, I was asked to analyze the extent to which
16 race played a role in the formation of the federal
17 congressional boundaries in Alabama.

18 Q And what is your opinion in this case?

19 A After careful analysis, it is my opinion that race served
09:45:57 20 as a predominant factor in the construction of these district
21 boundaries.

22 Q And when you say these district boundaries, which
23 districts are you referring to?

24 A I'm specifically referring to districts 1, 2, 3, and 7.

09:46:13 25 Q Okay. We'll discuss each of the specific data points you

1 analyzed in turn, but overall, what type of analyses did you
2 perform in reaching your conclusions?

3 A Throughout my report, I analyze -- I compare groups across
4 a district line. I descriptively evaluate the racial
09:46:35 5 composition across a boundary, whether that is a district line
6 within a county or a district line that's -- runs between
7 counties.

8 Q How did the type of analysis you performed differ, if at
9 all, depending on the districts that you analyzed?

09:46:52 10 A The analysis did not differ, again, except for that
11 distinction between lines that run through counties, individual
12 counties or separating different counties.

13 Q Why did you find these analyses useful to determine the
14 role race played in the construction of the district lines?

09:47:12 15 A I felt this was the most useful analysis in order to just
16 depict the differences that may or may not exist across these
17 lines. I wasn't making predictions. I am not offering
18 alternatives. I'm -- my task was to simply describe a
19 relationship that may exist between racial composition and
09:47:32 20 district lines.

21 Q Dr. Williamson, are you aware of the redistricting
22 guidelines adopted by the joint legislative committee on
23 reapportionment?

24 A Yes, I am aware.

09:47:46 25 Q Did these districting guidelines play any role in your

1 analysis?

2 A They did not.

3 Q And why is that?

4 A These guidelines, though perhaps informative to the
09:48:01 5 construction of the lines, my job was to -- what I set out to
6 do was analyze the relationship between race and those lines.
7 And so my -- the guidelines that were put forth would not
8 change my analysis in any way.

9 Q Do you believe that considering these guidelines would
09:48:20 10 have changed your conclusions in any way?

11 A No, I do not believe the guidelines would have changed my
12 conclusions, either.

13 Q And why is that?

14 A Again, my analysis would not differ. My -- I sought to
09:48:34 15 investigate the relationship between the lines as presented and
16 the racial composition of districts. And so the guidelines
17 were not informative to that calculation.

18 Q Dr. Williamson, I will represent to you that the
19 defendants have argued that one of their primary objectives in
09:48:54 20 drawing these maps was preserving the cores of existing
21 districts.

22 Other than your analysis of the change between the 2011
23 maps and the current maps, which we'll get to later, why
24 doesn't this principle affect the analysis you performed?

09:49:09 25 A Whether these lines are drawn from scratch or built around

1 some existing boundaries, the relationship between race and
2 those district boundaries is going to be the same. And,
3 therefore, that guideline was not informative to the analysis
4 that I was conducting.

09:49:29 5 Q Okay. Let's turn to the specific analyses that you
6 performed.

7 Let's discuss District 7 first. What was the first step
8 in your analysis regarding the relationship between race and
9 district lines for District 7?

09:49:45 10 A The first step was identifying the splits. This map
11 contains very few splits. But most split counties I should
12 say. And so, therefore, I began by looking at the split
13 counties -- Jefferson, Montgomery, and Tuscaloosa, which are in
14 Congressional District 7 and then comparing them to other
09:50:07 15 counties within the state.

16 Q Why did you choose to analyze these splits?

17 A Again, there are very few splits, and the majority of
18 splits are occurring in District 7. And so it's useful to
19 understand our -- is there a relationship between race and the
09:50:27 20 likelihood of living in a split county?

21 MR. ROSBOROUGH: I'd like, Mr. Ang, if you could pull
22 up Exhibit M-2, which has been entered into evidence. If we
23 could just go to the first page. Thank you.

24 BY MR. ROSBOROUGH:

09:50:44 25 Q Dr. Williamson, do you recognize this document?

1 A Yes. This is my report.

2 Q Okay.

3 MR. ROSBOROUGH: And now, Mr. Ang, could you please
4 pull up Table 1 on page 3?

09:51:00 5 BY MR. ROSBOROUGH:

6 Q Dr. Williamson, Table 1 titled County Black VAP, what does
7 this represent?

8 A This table shows the county-wide Black Voting Age
9 Population, which I may also refer to as the VAP for the
09:51:17 10 counties that have been split in Congressional District 7. So
11 you see in the first column, I have listed the counties, and in
12 the second column, I have listed the districts that these
13 counties are split between, whether that's District 7, which is
14 being analyzed, or one of the other districts, whether they be
09:51:35 15 2, 4, or 6.

16 Q And what does this table show?

17 A So looking at this table, we are seeing a third column.
18 This is the Black VAP for each of these counties. 41.5 percent
19 for Jefferson, 56.3 for Montgomery County, and 29.5 for
09:51:55 20 Tuscaloosa. This next column, the median black percentage,
21 this is the median county in Alabama, essentially the middle
22 district, middle county, excuse me, within the state. And that
23 county's Black VAP just to serve as a point of comparison.

24 And so this last column is the column of interest here.
09:52:15 25 It includes the percentage deviation, essentially just the

1 difference between columns 3 and 4. And so a positive
2 deviation denotes that these counties feature a larger Black
3 VAP, and negative deviation would denote that these counties
4 feature a lower Black VAP than the median.

09:52:33 5 Q What did this analysis -- what does this analysis tell the
6 Court?

7 A This analysis shows that the counties that are being split
8 are substantively -- have substantively higher levels of Black
9 VAP than the median county within Alabama. So the splits are
09:52:57 10 occurring in predominantly black counties.

11 Q Why is that meaningful for your analysis?

12 A Again, this is -- this establishes early on just a
13 suggestive of a relationship between race and district
14 boundaries.

09:53:16 15 Q Thank you. We can take that document down for the moment.

16 Dr. Williamson, what additional analysis did you perform
17 relating to the district splits in Jefferson, Tuscaloosa, and
18 Montgomery counties?

19 A I then look at the Black VAP within the different segments
09:53:41 20 of those counties, essentially comparing the racial
21 compositions of the districts that are contained within a
22 single county.

23 Q Why did you run this analysis?

24 A Again, it's useful to understand if these lines are drawn
09:53:59 25 without respect to race, we shouldn't expect to see meaningful

1 differences on opposite sides of a line bisecting a county. So
2 I wanted to make those comparisons.

3 Q Dr. Williamson, if you just draw a line bisecting a
4 county, couldn't racial differences just occur by chance?

09:54:17 5 A Sure. Any one line drawn through a county, a district,
6 the entire state may depict racial differences on opposite
7 sides. But we're not talking about one line. We're talking
8 about a collection of lines. We're not talking about a random
9 line. We're talking about a deliberately constructed line.
09:54:39 10 And so I wouldn't consider any one of these an isolation. It's
11 about looking at all of them.

12 Q Okay.

13 MR. ROSBOROUGH: Mr. Ang, could you please pull up
14 Table 2 on page 4 of Dr. Williamson's report?

09:54:55 15 BY MR. ROSBOROUGH:

16 Q Dr. Williamson, what does this table titled Census Block
17 Black VAP Within County represent?

18 A Again, we're looking at Jefferson, Montgomery, and
19 Tuscaloosa counties and looking at the different districts that
09:55:11 20 parts of these counties have been drawn into. So that's the
21 first two columns.

22 Here, I'm looking at the average census block Black Voting
23 Age Population within the county, and then depicting that
24 average here and presented in the third column, and then
09:55:28 25 describing that difference again with a percentage point

1 deviation in that fourth and final column.

2 Q Let's start with Tuscaloosa. What does this analysis show
3 regarding Tuscaloosa County?

4 A So this analysis shows that the part of Tuscaloosa that
09:55:45 5 was drawn into Congressional District 4 featured an average
6 Black VAP by census block of less than 10 percent compared to
7 the part of Tuscaloosa that was drawn in Congressional District
8 7 featured an average Black Voting Age Population of 33.5
9 percent. And then compared to the county as a whole, we're
09:56:06 10 talking about a nearly 25 percentage point deviation between --
11 between those two segments.

12 Q What did this analysis find regarding Montgomery County?

13 A Regarding Montgomery County, we see a similar relationship
14 where the average Black VAP part of the county that is drawn
09:56:27 15 into the district other than CD 7 is noticeably lower than the
16 part of the county that was drawn into Congressional District
17 7. So, again, we see 41 percent drawn into CD 2, and then
18 75 percent drawn into CD 7. And then compared to the county as
19 a whole, we see a 34-ish percentage point deviation between
09:56:51 20 these two groups.

21 Q And what were your -- what did your analyses show about
22 Jefferson County and how the Black Voting Age Population was
23 split between the two districts?

24 A Again, we see a similar relationship even greater in
09:57:07 25 magnitude. The part of the county drawn out of Congressional

1 District 7 features a much lower Black VAP, and the part of the
2 county drawn into Congressional District 7 had a much higher
3 average Black VAP compared to the county as a whole. We're
4 talking about a more than 45 percentage point difference, which
09:57:26 5 is the equivalent of having essentially Cullman County and one
6 part of the county, and say, Barbour County in the other part
7 of the counties split by this congressional district line.

8 Q Dr. Williamson, for your analysis, why did you choose to
9 focus on average Black Voting Age Population in each census
09:57:54 10 block rather than looking at the county as a whole?

11 A I focus on this for two reasons. One, I wanted to be
12 consistent and throughout these later analyses. But it's also
13 useful in that the census blocks are not necessarily weighted
14 by population. And so more populace areas, which tend to have
09:58:16 15 higher Black Voting Age Populations are weighted down. So this
16 actually creates a more conservative test when analyzing these
17 differences. And so that gives me greater confidence that any
18 relationship that I do uncover is not an artifact of the -- of
19 how the data are constructed or the estimation strategy.

09:58:38 20 Provides me more confidence in my conclusions.

21 Q How do these deviations by race -- or rather by Voting Age
22 Population by race between the districts in these three
23 counties inform your opinion about Congressional District 7?

24 A These -- this analysis leads me to conclude that race was
09:58:59 25 indeed a predominant factor in constructing CD 7.

1 Q Thank you.

2 MR. ROSBOROUGH: You can take that down, Mr. Ang.

3 Thank you.

4 BY MR. ROSBOROUGH:

09:59:09 5 Q Dr. Williamson, let's turn to your analysis of District 1,
6 2, and 3.

7 How did you look at the relationship between district
8 lines and Black Voting Age Population here?

9 A Here, I began with the acknowledgment that, you know,
09:59:27 10 Black Voting Age Population is not randomly distributed
11 throughout the state. It is instead concentrated in specific
12 group geographic portions of the state.

13 MR. ROSBOROUGH: And, Mr. Ang, can you please pull up
14 the map on page 6 of Dr. Williamson's report?

09:59:49 15 BY MR. ROSBOROUGH:

16 Q Dr. Williamson, what does this map represent?

17 A This map shows -- the title here is Black Voting Age
18 Population by county. So here we see each county's Black VAP
19 denoted by the proportion with darker shades of gray
10:00:08 20 illustrating higher levels of the Black Voting Age Population.

21 Q How did this map, if at all, inform your analysis?

22 A Again, this is useful in illustrating, again, how the
23 Black Voting Age Population is not randomly distributed
24 throughout the state. It is indeed concentrated in specific
10:00:28 25 portions of the state.

1 Q Thank you.

2 MR. ROSBOROUGH: You can take that down, Mr. Ang.

3 BY MR. ROSBOROUGH:

4 Q Why did you want to learn whether Black Voting Age
10:00:38 5 Population concentrations with -- within the state -- well,
6 strike that.

7 Dr. Williamson, what was the next step in your analysis
8 here?

9 A Given this concentration within the state, I wanted to see
10:00:54 10 if a comparable concentration emerged in the construction of
11 congressional districts.

12 Q Why is learning whether a comparable construction of Black
13 Voting Age Population within the district, why is that
14 something you wanted to learn as part of your analysis?

10:01:11 15 A If the concentration of Black Voting Age Population is
16 defused across multiple districts, that would provide evidence
17 of race as a factor in the construction of those boundaries.

18 Q Okay. And how did this analysis, if at all, differ from
19 your District 7 analysis?

10:01:32 20 A Again, the analysis here was focusing on comparison across
21 district boundaries. And with respect to CD 7, I was making
22 comparisons across district boundaries within the same county.
23 Here, I'm making comparisons across district boundaries in
24 separate counties.

10:01:51 25 Q Okay. What was the starting point for the analyses you

1 performed concerning these three districts?

2 A The starting point was looking at the level of variation
3 in the Black VAP across each of the congressional districts.

4 Q And what were you looking to analyze there?

10:02:12 5 A Again, I was looking to examine the variation, trying to
6 ascertain, if at all, there was a -- there might be a
7 relationship between race and the construction of district
8 boundaries based on how variable the Black Voting Age
9 Population was, whether or not, again, that concentration
10:02:34 10 translated into how the districts were drawn.

11 MR. ROSBOROUGH: Mr. Ang, can you please pull up Table
12 3 from Dr. Williamson's report?

13 BY MR. ROSBOROUGH:

14 Q Dr. Williamson, what does this table, which is titled
10:02:51 15 Congressional District Black VAP by census block, what does
16 this represent?

17 A As you see on the far left, I have listed all of the
18 districts, seven districts here, include the average Black VAP
19 by census block in the second column to contextualize the,
10:03:09 20 again, the general overall level of the average Black VAP.

21 Then I also include the standard deviation and
22 interquartile range. These are broadly speaking just measures
23 of variability. Imagine a distribution where, you know, if
24 it's very, you know, very thin and piqued, then there's not a
10:03:31 25 lot of variety. If it's very short and wide, there's a lot of

1 variables. But, you know, put it, you know, even more simply,
2 a higher standard deviation denotes greater variability, and a
3 lower standard deviation denotes less variability than the
4 average Black VAP. This is one measure of variability.

10:03:52 5 I employ a second measure of variability, this being the
6 interquartile range. Here, the number to the left of the colon
7 is the 25th percentile. So if you were to rank order all
8 census blocks within a district by their BVAP from smallest to
9 largest, that 0 for Congressional District 1 would be the 25th
10:04:14 10 percentile. And the number on the right would be the 70th --
11 75th percentile. Excuse me. So we are looking at the middle
12 50 percent in order to kind of eliminate any outliers that may
13 emerge and provide another measure of variation here.

14 Q And, Dr. Williamson, I think that was a helpful
10:04:33 15 explanation of the interquartile range. Can you explain a
16 little more about what precisely standard deviation is?

17 A Again, the -- there's a distribution that kind of centers
18 around an average. The standard deviation kind of denotes
19 again how -- how dispersed the data are. Again, so thinking
10:04:54 20 about, you know, to what percentage of the county -- the
21 district's Black VAP fits between, the average plus or minus
22 that standard deviation.

23 Q What is the significance of greater variability of Black
24 Voting Age Population between census blocks in a given
10:05:18 25 district?

1 A Again, thinking about the concentration that we saw in
2 that earlier map, greater variation as depicted by the standard
3 deviation in the interquartile range illustrate the connecting
4 predominantly black counties to other predominantly white
10:05:40 5 counties. So just providing evidence of a potential
6 relationship between race and the construction of boundaries.

7 Q Was there any comparison between these seven districts
8 here that you found useful for your analysis?

9 A Yes. I think it's useful to compare Districts 1, 2, and 3
10:06:00 10 to those of 4, 5, and 6. So starting with 4, 5, and 6, we see
11 the average Black VAP is much lower. The standard deviation is
12 also lower. You notice it's only between the -- essentially 21
13 and 28 percentage point range as compared to Districts 1, 2,
14 and 3 where that range is in the mid 30s.

10:06:21 15 So right away, we see that, you know, there is a
16 relatively high concentration of predominantly white areas in
17 the northern part of the state. And that is translating into
18 the construction of these districts, and going to be
19 interquartile range illustrates that well where looking at
10:06:43 20 Congressional District 4, for example, 75 percent of all census
21 blocks feature 4.5 percent or less Black VAP. And so we --
22 that's what a concentrated racial composition would look like
23 within a district.

24 Then comparing to Districts 1, 2, and 3, again, as I
10:07:04 25 already mentioned, the standard deviation is, you know, 5 to 10

1 percentage points higher, and the interquartile range is much
2 broader. So 25 percent of all census blocks within all of 1,
3 2, and 3 feature 0 percent Black VAP. But on the opposite end
4 of the scale, 25 percent of all census blocks feature at least
10:07:29 5 40 percent, if not more than 50 percent Black VAP. And so,
6 again, the point here is there is a lot more variability in
7 Districts 1, 2, and 3.

8 MR. ROSBOROUGH: Mr. Ang, you can take that down,
9 please. Thank you.

10:07:43 10 BY MR. ROSBOROUGH:

11 Q Dr. Williamson, how does this analysis inform your
12 conclusion?

13 A This is instructive in that describing that there's a
14 potential for a relationship but based on race, again, thinking
10:07:58 15 about translating the -- essentially splitting the
16 concentration of predominantly black counties across multiple
17 districts.

18 Q Dr. Williamson, let's move on to your next analysis. What
19 did you next study regarding the defusion of Black Voting Age
10:08:21 20 Population?

21 A In thinking about this, I created two categories of
22 counties; counties that share a border with another
23 congressional district, and those that are landlocked, for lack
24 of a better word, those that are internal to the district that
10:08:36 25 do not share a border with some adjoining congressional

1 district.

2 Q Why did you seek to analyze -- well, let me put it a
3 different way. Why was this comparison of districts that
4 shared a border or -- sorry -- counties that shared a border
10:08:54 5 with another district versus counties that did not useful for
6 your analysis?

7 A This is useful in that if the lines were drawn without
8 respect to race, if the lines were not drawn in such a way to
9 separate predominantly black counties and adjoin them to
10:09:14 10 predominantly white counties, there shouldn't be a relationship
11 between those that share a border and those that do not share a
12 border.

13 MR. ROSBOROUGH: Mr. Ang, can you please pull up Table
14 4 from Dr. Williamson's report?

10:09:26 15 BY MR. ROSBOROUGH:

16 Q Dr. Williamson, Table 4 from your report titled Census
17 Block Black VAP Within Districts, what does this table
18 represent?

19 A This table represents, again, the two categories that I
10:09:47 20 created; no shared border versus those that share a border. I
21 just want to note that my definition of sharing a border was
22 very conservative. If a county touched any part of a
23 neighboring county in a different district, it was counting as
24 sharing a border, even if that was more -- it was potentially a
10:10:09 25 touch point continuity. And so that's why District 1 is not

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1 included in this analysis, because by that definition, there
2 are -- there's no differentiation between shared borders and
3 unshared borders.

4 With that aside, this depicts the, again, the average
10:10:26 5 census block Black Voting Age Population of the entire county
6 based on these two different bins that I have created for
7 Districts 2 and 3.

8 Q What did you find here in analyzing District 3, first of
9 all?

10:10:43 10 A With respect to District 3, we see a more than 4
11 percentage point difference between counties that are internal
12 to the district and counties that border another district with
13 the border counties featuring a higher Black Voting Age
14 Population.

10:11:02 15 Q And what did you find regarding District 2?

16 A Regarding District 2, we see the same relationship of with
17 an even greater magnitude. We see a 13 percentage point
18 difference between counties that share a border with another
19 district and counties within that same district that do not
10:11:20 20 share a border.

21 Again, with the border counties featuring a higher average
22 Black Voting Age Population.

23 Q What is the significance of this analysis?

24 A Again, this illustrates how predominantly black counties
10:11:39 25 served as the cut points for dividing congressional districts

1 and the construction of these maps -- this map, I should say.

2 Q Could the different concentrations of Black Voting Age
3 Population within Districts 1, 2, and 3 and this shared border
4 analysis for Districts 2 and 3 just reflect that some parts of
10:12:01 5 the state of Alabama are just more racially diverse than
6 others?

7 A There are indeed -- there's necessarily going to be some
8 greater variability. But, again, we know that there are
9 concentrations within the state that are not translating to
10:12:17 10 comparable concentrations within the congressional districts.

11 MR. ROSBOROUGH: Mr. Ang, you can take that down.

12 Thank you.

13 BY MR. ROSBOROUGH:

14 Q Dr. Williamson, collectively, what did you conclude based
10:12:28 15 on these analyses?

16 A Based on these analyses, I again conclude that race was a
17 predominant factor in deciding how to construct the
18 congressional boundaries.

19 Q Okay. Dr. Williamson, what type of analysis did you
10:12:46 20 perform about the ways -- let me rephrase that.

21 What type of analyses about the ways in which specific
22 district splits occurred did you -- in this portion of the
23 state did you perform?

24 A I then look at the -- just compare, again, the racial
10:13:06 25 distribution of Black VAP within the state from the earlier map

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1 with the proposed map, just examining some of the choices made
2 with respect to the districts.

3 MR. ROSBOROUGH: Mr. Ang, can you please pull up the
4 maps that are side by side from page 8 of Dr. Williamson's
10:13:23 5 report?

6 BY MR. ROSBOROUGH:

7 Q Dr. Williamson, what are these two maps represent?

8 A These two maps, the one on the left is the congressional
9 plan as enacted. And the one on the right is, again, the
10:13:40 10 county Black Voting Age Population with darker shades of gray
11 denoting higher levels of Black VAP.

12 Q Is there a reason that you place these maps side by side?

13 A I think it's instructive and serves to well contextualize
14 some of the analysis that preceded this.

10:14:03 15 Q What did you find as part of this visual analysis? First,
16 let's start with District 3.

17 A Starting with District 3, I think one of the things that
18 were most striking to me was the inclusion of Macon and Russell
19 County right here that I have highlighted. And so you can see
10:14:26 20 that these feature relatively high levels of county Black
21 Voting Age Population. They are a part of the state that is
22 traditionally referred to as the Black Belt. And so you have
23 predominantly black counties in the same district as a number
24 of predominantly white counties that are some parts more than
10:14:47 25 150 miles away from each other.

1 Q Dr. Williamson, what did you find in your visual analysis
2 regarding District 2?

3 A Regarding District 2, again, the exclusion of Macon and
4 Russell county here, but for Congressional District 2, it's
10:15:06 5 also noticeable the inclusion of Autauga and Elmore here. And
6 so, again, you have excluded parts of the state traditionally
7 referred to as the Black Belt and included parts of the state
8 that are predominantly white. And I don't do any analysis
9 about compactness or anything like that. But just to eyeball
10:15:30 10 it, it is interesting to note that it may make for a more
11 compact district to include Macon and Russell in lieu of
12 Autauga and Elmore -- other necessary stipulations aside.

13 Q And what did you find in your visual analysis regarding
14 District 7?

10:15:51 15 A District 7 is particularly striking in that if you were
16 asked to construct a majority-black district, you could well
17 predict where Congressional District 7 was simply by following,
18 you know, this distribution here.

19 And so you see the concentration translating into a
10:16:18 20 district here. But the comparable concentration in other parts
21 of the state is being diffused across districts 1, 2, and 3.

22 Q Okay. How was your visual analyses informed, if at all,
23 by your quantitative analysis?

24 A Again, this serves to contextualize essentially how these
10:16:41 25 -- this empirical analysis presents on a map just like

1 corroborating that conclusion.

2 Q Considering all of these analyses together, what did you
3 conclude about the construction of Districts 1, 2, and 3?

4 A I conclude that race was a predominant factor in deciding
10:17:01 5 how to construct these district boundaries.

6 Q Is there any reasonable chance that these racial divisions
7 are explained by reasons other than race?

8 A Any one test or one data point may be attributable to
9 chance. But looking at the visual analysis, looking at all of
10:17:25 10 the individual tests within each analysis, a consistent and
11 substantively large relationship emerges. And so it is
12 extremely unlikely that this relationship would exist again, so
13 consistently and so substantially purely to chance.

14 Q Dr. Williamson, let's switch gears. What was the final
10:17:49 15 analysis that you performed?

16 A In my final analysis, I compared the enacted map to the
17 previously enacted map of 2011 looking at the census blocks
18 that were moved in or out of congressional districts.

19 Q Why did you perform this analysis?

10:18:12 20 A Yes. This analysis is instructive to understand the role
21 that race played. Again, if race was not a factor, we
22 shouldn't see, you know, an appreciable relationship between,
23 you know, essentially who is being moved in and out of
24 different districts.

10:18:31 25 MR. ROSBOROUGH: Mr. Ang, can you please pull up Table

1 5 from Dr. Williamson's report?

2 BY MR. ROSBOROUGH:

3 Q Dr. Williamson, Table 5 here is entitled Average Census
4 Block Black VAP. What does this table represent?

10:18:50 5 A Again, as you see on the far left, these are the different
6 districts that I look at -- 1, 2, 3, 6, and 7. The 1, 2, 3,
7 and 7 being the districts I was asked to analyze. 6 being
8 included here for reasons that I can explain later.

9 The second column here the total, again, this is the
10:19:11 10 average census block Black Voting Age Population. Then from
11 there, I create three categories; moved in, moved out, and
12 those that were kept the same. These describe census blocks
13 that were either kept in that district between 2011 and 2021,
14 those that were moved out, so if it was moved out of that
10:19:30 15 district between the two maps, and those that were kept the
16 same. And then I show the average census block Black VAP for
17 each of those three categories.

18 Q What did you find regarding these districts, in terms of
19 who was moved in and moved out and kept the same?

10:19:47 20 A Yeah. So I just want to note up front that there were --
21 I didn't have any census blocks moved into Congressional
22 District 1. So this test isn't necessarily appropriate for
23 evaluating CD 1. But looking at 2, 3, and 7, we see
24 substantially larger average Black VAPs moved out than those
10:20:13 25 that were moved in. And so, for example, within Congressional

1 District 2, the average Black VAP moved in was 31 percent. And
2 the average black VAP for census blocks moved out of 2 was
3 55.6 percent.

4 A similar relationship exists between moved in and moved
10:20:34 5 out in CD 3 with, you know, about a 15 percentage point
6 difference between the two. And then again in CD 7 where you
7 see a more than 28 percentage point difference, again, with
8 predominantly black census blocks being moved out of the
9 district. Sorry. And to round that off, thinking about, you
10:20:58 10 know, where -- where those blacks census blocks are potentially
11 being moved, we see the opposite relationship emerging in
12 Congressional District 6.

13 Again, we see it already has a, you know, relatively --
14 again, relative to these other districts low Black VAP of
10:21:16 15 18 percent. Those that were moved out of it were predominantly
16 white areas. Looking at the move out for CD 6, we see about
17 25 percent. But almost 50 percent Black VAP for census blocks
18 that were moved in to CD 6.

19 Q Thanks.

10:21:34 20 MR. ROSBOROUGH: You can take that down, Mr. Ang.

21 BY MR. ROSBOROUGH:

22 Q Dr. Williamson, what are -- what is the significance of
23 those findings?

24 A Again, this is useful in illustrating the defusion of the
10:21:51 25 Black Voting Age Population and the role that race played in

1 the construction of the district boundaries.

2 Q How do we know that these racial disparities you have
3 identified are not just occurring by chance or due to some
4 other factor?

10:22:06 5 A Again, I wouldn't consider any one of these points in
6 isolation as indicative of, you know, a relationship. But the
7 -- all of these corroborate all of the other tests in
8 illustrating the differences between groups illustrating a role
9 of race as a predominant factor. And so, again, given the
10:22:32 10 consistent findings and given the substantially large
11 differences at times between groups, it is very, very unlikely
12 to see such a consistent pattern purely by chance.

13 Q Based on all of your analyses, what are your opinions
14 about the role of race in the lines of Districts 1, 2, 3, and
10:22:52 15 7?

16 A Again, after these analyses, I conclude that race indeed
17 served as a predominant factor in the construction of these
18 district boundaries.

19 Q Thank you, Dr. Williamson.

10:23:08 20 MR. ROSBOROUGH: I am ready to pass the witness.

21 JUDGE MARCUS: Thank you. I take it, Mr. Davis, you
22 will begin your cross?

23 MR. DAVIS: Yes, Your Honor.

24 JUDGE MARCUS: I'm sorry. We're picking up something
10:23:25 25 else from someone else.

1 Okay. Thank you. Mr. Davis, you will be doing it for
2 both the Secretary of State and for the intervening defendants?
3 Or is Mr. Walker going to also be asking questions, or maybe --

4 MR. DAVIS: Mr. Walker -- he's sitting next to me. He
10:23:45 5 have says he does not expect to have any questions for
6 Dr. Williamson.

7 JUDGE MARCUS: The only reason I'm asking how long be
8 you be -- maybe this is a convenient time for us to take our
9 first break before you start.

10:23:57 10 MR. DAVIS: I think it would be. I doubt I would get
11 us to the lunch hour, but it will more than a few minutes.

12 JUDGE MARCUS: Why don't we do this. Let's take a
13 15-minute break at this point. And then we will come back,
14 Mr. Davis, and begin with your cross-examination. I have 10:25
10:24:19 15 your time. So we'll start at about 10:40 or so your time.

16 MR. DAVIS: Very well.

17 (Recess.)

18 JUDGE MARCUS: Is everybody available, and can you all
19 hear me okay?

10:41:57 20 Thank you so much. We had just a little snafu here.
21 We're ready to begin, then, with the cross-examination.
22 Mr. Davis?

23 MR. DAVIS: Yes, Your Honor.

24 CROSS-EXAMINATION

10:42:09 25 BY MR. DAVIS:

1 Q Good morning, Dr. Williamson.

2 A Good morning.

3 Q My name is Jim Davis. I represent Secretary Merrill in
4 this action.

10:42:18 5 You did not -- if I understand you correctly, you did not
6 consider Alabama's redistricting guidelines?

7 A That is correct.

8 Q So that means you did not consider traditional
9 redistricting criteria such as preserving communities of
10:42:35 10 interest?

11 A I did not directly assess that, that is correct.

12 Q And you did not directly assess the traditional
13 redistricting principle of avoiding conflicts among incumbents?

14 A That was not included in my analysis, that is correct.

10:42:50 15 Q And is that also true for core preservation and
16 compactness?

17 A For all redistricting guidelines, my task was to evaluate
18 the relationship between the lines and race. And so,
19 therefore, regardless of the guidelines, the lines as presented
10:43:12 20 are the same. And so, therefore, they were not informative to
21 my calculation.

22 Q But then you did not test whether the principle of core
23 preservation had any explanation for -- was any explanation for
24 where the lines were drawn?

10:43:28 25 A I did not directly assess that. Again, whether the maps

1 were drawn from a completely blank slate or derived from some
2 previous map, the relationship between race and where those
3 lines lay is the same. And so, therefore, it was not necessary
4 to include that in the pursuit of examining the relationship
10:43:52 5 between race and district boundaries.

6 Q Let's test that.

7 One -- the first opinion that you went through, if I
8 understood you correctly, was that when you looked at the ways
9 counties were split, your opinion was that if the racial
10:44:09 10 demographics were significantly different on one side of the
11 split than the other, then that led you to conclude that race
12 was a predominant factor. Is that a fair summary of your
13 opinion?

14 A That -- I would say, yes, that's generally fair.

10:44:23 15 Q I would like to share my screen and show you -- this is a
16 portion of Defense Exhibit 1, an expert report from Tom Bryan.
17 This is page 68 of that report. It is a map that he has
18 presented. I will represent to you, Dr. Williamson, that in
19 this map, Dr. Bryan has shown before and after Alabama's
10:44:51 20 district.

21 Do you see, for example, dark lines around District 5 in
22 the state?

23 A Yes.

24 Q In the northern part of the state? Those are the old
10:45:02 25 district lines, and the little blue here shows where the new

1 district lines. You can tell -- and Dr. Bryan -- Mr. Bryan
2 will be able to testify about this when it's his turn to
3 testify, Your Honor -- Dr. Williamson, what I represent to you
4 is this shows that before November, the lines were here where
10:45:24 5 the red is, and after redistricting in November, take this part
6 out of District 5. So you see the before and after.

7 Now, I say that to preface a couple of questions,
8 Dr. Williamson.

9 Do you agree that the line Montgomery County was moved a
10:45:43 10 little north?

11 A It does appear based on this depiction. Thank you. It
12 does appear based on this depiction that the 2021 line is,
13 indeed, north of the 2011 line.

14 Q Gotcha. Do you agree -- this is the area of Montgomery
10:46:01 15 County. Do you agree that District 3, then, was moved out of
16 Montgomery County, and District 2 absorbed the portions of
17 Montgomery County?

18 A Yes, I see that.

19 Q Okay. And here this is Tuscaloosa. Would you agree that
10:46:19 20 it looks like this line in District 7 in Tuscaloosa County
21 moved a little north?

22 A Yes.

23 Q Okay. Then you see other lines, too, were changed in
24 Jefferson County.

10:46:30 25 Dr. Williamson, do you know whether District 7 was

1 underpopulated or overpopulated after the 2020 census?

2 A I -- I have no basis to speak to that.

3 Q Okay. Well, there will be other evidence and other
4 witnesses who can speak to that.

10:46:47 5 I want you to assume for me that the evidence shows that
6 District 7 was underpopulated by 53,000 people. You know, but
7 before they sat down to draw the new district lines and they
8 looked to see which districts had too many people and too few
9 people based on one person one vote principles, which districts
10:47:11 10 needed to add population and which needed to take away
11 population, District 7 needed to add 53,000 people.

12 Now, if you were a legislator, Dr. Williamson, and you
13 cared about core preservation and you needed to find 53,000
14 people, where do you think the Legislature should have turned?

10:47:35 15 MR. ROSBOROUGH: Outside the scope of Dr. Williamson's
16 report and direct.

17 JUDGE MARCUS: Mr. Davis?

18 MR. DAVIS: I disagree. Dr. Williamson has said that
19 he can discern the legislator's intent from where they drew the
10:47:49 20 lines. I want to explore whether there aren't other perfectly
21 rational explanations that when they sit down to districting
22 the real world and had to consider real redistricting criteria
23 whether there's not other explanations other than race for the
24 moves.

10:48:05 25 MR. ROSBOROUGH: Can I respond briefly, Your Honor?

1 JUDGE MARCUS: Sure.

2 MR. ROSBOROUGH: That's a complete misrepresentation
3 Dr. Williamson's task. Nowhere in Mr. Williamson's report or
4 testimony does he purport to examine the subjective intent of
10:48:19 5 any individual. He is examining objective circumstantial
6 evidence of this. And what Mr. Davis is getting to is
7 something entirely outside of the scope of his opinions and
8 report.

9 JUDGE MARCUS: Are you able to answer that question,
10:48:34 10 Dr. Williamson?

11 THE WITNESS: I am not. At no point, did I
12 investigate anything about a legislator's or anyone else's
13 suggestive intent. I simply sought to analyze again the
14 relationship between race and the district lines as drawn.

10:48:50 15 JUDGE MARCUS: If you want to reframe your question,
16 Mr. Davis, I will permit you to put it.

17 BY MR. DAVIS:

18 Q I will try something else. Okay. So, Dr. Williamson, you
19 are saying you are not offering an opinion of any person's
10:49:01 20 intent?

21 A That is correct. I am describing a relationship.

22 Q Okay. You said if I understood your testimony on direct
23 correctly that you -- you formed an opinion that race was a
24 predominant factor in where the lines occurred?

10:49:17 25 A That is correct.

1 Q Okay. Well, somebody drew those lines. Was it a
2 predominant factor for whom?

3 A I make no statements and offer no opinions about whose
4 intent or anything like that. I am -- when I say predominant,
10:49:37 5 I am simply describing a consistent and substantially large
6 relationship between two things, in this case, race and the
7 district lines, as drawn.

8 Q Okay. But you're not offering an opinion that any
9 legislator voted for or against these plans based on race?

10:49:58 10 A I am offering nothing about any individual's thoughts or
11 motivations or anything along those lines.

12 Q And you did not test whether it might be motivated by
13 other criteria such as core preservation?

14 A Again, whether core preservation entered into the
10:50:17 15 calculation would not have changed my analysis, and, therefore,
16 would not have changed my conclusions. I was purely interested
17 in the lines as presented and their relationship with race.

18 Q Let's explore the thing, then, that you may not have
19 considered.

10:51:00 20 This, Dr. Williamson, another portion of Dr. Bryan's
21 expert report, Defense Exhibit 1, and I want to direct you to
22 page -- let's look at page 71.

23 So I will represent to you, Dr. Williamson, what this map
24 is depicting -- no, I want to go back to page 69. Yes. I will
10:51:30 25 represent to you this is a plan presented by Dr. Duchin. I

1 will represent to you, as well, that what Mr. Bryan has done
2 here is he's shown the outlines of one of Dr. Duchin's
3 demonstrative plans, and within the state is color-coded
4 precincts by the concentration of African-American population.

10:51:56 5 See this key down at the bottom. These precincts, which are
6 between 0 and 10 percent black are colored red. The 25 is
7 orange. Yellow, light green, dark green. The dark green is
8 where African-American population is more heavily concentrated,
9 and the red is where it's least concentrated.

10:52:16 10 Do we understand each other, you think, Dr. Williamson?

11 A Yes. Red is lower black population and green is higher.

12 MR. ROSBOROUGH: I am going to object here. There's
13 been no basis.

14 JUDGE MARCUS: We haven't heard the question.

10:52:30 15 Mr. Rosborough, we haven't heard the question yet. He's showed
16 him the map, and he explained it to him. Let's hear the
17 question, and then you can interpose your objection.

18 MR. ROSBOROUGH: Thank you, Your Honor.

19 BY MR. DAVIS:

10:52:41 20 Q Now, we want to focus in a little bit on Jefferson County.
21 And I know that's made -- Dr. Williamson, first of all, you
22 haven't had a chance to test the accuracy of this map, correct?

23 MR. ROSBOROUGH: Objection.

24 THE WITNESS: That is correct.

10:52:55 25 JUDGE MARCUS: I'm sorry.

1 MR. ROSBOROUGH: Dr. Williamson -- there's been no
2 foundation to establish that Dr. Williamson knows what he is
3 looking at or who Dr. Duchin even is.

4 JUDGE MARCUS: Why don't you lay the foundation and
10:53:06 5 simply ask him whether he's ever seen this map before,
6 Mr. Davis.

7 MR. DAVIS: Yes, sir.

8 BY MR. DAVIS:

9 Q Have you seen this before, Dr. Williamson?

10:53:12 10 A I have never seen this before.

11 Q Okay. Then I would like to at least ask my question then
12 let them object.

13 If -- Dr. Williamson, if this map does show that this
14 district was -- as drawn by Dr. Duchin, this split of Jefferson
10:53:33 15 County, that this area inside the line is more heavily
16 African-American, the green precincts, than this area outside
17 the line, which is red and orange, would you form the same
18 opinion that you expressed about Alabama's plan that race was a
19 predominant factor in the drawing of these lines?

10:53:52 20 MR. ROSBOROUGH: Objection. Calls for speculation.

21 JUDGE MARCUS: Can you answer that question,
22 Dr. Williamson?

23 THE WITNESS: No, I don't feel comfortable speculating
24 based on just looking at this one part of this one map that I
10:54:05 25 haven't had any time to do anything with.

1 BY MR. DAVIS:

2 Q What more would you need to know -- if you assume, again,
3 that this area on one side of the line is more heavily
4 African-American than the area outside the line, what more
10:54:21 5 would you need to know to form the same opinion about this plan
6 that you expressed about Alabama's plan?

7 A My conclusion was not based on any one piece of evidence.
8 I would want to look at the totality of everything in order to
9 ascertain whether or not there was a, you know, substantially
10:54:40 10 large and consistent relationship between these things that
11 could be empirically validated beyond eyeballing a map.

12 Q Okay. Did you form any opinion, then, whatsoever about
13 incursion into Mobile County in assuming that this green does,
14 in fact, depict more heavily African-American area than the
10:55:05 15 area that she did not include in District 2?

16 A Again, these -- there's just simply not enough information
17 here for me to reliably draw any conclusions that I would feel
18 comfortable espousing in this setting.

19 Q So it's not the split -- are these circumstances that you
10:55:30 20 would consider to be evidence that race was a predominant
21 factor?

22 A Could you tell me what you mean by that? I am not sure I
23 understand the question.

24 Q Very well. I am not asking you now to draw an ultimate
10:55:46 25 conclusion about whether race is a predominant factor. But

1 based on the analysis that you have applied to Alabama's plan,
2 would you looking at this split of Mobile County consider that
3 split to be evidence that race predominated?

4 A Simply looking at it, no, I would not count it as
10:56:04 5 evidence. Again, I would want to more empirically investigate
6 more substantively the relationship that I see there.

7 Q Okay. So you cannot look at one county split no matter
8 what the difference is or demographics on either side of the
9 line, that by itself, you are saying is not evidence that race
10:56:24 10 was predominant factor in drawing that line?

11 A I would not eyeball one map that I have never seen before
12 and draw any conclusions from.

13 Q You weren't asked to apply your own analysis to the plans
14 that are offered by the Milligan plaintiffs?

10:56:41 15 A I was asked to analyze the map as enacted.

16 Q On page 3 of your report, Dr. Williamson, you note that we
17 did not split Madison, Mobile, or Baldwin counties in Alabama's
18 enacted map. Do you know if any of those counties have ever
19 been split in an Alabama congressional plan?

10:57:20 20 A I have not chronicled the splits of previous counties, no.

21 Q I am going to look at page 5 of your report,
22 Dr. Williamson. At the bottom where you begin part 2, your
23 analysis of Districts 1, 2, and 3, you say there on the first
24 line that you examined the variability of census block Black
10:57:48 25 VAP within congressional districts to further test for

1 allegations of cracking.

2 Remind me. What do you mean by variability of census
3 block Black VAP?

4 A Again, I was looking at the range of census block Black
10:58:05 5 VAP within congressional districts as depicted by the standard
6 deviation and interquartile range in the table that follows.

7 Q Is your analysis suggesting that there's too much
8 diversity in Districts 1, 2, and 3?

9 A That would be a mischaracterization of what I have
10:58:25 10 presented.

11 Q Well, the more diverse the precincts are, then the higher
12 the variability of census block Black VAP, right?

13 A I am simply measuring variability. I am not making any
14 assessments about too much, not enough, anything related to
10:58:44 15 diversity, like that's simply identifying the level of
16 variability.

17 Q Well, don't you use this as part as a basis for your
18 opinion that race was a predominant factor in drawing Alabama's
19 congressional districts?

10:59:04 20 A This was a piece of evidence that served to inform some of
21 my analysis, yes.

22 Q So if Alabama had instead gone in and sorted voters by
23 race, and said this is a black area, it goes in one district,
24 this is a white area that goes in another, there would have
10:59:22 25 been less variability of census block Black VAP, wouldn't

1 there?

2 A I mean, it's impossible to know without analyzing
3 alternative plans, which I did not do.

4 Q Is it impossible to know whether we put every district --
10:59:41 5 every -- excuse me -- every precinct that was more than
6 50 percent black if we could have put that in one district, you
7 can tell us, right, whether or not that would have less
8 variability than you see in Districts 1, 2, and 3?

9 A I see. So you're saying if we assumed, we identified all
10:59:58 10 of the predominantly black blocks and lumped them together,
11 that there would be less variability. Am I understanding you
12 correctly?

13 Q Right.

14 A Yes. Then, yes.

11:00:09 15 Q Yes. Okay. Well, and with that, then, would that lower
16 variability, would that be evidence that race predominated in
17 drawing the districts?

18 A Without those data under that plan to analyze, I can't say
19 one way or another.

11:00:24 20 Q Well, is there any way to achieve lower variability of
21 census block Black VAP other than sorting voters by race?

22 A Could you ask that question again, please?

23 Q Sure. I mean, if -- if you think the high variability is
24 evidence that race predominated, I'm wondering how we lower
11:00:50 25 that number if you think that would result in less evidence

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1 that race predominated. And I can't think of a way to do that
2 other than making race predominant and sorting voters by race?

3 A I see. I believe what I was depicting here, which I think
4 is a little different than what we are talking about is
11:01:11 5 providing evidence of predominantly black counties in a
6 concentrated part of the state connecting them to predominantly
7 white counties in other parts of the state. Essentially trying
8 to identify essentially are the predominantly black counties
9 serving as cut points across districts. And so, again, I would
11:01:38 10 not draw any conclusions based on just one test or one piece of
11 evidence in my report. I was looking to see if a pattern
12 emerged, and then I based my conclusion based on the overall
13 consistency and magnitude of the effect illustrated by those
14 patterns.

11:01:58 15 Q Would you agree that if the Legislature had sorted voters
16 strictly by race that the end result would be -- for purposes
17 of say District 2, then there would be lower variability of
18 census blocks in District 2?

19 A So you're asking if District 2 was drawn to be
11:02:31 20 predominantly black, would there be less variability? Is that
21 your question?

22 Q Yes.

23 A Possibly, but I wouldn't definitively state one way or
24 another without looking at the overall construction of the
11:02:45 25 district and how that -- how that relates.

1 Q But you could get lower variability, could you not, if you
2 ignored everything except race? We don't care about
3 compactness, core preservation, avoiding incumbent conflicts,
4 we are going to look at nothing but race and put black voters
11:03:04 5 in one district and white voters in another, and the end result
6 may be lower variability of census block VAP?

7 A Maybe, yes.

8 Q Your analysis of census block variability, it doesn't tell
9 us, does it, whether census block with high Black VAP is
11:03:29 10 actually close enough to other such census blocks to be part of
11 the same district?

12 A I'm sorry. Could you say that again?

13 Q Let me see if this helps. I want you to assume,
14 Dr. Duchin, that this is -- excuse me -- Dr. Williamson, this
11:03:57 15 isn't Dr. Duchin's map. This is the Alabama's enacted plan. I
16 want you to assume again this map depicts border precincts that
17 are colored from red to green based on the concentration of the
18 African-American population in that precinct. If you look at
19 this degree, according to this map, would you agree that
11:04:19 20 Anniston, you see there is an area where there are a larger
21 number of African-American voters?

22 A Yes, I do see that.

23 Q Yeah.

24 A Sorry.

11:04:30 25 Q Same here for Talladega, correct?

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1 A Yes, I see that, that green.

2 Q Right?

3 A That smaller green section.

4 Q The question for you is: You know, you talk about the
11:04:41 5 variability of District 3. But did you actually analyze
6 whether African-American voters in Talladega or Gadsden or
7 Anniston close enough to Macon or even Mobile to be a part of
8 the same district?

9 A I conducted no analysis based on any sort of geographic
11:05:02 10 distance between census blocks.

11 Q And -- let's see. Your discussion of border counties,
12 your analysis of which counties appeared on borders of
13 districts, concluded, did you not, that counties on the borders
14 of districts have a higher average Black BVAP than counties
11:05:38 15 that are not on the borders of districts?

16 A That's correct.

17 Q Why did you only look at Districts 2 and 3 for that
18 analysis, Dr. Williamson?

19 A Again, given the strict definition I created of shared
11:05:51 20 border versus no shared border, technically Congressional
21 District 1 all counties border another county even if we're
22 talking about that touch point near the Bay, and so, therefore,
23 I couldn't create two categories based on that -- that
24 definition of shared versus not shared, and so therefore, it
11:06:18 25 was not included.

1 Q Did you test District 7? That has interior counties and
2 border counties.

3 A That's correct. For this particular section, I was only
4 looking at allegations that 1, 2 -- allegations regarding
11:06:35 5 Districts 1, 2, and 3 and not District 7.

6 Q Okay. Now that we have the map up, would it not make a
7 district very compact just to have a district that included
8 counties along the Alabama Georgia line, would it?

9 A I can't speculate about what compactness would look like
11:06:57 10 under an alternative plan.

11 Q Okay. Let's imagine a district runs from Cherokee up to
12 Houston counties that just include these counties on the
13 Georgia line. You can't tell me whether you think that would
14 be more or less compact than just District 2?

11:07:16 15 A I actually can't given the relative uniform width of these
16 things, and the compactness would also depend on which measure
17 you used. And so, for example, a Polsby-Popper would have a
18 pretty low compactness score, I imagine, but a compactness
19 score that only measures the kind of lost space if you placed a
11:07:36 20 rubber band around that would actually produce a relatively
21 compact score. And so empirically, you would have evidence
22 that it was both compact and non compact.

23 Q I have --

24 MR. DAVIS: Your Honor, I really must apologize. I
11:08:08 25 have written down the wrong number, and it is going to take me

1 just a moment to find it.

2 JUDGE MARCUS: That's okay. You take your time,
3 Mr. Davis. Do you want a break, or do you need a minute or
4 two?

11:08:17 5 MR. DAVIS: I think I just need a moment.

6 JUDGE MARCUS: You take your time.

7 MR. DAVIS: Here we go.

8 BY MR. DAVIS:

9 Q I represent to you this is a map from Defense Exhibit 1 of
11:08:33 10 Mr. Bryan's report, and it's page 71 of that map, page 71 of
11 that report. And this is a map where Mr. Bryan is showing us
12 where people live -- not just black, not just white, just
13 concentrations of total population by county. Would you agree
14 that -- these counties along the Georgia line with the
11:09:03 15 exception of Lee County has lower population than these
16 interior counties according to this map?

17 A This is the same scale with red being lower and green
18 being higher?

19 Q Correct. The red map is showing counties with lower
11:09:19 20 population, and the most populace -- most populace counties are
21 dark green.

22 A Okay. Yeah. So looking at three -- yeah, I see six red
23 counties and seven -- seven more -- so the plurality of
24 counties are between about that 6,000 and 25,000 mark.

11:09:44 25 Q Right. Okay. Now, that's the one I just showed you.

1 This is by county. This is by precinct. So I think it will
2 serve the purpose. Would you also agree, Dr. Williamson, that
3 these areas along the border -- no, this is switching to
4 African-American population, Dr. Williamson. And it's by
11:10:30 5 precinct and not by county.

6 Would you agree that this area along the Alabama/Florida
7 line according to this map has a lower concentration of
8 African-American voters than when you move interior in the
9 state?

11:10:46 10 A Yeah. According to this map, it does appear that the
11 southern-most part of the state has a lower Black VAP.

12 Q Gotcha. That's true District 3, at least in this northern
13 part of District 3, correct?

14 A Yes. I see a lot more red in that part of the state.

11:11:03 15 Q So unless you draw your districts to hug the state line,
16 you are going to have counties on the border with a larger
17 concentration of African-American voters, won't you?

18 A I'm sorry. Could you repeat that?

19 Q Sure. Unless you draw your district to hug the state
11:11:24 20 line, you're going to have counties on the border of the
21 districts that have a larger African-American population, would
22 you not?

23 A Theoretically, I believe that's correct.

24 Q Do you have any evidence of why the Legislature, in fact,
11:11:50 25 decided to put the lines within certain counties and not in

1 other counties?

2 A Again, I did not consider or investigate anything beyond
3 the lines as presented and their relationship with race.

4 Q Yeah. Now, you assessed who was moved in and out of
11:12:12 5 districts next, correct?

6 A Yes. Yes.

7 Q Okay. Does your analysis suggest that the Legislature was
8 moving heavily black census blocks into District 7?

9 A According to the Table 5, looking at the moved-in category
11:12:33 10 for District 7 that we see an average Black VAP of
11 30.4 percent, and so this table presents predominantly white
12 census blocks being moved into CD 7.

13 Q Okay. And you haven't assessed -- your analysis doesn't
14 tell us how many people are moved in and out of these
11:12:58 15 districts, right?

16 A That is correct. I do not include numbers about
17 individual populations.

18 Q I want should share -- this, Dr. Williamson, is --

19 MR. DAVIS: Oh, Your Honors, I have just been informed
11:13:34 20 that I think earlier -- I am not sure which exhibit this was,
21 but I at one point referred to Defense Exhibit 1, when, in
22 fact, I should have said Defense Exhibit 4, with Your Honors'
23 indulgence.

24 JUDGE MARCUS: Just so I am clear on that, when you
11:13:52 25 originally referred to Defense 1, I thought you were referring

1 to Mr. Bryan's report that you had offered, right?

2 MR. DAVIS: Yes. Yes. And Mr. --

3 JUDGE MARCUS: No, please. Go ahead.

4 MR. DAVIS: And Mr. Bryan's supplemental report is
11:14:07 5 District 4. I don't want to take up the Court's time. By your
6 leave, I will be prepared maybe later today to state for the
7 record which exhibits were which that we have reviewed.

8 JUDGE MARCUS: Sure. Sure. But I take it the thrust
9 of what you are telling me when you referred to Defense 1, you
11:14:26 10 really meant to be referring to Defense 4, which was the Bryan
11 rebuttal. Do I have that --

12 MR. DAVIS: For some of those reports, yes. Any time
13 when --

14 JUDGE MARCUS: All right. Later you can just
11:14:38 15 straighten that out. We don't have to take the time of your
16 examination of Williamson to do that.

17 MR. DAVIS: Great.

18 BY MR. DAVIS:

19 Q So, Mr. Williamson, I want to represent to you that this
11:14:52 20 is fact Defense Exhibit 1, and it is page 23 of Mr. Bryan's
21 first expert report.

22 And I will represent to you that here is performed a core
23 retention analysis that he will explain to the Court when he
24 testifies. This tells us -- if you look at this left column,
11:15:13 25 District 1, which based on the 2011 plan, those people who were

1 in old District 1 are now divided among three congressional
2 districts.

3 717,000 of them are still in District 1. 739 of them
4 moved to District 2. 7,783 are now in District 7.

11:15:38 5 It works the same way for all the districts.

6 My question to you, Mr. Williamson, is simply this: When
7 you were considering whether movement in and out of districts
8 was evidence that race predominated, did you consider the
9 volume of people, the number -- total number of people who were
11:15:57 10 being moved in and out?

11 A I did not directly assess the volume of people as I was
12 simply looking at racial composition instead.

13 Q Gotcha. And so, for example, if you had assessed -- I
14 know you didn't make a deal out of District 7 in this analysis,
11:16:17 15 but if it was only 739 people moving from District 1 to
16 District 2, which would have at least I would argue a de
17 minimus impact on the district as a whole, that, again, was not
18 part of your consideration?

19 A No. Again, I was looking at census blocks. And so the
11:16:36 20 proportion could have actually been deflated by looking at
21 census blocks instead of looking at total population.

22 Q Just for the Court's benefit, Mr. Bryan went through all
23 seven districts, and we'll show the same, and he will be able
24 to talk about that.

11:16:54 25 JUDGE MARCUS: He will testify accordingly, but let's

1 just proceed with Dr. Williamson.

2 BY MR. DAVIS:

3 Q Dr. Williamson, I will represent to you that we had a
4 deposition earlier in this litigation of a gentleman named
11:17:31 5 Randy Hinaman who was hired by legislators to do a draft plan.
6 And he testified that in drawing that plan he wanted to make
7 the area of District 7 in Jefferson County more compact than it
8 was in the District 11 plan. Do you have any criticism of a
9 decision -- of a decision to make a district more or less
11:17:55 10 compact?

11 MR. ROSBOROUGH: Objection. This is outside the scope
12 of Dr. Williamson's report or testimony.

13 JUDGE MARCUS: I think that that's true, counsel.

14 MR. DAVIS: I think I am asking him about a possible
11:18:06 15 alternative explanation for how the District 7 lines were
16 drawn.

17 JUDGE MARCUS: I understand. I would just rephrase
18 your question if you would.

19 MR. DAVIS: Okay.

11:18:13 20 BY MR. DAVIS:

21 Q Well, then, it's the same question: Did you consider
22 whether the Legislature amended the lines in Jefferson County
23 in order to make District 7 more compact?

24 A Whether or not the district became more compact, less
11:18:34 25 compact, was the same level of compact, the line still exists,

1 and the relationship between that line and race is the same.
2 And so, therefore, the -- whatever motivations exist did not
3 enter into my analysis, wouldn't have changed it, and,
4 therefore, my conclusion is the same.

11:18:52 5 Q You were at least questioning about the fact that Elmore
6 County was included with these other counties in District 2; is
7 that correct?

8 A That's correct.

9 Q Okay. Now, you grew up in Prattville, right?

11:19:20 10 A That's correct.

11 Q That's where I live now. That's Autauga County next door?

12 A Right.

13 Q Can you think of no reason other than race that Autauga
14 and Elmore County might be connected with Montgomery County?

11:19:34 15 A There are plenty of potential reasons. For growing up
16 there, you and I both know that a number of people work in
17 Montgomery but maybe live in Autauga or Elmore.

18 Q That's right. I mean, a lot of people live in Wetumpka or
19 Prattville and work either at the Maxwell Air Force Base or for
11:19:56 20 state government like I do or any of the other employers in
21 Montgomery County. Would you agree?

22 A Yeah. I'm sure there are a number of people who that
23 describes.

24 Q Okay. Well, might a desire to preserve a community of
11:20:09 25 interest among these three counties not be an explanation for

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1 including Elmore County with District 2?

2 A Again, I don't wade into intent or communities of interest
3 or anything like that. I simply set out to identify a
4 relationship, and that's what I have presented.

11:20:31 5 Q Did you have available to you any information about what
6 members of the congressional delegation thought about their own
7 districts?

8 A I did not.

9 Q So if they had told Alabama officials that in their
11:21:09 10 opinion certain areas ought to go together in congressional
11 districts, that was not information you had?

12 A No. I did not have that information as -- again,
13 regardless of the formation of the districts, the guidelines,
14 stipulations, whatever they may be, the lines as presented are
11:21:29 15 the same, and I only looked at the lines as presented.

16 Q Did you consider whether there's any actual connection
17 between, say, voters in Mobile County and voters in Russell
18 County on the far end of the state?

19 A What do you mean by that?

11:21:49 20 Q Okay. Well, if you think the way we drew it, that race
21 predominated in the way Alabama drew its lines, I presume you
22 mean that you think it should have been drawn some other way
23 where race did not predominate. And one of the ways that's
24 been suggested that we should have done that is to draw
11:22:05 25 districts that connect the African-American portions of Mobile

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1 County with counties from the far eastern part of the state.

2 So my question to you is: Did you in expressing your
3 opinions, make any assessment or evaluation as to whether those
4 voters in downtown Mobile and the eastern Black Belt counties
11:22:26 5 have any actual connection to each other?

6 A I --

7 MR. ROSBOROUGH: I am going to object again as
8 completely outside the scope of Dr. Williamson's report and
9 testimony.

11:22:35 10 JUDGE MARCUS: I think he is being asked whether he
11 considered something or did not consider it. I think it's a
12 clear and easy question.

13 Do you understand the question, Dr. Williamson?

14 THE WITNESS: As I understand it, I have been asked to
11:22:50 15 make a subjective assessment of any point. I just want to
16 clarify that I do not make a subjective assessment of or offer
17 alternatives. I am not -- I am not the lawyer. I am not
18 saying what could or should be done. I am simply describing a
19 relationship. To that point, no, in describing this
11:23:10 20 relationship, I did not include, you know, this comparison that
21 I have been asked about.

22 BY MR. DAVIS:

23 Q Do you express any opinion on whether race predominated in
24 drawing the boundaries of District 6?

11:23:23 25 A No, I do not offer an opinion on District 6.

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1 Q Do you think --

2 MR. DAVIS: Your Honor, I think I may be done, but I
3 would like to confer with my colleagues for a moment.

4 JUDGE MARCUS: Sure. Take your time.

11:24:36 5 MR. DAVIS: Thank you for your patience, Your Honor.
6 I do not have any additional questions for Dr. Williamson at
7 this time.

8 JUDGE MARCUS: All right. Thank you. Redirect,
9 Mr. Rosborough.

11:24:46 10 MR. ROSBOROUGH: Thank you, Your Honor, just a few
11 questions.

12 REDIRECT EXAMINATION

13 BY MR. ROSBOROUGH:

14 Q Dr. Williamson, do you recall a few minutes ago you were
11:24:54 15 asked by Mr. Davis about other reasons that Autauga and Elmore
16 counties might be connected to Montgomery? Did you recall
17 that?

18 A Yes, I recall that.

19 Q And do you recall testifying about individuals who may
11:25:12 20 live in those communities and commute to city center in
21 Montgomery?

22 A Yes, I do.

23 Q Would that also be true for people who live in Macon
24 County but are split into District 3?

11:25:25 25 A That's entirely possible, yes.

1 Q And might that also be true for individuals who live in
2 the other part of Montgomery County which has been split into
3 District 7?

4 A Yes, that is theoretically possible, as well.

11:25:43 5 MR. ROSBOROUGH: Those are all the questions I have.
6 Thank you, Your Honor. Thank you, Dr. Williamson.

7 JUDGE MARCUS: Anything further, Judge Manasco, for
8 this witness?

9 JUDGE MANASCO: Nothing for me.

11:25:54 10 JUDGE MARCUS: Judge Moorer?

11 JUDGE MOORER: No, sir.

12 JUDGE MARCUS: Seeing no other questions, we thank
13 you, Dr. Williamson. And you are excused.

14 THE WITNESS: Thank you.

11:26:05 15 JUDGE MARCUS: The next witness for Milligan would be
16 whom?

17 MS. CARTER: Going to be Shalela Dowdy.

18 JUDGE MARCUS: Do you want to proceed with her at this
19 point, Ms. Carter?

11:26:26 20 MS. CARTER: Yes, Your Honor.

21 JUDGE MARCUS: All right.

22 SHALELA DOWDY,
23 having been first duly sworn, was examined and testified as
24 follows:

11:26:30 25 JUDGE MARCUS: Thank you. If you would be kind enough

1 to state your name for the record, please.

2 THE WITNESS: My name is Shalela Dowdy.

3 JUDGE MARCUS: Thank you. And you may proceed,

4 Ms. Carter.

11:26:47 5 MS. CARTER: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. CARTER:

8 Q Ms. Dowdy, where were you born?

9 A I was born in Mobile, Alabama.

11:26:54 10 Q What year were you born?

11 A I was born in 1989.

12 Q What race do you identify as?

13 A I identify as black or African-American.

14 Q And where did you grow up?

11:27:10 15 A I grew up in the city of Prichard, Alabama and Mobile,
16 Alabama.

17 Q And do you still live in the city of Mobile or Prichard?

18 A Yes. I currently live in Mobile, Alabama.

19 Q What schools did you attend while growing up in Mobile?

11:27:29 20 A I attended Bessie C Fonvielle Elementary School, Nan Gray
21 Davis Elementary School, Ella Grant Elementary School, and
22 Calloway Smith Middle School and Murphy High School.

23 Q Where did you go to college?

24 A I attended undergrad at the United States Military Academy
11:27:50 25 at West Point, and I obtained my graduate degree from the

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1 University of Texas at El Paso.

2 Q What is your professional background?

3 A I am -- my professional background consists of me
4 commissioning in the United States Army in 2012 as a second
11:28:07 5 lieutenant and matriculated through the ranks to -- I earned
6 the rank of captain which is the rank I currently hold.

7 I was in air dispense artillery officer on active duty
8 where I was responsible for work centered around defending air
9 space and daily Army operations. I -- while in the Army, I was
11:28:30 10 stationed at Fort Sill, Oklahoma, Fort Bliss, Texas, deployed
11 to the Middle East to Bahrain, and Shaw Air Force Base in South
12 Carolina, while all the time still being a citizen of Alabama
13 and voting within the state.

14 And after six years of active duty, I switched to the
11:28:48 15 Individual Ready Reserves, and my first year out of the Army, I
16 worked as a consultant for Deloitte. And after a year of that,
17 the pandemic hit. And I worked for the Alabama Democratic
18 Party. I did work with the 2020 census. And for a -- for
19 about four months this year, I worked for the city of Mobile.

11:29:14 20 Q So Captain Dowdy, what is your current occupation?

21 A Currently, I am participating in a fellowship, a CROWD
22 fellowship, which stands for Community Redistricting Organizing
23 Working For Democracy with the Southern Coalition of Social
24 Justice.

11:29:32 25 Q And what kind of work does that organization do?

1 A SCSJ does work centered around voter advocacy work, and
2 right now, they're also focusing on the redistricting efforts
3 going on in the country.

4 Q What specifically do you do as a CROWD fellow?

11:29:51 5 A As a CROWD fellow, I am assigned lower Alabama. So
6 counties in the first congressional district and other counties
7 in the Black Belt. And my goal is to -- or my job is to
8 educate local residents on what redistricting is, being that it
9 is something that happens every ten years. A lot of people are
11:30:11 10 not knowledgeable on redistricting and knowledgeable on how
11 redistricting affects us when we go to the polls and vote.

12 So we're educating people on the redistricting process,
13 what redistricting entails, and also educating them on how they
14 can play a role in the process as average citizens. So we
11:30:30 15 provide them with testimony, training, update them on what's
16 going on in the state, and so that was our focus in the fall.
17 Now that these maps have been signed, right now, we're focusing
18 on work preparing them to be involved in the redistricting
19 going on with the local municipalities in the state of Alabama.

11:30:50 20 Q Does your work give you an understanding of issues
21 affecting black communities in Alabama?

22 A Yes. The previous work that I have done with the
23 Democratic Party, the work I have done as an organizer with the
24 non-profit. I am president of the Mobile -- called Stand Up
11:31:06 25 Mobile, and the work that I do now with CROWD provides me with

1 that background. I'm able to engage with the citizens above
2 Mobile and surrounding counties and in the Black Belt. And
3 gain an understanding on what they need, what their needs are,
4 and how we can progress forward.

11:31:25 5 Q Captain Dowdy, what congressional district do you live in?

6 A I reside in Congressional District 1.

7 Q And what is your understanding of Alabama's redistricting
8 process for congressional districts?

9 A My understanding is that the state has a reapportionment
11:31:44 10 committee that consists of members of both the Alabama State
11 Senate and the Alabama House from both political parties. And
12 the reapportionment committee is chaired by Senator McClendon
13 and Senator Chris Pringle. Once the census data was received
14 by the state, the reapportionment process basically started,
11:32:04 15 and there were 28 public hearings held across Alabama both in
16 person. And which allowed for private citizens in the state to
17 play a role in the process with our elected officials on any
18 issues that we saw with the current maps so that these issued
19 could be rectified with the new maps that would be presented.

11:32:32 20 There were 28 public hearings across the state. And the
21 citizens of Alabama were allowed to participate both virtually
22 and in person. She just through me off a little bit. And so,
23 anyways, once the public hearings were done, there was about a
24 month break, and then the reapportionment committee presented
11:32:56 25 maps to Alabama Legislature. And those maps were almost

1 immediately voted on. So the citizens of Alabama were not able
2 to play a role in talking about or having any discussion on the
3 new maps. It was as if the process was rushed. And there was
4 not a lot of transparency.

11:33:19 5 So the new maps were presented -- the people were not able
6 to talk about it if any of the communities of interest were
7 split up. If there were any other issues that were identified,
8 they were not able to be spoke about from the actual citizens.
9 And so they -- the reapportionment committee and the elected
11:33:41 10 officials, they say that, you know, they're aiming for the
11 process to be transparent, but given the actions that took
12 place, the short turnaround and how fast the maps were passed,
13 it was if they were trying to hinder the citizens from playing
14 a role in the process of the reapportionment.

11:33:57 15 Q Okay. Thank you. Did you participate in that process?

16 A I did participate in the process. There was a public
17 hearing held in Mobile. I participated in person. I testified
18 about and spoke about all four of the current maps and placed
19 emphasis on the congressional map, and so I spoke about the
11:34:21 20 packing that is evident in District 7, and that with that
21 packing, the black vote is basically diluted. I spoke about
22 that one district giving black Alabamians one out of seven,
23 which is only 14 percent of representation in Congress when we
24 make up about 27 percent of the population in the state of
11:34:43 25 Alabama. And so I also advocated that I would think the fair

1 and equitable thing would have been with the new maps for there
2 to be two majority-minority districts where a second
3 African-American could be elected to Congress.

4 I gave this testimony in person. And I also submitted a
11:35:05 5 written statement to the representative that was present from
6 the state reapportionment committee.

7 Q By second majority-minority district, do you mean a second
8 black district?

9 A Yes. I mean a second black district.

11:35:18 10 Q Why did you decide to participate in the redistricting
11 process?

12 A I decided to participate through my work and in engaging
13 with the citizens. I just realized people do not know how
14 important redistricting is and how it impacts us. And so I was
11:35:38 15 -- I was provided the opportunity through the fellowship to be
16 able to participate and utilize my voice. And so I chose to
17 participate because I saw the need. I see the lack of
18 representation of black Alabamians and decided to participate,
19 and I know when we have these public hearings, sometimes it
11:35:58 20 seems as if they're being done just to say they were done.

21 And so if the legislators see that we are attending and
22 playing a role in the process, it can also put pressure on them
23 to do the right thing. So that it can be known that, hey,
24 we're watching what you do. We know our state has a history of
11:36:15 25 diluting the black votes. So be aware that we are watching and

1 we are here. So I wanted my presence to be known. I wanted to
2 be the voice for those in my community who were not
3 knowledgeable on the process. And that's basically why I chose
4 to participate.

11:36:29 5 Q So, Captain Dowdy, why is it important that black voters
6 have a second district?

7 A It is important for fair and equitable representation.
8 Looking at who currently represents me in Congress, I am not
9 comfortable, and I am not confident that he is adequately
11:36:49 10 representing me based off of bills that he has chosen not to
11 support the build back, better build, bills centered around
12 nursing mothers. The CARES Act, the other bills, and so these
13 are issues -- we have issues in our community that can be
14 rectified by supporting these bills. And we don't have the
11:37:11 15 right person in these elected positions who will vote for the
16 things that can help fix the issues we have in our community.

17 Then it shows that they need to -- they need to not
18 necessarily go, but we need to be able to have the opportunity
19 to elect fair -- what are our issues, because not everybody who
11:37:30 20 is elected cares about how the issues in their community. So
21 when you're able to elect someone who understands you, who
22 comes from your community, then progress can be made. And so
23 that is why I am advocating for that. It is necessary that we
24 have a second black district.

11:37:49 25 Q In your lifetime, do you know of any black person who has

1 been elected to Congress outside of District 7?

2 A In my lifetime, I am only aware of black representatives
3 being elected in the Seventh Congressional District.

4 Q So and then additionally, the -- the bills that you
11:38:11 5 mentioned, the CARES Act and the infrastructure bill, those are
6 bipartisan supported bills, correct?

7 A Right. For the most part, they are.

8 Q Thank you. Can you tell us where the black community
9 resides in Mobile County?

11:38:27 10 A In Mobile County, the black community resides in the city,
11 the city of Prichard, the city of Chickasaw, and then we have
12 some black residents in the northern rural areas of the county,
13 as well.

14 Q As far as you know, what interests do the black community
11:38:45 15 in Mobile County share in common?

16 A Some of the interests that we share in common
17 unfortunately is the interest of dealing with what we -- what
18 our struggles are. So we have a high poverty -- a high poverty
19 rate. We have issues with being able to afford health care.
11:39:03 20 All the food deserts in the city happen to be in the black
21 community.

22 So our struggle is what kind of unifies us and what is our
23 interest. The health care -- issues with education. That's
24 what kind of unified, and those are what black people have in
11:39:21 25 common, the things they are struggling with.

1 Q Captain Dowdy, can you see and hear me?

2 JUDGE MARCUS: I think the witness has been cut.

3 Ms. Dowdy, can you hear me? I think we have lost.

4 THE WITNESS: I can hear you.

11:39:45 5 JUDGE MARCUS: You can hear us okay?

6 THE WITNESS: I can hear y'all.

7 JUDGE MARCUS: Okay. Thank you. You may proceed,
8 Ms. Carter.

9 MS. CARTER: Thank you, Your Honor.

11:39:53 10 BY MS. CARTER:

11 Q So, Captain Dowdy, do you specifically have ties to the
12 black community in the Black Belt?

13 A Yes, I have ties. My great, great, grandparents
14 originally migrated from the Black Belt area to Mobile for
11:40:09 15 economic and job opportunities. We have the port. We have
16 factories down here. And then outside of that, everybody in
17 the family didn't migrate. So I still have great aunts and
18 uncles and cousins and family members that do reside in the
19 Black Belt.

11:40:23 20 Q So black people from the Black Belt commute into Mobile to
21 work in the port?

22 A There are some people from the northern counties that
23 drive down to work at the ports on the coast of Alabama.

24 Q In your opinion, what do you think that the Black Belt
11:40:45 25 counties share in common with Mobile County?

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1 A Being that the Black Belt counties have a high black
2 population, what they share in common is the same -- the issues
3 that I mentioned of what unities the black community. So
4 health care issues -- their health care issues are more extreme
11:41:05 5 in the Black Belt due to the closing of hospitals. We have
6 access to Mobile. Our issue is having the ability to afford
7 the health insurance. And so in the Black Belt, they have
8 issues affording the health insurance, but also getting to the
9 hospitals because of the closing of a lot of rural hospitals.

11:41:22 10 So it's not even the hospitals. It's even seeking regular
11 daily medical attention that they have issues with because some
12 of the closest doctors' offices are over 50 miles away --
13 comparable to the poverty rate in the black community in
14 Mobile.

11:41:43 15 Health care-wise in the Black Belt, there's a high HIV
16 rate also. And then the issue with sewage in Lowndes County,
17 which leads to health care issues because they don't have
18 adequate infrastructure to provide themselves with adequate
19 sewage. And then the issues with education also. That's what
11:42:02 20 unites the Black Belt with those in Mobile. And when our
21 family in the Black Belt are struggling, we hear about it. We
22 try to assist as we can, because when they hurt, we hurt, and
23 it's a family issue.

24 Q So you mentioned education issues. How do education
11:42:18 25 issues impact black people in Mobile and the Black Belt more

1 specifically?

2 A Those issues -- the issues that we have with education,
3 the child care issues. So a lot of people cannot afford child
4 care. So the start of education is starting later in life.

11:42:37 5 And so some people are behind, and then it also leads the other
6 economic issues later in life because the education is the
7 issue growing up. That means you are possibly going to make
8 less money when you get older, and it continues to -- as
9 poverty, and it's starting early on because we don't have
11:42:53 10 adequate access to education, and one of those issues because
11 of the economy.

12 Q And how exactly people do people not have adequate access
13 to education?

14 A Well, it starts young, so the pre-K -- a lot of the pre-K
11:43:13 15 programs that were around previously no longer are not around.
16 Some of that should be coming back with the Build Back Better
17 plan did get approved. And so that will be providing funds for
18 child care and whatnot. But people cannot afford child care.
19 And so you're leaving your kid with family members while you
11:43:31 20 work. So like I said, the education and the learning process
21 for us in the black community is starting later in life because
22 we don't have the professionals. If I am leaving my child with
23 a family member, they are not a professional to start the
24 education process. We are behind basically and playing catch
11:43:47 25 up, and that sometimes puts it in -- contributes to us staying

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1 --

2 Q And that's an issue in Mobile and the Black Belt?

3 A It is an issue in Mobile and the Black Belt because the --
4 living in poverty is an issue in both locations.

11:44:03 5 Q You mentioned having relatives in the Black Belt. Where
6 exactly are they located in that region?

7 A I have family in Montgomery, Wilcox County, Monroe,
8 Escambia, the Dallas County where Selma is located. Those
9 regions. Tuskegee.

11:44:24 10 Q And also you mentioned the CARES Act and the Build Back
11 Better Act as being something that if you had -- that you would
12 like more representation on.

13 What specifically about those bills are -- have -- what
14 specifically about those bills affects black voters in Mobile
11:44:51 15 and in the Black Belt?

16 A The CARES Act or the Build Back Better plan, one of them
17 had tax credit. So that's extra money being pumped into the
18 household. Also the Build Back Better plan has it where the --
19 things like 7 percent of their income will go to child care.

11:45:12 20 So an example such as that the Build Back Better plan is going
21 to create more jobs and grow the economy framework wise. And
22 then it is the Build Back Better plan is investing in child
23 care, and also care giving on the back end for those
24 individuals who are elders in our families and in our
11:45:33 25 community.

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1 And then within Build Back Better, there's also health
2 care expansion.

3 MS. CARTER: Thank you, Captain Dowdy. No further
4 questions at this time. I pass the witness.

11:45:46 5 JUDGE MARCUS: All right. Mr. LaCour, will you be
6 doing the examination?

7 MR. LACOUR: I will, Your Honor.

8 JUDGE MARCUS: All right. Just a quick question of
9 timing, and you take all the time that you need. Normally, we
11:45:59 10 would break around noon. If you can start now and we will see
11 how we go. Do you have a sense of timing on your examination
12 of Ms. Dowdy?

13 MR. LACOUR: Your Honor, probably more than
14 15 minutes.

11:46:15 15 JUDGE MARCUS: Why don't you start, and then you tell
16 us what would be a convenient time to break.

17 MR. LACOUR: Okay.

18 JUDGE MOORER: Also, Ms. Dowdy, you probably are
19 nervous, but please speak a little slower. It is hard for the
11:46:35 20 court reporter to catch everything when you speak quickly.

21 THE WITNESS: Yes, Your Honor.

22 JUDGE MARCUS: Thank you, counsel, and you may
23 proceed.

24 MR. LACOUR: Excellent.

11:46:48 25 CROSS-EXAMINATION

1 BY MR. LACOUR:

2 Q Captain Dowdy, thank you for being with us today. I am
3 Edmund LaCour. I am an attorney for the defendant in this
4 case, Secretary of State. I have a few questions for you about
11:46:58 5 some of the testimony you gave today, as well as these
6 statements you -- and to your declaration that was submitted to
7 the Court.

8 First, you stated you were born and raised in Mobile,
9 correct?

11:47:10 10 A Yes, I was born in Mobile and raised in Mobile.

11 Q And would you agree that Mobile is a particularly unique
12 city not -- within the state of Alabama?

13 A We have a few things that are not found in other parts of
14 the state, so, yes.

11:47:28 15 Q What sort of things?

16 A Mardi Gras.

17 Q And Mardi Gras from school growing up, wouldn't you?

18 A Yes.

19 Q Do you know if that's common outside of Mobile?

11:47:44 20 A It's a Gulf Coast thing, so from New Orleans to Mobile for
21 the most part.

22 Q Uh-huh. Have you spent much time in New Orleans?

23 A I've been there a couple of times.

24 Q If you were to compare New Orleans to Mobile, and Dothan,

11:48:08 25 Alabama to Mobile, which would you say are more culturally more

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1 similar?

2 A I definitely -- I would really lean towards a mixture of
3 both.

4 Q Okay.

11:48:21 5 A Yeah. We have like rural areas of our city. So that's
6 why I said a mixture of both.

7 Q Okay. What are some of the other things that you noticed
8 about Mobile that set it apart within the state beyond Mardi
9 Gras?

11:48:41 10 A There really isn't much. And I have a lot to compare
11 since I was in the military. So there's not much to say
12 besides we are on the water, so we have an industry that other
13 cities wouldn't have.

14 Q Yeah. And the port, it's a major driver of economic
11:48:56 15 activity in Mobile, right?

16 A It is.

17 Q And not just for the city of Mobile, but for the county of
18 Mobile?

19 A For the state.

11:49:03 20 Q For the whole state. Correct.

21 Would you agree it's particularly important economic
22 driver for the counties that are centered around Mobile?

23 A I would say so, because I know people that are both from
24 our state to other states or from the northern counties above
11:49:25 25 us to come down to work in the particular field.

1 Q So including Baldwin, Washington, Monroe, and Escambia
2 counties?

3 A Yeah. Those -- those counties.

4 Q Would you say them in particular?

11:49:42 5 A Say again.

6 Q Would you say those particular counties sort of --

7 A I would say that because they're the -- they're -- they
8 are the closest. And people are not fond of the south, so,
9 yeah.

11:49:59 10 Q Yeah. Not a lot of folks travel in from where I am in
11 Montgomery down to work at the port on any given day, correct?

12 A Yeah, no.

13 Q And when the port is going well, does that benefit
14 Alabamians from all five of those counties?

11:50:20 15 A When the port is doing well, I would say it benefits the
16 entire -- in particular, the lower half of the state since it's
17 the closest to the port. So the Black Belt and the Mobile
18 area.

19 Q And that would include benefits for white and black
11:50:37 20 Alabamians alike, correct?

21 A Yes, for everyone in the state, no matter their race.

22 Q Okay. Now, I wanted to turn to something you said in your
23 declaration. This is paragraphs 7 and 8. Do you have that in
24 front of you or would you like me to share it on my screen?

11:50:56 25 A Can you repeat that?

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1 Q I was going to turn to something, a couple of statements
2 you made in your declaration.

3 A Okay.

4 Q In particular, paragraphs 7 and 8. Do you have a copy in
11:51:11 5 front of you, or would it be helpful for me to show that?

6 A I do not have it in front of me.

7 Q Okay. Let me pull that up right now.

8 Okay. So this is Milligan Exhibit 16. And I am going to
9 go down to paragraphs 6 -- or 7 and 8. I think this tracks
11:51:55 10 along with some of the things you were saying earlier.

11 In particular, you stated, along with other black people
12 in both the city of Mobile and Mobile County, can trace our
13 family roots back to the Black Belt areas of Alabama, and you
14 list some of those counties.

11:52:10 15 A Right. You don't have to read it. I see it.

16 Q All right. And then paragraph 8.

17 A Uh-huh.

18 Q Closing with, that I guess essentially black people in the
19 city of Mobile and the county of Mobile can trace family roots
11:52:30 20 back to Black Belt areas. And then black people both in the
21 city and the whiter county of Mobile share history and similar
22 struggles when it comes to combating diversity, fighting
23 inequality in the state of Alabama; is that correct?

24 A That is correct.

11:52:47 25 Q Okay. I will take this off of screen share.

1 So then would you agree that black people in the city of
2 Mobile and black people in Mobile County who live outside of
3 the city are part of a community of interest?

4 A I would say so. Those in the cities that I named earlier,
11:53:11 5 so Prichard, Chickasaw, Mobile -- and the city of Mobile.

6 Q Okay. And what about black people in any other parts of
7 the county?

8 A For the most part, the black people are kind of in the
9 same area. Besides the ones that are in the rural part of the
11:53:32 10 county, their numbers are low, but there are African-Americans
11 in the rural parts of Alabama, and I would say they're dealing
12 with the same issues that we are in the urban area of the
13 county.

14 Q Okay. So you would say there are part of the community of
11:53:50 15 interest with black Mobilians who live in the city?

16 A I would say so. They're dealing with the same issues,
17 health care issues, poverty, whatnot, so, yes.

18 Q Okay. Do you think that black people from Mobile city --
19 I will say Mobile city -- when I refer to people from Mobile
11:54:16 20 County, I will mean Mobile people who are not within the city
21 for this particular question. But do you think people -- black
22 people from Mobile city that have more in common with black
23 people from elsewhere in Mobile County or more in common with
24 black people from Barbour County, which borders the state of
11:54:36 25 Georgia?

1 A If Barbour County is a Black Belt county?

2 Q Would you define it as a Black Belt county?

3 A That's like 17 of them, so I don't know every Black Belt
4 county.

11:54:50 5 But black people in the Black Belt or black people in the
6 central lower half of Alabama are all dealing with the same
7 issues.

8 Q Uh-huh.

9 A With the poverty and health care, so I would say we do
11:55:03 10 have stuff in common. We do have similar issues in common.

11 Q Do you think people in Mobile city and the rest of Mobile
12 County, though, might also have other things in common beyond
13 dealing with those particular issues that you were discussing
14 in your testimony?

11:55:16 15 A What issues would you be talking about? Because I focused
16 on the issues that affect their daily -- day-to-day operations
17 in their daily lifestyles, not anything that is pleasure or
18 whatnot, but anything that prevents them from being to live
19 fair, equitably, and comfortably.

11:55:33 20 Q Oh, how about economic issues? Those are day-to-day,
21 correct?

22 A Right.

23 Q Probably --

24 A I would say as a whole, the state has a low minimum wage.

11:55:44 25 A low minimum wage affects being able to afford basic things,

1 such as health care. And so the people -- you know, their
2 economic issues are prevalent, and people in Mobile have the
3 same economic issues -- especially if we're following these
4 similar.

11:56:11 5 Q But would a Mobile County resident, black, white, any
6 race, be more likely to work with a Mobile city resident, or
7 with a Barbour County resident?

8 A Well, given the distance, I would say Mobile, but we are
9 in a state school board district with counties all the way on
11:56:29 10 the border of Georgia, so we have an interest when it comes to
11 say school board and no one has an issue with that. So I say
12 it shouldn't be an issue when it comes to another map.

13 Q All right. Would residents of Mobile County versus Mobile
14 city, would they be more likely to shop at the same stores and
11:56:51 15 get their news from the same sources than through Mobile County
16 and Barbour County residents?

17 A Given the location, I would say, yes, the city of Mobile
18 and the county of Mobile residents would shop in the same
19 entities.

11:57:05 20 Q Okay. So, then, residents of the county of Mobile might
21 have -- well, I take your point is that there are certain
22 things that Mobile city residents have in common with Barbour
23 County residents, or black Mobile city residents and black
24 Barbour County residents might have in common. There might be
11:57:27 25 other things that black Mobile County residents have in common

1 with black Mobile city residents that are not shared with black
2 Barbour County residents; is that fair?

3 A Off the top of my head, I really can't necessarily think
4 of anything -- any major issue that we would have in Mobile
11:57:44 5 that's just uniquely different to just us in the city instead
6 of black people in other areas of our state.

7 Q Well, let's take -- let's go back to the port for a
8 moment. If there's a congressional representative from the
9 Gulf, he might be more interested in making sure that the port
11:58:10 10 is deep end and wide end than a congressional representative
11 from Huntsville area who might be more interested in the
12 Redstone Arsenal, for example; is that fair?

13 A It would be fair if the current representative in the port
14 area hasn't been supporting a wall, and a wall isn't by the
11:58:34 15 Gulf Coast. So I don't think that could be a good comparison.

16 Q Could you say that again?

17 A When I say wall, I'm talking about the wall -- the Texas
18 border wall that has been talked about being built.

19 So that representative who represents us has supported
11:58:49 20 that wall, and that wall has nothing to do with us. So I don't
21 think the example that you gave would be a fair one for me to
22 -- to converse about.

23 Q I was speaking more hypothetically, Ms. Dowdy -- or
24 Captain Dowdy. I apologize.

11:59:10 25 A Miss is fine.

1 Q Great.

2 I mean, hypothetically, you would expect any
3 representative black or white from the Gulf area to be perhaps
4 more interested in Gulf issues?

11:59:25 5 A Right, you would.

6 Q Than a representative on the border with Tennessee?

7 A Yeah, you would. But you never know what you will get
8 sometimes when you elect certain individuals, so you would
9 think your elected representative would care about your health
11:59:39 10 care, but that isn't being a thing that we're seeing how things
11 are being voted on in D.C. So I'm real -- I am more of a
12 realistic person and not hypothetical.

13 Q Do you think there might be any -- some good faith reasons
14 for not supporting the Build Back Better plan?

11:59:56 15 A Looking at the -- the way it can grow the economy, how it
16 helps the middle class and the working citizens, I don't -- I
17 don't see a reason why you would not support helping Americans
18 when we are battling a pandemic. People have lost their jobs.
19 You should want to help the working citizens, all Americans, so
12:00:16 20 I don't see the issue -- I can't find a reason why someone
21 should not support it.

22 Q Would it be fair to say some people might be concerned
23 about the rate of inflation that might -- and how it might be
24 affected by a particularly large federal spending bill?

12:00:35 25 A I think people should come first, you know. You choose to

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1 represent people. When you are an elected official, you need
2 to be focused on whether or not the bill in front of you will
3 help the people who need the help in the district that you are
4 representing.

12:00:53 5 Q Does inflation affect black people?

6 A It probably would affect everybody in America.

7 Q Okay.

8 A And not just black people.

9 Q Okay. I would tend to agree it would affect everyone.

12:01:15 10 MR. LACOUR: This might be a good point to stop, Your
11 Honors.

12 JUDGE MARCUS: All right. Why don't we do that? We
13 will take a one-hour break for lunch, and we will come back
14 about five minutes after 1:00, and we will get started at that
12:01:28 15 point. Ms. Dowdy, I would ask you if you would be kind enough
16 to come on back or really just stay communicating with us
17 because we will start back with you at 1:05 with Mr. LaCour and
18 then again with Ms. Carter.

19 Mr. LaCour, how much more do you think you have with
12:01:49 20 Ms. Dowdy?

21 MR. LACOUR: Your Honor, it's a little tough to
22 estimate.

23 JUDGE MARCUS: Just a rough sense of how the rest of
24 the day is likely to play out.

12:02:02 25 MR. LACOUR: Probably 20 to 30-minute range.

1 JUDGE MARCUS: Okay. And then the next witness for
2 the Milligan folks, Ms. Carter, would be whom? Do you know?

3 MS. CARTER: I'm not exactly sure. I would be able to
4 say after lunch.

12:02:20 5 JUDGE MARCUS: Okay. We will just take it as we -- as
6 we proceed.

7 Ms. Khanna, was there anything you wanted to add at this
8 point or?

9 MS. KHANNA: Yes. Thank you, Your Honor. Just for
12:02:29 10 the Court's information, I believe the plan is after Ms. --
11 Captain Dowdy testifies, the Carter plaintiffs will begin with
12 your their Section 2 witnesses with Mr. Cooper -- sorry -- the
13 Caster plaintiffs. Apologies.

14 JUDGE MARCUS: Milligan. I'm not sure -- are you
12:02:49 15 putting on your experts at that point, or are we going to hear
16 from the Milligan experts Duchin, Liu, and Bagley?

17 MS. KHANNA: So the plan right now I think is to
18 proceed after this witness to the Section 2 case, which is both
19 Milligan and Caster. And we are coordinating so that our
12:03:06 20 witnesses will go not necessarily with just Milligan first,
21 then Caster, but interspersed.

22 JUDGE MARCUS: I got it. And you are free to put it
23 in any order mixing them however the parties think is most
24 appropriate.

12:03:18 25 All right. We thank you all. And we will see you back

1 here let's say at 1:05, and we will pick up the thread with
2 Mr. LaCour.

3 We are in recess until then. Thank you.

4 (Recess.)

13:04:44 5 JUDGE MARCUS: Judge Manasco, Judge Moorer, are we
6 ready to proceed?

7 JUDGE MOORER: Yes, sir.

8 JUDGE MANASCO: I am.

9 JUDGE MARCUS: We broke as I said before in the middle
13:08:11 10 of the cross-examination of the Ms. Dowdy by Mr. LaCour. With
11 that, you may proceed, counsel. Thank you.

12 BY MR. LACOUR:

13 Q Your Honor, Captain Dowdy, welcome back.

14 Just briefly. On your direct testimony, you said that the
13:08:29 15 Build Back Better bill was a bipartisan bill. What was your
16 basis for that?

17 A I didn't say bipartisan. You asked me, and I said from
18 what I'm tracking, it was passed, and some people from both
19 sides -- I don't know the exact number on how many from each
13:08:48 20 side voted for the bill, but I know -- I'm tracking that it
21 might have been members from both sides. I haven't really
22 looked. All I cared about was whether or not it had been
23 passed.

24 Q Are you referring to the small infrastructure bill or the
13:09:03 25 larger Build Back Better plan that has not yet been enacted?

1 A The Build Back Better plan, the one -- the one that was
2 recently signed.

3 Q Okay. Do you equate opposition to the Build Back Better
4 plan as a lack of responsiveness to the needs of Black
13:09:28 5 Americans?

6 A Knowing that health care expansion will be a huge part of
7 each aspect of the plan, I would say I don't think the black
8 Americans or those who struggle with being able to afford
9 health care was adequately taken into consideration.

13:09:57 10 Q Okay. And you -- I think you said earlier you lived in
11 South Carolina for a time; is that right?

12 A Yes. I was stationed at Shaw Air Force Base from 2017 to
13 2018.

14 Q Okay. Are you familiar with who Senator Tim Scott from
13:10:17 15 South Carolina is?

16 A I've heard the name, but because I have been registered in
17 Alabama to vote my whole life, I kind of -- I paid more
18 attention to the elected officials that I have the ability to
19 elect.

13:10:33 20 Q Does it sound right that he's someone who identifies as
21 black and also a Republican?

22 A I do know that -- I do know -- I know of Tim Scott. So I
23 don't follow him closely or what he votes for because he's not
24 my elected official.

13:10:53 25 Q Okay.

1 A Or represent me.

2 Q Would it surprise you if I told you that he opposed the
3 Build Back Better plan?

4 A It would not surprise me, because I do know he is a member
13:11:04 5 of the party who majorityly (sic) opposed the plan.

6 Q Okay. You think a congressional, a Republican Congressman
7 can represent the needs of black Alabamians?

8 A It depends on being able to examine their voting record.
9 And the current -- my current representative is in his first
13:11:34 10 term, but examining his current voting record in Congress, I do
11 not feel that he -- and I could only speak on my person because
12 he -- he is representing me, so I pay attention to who -- who
13 represents my area right now. I feel like he's not doing an
14 adequate job at representing black Alabamians.

13:11:54 15 Q Okay. And do you think a black Congressman could
16 represent the needs of white Alabamians?

17 A I feel like a -- I feel like a black Congressman could
18 represent both demographics. There are white Alabamians in
19 District 7, even though it is majority-black. And I think
13:12:16 20 Terri Sewell does a great job of representing everybody in her
21 district, and I use her because that's the only district we
22 have ever had black representation from.

23 Q Do you think she adequately represents the needs of
24 Republicans in her district?

13:12:31 25 A I would say yes.

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1 Q What makes you say yes?

2 A When it comes to basic necessities and what brings comfort
3 to individuals as a whole, she supports bills that benefit both
4 black and whites. So I would say yes. Black, white, Democrat,
13:12:50 5 Republican.

6 Q What sort of bills? I'm just curious.

7 A The opposite -- she's -- my Congressman did not support
8 basically. So Build Back Better, the CARES Act, there was a
9 bill centered around -- it was Pump, centered around nursing
13:13:10 10 mothers. She supported that. My Congressman did not. So
11 bills such as the ones that I mentioned previously. Basically
12 everything my elected official voted against, she voted for.
13 Things don't just help Alabamians. Thankfully they help
14 everybody in our state.

13:13:28 15 Q All right. So changing gears a little bit. You said
16 earlier that you have family ties to the Black Belt, correct?

17 A Correct.

18 Q Do you have any family ties to Birmingham?

19 A I have an aunt and all of her kids, so my cousins and
13:13:53 20 cousins that live in Birmingham.

21 Q Okay. Do you have any family ties to Huntsville?

22 A I do. I have cousins in Huntsville.

23 Q Okay. And do you know other black people in Mobile who
24 have family ties to Birmingham?

13:14:08 25 A Yes, I do. A lot of us have relatives who lived in the

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1 Black Belts who migrated -- they didn't just migrate to the
2 port, but also migrated to Birmingham because of the steel
3 industry and Huntsville and Montgomery. So we have family.
4 Myself and my peers, friends, we have family for the most part
13:14:27 5 in the rural parts of the state, along with the other major
6 cities in Alabama.

7 Q Okay. And earlier, you identified certain interests that
8 were shared by black people in Mobile and black people in the
9 Black Belt related to health care, education, correct?

13:14:51 10 A Correct.

11 Q Would those same interests be shared by black people in
12 Birmingham or Huntsville?

13 A I -- my work -- majority of my work has been done in the
14 lower part of the state, given my -- Montgomery. So I really
13:15:15 15 haven't done much research on Huntsville. Not even research.
16 I haven't had a lot of time in Huntsville and Montgomery. I
17 have had time there, but majority of my organizing work has
18 been in the lower central region of the state, just because of
19 accessibility.

13:15:31 20 Q Do you have reason to think that -- scratch that.

21 So returning briefly to your declaration. You stated that
22 black people in Mobile and in the Black Belt, quote, share
23 history and similar struggles when it comes to combating
24 adversity and fighting inequality in the state of Alabama. Do
13:15:54 25 you think there's a similar shared history and similar

1 struggles for black people in Birmingham or black people in
2 Huntsville?

13:16:11 3 A Being that they do have relatives -- I feel comfortable
4 saying people have relatives from the Black Belt area. There
5 could be similar struggle. The things I mentioned when it
6 comes to health care and food deserts and education, that's a
7 -- that can go out of other areas. But like I said, I'm more
8 knowledgeable on the central and lower half because I am
9 assigned to do work in the lower half in the First
13:16:30 10 Congressional District and the surrounding counties in the
11 Black Belt.

12 Q But do your family members in Birmingham or Huntsville
13 share similar interests to you in terms of these political
14 interests?

13:16:43 15 A Could you elaborate on the political interests you're
16 talking about? Because the health care stuff isn't political.
17 That's a human need or a human right.

18 Q They have similar interests when it comes to health care,
19 education, other human rights?

13:17:04 20 A Yes, as I think everybody would, black and white.

21 Q Okay. And would you say that black people in Mobile form
22 a community of interest with black people in Huntsville, then,
23 based on shared relationships to the Black Belt, shared
24 interests in health care, education, and other poverty-related
13:17:31 25 issues?

1 A I feel like we would have more family ties to those in the
2 Black Belt. So not necessarily Huntsville. Like the amount of
3 family I have in Huntsville is the smallest. I have the least
4 amount of family in the Huntsville area. So I would say with
13:17:51 5 the issues that are going on in my family in the Black Belt and
6 if it -- it's impacting me in Mobile because they're my family.
7 I wouldn't necessarily say that that is always the same issue
8 with Huntsville. So I'm not knowledgeable of Huntsville
9 because it's almost six hours away. I don't spend that much
13:18:09 10 time in Huntsville, so I haven't adequately engaged the people
11 of Huntsville, including family or organizing work. I have
12 been assigned the areas on the lower part of the state, just
13 because of the distance and the space.

14 Q Do you have reason to think that black people in
13:18:25 15 Huntsville would not have similar -- to use your language again
16 -- experience combating adversity and fighting inequality in
17 the state of Alabama as -- for black people in Mobile and black
18 people in the Black Belt?

19 A Are we talking about modern day or just throughout time?

13:18:47 20 Q Let's just stick to today for now.

21 A There is -- poverty exists in the black community. So in
22 the black community, they have --

23 JUDGE MARCUS: I'm sorry. You broke up for a second,
24 Ms. Dowdy. I don't think we heard the last thing that you
13:19:10 25 said.

1 THE WITNESS: With those in Huntsville. So I don't
2 feel like I can adequately answer the question.

3 BY MR. LACOUR:

4 Q And sorry. Could you repeat the -- I think we lost you
13:19:29 5 for a moment.

6 JUDGE MARCUS: Why don't we start over, Mr. LaCour.
7 Ask the question again, and again, we'll take Ms. Dowdy's
8 answer. The reason we're doing that is for a moment your
9 screen froze up, so we were unable to hear a piece of your
13:19:46 10 answer. With that, why don't you ask the question again.

11 MR. LACOUR: Sure, Your Honor.

12 BY MR. LACOUR:

13 Q The question was basically: Do you have any reason to
14 think that black people in Huntsville would not have a shared
13:20:01 15 history and similar struggles to black people in the Black Belt
16 or black people in Mobile when it comes to --

17 MS. CARTER: Objection, Your Honor.

18 JUDGE MARCUS: Let him finish the question.

19 BY MR. LACOUR:

13:20:14 20 Q -- fighting inequality in the state of Alabama?

21 JUDGE MARCUS: Ms. Carter?

22 THE WITNESS: I will say --

23 JUDGE MARCUS: No, no, no. Wait one second,

24 Ms. Dowdy. I think there is an objection from Ms. Carter.

13:20:24 25 MS. CARTER: Yes, Your Honor. The question -- the

1 question calls for speculation, and it's also asked and
2 answered. He's asked --

3 JUDGE MARCUS: Well, I think it has been asked and
4 answered a few times. We will give you one more shot at it,
13:20:37 5 Mr. LaCour, and then let's move on.

6 MR. LACOUR: All right. And am I asking it again
7 because of the lag or?

8 JUDGE MARCUS: I think the question has been asked in
9 a variety of ways and answered in a variety of ways. I think
13:20:54 10 it has been asked and answered. What I said was I would give
11 you one more stab at it if you want it.

12 MR. LACOUR: Okay.

13 BY MR. LACOUR:

14 Q My question was: Do you have any reason to think that
13:21:05 15 black people in Huntsville would not have shared interests
16 comparable to the shared interests between black people in
17 Mobile and black people in the Black Belt?

18 A Like previously stated, I haven't engaged on an in-depth
19 level with the people in Huntsville to hear about what their
13:21:26 20 issues are at the level that I have engaged with those in the
21 Black Belt and lower Alabama region.

22 Q And you said before that one reason is it's six hours
23 away, correct?

24 A Correct.

13:21:43 25 Q So that distance makes it a little bit harder for you to

1 know the facts on the ground in Huntsville, correct?

2 A It can. It can.

3 Q Now, you said you worked for the Alabama Democratic Party
4 for a time; is that correct?

13:22:06 5 A Correct. Correct.

6 Q Was any of that work on a congressional campaign?

7 A Outside of that work was centered around Senator Doug
8 Jones. And then outside of that in my personal time, I have
9 worked on a congressional campaign.

13:22:23 10 Q Was that in the First District?

11 A It was in the First District.

12 Q Okay. Was that a recent congressional campaign?

13 A It was 2020 election cycle.

14 Q Okay. Were you working with James Averhart?

13:22:41 15 A Yes. I was working with James Averhart.

16 Q Okay. And he was the Democratic nominee for the --

17 A He was.

18 Q -- in the general election to Representative Carl?

19 A Yes, he was.

13:22:54 20 Q What sort of work were you doing on the campaign?

21 A Engaging with the citizens in the counties assigned to the
22 -- to the district.

23 So engaging with them on what their issues were that they
24 would want James Averhart, if elected, to advocate for as their
13:23:24 25 Congressman. So we did that in some of the Black Belt counties

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1 -- Monroe County. Clarke county was in the First Congressional
2 District. A portion was, but it's not anymore. So in those
3 districts that those two counties are considered Black Belt
4 counties and the counties that we have and had now -- Escambia,
13:23:43 5 Washington.

6 So engaging with them on what their issues were because
7 being that I didn't permanently live -- I didn't always know
8 what their issues. So we engaged with them, had conversations.
9 I relayed that information back to the -- back to the
13:24:03 10 candidate. And then we also assisted those in the communities
11 with voter registration work. I did voter registration work
12 for those who were not registered or who thought they couldn't
13 vote because of previous things that prevented them from
14 voting. So engaging them in that manner on issues and voter
13:24:22 15 registration.

16 Q Did you find any issues that were common to people within
17 those five counties in particular, that they were people
18 interested in?

19 A Yeah. It's a repeat narrative, so kind of what I was
13:24:38 20 stating earlier. People having a lot of medical issues, not
21 having access to the food, and then when you don't -- when the
22 food desert -- you tend to eat unhealthy and that leads to
23 other health issues. And then they can't get those health
24 issues fixed. Those are -- it was issues along those lines,
13:24:58 25 things about infrastructure, you know, people complain about

1 roads. It was kind of like a similar narrative.

2 Q Okay. And it's easier to get around and actually meet
3 with all these people because they weren't six hours away,
4 correct?

13:25:15 5 A No. We -- we had to travel almost two hours to Monroe
6 County.

7 Q Right. But it's a shorter drive from Mobile to Baldwin
8 County, for example, than it is from Mobile to Madison County,
9 correct?

13:25:42 10 A Yes. But we also have congressional districts that are
11 that are already in effect that cover multiple counties and
12 require a multiple-hour drive to include our school board
13 district. So we are in a school board district with counties
14 that are three, maybe three, three-and-a-half hours away so --
13:25:59 15 on the state level, so.

16 Q And do you spend a lot of time -- do you know did the
17 campaign spend a fair amount of time and money getting to know
18 those particular voters in those particular counties?

19 A We did because they were not -- they're in the rural parts
13:26:23 20 of the state, so, yeah, we spent our weekends engaging with
21 them.

22 Q Okay. Would it have been disruptive to the campaign to
23 learn a few months before the election that 200,000 of those
24 voters were no longer going to be voters for District 1 and
13:26:43 25 that 200,000 new voters from somewhere else in the state were

1 going to be part of District 1?

2 A Not necessarily if you are aware of redistricting and know
3 that it's something that will occur and lives changed. So I
4 wouldn't think it would be that much of an issue.

13:26:58 5 Q Would it have taken more time and effort to go?

6 A It would. It would. Because you would have to go engage
7 new people, so it would, but that's a part of being a
8 candidate.

9 Q Great.

13:27:14 10 Let me see. Turn to next.

11 We -- so going back to your declaration. You had stated
12 in paragraph 4, it's a short quote, so I will read it to you,
13 and if you want to see it, I will be happy to pull it up as
14 well. Upon returning to Alabama, I immediately noticed the
13:27:43 15 lack of representation in many areas of leadership and elected
16 positions in particularly at the congressional level.

17 When did you return to Alabama?

18 A Around 2018. But I was always a voting citizen. When you
19 are on active duty, you can keep your state residency. So
13:28:05 20 since 18, I've always voted at home. But being on active duty,
21 you don't get to see -- you don't really get to engage with the
22 candidate, you know. You see what you can see from afar from
23 what information they put out on their websites and whatnot.
24 So once I returned home and I started organizing, and doing
13:28:24 25 organizing work, and learning more about the democratic

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1 process, and talking with people in the community and just
2 becoming more aware, you know, being able to be present --
3 because when you are on active duty, you are not present. Once
4 I was able to come home and realize that what I was looking at
13:28:47 5 wasn't fair representation, once I learned the numbers of how
6 many black people were in the state and the history of us only
7 having District 7, it was -- I was -- my eyes were opened.

8 Q And so that process began, 2018?

9 A More so around like 2015 or '16 because I was -- and as a
13:29:12 10 voter officer with my Army unit. So it required me to be
11 knowledgeable because I was encouraging to -- vote because a
12 lot of service members vote absentee ballot because we're not
13 present at home for election. So I became more aware around in
14 2015-16 when I was assigned VA voting advocate officer.

13:29:38 15 Q Okay. Any time before 2021, did you think about bringing
16 a lawsuit like this one to address that lack of representation?

17 A Beforehand, I assumed that with people -- more people
18 paying attention to redistricting and more people advocating
19 for a second congressional district through the public hearings
13:30:00 20 that were held and whatnot, I assumed that the state would
21 possibly give us fair representation. The majority of the
22 public hearings where we had a nice turnout were saying the
23 same thing, came for the same thing. You know, I had faith in
24 the reapportionment committee would provide that fair and
13:30:20 25 equitable representation, and then when the new maps came out,

1 and it almost looked exactly how it did previously, it's -- I
2 just decided why not play a role in possibly bringing about
3 that change and continuing to advocate and partake in a process
4 of participating in a suit such as this.

13:30:40 5 Q Okay. So from 2015-2016, when you are -- to become aware
6 of this lack of representation problem that you are alleging,
7 you decided, wait and see a few years until the next census
8 numbers come out and redistricting happens again; is that fair?

9 A Right. Because at that point, there was no -- I know the
13:31:00 10 maps got redrawn. But I know that the census data will provide
11 the adequate representation on what the numbers actually look
12 like. So. And then the work that I do through CROWD. So I
13 just became -- being a part of the fellowship really inspired
14 me to be more engaged in the process at the highest level that
13:31:25 15 I possibly can.

16 Q Based on your experience, your -- the knowledge you have
17 acquired, how long do you think this lack of representation has
18 been a problem?

19 A I have not -- I haven't looked at the census numbers from
13:31:43 20 2010 and 2000. So I don't know what the black population
21 number was in 2010. I was 20 years old at West Point. So it
22 wasn't on my radar, and I haven't went back and looked. So I
23 don't know if I can adequately answer how long I feel as if we
24 have not been represented properly.

13:32:04 25 Q And is the lack of representation really that you're

1 referring to the fact that the black population in Alabama is
2 roughly 27 percent, make up a majority -- a majority in a
3 congressional district and only 14.3 percent of congressional
4 districts?

13:32:24 5 A Right. We're not properly represented because we --
6 because there is only one district where a black candidate can
7 be elected.

8 Q Okay. And if there were two such districts, that would
9 represent 28.6 percent of congressional districts in Alabama,
13:32:45 10 correct?

11 A Correct.

12 Q Do you contend Alabama did something wrong in 1992 when it
13 drew one majority-black congressional district?

14 A Not knowing when District 7 came about, I would assume it
13:33:01 15 happened in '92, since you brought it up.

16 If that was -- I don't know when District 7 came about.
17 So did it come about in '92?

18 Q Yes, it did.

19 A Okay. So I would say going from no representation to that
13:33:14 20 First District, I would not say they did anything wrong because
21 it gave black people some opportunity to elect someone who is a
22 part of their community, understands their issues.

23 Q Okay. But at some point between 1992 and 20 -- and what
24 date do you think representation was --

13:33:40 25 A I think it just depends on -- I think that would depend on

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1 what percentage of Alabama -- what the black percentage of
2 Alabama looked like in those years. And I am not aware of what
3 the numbers are, so I can't adequately state what -- when did
4 we need the second district.

13:33:57 5 I will say we're just pushing for one extra district right
6 now, and it's an issue. So getting that one issue -- getting
7 that one district, and now we are aiming for another one, I
8 think it takes -- you have to take baby steps in processes like
9 that. So we are at the next step where it's time to advocate
13:34:17 10 for that second black district.

11 Q Does it matter to you how that second majority-black
12 district is composed?

13 A To me personally, no. I feel like a second district would
14 be the fair thing to do. So to me personally, knowing that
13:34:37 15 Birmingham is majority-black, or Jefferson County has a high
16 black population, I know another district can come from that
17 region. Because of the work I do, I am aware of the
18 demographics in the state. So at this point, I'm not -- I
19 don't have a preference over where it comes from.

13:34:54 20 Q Okay. If you could get a second majority-black district
21 by joining parts of Mobile with parts of Birmingham and
22 Huntsville, would that lead to fair and equitable
23 representation?

24 MS. CARTER: Objection, Your Honor, this exceeds the
13:35:10 25 scope.

1 JUDGE MARCUS: One moment. One moment, Ms. Dowdy. We
2 have an objection. Would you state your objection?

3 MS. CARTER: Yes, sir. This line of questioning
4 exceeds the scope of direct.

13:35:21 5 JUDGE MARCUS: Well --

6 MR. LACOUR: Your Honor, I am trying to determine what
7 she means by fair and equitable and if it means simply
8 proportional representation or if there are other factors that
9 might be relevant in determining whether a particular map is
10 fair and equitable when those are pretty --

11 JUDGE MARCUS: I will allow the question. You may
12 proceed. Just put the question again directly and simply.

13 BY MR. LACOUR:

14 Q Captain Dowdy, if a second majority-black district could
13:35:48 15 be drawn by joining parts of Mobile with parts of Birmingham
16 and Huntsville, would that lead to a fair and equitable
17 representation?

18 A Given the work that I have done with organizations across
19 the state, I haven't seen a map that puts Huntsville in a
13:36:11 20 majority-black district, a map that -- that and adequately talk
21 about how to answer that question because all the maps I have
22 seen proposed and seen people talk about that analysis have
23 been done with that maps have not included Huntsville in it.
24 So I'm aware of the Birmingham population of African-Americans
13:36:37 25 to Tuscaloosa, the Black Belt and Mobile, so I haven't seen a

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1 map with Huntsville produced and showing the stats. And so I
2 don't think I could adequately support a map of the nature that
3 you're talking about.

4 Q And just to drill down on why it is you couldn't support
13:37:00 5 that map. Is it simply because you haven't seen one that looks
6 that way?

7 A I haven't seen one. I haven't -- I haven't done analysis
8 or -- I don't know what the -- I don't know if the black
9 population is in the Huntsville area. And so I've seen maps
13:37:18 10 presented by people who are doing the work that have other
11 areas of the state combined. And so there's solutions to the
12 problem that we have, and I think those maps that have been
13 presented that do put -- that does not present Huntsville are
14 maps that we should be focused on and consider. Those are ones
13:37:37 15 that I am knowledgeable on. So because I don't know
16 demographics of northern Alabama, I don't think I can
17 adequately speak on what a map -- what map if I would support a
18 map that had Huntsville in it for a second black congressional
19 district.

13:37:56 20 MR. LACOUR: Is Judge Moorer still on? I don't see
21 him. I hate to...

22 JUDGE MARCUS: Yeah. I think that you're right. I do
23 not see Judge Moorer on the screen just this past moment. I am
24 glad that you raised it.

13:38:16 25 Frankie, are you with us? I guess not.

1 THE CLERK: Yes, sir. I am here.

2 MS. ADAMS: Your Honor, this is Kelly Adams. I'm
3 Judge Moorer's clerk. I will give him a call.

4 JUDGE MARCUS: Thank you, Mr. LaCour. Let's hold up
13:38:48 5 until we get him back on the screen.

6 MR. LACOUR: Absolutely.

7 JUDGE MARCUS: Judge Moorer, are you able to hear us
8 okay? Hi there. Can you hear us, Judge Moorer?

9 JUDGE MOORER: I'm sorry. We had some technical
13:41:23 10 difficulties on our end.

11 JUDGE MARCUS: No problem at all. We didn't proceed
12 at all without you. So there's been no break. We will proceed
13 with the next question, Mr. LaCour.

14 MR. LACOUR: Thank you.

13:41:36 15 BY MR. LACOUR:

16 Q Captain Dowdy, we talked earlier about some of the shared
17 interests, residents of the Gulf counties. In light of that,
18 if it were possible to create a majority-black congressional
19 district that included all of both Mobile and Baldwin counties,
13:41:53 20 rather than splitting those counties, do you think that would
21 be better for black voters who live and work in the Gulf region
22 than an alternative plan that also creates two majority-black
23 districts, but ends up splitting those counties?

24 A If a second -- can you -- are you saying that a second
13:42:16 25 black congressional district would be made but Mobile and

1 Baldwin County would be kept together?

2 Q Correct. If it were possible to create a second
3 majority-black district while still keeping Mobile and Baldwin
4 counties together, all things being equal, would that be
13:42:32 5 preferable for black voters who live and work in the Gulf
6 region rather than a different map?

7 MS. CARTER: Objection.

8 BY MR. LACOUR:

9 Q In which two majority-black districts are created?

13:42:45 10 MS. CARTER: Objection, Your Honor.

11 BY MR. LACOUR:

12 Q But Mobile and Baldwin are split?

13 JUDGE MARCUS: Yes. Basis.

14 MS. CARTER: Speculation.

13:42:54 15 JUDGE MARCUS: Well, I am not sure it's asking her to
16 speculate as to tell us what her preference would be. But can
17 you sharpen the question a little bit, Mr. LaCour? It's not
18 really -- I think there's a clause or a piece missing from the
19 question. Just put your question again, please.

13:43:13 20 MR. LACOUR: I will try it again, Your Honor.

21 BY MR. LACOUR:

22 Q Captain Dowdy, all things else being equal between two
23 hypothetical plans that both include majority-black
24 congressional districts, would it be better for black voters to
13:43:32 25 live and work in the Gulf region that all of Mobile and Baldwin

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1 counties be kept together versus being split apart?

2 A I don't think it would matter just because we already have
3 a map that was approved on a state level where Mobile and
4 Baldwin County are in two different districts. And that would
13:43:53 5 be the state education map. So I don't think it would matter
6 either way. We're split on that level, and then we're combined
7 now. So I don't think -- I don't think it would matter just as
8 long as there's a second majority-black district.

9 Q Do state board -- I mean, you referred a few times to the
13:44:13 10 state board of education, correct? Do members of the board
11 have similar responsibilities as members of Congress?

12 A They're representing Alabamians. But they're not voting
13 on legislation that impacts the whole country. They're focused
14 on educational issues to those in Alabama.

13:44:32 15 Q Correct. And typically on statewide basis, correct?

16 A Correct.

17 Q So they don't have the same opportunity to sort of secure
18 important federal spending for their district, for example?

19 A I don't -- I haven't worked on a state school board
13:44:59 20 campaign, so I don't know what the duties are. I'm just going
21 off of maps that have been approved and that a map that looks
22 like what we're fighting for that has already been approved,
23 and so that's why -- if it's fine for citizens to be
24 represented or combined -- if it's fine to combine Mobile and
13:45:17 25 the Black Belt when it comes to education on the state level,

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1 why wouldn't it be fine to combine Mobile and the Black Belt on
2 a congressional level, as well? And that -- that combination
3 was done, so that there could be a black school -- a black -- a
4 district where a black person could be elected. That's really
13:45:36 5 why that district is drawn that way. And so my deal is I don't
6 see the issue on why we can't work to achieve that on a
7 congressional level.

8 Q But you just said you don't know anything about the duties
9 of a state board of education member, correct?

13:45:52 10 A I do not because I haven't worked for a campaign, so.

11 Q So do you know whether that's really a good comparison
12 with --

13 A I would say yes.

14 Q -- Congress?

13:46:03 15 A The maps were drawn by the reapportionment committee,
16 signed by the governor. She's representing -- I guess state
17 school board would be -- I don't know if it's -- if college is
18 a road into that, or if it's just K-12, but legislation, so
19 they're representing students or our youth or things concerning
13:46:21 20 education, and there's bills that are passed at a national
21 level concerning education, and our kids are represented by the
22 congressional member, as well. So I see similarities in there.
23 When it comes down to it, they're representing people in
24 counties that are within our state.

13:46:37 25 Q And how many members are on the state board of education

1 from the districts?

2 A Eight.

3 Q And how many congressional districts?

4 A Seven.

13:46:48 5 Q Okay. Do you know anything about the history of the state
6 board of education map and how it came to be?

7 A I do not.

8 Q Okay. You stated -- let's see. There's one other -- at
9 least one other question I had from something you had said in
13:47:12 10 your declaration. Let me find it. Bear with me for just a
11 moment.

12 So paragraph 9 of your declaration refers to -- says the
13 issues of education, health care, and the equitable --
14 distribution of infrastructure have been devastating to the
13:47:55 15 black communities residing in the Black Belt and Mobile. All
16 of this in addition to not being able to elect someone who will
17 fight for the things the black people of Mobile find important,
18 results in the demographic that I belong to being helpless and
19 disempowered.

13:48:06 20 So are the members of the demographic you belong to
21 helpless and disempowered in every congressional district
22 except for District 7 right now?

23 A I can only -- I would say that they're not fairly being
24 represented. I will leave it at that. So when I say like
13:48:29 25 disempowered, it's like the way the maps are drawn right now.

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1 If I go -- when I go and vote, I know that at this point given
2 the demographics of my congressional district, I will not be
3 able to elect someone for the most part who will advocate for
4 the needs of my community, the black community. And being that
13:48:50 5 we know how incumbency work, the same person will more than
6 likely stay in the seat.

7 And so given the track record thus far, I don't -- I feel
8 as if I'm going to vote anyway, but I feel as if my vote holds
9 no weight because I'm not able to vote for someone who has
13:49:06 10 shown that they care about legislation that impacts those
11 people within the district, and especially those from my --
12 right now I'm focused on the black community.

13 Q Do you think Republican members of the black community are
14 helpless and disempowered in the First Congressional District?

13:49:25 15 A Given that I work for the Alabama Democratic Party, and
16 the majority of the black people I engage have been Democrats,
17 I really haven't engaged with the black Republicans, and I do
18 know the number is low. So I don't -- given my background, I
19 haven't really engaged with that many black Republicans. It's
13:49:47 20 literally been about two, so... I am not able to speak on that
21 from that I strong knowledge base.

22 Q Okay. So you don't know whether black Republicans in the
23 first congressional district are helpless and disempowered?

24 A No. Because the ones I have engaged have happened to have
13:50:05 25 been for the most part Democratic.

1 Q But you know a couple of Republicans you said, correct?

2 A I do.

3 Q In Alabama?

4 A I do.

13:50:20 5 Q Are they helpless and disempowered?

6 A They happen to not be a part of the majority of the
7 population that live -- that are in poverty. They are more so
8 like upper middle class, so.

9 Q Are they still part of the black community?

13:50:40 10 A They are. So they would have family members, because some
11 of us make it out, and everybody does not. So they would have
12 family members who may fit the description that you're talking
13 about.

14 MR. LACOUR: I think that might be it for me. If I
13:51:01 15 could just confer with my co-counsel for just a moment.

16 JUDGE MARCUS: Sure.

17 MR. LACOUR: Ms. Dowdy. I thank you for your time. I
18 pass the witness.

19 MS. CARTER: Your Honor, may I have about a ten-minute
13:51:30 20 break.

21 JUDGE MARCUS: You sure can. We will take a
22 ten-minute break. I have about 2:50, 2:51. We will come back
23 at -- or actually it's 1:51 your time. I'm reading it here on
24 Eastern Standard Time. We'll come back in about ten minutes, a
13:51:46 25 little past 2:00 o'clock your time in Central Standard Time.

1 Thank you. We will take a ten-minute break.

2 (Recess.)

3 JUDGE MARCUS: All right. I think we are all
4 assembled and everybody here, everybody is tuned in. Judge
14:02:19 5 Moorer, Judge Manasco, you are able to hear me okay?

6 JUDGE MANASCO: I can.

7 JUDGE MOORER: Yes, sir, I can.

8 JUDGE MARCUS: All right. Thank you. Ms. Carter, we
9 are ready for redirect of Ms. Dowdy.

14:02:35 10 MS. CARTER: Thank you, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. CARTER:

13 Q Captain Dowdy, do black people in the Black Belt celebrate
14 Mardi Gras?

14:02:43 15 A They travel down to Mobile to celebrate with us. Our
16 family members do.

17 Q Do black people from Clarke County communicate to Mobile
18 to work in the port?

19 A I don't know exactly from what counties people come down
14:02:59 20 from. And I'm trying to remember where Clarke County is. I
21 know it's -- it was in the First Congressional District. I'm
22 not knowledgeable to say on that county. But counties such as
23 Escambia and Washington County, yes.

24 Q And is one shared issue for black people in the Black Belt
14:03:23 25 and Mobile access to high speed Internet?

1 A Yes. And we saw that during the pandemic. We -- I'm
2 aware that that issue in the Black Belt, and then we had that
3 issue here in Mobile when the schools went virtual, and we
4 realized a lot of the black households didn't have access to
14:03:44 5 Internet.

6 MS. CARTER: Thank you. No further questions, Your
7 Honor.

8 JUDGE MARCUS: All right. Are there any other
9 questions, Judge Moorer or Judge Manasco?

14:03:57 10 JUDGE MANASCO: None from me. Thanks.

11 JUDGE MOORER: No, sir.

12 JUDGE MARCUS: Seeing none, we thank you, Captain
13 Dowdy, for coming down here today, and you are excused.

14 THE WITNESS: Thank you, Your Honor.

14:04:11 15 JUDGE MARCUS: And who would be the next -- I take it
16 at this point, the plaintiffs both Milligan plaintiffs and
17 Caster plaintiffs are turning to the Section 2 presentation
18 although there's undoubtedly overlap. Do I have that right,
19 Ms. Khanna?

14:04:28 20 MS. KHANNA: Yes, Your Honor. My understanding is
21 from here on out, we are dealing exclusively with the Section 2
22 case, both ours -- Caster plaintiffs and Milligan plaintiffs.

23 JUDGE MARCUS: So who will be called first?

24 MS. KHANNA: Mr. William Cooper. Caster plaintiffs'
14:04:44 25 expert.

1 JUDGE MARCUS: So you are going to put Mr. Cooper on
2 first, and I take it you will go back and forth between you and
3 the Milligan plaintiffs on the Section 2 case.

4 MS. KHANNA: Yes, Your Honor. We're trying to present
14:04:56 5 it in as coherent a fashion as possible, but obviously witness
6 availability and issues like that.

7 JUDGE MARCUS: I understand. So the way we will
8 proceed is we'll proceed in the same manner we have proceeded
9 earlier. If there's something particular to the Caster case
14:05:13 10 and the Caster case alone, you can highlight it, and we can
11 turn it at that point over to Judge Manasco. Otherwise, we
12 will proceed this way. I take it that's agreeable with you.

13 MS. KHANNA: Thank you, Your Honor. Yes.

14 JUDGE MARCUS: All right. Let's proceed. We have
14:05:28 15 Mr. Cooper?

16 MS. KHANNA: He should be here.

17 JUDGE MARCUS: Mr. Cooper, welcome.

18 WILLIAM S. COOPER,
19 having been first duly sworn, was examined and testified as
14:05:43 20 follows:

21 JUDGE MARCUS: Thank you. Good afternoon. And if you
22 would state your full name for the record, please.

23 THE WITNESS: My name is William Sexton Cooper.

24 JUDGE MARCUS: Thank you, sir. And you may proceed,
14:06:00 25 counsel.

1 MS. KHANNA: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MS. KHANNA:

4 Q Good afternoon, Mr. Cooper.

14:06:04 5 A Good afternoon.

6 Q You have been retained as an expert for the Caster
7 plaintiffs in this case; is that right?

8 A That's correct.

9 Q And you prepared two expert reports in this case?

14:06:16 10 A I have.

11 Q Okay. I would like to call up Caster Plaintiffs'
12 Exhibit 1, please. Can you please identify this exhibit?

13 A Yes. That is the first declaration I filed. I think it
14 was around the 10th of December.

14:06:36 15 Q Great. And if I can now call up Caster Plaintiffs'
16 Exhibit 59.

17 A And that would be the second declaration filed ten days
18 later.

19 Q Thank you. And do you have a printed copy of both of
14:06:57 20 these exhibits in front of you, as well?

21 A I do. I have a binder of various documents that you have
22 prepared I guess is a trial exhibit book.

23 Q I believe -- and if you look through it, is that basically
24 is just your two reports and all of the exhibits attached to
14:07:15 25 them; is that right?

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1 A Exactly.

2 Q And just for your awareness and the Court's awareness, I
3 will be periodically looking to an adjacent screen to looking
4 at the exhibits and my own notes, but I understand you might be
14:07:29 5 looking down at your report at times, too?

6 A Exactly.

7 Q All right. Let's pull up Plaintiffs' Exhibit -- Caster
8 Plaintiffs' Exhibit 2, please.

9 This was attached as Exhibit A to your first declaration.

14:07:46 10 Is this your current CV?

11 A Yes.

12 Q And does it provide a complete and accurate summary of
13 your background and professional experience?

14 A I believe it does.

14:07:57 15 Q Great. Okay. I think we can take this down.

16 I will just ask a few questions on your background and
17 expertise without combing over that document, which is, of
18 course, in the record.

19 What is your profession, Mr. Cooper?

14:08:13 20 A I am a consultant providing demographic analysis and
21 computer mapping analysis.

22 Q What does that mean?

23 A Basically, I draw maps, some of them for purposes of
24 elections, others for other kinds of demographic analysis --
14:08:36 25 poverty, households having issues with public utilities, or

1 something like that. It just varies from project to project.
2 But almost invariably there is a component that involves
3 mapping. So that's my key function.

14:09:00 4 Q And so do you usually incorporate census data in drawing
5 those maps?

6 A Yes. Yes. Almost always.

7 Q So is it fair to say that you draw maps for a living?

8 A That is fair. That is basically what I do. And --

9 Q How long have you --

14:09:12 10 A -- lawns.

11 Q How long have you been doing this?

12 A I started using GIS software maybe just a limited amount
13 in graduate school in the '70s actually, but it was off of a
14 mainframe, and stuff was printed out on a piece of paper. With
14:09:34 15 modern-day technology, I think in late 1989 or maybe early
16 1990, I obtained a copy of a software program called GIS Plus
17 that was developed by the Caliper Corporation in Massachusetts,
18 and they were also the makers of the world-famous Maptitude for
19 redistricting that I still use to this day.

14:09:57 20 Q So about 30 years?

21 A 30 years, right.

22 Q Have you been accepted as an expert witness in cases
23 involving redistricting before?

24 A I have.

14:10:06 25 Q And about how many?

1 A I think approximately 45.

2 Q 45 federal court cases?

3 A 45 federal court cases involving -- I believe almost all
4 of them would have been Section 2, not all perhaps, but almost
14:10:24 5 all.

6 Q And all of those cases are listed in Caster Plaintiffs'
7 Exhibit 2 dating back to the '80s; is that right?

8 A That's correct.

9 Q Have any of the Section 2 lawsuits in which you have
14:10:36 10 served as an expert witness resulted in changes to
11 redistricting plans?

12 A Many have, at least five at the state level, and 25 or
13 more at the local level.

14 Q And do you -- what state level plans have you testified in
14:10:58 15 Section 2 cases that resulted in changes to those plans?

16 A The first state level case I testified in would have been
17 in Tennessee in the early '90s. And in that case, the issue
18 was regarding the state House, and the end result was that a
19 year or two later, a new African-American majority House
14:11:20 20 district was drawn in west Tennessee.

21 Q Any other states?

22 A I was involved in a case in Montana in the '90s to the
23 early 2000s, Native American Section 2 case. Then later that
24 decade, I also had a case on South Dakota involving the Lakota
14:11:44 25 Sioux and the Cheyenne Sioux. That resulted in the Court

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1 finally ordering a plan that I developed as an illustrative
2 plan as the remedial plan. I think that would have been around
3 2008 or 2009 when it was finally court ordered.

4 Q And more recently in Mississippi, as well; is that right?

14:12:03 5 A That is correct. In Mississippi in 2019, I testified at a
6 Section 2 trial involving the Mississippi state Legislature,
7 the state Senate, and there, as well, the end result has been a
8 new state Senate district in the Mississippi Delta.

9 Q Have you served as an expert in any other Alabama cases?

14:12:23 10 A I have. I served as an expert in the Alabama Legislative
11 Black Caucus case which was not a Section 2 case. I also
12 testified in the judicial case in 2018 involving state court,
13 the Supreme Court, and the appellate courts. And I testified
14 also in 2017, I believe, in a school desegregation case
14:12:52 15 involving the city of Gardendale and Jefferson County. The
16 judge relied on some of my maps in her opinion.

17 So I have testified. I think those are the three times I
18 have testified in federal court in Alabama.

19 Q In fact, most recently, you actually testified in the
14:13:09 20 Chestnut case, as well, just a couple of years ago; is that
21 right?

22 A Exactly. Thanks for refreshing my memory.

23 Q Absolutely.

24 So have you only done work on behalf of plaintiffs in
14:13:19 25 litigation?

1 A No. I've worked on behalf of defendants' jurisdictions.

2 Q Any in particular? Any examples?

3 A Most recently in the summer of 2020. I think my first

4 Zoom trial I testified on behalf of the city of Quincy,

14:13:42 5 Florida, the Northern District of Florida, in a Section 2 case.

6 Q All right. Do you also provide map drawing consultation

7 to jurisdictions outside of litigation?

8 A Yes.

9 Q And which jurisdictions, for example?

14:13:56 10 A Well, since the release of the 2020 census data, I have

11 provided assistance to the city of Wenatchee, Washington and

12 also to San Juan County, Utah. In fact, just a couple of weeks

13 ago, the county commission out there adopted the plan that I --

14 a plan that I drew for them. So there is now a plan in effect

14:14:21 15 for the rest of the decade at the county commission level that

16 I drew.

17 Q And you have also provided map drawing services for

18 several jurisdictions in Mississippi; is that right?

19 A That is correct, going back to the late '90s.

14:14:34 20 Q Thank you.

21 MS. KHANNA: Your Honor, pursuant to federal rule of

22 evidence 702, I would like to proffer Mr. Cooper as

23 redistricting, demographics, and census data to the Court.

24 MR. DAVIS: No objection, Judge.

14:14:48 25 JUDGE MARCUS: I'm sorry. I couldn't hear you.

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1 MR. DAVIS: No objection, Your Honor.

2 JUDGE MARCUS: We will qualify the witness as an
3 expert in those three fields. You may proceed.

4 MS. KHANNA: Thank you, Your Honor.

14:15:00 5 BY MS. KHANNA:

6 Q Mr. Cooper, can you please tell the Court what you were
7 asked to do in this case?

8 A Yes. I was asked to do two different things. One, to
9 determine whether or not the minority population, specifically
10 the African-American population in Alabama was sufficiently
11 large in geographically compacted to create a second
12 majority-black district in central and south Florida, and also
13 to produce some statistics from the Census Bureaus,
14 specifically the American Community Survey examining the
14:15:38 15 socioeconomic well-being of African-Americans as opposed to
16 non-Hispanic whites in the state.

17 Q Did you reach any conclusions regarding whether the black
18 population in Alabama is sufficiently large and geographically
19 compact to create an additional majority-black congressional
14:15:55 20 district?

21 A Yes, I did.

22 Q And what was that conclusion?

23 A It is definitely sufficiently large and sufficiently
24 geographically compact to create a second majority-black
14:16:08 25 district based on the 2020 census.

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1 Q How did you determine that?

2 A I took the U.S. census data that was released back in
3 August and developed some illustrative plans combining
4 different counties, different parts of south Alabama, and those
14:16:30 5 plans were ultimately part of my first declaration, where I
6 drew I think six illustrative plans.

7 Q Great. And did you reach any conclusions regarding
8 whether there were any disparities between black Alabamians and
9 white non-Hispanic white Alabamians on various indicators on
14:16:51 10 socioeconomic well-being?

11 A Yes. That's just clearly apparent, I think, to most
12 anyone, and data really brings it out. Poverty rates are twice
13 as high for African-Americans versus non-Hispanic whites in the
14 state. College graduation rates are higher for non-Hispanic
14:17:11 15 whites. One could go on and on. It's very difficult to find
16 any data point relating to socioeconomic well-being that
17 results in African-Americans at large in the state
18 outperforming whites.

19 Q All right. I'd like to turn a little bit to the
14:17:28 20 demographics of the state.

21 Can you please describe at a high level the population
22 growth patterns among different racial groups in Alabama since
23 between the 2010 census and the 2020 census?

24 A Well, the population in the state that has increased. And
14:17:45 25 I think I have a table in my declaration. Specifically,

1 though, the minority population grew. I don't have the
2 percentage right off the top of my head. But I think it's
3 about 5 or 6 percent. And the non-Hispanic white population
4 actually fell by about 1 percent. And so African-Americans, I
14:18:09 5 believe, comprise a significant component of the minority
6 population growth. But the fastest growing minority population
7 in Alabama between 2010 to 2020 is actually the Latino
8 population starting from --

9 Q I think you are referring to --

14:18:34 10 A Oh, starting from a much lower population base.

11 JUDGE MARCUS: I think the point, Mr. Cooper, that our
12 court reporter is making is that she's had some trouble taking
13 down the testimony. She wants to get it exactly correct, so as
14 we proceed, just really proceed very slowly for all of us, and
14:19:00 15 we'd be much appreciative.

16 Did you want to put your question again, Ms. Khanna?

17 MS. KHANNA: No, Your Honor. I think we actually have
18 it on record now.

19 JUDGE MARCUS: Okay.

14:19:11 20 THE WITNESS: I would like to clarify that actually
21 the fastest growing population in the minority community would
22 have been Asian Americans. Not in terms of absolute numbers,
23 but just in terms of percentages. It nearly tripled by
24 193 percent.

14:19:29 25 BY MS. KHANNA:

1 Q All right. And I think that the figure you're referring
2 to is Figure 1 on page 6 of your report.

3 MS. KHANNA: Let's call that up. That's Caster
4 Plaintiffs' Exhibit 1, Figure 1.

14:19:43 5 BY MS. KHANNA:

6 Q So what does this figure indicate about the white
7 population since 2010?

8 A Since 2010, it's up by -- it's down by 1 percent, 33,000.

9 Q And what about the minority population overall?

14:20:01 10 A Up by 17 percent or 277,594.

11 Q And what about the single-race black population, including
12 black Hispanics?

13 A The single-race black population has increased by 44,851
14 persons or 3.58 percent.

14:20:25 15 Q And finally, what about the any-part black population?

16 A It increased by 83,618, or 6.53 percent.

17 Q Mr. Cooper, what is the difference between single-part
18 black -- the single-race black -- sorry -- and the any-part
19 black metric?

14:20:45 20 A Well, the single-race black category is just simply -- an
21 enumeration of the number of people when filling out the 2020
22 census form, there's an option to sign as single-race black or
23 black plus one other race, which could be black and white,
24 black and indigenous, black and Asian. So single race is just
14:21:14 25 for persons who checked black and nothing else. Any part would

1 include those who also identified as having some other racial
2 background in addition to being black.

3 Q So which metric do you typically use in determining
4 whether the black population is sufficiently large and
14:21:36 5 geographically compact to comprise a majority-black district?

6 A Well, it would vary from place to place, but primarily
7 nowadays in most parts of the South, I would use any-part
8 black, perhaps elsewhere say in south Florida, I might look at
9 non-Hispanic black just because it's a very large Latino
14:22:00 10 community there. But for Alabama, I think the appropriate
11 category to examine is the any-part black population.

12 Q And why do you choose to look at the any-part black
13 population?

14 A Because households in the 2020 census and individuals have
14:22:15 15 identified as either single-race black or some other part
16 black, and in addition to that, there is case law out there --
17 I am not a lawyer, but the definition has been accepted by the
18 Supreme Court going back to Ashcroft vs. Georgia, and so it
19 seems appropriate to use that definition.

14:22:41 20 Q So it's your understanding that the Supreme Court has
21 required the use of the any-part black metric in cases such as
22 this; is that right?

23 A I believe so. I believe so. It could vary from place to
24 place, though. I will point that out. But it's not something
14:22:59 25 that would be a factor in Alabama where the Latino population

1 is still relatively small, and beyond that probably, 40 percent
2 of the Latino population is noncitizen. So the key minority
3 population in Alabama is African-American.

4 Q So, Mr. Cooper, have any courts in Section 2 cases where
14:23:25 5 you have served as an expert used the any-part black metric in
6 determining whether the first *Gingles* precondition has been
7 met?

8 A My recollection is at least two have. One in Fayette
9 County, Georgia in 2014 or 2015, NAACP versus Fayette County.
14:23:46 10 And another time in the school board case I was involved in, in
11 Ferguson-Florissant school district outside of St. Louis,
12 Missouri. And I routinely report the any-part definition. In
13 some instances, it doesn't become an issue. But those are two
14 where I think it -- at some level did become an issue when the
14:24:09 15 Court accepted the any-part definition.

16 Q I'd like to move on to discuss the geographic distribution
17 of the black population in Alabama. Let's pull up Figure 2 of
18 your report, which is on page 8 of Plaintiffs' Exhibit 1.

19 Can you please describe what this figure shows?

14:24:32 20 A Yes. This shows the distribution of the black population
21 by percentage black at the county level. So naturally, some of
22 the more rural counties in the so-called Black Belt have high
23 percentages of African-American populations. And, of course,
24 Montgomery County is part of the Black Belt. And it, too, is
14:24:55 25 almost is roughly 50 percent black, I believe. It was a very

1 large population. But in addition to Montgomery County, there
2 are other counties in the state more urban, including
3 Jefferson, Tuscaloosa, Mobile, and, of course, Huntsville, as
4 we've sort of discussed or was discussed this morning. All of
14:25:13 5 those areas have very large numbers of African-Americans.

6 Q Okay. I am going to pull this one down and pull up Figure
7 4 of your report, which is on page 11. I believe this is the
8 current the 2021 enacted congressional plan; is that right?

9 A Yes.

14:25:35 10 Q Are any of the districts in this plan majority-black?

11 A Only one.

12 Q Which one is that?

13 A District 7. District 7.

14 Q Do you know how much of Alabama's black population is in
14:25:52 15 District 7 under this plan?

16 A I believe that I calculated that it was around 14 percent.

17 Q Actually, I am going to refer you to paragraph 28 of your
18 report. And I think there -- if that refreshes your
19 recollection, there your report -- the percentage of the
14:26:11 20 statewide black population that resides in District 7?

21 A I'm sorry. Which paragraph?

22 Q Paragraph 28.

23 A Oh. Oh. I'm sorry. Yes. You're right. Of all -- of
24 all of Alabama's black population, about a third does reside --
14:26:32 25 less than a third in Congressional District 7.

1 Q Great. Thank you. We can take that down.

2 In which districts -- so you said less than a third of the
3 black's population resides in majority-black district under the
4 congressional map; is that right?

14:26:48 5 A Yes.

6 Q In which districts do the remaining two-thirds of black --
7 of the black population generally reside?

8 A In Districts 1, 2, and 3.

9 Q Okay. Let's pull up -- if we could please pull up Figure
14:27:06 10 5 of your report on page 12 of Caster Plaintiffs' Exhibit 1.

11 A Yes.

12 Q What is the Black Voting Age Population of District 7
13 under the enacted plan?

14 A The percentage is 55.26 percent and in District 7.

14:27:28 15 Q And what is the Black Voting Age Population of Districts
16 1, 2, and 3 in the enacted plan?

17 A 1 and 3 are at just about 25 percent. District 2 is just
18 a little bit over 30 percent.

19 Q So about a quarter to a third of the eligible voters in
14:27:50 20 each of these three districts is black?

21 A Yes.

22 Q What is the total black population of those three
23 districts -- Districts 1, 2, and 3 under the enacted plan? And
24 if it helps, I can refer you to paragraph 29 of your report.

14:28:15 25 A Oh, oh, okay. For -- well, for 1, 2, and 3, the total

1 population -- the total black population would be 612,759.

2 Q How does that number compare to the ideal population for
3 an Alabama congressional district?

4 A It's almost as large as the ideal district size, which is
14:28:46 5 717,754.

6

7 Q So taken together, these three districts have enough black
8 population to form nearly an entire congressional district; is
9 that right?

14:28:59 10 A That's correct. It's actually -- it would be about
11 85 percent of the congressional district. And that would mean
12 all the people in that particular 85 percent would be black.
13 So that's a lot of people who are left out.

14 Q Thank you. I think we could take this exhibit down.

14:29:20 15 Mr. Cooper, you testified earlier that less than a third of
16 Alabama's black population resides in a majority-black
17 congressional district; is that right?

18 A Right.

19 Q How much of Alabama's non-Hispanic white population
14:29:33 20 resides in a majority white district?

21 A Over 90 percent.

22 Q 92 percent exactly, right?

23 A Yes. It sounds right.

24 Q And that's in paragraph 28 of your report?

14:29:45 25 A Yes.

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1 Q So according to the 2020 census, what percentage of
2 Alabama's population is black?

3 A According to the 2020 census, it is -- let me refer back
4 to Table 1. It's 20 -- 27.16 percent is any-part black. Was
14:30:16 5 that your question?

6 Q Yeah.

7 A Yeah.

8 Q So over 27 percent of the population is black in the 2020
9 census?

14:30:26 10 A Yes.

11 Q What percentage of Alabama's congressional districts are
12 majority-black?

13 A There's a 14 percent number. One out of seven.

14 Q One out of seven. So if Alabama were to draw a second
14:30:39 15 majority-black district, what percentage of Alabama's
16 congressional districts would be majority-black?

17 A About 28 percent, roughly in line with the statewide
18 percentage of African-Americans, which is about 28 percent
19 almost, or soon will be if the population continues to grow in
14:30:58 20 the course of a decade.

21 Q So according to the 2020 census, what percentage of
22 Alabama's population is non-Hispanic white?

23 A It is 63.12 percent.

24 Q And what percentage of Alabama's congressional districts
14:31:17 25 are majority white under the enacted plan?

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1 A Six out of seven, or 70 -- well, six out of seven. I am
2 not doing the math right, but it's going to be in the mid 80s.
3 86 percent, I guess.

14:31:39 4 Q I am going to do the math myself. Is it about
5 85.7 percent; is that right?

6 A Yeah. I rounded it up.

7 Q If Alabama were to draw a second majority-black
8 congressional district, what percentage of Alabama's
9 congressional districts would remain majority white?

14:31:55 10 A About 72 percent.

11 Q Thank you. I will move on to the state board of education
12 plan that you mention in your report; is that right?

13 A Yes.

14 Q Why do you reference the 2021 Alabama State Board of
14:32:18 15 Education plan?

16 A Well, the Alabama State Board of Education plan, the 2021
17 plan has eight districts, and two of them are majority-black.
18 One is anchored in Jefferson County, and the other in south
19 central, Alabama, and includes both Montgomery County and/or at
14:32:40 20 least part of Montgomery County and part of Mobile County. So.

21 Q Let's --

22 A Proceed.

23 Q Sorry. Let's pull up the map so that we're all looking at
24 the same one. If we could please pull up Plaintiffs' Exhibit 1
14:32:53 25 Figure 9 on page 19. So, Mr. Cooper, this is the 2021 board of

1 education map; is that right?

2 A That's correct.

3 Q Do you know when this map was enacted by the Alabama
4 Legislature?

14:33:07 5 A I believe in late October and signed into law in November,
6 along with the congressional plan.

7 Q So this was at the same time as the 2021 congressional
8 plan; is that right?

9 A Yes.

14:33:21 10 Q And so which of the districts under this plan are
11 majority-black?

12 A District 4, which is the green district, and the kind of
13 purplish color District 5, which is a district that goes from
14 the western Black Belt Macon County then through part of
14:33:41 15 Montgomery County to Mobile.

16 Q And is this the first time as far as you're aware that
17 Alabama has had a State Board of Education plan with two
18 majority-black districts?

19 A No. There's a long tradition of the configuration very
14:33:56 20 similar to this plan. I have a map in this declaration showing
21 the 2011 plan, if memory serves, the percentages are about the
22 same. And the two districts look very similar between 2011 and
23 -- between 2010 and 2020 census.

24 Prior to that, there was a plan adopted in the early 2000s
14:34:24 25 that I reference that had one district that was based on

1 single-race black slightly below 50 percent. In paragraph 34,
2 I have 47.61 percent. That was District 4 in the north, I
3 think. And then District 5 in the south was almost 52 percent
4 single-race black.

14:34:47 5 And there was litigation in the 1990s. So I think there
6 was a court ordered plan in 1996. And in that plan, District 4
7 was about 46.6 percent black and voting age, and District 5 was
8 51.75 percent. So for 25 years now, there has been two
9 majority-black school board districts out of eight.

14:35:11 10 Q Can you please describe looking at the 2021 board of
11 education plan, can you describe how District 5 is drawn here?

12 A Well, yes. It's -- it's drawn from Macon and Bullock
13 County in the east southwest through the Black Belt to Mobile
14 County and the city of Mobile and north along the Mississippi
14:35:43 15 line up to Sumter County. And then at that point, it borders
16 District 4, which is the second majority-black district that
17 includes the east -- the western part of the Black Belt,
18 including Tuscaloosa and part of Jefferson County.

19 Q Does District 5 include all of Mobile County?

14:36:08 20 A No, it does not.

21 Q Does the 2021 State Board of Education plan combine part
22 of Mobile County with Montgomery County?

23 A Yes, it does.

24 Q And does it also combine part of Mobile County with
14:36:28 25 Baldwin County in District 1?

1 A Yes, it does.

2 Q What portion of Alabama's black population resides in
3 these two majority-black board of education districts today?

4 A I believe that it is very close to half of the black
14:36:46 5 population. I think I have that figure in my declaration.

6 Q And I can refer you to paragraph 37, if that's easier.

7 A Yes. There it is. 51.69 percent.

8 Q So more than half of the state's black population --
9 sorry.

14:37:06 10 A No. Statewide population. Black population, right.

11 Q More than half of the state's black population then
12 resides in a majority-black board of education district; is
13 that right?

14 A Yes. In either District 4, which is the one in the north,
14:37:20 15 or District 5, which is the one in the central and south part
16 of the state.

17 Q So what did your review of this plan, the State Board of
18 Education plan, tell you about the possibility of drawing an
19 additional majority-black congressional district?

14:37:35 20 A Well, it suggests that it would not be at all difficult to
21 get a second black-majority congressional district because
22 there are only -- there are eight districts in the school board
23 plan and seven in the congressional plan. And the state is now
24 on record as proving a configuration much like this. So my
14:38:02 25 assumption -- working assumption at the outset was that it

1 would be possible to draw an additional district based on the
2 2020 census data.

3 Q And that's true even though this is an eight district plan
4 and the congressional map is a seven district plan?

14:38:16 5 A Right. Right, because it's not including some areas that
6 have significant black populations in those two districts.

7 Q Great. We can take this down now. Thank you.

8 I want to turn now to the illustrative plans that you
9 produced in your reports.

14:38:37 10 Can you first describe to the Court what an illustrative
11 plan is?

12 A Well, an illustrative plan is basically what it says it
13 is. It's just a plan that makes a demonstrative exhibit
14 showing how one might draw a plan given certain sets of
14:39:00 15 parameters. And so I've drawn a total of seven illustrative
16 plans, each of which has two majority-black districts.

17 Q So when you assess whether the black population is
18 sufficiently large and geographically compact to allow for the
19 creation of an additional majority-black district, is it
14:39:21 20 necessary to consider race?

21 A Yes. One of the traditional redistricting principles is
22 to be aware that you have -- that you are not diluting minority
23 voting strengths when you are developing a voting plan and the
24 underlying districts. So that is -- it is always a factor that
14:39:42 25 one must consider no matter where you are, or maybe not

1 Vermont, but generally speaking, you have to pay attention to
2 it, particularly in the South.

3 Q And are there other considerations that you take into
4 account when drawing illustrative plans, as well?

14:39:58 5 A Several. All districts have to be reasonably compact,
6 contiguous, and certainly have to be relatively equal in
7 population for congressional districts. They have to be almost
8 0. For school board districts, you can be kind of in a plus or
9 minus 5 percent range, probably although some states have more
14:40:22 10 restrictive requirements maybe than Alabama has with respect to
11 the school board.

12 Q So you reference in your report traditional redistricting
13 principles; is that right?

14 A Yes.

14:40:33 15 Q And what are -- without listing them out necessarily, what
16 does that generally refer to? What does it mean that term?

17 A Well, it's just a set of objectives, goals, that want you
18 to have in mind when putting together an illustrative plan or
19 what would ultimately become a real plan. You have to be aware
14:40:55 20 of the underlying demographics of the communities you're
21 working with, and try to produce a plan that is fair and
22 constitutional. And that's what I believe I have done in the
23 case of the seven illustrative plans that I have drawn for
24 Alabama's congressional plan.

14:41:14 25 Q And you would consider traditional redistricting

1 principles whether you are drawing an illustrative plan for
2 litigation or an actual district plan for a jurisdiction; is
3 that right?

4 A That's right. Yeah. It's the same.

14:41:27 5 Q So what specific traditional districting principles did
6 you consider in drawing the illustrative plans in this case?

7 A Well, I took all of them into consideration. I examined
8 the document produced back in May by the Alabama Legislature
9 outlining the guidelines for redistricting. But a lot of that
14:41:48 10 just incorporates the general concept of traditional
11 redistricting principles. So I didn't prioritize any of them.
12 I tried to balance them.

13 Q And those principles include population equality; is that
14 right?

14:42:01 15 A Yes.

16 Q And what else?

17 A Contiguity. The districts must be contiguous, either by
18 land or water. I think the Alabama redistricting guidelines
19 allow contiguity by water and not necessarily not by land or
14:42:18 20 road.

21 And then other factors are compactness. They have -- the
22 district has to be reasonably compact. One should also, of
23 course, very important to pay attention to political
24 subdivisions, counties, precinct lines, municipal boundaries,
14:42:37 25 sometimes the latter municipal boundaries can be very difficult

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1 to contend with in Alabama because there are some odd shapes
2 out there. But one should try to keep communities together,
3 jurisdictions together where possible. Obviously, if you start
4 at the county level, which I basically did, so many of the
14:42:53 5 component parts of the congressional plan involve whole
6 counties that you are automatically including political
7 subdivisions in toto cities, except maybe in a few rare
8 instances like in Jefferson County and Hoover, where part of
9 the city of Hoover dips into Shelby County. Most of it's in
14:43:17 10 Jefferson County.

11 Q I believe you also mentioned in your report the principles
12 of respect for communities of interest and non dilution of
13 minority voting strengths; is that right?

14 A Yes.

14:43:27 15 Q So was any one factor of the ones we just mentioned
16 predominant, the predominant factor when you were preparing
17 your illustrative plans in this case?

18 A Not really. I feel like I gave them equal weighting. It
19 would be possible to prioritize others and come up with
14:43:46 20 different configurations, but perhaps at the expense of one of
21 the key redistricting principles. So you could draw very
22 compact districts, but they might split numerous counties
23 because they're perfect squares. Or you draw a district that
24 is -- two districts that are maybe 60 percent black, but they
14:44:09 25 wouldn't be contiguous. That, you know, so you have to balance

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1 it.

2 Q And did race predominate in your development of any of the
3 illustrative plans?

4 A No. It was a consideration. This is a Section 2 lawsuit,
14:44:23 5 after all. But it did not predominate or dominate.

6 Q And you were balancing all the traditional redistricting
7 principles during your development of these plans?

8 A I believe so. I believe so. I was thinking about a lot
9 of different things. And all of those things kind of come
14:44:41 10 together in one or more of these illustrative plans.

11 Q Let's talk through what -- how those principles came to
12 be.

13 You mentioned population equality. How is this principle
14 reflected in your illustrative plans?

14:44:57 15 A Well, all of these plans have districts that are for all
16 intents and purposes zero deviation plus or minus one person.
17 One of them is minus two in one instance because I didn't want
18 to split a county. But, you know, there's zero deviation
19 plans. There's no -- no disputing that.

14:45:17 20 Q I think you also mentioned respect for political
21 subdivision boundaries in drawing illustrative plans?

22 A Yes.

23 Q And how did you follow that principle in drawing the plan?
24 What was your approach?

14:45:28 25 A Well, I felt like it was important to either meet or beat

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1 the county split achievement of the enacted plan. And I did so
2 in almost all the plans I drew. The enacted plan splits six
3 counties. And I think four of the plans I draw split six
4 counties. One splits five. And a couple others split seven,
14:45:55 5 although one of those splits is only 15 people in the one -- in
6 one of the plans involves seven county splits. So arguably,
7 that's not a necessary split and could be left as entirely in
8 Calhoun County instead of splitting Calhoun County.

9 Q Was it possible to keep the counties whole in drawing
14:46:21 10 these illustrative plans?

11 A Yes. I do split a county here and there often just to
12 achieve something very close to zero population deviation. So
13 it is very easy to draw districts in Alabama for a second
14 majority-black district that is built off of whole counties.
14:46:40 15 There are splits. One split always. But for the most part,
16 it's a very reasonable compact shape that you end up with when
17 you draw a plan that is -- contains two majority-black
18 districts.

19 Q So am I understanding your report correctly when you say
14:47:01 20 that you have to -- you had to split a few counties in order to
21 meet population equality; is that right?

22 A Oh, yes, you do. At some point, you have to split a
23 county. You could, you know, conceivably draw a plan that
24 maybe split four counties and had a higher deviation. I'm not
14:47:24 25 -- it's very unclear just to how far you can go with a

1 congressional plan above and below zero. Certainly, though, as
2 long as you're in the low teens, that's a zero deviation plan.

3 Q And certainly your plans are primarily plus or minus
4 one person; is that right?

14:47:40 5 A Yeah. There's -- there are two that are minus two in one
6 of the districts. And it just did not make any sense at all to
7 go into another county with a split and move one person. Of
8 course, you couldn't do that because the secret ballot. So you
9 would end up having to like move 300 people from one county in
14:48:01 10 one precinct into one county and split the other county so you
11 could put 302 in that. I mean, that's just pointless to do
12 anything other than except a minus two deviation.

13 Q Mr. Cooper, when you were forced to split a county to
14 achieve population equality, what was your approach in
14:48:22 15 splitting counties?

16 A Well, I tried to minimize precinct splits. Often that was
17 not possible. Again, because I was aiming for zero deviation.
18 So I think one of my plans splits 12 precincts. And I believe
19 the state splits seven. So I didn't quite hit their number in
14:48:44 20 that particular metric. But all of them are drawn to minimize
21 precinct splits.

22 I drew a couple of plans that kept the city of Mobile
23 whole. And in that case, both of those plans split around 20
24 or so precincts. That was partly just to follow the city
14:49:04 25 boundaries of Mobile. So it's not going to create any kind of

1 administrative problem for the city of Mobile because they have
2 city elections there, and they have already got everybody
3 organized by whether they're in the city of Mobile or in the
4 county as a whole for county elections.

14:49:17 5 Q So when you did have to split precinct boundaries, did you
6 follow other natural geographic boundaries or political
7 boundaries?

8 A Yes. I would follow either precinct lines or municipal
9 lines, primary roads, waterways, maybe, in a few instances.
14:49:35 10 Also sometimes in some instances, I followed census block
11 groups, which is an area that has been designated by the Census
12 Bureau as having some commonality. So that's another
13 geographic reference point that I used.

14 Q Mr. Cooper, you also considered geographic compactness in
14:49:58 15 drawing your illustrative plans; is that right?

16 A Yes, I did.

17 Q What are the most common compactness metrics?

18 A The most common is just eyeballing it as you draw the
19 plan. But if you are really obsessive about it, you can
14:50:16 20 constantly get readouts of various compactness scores. The
21 most widely relied upon are probably the Reock score and the
22 Polsby-Popper score. So you can get instant -- virtually
23 instant readouts of what the scores are for any district you're
24 drawing as you're drawing them from within the Maptitude
14:50:39 25 program that I used.

1 Q Can you describe in layman's terms what the Reock score is
2 measuring?

3 A Yeah. It's basically measuring the extent to which a
4 district minimizes the area of the district if you circumscribe
14:50:56 5 that district with a circle. So if you drew a circle, which
6 would be a perfect compact score, the Reock score would be 1.8.
7 Of course, if you drew a circle, you would end up splitting
8 counties, splitting precincts, splitting most cities. There
9 may be a couple in Alabama that are circles. There are in
14:51:15 10 George. But, yeah, that would be the perfect score, though,
11 one.

12 Q Okay. And how about the Polsby-Popper metric? What is
13 that measuring on the compactness when you are looking at
14 compactness?

14:51:26 15 A That looks at the perimeter of the district. For example,
16 you could have a Reock score that is very close to one because
17 you have drawn a very concentrated area in the district. But
18 with lots of squiggly lines. So the Reock score could be very
19 high, but that would be somewhat misleading, very misleading if
14:51:44 20 you looked at the perimeter of the district and relied on the
21 Polsby-Popper measure where it would score quite low.

22 Q Both of these metrics kind of capture different aspects of
23 compactness; is that fair to say?

24 A Right. You have to pay attention to those. They both
14:51:59 25 tell you a little something.

1 Q So how did you -- what was your approach to drawing --
2 what was your approach to incorporating the compactness
3 principle in drawing your illustrative plans?

4 A Well, I would occasionally glance at the score, and also I
14:52:13 5 was aware of the score that the state had for their plan. And
6 so I wanted to make sure that my score was sort of in the
7 ballpark of the state score. And I think that's generally the
8 case.

9 Some of my plans are somewhat lower, slightly lower, but
14:52:31 10 still certainly within the normal range if you look at
11 districts around the country. And in one instance, the last
12 plan I drew, illustrative plan 7 is part of my rebuttal
13 declaration, I think my district is actually higher on a mean
14 average score than the state's plan. And just 1/100th of a
14:52:51 15 point lower on the Polsby-Popper score. So in that case, I
16 have met the same standard that the state has. It would be
17 unfair maybe to call it a standard, because they don't specify
18 what a score should be. It just happens that they had a
19 certain score, and so I looked at that as a possible yardstick.

14:53:09 20 Q You also considered the principle of contiguity; is that
21 right?

22 A Yes. One good thing about Maptitude is -- and all modern
23 day GIS software, but back in the '90s, not the case. You can
24 get an instant readout as to whether the district is contiguous
14:53:29 25 in its entirety. So I took that into account.

1 Q And are all the illustrative plans contiguous?

2 A Yes.

3 Q You also mentioned in your report communities of interest
4 as one of the principles you took into account; is that right?

14:53:45 5 A Right.

6 Q How did you define communities of interest?

7 A Well, I -- and in basically working with a computerized
8 map, and so I consider communities of interest to include
9 political subdivisions like counties and towns and cities. I'm
14:54:07 10 also aware that the minority population in and of itself can be
11 a community of interest. I have some knowledge of historical
12 boundaries. For example, one of my -- one of my maps here
13 shows what is kind of generally considered to be the Black Belt
14 of Alabama, the group mainly of rural counties plus Montgomery
14:54:32 15 County in the central part of the state. So I was aware of
16 that historical feature.

17 So, you know, communities of interest can cross over into
18 many different features, but I guess the political subdivision
19 and the importance of recognizing communities of interest in
14:54:53 20 minority populations, those two items were probably top of mind
21 as I was drawing the plan, with respect to communities of
22 interest.

23 Q Mr. Cooper, you reference the 2021 redistricting
24 guidelines in your report; is that right?

14:55:07 25 A Yes.

1 Q Did you refer to those guidelines before developing your
2 plans in this case?

3 A I did.

4 Q I'd like to pull those up. If you could pull up please
14:55:19 5 Plaintiffs' Exhibit 82. And are these the reapportionment
6 redistricting guidelines that we were just talking about?

7 A Yes. And there's a very good written description of
8 communities of interest in the guidelines themselves.

9 Q And, Mr. Cooper, I think we have it up on the screen. I
14:55:44 10 think that's where you will find it. I don't believe it's in
11 your report.

12 Okay. If we could turn -- you mentioned the description
13 of communities of interest. If we could scroll down to I think
14 it's page 2 to 3, section --

14:56:00 15 A I found it.

16 Q Where are we -- j(iii). You see that?

17 A Yeah. I got it. Line 28.

18 Q Can you please read the text starting, community of
19 interest is defined as an area? Could you read that? We will
14:56:14 20 highlight that text there. Can you please read that out loud?

21 A Yeah. Districts shall respect communities of interest,
22 neighborhoods, and political subdivisions to the extent
23 practicable and in compliance with paragraphs A through I, and
24 then the definition. A community of interest is defined as an
14:56:32 25 area with recognized similarities of interests, including but

1 not limited to ethnic, racial, economic, tribal, social,
2 geographic, or historical identities. The term communities of
3 interest may in certain circumstances include political
4 subdivisions such as counties, voting precincts,
14:56:52 5 municipalities, tribal lands and reservations, or school
6 districts.

7 Q Thank you. We can take that --

8 A Oh.

9 Q Certainly, we can keep reading. If you look at the
14:57:05 10 screen, we have highlighted certain language that I just wanted
11 to focus on for a moment.

12 A Right.

13 Q So which of -- when you were -- you said you were -- when
14 you were approaching the communities of interest criterion, you
14:57:14 15 specifically looked at political subdivisions, and such as
16 counties, pre precincts, municipalities; is that right?

17 A Yes, among other things, that's right. I was balancing
18 things.

19 Q And there are multiple ways to define various communities
14:57:30 20 of interest across the state; is that right?

21 A True.

22 Q We can take this down. Mr. Cooper, in your opinion, as
23 somebody who draws electoral districts for a living, do each of
24 the illustrative plans comply with traditional districting
14:57:53 25 principles as the ones we just discussed?

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1 A Absolutely. I think they are all worthwhile plans that
2 are worth considering as possible remedial plans.

3 Q And they all balance the various criterion we just
4 discussed?

14:58:11 5 A Yes. In my opinion. I don't think I went to the extreme
6 in any of them.

7 Q Mr. Cooper, how many illustrative plans did you draw in
8 this case?

9 A I drew seven. Six in my initial declaration and seven in
14:58:28 10 my rebuttal declaration.

11 Q All right. I want to talk a little bit about the common
12 features we see among all of the illustrative plans. And I can
13 -- we can just pull up Illustrative Plan 1, just as a visual
14 aid. We can pull up Plaintiffs' Exhibit 18. This is attached
14:58:46 15 as Exhibit G-2 of your report. You can look it on the screen
16 here.

17 A Yes.

18 Q Where is District 7 roughly located across your
19 illustrative plans?

14:58:55 20 A Well, District 7 is to the north. And almost always
21 includes -- it always includes Jefferson County, which I think
22 has the largest black population in the state. And also
23 includes part of Tuscaloosa County and part of the city of
24 Tuscaloosa, as well as the rural counties in the western Black
14:59:20 25 Belt, including, of course, Dallas County where Selma is

1 located and Wilcox County. So it's the western and northern
2 district.

3 Q Where is District 2 generally located in your illustrative
4 plans?

14:59:35 5 A In the south. Again, also including the western border,
6 but the southern half -- normally I think most of the plans for
7 District 2 extend -- all of them start in Mobile County and I
8 think go as far north as Choctaw. There may be one that
9 splits. I don't recall. And then west to include Montgomery
14:59:59 10 County all or and in part, or in some instances such as this
11 one, I included districts that go all the way to the Georgia
12 state line, including Russell, Barbour, and Henry. Some of the
13 plans only go as far as Macon and Bullock.

14 Q Great. And can you specifically discuss the configuration
15:00:27 15 of Mobile County in your illustrative plans?

16 A Well, in the illustrative plans, all of the illustrative
17 plans include a significant portion of the city of Mobile, or
18 in the case of District 6 and 7, all of Mobile.

19 In illustrative plan 1, the only -- the primary area of
15:00:56 20 Mobile that I excluded from District 2 is the waterfront area
21 of Mobile, which is actually a grouping of precincts that are
22 predominantly African-American and I put into District 1 so
23 that there was a transportation route between District 1 and
24 Mobile County and District 1 in Baldwin County. So you don't
15:01:24 25 need to drive outside of District 1 to get from one part of

1 District 1 to the other. You have a straight route going
2 across U.S. 98 and Mobile Bay. And there are a few precincts
3 that are split along that route I-10 area coming in to downtown
4 Mobile. And that actually is a feature of most of my plans,
15:01:50 5 except for illustrative Districts 6 and 7 -- illustrative plans
6 6 and 7, which keep all of Mobile whole, extending it right up
7 to the waterfront.

8 Q This feature of dividing Mobile County, is that something
9 that you observed in the board of education plan, as well?

15:02:10 10 A Well, yes. The board of education splits Mobile County.

11 Q Are the Black Voting Age Populations of Districts 2 and 7
12 in each of your illustrative plans over 50 percent?

13 A Yes.

14 Q And that is any-part black?

15:02:30 15 A That is any-part black, although I think there are a
16 couple maybe that are also over single-race black, as well.

17 Q So in your report, you also report the -- let me take down
18 this figure.

19 You also report the non-Hispanic single-race Black Citizen
15:02:52 20 Voting Age Population in your report in your illustrative
21 plans, as well; is that right?

22 A That is true. That's the most restrictive definition one
23 could identify because it requires you not only be non-Hispanic
24 black and over 18, but you also must be a citizen. And it's
15:03:12 25 also four years old. So given that the black population in

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1 Alabama is a little bit younger, it's probably historically
2 inaccurate, too. As those cohorts age, when we see what the
3 non-Hispanic black citizen population is for 2020, it may be a
4 little higher than what I'm reporting because I'm reporting
15:03:34 5 something with a survey midpoint of 2017.

6 Q So is my understanding -- is my understanding correct that
7 the non-Hispanic single-race Black Citizen Voting Age
8 Population is the most conservative accounting for who -- who
9 is actually a black voter in that district?

15:03:52 10 A That's correct.

11 Q And that it's likely even higher than that given there's
12 some time lag between the citizenship data that is available
13 from the Census Bureau?

14 A Yes. That's now over four years old. The 2015-2020 ACS
15:04:10 15 special tabulation, that's the name given to the citizenship
16 report that the Census Bureau normally publishes every year
17 about this time, it was delayed due to the pandemic, and I
18 think it's going to become available later this year. I don't
19 even think they have set a date yet. So it probably won't be
15:04:30 20 available until late spring.

21 Q And are there any other ways that you determined whether
22 black voters make up a majority of Districts 2 and 7 in your
23 illustrative plans?

24 A Yes. At the time I drew Illustrative Plans 1 through 6, I
15:04:46 25 did not have access to a contemporary voter registration file

1 that I could geocode. But as part of discovery, after
2 December 10th, I received a statewide voter file, which I
3 geocoded and was able to confirm that the active voter
4 registration rate in all districts that I have drawn, 1 through
5 6 illustrative plans, as well as illustrative 7 in those plans
6 in Districts 2 and 7, the underlying active voter registration
7 rate for African-Americans as a component of the total voter
8 population is over 50 percent.

9 Q And in filling out their voter registration forms, do
10 Alabama voters indicate whether they are any-part black or
11 single-race black? How do they indicate their race?

12 A Well, I've seen the voter registration application, and
13 there's just one choice. You either select black or white or
14 Asian. I think those are the three categories. But you also
15 have the option to check Hispanic. But if you are Hispanic
16 black, you have to make a choice. You cannot say I am Hispanic
17 and black and register in that fashion. You only can check
18 one.

19 Q I am actually going to pull up Plaintiffs' Exhibit 104,
20 which I believe is the voter registration form we have just
21 been discussing. And let's zoom in right there in the middle
22 left where it says race check one?

23 A Yes.

24 Q This is what you are referring to; is that right,
25 Mr. Cooper?

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1 A Right. Right. Because Hispanic is actually an ethnicity.
2 It's not a race. But in Alabama at least, you can just check
3 one. So you have -- if you choose your -- if you choose
4 Hispanic, then you are not really identifying the race.

15:06:40 5 Q So you only have -- you can only choose one box here, and
6 so if somebody checks off black, that's the only you marker
7 that they have checked?

8 A Right. They have decided they are black, even if they are
9 Hispanic.

15:06:53 10 Q Okay. Can we -- we can pull this down. If we can pull up
11 your supplemental report, Plaintiffs' Exhibit 59, Figure 4,
12 which is on page 12, what does this figure show?

13 A That shows the geocoded percentage of African-Americans
14 who reside -- African-American voters -- active registered
15 voters who reside in District 2 or District 7. And you can see
16 across the board there is a black registered voter majority and
17 all seven plans for both District 2 and District 7.

18 Q So in each of your illustrative plans, Districts 2 and 7
19 are majority-black using the any-part BVAP metric; is that
15:07:46 20 right?

21 A Using any-part BVAP metric, using a voter registration as
22 you see here on Figure 4, and also of course, based on the
23 American Community Survey estimates, which are older, but also
24 clearly have shown that the non-Hispanic black citizen
15:08:05 25 population in all seven plans in both Districts 2 and 7 over

1 50 percent. So there should be no question about that.

2 Q Okay. Great. We can take this down. Thank you.

3 We've talked a little bit about how Districts 2 and 7 are
4 configured generally across illustrative plans. What about the
15:08:25 5 remaining congressional districts?

6 A Well, I drew the other districts to the extent I could in
7 a fashion that was generally following the geographic areas of
8 the state where the enacted plan has a given district. Of
9 course, because I am drawing a new black majority congressional
15:08:52 10 district that there are differences I can't match up

11 completely. But I did by and large keep District 5 in the
12 north part of the state in the first six plans I drew very
13 similar, almost identical to the way the state has drawn it,
14 because it's far removed from the areas that were reconfigured
15:09:12 15 to create the second African-American majority districts. So I
16 was able to keep that one fairly intact.

17 Others changed, but still in the same general part of the
18 state.

19 Q And District 4, too, is largely kept in the similar
15:09:26 20 configuration as it is under the enacted plan?

21 A For the first six districts -- first six plans I drew, I
22 took a different approach with the last one, and so District 4
23 is more compact in that plan as is District 5.

24 Q How do the illustrative plans compare to the enacted plan
15:09:46 25 on the measure of county splits?

1 A About the same. The -- I drew seven plans. Four of them
2 have exactly the same number of county splits -- six. One has
3 just five splits. That's Illustrative Plan 7, and then the
4 other two I think have seven splits, which is the same number
15:10:15 5 the plan had in 2011 enacted plan. As I mentioned, in one
6 instance, one of the illustrative plan does have seven splits,
7 but it only involves 15 people in Calhoun County, so arguably
8 it would not be necessary to make that split for an enacted
9 plan. It -- I did it just to get it down to plus or minus one.

15:10:35 10 But that seems unnecessary.

11 Q Okay. Let's talk a little bit about the compactness of
12 the illustrative plan that's compared to the enacted plan. I
13 will pull up figure 22 of your initial report. We will pull it
14 up here on the screen, which is on page 36 of Plaintiffs'

15:10:52 15 Exhibit 1?

16 A Yes.

17 Q What does this table show?

18 A It shows compactness scores for various plans that I
19 produced, as well as the enacted plan and also historical
15:11:13 20 congressional plan, the 2011 benchmark plan and the 2011 board
21 of education plan.

22 When I did this declaration on December 10th, I did not
23 have a block equivalency file for the 2021 congressional plan
24 or for the board of education plan. And so to avoid some sort
15:11:32 25 of minor discrepancy, I didn't report the compactness scores

1 for the 2021 board of education -- I'm sorry. I had the
2 congressional plan, but not the board of education plan. So
3 that's why I did not report 2021 board of education in this
4 one. But we got the -- we got the updated shape file between
15:11:59 5 December 10 and 20, so that -- and my next declaration, the
6 second declaration, I do report the score for the 2021 board of
7 education plan. It's about the same.

8 Q And, Mr. Cooper, in your experience, is there a bright
9 line standard for when a district is considered compact?

15:12:17 10 A No. No. And you really have to go beyond compactness
11 scores and take into account other factors, like odd-shaped
12 counties, odd-shaped cities, odd-shaped precincts. There just
13 really is not a bright line rule, nor should there be.

14 Q So how do your illustrative plans compare, or on the -- on
15:12:43 15 these metrics of compactness compared the enacted plan?

16 A Compared to the enacted plan, a little bit lower. But
17 there's nothing out of order here.

18 And I was able to pay more attention to compactness in the
19 Illustrative Plan 7 as a result of comments by defendants'
15:13:05 20 expert Mr. Bryan. And decided to see if I could draw a plan
21 that was more compact than 2021 plan. And I didn't draw one
22 that was more compact, but it's clearly as compact.

23 So we've met that objective, as well, in Illustrative Plan
24 7.

15:13:24 25 Q Before we get to Illustrative Plan 7, I know that was in

1 your supplemental report, I believe you wrote in your report
2 here that your evaluation of these compactness metrics
3 indicated that the illustrative plans were in the comparable
4 range as the other Alabama statewide plans including the
15:13:42 5 enacted congressional plan; is that right?

6 A That's right. That's right.

7 Q And you believe that the illustrative plans are comparable
8 in compactness to the enacted plan?

9 A I think so. I mean, they're not -- they're not scored
15:13:56 10 quite as high, but there is no, you know, you could get a blue
11 ribbon I guess for the best possible plan, in terms of the
12 Reock and Polsby-Popper scores. But that doesn't mean that all
13 the other plans are losers. They place.

14 Q All right. And you mentioned Illustrative Plan 7. Let's
15:14:16 15 pull that one up. Plaintiffs' Exhibit 59, Figure 3. And so
16 this is the chart that explains the metrics for Illustrative
17 Plan 7 as well as the 2021 board of education plans, Senate
18 plan and House plan, which you have added here, as well,
19 additional statewide plans; is that right?

15:14:37 20 A Right.

21 Q So why did you draw Illustrative Plan 7?

22 A Well, the defendants' expert is really almost obsessed
23 with compactness scores, so I felt like, well, you know, better
24 show that you can do two districts in a seven district plan
15:14:54 25 that have compactness scores that are equal to the 2021 plan

1 and not just a few hundredths of a point below. So that's what
2 I did with Illustrative Plan 7. A Reock score -- go ahead.

3 Q I was -- I was going to say the same thing you were. In
4 fact, the Illustrative Plan 7 actually has a higher Reock score
15:15:12 5 than the enacted plan; is that right?

6 A It does. It does. .41, and the enacted plan is .38.

7 Q And the Polsby-Popper score is I think 100th of a point
8 different; is that right?

9 A That's right.

15:15:25 10 Q And you mentioned the report submitted by Mr. Bryan in
11 this case. That's the defendants' expert; is that right? Is
12 that what you are referring to?

13 A Yes.

14 Q Was there anything in Mr. Bryan's report change your
15:15:41 15 opinion on whether or not the illustrative plans achieve
16 compactness?

17 A No, not at all. He used a methodology really an
18 evaluating plans at least in his initial declaration that was
19 flawed because you can't just add up the numbers. But, no,
15:15:56 20 nothing there would have changed my mind.

21 Q Great. We can take this down.

22 MS. KHANNA: Your Honor, I know we have been going for
23 a little over an hour. I am about to start talking about some
24 of the specifics of the illustrative plans. I would say I have
15:16:15 25 about maybe a half hour left. And I didn't know if the Court

1 wanted to take a break now.

2 JUDGE MARCUS: If you prefer to break at this point
3 and then pick up?

4 MS. KHANNA: I think so. I think it's probably more
15:16:26 5 logical stopping point right now.

6 JUDGE MARCUS: Okay. We will -- I have 3:16 Alabama
7 Central Standard Time. So we will get started a little past
8 3:30. We will take a 15-minute or so break. Thank you.

9 MS. KHANNA: Thank you, Your Honor.

15:16:51 10 (Recess.)

11 JUDGE MARCUS: Are the parties ready to proceed?

12 MS. KHANNA: I am. I wanted to make sure Mr. Cooper
13 is back on, on video.

14 JUDGE MARCUS: I do not see him. We have two lawyers
15:30:46 15 and no witness.

16 Mr. Cooper?

17 THE WITNESS: Yes. I am here.

18 JUDGE MARCUS: We hear you but do not see you.

19 Now we are all ready to proceed. Ms. Khanna, you may
15:31:14 20 proceed with your direct examination of Mr. Cooper.

21 MS. KHANNA: Thank you, Your Honor.

22 BY MS. KHANNA:

23 Q Mr. Cooper, I now want to discuss each of the individual
24 illustrative plans in some detail. Let's start with
15:31:26 25 Illustrative Plan 1. And we will pull up Plaintiffs'

1 Exhibit 18, Caster Plaintiffs' Exhibit 18, which is also
2 attached to your initial report.

3 So can you describe the configuration of District 7 in
4 your Illustrative Plan 1?

15:31:44 5 A Well, Illustrative Plan 1 places, as do all the plans as
6 all the plans do, Jefferson County in District 7 and then picks
7 up Tuscaloosa County and then several of the rural Black Belt
8 counties starting with Sumter and Perry and Dallas and Wilcox
9 and Hale.

15:32:16 10 Q And can you describe the configuration of the District 2?
11 Illustrative Plan 1?

12 A Okay. In Illustrative Plan 1, as in all plans, Mobile is
13 in the -- Mobile County is in District 2, at least part of it,
14 and then the remaining counties of the western and eastern
15:32:37 15 Black Belt, as well as part of the county of Montgomery. Like
16 the enacted plan in Illustrative Plan 1, a part of Montgomery
17 County is put into District 3.

18 Q Okay. And let's take a look at the statistics for
19 Illustrative Plan 1. I believe that's at Plaintiffs'
15:33:01 20 Exhibit 17. Can you see the screen -- see all the numbers on
21 the screen, Mr. Cooper?

22 A Yes.

23 Q What is the any-part Black Voting Age Population of
24 District 7 in Illustrative Plan 1?

15:33:15 25 A 53.28 percent.

1 Q And what is the any-part Black Voting Age Population of
2 District 2 in Illustrative Plan 1?

3 A 50.09 percent.

4 Q What is the non-Hispanic single-race Black CVAP for
15:33:36 5 Illustrative Plan 7 in this plan?

6 A 54.97 percent.

7 Q And the same metric for District 2?

8 A 51.16 percent.

9 Q Great. If we could zoom out from this close-up exhibit.

15:33:56 10 Okay. Let's turn to Illustrative Plan 2. That's
11 Plaintiffs' Exhibit 23, which shows the map.

12 So in what way does Illustrative Plan 2 differ from the
13 other illustrative plans? What's the defining characteristics
14 of this plan?

15:34:16 15 A Well, Illustrative Plan 2 does one thing that the other
16 plans do not do, and that includes -- that is that I have
17 included predominantly African-American community area of
18 Houston County in the city of Dothan in District 2, and the
19 only other thing that might be different -- actually I guess
15:34:49 20 there is no -- there is no other defining factor. Basically,
21 the same counties are combined perhaps in a different way. But
22 it's still District 2 in the south and District 7 in the north.
23 And District 7 in this instance, and I am not sure if in any
24 other of the plans I've drawn actually goes into Lowndes
15:35:10 25 County, which doesn't show up on the label on this map. It's

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1 sandwiched between Montgomery and Dallas counties. And I think
2 in the enacted plan and most of maybe even in the 2011 plan,
3 District 7 in the enacted plan did go from Jefferson County all
4 the way into Lowndes County and even picked up a little bit of
15:35:32 5 Montgomery. I have not taken it into Montgomery County, but
6 this plan does have Lowndes County in District 7.

7 Q Let's take a look at the statistics of Illustrative Plan
8 2, which is Plaintiffs' Exhibit 22, I believe.

9 What is the any-part Black Voting Age Population of
15:35:55 10 District 7 under Illustrative Plan 2?

11 A 53.79 percent.

12 Q What is the any-part Black Voting Age Population for
13 District 2 in this plan?

14 A 50.88 percent.

15:36:10 15 Q What is the non-Hispanic single-race Black Citizen Voting
16 Age Population for District 7 in Illustrative Plan 2?

17 A 55.58 percent.

18 Q And what about the same metric for District 2 in this
19 plan?

15:36:30 20 A 51.82 percent.

21 Q All right. Let's turn to Illustrative Plan 3. That's
22 going to be Plaintiffs' Exhibit 28. Look at the map.

23 So, Mr. Cooper, how does Illustrative Plan 3 differ from
24 the other plans? What are its defining features?

15:36:50 25 A Illustrative Plan 3 keeps Montgomery County whole. I

1 think the first two we looked at did not keep Montgomery County
2 whole.

3 And, of course, as in all the plans, it includes Mobile
4 County.

15:37:09 5 So District 7 is a northern district in this case. And
6 includes part of Bibb County and all of Bibb County, part of
7 Tuscaloosa, and the northwestern part of the Black Belt,
8 including Pickens and Sumter county along the Mississippi line.

9 Q So this map manages to keep Montgomery County whole in
15:37:31 10 District 2; is that right?

11 A Right.

12 Q And the enacted plan actually divides Montgomery County;
13 is that right?

14 A I believe so.

15:37:38 15 Q Okay. Let's pull up the statistics for Illustrative Plan
16 3 Plaintiffs' Exhibit 27. What is the any-part Black Voting
17 Age Population for District 7 in Illustrative Plan 3?

18 A 50.09 percent.

19 Q What about the same metric for District 2 in Illustrative
15:38:04 20 Plan 3?

21 A 50.27 percent.

22 Q And what is the non-Hispanic single-race Black Citizen
23 Voting Age Population in District 7 under this plan?

24 A 51.77 percent.

15:38:18 25 Q And the same metric for District 2?

1 A Yes. 51.08 percent.

2 Q Great. Let's talk about -- let's go to Illustrative Plan
3 4 that's Plaintiffs' Exhibit 33 to look at that map.

4 A Yes.

15:38:39 5 Q So how -- you anticipated my question. But yes. How
6 would you -- what's different about Illustrative Plan 4
7 compared to the other illustrative plans that you created?

8 A Well, this plan is different in that I kept Tuscaloosa
9 County whole, as well as the city of Tuscaloosa.

15:38:58 10 The current plan -- the enacted plan the state produced
11 actually splits Tuscaloosa County, of course, but it also
12 splits the city of Tuscaloosa. So I believe that this is the
13 only plan on the table right now that does not split Tuscaloosa
14 County county or the city of Tuscaloosa. So that was my
15:39:18 15 variation in this particular plan. And so District 7 is sort
16 of in the -- again, kind of a northwest quadrant. And then
17 District 2, as in all plans, includes Mobile County and extends
18 east to Barbour County on the Georgia line and also does have a
19 split in Montgomery County when shares that with District 3.

15:39:45 20 Q And that split is also reflected in the enacted plan?

21 A It's not the exact same split, but same general area,
22 true.

23 Q Okay. Let's go to statistics Illustrative Plan 4, which I
24 believe is now at Plaintiffs' Exhibit 32. What is the any-part
15:40:08 25 Black Voting Age Population of District 7 under this plan?

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1 A 50.09 percent.

2 Q And what is the any-part Black Voting Age Population of
3 District 2?

4 A 50.07 percent.

15:40:20 5 Q What is the non-Hispanic single-race Black Citizen Voting
6 Age Population of District in 7 under this plan?

7 A 52.13 percent.

8 Q What is that metric for District 2?

9 A 50.8 percent.

15:40:39 10 Q Mr. Cooper, I believe in Mr. Bryan's declaration, he notes
11 that some of the numbers that you report population figures
12 when it comes to Illustrative Plans 4, 5, and 6 were transposed
13 in your report. Do you recall reading that?

14 A I do. Apparently a copy and paste error as I was taking
15:41:03 15 columns from the exhibit and putting it into the declaration, I
16 must have inadvertently copied the wrong plan in the population
17 column. It does not change the percentages at all. The
18 numbers that are reported in my declaration exhibits are
19 accurate. I think that was confirmed by Mr. Bryan. He spent
15:41:30 20 about three pages discussing this issue, and it's really making
21 a mountain out of a mole hill.

22 Q So there was a typo in your declaration; is that right?

23 A Yeah. Well, you can call it a typo. It's a copy and
24 paste error. I just copied a column apparently from the wrong
15:41:49 25 election plan and put it into total population for a plan that

1 should have gone in another one. So that the -- sum of the
2 total population numbers instead of being plus one might be
3 minus one for one district. It's just not a meaningful error.

15:42:08 4 Q So but just for the Court's clarification, all of the
5 statistics, all of the numbers in the exhibits to your report,
6 including the one we're looking at right now, those are all
7 accurate?

8 A Yes.

9 Q Okay. All right. Let's move on to Illustrative Plan 5.
15:42:25 10 That will be Plaintiffs' Exhibit 38 to look at this map.

11 What are the unique details of Illustrative Plan 5
12 compared to the other plans that you produced?

13 A The key distinguishing factor with Illustrative Plan 5 is
14 that I put Coffee County into District 2, and the current
15:42:50 15 incumbent for District 2 lives in Coffee County. So this plan
16 demonstrates that you can draw two majority-black districts for
17 the U.S. House in Alabama and protect all incumbents.

18 Q And so in extending it to Coffee County to capture the
19 current incumbent, did you have to kind of extend District 2 a
15:43:14 20 little bit more southward than you did in any of the other
21 plans?

22 A Yeah. At least on the eastern most part of the district,
23 I did. The border instead of just being Macon and Bullock
24 County actually goes through Pike and all the way down to the
15:43:34 25 -- well, all of Coffee County down to the Geneva County line.

1 So it does extend the eastern border further south.

2 Q So with respect for the incumbent in that district in
3 particular creates that kind of little foot on the southeastern
4 side of the district?

15:43:47 5 A Yes.

6 Q Let's go to the statistics for this plan at Plaintiffs'
7 Exhibit 37. What is the any-part Black Voting Age Population
8 under Illustrative Plan 5?

9 A 50.09 percent.

15:44:04 10 Q And the any-part Black Voting Age Population for District
11 2?

12 A 50.24 percent.

13 Q What is the non-Hispanic single-race Black Citizen Voting
14 Age Population for District 7 in this plan?

15:44:20 15 A 51.65 percent.

16 Q And what is that metric for District 2 in that -- in this
17 plan?

18 A 51.2 percent.

19 Q All right. Let's move on to Illustrative Plan 6.

15:44:41 20 Mr. Cooper, I know in your report you describe each of these
21 plans more fully, and I am just asking for kind of a summary of
22 what the key differences are from one plan to another here. So
23 I know you have gone into more detail there. What would you
24 describe as the key difference --

15:44:55 25 JUDGE MARCUS: Let me stop you for a moment, counsel.

1 What exhibit number is Plan 6?

2 MS. KHANNA: Thank you, Your Honor. Apologies for
3 that. This is Plaintiffs' Exhibit 43.

4 JUDGE MARCUS: Thank you.

15:45:10 5 BY MS. KHANNA:

6 Q Mr. Cooper, looking at this map, what would you say are
7 the -- what differentiates this map from some of the other
8 plans you drew?

9 A Well, this is the first plan that I prepared or presented
15:45:22 10 that actually keeps all of the city of Mobile in District 2.
11 And it also at the same time keeps all of Montgomery County in
12 District 2. So it does not split Montgomery city or Mobile
13 city. Both are whole. And that is the key feature of this
14 particular plan.

15:45:46 15 Q And so if you recall back to the compactness chart, I
16 believe that Illustrative Plan 6, this one, scored the lowest
17 on the Polsby-Popper metric. Do you remember that?

18 A I don't remember exactly, no, but I know that there were
19 lower scores maybe in some of the plans compared to others.

15:46:08 20 Q Can you explain why this plan would score slightly lower
21 on the Polsby-Popper metric particularly when it comes to
22 District 2?

23 A Well, I think in the case of keeping Mobile city whole,
24 the city boundary is places kind of irregular shaped. And so
15:46:27 25 that would have been a factor. It also -- because I wanted to

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1 maintain a way for people to drive from District 1 in Mobile
2 County into Baldwin County without going to District 2, I left
3 that opening there in the north end of the county so that you
4 could cross through on I-65 or one of the state routes without
15:46:51 5 travelling into District 2. And I also wanted to make sure
6 that the incumbent in District 1 stayed in District 1. And in
7 doing that, some of the precincts in the east -- west of Mobile
8 before you get back into District 2 are slightly irregular, so
9 that may have had something to do with the lower score.

15:47:12 10 Q So those are regular boundaries that we see are explained
11 by certainly the Mobile city line, city boundary, but also
12 various road ways and other traversals as well as the
13 incumbent?

14 A Right. But I have to emphasize again there's nothing out
15:47:29 15 of line with the Polsby-Popper scores in any of these plans.
16 This one happens to be maybe one of the lower ones. But it
17 matches up fine if you look at districts around the country or
18 even if you look at some of the legislative districts in
19 Alabama.

15:47:49 20 Q Okay. Let's move on to the statistics for Illustrative
21 Plan 6. That's Plaintiffs' Exhibit 42. And, again,
22 Mr. Cooper, what is the any-part Black Voting Age Population
23 for District 7 under this plan?

24 A 51.09 percent.

15:48:09 25 Q What is the any-part Black Voting Age Population for

1 District 2?

2 A 51.28 percent.

3 Q What is the non-Hispanic single-race Black Citizen Voting
4 Age Population for District 7?

15:48:27 5 A 52 -- oh. 52.48 percent.

6 Q And what is the non-Hispanic single-race black CVAP for
7 District 2?

8 A 52.44 percent.

9 Q All right. Let's move on to Illustrative Plan 7, which is
15:48:44 10 Plaintiffs' Exhibit 61. What are the -- what differentiates
11 Illustrative Plan 7 from the others that you created for this
12 case?

13 A Well, first of all, this plan also keeps the city of
14 Mobile whole and also keeps Montgomery County whole. So it's
15:49:04 15 like District 6 -- and Illustrative Plan 6 in that sense. And
16 it also as I've discussed previously has higher compactness
17 scores than the state's plans. And it also makes changes to
18 the districts in the north. You can see District 6 is perhaps
19 more compact in this plan than in others.

15:49:27 20 I did change the configuration of this so that it
21 basically just includes the city of Huntsville, which is
22 extends now into Limestone County. It's not only Madison
23 County. So I included all the city of Huntsville and the
24 Appalachian counties in District 5. And District 4 runs from
15:49:47 25 Tuscaloosa north to the Tennessee line. But it's a more

1 compact shape than exists in the -- in the existing plan.
2 Because the existing plan if you live in suburban Tuscaloosa,
3 you can end up in the same district as somebody in, you know,
4 northwest Alabama really in the mountains. And so there is a
15:50:12 5 question there from a geographic standpoint whether that's a
6 good match up.

7 Q Let's pull up the statistics for Illustrative Plan 7
8 that's Plaintiffs' Exhibit 60. What is the any-part Black
9 Voting Age Population for District 7 under this plan?

15:50:34 10 A 51.88 percent.

11 Q Actually, for District 7, I think that's --

12 A Oh. I'm sorry. 50.31 percent.

13 Q Any-part Black Voting Age Population for District 2?

14 A 51.88 percent.

15:50:49 15 Q What is the non-Hispanic single-race Black Citizen Voting
16 Age Population for District 7?

17 A 52.12 percent.

18 Q And for District 2?

19 A 52.92 percent.

15:51:06 20 Q And in this exhibit, you also include the percent of black
21 registered voters in the district, as well; is that right?

22 A That's true because this particular plan was produced
23 after we -- that the discovery request was for voting
24 registration files. So Illustrative Plan 7, which was produced
15:51:25 25 sometime after the 10th of December, I was able to include the

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1 registered voter count in this particular plan for all
2 districts.

3 Q And I know we have already shown the figure that shows the
4 black active registered voters among all the illustrative
15:51:40 5 plans, but just looking at Illustrative Plan 7 here, this is
6 both District 7 and 2 are well over 50 percent; is that right?

7 A Yes, exactly.

8 Q We can take that down.

9 A This is current information I must emphasize. This is the
15:51:56 10 most recent registered voter files they have. 2021
11 information, whereas a slightly lower non-Hispanic CVAP is
12 historical dating to 2017.

13 Q Thank you. We can take down this exhibit. Mr. Cooper, is
14 it fair to say that each of your illustrative plans balances
15:52:16 15 traditional districting principles in different ways?

16 A Yes.

17 Q And in your opinion as a map drawer, each of these
18 achieves the goals of population equality, contiguity,
19 compactness, respect for political subdivision boundaries,
15:52:32 20 communities of interest, and non dilution of minority voting
21 strength. Is that fair?

22 A Yes.

23 Q Each of them contains two districts that are
24 majority-black under the any-part Black Voting Age Population
15:52:48 25 metric, the majority non-Hispanic single-race Black Citizen

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1 Voting Age Population, and have a majority of black active
2 registered voters; is that right?

3 A Right. And I believe Illustrative Plan 6 actually has two
4 districts that are single-race Black Voting Age Population over
15:53:06 5 50 percent.

6 Q I would like to shift gears right now to the socioeconomic
7 profile in Alabama.

8 I know all of the figures that we are going to talk about
9 that you have included here are incorporated in your first
15:53:20 10 report, I believe at page 37 onward. What data are these
11 socioeconomic statistics based on?

12 A They're based on the 2019, one-year American Community
13 Survey. So the survey instrument went out to households in
14 2019 and the early part of 2020. And then the data was
15:53:47 15 reported in the month of September of 2020. So it's fairly
16 recent socioeconomic information, although it predates the
17 pandemic. So for that reason, the pandemic has resulted in the
18 2021 American Community Survey being canceled. It is not going
19 to be reported except maybe in some sort of experimental
15:54:12 20 fashion since the bureau's indicated they are going to do
21 something with the data.

22 So this is the most current data available from the
23 one-year survey, and there won't be any more data available
24 until the 2021 survey is released, which will be in September
15:54:26 25 of '22.

1 Q And just to clarify, the American Community Survey data is
2 administered and produced by the U.S. Census Bureau, correct?

3 A Yes.

4 Q So what are your conclusions generally regarding the
15:54:41 5 socioeconomic profile of blacks and whites in Alabama?

6 A Well, whites outpace blacks in almost every single
7 category. I'm hard pressed to think of one where there is not
8 a disparity. And I outline that in my declaration and have a
9 set of charts in the exhibits, which illustrate those
15:55:02 10 disparities and is probably a little easier to get through,
11 just looking at bar charts.

12 Q And those disparities across -- span across education,
13 income, and other metrics, as well; is that right?

14 A Yes.

15:55:18 15 Q Employment?

16 A Unemployment rates, just the whole nine yards, really.
17 It's not -- it's sad in a way that the disparity is that
18 pronounced.

19 Q Thank you.

15:55:33 20 MS. KHANNA: Mr. Cooper, I don't have any further
21 questions at this time. Your Honor, I pass the witness.

22 JUDGE MARCUS: Thank you. Mr. Davis?

23 MR. DAVIS: Thank you, Your Honor.

24 CROSS-EXAMINATION

15:55:41 25 BY MR. DAVIS:

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1 Q Hello, Mr. Cooper.

2 A Hello. Long time no see.

3 Q Mr. Cooper, if someone identifies as black in filling out
4 the census, your report does not tell us how that person votes
15:55:57 5 or consider how that person votes, does it?

6 A No.

7 Q Are you making any assumptions in your analysis about how
8 that person votes, knowing nothing about him or her except the
9 color of the skin?

15:56:11 10 A I make no assumptions about voting. That's the job of the
11 *Gingles II* and *Gingles III* expert.

12 Q Is that true as well for someone who identifies as white
13 when filling out the census?

14 A That's true. I cannot make any kind of statement one way
15:56:29 15 or the other about an individual voter, no.

16 Q And then it would be also true for someone who checks both
17 black and white?

18 A For the -- for the census form, that's true. Of course,
19 we have the voter registration data, which is limited to only
15:56:50 20 one check, so, that's why I'm confident that all our districts
21 are majority-black. Of the two that are considered,
22 majority-black.

23 Q Do you have any understanding, Mr. Cooper, about whether
24 Section 2 requires proportional representation for minority
15:57:06 25 populations?

1 MS. KHANNA: Objection, Your Honor. That calls for a
2 legal conclusion.

3 JUDGE MARCUS: I will allow it insofar as he's telling
4 us what may have shaped or motivated him in drawing it. We
15:57:20 5 will take it. Overruled.

6 THE WITNESS: Well, my understanding is it does not
7 require proportional representation.

8 BY MR. DAVIS:

9 Q Thank you.

15:57:28 10 A But I'm not a lawyer.

11 Q If I understood you correctly, Mr. Cooper, you said that
12 when drawing illustrative plans for a Section 2 case, it is
13 necessary to consider race. Was that your testimony?

14 A Race in a Section 2 case is always in the background as it
15:57:50 15 really is in most plans one would draw anywhere in the country
16 outside of litigation if you are really following traditional
17 redistricting principles.

18 Q You say following traditional principals requires you to
19 district on the basis of race?

15:58:04 20 A You have to make sure that what you are doing is not
21 diluting a subset of the population that is minority in terms
22 of their voting strengths.

23 Q At some point in the process, but that doesn't mean you
24 have to consider race when drafting a plan, does it?

15:58:19 25 A Well, it's a traditional redistricting principle, so like

1 compactness or contiguity, you have to be aware of it as you
2 are drawing a plan.

3 Q Even if it's necessary to consider race when drawing an
4 illustrative plan, that does not mean that it's okay to make
15:58:37 5 race the most important factor, though, does it?

6 A No. One should try to balance the various traditional
7 redistricting principles as I believe I have done.

8 Q You've drawn many plans in many different jurisdictions,
9 correct?

15:58:54 10 A That is correct.

11 Q When you're drawing plans for a jurisdiction, and I don't
12 mean in litigation, I mean you're being hired by a state or a
13 county or school board or someone to draw their plans, how
14 often do you just start with a blank slate with no
15:59:13 15 consideration of how the districts looked before?

16 A Almost never. I would always see what the so-called
17 benchmark plan, the previous plan looked like.

18 Q Do you most often adjust the benchmark plan as necessary
19 to come within appropriate population deviation?

15:59:34 20 A Yes. I mean, I'm always looking at things that need to be
21 changed to comply with traditional redistricting principles
22 and, of course, that would definitely include one person one
23 vote.

24 Q Sure. Now, you said that you considered Alabama's
15:59:53 25 districting guidelines, right?

1 A I did. I reviewed them.

2 Q And you say you complied with our traditional districting
3 criteria, correct?

4 A I believe so.

16:00:04 5 Q Okay.

6 A Criteria very general, so I think so.

7 Q Sure. Does our guideline not -- do our guidelines not
8 include the traditional districting criteria of preserving the
9 core of districts?

16:00:19 10 A They do. And for the six plans I drew that include
11 District 5 in north Alabama, they're almost identical to the
12 District 5 that was drawn by the state. Because I'm also
13 looking at other factors like the minority population and the
14 reality that a second majority-black district could be drawn,
16:00:50 15 the so-called core retention numbers on my plan might not match
16 the state's. But that's okay. That's okay. I don't think
17 that's something to be concerned about.

18 Q Okay. Well, we do. So but our guidelines don't say
19 preserve the core of District 5, does it? It says preserve the
16:01:12 20 core of existing districts?

21 A Right. But if you start with a plan that prima facia may
22 be violating the Voting Rights Acts, you are going to change
23 districts. And because of that, when I set about to create a
24 second majority-black district, it was clear that I had to
16:01:30 25 change other districts. It was not possible just to do a de

1 minimus change. It required, you know, significant changes to
2 some of the adjoining districts, and because Districts 2 and 7
3 basically line up with the rest of the districts in the state,
4 all the districts except for District 5 have to change.

16:01:49 5 Q Does your report express any opinion or your supplemental
6 report that Alabama's plan violates the Voting Rights Act?

7 A Well, I am not a -- I am not a lawyer or a judge, so I
8 can't make that statement point blank. But I do believe that
9 second majority-black district can be created while adhering to
16:02:08 10 the traditional redistricting principles. Once you take that
11 concept into action, you're going to change the neighboring
12 districts. And because five of the districts are neighboring,
13 that pretty much just leaves you with the only possibility of
14 protecting core retention in District 5.

16:02:27 15 Q So is that a no?

16 A No to what?

17 Q That your report does not include an opinion that
18 Alabama's plan violates the Voting Rights Act?

19 A Well, it shouldn't because I'm not a -- I'm not a lawyer.
16:02:40 20 I'm not a judge. I just drew a plan that demonstrates that in
21 my opinion you can get a second majority-black district. And
22 flowing from that would be perhaps a judicial decision that
23 would say the enacted plan violates the Voting Rights Act.

24 Q Did you or did you not consider the traditional
16:03:02 25 districting criteria of preserving the core of districts that

1 is in Alabama's guidelines?

2 A I believe I did within the constraints of creating second
3 majority-black districts. I didn't radically change where the
4 districts are located. And I -- except in District 7, I did
16:03:20 5 change District 5 in that particular plan just to make the
6 point that the state could have drawn a more compact district.
7 But beyond that, I have done a pretty good job of keeping the
8 general areas served by each district except for District 1 in
9 the same part of the state. You're looking at me like you're
16:03:48 10 appalled.

11 Q Mr. Cooper I have to apologize. I will say this to the
12 Court, too. I am looking for the right -- I promise you -- I'm
13 trying to share my screen, and I'm making sure that I get the
14 right EF up. I am not meaning to look any way.

16:04:04 15 A Oh. I thought you were looking at me in a --

16 Q No, no.

17 JUDGE MARCUS: You all like fine to me. Let's just
18 proceed with the next question, please.

19 BY MR. DAVIS:

16:04:14 20 Q Mr. Cooper, how does this plan preserve the core of
21 existing districts? And this is your Illustrative Plan 7.

22 A Well --

23 Q Exhibit C-61.

24 A That's right. That's one where I did change District 5.
16:04:32 25 I believe it's a more compact district. It keeps Huntsville

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1 whole and does not put a voter in Tuscaloosa in a district
2 that's almost in Chattanooga. So it's a different
3 configuration. I'm not saying it has to be this way. I just
4 thought it would make the point.

16:04:51 5 You could draw District 5 as the state is drawn. And in
6 all the other plans, I basically have.

7 Q Mr. Cooper, did you observe traditional redistricting
8 principle of avoiding incumbent conflicts with your peers in
9 Alabama's guidelines?

16:05:09 10 A I did in Illustrative Plan 5.

11 Q In your other six, you did not observe that traditional
12 districting criteria, did you?

13 A However, I would point out those plans could in all cases
14 probably be modified such that the incumbent in district -- in
16:05:32 15 District 2 could be put in District 2 if not by way of a whole
16 county, all of Coffee County, which is really quite populace,
17 certainly it could be split, and the incumbent could be put in
18 District 2.

19 Q Is it true --

16:05:46 20 A There would be many options for that.

21 Q Is it true --

22 A I want --

23 JUDGE MARCUS: Just let him finish, please. You may
24 finish your answer, Mr. Cooper.

16:05:58 25 THE WITNESS: Oh. I just didn't want to introduce

1 more than six splits to any plan. So for that reason, I
2 didn't, for example, split Coffee County to put the incumbent
3 in the District 2. But there would be other variations. And
4 there's one on the table now that does that. So I have
16:06:16 5 protected all incumbents.

6 BY MR. DAVIS:

7 Q Is it true that in six of your seven illustrative plans,
8 you do not avoid incumbent conflicts?

9 A In six of the seven? But in any of those, I could have
16:06:30 10 probably protected the incumbent and kept a plan in place with
11 two out of seven majority-black districts. It might have
12 required an extra county split, though.

13 Q Have you ever lived in Alabama?

14 A No, I have not.

16:06:50 15 Q Have you spent any time speaking with Alabama voters or
16 election officials about what local communities of interest may
17 be?

18 A No. I mean, I have spoken with folks from Alabama. But I
19 have not spoken with election officials.

16:07:09 20 Q What makes you think that you are better able than 140
21 legislators who live in Alabama and represent local districts
22 -- what makes you think you are in a better position than them
23 to balance traditional criteria where they conflict?

24 MS. KHANNA: Objection, Your Honor. That
16:07:28 25 mischaracterizes his testimony. I don't think he's ever said

1 he's better able than the legislators.

2 JUDGE MARCUS: I will let him answer the question.

3 You may answer.

4 THE WITNESS: I think in the final analysis, even if
16:07:37 5 this case is ruled in our favor, the Legislature will get the
6 first opportunity to develop a remedial plan, and more often
7 than not, that's what happens. Sometimes it doesn't happen.
8 Like in say South Dakota, when ultimately the Legislature
9 refused to create a majority Native American district, so the
16:07:54 10 judge just finally had to order. But normally the Legislature
11 will have the opportunity to develop a plan.

12 In fact, in 2019, in Mississippi in the plan I referenced
13 earlier in my testimony, where I was a consultant, and the
14 plaintiffs' expert in a lawsuit, Section 2 lawsuit that created
16:08:13 15 a new state Senate district in the Delta, initially the judge
16 ordered my plan into place. But then the Legislature came back
17 and said, look, we want to develop a plan. The judge allowed
18 them do that, and the court ordered plan in the end was a plan
19 developed by the Legislature. It included a majority-black
16:08:33 20 district, though.

21 BY MR. DAVIS:

22 Q Mr. Cooper, did I understand you correctly when you said
23 you kept the city of Mobile whole that you split precincts in
24 order to do so?

16:08:52 25 A Some precincts had to be split in order to get to zero

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1 population deviation.

2 Q Okay. Did you have to split precincts in order to keep
3 the city of Mobile whole?

4 A In the configuration that you see in Illustrative Plan 6
16:09:15 5 and 7, I believe I did have to do that in order to meet
6 one person one vote zero deviation.

7 Q Why couldn't you have made that adjustment somewhere else
8 on the map?

9 A Well, perhaps I could have, but then that would have
16:09:27 10 introduced another county split. Yeah. There are an infinity
11 of plans out there one can draw. These are just seven
12 illustrative ones. So I am not saying it couldn't be done. I
13 just haven't produced such a plan so far.

14 Q Why did you not produce any plans that kept Mobile County
16:09:46 15 whole?

16 A I think that more than likely if you keep Mobile County
17 whole it becomes a little problematic to create two
18 majority-black districts.

19 Q Does it make it impossible?

16:09:59 20 A Well, maybe not, but it would require a number of other
21 county splits, I think.

22 Q Did you testify in direct, Mr. Cooper, that in Florida,
23 you have used the measurement of non-Hispanic black instead of
24 any-part black?

16:10:22 25 A No. No. I just said that there may be some places in

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1 America where there was a large black Latino population that
2 perhaps could be isolated for voting purposes.

3 Q Okay.

4 A But that's not the case in Alabama.

16:10:39 5 Q Okay. I wasn't asking about Alabama.

6 A Yeah. Well, I am. I'm telling you any-part black is the
7 definition to use in Alabama.

8 Q Okay. Did you testify that non-Hispanic single-race
9 citizen black is the most conservative measure that you could
16:11:04 10 use?

11 A I believe that is the most conservative measure I can use.

12 Q And you say that number is probably higher now than what
13 you report?

14 A Yeah. It's always running behind. It's always four years
16:11:15 15 old. So since we're right at the 2020 census, it is somewhat
16 historical.

17 Q I understand why it's historical. I don't understand why
18 you say that the number would necessarily be higher now?

19 A Alabama is a younger population. So assuming that the
16:11:30 20 younger cohorts between say 14 and 16 age to 18 over a
21 four-year period, the black VAP is probably going to go up.
22 Black CVAP will probably go up. That's speculative. I can't
23 say for sure.

24 Q I want to show you -- this is Exhibit C-1, and it's your
16:12:00 25 report. I want to go to page 8 of your report.

1 Mr. Cooper, do you recognize this map on page 8 of your
2 report?

3 A Yes.

4 Q And what are these counties that are outlined in black?

16:12:18 5 A Those are counties that are identified as part of the
6 historic Black Belt in Alabama. That definition came from the
7 encyclopedia of Alabama.

8 Q Have you --

9 A It references that.

16:12:37 10 Q Have you ever seen any definition of the Black Belt that
11 includes Mobile County?

12 A I have not, but I am not an historian.

13 Q Have you --

14 A And I would add, if you look at a U.S. map of historical
16:12:59 15 Black Belt counties, it is conceivable that Mobile might show
16 up going further back in time.

17 Q Have you presented any map in this case that keeps these
18 counties that you have identified together in a single
19 district?

16:13:16 20 A I have not.

21 Q In fact, isn't it true that these counties are split among
22 three districts in each of your seven maps?

23 A Not sure about that.

24 Q Okay. In your report, you give a total number of the
16:13:40 25 black voters in Districts 1, 2, and 3, correct?

1 A I do.

2 Q And let's see. It's around 612,000. You say is almost
3 enough to -- to be -- to make up an additional congressional
4 district?

16:14:00 5 A Right.

6 Q So the 612,000 voters that includes -- this, for the
7 record, is Defense Exhibit 1, Page 72.

8 Your 612,000 voters includes these African-American voters
9 in Mobile in District 1, right?

16:14:33 10 A True.

11 Q It would include these black voters in Dothan over in
12 Houston County in the southeast portion of the state?

13 A Right.

14 Q It would include voters in Auburn and Talladega and
16:14:46 15 Anniston and Gadsden, as well, right?

16 A True. And I don't think you could get all the way to
17 Gadsden or Huntsville with a majority-black district. You
18 could probably get to Talladega.

19 Q Are you suggesting that it would be possible to put all of
16:15:04 20 these black voters that you have identified together in a
21 single congressional district?

22 A Perhaps not in a single plan. But that's certainly --
23 those are areas excluding Gadsden, excluding Huntsville where
24 one could draw a second majority-black district. I believe I
16:15:20 25 did that in the trial testimony for the Chestnut vs. Merrill

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1 case back in 2019. I think I put Talladega in a majority-black
2 district. But obviously, you couldn't go all the way to
3 Huntsville.

4 Q Speaking of Chestnut, you were an expert for the
16:15:37 5 plaintiffs in that case, correct?

6 A Yes.

7 Q Have you ever seen or read the testimony of Congressman
8 Bradley Byrne from that case?

9 A I believe I may have read a news account, but I have not
16:15:53 10 read his testimony.

11 Q Okay. Do you have any knowledge of what Mr. Byrne
12 testified about in that case concerning any differences between
13 the role of a member of the State Board of Education and the
14 role of a member of Congress?

16:16:05 15 A I did not see his direct testimony on that, but I can
16 understand there would be differences.

17 Q Okay. What, if any, is your understanding of what those
18 differences might be?

19 A I would think that a Congress person probably has more
16:16:25 20 responsibility to get out and meet the voters than someone who
21 is on the board of education. But that's just my general
22 thought. I don't have specific knowledge about what the
23 members of the board of education of Alabama do. Many of them
24 may actually visit lots of schools, so.

16:16:40 25 Q But you don't know?

1 A No, I don't. I don't.

2 Q Okay. Do you know when the State Board of Education plan
3 was first split?

4 That's not what I meant to ask, Mr. Cooper.

16:16:52 5 Do you know when Mobile County was first split in the
6 Alabama State Board of Education plan?

7 A I think it may have been in the 1996 court ordered plan.
8 If not, maybe in the 2002 plan. But I could be wrong. Maybe
9 it wasn't split until 2011.

16:17:10 10 Q If -- I want you to assume it was split in 2011 for the
11 first time. You do know that in the 20 -- in the 2000-decade
12 plan there were two majority-black districts in the State Board
13 of Education plan, correct?

14 A Well, I -- there were two majority-black districts in the
16:17:38 15 2011 plan. I believe the plans that were developed and
16 precleared by the Justice Department in 2002 had two districts
17 that were -- one of the districts was not quite majority-black.
18 It was like 48 percent. That's in my declaration.

19 Q Do you know how communities of interest are different, if
16:18:04 20 they are, for purposes of a State Board of Education plan
21 versus a congressional plan?

22 A I don't -- I can't point to something that would be
23 helpful, I don't think. I'm not sure what you mean. One is
24 for focusing solely on education -- students in public schools
16:18:29 25 in the state. The other is responsible for just about

1 everything under the sun that has to do with federal issues.

2 Q Do you know if board of education members keep offices in
3 their districts?

4 A I don't think they would, but I could be wrong. Again,
16:18:49 5 you are asking me a lot about the board of education. I
6 frankly don't know the responsibilities in full.

7 Q Do you have an understanding as a demographer and for
8 purposes of instructing you in drawing these illustrative
9 plans, do you have any understanding of what sufficiently
16:19:20 10 compact means, in terms of Section 2? In other words --

11 A I do. And there's no question that I have met those in
12 all seven plans.

13 Q What is your understanding of what sufficiently compact
14 means?

16:19:32 15 A That the population is in an area that has clearly defined
16 boundaries that is reasonably shaped and is basically compact,
17 because I'm building it off of whole counties for the most
18 part. So in my mind, it is reasonably compact. And that's
19 confirmed by the scores. You can always fall back on those.

16:19:58 20 If you look at those compactness scores, they match up with the
21 same kinds of scores for the state Legislature. And if you
22 look at congressional plans around the country, those scores
23 are just fine. Just take a look at Texas. That's in my --
24 that's in my declaration. That's where Mr. Bryan was advising
16:20:18 25 the state House. And look at the scores in the congressional

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1 districts in Texas. They're down in the low single digits for
2 a congressional district.

3 So don't complain about the scores in my plans that I
4 formed, the illustrative plans. They are absolutely within a
16:20:35 5 normal range for congressional districts nationwide. And I
6 have referenced a court report written in 2012 based on the
7 2011 plans that makes that point clear.

8 Q Mr. Cooper, does your definition of sufficiently compact
9 have any -- does it include in any way whether the voters in
16:20:57 10 your districts are part of the same communities of interest?

11 A No. I think community of interest and compactness can
12 vary. I mean, there's -- the two different things.

13 Q Okay. I want to show you your first plan, Exhibit C-18.
14 Now, you say all your plans are consistent with traditional
16:21:28 15 districting criteria, correct?

16 A In my opinion, yes.

17 Q Okay. So is it consistent with traditional districting
18 criteria split Jefferson, Tuscaloosa, Montgomery counties in
19 the way you did in this Illustrative Plan 1?

16:21:43 20 A Well, first of all, my plan in illustrative -- my District
21 7 in Illustrative Plan 1 is very similar to the way you split
22 Jefferson County in the enacted plan. I've included all of
23 those precincts that go across the southern tier of Jefferson
24 County all the way over to the Walker County line. And that's
16:22:05 25 exactly what your plan does.

1 So Jefferson County is fine. Your plan splits Tuscaloosa
2 County as does mine in Illustrative Plan 1. But I have shown a
3 way that you haven't done to keep Tuscaloosa County whole and
4 put it all in District 7.

16:22:24 5 Q Mr. Cooper?

6 A Illustrative Plan 4, maybe.

7 Q Mr. Cooper, the question was: In your opinion, is it
8 consistent with traditional districting criteria to split
9 Jefferson, Tuscaloosa, and Montgomery County counties the way
16:22:42 10 that they're split in your Illustrative Plan 1?

11 A Yes.

12 Q And is it consistent with traditional criteria for Mobile
13 County to be split the way that it is in your Illustrative Plan
14 1?

16:22:58 15 A Yes.

16 Q What traditional districting criteria required you to
17 split Mobile County?

18 A One person one vote.

19 Q So there's no way to draw a map with equal population
16:23:16 20 among the seven districts without splitting Mobile County?

21 A And at the same time adhering to some of the other
22 traditional districting principals, like the non dilution of
23 the minority vote, true, no way. More problematic. Maybe
24 there would be a way, but you would also have to split other
16:23:34 25 counties. So I think this is the best compromise. Split

1 Mobile County.

2 Q Do you need to split Mobile County to avoid incumbent
3 conflicts?

4 A I don't understand that question exactly.

16:23:49 5 Q Is it necessary to split Mobile County to observe
6 Alabama's traditional criteria of not putting incumbents
7 together in the same district?

8 A Well, I mean, I still don't exactly understand the point
9 that -- of your question. Obviously, you could put all of
16:24:14 10 Mobile County in a district as you have done and leave District
11 1 as you've done, such that it doesn't go all the way into
12 Coffee County and protect all the incumbents. Incumbency
13 protection is a factor that one has to take into consideration.
14 But it's not exactly a traditional redistricting principle,
16:24:40 15 partly because incumbents constantly change.

16 Q Is it necessary to split Mobile County to preserve the
17 core of existing districts?

18 A Well, as I've said, I don't think core retention really is
19 a particularly significant metric in a *Gingles II* case, *Gingles*
16:24:58 20 *I* case, because the idea is to create an additional
21 majority-minority district. And once you do that, you are
22 going to be changing all of the other districts that are
23 adjacent to the minority-majority districts that is created.
24 And in this instance, that's basically the whole plan, except
16:25:15 25 for District 5.

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1 Q Mr. Cooper --

2 A Except for District 5.

3 Q Mr. Cooper, the question was: Is it necessary to split
4 Mobile County to preserve the core of districts?

16:25:30 5 A I don't understand your question, really. I mean, there
6 may be a way to split Mobile County and have a final score on
7 core retention that is higher than your score. I don't know.

8 Q Let me stop the share and show you know Exhibit C-43.

9 This is Exhibit C-43 for the record. It is your Illustrative
16:26:12 10 Plan 6. I don't think I'm sharing -- I think -- I'm sorry. I
11 just opened the pdf. Let's see.

12 Now, I closed it. I will come back to that.

13 Mr. Cooper, what do voters in Mobile County and say
14 Bullock County the eastern end of the state have in common? Do
16:26:41 15 you have any opinion about that?

16 A Voters in Mobile County?

17 Q Yes.

18 A And Bullock County?

19 MS. KHANNA: Objection. Outside the scope of his
16:26:52 20 report.

21 JUDGE MARCUS: I am not sure I understand the
22 question. Could you sharpen that question, then and we will
23 see whether there's an objection.

24 BY MR. DAVIS:

16:26:58 25 Q You contended, have you not, that your illustrative plans

1 comply with traditional districting criteria, correct?

2 A Correct.

3 Q One of those traditional districting criteria is serving
4 communities of interest, right?

16:27:13 5 A Right.

6 Q So you have -- sharing finally your Illustrative Plan 6 is
7 Exhibit C-43.

8 You have the opinion about whether these voters in
9 downtown Mobile are part of the same community of interest of
10 voters in say Bullock and Macon County which are part of the
11 same District 2?

12 A Well, we heard testimony earlier this afternoon from the
13 Milligan plaintiffs that, in fact, there is a community of
14 interest there because of the history of African-Americans from
15 the Black Belt immigrating to Mobile to look for work or to
16 Birmingham. The ties are there. So, yes, I think there is a
17 community of interest. Bullock County -- those in the Black
18 Belt, and there are lots of folks in Mobile who have relatives
19 and friends in Macon and Bullock. We are not talking about a
20 foreign country. My goodness. What is the connection between
21 somebody in Tuscaloosa and somebody who lives up around
22 Scottsboro, exactly? Those are really different places.

23 Q Mr. Cooper, did you have any understanding about the
24 communities of interest in Mobile and Macon and Bullock at the
16:28:37 25 time you drew these illustrative plans?

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1 A Yes. Because I've learned over time that there are
2 communities of interest, specifically relating to the
3 African-American population and the Diaspora from the Black
4 Belt looking for work in the '30s, '40s, and forward. So, you
16:28:58 5 know, I do think there's a community of interest there.

6 Q Do you have any opinion about whether there's a community
7 of interest that includes both voters in Houston County and
8 voters in this wider portion of Mobile County that you include
9 in District 1?

16:29:17 10 A They're very well should be. They live in south Alabama.
11 I suspect maybe -- maybe they're more University of Alabama
12 fans down in Mobile than in the eastern part of the state
13 Auburnland (sic). But other than that, there's probably not a
14 lot of difference.

16:29:37 15 Q Is there anything else you would have to add about why you
16 think might be a shared community of interest between voters on
17 the extreme ends of this District 1?

18 A Because they live --

19 Q What you have just said?

16:29:51 20 A They live in south Alabama. They are going to the same
21 public school system. The similarities are legion.

22 Q Thank you.

23 Why would you have this shape Mobile County?

24 A Real simple. First of all, I wanted to make sure you
16:30:14 25 could drive from District 1 in Mobile County into Baldwin

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1 County. So I left a pathway via I-65 and some secondary roads
2 from Mobile into Mobile County into Baldwin without splitting
3 the city of Mobile. And I left an opening there so that I
4 could keep the current incumbent in District 1, Representative
16:30:36 5 Byrne in District 1. I could have just as easily put him in
6 District 2 and probably made a more even shape at the edge
7 there of District 2 as it comes into Mobile County.

8 Q Is there any reason down in Mobile County -- do you see
9 this little pink strip down the middle, which is District 1 and
16:30:56 10 like a fish hook here, why not just go straight across and
11 close this pink part in?

12 A Can't do it, because Mr. Byrne lives way down there in the
13 south -- southeast, southwest of Mobile almost in Mississippi.
14 And that's why that line is drawn that way.

16:31:15 15 Q Did you draw any plans that score better than Alabama's
16 plans in either Polsby-Popper -- in Polsby-Popper and Reock?

17 A Yes. Illustrative Plan 7 scores higher on Reock and is
18 1/100th of a point lower on Polsby-Popper. But if you take the
19 methodology that Mr. Bryan has employed, which actually is
16:31:53 20 flawed and add them up, we are on top. Because as I have
21 indicated, you can't do that. You have to look at the two
22 results independent of one another.

23 Q Let me see if I can find your plan 7.

24 A Look at the mean average, and you will see that our plan
16:32:18 25 is better than yours.

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1 Q Now, this is your plan 7, right?

2 A Right.

3 Q This is Exhibit C-59. And that was page 3. And let's go

4 down to 7, where I think has your scores. Did your District 2

16:32:56 5 or District 7 in Illustrative Plan 7 score better than District

6 2 or District 7 in the state's plan?

7 A No. I look at the mean average.

8 Q Okay. So you did not improve the compactness of either

9 District 2 or District 7 in your Illustrative Plan 7?

16:33:13 10 A I do think those compactness scores are somewhat higher

11 than in the other plans. .39, .37 for the Reock scores.

12 Except maybe for Illustrative Plan 4 also has high Reock

13 scores, I think. So I can't emphasize enough that the scores

14 you were seeing with all of the plans but especially with the

16:33:39 15 Illustrative Plan 7 as I have drawn them are perfectly okay in

16 terms of compactness.

17 Q You improved your average in score -- in plan 7, but you

18 did not at least by any significant margin improve the

19 compactness of Districts 2 or 7, which are your majority-black

16:34:05 20 districts; is that correct?

21 A No. I think I did improve them just a little bit.

22 Q Okay. Just a little?

23 A Well, it's -- we can go back and look at the scores, but I

24 think that District 2 and District 7 are maybe 4 or 500 or so

16:34:18 25 points higher in this plan than in the previous plans.

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1 Q Didn't you -- going back up to the map, didn't you improve
2 the overall average by reconfiguring Districts 4 and Districts
3 5?

4 A That helped a little bit, too, I believe.

16:34:33 5 Q Okay.

6 A Also, this plan actually includes Chilton and Autauga in
7 District 7, so that improved the compactness score a little
8 bit, as well as, for Districts 2 and 7.

9 Q Did you give any consideration?

16:34:53 10 A The other plans I have drawn had Chilton and Autauga both
11 in District 7.

12 Q Did you give any consideration how this would affect
13 communities of interest in the northern part of Alabama?

14 A I certainly did. I thought about it. Because, you know,
16:35:07 15 that -- those county lines up there follow the Tennessee River.
16 So one could make the argument that District 5 should basically
17 follow the Tennessee River and go all the way over to
18 Lauderdale County. I am not sure why you split Lauderdale, but
19 that's a separate issue. So that's a point. And the point I
16:35:22 20 am making here is that there is another community of interest
21 in northwest Alabama that revolves around the mountains and,
22 you know, historical association with Appalachia that doesn't
23 exactly sit with suburbs of Tuscaloosa. So all plans are going
24 to have communities of interest at the congressional level that
16:35:44 25 vary from one part of the district to another to a certain

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1 extent because it's covering the whole state.

2 Q Mr. Cooper, I would like to share a page out of Defense
3 Exhibit 4, page 78. Have you had a chance before today to
4 review the report of Tom Bryan?

16:36:06 5 A I did read it, yes.

6 Q This is page 78 of his supplemental report, Exhibit 4, and
7 he has loaded your plan number 1, and he has taken the voting
8 precinct the state of Alabama and color coded those by the
9 concentration of African-American population in those
10 precincts.

11 Do you agree first of all, Mr. Cooper, that that's what
12 Mr. Bryan is representing here?

13 A That seems to be a report showing the percent black and
14 white in precincts, but I can't say that for a fact. I haven't
15 seen his -- I haven't seen his shape file. I haven't had a
16 chance to analyze it. It doesn't seem to be way off. But I
17 haven't seen the details.

18 Q Did you split --

19 A We also play tricks with how you break out the various
16:37:05 20 classifications of race. 0 to 10, 0 to 20. There are
21 different ways that that might change the map.

22 Q Did you consider race when drawing this district,
23 Mr. Cooper?

24 A As part of following traditional redistricting principles,
16:37:26 25 I had to be aware of race.

1 Q Did you sort voters by race when drawing these districts?

2 A I don't know what you mean by sort.

3 Q Did you divide -- did you use race to decide which voters
4 went into District 7 and which ones did not?

16:37:44 5 A Well, first of all, none of these plans were developed
6 using voter registration data. So I, you know, you say voters,
7 so, no, I did not.

8 Q Okay. Fair enough. Let me rephrase my question.

9 Did you use race to determine which people went into
16:38:04 10 District 7 and which ones did not?

11 A Well, to the extent that I know that the configuration
12 that I ended up with resulted in two majority-black districts.
13 But I did not try to maximize Black Voting Age Population. You
14 know, my plans were intended to balance those. If I had just
16:38:24 15 wanted to go in there willy-nilly and create two majority-black
16 districts without paying attention to county lines, without
17 paying attention to precinct lines, without paying attention to
18 municipal lines, I could have drawn a fairly compact looking
19 district that would have been higher in Black VAP for both
16:38:41 20 District 7th and District 2.

21 I'm balancing things, and I'm not trying to take things to
22 extreme, so I can't give you a really good -- I can't give you
23 a really good example of what extreme I might have been able to
24 hit. But these plans in no way maximize Black Voting Page
16:38:59 25 Population in District 2 and 7. They're drawn principally at

1 the precinct level. If you drew these plans at the block
2 level, then the percentages would get significantly higher in
3 you were trying to sort or whatever it is you are talking
4 about.

16:39:12 5 Q You come down into Mobile County in order to include the
6 African-American voters in Mobile in District 2?

7 A That's right, because it's a significant community of
8 African-Americans. It's, you know, the second or third largest
9 in the state. Second largest, I guess. Well, third, maybe
16:39:31 10 after Mobile -- after Montgomery and Jefferson County. I would
11 have to double check that. I think it's in the report.

12 Q I want to show you now -- let's see. Defense Exhibit 4,
13 page 86, and this is your Illustrative Plan 5. Do you agree
14 with that?

16:40:07 15 A I have no idea. I have not examined the shape files. I
16 don't know what he's produced here. It could well be, but I
17 don't know. I mean, I don't have -- I don't -- I don't have --
18 I did not have the opportunity to look at any of his work and
19 display it geographically. Just looking at a pdf file, you
16:40:32 20 can't tell much.

21 Q Mr. Bryan has labeled it as your plan 5, correct?

22 A Oh, he has, yes.

23 Q Yes. And generally, does it appear to have two
24 majority-black districts such as you included in your
16:40:44 25 illustrative plants?

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1 A Yeah. To the extent that it's possible to make that
2 assessment, that would appear to be the case. It may well that
3 it's Illustrative Plan 5.

4 Q Yeah. Isn't this the one where you said -- I don't
16:41:03 5 recall. What did you say was the unique feature of your plan
6 5, Mr. Cooper?

7 A The unique feature was that I put the incumbent from
8 District 2 into District 2. I put a county -- Coffee County
9 that's about 19 percent white, I believe, something like that.

16:41:17 10 Q That's right.

11 A And has a very significant population, I think it's almost
12 like 100,000, a lot of people -- maybe I'm overstating that --
13 into District 2 so that there would be no incumbent conflicts
14 in that map.

16:41:30 15 Q Okay.

16 A If, in fact, this is District 5. And I believe it is,
17 because it does -- it does include Coffee County. You can see
18 that.

19 Q Do you consider your District 1 in this map to be compact?

16:41:41 20 A Absolutely. There is no problem with District 1. It's as
21 straight as an arrow across the Florida line and following
22 counties to the north.

23 Q When you report registered voters or percentage of
24 registered voters in your illustrative plans, are you using all
16:42:05 25 voters or active voters, Mr. Cooper?

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1 A Active.

2 MS. KHANNA: Mr. Davis, I'm sorry. I'm sorry. I
3 don't have an objection. I don't mean to interrupt. I was
4 just wondering if maybe Mr. Cooper -- looks like the sun has
16:42:21 5 gone down in at that room. I am wondering if he can turn on a
6 light.

7 JUDGE MARCUS: What's happened, Mr. Cooper, is that
8 the light is dimmed on your portion of the screen, whether
9 that's because we're in the winter and it's getting dark real
16:42:35 10 soon.

11 THE WITNESS: Is that better?

12 JUDGE MARCUS: If you can lighten yourself, the screen
13 up a little bit, that's much better.

14 THE WITNESS: Okay.

16:42:42 15 JUDGE MARCUS: Thank you.

16 THE WITNESS: Yes, sir.

17 BY MR. DAVIS:

18 Q Do you have available the raw number of active voters in
19 each district in your illustrative plans?

16:42:57 20 A Yes, I do.

21 Q Okay. But you haven't presented those?

22 A Well, no. I just presented the -- the percentages for
23 simplicity.

24 Q So the percentage of active black voters is higher than
16:43:17 25 the percentage of black -- no. Let me try to start over. You

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1 first present in your original report the percentage of
2 African-Americans in your illustrative plans in each district,
3 right?

4 A Right.

16:43:35 5 Q In the percentage thereof, correct?

6 A I'm sorry. Yeah, yeah, based on the 2020 census and the
7 Voting Age Population under the 2020 census. Yeah. The
8 registration data has taken into account citizenship.

9 Q Gotcha. But you say -- all right, there's this many
16:43:53 10 African-American voters in District 1 of my plan, and
11 African-Americans are X percent of all people in this plan.
12 But as I look at it, the percentage of active registered voters
13 is higher than the percentage of African-Americans in the
14 district?

16:44:14 15 A And there's no surprise at that because there's a
16 citizenship issue. And the fact that there is a, you know, a
17 fairly large portion of the Latino population is noncitizen,
18 that's where they don't register to vote. And because the
19 number as I mentioned in my declaration, the reason why the
16:44:34 20 active registered voter count is even a little bit higher than
21 the non-Hispanic Voting Age Population percentage, I believe is
22 probably because the CVAP data is now four-and-a-half years
23 old.

24 Q All right. You see that data is based on the ACS Survey,
16:44:52 25 right?

1 A Right. It's estimates. That's right. And the voter
2 registration file is not an estimate.

3 Q But turning to your Citizen Voting Age Population numbers
4 based on the ACS, wasn't everybody expecting Alabama to lose a
16:45:09 5 congressional seat based on ACS estimates?

6 A Based on -- no. No. Nope. Nope. Not ACS. Census
7 Bureau does do a separate survey, cohort survey where they
8 estimate -- they estimated -- I don't remember what the
9 population estimate was -- but because of that estimate for
16:45:32 10 20189, I think, or 2020, it was suggested that Alabama might
11 lose a congressional seat. I don't think anybody really knew
12 for sure. It was going to be a close all, and I believe it was
13 a close all.

14 I don't know how much over the population was, but I bet a
16:45:49 15 dollar to a doughnut that if it weren't for the increase in the
16 minority population in Alabama, Alabama would have lost that
17 congressional seat. But I have to admit that I don't have the
18 numbers in front of me, but I think that would be the case
19 because we're talking about something approaching 100,000
16:46:10 20 people that was contributed by the minority population, in
21 terms of overall population growth in the state between 2010
22 and 2020.

23 Q You have answered my question.

24 A Okay. Good.

16:46:24 25 Q Turning to the socioeconomic data that you presented, did

1 you review socioeconomic data from any other state?

2 A I typically do. I typically do. But not for this -- I
3 don't do it for any specific one. I did not compare and
4 contrast Alabama with Connecticut, for example, or Oregon.

16:46:45 5 Q But you have in other projects looked at similar
6 socioeconomic data for other states in your career?

7 A I typically look at socioeconomic data whenever I'm doing
8 an election plan. In fact, I have -- in my -- in my report, I
9 believe I linked to a web address where you can get ACS charts
16:47:11 10 from the five-year survey for every single county, city, and
11 even unincorporated places in Alabama if you have a specific
12 question about some place in the state.

13 Q Do -- in looking at data from Alabama and any other states
14 at any time, are you aware of any state where these unfortunate
16:47:31 15 socioeconomic gaps do not exist?

16 A I think most states would have gaps. So I'm -- probably
17 -- probably not. Probably not. The gaps exist. I think the
18 gaps are a bit wider in Alabama and in the South in general.
19 But they're still there.

16:47:51 20 Q What is your basis for saying the gaps are wider in
21 Alabama and in the South in general?

22 A Just from having looked at a lot of different localities
23 and states. I mean, I have not prepared a report on the
24 matter, but they're wider between blacks and whites in the
16:48:08 25 South in general, I think.

1 Q But you don't know, correct?

2 A I am not -- I am not -- I have not done any kind of
3 analysis that would be something that I would want to testify
4 on here. You asked me the question, so I am giving you the
16:48:23 5 answer. But that's as far as I can go. Just my own gut
6 feeling. And having looked at a lot of data and a lot places,
7 and in almost every place in the South, blacks do tend to lag
8 behind whites on most key variables in socioeconomics.

9 Q Mr. Cooper, if you're assessing the -- well, if you're
16:48:52 10 assessing whether the *Gingles* requirements are met for your
11 proposed District 2, just say in plan number 1, which is the
12 more relevant compactness score, the compactness of District 2,
13 or the average compactness of all the districts?

14 A Well, it's all relevant. It's all relevant. And so
16:49:13 15 there's no issue here. The scores for District 2, District 7
16 are all in the normal range of districts around the country if
17 you just look at the various scores for the various
18 congressional plans. And I would invite to you take a look at
19 Texas for starters.

16:49:33 20 Q Mr. Cooper, if you were drawing a map without
21 consideration of race and considering only traditional
22 districting criteria, would you ever draw a map like one of
23 your seven illustrative plans?

24 A It's conceivable for some other reason. I don't know. I
16:49:56 25 mean, that's just -- who knows?

1 Q Any reason that you know of as you sit here today?

2 A It could be any. Possibly. How would I know? I mean, a
3 hypothetical, I have no way of answering that.

4 MR. DAVIS: Your Honor, I am at a stopping point. And
16:50:14 5 I believe if I have any more questions on Mr. Cooper's reports,
6 they will be very few. I also intend to at least make a record
7 of an attempt to ask questions about Mr. Cooper's involvement
8 in the whole county plan. I will represent to you that the
9 parties in the Singleton case have stipulated to the fact that
16:50:34 10 Mr. Cooper drew a first draft of the whole county plan. I
11 would like to ask maybe three minutes' worth of questions about
12 whether that's true and what his involvement was. I assume
13 that will reach an objection. And that will invite an
14 objection. I thought that I might go ahead and introduce --

16:50:53 15 JUDGE MARCUS: I take it the concern of the objection
16 is it's not responsive directly to the direct examination, and,
17 therefore, you would have to put him on as your own witness in
18 order to be able to do it. Is that the problem?

19 MS. KHANNA: Yes, Your Honor. We would certainly
16:51:11 20 object on that basis. It's beyond -- it's also well outside
21 the scope.

22 JUDGE MARCUS: I mean, what Mr. Davis is simply
23 suggesting is this would be a simple and efficient way. If he
24 were calling Cooper in his own right, he would ask Cooper these
16:51:28 25 questions. Admittedly, doing this would be doing it out of

1 order. You have a right to object, and he has a right to call
2 Cooper on his own to do it as his own witness. Is that what's
3 going on here, Mr. Davis?

4 MR. DAVIS: Yes, Your Honor. I'm happy to completely
16:51:46 5 conclude this -- the Caster report exam.

6 JUDGE MARCUS: Gotcha.

7 MR. DAVIS: It just seems inefficient for me to
8 subpoena Mr. Cooper and call him next week for three minutes.

9 JUDGE MARCUS: If I hear what you are saying, you have
16:52:00 10 completed your cross-examination of Mr. Cooper concerning the
11 subject matter that was covered on direct, that is to say the
12 plans, and the opinions that he's otherwise rendered. You now
13 have a series of questions that go beyond the four corners of
14 the direct examination, and you're asking for leave to do that
16:52:20 15 now rather than recall him.

16 I'm asking you, Ms. Khanna, do you object? You have a
17 right to object, in which case, Mr. Davis will subpoena
18 Mr. Cooper, and we will have him back here Friday in his own
19 case, or Monday, perhaps. I leave that to you. You are
16:52:39 20 entitled to object to the extent he wants to make him his own
21 witness for his own reasons now.

22 What is your pleasure?

23 MS. KHANNA: Your Honor, I believe you accurately
24 described our position when it comes to the separation between
16:52:56 25 this case and the Singleton case in which he's seeking to have

1 -- Mr. Davis is seeking to question Mr. Cooper about something
2 entirely separate than the Section 2 case that we're bringing.
3 I do understand that the -- that this -- for logistical reasons
4 that these hearings have been combined to streamline the
16:53:13 5 process, and I don't want to create -- make it any more
6 prolonged or difficult for that reason.

7 JUDGE MARCUS: The choice is fairly yours, because by
8 law, you have a right to limit him to the four corners of the
9 direct. If that's how you want to proceed, we will proceed
16:53:28 10 that way. Mr. Davis will bring Mr. Cooper back and call him as
11 his own witness vis-a-vis Singleton or anything else he wants
12 to do. That's how you wish to proceed, correct?

13 MS. KHANNA: Your Honor, I think we actually can do it
14 today as part of this process. I would agree we should close
16:53:48 15 out the Section 2 analysis first.

16 JUDGE MARCUS: Okay.

17 MS. KHANNA: And then move on to that. I would also
18 request that I be given a chance to ask him questions about the
19 same topics that Mr. Davis raises in that.

16:53:58 20 JUDGE MARCUS: So what you want to do -- what she is
21 proposing, Mr. Davis, is to conduct her redirect based on your
22 cross. And then depending on how much time we have left,
23 today, we probably only have a little more than a half hour,
24 you could then call him as your own witness, and it would be
16:54:18 25 taken up separately. Does that work for you?

1 MR. DAVIS: Of course. I think that's perfectly
2 appropriate. And I appreciate plaintiffs' counsel's
3 accommodation to letting me call a witness out of turn.

4 JUDGE MARCUS: Okay. So why don't we do this: Why
16:54:31 5 don't you go ahead with your redirect examination. We will
6 complete Mr. Cooper in so far as you're offering him and the
7 Milligan people are offering him in support of the Section 2
8 claim. And then you can take Mr. Cooper out of order,
9 Mr. Davis, for your own purposes, in which case, he will be
16:54:52 10 subject to cross-examination by Ms. Khanna, perhaps by counsel
11 for Milligan, as well. Do I have that right?

12 MR. DAVIS: Yes, Your Honor.

13 JUDGE MARCUS: Okay. That works for you, Ms. Khanna,
14 right?

16:55:08 15 MS. KHANNA: Yes, Your Honor.

16 JUDGE MARCUS: Okay. Why don't you proceed, then,
17 with your redirect examination.

18 MS. KHANNA: Thank you, Your Honor.

19 REDIRECT EXAMINATION

16:55:13 20 BY MS. KHANNA:

21 Q Good afternoon, Mr. Cooper. I know we talked about how
22 the light seemed to have gone dark in your room. I don't know
23 if you have a lamp or something else. I appreciate that you
24 turned the screen on. Is there something else that you can sue
16:55:28 25 to light up the room just so we can all see you a little

1 better?

2 A Maybe. I'll try another light. But I don't have a lot of
3 lights in here.

4 JUDGE MARCUS: We're looking for all of the
16:55:40 5 illumination that we can get. I assure you.

6 THE WITNESS: Well, I hate to disappoint you. The
7 light bulb is not working. I can turn on the TV.

8 BY MS. KHANNA:

9 Q No. I think that's probably fine. As long as the Court
16:56:25 10 can see him.

11 A Maybe if I move closer, does that help?

12 JUDGE MARCUS: No. We can see you just fine,
13 Mr. Cooper. The additional light answers the problem at least
14 as far as I'm concerned. Let me ask my colleagues. Judge
16:56:38 15 Manasco and Judge Moorer, are you able to see Mr. Cooper fine
16 on the screen?

17 JUDGE MOORER: I am.

18 JUDGE MANASCO: I am.

19 JUDGE MARCUS: Okay.

16:56:50 20 MS. KHANNA: Thank you, Your Honor.

21 BY MS. KHANNA:

22 Q You were asked, Mr. Cooper, during this cross-examination
23 about the redistricting guidelines that you consulted in
24 advance of developing your plans; is that right?

16:56:59 25 A Yes.

1 Q I want to pull up those guidelines again. That's
2 Plaintiffs' Exhibit 82. If I recall -- if I figure out where
3 exactly where we are going to direct -- if we look on the first
4 page, Roman Numeral II criteria for redistricting, and if you
16:57:42 5 look for that under -- under subheadings A, B, C -- I believe
6 the first five subheadings A, B, C, D, and E have to do with
7 population equality; is that correct?

8 A That's correct.

9 Q And if we scroll out of that and go to F and G, we see
16:58:02 10 those two criteria have to do with race and the Voting Rights
11 Act in particular; is that right?

12 A That's true.

13 Q Would you mind reading those two criterion out loud?

14 A Districts shall be drawn in compliance with the Voting
16:58:17 15 Rights Act of 1965 as amended. I think maybe there a little
16 piece there -- a redistricting plan shall have neither the
17 purpose nor the effect of -- I can't see the whole screen. I'm
18 seeing -- diluting minority voting strength and shall comply
19 with Section 2 of the Voting Rights Act and the United States
16:58:36 20 Constitution. Now I can see it.

21 Q Thank you. Could you also please read subsection G there?

22 A No district will be drawn in a manner that subordinates
23 race-neutral districting criteria to considerations of race,
24 color, or membership in a language-minority group, except that
16:58:54 25 race, color, or membership in a language-minority group may

1 predominate over race-neutral districting criteria to comply
2 with Section 2 of the Voting Rights Act, provided there is a
3 strong basis in evidence in support of such a race-based
4 choice. A strong basis in evidence exists when there is good
16:59:14 5 reason to believe that race must be used in order to satisfy
6 the Voting Rights Act.

7 Q Okay. Good. So these two criterion that we have on the
8 screen have to do with the Voting Rights Act and the efforts
9 the state must make to -- or must be made to comply with the
16:59:34 10 Voting Rights Act in drawing districts; is that right?

11 A That's right. I'm convinced that my plans that I
12 developed, seven illustrative plans do comply with the Voting
13 Rights Act. Of course, that's for the judge to decide.

14 Q So we can scroll -- zoom out of this highlight. And go on
16:59:50 15 to the next page where we see subheading H, and there we see
16 that the criteria discussed contiguity and the district must be
17 reasonably compact; is that right?

18 A Right.

19 Q Then we go on to subsection I, and we will see there's
17:00:06 20 several Alabama constitutional requirements that this portion
21 discusses, and those have largely to do with state legislative
22 districts?

23 A Right.

24 Q Let's go to sub J, paragraph J. If we could just look at
17:00:25 25 subparagraph J for a second, that would be great. Okay. And

1 here you see this subsection says, The following redistricting
2 policies are embedded in the political values, traditions,
3 customs, and usages of the state of Alabama, and shall be
4 observed to the extent that they do not violate or subordinate
17:00:47 5 the foregoing policies prescribed by the Constitution and laws
6 of the United States and the state of Alabama.

7 Do you see that?

8 A Yes.

9 Q Okay. And I believe you were asked about incumbency and
17:01:00 10 other criterion -- incumbency, communities of interest, and
11 core pros vision. If we could pull this highlight down. You
12 will see that under subparagraph J, little i, that's where it
13 talks about incumbents and not paring them wherever possible?

14 A Right.

17:01:19 15 Q We already looked at the paragraph -- subparagraph (ii)
16 talks about contiguity. Subparagraph (iii) we have already
17 discussed on your direct about communities of interest.
18 Subparagraph (iv) talks about the number of counties actually
19 in each district. And then subparagraph (v) is the criterion
17:01:41 20 on preservation of course. Can you read that criterion,
21 please?

22 A The Legislature shall try to preserve the cores of
23 existing districts.

24 Q And you were asked a lot on your cross-examination about
17:01:51 25 core preservation; is that right?

1 A That's right. I was.

2 Q Okay. And if we could look -- we can un-highlight that
3 now and look at subparagraph j(vi) in establishing legislative
4 districts, the reapportionment committee shall give due
17:02:17 5 consideration to all the criteria herein. However, priority is
6 to be given to the compelling state interests requiring
7 equality of population among districts and compliance with the
8 Voting Rights Act of 1965, as amended, should the requirements
9 of those criteria conflict with any other criteria.

17:02:33 10 Do you see that?

11 A Yes.

12 Q Okay. So what was your -- after you read these
13 guidelines, what was your understanding of the -- we can pull
14 this down. What was your understanding of the hierarchy of
17:02:46 15 criteria of -- specifically of core preservation when it comes
16 to understanding what the state's redistricting criteria are?

17 A It cannot supersede the Voting Rights Act by any stretch
18 of the imagination. From what I understand -- what I
19 understand of redistricting law and traditional redistricting
17:03:06 20 principles.

21 Q And, again, I'm not asking about your understanding of the
22 law. I really was asking you of your understanding of the
23 guidelines presented by the state of Alabama?

24 A Well, yeah. The guidelines. They -- the guidelines make
17:03:21 25 it clear, as well. They were written by a lawyer, probably.

1 Q Mr. Cooper, these guidelines that governed the
2 congressional redistricting in Alabama also governed the State
3 Board of Education redistricting in Alabama; is that right?

4 A I believe so.

17:03:36 5 Q We can pull -- oh, they are down, right? Okay.

6 Actually, let's go back to the guidelines and the
7 paragraph specifically about communities of interest. I know
8 you were asked a lot about communities of interest, as well.
9 We talked about communities of interest during your direct, as
17:04:07 10 well.

11 But, Mr. Cooper, would you agree that based on this
12 definition, it is -- there are many ways to comprise a
13 community of interest in the state of Alabama; is that right?

14 A That's true.

17:04:17 15 Q And, in fact, any individual voter can belong to multiple
16 communities of interest at the same time; is that right?

17 A Yes.

18 Q Those communities of interest may conflict with one
19 another at different times; is that right?

17:04:31 20 A Yes.

21 Q For instance, one can belong to a one racial community of
22 interest and a different social community of interest. That's
23 possible, right?

24 A Yes.

17:04:42 25 Q Or even multiple social communities of interest?

1 A Yes.

2 Q One can belong to one cultural community of interest and a
3 different economic community of interest if they have to travel
4 for work to a certain place; is that right?

17:04:56 5 A Yes.

6 Q And I think even yesterday there was, you know, we talked
7 about a witness who had attended a magnet school, and that's an
8 example of where one can have one different -- a different
9 neighborhood community of interest and they maybe an
10 educational community of interest; is that right?

11 A Yes. Yes. I did not hear that testimony, but that's
12 true.

13 Q Okay. So now more than -- there's more than one way to
14 define communities of interest and certainly more than one
15 community of interest to which one can belong; is that right?

16 A Yes. And that's almost always the case no matter where
17 you draw out the plan.

18 Q We can take this down. Thank you. Mr. Cooper, in your
19 experience evaluating maps, drawing maps, looking at
20 jurisdictions maps, are you aware of any plan that maximizes
21 every single traditional districting criteria?

22 A No. The key to drawing a good plan is to balance without
23 maximizing.

24 Q And, in fact, all redistricting plans require certain
17:06:04 25 trade off between the multiple various district --

1 redistricting principles; is that right?

2 A Absolutely.

3 Q That includes the enacted plan for the state of Alabama's
4 congressional districts, as well?

17:06:14 5 A It should.

6 Q For instance, we can't just comply with counties without
7 also balancing that against one person one vote?

8 A That's true.

9 Q And protecting --

17:06:32 10 A Looking for the golden mean.

11 Q Now, as you noted in one of your maps, extending a
12 district to protect an incumbent could sacrifice compactness in
13 some instances; is that right?

14 A That's very true.

17:06:46 15 Q And all of these plans including your illustrative plans
16 and the enacted plan requires different -- demonstrates
17 different ways to balance these varied interests; is that
18 right?

19 A Yes. Yes.

17:06:58 20 Q Mr. Cooper, is it your testimony that any one of the
21 illustrative plans that you drew must replace the enacted plan
22 under -- if the Court were to find a violation of Section 2 of
23 the Voting Rights Act?

24 A No. It could. But it must -- it's not a must. These are
17:07:25 25 illustrative plans, demonstrative plans. And different plans

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1 can be drawn for the remedial plan. That's more often the
2 case, as I explained earlier a little bit.

3 Q So your illustrative plans basically provide an example of
4 how one could draw two majority-minority districts, not how one
17:07:45 5 must draw two majority-minority districts?

6 A That's very true.

7 Q And whoever ends up drawing a remedial map in the event
8 that plaintiffs were to succeed in their Section 2 claim could
9 choose to balance the various traditional principles that we
17:07:59 10 discussed in the same or different ways as any of your maps; is
11 that right?

12 A That's true.

13 MS. KHANNA: Your Honor, I have no further questions.
14 I pass the witness.

17:08:24 15 JUDGE MARCUS: Any other questions for Mr. Cooper
16 regarding the subject matter we have covered? Anything from
17 our colleagues? Judge Manasco, or I think you had a question.

18 JUDGE MANASCO: I do.

19 Does Judge Moorer have any though? If he does, I'm happy
17:08:38 20 for him to go.

21 JUDGE MOORER: No. Go ahead.

22 JUDGE MANASCO: Great. So, Mr. Cooper, I understood
23 you to testify that as much as is possible, you tried not to
24 split counties. And then after that, you tried not to split
17:08:49 25 precincts; is that correct? But that some splits were

1 inevitable.

2 THE WITNESS: I think that's true. Yes. I mean, even
3 state splits seven precincts. I think the plan -- one of my
4 plans splits I believe 12 precincts in six counties.

17:09:06 5 JUDGE MANASCO: So my question is: When you concluded
6 that you had to split precincts, did you have a consistent
7 basis for deciding where to put the line, and if you did, what
8 was it?

9 THE WITNESS: To the extent that I could, I tried to
17:09:24 10 follow municipal boundaries, or main thoroughfares or census
11 block groups, which often don't necessarily follow a main
12 thoroughfare, but they are areas that are designated by the
13 Census Bureau as having some commonality. They're smaller than
14 census tracks. But a census track could include as many as
17:09:49 15 eight or nine block groups. And often times, a block group
16 would only have a couple of hundred people in it.

17 And they're used for certain kinds of analysis because
18 it's the smallest unit for which the American Community Survey
19 actually presents an estimate. So block groups are used for,
17:10:11 20 for example, determining the percentage of children who might
21 be eligible for free school lunches or summer food -- the
22 summer food programs. Some of the federal poverty programs
23 actually are designated to identify their areas of service by
24 block groups. So that's where the -- that's where the
17:10:37 25 commonality might come from. There are socioeconomic features

1 about those block groups that makes them a unit that can be
2 discerned even if it's not an incorporated entity.

3 JUDGE MANASCO: Okay. So do you recall any instances
4 when after concluding that you had to split a precinct you
17:10:57 5 decided where to put the line on the basis of race?

6 THE WITNESS: I don't think so. I mean, I did have to
7 -- I did split some block groups in some places, but it -- more
8 than anything, when that happened, it was just trying to get to
9 zero deviation. Because precincts in Jefferson County, for
17:11:19 10 example, that are very large, and so they have to be split
11 ultimately to get to zero. Lost my light. It's coming back.

12 JUDGE MANASCO: Great. Thank you. That answers my
13 questions.

14 JUDGE MARCUS: Any follow up based on the questions
17:11:35 15 Judge Manasco has asked, Mr. Davis, or Ms. Khanna? Let me
16 start with you, Mr. Davis.

17 MR. DAVIS: No further questions from the defendants,
18 Judge.

19 JUDGE MARCUS: Ms. Khanna?

17:11:47 20 MS. KHANNA: No further questions here either. Thank
21 you, Your Honor.

22 JUDGE MARCUS: All right. So this will conclude
23 Mr. Cooper's testimony as your witness and Milligan's witness
24 on Section 2. We will then turn to out of turn taking
17:12:07 25 Mr. Davis and giving him the opportunity to question Mr. Cooper

1 about some other matters that related to Singleton but that did
2 not concern Caster at all on Section 2 or Milligan, for that
3 matter, on Section 2. My question, Mr. Davis, is really two
4 fold: How much do you have in terms of timing, and is it your
17:12:32 5 pleasure to begin that now, or would you rather start that when
6 you're fresh in the morning? Because I don't want to break you
7 in the middle. I want to give you a chance to put your thing
8 on whole. So you tell me how you would like to proceed.

9 MR. DAVIS: I appreciate that, Judge. And this is not
17:12:51 10 hyperbole, but I can finish this in three to four minutes. I
11 only want to establish a couple of points.

12 JUDGE MARCUS: Let's do it, and then we can have any
13 -- who would be doing the cross of Mr. Cooper on these points?
14 I take it counsel for the Singleton plaintiffs? Do we have
17:13:14 15 them? Mr. Blacksher?

16 MR. BLACKSHER: I'm trying to wake up the screen, Your
17 Honor. Excuse me.

18 JUDGE MARCUS: No. That's fine. He has a few
19 questions that bear upon your case. So you would have the
17:13:28 20 opportunity to cross-examine Cooper to the extent he was being
21 called by Mr. Davis on his case in chief, and the opportunity
22 would also be there for the Milligan and the Caster lawyers to
23 do that, as well, if you want. That works for everybody?

24 MR. BLACKSHER: Yes, Your Honor.

17:13:54 25 JUDGE MARCUS: Okay. Let's proceed, Mr. Davis. So

1 the record is clear, Mr. Davis is calling Mr. Cooper in his
2 defense in his case in chief.

3 MR. DAVIS: Correct. And this, Your Honor, is related
4 to the claims brought by the Singleton plaintiffs.

17:14:12 5 DIRECT EXAMINATION

6 BY MR. DAVIS:

7 Q Good evening, Mr. Cooper.

8 A Good evening.

9 Q We are switching to a different topic from your earlier
17:14:20 10 examination in a different case. Mr. Cooper, it's been
11 represented to us that you drew the first draft of a whole
12 county plan for the congressional plan for the state of
13 Alabama; is that correct?

14 A I don't know if it's correct or not. But I did draw a
17:14:36 15 plan for Jim sometime in the late spring. Not for pay, just he
16 just asked me, so I did one, and sent it to him.

17 Q I would like to share with you what has been marked as
18 Singleton Exhibit 69. And the Singleton plaintiffs have
19 represented that this is a draft whole county plan that you
17:14:58 20 prepared. Is that correct?

21 A I don't know exactly. It looks like one I might have
22 produced. I do remember doing a plan and sending it to Jim.

23 Q Okay.

24 A I did it just as -- you know, it was just an afternoon
17:15:15 25 project, half of an afternoon. And he asked me to do it, so I

1 did one for him. Jim and I -- I call Mr. Blacksher Jim because
2 I have become his friend over the years. So I did this. I
3 made it clear to him that I was going to likely be engaged by
4 the Caster plaintiffs, although that was not called the Caster
17:15:41 5 case at that point. So that's the extent of it. I drew the
6 plan.

7 Q Mr. Cooper, I'm sorry to interrupt, but I do not mean to
8 ask you to disclose any communications that you had with any
9 lawyers in any of these cases. I simply wanted to establish if
17:15:56 10 it's true that you were involved.

11 So even if you do not know this is the plan you drafted,
12 is it true that you did draft a whole county plan?

13 A Yes. I did a plan for him one afternoon. I was not a
14 consultant. I did not get paid. He just asked me, and I did
17:16:14 15 it.

16 Q Okay. It has been represented that you were asked to
17 present a whole county plan that did two things: It kept
18 counties whole and kept the Black Belt together. Is that
19 consistent with any recollection you have about this project?

17:16:29 20 A No. I just remember doing -- that I should do a whole
21 county plan.

22 Q Fair enough.

23 Do you recall when drafting this plan whether you looked
24 for any specific combination of counties based on the Black
17:16:44 25 Voting Age Population in those counties?

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1 A I might have, but I was mainly concerned about just making
2 sure the deviation was as low as possible. But I was also
3 cognizant of the black population. So I don't know the numbers
4 for that plan, but I am sure that in the process of doing it
17:17:00 5 because I was trying to comply with some semblance of
6 traditional redistricting principles that I did pay attention
7 to that.

8 Q Do you recall whether when drafting a whole county plan
9 you look for any combination of counties that would present a
17:17:19 10 particular likely political outcome?

11 A I may have received political data from Jim that
12 afternoon. I don't remember the specifics in terms of what the
13 final result was. I think I may have gotten some -- some
14 county level data.

17:17:41 15 Q Then let me ask this my last question to try to do it more
16 succinctly. Do you recall if you were specifically looking for
17 a plan that had two districts that are likely to elect
18 Democrats?

19 A No. I mean, I think I just got presidential contest. And
17:18:01 20 I'm -- I would discount that. I am not a political scientist.
21 I would discount that because it's just one election, and also,
22 it did not create two majority-black districts. So for that
23 reason, I do not support the whole county plan.

24 MR. DAVIS: Thank you, Mr. Cooper. I have no further
17:18:16 25 questions.

1 JUDGE MARCUS: Mr. Blacksher? Cross-examination, if
2 any?

3 MR. BLACKSHER: So am I on the air? Yes.

4 CROSS-EXAMINATION

17:18:26 5 BY MR. BLACKSHER:

6 Q Mr. Cooper, I first of all, want to apologize for putting
7 you in a conflict position. I did not mean to do that.

8 A I understand.

9 Q But we had no other way to put in evidence of the origins
17:18:44 10 of this plan.

11 MR. BLACKSHER: And I have no further questions.

12 JUDGE MARCUS: All right. Thank you. Any questions,
13 Ms. Khanna?

14 MS. KHANNA: No, Your Honor.

17:18:57 15 JUDGE MARCUS: Any questions for the Milligan
16 plaintiffs of Mr. Cooper as he's being called by Mr. Davis
17 regarding the Singleton whole county plan?

18 MR. ROSS: No, Your Honor.

19 JUDGE MARCUS: All right. Seeing none, is there any
17:19:16 20 redirect that you want from the one comment Mr. Blacksher made?

21 MR. DAVIS: No, Your Honor.

22 JUDGE MARCUS: All right. So I take it we are
23 complete with Mr. Cooper, and we can let him go. Do I have
24 that right?

17:19:28 25 MR. DAVIS: Yes.

1 JUDGE MARCUS: From everybody's perspective,
2 Ms. Khanna, Mr. Blacksher, the Milligan folks, no one has any
3 need of Mr. Cooper any further?

4 MR. BLACKSHER: Correct.

17:19:39 5 JUDGE MARCUS: Mr. Cooper, we thank you for your time
6 and your effort. And you are excused as a witness at this
7 time.

8 THE WITNESS: Thank you. Thank you.

9 JUDGE MARCUS: When we come back tomorrow -- I don't
17:19:51 10 think we should be starting another witness at this point. I
11 have 5:19 Central Standard Time and 6:19 here in south Florida
12 in the Eastern Standard Time. Just so I have -- and my
13 colleagues have a sense of the witnesses as they're coming up
14 on the Section 2 prosecution, can you tell me, Ms. Khanna, who
17:20:21 15 will be next, and et cetera, just so we have some sense of the
16 ordering this evening?

17 MS. KHANNA: Your Honor, I am not entirely sure. I
18 will have to coordinate with the Milligan plaintiffs just to
19 make sure who is available when, but I think you can be sure
17:20:35 20 that tomorrow we will see the Milligan plaintiffs' *Gingles I*
21 expert and probably both sets of plaintiffs, Caster and
22 Milligan's *Gingles II* and *III* experts.

23 JUDGE MARCUS: Okay. You have given us a very good
24 idea of where we are going. We will break. Before we do, I
17:20:52 25 want to thank all of you for your time and effort and patience

1 with us. It's not altogether easy to do it with a split
2 screen, but I think we have been able to hear everybody, and I
3 can say it's been helpful and effective. I have been able to
4 follow fully as we've proceeded in this way.

17:21:11 5 Mr. Davis, anything further?

6 MR. DAVIS: Yes, Your Honor. I wanted to bring to the
7 Court's attention and also let other plaintiffs' counsel know
8 that we should probably talk off the air. I previously let
9 plaintiffs' counsel know that our expert Tom Bryan, our
17:21:26 10 demographer, is not available next week. They have graciously
11 agreed that I would be able to call him out of turn. He will
12 need to finish by like Saturday at noon in order to do a trip.
13 He could start as early as tomorrow afternoon he'll be
14 available, or any time Friday, but he will not be available to
17:21:46 15 continue his testimony on Monday.

16 So if the Court or the other parties have any preference,
17 in exchange for their courtesy, we will gladly do it whatever
18 time fits best for all parties involved.

19 JUDGE MARCUS: I leave that -- and we leave that to
17:22:00 20 the plaintiffs to work out with you. I only just have one
21 question that may be helpful in this regard.

22 How long do you think Bryan will be roughly? And I am not
23 holding you to it. But just give me a rough idea, because he
24 is an awfully important witness.

17:22:16 25 MR. DAVIS: He is, Your Honor. I truly think he's

1 likely to last longer than half a day, because he's testifying
2 for us about all three cases, and he is likely to be
3 cross-examined by all three sets of plaintiffs. I think my
4 direct examination would be between two and two hours. And I
17:22:34 5 think -- I will be shocked if all three plaintiffs do not have
6 cross-examination.

7 JUDGE MARCUS: Any idea of how long cross might be,
8 Ms. Khanna, on Mr. Ross, Mr. Blacksher, of Bryan? Not that he
9 said will be a big surprise. You have had a report and a
17:22:53 10 rebuttal from him. I'm just trying to get a sense of when it
11 makes the most efficacious way to fit Bryan in whether it's
12 tomorrow or Friday.

13 MS. KHANNA: So --

14 MR. BLACKSHER: Go ahead, Abha.

17:23:12 15 MS. KHANNA: For the Caster plaintiffs, I think we can
16 get it within 45 minutes.

17 JUDGE MARCUS: And, Mr. Blacksher?

18 MR. BLACKSHER: In less than an hour, Your Honor.

19 JUDGE MARCUS: And, Mr. Ross, for Milligan?

17:23:26 20 MR. ROSS: Your Honor, I believe about an hour.

21 JUDGE MARCUS: All right. So I think you're right,
22 Mr. Davis, in your expectations. You are looking at about
23 three hours of cross and about three hours, maybe a little more
24 on direct. He'll be the better part of the day as best we can
17:23:48 25 tell.

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1 Do I have that right?

2 MR. DAVIS: I think that's probably correct, Judge.

3 JUDGE MARCUS: Okay. So when do you want to put him
4 on? The choices are either to break it up tomorrow or start
17:24:01 5 with him fresh Friday morning and finish him up on Friday so we
6 can accomplish everyone's interests. I leave that to you,
7 Ms. Khanna, Mr. Ross, and Mr. Blacksher. You tell me. I guess
8 it's really we're breaking up the Section 2 case for Milligan
9 and Caster. So it's your call whether you want him tomorrow or
17:24:29 10 Friday. But I think you want to just let Mr. Davis know so he
11 can have the witness available either tomorrow or Friday. Do
12 you know what your pleasure is, or do you need some time to
13 consult about that?

14 MS. KHANNA: I think it would be probably most
17:24:45 15 efficient for us to huddle up and figure out the timing and
16 availability, but we will certainly let him know.

17 JUDGE MARCUS: I will leave that to you, and why don't
18 you let Mr. Davis know.

19 But we will accommodate Mr. Bryan one way or the other,
17:24:57 20 Mr. Davis. Rest assured, he will get on this week.

21 MR. DAVIS: We are grateful for everyone's
22 accommodation.

23 JUDGE MARCUS: All right. Thank you all. Have a good
24 evening. And we will see you all back here tomorrow at 9:00
17:25:10 25 a.m. Central Standard Time, 10:00 a.m. Eastern Standard Time.

1 We are adjourned for the day.

2 (Whereupon, the above proceedings were concluded at
3 5:25 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

01-05-2022

Christina K. Decker, RMR, CRR

Date

Federal Official Court Reporter

ACCR#: 255

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

4 BOBBY SINGLETON, et al., *
5 Plaintiffs, * 2:21-cv-1291-AMM
6 vs. * January 6, 2022
7 * Birmingham, Alabama
8 * 9:00 a.m.

9 JOHN MERRILL, in his official *
10 capacity as Alabama Secretary *
11 of State, et al., *
12 Defendants. *

13 *****

14 EVAN MILLIGAN, et al., *
15 Plaintiffs, * 2:21-cv-1530-AMM

16 vs. *
17 *
18 JOHN MERRILL, in his official *
19 capacity as Alabama Secretary *
20 of State, et al., *
21 Defendants. *

22 *****

23 MARCUS CASTER, et al., *
24 Plaintiffs, * 2:21-cv-1536-AMM

25 vs. *
*
JOHN MERRILL, in his official *
capacity as Alabama Secretary *
of State, et al., *
Defendants. *

21 TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING
22 VIA ZOOM CONFERENCE
23 VOLUME III
24 BEFORE THE HONORABLE ANNA M. MANASCO,
25 THE HONORABLE TERRY F. MOORER,
THE HONORABLE STANLEY MARCUS

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P R O C E E D I N G S

(In open court.)

JUDGE MARCUS: Good morning. Do we have counsel for Milligan?

08:59:59 MR. NAIFEH: Good morning, Your Honor. This is Stuart Naifeh for the Milligan.

JUDGE MARCUS: Good morning to you. And for Singleton?

09:00:08 MR. BLACKSHER: For Singleton, Your Honor, Jim Blacksher is here. I am sure there are others, too.

JUDGE MARCUS: Good morning to you. And for Caster?

12 MS. KHANNA: Good morning, Your Honor, Abha Khanna for the Caster plaintiffs.

14 JUDGE MARCUS: Good morning. And for the Secretary of State?

16 MR. LACOUR: Good morning, Your Honor. Edmund LaCour for the Secretary of State.

18 JUDGE MARCUS: And for -- I see we have Mr. Davis. Good morning to you.

09:00:26 MR. DAVIS: Good morning, Your Honor. Mr. Walker is in the building, and he is logging on as we speak. But he is here and ready to proceed.

23 JUDGE MARCUS: So we are ready to proceed as far as both you and Mr. Walker are concerned?

09:00:40 MR. DAVIS: Yes, Your Honor.

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1 JUDGE MARCUS: Okay. Thanks very much. When we broke
2 late yesterday in the evening, you were going to reconnoiter
3 amongst yourself and tell us the order in which you chose to
4 proceed on behalf of the plaintiffs. Have you reached a
09:01:01 5 conclusion, and can you share with us the order of the day
6 today?

7 MR. NAIFEH: Good morning, Your Honor. The order that
8 we have agreed upon is that the plaintiffs, the Caster and the
9 Milligan plaintiffs will call their *Gingles* witnesses, the
09:01:21 10 *Gingles I, II, and III*, and then the defendants will call
11 Mr. Bryan. And then we will proceed with our Senate factors
12 experts when Mr. Bryan concludes his testimony.

13 JUDGE MARCUS: On *Gingles I, II, and III*, how many
14 experts and witnesses do you have, Mr. Naifeh?

09:01:40 15 MR. NAIFEH: We have the Milligan plaintiffs,
16 *Gingles I* expert, Dr. Duchin, and then there are -- Caster and
17 Milligan each have a *Gingles II and III* expert. So three
18 experts total.

19 JUDGE MARCUS: Three experts. And do you think we
09:01:53 20 will get to Mr. Bryan today, or does that look like a pipe
21 dream?

22 MR. NAIFEH: From the plaintiffs' perspective, we
23 think it's possible we could get to Mr. Bryan toward the end of
24 the day.

09:02:08 25 JUDGE MARCUS: I just wanted to make sure, though,

1 that Mr. Davis and Mr. Walker have a chance to have a full day
2 to get Bryan on. I only say that if you spill over into
3 tomorrow with *Gingles I, II, and III*, I want to make sure that
4 we have a chance for Bryan to be heard. That won't be a
09:02:29 5 problem for you, Mr. Naifeh?

6 MR. NAIFEH: I don't believe so, Your Honor. We
7 expect that we will get through all of the *Gingles* experts
8 today. And Mr. Bryan, if we don't get to him today, he would
9 still have all day tomorrow.

09:02:43 10 JUDGE MARCUS: So I take it, Mr. Davis, Bryan is set
11 up for either late today or all day tomorrow starting in the
12 morning?

13 MR. DAVIS: Yes, Your Honor. Whether we begin today
14 and finish tomorrow or whether we begin tomorrow, we will be
09:02:57 15 ready to go.

16 JUDGE MARCUS: Thanks very much, and you may proceed,
17 counsel, with your next *Gingles* witness.

18 MR. NAIFEH: The Milligan plaintiffs would like to
19 call Dr. Moon Duchin.

09:03:06 20 MOON DUCHIN,
21 having been first duly sworn, was examined and testified as
22 follows:

23 JUDGE MARCUS: Would you be kind enough to state your
24 name for the record.

09:03:23 25 THE WITNESS: Sure. My name is Moon Duchin, and I am

1 a professor of mathematics and a senior fellow in the College
2 of Civic Life at Tufts University.

3 JUDGE MARCUS: Welcome to you. Thank you very much.
4 And, counsel, you may proceed.

09:03:36 5 DIRECT EXAMINATION

6 BY MR. NAIFEH:

7 Q Good morning, Dr. Duchin. Can you tell us your
8 educational background?

9 A Sure. I have undergraduate degrees in mathematics and
09:03:49 10 women's studies from Harvard University. And then a master's
11 and Ph.D. in mathematics from the University of Chicago.

12 Q We touched on this already, but what is your current
13 professional position or positions?

14 A I did, yes. I am a professor at Tufts University and hold
09:04:10 15 several affiliated positions there, but in particular as I just
16 mentioned, I am a senior fellow in the Civics College at Tufts.

17 Q Do you have any other affiliations at Tufts University?

18 A I do. I've been directing the program in science
19 technology and society, and I hold a collaborating faculty
09:04:30 20 position in the Department of Race, Colonialism, and Diaspora
21 Studies.

22 Q And are you affiliated with an entity called the MGGG lab?

23 A That's right. I'm the principal investigator of a lab
24 that's part of the College of Civics. It's called the MGGG

09:04:50 25 redistricting lab and it's an interdisciplinary lab whose staff

1 has been up to 20 people.

2 Q What does MGGG stand for?

3 A That stands for Metric Geometry and Gerrymandering Group.

4 And what that reflects is that I use my mathematical specialty,

09:05:08 5 which is called metric geometry, to try to understand

6 redistricting.

7 Q And you are a full professor at Tufts University?

8 A I am.

9 Q And how long have you been a professor at Tufts?

09:05:20 10 A I've been on the faculty since 2011.

11 Q How long have you been a full professor?

12 A Full professor, about a year.

13 Q As a math professor and principal investigator at the MGGG
14 lab, what does your research focus on?

09:05:41 15 A I have a few research specialties in pure mathematics, but
16 particularly as part of the lab, we look at geometry and
17 computation and how these help you understand redistricting.

18 Q So have you done research on issues related to
19 redistricting and can you describe some of that?

09:06:11 20 A I have --

21 Q I will try to speak more --

22 A Actually, can everyone hear me okay?

23 JUDGE MARCUS: We can hear you fine. Again, if
24 everyone will take their time and speak up loudly and slowly so
09:06:22 25 our court reporter can get everything down. She transcribes

1 everything as we go forward, but it's a little bit more
2 difficult since we're proceeding wholly remotely.

3 So, counsel, take your time. Dr. Duchin, take your time.

4 THE WITNESS: You bet.

09:06:43 5 BY MR. NAIFEH:

6 Q Do you need me to repeat the question?

7 A Oh, please do.

8 Q Okay. Can you describe some of your research on issues
9 related to redistricting?

09:06:56 10 A Yes. I'd be happy to.

11 I have at this point over a dozen peer-reviewed research
12 papers focused on issues of redistricting. Those appear in
13 venues like foundations of data science, the election law
14 journal, statistics in public policy, political analysis, and
09:07:20 15 so on.

16 In addition, I've done work supporting line drawing bodies
17 in states around the country.

18 Q And are you familiar with the scholarly literature on
19 census, racial and ethnic categories?

09:07:37 20 A I am. I have researched and taught courses covering the
21 history of the census, focused on the U.S. Census Bureau.

22 Q Okay. And can you describe your background working with
23 demographic data?

24 A Sure. I -- the heart of all of the data work that I do
09:08:03 25 uses the data set that comes from the U.S. census, namely --

1 especially the decennial census data and the -- what we call
2 PL 94-171. And also a number of other useful data products
3 from the bureau.

09:08:26 4 I recently was the principal investigator of a grant from
5 the national science foundation, a million dollar grant to
6 study what I called network science of census data. One of the
7 leading experts in the nation on the disclosure avoidance
8 systems that are used in the census, particularly what is
9 called differential privacy, which was instituted this year.
09:08:49 10 Or in this census, I should say.

11 Q Given your background, what expertise did you bring to
12 bear in formulating the opinions in this case?

13 A Knowledge of census data, knowledge of redistricting, and
14 of balancing the principles involved in redistricting,
09:09:09 15 particularly metrics such as compactness.

16 Q Other than for this case, have you prepared redistricting
17 plans?

18 A I have.

19 Q Can you describe your experience preparing redistricting
09:09:23 20 plans?

21 A Yes. I've prepared plans widely for demonstrative
22 purposes. For example, my lab has partnered with a non-profit
23 organization called More Equitable Democracy to examine various
24 redistricting situations around the country, and to consider
09:09:46 25 the question of whether districts or alternative systems such

1 as rank choice might perform better.

2 In the context of those studies, I looked at places from
3 the Chicago City Council to Terrebonne Parish, Louisiana; Jones
4 County, North Carolina; King County, Washington; localities
09:10:11 5 really around the country where demonstrative plans were part
6 of the work.

7 In addition, I was the redistricting expert consultant for
8 the Massachusetts State Senate in this cycle, where I helped,
9 in particular, to draw the voting rights district in that body.
09:10:32 10 I consulted for the people's maps commission in Wisconsin in
11 this cycle, where I drew demonstrative plans for Congress,
12 State Senate, and State House.

13 Those are a few examples of work around the country.

14 Q Thank you. And have you previously testified as an expert
09:10:53 15 witness in federal court?

16 A Not in a federal court.

17 Q In state court?

18 A I did earlier this week in North Carolina.

19 Q Okay. And in that case did the Court allow you to testify
09:11:07 20 as an expert witness?

21 A They did.

22 Q Okay.

23 MR. NAIFEH: Your Honor, I would like -- Your Honors,
24 I would like to tender Dr. Duchin as an expert witness in
09:11:17 25 redistricting, applied mathematics, quantitative redistricting

1 analysis and demography and use of census data.

2 JUDGE MARCUS: Why don't you go a little bit more
3 slowly so our court reporter can take it down. You started out
4 with an expertise in redistricting. What do you have after
09:11:33 5 that?

6 MR. NAIFEH: Applied mathematics, quantitative
7 redistricting analysis, and demography and use of census data.

8 JUDGE MARCUS: Is there any challenge to Dr. Duchin's
9 qualifications in those six or seven areas that have been
09:11:53 10 outlined?

11 MR. LACOUR: None from the defendants, Your Honor.

12 JUDGE MARCUS: All right. Seeing no objection, we
13 will qualify Dr. Duchin as an expert in each of the areas,
14 Mr. Naifeh, that you have identified.

09:12:09 15 MR. NAIFEH: Thank you, Your Honor.

16 BY MR. NAIFEH:

17 Q Dr. Duchin --

18 JUDGE MARCUS: You may proceed with your examination
19 of your expert witness.

09:12:17 20 MR. NAIFEH: Thank you, Your Honor.

21 BY MR. NAIFEH:

22 Q Dr. Duchin, did you prepare any reports in this case?

23 A I did. I believe three submissions in all.

24 Q And do you have copies of those reports in front of you
09:12:30 25 today?

1 A I do, on the computer.

2 Q And what were the questions you were asked to opine on in
3 this case?

4 A The principle question that I was asked to study was the
09:12:46 5 question of whether it is possible to draw two majority-black
6 districts out of the seven congressional districts in Alabama
7 while maintaining the traditional redistricting principles to a
8 very high degree.

9 Once I determined that it was possible to draw two
09:13:08 10 majority-black districts, I was asked to produce plans that
11 demonstrate that possibility and my report contains four such
12 plans.

13 Q And what tests did you apply to determine whether it is
14 possible to create two majority-black districts in Alabama's
09:13:26 15 congressional plan?

16 A The best proof of possibility is proof by example. And so
17 being able to furnish four plans demonstrates that it is
18 possible to do so.

19 Q And can you summarize what conclusion you reached with
09:13:45 20 regard to whether it is possible to draw a congressional plan
21 that includes two majority-black districts in Alabama?

22 A I concluded that it is possible.

23 Q In preparing your reports did you have occasion to
24 consider the congressional redistricting plan adopted by the
09:14:12 25 state of Alabama last fall?

1 A I did do so.

2 Q Okay. And is it okay if I refer to that plan as HB-1?

3 A Yes.

4 Q Do you understand what I am referring to?

09:14:24 5 A I do. I believe I call it that in my reports.

6 Q And I'd like to turn to demographics of Alabama. But
7 before we talk specifically about Alabama, can you please tell
8 us about how race is categorized in census data?

9 A Yes. Today on the U.S. census, on the short form that's
09:14:49 10 used in the decennial census, respondents are faced with six
11 choices -- well, respondents are faced with choices that the
12 census categorizes into six racial groups or categories.
13 Particularly the respondents are faced with certain yes-no
14 questions. There's a check box answer to the question "are you
09:15:16 15 white". There's a check box answer to the question "are you
16 black or African-American," and so on.

17 Because there are six categories, those can be responded
18 to in any of a large number of ways, particularly it would be
19 two to the sixth or 64 different combinations, except that the
09:15:39 20 a respondent cannot elect none of the racial categories. So
21 that makes 63 different ways that the census categorizes the
22 racial responses.

23 There's a separate ethnicity question, which is another
24 yes-no question effectively, asking respondents if they are
09:15:58 25 Hispanic or not.

1 So for racial and ethnic combinations that doubles the
2 number of possibilities to 126. Quite a lot of ways to
3 identify.

4 Q And just to be clear, when you say there are these check
09:16:16 5 boxes, someone completing the census form can check more than
6 one box. Is that your testimony?

7 A That's right. This was a change adopted by the Office of
8 Management and Budget in the 1990s, where it became possible
9 for the first time in recent history to elect multi-racial
09:16:37 10 identities explicitly.

11 Q And so the census does the census allow people to identify
12 themselves as both black and another race?

13 A It does. You could choose black and white; black, white
14 and Asian, and so on.

09:16:55 15 Q And does the census allow people to identify themselves as
16 both black and Hispanic?

17 A It does.

18 Q And also black and non-Hispanic?

19 A That's correct.

09:17:05 20 Q And does the census categorize those who have selected
21 black and another race or ethnicity?

22 A Could you ask that again, please?

23 Q Sure. Is there a category that includes people who have
24 identified themselves as black in addition to another race or
09:17:31 25 ethnicity?

1 A Well, the way that I've constructed black in my reports,
2 which some call any part black and which I believe Mr. Bryan
3 calls all black, it is to take everyone who answered yes to the
4 yes-no question "are you black". And so that's the most
09:18:01 5 expansive possible construction of black.

6 It takes, again, everyone who answered yes to the
7 question. That means that it includes people who identify as
8 black in combination with other races. That means that it
9 includes people who identify as Hispanic or not. As long as
09:18:23 10 they answered yes to the question "are you black".

11 Q And what is -- is there a more narrow definition of black
12 that is sometimes referred to when referring to census data?

13 A There are. There are several more restrictive
14 constructions. The most restrictive would be what is sometimes
09:18:45 15 called black alone, or non-Hispanic black alone. And that
16 would be those who select black, no other race, and the
17 non-Hispanic ethnicity. So that would, of course, be the
18 narrowest possible construction. Some call that single-race
19 black also.

09:19:02 20 I would note that there are other possibilities in between
21 those two extremes, between the most restrictive and the most
22 expansive. For instance, the Department of Justice issued
23 guidance with a fairly complicated definition that includes
24 single race for non-Hispanic respondents, includes single-race
09:19:24 25 black, black and white, and then a fraction of all the

1 multi-racial black identities. So I would call that a more
2 complicated construction that's intermediate between the
3 narrowest and broadest.

09:19:44 4 Q And you testified in this case you relied on the any part
5 black or the broadest definition of black; is that right?

6 A I did, as my principle construction.

7 Q Okay. And why did you use that category in this case?

8 A I believe there are multiple reasons to do so, but the
9 simplest is the one that I have already emphasized, which is
09:20:01 10 that respondents were asked are you black. And I included all
11 those who answered yes.

12 There are other reasons, particularly looking at the
13 history of the census that I believe that to be a justified
14 practice. And I could give an example, if that's of interest.

09:20:22 15 Q Please do.

16 A Sure. So, for instance, earlier in the Twentieth Century,
17 in the 1930s, there had been several multi-racial black
18 categories on the census, particularly Mulatto, Quadroon, and
19 Octoroon. These were all census categories up through the 1920
09:20:49 20 census. They were eliminated in the 1920s and only black then
21 appeared on the 1930 short form.

22 But the instructions that the bureau issued to its
23 enumerators explicitly told the enumerators to take everyone
24 who previously would have belonged to a multi-racial black and
09:21:11 25 white category and to enumerate them as Negro without

1 distinction. Those are the instructions to enumerators from
2 1930. The instructions went on to say that individuals who
3 were multi-racial should be identified according to the
4 non-white parent.

09:21:31 5 So this is an example. There's a lot to say about the
6 history of the census. This is an explicit example that made
7 clear that those earlier multi-racial identities that were
8 meant to be understood as under the umbrella of black
9 population.

09:22:00 10 Q Dr. Duchin, did you examine Alabama's demographics for
11 this case?

12 A Yes, I did.

13 Q And as of the 2020 census, what parts of Alabama have the
14 highest concentrations of black residents?

09:22:13 15 A Of course you can find black residents all over the state.
16 But in particular, there are two kinds of locus of black
17 population that are notable. One is urban and one is rural.

18 First, in terms of urban population, the largest cities in
19 Alabama have very long-standing and significant black
09:22:40 20 population. In particular, of the five most populous cities in
21 Alabama, four are majority black by population with Mobile
22 slipping just under a majority when you turn to voting age
23 population. So urban concentrations of black voters are an
24 important locus of population in the state.

09:23:05 25 On the other hand, of course, Alabama has a significant

1 rural black population, particularly notable is the Black Belt,
2 which traditionally consists of 18 core counties that span
3 across the state, with sometimes a few more counties, maybe
4 five, added secondarily more towards the west.

09:23:30 5 So those counties -- I know you have been hearing about
6 the Black Belt already in this trial. But the -- are
7 characterized by many counties with small population that are
8 rural that are historically agricultural. And then I
9 understand to have a shared economic interest.

09:23:51 10 So that's a second important locus of black population, is
11 that rural population and particularly the Black Belt.

12 Q And in the HB-1 plan, which district has the highest
13 concentration of black voters?

14 A That would be District 7 by far.

09:24:12 15 Q What is the any part Black Voting Age Population in
16 District 7?

17 A Okay. Here we could pull up my report, if you'd like. I
18 also have it in front of me. And so --

19 Q Can you just tell the Court?

09:24:30 20 A Certainly. HB-1 has just over 55 percent BVAP, again, by
21 my construction in District 7.

22 Q And how does that compare with other districts in HB-1?

23 A There's a fairly steep drop-off to the next district,
24 District 2, with about 30 percent BVAP.

09:24:54 25 Q And then beyond District 2?

1 A Then we see District 1 and 3 near 25 percent, 25,
2 26 percent.

3 MR. NAIFEH: And, Mr. Ang, can you pull up Figure 1 on
4 page 3 of Dr. Duchin's report? That's Exhibit M-3,
09:25:16 5 Document 88-3.

6 BY MR. NAIFEH:

7 Q Dr. Duchin, do you recognize this diagram?

8 A I do.

9 Q And what does it show?

09:25:29 10 A So on the left, we see this plan that we're calling HB-1,
11 which is the newly enacted congressional plan. And the colors
12 show you the different districts. And I've kept county lines
13 so that we can be aware of how those fall.

14 On the right, we see the outlines of the same districts,
09:25:53 15 but now overlaid with what's called a choropleth. It's just a
16 shaded representation of where black population is in the
17 state. So this is BVAP shown in these orange tones on the
18 right-hand side.

19 Q And you just used the term BVAP. Can you explain to the
09:26:15 20 Court what that means?

21 A Yes. Sorry. BVAP stands for the Black Voting Age
22 Population that I've been describing.

23 Q And in this case that means that any part Black Voting Age
24 Population?

09:26:29 25 A That's correct. That's the default construction

1 throughout my reports, although I do note other possibilities.

2 Q And how does HB-1 divide the state's black population into
3 the seven congressional districts?

4 A Well, what I see when I look at particularly this figure
09:26:50 5 on the right is hallmarks of what is often called packing and
6 cracking. So we can see that in District 7. Now, that's that
7 light blue district, and then you can find the corresponding
8 district on the right. You see that really the great majority
9 of the precincts that are included in the district are heavily
09:27:16 10 black by population share -- by voting age population share.

11 And this creates a district with an elevated BVAP overall.

12 On the other hand, when you look around that to the south
13 and east in districts 1, 2, and 3, you see what is sometimes
14 called cracking. In particular, when you look at those
09:27:41 15 dividing boundaries between those districts, you can see that
16 they go right through some of these loci of black population,
17 thereby splitting up a population that could have been numerous
18 and geographically compact enough to form a district.

19 Q About what portion of Alabama's black population resides
09:28:06 20 in Congressional District 7?

21 A In Congressional District 7, I think that would be
22 about -- about a third of Alabama's black population.

23 MR. NAIFEH: Thank you, Mr. Ang. We can take that
24 exhibit down.

25

1 BY MR. NAIFEH:

2 Q Going back to the questions you were asked to consider,
3 were you able to develop any illustrative plans demonstrating
4 whether it's possible to create two majority-black districts in
09:28:39 5 Alabama?

6 A Yes. My report includes plans that I called plan A, B, C,
7 and D.

8 Q And did you use any software to develop the illustrative
9 plans?

09:28:52 10 A I did. I used software in a few ways. As a first step,
11 as an exploratory step, I used algorithms developed in my lab
12 to create -- to generate large numbers of different
13 possibilities that would show me if it was possible to find two
14 majority-black districts. And I found that it was possible.
09:29:22 15 My randomized algorithms found plans with two majority-black
16 districts in literally thousands of different ways.

17 Convinced that that was possible, I then turned to drawing
18 by hand. And I would emphasize that the role of the maps found
19 by the exploratory algorithms was just then inspiration.

09:29:46 20 Seeing that it was possible and with some of the ideas about
21 how it was possible, I then started with a blank slate and drew
22 by hand.

23 I will say a little bit more about that. The hand drawing
24 was done first with the second software package developed in my
09:30:06 25 lab. And here, let me mention that all these software packages

1 are public, open source, available for inspection by the public
2 and by counsel at any time.

3 So the second package is called Districtr. And in it
4 members of the public can draw their own plans. And we use
09:30:27 5 Districtr -- I use Districtr to draw plans at the level of VTDs
6 or precincts. We haven't talked about those yet. But those
7 are the units of census geography that look a lot like the
8 precincts that people vote in.

9 So the second stage was to draw at the VTD level. And
09:30:47 10 then finally, to balance population, I used finer tools, and in
11 particular, we have a number of Python packages that we use to
12 see the demographics down to the block level, and to understand
13 the properties of plans.

14 Q And you mentioned Python. That is the -- is that a
09:31:11 15 programming language?

16 A Python is a common open source programming language. And
17 it permits many packages, such as what are called Pandas for
18 working with large data frames and GeoPandas for working with
19 Geo-spatial data. I would say that Python is the language of
09:31:33 20 choice in data science.

21 Q Is Python frequently used in redistricting?

22 A I would say that it is.

23 Q You mentioned that when you hand drew plans, you started
24 from a blank slate. So just to clarify, does that mean --
09:31:53 25 did you -- did you start from an existing plan?

1 A No. Only used some of the concepts I had seen in plans
2 that were found by the exploratory algorithms, but literally
3 started with an empty map of the state when drawing.

4 Q Okay. And what kind of data did you use to develop the
09:32:18 5 illustrative plans?

6 A Again, here, as in my research, by far the largest data
7 set is the one from the U.S. Census Bureau, called the
8 PL 94-171. That is block level demographic data that the
9 bureau was directed to compile specifically for redistricting
09:32:40 10 purposes. That is the express function of this data set.

11 In addition, there are number of other highly useful
12 Census Bureau products, such as their TIGER/Line Shapefiles
13 that give you the geographical units. Their American Community
14 Survey, which is an annual survey from which we extract
09:33:03 15 information about Citizen Voting Age Population and so on.

16 Q Okay. Are these the same types of data that you would
17 normally use to create a redistricting plan?

18 A Definitely.

19 Q And you mentioned census geography such as census blocks.
09:33:26 20 What are census blocks?

21 A Okay. So the census maintains a geographical hierarchy of
22 units, which has a central spine with six levels. It starts at
23 the nation, as you would expect, subdivides into states, from
24 states to counties, within counties the next unit is called
09:33:51 25 census tracts. Those divide into block groups which divide

1 into blocks.

2 So blocks are the smallest units of census geography.

3 They're sometimes called the pixels of redistricting. They're

4 the littlest units that you can use as building blocks. There

09:34:10 5 are a great number of them. In the 2010 census there were over

6 11 million census blocks in the nation. They range in

7 population from 0. They're a substantial number of census

8 blocks 0 population to typically a few hundred people, although

9 sometimes you will find census blocks with much larger

09:34:32 10 population, such as if there are group quarters like prisons or

11 dormitories. So that is a brief description, I hope, of census

12 blocks.

13 Q And you also mentioned VTDs. Can you tell us what a VTD

14 is, what VTD stands for and what a VTD is?

09:34:52 15 A Sure. There's a redistricting data program, an office

16 within the Census Bureau, and they undertake every 10 years to

17 communicate with the states and collect information on the

18 boundaries of precincts, which are, as we all probably know,

19 units of election administration that are maintained typically

09:35:17 20 at a local level.

21 And so the bureau collects this information and compiles

22 them into a product called VTDs. They say that stands for

23 voting district, but most people call them voting tabulation

24 districts, VTDs. And so you should think of those as the

09:35:36 25 Census Bureau's version of local election administration units.

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1 That makes them particularly useful for redistricting because
2 since they're in the census hierarchy, we can accurately
3 measure demographics, but they're also well-coordinated with
4 local elections, local election administration.

09:36:00 5 Q And did you use beyond the information from the Census
6 Bureau, did you use any other information or consult any other
7 information when preparing the illustrative plans in this case?

8 A I did. And some other sources are listed in my report.
9 But in particular, I consulted the enacted plans from the
09:36:22 10 state, which I obtained from the state's web sites. I looked
11 in particular at the congressional plan, of course. But also,
12 for example, at the school board of education plan prepared by
13 the state, enacted.

14 Q And did you consult the state's redistricting guidelines?

09:36:42 15 A I did. I did consult the state's redistricting
16 guidelines.

17 Q You mentioned the State Board of Education plan. What
18 did -- why did you obtain information from the State Board of
19 Education plan?

09:36:54 20 A The board of education plan was of particular interest to
21 me because it's an eight-district plan. We've already heard
22 that the congressional district plan has seven districts. But
23 the board of education plan has two that are majority-black.
24 So I was particularly interested to see how the state would con
09:37:17 25 instruct a second majority-black district.

1 Q And were there other features in the State Board of
2 Education plan that were relevant in drawing the illustrative
3 plans in this case?

4 A One of the things that you'll notice across my plans is
09:37:38 5 the -- having to do with Mobile County and with the city of
6 Mobile. And I was interested to see how that would be handled
7 in a second majority-black district. And so I looked to the
8 board of education for an example.

9 Q Is it your regular practice to look at the redistricting
09:37:58 10 plans for other governmental bodies in determining how to draw
11 an illustrative plan for a different set of districts?

12 A Yes. Definitely. I would call that a standard practice
13 of mine.

14 Q Okay. And you mentioned the Census Bureau's American
09:38:20 15 Community Survey or ACS. What did you use ACS data for?

16 A In this case, I only used ACS data to estimate what's
17 called BCVAP or Black Citizens Voting Age Population as
18 described in my report. I suppose I should clarify. Not only
19 Black Voting Age Population, but the Citizens Voting Age
09:38:46 20 Population of various groups.

21 Q Okay. How did you use the data and the information that
22 you mentioned to create the illustrative plans?

23 A Well, as we discussed, my main question was whether I
24 could make plans that had two majority-black districts while
09:39:10 25 showing great respect for the other additional districting

1 principles. And so the main way that all this data was used
2 was, in fact, many of the redistricting principles touch on
3 census and demographic data. But in particular, I needed to
4 make sure that the districts I was creating would be over
09:39:34 5 50 percent black.

6 Q Okay. And just sort of mechanically, how do you create a
7 redistricting plan using census data?

8 A Well, as I described, when drawing, I started out with the
9 Districtr program, which lets you select a paint brush like
09:39:57 10 tool and start to color in the VTDs of the state. You can also
11 turn on a feature that captures whole counties. And because
12 county preservation is important, as I'm sure we'll discuss, I
13 tried to take whole counties into a district whenever possible.

14 So typically the way you complete a plan is by first
09:40:23 15 drawing with the largest units counties in this case, getting
16 to a place of very coarsely balanced population, and then going
17 to the next smaller units to tune and balance. And so in this
18 case, from counties, the next units would be VTDs.

19 You can draw a very reasonably balanced plan, a 1 percent
09:40:49 20 balanced plan at the VTD level. But since, as I'm sure we'll
21 discuss, it's the standard practice to balance congressional
22 districts much more tightly. At the last stage, you then break
23 those VTDs down to blocks in order to tune the population.

24 Is that what you had in mind?

09:41:09 25 Q Thank you. Yes. That's helpful.

1 A Okay.

2 Q And so you -- is it fair to say that you drew your
3 illustrative plans at the census block level?

4 A In the end, yes. I found that it was necessary to break
09:41:30 5 some VTDs in order to balance the population. And so I did so
6 at the block level, yes.

7 Q Okay. And when you tune to the block level and see VTDs
8 and then tune the population of block level, how do you decide
9 where to split precincts?

09:41:55 10 A Right. So when splitting precincts -- so, first, I tried
11 to keep as many counties whole as possible but had to break
12 some counties. And then when you decide which precincts to
13 split, those would typically be within the already split
14 counties.

09:42:17 15 By far, the largest consideration when splitting precincts
16 is one of balancing the population. And so by far, the primary
17 consideration is the total population of those blocks so that
18 you can find just the right sizes to balance the population.

19 Q And when splitting precincts to balance the population and
09:42:43 20 selecting blocks to balance the population, do you ever decide
21 where to split the precinct on the basis of race?

22 A I would describe the priority order this way: When you
23 have to split a VTD looking to balance population, as I just
24 said, by far, the first thing that I look at is the total
09:43:03 25 population of the blocks. After that, the next consideration I

1 had was compactness, trying to make kind of less eccentric and
2 more regular boundaries between districts.

3 I -- over the course of the many draft maps made, I did
4 sometimes look at race of those blocks, but really, only to
09:43:32 5 make sure that I was creating two districts over 50 percent.
6 Beyond ensuring crossing that 50 percent line, there was no
7 further consideration of race in choosing blocks within the
8 split VTDs.

9 Q Are you familiar with traditional redistricting
09:43:54 10 principles?

11 A Yes, I am.

12 Q And what are they?

13 A Okay. Well, there are many. But I would identify what I
14 call a big six.

09:44:07 15 So let me very briefly outline them. First is population
16 balance, or one person one vote. And we've discussed that
17 already. That's the idea that we should balance total
18 population across the districts in a plan. The next and also a
19 federal requirement is minority electoral opportunity. And
09:44:32 20 that's through the lens of the Voting Rights Act of 1965, as
21 well as equal protection in the constitution.

22 So those are two nonnegotiable federal requirements.

23 Next, I might list two that are fairly easy to measure.

24 And those -- although not unambiguous, but still readily
09:44:57 25 quantifiable, and those are compactness and contiguity. And

1 then we come to two that are a little bit I would say harder to
2 measure, but nonetheless very important. And that's respect
3 for political boundaries. By that, we usually mean a priority
4 on keeping intact the counties, cities, and towns generally the
09:45:24 5 municipalities, of a state. And finally, respect for
6 communities of interest.

7 Q And did you consider those principles when developing the
8 illustrative plans?

9 A I certainly did.

09:45:39 10 Q Did you also consider the redistricting guidelines adopted
11 by the state's reapportionment committee?

12 A I did.

13 MR. NAIFEH: And, Mr. Ang, can you please pull up
14 Milligan Exhibit 28? This is Document 88-23.

09:45:51 15 BY MR. NAIFEH:

16 Q The committee's guidelines include additional criteria
17 beyond those you just mentioned?

18 A They do. And if we look at this, we can see the whole
19 first page concerns itself with population and minority
09:46:14 20 opportunity to elect and equal protection. And then if we go
21 on to the next page, that very next on the list is contiguity
22 and compactness, which I've mentioned. At that point, this
23 document gets to Alabama state constitutional requirements,
24 which repeat some of the previously listed concepts, and cite,
09:46:45 25 you know, once again cite contiguity population balance,

1 discuss the number of districts.

2 After that, we get to J, which within J, we introduce
3 other principles that are frequently discussed in
4 redistricting, such as consideration for incumbency. This is
09:47:09 5 where communities of interest are cited. And if we advance to
6 the next page, we will see in part (v) of part j. mention of
7 preservation of the cores of existing districts.

8 I would note that in my reading of this, I noticed in part
9 G here that the criteria identified within j. are stipulated
09:47:39 10 not to be listed in priority order.

11 To me, the reading that I took from this, and I think the
12 reasonable reading is that the ones listed before part j.
13 should be regarded to take precedence. And so I did take this
14 document quite seriously in listing the federal requirements
09:48:05 15 first, followed by compactness and contiguity with concepts
16 like incumbency consideration and core preservation clearly
17 lower ranked.

18 Q So in your understanding, the committee guidelines create
19 a higher hierarchy of certain principles over others?

09:48:25 20 A I think they do. And I think they do so in a manner
21 consistent with what I see in numerous other states.

22 Q Thank you.

23 MR. NAIFEH: Thank you, Mr. Ang. We can take this
24 exhibit down.

09:48:36 25 BY MR. NAIFEH:

1 Q Dr. Duchin, is it possible that different traditional
2 redistricting criteria might conflict with one another?

3 A Yes. It's not just possible, it's common place. The
4 criteria are often intention. And to give just a few examples
09:48:56 5 of that, I think it's clear from what I said a moment ago that
6 exact population balance requires you to break up units and so
7 its intention with respecting political boundaries pretty
8 clearly.

9 Another classic frequently observed example is that
09:49:17 10 compactness can be intention with communities of interest. If
11 you have a well-identified community with important shared
12 interests that itself is residentially located in kind of
13 elongated configuration, then you have a choice to make because
14 keeping that community whole might come at a cost to
09:49:40 15 compactness of your district. That's a frequently observed
16 instance among many where the principles can be in conflict.

17 Q In your experience, is it common to have to make trade
18 offs to -- in observing different redistricting principles?

19 A Absolutely. I would say -- go so far as to say that
09:50:04 20 redistricting is all about those trade offs.

21 Q When you prepared the illustrative plans in this case, did
22 you use -- sorry. I've got that covered.

23 Did you -- are the illustrative plans you developed the
24 only potential plans for a seven-member congressional district
09:50:20 25 in Alabama?

1 A Certainly not.

2 Q Are the illustrative plans that you developed in this case
3 the only potential plans for a seven-member congressional
4 redistricting plan in Alabama?

09:50:39 5 A They're far from the only plans. They're far from -- as
6 you heard me say before, far from the only ones with two
7 majority-black districts. I've seen thousands of examples, and
8 I know that overall, the universe of possibility in Alabama is
9 in the many trillions of trillions. So we're talking about
09:51:02 10 very large number of possible plans over all.

11 Q And so just to follow up on that, if you had a different
12 set of redistricting -- of priorities among the redistricting
13 principles, you could draw -- you would draw a different plan
14 that still contained two majority-minority districts; is that
09:51:25 15 right?

16 A That's absolutely true. And so as you heard me say a
17 moment ago, after the -- what I took to be nonnegotiable
18 principles of population balance and seeking two majority-black
19 districts, after that, I took contiguity as a requirement and
09:51:48 20 compactness as paramount following the guidelines.

21 It would be completely reasonable to take plans like mine
22 to take districts, something like my Districts 2 and 7, which
23 then kind of forces District 1 to look more or less as it does.
24 But with the remaining four districts, there's quite a lot of
09:52:13 25 latitude. You could adopt, then, a priority on maintaining

1 district cores, and easily produce a plan that performs better
2 in that regard, but you would do so at a cost particularly to
3 compactness.

09:52:36 4 So there are certainly trade offs. And I took the reading
5 of the guidelines to put a very high priority on counties and
6 compactness. But while retaining two majority-black districts,
7 many other choices could be made.

8 Q And in seeking to draw two majority-minority districts,
9 was your goal to maximize the Black Voting Age Population in
09:52:58 10 those two districts?

11 A Certainly not. We've seen from the state that it's
12 possible to have a substantially higher BVAP in a district, and
13 I can tell you that it's possible, while having two districts
14 to still have a substantially higher BVAP in a district, that
09:53:19 15 was simply not my goal.

16 Q And were there times in drawing the illustrative plans
17 when you made the decisions that had the effect of reducing the
18 Black Voting Age Population in one of the minority-majority
19 black districts in order to satisfy other redistricting
09:53:35 20 principles?

21 A Definitely. I took, for example, county integrity to take
22 precedence over the level of BVAP once that level was past
23 50 percent.

24 MR. NAIFEH: Mr. Ang, can you please bring up Exhibit
09:53:56 25 M-3? This is Document 88-3, and turn to page 7.

1 Dr. Duchin -- Mr. Ang, could you zoom in on the table?

2 BY MR. NAIFEH:

3 Q Dr. Duchin, please take a look at Table 3, which is
4 labeled, Demographics Broken Out As a Comparison of Black and
09:54:22 5 White Population.

6 A Yes.

7 Q What does this table show?

8 A This table shows the BVAP, the WVAP, BCVAP, and WCVAP. In
9 other words, the black and white shares of Voting Age
09:54:38 10 Population and Citizen Voting Age Population by district in
11 each plan.

12 Q And in each plan, that includes in the enacted plan HB-1?

13 A That's right. HB-1, as well as my plans A through D.

14 Q Okay. And turning down on the table labeled BVAP at the
09:54:59 15 top left, what does this table show?

16 A This shows that -- as I said earlier, HB-1 has one
17 majority-black district, and then drops off to around
18 30 percent while my plans A through D all have two districts
19 over 50 percent black.

09:55:17 20 Q And what definition of black is used to calculate these
21 percentages?

22 A Yes. So here still I'm using that expansive definition
23 that's sometimes called any-part black.

24 Q And then looking over to the table at the top right
09:55:36 25 labeled BCVAP, what does this table show?

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1 A So this is the black share of Citizen Voting Age
2 Population. I will note that sometimes in voting rights
3 enforcement, we look to Citizens VAP, CVAP, because it's taken
4 to be a closer proxy to the electorate because citizens are
09:56:00 5 eligible to vote. And so here I look at BCVAP and find that it
6 -- generally similar that HB-1 still has only one
7 majority-black district, and all four of my plans by this way
8 of counting still have two.

9 Q And in the BCVAP table, which definition of black was used
09:56:29 10 to calculate BCVAP?

11 A So here I'll just say very briefly, I used the ACS to
12 calculate the citizenship share of adults for each racial group
13 and then applied that to the any-part black population.

14 Q So, again, using -- it uses any-part black to estimate the
09:56:53 15 citizenship share of each district?

16 A To be exactly precise, the share, the rate of citizenship
17 does not use any-part black because it's done from the ACS,
18 which doesn't have the ability to count any-part black, so that
19 citizenship rate is used with a single-race black definition,
09:57:18 20 and then is applied to the any-part black map of the state.

21 Q Okay.

22 A This is described in detail in the appendix to this
23 report.

24 Q Okay. And using the any-part black category for BVAP, are
09:57:36 25 there two districts in each of your four plans that contained

1 majority-Black Voting Age Population?

2 A Yes. I will just confirm by either of these ways of
3 counting there are two majority-black districts in each of my
4 four plans.

09:57:49 5 Q And which districts are those?

6 A Those are consistently District 2 and District 7.

7 MR. NAIFEH: Thank you, Mr. Ang. We can take this
8 exhibit down.

9 BY MR. NAIFEH:

09:58:03 10 Q Did you investigate black population in your redistricting
11 plans using any measures other than any-part black?

12 A I did, particularly in response to Mr. Bryan's report. I
13 constructed the narrowest definition of Black Voting Age
14 Population, and demonstrated that my plan A is still
09:58:31 15 majority-black, even by the narrowest construction.

16 MR. NAIFEH: Mr. Ang, can you please bring up Exhibit
17 M-7 at page 3? This is Document 88-7.

18 THE WITNESS: Thank you.

19 BY MR. NAIFEH:

09:58:45 20 Q And so using the narrowest definition of black, do any of
21 your illustrative plans contain two majority-black districts?

22 A Yes. Plan A does. As you see here, it's just over
23 50 percent, but I believe the standard to be 50 percent plus
24 one person, and so by that standard, both CD 2 and CD 7 are
09:59:13 25 majority-black, even by the very narrowest possible

1 construction that census data permits.

2 Q Thank you.

3 MR. NAIFEH: And, Mr. Ang, you can take that down.

4 BY MR. NAIFEH:

09:59:27 5 Q And other than those census categories, any-part black and
6 single-race black, did you consider any other measures of the
7 black population in evaluating your plans?

8 A I did. It was communicated to me by counsel that defense
9 expert report suggested that it would be useful to look at
09:59:46 10 voter registration data. And so I did.

11 A voter registration file was provided to me by counsel.
12 I then geocoded it myself. By that, I mean used a service to
13 obtain latitude and longitude coordinates for each of the
14 3.7 million people in the voter registration file. That's
10:00:11 15 quite a data task.

16 I will briefly say, once we have those positions, we can
17 identify the census blocks that every registered voter lives
18 in, and with that, because the form asks people to identify
19 their race, and it gives them only the option to do so with the
10:00:34 20 single racial category, we can see what people -- what voters
21 in Alabama, what registered voters in Alabama, when asked to
22 choose a single racial designation, chose black.

23 Q Okay. And did you -- after allocating each registered
24 voter to a congressional district in your illustrative plans,
10:01:04 25 did you determine the black population, black registered voter

1 population in each district?

2 A I did. And what I found is that if you look at all of the
3 addresses, all of the people in the voter registration
4 database, or if you restrict to the ones designated as active
10:01:26 5 registered voters, either way, the District 2 and District 7 in
6 my plans are actually more -- by a more substantial margin are
7 majority-black by this way of counting.

8 Q And that's in all four plans?

9 A All four plans.

10:01:44 10 Q And that's true whether you include inactive voters or
11 active voters?

12 A That's correct. It's true of the full database or the
13 subset designated as active.

14 Q And do you have an understanding of what happens if
10:01:59 15 someone although they're instructed to choose only one race,
16 chooses more than one option in the race for ethnicity
17 category?

18 A Yes. I understand from the state's information that if
19 despite being told to choose only one, if a voter when
10:02:21 20 registering selects more than one, then they're classified as
21 others and not as, for instance, black. And that means that
22 the individuals that are categorized as black truly selected
23 black and no other option.

24 Q Okay. And did you include individuals designated other
10:02:45 25 when you were determining the black population according to the

1 voter registration data in your congressional plans?

2 A I did not. I only took the ones designated black divided
3 by the total number of people registered in that district.

4 Q And did you have the opportunity to analyze the registered
10:03:05 5 voter population in the enacted plan, HB-1 plan?

6 A I did.

7 Q And what percentage of registered voters in Congressional
8 District 7 in the enacted plan self identify as black?

9 A From memory, it's over 59 percent. But I suppose we could
10:03:23 10 bring that up if we want to get the exact number.

11 Q We will take your word for it that it's about 59 percent.

12 Okay. So now I'd like to ask you -- you have an opinion
13 whether the Black Voting Age Population in Alabama is
14 sufficiently numerous to constitute a majority of voters in two
10:03:48 15 of seven congressional districts?

16 A I do. But actually, before I get to that, let me mention
17 one thing I skipped a moment ago. It's worth saying that HB-1
18 has District 7 up at over 59 percent, but still has District 2
19 far from a majority. So it's still the case by voter
10:04:10 20 registration that HB-1 only has one majority-black district,
21 just for the record.

22 Q Okay. Let me ask the last question I asked again.

23 A Yes, please.

24 Q Do you have an opinion as to whether the Black Voting Age
10:04:24 25 Population in Alabama is sufficiently numerous as to constitute

1 the majority of voters in two of seven congressional districts?

2 A I do.

3 Q And what is that opinion?

4 A It is. It is possible. It is sufficiently numerous.

10:04:39 5 Q And what is the basis of that opinion?

6 A The basis is demonstrative plans that are over 50 percent
7 black in two districts.

8 Q And specifically, can you describe which demonstrative
9 plans you're referring to?

10:04:54 10 A My demonstrative plans A through D which are over
11 50 percent black by Voting Age Population in Districts 2 and 7.

12 Q And using the single-race black definition, do you have an
13 opinion as to whether it's possible to -- whether the black
14 population in Alabama is sufficiently numerous to constitute a
10:05:16 15 majority of voters in two congressional districts out of seven?

16 A I do. This is demonstrated by my plan A, which even by
17 the very most restrictive definition has a majority of Black
18 Voting Age Population in Districts 2 and 7.

19 Q And do you have an opinion whether using voter
10:05:37 20 registration data the black population in Alabama is
21 sufficiently numerous to constitute a majority in two of seven
22 congressional districts?

23 A I do. And that opinion is that it is true, and it's true
24 by larger margins.

10:05:53 25 Q Now, I'd like to turn to the traditional redistricting

1 principles and the other factors you considered, and first, I
2 would like to ask you about contiguity?

3 A Yes.

4 Q You testified that one traditional principle is
10:06:17 5 contiguity. Can you explain what it means for a district to be
6 contiguous?

7 A Sure. In the simplest terms, a contiguous district is
8 connected. That is, it is one connected piece. In slightly
9 more technical terms, for a district that's made out of blocks,
10:06:32 10 contiguity means that it's possible to get from anywhere in the
11 district to anywhere else in the district in a path going
12 through blocks that does not leave the district.

13 Q Okay. And do the redistricting committee's guidelines
14 discuss contiguity?

10:06:52 15 A They do.

16 Q And what do the committee guidelines say about how
17 contiguity is measured in Alabama?

18 A They specify that contiguity through water is allowed.
19 They specify that they do not include what's called point
10:07:11 20 contiguity. And that would be where you have two blocks that
21 meet only at a corner. So, in other words, you need adjacency
22 along an edge or a boundary of positive length to count as
23 connected. And they also rule out what's called long-lasso
24 contiguity, where you essentially have a thread by which a
10:07:32 25 district remains contiguous.

1 Q And do the illustrative plans that you created for this
2 case contain contiguous districts?

3 A They do. There's a slightly more complicated story there.

4 In my initial submission, I included plans which, as
10:07:53 5 Mr. Bryan noted in his rebuttal report, had a small number of
6 blocks, census blocks, that were misassigned in the sense that
7 they created small islands.

8 As he correctly noted, it was easy to infer which
9 districts those were meant to belong to. And so the
10:08:17 10 consequences for population were very small. But I did submit
11 corrected plans which fixed those small block islands and
12 rebalanced the population.

13 So the plans now in evidence are contiguous by every
14 definition, are population balanced to the one-person standard,
10:08:42 15 and have all the same properties described in the report.

16 Q And after correcting the illustrative plans for those
17 stray blocks identified by Mr. Bryan, are the districts in your
18 plan all contiguous?

19 A They are all contiguous by every definition and with every
10:09:03 20 caveat identified in the guidelines.

21 Q After correcting the illustrative plans to correct those
22 stray census blocks, did you change any of your opinions on the
23 questions you were asked about in this case?

24 A I did not. And in particular, I will note the changes
10:09:23 25 were so small that not a single number in my report needed to

1 be updated. So the report stands exactly as written, with
2 respect to the corrected plans.

3 Q Okay. Just to drill down on that a little bit.

4 Did correcting the noncontiguous blocks identified by
10:09:42 5 Mr. Bryan change the percentage of any-part Black Voting Age
6 Population in any of the districts in your plans?

7 A No, not to the number of decimal places that were
8 included.

9 Q So it may have changed the absolute numbers a tiny amount?

10:09:58 10 A Certainly.

11 Q But not the percentages?

12 A In one case, the stray blocks contained no population at
13 all, and in all cases, the population was under 100 people,
14 which is not enough to change any of the conclusions at any
10:10:15 15 level in the reports.

16 Q And did correcting the noncontiguous blocks identified by
17 Mr. Bryan change the percentage of non-Hispanic single-race
18 Black Voting Age Population in Illustrative Plan A?

19 A No. Again, to be perfectly clear, not at the level, not
10:10:42 20 to the number of decimal places reported in the report.

21 Q And did correcting the noncontiguous blocks identified by
22 Mr. Bryan change the percentage of black registered voters in
23 any district in any of your illustrative plans?

24 A No, not to the number of decimal places included in the
10:11:01 25 report.

1 Q And did you recalculate the registered voter percentage
2 after correcting the noncontiguous blocks?

3 A I did.

4 Q And was it the same?

10:11:14 5 A To the level of precision included in the report, it's
6 identical. In fact, I would add just as a matter of
7 mathematics, one can easily confirm that with the number of
8 people at question, it could not have changed any of those
9 numbers to the number of decimal places included in the report.

10:11:35 10 Q I'd like to turn to population equality. You testified
11 earlier that another redistricting principle you adhered to in
12 developing the illustrative plans was equal population?

13 A Correct.

14 Q What does it mean for the population to be equal in a
10:11:54 15 congressional plan?

16 A A majority of U.S. states, but not all 50, balance their
17 congressional plans to one person top to bottom deviation, with
18 respect to total population from the decennial census. And my
19 initial set of plans, every plan was within one person of ideal
10:12:21 20 -- of rounded ideal size. And that's also true in the
21 corrected plans where there's one person top to bottom
22 deviation in all four.

23 Q Okay. And so Mr. Bryan says that after reassigning stray
24 blocks there was a greater deviation. Did you correct for that
10:12:41 25 deviation after -- when correcting for your -- correcting your

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1 plans for those stray blocks?

2 A I did. So the corrections reassigned the blocks and then
3 rebalanced the population, as I said.

4 Q Okay. And so do you have an opinion about whether
10:12:59 5 plaintiffs' illustrative plans adhere to the equal population
6 principle?

7 A They do, even by the strictest possible -- mathematically
8 possible population equality.

9 Q Okay. So you testified earlier that you took into account
10:13:18 10 geographical compactness when you developed your illustrative
11 plans. How do you pleasure compactness?

12 A Yes. Well, this is one of the areas of my specialization.
13 So there are vast number of metrics in the literature. I've
14 counted more than 35 in the political science and geography,
10:13:44 15 scholarly literature, for measuring compactness.

16 But by far, the most common in redistricting is the use of
17 what's called the Polsby-Popper score. And particularly, the
18 average Polsby-Popper score over the districts in a plan.

19 That's one of three compactness metrics that I selected to
10:14:07 20 highlight in my reports.

21 Q And what were the other two?

22 A The next most common in redistricting is a metric called
23 Reock. It's R-E-O-C-K. And it's a metric that asks how
24 different the shape is from the smallest circle that can
10:14:30 25 contain it. So like Polsby-Popper, which compares area to

1 perimeter, both Reock and Polsby-Popper depend on the contour
2 or the outline of the district. So I sometimes refer to them
3 as contour-based metrics. So a second metric would be to take
4 the average Reock score over the districts in a plan.

10:14:56 5 I also chose to highlight a third metric, which I think is
6 becoming more popular in redistricting. And that is a discrete
7 metric called cut edges. In this case, block cut edges. It
8 looks as how the units, the blocks are separated from one
9 another in the plan.

10:15:15 10 Q Okay. And is any single -- any one of those quantitative
11 measures of compactness dispositive as to whether a given
12 district or a plan is -- can be called compact?

13 A No. And I would note the interesting thing for someone
14 like me who studies geometry, the interesting thing is that
10:15:37 15 these metrics really do measure different things so that for
16 any 2 of the 35 metrics, it's fairly easy to come up with a
17 plan, an example, the shape that looks compact by one of the
18 metrics, not so compact by the other.

19 And so they really do measure somewhat different things.
10:15:58 20 And there's a choice of emphasis when you're talking about
21 compactness.

22 For the purposes of this case, I focused on that average
23 Polsby-Popper score that I mentioned before because it is, by
24 far, the most common in redistricting.

10:16:15 25 Q And why did you in this case focus on the Polsby-Popper

1 score?

2 A So as I just mentioned, it's the most common. And so that
3 was the choice of focus. But I can also mention what
4 Polsby-Popper focuses on is how erratic the boundaries are of a
5 district. And so it does have a relationship to how the
6 districts look to the eye.

7 Q And did you calculate compactness measures for each
8 district or for the whole plan?

9 A I did both. In the report, I give the average scores, but
10 my back-up materials contain scores for every district in the
11 plan.

12 Q And why did you calculate average scores for the whole
13 plan, or why did you choose to report those in your report?

14 A Well, it's a standard way to make one plan comparable with
15 another. If you report the set of -- in this case, seven
16 numbers, some will be higher, some will be lower. And so a
17 standard way to make them comparable, which is reasonable for
18 my point of view, is to average the numbers.

19 Q Okay. And so in this case, did you calculate an average
20 compact Polsby-Popper score for each illustrative that you
21 created?

22 A I did. I computed the scores for plans A through D and
23 for HB-1.

24 Q And did you have occasion to compare the Polsby-Popper
25 scores for your illustrative plans to the HB-1 plan?

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1 A I did. All four of my plans are significantly more
2 compact than the state's enacted plan by this common metric,
3 the average Polsby-Popper score. And perhaps it's worth
4 mentioning also significantly more compact than the enacted
10:18:25 5 plan from ten years ago.

6 Q And did you have also have occasion to compare the
7 district level Polsby-Popper scores in the illustrative plans
8 to the HB-1 plan?

9 A I did. In my plans, it is consistently the case that
10:18:45 10 Congressional Districts 1 and 2 are the least compact. That's
11 because they're elongated in an east to west fashion.

12 Giving them scores of roughly, if memory serves -- we can
13 pull up the numbers, but if memory serves, roughly .15. I will
14 note that those scores, which are my least compact districts,
10:19:09 15 are comparable to and in some cases better than the least
16 compact district in the current enacted plan and the enacted
17 plan from ten years ago.

18 Q Okay. And is there a particular reason why Congressional
19 Districts 1 and 2 have lower compactness scores in your plans?

10:19:28 20 A There is. As I'm sure we'll discuss, District 2 is
21 elongated in east to west fashion in order to contain as much
22 as possible of the Black Belt. That Black Belt of 18 counties,
23 it was an express goal of mine to keep that as much as possible
24 within majority-black districts.

10:19:53 25 By doing that, because of the way the population is

1 distributed in the state, it creates District 1 to the south,
2 which is also very elongated east to west.

3 So the goal of securing representation in a majority-black
4 district for the Black Belt is what creates those relatively
10:20:17 5 low, but clearly still acceptable compactness scores in
6 Districts 1 and 2 in my plans.

7 Q Okay. And although they're lower than other districts in
8 your plan, in your opinion, are Congressional District 1 and
9 Congressional District 2 reasonably compact in all of your
10:20:39 10 illustrative plans?

11 A Yes. I think they are. And I'll just repeat they're
12 comparable to or better than the least compact districts in the
13 state's enacted plan that was voted through recently, as well
14 as the state's enacted plan from ten years ago.

10:21:00 15 Q And turning now to communities of interest, you testified
16 earlier that another redistricting principle you bore in mind
17 when drawing your illustrative plans was communities of
18 interest?

19 A Yes.

10:21:19 20 Q How do you define a community of interest?

21 A Well, in this case, the Alabama guidelines have language
22 concerning communities of interest that I found to be apt and
23 to be consistent with definitions in other states.

24 If I recall correctly, the shared interests that
10:21:40 25 constitute a community per the guidelines include common

1 economics, common racial and ethnic characteristics, common
2 history, common culture and so on. These are some of the --
3 and if we want to -- that's a paraphrase, but I would be happy
4 to take a look if we wanted to pull that out in order to be
10:22:02 5 more precise.

6 Q And in this case, what information did you consider when
7 trying to preserve communities of interest?

8 A I will note that in some states the state or a
9 state-affiliated office undertook a community of interest
10:22:21 10 collection process from the public in which members of the
11 public, including legislators were invited to identify
12 communities through mapping software.

13 I'm not aware of any such effort in Alabama. And I did
14 check the state's redistricting website to see if any such
10:22:42 15 thing had been undertaken.

16 Not finding a collection process like that, it's hard to
17 develop a metric around public testimony. And so I relied on
18 two examples, two kinds of communities of interest that I have
19 already alluded to. And one is the cores of cities in Alabama,
10:23:09 20 which I believe clearly meet the definition of a community of
21 interest provided in the guidelines. And the second is the
22 Black Belt across the state, which I also believe clearly to
23 meet the definition provided in the guidelines.

24 Q Okay.

10:23:28 25 MR. NAIFEH: And, Mr. Ang, can you pull up exhibit

1 M-28? This is again the redistricting guidelines
2 Document 88-23.

3 Mr. Ang, can you scroll down? I believe it's the third
4 page. Back up one.

10:24:00 5 THE WITNESS: There we are.

6 BY MR. NAIFEH:

7 Q It's at the bottom of page 2. Is that the definition that
8 you were referring to earlier?

9 A Yes. And so recognized similarities of interests,
10 including but not limited to ethnic, racial, economic, tribal,
11 social, geographic, or historical identities.

12 Exactly.

13 Q And it says there at the bottom that it can include?

14 A It can include in certain circumstances political
10:24:29 15 subdivisions, such as counties.

16 MR. NAIFEH: And can you go on to the next page,
17 Mr. Ang?

18 THE WITNESS: Great. Counties voting precincts,
19 municipalities, tribal lands and reservations, or school
10:24:44 20 districts.

21 MR. NAIFEH: Thank you, Mr. Ang.

22 BY MR. NAIFEH:

23 Q And does -- in your understanding, does the community of
24 interest principle mean that an entire congressional district
10:24:59 25 must form a single community of interest?

1 A No. And I think that's sometimes a common
2 misunderstanding. I don't think that respect for communities
3 of interest means that every district should itself be a single
4 unitary community. That wouldn't work because communities can
10:25:20 5 be of all sizes and are not necessarily the exact size of
6 congressional districts, which after all, are very large, over
7 700,000 people.

8 Instead, I believe that what it means is that communities
9 should be taken into account when you draw so that either
10:25:39 10 they're kept whole within a district, or if it's appropriate,
11 split among several in a way that amplifies their opportunity
12 to be heard by their representative.

13 Q So, in other words, there may be more than one community
14 of interest in a given congressional district?

10:25:59 15 A There certainly will, without fail, be more than one
16 community of interest within a congressional district.

17 Q And are the criteria for or the definition of community of
18 interest, is that an objective definition?

19 A Well, as it's written in law or in guidelines like these,
10:26:21 20 it's, of course, somewhat vague. There have been efforts to
21 try to make it more concrete and more quantifiable, that
22 usually start with a public collection process, as I mentioned
23 a little earlier.

24 Q So when you are serving the public about their communities
10:26:43 25 of interest, is it possible that different people might

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1 identify with different communities of interest?

2 A It is a certainty. When you ask people about their
3 communities, the nature of community is that you will get many
4 different kinds of account. Some of them will be continent and
10:26:58 5 will allow you to create a kind of small consensus so that you
6 have a community supported by the testimony of many people.
7 But inevitably, on even more than what some of the other
8 principles, there are trade offs, because communities can and
9 will overlap. So sometimes it's impossible to preserve one
10:27:23 10 without breaking another. So even within this principle, there
11 are trade offs to consider.

12 Q When developing your illustrative plans in this case, what
13 communities of interest did you consider?

14 A So the two communities of interest that I prioritized are
10:27:40 15 the two that I mentioned earlier, which are urban cores and the
16 18 counties that constitute the rural Black Belt.

17 I will mention that I am aware that there are many, many
18 other important and salient communities in Alabama, and I
19 prioritized these two that I believe to clearly and
10:28:05 20 unambiguously correspond to the language in the guidelines.

21 Q And in your opinion, do the illustrative plans respect
22 communities of interest?

23 A Yes. My plans A through D are designed to do so. And one
24 way that they do so is by taking upwards of 16 out of the 18
10:28:29 25 Black Belt counties in each case and keeping those in

1 majority-black districts.

2 Q And you mentioned also that municipalities or counties or
3 other political subdivisions can also constitute a community of
4 interest. Did -- in your opinion, do the illustrative plans
10:28:51 5 respect those communities of interest?

6 A They do. There's a marked respect not only for counties,
7 which I think is unmistakable in the plans, but also for
8 municipalities.

9 And I will note there that because the technical
10:29:08 10 boundaries of municipalities can be very erratic, that on a
11 community level, it's often that urban core that's most salient
12 from a community.

13 Q You also testified the guidelines -- the redistricting
14 committee's guidelines include as an additional criteria the
10:29:36 15 cores of prior districts?

16 A Yes.

17 Q What does preserving the cores of prior districts mean?

18 A Informally, it means that new districts should resemble
19 the previous districts. Often, that's measured in one of two
10:29:53 20 ways; by looking at the area overlap or the territorial overlap
21 between a new district and its corresponding its counterpart in
22 the older plan, or by looking at the population that's either
23 retained or displaced.

24 Q And do the illustrative plans preserve the cores of prior
10:30:17 25 districts?

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1 A No. I would characterize my Illustrative Plans A through
2 D as not particularly preserving the cores of the prior
3 districts.

4 Q And why is that?

10:30:30 5 A I judge it to be impossible to have as high of a core
6 preservation as, for instance, you see in the newly enacted
7 plans, while also having two majority-black districts. Just to
8 expand on that briefly, since the older plan has one
9 majority-black district, and then a significant drop off to,
10:30:54 10 you know, about 30 percent, it's again mathematically
11 impossible to create two majority-black districts without a
12 significant level of population reassignment from one District
13 to another. Because I regard the protection of minority
14 electoral opportunity to be a nonnegotiable federal
10:31:19 15 requirement, that necessitates a significant level of core
16 displacement.

17 Q Okay. And so that -- and then in the outside of those two
18 majority-black districts, were there -- can you explain why
19 your plans don't preserve cores to the extent it's of the
10:31:39 20 enacted plan?

21 A Yes. Absolutely.

22 So I read the guidelines to put core displacement as a
23 priority below compactness and the preservation of counties, in
24 particular compactness. And so I would note that one could
10:32:01 25 take my illustrative plans, retain something very much like my

1 Districts 2 and 7 and therefore District 1, and with the
2 remaining four districts, one could adopt a different
3 prioritization. And indeed if core preservation were elevated
4 at that point, it would be quite easy to reconfigure those four
5 districts to more resemble the previous enacted plan. I will
6 just note that you would be doing so expressly at the cost of
7 compactness.

8 Q So, in other words, you read the guidelines as requiring
9 compact districts more than core preservation, but if you read
10 them the other way, you could preserve cores to a greater
11 extent than you did?

12 A I think it's difficult to read them another way, but if
13 you elected to prioritize cores over compactness, you certainly
14 could do so, and that would greatly improve those displacement
15 numbers in my plan while maintaining two majority-black
16 districts.

17 Q And you also testified earlier that protecting minority
18 voting strength is a traditional redistricting criteria. What
19 does it mean to protect minority voting strength for avoid
20 dilution of minority voting strength?

21 A Well, in the context of *Gingles* I demonstration, it means
22 to draw districts that have a majority of -- in this case,
23 Black Voting Age Population while still being maximally
24 respectful to the other traditional principles. In other
25 words, in other words, what's at issue here is the opportunity

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1 to elect candidates of choice.

2 Q And what do the illustrative plans do to unable that
3 opportunity?

4 A Well, in particular, here they pass the threshold of
10:34:08 5 50 percent plus 1, so they create two majority-black districts
6 in which I believe together with the evidence of other experts
7 we can see there will be a clear opportunity to elect
8 candidates of choice.

9 Q And so based on what you have told us so far today, did
10:34:33 10 you form an opinion as to whether the black population in
11 Alabama is sufficiently numerous and geographically compact to
12 comprise a majority of voting age population in two
13 congressional districts?

14 A I did. As we heard, there were two majority-black
10:34:48 15 districts, and the plan as a whole is highly respectful of
16 other traditional districting principles, and in particular, is
17 highly compact. The compactness of the plan is itself a
18 demonstration that the population is compact enough to do so.

19 Q And are the illustrative plans the only potential remedy
10:35:10 20 for vote dilution in Alabama's congressional plan?

21 A They are far from the only possible remedy, and I leave it
22 to the Court to determine whether majority-black districts are
23 necessary as a remedy. And here, they're clearly demonstrated
24 to meet the *Gingles I* requirement.

10:35:27 25

1 MR. NAIFEH: Thank you, Dr. Duchin. I have no more
2 questions at this time.

3 JUDGE MARCUS: All right. It looks to me like this
4 might be a convenient time for our break. I have 10:35 your
10:35:42 5 time in Alabama Central Standard and 11:35 in Eastern Standard
6 Time. We'll take a 15-minute break.

7 I take it, Mr. LaCour, you are going to conduct the bulk
8 of the cross, or the cross for the Secretary of State?

9 MR. LACOUR: That's correct, Your Honor.

10:36:03 10 MR. NAIFEH: Your Honor, actually, there was one more
11 issue I wanted to raise with Dr. Duchin.

12 JUDGE MARCUS: Sure. Let's go back so you can finish
13 your direct, and then we'll break. Fire away.

14 MR. NAIFEH: Mr. Ang, can you please bring up
10:36:21 15 Exhibit 48, M-48, that's Document 92-1? And I will note for
16 the Court and for the record that this is one of the exhibits
17 that defendants have objected to, and I would like to lay the
18 foundation for getting it admitted.

19 JUDGE MARCUS: Sure.

10:36:49 20 BY MR. NAIFEH:

21 Q Dr. Duchin, on the screen is the document that has been
22 marked as exhibit M-48.

23 MR. NAIFEH: Mr. Ang, could you scroll through? I
24 think it's three pages.

10:37:06 25 BY MR. NAIFEH:

1 Q Dr. Duchin, do you recognize this document?

2 A I do.

3 Q And can you tell me what it is?

4 A This is a supplemental report that I filed whose focus is
10:37:18 5 the voter registration numbers that I described earlier.

6 Q And is this a complete copy of that report that you
7 executed on December 27th?

8 A Yes. It's quite a short report.

9 Q Okay. And it contains the information you have already
10:37:36 10 testified to concerning your analysis of voter data. Is that
11 what you stated a moment ago?

12 A Yes. With a bit more precision about the process, it
13 contains exactly the same information.

14 Q Okay.

10:37:52 15 MR. NAIFEH: I would like to move Milligan Plaintiffs'
16 M-48 into evidence.

17 JUDGE MARCUS: Let me hear from the state.

18 Mr. LaCour, I take it there was an objection on timeliness
19 ground?

10:38:03 20 MR. LACOUR: There was, Your Honor.

21 JUDGE MARCUS: Then the judges will be able to confer
22 amongst themselves and give you a ruling. I take it you would
23 want a ruling on this before you commence your cross?

24 MR. LACOUR: That would be -- that would be helpful,
10:38:21 25 Your Honor.

1 JUDGE MARCUS: Okay. Let's go right to the argument.
2 Tell me about timeliness. They admit it's slightly off
3 the time base. You tell me why we should hold them to that in
4 the context of the exigencies of the time boundaries we have
10:38:45 5 all been operating under.

6 MR. LACOUR: I think for that same reason, Your Honor,
7 it's we are also trying to prepare for -- we were also trying
8 to prepare for the hearing and trying to prepare witnesses,
9 trying to get ready for numerous cross-examinations, and we had
10:39:04 10 two reports from Dr. Duchin already, received a third report.
11 There's not a whole lot of time to really dig in. So I mean
12 our objection is strictly on the timeliness grounds. And
13 that's essentially our argument.

14 JUDGE MARCUS: Let me ask you just a question or two
10:39:21 15 about that.

16 This report was prepared and received on the 27th of
17 December. That was about ten days ago. I take it, it has been
18 given to and reviewed by Mr. Bryan, your expert.

19 MR. LACOUR: I -- I have not been working as closely
10:39:46 20 with Mr. Bryan, so if someone else is out there in the Zoom
21 world who could chime in, I'd welcome --

22 JUDGE MARCUS: I wanted to make sure there has been --
23 bear with me. I wanted to make sure that Mr. Bryan had the
24 opportunity to review the supplemental report of Dr. Duchin,
10:40:08 25 which was dated 27 December.

1 MR. LACOUR: I have no reason to think he has not had
2 that opportunity. But, Jim, if you are on, you might be able
3 to provide a definitive answer.

4 MR. DAVIS: Your Honor, if I may step in a moment.

10:40:29 5 JUDGE MARCUS: You sure can.

6 MR. DAVIS: I can respond to your question. Mr. Bryan
7 has not reviewed this supplemental report, but we do not deny
8 that we had the opportunity to provide it to him. This report
9 was just not focused in on the areas that Mr. Bryan discusses
10:40:48 10 and that he will discuss in his testimony. So he has not
11 reviewed it, but we do not dispute that we have had since the
12 27th to provide it to him, had we felt the need to do so.

13 JUDGE MARCUS: Okay. Thank you much. Anything
14 further on this issue from, Mr. Naifeh, from you or from
10:41:07 15 Mr. LaCour, Mr. Davis? If not, we will take it under at
16 advisement and give you a ruling shortly.

17 MR. NAIFEH: This is Stuart Naifeh for the plaintiffs.
18 I just want to note that there was no objection to Dr. Duchin
19 testifying about the same information that is contained in this
10:41:23 20 report. So that, you know, if there had been a concern that
21 they had not had -- if that information was outside the scope
22 or anything like that of her initial reports, that objection
23 has now been waived.

24 JUDGE MARCUS: Anything further, Mr. LaCour?

10:41:40 25 MR. LACOUR: Nothing further at this time, Your Honor.

1 JUDGE MARCUS: Okay. It is now by my count 11:41. We
2 will -- 10:41 your time, 11:41 my time. We will reconvene at
3 12:00 o'clock Eastern Standard, 11:00 o'clock Central Standard
4 Time. We will be in recess until about 11:00 or 12:00 o'clock
10:42:09 5 respectively. Thank you.

6 (Recess.)

7 JUDGE MARCUS: Do we have everybody assembled? We
8 have counsel for the state, Mr. LaCour?

9 MR. LACOUR: Yes, Your Honor.

11:00:53 10 JUDGE MARCUS: And we have counsel for the Milligan
11 plaintiffs, who is conducting the examination of Dr. Duchin,
12 correct?

13 MR. NAIFEH: Yes, Your Honor.

14 JUDGE MARCUS: So are we ready to proceed, folks? I
11:01:04 15 just wanted to make sure.

16 MR. NAIFEH: Milligan plaintiffs are ready to proceed.

17 JUDGE MARCUS: Mr. LaCour, are you ready to proceed?

18 MR. LACOUR: Yes, Your Honor.

19 JUDGE MARCUS: Before we start the cross-examination,
11:01:17 20 we note the objection to M-48, which was the supplemental
21 expert report of Dr. Duchin filled on the 27th of December.
22 The objection that was interposed was on the grounds of it
23 being untimely by some seven days.

24 The objection is overruled. We will permit and receive
11:01:45 25 M-48, the supplemental report of Duchin into the record. A

1 series of reasons lead us to that conclusion. I have counseled
2 with my colleagues about the matter. And we believe that, one,
3 there was more than sufficient time over the last 10 or 11 days
4 to make what use of it that you might. And it was your call,
11:02:15 5 Mr. LaCour, whether to show it or not to Dr. Bryan.

6 Two, under the Federal Rules of Civil Procedure Rule
7 6(b)(1)(B), the Court has the power to extend a time for a
8 sufficient reason. We're satisfied, given the exigencies of
9 the time and the compressed nature of the discovery that
11:02:45 10 there's ample reason to excuse the failure to timely file the
11 report of Dr. Duchin.

12 Third, it's worth observing that, in effect, she had
13 already testified about the substance of the supplemental
14 report on direct examination without any objection. So the
11:03:11 15 substance of it has already been come in. Theoretically, we
16 could strike that for the record. But for the reasons that
17 I've stated, we're not prepared to do that.

18 The objection is overruled. M-48 is received. And with
19 that, you may proceed with your cross. Thank you, Mr. LaCour.

11:03:32 20 MR. LACOUR: Thank you, Your Honors.

21 CROSS-EXAMINATION

22 BY MR. LACOUR:

23 Q Dr. Duchin, thank you for being with us. May name is
24 Edmund LaCour. I represent defendant Secretary of State of
11:03:45 25 Alabama John Merrill.

1 A Hello.

2 Q I would like to start with a couple of statements from
3 pages 7 and 9 of the reports. It's pretty brief, so I don't
4 pull it up on the screen unless you would like me to.

11:03:57 5 You note that Black Voting Age Population in Alabama is
6 about 26 percent. Black Alabamians make up a majority in only
7 14.3 percent of congressional districts in the state. And that
8 White Voting Age Population is about 65.5 percent, meaning
9 that, quote, proportional representation for white voters would
11:04:20 10 be between 4.4 and 4.6 of Alabama's seven seats in the U.S.
11 house, correct?

12 A Correct.

13 Q So you are stating the enacted map does not result in
14 proportional representation for white and black Alabamians?

11:04:34 15 A Well, to be careful, that depends on, of course, how
16 people vote. But it's certainly the case that majority-white
17 districts are present in the enacted plan super proportionally
18 with respect to population.

19 Q So if more white Alabamians voted differently, would
11:05:04 20 blacks be proportionally represented in Alabama?

21 A Certainly. As I just said, everything depends on how
22 people vote. I'm sorry. Am I understanding the question
23 correctly?

24 Q I was just trying to figure out what -- through the import
11:05:23 25 was of your observation that while black Alabamians make up

1 26 percent of the state, white Alabamians, 65.5, white
2 Alabamians hold 4.4 to 4.6 congressional -- you would expect --
3 it seems like you're suggesting you would expect 4.4 to 4.6 of
4 congressional seats to be majority white districts and
11:05:52 5 something higher than 14.3 percent of districts to be majority
6 black. So to clarify, no, that's not what that meant?

7 A It's mentioned with respect to the traditional
8 understanding that in applying voting rights, one doesn't seek
9 to go past the level of proportionality. Not that it's an
11:06:19 10 expectation, but that it has sometimes functioned de facto as a
11 ceiling in voting rights law.

12 Q And if one of your illustrative plans or another plan that
13 created two majority-black districts was either enacted by the
14 Legislature imposed by a court, black Alabamians would then be
11:06:40 15 a majority in what, 28.6 percent of congressional districts?

16 A That sounds about right. Two out of seven should be about
17 that.

18 Q Okay. Which would be greater than proportional
19 representation?

11:06:57 20 A I believe so we just said the population proportion is
21 about 26 to 27 percent black. I believe that projects out to
22 1.8, 1.9 seats, something like that. And so two would be the
23 closest. Since we can't have fractional seats in the end, two
24 would be the closest to that number.

11:07:18 25 Q Right. And I mean, wouldn't you agree that generally in

1 congressional districting in the United States, even with very
2 neutral redistricting processes observed, seldom produce
3 proportional results?

4 A To clarify, that results are not typically proportional.

11:07:38 5 That's the question?

6 Q Correct.

7 A I agree that I've looked at all states with significant
8 populations of minority groups and that often the
9 representation it's close, but falls short of proportionality.

11:07:58 10 That's correct.

11 Q Even with a neutral redistricting process, correct?

12 A It's hard to speak to the details of the processes in all
13 the states.

14 Q In 2019, you published a study on congressional districts
11:08:13 15 in Massachusetts, didn't you?

16 A I did. In the *Election Law Journal*.

17 Q Yeah. It was fairly interesting.

18 A Thank you.

19 Q Is it fair to say that you found that even though
11:08:23 20 Massachusetts Republican candidates often received between 30
21 and 40 percent of the two-way vote share in statewide elections
22 in Massachusetts, you wouldn't expect to see a map 30 percent
23 of the Commonwealth's nine congressional seats for the GOP?

24 A Actually, it's even stronger than that, the finding. Can
11:08:44 25 I briefly describe it?

1 Q That would be great.

2 A Thanks.

3 The finding is that over a ten-year span, about a third of
4 Massachusetts voters select a Republican in statewide contests.

11:08:59 5 But it's not only unlikely, it is on the nose mathematically
6 impossible to draw a congressional district in Massachusetts
7 that would have Republican majority. And so the finding is one
8 of impossibility, which is expressly not the case in Alabama,
9 as we saw in my testimony.

11:09:18 10 Q And we will get to it in just a moment. I think I found
11 it interesting you said -- does this sound like an accurate
12 quote? There are more ways of developing a valid districting
13 than there are particles in the galaxy. Every single one of
14 them would produce a 9-0 Democratic delegation?

11:09:35 15 A It's surprising, but true that it's literally impossible
16 to draw a Republican district in those conditions merely as a
17 matter of the political geography of where people live.

18 Q Right. Because -- that is also because of certainly
19 traditional districting criteria that are observed in the
11:09:56 20 Commonwealth, correct?

21 A You would actually surprised how strong the result is.
22 Even if you let go of contiguity, you still can't draw such a
23 district. It's quite a strong finding.

24 Q Uh-huh. And that's in part because you don't have many
11:10:11 25 parts of Massachusetts that are majority Republican, right?

1 A Exactly. As we describe it in the paper, it's that
2 Republicans while plentiful in Massachusetts are really spread
3 evenly throughout the state. That's exactly right.

4 Q Uh-huh. They're well integrated with their Democratic
11:10:30 5 brothers and sisters?

6 A I would call it uniform. And as I have said in the past,
7 it seems like Republican voters are a third of the state, a
8 third of every town, and maybe a third of every household.

9 Q Got it.

11:10:44 10 So return to Alabama. If all we knew, and just speaking
11 hypothetically here, if all we knew was that black Alabamians
12 made up 26 percent of the state, and that they formed
13 majorities in only 14.3 percent of the congressional districts,
14 that wouldn't tell us very much about the fairness of the
11:11:05 15 representation in the map, would it?

16 A Absolutely. That's -- that's precisely -- I agree with
17 you. That's what's shown in that Massachusetts paper is that
18 you have to look at what's possible.

19 Q Right. And again, going off this sort of blank
11:11:23 20 hypothetical slate, would it be kind of surprising if the
21 minority group, political or racial, made up a greater than
22 proportional -- made up a majority in a higher percentage of
23 districts than they are composed within the state?

24 A Sure. That happens all the time. If I understood -- let
11:11:48 25 me make sure I understood you.

1 Q I guess I'm trying to say, would it surprise you to -- if
2 let's say in Massachusetts, well hypothetical state of
3 Columbia. You have got 30 percent of people in the green
4 party. Would -- and 70 percent of people are Libertarians.

11:12:09 5 Would it be surprising for a congressional district to produce
6 majority green party districts in 35 percent of the districts
7 allotted to that hypothetical state?

8 A So the population share went to 35 percent, my
9 understanding?

11:12:29 10 Q The population share is 30, and they end up with
11 majorities in 35 percent of the districts.

12 A It's hard to know whether to characterize that as
13 surprising, because I'd need to know a lot more about the
14 situation. But what I take to be the point is that it can
11:12:47 15 often happen that the representation share is different from
16 the population share. That's certainly true.

17 Q Does it often skew a little in favor of the majority and a
18 little against the minority?

19 A That is frequently observed, although, I've just come back
11:13:05 20 from testifying in North Carolina, as I mentioned earlier,
21 where there are maps in play that -- that actually tend to give
22 majority representation to a minority of the votes. That can
23 also happen.

24 Q That evidence, in your mind, that they're not following
11:13:23 25 neutral something criteria?

1 A It really need to be assessed on a case-by-case basis.

2 Q In North Carolina, where you testified, did you take that
3 as evidence that neutral districting criteria were not being
4 followed?

11:13:36 5 A There's so much other evidence in play there, that I
6 wouldn't want to attribute it to a single piece of evidence.

7 Q But did that support the theory that something was afoot,
8 either racial or political? I'm not sure what the theory of
9 the case is.

11:13:56 10 A Right. I think I can say that it supported a conclusion
11 of a partisan intent on my part.

12 Q Okay. Do you know how many counties are in Alabama
13 altogether?

14 A I don't have the number in front of me.

11:14:14 15 Q Would 67 sound right?

16 A That sounds about right, yes.

17 Q And do you know how many of them are majority-black?

18 A Not off the top of my head.

19 Q If I told you it was around 11, would that sound -- that
11:14:31 20 sound right?

21 A I can work off of that assumption in the following
22 questions.

23 Q I want to pull up a map real quick that I think is --
24 might be helpful.

11:14:44 25 A Thank you.

1 Q All right. So can you see this map now, Dr. Duchin?

2 A I can. Yes.

3 Q I will represent to you this is Defendants Exhibit -- I

4 believe this is Defendants' Exhibit 2, page 38. Mr. Bryan

11:15:19 5 prepared this. And he purports to show the counties in

6 Alabama, and then marks them for black alone Voting Age

7 Population by county. Do you see that?

8 A I do.

9 Q And so does my cursor show up on your screen?

11:15:40 10 A I see it.

11 Q The little hand?

12 A Yes.

13 Q So we have got the Black Belt counties kind of running

14 sort of in this -- I think this is Pickens County here and

11:15:47 15 running down this direction. And many of them are

16 majority-black voting age. But some of them just barely. And

17 some of them below majority. Is that fair?

18 A I accept that representation.

19 Q Okay. All right. Back out of that. And I think you

11:16:13 20 reported that the Black Belt as a whole has only about 300,000

21 black residents. Does that sound right?

22 A We'd have to look at the numbers, but I remember it to be

23 over 300,000.

24 Q Okay. If your report said -- make sure I'm quoting the

11:16:35 25 chapter and verse. Happy to pull this up.

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1 You said -- this is page 10 of your report Milligan
2 Exhibit 3. The Black Belt region has over 300,000 black
3 residents?

4 A Correct.

11:16:50 5 Q All right. So something else I wanted to touch on from
6 page 2 of your report. You said that because Alabama's
7 any-part black population is 27.16 percent, the total
8 population group is, quote, large enough to constitute
9 majorities of three out of seven congressional districts
11:17:15 10 because it takes about 7.2 percent of the population, to
11 constitute the majority in a district. Is that correct?

12 A Yes.

13 Q Okay. Geographic constraints explain why you cannot draw
14 a map with three majority-black congressional districts,
11:17:34 15 correct?

16 A Where you cannot, is that what you said?

17 Q Correct. Yeah. Why you could not?

18 A Agreed. It's the exact same principle that we just
19 discussed in Massachusetts. The numbers alone don't tell you.
11:17:45 20 You have to look at what's possible.

21 Q Uh-huh. So you didn't have any maps that tried to unite
22 black voters in Huntsville with black voters in Birmingham and
23 Dothan, correct?

24 A I'm sorry. Are you asking if I attempted precisely to
11:18:02 25 follow those goals?

1 Q You didn't present -- did you try to draw any maps that
2 looked like that, that united black voters from the northern
3 most of the state to the southernmost part of the state?

4 A Well, that was certainly never an express goal to unite
11:18:20 5 voters from the very north and voters from the very south.

6 Q So question: Do you know if any of the plans your
7 algorithm generated produced maps that look like that?

8 A But, again, I think you mean that contain districts
9 spanning all the way from north to south; is that right?

11:18:44 10 Q That united black voters in Huntsville?

11 A Right.

12 Q You focused on in your report and Mobile?

13 A I certainly never saw a district connecting Huntsville to
14 Mobile.

11:18:54 15 Q Okay. And why was that?

16 A Well, it's hard to say why to an empirical question. I
17 never saw such a district.

18 Q Okay. And returning to your math about 7.2 percent of the
19 state's population being all that's needed to draw a majority
11:19:16 20 district, by that math, and this is lawyer math, would it take
21 only about 50.4 percent of voters statewide to form a majority
22 in each of the seven congressional districts?

23 A Right. So since we've been discussing this Massachusetts
24 paper, this is what we call an arithmetic or numerical test.

11:19:41 25 It's just are the numbers sufficient. So that's all that it

1 looks at is numbers alone, and the point of discussing that is
2 to say that that's not sufficient for redistricting. You need
3 to not only look at the numbers, but also look at the
4 geography.

11:19:57 5 Q Right. But mathematically, if we were to discard
6 traditional redistricting criteria, it would be possible to
7 draw -- there are a majority of whatever group if that group
8 made up 50.4 percent of voters statewide?

9 A Yes. I'm sorry. I didn't mean to talk over you at all.

11:20:19 10 Q Oh, not at all.

11 A That's right. If you have a bare majority statewide, it
12 is theoretically possible to recapitulate that majority in each
13 district. Each district could be a microcosm of the state.
14 That is theoretically possible, although difficult to achieve
11:20:37 15 in practice.

16 Q But that did happen in Massachusetts in a sense?

17 A Well.

18 Q They have a larger than 50 percent majority? I apologize.

19 JUDGE MARCUS: Let's just take our time. Let
11:20:57 20 Mr. LaCour finish his question, Dr. Duchin, before you give him
21 an answer. And, Mr. LaCour, let Dr. Duchin answer completely
22 before you proceed with the question.

23 Thank you. Let's take the next question.

24 BY MR. LACOUR:

11:21:14 25 Q Dr. Duchin, would it sound about right if I told you that

1 Republican presidential candidates in Alabama have obtained
2 over 60 percent of the vote in the last three general statewide
3 elections?

4 A Yes. I know that to be true.

11:21:29 5 Q Okay. So a map in which Republicans make up a majority in
6 all seven districts are mathematically possible in Alabama?

7 A That does not follow. Because now you said a map that
8 does. So you've brought geography into the question.

9 Q So traditional districting principles might inhibit that
11:21:51 10 result, but mathematically it could potentially be possible?

11 A I'm just going to keep distinguishing so that I can be
12 careful. Numerically, it would be possible.

13 Q Okay. And a guideline for redistricting like core
14 retention of districts might help explain why the 2021 map
11:22:14 15 includes only six majority Republican districts instead of
16 seven, even though it was enacted by a majority Republican
17 House and majority Republican state Senate?

18 A Certainly. If core retention is prioritized over minority
19 electoral opportunity, that would be an explanation.

11:22:33 20 Q Or if core retention was prioritized over partisan
21 interest, correct?

22 A I don't believe I've been discussing partisan interest at
23 all, and it wasn't part of my analysis.

24 Q Okay. Fair enough.

11:22:49 25 On the second page of your report, again, this is Milligan

1 Exhibit 3, you state -- you were asked to draw plans that
2 establish that it's possible to create two majority-black
3 districts in a map that maintains population balance,
4 reasonable compactness, respect for local boundaries -- I will
11:23:17 5 start over. I apologize for -- let me start over.

6 So on page 2, you state, I was asked --

7 JUDGE MARCUS: Just so that I am clear, you are
8 referring to page 2 of what? Of the Exhibit M-3?

9 MR. LACOUR: Yes, Your Honor.

11:23:38 10 JUDGE MARCUS: Thank you.

11 BY MR. LACOUR:

12 Q You state, I was asked to draw plans, establish that it is
13 possible to create two majority-black districts in a map that
14 maintains population balance, reasonable compactness, respect
11:23:55 15 for boundaries, and other traditional redistricting principles.
16 In particular, I was instructed to emphasize Polsby-Popper
17 inspirometric definition of compactness. What do you mean by
18 emphasize the Polsby-Popper definition of compactness?

19 A Sure. I mean that in two ways. One, that compactness is
11:24:21 20 important, that I took it to be a very highly ranked priority.
21 And, two, that within the ways of measuring compactness, I
22 selected that metric for emphasis. Does that make sense?

23 Q Yes. Let's see.

24 So did you give compactness more weight than some of the
11:24:49 25 other traditional districting principles?

1 A I did. I would clarify or expand that I took population
2 balance and minority electoral opportunity to be nonnegotiable
3 requirements, and after that, took contiguity and compactness
4 to be highest ranked following the Alabama guidelines.

11:25:15 5 Q Okay. I'd like to touch on that. I mean, you also stated
6 on page 2 -- I will go ahead and pull this up.

7 I may have too many windows. I apologize.

8 JUDGE MARCUS: Take your time.

9 BY MR. LACOUR:

11:25:52 10 Q All right. Are we looking at -- this is Milligan
11 Exhibit 3. I am going back to page 2. So this final
12 paragraph.

13 JUDGE MARCUS: Just so we're clear for the record,
14 this is Dr. Duchin's one of her reports, right?

11:26:21 15 MR. LACOUR: Right.

16 BY MR. LACOUR:

17 Q This is your initial report, Dr. Duchin, Milligan
18 Exhibit 3. You said, These two majority districts can be drawn
19 without sacrificing traditional districting principles like
11:26:31 20 population balance, contiguity, respect for political
21 subdivisions like counties, cities and towns, or the
22 compactness of districts, and with heightened respect for
23 communities of interest.

24 Now, you don't reference what I think you refer to as one
11:26:44 25 of your six districting criteria, correct.

1 A Let's see. One, two, three, four, five and so, of course,
2 this doesn't include what was in bold in the previous sentence,
3 which is minority electoral opportunity.

4 Q Correct. So I didn't -- when I had read this initially, I
11:27:12 5 did not read that as one of the goals that was necessarily
6 informing the drawing of the maps, but so -- but you did state
7 before that was one of your nonnegotiable criteria, correct?

8 A Correct. I would call it the principle goal, and as you
9 heard, the principle assignment in this case was precisely that
11:27:40 10 question.

11 Q So that -- how did that work with the other five criteria?

12 A Great. So the question is one of possibility as I have
13 highlighted repeatedly. And so though you have trade offs
14 among the principles, the goal was to create two majority-black
11:28:09 15 congressional districts while balancing the other principles as
16 well as possible. Is that responsive?

17 Q It's helpful. I think so.

18 So you talked before about keeping counties whole versus
19 strict compliance of one person one vote. And it's almost
11:28:31 20 impossible -- likely impossible in most plans to do both,
21 correct?

22 A Correct. Fundamental trade offs exist.

23 Q So when you decided to strictly add here to one person one
24 vote, that criteria took precedence over keeping counties
11:28:54 25 whole?

1 A That's right. Counties are split in order to comply with
2 one person one vote.

3 Q Okay. Why did you decide to comply so strictly with
4 one person one vote?

11:29:10 5 A The practice as I mentioned earlier in a majority of U.S.
6 states is to attain de minimus population deviation. And
7 that's regarded as dominant practice in the field. And so I
8 undertook to achieve that level of balance.

9 Q If Alabama's guidelines had provided greater deviation
11:29:45 10 that made that possible of the 2021 map, or if the 2011 map had
11 allowed for greater deviation, would you have potentially
12 allowed yourself more deviation?

13 A I still think that as a matter of federal law, it's safest
14 to minimize the population deviation.

11:30:05 15 Q Okay. Did you choose to stick with the strict one person
16 one vote approach for your plans because that's what the
17 guidelines mandate?

18 A But not specifically, although it's -- it is compatible
19 certainly with the language in the guidelines.

11:30:25 20 Q Okay. Next, contiguity. I mean, you adhered fully to the
21 state's contiguity principle, correct, with the caveat, that
22 they're the stray blocks that we have -- that you discussed
23 earlier, correct?

24 A That's right. So if we're talking about the corrected
11:30:48 25 plans, I believe those to comply fully and to the letter with

1 the state's description of the contiguity guideline.

2 Q Okay. And earlier on, you had mentioned that one of the
3 first steps you took in determining whether two majority-black
4 districts could be drawn in Alabama was -- both computers, if
11:31:14 5 you will, and an algorithm to generate numerous maps; is that
6 right?

7 A That's correct.

8 Q And my limited understanding is that what is that with
9 these algorithms, you can plug in certain constraints, correct,
11:31:38 10 or certain conditions to make a map, to make it more likely
11 some types of maps will be either spit out by the algorithm,
12 and certain types of maps will not be produced by the
13 algorithm; is that fair?

14 A Yes, that's right. Our algorithmic code base allows for
11:32:00 15 both constraints in the form of thresholds and also allows you
16 to program a preference for a certain kind of district over
17 another.

18 Q Okay. So do you -- going back to one person one vote.
19 Was that one of the constraints you put in place on the front
11:32:19 20 end, say only give me maps that give me minimal deviation?

21 A To be precise, the constraint was 1 percent from ideal
22 size.

23 Q Okay. And by there being less constraining of a
24 constraint than minimal deviation, does that produce a greater
11:32:40 25 number of maps -- greater number of possible maps?

1 A There's no question. In particular, since as I mentioned
2 earlier, those runs were done at the whole precinct level, at
3 the VTD level, I believe it to be either impossible or
4 statistically nearly impossible to get one person balanced from
11:33:05 5 whole precincts on a random basis.

6 Q Okay. Is contiguity one of the constraints you plugged in
7 at the outset?

8 A Absolutely. The algorithm enforces contiguity at the VTD
9 level.

11:33:22 10 Q Right. Next in the guidelines, you noted that they call
11 for districting plans that respect communities of interest,
12 neighborhoods and political subdivisions, and you stated and --
13 I'm sorry. I will pull this up. Make sure I'm quoting you
14 accurately here. Or at least giving the correct page numbers.
11:33:52 15 This is again from your report page 53.3, you stated -- in
16 order to make seven finely population tuned districts, it's
17 necessary to split at least 6 of Alabama's 67 counties into
18 two pieces. Does that sound right?

19 A Okay. To be precise, yes. You have to split six if you
11:34:25 20 are splitting them two ways. It's possible to split fewer than
21 six if you allow for more pieces. At the extreme, you could
22 imagine just a single county split if it's got seven pie wedges
23 in it.

24 Q Got it. So there need to be at least six county splits?

11:34:44 25 A No.

1 Q Let me rephrase that.

2 A Sorry.

3 Q At least six times, a county must be split to get the
4 one person one vote minimal deviation that we're looking for,
11:34:56 5 right?

6 A I think a precise way to phrase it would be that there
7 have to be at least six additional county pieces as a way of
8 phrasing.

9 Q And that's simple math that counties rarely line up where
11:35:13 10 -- you're unlikely to have a county that's exactly 717,000
11 whatever people in it to form that one perfect district, so you
12 are going to probably have to split it at least a little to
13 equalize it, right?

14 A That's the idea, yes.

11:35:28 15 Q Okay. And I think you said earlier today that you tried
16 to take whole counties into a district whenever possible; is
17 that right?

18 A Definitely.

19 Q But you did have to break some counties. And first, I
11:35:48 20 guess to return -- like what did you mean by whenever possible?
21 You didn't just mean six counties, six county pieces, correct?

22 A Right. The way I would characterize that is that in the
23 process of drawing, particularly when you start with a blank
24 slate, you encounter decision junctures at many points in the
11:36:16 25 process. And at each of those decision junctures, I would try

1 to keep a county whole, when possible. But in the course of
2 drawing, there are many such decisions to make.

3 Q You said that you did give it a -- you said very high
4 priority for minimizing those splits, right?

11:36:37 5 A For preferring lower numbers of splits, definitely.

6 Q Okay. Briefly, I want to talk about splits in your VTDs.
7 I think you said you had sort of a priority for how you did
8 that or how you determined which VTDs and precincts? To make
9 it look cleaner in the transcript, you had a priority for which
11:37:14 10 precincts you would decide to split; is that fair?

11 A I would say it a little differently. Is that as I
12 described earlier, I split VTDs late in the process.

13 Q Uh-huh.

14 A And I described a little bit the way of deciding where to
11:37:32 15 do so.

16 Q Okay. And at least one of the things you looked at was to
17 make sure that you were still creating two districts of over
18 50 percent Black Voting Age Population, correct?

19 A Yes. That was high up on the list in my assignment.

11:37:51 20 Q Okay. Did that same consideration drive any of your
21 decisions to split counties?

22 A Do you mean of whether to split counties or where to split
23 counties?

24 Q I would say let's start first with how many counties you
11:38:17 25 split?

1 A Okay. I have four demonstrative or illustrative plans,
2 and they split different numbers of counties. If I recall
3 correctly, my plan D splits only five. And so there's a series
4 of decisions embodied differently in those different plans.

11:38:50 5 Those plans respect various kinds of decisions at those
6 junctures I referenced earlier about which priorities to
7 emphasize. So plan D splits the fewest counties, and others
8 are better by the lights of the traditional principles in the
9 guidelines in other ways.

11:39:11 10 Q Okay. Just so we're all working off the same page, I will
11 share my screen again, and hopefully this will go smoothly for
12 us.

13 So we're looking at page 5 of your report. Milligan
14 Exhibit 3. And here we see eight splits in counties for plan
11:39:54 15 A, seven for plan B, nine for plan C, and five for plan D,
16 correct?

17 A That's correct.

18 Q And for plan D, while there are five counties that are
19 ultimately divided up, do you recall the -- that's the plan
11:40:13 20 that splits Jefferson County between three different districts
21 or among three different districts?

22 A Definitely. That's how it's possible to get just five
23 counties that are split.

24 Q Okay. And now is a good time to do a broad overview of
11:40:34 25 the maps. I have sort of compiled them together in this

1 document. So I won't have to switch among so many different --

2 JUDGE MARCUS: Mr. LaCour, take your time and speak up
3 so our reporter can get it all, please.

4 MR. LACOUR: Yes, Your Honor. I apologize.

11:40:49 5 JUDGE MARCUS: That's okay. Just take your time.
6 Keep your voice up so she can get it all down.

7 MR. LACOUR: Absolutely.

8 BY MR. LACOUR:

9 Q So this document has a few excerpts from your report and a
11:41:05 10 couple of Tom Bryan's reports together just so we don't have to
11 be jumping in between. But I will identify each page for the
12 record so you know what we're looking at, and I am also happy
13 to do it a slower way and toggle between documents if you think
14 it would be preferable. But I'm hoping to be moving things
11:41:24 15 along for everyone.

16 Here, this comes from Milligan Exhibit 3, your report,
17 Dr. Duchin, page 4. Does this look like the four maps that you
18 drew for this litigation?

19 A Yes, it does.

11:41:40 20 Q Okay. Next, go to page 8 of what is actually the same
21 report. It reports the any-part Black Voting Age Population
22 for HB-1, which is the 2021 enacted map plan A, plan B, plan C,
23 plan D. Those numbers look correct to you?

24 A This does look to be an accurate copy of my report.

11:42:10 25 Q And then we have talked about splits already. Something

1 else we were looking at earlier. I think this came from page 3
2 of your report. Again, Milligan Exhibit 3. And this shows the
3 shaded colors, essentially which precincts have a little higher
4 percentage of black population within Alabama, correct?

11:42:47 5 A Yes.

6 Q Great. So the next document borrows from page 3 and puts
7 it for everyone's benefit up against a similar analysis --
8 well, I will represent to you is a similar analysis that Tom
9 Bryan prepared for the defendants from Defendants' Exhibit 2.

11:43:10 10 This is his initial report on page 40. Did you have a chance
11 to look at Mr. Bryan's report?

12 A I did.

13 Q Okay. Does this map look familiar to you?

14 A Yes. And it looks -- now that you have put them side by
11:43:26 15 side, quite similar to mine, I am happy to say.

16 Q Yeah. That's -- we're all working off of similar facts.

17 I think he is measuring black alone Voting Age Population.
18 Do you recall if your measurements were any-part black or black
19 alone?

11:43:47 20 A I believe this to be any-part black, which is the
21 population basis that I use in my reports except where
22 otherwise noted.

23 Q Okay. But generally, the maps look fairly similar in
24 distribution of black Alabamians?

11:44:06 25 A They do. And I would comfortably speculate that the

1 difference, the visible difference between black alone and
2 any-part black would be minimal in a map of this kind.

3 Q Okay. I'd like to turn to plan A then. So this is plan
4 A, which, again, comes from Milligan Exhibit 3, page 4. I also
11:44:35 5 have from Tom Bryan's supplemental report, which is Defendants'
6 Exhibit 4, Page 69, his analysis that relays the lines from
7 your plan A across the sort of race shaded precincts from the
8 map we were looking at just a moment ago.

9 Do you see that?

11:44:59 10 A I do.

11 Q And for everyone's benefit, I have added up here the
12 number of county splits and the any-part Black Voting Age
13 Population for your District 2, which I take is this tan
14 colored district in the southern part of the state and District
11:45:22 15 7, which is the light blue sort of in the central western part
16 of the state. Is that fair?

17 A Yes. That all looks reasonable.

18 Q Okay. The first -- I may have shown this a little earlier
19 this morning. But well, actually, this is a little bit of a
11:45:41 20 different question.

21 Focusing on number of splits, what -- do you recall what
22 factor led you to split two more districts than necessary in
23 this particular plan?

24 A I think you mean two more counties.

11:45:58 25 Q Yes. I apologize. Two more counties?

1 A No problem. Just trying to be clear.

2 Q Thank you.

3 A The -- every time you draw, you are balancing the
4 different priorities against each other. And so it's hard to
11:46:16 5 truly whether it was consideration of municipalities, which
6 aren't visible in this map, or whether it was physical
7 geography or some other feature. But I am testifying that the
8 choice of which counties to split was made in a balance of all
9 and only the criteria that had been discussed.

11:46:44 10 Q And one of those criteria was to ensure two black majority
11 congressional districts?

12 A That was the question that I was asked to address.

13 Q Okay. So that factor might explain why if we zoom in here
14 between -- I will call the green district, District 4. Do you
11:47:13 15 recall if -- District 5 used to be up at the top in the enacted
16 plan, and 4 beneath it.

17 Do you recall when you sort of reshuffled them if you put
18 4 off to the northwest and 5 to the northeast?

19 A I think the numbers are correct as they're reported. In
11:47:34 20 Mr. Bryan's figure, would show those to be 4 and 5.

21 Q Great. I just want to be sure.

22 So if you were to close off this county split here, you
23 could do that potentially. That would mean you would need more
24 population for the rest of District 4 because it would be
11:47:58 25 losing population District 5, correct?

1 A Are you done? Sorry.

2 Q Yes.

3 A Yes. If you took that split county and colored it all, I
4 think you were saying the pink color, magenta color, yes, you
11:48:18 5 would lose green population or population for the green
6 district and would have to gain it elsewhere in order to
7 balance.

8 Q Okay. And if you were not going to split another county
9 to gain that population, there's only one place you could
11:48:35 10 really look at more population for District 4, correct?

11 A If I'm understanding your question right, it's true that
12 the only two split counties in 4 as I have drawn it are
13 Jefferson County where your hand currently is.

14 Q Uh-huh.

11:48:55 15 A And that northern county whose name I can't currently
16 remember.

17 Q Okay. So if you had to come down to Jefferson County to
18 get more population for District 4 -- I am going to zoom in.
19 It appears that if you were going to be in population from
11:49:18 20 around here, you would losing some black population from
21 District 7, correct?

22 A There's now a fairly intricate counterfactual. But I
23 think it's responsive to your question to say that the
24 construction of District 7 definitely looks at race so as to
11:49:43 25 ensure that it's majority black.

1 Q Okay. And would it also be fair to say that the principle
2 of splitting fewer counties was subordinated to the principle
3 of getting two majority-black districts in Alabama?

4 A It's true that I regard the federal requirements of
11:50:18 5 population balance and minority electoral opportunity to be
6 nonnegotiable and, therefore, higher ranked.

7 Q Okay. You know whether you could draw a plan like plan A
8 that has only six splits in counties instead of eight and that
9 still meets that nonnegotiable criteria of two majority-black
11:50:48 10 districts?

11 A I think what makes that a difficult question to answer is
12 that it's hard to say what makes one plan like another, but I
13 would say that I made an effort here, really a strong effort to
14 balance all of the principles that we have named.

11:51:06 15 Q Okay. I just mention -- let's see. And do you know
16 roughly how many voting age are within any given district on
17 average? Would it be right to say it's about 560,000?

18 A I know it to be between 500 and 600,000 because there you
19 are taking those 700 sum and restricting to adults. So that
11:52:03 20 sounds correct.

21 Q Okay. I just want to defer decision. Let's switch
22 screens I'm sharing real quick just to show you I'm not leaving
23 you.

24 MR. NAIFEH: Your Honor, I would like to request that
11:52:22 25 that demonstrative be marked as an exhibit.

1 MR. LACOUR: No objections.

2 JUDGE MARCUS: All right. Why don't you put a number

3 on it? That would be Defense Exhibit 2 for identification, if

4 I have it right. Do I have that right, Mr. LaCour? The only

11:52:39 5 other exhibit we marked for identification was the one you used
6 for impeachment yesterday.

7 MR. LACOUR: Yes, Your Honor. I believe that is

8 correct. But if --

9 JUDGE MARCUS: That's just a number. You give me any

11:52:52 10 number you want, and we can move along.

11 MR. LACOUR: We will go with Exhibit 2.

12 JUDGE MARCUS: Defense Exhibit 2 for identification.

13 You have may proceed. Thank you.

14 BY MR. LACOUR:

11:53:06 15 Q Turning to Defense Exhibit 4. There we go. And page 25

16 on the -- so this is Tom Bryan's supplemental report. Have you

17 had a chance to review this report, Dr. Duchin?

18 A Yes. I believe so.

19 Q Okay. And he reports your plan A that -- looking at Table

11:54:00 20 3.2 that District 2 has a Voting Age Population-- an 18-plus

21 number, 560,170; is that right?

22 A It's true that that's what is written here.

23 Q Okay. We'll ask for you to assume that he has his numbers

24 right, and I'm sure if he doesn't, we will hear about it later

11:54:29 25 when he testifies.

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1 And he reports 562,303 for District 7; is that correct?

2 A Yes, he does.

3 Q And we will go ahead and run through on to the next page.

4 District 2, 559,000 and some change; District 7, 762,630; for
11:55:04 5 plan C, 558,296 for District 2; and for your District 7 in plan
6 C, 562,107. To close it out, for plan 4 or plan B District 2,
7 560,550; and for plan D District 7, 562,391. Did I recount all
8 of those correctly, Dr. Duchin?

9 A I agree that that's what's written here.

11:55:42 10 Q Okay. And if those numbers are correct, then that would
11 mean that 1 percent of a district's Voting Age Population would
12 be about 5,600 people, give or take, a few dozen; is that
13 right?

14 A Yeah. That looks to be about right.

11:56:07 15 Q Okay.

16 A I should probably be careful, though. If there are any
17 precise calculations to do, I wouldn't want to have do those on
18 the spot, but would hope to have some time to sit and be
19 careful, make sure everything is done correctly.

11:56:29 20 Q Correct. I'll try to keep the math as simple as possible
21 for these purposes.

22 Returning just one more time to your plan A. Are you
23 aware of any traditional districting criteria that could
24 explain two additional county splits?

11:57:00 25 A Sure. Easily. We've heard, for instance, about

1 communities of interest, and an effort to preserve those,
2 whereas I said before, to keep municipalities whole could
3 certainly be a reason in particular in Alabama as in many
4 states, there are municipalities that cross over county lines.

11:57:24 5 Q Okay.

6 MR. LACOUR: Your Honor, as I see, it is almost the
7 lunch hour. It might be a good time to stop. I am going to
8 have a little more to go.

9 JUDGE MARCUS: Whatever works for you. Give me some
11:57:40 10 idea, Mr. LaCour, how much do you think you have on cross, and
11 we will have a sense of how many other witnesses we will get to
12 today.

13 MR. LACOUR: Your Honor --

14 JUDGE MARCUS: This is not to limit you. You take all
11:57:55 15 the time you need.

16 MR. LACOUR: Say probably another 45 minutes to an
17 hour. I hate to overpromise and under-deliver. But whichever
18 way --

19 JUDGE MARCUS: Thanks for giving me your estimate. We
11:58:10 20 are not holding you to it.

21 It's just a little before 12:00 Central Standard, 1:00
22 o'clock Eastern Standard. We'll break for one hour for lunch.
23 We'll reconvene 1:00 o'clock Central Standard, 2:00 o'clock
24 Eastern Standard. We'll ask you, Dr. Duchin, if you would be
11:58:32 25 kind enough to stick with us as we proceed into the afternoon.

1 Thank you all. And we will be in recess until 1:00 and
2 2:00 respectively.

3 (Recess.)

4 JUDGE MARCUS: Okay. Mr. LaCour, you are ready to
13:01:04 5 proceed with Dr. Duchin on your cross.

6 MR. LACOUR: And, Your Honor, thank you.

7 JUDGE MARCUS: Thank you. And you may proceed.

8 MR. LACOUR: Thank you.

9 BY MR. LACOUR:

13:01:15 10 Q Dr. Duchin, welcome back. I hope you had a nice lunch.
11 We will pick up where we left off. I am going to share my
12 screen again and start with plan B at this time. Can you see
13 that now?

14 A Yes, I can.

13:01:37 15 Q So question here: So we have got seven county splits
16 instead of the bare minimum six that would be needed if all we
17 were trying to do was equalize population; is that correct?

18 A No. As we heard, you can get under six if you're willing
19 to tolerate more pieces.

13:01:56 20 Q Splits of like -- we will stipulate when we say county
21 splits, we're referring to splits of counties. Would that be
22 the more accurate --

23 A No. So the number of split counties can -- I'm sorry. I
24 don't mean to be -- I want to be accurate. The number of split
13:02:19 25 counties can get below six, but if you are going to split them

1 only two ways, then six is the minimum.

2 Q Okay. So number of two-way county splits is one greater
3 here than would be necessary if all you were trying to do was
4 equalize population; is that fair?

13:02:39 5 A I'm sorry. Yes, that's fair.

6 Q I'd like to draw your attention, then, to District 2 in
7 the southwest corner. And I just for the record, I'm showing
8 Milligan Exhibit 3 at page 4, plan B, as well as Defendants'
9 Exhibit 4 at Page 71.

13:03:00 10 So we have got a split here between what is 2 and 7. Do
11 you recall why you didn't close this county on the west side of
12 CD 2 and maybe give up some of this county on the east side of
13 CD 2, or vice versa, close one of them? Because it appears you
14 can sort of work your way around, right, and equalize across
13:03:33 15 those four districts here, right?

16 A Let's see. I think that's Clarke County, if I remember
17 right?

18 Q I think that's right, yes.

19 A So this is one of really innumerable choices that you face
13:03:48 20 when drawing. And I think it's probably fair to say that I
21 tried this the other way, which has ripple effects in several
22 other places, and that the top of my consideration was to
23 balance the principles that we have described.

24 Q Okay. But the principle of equal population would not
13:04:11 25 require four splits among these four districts, right? It

1 would only require three splits among these four districts?

2 A The nature of that and of all the requirements is that it
3 interacts with the others to produce the choices that you see.

4 Q Uh-huh. Could it -- I mean, tell me if I'm reading this
13:04:41 5 all correctly.

6 Generally speaking, if we were to close this off here
7 (indicating)?

8 A Uh-huh.

9 Q By expanding 2 out this way, that means we would need to
13:04:55 10 expand 7 into Jefferson County if we were going to avoid
11 splitting another county, correct?

12 A I think it's fairly complicated, but this is one of the
13 reasons that I provided multiple demonstrative maps, and you
14 can see that Clarke County is whole in District 2 in some of my
13:05:16 15 other demonstratives. So that might be a good place to look to
16 explore that counterfactual.

17 Q Okay. But generally speaking, as a map drawer, I mean, it
18 does work a bit like a puzzle, right? So if you push a little
19 here, it's going to -- if you are going -- it's like moving
13:05:35 20 population clockwise in this instance, right? That's going to
21 require population continue moving in some direction in CD 7
22 unless you're going to break into a new county, correct?

23 A Well, I can say that moving population clockwise is
24 certainly not how I was thinking about it as I was drawing.

13:05:59 25 But I take your more general point to be that a choice made in

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1 one place has ripple effects in other places. And I
2 emphatically agree with that.

13:06:22 3 Q Okay. And so if you picked up -- if -- I guess that would
4 mean District 7 would lose some of this population here
5 (indicating), which is generally kind of in this area, which
6 you see some yellow and some orange and a little bit of green
7 in that area of Clarke County on the map, correct?

8 A It's hard to say, but I don't have any reason to doubt
9 you.

13:06:37 10 Q Okay. And then if you were going to -- new voters for
11 District 7 from Jefferson County -- just going to zoom in here
12 -- there's not much green left to take from around here,
13 correct?

14 A Well, you're describing a chain of reasoning that frankly
13:07:02 15 doesn't resemble my process, so it's hard for me to follow
16 along and agree or disagree in a principled way.

17 Q Okay. But if you are going to try to make some changes to
18 this map to give more weight to the minimizing of splits in the
19 counties, you were basically handed this map, that would be one
13:07:36 20 way to do it, right, if you close off Clarke here (indicating),
21 pick up some more people from Jefferson County here, then you
22 have got Shelby County here (indicating), where we could come
23 in, pick up some more people, and then you would come down to I
24 believe this is Barbour County?

13:07:54 25 A That's right.

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1 Q Pick up a few more people here, get the one person one
2 vote, correct?

3 A We are deep into speculative territory that I don't feel
4 comfortable kind of commenting on, on the spot.

13:08:12 5 Q Okay. Do you see a reason why -- just purely
6 mathematically would not be possible to remove one of those
7 county splits from this four-district area if you were setting
8 aside all the other traditional districting criteria that you
9 apply?

13:08:36 10 A Oh, on the contrary, I think you could, and that's
11 reflected in my other demonstratives.

12 Q Okay. Would it be that the -- sort of the nonnegotiable
13 criteria of ensuring that two majority-Black Voting Age
14 Population districts were created explains why there are four
13:08:58 15 splits in counties in this four-district area rather than just
16 three splits in this four-district area?

17 A So at the risk of being repetitive, it's -- there's a
18 balancing of that relatively long list of criteria. And in
19 this map, there's seven splits, and the map is better in some
13:09:22 20 other ways, but I also have a demonstrative plan with as few as
21 five counties that are split.

22 Q Okay. But I think the question was -- I mean, you have
23 got four splits in the four-district area. You would only
24 really need -- mathematically, is it true there would only --
13:09:43 25 it's potentially you could get that down to only three if you

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1 weren't worried about balancing the other factors?

2 A Well, I think my best and fullest answer would be that I
3 do believe other prioritizations of criteria are possible while
4 retaining two majority-black districts. And that in particular
13:10:07 5 as I think I mentioned in direct, if you kept something very
6 much like my District 2 and 7 and, therefore, 1, you have a
7 great deal of latitude with the other four districts to reorder
8 the priorities as you might see fit.

9 Q But maybe with this particular configuration of 2 and 7,
13:10:29 10 you wouldn't have latitude down to just six splits in the
11 counties; is that fair?

12 A Sorry.

13 Q I'm sorry. Go ahead.

14 A Thanks. That's not something I'm prepared to answer in a
13:10:42 15 speculative fashion looking at the map. But something I could
16 certainly sit down with mapping software and explore.

17 Q And I'll just point you here. CD 7, this was from your
18 report, and we looked at these numbers earlier. I am happy to
19 go back if you want to double check them. But I put down that
13:11:05 20 it was 50.24 percent any-part Black Voting Age Population, and
21 if I think we said that 1 percent of Voting Age Population of a
22 typical district is about 5,600 people, so we're talking less
23 than 2,000 people would be your margin for CD 7, correct? So
24 does that sound right?

13:11:32 25 A What exactly is the question? Is the question about

1 removing 2,000 people?

2 Q If you removed -- so if you removed 1,000 black people of
3 voting age from CD 7 and you replaced them with 1,000 non-black
4 people of voting age, that would bring your number down below
13:12:02 5 50 percent, correct?

6 A I don't think 1,000 would be enough from the numbers you
7 were quoting before. It sounded like maybe a few thousand
8 would, but, again, I'd want some time to sit down and get those
9 numbers just right.

13:12:16 10 Q Okay. In any event, the margins are at least -- the
11 margins are somewhat slim for CD 7, fair enough?

12 A I think that the standard is 50 percent plus one person.
13 But 50.24 is certainly less than, say, 51 percent.

14 Q Uh-huh. I will move on to plan C. Zoom out just a
13:12:52 15 little. Can you see that?

16 A I can.

17 Q Okay. And as with the other plans, the map on the left
18 comes from Milligan Exhibit 3 page 4. That's your initial
19 report. The map on the right that corresponds to it is from
13:13:11 20 Tom Bryan's supplemental report, Defendants' Exhibit 4 at page
21 73.

22 So here we've got District 2, and I think this comes from
23 page 8 of your report that shows that it is at 50.06 percent
24 Black Voting Age Population, which by my math, equates to about
13:13:40 25 350 people of voting age? Does that sound sort of in the

1 ballpark?

2 A I think you're asking is it true that .06 percent of the
3 voting age population of a district is a few hundred people?

4 Q Uh-huh.

13:13:56 5 A That sounds reasonable to me.

6 Q Okay. Great.

7 My question here -- we have nine splits in this particular
8 map. I wanted to first ask about the ones here in the
9 southwest corner of the map. What traditional districting
10 principles led you to draw that sliver through Washington and
11 Clarke counties?

12 A Well, I don't specifically recall that decision juncture,
13 but I can imagine that one possibility might have been the
14 compactness of District 7.

13:14:39 15 Q Okay. What leads you to say that, just looking at the map
16 here?

17 A Well, again, if we're looking at the Polsby-Popper
18 measure, or indeed at the Reock measure, in either of those
19 cases, the idealized shape is a circle.

13:15:04 20 Q Uh-huh.

21 A And I can see that this -- it's conceivable -- since you
22 are asking me, I think, to speculate, it's conceivable that
23 this decision was made in order to produce a somewhat rounder
24 District 7.

13:15:17 25 Q Okay. And would another way to do that be to sort of

1 borrow from that hydraulic analogy, move counterclockwise now
2 to maybe pick up some of this intrusion into Jefferson County,
3 and then in the process, make these counties whole?

4 A There are honestly innumerable choices that you face
13:15:49 5 that's really only one of many conceivable ways to balance the
6 decision in a different manner.

7 Q Okay. And so there are numerous ways you could have also
8 potentially made either of these counties whole either as part
9 of District 7 or as part of District 2, correct?

13:16:12 10 A That's correct. And I think that you will find some
11 examples in the other illustrative plans.

12 Q Okay. And you think one reason that there are nine splits
13 in counties in this plan as opposed to six splits in counties
14 is because of your -- the weight you gave to -- I apologize to
13:16:48 15 flip around there -- was because of the weight you gave to the
16 criteria of ensuring two majority-black congressional
17 districts?

18 A There's no question. And I have consistently acknowledged
19 that I took minority electoral opportunity to be a
13:17:09 20 nonnegotiable principle sought in these plans.

21 I will mention here you're also seeing in some of these
22 decisions a high priority on compactness and, of course, on
23 contiguity.

24 Q And we'll get to that in a minute.

13:17:30 25 Turning next to plan B --

1 MR. NAIFEH: Before we move on to plan B, I want to
2 make sure that all of these demonstratives are being marked.
3 So I think we had one for plan B and one for plan C.

4 JUDGE MARCUS: Did you want to mark this one B? This
13:17:54 5 is plan B?

6 MR. NAIFEH: This is D. We also saw B and C.

7 JUDGE MARCUS: So you are asking him to mark B and C
8 as well as D?

9 MR. NAIFEH: Yes, Your Honor.

13:18:05 10 JUDGE MARCUS: Any objection to doing that,
11 Mr. LaCour? Because what you are showing is not exactly the
12 exhibit as it appears in Milligan 3. Plan C, B, and A are what
13 existed, except you typed in some stuff at the top, right?

14 MR. LACOUR: Exactly. No objections, Your Honor, for
13:18:24 15 plan B.

16 JUDGE MARCUS: Why don't we do this: Why don't we
17 just mark your modifications to Duchin's plans B, C, and D as
18 Defendants' identification 3, 4, and 5? If I have the numbers
19 right, I think that works.

13:18:41 20 MR. LACOUR: Yes, that's exactly right.

21 JUDGE MARCUS: Does that work for you, counsel?

22 MR. NAIFEH: Yes, Your Honor.

23 JUDGE MARCUS: All right. So the record is clear, the
24 exhibits being shown to Dr. Duchin by Mr. LaCour are
13:18:59 25 Illustrative Plans A, B, C, and D, which have been modified to

1 typing at the top of the page, county splits, and the
2 percentage of APBVAP in each of Districts 2 and 7. Is that
3 right?

4 MR. NAIFEH: In addition, they have also added a map
13:19:19 5 from Defendants' Exhibit 4.

6 JUDGE MARCUS: That's on the other part of it. The
7 other part of the page includes a defendants' exhibit from the
8 report of the supplemental report of Mr. Bryan. With that
9 caveat, exhibits 3, 4, 5 -- would it be 3, 4, 5, and 6,
13:19:40 10 Mr. LaCour, the four of them?

11 MR. LACOUR: I believe it's 2 --

12 JUDGE MARCUS: We have already marked -- okay, so it's
13 3, 4, and 5 are marked as defendants' exhibits for
14 identification. You may proceed. Thank you.

13:19:56 15 MR. LACOUR: Great.

16 BY MR. LACOUR:

17 Q Dr. Duchin, we now come to plan D. Thank you for your
18 patience.

19 This is one that splits Jefferson County among three
13:20:10 20 different districts, correct?

21 A That's correct.

22 Q Do you recall what percentage of Jefferson County's black
23 residents ended up in your version of CD 7 and what percent
24 were placed into CDs 4 and CD 6?

13:20:30 25 A I don't think I ever calculated those percentages

1 anywhere, including in my reports, but I can tell you that
2 consideration here is to keep the core of the city of
3 Birmingham as whole as possible. It's worth pointing out that
4 the city boundaries here are especially contorted, and so it's
13:20:55 5 very difficult, as in the state's plan, to keep the city
6 completely whole. The city core it's easier to do so.

7 Q Okay. And with that caveat, I mean, does it appear here
8 -- I am zooming in a bit, and I'm sorry it's a little granary
9 -- on Tom Bryan's version of your plan D, does it appear that
13:21:24 10 race predominates in how these particular lines are drawn
11 between District 4, District 6, and District 7?

12 A Frankly, it's just really hard to tell.

13 MR. NAIFEH: Objection to the form of the question.
14 It calls for a legal conclusion.

13:21:45 15 JUDGE MARCUS: Why don't you reframe the question if
16 you could, Mr. LaCour?

17 BY MR. LACOUR:

18 Q Dr. Duchin, looking at the shapes of these lines that
19 separate District 4, District 6, and District 7, is it the race
13:22:07 20 of the population included within District 7, does it appear to
21 be a factor that was used for drawing this particular line?

22 A Okay. So it's very hard to tell just legitimately as a
23 question of the image resolution. But it looks to me that I
24 can see those green colored precincts on both sides of the
13:22:38 25 District 4, District 7 dividing line. At least, that's my best

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1 effort to narrate what I am seeing in this illustration. And I
2 think you would say that if the line was drawn in some
3 predominantly race conscious way, you might expect to see that
4 green population included in District 7. But as I have
13:23:00 5 testified, I only looked at race when drawing specific boundary
6 lines to make sure that I was retaining the majority-black
7 character of the districts that I was drawing.

8 Q Okay. And have you split any precincts in Jefferson
9 County in this particular map?

13:23:22 10 A I think it's very likely practically certain, because as I
11 said before, all the population balancing was done by splitting
12 precincts in those counties that had already been split.

13 Q Okay. Do you recall the racial makeup of the parts of the
14 precincts placed in District 7 versus in another district?

13:23:46 15 A Well, I certainly don't specifically recall that and never
16 computed it. But I will continue to maintain that the race
17 consciousness of selections was only in the service of
18 retaining the majority-black character of the districts as I
19 drew.

13:24:06 20 Q Okay. Take a break from the screen sharing for just a
21 moment.

22 I would like to move on to compactness, and I am going to
23 share the screen again.

24 Going back to Milligan Exhibit 3 and -- okay. So we've
13:24:44 25 got some compactness scores here on page 6 of your report. I

1 believe we discussed some of these this morning, or you
2 discussed some of these this morning with counsel for the
3 Milligan plaintiffs; is that correct?

4 A Yes. This is the section that discusses compactness, and,
13:25:06 5 yes, we discussed it earlier today.

6 Q Okay. And then to summarize, on the average Reock score,
7 the state's plan does the best of any of the five plans here,
8 correct?

9 A That's correct.

13:25:25 10 Q Your plans on average do better than the Polsby-Popper
11 score -- on the Polsby-Popper test?

12 A That's correct. All four illustrative plans are more
13 compact than HB-1 on Polsby-Popper.

14 Q Okay. And then one of your four plans is more compact
13:25:47 15 under the block cut edges approach, and the other three are
16 less compact; is that correct?

17 A That's correct.

18 Q Now, these metrics also be applied on a
19 district-by-district basis, correct?

13:26:08 20 A No. Block cut edges is a plan-wide score, but the other
21 two are averaged over the districts.

22 Q Okay. And so for Polsby-Popper, for example, if a
23 district were shaped like a salamander would score lower on
24 Polsby-Popper than a district shaped like a square, right?

13:26:33 25 A Yes. And there I think you're referring to the original

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1 gerrymander, which was Gary's salamander and, yes, that's part
2 of the history of compactness is the idea that reptilian
3 districts are less compact.

4 Q I thought you would get the reference.

13:26:59 5 In your view, what's the lowest Polsby-Popper score a
6 district could have and still be considered geographically
7 compact?

8 A Well, as I have actually written widely, I think
9 Polsby-Popper scores are highly context dependent. I will be
13:27:18 10 very brief. I won't -- I promise not to give a whole lecture.
11 But in particular, they're subject to what some people have
12 called the coast line penalty. And so, for instance, if you're
13 redistricting in Maryland, you can have a district that's quite
14 functionally compact with a Polsby-Popper score of 10 percent.
13:27:41 15 And so it really depends. You know, on the other hand, if you
16 are in Iowa, it's much -- there's much less reason that you
17 might draw a district that's considered reasonably compact
18 while still having a very low score.

19 Q Okay. Now, you were retained to show that two
13:28:02 20 sufficiently compact majority-black districts could be drawn in
21 Alabama, correct?

22 A Perhaps more broadly as a *Gingles I* expert.

23 Q Right. But you don't report a compactness score anywhere
24 in your three reports for any of the majority-black districts
13:28:21 25 that you drew, correct?

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1 A That's true. I'm sure those numbers are in my backup
2 materials, but I didn't highlight them individually in the
3 report.

4 Q Okay. You think that district-by-district information
13:28:35 5 might be relevant for determining whether you sufficiently
6 compact districts that are majority-black could be drawn in
7 Alabama?

8 A To be clear, actually, I don't think that's the language
9 of *Gingles I*, which asks instead whether the minority
13:28:55 10 population is sufficiently compact to enable the drawing of
11 majority-minority districts.

12 Q Correct. But for the minority population to be
13 sufficiently compact, they would need to be compact within a
14 district, correct?

13:29:11 15 A I think the prevailing interpretation is that to witness
16 the sufficient compactness is to draw an entire plan that's
17 highly conformant with the traditional districting principles.
18 And so I think the overall compactness of the plan is part of
19 how that has traditionally been assessed.

13:29:36 20 Q You had a plan, however, that let's just say had seven
21 districts. Six of them were perfect circles. And the seventh
22 snaked or salamandered (sic) all around the circles, that could
23 return an average score that in theory looked decent, correct?

24 A A few observations about that hypothetical. You are, I
13:30:09 25 think, correctly observing that circles don't pack, they don't

1 fit together nicely to make a whole. And so it's certainly
2 true that if you had several circular districts you would also
3 have to fill up that negative space with something that would
4 not be very compact.

13:30:25 5 Q Uh-huh. And that seventh filler district would not be
6 compact, correct, even if it was part of an overall plan that
7 scored well on average compactness score, correct?

8 A Yes, if I am understanding you right. I think that is the
9 nature of averages that one thing can be lower, other things
10 can be higher, and then there's a balance between the low and
11 the high in the nature of an average.

12 Q So your scores -- the scores you report don't tell us
13 whether the majority-black Districts 2 and 7 that you drew
14 scored better than the District 2 and District 7 that were
13:31:12 15 enacted by the Legislature, correct?

16 A Well, I did review the district-by-district compactness
17 scores in Mr. Bryan's report. And I do agree with them to the
18 number of digits that he included. And so I can report having
19 reviewed and confirmed those numbers that the least compact
13:31:36 20 districts in my plans, which are, I think, invariably not
21 Districts 2 and 7, but Districts 2 and 1, those are always the
22 least compact districts in my plans. Those have lower
23 compactness scores than the other districts.

24 On Polsby-Popper, I am sure we can look at the exact
13:32:02 25 numbers, but from memory, I believe them to be around

1 15 percent, which I will note is comparable to or better than
2 the least compact districts in the state's enacted plan from
3 this cycle and from the last cycle, as well, where districts
4 got as low as .13.

13:32:19 5 Q You think that those district-by-district scores would be
6 relevant, however, to an overall compactness analysis at
7 *Gingles I*?

8 A Yes. I'm trying to make sure I understand. Yes.
9 Individual district scores are how you get the average. And I
13:32:41 10 think it's legitimate to look at the scores individually and
11 together, as we are now doing.

12 Q All right. We'll return to your maps probably not the
13 last time. I will be honest. But let's go again to Exhibit 3,
14 Milligan Exhibit 3, page 4.

13:33:12 15 So did you testify earlier that Districts 4 and 5 in your
16 maps were drawn to make them more compact than they had been
17 earlier? Scratch that.

18 Now, Districts 4 and 5 in each of these maps doesn't bear
19 great resemblance to Districts 4 and 5 in the 2021 map,
13:33:46 20 correct?

21 A That's true. The enacted map, in fact, has elongated
22 districts in the north of the state as I do in the south.

23 Q Nor do they bear much resemblance to the 2011 map that was
24 passed by the Legislature, correct?

13:34:02 25 A That's right. It is similar in that respect.

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1 Q Why was it important to you to restructure Districts 4 and
2 5 in your maps when neither of them were adjacent to the new
3 majority-black district you were drawing down in the south of
4 the state?

13:34:22 5 A Oh, I hope the reason is quite clear. It's because, as I
6 said, I regarded compactness to be a priority higher ranked in
7 the state guidelines and more broadly than the preservation of
8 district cores.

9 But to answer that fully, I think it's worth noting that
13:34:45 10 you can retain the majority-minority districts and make other
11 choices with those four while still keeping *Gingles I* in place.

12 Q You didn't produce a map for the Court, though, that tried
13 to do that, did you?

14 A That's right. Because of my reading, that compactness was
13:35:06 15 higher ranked.

16 Q And why -- did you say it was something in the guidelines
17 that led you to prioritize compactness over cores of districts?

18 A I did.

19 Q Can you remind me exactly what that was, or I can perhaps
13:35:32 20 pull up the guidelines, if that will be helpful?

21 A I'm happy to do it broadly, and then we can pull them up
22 if you would like to quote directly.

23 But as I showed when we reviewed the guidelines together
24 earlier, the first page discusses population equality and
13:35:51 25 minority opportunity to elect hand in hand with equal

1 protection. Immediately after that are listed compactness and
2 contiguity. Several parts lower is section J, which lists
3 several criteria, including district cores, and then it is
4 specified that within j., the priorities are unranked, which
13:36:18 5 leads me to conclude in a manner that comports with practice in
6 every other state that I've seen that the federal requirements
7 and compactness and contiguity are to be considered higher
8 ranked than district cores, and for that matter, the
9 consideration of incumbency.

13:36:38 10 Q Okay. I am going to pull up the guidelines. I just want
11 to make sure we're looking at the same thing.

12 This is Milligan Exhibit 28 and -- so I think you're
13 referring here -- starting on page 2 at line 21, was it based
14 in part on -- if I am getting you wrong, I apologize -- on this
13:37:23 15 line here saying, The following redistricting policies are
16 embedded in the political values, traditions, customs and
17 usages of the state of Alabama, and shall be observed to the
18 extent that they do not violate or subordinate the foregoing
19 policies prescribed by the constitution and laws of the United
13:37:37 20 States and of the state of Alabama?

21 A That's right. I think that it's clear both from that
22 language and from part g. on the next page. There it is. So
23 you see clearly here that it is specified that within j.,
24 there's no order of precedence to be inferred. And I think the
13:38:07 25 plain reading of that is that, in the larger structure of the

1 document, there is an order of precedence to be inferred.

2 Q Okay. Is compactness listed in j.?

3 A No. It -- indeed, this is my point. It comes before j.

4 If you flip back to the previous page, you will see that

13:38:29 5 compactness is listed up in h.

6 Q Okay. And then to go back to page 3, it says -- and to g.

7 The criteria identified in paragraphs j(i) through (vi) are not

8 listed in order of precedence, and in each instance where they

9 conflict, the Legislature shall at its discretion determine

13:38:52 10 which takes priority.

11 Do you read that to mean that if there's a conflict among

12 the j. criteria and the Legislature gets to decide, and any

13 other criteria trumps the j. criteria when there's a conflict?

14 A The ones that are listed earlier, I would say that this

13:39:16 15 indicates that the j. criteria are subordinate to the ones that

16 are listed earlier.

17 And I would add to that, that it's my understanding -- not

18 being an attorney -- it's my understanding that these

19 guidelines are not part of state law, but describe the practice

13:39:35 20 that the Legislature uses to draw lines.

21 Q Okay. Your position, looking in here at the beginning of

22 j. refers to constitution and laws of the united States and the

23 State of Alabama, your position is not that compactness is a

24 constitutional requirement, correct?

13:39:58 25 A That's correct.

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1 Q Or that compactness is required by federal law or Alabama
2 law?

3 A I can't speak to whether it's considered to be part of
4 Alabama law, not being an expert in Alabama law.

13:40:13 5 Q Fair.

6 A But I am aware that it's not considered to be federal law.

7 Q Okay. Did you look at Alabama practice, either in this
8 past redistricting cycle or past decades to see whether it
9 looked like the Legislature has been giving compactness that
10 level of priority as opposed to core retention?

11 A My principle means of learning about Alabama practice was
12 a study of the enacted plans from 2021 and from 10 years
13 earlier in 2011. And as one often does, when trying to
14 understand redistricting priorities, I did infer some
15 priorities and interpretations from the properties of those
16 plans.

17 Q And was respect for core retention one of the guiding
18 principles that you were able to infer from looking at the 2011
19 map as opposed -- or when compared to the 2021 map?

13:41:29 20 A Oh, I certainly agree that core retention seems to have
21 been highly prioritized in the creation of the 2021 plan.

22 Q Let's see. Turning now to communities of interest.

23 You referred this morning to the fact that there has not
24 been a sustained effort to map out or quantify all the
13:42:05 25 different communities of interest that might be present in the

1 state of Alabama; is that correct?

2 A Oh, I think that goes farther than my statement. I just
3 said I wasn't aware of a state effort, and that I had checked
4 the state's redistricting website to confirm that.

13:42:26 5 Q Did you look at past maps to see if you could infer from
6 them any communities of interest?

7 A Well, I think it would be quite difficult to read
8 backwards to reverse engineer, you might say, communities of
9 interest from a map, particularly since, as I said this
13:42:52 10 morning, I don't think that each district itself constitutes a
11 unitary community.

12 But I did get some ideas about splittings from the state's
13 earlier plans, and as I mentioned, from the state's current
14 board of education plan.

13:43:11 15 Q Did you get any ideas about -- the opposite of
16 splittings -- keepings together, if you will, from the past
17 maps?

18 A Did I get any ideas about areas that were kept together,
19 sure. By observation I could see some areas that hadn't been
13:43:34 20 split. I'm trying to stay with the spirit of your question.

21 Q Okay. For example, how far back did you look at past maps
22 from -- past congressional maps from Alabama?

23 A As I've testified, I focused on the last two, on the maps
24 from 2011 and 2021.

13:43:58 25 I have definitely reviewed some older maps, but that would

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1 be longer ago and farther from the current process.

2 Q Okay. So you couldn't say, for example, if two gulf
3 counties, Mobile and Baldwin, have been together in the same
4 district for half a century or not?

13:44:18 5 A I couldn't. Not with a high degree of certainty. But I'm
6 willing to believe that that's true at the congressional level.
7 It's certainly the case that Mobile County is split in the
8 current State Board of Education map, and that parts of Mobile,
9 city and county, are connected to parts of the Black Belt.

13:44:45 10 Q I will have a few questions for you about a map in a
11 moment. But returning to communities of interest. You said in
12 your report that it was possible to identify several clear
13 examples of communities of interest of particular salients to
14 black Alabamians.

13:45:06 15 Am I recounting your testimony from this morning correctly
16 that the two you focused on were preserving the cores of urban
17 areas and preserving just the core of the Black Belt?

18 A I would say -- the way I described it is retaining as much
19 of the Black Belt as possible in majority-black districts.

13:45:30 20 Q Okay. Now, the Black Belt counties with the exception,
21 perhaps, of Montgomery, do not contain those large urban
22 centers that you were referring to, correct?

23 A That's right. I would say Montgomery is the clearest
24 exception.

13:45:50 25 Q Okay. So did you take into account any other communities

1 of interest?

2 A The only two kinds that I considered were the two that you
3 just cited.

4 Q Okay. And it's possible there are communities of interest
13:46:18 5 that are relevant to white and black Alabamians alike, correct?

6 A No question about that. In particular, I think urban
7 cores are relevant to black and white Alabamians alike.

8 Q Were you able to infer from looking at the 2011 and 2021
9 maps how the Legislature has applied the community of interest
13:46:43 10 factor in the past?

11 A Well, as I've said --

12 MR. NAIFEH: Asked and answered.

13 JUDGE MARCUS: I think it has been. Sustained.

14 BY MR. LACOUR:

13:46:57 15 Q You know, could community of interest consideration
16 explain why Mobile and Baldwin counties were kept together in
17 2021?

18 A Did you say could it or did it explain?

19 Q Could it?

13:47:09 20 A Could it. Certainly could.

21 Q Could a community of interest explain why the Wiregrass
22 counties were kept together in the 2021 map?

23 A It certainly could.

24 Q Okay. And similar question, could communities of interest
13:47:26 25 considerations explain why Madison and Morgan counties were

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1 kept together in the 2021 --

2 MR. NAIFEH: Objection here to this line of
3 questioning. It's calling for speculation.

4 JUDGE MARCUS: Okay to answer if she can give it to
13:47:42 5 us.

6 THE WITNESS: I'm willing to concede that it could,
7 but I was unable to find any systematic description of what
8 communities were considered. I would have indeed been very
9 happy to find such a description.

13:47:53 10 BY MR. LACOUR:

11 Q Could you describe the nature of your inquiry into how
12 that guideline might have been applied? I think you said you
13 looked for anything the state had put together. Did you do
14 anything further?

13:48:09 15 A No, that's all that I did to ascertain whether there had
16 been a state publication or a state collection process.

17 Q Okay. Now, I think you said earlier it was an express
18 goal of yours to keep the Black Belt counties in majority-black
19 districts to the extent you could. Is that fair?

13:48:40 20 A Yes.

21 Q And is it fair to say that you testified this morning
22 that's part of the reason why your compactness scores for CD 1
23 and CD 2 were lower, correct?

24 A That's right. Oops. Sorry.

13:49:01 25 Q Go ahead.

1 A That's right. The elongated east to west nature of the
2 Black Belt itself is the reason that CD 2 is also elongated in
3 east to west fashion and because that's close to the south of
4 the state, that ends up prescribing elongation for District 1,
13:49:26 5 as well.

6 Q Okay. So the goal of a majority-black district or rather
7 the goal of two majority-black districts that held most of the
8 counties in the Black Belt took precedence over compactness in
9 District 2?

13:49:43 10 A No. I can't agree with that. In my understanding of what
11 by Alabamalites should be considered reasonably compact, I used
12 the state's plan as a guide where the least compact district
13 from 10 years ago had a score, a Polsby-Popper score of .13.
14 All of my districts are more compact than that. So I think I
13:50:10 15 was able to maintain reasonable compactness by Alabama
16 standards in my entire plan.

17 Q Now, none of your plans put all 18 Black Belt counties
18 into one district, correct?

19 A That's correct. Although if -- I'm sorry.

13:50:30 20 Q No. Go ahead.

21 A If I remember right, at least one plan puts all 18 Black
22 Belt counties into either District 2 or District 7.

23 Q I'm not a hundred percent certain that's correct. But we
24 can --

13:50:51 25 A I am confident --

1 Q We can turn to the maps?

2 A Sure. By memory, that's plan D.

3 Q Okay. And -- well, I've got plan D here, so... and

4 Milligan Exhibit 3, page 4. So I believe this is also a Black

13:51:22 5 Belt county, correct, where at least some of it is in

6 District 3?

7 A Indeed, that's right. And that should be Russell, I
8 think.

9 Q I believe --

13:51:32 10 A Which --

11 Q Correct.

12 A In plan C then. Russell is whole and is included in CD 2

13 as is the rest of the Black Belt included in either CD 2 or

14 CD 7.

13:51:46 15 Q Pickens in CD 3 in plan C is CD 4, correct?

16 A So that is not one of the 18 counties traditionally
17 identified with the Black Belt, although I agree with you that
18 sometimes is included on secondary lists.

19 Q Going to page 10 of your report. I think you list here

13:52:20 20 among the 18 Black Belt counties, Pickens county, correct?

21 A That's true that's listed there and not exactly sure which
22 one it is from memory in the map. But I will accept your
23 representation if you're saying that it's excluded in plan C.

24 Q Our count was that the 18 counties were split among at

13:52:53 25 least three districts in each map, but we can certainly compare

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1 and contrast that later.

2 A Sure. I would be happy to do that later.

3 Q I want to get back to -- so do you recall if there was a
4 reason why all 18 counties were not placed into just two
13:53:21 5 districts instead of three?

6 A Well, again, with apologies for repetition, one is
7 balancing as a mapmaker. Quite a formidable number of
8 different priorities, and it's possible that that goal was only
9 attained in 17.5 counties, which is I think what we see in
13:53:43 10 plan B, 17.5 out of 18.

11 I would submit that that's quite a ways towards the goal
12 of securing representation in majority-black districts
13 throughout the Black Belt. And to that I would only add one
14 could certainly get all 18, but it would come at a cost to
13:54:06 15 other principles as we keep hearing.

16 Q Would it potentially come at a cost to two majority-Black
17 Voting Age Population districts?

18 A So now I think you're asking is it possible to get all 18
19 into Districts 2 and 7 in a plan where those remain
13:54:29 20 majority-black, right?

21 Q Right.

22 A I am confident that that's possible. But it would require
23 either more county splits or less compactness and more likely
24 both.

13:54:41 25 Q Okay. So if your goal was to get most of the Black Belt

1 counties both together and into majority-black districts, would
2 it be fair to say the community of interest you were trying to
3 keep together was not so much the Black Belt as it was just
4 black people more generally?

13:55:05 5 A No, I don't think so. I don't think anywhere here or ever
6 have I identified black people, full stop, as a community of
7 interest. Communities of interest, in my understanding, are
8 primarily geographical. And so that would not qualify.

9 Q Okay. I will take this down.

13:55:37 10 Okay. Do you recall from the guidelines a statement we
11 were looking at just a moment ago that says contest between
12 comments will be avoided whenever possible?

13 A That's right. If I recall, that's in that section j. that
14 we discussed.

13:56:00 15 Q Right. And you didn't address incumbents anywhere in your
16 report, did you?

17 A That's right. I did not, although I did obtain a list of
18 incumbent addresses while forming the plans. Those were not
19 part of the primary plan drawing. I did look at the number of
13:56:24 20 districts pairing incumbents at the end, although that's not
21 included in the report.

22 Q Okay. So you know whether the maps place one incumbent in
23 each district or whether they put multiple incumbents in some
24 districts?

13:56:42 25 A From memory, I think it's the case in all four of my

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1 illustrative plans that there were two districts with multiple
2 incumbents, either two incumbents or in some cases even three.

3 Q Okay. And if Tom Bryan's supplemental report indicated
4 that between four and five incumbents in two different
13:57:07 5 districts --

6 A That's consistent -- sorry.

7 JUDGE MARCUS: Let him finish the question. Was there
8 a question there, Mr. LaCour? If there was, let me hear it,
9 please.

13:57:19 10 BY MR. LACOUR:

11 Q Yeah. So if Tom Bryan's report, Defense Exhibit 4 at page
12 16 indicated that your plan places four and five incumbents in
13 districts with each other. Do you have any reason to doubt
14 that conclusion?

13:57:33 15 A No. On the contrary, I agree with that conclusion, that
16 there are either two districts with two incumbents making four
17 overall, or one with two and one with three making five
18 overall.

19 Q And you said you didn't consider incumbents at the outset
13:57:46 20 of your map drawing process?

21 A That's correct.

22 Q Did you consider them at any point in your map drawing
23 process?

24 A I did look at the end state the finalization stage to see
13:58:00 25 whether it would be possible to reduce the incumbency

1 pairing -- not to reduce incumbency itself. And I -- I
2 determined that it would be possible, for instance, to keep
3 Representative Sewell in District 7, which she has represented,
4 and I believe that my plan D does so. That was accomplished
13:58:28 5 with little cost to the other principles.

6 I also satisfied myself that it would be possible to
7 further reduce the incumbency pairing and indeed to reduce it
8 to no pairing at all if we are willing to sacrifice the
9 higher-ranked principles of compactness, and certainly
13:58:50 10 contiguity, but also if we are willing to sacrifice the county
11 integrity.

12 Q And there's a lot to be accomplished if you sacrificed
13 contiguity, correct?

14 A Yes. Although as we heard in the Massachusetts example,
13:59:04 15 not everything.

16 Q Not everything. You don't think it's possible to draw a
17 geographically -- or basically you don't think it's possible to
18 draw a map that is as compact as the maps you have produced as
19 the other criteria to the extent you've applied them also
13:59:29 20 avoids pairing incumbents and results in two majority-black
21 districts?

22 A I think what I'm comfortable saying is that to reduce
23 pairing of incumbents all the way to zero could still be
24 accomplished with two majority-black districts, I think that it
13:59:49 25 can, but at significant cost to the other principles. If I

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1 could add one thing.

2 Q Please.

3 A Just to illustrate some of the tradeoffs that that
4 requires, I note in my report that two incumbents actually live
14:00:05 5 not only in the same county, but a few highway exits apart.

6 And so it's clear that to keep those incumbents in different
7 districts, of course one has to split that county. That's just
8 a small illustration that it can literally require sacrifice to
9 the other principles in order to raise the priority on
14:00:31 10 incumbent protection.

11 Q One second. I apologize.

12 Okay. Turning to back to core retention. So you looked
13 at the 2011 map and you looked at the 2021 map. Before you got
14 started drawing your own illustrative maps. And you said
14:01:12 15 earlier that it -- you could infer that core retention might
16 have been important to the 2021 Legislature. Is that fair?

17 A In fact I inferred that it was.

18 Q Okay. I think you testified earlier today that it is
19 impossible to have as high a core preservation as the 2021 map
14:01:36 20 has while having two majority-black districts; is that correct?

21 A Yes, I believe that to be a simple matter of numbers.

22 Q Okay. When you were gearing up your algorithm, did you
23 try to preserve some degree of the core of districts in drawing
24 your first few thousand maps or --

14:01:59 25 A That was -- I'm sorry.

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1 Q Sorry. Go ahead.

2 A That was not a consideration.

3 Q Okay. What preservation like some of the other criteria

4 -- I mean, it could be a matter of degree. Would you agree?

14:02:18 5 A Yes, I would.

6 Q So you could try to preserve 80 percent of the cores of
7 districts or on average try to preserve 80 percent of the cores
8 of districts as one of your goals, correct?

9 A You could adopt that as a goal. That's the question?

14:02:38 10 Q Yes.

11 A Yes, you could.

12 Q And could your algorithm pull that in as constraints or as
13 a preference in producing maps?

14 A Yes, I have done that in the past in other states.

14:02:55 15 Q Okay. But not in this case, correct?

16 A I did not include that in this case.

17 Q Core retention is a traditional redistricting principle,
18 correct?

19 A Well, I would say that like incumbency consideration, it
14:03:13 20 is expressly encouraged in some states and is prohibited in
21 others as a consideration making it somewhat less traditional.

22 Q But it's not uncommon for a legislature when it sets down
23 to draw a new set of maps to start with the old set of maps,
24 correct?

14:03:35 25 A That requires me to speculate about process. Although I

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1 do think it's a reasonable inference.

2 Q Okay. In any event, it was inference you made in Alabama
3 for 2021, correct?

4 A That's right.

14:03:51 5 Q So you mentioned the State Board of Education map a few
6 times today. And you said that was informative for you in
7 drawing your illustrative plans?

8 A I considered it. I wouldn't put it high up on the list of
9 considerations, but at some point in the line drawing process I
14:04:26 10 became curious just how that second majority-black district was
11 formed.

12 Q Uh-huh.

13 A And so I looked to that map to give me a sense of
14 priorities that the state had in drawing it.

14:04:43 15 Q Okay. In trying to draw a congressional map in
16 understanding the state's priorities, do you think the way the
17 state drew its 2021 congressional map would be a more
18 informative source, or the way it drew its 2021, eight-member
19 State Board of Education map?

14:05:00 20 A I treated them both as highly informative.

21 Q Okay. Do you think one would be more informative than the
22 other?

23 A That's hard to say. I mean, we are talking about a
24 congressional plan, but if the question that you're seeking to
14:05:20 25 answer is how to make a decision that is not present in the

1 congressional plan, then I think you would find the board of
2 education plan to be more informative.

3 Q Okay. Do you know when the State Board of Education map
4 in Alabama first featured a split in Mobile County?

14:05:44 5 A In other words, do I know what it looked like in 2011? Is
6 that the substance of the question?

7 Q Yes.

8 A I don't actually know that.

9 Q I am going to show you Defendants' Exhibit 26.

14:06:13 10 So this is defense Exhibit 26. I will represent to you
11 that this is the State Board of Education map that was drawn
12 after the 2000 census?

13 A Right.

14 Q Do you see here Mobile County is not divided up in this
14:06:28 15 map, correct?

16 A I thought you were just asking about the 2011 plan, but
17 this one is 20 years old, just to be clear, yes?

18 Q Yes. And I'll -- I am going to move from this to the '21
19 map and bring us all the way to the present.

14:06:45 20 A Understood.

21 Q So you see Mobile County is not split. Is that fair?

22 A That is fair.

23 Q And it's in a district with Baldwin County and I believe
24 that's Escambia?

14:06:58 25 A I accept that.

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1 Q We have got District 5 that covers a great portion of the
2 Black Belt; is that correct?

3 A It is correct.

4 Q Okay. And 2011, Alabama would still have been subject to
14:07:19 5 Section 5 of the Voting Rights Act, correct?

6 A Certainly true.

7 Q Okay. So before enforcing a new State Board of Education
8 map, Alabama would need to obtain preclearance of that map
9 either from the Department of Justice or from a federal
14:07:35 10 district court in Washington, D.C., correct?

11 A Yes, that's my understanding.

12 Q And that process typically required a covered jurisdiction
13 like Alabama to prove that its new districts did not result in
14 retrogression.

14:07:52 15 MR. NAIFEH: Object here that this is calling for
16 legal conclusions.

17 JUDGE MARCUS: What is it you are trying to get her to
18 tell us, whether it amounts to retrogression as a matter of law
19 under the Voting Rights Act? If you are asking for that, that
14:08:06 20 calls for a legal conclusion and her expertise does not include
21 that.

22 MR. LACOUR: I'm asking --

23 JUDGE MARCUS: Let me finish, please. If you are
24 asking something else, Mr. LaCour, please let me know what that
14:08:17 25 would be.

1 MR. LACOUR: I was asking simply as historical matter
2 in 2011 if we wanted to -- if Alabama wanted a new map to take
3 effect, they would need to show the DOJ typically that this new
4 map would not have a retrogressive effect when compared to the
14:08:38 5 baseline old map.

6 JUDGE MARCUS: If you are asking her to tell us what
7 would have had a clear justice as a matter of retrogression.

8 MR. LACOUR: No, Your Honor, it's simply whether the
9 state --

14:08:54 10 JUDGE MARCUS: It's probably me, but I am not getting
11 the question.

12 MR. LACOUR: The question basically was to pass
13 preclearance, the state would typically need to satisfy either
14 the U.S. Department of Justice or the district court for the
14:09:11 15 District of Columbia that its new policy or its new map in this
16 instance was not retrogressive.

17 MR. NAIFEH: That is a legal question and it's also
18 outside the purview of the court.

19 JUDGE MARCUS: The objection is sustained.

14:09:30 20 BY MR. LACOUR:

21 Q You did say earlier, Dr. Duchin, though, that Section 5
22 did apply to Alabama in 2011; is that right?

23 A That's right. The Shelby County decision was in 2013 as I
24 recall.

14:09:42 25 Q I'd like to show you next Defendant's Exhibit 27.

1 This is a complaint that the state filed in the district
2 court for the District of Columbia in 2011 seeking preclearance
3 of its 2011 State Board of Education districts, as well as, I
4 believe, its congressional districts.

14:10:23 5 MR. NAIFEH: Objection. This is -- there's no
6 foundation that she's ever considered this document or for the
7 content that Mr. LaCour is describing.

8 JUDGE MARCUS: Let me ask you: Was that one of the
9 exhibits you objected to? 27?

14:10:37 10 MR. NAIFEH: We don't have an objection to the exhibit
11 coming in, but I have an objection --

12 JUDGE MARCUS: The reason I raised that --

13 MR. NAIFEH: -- characterization of the exhibit on the
14 record without asking the question.

14:10:47 15 JUDGE MARCUS: The reason I raised the question is I
16 understood that the Milligan plaintiffs objected to the 2011
17 plan, the complaint in Alabama, the holder on the grounds that
18 the documents from the litigation between the State of Alabama
19 and the DOJ were not relevant. You are not interposing that
14:11:13 20 objection?

21 MR. NAIFEH: Well, we -- I am -- I object to the
22 relevance unless he can lay a foundation for its relevance. So
23 if he wants to lay a foundation for its relevance.

24 JUDGE MARCUS: Can you tell me, Mr. LaCour, just
14:11:27 25 briefly what it is you want to do with this?

1 MR. LACOUR: So we've heard from Dr. Duchin that she
2 found it persuasive that the State Board of Education map has
3 split Mobile in order to form a second majority-minority
4 district and that that might be some evidence that the
14:11:47 5 Legislature used that as or maybe needed to preserve a
6 community of interest, or as the -- otherwise, like generally
7 fine with splitting Mobile. I think if you see the 2001 map we
8 were looking at earlier, or together, the 2011 when the census
9 was drawn -- when the census was complete, District 5 which was
14:12:17 10 heavily Black Belt lost a lot of population and then to avoid
11 retrogression, the least evidence suggests that to avoid
12 retrogression, that is why Mobile was split and added -- City
13 of Mobile was added to Section 5. And --

14 JUDGE MARCUS: Let me stop you at that point. All of
14:12:43 15 that may be true. But if we unpack it piece by piece, just ask
16 your question and see where we are going to go.

17 Just take it piece by piece if you want to get into this
18 and I can address each objection as you go along.

19 MR. LACOUR: Sure.

14:13:00 20 BY MR. LACOUR:

21 Q So, Dr. Duchin, you looked at the 2001 map with me a
22 moment ago for the State Board of Education.

23 A Yes.

24 Q And District 5 covered a large portion of the Black Belt;
14:13:14 25 is that correct?

1 A Yes.

2 Q Does it surprise you to learn between the 2000 census and
3 2010 census that district lost a great deal of population when
4 compared to other districts in the State Board of Education
14:13:32 5 map?

6 A That would not particularly surprise me to learn.

7 Q And thus, if the state were to try to maintain a
8 comparable black population within District 5, they would need
9 to go somewhere to get that population, correct?

14:13:54 10 A That's one way of putting it.

11 Q Maybe not the most eloquent way of putting it.

12 Could that explain why District 5 thus was expanded into
13 Mobile city in the 2011 map for the State Board of Education?

14 MR. NAIFEH: Object. It calls for speculation.

14:14:17 15 JUDGE MARCUS: Objection is sustained.

16 BY MR. LACOUR:

17 Q Very well.

18 JUDGE MARCUS: So you understand it, Mr. LaCour, you
19 are asking Dr. Duchin to tell us to the extent she knows why it
14:14:30 20 is that the state redrew the boundary lines the way they did
21 between '01 and '11. And I'm not sure that you have laid any
22 foundation that she has any knowledge of doing that. The
23 objection is sustained. Let's move on.

24 MR. LACOUR: Absolutely.

14:14:46 25 BY MR. LACOUR:

1 Q Okay. So we are getting close to the end, Dr. Duchin. I
2 appreciate your patience with me today.

3 Returning to something you said near the beginning. You
4 talked about how you used your -- the algorithm and algorithmic
14:15:15 5 computer system to generate a large number of maps.

6 A Yes.

7 Q And you had certain constraints put in on the front end
8 when you started generating those maps. And I believe you said
9 minimum population deviation, I think, was it plus or minus
14:15:34 10 1 percent?

11 A Yes.

12 Q And contiguity was baked in, as well, correct?

13 A Correct. The algorithm always enforces contiguity at the
14 VTD level and the population deviation threshold can be
14:15:52 15 specified by the user.

16 Q Okay. What other constraints did you program in at the
17 outset before you started generating maps?

18 A The only other constraints -- okay. So I doubt that you
19 want to hear specifics, but if you do, I'm happy to expound on
14:16:15 20 any of this, so let me know.

21 The algorithm in general has a strong preference for
22 compactness that's, as you said, baked in. It doesn't have to
23 be set by the user. The way that districts are formed, it's
24 done in a manner that generally strongly favors compactness,
14:16:34 25 particularly by the cut edges definition that I described

1 earlier.

2 The only other constraint that was added in that early
3 algorithmic -- in fact, not a constraint, but an algorithmic
4 preference, was to prefer plans in which there would be a
14:16:54 5 second majority-minority district. And I can explain how that
6 was done, if you would like to hear.

7 Q That would be great.

8 A Sure. So if you look at the BVAP in all seven districts
9 of a plan, we used what's called an objective function. In
14:17:13 10 other words, a function that sets a goal. And that function
11 credited a point to a plan with a majority-minority district
12 and then took the BVAP in the second district, second highest
13 BVAP, and added it to that. So that, for example, a plan with
14 one district at 52 percent and a second at 47 percent would get
14:17:39 15 a 1.47 score.

16 Am I making sense so far?

17 Q As much sense as you will make to me.

18 A Thanks for saying. I appreciate that.

19 So -- and then the way the algorithm is what's called a
14:17:58 20 mark-off chain, and it randomly proposes a new district
21 configuration and then flips what you can think of as a
22 weighted coin, and so the probability of acceptance was higher
23 if that score was greater. And in that way, an algorithm like
24 that can be shown -- there's -- my lab has published papers on
14:18:16 25 this topic. An algorithm like that can be shown to do a good

1 job at finding plans that are worthy of consideration in
2 *Gingles* I direction.

14:18:40 3 Q Okay. But you did not run the algorithm without that
4 strong preference for two majority-black districts, then, did
5 you?

6 A I did, in fact.

7 Q Okay. How many maps were generated when you did that?

8 A In fact, I have a publication where I do that in Alabama.
9 And in that paper, we generated 2 million districting plans for
14:18:59 10 Alabama, which I think we'll agree is quite a few. And we
11 found some with one majority-black district, but never found a
12 second with a majority-black district in 2 million attempts.
13 But, again, that's without taking race into account in any way
14 in the generation process.

14:19:19 15 Q Okay. So if you programmed into the algorithm traditional
16 districting criteria that did not include race, and you
17 generate 2 million maps, not one of them would have two
18 majority-black districts in it?

19 A Well, I have to say that I regard minority opportunity to
14:19:42 20 elect as an important traditional principle. So I don't know
21 of a way to talk about the traditional principles that is truly
22 race blind.

23 Q Would -- I think you -- would you characterize a map,
24 then, that -- assuming for a second that principle of
14:20:10 25 avoiding -- put it as minority vote dilution or creating

1 minority opportunity, how would you state the principle? I
2 want to make sure I'm stating it as you would.

3 A Minority opportunity to elect, I have called it, or
4 minority electoral opportunity.

14:20:27 5 Q Okay. So if we remove that sort of more race focused
6 minority opportunity to elect factor from the process and you
7 run your 2 million maps, if you were to get a map that had two
8 majority-minority districts that was manmade, that would
9 suggest as an extreme outlier, correct, if it was purporting to
14:21:00 10 apply the same traditional race blind districting principles?

11 A Just -- as someone who uses that term professionally quite
12 a bit, I think that's a misuse of the term.

13 Q How so?

14 A So the term extreme outlier implies a probability
14:21:21 15 distribution in which you're in the tails. If -- I don't
16 understand any way to construct a probability distribution that
17 reflects the traditional principles and is race blind. As I've
18 said, I think it's part and parcel, in fact, of the
19 nonnegotiable federal level principles. And so I don't know of
14:21:42 20 a way to talk about the traditional principles as a package
21 that is race blind.

22 Q Okay. So you offered no opinion in -- I'm sorry. Please
23 finish if --

24 A Well, I only was going to say that I don't mean to be
14:21:57 25 resisting the question. I am trying to characterize it in

1 language I am comfortable with.

2 Q Yeah. This is helpful.

3 So you don't offer any opinion, then, in this case as to

4 whether you could get -- whether it's possible to draw two

14:22:14 5 majority-minority districts in Alabama that respect traditional

6 districting criteria in a race blind way?

7 A It is certainly --

8 MR. NAIFEH: Objection. That mischaracterizes what

9 she said.

14:22:31 10 JUDGE MARCUS: Let's finish the question. Before you

11 answer, Dr. Duchin, give us a chance. I am not sure I heard

12 the entire question. The objection came in at the tail end of

13 the question. Let's ask it crisply and then we will hear the

14 objection.

14:22:48 15 MR. LACOUR: Thank you, Your Honor.

16 BY MR. LACOUR:

17 Q So Dr. Duchin, you said before that you don't really know

18 how to take into account traditional districting criteria

19 without also including that more race focused criteria of

14:23:03 20 ensuring minority representation, correct?

21 A I do know how to run algorithms that are race blind, but I

22 don't know how to think of those as answering to the

23 traditional principles. They equally -- just to illustrate, I

24 can also run algorithms that don't equalize populations and let

14:23:25 25 some districts get ten times as big as others. But then I

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1 think we've departed from the traditional principles.

2 Q Okay. So you offer no opinion, then, in this case,
3 though, as to whether it's possible to draw according to all
4 traditional redistricting criteria minus that one -- the race
14:23:48 5 focus criteria of two majority-black districts in the state of
6 Alabama?

7 A That question I can certainly answer.

8 It is possible, because the world of possibility includes
9 my demonstrative maps, which could be arrived at through a
14:24:07 10 random process. So it is certainly possible.

11 Q Okay. But when you applied a random process in that study
12 you referenced earlier and you drew 2 million maps, not one of
13 them came back looking anything like one of the four
14 illustrative maps, at least when it comes to Black Voting Age
14:24:30 15 Population in two districts?

16 A Well, I can't answer whether one of them had a
17 majority-black district and a second that was 49.999, in which
18 case it could closely resemble one of the ones that I drew.
19 But I can say that my understanding is that race consciousness
14:24:51 20 is expressly permitted in order to achieve minority electoral
21 opportunity, and in particular, in order to draw majority-black
22 districts, stands to reason that one must consider race. And I
23 think the study that I referenced showing that it is hard to
24 draw two majority-black districts by accident shows the
14:25:15 25 importance of doing so on purpose.

1 Q So -- okay. Sorry. One moment, please. Are you familiar
2 with Dr. Imai -- I'm -- try to say his first name -- I know
3 I'll get it wrong. Dr. Kosuke Imai?

4 THE WITNESS: It's Kosuke and certainly his -- he and
14:25:50 5 I have talked for many years about the development -- or for
6 districting algorithms.

7 BY MR. LACOUR:

8 Q Okay. He also engages in extreme outlier analysis,
9 correct?

14:26:02 10 A He does.

11 MR. NAIFEH: I am going to object. This is outside
12 the scope of direct and outside the scope of her opinions in
13 this case.

14 JUDGE MARCUS: Are you asking her to comment on
14:26:13 15 Dr. Imai's opinion?

16 MR. LACOUR: Your Honor, she said a moment ago that
17 she would reject the --

18 JUDGE MARCUS: I'm asking you whether you are asking
19 her to comment about Dr. Imai's opinions.

14:26:23 20 MR. LACOUR: Not to question his opinions, but to see
21 if her -- his opinions might affect her opinion of what is
22 possible when it comes to drawing majority-black districts in
23 Alabama.

24 JUDGE MARCUS: You might ask if she is familiar with
14:26:44 25 his opinion in this case.

1 BY MR. LACOUR:

2 Q Dr. Duchin, you are familiar with Dr. Imai's opinions in
3 this case?

4 A Absolutely not. In fact, I only very recently learned
14:26:54 5 that he was a witness in this case at all.

6 Q Okay. Would it surprise you if I told you that he drew
7 30,000 sample maps?

8 MR. NAIFEH: Objection.

9 JUDGE MARCUS: Let him finish the question,
14:27:14 10 Mr. Naifeh. Please.

11 BY MR. LACOUR:

12 Q Would it surprise you if I told you that he ran an
13 algorithm that produced 30,000 sample congressional maps in the
14 state that adhered to certain traditional districting criteria,
14:27:31 15 including incumbency which I know your maps did not, and that
16 of the 30,000 maps, not one of them came back with two
17 majority-black districts?

18 JUDGE MARCUS: The objection is sustained.

19 MR. LACOUR: Okay. Let me just have one moment to
14:27:57 20 confer with my colleagues.

21 JUDGE MARCUS: Sure. Take your time.

22 (Mr. LaCour confers with co-counsel.)

23 BY MR. LACOUR:

24 Q Two quick final questions, and then I can let you go.
14:28:24 25 So if you were to learn that Alabama split Mobile County

1 and State Board of Education plan in order to comply with
2 Section 5 would that affect how instructive the State Board of
3 Education plan's current construction might be in how you
4 were -- design draw your second majority-black district for
14:28:48 5 Congress?

6 A I think it would not affect my feeling that it's quite
7 informative, and if I could expand on that, I would say that
8 would be the exact kind of decision juncture that would be most
9 informative for me. That is if in order to increase the black
14:29:11 10 population in the district, they found themselves with a choice
11 to make about what to split, their choice about how to do that
12 would then be helpful for me in understanding something about
13 their priorities.

14 Q Okay. Then -- all right. I think that is all I have got.
14:29:36 15 Thank you for your patience and for your time today.

16 A Thank you so much.

17 JUDGE MARCUS: All right. Thank you. You have some
18 redirect, counsel? How long would that be? Because I wanted
19 to -- we have gone about an hour and a half and I want to make
14:29:48 20 sure I give our court reporter a break.

21 MR. NAIFEH: I think now is -- we do have some
22 redirect. I think now is a good time for a break and it should
23 be very --

24 JUDGE MARCUS: Give me some reference rough sense of
14:30:00 25 timing on redirect.

1 MR. NAIFEH: I think 20 minutes.

2 JUDGE MARCUS: And then the next witness for the
3 plaintiffs will be?

4 MR. NAIFEH: Dr. Palmer for the Caster plaintiffs.

14:30:13 5 JUDGE MARCUS: All right. Thank you. We will take a
6 15-minute break. That will take you to about a quarter to 3:00
7 Central Standard Time, a quarter to 4:00 Eastern Time.

8 Thank you.

9 (Recess.)

14:45:43 10 JUDGE MARCUS: I think we are all assembled. I wanted
11 to make sure Judge Manasco, Judge Moorer, ready to proceed?

12 JUDGE MOORER: I am.

13 JUDGE MARCUS: Thank you both. Mr. LaCour,
14 Mr. Naifeh, are you ready to proceed with the balance of the
14:45:59 15 examination of Dr. Duchin?

16 MR. NAIFEH: Yes, Your Honor.

17 JUDGE MARCUS: Mr. LaCour, are you ready?

18 MR. LACOUR: Yes, Your Honor.

19 JUDGE MARCUS: You may proceed with your redirect.

14:46:09 20 REDIRECT EXAMINATION

21 BY MR. NAIFEH:

22 Q Dr. Duchin, Mr. Ang, can you bring up Milligan Exhibit 28?
23 I want to refer you back to the redistricting guidelines from
24 the reapportionment committee. Is it your understanding that
14:46:29 25 these guidelines cover the State Board of Education?

1 A Yes. That's definitely my understanding.

2 Q And I refer you to paragraph C.

3 A Thank you. That is made explicit there in paragraph C.

4 Q Okay. And do the redistricting principles prioritize
14:46:53 5 compliance with the Voting Rights Act in your understanding?

6 A Yes. I see it mentioned here on the first page. In
7 Section F.

8 Q And, in fact, that comes right after one person one vote,
9 isn't that correct?

14:47:06 10 A That's right. As I characterized it, earlier I think
11 population balance and minority opportunity to elect/equal
12 protection are the only criteria that are discussed on the
13 first page.

14 Q And Mr. Ang, can you go to the next page?

14:47:32 15 In looking at paragraph j(iii) at the bottom of the page,
16 does the redistricting guidelines distinguish what counts as a
17 community of interest for purposes of the board of education
18 plan as opposed to any other type of plan the committee right
19 be drawing?

14:47:53 20 A They do not. And my reading is that they apply verbatim
21 and with equal force to congressional plans and to the State
22 Board of Education.

23 MR. NAIFEH: Thank you, Mr. Ang. And could you next
24 pull up Caster Exhibit 1 page 19? And this is an exhibit in
14:48:19 25 the Caster case. I am happy to move it into evidence in this

1 case if the Court thinks it's necessary.

2 JUDGE MARCUS: I think it has already been received.

3 I may be mistaken about that.

4 BY MR. NAIFEH:

14:48:31 5 Q I just really want to use it as a demonstrative.

6 JUDGE MARCUS: Why don't you mark it as Plaintiffs'

7 Exhibit -- Plaintiff Milligan Exhibit 1 for identification.

8 MR. NAIFEH: And I -- thank you. Plaintiffs' --

9 marked as Plaintiffs' Exhibit 1 for purposes of identification.

14:48:50 10 And Mr. Ang, can you zoom in on the map?

11 BY MR. NAIFEH:

12 Q And this is the State Board of Education map, I believe,

13 Mr. LaCour showed you this a moment ago or a version of this.

14 In this plan is Jefferson County split?

14:49:13 15 A Yes. I can see that Jefferson County is split and if I'm

16 reading the colors correctly, it touches three districts.

17 Q Thank you, Mr. Ang.

18 MR. LACOUR: For the record, I showed a different

19 version of the map -- sorry to interject -- but I believe I

14:49:32 20 showed the 2001 version. This I believe is the 2021.

21 JUDGE MARCUS: Yes, I think that's right. Just so

22 that we're clear, this is the '21 version adopted by the state

23 Legislature for the BOE.

24 MR. NAIFEH: Yes, Your Honor, that is what this.

14:49:50 25 JUDGE MARCUS: All right.

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1 MR. NAIFEH: Apologize.

2 JUDGE MARCUS: I just want to make sure we are zeroing
3 in on the right map at the right time.

4 MR. NAIFEH: Thank you. Thank you, Mr. Ang. You can
14:50:04 5 take it down.

6 BY MR. NAIFEH:

7 Q Mr. LaCour asked you about communities of interest and
8 which ones you considered. You mentioned the Black Belt and in
9 the course of urban areas. Did you also consider counties and
14:50:21 10 municipalities to be communities of interest in some cases?

11 A Yes. It's fair to say -- well, certainly they're called
12 out as such in the guidelines. But it's fair to say that I was
13 also considering those under separate cover as the conforming
14 to political boundaries. And so in a way they get double
14:50:48 15 billing, both as communities of interest and as political
16 boundaries.

17 Q Okay. And Mr. LaCour asked you about avoiding incumbent
18 pairings and you testified that, one, that you believed it was
19 possible to create a plan with two majority-minority districts
14:51:09 20 that did not pair any incumbents, but at the cost of certain
21 other redistricting principles. Is that -- am I stating that
22 accurately?

23 A Yes, exactly.

24 Q And you could draw a plan that avoided any incumbent
14:51:23 25 pairings and still contain two majority-minority districts

1 without sacrificing the principle of contiguity, isn't that
2 right?

3 A That's correct. I should have specified.

14:51:44 4 Q Okay. And Mr. LaCour also asked you about the preserving
5 the cores of prior districts, and he specifically asked you
6 about whether an 80 percent core retention threshold could be
7 met. Are you aware of any threshold in the redistricting
8 guidelines about the extent to which cores should be preserved
9 in creating a new plan in Alabama?

14:52:03 10 A First, just to correct the record, I think I was asked
11 whether an 80 percent threshold could be sought. I don't think
12 I was asked whether it could be met, just to be perfectly
13 clear. Either way, I have seen nothing of the kind in the law
14 or in the redistricting guidelines.

14:52:21 15 Q And are you aware of any such threshold in any other as a
16 redistricting principle in any other source?

17 A No. Of the numerous states and localities that I have
18 worked in, I have never seen a prescribed percentage for core
19 retention.

14:52:39 20 Q Thank you, Dr. Duchin. And that's all of the redirect
21 that I have.

22 JUDGE MARCUS: Mr. LaCour, anything further for
23 Dr. Duchin?

24 MR. LACOUR: Yes. I will keep it very brief.

14:52:54 25 RECROSS-EXAMINATION

1 BY MR. LACOUR:

2 Q So talking about the thresholds and there's no threshold
3 number in the guidelines, correct, when it comes to core
4 retention?

14:53:05 5 A I strongly think no. We could pull it up, but I'm
6 confident that there is no --

7 Q You are correct about that, I believe, but --

8 Now, when you were talking about compactness scores and
9 where you were making sure your CDs 1 and 2 came in, you said
14:53:24 10 that you looked at some of the least compact in terms of the
11 enacted map as maybe not as a safe harbor, but at least as some
12 guide for where you were pegging your scores for CDs 1 and 2,
13 correct?

14 A I think the right way to say it would be since as I
14:53:46 15 mentioned every state has a different state geography, I did
16 look at those minimum scores in the state's plan to get an idea
17 of what might be called reasonable compactness in an Alabama
18 context.

19 Q Did you consider looking at the lowest core retention
14:54:04 20 score of any of Alabama's districts to get a sense of what
21 might reasonably be considered to be core retention?

22 A I did not because, as I said, I judged that even the
23 minimum, you know, if -- any statistic connected to core
24 retention in the state's enacted plan that I would not be able
14:54:28 25 to achieve corresponding statistics while creating a second

1 majority-black district.

2 Q Okay. And you don't know whether State Board of Education
3 plan -- let me rephrase that.

4 You don't know whether the current 2021 State Board of
14:54:46 5 Education plan's District 5 was drawn to include a community of
6 interest or rather to meet some other objective like preserving
7 the core of existing districts, do you?

8 A I think we've established and I'm happy to repeat that I
9 don't know anything directly about any of the process or
14:55:08 10 conditions under which the plan was drawn.

11 Q Okay.

12 MR. LACOUR: That's all I have got.

13 JUDGE MARCUS: All right. Thank you again. Any
14 re-redirect?

14:55:18 15 MR. NAIFEH: No, Your Honor.

16 JUDGE MARCUS: Any questions, Judge Manasco or Judge
17 Moorer?

18 JUDGE MANASCO: None from me.

19 JUDGE MOORER: None from me.

14:55:30 20 JUDGE MARCUS: All right. Thank you, Dr. Duchin. And
21 you are excused.

22 And you may proceed with your next witness. I take it
23 this will be someone that you're putting on, Ms. Khanna, for
24 Caster?

14:55:48 25 MS. KHANNA: Caster plaintiffs are putting on the next

1 witness, Dr. Palmer, and I will defer to my colleague Lali
2 Madduri for that. I think there is one -- just scheduling
3 matter we wanted to raise, Mr. Ross, with Mr. Ross on the rest
4 of the afternoon before we get there.

14:56:04 5 JUDGE MARCUS: Sure.

6 MR. ROSS: Yes, Your Honor. Sorry. Your Honor, the
7 plaintiffs -- Caster and Milligan plaintiffs would like to put
8 on Mr. Bryan after Dr. Palmer finishes with the understanding
9 that, you know, Mr. Bryan will take most of a day. We just
10 wanted to make sure that we had as much time as possible with
11 him. Dr. Liu is available tomorrow and Monday. And so we
12 just -- given the time it took to finish the -- Dr. Duchin's
13 testimony we think it's better to try to put Mr. Bryan on now.

14 JUDGE MARCUS: Okay. So you don't want to call Palmer
14:56:47 15 now, you want to give -- who is calling Bryan?

16 MR. ROSS: I'm sorry. Judge Marcus, just to be clear,
17 we would like to call Dr. Palmer now because we believe it will
18 be short, but we would like Mr. Bryan to go on afterwards.

19 JUDGE MARCUS: Does that work for the State?

14:57:05 20 MR. DAVIS: Whatever. We're ready for Dr. Liu which
21 was what was represented would go first next. We are set up
22 for that. If that's a problem for plaintiffs, we will do it --
23 I frankly think it unlikely we would finish two more experts
24 today before Mr. Bryan anyway, so yeah, that's whatever.

14:57:24 25 JUDGE MARCUS: I think what he is simply asking is he

1 wants to make sure you have enough time with Mr. Bryan.

2 MR. DAVIS: I appreciate that.

3 JUDGE MARCUS: You have got the whole day tomorrow.

4 We have set that for you.

14:57:35 5 MR. DAVIS: Yeah. Right. We are going to have enough
6 time whether Dr. Liu goes next or whether Mr. Bryan goes next.
7 I don't see the big deal, but we can change the order if we
8 need to.

9 JUDGE MARCUS: Okay. So if I have this right,
14:57:45 10 Mr. Ross, you want to put on Palmer first, finish with Palmer,
11 and then turn to Bryan. Do I have that right?

12 MR. ROSS: Yes, Your Honor.

13 JUDGE MARCUS: And Bryan would be called in
14 Mr. Davis's case in chief, rather than by you as a hostile
14:58:01 15 witness. Do I have that right?

16 MR. ROSS: Yes, Your Honor. Yes, Your Honor.

17 JUDGE MARCUS: Okay. So let's proceed with
18 Dr. Palmer. And then we will see how much time we have left,
19 Mr. Davis, to proceed accordingly.

14:58:14 20 Dr. Palmer, would you raise your right hand please.

21 MAXWELL PALMER,
22 having been first duly sworn, was examined and testified as
23 follows:

24 JUDGE MARCUS: Thank you. If you would be kind enough
14:58:27 25 to state your name for the record.

1 THE WITNESS: Maxwell Palmer.

2 JUDGE MARCUS: Thank you. And counsel, you may
3 proceed with your direct examination.

4 DIRECT EXAMINATION

14:58:40 5 BY MS. MADDURI:

6 Q Thank you, Your Honor. Good afternoon, Dr. Palmer.

7 A Good afternoon.

8 Q You've been retained as an expert for the Caster
9 plaintiffs in this case; is that correct?

14:58:51 10 A Yes.

11 Q And you have prepared one expert report?

12 A Yes.

13 Q Let's briefly pull that up. It's Plaintiffs' -- Caster
14 Plaintiffs' Exhibit 79.

14:59:07 15 Dr. Palmer, can you identify this document as your report?

16 A Yes. This is my report for this case.

17 Q Okay. And we can pull it down.

18 Do you have a copy of your report with you?

19 A I do.

14:59:20 20 Q Is your CV included in your report?

21 A Yes.

22 Q And is your CV a complete and accurate summary of your
23 background and professional experience?

24 A It is.

14:59:33 25 Q I will briefly ask you a few questions about your

1 background and expertise. Can you first summarize your
2 educational background?

3 A I received my bachelor's degree in mathematics and
4 government and legal studies from Bowdoin College in Maine, and
14:59:52 5 my Ph.D. in political science from Harvard University.

6 Q Where are you currently employed?

7 A I'm currently an associate professor of political science
8 at Boston University.

9 Q Are you tenured?

15:00:05 10 A Yes.

11 Q What classes do you teach?

12 A I teach courses on American politics and political
13 methodology, including introduction to American politics,
14 Congress, American political institutions, data science, and
15:00:22 15 formal theory.

16 Q And what are your principle areas of research?

17 A My research mostly focuses on American political
18 institutions, Congress, redistricting, and local and urban
19 politics.

15:00:37 20 Q Have you been accepted as an expert witness in cases
21 involving redistricting before?

22 A Yes.

23 Q Have you ever been rejected as an expert by any court?

24 A No.

15:00:49 25 Q Is the list of cases in which you have served as an expert

1 included in your report on pages 1 and 2?

2 A Yes.

3 Q And in approximately how many of those cases have you
4 provided a racially polarized voting analysis?

15:01:09 5 A In several of them, including *Bethune Hill vs. Virginia*,
6 *Thomas v. Bryant*, *Chestnut v. Merrill*, *Dwight v. Raffensperger*,
7 *Bruni v. Hughs*, *Texas Alliance for Retired Americans v. Hughs*.

8 I believe that's all of them.

9 Q Have courts previously credited and relied on your
15:01:30 10 analyses?

11 A Yes.

12 Q And I think you listed this case, but just to confirm.
13 Have you previously served as an expert in the state of
14 Alabama?

15:01:40 15 A Yes. In *Chestnut v. Merrill*.

16 Q Did the Court accept you as an expert in that case?

17 A Yes.

18 Q And what kind of analysis did you conduct there?

19 A I performed racially polarized voting analyses for parts
15:01:57 20 of Alabama, as well as analyzed the performance of some
21 illustrative maps in that case.

22 MS. MADDURI: Your Honor, at this time Caster
23 plaintiffs would like to proffer Dr. Palmer as an expert in
24 redistricting and data analysis.

15:02:15 25 JUDGE MARCUS: Redistricting and data analysis. Do I

1 have that right?

2 MS. MADDURI: Yes, Your Honor.

3 JUDGE MARCUS: Is there any challenge or need to voir
4 dire, Mr. Wilson?

15:02:28 5 MR. WILSON: There is not, Your Honor.

6 JUDGE MARCUS: All right. We will qualify and receive
7 Dr. Palmer as an expert in redistricting and in data analysis.
8 Thank you. You may proceed.

9 MS. MADDURI: Thank you, Your Honor.

15:02:41 10 BY MS. MADDURI:

11 Q Dr. Palmer, let's now discuss the work that you performed
12 in this case.

13 First, what were you asked to do?

14 A I was asked to offer an expert opinion on the extent to
15 which voting is racially polarized in parts of Alabama, and I
16 was also asked to analyze the performance of the
17 majority-minority districts in the plaintiffs' illustrative
18 maps.

19 Q At a high level, what did you conclude with regard to
15:03:09 20 whether there is racially polarized voting in the areas of
21 Alabama that you examined?

22 A I find very strong evidence of racially polarized voting
23 across the focus area which I defined to be the first, second,
24 third, sixth and seventh congressional districts under the
15:03:27 25 newly enacted map. I find that black and white voters

1 consistently support different candidates.

2 I also find that voting -- strong evidence of racially
3 polarized voting within each of those five individual
4 congressional districts, as well.

15:03:43 5 Q Okay. After determining that there are high levels of
6 racially polarized voting in the areas you studied, what did
7 you conclude about whether black voters' preferred candidates
8 are able to win elections in those areas?

9 A I found that black preferred candidates are generally
15:04:03 10 unable to win elections in the focus area and in four of the
11 five congressional districts.

12 Q Okay. And we'll discuss that all in detail first.

13 What did you at a high level conclude about the
14 performance of plaintiffs' demonstrative majority-minority
15:04:22 15 districts in the Caster plaintiffs' illustrative plans?

16 A I find that black preferred candidates are able to win
17 elections in both of the majority-minority districts in all the
18 maps I analyzed.

19 Q Okay. Let's begin now and start with the racially
15:04:39 20 polarized voting analysis.

21 First, what is racially polarized voting as you understand
22 it?

23 A Racially polarized voting is when voters of different
24 racial or ethnic groups prefer different candidates.

15:04:55 25 Q Is there -- is it always the case that each racial group

1 you examine has a preferred candidate?

2 A No. Sometimes a group is split between two or more
3 candidates and it is not some clear preferred candidate for
4 that group.

15:05:14 5 Q In past cases, have you conducted a racially polarized
6 voting analysis and found that there was no racially polarized
7 voting?

8 A Yes. For example, in *Bethune Hill vs. Virginia*, I looked
9 at racially polarized voting across about a dozen districts for
15:05:33 10 the House of Delegates there. And I found in some districts
11 there was racially polarized voting and in others districts
12 there was not.

13 Q Okay. At a high level, how do you go about examining
14 racially polarized voting?

15:05:45 15 A So I use an analytical approach called ecological
16 inference, which seeks to estimate the percentage of voters
17 from each racial or ethnic group that I look at that votes for
18 each candidate for each election that I study.

19 And what this ultimately yields is an estimate for each
15:06:11 20 ethnic group or racial group supporting each candidate. And
21 then I can look to see if large majorities of the members of
22 those groups are supporting the same candidate or not. For
23 example, we might find that 80 or 90 percent of the voters of a
24 group are also voting the same candidate, in which case I can
15:06:31 25 identify a candidate of choice for that group. Or you might

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1 find that that group is roughly split between two candidates,
2 say 40, 50 percent for each candidate and then there's not a
3 clear candidate of choice for that group.

4 And so I first do that for each group that I analyze and
15:06:45 5 then I look to see if the voters are -- of each group have the
6 same candidate of choice, assuming they have one or when they
7 have one, or if they have different candidates of choice. When
8 I find that each group has a candidate of choice and they are
9 different, that's evidence of racially polarized voting.

15:07:02 10 Q Okay. And I think you listed these already, but what were
11 the geographic areas of Alabama that you examined for your
12 analysis?

13 A I defined the focus area as the first, second, third
14 sixth, and seventh congressional districts under the newly
15:07:18 15 enacted map. And I analyzed that focus area as a whole and
16 each of those individual districts.

17 Q What is the reasoning behind the districts that form what
18 you refer to as the focus area?

19 A I define that set of districts as a focus area because
15:07:37 20 that was where I was told the new majority-minority districts
21 under the illustrative maps would be drawn from.

22 Q And what elections did you examine in the course of your
23 analysis?

24 A I looked at statewide general elections from 2012 through
15:07:56 25 2020, as well as the special election for U.S. Senate in 2017.

1 Q Did you also look at some elections from 2012 and 2014?

2 A Right. Yes, that's right. I looked at 2012 and 2014
3 elections, as well.

4 Q Okay. And you mentioned ecological inference as part of
15:08:17 5 your racially polarized voting analysis. If I refer to that as
6 EI, will you understand what I mean?

7 A Yes.

8 Q Okay. So what is EI?

9 A So EI is a technique to estimate voting patterns from
15:08:33 10 aggregate data. And the challenge that we have is that because
11 of the secret ballot we don't get to see how any individual
12 votes. We only get to see aggregate data, by which I mean that
13 at the individual county or precinct level we can see the total
14 votes cast for each candidate at some unit of geography and we
15:08:55 15 can also see how many voters there are in that area by race or
16 how many people live in that area by race, as well, using
17 either the voter file or different types of census data.

18 So we don't get the individual level data, just the
19 aggregate. And what ecological inference does is it's an
15:09:15 20 algorithm that tries to estimate the percentages of each group
21 supporting each candidate by looking at patterns across many
22 different counties or precincts.

23 Q Would you say that EI is the best available method for
24 assessing racially polarized voting?

15:09:32 25 A Yes. There's a few different methods. My understanding

1 is that ecological inference is the one currently preferred by
2 courts.

3 Q Okay. So it's your understanding that courts regularly
4 rely on EI analyses to determine whether there is racially
15:09:49 5 polarized voting in a particular geographic area?

6 A Yes.

7 Q Is EI also regularly used by scholars and experts to
8 examine racially polarized voting?

9 A Yes, it's widely used.

15:10:05 10 Q What kind of results does an ecological inference analysis
11 produce?

12 A The ultimate results that I present in my report are
13 estimates for each election and just to be clear, we do the
14 same ecological inference analysis separately for every
15:10:26 15 election and geography that I analyze so it's many different
16 runs of this model. And for each one, we get an estimate for
17 each group of the percent of that group voting for each
18 candidate, as well as a confidence interval, a measure of
19 uncertainty about the estimate.

15:10:45 20 Q Okay. And what are the groups that you examined here?

21 A I look at three demographic groups. Non-Hispanic black,
22 non-Hispanic white and then others, which include Hispanic,
23 Asian, Native Americans and everybody else.

24 Q Roughly what percentage of voters fall into that other
15:11:06 25 category?

1 A I think about 5 percent or a little less.

2 Q Okay. And you performed at three different racially
3 polarized voting analyses in your report, right?

4 A Yes.

15:11:18 5 Q What were they?

6 A I -- -- I looked at precinct level election data for 2016,
7 '17, '18, and '20 using precinct level election results and
8 Citizen Voting Age Population data to measure demographics from
9 the U.S. Census Bureau.

15:11:41 10 I then do a second analysis just for 2020, where I have
11 some data on voter turnout by race. And then for 2012 and 2014
12 I didn't have precinct level data available, and so I do a
13 county level analysis there, using county level election
14 results and county level data on voter registration by race
15:12:01 15 provided by the state.

16 Q And are the results of your three analyses consistent with
17 each other?

18 A Yes. Across every election and all three analyses I find
19 strong evidence of racially polarized voting.

15:12:17 20 Q Okay. Let's first discuss that first precinct analysis
21 that you described for 2016 to 2020.

22 Overall, what did you find for that analysis?

23 A So I find strong levels of racially polarized voting in
24 the focus area as a whole across all 12 elections from 2012 to
15:12:48 25 2020 that I look at. I find there's a clear black preferred

1 candidate in every election. I find that white voters also
2 have a clear candidate of choice, which is the opponent of the
3 black preferred candidate in each election.

4 On average I find that black voters support their
15:13:08 5 candidate of choice, about 92 percent of the vote. And that
6 white voters strongly oppose this candidate, only about
7 15 percent of white voters support the black candidate of
8 choice in each election.

9 Q Okay. Let's now turn to -- turn to your report and look
15:13:26 10 at that analysis.

11 So let's call up Caster Plaintiffs' Exhibit 79, which is
12 your report. And we will turn to Figure 3 on page 6.

13 Dr. Palmer, what is does this figure show?

14 A This figure presents the results of the racially polarized
15:13:48 15 voting analysis using counties and Citizen Voting Age
16 Population data for the focus area.

17 So each row of the figure represents a different election
18 as labeled on the left. And then there's three key pieces of
19 information to take from each election on this thing.

15:14:06 20 First, if you look at the solid blue dot on the right,
21 that represents the average -- the estimated percent of black
22 voters voting for the black preferred candidate. And we see
23 there it's relatively high, generally in the low 90 percent
24 range.

15:14:24 25 Behind each dot there's some little horizontal and

1 vertical lines and those represent the balance of the
2 confidence interval showing relatively precise estimates here.

3 Then on the left-hand side we see the open circles which
4 represent the percent of white voters voting for the black
15:14:43 5 preferred candidate, again with confidence intervals behind
6 them. We see very low levels of support for the black
7 preferred candidate, generally in the teens.

8 And so that shows us the cohesion within each group, a
9 clear black preferred candidate and then a clear white
15:15:00 10 preferred candidate in opposition to that black one. And then
11 the distance between them shows that high degree of
12 polarization.

13 Q I want to clarify one thing. I think you said that you
14 used county level data for this analysis, but I believe it's
15:15:21 15 precinct level analysis; is that right?

16 A I apologize. I have misspoke. This is all precinct-level
17 data.

18 Q Thanks.

19 And so just -- and in sum, what does Figure 3 tell us
15:15:36 20 about racially-polarized voting in these elections?

21 A It shows that voting is highly polarized between black and
22 white voters and that this pattern is consistent across every
23 election that I analyze.

24 Q Is there a part containing the precise numbers for the
15:15:52 25 election particularly within Figure 3?

1 A Yes. It's all located in Table 2 of my report.

2 Q Okay. Let's turn to Table 2, which is on page 12 of your
3 report. And we are still on Caster plaintiffs' Exhibit 79.

4 This table is entitled ecological inference results --
15:16:11 5 estimated voted share of black preferred candidates -- precinct
6 level election data with Citizens Voting Age Population --
7 focus area.

8 What does this table show?

9 A This table shows the results that I plotted that I graphed
15:16:28 10 in the figure that we just looked at. These are the numbers
11 that come out of the ecological inference analysis. And so,
12 again, each row is a separate election that I analyze, and then
13 we have three sets of numbers; first, for black voters, then
14 white voters, and then for the other category.

15:16:47 15 And within each set of numbers, you will see first a
16 percentage, and that's the estimate, the percent of that group
17 voting for the black preferred candidate. And then in
18 parenthesis after that are the upper level bounds, the range of
19 the confidence interval. So that represents the -- the
15:17:05 20 horizontal line that I plotted behind each figure we just
21 looked at.

22 So just as one example in the 2016 election for U.S.
23 President, I estimate that 90.8 percent of black voters voted
24 for the black preferred candidate with a confidence interval of
15:17:25 25 that estimate ranging from 89.5 too 92.1 percent. And then for

1 white voters in that same election, I estimate that
2 10.3 percent of white voters voted for the black preferred with
3 a confidence interval of 9.5 to 11.12 percent.

15:17:45 4 Q Did you run the same racially-polarized voting analysis on
5 a district-by-district basis?

6 A I did.

7 JUDGE MARCUS: That's our court reporter, Mr. Palmer.
8 Take your time. We want to make sure our court reporter gets
9 it all accurately, and go slowly. Thanks very much.

15:18:03 10 THE WITNESS: Thank you.

11 BY MS. MADDURI:

12 Q So what were the results of your analysis on a
13 district-by-district basis?

14 A I find the same results at the individual district level,
15:18:23 15 a strong pattern of racially-polarized voting across every
16 election in every district.

17 Q Okay. Let's turn to Figure 5 on page 8 of your report,
18 which is, again, Plaintiffs' Exhibit 79.

19 This figure is entitled racially-polarized voting
15:18:42 20 estimates by race -- congressional districts.

21 What does this figure show?

22 A This figure shows the results of my analysis in a slightly
23 different way. I don't label each individual election here
24 just because I can't fit all the labels. But each point, each
15:19:01 25 separate dot corresponds to one of the 12 estimates for each of

1 the elections that I look at.

2 The dark blue dot across the top represents the percentage
3 of black voters voting for the black preferred candidate. And
4 what this shows is that across all five congressional
5 districts, there's a clear black-preferred candidate in every
6 election getting well more than 80 percent of the vote in each
7 contest. And then the open circles along the bottom shows a
8 percentage of white voters voting for the black-preferred
9 candidate and showing that those levels of support are

10 generally very low, in some places, less than 10 percent, in
11 others, ranging into the 30 percent range. And what we see is
12 polarization in every single election across all five
13 congressional districts.

14 Q Does your report contain the precise numbers in this
15 figure?

16 A Yes. These are -- there's a separate table for each
17 congressional district. Table 4 through Table 8.

18 Q Okay. And what conclusions did you draw based on your
19 2016 to 2020 precinct analysis?

20 A I find strong evidence of racially-polarized voting in the
21 focus area as a whole and in each of the five congressional
22 districts.

23 Q Okay. Let's next talk about your second precinct level
24 analysis for 2020. Why did you conduct that analysis?

25 A I really did it as a check using a different data source

1 on my previous analysis. So the precinct level analysis I just
2 discussed used Citizen Voting Age Population data for each
3 precinct.

4 And an alternate data source would be to use the voter
15:21:04 5 file, which in Alabama includes the race of each individual
6 voter and look at the number of actual voters by race who
7 turned out to vote.

8 I did not have the full voter file available to me as of
9 the election date, but the Redistricting Data Hub, which is a
15:21:23 10 public website that publishes a lot of useful data for
11 redistricting analyses put out data on precinct level voter
12 turnout by race from L2, which is a commercial data vendor.
13 And so I was able to do a second analysis this way, and the
14 advantage here is I don't have to account for turnout. I'm
15:21:46 15 only looking at actual voter and not the whole precinct
16 population or Citizen Voting Age Population.

17 Q And what did you find based on the second analysis?

18 A I found very similar results with the exact same
19 conclusions, strong evidence of racially-polarized voting. And
15:22:08 20 just be clear, I was only able to do this for the 2020
21 elections. I didn't have that data for previous elections.
22 But in these two elections where I was able to do that
23 analysis, I find strong evidence of racially-polarized voting
24 in the focus area and in each of the five congressional
15:22:24 25 districts.

1 Q Are the exact details of that analysis contained in Table
2 9 of your report?

3 A Yes.

4 Q And at a high level to confirm, is the methodology that
15:22:42 5 you described that you used for the 2016 to 2020 precinct level
6 analysis the same methodology you used for the second 2020 only
7 analysis?

8 A Yes. I still use ecological inference. It's all still
9 set up the same way, produces the same kind of results. It's
15:23:00 10 just different data on the population within each precinct.

11 Q Let's now turn to your county level analysis. And why did
12 you do this? Why did you do this analysis?

13 A I wanted to look at a longer range of elections, but I did
14 not have precinct level data available for 2012 or 2014.

15:23:25 15 Q Okay. And you -- for the county level analysis, you
16 examined only the focus area as a whole and not each individual
17 congressional district; is that right?

18 A Yes. There aren't enough units. There aren't enough
19 counties within each congressional district alone to do that
15:23:42 20 analysis.

21 Q Okay. Let's turn to Figure 4 on page 7 of your report,
22 which is Caster Plaintiffs' Exhibit 79.

23 What does this figure show?

24 A This figure shows the results of the county level
15:24:05 25 analysis. And it's exactly like Figure 2. Each row is an

1 election. The dark blue dots on the right show the percentage
2 of black voters voting for the black-preferred candidate, and
3 the open circle on the left show the percentage of white voters
4 voting for the black-preferred candidate. One thing you can
15:24:23 5 notice here is that the confidence interval, those horizontal
6 lines behind each point are significantly wider because they
7 have much less data at the county level to work with than the
8 precinct level to work with. However, the conclusions are the
9 same. There is a clear black-preferred candidate in every
15:24:41 10 election, and white voters are strongly opposed to that
11 black-preferred candidate because there's a high level of
12 racially-polarized voting in every election here.

13 Q Okay. And just to confirm, at a high level of the
14 methodology that you previously described for the 2016 to 2020
15:25:01 15 precinct-level analysis, the same methodology that you used for
16 the county-level analysis?

17 A Yes.

18 Q And does your report contain the precise numbers that are
19 depicted in Figure 4?

15:25:18 20 A Yes. It's all in Table 3.

21 Q Okay. And to just close this county-level analysis off,
22 are the results consistent with your two precinct-level
23 analyses?

24 A They are. Across all three analyses, I find strong
15:25:39 25 evidence of racially-polarized voting.

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1 Q Okay. First, we can take down the figure. Thanks.

2 After you determined that the analyzed elections
3 demonstrated the racially-polarized voting, what did you do
4 next?

15:25:57 5 A I next looked at each election within the focus area and
6 within each of the congressional districts to determine if the
7 black-preferred candidate were able to win those elections.

8 Q Is this part of the analysis commonly referred to as
9 *Gingles III*?

15:26:16 10 A Yes.

11 Q Okay. How do you conduct this part of your analysis?

12 A I look at the boundaries for the focus area for the
13 districts and look at all the precincts that fall within those
14 boundaries to identify the past election results that would
15:26:39 15 have occurred sort of within those boundaries, and I add up
16 those past election results. I aggregate them up to the level
17 of the district or focus area. So I am just using past
18 election results and adding up the number of votes within each
19 area.

15:26:53 20 Q Okay. Let's turn to Table 1 on page 12 of your report,
21 which is Exhibit 79. The table is entitled, Election Results
22 in the Focus Area -- Vote Share of Black-Preferred Candidates.

23 What does this table show?

24 A This shows the results of this analysis. Each number in
15:27:16 25 the table corresponds to the vote share of the black-preferred

1 candidate in each election within each of the geographies
2 listed across the top of the table. And this is of the
3 two-party vote. So the other candidate would get 100 minus
4 each of these numbers.

15:27:34 5 So, for example, in 2016, U.S. President, the
6 black-preferred candidate received 39.5 percent of the vote in
7 the focus area.

8 And then the numbers to the right show the percentage the
9 black-preferred candidate received in each of the congressional
10 districts.

11 Q Okay. And just to be clear, when you mention the vote
12 share and the focus area, these are not actual vote shares
13 statewide that the candidates received in these elections,
14 right?

15:28:02 15 A No. These are not the statewide vote shares. They're the
16 vote shares within these particular geographies.

17 Q Okay. And what did you find about whether black voters
18 were able to elect their preferred candidates in the focus area
19 as a whole?

15:28:17 20 A Black voters are generally not able to elect their
21 preferred candidates in the focus area across these 12
22 elections. The black-preferred candidate won only one.

23 Q And what election did the black voters preferred candidate
24 win?

15:28:34 25 A The 2017 special election for U.S. Senate.

1 Q And who were the candidates in that election?

2 A The black-preferred candidate was Doug Jones. And the
3 white-preferred candidate was Roy Moore.

4 Q What, if anything, do you know about Roy Moore?

15:28:51 5 A My understanding is that Roy Moore is a uniquely
6 controversial figure in Alabama politics, that he was elected
7 to the state Supreme Court, I believe twice, and then ran a
8 very controversial campaign in 2017 for U.S. Senate where he
9 was accused of sexual misconduct.

15:29:13 10 Q Okay. And did the black-preferred candidate win the 2017
11 election in all of the districts in the focus area?

12 A No. The black-preferred candidate in that election lost
13 in the First, Second, Third, and Sixth Congressional Districts.
14 And only won in the Seventh Congressional District.

15:29:36 15 Q Okay. What about for the other 11 elections? How did the
16 black-preferred candidate perform in each individual district?

17 A In the First, Second, Third, and Sixth Districts, the
18 black-preferred candidate lost all 12 elections.

19 And in the Seventh Congressional District, the
15:29:55 20 black-preferred candidate won all 12 elections.

21 Q Is it your understanding that Congressional District 7 is
22 a majority-black district?

23 A Yes.

24 Q Is it also your understanding that the other districts 1,
15:30:09 25 2, 3, and 6 in the focus area are majority-white districts?

1 A Yes.

2 Q And we can take down the figure.

3 Did you also examine which group's preferred candidate won
4 in the eight elections that you analyzed for 2012 and 2014?

15:30:31 5 A I did. Across the eight elections that I analyzed at the
6 county level, and I could only look at this for the focus area,
7 the black-preferred candidate won only once.

8 Q Okay. And what can you tell us about the election where
9 the black-preferred candidate was able to win?

15:30:50 10 A The black-preferred candidate was only able to win the
11 2012 election for Chief Justice of the Supreme Court, where the
12 white-preferred candidate was again Roy Moore.

13 Q What are your overall conclusions regarding whether
14 black-preferred candidates are able to win elections in the
15:31:11 15 focus area?

16 A Black-preferred candidates are largely unable to win
17 elections in the focus area with the exception of the Seventh
18 Congressional District.

19 Q Okay. Earlier we briefly discussed your testimony in
15:31:25 20 *Chestnut v. Merrill* in 2019. And I think you already confirmed
21 this, but in that case, you also examined racially-polarized
22 voting; is that right?

23 A Yes.

24 Q Okay. Did you also look at some congressional elections
15:31:39 25 in that case?

1 A I did.

2 Q Which ones?

3 A I believe I looked at the 2018 congressional elections in
4 the district, which were the old districts, you know, in use at
15:31:55 5 the time for that case.

6 Q And would that have been for Congressional Districts 1, 2,
7 and 3 that existed as they were in 2018?

8 A Yes.

9 Q What were the results of your racially-polarized voting
15:32:08 10 for those elections?

11 A I found that in those congressional elections voting was
12 highly polarized.

13 Q Okay. And were the findings largely consistent with your
14 findings here?

15:32:19 15 A Yes.

16 Q And I think you confirmed that you found that the voting
17 was racially polarized. Did you find that the black-preferred
18 candidate was defeated in the elections that you looked at?

19 A In the First, Second, and Third Districts, yes.

15:32:34 20 Q Okay. Let's just briefly pull out Plaintiffs' Exhibit 83.
21 Do you recognize this document?

22 A Yes. This is my expert report from *Chestnut v. Merrill*.

23 Q Okay. Thank you.

24 Let's now turn to your analysis of the functionality of
15:33:00 25 the majority-minority districts in six of the Caster

1 Plaintiffs' illustrative maps. What did your functionality
2 analysis examine?

3 A I looked at the two majority-minority districts, which are
4 always Districts Number 2 and Number 7 and the performance of
15:33:18 5 the black-preferred candidate in those districts under those
6 six maps.

7 Q How did you perform this analysis?

8 A I do this in the same way I do the performance analysis or
9 the ability-to-win analysis that we just discussed. I identify
15:33:33 10 the precinct that fall into each of these new districts or into
11 these illustrative districts and aggregate the election results
12 up to the district level and look at which candidate received
13 the most votes or calculate the percent of the votes received
14 by each candidate.

15:33:49 15 Q And what you are your findings about whether
16 black-preferred candidates would be able to win in Plaintiffs'
17 illustrative majority-black districts?

18 A I find that across the six maps I analyzed,
19 black-preferred candidates are able to win every election in
15:34:05 20 both the Second and Seventh Congressional District looking at
21 the same 12 elections from 2016 to 2020 that we have already
22 looked at.

23 Q Okay. Let's turn to Figure 7 of your report.

24 This is page 11 of Exhibit 79. The table is entitled
15:34:26 25 Election Results in the Focus Area Vote Shares of

1 Black-Preferred Candidates.

2 What does this figure show?

3 A This figure shows the results of that analysis. And so
4 each of the six maps is its own separate plot. Each row is a
15:34:46 5 different election. And then the blue dots here correspond to
6 the vote share of the black-preferred candidate in the Second
7 Congressional District, and the open circles correspond to the
8 vote share of the black-preferred candidate in the Seventh
9 Congressional District. And then at the 50 percent point,
15:35:03 10 there's a dark vertical line. And so the fact that each of
11 these points is to the right of that 50 percent line shows that
12 the black-preferred candidate are getting a majority of the
13 vote across every election in both the Second and Seventh
14 Congressional Districts in all six maps.

15:35:20 15 Q Do you recall on average what percentage of the votes of
16 black-preferred candidate is winning in CD 2 under plaintiffs'
17 illustrative maps?

18 A I think they -- it's an average of at least 57 percent of
19 the vote and higher in some of the maps.

15:35:44 20 Q And what's the average for the black-preferred candidate
21 in CD 7?

22 A At least 65 percent of the vote and, again, higher in some
23 of the maps.

24 Q Okay, Dr. Palmer, I would now like to briefly discuss with
15:36:04 25 you a different topic. After you submitted your report, an

1 expert for the state, Dr. Hood, submitted the report that
2 offers a few criticisms of your analysis, and I would like to
3 ask you about those now.

4 Have you reviewed Dr. Hood's report that was submitted on
15:36:21 5 December 20th?

6 A I have.

7 Q Okay. Dr. Hood notes that you relied on CVAP population
8 from the census, and states that this introduced a, quote,
9 force of potential error, end quote, into your analysis.

10 Does Dr. Hood's criticism raise any concerns for you?

11 A No.

12 Q Why not?

13 A Using Citizen Voting Age Population data, which is forced
14 from the American Community Survey, which is a survey conducted
15:36:54 15 by the U.S. Census Bureau every year, is very common practice
16 in this field. It's widely used by political scientists, in
17 peer-reviewed published academic work, as well as by expert
18 witnesses. And this is reliable high-quality data.

19 Q Does Dr. Hood conduct any analyses using that same data?

15:37:26 20 A I don't recall, and I don't have his report in front of
21 me.

22 Q Okay. That's fine.

23 Is there any reason to believe that there are systemic
24 errors in the CVAP data that you used that could bias your
15:37:39 25 analysis in any way?

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1 A No.

2 Q Dr. Hood also criticized your use of data from the
3 Redistricting Data Hub. Specifically, he expresses concerns
4 that the Redistricting Data Hub was, quote, not able to

15:37:55 5 replicate joining election data and precinct boundaries because
6 they did not have precinct boundary data for every election.
7 Does this criticism raise any concerns for you about your
8 analysis?

9 A No.

15:38:07 10 Q Why not?

11 A So this data, the precinct level data I rely on, I
12 downloaded from the Redistricting Data Hub. And as I
13 mentioned, this is just a public website that aggregates many
14 different sources, or collects and publishes many different
15:38:28 15 sources of relevant redistricting data.

16 But the actual data that they're using here in which I
17 talk about in my report is assembled by a group called the
18 Voting and Election Science Team, or VEST, which is a group of
19 academics I think based at the University of Florida who do the
15:38:47 20 really hard and difficult work of assembling precinct-level
21 data, matching up shapefiles the geographic boundaries of each
22 precinct with election results. And this is a really time
23 consuming and difficult task. And one of the many things they
24 do is they go to individual states or individual counties and
15:39:08 25 request maps of the precincts that they actually can absolutely

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1 get the precinct boundaries. And this is challenging and very
2 time consuming.

3 And so their data is widely used by academics in
4 peer-reviewed published work, and it's highly reliable.

15:39:25 5 And what the Redistricting Data Hub does and what Dr. Hood
6 comments on is they just look at the data and produce a
7 validation report that says, could we independently on our own
8 reproduce these same numbers? And the answer here is no,
9 because Redistricting Data Hub doesn't have the same
15:39:42 10 shapefiles, those same files that the VEST group got from each
11 county to reproduce that work. They note that in their own
12 validation report. They say in that same report that Dr. Hood
13 cites that this is to be expected, given the way that the data
14 was assembled.

15:39:58 15 So the Redistricting Data Hub team doesn't have any
16 concerns about this data, and I don't have any concerns about
17 this data.

18 Q Can you briefly explain the difference between a VTD and a
19 precinct and how that data is merged, which is what I believe
15:40:15 20 you were explaining the VEST team did?

21 A The VEST team is actually doing something one step
22 earlier. They are collecting precinct boundaries from states
23 and counties and merging that with precinct-level election
24 results produced by individual states and counties after each
15:40:34 25 election.

1 And that in itself can be very difficult because the names
2 of the precincts or the way they're identified in the systems
3 that tabulate those are the ways they're reported don't always
4 match up cleanly with the shapefiles that are available.

15:40:49 5 For example, the state might report a precinct name, but
6 the county may provide a shapefile with ID numbers for each
7 precinct instead. And this is a challenge that I had to handle
8 in Alabama in 20 -- in 2019 in *Chestnut vs. Merrill*, where I
9 assembled some precinct-level data from Alabama precincts and
10 election results myself.

11 So that's a different challenge.

12 To answer the other part of your questions, voting
13 tabulation districts are the census equivalent, the U.S. Census
14 equivalent of precinct boundaries. And they're based on data
15 provided to the Census Bureau from each state. And because
16 precincts change over time, voting tabulation districts or VTDs
17 are often a good unit of analysis for redistricting work,
18 because we can look at the election data or demographics over
19 time, looking at a constant geographic unit instead of looking
20 at precincts which might vary in number or location and shape
21 over time within each county or state.

22 Q Okay. I think Dr. Hood's next criticism is related to
23 what you just described.

24 So he suggests that there may be mismatches between
15:42:04 25 VTD-shaped files on Redistricting Data Hub and the actual

1 precinct boundaries for Alabama counties.

2 He specifically points to Washington County as such an
3 error. Does Dr. Hood's criticism give you any cause for
4 concern?

15:42:18 5 A No. I think this stems from sort of the interchangeable
6 use of the term precinct and VTD in my report. So in my
7 report, I discuss precinct-level analyses. But as I note in --
8 on page 3, the data I'm using -- or actually Voting Tabulation
9 District-level data, where the VEST team has taken precinct
15:42:45 10 level data and reallocated it to match the new geographies that
11 correspond to U.S. Census, reaggregate it to voting tabulations
12 district boundaries instead. And so Dr. Hood has in his report
13 two maps: One of VTD and one of precincts. And the source
14 data from the VEST team, the precinct-level data they provide
15:43:09 15 looks exactly like Dr. Hood's maps. Those maps are identical.
16 And then using very standard algorithms and approaches for
17 aggregating data from one geography to another, they then
18 transform that data to Voting Tabulation District data and
19 publish that, as well. So I have both versions of that data.
15:43:30 20 I'm using Voting Tabulation District for simplicity.

21 And for 2017, where that Voting Tabulation District data
22 was not provided by the Redistricting Data Hub, I assembled
23 that in the same way myself using the exact same code and
24 process that the Redistricting Data Hub used.

15:43:46 25 Q Finally, Dr. Hood also criticizes your use of data derived

1 from a commercial vendor that I think you mentioned called L2.
2 Specifically, he suggests that L2's data contains discrepancies
3 that, quote, could make a difference in a district
4 functionality analysis, end quote. Does Dr. Hood's speculation
15:44:13 5 give you any cause for concern?

6 A No.

7 Q Why not?

8 A Because I don't use this data at all in any functionality
9 analysis that I do. My functionality analysis relies entirely
15:44:25 10 on past election results.

11 Q Do any of the criticisms that Dr. Hood makes of your
12 report cause you to doubt or change any of your conclusions?

13 A No.

14 Q Did Dr. Hood also perform a racially-polarized voting
15:44:41 15 analysis?

16 A Yes.

17 Q What methodology did Dr. Hood use as you understand it?

18 A Dr. Hood also uses ecological inference.

19 Q And what geographic areas did Dr. Hood examine?

15:44:56 20 A I know he did this for the Seventh Congressional District
21 and I believe for some others, as well, but I am not positive.

22 Q Okay. Where the geographic areas examined overlap between
23 your analysis and Dr. Hood's analysis, how did Dr. Hood's
24 results compare with yours?

15:45:17 25 A So for the Seventh Congressional District where Dr. Hood

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1 does ecological inference using 2020 presidential election
2 results and 2018 gubernatorial election results, we find the
3 same conclusions. He also finds strong evidence of
4 racially-polarized voting in that district.

15:45:38 5 Q Okay.

6 MS. MADDURI: Thank you, Dr. Palmer. Those are all
7 the questions that I have for you at this time. I will pass
8 the witness to Mr. Wilson.

9 JUDGE MARCUS: Thank you very much.

15:45:53 10 Before we start, Mr. Wilson with your cross, I just want
11 to ask if our reporter's doing okay.

12 Mr. Wilson, fire away.

13 MR. WILSON: Thank you, Judge Marcus. And I apologize
14 for the confusion. Can I actually ask for a very quick break
15 right now?

16 JUDGE MARCUS: You sure can. You sure can. We will
17 take -- how much time do you need? You tell me.

18 MR. WILSON: Shouldn't be more than five minutes or
19 so.

15:46:37 20 JUDGE MARCUS: Let's take a ten-minute break at this
21 point, and we will reconvene with your cross. Quick question:
22 What's your timing on the cross because we're somewhere --
23 they're debating whether Mr. Bryan will come next or whether
24 their other expert on *Gingles II* and *III* will come next.

15:46:58 25 MR. WILSON: Understood, Your Honor. It's a little

1 bit.

2 JUDGE MARCUS: Let me just preface it by saying,
3 again, you take all the time you need to do your cross.

4 MR. WILSON: Thank you, Your Honor. There are some
15:47:10 5 questions that we have that remain about the analysis itself,
6 and that could take a little longer, even though Ms. Madduri
7 did ask a few questions about the analysis, too, so it's
8 difficult to speculate, but I would think hopefully under
9 45 minutes.

15:47:36 10 JUDGE MARCUS: Let's just -- we will play it by ear.
11 You take your time. We will take a ten-minute break at this
12 point. Thanks.

13 (Recess.)

14 JUDGE MARCUS: Judge Moorer, are we ready to begin?

15:56:47 15 JUDGE MOORER: Yes, sir, we are.

16 JUDGE MARCUS: Thanks so much. Mr. Wilson, you may
17 continue with your cross of Dr. Palmer.

18 CROSS-EXAMINATION

19 BY MR. WILSON:

15:56:57 20 Q Dr. Palmer, how are you?

21 A Good. Thank you.

22 Q Good. Glad to hear it.

23 So now, Dr. Palmer, because we didn't have a chance to do
24 a deposition in this litigation, some of the methodological
15:57:12 25 questions that I ask might be very basic, and it's just stuff

1 that I'm unfamiliar with. So apologies in advance if I missed
2 an obvious explanation.

3 But I am going to try to understand your report. Is that
4 fair?

15:57:25 5 A Yes.

6 Q And you still have your report in front of you?

7 A I do.

8 Q Thank you. So I will probably refer to that fairly
9 frequently if you wouldn't mind keeping it handy.

15:57:40 10 Now, Dr. Palmer, you have conducted racial-polarization
11 analysis in Voting Rights Act litigation before; is that
12 correct?

13 A Yes.

14 Q And can you explain when you generally find that
15:57:53 15 racially-polarized voting has occurred?

16 A Can you be more specific?

17 Q Sure. Under what conditions do you find
18 racially-polarized voting occurs when you're analyzing
19 different populations or minority groups?

15:58:12 20 A It entirely depends on the groups I'm looking at and the
21 dynamics of the elections in those places.

22 Q Okay. I think I might be asking a more basic question. I
23 apologize.

24 Is it fair to say that racially-polarized voting occurs
15:58:30 25 when, say, black voters and white voters support different

1 candidates?

2 A Yes.

3 Q Okay. And is it fair to say, then, your analysis is
4 looking at results?

15:58:43 5 A Election results? Yes.

6 Q Yeah. Yes. Thank you.

7 So, in other words, your analysis is not examining why
8 voters are voting the way that they're voting; is that right?

9 A That's correct. I do not look at why voters make the
15:59:02 10 choices they do, just the choices that they are making.

11 Q Thank you, Dr. Palmer.

12 And how do you determine whether a racial group supports a
13 particular candidate?

14 A So first I run the ecological inference algorithm, and I
15:59:22 15 look at the results. And if a large majority of that group is
16 supporting the same candidate, then I would say that's the
17 group's candidate of choice.

18 Q And, Dr. Palmer, when you say a large majority, what do
19 you mean?

15:59:41 20 A So there's not an exact cutoff, but generally I think of
21 it as, you know, well above 50 percent, and often I look at the
22 confidence interval and would like to see a confidence interval
23 that's also above -- or well below 50 percent, either way, far
24 away from 50 percent. So, for example, if I were to estimate
16:00:03 25 that a group supported a candidate, let's say, 60 percent of

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1 the vote, but with a big confidence interval say going down to
2 45 percent, I would not have confidence that that group had a
3 candidate of choice.

16:00:22 4 Q Understood. And so when you say well above 50 percent, is
5 that 55 percent?

6 A Generally higher, but I don't have an exact cutoff.

7 Q Do you know whether any experts in your field have exact
8 cutoffs for what they consider to be a significant majority
9 such that it produces a candidate of choice among a racial
16:00:46 10 group?

11 A I don't know.

12 Q And have you observed any consistent numbers in your own
13 past practice or litigation you've been involved in of when you
14 generally find that a significant majority prefers a candidate
16:01:09 15 such that it is their candidate of choice?

16 A Typically, I find one of two results for the most part.

17 Q Uh-huh.

18 A Either there's a relatively high vote share, for a
19 group -- a certain candidate, say 70 percent range or higher.

16:01:35 20 Q Okay.

21 A And so I don't have to worry about sort of that fine line,
22 or that group's sort of towards the middle and split. And
23 often when a group is split, there's going to be a relatively
24 large competent table. We are going to be more uncertain about
16:01:49 25 that group's voting behavior.

1 So those are sort of the more typical results that I find.

2 Q Got it. Thank you, Dr. Palmer.

3 So there really is no bright line for racially-polarized
4 voting that you are aware of?

16:02:02 5 A That's right.

6 Q Okay. And for your racial polarization analysis in this
7 case, you analyzed 12 elections; is that right?

8 A I look at 12 elections at the precinct level and an
9 additional eight elections at the county level.

16:02:22 10 Q Okay. And did your report contain information about any
11 congressional elections?

12 A No. There have been no congressional elections under
13 these enacted maps.

14 Q Uh-huh. And all of these elections that you analyzed are
16:02:41 15 statewide elections, right?

16 A Yes.

17 Q So am I correct that when you used in the racial
18 polarization context the term, endogenous election, refers to
19 elections for the particular office at issue?

16:02:59 20 A Yes.

21 Q And your report does not contain any endogenous elections,
22 right?

23 A There have been no endogenous elections held under these
24 under these new districts, but as I talked about earlier, I did
16:03:15 25 examine endogenous elections under the old map for 2018 in

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1 *Chestnut v. Merrill* and found the exact same pattern.

2 Q Okay. And under the old map, you could have looked at
3 congressional elections, and you did in *Chestnut v. Merrill*,
4 then, right?

16:03:32 5 A Yes.

6 Q Okay. And do you think that analysis would be relevant to
7 what you are testifying about today?

8 A It's relevant in that I find the same consistent pattern.

9 Q Uh-huh.

16:03:46 10 A But simply endogenous elections at these geographies are
11 not available.

12 Q Right. But they're available for geographies that look
13 similar to these geographies; is that right?

14 A I don't have the old and new maps in front of me to sort
16:04:01 15 of compare the changes.

16 Q Okay. Fair enough.

17 Did you discuss any primary elections in your report?

18 A No.

19 Q Did you analyze any primary elections when conducting any
16:04:17 20 research for your report, so, analyze primary elections that
21 may not have made it into the final cut?

22 A No.

23 Q Are you aware of any racial polarization expert reports
24 offered for the purposes of litigation that have included
16:04:35 25 information about primary elections?

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1 A Yes.

2 Q Can you think of any reasons why racial polarization
3 experts might prefer to look at primary elections rather than
4 general elections?

16:04:49 5 A I prefer to look at general elections.

6 Q I apologize if my question wasn't clear. Can you think of
7 any reasons why racial polarization experts might prefer to
8 look at primary elections rather than general elections?

9 A I don't know.

16:05:09 10 Q Do you think that primary elections could have advantages
11 over general elections for the purposes of racial polarization
12 analysis insofar as primary elections could more effectively
13 hold partisanship constant?

14 A I disagree that that would be an advantage.

16:05:33 15 Q Do you think that looking at primary elections for the
16 purposes of racial polarization analysis could more effectively
17 try to hold partisanship constant?

18 A I think -- I don't think so. I think that general
19 elections where the most -- the largest number of voters and
16:05:58 20 much larger number of voters participate give us a better
21 measure of racial polarized voting.

22 Q Okay. Maybe my question is a little bit unclear. What
23 I'm trying to tease out, and I'm sure I am not doing a good job
24 is, you know, when I think about a general election, I think
16:06:16 25 one confounding variable about why voters vote the way that

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1 they do could be partisanship as opposed to race. Is that
2 fair?

3 A I disagree that it's a confounding variable. Whereas we
4 talked about earlier, we're not trying to understand why voters
16:06:37 5 vote the way they do.

6 Q Uh-huh.

7 A We're trying to look at how they vote. And racial
8 polarized voting doesn't require understanding why. It only
9 requires understanding how they vote and the choices that
16:06:51 10 voters make.

11 Q Fair enough, Dr. Palmer.

12 So if someone were interested in trying to figure out why
13 voters vote the way that they do, do you think that there could
14 be an advantage to analyzing primary elections insofar as those
16:07:07 15 primary elections might hold partisanship more constant than
16 general elections?

17 A Can you repeat the question?

18 Q Sure. So insofar as someone was trying to figure out why
19 voters vote the way that they do, do you think that there could
16:07:26 20 be an advantage in looking at primary elections rather than
21 general elections because primary elections could hold
22 partisanship more constant?

23 MS. MADDURI: Objection. Calls for speculation, and
24 it's beyond the scope of Dr. Palmer's report.

16:07:44 25 JUDGE MARCUS: If you can answer the question, I will

1 allow it. You may proceed, Dr. Palmer, with your answer.

2 Overruled.

3 THE WITNESS: I think you're asking a research
4 question about if primaries have that advantage. I don't know
16:07:58 5 the answer to that question.

6 BY MR. WILSON:

7 Q Are you aware of any racial polarization experts who have
8 concluded the primary elections would have that advantage over
9 general elections?

16:08:13 10 A I don't know.

11 Q Fair enough.

12 Now, Dr. Palmer, I would like to ask you a little bit
13 about the data sources that you used.

14 Could we turn to page 2 of your report, please? And if
16:08:30 15 it's easier -- it looks like you have it in front of you. But
16 if you would like, I can put it up on the screen. Just let me
17 know.

18 On page 2 of your report, you have a section called data
19 sources and elections analyzed, right?

16:08:46 20 A Yes.

21 Q And in this section, you explain where you got the data
22 that you used for racial polarization analysis, right?

23 A Yes.

24 Q And you write in paragraph 11, I analyzed
16:09:03 25 racially-polarized voting using two different data sources,

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1 correct?

2 A That's correct. But I believe that should be three when
3 you include the county level data, as well.

4 Q Thank you. You are well ahead of me, Dr. Palmer. I was
16:09:16 5 going to ask about that for my own edification.

6 So the first bullet point, you described the sources that
7 you used to determine precinct level election results and data
8 on Citizen Voting Age Population or CVAP by race for the 2016,
9 2018, and 2020 general elections, and the 2017 special election
16:09:38 10 for Senate, right?

11 A Yes.

12 Q And as you describe it, in the first bucket, you used
13 data, quote, assembled by the voting and election science team,
14 right?

16:09:49 15 A Yes.

16 Q And I think Ms. Madduri may have asked you about the
17 voting and election science team. But can you tell me just one
18 more time who they are or what that group is?

19 A It's a group of academics at least partially based at the
16:10:08 20 University of Florida who do the really hard and time-consuming
21 work of matching up precinct shapefiles to election results.

22 Q Thank you, Dr. Palmer.

23 And so does the Secretary of State provide the voter
24 registration and voter history data that the VEST uses?

16:10:28 25 A I don't believe that they use that data. They use the

1 election results, the actual counts of the number of votes cast
2 for each candidate, which is from the Secretary of State.

3 Q Okay. Okay.

4 Got it. And what specific data then did the voting and
16:10:51 5 election science team assemble?

6 A They take the election results, which are lists for every
7 precinct of every election and the number of votes received by
8 each candidate, and then they match those results to geographic
9 data, to a shapefile, which is a map --

16:11:11 10 Q Uh-huh.

11 A -- of the precincts at the time of the election. And this
12 is -- this sounds like something that should be easy, but in
13 practice in many states, it's not because the counties that
14 might administer the precinct boundaries might identify
16:11:33 15 something differently than the state system for reporting
16 election results.

17 Q I have no doubt that that's difficult.

18 Is that a task that you have ever undertaken yourself?

19 A Yes, many times. Including in *Chestnut v. Merrill* in
16:11:49 20 2019, I sought to do this for Alabama, and I was provided
21 shapefiles for I believe most, if not all, the counties in the
22 focus area that I used at the time, which was a different focus
23 area in that case, and voter files which identified by
24 precincts and election results, and I had significant
16:12:13 25 challenges matching up that data such there were some counties

1 I could not include in my analysis even with additional data
2 and requests from the state at the time. And that's all
3 documented in that report.

4 Q And so why did you not repeat that process in this case?

16:12:32 5 A I knew from past experience that it's a very -- very
6 time-consuming task. And the VEST data was not -- I do not
7 belief was available at the time of my previous report, but was
8 now available. So if somebody else had already completed this,
9 you know, very difficult time-consuming task, I can rely on
16:12:54 10 their data set.

11 Q Fair enough. Thank you. And next you described the data
12 as having been, quote, updated to use 2020 VTDs and distributed
13 on the Redistricting Data Hub, right?

14 A Yes.

16:13:06 15 Q I'm sure this is a very basic question, but what does it
16 mean to update the Secretary of State's data to use 2020 VTDs?

17 A So it's updating the VEST data, which is based on election
18 results from the Secretary of State. And essentially, it's
19 transforming one geography, one set of boundaries into another.
16:13:30 20 And the way that this is typically done is you look at census
21 blocks or block groups, so very small units within each
22 precinct, and precinct would be made up of many such, and
23 aggregate the data down to go from precinct level to census
24 block level. And then apply the -- and then for the aggregate
16:13:53 25 back up based on which census blocks are in which VTDs instead.

1 So it's a way of estimating vote shares at a different
2 geographic level based on data from the precinct level data.

3 Q Thank you.

4 And then you quote distributed this updated information on
16:14:12 5 the Redistricting Data Hub; is that right?

6 A This data was distributed. I did not distribute it.

7 Q Okay.

8 A I downloaded it from Redistricting Data Hub.

9 Q Okay. My mistake. Thank you.

16:14:23 10 And does distribute meaning anything statistically special
11 here, or does that just mean that Redistricting Data Hub had
12 the information and it was provided?

13 A Yes. I could have said published.

14 Q Published. Okay. Thank you. And am I right, you write
16:14:41 15 then that you, quote, merged the distributed data with the
16 Citizen Voting Age Population data from the U.S. Census'
17 American Community Survey; is that right?

18 A Yes.

19 Q And so what is it to merge the distributed data?

16:14:56 20 A So what I was able to download from the Redistricting Data
21 Hub was VTD level election data, that is, the number of votes
22 cast for each candidate in each election within that unit of
23 geography and then a map, the actual boundaries of that
24 geography, and that's it. There's no data on the people who
16:15:20 25 live there. So I guess the data on the people who live there

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1 from the Census Bureau, and the American Community Survey is
2 the annual product of the U.S. Census Bureau, unlike the
3 decennial census, and it's the only government source for data
4 on citizenship. So that's where -- that's our source for
16:15:42 5 Citizen Voting Age Population, and there's a special version of
6 the ACS, the American Community Survey, put out every year by
7 the Census Bureau of those Citizen Voting Age Population tables
8 that are designed for this use for use in redistricting the
9 voting rights cases.

16:16:04 10 And so that data is at a different geographic level. It's
11 at the census block level is the small population or geographic
12 level for that data. So I figure out which census blocks fall
13 into which voting tabulation districts, and then add up the
14 Citizen Voting Page Population for each group to get VTD level
16:16:25 15 population data to go with the VTD level election data.

16 So it's all just -- all the data comes from different
17 places. There's no one place that has it all together. And
18 the bulk of my work on these cases of putting all this together
19 in a way that works to make sense in checking it and validating
16:16:44 20 it.

21 Q Thank you, Dr. Palmer.

22 Am I right that ACS data are survey results?

23 A Yes. But a very, very large scale survey conducted by the
24 Census Bureau, not say -- a very different kind of survey that
16:17:00 25 you might think about a public opinion survey that's looking at

1 a few hundred people.

2 Q Sure. Thank you for that. And these data are as you said
3 different from the decennial census data, right?

4 A Yes.

16:17:11 5 Q And decennial census data are also referred to as, am I
6 right, PL-94 data?

7 A The PL-94 is one way in which the census data is published
8 and distributed I believe primarily for redistricting. It's
9 the first -- it's sort of the first release of the census data,
16:17:32 10 the one that came out last summer for this redistricting cycle.
11 There's many, many other forms in which the U.S. census data is
12 also produced.

13 Q Okay. And the PL 94 data, then, were available when you
14 conducted this analysis; is that right?

16:17:46 15 A Yes.

16 Q Okay. And correct me if I'm wrong, but does ACS data --
17 does it allow you to control for both single-race black or you
18 could call it black alone and any-part black racial
19 demographics?

16:18:05 20 A There's a few different racial categories within the
21 Citizenship Voting Age Population data. I used single-race
22 non-Hispanic black. I believe there is some different
23 multi-racial categories in there, but I am not sure what
24 exactly they are right now.

16:18:27 25 Q Thank you, Dr. Palmer.

1 So I think that answered my next question. But you chose
2 single-race black -- excuse me. You chose single-race
3 non-Hispanic black for your analysis; is that right?

4 A Yes.

16:18:40 5 Q Thank you.

6 And then I think the second bullet point, you described
7 the sources that you used to determine, quote, precinct-level
8 election results and data on actual voter turnout by race for
9 the 2020 general elections; is that right?

16:18:56 10 A Yes.

11 Q And so, again, this data was assembled by the voting and
12 election science team; is that right?

13 A The election results were also from the voting election
14 science team.

16:19:10 15 Q I'm sorry. Was that a -- sorry. Was that a
16 clarification?

17 A Yes. The data -- this full data set was assembled by me.

18 Q Okay.

19 A The election half of it came from the voting election
16:19:28 20 science team. The voter turnout side of it came from the data
21 vendor L2.

22 Q Understood. Thank you, Dr. Palmer.

23 And I did want to ask you about that. So you say the
24 actual turnout rate -- excuse me -- actual turnout by race was
16:19:45 25 calculated by the Redistricting Data Hub using a commercial

1 voter file provided by the data vendor L2, right?

2 A Yes.

3 Q Do you know how L2 determines actual turn out by race?

4 A So L2 gets the voter files from the state, and then they
16:20:07 5 modify the race data a little bit. So Alabama includes
6 self-identified race in the voter file, so L2 can start with
7 that. And then for people where it's unknown or missing, they
8 can do some modeling to try to estimate the race of those
9 people. So it's going to be a little bit different than the
16:20:25 10 one provided by the state, but I did not have access to a state
11 voter file.

12 Q Understood, Dr. Palmer.

13 And the information that L2 got from the state would have
14 come from the Secretary of State; is that right?

16:20:38 15 A I believe so.

16 Q Okay. And to the best of your knowledge, that's the
17 Secretary of State's voter registration. And is it a voter
18 history file or product?

19 A Yes. I don't know in Alabama if it's one big file or if
16:20:57 20 it's produced as two separate files. But a typical voter file,
21 you're going to have a list of every registered voter, and then
22 either within that same list or some other table, a list of
23 every election that each voter voted in, at least within some
24 period of recent years.

16:21:12 25 Q Thank you, Dr. Palmer.

1 And do you know how the Secretary of State categorizes
2 race in its voter registration or voter history files?

3 A I believe that it comes from the voter registration forum
4 where voters are asked to identify their own race by selecting
16:21:31 5 I box from a list.

6 Q And do you know whether voters can select multiple boxes
7 such that they could be multi-racial under the Secretary of
8 State's data?

9 A I don't know.

16:21:48 10 Q Do you know whether the Secretary of State's data includes
11 a box that voters can check that says black?

12 A I believe it does. I know I looked at the -- in *Chestnut*
13 *v. Merrill*, I was working directly with the voter files, but
14 it's been some time since I looked at that form.

16:22:10 15 Q Sure. And do you know, then, what happens if a voter
16 selects two different racial groups?

17 A I don't know.

18 Q Okay. If it's the case that a voter identifies only as
19 black, is it -- excuse me -- let me rephrase the question.

16:22:35 20 If a voter only selects black on the voter registration
21 form, is it fair in your view to say that they identify as
22 single-race black?

23 A I don't know. I don't know how a multi-racial voter would
24 choose to fill out that form.

16:22:56 25 Q If they could select multiple boxes, if they consider

1 themselves to be multi-racial, are they declined to select
2 multiple boxes and select only black, is it fair to assume that
3 they identify as single-race black?

4 MS. MADDURI: Objection. Calls for speculation.

16:23:18 5 Outside the scope.

6 JUDGE MARCUS: Can you answer that question,
7 Dr. Palmer?

8 THE WITNESS: I think for the purposes of voter
9 registration, they are at times choosing to identify themselves
16:23:28 10 as single-race black.

11 JUDGE MARCUS: All right. You may proceed,
12 Mr. Wilson.

13 MR. WILSON: Thank you, Judge. Thank you, Dr. Palmer.

14 BY MR. WILSON:

16:23:44 15 Q So if we could move to the third bullet. You state that
16 you used data, quote, downloaded from the website of the
17 Alabama Secretary of State to find county level election
18 results and data on voter registration by race for the 2012 and
19 2014 general elections, right?

16:24:02 20 A Yes.

21 Q Okay. Do you recall who was running in these elections?

22 A The -- I remember the name of some of the candidates, but
23 certainly not all of them.

24 Q Okay. And how did the 2012 and 2014 election data feature
16:24:25 25 in your analysis?

1 A In Figure 4 and I believe it's Table 3 where I used the
2 county level data to estimate racially-polarized voting at the
3 county level.

4 Q Okay. And you were getting the data on voters' race from
16:24:50 5 the Secretary of State for this analysis, right?

6 A Yes.

7 Q And so per our previous question and answer, you would say
8 that this is, then, single-race data; is that right?

9 MS. MADDURI: Objection. Misstates the testimony.

16:25:06 10 JUDGE MARCUS: I think you can answer the question.

11 Did Mr. Wilson have it right or not, Dr. Palmer?

12 THE WITNESS: It's self-identified racial data, which
13 I believe if they can only check one box, I believe we consider
14 that single-race data.

16:25:21 15 BY MR. WILSON:

16 Q Right. Yeah. Thank you, Dr. Palmer. I appreciate that.
17 And I apologize if my question was unclear.

18 So is it fair to say, then, that the single-race black
19 metric underlies part of your racial polarization analysis?

16:25:35 20 A Yes. I used single-race non-Hispanic black in the Citizen
21 Voting Age Population. And to be fair, that's reflected on the
22 voter file of the other analyses.

23 Q Okay. So to the extent that single -- that -- excuses me.
24 Let me rephrase. To the extent that the single-race black
16:26:00 25 metric is reflected in the second and third analyses that you

1 refer to, you would say that you used single-race black for all
2 of your analysis; is that right?

3 A Yes.

4 Q Thank you, Dr. Palmer.

16:26:15 5 The Secretary of State provides voter registration data in
6 which -- excuse me. I'm sorry.

7 I think we actually already covered some of this.

8 So we talked about Dr. Hood's rebuttal report a little bit
9 earlier. You talk about that report with Ms. Madduri; is that
16:26:54 10 correct?

11 A Yes.

12 Q And you did have a chance to look at this report, right?

13 A Yes.

14 Q And, Dr. Palmer, do you have that report in front of you?

16:27:02 15 A I do not.

16 Q Okay. I will try to share my screen here. Am I sharing
17 my screen here with you, Dr. Palmer?

18 A Yes.

19 Q Thank you.

16:27:36 20 In paragraph 2 of Dr. Hood's supplemental report, he
21 specifically notes the Redistricting Data Hub's data.

22 JUDGE MARCUS: I'm sorry to interrupt you, but could
23 you tell us what number this is among your exhibits?

24 MR. WILSON: Of course. I'm sorry. This is
16:27:54 25 Defendants' Exhibit 6.

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1 JUDGE MARCUS: Thanks.

2 BY MR. WILSON:

3 Q Dr. Palmer, in paragraph 2 of Dr. Hood's supplemental
4 report, he specifically notes that the Redistricting Data Hub's
16:28:15 5 data appears to have several problems; is that right?

6 A He -- I don't think that's right. He notes a comment in a
7 validation report that they were not able to replicate joining
8 election data. That's in paragraph 2, but he doesn't say that
9 that necessarily means there's a problem.

16:28:37 10 Q Fair enough. Thank you, Dr. Palmer. And he notes that
11 it's unclear from his report, and he is referring to your
12 report, how much time Professor Palmer engaged in to validate
13 the quality of data housed on the Redistricting Data Hub
14 website. Did I read that correctly?

16:28:51 15 A You did. I didn't report the amount of time I spent
16 validating the data. In my report though, I spent considerable
17 time doing so.

18 Q Can you describe that process for us?

19 A Sure. So to start with, the best data, which is the one I
16:29:14 20 believe he -- Dr. Hood is discussing here, I looked at the
21 individual records. I looked at the totals of the county and
22 state levels to make sure that the total numbers made sense.
23 Where possible, I looked at a lot of maps of the data to make
24 sure that the units made sense, as well. And most
16:29:38 25 significantly, because this data was updated from precinct

1 level to VTD level, I looked at the exact process that was
2 done. And in fact for 2017, where it was not done, I
3 implemented that same code myself to update the data. So I
4 really -- by the end of the process, I really understood how
16:29:56 5 they assembled their data, why it looked the way it did, how it
6 was organized, and how to recreate parts of that process
7 myself.

8 Q Thank you, Dr. Palmer.

9 And can you estimate about how long this process took you,
16:30:09 10 if you recall?

11 A I don't know exact. It happened, you know, over several
12 different steps of my analysis. You know, I looked at the
13 initial data, understood it, and then as I worked through the
14 analysis, I did continual validation checks, especially around
16:30:26 15 merging. When I am merging -- I have to merge these files
16 together, different data sources, you know, merging takes a lot
17 of time and validation to make sure nothing is getting missed
18 or merging correctly.

19 Q Understood. Thank you. Dr. Palmer. If we could look at
16:30:45 20 Paragraph 3, and I believe Ms. Madduri asked you a little bit
21 about this earlier.

22 Now, Dr. Hood notes that by his finding, at least, the L2
23 data consistently underestimated the percentage of white
24 voters, and the percentage of other voters was consistently
16:31:11 25 overestimated by L2 on an average of about 4 -- a little over

1 4 percent for both; is that right?

2 A That's what Dr. Hood reports, yes.

3 Q Right. Right. Yeah. Just asking about his report here.

4 And do you dispute that conclusion?

16:31:27 5 A I -- I have not compared the baseline registration number
6 Dr. Hood is making the comparison to, but I do find small
7 differences, as well.

8 Q He also notes that the percentage of black voters was
9 overestimated by L2 in some counties and underestimated in
16:31:52 10 others, right?

11 A Yes.

12 Q And did you find those same conclusions?

13 A I did. And we should expect this. Right? We should
14 expect the estimates are going to be slightly different than
16:32:09 15 other data sources. And if we're estimating data, and I also
16 talk about in my report how the voter file I had access to is
17 dated a little bit later than the actual election. As there's
18 some uncertainty, we should expect that numbers will be a tiny
19 bit too high in some and a tiny bit too low in others. That
16:32:29 20 seems completely reasonable to me for estimated data.

21 Q Thank you, Dr. Palmer.

22 And do you agree with Dr. Hood's conclusion that while
23 these discrepancies in the L2 turnout data may not appear to be
24 all that sizeable, they certainly could make a difference in a
16:32:45 25 district functionality analysis where the racial composition of

1 the district in question is evenly divided?

2 A They could make a difference in a functionality analysis
3 conducted using this data. But my functionality analysis did
4 not use this data. They can make no difference to my
16:33:04 5 functionality analysis.

6 Q Understood, Dr. Palmer. And why would this be a problem
7 to use L2 data as Dr. Hood has described it for functionality
8 analysis?

9 A Well, it -- first of all, it might be a problem. We don't
16:33:21 10 know. It depends potentially I would expect on the results of
11 the functionality analysis and, you know, how close the
12 district might be to 50 percent. I believe that Dr. Hood's
13 functionality methodology could use data like this, but that's
14 a different approach to functionality than what I take in my
16:33:43 15 report where I rely just on the actual past election results.
16 I don't do any modeling on the results. I just aggregate them
17 up to the new geographic units.

18 Q Understood, Dr. Palmer. But do you think, then, that the
19 problem with modeling and the estimates that models produce can
16:34:06 20 pose a problem for functionality analysis? Again, not saying
21 that this is what you did here, but in a different
22 functionality analysis, could using estimates pose the problem
23 that Dr. Hood describes?

24 A I suppose it's entirely dependent on the analysis and the
16:34:26 25 estimates and what we're doing. It's not the way I have done

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1 this analysis. I find that difficult to answer.

2 Q Fair enough. So if we could actually turn, then, and I am
3 going to go back to your report, and, Dr. Palmer, do you still
4 have your report in front of you?

16:34:45 5 A I do.

6 Q Give me a second to stop sharing. Hopefully that worked.

7 So on page 9 of your report, you offer your expertise
8 regarding the, quote, performance of the majority-minority
9 districts in the illustrative maps; is that correct?

16:35:05 10 A Yes.

11 Q And so the record is clear, these are referring to the
12 Caster plaintiffs' illustrative maps?

13 A Yes.

14 Q Is that right? Thank you. Did you draw those maps,
16:35:20 15 Dr. Palmer?

16 A No.

17 Q Do you know who drew those maps?

18 A I believe it was Mr. Cooper.

19 Q Can you briefly describe how you conducted this analysis?

16:35:35 20 A I was provided shapefiles, that is, geographic mapping

21 files for each of the six maps by plaintiffs' counsel. And I
22 then take that, and I merge that with the election data that's
23 also -- has spatial data in it, the election results,
24 essentially that VEST election data we have been talking about.

16:36:01 25 And so for each district, I look and see which precincts are

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1 contained in that district. And then I aggregate. I add up
2 all the votes for each candidate in each election within each
3 district and say, well, if these are the precincts that voted
4 in this election, this is who would have won, or those are the
16:36:22 5 vote shares that would have resulted.

6 Q Just so I'm tracking, Mr. Cooper part of what he provided
7 you then would be the racial populations of the proposed
8 districts, and then is it fair to say you applied the
9 statistical patterns of racial voting that you had determined
16:36:40 10 to those populations? Is that --

11 A No. No. That's incorrect.

12 Q Okay.

13 A I don't -- I don't know if I was provided the racial data.
14 If it was included, it was not something that I looked at or
16:36:51 15 factored into my analysis. I suppose I had it to know which
16 was the majority-minority district, but I did not actually use
17 those numbers in my analysis. What you are describing is an
18 approach that I believe was used by Dr. Hood in his initial
19 report. I'm not doing that. I'm not looking at the
16:37:09 20 demographics of these places. I am not looking at turnout by
21 race. I'm just taking the actual election results for the
22 physical places that fall within these new districts. I'm
23 looking at the actual votes cast.

24 So let's say a district contains some set of precincts, I
16:37:30 25 add up all the votes cast for each candidate in those

1 precincts, and say, okay, this candidate would have gotten X
2 votes, add it all up, this candidate got Y votes, and now here
3 is the vote share and who won. There's no modeling done
4 whatsoever in my functionality analysis.

16:37:46 5 Q Understood. That's very helpful. Thank you, Dr. Palmer.

6 And we have discussed a procedure -- a statistical
7 procedure called ecological inference throughout your
8 examination; is that right?

9 A Yes.

16:38:05 10 Q And that is the statistical method that your
11 racial-polarization analysis relies on; is that right?

12 A Yes.

13 Q And it's fair to say that ecological inference allows you
14 to estimate how groups vote?

16:38:26 15 A That's the general goal of the analysis.

16 Q Fair enough. That's the goal of the analysis. The goal
17 of ecological inference is to determine how groups vote, right?

18 A Yes.

19 Q And ecological inference, then, does not explain why
16:38:45 20 groups vote the way that they do?

21 A That's correct. That's not the goal.

22 Q And so your report shows that white Alabamians tend to
23 vote Republican; is that right?

24 A I don't believe that's shown in my report, but I believe
16:39:01 25 that to be true.

1 Q You don't believe that that's shown in your report?

2 A I don't think I talk about parties in my report.

3 Q Do you talk about candidates in your report?

4 A In a few places, yes.

16:39:15 5 Q Are you aware of the parties to which the candidates
6 belonged in the elections that you examined, Dr. Palmer?

7 A Yes.

8 Q And did the white candidates of choice belong to the
9 Republican Party?

16:39:34 10 A Yes.

11 Q Thank you.

12 Did you investigate whether white Alabamians tends to vote
13 Republican because of some sort of racial bias?

14 A No. That would be looking at why voters vote the way they
16:39:52 15 do, which is not part of this analysis.

16 Q Right. And ecological inference could not tell you that;
17 is that right?

18 A That's right.

19 Q And did you come to any conclusion about the party for
16:40:03 20 whom black Alabamians tend to vote?

21 A They tend to vote for Democratic candidates.

22 Q And based on your report, do black Alabamians tend to
23 block vote to a greater or lesser extent than white Alabamians?

24 A It depends on the election, but potentially a slightly
16:40:34 25 greater extent in some elections, but not in all of them.

1 Q Okay. And I think you have already said this, but the
2 racial-polarization analysis you conducted can't explain why
3 black Alabamians tend to vote for Democrats, can it?

4 A That's right. That's not the intent of this analysis.

16:40:59 5 Q Uh-huh. So is it fair, then, to say that someone using
6 ecological inference cannot say whether people cast votes
7 because they like a candidate as opposed to because they
8 dislike another candidate?

9 A I suppose so. We just simply see they prefer one
16:41:25 10 candidate to another.

11 Q Right. And so, for example, Dr. Palmer, are you familiar
12 with the concept of a protest vote? Have you heard that term
13 before?

14 A Yes.

16:41:37 15 Q And would it be fair to say that a protest vote occurs
16 when someone votes really because they dislike a certain
17 candidate and so they are going to vote for someone else?

18 A I think that's reasonable.

19 Q Okay. So a protest vote would be like I oppose this
16:41:57 20 candidate, and I don't care. I'm just going to cast a vote
21 that opposes this person, right?

22 A Yes. You're describing a reason why somebody might cast
23 their vote a certain way, which is not the purpose of this
24 analysis.

16:42:10 25 Q Right. So ecological inference then you would agree can't

1 show whether groups are voting for one candidate or against
2 another; is that right?

3 A I'm not sure that's something that we can ever separate.

4 It's showing that they prefer one candidate to another is the

16:42:36 5 same thing as showing they don't prefer the other candidate.

6 So I am not sure we can say like versus dislike, everything is
7 relative.

8 Q Okay. Fair enough. I am going to try to share something
9 again.

16:42:53 10 And I believe if I do this correctly, Dr. Palmer, am I
11 sharing your report? Are you able to see your report in the
12 record? This is Caster Exhibit 79.

13 So I would like to go down to page 5 and paragraph 17 of
14 your report. You wrote that in paragraph 17, White voters are
16:43:34 15 highly cohesive in voting in opposition to the black candidate
16 of choice in every election.

17 Did I read that correctly?

18 A Yes.

19 Q And in paragraph 16, you also refer to black voters as
16:43:49 20 supporting their candidates of choice, right?

21 A Yes.

22 Q I think earlier in your direct examination, you referred
23 to white voters as opposing black-preferred candidates. Do you
24 recall that?

16:44:05 25 A Yes.

1 Q Okay. But you agree that ecological inference can't
2 actually confirm that white voters are voting because they
3 affirmatively oppose black-preferred candidates; is that right?

4 A I'm not sure I understand that. I use the terms as a
16:44:26 5 relative term. A black voter supporting their candidate of
6 choice is the same thing as a black voter opposing the white
7 candidate of choice. And vice versa. These are just relative
8 measures of support. I don't use these labels to denote that
9 one party is voting, you know, in a -- because they like
16:44:47 10 candidates, whereas the other is voting dislike or vice versa.
11 We're purely looking at relative relevance.

12 Q So to vote for or against someone in a binary election,
13 you would say that those are basically synonymous, or at least
14 is that how you intend to use them in your report?

16:45:04 15 A Yes. I think that anything else is trying to get at why
16 people vote the way they do, and here, it's just what is your
17 ranking of these candidates, who are you choosing to vote for.

18 Q Understood. Thank you, Dr. Palm ever.

19 So in paragraph 18 in the final sentence, you write, Every
16:45:24 20 election, black voters have a clear candidate of choice, and
21 white voters are strongly opposed to this candidate. Did I
22 read that correctly?

23 A Yes.

24 Q And so what does it mean for white voters to be strongly
16:45:39 25 opposed this candidate?

1 A They are voting -- they are strongly or cohesively voting
2 for the opponent of the black candidate.

3 Q So to be clear, then, your analysis is not suggesting that
4 white voters have a particularly -- individually have a
16:46:00 5 particularly strong opposition. What you mean by strongly
6 opposed is that white voters by a large margin are voting for
7 the white-preferred candidate; is that right?

8 A Yes.

9 Q Okay. And because these are synonymous terms, you could
16:46:19 10 have rewritten the last sentence of paragraph 18 to say that
11 white voters have a clear candidate of choice, and black voters
12 are strongly opposed to this candidate; is that right?

13 A Yes.

14 Q And what do you mean when you say that black voters are
16:46:42 15 strongly opposed to the white-preferred candidate?

16 A In that case, large majorities of black voters are voting
17 against the white-preferred candidate.

18 Q Would this be evidence that black Alabamians vote for
19 racist reasons?

16:46:58 20 A No. Once again, we're never getting at intent in this
21 analysis. We're never getting at reasons -- reasons for voting
22 in this analysis.

23 Q Would this analysis support the inference that black
24 Alabamians are voting for racist reasons?

16:47:15 25 A No. This analysis provides no evidence about why people

1 vote the way they do.

2 Q Okay. I think just a couple more questions, Dr. Palmer.

3 I appreciate your patience.

4 In your view, Dr. Palmer, does block voting approximate

16:47:45 5 racial animus?

6 MS. MADDURI: Objection. Asked and answered.

7 Dr. Palmer has explained his response to this in numerous

8 different ways.

9 JUDGE MARCUS: We will take it one more time.

16:47:57 10 Overruled.

11 THE WITNESS: Can you repeat the question, please?

12 BY MR. WILSON:

13 Q Of course. Thank you. Dr. Palmer, does block voting

14 approximate racial animus?

16:48:08 15 A I don't think evidence of block voting says anything about

16 racial animus.

17 Q Thank you, Dr. Palmer.

18 So is it fair to say that even where racial polarization

19 in voting is high, partisanship or political platforms may

16:48:28 20 explain the different voting preferences of different races?

21 MS. MADDURI: Objection. Asked and answered.

22 JUDGE MARCUS: I think he has asked and answered this

23 question a number of times. If I heard him right, Mr. Wilson,

24 he said that he can tell you nothing about the why question,

16:48:52 25 just the how question. And I think you have probed that in any

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1 number of different ways.

2 So can we move on, please?

3 MR. WILSON: Of course, Judge Marcus. Thank you. I
4 will move along.

16:49:04 5 BY MR. WILSON:

6 Q Dr. Palmer, you've served as an expert witness or
7 litigation consultant on numerous cases involving voting
8 restrictions; is that right?

9 A Yes.

16:49:20 10 Q Did any of these numerous cases require you to analyze
11 whether racially-polarized voting existed where a majority of
12 white voters supported the Republican Party?

13 A I'm sorry. Can you repeat the question?

14 Q Sure. Did any of these numerous cases require you to
16:49:45 15 analyze whether racially-polarized voting existed where a
16 majority of white voters supported the Republican Party?

17 A Yes.

18 Q I apologize. I'm still sharing, and I don't need to be.
19 So let me stop that.

16:50:07 20 And in these cases where a majority of white voters
21 supported the Republican Party, did you ever conclude that
22 elections were not racially polarized?

23 A I don't believe so.

24 Q Dr. Palmer, are you aware of any parts of Alabama where
16:50:29 25 African-Americans predominantly support the Republican Party?

1 A I don't know.

2 Q Are you aware of any parts of America in which
3 African-Americans predominantly support the Republican Party?

4 A I don't know.

16:50:43 5 Q Do you know whether at the national level African-American
6 voters tend to vote for the Democratic Party?

7 A They do.

8 Q Does this mean that as far as you're aware, voting will be
9 racially polarized any place in America with both black voters
16:51:08 10 and Republican-leaning white voters?

11 MS. MADDURI: Objection. Calls for speculation.
12 Outside the scope of Dr. Palmer's report.

13 JUDGE MARCUS: Overruled. You may answer if you can.

14 THE WITNESS: Can you repeat that, please?

16:51:23 15 MR. WILSON: Sure, Dr. Palmer.

16 BY MR. WILSON:

17 Q Sure. I asked you earlier whether you are aware that
18 African-American -- whether you are aware if African-American
19 voters throughout the country tend to vote for the Democratic
16:51:36 20 Party, and the answer was yes, right?

21 A Yes.

22 Q And so my question, then, is: Does mean that as far as
23 you're aware, voting will be racially polarized any place in
24 America with both black voters and Republican-leaning white
16:51:52 25 voters?

1 A I suppose it first depends on what you mean by Republican
2 leaning. If it's say 80, 90 percent of white voters are
3 Republican like here in Alabama, then we are likely to find
4 that it's likely to be polarized. We can't always detect it.

16:52:14 5 It depends on the data, whether we can identify
6 racially-polarized voting. I think that's a separate question,
7 whether it exists.

8 If, you know, when you say white voters tend to support
9 the Republican Party and it's something like 55 percent of them
16:52:28 10 are Republican, I would not classify that as racially-polarized
11 voting.

12 Q Fair enough. Have you ever heard of racial polarization
13 existing where a majority of white voters supported Democrats?

14 A I don't believe so in at least the recent era.

16:52:47 15 Q Thank you for that clarification.

16 So is it true, then, that to the best of your knowledge,
17 racial polarization has only been found to exist where whites
18 tend to vote for Republicans?

19 A I believe that's been my finding in my reports.

16:53:09 20 Q Are you aware of any reports that have come to the
21 opposite conclusion?

22 A I don't believe so.

23 MR. WILSON: And, Your Honor, if I may have one moment
24 to confer with my counsel?

16:53:30 25 JUDGE MARCUS: You sure can.

1 MR. WILSON: I think that's all we have. Thank you
2 for your time.

3 JUDGE MARCUS: Thank you. We have redirect,
4 Ms. Madduri?

16:53:50 5 MS. MADDURI: No, Your Honor.

6 JUDGE MARCUS: No further questions, then, that anyone
7 has for Dr. Palmer? Judge Manasco, Judge Moorner, any
8 questions?

9 JUDGE MANASCO: None from me.

16:54:05 10 JUDGE MOORER: None.

11 JUDGE MARCUS: Thank you, Dr. Palmer. You are
12 excused.

13 What is your pleasure, folks, at this point? And let me
14 raise one other thing with you as you tell me your pleasure.

16:54:21 15 Judges Manasco, Moorner, and I discussed earlier the
16 prospect and preference if it's agreeable with all of you to
17 begin tomorrow morning at 8:30 Central Standard Time rather
18 than 9:00 o'clock Central Standard, and it would be 9:30
19 Eastern Time so we can get an earlier start on Dr. Bryan's
16:54:52 20 testimony tomorrow. Does that work -- do any of you have any
21 problem with that? I see none.

22 MR. DAVIS: No.

23 JUDGE MARCUS: What is your pleasure, then, at this
24 point? You have about 25, 30 minutes left in the schedule we
16:55:11 25 had set. I don't know that it makes sense to start anybody

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1 now. You tell me what your pleasure is.

2 MR. DAVIS: Your Honor, for Secretary Merrill, I do
3 not have a preference. If the Court would like, if I could
4 have about three minutes to go downstairs where Mr. Wilson just
16:55:25 5 was and get set up, and Mr. Bryan will take my place here.

6 We're happy to get 30 minutes out of the way. We're happy to
7 wait until the morning. Up to the other parties and the Court.

8 JUDGE MARCUS: So you are happy to start with Bryan
9 right now is what you are saying?

16:55:40 10 MR. DAVIS: Whatever the parties and the Court prefer.

11 JUDGE MARCUS: Let me turn to your colleagues for each
12 of the plaintiffs. What is your pleasure, Ms. Khanna, and
13 Mr. Ross? Do you prefer we start him tomorrow morning, or
14 would you just as soon have him start today?

16:55:57 15 MS. KHANNA: Your Honor, I think we'd just as soon
16 have him start today if there's time.

17 JUDGE MARCUS: Mr. Ross, do you have the same view?

18 MR. ROSS: Yes, Your Honor.

19 JUDGE MARCUS: All right. Since you have all agreed,
16:56:10 20 then why don't we take a few minutes, Mr. Davis, give you a
21 chance to bring Mr. Bryan up, and we'll get started in about
22 five minutes.

23 Thank you.

24 (Recess.)

17:03:05 25 JUDGE MARCUS: Are the parties ready to proceed?

1 MR. DAVIS: We're ready.

2 MS. KHANNA: Yes, Your Honor.

3 JUDGE MARCUS: I take it you are calling Mr. Bryan at
4 this point.

17:03:13 5 MR. DAVIS: We are, Your Honor.

6 JUDGE MARCUS: All right. Thank you. Mr. Bryan, if
7 you would raise your right hand, we will swear you in at this
8 point.

9 THOMAS BRYAN,

17:03:19 10 having been first duly sworn, was examined and testified as
11 follows:

12 JUDGE MARCUS: If you would be kind enough to state
13 your name for the record.

14 THE WITNESS: Thomas Mark Bryan, B-R-Y-A-N.

17:03:38 15 JUDGE MARCUS: Thank you, sir. You may proceed.

16 MR. DAVIS: Thank you, Judge.

17 DIRECT EXAMINATION

18 BY MR. DAVIS:

19 Q Good evening, Mr. Bryan.

17:03:45 20 A Good evening, sir.

21 Q What is your profession?

22 A I am a professional demographer.

23 Q Do you have an educational background in demography or
24 related to the field?

17:03:58 25 A Yes.

1 Q What degrees do you hold related to the field?

2 A I have an undergraduate degree in history from Portland
3 State University. I have a master's degree in urban studies
4 from Portland State University. I have a master's degree in
17:04:14 5 management in information systems technology from George
6 Washington University.

7 Q And do you have experience in the area of redistricting?

8 A Yes, I do. I have worked for approximately 20 years as an
9 expert. I have performed analysis, developmental plans,
17:04:39 10 critiquing of plans of approximately 50 political districting
11 or redistricting exercises, and approximately 150 school
12 redistricting exercises during that time.

13 Q So have you been hired by any jurisdictions to draw plans?

14 A Yes, I have.

17:05:00 15 Q At what levels have you either drawn plans or assisted in
16 drawing plans?

17 A I have drawn plans or assisted in the drawing of plans at
18 all levels of geography. I have participated in either the
19 litigation of plans or the drawing of plans at the state level
17:05:21 20 this year in four different states. I have also participated
21 in the drawing -- or the critique of the drawing of plans at
22 the local level, county level, and small areas over the course
23 of my entire career.

24 Q And do you have experience, Mr. Bryan, in studying and
17:05:43 25 critiquing a plan that someone else has drawn?

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1 A Yes, I do, extensively.

2 Q Do you have experience with databases combining
3 demographic and election data?

4 A I do. I have significant background and experience in
17:06:01 5 census data. I used to be an employee of the Census Bureau.
6 And I am familiar with their databases and their techniques
7 based on my employment there. I leveraged that experience and
8 background to use those data in combination with other data
9 sets, in some cases, political data for the benefit in some
17:06:23 10 instances of supporting political scientists in their roles in
11 cases such as this.

12 Q What is the field of statistical transformation,
13 Mr. Bryan?

14 A Statistical transformation, it's an area of looking at
17:06:39 15 data that, you know, may or may not make sense or may or may
16 not be useful in the forum that they're actually reported in.
17 And so we as statisticians, demographers, and analysts have to
18 take the opportunity to do work with data that we're presented
19 in order to change it into a form that's more readily usable or
17:06:59 20 easily interpretable by our audience.

21 Q Thank you. And do you have experience, then, in
22 statistical transformation as you have described it?

23 A Yeah. Yes, we do. It's a common practice in demography.
24 There is a wide variety of different ways we can do it and
17:07:15 25 circumstances under which we would do it in order to make data

1 more useful or interpretable by our audience.

2 Q Are you experienced to predicting population shifts?

3 A Yes, I am. I have been published. I am the author of the
4 section on population estimates and projections in a book
17:07:35 5 called The Methods and Materials of Demography. It's commonly
6 referred to in the field as the Bible of demography.

7 I have experience in writing peer-reviewed journals,
8 papers, and sections of other books with coauthors that I
9 commonly work with in this space. It was also an area in which
17:07:56 10 I was professionally trained and developed expertise when I
11 worked at the Census Bureau.

12 Q Thank you. And when did you work at the Census Bureau?

13 A It was approximately 1998 to 2001, during the course of a
14 decennial census and during the development of the American
17:08:16 15 Community Survey. Thank you.

16 Q You should have a copy of a notebook with our exhibits in
17 it, Mr. Bryan, at least available to you. Would you take a
18 look at Defense Exhibit 3 and tell us if that is a copy of your
19 CV?

17:08:29 20 A Yes. I have that document.

21 Q Thank you. I just wanted to identify it for the record.

22 MR. DAVIS: At this time, Your Honors, we move to
23 tender Mr. Bryan as an expert in redistricting, demography,
24 statistical transformation, and predicting population shifts,
17:08:46 25 which Mr. Bryan can explain is also known as applied

1 demography.

2 JUDGE MARCUS: Any objections from counsel for the
3 plaintiffs?

4 MR. BLACKSHER: No.

17:08:56 5 MS. KHANNA: No objection, Your Honor.

6 JUDGE MARCUS: And for the Milligan folks, any
7 objection? I'm sorry. We can't hear you in New York because
8 you are muted. You are still muted, so we can't hear you. Get
9 someone to help him unmute.

17:09:27 10 He would be for Milligan or for --

11 MR. DUNN: Did that help?

12 JUDGE MARCUS: That's perfect. Thank you.

13 MR. DUNN: Thank you, Your Honor. I take it you can
14 see and hear me.

17:09:38 15 JUDGE MARCUS: I can. If you would just state your
16 name and who you represent.

17 MR. DUNN: I'm sorry. Yes, my name is David Dunn. I
18 am with Hogan Lovells, and I will be representing the Milligan
19 plaintiffs for this witness. We don't have an objection, Your
17:09:49 20 Honor, except we'd like to reserve the right to ask some
21 questions on cross-examination that would go to the scope and
22 the weight potentially of the witnesses's testimony if that's
23 acceptable.

24 JUDGE MARCUS: You are perfectly free to do that.

17:10:05 25 For the Singleton folks, I am not sure that you are going

1 to do any cross here, but I just wanted to give you that
2 opportunity. And if you were going to exercise it, whether you
3 had any objection to qualifying Mr. Bryan as an expert in the
4 fields Mr. Davis specified.

17:10:25 5 MR. BLACKSHER: We have no objections to his being
6 qualified in those fields, Your Honor, and, yes, we would like
7 the opportunity to cross-examine him. We will need at least an
8 hour. I have agreed with counsel for the Milligan and Caster
9 plaintiffs to go last, so I'm sort of putting my marker down
17:10:45 10 now. Before Mr. Bryan leaves for parts unknown, I need an hour
11 left for me, please.

12 JUDGE MARCUS: You will have the opportunity to
13 cross-examine him as fully as you deem appropriate.

14 Having said that, Mr. Bryan is accepted as an expert,
17:11:04 15 Mr. Davis, in the fields that you have specified, and you may
16 proceed with your examination.

17 MR. DAVIS: Thank you.

18 BY MR. WILSON:

19 Q Mr. Bryan, are you familiar with traditional redistricting
17:11:14 20 principles?

21 A Yes, I am.

22 Q Where do you look to find out what those are?

23 A The most common source that I look to nationally as the
24 starting point if I am going to get kind of the ground truth
17:11:29 25 nationwide would be an organization called NCSL, National

1 Conference State Legislature, widely regarded as the kind of
2 go-to organization for information like that. They've got a
3 variety of different traditional districting principles that
4 are in common use throughout the United States.

17:11:51 5 Q Thank you. Tell us what some of those traditional
6 districting principles are one by one and describe them,
7 please, just in brief fashion?

8 A Yeah, sure, of course.

9 Some of the guidance that they recommend that I see
17:12:06 10 followed in different cases in the United States are things
11 such as compactness, contiguity. I think as Dr. Duchin
12 described earlier, there is a variety of different types of
13 contiguity, and we strongly advocate that.

14 Preservations of geographic, political subdivisions,
17:12:27 15 preservations of communities of interest, what we would call
16 COIs. They also recommend things such as not pairing
17 incumbents. They don't want to unnecessarily put incumbents
18 that may already represent a constituency, pit them against
19 each other in an election.

17:12:50 20 There are some other emerging principles, maybe not
21 necessarily traditional or existing principles, but there's
22 kind of a movement more recently to do things like try to
23 remove partisanship, for example, or introduce this concept of
24 proportionality into the redistricting process.

17:13:10 25 Those are pretty much the scope of the most widely used

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1 and referred to traditional principles.

2 Q These emerging principles you mentioned, addressing
3 partisanship and proportionality, what kind of proportionality
4 do you mean?

17:13:27 5 A Basically coming up with neutral like data science based
6 ways of balancing population and kind of prioritizing less
7 emphasis on other redistricting principles. It's not an area
8 that's widely used, and it's not an area that I understand is
9 being used -- leveraged in the Alabama case.

17:13:47 10 Q I know that a couple of states that have new districting
11 commissions to draw districts for different bodies, the states
12 have -- may say that we prefer that if 30 percent of the
13 statewide vote went Democrat, then we would prefer 30 percent
14 of the state legislative seats be Democrat. Is that the kind
17:14:11 15 of proportionality you are talking about?

16 A Yeah, that's correct.

17 Q What about preserving the core of districts? Is that a
18 recognized traditional districting principle?

19 A Sure. Sure. Yeah, it is. It's, you know, kind of a part
17:14:26 20 of a tenet what we would call continuity of representation.
21 Making sure that you don't pair incumbents kind of follows
22 under that same principle assuring that if there is a community
23 of interest population that's been represented by a particular
24 representative, he or she has a chance of continuing that
17:14:48 25 representation. And then obviously, ensuring as you

1 redistrict, the degree to which you keep districts whole and
2 don't change them unnecessarily to meet changing criteria is
3 important to ensuring that continuity of representation.

4 Q Why should a map drawer observe traditional districting
17:15:17 5 criteria, Mr. Bryan?

6 A I think that these are very well-established criteria.
7 They're long standing, and they give us a common of set of
8 rules and guidelines that when we go through this extremely
9 important difficult process of redistricting, they are a bit of
17:15:40 10 guidance that we can use and we can all refer to. And whether
11 you agree on whether one may be more important or less
12 important than another one, at least, all the parties that are
13 involved know what those different principles are and have a
14 common rule book to play by.

17:15:56 15 Q You know, in -- can you give us an estimate of how many
16 times you have been retained to draw a plan or assist in
17 drawing a plan?

18 A Yes. My estimated in the 20 years of doing this for the
19 purpose of districting and political redistricting is
17:16:17 20 approximately -- the number of cases I have work on is
21 approximately 50. If you were to say what are the number of
22 plans that I have drawn or attempted to draw underneath those
23 cases, they would be in the hundreds. As you have seen in this
24 case, some of the other plaintiffs have brought, you know,
17:16:37 25 experts that have drawn, four, five, six, ten different maps,

1 you know, just for this one particular case.

2 So there is a number of cases versus how many maps are
3 drawn are two different metrics.

4 Q When somebody hires you and says, you know, Mr. Bryan, we
17:16:52 5 want you to help us draw new districts for our local school
6 board or for our county commission or for our state Senate, do
7 you usually start with a blank outline of the jurisdiction, or
8 do you start from the previous plan?

9 A Yeah. So the first thing that I would do is since I do
17:17:17 10 redistricting across the United States, I work in many
11 different states that have the different prioritization of the
12 different principles. But more often than not, the starting
13 point for doing redistricting or political redistricting is to
14 begin with the plan that's in place, again, trying to conform
17:17:37 15 with the principle of continuity of representation. And then I
16 would typically seek to learn about communities of interest,
17 the political landscape, the priorities of the policy makers,
18 and try and help best understand how we can adopt that plan to
19 be best suited to the new demographic reality after we have a
17:18:03 20 census.

21 Q Thank you. In the course of your work in this case, have
22 you had an opportunity to assess the plan passed by the
23 Legislature last November, the congressional plan?

24 A I have had an opportunity to assess the plan, yes.

17:18:15 25 Q Okay. I would like to show you -- this is Defense

1 Exhibit 1. Is this a copy of the report that you provided in
2 Singleton versus Merrill?

3 A Yes. It appears to be.

4 Q Okay. I want to refer you to page 67 of that report.

17:18:46 5 Is this the plan passed by the Alabama Legislature and
6 signed by the governor just a couple of months ago?

7 A Yes, that's correct.

8 Q I want to now look at the next page, page 68?

9 A Sure.

17:19:04 10 Q Would you please explain to the Court what are you showing
11 us with this map?

12 A Sure. There is a dark outline, a heavy dark outline, and
13 that shows the outline of the existing plan. There is another
14 outline sometimes layered underneath it because there's a lot
17:19:34 15 of continuity of these districts that shows what the
16 adjustments were to the existing plan and what the differences
17 are of the existing plan to the new plan.

18 And what I see in this plan is that it largely represents
19 what I would call a least-changes plan. There are no wholesale
17:19:59 20 significant changes in the geography except what appears to be
21 necessary in order to achieve one person one vote balance
22 population requirements.

23 Q I see. And what does this show us that the Legislature
24 did with District 5 in the northern part of the state?

17:20:16 25 A Sure. So it appears that he took District 5, which ran

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1 east to west and slightly reduced the size of that to reduce
2 the population there, and this would suggest that perhaps the
3 -- relative to the rest of the state, there may have been more
4 population there than in some other parts of the state where
17:20:40 5 boundaries had to be expanded to add population.

6 Q I see. And what does it mean when district has to give up
7 geography? What does that tell us about whether the district
8 was underpopulated or overpopulated after the 2020 census?

9 A Sure. Typically, if you are going to reduce the
17:21:01 10 geography, that means that it was overpopulated, and that
11 excess population needs to be moved to other districts that may
12 have been more equitably populated or perhaps underpopulated.

13 Q And then if a district had to expand in geography, does
14 that mean it was underpopulated or overpopulated?

17:21:21 15 A Yes, that's typically the interpretation, that's correct.

16 Q Yeah. Okay. What do you see that the Legislature did
17 with District 7 in this map?

18 A Yes, sir. District 7 is -- it's a very interesting
19 district. I see looking at the existing outline where it goes
17:21:42 20 up into Birmingham. It has this narrow thread kind of pushing
21 up to the northeast, and then kind of similarly to the south,
22 kind of the south central part of it. There was some irregular
23 geography down there, as well. And what -- from this map alone
24 without knowing the characteristics in any of the population,
17:22:05 25 which were not taken into my understanding is we're not taking

1 into account in the drawing of the map, I can see that the
2 outline, the boundaries of District 7 seem to have been what's
3 called generalized. They have been simplified. In laymen's
4 terms, you could say they were cleaned up. And that was
17:22:26 5 probably in an effort to improve the compactness of the
6 district while they adjusted it in an effort to balance its
7 population.

8 Q District 7 was underpopulated after the 2020 census,
9 correct?

17:22:41 10 A That's my understanding, yes.

11 Q Yes. This area in the southern part, is it correct that
12 the Legislature undid what was previously a split of Clarke
13 County?

14 A I cannot speak to that.

17:22:57 15 Q Fine. You probably don't have the right information in
16 front of you at the time.

17 A I did not. I am aware of the Birmingham changes.

18 Q Sure. Did you assess the demographics of the 2021 plan?

19 A I did.

17:23:11 20 Q And we are going to turn now to page 16 of your report.
21 This is still Defense Exhibit 1.

22 Is this where you present the demographic of the new
23 congressional plan passed by the Alabama Legislature?

24 A Yes. These are four tables showing the total population,
17:23:37 25 the Voting Age Population, for the existing plan and then --

1 the for the new plan, so four tables of data representing the
2 seven districts in total.

3 Q

4 I see. So you on this page, page 16 of D-1 --

17:23:52 5 A Yes.

6 Q -- you addressed demographics of both the new
7 congressional districts and the previous congressional
8 districts?

9 A That's correct.

17:23:59 10 Q What do you see here about how the demographics changed,
11 if they did, in District 7?

12 A What's very interesting about this, I would note first
13 that the plan is legal and compliant. When I look in Table 4.3
14 under total population, I can see that the deviation there is
17:24:19 15 all within one person. It's a first thing as an expert that I
16 would always check for.

17 The next thing that I would look at is what was the
18 population at the time of the census of what the existing plan
19 was. That is, how much did the existing districts and the
17:24:35 20 existing plan need to change in order to get that equitably
21 balanced population we see in Table 4.3.

22 So as you can see, in Table 4.5, that is our starting
23 point. And as you can see after ten years of the census, the
24 population is unbalanced. This is why we have a law saying
17:24:58 25 that we need to redistrict.

1 Some of these districts, such as District 1, District 3,
2 District 5, overpopulated. And then there are some districts,
3 such as District 7 in particular, District 2, to a lesser
4 degree, that are underpopulated.

17:25:17 5 In the process of redistricting, District 7 needed to have
6 its population increased from 664,611 up to 717,754.

7 What is notable to me as I assess this plan is I go over
8 and I look at the composition of that population change. So I
9 examine what I have referred to as the black-alone population
17:25:48 10 or what I have referred to as all black. Others are referred
11 to as any-part black population, because it gives us a
12 comprehensive, a thorough view of the change in the population
13 that drove the rebalancing during the redistricting process.

14 What I noticed as I examined this was that as you will see
17:26:10 15 in District 7, Table 4.5, if you read across, there's
16 approximately 404,000 blacks that were in the existing District
17 7, approximately 415,000 if you look at any-part black or the
18 all-black population.

19 If you go back up to Table 4.3, what is noticeable is that
17:26:38 20 those black populations who existed at the time of the census
21 were actually reduced as part of the process of redistricting.

22 Now, it's my understanding that race did not have a
23 factor, in fact, wasn't even looked at as part of the process.
24 But as part of the process of drawing new balanced compact
17:27:02 25 districts, it is, in fact, an artifact of that process that the

1 black population was reduced by approximately 5,000 give or
2 take if you were looking at black alone or the all-black
3 population.

4 The results of that is that the percent black in District
17:27:21 5 7 was reduced from 62.4 percent to 57.1 percent. It was
6 effectively -- even though that was not the objective of
7 drawing District 7, that is an outcome of it.

8 So that outcome was driven further by the fact that the
9 map drawer, who I do not know, had to add approximately 50,000
17:27:45 10 people to that district in order to make it whole. And the
11 vast majority of the people who were added had to have been
12 non-black population, which were overwhelmingly white but some
13 Asian, Hispanics, native and Pacific islanders, and other
14 smaller populations that were put together in order to drive
17:28:07 15 the balancing of the population.

16 Q Let's try to put that together, Mr. Bryan. Back to 4.5,
17 just to make sure a couple of points that you made are clear
18 for the record.

19 This chart shows what the population was in the old
17:28:22 20 district lines but with 2020 census data; is that correct?

21 A Yes, sir.

22 Q Okay. So we know -- well, what after the 2020 census was
23 the ideal population of the 7 congressional districts in
24 Alabama?

17:28:37 25 A So seven, it's fractional because you can't divide it

1 exactly, but it's 717,754. So you think you have one layer
2 with 755. It takes into account the fractions.

3 Q Gotcha. So we can look at your Table 4.5 and with some
4 addition and subtraction figure out how much each district
17:28:59 5 needed to shrink or grow by population?

6 A Yes.

7 Q Okay. And you found that after the redistricting process
8 the number of African-Americans in District 7 went down?

9 A That's correct. And in no matter which way you measure
17:29:18 10 whether it is black alone or any-part black, there is less
11 black population in District 7 than was there before.

12 MR. DAVIS: At this point, Your Honor, I am about to
13 move to an assessment -- to Mr. Bryan's assessment of the
14 Singleton plan, a new subject. I am happy to continue as long
17:29:37 15 as the Court would like. If you wish to break at our usual
16 time, I am about to enter into a new subject area.

17 JUDGE MARCUS: Well, this is about 5:30. This would
18 be our usual time.

19 So we will pick up the thread tomorrow morning. But we
17:29:52 20 will pick up the thread at 8:30 Central Standard Time, so you
21 will get an extra half hour in tomorrow.

22 Quick question, just so I have some sense: Rough sense,
23 about how much time you have with Mr. Bryan, Mr. Davis,
24 remaining?

17:30:12 25 MR. DAVIS: Your Honor, my best guess would be two to

1 two-and-a-half hours. That might be long. There's so much
2 that he has to go through with the three cases.

3 JUDGE MARCUS: I understand. We are not holding you
4 to it. I am just trying to get a sense of whether we
17:30:28 5 realistically will be able to finish tomorrow.

6 Ms. Khanna, how long do you think you will be?

7 MS. KHANNA: I still think we will probably be about
8 an hour on our cross.

9 JUDGE MARCUS: Okay. And, Mr. Dunn, what's your sense
17:30:42 10 to the extent you have?

11 MR. DUNN: I would say an hour to an hour-and-a-half,
12 Your Honor.

13 JUDGE MARCUS: And, Mr. Blacksher, you needed an hour,
14 you said.

17:30:51 15 MR. BLACKSHER: Yes, Your Honor.

16 JUDGE MARCUS: So by my count, we have about
17 five-and-a-half to six-and-a-half hours in all. But we'll see
18 where we go. I only say that so that you may have time for the
19 Singleton and Caster folks to put someone else on, on Friday
17:31:17 20 later in the afternoon. You may want to just have them lined
21 up. And we'll just take it from there.

22 With that, I thank you. Unless there's anything else --

23 MR. DUNN: Your Honor, I just had one small thing,
24 because I think Mr. Bryan has only testified once before.
17:31:34 25 Could I ask the Court to caution him that overnight he should

1 not discuss his testimony with anyone whatsoever?

2 JUDGE MARCUS: Sure. I understand, Mr. Bryan
3 understands the rules, and I know the lawyers do.

4 With that, I thank you --

17:31:45 5 MR. DUNN: Okay. Great.

6 JUDGE MARCUS: With that -- Judge Manasco?

7 JUDGE MANASCO: Judge Marcus, I was just going to let
8 everybody know that Frankie will open the Zoom at 8:00 a.m.
9 tomorrow since we will be begin court at 8:30 so people can
10 start being allowed in at 8:00.

11 JUDGE MARCUS: All right. With that, I thank you all.
12 Have a good evening, and we will see you back here at 8:30
13 Central Standard Time tomorrow.

14 (Whereupon, the above proceedings were concluded at
15 5:32 p.m.)

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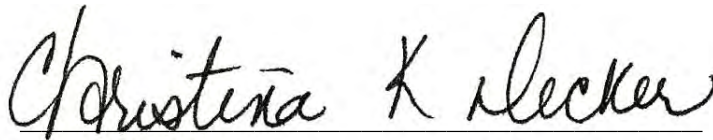
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CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

01-06-2022

Christina K. Decker, RMR, CRR

Date

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ACCR#: 255

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

4 BOBBY SINGLETON, et al., *
5 Plaintiffs, * 2:21-cv-1291-AMM
6 vs. * January 7, 2022
7 * Birmingham, Alabama
8 * 8:30 a.m.

9 JOHN MERRILL, in his official *
10 capacity as Alabama Secretary *
11 of State, et al., *
12 Defendants. *

13 *****

14 EVAN MILLIGAN, et al., *
15 Plaintiffs, * 2:21-cv-1530-AMM

16 vs. *

17 JOHN MERRILL, in his official *
18 capacity as Alabama Secretary *
19 of State, et al., *
20 Defendants. *

21 *****

22 MARCUS CASTER, et al., *
23 Plaintiffs, * 2:21-cv-1536-AMM

24 vs. *

25 JOHN MERRILL, in his official *
capacity as Alabama Secretary *
of State, et al., *
Defendants. *

TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING
VIA ZOOM CONFERENCE
VOLUME IV
BEFORE THE HONORABLE ANNA M. MANASCO,
THE HONORABLE TERRY F. MOORER,
THE HONORABLE STANLEY MARCUS

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P R O C E E D I N G S

(In open court.)

JUDGE MARCUS: Good morning to everyone. I take it
counsel are ready to proceed for the Secretary of State.

08:31:19 5 Mr. Davis, you are ready to proceed?

6 MR. DAVIS: We are, Your Honor.

7 JUDGE MARCUS: You have your witness, Mr. Bryan, here.
8 And we have Ms. Khanna for the Caster plaintiffs, Mr. Blacksher
9 for Singleton, Mr. Dunn for Milligan. So we are ready to
08:31:37 10 proceed with the direct examination.

11 Before we did, there's one thing I wanted to raise with
12 you. Judges Moorer, Manasco and I took a look at scheduling
13 and we wanted to make one brief change in the scheduling order
14 that we have already entered.

08:31:59 15 We had asked the parties to submit proposed findings of
16 fact and conclusions of law within 5 days of the completion of
17 the preliminary injunction hearing, whether the hearing ends on
18 Tuesday or Wednesday, I am not quite sure. You will take
19 whatever time you need to do it and do it right.

08:32:28 20 But we are going to accelerate the time for filing those
21 proposed findings of fact and conclusions of law, and we would
22 ask you to submit them to the Court no later than the end of
23 next Friday, January 14th. So we are not talking about the end
24 of business, but really at the end of the day.

08:32:55 25 So by the end of next Friday, we will ask you to submit

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1 any proposed findings of fact and conclusions of law. But we
2 wanted to give you at least seven or eight days notice of that,
3 which is why we decided to share that change with you this
4 morning.

08:33:16 5 Having said that, we're ready to proceed, Mr. Davis, with
6 your witness. You may proceed on your direct. Thank you.

7 DIRECT EXAMINATION OF THOMAS BRYAN CONTINUED

8 BY MR. DAVIS:

9 Q Thank you, Your Honor. Good morning, Mr. Bryan.

08:33:30 10 A Good morning.

11 Q Mr. Bryan, did you assess the whole county plan presented
12 by the Singleton plaintiffs?

13 A I did.

14 Q I will share with you Defendants' Exhibit 1. This is
08:33:49 15 page 53 of your first report. Is this the whole county plan
16 that you assessed?

17 A This looks correct, yes.

18 MR. DAVIS: And I will say for the benefit of the
19 court and the other parties, we will first go through
08:34:02 20 Mr. Bryan's Singleton report, then his analysis of the Hatcher
21 plan, and third, his supplemental report.

22 It will be a bit slow going through the Singleton plan
23 because for each analysis Mr. Bryan will be explaining what he
24 did. There will be no need to repeat that for the Hatcher and
08:34:20 25 the for the other two reports. Those will go more quickly.

1 JUDGE MARCUS: Thank you, Mr. Davis. And, again, you
2 take the time you need.

3 MR. DAVIS: Thank you, Your Honor.

4 BY MR. DAVIS:

08:34:30 5 Q What do the Singleton plaintiffs do with counties in this
6 map that they presented, Mr. Bryan?

7 A My assessment is that the plaintiffs used whole county
8 geography, that is, they did not split counties or conform to
9 any other piece of administrative geography beside counties.

08:34:55 10 They used the -- can we bring the exhibit up please?

11 Q Of course.

12 A Thank you. They used the 67 counties, and then appears to
13 have built seven different districts by aggregating whole
14 county units in a unique way to generate a plan that I believe
08:35:27 15 ended up -- because of the use of whole counties -- had
16 approximately a 2.5 percent population deviation.

17 Q Okay. Are you aware of any requirement in Alabama law
18 that requires Alabama to keep counties whole in this
19 congressional plans?

08:35:45 20 A I am not aware.

21 Q Are there any states that keep counties whole in their
22 congressional districts? And I should say states with more
23 than one congressional districts.

24 A Yes. Thank you for that.

08:35:58 25 Our research showed that we are certain that there are

1 two. We examined the redistricting rules for all of the states
2 and note for certain that Iowa uses counties, and that West
3 Virginia uses them.

4 There are other states that may use counties for other
08:36:21 5 types of redistricting, but not for the entire state.

6 Q So other than Iowa and West Virginia, other states, to the
7 best of your knowledge, that have more than one congressional
8 district split at least some counties?

9 A That is correct, to the best of my knowledge. I wouldn't
08:36:39 10 assume there may not be some other state out of all of them
11 that we may have missed, but we believe for certain that Iowa
12 and West Virginia at a minimum have them. But it's a very
13 uncommon practice.

14 Q Remind us what a community interest is to your way of
08:36:57 15 thinking.

16 A Sure. Yeah. It's a group of people, a collection of
17 people, and they can generally be thought of as being
18 geographically defined, a universe of people with often times
19 similar, you know, attitude, beliefs, behaviors, things that
08:37:14 20 help define them as staying in common.

21 As Dr. Duchin testified yesterday, a point which I agree,
22 that those communities of interest can oftentimes work in
23 conflict with each other. There is no uniform widely known
24 right or prevailing community of interest over any other. It's
08:37:36 25 a subjective and difficult concept to try and apply to

1 redistricting.

2 Q Do you have any opinion as a demographer on the relative
3 importance of counties as a community of interest as opposed to
4 say some type of economic bond?

08:37:56 5 A In different states, different communities of interest can
6 mean different things. The plaintiffs mentioned in their
7 complaint, they refer to Georgia, and Georgia is a unique state
8 insofar as it has I think 159 counties. It has many, many more
9 units of county geography.

08:38:24 10 So it's both more relevant and easier to use counties in
11 that case in that state just because that is a more prevailing
12 and easier to use a piece of geography than it may be in a
13 state like Alabama where counties at one point a long time may
14 have been used to define districts in the state, but they are
08:38:44 15 no longer. And it is, in fact, difficult, it is more difficult
16 to use counties in a state like Alabama because there are
17 relatively fewer counties to use to do redistricting.

18 Q Are counties as important as -- are these important today
19 as they were 50 or a hundred years ago?

08:39:02 20 A Yeah. I would say no. I wrote at some length about the
21 origins and uses of counties and there's obviously still legacy
22 use of counties in the administration of the state, but there
23 are other prevailing communities of interest today. We could
24 say such as economic bonds, social bonds, bonds within cities
08:39:26 25 or other pieces of geography that prevail over counties as a

1 community of interest. I think that's reflected by the long
2 recent history in Alabama of not using them. They use other
3 things instead.

08:39:47 4 Q Do the Singleton plaintiffs ever say why they consider
5 counties so important that you saw in your review of their
6 complaint?

7 A I read the complaint carefully, and I did not see a strong
8 argument for why. It just -- the -- my interpretation of the
9 report is that they said that their defense was that they were
08:40:05 10 used historically and they want to use them now. But I didn't
11 see a strong defense of why they should be used over other
12 communities of interest.

13 Q You said review of the report. Did you mean review of the
14 complaint?

08:40:18 15 A Yes, that's correct.

16 Q Thank you. What does a demographer mean by core
17 retention?

18 A Yeah. So core retention for a demographer in the process
19 of redistricting is a quantitative method that we use to
08:40:35 20 measure the degree to which a district is changed in the
21 process of redistricting.

22 Typically, we will begin with a count of the population of
23 the districts that we are going to redistrict, and we will make
24 an assessment of how many people are in those districts
08:40:56 25 currently using the most recent decennial census data.

1 The exercise of core retention then goes on to measure how
2 much those districts are changed and how population are moved
3 among them forensically from one district to another to the
4 person to make an assessment of how many people are displaced,
08:41:22 5 and how many people are retained in the what we would call the
6 core district. That gives us the ability to see how much
7 retention and how much displacement there is in the process of
8 redistricting.

9 Q In your experience as a demographer working on plans in
08:41:40 10 different jurisdictions, is it common for folks to desire to
11 preserve the core of previous districts?

12 A It is common. It is one of the NCSL standards. It's one
13 of the standards in the Georgia, the reapportionment
14 guidelines. And they are numbers that we look carefully at, no
08:42:07 15 matter what redistricting plan that we are working on. It's an
16 important consideration and something that you think hard about
17 for the continuity of representation.

18 Q Did you assess how well or poorly Alabama did preserving
19 the core that 2011 districts in its new plan?

08:42:31 20 A Yes, I did.

21 Q Is that reflected in this Figure 5.1 on page 22 of Defense
22 Exhibit 1?

23 A Yes, it does. Figure 5.1 shows the percent of the
24 population that was retained in the original seven districts
08:42:53 25 through the process of redistricting.

1 The blue line shows the percent of the total population
2 that was retained. And then given the nature of this case,
3 that there is an interest consideration of the black population
4 and the impact to the black population. We extended this
08:43:14 5 analysis to do a core retention of the black-alone population
6 incremental to the total population.

7 And the purpose of that analysis was to determine whether
8 there was a significant disproportionate impact on the black
9 population through the process of redistricting. It's -- from
08:43:37 10 a demographer's point of view, you would always want to know if
11 there's been a disproportionate impact on a population that's
12 different from everybody else.

13 Q Okay. So would it be a fair interpretation of this map,
14 looking here at District 1 on the left side, that this blue
08:43:54 15 line means that between 2011 and 2021 Alabama retained
16 98.8 percent of the population of old District 1 in new
17 District 1?

18 A That's correct.

19 Q And then 98.6 percent of the black population of old
08:44:12 20 District 1 in new District 1?

21 A That's correct. Virtually identical. It would be no --
22 what I would refer to as differential impact to the black
23 population with the core retention of District 1.

24 Q Okay. Let's look at the next page, your Table 5.1.

08:44:33 25 A Yes.

1 Q This is page 23 of Defense Exhibit 1.

2 Interpret this table for us, Mr. Bryan. Maybe start with
3 District 1 and show us what you are telling us in this table.

4 A Sure. Thank you.

08:44:47 5 In the first column, what we have done is we've made an
6 identifier for the what I will call the base district or the
7 original district that was subjected to the redistricting
8 process. Then what I've done in the second column is I have
9 identified districts with population that were changed from the
08:45:11 10 first or the original base district that we did redistricting
11 on.

12 So in District 1, as we look and read across the rows, you
13 can see base District 1, new District 1, the total population
14 was 717,754. When you read the second line, you can see there
08:45:37 15 was a very small number, 739 people, that were moved into
16 District 2.

17 And then lastly, there were approximately 7,800 people who
18 were moved into District 7.

19 We can see here this last line where it says one total
08:45:55 20 where it says 726,276 that was the total population that we
21 started with when we began the redistricting process. That
22 number at the top, again, 717,754, that is the target
23 population for the districts in the redistricting plan.

24 As you continue to the right, you see the same analysis
08:46:21 25 for the total, except for the black-alone population. In this

1 case, there was 185,771 thousand blacks who were originally in
2 District 1 who remained in District 1. Again, a small number
3 were moved into District 2, and also a small number -- a
4 relatively small number were moved into District 7.

08:46:43 5 This analysis continues down with each district showing
6 the pieces that were retained and the pieces that were moved
7 into different districts.

8 If you look at District 4, for example, District 4 was
9 moved into five different pieces. District 5 was split into
08:47:01 10 two different pieces, and so forth.

11 This gives us the forensic ability to see exactly how many
12 of what kind of people were moved between different districts
13 and the redistricting process.

14 Q Okay, Mr. Bryan, did you assess how well the Singleton
08:47:24 15 plan did with core retention?

16 A I did.

17 Q Then we'll refer you to your Figure 5.2 that is on page 24
18 of Defense Exhibit 1.

19 A Thank you.

08:47:33 20 Q Tell us what your Figure 5.2 shows, please.

21 A Sure. Thank you.

22 In Figure 5.2, we show a chart that is consistent with the
23 state of Alabama chart that we just walked through. So in this
24 case, if you look at District 1, it would say that 94.1 percent
08:47:58 25 of the total population was retained in District 1 and also

1 92.5 percent of the black population.

2 So consistent with the Alabama plan, this plan has a very
3 high level of core retention in District 1. This plan also has
4 somewhat high retention in District 5. We know this already,
08:48:25 5 but when we start looking at the other districts that were
6 changed in the redistricting process, you can see that there
7 was a signi -- two features -- a significantly lower amount of
8 core retention by district, and also a significantly higher
9 impact to the black population separate from the total
08:48:46 10 population.

11 Q What do you mean by higher impact to the black population?

12 A Yes. So, for example, if you examine in this chart
13 District 2, District 2 would show that 66 percent of the total
14 population was retained; that is, their continuity of
08:49:10 15 representation is ensured.

16 By comparison, only 50 percent of the black population in
17 District 2 were retained. So that is there were approximately
18 16 percentage points more of black population who lose their
19 continuity of representation in this plan for the blacks
08:49:31 20 compared to the total.

21 That same feature plays through if you look at District 4.
22 But in that case, it is even more severe. There's 63 percent
23 of the total is retained. Again, much lower than the State of
24 Alabama's plan, but then you look at the black population,
08:49:51 25 33.7 percent, there was, you know, over -- nearly a 70 percent

1 displacement of blacks, preventing their continuity of
2 representation in District 4.

3 Q Thank you.

4 And the next page, page 25, Table 5.2. What is Table 5.2?

08:50:17 5 A Yeah. Table 5.2 is a companion to the earlier table we
6 just walked through. This table shows the comparison of the
7 existing districts with the Singleton plan as opposed to the
8 distribution that you would have arrived at with the state of
9 Alabama plan.

08:50:36 10 Q Thank you.

11 Mr. Bryan, what does a demographer mean by incumbency
12 protection?

13 A Yeah. The way we think about incumbency protection is
14 through the lens of generally accepted rules for traditional
08:50:57 15 redistricting principles, which is that, again, part of
16 continuity of representation, you generally want to avoid
17 pitting incumbents that may have a longstanding relationship
18 and a deep knowledge of their constituency from having to run
19 against each other and compete and losing the knowledge or
08:51:17 20 experience that may come with that representation.

21 Q If the state ignores incumbency protection, would that
22 give the majority party the ability to get rid of political
23 rivals by making their opponents run against each other,
24 putting them in the same districts?

08:51:36 25 A It is possible. And we have seen that happen even

1 recently.

2 Q Did you assess how Alabama's plan did with incumbency
3 protection?

4 A I did.

08:51:47 5 Q What did you find?

6 A I found that there was no pairing of incumbents.

7 Q Did you assess whether the Singleton plan created any
8 incumbent conflict?

9 A Yes. There was a set of paired incumbents in the
08:52:05 10 Singleton plan. I don't have the name of the pair in front of
11 me, but it should be in my report.

12 Q You assess that on page 27 of your report.

13 A Yeah. This is correct. So the plaintiffs plan pairs
14 Palmer/Rogers in a proposed District 3 leaving District 7
08:52:24 15 unrepresented. I would know that that pairing, which you can
16 see in the very center of the map, those two incumbents are
17 literally right on the edge of the border there between
18 District 3.

19 Q Thank you.

08:52:46 20 So the Singleton plan does have a district with two
21 incumbents in the same district?

22 A It does. Yes. And it would be very difficult from here
23 to have adapted this plan to avoid that. You can see that the
24 location of the pairing next to the number 3 on the map is
08:53:05 25 still quite a ways away -- geographically is quite a ways away

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1 from anywhere in District 7 where another incumbent would have
2 to be so that you would not pair incumbents.

3 Q Thank you. You present some alternative whole county
4 plans in your report, do you not?

08:53:27 5 A I do, yes.

6 Q And would those be available for viewing in the map
7 appendices of Defense Exhibit 1?

8 A Yes, they would.

9 Q Did you find any combinations of counties in alternative
08:53:41 10 whole county plans that avoids incumbent conflicts?

11 A Yes, we did. We did not pursue that as an objective of
12 it, but there were, I believe, at least -- at least two
13 different ways which you could group counties to comply with
14 that tradition of redistricting principle.

08:54:04 15 Q Okay. What does it mean to a demographer for a district
16 to be compact?

17 A Yeah. As Dr. Duchin discussed yesterday, she shares a
18 point of view with which I agree, is that it features
19 geographic compactness and would not have a necessary or
08:54:30 20 extraneous other pieces of the geography that would perhaps
21 stick out or impose into it that would make it unusual,
22 unwieldy, or have an uncommon geographic feature that may be
23 for some other redistricting purpose. It's a -- generally a
24 benefit to have geographically compact districts.

08:54:55 25 Q I want to go to Page 45 of Defense Exhibit 1.

1 A Yeah.

2 Q What are some of the ways that demographers measure
3 compactness of a district?

4 A Sure. It's important to know that compactness is an area
08:55:23 5 of mathematics. It's an area of analytics where there is no
6 agreement. There's not a right way. There is a very famous
7 article, a great paper by Dr. King of Harvard that says
8 compactness is just -- you'll know it when you see it, right?

9 So there have been several very prominent, very good
08:55:47 10 mathematicians that have tried to tackle this problem by
11 looking at things such as, you know, the ratio of the area of a
12 district to a circle that circumscribes it or outer bounds it,
13 right?

14 So as Dr. Duchin said yesterday, there's two very
08:56:03 15 common -- and I agree, there are two most common methods.
16 Those would be Polsby-Popper and the Reock scores they use to
17 assess the compactness of a plan.

18 Q Just briefly in layman's term, how does the Polsby-Popper
19 measurement work?

08:56:19 20 A Yeah. So basically it's taking the ratio of the -- I want
21 to get my language exactly right here because there is some
22 precision in the mathematics. Polsby-Popper is the ratio of
23 the area to the area of the circle whose circumference equals
24 the perimeter of the district.

08:56:47 25 Q Okay.

1 A It's a lot of words, but it's just a distillation of some
2 mathematics that say it's the ratio of this area to a circle.
3 And as Dr. Duchin pointed out, the circle is kind of the
4 optimal feature, and things that you elongate or go outside of
08:57:07 5 a circle would be detrimental to its compactness.

6 Q And there's a Schwartzberg measure?

7 A Yes. Which this is a close companion measure to the
8 Polsby-Popper. The Schwartzberg method that I use is actually
9 an adaptation of the historic, probably the more well known,
08:57:26 10 the original mathematic derivation of the Schwartzberg method,
11 but we can talk about that if you'd like.

12 Q Sure. Well, the plaintiffs have said -- some of the
13 plaintiffs' experts have said that they disagree with the way
14 you presented Schwartzberg measurements. So what is your
08:57:49 15 response to that?

16 A They're correct. The pure mathematics of Schwartzberg are
17 different than what I presented. What I present for
18 Schwartzberg is what I would call an adaptation, a useful
19 adaptation of that method.

08:58:03 20 The Schwartzberg method will generate results that can go
21 from 1, you know, in theory, to infinity. And so what we do,
22 in order to make the Schwartzberg number more comparable,
23 compatible, easier to interpret compared to other measures, is
24 we rescale that to a value that's between 0 and 1. It is not
08:58:27 25 conventional, but I am not the first one who has used it.

1 When we did that adaptation of the Schwartzberg method, we
2 did rigorous statistical tests to see how it compared with its
3 companion measure, the Polsby-Popper. And the statistical test
4 that we ran suggested that it was so consistent with our
08:58:51 5 findings for Polsby-Popper, we probably didn't even need it.

6 So it's a useful metric, it's an interesting metric. But
7 no matter whether you use the original mathematic derivation of
8 it or our adapted method of it, the outcome is the same. And
9 it would be exactly consistent with the statistics we had with
08:59:16 10 Polsby-Popper, which Dr. Duchin, I believe, suggested we match
11 our conclusions there exactly.

12 Q When we discussed your qualifications yesterday afternoon,
13 you said, did you not, that you have experience in statistical
14 transformation?

08:59:31 15 A Yes, I do.

16 Q Okay. And is that what you were doing here, converting
17 the Schwartzberg scale to use the same scale as other
18 compactness measures?

19 A Yes. Yes, it is.

08:59:45 20 Q Thank you. That's enough of the measures.

21 Let's look -- you measured compactness of the Alabama plan
22 and the Singleton plans, did you not?

23 A I did.

24 Q Let's turn to page 29 of Defense Exhibit 1. Actually,
09:00:15 25 let's move on to the next page.

1 What scores are you showing here in Table 5.4 on page 30
2 of Defense Exhibit 1?

3 A All right. Thank you.

4 The table you see here is color coded. The Christmas tree
09:00:35 5 coloring of red to green shows the red scores being the lowest
6 scores, the green scores being the highest scores.

7 There's two different ways that I summarize the statistics
8 in this table. The first is by summing each column. So for
9 Polsby-Popper as you add up these different values we would get
09:00:59 10 a score of 1.55. You sum up my adapted Schwartzberg, it's
11 3.28. Reock is 2.67. The convex hull is 5.01.

12 So these are numbers that you would then take for this
13 plan and then say, ah, let us compare these with the sum of the
14 figures for another plan and then we can come to a useful
09:01:22 15 determination, if in aggregate, one plan is more compact than
16 another plan, right?

17 The other way that I summarize these data is by row. And
18 the reason that I do this is because it's very difficult to
19 just look at all of these different numbers and say, with all
09:01:45 20 these different fractions, which one in aggregate -- which
21 district in aggregate is better than another. So I emphasize
22 there is no one right way of doing it. This is how I've done
23 it. It has been useful to judges and courts and experts and to
24 informed discussions about in general which plans in which
09:02:09 25 districts perform better than the other.

1 There was criticism of this approach by Dr. Duchin in her
2 rebuttal report saying that this, from a pure mathematics
3 standpoint, is not pure, if you will. I mean, it's subject to
4 some variation, perhaps different interpretations because of
09:02:29 5 different distributions of numbers within here.

6 So I would like to acknowledge and concede that, yes,
7 there is no one perfect way to aggregate or summarize different
8 methods for individual districts, but I would argue it as one
9 useful way in general to be able to see which ones are better,
09:02:51 10 and in general which ones are worse.

11 The reason that we provide all of the data for all of the
12 districts for all of the methods is so that the readers, the
13 experts, the courts, can look and see for individual methods
14 what those numbers are for each one individually.

09:03:10 15 This prevents us from having the perception that we are
16 trying to hide any information. We're trying to be fully
17 transparent and share everything we know and fully document how
18 we got there because there is no known or agreed upon way to
19 summarize or tabulate these data.

09:03:29 20 Q Have you found these totals that you present to be a
21 useful way to judge the compactness of the district or a plan?

22 A Yes. In summary, it's a very useful way just to look at a
23 glance and say which ones are higher or which ones are lower.

24 They do not have the mathematic precision that Dr. Duchin

09:03:57 25 points out, but that does not detract from the fact that they

1 have utility in helping a reader quickly see which ones are
2 higher or which ones are lower.

3 If you go into the individual methods, the Polsby-Popper,
4 Schwartzberg, Reock, convex hull, and you look at those
09:04:15 5 individually, you will find that they will generally follow the
6 same pattern as this number does in aggregate. This number
7 tries to take a lot of different information and put it
8 together in one summary statistic. But, again, we leave all of
9 the information here for the reader. So if they know, familiar
09:04:33 10 with these different methods, they're more than welcome to look
11 at those and focus on those individually as well.

12 Q You present measurements for the Singleton plan, do you
13 not?

14 A Sure. Yes.

09:04:45 15 Q And is that in Table 5.5 on the bottom of page 30 of
16 Defense Exhibit 1?

17 A Yes, that is correct.

18 Q How does the compactness of the Singleton plan compare to
19 the compactness of Alabama's 2011 plan -- excuse me -- 2021
09:05:04 20 plan?

21 A Sure. Yes. Thank you.

22 So when we -- when we compare tables 5.4 and 5.5, what I
23 would look here to is the sum. Basically, the row at the
24 bottom of each one of these tables to say is there a difference
09:05:23 25 or not.

1 And so when we look at Polsby-Popper and Schwartzberg, as
2 I said earlier, the adapted Schwartzberg score is very, very
3 close. You can look at the rank order of them and the sum, and
4 you can see that there's basically no difference in
09:05:39 5 Polsby-Popper for the enacted plan compared to the
6 Polsby-Popper for Singleton.

7 Similarly, as you would expect, the Schwartzberg score or
8 adapted Schwartzberg score is within 1/100th as well. So by
9 those two measures you would say the Alabama plan and the
09:05:57 10 Singleton plan here would be comparable.

11 Some of these other measures, the Reock, for example,
12 which is the other measure that Dr. Duchin presents in her
13 work, would show -- the Reock score here would show higher for
14 the Alabama plan. And then a fourth method that I find useful,
09:06:19 15 it's not always used in redistricting, but it's still a very
16 useful measure of compactness, called convex hull. The convex
17 hull measure here also scores the Alabama plan higher than the
18 Singleton plan.

19 Q Thank you. Did you assess the demographics of the
09:06:38 20 Singleton plan?

21 A Yes, I did.

22 Q Let's go to page 15 of Defense Exhibit 1.

23 A Great.

24 Q Table 4.1. What, if anything, did you note by reviewing
09:07:00 25 the total population of the districts in the Singleton plan?

1 A Yes. As we noted earlier, because the plan was built with
2 counties and was not built down to the degree where you had
3 one person of deviation, you see a reflection, a manifestation
4 of that two-and-a-half percent deviation here.

09:07:27 5 So you see a low score here of -- a low population of
6 709,514 in District 2. And then I think the high -- the high
7 population figure here, the watermark, is 727,206.

8 Q Okay. What does it mean for voters if there's population
9 deviation among the districts?

09:07:54 10 A Sure. So this is a core tenet that -- related to
11 one person, one vote. And the idea here, you know, part of the
12 reason we have a census, part of the reason we go and check and
13 see what the population is every 10 years is so that we can
14 balance the population equally in each district.

09:08:18 15 The impact of balancing that population is important
16 because per one person, one vote, you want to have each
17 individual citizen's vote count as closely as possible, if not
18 exactly the same amount as the citizen next to them. You would
19 seek to have as close to an equitable one person, one vote as
09:08:41 20 possible.

21 Q If I am in a district with a hundred people, does my vote
22 count the same as -- of somebody in a district with 50 people?

23 A No.

24 Q If a plan has 2.5 percent deviation today, does that mean
09:09:01 25 that the deviation will remain at 2.5 percent over the course

1 of the decade that the districts are used?

2 A Yes. I would say regardless of what a deviation is now,
3 whether at 0 or 2 or 5, my experience is that no matter what,
4 invariably, that that deviation can and will grow over time,
09:09:22 5 and that is almost a universal truth in demography.

6 Q And you told us yesterday, did you not, that you have
7 experience in estimating population shifts?

8 A I do.

9 Q Did you assess how the deviation of the Singleton plan in
09:09:49 10 Alabama's 2021 plan are likely to change over the course of the
11 coming decade?

12 A Yes, I did.

13 Q Tell us what you're showing us in Figure 5.7 of Page 33 of
14 Defense Exhibit 1.

09:10:08 15 A Thank you.

16 In performing this analysis, I independently ran a series
17 of rigorous population projections at the county level. I
18 projected the county population by year, out to the year 2030.
19 I then aggregated those county-level projections into the
09:10:40 20 districts that are represented in the Singleton plan.

21 I then compared that with population projections that I
22 built using the exact same methodology for the Alabama plan.

23 The outcome of this is that the Alabama plan, starting
24 obviously at 0.0 percent deviation in 2020, you can see it
09:11:07 25 starts going up almost immediately. You can see by 2021 the

1 current number, the Alabama plan would already have 1.4 percent
2 deviation, but the 2.5 percent deviation in the plaintiffs'
3 plan, we estimate to already be 2.9 percent.

4 If you follow those trends of the population projections
09:11:31 5 out over time, our estimate is that the total deviation by the
6 year 2030, if you stick with the Alabama plan, would only be
7 7.2 percent. And that number is a very common amount of
8 deviation that you would find at a time of redistricting -- 7,
9 6, 5 percent, those are the kinds of numbers of deviation we
09:11:56 10 commonly find.

11 By comparison, if you start a plan already handicapped
12 with a 2.5 percent deviation to begin with, what will happen is
13 that deviation is going to grow in a -- much more likely to
14 grow higher and higher than a plan that started with zero
09:12:16 15 deviation to begin with.

16 So in this regard, I would strongly advocate this analysis
17 as a way to understand and represent the utility of the
18 district plan over the course of the decade. Not just the year
19 that it begins, but for all the years that this plan is
09:12:38 20 supposed to support the people of Alabama.

21 Q So if Alabama -- just to sum this up -- if Alabama were to
22 adopt the Singleton plan today --

23 A Right.

24 Q -- what do you estimate the total deviation to be among
09:12:53 25 congressional districts by the end of the decade?

1 A 11.6 percent.

2 Q Did you form the same analysis, Mr. Bryan, for the
3 alternative plans, the whole county plans that you drew?

4 A Yes, I did.

09:13:10 5 Q Tell us what you're showing us in Figure 5.8 on Page 34 of
6 Defense Exhibit 1.

7 A Sure. Thank you.

8 So in this map, we just show a variety of lines. It looks
9 a little messy. But basically, we're showing the different
09:13:32 10 potential outcomes, given some different combinations of the
11 plans that we came up with built on counties. And we did
12 not -- we did not design these plans to optimize the forecasts.
13 All the forecasts were done after the plans were designed.

14 As you can see, there's some plans that start high and end
09:13:55 15 even higher. And there are some plans -- Plan 4, for example,
16 that starts low. That one even gets better for a time before
17 it goes up. But the outcome is that if you are starting with
18 a zero percent deviation to begin with, as we see in the green
19 line, that you are going to end up with the lowest deviation
09:14:16 20 over the course of the whole decade compared to any other way
21 you would build this with counties.

22 Q Gotcha. This might be a good time to talk about the
23 alternative plans in general.

24 Did you draw any of the alternative whole county plans
09:14:31 25 with any particular goals in mind, other than trying to achieve

1 minimum deviation?

2 A No, we did not. There is many, many ways that you could
3 draw the plans based on counties to the point where they
4 became, for example, hopelessly not compact, irregular or
09:14:56 5 perhaps that they may have really large deviations.

6 So my analysis here and my determination to cut this off,
7 whatever, 13 different plans, was subjective. It was a point
8 where there wasn't any incremental benefit from destroying more
9 and more plans. It would be inferior to these combinations
09:15:16 10 that we had already come up with.

11 Q Well, just looking at the left side of Figure 5.8, did you
12 draw some whole county plans that had lower deviation than the
13 Singleton plan at the beginning?

14 A Yes.

09:15:29 15 Q And did you draw some that had greater deviation than the
16 Singleton plan at the beginning?

17 A Yes. They were both higher and lower than the Singleton
18 plan.

19 Q From your estimates, Mr. Bryan, did you find any whole
09:15:42 20 county plans that would, by the end of the decade, present
21 lower deviation than Alabama's 2021 plan?

22 A No. There was one, Plan 4, that is close, but at the end,
23 the Alabama plan, because of its zero deviation starting point,
24 prevails as having the lowest overall deviation for the entire
09:16:07 25 decade of their utility.

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1 Q Mr. Bryan, Singleton plaintiffs allege, do they not, that
2 if their plan were in use, that two of those districts in past
3 elections would have voted for the Democratic candidate? Do
4 you understand that to be the case?

09:16:36 5 A I understand that to be the case, yes.

6 Q And I want to refer you now to page 37 --

7 A Great.

8 Q -- of your report. What are you showing us in
9 Figure 5.10? And, again, that is page 37 of Defense Exhibit 1.

09:17:05 10 A Thank you.

11 What we tried to do here is create a data visualization
12 that enabled the reader to be able to quickly and easily see
13 what the rank order of the political performance would be in
14 each district under each plan.

09:17:24 15 So, for example, if you read this vertically, the number
16 to the highest, this is percent Republican voting. The number
17 at the highest is the highest percent Republican district in
18 that plan. The numbers at the bottom represent the lowest
19 Republican performing plans. And those were plans where
09:17:43 20 consistent with the plaintiffs' assertion of the use of black
21 registered voters in the 40 percent range as being a performing
22 district, we looked for versions of this plan that had either
23 one or two districts that had Democratic performing districts
24 in that range, the 40 to 45 percent range.

09:18:07 25 Q So this is just a hypothetical plan. You're just showing

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1 us how to read a chart here, correct?

2 A Yep. It's just a -- it's a setup because it's a lot of
3 information. Yep.

4 Q Now, your alternative plans, do you find that if you keep
09:18:22 5 counties whole that it's necessarily the case that you will end
6 up with two districts likely to elect a Democratic candidate?

7 A No. That, in fact, was not the case, and that's not
8 surprising to me.

9 Q Okay. Let's look at Figure 5.1.

09:18:38 10 A Okay.

11 Q On page 38 of Defense Exhibit 1.

12 A Sure.

13 Q Explain this chart for us, please.

14 A Sure. So on the left, we have the distribution of seven
09:18:52 15 districts for the plaintiff plan. You can see a seven dots
16 there ranked from lowest to highest. And, you know, the
17 plaintiffs, I believe it's page 26 of their complaint, talk
18 about the percent black registered voters. This is a little
19 bit -- little bit different way of looking at the information.

09:19:14 20 Here we're looking at the percent Republican votes in the
21 2018 governor's race, as there's nothing magical about that
22 race. We looked at some other races and findings were
23 consistent.

24 So what this would say is that if you look to the left,
09:19:31 25 the plaintiff plan would show there would be two strong

1 Democrat performing districts and five Republican ones.

2 As you read across the right, you will see some of my

3 different alternate plans, that there are some cases where

4 there are one and some cases where there are two Democrat

09:19:49 5 performing districts. And then you can see on the far right,

6 the state of Alabama plan has one very strong performing

7 Democratic district.

8 Q Let's be clear. You are not a political scientist, are

9 you, Mr. Bryan?

09:20:09 10 A No.

11 Q And have you prepared any estimates of how these districts

12 are likely to perform in the future?

13 A I have not, and I have no idea. I wouldn't know how to do

14 that.

09:20:23 15 Q Okay. So let's -- just to make sure we're all on the

16 page, this one here is one of your alternative plans, correct?

17 A That is correct.

18 Q And this plan number 1, is it true that what you're

19 showing -- in this plan there's one district where in the 2018

09:20:45 20 governor's race a majority of voters supported the Democratic

21 candidate?

22 A That's correct.

23 Q And there are six districts in that hypothetical -- in

24 that plan that supported the Republican candidate in the 2018

09:20:59 25 gubernatorial election?

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1 A That is correct.

2 Q Of the 13 plans that you drew, how many resulted in two
3 districts that supported the Democratic candidate in that one
4 election?

09:21:13 5 A I believe there were two districts that had two Democrat.

6 Q Okay. The Singleton plan had two districts that were over
7 40 percent African-American Voting Age Population; is that
8 correct?

9 A Can you please say the question again?

09:21:41 10 Q Sure. Is it true, Mr. Bryan, that the Singleton plan has
11 two districts that had over 40 percent African-American Voting
12 Age Population?

13 A Yeah. There is, I believe, two, or perhaps one more,
14 three. I'm going off of memory, but, yeah, there were a
09:22:00 15 couple.

16 Q I understand. Let's look at your Figure 5.13.

17 A Sure.

18 Q Page 39.

19 A Yep.

09:22:13 20 Q Defense Exhibit 1.

21 A Yeah.

22 Q Tell us what you're showing us in this chart.

23 A Sure. So this is a similar data visualization as we just
24 saw with the political performance, except that now what we are
09:22:30 25 doing is looking at the percent black population for each one

1 of the plans by district under each one of these different
2 scenarios.

09:22:50 3 So as we start to the left, no surprise. We can see kind
4 of two dots above the line for the plaintiff plan and then as
5 you read across to the right, then you can see that there's,
6 you know, several districts here where there are one district
7 in my alternative plans that are above 40 percent, and there's
8 a couple instances here where there were two above 40 percent.

09:23:12 9 At the end of this data visualization on the far right,
10 you can see the state of Alabama plan, and that has one black
11 district that's up in 50, mid-50 percent range.

12 Q Got it.

13 So looking at plaintiffs' plan, is it true that this chart
14 tells us that in the Singleton plan there is a district with
09:23:34 15 approximately -- looks like 48, 49 percent African-American --

16 A Yeah.

17 Q -- population?

18 A 48.8.

19 Q Now, I may have used imprecise language. Are you telling
09:23:45 20 us what the total black population is in the district, or the
21 total Black Voting Age Population in the district?

22 A I am going off of memory. I believe this is the total
23 population. I want to be cautious. I don't recall precisely,
24 but I think it's the total population.

09:24:15 25 Q That will be made clear in the language of your report,

1 would it not have?

2 A Yeah.

3 Q Yeah. Yeah. We won't dig around for that.

4 Out of the alternative whole county plans you drew, how
09:24:29 5 many plans had two districts that were more than 40 percent
6 single-race black?

7 A Yeah.

8 Q Oh, no, no, no. You said all black. So how many had more
9 than two districts that were over 40 percent all black?

09:24:44 10 A Looks like we have three here.

11 Q Okay.

12 A I may have said two, but, yeah, I think there is three in
13 here. But out of -- it's three out of 13. So the majority of
14 them only have one.

09:24:58 15 Q Mr. Bryan, if a court were to order that Alabama had to
16 keep counties whole in this congressional plan, would that, in
17 your view, eliminate the possibility of racial gerrymandering?

18 A No.

19 Q Why not?

09:25:19 20 A Because we're able to demonstrate that there are different
21 ways of combining counties to achieve different political and
22 racial outcomes.

23 Q Okay. And to go back, to be clear, when you were drawing
24 your alternative plans, were you purposely trying to either be
09:25:40 25 sure to draw the districts with certain minority population or

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1 to avoid doing so?

2 A The characteristics of the districts had no bearing,
3 except that we sought to identify combinations that achieved
4 the lowest population deviations. And at that point, we
09:25:58 5 stopped until we got to the plaintiff about 5 or 6 percent
6 deviation and then we did no more. I had no idea what the
7 characteristics were when I drew them.

8 Q If a state wanted to keep counties whole in its
9 congressional plan --

09:26:15 10 A Uh-huh.

11 Q -- could it racially gerrymander by choosing which
12 counties to group with other counties based on the minority
13 population in those counties?

14 A You could choose to do that.

09:26:27 15 Q I wanted to go back to Defense Exhibit 1 and have you
16 explain to us some of the maps that you have presented in the
17 appendices of your report.

18 A Sure.

19 Q Let's look at Map Appendix 18 on Page 71 of your report.

09:26:57 20 Tell us what you are making in this map, Mr. Bryan.

21 A Sure. So this map has two -- what I will refer to as
22 layers. So we have one layer. There's an outline that's shown
23 in blue. And that is the outline of the 2021 plans for
24 Alabama.

09:27:25 25 And then what we see with the different color shading from

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1 red to orange, yellow, light green, dark green, are
2 progressively higher and higher number of population for the
3 counties.

4 Q Thank you. So we can look at this map and tell
09:27:50 5 immediately which counties are the most populous in the state,
6 then; is that right?

7 A Sure. Yes.

8 Q And you can spot areas that have low total population?

9 A Easily, yes.

09:28:00 10 Q Okay. Pick District 7, for example, in the state '21
11 plan.

12 A Yep.

13 Q Where is most of the population coming from that's in
14 District 7?

09:28:12 15 A I am going to refer to my report, if I may.

16 Q Sure. Yes.

17 Maybe I could ask a clearer question.

18 A Sure.

19 Q Which counties in District 7 are the most populous?

09:28:34 20 A Yeah. If I may, I just would like to refer to -- there's
21 another map adjacent to this in my report.

22 Q Okay. Do you want me to go to --

23 A Yeah, can you.

24 Q This one?

09:28:52 25 A Yeah. That -- that's much more helpful.

1 So, yeah, in Jefferson, like we'd look up into the central
2 part of the state, it's -- this is the -- this is obviously
3 black alone. Just looking for the district identifiers here.
4 I didn't put it on the earlier maps. But, yes, so if you want
09:29:11 5 to go back up, you can see that there's a lot of population
6 distributed around the west -- the southern and western part.
7 There's a lot of small population counties that populate the
8 rest of District 7.

9 Q Sure. But we're looking -- we're looking here on this map
09:29:29 10 on Page 71 of your report, just where -- where there are lots
11 of people --

12 A Yeah.

13 Q -- no matter what the race is.

14 A Yeah. Around -- obviously, you look at the Birmingham
09:29:41 15 area, right in the center, sort of the majority of all the
16 population is that's driving 7 and the intersection with 6.

17 Q Gotcha.

18 Now, let's go to the next page at the map we looked at
19 briefly.

09:29:55 20 A Thank you.

21 Q Page 72 of your report Defense Exhibit 1.

22 A Yep.

23 Q Tell us what this map depicts.

24 A Sure. So this is a map. It's a companion map to what we
09:30:12 25 just saw earlier. As we discussed yesterday, there is another

1 layer of geography that can be used to measure and analyze and
2 report population data, and those are called VTDs or voting tab
3 districts. They are close companion to voting precincts,
4 right? So it's a very useful way, a smaller level of geography
09:30:33 5 that gives us greater granularity, clearer pictures of where
6 the populations are.

7 In this case, what I have done is calculated the percent
8 black-alone Voting Age Population by VTD. In this case, the
9 red areas show where there are low percentages of black alone.
09:30:55 10 Orange shows progressively higher and yellow higher yet. The
11 green areas, the dark green areas show where there are the
12 highest concentrations of black population by VTD in the state.

13 Q Thank you, Mr. Bryan.

14 What on the map do you show on page 73 of Defense
09:31:21 15 Exhibit 1? Tell us what's in this map.

16 A Yeah. So this map, again, it's a companion to the earlier
17 county-level map showing Voting Age Population by VTD. And,
18 again, it just shows a more granularity, for example, in
19 District 7, the high concentration of population driving
09:31:41 20 District 7.

21 Q Thank you.

22 You prepared similar maps for the Singleton plan, did you
23 not?

24 A I have.

09:31:49 25 Q Let's look at some of those. We'll go to page 75 of your

1 report, Map Appendix 21. Tell us what's in this map.

2 A No, this -- this map shows the outline of the Singleton
3 plan. And it shows the percent black population by county
4 relative to the boundaries of the Singleton plan.

09:32:17 5 Q Okay. Let's go to the next page, 76 of Defense Exhibit 1.
6 What are you showing us here?

7 A Yeah. So this map then would show the Voting Age
8 Population by county relative to the Singleton plan.

9 Q Okay. So this map -- this district in the middle, I don't
09:32:49 10 remember which number district this is in the Singleton plan,
11 the one that includes Jefferson County, Bibb, Hale and Perry, I
12 believe. The vast majority of the total population of this
13 district is coming from Jefferson County, is it not?

14 A Yeah. Virtually all of it, yes.

09:33:08 15 Q Okay. This other district that includes some of the Black
16 Belt in Tuscaloosa County, looks like a significant amount of
17 the total population of that district comes from Tuscaloosa and
18 Montgomery counties. Would you agree with that?

19 A Yes.

09:33:28 20 Q Okay.

21 A Yeah.

22 Q Now, let's go to page 77 of Defense Exhibit 1. And tell
23 us, Mr. Bryan, what you are showing us in this map, which is
24 Map Appendix 23.

09:33:42 25 A So yes. So this map shows the percent black alone of the

1 Voting Age Population by VTD in relationship to the boundaries
2 of the Singleton plan.

3 Q Thank you, Mr. Bryan.

4 Let's turn now to your next report, Defense Exhibit 2.

09:34:17 5 You prepared a report for the Milligan and Caster cases, did
6 you not?

7 A I did.

8 Q Let's -- district -- excuse me. Defense Exhibit 2 is that
9 report, correct?

09:34:37 10 A That is correct. Yes.

11 Q Yes. Okay. Did you assess the Hatcher plan in this
12 report?

13 A I did.

14 Q Okay. And for the Court's benefit, is the Hatcher plan
09:34:54 15 the plan that was presented in the Milligan plaintiffs'
16 complaint? To the best of your knowledge. If you need to
17 review something, Mr. Bryan, let me know. The names may be
18 confusing.

19 I will represent to you that the plan presented the
09:35:25 20 Milligan complaint was also introduced into the legislature by
21 Senator Hatcher?

22 A Yeah. That's my understanding, correct.

23 Q So if it confuses you for me to call it either the Hatcher
24 plan or the Milligan plan, let me know and we will get on the
09:35:43 25 same page with the language.

1 A I am clear.

2 Q I want to share Defense Exhibit 75 and ask you is that the
3 Hatcher plan that you assess in your report that was submitted
4 as Defense Exhibit 2?

09:36:02 5 A This -- it appears to be. This is not my map. But this
6 appears to be the same map.

7 Q Thank you.

8 Now, this is somewhat different from the various plans
9 presented by Dr. Duchin and Mr. Cooper as demonstrative plans,
09:36:21 10 is it not?

11 A It is.

12 Q Okay. How does the general structure of this plan compare
13 to the various demonstrative plans you've reviewed?

14 A Sure. So the key features of this plan, the first major
09:36:39 15 difference is this is not a county-based plan. It has
16 geography that builds their districts going all the way down to
17 the block level. My observation is they generally used -- the
18 authors of these plans used VTDs, but there were cases in order
19 to achieve precise population balance where those VTDs were
09:37:04 20 split and blocks were used.

21 As a more general observation I have here, the most
22 impactful changes are that there are changes to where the
23 boundaries of District 7 are drawn, I have up and around the
24 Birmingham area. We can look around Birmingham relative to
09:37:24 25 where the existing districts are.

1 We can kind of see where these plaintiffs' plans went,
2 with regards -- and relative to and with regards to the
3 existing plan. But I also think importantly that we can see
4 that there's been a really significant change in District 2,
09:37:43 5 insofar as it now kind of stretches from the far, you know,
6 western to the eastern side of the state. And then also
7 extends southward dividing Mobile and Baldwin counties.

8 Q All right. Let's go back then to your report and look in
9 more detail at your assessment of this Hatcher plan.

09:38:16 10 Did you assess the demographics of the Hatcher plan?

11 A Yes.

12 Q I will refer to page 12 of Defense Exhibit 2. And tell us
13 what you saw in reviewing the demographics of the districts in
14 the Hatcher plan.

09:38:35 15 A Yes. Thank you.

16 My first observation, just as I discussed with the last
17 plan, was to look at the total population in Table 4.1. It
18 appears that the Hatcher plan is able to achieve a plus and
19 minus 1 percent deviation. That is the low is 717,753, high
09:38:59 20 717,755.

21 As I read across this table, I see that the percent black
22 population of the districts were 51.3 percent -- 51.5 percent
23 for black alone in District 2 and 53.4 all black, or any-part
24 black. And in District 7, there's a stronger black majority in
09:39:30 25 that district with 54.3 percent black alone, and 55.8 percent

1 all black or any-part black.

2 Q Okay. What do you mean when you say this next to last
3 column going left to right, black alone?

4 A The black-alone population?

09:39:57 5 Q Correct. How -- what do you mean by the term black alone
6 versus the term you use in the next column, all black?

7 A Sure. So the black-alone population, the way that I
8 define it and the way I think it's commonly defined in
9 demography is that, as Dr. Duchin mentioned yesterday, there's
09:40:17 10 the option to check if you are black in the census form, as
11 there is options to check if you are any number of other races,
12 including white, Asian, American Indian, Native Hawaiian,
13 Pacific Islander, and so forth.

14 The way that the Census Bureau then follows up, they ask a
09:40:38 15 question about what they call ethnicity or Hispanic origin.
16 And so Hispanic origin is as a separate construct. It's a
17 separate concept from race.

18 Hispanic is not race. So for every race you can pivot
19 that to say whether that race is by Hispanic or not. So there
09:40:59 20 are Asian Hispanics. There are Native Hawaiian Hispanics.
21 There are black Hispanics.

22 So when we look at the black-alone population, I think of
23 that as being the most limiting -- that's the smallest possible
24 number, the lowest guardrail. If you were to say what number
09:41:20 25 can you be really, really sure there is this number of blacks

1 at a bare minimum, this is the number you would refer to
2 because this number does not refer to black in combination with
3 anything else, not even Hispanic.

09:41:42 4 Q Okay. Some experts have used the language single-race
5 black and any-part black.

6 A Sure.

7 Q Is single-race black the same as black alone, as you
8 understand it? Are you talking about the same thing?

09:42:00 9 A I -- not knowing their work, but hearing their
10 characterization of the definition, my belief is that we are
11 using the same definition.

12 Q Gotcha.

13 And any-part black, is that as far as you know, the same
14 as what the term you use, all black?

09:42:13 15 A That is my understanding.

16 Q Why do you present both measures in your report,
17 Mr. Bryan?

09:42:31 18 A Yeah. So I'm not a political scientist. But I have
19 worked with political scientists for many years on these
20 projects. And the input that I have gotten from them is that
21 it is beneficial for them to have these numbers so they are
22 able to understand the size and the characteristics of the
23 black population in context.

09:42:52 24 From a demographic perspective, for me it's beneficial
25 because having reviewed numerous reports from numerous other

1 experts, it is very common that other experts either do not
2 know or do not understand the definition of the black
3 population and will use numbers that they find in reports and
4 documents or references that they themselves do not know or
09:43:13 5 understand.

6 So for the benefit of my reports, personally from my
7 analytics, it is beneficial for me to have both of these
8 numbers so we know what the lowest possible number is that
9 blacks can be, as well as the greatest possible numbers.

09:43:29 10 When we're talking about a Voting Rights Act case, it is
11 beneficial to know what both of those are. Because in
12 different kinds of cases and in different venues, some of those
13 numbers will serve different purposes for different parts of
14 the case.

09:43:44 15 Q Okay. You refer to the use of black alone or single-race
16 black as being more defensible in Voting Rights Act cases.

17 A That's correct.

18 Q What do you mean by that?

19 A So, again, I am not a political scientist, but I have
09:44:04 20 worked closely with political scientists for many, many years
21 in the cases. And so I refer to my experience with them that
22 when they ask me for the number, size, location of the
23 population, that they need to make claims about the political
24 cohesion or the political performance of that population, the
09:44:25 25 political scientists that I have worked with have told me that

1 it is easier to defend the political performance, the political
2 voting behavior of the more homogenous, smallest, most cohesive
3 black population.

09:44:46 4 It was notable to me yesterday, I believe I heard a
5 political scientist in this case refer to the fact that he had
6 been using the black-alone population for his political
7 analytics.

8 So it's a common thing to use those. I have no opinion
9 whether one is right or wrong or better or worse. I simply
09:45:07 10 refer to my experience and what has been asked of me by
11 political scientists.

12 Q Let's move on now, Mr. Bryan, to a discussion of
13 communities of interest.

14 Have you ever been hired to draw a plan for a state or
09:45:26 15 geographical area that was unfamiliar to you?

16 A Frequently I do work across the United States and am
17 oftentimes called upon to participate in cases, either
18 critiquing plans or drawing new plans for areas that I have
19 never been before.

09:45:43 20 Q When you're put in that position, do you consider it
21 important -- do you consider it important to educate yourself
22 about communities of interest in the area before you draw the
23 plan?

24 A I'd say it's very important. It's a leading criteria.
09:46:04 25 The rules that many states use and the NCSL advocates is

1 knowing what those communities of interest are.

2 It's one criteria that, obviously, if you are going to
3 serve the people as in this case, the great people of the state
4 of Alabama, it is in the best interest of me as an expert to
09:46:22 5 know what I can, familiarize myself.

6 Q So what are some things you might do to educate yourself
7 about the communities of interest in an area that is new to
8 you?

9 A Sure. So, typically, what I would do is I would find
09:46:44 10 people who are experts, people who are residents, maybe people
11 who used to work as representatives for the areas, used to have
12 experience with the political system, state and local
13 officials, or people who I personally know who may be able to
14 give me valuable insights on what's actually going on in a
09:47:06 15 state like Alabama. And in the case of Alabama, that's exactly
16 what I did.

17 Q Now, I won't pull this up, but you have a notebook with
18 our exhibits in it. I would ask you to look at Defense
19 Exhibit 171.

09:47:25 20 We provided you with copies of the testimony of Jo Bonner
21 and Bradley Byrne from the Chestnut litigation, did we not?

22 A Yes, you did.

23 Q And is that --

24 A I am looking at it.

09:47:36 25 Q Yeah. Is Defense Exhibit 171 the testimony that we

1 provided you with?

2 A Yes.

3 Q Okay. Did you review it?

4 A Yes.

09:47:45 5 Q What were your impressions from that testimony in terms of
6 whether it offered any information of value to you as a
7 demographer?

8 A I mean, I think it was as good of information as you could
9 possibly get in knowing and understanding social, economic,
09:48:09 10 geographic characteristics of an area.

11 The Byrne/Bonner testimony talked in some detail
12 especially about District 1 and about the details and
13 characteristics of Mobile and Baldwin that were detailed,
14 factual and insightful and very beneficial for my understanding
09:48:31 15 of that area.

16 Q As a demographer, did you find that testimony persuasive
17 if you were considering whether or not there is a community of
18 interest around the Gulf Coast counties?

19 A It was very compelling in discussing the socioeconomic
09:48:54 20 political cohesion of the area. I am hard pressed to think of
21 another document or testimony that I could refer to that would
22 be any more enlightening than what the Byrne and Bonner
23 testimony provided.

24 Q Okay. Now, of course, they weren't purporting to be
09:49:14 25 discussing every possible community of interest in the state of

1 Alabama, were they?

2 A For sure, no.

3 Q Yeah. But in terms of that one community of interest, did
4 you find that information that would be valuable to you if you
09:49:29 5 were retained to draw a congressional plan for the state of
6 Alabama?

7 A Yes, definitely.

8 Q When you draw plans, Mr. Bryan, do you assume as a
9 demographer that all the white voters in the jurisdiction have
09:49:47 10 one set of interest and all the black voters in a jurisdiction
11 have a different set of interests?

12 A I would never consider that.

13 Q Would you consider that to be an appropriate approach to
14 redistricting?

09:49:57 15 A Definitely not.

16 Q Are you aware, Mr. Bryan, that some of the witnesses for
17 the plaintiffs have mentioned the Black Belt in Alabama as a
18 community of interest?

19 A I am aware.

09:50:20 20 Q Are you familiar with the general area that most people
21 consider to be the Black Belt?

22 A I am generally familiar.

23 Q When a community of interest is identified to you as a
24 demographer, Mr. Bryan, do you understand that to be an
09:50:42 25 argument that the area should be included in one district or

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1 split among several?

2 A Again, when you are discussing communities of interest,
3 there can be different competing overlapping communities of
4 interest. But generally if you have one community of interest
09:51:03 5 that is very important and prevails and especially if you are
6 presenting a competitive plan that advocates for significant
7 deviation from an existing plan, I would be looking for the
8 degree to which a plan kept a community of interest whole.

9 Q We'll talk more about the plans presented by Mr. Cooper
09:51:23 10 and Dr. Duchin shortly. But to the best of your knowledge, do
11 any of the plans you've reviewed in this case, whether it is
12 the Hatcher plan, the plans presented by Dr. Duchin or the
13 plans presented by Mr. Cooper; do any of those keep the Black
14 Belt counties in a single district?

09:51:42 15 A No.

16 Q I want to share my screen again.

17 Look at a different part of your report that we have
18 submitted as Defense Exhibit 2.

19 I want to go to page 24 of that report.

09:52:11 20 Mr. Bryan, did you do a core retention analysis of the
21 Hatcher plan that is discussed in Defense Exhibit 2?

22 A I did.

23 Q Well, let's see. This is actually --

24 A I believe that's the existing Alabama map.

09:52:32 25 Q That's the existing plan. Yeah. Look at Figure 5.2 on

1 page 24. Tell us what we see in that chart, what you're
2 analyzing and what you are showing us.

3 A So this is the core retention of the Hatcher plan. We see
4 in this case that there was a -- as we know from the design of
09:53:01 5 the plan and see visually, that Districts 1 and 2 were
6 significantly impacted.

7 We can see that there's relatively low retention,
8 approximately 59 percent in District 1, less than half of that
9 with black retention in District 1. So in this case, the
09:53:22 10 continuity of representation is significantly detrimental to
11 the black population in District 1.

12 In District 2, District 2 kind of becomes a core, a locus
13 of population where you need to move other population around in
14 order to improve the black performance there. And that is why
09:53:43 15 in this case, the what -- the non-black or the total population
16 is significantly lower than the black population. Because
17 white and other non-black populations had to be moved out of it
18 in order to enable its black performance.

19 Some of the other districts -- District 3, for example,
09:54:04 20 has somewhat good and balanced retention. In Districts 4
21 and 5, I think these are very consistent. There was not much
22 change made up in those districts, so their core retention is
23 very good. Again, there was some difference, lower performing
24 core retention in District 6 with a notable differential impact
09:54:27 25 to the black population.

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1 And then, again, in District 7, I think there was less
2 impact there, and there was comparable performance of core
3 retention there between black and the total population.

4 Q Which plan does better with preserving the core of
09:54:47 5 existing districts? The Hatcher plan or Alabama's 2021 plan?

6 A It's -- the core retention overall for the Alabama plan is
7 significantly higher. I don't remember the exact number. It
8 may have been a million more people perhaps, or retained in
9 their core districts in the Alabama plan than in the Hatcher
09:55:10 10 plan.

11 Q And which plan shows more distinction between how white
12 and black persons are treated, in terms of core retention?

13 A Sure. There's obviously significantly more differential
14 impact of the subpopulations in the Hatcher plan than in the
09:55:33 15 total plan. There's virtually no differential impact in the
16 Alabama plan between total and black.

17 Q Table 5.2 appears on page 26 of your report. And let's
18 just say for the record, I'm referring to the filing page
19 number. Actually, the page number that originally appeared on
09:56:06 20 Mr. Bryan's report is page 25. I may have been a little sloppy
21 going through these reports and which one I was referring to.
22 Hopefully by stating which table precisely we're looking at
23 will be clear.

24 In Table 5.2 of Defense Exhibit 2, Mr. Bryan --

09:56:25 25 A Yes.

1 Q -- would you tell us what you are showing us here?

2 A Yes. So this is a core retention analysis of the existing
3 plan because where we started all of our core retention

4 analysis with the Hatcher plan. And as you can see looking at

09:56:43 5 District 1, there were 426,386 people from the original

6 existing District 1 who remained there. And then there was

7 significant displacement, as we know, with the development of

8 District 2. There was 285,000 people that got moved into

9 District 2.

09:57:05 10 Q Okay. So this is similar to a chart that we reviewed when
11 you were analyzing the Singleton plan.

12 A Yes. Yes. This is the exact same analytic technique.

13 Q Okay. I am going to move to your discussion of
14 incumbency.

09:57:27 15 A Sure.

16 Q What does the Hatcher plan do with avoiding incumbent
17 conflicts? And I will refer you to page 28 as is shown on the
18 top of the page of Defense Exhibit 2.

19 A Yes. Thank you. So interestingly, there's actually
09:57:53 20 two pairs here. So the plaintiffs' plan pairs the Moore --
21 Representatives Moore and Carl. In District 1 you can see that
22 down in the south, that they're not on the edge, they're not on
23 the border of the districts, they're wholly contained inside of
24 District 1, leaving District 2 unrepresented.

09:58:16 25 And then it goes on, as we saw in several plans, that

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1 Sewell and Palmer were both in District 6, leaving District 7
2 unrepresented.

3 So the two districts -- Districts 2 and Districts 7 here
4 are left without any incumbent representation at all.

09:58:51 5 MR. DAVIS: Your Honors, I'm quite content to continue
6 for a little longer. I am about to move into a slightly
7 different subject, as we're going to discuss compactness.

8 JUDGE MARCUS: I think this might be a convenient
9 point. We wanted to give our reporter a break after about an
09:59:04 10 hour and a half, and we are -- we are just about at that point.

11 So this would be a good breaking point. Let me just ask
12 you a quick question: What's your sense on the balance of your
13 examination of Mr. Bryan?

14 MR. DAVIS: My best judgment, Judge Marcus, would be
09:59:25 15 that I have about an hour to go. It could be a little less.

16 JUDGE MARCUS: Okay. Why don't we do this -- I have
17 exactly 10:00 o'clock Central Standard Time or almost 10:00
18 o'clock, 9:59, and almost 11:00 o'clock Eastern Time. Why
19 don't we take a 15-minute break, and we will pick up, then, at
09:59:49 20 10:15 Central Standard Time? Thank you all. We will take a
21 short break.

22 (Recess.)

23 JUDGE MARCUS: Do you have an order in which the
24 cross-examination is going to proceed? Have the plaintiffs
10:17:31 25 settled on that?

1 MS. KHANNA: Yes, Your Honor. The Caster plaintiffs
2 will cross-examine Mr. Bryan first, and I believe then
3 Milligan. And then Singleton.

4 JUDGE MARCUS: Okay.

10:17:42 5 MR. DUNN: That's my understanding, as well, Your
6 Honor.

7 JUDGE MARCUS: Mr. Blacksher, that's your
8 understanding, as well?

9 MR. BLACKSHER: Yes, Your Honor. That's why I was
10:17:50 10 worried about bumping up against Mr. Bryan's timeline since I
11 am at the tail end.

12 JUDGE MARCUS: Don't worry. You will have all the
13 time you need.

14 MR. BLACKSHER: Thank you.

10:17:58 15 JUDGE MARCUS: Mr. Davis, let's proceed. Thank you.

16 BY MR. DAVIS:

17 Q Mr. Bryan, did you assess the compactness of the Hatcher
18 plan?

19 A I did.

10:18:09 20 Q I will share page 31 of Defense Exhibit 2.

21 Your scores of the Hatcher plan appear in Table 5.5.

22 A That's correct.

23 Q Okay. Tell me -- summarize how the Hatcher plan's
24 compactness scores compare to Alabama's 2021 plan. Does it
10:18:38 25 perform better, worse, the same?

1 A Yeah. Sure. Sure. So again, there are two different
2 ways that you can summarize compactness. You can summarize it
3 for the plan as a whole, and then you can summarize it by
4 district.

10:19:03 5 And as we discussed earlier and as Dr. Duchin has pointed
6 out, the total metric here is just a layman's simple summary
7 statistic to help us understand relatively for one plan versus
8 another plan how a district performs.

9 So when we look at the Alabama plan versus the Hatcher
10:19:26 10 plan, pretty much across the board as we look at the
11 Polsby-Popper, the adapted Schwartzberg score, the Reock
12 scores, and the convex hull scores, if you look at all four of
13 these different measures, you see that the Alabama plan is much
14 higher. It performs much, much better.

10:19:52 15 There's -- in one area, it's around District 4, I believe,
16 where there is a little bit lower score for the state of
17 Alabama. You can see that my total score for the state of
18 Alabama there, low at 1.6. Similarly, around District 6, also
19 at about 1.55, those two relatively low areas.

10:20:22 20 Those are driven by some physical features at the
21 intersection of these districts. I refer to it as the Bankhead
22 Lake area. There's a lot of water features, a lot of curvy
23 lines and things in those districts, just by their physical
24 features, less compact. And that is part of the reason that
10:20:39 25 when you compare those specific districts with the couple of

1 comparable districts in the Hatcher plan, you may see a couple
2 of instances there where the Hatcher plan is not as low, just
3 because it does not have boundaries that exactly follow those
4 physical features. But in aggregate, across the board, every
10:21:01 5 measure that you would look at would say the Alabama plan is
6 superior, sometimes significantly so to the Hatcher plan.

7 Q Got it. But the Court, if it wants to look at Table 5.4
8 and 5.5 and compare the scores for each district in the Hatcher
9 plan and the state's plan; is that right?

10:21:24 10 A Right.

11 Q Okay. Let's look at some of the maps you prepared for the
12 Hatcher plan, Mr. Bryan. I want to turn now to Page 44 of your
13 report, Page 44 according to the filing information on the top
14 of the page.

10:21:45 15 What do we see in this map, Mr. Bryan? This Map
16 Appendix 5?

17 A Sure.

18 Q Tell us what you are showing us in this map.

19 A Sure. So this is a -- this is consistent with some of the
10:22:07 20 other maps that we've produced for different plans. It's an
21 outline of the Hatcher plan, and it shows the percent black
22 alone by -- let's see -- this is actually mislabeled. This is
23 a black alone by county map. So I would disregard the label
24 within the map and refer to the map appendix, the title of the
10:22:33 25 map. This is black alone by VTD -- by county.

1 Q Thank you.

2 Now, this District 2 -- you see my cursor moving, I take
3 it, on the screen?

4 A Yes, I see.

10:22:49 5 Q District 2, which takes part of Mobile County and then
6 goes east, and District 7 which includes this finger into
7 Jefferson County, those are the two majority-black districts in
8 the Hatcher plan, are they not?

9 A That's correct.

10:23:01 10 Q Is there any county in the state that is more than
11 40 percent black population that is not included in either
12 District 7 or District 2 in the Hatcher plan?

13 A There's only two pieces that I see. There's, again, in
14 Jefferson, there's a little portion of the district that goes
10:23:28 15 outside of 7. And then, I think similarly, you move your
16 cursor down and over to the right, that county with 79 percent
17 goes just over the edge. And that's slightly split by
18 district, as well.

19 But other than that, yeah. And 43 right there. Other
10:23:48 20 than that, there's no other 40 percent or greater wholly
21 contained counties in any other districts.

22 Q Let's move to the next map, Map Appendix 6. What are you
23 showing us here?

24 A Yeah. So this would be the Voting Age Population by
10:24:06 25 county overlaid with the Hatcher plan, again showing the high

1 concentrations of population in Jefferson County and Mobile and
2 Baldwin counties.

3 Q Where does it appear, according to this map, that
4 District 7 is getting most of the people that populate this
10:24:26 5 district? Most of the people, regardless of race.

6 A Yeah. The biggest piece would be coming from the area in
7 Jefferson County.

8 Q And where would District 2 be getting most of its total
9 population?

10:24:44 10 A It's a little less clear here because you've -- it is
11 intersecting the Mobile and the Baldwin counties to the
12 southwest. But there is another also another populous county
13 in north central -- 177,427, right in there. So that's a
14 corner, just given that we have 700-and-some thousand
10:25:07 15 population, that county would be contributing
16 disproportionately to the overall plan.

17 Q Yeah. This is Montgomery County, correct?

18 A Yeah. Correct. It's not labeled on my map, but, yeah, I
19 believe that's correct.

10:25:19 20 Q Let's look at Map Appendix 7 on the next page.

21 A Sure.

22 Q What do we see here, Mr. Bryan?

23 A Yeah. So this is the -- this is the plan that shows the
24 percent black alone by the VTDs overlaid with the Hatcher plan.

10:25:37 25 Q Okay. What, if anything, is indicative to you of the map

1 drawers' intention when you look at the splits of, say,
2 Jefferson County, here between 7 and 6, and Mobile County
3 between Districts 2 and 1?

4 A Sure. I'll be careful to put myself in the mindset or
10:26:10 5 speak for the intention of the map drawer. I will speak more
6 so to the appearance or the outcome of the map, if that is all
7 right.

8 Q Assume that's what I asked. Is this any appearance here
9 that jumps out to as an a demographer?

10:26:29 10 A Yes. I would be more precise if I focus on that than
11 intent.

12 As you follow the new District 2 starting kind of over on
13 the eastern edge of the state near the border, near where
14 Columbus is, and you see that the northern edge of District 2
10:26:49 15 starts tracing from east to west across the central part of the
16 state, you can see easily that that line almost precisely
17 exactly follows the contours of the very highest black
18 population VTDs -- can literally go from one to the next and
19 look on the northern edge of that line and see what I call the
10:27:14 20 yellow, red, you know, 10 percent, 20 percent black, and then
21 you go below that line and you immediately see a 60 percent or
22 more black. It is literally like the dividing line of black
23 and much less black population.

24 As you follow that boundary around to the central part of
10:27:36 25 the state through the Black Belt, District 2 turns south and

1 goes down towards Mobile and Baldwin counties. You can see
2 that the map -- and the map that District 2, the boundaries of
3 it go down around Mobile. I think we have another map that may
4 show it in more detail. But we can illustrate that in this
10:27:57 5 plan the boundaries of District 2 went around Mobile, not
6 following a city boundary or any other administrative
7 boundaries. It just followed the edge of where black
8 population was and was not.

9 Similarly, in District 7, you can see that it captures
10:28:18 10 large portions, very carefully captures large portions of black
11 populations. And as you go into Birmingham, Jefferson County,
12 you can see that it nearly perfectly outer bounds only the
13 exact black population VTDs in the northeast corner of
14 Birmingham.

10:28:35 15 Q Why don't we go ahead and look at some of the close-up
16 maps that you prepared.

17 Let's look at Map Appendix 9?

18 A Right.

19 Q What do we see here, Mr. Bryan?

10:28:52 20 A Sure. So the dark line, if you can see carefully enough
21 it's kind of dark black and a purple line. That's the existing
22 district boundaries.

23 The --

24 Q Let me interrupt you. By existing, do you mean the 2011
10:29:08 25 plan?

1 A Yes.

2 Q Okay.

3 A Thank you.

4 The existing 2011 district plan. And what I have done
10:29:16 5 here is I have overlaid, again, with a blue outline where the
6 Hatcher plan boundaries are. And if you look, what the Hatcher
7 plan does, is it kind of follows closely along where the
8 existing districts were, but then I have shown with little blue
9 dots here where the Hatcher plan did what we call an outer
10:29:43 10 bound. That is it went beyond the existing districts and
11 grabbed just the precincts that had the highest concentrations
12 of black population.

13 You can see that there are plenty of VTDs surrounding
14 Birmingham that are colored yellow and orange, reflecting lower
10:30:07 15 black population concentrations. And the plan just really
16 prioritized -- appears to have prioritized making sure that it
17 got the highest black concentration VTDs into the plan.

18 Q Thank you.

19 Let's look at the next map, Map Appendix 10.

10:30:35 20 A Sure.

21 Q What are you showing us with this map, Mr. Bryan?

22 A Yeah. So one of the -- in just looking at the data for
23 the new Alabama plan, what I suspected we were going to find is
24 that there were some VTDs -- I did not know where, but there
10:30:54 25 would be some VTDs where there was black population that would

1 be disgorged, displaced, moved out to other districts.

2 This was the 5 percent of, you know, several thousand
3 blacks that we had talked about earlier today. And I found
4 this part of Birmingham to be the area where that displacement
10:31:16 5 took place. I know that was not the intent of the mapmaker.
6 It's an effect of their efforts to draw a more compact plan.

7 MR. DUNN: Your Honor, could I ask that he not testify
8 or try to testify as to the intent of the mapmaker? I don't
9 know how he can possibly do so.

10:31:33 10 JUDGE MARCUS: I think the point is well taken. I
11 don't think that was the thrust of your question in any event,
12 Mr. Davis.

13 MR. DAVIS: That's correct.

14 MR. DUNN: I don't think it was a problem with the
10:31:42 15 question, Your Honor, but I think it's a problem with the
16 answer.

17 JUDGE MARCUS: I understand, Mr. Dunn. So Mr. Bryan,
18 focus specifically on the question as it's put by Mr. Davis, if
19 you would. He's asking about appearance rather than intent.

10:31:57 20 BY MR. DAVIS:

21 Q Yeah. Let me rephrase, Mr. Bryan, and ask you what moves
22 do you see were made in this part of Jefferson County between
23 the 2011 and the 2021 plan?

24 A So there is a black and white line across the middle of
10:32:16 25 the map. And above that black and white line, there are

1 several squares, as opposed to the circles I mentioned earlier.
2 Those squares identify high black concentration VTDs. Those
3 high black concentration VTDs have previously been in the
4 existing plan or in, as you can see by the location of the new
10:32:43 5 line, those black VTDs are no longer contained in District 7.

6 The black line has the geometry effect of making the
7 boundaries of the district here more compact and more simple.

8 Q Thank you.

9 Now, let's look at Map Appendix 11, it will be the last
10:33:08 10 map in the Hatcher plan.

11 A Yep.

12 Q Tell us what we see here.

13 A Right. So this is a view of the Hatcher plan. You can
14 see in the northern parts, just a little bit of the existing
10:33:23 15 2011 congressional plan. And so what we're looking at here is
16 a close-up of where the boundaries of District 2 go down into
17 Mobile County in the population that is added to District 2 in
18 this plan.

19 And what we can see is that in the areas surrounding the
10:33:43 20 intersections of District 1 and District 2, that there is lots
21 of VTDs that have very low black populations. This is
22 represented by red, orange, and yellow areas.

23 And what we see here is that with this plan, District 2
24 extends down into Mobile, again, not following any other
10:34:07 25 administrative or physical geography and grabs only the pieces

1 of Mobile shown in dark black, which represent the highest
2 concentration of black population in the county.

3 Q These dark green precincts, you mean?

4 A Yes. As you can see, especially in eastern Mobile, the
10:34:38 5 line goes down. There's very low black population to the right
6 edge of that line. There's very high black population to the
7 left edge of the line. And if it was one black VTD, I could
8 pass it off as happenstance. But there's obviously several of
9 those here illustrating that.

10:35:00 10 Q Thank you.

11 Now, Mr. Bryan, I want to refer you to page 32 of your
12 report, going by the filing number.

13 A Yes.

14 Q What is your conclusion, if any, from your analysis of the
10:35:18 15 Hatcher plan?

16 A In looking at the changes that were made in the two
17 districts that sought to be black majority districts, they
18 appear to be racial gerrymanders because of the way that the
19 lines were drawn to precisely include just black populations
10:35:52 20 and to precisely exclude non-black populations.

21 MR. DUNN: Your Honor, again, he is straying over into
22 testifying about intent. I object to that and move to strike
23 the last answer to the extent it does that.

24 JUDGE MARCUS: Overruled. He said there appeared to
10:36:19 25 be racial gerrymandering, including blacks in one way,

1 excluding whites in the other way.

2 I didn't take it as bearing on intent. Overruled. You
3 may proceed.

4 BY MR. DAVIS:

10:36:32 5 Q Mr. Bryan, did you review the reports that were submitted
6 in this case by Mr. Bill Cooper and Dr. Moon Duchin?

7 A I did.

8 Q And does your analysis appear in a report supplemental
9 report that's been marked as Defense Exhibit 4?

10:36:51 10 A Yes.

11 Q Okay. Did you review the demographics of the plans that
12 Dr. Duchin submitted?

13 A I did.

14 Q And this is a summary of one of her plans on page 27 of
10:37:17 15 Defense Exhibit 4.

16 A That is correct.

17 Q Okay. Do Dr. Duchin's plans include two majority-black
18 districts?

19 A By both metrics of black alone and all black or any-part
10:37:35 20 black, they do. I would like to acknowledge that I have done
21 an analysis comparing my all black with the any-part black from
22 her reports, and I believe that our statistics are representing
23 her plans match precisely between both of our analyses insofar
24 as the all black and any-part black.

10:37:55 25 Q Do Dr. Duchin's plans present majority-black districts

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1 when you consider only Voting Age Population?

2 A In that case, the answer would be it depends.

3 In the -- in this particular -- would you like me to speak
4 to Duchin plan D, what I see on the screen?

10:38:22 5 Q That would be fine. Let's -- for the record and for the
6 Court's benefit, you present the demographics of all of her
7 plans, correct?

8 A Yes, I do.

9 Q And that begins in the appendix of your -- in Defense
10:38:42 10 Exhibit 4, it begins on page 25 of Defense Exhibit 4. Then you
11 see each of her plans addressed in turn, correct?

12 A Yes.

13 Q Why don't we address this plan, her plan A?

14 A Great.

10:38:57 15 Q Tell us whether Dr. Duchin's plan A presents
16 majority-black districts of Voting Age Population?

17 A It does. By both black alone and any-part black.

18 Q And what about her plan B?

19 A In this plan, the black-alone statistics do not rise to
10:39:22 20 meet the majority threshold. The percent all black, any-part
21 black statistics in this case do rise to the 50 percent or
22 greater majority threshold.

23 Q Okay. And C?

24 A Yes. So in this particular case, District 2 does not rise
10:39:46 25 to the majority threshold for black alone, but it does rise to

1 majority threshold for all black or any-part black.

2 District 7 in her plan would be a majority, whether black
3 alone or all black.

4 Q Okay. And, now, what about plan D or plan 4?

10:40:06 5 A Yeah. So consistent with plan C, in District 2, there's
6 by black alone, it would be a minority, would not rise to the
7 majority threshold. By all black, it is a fair majority of
8 50.05 percent. With District 7, they look solid majorities at
9 50.55 percent black alone and 51.7 for all black or any-part
10:40:34 10 black.

11 Q Okay. And next in your report, on the next page,
12 page 28 --

13 A Yes, sir.

14 Q -- you start to present demographics of the plans that
10:40:43 15 Mr. Cooper offered?

16 A Right. That's correct.

17 Q All right. Let's look at his plan 1?

18 A Right.

19 Q Does it contain two majority-black districts when you
10:40:54 20 consider Voting Age Population?

21 A Yes. In District 2, by the black-alone measure, it does
22 not, but by all black it does. In District 7, both by all --
23 by black alone and all black, they are definitive black
24 majority districts.

10:41:15 25 Q Great.

1 District -- excuse me. What about plan 2, does it have
2 two majority-black districts considering Voting Age Population?

3 A Yes, sir. As with one, black alone in District 2 is not a
4 majority, all black is. And District 7, again, has majority by
10:41:35 5 both black alone and all black or any-part black.

6 Q What about for plan 3?

7 A In this particular plan, neither District 2 nor District 7
8 would rise to the 50 percent threshold. The all black
9 definition would achieve a majority in District 2 of

10:42:00 10 50.3 percent, and would achieve a bare majority, 50.09 percent
11 in District 7.

12 Q Plan 4?

13 A Yeah. In this case as well, by the black-alone measure,
14 Districts 2 and District 7 would not be a majority by black
10:42:22 15 alone, but would be a majority under all black, District 2, a
16 fair majority, 50.07, and District 7 at 50.09.

17 Q What about Cooper plan 5?

18 A Yeah. So, again, in this case, just as with some of the
19 other plans Cooper has presented, the percent black-alone
10:42:49 20 statistic, you would not rise to a majority in Districts 2 or
21 7, but you would rise to a majority -- more definitive majority
22 in this plan with 50.2 percent all black in District 2 and
23 50.09 percent in District 7.

24 Q Finally, Cooper plan 6.

10:43:10 25 A Sure. Again, in this case, similar to the previous plans,

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1 neither his District 2 or 7 rise to be a majority. They're
2 close, but are not a majority by the black-alone measure, but
3 both of them are majority districts by the all black or
4 any-part black measure.

10:43:31 5 Q Okay. By the way, Mr. Bryan, did you find similarities
6 between the plans presented by Dr. Duchin and Mr. Cooper with
7 the Hatcher plan that we discussed earlier?

8 A There were general similarities, yes.

9 Q You assess -- did a core retention analysis of the plans
10:43:59 10 that Dr. Duchin and Mr. Cooper presented, did you not?

11 A Yes, I did.

12 Q Just generally -- we will not go through all ten plans.

13 A Okay.

14 Q Tell us generally how they performed with core retention.

10:44:13 15 A Sure. And thank you for that.

16 The performance of the core retention for the Duchin plans
17 are similar with the Hatcher and with many of the features of
18 the Cooper plans as well. We see especially in District 1 the
19 total population's core retention is relatively low, 64 percent
10:44:34 20 core retention of the blacks is much lower at 32.5 percent.
21 This is consistent with what we found in District 6 as well.
22 And just reflects the significant rearranging of the black
23 population for the effort to create two black majority
24 districts.

10:44:54 25 Q Okay. So your core retention analyses begin appearing on

1 page 34?

2 A Yes.

3 Q If the Court wishes to find details about your analysis,
4 could they find parts of this sort for each of the plans
10:45:14 5 presented by Dr. Duchin and Mr. Cooper?

6 A There will be -- there are details of the plans and the
7 core retention throughout my report, yes.

8 Q So is it true for all of the plans presented by Dr. Duchin
9 and Mr. Cooper that they performed more poorly than Alabama's
10:45:37 10 plan in core retention and in the differential treatment of
11 black voters?

12 A That is true in both regards. The core retention of the
13 total population in the different Duchin and Cooper plans
14 were -- for the total population were in the 50 percent to
10:45:58 15 60 percent range, compared with the 90 percent for the state of
16 Alabama plans.

17 And then the performance of the black core retention was
18 lower, obviously, because of the rearranging of the black
19 population. So those numbers were more commonly in the
10:46:18 20 50 percent and sometimes lower range.

21 Q Did you assess whether the plan submitted by Dr. Duchin
22 and Mr. Cooper created any incumbent conflicts?

23 A I did.

24 Q And what did you find?

10:46:35 25 A I found that the evidence in the Duchin plans was that

1 there was not any regard to incumbency in the drawing of the
2 plans. So, for example, in plan A, there is an instance where
3 Representative Sewell, Representative Palmer, Representative
4 Rogers are all one district, and Representatives Moore and Carl
5 are in District 1's, leaving three districts unrepresented.

6 There were similar pairings in each of her plans. And
7 there was also pairings in Cooper's plans, as well.

8 Q Thank you. And can the Court find details of your
9 analysis on page 16 of Defense Exhibit 4?

10 A Yes.

11 Q Before we turn to compactness, Mr. Bryan, the transcript
12 will show us precisely what was said, but I believe yesterday I
13 heard Dr. Duchin say or refer to as minority opportunity to
14 elect as a traditional districting principle. Perhaps to be
15 more clear, she said protecting or preserving minority
16 opportunity to elect.

17 Would you consider any of those things to be a traditional
18 districting principle?

19 A I have not ever heard that as a traditional or
20 contemporary redistricting principle and I would not agree with
21 that.

22 Q Thank you.

23 Did you assess compactness of the plans submitted by
24 Dr. Duchin and Mr. Cooper?

25 A Yes.

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1 Q Okay. And in your analyses we found beginning on page 57
2 of Defense Exhibit 4, right?

3 A Yes.

4 Q Let's look at Dr. Duchin's plan A. How does the average
10:48:38 5 score for the entire plan compare to Alabama's plan?

6 A Generally her plans outperform the Alabama plan across all
7 these metrics.

8 Q Do each of her districts perform better than Alabama's?
9 Not each plan, but each districts within the plan.

10:48:59 10 A Right. Right. This was something that I noted in her
11 report. Dr. Duchin presented the summary statistics that you
12 see below in each one of her plans for Polsby-Popper and, I
13 believe, Reock. She did not in her original report present
14 information on the compactness by district.

10:49:21 15 I understand she may have in a subsequent report, but I
16 did not see that report or those findings. I refer here only
17 to my own observations and findings from my analysis.

18 My findings and observations in my analysis is that in the
19 districts that were more heavily focused on in order to achieve
10:49:43 20 the two black majority population districts that she said she
21 was seeking to achieve, those districts' compactness suffer
22 tremendously. They're much lower because they had to be drawn
23 in a very specific way, disregarding other traditional
24 redistricting principles in order to achieve her objective.

10:50:05 25 So you can see here in Districts 1 and 2 in particular,

1 that the compactness scores for her plans in these areas were
2 low. And it's understandable, given what she was seeking to
3 achieve there.

4 What is notable to me, though, is that compactness was
10:50:26 5 sacrificed in this part of the plan, but compactness was
6 prioritized -- appeared to be prioritized in the drawing of
7 other parts of her plan.

8 So, for example, if you look at Districts 4 and
9 Districts 5, the area that you see in my charts as being
10:50:47 10 highlighted in bright green, those areas were drawn in such a
11 way to significantly improve compactness. It impacted the core
12 retention of those areas for sure, but it sacrificed core
13 retention for the benefit of compactness.

14 So the overall outcome, the summary statistic of
10:51:10 15 Dr. Duchin's compactness analysis really, I think, masks some
16 important details, which is that compactness took different
17 roles in different parts at different times of the design of
18 her districts.

19 Q In Districts 1 and 2 in Dr. Duchin's plans, are those the
10:51:30 20 districts that appear in the southernmost part of the state?

21 A Yes, I believe so.

22 Q And are 4 and 5 the districts in Dr. Duchin's plan that
23 appear in the northernmost portion of Alabama?

24 A Yes, I believe so.

10:51:43 25 Q You present similar analyses of Mr. Cooper's districts, do

1 you not?

2 A Right. Yes, I do.

3 Q And how did the compactness of Mr. Cooper's plans compare
4 to the state of Alabama's?

10:51:57 5 A Generally, they were poorer performing compactness
6 compared to the state of Alabama.

7 Q I will represent to you, Mr. Bryan, that Mr. Cooper
8 presented an additional plan in a supplemental report. Was
9 that available at the time you prepared this report?

10:52:15 10 A No.

11 Q So you have not analyzed districts -- Cooper's plan
12 number 7 in this report, correct?

13 A I am aware of the report. I have not analyzed the report.

14 Q Thank you.

10:52:36 15 Let's look now at some of the maps you prepared.

16 Showing you now Map Appendix 5, which appears on page 68
17 of Defense Exhibit 4. Would you tell us what this map shows
18 us, Mr. Bryan?

19 A Sure. So this map shows, again, kind of the dark
10:53:04 20 outlines, the dark contours here. Those are the outline of
21 existing historic 2011 congressional districts. And then there
22 is a lighter green outline that shows the outline of Duchin
23 plan A overlaid with the existing historic Alabama plan.

24 Q Thank you.

10:53:30 25 So you can see the lines here of the 2011 Alabama plan and

1 Dr. Duchin's plan A, correct?

2 A Yes, that is correct.

3 Q Then next, in Map Appendix 5A. What do you present?

4 A Can we go back to the previous map for a moment?

10:53:51 5 Q Yes.

6 A Okay. And so I want to make an additional comment here on
7 compactness.

8 Q Yes.

9 A Districts 4 and 5 in the northern part of the state really
10:54:09 10 have nothing to do with the objective of achieving two black
11 majority districts, which I heard and understand to have been
12 the overriding objective of the plan.

13 So in looking at this map, in looking at the existing
14 Districts 4 and 5 and the new Districts 4 and 5, I do not see
10:54:33 15 any other reason for the new Districts 4 and 5 as being drawn
16 except for potentially for the purposes of compactness. They
17 were unrelated to the objective of the black majority district
18 drawing.

19 I just wanted to state that as an observation.

10:54:51 20 Q In the various plans you have reviewed, whether it's the
21 Hatcher plan or Mr. Cooper's plan or Dr. Duchin's plan, have
22 you seen any of them draw African-American population from say
23 the northernmost third of the state in order to populate their
24 majority-minority districts?

10:55:10 25 A I have not.

1 Q Okay. Let's go on now, then, to Map Appendix 5A.

2 A Yes, sir.

3 Q Tell us what you are showing us in these maps.

4 A Sure. Yeah. So this -- this map presents Dr. Duchin's --

10:55:29 5 can you please zoom out? Thank you.

6 This map shows Dr. Duchin's plan A outlined in black
7 outline overlaid with the percent black-alone Voting Age
8 Population by VTD in Alabama.

9 Q Okay. And did you present the same two maps --

10:56:05 10 A Sure.

11 Q -- for each of the plans presented by Dr. Duchin and
12 Mr. Cooper? First the map comparing the 2011 plan with
13 whichever plan plaintiffs' expert is presenting, followed by a
14 map of defendants' experts plans overlaid with VTDs color coded
10:56:25 15 by concentration of African-American population?

16 A Yes, that's the process.

17 Q So those will all appear in the map appendices should the
18 Court wish to review them for any plan?

19 A Yes.

10:56:40 20 Q I will refer you to page 19, Defense Exhibit 4, Mr. Bryan.

21 Tell us, as a demographer, what is your overall conclusion
22 after analyzing the plans presented by Dr. Duchin and
23 Mr. Cooper?

24 A I think there's really two key takeaways.

10:57:16 25 The first one is that they use -- they're able to use

1 sub-county geography in order to achieve a balanced population,
2 and more often than not, to achieve a black majority population
3 in two districts. Again, it's depending on the definition, the
4 exact plan. But generally, that's what they were able to
10:57:42 5 accomplish.

6 In achieving that, there were other traditional
7 redistricting principles that were generally sacrificed. And
8 by that, I mean there were cases where there is less
9 compactness, the core retention is sacrificed significantly.

10:58:07 10 So, therefore, the continuity of representation because of
11 the cracking and packing of the incumbents and then the --
12 mostly based on the -- mostly based on the incumbents, but also
13 based on the core retention analysis, there is a significant
14 impact to the continuity of representation in these plans.

10:58:31 15 And so I would say on the whole, that there were numerous
16 traditional redistricting principles that were traded off,
17 sacrificed in the pursuit of these other goals.

18 Q I want to go back to the map we were reviewing a moment
19 ago. Map Appendix 5A.

10:59:07 20 A Sure.

21 Q In which -- Dr. Duchin's plan A.

22 Mr. Bryan, as a demographer, as one who is drawn and
23 critiqued many redistricting plans, are you aware of any
24 redistricting criteria that would lead a map drawer to draw
10:59:33 25 this congressional map than by Dr. Duchin's plan A?

1 A I'm not aware of a traditional or combination of
2 traditional redistricting principles that would lead this to be
3 drawn in this precise way.

4 Q Okay. Are you aware of any need that Mobile County in
10:59:58 5 order to follow the traditional districting criteria of
6 compactness triggers?

7 A Can you please restate the question?

8 Q Yes, of course.

9 Would a desire to make districts compact lead a map drawer
11:00:14 10 to split Mobile County?

11 A No.

12 Q No. Would a desire to preserve communities of interest
13 preserve -- lead a map drawer to split Mobile County?

14 A No. My research would suggest it would not.

11:00:32 15 Q Do you need to split Mobile County in order to avoid
16 putting incumbents in the same district?

17 A No.

18 Q Do you need to split Mobile County to preserve the core of
19 existing districts?

11:00:42 20 A No.

21 Q Do you need to split Mobile County to equalize population
22 among the districts?

23 A No.

24 Q Your experience as a demographer, Mr. Bryan, do you see
11:01:01 25 anything that would lead a map drawer to draw this map other

1 than a desire to divide voters by race in order to draw two
2 majority-black districts?

3 A I do not.

4 Q Would you give the same answers if we went through each of
11:01:20 5 these maps of Dr. Duchin's and Mr. Cooper's plans?

6 A Yes.

7 Q Mr. Bryan, in your opinion, as a demographer, have the
8 Caster and Milligan plaintiffs proven that it is possible to
9 draw two majority-black districts without splitting Jefferson
11:01:47 10 and Mobile counties along racial lines?

11 A No.

12 Q In your opinion, as a demographer, have the plaintiffs
13 proven that it is possible to draw two majority-black
14 congressional districts in Alabama without sacrificing
11:02:02 15 traditional districting criteria?

16 A No.

17 MR. DAVIS: Your Honor, may I have a moment to consult
18 with my colleagues?

19 JUDGE MARCUS: You sure can.

11:02:12 20 (Counsel confers with co-counsel.)

21 MR. DAVIS: We have no further questions for Mr. Bryan
22 at this time, Judge Marcus. Thank you.

23 JUDGE MARCUS: All right. Thank you very much. We
24 will take a break for lunch now and reconvene at 1:10 Central
11:02:45 25 Standard Time. It's a little less than an hour and 10 minutes

1 from now. That would be 2:10 eastern time. Do I have that
2 right?

3 MR. DUNN: No. I think it's 12 -- 11:00 Central.

4 JUDGE MARCUS: I'm sorry. So we're -- right now you
11:03:12 5 are 11:00 o'clock Central Standard Time. So we really do have
6 some time to proceed with cross. Are you ready to proceed,
7 Ms. Khanna?

8 MS. KHANNA: I am, Your Honor.

9 JUDGE MARCUS: All right. Let's proceed with
11:03:26 10 cross-examination.

11 MS. KHANNA: If you will give me one moment.

12 JUDGE MARCUS: Do you want a short break, a 5-minute
13 break?

14 MS. KHANNA: I think I can jump in. Just give me
11:03:39 15 two seconds to get my notes in order.

16 All right. I think I am ready to go.

17 JUDGE MARCUS: Thank you. You may proceed.

18 CROSS-EXAMINATION

19 BY MS. KHANNA:

11:04:29 20 Q Good morning, Mr. Bryan.

21 A Good morning.

22 Q My name is Abha Khanna. I don't think we have met before,
23 and I met with, I think, the Caster plaintiffs in this case.

24 A It's a pleasure to meet you. Thank you.

11:04:38 25 Q Same here. So you produced two reports in the cast -- in

1 the Caster case; is that right?

2 A Yes.

3 Q And that was the first one, I believe is marked
4 Defendants' Exhibit 2 on December 10th, and the second marked
11:04:53 5 Defendants' Exhibit 4 on December 20th; is that right?

6 A That sounds right.

7 Q And just to clarify. You have not seen any of the Caster
8 plaintiffs' expert reports at the time you submitted your first
9 report in this Caster case; is that right?

11:05:09 10 A I don't believe so.

11 Q And you had not seen any of Mr. Cooper's illustrative
12 plans at the time you first submitted or submitted your first
13 report in this case; is that right?

14 A No, I did not see either Mr. Cooper or Dr. Duchin's plans
11:05:25 15 until later in the case.

16 Q So only -- so later in the case is -- during your
17 supplemental report, that's the only time --

18 A Yeah.

19 Q -- where you actually analyzed any of Mr. Cooper's plans;
11:05:37 20 is that right?

21 A Yeah. Uh-huh.

22 Q Did you provide any response or analysis regarding
23 Dr. Palmer's expert report on racially polarized voting?

24 A No. I have no -- I am not a political scientist. I offer
11:05:58 25 no opinion on any of the political science related reports.

1 Q And you don't provide anything to refute Dr. Palmer's
2 conclusions regarding the performance of black-preferred
3 candidates in any of Mr. Cooper's illustrative plans; is that
4 right?

11:06:10 5 A No.

6 Q You also don't dispute any of Mr. Cooper's analyses on
7 socioeconomic disparities between blacks and whites in Alabama?

8 A No.

9 Q And nor do you address any of the conclusions in
11:06:27 10 Dr. Bridgett King's report relating to the history of
11 discrimination in Alabama?

12 A No.

13 Q So you have been retained as an expert on behalf of the
14 Secretary of State in this case; is that right?

11:06:40 15 A Yes.

16 Q When were you first retained?

17 A I do not know the exact date that I was retained. Is that
18 something I can consult with my colleagues to get an exact
19 date? Is that necessary? It's --

11:06:59 20 Q I don't need an exact date.

21 A -- three months this fall, you know. I apologize. I
22 don't have the precise date. It's been probably about three
23 months ago when I was originally contacted on the case.

24 Q Do you know if it was before or after the congressional
11:07:24 25 plan for Alabama was adopted and enacted on November 4th?

1 A I would have had conversations about the case before the
2 enacted plan, but I could not have begun the work on the plan
3 until after that date.

4 Q And do you know if it was before or after mid August, when
11:07:47 5 the census data was released?

6 A It would have been after mid August.

7 Q Mr. Bryan, this is your first time testifying in a federal
8 court; is that right?

9 A That's correct.

11:07:59 10 Q Or in any court?

11 A Yes.

12 Q So in your report, and I think several times during your
13 testimony as well, you mentioned that we observed this or you
14 referred to our analysis. Did anyone else assist you in
11:08:15 15 preparing your analysis in this case?

16 A I have -- I own a company and I have an analyst and a
17 director of analytics that help me execute some of the
18 technical parts of my analytics.

19 Q So when you refer to we or our conclusions, are you
11:08:35 20 referring to anyone other than your own analyses and
21 conclusions?

22 A The conclusions, the interpretation of those are mine and
23 mine alone.

24 Q And I believe you mentioned during your direct examination
11:08:47 25 that you're not a political scientist, but you have often

1 worked with political scientists?

2 A That's correct.

3 Q Consulted --

4 A Yeah.

11:08:56 5 Q Were there any political scientists that you consulted in
6 preparation for your work in this case?

7 A Not that I consulted for my work, no. There is another
8 political scientist who is working on the case, but my work was
9 not done in correspondence with his work in this case.

11:09:19 10 Q I am going to turn to your census demography analysis. I
11 am looking at page 5 of your supplemental report. Here you
12 include -- I think we can pull it up as well.

13 A Yeah. Thank you.

14 Q I think here you include -- you see at the top?

11:09:46 15 A Yeah.

16 Q The title Census Race Definitions; is that right?

17 A Yeah, that's correct.

18 Q Okay. And if I am reading correctly in the first
19 paragraph of -- on this page, you say here that you were -- you
11:09:59 20 tried to define and document the true black population of the
21 two black districts in each of plaintiffs' illustrative plans?

22 A Yeah, that's correct. Uh-huh.

23 Q And you also note that it was unclear why here plaintiffs
24 refer to undocumented voting strength statistics rather than
11:10:20 25 census Black Voting Age Population.

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1 Did I read that correctly?

2 A Yeah. That's correct.

3 Q Can you explain what you mean by undocumented voting
4 strength statistics?

11:10:32 5 A Yeah. Typically, in cases like this, when we're measuring
6 the performance, the racial performance and characteristics of
7 a district, we would use the decennial census data that are
8 used by law to define, draw, and characterize a district.

9 I typically would not use, at least for the design and
11:10:54 10 characterization of a plan, would not ever use the voting
11 strength or voting characteristics or voting behavior. We
12 typically leave that to the political scientists to focus on
13 that.

14 So when the plaintiffs have a chance and they have the
11:11:13 15 opportunity to characterize the plan by the race data that is
16 from the census and use voting data instead, that was
17 inconsistent to me. I understood it, but it was inconsistent.

18 Q So was it your position that Mr. Cooper used undocumented
19 voting strengths statistics in creating any of his or
11:11:39 20 evaluating any of his illustrative plans in his report?

21 A I just -- insofar as it's undocumented, I didn't see where
22 they came from. I have no -- because we don't use those in our
23 analysis, I have no ability to verify those. And we did not
24 analyze those, so I can't speak to those statistics or why he
11:11:58 25 used them.

1 Q Can you explain what specific statistics you are referring
2 to in Mr. Cooper's report?

3 A I cannot. I would have to go -- pull up a copy of his
4 report and look at it in some detail to answer that. But I
11:12:14 5 would stand by my assertion that we would focus exclusively on
6 the census data that is the public law data and not on any
7 voting related data for the design and characterization of a
8 plan.

9 Q But it's your understanding that Mr. Cooper used voting
11:12:32 10 strengths statistics in his illustrative plans or in his
11 reports?

12 A Yeah. Among other things, yes.

13 Q And can you give me an example of what a voting strength
14 statistic would be?

11:12:44 15 A Yeah. I would have to pull up his report to make a
16 specific reference to it, but it's generally a characterization
17 of the number or the percent of the population that by race
18 voted in a particular way.

19 Q So your understanding of voting strength statistics is
11:13:03 20 something that measures the voting behavior of individual
21 voters in the state; is that right?

22 A Yeah. I would be very cautious since I am not a political
23 scientist and I do not study those statistics or use those
24 statistics in my analysis, I would not want to represent myself
11:13:20 25 as someone who has deep expertise in voting strength by race

1 and recognize it. I know what it is, but I am not an expert in
2 it and I don't use that in my analysis.

3 Q Do you dispute that Mr. Cooper used census data in
4 constructing or in evaluating his illustrative plans as
11:13:39 5 reported in his expert reports?

6 A He did use some census data, yes.

7 Q Used some census data?

8 A Beg your pardon?

9 Q Did you say he used some census data?

11:13:50 10 A He did, in some cases correctly, and some cases
11 incorrectly, but, yes, he has tables of census data in his
12 report.

13 Q Do you have an example of a place where he has used census
14 data incorrectly?

11:14:06 15 A Yeah. May I refer to a part of my report?

16 Q Sure.

17 A Thank you. I am reading from my report.

18 In his plan 4, he reports the total population
19 incorrectly.

11:14:40 20 In plan 5, he reports total population by district
21 incorrectly.

22 He reports the -- in plan 5 VAP population incorrectly.

23 While those numbers were incorrect, his reported percent VAP

24 black and percent white were reported correctly. So his tables
11:15:04 25 had internal inconsistencies.

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1 Let's see. In his plan 6, the VAP population 18 plus is
2 reported incorrectly. And his VAP 18 plus population is also
3 reported incorrectly. So there were places where there was
4 inconsistencies within and across his different census tables.

11:15:28 5 I was able to identify with my analysis of the census data.

6 Q I understand. Thank you for the clarification.

7 A Thank you.

8 Q Were you present or were you in trial -- in our Zoom trial
9 when Mr. Cooper testified?

11:15:41 10 A I was not. I was not present and I do not know anything
11 about his testimony.

12 Q So you didn't hear him explain that the figures that you
13 just talked about in his report were actually typographical
14 errors that are accurate in the exhibits attached to his
11:15:59 15 report?

16 A No.

17 Q Did you measure the -- did you evaluate the data as
18 reflected in the exhibits, the detailed exhibits attached to
19 Mr. Cooper's report?

11:16:08 20 A No. I didn't examine any subsequent exhibits. And in
21 this business, if it's an error, it's an error. Whatever the
22 explanation or the root cause of it is, it is either right or
23 it's wrong. And when I refer to his report, I saw the numbers
24 and they were not correct.

11:16:23 25 Q So you are familiar, I imagine, that when Mr. Cooper

1 submitted his first report, he included with it a number of
2 detailed exhibits with charts, tables, and maps, correct?

3 A Yeah. I recalled that there are those exhibits, yes.

4 Q Those were not subsequent to his initial reports, those
11:16:41 5 were alongside his report?

6 A Yeah. I am recalling. I believe so.

7 Q And you did not review those exhibits in evaluating his
8 plans; is that correct?

9 A I only reviewed the detailed -- the maps and the census
11:16:57 10 data characteristics of his plans.

11 Q I just want to make sure I am clear.

12 A Yeah.

13 Q When you discuss the data in his report, you only looked
14 at his written report, the declaration, not the exhibits
11:17:13 15 detailed, the census data, the maps that were attached to that
16 report?

17 A Right.

18 Q And the same would be true of his supplemental report, you
19 reviewed only his report, but not any of the exhibits attached
11:17:29 20 to it?

21 A I mean, I -- I reviewed the -- all of the pages that were
22 in his supplemental report, but focused on the data. Again, I
23 did not examine his plan 7. I didn't have time to when I was
24 preparing here.

11:17:48 25 Q Okay.

1 A Thank you.

2 Q Going back to the quote that you have on page 5 of your
3 report, Defendants' Exhibit 4, where you say it's unclear why
4 the plaintiffs referred to undocumented voting strength
11:18:05 5 statistics rather than census Black Voting Age Population.

6 JUDGE MARCUS: Let's take our time and read it more
7 slowly if you would, Ms. Khanna.

8 MS. KHANNA: My apologies. I certainly will.

9 BY MS. KHANNA:

11:18:21 10 Q So you see --

11 JUDGE MARCUS: You want to read from 3, Census Race
12 Definition?

13 MS. KHANNA: I'm not sure I understand. I can read
14 the highlighted language again.

11:18:37 15 JUDGE MARCUS: I thought you were reading some of it.
16 I may have misunderstood.

17 MS. KHANNA: I probably was. I will say it again.

18 BY MS. KHANNA:

19 Q So here, Mr. Bryan, where you say, It is unclear why here
11:18:46 20 plaintiffs refer to undocumented voting strength statistics
21 rather than census Black Voting Age Population. Did I read
22 that right?

23 A Yeah. That seems to be right.

24 Q You don't dispute that the census reports the any-part
11:19:03 25 Black Voting Age Population, do you?

1 A Reports it in great detail of course, yes.

2 Q So the any-part Black Voting Age Population reported in
3 Mr. Cooper's plan is, in fact, census Black Voting Age
4 Population under your definition, correct?

11:19:21 5 A It's a definition.

6 Q Do you understand that to be census Black Voting Age
7 Population as you used that term here?

8 A When I refer to census Black Voting Age Population, I
9 refer to it in the context that I discussed earlier, which is a
11:19:44 10 range of values from black alone to any-part black or all
11 black, depending on the analysis and the context, including
12 some internal definitions within that, that the DOJ advocates,
13 such as black alone or black plus white. I do not refer to any
14 one specific precise Black Voting Age Population here. I just
11:20:09 15 refer to it in the context of census data that describes Black
16 VAP.

17 Q Okay. Thank you for that clarification.

18 A Yes. For sure.

19 Q If we can go to -- turn to page 6 of this report.
11:20:22 20 Defendants' Exhibit 4.

21 Here you observed the different absolute numbers and
22 percentages of the black-alone population and then the black
23 alone in combination population, correct?

24 A Yeah, that's correct.

11:20:35 25 Q And I believe you touched on this with Mr. Davis, but do

1 these categories correspond to what we've also talked about as
2 the single-race black population and the any-part black
3 population?

4 A Yes. That's correct. That's consistent.

11:20:49 5 Q And you note that -- let me see -- you note in the first
6 paragraph here that the latter category, the any-part black
7 population is 1,364,736 people. Did I read that correctly?

8 A Yeah, that's correct.

9 Q And that comprises 27.2 percent of the population?

11:21:19 10 A That's correct.

11 Q And you also say that this represents an additional 68,574
12 blacks, compared to the number of people in the black-alone
13 category?

14 A That's correct.

11:21:33 15 Q And those 68,000 people comprise about 5.08 percent of the
16 total Alabama black population?

17 A Yes, that is correct.

18 Q Mr. Bryan, you don't dispute, do you, that those 68,574
19 blacks are, in fact, black, do you?

11:21:58 20 A Black is a measure of self identification. There are
21 people who identify themselves as being black and black alone.
22 And there's people who can self identify as being black and
23 black in combination with other races.

24 I do not have any experience or knowledge of the
11:22:22 25 identification of people in combination with other races. What

1 they may answer is their prevailing characteristic. All I know
2 is those people identify as at least being some part black.

3 Q So all of those 68,574 people identify as black?

4 A As one of their racial characteristics, yes.

11:22:47 5 Q And as you state here, the total Alabama black population
6 is 1,364,736, that more inclusive figure, correct?

7 A That is correct, yes. And that's a very interesting
8 number in demography a number that has changed dramatically in
9 the last decade, which is why it has it has particular
11:23:13 10 relevance in the redistricting case today.

11 Q And as in the next paragraph, you also provide that the
12 Alabama Black Voting Age Population is 1,014,372 people
13 correct?

14 A That looks correct, yes.

11:23:35 15 Q And that's inclusive of black alone and anyone else who
16 identifies themselves as black?

17 A That's right.

18 Q Let's turn to the next paragraph down here, and
19 specifically there is a sentence here where you say, and I will
11:23:51 20 read it out loud, The alone definition is one of the most
21 consistently used history -- one -- sorry -- is the one most
22 consistently used historically in VRA cases?

23 A Yeah.

24 Q Because A, a multi-race classification did not exist prior
11:24:08 25 to 2000; and, B, the alone definition has been most defensible

1 from the political science *Gingles II* voting behavior
2 perspective?

3 A Yeah.

4 Q Did I read that correctly?

11:24:17 5 A That is correct.

6 Q Okay. I want to break this down into its component parts.

7 A No problem.

8 Q Let's talk first about the subject subheading A here.

9 In 2000, the U.S. Census Bureau added the option for
11:24:31 10 people to choose more than one race on their census form; is
11 that right?

12 A That's correct.

13 Q And before that, an individual had to select one and only
14 one race?

11:24:40 15 A That's right.

16 Q So are you suggesting here that because there was no
17 any-part black category before 2000, we should not count the
18 any-part black category in 2021, even though the census now
19 calculates that figure and has for the last two decades?

11:25:01 20 A I want to be careful and precise with my language here.

21 I'm not advocating that any one measure should or should
22 not be used for the purpose of *Gingles II* or for how a
23 political scientist would use it, and there's nothing in
24 history that would create a precedent for if and how different
11:25:26 25 definitions should be used today. I base my comment on my

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1 experience and working with professional political scientists,
2 and when we ask me for demographic data for the purpose of
3 doing their work, their characterization to me is that there is
4 a race group that is race alone, it is easier for them, and it
11:25:50 5 is more defensible for them to try and do their political
6 science work for a homogenous racial population than a more
7 heterogenous more probably defined racial population. And that
8 is what -- the comment that I make is based on that experience.

9 Q And, again, was there any particular political scientist
11:26:11 10 who you were directing this information in your report?

11 A I have worked with multiple political scientists
12 throughout my career. And I have heard this is a frequent
13 request and frequent feedback to me in their work.

14 Q Did any particular political scientist request this
11:26:28 15 information for your report in this case?

16 A The political scientist in this case was Trey Hood. I did
17 not provide my data to him directly, but I assume that it made
18 its way to him. I worked with Mr. Trey Hood in the past.

19 Q You would agree that the Voting Rights Act protects
11:27:01 20 African-American voting strengths -- voting rights; is that
21 right?

22 A Yes, that's what it does.

23 Q That was before 2000?

24 A Yes. Since its inception.

11:27:12 25 Q And it's certainly true today?

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1 A Yep.

2 Q So let's say we have a black Alabama resident who is both
3 black and Asian. Let's say before the 2000 census when they
4 had to choose one race, they selected black?

11:27:29 5 A Right.

6 Q You would agree that the person -- that person would be
7 considered black for purposes of Section 2 of the Voting Rights
8 Act?

9 A At that time, yes.

11:27:39 10 Q Okay. So let's say that after the 2000 census, they now
11 have the option to choose more than one race, they choose both
12 black and Asian, which is an accurate representation of their
13 heritage, correct?

14 A Yep.

11:27:55 15 Q Is it your position that that person would no longer be
16 considered black for purposes of the Voting Rights Act?

17 MR. DAVIS: Your Honor, I'd like to pose an objection
18 to this question. Ms. Khanna is asking how Mr. Bryan would
19 view this one thing, but asking him whether a person is of
11:28:12 20 which race for purpose of the Act, I believe is calling for a
21 legal conclusion from Mr. Bryan. And he does not purport to be
22 an attorney.

23 JUDGE MARCUS: Ms. Khanna, are you asking for a legal
24 conclusion?

11:28:22 25 MS. KHANNA: I am not, Your Honor. I am really trying

1 to understand what Mr. Bryan considers to be black under
2 this -- under the various classifications before and after
3 2000.

4 JUDGE MARCUS: I think you should rephrase your
11:28:35 5 question. The objection is sustained as to the form.

6 MS. KHANNA: Thank you, Your Honor.

7 BY MS. KHANNA:

8 Q Is it your position, Mr. Bryan, that this person would --
9 should -- would no longer be considered black when evaluating
11:28:55 10 whether a -- whether a district that includes this person is
11 majority black?

12 A Again, I would leave that to an interpretation by the
13 political scientists, and I would also defer an interpretation
14 to the guidance that was recently provided by the Department of
11:29:17 15 Justice. The Department of Justice's recent guidance -- I
16 don't have it in front of me -- but advocates starting with the
17 race alone, and then expands that definition procedurally to
18 include black and -- black and white. And then as a next
19 extension to black in combination with any other races. I'm
11:29:41 20 not an attorney, and I am not a political scientist. I do not
21 know what the triggers are for each one of those steps in the
22 progression to the different definitions, and I am not in a
23 position to state whether one definition is right or wrong.

24 Q Thank you. I appreciate that.

11:29:58 25 A Thank you.

1 Q Is it your position, Mr. Bryan, that the effect of adding
2 the multi-race option to the census in 2000 would be to shut
3 out individuals from belonging -- multi-race individuals from
4 belonging to any racial group?

11:30:16 5 A Since I worked at the Census Bureau during the development
6 of that question, I can say that that is not the case. The
7 objective of adding race was to -- as part of the question
8 development program in the 1990s was to try and give people in
9 a rapidly developing more dynamic more diverse universe that we
11:30:44 10 live in the United States the opportunity to self identify
11 whatever they were.

12 Now, that did not decide or preclude how that data would
13 end up being used in law or how that data would end up being
14 used by political scientists. At the time, the intent of that
11:31:00 15 question was to afford people the opportunity to identify
16 personally as accurately as possible all the different things
17 that they possibly could self identify that they were.

18 Q Understood.

19 I want to move to the second -- the part B quote that we
11:31:17 20 read from your report.

21 A Great.

22 Q This is where you state that, The alone definition has
23 been most defensible from a political science/Gingles II voting
24 behavior perspective?

11:31:29 25 A Yeah.

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1 Q As you mentioned several times, you are not a political
2 scientist, correct?

3 A No. No.

4 Q And you are not offering an opinion in this case on the
11:31:37 5 *Gingles II* voting behavior?

6 A Definitely not.

7 Q You don't cite any political scientist for this statement
8 that the black-alone definition is most defensible, correct?

9 A No. There's no literature that I refer to, only my
11:31:54 10 personal experience with numerous cases and interacting with
11 political scientists.

12 It is also grounded in just basic demographic analytic
13 concept, which is that any time you have a group that is more
14 homogeneous, uniform in their characteristics, it is easier to
11:32:16 15 analyze and understand their attitudes, their beliefs, their
16 behaviors, and the rest of their characteristics. Yes, it is a
17 universal demographic truth that the more homogenous population
18 you have the better job you can do with that.

19 The more that you add heterogeneity to this homogenous
11:32:38 20 population, that is people with different characteristics, they
21 may have part or one characteristics, but then they have parts
22 of other characteristics, whether it's in political law or
23 sociology or anthropology, it is harder and harder the more
24 heterogeneity you add to a group to understand consistently and
11:32:57 25 reliably their attitudes, beliefs, and behaviors.

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1 Q So the testimony you just provided about attitudes and
2 behaviors of various voting groups, that's just your opinion;
3 is that correct?

4 A That's correct.

11:33:06 5 Q That's not informed by any specific expertise that you
6 have in voting behavior or political science, correct?

7 A Has no grounding in my own personal experience with voting
8 behavior. It's only what the expertise provided to me by
9 political scientists I work with.

11:33:24 10 Q So when you say in your report that the black alone is
11 most defensible, you were just basing that on your own beliefs
12 and observations?

13 A No. I have been in cases where plaintiffs have presented
14 a black-majority population that was 49 percent black, for
11:33:49 15 example, black alone, and only achieved majority status of
16 greater than 50 percent by adding the black in combination with
17 other races. And some of those cases where you don't quite
18 have a black majority because you only have black alone of less
19 than 50 percent have turned into what I have witnessed to be
11:34:15 20 hard fought battles.

21 Q You don't cite any of the cases in your report, do you?

22 A No, that wasn't the point of my report.

23 Q But when you characterized the use of the black-alone
24 figure as most defensible, you are basing this on some cases,
11:34:29 25 perhaps, some information that you have that you have not

1 cited, correct?

2 A That's correct.

3 Q You don't point to a single case in your report that has
4 used the black-alone definition in determining whether the
11:34:40 5 first *Gingles* precondition is satisfied, do you?

6 A No. And to me, it doesn't matter. This is the land of
7 the political scientists, and it's a reflection of my
8 experience with them. I don't advocate one as being right or
9 wrong. The breadth -- this is a secondary passing comment
11:34:58 10 about the facts of my professional experience in this field.

11 The reason that I present black alone and black in combination
12 is to provide full, complete, context and understanding of the
13 race alone and race in combination to help me better understand
14 plaintiffs' representation of the black population, which is
11:35:20 15 almost always not documented, inaccurate, or incomplete. That
16 is why we do the complete job that we do. Not to try and prove
17 a point about *Gingles II*.

18 Q I really appreciate that clarification. And I understand.

19 A Thank you.

11:35:32 20 Q What you just mentioned, that that was just a passing
21 comment in your report. I am sure you understand that we
22 have -- I need to ask you: You wrote in your report that this
23 is the most defensible, and as I understand you saying now, you
24 actually don't mean to be concluding whether one is
11:35:49 25 defensible -- one use of a metric is defensible or better; is

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1 that right?

2 A That is correct. I am not -- I am definitely not making a
3 judgment that one is right or wrong or better or worse.

4 Q And you have cited -- or can cite no authority whether
11:36:07 5 it's legal precedent, demographics, and political science that
6 the notion that the black-alone definition is the most
7 defensible, correct?

8 A No. Personal experience.

9 Q You mentioned the DOJ guidance, and we can turn to that
11:36:22 10 now.

11 A Sure.

12 Q Because you do -- you quote that paragraph on page 6 of
13 your supplemental report.

14 A Yeah.

11:36:31 15 Q This is from the DOJ's guidance under Section 2 of the
16 Voting Rights Act for redistricting in method of electing
17 government bodies?

18 A That's right.

19 Q And if I am reading it correctly, this guidance provides
11:36:48 20 for two steps in determining who belongs in which racial
21 category for purposes of Section 2 of the Voting Rights Act,
22 correct?

23 A Yes. This is -- that's right. That's their guidance.

24 That's correct.

11:37:02 25 Q So let's just walk through this. Can you please read

1 aloud the first two sentences of the block quote DOJ guidance
2 that you report?

3 A Yeah. The department's initial review based on
4 allocation, any response that includes white and one of the
11:37:21 5 five other race categories identified in the response.

6 I should state that while that is the guidance, the
7 incremental white to black population, for example, is almost
8 always very small and is rarely used. But this is the
9 guidance, yes.

11:37:49 10 Q And can you please read the second sentence of that
11 paragraph, as well?

12 A Sure. Yeah. My pleasure.

13 Thus, the total numbers for black, Asian, American Indian,
14 Alaska native, native Hawaiian or some other race reflect
11:38:06 15 single race in combinations with minority and white.

16 Q I'm sorry. Were you reading right from the DOJ guidance
17 there?

18 A I'm sorry?

19 Q I'm looking specifically at the block quote that you
11:38:26 20 include in your report.

21 A Yeah. Uh-huh. That's what I was reading.

22 Q Okay. And it says that the total numbers of black
23 African-American as well as the other minority groups?

24 A Yep.

11:38:36 25 Q Reflect the total of the single-race responses and the

1 multiple responses in which an individual selected a minority
2 race and white race. Correct?

3 A That's correct.

4 Q So just to make sure I'm understanding this first step
11:38:49 5 correctly under the DOJ's initial review, they count the total
6 number of black population to mean the number of people who
7 identified as single-race black, plus those who identified as
8 both black and white; is that right?

9 A That's right.

11:39:08 10 Q And that's just step one?

11 A Yes.

12 Q So already step one, we have the DOJ would count more than
13 just the black-alone category?

14 A I would say in a DOJ VRA case, this is the guidance that
11:39:27 15 they would use, and my experience many of these cases do not
16 follow the DOJ guidance. But in a DOJ VRA case, yes, this is
17 their road map.

18 Q And this is the guidance you thought was important to
19 provide as authority in your report, correct?

11:39:42 20 A Well, it's important context to know what all the
21 different rules are, provide all the information for how people
22 think about race. And that's the purpose of this section of my
23 report, to provide all the information to give clear ideas of
24 what the different rules are, depending on what the work is
11:39:58 25 you're trying to accomplish.

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1 Q Okay. Great. Can you read the second part, the last two
2 sentences of that block quote from the DOJ guidance, which I
3 think goes on to the second step?

4 A Yeah. So where I see there's significant numbers to such
11:40:14 5 responses, the department will as, as required by OMB allocate
6 those responses on an iterative basis to each of the component
7 single-race categories for analysis.

8 Q And the sentence before that says that the department will
9 then move to the second step in its application of the census
11:40:31 10 data by reviewing the other multiple-race category?

11 A Right.

12 Q Which is comprised of all multiple-race responses
13 consisting of more than one-minority race?

14 A Yep.

11:40:42 15 Q So under the second step, where there are significant
16 numbers of people who indicated they belonged to more than one
17 racial group, they will then be allocated to each component
18 racial group; is that right?

19 A They get allocated. They didn't get all just allocated
11:41:04 20 just to black.

21 Q So the person who identifies as both black and Asian, as I
22 understand this guidance, would -- the second step be allocated
23 to the black category and to the Asian category. Is that your
24 understanding, as well?

11:41:18 25 A That is my understanding. I do not know the exact

1 allocation algorithm that the DOJ or the Census Bureau would
2 use to do that. It's --

3 Q But based on the guidance that you have quoted in your
4 report, you would agree that the DOJ's guidance provides
11:41:41 5 authority for the use of the any-part black metric?

6 A There is authority for the use of it for sure. It's one
7 of many different scenarios that can play out in this type of
8 analysis in these types of cases.

9 Q And I believe in this -- in the same passage that you just
11:42:05 10 read, the DOJ notes that this calculation of how it determines
11 the black population or any minority population --

12 A Uh-huh.

13 Q -- is required by both OMB guidance and judicial opinions;
14 is that right?

11:42:18 15 A That -- yes, that is true. That does not mean that all
16 redistricting cases end up relying on these definitions.
17 That's different.

18 Q But, in fact, the DOJ guidance does cite one judicial
19 opinion in particular; is that right?

11:42:35 20 A I am in complete agreement with that. That is one
21 universe, and this is the rules that apply in that universe,
22 and I agree with you enthusiastically.

23 Q That is *Georgia v. Ashcroft*?

24 A I beg your pardon?

11:42:48 25 Q That case it cites is *Georgia vs. Ashcroft*?

1 A I do not have the cite in front of me. I'm sorry. I
2 can't speak to that.

3 Q That's okay.

4 Well, I am just looking at your report, and at the end of
11:43:03 5 the DOJ guidance, you have a footnote that cites to *Georgia vs.*
6 *Ashcroft*?

7 A Okay.

8 Q Am I --

9 A I believe you.

11:43:10 10 Q Am I saying that correctly -- I think it's on the screen.
11 Do you see on the -- in your report on page 6?

12 A Yes.

13 Q Footnote 11?

14 A Yeah. I see that. Yep.

11:43:26 15 Q Actually, can we also -- can also pull up the DOJ guidance
16 itself, just to make sure we're speaking about the same
17 document? This is the document -- this is the document that
18 you quoted in your report; is that right?

19 A Yeah, I believe so. Yes, that's correct.

11:43:42 20 Q If we can just scroll to page 13 of this document. I'm
21 sorry. Maybe it's -- actually, yes. Starting on page 12.

22 A Yeah, that's probably where I got that reference from
23 there.

24 Q Okay. Great.

11:44:08 25 A Good. Yeah. Thank you.

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1 Q So the DOJ specifically cites to *Georgia v. Ashcroft* 539
2 U.S. 461, page 473, footnote 1; is that right?

3 A Yes.

4 Q And that's the same cite that you include in your report?

11:44:25 5 A Yeah.

6 MS. KHANNA: Your Honor, I don't believe this has
7 actually been marked as an exhibit. I am happy to mark it as
8 plaintiffs' exhibit. I believe we are on 105 and offer it into
9 evidence.

11:44:39 10 JUDGE MARCUS: Just so I have this right, Plaintiff
11 Caster 105 is the Justice Department's guidelines, right?

12 MS. KHANNA: Yes, Your Honor.

13 JUDGE MARCUS: Are you offering that?

14 MS. KHANNA: I am offering that into evidence right
11:44:55 15 now.

16 JUDGE MARCUS: Any objection?

17 MR. DAVIS: No objection from the Secretary of State,
18 Your Honor.

19 JUDGE MARCUS: Anyone else have any objection?

11:45:03 20 Seeing none, we will receive Plaintiffs' Caster 105 in the
21 cases before us.

22 MS. KHANNA: Thank you, Your Honor. And we can take
23 this down.

24 BY MS. KHANNA:

11:45:23 25 Q So have you read the *Georgia v. Ashcroft* opinion that you

1 cite in your report?

2 A Have I read what?

3 Q The *Georgia v. Ashcroft* judicial opinion from the U.S.
4 Supreme Court that you cite in footnote 11 of your report?

11:45:36 5 A Yeah, not for a long time. Probably been -- it's been
6 many years.

7 Q Did you read it in preparation for your report?

8 A No.

9 Q If we could just pull up that case and specifically, if
11:45:57 10 you could go to footnote 1.

11 This is a long footnote. I won't make you read it all out
12 loud. But I will represent to you that it's basically about
13 the question about what metric of black to use in a given case
14 where different parties are advocating for different metrics.
11:46:21 15 Here it was the United States and the state of Georgia.

16 Could you please read out loud starting with, Moreover in
17 the beginning of the -- in the middle of the footnote?

18 MR. DAVIS: Can I request that if Ms. Khanna would
19 like something read into the record that she do so, and then
11:46:36 20 I'm sure Mr. Bryan would be happy to comment on whether or not
21 you read it correctly. He's been talking an awfully lot this
22 morning.

23 JUDGE MARCUS: I leave it to you, Ms. Khanna. Do you
24 want to read it or him?

11:46:45 25 MS. KHANNA: I would actually prefer that he read it

1 just to make sure we're both understanding.

2 JUDGE MARCUS: Okay. Make sure you have underscored
3 the portion that you want him to read so he can see that and we
4 can all see that clearly. You are asking him to read from
11:46:59 5 footnote 1 of *Georgia vs. Ashcroft*, correct?

6 MS. KHANNA: Yes, Your Honor. Yes.

7 JUDGE MARCUS: Mr. Bryan, do you see the highlighted
8 portion she's asking you to read?

9 THE WITNESS: I do.

11:47:12 10 JUDGE MARCUS: Would you read it aloud for us, please?

11 THE WITNESS: Yes, sir. Moreover, the United States
12 does not count all persons who identify themselves as black.

13 BY MS. KHANNA:

14 Q Can you please keep reading to the end of the footnote, as
11:47:25 15 well?

16 A It counts those who say they are black, those who say they
17 are black and white, but it does not count those who say they
18 are both black and a member of another minority group. Using
19 the United States' numbers may have more relevance if the case
11:47:41 20 involves a comparison of different minority groups.

21 References. Here, however, the case involves an examination of
22 only one minority group's effective exercise of the electoral
23 franchise. In such circumstances, we believe it is proper to
24 look at all individuals who identify themselves as black.

11:48:02 25 Q Thanks. Thank you for reading that.

1 So you would agree that the present Section 2 case as you
2 understand it involves an examination of only one minority
3 group's effective exercise of the electoral franchise?

4 A I'm sorry. Can you restate the question?

11:48:23 5 Q Do you understand that the present Section 2 case involves
6 the examination of only one minority group's effective exercise
7 of the electoral franchise?

8 A That's correct, yes. That's my understanding.

9 Q We are not comparing the voting strength of one minority
11:48:40 10 group to another minority group?

11 A No. Not that I know of. But, again, I am not focused in
12 my report, my analysis, or my expertise on voting strength. So
13 I am a little bit out of my sandbox going there.

14 Q You didn't see anything in the reports -- Mr. Cooper's
11:48:59 15 report to which you responded that suggests that plaintiffs
16 were trying to build a minority coalition district or compare
17 black voting strength or Hispanic majority district or anything
18 like that, correct?

19 A I did not. I found that it was relevant to be able to
11:49:18 20 present both black alone, as well as the black alone in
21 combination to provide useful context for where different
22 plaintiffs' plans fell because there were so many of them that
23 by one measure were just above and by another measure were just
24 below 50 percent.

11:49:33 25 So for the benefit of the Court, I thought it useful for

1 them to see and understand where those numbers fell using
2 different definitions. I leave it to the Court and other
3 experts to decide which definition is most appropriate for this
4 case.

11:49:48 5 Q And just to clarify, you know, in these circumstances, as
6 reflected by the Supreme Court's guidance in the case that you
7 cite in your report, it is proper to look at all individuals
8 who identify themselves as black, correct?

9 A In this case, that is what that says. I do not have an
11:50:08 10 opinion of whether that is the appropriate measure for this
11 case or not.

12 Q Okay.

13 MR. DAVIS: I will withdraw an objection.

14 JUDGE MARCUS: I'm sorry. Did we get the full answer
11:50:22 15 to the question?

16 MS. KHANNA: I believe we did.

17 JUDGE MARCUS: All right. Thank you.

18 THE WITNESS: Thank you, Your Honor. What else?

19 BY MS. KHANNA:

11:50:31 20 Q Let's see. Let's turn back to your report, and if we go
21 to page 9 of your supplemental report, you -- this is where you
22 discuss Mr. Cooper's plans; is that right?

23 A Yes. That looks correct.

24 Q And you state here that your first order of business was
11:50:56 25 to assess Mr. Cooper's statement that he is able to create two

1 majority-black districts?

2 A Yes, that's what he alleged that he was doing, so my goal
3 was to analyze the degree to which he accomplished that.

4 Q And we can zoom out from that. But for the remainder of
11:51:15 5 that page and to the next page, you then go on to report the
6 black-alone figure for District 2 in each of his illustrative
7 plans, correct?

8 A I believe in the analysis we provide an analysis of both
9 black alone and in combination measures.

11:51:34 10 Q I think you're right when it comes to the tables that you
11 include in your appendix. But I'm -- just want to clarify if
12 we can look at the text on page 9. For instance, let's start
13 with the second paragraph.

14 For Cooper plan 1, I show in Cooper demographic
11:51:57 15 characteristics Table 3.10. You see that sentence there?

16 A Yeah. I got it.

17 Q Am I right that you only report the black-alone figure for
18 District 2 in Mr. Cooper's illustrative plan here?

19 A In that case, yes, that's correct.

11:52:14 20 Q But for District 7, you report both the black alone and
21 the black in combination figure, the more inclusive figure?

22 A Yeah. I think that that is an important point because
23 what this says is that in District 2, it's a minority reported
24 as black-alone majority as alone in combination, whereas the
11:52:38 25 distinction here is that in District 7 it is a majority by both

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1 definitions. And it's a strong defensible majority by both
2 definitions. So I think it's important to highlight that.

3 No matter which definition you use, that plan has -- or
4 that district in that plan has a strong defensible black
11:52:58 5 majority population, no matter which population is used.

6 Q When you say strong and defensible majority-black
7 population, I don't see those terms here. What does that refer
8 to?

9 A Yeah. Typically, there is no hard and fast rule for what
11:53:14 10 a majority defensible strong majority is. The courts, to my
11 knowledge, the expertise in the field don't have a strong
12 over/under number. I have done a significant amount of
13 statistical analysis in this area, and when I look at numbers
14 that are 50.01 percent, 50.02 percent, 50.03, so forth, those
11:53:37 15 types of plans, when you do statistical analysis on them, you
16 can find that they ought -- the chances -- the statistical
17 probabilities of them really being a majority, sometimes can be
18 questionable, certainly when you put together multiple
19 districts with those small majority fractional majority
11:53:59 20 populations. But in my experience, when you have districts
21 that have 52 percent or 53 percent, certainly in a black-alone
22 district, I have never seen anyone argue that those may or may
23 not be a black majority district. It's a subjective threshold.
24 Q When you say strong and defensible, you are talking about
11:54:23 25 whether or not the demographic figure is accurate?

1 A Whether that -- whether that number is representing a
2 black majority district or not. And I have seen numbers --
3 when the number is 50.01 percent, then there is usually lots of
4 dialogue around that about whether that really is a majority or
11:54:48 5 not. If it's -- well by the law 50 plus -- 50 percent plus
6 one person is the law, but those types of numbers very close to
7 50 percent elicit much more conversation about whether it's a
8 black majority than a 52 or 53 percent district would.

9 Q Just to be --

11:55:06 10 A I have never heard that debated.

11 Q Just to be clear, you provide no opinions, conclusions, or
12 analysis about whether any of the illustrative plans that you
13 reviewed in this case provide strong defensible majority-black
14 populations, do you?

11:55:23 15 A I'm just explaining that as my opinion and response to
16 your questioning. It's not appropriate in this report to
17 say -- to defend one as being strongly defensible or not. I
18 simply state the facts.

19 Q So as you noted, you do, in fact, include both the
11:55:52 20 any-part black figure and the black-alone figure in your tables
21 in the appendix to your report, correct?

22 A Yeah, that's correct.

23 Q And just to -- and you also have now testified that you
24 are offering no opinion that use of the any-part black figure
11:56:24 25 is wrong in this case, correct?

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1 A No, it is -- it is neither right nor wrong. It is one of
2 two numbers that gives the Court and the experts useful context
3 for where the numbers that plaintiffs' plans lie.

4 Q If we can scroll back or go back to your report, page 5,
11:56:44 5 at the top, and, again, at the first paragraph here?

6 A Right.

7 Q You note that in this section you will try to define and
8 document the true black population of the two black districts
9 in plaintiffs' alternative plans?

11:57:10 10 A Yeah. That's correct.

11 Q But at no point in your report do you conclude that the
12 true black population in Alabama is defined as only the
13 single-race black population?

14 A Yeah. That's correct. What I'm seeking to do, for
11:57:25 15 example, referring to Dr. Duchin's work, where she does nicely
16 document what her population is, I appreciate the accuracy and
17 the clarity of her analysis. She is very transparent that her
18 work represents all-part black, and that's great. Very
19 frequently other plaintiffs don't. And in reading through the
11:57:47 20 bodies of work that I have looked at as part of this case in
21 Singleton, Caster, and looking at other work, for example, that
22 Cooper has done, there are many instances where it is not clear
23 what the black population is that they're referring to.

24 So part of my exercise is to do the analysis and the
11:58:04 25 research to make sure I know that when I see a number that says

1 this district is 50 percent black or 55 percent black, because
2 those are not oftentimes not documented, I take it as my
3 responsibility as the demographic expert to find out what those
4 true black populations are that they are referring to. It is
11:58:25 5 much of benefit for clarity and the definition. It is not a
6 judgment of which is right or wrong.

7 Q And I just want to make sure that we are talking about
8 this case and the reports in this case. You mentioned
9 plaintiffs generally maybe even Mr. Cooper's reports in other
11:58:40 10 cases. Is it your position that Mr. Cooper did not clarify in
11 his report where and when he was using the any-part black
12 calculation?

13 A No. In this particular report, it's -- he provides two
14 columns of data that show what his numbers are. But given my
11:59:02 15 experience with tables that I have reviewed for Mr. Cooper and
16 errors I have found in those tables, I felt it was important to
17 make sure that those numbers were correct. And as I found out
18 in my analysis, in some cases they were not. So it was still a
19 worthwhile exercise even though he represented them as being
11:59:21 20 all black or any-part black or black alone. It's still a
21 useful purposeful exercise because it uncovers things like
22 this.

23 Q And when you went back to check those figures, you would
24 agree that using the any-part black metric as stated in the --
11:59:39 25 as approved by the Supreme Court and the Department of Justice,

1 each of Mr. Cooper's maps have two majority-black districts,
2 correct?

3 A I -- in any-part black metric, yes, I agree with that.

4 MR. DAVIS: Before you continue, Ms. Khanna, I
11:59:55 5 apologize for interrupting. But, Your Honors, our expert has
6 been going for some time now. I don't mean to interrupt
7 Ms. Khanna's flow, but I would ask her and the Court if we
8 might be able to take a break before too long at the
9 appropriate time.

12:00:11 10 JUDGE MARCUS: Fair enough. What's your sense,
11 Ms. Khanna -- I don't want to break you in the middle of a
12 thread. But you tell me what would be a convenient time to
13 break.

14 MS. KHANNA: I'm happy to break here, Your Honor. I
12:00:25 15 think we've kind of closed out this portion of his report, and
16 we can move on to the next topic after lunch.

17 JUDGE MARCUS: You have closed the loop on this? On
18 -- and we will take a break, and then you will come back with
19 the balance of your cross; is that right?

12:00:44 20 MS. KHANNA: Yes, Your Honor.

21 JUDGE MARCUS: If I hear you right. All right. I
22 have 12:00 o'clock Central Standard Time. I want to be sure I
23 am right. It's 1:00 o'clock here in south Florida.

24 We will reconvene in one hour, which will be 1:00 o'clock
12:01:00 25 Central Standard Time, 2:00 o'clock Eastern Standard Time.

1 Thank you all. We will be in recess until that time.

2 (Recess.)

3 JUDGE MARCUS: I think we have everybody assembled.

4 Ms. Khanna, you're in the midst of your cross, and you may

13:02:08 5 proceed with Mr. Bryan. Thank you.

6 MS. KHANNA: Thank you, Your Honor.

7 BY MS. KHANNA:

8 Q Good afternoon, Mr. Bryan.

9 A Hi, Abha.

13:02:17 10 Q Before the break, we spoke about the any-part black metric
11 versus the single-race black metric; is that right?

12 A That's correct. Mr. Cooper also.

13 Q Mr. Cooper also reported in his reports the non-Hispanic
14 single-race black Black Voting Age Population for each of the
13:02:42 15 districts in his illustrative plans. Do you recall that?

16 A I did see those statistics, yes.

17 Q You don't address that metric at all in your discussion of
18 the demographic data?

19 A That is correct.

13:02:55 20 Q And you do not contest the use of CVAP, Citizen Voting Age
21 Population data in evaluating whether plaintiffs have satisfied
22 the first *Gingles* precondition, do you?

23 A I would say that the -- the PL census data would be the
24 data of record for the purposes of establishing *Gingles I*, not
13:03:27 25 CVAP. The CVAP would be more appropriate for assessing voting

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1 strength particularly in populations such as Hispanic
2 populations, which may have lower citizenship rates as a
3 minority population.

4 Q Okay. If we could go to your first report in the -- in
13:03:50 5 this case, in the Caster case, Defendants' Exhibit 2. Let's go
6 to page 3.

7 A Great. Thank you.

8 Q Here, about four lines down?

9 A Yeah.

13:04:06 10 Q Note that in 2015 you served in a leadership role in
11 writing an amicus brief to the U.S. Supreme Court in the
12 *Evenwel* case; is that right?

13 A That's correct. I worked with a team of demographers and
14 Census Bureau experts to write that brief, but I was one of the
13:04:26 15 lead authors.

16 Q That brief was specifically about the use of CVAP data in
17 redistricting; is that correct?

18 A That's correct, yes.

19 Q If we could call up that brief?

13:04:39 20 A There it is.

21 Q There it is. You see your name?

22 A I remember it real well.

23 Q That's the brief to which you are referring?

24 A Yes, ma'am.

13:04:46 25 MS. KHANNA: And I don't believe this has been marked

1 as an exhibit yet. I would like to mark this as Plaintiffs'
2 Exhibit -- Caster Plaintiffs' Exhibit 106 and offer it into
3 evidence.

13:04:58 4 JUDGE MARCUS: Was marked for identification. You may
5 proceed.

6 MS. KHANNA: I would also like to offer it into
7 evidence, Your Honor. Or would you like me to lay the
8 foundation first?

9 JUDGE MARCUS: Is there an objection?

13:05:06 10 MR. DAVIS: Your Honor, if it's okay, I would like to
11 hear how Ms. Khanna intends to use this. I certainly have no
12 objection to it being was marked for identification. Whether
13 in evidence, I would like to hear how she intends to use it to
14 see if we can assess if it's relevant.

13:05:22 15 JUDGE MARCUS: Fair enough. Lay the foundation if you
16 would.

17 MS. KHANNA: Will do. Thank you, Your Honor.

18 BY MS. KHANNA:

19 Q Mr. Bryan, this brief, if you would look -- let's go to
13:05:35 20 page 15 of this brief.

21 A Great.

22 Q Toward the bottom of page 15, you write that the U.S.
23 Supreme Court's recent Section 2 cases have accepted CVAP as
24 the yard stick when assessing minority voting strength; is that
13:06:00 25 right?

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1 A In the middle of the census for districting litigation,
2 yes.

3 Q Okay.

4 A Not for the purposes of the decennial census based
13:06:17 5 political redistricting exercise.

6 Q Interesting. If we could go to page 70. The very top of
7 page 17, you write, Likewise, in *Bartlett v. Strickland*, the
8 Court and litigants relied on CVAP to evaluate the first
9 *Gingles* requirement. Did I read that correctly?

13:06:37 10 A Yeah, that looks right.

11 Q And you note in the footnote that that case, like this
12 one, involved a Section 2 claim on behalf of black voters,
13 correct?

14 A Yes, in that litigation it was true. Yeah.

13:06:55 15 Q And that was litigation -- it was a Section 2 litigation
16 based on the in 2011; is that right? I'm sorry. 2009?

17 A It was not a -- if I recall correctly, it was not part of
18 a state redistricting exercise. It was post-redistricting
19 litigation.

13:07:18 20 Q To your understanding?

21 A Yes, that's correct.

22 Q Is it your understanding that the *Bartlett v. Strickland*
23 case is the Supreme Court precedent on how to establish the
24 first *Gingles* precondition?

13:07:36 25 A For Voting Rights Act litigation? Yes. I would draw a

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1 distinction between that and drawing districts based on the
2 decennial census data.

3 Q But for Section 2 Voting Rights Act cases, that is the
4 governing case?

13:07:58 5 A Yes. I would frequently -- I frequently would use and
6 report both the decennial census data the total population as
7 well as the CVAP data, which is an exercise we actually pursued
8 in the *Evenwel* case.

9 Q Okay. You further recognize in this brief that these
13:08:19 10 numbers can make a significant difference sometimes, correct?

11 A It can for a lot of reasons. Some based in what they're
12 measuring, and some based in their accuracy.

13 Q So if we look at the bottom of page 18 of this brief
14 toward the top of page 19, here you say, Every fraction of a
13:08:41 15 percentage point is of intense interest to the political
16 players in this process.

17 A Yeah.

18 Q They trust that CVAP is a reliable data source for this
19 sensitive work.

13:08:53 20 Did I read that correctly?

21 A That's -- yeah. That's how it is used. There's obviously
22 always debate and questions about the accuracy of the data
23 every time that it's used, but that -- the number is used as it
24 is. And for that purpose, yes, every tenth of a percent is of
13:09:09 25 interest to parties in cases like this. That's true.

1 Q But in this report, in this case, you don't question or
2 debate the accuracy of the CVAP data reported in Mr. Cooper's
3 plans?

4 A I will say this about that: The ACS, which is a survey
13:09:25 5 that I participated in the development of almost 20 years ago
6 is a survey that's called a continuous measurement survey. And
7 that survey is designed to fill in information that was
8 historically given by the long form, the one-in-six long form
9 sample many years ago.

13:09:47 10 And so that survey is in some sense renewed. There are
11 many parts of it that are updated and refined and enhanced
12 during the decennial and immediately following the decennial
13 census.

14 It is my experience, having been part of the development
13:10:07 15 of the American Communities Survey, and using it intensively
16 for many years, that the farther and the farther that you get
17 away from that base decennial year, the poorer and poorer
18 quality that ACS data is going to be. This is widely known in
19 the demographic community.

13:10:27 20 So by the time you get to the ACS file that we are using
21 today, which is what we would call the 2015 to 2019 file, it's
22 a five-year data file, this file is the furthest out from the
23 last decennial census of any ACS data that will be available.
24 And soon, in the next year or two, it will be renewed again and
13:10:52 25 re-grounded in the reality that it's the current census.

1 In my analysis of a recent very large-scale intense
2 redistricting exercise that was the Texas Legislature, I
3 studied the CVAP data for the state, and I studied the
4 decennial census for the state intensively. And my findings in
13:11:12 5 this very large sample of ACS data, compared to the decennial
6 census data was that there were dramatic numerous significant
7 differences in what the ACS reported was the Citizen Voting Age
8 Population and what the decennial census said was a companion
9 Voting Age Population.

13:11:34 10 The differences were so significant and so vast that it is
11 my professional opinion that using the current ACS CVAP data
12 which is based in 2010 census concurrently with the 2020
13 decennial census is both an unnecessary exercise, and I also
14 think that it's a very risky one because the data from the ACS
13:11:58 15 now, nine years out from the last census, are at a much more
16 perilous state than they were in *Strickland* only one year out
17 from the census.

18 Q That opinion that you just expressed is not an opinion you
19 expressed anywhere in your reports in this case, correct?

13:12:13 20 A It's not in this report, but I have written about it. I
21 have presented on it, and I have discussed it extensively in
22 the professional community.

23 Q You were presented with Mr. Cooper's illustrative plans
24 and his report?

13:12:28 25 A Yeah.

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1 Q As well as his calculation of the non-Hispanic single-race
2 black Citizen Voting Age Population of the districts in those
3 illustrative plans, correct?

4 A I saw that. I was aware that that was in the report.

13:12:45 5 That's correct.

6 Q You provided an analysis of the racial demographics in
7 Mr. Cooper's plans, correct?

8 A I did.

9 Q You had the opportunity to find or dispute or address in
13:13:00 10 any way his assessment of the Citizen Voting Page Population
11 demographics in this plan?

12 A I did not feel it was appropriate or necessary. And if I
13 did, I wouldn't have had the time to anyways.

14 Q You did not include any discussion or response on the
13:13:20 15 Citizen Voting Age Population in your report, correct?

16 A I did not.

17 Q If we can go back to the brief shortly, the *Evenwel* brief
18 that we just mentioned, let's go to the top of page 20.

19 Here you write, in short, CVAP is now an indispensable
13:13:44 20 feature in voting rights litigation under Section 2. Did I
21 read that correctly?

22 A Yeah, that's correct for sure.

23 Q We can take this down.

24 A I would derive distinction between voting rights
13:13:56 25 litigation and certainly voting rights litigation late in the

1 decade versus using decennial census data which are required by
2 law. ACS data are not required by law for purposes of
3 redistricting. So I do not know or understand why Mr. Cooper
4 or anyone would choose to use ACS for the development of a
13:14:15 5 redistricting plan.

6 Q You don't draw that distinction in your brief to the
7 Supreme Court in *Evenwel*, correct?

8 A The inference when I say the ACS CVAP data is instrumental
9 for litigation, if I had meant that ACS data was critical for
13:14:32 10 redistricting, I would have said so. And it's not, so I did
11 not.

12 Q You just said that it's critical for evaluation in a
13 Section 2 Voting Rights Act case?

14 A Yeah. Typically, post-redistricting litigation,
13:14:46 15 especially as it pertains to Hispanics, as was the case in
16 *Evenwel*. It's especially important measuring one person one
17 vote and voting strength. And I strongly agree with that. For
18 that purpose, it's absolutely instrumental. It is not
19 instrumental. It is not required by law. Law doesn't say
13:15:03 20 anything about using CVAP data to develop a political
21 redistricting plan. And I do not ever see it done, and I don't
22 do it.

23 Q So the distinction you're drawing is that the law does not
24 require the use of CVAP data for a legislature drawing a
13:15:20 25 congressional plan. Is that what you are saying?

1 A It's not required that. That's -- the purpose of the
2 decennial census is for the purpose of apportionment and for
3 redistricting. The purpose of the ACS is not for political
4 redistricting or for apportionment.

13:15:36 5 Q But the in the *Evenwel* brief you agree that the use of
6 CVAP data is relevant, at the very least, in Section 2 Voting
7 Rights Act lit indication, correct?

8 A Yes. I would agree. And when this case goes, I am sure
9 that that will have some role in it. I don't believe it has a
13:15:58 10 role now. I would emphasize that because black citizenship,
11 especially in the state of Alabama, is so high that we would
12 typically as demographers look at black CVAP, Black VAP as
13 being virtually indistinguishable. In fact, when I am looking
14 at the number of black Hispanics in the state of Alabama, I see
13:16:23 15 8,000 black Hispanics out of 1.3 million. So my assertion that
16 they are indistinguishable I think is fair and valid.

17 When you look at Section 2 Voting Rights Act claims with
18 Hispanics, those citizenship rates can and do vary wildly,
19 which is why the ACS CVAP data is so particularly important in
13:16:45 20 those cases, particularly pertaining to Hispanics. It's
21 virtually irrelevant for the purposes of assessing blacks. It
22 adds virtually no incremental value and can be deceiving as
23 what I believe I see in Mr. Cooper's report in representing
24 Black VAP because it is so far antiquated based on the 2010
13:17:11 25 census data versus data that we literally have right now about

1 what's really going on here in the state of Alabama.

2 Q Mr. Bryan, you do not dispute in your reports that each of
3 Mr. Cooper's illustrative plans contain two districts that are
4 majority-black according to the non-Hispanic single-race black
13:17:31 5 Citizen Voting Age Population metric, do you?

6 A I have no way of knowing because I did not run that
7 analysis myself. If his numbers are right, which they have
8 been in some cases; in this case, been shown not to be, I don't
9 know. I can't give an opinion.

13:17:42 10 Q And you didn't offer an opinion on that?

11 A And I do not offer an opinion, no.

12 Q And you certainly didn't dispute it in your report,
13 correct?

14 A Don't dispute it. Don't know. No opinion.

13:17:52 15 Q Okay. Let's turn to your supplemental report. Let's go
16 back now to page 4 of that and your discussion of traditional
17 redistricting principles.

18 A Yeah. Great.

19 Q So here, you quote a passage from the Congressional
13:18:23 20 Research Service listing common redistricting principles; is
21 that right?

22 A Yeah. The congressional service here is talking more
23 about the importance of it. And I use the NCSL more as an
24 inventory of the ones that are most important.

13:18:40 25 Q But you specifically quote on page 4 a passage from the

1 Congressional Research Service regarding traditional
2 redistricting principles, right?

3 A Yeah. That's correct. And as I was asked in direct why
4 there is -- what is important about using traditional
13:19:06 5 redistricting principles, part of my opinion in that exam was
6 elaborating on this, why it's a common set of rules, enhancing
7 fairness, minimizing gerrymandering, and so forth. That's why
8 this is more of an explanation of why we have the traditional
9 redistricting principles that we do and why we use them.

13:19:27 10 Q Let's highlight the quote that you include, the block
11 quote that you include in your report, starting with, Many of
12 the rules?

13 A Yeah. Great.

14 Q Will you please read that out loud to the Court?

13:19:45 15 A Many of the rules or criteria for drawing congressional
16 boundaries are meant to enhance fairness and impact of
17 gerrymandering. These rules, standards, or criteria include
18 assuring population equality among districts within the same
19 state; protecting racial and language minorities from vote
13:20:15 20 dilution, while at the same time not promoting racial
21 segregation; promoting geographic compactness and contiguity
22 when drawing districts; minimizing the number of split
23 political subdivisions and communities of interest within
24 congressional districts; and preserving the historical
13:20:39 25 stability in the cores of previous congressional districts.

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1 Q Thank you. I believe -- I believe you testified on direct
2 that you have never heard of minority voting rights protection
3 used as a traditional redistricting principle. Did I hear that
4 right?

13:20:57 5 A I have not seen the use of minority voting rights as a
6 principle drawing to a minority voting right target certainly
7 in subordination of any other traditional redistricting
8 principle.

9 Q The very paragraph that you cite in your report as an
13:21:24 10 authority in your discussion of traditional redistricting
11 principles specifically includes as the second criterion
12 protecting racial and language minorities from vote dilution,
13 correct?

14 A Yes, that's part of the process. Sure. That can be a
13:21:50 15 part of the process.

16 Q Okay. So the redistricting principles listed here in this
17 paragraph include in the following order: Population equality,
18 non-dilution of racial minority voting strength, compactness,
19 contiguity, minimizing political subdivision splits, minimizing
13:22:15 20 community of interest splits, and core preservation.

21 Am I reading that the same way you are?

22 A Yeah. I would not literally take those in order as most
23 important to least important. Population equality is certainly
24 the most important. In look at protecting racial and language
13:22:35 25 minorities, I think it's very easy to fall into a trap of very

1 detailed subtle nuances in language, what that exactly means.

2 Protecting race or protecting voting strength is an
3 extremely broad area. And exactly how you draw boundaries or
4 if you draw boundaries towards those is a very murky area.

13:22:57 5 Q But you would agree with me that I read right, I singled
6 out the individual criteria listed in this paragraph in the
7 order listed in this paragraph; is that right?

8 A I don't necessarily agree with the order. It's an
9 inventory. This is so often the case. I would agree with the
13:23:15 10 legal requirement, the population equality is the first,
11 balancing one person, one vote for sure.

12 Q So you may not agree with the order as it's presented here
13 in the paragraph that you cite in your report, but do you agree
14 that I accurately represented the individual criteria in the
13:23:37 15 order they are listed in this paragraph?

16 A Yeah. That's true.

17 Q If we could turn to page 11 of your second report. This
18 is Defendants' Exhibit 4, again, page 11. Okay. Here is where
19 you begin your analysis of Mr. Cooper's illustrative plans?

13:24:02 20 A Right.

21 Q Using just three redistricting principles; is that right?

22 A Yeah, that's correct.

23 Q And those three principles that you chose to analyze are
24 in this order: Core retention, incumbency, and compactness?

13:24:21 25 A It's because that order or that -- there's no particular

1 meaning to that order, but those three were used subsequent to
2 the establishment that they were legal plans with equally
3 balanced population that would support one person, one vote.
4 So checking that box, I moved on to these other issues.

13:24:42 5 Q I'm sorry. Can you explain that one more time? I am not
6 sure I understood.

7 A Yes. I -- there was no need to do an in-depth analysis of
8 the equitable distribution of population because it's factual
9 at face value. I looked at it. It is -- there's no need to do
13:25:02 10 a deep dive or a detailed analysis on whether they did a -- the
11 traditional redistricting principle of equally balancing
12 population was met or not.

13 It was at face value, it is evident that it was. So
14 there's no need to create a section and write in detail about
13:25:24 15 if and how it was. It was.

16 Q Okay. We can take down the exhibit. Just to make sure --

17 A Thank you.

18 Q Just to make sure I understand. As you just testified,
19 you offer no analysis of Mr. Cooper's plans with respect to
13:25:41 20 population equality, correct?

21 A No.

22 Q You offer no conclusion that Mr. Cooper's plans failed to
23 abide by population equality, correct?

24 A No, the total population numbers that I reviewed in his
13:25:55 25 tables and that I confirmed suggest that he meets that

1 criteria.

2 Q Okay. You also provide no analysis of non-dilution of
3 racial minorities in either the enacted plan or any of
4 Mr. Cooper's plan, correct?

13:26:10 5 A No.

6 Q And you certainly offer no conclusion that Mr. Cooper's
7 plans failed to abide by the principle of non-dilution of
8 minority voting strength?

9 A No. I have no opinion.

13:26:25 10 Q You also provide no analysis of the traditional
11 redistricting principle of contiguity in any of Mr. Cooper's
12 illustrative plans, correct?

13 A That is correct.

14 Q And you offer no conclusion that Mr. Cooper's plans failed
13:26:42 15 to abide by the principle of contiguity?

16 A Yeah. That, again, is a fact that was self-evident and I
17 found that to be true and not an item to write a detailed
18 analysis on. The only analysis or time when I did focus on
19 that was on Dr. Duchin's report where there was an instance of
13:27:08 20 non-contiguity.

21 It was immaterial, an easy mistake and trivial. Had no
22 material impact on the outcome, but it was simply one worth
23 noting. Because there was no such issue with contiguity in
24 Mr. Cooper's plan, I did not raise it as an issue to analyze.

13:27:25 25 Q You also provide no analysis of the extent to which

1 Mr. Cooper's plan split political subdivisions; is that right?

2 A Yes, that's correct.

3 Q You offer no conclusion that Mr. Cooper's plans failed to
4 minimize political subdivision splits?

13:27:44 5 A I'm sorry. You broke up for a moment. Can you please
6 repeat?

7 Q I can. Can you hear me now?

8 A Yeah, I can hear you. I got you. No worries.

9 Q And you offer no conclusion that Mr. Cooper's illustrative
13:27:58 10 plans failed to minimize political subdivision splits?

11 A I did not, no.

12 Q So in that paragraph from the congressional -- what was
13 it, the Congressional Research Service --

14 A Right.

13:28:16 15 Q -- on traditional redistricting principles, that paragraph
16 did not even mention the word incumbents, correct?

17 A That was does not. That's why I used that in conjunction
18 with the authoritative list provided by the NCSL. Some
19 different organizations may provide different lists.

13:28:41 20 Incumbency is a very widely used one for sure.

21 Q But not used in the list that you quoted first in your
22 analysis of traditional redistricting principles?

23 A Yeah. That's why I thought it was important to provide
24 the context, the importance that the Congressional Research

13:28:59 25 Service provided, and then the inventory of NCSL, so we would

1 have a thorough, comprehensive, exhaustive view of what the
2 authoritative agencies on this would say about the matter.

3 Q Okay. So --

4 A It was just the completeness. I'm sorry.

13:29:15 5 Q Okay. Thank you.

6 JUDGE MARCUS: Just slow down. Allow each of you to
7 finish your answer and your question so the reporter can get it
8 down. And equally important so that Judges Manasco, Moorner and
9 I can receive it. So just take your time, please.

13:29:36 10 MS. KHANNA: Yes, sir. Thank you, Your Honor.

11 THE WITNESS: Yes, sir. Thank you.

12 BY MS. KHANNA:

13 Q Let's turn to core retention which is the first principle
14 that you analyze in this report.

13:29:47 15 A It is. Thank you.

16 Q Is it fair to say that your analysis prioritizes core
17 retention above other criteria?

18 A I don't think that's accurate. The order in which I
19 present my information or the details that I present are not
13:30:07 20 proportionate to their importance. Core retention is a very
21 complex, detailed, hard analysis to run. It just is. And in
22 order to deeply understand it, in order to execute it, you have
23 to do a lot of detailed work.

24 The fact that there is a lot of pages and a lot of charts
13:30:30 25 and a lot of tables only reflects the complexity of the

1 analysis, not necessarily the relative importance of it.

2 The outcome of it, I would say is important, not just
3 because there are significant differences in core retention in
4 the plans, but also because there is a significant differential
13:30:51 5 impact to a minority population.

6 And as an expert, this is something that I am trained to
7 look at because there are cases where minority populations --
8 and I am not suggesting this was the case here -- but it is the
9 risk and certainly the perception that if you are moving
13:31:12 10 populations and breaking their continuity of representation, if
11 you do that disproportionately to a minority population, that
12 you should pay particular care and attention in studying where
13 and why and how that happens to ensure that you are protecting
14 their continuity of representation as much as the rest of the
13:31:34 15 population.

16 Q So as the map drawer you would want to make sure that you
17 are protecting the voting rights of minority populations in
18 particular?

19 A I would argue that the motivation is less to ensure that
13:31:55 20 you are protecting them more so to deeply understand and
21 measure them and understand it and know where and why and what
22 the tradeoffs are if you are making significant changes to an
23 existing districting plan.

24 It's not to judge and say that you should do it, or you
13:32:14 25 should not do it. It's more of an identification, a

1 quantifiable measure to say it is happening so that you can
2 remediate it and understand it, deal with it and acknowledge
3 whether it's a necessary tradeoff or not.

4 Q Mr. Bryan, are you familiar with the redistricting
13:32:35 5 guidelines adopted by the Alabama reapportionment committee to
6 govern this redistricting cycle?

7 A Yes, ma'am, I am. I have them available as an exhibit
8 right next to me.

9 Q Okay. Great. Let's pull them up so we can all be looking
13:32:51 10 at the same thing?

11 A Thank you.

12 Q Caster plaintiffs' Exhibit 82.

13 A I am just looking to make sure these are the same as what
14 I am looking at.

13:33:02 15 Q Sure.

16 A They are. Yes, ma'am. The documents -- this is a
17 consistent document with what I have. Thank you.

18 Q Okay. So if we look under Roman Numeral II, we see the
19 criteria for redistricting.

13:33:14 20 A Yes.

21 Q Under which the committee lists all the criteria, correct?

22 A That's right. Yes, ma'am.

23 Q I will -- I won't make you sit here and read all the
24 criteria.

13:33:24 25 A That's all right. I will. It's okay.

1 Q I know we've all done it a few times now.

2 A It's okay.

3 Q But as you review this document, do you agree that the
4 first five of those criteria, subsections A through E, all have
13:33:40 5 to do with population equality?

6 A Let me pause one moment. Yes, I agree with that.

7 Q And then the next two criteria, subsections F and G,
8 pertain to the Voting Rights Act, correct?

9 A That's correct, yeah.

13:34:14 10 Q Then if we move on to paragraph H, this paragraph provides
11 that districts should be contiguous and reasonably compact?

12 A Yes, that's correct.

13 Q Then paragraph I addresses various requirements embedded
14 in the Alabama State Constitution --

13:34:38 15 A That's right.

16 Q -- largely for state legislative districts, correct?

17 A Yes. Yes. That's correct. May I add, on page 3 there
18 was a sentence that says the legislature shall try to preserve
19 the cores of the existing districts. I would -- what I was
13:35:01 20 looking at earlier was that statement because to me that almost
21 is a -- is a part of the conversation about minimizing
22 population, deviations, balance populations. It's just -- it's
23 a little bit out of place in this document to me, to me it
24 would also be kind of tied in some sense to those first
13:35:24 25 requirements you brought up.

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1 Q Okay.

2 A Sorry for interrupting.

3 Q No. I think you actually are anticipating some of my
4 questions as well. So let's actually first go to paragraph J.

13:35:34 5 A Okay, let's do.

6 Q And we can highlight that paragraph for your ease of
7 reference.

8 This is --

9 A 21 J. Yeah. I may be -- okay. Yeah, I see.

13:35:52 10 Q Okay? And paragraph J appears before the paragraph that
11 you just mentioned about core preservation, correct?

12 A I believe so, yes.

13 Q Can you please read paragraph J out loud?

14 A Yeah. The following redistricting policies are embedded
13:36:07 15 in the political -- if you don't mind, I am going to read off
16 of mine because your face is actually covering that half of the
17 paragraph. I apologize.

18 The following redistricting policies are embedded in the
19 political values, traditions, customs, usages of the State of
13:36:24 20 Alabama and shall be observed to the extent they do not violate
21 or thwart any foregoing policies prescribed by the Constitution
22 of the United States and the State of Alabama.

23 Q Okay. And the custom --

24 A There we go.

13:36:40 25 Q -- and the custom of avoiding contest between incumbents

1 and core retention are included as subparagraphs to that
2 paragraph J; is that right?

3 A Yes, that's correct.

4 Q So you would agree -- I'm sorry. Go ahead?

13:36:58 5 A No, please, ma'am, after you.

6 Q You would agree, wouldn't you, that under Alabama's
7 redistricting guidelines, compliance with the Voting Rights Act
8 expressly trumps the criteria that you chose to focus on, core
9 retention and incumbency.

13:37:17 10 MR. DAVIS: I object, Mr. Bryan. Just one second. I
11 think this is asking for a legal conclusion if you're asking
12 for Mr. Bryan's statement as to whether as a matter of law one
13 has priority over another.

14 JUDGE MARCUS: No, I don't think the question was
13:37:33 15 asking him to tell us what the law is and he's not equipped to
16 do that. I think the question was simply asking him to focus
17 on the language used in the Alabama Legislature's guidelines.
18 And asked specifically whether these two interests -- core
19 retention being one and incumbency protection in the plan are
13:38:00 20 listed as subordinated to the Voting Rights Act at least
21 insofar as the legislature has expressed its view on these
22 priorities.

23 He's not here to tell us whether something is more or less
24 importantly as a matter of law so much as she's just asking him
13:38:19 25 to read from the form. Do I have the essence of the question?

1 MS. KHANNA: That's correct, Your Honor.

2 JUDGE MARCUS: All right. Do you understand the
3 question, Mr. Bryan? Or do you want her to repeat it?

4 THE WITNESS: No. I believe I understand the
13:38:31 5 question. I would like to say two things about this.

6 First, I look at the universe of traditional redistricting
7 principles from the state of Alabama as a refinement. An
8 improvement, something very specific to the state of Alabama
9 that's a subset of the congressional redistricting service and
13:38:53 10 of the NCSL. And it adds tremendous value and clarity in the
11 direction of the redistricting exercise for the state.

12 I am reluctant to offer an opinion that says because of
13 the order that these are written or how they are written that
14 one is necessarily more important than another.

13:39:15 15 In assessing the state of Alabama's plan, it is my
16 understanding and was my expectation that any care, any
17 concern, any regard for Voting Rights Act compliance was
18 accommodated and taken care of and considered in the drawing of
19 the plan.

13:39:36 20 I was not asked to and I did not expect to offer an
21 opinion on if or how much the plan did or did not comply with
22 the Voting Rights Act. I acknowledge it's a high and important
23 criteria. It is not one that was part of my opinion.

24 The other items that I investigated were areas that I felt
13:40:01 25 were important and areas that I have expertise in, and that I

1 was able to offer an expert opinion in. I am not in the
2 position to say which of these is more or less important than
3 the other if I understand Ms. Khanna's question.

4 BY MS. KHANNA:

13:40:17 5 Q Thank you for the clarification. And to be clear, I am
6 not asking you what you believe to be most important when it
7 comes to evaluating or drawing these plans.

8 But you did evaluate this document --

9 A Yes.

13:40:29 10 Q -- in preparation of your report, correct?

11 A I did, yeah.

12 Q And you would agree that according to these guidelines as
13 provided by the Alabama reapportionment committee, compliance
14 with the Voting Rights Act expressly trumps the criteria that
13:40:47 15 you chose to focus on?

16 A I am careful to answer around the word chose to focus on.
17 I did not deliberately choose not to focus on the degree to
18 which this plan complied with the Voting Rights Act.

19 Q Then maybe I can refine my question. You would agree that
13:41:12 20 under these guidelines, compliance with the Voting Rights Act
21 expressly trumps compliance with a core retention principle,
22 correct?

23 A I am not an authority to prioritize or offer an opinion on
24 which traditional redistricting criteria are more important
13:41:41 25 than the other. I can offer an opinion that compliance with

1 the Voting Rights Act is a big and important criteria and is
2 one of the highest criteria that we must consider, along with
3 equalizing population.

4 I am not in a position to exactly rank order that with
13:42:01 5 other traditional redistricting criteria.

6 Q And, again, Mr. Bryan, I am not asking you, again, to tell
7 me what you believe is most important. I understand you don't
8 have -- you are not offering that opinion.

9 But I'm asking you to -- about the guidelines in front of
13:42:18 10 you right now --

11 A Right.

12 Q -- that you reviewed in preparing your report. Under
13 these guidelines as you read them, the Voting Rights Act --
14 compliance with the Voting Rights Act expressly trumps core
13:42:34 15 retention, correct?

16 A The requirement for Voting Rights Act compliance, in order
17 of this document, is written before core retention. I do not
18 take that as a literal interpretation that that means or how
19 much more it means just by its placement in this document, that
13:43:00 20 it is more important or how much more important it is.

21 The Voting Rights Act compliance was not part of my
22 analysis because I took it at face value that a plan that I was
23 presented with to analyze had already taken that into
24 consideration. I was -- so if that were the case, then -- I'm
13:43:22 25 sorry. Go ahead.

1 Q So when you evaluated this document in preparing your
2 report in this case --

3 A Yes.

4 Q -- you did not understand it to be saying whether the --
13:43:36 5 whether compliance with the Voting Rights Act was more or less
6 important than compliance with a core preservation principle?

7 A Yeah. I think that's very fair and helpful. Thank you.

8 Whether it was or was not, if there was a question or a
9 concern about whether the state's plan was compliant with the
13:44:01 10 Voting Rights Act or not, I was not presented with that
11 question. I was not presented with that task. It was not part
12 of my analysis. But retroactively I can say in looking at the
13 state's plan with the percent black in District 7 that is
14 consistent with the last redistricting exercise, yes, there is
13:44:25 15 at least one district that is a majority-black district.

16 But other than that as a thought exercise, my analysis did
17 not go any farther than that. I was not asked to go any
18 farther than that and explore the scenarios or dive into the
19 Voting Rights Act.

13:44:44 20 Q Just to clarify -- the question I am asking you is about
21 your reading of the guidelines in front of you --

22 A Yeah.

23 Q Right now. In preparation for your report, when you read
24 these guidelines --

13:44:58 25 A Yes.

1 Q -- you did not understand them to provide any kind of
2 hierarchy of criteria of the ones that they list here; is that
3 right?

4 A I didn't, except for the very first sentence, which says
13:45:13 5 they must equalize population. That's common in a list of
6 priorities to cite the legal requirement first. After that,
7 the prioritization of VRA, core retention, contiguity, these
8 things I found in a variety of sort orders in different
9 documents like this in my experience. So I am careful not to
13:45:33 10 prioritize -- literally prioritize one over the other just
11 because the order that they're presented in the document.

12 And I apologize. I am not trying to be obtuse or
13 difficult. I'm just reflecting on my understanding and
14 interpretation of the document. I'm trying to answer as best
13:45:51 15 as I can.

16 Q I completely understand. And I just want to make sure
17 that we're both reading the guidelines the same way.

18 A Thank you. And it may be. It may be the case that the
19 authors of this and the state's interpretation of this in
13:46:05 20 developing their plan was to do these in rank order and that's
21 how they arrived at the plan they did. I don't know.

22 Q We can take the guidelines down.

23 A Thank you.

24 Q Mr. Bryan, are you familiar with how plaintiffs in
13:46:22 25 Section 2 cases are required -- or generally show that they can

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1 satisfy the *Gingles* first precondition?

2 A Yes. I have participated in many cases where they do that
3 and we do that ourselves on both sides of these cases.

4 Q So plaintiffs in Section 2 cases have to demonstrate that
13:46:44 5 a new majority-minority district could be drawn, correct?

6 A That's correct, yes. With other criteria.

7 Q One that does not already exist in the map on -- being
8 challenged?

9 A I'm sorry. I don't understand the question. Can you
13:47:04 10 please repeat it?

11 Q Sure. So you understand that the plaintiffs -- any
12 plaintiffs in any Section 2 case have to demonstrate that a new
13 majority-minority district could be drawn, and that new
14 majority-minority district is a district that does not exist in
13:47:23 15 the plan that they're challenging under Section 2, correct?

16 A It may or may not be an adaptation of an existing plan or
17 it may be an entirely new plan as is frequently the case in
18 cases changing at-large voting districts to district-based
19 voting districts.

13:47:40 20 So the answer is it would be depend on what kind of case
21 it was. But, yes, they would have to show a plan had a
22 majority-minority and be -- satisfy the other major criteria.
23 I agree with that, yes.

24 Q They have to draw a new plan, correct?

13:47:58 25 A Yes, ma'am. Yes.

1 Q One that's different than the existing plan that they're
2 challenging?

3 A Frequently, if it is an adaptation of an existing
4 district-based plan, that would be the case, again, if it's an
13:48:13 5 at-large plan, then it would frequently be drawn from scratch.
6 And that oftentimes happens.

7 Q So in a case such as this one, where the plaintiffs are
8 challenging an existing district-based plan?

9 A Yes.

13:48:26 10 Q You would -- you would agree that by design, the first
11 *Gingles* precondition requires plaintiffs to present plans that
12 look different from the enacted plan in this regard?

13 A If they were seeking to design a plan to a new standard
14 that required two districts instead of one district, then, yes,
13:48:54 15 they would have -- if that were the objective, setting aside
16 whether that is a legal objective or not, then, yes, the
17 existing plan would need to be adapted and this is my opinion
18 and understanding that so long as that adaptation does not make
19 race prevail in the design of the districts, then that is a
13:49:20 20 reasonable thing to do.

21 Q Do you know how many majority-minority districts were
22 included in the 2011 Alabama congressional plan?

23 A The -- there was -- you're asking about congressional?

24 Q Yes.

13:49:39 25 A Yeah. There was -- I believe there was one and there is

1 one again today, the 7th, I believe.

2 Q Right. So you -- in fact, you characterized the enacted
3 plan, the 2021 plan, as a least changed plan, correct?

4 A Yes, I did. And that's frequently -- a common use
13:50:04 5 language in the design of plans like this, where you see
6 minimum boundary changes necessary to comply with the law.
7 That's a -- one of several strategies to design a map.

8 Q It looks pretty similar, the 2021 plan to the 2011 plan.

9 A Yes. In some regards, I would characterize it as an
13:50:22 10 improvement. They reduced the -- the degree to which the black
11 population was concentrated in District 7, and, in appearances,
12 they improved compactness and were able to successfully
13 rebalance the population.

14 So there's many traditional redistricting criteria that
13:50:42 15 they appear to have succeeded in fulfilling in the design of
16 that plan.

17 Q Both the 2021 plan and the 2011 plan included one
18 majority-black district, correct?

19 A That's my understanding, yes.

13:50:58 20 Q And you're aware that the Caster plaintiffs in this case
21 are seeking the creation of or an additional majority-black
22 district, correct?

23 A Yes, that is my understanding throughout all these -- all
24 the plaintiffs, not just the Caster, were all seeking two
13:51:15 25 plans -- two districts.

1 Q And that additional black district does not exist in the
2 2021 plan, of course?

3 A Sure, yeah.

4 Q And it did not exist in the 2011 plan, correct?

13:51:29 5 A That's correct, yes.

6 Q You would agree that if a plan adds a majority-minority
7 district that wasn't there before, the core retention of that
8 plan will be less than a plan that retains the same number of
9 majority-minority districts as the previous plan?

13:51:49 10 A Yes. That can often times be the case. And as an expert,
11 when you are analyzing situations like that, we would look for
12 the degree to which core retention is changed as part of that
13 process.

14 If you are able to adapt an existing plan, and, again,
13:52:11 15 this is -- it's subjective, but if you are able to adapt an
16 existing plan and still not create a significant detriment to,
17 for example, compactness or significantly change core retention
18 or significantly change the geographic boundaries in, you know,
19 materially in a different direction to cover areas that just
13:52:34 20 have never been in one district before, those would be areas
21 where I would look at closely because the effort to create the
22 second district significantly impacted the rest of the
23 traditional redistricting principles.

24 And that's within we start looking at whether these other
13:52:54 25 criteria were subordinated or perhaps even ignored for the

1 singular pursuit of the drawing of those two black districts.

2 Q And the traditional districting principle in this part of
3 the analysis that you focus on is core preservation, correct?

4 A Yes. There were, again, I think three main ones. It was
13:53:17 5 incumbency, core retention and the compactness analysis. Those
6 were the kind of three that we looked carefully at it as a
7 result of this effort to draw two districts.

8 Q Okay. Let's go back to your report, Defendants'
9 Exhibit 4, page 15.

13:53:41 10 A Yes. Great. 4, 5, 6, yeah. This is preceded by several
11 other pages of for context core retention of other Cooper plans
12 and Duchin plans.

13 Q Right. And I am actually going to focus on the paragraph
14 at the bottom of these tables?

13:54:00 15 A Great. Okay.

16 Q And here you write, This superior record for the state's
17 plan reflects the advantage of a least change approach --

18 A Yes.

19 Q -- simply adjusting existing boundaries where necessary,
13:54:17 20 instead of completely redrawing all districts, as plaintiffs
21 did.

22 Did I?

23 A Yes.

24 Q Read that correctly?

13:54:23 25 A That is correct, yes.

1 Q You would agree, Mr. Bryan, wouldn't you, that if the plan
2 under review violates the Voting Rights Act, any advantages of
3 a least change approach, as you call it, would be superseded by
4 the need to comply with federal law?

13:54:45 5 A I can't offer an opinion on that.

6 Q You do not offer an opinion on the relative advantages of
7 a least change approach compared to one that includes an
8 additional black -- majority-black district?

9 A Yeah. The -- the judgment of that is outside of my scope,
13:55:13 10 and I have no opinion on which one of those is more or less
11 important in the design of a plan.

12 Q You also --

13 JUDGE MARCUS: I'm sorry. You can finish your answer,
14 please.

13:55:26 15 THE WITNESS: No. Thank you. I'm done, sir.

16 JUDGE MARCUS: All right. Thank you.

17 BY MS. KHANNA:

18 Q You also write here that the differences in core retention
19 shows that the significant incremental loss of continuity of
13:55:40 20 representation is borne disproportionately by Alabama's black
21 population; is that right?

22 A Yes. That is correct.

23 Q We can take down the report and so we can see each other
24 better.

13:55:56 25 A And it is -- factually, it is true.

1 Q Okay. We can take down the exhibits. Thanks.

2 A Okay. No problem.

3 Q As I understand that conclusion of yours, your position is
4 that black voters are primarily the ones who suffer from a loss
13:56:14 5 of continuity of representation in the illustrative plans; is
6 that right?

7 A Suffer is a strong word. They are disproportionately
8 impacted, sometimes significantly disproportionately impacted.

9 Q You -- you conclude that they are disadvantaged on this
13:56:40 10 metric of continuity of representation in the illustrative
11 plans, correct?

12 A Yeah. It's the concept of continuity of representation,
13 whether it is through paired incumbents or through losses shown
14 by core retention analysis, would say that losing your
13:57:00 15 representation is a disadvantage. It's just -- I represent
16 that not as a professional political scientist, but as a basic
17 core tenet of redistricting in my layman's knowledge of the
18 idea.

19 Q So black voters disproportionately bear that loss of
13:57:17 20 continuity of representation. That's your interpretation,
21 correct?

22 A That's accurate, yeah. That would be my assessment.

23 Q Did you consult any -- did you consult any black voters in
24 forming that conclusion?

13:57:32 25 A I did not speak to any black Alabama voters and I would

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1 believe the impact to black voters of the understanding of the
2 impact to the black voters outside of the simple linear
3 interpretation of less representation is worse than more --
4 continuous representation.

13:58:00 5 I would leave the details of those analyses and the
6 interpretation to our political scientist, Trey Hood. I think
7 he could speak very nicely to that.

8 Q So your report shows that Mr. Cooper's illustrative
9 plans 1 through 6 retain less of the core of District 2 than
13:58:23 10 the enacted plan; is that right?

11 A I believe in virtually all of the districts, the retention
12 is lower by district, as well as an aggregate.

13 Q So Mr. Cooper's District 2 in his illustrative plans is
14 less similar to the 2011 version of District 2 under the
13:58:45 15 Alabama congressional map, correct?

16 A You mean insofar as compared to the enacted Alabama map?
17 Yes.

18 Q Yes.

19 A Yes. Yeah. Okay. Thank you for the clarity.

13:58:58 20 Yeah. The statistics would show that the percent
21 retention -- I'm going off the top of my head -- would have
22 been in the 90 percent for both black and total population in
23 the Alabama plan and, again, I don't have Mr. Cooper's chart in
24 front of me, but they were much lower -- 30s, 40, 50 percent.
13:59:19 25 I can't speak to the exact number. Yes. Lower.

1 Q You would agree that under the 2011 plan, black voters
2 were not a majority of the Voting Age Population in District 2?

3 A Sorry. Could you say the question again, please?

4 Q Sure. Under the 2011 congressional plan, District 2 was
13:59:43 5 not a majority-black district, correct?

6 A I do not know whether it was at the time of enactment. I
7 know that as of the 2020 census, the enacted plan, District 2
8 was not a majority district. That's correct.

9 Q Do you know whether black voters had an opportunity to
14:00:03 10 elect their preferred candidates in District 2 under the
11 previous plan?

12 A I do not know.

13 Q Do you believe that the current representative of
14 District 2 is the candidate of choice among black voters?

14:00:18 15 A I do not know the answer to that. That would be in the
16 scope of our political scientists and outside my expertise.

17 Q So is it your position that black voters in District 2 are
18 better off remaining in a district in which they have
19 continuity of representation than in a district where they
14:00:43 20 would form a majority of the Voting Age Population?

21 A Good question. I would step back and make my assessment
22 more broadly across all districts, which is to say, in general,
23 unless there is an in-depth detailed analysis of a specific
24 district that shows whether or not a specific minority group is
14:01:03 25 satisfied with their representative and want the continuity of

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1 representation, in general, unless you do that and you look at
2 this measure of continuity of representation and core retention
3 holistically, the starting position is there is a disadvantage
4 to populations who lose their continuity of representation
14:01:26 5 until and unless it is shown that there is some reason that
6 there needs to be a change in that continuity and the change
7 benefits them more than the continuity that they lose.

8 Did I say that in a clear way? Does that make sense?

9 Q I believe so. I --

14:01:44 10 A Okay. Thank you.

11 Q I just want to make sure -- I am going to go back to the
12 transcript to make sure my question was clear.

13 A Yeah. I want to make sure I got it right for you.

14 Q I am going to restate the question as I'm reading it in
14:02:01 15 the transcript just to make sure we're speaking about the same
16 thing.

17 A Sure.

18 Q Is it your position that black voters in District 2 are
19 better off remaining in a district in which they have
14:02:12 20 continuity of representation than in a district where they
21 would form a majority of the Voting Age Population?

22 A So I cannot answer that question specific to District 2.
23 I can say holistically for all districts, if there is a
24 population that loses their core retention, and particularly if
14:02:39 25 there is a minority population that disproportionately bears

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1 the brunt of a loss of their core retention, then there would
2 be need to be additional in-depth analysis of a specific
3 district, such as the one you're leading to, District 2, to
4 deeply understand whether the tradeoff, because of an
14:02:57 5 understanding of whether the representation is representation
6 they want or not, is real. And it's something they want.

7 It's hard to tell without knowing holistically, but the
8 starting point is until that analysis is done, the assumption
9 is if you have great loss of representation, you need to be
14:03:17 10 able to go on and show that there is some benefit for the
11 significant loss of representation that we're measuring.

12 I did not do that analysis. I simply measured how much
13 core retention there is and set the stage for how much of a
14 difference there is for the new plans, the plaintiff plans,
14:03:36 15 compared to the enacted Alabama plan. And I can quantify that
16 difference.

17 Q Okay. Great. I think you just answered my next question,
18 which is you did not provide any analysis of the tradeoffs
19 between the advantages on one metric and the disadvantages on
14:03:51 20 another?

21 A No. I really -- that's outside of my scope and my
22 expertise.

23 Q Okay. Great. Let's go to your incumbency analysis, which
24 is the next --

14:04:00 25 A Thank you.

1 Q The next criterion on which you analyze the illustrative
2 plans. And I think we can turn to page 16 of your report.

3 A Yes, ma'am.

4 Q In this top paragraph here at the end of that paragraph,
14:04:20 5 you say that the Duchin and Cooper plans do not -- you're
6 referring to the previous sentence -- you said that they pack
7 incumbents. Do you see that? What do you mean by --

8 A Do not -- that might be -- it says do not unpack -- it
9 should read Duchin and Cooper plans do not unpack incumbents as
14:04:44 10 follows. It may not say do not and unpack.

11 The crux of the statement is that the Duchin and Cooper
12 plans pack incumbents.

13 Q Okay. Great. Can you explain to me what you mean by
14 packing incumbents?

14:05:02 15 A Yes. I use that not as a precise scientific term. You
16 could also say as pairing incumbents, grouping incumbents.
17 It's the practice of putting more than one incumbent in a
18 different -- in a district and leaving other districts
19 unrepresented.

14:05:26 20 Q So I think on your direct testimony, you mentioned -- I
21 think you even used the term cracking and packing incumbents.
22 Does that sound right?

23 A It was convenient language. It may not have been
24 appropriate to use that redistricting context, but the idea is
14:05:39 25 that in the practice of redistricting, if you put multiple

1 incumbents in one district, you're pairing them, and then in
2 other districts that you leave abandoned, you can be leaving
3 them -- you're leaving them essentially without any
4 representation or certainly no continuity of representation.

14:06:01 5 So I apologize for the confusion in the language.

6 Q No. I appreciate that because as you know in
7 Section 2 cases, the words packing and cracking do have certain
8 connotations.

9 A Yeah. Thank you for the critique.

14:06:17 10 Q So when you talk about packing incumbents, what you mean
11 is pairing incumbents?

12 A Yes, ma'am.

13 Q Okay. And it's your opinion that the Alabama enacted plan
14 respects incumbents, correct?

14:06:31 15 A Yes. We performed an independent analysis. We put the
16 incumbents to the best of our ability where we understand their
17 residences are. We overlaid the existing Alabama plan. And
18 our analysis suggests that none of the incumbents -- there is
19 not more or less than one incumbent in any given district.

14:06:55 20 We did not find that in our analysis of other plaintiff
21 plans.

22 Q You can take down the exhibit.

23 A Great. Thank you.

24 Q Maybe you have already answered this question. But can
14:07:10 25 you explain why do you believe that protecting incumbents is an

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1 important redistricting principle?

2 A Yeah. That's a great question and an important one.

3 You know, in representation, representation of a
4 population, historically there's a lot of evidence to suggest
14:07:32 5 that a representative, political representative, whether it's
6 local, county, state, or even a U.S. representative, that those
7 representatives over time and only with time have the
8 opportunity to deeply learn, know and understand the geography
9 that they represent, their constituency, the economy, the
14:08:07 10 demographics, the characteristics of the area that they
11 represent.

12 And so if you have a situation where you have a
13 representative and you turned that representative over
14 four years, every time, no matter what, and you don't give an
14:08:29 15 incumbent the time to build that long tenure and relationship
16 with their constituency and the deep knowledge of the geography
17 they represent, you kind of put yourself in an environment
18 where whoever the new freshman representative is, is spending
19 all the time in the first term learning their constituency and
14:08:51 20 learning all these valuable things, that they don't ever have
21 time to go actually leverage that deep penetrating insight and
22 knowledge of their constituency to benefit them.

23 Terms can frequently run out before they have even gotten
24 started. And it's a generalization, but it's I believe it's a
14:09:09 25 fair one.

1 Q So if I understood your testimony correctly, you believe
2 that the longer an incumbent has served in their district, the
3 better able they are to know about the needs of their
4 constituents?

14:09:26 5 A Generally, it is true. And the decision as to whether or
6 not an incumbent should remain and represent the values,
7 beliefs, and the needs of their people with policy should be in
8 the hands of the people.

9 The decision as to whether an incumbent should or should
14:09:45 10 not continue representation of their constituency should not be
11 decided as part of a redistricting practice that can pit
12 multiple incumbents that may both be doing a very good job
13 against each other and one of them losing all of that
14 experience and representation just because of the design of a
14:10:07 15 plan.

16 Q And just so I'm clear, the your position in your testimony
17 about the benefits of protecting incumbents, is that -- that's
18 not based on your demographic expertise, is it?

19 A No, that is not.

14:10:23 20 Q That's just your personal opinion?

21 A Again, I would base that on my knowledge and experience in
22 working with the political scientists that I work with on my
23 case and my general knowledge of the Democratic system.

24 Q All right. So it's based on your knowledge working with
14:10:40 25 political scientists, but it's not based on any political

1 science expertise that you bring to bear on the issue?

2 A I certainly agree with that. It's my responsibility as a
3 demographer and an expert in these cases to at least have some
4 amount of knowledge about each one of these traditional
14:10:57 5 redistricting criteria and I think I have enough of that to be
6 able to represent my knowledge and why it's important.

7 Q And if I understand --

8 A Expertise. Sorry. Go ahead.

9 Q And if I understand your testimony correctly, you -- your
14:11:13 10 position is that more senior members of Congress are better
11 able to serve their districts than more junior members; is that
12 fair?

13 A That would be a general statement. I would not pick on
14 any particular freshman or tenured Congressman in that at all.
14:11:34 15 I'll tread carefully.

16 Q I am not trying to trap you in that, don't worry.

17 A No problem. Thank you. But in general, yes, if people
18 have been around longer and they know their constituency and
19 know the halls of Congress, then they are probably going to do
14:11:48 20 a good job for their people.

21 Q Sounds good. Let's actually turn to your incumbency
22 analysis of Mr. Cooper's plans.

23 A Thank you.

24 Q On page 16 of your supplemental report, Defendants'
14:12:02 25 Exhibit 4.

1 A Yeah. There's both Duchin and Cooper on this one.

2 Q I am going to leave it to the Milligan plaintiffs' counsel
3 to discuss Dr. Duchin's plans, but I will focus on just that
4 last bullet point.

14:12:19 5 A Okay, great.

6 Q That's the one that addresses Mr. Cooper's plans, correct?

7 A Yeah. Yeah.

8 Q And there you conclude that Mr. Cooper's plans 1, 2, 3, 4
9 and 6 pair incumbents; is that right?

14:12:36 10 A Yeah, I believe that's the case. Again, we did our best
11 job to join where we believe the representatives to be with our
12 best, most accurate knowledge of the boundaries of his plans.

13 Q So you don't make any mention of Mr. Cooper's Illustrative
14 Plan 5 in this analysis, correct?

14:12:56 15 A Yeah. I don't believe that plan 5 -- I will be careful
16 here. Mr. Cooper did not present a boundary file for plan 5.
17 My team had to build it.

18 I don't remember honestly whether when we did our
19 incumbency analysis whether plan 5 is omitted because we did
14:13:21 20 not have a plan 5 for Mr. Cooper or because plan 5 manages to
21 not pair any incumbents. It is one of those two. I honestly
22 do not remember which -- in the rapid sequence of events, which
23 one of those two it was that --

24 Q So --

14:13:38 25 A -- did not pair.

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1 Q -- your -- so your understanding is that Mr. Cooper did
2 not provide a shapefile for Illustrative Plan 5?

3 A Yeah, we did not. I'm sorry for interrupting.

14:13:57 4 Q But he did provide that -- those shapefiles for the other
5 illustrative plans; is that correct?

6 A Yes, ma'am. And to be precise, when we realized we did
7 not have a plan 5 shapefile, my team, who are experts in this,
8 were able to build a plan 5 from what is known as his block
9 correspondence file. So we did have it. I just don't know if
14:14:16 10 that's why it's not mentioned in this piece or not.

11 Q Did you ever request the block shape -- the shapefile or
12 the block equivalency file for Mr. Cooper's Illustrative Plan 5
13 and note that it was missing?

14 A Yeah. No. We actually did not. There was no time for
14:14:34 15 that. We were able to build it very quickly and put it into --
16 put it into practice before we would have gotten the file from
17 Mr. Cooper.

18 Q Do you feel like you had an opportunity to evaluate
19 Mr. Cooper's Illustrative Plan 5 in writing your report in this
14:14:53 20 case?

21 A Yes, ma'am. We did. And I believe that our creation of
22 the plan 5 was accurate because the statistics that we were
23 able to generate that were -- we were able to get those to foot
24 back to some of Mr. Cooper's statistics for plan 5, so I
14:15:12 25 believe we did an accurate job with that. I just don't know

1 whether we had the incumbencies before or after we drew that.

2 Q Isn't it true, Mr. Bryan, that Mr. Cooper's Illustrative
3 Plan 5 does not pair any incumbents?

4 A I don't know the answer to that. It is possibly true.

14:15:35 5 Q If we assume for the moment that Mr. Cooper's Illustrative
6 Plan 5 does not pair any incumbents, you would agree that by
7 your definition, it respects incumbents, correct?

8 A If that is the case, then, yes, I would agree with that
9 statement.

14:15:54 10 Q Okay. In your bullet point here, you note that
11 Mr. Cooper's illustrative plans 1, 2, 3, 4, and 6 pair just one
12 set of incumbents; is that right?

13 A That is correct. Moore -- they were the same for each
14 plan, Moore and Carl.

14:16:20 15 Q The incumbents from Districts 1 and 2?

16 A Yes. Correct.

17 Q Okay. We can take down the exhibit.

18 And I believe you just mentioned this, but do you know who
19 the current representative of District 2 is?

14:16:36 20 A I think they may have been just in the last exhibit. I
21 don't know off the top of my head. I'm sorry.

22 Q I will represent to you that the current representative of
23 District 2 is Barry Moore.

24 A Moore. Okay. Yeah. That sounds correct.

14:16:52 25 Q And Mr. Moore was just newly elected in 2020, correct?

1 A I don't know the answer to that.

2 MR. DAVIS: Pardon me, Ms. Khanna, excuse me, Judges.
3 If it would be possible sometime in the near future when it's
4 convenient, Ms. Khanna, to have a brief recess.

14:17:14 5 JUDGE MARCUS: Sure.

6 MR. DAVIS: It's a little early.

7 JUDGE MARCUS: I understand. We are usually going to
8 go about 90 minutes per break. Ms. Khanna, do you want to just
9 take the next 10 minutes and we will break, or what's your
14:17:26 10 pleasure?

11 MS. KHANNA: If I could just finish up on this
12 incumbency, please, I will be happy to take a break then.

13 JUDGE MARCUS: You sure can.

14 MR. DAVIS: Thank you.

14:17:35 15 BY MS. KHANNA:

16 Q So you don't know when Mr. Moore was elected to
17 congressional District 2, right?

18 A No. No. And when people were elected had no bearing in
19 my incumbency analysis. It was they are representative. They
14:17:50 20 are in or they are out. It's as black and white as that.

21 Q But you did -- you did testify that one of the reasons you
22 believe that incumbency protection is important is because the
23 longer that an incumbent has served a district, the better able
24 they are to serve that district; is that right?

14:18:08 25 A Yeah. Yes, that's absolutely true, for sure.

1 Q So it would be relevant to your opinion on that score that
2 whether or not the incumbent in District 2, which is paired in
3 Mr. Cooper's Illustrative Plans 1, 2, 3, 4, and 6, has served
4 for a long time or was newly elected in 2020, correct?

14:18:27 5 A Yeah. I would say it makes -- it would make some
6 difference, and not one that I can quantify, whether they have
7 been a long-serving representative or not, but I would say that
8 certainly if you look at the events of the past two years in
9 our great nation, that anyone who has been through that
14:18:47 10 experience has learned a lot about their districts, their state
11 and the role that they have on Capitol Hill.

12 Q So I take it you do not or do you know who represented
13 District 2 before Congressman Moore?

14 A No.

14:19:06 15 Q I will represent to you that Representative Martha Roby
16 represented District 2 for over -- for a decade prior to that.

17 A Great. Okay.

18 Q Do you know who the current representative of District 1
19 is?

14:19:23 20 A No. The names of the representatives by district were not
21 a relevant part of my analysis. It was binary. Are they
22 paired or are they not paired.

23 Q I'm sorry. I don't mean to quiz you on it.

24 A No. It's okay. Go ahead.

14:19:40 25 Q I know I took down the exhibit, but in the last bullet

1 point of your incumbency analysis, you note that
2 Representatives Moore and Representatives Carl in Districts 1
3 and 2 are the ones that are paired in Mr. Cooper's plans.

14:19:58 4 A I believe so. That's -- I would have just taken those
5 names from the file when I performed the analysis.

6 Q So the representative of District 1 that you mentioned in
7 your analysis is Representative Jerry Carl; is that right?

8 A I believe so.

9 Q And Mr. Carl was also newly elected in 2020, correct?

14:20:15 10 A I don't know.

11 Q But you are familiar with who represented District 1
12 before Mr. Carl; is that right?

13 A I -- I will -- if we want to just go quickly through this,
14 I do not know the election history by district for the state of
14:20:35 15 Alabama. So we could go one by one, or I can just tell you I
16 don't know who was the preceding U.S. representatives in any of
17 the districts or how long they served for. It was a binary,
18 black or white exercise.

19 Q I believe in your report you do refer to the testimony of
14:20:53 20 Representative Bradley Byrne; is that right?

21 A Yeah. There was, you know, relevant to the conversation
22 about communities of interest and part of my education on
23 communities of interest, especially in Alabama, and I'm
24 sorry -- in Mobile and Baldwin counties, yeah, there was some
14:21:15 25 pre -- there were two previous representatives there that I

1 relied on, some of their testimony in a previous case to help
2 me learn better about what the Mobile-Baldwin County
3 environment was. That is true. But, again, how long those two
4 representatives served for, what the circumstances of their
14:21:33 5 departure are, I don't -- I don't know the answer to that.

6 Q Okay. I will represent to you that Bradley Byrne was the
7 representative of CD 1 prior to Mr. Carl.

8 A Sounds good.

9 Q So, Mr. Bryan, is it your position that it is important
14:21:52 10 for continuity of representation to ensure that both of the
11 incumbents of Districts 1 and 2 remain in their districts?

12 A I'm sorry. I may have lost your audio for just a moment
13 at the end of your statement. Can you please restate so I make
14 sure I get all of it?

14:22:11 15 Q I sure can. And I just wanted to make sure. Can
16 everybody hear me now?

17 JUDGE MARCUS: We hear you fine. Just put the
18 question again, please.

19 BY MS. KHANNA:

14:22:19 20 Q Mr. Bryan, is it your position that it is important for
21 continuity of representation to ensure that both of the
22 incumbents of Districts 1 and 2 remain in their districts, even
23 though they have served less than one year in office?

24 A My opinion is that any representative who has had any
14:22:43 25 amount of time in office is more seasoned and has more tenure

1 and experience with their constituency than one who has had
2 none. And I don't differentiate Districts 1 and 2 versus any
3 others. I say incumbency and continuity of representation is a
4 theme that is important, and any amount of experience is
14:23:05 5 valuable and important. And certainly pitting even two
6 freshmen representatives against each other will assure that
7 some -- even limited number of years of experience in the House
8 are going to be lost that are going to then be replaced.

9 Q Okay.

14:23:25 10 MS. KHANNA: I believe that closed up my questions on
11 the incumbency please, Your Honor. If this is a good place to
12 break, I'm happy to break now.

13 JUDGE MARCUS: We will take our 15-minute break at
14 this point. We will come back and pick up the thread of your
14:23:39 15 cross-examination. Thank you.

16 (Recess.)

17 JUDGE MARCUS: Are the parties ready to proceed?

18 Ms. Khanna, you may proceed.

19 MS. KHANNA: Thank you, Your Honor and actually,

14:38:25 20 before I ask my next line of questions, I just wanted to make
21 sure that I offered into evidence the *Evenwel* brief that we had
22 it marked for identification earlier. I would offer it as
23 plaintiffs' exhibit -- Caster Plaintiffs' Exhibit 106 into
24 evidence.

14:38:42 25 JUDGE MARCUS: Any objection?

1 MR. DAVIS: Judge, obviously no objection to it being
2 marked to an impeachment exhibit to memorialize the
3 conversation, but it's been so long since I have seen it, I
4 don't know what else may be in it that we didn't talk about it
14:38:54 5 before.

6 JUDGE MARCUS: Why don't you do this: At your
7 leisure, take a look at it, and then come back Monday and let
8 us know. We have the opportunity to redact it and just receive
9 those portions that the bore directly on the questions and
14:39:09 10 answers, if you would like, as well. But we will reserve on
11 that, Mr. Davis and Ms. Khanna, just to give the Secretary of
12 State's counsel a chance to review it because it was a long
13 brief filed with the Supreme Court. I know it was used
14 fundamentally for the purposes of impeachment.

14:39:30 15 We will leave that issue open and you come back and let us
16 know on Monday your pleasure, Mr. Davis.

17 MR. DAVIS: Thank you, Judge.

18 JUDGE MARCUS: Ms. Khanna, you may proceed.

19 MS. KHANNA: Thank you, Your Honor.

14:39:41 20 BY MS. KHANNA:

21 Q Mr. Bryan, let's turn to your compactness analysis.

22 A Thank you.

23 Q That's the third criteria on which you evaluate
24 Mr. Cooper's plans.

14:39:52 25 Mr. Bryan, when we went over the redistricting

1 guidelines -- I won't pull them up again -- but those provide
2 that districts should be composed of reasonably compact
3 geography; is that right?

4 A Yes.

14:40:07 5 Q Your report does not set out any threshold or standard by
6 which to judge whether a map is considered reasonably compact;
7 is that right?

8 A There are no such standards. Dr. Duchin elaborated on
9 this yesterday. It can depend on numerous factors and there's
14:40:26 10 no commonly accepted numbers. It's relative from one plan to
11 another.

12 Q Great. So no objective standard about when a district or
13 a map is objectively compact versus non-compact?

14 A It's typically regarded as a relative comparing those
14:40:46 15 statistics from one plan to another plan, not universally in
16 the business.

17 Q And you're not aware of any requirement that illustrative
18 plans in a Section 2 case be as compact or more compact than
19 the enacted plan, are you?

14:41:02 20 A I am not aware.

21 Q So your compactness analysis with respect to Mr. Cooper's
22 illustrative plans is contained on pages 17 through 19 on your
23 supplemental report and Appendix 5 to that report; is that
24 right?

14:41:24 25 A Okay.

1 Q In the interest of time, I won't pull that up to show you.
2 You can peruse that if you have the report in front of you.

3 JUDGE MARCUS: If you need it on the board, you just
4 let us know, Mr. Bryan.

14:41:37 5 MR. DAVIS: I will stipulate Ms. Khanna gave the
6 correct page number.

7 JUDGE MARCUS: Okay. Great.

8 THE WITNESS: Great. Sounds good.

9 JUDGE MARCUS: My concern, Mr. Davis, was not that she
14:41:48 10 gave the right one, but that he might not recall everything in
11 it without seeing it.

12 THE WITNESS: Your Honor, I have the compactness
13 scores right here next to me if you would like me to refer to
14 them.

14:41:58 15 JUDGE MARCUS: I leave it up to you and counsel. You
16 may proceed, Ms. Khanna.

17 THE WITNESS: Thank you, sir.

18 MS. KHANNA: Thank you, Your Honor.

19 BY MS. KHANNA:

14:42:04 20 Q Mr. Bryan, I will be sure to direct you to any specific
21 portion of that analysis as we go through it.

22 Your analysis contained in your report, your compactness
23 analysis consists entirely of the numerical metrics of
24 compactness on a number of different measures; is that right?

14:42:21 25 A That is correct.

1 Q Your compactness analysis does not contain any analysis of
2 the contours of specific districts in Mr. Cooper's illustrative
3 plans; is that right?

4 A I'm sorry. I do not understand the question.

14:42:38 5 Q When you are evaluating the compactness of Mr. Cooper's
6 illustrative plans --

7 A Uh-huh.

8 Q -- you evaluate them solely based on their metrics, the
9 Reock score, the Polsby-Popper score, the Schwartzberg score,
14:42:57 10 and the convex hull score?

11 A Yes, that's correct.

12 Q You do not analyze any of the specific contours of the
13 districts actually drawn other than their compactness scores?

14 A Yes. As a practice in compactness, except for
14:43:17 15 diagnostics, you would not go analyze any specific contour or
16 detail or part of a district. There's one number that
17 represents the plan.

18 Q You provide no analysis to the extent to which county or
19 city or VTD boundaries informs the compactness of a given
14:43:39 20 district in Mr. Cooper's illustrative plans?

21 A I do not. But the decision to comply with county
22 boundaries or other boundaries that they create better
23 compactness or poorer compactness, as was the case with some
24 districts in Alabama, is solely at the discretion of the drawer
14:44:03 25 of the plan.

1 Q And you don't provide any analysis of the extent to which
2 highways and rivers inform the compactness of any given
3 district in Mr. Cooper's illustrative plans?

4 A Not in Mr. Cooper's plan. I do offer some analysis of
14:44:17 5 that in other plans where it was relevant, for example, in the
6 Alabama plan where there was some districts with lower
7 compactness scores. Those were a result of some geographic
8 features. I found no strong prevailing geographic features
9 that in particular hindered Mr. Cooper's compactness scores.

14:44:39 10 Q Well, you don't provide any analysis at all of the
11 geographic or political boundaries of his districts as it
12 relates to their compactness?

13 A I did not identify any features -- specific features of
14 the plan that were specifically very detrimental, and I defer
14:44:58 15 to Mr. Cooper's expertise and judgment in drawing plans that
16 are either compact or not compact.

17 Q Toward the end of your direct examination with Mr. Davis,
18 I believe he asked you some questions about whether plaintiffs
19 illustrative plans draw lines that appear to you to be based on
14:45:18 20 race or other traditional districting principles. Am I
21 recalling that correctly?

22 A That is correct.

23 Q But at no point in your report do you provide any analysis
24 of the way in which specific districts in Mr. Cooper's
14:45:35 25 illustrative plans are configured outside of their objective

1 compactness scores.

2 A Except insofar as to acknowledge how they were precisely
3 drawn to exclude white population and include black population
4 to achieve the majority district status that he was seeking.

14:45:54 5 Q Can you point me to where in your supplemental report you
6 speak about that topic in Mr. Cooper's illustrative plans?

7 A It may be in the map -- just give me a moment, let me see
8 if I can track it.

9 Q Sure.

14:46:58 10 A It appears I may not have written text about that finding.
11 I would refer to the map of the Cooper's plans to support my
12 observation.

13 I cannot quickly find text if I wrote any about the
14 observations because, as I stated earlier on my direct with
14:47:19 15 Mr. Davis, the performance in the outline of these plans were
16 very consistent with the Hatcher plan, which I did document the
17 degree to which it followed these boundaries exactly. And in
18 looking at the Cooper plans, as I am now, one after the next,
19 the degree to which they follow black populations and exclude
14:47:41 20 white populations around Birmingham and Mobile are consistent
21 with every one of the other plaintiff plans that I reviewed.
22 So I'll stick with that.

23 Q And that analysis that you just provided, including the
24 analysis in response to Mr. Davis's questions are not
14:47:59 25 actually --

1 JUDGE MARCUS: I am not sure we heard the whole
2 question. I'm sorry. Ms. Khanna? Have we frozen up
3 completely? Mr. Davis, can you hear me? Judge Manasco?

4 MR. DAVIS: I can hear you, Your Honor. I just
14:48:26 5 believe Ms. Khanna's screen has frozen momentarily.

6 MR. DUNN: I think it's Ms. Khanna's screen that's
7 frozen, Your Honor.

8 MR. DAVIS: There she is. She is back.

9 JUDGE MARCUS: Ms. Khanna?
14:48:40 10 Hi, Ms. Khanna. I think we lost you for a moment.

11 MS. KHANNA: I apologize, Your Honor.

12 JUDGE MARCUS: That's all right. Why don't you start
13 over and ask your question again.

14 MS. KHANNA: Can everybody hear and see me now?

14:48:51 15 JUDGE MARCUS: We hear you fine.

16 MS. KHANNA: Thanks. Give me one second to
17 reconfigure my screen. It closed out for a second.

18 JUDGE MARCUS: Sure.

19 BY MS. KHANNA:

14:49:22 20 Q Okay. I am not sure where I got cut off, but my question
21 was the analysis that you just provided about --

22 A Yeah.

23 Q -- about how the lines were drawn in Mr. Cooper's
24 illustrative plans --

14:49:34 25 A Yeah.

1 Q -- is not an analysis that we will find anywhere written
2 in your report about Mr. Cooper's illustrative plans, correct?

3 A No. I think that part of the report and the analysis was
4 pretty light and I think that I was mostly led by the fact that
14:49:52 5 his plan and Dr. Duchin's plan, all of these plans were
6 following a very similar pattern. And if you look at the map,
7 you will see that they do the same thing as in other plans that
8 we documented, where we show it follows precisely where black
9 population is and is not -- I concede that that analysis and
14:50:11 10 that finding is not -- does not appear to be written up in my
11 summary of findings.

12 Q You provide no analysis in any of the text about the
13 configuration of the districts in Mr. Cooper's plans outside of
14 their objective compactness scores, core preservation scores
14:50:28 15 and incumbency protection scores?

16 A Yes. My observation about their consistency in
17 performance in including or excluding black populations is as I
18 am reciting to you right now, looking at the maps that I drew.

19 Q But not an opinion you expressed in your report?

14:50:45 20 A Yes, ma'am, that's correct.

21 Q And at no point in your report do you offer any
22 conclusions or opinions as to the apparent basis of any
23 individual line drawing decisions in Mr. Cooper's illustrative
24 plans?

14:50:59 25 A I did not. Yep. That's correct.

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1 Q So your report analyzes Mr. Cooper's Illustrative Plans 1
2 through 6, correct?

3 A That's correct.

4 Q And just to clarify, it does not provide any analysis of
14:51:13 5 the compactness of Mr. Cooper's Illustrative Plan 7 since you
6 did not have that plan in front of you when you wrote your
7 supplemental report?

8 A Yeah, that's correct.

9 Q So you offer no opinions or conclusions on Illustrative
14:51:29 10 Plan 7, including its compactness, correct?

11 A I do not. And if there is significant evidence of a
12 revelatory or new different plan that is a breakthrough in this
13 case, then I probably would have been alerted to that and I was
14 not.

14:51:43 15 Q Okay. Have you actually reviewed Illustrative Plan 7?

16 A No.

17 Q Before your testimony today?

18 A No.

19 Q You have not even seen that plan?

14:51:53 20 A It's in my e-mail somewhere. I have not had a chance to
21 review it. I'm sorry.

22 Q So among Mr. Cooper's Illustrative Plans 1 through 6, if I
23 am reading your report correctly, and I am referring you to
24 page 18 of your report, you conclude that Illustrative Plan 4
14:52:14 25 has compactness scores that you believe are comparable to the

1 enacted plan; is that right?

2 A May I refer to my report?

3 Q Please do.

4 A Thank you.

14:52:22 5 Q Page 18 is specifically where I am looking.

6 A Okay. Great. I see on page 18 the enacted plan
7 compactness scores. Is what you are referring to? Yeah.
8 That's it. Yeah. Terrific. Yes. Yes. I recognize this.
9 Yep.

14:52:50 10 Q And in the paragraph, the last paragraph on page 18, you
11 note that only Cooper plan 4 has comparable scores to the other
12 plans. Am I reading that correctly?

13 A Yes. That looks like what that says.

14 Q And there you further conclude that Mr. Cooper's
14:53:11 15 Illustrative Plans 1 to 3 and 5 and 6 have inferior compactness
16 scores to the Duchin plans; is that right?

17 A Yes. That is correct. Dr. Duchin's plans, because of the
18 additional compactness she drew into Districts 4 and 5,
19 outperform in total Mr. Cooper's plans.

14:53:33 20 Q Okay. If we go to the next page to your conclusion
21 paragraph on page 19 of your report.

22 A Yep.

23 Q There you say, My analysis of compactness shows that
24 Dr. Duchin's plans perform generally better on average than the
14:53:51 25 enacted state of Alabama plans --

1 A Yes.

2 Q -- although some districts are significantly less compact
3 than Alabama's and significantly better than Bill Cooper's
4 plans. Did I read that correctly?

14:54:03 5 A Yeah. This would be the -- what I would call the -- when
6 I say in aggregate, that's literally the summary across all
7 districts within the plans. That is correct, yes.

8 Q So your conclusion as to the compactness of Mr. Cooper's
9 plans here is how they fare relative to Dr. Duchin's plans; is
14:54:26 10 that right?

11 A It is and also relative as you see in the top two lines to
12 the 2011 existing and 2021 exact -- enacted.

13 Q But the statement here about the Duchin plans being
14 significantly better than Mr. Cooper's plans, that does not
14:54:49 15 apply to Mr. Cooper's Illustrative Plan 4, which you said was
16 comparable, correct?

17 A That is the only plan that was remotely close in
18 compactness, as you can see in this Table 3, to the other
19 plans. And then, in that regard, in Polsby-Popper and
14:55:10 20 Schwartzberg, it is comparable, and Reock, it was not. Convex
21 hull, it was. So there's one plan where three of the four
22 metrics were almost comparable with the enacted plans.

23 Q And that conclusion, of course, does not apply to
24 Illustrative Plan 7, which you haven't reviewed in this case?

14:55:33 25 A No, ma'am. I cannot offer an opinion.

1 Q Okay. We can take down the exhibit. Mr. Bryan, at no
2 point in your report do you offer any opinion or conclusion
3 that any of Mr. Cooper's illustrative plans are not reasonably
4 compact, do you?

14:55:52 5 A I have no opinion on what is reasonable and what is not
6 reasonable. There's no such standard in the industry. I
7 present it in relative terms to other potential options that
8 the state of Alabama could consider for their redistricting
9 solution.

14:56:14 10 Q Let's move on to your discussion of communities of
11 interest.

12 I believe that the three traditional redistricting
13 principles on which you evaluated Mr. Cooper's plans were the
14 ones we just discussed -- core preservation, incumbency and
14:56:30 15 compactness; is that right?

16 A Uh-huh.

17 Q Your supplemental report does not analyze any of
18 Mr. Cooper's illustrative plans based on communities of
19 interest, correct?

14:56:39 20 A There's only one major finding of communities of interest
21 in the -- the Hatcher, the Duchin and the Cooper plans, which
22 is the disruption of the community of interest in Mobile and
23 Baldwin counties.

24 Q And that analysis of communities of interest is included
14:57:00 25 in your first report, correct, not your second?

1 A Yes, ma'am, correct.

2 Q You had not reviewed any of Mr. Cooper's plans at that
3 time?

4 A No. But they are -- given the consistency of those plans
14:57:11 5 with the original plan, I would make the same assessment and
6 generalize my findings on the Mobile community of interest to
7 Cooper and Duchin's plans.

8 Q So if I am looking at the same conclusion paragraph that
9 we just discussed in your supplemental report, you say that the
14:57:38 10 plans provided by Mr. Cooper have generally similar features
11 and performance as the Hatcher plan; is that right?

12 A That's correct, yes.

13 Q What do you mean by performance?

14 A So I mean performance insofar as the demographic
14:57:59 15 characteristics of it, the compactness of it, the impact to
16 incumbency, the traditional redistricting principles that we
17 assessed Hatcher with were the same ones that we looked at the
18 Cooper and the Duchin plans.

19 Geographically speaking, the performance of the plans were
14:58:16 20 similar geographically insofar as they change the boundaries
21 around Birmingham. They extend to District 2, all the way to
22 the eastern -- generally to the eastern edge of Alabama and
23 also pushed the district down into Mobile and Baldwin counties.
24 Geographically that's what I -- in a very high level what I
14:58:40 25 would mean in terms of geographic performance.

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1 Q So your analysis of the Hatcher plan is entirely included
2 in your first report; is that right?

3 A Yes, ma'am.

4 Q And there are a few features of the Hatcher plan that you
14:58:52 5 thought it was important to emphasize in your first report?

6 A Yes.

7 Q So one of the features that you emphasize in your first
8 report -- and I am referring specifically to Defendants'
9 Exhibit 2 at page 6 for your reference.

14:59:12 10 A Okay.

11 Q You note that the Hatcher plan contains numerous county
12 splits; is that right?

13 A Yes. It was not a county-based plan.

14 Q We can take down the exhibit. I just wanted to make sure
14:59:26 15 we were looking at the right document.

16 You never mentioned the number of county splits in
17 Mr. Cooper's plans in either of your reports, correct?

18 A No, I did not.

19 Q The Hatcher plan, in fact, splits 13 counties; is that
14:59:44 20 right?

21 A That sounds right.

22 Q Mr. Cooper's plans -- illustrative plans, however, most of
23 them split only six counties, isn't that right?

24 A That sounds right.

14:59:57 25 Q The same number as the enacted plan?

1 A Could be.

2 Q And that number -- and six is, of course, fewer than half
3 of the number of splits in the Hatcher plan, correct?

4 A Based still -- I did not differentiate how many different
15:00:17 5 counties were split except to say that they were. There was no
6 split counties in the Singleton plan. There were some -- more
7 number of counties that were split in these other plans. It's
8 my understanding Hatcher had more, but they all had some.

9 Again, to emphasize, I did not do a detailed split
15:00:58 10 geography analysis. I just saw what I saw while I was doing my
11 York in these other areas.

12 Q But when you were evaluating the Hatcher plan in your
13 first report, you believed it was important to note that it
14 split numerous counties, correct?

15:01:19 15 A Yeah. I think that was a fair observation, given that
16 plan was presented subsequent to a plan that was purported to
17 have no county splits at all. So in the context of the
18 previous plaintiffs' plan, I thought it was important to note
19 and emphasize that only insofar as the differences from the no
15:01:41 20 county split plan that had been presented earlier.

21 Q And for Mr. Cooper's plans that split six counties like
22 the enacted plan, you don't contend that those plans include
23 numerous county splits, correct?

24 A That's an object -- a subjective statement to say whether
15:02:00 25 it's numerous or many. There are less numerous than there is

1 in the other plan. I am sure there are plans and other ways of
2 doing this where there could be less than six county splits as
3 well.

4 I don't have an opinion as to whether Mr. Cooper, in the
15:02:16 5 development of his plans, optimized not splitting counties or
6 not. This is the type of thing, again, I look for when I do my
7 compactness analysis and whether you use counties as whole
8 pieces of geography are generally reflected in whether you have
9 good compactness scores or not.

15:02:35 10 In his case, even though he split fewer counties than in
11 Hatcher, he still ended up with poorer compactness scores
12 because of the way his districts are configured.

13 Q You also note in your evaluation of the Hatcher plan that
14 it does not respect incumbents because it pairs two sets of
15:02:54 15 incumbents; is that right?

16 A That's correct. Yes. I am not looking at the exhibit,
17 but I recall that to be true.

18 Q And just so you make sure you have all the information in
19 front of you, I am looking specifically at page 27 of
15:03:09 20 Defendants' Exhibit 2, your first report in this case.

21 A Do you have it?

22 Q I sure can. I can pull it up.

23 A I have it. Yes. So, yes, the Alabama enacted plan
24 respects incumbents. There's really not a mention in the
15:03:39 25 plaintiff plan about incumbents, but I noted that the

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1 plaintiffs' plan pairs, like I said, Moore and Carl in 1,
2 leaves 2 unrepresented. Pairs Sewell and Palmer in 6,
3 leaving 7 unrepresented.

4 Q So the Hatcher plan pairs four incumbents, two sets of
15:03:59 5 incumbents, right?

6 A Yes, that's correct. Two pairs, leaving two districts
7 unrepresented.

8 Q Mr. Cooper's plans, however, only pair one set of
9 incumbents where they pair incumbents, correct?

15:04:11 10 A That is correct.

11 Q Mr. Cooper's Illustrative Plan 5 actually pairs no
12 incumbents; is that right?

13 A Again, I am uncertain. I -- if -- you are stating that as
14 a known fact, I cannot confirm that right now. I believe you
15:04:29 15 if you say it's true.

16 Q If we assume that it's true, you would agree that in that
17 respect Mr. Cooper's plans are not similar to the Hatcher plan?

18 A I would say that the difference is whether a plan pairs
19 incumbents or does not pair incumbents. I don't do degrees of
15:04:48 20 measure of how badly they do it. The fact that Duchin's plans
21 pair them even more is notable, but the differentiating point
22 is whether you do so or if you do not do so, not how badly you
23 do so.

24 But if Mr. Cooper would like credit for having fewer
15:05:09 25 pairs, but still paired incumbents, then I will concede that.

1 Q So it's your understanding that the question for whether
2 or not -- whether or not a plan respects incumbents, is whether
3 it pairs any incumbents or doesn't pair any incumbents, not the
4 number of incumbents?

15:05:33 5 A If there are competing plans that pair incumbents, if
6 there is, in this case, one pair of incumbents or two pairs of
7 incumbents as the case may be, I would not draw a distinction
8 that that means by inference that one plan is somehow superior
9 in traditional redistricting principles than the other. It may
15:05:56 10 garner a nod or some small benefit, but the fact that they
11 still split them is the major problem.

12 Q Mr. Bryan, you recently submitted an expert report in the
13 Wisconsin Supreme Court; is that right?

14 A I did.

15:06:15 15 Q And that expert report was in support of a redistricting
16 map put forward by the Wisconsin legislature; is that right?

17 A That is correct.

18 Q If we could call up that report. This is the report that
19 we have been discussing from Wisconsin; is that right?

15:06:46 20 A Yes. This is my report.

21 Q If we could turn to page 6 of that report.

22 A Great.

23 Q I believe on page 6 you conclude that the Wisconsin
24 Legislature has proposed assembly plan, was able to conform
15:07:14 25 with numerous traditional redistricting principles including

1 avoiding pairing incumbents; is that right?

2 A That is correct.

3 Q And, in fact, the assembly plan that you said respects
4 incumbents or avoids pairing with incumbents in fact did pair
15:07:33 5 six incumbents; is that right?

6 A Yes. Yes. That was mathematically impossible not to do
7 that. It was not optional in the case of Alabama. All of
8 these plans pair incumbents unnecessarily.

9 Q But --

15:07:51 10 A Please.

11 Q You would agree that the Wisconsin plan that you endorsed
12 pairs incumbents, correct?

13 A It -- by necessity, by mathematic necessity, it did, yes.

14 Q You believe that it avoided pairing incumbents in
15:08:08 15 conformance with traditional redistricting principles?

16 A The plan avoided in every instance except where it was
17 mathematically impossible not to avoid it, it did successfully
18 avoid pairing incumbents. The PMC plan and now the other
19 plaintiffs' plans submitted in that case have dozens of pairs
15:08:36 20 by comparison and there is strong evidence that there is
21 partisan politics that are playing into those pairings because
22 many of them are Republican pairs in those plans. So not only
23 were they not necessary, but they also appear to have a
24 partisan bias.

15:08:54 25 The Wisconsin plan from the legislature did not have a

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1 partisan bias. In fact, they paired two of their own
2 Republican representatives in this, in one of those plans.
3 And, again, it is by mathematic necessity, not out of choice.

4 Q So when you evaluate -- we can take down the exhibit.

15:09:15 5 When you evaluated incumbent pairings in Wisconsin, you
6 did look at who, in fact, the incumbents were that were being
7 paired, as well as then provide an analysis?

8 A We were asked by counsel for the legislature to look at
9 the party affiliations of the representatives that were paired
15:09:38 10 and my team of experts did, in fact, analyze that and present
11 findings that were accepted in that report.

12 Q And when -- I'm sorry. When you say accepted in that
13 report, has the Court accepted that report or those findings?

14 A My belief that they have. I have been busy with a few
15:09:58 15 other things the last few days.

16 Q I understand.

17 A Yeah.

18 Q And in your analysis in that Wisconsin report, you
19 believed it was important to note that the plan that you were
15:10:13 20 endorsing or that you are supporting in your expert report
21 paired fewer incumbents than other plans?

22 A The -- there was two points, one was the number of the
23 pairs, and then the other was pointing out the significant
24 partisanship of the pairs that were coming from the plaintiffs
15:10:34 25 in that case. And, yeah, that was -- in conversations with

1 experts and counsel, that became a decisive point in the
2 analysis and the reason that I fulfilled that.

3 Q All right. Let's go back to the Hatcher plan that you
4 discussed in your first report in this case.

15:10:55 5 If we look to Defendants' Exhibit 2, page 16. We can pull
6 that up so that everyone is looking at the same thing. Here up
7 in the top paragraph you say --

8 A Yes.

9 Q -- no effort was made to try and conform the boundaries of
15:11:27 10 District 2 to the existing city boundary of Mobile; is that
11 correct?

12 A Yes. I looked at this carefully. The municipal
13 boundaries of Mobile are complex, and, nevertheless, the
14 boundaries of the plan slices through them. I do not have a
15:11:45 15 count of how many sometimes it splits the boundaries of Mobile.
16 Conventionally, if you were going to make this big of a
17 deviation in a plan to go grab a piece of geography that is out
18 of bounds, such as Mobile, you would do so by trying to include
19 administrative geography such as the city boundaries.

15:12:03 20 This -- the boundaries of the Hatcher plan, the Duchin
21 plans and the Cooper plans in my analysis do not make appear to
22 make any effort to conform to any other administrative
23 geography, rather only to try and capture the most densely
24 black population of Mobile.

15:12:23 25 Q Just to be clear. The sentence that's highlighted on the

1 screen right now is from your first report?

2 A Yes.

3 Q And it refers only to the Hatcher plan, correct?

4 A Yes, ma'am. That is correct. Yes.

15:12:34 5 Q You had not seen any of the Cooper plans at the time you
6 wrote this report?

7 A No. My statement reflects subsequent observations of the
8 other plaintiff plans. I'm sorry. Retract.

9 Q Okay. Let's pull up Mr. Cooper's Illustrative Plan 6 and
15:12:53 10 let's specifically look at District 2. That's going to be
11 Plaintiffs' Exhibit 44. This was included as an exhibit to
12 Mr. Cooper's first report.

13 And if I recall your previous testimony, you did not
14 review any of the exhibits attached to Mr. Cooper's reports; is
15:13:14 15 that right?

16 A No, my analysis was based on the information that I
17 received -- the electronic information I received that I used
18 in my geographic information system to perform an analysis that
19 would be in essence a replication of this map that I'm seeing
15:13:33 20 now. I did not use or refer to this exact map. I referred to
21 my own company's representation of this map in my analysis.

22 Q Okay. But looking at Mr. Cooper's illustrative plan, his
23 map right here, you would agree that, in fact, District 2 does
24 keep the city of Mobile whole by conforming to municipal
15:13:56 25 boundaries, correct?

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1 A It's difficult to see where that boundaries of the city of
2 Mobile are in this map. I can't give an opinion. It may be
3 the case, but I can't tell from this map. But whether the map
4 contains it is -- would be a misleading statement because you
15:14:21 5 can have a geography that can outer bound a city and capture
6 numerous pieces of irregular geography around it. Because it
7 contains it does not mean it follows it. And the benefit of
8 following administrative geography in redistricting is because
9 it captures pieces of administrative geography that enable that
15:14:41 10 district to represent people with similar administrative
11 geography and policy interests and concerns.

12 So stating that this outer bounds, the city of Mobile does
13 not necessarily mean that that means that it's an accurate
14 capture of Mobile.

15:14:56 15 A visual examination of this plan shows a highly irregular
16 draw into the county of Mobile anyway. So some other thing was
17 happening when Mr. Cooper drew this in this very unusual and
18 unique way, into the otherwise very geometrical simple
19 geography of Mobile.

15:15:18 20 Q So you don't know sitting here today whether that -- the
21 drawing of District 2 in Mobile County conforms to the
22 boundaries of the city of Mobile; is that right?

23 A I -- it may -- I want to be precise with my language.

24 That district may outer bound, that is, fully contain the city
15:15:38 25 of Mobile. I do not believe just looking at this map, which is

1 not precise, whether it exactly follows the boundaries of the
2 city of Mobile or not. I don't believe that it is. But I
3 cannot say that definitively.

4 Q You would agree that if it does exactly follow the
15:15:55 5 boundaries of the city of Mobile, that would make a significant
6 difference between its configuration and the Hatcher plan that
7 you criticize; is that right?

8 A If this exactly followed the city boundaries of Mobile,
9 that would certainly give it some credence, but that does not
15:16:14 10 change the highly irregular features and the draw that was made
11 to go into Mobile County. There's no way a map drawer could
12 look at this draw and not avoid the highly irregular draws in
13 and out and around the county.

14 Q So when you were evaluating whether a district looks
15:16:37 15 irregular, you are doing that without respect to whether or not
16 it's following municipal boundaries; is that right?

17 A In this particular case, Mobile is only a part of Mobile
18 County and so my visual observation of this draw is showing
19 significant irregularities that are clearly outside of the city
15:17:00 20 of Mobile here.

21 Q So your understanding is this district -- the district
22 lines of CD 2 do not conform with the city of Mobile
23 boundaries; is that right?

24 A I am not able to say with certainty whether they do or do
15:17:19 25 not. It does not visually appear to, given my knowledge of the

1 area. I would have to see something much more detailed to be
2 able to prove that or not.

3 My assessment is that the draw in Mobile County in this
4 case appears, given the geometric simplicity of the county,
15:17:37 5 that there was some motivation to draw a highly irregular
6 boundary within the county. And not all of that -- not -- it
7 is not possible to that all of those irregularities were
8 determined simply by the municipal administrative unit of
9 geography known as the city of Mobile.

15:17:54 10 Q And you mentioned there were motivations, but you, of
11 course, have no knowledge, information or opinion about any of
12 the motivations, correct?

13 A I don't know what the motivations were. All I know from
14 my own analysis and maps are that the lines that go down into
15:18:10 15 Mobile across all these different plans, I am speaking
16 generally, not to any one particular plan, go down into Mobile
17 and surgically go into and out of white VTDs and black VTDs,
18 including the black ones and excluding the white ones.

19 If that was the motivation, I would believe that a
15:18:29 20 mapmaker would have just gone into Mobile and taken the whole
21 county. Otherwise there is no reason to have gone in here and
22 so surgically and forensically grabbed just very precise pieces
23 of the city of Mobile, which we know to be the most densely
24 black portion of the county.

15:18:44 25 Q And, again, your testimony about which pieces of the city

1 of Mobile may or may not be included in District 2 --

2 A Right.

3 Q -- is not about this district that we're looking at right
4 now, you're speaking generally about some of the illustrative
15:19:02 5 plans?

6 A Yes, ma'am.

7 Q And about the Hatcher plan?

8 A That, too.

9 Q Let's turn -- let's actually look at your depiction of
15:19:10 10 Mr. Cooper's Illustrative Plan 6. And I think that's going to
11 be at page 88 of your supplemental report. Defendants'
12 Exhibit 4. Does this look familiar to you?

13 A It does, yes.

14 Q This is your depiction of Mr. Cooper's Illustrative Plan 6
15:19:31 15 color coded by the concentration of black population; is that
16 right?

17 A Yep, that is correct.

18 Q And sitting here today, you can't tell me whether the
19 District 2 boundaries depicted in this map conform to the city
15:19:45 20 of Mobile boundaries; is that right?

21 A I cannot determine that from this map. I could in a
22 matter of minutes if it's an important point, but I cannot tell
23 from this whether it definitively is or is not.

24 Q But you can tell from this map that Mr. Cooper's
15:20:08 25 District 2 includes a lot of those red and orange VTDs on your

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1 illustration here; is that right?

2 A Are you speaking specifically to the area around what
3 we're going to characterize as the area around Mobile city?

4 Q I'm actually -- I'm looking at a southwest corner of this
15:20:36 5 map.

6 A Okay.

7 Q Maybe we can zoom in on it.

8 A Sure. Yeah.

9 Q If I am understanding your testimony correctly, you

15:20:57 10 criticize the Hatcher plan and apparently some other plans for
11 excluding white VTDs and including black VTDs into District 2;
12 is that right?

13 A That's correct. And just -- this is not one of my
14 close-in maps. I am not sure I have a close-in map of Cooper,

15:21:22 15 but even with this grainy picture, you can see that there was
16 a -- basically a fish hook where the district was run down the
17 western edge of the state, excluding lots of red, orange,
18 yellow, you know, low black concentrated VTDs and then wrapping
19 around very low population areas in the south corner and

15:21:45 20 reaching up to grab, as you can see the line of the boundary of
21 the district, grabs just the green areas exactly around the
22 city of Mobile.

23 If this plane was not motivated by grabbing just that
24 population, I would have expected the drop to go geometrically
15:22:07 25 just simply straight down from the north and just capture one

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1 irregular geometrically continuous space, rather than this
2 highly irregular draw, fish hooking around just to grab this
3 black population in this corner of Mobile.

4 Q And when you analyze this plan, you did not know whether
15:22:26 5 those boundaries of District 2 were decisions that Mr. Cooper
6 made or the lines of the city of Mobile, correct?

7 A Yes. I -- I looked at the city boundaries of Mobile
8 compared to many of these plans and I cannot give a forensic
9 accounting off the top of my head. Every one that I looked at
15:22:54 10 of the plaintiffs' plans did not conform to the municipal
11 boundaries. If this happens to be one instance where
12 Mr. Cooper got in one that does in some sense follow the
13 municipal boundaries, it may be the case. But it doesn't look
14 like it from here.

15:23:10 15 Q And you would agree looking at Mr. Cooper's District 2 in
16 Mobile County, along the west side it includes red and orange
17 VTDs and along the bottom it includes multiple red and orange
18 VTDs before it goes up in that fish hook; is that right?

19 A It's my understanding that these are very -- that is
15:23:41 20 correct. It is my understanding those are low population
21 geographies that were used with the intention of connecting
22 District 2 around and up into a much higher population and
23 dense black population around Mobile.

24 Q Again, you use the word intention and I just want to
15:24:01 25 clarify. You don't opine on the intent behind any of these

1 illustrative maps, correct?

2 A That is correct. I do not know the intention. I can see
3 the effects of an effort to maintain the contiguity of
4 District 2. It was drawn in such a way -- virtual -- you can
15:24:21 5 see it virtually goes down to a one-lane road on the western
6 border before it expands again and circles up to grab that
7 green high dense black population.

8 So the appearance is that the effort was to draw and
9 connect District 2 as efficiently as possible to get access to
15:24:43 10 that black population in Mobile. The appearance, if I may.

11 Q You are drawing inferences of an effort based on the
12 appearance of the district; is that right?

13 A Yes. The population to the north of Mobile in this map
14 has more population, and, again, this is my independent opinion
15:25:07 15 and observation, that if Mr. Cooper had drawn this district
16 straight down into Mobile with this configuration, that he
17 would not necessarily have been able to achieve the black
18 majority. He may have only -- again, it's an opinion, may have
19 only been able to achieve this by connecting that area in
15:25:31 20 Mobile with very low population, admittedly low black
21 population VTDs in order to get there.

22 Q That's not an opinion you express anywhere in your report,
23 correct?

24 A That's correct. Yeah. This is just an observation
15:25:45 25 looking at the map and then studying this with other maps as I

1 observed these draws to go get Mobile.

2 Q We can take down this exhibit.

3 You mentioned already that you did not look at

4 Mr. Cooper's Illustrative Plan 7 submitted alongside his

15:26:11 5 supplemental report; is that right?

6 A Yes, that's correct.

7 Q So you don't know if Illustrative Plan 7 kept the city of
8 Mobile whole in District 2, correct?

9 A Do not.

15:26:26 10 Q Turning back to your first report on your analysis of the
11 Hatcher plan. You criticize the Hatcher plan on page 20 of
12 that report for expanding the existing boundaries around
13 Birmingham in a very nearly exact way to only add heavily black
14 VTDs and to avoid less black VTDs; is that right?

15:27:05 15 A Yes, ma'am.

16 Q Birmingham is in the center part of Jefferson County; is
17 that right?

18 A Yes, that is correct.

19 Q And you know from your experience in mapping and
15:27:24 20 evaluating these maps that the western portion of Jefferson
21 County is the heavily white portion of Jefferson County; is
22 that right?

23 A More so, for sure, yes.

24 Q And the Hatcher plan, as you recall, does not extend to
15:27:39 25 the western boundary, the western border of Jefferson County?

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1 A Yes. I recall that. I am going from memory, but I
2 believe that's true.

3 Q Okay. Let's pull up Mr. Cooper's Illustrative Plan 1, and
4 specifically District 7 in that plan.

15:27:58 5 This is plaintiffs' exhibit -- Caster Plaintiffs'
6 Exhibit 20. This was included in the exhibits to Mr. Cooper's
7 report and those again are exhibits that you had not reviewed
8 in preparing your own report, correct?

9 A Yes. Yes, that's correct.

15:28:19 10 Q So do you see here how Mr. Cooper's configuration of
11 District 7 includes the western portion of Jefferson County?

12 A Yes, I do.

13 Q And in the interest of time, I'm going to represent to you
14 that it does this in at least three other illustrative plans
15:28:40 15 that Mr. Cooper provides. Does that sound right, based on your
16 memory or your evaluation of these plans?

17 A It sounds about right.

18 Q So in that respect you would agree that Mr. Cooper's
19 illustrative plans, including this one, differ from the Hatcher
15:28:56 20 plan, correct?

21 A There are -- without a doubt there are some similarities
22 and some differences between the plans. When I talk about them
23 being similar, it is a very high level, again, focusing on some
24 similarities and how adjustments were made in parts of
15:29:15 25 Birmingham, some similarities in how District 2 gets stretched

1 and some similarities in how Mobile ends up getting wrapped in,
2 seemingly unavoidably, to create a second black
3 majority-minority district.

4 Beyond that, details such as whether we go into the
15:29:33 5 western side of Jefferson County or not to me are smaller
6 details and nuances that, of course, yes, we see that in
7 Duchin's plan as well, but there are details like that that --
8 subtle differentiations between the plans, but I subordinate
9 those in my analysis to the larger ones that actually drive the
15:29:55 10 concentration of black populations in these two districts.

11 Q When you were evaluating the Hatcher plan you believed it
12 was important to note that in Jefferson County the plan
13 included the heavily black areas of Jefferson County around
14 Birmingham, and excluded the heavily white areas in Jefferson
15:30:16 15 County, correct?

16 A My analysis showed that to be the case and we provided an
17 exhibit with some detailed maps that illustrate that to be
18 true.

19 Q In the Hatcher plan?

15:30:28 20 A Yes, ma'am.

21 Q You did not similarly assess the extent which Mr. Cooper's
22 plans included the heavily black portions of Jefferson County
23 and excluded the heavily white portions of Jefferson County,
24 correct?

15:30:42 25 A I did not. To be precise, I did not include that in my

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1 report, but the degree that his plan goes up into and around
2 Pinson and Gardendale, even though I can't see the exact
3 boundary compared to my maps, yes, there are places where his
4 maps draw captures black population in the north east corner of
15:31:05 5 Jefferson County and in some cases there, excludes adjacent
6 white VTD -- more predominantly white VTDs. It's not easy to
7 illustrate that from this map, but it is true.

8 Q Let's go to your map, and I don't have that at the ready,
9 which map we're looking at.

15:31:26 10 But the one that you say would show the BVAP or the black
11 concentration. Do you know what map we're looking at in your
12 report for that?

13 A One of the Hatcher.

14 Q Oh, I'm sorry. I want to look specifically at
15:31:49 15 Illustrative Plan 1 as depicted in your report. Mr. Cooper's
16 Illustrative Plan 1.

17 A Plan 1.

18 MR. DAVIS: Ms. Khanna, I have that -- turned to that
19 map. Would you like me to share the page number?

15:32:12 20 MS. KHANNA: That would be great. Thank you, Mr.
21 Davis.

22 THE WITNESS: 78.

23 BY MS. KHANNA:

24 Q Excellent. Can you --

15:32:16 25 A 78 in my report.

1 Q Let's pull that up, page 78 of Defendants' Exhibit 4.

2 Thank you, Mr. Davis. Thank you, Mr. Bryan.

3 A Yeah, that's correct.

4 Q Okay. Make sure I'm looking at that. So you would --
15:32:30 5 sorry. Go ahead.

6 A This map shows my point that when you look at the
7 northeast corner of District 7 in Birmingham, you don't really
8 even have to zoom in to see that where the black line is drawn,
9 everything outside the black line is the lower density black
10 population and very carefully everything inside the black line
11 as part of District 7 is green to dark green, high density
12 black population.

13 Q You can see here that the western portion of Jefferson
14 County, which is the heavily white portion of Jefferson County
15 is included in Mr. Cooper's illustrative District 7 in a way
16 that it was excluded in the Hatcher plan, correct?

17 A Yes, I believe that to be true. Each variation of
18 District 7 would need to include some white population,
19 somewhere in order to get up to the exact population threshold,
15:33:44 20 whether Mr. Cooper does it here, Dr. Duchin does it somewhere
21 else, or Hatcher does it somewhere else, isn't really material
22 or as material to me as the fact that each of these plans goes
23 very carefully to get exactly the black population out of
24 Birmingham necessary to create a black majority district.
15:34:03 25 Wherever the white people are after that to balance out the

1 population is less relevant.

2 Q It's less relevant where the white people are. Is that
3 what you just said?

4 A Yeah. When you are devising a plan for a black majority,
15:34:23 5 the most important thing to ensure that you are going to get
6 your 50 percent black majority is making sure you have an
7 enumerator that has sufficient number of -- with geographically
8 compact black population. And the only way to do that is to
9 make sure you build an enumerator with this large core
15:34:44 10 concentration of black people in and around Birmingham.

11 Q But you made a point of criticizing the Hatcher plan for
12 including heavily black VTDs and avoiding less black VTDs,
13 correct?

14 A Yes. That's correct.

15:35:00 15 Q You would agree that where a district includes less black
16 VTDs, under your own analysis of the Hatcher plan, that would
17 be relevant, correct?

18 A I'm sorry. Could you restate the question?

19 Q Sure. I know that was not clear. If I understand your
15:35:21 20 testimony correctly, you are now saying it's more important to
21 look at whether a district includes the heavily black VTD s,
22 not the heavily white VTDs, correct?

23 A Well, it's a comprehensive analysis. You have to end up
24 looking at all of them. But if you are looking at a plan to
15:35:36 25 say whether you form an opinion or an assessment of whether a

1 draw was made for the purpose of including or excluding black
2 population, because you are trying to draw a black majority
3 district, it is most relevant to look at where and how those
4 lines were drawn, and if there are highly segregated black and
15:35:59 5 white populations in different VTDs, such as there are in
6 northeastern Birmingham, it's relevant to note that when the
7 map drawer had a choice, she or he drew a line in a very exact
8 way, just to include -- make sure just to include as
9 efficiently as possible all the dense black heavily populated
15:36:22 10 VTDs there that they needed to make sure District 7 got over
11 50 percent on the whole.

12 Q It's also relevant to evaluate the extent to which that
13 map drawer included heavily white VTDs in the same district,
14 correct?

15:36:37 15 A Yeah. And they would have to somewhere in the plan. And
16 I agree that there's probably some differences in where
17 Duchin -- and Dr. Duchin and Mr. Cooper and Hatcher acquired
18 that white population to get to the total, where to me it is
19 less important where they got it. They all had to somewhere.
15:36:57 20 Mr. Cooper chose to get it here in western Jefferson County and
21 that's fine.

22 Q So you would agree that in creating a district that is
23 majority black, a map drawer would have to include some
24 portions that are heavily black and some portions that are
15:37:11 25 heavily white?

1 A I would agree with the assessment they would have to get
2 some portions -- the most important is they would have to get
3 half the population black, no matter how you define it, whether
4 the remainder is white, Asian, Native Hawaiians, multi-race is
15:37:31 5 less relevant. It doesn't necessarily need to be expressly
6 non-Hispanic white population, but it's frequently the case.

7 Q But some portions would be heavily black, some portions
8 will not be heavily black --

9 A That's correct. Yeah. I like that better.

15:37:47 10 Q We can take down the exhibit. Mr. Bryan, in your initial
11 report in this case, pages 16 to 17, you discussed this
12 community of interest that you have spoken about between Mobile
13 and Baldwin counties; is that right?

14 A Yes, that is correct.

15:38:09 15 Q And that entire discussion is based on the trial testimony
16 of former Representatives Bonner and Byrne from the Chestnut
17 case; is that right?

18 A In my report, I rely heavily on that testimony, but I
19 independently spent time looking at some of the history of
15:38:31 20 Mobile and Baldwin, the development of that area and the
21 evolution of their relationship together, just personal history
22 research in background. So I rely in Byrne and Bonner in my
23 report. I also did personal learning research on the area as
24 well.

15:38:52 25 MR. DUNN: Your Honor, I object -- I was trying to let

1 Mr. Bryan finish.

2 I object to everything after the last three words and move
3 to strike. It's not responsive and it's completely outside of
4 the scope of his report or his expertise.

15:39:05 5 JUDGE MARCUS: Let's move on. Denied. But let's try,
6 Mr. Bryan, to answer the question as it's asked. If there's
7 something else, it will be brought out on redirect by
8 Mr. Davis, I'm quite sure.

9 You may proceed, counsel.

15:39:25 10 THE WITNESS: Yes, Your Honor.

11 MS. KHANNA: Thank you, Your Honor.

12 BY MS. KHANNA:

13 Q Your analysis of the community of interest between Mobile
14 and Baldwin counties as presented in your report relies
15:39:35 15 exclusively on the trial testimony of former Representatives
16 Bonner and Byrne; is that correct?

17 A My testimony in the report did rely on that testimony by
18 Byrne and Bonner, yes.

19 Q And to the extent you looked at anything outside of that
15:39:52 20 testimony, you have not cited any of that information in your
21 report?

22 A Yes.

23 Q On page 17 of your report, and we can pull that up -- this
24 is Defendants' Exhibit 2, page 17. You state toward the
15:40:12 25 bottom, Due to time constraints, I will rely on this history,

1 evidence and testimony as my defense of why Mobile and Baldwin
2 counties are an inseparable COI. Did I read that correctly?

3 A Yes, that is correct.

4 Q You can pull this down.

15:40:29 5 Just to be clear, that history, evidence and testimony
6 that you note there is the Bonner and Byrne trial testimony
7 that you cite in your report, correct?

8 A That is correct.

9 Q It's nothing more than that, there's nothing more that you
15:40:47 10 cite in your report, correct?

11 A I read all of the testimony and selected those as
12 illustrative and valuable examples that I base my
13 conclusions on.

14 Q When you discuss, quote, My defense of why Mobile and
15:41:07 15 Baldwin counties are an inseparable community of interest, why
16 did you feel it was the need to mount your defense about the
17 community of interest between Mobile and Baldwin counties?

18 A As with any expert working on a case, trying to deeply
19 know and understand how and why maps are drawn as they are, I
15:41:34 20 felt it was personally important to deeply understand what the
21 environment is and whether there was cause or reason to divide
22 those or if there was any benefits or drawbacks to drawing the
23 map in that way because it deviated significantly from the way
24 that the map has been drawn in that corner of the state for a
15:41:55 25 long time. I believe the 1970s, if I am not mistaken.

1 So the purpose of that was to ensure that I had an
2 understanding and was able to say that those were or were not a
3 community of interest.

4 If I had found no evidence that Baldwin and Mobile
15:42:14 5 counties were a community of interest, let alone potentially a
6 strong community of interest, then I would not have had as
7 strong of a personal offense, certainly I don't have the
8 expertise to say that it's unreasonable to try and draw a
9 district down into capture that population in Mobile the way it
15:42:36 10 was done in the plaintiffs' plans.

11 Q Were you instructed by counsel to provide a defense of a
12 community of interest between Mobile and Baldwin counties, or
13 did you arrive at an independent conclusion that this was a
14 community of interest worth protecting?

15:42:57 15 A I arrived at that conclusion on my own, given the
16 significant change from the existing plan. I felt it important
17 to go investigate that and determine on my own, independently
18 form an opinion of whether that was a community of interest or
19 not.

15:43:17 20 Q That was the only community of have you saw fit to
21 investigate?

22 A Given that that part of the state was the most significant
23 departure from the existing plan and knowing that particular
24 area did have a very strong social and economic tie around that
15:43:40 25 area, that's the one I found to be most compelling and most

1 notable if it was going to be split.

2 There are other counties that were split, particularly
3 around the edges of the Black Belt that were lower population,
4 less social connection, less economic connection, that it did
15:43:57 5 not appear in my expert opinion to make a difference or split a
6 particular community of interest in other parts of the plan the
7 way that it did in Mobile and Baldwin counties.

8 Q You are not from Alabama, correct?

9 A Certainly, no. I am a Virginia boy.

15:44:12 10 Q You have never lived in either Mobile or Baldwin counties?

11 A No, ma'am.

12 Q So your understanding of that community of interest that
13 you discussed between Mobile and Baldwin counties is based on
14 the lay witness testimony of Representatives Bonner and Byrne
15:44:31 15 that you were provided by counsel in this case, correct?

16 A Primarily, yes.

17 Q That's the entirety of your expert -- the basis of your
18 expert opinion in this case?

19 A Yes.

15:44:41 20 Q Did you also review the trial testimony of anybody else in
21 the Chestnut trial regarding the differences or similarities
22 between Mobile and Baldwin County?

23 A Not that I recall.

24 Q So you did not review the testimony of Lakeisha Chestnut
15:45:02 25 regarding her understanding of the differences between Mobile

1 and Baldwin counties; is that right?

2 A I did not, no. That was certainly not a lack of interest.
3 It was more expediency in trying to get whatever I could as
4 fast as I could for the preparation of my expert report.

15:45:23 5 Q You were not provided with that testimony; is that right?

6 A I don't recall.

7 Q What about this trial and this case? Did you review
8 Dr. Bagley's supplemental report on the similarities or
9 differences between Mobile and Baldwin counties?

15:45:48 10 A Yeah. There was a supplemental report by Bagley that was
11 provided. I reviewed it briefly.

12 Q And did you hear Captain Dowdy testify earlier in trial
13 about the differences between Mobile and Baldwin counties?

14 A I don't recall that I did.

15:46:04 15 Q Did you review any evidence regarding the differences
16 between Mobile and Baldwin counties when you were providing
17 your expert report in this case?

18 A Yeah, of course. In reviewing the history and the
19 development of the relationship of those counties to each
15:46:38 20 other, I learned a great deal about the evolution at the time
21 when Mobile County and Baldwin County were, in fact, separate
22 because of the day there, there was less transportation, less
23 communication, less connective tissue between those two
24 geographies, and they have since grown because of development
15:46:59 25 of infrastructure to be much more closely related than they

1 were historically.

2 I would characterize my analysis of the community of
3 interest of Mobile and Baldwin, frankly, to be more focused on
4 the excision, extraction of Mobile, the city of Mobile from
15:47:22 5 Mobile County probably more so than, you know, whether or not
6 the corner of Baldwin County is connected in District 2 to
7 Mobile County or not. It's really the focus on the grab of the
8 city of Mobile, the black population of Mobile that caught my
9 attention.

15:47:41 10 Q The evidence you reviewed in determining your analysis of
11 this community of interest was the lay witness testimony of two
12 witnesses who believed there was a community of interest
13 between Mobile and Baldwin County, correct?

14 A Yes.

15:47:59 15 Q You did not review any evidence, any contrary evidence
16 from any other witnesses on this issue, correct?

17 A No.

18 Q My last point, Mr. Bryan, you conclude in the passage we
19 just looked at that Mobile and Baldwin counties are an
15:48:21 20 inseparable community of interest; is that right?

21 A That is the conclusion I arrived at from my research, yes.

22 Q So it's your belief that those two counties cannot be
23 separated in a congressional plan, correct?

24 A That is the conclusion I draw from the evidence that I
15:48:40 25 reviewed, yes.

1 Q Is it your understanding that the Alabama Legislature
2 believed that those two counties were inseparable?

3 A I do not know.

4 Q You would agree there was no mention of Mobile or Baldwin
15:48:59 5 counties in the redistricting guidelines that we have gone
6 over, correct?

7 A I don't believe there were any specific descriptions of
8 secret communities of interest that could or could not be
9 broken in the guidelines, no.

15:49:15 10 Q Precisely. They don't mandate that Mobile -- the Mobile
11 Baldwin community of interest stay together or any other
12 particular community of interest stay together, correct?

13 A They do not specify, no.

14 Q And certainly if the reapportionment committee believed
15:49:34 15 that a particular community of interest was so inviable, they
16 could have said as much in their guidelines, correct?

17 A They could have said so. My interpretation and analysis
18 says that given that those two counties have been together for
19 some 50 years now through multiple redistricting cycles, if
15:50:01 20 there was a need, an interest, value in separating them, that
21 may have come up in the past and it has not. And my research
22 suggests that these counties are closer, have grown closer
23 socially and economically throughout that 50-year time period.

24 So with no evidence that any splits have been attempted
15:50:21 25 before for any reason, is my conclusion, especially given the

1 expert testimony that I reviewed that those two districts are
2 something that historically have been retained and the evidence
3 I reviewed says there's close consecutive tissue that suggests
4 suggests that they should remain retained.

15:50:42 5 Q I think you just said based on the expert testimony you
6 reviewed. You did not review any expert testimony --

7 A Byrne and Bonner.

8 Q Correct.

9 A Yes.

15:50:50 10 Q You would agree that the redistricting community
11 guidelines do, in fact, express certain criteria that are
12 inviable, correct?

13 A Yes. That's correct.

14 Q And what are those?

15:51:04 15 A Well, complying with the law, making sure that you've got
16 equitable population for sure.

17 Q And also complying with the Voting Rights Act, right?

18 A Yes, ma'am.

19 Q Thank you, Mr. Bryan, I have no --

15:51:23 20 JUDGE MARCUS: I did not hear the answer to that
21 question. Maybe it was me. Did you answer that question,
22 Mr. Bryan?

23 THE WITNESS: Yes, sir. The answer was in the
24 affirmative, that is correct. The Voting Rights Act it would
15:51:35 25 be the other inviable role.

1 JUDGE MARCUS: All right. Thank you very much. Did
2 that conclude it for you, Ms. Khanna?

3 MS. KHANNA: It does, Your Honor. Thank you,
4 Mr. Bryan. I pass the witness.

15:51:47 5 JUDGE MARCUS: All right. Mr. Dunn, do you need a
6 break or do you want to get started? What's your pleasure?

7 MR. DUNN: I know it's late, but I think we could
8 probably --

9 THE WITNESS: Could I just -- 5 minutes to grab a
15:52:00 10 drink of water and I can --

11 JUDGE MARCUS: Absolutely.

12 MR. DUNN: We could use at least five.

13 JUDGE MARCUS: We will absolutely take a short break
14 for you, Mr. Bryan and for all of us.

15:52:12 15 Quick question: Just help me as I think through the rest
16 of the afternoon.

17 I ask the question not to cut you off, but just to get
18 some sense, because I know Mr. Blacksher is to use my baseball
19 lingo on deck. So tell me how long you think you will be as
15:52:32 20 you go forward and you take the time you need.

21 MR. DUNN: Ms. Khanna covered a lot of things that I
22 intended to cover. I really have to do this on the fly. I
23 will be an hour. I will try not to be more than an hour and a
24 half, but it will be an hour, and we are looking at 5:00
15:52:50 25 o'clock. I'm sorry.

1 JUDGE MARCUS: Okay. And then we will follow with
2 you, Mr. Blacksher. Thanks very much and we will take as much
3 time as you need to examine the witness. We will take a
4 five-minute break at this point. Thank you.

15:53:06 5 (Recess.)

6 JUDGE MARCUS: Thank you. I think we have everybody.
7 I thought we did. We are going to begin with the
8 cross-examination of Mr. Dunn of Mr. Bryan.

9 Mr. Dunn, you may proceed. Thank you.

11:03:41 10 CROSS-EXAMINATION

11 BY MR. DUNN:

12 Q Thank you, Judge Marcus.

13 Good afternoon, Mr. Bryan. Can you hear me?

14 A Yes, sir. Good afternoon.

15:59:46 15 Q Okay. If at any point in my examination my questions
16 aren't clear, you don't understand me, please indicate that.
17 We have a virtual connection. I know it's been a long day, but
18 I will try and be as clear and succinct as I can.

19 Let me start with your background a little bit.

16:00:10 20 In your reports, you describe yourself as a demographer
21 and a political redistricting expert; is that correct?

22 A Yes, that is accurate.

23 Q But then, Mr. Davis, when he qualified you, also talked
24 about statistical transformation?

16:00:31 25 A Yeah.

1 Q Which of those expertises that you referred to your report
2 includes statistical transformation?

3 A Yes, sir. It's -- statistical transformation is an area
4 of data science and analytics. And in this particular case,
16:00:52 5 because of questions around the calculation of the Schwartzberg
6 compactness measure, I felt it reasonable to qualify myself as
7 having background and experience in a specific area of
8 mathematics that was relevant to my use of the adaptation of
9 the Schwartzberg measure.

16:01:11 10 It's a subset and I believe less relevant part of my
11 background and expertise than the top line demography and
12 political redistricting experience.

13 Q Okay. But so that's only related to the reformation of
14 Schwartzberg in connection with compactness, right?

16:01:29 15 A Yeah. Yeah. That really doesn't have applicability
16 anywhere else.

17 Q And it's in addition to the areas of expertise that are
18 referred to in your report?

19 A Yes, sir.

16:01:38 20 Q Okay. Mr. Davis also mentioned predicting population
21 shifts.

22 A Yes, sir.

23 Q Where does that fit?

24 A Part of my background and experience starting with my work
16:01:55 25 at the Census Bureau was developing population estimates and

1 population projection techniques. In this case, in Singleton
2 in particular, it was important to me that when I saw that the
3 use of counties was going to introduce some amount of
4 population deviation, that I help the Court and I help the
16:02:17 5 experts and I help counsel understand that the impact of having
6 even a small population deviation at the beginning of the
7 decade after redistricting is not the end of the consequences.

8 The consequences of even a small deviation of population
9 in a plan starting right now has far-reaching longstanding
16:02:42 10 significant consequences.

11 My experience in developing peer-reviewed professional
12 population estimates and projections, the relevance is that I
13 was able to use that expertise to develop those projections to
14 help the Court and help counsel understand what I would expect
16:03:03 15 to be the deviation at the end of 10 years compared to a plan
16 such as the state of Alabama's, which would be starting with
17 zero deviation.

18 Q Okay. So that area of expertise doesn't have anything to
19 do with your testimony vis-à-vis the Milligan case or
16:03:21 20 specifically Dr. Duchin's work, right?

21 A Yes, sir, that's correct. It's relevant to Singleton.

22 Q Then I will let Mr. Blacksher worry about it.

23 Is there any other expertise you claim or utilized in
24 connection with this case other than what you have testified
16:03:37 25 about and we have discussed?

1 A No, I don't believe so.

2 Q Okay. And you didn't bring to bear any other areas of
3 expertise in drafting your reports in this case, did you?

4 A No, I don't believe so.

16:03:51 5 Q Now, demography is the statistical study of human
6 populations; is that right?

7 A Yes, sir.

8 Q And that's the area you have experience and training in,
9 right?

16:04:04 10 A Yes, it is.

11 Q And it focuses specifically on issues of size, density,
12 and distribution of statistical characteristics, is that fair?

13 A That is the core of the study. It can expand into other
14 areas of sociology, economics, other spaces. But you have the
16:04:26 15 core correct.

16 Q Okay. And your formal educational training is in that
17 area; is that correct?

18 A It's one part of my training, yes.

19 Q And what is the -- can you describe the expertise you have
16:04:41 20 in political redistricting?

21 A Sure. So I have worked --

22 Q I don't want to know the experience. I want to know the
23 scope of what you think that means.

24 A Yeah. So the scope of that for me and my area of
16:04:57 25 expertise has been the -- what I call in data science terms,

1 it's called CMAR -- Collect, Manage, Analyze and Reporting of
2 Data. And that's demographic data relevant to redistricting.

3 I have expertise in collecting demographic data, the
4 management, the analysis, and the reporting of demographic data
16:05:23 5 and conclusions of those demographic data to support
6 districting and political redistricting cases. I've leveraged
7 that expertise in both small area and large area, drawing whole
8 plans and defending plans and critiquing plans in my career.

9 Q Okay. Anything else?

16:05:43 10 A No, sir.

11 Q Okay. You have two master's degrees; is that correct?

12 A Yes, sir.

13 Q One is in management and information systems, right?

14 A That is correct.

16:05:56 15 Q And the other one is in statistics?

16 A It is in urban studies and planning with a core of
17 demography in statistics.

18 Q And that completed your education; is that right?

19 A I have one other degree, a chief information officer

16:06:13 20 certification from the GSA. That's the extent of my
21 professional formal higher education and training.

22 Q And you haven't studied history since you were an
23 undergraduate, right?

24 A I study history every day, but for my professional
16:06:27 25 training, no, not since my undergrad.

1 Q And not in any formal matter? I mean, we all read the
2 papers and keep ourselves informed of all sorts of things.

3 A Of course.

4 Q And by the same token, you don't consider yourself to be a
16:06:41 5 political scientist, even though you may keep yourself informed
6 of developments and government?

7 A That is correct and the relationships, professional and
8 personal, that I maintain with people in redistricting who do
9 political work for sure.

16:06:57 10 Q I will come to that.

11 And you never formally studied sociology, anthropology or
12 political science, right?

13 A I did not study the anthropology or political science. I
14 have studied sociology as part of my undergraduate and graduate
16:07:16 15 coursework, but I would not characterize myself as a sociology
16 expert.

17 Q That's exactly what I was going to answer. I appreciate
18 your anticipating my question.

19 Did you ever study the history of the U.S. census?

16:07:31 20 A I have some knowledge and experience of the census. I
21 would not consider myself to be Margo Anderson, the nation's
22 census historian.

23 Q Do you have knowledge of how the census operated before
24 the time you were first involved with it in the 1990s?

16:07:46 25 A I have some understanding of it, yes.

1 Q And what was -- where did you get that information?

2 A It was experience working as the director of the Oregon
3 state data center, and that responsibility compelled me to know
4 and understand the source of the census data statistics that
16:08:08 5 were used to support the state data center. It was learning on
6 the job.

7 Q Okay. Let me shift gears. Who retained you in this case?

8 A The Secretary of State, and I have been working with
9 Mr. Jim Davis of the Attorney General's Office.

16:08:24 10 Q So it was Mr. Merrill himself who retained you? Secretary
11 Merrill actually was involved in your hiring; is that your
12 testimony?

13 A I would defer to the exact contractual agreement with --
14 and ask Mr. Jim Davis to answer that question what the sequence
16:08:44 15 of retention was.

16 Q Well, I am not asking about the sequence of retention. I
17 am asking about who was the person who hired you?

18 A Jim Davis.

19 Q Okay. And he's the counsel who questioned you this
16:08:58 20 morning?

21 A Yes. Yes.

22 Q When did he hire you? I think you said sometime in the
23 fall, right?

24 A Yeah. It was about probably about three months ago.

16:09:07 25 Q And you have a written retainer agreement?

1 A I do.

2 Q Does that describe the scope of what you were hired to do?

3 A There were two retainers. There was an emergency retainer

4 and then there was an ongoing retainer. And, yes, both those

16:09:25 5 documents described the scope of my work as being demographic

6 analysis and critique of plans, areas I have written about.

7 Q Demographic analysis of what?

8 A Yes. The characteristics of the original Alabama plan,

9 the enacted Alabama plan. And at the time, the Singleton plan,

16:09:55 10 anticipating that there were going to be other plaintiff plans.

11 So the anticipation was to be able to understand and

12 characterize the demographic features and performance of those

13 plans.

14 Q What came to be the Duchin and Cooper plans?

16:10:12 15 A And, yes, certainly with time. Then there were Duchin and

16 Cooper plans were introduced as well. And so I -- even with

17 the compressed timeframe, I did my best to apply the same type

18 of analytics to those plans as I did to the earlier Singleton

19 plan.

16:10:29 20 Q I understand that and we will get to what you did. I'm

21 just working on the scope right now, okay?

22 A Yes, sir.

23 Q In your reports, did you identify all of the information

24 that you relied upon in order to form the opinions you

16:10:43 25 expressed?

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1 A I believe I did.

2 Q Okay. And you identified the sources that you used to
3 obtain that information; is that correct?

4 A Yes, I did.

16:10:54 5 Q Did you obtain any information at all directly from any
6 legislators in Alabama?

7 A No, I did not.

8 Q Have you ever met a legislator in Alabama?

9 A No, I have not had the pleasure.

16:11:13 10 Q So you are not -- your clients don't include the
11 intervenors in this case who are such legislators, right?

12 A That's right.

13 Q And you have never met the co-chairs of the legislative
14 reapportionment committee?

16:11:27 15 A No, I have not.

16 Q And what you know about -- what you relied upon in your
17 court in reference about what former Congressman Bonner and
18 former Congressman Byrne said came from reading testimony that
19 Mr. Davis provided to you, right?

16:11:44 20 A That's correct.

21 Q So you have never met any federal legislators or Congress
22 representatives either, in connection with this work, right?

23 A No, I have not.

24 Q Have you ever met any legislators in Alabama or
16:11:57 25 congressional representatives from Alabama in any other work in

1 your life?

2 A No, I have not.

3 Q Okay. Before this case, had you done any work in
4 connection with Alabama?

16:12:10 5 A Yes, I have.

6 Q When was that?

7 A It was earlier in 2021. I was connected to Mr. Davis in
8 the Attorney General's Office with an interest in understanding
9 the impact of a new innovative Census Bureau system called
16:12:31 10 differential privacy. It's a new method of disclosure
11 avoidance. I was asked to provide demographic expertise and
12 assessment of the impact of differential privacy on the census
13 data that would be used by the State of Alabama for the purpose
14 of redistricting. And that work was completed in March, April,
16:12:54 15 May of 2021.

16 Q So before 2021, did you have any experience working in
17 Alabama?

18 A No.

19 Q Had you ever been to Alabama for professional reasons?

16:13:07 20 A Just for conferences and other personal relationships.

21 Q You have friends that live in Alabama?

22 A Not currently.

23 Q Okay. Now, you say at page 5 of your report that the plan
24 at issue in this case was drawn in compliance with the
16:13:37 25 published criteria for redistricting. Do you remember saying

1 that?

2 A The plan -- which plan are you referring to? Is that
3 the --

4 Q Well, I was going to ask you -- I apologize for having cut
16:13:52 5 you off. I will try not to do it again.

6 A Which is the plan that you are referring to? I don't
7 recall the exact language.

8 Q Okay. You referred, I believe, to the plan at issue.
9 It's on page -- do you have a copy of your report?

16:14:10 10 A I do. It's the Singleton report?

11 Q I think it's the Singleton report, yeah.

12 A Okay. The plan at issue could have been the enacted
13 Alabama or it could be the Singleton plan. There was a lot at
14 issue.

16:14:30 15 JUDGE MARCUS: The question, counsel, is are we
16 referring to the first report Mr. Bryan did and relates simply
17 to the Singleton plan, or are we referring to the second plan?
18 I think -- I think on the screen --

19 MR. DUNN: There are three plans. Hold on a second.

16:14:56 20 BY MR. DUNN:

21 Q Yep. I'm actually referring to your report in the Merrill
22 and Caster cases. It's D-2, I believe.

23 A All right.

24 Q And you said -- yes, that's it right there. If you look
16:15:11 25 at the screen, you will see plans were drawn in compliance with

1 the published criteria for redistricting. Does that refresh
2 your recollection?

3 A Yes. Yes.

4 Q Okay. And what plans were you referring to when you said
16:15:36 5 that?

6 A This was the Alabama congressional plan.

7 Q Okay. And then yesterday you testified in response to
8 Mr. Davis's question that the Legislature's 2021 plan was legal
9 and compliant. Do you remember giving that testimony?

16:15:56 10 A Yes, I do.

11 Q Okay. So first of all, when you said that those plans
12 were drawn in compliance with published criteria for
13 redistricting --

14 A Uh-huh.

16:16:11 15 Q -- what published criteria did you mean?

16 A This would have been the reapportionment committee
17 redistricting guidelines.

18 Q And you consider it within your expertise to be able to
19 form an opinion as to that?

16:16:23 20 A If these were the guidelines that were used for the
21 drawing of the plan, I have an ability to look at those
22 guidelines and look at certain of them, not all of them, but
23 certain of them, such as minimum population deviation,
24 one person, one vote, compactness, yeah, I have expertise to
16:16:49 25 speak to several, but not all of the criteria that were

1 published and what I understand to be used for the drawing of
2 the plan.

3 Q But some of them you don't have expertise to opine about?

4 A Yes, that's correct.

16:17:01 5 Q Okay. And then you said the plan was legal and compliant?

6 A Right.

7 Q What's your basis to form an opinion about whether the
8 plan was legal?

9 A Because when I looked at the minimum population deviation
16:17:15 10 and equalizing population, it met that criteria. That's the
11 legal criteria as I said earlier. I don't have a basis to form
12 an opinion of whether it was compliant with the Voting Rights
13 Act. I took that as fact that that plan as it was submitted by
14 the experts who drew the plan that it was. I am not a Voting
16:17:37 15 Rights Act expert.

16 Q So in giving that testimony and writing that language, you
17 made an assumption of compliance with the Voting Rights Act; is
18 that what you are saying?

19 A Yes. And other things that are outside, I did not make a
16:17:51 20 complete inventory of which of these were in my expertise or
21 outside, but for the areas of my expertise, the plan conformed
22 with those areas with which I am an expert.

23 Q So we can modify the language that I referred to, to say
24 to the extent of your expertise, that was your conclusion,
16:18:07 25 right?

1 A That's fair.

2 Q Good. Do you know who drew the plan?

3 A I do not.

4 Q So you never communicated directly with whoever the drawer
16:18:21 5 of the plan was?

6 A I don't even know their name.

7 Q And nobody ever gave you any information on what the
8 drawers' activities were or qualifications were, or anything
9 else about him or her or them?

10 A Literally do not know anything about the -- whoever put
11 the map together.

12 Q Did you ask for any of that information?

13 A No, I did not. I think it would have been inappropriate
14 and would have interfered with my expert assessment of the
16:18:55 15 plan.

16 Q Now, you also said yesterday that race was not looked at
17 in drawing the legislature's plan. Do you remember saying
18 that?

19 A That's what I was told, yes.

16:19:10 20 Q Oh, so the only way you know that is because somebody told
21 you that?

22 A Yes.

23 Q Who told you that?

24 A Counsel.

16:19:20 25 Q So you feel comfortable testifying under oath as to things

1 counsel told you?

2 A If counsel tells me that race was not a factor in drawing
3 it and the mapmaker did not consider that in the drawing of the
4 maps, I have no reason not to believe that. I was not part of
16:19:47 5 the map drawing process, but if things are said about the
6 drawing of the maps, then, yes I have to take that in faith
7 that that's what happened.

8 Q Are there any other things in your report that you don't
9 know personally, but you relied on Mr. Davis to tell you?

16:20:05 10 A I would say that the testimony, for example, presented by
11 Byrne and Bonner was an illustrative example of information
12 that I was looking for to build my expertise that was provided
13 by Mr. Davis.

14 Q Okay. Anything else?

16:20:25 15 A Not off the top of my head. There may be some things, but
16 not that I recall.

17 Q And the published criteria that you refer to are the
18 guidelines, I think there are at least two exhibits previously.
19 I have Exhibit 4. I think they were Exhibit 82; is that right?

16:20:46 20 A The exhibit I have is M-28.

21 Q Okay. I got the numbers reversed. M-28. And those are
22 the May 5th, 2021, guidelines; is that right?

23 A Yes, sir, that's correct.

24 Q And that document contains criteria for redistricting that
16:21:06 25 are contained in Section 2; is that correct?

1 A That is correct.

2 Q And do you understand that to be the governing document
3 that lays out the requirements for the development of
4 redistricting plans in Alabama?

16:21:20 5 A It is my understanding, yes.

6 Q And those criteria apply --

7 JUDGE MANASCO: Your Honor, can I interrupt. Just one
8 moment. I think we may have a technical difficulty. I can't
9 see Judge Moorer anymore, and it may just be my screen because
16:21:36 10 he's a small -- there he is. Okay. I just wanted to make sure
11 he was with us.

12 MR. DUNN: No point in having this examination if we
13 don't have all the judges present, Judge Manasco, I really
14 appreciate you pointing that --

16:21:52 15 JUDGE MANASCO: These little tiny blocks and if
16 somebody moves just a few inches, they slip out of their block.

17 MR. DUNN: Thank you.

18 JUDGE MARCUS: For the record, I am -- have been
19 monitoring the screens fastidiously, and I have seen Judge
16:22:07 20 Moorer from the corner of the screen, from time to time he's
21 moved over to the left side of the screen. And you can only
22 just see a portion of his arm. But I do want this record to be
23 crystal clear that I have observed Judge Moorer at every moment
24 of this testimony.

16:22:27 25 With that, you may proceed, Mr. Dunn.

1 MR. DUNN: Thank you very much, Judge Marcus.

2 BY MR. DUNN:

3 Q So we were talking about the criteria for redistricting
4 which are Exhibit M-28 in evidence, Mr. Bryan. And the
16:22:44 5 question that I started to ask you was whether the criteria
6 that are set forth in Section 2 of that document apply as to
7 all redistricting in Alabama?

8 A You mean all redistricting insofar as the legislature, the
9 senate and State Board of Education?

16:23:09 10 Q Yes.

11 MR. DAVIS: Pardon me. I have no objection. I want
12 to make sure Mr. Bryan has a copy of the document we are
13 talking about if he wishes --

14 Thank you.

16:23:20 15 JUDGE MARCUS: I think he does.

16 THE WITNESS: Yes, sir.

17 MR. DUNN: And I want to make sure that he has it,
18 too, Mr. Davis, so I am glad you pointed that out. Thank you.
19 I would put it up, but I'm just really trying to move along as
16:23:31 20 fast as we can and not burden us with exhibits except to the
21 extent that I have to. But I am happy to put it up if that
22 would be of assistance.

23 BY MR. DUNN:

24 Q If I mention any documents, Mr. Bryan, you don't have or
16:23:43 25 you need to refresh yourself with the language, you just let me

1 know and we will put them up, okay?

2 A Yes, sir. That sounds great.

3 Q Thank you. I appreciate that.

4 A Thank you, sir.

16:23:51 5 Q Okay.

6 A In reading the document, it states at the beginning of the
7 document it's the intention of the provision to include from
8 use census data, da da da. The inference of this document is
9 the criteria for redistricting as it is for all of the plans.

16:24:10 10 I only used this for the purpose of assessing the congressional
11 plans. I did not assess the legislative, senate, or State
12 Board of Education plan.

13 So I do not have a basis for stating factually whether
14 these criteria were used for the development of those plans or
16:24:26 15 not.

16 Q Well, you have seen in the course of this case some
17 reference to the State Board of Education districts and the
18 redistricting for that, right?

19 A I have to be honest. I have only heard about that work
16:24:42 20 and seen it and noted it peripherally. I have had no State
21 Board of Education work as part of this case whatsoever.

22 Q Do you know that the State Board of Education districts
23 were restricted as a result of the 2020 census in Alabama?

24 A That's the -- about the extent of my awareness. That's
16:25:00 25 what the legislature and senate -- yes.

1 Q Okay. So I want to go one step further. Do you
2 understand that that redistricting that was done was done in
3 accordance with the guidelines that are Exhibit M-28?

4 A I assume that they were.

16:25:13 5 Q Okay. Now, is it a fact that these guidelines require
6 compliance with the Voting Rights Act?

7 A Yes.

8 Q And do you understand the fundamental issues that brings
9 us here to this proceeding is the question of whether they do
16:25:38 10 so?

11 A Yes.

12 Q So just to be clear. You have no opinion at all as to
13 whether the congressional plans at issue here, the 2021
14 redistricting plan, does or does not comply with the Voting
16:25:58 15 Rights Act?

16 A I do not have an opinion, no.

17 Q Now, in your report at page 8, and this is D-2. Do you
18 have that?

19 A Yes, sir.

16:26:17 20 Q Maybe we should put this up?

21 A Census --

22 JUDGE MARCUS: Bear with me. What you want to do is
23 put up on the screen what you are referring to, Mr. Dunn.

24 Could you tell us -- this is Defendant Exhibit D-2, the report
16:26:38 25 of Mr. Bryan. Is this just for my help? Report 1 or report 2?

1 I guess this is the second one, right?

2 MR. DUNN: Judge Marcus, there are actually three.

3 JUDGE MARCUS: I understand. But is this the second
4 or the third of the three?

16:26:52 5 MR. DUNN: This is the second. This is -- this is the
6 first report in Merrill and Caster.

7 JUDGE MARCUS: Gotcha. Thanks very much.

8 BY MR. DUNN:

9 Q Mr. Bryan, can you confirm that the document we're looking
16:27:06 10 at that's D-2 in evidence is the first one you wrote in the
11 Merrill and Caster cases?

12 A Yes, sir.

13 Q Okay. Good.

14 MR. DUNN: Mr. Davis, we all agree?

16:27:12 15 MR. DAVIS: We do.

16 JUDGE MARCUS: Let's proceed, counsel.

17 BY MR. DUNN:

18 Q Now, in this report, you refer to criteria that are set
19 forth in by the Congressional Research Service on page 8; is
16:27:45 20 that correct?

21 A Yes.

22 Q Given that Alabama had specifically set forth its own
23 criteria in the redistricting guidelines, why did you choose to
24 refer to the more generic Congressional Research Service
16:28:05 25 reports instead of Alabama's own guidelines?

1 A Yes. My intent in providing this information, as it was
2 with all the reports, was to provide a complete picture, a
3 context, a national view of what traditional redistricting
4 principles are. It is to ground the reader, ground the Court,
16:28:27 5 ground the counsel in what traditional redistricting principles
6 are, and why they are important.

7 The intent here was to provide this larger scale
8 background and context of what these things were, and then to
9 funnel that information down into specifically what the rules
16:28:50 10 in Alabama were. I was not challenging or changing the rules
11 for Alabama or trying to contravene them in any way. It was
12 simply background and context of what they generally are and
13 their relevance.

14 Q So certainly nothing in the Congressional Research Service
16:29:09 15 report would override or modify the specific criteria that
16 Alabama has articulated in its guidelines, right?

17 A No, sir.

18 THE COURT REPORTER: Please do not talk over each
19 other.

16:29:28 20 Q To the extent that I did that, I apologize. I will try to
21 let you finish your answer before I ask my next question.

22 You had a lot of discussion on Ms. Khanna's
23 cross-examination about the definition of black and what you
24 used as the definition of what you call true black. Do you
16:29:57 25 recall that discussion?

1 A The use of the word true in my report refers to my effort
2 to identify plaintiffs' reported black populations.
3 Oftentimes, I do not know what the black populations are that
4 they refer to. I frequently see plaintiffs and other experts
16:30:23 5 refer to black populations that are either incorrect or may not
6 have a proper definition or reference.

7 My goal to identify what I refer to as the true black
8 population is not to pick one that is right or is wrong, but
9 rather to provide a set of guardrails, an in-depth
16:30:43 10 understanding of what the definitions are and then to try to
11 help the experts and the work that I see in the plaintiffs'
12 reports to know exactly what the black populations are that
13 they are using in their analysis.

14 That is the context of what I refer to as true.

16:31:00 15 Q Did you think there was any ambiguity or uncertainty in
16 the definition of black that Dr. Duchin used in her work?

17 A Dr. Duchin is exceptionally attentive to those details and
18 it's much appreciated. There's no lack of clarity at all.

19 Q So you didn't need to clarify the definition in analyzing
16:31:25 20 her work, did you?

21 A I think specific to her plans, no. In general, in my
22 experience in doing this work, this problem comes up
23 repetitively and it's an effort I make in my work to make sure
24 that there is clarity no matter what, however well or not well
16:31:45 25 someone may represent their work.

1 The other reason that I do this, as I mentioned earlier,
2 is not with the case of Dr. Duchin, but in the case of
3 Mr. Cooper, errors can and are made in this. And so my effort
4 is to define my math and to double-check my math and make sure
16:32:05 5 that the data in his reports are, in fact, what they say that
6 they are. And that was the intent of my effort here.

7 Q Okay. But as to Dr. Duchin, that was not an issue or a
8 problem, right?

9 A No. Dr. Duchin did a fine job.

16:32:17 10 Q By the way, did you hear her testimony?

11 A I heard most of it, yes.

12 Q Okay. What other testimony in this case have you been
13 able to observe?

14 A I heard the testimony earlier today, but yesterday the --
16:32:40 15 my focus was really on Duchin's work. I did not hear any of
16 Mr. Cooper's testimony. I had not arrived in Montgomery in
17 time for that.

18 Q Okay. So you heard the Milligan expert, but not the
19 Caster expert testify?

16:32:57 20 A Yes, sir.

21 Q And you said you heard some other testimony yesterday?

22 A Yeah. There was a political scientist that spoke for some
23 time, although that was less relevant, while interesting, it
24 was less relevant to my work.

16:33:11 25 Q Now, did you rely in your work on information that was

1 provided to you by any political scientists?

2 A None of my work was informed by a political scientist. I
3 performed work, demographic, data science and analytic work
4 that was subsequently provided to the political scientists for
16:33:43 5 a small portion of their work.

6 Q What political scientist?

7 A I believe his name is Dr. Trey Hood.

8 Q And how do you know that your work was provided to
9 Dr. Hood?

16:33:55 10 A Through conversations with counsel, Jim Davis. There was
11 a request for some information about the VTD boundaries,
12 location of voters in Washington County, which is an area of
13 expertise on my team.

14 Q Is it correct that you have not, however, communicated
16:34:20 15 with Dr. Hood in connection with any of the work in your
16 report?

17 A That's correct -- yeah, that's correct.

18 Q And you haven't relied on anything that he had previously
19 told you?

16:34:28 20 A No.

21 Q And you knew Dr. Hood before; is that correct?

22 A That's correct.

23 Q You worked with him before?

24 A Yeah. There have been cases, sure.

16:34:37 25 Q Any other political scientists?

1 A Not on this case.

2 Q Let me withdraw that.

3 A No.

4 Q There are no other political scientists you have
16:34:48 5 communicated with in connection with the preparation of your
6 reports, right?

7 A No.

8 Q And you are not relying on anything that any other
9 political scientist told you or information they provided to
16:34:59 10 you previously in connection with your report; is that right?

11 A Only insofar as that I am aware from a political science
12 perspective what the preferences of the political scientists I
13 work with are in terms of defining the race groups for the
14 purpose of their *Gingles II* analyses.

16:35:27 15 That's the only extent to which I have used any previous
16 knowledge of working with my political scientists in this case.
17 It's just that historic knowledge and relationship.

18 Q So going back to where we were before, you understand
19 there's a choice in defining the black population that you
16:35:48 20 made, correct?

21 A I do not make the choice. I prepare the variety of
22 options that are available. And I provide that option in my
23 analysis for my own critique of plaintiff plans and I also
24 provide those options to political scientists who may use that
16:36:11 25 information for their analyses.

1 Q So it's your testimony that you did not express a
2 preference for single-race black over any-part black in your
3 report and your work in this case?

4 A I do not have a preference. There is not a right or a
16:36:32 5 wrong way. Both of the ways that you can measure this have
6 significant value and importance in these cases. I believe my
7 statement with regard to the single-race is my understanding,
8 again, from my experience with political scientists that more
9 homogeneous groups are easier to characterize and to analyze
16:36:53 10 and to defend than more heterogeneous groups. And that is no
11 way a judgment or ranking of one particular method over the
12 other.

13 Q And you don't have any expertise to express a preference
14 for which should be used in connection with the analyses that
16:37:16 15 are at issue in this case; is that right?

16 A I certainly do not. No, that's correct.

17 Q And you do understand, I take it, that Dr. Duchin made a
18 choice different from the one you're now talking about, that
19 she used any-part black, right?

16:37:31 20 A Yeah. Yeah. That's correct. And there's -- there can be
21 reasons individual experts may do that, and I know those and
22 respect those. It's a fine choice if that's appropriate for
23 them.

24 Q So when you critiqued her work --

16:37:45 25 A Uh-huh.

1 Q -- in terms of whether the districts that she proffered
2 were majority black on the basis of your analyses, you didn't
3 mean to express a judgment as to what definition of black was
4 appropriate for that?

16:38:03 5 A No. And that's why I do my analyses of these types of
6 plans consistently, same way every time, is that I present both
7 of the statistics in my assessment and my summary, just simply
8 state factually whether they do or do not rise to meet a
9 majority-minority threshold under one criteria or another.

16:38:26 10 There is no judgment or assessment of it failing or succeeding
11 based on one or the other. It's a simple factual black and
12 white observation.

13 Q And to cut to the chase with Dr. Duchin's work, you found
14 that even using the sole-race black criteria, one of her plans
16:38:49 15 qualified as a majority-black plan in both of the districts
16 that she identified, correct?

17 A Yes, that's correct.

18 Q And if you use the any-part black test, you confirmed her
19 analysis that all of her plans did so?

16:39:05 20 A Yes, that's correct.

21 Q And you understood that her plans, the four plans she
22 presented were representative plans, right?

23 A Yes.

24 Q That were designed specifically to cross the majority
16:39:18 25 threshold and demonstrate the possibility that in Alabama you

1 could design a plan that contained two majority-black
2 districts, right?

3 A Yes. She was clear that was her intent, the direction and
4 intention of her efforts, yes.

16:39:35 5 Q And using her definition, she fully succeeded?

6 A She appears to have, yes.

7 Q Great. And by the way, when we talk about majority, do
8 you understand that the definition of majority is anything
9 above 50 percent?

16:39:49 10 A It's as a demographer following the law, it is literally
11 50 percent plus one person.

12 Q Thank you. Let me return to the committee guidelines.

13 I take it you did review those in connection with your
14 report?

16:40:06 15 A Yes, I did.

16 Q And you relied upon them in your report?

17 A Yes, I did.

18 Q Could we put them back up, please? And I would like to
19 call your attention to Section 2(g) of the guidelines, if I
16:40:27 20 could, Mr. Bryan. Could we highlight that, please? Are you
21 familiar with this subsection?

22 A I am familiar with it, but it was less relevant to my area
23 of expertise and my area of analysis in the case.

24 Q Well, it says specifically that considerations of race,
16:41:01 25 color, or membership in a language minority group -- I'm sorry.

1 Let me back up.

2 No district shall be drawn in a manner that subordinates
3 race-neutral districting criteria?

4 A Right.

16:41:16 5 Q Those are the criteria that are discussed below in this
6 document, right?

7 A That is correct.

8 Q So they should not be subordinated to issues of race or
9 color, except race, color or membership in a language minority
16:41:35 10 group may predominate over race-neutral districting criteria to
11 comply with Section 2 of the Voting Rights Act. Do you see
12 that?

13 A Yes, sir. Correct.

14 Q So do you understand that if districts need to be reshaped
16:41:49 15 in order to comply with Section 2 of the Voting Rights Act,
16 that other criteria need to yield to those requirements?

17 A I understand that that is the requirement. It is outside
18 the scope of my expertise to determine whether one district or
19 two black majority-minority districts were necessary to comply
16:42:15 20 with the requirement.

21 Q But if two districts were required, the plan the
22 legislature adopted only contained one, right?

23 A Can you please rephrase the question?

24 Q You know the plan the legislature adopted in 2021?

16:42:36 25 A Yes.

1 Q Only contains one majority-black district?

2 A Correct.

3 Q So if two districts are required in order to comply with
4 the Voting Rights Act, then this section would apply and
16:42:52 5 race-neutral criteria would have to yield to whatever is needed
6 to be done to comply with the Voting Rights Act; is that
7 correct?

8 A Not being an expert in that space, this would be my
9 literal interpretation of this -- that statement would be
16:43:10 10 correct.

11 MR. DAVIS: I would like to lodge an objection for the
12 sake of completeness of the transcript. Mr. Dunn only read
13 part of the section. I just wish to note that there is more to
14 the sentence regarding the guidelines reference to Section 2 of
16:43:31 15 the Voting Rights Act.

16 JUDGE MARCUS: You will have every opportunity to
17 explore it on redirect.

18 You may proceed, sir.

19 BY MR. DUNN:

16:43:41 20 Q And then as Ms. Khanna discussed with you, there are
21 certain criteria that are identified in subsection J. Mr. Ang,
22 can we go down to subsection J?

23 And the -- specifically -- no, let's go back to the whole
24 page, please. Because what I want to establish is that
16:44:07 25 subsection J is where considerations of contest between

1 incumbents and communities of interest are placed in the
2 guidelines; is that right?

3 A Yes.

4 Q And those criteria cannot be used to subordinate or impair
16:44:32 5 the requirements that are stated above them, can they?

6 A Yes, that's correct, that's my understanding.

7 Q And minimization of the number of counties is also a
8 subsection J criteria, right?

9 A Yes, it is.

16:44:49 10 Q And so is core preservation?

11 A Yes, correct.

12 Q So the same rules of priority apply with respect to them,
13 correct?

14 A Yes.

16:44:58 15 Q And subsection G says specifically that the criteria in
16 paragraph J are not listed in order of importance, right?

17 A I do not see -- I apologize. I do not see Section (g).
18 Yes.

19 Q But the requirement --

16:45:27 20 A I do.

21 Q -- the requirements for contiguity and compactness are way
22 up above all of this, and they have priority; is that your
23 understanding?

24 A That's my understanding.

16:45:40 25 Q Thank you.

1 Now, if we could go back to your report, which is
2 Exhibit D-2 on page 8, you list traditional districting
3 principles. And you list preservation of communities of
4 interest and continuity of representation above compactness and
16:46:19 5 contiguity. Do you see that?

6 A Yeah. I would be -- caution the reader not to read this
7 literally as a hierarchal prioritization of these rules. It's
8 more of an inventory.

9 Q Okay. Let's talk about compactness for a little bit if we
16:46:43 10 could.

11 A Okay.

12 Q You say at page 28, at the top of your discussion on
13 compactness in D-2, that compactness is a measure to ensure
14 that districts do not deviate from being reasonably shaped and
16:47:04 15 is intended as a deterrent to gerrymandering; is that correct?
16 Did I read that right?

17 A Yeah. That's the goal, for sure.

18 Q But as I think you have indicated previously, measuring
19 compactness is a complicated subject?

16:47:22 20 A Very.

21 Q And there are no objective criteria for what is a compact
22 district versus a not compact district?

23 A There are not. It's typically regarded as a relative
24 measure within one set of plans for a specific state for a
16:47:41 25 specific redistricting exercise versus another set of plans for

1 the same state for the same redistricting exercise.

2 Q And even though there are no objective standards, there
3 are benchmarks or standard measures that you say are used by
4 demographers regularly to measure and compare compactness; is
16:48:01 5 that a fair characterization?

6 A Yes, sir, that is correct.

7 Q And you picked four particular measures of compactness to
8 use; is that right?

9 A Yes, I do.

16:48:12 10 Q And two of those measures are measures that were also used
11 and referenced by Dr. Duchin; is that right?

12 A That is correct.

13 Q And then she had an additional criteria. Are you familiar
14 with that criteria?

16:48:33 15 A Yes. It's the -- it's an innovative technique she has
16 developed and I believe it is the block edge technique. I
17 think it reflects how quickly this area is evolving and how
18 much change there is and how we are examining these things
19 right now. I commend her work to come up with new techniques
16:48:56 20 to do this as well as possible.

21 Q And then you also used what's referred to as the
22 Schwartzberg score to measure --

23 A Yes, sir that's correct.

24 Q -- compactness. But you modified the Schwartzberg score
16:49:12 25 in your analysis; is that correct?

1 A Yes, sir.

2 Q And in adapting the Schwartzberg score, what did you do?

3 A So the Schwartzberg score is different than many of the
4 other generally accepted techniques. The scores that you would
16:49:43 5 have for Reock, for example, for Polsby-Popper, for convex
6 hull, I mean, there's dozens of these techniques. And
7 virtually all of them give you values that rank from zero to 1,
8 right?

9 What's both powerful, but as well difficult about the
16:50:02 10 Schwartzberg score is it's a number that can stretch to
11 infinity, right? And so if you look at that score, most
12 people, certainly not me, can look at a score of 100,000 or a
13 hundred million or a billion or whatever the number may be and
14 quickly say, oh, there is how much better a million is than a
16:50:25 15 billion. Our brains are just not wired to be able to do that
16 quickly.

17 So other experts, other analysts adapted a version of
18 Schwartzberg that basically just divided it by 1 and turned it
19 into a fraction and rescaled it between zero and 1. And
16:50:47 20 largely the purpose of that is to help people look and say, ah,
21 I know what the difference is between .5 and .6 or .5 and .7,
22 right? It's much easier to do than trying to figure out the
23 difference between million and a billion.

24 So when we did that adaptation of Schwartzberg, one of the
16:51:10 25 ways that we quality controlled it and assessed it was to do

1 what is called a regression analysis. That is we compared it
2 with one of the techniques Dr. Duchin advocated, the
3 Polsby-Popper score, and what we found is that our adaptation
4 had almost a perfect correlation to the Polsby-Popper score.
16:51:31 5 That is as conceptually the mathematics, if you knew them, it
6 would sound, look, feel the same, and the math that we did
7 proved that it was the same.

8 So the outcome, or the effect is you're just duplicating
9 the Polsby-Popper score. Through this experience, even though
16:51:48 10 we have shared this metric out with other judges and courts in
11 the past and it's beneficial, I have learned something from
12 this, that it doesn't really matter if you add Schwartzberg
13 into this combination of different methods or you don't. The
14 Polsby-Popper basically serves the same function as the
16:52:08 15 Schwartzberg score does. The adaptation makes no difference
16 whatsoever in the ranking or the performance overall of the
17 compactness, and would not change any of my conclusions whether
18 you included it or excluded it.

19 Q And that's demonstrated because if you look at the tables
16:52:27 20 in your appendix, when you present the compactness of various
21 districts, the coloring and measurement in Polsby-Popper and
22 Schwartzberg are absolutely identical.

23 A That's exactly right, yes.

24 Q Okay. So effectively, what you did was to create a
16:52:44 25 benchmark that mirrored Polsby-Popper, so in your tables where

1 you are Schwartzberg and Polsby-Popper what you really have is
2 Polsby-Popper and then a proxy that's exactly like
3 Polsby-Popper again?

4 A Very closely, yes, sir, that's a great analysis.

16:52:59 5 Q Good. Then I'll stop there. Let me ask you one more
6 question. In Appendix 3, where you talk about compactness
7 measures in D-2, you reference a set of diagrams and discussion
8 of the various benchmarks and you give an Internet site for
9 your source. Do you see that, this is page 34?

16:53:31 10 A Yes. I am familiar. This is one illustrative.

11 Q What you referenced is an unpublished student paper; isn't
12 that right?

13 A Yes, but the map is the same, regardless of wherever you
14 looked. It could be a high school paper or it could be a
16:53:50 15 Harvard mathematician paper. The math is the same.

16 Q The math may be the same, but certainly an unpublished
17 student paper is not something that ordinarily an expert in the
18 field would rely upon, is it?

19 A I rely on the math no matter what the source is.

16:54:07 20 Q That wasn't my question.

21 A I understand. For the purposes of having a visual
22 illustration of these scores, I am not aware of any site that
23 has a better quick easy visual representation of these, what
24 the impact of these difference compactness measures are.

16:54:30 25 If the purpose was to go into the ancient mathematic roots

1 of these, I would refer to a different source. If I want
2 somebody to be able to look at one of these methods and
3 understand in 30 seconds how they work, I would send them to
4 this site.

16:54:45 5 Q My question is general isn't it the case that experts
6 skilled in the area will refer to published professional
7 peer-reviewed papers, not to student works?

8 A They could certainly do that. I would challenge anyone
9 going into, for example, a wonderful document such as
16:55:09 10 Dr. Duchin's 2018 geometry report on these different measures
11 to figure out how these measures work through that paper in
12 hours, let alone 30 seconds. The benefit of this is quick and
13 intuitive way to understand how they work.

14 Q Would you agree that the models and the plans that
16:55:41 15 Dr. Duchin has proffered score as well or better than the plan
16 the state adopted for compactness?

17 A There are two levels to this answers. In aggregate, they
18 do. By in order to understand compactness, you have to
19 understand the details that make up that overall score.

16:56:11 20 In Duchin's original report, and I did not see her
21 subsequent report, in Duchin's original report all she provided
22 us was the top line summary statistic. This is the average
23 score for Polsby-Popper, the average score for Reock.

24 What she did not show in the original report was that if
16:56:29 25 you look at the individual districts that comprise those

1 scores, the districts that make up her two majority-minority
2 districts perform much worse in terms of compactness because
3 they had to be drawn in a very specific and one might say
4 convoluted way in order to be able to capture just the black
16:56:53 5 populations necessary to make the majority.

6 She made up for that in some sense in other districts that
7 did not need to be adjusted in the north. Those will be
8 Districts 4, for example, and Districts 5. So by going into
9 those districts that did not need to be adjusted for the
16:57:10 10 purpose of this case and making them very geometrically
11 compact, which is a great benefit, it belies the fact that
12 underlying that is a couple of districts that are very poor in
13 terms of compactness, and those are her majority-minority
14 districts, and they are in some sense offset or accounted for
16:57:33 15 by making adjustments in areas where it's just not relevant.

16 Q Aren't all districts in a plan relevant?

17 A For the purpose of drawing a majority-minority district,
18 you have to draw those in a specific way in order to achieve
19 her objective.

16:57:55 20 If she wanted to go on and make adjustments elsewhere, she
21 could have chosen to or did not choose to. The fact is when
22 she drew her plan, she selectively used one criteria for one
23 part of her plan and used a different criteria for a different
24 part of her plan.

16:58:16 25 Q What -- what difference in criteria do you claim she

1 applied?

2 A So in the northern districts, in 4 and 5, she used
3 compactness and optimized and sought clearly -- she has said in
4 her algorithm that sought to optimize compactness in her
16:58:36 5 northern districts. You didn't have to do that to get, you know,
6 what she said was her primary goal of two majority-minority
7 districts.

8 So in those northern districts, she used compactness. In
9 her southern districts, where she wanted to optimize for black
16:58:50 10 population, said, well, compactness doesn't matter. She said
11 as much, all I want to do is make sure that I get two black
12 districts.

13 So what is unconventional that the plan is that while she
14 did achieve her two black majority districts, she did that
16:59:05 15 using one set of criteria there and then tried to optimize a
16 different set of criteria somewhere else in the state. It's
17 the result of those efforts why she achieved an overall better
18 compactness than the state of Alabama plan.

19 Had the state of Alabama sought to generalize and make
16:59:24 20 their northern districts more compact -- they didn't have to,
21 they sought a least change plan -- but if they had sought to do
22 that they could have just as easily met or exceeded the
23 compactness scores of Dr. Duchin. The state deliberately
24 decided not to sacrifice core retention, not to change any more
16:59:44 25 than necessary just for the sake of compactness.

1 Losing continuity of representation just so you say you
2 made something that looks more like a circle is not a tradeoff
3 the State of Alabama decided to make.

4 Q No district in any one of Dr. Duchin's plans has a lower
17:00:06 5 compactness score than the lowest score in the state's plan,
6 does it?

7 A I need to refresh my memory by looking at my report.

8 Q Going to tell us what you are looking at?

9 A Yeah. I am looking at my report, the supplemental Cooper
17:00:26 10 and Duchin report. This would be Document 76-4.

11 All right. I am looking at it.

12 Q This is Exhibit D-4; is that correct?

13 A There's a compactness Table 2 for the Alabama enacted.
14 And then there's an Appendix 5.1, 4.2, 4.3, and 4.4.

17:01:10 15 So in looking at the Alabama enacted plan for
16 Polsby-Popper, the Polsby-Popper score in District 1 compared
17 to the Polsby-Popper score for Duchin in District 1, the
18 state's Polsby-Popper score is higher. District 2 is higher,
19 District 3 is the same. Districts 4 and 5, as I mentioned
17:01:35 20 earlier, are less. District 6, Duchin is higher, and
21 District 7, Duchin is higher. So there are some districts from
22 the state plan that are higher by district, and some districts
23 where the Duchin plan are higher.

24 JUDGE MARCUS: You will have to speak into the machine
17:02:01 25 as you face away and look at the other screen. Your voice gets

1 muted and we have some difficulty.

2 So take your time and speak right into that machine so we
3 can hear you and our court reporter can get it down accurately.

4 Thank you.

17:02:16 5 THE WITNESS: Yes, sir.

6 I compared the results of Polsby-Popper briefly just now.
7 And looked at different districts for the state of Alabama
8 plan, which was what I believe I'm being asked and comparing
9 those different district scores by Polsby-Popper with one of
17:02:36 10 the Duchin plans, Duchin plan A. And the results are that
11 there are some districts where Duchin's plans are better,
12 notably 4 and 5. There are some plans where the compactness is
13 not as good. That would be in Districts 1 and 2, I believe. I
14 can present other findings if you would like me to.

17:02:56 15 BY MR. DUNN:

16 Q No, that's fine.

17 Isn't it the case that Dr. Duchin attempted to optimize
18 compactness to the extent possible every where while creating a
19 majority-minority district? Didn't you hear her testify to
17:03:14 20 that?

21 A I heard her concede that in District 2 that it was not
22 compact because of the need to make it a black district.
23 That's why it was elongated and was not a compact district.

24 Q When you say it was elongated, you mean it stretched from
17:03:31 25 one side of the state to the other?

1 A That's correct. And that was her explanation of why it
2 had an inferior compactness score, because she wanted to
3 prioritize blackness.

4 Q Compared to other districts, you're talking about?

17:03:43 5 A That's correct.

6 Q There is no such thing, as you told us, of an inferior or
7 superior compactness score in the objective.

8 A Relative to the other districts in her plans, certainly it
9 had a lower score and she explained why.

17:03:55 10 Q In the 2021 plan adopted by the legislature, how many
11 districts stretched from state border to state border east to
12 west?

13 A Just not sure there is one. Perhaps 5 at the very top,
14 District 5.

17:04:18 15 Q Yes.

16 A Yes, at the very top the narrowest part of the state, 5
17 would go from east to west.

18 Q And District 4, no?

19 A Yes, diagonally. Yes, it would.

17:04:30 20 Q And I was about to say, it not only goes from east to west
21 border to border, it goes diagonally, not straight across?

22 A Yes, that's correct.

23 Q And in Dr. Duchin's plan A, she, too, has two districts
24 that stretch from border to border, Districts 1 and District 2,
17:04:48 25 right?

1 A Yes. Yes. Those are -- are newly created east to west
2 districts. So I would concede that the same lower compactness
3 scores in the Alabama plan for Districts 4 and 5, which Duchin
4 sought to remedy at the expense of core retention and
17:05:11 5 incumbency are the same types of scenarios that you see play
6 out in her Districts 1 and 2.

7 Q And in summary, in your rebuttal report you concluded --
8 this is page 18 -- quote, Dr. Duchin's plans A to D, all four
9 of them, almost always score better than the enacted Alabama
17:05:31 10 plan on average; is that correct?

11 A That is correct. Yes.

12 Q And, in fact, the only time Dr. Duchin's plans did not
13 outscore the enacted plan was plan C, and only on the
14 calculation under Reock, right?

17:05:46 15 A I believe that to be the case, yes.

16 Q So other than that for compactness, each of the Duchin
17 plans had an equal or higher scores when the benchmarks on
18 average were compared to the enacted plan?

19 A Yes. Yes, it was clear that was prioritized over other
17:06:05 20 traditional redistricting principles in her address, that's
21 correct.

22 Q Okay. I think I would like to move on to another subject.

23 Let's talk about communities of interest, if we could. On
24 page 14 of D-4, you talk about communities of interest, I
17:06:45 25 think. I'm sorry. No. It's on page 14 of D-2. I'm sorry. I

1 have the wrong report.

2 A Yeah. That looks correct. Got it.

3 Q Okay. Now, you start here with a quotation, but you don't
4 say what source you are quoting from.

17:07:31 5 A That's from the University of Michigan center for urban
6 study and local policy. It's on the front page of their
7 website.

8 Q Why did you quote a University of Michigan definition of
9 communities of interest when the Alabama guidelines themselves
17:07:56 10 contain a definition?

11 A Yeah. So, again, I think that this was one of the cases
12 where as an expert in the space I try to provide what I think
13 is the best definition, the best information is in national
14 context. And then I would supplement that, refine it, and
17:08:16 15 tailor it based on what the Alabama specific or any other state
16 specific guidance is.

17 I think that this definition from CLOSUP is a particularly
18 clear and useful definition and a good starting point to
19 educate anyone who is interested in what is a community of
17:08:36 20 interest is.

21 Q But the finishing point in terms of Alabama needs to be
22 the Alabama guidelines, Exhibit M-28, and they contain a
23 specific definition of communities of interest, don't they?

24 A Yeah.

17:08:53 25 Q Look at J-3 on page 2, please.

1 JUDGE MARCUS: Let him answer the question. I'm
2 sorry. Before you go on, to just refine it. Had you finished
3 your answer?

4 THE WITNESS: Yes.

17:09:03 5 JUDGE MARCUS: Okay. I'm sorry.

6 THE WITNESS: Thank you.

7 BY MR. DUNN:

8 Q So let's look at M-28, if you would. A community of
9 interest is defined as an area with recognized similarities of
10 interest, including, but not limited to ethnic, racial,
11 economic, tribal, social, geographical, historical identities;
12 is that right?

13 A That is correct. Yes.

14 Q Do consider that to be in any way fundamentally different
15 from the University of Michigan definition you quoted?

16 A No. It's specific refinements, specific to Alabama. It's
17 not in conflict.

18 Q Now, do you consider yourself to be an expert in
19 identifying communities of interest within a state that meet
17:10:00 20 that definition?

21 A I would not consider myself a nationally recognized expert
22 in communities of interest. I'm knowledgeable of them. I've
23 researched them and used them extensively in my practice.

24 Q Are there demographics that one looks at to determine
17:10:17 25 communities of interest?

1 A There certainly would be. Those can be characterized by
2 specific age groups, income groups, employment groups,
3 different types of family structure. For example, that those
4 are some of many different communities of interest that combine
17:10:39 5 a group of people together.

6 Q Racial composition?

7 A That can be one, although my experience is that there can
8 be racial populations that have significant differences and
9 even conflicts within the same racial groups, so one must be
17:10:59 10 thoughtful and careful about generalizing, just based on race
11 alone.

12 Q I didn't say race alone. I said are they demographics
13 about race that are relevant to whether a particular area is a
14 community of interest?

17:11:13 15 A Sure. In using race to define -- in using race to define
16 a community of interest, it would be foolhardy just to assume
17 one group defined as a specific race is somehow uniformly a
18 community of interest. So a similar attitude, beliefs, and
19 behaviors.

17:11:35 20 Q I wasn't suggesting that it would, but certainly racial
21 characteristics and commonality are specifically within the
22 definition --

23 A Yes.

24 Q -- in Alabama and otherwise, right?

17:11:44 25 A Yes.

1 Q And there are demographic statistics that could be looked
2 at to inform you about that?

3 A Certainly.

4 Q And all the other things you mentioned, right?

17:11:58 5 A Yes.

6 Q Did you look at any of those statistics in connection with
7 your work in this case?

8 A I did.

9 Q Did you mention that in your report?

17:12:08 10 A I did not decompose subtle differences in black
11 populations within the Black Belt, for example, no.

12 Q Well, you seem to be preoccupied with racial statistics.
13 I'm talking about age, income, employment, social, including
14 racial statistics. All of those statistical categories, did
17:12:41 15 you look --

16 A Yes.

17 Q -- at that group of statistics to determine what
18 communities of interest exist in Alabama?

19 A Yes. So I looked at age characteristics, socioeconomic
17:12:56 20 status, income, types of employment and race and found that for
21 sure, there are differences in demographic characteristics in
22 different parts of the state of Alabama, but those being one of
23 many different communities of interest, I did not see an
24 instance, where, for example, differences in age structure, for
17:13:23 25 example, or racial structure prevailed to a degree where they

1 would override other communities of interest.

2 So I is not find it worthwhile to try and contribute
3 information on demographic communities of interest that would
4 not have had a material outcome in the findings.

17:13:45 5 Q Well, is there anything at all in any of your reports that
6 talks at all about your use of any statistical analysis in
7 connection with communities of interest?

8 A Not a statistical analysis, no.

9 Q Okay. What nonstatistical analysis did you do?

17:14:08 10 A I think the primary nonstatistical analysis I did was
11 covered in my earlier cross in discussing the area around
12 Mobile and Baldwin.

13 Q And as to the area around Mobile and Baldwin, your due
14 diligence efforts consisted solely of reading the testimony of
17:14:31 15 two former congressmen that Mr. Davis provided you; is that
16 right?

17 A That's correct. Yes.

18 Q And you didn't even read the testimony of other people in
19 that case?

17:14:40 20 A I would not say that that was an act of negligence. It
21 was an act of not sleeping for three weeks preparing this
22 testimony.

23 Q So you had plenty of time to read Bonner and Byrne, but
24 you didn't have any time to read Chestnut. Is that your
17:14:57 25 testimony? Is that your testimony?

1 A I did not -- yes.

2 Q Okay. Did you talk to anybody -- did you talk to anybody
3 about the Mobile Baldwin community of interest that you found
4 so important? And I will exclude Mr. Davis for the moment.

17:15:23 5 A No.

6 Q Okay. And did you investigate any other communities of
7 interest besides Mobile or Baldwin?

8 A Yes. I particularly in places where districts crossed
9 administrative pieces of geography such as counties. I
10 explored and investigated places where that happened to see if
11 there were any significant communities of interest there.
12 Cities, for example, that were going to get split by the
13 boundaries. I didn't find any else where that seemed to be
14 relevant.

17:16:08 15 I acknowledged existing splits of Jefferson County and
16 those splits just exist in various degrees and various
17 different ways in the different plans now. So there was no
18 other additional findings of a significant change in a
19 community of interest that I found besides what I explored in
17:16:27 20 Mobile.

21 Q I wasn't talking about changes. I was talking about
22 whether you even identified other communities of interest.

23 A Yes, I did.

24 Q Which other communities of interest do you discuss in your
17:16:40 25 report?

1 A As I just suggested, I explored other communities of
2 interest to find any that may have been material and have an
3 impact on the borders, or the definition of what one of the
4 districts may have been, or why it was different than another
17:16:56 5 district. And I did not find any other communities of interest
6 that seemed to have had a significant impact on the boundaries
7 that were decided upon.

8 All the plaintiff boundaries and the state boundaries were
9 decided either by least change for the state, or were driven by
17:17:12 10 the need for county boundary changes, or other changes
11 unrelated seemingly to any significant community of interest
12 elsewhere in the state.

13 Q Did you give any consideration to whether the Black Belt
14 is a community of interest?

17:17:26 15 A I did. I looked at that carefully. And it was notable
16 and interesting to me that in those 18 -- I think there's
17 different definitions, 18 or 19 counties that within the Black
18 Belt many of the plaintiff plans seemed to cut the Black Belt
19 into different pieces. Two pieces. I think there were some
17:17:49 20 cases I saw it was cut into three pieces in different plaintiff
21 plans, as well.

22 So I acknowledged it as a community of interest, but it
23 does not seem to be one that prevailed in the development of
24 these plans.

17:17:59 25 Q Okay. Mr. Bryan, I know it's getting late, but you have

1 really got to listen to my question. Do you agree the Black
2 Belt is a community of interest?

3 A Yes.

4 Q Okay. It's a rural area throughout, is it not?

17:18:12 5 A Yes, predominantly, yes.

6 Q It's heavily agricultural?

7 A Yes.

8 Q It has lower income levels than other parts of the state?

9 A Definitely.

17:18:22 10 Q Lower education levels?

11 A Yep.

12 Q Lower infrastructure?

13 A My understanding.

14 Q And a shared history?

17:18:32 15 A Yes.

16 Q And it's racially significant because that's where --
17 those counties as you pointed out in your own work have
18 significantly higher percentages of blacks than other counties,
19 right?

17:18:44 20 A They do.

21 Q Now, is it -- so -- and one of the things that
22 Dr. Duchin's models perform is to aggregate the Black Belt more
23 than the existing plan or the 2011 plan, isn't that correct?

24 A It appears so.

17:19:07 25 Q So you would say on communities of interest with respect

1 to the Black Belt community that her plan is better than the
2 state's plan, right?

3 A I don't have enough detailed knowledge of every part of
4 the Black Belt to say where she split the Black Belt results in
17:19:27 5 a better performing Black Belt. They're split and the
6 precision of where they were split does not give me, with my
7 knowledge, the ability to assess whether it is a better or
8 worse combination of a split of the Black Belt than any other
9 plan.

17:19:44 10 Q Well --

11 A Fewer splits are generally better.

12 Q And she had fewer splits?

13 A Yep.

14 Q Okay. Have you reviewed Dr. Duchin's supplemental report
17:19:55 15 dated December 27th?

16 A I believe I have.

17 Let me make sure I have got the right one. Is this the
18 rebuttal report to me.

19 Q No. This is the supplemental report that talks about the
17:20:11 20 voter registration data.

21 A Oh, no, I did not. I'm sorry for my confusion. I
22 apologize.

23 Q Okay. Are you aware -- did anybody make you aware that
24 Dr. Duchin prepared and submitted a supplemental report that
17:20:25 25 analyzed her plans using voter registration data?

1 A Not until very recently. I would say I became aware of it
2 perhaps in the last week or two.

3 Q Okay. But you haven't examined her analysis in that
4 regard?

17:20:43 5 A No, I have not.

6 Q Are you aware that voter registration data can be used for
7 the purpose of determining whether a plan contains districts
8 that are majority black?

9 A It could, yes.

17:20:55 10 Q Okay. But as to her -- and would you consider it
11 reasonable or appropriate as a demographer to use such data?

12 A It's a tool that can be used, yes.

13 Q But you haven't done any analysis of her use of that data;
14 is that correct?

17:21:16 15 A No, I have not.

16 Q So you have no opinion on whether she did a good job, bad
17 job or whatever else, in that regard?

18 A No.

19 Q Mr. Bryan, did you provide testimony and expert opinion in
17:21:43 20 connection with a case called Harding versus County of Dallas?

21 A I believe I did. It's been a number of years.

22 Q It's on your CV, I believe, as item 16. Does that help
23 refresh your recollection?

24 A Nope. It is. Yep. I'm sorry. I'm deeply focused on
17:22:05 25 this case right now. I don't remember the details on that case

1 on the top of my head. What would you like to know?

2 Q Do you remember that you sponsored a plan, an alternative
3 plan to comply with the VRA in that case?

4 A I honestly -- I do not recall the details of that plan
17:22:24 5 right now. I'm sorry.

6 Q Do you recall that the plan you sponsored in that case
7 preserved only 40 to 60 percent of the cores in the two
8 districts that were at issue?

9 A No, I don't recall the circumstances or what the priority
17:22:40 10 of core retention was of that case at that time. I'm sorry.

11 Q Would you agree with me generally that when you adjust the
12 districts in a plan in order to create an additional new
13 district to comply with the VRA, that is going to have an
14 adverse effect on core retention by definition?

17:23:00 15 A It can and sometimes severely for sure.

16 Q And isn't that the reason that Dr. Duchin's plans suffer
17 in terms of core retention, because she created a new second
18 majority-black plan?

19 A It appears to be the consequence of her effort to create
17:23:25 20 the second majority plan. There is a relationship for sure.

21 MR. DUNN: Your Honor, I think I've reached about the
22 end, but if I could have a 5-minute break to --

23 JUDGE MARCUS: Sure. Why don't we --

24 MR. DUNN: We have been going quite a while. I know
17:23:43 25 it's late.

1 JUDGE MARCUS: That's quite all right. Why don't we
2 take actually a 15-minute break. We will finish up with you,
3 or you may have nothing more, and then, Mr. Blacksher, we will
4 start with you. Will that be okay?

17:23:55 5 MR. BLACKSHER: That will be fine. Thank you, Your
6 Honor.

7 JUDGE MARCUS: All right. We will take a 15-minute
8 break at this point. Thank you all.

9 (Recess.)

17:40:08 10 JUDGE MARCUS: I take it we have everybody assembled.
11 Mr. Dunn, did you have anything further for Mr. Bryan?

12 MR. DUNN: Yeah. Just a couple of questions. I will
13 try and be as brief as possible, Your Honor.

14 JUDGE MARCUS: Sure.

17:40:21 15 BY MR. DUNN:

16 Q Okay. Mr. Bryan, in identifying communities of interest,
17 you said one of the things you would do would be to meet with
18 congressional, state and local elected officials to help you
19 identify communities of interest; is that right?

17:40:35 20 A As a general practice, I would try to do that. I didn't
21 have the opportunity to do that this time.

22 Q Okay. Elected officials may have different views on the
23 communities of interest than their constituents, though,
24 wouldn't they?

17:40:50 25 A It's possible, yes, but I try to get and process and

1 manage the information that I get from these people in the most
2 objective and fair way possible.

3 Q Elected officials tend to be focused on the people who
4 they think will vote for them, right?

17:41:09 5 A Yes. But I do not necessarily limit my education about
6 communities of interest just to people who are elected
7 officials. You don't really get a chance to go pick and choose
8 every kind of random person knowledgeable about communities of
9 interest in an area when you go into a case, but I do my best
17:41:27 10 to get what information I can when I can get it.

11 Q How about community organizers? Do you think they would
12 be people to talk to?

13 A They would for sure be community organizations. The most
14 valuable source of information in Central Virginia where I come
17:41:40 15 from is a community organization known as CARITAS, and they
16 care for drug and alcohol impacted people, homeless people,
17 people who have lost their jobs, and I think they're one of the
18 very best sources of information about what is going on locally
19 and what the community needs are.

17:41:57 20 Q And did anybody tell you about the testimony in this case
21 of Captain Dowdy in that regard?

22 A I'm not aware of that testimony.

23 Q Okay. Now, you focused in your report with respect to
24 community of interest on the Mobile-Baldwin community, right?

17:42:14 25 A Primarily, yes, that's correct.

1 Q And you focused particularly on its coastal nature and the
2 Port of Mobile, correct?

3 A That's correct.

4 Q Are you aware that the largest industry in Mobile is
17:42:33 5 health care?

6 A Yeah. I understand there's a transportation,
7 manufacturing, aerospace, health care, there's a variety of
8 industries that are down there that flesh out that economy, for
9 sure.

10 Q Okay. I know it's late. But my question was are you
11 aware that the largest industry employer in Mobile is health
12 care?

13 A I believe it's the largest or one of the largest, yes.

14 Q That doesn't have anything to do with the port?

17:43:07 15 A Right.

16 Q Or the waterways?

17 A Right. And certainly the provision of health care in an
18 area such as a peninsula is something that would be very
19 relevant and important. If you had a health care system and
17:43:21 20 you had a congressional district that cuts straight across the
21 middle of it, it would obviously impact policy decisions for
22 one district opposed to another district, right through the
23 middle of Mobile would impact the provision of health care from
24 an organization like that.

17:43:38 25 Q Mr. Bryan, it's very late. The only question I asked was

1 whether health care as an industry has anything to do with the
2 port?

3 A Yes. Does the health care have anything to do with the
4 port? Only insofar as providing health care for port workers
17:43:51 5 and their families.

6 Q Got it. The second largest industry is retail. Did you
7 know that?

8 A It's one of the major industries, sure, as with any urban
9 area, yes.

17:44:04 10 Q And retail isn't specifically related to the port or the
11 coastline either, is it?

12 A Not insofar -- except insofar as it provides economic
13 support for the people who work there.

14 Q And you also said that -- I'm quoting, the county, meaning
17:44:22 15 Mobile County, is a national leader in training and workforce
16 development. Do you remember saying that?

17 A Yes. I've heard that. It's a big part of that area,
18 sure.

19 Q Where did you get that information?

17:44:36 20 A From the testimony that I told you earlier that I got most
21 of my information about that area from.

22 Q So the only thing you know about Mobile County as a
23 training and workforce development area is what you read in the
24 testimony of Bonner and Byrne; is that right?

17:44:52 25 A Uh-huh. Additionally the information I collected on my

1 own, knowing about its transportation manufacturing aerospace,
2 medicine. Those are the areas.

3 Q You collected? You collected information about training
4 and workforce development?

17:45:08 5 A It's -- in reading the testimony and going on to
6 Wikipedia, it's not hard to find information about what is the
7 primary drivers of the economy in Mobile and Baldwin counties.

8 Q And what are the largest training and workforce
9 development programs in Mobile?

17:45:22 10 A I'm sorry. I didn't have the opportunity to go in-depth
11 and learn every one of those individually. I'm sorry. In this
12 case, it was a matter of learning it was an economic area of
13 interest, not to do a deep dive economic analysis or what the
14 drivers were.

17:45:37 15 Q Do people from the Black Belt migrate to Mobile for work?

16 A My understanding is that there is a majority of the people
17 that migrate to Mobile for work will come from more likely
18 Baldwin County.

19 Q That wasn't my question. My question was do people
17:45:59 20 migrate from the Black Belt to Mobile?

21 A It's possible. I don't know the exact number.

22 Q You didn't explore that issue, did you?

23 A No. No. Doing migrate and intra-Black Belt migrational
24 analysis in Mobile-Baldwin and Black Belt counties was not in
17:46:14 25 the scope of the work.

1 MR. DUNN: No further questions, Your Honor.

2 JUDGE MARCUS: Thank you. Our next examiner would be
3 Mr. Blacksher. Are you ready to go forward at this point?
4 Would that be fine with you?

17:46:31 5 MR. BLACKSHER: Yes, Your Honor.

6 JUDGE MARCUS: All right. And as we do, if anyone
7 needs a break, let me know. And depending on how long
8 Mr. Davis's redirect would be, it would be our intention to
9 take a half hour break after Mr. Blacksher and before you
10 proceed, unless you want to just go right through. But as we
11 do this, Mr. Bryan, if at any point you need to take a break,
12 you just let us know and we will be happy to accommodate you.

13 THE WITNESS: Thank you, Your Honor.

14 JUDGE MARCUS: Thank you all.

17:47:05 15 And Mr. Blacksher, you may proceed.

16 CROSS-EXAMINATION

17 BY MR. BLACKSHER:

18 Q Good evening, Mr. Bryan. I'm Jim Blacksher, one of the
19 Singleton plaintiffs. And I am going to ask you a little bit
20 about your report which causes you to shift gears from
21 interrogation about Voting Rights Act issues to racial
22 gerrymander issues in the Singleton case.

23 I am going to try to share my screen here. Did that work?

24 A I do see a highlighted screen, sir, yes. Thank you.

17:47:59 25 Q This is your Singleton report, which is marked as

1 Exhibit D-1. And I'm on page 17, where I've highlighted some
2 language that I want to refer to, to begin the questioning,
3 where you say, For the purposes of independent comparison and
4 context, I attempted to develop additional Alabama
17:48:34 5 redistricting plans using the plaintiffs' method of whole
6 counties. Our goal was to determine whether the plaintiffs'
7 plan was the only way to develop Alabama congressional
8 districts using whole counties.

9 The only way of knowing whether their exact use of whole
17:48:56 10 counties is the best remedy to a questionable harm, I need to
11 know the breadth of outcomes possible with plaintiffs' proposed
12 remedy. Is it the strategy and methodology of using whole
13 counties that provides the needed potential relief, or is it
14 the exact combination of counties they propose?

17:49:19 15 So you're asking the right questions, it seems to us,
16 Mr. Bryan. And let me go to three side-by-side maps.

17 MR. BLACKSHER: Your Honor, I would like to have this
18 demonstrative marked as Singleton Exhibit 70.

19 JUDGE MARCUS: Singleton 70 is marked for ID.

17:49:47 20 BY MR. BLACKSHER:

21 Q On the left, you can see is the 2011 plan. In the middle
22 is the 2021 plan that was enacted in the October/November
23 session. And on the right is the Singleton whole county plan.

24 So Mr. Bryan, as you know and as you say in your
17:50:23 25 complaint, the plaintiffs allege that District 7 in the 2011

1 plan, was racially gerrymandered, and that it was -- the
2 gerrymander was accomplished by splitting the county boundaries
3 of Montgomery County, Tuscaloosa County, Jefferson County and
4 Clarke County so as to add black population to District 7 to
17:50:58 5 the extent possible.

6 You are aware that that's the allegation in the
7 complaint -- in the amended complaint as you read it, correct?

8 A Yes. Yes, sir. I'm clear that's the allegation.

9 Q Okay. And the allegation further of the amended complaint
17:51:13 10 is that to remedy that racial gerrymander, the legislature
11 should have and the Court may have to go back to traditional
12 districting principles, which in Alabama, the complaint
13 alleges, historically is the use of whole counties.

14 Therefore, the using the allegations of the amended
17:51:47 15 complaint, the first step in eliminating the gerrymander would
16 be to restore whole these four counties. Do you agree with
17 that?

18 A That would be one approach, yes.

19 Q Okay. Well, that was the approach that is alleged in the
17:52:08 20 complaint. I am not going to try to argue with you about
21 what's best legally or anything else. I'm just trying to get
22 into your report about how you examined what we did.

23 All right.

24 A Yes, sir.

17:52:24 25 Q So I -- if you make whole Clarke County, Tuscaloosa

1 County, Jefferson, and Montgomery, the first thing you
2 notice -- and I'm sure you have -- is that when you make
3 Jefferson County whole, you've got yourself an almost perfect
4 congressional district with one county. It's about 43,000
17:52:52 5 persons short of being an ideal district size, correct?

6 A That's correct.

7 Q And that pretty much -- that pretty much limits the
8 opportunities for connecting other counties with Jefferson in
9 order to reach 717,754 people, more or less. And so the plan
17:53:23 10 that the amended complaint settled on was to link it with these
11 rural counties south of Jefferson County, correct?

12 A That is correct.

13 Q Bibb, Perry and Hale.

14 Once that is done, once Jefferson County's made whole,
17:53:48 15 obviously, District 7 will need to find additional population
16 elsewhere because that's a whole bunch of folks that are taken
17 out of District 7. Almost 200,000, right?

18 A Yes.

19 Q And so what the plaintiffs proposed was to, first of all,
17:54:10 20 you are get a little bit more, you get about 42,000 out of
21 making Tuscaloosa County whole, and then you go over and you
22 add all of Montgomery County, and Macon and Bullock County, two
23 other Black Belt counties, and then proceeding further south,
24 counties elsewhere in the Black Belt or bordering the Black
17:54:34 25 Belt, that's what this plan does, correct?

1 A Yes.

2 Q Okay. And once that was done, it had little -- it had
3 some effect on Mobile County because in the 2011 plan, Mobile
4 County and Baldwin County in District 1 were connected with
17:55:01 5 Washington and Monroe counties, and to gain population for 7,
6 Washington and Monroe County went into the plaintiffs' proposed
7 whole county plan. Do you see that?

8 A Yes.

9 Q And that meant District 1 had to expand eastward along the
17:55:24 10 Florida border to pick up Covington County.

11 That's going to create a problem for District 2, correct?

12 A It would, yes.

13 Q And in fact, it pushed District 2, which was all down here
14 in the southeastern part of the state that we call the
17:55:43 15 Wiregrass, it pushed District 2 and the Wiregrass part farther
16 up the Georgia/Alabama border through Barbour, which is a Black
17 Belt county, Russell, Lee, Chambers, Tallapoosa, Elmore.

18 Well, anyway, I'm just trying to, first of all, set the
19 stage here by examining what the plaintiffs' amended complaint
17:56:14 20 alleged was a proper way to remedy their alleged racial
21 gerrymander of the 2011 plan. And then I want go and look at
22 the way you have explored the questions you asked.

23 Are there other ways to do this using whole counties,
24 okay?

17:56:34 25 A Yes.

1 Q All right. Let's go down to page 31. I'm sorry, page 32
2 of your report.

3 A I'm referring to my report here, so...

4 Q 27, 28, 29, 31, 32.

17:57:08 5 A There it is.

6 Q There you go. There's the table that summarizes the
7 alternative plans using whole counties that you attempted to
8 draw.

9 So they're labeled a little confusingly, but S-1, S-2, 1,
17:57:34 10 2, 3, 4, 5, 1-B, 2-B, 3-B, down to 6-B.

11 The next column is deviation. Now, when it says
12 deviation, that's maximum deviation, correct?

13 A That is correct.

14 Q And remind the Court what maximum deviation means.

17:57:52 15 A So that would be the number of percentage points above and
16 below zero deviation as represented by what percentage of the
17 population deviates from a perfect deviation both above and
18 below the perfect target of 717,754 people.

19 Q So to get maximum deviation, you simply take the district
17:58:23 20 that's most overpopulated and add that percentage to the
21 district that's least populated and those two percentage added
22 arithmetically is the maximum deviation?

23 A That is correct.

24 Q Excuse me. The third column, incumbents safe, question
17:58:43 25 mark. When you mean safe, do you mean are they in a district

1 with some other incumbent or is there some other measure you're
2 using here?

3 A Yes. This is an indicator of whether the incumbents are
4 paired or are not. In District 2, as to District 3, the
17:59:05 5 incumbents are all in their own districts. In the Alabama plan
6 they're in their own districts. The remainder have two or more
7 incumbents paired.

8 Q Okay. The fourth column says 2018 election, governor.

9 And I remember from your direct examination that you just
17:59:28 10 selected this as one of many election returns over the past
11 decade that you scanned and thought that this was
12 representative of what those other election results look like;
13 is that correct?

14 A Yes, sir.

17:59:42 15 Q All right. This column then says, first of all, the
16 number of and percent of D districts, that means Democratic
17 districts?

18 A Yes.

19 Q And you picked Democratic districts because the undisputed
18:00:04 20 testimony, including the testimony of Trey Hood is soon -- soon
21 to be, appears that in Alabama, black voters support -- over
22 90 percent of the black voters, I think you said 92 percent, at
23 some point support Democratic candidates; is that correct?

24 A I did not listen to the testimony of Trey Hood, but that
18:00:27 25 is a fact that I believe to be true.

1 Q Okay. I'm sorry. Getting ahead.

2 All right. So if you go to the first alternative district
3 that you drew, it says it produces -- it produces one
4 Democratic district; is that correct?

18:00:57 5 A That's correct.

6 Q And your report says that you computed the -- the
7 performance data, the election return performance data by going
8 to the precinct level, getting the election results and then
9 aggregating them at the county level; is that correct?

18:01:24 10 A That's correct.

11 Q And I guess you might have done that because you were also
12 trying to ascertain what the performance -- the election
13 performance results would be in the plans -- the plan enacted
14 by the state, which cuts county boundaries, and, therefore, you
18:01:45 15 have to go to the precinct level. Is that why you did that?

16 A Yeah, exactly.

17 Q Rather than just using the election returns for the whole
18 county that you can get right off the Secretary of State's
19 website?

18:01:56 20 A That is correct.

21 Q Okay. But they should be the same. These should -- the
22 data you used should correspond with the election returns for
23 each county in Districts 6 and 7 of the proposed whole county
24 plan, right?

18:02:13 25 A Yes.

1 Q Okay. And then this percentage here, 41.3, what does that
2 mean?

3 A You know, I think the label here where it says percent D,
4 this may actually be the percent Republican, which reflects
18:02:38 5 that the majority, the percent majority Democrat in that
6 district -- I'm trying to think. I'm sorry, James. Let me
7 just think a minute.

8 Q I think it's --

9 A It is the percent Democrat. It is the percent Democrat in
18:02:56 10 those districts. That's correct. Percent Democrat.

11 Q I think somewhere in this report you say it represents the
12 percent of BVAP in that district?

13 A Yeah. There's two. There's one -- the first column is
14 percent Democrat and the second one is percent BVAP. So the
18:03:21 15 second -- the last column there shows the percent BVAP and what
16 the BVAP percentages are in those districts -- in those
17 different alternative districts.

18 Q Okay. And the 41.3 is what?

19 A That's the percent -- the number of what we would call the
18:03:38 20 number of the at least Democrat influenced districts and the
21 percent Democrat in those districts. So there would be one
22 Democratic district. In the plaintiff plan there would be two,
23 41 -- that are over 40 percent. 41.4 and 44 percent. I
24 believe numbers that closely relate to the percent of
18:04:05 25 registered back voters and also to the Democratic performance

1 in those districts.

2 Q Well, I mean, in order to have one performing Democratic
3 district, the election returns had to show a majority for the
4 Democratic candidate, right?

18:04:21 5 A Yeah. I think that that -- the analysis of the number is
6 just my own analysis.

7 Q So the 41.3 might be percent Republican, you say?

8 A I really apologize. I'm flooded with numbers right now.
9 I would have to look at my table. I apologize. But I believe
18:04:44 10 that's the case.

11 Q All right. And then the last column, the number and
12 percent of black districts greater than 40 percent?

13 A Yes, sir.

14 Q How did you land on 40 percent as a metric?

18:05:00 15 A Yeah. That was an arbitrary number. It's a cutoff
16 number. And I kind of base that on the report that showed the
17 percent black registered voters in the analysis of the
18 complaint, I believe was about 42 or 43 percent. That was the
19 lower of the two thresholds for BVAP population in the
18:05:29 20 plaintiff districts.

21 So I used that as kind of an arbitrary cutoff to say what
22 would the number have to be in order to be a candidate black
23 influenced district in one of my candidate plans.

24 Q Yeah. And if 43.0 percent in your alternative district

18:05:51 25 S-1 --

1 A Yes.

2 Q -- is the BVAP in that district, in that one district that
3 performs?

4 A Right.

18:06:02 5 Q Okay? Excuse me. That BVAP figure is really sort of
6 superfluous, isn't it? Once you determine that the district
7 went Democrat, it really doesn't matter what the black
8 percentage was, does it?

9 A Yeah. That's correct. So the assessment here when you
18:06:24 10 look at the number of Democrat districts and then the black
11 percentage there, it's not a coincidence that those numbers
12 look very similar as you go down through the analysis.

13 Q The feature of drawing districts using whole counties is
14 that instead of focusing on the race of the voters, the
18:06:50 15 geographic dispersion of the demographics, or anything else,
16 you simply have to look at what the total population is once
17 the districts -- the counties are aggregated. And if whether
18 or not -- if you are looking at whether or not it conforms with
19 the Voting Rights Act, you would want to know whether or not
18:07:20 20 candidates favored by blacks are able to win in that district,
21 correct?

22 A That is correct.

23 Q Okay.

24 A I want to state for the record that I am not a political
18:07:36 25 scientist. And my analysis here of the political performance

1 of the districts was purely diagnostic and not a reflection of
2 my expertise in that area.

3 Q That's great. And I'm not holding you to that. I just
4 want to understand and let the Court understand what you have
18:07:53 5 found in this experiment that you undertook.

6 I'm going to go down to the maps now.

7 A Thank you.

8 Q And since I'm not clever, I can't separate out this table
9 we were just looking at. We are going to -- I have it in front
18:08:10 10 of me. Any chance you can get it in front of you?

11 A I've got a copy of the maps in front of me.

12 Q I mean a copy of the table. I am going to have the maps
13 up on the screen.

14 A Yep. Hang on a minute. I've got it. Okay. Yeah. I
18:08:32 15 have the percent black and then the -- also have the percent
16 Democrat --

17 Q Okay.

18 A -- tables in front of me.

19 Q And the table, on the second column where you have maximum
18:08:44 20 deviation, your plans all the way down to Plan Number 5 are
21 supposedly -- are listed as being smaller in deviation than the
22 2.47 percent maximum deviation in the whole county plan, the
23 Singleton whole county plan?

24 A I think that's right.

18:09:14 25 Q Okay.

1 A Yeah. Found it.

2 Q Okay. So if -- if the Singleton map drawer was trying to
3 minimize the maximum deviation when he was aggregating counties
4 into districts, these plans down to Number 5 would indicate
18:09:40 5 options he might have taken to get even a smaller maximum
6 deviation, right?

7 A Yes. Those are possible scenarios with lower deviation.

8 Q Okay. So let's look at them one at a time.

9 Here is plan S -- well, that's the plaintiffs' plan.

18:09:58 10 A Yeah.

11 Q S-1. Okay.

12 A Right.

13 Q S-1 says it's a maximum deviation of 0.6 percent and it's
14 got one performing district.

18:10:14 15 Now, let's stop right now. That one performing district
16 is a Jefferson County district, right?

17 A Yes.

18 Q I mean, there ain't no way you can keep Jefferson County
19 whole and not have one Democratic performing district, right?

18:10:29 20 A Yes.

21 Q Okay. And, in fact, all of your -- all of your
22 alternative plans either connect Jefferson County with -- in
23 this case it's with Greene instead of Perry, but --

24 A Yeah.

18:10:46 25 Q -- the rural counties to the south, or you've got two

1 further down we will get to that connect it with Blount.

2 But the Blount ones -- when you connect it with Blount it
3 goes over the 2.47 maximum deviation to the plaintiffs' one.

4 All right. So let's look at this one. This is

18:11:05 5 0.6 percent. And to achieve this, you've got in addition to

6 the Jefferson County district, you have got a district

7 something or other here. What is the Greene district number?

8 7. That's the --

9 A 7. Right.

18:11:25 10 Q So you had to connect -- you had to take 7 all the way up
11 to Lauderdale County. You had to take the District 7
12 representative up to Tennessee, right?

13 A Yes.

14 Q Okay. And that's on one end. And on the other end you've
18:11:46 15 got to take him over to the Georgia border.

16 A Yes.

17 Q So tour the whole state. So you did not provide in your
18 report any core analyses for these alternative plans like you
19 did for all the ones you just testified about; is that right?

18:12:08 20 A Yeah. That's correct. I presented these, you know,
21 really just as scenarios to say was it possible under any
22 circumstance no matter what -- except with regards to the
23 deviation -- was there any way to use the county-based method
24 to combine counties in any other way. And in some of those
18:12:32 25 ways, those combinations end up with a good mathematic outcome,

1 but are ridiculous looking maps, I will concede.

2 Q This one is not compact and it just destroys the core,
3 right?

4 A It would, yes.

18:12:48 5 Q Okay.

6 A County-based, small deviation is pretty much the two
7 criteria we used here.

8 Q Okay. Then we go to S-2, plan S-2, and it is a
9 1.0 percent maximum deviation, again with just one Democratic
10 performing district. And that is the Jefferson County
11 district.

12 A Yes. Yes.

13 Q Now, this plan is not quite as ridiculous, is it?

14 A It's -- I will agree.

18:13:29 15 Q But it does make a hash out of the Black Belt. I mean,
16 you have got Black Belt counties Wilcox, Lowndes and Montgomery
17 hooked up all the way up north to Cherokee County. And you
18 have got whatever this purple district is, 4? District 4?
19 Okay. It doesn't matter.

18:13:57 20 JUDGE MARCUS: Let's focus the questions specifically,
21 if you would, Mr. Blacksher.

22 MR. BLACKSHER: Am I taking too long with the
23 questions?

24 JUDGE MARCUS: No. I think if you cut it down and
18:14:05 25 make it shorter, it will be easier to get an answer from him.

1 MR. BLACKSHER: Okay. Okay.

2 BY MR. BLACKSHER:

3 Q Let me just put it this way: This -- isn't it true that
4 this plan also, S-2, violates the traditional districting
18:14:23 5 requirements of preserving the core in compactness?

6 A Are you -- it is definitely not optimized for compactness
7 or for core retention. It was optimized for balancing
8 population and maintaining counties as building blocks and
9 minimizing the deviation. That's it.

18:14:47 10 Q Okay. Alabama plan 1 is next. And this one is
11 2.1 percent maximum deviation. Both S-2 and S-1, by the way,
12 prevent any incumbents from being paired. These are the two --

13 JUDGE MARCUS: Is that a question, Mr. Blacksher?

14 MR. BLACKSHER: It's a leading question, Your Honor.

18:15:13 15 JUDGE MARCUS: All right. Let's get a question mark
16 at the end of it and let's get an answer.

17 MR. BLACKSHER: I'm -- I'm trying to speed things up
18 by saying isn't that what it shows.

19 THE WITNESS: Yes.

18:15:25 20 BY MR. BLACKSHER:

21 Q Okay. Once again, isn't it true that this plan has to
22 split up the Black Belt?

23 A Yes.

24 Q Isn't it true that this plan has to take District 2 and
18:15:46 25 run it almost the entire eastern boundary of the state of

1 Alabama?

2 A Yes.

3 Q So this plan 1 is also a failure when it comes to
4 preserving cores or compactness, right?

18:16:01 5 A On those metrics, yes.

6 Q Okay. Plan 2 is 2.1 percent. It also has only one and
7 it's the Jefferson County district. And I'm just going to
8 move -- I know the Court is tired and doesn't --

9 JUDGE MARCUS: I am not tired in the slightest,
10 Mr. Blacksher. The problem I'm having is that it is a compound
11 question stringing together three concepts. I think it would
12 be easier if you just crisply refine the question to each issue
13 unless you need a broader explanation for the question.

14 BY MR. BLACKSHER:

18:16:48 15 Q How about if I ask does this plan work for you, Mr. Bryan?

16 A I can help this by saying that virtually all of these
17 plans violate core retention and compactness and are simply
18 illustrations of different combinations of counties that can
19 minimize deviation. Those were the only two objectives for any
18:17:14 20 of them. And they will all virtually fail if you hold them to
21 any other criteria.

22 They were simply designed to illustrate all the different
23 possible combinations of counties that you could possibly
24 achieve if we use the plaintiffs' proposed methods of building
18:17:28 25 on counties. Because the building of counties subordinates in

1 the report and the complaint that I saw, it subordinates the
2 other traditional redistricting principles. And that is why we
3 took the liberty of creating these options.

4 Q But to go back to the District 7 composite of three maps,
18:17:49 5 it is true, isn't it, that the plaintiffs' proposed plan
6 preserves the core of District 6, which is Jefferson County,
7 and pre serves the core of District 7, which is the Alabama
8 Black Belt?

9 A Yes, that appears to be so.

18:18:06 10 Q Okay. I wanted to go down to -- I will skip down to Plan
11 Number 5, because your -- your chart says that the maximum
12 deviation for this plan is 0.7 percent. And it's much closer
13 to the plan that the plaintiffs -- it's in the plaintiffs'
14 amended complaint.

18:18:38 15 Can you -- I need you to recheck that 0.7 percent because
16 I tried to check the maximum deviations in your table, but
17 since I -- I don't have Maptitude, I'm using a poor man's
18 Maptitude. I'm using Dave's redistricting map. Are you
19 familiar with Dave's?

18:19:01 20 A Yes, I am very familiar.

21 Q Okay. So let me just show you that when I put -- and by
22 the way, excuse me. That's the wrong thing. Here we go.

23 This is your plan 5, as I inserted it into Dave's. And
24 isn't the reapportionment committee through counsel,
18:19:31 25 Mr. Walker, provided everybody with the block equivalency files

1 for most of these plans. But I did not use any block
2 equivalency files here. I just built it to look like your
3 plan 5, all right?

4 JUDGE MARCUS: Mr. Bryan, do you understand what he
18:20:00 5 has done here?

6 THE WITNESS: Yes.

7 JUDGE MARCUS: That's the predicate for his next
8 question.

9 THE WITNESS: It appears as if he has replicated my
18:20:07 10 plan and may have a deviation that's somewhat different than
11 the plan that was reported by my analytic team. It's possible.
12 We can certainly look at where and why there may be a
13 population deviation that's different.

14 JUDGE MARCUS: I don't think that was the question.
18:20:25 15 So bear with his questions if you would.

16 BY MR. BLACKSHER:

17 Q The question is: Is it possible that your deviation is,
18 in fact, 5.99 percent?

19 A If -- it's possible. We created a limit for the deviation
18:20:43 20 in our plans of not more than 6 percent. So it's possible that
21 the name of one of the plans slipped from -- given that there
22 was 13 of them -- that one slipped from one plan to another
23 plan. But at no instance were these combinations greater than
24 6 percent total deviation.

18:21:01 25 Q Let me go to plan 1-B. Alabama plan 1-B is 2.5 percent

1 maximum deviation and has two performing Democratic
2 districts -- Jefferson County, of course. And district --
3 well, the one that's marked purple here.

4 A Be 4, I believe.

18:21:41 5 Q You have labeled it 4 out of -- I would have thought it
6 would be more 7. It's usually where 7 is, right?

7 So --

8 JUDGE MARCUS: Bear with me. I may be the only one
9 who missed it, but I did not get your answer, Mr. Bryan.

18:21:58 10 THE WITNESS: Yes, that is correct.

11 JUDGE MARCUS: All right. Thank you.

12 BY MR. BLACKSHER:

13 Q So when you compare plan -- Alabama plan 1-B with the
14 plaintiffs' proposed whole county plan, the only major
18:22:12 15 difference, isn't it, is that you have substituted Greene
16 County for Perry County? Or did I miss something?

17 A It's possible, yeah.

18 Q Okay. So this -- this shows that as long as you keep the
19 Black Belt whole and you keep Jefferson County district whole,
18:22:37 20 you are going to come up with something around 2.5 percent,
21 right?

22 A Yes, that would be my conclusion.

23 Q Okay. The other plan that had two performing black
24 districts was District 5-B. Go down to it.

18:22:58 25 And once again, it comes very close to the plaintiffs'

1 plan, except that you have got Clarke County and Washington
2 County in District 1, right?

3 A Yes.

4 Q Okay. But, again, both these plans -- this plan 5-B has a
18:23:16 5 maximum deviation of 6.0 percent, right? So my question to
6 you, based on your alternative plans, isn't it true that the
7 plan proposed in the plaintiffs' complaint, the whole county
8 plan that they proposed, is, for practical purposes, as low a
9 population deviation you can get with the whole counties and
18:23:46 10 still make some kind of districting sense for Alabama.

11 A You have the criteria of making some districting sense,
12 yes, that's a fair assessment.

13 Q Let me go down finally -- I am going to go down to one
14 other place in your report that I need to ask a question about,
18:24:33 15 and it's on page 40. And this is the page where you are
16 talking about racial composition and where --

17 A Sure.

18 Q -- you say that you paused to reflect on the possibility
19 that the Singleton plan is a racial gerrymander.

18:25:05 20 Now, going over these -- what is the evidence you cite
21 here for -- that suggests that it's a racial gerrymander?

22 A The evidence is that District 6 was extended in the only
23 direction and in the only way to capture as much black
24 population as is possible to get it to a point -- I'm reading
18:25:44 25 here -- of semi-equitability with race and political

1 performance as District 7.

2 It was drawn in such a way, and the only way that it could
3 possibly have achieved the same performance. There's no other
4 direction or way District 6 could have been extended beyond
18:26:05 5 Birmingham.

6 So the evidence that I submit is that if there's only one
7 way to do it and that was the only way and that was the only
8 way that the plan was drawn to try and get District 6 up to
9 this competitive district, that that could be argued to be a
18:26:24 10 gerrymander as well.

11 Q Even though it's the only way to achieve population
12 equality, substantial population -- practicable equality?

13 A There are -- if we -- go ahead.

14 Q If you are going to make Jefferson County whole, it's got
18:26:48 15 to go in that direction unless it goes up to Blount County and
16 has a bigger deviation, right?

17 A Yeah. So there's -- another option, but they are limited,
18 I can see.

19 Q In fact, the gerrymander in all the maps that the Court
18:27:07 20 has seen, both in the Voting Rights Act case and this case, all
21 have one focal point and that is Jefferson County, isn't that
22 correct?

23 A It is true, yes.

24 Q It is Jefferson County that drives redistricting in the
18:27:22 25 state of Alabama when it comes to congressional districts?

1 A Yes.

2 Q To split or not to split. That is the question, right?

3 A Right.

4 Q There are several places you say, for example, on page 20,
18:27:53 5 that in order to -- let me just use this as a way to
6 demonstrate the argument.

7 Isn't it true that what your exercise shows is that when
8 you do employ whole counties to draw congressional districts in
9 Alabama, it will constrain the ways in which the districts can
18:28:17 10 be gerrymandered?

11 JUDGE MARCUS: Do you understand the question,
12 Mr. Bryan?

13 THE WITNESS: I am sorry. I didn't hear that posed
14 in --

18:28:35 15 JUDGE MARCUS: All right.

16 THE WITNESS: -- as a question. If the argument is
17 does it -- does it limit the ways in which it can be
18 gerrymandered, I would say yes. Does it prevent gerrymandering
19 as a method and preclude it and stop it, I would say no.

18:28:53 20 BY MR. BLACKSHER:

21 Q There's probably nothing in the world that can prevent
22 gerrymandering. My question was whether it definitely
23 constrains the options for either incumbent gerrymandering,
24 racial gerrymandering, or partisan gerrymandering, whatever; is
18:29:15 25 that correct?

1 A It restricts those dimensions of redistricting.

2 Q You point in several places -- page 20, page 31,
3 page 40 -- I have got written right down here on page 40 that
4 without -- you say the argument is made that the black -- blah
18:29:48 5 blah blah -- without counties as the determining factor, I
6 could argue that there are innumerable geographic combinations
7 besides those constrained by counties that could potentially
8 meet and even exceed the performance touted by plaintiffs if
9 that was their objective.

18:30:06 10 What -- first of all, that concedes that until you start
11 cutting the county boundary, you have some constraints on what
12 your options are for gerrymandering, right?

13 A Well, the constraints are not limited just to
14 gerrymandering, but to other traditional redistricting
18:30:25 15 principles. They also prevent you from optimizing compactness.
16 It also has an impact on core retention and it certainly has an
17 impact on deviation, the limitations of using county alone are
18 not limited simply to the impact of gerrymandering.

19 Q My question simply was about gerrymandering, okay?

18:30:47 20 A It limits the gerrymandering.

21 Q Okay. And you have said elsewhere in the report in order
22 to identify other communities of interest as a basis for
23 drawing districts, you have to go to the sub-county level;
24 isn't that correct?

18:31:08 25 A As we discussed earlier, there are numerous communities of

1 interest across Alabama. Some I focused on more than others,
2 but there are many -- if you were to use the Black Belt as an
3 example as a community of interest, it spans across multiple
4 different counties and even when that is the case, the Black
18:31:33 5 Belt and almost every plaintiff plan we have looked at today
6 still ends up getting split by different plaintiff plans.

7 Q Let me go to page 31. I have highlighted this language
8 here, the number of alternative plans using sub-county
9 geography such as voting precincts or even census blocks is
18:32:16 10 immeasurable.

11 A Yes.

12 Q Okay. So what we can say about using whole counties is at
13 least those alternatives are relatively measurable?

14 A I would agree, yes.

18:32:31 15 Q Okay. So the question is -- I know you are not a lawyer,
16 but the question that this plan that the plaintiffs drew
17 whether or not it's -- it can be adopted by the legislature or
18 by a court is, A, whether it complies with one person, one
19 vote, and, B, whether it complies with the Voting Rights Act,
18:33:09 20 right?

21 A Those would be the key questions, yes.

22 Q Okay. I think I am about through, Judge, if you will just
23 give me a second.

24 JUDGE MARCUS: You take your time. I think something
18:33:37 25 has popped up on the screen here, Mr. Blacksher. It looks like

1 e-mails I don't think belong on this screen.

2 MR. BLACKSHER: No, they don't. I'm chatting with my
3 colleagues to see if they had any more questions for me.

4 JUDGE MARCUS: No. I understand. You take your time.

18:33:54 5 Let me know if you want to take a short break.

6 MR. BLACKSHER: What I need to do is stop sharing the
7 screen. There. That's much better. I'm sorry, Your Honor.

8 JUDGE MARCUS: That's all right.

9 MR. BLACKSHER: I have no further questions.

18:34:10 10 JUDGE MARCUS: All right. Mr. Davis, tell me about
11 your pleasure, do you need a break or do you want to roll right
12 through?

13 MR. DAVIS: I am at the court's pleasure. Unless
14 Mr. Bryan needs a break, I'm happy to proceed.

18:34:23 15 JUDGE MARCUS: How are you doing?

16 THE WITNESS: I am ready to go, Your Honor.

17 JUDGE MARCUS: How long do you expect that you will be
18 on your redirect?

19 MR. DAVIS: Between 10 and 15 minutes, Your Honor.

18:34:35 20 JUDGE MARCUS: Okay. Fire away.

21 REDIRECT EXAMINATION

22 BY MR. DAVIS:

23 Q Mr. Bryan, when we talk about incumbent protection, even
24 if incumbents are not paired, voters still retain the ability
18:34:53 25 to vote out a representative if they're unhappy with the

1 representation, right?

2 A That is correct.

3 Q I want to look at the Singleton Report 1 and take care of
4 a couple of issues. Let's see if we can't clear something up.

18:35:16 5 I am going to look at page 38.

6 Can you see your Figure 5.11?

7 A Yeah. Those numbers were percent Republican.

8 Q I see it.

9 A They may have been labeled percent Democrat in the other
18:35:34 10 table, but, yeah, that's correct. Those correspond to percent
11 Republican. Thank you for the clarification.

12 Q So if we go back up to page 32, look at Table 5.6. The
13 numbers we see in the one, two, three, fourth column, for
14 plan 1, 41.3 percent, that's the percent of the Republican vote
18:35:56 15 in that district?

16 A That's correct. Yes.

17 Q And that means that a majority of voters in that district
18 during that 2018 election supported the Democrat?

19 A That's correct, yes.

18:36:07 20 Q Mr. Blacksher -- excuse me -- Mr. Bryan, did you receive
21 shapefiles or block allocation files for all of the plans that
22 you have assessed?

23 A Can you please be specific to which plan or are you
24 referring to all of the plaintiff plans that we worked on?

18:36:30 25 Q Thank you. I meant all of the plaintiffs' plans that you

1 look -- that you address in the reports that we've talked about
2 today.

3 A Yeah. So I have received shapefiles and/or block
4 allocation files for all of the plans, including the state of
18:36:45 5 Alabama plans.

6 Q Explain to us what you do with a shapefile or block
7 allocation file.

8 A Sure. What I would do with a shapefile is I would use it
9 in two ways. There's two different layers of geography that we
18:37:01 10 use in our geographic information systems. One is what we
11 would call a block file. This is the file that has the most
12 granular units of geography for the state. They're called
13 census blocks. They're at the bottom of the spine, as you
14 will, for census geography.

18:37:19 15 Those blocks, the way they come from the Census Bureau do
16 not have any demographic data associated with them at all. So
17 part of my practice as a demographic expert is to join the
18 demographic data that we have from the census with those
19 blocks.

18:37:36 20 So just because I receive a block assignment file from a
21 plaintiff or from the State of Alabama does not mean that I
22 have all the census data that I need to perform my analysis.

23 Q Fair enough. But if you have the block allocation file or
24 shapefile --

18:37:53 25 A Right.

1 Q -- does that allow you to load one of the plaintiffs'
2 plans on to your system?

3 A Indeed it does. That brings me to the second layer that
4 we use, which are what we call an outline shapefile. It's just
18:38:06 5 basically whatever the perimeter or the boundary is of that so
6 we can ascertain which blocks belong in which districts to
7 perform our analysis.

8 Q Okay. So in all of these tests you have run on the
9 different plaintiffs' plans in your report, did you run those
18:38:24 10 by looking at the plaintiffs' reports and exhibits, or did you
11 run those by loading the plaintiffs' plans on to your system
12 and performing the tests on your demographic software?

13 A All of those plans were independently run, tested, and
14 quality controlled on my own system, and then compared where
18:38:42 15 possible with the exhibits presented by the plaintiffs.

16 Q Thank you.

17 In our discussion of the youth of single-race black or
18 any-part black, Mr. Bryan, now, you present both metrics in
19 your report, correct?

18:38:56 20 A I do, yes.

21 Q Are you intending to question any person's self-identity?

22 A I would never.

23 Q Are you offering an opinion to this Court in this lawsuit
24 as to whether the Court should or should not use any specific
18:39:13 25 measure?

1 A I do not.

2 Q Are you offering opinion as to whether any measurement is
3 correct or incorrect?

4 A I do not.

18:39:21 5 Q Okay. Now, in redistricting cases -- and you have been a
6 part of many different redistricting cases, correct?

7 A Yes, I have.

8 Q Including Section 2 cases?

9 A Yes, I have.

18:39:33 10 Q So you understand, do you not, that you demographers do
11 your thing, that's generally related to the *Gingles I*?

12 A We did.

13 Q And that addresses among other things whether you can get
14 to 50 percent plus 1 in a single member district; is that
18:39:52 15 correct?

16 A In my area of analysis, I prepare and present both of
17 those numbers in support of Section 2 claims.

18 Q Right. There are other folks, political scientists, who
19 do other parts of the analysis, is that your understanding?

18:40:10 20 A That is correct.

21 Q And they're addressing voting behavior, would you agree?

22 A I would agree.

23 Q And that's not what you do?

24 A It is not.

18:40:19 25 Q Okay. So you're looking at whether the minority

1 population is a majority and the political scientists are
2 looking at how the minority population votes. Is that a fair
3 summary -- maybe very generalized, but is that a fair summary
4 of what you experts are doing?

18:40:36 5 A It is accurate and it characterizes the division of labor
6 between our two professions.

7 Q And do you consider it important whether -- or relevant to
8 your analysis as to whether when you guys, demographers, are
9 talking about whether the minority populations are majority,
10 whether you are looking at the same minority population as the
11 political scientists guys who are addressing voting behavior?

12 A Those are -- oftentimes they turn out to be two different
13 numbers and may be used the same way or in different ways by
14 the courts. I have seen as in testimony in this case that
15 black alone was used as a measure by a political scientist. I
16 see other cases sometimes where it's used alone in combination.

17 Similarly, for *Gingles I*, different courts, different
18 circumstances will call upon the use of black alone or Hispanic
19 or alone in combination. They are not necessarily
20 intrinsically intertwined or dependent on each other.

21 Q Mr. Bryan, would you consider the one person, one vote
22 requirement to be a legal requirement that applies any time a
23 plan is drawn or as a traditional districting criteria?

24 A I would consider it to be a legal requirement and then
18:42:00 25 conformance with that legal requirement is reflected in the

1 plan drawn by the state of Alabama and most of the other
2 plaintiff plans that were presented.

3 Q And would you as a demographer consider the laws
4 prohibiting racial discrimination to be a legal requirement
18:42:19 5 that applies whenever a plan is drawn, or a traditional
6 districting criteria that you might balance with other
7 traditional criteria?

8 A They're laws. Laws are laws.

9 Q Is there a traditional districting criteria of a
18:42:34 10 requirement to draw every possible majority-black district no
11 matter how non-compact it might be, or how much it butchers
12 communities of interest?

13 A There is not a requirement to my knowledge.

14 Q If non --

18:42:51 15 JUDGE MARCUS: Just -- will you stop? I think
16 Mr. Dunn is trying to interpose an objection. I see him
17 speaking, but he is muted. So we cannot hear him. We cannot
18 hear you, Mr. Dunn, because you have your microphone muted.

19 MR. DUNN: Can you hear me now, Your Honor?

18:43:24 20 JUDGE MARCUS: I sure can.

21 MR. DUNN: I am sorry. I apologize.

22 JUDGE MARCUS: We did not hear what you were saying.

23 MR. DUNN: I was trying to object to this line of
24 questioning. He is asking him to testify to things that are
18:43:37 25 obviously legal conclusions and way beyond the scope of cross.

1 JUDGE MARCUS: The objection is sustained. If you
2 would like to refrain your question, you may, Mr. Davis.

3 MR. DAVIS: Very well. I do not know to which
4 objections Mr. -- which questions Mr. Dunn's objection apply
18:43:54 5 to.

6 JUDGE MARCUS: I think the very last one seemed to
7 call for some kind of legal analysis or conclusion.

8 To the extent that was the thrust, Mr. Bryan's opinion
9 might be interesting, but it's of no help to us in this case
18:44:09 10 because he has not been qualified as an expert on the law.

11 MR. DAVIS: Very well.

12 BY MR. DAVIS:

13 Q Mr. Bryan, as a demographer, do you understand there to be
14 a traditional districting criteria that requires a jurisdiction
18:44:25 15 to draw any possible majority-black district no matter how
16 non-compact that district might be?

17 A I'm not aware.

18 Q I believe you agreed that if a party is required to show
19 that -- or is required to present a plan that includes an
18:44:52 20 additional majority-black district than in the previous plan,
21 that that's going to impact that plan's core retention score.
22 Did you agree with plaintiffs' counsel on that point?

23 A I agree.

24 Q Is it not still true that the amount of displaced voters
18:45:11 25 and the larger impact of core retention scores can be

1 instructive as to show you how much the traditional districting
2 criteria policy of core retention must be sacrificed in order
3 to draw that additional majority-black district?

4 MR. DUNN: Your Honor, I know it's really late, but he
18:45:30 5 is just testifying. He's leading the witness. He has got to
6 let the witness testify and not make speeches. I object. This
7 is really inappropriate.

8 JUDGE MARCUS: I will take the answer. Overruled.

9 Mr. Bryan, do you understand the question?

18:45:47 10 THE WITNESS: Please state the question again.

11 BY MR. DAVIS:

12 Q I'll try. Mr. Bryan, in any -- in assessing any of these
13 plaintiffs' plans, does the amount of -- does the core
14 retention score -- can it be instructive to tell us how much
18:46:12 15 the traditional districting policy of core retention has to be
16 sacrificed in order to draw an additional majority-black
17 district?

18 JUDGE MARCUS: Do you understand the question,
19 Mr. Bryan?

18:46:22 20 THE WITNESS: Yes, Your Honor, I do.

21 JUDGE MARCUS: All right. You may answer.

22 THE WITNESS: I would say that the core retention
23 analysis and I think particularly the differential core
24 retention analysis showing how much more a minority population
18:46:36 25 is impacted than the population as a whole would be the metric

1 that one would use to assess what the consequences are to core
2 retention if you are going to seek some other goal besides
3 compactness or core retention as your primary goal. I agree.

4 BY MR. DAVIS:

18:47:01 5 Q We've spoken of common features that we might see in the
6 Hatcher plan and in Dr. Duchin's plan and in Mr. Cooper's
7 plans. So I want to point out some things, and you tell me if
8 those are common features of all of these plans.

9 Do they all split Mobile County?

18:47:20 10 A Yes.

11 Q Do they all join the inner city part of Mobile County, the
12 part is more African-American with the counties in the western
13 Black Belt?

14 A Yes.

18:47:34 15 Q I misspoke. I said the county -- I meant the counties in
16 the eastern?

17 A Eastern. I understood. Yes. It is correct in the
18 eastern. To some cases not all the way to the eastern border
19 but eastern through the Black Belt for sure.

18:47:48 20 Q And do all of these plans join the less African-American
21 portions of Mobile County with the Wiregrass counties along the
22 Florida line?

23 A Yes, they do.

24 Q Sometimes all the way out to Houston County, correct?

18:48:04 25 A All the way.

1 Q In the report that you prepared for the State of
2 Wisconsin, I believe it was the Wisconsin Legislature,
3 Mr. Bryan, was it possible in that matter to draw a map that
4 avoided any incumbent conflicts?

18:48:23 5 A It was not mathematically possible.

6 Q Is it your belief that the plan that you were testifying
7 about does as good a job as is possible in Wisconsin of
8 avoiding incumbent conflicts?

9 A It did.

18:48:39 10 Q Have we asked you to express an opinion in this case of
11 the legislature's intent in passing these plans?

12 A No.

13 Q Do you have some understandings of what has occurred in
14 depositions in this case? Just based on information that we
18:49:07 15 shared with you.

16 A Some, but not all.

17 Q But we have not asked you to express an opinion as to
18 whether that is correct, would you agree with that?

19 A Yes.

18:49:20 20 Q From your review of Dr. Duchin's plans and Mr. Cooper's
21 plans, do you believe as a demographer that it is necessary to
22 sacrifice compactness to some extent to draw two majority-black
23 districts in Alabama?

24 A Yes.

18:49:47 25 Q You conceded that you're not some national expert in

1 communities of interest, but as a demographer, have you become
2 familiar over the years with the concept of community of
3 interest?

4 A Yes.

18:50:05 5 Q And have you gained an ability -- how to assess and weigh
6 communities of interest against one another?

7 A I have some ability. It is a subjective difficult
8 exercise that is frequently very specific to the areas that we
9 are analyzing and can be a changing target.

18:50:28 10 Q Mr. Bryan, if Dr. Duchin's plans split the Black Belt
11 three ways, I mean, among three different districts, and if the
12 Alabama plan splits the black plan three ways among three
13 different districts, can you say whether one plan does better
14 than the other, in terms of treating the Black Belt as a
18:50:53 15 community of interest?

16 A I cannot.

17 Q I believe you recognized, Mr. Bryan, that a community
18 organizer can be a valuable source of information about
19 communities of interest?

18:51:10 20 A I agree.

21 Q Would you, nonetheless, need to review any specific
22 testimony from a community organizer before you can make a
23 judgment about whether that specific testimony is reliable and
24 sensible from a demographer's standpoint?

18:51:30 25 A That would be preferable and the more information a

1 demographer or an expert has in understanding the expert
2 opinions that are being provided to help inform them, the
3 better.

4 MR. DAVIS: One moment, if I may, Your Honor.

18:51:48 5 JUDGE MARCUS: Sure.

6 MR. DAVIS: Thank you, Mr. Bryan. Your Honor, I have
7 no further questions on direct.

8 JUDGE MARCUS: Thank you, Mr. Davis. Judge Manasco,
9 do you have questions?

18:52:07 10 JUDGE MANASCO: I do. I have two things I would like
11 to ask about. Mr. Bryan, so I heard you say several times -- I
12 believe it began in your conversation with Ms. Khanna for the
13 Caster plaintiffs, and continued in your examination by
14 Mr. Dunn, the Milligan plaintiffs, that you are reluctant to
18:52:28 15 opine that any one particular redistricting principle ought to
16 be placed in a hierarchy above the others, setting aside
17 one person, one vote, which I understand you regard as a legal
18 requirement, not a traditional redistricting principle. Did I
19 understand that correctly?

18:52:48 20 THE WITNESS: Correct.

21 JUDGE MANASCO: So will you look with me at the last
22 page, please, of your rebuttal report in Milligan and Caster.
23 I think it's Defense Exhibit 4 on page 19. Just let me know
24 when you're there.

18:53:18 25 THE WITNESS: Would this be the document, Your Honor?

1 JUDGE MANASCO: That's it. So the next to last
2 sentence says, My analysis of compactness shows the that
3 Dr. Duchin's plans perform generally better on average than the
4 enacted state of Alabama plans.

18:53:41 5 THE WITNESS: That's correct.

6 JUDGE MANASCO: Although some districts are
7 significantly less compact than Alabama's and significantly
8 better than Bill Cooper's plans.

9 THE WITNESS: That's correct.

18:53:52 10 JUDGE MANASCO: The last sentence says, In the
11 hierarchy of redistricting criteria priorities, I assess the
12 benefit of this accomplishment as being more than offset by the
13 significant detrimental impact to the continuity of
14 representation.

18:54:12 15 THE WITNESS: That is correct.

16 JUDGE MANASCO: So what I'm trying to understand is,
17 do you or don't you put the traditional districting principles
18 into a hierarchy as part of your analysis, and if you do, help
19 me understand where the hierarchy comes from; and if you don't,
18:54:32 20 my question would be do you adhere to the last sentence of your
21 rebuttal report.

22 THE WITNESS: Thank you, Your Honor. I would answer
23 this as follows: I do not follow a rule that says any one in
24 any given instance higher or lower than any other one. I
18:54:49 25 assess all of these redistricting criteria concurrently,

1 simultaneously watching what for the benefits and the drawbacks
2 are of applying one particular redistricting criteria over or
3 under another.

4 What is unique about the Duchin plan is that compactness
18:55:08 5 is selectively applied only in part of the plan and is not
6 applied in part of the plan where she is seeking to optimize
7 two black populations. In the area where she significantly
8 changes, manipulates the districts, that being Districts 4
9 and 5, if I recall correctly, there is no other reason for
18:55:27 10 compactness to be changed or for those districts to be changed
11 except solely for the purpose of compactness.

12 And it is my assessment that if a district -- in that
13 case, if a district is significantly changed and the continuity
14 of representation of that district is significantly disrupted
18:55:47 15 just for the sake of saying that the long historic bonds of a
16 group of people that have been represented in the same area by
17 the same representative for a long period of time, that, to me,
18 is not a fair or good tradeoff.

19 You're sacrificing the continuity of representation of
18:56:07 20 these people just to say that your district looks more like a
21 circle so that you can say it looks like a circle.

22 So in that instance, in that tradeoff, my professional
23 assessment is that the fact that it looks more like a circle is
24 not worth the tradeoff due the significant damage to continuity
18:56:23 25 of representation. That is not a hard and fast rule and

1 there's no fixed hierarchy that plays universally across all of
2 those judgments.

3 JUDGE MANASCO: Understood. Okay. So for my second
4 question, I want to return to the conversation about the metric
18:56:40 5 for measuring the Black Voting Age Population and whether it
6 should be any-part black or black alone. And I think you and
7 Ms. Khanna for the Caster plaintiffs discussed the Georgia
8 versus Ashcroft citation in your first report in Milligan and
9 Caster. You don't have to refer to it specifically. I'm just
18:57:04 10 going to ask you a general question about it.

11 THE WITNESS: Thank you.

12 JUDGE MANASCO: No problem. I know it's been a long
13 day. And I took your testimony to be that in the course of
14 preparing your analytics and in your report that you might rely
18:57:17 15 on data analysis prepared by team members who worked for and
16 with you in this kind of enterprise. Is that correct?

17 THE WITNESS: Yes, I do, and they're my direct
18 supervision.

19 JUDGE MANASCO: Okay. And I heard you say that you
18:57:35 20 had reviewed the Ashcroft decision some time ago, but not
21 directly in the course of preparing this report.

22 THE WITNESS: Yes.

23 JUDGE MANASCO: And I assume your data analysts would
24 not be doing that kind of work, they would be --

18:57:47 25 THE WITNESS: They had nothing to do with that.

1 JUDGE MANASCO: Okay. Is there any other material
2 that is cited in any expert report you have prepared and filed
3 that you did not personally review or have one of your team
4 members review in connection with the preparation of the
18:58:02 5 report?

6 THE WITNESS: Nope.

7 JUDGE MANASCO: Thank you.

8 JUDGE MARCUS: Judge Moorer? Any questions?

9 JUDGE MOORER: Yes, sir.

18:58:14 10 Mr. Bryan, there's no perfect redistricting plan that's
11 possible to be drawn anywhere, is there?

12 THE WITNESS: No, Your Honor.

13 JUDGE MOORER: And every ten years, virtually, every
14 state is going to make some changes to their redistricting to
18:58:30 15 take into account population shifts and whatnot, right?

16 THE WITNESS: Yes, Your Honor.

17 JUDGE MOORER: And every plan is going to involve
18 tradeoffs of compactness.

19 THE WITNESS: They always do, Your Honor.

18:58:43 20 JUDGE MOORER: Incumbency.

21 THE WITNESS: Yes.

22 JUDGE MOORER: And incumbency, when two incumbents are
23 pitted in the same district because of redistricting, is
24 something that incumbents can solve themselves if they want to
18:58:58 25 by moving to another district, right?

1 THE WITNESS: If they choose to do so, yes.

2 JUDGE MOORER: Or staying in a district and running
3 against whomever.

4 THE WITNESS: That is their choice, yes, Your Honor.

18:59:12 5 JUDGE MOORER: And no matter the incumbent, there's no
6 rule that other people who are not incumbents cannot run and
7 win against incumbents.

8 THE WITNESS: That's correct, Your Honor.

9 JUDGE MOORER: Whether that incumbent is pitted
18:59:29 10 against somebody else who might be an incumbent or not.

11 THE WITNESS: Yes, Your Honor.

12 JUDGE MOORER: And sometimes people who were
13 incumbents before run against current incumbents and win, don't
14 they?

18:59:44 15 THE WITNESS: Yes, Your Honor, they do.

16 JUDGE MOORER: Do you know if the state looked at
17 whether they could draw two minority districts when they were
18 going through the redistricting process.

19 THE WITNESS: Allow me to restate the question to make
19:00:15 20 sure I'm clear. You asked if --

21 JUDGE MOORER: Let me ask you a more clear question.

22 THE WITNESS: Thank you, Your Honor.

23 JUDGE MOORER: Did the state map drawer as far as you
24 know look at and draw potentially districts that would include
19:00:35 25 two minority districts?

1 THE WITNESS: Your Honor, I have already testified
2 that I have no knowledge of who the map drawer is, what their
3 process was or what the iterations were that they went through
4 and would be inappropriate for me to know so.

19:00:50 5 JUDGE MOORER: Okay. That's fine. I don't think I
6 have any other questions.

7 JUDGE MARCUS: Thank you. I have one for you,
8 Mr. Bryan.

9 You testified earlier that one of the areas of expertise
19:01:12 10 that you had was in estimating population shifts.

11 THE WITNESS: Yes, Your Honor.

12 JUDGE MARCUS: And you testified about that in a
13 specific context when you were looking at population deviations
14 and how they grew over a ten-year decennial period, right?

19:01:32 15 THE WITNESS: Yes, Your Honor.

16 JUDGE MARCUS: Did you review and is there anything in
17 any of your reports that projected population splits based on
18 race going back in time and going forward? For example, we
19 know from this record what the African-American population was,
19:01:57 20 say, circa 1992, and then we have numbers in the year 2000 from
21 the census and years in 2010 and 2020.

22 And if you look at those, you see a drop in the white
23 population if the numbers I saw in one of these reports is
24 right from roughly 73 percent to 63 percent of the Voting Age
19:02:24 25 Population. And conversely, the African-American population

1 grew somewhere between three and four from, say, 23 to 27,
2 something roughly like that. That's in the record, right?

3 THE WITNESS: We performed no such population
4 projections by race for the purpose of this analytic exercise,
19:02:47 5 Your Honor.

6 JUDGE MARCUS: Okay. So you didn't make any
7 projection from '21 to '31?

8 THE WITNESS: No, Your Honor.

9 JUDGE MARCUS: That's all I wanted to know. Thank you
19:02:56 10 very much.

11 Any follow-up questions by any of the lawyers? Let me
12 start with you, Ms. Khanna, and then turn to Mr. Dunn, and then
13 finally Mr. Blacksher, and Mr. Davis, we will give you the last
14 word because he's your witness.

19:03:12 15 Ms. Khanna? I'm sorry. You are muted. He did not hear
16 you. Fire away. Thank you.

17 MS. KHANNA: Nothing from me, Your Honor. I would
18 like to thank Mr. Bryan and the Court for its patience today.

19 THE WITNESS: Thank you, Ms. Khanna.

19:03:31 20 JUDGE MARCUS: Do you have anything further that you
21 would like to ask, Mr. Dunn?

22 MR. DUNN: No. I think we have all had enough for
23 today, Your Honor.

24 JUDGE MARCUS: Mr. Blacksher, anything further to
19:03:42 25 follow up on anything the judges asked?

1 MR. BLACKSHER: No, Your Honor.

2 JUDGE MARCUS: All right. Thank you much. Finally,
3 Mr. Davis?

4 MR. DAVIS: No questions from me, Your Honor.

19:03:51 5 JUDGE MARCUS: All right. I thank you all.

6 We will adjourn for the day. We will reconvene Monday
7 morning at 9:00 o'clock the usual time we had set, Central
8 Standard Time. That would be 10:00 a.m. Eastern Standard Time.

9 Thank you all. We are in recess.

19:04:17 10 (Whereupon, the above proceedings were concluded at
11 7:04 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

01-07-2022

Christina K. Decker, RMR, CRR

Date

Federal Official Court Reporter

ACCR#: 255

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

4 BOBBY SINGLETON, et al., *
5 Plaintiffs, * 2:21-cv-1291-AMM
6 vs. * January 10, 2022
7 * Birmingham, Alabama
8 * 9:00 a.m.

9 JOHN MERRILL, in his official *
10 capacity as Alabama Secretary *
11 of State, et al., *
12 Defendants. *

13 *****

14 EVAN MILLIGAN, et al., *
15 Plaintiffs, * 2:21-cv-1530-AMM

16 vs. *

17 JOHN MERRILL, in his official *
18 capacity as Alabama Secretary *
19 of State, et al., *
20 Defendants. *

21 *****

22 MARCUS CASTER, et al., *
23 Plaintiffs, * 2:21-cv-1536-AMM

24 vs. *

25 JOHN MERRILL, in his official *
capacity as Alabama Secretary *
of State, et al., *
Defendants. *

TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING
VIA ZOOM CONFERENCE
VOLUME V

BEFORE THE HONORABLE ANNA M. MANASCO,
THE HONORABLE TERRY F. MOORER,
THE HONORABLE STANLEY MARCUS

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P R O C E E D I N G S

(In open court.)

09:00:12 JUDGE MARCUS: Before we begin with the next witness,
last week an objection was raised provisionally to one of the
09:00:12 exhibits Caster was offering in evidence. It was a brief that
had been submitted to the Supreme Court. I had raised that
issue after there was a preliminary objection, and we gave you
folks the opportunity to think about where we stood on that. I
thought we would take that up at the outset. Counsel, where
09:00:39 are we on that exhibit? Do you remember the exhibit I'm
talking about?

MR. DAVIS: I do, Your Honor. We have reviewed the
brief. We have no objection to the portions that were read
into the record coming in, the redacted version. We would
09:00:54 object to the brief in its entirety.

JUDGE MARCUS: Counsel, can you agree to redact it
with Mr. Davis so that you can then just give us a redacted
form? I don't know that you need all of it, but if you do, we
will rule on it. You tell me.

09:01:10 MS. KHANNA: I think that's fine. I just want to make
sure, Your Honor, that -- I am not sure I read everything
verbatim into the record. I might have summarized some
portions of it, so I would like to go through and make sure we
are accurately reflecting what we discussed. But I would be
09:01:25 happy to work with Mr. Davis on that.

1 JUDGE MARCUS: Why don't we leave it open. That was
2 106 to my recollection. Caster 106, right?

3 MS. KHANNA: Yes, sir.

4 JUDGE MARCUS: Okay. We will withhold ruling on that
09:01:37 5 to give you, Mr. Davis, a chance to sit down at your leisure
6 with Ms. Khanna and see if you can isolate the portions,
7 perhaps the easiest way would be to have -- once you have
8 agreed, to have Ms. Khanna read it right into the record so you
9 don't actually have to put the whole thing in. That works for
09:01:55 10 both of you?

11 MR. DAVIS: That would be fine. I am very happy to
12 continue a conversation with Ms. Khanna to make sure
13 everybody's interests are taken into account.

14 JUDGE MARCUS: Okay, Ms. Khanna, when you are ready
09:02:05 15 with the offer, then you just let me know, and we will address
16 it as soon as you wish.

17 MS. KHANNA: Will do. Thank you.

18 JUDGE MARCUS: With that, we have finished with the
19 testimony of Mr. Bryan. We had taken him out of order to
09:02:18 20 accommodate the Secretary of State. So we are going back now
21 to the plaintiffs' cases collectively.

22 So who would be the next witness? You just let us know,
23 please.

24 MR. ROSS: Your Honor, the next witness is Dr. Bagley,
09:02:34 25 but I wanted to ask a very quick question about closings if you

1 didn't mind.

2 JUDGE MARCUS: Sure.

3 MR. ROSS: I guess our question was does the Court
4 still expect to have closings, and if so, I think I'd like to
09:02:45 5 propose either some time limits or just I guess we would like
6 --

7 JUDGE MARCUS: I am happy to take that up right now,
8 Mr. Ross.

9 Originally, you folks indicated you did not wanted to make
09:02:59 10 openings, but you did want to make closings. That's fine with
11 us if you want to make closing arguments. I take it each of
12 the plaintiffs want to make a closing statement. Do I have
13 that right, from Singleton, Milligan, and Caster?

14 MR. BLACKSHER: Go ahead, Abha.

09:03:16 15 MS. KHANNA: I was going to say not necessarily. We
16 would be happy to do whatever the Court would find most
17 helpful. If that really is just an opportunity to ask the
18 attorneys questions as opposed to formal closings, that will be
19 fine. We will be happy to direct our -- whatever we would use
09:03:31 20 in our closing to our proposed findings and conclusions that
21 are due later this week. We are entirely at your pleasure,
22 whatever would be most helpful to the Court in resolving the
23 case.

24 JUDGE MARCUS: Mr. Ross, what's your pleasure?

09:03:47 25 MR. ROSS: We have a preference for doing formal

1 closing. We would agree to keep it to 30 minutes so it's not
2 too long.

3 JUDGE MARCUS: And, Mr. Blacksher, what's your
4 pleasure?

09:03:57 5 MR. BLACKSHER: I think we agree with Ms. Khanna, that
6 it would be better just to provide the Court an opportunity to
7 ask us questions. The problem for closings is we would get
8 three consolidated cases that run separate courses with respect
9 to issues that were presented to the Court, and it can become
09:04:14 10 very confusing. And it's much better handled especially since
11 you set a deadline of Friday for findings of fact and
12 conclusions of law.

13 It would just seem more economical to rely on that.

14 JUDGE MARCUS: What is the pleasure of the Secretary
09:04:30 15 of State and the intervening defendants, as to closing
16 argument?

17 MR. LACOUR: Your Honor, we would like to have the
18 opportunity for closing argument. I think it would be helpful
19 that Your Honors have heard a lot of evidence and a lot of
09:04:43 20 argument in the briefing. And I think the opportunity to try
21 to focus some of that and also hear areas where you all might
22 have concerns or questions, it would be very valuable to the
23 parties and to the Court.

24 JUDGE MARCUS: And what about the intervening
09:05:00 25 defendants McClendon and Pringle? Will you be making it for

1 them, as well, or do they want to make a separate one?

2 Mr. Walker, what is your pleasure?

3 MR. WALKER: Your Honor, nothing to add to what

4 Mr. LaCour said.

09:05:15 5 JUDGE MARCUS: Okay. So you would want to make one,
6 too, or --

7 MR. WALKER: Oh, no, sir.

8 JUDGE MARCUS: -- or you would rest on the closing
9 argument made by the Secretary of State.

09:05:24 10 MR. WALKER: Mr. LaCour will speak for all defendants.

11 JUDGE MARCUS: Okay. Well, since by my count a number
12 of the parties do wish to make closing statements, we will give
13 you leave to do that. Why don't you think about how much time
14 each of you would like for it, and we will give you a setting
09:05:49 15 thereafter for the amount of time.

16 Last question, though, Mr. Ross, since you have raised it.
17 When do you think we will be getting to closing? What's your
18 best guess?

19 MR. ROSS: Your Honor, I -- we would like to have it
09:06:00 20 maybe Wednesday morning. I think that we probably will get
21 done with all of the witnesses today and tomorrow.

22 JUDGE MARCUS: Okay. Well, we'll see where we go. We
23 have Mr. Bagley from your end. Who else do we have from
24 Milligan?

09:06:15 25 MR. ROSS: For Milligan, Dr. Bagley and then Dr. Liu.

1 And then Caster I believe has one expert and two fact
2 witnesses.

3 JUDGE MARCUS: Ms. Khanna?

4 MS. KHANNA: Yes, Your Honor. We have two of our
09:06:28 5 plaintiffs that testify. They should be pretty short this
6 afternoon. And that's Mr. Caster and Mr. Jones. And then
7 Dr. King should be available either this afternoon or tomorrow
8 morning as -- or tomorrow as needed.

9 JUDGE MARCUS: So you will have three witnesses.
09:06:45 10 Milligan has two. Mr. Blacksher, I think you rested, but I
11 just wanted to be sure. You didn't expect to call anyone else,
12 did you?

13 MR. BLACKSHER: We have no more witnesses, Your Honor.
14 We just want to make sure our exhibits are admitted in
09:07:00 15 evidence.

16 JUDGE MARCUS: Sure. Finally, from the Secretary of
17 State, Mr. Davis? You have already put on only one of your
18 witnesses so far.

19 MR. DAVIS: Yes, Your Honor. And we will next call
09:07:12 20 Dr. Trey Hood, another expert in the morning. After that,
21 assuming his schedule permits it, we intend to call former
22 Congressman Bradley Byrne once the plaintiffs have put on all
23 of their witnesses.

24 I think Mr. Ross's assessment is correct, in that
09:07:27 25 Wednesday morning is a very reasonable estimate of when we

1 would be ready -- we would have concluded all witnesses and be
2 ready for closing.

3 JUDGE MARCUS: So you figure the case will be ready
4 for closing argument by the end of business Tuesday, going
09:07:42 5 forward on Wednesday morning.

6 MR. DAVIS: I think that likely.

7 JUDGE MARCUS: Okay. And we will address it further
8 -- how much time, by the way, Mr. Davis, do you think you or
9 Mr. LaCour wants for closing? Obviously, you will be hearing
09:07:57 10 three closing arguments from three sets of plaintiffs.

11 MR. DAVIS: Your Honor, I apologize. I did not
12 understand the question.

13 JUDGE MARCUS: How much time would you want for
14 closing given that you will be hearing three closing arguments
09:08:11 15 from each of Milligan, Singleton, and Caster?

16 MR. DAVIS: Mr. LaCour can address that.

17 MR. LACOUR: Your Honor, I think an hour would it. I
18 hope as with the normal Eleventh Circuit argument that we have
19 the chance to answer a lot of questions that you all might
09:08:31 20 have. I think the plaintiffs are making some key points that
21 we would want to make on behalf of the defendants. And then
22 answering questions you might have. But assume that could be
23 done in under an hour.

24 JUDGE MARCUS: Fair enough. We will just give you a
09:08:47 25 timeline before by the end of business tomorrow or maybe even

1 later today for how much time, but we would permit you to make
2 closing arguments each of the counsel. And as I understand,
3 Mr. LaCour, you will be doing the closing not only for the
4 Secretary of State, but for the two intervening defendants
09:09:08 5 Pringle and McClendon, correct?

6 MR. LACOUR: That's correct, Your Honor.

7 JUDGE MARCUS: All right. Thank you much.

8 So I have this right, Mr. Ross, you are going to go
9 forward with Dr. Bagley first, and then you are going to put on
09:09:21 10 Liu. Is that the order?

11 MR. ROSS: Yes, Your Honor.

12 JUDGE MARCUS: And then, Ms. Khanna, you will proceed
13 with the two plaintiffs and Dr. King?

14 MS. KHANNA: Yes, Your Honor.

09:09:31 15 JUDGE MARCUS: And then the state will put on Dr. Hood
16 and perhaps form Congressman Byrne if I have that right.

17 MR. DAVIS: That's correct.

18 JUDGE MARCUS: All right. Thanks so very much. Let's
19 proceed with your first witness. Mr. Ross, are you going to be
09:09:47 20 questioning Dr. Bagley?

21 MS. SADASIVAN: No, Your Honors. I am Kathryn
22 Sadasivan for the Milligan plaintiffs. I will be putting
23 forward the testimony of Dr. Bagley.

24 JUDGE MARCUS: Welcome. Glad to have you.

09:09:59 25 JOSEPH BAGLEY,

1 having been first duly sworn, was examined and testified as
2 follows:

3 JUDGE MARCUS: Would you be kind enough to state your
4 name your full name for the record?

09:10:15 5 THE WITNESS: Yes, Your Honor. Joseph Mark Bagley.
6 J-O-S-E-P-H, M-A-R-K, B-A-G-L-E-Y.

7 JUDGE MARCUS: Thank you. Welcome, and you may
8 proceed, counsel.

9 MS. SADASIVAN: Thank you, Your Honor.

09:10:28 10 DIRECT EXAMINATION

11 BY MS. SADASIVAN:

12 Q Dr. Bagley, do you know why you are here today?

13 A Yes. I was retained by plaintiffs' counsel in this case.

14 Q And what did plaintiffs' counsel retain you for?

09:10:39 15 A They have asked me to perform a set of factors analysis
16 relative to HB-1 at issue in this mitigation.

17 Q Dr. Bagley, I would like to just ask you your background
18 and experience first.

19 MS. SADASIVAN: Eric, can you pull up Plaintiffs'

09:10:55 20 Exhibit M-5, which is ECF 68-2.

21 BY MS. SADASIVAN:

22 Q Dr. Bagley, I am showing you what's been marked as
23 Plaintiffs' Exhibit M-5. Do you recognize this document?

24 A I do. That is the report that I submitted in this case.

09:11:09 25 MS. SADASIVAN: And, Eric, can you please go to page

1 33 of the report? Thank you.

2 BY MS. SADASIVAN:

3 Q And, Dr. Bagley, does page 33 of your report reflect a
4 current version of your resume or CV?

09:11:20 5 A It does.

6 Q Dr. Bagley, where did you grow up?

7 A I grew up in Alabama in the Birmingham area in Helena,
8 went to Pelham High School. We moved and during my high school
9 years to Opelika, graduated from Opelika and ended up at Auburn
09:11:39 10 University.

11 Q And what is your educational background?

12 A I got a B.A. and M.A. in history, as you see there from
13 Auburn, and got my Ph.D in history, as well, from Georgia State
14 University in 2013.

09:11:52 15 Q And what's your current occupation?

16 A I am assistant professor of history and honors program
17 Georgia State University Perimeter College.

18 Q And how long have you taught at Georgia state?

19 A I've been at GSU in one capacity or another since I
09:12:10 20 graduated in 2013. I have been a visiting lecturer downtown.
21 I have been a lecturer and in my current tenure position since
22 2017.

23 Q And what do you consider to be your areas of
24 specialization, Dr. Bagley?

09:12:24 25 A 20th Century United States constitutional legal history,

1 politics, race regulations, especially in Georgia and Alabama.

2 Q Have you won any awards?

3 A My dissertation won the departmental award for the best
4 one in a dissertation two-year cycle.

09:12:43 5 Q What was the dissertation about?

6 A It's entitled School Desegregation Law and Order and
7 Litigating Social Justice in Alabama. In addition to being a
8 narrative of school desegregation between the '50s and up to
9 what was at the time present day, it examines how state law
09:12:59 10 makers learned to as I describe it color mask their laws that
11 are discriminatory so they can pass court tests, lessons
12 learned and fight against school desegregation.

13 Q Have you been invited to lecture?

14 A I have. I have lectured a number of times at the Alabama
09:13:18 15 Department of Archives and History. I have lectured at Auburn
16 for the critical studies working group in the College of
17 Education, lectured at the drawing center and the humanities
18 there at Auburn for the leaders and the voters in Jefferson
19 County, and so on.

09:13:34 20 Q And have you been published, Dr. Bagley?

21 A My book was published in 2018. It's a distillation of my
22 dissertation. It's entitled, The Politics of White Rights,
23 Race, Justice, and Integrating Alabama Schools. It was
24 published by the University of Georgia Press.

09:13:50 25 I also published a number of book reviews. I have

1 performed manuscript reviews and so on for the Alabama Review,
2 the Journal of Urban History, History of Education Quarterly,
3 Journal of Southern History, and so on.

09:14:08 4 Q And you mentioned that your book was published. What was
5 your book about?

6 A It's a distillation of my dissertation as I say, so it
7 examines school desegregation between the 1950s and the '70s
8 and follows that up even to the present and looks at how law
9 makers in the state learned how to focus their attention on
09:14:27 10 tailoring laws that were discriminatory to pass court tests.
11 Lessons learned, if you will, in the fight against school
12 desegregation.

13 Q Are you member of any professional organizations,
14 Dr. Bagley?

09:14:39 15 A Yes. The Organization of American Historians, the
16 American Historical Association, the Southern Historical
17 Association, the Alabama Historical Association, and the
18 American Society for Legal History.

19 Q Have you testified as an expert in litigation before?

09:14:59 20 A Yes. I have testified in *People First vs. Merrill* in
21 2020. I submitted a report in that case. I was -- I testified
22 in a deposition and at trial, and my findings were cited to by
23 the Court in its opinion in that case.

24 Q And you were qualified as an expert in *People First*?

09:15:22 25 A Yes.

1 MS. SADASIVAN: Your Honors, I would like to tender
2 Dr. Bagley as an expert witness in Alabama political history,
3 political analysis, and historical methodology.

4 JUDGE MARCUS: Political history, political
09:15:36 5 methodology, and Alabama -- what particular focus is it going
6 to be on in Alabama history?

7 MS. SADASIVAN: So Alabama political history, Your
8 Honor, political analysis, and historical methodology.

9 JUDGE MARCUS: All right. Is there any objection or
09:15:52 10 challenge to Dr. Bagley? Mr. Harris?

11 MR. HARRIS: No, sir, not as a historian.

12 JUDGE MARCUS: All right. We will receive your
13 testimony as an expert in the history that you have detailed.

14 You may proceed. Thank you.

09:16:10 15 MS. SADASIVAN: Eric, can you please pull up
16 Plaintiffs' Exhibit M-9 which is ECF 76-2.

17 BY MS. SADASIVAN:

18 Q Dr. Bagley, do you recognize this document?

19 A Yes. That's the supplemental report that I submitted in
09:16:24 20 this case subsequent to my original report.

21 Q Thank you, Dr. Bagley, if you wish to have any of the
22 pages from your report or your supplemental report pulled up,
23 please just let me know, and I or Eric will do so. Otherwise,
24 I will phrase my questions about the report with the page
09:16:41 25 numbers, as well, so those who are listening can follow along.

1 A All right.

2 Q Let's turn now, Dr. Bagley, to your role in this case.

3 On page 1 and 2 of your report, what do you describe as
4 the subject of your report in this case?

09:16:56 5 A I was asked by plaintiffs' counsel to examine what I felt
6 like were any relevant socio-historical factors, and how they
7 might interact with HB-1 to possibly impair the ability of
8 black voters to participate fully and equitably in the
9 political process and to elect candidates of their choice.

09:17:20 10 And in essence, I was asked to perform a so-called Senate
11 Factors analysis.

12 Q So let's talk about the methodology that you employed and
13 conducted in this analysis.

14 On the bottom of page 1, what do you say guided your
09:17:34 15 analysis?

16 A Well, as a historian, I am guided by the common standards
17 of historiography obviously. That just means that I examine a
18 number of different sources from the legislative record to the
19 judicial record, of course, relevant press coverage, campaign
09:17:53 20 literature, public statements, my own previous work, in this
21 case, recent archival work that I have done, you know, existing
22 scholarship, of course, and sometimes and including in this
23 case relevant published scientific reports and so on.

24 We weigh all of that collectively and against itself in
09:18:18 25 drawing our conclusions. Also, as I mentioned before, I am

1 guided in this particular inquiry by the Senate Factors,
2 meaning the totality of the circumstances test as adopted by
3 the Supreme Court in *Thornburg vs. Gingles*.

09:18:39 4 Q And are the sources -- before we talk more about the
5 Senate Factors, are the sources that you relied upon in
6 conducting your analysis typical of sources relied upon by
7 historians?

8 A Absolutely. Yeah. We don't rely only on, you know,
9 archival work that we have done ourselves. We rely on what we
09:18:56 10 call secondary sources, and again, the essence of
11 historiographical inquiry, somewhat actually like the totality
12 and circumstances inquiry is weighing all of that against
13 itself and looking at it broadly.

14 Q Dr. Bagley, what are the Senate factors?

09:19:17 15 A So the Senate Factors were adopted by the Court in *Gingles*
16 taken from a report that the Senate judiciary committee put out
17 during the readoption of the Voting Rights Act in the early
18 1980s. I focused my report on Factors 1 and then 5 through 8,
19 although I do discuss Senate Factor 3 in my discussion of 1.
09:19:46 20 If it's useful for me to run down very briefly what those are
21 individually, I'm happy do that.

22 Q Yeah. If you wouldn't mind just sharing the Senate
23 Factors that you applied and what they are before we move in,
24 we will discuss each Senate Factor in your report one by one.
09:20:01 25 And it's on page 3 of your report.

1 A Sure. So the first factor to consider as we're looking at
2 a piece of legislation in trying to determine you know is this
3 going to impair a minority voter's ability to participate fully
4 and equitably in the political process is, is there a history
09:20:22 5 of discrimination? In this case, in the state of Alabama,
6 especially relevant to the minority group in this case black
7 voters' ability to access the franchise.

8 Factor 2 is the extent to which voting in a state has been
9 racially polarized.

09:20:44 10 Factor 3 asks us to examine the extent to which there have
11 been dilutive devices like at-large election schemes with
12 numbered posts and majority vote requirements and so on.

13 Factor 4 asks if there has been a candidate slating
14 process and to what extent minority groups have had access to
09:21:11 15 that.

16 Factor 5 asks us to examine the extent to which the
17 minority group bears the effects of past and ongoing
18 discrimination in certain areas.

19 Factor 6 asks us whether political campaigns have been
09:21:31 20 characterized by overt or subtle racial appeals.

21 Factor 7 asks us to what extent have minorities been
22 elected to public office in the state.

23 And then there are two additional factors -- one, has
24 there been a lack of responsiveness on the part of elected
09:21:53 25 officials to the needs, the particularized needs of the

1 minority group.

2 And then the final additional factor is whether the policy
3 in question may be tenuous.

4 Q Thank you, Dr. Bagley. So let's now discuss the Senate
09:22:10 5 Factors that you analyzed one at a time. Pages 8 through 16 of
6 your report discuss Senate Factor 1, which is the history of
7 official discrimination in the state of Alabama that touched on
8 the right to vote, the right to register and otherwise
9 participate in the political process in Alabama.

09:22:26 10 Before we get into the findings in Senate Factor 1, you
11 discussed in your report Alabama's current constitution. When
12 was that first enacted?

13 A It was enacted in 1901. Alabama remains under that 1901
14 constitution. That's important for a couple of reasons. One,
09:22:49 15 I would say -- obviously, I don't think anyone disputes, and
16 courts have repeatedly recognized that the purpose of
17 establishing that constitution in the first place was to
18 establish white supremacy and to disenfranchise entirely black
19 voters very explicitly so.

09:23:12 20 Many of the provisions of that constitution throughout the
21 20th Century have been blocked or nullified. But I would add
22 that has almost always been the case because of litigation
23 filed by black plaintiffs or otherwise protest action or
24 pushback from black plaintiffs and their allies.

09:23:36 25 So to note that a number of those provisions of the

1 original constitution are no longer active, I think we have to
2 add recognition of why that is the case.

3 A few other things to note, some of the plainly racist
4 language remains in that constitution are the discriminatory
09:23:57 5 language, at least. There have been referenda to remove some
6 of that. Sometimes it has passed, sometimes it has not.

7 For example, I believe the language regarding segregated
8 schools and the poll tax remains, although I think there is
9 another provision to perhaps remove that in play right now.

09:24:17 10 Some language has only lately been removed. For example,
11 in the year 2000, what they would have called the state's
12 miscegenation statute was removed by referendum. This was the
13 complication of the idea that anyone with so called one drop of
14 black blood, anyone who was any-part black could not marry a
09:24:42 15 white person. Laws like that were invalidated, obviously, by
16 the *Loving* decision in the 1960s. But, again, that language
17 was not removed until I think the year 2000.

18 So the specter of some of the worst parts of that
19 constitution serve angst over us still today I guess is the
09:25:06 20 point.

21 Q So let's talk about your Senate Factor 1 analysis. What
22 did your analysis in this report with respect to Senate Factor
23 1 focus on?

24 A Well, I begin by talking a little bit about the state's
09:25:22 25 history from Reconstruction and to the first half of the 20th

1 Century. But I tried not to spend too much time on that
2 because I think it's been more or less accepted by all parties
3 in this kind of litigation. I think it's been recognized
4 repeatedly by federal courts. And so what I have done is try
09:25:43 5 to focus this section of my report on the redistricting
6 process.

7 And so I began in earnest in the 1960s and looked at the
8 redistricting cycles and examined, you know, where can we see
9 this history of discrimination on the part of the state
09:26:04 10 manifests itself specifically in the redistricting process.

11 Q So, then, pages 8 through 12 of your report, Dr. Bagley,
12 discuss the redistricting process in Alabama between the 1960s
13 and the '90s. Could you please take us through that now?

14 A Yes. I began in the 1960s for a couple of reasons. One,
09:26:28 15 in the 1901 constitution, it's stipulated that the state should
16 reapportion its state Legislature, it should redistrict with
17 every decennial census.

18 But the state had failed do that up until 1960. The very,
19 very wealthy white land owners of the Black Belt in particular
09:26:50 20 had a sort of strangle hold on state politics and had resisted
21 very much efforts of the state to reapportion, because with the
22 growth of cities like Birmingham and Mobile, this would mean a
23 dilution of their power.

24 That being said, litigation was filed in the '60s that
09:27:08 25 forced the state to reckon with that.

1 Setting that aside for a second, the '60s are a useful
2 place to begin because 1960 was the year the Supreme Court
3 handed down the *McMillian* decision.

4 The state Legislature had enacted a law pushed through by
09:27:30 5 Macon County's Sam Engelhart that had redrawn the boundaries of
6 the city of Tuskegee excluding all black residents or nearly so
7 from the city limits and not any white people. Tuskegee had
8 come sort of a seedbed at that time for black -- budding black
9 political activism, and so Mr. Engelhart wanted to shove black
09:27:52 10 people out from city politics, and the Supreme Court recognized
11 that in *Gomillion* in 1960 ruling that that was an
12 unconstitutional racial gerrymander.

13 I mentioned the litigation that was going to force the
14 state to reapportion. That's the *Sims* litigation. There are a
09:28:10 15 number of major rulings under the *Sims* mantel. The first of
16 which is the *Sims v. Frank* decision, which I talk about on page
17 9 of my report.

18 The Court compelled the state to submit plans to
19 redistrict. It submitted two. And the Court found that both
09:28:30 20 of those were arbitrary, quote, irrational, and discriminatory,
21 and rejected those and held the state accountable moving
22 forward to attempt yet again, perhaps, to submit a plan.

23 The next ruling comes under the mantel of *Sims vs.*
24 *Baggett*. And this is a mid 1960s, at which time the Voting
09:28:59 25 Rights Act had been passed. And black litigants intervened in

1 *Sims* eventually with a Section 2 claim. And so when the Court
2 rules and *Sims vs. Baggett*, it not only rules that these plans
3 are, as it had said before, arbitrary and irrational, they're
4 specifically discriminatory in that they were designed -- at
09:29:22 5 least the state's House plan was designed specifically so the
6 Court to prevent the election of a black member of the House of
7 Representatives.

8 *Sims* is -- the state is still under injunction in *Sims*
9 going into the 1970s. And it submits plans yet again to
09:29:46 10 redistrict the state House and the state Senate. And at that
11 time, the Court finds yet again that the plans the state
12 submitted were unacceptable not only because they failed the
13 one person one vote test that the Supreme Court in *Sims* had
14 established, but also because they would have a discriminatory
09:30:07 15 effect. So the Court at that point I believe gives the state
16 yet another chance. This is the *Sims vs. Amos* styling to
17 submit plans that would past muster, and it had failed yet
18 again.

19 So the upshot of that is by the 1970s, the state had
09:30:24 20 submitted at least four plans that the Court had found
21 unacceptable, at least partly because of their potential
22 discriminatory effect.

23 I will take us through the 1980s, if I can.

24 In the 1980s, new litigation was filed. Black plaintiffs
09:30:45 25 filed a class action suit against the state at that time

1 arguing that its -- again, its state legislative plans were
2 racially discriminatory. This is the *Burton vs. Hobby*
3 litigation. The Court in that litigation gave the state
4 actually the opportunity to submit its plan to the Justice
09:31:09 5 Department so it would be deferred to the federal government.

6 Alabama was, of course, by that time covered under Section
7 5 of the Voting Rights Act. And so the Court deferred as I
8 said. The state submitted its plan to the Justice Department.
9 And it found that the state's plans were retrogressive in terms
09:31:31 10 of black electoral power and blocked those plans through
11 Section 5 of preclearance.

12 One last thing on the 1980s, this is just a couple of
13 years after that Section 5 objection that was rendered against
14 the state's plans. The Court rules in the *Dillard* litigation,
09:31:51 15 *Dillard vs. Crenshaw County*. *Dillard* does not concern
16 redistricting, but I think it is relevant particularly in terms
17 of Senate Factor 3. The target in *Dillard* was the state's
18 numbered place law and how it interacted with at-large election
19 schemes. It was sounded in *Dillard* litigation that the state's
09:32:15 20 numbered place law was put in place was passed specifically to
21 avoid the election of black candidates.

22 Switching to at-large elections is something the state had
23 done during Reconstruction of the so-called redemption period
24 in the late 19th Century. And there was a return to that in
09:32:33 25 the mid-20th Century. And it was- the Court found explicitly

1 in *Dillard* that using these at-large schemes with numbered
2 places and staggered terms and majority vote requirements this
3 was collectively intended to prevent the election of black
4 candidates. And through the course of the *Dillard* litigation,
09:32:53 5 I think 183 local governmental entities in the state of county
6 commissions, city counsels, so on were compelled in some way or
7 another to discard those at-large systems for single member
8 district election schemes.

9 That's in the final point here on the 1980s before we can
09:33:14 10 move on, very recently, still some local entities have been
11 compelled by litigation to discard those kind of schemes. So
12 this is not something where we had an at-large diluted schemes,
13 there was *Dillard*, and then that's a thing of the past.

14 As recently as just a few years ago, 2019, as I note on
09:33:40 15 page 12 of my report, the -- this court in *Jones vs. Jefferson*
16 *County* heard a case that looked at the Jefferson County Board
17 of Education's way of electing its members, and the county
18 board actually agreed as part of that case to discard its
19 multi-member district slash single-member district at-large
09:34:08 20 voting scheme so that the board of education was compelled in
21 that case to discard that and to move to a new scheme.
22 Similarly, the city of Pleasant Grove faced litigation in that
23 same year and was also compelled to discard its at-large
24 electoral means of electing members to the city council.

09:34:29 25 Q So let's talk now about the redistricting process

1 following the 1990 census which begins on page 13 of your
2 report. Dr. Bagley, could you describe your findings with
3 respect to litigation following or challenges following the
4 1990 census?

09:34:43 5 A Yes. So in the 1990s, actually, initially, the state
6 failed to pass a plan redistricting its congressional
7 districts. Then a challenge was brought in federal court in
8 the Southern District on a one person one vote basis because it
9 -- obviously, there had there had been significant changes in
09:35:11 10 terms of demographics in the state. And at the moment the suit
11 was filed, there was no congressional plan.

12 That litigation was eventually joined in by black
13 plaintiffs with a Section 2 claim, but while that litigation
14 was ongoing, the state actually did pass a congressional plan.
09:35:30 15 And it submitted that to the Justice Department. And the
16 Justice Department objected to that plan citing a, quote,
17 predisposition on the part of the state to pack black voters
18 into the Seventh Congressional -- the newly created
19 majority-minority Seventh Congressional District and then to
09:35:53 20 crack their numbers elsewhere.

21 So while that litigation, the *Wesch* litigation was ongoing
22 there, as the Civil Rights Division objection to a plan that
23 was passed down at the State Legislature.

24 Q So on the bottom of page 14, Dr. Bagley, of your report,
09:36:12 25 you describe the Alabama redistricting process following the

1 2010 census. Was Alabama's legislative redistricting process
2 challenged following the 2010 census?

3 A Yet. There was yet another challenge to the state
4 legislative plans in that cycle that was actually concurrent
09:36:33 5 with an FBI investigation into an alleged attempt to influence
6 gambling litigation -- or I'm sorry -- legislation in the
7 state. That's relevant only because a state legislator was
8 wearing a wire for some of that investigation and caught --
9 recorded some sort of plainly racist statements made by some of
09:37:00 10 the law makers who were actually involved in at various stages
11 of the redistricting process.

12 To the redistricting process itself, then Representative
13 McClendon was in charge of the committee and reapportionment
14 and redistricting at the time along with then Senator Gerald
09:37:24 15 Dial. That -- the process as I write about on the bottom of 14
16 and into 15 of actually drawing up the maps was handled by
17 Senator Dial, Representative McClendon, and a very, very select
18 number of individuals who were not members of the committee and
19 not members of the Legislature. This is recognized in press
09:37:50 20 coverage and statements during and after the fact. There are a
21 number of public statements from black lawmakers saying this
22 was a, quote, back-room deal. It was not a transparent
23 process. You know, they didn't find out the contours of the
24 maps until very late in the process and so on. But in terms of
09:38:07 25 the challenge in court, this is the Alabama Legislative Black

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1 Caucus litigation by which it was found that a number of the
2 districts drawn for the state's legislative plans the Court
3 found that race predominated in the drawing of a number of
4 those districts and that they could not stand.

09:38:30 5 Q Before we move on, Dr. Bagley, to Senate Factor 5, you
6 mentioned briefly at the outset of your discussion of the 2010
7 redistricting process, the wire tap and a number of legislators
8 involved. Would you mind just speaking a little bit more about
9 *United States vs. McGregor*?

09:38:47 10 A Yes. Mr. Beason, Senator Scott Beason was the one wearing
11 the wire and actually caught himself making racist statements
12 along with former Senator Larry Dixon. At issue was the idea
13 that if the gambling referendum was on the ballot in the fall,
14 that quote unquote Aborigines, i.e. black people would be
09:39:20 15 bussed to the polls on HUD or Housing and Urban Development
16 that is federal buses, and that would not be beneficial to
17 these lawmakers.

18 Q Let's move now to Senate Factor 5 covered in pages 17 to
19 26 of your report, Dr. Bagley, which discusses the extent to
09:39:35 20 which black people in the state of Alabama bear the effects of
21 discrimination in such areas as education, employment, and
22 health and living conditions, which hinder their ability to
23 participate effectively in the political process.

24 Dr. Bagley, can you briefly describe the summary of your
09:39:53 25 findings with respect to Senate Factor 5 on page 17 of your

1 report?

2 A Yes. I describe how indeed black people in Alabama do
3 face the ongoing effects of past discrimination in these areas
4 and a few more. If you -- turn back to page 17. If you
09:40:19 5 consider that white people in Alabama are more likely to be
6 able to afford a car, they're more likely to have broadband
7 Internet service, they're more likely to have a personal
8 computer, a tablet, a smart phone, they can take time off of
9 work, they can contribute to a political campaign, and so on.
09:40:41 10 In essence, they have more ability to engage politically. And
11 that goes beyond just registration and turnout.

12 Two, if you look at the Census Bureau's most recently
13 published ACS data -- American Community Survey data -- you can
14 see that black Alabamians are less likely to have completed
09:41:02 15 high school. They are more likely to live below the poverty
16 line. They are more likely to be unemployed. They are more
17 likely to work in a service industry job. They are more likely
18 to rent rather than to own their home, more likely as I said
19 earlier to lack access to a vehicle. And more likely to have a
09:41:23 20 significantly lower median household family income.

21 Q Thank you, Dr. Bagley. So let's take a look, and let's
22 start with health. Can you describe your report's findings
23 with respect to discrimination in access to health, which
24 begins in your report on pages 17 and 18? And you can start at
09:41:43 25 Reconstruction if you don't mind.

1 A Sure. I mean, I very briefly described that, you know,
2 priority the passage of the Civil Rights Act and other
3 legislation in the middle of the 20th Century, most black
4 people in Alabama, particularly in the Black Belt, were sort of
09:41:59 5 left to fend for themselves when it came to health, whether it
6 was the black -- the help of the Freedman's Bureau or the
7 immediate aftermath of the Civil War, or the Rosenwald Fund,
8 which is also instrumental in establishing the first black
9 schools in the South in the latter portion of the 19th Century.

09:42:17 10 Really, this is the reality in a lot of rural parts of Alabama
11 until the middle of the 20th Century and the enactment of great
12 society social welfare programs.

13 Q So on the bottom of page 18, Dr. Bagley, 19 of your
14 report, you just identified discrimination in employment. Can
09:42:38 15 you describe your findings, please?

16 A Yes. I cite to some figures published by the Federal
17 Equal Employment Opportunity Commission in 2020, specifically
18 claims of discrimination of work force discrimination. If you
19 look at those numbers from state to state, Alabama has the
09:42:59 20 highest percentage of any state of the union when it comes to
21 racially-based claims.

22 I also cite to a number of findings in federal courts over
23 the last 50 years, but even including in the last 10 years of
24 work force discrimination. Some on the part of private
09:43:20 25 entities, firms, some on the part of local governments. And

1 then several on the part of various state entities.

2 Q And what about discrimination and access to transportation
3 Dr. Bagley?

4 A I discuss in my report the finding of the Federal
09:43:43 5 Department of Transportation fairly recently that the state had
6 essentially committed a Civil Rights violation, Title VI
7 violation, when it closed Department of Motor Vehicle offices
8 in predominantly black areas, especially in the Black Belt.
9 The state was compelled to reverse that, as part of the
09:44:08 10 Department of Transportation's investigation.

11 Q The state was compelled to sorry, what, Dr. Bagley?

12 A To reopen those DMVs, a number of them, those offices.

13 Q Thank you. Let's turn to pages 24 and 26 of your report,
14 where you describe initial discrimination in education in
09:44:28 15 Alabama. Can you please describe your findings with respect to
16 discrimination in education?

17 A Sure. Yes. First, I think we should recognize that
18 segregated education was established in the 1901 constitution.
19 I think at least some of that language is still there.

09:44:49 20 Two, the *Brown* decision comes down in 1954, but as of
21 1963, there had been no desegregation in the state's public
22 schools whatsoever. A number of cases were filed that year,
23 including the *Hereford vs. Huntsville* case which remains open
24 before this Court. In that fall, four public school systems in
09:45:14 25 the state were forced to admit a handful of black school

1 children to public schools in Alabama for the first time.

2 Another of those cases, the Tuskegee-Macon County case,
3 *Lee vs. Macon County*, several years later in 1967 became the
4 vehicle for statewide desegregation. Actually, the first
09:45:35 5 statewide structural injunction ever issued was issued against
6 Alabama in that case. And ultimately 99 public school systems
7 were forced to desegregate under the *Lee v. Macon* mantle using
8 the freedom-of-choice methods of school desegregation.

9 Between that time and the early 1970s through a number of
09:45:58 10 cases including the Jefferson County case, which is also still
11 active before this Court, there is a shift from
12 freedom-of-choice desegregation, which led to a reality of
13 whites, formerly all-white schools with a few black students
14 being admitted by a court order and still all-black schools,
09:46:21 15 and the courts recognized especially the Fifth Circuit that it
16 was supposed to be -- supposed to have just schools quote
17 unquote.

18 And so there's a shift towards compulsory assignment
19 desegregation orders. And so we don't see meaningful actual
09:46:37 20 integration until the 1970s. But those cases continue on
21 contentiously into the 1980s into the 1990s.

22 I note in my report that the Huntsville case is still
23 active. The Jefferson County case is still active. And the
24 Huntsville case, the school board remains unable to meet the
09:47:03 25 Green factors, the *Green vs. New Kent County* litigation. It's

1 laid out in there that there are certain factors school systems
2 must address to get -- it's now piecemeal that you can get
3 those orders lifted, but to get those fully lifted, Huntsville
4 has been unable do that with respect to student discipline,
09:47:24 5 which is continued to be found to be discriminatory, access to
6 advanced placement courses, for example.

7 And then in the Jefferson County case, fairly recently the
8 city of Gardendale attempted to secede or sever from the county
9 system, which has happened before with cities like Trussville
09:47:45 10 and others. But this Court found and as part of the *Stout* case
11 a couple of years ago that the part of the motivations for
12 Gardendale were racial. And I think the Court may have even
13 used the word deplorable to refer to those motivations. The
14 Court though actually allowed conditionally the severance to
09:48:11 15 move forward, that is, until the Eleventh Circuit, I believe,
16 including Judge Pryor actually reversed that and affirmed the
17 Court's finding with respect to racial motivation and actually
18 disallowed the severance.

19 Finally, in terms of modern day relevance, when it comes
09:48:31 20 to education, I discuss on page 24 the Alabama Accountability
21 Act, which had passed in 2013, this establishes the
22 classification of failing schools in the state. If you look at
23 the list of failing schools that's published every year,
24 invariably, it's majority black schools. Many of them are
09:48:55 25 all-black schools. They're often in majority black public

1 school systems. In fact, if you look at the most recent list,
2 almost exclusively, it's public schools in the Black Belt, in
3 Birmingham, or in the urban core of Mobile.

09:49:22 4 Q Thank you, Dr. Bagley. What did your report determine in
5 higher education?

6 A I talk briefly about the *Knight* litigation from the 1990s.
7 The state's flagship universities were desegregated by a
8 litigation in the 1960s. So Auburn and Alabama were
9 desegregated at that time. But in the 1990s, in *Knight vs.*
09:49:47 10 *Alabama* litigation, the Court found there were still, quote,
11 vestiges of segregation in those institutions and in the --
12 proposed at that time satellites of those institutions that
13 were being built in Huntsville and Montgomery respectively.
14 And it entered in a remedial decree similar to that in *Lee v.*
09:50:08 15 *Macon* where it oversaw the process of trying to eliminate those
16 vestiges over the course of a ten-year period up into the
17 2000s.

18 Q So, Dr. Bagley, when you were discussing schools, you
19 mentioned the Black Belt of Alabama on pages 1 and 2 of your
09:50:24 20 supplemental report, which is Plaintiffs' Exhibit M-9, you
21 discuss the Black Belt in Alabama. Can you tell me a little
22 bit about the history of the Black Belt of Alabama?

23 A Yeah. So the Black Belt broadly speaking is an
24 agricultural region that stretches all across the deep south.
09:50:44 25 So from all the way up into Virginia and the whole

1 tidewater, tobacco-growing regions through the rice-growing
2 regions of the low country and through the heart of the sort of
3 deep south. In Alabama, it stretches through south central
4 Alabama from roughly Russell and Barbour counties through
09:51:08 5 Montgomery and widening out sort of from Sumter County down to
6 Washington County on the Mississippi state line.

7 This is the area of the state when the state was very
8 young when native Americans were forcibly removed from that
9 area. White settlers flooded in down the federal road from
09:51:29 10 Georgia either bringing with them enslaved persons or
11 purchasing them at slave markets at a time where people
12 realized the deep rich black soil, where the name Black Belt
13 comes from, and the climate of the South was perfect for
14 growing long-staple cotton at just the right time where via
09:51:50 15 mechanization industrialization cotton was becoming the go-to
16 material in textile production. So the upshot is it made a lot
17 of white land owners very, very rich, and the labor was being
18 done of course primarily by enslaved black persons.

19 In terms of relevance to this case, as I talk about in my
09:52:10 20 supplemental report, there was never a land redistribution
21 program. Land was never systematically taken from white land
22 owners after the Civil War and distributed to former slaves.
23 Even when the so-called radical Republicans in Congress were in
24 charge of Reconstruction, that never happened.

09:52:34 25 And so most of the poorer states become landless tenant

1 farmers, sharecroppers. The legacy of that is very, very long
2 and profound. The Black Belt remains characterized by its
3 mostly black population by the fact that it is stricken by
4 poverty.

09:52:56 5 And the -- I should add that where I'm going with this in
6 the supplemental report is to say that over time a lot of black
7 people leave the Black Belt. I think that's widely known when
8 it comes to the so-called great migration that black people
9 leave the poorer areas of the South and move to cities in the
09:53:20 10 Midwest or the Northeast.

11 What I tried to emphasize, though, in my report is that
12 also black people leave the Black Belt and move to cities in
13 Alabama, most especially Mobile. And I cite to the imminent
14 historians in Alabama including Wayne Flynt who have described
09:53:41 15 the process whereby black people have left in large numbers in
16 a couple of different waves the Black Belt for the city of
17 Mobile, and they share then the current residents of the urban
18 core of Mobile that history with black people in the Black
19 Belt. And it's not just the migration. It's not just ancestry
09:54:03 20 and heritage. It's cultural, and it's multifaceted when it
21 comes to the history.

22 For example, you look at the mid-20th Century and the
23 Civil Rights movement. Where were black people first active,
24 in terms of organizing to bring down Jim Crow and to have
09:54:23 25 access to the franchise? You would look at something like John

1 Hewlett in the Lowndes County Freedom Association. That is in
2 the heart of the Black Belt. You would look at John Cashin who
3 is from Huntsville, but when he forms his National Democratic
4 Party of Alabama, where do they first run candidates? They run
09:54:44 5 them in the Black Belt. Where do they first win races? They
6 win them in the Black Belt.

7 Literally at the same time, you have John LeFlore in
8 Mobile organizing black stevedores and then organizing a local
9 chapter of the Non-Partisan Voters League. And all of these
09:55:04 10 individuals and anyone associated with this organizational
11 activity is facing the sort of brunt or butt end of withe
12 backlash. So all that to see there are these important
13 connections I feel like when it comes to the Black Belt and
14 Mobile, and that is what I am reporting in this supplemental
09:55:25 15 report.

16 Q Let's move now, Dr. Bagley, to page 21 of your report,
17 where you describe the living conditions in the Black Belt.
18 Can you take us through those?

19 A Sure. And I'm trying to find that page. And it is --
09:55:42 20 here it is.

21 Q Page --

22 A Thank you. I cite to a report that the United Nations
23 published in 2019. The UN sent a special representative to the
24 United States that year to examine conditions of extreme
09:56:02 25 poverty. And one of the places they looked was the Alabama

1 Black Belt. The UN's special representative reported that
2 there were indeed conditions of extreme poverty, especially
3 when it came to, for example, drinking water and waste water
4 systems. He reported widespread findings of, you know, folks
09:56:25 5 having to try to fashion their own water systems with PVC pipe,
6 drinking water systems at the same time that their septic tanks
7 are backing up in their yard and you have got drinking water
8 that's exposed to raw sewage, and you have got people getting
9 sick, sometimes entire households at a time with E. Coli and
09:56:52 10 hookworm and so on.

11 And I also talk briefly about the effects of the
12 environmental pollution in the Black Belt. I talk about how
13 the Court in *People First* found that black people are more
14 likely to live in areas that suffer from the effects of
09:57:09 15 environmental pollution. And I talk briefly on page 21 about
16 the case of Uniontown in the south central Black Belt where 4
17 million tons of potentially toxic coal ash was dumped sometime
18 ago with -- over the protestation of then Congressman Artur
19 Davis. And that has been fairly recently found to continue to
09:57:34 20 have an adverse impact on people in that area.

21 Q Dr. Bagley, let's talk more then about the environmental
22 deprivation, particularly in large areas with high black
23 populations in the state: Can you describe your other
24 findings?

09:57:50 25 A Yeah. I look at -- the Environmental Protection Agency

1 will designate certain areas that are in need of more or less
2 immediate clean up due to the effects of pollution, especially
3 industrial pollution.

4 The north Birmingham neighborhood in the city of
09:58:10 5 Birmingham was designated as one such site. They call them
6 super fund sites. That neighborhood historically became all
7 black through white flight. It was a relatively poorer
8 neighborhood. And it sits in the immediate vicinity of heavy
9 industrial factories, especially coke producing factories, that
09:58:33 10 is not Coca-Cola, but heavy industrial fuel from coal.

11 The EPA found that the soil in that neighborhood was
12 highly toxic. And as I described in my report, it actually
13 attempted to fast track the clean up at that site, and that was
14 opposed by the state's Department of Environmental Management
09:59:01 15 and by the office of the Attorney General, though it was
16 supported by the mayor of Birmingham at the time and the then
17 representative of the Seventh Congressional District, Terri
18 Sewell.

19 Q Let's move, then, to living conditions of those
09:59:22 20 incarcerated, which you discussed in your report, as well. Can
21 you take us through the discrimination in the Alabama penal
22 system?

23 A Yes. And this is on pages 19 and 20, I believe. First of
24 all, black people in Alabama are grocery disproportionately
09:59:43 25 represented in terms of the numbers of the incarcerated. As I

1 am sure has been said in this area many times, black people
2 constitute around 27 percent of the state's population, and
3 they constitute around 50 percent of those incarcerated in the
4 state's prisons.

10:00:01 5 I think you have to consider that along side repeated
6 findings of violent and unsafe conditions in the state's
7 prisons.

8 The state's Department of Corrections has long been
9 subjected to litigation, including back to the 1970s, when
10:00:21 10 there was a *Lee v. Macon* style issued against the state. A
11 more recent case is ongoing in the Middle District where Judge
12 Thompson just issued an order just several days ago or a couple
13 of weeks ago holding the state accountable for hiring more
14 personnel. The Court in that case found that mental health
10:00:46 15 care in the state's prison system was, quote, horrendously
16 inadequate. As part of that case, the state also faces a
17 lawsuit initiated some years ago by the Department of Justice
18 alleging unsafe, unsanitary conditions. That side of the
19 reporter issued -- or published by the New York Times paints a
10:01:14 20 picture of the state's prison system whereby violence is
21 endemic, rape is not uncommon, corruption not uncommon, and so
22 on.

23 And, again, I just say you have to consider along with
24 these allegations and findings that black people are
10:01:28 25 disproportionately represented in terms of being incarcerated

1 in the state.

2 Finally, on page 20, I also look at a report issued by a
3 juvenile justice task force that was convened the state in I
4 think 2017 or at least issued this report in 2017. That task
10:01:53 5 force found there were racial disparities at more or less every
6 level of the juvenile justice system. And as far as I know,
7 very little has been done to act upon those findings as of
8 right now.

9 Q Can you tell us a little bit more about that enactment or
10:02:11 10 the empanelment of the task force you just mentioned with
11 respect to the juvenile penal system?

12 A Yeah. So that again was issued I think in 2017. I
13 believe it was Governor Ivey who convened that task force. I
14 think it was bipartisan, maybe included both elected officials
10:02:31 15 and private sector individuals.

16 The findings were that a larger share of black youth were
17 placed in detention and out of home diversion. Black people
18 were represented disproportionately in terms of dispositions to
19 the youth -- Department of Youth Services custody and so on.

10:02:51 20 And, again, as far as I am aware, I don't know that much
21 has been done to act upon or to remedy those racial
22 disparities.

23 Q Thank you. Let's turn now to Senate Factor 6, which is
24 the extent to which political campaigns in Alabama have been
10:03:07 25 characterized by overt or subtle racial appeals.

1 Just to start, Dr. Bagley, how do you define racial
2 appeals in your report?

3 A So a racial appeal simply means that a candidate is making
4 an appeal that would seem to be intended to encourage a racial
10:03:26 5 group to vote block. You know, it wouldn't be exclusively too
6 white or black or Latinx candidates. If you are issuing an
7 appeal that would seem to only appeal to one racial group to
8 vote collectively or as they used to say in this kind of
9 litigation to vote block, that to me is a racial appeal. And I
10:03:48 10 cite to several of those from the last few years in this
11 report. Former Chief Justice of the Supreme Court Roy Moore
12 has suggested that we would be better off without the 13, 14th
13 and 15th Amendments. Of course, eliminating slavery,
14 guaranteeing rights for former slaves and so on. The 19th
10:04:11 15 Amendment, of course, expanding that to black women.

16 He also had suggested that we were better off during
17 slavery times even though we had slavery he says, and we were
18 strong in our families and cared for one another. Chief
19 Justice Tom Parker also ran an ad in 2018 that was actually
10:04:39 20 found by a federal court to be a racial appeal. Justice Parker
21 talked about the leftist mob trying to destroy our society
22 while an image of black congresswoman Maxine Waters from
23 California appears. The Court found that there was, quote, no
24 other reason for that, other than for it -- to be to draw
10:05:00 25 attention to race.

1 Representative Mo Brooks had repeatedly talked about,
2 quote, war on whites, and claiming that there are people out
3 there saying that, quote, whites hate everyone else.

4 Republican Moore, Republican Barry Moore has talked about
10:05:24 5 what happened on January 6th of last year, where a black police
6 officer shot a white female veteran by saying, I understand
7 that this was a case in, quote, you know that doesn't fit the
8 narrative. And then finally Republican Pringle has run an ad
9 in which he says if you look like me, they say you're -- they
10:05:47 10 call you a racist and blame you for everyone else's problems.
11 And that is in a campaign ad that Representative Pringle ran
12 quite recently.

13 Those are the -- those are a number of examples that I
14 cite in the report on 27 and 28.

10:06:03 15 Q Thank you, Dr. Bagley. And just to go back for a second,
16 with respect to the insurrection that you mentioned on January
17 the 6th, would you mind just providing a little more clarity
18 about what that statement was about?

19 A Yes. This was in regards to the shooting of one of the
10:06:27 20 infiltrators of the capital, Ashli Babbitt by the U.S. Capitol
21 police. He said, I understand it was a black police officer
22 that shot a white female veteran. You know that doesn't fit
23 the narrative.

24 I think when someone says, you know that doesn't fit the
10:06:44 25 narrative, this is sort of a flippant way of saying, yeah,

1 people indicate or people always claim that it's white police
2 who shoot black people, and this, you know, this quote unquote
3 doesn't fit the narrative, meaning this is not what those other
4 people like to say. In other words, I mean, it's drawing
10:07:03 5 attention to race quite clearly.

6 Q And that's how you characterize racial appeals in Senate
7 Factor 6 in your report was drawing attention to race?

8 A Correct.

9 Q Motivating block voting?

10:07:15 10 A That's right.

11 Q So let's turn to Senate Factor 7, the extent to which
12 black Alabamians have been elected to public office, which
13 begins on page 28 of your report. What were your conclusions
14 with respect to Senate Factor 7, Dr. Bagley?

10:07:28 15 A So first, if you look at the congressional districts,
16 which are obviously at issue here, until the 1990s, black
17 citizens in Alabama didn't have the opportunity to elect a
18 black representative. Since 1990, they have only had a
19 majority in that one district. And as 27 percent of the
10:07:53 20 population, you have to compare that to one district out of
21 seven being around, you know, 14 percent, in terms of potential
22 for representation.

23 Secondly, black citizens currently hold no statewide
24 office in the state. They have not held statewide office in
10:08:13 25 the last 20 years, despite having run over the years for

1 Governor, for Lieutenant Governor, for Senate, for Secretary of
2 State, and a number of different statewide offices.

3 In fact, only three individuals, three black individuals
4 had ever held state office in Alabama. Only two of those
10:08:35 5 individuals was actually elected to that position. And both of
6 those individuals were eventually appointed to that position
7 and, therefore, had the benefit of being incumbents when they
8 were elected.

9 Finally, I discussed black representation in the state
10:08:56 10 Legislature. Representation there is roughly proportionate to
11 the black population. But I think you have to recognize that
12 that is only because of repeated sustained litigation in these
13 federal courts through protest action on the streets, through a
14 really a Herculean effort on the part of black citizens of this
10:09:22 15 state to gain access to the franchise, to overturn diluted
16 schemes like you saw in *Dillard* and continue to do that even
17 very recently. So, yes, there is something very closely
18 resembling proportional representation in the state
19 Legislature, but it is taking great, great effort to get there.

10:09:46 20 Q Thank you, Dr. Bagley.

21 And move now to Senate Factor 8, which is the lack of
22 responsiveness on the part of elected officials to
23 particularize needs of the minority community in Alabama, which
24 begins on page 29 of your report on to 30 and 31. What were
10:10:03 25 your findings with respect to Senate Factor 8, Dr. Bagley?

1 A Well, first, I think it's important to recognize that
2 since the '90s, black leaders in the state have called for the
3 creation of the second majority-minority congressional
4 district.

10:10:21 5 Repeatedly that has been, you know, sort of summarily
6 brushed aside. And so that to me is the most important example
7 of a lack of responsiveness with respect to this case. But I
8 think you could also look at the -- all the things that I talk
9 about in Factor 5.

10:10:44 10 So what I mean by that is if you have black citizens who
11 live in impoverished areas with the lack of basic services, who
12 suffer the attendant health issues we talked about. If their
13 children are attending failing schools, if they lack
14 transportation, if they needed a DOT ruling to get the local
10:11:08 15 DMV reinstated, if their school systems are crippled by
16 underfunding, if they suffer discrimination in the workplace,
17 if they attempted to, as the city of Birmingham did, raise the
18 minimum wage and were overridden by the state Legislature, and
19 so on.

10:11:26 20 All of these are examples of things that would tend to
21 need an adequate response that black citizens in the state are
22 not getting. And if you look at where they do have
23 representation, that is, you look at Representative Sewell, and
24 her record has been one of attempting to address those things.
10:11:45 25 For example, supporting a bill that would improve the water

1 systems in her district.

2 For example, she's the only representative to have voted
3 for the infrastructure bill that just passed the United States
4 Congress. The other representatives in the state in Congress
10:12:04 5 voted against and then even touted as being beneficial to their
6 district after the fact. So these are all examples.

7 I think the other relevant one to mention would be the
8 state's repeated failure to expand Medicaid, to close the
9 coverage gap between Medicaid parameters and ACA or Obamacare
10:12:31 10 parameters wherein black people would stand to benefit greatly
11 as black leaders in the state have argued, and the state has
12 repeatedly rejected those efforts, despite Representative
13 Sewell and some others attempting to compel the state to do
14 that.

10:12:49 15 Q And with respect to the infrastructure bill you just
16 listed, Dr. Bagley, that is a bipartisan bill, right?

17 A Yes. Yes, it was. I believe the majority leader voted
18 for that bill.

19 Q Thank you. Sorry for cutting you off.

10:13:02 20 A No problem.

21 Q Having analyzed the Senate Factors in this case, did you
22 reach any ultimate conclusions?

23 A Yes. Only that -- I mean, these Senate Factors are
24 present. It would seem to me that given the socio-historical
10:13:17 25 factors I have examined here and the affirmative findings with

1 respect to these Senate Factors that HB-1 may well result
2 ultimately in the impairment of black voters' ability to fully
3 and equitably participate in the political process.

4 Q Thank you, Dr. Bagley.

10:13:39 5 MS. SADASIVAN: Your Honors, I don't have any further
6 questions at this time.

7 JUDGE MARCUS: All right. Mr. Harris?

8 CROSS-EXAMINATION

9 BY MR. HARRIS:

10:13:47 10 Q All right, Dr. Bagley, can you hear me okay?

11 A Yes, sir, Mr. Harris.

12 Q Thank you very much. This is my first time in this
13 proceeding. I wanted to make sure you could hear me.

14 A Okay.

10:13:55 15 Q Let's see. Are you an attorney?

16 A No.

17 Q Are you a political scientist?

18 A I am a historian and a historian solely.

19 Q Okay. And so it's safe to say you are not a sociologist
10:14:09 20 either; is that right?

21 A That's right. Some consider history to be a social
22 science. We kind of straddle the boundaries between social
23 science and humanities.

24 Q Okay. And I believe when you were introduced earlier, you
10:14:23 25 said your expertise focused on 20th Century issues; is that

1 right?

2 A 19th and 20th Century. My Ph.D. examinations were in
3 both.

4 Q I see. And it's right that the title of your
10:14:36 5 dissertation, School Desegregation, Law and Order, and
6 Litigating Social Injustice in Alabama 1954 to 1974; is that
7 right?

8 A That's correct, although there is an epilogue in there
9 that brings those issues up to the present day.

10:14:50 10 Q I see. So epilogue, you kind of try to put a bow on it;
11 is that fair to say?

12 A Maybe.

13 Q Not trying to characterize it.

14 A Fair enough.

10:15:06 15 JUDGE MARCUS: Can you answer the question,
16 Mr. Bagley.

17 THE WITNESS: Yes, Your Honor. I traced developments
18 from 1974 up to the present to the extent that they're relevant
19 to my thesis.

10:15:21 20 BY MR. HARRIS:

21 Q Okay. Let me see. All right. I'm looking at your
22 report. Do you have a copy of your report there with you?

23 A Yes, sir.

24 Q Okay. So when I reference it, you will be able to look at it
10:15:34 25 without me having to put it on my screen; is that right?

1 A That is correct.

2 Q If at any point you would like me to show it, I will be
3 more than happy do that.

4 You say -- let me see here. It is your opinion, is it
10:15:49 5 not, that HB-1 will deny black Alabamians an equitable right to
6 elect candidates of their choices; is that right?

7 A I am saying given my findings, that's possible.

8 Q Okay. Are you saying it's possible, or you say that it
9 will result?

10:16:02 10 A I am saying that it is possible. I believe -- where are
11 we in the report?

12 Q Sure. It is the last paragraph on page 1.

13 A The last full paragraph, or.

14 Q Yes. No. I'm sorry. I have been asked is how it starts.

10:16:20 15 A Right. Yes. So yes. It will result in impairment of
16 black voters' ability to participate fully and equitably in the
17 political process in electing candidates of their choice given
18 the findings here.

19 Q Okay. So I guess my very basic question, Dr. Bagley, is
10:16:40 20 are you here to provide history for someone to make that
21 conclusion, or are you here to make a conclusion about whether
22 HB-1 will affect black voters' ability to elect the candidate
23 of their choice?

24 A I am not here to draw legal conclusions. I want to be
10:16:54 25 clear about that. What I have been asked to do is provide a

1 Senate Factors analysis to lay out what I feel like are the
2 relevant factors, and to say here are my findings as a
3 historian.

4 Q Okay. And as a historian, in other contexts, do you give
10:17:12 5 state legislatures your opinion on their laws?

6 A Could you ask that again?

7 Q Sure. Let's say the Georgia Legislature is wanting to
8 create a bill, and they're curious about its effect. Would
9 they call you up and say, you know, do you think this bill
10:17:26 10 would negatively affect Georgians or anything like that?

11 A I have not done that. I guess it's not inconceivable if
12 they wanted to avoid a Section 2 claim or violation.

13 Q Okay. But that's not something you have ever done?

14 A No.

10:17:39 15 Q Okay. Is any part of your testimony meant to show the
16 intent of Alabama's 2021 Legislature?

17 A This is not an intent report, no.

18 Q Okay. And still kind of on background here. Can you walk
19 me through how your process of historiography how you went
10:18:03 20 about finding the sources on which you relied in your report?

21 A Sure. I mean, it's multifaceted. It's sort of dove tails
22 with a sort of totality of the circumstances analysis.

23 I read case law. That can lead to obviously other case
24 law. I have read the relevant secondary sources. I've very
10:18:27 25 recently and over the years done research in the papers of

1 Judge Frank Johnson, the library of Congress. I have done
2 archival research. Obviously, I follow any and all press
3 coverage that I can, including very recently and over the years
4 relevant to the state Legislature to politics in Alabama to
10:18:48 5 society in Alabama, and so on.

6 Q And I hope I'm making sense here, Dr. Bagley. I guess I
7 am asking a more basic question. On not exactly what you
8 looked at, but how you got it. For example, when you are look
9 at case law, how, you know, how do you search for it, or what
10:19:07 10 do you do there, and looking at primary sources, how do you

11 determine which individual sources, you know, you will analyze?

12 A Well, as a historian of Alabama, I am sort of generally
13 aware of the basic parameters of its history of discrimination,
14 right? So if I am aware of the Sayre Law, the Boswell

10:19:25 15 Amendment, the *Davis vs. Schnell* decision, Alabama's voter

16 questionnaire that was at issue in Justice Department of

17 litigation. You read those decisions. Those decisions cite

18 other decisions. I am aware of the work of, you know,

19 Dr. Flynt, Dr. Feldman, other historians who have written about

10:19:48 20 those things. So there is no one singular path to analysis.

21 It's a very broad and wide ranging search.

22 Q And this is, again, more of a general process question.

23 So let's say in conducting your research and you come

24 across a piece of evidence that you think might weigh against

10:20:13 25 your ultimate conclusion, you mentioned earlier that you have

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1 to weigh the evidence against itself kind of --

2 A Right.

3 Q -- and when you described your process.

4 A Yes.

10:20:21 5 Q So can you explain to me when you go through that process
6 of weighing evidence against itself and against the other
7 evidence you are looking at, how did you determine what to
8 include or not to include in your analysis?

9 A I see. Okay. So when I look at the Senate Factors, you
10:20:40 10 know, and I list them on page 2, what they've asked us to
11 identify is the extent, for example, with Factor 1 of a history
12 of the official discrimination. To me, that means where has
13 the state discriminated, and in particular in this case, with
14 respect to redistricting?

10:20:59 15 It doesn't ask us to, you know, proactively seek out those
16 instances in ways in which the state has not discriminated or
17 has repudiated its discrimination or has done the right thing
18 by the law.

19 That being said, I don't feel like I'm hiding instances
10:21:20 20 where that is the case, especially with respect to
21 redistricting. For example, the state has occasionally had its
22 plans for congressional redistricting or House and Senate
23 redistricting precleared by the Justice Department. And that
24 is in the report.

10:21:35 25 So I think what you may be trying to say is that I am out

1 there simply gathering all of the negative that I can in
2 regards to the state and dumping that in a report and not --
3 you know, these instances where the state may have made
4 progress. And that's not what I am trying to do.

10:21:54 5 Q Dr. Bagley, I am not trying to trip you up on your own
6 words. I am truly trying to understand. You say you followed
7 the Senate Factors; is that right?

8 A Yes.

9 Q And in doing so, you looked for the history of official
10:22:13 10 discrimination; is that right?

11 A Sure.

12 Q So you're looking for instances of discrimination and not
13 the opposite, right?

14 A To an extent, because that's what the Senate Factors asked
10:22:25 15 us to do. But, again, I'm not hiding the fact that, you know,
16 there may be instances where the state, you know, had a plan
17 that would pass muster in court or got a plan precleared in
18 this sort of thing.

19 I talked about earlier how there was a semblance of
10:22:41 20 proportional representation in the state Legislature, thanks to
21 the efforts of black litigants over the years and so on.

22 Q Right. Okay. So it's your opinion that you did include
23 such positive evidence in the redistricting context, for
24 example, when it came up?

10:22:56 25 A Yeah.

1 Q Okay. And one -- I think last question on this topic. So
2 it's right then that you structured your analysis around the
3 Senate Factors. Would you say that's typical for a historian
4 in your field when conducting a historiography?

10:23:14 5 A No, we wouldn't, you know, for example, actually use the
6 Senate Factors framework in say a published essay or historical
7 monograph. But, you know, historians in this type of
8 litigation, including Dr. Flynt, who I mentioned earlier, and
9 others that I happen to I know have conducted these type of
10:23:37 10 analyses and these cases in the litigation. Now, that being
11 said, I think alluded to how our mode of inquiry is quite
12 similar to a total -- a totality of the circumstances inquiry
13 in general.

14 Q So I'm trying to figure out the distinction between what
10:23:53 15 you would do in your academic work and following the Senate
16 Factors here.

17 So if the Senate Factors look, say, for the history of
18 official discrimination and define those sorts of instances, is
19 that the same sort of work you would do just a historiography
10:24:07 20 essay or published work, or is it -- I'm trying to see if
21 there's any sort of substantive difference in what the work you
22 might perform as a historian and the work that you are
23 performing in this case?

24 A Substantively, I don't think so. I mean, structurally,
10:24:22 25 sure. Again, I wouldn't publish an essay for a history journal

1 where I lay out the Senate Factors and then structure an essay.
2 Those would be obviously uncommon. But in terms of looking at
3 the history of discrimination, patterns of discrimination on
4 the part of the state, the effects of discrimination, the fact
10:24:41 5 that, you know, black people aren't being able to elect
6 candidates of their choice in statewide office, all of those
7 would be things that would not be uncommon at all for us to
8 consider, nor are the sources that I used here uncommon for
9 historians to consider or to use.

10:24:56 10 Q Okay. I am going to try and go through your report kind
11 of chronologically -- not chronologically, but from front to
12 back and starting with Senate Factor 1 here on page 3.

13 So is it right that Senate Factor 1 is the extent of any
14 history of official discrimination in the state or political
10:25:26 15 subdivision that touched on the right of the members of the
16 minority group to register, to vote, or otherwise to
17 participate in the democratic process; is that right?

18 A That is correct.

19 Q And I believe earlier today you testified that you tried
10:25:41 20 to focus this section on the redistricting process; is that
21 right?

22 A Yes. I kind of run through Reconstruction up to the
23 mid-20th Century relatively quickly because it's more or less
24 accepted in litigation in my experience that the state engaged
10:26:02 25 in a variety of discriminatory practices up to that time.

1 Q Okay. You mentioned two specific cases earlier -- *Jones*
2 *vs. The Jefferson County Board of Education* and also the
3 *Pleasant Grove* case. Do you recall that testimony?

4 A Yes.

10:26:22 5 Q And I bring it up here because you mentioned it briefly in
6 the introduction. I am not trying to get too out of order.
7 Did you review the filings in those cases?

8 A I am generally aware of the disposition.

9 Q Did you review any of the filings?

10:26:41 10 A Some in one of the cases. But I am aware of, again, how
11 those played out.

12 Q Okay. And would a historian in your field typically
13 review those sorts of publicly available primary sources in
14 writing about them?

10:27:00 15 A If, you know, they're like me and they school
16 desegregation in Alabama, racial politics, voting rights in
17 Alabama, if you are writing a book as I am about voting rights
18 litigation in Alabama, then, yes.

19 Q Okay. And I believe about these suits you mentioned that
10:27:22 20 these jurisdictions were compelled to discard election systems;
21 is that right?

22 A Yes. I use that word compelled carefully. I think -- and
23 you can correct me if I am wrong -- I believe there were
24 consent decrees or settlements in both of those cases. I use
10:27:40 25 the word compelled not to say compelled by court order, but to

1 acknowledge the fact that the board of education or the city
2 council didn't just voluntarily decide to discard these
3 at-large systems. They were sued and presumably entered into
4 these settlements or consent decrees because they thought there
10:27:58 5 was a reasonable chance they might lose.

6 Q So it is your understanding as a historian that they did
7 not agree to the consent decree or settle until after the
8 complaint started?

9 A It's my understanding that they agreed to discard those
10:28:15 10 systems as part of the litigation.

11 Q Okay. And I have been thinking about *Jones* so far. And
12 thinking about *Pleasant Grove*, too, that was -- can you -- what
13 was that case about?

14 A *Pleasant Grove* involved an at-large election members of
10:28:34 15 the city council, and once that was disposed of and the counsel
16 did away with its at-large election system, I believe that two
17 black individuals were elected to the city council, if I am not
18 mistaken.

19 Q And is it right that you did not review any of the filings
10:28:51 20 in that case?

21 A Not specifically, not although, again, I followed press
22 coverage of the case and am generally aware of how it unfolded.

23 Q Okay. I am going to show you what's been marked as
24 Defendants' Exhibit 99. I hope I am, anyway.

10:29:16 25 Can you see that, Dr. Bagley?

1 A Yes.

2 Q Can you read the caption of the case, the title of it up
3 here?

4 A Yeah. *Alabama State Conference of NAACP Eric Calhoun and*
10:29:26 5 *Jennifer Ford vs. City of Pleasant Grove.*

6 Q And is this the case that you are finding in your opinion?

7 A Yes, sir.

8 Q Okay. I am going to scroll down to page 6. And I have
9 highlighted something here on this document. Do you see that?

10:29:45 10 A I do.

11 Q Can you read that for me, please?

12 A This settlement is the result of a compromise between the
13 parties, and nothing in this agreement constitutes an admission
14 of liability on the part of the city or any city official.

10:29:57 15 Nothing set forth in this settlement, the fact of settlement,
16 or any act performed or document executed pursuant to or in
17 furtherance of the settlement may be construed -- I apologize
18 to the court reporter for blasting through that -- may be
19 construed or be used as an admission of evidence of the
10:30:17 20 validity of any claim or allegation, or of any act, omission,
21 liability, or wrongdoing on the part of the city or as
22 supporting certification in any action or proceeding of any
23 kind whatsoever.

24 Q And it's right that you did not read this document in
10:30:34 25 conducting your analysis?

1 MS. SADASIVAN: Object, Your Honors. This is a
2 confidential settlement agreement. And I don't see its
3 relevance to Dr. Bagley.

4 JUDGE MARCUS: Is it in evidence?

10:30:48 5 MR. HARRIS: Yes, Your Honor. I mean, it's publicly
6 filed up here on the top as you can see.

7 JUDGE MARCUS: I will allow the question. Overruled.

8 THE WITNESS: So I have read probably this in general.
9 You know, I am aware that there was a settlement. I think -- I
10:31:04 10 will emphasize my point that whereas the city here is saying we
11 admit to nothing here, nonetheless, as a historian and not a
12 lawyer, I look at this and see the city had an at-large system,
13 a sort of textbook dilutive system that would and should have
14 failed under *Dillard*, and they were sued, and they entered into
10:31:29 15 a settlement to do away with that.

16 So the lawyers and the Court can, of course, reckon with
17 the particulars here, but that is the way that I view it as a
18 historian. The city had a dilutive structure, was sued, and
19 then by part of that litigation agreed to do away with that
10:31:51 20 diluted structure.

21 BY MR. HARRIS:

22 Q Okay.

23 JUDGE MARCUS: Mr. Harris, we generally take a break
24 to give our reporter a break about an hour and a half into it.
10:32:11 25 I do not mean to break your thread.

1 Just find a convenient point as you proceed if you would.

2 MR. HARRIS: Your Honor, I think this is --

3 JUDGE MARCUS: You don't have to at this moment, but
4 just at a convenient point.

10:32:27 5 MR. HARRIS: Understood, Your Honor. I think now is
6 as good a time as any to take a break on my end.

7 JUDGE MARCUS: Thank you. We will take a 15-minute
8 break, and then come back and finish up the cross.

9 Your timing on cross, the balance of the cross?

10:32:41 10 MR. HARRIS: I would expect between 30 and 45 minutes.

11 JUDGE MARCUS: Thanks very much. Thank you all. We
12 will see you back here in 15 minutes.

13 (Recess.)

14 JUDGE MARCUS: Do we have all of the parties ready to
10:47:04 15 proceed? Counsel for the Secretary of State and for Milligan?

16 MR. HARRIS: I'm ready, Your Honor.

17 MS. SADASIVAN: Yes, Your Honor.

18 JUDGE MARCUS: All right. You may proceed with your
19 cross-examination, Mr. Harris.

10:47:18 20 MR. HARRIS: Thank you.

21 BY MR. HARRIS:

22 Q At the bottom of page 4, you reference the Sayre Law. I
23 think you mentioned it in passing maybe in your
24 cross-examination just a few moments ago or if not in your
10:47:34 25 direct. And that they replaced the party ballot with the

1 secret ballot. When you say the secret ballot, what do you
2 mean?

3 A So what they attempted to do there -- you had a situation
4 before where you could simply look at the top of a ballot and
10:47:53 5 see the emblem. The emblem for the Democratic Party at the
6 time said white supremacy for the right. It had the roaster on
7 there. You could simply identify the emblem and vote a
8 straight party ticket. What the Sayre Law did is allow for
9 people to go in and only get help from a state-appointed
10:48:17 10 official and have to read a card with instructions and so on.
11 So it's called the secret ballot, but what it was intended do
12 is make it more difficult for people who are illiterate to be
13 able to just simply come in and see that logo and vote under a
14 straight party ticket.

10:48:35 15 Q I see. And so the secret ballot is what we still have
16 today; is that right?

17 A More or less, yes.

18 Q Okay. And just to clarify your opinion, so it's not your
19 opinion that when we go to the polls in 2022 and use a secret
10:48:55 20 ballot, is that the sort of -- the fact of racial
21 discrimination that you are opining on in your report, is that
22 part of racial discrimination?

23 A No. And the Sayre Law is only relevant to this history of
24 discrimination insofar it was plainly an attempt to
10:49:12 25 simultaneously disenfranchise illiterate black people and poor

1 white folks who were voting for populace candidates at that
2 time. And of course, it's no longer on the book. So, you
3 know, the Sayre Law is an example of something I mentioned
4 earlier that was enacted. There was obviously pushback against
10:49:30 5 it, and it's no longer in place as such.

6 Q But the secret ballot is in place, right?

7 A The basic parameters of the way we vote, yes.

8 Q Okay. At page 5 -- and you mentioned this in your
9 testimony, as well. Discussing Alabama's anti-miscegenation
10:49:49 10 law. Do you recall that testimony?

11 A I do.

12 Q And in your report -- so why did you include that in your
13 report?

14 A Well, I wanted to talk about the 1901 constitution. And I
10:50:05 15 wanted to mention that -- obviously, as we've said with things
16 that were a part of that constitution, like the poll tax, and
17 literacy tests, some of that, not the language about the poll
18 tax, but some of that has been invalidated over the years
19 through litigation, and it is no longer active. But there have
10:50:26 20 been at times these referenda to attempt to remove some of that
21 language and it -- some of it hasn't been removed, and some of
22 it has. And so I know the miscegenation language was removed I
23 think by referendum in 2000, but like the segregated schools
24 language is still in there.

10:50:48 25 Q Okay. So this one-drop rule, the one drop of black blood

1 you used that as an example of invidious racial discrimination;
2 is that right?

3 A Yeah. I mean, it's relevant obviously to the
4 miscegenation statute. Yeah. And that's been the way that
10:51:04 5 typically the law characterized black people throughout the
6 years.

7 Q And, Dr. Bagley, I am not trying to put words in your
8 mouth, but I believe in your testimony you used the phrase
9 any-part black. Do you recall that?

10:51:17 10 A I may well -- if you say I did, then I did.

11 Q And I just want to know what did you mean by that?

12 A I just mean that the one-drop rule meant that if you -- I
13 mean, when they say one drop, that's what they mean, any-part
14 black. If you were, you know, one-fourth African-American, if
10:51:38 15 you were what they would have called mulatto, anything like
16 that, even back of course to codification of racial law and
17 slavery times, that meant you were a black person.

18 Q Okay. Let me see here. Okay. I am going to jump on to
19 page 8, and you're summarizing redistricting in Alabama between
10:52:07 20 1960s and the 1980s; is that right?

21 A Yes, sir.

22 Q And I believe you testified that this was the focus of
23 your report was the history related to redistricting; is that
24 right?

10:52:18 25 A I tried to focus my Factor 1 findings on that, yeah.

1 Q Okay. So in particular, did you have a focus on
2 congressional redistricting or just redistricting at large
3 would you say?

4 A Well, congressional redistricting has been more at issue
10:52:40 5 since the '90s, so in terms of the last 30 years, the focus of
6 the balance may tend to be there, but I've looked at the state
7 Legislature, as well.

8 Q Okay. Let me see here. At the top of page 10, I believe
9 this is right -- and this is the paragraph that is cut off. So
10:53:02 10 this is I think straddling 9 and 10. Let me see here. I want
11 to make sure that -- it -- I guess my question is: Is it right
12 that the 1960 congressional redistricting map, was that passed
13 by the Legislature without court intervention?

14 A I believe so. I think the situation there they ran at
10:53:31 15 large, yeah. That was -- yes. They ended up, I think, in that
16 decade running all the seats for Congress at large rather than
17 actually redistricting.

18 Q Okay. Can you read starting with, some had pushed, there
19 at the top of page 10, that first full sentence?

10:53:50 20 A Some had pushed for maintaining the at-large election of
21 the delegation, but with numbered posts. This is the impetus
22 of the *Mizell* and the executive committee meeting warning that
23 voters would put a scalawag Republican or Negro in there that
24 became central to the *Dillard* litigation years later.

10:54:11 25 Q And as I understand it, that was -- that was rejected; is

1 that right?

2 A That's correct.

3 Q Okay. So it's right, then, that that quote was not --
4 that was rejected by the Alabama Legislature in the '60s? I
10:54:25 5 just want to make sure I understand.

6 A Yes, sir. No. They did not follow through with that in
7 respect to the congressional delegation. It just became the
8 sort of smoking gun in *Dillard* because it showed that this was
9 the reason why a number of places were used in general, but,
10:54:40 10 yes, you are correct with respect to congressional.

11 Q So did you review any other information about Alabama's
12 congressional redistricting between 1960 and 1990?

13 A Whatever I reviewed is reflected in the footnotes.

14 Q Okay. So my question for you is: Why did you not
10:55:07 15 include, or maybe did not review if you didn't review it, any
16 information related to congressional redistricting in the '70s
17 and '80s?

18 A Let's see. This would be reflected on page 11? Do I have
19 that right?

10:55:24 20 Q That is 10 and 11 is this era, and I sure enough may have
21 missed it. I found state Legislature information.

22 A Uh-huh.

23 Q And I could not find congressional. And that is what I'm
24 asking.

10:55:37 25 A So if Factor 1 is asking us to identify the history of

1 discrimination, and that's what I found in the '70s and '80s,
2 it was with respect to the state House. As you can see, when I
3 talk about, you know, the 2000-cycle, for example, if the plan
4 was precleared or passed or was enacted by the Court, I'm not
10:56:01 5 trying to hide that fact.

6 So if I've not discussed congressional reapportionment
7 plans with respect to the '70s and '80s, that means that it was
8 not contentious.

9 Q And what does that mean?

10:56:15 10 A Well, I simply mean that, you know, in the case of the
11 '70s and '80s, it was probably inconceivable black people were
12 focusing their attention at that time on gaining access to
13 simply being able to elect members to the state Legislature.
14 And so it's not until the '90s that they actually -- it becomes
10:56:39 15 feasible to actually attempt to given the makeup of the -- even
16 the federal government at the time, to challenge the state's
17 congressional plan to actually get a majority-minority
18 district. I think if you would have ask black leaders in the
19 '60s and '70s, and evening at the beginning of the '80s if that
10:56:59 20 were possible, they would have said no. So this just means
21 this is the source of black activists' efforts up to that
22 point.

23 Q And when you say black activists, who do you mean?

24 A I mean those who are advocating for up to that point state
10:57:19 25 legislative redistricting plans that would include districts

1 that would allow black voters to elect candidates of their
2 choice.

3 Q Okay. And is your -- and the reason it's not in the
4 report -- and correct me if I am misstating your statement,
10:57:41 5 please. The reason you haven't included it is because you
6 think that black leaders just weren't -- just weren't focused
7 on the issue; is that right?

8 A I think the -- I think up -- I'm sorry if I cut you off.

9 MS. SADASIVAN: I was going to object, Your Honors,
10:57:56 10 because that mischaracterizes earlier testimony. I think
11 Dr. Bagley answered the question.

12 JUDGE MARCUS: Why don't you put the question again,
13 Mr. Harris.

14 MR. HARRIS: Sure. I apologize, Your Honor. I am
10:58:14 15 looking at my last question to see how I can look at it.

16 BY MR. HARRIS:

17 Q Is it right that you did not include information about
18 congressional redistricting in the '70s and '80s because in
19 your opinion as a historian, black activists did -- were not
10:58:32 20 pursuing that; is that right?

21 A I think the focus at that time was on the initial
22 break-throughs that occur in the 1970s. I mean, if you think
23 about what is it, Fred Gray and Thomas Reed are the very first
24 black citizens elected to the state Legislature. That had just
10:58:54 25 happened. So the focus was on expanding access to state level

1 positions or rather district level positions.

2 And I'm not saying it wasn't on anyone's radar until the
3 1990s, but the focus was different. And so the focus of my
4 report is different is all I'm saying.

10:59:17 5 Q Okay. So what information did you review about that as
6 part of your historiography?

7 A Again, any information I reviewed is reflected in the
8 footnotes. So you can see there there's a number of press
9 coverage, there's case law cited there, Civil Rights Division
10 objection letters I'm looking at, and so on.

11 Q Okay.

12 A Mr. Blacksher wrote an article that's referenced there.

13 Q Okay. Earlier we were talking about -- down on to page
14 12. We talked briefly about the litigation from *Pleasant Grove*
10:59:58 15 in Jefferson County. And I believe you kind of mentioned that
16 -- I think you related those to *Dillard* somehow; is that right?

17 A The focus in both the *Dillard* litigation and those cases
18 were at-large voting schemes.

19 Q Okay. And you mentioned in your report and I believe in
11:00:26 20 your direct testimony that *Dillard* would compel in the 180s
21 some 183, I believe?

22 A Yes, sir.

23 Q Local governments to change their election system. And
24 you talked a little bit about when you use the word compel, you
11:00:42 25 use that very carefully; is that right?

1 A Yes.

2 Q And I believe you said that you were aware that some of
3 those were, for example, settlement agreements; is that right?

4 A That's right.

11:00:52 5 Q Do you know how many of those 183 were settlement
6 agreements?

7 A Not off the top of my head, no.

8 Q Would you have reviewed information in the past about how
9 many of them were?

11:01:05 10 A No doubt, yes.

11 Q Okay. And so then can you give me a ballpark? Is it
12 maybe a dozen or a 100 or some -- can you kind of give me what
13 your understanding is?

14 A I mean --

11:01:16 15 MS. SADASIVAN: I am going to object. I am sorry, I
16 am going to object because Dr. Bagley did already answer that,
17 but.

18 JUDGE MARCUS: You may ask the answer, and you may
19 answer it if you can. If you can't answer it, just tell us,
11:01:27 20 Mr. Bagley.

21 THE WITNESS: Yes, Your Honor. I do not know that
22 figure. It could be several dozen, in fact. But, again, I as
23 a historian, it's clear to me that those systems were not going
24 to be voluntarily discarded. I mean, *Dillard* was the impetus
11:01:46 25 for those changes in the 1980s, whether local governments were

1 compelled by a court order to discard those systems or not.

2 And, two, of course, if it was a consent decree or settlement,

3 I mean, that has the weight of the Court behind it, as well.

4 But, no, sir, I do not know that number.

11:02:06 5 MR. HARRIS: I am going to try to share my screen
6 again. And I'm not trying to pull a fast one on counsel. This
7 has not been marked as an exhibit. It is a court opinion. And
8 if -- I would like to show Dr. Bagley. I don't know if I need
9 to preclear these exhibits or not.

11:02:27 10 JUDGE MARCUS: Just mark it for identification so we
11 have a number to it.

12 MR. HARRIS: Certainly.

13 BY MR. HARRIS:

14 Q Let me see here.

11:02:35 15 All right. Where are we at this point?

16 MR. DAVIS: I don't recall. It's probably around 5 or
17 6.

18 MR. HARRIS: If anyone has a hand on where we are, we
19 might be Exhibit 6 at this point.

11:02:54 20 JUDGE MARCUS: That's fine. You mark it for
21 identification.

22 MR. HARRIS: Certainly.

23 JUDGE MARCUS: As Defendant Exhibit 6.

24 MR. HARRIS: Certainly.

11:03:01 25 BY MR. HARRIS:

1 Q And can you read the caption again for me, please,
2 Dr. Bagley?

3 A Yes. This is in the Northern District Court for Alabama,
4 *Dillard vs. Baldwin County*.

11:03:11 5 Q And just for identification purposes, I am not sure this
6 is relevant, but Middle District of Alabama, correct?

7 A Yes, sir.

8 Q And I'm -- and are you -- does this look to you like the
9 *Dillard* litigation you have been talking about?

11:03:25 10 A Yes, sir.

11 Q Okay. And I am going to scroll down here a little bit.

12 I have highlighted here that 176 of these jurisdictions
13 entered into an interim consent decree. Do you see that?

14 A I do.

11:03:41 15 Q So that's 176 of the 183. Were you aware that the number
16 was that high?

17 A I figured it was relatively high, yes.

18 Q Does that have any effect on your opinion?

19 A No. Again, I mean, it's not that these 176 all of a
11:03:57 20 sudden decided that they needed to discard these dilutive
21 systems out of magnanimity. They did it because this lawsuit
22 was filed you know. And whether they were directly subjected
23 to a court order ordering directly to do so doesn't change my
24 general understanding of how that unfolded.

11:04:20 25 Q Okay. And along these lines, is it your understanding as

1 a historian when you're examining these documents that numbered
2 post-voting systems are discriminatory per se or that they're
3 always found to be discriminatory?

4 A If they're used in conjunction with at-large voting with
11:04:42 5 majority vote requirements and so on, they have traditionally
6 been found, I believe, to be so.

7 Q Okay. So are you aware of any court decisions about
8 numbered post-voting laws that have come to the opposite
9 conclusion?

11:04:59 10 A Not off the top of my head, no.

11 Q Okay. So you haven't read an opinion from a couple of
12 years ago about judicial elections in Alabama? Does that ring
13 any bells?

14 A All right. Yes. So there -- the -- do you refer to the
11:05:19 15 *NAACP vs. State of Alabama* case.

16 Q That's the one?

17 A Yes, sir. I am aware of that.

18 Q And that was the case with numbered post-voting and
19 majority vote requirements, right?

11:05:31 20 A For judges, I believe so, yes, sir.

21 Q For judges, that's right. And do you know how judges are
22 elected in Alabama?

23 A Yeah. I think I actually cite to this case at some
24 point --

11:05:39 25 Q Oh, good.

1 A -- in my report.

2 Q Okay. So you read it, then; is that right?

3 A I am aware of it, yes.

4 Q I'm sorry. Did you read it?

11:05:48 5 A Yes.

6 Q Okay. And do you recall the Court considering historical
7 evidence?

8 A Yes.

9 Q Okay. And did you give any weight to the Court's holding
11:06:01 10 in that case as you were preparing your opinion in this case?

11 A Yes. I said I've mentioned it in the report. I can't
12 tell you where exactly. I think in a couple of different
13 places, but I don't remember who the historian that testified
14 in that case was. But my report is my report. So if, you
11:06:22 15 know, the Court can consider my report in this case, you know,
16 whatever the Court found in that case is -- is what it is.

17 Q Okay. So you don't think that your opinion is -- well,
18 withdrawn.

19 Let me see. So you did cite it in your report that I see
11:06:45 20 on page -- let me see -- at 17. You say that -- and you quote
21 it as saying, Though things you have changed, the effects of
22 discrimination persist to some degree. I am not sure if you
23 are reading it, but does that sound right?

24 A Yes, sir.

11:07:05 25 Q Okay. And you did read other parts of that opinion, too?

1 A Yeah, at some point, yes.

2 Q Okay. But you decided not to include any other sort of
3 analysis or historical information from that opinion; is that
4 right?

11:07:16 5 A That's right.

6 Q And you -- and why is that?

7 A I cite to what I felt like was most relevant for my
8 report. I included that case, that finding, I considered
9 things on balance, and I considered the totality of the
11:07:34 10 circumstances, so I am not trying to act like that decision was
11 not rendered. But I considered it as part of my analysis.

12 Q Okay. And I believe when we started this line of
13 questioning, you said it was your opinion -- and please again
14 correct me -- that if -- that numbered post-voting requirements
11:07:55 15 combined with majority requirements in a statewide election or
16 in a general election -- I don't recall exactly; is that right
17 -- were generally found to be discriminatory; is that right?

18 A Yes. I don't know that we said in which kind of election
19 or another, but generally speaking, yes. Although very clearly
11:08:12 20 not universally.

21 Q Sure. So did you disagree with the Court's opinion that
22 you read?

23 A Well, I am not a lawyer, and I am not going to say I
24 disagree with any court finding.

11:08:23 25 Q Okay. And you said you didn't -- were unaware of who the

1 expert was in that case; is that right?

2 A Correct.

3 Q Okay. All right. We can move on to 1990s redistricting
4 cycle, which you have starting on page 12.

11:08:51 5 Let me see. You mentioned that the Legislature submitted
6 a congressional plan to the Department of Justice and that the
7 Department of Justice objected; is that right?

8 A Yes, sir.

9 Q And you cite that objection letter in your report, right?

11:09:08 10 A I do.

11 Q So did you read the state of Alabama's submission that
12 prompted that objection?

13 A Not in its entirety, no.

14 Q But --

11:09:20 15 A I am aware of it. I mean, obviously, I cite to the
16 objection letter. I am aware that there was litigation ongoing
17 at that time or had recently concluded one or the other and
18 that the Court ultimately adopted a different plan.

19 Q Okay. What sorts of documents or what specific documents,
11:09:45 20 if you know, did you review related to the redistricting plan
21 from the -- after the 1990s census cycle? So related, for
22 example, to that objection letter or the *Wesch* case or -- what
23 sorts of documents did you consider?

24 A Obviously, the opinion of the Court in *Wesch*, press
11:10:06 25 coverage of that process, looking at the footnotes here, again,

1 Mr. Blacksher's article, more press coverage, and so on.

2 Q Okay. So did you consider any documents that you do not
3 cite in your report, so things that you thought didn't make the
4 cut on importance or relevance?

11:10:32 5 A Anything I considered should be in the footnotes.

6 Q Okay. Earlier today, I believe in the context of another
7 Senate Factor in responsiveness to the needs of black
8 Alabamians --

9 A Uh-huh.

11:10:47 10 Q -- you mentioned that black leaders from Alabama have been
11 trying to advocate for a two-majority-minority congressional
12 districts since the '90s; is that right?

13 A I did say that, yes.

14 Q And what black leaders are you referring to?

11:11:02 15 A I know that some in the 1990s did not, which may be your
16 point. Not every black leader in the state in 1990s was
17 pushing for two majority-minority districts. You know, I don't
18 want to misstate, but among the black leaders at the time, some
19 of them were supportive of the one majority-minority plan,
11:11:25 20 others were supportive of two. That's not in this portion of
21 the report. I am not, you know -- I am not going to speak to
22 anything that's not in there, but, yes, I am aware that some
23 black leaders were supportive of two at that time, and some
24 were not. Some were -- I hesitate to use the word content
11:11:45 25 here, but some leaders were supportive enough of having the one

1 majority-minority district that they were -- that they at that
2 time supported that idea.

3 Q So is it your opinion that such leaders were not
4 responsive to the needs of black Alabamians?

11:12:02 5 A No. I think they weighed what was possible at the time.
6 This goes back to what I was saying earlier about focusing in
7 the '70s and the '80s on, you know, election to the state
8 House, the state Senate versus Congress.

9 Q Okay. Let me see. So you said, I believe, that you were
11:12:26 10 aware of or that you may have seen the state's submission to
11 the Department of Justice that prompted the letter; is that
12 right?

13 A Uh-huh. Yes, sir.

14 Q Okay. Those have been introduced into evidence as
11:12:40 15 exhibits 22 and 23. Let me see here. I am going to show you.

16 There are two -- I guess they are 22 and 23. There was a
17 formatting problem with the first one.

18 JUDGE MARCUS: Back up for a second, Mr. Harris. Can
19 you give me the numbers again? I want to make sure I have that
11:13:21 20 right.

21 MR. HARRIS: Yes, Your Honor. Defendants' Exhibit 22
22 and 23. It's the second half of the same document.

23 JUDGE MARCUS: Thank you.

24 BY MR. HARRIS:

11:13:35 25 Q There. I found it. You see my screen, Dr. Bagley?

1 A Yes, sir.

2 Q Does this look familiar to you?

3 A Yes. That appears to be the state's submission to the DOJ
4 from March of '92.

11:13:49 5 Q Okay. And do you know if you have reviewed this
6 information?

7 A Sometime ago, but yes.

8 Q Okay. And you say sometime ago. Like in what context
9 would you -- as part of this case or?

11:14:00 10 A As part of my work trying to write this manuscript, voting
11 rights litigation in the state.

12 Q I see.

13 A I have more recently read the *Wesch* decision, and
14 obviously, I cite to the preclearance objection letter in the
11:14:15 15 report. I do not cite to this document in the report.

16 Q All right. And we have here in this full paragraph, and
17 this is on page 9 of the Defendants' Exhibit 22. You know,
18 it's talking about black political leaders in Alabama. Do you
19 see that?

11:14:35 20 A Yes. And I was aware that Mr. Reed and Mr. Gray had at
21 that time gotten behind the one majority-minority district
22 plan.

23 Q Okay. And you said -- you named those two people by name.
24 Who is Joe Reed?

11:14:53 25 A Joe Reed is a long influential black educator and leader

1 in the state.

2 Q Okay. And this identifies him as the chair of the ADC.

3 Do you know what that is?

4 A The Alabama Democratic Conference.

11:15:08 5 Q And what is that?

6 A The black political organization.

7 Q Okay. And you also mentioned Mr. Gray by name. Who is
8 that?

9 A He was also a part of ADC.

11:15:18 10 Q Okay.

11 MR. HARRIS: And, Your Honor, also there's been an
12 objected to exhibit is what I had planned to reference next.
13 That's Defendants' Exhibit 17.

14 JUDGE MARCUS: I'm with you.

11:15:37 15 MR. HARRIS: Let me see who is objecting to it. I
16 have it. It is -- yeah, the Milligan defendants. So I am
17 happy to discuss it, or I am not sure how you want to approach
18 it.

19 JUDGE MARCUS: Let me pull it up. That was the public
11:15:52 20 hearing transcript?

21 MR. HARRIS: Yes, sir. And it's cited in that --

22 JUDGE MARCUS: The committee on reapportionment,
23 right?

24 MR. HARRIS: Yes, Your Honor.

11:16:00 25 JUDGE MARCUS: All right. Do you want to question him

1 about it, or you want to offer it first? What is it you want
2 to do?

3 MR. HARRIS: So, Your Honor, this is the hearing
4 transcript that was cited in that DOJ submission that contains
11:16:12 5 testimony from these black leaders. I'm trying to see how this
6 would affect his opinion that Alabama is nonresponsive to the
7 needs of black Alabamians.

8 JUDGE MARCUS: All right. You may use it for the
9 purposes of impeaching him.

11:16:24 10 MR. HARRIS: Okay.

11 JUDGE MARCUS: That's what you want to do now is use
12 it to impeach, I take it.

13 MR. HARRIS: Yes, Your Honor, that's right.
14 Separately, we would also like to have it in evidence.

11:16:35 15 JUDGE MARCUS: I understand that. There's a dispute
16 about the admission of 17, counsel?

17 MS. SADASIVAN: Yes, Your Honor. We've objected to
18 the exhibit. I should also add that Dr. Bagley hasn't seen the
19 transcript -- although he cited to in his report the DOJ's
11:16:51 20 objection, he has not seen any of the transcripts of the public
21 hearing, so I am not sure what evidence Mr. Reed is trying to
22 offer for -- Mr. Harris is trying to offer for impeachment.

23 JUDGE MARCUS: He is trying to do two things, counsel.
24 He is trying to impeach with the document, which he may do, and
11:17:06 25 he is trying to substantively offer it, as well. We will take

1 the substantive offer when we get to his case.

2 In the meantime, you may -- particularly with an
3 objection, but you may use the document for purposes of
4 impeachment. You may proceed, Mr. Harris.

11:17:20 5 MR. HARRIS: Thank you, Your Honor.

6 BY MR. HARRIS:

7 Q And, Dr. Bagley, is it right that you have never seen this
8 document?

9 A I am --

11:17:31 10 Q I am going back to the beginning so you could see. I
11 wasn't trying to pull a fast one. Is it right you don't recall
12 ever seeing this document?

13 A Are we still looking at the state submission?

14 Q I'm sorry. Can you see --

11:17:47 15 A Yes.

16 JUDGE MARCUS: Let's cut to the chase.

17 You have shown him page 9. This is a public hearing
18 transcript from the joint legislative committee on
19 reapportionment. Have you seen it before or haven't you,
11:18:01 20 Mr. Bagley?

21 THE WITNESS: I -- I'm sorry. I've --

22 BY MR. HARRIS:

23 Q I've made a mistake I am afraid with what you can see and
24 what you cannot. And I am very, very sorry.

11:18:12 25 This is what -- Defendants' Exhibit -- can you see this?

1 A Yes. And, no, I have not reviewed that.

2 JUDGE MARCUS: What you put up -- just so the record
3 is crystal clear, Mr. Harris, on the screen is the legislative
4 committee hearings on reapportionment, October 2nd, 1991.

11:18:35 5 That's what you are asking Dr. Bagley whether he has seen
6 before or not.

7 MR. HARRIS: That's right.

8 JUDGE MARCUS: Have you seen it, Dr. Bagley?

9 THE WITNESS: No, Your Honor, I have not reviewed this
11:18:46 10 particular document.

11 JUDGE MARCUS: All right.

12 MR. HARRIS: Thank you for that. I apologize for the
13 confusion.

14 BY MR. HARRIS:

11:18:53 15 Q Why not?

16 A I'm not sure how to answer that. It's not come across,
17 you know, my desk. It's -- I have not -- I am not even sure
18 how exactly I would have accessed that, to be honest with you.

19 It is case -- published case law is much easier for me to
11:19:15 20 review, particularly during, you know, a pandemic when we are
21 not doing archival research.

22 Q And in terms of how you would see it -- and I want to be
23 clear where this came from -- in that last exhibit we looked at
24 was the DOJ submission letter. Do you recall that?

11:19:30 25 A Yes.

1 Q Okay. And this is cited in that letter, so --

2 A Okay.

3 Q -- that's where it's coming from.

4 Is this the type of information, the testimony about
11:19:42 5 redistricting that an historian in your field would likely
6 consider when writing or developing sort of historiography
7 about redistricting in Alabama?

8 A It right be considered, sure.

9 Q Okay. And why is that?

11:19:57 10 A Because it's a part of the public record.

11 Q Okay. And you think it's relevant how the Legislature
12 acted at that point?

13 A Sure. You know, I would just say if I'm examining, you
14 know, three-quarters of a century of history, I am not going to
11:20:17 15 be able to access every single relevant source.

16 Q Sure.

17 You know what? I -- I had hoped to read a portion of this
18 document. And, you know what? I will stop here. I won't do
19 that. I have gotten confused with my document.

11:20:41 20 I do want to talk about *Wesch*, though. And you mentioned
21 that specifically. You say you have read *Wesch* opinion; is
22 that right?

23 A Yes, sir.

24 Q And what is that?

11:20:49 25 A That is -- the *Wesch* case was the case whereby the Court

1 took under consideration a number of plans that had been
2 submitted to the state Legislature for congressional
3 redistricting in the '90s. And the Court ultimately, I
4 believe, ordered the enactment of one of such plan with some
11:21:12 5 slight modifications put in place by the Court.

6 Q Okay. Let me see here. And you mentioned that black
7 voters joined the suit citing specifically the lack of a second
8 majority black congressional district; is that right?

9 A Where is that if you don't mind?

11:21:30 10 Q Let me see. In the first sentence of the first full
11 paragraph on page 13. And starting with black voters, so that
12 second clause is what I was citing.

13 A Yes, I see that.

14 Q And why did you include that fact in the report?

11:21:47 15 A I felt it was relevant that you had people challenging at
16 every step of the way the state's plans.

17 JUDGE MARCUS: I'm sorry. I -- do you understand the
18 question, Dr. Bagley?

19 THE WITNESS: Yes. Yes, Your Honor. I think so.

11:22:08 20 JUDGE MARCUS: Could you answer it?

21 THE WITNESS: Would you restate it please, Mr. Harris.

22 BY MR. HARRIS:

23 Q Sure. I think you -- I think you answered what I meant to
24 ask, anyway, and is why you didn't it include it. So you
11:22:22 25 testified I believe that you said black voters were challenging

1 the state's action at every step of the way; is that right?

2 A Yes.

3 Q Okay. Now --

4 A I mean, not uniformly of course as you have just pointed
11:22:35 5 out. I mean, there have been some black leaders in the state
6 who have been supportive of initially one majority-minority
7 district.

8 Q Okay. I'm going to show -- again, this has not previously
9 been marked as an exhibit, but it is the *Wesch* opinion that you
11:22:52 10 cite in your report that is a *Wesch* document.

11 Is it right that you have read that case?

12 A Yes.

13 Q Okay. Great. Sorry. I know I already asked that. We
14 will mark this for identification as Exhibit 7. And it's as
11:23:08 15 published in the federal supplement 785 F. Supp. 1491. This is
16 just the Westlaw version of it.

17 I'm going to scroll down to paragraph 26 of the opinion
18 where it is on the fourth page of this case file I printed.

19 Can you read that? Do you see that on your screen, Dr. Bagley?

11:23:30 20 A I do.

21 Q Okay. And I pulled this up. You say black voters join
22 the suit citing specifically the lack of a second majority
23 black congressional district. Is this what you are referring
24 to?

11:23:43 25 A Where specifically?

1 Q I'm sorry.

2 Paragraph 26. So the Hilliard Plan that we're advocating
3 two African-American majority districts?

4 A Yes. Earl Hilliard was among those who dating back to the
11:23:58 5 '90s was supportive of two majority-black districts.

6 Q Okay. Can you read that paragraph 26 for me, please?

7 A The Hilliard Plan includes two majority African-American
8 districts, with an African-American population of 59.33 percent
9 and 61.98 percent respectively. Although this plan was
11:24:20 10 submitted by the intervenors, they took the position that the
11 Hilliard Plan probably provided obstacles of sufficient nature
12 to cast doubt on their opportunity to elect candidates of their
13 choice in these districts.

14 Q Okay. And do you think this is the plan that you're
11:24:37 15 referencing in your report or -- excuse me -- the claim you are
16 referencing in your report?

17 A Yes.

18 Q Okay.

19 A Well, yes. That -- yes.

11:24:47 20 Q Okay. And is it your opinion that this is part of the
21 state's history of discrimination in redistricting?

22 A Well, it's my opinion that, you know, that where you're
23 having to litigate this to even get the one majority-minority
24 district, again, we're looking at the totality of the
11:25:11 25 circumstances.

1 Q Okay. And I want to talk a little bit more about that.
2 You say litigating one majority-minority district. What do you
3 mean by that?

4 A I mean, the plan that was adopted was adopted by a court
11:25:25 5 with modifications by the Court at that time.

6 Q Do you -- and there was a DOJ objection letter as you have
7 already said and I believe you testified. Did the state also
8 pass a different map that year, do you know?

9 A There was a separate map, yeah. While the *Wesch*
11:25:42 10 litigation was ongoing, the state passed a map. That was the
11 one the DOJ objected to. And then the Court adopted the map in
12 *Wesch*, one of the maps that had been submitted as part of the
13 process with modifications by the Court, yeah.

14 Q Okay. And have you seen the state's plan that was -- like
11:26:02 15 the one that -- not the Court's plan, but the state's plan?

16 A I believe you showed me the submission to the Department
17 of Justice just a minute ago.

18 Q Right. That's right.

19 A Uh-huh.

11:26:11 20 Q Do you know how it compared to the Court ordered plan that
21 was ultimately entered?

22 A It was fairly similar, I believe.

23 Q Okay. So the state's plan that it passed also contained
24 majority-minority district; is that right?

11:26:28 25 A Yes.

1 Q Okay. Okay. You say in your report that what you just
2 said just now that the Pierce Plan was ultimately adopted or a
3 modify version of the Pierce Plan; is that right?

4 A Yes.

11:26:55 5 Q Okay. Then at 13, you say, the Pierce Plan was originally
6 the Larry Dixon Plan. And I believe that's the last full
7 paragraph on 13. Why do you include that information here?

8 A It was just known in the litigation as the Dixon-Pierce
9 Plan.

11:27:10 10 Q It was known as the Dixon-Pierce Plan?

11 A It was referred to as such at some point, yeah.

12 Q Okay. So the Pierce Plan was referred to the Larry Dixon
13 Plan is your testimony?

14 A No. I'm saying that I have seen it referenced as the
11:27:29 15 Dixon-Pierce Plan somewhere before. I include Mr. Dixon there
16 because he is among the individuals I discussed or referred to
17 at least in a footnote later that was part of the McGregor
18 investigation.

19 Q I see. So -- okay.

11:27:46 20 Now, do you note -- did the state adopt the Larry Dixon
21 Plan, or did the Court adopt the Larry Dixon Plan?

22 A The Dixon Plan, I believe, became the Pierce Plan, which
23 the Court then made some changes to, and that was ultimately
24 adopted is my understanding.

11:28:00 25 Q So the Dixon Plan became a different plan, which became a

1 different plan, right?

2 A There was some -- there were minor changes made is my
3 understanding.

4 Q Okay. All right. And moving on to 2000, which I believe
11:28:25 5 we have starting on 14 -- bottom of 13 and on to 14. Is it
6 right that the state -- that the Legislature passed and the
7 Department of Justice precleared the state's congressional plan
8 after 2000?

9 A Yes, sir.

11:28:43 10 Q Okay. And do you know whether anyone ever declared those
11 plans unlawful in 2000 either the Department of Justice or a
12 federal court?

13 A No, sir. There was not objection or adverse ruling.

14 Q Okay. And do you know what Alabama legislator sponsored
11:29:17 15 that plan that was ultimately passed in 2000?

16 A Not off the top of my head, no.

17 Q Okay, Dr. Bagley, I will represent to you that earlier in
18 this case, there's been testimony that that was Hank Sanders.
19 Does that name ring a bell to you?

11:29:31 20 A Yes. Mr. Sanders a black legislator from Selma.

21 Q Okay. And is it your opinion that Mr. Sanders was not
22 responsive to the needs of black Alabamians in 2000 when he
23 sponsored that map?

24 A That would not be my opinion, no.

11:29:46 25 Q Okay. And did you look at that bill? And, again, I am

1 coming back to your historiography here. Did you consider the
2 2000 bill in the map that was passed?

3 A I do refer to it. I do discuss it on 13 and 14. I state
4 plainly that the plan was passed and enacted and, you know, was
11:30:11 5 precleared.

6 Q Okay. And, you know, in the first full paragraph on page
7 14, you reference the redistricting battles of the early 2000s.
8 And this is three lines up, where it starts with between the
9 redistricting. Do you see that in the first full paragraph on
11:30:30 10 page 14?

11 A Yes.

12 Q Okay. When you say the redistricting battles of the early
13 2000s, what are you referring to?

14 A This is at 14, first full paragraph? I am just trying to
11:30:49 15 find where you are reading from.

16 Q I'm happy to show it on the screen.

17 A No, no, no. You don't have to do that. It's the
18 paragraph that begins, The Republican party?

19 Q That's the one.

11:30:59 20 A Yeah. I mean, I talk about in the previous paragraph if
21 you will allow me to go back.

22 Q Certainly.

23 A Three separate actions challenging the state's failure
24 were filed and consolidated. The state was forced to
11:31:13 25 acknowledge portion -- three-judge court invited the submission

1 of plans, heard testimony, appointed its own experts. I'm
2 paraphrasing at this point.

3 Q Uh-huh.

4 A You know, these consolidated cases. I referred to that
11:31:28 5 litigation.

6 Q Okay. So you're referring to the plans that were
7 precleared when there was no adverse rulings, and that's the
8 redistricting battles of the early 2000s?

9 A Correct.

11:31:38 10 Q Okay. And so is it your opinion that it was the
11 redistricting battles of the early 2000s that led to the
12 Republican takeover of the Alabama Legislature in 2010?

13 A I'm not trying to draw a direct causal connection there,
14 not necessarily, no.

11:31:56 15 Q Okay. So it's not your opinion, then, that redistricting
16 caused the Republican takeover in 2010?

17 A No.

18 Q Okay. On the 2010 plan, and let me see here. On looking
19 at page 16 of your report?

11:32:19 20 A Uh-huh.

21 Q Actually -- so it straddles 15 and 16. And what I want to
22 ask about is the absolute first words on page 16. But it might
23 help to start at the bottom of 15.

24 You cite Senator Bobby Singleton as saying, I think it's
11:32:35 25 political packing, in terms of the 2010 plan.

1 Do you remember that part of your report?

2 A Yes.

3 Q And what does that mean?

4 A What did Senator Singleton mean?

11:32:49 5 Q Sure. Or what did you think it meant when you put it in
6 your report?

7 A That he was arguing that the map was packing black voters
8 into the Senate district, I believe.

9 Q So to you, political packing is the same as packing black
11:33:04 10 voters?

11 A I think that's probably what Senator Singleton meant, but
12 this cuts to the issue of is it party or race, which is a
13 thorny issue.

14 Q Can you say more about that? What do you mean? How do
11:33:23 15 you consider that a historian?

16 A I think I deal with that in the report by simply showing
17 the shifts in the park fees -- I mean, what's at issue here is
18 discrimination against the state's black citizens, though. So
19 I don't know that Senator Singleton meant to refer simply to
11:33:44 20 political parties. I think he meant to refer to the black
21 citizens. I think that was the point, and I think that has
22 been the point.

23 Q Okay. Let me see here. So as part of that discussion,
24 you reference the Alabama Legislative -- the ALBC, the Alabama
11:34:11 25 Legislative Black Caucus case. Do you recall that?

1 A Yes.

2 Q And speaking again about the congressional plan
3 specifically, you say that after preclearance occurred on that
4 2010 plan, this severed that issue from the Alabama Legislative
11:34:29 5 Black Caucus case. And now I'm starting here at the bottom of
6 page 16 and four lines up on the far right side is where it
7 says this --

8 A Uh-huh.

9 Q Do you see that?

11:34:39 10 A Yes.

11 Q What does that mean? That sentence? What does that mean?
12 It's severed. You can take a minute to read it.

13 A I see it. I just mean that was, you know, wouldn't have
14 been a consideration anymore by that point.

11:34:51 15 Q Is it your understanding if something is precleared that
16 it can't be challenged in courts?

17 A It can, yeah. But I mean, if it received preclearance, it
18 may be the case that, you know, one might reconsider
19 challenging it or what have you.

11:35:09 20 Q Okay. So is it your opinion that Alabama's 2010
21 congressional map was part of the state's lack of
22 responsiveness to the needs of black Alabamians?

23 A If I don't state that my explicitly in the report, then
24 that's not the case.

11:35:25 25 Q Okay. So that is not your opinion?

1 A Would you say it again, please?

2 Q Certainly. Is it your opinion that the 2010 congressional
3 map from Alabama was part of the state's lack of responsiveness
4 to the needs of black Alabamians, or part of the history of
11:35:41 5 discrimination against black Alabamians, either way?

6 A No. I mean, I just -- the plan is an outgrowth of what
7 had been in place, you know, since the '90s. Obviously, there
8 were those who took issue with that. There were some who did
9 not, and I think that's accurately detailed in my report.

11:36:02 10 Q Okay. And then lastly, as a point of clarification --
11 well, the last redistricting point I believe comes at page 29,
12 and you mentioned *Chestnut* litigation unless I have got my
13 pages wrong. Here we go. Yeah. And under, lack of
14 responsiveness on -- you have Roman Numeral VI Section 2 of
11:36:38 15 your report, you mention that State Representative Prince
16 Chestnut, a named plaintiff in a lawsuit that was pending when
17 the 2020 census was published. Is that what you have written
18 here?

19 A Yes, sir.

11:36:51 20 Q And are you referring to *Chestnut v. Merrill*, the
21 redistricting lawsuit that ended in 2019?

22 A Yes, sir.

23 Q Okay. And so that was not pending when the census was
24 issued; is that right?

11:37:05 25 A I'm not sure precisely when that litigation ceased.

1 Q Okay. And you mentioned --

2 A I think -- I'm sorry. I don't mean to speak over you.

3 Q I take it back. I apologize. Please continue,

4 Dr. Bagley.

11:37:21 5 A I think, if I'm remembering correctly, the imminent
6 publication of this census data would have rendered that
7 litigation moot. Maybe I am wrong on the precise procedural
8 details there, but that's my recollection.

9 Q Okay. And is it possible that you meant Lakeisha Chestnut
11:37:40 10 who is also a plaintiff in this case and not Representative
11 Prince Chestnut?

12 A Yes.

13 Q Okay. All right.

14 Factor 5 is the effects of past discrimination.

11:37:53 15 You mentioned and you testified earlier today about
16 employment discrimination claims. Do you recall that
17 testimony?

18 A Yes, sir.

19 Q And it was your testimony that Alabama had the
11:38:07 20 disproportionate share of racial discrimination claims; is that
21 right?

22 A Based on the EEOC data, yes, sir -- well, yes.

23 Q And based on what about the EEOC data?

24 A I cited to the fact that 45 percent of the claims in
11:38:26 25 Alabama were racially based claims. Then the very next line I

1 cite to the fact that racially based claims accounted for
2 3.1 percent of national racial plans -- excuse me -- Alabama's
3 racially based claims accounted for 3.1 percent of national
4 racial claims, although Alabama's population as of the last
11:38:52 5 census accounted for only 1.5 percent of the national
6 population.

7 Q Okay.

8 MS. SADASIVAN: Your Honor, would it be possible to
9 take a break now?

11:39:03 10 JUDGE MARCUS: Do you have an objection to doing that,
11 Mr. Harris?

12 MR. HARRIS: I have no specific objection, Your Honor.
13 I'm at the Court's pleasure.

14 JUDGE MARCUS: How long a break did you need, counsel,
11:39:14 15 at this point?

16 MS. SADASIVAN: Just a five or ten-minute break.

17 JUDGE MARCUS: All right. We will take a ten-minute
18 break at this point.

19 MS. SADASIVAN: Thank you, Your Honors.

11:46:25 20 (Recess.)

21 JUDGE MARCUS: Are you ready to proceed now, counsel?

22 MS. SADASIVAN: Yes, Your Honor. Thank you.

23 JUDGE MARCUS: All right. Mr. Harris, are you ready
24 to proceed?

11:46:35 25 MR. HARRIS: I sure am.

1 BY MR. HARRIS:

2 Q Dr. Bagley, are you ready to go?

3 A Yes, sir.

4 Q Great. So I had just asked about your statistic about
11:46:45 5 3.1 percent of national racial discrimination claims accounting
6 even though Alabama was just 1.5 percent of the population; is
7 that right?

8 A Yes.

9 Q Okay. So in your analysis, do you find it helpful to
11:46:59 10 compare Alabama to other states and see how Alabama stacks up?

11 A I have done that here, but it's not necessary to do that
12 everywhere because we're dealing with Alabama and Alabama
13 exclusively.

14 Q So I'm sorry. So why do you do it here? You say it's
11:47:22 15 usually not helpful?

16 A Well, I mean, it's -- you can compare Alabama to other
17 states. Sometimes that might be helpful, sometimes it might
18 not be. The Court can take it for what it is.

19 Q Okay. But how about you, as a historian, and as you're
11:47:42 20 conducting this historiography, how do you decide that this is
21 helpful to you in this context?

22 A I think it's part and parcel of the totality of the
23 circumstances.

24 Q Okay. Do you know what percent of the nation's black
11:48:04 25 population resides in Alabama?

1 A I think it's about 3 percent.

2 Q Okay. And does that affect your analysis?

3 A Well, no, I mean, if you go back to the number I cited
4 here, all that means is that Alabama's number of discriminatory
11:48:20 5 claims is -- lines up with its black population. I don't
6 understand how that's helpful or not.

7 Q Okay. So that's -- you don't -- not helpful. Thank you.

8 You also testified some earlier today about the Alabama's
9 Department of Corrections of having -- being disproportionately
11:48:41 10 having problems with black Alabamians; is that right?

11 A I believe I testified that the number of incarcerated
12 black citizens in Alabama is substantially higher than the
13 black population of the state.

14 Q I see. Thank you.

11:48:57 15 Did you compare Alabama to other states in that metric the
16 same way you did with employment discrimination claims?

17 A No.

18 Q I'm sorry. Did you say no?

19 A Yes.

11:49:11 20 Q And why not?

21 A I was simply running through the findings of the DOJ
22 report. What page is this, by the way?

23 Q Let me see. I do not recall. I was just remembering your
24 testimony from earlier today. I can tell you the EEOC
11:49:28 25 information is between 18 and 19. I'm not sure.

1 A Yeah. This is 19 and 20.

2 Q Okay.

3 A Yeah. So I am looking at the litigation, and I talked
4 about the litigation in the '70s, the *Braggs v. Dunn* case which
11:49:42 5 is ongoing, the New York Times report, the federal Justice
6 Department investigation, these are the sources I cite to
7 there.

8 Q And I'm trying to understand why it's helpful for you as a
9 historian to compare Alabama to other states in the context of
11:49:58 10 employment discrimination, but not in the context of prisons
11 and the Department of Corrections. Could you -- can you help
12 me understand that?

13 A I think if you look at the report generally, comparing
14 Alabama to other states is not something that I have done. We
11:50:11 15 can drill down on literally one line in that paragraph and say
16 that I have done that there with discrimination. It's not even
17 -- it's only 50 percent even of what I was looking at in
18 regards to the EEOC data, so I don't think that I am
19 necessarily selectively comparing Alabama to other states. I
11:50:31 20 mean, it's just one line in a 33-page report.

21 Q Okay. And you also mentioned in your report about the
22 Department of Corrections that the state plans to use funds --
23 federal funds, Rescue Plan Act funds for prison construction;
24 is that right?

11:50:58 25 A Yes.

1 Q And how does that affect your opinion in this case?

2 A Could you show me where that is?

3 Q Yes. It is in the middle of the first full paragraph of
4 page 20.

11:51:17 5 A Well, I'm talking about the justice system in general in
6 Alabama.

7 Q Uh-huh.

8 A And we're talking about something that has garnered
9 criticism from black leaders in the state using these COVID
11:51:30 10 funds to just simply build more prisons.

11 Q Okay. So it's your opinion that using these funds on
12 prisons is part of the state's history of discrimination; is
13 that right? Excuse me -- effective past discrimination?

14 A I think it's part of the state's systemic problem with its
11:51:49 15 prison systems broadly speaking or its criminal justice system.

16 Q So, okay. So you think the state's use of funds is part
17 -- evidences the problem of the problems with the Department of
18 Corrections?

19 A What I state in the report is that the state was recently
11:52:10 20 criticized for trying to address overcrowding by pledging funds
21 intended for COVID relief to the building of new prisons,
22 thereby taking funds away from one crisis that
23 disproportionately affects black people to address another one.

24 Q Okay. I will move on. You mentioned the lack of
11:52:36 25 broadband I think as a big problem on page 18. Were you still

1 in the context of the COVID 19 pandemic?

2 A Yes.

3 Q And do you know whether the state also plans to use Rescue
4 Plan Act funds for broadband expansion?

11:52:48 5 A They do.

6 Q Does that affect your opinion at all?

7 A No, not overall, no. I mean, that's great that they have
8 done that.

9 Q Okay. So do you think that sheds any light about the
11:53:01 10 responsiveness from the state of Alabama to the needs of the
11 black community?

12 A I don't think the fact that the state has very, very
13 reasonably decided to use these funds for that overturns the
14 weight of evidence for the rest of the report, no.

11:53:17 15 Q Okay. All right. Moving right along. I believe I'm
16 getting closer. And I thank you for your patience, Dr. Bagley.
17 Looking at Senate Factor 6, political campaigns
18 characterized by racial appeals. I think you testified earlier
19 today when someone draws attention to race is kind of what you
11:53:45 20 consider as part of this factor; is that right?

21 A Draws attention to race would be an intention of getting
22 people to block vote.

23 Q Okay. When you were preparing your report or conducting
24 your analysis for this case, how many campaign advertisements
11:54:04 25 did you view?

1 A I'm not sure honestly.

2 Q Can you give me an estimate, a ballpark?

3 A Dozens, maybe.

4 Q Dozens. Okay. And do you have a sense of how many
11:54:22 5 political advertisements might be prepared or published in a
6 given electoral cycle?

7 A No. I mean, I'm sure it's quite a few. I'm sure it's a
8 great many.

9 Q And, you know, the gist of my question is: What does it
11:54:37 10 mean for you for a campaign to be characterized by racial
11 appeals to use the terminology of the Senate Factor?

12 A I think it's asking us whether racial appeals are present.
13 I don't think -- I don't take that language to mean like
14 someone's entire campaign has to be predicated upon, you know,
11:54:56 15 a racial appeal. I mean, are racial appeals present is what
16 that means to me. I suppose you could read it that way, but
17 that is not the way I read it.

18 Q So I would like to -- I am looking just in your summary at
19 the beginning on page 2, just how you bullet pointed the list.

11:55:16 20 The question, according to -- what we have here is whether
21 political campaigns have been characterized by overt or subtle
22 racial appeals.

23 So I am asking what, to you, as you conduct your analysis,
24 what does it mean that the campaign be characterized by these
11:55:34 25 appeals?

1 A That means if there are present in those campaigns public
2 statements or advertisements where candidates are appealing to
3 race.

4 Q Okay. So is one enough?

11:55:45 5 A Well, it's not just one ad that airs one time. It is an
6 ad that airs repeatedly and is viewed presumably by hundreds
7 and thousands of people. So, yes, I mean, we are not talking
8 about a one-off statement if we are talking about campaign ads
9 in the modern day and age.

11:56:03 10 Q Okay. And you mentioned the extent to which minorities
11 have been elected to office in Alabama. You mentioned earlier
12 today that not in the last 20 years has a minority been elected
13 to statewide office; is that right?

14 A Yes.

11:56:30 15 Q And do you know how many Governors that are black are
16 currently serving nationwide?

17 A Not off the top of my head.

18 Q Can you provide an estimate?

19 A To what end? That's not really something I discuss in my
11:56:49 20 report or that I find relevant. They asked us to what extent
21 they have been elected in Alabama. I don't have to speak to, I
22 don't feel like, you know, to what extent they have been
23 elected elsewhere.

24 Q So this is not a situation where you find it helpful to
11:57:04 25 consider Alabama in the context of other states?

1 A No. I mean, again, this goes back around to -- we're
2 talking about one line earlier that we're trying to, you know,
3 characterize the entire report. Again, furthermore, if we're
4 talking about black people being elected to statewide office,
11:57:26 5 if that's true in other states, that just means other states
6 are probably dealing with the effects of past discrimination,
7 too. I don't know how that absolves the state of Alabama.

8 Q So I will represent to you, Dr. Bagley, it's my
9 understanding that there zero black Governors nationwide. So
11:57:44 10 do you think this factor would be satisfied for every state in
11 the United States? You said it doesn't --

12 A Not based on that law in fact. Given the totality of
13 circumstances, I'm sure it would apply to a great many states,
14 but if you are doing a totality of the circumstances analysis,
11:57:59 15 you can't cherry-pick one single thing, and say, well, it's not
16 true just of Alabama, it's true of everyone, and say that is,
17 you know, the end all be all.

18 Q Okay. In the context of the lack of responsiveness to the
19 needs of Alabamians, and, again, to quote your report, I
11:58:21 20 believe you describe this as the particularized -- excuse me --
21 particularized needs of the black community; is that right?

22 A Yes.

23 Q And what does that mean to say the particularized needs of
24 the black community?

11:58:34 25 A Just means things that will be of great concern to black

1 Alabamians.

2 Q Okay. So is it still a particularized need in your
3 understanding if it affects black and white people similarly or
4 alike or how --

11:58:49 5 A Yeah.

6 Q -- does that weigh into your analysis?

7 A Yes. I don't mean exclusively.

8 Q Okay.

9 A But there may be things that carry more weight with black
11:58:57 10 citizens.

11 Q Okay. And I want to think specifically about the state's
12 response to the COVID-19 pandemic, which you cite as evidence
13 of lack of responsiveness.

14 And I want to make sure I understand the context of the
11:59:13 15 Senate Factor, as well. Is it your opinion that this is modern
16 day discrimination, or is this an effect of past
17 discrimination?

18 A Both.

19 Q Okay. So it is your opinion that the state of Alabama
11:59:24 20 discriminates against its citizens based on their response to
21 COVID-19?

22 A I think the decorative *People First* found disparities in
23 terms of COVID's effects were traceable to systemic factors.

24 Q Traceable to systemic factors. And I am sorry. What does
11:59:45 25 that mean?

1 A I can find it in the report if it's useful.

2 Q Yeah.

3 A This is not in the section, which was referenced earlier.

4 Q Okay.

12:00:10 5 A Bottom of page 17, the Court and *People First* acknowledge
6 that, quote, due to patterns resulting from -- sorry. Back
7 that up.

8 But also bottom of 17 the -- that the Court found
9 discrimination and systemic racism contributed to elevated
12:00:32 10 COVID-19 risks for black people and other minorities.

11 Q Okay. All right. So did you speak to anyone about, for
12 example, at the Alabama Department of Public Health about their
13 response to COVID-19?

14 A No.

12:00:51 15 Q No? Okay.

16 Are you familiar with any efforts undertaken by the
17 Department of Public Health to reach out to the black
18 community?

19 A I'm aware that they have done a good job of getting people
12:01:13 20 vaccinated.

21 Q Okay. Does that factor into your analysis?

22 A I'm not sure if I cite specifically to that or not.

23 Q Okay. And when you say they have done a good job of
24 getting people vaccinated, what is your basis for that
12:01:28 25 statement?

1 A Black people are vaccinated in Alabama at a high rate.

2 Q Relative to what? I'm sorry.

3 A Just in general.

4 Q Do you mean compared to?

12:01:40 5 A Compared with the population of black people in Alabama,
6 the rate is high.

7 Q Okay. Okay. In terms of responsiveness, also you
8 mentioned a recently enacted photo ID law in this section, as
9 well. Are you referring -- what are you talking about there,
10 and this is the -- I'm sorry. Do I need to cite it for you?

11 A No. Not at all. Photo ID law, yes.

12 Q Are you referring to the law passed in 2011?

13 A Yes, I think so.

14 Q Okay. And you state that that law was challenged in
12:02:38 15 courts as being discriminatory; is that right?

16 A Yes.

17 Q Do you know the outcome of that lawsuit?

18 A Yeah. The law was upheld.

19 Q Okay. But is there a reason you chose not to include that
12:02:53 20 in your report?

21 A No. I don't -- in fact, I didn't realize that I didn't to
22 be perfectly honestly. I think everybody knows the law was
23 upheld.

24 Q Okay. And you also reference the Alabama's minimum wage
12:03:08 25 law that was challenged in courts; is that right?

1 A Yes.

2 Q Do you know whether that was challenged -- or excuse me --
3 what the result of that litigation?

4 A Yeah. That the state won that, as well.

12:03:17 5 Q When you say the state won that it was -- well, withdrawn.
6 Excuse me. I will take it back.

7 Is there a particular reason you chose not to include that
8 in your report, either?

9 A No. Again, I think if I cite to the case, then, you know,
12:03:38 10 the citation is there, so it's not like I'm hiding the fact
11 that that's -- that was the ultimate disposition of that.

12 Q Okay. I am going to move to your rebuttal report I think
13 briefly.

14 And so do you have experience in your field as a historian
12:03:59 15 defining or analyzing communities of interest? Are you
16 familiar with that term?

17 A I am familiar with that term. I understand it to be
18 nebulous. I understand the state has guidelines laying out
19 what for the state would be a community of interest. I don't
12:04:16 20 purport to define that myself.

21 Q Okay. So just to clarify, that's not within the scope of
22 your expertise in this case; is that right?

23 A Correct.

24 Q Okay. And you state in your report that -- on page 3 in
12:04:31 25 the last paragraph on page 3, do you have it in front of you?

1 A Yes.

2 Q Okay. You're talking about Mobile and Baldwin counties,
3 and then you say, the population of Mobile County east of
4 Interstate 65 is overwhelmingly black and shares little today
12:04:52 5 with the rest of the Metropolitan area, which is predominantly
6 white.

7 What is the basis of that conclusion?

8 A So if you look at Mobile east of 65, there is this sliver
9 between I think Spring Hill and Government, where the
12:05:08 10 population is a little bit more diverse. But studying school
11 desegregation, I know that the rest of the state north and
12 south of that, from Prichard to Mayesville, is overwhelmingly
13 black. There are pockets of black population outside of 65,
14 for example, just northwest of Prichard in the Baldwin County
12:05:35 15 area, but that is traditionally speaking where as --
16 substantially as a result of the integration of the schools,
17 white people fled west of 65 to other parts of the county or
18 across the bay to Baldwin.

19 Q Okay. So is it right that your statement that they share
12:05:54 20 little today is that one area is predominantly black and the
21 other is predominantly white?

22 A No. The area of urban core, other than, again, portions
23 of that midtown sliver are -- also suffer from poverty. They
24 go to failing schools, and so on. They -- if you look at
12:06:17 25 socioeconomic indicators, for example, these are all things

1 that I am tying those people living in the urban core to people
2 in the Black Belt. Those are all commonalities. If you look
3 at people from Russell County to Lowndes County, they also go
4 to failing schools. They have higher infant mortality rates,
12:06:34 5 and so on. So historically speaking, there are these ties that
6 those people inside the 65 and the rest of the county don't
7 have.

8 Q Is it right, though, that this is outside your field of
9 expertise? I believe you testified that you apparently
12:06:47 10 consider is coming up to communities of interest?

11 A Specifically defining what is a community of interest is
12 not something I would purport to do. I am aware that this
13 state has guidelines based on that, and that ethnicity,
14 history, these are all things that one would consider, just
12:07:06 15 based on the state's own guidelines. But I am not drawing --
16 in the report, I am not saying this is or is not a community of
17 is. I am simply pointing out things that people have in common
18 that the state might well consider on something like a
19 community of interest.

12:07:24 20 Q Okay. In the context of your rebuttal report, you talk
21 about migration of black Alabamians historically; is that
22 right?

23 A Yes.

24 Q Is that called the great migration? Is that a historical
12:07:40 25 term?

1 A Typically, when people refer to the great migration, they
2 mean the historical migration of black people out of the South
3 to cities in other parts of the country. What I am pointing
4 you to in the report is that historians specifically of Alabama
12:07:53 5 have found that in addition to that, lesser known is the
6 migration of black people internally from rural areas like the
7 Black Belt to cities like Mobile.

8 Q And I'm trying to understand the entirety of your
9 historical analysis on this point, Dr. Bagley. Is it right
12:08:16 10 that millions of people from the South went to the north to
11 places like Chicago and Detroit; is that right?

12 A Millions of people from throughout the South migrated to
13 cities in the Northeast, the Midwest and the West. What I am
14 pointing out is there was also a -- I believe Dr. Flint calls
12:08:34 15 it hemorrhaging of people to -- from the Black Belt to urban
16 areas including Mobile.

17 Q Okay. But some number less than millions, I imagine; is
18 that right?

19 A Of course.

12:08:48 20 Q Okay.

21 MR. HARRIS: Your Honor, I believe I am very nearly
22 done. If I can have just a moment to confer.

23 JUDGE MARCUS: You sure can.

24 BY MR. HARRIS:

12:09:27 25 Q Let me see. Very quickly, Dr. Bagley. I do have one

1 thing to follow up on.

2 This is -- as part of your direct testimony, you mentioned
3 that blacks are proportionately represented in the Alabama
4 state Legislature; is that right?

12:09:43 5 A I believe that's roughly the case.

6 Q And you said that that was at least in part due to
7 litigation; is that right?

8 A Yes.

9 Q Okay. And what litigation would that be, do you know?

12:09:56 10 A Yeah. I talk in my report about the various challenges to
11 the state's state redistricting plans, for example. I talk
12 about earlier in the report challenges to the state's voter
13 questionnaire. I talk about challenges to the devices in the
14 1901 constitution. I mean, all manner of legal challenges
12:10:18 15 throughout the 20th Century paved the way for black people to
16 be able to vote period, to be able to register to vote, to be
17 able to even conceive of getting elected to the State
18 Legislature in the 1960s and into the 1970s. To be able to,
19 you know, go from there. I mean, it takes, what is it, decades
12:10:39 20 from there to achieve that semblance of proportional
21 representation. So it's a very long litigative history.

22 Q So just to be clear, you are not referring to a specific
23 example of litigation that by which black Alabamians won that
24 proportional representation?

12:10:55 25 A No.

1 Q Okay.

2 MR. HARRIS: Thank you. That's all I have.

3 JUDGE MARCUS: Counsel, redirect? How much do you
4 have? Can we do this before lunch?

12:11:03 5 MS. SADASIVAN: Would you mind if I confer with my
6 co-counsel quickly?

7 JUDGE MARCUS: Of course. Take your time.

8 MS. SADASIVAN: Thank you, Your Honor. Okay. We are
9 ready, Your Honor, to proceed with redirect.

12:11:42 10 JUDGE MARCUS: How much do you have for Dr. Bagley?

11 MS. SADASIVAN: Not much. I think it should be done
12 in 15 minutes maximum.

13 JUDGE MARCUS: All right. Let's go forward. Thank
14 you.

12:11:51 15 REDIRECT EXAMINATION

16 BY MS. SADASIVAN:

17 Q Dr. Bagley, your analysis did not express -- your report
18 in this case did not discuss discriminatory intent; is that
19 right?

12:12:00 20 A That's correct.

21 Q So your analysis in Senate Factor 1 discussing the
22 redistricting process was not an attempt to demonstrate
23 discriminatory intent as the Supreme Court explained the
24 analysis in Arlington Heights, or to chronicle the
12:12:16 25 discriminatory intent of a particular Legislature moving

1 forward; is that correct?

2 A Yeah, it's not an Arlington Heights analysis, correct?

3 Not an intent analysis.

4 Q And your Senate Factor 1 analysis was intended to

12:12:31 5 chronicle indicia of official discrimination in the state of

6 Alabama that touched on the right of black people to

7 participate in the political process, correct?

8 A That's correct.

9 Q And in making a discriminatory intent analysis, which you

12:12:41 10 didn't do in this case, you might have considered other factors

11 relevant to assessing discrimination in its past and present

12 form, correct?

13 A Of course. Yes.

14 Q You testified earlier about the Sayre Law. The Sayre Law

12:12:53 15 prohibited certain assistance for illiterate voters; is that

16 right?

17 A Correct.

18 Q And that was intended to target generally black people,

19 correct?

12:13:02 20 A It was. And it, in fact, had that effect.

21 Q Now, are you aware of whether there was litigation ending

22 in around 1988 under the Voting Rights Act changed the Sayre

23 Law's prohibition on assistance?

24 A Yes.

12:13:17 25 Q And you are aware that the Voting Rights Act was amended

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1 to include Section 2 a way to ensure the provision of
2 insistence?

3 A Yes, yes, absolutely. That is all correct.

4 MR. HARRIS: Your Honor, can I object on leading on
12:13:34 5 some of these questions? I'm not -- I know this is --

6 JUDGE MARCUS: I think the problem, Mr. Harris, is
7 that leading has been the order of the day since we got started
8 on direct. I'm not going to prohibit it at a point unless it
9 goes too far.

12:13:51 10 Ask your next question, counsel.

11 MS. SADASIVAN: Thank you, Your Honor, and
12 respectfully, I will not object to compound questions and those
13 kinds of things going forward.

14 JUDGE MARCUS: Just put your question, please.

12:14:02 15 MS. SADASIVAN: Thank you.

16 BY MS. SADASIVAN:

17 Q Dr. Bagley, in your discussion of the one-drop rule, you
18 are not taking a position on who should be considered black,
19 correct?

12:14:09 20 A No. I am simply saying that -- and with respect to the
21 miscegenation clause and other elements of Alabama in terms of
22 its constitutional laws historically speaking, that has been
23 the definition that is used.

24 Q And do you consider a Court's assessment of historical
12:14:26 25 facts to be definitive or binding on you as a historian?

1 A No, not necessarily. Again, I am approaching this from a
2 totality of the circumstances lens.

3 Q And in the '90s, it was generally thought that an
4 effective majority black district required 65 percent BVAP
12:14:46 5 right?

6 A That was the Department of Justice policy at that time as
7 I understand it.

8 Q And your report discusses that, regardless of some black
9 political leaders believed in the 1990s that the DOJ objected
12:15:00 10 to the 1991's congressional plan?

11 A I do discuss that in the report, yes.

12 Q With respect to Senate Factor 7, Dr. Bagley, you assessed
13 all statewide offices in your analysis of Senate Factor 7;
14 isn't that right?

12:15:12 15 A Correct. Not just governor. I mean, I note that black
16 candidates have run for a number of statewide offices, and the
17 facts of how many have been elected are the same.

18 Q So your analysis that there have been no black statewide
19 elected officials Alabama is not limited to the Governor of the
12:15:29 20 state? You considered a number of positions?

21 A No, correct. Yes, and I point out that black candidates
22 have run for a number of those different offices.

23 Q So you are aware that Alabama is one of only ten states
24 since Reconstruction where only white candidates have won
12:15:44 25 election for President, Senate, Governor, and nonjudicial

1 statewide offices?

2 A Yes, of course. And that, again, that's indicated in the
3 report.

4 MS. SADASIVAN: Thank you, Your Honors and Dr. Bagley.

12:15:54 5 No further questions.

6 JUDGE MARCUS: All right. Judge Manasco, Judge
7 Moorer, any questions for Dr. Bagley?

8 JUDGE MANASCO: None from me.

9 JUDGE MOORER: No. Thank you.

12:16:06 10 JUDGE MARCUS: If there's nothing further, Dr. Bagley,
11 we thank you for your time. And you are excused.

12 THE WITNESS: Thank you, Your Honors.

13 JUDGE MARCUS: Before we break for lunch, I just
14 wanted to ask one question. The next witness coming on would
12:16:21 15 be Dr. Liu; is that right?

16 MR. ROSS: Yes, Judge Marcus.

17 JUDGE MARCUS: All right. And then after Liu, did you
18 have another one, or was that it?

19 MR. ROSS: That's it for the Milligan plaintiffs. I
12:16:37 20 believe Caster has several witnesses after that.

21 JUDGE MARCUS: Okay. I have 1:16 -- 12:16. We will
22 see you folks back here at 1:30, and we will get started at
23 1:30 Central Standard Time.

24 Thank you. We will be in recess.

12:16:59 25 (Recess.)

1 JUDGE MARCUS: One preliminary matter before you put
2 on your next witness, which I take it from Milligan would be
3 Dr. Liu, right?

4 MR. ROSS: Yes, Your Honor.

13:31:14 5 JUDGE MARCUS: We, the judges, talked a little bit
6 about the request for closing argument. And we wanted to give
7 you our sense of it so you could make your plans appropriately.

8 We will give each side the opportunity to make closing
9 argument. We will give the plaintiffs of which there are three
13:31:34 10 sets -- they are the Singleton plaintiffs, the Milligan
11 plaintiffs, the Caster plaintiffs, and, of course, there are
12 the two sets of defendants. We will give the plaintiffs a
13 total of 90 minutes for closing argument, and we leave it to
14 the plaintiffs to decide how to break up or order that time.

13:31:57 15 You're free to use it any way you deem appropriate. If
16 you cannot agree, then each of the three sets of plaintiffs
17 would get 30 minutes. You are free to reserve some of that if
18 it's your pleasure for rebuttal. We leave that up to you. But
19 the plaintiffs have a total of an hour and a half.

13:32:20 20 The defendants likewise are given an hour and a half for
21 their case. So we have allocated a total of three hours for
22 closing argument, which is not to say you have to take all of
23 it, but that's what we have given you. And so we will leave it
24 up to you for the plaintiffs how to order and break it up.

13:32:44 25 The defendants have already indicated, if I heard

1 Mr. LaCour right, that Mr. LaCour will be making the argument
2 for both sets of defendants. Do I have that right, Mr. LaCour?

3 MR. LACOUR: That's correct, Your Honor.

4 JUDGE MARCUS: All right. You need not give us an
13:33:02 5 answer today. We leave that up to you to address and tell us
6 when we get to closing argument.

7 Final matter that I want to preliminarily to take up is
8 there was a motion, an offer, really, to receive Defendants'
9 Exhibit 17. Mr. Harris, you were offering that. That was the
13:33:33 10 public hearing transcript of the joint legislative committee,
11 if I have that right.

12 Anything further anyone wants to say on that before we
13 rule?

14 MR. ROSS: Your Honor, Deuel Ross for the Milligan
13:33:53 15 plaintiffs. This is a document that was some 30-years old that
16 we were not aware of and have no way to verify where it came
17 from or what exactly it is, and so that was our concern with
18 respect to the objection, that it, you know, we don't know how
19 the transcript was created. All this is essentially hearsay
13:34:09 20 evidence.

21 JUDGE MARCUS: Well, if I hear your objection, it
22 really is an authentication objection. Although initially I
23 heard it to sound in relevance. It seemed to us that it was
24 relevant insofar as it bore on the question of intent in
13:34:33 25 drawing the '92 map, which I take it is part of the

1 constitutional claim that you have made, Milligan has made, and
2 there's, of course, constitutional claim that the Singleton
3 plaintiffs have made. So it struck us that it was relevant, it
4 bore directly on the question of intent, at least way back
13:35:00 5 when. How much of the antecedent history you can bring
6 forward, and in what manner if at all remains to be seen, but
7 it certainly struck me as being relevant to these proceedings.

8 I think, if I hear Mr. Ross right, Mr. Harris, the heart
9 of the objection is foundational. Can you establish that it is
13:35:28 10 what it purports to be? That's really the objection if I hear
11 Mr. Ross right is being raised. Do I have that right,
12 Mr. Ross?

13 MR. ROSS: Your Honor, I would just add that at this
14 time, we are not bringing our intentional discrimination case
13:35:43 15 as to the failure to draw two majority-black districts. And so
16 I would just say that it is from our perspective not
17 necessarily relevant to our Section 2 and racial gerrymandering
18 claims.

19 JUDGE MARCUS: It may not be relevant to Section 2,
13:35:58 20 but the fact is that there are two racial gerrymandering equal
21 protection claims before the panel; one that has been raised by
22 Mr. Blacksher on behalf of Singleton and one that you and your
23 colleagues have raised on behalf of the Milligan plaintiffs.
24 So insofar as the constitutional claim is before this panel on
13:36:24 25 a preliminary injunction hearing, beyond the Section 2 claim,

1 it seems to me it is, certainly is for Mr. Blacksher's clients,
2 and I thought it was for your clients, as well, it seems
3 relevant to me. Am I missing something here?

4 MR. ROSS: I think, Your Honor, from our perspective,
13:36:46 5 it may be relevant to our racial gerrymandering claim. I think
6 it is probably more relevant to our intentional discrimination
7 claim. So separate, you know, as you know, we have two equal
8 protection claims.

9 JUDGE MARCUS: I understand that.
13:37:01 10 Mr. Blacksher, this is all relevant to gerrymandering and
11 equal protection, isn't it, from your claim?

12 MR. BLACKSHER: I think I join the concern voiced by
13 Mr. Ross. I don't -- we don't object to the document coming
14 in. This is a bench trial. The Court knows very well how to
13:37:21 15 handle that.

16 I just want to emphasize that the gerrymandering claim
17 that we are seeking relief for on preliminary injunction does
18 not involve intentional discrimination and doesn't involve
19 discrimination at all. It involves placing individual voters
13:37:37 20 on -- based on their race on opposite sides of a line. And
21 that is not -- the Court has emphasized -- the same as
22 discrimination.

23 Discrimination produces a practical concrete harm by
24 diluting someone's vote, whereas the racial gerrymandering
13:37:56 25 claim is based simply, totally on the separation based -- or

1 classifying an individual based on his or her race. And that
2 is what -- what the Courts have called an expressive harm, not
3 discrimination. And I know that's confusing, because it's
4 confusing to all of us. But it's important to understand that
13:38:16 5 in this context, even though it has nothing to do with -- even
6 though we don't object to the exhibit.

7 JUDGE MARCUS: Mr. Harris?

8 MR. HARRIS: Your Honor, I don't think at this point I
9 will make an argument related to what Mr. Blacksher just said.
13:38:32 10 I will point out related to discovery there was truncated
11 discovery in case. These documents were responsive to the
12 discovery request as far as the preclearance files that they
13 had, and that's where this came from. It resulted from that
14 discovery request. And it was produced a while back by
13:38:52 15 bringing it to trial.

16 JUDGE MARCUS: I think the only real objection from
17 our perspective is can you lay the foundation that this is what
18 it purports to be.

19 I don't ask you to do that now, but whenever we finally
13:39:05 20 address the problem, we will leave it to you to lay the
21 foundation, if you can.

22 MR. HARRIS: Thank you, Your Honor. Will do.

23 JUDGE MARCUS: Subject to that, the objection is
24 overruled.

13:39:16 25 We do think it is germane and relevant to the equal

1 protection claim or claims in some measure, which are before us
2 in some measure at this point.

3 But the ultimate determination will be made when and if
4 Mr. Harris can produce the appropriate foundation that it is
13:39:45 5 what it purports to be.

6 With that, let's proceed with -- are we all clear sort of
7 on where the Court's coming from on this defense exhibit -- if
8 I have the number right, Mr. Harris, it was Defense 17.

9 MR. HARRIS: Right, Your Honor. And very briefly, I
13:40:02 10 will add that we -- the state's position is that it also is
11 relevant in the context of the Section 2 cases, and I'm not
12 trying to argue about that now, but I just wanted to make sure
13 that was clear.

14 JUDGE MARCUS: I understand. We will leave it to you
13:40:13 15 to set the foundation, if you can.

16 With that, Mr. Ross you may proceed with your next
17 witness.

18 MR. ROSS: Thank you, Your Honor. Our next is
19 Dr. Baodong Liu.

13:40:26 20 JUDGE MARCUS: Thank you.

21 MR. ROSS: I believe he's here.

22 JUDGE MARCUS: Thank you.

23 BAODONG LIU,

24 having been first duly sworn, was examined and testified as
13:40:38 25 follows:

1 JUDGE MARCUS: Would you be kind enough to state your
2 name for the record, please.

3 THE WITNESS: Baodong Liu.

4 JUDGE MARCUS: Could you spell that just for our court
13:40:50 5 reporter.

6 THE WITNESS: My first name is B-A-O-D-O-N-G. Last
7 name, L-I-U.

8 JUDGE MARCUS: Thank you much, Dr. Liu. And counsel
9 you may proceed.

13:41:13 10 MR. ROSS: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. ROSS:

13 Q Dr. Liu, did you prepare any expert reports for this case?

14 A Yes.

13:41:19 15 Q Do you have copies of those reports with you?

16 A Yes, I do.

17 Q Okay. How many reports did you prepare?

18 A I submitted my initial preliminary report on
19 December 10th, and then I also submitted a rebuttal report on

13:41:39 20 December 20th.

21 Q All right. So let's begin with your first report, which
22 was previously marked as Plaintiffs' Exhibit M-4. Let's turn
23 to page 21. Dr. Liu, what is your highest level of education?

24 A I received a Ph.D. in political science from University of
13:42:02 25 New Orleans in 1999.

1 Q What's your current occupation?

2 A I am a professor of political science and ethnic studies
3 at University of Utah.

4 Q And how long have you taught there?

13:42:15 5 A Ever since 2008.

6 Q And what other administrative roles have you had at the
7 University of Utah?

8 A I have served as both the interim director for ethnic
9 studies program for which I established the first bachelor's
13:42:35 10 degree in ethnic studies here at University of Utah, as well as
11 serving as the associate chair for the whole department of
12 political science.

13 Q Okay. And where else have you taught?

14 A I have taught in other universities. Prior to University
13:42:56 15 of Utah, I taught at branch for the UW -- UW meaning University
16 Wisconsin system, the branch is Oshkosh, and before that, I
17 also taught at small liberal college in Missouri called
18 Stephens College.

19 Q Okay. And turning back to your position now at University
13:43:18 20 of Utah, what graduate level courses do you teach?

21 A I have taught many graduate level courses, especially
22 concerning American political system. My expertise is American
23 electoral system and political behaviors. I have taught what
24 we call 6,000 level. That's both master and Ph.D. in political
13:43:47 25 behavior in America, as well as the advanced quantitative

1 method for all graduate students.

2 Q Okay. And what do you consider your areas of
3 specialization?

4 A I am primarily concentrated on the American electoral
13:44:04 5 system and also how American voters voted and the consequence
6 of especially voting along racial lines in America.

7 And moreover, I am also an expert of the advanced
8 quantitative method. So I do research about how to use
9 technology, especially, software to seek for answers related to
13:44:33 10 political issues. So I teach things like R coding for graduate
11 students.

12 Q Have you won any awards?

13 A I won quite a few awards from the premier American
14 Political Science Association called American Political Science
13:44:55 15 Association, and also regional associations such as
16 Southwestern Political Association, Southern Political
17 Association, and I also served as a fellow at National Humanity
18 Center.

19 Q And have you ever published books?

13:45:14 20 A Yes. I have published a total of eight books.

21 Q And what issues do your books generally cover?

22 A My books vary from local level politics, such as southern
23 cities as New Orleans, Memphis, and so on. Mayor elections,
24 city council elections, school board elections, all the way to
13:45:39 25 state level elections, such as Governor, Lieutenant Governor,

1 and so on. But also the national elections, such as
2 Presidential elections. I have had at least one book on Obama
3 and also my forthcoming book is about the election of President
4 Trump.

13:45:58 5 Q And have you written any peer-reviewed articles?

6 A I have published more than 30 peer-reviewed articles.

7 Q And do they generally cover the same topics as your books?

8 A Yes. Generally, it's about American political behavior,
9 elections, and also city politics, so issues such as urban
13:46:22 10 economics, urban voters, political behavior, opinions, and
11 such.

12 Q Okay. And have you ever testified as an expert in court?

13 A Yes, I have.

14 Q About how many cases have you testified in?

13:46:38 15 A About a half a dozen.

16 Q Okay. And in what areas did you testify?

17 A I have been asked to serve as expert witness, especially
18 for racially-polarized voting or RPV.

19 MR. ROSS: Your Honors, I would like to tender Dr. Liu
13:47:01 20 as an expert in racial-polarization analysis and American
21 political behavior.

22 JUDGE MARCUS: Any objection, Mr. Harris?

23 MR. HARRIS: No objection.

24 JUDGE MARCUS: Seeing none, we will qualify Dr. Liu in
13:47:12 25 those fields, and you may proceed to present his opinions to

1 us.

2 MR. ROSS: Thank you, Your Honor.

3 BY MR. ROSS:

4 Q Dr. Liu, if during your testimony you wish to have any
13:47:23 5 pages from your reports displayed, please let me know, and I
6 will have Mr. Ang do it.

7 I'd like to turn to your role in this case.

8 When were you first contacted about this case?

9 A It was about the second week of November.

10 Q Okay. And when did you submit your initial report?

11 A I submitted on the 10th of December.

12 Q Okay. And looking at page 1 of your initial report, what
13 were you asked to determine?

14 A I have been asked specifically to analyze elections in
13:48:01 15 Alabama to provide opinion to the Court whether or not there
16 has been a pattern of racially-polarized voting in especially
17 congressional elections in Alabama.

18 Q Okay. And how does your report define racially-polarized
19 voting?

13:48:19 20 A Racially-polarized voting is very important topic not only
21 for academic research but also for all litigations concerning
22 Section 2 of Voting Rights Act.

23 The Supreme Court of United States has used the *Gingles*
24 decision to lay out a clear legal definition of RPV, and
13:48:41 25 especially the second condition and third condition of *Gingles*.

1 The second one being that the minority voters, in this case in
2 Alabama, it's African-American voters have shown cohesiveness
3 in political -- in elections. And that is to say that they
4 vote for the same candidate.

13:49:04 5 And the third condition made it clear that the majority
6 voters have to show that they voted as a voting block, which
7 enable a typical defeat for the black-preferred candidate.

8 Q Okay. And, Dr. Liu, just so maybe to speed things up a
9 little bit, if I refer to racially-polarized voting as RPV, you
13:49:29 10 will understand what I mean; is that right?

11 A Yes. It's a very common way to address it.

12 Q Okay. And when you're making your determination about RPV
13 -- when you are making your determination about RPV, is it
14 based on whether or not a candidate receives a majority of
13:49:48 15 support from a particular racial group?

16 A As I stated in my initial report, my operational
17 definition of RPV following the *Gingles II* and *III* conditions
18 is that I first of all evaluate whether or not the preferred
19 candidate of black voters received majority support from the
13:50:13 20 black group. And then I started to look at whether the
21 majority voters do not share that preference, that is to say,
22 only a minority of the white majority group voted for the same
23 candidate, and if so, then I look at whether the
24 black-preferred candidate is defeated.

13:50:36 25 Q Okay. And to find RPV, do you require that

1 black-preferred candidates receive supermajority or some other
2 threshold of the black vote?

13:51:00 3 A It is important to see beyond racially-polarized voting,
4 whether there is a huge racial gap or somewhat gap or just a
5 small gap. But one has to establish whether there is
6 racially-polarized voting in the first place. And then we can
7 talk about the gap.

8 Q All right. So is it right, then, that you don't use any
9 sort of threshold of 60 percent or something else to determine
10 whether or not there's racially-polarized voting?

11 A I strongly disagree to use a ridged, like threshold to say
12 beyond this point then it's racially-polarized voting. Below
13 this, it's not because obviously, elections have their own
14 context.

13:51:40 15 Q Okay. Okay. So looking at page 3 of your report, what
16 did you find with respect to RPV in Alabama?

17 A It is my opinion that based on all the elections I have
18 analyzed, the total of 13 elections, there has been a
19 racially-polarized voting pattern, in that blacks preferred the
13:52:04 20 same candidate who is from their own racial group, and that
21 black preference is not shared by the white majority voters.
22 And -- and those results typically enable the defeat of
23 black-preferred candidates.

24 Q Did you also conduct an effectiveness analysis in this
13:52:28 25 case?

1 A Yes, I did.

2 Q And what is an effectiveness analysis?

3 A Effectiveness analysis is a research project that allows
4 experts like me to analyze different redistricting plans
13:52:43 5 concerning certain jurisdiction. And using comparative study,
6 we can evaluate given different racial configurations what are
7 the levels of opportunities for minority voters to elect
8 candidate of their choice.

9 Q Okay. Thank you, Dr. Liu. Let's turn to your methodology
13:53:04 10 which I believe is discussed on page 6 of your report.

11 What is ecological inference?

12 A Ecological inference is a method or a tool for scholars to
13 study to the extent to which racial groups may differ or
14 exhibit sameness in their choice of voting. And by using the
13:53:30 15 ecological data usually, in election studies, we use political
16 precincts. That's the place where voters cast their votes. So
17 we use the precinct election returns for candidates, and then
18 associated with it, we attach the demographics. In this case,
19 racial demographics.

13:53:56 20 In Alabama, we would look at black racial density in these
21 precincts. And then we look at whether or not the demographic
22 features, such as black density, has a relationship with the
23 election returns for candidates that we see, say, for very
24 homogenous black precincts, their support for black candidates
13:54:24 25 is very high as opposed to very white homogenous precincts, the

1 support is very low. And then we use ecological inference
2 technology to get the specific racial estimates for that we
3 have both point estimates, that is the best estimation of the
4 vote. Say, the percentage of votes from the black groups is
13:54:50 5 at, say, 92 percent. That's what we call point estimate. And
6 we also have the uncertainty estimate along the point estimate.
7 That's ecological inference.

8 Q Thank you, Dr. Liu.

9 So here in this case, what data did you use to identify
13:55:10 10 the race of voters in the precincts?

11 A For race of voters, I used the census data.

12 Q Okay. Is that the 2010 and 2020 census data?

13 A Yes. For elections that took place around the year of
14 2020, say, the 2020 election, or 2018 election, I used 2020
13:55:37 15 census data. But for the elections I also analyzed, there was
16 a little way back, I used the 2010, say, 2012 elections, and so
17 on.

18 Q What is the American Community Survey?

19 A American Community Survey is survey that interviewed a
13:56:00 20 sample of American population. And they raised questions about
21 their racial identity, social economic indicators, and such.

22 Q Okay. And did you use American Community Survey data, as
23 well?

24 A Yes. I -- I have primarily relied on the census data,
13:56:21 25 especially the racial demographics, such as Black Voting Age

1 Population to do my RPV analysis. But then after I have
2 finished my RPV analysis, I also use American Community Survey
3 data to double check what I have found.

4 Q Okay. And where did you obtain the election and precinct
13:56:49 5 data for your report?

6 A The election returns are easily accessible from the
7 Secretary of State of Alabama website.

8 Q Okay. And are there other sources listed in your report?

9 A Yes. In my report, I have a particular documentation,
13:57:09 10 which I used as Appendix 3 that shows how the demographer in
11 this case that has provided me the matched data set between
12 election returns and the census.

13 So that documentation provides details about the sources.

14 Q And did you verify those sources?

13:57:35 15 A Yes. I asked the counsel for the plaintiff to clarify
16 what are the sources for the data provided to me, and they did.
17 And then I went ahead and look at the website. And those are
18 very commonly used public source data. And, therefore, I
19 verified them, and I used them, and run my RPV, which provide
13:58:07 20 in my view the most precise outcome for the RPV analysis.

21 Q Okay. And you said that you looked at websites to verify
22 the data. What were those -- do you recall what it was?

23 A Yes. One source is hosted in the Harvard database where
24 political scientists deposit their data, and it has been used
13:58:36 25 by scholars across America. So that's a very reliable source

1 of data. And I also look at open-election data source. That's
2 a GitHub of public source -- venue for not only scientists, but
3 also programmers from computer science and other areas to
4 deposit their data and double check the accuracy, as well as
13:59:12 5 software development. So it's a very, very highly reputable
6 data source.

7 Q Okay. And turning back to your use of census data, is it
8 common to use that for ecological inference?

9 A Yes, it is actually very common. The only -- I have done
13:59:31 10 that for my own books and articles. I have used it in
11 litigations related to expert witness works, and so many of my
12 colleagues have used it census, as well.

13 Q Okay. And for the census data, what category did you use
14 for -- to identify black people?

13:59:51 15 A I used the particular one called non-Hispanic Black Voting
16 Age Population to do my first analysis of RPV.

17 Q Okay. And did you use any-part black for your RPV
18 analysis?

19 A Yes, I did. Especially for the endogenous elections, that
14:00:17 20 is congressional elections, I have used the non-Hispanic,
21 single-race VAP data from census, as well as any-part black in
22 the census data to do my RPV analysis.

23 Q Did your results change depending on which category of
24 black you used?

14:00:37 25 A It's the same. It's Alabama. So it doesn't surprise me

1 the -- when I use both, it gives me the same results.

2 Q Okay. Would it be possible for you to analyze how
3 multi-racial black people vote separate from how single-race
4 black people vote?

14:00:58 5 A Could you explain your question?

6 Q Sure. So you said that you use both single-race black to
7 do your RPV analysis, and then separately, you also analyze for
8 people who identified as single race as well as people who may
9 have identified as any-part black; is that right?

14:01:18 10 A Oh, yes. Yes. If your question is about whether I do
11 both, the single race and any-part black, as is absolutely, but
12 if your question is, did I do only the multi-racial black --

13 Q I'm sorry.

14 A Okay.

14:01:41 15 Q I'm sorry, Dr. Liu. My question was: Would it be even
16 possible to separate out how single-race black people vote
17 versus how black people who may identify with a different
18 racial group may vote in Alabama?

19 A That's a great question. Alabama population structure is
14:02:00 20 very clear. There are very few blacks who identify themselves
21 as multi-racial or they check multiple boxes in the census,
22 unlike Florida or New York, where there are there are
23 concentration of black, communities who are, say, Latino
24 blacks, and so on. So in Alabama, you have very few blacks
14:02:32 25 that identify that way. And maybe you have, you know, one or

1 two from a whole precinct. It's just impossible to use the --
2 that one or two from a whole neighborhood, of whole precinct
3 that have heavily population from the black community
4 identifying as only single-race black. So there's no way for
14:03:02 5 us to analyze that so-called multi-racial black.

6 By the way, I also address that in my own academic
7 research. It's been a -- a very important topic for us as
8 scholars to study, say Presidential election of 2008, Obama is
9 obviously multi-racial. His mother is white. But he's
14:03:34 10 representing all blacks. And that's been proved by own data
11 analysis, also my colleagues in the country.

12 Q You mean that black people voted for him; is that right?

13 A Yes.

14 Q Voted for President Obama?

14:03:53 15 A Yes. My research is that it is the shared black
16 experience, whether being those who identified them as
17 single-race black or multi-racial black, their political
18 behavior showed this extraordinary cohesiveness, and that's
19 proved by President Obama's electoral success all over the
14:04:18 20 country from the black community.

21 Q Thank you. If I will call ecological inference EI for
22 short, you will understand what I mean, correct?

23 A Yes.

24 Q Okay. Did your EI analysis calculate turnout?

14:04:34 25 A Yes.

1 Q Okay. And those are estimates; is that right?

2 A Yes.

3 Q Okay. And how does EI generally estimate turnout?

4 A There is a particular tool within EI. It's called EI pack
14:04:51 5 in the -- our software tools. We can use that one to estimate
6 racial turnout because it's a tool also called as R by C -- R
7 meaning rows, C meaning columns, that intuitively, it's about
8 multiple groups. So if we have multiple groups, we can
9 estimate all groups' racial turnout and their breakdown of vote
14:05:27 10 choice. So in the EI pack tool, we can use particularly for
11 this no-vote group, meaning the people among the voting age of
12 population that didn't cast their vote. And then we will do
13 the estimation along racial lines. And we will get the
14 breakdown of racial groups turnout in that way.

14:05:45 15 Q And did that turnout estimate, does that impact your
16 analysis of racially-polarized voting?

17 A No. The racially-polarized voting is the racial breakdown
18 of how they vote in their choice for candidate, right? So the
19 racial turnout is simply about the group who cast their vote
14:06:09 20 versus the group that didn't cast.

21 So the EI pack give us both outcomes.

22 Q Thank you, Dr. Liu. So it's -- the racial turnout
23 estimate is simply additional information that the ecological
24 inference estimates; is that right?

14:06:27 25 A Yes. Scholars can choose to calculate turnout. A lot of

1 scholars don't calculate turnout. It just depends on the
2 context in which we are asked to do our research.

3 Q Okay. And can ecological inference be used to identify a
4 voter's intent, why they're voting a particular way?

14:06:50 5 A That is -- I wouldn't frame the question that way because
6 EI is simply a tool. So using this tool, we can study first of
7 all, the voting patterns, the racial groups' choice for
8 candidates. And then with the facts produced by EI tool, we
9 can then study whether it's racial intent or there are other
14:07:23 10 factors, the agenda, social class, neighbors, economics. So EI
11 is a tool that allows, you know, scholars to study all kinds of
12 questions. That's what EI is.

13 Q And does your report attempt to identify the reason why
14 people voted for or against the politician?

14:07:44 15 A In my full report, there is no single word about intent
16 because I was simply asked to do RPV analysis. And intent was
17 not my task.

18 Q Thank you, Dr. Liu. Other than your EI analysis, did you
19 rely on any other data or polls in your report?

14:08:08 20 A After I completed my RPV analysis by using EI, and then I
21 double checked, I already said I used American Community Survey
22 data to double check. I also used exit polls to double check
23 for some elections I analyzed.

24 Q Thank you, Dr. Liu. Do you remember how many exit polls
14:08:36 25 you looked at?

1 A Yes. I looked at -- can you -- how many elections I have
2 completed my -- for the exit polls.

3 Q I will move on to a different question.

4 Dr. Liu. So what elections did you analyze for your
14:08:54 5 report using EI?

6 A I analyzed primarily the congressional elections. Those
7 are what we call endogenous elections because they are the
8 election relevant to the litigation or issue. Then I also look
9 at statewide biracial elections that obviously took place in
14:09:21 10 Alabama recently.

11 Q Are those statewide elections called exogenous elections?

12 A Yes.

13 Q And you mentioned you looked at biracial elections. Why
14 did you look at biracial elections?

14:09:36 15 A Biracial elections are vital for scholars, like Dr. Hood's
16 stated in he has SSQ piece meaning Social Science Quarterly
17 publication. It is vital for us in the voting rights or
18 dilution cases to analyze elections which involve minority
19 candidates, especially for litigations which involve the
14:10:12 20 particular minority group, in this case black. So biracial
21 elections that involve a black candidate is super important for
22 us to see how black voters vote when there is presence of black
23 candidacy in the candidate pool, whereas in uni-racial
24 elections being uni-racial black or uni-racial white, we don't
14:10:38 25 have the opportunity to evaluate realistically how different

1 racial groups would vote given a choice of different racial
2 candidates. So that is why it is very important to use
3 biracial election to establish whether the two preferred
4 candidate of choice of minority voters have realistic chance of
14:11:06 5 being elected.

6 Q Okay, Dr. Liu. How did you identify the elections that
7 you analyze in your report?

8 A I have done very extensive research in the southern study,
9 including Alabama. I have also served as expert witness for
14:11:22 10 Alabama case before this one. So I knew some elections. I
11 certainly knew President Obama's elections. I wrote a book
12 about him in 2008. So I knew Alabama data and also knew some
13 statewide elections in Alabama such as Lieutenant Governor race
14 in 2018, and so I asked the counsel to give me those data, some
14:11:48 15 of those data directly from the Secretary of State website as I
16 said. I also asked the counsel to help me identify especially
17 all the endogenous elections as many as we can. So I went
18 ahead and made my own effort to try to analyze as many as
19 possible.

14:12:13 20 Q Did you identify every endogenous election?

21 A I made to best of my effort to analyze all of them. I
22 believe I did all the congressional election analysis before
23 the deadline, which is December 10th, but after I submitted my
24 initial report, there was one general election. I believe that
14:12:44 25 was CD 1 in 2014 that I didn't have data about. And so I went

1 ahead after I submitted my report, analyzed the 2014 CD 1
2 election involving a black candidate named LeFlore, and white
3 candidate named Byron. The result turned out to be racially
4 polarized just as I found in my report for other elections. So
14:13:19 5 that just reconfirmed my opinion of the Obama -- I mean, under
6 Alabama's congressional elections. I also know there was
7 special election in the CD 1 2013, which I still haven't had
8 data. So that's the only one I knew of at this point I haven't
9 analyzed, but I don't have data at this point.

14:13:53 10 Q When you said CD 1, do you mean Congressional District 1?

11 A Oh, sorry, yes, yes. Yes. Congressional District Number
12 1.

13 Q Thank you, Dr. Liu.

14 And is it right that you went back for your analysis to
14:14:06 15 about 2008?

16 A Yes, I did.

17 Q Why did you go back to 2008?

18 A For us, the task is to provide our opinion to the Court
19 about whether there has been a racially-polarized voting
14:14:24 20 pattern in Alabama and the consequence on redistricting
21 process.

22 So one should use all the elections that would allow us to
23 analyze the voters at issue, in this case, Alabama. And
24 obviously, more recent elections represent the same voters that
14:14:48 25 will vote in near future, who may be affected by this decision

1 process. But I also went back to 2008 because longitudinal
2 data set can allow us to see how over time voters voted so that
3 we avoid making mistakes by using just single -- well, couple
4 of elections to generalize all voters in Alabama. So I went
14:15:18 5 back, but I didn't go back too far. I went back 2008. That
6 would allow me to use the 2010 census data and then see whether
7 I can see coherence in vote choice. That's why I went back to
8 2008.

9 Q Thank you, Dr. Liu. And how many endogenous elections did
14:15:40 10 you look at using ecological inference?

11 A I analyzed seven endogenous elections for my initial
12 report. As I said, I did one more after I submitted.

13 Q Okay. And how many exogenous elections did you analyze
14 using EI?

14:16:00 15 A I analyzed six exogenous elections before I submitted my
16 report.

17 Q Your initial report; is that right?

18 A Yes, yes, that's what I mean. Initial report.

19 Q And did you analyze additional exogenous elections for
14:16:17 20 your rebuttal report?

21 A Yes, I did.

22 Q All right. Thank you, Dr. Liu. So let's talk about the
23 seven endogenous elections. Can you please turn to page 9 and
24 look at Table 1 of your report? And I will also ask Mr. Ang to
14:16:31 25 please pull up Table 1, if possible.

1 A Yes, I am here.

2 Q Thank you.

3 Dr. Liu, what does Table 1 show?

14:16:48 4 A Table 1 is a table for me to report to the Court what's
5 the RPV analysis show for the endogenous elections.

6 Q Okay. So, Dr. Liu, let's begin with the general elections
7 here on this table. What was the highest level of white voter
8 support for the black candidates in these general elections?

14:17:13 9 A In these general elections, it is pretty consistent. The
10 white support for black candidate usually had been in the teens
11 range, just barely over, you know, 10, 15, or so. But the
12 highest is about a quarter all of white electorate that
13 supported a black candidate, in this case, the CD 7, the black
14 incumbent in CD 7.

14:17:43 15 Q Is it right that the lowest level of white voter support
16 for a black candidate is 5 percent?

17 A Yes. It was as low as 5.2 percent in CD 2 election in
18 2020.

19 Q And in a general election, what was the highest level of
14:18:02 20 black voter support for a black candidate?

21 A Black support for black candidates was almost universal,
22 as shown in Table 1. It's overwhelmingly in the 90s range
23 between 90 and 95, sometimes even surpass 95 percent.

24 Q Okay. And now, let's talk about the primary election that
14:18:24 25 you looked at for CD 1.

1 What did you -- did you find RPV in the Congressional
2 District 1 primary election from 2020?

3 A Yes, I did.

4 Q Okay. And is it right that the RPV was -- the black
14:18:44 5 support for the black candidate was lower in that election?

6 A Yes. Primary elections usually feature candidates from
7 same race -- sorry -- same party. And so voters vote for the
8 same Democratic candidates in this particular election that I
9 analyzed. And the RPV was not as high as other general
14:19:15 10 elections, which is pretty typical.

11 Q Okay. And this election went into a runoff; is that
12 right?

13 A Yes, it did.

14 Q And do you know the results of that runoff?

14:19:26 15 A Yes. I believe the black candidate James Averhart won the
16 runoff, but in the general election, as I recall it here, he
17 was defeated in the biracial election.

18 Q Okay. And I believe you say in your report your
19 understanding was that black voters were the majority in the
14:19:47 20 primary electorate; is that right?

21 A Could you -- could you --

22 Q Sorry. I was saying I believe you say in your report that
23 black voters were the majority of the primary electorate in
24 that election; is that right?

14:20:01 25 A I do not recall. Could you point --

1 MR. ROSS: Mr. Ang, if you can just take that down and
2 -- I believe it's there in the middle there where it says.

3 THE WITNESS: You mean the -- for this specific
4 primary election?

14:20:25 5 BY MR. ROSS:

6 Q Yes. I believe it's -- I will find it, and we can come
7 back to it.

8 MR. ROSS: But maybe on the next page, Mr. Ang.

9 So I think there you say that the -- we will come back to
14:20:51 10 it.

11 BY MR. ROSS:

12 Q So, Dr. Liu, your RPV analysis, you talk a little bit
13 about -- what's the difference between general and primary
14 elections?

14:21:03 15 A The general elections usually feature candidates from two
16 major parties. And the candidate pool is much smaller. And
17 the profiles for the candidates are more visible. And they're
18 highly competitive. Usually they result in a very large racial
19 gap, whereas in primary --- like I said, especially for
14:21:34 20 Democratic primary, the candidates are from the same party.

21 And if we have both white and black candidates in a
22 primary in southern state such as Alabama, we may still see
23 racially-polarized voting, but that is at a lower level
24 compared to a general election.

14:21:59 25 Q So Dr. Liu?

1 A Sorry. I need to add one more point.

2 That is, in primary, usually voter turnout is lower than
3 general election, especially because it's only a subset of
4 population that participated. And even the subset may shrink
14:22:24 5 if a primary does not feature major candidates.

6 Q Okay.

7 MR. ROSS: And, Mr. Ang, if you can just pull up the
8 paragraph after Table 1, the full paragraph, that begins to be
9 more specific.

14:22:39 10 BY MR. ROSS:

11 Q And do you see, Dr. Liu, in the middle of that paragraph
12 where you say, black voters were the majority of the electorate
13 in the 2020 primary?

14 A Yes.

14:22:54 15 Q The fourth line?

16 A Yes. Now I know what you refer to.

17 Q Okay. Thank you, Dr. Liu.

18 MR. ROSS: You can take it down, Mr. Ang.

19 BY MR. ROSS:

14:23:03 20 Q So in sum, Dr. Liu, what can we take from Table 1?

21 A Table 1 gives us a very good look into how biracial
22 elections show the racially-polarized voting pattern that is in
23 all seven congressional elections but having super cohesive in
24 choosing the same candidate from their own racial group. And
14:23:40 25 that preference was not shared by the white majority voters.

1 Like I said, overwhelming support from the black groups at the
2 90s range, but only in the teens range, sometimes just a little
3 bit over teen for the white group for the black-preferred
4 candidate. And more importantly, the black-preferred candidate
14:24:05 5 was typically defeated in these endogenous elections with the
6 only exception of CD 7, which has a different racial
7 configuration in the district. CD 7 is a black majority
8 district. The racially-polarized voting did not lead to the
9 black defeat. Instead, we saw the black success in those CD 2
14:24:34 10 elections.

11 Q Thank you, Dr. Liu.

12 MR. ROSS: I am going to move on to Table 2, which is
13 on page 11. Mr. Ang, if you can pull that up, please.

14 BY MR. ROSS:

14:24:47 15 Q Dr. Liu, what does Table 2 show?

16 A Table 2 is table for me to report to the Court what
17 happened in the exogenous elections that are biracial. Do we
18 see again racially-polarized voting or lack of?

19 Q And here looking at Table 2, what was the highest level of
14:25:13 20 white support for a black candidate?

21 A Again, it's consistent finding. The white support for
22 black candidates in these biracial exogenous elections were
23 very low. Usually it's in the teens.

24 Q Okay. And what was the highest level of black voter
14:25:33 25 support for a black candidate?

1 A Once again, we see the consistent finding, just like we
2 saw in the endogenous elections. In these exogenous elections,
3 black support for black candidates were overwhelming in the 90s
4 range, sometimes surpass 95 percent.

14:25:55 5 Q Thank you, Dr. Liu. In sum, what does Table 2 show?

6 A So Table 2 give us a very clear message that is in the
7 exogenous election, we receive supplemental piece of evidence
8 empirically that racially-polarized voting is not only enduring
9 not only in endogenous but in exogenous elections. And these
14:26:19 10 exogenous elections are super important for us because they
11 involve the voters that voted in those congressional elections.
12 And most likely, they will vote in the near future in the
13 redistrict areas based on whatever final plan adopted by the
14 Court.

14:26:39 15 Q Thank you, Dr. Liu. So let's move on to Table 3, which is
16 on page 13.

17 Dr. Liu, what is Table 3 showing us?

18 A In order to use the data from exogenous elections, again,
19 these are the biracial statewide elections.

14:27:10 20 I also look at -- I also looked at the congressional
21 districts. By that, I mean, I use the same EI methodology and
22 the same data set from exogenous elections. In this table, I
23 reported 2008 presidential election, and then I look at what
24 happened in the congressional districts. And as seven of them,
14:27:43 25 I reported the RPV pattern in the seven congressional districts

1 related to the 2008 presidential election.

2 Q And what did you find in those seven congressional
3 districts for the 2008 election?

4 A I found in all seven congressional districts there was a
14:28:04 5 racially-polarized voting pattern, that is, Obama was an
6 overwhelming choice for the black voters, and white voters with
7 majority overwhelmingly voted against him.

8 Q And did the black candidate win in any district?

9 A Yes. In CD 7.

14:28:28 10 Q Okay. And did you conduct a similar analysis for the 2012
11 presidential election?

12 A Yes, I did. The results are very similar to this one.

13 Q Okay. Thank you, Dr. Liu.

14 Let's move on to page 13 where you discuss exit polls.

14:28:49 15 MR. ROSS: And you can take it down, Mr. Ang.

16 BY MR. ROSS:

17 Q Dr. Liu, what exit polls do you recall reviewing?

18 A I reviewed the presidential exit polls for both 2008 and
19 2012. And I also reviewed the exit poll for statewide U.S.

14:29:12 20 Senate election that took place in Alabama in 2008.

21 Q Okay. Did you also look at the 2008 Democratic primary?

22 A Yes, I did.

23 Q Okay. And let's start with the Presidential elections.

24 What did you find with respect to the 2012 and 2008

14:29:33 25 Presidential elections looking at those exit polls?

1 A The exit polls give us additional empirical evidence that
2 racially-polarized voting did take place in 2008 and 2012
3 presidential elections, which reconfirm what we found by using
4 EI technology.

14:29:59 5 Q Okay. In looking at the 2008 election in particular, did
6 you see anything with respect to how white Democrats voted?

7 A Yes. In 2008, like I said, I not only looked at the
8 general election between Obama and McCain, but also the
9 Democratic primary in 2008 between Hillary Clinton and Barack
14:30:34 10 Obama. Both of them are high profile national figures. It's
11 very enlightening to see how voters voted, especially in the
12 Democratic primary in 2008, because both candidates -- Clinton
13 and Obama -- are Democrats. So I was able to see whether race
14 played a role. Indeed I saw that Hillary Clinton received
14:31:02 15 72 percent of white vote.

16 Q And how much support did then Senator Obama receive in the
17 primary? Sorry, Dr. Liu.

18 How much support did the -- how much support did President
19 Barack Obama receive in the 2008 Democratic primary from black
14:31:33 20 voters?

21 A That was 84 percent.

22 Q Okay. And then in the 2008 general election, how much
23 support did President -- sorry -- Senator McCain receive from
24 white Democrats specifically?

14:31:48 25 A Yes. He received the majority white support -- I believe

1 it was 50, 51 or -- or 52 percent. Yeah. I can --

2 Q And that's -- that's white Democratic support; is that
3 right?

4 A Yes. Yes.

14:32:04 5 Q Okay. And how much black support did President Obama
6 receive in the 2008 election?

7 A It's almost universal. More than 95 percent.

8 Q Okay. In looking at page 13 of your report, Dr. Liu, did
9 you also analyze -- I think you already mentioned this -- the
14:32:26 10 election between Senator Sessions and State Senator Figures?

11 A Yes. I did. I also look at the exit poll for that
12 particular U.S. Senate election. And it showed that Senator
13 Sessions received overwhelming white support. But more
14 importantly, even 58 percent white Democratic supported Senator
14:32:56 15 Sessions. So that shows that race obviously outweighed party
16 for these white Democrats.

17 Q Thank you, Dr. Liu. And what are your sources for these
18 exit polls?

19 A I am a scholar of presidential elections. As I said, I
14:33:17 20 have published a book on Obama. My forthcoming book is about
21 President Trump. So I have accumulated very large database
22 myself. My students use my own database. And for exit polls,
23 every time national medias that publish their exit poll
24 results, especially CNN, I recorded them in my database.

14:33:44 25 But for this particular report, I also used a double

1 reference check. And I went to Google and searched for
2 confirmation of these numbers. So I saw some websites after I
3 googled, and these are the numbers I reported.

14:34:14 4 Q So just to be clear, you relied on your own data source,
5 which was essentially collected from CNN; is that right?

6 A Yes. Every time when CNN or NBC and other major media
7 networks published their numbers on exit polls, I recorded them
8 in my own database. So my students can use them. But for this
9 report, I went back to CNN, the CNN website doesn't have that
14:34:43 10 -- those numbers anymore. So then I googled, and I found
11 second source for my confirmation of the numbers.

12 Q Okay. Thank you, Dr. Liu.

13 So let's move on to the page 15 of your report, Table 4.

14 MR. ROSS: Thank you, Mr. Ang.

14:35:02 15 BY MR. ROSS:

16 Q Dr. Liu, what does Table 4 show?

17 A Table 4 is a table for me to show to the Court what's the
18 result of my first effectiveness analysis.

19 Q Okay. And can we just walk through -- so your first
14:35:27 20 effectiveness analysis, you -- is it right that you were
21 comparing the plan that's at issue here, the adopted plan, to
22 several of Dr. Duchin's plans; is that right?

23 A Yes. This is a table that shows the results in
24 comparison. There are three plans. The first is the adopted
14:35:51 25 congressional redistricting plan. And the second and the

1 third, those proposed by the plaintiffs in this -- they are
2 named as Plan B and Plan D.

3 Q Okay. Thank you, Dr. Liu. Is it right for the Table 4,
4 you are looking at the 2018 Lieutenant Governor race in
14:36:15 5 Alabama?

6 A Yes, it is.

7 Q And is it right that later you look at the State Auditor
8 elections?

9 A Yes.

14:36:21 10 Q 2018, as well?

11 A Yes.

12 Q Why did you choose the 2018 Lieutenant Governor and State
13 Auditor elections?

14 A The 2018 statewide elections allow me to evaluate how
14:36:35 15 voters voted in those recent biracial elections.

16 And more importantly, for effectiveness analysis, they
17 allow me -- these two elections allow me to have reasonable
18 projection about what will happen in near future given
19 different racial configurations according to these plans.

14:37:00 20 Q Thank you, Dr. Lieu.

21 And which of plaintiffs' plans did you analyze for your
22 effectiveness analysis?

23 A I analyzed Plan B and Plan D. And before I submitted my
24 preliminary report, I had time to analyze these two, but after
14:37:28 25 I submitted, I also analyzed Plan A.

1 Q Okay. And what type of -- again, going back to the sort
2 of the racial group that you used to identify black people, did
3 you again use both any-part black and single-race black?

4 A For the Plan A, I did analyze after I submitted. I used
14:37:51 5 both single race or non-Hispanic Black VAP, as well as any-part
6 Black VAP. However, I want to emphasize they do not matter at
7 all. Because here, I reported the final row here, total, in my
8 table. That's the same. Regardless whether I use single-race
9 black or any-part black, they are the same.

14:38:25 10 Q Thank you, Dr. Liu. And for your effectiveness analysis,
11 how did you determine who actually would win in your -- in the
12 various plans?

13 A My final row in these sub tables in Table 4, it's called
14 total. It's very clear that the black candidate would receive
14:38:53 15 35 percent -- 35.5 percent in the 2018 Lieutenant Governor CD 2
16 race, and the white candidate would receive 64.5 percent.
17 Therefore, the black candidate will be defeated according to
18 the adopted plan.

19 Q Thank you, Dr. Liu. And is it right for Plan B and D,
14:39:22 20 looking at plaintiffs' plan that the black candidate would have
21 won; is that right?

22 A Yes. The Plan B it shows the black candidate would
23 receive 56.8 percent, which is certainly more than majority.
24 And Plan D also give us the majority.

14:39:42 25 And by the way, these are simply the tally of votes given

1 the racial configuration of these plans.

2 Q So thank you, Dr. Liu. And I want just to clarify. So
3 when you were tallying up who would win or lose under each
4 plan, you are relying on the actual election results; is that
14:40:03 5 right?

6 A Yes. This is what effectiveness analysis is all about
7 because different plans give us different racial
8 configurations.

9 We use -- I mean, I use in this case the 2018 the real
14:40:20 10 election that happened recently and simply tally the votes,
11 given different plans.

12 Q When you show the turnout data here, that didn't play any
13 role in determining who would win or lose under each plan; is
14 that right?

14:40:35 15 A Right. The turnout is simply an estimate based on the EI
16 pack, software program, which has nothing to do with the vote
17 tally.

18 Q Okay. And then you have here estimates of what
19 racially-polarized voting would be; is that right?

14:40:54 20 A Right. Those are based on the EI technology.

21 Q Okay. And, again, those are -- that's simply information
22 about racially-polarized voting. It didn't play a role in your
23 determining who would win or lose under each of the plans; is
24 that right?

14:41:10 25 A Right. The final outcome, again, is based on simply the

1 -- the total votes for political candidate. And then compare
2 candidates, see who is the winner. But the RPV,
3 racially-polarized picture in all these different plans, given
4 racial configurations, are done by the EI technology.

14:41:37 5 Q Okay. Thank you, Dr. Liu. And sorry. Just one final
6 question. So is it right that under any of the plans you found
7 that voting would have been racially polarized in 2018; is that
8 right?

9 A Yes. For CD 2, these three plans are uniform, in terms of
14:41:58 10 racially-polarized voting, but the outcome is different. The
11 black candidate would be elected in the Plan B and Plan D. And
12 black candidate would be defeated in the adopted plan.

13 Q Okay. All right. Thank you, Dr. Liu.

14 And sorry. Just to be clear on how you're getting this
14:42:20 15 total. Is it right that you're simply adding up who won in
16 each of the precincts that would be in CD 2 under any of the
17 adopted plans; is that right?

18 A Yes.

19 Q Okay. Thank you, Dr. Liu.

14:42:32 20 MR. ROSS: You can take it down. Mr. Ang.

21 Let's go to Table 5, please.

22 BY MR. ROSS:

23 Q And, Dr. Liu, is it right that Table 5 is a similar
24 effectiveness analysis except using -- looking again at
14:42:52 25 Congressional District 2 under each of the plans, but using the

1 2018 State Auditors' race?

2 A Yes.

3 Q Okay. Thank you. And is it right that, again, under the
4 adopted plan, the black candidate would lose, but under Plans B
14:43:07 5 and D, the black candidate would receive over 56 percent of the
6 vote?

7 A Yes.

8 Q Thank you.

9 And is it right that voting was racially polarized in
14:43:15 10 these elections?

11 A Yes.

12 Q Thank you.

13 MR. ROSS: You can take this down, Mr. Ang.

14 BY MR. ROSS:

14:43:29 15 Q Dr. Liu, let's go to Table 6. I'm sorry. Just to be
16 clear, and, again, Dr. Liu, for all these tables, the turnout
17 estimate is part of the racial-polarization analysis. It
18 didn't determine who would win or lose under the plan; is that
19 right?

14:43:45 20 A Correct.

21 Q Thank you.

22 All right. So here, again, this is -- is this right that
23 -- well, can you tell me what Table 6 shows?

24 A Table 6 is once again an effectiveness analysis for

14:44:00 25 different congressional district, in this case, CD 7. I once

1 again used the Lieutenant Governor for race in 2018. And I
2 used the EI technology for the RPV and simply used the vote
3 tally given the different racial configurations or plans and
4 reported to the Court the outcomes.

14:44:20 5 Q Thank you.

6 And is it right that the black candidate wins in all three
7 of these plans?

8 A Yes. The black candidate in this case, the name is Will
9 Boyd win all CD 7, regardless whether we are talking about
10 adopted plan, or Plan B and Plan D, but there is nuance about
11 this.

12 Q And what is that nuance?

13 A Well, CD 7 is, as I said earlier, is a majority-black
14 district. However, if we adopted the Plan B and Plan D, the
14:45:00 15 same result. It's black majority. But no packing of black
16 voters as what the adopted plan showed.

17 So adopted plan would elect the black voter. However,
18 adopted plan would pack many, many voters in that district.
19 And the consequence of that is to dilute the black strengths in
14:45:29 20 other districts.

21 Q So is it right, Dr. Liu, just to summarize, that under the
22 adopted plan, the black candidate received about 66 percent of
23 the vote, but under plaintiffs' plans, the black candidate
24 would receive a little more than 60 percent of the vote?

14:45:45 25 A Yes. They are pretty similar.

1 Q Thank you, Dr. Liu.

2 MR. ROSS: You can take that down, Eric.

3 Can we look at tables 6 and 7, as well. Sorry. Table 7.

4 BY MR. ROSS:

14:46:13 5 Q And is it right, Dr. Liu, that Table 7 is similar analysis
6 as Table 6, except this time looking at the State Auditor race?

7 A Yes.

8 Q And do we see essentially the same results that the black
9 candidate would win in CD 7 under any of the plans?

14:46:31 10 A Yes.

11 Q Okay. And sorry. Can you say again what the difference
12 is between how much the black candidate would win under the
13 adopted plan versus under plaintiffs' proposed plans?

14 A Yeah. The adopted plan would elect black candidate in CD
14:46:51 15 7 for the State Auditor race by 66.1 percent whereas the Plan B
16 61.9 percent, and Plan D, 62.9 percent.

17 Q Thank you, Dr. Liu.

18 And in any case, the black candidate would win with over
19 20 -- by over 20 points; is that right?

14:47:15 20 A Yes.

21 Q Thank you.

22 So let's turn to the end -- well, Dr. Liu, you mentioned
23 that you had looked at Plan A. Are the results roughly the
24 same for Plan A, as well?

14:47:32 25 A Yeah. Plan A, like I said, I not only use any-part black,

1 but also single-race black for Plan A verification. I found
2 the same result. Obviously, the exact statistic varied a
3 little bit.

4 Q Okay. Thank you, Dr. Liu.

14:47:53 5 Let's just to wrap up your final -- your initial report,
6 can you tell us what -- in sum, what did you find in your
7 initial report with respect to RPV?

8 A In sum, the elections that took place in Alabama revealed
9 the same message that is if given the choice between black
14:48:18 10 candidate and white candidate, black voters vote cohesively in
11 choosing the candidate from their same race. And that
12 preference for black candidates is not shared by white voters
13 who voted as a block.

14 And the black -- the white block voting enabled typically
14:48:42 15 the defeat of black candidates with only exception of the black
16 candidate from CD 7, which is black majority district.

17 MR. ROSS: Mr. Ang, you can take at that down. Thank
18 you.

19 BY MR. ROSS:

14:49:01 20 Q So Dr. Liu, I want to turn to your rebuttal report, which
21 is Plaintiffs' Exhibit M-8. If you need any pages from that
22 report displayed, please let me know.

23 Just beginning on page 1 of your rebuttal report, I
24 believe there is a section entitled, Areas of Agreement With
14:49:25 25 Dr. Hood. Did you review Dr. Hood's initial report in this

1 case?

2 A Yes, I did.

3 Q All right. And so how many areas of agreement were there
4 between you and Dr. Hood?

14:49:36 5 A There are a total of four areas of agreement between me
6 and Dr. Hood. And the first one is that we both found there
7 has been a racially-polarized pattern between black voters and
8 white voters.

9 Secondly, the negative effect of RPV is clear, that is,
14:50:01 10 the black candidates are typically defeated in white majority
11 context.

12 And thirdly, we agree that the methodology that we can use
13 to estimate racial voting is EI technology. And finally, we
14 also agree that in the Democratic primary, white voters and
14:50:24 15 black voters may choose different candidates if given the
16 choice between two racial groups' candidates, and that
17 differences may lead to the defeat of black candidates if that
18 district is configured in a way that dilute black votes.

19 Q Thank you.

14:50:51 20 So is it your understanding that Dr. Hood also used EI?

21 A Yes, he did.

22 Q Can you use voter registration data for an EI analysis?

23 A Yes.

24 Q And what data is your understanding that Dr. Hood used for
14:51:09 25 his analysis?

1 A He's RPV analysis is based on -- as I can see from his own
2 R code, he provided it to the Court and the counsel for
3 plaintiffs. He used the EI pack, which is the same software
4 program that I used. And he engaged in analysis of turnout.

14:51:36 5 But somehow he used registration data to talk about turnout.

6 Q All right. Thank you, Dr. Liu. Let's -- did you -- is it
7 right that Dr. Hood ran some elections that you did not in your
8 initial report?

9 A Yes. As I said, I had four areas of agreement with
14:52:06 10 Dr. Hood, but I also have very strong disagreement with him
11 regarding some of his assertion, especially in terms of the
12 selection of elections.

13 He chose to use the 2020 Presidential election, which is
14 not a biracial election, even though in his own publication
14:52:36 15 Social Science Quarterly, he and his coauthor indicated that
16 it's necessary to use elections which include minority
17 candidates so that we can test whether RPV matters. He didn't
18 do that. He used the 2020 Presidential election, which
19 featured white men for both major political parties, even
14:53:04 20 though for the Vice-President candidate from the Democratic
21 side, we had a black Asian woman on the ticket, but she is not
22 on the top of the ticket. So that's contrary to what he
23 suggested in his own publication. But in order to test his
24 idea about racially-polarized voting in 2020 Presidential
14:53:37 25 election, I went ahead and did verification study by using data

1 from this election. And this election, which is not biracial,
2 revealed the same thing -- racially polarized pattern as he
3 reported in his original report.

4 But my disagreement with Dr. Hood is more than that. It
14:53:56 5 is where he turned to the assertion that the black conservative
6 candidate success in Alabama he choose the House District 73 to
7 make that claim. But he didn't provide any RPV analysis on his
8 own. So I went ahead and I did my own RPV analysis. In that,
9 RPV analysis indeed show that's not an effective election to
14:54:29 10 show the true preference of either white or black voters. And
11 moreover, it's only a very narrow election involving very few
12 voters.

13 I chose the 2016 Republican primary, which is statewide.
14 And very competitive election featuring future President Donald
14:54:56 15 Trump and other ten black Republican prominent figures,
16 including a black conservative, so I analyzed that as well.

17 Q So you conducted EI analysis of that election?

18 A Yes, I did.

19 Q Did you find that white Republicans supported Dr. Carson
14:55:16 20 in that election?

21 A The support for Dr. Carson, who once upon a time was even
22 the leading figure among all the black -- I mean, all
23 Republican nominees for president.

24 The white support for him in Alabama was at a single-digit
14:55:39 25 level, unlike what Dr. Hood claimed. There has been average --

1 an average equal or even more support for black conservative in
2 -- in America, especially Alabama he said. There's no
3 empirical evidence whatsoever for that.

4 Q Thank you, Dr. Liu.

14:56:00 5 And what was the black turnout in that election, according
6 to your estimates?

7 A The black turnout for the Republican primary is very low.
8 And it's just over 1 percent, about 1.7 percent.

9 And the -- for the same reason, we look at the whites
14:56:28 10 turnout, especially for the House District 73 that Dr. Hood
11 claimed as the evidence for black conservative success in white
12 community, the white turnout in that HD 73 was low as
13 1.3 percent.

14 So white voters didn't vote much in that election.

14:56:57 15 So both HD 73 and Presidential nominee contest for
16 Republican Party in 2016 revealed the extent to which how
17 voters are involved. And that's why there's no empirical
18 evidence for Dr. Hood's claim on the black conservative success
19 among white voters empirically.

14:57:25 20 Q Thank you, Dr. Liu.

21 So in sum, can you tell me what did you find with respect
22 to, again, taking into consideration your rebuttal report, what
23 did you find with racially-polarized voting in Alabama?

24 A The original report I give to the Court and also my
14:57:46 25 rebuttal report, as well as Dr. Hood's own findings, the only

1 congressional elections, but exogenous elections, as well as
2 one non-biracial election that Dr. Hood himself included, it's
3 very clear that in Alabama there has been a pattern of
4 racially-polarized voting in that black voters choose the
14:58:19 5 candidate from their own racial group, and that preference was
6 not shared by the majority white voters who voted as a block
7 that enables the typical defeat of black candidates. With the
8 exception of the majority-black districts, the RPV failed to
9 prevent the election of black candidates.

14:58:50 10 MR. ROSS: Sorry. Judges, if you will just give me
11 one moment.

12 JUDGE MARCUS: Take your time.

13 MR. ROSS: I believe we are set. We will pass the
14 witness for now.

14:59:12 15 JUDGE MARCUS: You will be doing the cross I take it,
16 Mr. Harris?

17 MR. HARRIS: Yes, I will.

18 JUDGE MARCUS: Would this be a convenient time for a
19 break for you?

14:59:20 20 MR. HARRIS: That would be great.

21 JUDGE MARCUS: Okay. It's almost 3:00 o'clock your
22 time Central Standard, 4:00 o'clock Eastern Standard Time. We
23 will take a 15-minute break, and then we will come back to your
24 cross-examination, Mr. Harris, of Dr. Liu. Thank you.

14:59:40 25 (Recess.)

1 JUDGE MARCUS: Good afternoon, folks. Is everybody
2 ready to proceed with the cross-examination of Dr. Liu by
3 Mr. Harris? Mr. Harris, you ready?

4 MR. HARRIS: Yes.

15:17:24 5 JUDGE MARCUS: Mr. Ross, all set?

6 MR. ROSS: Yes, Your Honor.

7 JUDGE MARCUS: Dr. Liu, are you ready to proceed?

8 THE WITNESS: Yes, I am ready, Your Honor.

9 JUDGE MARCUS: All right. Thank you. You may
15:17:34 10 proceed, Mr. Harris.

11 MR. HARRIS: Thank you.

12 CROSS-EXAMINATION

13 BY MR. HARRIS:

14 Q Dr. Liu, I am looking at your expert report, and do you
15:17:46 15 have it in front of you; is that right?

16 A Yes, I do.

17 Q Okay. Great. You say that you are asked to express
18 opinions on whether RPV exists in Alabama and whether or not
19 RPV has resulted in the defeats of black-preferred candidates
15:18:02 20 in Alabama congressional elections; is that right?

21 A Yes.

22 Q Okay. And looking at your conclusion or opinion in page 3
23 in the opinion section, you say in -- the final sentence there
24 is, As a result, the black-preferred candidates were typically
15:18:20 25 defeated in biracial elections in Alabama?

1 A Yes.

2 Q So why did you focus exclusively on biracial elections in
3 Alabama?

4 A As I stated in my report, RPV analysis would give us the
15:18:41 5 realistic result to see the real opportunity to elect candidate
6 of choice if the election involves a candidate from a minority
7 group and a candidate from the majority group. So, therefore,
8 the true preference will be revealed by the empirical data
9 instead of any theorization.

15:19:09 10 Q Is that your understanding of the law, or is that your
11 professional judgment that you exercise in your academic
12 research?

13 A It is, of course, included in my academic research. The
14 U.S. political science literature has documented it all the way
15:19:31 15 back from the 1960s in terms of how, say, average Americans
16 embrace candidates who are Irish in very, very early on U.S.
17 history about urban elections.

18 So, indeed, literature revealed the importance of presence
19 of minority voter -- minority candidates immobilizing minority
15:19:57 20 voters to participate, but it is also based on -- the question
21 in front of me as expert witness, that is, what is the RPV and
22 the result of it? That task that I have as expert witness make
23 me believe that only by using biracial elections can we know
24 the answer.

15:20:20 25 Q Just to clarify, and I believe you said this already.

1 It's your opinion that the only way to empirically determine
2 RPV between two racial groups is to analyze biracial elections?

3 A The only way to tell whether or not different racial
4 groups preferred different candidates is to analyze elections
15:20:50 5 that gives us a choice between different candidates. Then we
6 can know. That is, yes. But I am not making overarching
7 argument to say uni-racial elections have no implications, no
8 use whatsoever. That's not what I wanted to claim.

9 Q Dr. Liu, I am trying to understand the difference between
15:21:16 10 those two statements.

11 So you don't think that biracial elections are the only
12 way to empirically determine whether RPV exists?

13 A RPV itself, as empirical measure, of course, can have
14 elections, which have uni-racial candidates because different
15:21:46 15 racial groups may choose different candidates even if the
16 candidates share the racial identity. It's just empirical
17 fact.

18 However, the RPV to evaluate the opportunity to elect
19 candidate of choice, that has to be based on the evaluation of
15:22:11 20 elections which allow scholars to measure the choice in the
21 first place.

22 Q And by the choice, what are you referring to exactly?

23 A By choice, I mean, whether a racial group prefer a
24 candidate from whatever particular kind of racial group, one
15:22:35 25 has to have a choice between that group and alternative.

1 Q Okay. So I think I understand your testimony to be that
2 uni-racial elections can sometimes be probative, and correct me
3 if I am wrong; is that right?

4 A Uni-racial elections may give us results that racial
15:23:11 5 groups choose candidates differently that is racially
6 polarized. That's empirical possibility, yes.

7 Q Okay. And it's your opinion, then, that biracial
8 elections are simply more helpful to you than uni-racial
9 elections?

10 A As I stated, the biracial elections will or would allow us
11 to evaluate, given the choice between racial groups, the
12 preference of racial groups. That is the reason why biracial
13 elections allow us to fully evaluate the candidate of choice,
14 especially for different racial groups.

15:24:13 15 Q Okay. So if you will try to answer a hypothetical
16 question for me, is it your opinion that all else equal, that a
17 2008 biracial elections is more probative than a 2020
18 uni-racial election?

19 A If your question is about to evaluate candidate of choice
15:24:43 20 of racial groups, the answer is yes.

21 The 2008 Presidential election featured a black candidate
22 and a white candidate from the two major parties, whereas the
23 2020 Presidential elections featured both party candidates as
24 whites.

15:25:07 25 So, therefore, yes.

1 Q And so the 2020 Presidential election, do you -- that is
2 -- that is not probative to you at all? It's not relevant to
3 your RPV analysis, or just much less so even than an older
4 election?

15:25:32 5 MR. ROSS: Objection. Asked and answered.

6 JUDGE MARCUS: I will take it one more time.
7 Overruled.

8 THE WITNESS: The 2020 Presidential election may
9 reveal racially polarized pattern or not.

15:25:46 10 However, to answer the question such as the one in front
11 of me as expert witness, the 2008 Presidential election is the
12 one that allowed me to evaluate two candidate of choice for
13 racial group, whereas, 2020 does not have that level of
14 empirical data for me to form opinion on.

15:26:19 15 BY MR. HARRIS:

16 Q Okay. So do your conclusions in this case, do they apply
17 to all Alabama elections or all endogenous elections or only to
18 biracial elections?

19 A My opinion, as I stated in the report -- initial report,
15:26:44 20 is about the choice given to the voters. When choice is given,
21 they choose their own racial group. That is applied to
22 endogenous elections, as well as exogenous elections in
23 Alabama.

24 Q Okay. It's even more helpful for me to use an example. I
15:27:13 25 am looking at page 15 of your report, and this is part of your

1 effectiveness analysis of the plaintiffs' plans. Are you
2 looking at your report?

3 A Yes. I am here.

4 Q Okay. Great. And in the columns, you list black
15:27:31 5 candidate and white candidate; is that right?

6 A Yes.

7 Q So what does that mean?

8 A It means black candidate and white candidate.

9 Q Okay. So if, for example, in 2022 or in the next

15:27:47 10 congressional election, if that were two white candidates, if
11 both the Democrat and the Republican were white?

12 A Uh-huh.

13 Q Is your analysis relevant at all to considering that?

14 A No. I mean, if I understand your question clearly, if

15:28:08 15 your question is about can I use the same Table 4 to apply for
16 -- apply to a hypothetical election where there is only
17 uni-racial candidacy, then the answer is no.

18 Q Okay. Switching gears a little bit, Dr. Liu. Is it right
19 that your analysis does not consider the reasons why voters

15:28:47 20 vote the way they do?

21 A My task for this case is to provide empirical facts to the
22 Court, whether there has been racially-polarized voting and
23 whether that pattern has result as the black defeat typically
24 in those elections.

15:29:06 25 So in no place of my whole report did I report to the

1 Court about intent.

2 Q Okay. So, for example, did you consider characteristics
3 about individual candidates other than race, such as their
4 financial support, or campaign tactics, or anything like that?

15:29:28 5 A If the question is in general whether I am a scholar to
6 consider those factors in my scholarly work, the answer is yes.
7 But for this particular task in front of me, it's not about
8 intent. It's about whether empirically there is evidence of
9 racially-polarized voting and what's the result of it.

15:29:57 10 Q Okay. Thank you.

11 I would like to look at which elections you included in
12 your analysis. And you have this elections analyzed section at
13 pages 3 and 4 of your report.

14 So and I know you testified some about this already. I
15:30:29 15 believe -- let's see. On page 4, you say there were only seven
16 such endogenous biracial elections during the period under
17 study; is that right?

18 A As I already said, it is a report that is submitted on
19 December 10th.

15:30:56 20 Q Uh-huh.

21 A I sought as many as I could. And these were the elections
22 I was aware of and had data about.

23 After I submitted, I became aware of the fact that there
24 was a CD 1 biracial elections in 2014 that I was not even aware
15:31:29 25 of. So when I put that statement there, that is when I

1 submitted my report. I did as much as I could.

2 Q Okay. And I believe you testified today that you made
3 your own efforts, right? Isn't what you just said to identify
4 those elections; is that right?

15:31:47 5 A I, indeed, have said that as a scholar of southern
6 politics, I have studied many states including Alabama, and I
7 have served as expert witness for cases related to Alabama.

8 So I knew some elections, but obviously, I didn't know all
9 of the congressional and, you know, all the elections that may
10 be relevant for me. So I asked the counsel to help me. If I
11 missed, just charge a fine, and did as much as I could.

12 Q Okay. I will look at some of these specifically. In
13 2019, so besides the 2014 election you just mentioned, is that
14 the only election you are aware of that was not included in
15 your report that was, in fact, the endogenous biracial election
16 in Alabama?

17 A As I said, I tried my best. At this point, these general
18 elections, at least, that are congressional elections. The
19 only one I missed was that 2014 election, which reconfirmed my
20 findings.

21 If I have anything missing, I would absolutely be more
22 than glad to go ahead and analyze it. But I believe I have
23 found very, very strong consistent pattern.

24 Q Okay. I'm looking at page 9 of your report, which has
15:33:33 25 this chart of -- it's Table 1, titled, Estimated Racial Support

1 For Black Candidate in Endogenous Elections.

2 A Okay. --

3 Q In this --

4 A Yes, I did.

15:33:47 5 Q And in this chart, you list these endogenous elections; is
6 that right?

7 A Yes.

8 Q And you include the 2021 primary -- the very first one,
9 2021 CD primary, and you note it went into a runoff; is that
10 right?

11 A Yes. Yeah. It -- the black candidate James Averhart
12 indeed got into the runoff, and I was aware of the fact that he
13 won the run off. But then he lost in the general. And that's
14 why, like I said, I try my best to include the general
15 elections before I can finish my RPV analysis. And this is
16 what I did.

17 Q Okay. So did you consider the runoff election -- do you
18 know whether the runoff election was a biracial election?

19 A I believe it was. But I had time at that point. And like
15:34:46 20 I said, I did my best to do the general elections.

21 And I also did the primary. So the runoff I believe he
22 won. That's why he got into the general election. But I
23 didn't have the time. I thought it's a lesser election in
24 terms of importance for me to draw conclusion because I analyze
15:35:14 25 his own primary. And then his general.

1 So maybe there's this runoff. I will be happy to follow
2 up with that one, too.

3 Q So to make sure I understand you, if you had had more
4 time, you would have preferred to include more biracial
15:35:36 5 elections; is that right?

6 A I believe that endogenous elections are more probative for
7 me to draw conclusion, and that's supported by the courts in
8 this country. And I also believe that's indeed should be my
9 responsibility to do. So I try my best.

15:35:55 10 Q Oh, I understand, Dr. Liu. And I'm trying to just make
11 sure I understand where you are.

12 If there were more endogenous biracial elections in
13 Alabama, would you like to consider those in forming your
14 opinion?

15:36:08 15 A Yes.

16 Q So you didn't just come to a point and say, I have all the
17 data I need, this is it? If there were more, you would be
18 interested to see more?

19 A Well, if you raise question that way, I think it may lead
15:36:25 20 to different kind of feeling about my statement. My statement
21 is, I have tried my best, and I would include as many elections
22 I could. That doesn't I don't have an opinion. As I form
23 these opinions, these facts, accumulating in front of me, I
24 form opinions, and obviously, there is plausibility that I
15:36:54 25 could include more elections. But if the facts are

1 overwhelming, then I stand by my opinion. Because one or two
2 elections just wouldn't change my overall opinion about RPV in
3 this case.

4 Q Okay. I won't stay here too long, but I am going to go to
15:37:19 5 Defendants' Exhibit 91. I believe it has been admitted without
6 objection.

7 All right. Can you see my screen, Dr. Liu?

8 A Yes.

9 Q This is -- what does this appear to be to you? Have you
15:37:48 10 ever seen a document like this?

11 A No, I have never seen this particular document.

12 Q Right. So I will represent to you that this is a
13 certification of candidates from Alabama, and it's dated
14 December 20, 2019. Do you see that?

15:38:13 15 A Yes.

16 Q Let me see here. Do you see this is from the Alabama
17 Democratic Party?

18 A Yes. I saw that.

19 Q So I am looking at Congressional District 2 primary. We
15:38:31 20 see here Phyllis Harvey-Hall and Nathan Mathis in the election.
21 Do you see that?

22 A Yes, I saw that.

23 Q But you did not analyze the election between Phyllis
24 Harvey-Hall and Nathan Mathis, did you?

15:38:45 25 A I don't believe so.

1 Q Do you know why that is?

2 A As I said, I -- with the time I had, I did my best to
3 analyze endogenous in general elections first.

4 Q Okay. So if you had been aware -- so, excuse me. I take
15:39:05 5 that back. So were you aware of this election and decided not
6 to include it, or were you unaware of this election?

7 A I certainly was not aware of this election.

8 Q Okay.

9 A That's not even in my report. I had no idea. But like I
15:39:23 10 said, I tried to do my best first for the general election. So
11 I didn't have the time to dive into all the primary elections.

12 Q Okay. You chose to just choose one primary election; is
13 that right?

14 A I didn't choose simply because, you know, this election CD
15:39:49 15 1 had multiple candidates, as you can see, from 2000 I believe
16 18. And I even missed another one of the CD 1. So CD 1 to me
17 with the time I had obviously involved black candidates. So I
18 tried my best to see whether I could get data, and I did.

19 Q Okay. And along these same lines, you referenced Will
15:40:34 20 Boyd earlier in your testimony earlier, I believe. And you
21 mentioned Robert Kennedy, Jr., here, on page 9; is that right?

22 A Yes.

23 Q And do you know whether those candidates were involved in
24 another biracial statewide election that you did not include in
15:40:52 25 this report?

1 A I -- to this point, I still don't know what you are
2 saying, so I obviously have no idea.

3 Q Okay. Okay. And looking still at page 9 in this table
4 you include here, you look at, the very last column, says RPV
15:41:19 5 question mark. And it has yes. So did I understand your
6 testimony today earlier that if it's higher than -- if it's a
7 majority, if it's 50 percent or more, then for black support of
8 the black candidate, and then the less than a majority or a
9 minority of white support for a white candidate, that makes the
15:41:41 10 yes box an RPV?

11 A Yeah. Operationally, obviously we have had had -- we have
12 to have some kind of framework to form opinion on RPV, yes.

13 Q Uh-huh.

14 A That's the framework. The majority black support this
15:41:59 15 particular candidate, and yet the majority white oppose this
16 candidate, yes, that's the framework.

17 Q Okay. And so, for example, in that 2020 CD 1 primary?

18 A Yes.

19 Q The black support says 53.8 percent; is that right?

15:42:17 20 A Yes.

21 Q So if that had been 51 percent, would your conclusion have
22 been the same? Does it only matter that it's above 50; is that
23 right?

24 A Yes.

15:42:27 25 Q Okay. So if, say, black support for a candidate is

1 51 percent and white support for the white candidate is
2 49 percent, would RPV be established?

3 A I have studied this issue in all my professional career.

4 Up to now, I haven't found that election that took place in

15:42:50 5 America. But indeed, I will say categorically speaking,

6 obviously, the majority from a group voted for a candidate, and

7 the majority from another group opposed that candidate, even

8 though the gap between the two racial groups as you put it is

9 so small, but majority of one group voted this way and a

15:43:22 10 majority of the other group voted different way, that would

11 satisfy conceptually racially-polarized voting.

12 Q Okay. And is that your understanding of the law as it

13 exists, or is that a professional judgment that you use as an

14 RPV expert in your academic work?

15:43:46 15 A Thank you, Mr. Harris. It's a great question.

16 I am an expert on racial politics. And I have served as

17 expert witness for racially-polarized voting. So obviously, I

18 have built my own reputation on research of my own.

19 However, I'm not a lawyer. So I cannot give you opinion

15:44:12 20 about, you know, what the case law eventually evolve and

21 define. My position on this is that reading the *Gingles* Number

22 *II* and Number *III* condition, that is relevant to me for my role

23 to play indeed. I stand by the opinion that we should use this

24 majority black support for a candidate of their own, and then

15:44:48 25 the majority white disagree. I think that's the baseline for

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1 all of us as expert witness that should report to the Court for
2 RPV. But beyond that, as scholars and expert witness, we look
3 at racial gap, how large is racially-polarized voting reveal,
4 and so on. These are all important questions.

15:45:11 5 Q Great. And I have I guess some general questions about
6 the underlying data you use in your report.

7 In Appendix 3, like I believe you mentioned on your
8 direct, you have -- this is described as your description of
9 the data acquisition processing and aggregations process; is
10 that right?

11 A Yes, correct.

12 Q So I -- on your direct, I believe you said that this came
13 from the demographer, or can you explain to me the appendix,
14 and did you write the appendix, or just explain to me the
15 nature of this document?

16 A Sure. The Appendix 3 is a documentation I demanded, and
17 the reason is this, I have served as expert witness for
18 two decades. Every time in a given case, I work with a
19 demographer. And a demographer that is expert, say, Black VAP
20 in political areas in that nature. I am not demographer. So
21 since I have worked with the lawyers for this case in the past,
22 they will -- very familiar with what I wanted in my data set
23 for the demographer to do. And I asked the demographer -- the
24 lawyer to help me understand what is the source of the data,
15:46:57 25 how they match it.

1 And since this is the first time I worked on this case,
2 which has this demographer, who I never had a direct contact
3 during my research, so I asked the counsel to help me out
4 understand what the data processing acquisition was, and that
15:47:18 5 was the documentation from the demographer. And I read it, and
6 it appeared to be the most comprehensive and objective
7 description of the detail data processing that I have ever seen
8 in my role as expert witness, but it is not my document. It is
9 demographer's.

15:47:41 10 Q Okay. So just for example, looking at number one, under
11 Data Acquisition, it says, Acquired 2016, 2018, and 2020
12 precinct level shapefiles. So you did not acquire those,
13 right? This just describes what either plaintiffs' counsel or
14 what someone else did, right?

15:48:04 15 A Again, I am not demographer. So it's not my job to find
16 whatever shapefiles and put in my computer to run these. So
17 always in my voting rights case expert witness experience, I
18 have had a demographer who does shapefiles and try to join in
19 that way. So yes, indeed this is what they described in
15:48:37 20 detail.

21 Q Just to be clear, when you say what they described in
22 detail, who are you referring to?

23 A I mean the demographer working on this case. So I never
24 worked directly with this particular demographer during my
15:48:58 25 research on RPV.

1 Q So what did you do to verify that the information was
2 reliable or accurate?

3 A Yeah. After I received this description, I went to the
4 website, and I asked the lawyer to clarify what is the voting
15:49:20 5 election science team, and I was able to get the website, and
6 then I went to the website. I realize it's the Harvard data
7 first, which actually I was very familiar with in the past
8 because in my other voting rights cases, I knew demographer
9 when he -- they get data from there. So I understood, okay,
15:49:46 10 they went there to collect the shapefile, which to me is very
11 standard.

12 And then I also had questions about open elections in the
13 description. And I asked the counsel to help me to get the
14 detail about what is the open elections. And I was told that
15:50:08 15 it's on GitHub. I went to GitHub. I wrote recent peer-review
16 article which I presented in my international conference about
17 GitHub. So I know GitHub very well. That's a place where
18 scholars, data scientists deposit their data, and I went to
19 especially Alabama data set on open elections. I realized
15:50:34 20 indeed it's on GitHub. So that means all users, all over the
21 world can check on the data, accuracy, and everything. So it
22 must be one of the most vigorous source of data. That's why I
23 believe my RPV is grounded on these sources that are in the
24 public domain and very reliable.

15:51:01 25 Q Okay.

1 Did I understand you right that as you reviewed this data
2 process, you asked counsel what the voting and election science
3 team was?

4 A Yes. I asked in particular after they told me about the,
15:51:21 5 you know, the Harvard base where they hosted the data, and I
6 got to know more detail about the data concerning this
7 particular description right here, it is data originally
8 compiled by scholars, political scientists, professional
9 political scientists from University of Florida that deposited
15:51:53 10 the data in this public domain on Harvard database, on the
11 website. So I gain more confidence. You know, University
12 Florida has had some very prominent professors such as Michael
13 McDonald, and so on, who have been the leading experts on
14 turnout and voter participation and so on. So I trust the
15:52:21 15 source because of that verification I did with the counsel.

16 Q Okay. Is it within your expertise to be able to clean and
17 match this sort of data? So had you wanted to, could you have,
18 you know, acquired the shapefiles or other election data to be
19 able to get them in a workable format for you?

15:52:51 20 A Thank you, Mr. Harris. That's a very good question,
21 because I want to clarify what I do. I'm an expert on RPV. So
22 my job is to provide empirical data and evidence for the Court
23 to understand RPV related. I am not demographer. So it's not
24 my job to do anything related to shapefiles. I always had a
15:53:19 25 demographer working on the case. Very often there are

1 different demographer, depending on whatever case we are
2 talking. But in this case, I never had -- it's not even
3 necessary for me to -- to use shapefiles because it has nothing
4 do with my job. I don't do those things.

15:53:45 5 Q Thank you.

6 I might have used a bad example. So are you -- so census,
7 for example, census data I believe you referred to several
8 times in your direct examination, and you are aware of the
9 difference between single-race black and any-part black; is
10 that right?

11 A Yes. I am aware of.

12 Q Uh-huh. And so I know that you talked about this some
13 before, and I want to make sure I can understand.

14 So at what point in your analysis, did you use single-race
15 black data?

16 A Yes. As I said in my report, the effectiveness analysis
17 that I reported to the Court in my preliminary report, that was
18 based on any-part black. But I did have time after I submitted
19 my report to analyze yet another plan called Plan A in which I
20 did use any-part black, as well as single-race black. So
21 that's the first important point for me to tell you what I did.
22 And the second is that for my report on RPV, all the tables you
23 saw on RPV analysis, not effectiveness analysis, I did both
24 single-race black, as well as any-part black for endogenous
25 elections I reported there.

1 So when I had time, I always try to double check by using
2 both. And like I said, already in the direct, it doesn't
3 matter. It doesn't surprise me, though. I mean, it's Alabama.
4 We don't have too many African-Americans who identify
15:56:03 5 themselves as multi-racial black by checking multiple boxes.
6 It's not Florida or New York. And there's no concentration of
7 anywhere in Alabama I am aware of that is, you know, a
8 community of multi-racial black, so to speak.

9 So the results that I have reached in all my analysis,
15:56:28 10 including RPV, effectiveness analysis, they're all the same, no
11 matter what I use.

12 Q So, for example, looking at page 9, this is the same Table
13 1 that we looked at a few moments ago.

14 The statistics -- so earlier you said you used both in
15:56:48 15 your RPV analysis. And I'm trying to understand, for example,
16 in this chart, when you say black support for black candidate,
17 and you have a percent, what does black mean in that chart?

18 A Yeah. In the charts about RPV, including Table 1, that's
19 the exact statistic based on my operation of EI using
15:57:14 20 single-race black, or more fully or academically, it's
21 non-Hispanic Voting Age Population, that is black. That's how
22 one should understand this, yeah, that's based on that
23 particular non-Hispanic Voting Age Population that is black.

24 Q Non-Hispanic voting?

15:57:44 25 A Yeah. Some use single race to say the same thing.

1 Because it's non-Hispanic Voting Age Population that is black
2 in the census. There are people who just refer that as, okay,
3 single-race black. But I don't -- I don't -- I never use that
4 term in my report. I use the term non-Hispanic Voting Age
15:58:16 5 Population that is black.

6 Q And it could be that we just are using -- I am sure I'm
7 using the wrong terms, Dr. Liu. And I am trying to understand
8 you say you -- what is your -- what is single-race black? When
9 I say that, do you know understand what I mean?

15:58:35 10 A Yeah. In my report, at least, my -- again, I never use
11 the single-race black, so I cannot speak for everyone. But in
12 my report, the black measurements have two ways -- one is the
13 non-Hispanic Voting Age Population that is black. Some people
14 refer that as single-race black, but I never did that. But
15:59:07 15 there is also any-part black term. The any-part black term at
16 least in my report is the black persons who identify them not
17 only as what I just said non-Hispanic Black VAP, that part, but
18 also, like they check on other boxes, so therefore they have
19 other racial identify being Latino or white or other.

15:59:43 20 In Dr. Hood's report, he called that multi-racial black.
21 Again, I never use that word. Yes, I understand your confusion
22 about that. But, again, I am not demographer. I'm just trying
23 to clarify what I have done in my own RPV analysis.

24 Q So you say as you use it, I believe you define single-race
16:00:07 25 black as non-Hispanic Voting Age Population that is black?

1 A Yes.

2 Q Is that right? So you mean they only check black when
3 identifying their race on the census, is that what you mean?

4 A Again, I don't want to speak for the -- any demographers
16:00:23 5 that have worked -- in particular this one. In the data set I
6 have received from the state demographer person, in particular,
7 there is a column called non-Hispanic Black VAP. That's what I
8 use. And that's my understanding of the so-called single-race
9 black. I cannot speak for any demographer or any other
16:00:50 10 scholars that used a similar term.

11 Q So the data you use that you are referring to with a
12 column that has non-Hispanic BVAP, you are referring to data
13 you received from the demographer in this case?

14 A Yes. Yes.

16:01:05 15 Q Okay. So you didn't go back to verify what sort of racial
16 data that was, you just knew it was from the census; is that
17 right?

18 MR. ROSS: Objection. Asked and answered. He's asked
19 this multiple times.

16:01:24 20 JUDGE MARCUS: Overruled.

21 THE WITNESS: The answer is yes. I am not a
22 demographer. I have always worked in voting rights cases where
23 there is a given demographer, whatever that case, the counsel
24 has provided.

16:01:40 25 BY MR. HARRIS:

1 Q Okay. You talked a little bit about multi-racial voters
2 on your direct examination. And I believe you said that there
3 were very few in Alabama; is that right?

4 A In comparison. I used the word, like unlike Florida or
16:02:05 5 New York where we know for sure there are concentrations of
6 multi-racial, but even some people call biracial say Latino
7 blacks, right? In Florida, we know of -- I am again not a
8 demographer. I know in Alabama, it is usually we are talking
9 about the black community who identify as black only. So
16:02:33 10 that's what I mean.

11 Q So did you examine any data in Alabama about either
12 multi-racial black or any other statistic that could have shed
13 light on that?

14 A I'm not a demographer, so I -- it's not my job to -- to
16:02:58 15 analyze populations. But my -- my belief that in southern
16 states other than Florida and Texas, traditionally we are
17 talking about the black people who identify them as black. I
18 just want to reiterate that the fact that I did both any black
19 and so-called single-race black in my term is non-Hispanic VAP
16:03:39 20 black, I did both, and they show the same results that just
21 reinform my understanding of Alabama, that is, there are not
22 too many the black people that only identify them as
23 multi-racial black, because if that's the case, then, my RPV
24 will give me very different results. Every time I run both,
16:04:06 25 they give me almost identical results. So that's essentially

1 suggests there are not too many multi-racial black. But I am
2 not demographer, so I never did any shapefile analysis or
3 distribution or population in that nature.

16:04:32 4 Q Is this along the same lines of what you said earlier on
5 your direct that it would be impossible for to analyze
6 multi-racial blacks?

7 A It is not my job. In the first place, I am not a
8 demographer. I don't to shapefiles or other ways of geocoding.
9 But I form my opinion based on my RPV analysis and
16:04:56 10 understanding of southern politics and U.S. history. But I am
11 not demographer.

12 Q Okay. I appreciate you stopping me, Dr. Liu, if I am
13 trying to veer out something you didn't mean to testify about.
14 And please keep doing that. I am not trying to lead you
16:05:14 15 astray.

16 But in your direct, you mentioned the shared black
17 experience, I think you said?

18 A Yes.

19 Q In talking about the political cohesiveness. And I --

16:05:26 20 A Yes.

21 Q I think you were referring to multi-racial voters, and I
22 could be mistaken. When you were talking about that shared
23 black experience of racial groups, can you explain more what
24 you were talking about?

16:05:38 25 A Certainly. I will be glad to.

1 The literature increasingly is paying attention to the
2 fact America is becoming more multi-racial. So scholars such
3 as me need to understand how the multi-racial overall picture
4 of USA has impacted how voters voted. And in particular, my
16:06:09 5 research has brought me to the study of the black people in
6 USA, in obviously, there are some states as like I said,
7 Florida, Texas, you know, there are immigrants and multi-racial
8 communities.

9 But the question about whether different kinds of blacks
16:06:37 10 may lead to the voting decisions of these so-called different
11 blacks differently, that's what I am interested as a scholar.
12 I have done research especially related to Obama's Presidential
13 election, because there was a national dialogue about whether
14 Obama represents all black, whether his mom is white. That
16:07:07 15 represents the blackness, a sense in that nature, I have
16 studied extensively, extensively about that. All my studies in
17 empirical research have lead me to believe that though there
18 are increasingly multi-racial fact in the black community
19 itself, the shared blackness has made the Obama Presidential
16:07:39 20 election a very clear piece of empirical evidence to say that
21 they voted for Obama. Regardless whether we are talking about
22 blacks and, say, Florida, or New York, or in Alabama, or even
23 here in Utah, that shared blackness to me has to be reported to
24 the Court when we talk about, you know, issues concerning
16:08:15 25 racially-polarized voting especially in the context of Alabama,

1 which doesn't have multi -- too many multi-racial blacks in my
2 research.

3 Q Okay, Dr. Liu, is it correct that you did not conduct an
4 analysis in this case about the cohesiveness of multi-racial
16:08:39 5 black Alabamians and single-race black Alabamians?

6 MR. ROSS: Objection. Misstates his testimony.

7 MR. HARRIS: Please correct me. I'm --

8 JUDGE MARCUS: Do you understand the question,
9 Dr. Liu?

16:08:53 10 THE WITNESS: I'm trying --

11 JUDGE MARCUS: Either you do or you don't. If you
12 don't, we will have him rephrase it.

13 THE WITNESS: Okay. I -- please do clarify your
14 questions.

16:09:03 15 JUDGE MARCUS: Would you rephrase it, because I am not
16 sure regardless of anyone else sitting in this virtual
17 courtroom that I understand the question.

18 BY MR. HARRIS:

19 Q Dr. Liu, I am curious about the cohesiveness of
16:09:23 20 multi-racial black voters as I think you've described them and
21 non-multi-racial black voters. That's the premise I am getting
22 at here. My question is whether you conducted an analysis
23 about the cohesiveness of those two groups of voters, of
24 multi-racial voters and non-multi-racial black voters.

16:09:40 25 A If I understand your question clearly, if you insist in

1 analyzing multi-racial blacks only, there's no way to do it.
2 There are just few of them in Alabama. But I object to the
3 assertion that I have never done anything about cohesiveness
4 analysis for multi-racial because I did. The any-part black
16:10:08 5 include the multi-racial black community obviously. So I did
6 both. The non-Hispanic Black VAP and any-part Black VAP that
7 includes these multi-racial blacks. So the assertion that I
8 have never done any cohesive analysis for them, I disagree with
9 that general statement.

16:10:34 10 Q Okay. I think this will be my last question on this
11 point. And looking again at Table 9, can you tell me just very
12 simply, you said you use both types of any-part black and
13 single-race black. In the numbers that appear on this chart,
14 are these numbers single race or any-part black?

16:10:59 15 A Are you talking about Table 1?

16 Q Yes.

17 A Yes. Table 1.

18 JUDGE MARCUS: Just stop for a moment. Which table
19 are we referring to, Mr. Harris?

16:11:11 20 MR. HARRIS: I apologize. Table 1 on page 9 titled
21 Estimated Racial Support For Black Candidates in Endogenous
22 Elections.

23 THE WITNESS: Yes. As I noted in my report, my RPV
24 analysis including this one for endogenous elections is the
16:11:31 25 report of the statistical findings by using non-Hispanic VAP

1 that is black.

2 BY MR. HARRIS:

3 Q And that is the number you received from the demographer
4 labeled as such, right?

16:11:54 5 A Yes.

6 Q Okay. Thank you. I would like to ask you a few questions
7 about your effectiveness analysis starting at -- I'm looking at
8 page 15 at this chart.

9 And I know you spoke about this some on direct, but I am
16:12:26 10 still not sure I understand.

11 Can you describe to me what the turnout column on these
12 tables is? And this is Table 4 labeled CD 2, plans compared
13 based on the RPV analysis of the 2018 Lieutenant Governor
14 election.

16:12:44 15 A Yes. The turnout column is the column for the estimation
16 of racial groups turnout. So, for example, the first row is
17 the estimation for the black voters in the 2018 Lieutenant
18 Governor election in the areas based on the adopted plan for CD
19 2.

16:13:21 20 Q Okay. And why -- so do I -- am I reading it correctly
21 that in that first table, for example, turnout is higher for
22 black voters than it is for white voters?

23 A That's a very good question. The black turnout is a
24 variable. It varies in different elections just like white
16:13:50 25 turnout. But black turnout can be different, especially when

1 black candidates aren't involved in certain elections, such as
2 Presidential election in 2008. President Obama as back then
3 the black candidate enhanced the black interest in
4 participating in that unprecedented election.

16:14:24 5 So elections all have their own contextual backgrounds.
6 For this particular election, actually, Table 1 -- I mean,
7 sorry. Table 4 shows CD 2, the black turnout at 43 percent and
8 the white turnout is 42.5, it's basically neck and neck.

9 Q Okay. But that -- okay. Thank you for clarifying that.
16:14:54 10 So that is what this says, though. And you referred to that as
11 an estimate, I believe. Is that an estimate of turnout?

12 A Yes. It's an estimate based on the EI method.

13 Q The estimate you said is based on the EI method. What
14 does -- what do you mean by that?

16:15:20 15 A Yeah. As I explained to the Court earlier, the ecological
16 inference method which Dr. Hood also used is a method to use
17 ecological data from geographic areas, in this case, political
18 precincts, as well as the demographic racial data from Geo
19 units, and see the relationship between the two, the EI
16:15:48 20 technology allow us to estimate not only the breakdown of
21 racial vote for candidates, in this case, Will Boyd, but also
22 the turnout of racial groups.

23 So that's why I used. The census data and the election
24 return matched for the particular election. And this is the
16:16:18 25 racial estimation of turnout that I reported based on EI.

1 MR. HARRIS: Your Honor, if I can have just a moment
2 to confer with a colleague.

3 JUDGE MARCUS: Yes, you may.

4 MR. HARRIS: I apologize for that.

16:17:06 5 BY MR. HARRIS:

6 Q I'll -- so this is an estimate of turnout. Are you aware
7 that you can get actual turnout information from the Alabama
8 Secretary of State to not have to use estimated turnout data?
9 Is that something you considered?

16:17:16 10 A I read Dr. Hood's report. I certainly am aware now that
11 he claimed he used the racial registration data from the
12 Secretary of State, which number one, I was not aware of when I
13 did my RPV analysis. Number two, his report give us the same
14 picture. We both agreed by using whatever his data or my
16:17:53 15 census data, same result, RPV, racially polarized, whether, in
16 his case, he wants to use the 2020, I duplicated his research
17 from the same thing.

18 So I will be happy to see how he did it. He didn't
19 explain what he mean biracial registration data, he one time
16:18:22 20 mentioned historical data, and then he also label as 2020
21 general turnout. I asked the counsel for plaintiff to get
22 detailed explanation of how he got it, what he mean by the
23 racial turnout, how he got the number. To my best of my
24 knowledge, he has not provided, and since I don't know how he
16:18:54 25 did it.

1 Q Okay. I'd like to ask you a couple of questions about
2 your rebuttal report. Do you also have that in front of you?

3 A Yes. Let me -- yes, I am here.

4 Q Okay. And I am looking at page 3 specifically where you
16:19:20 5 are referring to Dr. Hood's, quote, misleading assertion about
6 black Republican candidate success. Do you see that on page 3?

7 A Yes, I am here.

8 Q And I am looking at paragraph 2 where you say, A super
9 white majority district unfortunately does not allow any
16:19:39 10 realistic opportunity to estimate the extent to which RPV or
11 lack thereof may have any influence on the election outcome in
12 a typical racially contested election in Alabama. Did I read
13 that about right?

14 A Yes.

16:19:59 15 Q Okay. So I guess, can you explain to me what this
16 sentence means -- do you just mean, it doesn't show us that it
17 could affect the outcome, or doesn't tell us anything about RPV
18 at all?

19 A No. I didn't say anything at all. I say what I mean,
16:20:20 20 that is, like you already re-read my statement.

21 So this is the super white majority district. And
22 Dr. Hood used that to try to make assertion about the black
23 conservative success in Alabama. First of all, that is not
24 correct, because this is only one small narrow House district
16:20:52 25 with 84 percent, according to his statement, white. So how can

1 you use this single area with so many whites talking about
2 whole RPV? That's my point, number one.

3 Number two, as I followed the statement by presenting more
4 facts about that race itself, to see how indeed it took -- the
16:21:21 5 election took place and how groups participated and voted,
6 indeed, as I said, it's not representative of Alabama, which is
7 all this litigation is about. It's about congressional
8 districting -- redistricting.

9 So just granted, even if we use 73 House State District to
16:21:46 10 talk about all Alabama congressional districts, what can we
11 learn? Well, my paragraph stated clearly if we indeed engage
12 in RPV analysis by using the real election data from that
13 particular race that he talked about, here is the finding.
14 Very few white voters even from that very homogeneous white
16:22:16 15 community participated. It's single digit, certainly less than
16 2 percent. How do you use that election to have this
17 overarching argument for the black conservative candidates'
18 success in Alabama? So I think my statement is very clear, and
19 my facts are here. I didn't see any empirical data from Dr.
16:22:44 20 Hood about this particular election. That's why I used that
21 sentence.

22 Q Okay. So do you dispute that a black Republican defeated
23 a white Republican in the primary in that election?

24 A I didn't have that in my whole paragraph. I don't think I
16:23:07 25 said anything about --

1 Q Okay. I'm not saying you did. I'm trying to make sure.
2 Are you aware that a primary election occurred before this
3 general election?

4 A I think I -- I referred in my report -- in my rebuttal
16:23:26 5 report how he won. He won with just a small number -- small
6 margin. I think I quoted here -- let me double check.

7 He defeated his white opponent in the primary was I
8 believe 50 -- 52 percent or something. So let me double check.

9 51.1 percent vote. So I had that. So, of course, I was
16:24:03 10 aware of that primary.

11 Q Okay. And just to clarify, your opinion in general on
12 this point is that white Republicans do not support black
13 nominees or candidates; is that right?

14 MR. ROSS: Objection. It misstates his testimony.

16:24:35 15 JUDGE MARCUS: Why don't you reframe your question? I
16 am not sure that's exactly what he said.

17 MR. HARRIS: I apologize, Your Honor. Let me see.

18 BY MR. HARRIS:

19 Q In your rebuttal and near the close, this is the last
16:24:52 20 paragraph you have on page 4, before your attestation there,
21 it's -- in that last sentence, you said that Dr. Hood's
22 assertion about white conservative support for black
23 Republicans has little, if any, empirical support; is that
24 right?

16:25:09 25 A Yes, I say that. Yeah.

1 Q Okay. So is it -- is it your opinion, then, that white
2 Republicans do not support black candidates?

3 A It's -- it's stated in my rebuttal. Dr. Hood and I both
4 agree that there's racially-polarized voting. In Alabama in
16:25:33 5 particular, black voters show preference for black candidates
6 who in my -- to the best of my knowledge, are all Democratic
7 candidate at least in my RPV analysis. In his analysis, he
8 used -- even though the -- it's 73, he didn't use any RPV
9 analysis whatsoever. But he agreed with me. At least I quoted
16:26:02 10 him in my rebuttal that the racially-polarized voting hadn't
11 existed in Alabama.

12 Q Okay. Thank you, Dr. Liu. This will be my last little
13 section here.

14 Is it right that in Appendix 2 of your report you included
16:26:23 15 the cases in which you have testified previously?

16 A Yes, correct.

17 Q Okay. I would like to ask you about a few of those.

18 One of them, *League of Women Voters of Florida, et al.*,
19 *vs. Detzner, et al.* Do you recall that case?

16:26:39 20 A Yes.

21 Q What was it about?

22 A The case was about the redistricting in Florida, yes.

23 Q And do you recall if the Court -- do you know what the
24 Court thought of your opinion in that case?

16:26:55 25 A It's been a while. Vaguely.

1 Q What's your recollection?

2 A When I say vaguely, I remember some. Obviously not all of
3 them.

4 Q Sure. And what was your -- you said generally or vaguely.
16:27:17 5 What's your general recollection if you had one?

6 A Yeah. My recollection was that the League of Women Voters
7 sued the government, and the state Legislature asked me to
8 conduct racially-polarized voting, which I did. And -- and so
9 both sides got some support from the courts and lose some
16:27:46 10 points of their arguments, and, yeah, so I did my work about

11 RPV. I vaguely remember some of those elections, but --

12 Q And I am sorry.

13 A Right.

14 Q I'm sorry, Dr. Liu. I may not have asked a good question.

16:28:04 15 Do you remember whether the trial court discussed your
16 testimony or referred to it in its opinion?

17 A I don't remember anything in detail.

18 Q Okay. I would like to show you the opinion in that case,
19 which has not been marked as an exhibit. This is another

16:28:28 20 published opinion from the Florida Supreme Court.

21 Okay. Can you see my screen here?

22 JUDGE MARCUS: Do you want to put a number on it for
23 identification, Mr. Harris?

24 MR. HARRIS: Certainly. Are we at 7?

16:28:44 25 JUDGE MARCUS: I think you used 7. I think your next

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1 one will be 8.

2 MR. HARRIS: Okay. We will refer to this as the
3 Defendants' PI Hearing Exhibit 8.

4 BY MR. HARRIS:

16:28:53 5 Q Can you read the caption of this case, the title of it up
6 here?

7 MR. ROSS: Your Honor, I am going to object. He said
8 he doesn't remember anything about this case, so I am not sure
9 why Mr. Harris is showing to it him.

16:29:04 10 JUDGE MARCUS: To impeach him. We will allow it.
11 Overruled. Let's see if we can move this along, Mr. Harris.
12 Let's get right to the impeachment, please.

13 MR. HARRIS: Absolutely.

14 BY MR. HARRIS:

16:29:15 15 Q Do you recall whether the trial court opined and the
16 Supreme Court affirmed that the data you relied on was suspect?

17 A I don't recall that at all.

18 Q Okay.

19 A I have no recollection of -- what -- what's stated here.

16:29:28 20 Q Okay.

21 A I cannot read.

22 Q I'm sorry. Can you read this highlighted section here?
23 And I mean, literally, can you. I am not asking you to read
24 it.

16:29:41 25 A Yeah, it's much clearer now.

1 Q Okay. And it says, The trial court did not find professor
2 Liu's testimony to be particularly helpful because the data he
3 used to draw his conclusions from was suspect.

4 Do you know what that order might have been referring to?

16:29:57 5 A I don't recall this at all. The Court can certainly
6 decide to either accept or not accept my testimony. But in my
7 20 years of serving as expert witness, I have many courts,
8 quite a few courts that accepted my testimonies. But I don't
9 remember this exact quote at all.

16:30:26 10 Q Do you know whether other courts have disregarded your
11 opinion like the one we just saw?

12 A Could you repeat that question, please?

13 Q Yes. Do you know of any other instance in which a court
14 has treated your opinion that way, either disregarded it or
16:30:44 15 accorded it less weight because of the data you relied on?

16 A No, I don't -- if I understand your question, you are
17 asking me whether I remember any of the courts that did not
18 accept my opinion or like this Court. I don't. In fact, I
19 remember quite a few courts that accepted my opinions.

16:31:07 20 Q Okay.

21 MR. HARRIS: And I'm not trying to belabor this point,
22 Your Honor. This will be my last exhibit.

23 BY MR. HARRIS:

24 Q I am going to show you another court opinion from Second
16:31:20 25 Circuit Court of Appeals in New York. Do you recall giving

1 testimony in this case?

2 A Yes, I remember this case.

3 Q And do you recall giving testimony specifically at the
4 preliminary injunction hearing in this case?

16:31:30 5 A That's a decade ago. If you want to -- I mean, obviously,
6 what details?

7 Q It's true -- do you recall giving different sets of
8 testimony? I'm just trying to make sure it's not confused,
9 because there's two different sets of opinions, and I am not
16:31:48 10 trying to -- I am trying to make sure it's not -- I am not
11 confusing the issue.

12 A (Nodded head.)

13 Q What I will represent to you what I am showing you here is
14 an opinion based on the preliminary injunction proceedings in
16:31:59 15 that case, which is the same level of the proceedings we are at
16 here.

17 And do you recall the Court's treatment of your opinion in
18 this case?

19 A I remember vividly the Court eventually reversed its
16:32:14 20 original decision and fully embraced my opinion, if I recall
21 clearly. Is this the first one -- decision? I don't know what
22 you are talking about here. I have not seen this.

23 Q That's all right. I apologize. I know that all of these
24 -- courts love to find a way to make things confusing it seems.

16:32:37 25 JUDGE MARCUS: Mr. Harris, would you get right to the

1 question, please.

2 MR. HARRIS: Yes, Your Honor.

3 BY MR. HARRIS:

4 Q Do you recall that the Court found that you omitted data
16:32:44 5 and that the record provided no insight as to why the data
6 wasn't analyzed and that from when similar elections were?

7 A Again, I mean, there are so many details that I cannot
8 recall everything.

9 Q Okay.

16:32:59 10 A But this Court, this particular Court eventually decided
11 to use my opinion to find -- to have their final verdict. So I
12 stand by my original report in the Albany case.

13 Q Okay.

14 MR. HARRIS: Thank you. That is -- those are all the
16:33:20 15 questions I have.

16 JUDGE MARCUS: All right. Thank you. Mr. Ross, are
17 you ready to go forward, or do you need a short break? What's
18 your pleasure?

19 MR. ROSS: If we could have just five minutes, Your
16:33:31 20 Honor.

21 JUDGE MARCUS: You sure can.

22 (Recess.)

23 JUDGE MARCUS: Mr. Ross, are you ready to proceed?

24 MR. ROSS: Yes, Your Honor.

16:39:13 25 JUDGE MARCUS: Thank you much. You may go forward.

REDIRECT EXAMINATION

BY MR. ROSS:

Q Dr. Liu, I just have a few additional questions for you.

16:39:25 In looking at the 2020 Presidential election, you were
able to identify black voters preferred candidate, right?

A Could you repeat that question, please?

Q Yeah, sure. In looking at the election for the 2020
President -- sorry. Strike that.

16:39:42 In looking at the 2020 Presidential election, you were
able to identify black voters' preferred candidate, correct?

A Yes.

Q And it's possible to conduct RPV analysis for uni-racial
elections, right?

16:39:59 A Yes. I stated the EI technology allow us to analyze any
elections as long as we have the data from the geographic
areas. And then there may be the clear statistical result that
groups don't vote the same way. So you have racially polarized
that's factually possible, of course.

16:40:29 Q Right. But it's your position as a scholar, though, that
biracial elections are more important than uni-racial
elections; is that right?

16:40:53 A Yeah. I also reemphasize, not also in my report but here
during in both direct and cross, biracial elections are the
only elections that allow us to evaluate how different voter
groups would make their decisions given a choice between

1 candidates from their own racial group and alternatives.

2 So only biracial elections allow us to do that. That's
3 why it's so important for us to report to the Court for these
4 biracial elections when given the choice how voters decide.

16:41:20 5 Q But, again, you're not saying that you can't conduct an
6 RPV or effectiveness analysis for elections involving only
7 white candidates, right?

8 A Right. Correct.

9 Q Okay. Thank you.

16:41:34 10 And just you had talked about -- you went over some of the
11 Democratic primaries that you analyzed. Is it right that the
12 in some instances there was sort of smaller majority of black
13 voters or white voters were voting for different candidates; is
14 that right?

16:41:55 15 A Yes.

16 MR. ROSS: Why don't we if, Mr. Ang, if you can pull
17 up Table 1 again.

18 And just that first row there.

19 BY MR. ROSS:

16:42:16 20 Q Is it right that the black support for the black candidate
21 was about 54 percent?

22 A Yes.

23 Q And white support for the white -- for the black candidate
24 was only about 17 percent?

16:42:29 25 A Yes.

1 Q And so Mr. Harris was positing a scenario in which, you
2 know, there was 49 percent white support for black candidate
3 and 51 percent for a black candidate. That's not the scenario
4 here in your report, right?

16:42:47 5 A Again, like I already said, when I answered his question
6 that the hypothetical 51 versus 49, in my 20-plus years of
7 academic research, I haven't found exact that kind. But one
8 would be curious if that happens, why that happens. But this
9 one certainly is not.

16:43:11 10 Q There's a large difference between the black and the white
11 voter support, right?

12 A There are 53.16, that is more than 35 percent.

13 Q Thank you, Dr. Liu.

14 MR. ROSS: You can take that down, Mr. Ang.

16:43:27 15 BY MR. ROSS:

16 Q For the endogenous elections, I believe that you said this
17 on the direct, but just to clarify. For the endogenous
18 elections, you looked at both any-part black and single-race
19 black, correct?

16:43:44 20 A Could you repeat that question, please?

21 Q Sorry. For your RPV analysis of endogenous elections, you
22 used both any-part black and single-race black, correct?

23 A Correct.

24 Q And whether you used any-part black or single-race black,
16:44:01 25 the RPV analysis essentially came out the same; is that right?

1 A Yeah. Like I repeatedly reported to the Court, including
2 today, the results are the same, no matter whether you are
3 doing endogenous particular elections by using single race or
4 any part to do RPV or effectiveness analysis that I conducted
16:44:27 5 for Plan A, they are the same. And that just support my belief
6 that in Alabama they're just too few multi-racial blacks that
7 would make any difference whatsoever.

8 Q Okay. And just to be clear, what you were doing in your
9 effectiveness analysis, you were applying the results of the
16:44:48 10 2018 election to the plan adopted in 2021, correct?

11 A Yes.

12 Q And so what voter turnout might have been in a 2018
13 election, you were sort of -- whatever that turnout was, you
14 were making an estimate, right, because --

16:45:06 15 A Yes, yes.

16 Q -- you were applying 2018 results to 2021 -- a 2021 plan,
17 correct?

18 A Yes. Those are, again, by EI technology, we estimate in
19 the particular election given a plan if the district is drawn
16:45:24 20 that way, that district has that turnout.

21 Q And, again, for your effectiveness analysis to determine
22 whether or not a black or a white candidate won, you were
23 looking at ultimately what the actual results of the election
24 were so the turnout didn't -- the turnout aspect of your RPV
16:45:44 25 analysis didn't matter, right?

1 A Yes. That's a very important fact for the effectiveness
2 analysis. I understand that my result is simply based on total
3 votes if the district is joined in that way for that particular
4 election, so there's no EI or statistical inference whatsoever
16:46:08 5 when I reported that. But Dr. Hood's report used his ways of
6 analyzing RPV, and then turnout, and then create a hypothetical
7 election that he called his functionality analysis to get some
8 kind of result. But those are not actual results. Mine, in my
9 report, those are the vote tally if the district is drawn that
16:46:40 10 way.

11 Q Thank you, Dr. Liu.

12 And Mr. Harris asked you about the *Pope vs. Albany County*
13 case. I believe you already said this. Just to confirm, the
14 district court ultimately agreed with you there was
16:46:56 15 racially-polarized voting, correct?

16 A Yes.

17 Q The district court found that there was a Section 2
18 violation?

19 A Yes.

16:47:03 20 Q Okay. Thank you.

21 MR. ROSS: No more questions, Your Honor.

22 JUDGE MARCUS: Judge Manasco, any questions?

23 JUDGE MANASCO: None from me.

24 JUDGE MARCUS: Judge Moorer?

16:47:15 25 JUDGE MOORER: No, sir.

1 JUDGE MARCUS: I have one for you, if I might,
2 Dr. Liu. I want to be sure that I understand this correctly.

3 THE WITNESS: Yes, Your Honor.

4 JUDGE MARCUS: You did an RPV analysis using 13
16:47:31 5 elections, correct.

6 THE WITNESS: Correct. For my initial report.

7 JUDGE MARCUS: Yes. I am talking about in report 1,
8 and seven of those initially were endogenous elections.

9 THE WITNESS: Yes.

10 JUDGE MARCUS: And six were exogenous elections,
11 correct?

12 THE WITNESS: Correct.

13 JUDGE MARCUS: When you did your analysis of all 13
14 endogenous and exogenous, did you do that analysis both based
16:48:05 15 on single-race black and any-part black?

16 THE WITNESS: For the endogenous elections.

17 JUDGE MARCUS: Yes, sir.

18 THE WITNESS: Yes, I did. But for exogenous
19 elections, which are supplemental evidence for me to report to
16:48:25 20 the Court, I didn't have time to do both any part and single
21 race.

22 So only for the endogenous elections I did both.

23 JUDGE MARCUS: So what did you do for the exogenous
24 elections?

16:48:43 25 THE WITNESS: For the exogenous elections, I did the

1 non-Hispanic VAP that is black. Some people call that single
2 race. But that's the term I use.

3 JUDGE MARCUS: That was in your first report or in
4 your second report?

16:49:01 5 THE WITNESS: In my first report.

6 JUDGE MARCUS: And what about in your second report?
7 Did you address this question -- just bear with me for a
8 moment.

9 THE WITNESS: Sure.

16:49:10 10 JUDGE MARCUS: Did you address this definitional
11 question in your second report?

12 THE WITNESS: In my second report, I believe I did
13 also the -- the non-Hispanic VAP that is black, because those
14 are exogenous elections.

16:49:41 15 JUDGE MARCUS: Final question from me: In your
16 analysis, did you find any difference as to racial-polarization
17 voting, whether you used one metric of black or a different
18 metric?

19 THE WITNESS: They are very close. They're not in
16:49:56 20 front of me. But the results of using non-Hispanic Black VAP
21 versus any-part Black VAP are very close.

22 I will be glad to report to the Court the details. But
23 they do vary statistically, but none of them come to the point
24 where I need to change anything at all, even the level of -- or
16:50:31 25 the gap of RPV is pretty close.

1 JUDGE MARCUS: All right. Thank you. Any follow up
2 from counsel based on anything that I asked? Let me start with
3 Mr. Ross, and then Mr. Harris.

4 MR. ROSS: No, Your Honor. Thank you.

16:50:48 5 JUDGE MARCUS: Mr. Harris?

6 MR. HARRIS: No, Your Honor.

7 JUDGE MARCUS: All right. Anyone have any questions?
8 Any further questions for Dr. Liu?

9 All right. Seeing none, Dr. Liu, we thank you, and you
16:51:00 10 are excused.

11 THE WITNESS: Thank you, Your Honor.

12 JUDGE MARCUS: We will take a short break, but before
13 we do, just tell me where we are with regard to your next
14 witness.

16:51:13 15 MS. KHANNA: Your Honor, our next witness will be
16 Mr. Jones for the Caster plaintiffs.

17 JUDGE MARCUS: Okay. And what's your timing on that?
18 Do you think we can get Jones in before we break?

19 MS. KHANNA: I do.

16:51:26 20 JUDGE MARCUS: That is through for the day.

21 Mr. LaCour, are you going to be conducting the examination of
22 Mr. Jones?

23 MR. HARRIS: I believe Mr. Bryant Smith will be on
24 behalf of the state.

16:51:40 25 JUDGE MARCUS: Do you think we have enough time to get

1 it in? We will go as far we can go.

2 MR. HARRIS: I got a thumbs up from Mr. Smith. He
3 thinks so.

4 JUDGE MARCUS: Okay. Many, many thanks. We will take
16:51:50 5 a ten-minute break at this point.

6 (Recess.)

7 JUDGE MARCUS: Are the parties ready to proceed?

8 MS. KHANNA: Yes, Your Honor. For the Caster
9 plaintiffs, my colleague Dan Osher will be taking Mr. Jones'
16:59:51 10 testimony.

11 JUDGE MARCUS: And, Mr. Smith, you are ready, as well?

12 MR. SMITH: Yes, Your Honor.

13 JUDGE MARCUS: And, Mr. Osher, you will be doing the
14 questioning of Benjamin Jones, correct?

17:00:03 15 MR. OSHER: That's correct, Your Honor.

16 JUDGE MARCUS: All right. Thank you very much.
17 Mr. Jones, if you would be kind enough to raise your right hand
18 and repeat after me.

19 BENJAMIN JONES,
17:00:06 20 having been first duly sworn, was examined and testified as
21 follows:

22 JUDGE MARCUS: If you would be kind enough to give us
23 your full name for the record.

24 THE WITNESS: Benjamin Jones.

17:00:24 25 JUDGE MARCUS: Thank you, sir. And you may proceed,

1 counsel, with your direct.

2 MR. OSHER: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. OSHER:

17:00:30 5 Q Good afternoon, Mr. Jones.

6 A Good afternoon.

7 Q Thanks for offering your time to appear today. Can you
8 hear me okay?

9 A I can, yes.

17:00:38 10 Q Great. Are you a plaintiff in this lawsuit?

11 JUDGE MARCUS: Let me just stop you for a moment,
12 Mr. Osher. Maybe if you can lean in and just keep your voice
13 up so that our court reporter can hear you, as well as all of
14 us in this virtual courtroom. Thanks very much.

17:00:56 15 MR. OSHER: No problem.

16 BY MR. OSHER:

17 Q Mr. Jones, are you a plaintiff in this lawsuit?

18 A I am.

19 Q Where do you live?

17:01:03 20 A I live in Montgomery, Alabama.

21 Q Do you know what congressional district you live in?

22 A I live in Congressional District Number 2.

23 Q Where did you grow up?

24 A I grew up in Barbour County, Alabama, Eufaula, which is
17:01:21 25 where I was born and raised.

1 Q And do you have family in Alabama today?

2 A I do have family in Alabama. I have sister-in-law and
3 niece and nephew here in the Montgomery area, and I grew up, of
4 course, in Eufaula, so I have cousins and other relatives here
17:01:43 5 in Alabama.

6 Q And is that in Barbour County; is that right?

7 A That is in Barbour County.

8 Q Mr. Jones, how do you identify in terms of your race?

9 A Black.

17:01:54 10 Q Could you tell me a bit about your educational background?

11 A I graduated high school Barbour County in the school
12 system, public school system. Studied chemical engineering at
13 Tuskegee University, Tuskegee, Alabama. Studied -- well,
14 jurisprudence at Jones School of law Faulkner University in
17:02:22 15 Montgomery. Studied theology at Birmingham Theological
16 Seminary in Birmingham, Alabama, and studied public policy and
17 administration at Virginia Commonwealth University in Richmond,
18 Virginia.

19 Q And what do you currently do for a living?

17:02:37 20 A Currently, I'm the CEO of Montgomery Community Action
21 Agency working with the Community Action Committee Agency,
22 Inc., and I pastor a church in the Pike Road area outside of
23 Montgomery County.

24 Q Can you tell us a little bit about Montgomery Community
17:02:56 25 Action, what does that organization do?

1 A Montgomery Community Action Agency is a non-profit agency.
2 We have the Head Start program where we served 1,299 children
3 and families with Early Head Start and Head Start program. We
4 have senior program. We administer the CSBG -- Community
17:03:23 5 Services Block Grant programs. We administer LIHEAP -- Low
6 Income Heat and Energy Assistance Program. We have senior
7 programs. We have youth programs. And housing programs. We
8 also have a self-sufficiency program where we help individuals
9 with training and getting jobs.

17:03:41 10 Q Can you tell us what the general demographic of the
11 community that Montgomery Community Action services?

12 A Montgomery Community Action generally serves a population
13 with demographics of about 80-plus percent black, and the other
14 would be about I guess 10 percent, 15 percent white. And then
17:04:08 15 the others would just be that few numbers of Hispanics and
16 Latinos.

17 Q And can you tell us a little bit about your church? Where
18 is it located?

19 A My church is located in the outskirts of Montgomery
17:04:22 20 County, Pike Road area. And the demographics of my church is
21 about 90 percent black and about 10 percent white.

22 Q So through this work at Montgomery Community Action and
23 pastoring your church, would you say that you have had the
24 opportunity to become familiar with the interests and needs of
17:04:40 25 the black community in your area?

1 A I would say so, yes.

2 Q Okay. Mr. Jones, are you registered to vote in Alabama?

3 A I am.

4 Q Do you vote regularly?

17:04:50 5 A Never missed an election since I was voting age.

6 Q Would you say it's important to you?

7 A It's extremely important to me. Voting is extremely
8 important. I am 1 of 16 children raised by my parents, and
9 voting was extremely important to them, and my parents
17:05:13 10 participated in the voting right marches of the 1960s.

11 Q Can you tell us a little bit more about your father's
12 activism?

13 A My father was extremely active in marching and
14 participating in the Civil Rights marches of 1960s along with
17:05:31 15 some of my older sisters and brothers. And they went to jail
16 on a number of occasions for voting, and my mother -- I think
17 they just had a strategy that they put together, and my mother
18 had to stay out, so she wasn't allowed to go to the marches,
19 but someone had to be out to get them out of jail, and so my
17:05:49 20 understanding was they went on several occasions.

21 Q Being able to vote, what does that mean to you?

22 A Well, for me, voting is extremely critical. It is the
23 opportunity to be a part of the operation of local, state, and
24 national government. Partly because we are governed by the
17:06:18 25 voting of individuals. We are supposed to be led by ourselves

1 in terms of voting and selecting a representative to represent
2 our interests. So it's extremely important to have my
3 interests represented.

17:06:33 4 Q Do you know who currently represents the Second
5 Congressional District?

6 A Yes. Barry Moore.

7 Q And prior to last year, do you know who represented the
8 Second Congressional District?

9 A Martha Roby.

17:06:43 10 Q Did you vote for Barry Moore in 2020?

11 A I did not.

12 Q But he won nonetheless?

13 A He did.

14 Q And did you vote for Martha Roby the election cycle before
17:06:55 15 then?

16 A I did not.

17 Q And she won nonetheless?

18 A She did.

19 Q Do you know whether since 2012 the congressional elections
17:07:05 20 in your district have been competitive?

21 A Well, I wouldn't say they've been competitive. Since I
22 recall, Martha Roby I think ran in 2014 was Eric Wright, and I
23 think that was about a 30-something percent swing. She had
24 about 60-plus percent, and the same happened with Barry Moore
17:07:35 25 with Phyllis Harvey-Hall. He had about 60 something, and she

1 had about 30 percent. So I wouldn't say that was very
2 competitive.

3 Q So those are 30-point margins?

4 A Correct.

17:07:45 5 Q And both of those races that you identified, Mr. Wright
6 and Ms. Harvey-Hall, those were both black candidates?

7 A They were, yes.

8 Q In light of these results, do you feel like you have a say
9 in Alabama's congressional elections?

17:08:02 10 A Well, for my congressional district, I think that is
11 almost a foregone conclusion that the conservative candidate is
12 going to win in the general election, yes.

13 Q And you said that you did not support Mr. Moore last
14 election, and you did not support Ms. Roby before then. Can
17:08:28 15 you tell us why you voted for the candidate that opposed those
16 representatives?

17 A Well, certainly because the -- because of my work with
18 Community Action and my pastoring and just knowing the black
19 community that I serve here in Montgomery County, I haven't
17:08:53 20 felt that Martha Roby have represented the interests of the
21 blacks in this -- in this Montgomery area. And just judging
22 from the campaign for Barry Moore, I did not see where he would
23 represent the interest of the blacks, as well.

24 Q Mr. Jones, what result are you trying to achieve in this
17:09:20 25 lawsuit?

1 A Well, I would like to just see for the blacks in
2 Montgomery in this area a candidate who at least have an
3 opportunity to represent the interests of the black community.

17:09:44 4 Q And is it your understanding that to bring about that
5 result, the plaintiffs in this case are seeking to create a
6 second majority-black district? Is that your understanding?

7 A That is correct, yes.

8 Q If that were to happen, do you think it's likely that
9 someone else who has not served your congressional district
17:10:00 10 would then be elected?

11 A I believe so, yes.

12 Q Uh-huh. And would that change in representation -- do you
13 think that would benefit or harm the black community in your
14 area?

17:10:10 15 A Well, I think it can only benefit the black community,
16 certainly the more representation that we have, the better the
17 opportunity of our interests to be served.

18 Q Mr. Jones, based on your experience working in Montgomery,
19 does the black community there have unique needs relating to
17:10:34 20 education?

21 A I would say that the black community has unique needs,
22 because in Montgomery public school system in Montgomery
23 County, population of blacks in the school system is probably
24 about 85 to 90 percent, and certainly Montgomery County has for
17:10:55 25 a long time had a very low tax base for millage for the school

1 system, and the majority of the whites in Montgomery County are
2 in the public schools. And I mean -- in the private schools --
3 blacks in the public schools. And so with the low tax base,
4 the school system is substandard. So the education is
5 substandard. And so then that causes issues for blacks, in
6 terms of getting a good quality education and going from that
7 to getting a good quality job to serve their families.

17:11:18 8 Q What about affordable child care for kids who aren't yet
9 of school age? Is that a problem for a unique problem -- I
10 should say -- sorry. Does the black community have a unique
11 need in that area, as well?

12 A Oh, absolutely. Child care is expensive for everybody.
13 But when you're struggling to hold more than one job or so to
14 support your family, then it becomes extremely critical, and so
15 with the cost of child care, it is extremely difficult on
16 blacks who are perhaps working low -- low-income jobs in the
17 beginning. So that just makes it all the more difficult.

18 Q Are you aware that a recent federal legislation that would
19 have addressed this unique -- this particular need that the
20 black community has?

21 A Well, I think that the bipartisan infrastructure bill had
22 some funds in it for creating jobs and perhaps addressing some
23 needs that could have been helpful or would be helpful or will
24 be helpful to blacks in Montgomery County because that bill did
25 pass.

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1 Q Do you know if Representative Moore voted for that
2 infrastructure bill?

3 A No. He voted against it. As a matter of fact, the entire
4 delegation did, except for Terri Sewell.

17:13:02 5 Q Uh-huh. And Terri Sewell represents -- am I correct, she
6 represents a majority-black district?

7 A She does, yes.

8 Q What about the Build Back Better Act? Are you familiar
9 with that?

17:13:13 10 A I am.

11 Q Yes. Do you know whether that legislation addresses the
12 need of affordable child care?

13 A It does, yeah. There is affordable child care in that I
14 think the -- a few hundred billion in there, couple of hundred
17:13:31 15 billion for --

16 Q And?

17 A Child tax credit and some -- some that are in there for
18 our pre-K, which is a part of what we work with, as well, so
19 all of that would be beneficial to blacks in the low-income
17:13:49 20 bracket.

21 Q Do you know how Representative Moore voted on the Build
22 Back Better Act?

23 A He voted against it.

24 Q And the Build Back Better Act and the infracture act, did
17:13:58 25 you want Representative Moore to support them?

1 A Absolutely.

2 Q And do you think that his opposition to these pieces of
3 legislation did it serve or disserve the black community in
4 your area?

17:14:09 5 A Definitely disserved the community.

6 Q You talked about this a bit. Does the black community in
7 your area have unique needs related to employment?

8 A Yes absolutely.

9 I mean, clearly, employment for everyone was important.

17:14:30 10 But if you start out with an education system that is poor,
11 then it makes it all the more difficult to get good quality
12 jobs, a good high-paying job, and so for the black community,
13 for a large portion of the black community in Montgomery
14 County, if they're seeking a job, they're seeking jobs in those
17:14:56 15 areas that are going to be low wages. And so that makes it all
16 the more difficult for them to get good quality employment.
17 And then that also bleeds then into affordable housing, because
18 if you don't have a good quality job, it's difficult to get
19 good quality housing and all the other issues that comes along
17:15:20 20 with it like black health care and things of that nature.

21 Q Based on your experience, has the COVID-19 pandemic
22 exacerbated the black community's needs related to employment?

23 A Most definitely. In our -- in this agency, we've seen a
24 tremendous increase over the last couple of years in those
17:15:42 25 persons who have come to seek assistance from the program.

1 That's true across all of racial groups in -- for us, but
2 blacks were already the higher number, and that just compounded
3 it to be even greater. So we have seen a tremendous amount of
4 blacks seeking assistance.

17:16:03 5 Q Are you familiar with the American Rescue Plan?

6 A I am. Yes.

7 Q Is that otherwise known as the 2021 COVID Relief Bill?

8 A It is, yes.

9 Q Did that legislation -- do you know whether that
17:16:19 10 legislation had provisions providing assistance to people who
11 lost their job during the pandemic?

12 A It did. And had provisions for funding for our agency, as
13 well, to assist people, so it was a bill that provided
14 assistance for a number of families on that level, yes.

17:16:38 15 Q And how did Representative Moore vote on that piece of
16 legislation?

17 A He voted against that also.

18 Q And did you want him to support it?

19 A Absolutely.

17:16:47 20 Q Did his vote against that bill serve or disserve the black
21 community in your area?

22 A Definitely disserved the black community.

23 Q You talked a bit about health care. Is that a unique need
24 among the black community in your area?

17:17:03 25 A Health care is a tremendous need. We have in the black

1 community, Montgomery County, there's a lot of diabetes, a lot
2 of preexisting conditions that was aggravated by COVID-19 or
3 brought out or highlighted by COVID-19. And so there's a
4 tremendous need for health care.

17:17:21 5 Q When she was in office, did Martha Roby take any actions
6 relating to legislation dealing with health care?

7 A The only thing that I could think of is that she voted to
8 repeal the Affordable Care Act.

9 Q Did you want her to support the repeal of the Affordable
17:17:41 10 Care Act?

11 A Not at all.

12 Q Why not?

13 A I mean, of course, the Affordable Care Act if it was
14 repealed would have certainly hurt a tremendous number of black
17:17:53 15 families in Montgomery County. As a matter of fact, we were
16 hoping that there would be more support for expanding it and
17 for Alabama accepting the expansion of Medicaid.

18 Q And has, to your knowledge, has Alabama expanded Medicaid
19 under the Affordable Care Act?

17:18:12 20 A Not -- not to date, no.

21 Q And what effect has that had on the black community?

22 A It's certainly has been a negative for the black community
23 for the entire state for those who are poor and impoverished
24 and in need of health care.

17:18:29 25 Q We spoke about the Build Back Better Act a bit ago. Do

1 you know whether that contained provisions helping those who
2 don't have access because of the failure to expand Medicaid
3 under the Affordable Care Act?

4 A It does have provisions for health care.

17:18:46 5 Q And Representative Moore voted against that legislation?

6 A Absolutely.

7 Q What about access to utilities, quality and affordable
8 utilities, is that an issue for the black community in your
9 area?

17:19:05 10 A It is. As I stated earlier, the agency here at Community
11 Action, we assist families with energy assistance, and we have
12 a tremendous number of blacks who have -- COVID has increased
13 that number, but we have a tremendous number of blacks that
14 come to our agency for assistance with energy because of the
17:19:32 15 need for it and the difficulty of maintaining it.

16 Q Any of the legislation we have talked about, did that
17 address that need?

18 A Well, I think -- yeah, the American Rescue Plan assisted
19 in that area. Build Back Better will provide funding to help
17:19:55 20 that, as well. And some of the climate change items that are
21 there, as well.

22 Q Any other pieces of federal legislation that you believe
23 Representative Moore's positions have been adverse to the black
24 community in your area?

17:20:10 25 A I would say that -- well, the Voting Rights Act have been

1 something that would have been -- will be beneficial to the
2 black community if it's passed. And Representative Moore has
3 not voted in favor of that.

4 Q Can you tell us a bit more about why you think those
17:20:36 5 voting-related pieces of legislation would benefit the black
6 community?

7 A Well, because clearly as I stated earlier, voting is one
8 of those things that is important because it gives us an
9 opportunity to select those representatives who would represent
17:20:54 10 our interest. And if we are not clearly -- if we don't have
11 that clear right to have better access to voting, better access
12 to voter registration, and all of those things, then it's
13 adverse to the black community.

14 Q The things that we have talked about -- education, health
17:21:15 15 care, employment, those -- you are not asserting that white
16 residents of Alabama don't have needs related to those areas,
17 right?

18 A Oh, absolutely not. Those are things that every race will
19 need, and every person in Alabama would really need to have
17:21:36 20 access to all of those things. I guess my assertion is that
21 blacks are behind in all of those things already. We have a
22 higher rate of uneducated individuals. We have a higher rate
23 of persons in need of health care, a higher rate of persons in
24 need of affordable housing, and certainly a higher rate of
17:21:59 25 blacks in prison. So criminal justice is important to us, as

1 well, than it is whites in jail.

2 So we are -- our representation is out of sort for a
3 number of things. And our population in the state of Alabama
4 is about 20-plus percent, 25, 27 percent. And our
17:22:23 5 representation in the prison is about 50-plus percent.

6 Q We have been talking a lot about federal legislation,
7 which I guess that is not surprising because this case is about
8 congressional districts.

9 Aside from federal legislation, do you think a
17:22:39 10 congressional representative can also impact state policy?

11 A Well, I certainly think so. I certainly think that
12 because of the way state legislators approach congressional
13 delegation for support on things that they want, I think that
14 gives the opportunity for collaboration and that collaboration
17:23:05 15 could be helpful to local policies, as well as federal policy.

16 Q And you spoke earlier about Representative Sewell who
17 represents District 7, which is a majority-black district. Do
18 you think she has used her political capital as a federal
19 legislator to impact state policy that's been beneficial to the
17:23:25 20 black community?

21 A Oh, absolutely. I think that she has taken every
22 opportunity to collaborate with state officials and state
23 government and do what she could from her position to assist in
24 those things that are of interest to blacks in her district and
17:23:44 25 throughout the state.

1 Q Mr. Jones, are you a member of a political party?

2 A I am. I am a registered Democrat.

3 Q Do you have a sense of whether in Alabama black voters
4 tend to support either of the major political parties?

17:24:02 5 A Of course, black voters in Alabama tend to vote
6 Democratic. And I think, of course, that's based on looking
7 for who would best represent the black interest.

8 Q Can you tell us a little bit more -- well, why don't you
9 tell us why you are a member of the Democratic Party.

17:24:21 10 A Well, again, I will stress that I -- I am a part of the
11 Democratic Party only because it represents more of those
12 interests that I have in terms of things I would like to see
13 like the Build Back Better Act or the infrastructure bill that
14 would help the American Rescue Plan and anything that could
17:24:44 15 help the population that I serve, which is not necessarily
16 having to be black, just those persons who are low income and
17 in need, and those things are better represented by the
18 Democrats at this time.

19 Q Do you have a sense of whether white voters in Alabama
17:25:07 20 tend to support one of the two major parties?

21 A Well, certainly in Alabama, the majority of white voters
22 support the Republican Party.

23 Q Do you think -- to what extent, if any, do you think this
24 division is influenced by race in issues explicitly tied to
17:25:27 25 race?

1 A Well, I mean, from all of my voting career and all of my
2 time voting in Alabama, I would say that I am -- I have always
3 had a sense that race was playing a part in every election.
4 When I think about the southern strategy and how race always
17:25:49 5 seems to come up in how it's always somehow even if it's
6 indirect or direct, it somehow plays a part in our voting in
7 Alabama.

8 Q Do you think that division has gotten better or worse in
9 the last few years?

17:26:04 10 A I'd say it's gotten much worse.

11 Q Can you tell us why you say that?

12 A Well, it appears that there is no compromise or
13 collaboration as it relates to the things that would represent
14 the interest of all people, including those who are low income
17:26:27 15 and impoverished and in need of health care, things of those
16 nature. It seems that those things are not even considered.
17 It's just it seems that everything goes along partisan lines.

18 Q And --

19 A And race becomes a big part of that since blacks tend to
17:26:48 20 be the ones who have the higher numbers in the negative
21 categories.

22 Q Mr. Jones, are you familiar with the region called the
23 Black Belt?

24 A I am, yes.

17:27:01 25 Q Does the black community have an important history in the

1 Black Belt?

2 A Oh, no doubt. Absolute.

3 Q To what extent, if any do you think there are connections
4 between the black communities in your area and those who live
17:27:17 5 in the Black Belt?

6 A Well, those items that we talked about earlier, education,
7 is an issue in the Black Belt because of the poverty, the level
8 of poverty, the low tax base in the Black Belt, along with that
9 would be health care issues because it's very rural in the
17:27:34 10 Black Belt. And there's not a lot of quality health care
11 available to people in the Black Belt. Affordable housing
12 would be the same issue in the Black Belt, as well as criminal
13 justice is an issue in the Black Belt.

14 So Montgomery is tied to the Black Belt. It's almost one
17:27:55 15 and the same for the black population.

16 Q And joining those two areas together to enable black
17 voters in the area to elect their candidate of choice, would
18 that allow those communities to receive better representation?

19 A I think it would, yes.

17:28:19 20 MR. OSHER: Mr. Jones, I have no more questions for
21 you. Thank you.

22 JUDGE MARCUS: All right. Thank you.

23 Cross-examination, Mr. Smith?

24 MR. SMITH: Thank you, Your Honor.

17:28:26 25 CROSS-EXAMINATION

1 BY MR. SMITH:

2 Q Good evening, Mr. Jones. Can you hear me okay?

3 A Yes, sir. Good evening, Mr. Smith.

4 Q All right. Mr. Jones, you spoke about the organization
17:28:35 5 you lead, the Montgomery Community Action, right?

6 A That's correct.

7 Q And that organization, you all have programs that provide
8 financial assistance to Montgomery residents. Did I understand
9 that right?

10 A That is correct. Montgomery County we serve.

11 Q And do you receive grants from the state that fund any of
12 those programs?

13 A We receive grants from the federal government that do come
14 through the state, LIHEAP and CSBG.

15 Q You do receive some grants that are administered by ADECCO
16 for example?

17 A That is correct. Absolutely.

18 Q And, Mr. Jones, I think you testified that you pastor a
19 church in Pike Road; is that right?

20 A That is correct.

21 Q And that's in the eastern part of Montgomery County, east
22 of the city, right?

23 A That's correct.

24 Q And, Mr. Jones, would you support a congressional plan
17:29:28 25 that put your church in a district that would be represented by

1 a Republican representative?

2 A It is now, yes.

3 Q What I'm asking, I think, Mr. Jones, is whether you would
4 support a new congressional plan that had the result of putting
17:29:47 5 your church in a district that would be represented by a
6 Republican representative?

7 A I am not -- well, I guess I am not really clear. Since
8 it's already there, I am not clear that I understand the
9 question.

17:30:06 10 Q Well, let me share my screen with you, Mr. Jones.

11 Mr. Jones, this is Caster Plaintiffs' Exhibit 19, I
12 believe. And this is a proposed congressional map.

13 Mr. Jones, based on your familiarity with your church and
14 with Montgomery County, would it look to you like your church
17:30:44 15 would probably be in the green portion of this map?

16 A 231? Yes. Some portion of it.

17 Q And, Mr. Jones, if that green district was represented by
18 a Republican representative, would you support that plan?

19 A I mean, I guess I'm not really sure that it would make a
17:31:11 20 difference on that end of it, so.

21 Q Mr. Jones, would you prefer if your church were in a
22 district that was represented by a Democratic representative?

23 A Well, I guess my main interest would be a person who would
24 serve the interests of the black community. So if that would
17:31:32 25 be a Democratic representative, yes.

1 Q So, Mr. Jones, to that point, what kind of representative
2 would, in your view, represent the interests of the black
3 community?

4 A Well, clearly, one that would vote for the Build Back
17:31:56 5 Better plan, one that would vote for a bipartisan
6 infrastructure plan, one that would support the expansion of
7 Medicaid in the state of Alabama, one that just would take into
8 consideration the needs of the black community.

9 Q Could that person be either black or white?

17:32:14 10 A Could be, yes.

11 Q Could that person be either a Republican or a Democrat?

12 A Very much could be, yes.

13 Q And, Mr. Jones, I heard you testify you gave some
14 testimony about race being part of the reason that people vote
17:32:32 15 the way they do. Is that based on any research you have done,
16 or is that just your opinion?

17 A Actually, just based on my experience and the people that
18 I know and talk to, not necessarily research or opinion, just
19 people that I have had conversation with.

17:32:52 20 Q Thank you, Mr. Jones.

21 Mr. Jones, do you know state Senator Kirk Hatcher?

22 A I do.

23 Q And how do you know him?

24 A I know him as a representative for the state Senate here
17:33:08 25 in Montgomery. And I know him as an employee of Montgomery

1 Community Action.

2 Q So he is one of your employees?

3 A He is, yes.

4 Q And, Mr. Jones, you testified that you grew up in Barbour
17:33:24 5 County, right?

6 A I did.

7 Q And specifically, in Eufaula?

8 A That's correct.

9 Q And Eufaula, it hugs the Georgia line, right?

17:33:33 10 A That's correct, yes.

11 Q So, Mr. Jones, based on your familiarity with Eufaula, do
12 folks in Eufaula drive to Mobile for work?

13 A Folks in Eufaula? To Mobile? No.

14 Q Do they get their news from Mobile?

17:33:52 15 A They don't.

16 Q Do they go hopping in Mobile?

17 A Perhaps from time to time, they might.

18 Q But not as a regular matter?

19 A No.

17:34:03 20 MR. SMITH: Your Honor, if I could have just a moment.

21 JUDGE MARCUS: You sure can.

22 MR. SMITH: No further questions, Your Honor. We pass
23 the witness. Thank you, Mr. Jones.

24 JUDGE MARCUS: All right. Thank you. Mr. Osher, any
17:34:20 25 redirect?

1 MR. OSHER: No, Your Honor. Mr. Jones, thank you for
2 your time.

3 THE WITNESS: Thank you.

4 JUDGE MARCUS: Any questions, Judge Manasco, Judge
17:34:28 5 Moorer, for Mr. Jones?

6 JUDGE MANASCO: None from me.

7 JUDGE MOORER: No. Thank you.

8 JUDGE MARCUS: Thank you, Mr. Jones. You are excused.

9 THE WITNESS: Thank you.

17:34:38 10 JUDGE MARCUS: We will break for the day until 9:00
11 a.m. Central Standard Time tomorrow.

12 Just a quick question. Ms. Khanna, are you -- you have
13 another witness you are putting on tomorrow morning?

14 MS. KHANNA: Tomorrow, we have two witnesses. Our
17:34:56 15 expert Dr. King, and our final fact witness, Mr. Caster.

16 We have spoken with Mr. Davis for the state who noted that
17 Dr. Hood, his schedule requires that he goes tomorrow morning,
18 so we would allow him to come in out of order tomorrow morning.

19 JUDGE MARCUS: Okay. That's your pleasure, counsel,
17:35:15 20 for the counsel for the state? You are going to start with
21 Dr. Hood in the morning, right?

22 MR. DAVIS: Yes, Your Honor. Because of scheduling
23 issues, plaintiffs' counsel have graciously agreed.

24 JUDGE MARCUS: Length of time with Dr. Hood, your
17:35:28 25 sense, direct, cross?

1 MR. DAVIS: Mr. Smith will be leading that direct.
2 And he believes it will take less than an hour, correct, Mr.
3 Smith? Yes.

4 JUDGE MARCUS: And on cross, your sense, Ms. Khanna,
17:35:41 5 Mr. Ross, Mr. Blacksher?

6 MS. KHANNA: The various groups, I think, have
7 discussed on timing. Ms. Madduri will be crossing for our
8 team, the Caster team, and we believe it will be about
9 45 minutes or less.

17:35:56 10 JUDGE MARCUS: Mr. Ross, any sense?

11 MR. ROSS: The same, Your Honor. 45 minutes or so.

12 JUDGE MARCUS: Okay. And, Mr. Blacksher, if you have
13 any questions? Of course, that's your choice.

14 MR. BLACKSHER: Yes. I think Mr. Quillen will
17:36:11 15 cross-examine, and it should not take any longer than the
16 45 minutes the others are talking about.

17 JUDGE MARCUS: Okay. I only go through this so you
18 can have lined up, Ms. Khanna, your next witness after that, I
19 guess that whether it's the fact witness or your expert. You
17:36:29 20 will get to them maybe late in the morning, perhaps not until
21 after lunch.

22 Any other issues that anyone wanted to raise before we
23 break for the evening?

24 All right. Seeing none, thank you all. And we will see
17:36:45 25 you back here at 9:00 a.m. Central Standard Time.

1 (Whereupon, the above proceedings were concluded at
2 5:36 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

01-10-2022

Christina K. Decker, RMR, CRR

Date

Federal Official Court Reporter

ACCR#: 255

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

BOBBY SINGLETON, et al., *
Plaintiffs, * 2:21-cv-1291-AMM
vs. * January 11, 2022
* Birmingham, Alabama
* 9:00 a.m.

JOHN MERRILL, in his official *
capacity as Alabama Secretary *
of State, et al., *
Defendants. *

EVAN MILLIGAN, et al., *
Plaintiffs, * 2:21-cv-1530-AMM

vs. *

JOHN MERRILL, in his official *
capacity as Alabama Secretary *
of State, et al., *
Defendants. *

MARCUS CASTER, et al., *
Plaintiffs, * 2:21-cv-1536-AMM

vs. *

JOHN MERRILL, in his official *
capacity as Alabama Secretary *
of State, et al., *
Defendants. *

TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING
VIA ZOOM CONFERENCE
VOLUME VI

BEFORE THE HONORABLE ANNA M. MANASCO,
THE HONORABLE TERRY F. MOORER,
THE HONORABLE STANLEY MARCUS

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P R O C E E D I N G S

(In open court.)

JUDGE MARCUS: Good morning to everyone. I hope you didn't have to stay up too late as I did to watch Georgia/Alabama last night.

With that, are the parties ready to proceed? We are in the middle of the presentation of the plaintiffs' case, but we were going to accommodate the defense and take Dr. Hood out of turn, if I had that right.

Do I have that right, Mr. Smith?

MR. SMITH: That's right, Your Honor.

JUDGE MARCUS: And the plaintiffs were agreeable to that, and they are ready to proceed, I take it?

MR. BLACKSHER: Yes, Your Honor.

JUDGE MARCUS: All right. And for Milligan and Caster, I take it there's agreement on this order of proceeding, as well.

MS. MADDURI: Yes, Your Honor.

MS. GBE: Yes, Your Honor.

JUDGE MARCUS: Thank you very much. And your next witness, Mr. Smith, would be.

MR. SMITH: Your Honor, Secretary of State calls Dr. Trey Hood.

JUDGE MARCUS: All right.

DR. M.V. TREY HOOD, III,

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1 having been first duly sworn, was examined and testified as
2 follows:

3 JUDGE MARCUS: Thank you very much. And if you would
4 state your name, your full name for the record, I would be much
09:01:57 5 appreciative.

6 THE WITNESS: Certainly, Your Honor. It's M.V. Hood,
7 III.

8 JUDGE MARCUS: Dr. Hood, thanks very much, and
9 Mr. Smith, you may proceed with your direct.

09:02:08 10 MR. SMITH: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. SMITH:

13 Q Good morning, Dr. Hood.

14 A Good morning.

09:02:12 15 Q Dr. Hood, have you been retained as an expert in this
16 case?

17 A Yes.

18 Q And have you prepared expert reports as part of this case?

19 A Yes.

09:02:22 20 Q And do you have copies of those reports handy?

21 A I have printed copies of the reports in front of me, yes.

22 Q Great. I will be referring to those periodically. And
23 for the Court's benefit, those are Defendants' Exhibit 5 and 6,
24 the initial and rebuttal reports.

09:02:41 25 So, Dr. Hood, your initial report, Exhibit 5, if you turn

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1 to page 20 of that report based on the ECF header in the top
2 right corner, is that a copy of your CV?

3 A Yes.

4 Q And is your CV a complete and accurate summary of your
09:03:13 5 background and professional experience?

6 A Yes.

7 Q Dr. Hood, if you would, could you briefly summarize your
8 educational background for the Court?

9 A Certainly. I've got three degrees in political science, a
09:03:28 10 B.S. from Texas A&M, an M. A. From Baylor University, and a
11 Ph.D. from Texas Tech University.

12 Q And how are you employed, Dr. Hood?

13 A I am currently a professor of political science and
14 director of the SPIA Research Center at the University of
09:03:47 15 Georgia.

16 I have been at the University of Georgia since 1999.

17 Q And what classes do you teach?

18 A I teach a variety of classes in American politics. Right
19 now, I'm teaching a class in southern politics. I teach
09:04:05 20 introductory sections of American government. I have taught
21 undergraduate methods courses. I teach a survey research
22 internship course right now, as well. So I have taught a
23 variety of classes in American politics and policy over the
24 years.

09:04:23 25 I have taught graduate classes in southern politics and

1 election administration, as well.

2 Q And do you conduct empirical social science search?

3 A Yes. Almost all of the research I have conducted in my
4 career as a social scientist has been empirical in nature.

09:04:46 5 Q And do you have any principal areas of research?

6 A Generally, American politics and policy; more
7 specifically, southern politics and election administration
8 again.

9 I sort of specialize in voting behavior, public opinion,
09:05:08 10 southern politics, racial politics, and election
11 administration. Sometimes people call it election sciences
12 today, but the study of how elections are carried out.

13 Q Thank you, Dr. Hood.

14 A Sort of the mechanical process for how elections are
09:05:25 15 carried out.

16 Q Thank you, Dr. Hood. And have you received any external
17 grants to study issues related to those areas of research?

18 A I have received grants over the years from the Pew
19 Charitable Trust, from the National Science Foundation.

09:05:40 20 Recently, we received a grant to study absentee by-mail
21 balloting in the 2020 election during the pandemic. I also for
22 the -- I believe it's the Center For Election Innovation and
23 Research, we received a grant to conduct research on behalf of
24 the Secretary of State's office in Georgia looking at the
09:06:01 25 implementation of a new ballot marking voting system that the

1 state implemented in 2020.

2 Q And, Dr. Hood, turning to page 2 based on the ECF header
3 of your report, do you include a list of the cases in which you
4 have served as an expert in the last five years?

09:06:22 5 A Yes.

6 Q And approximately how many cases is that?

7 A Looks like 15.

8 Q And have you been accepted as an expert witness in cases
9 involving redistricting before?

09:06:35 10 A Yes.

11 Q Have courts previously credited and relied on your
12 analysis?

13 A Yes.

14 Q Have you previously served as an expert in the state of
09:06:46 15 Alabama?

16 A Yes.

17 Q And did the Court accept you as an expert in that case?

18 A Yes.

19 MR. SMITH: Your Honors, at this time, we would tender
09:06:59 20 Dr. Hood as an expert in the fields of political science,
21 empirical social science research, and for the matters
22 discussed in his reports.

23 JUDGE MARCUS: Is there any challenge to his
24 qualifications from any of the parties, Milligan, Singleton
09:07:18 25 Caster?

1 MR. QUILLEN: Not from Singleton, Your Honor.

2 MS. GBE: Not from Milligan, Your Honor.

3 JUDGE MARCUS: And Caster?

4 MS. MADDURI: No, Your Honor.

09:07:29 5 JUDGE MARCUS: Thank you. You may proceed.

6 Dr. Hood is accepted as an expert in the fields you have
7 delineated, Mr. Smith.

8 MR. SMITH: Thank you, Your Honor.

9 BY MR. SMITH:

09:07:38 10 Q Now, Dr. Hood, turning on to page 3 of your report. And
11 just generally, can you describe the scope of what you were
12 asked to do?

13 A Certainly. It was fairly narrow. I was asked to provide
14 in this particular case a functional analysis for District 7,
09:08:02 15 as it was drawn in 2021 and for District 6 and 7 in the
16 Singleton Plan.

17 And I also wrote a short section on conservative white
18 support for minority Republican candidates. And that was about
19 it.

09:08:22 20 Q Thank you, Dr. Hood.

21 And could you briefly summarize the steps you took to
22 carry out your functionality analysis?

23 A So that begins on page 2 of my report, or page 3, as it's
24 stamped. That's where the district functionality analysis
09:08:44 25 start. And I went through a number of steps that are outlined

1 for each one of these districts as encompassed. So would you
2 like me to walk through an example, or...

3 Q Yes. Let me share my screen.

4 And if I could, this is your report, Exhibit 5.

09:09:27 5 And so does your functionality analysis, the first one
6 starts on page 4 or 5 based on the stamp, right?

7 A Correct. Correct.

8 Q And why don't you walk us through what we're seeing here?

9 A Okay. So I guess to back up for just a second, the first
09:09:42 10 thing we have to do is collect some data. I collected voting
11 data for the 2018 gubernatorial election and the 2020
12 presidential election from the Alabama Secretary of State's
13 office at the precinct level. And I also collected data from
14 the Alabama Secretary of State's office on registration and
09:10:07 15 turn out by race. And, again, that can be aggregated at the
16 precinct level, which is what I did.

17 So I combine those sources of data, as well. What we have
18 to do is come up with an estimate of how the different racial
19 groups are voting for the different candidates, and that's the
09:10:30 20 first part of what we see here in Table 1. I used a commonly
21 accepted method in the social sciences and in court proceedings
22 called ecological inference to petition the vote by race for
23 these various candidates. That's what you see. The results of
24 that are what you see in Table 1.

09:10:53 25 So the confidence intervals are down below that bracket,

1 below the point estimates.

2 So, for instance, it's estimated that 98.6 percent of
3 African-Americans in Alabama in this particular district as is
4 drawn voted for Democrat Joe Biden.

09:11:16 5 So and you can just read across the table here. So that's
6 the results of my ecological inference estimates for CD 7. I
7 call it enacted CD 7. It was the district passed by the
8 Legislature in 2021.

9 Q And then, Dr. Hood, once we have those estimates, what's
09:11:40 10 the next step in the analysis?

11 A Well, the next step I undertook was to go back and look at
12 -- so I got this data from the reapportionment office, the
13 legislative reapportionment office in Alabama. And these are
14 just the VAP or the Voting Age Population numbers for this
09:12:02 15 particular district. But the percent in the literal number of
16 people over there to the right in Table 2 so we can see that
17 this district, as drawn, was 54.22 percent Black VAP, which
18 equates to 308,006 voters in this case.

19 So I am going to use those data in a subsequent step. You
09:12:30 20 can see that these numbers of voters in Table 2 to the far
21 right are then inserted down in the left column of Table 3. So
22 those are the exact same numbers.

23 And then, again, having previously collected the turnout
24 registration data, we can calculate turnout by race using those
09:12:55 25 data to come up with an estimate of how many black, white, and

1 other voters we would have in this district. So that's what's
2 going on there. Those are the turnout percentages that I
3 calculated in Table 3 in the middle column. I am multiplying
4 those by the number, the VAP numbers in the left-hand column to
09:13:19 5 get the number of voters in the right-hand column. So that's
6 just multiplication of that fraction.

7 So I am trying to get an idea of what the electorate in
8 this district that's just been drawn might look like.

9 Q And, Dr. Hood, could you explain briefly how you got this
09:13:38 10 turnout percentage figure?

11 A So like most states, Alabama has voter registration
12 database. Unlike most other states, except for a handful,
13 Alabama does have information on the race of registrants in
14 this database.

09:13:58 15 Like other states, Alabama calculates or puts together a
16 voter history database, which tells you whether someone turned
17 out to vote in the gubernatorial election or not. So you can
18 combine these two databases together in order to figure out,
19 you know, what -- how many people turned out and who were these
09:14:19 20 people.

21 So, and again, you can't do that in most states, but we
22 can do that in Alabama. Most states just don't track
23 registrant data by race.

24 Q Thank you, Dr. Hood.

09:14:34 25 And then once you have the turnout percentage, what's the

1 next step after that?

2 A So then you've got the number of voters that we
3 calculated, and we are going to take the number of voters in
4 Table 2 to the far right-hand column and then multiply those by
09:14:54 5 the breakdown we get in Table 1 for the vote totals. So we are
6 going to de-aggregate the data based on how these racial groups
7 are voting, and then we are going to reaggregate the data
8 together to figure out what percent Democratic vote there was,
9 what percent Republican vote there was, and what percent other
09:15:19 10 vote there was in this case.

11 Q And then that reaggregation, is that what we say in Table
12 4?

13 A Yes. That's the last step. So you've put these various
14 data sources and calculations together and add them up, and
09:15:44 15 then, again, divide by the electorate, and the estimate is that
16 in this given district based on the election analysis from the
17 2020 presidential election, the Democratic vote percentage
18 would be 60.75 percent. The Republican vote percentage would
19 be 37.24 percent.

09:16:07 20 So this gives us some idea, hopefully, of how this
21 district might function in a future election based on these
22 previous election results.

23 Q So this table shows us how based on your analysis it
24 appears that the enacted District 7 would function in a
09:16:29 25 hypothetical future election?

1 A Yes. Yes. You know, we've never had an election run in
2 this particular district, obviously. So we're having to use
3 previous election results to make an inference about the
4 future.

09:16:42 5 Q And, Dr. Hood, I am not going to run through each of the
6 steps again, but then you repeat the same analysis, but using
7 data from the 2018 gubernatorial election?

8 A The exact same analysis is repeated except the election is
9 different. We use -- I use the 2018 gubernatorial election,
09:17:07 10 and the process is repeated also for the other Districts 6 and
11 7 in the Singleton plan. And I believe -- so I go through the
12 steps again, the exact same steps for each one of these as
13 outlined in the district that we just talked about. And I
14 think -- let's see. To make things easier on myself, there's a
09:17:33 15 summary table on page 14 stamped -- yes. So that's just a
16 summary of the results, the estimated Democratic vote share
17 that were produced by these analyses that were carried out.

18 Q And so were there any differences in the methodologies in
19 how you calculated the vote shares for these particular
09:18:07 20 districts?

21 A No. The exact same process was repeated again and again
22 for each one of these districts.

23 Q Can you briefly summarize the results of what you found
24 after performing this functionality analysis?

09:18:25 25 A Sure. For enacted CD 7, based on the 2018 gubernatorial

1 data, the estimated vote share for the Democratic candidate
2 would be 66.86 percent. Based on the 2020 presidential
3 election, it would be 60.75 percent.

09:18:48 4 Then CD 6 for the Singleton plan, my estimate from the
5 2018 gubernatorial election would be 52.28. Then for the 2020
6 presidential election, it would be 52.03.

7 Then for CD 7 in the Singleton plan from the gubernatorial
8 election, it would be 55.48. And for the 2020 presidential
9 election, it would be 49.13.

09:19:09 10 Q And, Dr. Hood, I would like to back up just a little bit
11 based on that last stat, and Table 20, could you summarize what
12 you see from the vote shares for this particular election?
13 This is on page 12.

14 A Okay. What's the question?

09:19:46 15 Q Can you just summarize the vote shares from this table,
16 for this hypothetical election?

17 A Okay. For CD 7 and from the Singleton plan, let's see.
18 That would be based on the presidential vote from 2020, the
19 Democratic vote share would be 49.13. Again, the estimated
09:20:09 20 Democratic vote share. The estimated Republican vote share
21 would be 48.92, and the independent candidates or the other
22 candidate would have received 1.94 percent.

23 Q Thank you, Dr. Hood. So in each of these elections that
24 you analyzed, the Democratic candidate received more votes than
09:20:31 25 the Republican candidate?

1 A Yes.

2 Q What is your opinion as to whether Singleton District 6
3 would function in an actual election?

4 A Would it function in terms of producing a Democratic
09:20:54 5 majority? Is that fair?

6 Q Yes.

7 A Okay. Quite possibly. One of the estimates from the 2020
8 presidential election was only 52 percent. The other was
9 higher at 58 percent. So it's quite possible it might. Again,
09:21:13 10 I raised some other questions. There are some things to think
11 about at the end of this section that we can talk about, but
12 it's -- it's more Democratic leaning, I would say, than CD 7
13 under the Singleton plan certainly, which at least one estimate
14 fails to produce a Democratic majority.

09:21:38 15 Q So, Dr. Hood, in your opinion, would the Singleton
16 District 6 and 7 consistently elect the black candidate of
17 choice?

18 A Well, I have got some questions about 7, whether it would
19 consistently do so. There would be a higher probability in 6,
09:21:59 20 but, again, if we are closer to 50 percent, again, there's some
21 things that we have to consider. One, you know, using EI
22 estimates, those estimates or those point estimates come with a
23 margin of error around them. If the point estimate is truly
24 towards the lower end of that margin of error, that will lower
09:22:25 25 the Democratic vote share. And then also issues with

1 differential privacy. I mean, we are drawing districts to be a
2 certain percentage, or once we draw the district, we can look
3 at the numbers and see what the racial percentage is, but
4 because of differential privacy concerns put in place by the
09:22:46 5 Census Bureau, we're not exactly sure, and there's no way to
6 know exactly what the racial percentage in the district
7 actually is.

8 Q And, Dr. Hood, could you explain a little bit what you
9 mean by differential privacy?

09:23:02 10 A Right. So below the -- so I have got a section in the
11 report, which is on pages 14 and 15 and is stamped, and in
12 order to avoid -- or in order to protect privacy, I guess is
13 the way to put it, the Census Bureau introduces noise into the
14 data at lower levels of geography below the state level,
09:23:33 15 including down to the block level, which is where we usually
16 draw districts. And so it's very hard to tell exactly what the
17 racial percentage of a district might be because of the
18 differential privacy put in place by the Senate or the
19 disclosure avoidance system is what they might call it, so...

09:23:59 20 Q And, Dr. Hood, when you say they put noise into it, into
21 the data, what do you mean by that?

22 A Well, what they have done is they have made it impossible
23 essentially for someone outside the Census Bureau to know what
24 the true racial numbers are down to the block level. You know,
09:24:24 25 they will aggregate -- these numbers will aggregate and be

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1 correct at the state level, but below that level, there is
2 noise that's been introduced into the data that makes it
3 impossible for someone to know with certainty exactly what
4 those numbers are, someone on the outside of the Census Bureau.

09:24:44 5 Q Thank you, Dr. Hood. And Dr. Hood, in your opinion, would
6 the enacted District 7 consistently elect the black candidate
7 of choice?

8 A It should, yes. It's over 60 percent in both of those
9 elections I looked at.

09:25:02 10 Q And, Dr. Hood, you mentioned racially-polarized voting at
11 times in this section. What do you mean by that phrase?

12 A Well, what we're looking for, again, this sort of gets to
13 prong 2 of the *Gingles* test or the *Gingles* analysis, does the
14 minority group -- in this case, we could just talk about
09:25:30 15 African-Americans in Alabama, did they have a clearly defined
16 candidate of choice, you know, and does that -- if so, does
17 that clearly defined candidate of choice differ from the white
18 majority or the white-voting block? Whites may or may not be
19 in the majority depending on the district configuration, but do
09:25:52 20 they have -- do whites have a different clearly defined
21 candidate of choice from the black community? That's another
22 way of talking about if that's the case that there is
23 racially-polarized voting. You have one group, one racial
24 group voted in one direction, and another racial group voting
09:26:12 25 in another direction.

1 Q Do you draw any conclusions based on that about the intent
2 of those voters?

3 A Not intent. It's just is the pattern there or not, the
4 statistical pattern.

09:26:31 5 Q So you don't offer any opinion in your report about the
6 intent of any voters in voting the way they do?

7 A I do not, no.

8 Q And, Dr. Hood, did you perform any functionality analyses
9 of primaries in your report?

09:26:47 10 A No, I did not.

11 The turnout in registration databases that I was using in
12 my report, I could not get copies of those databases around the
13 time of the primary elections. So I did look into that, but
14 from the Secretary of State's office, those data were not
09:27:11 15 available to me.

16 Q Thank you, Dr. Hood.

17 And, Dr. Hood, I want to turn to Section 4 of your report
18 starting on page 16, White Support For Minority Republican
19 Candidates. Dr. Hood, have you researched white support for
09:27:35 20 minority Republican candidates?

21 A Yes. A co-author and myself wrote a peer-reviewed
22 published article on this topic.

23 Q And what did you find in that research?

24 A Well, we were looking at general election outcomes, and we
09:27:49 25 were comparing -- so general election outcomes for

1 gubernatorial and U.S. Senate elections, and we used survey
2 data to see if white conservatives would support black
3 Republican candidates at the same rate as white Republican
4 candidates.

09:28:07 5 And, in fact, we found that that was the case. And
6 sometimes white conservatives' support for Republican minority
7 candidates was even higher than for white Republican candidates
8 in these particular elections.

9 Q And what sorts of elections were you looking at?

09:28:28 10 A These were general elections for U.S. Senate and Governor.

11 Q Have you examined any instances of Republican support for
12 minority candidates in Alabama?

13 A Well, I give an example. I do have one example here from
14 pretty recent history, where Paschal, a black Republican, was
09:28:52 15 elected from a state House district in Shelby County, Alabama.

16 Q And what do you find significant about that election?

17 A Well, you know, given the racial composition of the
18 district, which is -- which was -- was, I guess you could say
19 since it's in the past 84.1 white VAP, no candidate's going to
09:29:16 20 win without majority-white support in that district. And
21 Paschal does end up winning that seat. So he obviously had the
22 support of white voters in that particular district.

23 Q And, Dr. Hood, are you aware of the criticisms of some of
24 the other experts in this case that you should have considered
09:29:39 25 the 2016 GOP primary in this section?

1 A Yes.

2 Q And do those criticisms give you any concern?

3 A Well, it doesn't nullify this example or the work that I
4 did -- the published work I did in this article, certainly.

09:29:54 5 And it's just one example where, of course, the example being
6 Ben Carson running in the Republican presidential primary race.
7 He does not win. That doesn't necessarily give me pause or
8 nullify the findings in this particular section, as I have laid
9 them out here.

09:30:16 10 Q Thank you, Dr. Hood.

11 And, Dr. Hood, I am going to share my screen with you.
12 Can you see this document, Document 68 on the front?

13 A Yes.

14 MR. SMITH: For the Court's benefit, this was
09:30:44 15 initially submitted as 68 and was subsequently renumbered as
16 S-44.

17 JUDGE MARCUS: In the record now, it's S-44, correct?

18 MR. SMITH: That's right, Your Honor.

19 JUDGE MARCUS: Thank you.

09:30:57 20 BY MR. SMITH:

21 Q And, Dr. Hood, do you recognize this document?

22 A Yes.

23 Q And do you have a copy of it with you there?

24 A Yes, I do.

09:31:08 25 Q And, Dr. Hood, turning to page 14 of that report, page 14,

1 as the bottom number gives it. It's hard to tell from the
2 stamp what page it is. It's the --

3 A Okay. Gotcha.

4 Q Section 6, black voting patterns?

09:31:39 5 A Okay.

6 Q Would you briefly summarize what you're asked to do in
7 this section of the report?

8 A In this section of the report, I was asked to look at
9 black voting patterns, and I did so using survey data. And I
09:31:55 10 compared black voting patterns in Alabama to black voting
11 patterns in another 20 states, both in the South and outside of
12 the South that had a black population of at least 10 percent or
13 greater. So I used a large-scale social science survey that's
14 been going on for a number of years called the -- used to be
09:32:18 15 called the CCES. Now, it's called the Comparative Election
16 Study. I also used the exit polls that are produced by the
17 news consortiums after each general election, or during each
18 general election.

19 So I collected data on presidential vote shares,
09:32:41 20 gubernatorial vote shares and U.S. Senate. And in some cases,
21 I had data on U.S. House races, as well.

22 Q And, Dr. Hood, let me back up and ask sort of more of a
23 threshold question. Was this a report that you submitted as
24 part of the *Chestnut v. Merrill* case?

09:32:58 25 A It was, yes.

1 Q And that's been -- that was about two years ago, right?

2 A At least. Pre-pandemic. Pre-pandemic, for sure.

3 Q And have you had an opportunity to review this document
4 recently?

09:33:17 5 A I did look back over it, yes.

6 Q Thank you, Dr. Hood.

7 So in this first section, the 20 states you listed, do
8 they include southern states?

9 A Oh, certainly. Yes.

09:33:34 10 Q And northern states, as well?

11 A Yes.

12 Q And midwestern states?

13 A Yes. Again, it's on page 14, Arkansas, Connecticut,
14 Delaware, Florida, Georgia, Illinois, Louisiana, Maryland,
09:33:50 15 Michigan, Mississippi, Missouri, New Jersey, New York, North
16 Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas,
17 and Virginia.

18 Q Thank you, Dr. Hood.

19 And, Dr. Hood, on page 15, based on the number at the
09:34:21 20 bottom, do you go over the results of what you find based on
21 one of these sets of data?

22 A Yes. Are you looking specifically at Table 9 or 10?

23 Q Well, what are we seeing in Table 9?

24 A So those are the comparison of black voting patterns in
09:34:45 25 these 20 states. And it is just sort of summarized there. So

1 across all races on average, the Democratic vote share from
2 black voters was 91.1 percent; specifically for presidential
3 elections, it was 93.6 percent; for gubernatorial elections,
4 89.3; and for U.S. Senate, it was 90.1.

09:35:13 5 Q So based -- the use of this survey data allow you to make
6 inferences about black voting patterns?

7 A Certainly, yes. That -- the inference being and not
8 really a surprise to me that overwhelmingly the black
9 communities supports Democratic candidates at 90-plus percent.

09:35:38 10 Q And what years did you review in conducting this analysis?

11 A 2008 through 2018.

12 Q And this 90.1 percent figure, does it include Alabama?

13 A No. Alabama's down below in Table 10.

14 Q And so what figure did you find for Alabama?

09:36:00 15 A The comparable figure the average of the averages across
16 all these races for Alabama was 94.3 percent.

17 Q And in your opinion, are those comparable rates of turnout
18 -- or of support? Excuse me.

19 A Vote share, yes, certainly. Again, 90-plus percent in
09:36:19 20 Alabama, 90-plus percent in these other 20 comparison states.

21 Q And, Dr. Hood, in Tables 11 and 12, did you repeat this
22 analysis, but using the CCES data?

23 A Yes. So different data source, again the CCES -- or what
24 was called the CCES, now the CES is a large-scale survey,
09:36:45 25 public opinion survey, so...

1 Q And what did you find?

2 A Well, very similar numbers. 91.5 percent to the
3 comparison states and 90.9 percent. So a little bit lower for
4 Alabama, but not much, a couple of points. So for Alabama,
09:37:09 5 it's 94 percent with one data set and 91 percent with the
6 other.

7 Q So did you find any significant differences in black
8 support for Democratic candidates in Alabama and black support
9 for Democratic candidates in other states?

09:37:24 10 A No.

11 Q And that includes states outside the South?

12 A Yes.

13 Q And throughout the country?

14 A Yes. Yeah.

09:37:32 15 Q So on average, both in Alabama and throughout the country,
16 black voters support Democratic candidates at rates of above
17 90 percent?

18 A Correct.

19 Q So, Dr. Hood, given these high levels of support for
09:37:47 20 Democratic candidates among black voters, as far as you are
21 aware, would voting be racially polarized any place in America
22 with both black voters and where white voters tend to vote for
23 Republicans?

24 A Well, if you had -- I mean, so from these data, we can
09:38:06 25 certainly infer that almost always the preferred candidate of

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1 choice for the black community is going to be a Democratic
2 candidate.

3 So if you had on the other side say a majority of white
4 conservatives comprising that electorate, then, yes, that
09:38:26 5 community's preferred candidate of choice is probably going to
6 be a Republican.

7 So from my previous statement about what is
8 racially-polarized voting, yes, that would probably result in
9 racially-polarized voting.

09:38:40 10 Q Dr. Hood, in the recent era, have you ever heard of racial
11 polarization existing where a majority of white voters
12 supported Democrats?

13 A Well, in that hypothetical, it wouldn't be possible, I
14 don't think, because if you had a majority of white voters
09:38:59 15 supporting the Democratic candidate, then again, at least from
16 this data, a majority of African-American, more than a majority
17 would support the Democratic candidate, as well. They would
18 both have the same preferred candidate of choice, both racial
19 groups. Hence, you wouldn't have racially-polarized voting.

09:39:19 20 Q Dr. Hood, to the best of your knowledge in the modern era,
21 has racial polarization only been found to exist where whites
22 tend to vote for Republicans?

23 A Well, I think that would have to be almost a necessary
24 precondition. Again, if a majority of whites are voting
09:39:42 25 Democratic, you are not going to end up with a situation where

1 you have racially-polarized voting.

2 Q Thank you, Dr. Hood.

3 And now I am going to turn to Section 7 of your *Chestnut*
4 report on page 17. And what analysis did you perform here?

09:40:00 5 A I was asked to do a comparison. And, again, I am looking
6 at Alabama, and I am using the same 20 states that we just
7 talked about that all had a black population of at least
8 10 percent or greater.

9 And here I am doing just a number of racial comparisons
09:40:21 10 between whites and blacks in these different states on quite a
11 few different metrics.

12 So things like education, poverty rate, home ownership,
13 infant mortality, you know, there are quite a few comparisons
14 between blacks and whites in these 21 states, 21 including
09:40:45 15 Alabama. And the results of these comparisons --

16 JUDGE MARCUS: Was there --

17 MS. GBE: Yes, Your Honor. This is Harmony Gbe on
18 behalf of the Milligan plaintiffs. I wanted to object to this
19 line of questioning because it goes beyond the scope of
09:41:02 20 Dr. Hood's report, and it's basically speculation.

21 JUDGE MARCUS: Mr. Smith, I take it you're proffering
22 Dr. Hood now beyond the issues of racial polarization and
23 offering him as an expert on the Senate Factors 1 to 8 or 1 to
24 9. Is that where we are going?

09:41:24 25 MR. SMITH: Well, Your Honor, we have offered him as

1 an expert in political science and on empirical social science
2 research, and this is part of a report that he did in a
3 previous case that employed those methods to find some of those
4 factors. But, yes, it would be relevant to the --

09:41:39 5 JUDGE MARCUS: You are offering him -- I understand
6 that he has the expertise as a general matter to opine beyond
7 simply racial polarization, and you are offering this for the
8 Senate Factors.

9 My question -- I have that right, correct?

09:41:59 10 MR. SMITH: Yes.

11 JUDGE MARCUS: The objection is that in this case, the
12 report he had offered did not go into *Gingles I* through *VII*,
13 and they were unaware that you were proffering him to provide
14 expert opinion on Senate Factors 1 to 8; that you have gone
09:42:22 15 beyond the scope with the oral testimony of what his expert
16 report covered, that you're introducing a new basic kind of
17 analysis covering a different area.

18 MR. SMITH: Well, Your Honor, the Singleton --

19 JUDGE MARCUS: Is that a fair statement? I guess
09:42:41 20 they're saying they simply were unaware, perhaps, that Dr. Hood
21 would be opining about the Senate Factors here.

22 MR. SMITH: Well, Your Honor, I don't think that can
23 be the case. The Singleton plaintiffs put this exhibit in
24 evidence, and it's already been received. It was listed on
09:42:59 25 Milligan's own second amended exhibit list to that nature. And

1 the Caster plaintiffs have offered a transcript of Dr. Hood's
2 testimony from *Chestnut*. I think that if this evidence is
3 going to be in the record, then Dr. Hood should be allowed to
4 testify about it on direct.

09:43:17 5 JUDGE MARCUS: Counsel?

6 MS. GBE: Your Honor.

7 JUDGE MARCUS: Is it true that the Singleton put this
8 into evidence in the first place, and Caster put his testimony
9 into evidence in the second?

09:43:30 10 MS. GBE: I believe that that's true, Your Honor. But
11 we --

12 JUDGE MARCUS: Why would it be -- I guess why would it
13 be unfair and why would it go beyond the scope of the
14 plaintiffs' case to allow him to talk about a report that the
09:43:47 15 plaintiffs actually put in albeit in another case?

16 MS. GBE: Well, Your Honor, a lot of the facts that
17 Dr. Hood is testifying to are irrelevant to this case. For
18 example, the exit poll information was not considered in his
19 expert report. And it's just as we stated earlier, outside of
09:44:08 20 the scope of what he provided in his report. So we think it
21 shouldn't be allowed.

22 JUDGE MARCUS: The objection is overruled. You may
23 proceed, Mr. Smith. And you may, of course, cross-examine him
24 on anything that he says, as may the Caster folks, and as may
09:44:26 25 Singleton.

1 You may proceed, Mr. Smith.

2 MR. SMITH: Thank you, Your Honor.

3 BY MR. SMITH:

09:44:36 4 Q So, Dr. Hood, the comparison states you're using here,
5 they're the same as were in the last set?

6 A Yes, that's correct. Alabama and the other 20 states we
7 talked about previously.

8 Q And, Dr. Hood, just to kind of illustrate, we won't go
9 through each table, but looking at Table 13, can you explain
09:44:57 10 what data you used and how you analyzed it as --

11 A I used different data sources for different metrics. In
12 this case, I am using the Census Bureau data from the American
13 Community Survey, which is very commonly used for this kind of
14 thing to look at educational attainment rates by race for these
09:45:20 15 states.

16 Q And what do you find based on this table?

17 A This, for instance, looking at the Alabama line up at the
18 top there, this is the percentage of whites and blacks in
19 Alabama over on the left that have received a high school
09:45:43 20 degree or equivalency degree. So 87.7 percent of whites in
21 Alabama have a high school education or equivalency versus
22 81.6 percent of black Alabamians. So the difference between
23 those, literally just the difference, the subtraction is
24 6.1 percent.

09:46:02 25 So in this case, a positive difference would indicate that

1 education attainment by the white community is higher than that
2 for the black community.

3 And then you can see I've listed the congruent statistics
4 for each one of these comparison states. And then the average
09:46:25 5 for the 20 states -- not for Alabama, but the average for the
6 20 states at the bottom there. And then over on the right-hand
7 columns, it's the same process, except here we're looking at
8 who's obtained at least a college degree or higher by race.

9 So, again, positive differences would mean that the white
09:46:48 10 community had a higher educational attainment rate, at least on
11 this particular metric, than the black community.

12 Q And, Dr. Hood, are the difference for Alabama and the
13 average, is there any significance as to whether it's larger or
14 smaller?

09:47:08 15 A Well, one can make that comparison, certainly. The data
16 are here. You know, what struck me across all the comparisons
17 I did on these particular metrics is that the disparity rate
18 between whites and blacks in Alabama as well as all these other
19 states was there. So I don't think there was a single instance
09:47:35 20 where the disparity rate was higher for whites than it was for
21 blacks on any of these metrics that I looked at.

22 Q So in this table specifically, you find that there's a gap
23 between -- did you find that there is a gap between white and
24 black residents of Alabama in educational attainment?

09:47:54 25 A Yes, I did.

1 Q And did you find that a similar gap existed in each of the
2 other 20 states that you reviewed?

3 A Yes, I did.

4 Q And, Dr. Hood, I think you mentioned you performed a
09:48:05 5 similar analysis for several other characteristics?

6 A Yes. Quite a number. I mean, it's not an exhaustive
7 list. I mean, we could keep coming up with different
8 comparisons, but I compared a number of sort of commonly used
9 sociodemographic characteristics.

09:48:25 10 Q And, Dr. Hood, I am not going to have you run through the
11 methodology again. Would you just flip through this report and
12 tell the Court what those other characteristics you looked at
13 were?

14 A Certainly. Table 14 looks at the proportion of the
09:48:42 15 state's population that are receiving food stamps. Table 15
16 looks at median household income. Table 16 looks at per capita
17 income. Table 17 looks at the poverty rate. Table 18, home
18 ownership. Table 19, unemployment rates. And Table 21, infant
19 mortality rates.

09:49:10 20 Q And, Dr. Hood, was there any characteristic in any state
21 that you reviewed where you did not find a gap?

22 A I don't believe so. I believe there was -- there was
23 always this gap present.

24 Q And, Dr. Hood, is that true both in Alabama and all of the
09:49:29 25 20 comparison states that you reviewed?

1 A Yes, it is.

2 Q Is that true both in northern and southern states?

3 A It is.

4 Q And is it true in both red states and blue states?

09:49:42 5 A Yes, it is.

6 Q All right. Dr. Hood, I would like to turn to your
7 supplemental report in this case, and this is what's been
8 marked as Defendants' Exhibit 6.

9 Dr. Hood, could you briefly summarize what you were doing
09:50:06 10 in this supplemental report?

11 A Well, it's pretty brief. Its looks like it's
12 two-and-a-half pages long. So it's just -- was a quick
13 response, if you will, to reports that were issued in this case
14 by Professor Liu and Professor Palmer.

09:50:27 15 Q And, Dr. Hood, starting with number one on page 2 of this
16 report, based on the header, what was your concern with
17 Dr. Palmer's report there?

18 A Well, Point 1 talks about CVAP or Citizen Voting Age
19 Population data that Professor Palmer at least relied on for
09:50:51 20 part of his report. I just point out some things, in terms of
21 the fact that CVAP data are from the American Community Survey,
22 which is a survey. It's not an enumeration. So there's some
23 degree of error, you know, with these particular data, and it's
24 also impossible to desegregate CVAP data down to the block
09:51:16 25 level. It's just not available. You can desegregate it down

1 to the block group level. So then if you want to desegregate
2 it to the -- at the block level, because you have a districting
3 plan that's at the block level, drawn at the block level, and
4 you are trying to reaggregate around blocks, you have to
09:51:37 5 partition the CVAP data from block groups to blocks. And in
6 doing so, you have to make some assumptions to partition those
7 data.

8 Q And, Dr. Hood, what is the significance of that, of having
9 to make assumptions about the data?

09:51:55 10 A Well, I mean, you are -- any time you make an assumption,
11 you don't know for certain if it's right or wrong for one
12 thing.

13 Q And, Dr. Hood, how does this data compare with the data
14 that you used in this case for your analysis?

09:52:09 15 A Well, again, I relied primarily on voting data, you know,
16 voting results data from the Secretary of State's office and
17 registration and turnout data from the Secretary of State's
18 office, as well. Those are population level data, if you will.
19 Those should be -- you should have the entire count for each
09:52:37 20 precinct and then be able to join those data with the
21 registration and turnout data by a precinct, as well.

22 Q So in other words, those are actual results as compared to
23 estimates?

24 A Yes. They're not estimates, certainly.

09:52:54 25 Q Okay. Thank you, Dr. Hood.

1 And then turning to paragraph 2, could you briefly
2 describe what problems you're outlining here with Dr. Palmer's
3 report?

4 A Well, I just raise some questions here. Professor Palmer
09:53:08 5 relied on data from something called the Redistricting Data Hub
6 website. And they report themselves this organization, this
7 group, that they didn't have, you know, complete data to be
8 able to check every county in Alabama.

9 And so, again, it just raises questions about whether or
09:53:34 10 not the data from the redistricting web hub -- excuse me -- the
11 Redistricting Data Hub website are correct or not.

12 Q And did you do any investigation into the VTD versus
13 precinct issue?

14 A Right. So they're relying on VTDs, the Redistricting Data
09:54:02 15 Hub website. So, for instance, in Alabama, in Washington
16 County, you know, from what I understand from talking to
17 election officials there, the map to the right is the precinct
18 map, which is not the map to the left, which is the VTD map.

19 Now, you know, you can run algorithms and convert election
09:54:29 20 data or voting data from precincts to VTDs. I am not saying
21 you can't do that. But, again, you are making assumptions when
22 you do that.

23 I just stuck with the precincts in that case because that
24 was the unit -- the geographic unit where these votes were
09:54:47 25 collected and tabulated.

1 Q And, Dr. Hood, these two figures from your report, is this
2 the comparison of the Redistricting Data Hub VTDs and what you
3 found to be the precincts based on confirming with Washington
4 County officials?

09:55:04 5 A Yes. That's my -- yes, correct.

6 Q And, Dr. Hood, just so we're clear, so Dr. Palmer, if he
7 transformed the data, even if he had the data, would that raise
8 any questions for you about the quality of the data?

9 A Well, to be fair, I don't think Dr. Palmer did the
09:55:24 10 transformations. I think the -- this group hosting this
11 website made transformations. But, yes, you are making
12 assumptions, again, when I don't think it's necessary to make
13 assumptions.

14 Q Thank you, Dr. Hood.

09:55:42 15 And in Point 3, could you summarize what your criticism of
16 Dr. Palmer here is?

17 A Well, in another part of Professor Palmer's report, he
18 says he relies on data from a private vendor known as L2, which
19 I am familiar with. I use L2 for survey data for telephone
09:56:03 20 numbers, so I am pretty familiar with L2.

21 And he says he uses L2 racial data. L2's racial data is
22 modeled. It's estimated. And, again, in Alabama, we don't
23 really need to do that because the Secretary of State's office
24 has the registration turnout numbers by race.

09:56:25 25 And so I did a little bit of an investigation here

1 comparing L2's racial numbers to the state's racial numbers.
2 And basically, in a nut shell, what I found was at the county
3 level, L2 consistently underestimated the percentage of white
4 voters by about 4 percent, overestimated the percentage of
09:56:53 5 other voters by about 4 percent, and then either underestimated
6 or overestimated, depending on the situation, the county level
7 for black turnout.

8 So all that to say L2's numbers, which are estimates,
9 really are not the same thing as the state's numbers, which are
09:57:13 10 not estimates.

11 Q And, Dr. Hood, this is Caster Plaintiffs' Exhibit 79, and
12 this is Dr. Palmer's report. And is this paragraph that goes
13 from page 3 to page 4, is that, Dr. Hood, where you understand
14 Dr. Palmer to be talking about his use of L2 data?

09:57:38 15 A Well, that's where he mentions it, yes.

16 Q And so you understand, based on this, that he is using L2
17 data to calculate turnout by race or somehow otherwise using
18 it?

19 A Seems to be using L2 data to make inferences about turnout
09:57:59 20 by race is what I would say, from what's written there.

21 Q Thank you, Dr. Hood.

22 And turning to Point 4, could you describe what issues you
23 raise about Professor Liu's report?

24 A In Point 4, I just have some questions about Professor
09:58:22 25 Liu's estimated turnout percentages.

1 He includes these in his report, and you can estimate
2 turnout by race using ecological inference. You certainly can
3 do that. He doesn't explain exactly what he does to get these
4 numbers. They're just listed in his report. And I have got
09:58:44 5 questions because consistently, you know, if those are -- if
6 those are his estimated turnout numbers by race in his report,
7 black turnout is consistently higher than white turnout, his
8 estimates are. And we know from the Secretary of State's
9 office from those data that typically white turnout is just
09:59:12 10 slightly higher than black turnout in Alabama.

11 So I just have questions about that.

12 Q And approximately, where does Dr. Liu predict that black
13 turnout would be compared to white turnout?

14 A Well, it's scattered throughout his report in each one of
09:59:33 15 these -- most of these tables in his report from what I
16 remember have a turnout estimate by race.

17 So it's just sort of scattered throughout his report.

18 Q And, Dr. Hood, turning to Point 5, could you summarize the
19 issue that you raise in Point 5?

09:59:53 20 A Well, here, I am raising some questions about Professor
21 Liu using any-part Black VAP and his functional analyses. I
22 don't use any-part black typically. I certainly don't use -- I
23 just use single-race categories in my academic research. But
24 if you are going to include, for instance, any-part black with
10:00:22 25 black, you have to make sure that that group of voters, the

1 any-part group of voters, is going to vote cohesively -- or is
2 voting cohesively with the parent racial category, if you will.

3 Q And, Dr. Hood, you mentioned the racial categories that
4 you use in your academic work. And I think you mentioned
10:00:48 5 single race. Why do you use that category?

6 A Well, I, you know, for one, we have a lot of different
7 racial categories -- could you repeat the question so I can get
8 my mind wrapped back around things?

9 Q Of course, Dr. Hood.

10:01:28 10 Dr. Hood, I think you mentioned that you use single-race
11 categories in your own academic research, and I was just asking
12 why that is.

13 A Right. So, you know, usually we are relying on people to
14 self identify themselves, certainly in the census, for
10:01:42 15 instance, or in a survey as a racial category or an ethnic
16 category in the case of Hispanics.

17 And when you have -- but it's certainly possible to
18 identify as more than one racial or ethnic category today, as
19 well. But, again, if you have a group of people who are just
10:02:02 20 identifying as, say, African-American, or non-Hispanic white or
21 Hispanic or Asian, there's little question there about how you
22 can analyze them as a group.

23 On the other hand, if you start to include people who are
24 say, African-American and then African-American plus Hispanic,
10:02:23 25 or African-American plus white, you have sort of multiple

1 racial or ethnic categories. Again, it raises questions about
2 whether those individuals are really cohesive with the parent
3 racial category there.

10:02:46 4 Q And, Dr. Hood, do you know whether there's any empirical
5 research that would show whether the multi-racial category
6 votes cohesively with the single-race non-Hispanic black
7 category?

8 A I'm not aware of any. I'm not saying there's not been,
9 but I am not aware of any.

10:03:01 10 Q Thank you, Dr. Hood.

11 MR. SMITH: Your Honor, may I have just one moment to
12 confer with my colleagues?

13 JUDGE MARCUS: Sure.

14 MR. SMITH: Nothing further at this time, Your Honor.
10:03:19 15 We pass the witness.

16 JUDGE MARCUS: All right. Thank you.

17 Cross-examination. What order did you want to take them?

18 Singleton first, and then go on to Milligan and Caster, or did
19 you have some order?

10:03:32 20 MS. GBE: Good morning, Your Honor. This is Harmony
21 Gbe again on behalf of the Milligan plaintiffs. Plaintiffs
22 have agreed on Milligan going first for cross, and then the
23 Caster plaintiffs, and then the Singleton plaintiffs.

24 JUDGE MARCUS: All right. Thanks very much, and you
10:03:45 25 may proceed.

1 MS. GBE: Thank you very much.

2 CROSS-EXAMINATION

3 BY MS. GBE:

4 Q Good morning, Dr. Hood.

10:03:50 5 A Good morning.

6 Q I'm going to ask you a few questions on behalf of the
7 Milligan plaintiffs, all right?

8 A Yes, ma'am.

9 Q So as you testified, this isn't the first time that you
10:04:03 10 have been retained as an expert to provide testimony in a
11 voting case, correct?

12 A Correct.

13 Q In fact, you have served as an expert in several voting
14 cases, right?

10:04:13 15 A Correct.

16 Q And in most of those cases, were you retained by the
17 state?

18 A In a majority, yes.

19 Q Have you ever been denied permission to offer an expert
10:04:28 20 opinion in a case?

21 A Could you be a little more specific?

22 Q In a voting rights case.

23 A Has my testimony been excluded in a case? Is that fair?

24 Q Yes. Sure.

10:04:40 25 A Yes. Once, in the first case I testified in, yes.

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1 Q And do you remember the name of that case?

2 A *Billups vs. Common Cause*. I was testifying on behalf of
3 Common Cause about Georgia's voter ID law.

4 Q And do you remember the year of that case?

10:05:00 5 A Ooh. Not specifically, to be honest with you. Like 2006.
6 I mean, again, I'm -- that's a guess.

7 Q Okay. So let's -- actually, one more follow-up question.

8 Do you remember the scope of your expert testimony in that
9 case?

10:05:27 10 A Yes. I was testifying on behalf of Common Cause about
11 implementation of Georgia's photo ID law.

12 Q I see.

13 A It may have been 2005. I -- somewhere around that time
14 period.

10:05:45 15 Q And why were you excluded in that case?

16 A I'd have to go back and look.

17 Q So you don't remember sitting here?

18 A I haven't looked at that in quite some time.

19 Q So let's turn to your expert testimony and reports in this
10:06:10 20 case and talk about the functionality analysis that you
21 conducted.

22 So you conducted a district functionality analysis looking
23 at Districts 6 and 7 of the whole county map proposed by the
24 Singleton plaintiffs, correct?

10:06:25 25 A Correct.

1 Q You didn't conduct a functionality analysis for the maps
2 proposed by the Milligan plaintiffs, correct?

3 A Correct.

4 Q And you stated in your report that time didn't permit you
10:06:38 5 to analyze the Milligan maps; is that right?

6 A Well, time, and I wasn't specifically asked to do so.

7 Q You weren't specifically asked by defense counsel?

8 A Correct.

9 Q So your purpose in conducting the functionality analysis
10:06:56 10 was to fulfill the third prong of the *Gingles* test, right?

11 A Second and third, to be comprehensive.

12 Q To fulfill the second and third --

13 A Yes.

14 Q -- prongs of the *Gingles* test?

10:07:10 15 A Yes.

16 Q And your goal was to analyze whether black-preferred
17 candidates are likely to win in a majority-white congressional
18 district, correct?

19 A Well, I would say with the proviso that the white
10:07:29 20 community's not always in the majority in some of these
21 examples we're talking about. I mean, that is the way the
22 *Gingles* test describes.

23 Q Right. So it is the *Gingles* test that you are trying to
24 determine whether a black-preferred candidate is likely to win
10:07:49 25 than a majority-white congressional district, correct?

1 A Well, again, I would just say would a black-preferred
2 candidate of choice win in a given election -- a given
3 district, as drawn? I mean, again, you know, that includes
4 what is the white community doing as a voting block. I'm just
10:08:14 5 saying the white voting block in some of these examples like in
6 the enacted plan is not in the majority, though.

7 Q Okay. So in your report, you lay out three steps that you
8 need to take to conduct functionality analysis, right?

9 A Well, there may be more than three. Are you referring to
10:08:39 10 a specific part of the report that we could look at?

11 Q Sure. Do you -- you do have a copy of your report in
12 front of you, correct?

13 A Yes, I do.

14 Q So if you can turn to page 3.

10:08:51 15 A Okay.

16 Q Starting at page 3. You explained that when you conduct a
17 functionality analysis, you first need to estimate the manner
18 in which various racial groups are voting, right?

19 A That's correct.

10:09:03 20 Q And then you go on to talk about a second step where you
21 calculate turnout by race, correct?

22 A Well, I didn't -- to be very specific, I didn't make those
23 calculations. I used data that were available in this case.

24 Sometimes you do have to estimate turnout by race. But I
10:09:26 25 didn't have to estimate that in the case of Alabama. But I

1 made use of those data.

2 Q Okay. So there were no calculations involved with the
3 second step. You just took the numbers directly from the
4 Secretary of State; is that right?

10:09:42 5 A Well, I did some data manipulations, but there weren't --
6 beyond simply determining, okay, at the precinct level, what
7 was the number of whites, African-Americans, and other voters
8 that turned out to vote. I didn't do anything beyond that.

9 Q So what do you mean exactly by data manipulation?

10:10:07 10 A Well, these are databases. And so records are
11 individuals. And you have to -- I had to aggregate these
12 individuals into the respective voting precincts.

13 Q So you did -- you didn't manipulate the data by
14 aggregating it?

10:10:29 15 A That's fair, yes. I am saying these weren't estimates I
16 produced, though.

17 Q Understood. Okay. The third and final step of your
18 functionality analysis involved calculating the racial
19 breakdown for the Voting Age Population, correct?

10:10:44 20 A Well, I didn't calculate that step at all. I mean, those
21 numbers just simply came from Alabama's reapportionment office.

22 Q Okay. So, Dr. Hood, you conducted a racially-polarized
23 voting or RPV analysis for each of the elections you looked at,
24 right?

10:11:10 25 A As part of the functionality test, yes, that's correct.

1 Q And you concluded that RPV is present in District 7 of the
2 enacted plan, correct?

3 A Yes.

4 Q In fact, there was RPV in both of the two elections that
10:11:22 5 you analyzed in District 7 of the enacted plan, right?

6 A Correct.

7 Q You also conducted an RPV analysis on the Singleton
8 plaintiffs' proposed District 6 and 7, correct?

9 A Correct.

10:11:38 10 Q And there you also concluded that RPV is present in the
11 Singleton plaintiffs' proposed District 6 and 7, correct?

12 A Correct.

13 Q So in your report, as part of your functionality analysis,
14 you conclude that RPV is present with black voters
10:11:57 15 overwhelmingly supporting the Democratic candidate, and more
16 than a majority of white voters casting a ballot for the
17 Republican candidate, correct?

18 A Correct.

19 Q You would agree that if there is a high degree of RPV in
10:12:11 20 Alabama, then white block voting will usually result in the
21 defeat of black-preferred candidates in white majority
22 districts, right?

23 A I would just say the general principle hypothetically,
24 yes, that's -- there is a high probability of that. You would
10:12:29 25 have to run the exact numbers to see, but that's usually --

1 Q But it's likely?

2 A That's usually the condition that underlies, you know,
3 prong 3, or the reaching prong 3 of the *Gingles* test.

4 Q Along those same lines, if there is an insufficient number
10:12:51 5 of black voters to constitute a majority in a Democratic
6 primary, the black community may be unable to elect their
7 preferred candidate, correct?

8 A That's a possibility, yes.

9 Q Is it more likely?

10:13:07 10 A Well, it just depends on, you know, if the white community
11 in a Democratic primary has a different preferred candidate of
12 choice than the African-American community. Based on that
13 hypothetical, then, yes, that could happen.

14 Q Have you read Dr. Liu's initial and rebuttal reports in
10:13:31 15 this case?

16 A Yes.

17 Q And did you listen to Dr. Liu's testimony yesterday?

18 A I did not.

19 Q Okay. Are you generally familiar with the conclusions
10:13:41 20 reflected in Dr. Liu's reports?

21 A Well, generally, yes.

22 Q You and Dr. Liu both agree that RPV exists in Alabama,
23 correct?

24 A I think we both found evidence of that, yes.

10:13:57 25 Q And you and Dr. Liu also agree that black-preferred

1 candidates are usually defeated in white majority congressional
2 districts in Alabama, correct?

3 A Well, I didn't do that particular analysis. You know,
4 again, I did a functional analysis of these districts which had
10:14:17 5 not seen -- none of these districts have ever seen an election
6 in that district configuration.

7 Q So you wouldn't agree that a black-preferred candidate is
8 likely to be defeated in a white majority congressional
9 district in Alabama?

10:14:32 10 A I would say, again, there's certainly a probability of
11 that.

12 Q You and Dr. Liu both agree that the ecological inference
13 method is an appropriate way to conduct an RPV analysis,
14 correct?

10:14:47 15 A I think we both agree on that, yes.

16 Q In your supplemental report and you testified a bit about
17 this, this morning, you questioned Dr. Liu's use of any-part
18 Black Voting Age Population in his functionality analysis,
19 right?

10:15:05 20 A Correct.

21 Q So for your functionality analysis, you used single-race
22 black VAP for the black racial group measurement, correct?

23 A Correct.

24 Q And it is your view that single-race black is a more
10:15:21 25 appropriate racial group measurement than, for example,

1 any-part black, correct?

2 A That's fair, yes.

3 Q So earlier today, you testified that there was no
4 empirical evidence that multi-racial people, including -- but
10:15:40 5 also identify as black vote cohesively with a group that is
6 single-race black, correct? Is that an accurate statement of
7 your testimony?

8 A I think the statement was I wasn't aware of any research.
9 I am not denying that any exists.

10:15:57 10 Q So are you aware of any professional studies or research
11 that shows that they -- actually, strike that. Let me
12 rephrase.

13 Are you aware of any professional studies or analyses that
14 show that voters who report themselves as multi-racial
10:16:13 15 including black vote any differently than those who report
16 themselves as single-race black?

17 A Well, again, I am not aware of any studies on that topic
18 period, you know, showing one direction or the other. I'm not
19 saying that they may not exist. I'm not aware of any.

10:16:31 20 Q And have you conducted any independent research to verify
21 your understanding of how multi-racial blacks vote versus
22 single-race blacks?

23 A I have not conducted any research myself on that
24 particular question.

10:16:50 25 Q And for this particular case, you didn't conduct any

1 analysis along those lines, correct?

2 A No.

3 Q Do you know defendants' demographer in this case,
4 Mr. Bryan?

10:17:03 5 A A little bit, yes.

6 Q Have you worked with Mr. Bryan before this case?

7 A Not -- we published an article together, an academic
8 article. But, no, I have not worked directly with Mr. Bryan in
9 a legal sense before on a case.

10:17:27 10 Q Did you speak to Mr. Bryan in connection with this case,
11 or your expert analysis offered in this case?

12 A Not in my analysis. I did speak to Mr. Bryan, yes.

13 Q But it wasn't related to your expert analysis?

14 A No.

10:17:45 15 Q Did Mr. Bryan seek your input at all for his portion of
16 the analysis?

17 A No.

18 Q Okay. So, Dr. Hood, now let's discuss the two elections
19 that you analyzed in this case.

10:18:04 20 In your functionality analysis, you looked at the 2020
21 presidential election and the 2018 gubernatorial races,
22 correct?

23 A Correct.

24 Q When conducting an RPV analysis, it's important to
10:18:17 25 consider the race or ethnicity of the candidates running for

1 election, correct?

2 A It can be, yes.

3 Q So, Dr. Hood, I am going to show you an article now that

4 you cite to in your expert report. I am going to ask my

10:18:31 5 colleague, Mr. Ang, to pull up the article. If you could make

6 it a bit bigger, that would be helpful. Thank you?

7 MS. GBE: Your Honor, permission to mark this article

8 for ID as Milligan Plaintiffs' 51.

9 JUDGE MARCUS: Okay.

10:18:56 10 BY MS. GBE:

11 Q Dr. Hood, do you recognize this article?

12 A I do.

13 Q It's an article that you coauthored entitled From Legal

14 Theory to Practical Application. And it was published in the

10:19:11 15 Social Science Quarterly, correct?

16 A Correct.

17 Q And you currently serve on the editorial board for the

18 Social Science Quarterly, correct?

19 A I do.

10:19:19 20 Q And from what you can tell, this is a true copy of the

21 article that you coauthored, correct?

22 A It looks to be.

23 MS. GBE: Your Honor, I would like to move for

24 Exhibit 51 to be admitted into evidence.

10:19:34 25 JUDGE MARCUS: Any objection?

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1 MR. SMITH: No objection, Your Honor.

2 JUDGE MARCUS: Without objection, plaintiff Milligan
3 51 is received.

4 MS. GBE: Thank you, Your Honor.

10:19:45 5 BY MS. GBE:

6 Q So in this article, if we can turn to page 546. Thank
7 you.

8 So, Dr. Hood, in this article, you discuss how to conduct
9 a Section 2 vote dilution analysis, and you described the
10 appropriate approach to analyzing RPV as follows. So you say,
11 One must also consider the race/ethnicity of the candidates
12 running for election. Of the elections available for analysis,
13 the more relevant are those that feature a minority candidate
14 from the racial/ethnic group suing the jurisdiction in
10:20:26 15 question.

16 Did I read that correctly, Mr. Hood?

17 A Yes.

18 Q But neither of the elections you chose to analyze for your
19 report in this case directly feature a minority candidate,
10:20:39 20 correct?

21 A That's correct.

22 Q And you are aware that there have been elections in
23 Alabama in the recent past that did involve a minority
24 candidate, correct?

10:20:48 25 A Yes.

1 Q But you chose not to analyze those elections in your work
2 for this case, right?

3 A Well, yes, I did.

4 Q Okay.

10:20:59 5 MS. GBE: If we could take that language down,
6 Mr. Ang. Thank you.

7 BY MS. GBE:

8 Q So moving on to the ecological inference you did or EI,
9 you used EI to conduct your RPV analysis, correct?

10:21:15 10 A Correct.

11 Q And the EI method is a commonly used method in your field
12 of expertise; isn't that right?

13 A Yes, it is.

14 Q And you used census data for your EI calculations, right?

10:21:30 15 A No.

16 Q What kind of data did you use for your EI calculations?

17 A Again, I used precinct level vote returns from the
18 Secretary of State's office in Alabama and turnout and
19 registration data at the precinct level from the Alabama

10:21:47 20 Secretary of State's office.

21 Q Did you use census data in any part of your analysis?

22 A The only part of my analysis that used census data was the
23 latter part of the functionality analysis that starts out and
24 says, as drawn in 2021, this district is -- this percent BVAP,
10:22:11 25 this percent white Voting Age Population percent, other voting

1 age population. It's not -- I guess you could say it's part of
2 my analysis in a functional sense. I didn't use those data,
3 the census data for any of my EI estimates, though.

4 Q Okay. Did -- you used the EI pack or package to conduct
10:22:37 5 your analysis, correct?

6 A Yes.

7 Q And the IE pack is a commonly used software package in
8 your field, correct?

9 A Yes.

10:22:44 10 Q It provides reliable and accurate estimates for RPV
11 analysis, correct?

12 A Yes.

13 Q You are aware that Dr. Liu also used the EI method for his
14 analysis, correct?

10:22:56 15 A Correct.

16 Q The R by C procedure in the EI pack allows someone to
17 estimate racial turnouts, correct?

18 A You can, yes.

19 Q And you relied on the EI pack to generate the data you
10:23:11 20 used for your racial estimates in this case, correct?

21 A For the racial vote estimates, correct, yes.

22 Q The R by C procedure in the EI pack also allows for racial
23 vote estimates for candidates, correct?

24 A Well, I thought that's what you had just said.

10:23:33 25 Q Oh, okay.

1 A In a slightly different way.

2 Q Okay. We can just move on.

3 So in the R code in your replication folder, showed that
4 you ran an R operation, which would have given you an estimated
10:23:51 5 racial turnout and racial vote total; is that accurate?

6 A Yes.

7 Q So in Dr. Liu's rebuttal report, Dr. Liu noted that he
8 requested a detailed explanation for the method you used for
9 arriving at the racial breakdown and turnout by race you
10:24:09 10 present in Tables 1 and 2 of your report. But you did not
11 provide Dr. Liu with that detailed explanation of your
12 methodology, did you?

13 A I believe I did. I sent quite a number of messages
14 through counsel about what I had done. And it was explained in
10:24:27 15 my report.

16 Q So you --

17 A I don't -- I am not really sure where the disconnect is on
18 this particular point. Because, again, in terms of racial
19 turnout, I'm not using estimates. I'm using the actual data.

10:24:45 20 Q But you recall receiving specific questions from Dr. Liu
21 about your methodology using the voter registration data,
22 correct?

23 A And I responded to those, yes. I didn't know who they
24 were from, but I responded.

10:25:00 25 Q You provided those responses to defense counsel?

1 A Yes.

2 Q Now, let's talk about your opinions about Republican
3 support for minority candidates as explained in your report.

4 So you claim that white conservatives support minority
10:25:23 5 Republican candidates at the same rates or significantly higher
6 rates than Anglo GOP nominees, correct?

7 A That part is a little more than a claim. I think I
8 hopefully substantiated that through social science research.
9 That's from the published article.

10:25:38 10 Q Right. So in support of that claim, you cite to an
11 article titled, True Colors, White Conservative Support For
12 White Republican Candidates, correct?

13 A Yes, that's fair.

14 Q And the True Colors article analyzes the success of
10:25:55 15 nonwhite candidates as a group, but does not specifically
16 analyze black candidates, correct?

17 A Well, there is some African-American candidates in that
18 group of minority Republican candidates.

19 Q But the article doesn't provide any specific discussion of
10:26:12 20 white Republican willingness to vote for black candidates,
21 right?

22 A No, only to the extent to which black minority -- black
23 Republican candidates are included in the group of minority
24 Republican candidates, if you will.

10:26:27 25 Q And the article isn't based on any elections conducted in

1 the state of Alabama, correct?

2 A Correct.

3 Q The only example of black Republican candidates' success
4 in Alabama that you cite to in your report is that of

10:26:48 5 Representative Paschal, correct?

6 A Correct.

7 Q But you didn't conduct an RPV analysis on Representative
8 Paschal's election to determine the degree of racial support
9 for his candidacy, right?

10:26:59 10 A I did not. Again, in that case, given the very high rate
11 of white VAP in that district, I don't think it's possible for
12 any candidate to win without majority-white support.

13 Q But you didn't conduct an RPV analysis to confirm your
14 hypothesis, correct?

10:27:18 15 A That's correct.

16 Q In fact, you did not conduct an RPV analysis on a single
17 election involving a black Republican candidate in Alabama,
18 right?

19 A That's correct.

10:27:28 20 Q Are you aware that Representative Paschal is the first
21 Republican elected to the Alabama Legislature in 140 years?

22 A Yes, I read that.

23 Q And Representative Paschal won the Republican runoff
24 election in 2021 by a very close margin, correct?

10:27:47 25 A Yes. I think I documented that.

1 Q In fact, there were only 63 votes between Representative
2 Paschal and his opponent Leigh Hulsey, correct?

3 A Well, you if you're representing that's what it says in my
4 report, then I will take your word for it.

10:28:08 5 Q Would you like me to pull up the --

6 A I can just flip over here real quick and look.

7 MS. GBE: Mr. Ang, if you can pull up --

8 THE WITNESS: I am not saying you're not correct.

9 BY MS. GBE:

10:28:20 10 Q Not a problem. We can just pull up Defense 5, Dr. Hood's
11 initial report and turn to page 15 I think we -- so the
12 reference is footnote 12, but I don't think -- I think we have
13 just the link to the Secretary of State's website.

14 So let's not go through that part.

10:29:01 15 But you do recall that it was a close election, right,
16 Dr. Hood?

17 A From my recollection, yes. I couldn't give you the vote
18 count from my memory.

19 Q Understood. And that election took place in Shelby
10:29:16 20 County, right?

21 A Correct.

22 Q Okay. And you testified earlier today that Shelby County
23 has about an 84 percent white Voting Age Population, correct?

24 A Well, that district itself in Shelby County, yeah.

10:29:31 25 Q And are you aware that turnout in Representative Paschal's

1 race was very low?

2 A Well, I don't know that I looked at turnout specifically.

3 Q So you don't have any information about which category of
4 voters turned out to elect Representative Paschal?

10:29:55 5 A Well, again, as I said, the inference here the assumption
6 is that no one can win in that district without a majority
7 support of the white vote. In reference to your question you
8 asked about did I run an ecological inference on that
9 particular race, the answer was no.

10:30:16 10 Q You would agree, Dr. Hood, that white support of a black
11 Republican candidate in a statewide election will provide a
12 relevant basis to analyze white Republican support for black
13 candidates, right?

14 A Well, yeah, that could be one piece of data looked at,
10:30:38 15 certainly.

16 Q So, Dr. Hood, as we talked about a bit earlier, you -- you
17 have served as an expert in several voting cases, correct?

18 A Correct.

19 Q And some of those cases include redistricting cases?

10:30:56 20 A Yes.

21 Q So you are generally familiar with the traditional
22 redistricting principles, correct?

23 A Correct.

24 Q And you would agree that maintaining the core of existing
10:31:10 25 districts is a redistricting guideline in several states,

1 including Alabama, correct?

2 A Yes, from my understanding, yes.

3 Q You agree, however, that an interest in core preservation
4 as a redistricting consideration does not supersede compliance
10:31:27 5 with Section 2 of the Voting Rights Act, correct?

6 A Okay. So this is -- I am going to have to provide some
7 context to this answer. This is a little complicated, or it
8 can be.

9 Redistricting can be essentially an iterative process some
10:31:47 10 sometimes. So you start out drawing a district. You can even
11 draw a district race blind using traditional redistricting
12 criteria. And then later you might look at the racial
13 composition of the district and do some functional analyses.
14 If it's determined that an adjustment may need to be made based
10:32:08 15 on Section 2 or a potential Section 2 violation, at that point,
16 Section 2 comes into play.

17 Now, you know, again, this is my understanding that the
18 traditional redistricting criteria are somewhat encompassed in
19 prong 1 of the *Gingles* test, right? So at that point, you
10:32:31 20 know, if you needed to add just hypothetically say Black VAP to
21 the district because of the Section 2 issue, you can do that.
22 So at that very point, that would sort of supersede other
23 criteria, but you can't -- you can't just lay aside the other
24 criteria at that point because, again, those criteria are, from
10:32:54 25 my understanding, encompassed in prong 1.

1 So there may be -- I guess to answer your question -- I am
2 trying to answer your question, trying to be succinct -- there
3 may be a case where the Section 2 is invoked to deal with a
4 particular problem. And at that point in time, you are going
10:33:15 5 to perhaps have to add or subtract various racial groups from
6 the district. But you can't just ignore the other traditional
7 redistricting criteria.

8 Q Right. So you can't ignore them completely, but you would
9 agree that Section 2 does trump a lot of those traditional
10:33:35 10 redistricting criteria?

11 A Well, I wouldn't say completely trump. I mean, you can't
12 just go from a district that's fairly compact to one that's
13 completely un-compact just because you're trying to remedy a
14 Section 2 issue, is what I would say.

10:33:56 15 Q So you testified earlier today, and we went through it a
16 bit extensively, that you provided expert opinion in the
17 *Chestnut* case, correct?

18 A Correct.

19 MS. GBE: So if we can pull up some of the language
10:34:14 20 from that opinion, Mr. Ang.

21 So, Your Honor, permission to mark this document for ID as
22 Milligan Plaintiffs' 52.

23 JUDGE MARCUS: Yes. That's the opinion by Judge
24 Bowdre in the *Chestnut* case, correct?

10:34:36 25 MS. GBE: Correct.

1 BY MS. GBE:

2 Q So the opinion references some of the statements you made
3 in that case. And if you can read the highlighted portions for
4 us.

10:34:48 5 A You would like me to read it?

6 Q Yes, please.

7 A Okay. A later expert witness for the defendant, Dr. Trey
8 Hood also stated that, regardless, an interest in core
9 preservation could not trump compliance with Section 2 of the
10:35:04 10 VRA as a redistricting consideration.

11 Q So you would agree that an interest in core preservation
12 as a redistricting consideration does not trump compliance with
13 Section 2 of the Voting Rights Act, correct?

14 A Correct. I would say it could be -- it would have to
10:35:23 15 would be subsumed at some point.

16 Q So in addition to *Chestnut* --

17 MS. GBE: I am sorry, Mr. Ang, you can take that down.
18 Thank you.

19 BY MS. GBE:

10:35:32 20 Q In addition to *Chestnut*, you have provided expert opinions
21 in other voting cases, correct?

22 A Correct.

23 Q Did any court ever criticize or reject your expert opinion
24 in a voting case?

10:35:43 25 A Well, I have been qualified as an expert in, I think, or

1 testified in more than 25 cases now. Certainly, some courts
2 have given more weight to my testimony than other courts. I
3 mean, that's true.

4 Q Dr. Hood, you served as an expert in a case called Veasey
10:36:07 5 v. Perry, correct?

6 A Correct.

7 Q And that case was pending before a district court in
8 Texas, correct?

9 A Correct.

10:36:13 10 Q And that case involved allegations that Texas voter ID law
11 was unconstitutional and violated the VRA, correct?

12 A Correct.

13 Q And in that case, you analyzed whether that voter ID law
14 would affect voter turnout, correct?

10:36:30 15 A That was one of the things I did, yes.

16 Q Isn't it true that the Court afforded, quote, little
17 weight to your opinions in that case?

18 A I believe so, from what I remember.

19 Q Okay. Let me -- let's look at the opinion to refresh your
10:36:50 20 recollection.

21 MS. GBE: Mr. Ang, if you would pull up Veasey,
22 please? And we can mark this as --

23 Your Honor, permission to mark this for ID as M-53.

24 JUDGE MARCUS: Yes.

10:37:06 25 MS. GBE: Thank you.

1 BY MS. GBE:

2 Q So, Dr. Hood, there is a portion of the Veasey opinion.

3 Can you please -- can you please read the highlighted passage
4 describing the reasons why the Court gave little weight to your
10:37:18 5 opinion in that case?

6 A On the cross-examination, plaintiffs pointed out a
7 multitude of errors, omissions, and inconsistencies in
8 Dr. Hood's methodology, report, and rebuttal testimony, which
9 Dr. Hood failed to adequately respond to or explain. The Court
10:37:33 10 thus finds Dr. Hood's testimony and analysis unconvincing and
11 gives it little weight.

12 Q So the Veasey court did not find your expert opinion in
13 that case reliable, correct?

14 A Well, it gave it little weight, yes.

10:37:49 15 Q And, Dr. Hood, you served as an expert in another case
16 called *Northeastern Ohio Coalition vs. Husted*, correct?

17 A Yes.

18 Q And that case was before the Southern District of Ohio,
19 correct?

10:38:02 20 A Yes.

21 Q And in that case, the Court ruled that certain portions of
22 Ohio's SNT and provisional voting regimes were
23 unconstitutional, correct?

24 A I believe so, from what I remember, yes.

10:38:21 25 Q Much of your expert report and opinion testimony in that

1 case focused on the Senate Factors and your criticism of the
2 opposing expert, I believe his name was Dr. Timberlake. You
3 criticized Dr. Timberlake's regression analysis. Do you recall
4 that?

10:38:35 5 A Yes.

6 Q Again, the Court in that case found your expert opinion
7 largely unhelpful, correct?

8 A From what I recall, yes.

9 Q Okay.

10:38:47 10 MS. GBE: Mr. Ang, can you pull up *Husted*, please?

11 BY MS. GBE:

12 Q So this is the language from the *Husted* opinion, and I
13 will just read that to go through it quickly.

14 The Court gives little weight to Dr. Hood's opinion that
10:39:05 15 the rejection of provisional ballots for trivial errors is
16 unlikely to occur under the new law because the board's review
17 provisional and absentee ballots and screen out trivial errors
18 from substantive errors, which he defines as errors that,
19 quote, preclude the board from being able to identify who the
10:39:25 20 voter is.

21 The *Husted* court then goes on to say on the next page, In
22 sum, Dr. Hood's testimony and report were in large part
23 irrelevant to the issues before the Court and also reflected
24 methodological errors that undermine his conclusions. Other
10:39:45 25 courts have found likewise. As such, the Court finds his

1 contribution of limited value.

2 Do you recall that, Dr. Hood?

3 A Well, now that you have read that, yes.

4 Q So the *Husted* court like the *Veasey* court found your
10:40:03 5 expert opinion unreliable, correct?

6 A Well, it says limited value, yes.

7 Q Just one more case that I would like to go through with
8 you.

9 You served as an expert in the case called *Florida v.*
10:40:18 10 *United States*, right. Do you recall that?

11 A Yes.

12 Q So that case was also before a three-judge court in the
13 District Court for the District of Columbia, correct?

14 A Yes, I believe so.

10:40:32 15 Q And in that case, Florida, the state, sought Section 5
16 preclearance of changes to its election laws, including a
17 change in early person -- early in-person voting, as well as a
18 change in voting procedures for voters who were moving in
19 between counties, correct?

10:40:55 20 A Correct.

21 Q Your expert opinion in the Florida case focused primarily
22 on the early voting changes, correct?

23 A Yes.

24 Q And the Court in that case also rejected your expert
10:41:11 25 analyses and conclusions, correct?

1 A I think they gave them little weight, yes.

2 Q Okay.

3 MS. GBE: Mr. Ang, if you could pull up the relevant
4 language from the Florida case.

10:41:29 5 MR. SMITH: Your Honor, I would like to object to
6 this. He's already said they gave him little weight. I'm not
7 sure that this has any impeachment value.

8 JUDGE MARCUS: No. I will allow it. Overruled.

9 MS. GBE: Thank you, Your Honor.

10:41:39 10 JUDGE MARCUS: What's the name of the case, counsel?

11 MS. GBE: The case is *Florida vs. U.S.* And if,
12 Mr. Ang, if you could pull up the first page the caption for
13 the Court's reference. Right there in the bottom, the -- I
14 guess the bottom right of the screen. There you go.

10:41:55 15 JUDGE MARCUS: Thank you.

16 MS. GBE: Okay. Now, Mr. Ang, if you could go to the
17 relevant sections. Thank you.

18 BY MS. GBE:

19 Q So the Florida court, with regards to your expert opinion,
10:42:10 20 Dr. Hood, specifically found, quote, in finding that
21 African-American voters in the covered counties will be
22 disproportionately affected by the reduction in early voting
23 days under the new law, we reject the contrary opinions of
24 Florida's expert witness, Professor Hood. We do so because the
10:42:29 25 analysis underlying his conclusions suffers from a number of

1 methodological flaws.

2 The Court then goes on to say, We reject other
3 calculations in Professor Hood's expert report because we agree
4 with the intervenors' expert that in several instances,
10:42:46 5 Professor Hood inappropriately pools together groups of
6 dissimilar data, which is not methodologically appropriate.

7 Finally, the Court says on again the following page,
8 Professor Hood also frequently lumps African-Americans and
9 Hispanics into a single category of minorities, which
10:43:04 10 misleadingly flattens the data, because unlike
11 African-Americans, Hispanic voters use early voting at about
12 the same rate as whites.

13 Did I read that accurately, Dr. Hood?

14 A I believe so.

10:43:19 15 Q So, again, this is another example of a court that did not
16 find your opinion particularly helpful, correct?

17 A Fair.

18 Q And there are still other courts that have criticized and
19 rejected your findings in voting cases, correct?

10:43:36 20 A Yes.

21 Q Okay.

22 MS. GBE: Your Honor, if I could have a few minutes
23 before proceeding? I think I'm pretty much -- I'm wrapping up.

24 JUDGE MARCUS: We will take just a moment or two,
10:43:49 25 sure.

1 MS. GBE: Thank you.

2 Okay. No further questions, Your Honor.

3 JUDGE MARCUS: All right. Thank you. Before we

4 proceed to the next cross-examination, this might be a

10:44:19 5 convenient point for us to take a 15-minute break.

6 Who is the next examiner? That would be for Caster?

7 MS. MADDURI: That's right, Your Honor.

8 JUDGE MARCUS: Ms. Madduri. Thanks. We will take a

9 15-minute break, Mr. Hood, and we will get started at 11:00

10:44:51 10 o'clock Central Standard Time.

11 (Recess.)

12 JUDGE MARCUS: I take it the parties are ready to

13 proceed with cross-examination, Ms. Madduri?

14 MS. MADDURI: I am ready, Your Honor.

11:00:40 15 JUDGE MARCUS: All right. Mr. Smith, we are all set?

16 MR. SMITH: Your Honor, if I could make one quick

17 point before we start.

18 We, again, appreciate the plaintiffs allowing us to call

19 Dr. Hood out of turn, and that's because he is traveling this

11:00:51 20 afternoon. And so I just wanted to make the Court aware of

21 that.

22 If we could finish Dr. Hood's testimony before we break

23 for lunch, I think that would be preferable from our end.

24 JUDGE MARCUS: We will do everything we can to do

11:01:05 25 that.

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1 Dr. Hood, thanks for bearing with us. We will try and get
2 you out of here as quickly as we can. But you take your time,
3 Ms. Madduri, in your cross-examination. And, of course,
4 Mr. Quillen, you will have every opportunity to cross-examine
11:01:22 5 Dr. Hood, as well.

6 MR. QUILLEN: Thank you.

7 JUDGE MARCUS: With that, let's proceed, Ms. Madduri.

8 MS. MADDURI: Thank you, Your Honor.

9 CROSS-EXAMINATION

11:01:31 10 BY MS. MADDURI:

11 Q Dr. Hood, it's nice to see you again.

12 A Yes. Good afternoon. Well, here, good afternoon. Sorry.

13 Q No problem. Dr. Hood, your second report addresses the
14 reports issued by plaintiffs' expert Dr. Maxwell Palmer and
11:01:47 15 Dr. Liu; is that right?

16 A Yes.

17 Q Okay. You provide no response to the expert reports of
18 Dr. Bridgett King regarding the history of voting related
19 discrimination in Alabama or the other Senate Factors; is that
11:02:01 20 right?

21 A Correct.

22 Q And you do not respond to Mr. Cooper's expert report
23 regarding whether plaintiffs are able to satisfy the first
24 *Gingles* precondition; is that correct?

11:02:12 25 A Correct.

1 Q And you don't respond to Mr. Palmer's -- I'm sorry --
2 Mr. Cooper's conclusion that there are racial disparities
3 across key indicators of socioeconomic well-being in Alabama
4 between white Alabamians and black Alabamians either generally
11:02:31 5 or in the enacted Congressional Districts 1, 2, 3, 6, and 7,
6 correct?

7 A Correct.

8 Q Okay. Dr. Palmer's report concluded that voting is
9 racially polarized in Congressional Districts 1, 2, 3, 6, and
11:02:47 10 7, both individually and combined, correct?

11 A From my memory, that's correct.

12 Q Okay. And you don't dispute Dr. Palmer's conclusions that
13 black voters in the areas he examined vote for the same
14 candidates cohesively, correct?

11:03:04 15 A No.

16 Q Okay. And you don't dispute Dr. Palmer's conclusion that
17 black Alabamians and white Alabamians in the areas he examined
18 consistently preferred different candidates, correct?

19 A Correct.

11:03:19 20 Q And you don't dispute Dr. Palmer's conclusion that the
21 candidates preferred by white voters in the areas that he
22 looked at regularly defeat the candidates preferred by black
23 voters, correct?

24 A Correct.

11:03:32 25 Q Dr. Palmer also conducted a district functionality

1 analysis for the majority-black districts in Mr. Cooper's
2 illustrative plans, correct?

3 A Yes.

4 Q Dr. Palmer concluded that Mr. Cooper's illustrative
11:03:55 5 majority-black CD 2 and 7 would on average elect
6 black-preferred candidates with 57 percent and 65 percent of
7 the vote respectively. Do you recall that?

8 A Not those exact figures, no.

9 Q Do you recall that to roughly be the case?

11:04:11 10 A Well, I recall the pattern. I mean, I just don't remember
11 the exact figures sitting here.

12 Q Okay. But you don't offer any -- you don't offer anything
13 to dispute Dr. Palmer's conclusions on the functionality of
14 plaintiffs' illustrative black majority districts, correct?

11:04:31 15 A Correct. I didn't do any tests on those districts, so...

16 Q Okay. Let's now turn to your discussion of the Citizen
17 Voting Age Population or CVAP data, which you discuss in your
18 second report. CVAP data is collected from an annual survey
19 conducted by the U.S. Census Bureau, correct?

11:04:56 20 A Correct.

21 Q That's called the American Community Survey, correct?

22 A Correct.

23 Q And that is commonly referred to as the ACS?

24 A Yes.

11:05:05 25 Q Okay. Experts in political science have regularly used

1 CVAP data attained through the ACS, correct?

2 A I'm sure they do for a variety of purposes.

3 Q Okay. And that same CVAP data is regularly relied upon in
4 peer-reviewed publications, right?

11:05:22 5 A I am sure it is, yes.

6 Q Okay. The decennial census does not collect any
7 citizenship information, correct?

8 A That is correct.

9 Q So the data file that's used for redistricting that you
11:05:36 10 mentioned in your report, which was called the PL 94-171 file,
11 that doesn't contain any citizenship information, right?

12 A That is correct.

13 Q The ACS is the only Census Bureau source for Citizen
14 Voting Age Population, right?

11:05:56 15 A Yes.

16 Q And you and Dr. Palmer both examined racially-polarized
17 voting in enacted CD 7, right?

18 A Yes.

19 Q Okay. I think you testified that you used voter
11:06:07 20 registration and turnout data from the state of Alabama, right?

21 A That part of it, yes.

22 Q And Dr. Palmer used CVAP data from the Census Bureau,
23 right?

24 A From my understanding of his report, yes.

11:06:21 25 Q At least for part of his analysis, he used CVAP data,

1 right?

2 A Right. Right. I don't think for all of it, but for part
3 of it, yes.

4 Q Okay. Thank you.

11:06:31 5 And you and Dr. Palmer found very similar levels of
6 racially-polarized voting in CD 7 despite using different data,
7 right?

8 A I think the directionality was certainly the same.

9 Q Is it your --

11:06:48 10 A Again, I can't remember his exact numbers sitting here.

11 Q Sure. Sure. Is it your recollection that there were any
12 major discrepancies in your findings versus Dr. Palmer's
13 findings for the level of racially-polarized voting in CD 7?

14 A Well, the substantive pattern was there in either
11:07:05 15 analysis.

16 Q I couldn't quite hear?

17 A The substantive pattern was there in his analysis as well
18 as my analysis.

19 Q The substantive pattern being high levels of
11:07:19 20 racially-polarized voting?

21 A Yeah. The presence of racially-polarized voting, yes.

22 Q Okay. So that was consistent between both of your
23 findings?

24 A Correct.

11:07:27 25 Q Okay. Can we pull up your second report, which is

1 Defendants' Exhibit 6, and turn to page 2.

2 Okay. So in paragraph 1 of that page, you observed that
3 CVAP data comes from a survey, meaning they are -- you said,
4 quote, estimates which come with a margin of error, end quote;
11:07:59 5 is that right?

6 A Yes.

7 Q Okay. But you don't calculate or report that margin of
8 error, do you?

9 A The margin of error for the CVAP data?

11:08:11 10 Q Correct.

11 A Correct. I'm just stating that it exists.

12 Q Okay. And you don't claim that that alleged margin of
13 error in any way undermines Dr. Palmer's analysis or
14 conclusions regarding racially-polarized voting, correct?

11:08:25 15 A Not specifically, no. Again, it just -- that's a
16 statement that these are survey data. They're not enumeration
17 level data, and so they come with a margin of error.

18 Q Okay. But you don't claim that that margin of error
19 affects Dr. Palmer's analysis or conclusion in any meaningful
11:08:48 20 way, correct?

21 A Well, I couldn't claim that without doing the analysis.
22 I'm just raising a question here.

23 Q Okay. And you didn't do that analysis, right?

24 A That's correct.

11:08:58 25 Q Okay. I think later in that paragraph you also note that,

1 quote, the CVAP data come from the ACS -- that come from the
2 ACS are only available down to the block group level.
3 Districting plans that are drawn at the block level would
4 require one to disaggregate the CVAP data to that level.

11:09:24 5 Did I read that right?

6 A Yes.

7 Q You go on to say, While this can be done, one is required
8 to make a number of assumptions about the manner in which the
9 CVAP block group data should be disaggregated to the respective
11:09:37 10 blocks in the group, and that this process may, in turn, also
11 introduce another source of potential error. Correct?

12 A Correct.

13 Q Okay. But you didn't identify any such errors in
14 Dr. Palmer's analysis or data, right?

11:09:49 15 A Well, not specifically, no. Again, this is just raising a
16 concern.

17 Q Okay. And you don't claim that the fact that CVAP data
18 requires disaggregating data undermines Dr. Palmer's conclusion
19 regarding racially-polarized voting, correct?

11:10:08 20 A Not necessarily, no.

21 Q Okay. We can move on, and we can take this exhibit down.
22 Thank you.

23 Okay. You also comment on data Dr. Palmer obtained from
24 the Redistricting Data Hub; is that right?

11:10:31 25 A Correct.

1 Q Okay. Are you aware that the data Dr. Palmer obtained
2 from the Redistricting Data Hub was prepared by an organization
3 called the Voting and Election Science Team?

4 A Yes.

11:10:45 5 Q Are you familiar with the Voting and Election Science
6 Team?

7 A Just a little.

8 Q Okay. Are you aware of the fact that the Voting and
9 Election Science Team is a group of scholars that are based at
11:10:58 10 multiple universities, including the University of Florida?

11 A Yes.

12 Q Are you aware that among other things they assemble
13 precinct level election data by collecting and matching
14 shapefiles, which contain the geographic boundaries of each
11:11:13 15 precinct with election results at the precinct level?

16 A Where the shapefiles were available, yes, I understand
17 that. I am pointing out that there are some counties in
18 Alabama shapefiles apparently were not available according to
19 their own website.

11:11:30 20 Q Okay. But you are aware that the VEST Team goes to both
21 states and counties to request the maps of precinct so they can
22 be sure that they have the right precincts, right?

23 A Right. I mean, they make requests. That doesn't mean
24 they're always fulfilled, though, is what I am saying.

11:11:50 25 Q Are you aware that generally their data is widely used by

1 academics and peer-reviewed published work?

2 A No, I am not. I am not saying it's not. I'm just not
3 aware.

4 Q Okay. Dr. Hood, what is a VTD?

11:12:08 5 A Voting Tabulation District.

6 Q And what is a precinct?

7 A A precinct is an actual geographic unit where people go
8 and vote. There's usually a polling place encompassed in the
9 precinct. Sometimes precincts and VTDs are the same. And
11:12:26 10 sometimes they're not.

11 Q And precincts will often change over time while VTDs
12 remain constant; is that right?

13 A Well, if you make the VTDs stay constant.

14 Q Are VTDs, as you understand them, the U.S. Census
11:12:46 15 equivalence of precincts?

16 A I think that -- I think that's fair, yes. They're
17 equivalent. They are not necessarily exactly the same.

18 Q But the boundaries of VTDs and precincts sometimes don't
19 match up, right?

11:13:04 20 A Yes, that's correct. Sometimes a VTD, for instance, might
21 be comprised of two or three precincts, for instance. It
22 varies, you know.

23 Q Okay. And you provide I think an example of what we're
24 discussing a mismatch of sorts between precincts and VTD
11:13:25 25 boundaries in your report, right?

1 A Well, I believe it is, yes.

2 Q Okay. Why don't we look at that? So that's page 3 of
3 your second report, which is Defendants' Exhibit 6.

4 And if you can zoom in on the figures so you can see them
11:13:44 5 a little better.

6 Okay. So on the left, Figure 1 is labeled Washington
7 County, Alabama VTDs, correct?

8 A Correct.

9 Q Okay. And on the right, the figure is labeled, Washington
11:13:56 10 County, Alabama precincts, right?

11 A Correct.

12 Q Okay. So the fact that there's a mismatch between the
13 precincts and the boundaries, that's not really surprising or
14 irregular, correct?

11:14:11 15 A They may not match up, no.

16 Q And it would be reasonable to expect that, given the fact
17 that precincts and VTDs often don't match up?

18 A Not always, that's correct.

19 Q Okay. Are you familiar with the process by which scholars
11:14:31 20 and others take precinct level data and reallocate it to match
21 VTD boundaries?

22 A Yes, generally speaking, yes.

23 Q Okay. And you would agree that that's something that
24 scholars and experts do pretty regularly, right?

11:14:47 25 A Scholars do that, yes. I guess my point with this is if

1 Washington County is using the map on the right with the green
2 boundaries, then that's where the original vote data is
3 captured, then I'm just going to stick with that. I am not
4 going to make assumptions in de-allocating those data to VTDs.

11:15:12 5 Q But you would agree that that is doable and a process that
6 scholars regularly engage in, right?

7 A You can do it. Again, if you have the precinct data,
8 though, that's the most accurate data available.

9 Q Okay. Do you have any reason to believe that the process
11:15:31 10 of -- that this process biased Dr. Palmer's data in any way?

11 A I don't know one way or the other, to be honest.

12 Q Okay. You didn't do that analysis?

13 A Correct.

14 Q Were you present when Dr. Palmer testified this week?

11:15:49 15 A Yeah. Yeah.

16 Q Okay. Would it surprise you to hear that Dr. Palmer
17 testified that for Washington County, the VEST Team precinct
18 level map is identical to the precinct level map that you
19 present in your report?

11:16:04 20 A Well, I took -- I looked at the VEST data, and their map
21 was the VTD map from my -- from what I remember. You know, I
22 wouldn't present this if I didn't think there had been a
23 mismatch.

24 Q Okay. So as I understand it, you're presenting the VEST
11:16:24 25 data for the VTDs in Washington County here on the right in

1 Figure 1, right?

2 A Right.

3 Q Okay. Did you review the precinct boundaries in the VEST
4 data, which is also available on Redistricting Data Hub?

11:16:40 5 A But they were using the VTD boundaries for their data.
6 That's my understanding of it, at least. And I looked at their
7 map files, and they're using the VTDs, not the precincts.
8 Maybe they have a precinct-shaped file. I'm not saying they
9 don't.

11:16:59 10 Q So are you describing the process -- are you saying -- are
11 you describing the process by which I guess the resulting VTD
12 file would be after that reallocation process happened that we
13 discussed?

14 A Yes. It must have been.

11:17:15 15 Q Okay. And you didn't review the original precinct values
16 that the VEST used; is that right?

17 A I couldn't find those data. I am not saying they're not
18 on the website somewhere. I couldn't find it.

19 Q Okay. I'd like to pull up plaintiffs -- what will be
11:17:37 20 Plaintiffs' Exhibit 107, which I'd like to mark for
21 identification purposes. I'd like to show you that along side
22 Figure 2 in your report, which is Defendants' Exhibit 6, and,
23 again, this is page 3.

24 Dr. Hood, it sounds like you were not able to find this
11:18:00 25 map on the Redistricting Data Hub website, correct?

1 A I never ran across that, no.

2 Q Okay. I will represent to you that this is the VEST
3 Team's precinct level map for Washington County.

4 Does it appear to match the precinct level map that you
11:18:16 5 obtained from Washington County?

6 A Looks like it from what I can tell.

7 Q Okay. And, Dr. Hood, you don't claim the fact that
8 Washington County VTDs don't match Washington County's precinct
9 in any way undermines Dr. Palmer's conclusions regarding
11:18:45 10 racially-polarized voting, correct?

11 A Well, not necessarily. I didn't conduct that analysis
12 again. I am questioning or raising questions I think are
13 pertinent about the VEST data.

14 Q Okay. But you don't actually make any claims about the
11:19:03 15 facts that Washington County VTDs don't match Washington
16 County's precincts undermine Dr. Palmer's conclusions in any
17 way, correct?

18 A Well, I didn't perform that analysis, so in fairness, yes.

19 Q And you are not claiming that the fact that it may be the
11:19:26 20 case that multiple of Alabama's counties VTDs don't match up
21 with precincts in any way undermines Dr. Palmer's conclusions,
22 right?

23 A It all depends on -- no, not necessarily. Again, it all
24 depends on the due diligence that this VEST Team undertook to
11:19:40 25 ensure that they had the right precinct geographies for these

1 counties which is sometimes not an easy thing. So...

2 Q Okay. But you haven't identified any mistakes that the
3 VEST Team made in that regard, correct?

4 A No. I'm just pointing out the fact that even they admit
11:20:03 5 that they were unable to obtain precinct geography files for
6 all the counties in Alabama. I mean, they state that in their
7 report.

8 Q Do you mean that the Redistricting Data Hub states that?

9 A Yes. That's -- yes.

11:20:16 10 Q So you don't mean that the VEST Team has ever stated that,
11 correct?

12 A Well, fair enough. But I mean, you know, from my
13 understanding, the VEST Team puts the data on the Redistricting
14 Data Hub website, right?

11:20:33 15 Q That's right.

16 A So that would be -- I think it's fair to say the VEST Team
17 and/or the Redistricting Data Hub website, either one, they
18 seem to be the same entity essentially. That's just where
19 they're storing or housing their data.

11:20:48 20 Q Is it your understanding that those entities are the same
21 entity?

22 A Not the same entity. What I am saying is that's certainly
23 the VEST Team stores their data on redistricting on that
24 website, right?

11:21:08 25 Q My understanding is that they distribute it publicly using

1 that website because it's -- it provides access to the public.

2 A Right. I think we're talking past each other a little bit
3 here at this point.

4 I mean, again, to the extent to which -- whoever it is
11:21:29 5 that's assembling these redistricting data don't have proper
6 precinct-level shapefiles at the county level raises questions,
7 and they specifically state in a report on the Redistricting
8 Data Hub website that they were unable to obtain precinct-level
9 shapefiles for all counties in Alabama.

11:21:50 10 Q You mean that the Redistricting Data Hub says that they
11 were unable to obtain precinct-level shapefiles for every
12 county, correct?

13 A Well, right. But I am assuming that they were unable to
14 obtain that because the VEST Team was unable to obtain that.

11:22:06 15 Again, I don't know if we're talking past each other now
16 or not, but --

17 Q Okay. I can ask you a different question.

18 So you have made no claims about whether the VEST Team
19 obtained county-level precinct maps from counties, correct?

11:22:21 20 A Well, again, I'm not trying to be argumentative or
21 anything. But I don't know -- if the VEST team is collecting
22 these data, if they're running the data and housing it on this
23 website, then it's not really this Redistricting Data Hub
24 website that's collecting the data. It's really the VEST Team.

11:22:50 25 Q Okay. And you're not aware of what process the VEST Team

1 went through to collect their data, correct?

2 A Well, I'm sure they went about, you know, using publicly
3 available sources where possible, and then contacting state and
4 local election officials in other cases. I mean, that's what
11:23:10 5 has to happen for anyone, so...

6 Q Okay. Understood. And the fact that the figure on the
7 right on the screen right now is the VEST precinct data would
8 suggest that they engaged in the same process you did for
9 Washington County and requested the precinct map from that
11:23:25 10 county, correct?

11 A Well, if that is the map they had for Washington County,
12 then, yes, they have the right precinct map.

13 Q Okay. Let's now -- we can go ahead and take this down.
14 Let's next discuss the -- your comments on the L2 data
11:23:48 15 that Dr. Palmer used for one portion of his analysis.

16 And you note that there may be some discrepancies in the
17 L2 data, correct?

18 A Well, my point is that the L2 racial data are estimates.
19 They're modeled on algorithms.

11:24:08 20 Q Okay. And you note that those discrepancies, they're not
21 all that sizeable, correct?

22 A Well, one group was overestimated, another group was
23 underestimated, and a third group was both under and
24 overestimated. I guess my point being, again, in Alabama given
11:24:30 25 that the state records racial data in their registration

1 database, we don't have to use estimates. The most accurate
2 data are the data that the state has.

3 Q Okay. But you write that the discrepancies that you just
4 identified are not all that sizeable, right?

11:24:49 5 A Do I use the words not all that sizeable?

6 Q Yeah. I can point that to you if that would be helpful.

7 A Okay. That's fine. Thank you.

8 Q I'm sorry. Do you want me to point you to that language?

9 A Yeah. I don't remember using those exact words.

11:25:17 10 Okay. I see it. Yeah. Yes.

11 Q Okay. And --

12 A Thank you.

13 Q Of course. I'm sorry to speak over you. I will make sure
14 not do that.

11:25:28 15 You also go on to speculate that these discrepancies,
16 quote, could make a difference in a district functionality
17 analysis where the racial composition of the district is -- in
18 question is evenly divided, correct?

19 A Sure.

11:25:45 20 Q Okay. And you don't make any claims that these
21 discrepancies affect racially-polarized voting in Alabama,
22 right?

23 A No. I am just raising the question there.

24 Q Okay. You're aware that Dr. Palmer conducted a district
11:26:00 25 level functionality analysis for Mr. Cooper's illustrative

1 majority-black districts, right?

2 A Yes.

3 Q You are also aware that Dr. Palmer did not use L2 data for
4 that functionality analysis, right?

11:26:15 5 A I just -- I honestly don't remember one way or the other.

6 Q Okay. If Dr. Palmer did not use the L2 data for his
7 functionality analysis, any minor discrepancies in the L2 data
8 couldn't possibly affect that functionality analysis, correct?

9 A Well, I agree. If he was not using those data, then no.
11:26:39 10 You couldn't affect things.

11 Q Okay. Okay. Let's move on to talk about something else
12 now.

13 In your first report, you observed that Representative
14 Paschal who is black was elected to the Alabama State House in
11:26:58 15 2021 as a Republican, right?

16 A Correct.

17 Q Okay. You also noted that he came in second in the first
18 Republican primary contest, right?

19 A The initial contest, yes.

11:27:09 20 Q Okay. Do you know how many people voted in that primary?

21 A No.

22 Q Would it surprise you to learn --

23 A I don't have it in my report, so I don't know the answer
24 to that sitting here.

11:27:24 25 Q Okay. Would it surprise you to learn that it was about

1 3,000 people?

2 A No. It was a special election, I believe.

3 Q Okay. And Representative Paschal got about 27 percent of
4 the vote in that first primary, right?

11:27:42 5 A Well, I don't have that figure in my report. I'm not
6 saying that's incorrect. I just don't have that figure.

7 Q Okay. If he had gotten 27 percent of the vote, that would
8 be about 800 people who voted for him, right?

9 A Correct.

11:28:16 10 Q Okay. And then the rest of the voters all voted for
11 somebody else in the primary, then, right?

12 A If that's accurate, then, yes.

13 Q Okay. And one of those candidates that I do think you
14 discussed is Ms. Hulsey. I'm probably mispronouncing her name.

11:28:35 15 A I think it's Hulsey.

16 Q Hulsey. Okay. Sorry about that. She was one of the
17 candidates in that first primary, right?

18 A Yes.

19 Q And are you aware that all of the other candidates in that
11:28:50 20 primary were white?

21 A Yes.

22 Q Okay. And since neither Representative Paschal nor Ms.
23 Hulsey got 50 percent of the vote in that first primary, they
24 went into a runoff?

11:29:10 25 A That's correct.

1 Q Do you know how many people voted in the runoff?

2 A I don't have the figure in my report.

3 Q Okay. Would it surprise you to learn that it was about
4 2,900 people?

11:29:20 5 A No.

6 Q Okay. And in that election, Representative Paschal beat
7 Ms. Hulsey by I think somewhere around 65 votes, right?

8 A It was close. I mean, I don't know the exact number.

9 Q Does that sound about right?

11:29:40 10 A I mean, he got 51.1 percent of the vote. I have that. So
11 it was close.

12 Q Okay. So it's about 2 percent of the vote he won by; is
13 that right?

14 A Yes.

11:29:52 15 Q Okay. Are you aware that about 3,700 people voted in that
16 election?

17 A Not -- I mean, I don't remember that fact sitting here.

18 Q Okay. Any reason to disagree?

19 A No. I'm not disagreeing. I just don't have that in my
11:30:11 20 report.

21 Q That's fine. And you already testified that you didn't
22 conduct any kind of racially-polarized voting analysis on that
23 election, right?

24 A Correct.

11:30:22 25 Q Okay. So you don't provide us with any information about

1 whether voting in that election was actually racially
2 polarized, right?

3 A Well, I didn't do an analysis, no. But, again, the
4 district's 84 percent white.

11:30:38 5 Q The district's 84 percent white, but only about 3,700
6 people voted in that election, right?

7 A Correct.

8 Q Okay. And we don't actually know whether there was a
9 candidate of choice for either black voters or white voters,
11:30:53 10 right?

11 A I didn't run the analysis, so I can't state that, correct.

12 Q Okay. So it's possible that black voters preferred
13 candidate was Paschal, correct?

14 A It's possible, yes.

11:31:09 15 Q And it's possible white voters didn't have a preferred
16 candidate at all, right?

17 A Well, you can imagine a scenario in which that might be
18 the case. They probably did have a preferred voter given the
19 fact that again 84 percent of the district's white.

11:31:27 20 Q Is that the only basis that you have for saying that they
21 probably did have a candidate of choice?

22 A Well, again, I can't state that definitively because I
23 didn't run an analysis to find that out.

24 Q Okay. Since -- you would agree that there are far more
11:31:52 25 than 3,700 black voters in Shelby County, right?

1 A I would assume so, but, again, this is a district in
2 Shelby County, so it's only part of Shelby County.

3 Q Okay. But you didn't do any analysis to determine whether
4 there was racially-polarized voting, right?

11:32:11 5 A Correct.

6 Q Okay. Are you suggesting we draw conclusions about the
7 general electorate in Alabama based on this one election?

8 A Well, it is just one election, so we would have to base
9 any kind of conclusion with a note of caution. I guess what I
11:32:27 10 am stating here based on this example and, again, it's one
11 example, I will grant -- but this example in my academic work
12 is that it appears that black conservatives -- again, there
13 we're talking about white Republicans essentially -- seem to be
14 more than willing to vote for minority Republican candidates.
11:32:48 15 This is an example of it happening in Alabama.

16 Q Okay. So you say this is an example of that, but you
17 haven't provided any other examples in Alabama, right?

18 A This is the only example I have, yes.

19 Q Okay. And I will represent to you that only 3,700 people
11:33:20 20 voted in that election. So that would be a pretty tiny portion
21 of Alabama's population, correct?

22 A Yes, that's correct.

23 Q Okay. In your first report, you also cite an article that
24 you have already discussed a bit, and I just have a few
11:33:42 25 questions about it.

1 It's called True Colors, White Conservative Support For
2 Minority Republican Candidates. Do you recall that article?

3 A Yes. Yes.

4 Q Okay. Is it right that when you refer to minority
11:34:00 5 candidates in that article, you're lumping all different
6 minority groups together, right?

7 A Well, that's fair. Again, I mean, we know the race or
8 ethnicity of these candidates that we're studying. But the
9 group we're studying are just minority candidates as a group.

11:34:19 10 Q Okay. And I think -- is it right that you analyzed 11
11 elections in that article?

12 A Without looking, that sounds about right.

13 Q Okay. I think you said that none of those elections were
14 in Alabama, right?

11:34:34 15 A There were no examples -- I mean, we used the entire set
16 of elections that were available to us to study minority
17 Republican candidates running for Governor or U.S. Senate. So
18 there wasn't an example to use from Alabama. It just didn't
19 exist.

11:34:51 20 Q Okay. So you didn't analyze any elections from Alabama?

21 A That's correct. There weren't any to analyze.

22 Q Got it. And of the 11 -- of the 11 elections you did look
23 at, does it sound right to you there were four that involved a
24 black candidate?

11:35:14 25 A That sounds correct.

1 Q Okay. And is it also correct that none of those black
2 candidates actually won their general elections?

3 A I would have to look. I would have to go back and look.

4 I guess that would mean that perhaps Senator Tim Scott
11:35:39 5 from South Carolina had not had an election at that point when
6 we wrote this article, otherwise, he certainly would have been
7 in the data set and would have been an example of the winning
8 minority Republican candidate.

9 So if it was before Senator Scott, then it may be the case
11:36:00 10 that none of the minority candidates who are black won in this
11 particular study.

12 Again, we weren't looking at winning or losing. We were
13 looking at levels of support from white conservatives, so...

14 Q Okay. Since the article didn't examine any elections in
11:36:29 15 Alabama, is it fair to say that it doesn't provide any direct
16 evidence related to voting behavior in Alabama?

17 A Well, I guess that's fair at a certain point. Again, this
18 is -- was a nationwide study used elections that were available
19 to us from a variety of states for different offices. It
11:36:50 20 doesn't necessarily mean that the pattern we uncovered in the
21 article wouldn't occur in Alabama, though.

22 Q Okay. But you haven't offered any evidence that that
23 pattern exists in Alabama, right?

24 A Well, I think it does, as an expert sitting here today,
11:37:08 25 having conducted research on this topic.

1 Q Okay. But --

2 A I think it's pretty safe to say that white conservatives,
3 almost all of whom are Republicans today, would support a
4 minority Republican candidate even in Alabama. I mean, that's
11:37:25 5 my opinion on the matter, having conducted research in this
6 area.

7 Q Okay. But you don't offer any actual evidence of that to
8 support that opinion, correct?

9 A Well, the evidence I have is from this nationwide study we
11:37:41 10 did. There wasn't a --

11 JUDGE MARCUS: Let's stop for a second, Dr. Hood.
12 Ms. Madduri, just to allow the witness to finish his answer
13 before you put the next question. You may complete your
14 answer.

11:37:58 15 THE WITNESS: Thank you, Your Honor.

16 Again, there wasn't a case to study in Alabama in the
17 social sciences. I'm not trying to be flippant, but we're not
18 laboratory sciences. We have to study what's out there that's
19 occurred. And they're just had not been a case at that point
11:38:17 20 when we wrote this article of a minority Republican candidate
21 running for U.S. Senate or Governor in Alabama. So, no, that's
22 not part of the study. I agree.

23 It doesn't mean that that pattern wouldn't be uncovered in
24 Alabama if we did -- if we were able to study it directly.

11:38:34 25 BY MS. MADDURI:

1 Q Okay. But you haven't studied that, correct?

2 A Correct.

3 Q Dr. Hood, is it fair to say that you have studied partisan
4 change in the South since the enactment of the Voting Rights
11:39:09 5 Act?

6 A Yes.

7 Q Okay. Is one of your publications on that topic called
8 The Rational Southerner?

9 A Yes.

11:39:24 10 Q And in your work, including in that publication, you
11 specifically discuss the partisan realignments that happened in
12 the South among black and white voters after the Voting Rights
13 Act passed; is that right?

14 MR. SMITH: Your Honor, I would object. This is
11:39:39 15 beyond the scope of what Dr. Hood has expressed an opinion on
16 and beyond the scope of his report.

17 JUDGE MARCUS: We will see where she is going with
18 this. You may proceed. But let's get right to the point if we
19 could, Ms. Madduri.

11:39:52 20 THE WITNESS: So the answer to that --

21 JUDGE MARCUS: No, no, no. I'm sorry. What was the
22 question, Ms. Madduri? I want to make sure we have it.

23 MS. MADDURI: Sure. The question was: That in
24 Dr. Hood's work, he has specifically discussed the partisan
11:40:10 25 realignments that happened in the South among black and white

1 voters after the passage of the Voting Rights Act.

2 JUDGE MARCUS: You may answer.

3 THE WITNESS: Yes, that's correct.

4 BY MS. MADDURI:

11:40:26 5 Q Okay. And is it also correct based on your research that
6 once African-Americans were re-enfranchised after the Voting
7 Rights Act, they fairly quickly realigned to the Democratic
8 Party in the South?

9 A Yes, that's fair.

11:40:41 10 Q Okay. And prior to partisan realignment, white
11 southerners had overwhelmingly preferred the Democratic Party,
12 correct?

13 A In the South, yes.

14 Q Okay. And after the VRA passed, white southerners
11:40:54 15 realigned to affiliate with the Republican Party, correct?

16 A Conservatives and moderates, yes. I mean, if you are a
17 white progressive, you didn't realign is what I am saying.

18 Q Okay. But your research shows that generally white
19 southerners overall reaffiliated with the Republican Party
11:41:16 20 after the VRA was enacted, right?

21 A Correct. Because, you know, there are more white
22 conservatives than moderates and progressive, so, yes.

23 Q And you would agree that that realignment is primarily a
24 function of racial and political dynamics, right?

11:41:34 25 A Well, that's pretty broad racial and political.

1 Certainly, yes. I mean, that -- yeah.

2 Q Specifically, your research has found that the
3 increasingly liberal orientation of the National Democratic
4 Party on the issue of Civil Rights impacted white southerners,
11:42:01 5 correct?

6 A Correct.

7 Q Okay. And you would -- your research I think shows that
8 the VRA was a milestone in the development of the Republican
9 Party in the South, right?

11:42:09 10 A Yes.

11 Q Okay. And at the same time, there was also a transition
12 at the national level where the Democratic Party became more
13 liberal on the issue of Civil Rights for African-Americans, and
14 the Republican Party became more conservative on that same
11:42:27 15 issue, correct?

16 A Yes. There was an switch in issue positions at the
17 national level.

18 Q Okay. And the Republican Party was increasingly viewed as
19 the party of racial conservatism, right?

11:42:40 20 A Yes, that's fair.

21 Q Okay. And black mobilization in the Democratic Party led
22 directly to the transition of whites to the Republican Party,
23 right?

24 A Yes. That's one of the major arguments of the book, yes.

11:42:54 25 Q Okay. So you would agree, then, that race is one of the

1 factors that impacts which political party Alabama voters
2 support, correct?

3 A Well -- okay. So it would be a little more specific. Or
4 can you be more specific with that question?

11:43:13 5 Q Yeah. I can -- let me ask again. So would you agree that
6 race is one of the factors that impacts which political party
7 voters in Alabama support?

8 A Well, yes. Now, differentiating between race and racism,
9 I mean, in the South today included in Alabama, a majority of
11:43:38 10 whites support the Republican Party. More than a majority of
11 African-Americans support the Democratic Party.

12 So the -- very much so there are racial coalitions that
13 underlie the party structure at the state level in the South.

14 Q Would you agree, then, that race is one of -- not just
11:44:14 15 speaking about the race of the people who support the party,
16 but the fact that race is an issue is one of the things that is
17 involved in voters selecting which political party they
18 affiliate with?

19 A It can be, yes. I mean, that's part of it. There is, you
11:44:34 20 know, a multitude of things that may go into someone's calculus
21 for which party to join.

22 Position on racial issues, like affirmative action, for
23 instance, might be one of those.

24 Q Okay. And would you say that the position of the parties
11:44:53 25 on race-related issues is contributed to that divide that you

1 described?

2 A Well, the parties sort of set the tone at the national
3 level with this switch in issue positions in about 1964. And
4 so they -- the party elite sent out the signal which, in turn,
11:45:16 5 caused an exodus. I mean, before the Voting Rights Act, you
6 really just had the Democratic Party in the South. You had
7 factions within the Democratic Party. Again, especially in
8 certain states, most African-Americans may have been
9 disenfranchised. So you are really talking about a white
11:45:38 10 Democratic party. When they switched issue positions in the
11 '64 Civil Rights Act, and the '65 Voting Rights Act were
12 passed, it did begin a slow exodus of white conservatives and
13 later white moderates to the Republican Party. Fairly quickly,
14 though, in the mid 1960s, African-Americans who were
11:45:59 15 re-enfranchised moved very quickly to the Democratic Party.

16 So, you know, if you are a white conservative in order to
17 accomplish political goals in a party that's pretty quickly
18 becoming crowded out with issue -- or opinions that don't
19 necessarily mesh with yours, you're going to move to another
11:46:22 20 vehicle for that, and that's what happened with black
21 conservatives.

22 Q Okay. And I think you mentioned that the national party
23 switched issue positions. You mean on issues related to race,
24 correct?

11:46:44 25 A On Civil Rights, yes. Yeah. That's what I am talking

1 about.

2 Q Okay. Your analysis in this case has not looked at the
3 impact that race-related issues -- how race-related issues
4 contribute to the partisan divide between whites and blacks
11:47:07 5 candidates, right?

6 A I didn't analyze that for this case, no.

7 Q And I'm sorry. I think I said candidates, but I meant
8 voters. I can restate the question if you don't understand
9 what I am asking?

11:47:20 10 A Well, I didn't do that analysis period in this case. I
11 mean, that's fair.

12 Q Okay. And your analysis doesn't in any way suggest that
13 race-related issues don't have an impact on the division
14 between voters, correct?

11:47:39 15 A They may have an impact. I am not saying that they're
16 not.

17 Q And would you agree that a complete understanding of
18 southern party politics requires an appreciation of the role
19 that race has played and continues to play in that region?

11:48:00 20 A That sounds like what I said yesterday and the first day
21 of class, so, yes. It's not the only thing, but certainly you
22 have to understand race to understand southern politics.

23 Q Okay. I think I am just about done here, Dr. Hood. I
24 want to ask you about one thing that you testified about during
11:48:28 25 your discussion with Ms. Gbe.

1 You discussed the concept of the core preservation and the
2 fact that some states at times list that as a criteria for
3 redistricting. Do you recall that?

4 A Yes.

11:48:43 5 Q Is it your recollection that Alabama did not include core
6 preservation in its redistricting guidelines in 2010?

7 A I just honestly don't remember the answer to that. Not
8 sure.

9 Q Okay. I can pull the exhibit to refresh your
11:49:08 10 recollection.

11 A Okay. Please do.

12 Q Okay. That would be Plaintiffs' Exhibit 87, pages 917 and
13 918.

14 I can represent to you that this is a transcript of your
11:49:51 15 testimony in the *Chestnut* case in 2019.

16 A Okay.

17 Q Okay. And we can zoom in a little bit on -- first on page
18 917 at line 13, around line 13 to the bottom. Okay, again,
19 here I will represent to you that you were discussing the 2010
11:50:22 20 guidelines in this section of your testimony.

21 And the last line there says, But nothing in that section
22 mentions core preservation; is that correct?

23 A Well, okay. So.

24 Q We are going to get it arranged for you to be able to see.

11:50:45 25 A Okay. All right.

1 Q If you can just hang on one second. There you are being
2 asked about the guidelines, and it says at the bottom at line
3 25 on page 917, But nothing in that section mentions core
4 preservation; is that correct? And you say, I don't see it.

11:51:16 5 A That's correct.

6 Q Okay. Does this -- go ahead?

7 A Up above, so I just want to point out up above we're
8 talking about avoiding incumbent contests. I mean, core -- you
9 know, I don't disagree that apparently the document didn't use
11:51:35 10 the word core preservation. But if you're worried about
11 incumbent contests in retaining incumbents, by virtue of that
12 fact, you're thinking about core preservation at least. You
13 have to be. If you draw someone out of their district or you
14 draw a district where someone has got 10 percent of the -- of
11:52:00 15 the constituents they had in the previous election cycle, you
16 know, so it has almost no core preservation, you are
17 endangering that incumbent.

18 So I'm just pointing that out.

19 Apparently, I don't disagree. It didn't use the word core
11:52:17 20 preservation, but if it's talking about incumbency, it's still
21 a factor to think about.

22 Q Okay. So you agree that the 2010 guidelines did not list
23 core preservation as a guideline, right?

24 A Not according to what I said here, no. I mean, yes, I
11:52:35 25 agree with you.

1 Q Okay. So then core preservation as a guideline was only
2 added in 2021; is that right?

3 A Well, if it wasn't there in 2011 or 2010, then, yes.

4 Q Okay.

11:53:11 5 MS. MADDURI: I don't have any further questions for
6 Dr. Hood.

7 JUDGE MARCUS: Okay.

8 MS. MADDURI: Thank you for your time.

9 THE WITNESS: Thank you.

11:53:16 10 JUDGE MARCUS: All right, Ms. Madduri. We will turn
11 to counsel for Singleton, Mr. Quillen.

12 MR. QUILLEN: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. QUILLEN:

11:53:25 15 Q Good afternoon, Dr. Hood.

16 A Good afternoon.

17 Q My name is Henry Quillen, and I represent the Singleton
18 plaintiffs in this case.

19 I'd like to begin by talking about your functionality
11:53:38 20 analysis. You used the 2018 gubernatorial election and the
21 2020 presidential election as the basis of that analysis,
22 correct?

23 A Correct.

24 Q And for both of those elections, your analysis showed that
11:53:54 25 black voters overwhelmingly voted for the Democratic candidate,

1 correct?

2 A Correct.

3 Q And for both of those elections, you built a model to
4 estimate the results if those elections had been contested in
11:54:09 5 three different hypothetical congressional districts, right?

6 A Correct.

7 Q One of those districts was District 7 in the plan that was
8 enacted by the state of Alabama in 2021, right?

9 A Correct.

11:54:21 10 Q And the other two districts were Districts 6 and 7 in the
11 whole county plan proffered by the Singleton plaintiffs,
12 correct?

13 A Correct.

14 Q You didn't present this analysis to the Alabama
11:54:36 15 Legislature before it enacted the 2021 plan, did you?

16 A No. It was -- I didn't have it done, no.

17 Q Okay. For the 2018 gubernatorial election, your analysis
18 estimated that the Democratic candidate would have received
19 more votes than the Republican candidate in Districts 6 and 7
11:55:00 20 in the Singleton whole county plan. And if you would like me
21 to put that up on the screen for you, I can.

22 A I have got it in front of me. That's correct. That's
23 correct.

24 Q And the same is true for the 2020 presidential election,
11:55:15 25 correct?

1 A Yes, I believe so. It was -- 49 to 49 in District 7. I
2 mean, it's very true. It's 49.13 Democratic in Singleton
3 District 7 and 48.92 percent Republican in that district.

4 So I mean, mathematically, yes, that's correct. It's
11:55:51 5 almost a virtual tie, though.

6 Q But the Democrat had the plurality, correct?

7 A That's true.

8 Q And in the presidential election in Alabama, plurality is
9 good enough to win, correct?

11:56:04 10 A I think that's good enough to win in any state that I am
11 aware of, yes.

12 Q There's no such thing as a presidential runoff general
13 election?

14 A No. Or Georgia would have tried it, so... We have a
11:56:16 15 runoff for everything else, so...

16 Q When you're trying to estimate the results of an election,
17 would you agree it's important to use the most accurate data
18 available to you?

19 A Yes.

11:56:30 20 Q The ecological inference has an inherent margin of error,
21 too, correct?

22 A Yes. I mean, all statistical models do.

23 Q And the differential privacy rules of the Census Bureau
24 create potential errors, as well, in your ecological inference
11:56:53 25 analysis, correct?

1 A Well, potentially, yes. They're unknown, though. We
2 can't control for those. We don't know what the answer to that
3 is.

4 Q Okay. The Singleton whole county plan that you evaluated
11:57:06 5 doesn't split any counties across congressional districts,
6 correct?

7 A That's correct.

8 Q And for gubernatorial and presidential elections, the
9 Alabama Secretary of State reports election results at the
11:57:20 10 county level, correct?

11 A Correct.

12 Q And those figures were available to you when you were
13 doing your analysis, correct?

14 A Certainly.

11:57:33 15 Q You have the ability to calculate what the actual election
16 results would have been in District 6 and 7 of the Singleton
17 whole county plan in the 2010 gubernatorial election and the
18 2020 presidential election, correct?

19 A Based on the county numbers, yes.

11:57:50 20 Q But you didn't include those calculations in your report?

21 A Well, no, that's not how I ran my functional analysis, so
22 I didn't.

23 Q Did you look at the actual results in those counties to
24 compare them to the results of your model?

11:58:08 25 A No.

1 Q Did you review the report of the Singleton plaintiffs'
2 expert Dr. Natalie Davis?

3 A I think I looked at it.

4 Q Okay.

11:58:28 5 MR. QUILLEN: Ms. York, could you pull up Exhibit S-2,
6 which is -- this is the report of Dr. Natalie Davis that's been
7 admitted into evidence?

8 BY MR. QUILLEN:

9 Q You had an opportunity to respond to this report, correct?

11:58:51 10 A I'm assuming so, yes.

11 Q But you didn't respond to this report?

12 A Correct.

13 Q Can we go to page 24 of this pdf, please? There we go.

14 Dr. Hood, in this part of Dr. Davis's report, she
11:59:20 15 calculates the actual election results in the counties that
16 encompass District 6 and District 7 in the Singleton whole
17 county plan for 12 elections dating back to 2012.

18 Do you recall seeing this when you reviewed her report?

19 A I don't recall this, but go ahead.

11:59:45 20 Q Do you have any reason to believe that she didn't add up
21 these numbers correctly?

22 A Not sitting here, no.

23 Q And would you agree that this sort of analysis is not
24 complicated? If you had to do the same analysis, you would

11:59:57 25 just add up the county level results and divide by the totals?

1 A Yes.

2 Q So in this part of her work -- I will ask you to assume
3 for purposes of my next few questions that she didn't make any
4 mathematical errors here.

12:00:17 5 Do you see how that she lists the counties that are in
6 District 6, and then she lists the counties that are in
7 District 7.

8 MR. QUILLEN: And, Ms. York, could you scroll down a
9 little bit so we can see, yeah, the totals for both?

12:00:33 10 THE WITNESS: Okay.

11 BY MR. QUILLEN:

12 Q Yeah. If we could skip ahead a couple of pages now to the
13 results for the 2018 gubernatorial election. There we are.
14 That's -- these are the county level results on the right side
12:00:57 15 where you see 2018 Maddox-D, Ivey-R. These are the results for
16 the 2018 gubernatorial election. Do you see that?

17 A Yes.

18 Q In District 6, the Democratic candidate received
19 59 percent of the vote. Do you see that?

12:01:22 20 A Okay.

21 Q And in District 7, the Democratic candidate received
22 56 percent of the vote. Do you see that?

23 A Okay. Yes. Yes.

24 Q Can we switch back to Exhibit D-5 of your report at page
12:01:51 25 13? And scrolling down a little bit, we see that for District

1 7, actually could you go to the next page, it's page 13 of the
2 report pdf.

3 So for that race, your numbers were close. You
4 underestimated by a little bit the actual result in District 6,
12:02:38 5 which it was actually 59, and you estimated 58.28, and you
6 slightly underestimated the result in District 7. It was 56,
7 and you estimated 55.48; is that correct?

8 A From -- I have been trying to follow. I think so, yes.

9 Q Okay. Bear with me because I'd like to do the same thing
12:03:06 10 for the presidential election. Maybe before we leave this --
11 can we just take note of what you said -- you estimated the
12 vote shares were in the presidential election in District 6 and
13 7.

14 So you said that in District 6, it was 52.03 percent; and
12:03:29 15 in District 7, it was 49.13 percent, correct?

16 A Yes.

17 Q Okay. Can we go back to Dr. Davis's report now on -- I
18 think it's page 28 of the pdf?

19 Yes. So here is the presidential election. The bottom
12:04:06 20 percentage in the top group of numbers is 56 percent. Now, I
21 will -- I do need to tell you, Dr. Davis did not take into
22 account third-party candidates, which you did. But your
23 analysis found that third-party candidates received somewhere
24 between 1 and 2 percent of the vote, correct?

12:04:31 25 A Correct.

1 Q Okay. So Dr. Davis found that the Democratic candidate in
2 the 2020 presidential election actually got 56 percent of the
3 vote in Congressional District 6, which is about 4 points
4 higher than you estimate, correct?

12:04:50 5 A Correct.

6 Q And scrolling down a little bit to the District 7 numbers,
7 Dr. Davis found that the Democratic candidate actually received
8 54 percent of the two-party vote compared to 49 percent in your
9 estimate, correct?

12:05:09 10 A Correct.

11 Q So for each of the four results you got -- two elections
12 in two districts -- you underestimated the actual Democratic
13 vote share, sometimes by a little, sometimes by, you know, at
14 least two or three points, correct?

12:05:28 15 A Well, again, as we just talked about, for one thing, she's
16 not controlling for third-party candidates.

17 You know, my model starts out by disaggregating and then
18 reaggregating things. So, you know, it's not exactly the same
19 method as what we're seeing here.

12:05:47 20 I mean, I can agree that in these counties in that
21 election this was the vote percentage. My model, the
22 functional analysis takes into account how this district's
23 going to look moving out into the future, you know. I have got
24 the current VAP numbers, for instance, I'm using as a spring
12:06:08 25 board for what the election might look like in the future.

1 Q The current VAP numbers that you're using came from 2020
2 census, correct?

3 A Correct.

4 Q And we're looking at the 2020 presidential election,
12:06:21 5 correct?

6 A That's one of the ones we're looking at, yes.

7 Q Were there significant changes in demographics in either
8 of those districts between 2018 and 2020?

9 A I don't know the answer to that.

12:06:33 10 Q Do you have any reason to believe there were?

11 A There were probably some changes. I don't know if they're
12 significant or not.

13 Q Okay. Which would be a more accurate measure of the
14 results of the 2020 presidential election in District 6 and 7
12:06:54 15 of the Singleton whole county plan; your model or the results
16 that were certified by the Governor, Attorney General, and
17 Secretary of State of Alabama?

18 A Well, I mean, the results are the results. Right? I have
19 modeled the results as a part of the *Gingles* test. I mean, I
12:07:15 20 had to do that. I can't just start out with the results and
21 say here they are.

22 I'm not disputing these are the vote totals.

23 Q So based on your analysis and the actual election results,
24 would it be fair to say that in District 6 and 7 of the
12:07:38 25 Singleton whole county plan, black voters have an effective

1 opportunity to elect the candidate of their choice?

2 A What do you mean by -- define effective.

3 Q Do they have a substantial opportunity to elect a black
4 candidate?

12:07:58 5 A That is an opportunity. Again, unsure, according to my
6 numbers, District 7, especially in the Singleton plan would
7 perform or not as a minority opportunity to elect district, for
8 instance.

9 Q Right. But you been looking at the -- looking at using
12:08:19 10 census numbers from the same year the 2020 presidential
11 election was contested, your model underestimated the
12 Democratic share by 5 percentage points?

13 A Well, again, it's not apples to apples, to be fair. We
14 would have to have the third-party votes in there.

12:08:37 15 Q Right. So well let's look at that.

16 A And we know that -- something we haven't discussed that no
17 one can control for in Alabama is the fact that the absentee
18 by-mail votes cannot be put back into the proper precinct.

19 Q So that would have been an additional source of error for
12:09:03 20 your analysis?

21 A I don't know that it's a source of error. It's just that
22 that's one of the reasons my numbers might slightly differ from
23 the vote totals, which we have at the county level, but we
24 don't have it that the precinct level, and that's where my
12:09:17 25 analysis took place.

1 Q Is a precinct-level analysis necessary when a district
2 only includes whole counties?

3 A A precinct-level analysis is certainly necessary when one
4 is trying to estimate how various racial or ethnic groups are
12:09:33 5 voting for candidates, yes.

6 Q Yeah. But that wasn't my question.

7 A Well, that's part of my analysis.

8 Q If we are trying to estimate what the results of the 2020
9 election would have been, we don't need to know how the
12:09:48 10 absentee ballots were associated with particular precincts, do
11 we, because we already have the Secretary of State's certified
12 election results --

13 JUDGE MARCUS: Yeah. Please, if we would just allow
14 the question to be complete before we get the answer and allow
12:10:10 15 the answer to be complete before we go with the next question.

16 With that, you may proceed, Mr. Quillen.

17 BY MR. QUILLEN:

18 Q If we're trying to estimate how the 2020 presidential
19 election would have come out in Alabama in these districts,
12:10:26 20 which are whole counties, we don't need to associate absentee
21 ballots with particular precincts because the results are
22 reported at the county level, correct?

23 A Correct. But you're not estimating anything. You're just
24 taking the vote totals and adding them up.

12:10:41 25 Q Right. And in that way, it's more accurate than what you

1 did?

2 A It's more accurate from the standpoint of these were these
3 vote totals in these counties. It's not necessarily more
4 accurate given all that I was trying to accomplish with my
12:10:57 5 analysis.

6 Q What is the purpose of trying to build the results from
7 the 2020 presidential election from a precinct-level
8 demographic analysis if you already have the actual results?

9 A Again, part of what I'm doing relates to prong 2 of the
12:11:20 10 *Gingles* analysis.

11 Q Okay. Does -- if what -- if what you -- if you come up
12 with a result that suggests that a Democrat would lose in a
13 district, but the actual results show that the Democrat would
14 have won, which one should you rely on to know whether or not
12:11:44 15 black -- the preferred candidate of black voters would have an
16 opportunity to win?

17 A Well, for one, I think my model is pretty well thought
18 out, in terms of partitioning votes by race using real turnout
19 and registration data, looking at the demographics of the
12:12:05 20 district as it's going to exist in the future, and putting all
21 those things together to come up with a vote estimate.

22 Q Which part of this projects demographic results into the
23 future?

24 A Well, I have the VAP numbers for the new district.

12:12:25 25 Q Right. But that -- right. But as we discussed, those

1 were based on the 2020 census, and one of your elections was
2 the 2020 election. Does -- you are not projecting past the
3 year 2020, are you?

4 A Well, even you are making a projection here with these
12:12:40 5 numbers. These are 2020 presidential election numbers.
6 They're not numbers that we -- that someone's running for
7 Congress in this district, so...

8 Q The --

9 A It's not congruent in that regard.

12:12:56 10 Q Did you run any analysis of races involving people running
11 for Congress in this district?

12 A No, I did not.

13 Q Okay.

14 A I relied on state level elections where I could resort to
12:13:11 15 precincts in this district I needed to, so...

16 Q If -- if you took your results based on 2020 census data,
17 and it had one -- you know, and it had one vote share for
18 Democrat, and the actual results had different vote share for
19 the Democrat, which of those would be more reliable?

12:13:37 20 A Well, I mean, again, if you just want to calculate the
21 actual vote share, and you can do that using counties, then,
22 fine. But, again, I'm doing much more than that for my
23 analysis.

24 Q Do you -- based on your analysis and the actual results,
12:14:00 25 you wouldn't say that -- that -- that black voters have no

1 opportunity to elect a candidate of their choice, correct?

2 A I wouldn't say no. That's correct.

3 Q Uh-huh. Okay. And if I told you that Dr. Davis actually
4 ran her analysis for 12 races, and the Democrat got more votes
12:14:25 5 than Republican in each one, would that surprise you?

6 A Not necessarily.

7 Q Okay.

8 A I mean, this isn't an analysis, though. These are just
9 numbers that are aggregated together.

12:14:46 10 MR. QUILLEN: Ms. York, you can take this down now.

11 And, actually, can you please put up Dr. Hood's report,
12 page 15 of the pdf, page 14 of the report?

13 JUDGE MARCUS: We are talking about the first report
14 now, right?

12:15:06 15 MR. QUILLEN: Yes. First report. Exhibit D-5. I'm
16 sorry.

17 BY MR. QUILLEN:

18 Q Okay. Here you are discussing primary elections.
19 Actually, yeah, if you could scroll down just a little bit.

12:15:29 20 Thank you.

21 In this bottom paragraph here, you wrote, If there is an
22 insufficient number of black voters to constitute a majority in
23 a Democratic primary, the black community may be unable to
24 elect their candidate of choice.

12:15:43 25 Do you see that?

1 A Yes.

2 Q Did you analyze whether black voters would constitute a
3 majority of the voters in the Democratic primary in Districts 6
4 and 7 of the Singleton whole county plan?

12:15:55 5 A No.

6 Q Do you have any opinion about whether they would
7 constitute a majority in those districts?

8 A No. I don't. Because I didn't look at that.

9 Q You don't have any reason to believe that they would not
10 constitute a majority in those districts?

11 A I don't have a reason to say anything one way or the other
12 just sitting here right today.

13 Q In your model, though, you did -- you did look at general
14 election votes broken down by party and race, correct?

12:16:27 15 A Yes.

16 Q If we could go to page 8 of your report, please. Page 9
17 of the pdf.

18 This is -- this is the -- your model of the 2020
19 presidential election in District 6 in the Singleton whole
12:16:52 20 county plan.

21 Is that left column the breakdown of the Democratic votes
22 by race?

23 A Yes.

24 Q So it appears that black -- black Democratic voters
12:17:11 25 outnumbered white Democratic voters by more than three to one;

1 is that right?

2 A In this calculations, yes.

3 Q Okay. If we go to the next page --

4 A Those aren't necessarily --

12:17:25 5 JUDGE MARCUS: I'm sorry. Let him finish his answer
6 please, Mr. Quillen.

7 THE WITNESS: Those -- I'm just saying those aren't
8 necessarily primary voters, though.

9 BY MR. QUILLEN:

12:17:34 10 Q Understood.

11 A Okay.

12 Q And if we could go to the next page where it has the
13 similar result for the 2018 gubernatorial election in District
14 6. Here towards the bottom of the screen, the black Democratic
12:17:55 15 voters outnumbered the white Democratic numbers by more than
16 two to one, correct?

17 A Yes, that's correct.

18 Q Okay. And if we go to the next page, which is the results
19 that you got for the 2020 presidential election in District 7.

12:18:15 20 I think -- let's see. Oh, I'm sorry. One more page.

21 Here, the black Democratic voters outnumbered the white
22 Democratic voters by more than eight to one, correct?

23 A Yes.

24 Q Okay. And last one is on the next page, which is the 2018
12:18:40 25 gubernatorial election in District 7. The black Democratic

1 voters outnumbered the white Democratic voters by more than
2 four to one?

3 A Yes.

4 Q You don't have any evidence, do you, that black turnout in
12:19:01 5 primary elections is so low compared to general elections that
6 black voters would be a minority in a Democratic primary in
7 these districts, despite being the vast majority of the
8 Democratic voters in the general election, do you?

9 A No, I don't have access to those data. As I stated
12:19:19 10 earlier in my testimony, I asked for the voter registration and
11 history databases for some primary elections, and I was unable
12 to obtain them.

13 Q Just as a matter of mathematics, if black Democratic
14 voters outnumber white Democratic voters by eight to one in a
12:19:40 15 general election, then for them to be the minority in the
16 primary election, their turnout would have to fall by
17 seven-eighths while white turnout remained at 100, correct?

18 A Yeah, in that hypothetical, yes.

19 Q Is that something that you have seen in your political
12:19:59 20 research --

21 A I'm not saying that's the case.

22 Q Okay. All right. If you will just give me one minute.

23 MR. QUILLEN: Okay. I have no further questions.

24 JUDGE MARCUS: Thank you. Mr. Smith, where are we in
12:20:26 25 terms of redirect? We will be able to give our reporter a

1 break, but if you will be short, you may proceed.

2 MR. SMITH: Your Honor, I think it will be maybe
3 five minutes.

4 JUDGE MARCUS: Fire away.

12:20:36 5 REDIRECT EXAMINATION

6 BY MR. SMITH:

7 Q Dr. Hood, do you recall questions from plaintiffs' counsel
8 about courts crediting your testimony?

9 A Yes.

12:20:48 10 Q And, Dr. Hood, approximately how many cases have you
11 served as an expert witness in?

12 A I'm not really sure. I've testified -- testified in court
13 more than 25 times.

14 Q And have a number of those courts credited your testimony?

12:21:08 15 A Yes.

16 Q And does that include the Northern District of Alabama in
17 the *Chestnut* case?

18 A Yes.

19 Q And, Dr. Hood, did Mr. Bryan assist you with processing
12:21:24 20 any data in this case?

21 A Yes. He did some geocoding.

22 Q But is any opinion in your report that references that
23 data, in fact, your own opinion?

24 A Yeah. That's what I was saying earlier. We did not
12:21:40 25 discuss the merits of my analysis or anything like that. It

1 was literally discussion of some data that I needed him to run,
2 that I used in my analysis.

3 Q And, Dr. Hood, do you recall being asked about the passage
4 of the VRA in partisan realignment?

12:21:59 5 A Yes.

6 Q Dr. Hood, even if the passage of the VRA influenced some
7 partisan realignment in the 1960s, does that tell us why anyone
8 is voting for a Republican candidate today?

9 A Not necessarily. I mean, you know, there are many --
12:22:19 10 again, there are many different issues that may make someone
11 identify as a Republican or a Democrat today.

12 So I would say it's part of the calculus, but not all of
13 the calculus, I guess is a fair way to put it.

14 Q And, Dr. Hood, looking to page 15 of your report, where
12:22:42 15 you discuss the election of Representative Paschal, what was
16 the race of the Democratic candidate in the general election?

17 A From my memory, I think they were white.

18 Q And can you tell us what the vote shares in that general
19 election were between the Democratic and Republican candidates?

12:23:08 20 A Well, yes. So I will just read the sentence.

21 Paschal faced a white Democrat Sheridan Black in the
22 special general election held on July 13th, 2021. In this
23 contest, Paschal won with 74.7 percent of the vote to
24 25.1 percent of the vote for black.

12:23:32 25 Q And, Dr. Hood, would you say that's a safe margin that he

1 won by?

2 A I think most legislative incumbents would think that's a
3 safe margin, yes.

4 Q Dr. Hood, in performing your functionality analysis or any
12:23:48 5 other -- would -- let me reframe that. Withdrawn.

6 Dr. Hood, when considering elections in this case on which
7 you based your opinions, how did you go about picking the
8 elections that you picked?

9 A Well, I picked recent elections that were conducted
12:24:04 10 statewide that were contested, as well. Again, if you have a
11 statewide election, you can reconfigure it in any district you
12 want to, including districts that may or may not be in
13 existence.

14 So, again, the top of the ticket, most recent, statewide
12:24:22 15 elections in the past two election cycles, Governor and
16 President, if there was time, there could have been more done,
17 certainly. Other elections could have been analyzed. But I
18 viewed these as pretty probative in terms of trying to get a
19 fix or an idea of how these districts would perform out in the
12:24:43 20 future.

21 Q And, Dr. Hood, given more time, would you review more
22 elections?

23 A Certainly, I could have run more elections with more time,
24 yes.

12:24:57 25 MR. SMITH: Your Honor, may have just a moment?

1 JUDGE MARCUS: You sure can.

2 BY MR. SMITH:

3 Q Dr. Hood, one or two more questions. Do you recall being
4 asked about whether the core preservation factor was in the
12:26:08 5 redistricting guidelines before 2020, or 2021?

6 A Yes.

7 Q And have you reviewed the reapportionment redistricting
8 guidelines from 2000 to know whether they were included in
9 those guidelines?

12:26:24 10 A I can't remember having ever looked at that document.

11 Q Okay.

12 MR. SMITH: Your Honor, nothing further from us.

13 JUDGE MARCUS: All right. Any questions, Judge
14 Manasco or Judge Moorer?

12:26:37 15 JUDGE MANASCO: None from me.

16 JUDGE MOORER: None from me.

17 JUDGE MARCUS: All right. Anything further for this
18 witness?

19 All right. Seeing none, we thank you, Dr. Hood, and you
12:26:49 20 are excused.

21 THE WITNESS: Thank you, Your Honor.

22 JUDGE MARCUS: I take it we're going to go back to the
23 plaintiffs' case when we come back after lunch.

24 We talked about your expert from Caster would be the next
12:27:07 25 witness?

1 MS. MADDURI: That's right, Your Honor.

2 JUDGE MARCUS: That would be Dr. King.

3 MS. MADDURI: Correct.

4 JUDGE MARCUS: Do you have any other witnesses that
12:27:17 5 you are planning to call?

6 MS. MADDURI: We have one other witness who is a
7 plaintiff in the case, Mr. Caster.

8 JUDGE MARCUS: All right. And does that complete the
9 presentation by all of the plaintiffs? There would be nothing
12:27:31 10 further from Milligan or Singleton, I take it?

11 MR. BLACKSHER: Nothing further --

12 JUDGE MARCUS: Thank you. Same thing for Milligan,
13 counsel?

14 MS. GBE: Yes, nothing further from Milligan.

12:27:44 15 JUDGE MARCUS: All right. So then we will turn to
16 Mr. Davis to the rest of your case.

17 Who do you have lined up, just trying to get of sense of
18 whether we will get it in today or we'll go into tomorrow?

19 MR. DAVIS: We intend to call Bradley Byrne, former
12:28:04 20 Congressman Bradley Byrne, Your Honor, again assuming his
21 schedule permits. We will have to see when we get there.

22 JUDGE MARCUS: Gotcha. That would be the only one?

23 MR. DAVIS: Correct.

24 JUDGE MARCUS: Just so you're clear, originally, you
12:28:16 25 indicated that you might be calling the map drawer, the

1 cartographer Hinaman. He has been fully deposed. I take it
2 you are not planning to call him.

3 MR. DAVIS: We do not plan to call him, Your Honor.
4 His deposition is in the record.

12:28:30 5 JUDGE MARCUS: Yes. Yes, it is.

6 All right. With that, it's 12:28 your time. We will
7 proceed, then, at 1:30 Central Standard Time, 2:30 Eastern
8 Standard Time with the Caster -- the rest of the Caster case.

9 Thank you all. We will see you in about an hour.

12:28:52 10 (Recess.)

11 JUDGE MARCUS: I take it the parties are ready to
12 proceed? Caster I take is next?

13 MR. OSHER: That's right, Your Honor.

14 JUDGE MARCUS: All right. Mr. Osher, you will be
13:29:47 15 calling Bridgett King, correct?

16 MR. OSHER: Yes, that's right.

17 JUDGE MARCUS: All right. Thank you much.

18 Ms. King, if you will raise your right hand.

19 BRIDGETT KING,
13:29:56 20 having been first duly sworn, was examined and testified as
21 follows:

22 JUDGE MARCUS: Thank you very much. If you will state
23 your name for the record, please.

24 THE WITNESS: Sure. Bridgett King.

13:30:14 25 JUDGE MARCUS: Thank you, Ms. King, and you may

1 proceed with your examination.

2 MR. OSHER: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. OSHER:

13:30:22 5 Q Good afternoon, Dr. King.

6 A Good afternoon.

7 Q Thanks for being with us today. Can you hear me okay?

8 A Yeah. Can y'all hear me?

9 Q I think that works.

13:30:33 10 MR. OSHER: Your Honor, does that work?

11 JUDGE MARCUS: Yes. We hear you fine.

12 BY MR. OSHER:

13 Q All right. Dr. King, you have been retained as an expert
14 for the by the Caster plaintiffs; isn't that right?

13:30:43 15 A That's correct.

16 Q Okay. I would like to refer your attention to what's been
17 admitted as Plaintiffs' Exhibit 80, which I believe you have in
18 front of you, which is currently shown on the screen. Is this
19 the initial report that you submitted for the plaintiffs in
13:31:01 20 this case?

21 A Yes.

22 Q Thank you. And looking at the page after page 56 of that
23 initial report, is that a copy of your current resume?

24 A Yes.

13:31:12 25 Q We can go ahead and take that down. Thank you.

1 Let's start with your background, Dr. King. Can you
2 please give us a brief overview of your educational history?

3 A Sure. I have a bachelor's degree in psychology from
4 Hampton University, which I earned in 2003. A master's degree
13:31:33 5 in justice studies, which I earned from Kent State University
6 in 2006, and a Ph.D. in political science also from Kent State
7 University, which I earned in 2012.

8 Q Can you tell us about your dissertation at Kent State?

9 A Sure. So my dissertation was in analysis that looked at
13:31:54 10 the way state policies impact the voter turnout of
11 African-Americans from 2008 to -- great -- 2008 to -- 2006 to
12 2012. I haven't looked at it in a while.

13 Q Fair enough. What sort of policies did you look at?

14 A Sure. My dissertation considers things like election day
13:32:19 15 registration, the severity or strictness of enforcing a voter
16 ID law requirements, variations in felony disenfranchisement
17 statutes that exist in the states, things like the number of
18 days prior to an election that one must register, days for
19 early voting, thing like that.

13:32:36 20 Q Great. And just to be clear, that focused on the impact
21 of voters who are black; isn't that right?

22 A Yes, specifically focused on voter turnout among black
23 Americans, yes.

24 Q So after you received your dissertation at Kent State,
13:32:53 25 what did you do after that?

1 A After completing my dissertation, I spent a year at the
2 Brennan Center for Justice at NYU as a voting rights
3 researcher.

4 Q What sort of work did you do at the Brennan Center?

13:33:05 5 A So at the Brennan Center, we worked on a variety of
6 projects that directly related to different issues surrounding
7 the 2012 election. So we did a collaborative multi-state
8 survey with common cause. I also did some work that looked at
9 the allocation of resources and how that is connected to
13:33:26 10 demographics in different precincts and polling locations in
11 Florida. Broadly, though, I along with the other voting rights
12 researchers were there to just support through social science
13 research any of the projects they might have been working on.

14 Q Great. And I'm showing this as much a reminder for me as
13:33:45 15 is for you, but if we can try to talk slowly so the court
16 reporter can take it all down, we would appreciate it.

17 A I will slow down.

18 Q So after your year at the Brennan Center, where did you go
19 after that?

13:33:57 20 A I was a visiting instructor at Valdosta State University
21 in Georgia.

22 Q What did you teach there?

23 A While at Valdosta, I taught sort of a general American
24 government course. I also taught public opinion. And I taught
13:34:12 25 research methods, which I also taught while I was in grad

1 school.

2 Q Gotcha. And then after Valdosta State, where did you go
3 after that?

4 A After Valdosta, I accepted my job at Auburn University
13:34:25 5 where I currently work.

6 Q How long have you been at Auburn now?

7 A I have been at Auburn since the 2014-2015 academic year.

8 Q Great. And what's your current position at Auburn?

9 A I am an associate professor with tenure in the department
13:34:39 10 of political science and also the director of the master public
11 administration program.

12 Q What classes have you taught and teach -- currently teach
13 at Auburn?

14 A So at the undergraduate level, American government. I
13:34:56 15 also have taught a class called state and local government that
16 has been revised and now wholly focuses on states. I taught
17 classes in political participation, the legislative process,
18 which primarily focuses on Congress, but also state
19 legislatures. I've done independent studies that focus on
13:35:15 20 felony disenfranchisement and election administration. I think
21 that's it.

22 At the graduate level, I have taught a comparative state
23 politics class. I also have -- currently teach our seminar in
24 public administration and public service. I have taught our
13:35:37 25 diversity and public life course. I taught a policy analysis

1 course. I also teach some classes that involve both grad
2 students and undergraduate students around special topics
3 issues. So, for example, this past spring, I taught a class
4 called the politics of pandemics with one of my colleagues. We
13:35:56 5 looked at government response, both domestically and
6 internationally. And I taught a class also last spring about
7 black identity and institutions historically in the United
8 States.

9 Q So turning now to your scholarships. Have you published
13:36:14 10 literature on the subject of voting?

11 A Yes.

12 Q And can you tell us a little bit about that?

13 A So an example of my scholarship on voting specifically
14 related to political participation, and I have published an
13:36:28 15 article that focuses on the effects of felony
16 disenfranchisement. So the rate of felony disenfranchisement
17 in the states and how that impacts the voter turnout of
18 African-Americans. I also do some work that looks more
19 directly at how or how -- what citizens experience when they go
13:36:51 20 to cast a ballot, how these interactions affect their
21 confidence in the electoral process. So disposition of their
22 ballot, ballots in their community, ballots across the country.
23 I also have looked at how certain variations and access to
24 voting and registration information online and the state of
13:37:16 25 Alabama. So those are primarily journal articles.

1 But I have also coedited several books. And so one that I
2 edited by myself focuses -- how do I say this -- it's kind of a
3 history of voting more broadly. So starting with early America
4 and then ending in 2016, where I wrote essays over -- I think
13:37:44 5 it was eight time periods that sort of focus on what was
6 happening in terms of the evolution of voting rights in the
7 United States, and then those essays are supplemented with some
8 copies of the original documents that I discuss this these
9 essays for reference.

13:38:00 10 With some of my colleagues at Auburn, I also have worked
11 on -- edited books that specifically focus on election
12 administration, what it looks like now, and what it will look
13 like in the future. That includes working with academics
14 outside of Auburn University and also election administration
13:38:17 15 practitioners from across the United States.

16 And then lastly, I coedited a book that is about the
17 causes and consequences of the decision to participate or not
18 participate in the context of the United States.

19 Q And you touched on this before, but that does that
13:38:37 20 scholarship often discuss the influence of race on voting
21 behavior?

22 A Yes.

23 Q And has your scholarships specifically touched on the
24 history of voting in Alabama?

13:38:49 25 A Both directly and indirectly. So I would say through a

1 lot -- so when talking about sort of current realities, history
2 is deeply embedded in that. And so specifically when talking
3 about the evolution of voting rights, obviously, there are some
4 discussion of Alabama.

13:39:06 5 I would also say in that text that I mentioned earlier,
6 the edited text that goes from early America to 2016, I would
7 argue there's a considerable discussion specifically about the
8 state of Alabama along with the Deep South more general.

9 Q And in the process of performing that research, have you
13:39:25 10 become familiar with Alabama's history of voting and
11 discrimination in voting?

12 A Yeah. I would say along with the process of performing
13 that research and living here and teaching students who are a
14 lot from Alabama, they ask questions, and I like to be in a
13:39:47 15 position to answer them.

16 Q All right.

17 MR. OSHER: Your Honor, at this point, I tender
18 Dr. King as an expert in the fields of political science,
19 research methodology, history of voting, and elections in the
13:39:58 20 United States and Alabama, voting behavior, and the matters
21 discussed in her reports.

22 JUDGE MARCUS: Is there any challenge to Dr. King's
23 expertise from the state?

24 MR. BOWDRE: No, Your Honor.

13:40:15 25 JUDGE MARCUS: All right. Seeing no challenge, we

1 will qualify Dr. King as an expert in each of the fields,
2 Mr. Osher, that you have identified, and you may proceed with
3 her as qualified.

4 MR. OSHER: Thank you, Your Honor.

13:40:30 5 BY MR. OSHER:

6 Q Dr. King, we looked at your initial report in this case.
7 Let's now turn to your rebuttal report, which has been admitted
8 as Plaintiffs' Exhibit 81. And that is, in fact, your rebuttal
9 report that you submitted in this case?

13:40:50 10 A Yes.

11 Q Now, as to both of -- both of the reports that we
12 discussed, have you changed your opinions or conclusions in any
13 way since you signed them?

14 A No.

13:40:58 15 Q Okay. Can you please briefly describe the materials you
16 reviewed in creating your expert reports?

17 A Sure. So I reviewed academic journal articles, also law
18 articles, and relevant texts, some data from state websites,
19 state organizations, and other relevant non-state entities,
13:41:26 20 non-profit organizations, for example, that would have relevant
21 data. I looked at some news articles, some exit polls surveys,
22 I think that's about it.

23 Q Do you use these sources that you have identified
24 routinely in your scholarship?

13:41:47 25 A Yes.

1 Q And is it usual for political scientists generally to use
2 these sources in their scholarship?

3 A I would say yes.

4 Q Okay. Could you please explain what the attorneys for the
13:41:59 5 Caster plaintiffs asked you analyze for purposes of creating
6 your initial report?

7 A Yes. So I was asked to write a report that was responsive
8 to several of the Senate Factors.

9 Q And can you tell us what your understanding is regarding
13:42:15 10 what the Senate Factors are and where they come?

11 A Sure. So the role of the Senate Factors is to provide a
12 more holistic sort of overview of circumstances and/or
13 conditions in the state that might be discriminatory when
14 trying to make a decision about discrimination related to
13:42:39 15 political participation, or equal access to participation I
16 should say.

17 Q And it's not your understanding that this is going to show
18 intentional discrimination with respect to the policy being
19 challenged in this case, right?

13:42:52 20 A That's my understanding.

21 Q Is it common for political scientists to become familiar
22 with relevant people authority, such as cases, statutes, and
23 legislative history when they are engaging in scholarship like
24 this?

13:43:07 25 A I would say yes.

1 Q And do you often incorporate those sort of legal sources
2 into your work?

3 A Yes. And so as an example, I have an article that looks
4 at the role that race plays when voters go to cast a ballot in
13:43:25 5 a foreign location. So looking at same race interactions in
6 polling locations, and that article, for example, references
7 the *Graddick* case, so I would say, yes, it's fairly reasonable.

8 Q And the *Graddick* case you are referencing there, that is a
9 federal court decision in Alabama regarding the people who work
13:43:42 10 at the polls?

11 A Yes.

12 Q All right. Dr. King, did you have an opportunity to
13 observe Dr. Bagley's testimony presented by the Milligan
14 plaintiffs?

13:43:52 15 A I did.

16 Q And is it your understanding that Dr. Bagley also analyzed
17 the Senate Factors just as you did?

18 A It is.

19 Q Okay. Do you generally -- did you generally agree with
13:44:02 20 the substance of his testimony?

21 A Generally, yes.

22 Q And in your independent analyses of each of the Senate
23 Factors, did you ultimately reach the same conclusions that he
24 did?

13:44:14 25 A Yes.

1 Q So rather than cover the same topics that Dr. Bagley
2 discussed in his testimony, I would like to focus on the areas
3 where your reports do not overlap.

4 So we're going to go ahead and start with Senate Factor 2.

13:44:28 5 So if I can direct your attention to the discussion of
6 Senate Factor 2 in your initial report, which starts on page
7 23.

8 MR. OSHER: And, Jeff, you can go ahead and take it
9 down. And I will let you know if we want to pull anything up
13:44:50 10 specifically. Thank you.

11 BY MR. OSHER:

12 Q So starting with paragraph 65, am I correct that you were
13 not asked to measure the extent to which black and white voters
14 in Alabama vote in a polarized manner?

13:45:04 15 A That is correct.

16 Q Okay. And in looking at paragraph 65, you write, quote,
17 below, however, I discuss how racial attitudes and racialized
18 politics drive the historical and ongoing polarization among
19 black and white Alabamians. Did I read that right?

13:45:19 20 A Yes, that is correct.

21 Q So what is your opinion as to whether racial attitudes and
22 racialized politics play a role in the polarization among black
23 and white voters in Alabama?

24 A They do play a role.

13:45:36 25 Q So based on your work studying voting in Alabama as well

1 as your election administration work in the state, is there a
2 general trend as to whether black and white voters support
3 different political parties today?

4 A Yes. Black voters overwhelmingly identify with the
13:45:54 5 Democratic Party and white voters the Republican Party.

6 Q And I will direct your attention to paragraph 66 through
7 paragraph 75.

8 To what extent is this partisan alignment that you have
9 just identified between black and white voters the result of
13:46:17 10 positions that those parties have taken on issues specifically
11 relating to race?

12 A Can you repeat that question?

13 Q Sure. You stated that it is your understanding that in
14 Alabama, blacks -- black voters overwhelmingly support the
13:46:33 15 Democratic Party and white voters support the Republican Party?

16 A Uh-huh.

17 Q Starting at page or paragraph 68 in your report, you begin
18 to outline the history of how that has come to be. Can you
19 just give us a general overview of what that history is?

13:46:49 20 A Sure.

21 So if we look to Reconstruction, specifically, and the
22 following Emancipation Proclamation more broadly, what
23 historically you see is African-American s aligning themselves
24 with Republican Party, which we might refer to as the party of
13:47:10 25 Lincoln.

1 What you do, though, see, is specifically surrounding or
2 -- the New Deal as one sort of focusing event, you begin to see
3 a realignment, particularly through the New Deal, black
4 Americans had access to public spaces that they hadn't had
13:47:30 5 access to before. And they also had opportunities to
6 participate in ways that didn't necessarily exist. And so even
7 though the New Deal wasn't explicitly about providing redress
8 for some of these racial inequities, it did create
9 opportunities for black Americans to participate in ways that
13:47:52 10 they hadn't participated before.

11 And so basically then you begin to see black Americans
12 aligning themselves with the Democratic Party. And so we begin
13 to talk about sort of this realignment that occurs over time.

14 If you jump ahead a little bit, which you then see is sort
13:48:14 15 of the next focusing event as we might call it in political
16 science or series of focusing events. So the signing of the
17 Civil Rights Act in 1964, and the Voting Rights Act in 1965,
18 that also act as a catalyst towards pushing black Americans
19 increasingly towards identifying as Democrats and with the
13:48:37 20 Democratic Party.

21 And that also occurs because the Democratic Party
22 specifically -- particularly northern Democrats, but the
23 Democratic Party begins to take positions that are advantageous
24 and create a more special justice and access in Civil Rights --
13:48:58 25 progressive Civil Rights positions that would improve the

1 living conditions of African-Americans in the United States.

2 At the same time, as those positions are coalescing and
3 forming within the Democratic Party, you see some white voters,
4 particularly those who are white voters in the South who also
13:49:21 5 were affiliated with the Democratic Party beginning to slowly
6 shift their party identification towards the Republican Party
7 as those issues around race sort of coalesce in the ways we
8 understand them today.

9 Q And at the end there, you described white voters starting
13:49:42 10 to move to the Republican Party. Can you tell us -- and I am
11 looking specifically at paragraph 72 and 73. Can you tell us
12 about the -- I'm sorry -- paragraph 73 actions by the
13 Republican Party that were to hasten that realignment among
14 white voters to the Republican Party?

13:50:03 15 A Sure. So one of the things that the Republican Party did
16 as a way to attract sort of these potentially new supporters,
17 was to engage what I think and what I called reactionary
18 politics, reactionary racial politics where you -- so let me
19 back up a little bit.

13:50:26 20 So you can kind of think about it as constant battles over
21 sort of who has the right to access power in public spaces.
22 And so what you tended to see is as in this case as
23 African-Americans being more access to public places and spaces
24 in political power, which they had formerly been denied, you
13:50:48 25 see the Republican Party actively working to, I guess create

1 road blocks to limit the capacity of these newly enfranchised
2 -- not newly enfranchised, but these individuals to continually
3 and increasingly have access to power.

4 Q And when you're referring to these individuals, you are
13:51:10 5 referring to black Americans?

6 A Sorry. Yes. Black Americans. Apologies.

7 Q No problem.

8 Okay. And let's actually flip to paragraph 130, which is
9 on page 46 of your initial report. And there you identify
13:51:32 10 something called the Southern Strategy. Can you tell us what
11 that was?

12 A Yeah. So the Southern Strategy you could basically
13 articulate it that it was a posture that used racialized
14 messaging to communicate an openness or welcomeness for these
13:51:53 15 disaffected voters who formerly identified with the Democratic
16 Party, or were decreasingly, I should say identifying with the
17 Democratic Party in the South.

18 Q And, again, just to be clear, there you are referring to
19 white voters in the Democratic Party?

13:52:09 20 A Yes, I was talking about -- sorry.

21 Q That's okay. Who alienated by the Democratic Party's
22 embrace of Civil Rights litigation?

23 A Yes. That is the population of individuals I am
24 referencing in that statement.

13:52:24 25 Q And in paragraph 130, you note, quote, that the strategy

1 -- I'm sorry -- the strategy, quote, dictated a posture of the
2 denying neglect towards the aspirations of black Americans, end
3 quote. Can you explain what you mean by that?

4 A Yeah. So one way to think about benign neglect is sort of
13:52:46 5 a position of indifference, where one acknowledges that there
6 are differences in the way people experience government or the
7 power that they have or their ability to participate
8 politically or access, you know, government in public spaces.
9 And basically, not actively working towards doing anything to
13:53:06 10 facilitate or present yourself as being affiliated with efforts
11 that might provide those individuals with a greater ability or
12 enhanced ability to access and realize that right.

13 Q So sort of an intentional neglect, if that makes sense?

14 A You could put it that way, yes.

13:53:26 15 Q But this strategy was a clear direct appeal towards white
16 voters who had been alienated by the Democratic Party based on
17 its stance on racial issues?

18 A That is correct.

19 Q Okay. In paragraph 133, you identified a concept that you
13:53:43 20 called the Long Southern Strategy. Can you tell us what that
21 is?

22 A Sure. So the Long Southern Strategy is very much a
23 rebranding of the original southern strategy that we just
24 talked about previously. But the Long Southern Strategy takes
13:54:01 25 into consideration the ways in which or how words have to be

1 modified or presented in a different way, perhaps a way that is
2 more subtle because some of the language that was used
3 historically would not be accepted today.

4 Q And the Long Southern Strategy is something that political
13:54:31 5 scientists today largely affiliate with the Republican Party;
6 is that right?

7 A That is correct.

8 Q Okay. This coded and subtle language that you referred
9 to, do political scientists sometimes all this language dog
13:54:45 10 whistles?

11 A Yes.

12 Q Can you sort of explain what that term means?

13 A Sure. So if you think about a dog whistle in the formal
14 sense that you use for an actual dog, it is a whistle that
13:54:59 15 emits a high pitch sound that only a dog can hear. If we think
16 about dog whistles in the political context, they are words
17 that are communicated, which for people who are not necessarily
18 meant to hear them or embrace them, they might just sound like
19 a phrase. But for other individuals, they communicate
13:55:19 20 something more specific.

21 Q Can you give us some examples of dog whistles as they
22 would be recognized by political scientists?

23 A Sure. I would probably say one of the oldest examples of
24 a dog whistle is the term welfare queens, which I imagine a lot
13:55:40 25 of people are familiar with.

1 Some more contemporary dog whistles might be the use of
2 law and order, inner city, those are the only two I can think
3 of right now.

4 Q Would tough on crime be considered a dog whistle by
13:56:09 5 political scientists?

6 A Possibly, yes.

7 Q What about references to people changing the country?

8 A Possibly, yes.

9 Q What about references to returning our country to the way
13:56:21 10 it was in the past?

11 A Possibly, yes.

12 Q And references to us versus them?

13 A Yes.

14 Q In paragraphs 134 through 140 of your report, you refer to
13:56:35 15 a series of statements by candidates and officeholders that you
16 refer to as racial appeals. Do the statements that you
17 identify there fit within the strategy that we have been
18 discussing?

19 A Yes.

13:56:51 20 Q Do you happen to know specifically in Alabama when the
21 realignment that we have been discussing fully solidified?

22 A 2010.

23 Q I'm sorry. Was that 2010?

24 A I'm sorry. 2010.

13:57:08 25 Q Gotcha. What was notable about that election?

1 A The -- there were considerable gains in the Republican
2 Party in the state Legislature.

3 Q And in terms of timing, you know, what happened in the
4 2008 election that would have been relevant to that -- the
13:57:25 5 completion of that realignment?

6 A Oh, Barack Obama was elected President.

7 Q And 2010 was the first --

8 A It was the first -- yes. The 2010 election was the first
9 election, midterm election after he was elected.

13:57:45 10 Q So I want to take a step back.

11 Just to be clear, your opinion is not asserting that this
12 evidence suggests that anyone who affiliates with the
13 Republican Party is motivated by racial bias. That's not your
14 testimony, right?

13:58:01 15 A Absolutely not.

16 Q You are not asserting -- I'm sorry. But instead, that
17 race plays a material role in partisan politics today?

18 A Yes.

19 Q And that is the case in Alabama?

13:58:14 20 A Yes.

21 Q I am now going to ask you to turn to your rebuttal report.
22 And I will direct your attention to paragraph 23, and that
23 starts on page 7 of your rebuttal report. I am actually going
24 to have you go to page 8 which lists a series of survey
13:58:40 25 results. Can you tell us what those results indicate?

1 A Sure. The survey results you just had me turn to indicate
2 that on issues related to race, there are vast differences
3 between the opinions of individuals who are Democrats and
4 Democrat leaders and Republican and Republican leaders.

13:59:02 5 Q Uh-huh. And so these survey results indicate a wide gap
6 in views on issues relating to race between the two major
7 parties?

8 A Yes.

9 Q And the surveys that you identify here, are these national
13:59:19 10 surveys?

11 A Yes.

12 Q Okay. Is there any reason why you didn't provide Alabama
13 specific survey results?

14 A The only reason is I didn't have access to any, and when
13:59:32 15 doing my research, I couldn't find any. Otherwise, I would
16 have used them.

17 Q Gotcha. From a political science perspective, do national
18 politics today drive partisan affiliation at the state level?

19 A Yeah. I mean, partisan leads at the national level often
13:59:48 20 regularly -- I would just say consistently signal to
21 individuals where the party stands on a variety of different
22 issues, or where a party, I should say, stands on a variety of
23 issues.

24 Q Gotcha. Okay.

14:00:03 25 MR. OSHER: Jeff, I am going to ask you to pull up

1 Caster Plaintiffs' Exhibit 90, and specifically, go to
2 transcript pages 1 -- page 105.

3 BY MR. OSHER:

4 Q And looking at lines 10 through 23, Dr. King, this is a
14:00:24 5 transcript of the deposition of Senator Jim McClendon, who was
6 a co-chair of the Alabama Permanent Legislative Committee --
7 Legislative Redistricting Committee. I apologize if I got that
8 wrong.

9 Do you see the text there?

14:00:39 10 A I do.

11 Q All right. I am going to go ahead and just read this into
12 the record.

13 Question: Based on your 19 years serving in the
14 Legislature, in your view, do the views of the members of the
14:00:49 15 Democratic Party in Alabama generally differ from the members
16 of the Republican Party in Alabama when it comes to the issue
17 of removing Confederate monuments from public spaces?

18 Answer: You know, I think if you make that broad and say
19 generally, I think I can agree with that statement. There are
14:01:05 20 definitely exceptions. But I think with the general in there,
21 I can say I generally agree with your statement.

22 Question: So the answer to my question was yes?

23 Answer: Yes.

24 MR. OSHER: Jeff, if we can now go to page 109,
14:01:19 25 specifically lines 6 through 17.

1 BY MR. OSHER:

2 Q And to save time here, I am going to represent to you,
3 Dr. King, that in this portion of the deposition, Senator
4 McClendon agrees that there are differing views generally among
14:01:40 5 Democrats and Republicans in Alabama when it comes to criminal
6 justice reform. Do you see that there?

7 A I do.

8 Q And then let's go to transcript page 110.

9 Looking at lines 14 through 20. And here again, I will
14:02:02 10 represent to you that Senator McClendon agreed that there were
11 general differences between Democrats and Republicans on the
12 issue of whether there is a significant amount of
13 discrimination against black residents of Alabama. Do you see
14 that?

14:02:14 15 A Yes.

16 Q Okay. Caster Plaintiffs' Exhibit 89 is a transcript of
17 the deposition of Representative Chris Pringle, who also was
18 the other co-chair of that committee. And I will represent to
19 you -- actually I am sorry. Let's go to page 124 of that
14:02:33 20 deposition.

21 And I will read the question. And just to clarify, you
22 are saying that there's a difference between the general views
23 of the Democratic Party -- members of the Democratic Party and
24 members of the Republican Party when it comes to criminal
14:02:56 25 justice reform.

1 Answer: There could be, yes.

2 Did you see that there?

3 A Yes.

4 Q Okay. And then let's go to page -- the same page starting
14:03:05 5 at line 20 through the end of the page to line 2 of the next
6 page. And I will represent to you that -- that Representative
7 Pringle also agreed that there were general differences between
8 Democrats and Republicans in Alabama on the issue of whether
9 there is a significant amount of discrimination against black
14:03:33 10 individuals of the state. Do you see that there?

11 A Yes.

12 Q The conversations that I have just shown to you are
13 specific to Alabama. Are those consistent with what the survey
14 results that you have in your report here, are they consistent
14:03:55 15 with those results?

16 A Yes. I would say they align with the national survey
17 results that are reported in my reports.

18 Q Okay. Thanks. So from the perspective of a political
19 scientist, does the fact that black and white voters prefer
14:04:14 20 different parties exclude the possibility that those voters are
21 motivated by considerations relating to race? I think you
22 might have cut out. Can you say your answer again?

23 A Oh. Sorry. I said no.

24 Q And in light of the discussion above, is it your opinion
14:04:31 25 that racial attitudes and racialized politics do, in fact,

1 influence the division and partisan affiliation among black and
2 white voters in Alabama?

3 A Yes.

4 Q Okay. Let's stay with your rebuttal report here. And I'd
14:04:47 5 like to take a step back starting at page 17 -- I'm sorry --
6 paragraph 17, page 5.

7 And I am looking at the section Roman Numeral II(a)
8 support for black candidates among white Republican voters. Do
9 you see that?

14:05:06 10 A I do.

11 Q Okay. Can you tell us generally what the plaintiffs'
12 attorneys asked you to do in this section of your rebuttal
13 report?

14 A Yes.

14:05:16 15 So Dr. Hood made an assertion in his report that ideology
16 trumps race in the case of white Republicans and their support
17 of GOP minority candidates, specifically citing an article he
18 published with Mr. McKee.

19 Q And in paragraphs 18 and 19, you provide a response to
14:05:41 20 that assertion. Can you tell us what that response is?

21 A Yes. So two things: First, the report -- not the report
22 -- sorry. The paper does not explicitly focus on elections in
23 Alabama. And furthermore, the report in its assessment of
24 white Republican willingness to vote for non-white or minority
14:06:07 25 GOP candidates uses a measure that clusters individuals from

1 three different racial groups into one category of -- I think
2 it's non-minority -- of minority. Excuse me. And so it
3 doesn't explicitly evaluate the willingness of white
4 Republicans to vote for a black Republican, nor -- so -- nor
14:06:29 5 does it articulate any conditions under which such a vote might
6 occur.

7 Q And so in your view, does Dr. Hood's article tell us
8 anything about whether racial considerations or racialized
9 politics influence voting behavior among white Republicans?

14:06:46 10 A In Alabama, no.

11 Q Or generally?

12 A Can you ask me that again?

13 Q Sure. That's fine. We will go on.

14 So starting at paragraph 20, if a white voter votes for a
14:07:08 15 black candidate, does that exclude the possibility that that
16 voter is motivated by biased racial attitudes?

17 A No. So -- so the thing we have to consider, and, you
18 know, it's very clearly articulated by scholars Jefferson and
19 Tessler (phonetic) is that a white conservative voter or white
14:07:33 20 Republican voter voting for a black or non-minority candidate
21 in itself does not necessarily mean that that individual is not
22 making or does not harbor or is not motivated any racial
23 considerations.

24 So one of the things that they point to is that it's not
14:07:54 25 necessarily a blackness into itself that is the issue. But it

1 is a specific manifestation or type of blackness that
2 individuals are not willing to support.

3 And so that would be someone who is black and actively
4 advocates for policies that would improve the lives of other
14:08:22 5 African-Americans. It would be a candidate who -- who -- it
6 would be a candidate who won't engage in policies that will
7 append or work to change sort of the racial hierarchy that has
8 been supported historically by the parties since realignment.

9 So it's not a black candidate, per se, but a specific
14:08:50 10 manifestation of blackness that a candidate might present.

11 Also included in their analysis is an example where they
12 look at white voters for their support for Ben Carson or Jeb
13 Bush and the level of -- I think it's racial resentment -- or
14 belief that -- excuse me -- the belief that black voters have
14:09:17 15 too much influence or U.S. politics. And what they actually
16 found is there is a relationship between people who are high on
17 that scale and their likelihood of voting for Carson. And so
18 what that basically means is individuals who had higher support
19 for the assertion that black Americans have too much influence
14:09:38 20 on U.S. politics were actually more likely to vote for Ben
21 Carson, who himself is a black man.

22 Q And that was also the case for those who harbored the
23 overtly prejudiced view that most African-Americans are more
24 violent than most whites?

14:09:54 25 A According to the research, yes.

1 Q Now, this specific example that you are providing, this
2 was not Alabama specific. This was --

3 A No. Right. This is the -- this data come from the
4 American National Election Study, which is a national study.
14:10:10 5 It is not specifically about Alabama.

6 Q Gotcha.

7 All right. Let's turn to Section 2-B of your rebuttal
8 report which starts on page 9. Can you explain to us what --
9 what the Caster plaintiffs' attorneys asked you do here?

14:10:29 10 A Sure. Also in Dr. Hood's report following the discussion
11 of his article with Dr. McKee, there was a -- I don't want to
12 call it a note, but there was some information that referred to
13 the election of Kenneth Paschal, whose last name I may not be
14 saying correctly, communicating or suggesting it was evidence
14:10:57 15 of the willingness of white Republicans to vote for a black
16 candidate or black Republican.

17 Q Gotcha. I'm sorry to -- stop right there.

18 MR. OSHER: Frankie or whoever has control, it looks
19 like someone has accidentally turned on their video. Could I
14:11:13 20 have -- is it possible for someone to just forcibly mute that?

21 Thank you.

22 BY MR. OSHER:

23 Q Okay. So your -- so you were looking at Dr. Hood's
24 identification of Mr. Paschal's victory in 2021, and the
14:11:33 25 suggestion that that tells us something about white voters'

1 willingness to support black candidates, right?

2 A Yes.

3 Q Okay. I am going to have you go --

4 MR. OSHER: And, Jeff, if you can pull this up, this
14:11:46 5 is the last page of your rebuttal report, which is Plaintiffs'
6 Exhibit 81.

7 BY MR. OSHER:

8 Q And the last sentence before the three numeral signs
9 starting with using this example. Can you read that last
14:12:07 10 sentence for us?

11 A Yes. Using this example to extrapolate any conclusion
12 about white voting behavior in Alabama would be scientifically
13 unsound.

14 Q So from a political science methodology perspective, if
14:12:21 15 you were analyzing voting patterns at the congressional
16 district or state level in Alabama, would you rely on this
17 single election to reach any conclusion?

18 A No.

19 Q Can you tell us why that is?

14:12:34 20 A Sure. I mean, I think the scholarship that I just
21 mentioned by Drs. Jefferson and Tessler points to the need to
22 -- if you want to understand sort of what considerations go
23 into -- in this case, the willingness of white conservatives or
24 white Republicans to vote for a black Republican, you need to
14:12:59 25 understand who those voters are so their racial demographics

1 and also what sort of ideas they harbor or have about
2 African-Americans.

3 Further, it's one election. And so that's -- it's one
4 election. It is a small election. And so while it -- and
14:13:22 5 because of that, it isn't really necessarily generalizable to
6 what white Republicans across the state might actually do. And
7 so that is in part why I went about putting together this
8 table. Because one thing I was interested in better
9 understanding, in terms of sort of a broader landscape of what
14:13:45 10 white Republicans support for black Republican candidates look
11 like was to consider other elections beyond that specific
12 election that we just had.

13 Q And just -- I'm sorry. Are you referring to the table on
14 pages 10 and 11 of your rebuttal report?

14:14:03 15 A Sorry. Yes. The tables on pages 10 and 11.

16 Q I'm sorry. Go ahead. I didn't mean to interrupt.

17 A And so through a review, I would say, of more elections
18 beyond that specific one, and looking at successes of black
19 Republican candidates for a wide variety of races, when they
14:14:24 20 were running in primary elections where there were challengers,
21 my argument would actually be that in the case of the specific
22 election, so the Paschal election, his victory is more an
23 exception than the rule in terms of sort of what we see when we
24 take a more longitudinal sort of over time review of how
14:14:48 25 successful black Republican candidates have been in the state

1 of Alabama.

2 Q Dr. King, I have a few more questions about your rebuttal
3 report.

4 Let's go to the beginning of the report starting at
14:15:02 5 paragraph 3. And here you are responding to an assertion by
6 Mr. Bryan. Can you tell us what that assertion is?

7 A Sure. He asserts that using black alone or single-race
8 black has been the most defensible position from a political
9 science perspective.

14:15:25 10 Q Okay. And what is your response to that assertion?

11 A That's it's incorrect.

12 Q Can you tell us -- what is your view about whether
13 single-race black or any-part black is the superior definition
14 from a political science perspective?

14:15:44 15 A So -- so I think if you're going to make decisions about
16 people's identity, so in this case, who is black versus who
17 isn't black, I think you need to sort of embed that decision in
18 how we historically have identified black people in the United
19 States, and to this point, how that history has fundamentally
14:16:14 20 been embraced. So if we think about early definitions of
21 people being black, we know that in the South and in Alabama,
22 individuals were considered black if they had any traceable
23 African or black American ancestry. And so that definition --
24 so we can think of that as what we might refer to as the
14:16:38 25 one-drop rule.

1 And the one-drop rule has roots in racism where the idea
2 asserted was that to be white you could only be -- you had to
3 be basically pure white blood. It's also true that
4 historically that one-drop rule was specifically attached to
14:17:07 5 individuals who had racial identities that were both black and
6 white, not necessarily black Hispanic Latino, black and Asian,
7 et cetera. And if we think about this in the context of when,
8 you know, the black Americans in the United States who have
9 ancestral ties to enslaved populations, obviously, there is
14:17:31 10 some value in counting people who have a drop of black blood as
11 black, because obviously, during slavery that would mean you
12 had more bodies I guess I should say to be engaged in forced
13 labor.

14 Moving forward, though, even if we think about after the
14:17:53 15 end of slavery, the 13th, 14th, and 15th Amendments, and moving
16 into the Voting Rights Act and the Civil Rights Act, that
17 delineation of who was black so still focusing on if you are
18 part black, you are black, also helped to continue the racial
19 hierarchy that had dominated the South for centuries.

14:18:15 20 And so moving forward, again, we have now entered a space
21 where instead of the state assigning an identity to an
22 individual where individuals are effectively able to make a
23 conscious choice to identify with that specific heritage and
24 legacy, if they are of mixed race in heritage, and so, you
14:18:42 25 know, similar to how the state -- not necessarily the state of

1 Alabama, but the state in terms of government assigned
2 identities to individuals for a specific purpose, to strip for
3 lack of a better word, someone of that identity that they have
4 clearly and effectively asserted and chosen to identify with,
14:19:08 5 is in many ways a new manifestation of the same thing.

6 So I mean, if someone says they are black, whether it's
7 black in part, or all black for lack of a, you know, a better
8 term, I mean they are black because they have asserted their
9 blackness.

14:19:27 10 Q And just to be clear, it's not your position that we
11 should continue the one-drop rule to maintain white supremacy,
12 right?

13 A No, that is not my position that we should rely on the
14 one-drop rule to continue white supremacy. My position is that
14:19:47 15 if people who have options -- technically, everyone has an
16 option. But if people have options in choosing which parts or
17 parts of their multi-racial and multi-faceted identity in race
18 to assert, we should respect that assertion and their decision
19 to identify themselves that way.

14:20:11 20 Q So given this history and the impact the one-drop rule has
21 had on racial self-identification, do you see the any-part
22 black or single-race black definition as superior in the
23 context of political science?

24 A I mean, the any-part black is the more accurate definition
14:20:32 25 of blackness.

1 Q Okay. Just a few more questions, Dr. King.

2 I wanted to touch very briefly on Senate Factor 5, which
3 inquires about socioeconomic disparities resulting from
4 discrimination and their impact on access to political process.

14:20:49 5 You said that you observed Dr. Bagley's testimony?

6 A I did.

7 Q And do you recall during his cross-examination questions
8 about the fact that black residents of other states might also
9 suffer from socioeconomic disparities that similarly exist in
10 Alabama?

11 A Vaguely.

12 Q Does the fact that such disparities might exist outside of
13 Alabama, such as in states in the North or the Midwest, does
14 the fact that those disparities exist change your opinion as to
14:21:22 15 the effect of those disparities in Alabama and their roots in
16 the history of discrimination here?

17 A No. I mean, every state has its own unique historical
18 cultural and political orientation or, you know, origins or
19 foundations. So the fact that discrimination or
14:21:46 20 disenfranchisement looks different in another place does not
21 mean or negate the disenfranchisement or discrimination that
22 exists in Alabama.

23 I mean, if you, for example, consider like the great
24 migration which went from about 1910 to 1970, you have black
14:22:08 25 people migrating from the Deep South, including, which would

1 include Alabama to places in the West Coast, the Midwest, and
2 the Northeast, and if we look at sort of what their reaction
3 was there, you know, major cities, you know, wouldn't allow
4 black Americans in the North, right? So I am not talking
14:22:29 5 about -- but major cities wouldn't allow black Americans access
6 to public housing.

7 Places in the Midwest, the East Coast and the West also,
8 you know, adopted things like restrictive covenants, and even
9 though there might not have been explicit laws about
14:22:49 10 segregation, one thing that we can see even now is that cities
11 continue to be segregated even though the country is
12 increasingly becoming, you know, more racially and ethnically
13 diverse.

14 So their histories are different, but similar to how we
14:23:09 15 can trace state reaction to the black Americans in the South or
16 in Alabama getting citizenship rights and voting rights, you
17 can also see similar manifestations of those reactions as the
18 black population increased in northern cities.

19 I mean -- well, personal example, but I will spare y'all.

14:23:37 20 MR. OSHER: Thank you, Dr. King. I don't have any
21 other questions for you.

22 JUDGE MARCUS: Thank you. Cross-examination,
23 Mr. Bowdre.

24 MR. BOWDRE: Thank you, Your Honor.

14:23:45 25 CROSS-EXAMINATION

1 BY MR. BOWDRE:

2 Q Dr. King, my name is Barrett Bowdre, and I am an attorney
3 who represents Secretary of State John Merrill in this action.

4 Can you hear me okay?

14:23:57 5 A Yeah, I can hear you.

6 Q Great. You're testifying today as a political scientist;
7 is that correct?

8 A I am a political scientist, yes.

9 Q You are not a historian?

14:24:07 10 A I am not a historian, no.

11 Q And have you published any articles looking at political
12 behavior in Alabama?

13 A Alabama specifically, no.

14 Q Yes. Okay.

14:24:18 15 I know that you didn't really discuss the Senate -- all
16 the Senate Factors in your direct, but you did discuss at least
17 most of them in your -- in your expert reports. I do want to
18 ask a few questions about the first Senate Factor and the
19 history of racial discrimination in Alabama.

14:24:37 20 Would you agree that race relations have improved since
21 1965?

22 A Absolutely.

23 Q And in Alabama, it's been over 50 years since the state
24 has had an all-white primary; isn't that right?

14:24:54 25 A Yes.

1 Q And I'm not asking --

2 A No, I was trying to do math in my head, but, yes.

3 Q And the same would be true for poll taxes and literacy
4 tests and employment or property requirements for voting?

14:25:07 5 A That is correct.

6 Q Okay. Is there any evidence that you know of to suggest
7 that a legislator was influenced by that history in Alabama
8 when he or she voted on their -- on the redistricting plan at
9 issue in this case?

14:25:25 10 A Not to my knowledge, no.

11 Q Okay. I want to come back to felon voting laws, which you
12 discuss at length in your report.

13 But in the first part of your report, you say -- and this
14 is in paragraph 23. I don't know -- do you have your report in
14:25:53 15 front of you?

16 A I do.

17 Q Okay. So I am looking at paragraph 23. And you discuss
18 Section 182 of the Constitution of Alabama, which as you note,
19 disqualified voters if they committed certain crimes. And the
14:26:08 20 original -- Section 182 as you note, included all felonies,
21 plus crimes of moral turpitude, plus a number of listed crimes
22 such as vagrancy, which were racially tinged; is that correct?

23 A That is correct.

24 Q Okay. And you would agree that that is not the current
14:26:26 25 law in Alabama?

1 A Oh, yes, I would agree, that is correct.

2 Q You also mentioned the races origins of secret ballots in
3 paragraph 25 of your report. Alabama still has a secret ballot
4 law, right?

14:26:41 5 A Yeah. Effectively the ballots we use today, yes.

6 Q Yeah. And would you agree that the state's decision not
7 to do away with the secret ballot and revert back to voice
8 voting is not indicative of racial discrimination today, even
9 though it was in the past?

14:26:56 10 A Can you repeat that?

11 Q Yeah. Sorry. Would you agree that Alabama's decision not
12 to do away with the secret ballot and revert to voice voting,
13 which was in place before Alabama instituted the secret ballot,
14 would you agree that that decision is not indicative of racial
14:27:19 15 discrimination today, even though the secret ballot's origin
16 was racist?

17 A So just so I understand because that was long.

18 Q Yes, ma'am.

19 A Are you asking me if the state's continued use of the
14:27:32 20 secret ballot is not indicative of supporting what I note in
21 your report even though it had racist origins?

22 Q Yes.

23 A Yes.

24 Q Sorry for that question.

14:27:47 25 A It's fine.

1 Q Okay. You note in your report that between -- and now I
2 am looking at paragraph 16 -- you note that between 1965 and
3 2013, at least 100 voting changes proposed by Alabama state,
4 county, or city officials were either blocked or altered under
14:28:12 5 the Voting Rights Act?

6 A Can you tell me what paragraph that is again? Is it page
7 16 or paragraph 16?

8 Q You -- yeah. You're correct. Sorry.

9 A It's okay.

14:28:28 10 Q I'm sorry. It's page 16, paragraph 44. I'm sorry about
11 that.

12 A No worries. Okay. Can you repeat the question again?

13 Q Yeah. So you say in your report that between 1965 and
14 2013, Alabama had 100 voting changes that were either blocked
14:28:49 15 or altered under the VRA; is that right?

16 A That is the quote, yes.

17 Q Okay. Isn't it true that the last statewide objection
18 that was either lodged or sustained by the Department of
19 Justice occurred nearly 30 years ago in 1994?

14:29:04 20 A I mean, the reference I used would say otherwise, but I
21 don't --

22 Q Okay. I will share my screen with you real quick if
23 that's okay with you?

24 A That's fine.

14:29:31 25 Q Well, I am going to try to share my screen with you.

1 Okay. Can you see this? It says Department of Justice
2 determination letters?

3 A Yes.

4 Q Okay. And I am going to scroll down until the very last
14:30:12 5 page. And my question was between -- the last statewide
6 objection was -- that occurred in 1994. And so here the last
7 statewide objection -- go to 2008, and then we see 1994. And
8 so my question is: Do you see any statewide objections between
9 1994 and 2008?

14:30:36 10 A Right. I was initially confused about your question
11 because my citation talks about state, city, or county. So,
12 no, I do not see any statewide objections post that date.

13 Q Okay. Thank you.

14 A Uh-huh.

14:30:47 15 Q Okay. Looking at paragraph 45 and 46, you discuss *Shelby*
16 *County vs. Holder*, and you say that one of the first changes
17 that Alabama made to its voting laws in the wake of *Shelby*
18 *County vs. Holder* was to institute one of the most rigorous
19 voter identification requirements in the nation.

14:31:13 20 So my first question about this is: By including the
21 voter ID law in your discussion in, *Modern Discrimination By*
22 *the State*, do you think the law has the effect of reducing
23 voter -- black voter turnout or registration?

24 A So I didn't do any analysis about the impacts of the
14:31:35 25 state's voter ID law on black voter registration and turnout.

1 Q So on what basis do you deem it discriminatory or part of
2 the modern discrimination by Alabama?

3 A Sure. There -- as you will note, there was a report cited
4 by the U.S. Commission on Civil Rights, and so my inclusion of
14:31:59 5 it in that section is based on the information that I reviewed
6 in preparing this section.

7 Q Okay. Well, let me ask you about that.

8 A Okay.

9 Q Did you look at any other resources when -- besides the
14:32:18 10 Alabama Advisory Committee when you were talking about the
11 voter ID law in Alabama?

12 A That's what I cited, so I am going to assume no.

13 Q Okay. So -- are you aware that the Eleventh Circuit -- or
14 are you aware that this issue has been litigated both in the
14:32:39 15 Federal District Court and in the Eleventh Circuit?

16 A I do know there was a -- there were courses -- not
17 courses, cases, excuse me, challenging Alabama's voter ID laws.
18 I could not cite their names verbatim to you, but I know that,
19 yes.

14:32:56 20 Q Okay. Do you know the results of those cases?

21 A I mean, I live in Alabama, and I vote in Alabama. And we
22 still have a voter ID law. And so to a certain extent,
23 obviously, the voter ID law persisted. But I also know there
24 are multiple forms of ID that people in Alabama can use to
14:33:13 25 vote, and I do not know if those multiple forms were part of

1 the original state proposed law, or if they are the result of
2 some of that litigation.

3 Q Okay.

4 A That is what I know.

14:33:23 5 Q Well, let me ask you a few questions. I am going to pull
6 up the Eleventh Circuit decision in it, and I want to get your
7 take very quickly.

8 A Keep in mind, I am not a lawyer.

9 Q Yeah. I understand that. I'm just trying to understand
14:33:39 10 your view as a political scientist and what resources you
11 looked at.

12 So, okay. Do you see this *Greater Birmingham Ministries*
13 *vs. Secretary of State*? And this is the Westlaw report at 992
14 F.3d 1299, which was released by the Eleventh Circuit in 2021?

14:34:07 15 A Yes.

16 Q Okay. I want to read a couple of the findings by the
17 Eleventh Circuit. And the first one is here on page 1325 of
18 the reported decision. Quote, the fact remains that plaintiffs
19 cannot point to evidence -- not a single comment made by any
14:34:40 20 sitting Alabama legislator in reference to HB-19 to support
21 their argument that the voter ID law was intended to
22 discriminate against black and Latino voters, end quote.

23 Did I read that correctly?

24 A Do you have a question?

14:34:55 25 Q Yes. Excuse me. Did I read that correctly?

1 A Yes.

2 Q Okay. And then I want to go down to page 1329. And the
3 Court says there that, It is undisputed that approximately
4 99 percent of white voters and 98 percent of black voters
14:35:18 5 possess a photo ID.

6 Did I read that right?

7 A Yes.

8 Q And then one more court quotation.

9 And then this is at page 1310 of the reported decision.

14:35:41 10 In sum, a voter who lacks an appropriate form of ID may acquire
11 the documents needed to obtain a voter ID for no fee.

12 Did I read that right?

13 A Yes.

14 Q Okay. So my question is: You did not cite to the

14:36:05 15 Eleventh Circuit's decision, and you also did not cite to the
16 District Court's decision, which had a lot of factual findings.
17 And I was wondering why you did not do that.

18 A I do note that I did not do that, but I also believe that
19 I noted in my report that the voter ID law was implemented. So
14:36:26 20 even though -- I mean, I didn't make note of that, it's clearly
21 communicated that the law was into effect. So I'm not entirely
22 sure what it is explicitly about either of those things that
23 you think I should have -- or am I making sense?

24 Q Okay. So sure. Let's clear up that timeline, then.

14:36:49 25 A Okay.

1 Q So in paragraph 46, you say that one of the first changes
2 that Alabama did in response to Shelby County was to enact the
3 voter ID law, and that --

4 A Or to implement.

14:37:02 5 Q Implement. And then it went into effect in 2014; is that
6 correct?

7 A Uh-huh. Uh-huh.

8 Q And then this Eleventh Circuit decision that we just
9 reviewed was from 2021, right? I can pull that back up.

14:37:21 10 A Wait. You said that decision was from 2021?

11 Q Yeah. Because the -- the law was enacted, and then it was
12 challenged, and then it went to court, and then the Eleventh
13 Circuit upheld it, right?

14 A In 2021?

14:37:35 15 Q In 2021.

16 A Okay.

17 Q Okay. And so you mentioned that instead of relying on
18 that case or looking at the evidence that was presented in that
19 case, you instead relied on the Alabama Advisory Committee's
14:37:50 20 report; is that correct?

21 A In the assertion of the voter ID law being one of the most
22 rigorous in the nation, yes.

23 Q Right. Are you aware if the committee reviewed the
24 evidence in the voter ID litigation?

14:38:13 25 A I am not aware.

1 Q Am I correct that the only discussion of the -- of the
2 court case was in one of the statements of dissent and was not
3 even mentioned by the committee itself; is that correct?

4 A I mean, I haven't read it, so I don't know.

14:38:34 5 Q You did not read the committee report that you --

6 A Oh. No. I have thought you were saying it was in --
7 sorry. I misunderstood the question. Sorry.

8 Q Okay. I will rephrase. I'm sorry.

9 A No. You're fine.

14:38:44 10 Q Am I correct, or do you know if the committee report
11 itself lists or discusses in any way either the district
12 court's or the Eleventh Circuit's decision in the voter ID
13 case?

14 A I cannot remember sitting here off the top of my head what
14:39:01 15 is explicitly mentioned on all the pages of the report.

16 Q Okay. Are you aware how the advisory committee that you
17 cited to obtained its information, how it went about gathering
18 information for the report?

19 A I know for some sections of the report they actually
14:39:19 20 called and contacted offices. I mean, there were -- there was
21 a wide variety of activity based on what I remember from what I
22 read. So I mean, if you could ask me like a more specific
23 question, maybe, I could answer. I'm not really --

24 Q Am I correct that one of the major ways that the committee
14:39:40 25 went about gathering evidence was to hear panelists that were

1 invited from advocacy organizations, including the ACLU,
2 Greater Birmingham Ministries, the Southern Poverty Law Center,
3 NAACP Legal Defense Fund, Equal Justice Initiative, Alabama
4 NAACP, and the Ordinary People Society?

14:40:00 5 A I don't have the report in front of me. But if that's
6 what's listed as the people that had meetings with, I also know
7 they had hearings with John Merrill, Secretary of State, so I
8 will trust that that is part of the report, because, again, I
9 don't have it in front of me.

14:40:16 10 Q Okay. I can pull it up real quick.

11 A Okay.

12 Q And I am referencing -- this is Defense Exhibit 88, and
13 it's 88-A because it was broken up into pieces. And this is
14 the report to the Alabama Advisory Committee -- excuse me --
14:40:45 15 the report by the Alabama Advisory Committee to the United
16 States Commission on Civil Rights.

17 Is this the report you reviewed, Dr. King?

18 A Yes.

19 Q Okay. I am going to skip down to page 60. And this is a
14:41:02 20 news release on one of the -- I think the main public forum,
21 the main meeting that the committee held. Do you see this?

22 A Yes.

23 Q And then we see that John Merrill testified?

24 A Uh-huh.

14:41:15 25 Q As you just mentioned.

1 A Uh-huh.

2 Q Then we have Congresswoman Sewell. And then we have
3 Representative from the ALCU, Greater Birmingham Ministries,
4 Southern Poverty Law Center, NAACP Legal Defense Fund, Equal
14:41:33 5 Justice Initiative, Alabama NAACP, and the Ordinary People
6 Society. Do you see that?

7 A Yes.

8 Q Okay. Thank you.

9 You mention in your report that Alabama closed some of the
14:41:55 10 DMV locations?

11 A Uh-huh.

12 Q This is paragraph 48?

13 A Uh-huh.

14 Q Am I correct that the closure of the DMV locations would
14:42:06 15 not affect a voter's ability to obtain a free voter ID from a
16 county registrar?

17 A That is correct. But I'm also not sure if the registrars
18 were issuing IDs at the time the DMVs closed. Were they?

19 Q I think the answer is yes, but I --

14:42:26 20 A Okay.

21 Q I won't go into that.

22 But it would also not affect the voter's ability to
23 request a visit from the Secretary of State's mobile unit,
24 would it?

14:42:37 25 A No, it would not impede their ability to request a visit

1 from the mobile unit, no.

2 Q Are you aware that the Secretary of State does, in fact,
3 have a mobile voter ID unit that will go to an individual
4 voter's house?

14:42:50 5 A I am very much aware of the mobile voter unit, yes.

6 Q The mobile voter unit will provide a free photo ID to that
7 person?

8 A I am very much aware that the state offers free IDs at
9 multiple points, yes.

14:43:04 10 Q Okay. You note in your report that Jenny Carroll, who is
11 the chair of the advisory committee that you relied on said she
12 tried to determine the hours of operation for the DMV in
13 Bullock and Wilcox counties. Did you yourself perform any
14 research on this question?

14:43:26 15 A Did I myself call the DMVs?

16 Q Yes.

17 A No.

18 Q All right. Per your discussion in paragraph 53 of the
19 report on polling closing -- excuse me -- I will start over.

14:43:46 20 In your discussion in paragraph 53 about polling location
21 closures, did you do any investigation to determine why an
22 individual polling location was closed or where those resources
23 were reallocated if that location was closed?

24 A No. I did not contact any of the counties that closed
14:44:11 25 their polling locations, nor did I ask about the reallocation

1 of resources.

2 Q Okay. Thank you.

3 A Uh-huh.

4 Q All right. So moving on to Senate Factor 2, and I think

14:44:24 5 this picks up on page 23 of your report. Do you purport to be
6 an expert on the voting behavior of Alabamians?

7 A Not specifically.

8 Q Okay. Have you conducted or reviewed any surveys on why
9 Alabamians vote the way they do?

14:44:45 10 A Have I conducted or reviewed?

11 Q Any surveys about why Alabamians vote the way they do?

12 A Do you mean in terms of the considerations people make in
13 making their vote decisions, or is that what you mean?

14 Q Sure.

14:45:03 15 A I mean, so I, you know have -- I will say no.

16 Q Okay. Would you agree that voting tends to be racially
17 polarized in any state with black voters in which there are --
18 excuse me -- would you agree that voting tends to be racially
19 polarized in any state with black voters where a majority of
14:45:36 20 white voters tend to vote Republican?

21 A I mean, honestly, without actually looking at some actual
22 data, I don't think I feel comfortable answering that question.

23 Q Okay. So you discussed some of this on your direct. And
24 with the party realignment?

14:45:56 25 A Uh-huh.

1 Q Which is also paragraph 66 through 75 of your report, did
2 you look at Alabama's history in particular in discussing
3 political party realignment?

4 A You mean did I look at the racial distribution of voters
14:46:13 5 in Alabama and their party affiliations? No.

6 Q I guess I am asking more about the history. So you
7 discuss national trends and the National Republican Party and
8 you discuss some about the South in general.

9 A Uh-huh.

14:46:28 10 Q And my question is: Did you examine any resources about
11 Alabama's history in particular?

12 A No. Only the extent to which it is the focus in some of
13 the books on southern politics. For example, there is one of
14 the resources that I used has states that explicitly, you know,
14:46:46 15 dedicated to -- has a chapter, excuse me, explicitly dedicated
16 to each state. And so there was information about Alabama in
17 there. But I mean I didn't read a series of texts explicitly
18 about party realignment in Alabama. If I had come across one,
19 I would have.

14:47:05 20 Q Okay. Well, this might be close. Are you familiar with
21 the recent decision from the Middle District of Alabama called
22 *Alabama State Conference of NAACP vs. Alabama*?

23 A That's a 2017?

24 Q Is it a 2020 decision regarding a Section 2 challenge to
14:47:29 25 Alabama's at-large judicial elections?

1 A I would say familiar is a fair term, yes.

2 Q I am going to pull that up.

3 A Okay.

4 Q And get your opinion a little bit on the history of
14:47:40 5 Alabama.

6 Okay. Do you see this on my shared screen?

7 A Yes.

8 Q And this is *Alabama State Conference of NAACP vs. The*
9 *State of Alabama*, and the cite is 2020 WL 583803?

14:48:11 10 A Yes.

11 Q You did not discuss or cite to this opinion in your
12 report, did you?

13 A I do not believe so, no.

14 Q Okay. This is looking at page 5 of the Westlaw cite?

14:48:36 15 A Can you make that a little bigger?

16 Q Yes. I'm sorry.

17 A Thank you.

18 Q Okay. Can you see that?

19 A Yes.

14:48:45 20 Q All right. So this -- well, I will just read this first
21 paragraph, and I will ask you a couple of questions as we go
22 on.

23 So as part of the opinion, the Court says, quote,

24 African-Americans in Alabama prefer the Democratic Party by

14:49:04 25 overwhelming margins -- in excess of 90 percent in some recent

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1 case.

2 I am going to skip down.

3 So Alabama voting is racially polarized, that is, there is
4 significant correlation between race and voting behavior in
14:49:19 5 Alabama. The question of this case is why. Is it on account
6 of race, as condemned by Section 2 of the VRA, or on account of
7 some other cause or causes such as partisan politics?

8 Did I read that right?

9 A Yes. The jump through me off a bit, but yes.

14:49:37 10 Q In this next paragraph, do you see where the Court talks
11 about some of the national trends that you discuss with regard
12 to the passage of the VRA in 1965, Senator Goldwater voting
13 against that? Do you see that?

14 A In the highlighted section?

14:49:54 15 Q Yes, ma'am.

16 A Yes.

17 Q Okay. And then in this next paragraph, do you see where
18 the Court says, The second partisan shift took its sweet time
19 and is much more complicated. Do you see that?

14:50:08 20 A Yes.

21 Q And in that section, the Court is discussing Alabama's
22 shift in particular, and you can see this as the Court talks
23 about the shift of the Legislature that George Wallace won the
24 Democratic election in, what, 1982 as a Democrat with over 90
14:50:37 25 percent of --

1 A I think you mean '62.

2 Q Well -- I'm sorry. Let me skip down a little bit.

3 We see here in 1972, Wallace survived the assassination

4 attempt. Skipping down a little bit. The Court goes on to

14:50:57 5 talk about Alabama's unique political history. I guess that's
6 the point. I don't want to waste your time going through every
7 single paragraph.

8 But given this background, would you agree with that first

9 sentence that we read, that the partisan shift in Alabama is

14:51:13 10 much more complicated and took, quote, its sweet time in a way
11 that the national shift did not?

12 A I think that's fair, given that we talked about in my
13 direct the legislative shift didn't occur until 2010. I think
14 that's fair.

14:51:31 15 Q Okay. You did not discuss this unique Alabama history in
16 your report, did you?

17 A Not in the extensive detail that you just presented to me,
18 no.

19 Q Why not?

14:51:47 20 A I can't say it was an intentional omission on my part. I
21 mean, a lot of where I started with my research was with
22 scholarship that I was familiar with, you know, through my
23 instruction, and then added on to that as I, you know,
24 uncovered more evidence. So it wasn't intentional.

14:52:17 25 Q Okay.

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1 A Whatever.

2 Q Moving on a bit. And you discussed this on your direct.

3 You discussed that black voters -- you discussed that black
4 voters tend to support black candidates regardless of ideology
14:52:36 5 or partisan affiliation; is that right?

6 A Can you tell me where that is in your report?

7 MR. OSHER: Objection, Your Honor. That
8 mischaracterizes Dr. King's testimony.

9 BY MR. BOWDRE:

14:52:45 10 Q Let me pull up the --

11 JUDGE MARCUS: Why don't you just rephrase your
12 question or cite to the record.

13 MR. BOWDRE: Yes, Your Honor.

14 BY MR. BOWDRE:

14:53:01 15 Q Let me ask you about paragraph 76. And here you say,
16 First, the literature suggests that both black and white voters
17 prefer to vote for candidates of their own race when the
18 contest includes a black and white candidate. And second,
19 there is no clear relationship between the ideology of black
14:53:21 20 voters and their candidate preferences. For example, while
21 90 percent of black voters supported Barack Obama in 2008, only
22 47 percent of blacks identify as liberal, but 45 percent
23 identify as conservative.

24 A Uh-huh.

14:53:36 25 Q Did I read that correctly?

1 A Yes, you did.

2 Q Okay. So I guess I'm curious that if party affiliation
3 does not matter as much as the color of the candidate, do you
4 know if in 2016 blacks across the country in open primaries
14:53:58 5 voted in high numbers for Ben Carson since there was no major
6 black candidate in the Democratic Primary?

7 MR. OSHER: Objection, Your Honor. That again
8 mischaracterizes Dr. King's testimony.

9 JUDGE MARCUS: Do you understand the question,
14:54:11 10 Dr. King?

11 THE WITNESS: Honestly, no.

12 JUDGE MARCUS: Would you rephrase it, please?

13 MR. BOWDRE: Yes, Your Honor.

14 BY MR. BOWDRE:

14:54:18 15 Q So I am trying to understand the relationship that you
16 note between race and partisan affiliation. And that race
17 according to this paragraph is a stronger indicator than
18 partisan affiliation. Is that a fair characterization of that
19 paragraph?

14:54:34 20 A I don't think I would say stronger. I mean, but I think
21 what it actually says is black and white voters prefer. That
22 doesn't necessarily mean that preference is stronger than other
23 preferences, just that it exists.

24 Q Okay. So thinking in the 2016 primaries, my question is?

14:54:59 25 A Okay.

1 Q And taking into account my question is about these
2 preferences?

3 A Okay.

4 Q Do you know if to express that preference that black
14:55:09 5 voters may have had for a black candidate?

6 A Uh-huh.

7 Q Do you know if black voters in open primaries voted in
8 high numbers in support of Ben Carson, a black Republican,
9 because there was no major black candidate in the Democratic
14:55:27 10 primary?

11 A So in states where voters had options to vote across all
12 the primary candidates, am I aware of scholarship that suggests
13 that black voters in those states chose to vote for Ben Carson?

14 Q Yes.

14:55:40 15 A I am not aware.

16 Q Okay. So in your rebuttal report, you discuss this on
17 your direct, as well, you note that in that 2016 Republican
18 primary, whites harboring racially prejudiced views supported
19 Ben Carson at higher rates than they supported Jeb Bush; is
14:56:07 20 that correct?

21 A That's correct. Yes.

22 Q In that case, the racially prejudiced voters were not
23 supporting the candidate of their own race, correct?

24 A So that's a mischaracterization of the research. What it
14:56:21 25 says is voters with higher -- what did it say -- voters who

1 have higher overly prejudiced views or voters who believe that
2 blacks have too much influence in U.S. politics are more likely
3 to vote for Carson. That doesn't mean that there were not
4 voters who had those similar views that did not vote -- sorry.

14:56:47 5 Now I have confused myself.

6 That does not mean that there were not voters who also
7 harbored similar views who voted for Jeb Bush.

8 Q Okay. But a higher number of voters who harbored racially
9 prejudiced views voted for a candidate not of their own race;
14:57:09 10 is that correct?

11 A So, again, this isn't about the number of people who
12 voted. It was about the relationship between those views and
13 who they voted for.

14 I didn't assert anything about the number of people. The
14:57:18 15 correlation is between the people's views and who they voted
16 for. There is no math in here that talks about the number of
17 people who voted for either. They were -- if that makes sense.

18 Q Okay. I think I will move on.

19 A Okay.

14:57:31 20 Q Thank you.

21 A Sorry. I feel like I'm not being helpful.

22 Q You also note -- this is in paragraph 20. The mere fact
23 that white Republicans support a minority candidate tells us
24 quite little about whether any of those voters are motivated by
14:57:57 25 racial considerations. What does this mean?

1 A So I think the -- so what it effectively means is that
2 someone -- so in this case, a white Republican, could vote for
3 a black Republican, and in that decision still add racial
4 calculations to that vote choice. Does that make sense?

14:58:19 5 And so that's why the paragraph follows with the
6 discussion of Ben Carson as an example.

7 Q Okay. And I want to get to that. But one more question
8 here. Why are the subjective motivations of the voter
9 important if they are still voting for a black candidate?

14:58:40 10 A Well, because so this -- I also think is worth noting that
11 this information is included in response to one of the
12 assertions made by Dr. Hood. And so he is articulating that,
13 yes, white Republicans will support minority -- sorry -- GOP
14 candidates. And so while this might happen, if you want to
14:59:08 15 understand if it's ideology or some other consideration that
16 is, you know, which is -- oh, what is the word I'm trying to
17 say -- not driving -- but contributing to that decision, right,
18 so if you are going to argue that it's just -- if you want to
19 say it's just party and there are no racial considerations and
14:59:32 20 you're going to communicate -- that's basically what he is
21 saying, right? So they're all Republicans. There are people
22 who are non white. And they voted for them, anyway. So,
23 clearly, race was not a consideration.

24 The point I was trying to make in the following paragraphs
14:59:47 25 is that you can be conservative, or in this case Republican,

1 and you can support a minority candidate. And you can do that
2 while also having -- harboring what we might consider racially
3 conservative views, so while making racial considerations.

4 Q Okay.

15:00:09 5 A Does that make sense? So I'm saying that decision is not
6 absolved of race, even though you are voting for someone who is
7 a minority.

8 Q All right. Thank you.

9 A I'm sorry.

15:00:23 10 Q For this conclusion, you rely on the article in 538; is
11 that right, the Jefferson and Tessler article?

12 A It's a Vox article, but yeah. I feel like it's on Vox.

13 Q I'm sorry. Is it not footnote 16 on page 6?

14 A It is footnote 16, yes.

15:00:49 15 Q That is a non peer-reviewed article?

16 A That is correct. But I mean I feel like I would be remiss
17 if I don't say that part of the way that political scientists
18 actively try to contribute to discourse around issues is
19 publishing things that are not peer-reviewed, but are relevant

15:01:08 20 and timely. And so often times, that work will eventually

21 appear, you know, in a peer-reviewed article or publication,

22 but the academic publishing cycle did can take anywhere from

23 18 months to two years, so we will be on to the next thing by

24 then. So, I mean, yes, it is not a peer-reviewed article, but

15:01:29 25 I think it's still valuable. I mean, they provide links to all

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1 the data that they use. You can go retrieve the analysis
2 yourself. So it is not unusual for political scientists to
3 present research prior to peer review and for other political
4 scientists to cite it.

15:01:49 5 Q Okay. Thank you.

6 A Uh-huh.

7 Q You -- so this is part of the article that you quote on
8 paragraph 20. You say that white voters who harbor racial
9 prejudice will support a black candidate who successfully
10 demonstrates he or she is, quote, not in the business of
11 carrying water for their own racial group, end quote.

12 So my question here is, since the 538 article that you
13 quote from used Ben Carson as an example of a black candidate
14 that racially prejudiced white voters would support, is it fair
15 to say that the article implies that Ben Carson is, quote, not
16 in the business of carrying water for his own racial group?

17 A So are you asking me if Ben Carson is the type of
18 candidate that they are describing, or that I quoted from their
19 description in the previous paragraph?

15:02:46 20 Q Yes.

21 A Yeah. I mean, I would imagine -- I think if you look at
22 the things Ben Carson has stated when he was running, that
23 would be fair.

24 Q Sorry. I did not understand. Could you repeat that? I
15:03:02 25 just didn't understand?

1 A I was agreeing with you, yes.

2 Q Okay. Would you say the same thing about Representative
3 Paschal here in Alabama?

4 A I honestly haven't heard him speak, and I can't attest to
15:03:19 5 where he stands on issues related to African-Americans.

6 Q Would you say this about any black Republican candidate
7 that white voters vote for?

8 A No.

9 Q So what makes a candidate someone who, quote, does not --
15:03:37 10 is not in the business of carrying water for his own racial
11 group?

12 A I mean, I think you would have to look at the statements
13 that are made by said candidate while they're on the campaign
14 trail when addressing issues related to race in the United
15:03:50 15 States.

16 Q Do you have examples of those statements that Ben Carson
17 made?

18 A I mean, it would just honestly at this point be based on
19 my own personal impression of him when he was running for
15:04:14 20 office. I don't have his statements memorized, no.

21 Q Okay. So I am going to try and understand these two
22 theories together because they seem to me to have a little bit
23 of conflict. And I just want you to help me get through that.

24 So under the first theory that you discuss in your initial
15:04:41 25 report, in which white voters tend to vote for the white

1 candidate, so if a white voter supports a white Republican,
2 that is, on the whole, indicative of race, because white voters
3 support white candidates. Is that fair?

4 A I think what my initial report actually says is that black
15:05:04 5 -- both black and white voters prefer to vote for candidates
6 who share their racial identity, and that exists outside of
7 party.

8 Q Okay. And then so acknowledging that and then trying to
9 combine that with the second theory that if a white voter
15:05:21 10 supports a black Republican, it is at least possible that that
11 is also a vote count on -- on either account of race or at
12 least indicative of racial prejudice, does this mean that a
13 white Republican would have to vote for a Democratic candidate
14 for that vote not to be cast on account of race?

15:05:42 15 A I'm not entirely sure I actually understand what you're
16 asking me.

17 Q I will rephrase it.

18 A Okay.

19 Q So I can make this clear.

15:05:53 20 A Okay.

21 Q If all you know about a voter is that he is white and
22 supports Republican candidates, can you tell whether that voter
23 is motivated by racial bias?

24 A No. You would only be able to tell in light of there
15:06:10 25 being options for a non-white candidate. And you would also

1 have to understand where that individual voter stands on issues
2 regarding race or perceptions of non-white people.

3 Q Okay. Do you have any evidence that any Republican voters
4 in Alabama are voting Republican in 2022 because of racial
15:06:32 5 bias?

6 A I mean, we haven't had any elections, and, no.

7 Q What about in the last election?

8 A No. I haven't done research on the racial attitudes of
9 Alabama voters to be in a position to make an assertion about
15:06:50 10 the extent to which racial considerations contribute to their
11 choices.

12 Q Okay. If a voter is pro life, supports strong protection
13 of Second Amendment rights, and favors smaller government,
14 which party might seem more attractive to that voter?

15:07:08 15 A Can you repeat that one more time?

16 Q If a voter is pro life, supports strong protection of
17 Second Amendment rights, and favors smaller government, which
18 party might seem more attractive to that voter?

19 A I mean, I guess generically the Republican Party.

15:07:24 20 Q Okay. If that voter in fact --

21 A Go ahead.

22 Q Okay. If that voter, in fact, voted Republican, would you
23 say that is because of racial bias?

24 A I mean, I don't think you could make that assertion
15:07:45 25 without, again, like I stated knowing who the candidates were

1 in a specific race and/or understanding where the individual
2 voter stood on some of those issues we have already discussed.
3 So, no, I wouldn't broadly say if someone is -- to your point,
4 supports those issues and votes for a Republican that that is
15:08:10 5 the conclusion one could draw.

6 Q Okay.

7 JUDGE MARCUS: Mr. Bowdre, let me just ask you a
8 question. We are looking for an appropriate point to take a
9 break. I don't want to interrupt you in the middle of a
15:08:22 10 thread.

11 You tell me what would be a good breaking point.

12 MR. BOWDRE: May I ask maybe four more questions and
13 then take a break?

14 JUDGE MARCUS: Sure. Absolutely.

15:08:34 15 MR. BOWDRE: Thank you, Your Honor.

16 BY MR. BOWDRE:

17 Q In your rebuttal report, Dr. King, one of the reasons you
18 give for rejecting the study Dr. Hood relies on to show that
19 ideology trumps race for white Republicans is that the report
15:08:54 20 did not consider any elections conducted in the state of
21 Alabama.

22 And this is in paragraph 18, and obviously, you discussed
23 it in your direct.

24 I just want to be clear. You did not conduct any surveys
15:09:08 25 of voter motivation in Alabama, did you?

1 A No. But I also want to clarify that my assertion that
2 Dr. Hood's report is inappropriate is about his assertion that
3 we can learn about Alabama through, you know, an article that
4 doesn't actually directly address Alabama.

15:09:30 5 Q Okay. And the 538 article that you relied on --

6 A Uh-huh.

7 Q -- also did not directly address Alabama, correct?

8 A That is correct.

9 Q And you did not talk to any voters in Alabama about why
15:09:48 10 they vote the way they do?

11 A No, I did not interview any voters, no.

12 MR. BOWDRE: Your Honor, at this time, I think a break
13 would be appropriate.

14 JUDGE MARCUS: All right. We will take a 15-minute
15:10:03 15 break at this point and then come back and pick up the thread.
16 Thank you all.

17 (Recess.)

18 JUDGE MARCUS: Are the parties ready to proceed? I
19 think I am muted. Can you hear me okay?

15:26:45 20 All right. And, Mr. Osher, you are ready to proceed?

21 MR. OSHER: I am, Your Honor.

22 JUDGE MARCUS: All right. Mr. Bowdre, you may proceed
23 with your examination of Dr. King.

24 MR. BOWDRE: Thank you, Your Honor.

15:26:59 25 BY MR. BOWDRE:

1 Q Dr. King, I have a few more questions about racial
2 polarization in Alabama.

3 And we discussed earlier the Alabama NAACP case, which was
4 about judicial elections in Alabama. Do you recall that case?

15:27:19 5 A Is that the one you just showed me a little while ago?

6 Q Yes.

7 A Yes.

8 Q And is it fair to say that you did not examine the
9 evidence that was presented in that case?

15:27:30 10 A I did not, no.

11 Q Okay. Am I correct that the Court specifically rejected
12 the plaintiffs' theory in that case that white voters'
13 preference for the Republican party in Alabama was on account
14 of race?

15:27:49 15 MR. OSHER: Objection, Your Honor. Dr. King has said
16 she has not reviewed the case.

17 JUDGE MARCUS: Can you answer the question, Dr. King?

18 THE WITNESS: I mean, I could read it if -- I mean, if
19 you pull it up.

15:28:03 20 JUDGE MARCUS: I think --

21 THE WITNESS: No, no. I do not know.

22 JUDGE MARCUS: All right. Thank you.

23 BY MR. BOWDRE:

24 Q I will share my screen with you, Dr. King.

15:28:14 25 Okay. You see the same opinion that we looked at earlier?

1 A Yes.

2 Q Okay. And this is, for the record, *Alabama State*
3 *Conference of NAACP vs. State of Alabama*.

4 And I am going to skip to Westlaw cite 48.

15:28:38 5 A Can you zoom in again?

6 Q Yes.

7 A Thank you.

8 Q I am going to read the highlighted part.

9 Dr. McKee, who is the plaintiffs' expert in that case,
15:28:53 10 Dr. McKee's conclusion that race best explains the present
11 results in Alabama judicial elections has at least two flaws.
12 First, his explanation for voter behavior unpersuasively writes
13 off ideology as a cause of partisan sorting. And, second,
14 Dr. McKee did not consider facts specific to Alabama judicial
15:29:12 15 elections that speak to the results of those elections. He did
16 not include any state judicial races in his empirical analysis.

17 And then I am going to skip to -- well, first, did I read
18 that correctly?

19 A Yes.

15:29:30 20 Q Okay. Okay. And then skipping to Westlaw cite 42, the
21 Court states that there is evidence that black Democrats get
22 more votes in statewide appellate judicial races than white
23 Democrats. Under a multi-variate regression model in which the
24 two independent variables are the percentage of registered
15:29:57 25 voters who are African-American and whether the losing

1 candidate was African-American, black Democratic candidates
2 performed an average of 1.4 percentage points better than white
3 Democratic candidates in general elections.

4 And skipping down a paragraph, the Court says, from these
15:30:15 5 results, it reasonably can be inferred that white Democratic
6 voters give equal or greater support to black Democratic
7 candidates as they do to white Democratic candidates.

8 And then the final line I will read appears that --
9 Westlaw cite 43, The white Democratic primary voters appear to
15:30:36 10 give equal support to black Democratic candidates suggests that
11 black candidates are not penalized in appellate judicial
12 elections by their race alone.

13 Did I read that correctly?

14 A Yeah. I mean yes.

15:30:49 15 Q And then the Court concludes the notion that
16 African-American candidates lose solely because of their skin
17 color is not supported by the evidence. There is a strong case
18 that party not race is driving election results in Alabama
19 appellate judicial races. Did I read that right?

15:31:05 20 A Yes.

21 Q And you did not discuss this in your report, correct?

22 A Did not, no.

23 Q Okay. I have a couple of questions about your rebuttal
24 reports regarding any-part black versus single-part black or
15:31:23 25 single-race black responses. And you recall your testimony on

1 direct about this?

2 A Yes.

3 Q I want to make sure I'm getting the definitions right. Is
4 it your understanding any-part black is -- can be someone who
15:31:41 5 checks more than one racial category versus a single-race black
6 is someone who just chooses black as the racial category; is
7 that correct?

8 A Generically, yes.

9 Q And you contend that any-part black is a proper method of
15:31:59 10 measurement?

11 A Yes.

12 Q Do you have any evidence to suggest that any-part black
13 voters vote the same as single black race voters?

14 A No. And I would suggest that based on why I included that
15:32:14 15 discussion in my rebuttal report and being responsive to the
16 notion that -- what is it, single-part black is the best
17 position defensible from a political science perspective, there
18 would also be no reason for me to engage in that analysis.

19 Q Sorry. Why is that?

15:32:33 20 A So I -- so my discussion of single-part black -- not
21 single part. Sorry. Black alone and black in combination was
22 in direct response to the notion that that's the defensible
23 position from my discipline.

24 Q Okay. So you don't know if single-race blacks or any-part
15:32:56 25 blacks vote the same?

1 A No, I did not conduct that analysis. I do not know.

2 Q Okay. Do you agree that someone -- if we're -- excuse me.
3 If we're measuring any-part black, you agree that someone can
4 identify as Hispanic and black?

15:33:14 5 A Yes.

6 Q Do you know if Hispanic and black voters either
7 single-race black or the aggregate of all any-part black vote
8 similarly?

9 A Can you say that one more time?

15:33:28 10 Q Yep. Do you know if Hispanic and black voters and in the
11 second category of black voters, I am including both or either
12 single-race black or the aggregate of any-part black -- do you
13 know if those two categories would vote similarly?

14 A So people who are black Hispanic and people who are -- who
15:33:51 15 only check black and people who check black and something else?

16 Q Yes.

17 A Is that what you are asking me?

18 Q Yes.

19 A Just to clarify. I do not know.

15:34:00 20 Q Okay.

21 A I -- well, go ahead.

22 Q In your report, you rely on political polling from news
23 organizations such as CNN and ABC, correct?

24 A Yes.

15:34:17 25 Q Okay. Are you aware that according to a recent poll

1 conducted for the Wall Street Journal that Hispanics are evenly
2 split in their support between Republican and Democratic
3 parties?

4 A No, I did not know that. But I mean, I think if we look
15:34:33 5 at the history of black identity, we're talking about black and
6 white combinations, not black and other.

7 Q Okay. But you would agree that the any-part black would
8 include someone who identifies as both black and Hispanic,
9 right?

10 A I mean, yes, I would, but I just wanted to, you know, for
11 the purpose of what I was speaking to specifically, I just
12 wanted to be clear.

13 Q Okay. I want to pull out Defendants' Exhibit 152. Where
14 I do not believe is in evidence. I think it was one of the
15:35:07 15 exhibits that was objected to by the Milligan plaintiffs. I
16 will share my screen.

17 Do you see this, Dr. King?

18 A I do.

19 Q And this is the Wall Street Journal article entitled,
15:35:24 20 Hispanic Voters Now Evenly Split Between Parties?

21 A Yes.

22 Q And I am going to scroll down -- do you see these tables?

23 A Yes.

24 Q And the first table is -- the tables both are portrait of
15:35:43 25 the Hispanic voters, and then the first table is which

1 candidate would you support for Congress?

2 A Uh-huh.

3 Q And we see that Hispanics are evenly split at 37 percent
4 between a Democratic and a Republican candidate; is that
15:35:59 5 correct?

6 A Yes, that's what I --

7 MR. ROSS: Your Honor, the Milligan plaintiffs
8 continue to object to the inclusion of this evidence. It's
9 hearsay that no expert has testified about, and it doesn't even
15:36:11 10 breakdown by black people who are also Latino. So there's no
11 basis for any of this testimony or for him to introduce it. We
12 continue to object to it.

13 JUDGE MARCUS: Again, at this point, he hasn't offered
14 it. He simply has marked it for identification to
15:36:27 15 cross-examine. When and if he argues it, we'll be happy to
16 take up that objection. You may ask your question.

17 MR. BOWDRE: Thank you, Your Honor.

18 BY MR. BOWDRE:

19 Q The next table -- if the 2024 election for President were
15:36:46 20 held today, for whom would you vote, the table shows that
21 44 percent of Hispanics would vote for Biden versus 43 percent
22 for Trump. Do you see that?

23 A I do.

24 Q Okay. You say that this polling indicates to you that
15:37:01 25 there may be a difference in how Hispanics, which would include

1 black Hispanics may vote as compared to single-race blacks or
2 the aggregate of all any-part blacks?

3 MR. OSHER: Objection, Your Honor.

4 JUDGE MARCUS: Sustained as to form. The objection is
15:37:19 5 sustained, Mr. Bowdre.

6 MR. BOWDRE: Okay. Sorry. Why is that?

7 JUDGE MARCUS: It was the form of the question.

8 MR. BOWDRE: Okay. Thank you, Your Honor.

9 BY MR. BOWDRE:

15:37:34 10 Q Dr. King, in your opinion as a political scientist, would
11 this polling be relevant to you in determining whether
12 Hispanics and black voters might vote differently?

13 MR. OSHER: Objection, Your Honor. This goes beyond
14 the scope --

15:37:49 15 JUDGE MARCUS: I will take the answer to that
16 question. Do you understand it, Dr. King?

17 THE WITNESS: Can you repeat it?

18 JUDGE MARCUS: Sure.

19 THE WITNESS: Thank you.

15:37:56 20 BY MR. BOWDRE:

21 Q Dr. King, in your opinion as a political scientist, would
22 this polling be relevant to you in determining whether
23 Hispanics and black voters might vote differently or the same?

24 A So by relevant, do you mean, would I use it? Can you sort
15:38:21 25 of clarify what you mean by using relevant?

1 Q Within the context of single-race blacks or any-part
2 blacks, would this polling be relevant to you in determining
3 that there might be a difference in how black Hispanics, for
4 instance, might voting as compared to other blacks?

15:38:39 5 A I mean, possibly, but I'd say it's hard to tell for a
6 variety -- so first of all, there's a variety of reasons with
7 that categorization Hispanic, but that's a subside
8 conversation.

9 I mean, possibly. I mean, that's the best answer I can
15:39:10 10 give you right now.

11 Q Okay.

12 MR. BOWDRE: Your Honor, at this time, I will move to
13 admit Defendants' Exhibit 152.

14 JUDGE MARCUS: Your objection, Mr. Ross? Mr. Ross,
15:39:28 15 did you want to comment about it?

16 MR. ROSS: Yes, Your Honor. Sorry. I was just
17 getting logged back in.

18 We continue to object. We don't think that it's relevant.
19 As I said, it doesn't even break out by their -- as this Court
15:39:42 20 knows, there are black people who are also Latino. There are
21 white people who are Latino. This information is in the
22 aggregate. It's national. There's been no expert testimony as
23 to it at all. It's entirely hearsay.

24 JUDGE MARCUS: Anything further, Mr. Osher, on that?

15:39:58 25 MR. OSHER: From just that -- to clarify, defendants

1 have not laid the proper foundation for how this was generated
2 and what methodology was used.

3 JUDGE MARCUS: Okay. Anything further, Mr. Bowdre, on
4 that?

15:40:14 5 MR. BOWDRE: Yes, Your Honor. I would say that
6 Dr. King did testify that she relies on polling. Specifically,
7 she said ABC and CNN polling, and this is a similar polling.
8 So it is the kind of evidence that political scientists like
9 Dr. King routinely rely on, and she cites similar evidence in
10 her report.

11 Obviously, it's up to Court as to what weight to give the
12 evidence, but I do think it is relevant, at least a little bit
13 in the discussion of single-race votes or single-race black
14 votes versus any-part black votes, which would include
15 Hispanics, which at least this polling does indicate might vote
16 differently than the majority of blacks, who are much more
17 closely aligned to the Democratic Party according to Dr. King.

18 JUDGE MARCUS: The objection is sustained, counsel.
19 It is one thing to cross-examine her with it and quite another
15:41:13 20 to offer it without any foundation. She hasn't seen it. She
21 can't tell us anything about it. Whether the polling
22 methodology was sound or not, who did it, and how it bears on
23 the issues here all remain open. The foundation has not been
24 laid. The objection is sustained.

15:41:40 25 BY MR. BOWDRE:

1 Q Dr. King, I will move on to Senate Factor 5, to that
2 portion of your report.

3 So a few questions about your conclusions regarding racial
4 education disparities. And you say in your report that Alabama
15:41:59 5 ranks 39th among the 50 states when it comes to per pupil
6 spending on K-12 education.

7 A Can you tell me what paragraph that is?

8 Q I'm sorry. This is paragraph 92.

9 A Oh, sorry. So what you're asking me is why I include the
15:42:26 10 information that Alabama ranks 39th of 50?

11 Q Correct. Why is that comparison relevant to your
12 determination or your analysis?

13 A Oh. So this section was focused explicitly on education
14 and potential disparities that exist. And I think my general
15:42:57 15 sense is that I included it to position the state in total
16 relative to the United States. Also PARCA exists in the state
17 of Alabama, and so it seemed relevant to include information
18 about the state -- the organization that is in the state.

19 Obviously, I can't go back in time and, you know, think
15:43:17 20 directly about what I was thinking, but that seems reasonable.

21 Q Okay. So would you agree that -- I think you said
22 situated in Alabama within the context of the United States
23 that that is -- or can be a helpful portion of your analysis in
24 determining the present effects of discrimination in Alabama?

15:43:35 25 A I think that's reasonable.

1 Q Okay. So you note that there is a disparity in per pupil
2 funding.

3 A Uh-huh.

4 Q And my understanding is that Alabama by federal law
15:43:56 5 releases reports of per pupil funding by individual school.
6 Have you looked at those reports?

7 A I believe I got this information from the Alabama
8 Department of Education. So unless that information is housed
9 on that website, probably not.

15:44:15 10 Q Okay. So did the information that you reviewed look --
11 did it provide the amount of funding per school in Alabama?

12 A Per school or per school district?

13 Q Both.

14 A I think I was just looking at districts.

15:44:31 15 Q Okay.

16 A I believe -- or systems as I think they are actually
17 called.

18 Q Okay. Have you been following the reporting that AL.com
19 has been doing over the last couple of years on school funding
15:44:48 20 in Alabama?

21 A Not closely, no.

22 Q But you generally rely on AL.com and find it to be a
23 reputable news source?

24 A Yes.

15:45:01 25 Q So as part of its reporting, AL.com took all the

1 information that the state issued on -- which comes in a --
2 like a 500-page pdf broken down by school, and then AL.com put
3 it into a searchable database so that people can, you know,
4 search through and manipulate the numbers. Have you looked at
15:45:28 5 that database?

6 A I know there's a tool on the PARCA website that allows you
7 to do something similar, but I don't know if that's the same
8 tool.

9 Q Okay.

15:45:37 10 A So possibly -- so I haven't gone to AL.com to explicitly
11 look at that tool if that's not the same tool as the other one
12 that I am aware of.

13 Q Okay. So you pick out Mountain Brook -- in paragraph 92,
14 you pick out Mountain Brook as the one of the example schools
15:46:00 15 and note that it spends \$12,000 per student per the system; is
16 that correct?

17 A According to the Alabama Department of Education, that's
18 what they reported, so I reported that.

19 Q Okay. I want to pull out the AL.com article and ask you a
15:46:21 20 few questions about that.

21 A Okay.

22 Q Okay. Do you see this, the article entitled, Here's How
23 Much Each Alabama School Spent on Students?

24 A Again, can you make it a little bigger?

15:46:42 25 Q All right.

1 A Thank you.

2 Q Skip down to page --

3 JUDGE MARCUS: Let me stop you for a moment. Can you
4 just tell me what exhibit this, Mr. Bowdre?

15:46:57 5 MR. BOWDRE: I'm sorry, Your Honor. This has not been
6 previously marked. I think it would be Defense Exhibit 9 for
7 demonstratives.

8 JUDGE MARCUS: Thank you.

9 BY MR. BOWDRE:

15:47:13 10 Q So here at the top of page 3, the article note, The
11 average total spending at schools in Alabama not serving
12 specialized populations was 9,374, and that spending ranged
13 from a low of 4,593 per student at Eufaula's Moorer Middle
14 School to a high of \$20,020 at Lee County's Loachapoka High
15:47:40 15 School. And you live in Lee County, correct?

16 A I do.

17 Q Are you familiar with Loachapoka High School?

18 A I know it's in Lee County.

19 Q Okay. Are you aware that the majority of students at
15:47:52 20 Loachapoka are black?

21 A I was aware that Loachapoka is a predominantly black
22 community, so inferring, I would assume that the school would
23 be black.

24 Q Okay. I am going to go up to the conclusion of -- at
15:48:09 25 least of this reporter. One surprising finding in the school

1 level spending numbers was that spending is actually higher in
2 schools with higher levels of poverty, generally speaking, even
3 after federal dollars -- which are typically higher at schools
4 with more students in poverty -- are removed.

15:48:26 5 Did I read that right?

6 A Yes.

7 Q Do you agree with that conclusion, or do you have any
8 thoughts about that conclusion?

9 A I mean, we looked at school two data points.

15:48:48 10 Q Well, I'm sorry.

11 A I am not sure if --

12 Q Okay. I think -- let me scroll up. I think it's clear
13 that --

14 A Okay.

15:48:57 15 Q They're not just talking about two --

16 A No. I meant in our conversation here. Like I have only
17 seen two.

18 Q Well, I guess -- I'm sorry.

19 I'm asking you presumably -- well, let me take a step
15:49:12 20 back.

21 A Sure.

22 Q Why did you include Mountain Brook as the one example in
23 your report?

24 A I included Mountain Brook to show the range. That's
15:49:26 25 really the only reason. And I actually think this is directly

1 from an Alabama Department of Education report. Like so I
2 wasn't sitting there looking at the entire list. And then I
3 was like, oh, let me pick Mountain Brook. I don't think that's
4 what actually happened here.

15:49:58 5 Q Okay. What, if anything -- I guess I am a little still
6 confused why you chose Mountain Brook as the example in your
7 report if there are -- if looking at range, there would be
8 other schools with higher per pupil spending.

9 A No. So I think --

15:50:19 10 MR. OSHER: Object, Your Honor. Sorry. Objection.
11 Asked and answered.

12 JUDGE MARCUS: No. We will take it one more time.
13 Overruled.

14 THE WITNESS: So if I recall correctly, when I was
15:50:29 15 looking at the data from the Department of Education -- when I
16 was reading the reference from the Department of Education,
17 they listed Mountain Brook, and they listed Autauga. And I
18 just included that in the report.

19 BY MR. BOWDRE:

15:50:42 20 Q I see.

21 A So it's probably -- should be an indirect quote with no
22 quotation marks, and I apologize for that.

23 Q So are you making any larger points about the relationship
24 of school spending and outcomes in Alabama?

15:51:00 25 A No. No. This -- this paragraph that we're talking about,

1 paragraph 92, is literally just about differences in spending
2 across the state.

3 I mean, I do note in the footnote that there are racial
4 differences between those two counties. But with -- like I
15:51:18 5 just said with this, like you can't make assumptions off of
6 necessarily two data points. It's descriptive. It's not
7 correlational, and it's not causal.

8 Q I see. Okay.

9 A I'm sorry. Does that make sense?

15:51:31 10 Q Yes, it does. Thank you.

11 A Oh, okay.

12 Q All right. Skipping ahead to economic disparities.

13 In discussing economic disparities, you note in your note
14 that the unemployment rate for black Alabamians was 4.6 percent
15:52:02 15 and for white Alabamians is 2.5 percent, correct?

16 A Can you tell me what paragraph we're in?

17 Q Yes. I'm sorry. Paragraph 103 on the first paragraph?

18 A Okay.

19 Q Do I have that right?

15:52:14 20 A So as an example that -- is that what we're talk about?

21 The employment rate for black residents? Is that what we're
22 talking about? Can you read the quote again? I guess that's
23 easier. Sorry.

24 Q Yes. I'm sorry. This is coming from paragraph 103, and
15:52:31 25 you state, In terms of employment, the unemployment rate for

1 African-American workers, 4.6 percent, is twice that of white
2 workers, 2.5 percent.

3 Do you see that?

4 A Yes. Sorry. Yes.

15:52:47 5 Q Is it correct or do you know that the nationwide black
6 unemployment rate is 7.1 percent?

7 A I did not know that.

8 Q So per this citation you cite to -- I'm sorry. Just give
9 me one second.

15:53:22 10 A You're fine.

11 Q Okay. Yeah. This is footnote 108.

12 A Okay.

13 Q Which is the Economic Policy Institute, State Unemployment
14 By Rate and Ethnicity?

15:53:49 15 A Uh-huh.

16 Q I am going to pull that up for you. Defendants'
17 Exhibit 158, and I think it is also an objected to exhibit.
18 You see this?

19 A I do.

15:54:16 20 Q Is this the report you looked at?

21 A It was a website, so it looked a little different, but I
22 am going to assume yes.

23 Q Okay. Would it help if I scrolled through it? I did save
24 it as a pdf, so it might be a little bit different.

15:54:31 25 A I guess -- if it's not fine, I will let you know.

1 Q Okay. So my main questions are on this first page. And
2 we see that the nationwide black unemployment rate is
3 7.1 percent. Is that what that says?

4 A Yes, it does.

15:54:49 5 Q And the DC -- just for comparison, the D.C. unemployment
6 rate, the black unemployment rate is 11.7 percent; is that
7 correct?

8 A That is correct.

9 Q Okay. And that is compared to Alabama's 4.6 percent that
10 you mentioned in your report, right?

11 A That is true.

12 Q So previously, you gave us an example of putting Alabama's
13 number in context with the education spending?

14 A Uh-huh.

15:55:22 15 Q Why did you not do that when it came to unemployment?

16 A Again, so like I said earlier, if the comparison was
17 present, I included it, but I didn't go through each point
18 looking for information to compare Alabama to other places.

19 So, for example, when I was doing my research on
15:55:43 20 education, one of the first places I went to was PARCA and the
21 Department of Education. And so the comparison was present, so
22 I included it.

23 I will say, though, I mean, it's clear that Alabama's
24 black unemployment rate is lower than -- what is that, D.C.?
15:56:00 25 D.C. is also lower than nationwide black unemployment. But

1 that also doesn't, like, eliminate the fact that there is a
2 disparity between black unemployment and white unemployment in
3 the state.

4 Q But you also did not note the national comparison, like --

15:56:26 5 A I -- sorry. I didn't mean to cut you off. I apologize.

6 Q No. Go ahead.

7 A No. I was going to say you are correct. I did not note
8 that -- I did not include nationwide unemployment statistics in
9 the section. You are correct.

15:56:45 10 Q Thank you.

11 A Uh-huh.

12 MR. BOWDRE: Your Honor, I would move to admit Defense
13 158 since we have offered it before, and this is I think
14 different than the last offer in that this is -- Dr. King has
15 testified that this is the article that she relied on. She
16 obviously found it relevant and reliable because she relied on
17 it, and it is relevant to this case because it shows
18 unemployment rates not just for Alabama, but for other
19 jurisdictions, as well.

15:57:24 20 JUDGE MARCUS: Any objection?

21 MR. ROSS: Your Honor, I believe it was the Milligan
22 plaintiffs that objected. As you know, the Supreme Court has
23 said that this is an intensely local analysis, and so we object
24 to including any evidence about other states, because as
15:57:39 25 Dr. King testified, the relevant comparison is black Alabamians

1 to white Alabamians, not to black people in other states and
2 other cities.

3 JUDGE MARCUS: So the objection is not one of
4 foundation, but of relevancy.

15:57:54 5 MR. ROSS: Yes, Your Honor, relevance and hearsay,
6 since this is not a government document, so we don't know the
7 underlaying basis.

8 JUDGE MARCUS: We will reserve on 158.

9 MR. ROSS: Thank you.

15:58:08 10 BY MR. BOWDRE:

11 Q Dr. King, moving on to paragraph 112 of your report, this
12 is about the section of your report entitled, Criminal Justice
13 and Felony Disenfranchisement?

14 A Yes.

15:58:35 15 Q So you know -- this is the first sentence of paragraph 113
16 in which you were talking about the incarceration rate in
17 Alabama and the effect that that has on felon voting in
18 Alabama.

19 And you say that these disparities make Alabama an outlier
15:58:59 20 among other states; is that correct?

21 A Is that in paragraph 112?

22 Q The beginning of paragraph 113.

23 A Oh. Sorry. Yes. Proceed. That is what I wrote. Yes.

24 Q So, here again, why is it important or why do you note
15:59:23 25 that Alabama is an outlier as compared to other states?

1 A Again, I can't say that I was actively trying to exclude
2 or include nationwide comparisons. I mean, I can't really give
3 you an I did it because of X or Y. I often, you know -- so I
4 will just say this: As a, you know, as a social scientist,
16:00:00 5 when talking about and presenting statistics, sometimes you
6 present national points of comparison, and other times you
7 don't. I can't -- I can't speak for -- me. I will speak for
8 myself. But I can't say I sit there and have an active sort of
9 dialogue or discussion about, you know, should I do it here or
16:00:23 10 shouldn't I do it there. It's not that intentional.

11 Q Okay. But you would agree that at times it can be helpful
12 or relevant to have that context?

13 A Oh, yeah. I agree wholly, yes.

14 Q So in the previous paragraph, which is paragraph 112?

16:00:42 15 A Yes.

16 Q You say that the incarceration rate in Alabama is 1,132
17 black residents imprisoned per 100,000 black residents in the
18 state, and 421 white residents imprisoned per 100,000 white
19 residents in the state. Did I read that correctly?

16:01:02 20 A That is correct, yes.

21 Q Okay. And for that, you rely on the sentencing project,
22 The Color of Justice; is that correct?

23 A I do.

24 Q In --

16:01:24 25 A Yes.

1 Q I am going to pull that up and share that on my screen.

2 A Please do.

3 Q And this is -- I'm sorry. Can you see that?

4 A Yes.

16:01:39 5 Q And this is Defense Exhibit 153, which I also think was
6 objection by the Milligan. But I assume like the other ones
7 would be in evidence in the Caster case.

8 Is this the report that you relied on, Dr. King?

9 A It is.

16:02:11 10 Q I'm sorry. I missed that. Okay. I am going to skip down
11 to page 21. And this is -- the Table 7 is the black
12 differential high to low. Do you see that?

13 A I do.

14 Q And then I have Alabama highlighted, and I see the numbers
16:02:39 15 that you pulled -- 421 and 1,132 for a disparity of 2.7; is
16 that right?

17 A Can you zoom in?

18 Q Yes. I'm sorry. Go ahead. Can you see that?

19 A I can.

16:02:57 20 Q And those are the numbers that you pulled for your report?

21 A Yes. But I believe I pulled the Alabama numbers from the
22 text and not the table.

23 Q Okay. But the numbers are the same?

24 A Yes, uh-huh.

16:03:09 25 Q Okay. And so scrolling out just a little bit. Would you

1 agree that this places Alabama as the 49th state right behind
2 Hawaii, in terms of the black/white differential looking high
3 to low?

4 A Can you scroll down?

16:03:31 5 So, yes.

6 Q Okay. But you did not include that context in your
7 report, did you?

8 A I --

9 MR. ROSS: Your Honor, the Milligan plaintiffs.

16:03:43 10 JUDGE MARCUS: One moment. If you hear an objection,
11 Dr. King, just give me a chance to hear it and rule on it
12 before we rule on the objection, okay?

13 THE WITNESS: Will do.

14 JUDGE MARCUS: Thank you.

16:03:54 15 Mr. Ross?

16 MR. ROSS: Your Honor, the Milligan plaintiffs also
17 objected to this report on the same basis relevance, hearsay,
18 and foundation. We have the same issues as we have had with
19 the last several exhibits.

16:04:11 20 JUDGE MARCUS: Let me ask this question just so I'm
21 clear. Caster, have they offered this?

22 MR. OSHER: No, Your Honor.

23 JUDGE MARCUS: Was this among the materials you have
24 offered, Mr. Osher?

16:04:22 25 MR. OSHER: No, Your Honor.

1 JUDGE MARCUS: Are you objecting as well, or do you
2 have no position on this.

3 MR. OSHER: In the joint pretrial report or prehearing
4 report, the Caster plaintiffs did not interpose an objection to
16:04:34 5 this exhibit.

6 JUDGE MARCUS: All right. Do you want to tell us
7 about relevance, Mr. Bowdre?

8 MR. BOWDRE: Yes, Your Honor.

9 JUDGE MARCUS: He said, one, it isn't relevant what
16:04:47 10 the nationwide figures are. What's relevance is what the
11 Alabama figures are. And, two, he says that it's hearsay. It
12 doesn't come from some official government document or report
13 from the Justice Department of Bureau of Prisons or anything
14 like that, and therefore, he is objecting on the grounds of
16:05:10 15 hearsay.

16 MR. BOWDRE: Yes, Your Honor. I will address hearsay
17 first.

18 So Dr. King has testified as an expert she has relied on
19 this. It is cited in her expert report on footnote 127. And
16:05:32 20 at a preliminary injunction hearing, all the rules of hearsay I
21 don't think apply with full force, and the Court has discretion
22 to consider, you know, just for the speed of things and the
23 quick nature of things -- this is *Levi Strauss & Company vs.*
24 *Sunrise International Trading, Inc.*, 51 F.3d at 985, and --
16:05:58 25 just one sentence quote is: At the preliminary injunction

1 stage, a district court may rely on affidavits and hearsay
2 materials, which would not be admissible evidence for a
3 permanent injunction if the evidence is appropriate given the
4 character and objectives of the injunctive proceeding.

16:06:16 5 And as for relevance, I think that Dr. King has testified
6 that it can be useful and relevant to situate Alabama's numbers
7 within the context of America and within the context of other
8 states. Indeed she does so in the immediate next sentence in
9 her report in paragraph 113.

16:06:37 10 JUDGE MARCUS: We will reserve on the admissibility so
11 I have a chance to counsel with my colleagues. You may
12 proceed. So we're clear, we have reserved on 153, as well as
13 on is 158.

14 Did you want to add something, Mr. Ross? I didn't mean to
16:06:57 15 cut you off.

16 MR. ROSS: Yes, Your Honor. I am sorry. I just want
17 to acknowledge that we also had a foundation objection, which I
18 believe is similar to our other objections. I just wanted to
19 make sure I have it.

16:07:08 20 JUDGE MARCUS: Yes, I understand.

21 MR. ROSS: Thank you, Your Honor.

22 JUDGE MARCUS: So everyone is clear, we have reserved
23 on 153 and 158. These are not government reports purporting to
24 summarize statistics nationwide. You may proceed with your
16:07:23 25 next question.

1 MR. BOWDRE: Thank you, Your Honor.

2 BY MR. BOWDRE:

3 Q I apologize if you have already answered this, but you did
4 not provide this context in your report; is that correct?

16:07:33 5 A I did not state where Alabama falls relative to the other
6 49 states. You are correct. But I would again make the same
7 point I made earlier, that even though Alabama's black/white
8 differential is one of the lowest, it still exists within the
9 state.

16:07:57 10 Q Okay. Thank you.

11 A Uh-huh.

12 Q Okay. In paragraph 120, you discuss the Census Bureau and
13 policies of counting inmates of where they are imprisoned. And
14 my question is -- and you note that Alabama does the same
16:08:25 15 thing, right?

16 A Uh-huh.

17 Q And my question is: I just want to be clear that this is
18 a Census Bureau policy of counting inmates at the prison and
19 not something that Alabama uniquely has done; is that correct?

16:08:37 20 A Right. When conducting the census and geographically
21 positioning people, the Census Bureau counts incarcerated
22 people where they are housed, correct.

23 Q And other states, not all other states, but a lot of other
24 states do not reallocate where those people are counted for
16:09:00 25 terms of redistricting?

1 A There are some states that don't, and there are some
2 states that do, yes.

3 Q In fact, only 13 states relocate their prison populations;
4 isn't that right?

16:09:08 5 A I mean, I don't know the number off the top of my head,
6 but if that's number you're presenting as fact, I will take
7 your report.

8 Q Okay. Let's talk about felon disenfranchisement for a
9 moment.

16:09:24 10 A Okay.

11 Q Let me skip some of these questions. So I am looking at
12 paragraph 115?

13 JUDGE MARCUS: Again, just so that I am clear,
14 Mr. Bowdre, you're referring to Dr. King's first report,
16:09:48 15 paragraph -- the paragraph you're referencing?

16 MR. BOWDRE: Yes, Your Honor. Paragraph 115 of
17 Dr. King's initial report.

18 BY MR. BOWDRE:

19 Q You discuss the Supreme Court's decision in *Hunter vs.*
16:10:06 20 *Underwood*?

21 A Uh-huh.

22 Q Did you read that case?

23 A In its entirety, no. And so I think something I should
24 say here is so as a political scientist relative to my work,
16:10:15 25 when I engage in court cases, particularly as part of my

1 scholarship, it's fundamentally looking at what the decision
2 was and sort of what the potential impact of that decision was.

3 So I don't regularly in my, you know, academic work as
4 faculty at Auburn University nor as sort of in my academic
16:10:40 5 presentation in response to the Senate Factors, did I -- I
6 didn't change the way I approach research for this is what I
7 guess I'm trying to say to you.

8 Q Okay. Thank you.

9 So my question stems from the sentence, Although Section
16:10:54 10 182 was struck down in *Hunter vs. Underwood*, Amendment 579 was
11 added to the Alabama Constitution in 1996?

12 A Uh-huh.

13 Q So my question is: Didn't *Hunter vs. Underwood* only
14 strike down the felon disenfranchisement provision as it --
16:11:13 15 actually related only to misdemeanants not felons?

16 MR. BLACKSHER: Your Honor, this is Jim Blacksher for
17 the Singleton plaintiffs.

18 JUDGE MARCUS: Yes, sir.

19 MR. BLACKSHER: I would remind, Your Honor, that that
16:11:28 20 very issue is pending before the Eleventh Circuit. There was
21 oral argument in *Thompson vs. Merrill* on the felon
22 disenfranchisement case only about a month ago. I am
23 co-counsel in the case.

24 JUDGE MARCUS: Yes. Mr. Bowdre, what is it you want
16:11:44 25 to ask her? What the district court ruled?

1 MR. BOWDRE: No, Your Honor --

2 JUDGE MARCUS: Or the Eleventh Circuit? I am not sure
3 I have the import of the question.

4 MR. BOWDRE: I'm sorry. I'm asking her about her
16:11:56 5 assertion in paragraph 115 that the U.S. Supreme Court in
6 *Hunter vs. Underwood* struck down Alabama's provision. And my
7 question --

8 BY MR. BOWDRE:

9 Q And my question is: Didn't the Court only strike down the
16:12:10 10 provision as it applied to misdemeanors?

11 A I think this is just a poor wording on my part, in terms
12 of, you know -- yes, I probably should have been more specific
13 in the way I wrote that one sentence.

14 Q Okay. So as Mr. Blacksher pointed out, are you aware that
16:12:39 15 Alabama's felony disenfranchisement law has recently been
16 litigated in federal court?

17 A The current law?

18 Q Yes.

19 A Well, I am now.

16:12:52 20 Q You were not when you wrote your report?

21 A Like did I know there were challenges against the Moral
22 Turpitude Act? Is that what we're talking about?

23 Q Yes. The 2017 provision that you discuss in paragraph
24 116.

16:13:09 25 A No. Actually, I was not aware that it was currently being

1 litigated in court.

2 Q Okay. And so you were also not aware that the district
3 court the Middle District of Alabama upheld Alabama's law?

4 A You mean the one in place now?

16:13:28 5 Q Yes.

6 A I mean, I know it's in place.

7 Q Okay. Let me go back --

8 A I don't -- I don't understand what you are asking me.

9 MR. OSHER: Your Honor, I am going to object to this
16:13:41 10 line of questioning. Dr. King's not asserting that this law is
11 -- it is unlawful. She's asserting that it has a
12 discriminatory effect, period. She's not opining on the
13 legality of the provision. And the questions about what a
14 court has done or has not done is not relevant to her opinions
16:14:02 15 in this case.

16 JUDGE MARCUS: You may ask her whether she's familiar
17 with it or not. To the extent the objection went to that
18 question, it is overruled. And then let's see if we can move
19 this along, Mr. Bowdre.

16:14:14 20 MR. BOWDRE: Yes, Your Honor.

21 BY MR. BOWDRE:

22 Q Just to be clear, Dr. King, it's your testimony that you
23 were not familiar with the *Thompson vs. Merrill* decision or
24 that litigation when you wrote your report; is that correct?

16:14:26 25 A Yes, that would be correct.

1 Q Okay. In paragraph 117 of your report, you state that
2 despite passage of the 2017 law clarifying which crimes are
3 disenfranchising, there has been no effort on the part of the
4 state to inform the thousands of Alabamians who prior to 2017
16:15:00 5 may have been told that they were ineligible due to their
6 felony convictions, but for whom the Moral Turpitude Act
7 clarified that they are indeed eligible to vote; is that
8 correct?

9 A That is what I wrote, yes.

16:15:13 10 Q And for that assertion, you relied on a student note in
11 the Harvard bar review; is that correct?

12 A That and my -- I mean, I couldn't cite my own personal
13 knowledge. I don't believe so. I didn't.

14 Q Okay. What is your personal knowledge about that
16:15:31 15 assertion?

16 A So as part of my work at Auburn University, one of my
17 colleagues has a grant with the secretary -- no -- not a grant
18 -- a contract -- with the Secretary of State's office to
19 provide training for the voter registrars across the state
16:15:49 20 relative to the work that they do. And so part of that work
21 focuses on moral turpitude and efforts to notify people that
22 they are eligible. Not -- so part of that work is about
23 explaining what the act is, what the -- we go through the
24 cases, we present, you know, different potential felonies
16:16:13 25 people could be convicted of. And so I mean we have

1 conversations about what they do or don't do as part of their
2 jobs.

3 And so.

4 Q So I just want to make sure I understood what you just
16:16:26 5 said.

6 A Sorry.

7 Q You were discussing a grant either with --

8 A It's a contract through the Secretary of State's office
9 that one of my colleagues has, yes.

16:16:37 10 Q Okay. So the Secretary of State's office has contracted
11 with your colleague?

12 A Uh-huh.

13 Q To explain?

14 A No.

16:16:43 15 Q To voters what the moral turpitude law is?

16 A No. She's contracted with the registrars to provide
17 formal training over Alabama's voter registration rules. And
18 so part of that training involves discussions of the Moral
19 Turpitude Act and how they as registrars are supposed to deal
16:17:02 20 with it when someone shows up and says they have a felony
21 conviction. So while we're there, oftentimes we regularly have
22 conversations about sort of what it is or what they don't do as
23 a part of their jobs, and notifying people is not a part of
24 their jobs. And they work for the state, so...

16:17:22 25 Q I see. Okay.

1 A I didn't want to -- I mean -- putting that -- sorry.

2 Q Have you been in contact with anyone at the Secretary of
3 State's office or the Board of Pardon and Paroles about their
4 efforts, if any, to reach voters?

16:17:41 5 A No, I did not contact the Secretary of State's office or
6 the Board of Pardons and Paroles. I did not do that. You are
7 correct.

8 Q Okay. And since you are not aware of the *Thompson*
9 litigation, is it safe to say that you did not review any of
16:17:55 10 the evidentiary submissions in that case?

11 A That would be safe to say, yes.

12 Q Okay. Did you check to see if there were any newspaper
13 articles or blog posts for social media posts about the 2017
14 law either from the Secretary of State's office or from anyone
16:18:14 15 else that might inform Alabama voters?

16 A I know there is a press release on the Secretary of
17 State's website because I have seen it. And I would imagine at
18 some point in time, I probably read an article on AL.com.

19 Q Okay. When you were you were at the Secretary of State's
16:18:35 20 website, did you see the infographic on that website listing
21 felonies that require restoration?

22 A You mean the CERV?

23 Q Yes.

24 A I mean, I -- I'm sure I have seen it. I can't say I was
16:18:49 25 actively looking for it, but I am sure I have seen it.

1 Q Okay. I am going to pull up Defense Exhibit 156.

2 A I'm sorry.

3 Q Do you see that, Dr. King?

4 A I do. And I do actually believe I have seen this before.

16:19:18 5 Q Okay. Did you see it on the Secretary of State's website,
6 do you think?

7 A Probably.

8 Q Okay. You just know that you have seen it before?

9 A I know I have seen it, yes.

16:19:32 10 Q But you would not say that this is an effort to inform
11 people of the 2017 law?

12 A No. And I think -- no, I don't think -- I know when I
13 mentioned inform, I meant to actively contact people, not post
14 information on the Internet as you would for any state
16:19:53 15 statutory change. I should have worded what I was implying
16 more specifically.

17 Q I see. So you mean --

18 A Like direct.

19 Q Okay. I will move on. Thank you.

16:20:11 20 A Uh-huh.

21 Q This is looking at paragraph 118 in the CERV process that
22 you just mentioned. And you note that there have been 3,493
23 voting rights restorations from 2016 to 2020?

24 A Uh-huh.

16:20:36 25 Q That is through the CERV process.

1 Did you also look to see how many pardons were granted by
2 the Bureau of Pardons and Paroles during that same time period?

3 A I did not.

4 Q Would you agree that being pardoned would also restore an
16:20:50 5 individual's right to vote?

6 A Yes.

7 Q Okay. You did not discuss that in your report?

8 A No, I did not. And, again, it wasn't some sort of
9 intentional -- let me not include this data point.

16:21:07 10 Q Continuing on Senate Factor 5, would you say that the
11 factors you have discussed have hindered the ability of black
12 Alabamians to register to vote?

13 A Can you tell me what page Senate Factor 5 is on? Would
14 you be able to tell me what page Senate Factor 5 starts on?

16:22:05 15 Q Yes. Senate Factor 5 in your report starts on page 30.

16 A Let's see. In Senate Factor 5, I discuss education,
17 economic disparities, criminal justice and felony
18 disenfranchisement and --

19 JUDGE MARCUS: Dr. King, I have to ask you again
16:22:33 20 please just slow down so the reporter can take all of this
21 down. Thanks very much.

22 THE WITNESS: My apologies. I'm sorry.

23 JUDGE MARCUS: Just take your time.

24 THE WITNESS: Okay. So in Senate Factor 5, I discuss
16:22:45 25 education, economic disparities, criminal justice and felony

1 disenfranchisement, and health care, I believe. Health
2 insurance and health outcomes. Okay.

3 So can you repeat your question?

4 BY MR. BOWDRE:

16:23:09 5 Q Yes.

6 A Thank you.

7 Q Would you say that the factors that you have discussed
8 with regard to Senate Factor 5 have hindered the ability of
9 black Alabamians to register to vote?

16:23:19 10 A So I would say in my report, I do not conduct any analysis
11 that directly connects these disparities to voter registration
12 or casting about among black Alabamians. What I do is provide
13 them in the context of the broader social science or political
14 science literature that suggests these things do matter and can
16:23:43 15 impact political participation.

16 Q Okay. But you do not look directly at either voter
17 registration rates or voter participation turnout among black
18 Alabamians in recent elections; is that correct?

19 A I did not conduct any voter registration or turnout
16:24:02 20 analysis, correct.

21 Q And is that -- would you not consider that to be relevant
22 to your analysis?

23 A I mean, I -- to a certain extent. I mean, so my
24 understanding of the Senate Factors as I am as a political
16:24:20 25 science -- as a political scientist, am supposed to contribute

1 to is to discuss the extent to which -- I mean, I am reading it
2 now -- that the extent to which there is discrimination in
3 areas such as education, employment, and health, that could
4 hinder the ability of individuals to participate. Is that
16:24:44 5 correct? And I think that's correct, right? So as a political
6 scientist who is not positioned to conduct my own research
7 relative to that answer, I did the best that I could with
8 respect to providing information about Alabama and its
9 disparities and connecting that to what we know in the
16:25:06 10 overarching literature relative to political science.

11 But no, I did not conduct a separate analysis that looks
12 at the impact of each of these factors on individual voter
13 turnout. No. I did not do that.

14 Q Okay. Would you agree that in recent elections both that
16:25:30 15 black voter registration is on par with white voter
16 registration in Alabama generally speaking?

17 A I haven't looked at the Alabama voter registration and
18 turnout statistics lately, so --

19 Q Okay. So you mentioned --

16:25:47 20 A I can't --

21 Q -- I am not trying to belabor this point.

22 A No, you're fine.

23 Q I want to make sure I understand.

24 In paragraph 34, for instance, and this is I think part of
16:26:01 25 the first Senate Factor your discussion. You mentioned that

1 only 23 percent of blacks are registered to vote. And I guess
2 my question is --

3 A Can you repeat that paragraph again, please?

4 Q Yeah. I think it was paragraph 23. I'm sorry. It was
16:26:20 5 paragraph 34 of your report.

6 A Okay.

7 Q And my question is: When we're discussing whether any of
8 these disparities that you discuss with regard to Senate Factor
9 5?

16:26:36 10 A Uh-huh.

11 Q And whether those disparities would hinder political
12 participation by blacks in Alabama?

13 A Uh-huh.

14 Q I guess my question is: Why did you not look at or
16:26:47 15 consider voter registration or voter turnout data?

16 A So -- so first thing, the statistics you pointed to about
17 where I looked at voter -- registered voters is from 1965. So
18 that is old.

19 And so can ask you me your question one more time? Why
16:27:10 20 did I not look at voter registration and turnout relative to
21 the factors I discuss in response to Senate Factor 5?

22 Q Yes.

23 MR. OSHER: Objection, Your Honor. Asked and
24 answered. She has been asked this question.

16:27:26 25 JUDGE MARCUS: Overruled. You may answer.

1 THE WITNESS: Sure. So, again, in response to Senate
2 Factor 5, I provided evidence of disparities across a wide
3 variety of public sector areas that through political science
4 scholarship have been demonstrated to impact the ability of --
16:27:47 5 one's ability to participate politically. In order to conduct
6 the type of analysis you just mentioned where I look at -- you
7 know, I perform a -- you would have to perform a regression
8 analysis that looks at these factors and then individual
9 turnout to determine if there has been in effect, I off the top
16:28:10 10 of my head, cannot think of a data set that would allow me to
11 do that across all of those factors for individual voters in
12 Alabama.

13 BY MR. BOWDRE:

14 Q Okay. I think I only have one -- two more questions about
16:28:27 15 this. But I want to make sure I understand it correctly.

16 So you just said that you look at the factors that have
17 been identified in the political science literature?

18 A Uh-huh.

19 Q That are related to negative voter participation?

16:28:41 20 A Well -- well, no.

21 JUDGE MARCUS: Let -- Ms. Dr. King, please, let him
22 finish the question.

23 THE WITNESS: I apologize.

24 JUDGE MARCUS: And then you can give the answer.

16:28:51 25 THE WITNESS: I'm sorry.

1 BY MR. BOWDRE:

2 Q So my understanding of what you just said was that you
3 look at the factors that have been identified in the political
4 science literature as having some connection with negative
16:29:05 5 voter participation. And then you look at whether those
6 factors exist in Alabama without making that further step of
7 connecting, you know, those things with actual voter
8 participation in Alabama. Is that generally right?

9 A Generally.

16:29:22 10 Q Okay. And so my -- would it affect your analysis, or
11 would it give you pause as to your conclusions if white voters
12 and black voters in Alabama participated in voting and in
13 registration at the same rates?

14 A No.

16:29:45 15 Q Why not?

16 A So can I use an example to sort of explain why not?

17 Q Sure.

18 A Okay. So one of the examples that we -- so one of the
19 factors that we know matters in political science relative to
16:30:05 20 voter participation is education. And so we know that as
21 education increases, people are more likely to vote and/or cast
22 a ballot.

23 What we also know within that literature is that while
24 there is an effect for both black and white voters, the
16:30:26 25 magnitude of the effect is not the same.

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1 So the effect is present, but the size of the effect is
2 present -- excuse me -- is not consistent across those groups.

3 So what the literature tells us about African-American
4 voter turnout, and to a certain extent registration, is that in
16:30:50 5 -- when looking at education as an example specifically, what
6 you actually do see is higher participation among
7 African-Americans than you would expect relative to those
8 disparities that I discussed in my report about education. And
9 so how we as political scientists whose -- you know, studied
16:31:14 10 these things have, you know, sensed out or tried to understand
11 them is while there is an effect, for example, of education,
12 the magnitude is lesser for African-Americans because
13 African-Americans have, you know, other factors that supersede
14 or reduce what the expected effect of educational turnout might
16:31:39 15 be.

16 So we talk about things like group consciousness and
17 communal activities that mobilize black people to vote more
18 than you would expect them to given what we know about
19 education disparities in the United States. So just because
16:31:57 20 voter registration is higher or voter turnout is higher for a
21 population that is negatively impacted by those disparities, I
22 mean, it doesn't mean that those disparities don't matter with
23 respect to African-Americans. What the literature suggests is
24 because of those disparities, African-Americans have found ways
16:32:20 25 to navigate systems that make voter registration and turnout

1 higher. And so without those disparities, you probably would
2 probably see registration and turnout higher than it is. So
3 that's why if they were at parity as you noted, I wouldn't
4 necessarily change my opinion.

16:32:35 5 Q Okay. Thank you. Senate Factor 6. And this starts on
6 page 45 of your report.

7 And Senate Factor 6 concerns political campaigns that have
8 been characterized by overt or subtle racial appeals; is that
9 correct?

16:32:56 10 A I am a few pages behind you. Yes. Go ahead.

11 Q So in paragraph 135, you discuss some racist comments by a
12 former Alabama legislator that were recorded as part of a
13 federal investigation. Would you agree that those comments
14 were not part of a political campaign?

16:33:36 15 A Electoral campaign, I would agree.

16 Q And --

17 A Not part of the campaign to secure office, I would agree,
18 yes.

19 Q Okay. How did you go about determining which campaign ads
16:34:00 20 to review?

21 A I will be perfectly honest with you. It was a struggle to
22 find records of old campaign ads. I honestly started -- there
23 are repositories of campaign ads that exist. So I started
24 there. And then honestly to find ads in Alabama that were
16:34:25 25 still present, I did a lot of googling. I am going to be

1 perfectly honest with you.

2 Q Okay. Do you think your report provides a representative
3 sample of campaign ads in Alabama?

4 A Representative of those I was able to find.

16:34:38 5 Q In determining what weight or import -- let me rephrase
6 that.

7 In determining the import of a racial appeal in a
8 campaign, do you think it matters at all whether the candidate
9 won the election or not?

16:34:57 10 A No. Because I mean I think there are a wide variety of
11 things that will go into the calculus of, you know, how a
12 campaign shakes out.

13 Q Okay. So there would not be a difference between, you
14 know, someone like George Wallace running in the '60s on a --
16:35:19 15 on a platform of segregation and being rewarded for it by being
16 elected into office versus someone running a very similar
17 campaign in 2010 and not getting office; you would not
18 differentiate those?

19 A I mean, the world is very different between now and when
16:35:36 20 it was in 1965. And so I can imagine someone running a
21 campaign similar to George Wallace's and not winning because
22 people were overwhelmingly offended.

23 Q All right. I think we're in agreement on that. Okay. So
24 I will just continue.

16:35:58 25 On -- and I don't have too many questions on this. The

1 first campaign ad you discussed is Tim James's 2010 ad. And
2 Tim James lost that election, correct?

3 A Okay.

4 Q Is that correct?

16:36:14 5 A What page are we on? Yes, I do believe so. I believe so.

6 Q Okay. In paragraph 140, you mentioned two other ads, one
7 by Jeff Sessions?

8 A Uh-huh.

9 Q And one by Arnold Looney?

16:36:28 10 A Uh-huh.

11 Q So a couple of questions about those. One, would you say
12 that to the extent that these ads make a racial appeal, it is a
13 racial appeal that is not along black/white lines? And these
14 are -- just to provide the context, these are in relation to
16:36:51 15 illegal immigration, correct?

16 A I mean, I would say that's accurate.

17 Q Okay. And both of those candidates lost those elections,
18 correct?

19 A Okay. Correct.

16:37:11 20 Q Okay.

21 A I would like to say, though, I mean --

22 JUDGE MARCUS: Is this in response to a question,
23 Dr. King?

24 THE WITNESS: I'm sorry. Go ahead.

16:37:28 25 JUDGE MARCUS: We proceed by question and answer. So

1 if you don't understand the question, let us know, and we will
2 have him rephrase it. And then when you get a question, take
3 all time you need to answer.

4 Next question, Mr. Bowdre.

16:37:41 5 MR. BOWDRE: Thank you.

6 BY MR. BOWDRE:

7 Q Moving on to Senate Factor 8, which begins on page 52 of
8 your report.

9 You list Medicaid as one example of the lack of
16:37:55 10 responsiveness by Alabama officials to the needs of black --
11 excuse me -- to the needs of black Alabamians. Would you agree
12 that the Affordable Care Act which created the Medicaid
13 expansion option was passed largely along party lines?

14 A I would agree with that, yes.

16:38:14 15 Q Okay. Would you also agree that some other Republican
16 states not in the South and without Alabama's history have
17 decided not to opt in to Medicaid expansion?

18 A I mean, I don't have a list in front of me, but I am
19 assuming you have done the research. So if you can assert that
16:38:38 20 that is in fact the case, then yes.

21 Q Okay. Do you think that there are reasons other than race
22 why a certain state might not wish to opt in to Medicaid
23 expansion?

24 A Yes. But I don't think those other reasons negates the
16:38:55 25 fact that choosing not to do so can also be like interpreted as

1 neglecting the needs of a specific population.

2 Q Okay.

3 MR. BOWDRE: Your Honor, may I have a moment?

4 JUDGE MARCUS: You may, indeed.

16:39:34 5 MR. BOWDRE: Your Honor, at this time, I don't have
6 any further questions. Thank you.

7 JUDGE MARCUS: Thank you. Mr. Osher?

8 MR. OSHER: Thank you, Your Honor.

9 REDIRECT EXAMINATION

16:39:45 10 BY MR. OSHER:

11 Q Dr. King, during cross-examination, do you recall being
12 asked about your response to Dr. Hood's statement about white
13 Republican support for minority candidates?

14 A Yes.

16:39:59 15 Q Okay. And that was in your rebuttal report?

16 A Yes.

17 Q Okay. I want to make sure that the competing opinions
18 here are accurately characterized.

19 So what is your understanding of the assertion that
16:40:11 20 Dr. Hood makes about what white Republican support for minority
21 candidates meets?

22 A So Dr. Hood's assertion as presented in the article that
23 he wrote with Dr. McKee and in his initial report, his -- my
24 understanding of his assertion is that the evidence presented
16:40:45 25 in that article that black -- sorry -- that white Republicans

1 will vote for minority candidates is evidence that ideology is
2 more important than race in making candidate election
3 decisions.

4 Q Okay. And what is your response to that assertion?

16:41:07 5 A That the evidence he presents to support that assertion is
6 insufficient as identified by that specific article.

7 Q So it is your response that a white voter's support for a
8 minority candidate is not evidence that racial bias is not at
9 play in that voter's behavior; is that right?

16:41:35 10 A That is correct.

11 Q Okay. And you are not asserting that a white voter's
12 support for a minority candidate means that that voter is
13 racially biased?

14 A That is also correct.

16:41:51 15 Q And you are not saying that ideology has no impact on
16 partisan preference in Alabama?

17 A That is also correct.

18 Q But, instead, that race also influences partisan
19 preference in Alabama?

16:42:05 20 A That is correct.

21 Q Okay. You were asked about the Alabama State Conference
22 case regarding election of judges.

23 MR. OSHER: And can you pull that case up for us,
24 Jeff? And can we go to page 46 of the pdf?

16:42:17 25 BY MR. OSHER:

1 Q So I am looking at the second paragraph on this page that
2 starts with, there was evidence that. And, Dr. King, I believe
3 you were shown this during cross-examination. And if you could
4 highlight the second to last sentence in that paragraph. Okay.

16:42:52 5 So that says, But the notion that African-American candidates
6 do solely because of their skin color is not supported by the
7 evidence. Do you see that?

8 A I do.

9 Q Are you offering an opinion that -- strike that.

16:43:08 10 You are not suggesting that black candidates in Alabama
11 lose because of their race, right?

12 A That's correct.

13 Q Instead, you are offering an opinion about the impact that
14 racial considerations have on partisan preference?

16:43:21 15 A That is correct.

16 Q And it is your opinion that support for minority
17 candidates tells us very little about whether racial
18 considerations are at play?

19 A That is correct.

16:43:35 20 Q You were asked about in the context of racial appeals the
21 *McGregor* case, the 2010 case regarding state legislators very
22 clearly saying racist things about black Alabamians. Do you
23 recall being asked about that?

24 A I do.

16:44:00 25 Q And you said that wasn't in the context of a campaign for

1 office. Is that you said?

2 A Correct.

3 Q But that was in the context of an attempt to influence
4 black turnout based on what was on the ballot or not on the
16:44:18 5 ballot; isn't that right?

6 A That is correct.

7 Q Okay.

8 MR. OSHER: Your Honor, if I could just have a moment.

9 JUDGE MARCUS: Sure.

16:44:35 10 MR. OSHER: That's all. Thank you, Dr. King.

11 JUDGE MARCUS: Thank you. Any questions, Judge
12 Manasco or Judge Moorer for Dr. King?

13 JUDGE MANASCO: None from me.

14 JUDGE MOORER: No. Thank you.

16:44:46 15 JUDGE MARCUS: Thank you, Dr. King. You are excused.

16 THE WITNESS: Thank you.

17 JUDGE MARCUS: Did we have -- we had another witness
18 for the Caster plaintiffs, did we not?

19 MR. OSHER: We do. We do, Your Honor. Dr. Caster is
16:45:05 20 here to testify.

21 JUDGE MARCUS: All right. Do you want to take a short
22 break before we start, or do you want to go right into it?

23 MR. OSHER: I -- a very short break. That would.

24 JUDGE MARCUS: All right. We will take just
16:45:16 25 five minutes and then get started.

1 Quick question: The extent of your examination of
2 Dr. Caster length-wise would be what?

3 MR. OSHER: I would guess 30 minutes.

4 JUDGE MARCUS: And, Mr. Davis, your cross for
16:45:32 5 Dr. Caster?

6 MR. DAVIS: Actually, I had another question I will
7 pose in a moment, Your Honor. Mr. Walker is actually crossing.
8 And if he's in the room downstairs, I will let him answer that.

9 JUDGE MARCUS: Okay. I -- are you going to
16:45:47 10 cross-examine him?

11 MR. DAVIS: No, Judge. Mr. Dorman Walker is going
12 to --

13 JUDGE MARCUS: The sole examination of it.

14 All right. Why don't we just in the meantime take --
16:45:59 15 there -- hi, Mr. Walker. Quick question: Rough sense of
16 timing on Caster cross-examination?

17 MR. WALKER: 15 minutes, Your Honor.

18 JUDGE MARCUS: I am just trying to figure out whether
19 we will get it all in today or not.

16:46:13 20 I have 4:46 your time. Why don't we take a ten-minute
21 break, and we will see where we go from there. And then we
22 will get started in ten minutes with your next witness,
23 Mr. Osher. Thank you.

24 (Recess.)

16:54:42 25 MR. DAVIS: Judge Marcus, before testimony begins

1 again, I had a question for the Court if I may.

2 JUDGE MARCUS: Of course.

3 MR. DAVIS: Considering the lateness of the hour, I
4 wondered if the Court thought it was safe for me to let

16:54:55 5 Mr. Byrne know we will begin his testimony in the morning and
6 not this evening.

7 JUDGE MARCUS: Indeed it is. I think that's clear
8 because they have about a half hour, 45 minutes for this
9 witness, and we will not go beyond 6:00 o'clock Central
16:55:09 10 Standard Time at the latest today. But if you can have your
11 witness lined up a little earlier, we would like to get started
12 at 8:30 Central Standard Time. Is that a problem for anyone?

13 MR. DAVIS: I do not think it will be a problem for
14 any of the counsel. And I will confirm with Mr. Byrne.

16:55:28 15 JUDGE MARCUS: All right. We will start, then, Byrne
16 tomorrow morning at 8:30. Is he the last of your witnesses, or
17 were you planning to call someone else?

18 MR. DAVIS: No. He will be the last of our witnesses,
19 Judge.

16:55:41 20 JUDGE MARCUS: Okay. Is there any additional evidence
21 that, Mr. Walker, you were going to be putting on besides what
22 we have already had presented?

23 MR. WALKER: No, sir, Your Honor. I will not.

24 JUDGE MARCUS: Okay. So you are not calling
16:55:57 25 Mr. Pringle or Mr. McClendon?

1 MR. WALKER: They will not be called, Your Honor.

2 JUDGE MARCUS: Okay. The only final question I have,
3 do you expect any rebuttal either from Caster, Singleton, or
4 Milligan?

16:56:11 5 MS. KHANNA: Not from Caster, Your Honor.

6 MR. ROSS: Not at this time, Your Honor.

7 JUDGE MARCUS: All right. And for Singleton? Well,
8 if there's anything -- I'm sorry, Mr. Blacksher, Mr. Whatley?

9 MR. WHATLEY: Not at this time, Your Honor.

16:56:33 10 JUDGE MARCUS: I'm sorry?

11 MR. WHATLEY: I said we don't expect any rebuttal at
12 this time, Your Honor.

13 JUDGE MARCUS: Thanks very much. Let's proceed, then,
14 with the next witness for the Caster plaintiffs. Ms. Khanna,
16:56:46 15 you will be conducting that?

16 MS. KHANNA: No. It's actually going to be Mr. Osher.
17 But I wanted to flag for the Court maybe you can already see
18 Mr. Caster appears to be having some video troubles and trying
19 to publish it with him. Maybe before Mr. Davis lets
16:57:00 20 representative Byrne go, we should see if we can resolve this.

21 JUDGE MARCUS: Okay. Mr. Davis?

22 MR. WALKER: He has left the room, sir. I think he is
23 moving -- there he is.

24 MR. DAVIS: I am here listening, Judge.

16:57:15 25 JUDGE MARCUS: You heard they were having some

1 mechanical problems getting Mr. Caster hooked up here. So you
2 might want to keep Byrne on deck just in case we go with him
3 instead.

4 MR. DAVIS: Very well.

16:57:31 5 JUDGE MARCUS: Thanks.

6 MS. KHANNA: Thank you, Your Honor. I know Mr. Osher
7 is calling him right now to see if they can help troubleshoot.

8 JUDGE MARCUS: Thank you. While we are waiting,
9 Ms. Khanna, is that Mr. or Dr. Caster?

16:58:15 10 MS. KHANNA: I think it's Dr. Caster.

11 JUDGE MARCUS: Thank you.

12 MS. KHANNA: Apologies, Your Honor. Just give us one
13 more moment to see if we can resolve the problem.

14 JUDGE MARCUS: Okay.

17:00:39 15 MS. KHANNA: Looking bleak for this moment. I think
16 maybe it's best rather than wasting the Court's time to jump to
17 Representative Byrne if he is available. Thank you for your
18 flexibility.

19 JUDGE MARCUS: All right. Thank you. Mr. Davis, does
17:00:52 20 that work for you?

21 MR. DAVIS: It works for me fine. It will be just a
22 moment, though. Mr. Byrne was in another part of the building
23 and is headed back into his office.

24 JUDGE MARCUS: Thank you. Do you want us to take a
17:01:02 25 five-minute break to do that?

1 MR. DAVIS: It will probably take him that long to get
2 back and log in, Judge.

3 JUDGE MARCUS: Why don't we take a five-minute break,
4 and we will get started with Mr. Byrne.

17:01:12 5 (Recess.)

6 JUDGE MARCUS: Mr. Walker, any problem if we go
7 forward with Mr. Caster -- Dr. Caster who we have here now?

8 MR. WALKER: Your Honor, we would be happy to go
9 forward with Dr. Caster now and put Mr. Byrne off until
17:04:19 10 tomorrow.

11 JUDGE MARCUS: Okay. Would you be kind enough to tell
12 him that we will start with him at or about 8:30, depending on
13 whether we finish up with Dr. Caster tonight? We just can't
14 give him any guarantee, but I expect we will get started at
17:04:34 15 8:30.

16 MR. WALKER: Yes, sir. I will make sure he knows.

17 MR. DAVIS: Thank you very much.

18 JUDGE MARCUS: Thank you very much. Thank you,
19 Mr. Davis.

17:04:42 20 MARCUS E. CASTER,
21 having been first duly sworn, was examined and testified as
22 follows:

23 JUDGE MARCUS: Would you be kind enough to state your
24 name for the record, please.

17:04:54 25 THE WITNESS: Marcus Ellis Caster.

1 JUDGE MARCUS: Thank you, sir, and you may proceed,
2 Mr. Osher.

3 MR. OSHER: Thank you, Your Honor.

4 DIRECT EXAMINATION

17:05:00 5 BY MR. OSHER:

6 Q Good afternoon/evening, Dr. Caster.

7 A Good afternoon. Good evening to everyone. Your Honors.

8 Q Thank you for being with us.

9 MR. OSHER: Your Honor, I apologize for the
17:05:16 10 technicalities difficulties.

11 JUDGE MARCUS: That's quite all right.

12 BY MR. OSHER:

13 Q Dr. Caster, are you a plaintiff in this lawsuit?

14 A Yes.

17:05:22 15 Q And where do you live?

16 A I live in McIntosh, Alabama, which is in Washington
17 County.

18 Q Great. And do you have family in Alabama?

19 A Yes. I have a two brothers that live in Mobile County in
17:05:39 20 the city of Mobile. My mother also stays in Mobile County and
21 Mount Vernon, Alabama, and me and if I family we reside in
22 McIntosh, which is in Washington County, Alabama.

23 Q Can you tell us a bit about your childhood, where did you
24 grow up?

17:05:56 25 A I grew up in Mount Vernon, which is a town north of

1 Mobile, north of Mobile County. Very small, one red light and
2 a few stop signs, so it's very small, rural, but the
3 environment there was -- it was pretty nice and enjoined. But
4 Mobile County has a vast outskirts of communities such as Mount
17:06:26 5 Vernon, Citronelle, those are on the further north end of
6 Highway 43.

7 Q Okay. And I think you said you went to Citronelle High
8 School?

9 A Yes. I went to Citronelle High School.

17:06:39 10 Q What further education did you get after that?

11 A After Citronelle, I received a basketball scholarship at
12 the University of Mobile where I received my bachelor's degree
13 in sports medicine, pre-physical therapy. I received my
14 master's degree in business administration from University of
17:07:02 15 Phoenix, and I received my doctor's of business administration
16 from Walden University, and I am now currently at Arkansas
17 State University getting an education specialist degree in
18 education leadership.

19 Q Thank you. Dr. Caster, if you could go even slower, that
17:07:20 20 would be great. The court reporter has to take down every word
21 that we say. And it's not an easy task.

22 A Sure.

23 Q What do you currently do for a living?

24 A Currently, I am a teacher educator in the Clarke County
17:07:33 25 school system. I teach kids three through five, and also I am

1 an adjunct business professor at Southern New Hampshire
2 University teaching students getting their master's degree in
3 business administration.

4 Q And where else have you taught in Alabama?

17:07:49 5 A I taught in Mobile -- I taught with the Mobile County
6 public schools systems when I first came out of college. I was
7 assistant basketball coach at Spring Hill College. I also
8 taught in Mobile at the drug education council where I was the
9 youth council coordinator for the city of Mobile and the county
17:08:07 10 of Mobile.

11 Q Can you tell us just a little bit more about the drug
12 education council?

13 A Yes. At the drug education council, I was -- where I was
14 the youth council coordinator, my job was to serve as the
17:08:23 15 liaison between the county commissioners of Mobile, the city
16 council of Mobile, and the mayor of Mobile, and the youth of
17 the city and county of Mobile County. So our job was to try to
18 identify problems that was going on in the city and county of
19 Mobile and present those problems to the mayor of Mobile, to
17:08:49 20 the county commissioners of Mobile, and to the city council
21 members of Mobile to try to strengthen the youth and -- and
22 bridge the gap between the youth and local and county, city
23 government.

24 Q In your work with the drug education council, did you get
17:09:07 25 an opportunity to learn what the communities of interests of

1 the residents of Mobile are?

2 A Yes, we did. Having to go to Government Plaza every week
3 to attend the county commissioners' meeting and having to
4 attend the city council meetings, you get a brief understanding
17:09:30 5 of what the citizens of Mobile, citizens of Mobile, what were
6 the issues in their districts, and what they are wanting for
7 their district, and also when you attend -- when we attended
8 the county commissioners' meeting, we had an opportunity to
9 find out what was going on in the rural areas, such as

17:09:53 10 Citronelle, Prichard, Alabama, Mount Vernon, and other -- other
11 towns and cities that's on the outskirts of Mobile County.

12 Q And did you get an opportunity to identify what the
13 particular needs of the black community are in those areas?

14 A Yes. I had an opportunity to listen to a lot of the
17:10:16 15 residents to come to the county, the county commissioners'
16 meeting. They was -- most of their concerns were education,
17 jobs. They was wanting to get more jobs. They was also
18 wanting to -- protection for the youth, and high-paying jobs,
19 as well. So there's a lot -- there's a variety of things that
17:10:42 20 was a concern for a lot of the citizens of the county of
21 Mobile.

22 Q So we will talk about those issues in a bit.

23 I have a couple of other questions about your background.
24 Have you ever run for political office?

17:10:57 25 A Yes, sir, I did. I ran for Alabama House of

1 Representatives District 65 back in 2018.

2 Q That's in Washington County?

3 A It covers Washington County, Choctaw County, and a portion
4 of Clarke County.

17:11:13 5 Q And when running that campaign, did you have a chance also
6 to learn the unique needs of the black community in your area?

7 A Yes, I did. And the needs -- and the needs for the black
8 community area was pretty much the same as the ones that was in
9 Mobile, Mobile County. More jobs, more trades and training,
17:11:38 10 more resources, and just things dealing with trade and the
11 recreation facilities for the youth.

12 Q Dr. Caster, how do you identify in terms of your race?

13 A Black, African-American.

14 Q Okay. Are you registered to vote in Alabama?

17:11:57 15 A Yes, I am.

16 Q Do you vote regularly?

17 A Yes, I do. I vote in both primary, local, city, any type
18 of election that we have, I try to voice my opinion by casting
19 a vote. Voting is very important to me, my family. It's
17:12:14 20 something that we take very seriously and that I instill that
21 in my children. And I also try to instill that into other
22 family members and friends, as well.

23 Q Do you know which congressional district you live in?

24 A Yes, Congressional District 1.

17:12:30 25 Q Okay. And who currently represents that district?

1 A Jerry Carl.

2 Q Do you know who represented that district prior to
3 Mr. Carl?

4 A Priority to Mr. Carl, it was Bradley Byrne.

17:12:43 5 Q Did you vote for Jerry Carl in the last election?

6 A No, I did not. I actually voted for James Averhart.

7 Q And James Averhart was a -- he's a black man?

8 A That's correct.

9 Q And Mr. Carl won that campaign, though, right?

17:13:00 10 A Yes, he did.

11 Q Did you vote for Bradley Byrne when he was running for
12 Congress?

13 A No, I did not.

14 Q Why didn't you support Mr. Byrne in his congressional
17:13:15 15 campaigns?

16 A Well, just by the values and things that my community
17 need, I felt as though my community, people in Washington
18 County, people that are north of Mobile County, and some people
19 that are also in Mobile County, the things that we want for our
17:13:33 20 community I felt as though the other candidates that were --
21 James Averhart, Robert Kennedy, Jr., those individuals, I felt
22 like those were the ones that were better -- was better
23 representative of what the needs of my community was looking
24 for. And I felt as though that the other Representative
17:13:58 25 Bradley Byrne and Representative Carl, they didn't represent

1 the needs of my community.

2 Q And, Dr. Caster, you made several references to my
3 community there. Are you specifically referring to the black
4 community?

17:14:10 5 A Yes, that's correct.

6 Q Do you know whether the congressional elections in
7 District 1 have been competitive recently?

8 A No, they have not.

9 Q In light of that, do you feel like you have a voice in
17:14:27 10 congressional elections in Alabama?

11 A No, I don't. I -- we continue -- I continue to vote, but
12 I do not feel as though that my voice is being heard because
13 we're not getting someone that's representing the black
14 community. I mean, so, no, I don't feel like my vote is being
17:14:47 15 heard -- is being heard at all.

16 Q Dr. Caster, what result are you trying to achieve in this
17 lawsuit with respect to your congressional district?

18 A A voice. A voice. I was -- I mean, my ancestors fought
19 for us to have a right and opportunity to vote. And, you know,
17:15:09 20 and it's already difficult from -- it's difficult having to
21 talk to blacks and try to get them out to vote. And but when
22 they feel like their vote is not counted, it distracts them and
23 discourages them from going back to the polls. And I try to --
24 I try to be an activist in my community in a positive way. And
17:15:33 25 then when I'm going out trying to talk to people about

1 registering to vote and being prepared to vote, they kind of
2 feel as though it's falling on deaf ears because they don't
3 feel like their vote don't count when they have someone in
4 office that doesn't represent them at all.

17:15:52 5 Q Now, you don't mean literally not counted, right? They're
6 able to cast a vote --

7 A Yeah. They're able to cast a vote, but when I say don't
8 count, it's by getting someone in office that does not
9 represent them.

17:16:06 10 Q And if you were to live in a -- if you were to succeed in
11 this lawsuit and the state was ordered to create a second
12 majority-black district, do you think it's likely that your
13 current representative would change as a result of that?

14 A Could you repeat the question, please?

17:16:26 15 Q Would you think the individual who represents your
16 district would change if you were moved into a second
17 majority-black congressional district?

18 A I'm sorry. I'm trying my best to hear you on this
19 computer. I got my volume turned up, but I am still having
17:16:44 20 problems.

21 Q No problem. Thank you for letting me know.

22 So if you were to succeed in this lawsuit and the state
23 drew a second majority-black congressional district that you
24 lived in, do you think the person who currently represents your
17:16:57 25 district would change as a result of that?

1 A Would they change? Would the person that's currently the
2 representative would they change or the new person?

3 Q Would you elect someone else besides Mr. Carl to represent
4 your congressional district?

17:17:14 5 A Oh. Yes. I would -- I would elect someone else besides
6 Representative Carl to represent my district.

7 Q And would that change in representation, would it benefit
8 or harm the black community in your area?

9 A I think it would be more beneficial to the black community
17:17:33 10 to have someone in that will be able to listen to the citizens
11 in our community, that would visit the citizens in our
12 community, that would go to Washington to represent us and to
13 vote on bills that represent our community would be very
14 beneficial to the district, our district, and the citizens --
17:17:59 15 the black citizens in the community, as well.

16 Q And so just to be clear, you talked about feeling like you
17 -- your vote doesn't count in congressional elections based on
18 where you live. Do you think the black community in your area
19 has even an opportunity to elect their representative of choice
17:18:19 20 right now?

21 A No. No, we don't.

22 Q Are you having issues hearing me right now? I think --

23 A I can hear you. Yeah. It just kind of -- I have to try
24 to lean in, but I can hear you.

17:18:36 25 Q Okay. My apologies if I'm cutting out.

1 All right. Dr. Caster, you identified a few issues that
2 people -- that people in the black community have identified as
3 particular needs that they have in the area that you live in.

4 You talked about employment. Can you tell us more about
17:18:56 5 what the specific employment-related needs of the black
6 community are in your area?

7 A Well, in my area, we have -- we have three to four
8 multibillion dollar plants. And in they generate billions of
9 dollars each year. And these plants employ a lot of people in
17:19:20 10 our -- in the state. Unfortunately, a lot of individuals that
11 stay in the community that are black does not work for the
12 plants themselves because they don't have the training -- they
13 don't have the trades in order to get inside of these plants.
14 But our white counterparts are able to get these positions, get
17:19:40 15 positions at these plants, and we are not able to get positions
16 at the plants.

17 Q Is the result of that, that the black -- members of the
18 black community have to get lower paying and less flexible
19 jobs?

17:19:55 20 A That's pretty much -- that's pretty much throughout our
21 community, yes. They -- we work at low-wage organizations and
22 companies where others -- whites get paid more. And it just --
23 it just the way it is -- that's just where we are right now.
24 Sad to say, but that's the truth.

17:20:19 25 Q Do you think that the COVID-19 pandemic has made that

1 issue worse for the black community?

2 A Definitely, yes. COVID has impacted our community very
3 hard. Deaths and sickness, yes. It has definitely impacted
4 our community.

17:20:37 5 Q And in terms of employment, as well?

6 A Yes.

7 Q Are you familiar with the American Rescue Plan or the 2021
8 COVID Relief Bill?

9 A Yes, I'm familiar with it.

17:20:49 10 Q Do you know whether that legislation provided assistance
11 to people who lost their job during the pandemic?

12 A Yes, it did.

13 Q And how did Representative Carl vote on that legislation?

14 A Against it.

17:21:03 15 Q Did you want him to support it?

16 A Yes.

17 Q Did you think that his vote against it served or disserved
18 the black community?

19 A It was a disservice to the black community.

17:21:15 20 Q What about transportation? Is that a unique need of the
21 black community in your area?

22 A Yes, it is. Transportation is a -- we don't have public
23 transportation. We don't have cabs. We don't have Uber. We
24 don't have Lyft, anything, to get our people -- even if they
17:21:40 25 didn't have a vehicle to get them to, you know, transportation

1 to a job even if they did have one. So, yes, lack of
2 transportation is really a problem.

3 MR. OSHER: Mr. Walker, I think your --

4 BY MR. OSHER:

17:22:00 5 Q Are you familiar with the infrastructure bill that
6 President Biden recently signed into law?

7 A Yes, I'm familiar with it.

8 Q Do you know whether that legislation had any provisions
9 pertaining to expanding access to public transit?

17:22:17 10 A Yes.

11 Q Would that be something that your community would benefit
12 from?

13 A Yes. Yes, definitely.

14 Q My apologies. I didn't mean to talk over you.

17:22:30 15 Do you know how Representative Carl voted on the
16 infrastructure bill?

17 A Against it.

18 Q Did you want him to support it?

19 A Yes.

17:22:36 20 Q And did his vote serve or disserve the black community in
21 your area?

22 A It was a disservice to the black community.

23 Q What about access to quality and affordable health care,
24 is that an issue for the black community in particular in your
17:22:57 25 area?

1 A Yes, it is.

2 Q Can you tell us a little bit more about that?

3 A Yes. We -- our community is -- first of all is -- we need
4 health care, more affordable health care. And because our
17:23:15 5 communities is particularly in an area -- when I mentioned
6 those four multibillion dollar plants, they -- they also emit
7 pollution in the area, and a lot of individuals from our
8 community get sick from it. Most of -- in fact, just about
9 everyone that I know stays around these plants, and they're
17:23:42 10 predominantly black that stays in these areas right around
11 these plants, and they get sick easy from cancer, easy from
12 lung disease and different ailments that they might have, and
13 we definitely need health care because, you know, they can't
14 afford to move out from these places. So it is very important.

17:24:01 15 Q Are you familiar with the Build Back Better Act?

16 A Yes, I'm familiar with it.

17 Q Do you know whether any provisions of that legislation are
18 aimed to reduce pollution in disadvantaged communities?

19 A Yes. Yes. Parts of the bill was for pollution and things
17:24:25 20 like that. But, you know, once again, the -- our
21 representative votes against all the bills that supposed to
22 serve our community.

23 Q And so Jerry Carl voted against the Build Back Better Act?

24 A Yes.

17:24:38 25 Q And that legislation failed -- or currently is not

1 enacted, right?

2 A Correct.

3 Q Those provisions would have helped your community when it
4 comes to the pollution that the factories in your area cause
17:25:00 5 for the black community?

6 A Yes, sir, that's correct. We have our housing, child
7 care, and everything.

8 Q Does the proximity of the factories to the black
9 neighborhoods in your area affect the quality of drinking
17:25:18 10 water?

11 A Yes. Actually, yes. There was -- mercury was found in
12 the water I think back in 2013. And -- and back then, the
13 drinking water was almost compared to that of Michigan. And a
14 lot of individuals from the community actually received some
17:25:39 15 type of pay behind it, but the water is still not up to par.
16 So right now, people in the community now, they just put a
17 filter on their water faucet and pray for the best.

18 Q And you referenced Michigan. You're referring to Flint,
19 Michigan?

17:26:02 20 A That's correct.

21 Q Do you know whether the Build Back Better Act has
22 provisions meant to improve the quality of drinking water in
23 disadvantaged communities?

24 A Yes.

17:26:13 25 Q And, again, Representative Carl voted against it?

1 A That's correct.

2 Q You spoke about your work in Mobile with specifically the
3 younger individuals who live there. Did you notice any issues
4 related to criminal justice specifically in the city of Mobile?

17:26:38 5 A Yes. I mean, Mobile -- Mobile has been going through a
6 lot when it comes to criminal justice right now. A lot of -- a
7 lot of blacks being incarcerated more so than the whites.

8 And a lot of the bills in the -- the bills that was -- the
9 first step bill, you know, was supposed to help with some of
17:27:13 10 these issues. And, again, our representative just don't
11 support these bills that is supposed -- you know, that's to
12 help our community.

13 Q And was that a reference to the First Step Act?

14 A Yes.

17:27:27 15 Q From a few years ago?

16 A Yes.

17 Q And am I understanding you that Representative Byrne voted
18 against that?

19 A That's correct.

17:27:35 20 Q One more, Dr. Caster. Access to high speed Internet. Is
21 that an issue for the black community in your area?

22 A Yes. That's why I -- yes. Yeah. I'm at work now, so
23 high speed Internet at my house is -- is almost like dial up.

24 So we definitely need access to high speed Internet, more
17:28:04 25 broadband connections, things of that nature to try to -- you

1 know, the more you have that, the more people can seek jobs
2 online, things that you can just do a lot more by having high
3 speed Internet. And like I said, we don't have -- we don't
4 have access to a lot of that being in the rural area that we're
17:28:22 5 located in.

6 Q And with the COVID pandemic, did that lack of access to
7 Internet harm students when they had to stay home?

8 A Yes. Yes. In -- in Mobile County, and Mobile County
9 actually had to -- they actually put the access on a bus and
17:28:48 10 had parents to if they wanted -- if they didn't have Internet
11 at home, they could pull up by the bus and get the Internet
12 access from the -- from there.

13 And in my area, which is the rural area of Washington
14 County, you know, Washington County and Mobile County, they
17:29:07 15 butt right up against one another, so in the rural Mobile
16 County, like I say the Internet access, we just don't have --
17 we just don't have the resources right now.

18 Q And I just want to be clear here.

19 You're talking about the black community specifically,
17:29:23 20 blacks' access to high speed Internet?

21 A Yes.

22 Q Do you know whether the infrastructure bill we talked
23 about earlier has provisions that would increase access to high
24 speed Internet around the country?

17:29:41 25 A About \$65 billion.

1 Q And Representative Carl vote against the bill, did that
2 serve or disserve the black community with respect to that
3 issue?

4 A Disserve.

17:29:51 5 Q And just to be clear, some of these bills passed, some did
6 not?

7 A Right.

8 Q Representative Carl consistently voted against them,
9 right?

17:29:59 10 A That's correct.

11 Q Do you mean to say that white residents of Alabama don't
12 have needs in the areas that we've been talking about?

13 A No. No. Everyone. Everyone have a needs, you know, it's
14 black, white, Hispanic, everyone have them. But when I speak
17:30:17 15 to you, I'm talking about as far as our representative in our
16 congressional district and a disservice to blacks.

17 Q And is it that the level of need among the black community
18 the just significantly higher than those in the white
19 community?

17:30:33 20 A No. No. It's not that it's higher. It's just the fact
21 that it's important and it matters.

22 Q Okay. And will the issues that we talked about earlier in
23 terms of employment, in terms of education, that desperately
24 impact black residents of your area, does that result in a
17:30:51 25 higher need in these areas for the black community?

1 A Yes. It's definitely s higher need because we don't have.
2 And so if you don't have them, have the resources, then you
3 know, those who don't have, there's a higher need for -- to try
4 to get them to catch up with everyone else. And a lot of, you
17:31:13 5 know, a lot of people in, you know, neighboring us, they have
6 access to some of these things, and we just don't.

7 Q All right. Dr. Caster, I just have a few more questions
8 for you. I want to talk about where you live and your
9 understanding of Washington County and Mobile County.

17:31:33 10 Do you understand the Washington, Mobile, and Baldwin
11 counties are all currently in the same congressional district?

12 A Yes.

13 Q Based on your work in Washington and Mobile counties,
14 would you say that black residents of those areas have a lot in
17:31:48 15 common with those who live in Baldwin County?

16 A From what I see, the people from my area, my community,
17 they frequently visit Mobile County for entertainment, the
18 Mardi Gras, things of that nature. That's where we go for to
19 support Mobile, and in the same time, Mobile comes to our area
17:32:15 20 and support us, as well, so, yes.

21 Q Would you say that black residents of your area in the
22 city of Mobile have more in common with the Black Belt region
23 and the counties in the Black Belt than they do with Baldwin
24 County?

17:32:32 25 A Yes.

1 Q In fact, you were very patient with us on Friday when we
2 thought that you were going to testify then. When you didn't,
3 where did you go after that?

4 A I was actually in the Black Belt. My son had two
17:32:46 5 basketball games in the Black Belt last week in Marengo County
6 Tuesday, and then I think it was Friday we was in Camden in
7 Wilcox County.

8 Q And so just to be clear. So I'm sorry.

9 What's your view about whether the -- or the economies of
17:33:13 10 the city of Mobile and the economies of Baldwin County in your
11 view, are they similar, independent, how do they compare to one
12 another?

13 A Well, when you look at the simple fact that Mobile County
14 -- they both on the Gulf Coast, okay, and a bridge separates
17:33:36 15 the two. Baldwin County is more tourists. And Mobile County
16 is through the ports and blue collar. So, therefore, the
17 economies are totally different from one another. If anything
18 is incumbent, it would be Mobile County and Washington County
19 where I stay, where you talk about blue collar workers when you
17:34:04 20 come to the factories and the plants and also the Black Belt.

21 Q That was the case that people go from Mobile to Baldwin
22 County and from Baldwin County to Mobile, right, people --
23 people go between those counties all the time, right?

24 A Yes. Yes.

17:34:18 25 Q But you're saying that the nature of the economies are

1 different?

2 A Correct.

3 Q Do you think that black residents of Washington and Mobile
4 County would be better served if they were a part of the
17:34:34 5 congressional district that covered the Black Belt?

6 A Yes, I do.

7 Q And is that because the representative that would
8 represent that district would better serve the interests of the
9 black community?

17:34:45 10 A That would be correct.

11 MR. OSHER: Your Honor, just a moment?

12 JUDGE MARCUS: Sure.

13 MR. OSHER: Dr. Caster, that's all I have for you.
14 Thank you for your time.

17:35:22 15 JUDGE MARCUS: Thank you. Mr. Walker, you may
16 proceed.

17 MR. WALKER: Thank you, Your Honor. And I apologize
18 to Mr. Osher and the Court for interrupting his examination.

19 CROSS-EXAMINATION

17:35:26 20 BY MR. WALKER:

21 Q Dr. Caster, hello. I am Dorman Walker. I represent the
22 chairs of the reapportionment committee.

23 A Nice to meet you.

24 Q Nice to meet you, sir. I will ask you a few questions.

17:35:41 25 You talked about a representative who would represent the

1 interests of the black community. Could that person be black
2 or white?

3 A Yes, it could be black or white.

4 Q And could it --

17:35:55 5 A Someone --

6 Q I'm sorry?

7 A I say, yes, it could be someone black or white, just
8 someone that's looking out for, you know, that understand the
9 needs of the black community and is willing to do something
10 about it.

11 Q And could that person be Republican or Democrat?

12 A It could.

13 Q And --

14 A We have a Republican, and that's not been working.

17:36:26 15 Q Thank you, sir. Would it be someone in that area who
16 understands the needs of -- you have talked about the needs of
17 primarily black people in Washington County, so would it be
18 that representative be somebody from that area who could
19 understand those best?

17:36:48 20 A Yes, it could.

21 Q Are you familiar with the -- with the alternative
22 districts that have been proposed in this case? Have you seen
23 any alternative maps?

24 A I saw some, but I am not totally familiar with them. I
17:37:08 25 did see some alternative maps.

1 Q Let me just show you something.

2 Can you see the map that I have put up?

3 A Yes, sir, I can.

4 Q Figure 10, Alabama U.S. House Illustrative Plan 1 from the
17:37:32 5 Cooper Report. And you see that -- you see where Washington
6 County here is where I am moving the cursor?

7 A Yes, I do.

8 Q And you see that this proposed district, which is typical
9 of the districts proposed by Mr. Cooper or drawn by Mr. Cooper
17:37:50 10 stretches all the way over to the border of Georgia; is that
11 correct?

12 A Yes, that's what -- according to this map, yes.

13 Q How many times in the last several years have you visited
14 Russell or Barbour or Henry County?

17:38:06 15 A Not -- I visited Russell County I think it was once.

16 Q And when was that, sir?

17 A That was a few years ago.

18 Q Do you know anything about the demographics of those
19 counties?

17:38:28 20 A No.

21 Q Do you know anything about the industries of those
22 counties?

23 A No, I do not.

24 Q Do you know where those people go to get their health
17:38:43 25 care?

1 A No, I do not.

2 Q Do you feel like you are in a community of interest with
3 those people?

4 MR. OSHER: Objection, Your Honor. Dr. Caster is not
17:38:54 5 a map drawer. He is not a politician. We need to lay some
6 foundation of what community of interest means.

7 JUDGE MARCUS: Mr. Walker?

8 MR. WALKER: Your Honor, I've asked words -- it's a
9 plain simple question. Does he feel like he is in a community
17:39:11 10 of interest for the people who live over in those counties. I
11 don't think it's a legal term.

12 JUDGE MARCUS: You are asking it in the common usage
13 of the words; is that correct?

14 MR. WALKER: I am asking it in the common usage of the
17:39:21 15 words, Your Honor.

16 JUDGE MARCUS: The objection is overruled. You may
17 answer the question, Dr. Caster.

18 THE WITNESS: Can you repeat the question, please?

19 BY MR. WALKER:

17:39:29 20 Q Yes, sir. Do you believe that you are in a community of
21 interest with these people on the western -- on the eastern
22 border of Alabama in Russell County, Barbour County, and Henry
23 County, who you have testified basically that you don't know
24 anything about?

17:39:44 25 A That's correct. I'm not -- I don't have any -- I don't

1 know anything about them, so I can't say that I am in the
2 interest of -- that community interest with them or not, so I
3 can't adequately answer that question.

4 Q Thank you.

17:40:01 5 MR. WALKER: Your Honor, can I have just a second?

6 JUDGE MARCUS: You sure can.

7 MR. WALKER: Your Honor, thank you, sir. That's all
8 we have.

9 JUDGE MARCUS: All right. Any redirect, Mr. Osher?

17:40:19 10 MR. OSHER: Just a moment, Your Honor, if you would
11 indulge me.

12 JUDGE MARCUS: Sure.

13 MR. OSHER: Nothing more. Thank you, Dr. Caster.

14 Thank you for your patience, and I am glad we were able to get
17:40:41 15 you on tonight.

16 THE WITNESS: No problem.

17 JUDGE MARCUS: Thank you, Dr. Caster, and you are
18 excused.

19 THE WITNESS: Thank you, Your Honor.

17:40:46 20 JUDGE MARCUS: We will break for the day, folks, and
21 we will get started tomorrow morning at 8:30 Central Standard
22 Time rather than 9:00.

23 And I take it at that point, Mr. Davis, you will be ready
24 to proceed with your next witness.

17:41:05 25 MR. DAVIS: We certainly expect to. Mr. Byrne thinks

1 he can move something around and be here by 8:30. If he's not
2 here at 8:30, it won't be long. And I do think there may be
3 some business to take up with the Court on exhibits at some
4 point.

17:41:20 5 JUDGE MARCUS: I expect we will take them up before we
6 get to closing.

7 MR. DAVIS: I believe we can make good use of the
8 court time even if Mr. Byrne is a few minutes late.

9 JUDGE MARCUS: Okay. Thank you all. Anything further
17:41:32 10 from anyone? If not, have a good evening, ladies and
11 gentlemen. And we will see you back here 8:30 tomorrow morning
12 Central Standard Time, 9:30 Eastern Time. Court is adjourned.

13 (Whereupon, the above proceedings were concluded at
14 5:41 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

01-11-2022

Christina K. Decker, RMR, CRR

Date

Federal Official Court Reporter

ACCR#: 255

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

BOBBY SINGLETON, et al., *
Plaintiffs, * 2:21-cv-1291-AMM
vs. * January 12, 2022
* Birmingham, Alabama
* 8:30 a.m.

JOHN MERRILL, in his official *
capacity as Alabama Secretary *
of State, et al., *
Defendants. *

EVAN MILLIGAN, et al., *
Plaintiffs, * 2:21-cv-1530-AMM

vs. *
*
JOHN MERRILL, in his official *
capacity as Alabama Secretary *
of State, et al., *
Defendants. *

MARCUS CASTER, et al., *
Plaintiffs, * 2:21-cv-1536-AMM

vs. *
*
JOHN MERRILL, in his official *
capacity as Alabama Secretary *
of State, et al., *
Defendants. *

TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING
VIA ZOOM CONFERENCE
VOLUME VII

BEFORE THE HONORABLE ANNA M. MANASCO,
THE HONORABLE TERRY F. MOORER,
THE HONORABLE STANLEY MARCUS

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P R O C E E D I N G S

(In open court.)

JUDGE MARCUS: Are the parties ready to proceed?

MR. DAVIS: Defense is ready, and Mr. Byrne the next witness is here and ready, Judge.

JUDGE MARCUS: Okay. Caster plaintiffs are ready?

MS. KHANNA: Yes, Your Honor.

JUDGE MARCUS: And the Milligan and Singleton plaintiffs?

MR. BLACKSHER: Singleton are.

MS. WELBORN: Milligan are, as well, thank you.

JUDGE MARCUS: We are going to turn now to your next witness, Mr. Davis.

MR. DAVIS: Thank you, Judge. The defense calls Mr. Bradley Byrne.

BRADLEY BYRNE,
having been first duly sworn, was examined and testified as follows:

JUDGE MARCUS: Thanks very much. And if you would be kind enough to state your name for the record.

THE WITNESS: My name is Bradley Byrne, B-R-A-D-L-E-Y, B-Y-R-N-E.

JUDGE MARCUS: Thank you very much. And with that, Mr. Davis, you may proceed.

MR. DAVIS: Thank you, Judge.

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1 DIRECT EXAMINATION

2 BY MR. DAVIS:

3 Q Good morning, Mr. Byrne.

4 A Good morning.

08:30:45 5 Q Where do you live, Mr. Byrne?

6 A I live in Fair Hope, Alabama.

7 Q How long have you lived in the Gulf Coast region?

8 A My entire life.

9 Q And what do you do for a living?

08:30:57 10 A I am a lawyer.

11 Q Have you ever served in public office?

12 A I have.

13 Q Would you please tell the Court about your experience in
14 public service beginning with your earliest appointed or
08:31:10 15 elected position?16 A Yes. I was elected to the Alabama State School Board in
17 1994 and took office in December of that year because my
18 predecessor left to go take another position, so I started that
19 a little bit earlier.08:31:25 20 I served the Alabama State School Board eight years. I
21 was elected to the Alabama State Senate in 2002, and under
22 Alabama law, you take office immediately after general
23 election. So I became the state senator in November of 2002.
24 I served there until May of 2007, when I became the chancellor
08:31:43 25 post-secondary education for the state of Alabama.

1 In December of 2013, I was elected in a special election
2 to the United States House of Representatives representing the
3 First District, which is the southwestern part of Alabama. I
4 served there until January 3rd of last year, when I left
08:32:01 5 office, and my term expired.

6 Q Thank you, Mr. Byrne.

7 I want to share my screen now and show you a map that has
8 been marked as Defendants' Exhibit 55. Can you see this map,
9 Mr. Byrne?

08:32:14 10 A I can.

11 Q I will represent to you that these are the congressional
12 districts that the Alabama Legislature passed November the last
13 districting cycle.

14 Does the First Congressional District look similar to the
08:32:33 15 district as it existed when you represented the First District?

16 A It is similar. It does not include the lower half of
17 Clarke County that I had in my district. And there's a small
18 sliver of the eastern part of Escambia County that is now part
19 of the Second District, but other than that, it's the same
08:32:51 20 district that I had.

21 Q To your recollection, does the Second District look
22 similar in structure to the way it was when you were serving in
23 Congress?

24 A It does.

08:32:58 25 Q Thank you. How would you describe Gulf Coast region,

1 Mr. Byrne? And by that, I mean what is it, if anything, that
2 binds that region together to make it a community of interest?

3 A Well, we are on the water. We are on the Gulf of Mexico.
4 We have lots of bodies of water in the district. Mobile Bay is
08:33:22 5 very prominent, and Perdido Bay is pretty prominent. A number
6 of rivers, sounds, et cetera. So water defines the district
7 very much. It's not just any kind of water. It's salt water,
8 brackish water, et cetera.

9 What that means is we have a major deep water port. We
08:33:40 10 have a major ship building industry. We have major tourism
11 industry that's related to the beaches and the water. And also
12 a major seafood industry. And all of those are unique in terms
13 of Alabama unique to this part of the state.

14 And so when you deal with the things that happen in this
08:33:58 15 part of the state, you are dealing with something that's unique
16 in the state of Alabama.

17 Q Do people throughout the region through the other counties
18 in the First District commute in to Mobile for employment?

19 A Yeah. There are major highways that come from the
08:34:16 20 northern part of the district into both Mobile and Baldwin
21 counties. So people in what I call the collar counties, which
22 are Washington County, Escambia County, Monroe County, and
23 presently that lower part of Clarke County, they'll use those
24 highways to go back and forth.

08:34:29 25 It's not just their jobs. It may be going to the doctor,

1 the hospital, their shopping, et cetera. So there's this sort
2 of larger community involving these four, five counties that
3 flow into and out of Mobile and Baldwin counties. It used to
4 be just Mobile County. Baldwin County has grown so much.

08:34:49 5 Baldwin County is now a very big part of that, as well.

6 Q What role does the Port of Mobile play, if anything, in
7 binding that region together?

8 A Well, it's huge. Mobile started out in the 18th Century
9 as a port. It was a port for French traders, but it was still
08:35:07 10 a port, and it's been a port for 300-plus years, and the port
11 continues to grow. In fact, it had amazing growth last year.
12 It's not just the port itself. The port is at the very center
13 of what is a major logistics hub. For example, we have one of
14 Walmart's four mega distribution centers here in Mobile County.
08:35:25 15 That's all related to the port.

16 The fact that we have Airbus in Mobile, we have it in part
17 because they can ship directly via the ship channels directly
18 from a port in Europe to a port right outside of their assembly
19 facility here in Mobile. So that port is the anchor for the
08:35:46 20 economy around here. And it literally directly and indirectly
21 creates tens of thousands of jobs. So it's extremely important
22 to this area.

23 Q Are there industries in the area along the rivers that
24 flow into the port?

08:36:01 25 A Oh, yeah. We have major industries, chemical industry

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1 players, steel industry players up and down the Mobile river
2 and as you get further north of that into the Tombigbee River.
3 So the river, the Tombigbee River, then on the eastern side,
4 the Alabama River, those are very important to the economy and
08:36:25 5 the culture of this area.

6 Q And do any of those industries rely on the port for
7 distribution of the products?

8 A Well, for the distribution of their products, but also for
9 stuff that comes in that they have to use to create their
08:36:41 10 product. Maybe different types of elements that go into the
11 chemical process. In the case of steel, we actually have steel
12 slabs that come up from Brazil that are then offloaded off the
13 ships and put on barges that come up to a company called AM/NS
14 Calvert. It's a multinational company that employs well over
08:37:01 15 2,000 people in the production of coal and steel.

16 Q Is there anything unique about the history of this region,
17 in terms of international influence?

18 A Yeah. We were founded by the French in 1702. We had
19 20 years in there where we were a British colony and then 30 or
08:37:21 20 40 years where we were a Spanish colony.

21 So unlike the rest of the state of Alabama, we have this
22 extensive Colonial history, and it continues to form our
23 culture today. We're far more likely to have Catholic
24 residents here than in any other part of the state. We have
08:37:42 25 Mardi Gras, which may sound like just sort of a frivolous fun

1 thing, but Mardi Gras is big business here. There are a lot of
2 businesses that that is what they do. So it's not unusual to
3 find Mardi Gras parades not just here in Mobile, but you go
4 north of here into Washington County, you go over into Baldwin
08:37:55 5 County, several of the cities in Baldwin County, and even up
6 into Monroe County, they have Mardi Gras because there is that
7 cultural connection between the two.

8 I was reading an interesting article the other day about
9 Truman Capote. He used to have relatives in Monroe County that
08:38:20 10 he would visit. Mr. Capote wrote that he actually entered into
11 contests as a child to write stories, and those stories were
12 part of a contest in the *Mobile Press Register*. He was in
13 Monroe County. This is 100 years ago.

14 So you can see that there's this long-term connection
08:38:34 15 between what I call the collar counties in the First
16 Congressional District and Mobile itself.

17 Q Are Baldwin County in Mobile County closely connected?

18 A Oh, yeah. If you look at a map of Mobile and Baldwin
19 counties, it looks like an inverted U. And what's in the
08:38:53 20 interior of that U is Mobile Bay. And so if you go back
21 literally centuries, you will see a connection between the two
22 counties.

23 So my family is originally from Baldwin County. The
24 Byrnes were from Baldwin County. But if you go back to the
08:39:08 25 late 18th Century, you will see one of my ancestors was

1 actually baptized in the Roman Catholic Church here in Mobile.
2 So there's this intersection between those two counties that's
3 been going on for a very long time.

08:39:24 4 Q Would you say those counties are more closely connected
5 today than they were, say, in the '60s and 70s?

6 A Oh, yeah. For example, when -- I live in Baldwin County,
7 and I work in Mobile County.

8 If you were in my car with me today, you would have seen
9 thousands of cars crossing from Baldwin County into Mobile
08:39:42 10 County. So you have lots of people who live in Baldwin County,
11 but work in Mobile County.

12 Not as many people, but there are people who live in
13 Mobile County and work in Baldwin County.

14 So there's really strong interconnection between the two
08:39:56 15 counties.

16 Q What are -- you mentioned a few of these. Let's get on
17 the record and say what are some of the major industries and
18 employers in the Mobile region?

19 A For instance, the Port of Mobile. That's a big one. You
08:40:17 20 have AM/NS Calvert, which is the steel company. There's
21 Outokumpu, which is a stainless steel company; there's SSAB,
22 another coal and steel company; and Earth Pipe, which is a
23 steel pipe company, so those are steel companies.

24 Numerous chemical companies. I think about it. Huntsman,
08:40:42 25 there's -- oh, shoot. There's Shell. I can't remember all the

1 chemical companies. It must be 20.

2 Q Of course.

3 A We have the University of south Alabama, which is a major
4 employer in this area. We have Austal USA, which is a
08:41:01 5 ship-building company. We have Airbus USA, which is major
6 airplane assembly facility here. We have the Mitchell Cancer
7 Research Center. We have -- I mentioned the Walmart mega
8 distribution center. We have a number of other logistic
9 distribution centers because of the port.

08:41:21 10 And then if you go into the southern part of Baldwin
11 County, you have major businesses are there to provide
12 condominium access to tourists that come down here, hotels,
13 restaurants, et cetera. In Bon Secour, Alabama and Bayou La
14 Batre, Alabama, these are two of the largest seafood
08:41:43 15 distribution places literally in the United States of America.

16 So Nelson Bon Secour Fishery in Bon Secour, huge
17 distributor for seafood. I can remember eating crab meat in
18 Washington D.C. and finding out during the meal that that crab
19 meat came from Bon Secour, Alabama.

08:42:01 20 So you know, no other part of Alabama has industries like
21 this. I am not saying it's better or worse than the other
22 parts of the state. It's just unique.

23 Q Would you describe the First District as racially diverse?

24 A Oh, yes. Very much so. We have obviously long-time white
08:42:21 25 and black communities, but we have Hispanic communities. Down

1 in Bayou La Batre, we have a number of southeast Asian
2 communities, people that left those areas in the aftermath of
3 the Vietnam War and settled Bayou La Batre, Alabama and formed
4 these huge fishing communities. We have other Asian
08:42:40 5 communities here. This is always been because of the port I
6 guess a very diverse area, going back to the earliest times
7 here.

8 So it's not unusual to find somebody like me who has
9 French ancestors, you know, Scottish ancestors, Irish
08:42:58 10 ancestors, German ancestors. It's not unusual to find people
11 here that can draw their lines back to various parts of Africa.
12 There are people here that can draw their lines back to the
13 various nations in southeast Asia. This is a very diverse area
14 and always has been.

08:43:15 15 Q Are there military interests in the First District?

16 A Yes, sir.

17 Q What do you have?

18 A We have a shipyard here called Austal USA that makes two
19 different ships presently for the United States Navy, combat
08:43:33 20 ship and the expeditionary fast transport vessel. Those are
21 the only vessels that that shipyard makes. It employs
22 presently about 3,500 people. At one point, it had as many as
23 4,500 people. Ship building has been a major part of Mobile
24 going back to Colonial times.

08:43:50 25 We have all -- you have people here who are like fifth,

1 sixth generation ship builders. Making ships is not like any
2 other manufacturing process because they're so darn big. It's
3 just a lot more to it than making a car, or even making the
4 airplanes that Airbus makes here.

08:44:09 5 So we -- that ship building for the Navy here is a big
6 deal.

7 Q In the years when you were representing this area in
8 Congress, Mr. Byrne, were there any particular issues that you
9 would focus on?

08:44:23 10 A Sure. When you are a Congressman, you're the primary
11 representative for the people in your district in Washington,
12 D.C.

13 So there were a myriad of things that were particular to
14 this district that I had to focus on. The shipyard, for
08:44:43 15 example, very critical that we make sure those ships are
16 authorized and appropriated year after year after year.
17 There's nothing automatic about that. There's a fight over
18 that every year.

19 But it may sound mundane. We had a huge issue here in
08:44:56 20 involving the Gulf Red Snapper, which is the number one fish
21 people like to catch out in the Gulf of Mexico. We have a huge
22 industry in Orange Beach built up around charter boats, people
23 that own their own boats. Think about it. It is not just the
24 fact of the boat, it's you have to buy fuel for the boat, you
08:45:14 25 have to buy ice for the boat, you have to buy bait for the

1 boat, you have to buy beer to go out and have fun in the summer
2 time. It's a huge industry. And we have a real problem with
3 those seasons being artificially shortened, and we had to go
4 work on trying to get those seasons back to a reasonable level.
08:45:32 5 For friends of mine that wanted to go fishing on Saturday, it
6 was for that industry. It was important.

7 We have a program in the federal government called GOMESA.
8 It is an acronym. But basically, it provides a certain
9 percentage of what the federal government gets in off shore gas
08:45:47 10 leases and oil leases that go to the states that border the
11 Gulf of Mexico. That's to help them deal with what could be
12 the very negative effect from that like with the BP oil spill
13 that we had back in 2010. So I was constantly working on that
14 and similar programs.

08:46:03 15 So I actually formed a caucus in Congress called the I-10
16 Caucus because those of us that represented districts in the
17 Gulf Coast had sort of unique problems that we would actually
18 work on together because those same interests weren't shared
19 with our colleagues and our state delegations up in the upper
08:46:21 20 parts of our states. So we would work together on things like
21 that.

22 And then there would be just the stuff that, you know,
23 every industry faces when you deal with federal government
24 regulations. Ship building has all sorts of interesting issues
08:46:36 25 with the Coast Guard, et cetera. So, yeah, I mean, I had to

1 work on those. And really had to become an expert on those
2 issues along with my staff.

3 Q Obviously, a longer snapper season would benefit the
4 people who enjoy going out in the Gulf and fishing. Does it
08:46:54 5 have any benefit to other residents of the First District
6 having a healthy fishing industry?

7 A Okay. That's an industry around it. There are charter
8 boat fleets, people that work on charter boats. There are
9 people that run marinas. There are people that sell fuel.
08:47:10 10 There are people that sell ice. There are people that sell
11 bait. There are people that, you know, provide condos and
12 hotel rooms that people stay in when they go fishing.

13 I mean, I remember when I was first elected and I had a
14 meeting with the people in Orange Beach that were in that
08:47:24 15 industry, and the room was just crammed full of people. I
16 never really thought of it that clearly before just how many
17 people were touched by the fact that we do or do not have a
18 good snapper season. And it was a major motivation to make
19 sure that we got that problem solved because it touched so many
08:47:41 20 different lives and touched so many different jobs.

21 Q Would issues that you worked on such as is the snapper
22 season or a healthy port or a healthy ship building industry,
23 would they help both the black and the white residents of the
24 First District?

08:47:55 25 A Oh, yeah. I mean, people down here, we have people of all

1 races that are working in all of these industries. And it's a
2 major source to get good high paying jobs. So it's a benefit
3 to everybody that we do that.

08:48:15 4 Q Uh-huh. Are you familiar with the Wiregrass region in the
5 Second District?

6 A I am. I told you earlier that I was a chancellor of
7 post-secondary education for the state of Alabama. And we had
8 three or four colleges in the Wiregrass region. We had a
9 number of vacancies in those colleges, so I had to go through
08:48:37 10 presidential searches. When you do a presidential search for a
11 community college, you have to involve the community. You have
12 to get involved with the community. You have to understand
13 that community.

14 So, for example, Lurleen B. Wallace Community College in
08:48:55 15 Andalusia, Alabama, that's Covington County, I spent a lot of
16 time in Andalusia because we had to build a vacancy there. So,
17 yes, I have spent a lot of time in the Wiregrass of Alabama
18 because of that position.

19 Q Tell me how the interest of the Wiregrass would compare to
08:49:13 20 the interest of the counties that are in the First
21 Congressional District.

22 A Well, what I described to you before is in the First
23 Congressional District southwest Alabama, something's built
24 around the water, okay? The Wiregrass is built around a couple
08:49:29 25 of things. Fort Rucker, which an Army helicopter training base

1 there in Ozark is a big part of the Wiregrass. Troy State
2 University is a huge part of the Wiregrass.

3 People in the Wiregrass sort of revolve around Dothan down
4 at the southern end and Montgomery at the northern end. And
08:49:53 5 they have agricultural interests that are different from the
6 agricultural interests that will be out here in southwest
7 Alabama. They don't have a nursery industry like we have here.
8 We have major wholesale nursery businesses here. They don't
9 have major watermelon crops. They don't have major pecan
08:50:13 10 crops. They're more built in to peanuts and cotton and cattle.

11 So they face, for example, during -- during in Andalusia,
12 Alabama, you face more towards Troy or Ozark or Dothan. You
13 don't face down here in southwest Alabama. In addition, it's
14 kind of hard to get from Mobile to the Wiregrass. We don't
08:50:36 15 have really good highway connections over there. So it's not
16 easy for people from there to come here or for people from here
17 to go there.

18 So they sort of face to the southeastern part of the
19 state. We face to the southwestern part of the state.

08:50:52 20 Q If you were representing the Second District, would you
21 focus on the same issues that you are focused on when
22 representing the First?

23 A No, sir. For example, I was on the Armed Services
24 Committee, and with the Navy shipyard, I am going to be focused
08:51:07 25 on Navy stuff.

1 If I represented the Second Congressional District, I
2 would be focused on the Army and particularly Army helicopters.
3 That's what they do at Fort Rucker.

4 In this district, I was focused for higher education
08:51:21 5 reasons on the University of South Alabama. If I represented
6 the Second District, I would be focused on Troy. Now, Troy has
7 a different mission from the University of South Alabama. They
8 have an international presence. So working with Troy would be
9 very different from working for the University of South
08:51:36 10 Alabama. Troy doesn't have a medical school, but it has a
11 whole lot of other stuff that's pretty darn important. So
12 there would -- and the agricultural interests I just described
13 are very different.

14 So I would think being the congressman from the Second
08:51:51 15 District requires a different level of expertise and level of
16 expertise that I feel like I had to have to represent this
17 district.

18 Q I want to share another screen now, Mr. Byrne. And this
19 is Milligan Exhibit 3, page 7 of that exhibit.

08:52:11 20 These are some proposed congressional maps that one of the
21 plaintiffs' experts presented, I will represent to you,
22 Mr. Byrne.

23 Review just say these -- here's Plan A and B, and then I
24 will scroll down to Plan C and Plan D, as well.

08:52:29 25 Focus on any of those, and tell us what's your reaction

1 is. Do you see any issues with representing these districts?

2 A Yes. If you look at Plan A and Plan B, you see it takes
3 in part of Mobile County, all of Baldwin County, and then goes
4 east into the Wiregrass legion. So you would essential have to
08:52:56 5 become an expert on two different regions altogether, two
6 different communities of interest. I know that's important for
7 those proceedings.

8 Then if you look at that district just above it, that
9 district is essentially part of the Black Belt and part of
08:53:14 10 southwest Alabama. So the person representing that district
11 would essentially have to have two very dramatically different
12 sets of expertise. I think it would be very difficult to be
13 the congressman for either of those districts not just the fact
14 you would have this vast geographic area you would have to
08:53:33 15 cover, but you would be covering two very different communities
16 of interest.

17 Q Uh-huh. Why would it make it more difficult to represent
18 a district if it encompassed different communities of interest?

19 A Well, for example, if you represented that blue district
08:53:50 20 at the very bottom, you would have to be an expert on things
21 involving Navy shipyards and Army helicopter bases. You would
22 have to be an expert when it comes to agricultural issues like
23 everything from wholesale nurseries, watermelons, pecans, to
24 peanuts, cattle production, and cotton production. You would
08:54:13 25 have to be focused on two major universities that have very

1 different missions. You would have to be focused on Dothan.
2 You would have to be focused on Andalusia. You would have to
3 be focused on Brewton, Mobile, and then all of Baldwin County,
4 which is the fastest growing county in the state.

08:54:30 5 So I am not saying you couldn't do it. It would be
6 extremely difficult to do it, and you would find yourself
7 somewhat diffused in your ability to be an effective advocate
8 for that region.

9 Q What do you mean by diffused?

08:54:44 10 A Well, there's only so many hours in the day for a
11 congressman and the staff that that congressman has. And there
12 are hundreds if not thousands of issues in Washington. And you
13 have got to figure out what your focus is going to be on. And
14 focus is very important for a member of Congress because
08:55:02 15 there's just not enough bandwidth, and there's only 435
16 congressmen, and you are one of them.

17 So you really have to figure out where am I going to put
18 my time? Where am I going to put the resources of my staff?
19 What fights am I going to fight. If you are fighting a whole
08:55:21 20 bunch of different fights because you have to, because you have
21 got that many interests in your district, you are not going to
22 be effective on each one of those. The more you can sort of
23 focus your energies, the more effective you will be.

24 I will give you an example. Everybody in the House of
08:55:32 25 Representatives and the staff and the leadership, et cetera

1 knew that I was interested in a bridge across Mobile Bay,
2 fixing the snapper problem, and gaining the ships authorizing
3 and appropriated for the shipyard here. Literally, I had the
4 Speaker come up to me on the floor and say, we get it. It's
08:55:50 5 that bridge, it's those ships, and it's those fish. Now, when
6 they know that, they know they have got to make me happy on
7 that to get my votes. If they don't make me happy on that,
8 they are not going to get my votes.

9 Now, if I say I have 20 different things I want you to
08:56:03 10 make me happy on, they will say, look, I am not going to make
11 you happy on 20 things. You tell me what your priorities are.
12 We will help you get those things done, and then you will be a
13 part of the team. That's how it works. Anybody that tries to
14 be like out there fighting on every fight tends not to win any
08:56:22 15 fight.

16 Q Let's say you represented -- I guess I should show you the
17 maps again. If you represented a blue district, do you see any
18 difficulty in just getting around and visiting your
19 constituents?

08:56:35 20 A Yeah. It's a long way from Mobile to Dothan. Actually,
21 the way you get from Mobile to Dothan is that you get on
22 Interstate 10, you drive east through the Florida panhandle,
23 and then you get just north of Panama City you turn north. So
24 it's about a three to three-and-a-half hour drive from Mobile
08:56:58 25 to Dothan.

1 And north of there to Henry County, that's a county just
2 north of Houston County, it's even further than that. And so
3 in order to represent the people in Abbeville who deserve good
4 representation, even if you just visited there for an hour, you
08:57:13 5 would spend three-and-a-half, maybe four hours just to get
6 there and that much going back, so it's a long haul.

7 And the interests as I said of that southeastern part of
8 the state are very different than the interests in the
9 southwestern part of the state.

08:57:27 10 So when you finish with having your meetings in an area
11 like that, go back to Washington, you have to decide, all
12 right, what I am going to focus on? What are the priorities
13 for this sort of sprawling district with all these different
14 interests?

08:57:39 15 And somebody is going to lose out. That's just the way it
16 is. There's only so much bandwidth for a congressman, and that
17 person has to decide what am I going to focus on? Am I going
18 to help the shipyard in Mobile, or am I going to help Fort
19 Rucker?

08:57:54 20 Q Where do you think a congressman or congresswoman who
21 represented the blue district would want to have local offices?

22 A Well, you clearly want to have your main office Mobile,
23 but you want to have as pretty significant office as you can
24 afford in Dothan. You are only allotted so much money as a
08:58:13 25 congressman for your office, staff, and your office rent. So

1 you have got to spread that over Mobile and Dothan. And
2 Baldwin County is the fastest growing county in the state. You
3 have to have a presence in Baldwin County for a lot of
4 different reasons.

08:58:31 5 Then I guess you try to find some way to put something in
6 Andalusia. That's kind of more centrally located
7 geographically. But as I said, and I can say it's really hard
8 to get from here to Andalusia. Andalusia is a pretty hefty
9 drive from here. Not as far as Dothan, but it's still a hefty
08:58:51 10 drive because there's no good highway to get there.

11 Q Look at this yellow district or tan, the one above the
12 blue district.

13 Let's say there was a primary election in that district,
14 and someone was running to be the Democratic candidate, and
08:59:09 15 that someone was from Mobile. There was another person running
16 in the primary from Montgomery. Do you have any thoughts on
17 who might have a stronger base of support geographically?

18 A I would think that if you were from Montgomery, you would
19 have a stronger chance than if you're representing that part
08:59:29 20 that's in Mobile.

21 The Black Belt -- what those counties primarily look like
22 to me, the Black Belt is kind of its own thing. It's got very
23 rural, very agricultural. And they look more to Montgomery
24 than they look to Mobile for sure. So I would think somebody
08:59:50 25 from Montgomery would have a better shot at that district than

1 somebody from Mobile.

2 Q Do you think it possible, Mr. Byrne, if you had a map in
3 Plan A or Plan B that you could have, say, a congressman for
4 the blue district from Dothan or Andalusia and a congressman
09:00:10 5 for the yellow district from Montgomery so that you had no one
6 in Congress from the Mobile region?

7 A That could happen, yeah. It's kind of hard to know
8 exactly what parts of Mobile County are being taken with those
9 two plans. But if you dilute the vote in Mobile County, that
09:00:29 10 obviously is going to make the vote of the rest of that
11 district -- those two districts more important. So, yeah, you
12 could have a congressman from Dothan under both of those plans
13 and a congressman from Montgomery and not a congressman from
14 Mobile, which would be a tragedy for the people down here.

09:00:45 15 Q Why would it be a tragedy for the people down there?

16 A I'm not saying somebody from Dothan or Montgomery wouldn't
17 care about this area. But as I said before, you wouldn't have
18 somebody that's focused, focused on the port, focused on the
19 shipyard, focused on our fishery in the Gulf of Mexico, focused
09:01:01 20 on the nursery issues we have here. They just -- they're just
21 not enough bandwidth to be as focused as I was able to be
22 focused. I could walk in a room and talk about any of those
23 issues and master it. If I had to represent those other areas,
24 as well, or somebody from the other areas had to represent
09:01:22 25 Mobile, I just don't think that you could master it.

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1 Q Do Mobile and Montgomery ever compete each other, in terms
2 of trying to recruit businesses, for example?

3 A Not that I know of. Their economic development plan,
4 their industrial plan is very different from ours. Montgomery,
09:01:45 5 for all the right reasons, has really focused on two things --
6 automotive, obviously with the Hyundai plant there and all the
7 suppliers of the Hyundai plant, but also because of their Air
8 Force presence, they really focus on how they can magnify
9 Maxwell Air Force Base and things that are a part of that.

09:02:05 10 I think they have made a very smart decision to do that,
11 by the way, but that's a different economic plan than what we
12 have done here. So we're as much trying to help them because
13 of the port. So as anything else, I don't really think we
14 believe ourselves that we're competing with them.

09:02:23 15 Q Would you have any concerns with the congressional map
16 that divided the Mobile region along racial lines?

17 A Yes.

18 Q What would those be?

19 A Well, when you are a Congressman, you should be
09:02:39 20 representing everybody and thinking about how I do X is that
21 going to affect everybody in my district? You shouldn't be
22 thinking about, I am going to do this because it helps black
23 people, or I'm going to do this because it helps white people.
24 I am going to do this because it helps everybody. And if you
09:02:55 25 help everybody, everybody rises. That's what you want.

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1 Mobile is a little bit different from the rest of the
2 state. We do not have the same history during the Civil Rights
3 movement that Selma, Montgomery, Birmingham did. We had a
4 mayor here named Joe Lang who worked with a Civil Rights leader
09:03:14 5 down here named John LeFlore. And so we didn't have some of
6 the violence, the extent of the violence that you saw in the
7 other parts of the state. We tried to work through our issues
8 because we thought it was more important for us to work through
9 those issues and work together to try to figure out a way to
09:03:31 10 live together harmoniously. Were we perfect about it? No, we
11 did not. But we didn't have the problems you saw in the rest
12 of the state because we at least made the effort to work
13 together.

14 Q When you said that you worked -- that you served on the
09:03:47 15 state school board, correct?

16 A Yeah.

17 Q I want to share a map now which is Defendants' Exhibit 26.
18 This is the 2001 map, Mr. Byrne. I know -- I think you
19 were in the State Senate then, weren't you?

09:04:08 20 A In 2001, I was still on the state school board.

21 Q Okay. So which district did you represent in the state
22 school board?

23 A District number 1.

24 Q Thank you. Did you ever get calls from people in, say
09:04:25 25 District 5 when you were on the school board?

1 A I did. There was some people in Monroe County, I
2 remember, and maybe Clarke County who thought I was their state
3 school board member, and they would call me, and I would always
4 call the member for that district when they did and ask him or
09:04:42 5 her because it changed if they wanted me to help those people,
6 and they would say, please. And I would go up there and talk
7 with them and explain to them I was not their school board.

8 Q Now, I want to share a newer map. This is from Caster
9 Exhibit 1, which for the record, was Mr. Cooper's report. This
09:05:12 10 is page 19 of that report. And I will represent to you,
11 Mr. Byrne, this is the new state school board map that was
12 passed by the Legislature this cycle just a couple of months
13 ago.

14 What thoughts if any do you have about this map, in
09:05:26 15 particular, the way the blue district includes part of Mobile
16 and Baldwin County is constructed?

17 A Well, I testified before the Legislature Redistricting
18 Committee that I felt like Mobile and Baldwin County should be
19 kept whole and contiguous. So to the extent that this map
09:05:47 20 includes a district that comes from Montgomery all the way into
21 Mobile County, I didn't much like it.

22 Q Why did you not like it?

23 A Because Mobile County school system is the largest school
24 system in the state. And it has unique issues because it's the
09:06:06 25 largest in the state. And I felt like we needed a school board

1 member who was focused on Mobile County as well as the other
2 counties. I had Baldwin and Escambia as well. But there were
3 so many issues with the Mobile County school system, a lot of
4 my time was spent focused on that. And if you break it up into
09:06:25 5 two different people, you don't really have that level of
6 focus.

7 I'm not saying that the people that represent those two
8 districts aren't working as hard as they can. I'm sure they
9 are. But it's very difficult to be focused on the Mobile
09:06:37 10 County school system if you have got almost all the Black Belt,
11 which that district up in the northern part is and a big chunk
12 of the Wiregrass, which the lower part of the -- the lower
13 district is.

14 Q Someone who has served both in Congress and on the state
09:06:56 15 school board, how do the roles of those two offices compare to
16 each other, Mr. Byrne?

17 A They're very different. You're on the state school board,
18 you are focused on educational issues. That's it.

19 Now, there are some work force development issues that go
09:07:13 20 with that, et cetera. But that's pretty much it. You are just
21 focused on educational issues. When you are in the United
22 States Congress, you are focused on a large number of issues.
23 I mean, it's almost everything comes within the purview of the
24 United States Congress from foreign policy, defense policy,
09:07:32 25 health care, to internal security, and education, as well. I

1 was on the Education and Labor Committee in the House of
2 Representatives. And one of the problems I had as a
3 congressman is that people expected you to be knowledgeable on
4 so many different things.

09:07:48 5 Now, at least you have got a staff in Congress. When I
6 was on the state school board, I had no staff. I had to rely
7 upon the staff of the State Department of Education, and they
8 had other things to do.

9 So it was difficult to me to be on the state school board.
09:08:03 10 But at least I could just focus on one set of issues and try to
11 master them.

12 And so it was very different being in both of those roles.
13 But I enjoyed both of those roles.

14 Q Considering the different roles between the school board
09:08:17 15 and the congressman, even if you assumed it made sense to split
16 Mobile County in a school board map, does that mean it would
17 make sense to do so in a congressional map?

18 A No. It would not make sense. At least on the school
19 board, you are focused on one set of issues. So if I'm from
09:08:38 20 Montgomery and I have got half of Mobile County from Mobile and
21 I have part of the Wiregrass, at least, I have got a
22 geographically diverse area. At least, I'm really only focused
23 on a very set, defined set of issues.

24 Now, they are very important issues. Don't get me wrong.
09:08:56 25 But at least I could focus on those issues and try to make sure

1 as I go from county to county that I am applying what I know on
2 these issues to each one of those counties as they are very
3 different.

09:09:11 4 Q When you campaigned for Congress in the different
5 elections, Mr. Byrne, what parts of your district would you
6 campaign in?

7 A All of them. I had a -- go ahead.

8 Q Would you campaign in areas that were both more -- would
9 you campaign in neighborhoods or areas that had a large
09:09:30 10 African-American community?

11 A Oh, yeah. You can't run for Congress in this district --
12 I will just make sure -- to be clear -- in this district
13 without touching every part of it. And I made a concerted
14 effort to go everywhere. In fact, if you look at my schedule,
09:09:49 15 I spent a disproportionate amount of my time in the more rural
16 areas than I did in more populated areas, because if you want
17 to go up to Monroeville, you might as well spend some time in
18 Monroe County.

19 There are parts of Monroe County that are almost
09:10:07 20 completely African-American. There's a little town in north
21 Monroe county called Beatrice that's 50/50. I had a town ball
22 in Beatrice. Someone said, why in the world would you bother
23 spending time in Beatrice because it's so small? I said they
24 deserve to be represented, too. So I went to all parts of my
09:10:25 25 district.

1 Prichard probably didn't give me 5 percent of the vote in
2 my elections. I probably lost there by a huge margin. But I
3 would go and have town hall meetings and campaign in Prichard
4 because I believed the people in Prichard deserve to have a
09:10:42 5 good congressman.

6 Q When you ran for Congress, Mr. Byrne, did you run as a
7 candidate of any political party?

8 A Yes. I was a Republican.

9 Q Why are you a Republican, Mr. Byrne?

09:10:54 10 A Because the Republican Party is closer to the conservative
11 principles that I believe in than the Democratic Party is. I
12 started out as a Democrat, but I felt like by 1997 I guess is
13 when I switched parties, the Democratic Party had migrated away
14 from what were my principles. Not putting down the Democratic
09:11:15 15 Party if people are Democrats. I have friends who are
16 Democrats and work with a lot of Democrats, but I just felt
17 like the Republican Party is more closely aligned with where I
18 stood on issues and principles.

19 Q Did you work with Democrats when you were in Congress?

09:11:31 20 A Oh, yes. All the time. I will give you two examples. I
21 served on the Armed Services Committee. Every year, the only
22 bill the Armed Services Committee works on is the National
23 Defense Authorization, which we have passed out of the Congress
24 every year since John Kennedy was president. Those bills are
09:11:53 25 always bipartisan 100 years ago percent of the time. We work

1 -- from the very beginning of the years, we work on that bill.
2 We consciously work together to make sure that bill, the bill
3 that authorizes the defense of this country is something that
4 we can all vote for.

09:12:08 5 So we work at being bipartisan, very much so.

6 The other example I give you is this: Shortly after
7 President Trump was elected, this "Me-Too" movement came out.
8 And we discovered that we have "Me-Too" problems in United
9 States Congress. But we also discovered that members of the
09:12:28 10 United States Congress weren't subject to the same processes
11 that the private sector was subject to under Title VII of the
12 1964 Civil Rights Act.

13 Now, I spent a career as a labor employment attorney
14 telling small, medium-sized businesses in Alabama what they had
09:12:44 15 to do to comply with that law. And here in Congress, the body
16 that passed that law was not holding itself under the same set
17 of accountability processes.

18 So I worked with a very liberal Democrat congresswoman
19 from California, Jackie Speier, and we put together a bill that
09:13:04 20 made Congress be as accountable, even more accountable than we
21 hold people in the private sector, and that bill that Jackie
22 and I put together passed the United States House unanimously,
23 passed the United States Senate unanimously, and is a law of
24 the United States now. And those are just two examples.

09:13:20 25 I worked all the time in a bipartisan manner, because I

1 firmly believe that the best legislation in Washington is
2 bipartisan legislation. The hardest legislation to pass in
3 Washington is partisan legislation. And it's always a problem,
4 always.

09:13:36 5 So I enjoyed working the bipartisan fashion. I know you
6 look up there now and think, they're completely divided. They
7 can't get along. And there are problems. Don't get me wrong.
8 But there are still people up there, former colleagues of mine
9 on both sides of the aisle that understand what I say is true,
09:13:53 10 and they're still trying to work together to make things happen
11 and happen in the right way.

12 Q When you served on the delegation with Congresswoman
13 Sewell for the Seventh District, did you have the opportunity
14 to work with her on any issues?

09:14:09 15 A Oh, all the time. All the time. We shared Clarke County.
16 We actually had joint town halls together.

17 If she had an issue that affected her district, you know
18 uniquely, she would call on the other members of the delegation
19 to help her, and we always did, 100 years ago percent of the
09:14:26 20 time. And she always helped us. We all worked together. It
21 wasn't like it was unique to her.

22 So Terry was a part of a group called Faith and Politics.
23 I assume she is still a part of it. That's the group that
24 brings the pilgrimage to Alabama every year around the
09:14:47 25 anniversary of the Edmund Pettus Bridge March from 1965. She

1 wanted to make sure that when that group came here to Alabama,
2 which would bring couple hundred people, people from Congress,
3 people from business and industry, people from foundations, she
4 wanted to make sure that we were all working together, that
09:15:08 5 they saw Alabama, the Alabama delegation working together.

6 So I always participated in that pilgrimage with her.
7 Usually on Saturday mornings when she did her program either at
8 Brown Chapel in Selma or the Dexter Avenue Baptist Church in
9 Montgomery, she would ask me to be sort of her sidekick for it,
09:15:27 10 so that we could get up and tell the people from all the other
11 parties of America here's a Democrat and Republican, black
12 woman and white man working together on issues that matter to
13 the people of Alabama, in particular, matters that revolve
14 around Civil Rights.

09:15:40 15 And I was always honored that she felt comfortable enough
16 to ask me to do that. And I can tell you, you can sit in that
17 room with some of the people in that room like John Lewis who
18 we lost last year, and you realize what people in this state
19 went through to get us the quality of life we have got today --
09:15:58 20 to get to today. I feel like a little bitty nothing compared
21 to people like that. But it was an honor always to be with
22 Terry and to work with her on -- whether it's the pilgrimage or
23 other things that were important to our district.

24 Q When you were in Congress, Mr. Byrne, were there any
09:16:17 25 issues you worked on to devote your time and your political

1 capital towards that you thought and expected to have a
2 particular benefit to your African-American constituents?

3 A Just about everything. If I am doing something that's
4 going to benefit the economy in southwest Alabama, it's going
09:16:36 5 to benefit African-Americans in my district, of course, it is.
6 If you go to the various businesses in this area, and I
7 traveled and met with workers in every one of these industries.
8 It was always black and white. That's the nature of our work
9 force down here. I mean, whether you are at a chemical plant,
09:16:56 10 steel plant, ship building plant, airplane, you are going to
11 have a mixed group of people.

12 So every time I was doing something for the economy. But
13 I particularly felt like I was helping them every time we
14 worked on education issues. And this goes back to my state
09:17:13 15 school board days. I think the number one Civil Rights issue
16 in Alabama today is the fact that we don't give a quality
17 education to black people like we do the white people. And I
18 really feel strongly about that. We are not going to have the
19 sort of gains and advances and progress we need in this state
09:17:30 20 until we make more improvements to our education system.
21 That's true across the country, but I am more focused on
22 Alabama.

23 Q Have you spent any time working with HBCUs, Mr. Byrne?

24 A Yes, sir. HBCUs are historically black colleges and
09:17:48 25 universities. We had several of them in the two-year college

1 system in Alabama include Bishop State here in Mobile. So when
2 I was on the state school board, I worked with them. When I
3 was chancellor of post-secondary education I worked with them.
4 And by the way, including Tuskegee, and then when I got to
09:18:06 5 Congress, a congresswoman from North Carolina named Alma Adams
6 asked me to be a co-chair with her of the HBCU Congressional
7 Causas. So for five years I guess it was, I was the co-chair
8 of the HBCU Congressional Caucus.

9 Q Did you spend time working on community health centers?

09:18:33 10 A Oh, yes. We have several community health centers here in
11 the district. I've gotten to know them pretty well. I am very
12 impressed with the quality of health care that they provide to
13 their patients. And I was a strong advocate for them and
14 continue to be a strong advocate for them because I think that
09:18:56 15 they provide quality health care close near where people live,
16 so it's community plan, and it's the best way I think to get
17 primary health care to people in those communities. So I am a
18 strong supporter of community health center.

19 Q Back to your co-chairmanship on the HBCU caucus, I am not
09:19:21 20 suggesting this was the reason you did it, but did you receive
21 any recognition for your service in that area?

22 A I did. The Thurgood Marshall Fund gave me an award
23 three years. Probably one of the awards that I am the most
24 proud of. Thurgood Marshall Fund works to provide funding,
09:19:40 25 private funding to HBCUs across America. And I had no idea

1 they were going to give me an award, and it just knocked me out
2 when they did. I remain in contact with them. I still
3 continue to work with them even though I am not in Congress
4 because I am a huge believer in HBCUs, and I think what the
09:19:59 5 Thurgood Marshall Fund is doing and the United Negro College
6 Fund, both of them together are doing great work for those
7 colleges, and I think they are important to America.

8 Q Just a few more questions, Mr. Byrne. And I will remind
9 you. We want to make sure the Court understands your testimony
09:20:15 10 that Ms. Decker can take it down. We will try to slow down
11 just a little. I want to -- when you were in Congress, did you
12 consider yourself to be the representative of both Republicans
13 and Democrats in your district?

14 A Yes.

09:20:30 15 Q Did you consider yourself to be the representative of both
16 the white and African-American constituents in your district?

17 A Absolutely, yes.

18 Q I want to share a screen now, Mr. Byrne. This is Milligan
19 Exhibit 5. It is the report of one of their experts, Dr. King,
09:20:57 20 and she is offering opinions on certain issues. I want to read
21 this introduction section into the record so you can get some
22 context. Dr. King writes, White law makers in Alabama learned
23 long ago to color mask their public statements, just as they
24 have learned to color mask the legislation intended to protect
09:21:22 25 their racial prerogatives.

1 Not since the high tide of brazen white supremacy when
2 George Wallace proclaimed, segregation forever, have public
3 figures been so bold.

4 MS. WELBORN: Mr. Davis, this is Dr. Bagley's report,
09:21:43 5 not Dr. King's report.

6 MR. DAVIS: I apologize for that confusion. Yes.
7 Thank you for the correction.

8 BY MR. DAVIS:

9 Q Then Mr. Bagley after giving some examples says this.

09:22:03 10 JUDGE MARCUS: I think you have to just -- as we
11 proceed, Mr. Davis, just take your time and speak right into
12 the speaker.

13 MR. DAVIS: Thank you, Judge.

14 BY MR. DAVIS:

09:22:16 15 Q I will read now an excerpt into the record from Milligan
16 Exhibit 5, the Bagley report.

17 Dr. Bagley writes, Representative Bradley Byrne of the
18 State's First Congressional District when he was vying for a
19 Senate seat aired a campaign ad in which he condemned black
09:22:36 20 people by placing their images in a fire.

21 The television spot begins with Byrne staring into a wood
22 fire in a backyard and lamenting the loss of his brother in the
23 armed services. He shifts to lamenting the course the country
24 is taking as the faces of black and brown people appear in the
09:22:56 25 fire. Former national football league quarterback Colin

1 Kaepernick appears in the fire as Byrne calls him an entitled
2 athlete dishonoring the American flag. Members of the
3 congressional caucus known as the Squad, Ilhan Omar and
4 Alexandria Ocasio Cortez appear in the fire and are accused of
09:23:17 5 attacking America and cheapening 9/11. No white people appear
6 in the fire.

7 My question to you, Mr. Byrne, is: Is there anything you
8 care to say in response?

9 A Yes, sir. That ad was about my brother. And the fire was
09:23:38 10 a fire in the fire pit at our hunting camp that he and I used
11 to sit around all the time. So that ad was about my brother.

12 Now, the fact that I'm contrasting a rich, NFL quarterback
13 named Colin Kaepernick who won't stand up during the national
14 anthem with my brother's service who made far less than Colin
09:24:01 15 Kaepernick makes and literally contracted a disease during one
16 of his deployments with the 20th Special Forces group that
17 killed him, I think that's a legitimate thing for me to raise.
18 I have grave disagreements with Representative Alexandria
19 Ocasio Cortez and Representative Omar. But I can tell you I
09:24:18 20 never had any negative interaction with either one of them.

21 Representative Alexandria Ocasio Cortez, actually, her
22 office was in my office building. And when she was relatively
23 new, she couldn't find her way to her office and literally
24 stopped me in the hallway and asked me, can you tell me where
09:24:36 25 my office is? I said, yes, ma'am, and I told her where it was.

1 And we sort of developed a personal rapport just because she
2 got to the moment of weakness, which we all have in Congress by
3 the way. It's easy to get lost in those buildings.

09:24:50 4 So we never really had a political conversation, but we
5 would have these personal sort of, you know, informal social
6 interactions. I disagree with her on the issues, but I don't
7 have any problems with her as a person.

8 The same is true for Ms. Omar. Now, Ms. Omar served on
9 the Education and Labor Committee with me. So we would have
09:25:07 10 interactions about education issues, and we had some
11 disagreements about -- but there was no -- that was really
12 about my brother. It was not about those other people. And
13 the fact that we used them was to simply contrast them and
14 their positions with the service that my brother had rendered
09:25:29 15 to our country.

16 Q Was it your intention to single out anyone because of
17 their race?

18 A No. I singled out Mr. Kaepernick because he won't stand
19 up during the national anthem, and there are plenty of black
09:25:43 20 athletes that stand up during the national anthem by the way.
21 I have noticed that's not as what a lot of people try to
22 portray it to be.

23 And I am singling out Ms. Alexandria Ocasio Cortez and
24 Ms. Omar because of their attacks against America. They attack
09:25:56 25 American values. And I think it's perfectly within the realm

1 of what's appropriate dialogue to say, I expect somebody that's
2 making this money as Colin Kaepernick to stand up during the
3 national anthem, and I don't think members of Congress should
4 be attacking the country.

09:26:12 5 Q Mr. Byrne, I want you to think of the people who are
6 involved in congressional campaigns, whether it's a candidate
7 or someone considering a run, that person's staff, volunteers,
8 and then I want you to assume that a couple of weeks before the
9 January 28th deadline, the congressional map changes from the
09:26:40 10 way it's usually been and what the Legislature passed to all of
11 a sudden it changes to something like what the plaintiffs are
12 representing excuse me -- what the plaintiffs are proposing.

13 Do you see any issues that would cause with congressional
14 campaigns?

09:26:57 15 A Yes, sir. First of all, we have primaries in four months,
16 general election in ten months. Once you turn the calendar to
17 the beginning of the year, you have that primary staring you in
18 the face, you have already set your campaign in place. You
19 already have your plan in place. You have already got
09:27:17 20 volunteers set up ready to go. You have got, you know, the
21 campaign ad messaging already worked out. And you are hitting
22 the ground running.

23 So if you change my district on me with that little time,
24 it's going to put a substantial burden on my ability to refocus
09:27:33 25 my campaign, conduct my campaign, get volunteers, et cetera.

1 And particularly if you give me a new geographic area that I
2 haven't represented before, where I don't have, you know, the
3 natural contacts, et cetera, that's a huge problem for any
4 community. And I don't -- and that's true for any candidate,
09:27:52 5 Democrat, Republican, people that are long-time public office
6 holders, people that are brand new. It could be a tremendous
7 difficulty.

8 Q Mr. Byrne, you said you went to a public hearing where
9 some of these districts were at issue. Why did you go to the
09:28:13 10 public hearing? Why are you here today to talk to the Court
11 about districts?

12 A Number one, I am a citizen, so I have -- so I am not just
13 any citizen. I mean, I served on the state school board, held
14 a district for eight years. I served in the United States
09:28:33 15 House of Representatives representing one of the districts for
16 seven years. I have, you know, a unique set of understandings
17 about what it's like to represent these areas. And I felt like
18 I owed it to the system. I owed it to the public to stand up
19 and say -- as somebody that's actually done this work, these
09:28:51 20 districts the way I'm proposing them makes sense this way.

21 And the most important thing I was trying to say is keep
22 this particular community together. Keep these communities
23 together. Don't pull southwest Alabama apart because we work
24 together down here. Mobile area Chamber of Commerce doesn't
09:29:13 25 just do economic development for Mobile County. They also do

1 it for Washington County.

2 JUDGE MARCUS: Let me stop you for a second,
3 Mr. Byrne. You cut out. The sound cut out for a minute. So
4 take your time and just repeat what you just said if you would,
09:29:29 5 please.

6 THE WITNESS: Yes, sir. What I have been the most
7 concerned about is that people that pull apart southwest
8 Alabama and have different parts being represented -- we work
9 together down here in southwest Alabama. The example I used
09:29:48 10 was the Mobile area Chamber of Commerce, the economic
11 development for both Mobile County and Washington County,
12 because we're so closely connected.

13 We need to stay together down here. We have a group
14 called CAP, Cultural Alabama partnership, that pulls together
09:30:05 15 these counties so that we have common representation, common
16 advocacy efforts with the Alabama Legislature and the members
17 of Congress. So keep us together. Don't pull us apart. Let
18 us be one group of people that work together for our region of
19 the state and maximize the benefits that we want to get for our
09:30:27 20 people down here.

21 MR. DAVIS: Thank you, Mr. Byrne. I have no further
22 questions and pass the witness at this time.

23 JUDGE MARCUS: Thank you, counsel. Cross-examination
24 in what order did you propose to proceed on behalf of Milligan
09:30:40 25 and Caster and the Singleton? And we leave that up to you.

1 MS. WELBORN: I will be going first for the Milligan
2 plaintiffs, Your Honor.

3 JUDGE MARCUS: All right. And, Mr. Whatley, would you
4 be going second or the Caster folks going second?

09:30:57 5 MR. WHATLEY: Doesn't matter to me, Your Honor.

6 JUDGE MARCUS: I leave that up to you. So let's
7 begin --

8 MR. WHATLEY: I am happy for the Caster plaintiffs to
9 go second.

09:31:03 10 JUDGE MARCUS: All right. Thanks very much.
11 Ms. Welborn, you may proceed with your cross-examination.

12 MS. WELBORN: Thank you.

13 CROSS-EXAMINATION

14 BY MS. WELBORN:

09:31:10 15 Q Representative Byrne, my name is Kaitlin Welborn, and I
16 represent the Milligan plaintiffs. Good morning.

17 A Good morning.

18 Q So I'd like to talk about the current redistricting plan
19 first. You had no direct role in drawing the current

09:31:25 20 congressional map in Alabama, right?

21 A I didn't have any direct role, but I did testify before
22 the committee.

23 Q But other than that, you did not do anything to --

24 A That's correct.

09:31:37 25 Q -- help draw the congressional map?

1 A That's correct.

2 Q And you did not provide any input to Mr. Hinaman, the map
3 drawer?

4 A I did not know Mr. Hinaman.

09:31:49 5 Q I'm sorry?

6 A I don't think I know him.

7 Q Okay. And you did not speak with Representative Pringle
8 about the 2021 map?

9 A I did.

09:31:59 10 Q You did?

11 A Yes.

12 Q I'm sorry?

13 A He is the chair of the committee, and I testified before
14 the committee.

09:32:08 15 Q Okay. But did you speak to Representative Pringle outside
16 of the public hearing?

17 A I don't believe I did, no.

18 Q Okay. And did you not speak with Senator McClendon
19 outside of the public hearing?

09:32:22 20 A I don't believe I did, no.

21 Q And you did not speak with Secretary Merrill's expert
22 Thomas Bryan?

23 A No, ma'am.

24 Q Okay. You first ran for Congress in a special election in
09:32:34 25 2013, right?

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1 A That's correct.

2 Q And at that time, you had already held state office in
3 Alabama for some time as you had mentioned, right?

4 A That's correct.

09:32:44 5 Q So you were something of a known quantity to the voters in
6 your district?

7 A Well, I thought I was better known than I found out that I
8 was, but, yes, to some people, I was a known quantity.

9 Q And in the 2013 special election, your opponent,
09:33:05 10 Mr. LeFlore was black, right?

11 A That's correct.

12 Q And he lost to you by over 30 percent?

13 A I don't remember the percent.

14 Q And then you faced Mr. LeFlore again in the 2014 general
09:33:20 15 election?

16 A That's right.

17 Q And at that time, he lost to you by over 35 percent?

18 A Once again, I don't remember the percent.

19 Q Okay. As a congressional representative, don't you have
09:33:35 20 to focus on multiple issues all at once?

21 A You do.

22 Q And you have to learn about all of the issues that matter
23 to your constituents?

24 A You do, but there's some issue you know more about than
09:33:49 25 others to be honest with you. You can't be an expert on

1 everything.

2 Q And some Representatives in Congress represent entire
3 states, right?

4 A That's true.

09:33:57 5 Q Is it impossible to be knowledgeable about, for example,
6 both the University of South Alabama and Troy University at the
7 same time?

8 A Well, you can be knowledgeable about them, but you can be
9 more knowledgeable about one than two.

09:34:15 10 Q Okay. Wouldn't having two congressional representatives
11 representing Mobile and Baldwin give the region even greater
12 influence in Congress?

13 A Well, the truth of the matter is if you have two different
14 ones, you don't have one that's just entirely focused on a
09:34:33 15 particular interest. So --

16 Q No. You have two that are focused on that area?

17 A Unfortunately, when you have two, you don't have the same
18 amount of focus. That's just the honest truth about it. So if
19 I am only concerned about the University of South Alabama, I
09:34:47 20 know I am the congressman for the University of South Alabama,
21 and they don't have anybody but me to go up there and do what
22 needs to be done for them. And so it really is better to have
23 just one than to have two that are sort of split and paying
24 attention to other things.

09:35:02 25 Q Representative Sewell and Palmer both live in Birmingham,

1 right?

2 A I don't think -- I know Representative Sewell lives in
3 Birmingham. I think Representative Palmer lives outside of
4 Birmingham, but in the metro area.

09:35:24 5 Q In Jefferson County?

6 A Yeah.

7 Q Okay. Are you aware of any criticisms of either of those
8 representatives failing to adequately represent the rest of
9 their districts?

09:35:35 10 A I've never heard anybody criticize either one of them for
11 what they do for their district. Each one of them in their own
12 way do an excellent job for their district.

13 Q Okay. Are you aware that District 4 stretches across the
14 northern part of the state from Lamar and Tuscaloosa counties
09:35:53 15 all the way east to Etowah and Dekalb counties?

16 A I am. I believe that's Congressman Aderholt's district.

17 Q That's right. It's Congressman Aderholt.

18 And presumably, Representative Aderholt campaigns
19 everywhere in his district, right?

09:36:10 20 A I don't know where he campaigns, but Congressman Aderholt
21 like Congresswoman Sewell and Congressman Palmer, does an
22 excellent job in his district.

23 Q I would like to talk about the economics of the Mobile
24 area.

09:36:22 25 You spoke quite a bit about the port in Mobile. Does

1 Republican Carl your successor also work to protect ship
2 building in Congress?

3 A Yes, ma'am. He is doing a good job.

4 Q Wouldn't you expect anyone who represented Mobile to work
09:36:39 5 to protect the ship building industry in Congress?

6 A Oh, I think that's true. The question is, once again,
7 it's bandwidth. How much time can you devote to that issue if
8 you have got other competing issues? So I can't say this about
9 Congressman Carl because I am not there with him all the time.
09:36:58 10 But for me, every day that I woke up in Congress, I was
11 concerned about that shipyard. And that's what it took because
12 there were all sorts of people trying to take the money away
13 from those programs that they were building ships for, for
14 other programs. And it was a fight every day just like the red
09:37:14 15 snapper fight was a fight every day.

16 Now, if I have got to worry about several other issues in
17 addition to those, I am not going to be as effective in that
18 fight as I would be if I'm focused on those.

19 Q Okay. But if the port in Mobile were in a different
09:37:30 20 district than CD 1, it would still be true that someone would
21 work to represent, you know, the ship -- protect the ship
22 building industry in Congress?

23 A I would think so, but I would think it would be a question
24 of how much time, how much effort, and how much priority they
09:37:46 25 put on it. And if they have got other things they are

1 competing with, it wouldn't be as much. That's just the nature
2 of things.

3 Q Okay. And other than the port, you mentioned a few other
4 industries such as Airbus and fishing, and said that those are
09:38:05 5 some of the largest industries in the Mobile area, right?

6 A Yeah. I also mentioned tourism and seafood, et cetera.

7 Q Okay. The largest industry in Mobile County is health
8 care; is that right?

9 A I guess if you put all the hospitals together, it might --
09:38:26 10 that might be true, yeah.

11 Q And the second largest industry is retail sales; is that
12 right?

13 A In terms of numbers of employees, that may be true. I
14 don't know about payrolls.

09:38:36 15 Q Okay. And the recent economic growth in Mobile County has
16 attracted more people to move to the Mobile area; is that
17 right?

18 A That's correct.

19 Q And people go to Mobile County from other counties to
09:38:50 20 work?

21 A Oh, yes. A lot of people do.

22 Q And to live?

23 A Yes.

24 Q And to shop?

09:38:57 25 A Oh, yes.

1 Q And those people may come from Clarke County?

2 A Yes.

3 Q Conecuh County?

4 A Not too many people from Conecuh County.

09:39:10 5 Q Okay. What about Wilcox County?

6 A Not very many people from Wilcox County.

7 Q And migration from other areas would include people moving
8 from the area commonly known as the Black Belt, right?

9 A There are people that move here from the Black Belt, yes.

09:39:28 10 Q Okay. You don't know the level of migration into the
11 Mobile area in the past decade, do you?

12 A You mean where they came from?

13 Q The level of migration.

14 A The level. Oh, I couldn't quantify it for you, but we
09:39:45 15 have had migration.

16 Q Or the past 50 years?

17 A We have had migration the last 50 of years, yes.

18 Q But you don't know the level?

19 A No, I can't quantify for you.

09:39:56 20 Q And you don't have a breakdown of where those migrants
21 have come from?

22 A No, ma'am.

23 Q Are you aware of the racial disparities in the poverty
24 level in Mobile?

09:40:08 25 A You mean the percentage of people who are in poverty who

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1 are black versus white?

2 Q Yes.

3 A I know that it's a higher percentage poverty among black
4 people than white people in Mobile County.

09:40:26 5 Q Are you aware that over 51 percent of people living below
6 the poverty line in Mobile County are black, even though only
7 36 percent of Mobile County is black?

8 A I don't know the figure precisely, but I wouldn't be
9 surprised if that was the case.

09:40:43 10 Q Okay. Are you aware that the Mobile City Council had to
11 be sued in the 1970s and 1980s to ensure black representation?

12 A I am well aware of that, yes, ma'am.

13 Q And are you aware that the Mobile County School Board had
14 to be sued in the 1970s and 1980s to ensure black
09:41:01 15 representation?

16 A I am well aware that, yes, ma'am.

17 Q You mentioned representative John Lewis and the
18 commemoration of the Selma to Montgomery March?

19 A Correct.

09:41:13 20 Q But you did not support the John Lewis Voting Rights
21 Advancement Act while you were in Congress, did you?

22 A I did not.

23 Q You are familiar with the area referred to as the Black
24 Belt, right?

09:41:29 25 A Oh, yes, ma'am.

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1 Q And the Black Belt is generally an area whose counties are
2 generally majority black, right?

3 A It's actually called the Black Belt because of the soil.
4 The soil is dark and rich there, so it's not called the Black
09:41:44 5 Belt of race or ethnicity.

6 Q That's not what I asked. Is it an area whose counties are
7 generally majority black?

8 A Yes. There are some exceptions to that, but yes, as a
9 region, it's majority black.

09:42:00 10 Q Okay. And in general, the Black Belt has lower income
11 levels than other areas of the state, right?

12 A Yes, ma'am, that's correct.

13 Q And it has lower education levels than other areas?

14 A There are exceptions to that, but that's true.

09:42:17 15 Q And it has worse health care and facilities than other
16 areas?

17 A I don't know that. I have toured hospitals in the Black
18 Belt, and there the number of good hospitals in Black Belt, so
19 I can't verify what you just said.

09:42:28 20 Q Okay. That's perfect, because I would like to talk about
21 health care now.

22 In December 2020, you were interviewed by al.com about
23 your time after Congress. Do you recall this interview?

24 A Well, yeah, I did a lot of interviews when I was a member
09:42:45 25 of Congress, but I do recall generally that interview.

1 MS. WELBORN: Mr. Ang, could you bring up that
2 article?

3 BY MS. WELBORN:

4 Q Mr. Byrne, do you recognize this article?

09:42:55 5 A It's been a while since I've read it, but, yes, John
6 Sharp. I remember the article he wrote, yeah.

7 MS. WELBORN: Your Honor, we would like to mark this
8 document as Milligan Plaintiffs' Exhibit 55 for identification.

9 JUDGE MARCUS: Okay.

09:43:12 10 MS. WELBORN: Mr. Ang, could you flip to page 2,
11 please?

12 BY MS. WELBORN:

13 Q And, Republican Byrne, could you please read the paragraph
14 starting with, the daily data?

09:43:24 15 A The daily data that I've got in this -- which really
16 forced me to focus on the fact that there is a problem with the
17 ability of black people to be able to get good, primary health
18 care. One thing I have worked on in Congress and will continue
19 to be interested in, is how do we get primary health care to
09:43:43 20 black people? It's clear with the data we have is that black
21 people with underlying health conditions are disproportionately
22 affected by the novel Coronavirus virus. We should want
23 everyone in our communities to have real access to quality
24 primary health care.

09:44:01 25 Q Thank you.

1 MS. WELBORN: And, Mr. Ang, could you flip to the last
2 page, please?

3 BY MS. WELBORN:

4 Q And, Representative Byrne, could you read the paragraph
09:44:11 5 starting with, many of us have access?

6 A Many of us have access to primary health care, and we take
7 that for granted, but for a disproportionate number of people
8 in the state, and a disproportionate number of black people,
9 that's not true. It's not good for our communities, for our
09:44:27 10 state, or our nation.

11 Q Thank you.

12 MS. WELBORN: And, Mr. Ang, you can take that down.

13 BY MS. WELBORN:

14 Q Representative Byrne, do you agree that it is difficult
09:44:37 15 for black people in Mobile County to get primary health care?

16 A Yes, ma'am.

17 Q And would you agree that it is difficult for black people
18 in the Black Belt to get primary health care?

19 A I don't know as much as the Black Belt as I do about
09:44:51 20 Mobile County, but I wouldn't be surprised if that was true.

21 Q Okay. Thank you. You are aware that the Affordable Care
22 Act allows states to opt in to Medicaid expansion, right?

23 A I am.

24 Q And you are aware that Governor Bentley convened a task
09:45:07 25 force that recommended that Alabama opt into Medicaid

1 expansion, right?

2 A I don't know about that.

3 Q Okay. But Alabama has not opted into Medicaid expansion?

4 A That's correct.

09:45:20 5 Q And if Medicaid were expanded in Alabama about, 220,000
6 more Alabamians would receive health care coverage; is that
7 right?

8 A No.

9 Q I'm sorry?

09:45:35 10 A I said no.

11 Q Okay. Do you have a different figure?

12 A No. I think what you are saying is they would be covered
13 by Medicaid, but it doesn't mean they would have access to
14 health care because there are not enough health care providers
09:45:51 15 to provide health care to.

16 Q I'm sorry. I'm talking about health care coverage, so
17 insurance?

18 A It's a difference between coverage and gaining health
19 care.

09:45:59 20 Q Okay. 220,000 more Alabamians would be covered by
21 Medicaid and have Medicaid insurance?

22 A Yes. But they wouldn't necessarily be able to get health
23 care because we don't have doctors that will take care of them.
24 We have --

09:46:14 25 Q Thank you.

1 A We have one pediatrician in Escambia County, Alabama that
2 will take Medicaid patients because the level of pay is so low
3 for Medicaid. So you can have Medicaid and not be able to get
4 health care because there's no doctor to give it to you.

09:46:29 5 That's --

6 Q Okay. Thank you.

7 A -- why I support community health centers.

8 Q But of those 220,000 Alabamians who would be covered under
9 Medicaid in that they have Medicaid insurance, black people
09:46:44 10 would disproportionately be among those at those people, right?

11 A I don't know that figure. I couldn't -- I couldn't
12 quantify that.

13 Q And while you were in office, you opposed Medicaid
14 expansion, right?

09:46:55 15 A I did because I thought we should have community health
16 centers instead.

17 Q Okay. And Representative Sewell supports Medicaid
18 expansion?

19 A She does.

09:47:04 20 Q And that Alabama Black Legislative Caucus supports
21 Medicaid expansion?

22 A I don't know.

23 Q Okay. In Congress, you made opposition to the Affordable
24 Care Act a major priority; is that fair?

09:47:19 25 A I did.

1 Q And you sponsored a 2015 bill to repeal the Affordable
2 Care Act?

3 A Repeal and replace.

4 Q And in 2017, you supported a budget revolution to appeal
09:47:32 5 the Affordable Care Act?

6 A That's correct.

7 Q Do you recall the American Health Care Act of 2017?

8 A I do.

9 Q And it sought to repeal the Affordable Care Act, as well,
09:47:44 10 right?

11 A Repeal and replace.

12 Q And you supported the American Health Care Act, right?

13 A Yes, because I thought it was going to give a better
14 health care system than the one that the Affordable Care Act
09:47:57 15 provided.

16 Q Okay. Thank you.

17 Do you know what percentage of black voters voted for you
18 in the 2014 and 2018 general elections?

19 A I don't.

09:48:07 20 Q Would it surprise you that in your 2014 election only
21 15 percent of black voters in District 1 voted for you?

22 A No.

23 Q And would it surprise you to know that in 2018 only
24 5.4 percent of black voters in District 1 voted for you?

09:48:29 25 A That would surprise me, yeah.

1 Q Okay.

2 MS. WELBORN: I believe I have no further questions,
3 but if I could please confer with my colleagues for a few
4 minutes.

09:48:40 5 JUDGE MARCUS: You may.

6 MS. WELBORN: Thank you.

7 We have no further questions. Thank you.

8 JUDGE MARCUS: All right. Thank you. And you may
9 proceed, Mr. Osher.

09:49:09 10 MR. OSHER: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. OSHER:

13 Q Good morning, Representative. How are you?

14 A Good morning. I'm well, thank you.

09:49:17 15 Q Can you hear me okay?

16 A I can.

17 Q Great. My name is Dan Osher. I represent the Caster
18 plaintiffs in this lawsuit. I think we met a few years ago
19 during the *Chestnut* litigation where you testified. Do you
09:49:29 20 remember that?

21 A I do.

22 Q Great.

23 Representative, how long did you serve in Congress?

24 A Seven years.

09:49:38 25 Q And during that time and when you were campaigning, did

1 you reach out to your constituents to try to learn what their
2 interests and needs were?

3 A Constantly.

4 Q I'm sorry. I didn't catch that answer.

09:49:52 5 A Constantly.

6 Q What about organizations that served your constituents,
7 did you reach out to meet with any such organizations?

8 A Typically, they would reach out to me. So somebody
9 reached out to me and said, will you come speak to our group,
09:50:05 10 or can we come meet with you? I would say, yes.

11 Q Okay. You mentioned Airbus during your testimony. That
12 is a pretty big presence in Mobile; isn't that right?

13 A Yes, sir.

14 Q Did you ever seek out a meeting to meet with
09:50:21 15 Representatives from Airbus?

16 A No. They sought out meetings with me.

17 Q So you never reached out to them during your candidacy or
18 serving Congress?

19 A I didn't have to. They reached out to me.

09:50:34 20 Q Fair enough.

21 What about Austal, did you ever reach out to them?

22 A Yes, sir, but that was part of the back and forth in
23 trying to get ships authorized and appropriated. So I would
24 initiate conversations with them and tell them this is what
09:50:50 25 just happened or what's about to happen.

1 Q Sure. And that was a huge project in your district,
2 right? I believe you spent a lot of time on that?

3 A Yes, sir. A lot of time.

4 Q Any other of the companies that you identified in your
09:51:01 5 direct examination, did you reach out to any of those while you
6 were serving or campaigning?

7 A I would probably each reach out to the University of South
8 Alabama because I was on the education committee, and I was
9 trying to -- but in general, if I spoke with companies, that
09:51:22 10 would have been because they or somebody representing their
11 industry reached out to me.

12 Q Sure. Busy guy. I wouldn't dispute that. So you
13 testified in the *Chestnut* trial while you were in office you
14 never had a formal reading with the Alabama State Conference of
09:51:42 15 the NAACP; isn't that right?

16 A That's correct. They never reached out to me.

17 Q And you never reached out to them?

18 A No.

19 Q And you didn't know who the president of that organization
09:51:55 20 was when you testified in *Chestnut*; is that right?

21 A Yes, sir.

22 JUDGE MARCUS: Give him a chance to complete his
23 answer. You may proceed, Mr. Byrne.

24 THE WITNESS: I still don't know.

09:52:09 25 BY MR. OSHER:

1 Q And you testified in *Chestnut* that you never held a
2 meeting with anyone from the Urban League while you were in
3 office, right?

4 A That's correct. They never reached out to me.

09:52:21 5 Q And you never reached out to them?

6 A That's right.

7 Q And you testified in *Chestnut* you never met with anyone
8 from the Southern Christian Leadership Conference; isn't that
9 right?

09:52:31 10 A Not that I am aware of.

11 Q And you testified in *Chestnut* that you never had a meeting
12 with anyone from the National Coalition of Black Civic
13 Participation; isn't that right?

14 A That's correct. Now, I think what I said in that trial
09:52:43 15 and I will say again today is I may have met with those people
16 when I was somewhere else. Like I may have met with them in
17 Selma during the pilgrimage, but I didn't meet with them as
18 members of organizations. It was part of a bigger meeting.

19 Q Of course. Understood. And you testified in *Chestnut*
09:53:03 20 that you never met with anyone from LULAC, the League of United
21 Latin American Citizens; isn't that right?

22 A That's correct.

23 Q And you testified in *Chestnut* that you didn't even know
24 what that organization was?

09:53:15 25 A That's correct.

1 Q And you further testified that you never paid attention to
2 what extent your black constituents supported or opposed you in
3 your congressional races; isn't that right?

4 A That's right. It didn't matter. I still had to represent
09:53:33 5 them, whether they voted for me or not.

6 Q Sure. But you didn't pay attention to whether they
7 actually supported or opposed you?

8 A No. Wouldn't matter.

9 Q So during your seven years in Congress, and I think you
09:53:47 10 already talked about this, you got to know the other members of
11 the Alabama delegation; isn't that right?

12 A Our delegation worked together very well, very closely.

13 Q And I -- in Ms. Welborn's cross-examination, you talked
14 about this a little bit, but I'd like to dig down a little
09:54:08 15 more.

16 MR. OSHER: Jeff, can I have you pull up Caster
17 Plaintiffs' Exhibit 12? Thanks.

18 BY MR. OSHER:

19 Q And, Representative, I will represent to you that this is
09:54:26 20 a map of the congressional plan that was in place I believe the
21 whole time that you were in office?

22 A That's correct.

23 Q Over a decade between 2012 and this year, or I should say
24 last year.

09:54:41 25 So Robert Aderholt represented District 4, right?

1 A That's correct.

2 Q So looking at his district -- and let's see.

3 MR. OSHER: Jeff, could you focus in on the purple
4 district there? Yeah. Perfect.

09:54:59 5 BY MR. OSHER:

6 Q So looking at that district, it spans the width of the
7 state. It has corners in Colbert County in northwest down to
8 Lamar and Tuscaloosa counties, then over east to Etowah,
9 Marshall, and Dekalb County; isn't that right?

09:55:22 10 A Yes, sir.

11 Q Would you say that's an accurate description of that
12 description?

13 A Yes, sir.

14 Q Did Representative Aderholt ever express to you that it
09:55:32 15 was too difficult for him to travel to the different parts of
16 his district?

17 A No. I actually know that area fairly well because I have
18 campaigned in there twice running for statewide office, and
19 that area, it has an awful lot in common with one another.

09:55:49 20 Q Sure. That --

21 JUDGE MARCUS: Just let him finish his answer.

22 THE WITNESS: I said they're very similar.

23 BY MR. OSHER:

24 Q My apologies for -- I didn't mean to talk over you,
09:56:02 25 Representative.

1 That wasn't my question. My question was: Did
2 Representative Aderholt ever express to you that it was too
3 difficult for him to travel to the different parts of his
4 district when he represented them?

09:56:13 5 A No. When you are in Congress and you are delegated to a
6 district like that, you do what you have to do, and I am sure
7 he does an excellent job of it.

8 Q And he is an effective representative of his district?

9 A Yes. Very much so.

09:56:28 10 Q And you testified that you got to know Representative
11 Sewell pretty well during your time in Congress?

12 A Actually, I knew her before I got to Congress. But she
13 and I worked very closely together when I was in Congress.

14 Q She is also a very effective Representative of her
09:56:42 15 district?

16 A Very effective.

17 MR. OSHER: Jeff, can we focus on District 7 in the
18 map?

19 BY MR. OSHER:

09:56:53 20 Q So, again, looking at this district, her district started
21 out in -- well, it goes down to the south in Clarke County,
22 then to Montgomery in the east, up to Birmingham in the
23 northeast in Jefferson County, and then over to Pickens County
24 in the west. Do you see that? Did I describe her district
09:57:13 25 accurately?

1 A Yes.

2 Q In your time in Congress, did Representative Sewell ever
3 express to that you it was too difficult for her to travel to
4 the different parts of her district?

09:57:26 5 A She never said it was too difficult, but she said it was
6 pretty difficult.

7 Q When did she say that?

8 A On several different occasions. She would talk about what
9 her schedule was and how difficult it was for her to be able to
09:57:39 10 go from Birmingham to Clarke County to Lowndes County to
11 Choctaw County, just the difficulty in travel, and the fact
12 that, you know, she's got parts of Jefferson County an urban
13 county, parts of Montgomery County another urban county
14 together with the rural Black Belt counties. It's tough, it's
09:58:01 15 real tough on her, but she is very smart and very capable, and
16 she does -- she works hard.

17 Q And you said she's a very effective representative?

18 A Oh, yes very effective.

19 Q And let's look at District 3.

09:58:17 20 As you spoke a bit about earlier, looking at that district
21 -- and I'm sorry. Who represents District 3?

22 A It's Mike Rogers.

23 Q And he did the whole time you were in office; is that
24 right?

09:58:29 25 A Oh, yes. Yeah.

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1 Q So looking at his district, it has at least half of the
2 eastern border of the state running all the way up from
3 Cherokee County and all the way down to Russell County; isn't
4 that right?

09:58:41 5 A That's right.

6 Q Okay. Did Representative Rogers ever say to you that it
7 was too difficult for him to travel to the different parts of
8 his district?

9 A No. I think he felt like his district had a lot of
09:58:52 10 commonality -- not necessarily easy to get from Cherokee County
11 to Russell County, but the commonality of interests they had
12 made it a little bit easier on him.

13 He does have the Anniston Army Depot, so he is going to be
14 focused on that. But in Russell County, he has got people that
09:59:11 15 are across the river from a major Army base, so he's got that
16 to contend with, too. But he's a ranking member of the House
17 Armed Services Committee now, soon to be the chairman, and so
18 he will be in a unique position to help both of those.

19 Q Sure. That wasn't my question. My question was about the
09:59:29 20 difficulty of travel to the different parts of the district.

21 And --

22 A Yeah. He would say, I have had a long day or a long
23 couple of three days because I have to go from Cherokee County
24 all the way down to Pike Road in Montgomery. That's a long
09:59:44 25 way.

1 Q But he's -- you think he's a very effective representative
2 in his district?

3 A Oh, yeah, yeah.

4 Q Okay.

09:59:51 5 MR. OSHER: You can take that down, Jeff, thank you.

6 BY MR. OSHER:

7 Q In your direct examination, do you recall talking to
8 Mr. Davis about how the illustrative plans that the plaintiffs
9 have offered in this case may result in no congressional
10:00:06 10 representative living in Mobile? Do you remember that?

11 A Yes.

12 Q And I think -- I can't remember. It might have been
13 Mr. Davis or you said that that would be a tragedy?

14 A It would be a tragedy if we didn't have somebody from
10:00:16 15 Mobile representing the Mobile area, yeah.

16 Q Okay.

17 MR. OSHER: Jeff, could I have you pull up Defendants'
18 Exhibit 2, which I believe is Mr. Bryan's report that was
19 offered by the state in this case?

10:00:37 20 Can you go to page 27? Next page, please. And can you
21 zoom in on the Figure 5.6, Alabama enacted plan. Any way to
22 zoom in further.

23 BY MR. OSHER:

24 Q Representative, can you see that map?

10:01:08 25 A I can.

1 Q Okay. I will represent to you that this is the current
2 enacted map, and it has dots as to where each of the current
3 Representatives live. Do you see that?

4 A I do.

10:01:19 5 Q Can you tell me which congressional representative
6 currently lives in Montgomery?

7 A I don't think anybody currently lives in Montgomery.

8 Q And you would agree that Montgomery is the third biggest
9 city in Alabama?

10:01:38 10 A Actually, now, I think it's the fourth.

11 Q Fair enough. You would say that Montgomery is a very
12 important city in the state of Alabama?

13 A Oh, yes, very important city.

14 Q Okay.

10:01:50 15 MR. OSHER: You can take that down, Jeff. Thank you.

16 BY MR. OSHER:

17 Q You spoke a bit about District 5 in the State Board of
18 Education plan. Do you remember that?

19 A I can't remember which district it was.

10:02:03 20 Q District 5 is the one that connects Montgomery to Mobile
21 with the Black Belt?

22 A Okay. I remember that one.

23 Q And up until a few years ago, Ella Bell represented that
24 district for a long time; is that right?

10:02:17 25 A She did, yes.

1 Q Did she ever express to you that it was too difficult for
2 her to represent a district that had both Montgomery and Mobile
3 in it?

4 A Yes.

10:02:27 5 Q When did she say that?

6 A I think I mentioned earlier that I would get phone calls
7 from people in her district at -- thinking I was their state
8 school board member. And asking me to come to meetings. And I
9 would call her and I would say, it's your district, not my
10:02:46 10 district. I don't want to do anything in your district you
11 don't know about. I said, do you want me to do something? She
12 said, would you please, because I cannot get down there. It's
13 too far me to get from Montgomery to there. I have other
14 things going on. And so I said, sure, I will be happy to do
10:02:59 15 it. So I would do that for her from time to time and for her
16 predecessor.

17 Q And if she was a member of Congress and you were also a
18 member of Congress and that sort of confusion arose, that would
19 -- the same thing would happen, right, you would talk to the
10:03:17 20 other member of the Congress and try to figure it out?

21 A Yes. But I got to be honest with you, that never happened
22 when I was in Congress. I guess people know who their
23 Congressman is. So I never got any calls from Terri Sewell's
24 district, for example, saying would you come meet with us
10:03:32 25 except for Clarke County because she and I shared Clarke

1 County.

2 Q And Clarke County is the only district -- I'm sorry -- the
3 only county that your district split last redistricting cycle,
4 right?

10:03:43 5 A That's right. And we had an understanding we would work
6 together in Clarke County, and there was never any issue.

7 Q Sure. Ella Bell extremely effectively represented that
8 district, right?

9 A I don't think I would agree with that.

10:04:01 10 Q Dr. Tommy Stewart succeeded Ella Bell to represent that
11 district?

12 A I -- yeah. I don't know him, but I -- I know the name.

13 Q Did you ever speak to Dr. Stewart?

14 A Not that I can recall.

10:04:19 15 Q What about Dr. Chestnut, who currently represents that
16 district?

17 A I don't recall having any interaction with Dr. Chestnut
18 either. I've been away from the state school board for a
19 while.

10:04:30 20 Q You voted to -- in Ms. Welborn's cross-examination, you
21 spoke about your efforts to repeal the Affordable Care Act;
22 isn't that right?

23 A That's right.

24 Q You testified in *Chestnut* that you never tried to
10:04:48 25 determine whether your black constituents wanted the Affordable

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1 Care Act to be stay in place, right?

2 A I didn't try to determine anybody's particular views on
3 that. I just listened to what people were telling me. And I
4 had a lot of people telling me they wanted to change it.

10:05:02 5 Q You never sought out the advice from the state conference
6 of the NAACP on that issue?

7 A I think I testified earlier I never had any interaction
8 with them consciously. I may have been in a room with some of
9 them and didn't know they were members of that organization.

10:05:16 10 Q And you never even tried to figure out what their position
11 was on the issue?

12 A No. I -- when it came to that issue, I had plenty of
13 people tell me what their positions was. I didn't have to
14 reach out to people.

10:05:30 15 Q In *Chestnut*, you testified that while you were in office
16 you never even tried to determine how many black constituents
17 you actually had; isn't that right?

18 A Well, I knew them in general, but I didn't know precisely.
19 I knew it was about 25 percent.

10:05:44 20 Q In fact, when you were asked about a percentage of your
21 district that was black during *Chestnut*, you said, it didn't
22 matter to me. Isn't that right?

23 A It didn't matter to me.

24 Q You voted against the First Step Act?

10:05:59 25 A You have to refresh me. I don't know what the First Step

1 Act was.

2 Q The First Step Act was the criminal justice reform?

3 A Oh, yeah, yeah, yeah. I'm sorry. Yes, I did.

4 Q But you testified in *Chestnut* that you never tried to

10:06:15 5 determine whether your black constituents felt that that bill

6 would improve their lives, right?

7 A I never heard from anybody about that bill.

8 Q You didn't attempt to discern the Alabama NAACP's view on

9 the bill?

10:06:30 10 A I never had any interaction with them. Consciously

11 knowingly.

12 Q You spoke a bit about the various factories and plants

13 that are located in Mobile?

14 A (Nodded head.)

10:06:44 15 Q Do you recall that?

16 A That's right.

17 Q Are you aware that there are higher rates of cancer and

18 asthma among the black community in Mobile due to their

19 proximity to those factories and plants?

10:06:55 20 A I'm not, but I wouldn't argue with it. In general, I know

21 that we have an issue with regard to the quality of health care

22 that's been available to black people in Alabama in my

23 district.

24 Q Do you know who Alabama commemorates in Congress' Statuary

10:07:19 25 Hall?

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1 A Yes. It's Helen Keller, and it's -- I forgot his name --
2 a former Civil War general.

3 Q Joseph Wheeler?

4 A Yeah.

10:07:31 5 Q And Joseph Wheeler was a calvary general for the
6 Confederate Army; isn't that right?

7 A I know he was a general. I don't know if it was calvary
8 or not.

9 Q But he was on the Confederate side of the Civil War?

10:07:43 10 A Right. I know a lot more about Helen Keller than I know
11 about him.

12 Q Did you ever try to determine how your black constituents
13 felt about Alabama celebrating a Confederate general in the
14 halls of Congress?

10:07:53 15 A I never asked them, but I think I can guess.

16 Q You never reached out to?

17 A No.

18 Q And what is your guess as to how they would feel about it?

19 A I don't think they would like it. That's a decision by
10:08:08 20 the state, not a decision by Congress.

21 Q You would agree with me that members of Congress can use
22 their influence to try to change state policy?

23 A Some do. I didn't. I didn't think it was appropriate.

24 Now, when I was in the Legislature, I supported putting Helen
10:08:29 25 Keller's statute in there. I actually served on the committee

1 that raised the money to put the statue there because I think
2 Helen Keller was a better representative of the state than the
3 person we had there before.

4 Q Oh, you're referring to the Joseph Wheeler statue, or the
10:08:44 5 one that was replaced by Helen Keller?

6 A The one replaced by Helen Keller.

7 Q You didn't take any action in the Legislature to remove
8 the Joseph Wheeler statue or replace it with something else?

9 A No. We were kind of focused on Helen Keller when I was in
10:08:57 10 the Legislature.

11 Q Speaking of your time in the Legislature, when did you
12 serve in the Senate?

13 A From November of 2002 to May of 2007.

14 Q During that time, I imagine you went to the Alabama
10:09:15 15 Capitol pretty often?

16 A Yes, sir.

17 Q Did you often walk by the monument to Confederate soldiers
18 and sailors that sits in front of the Capitol?

19 A If I did, I didn't pay any attention to it. I didn't know
10:09:30 20 that we had one.

21 Q So you sort of turned a blind eye to it?

22 A I was busy doing other things. I wasn't paying attention
23 to stuff like that.

24 Q Were you aware that while you were there, the memorial was
10:09:40 25 surrounded by flags of the Confederate states?

1 A I don't remember that, either.

2 Q Is it your contention that that shrine to the Confederacy
3 does not exist in front of the Capitol?

4 A Oh, no. I'm not saying they don't. I just never paid any
10:09:58 5 attention to them.

6 Q So you never tried to determine whether your black
7 constituents had a problem with that sitting at the foot of the
8 Capitol?

9 A I never had a discussion with any constituent about that.

10:10:08 10 Q And is your assumption that you described earlier the same
11 here that you would think that your black constituents probably
12 did not appreciate that?

13 A If they even knew about it.

14 Q Representative, you would agree that the poverty rate
10:10:32 15 among black Alabamians is significantly higher than it is among
16 white Alabamians?

17 A I know it's higher. I don't know I can say it's
18 significantly higher.

19 Q Am I right that when you testified in *Chestnut*, you
10:10:44 20 actually said you didn't know if that was the case, right?

21 A No. But I wouldn't be surprised if it was higher.

22 Q Understood. I will represent to you that the poverty rate
23 is more than double among black Alabamians than it is white
24 Alabamians.

10:11:06 25 What about child poverty rates? Do you know if there's a

1 disparity there?

2 A I don't. I don't know what the child poverty rate is.

3 Q Would it surprise you if it was nearly triple among black
4 Alabamians than it is white Alabamians?

10:11:19 5 A It would not.

6 Q Household average income, do you know if that's lower
7 among black Alabamians than white Alabamians?

8 A I don't know, but I would not be surprised if it were.

9 Q Same with unemployment rate, do you know if it's -- if
10:11:35 10 it's higher than among black Alabamians than white Alabamians?

11 A I don't know, but I wouldn't be surprised if it were.

12 Q I will represent to you that it's more than double among
13 black Alabamians than white Alabamians. Does that surprise
14 you?

10:11:48 15 A Yeah, that kind of does surprise me.

16 Q Okay. Do you have any reason to dispute that?

17 A No. I am just saying -- I don't have the data in front of
18 me, so I am not going to try to guess at the data, but as I
19 come around and looked at this as an industry down in this part
10:12:08 20 of the state, there are plenty of black people that work in
21 every industry that we have got down here. And that doesn't
22 surprise me because 25 percent of the people that live down
23 here are black and expected to be in the work force, and they
24 are.

10:12:21 25 Q Representative you are a little quiet now, if you wouldn't

1 mind speaking up.

2 A Okay.

3 Q Thank you.

4 A I will move a little closer.

10:12:30 5 Q I will represent to you that one of the Caster plaintiffs'
6 experts in this case reported that the black unemployment rate
7 among -- the black Alabamian unemployment rate is 7.8 percent,
8 and that for white Alabamians, it's 3.8 percent. So the -- so
9 he reports that it's more than double among black Alabamians?

10:12:51 10 A I don't know.

11 Q So assuming the figures that I discussed there are true,
12 you would agree that those disparities stem from Alabama's
13 centuries' long discrimination against black people in the
14 state?

10:13:04 15 A I think the problems that are facing the black community
16 with regard to all these issues is a function of the failure of
17 the state of Alabama to provide a quality education to them.

18 Q Does that have -- is that rooted in the discrimination
19 that Alabama had against black individuals?

10:13:23 20 A No. It's rooted in the overall failure to the Alabama
21 public education system, which -- white people just not as much
22 as it affects black people. It's the reason I got in public to
23 begin with is because I thought the biggest problem facing
24 Alabama was our inability to provide quality education to all
10:13:41 25 of our citizens, and we're still not doing enough. And it's

1 having these effects that I think hurt everybody in Alabama,
2 but particularly the people who are not getting that quality
3 education.

4 Q So is it your testimony that the disparities that I have
10:13:56 5 described have no roots in the centuries' long discrimination
6 that Alabama, the entrenched discrimination in Alabama against
7 black individuals?

8 A I don't know that I can say that there's no effect. But
9 what I'm saying is, is that the single biggest problem, the
10:14:15 10 thing that's the biggest cause for them is our failure to
11 provide quality education to everybody in the state. We live
12 in a time when you're going to be valued by what you know and
13 what you do with what you know. And if we don't provide
14 quality education to all of our people, they won't get the
10:14:32 15 economic value in their lives that they need. If they don't
16 have the economic value in their lives, they can't afford
17 quality health care and all these other stuff. So I continue
18 to believe today as I did when I ran for state school board in
19 1994, if you want to address all the other issues, fix the
10:14:48 20 education system in the state.

21 Q You agree with me that Alabama had for a very long time a
22 strictly segregated education system?

23 A Oh, yes, sir, absolutely. To our great shame, we did
24 that.

10:15:03 25 Q Just a few more questions, Representative.

1 You testified on direct about the -- the campaign ad. Do
2 you recall that?

3 A Yes.

4 Q Your campaign ad.

10:15:17 5 I understand your testimony that that ad was intended to
6 be primarily about your brother; is that right?

7 A That's correct.

8 Q So regardless of your intent, do you know how that ad was
9 perceived among your black constituents?

10:15:29 10 A I don't know that I ever had a discussion with a black
11 person about that ad.

12 Q You didn't hear any feedback from the black community or
13 the press on this?

14 A Not that I can recall.

10:15:44 15 Q You understand, don't you, that images of black people in
16 a fire could trigger a connection in the minds of some to the
17 more horrific eras of racial discrimination in Alabama?

18 A No.

19 Q You would agree that in Alabama, there is a horrific
10:16:03 20 history of lynching black Americans?

21 A Yes, sir.

22 Q And that history included burning black individuals alive?

23 A Never heard of that.

24 Q You would also agree, wouldn't you, that Alabama has had a
10:16:17 25 history of bombing and burning down houses occupied by black

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1 Alabamians?

2 A Yes, sir. To our great shame.

3 Q You would also agree that the KKK used burning crosses to
4 terrorize black individuals in Alabama?

10:16:31 5 A Yes, sir. To our great shame, they did that.

6 MR. OSHER: Your Honor, if I can just have a minute.

7 JUDGE MARCUS: You may.

8 BY MR. OSHER:

9 Q Just one more question, Representative. Sitting here
10:17:11 10 today, do you understand how the images included in that ad
11 might be viewed negatively by the black community?

12 A No.

13 MR. OSHER: That's all I have. Thank you.

14 JUDGE MARCUS: All right. Thank you. And who will be
10:17:25 15 conducting cross-examination for the Singleton plaintiffs?

16 MR. WHATLEY: Your Honor, I am Joe Whatley. I will.

17 JUDGE MARCUS: All right. Thank you, Mr. Whatley, and
18 you may proceed.

19 MR. WHATLEY: Thank you.

10:17:35 20 CROSS-EXAMINATION

21 BY MR. WHATLEY:

22 Q Mr. Byrne, it's good to see you again. I have a few
23 questions.

24 First of all, I, along with other counsel, I represent the
10:17:47 25 Singleton plaintiffs. Are you familiar with the whole county

1 plan that the Singleton plaintiffs have proposed, Singleton
2 plan number one?

3 A I don't know if it's the Singleton plan, but I have seen a
4 map that shows whole counties.

10:18:03 5 Q Okay. And are you aware that that plan keeps Mobile
6 County whole?

7 A The map that I saw kept Mobile County whole.

8 Q And you would agree that's a good thing?

9 A That's a good thing. What I was concerned about was that
10:18:23 10 it added Andalusia and the county that Andalusia is in and took
11 away Washington County and Monroe County. I don't think that's
12 a community of interest between Covington County which is where
13 Andalusia is and Mobile.

14 Q Okay. We will talk about that in a second.

10:18:35 15 A Okay.

16 Q But it also kept Mobile and Baldwin counties together, the
17 two Gulf counties?

18 A It did.

19 Q And that was something you viewed to be crucial, correct?

10:18:43 20 A Yes.

21 Q Okay. And you know when you are drawing districts you
22 have to keep the population -- you have to have an eye on the
23 population. What you have -- how equal it has to be is a
24 question the judges will decide. But you know that you have to
10:18:58 25 look to population of counties when you are drawing districts,

1 correct?

2 A That's correct.

3 Q And by putting Covington in instead of Washington and
4 Monroe, they came -- the Singleton plaintiffs came to districts
10:19:14 5 that had relatively equal population, correct?

6 A That's correct. It has some flaws other than that, but,
7 yes, it does do that.

8 Q And you would also agree that Covington and Escambia
9 counties have some commonalities, correct?

10:19:29 10 A Yes. But Escambia County is not the core of the district.

11 Q I'm sorry. I couldn't hear you?

12 A I'm sorry. Escambia County is not the core of the
13 district. And the part of Escambia County that is closest to
14 Covington County, which is Brewton and east Brewton, not really
10:19:48 15 Atmore, which on the other end of Escambia County, clearly much
16 more to Mobile.

17 Q And the county seat in Escambia County?

18 A Brewton.

19 Q Remind me where that is?

10:19:58 20 A It's Brewton.

21 Q Okay. In that eastern end of the county that's closer to
22 Covington?

23 A That's right.

24 Q And not far from Andalusia?

10:20:04 25 A That's right.

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1 Q Okay.

2 MR. WHATLEY: Let's pull up Caster Exhibit 12. And go
3 down so we can see the southern part of that, Suzanne.

4 BY MR. WHATLEY:

10:20:26 5 Q This is the current district -- I think you just testified
6 the district that -- District 1 is the one you served in this
7 configuration?

8 A That's correct.

9 Q Okay. Now, I will tell you as a preliminary matter both,
10:20:42 10 Mr. Hare and I grew up in Monroeville. And my mother and his
11 parents still live in Monroeville. So let's spend a little bit
12 of time talking about your testimony about Monroe County.

13 Now, Monroe County -- in Monroe County, the economy is
14 largely or in many respects built around the tree; isn't that
10:21:10 15 right? You have paper mills, you have the timber business
16 especially in the northern part of the county. It's -- that's
17 a huge part of the county -- economy; isn't that right?

18 A It's a significant part of it, yes.

19 Q Okay. And they don't have ship building in Monroe County,
10:21:27 20 for example?

21 A No. But you have people from Monroe County that work in
22 the shipyards.

23 Q True. People commute. But they don't do it in Monroe
24 County?

10:21:34 25 A They don't do it in Monroe County, no.

1 Q And, in fact, between 2010 and 2020, between the two
2 censuses, Monroe County lost a significant part of its
3 population, didn't it, what, around 15 percent?

4 A I don't know the exact percent, but they did lose a
10:21:52 5 significant amount of population.

6 Q Okay. And in Monroe County or at least Monroeville also
7 has a tourist element to its economy, doesn't it?

8 A It does. They try to attract people there because it's
9 the home of Harper Lee, who you probably knew.

10:22:10 10 Q Right. And you brought up Truman Capote in your direct
11 testimony. Were you aware that Truman was the other boy, To
12 Kill a Mockingbird?

13 A Yes.

14 Q Not Harper Lee's brother obviously, but the other boy in
10:22:30 15 To Kill a Mockingbird?

16 A Yes.

17 Q And what you're saying -- in Monroeville, especially
18 pre-COVID and we hope post-COVID, a lot of the economy is built
19 around the Mockingbird, it's built around Harper Lee and Truman
10:22:48 20 Capote and attracting tourists to Monroeville based on that?

21 A They're trying to develop more tourism off of that, yes.
22 I don't know to what extent they have been successful.

23 Q Well, you know at least pre-COVID and even last year to
24 some extent they have a -- the To Kill a Mockingbird play and
10:23:05 25 attract hundreds -- attract thousands of people into

1 Monroeville to see the Mockingbird play?

2 A Yes, they do. In fact, I've seen it three or four times
3 and got to be on the jury one time.

4 Q Okay. And that -- especially in the spring is a big part
10:23:22 5 of the economy?

6 A In the spring, I would think it would be, yeah.

7 Q Okay. And you mentioned that you attended a town hall
8 meeting in Beatrice, right?

9 A Yeah. Yeah.

10:23:37 10 MR. WHATLEY: And, Suzanne, can you make the District
11 1 larger?

12 BY MR. WHATLEY:

13 Q Is kind of in the northeastern corner of Monroe County?

14 A I don't know -- yeah, I guess that's northeastern.

10:24:03 15 Q And one of the things that's important in Beatrice's
16 economy is hunting camps. You mentioned you were at you a
17 hunting camp, at your hunting camp, but hunting camps are big
18 up there, right?

19 A Yes.

10:24:19 20 Q Okay. And I think you said the northern part of Monroe
21 County is a predominately black area, right?

22 A Yes.

23 Q And, in fact, especially the northern half of Monroe
24 County is considered to be part of the Black Belt, right?

10:24:32 25 A I don't know that.

1 Q You don't know that.

2 Do you know that both its population and its economy have
3 a lot of similarities to the rest of the Black Belt, correct?

4 A I don't think I would agree with that. It has some
10:24:52 5 interesting unique industries there. You mentioned tourism, in
6 terms of the Mockingbird, but also there's a plant there that
7 does pre-manufactured concrete walls. It's another plant there
8 that makes the cardboard containers that are used to package
9 various goods including some of the craft beer that are made in
10:25:21 10 Mobile. So I don't know other counties in the Black Belt that
11 have those sort of more advanced industries.

12 Q Yes, sir. I'm sorry. Did I cut you off?

13 A No. I finished.

14 Q Okay. You were talking about the precast concrete. You
10:25:40 15 were talking about Gate or Gate-Lazenby?

16 A Yes.

17 Q Okay. What I was really focused on is more the part of
18 the county north of Monroeville?

19 A Okay.

10:25:49 20 Q And Gate-Lazenby -- I don't mean to make this personal,
21 but I worked my way through college working there. But north
22 of Gate-Lazenby is also south of Monroeville, right?

23 A Yes.

24 Q Okay. And north of --

10:26:06 25 A But in Monroe County.

1 Q North of Monrovia, in the northern part of the county,
2 that is the area where wouldn't you agree with me at least the
3 population is very similar to what you found in the Black Belt?

4 A I would think in very north Monroe County, it would be
10:26:21 5 very similar to say Wilcox County.

6 Q Right. And you talked about the education. The high
7 school in Beatrice is J. F. Shields, right?

8 A I don't know the name of it.

9 Q But you know there is a high school in --

10:26:44 10 A That's right. I think I have been there.

11 Q Yes, sir. And it is an all-black school?

12 A I know it's predominantly black. I don't know if it's all
13 black.

14 Q And the white children around Beatrice go to the all-white
10:27:03 15 private school, Monroe Academy down in Monroeville, don't they?

16 A I don't know that.

17 Q You don't know that?

18 A No.

19 Q Well, you mentioned that there were some white folks at
10:27:13 20 your town hall meeting in Beatrice. Do you know where their
21 children go to school?

22 A I didn't ask where they children went to school. People
23 in the town hall meeting were mainly older.

24 Q Okay. You do know that there is an all-white private
10:27:29 25 academy in Monroe County where many of the white students go to

1 school?

2 A I know that there's a private academy. I don't know the
3 racial mix of it. I don't think I have ever been to that
4 school.

10:27:41 5 Q Okay. Now, let's go over to Clarke County, if we could.

6 You represented -- and, again, I have relatives there, so
7 I am going to focus on some issues. You are represented the
8 part of Clarke County that includes Grove Hill?

9 A Part of Grove Little, not all of Grove Hill.

10:28:06 10 Q And you represented the part that goes out on Highway 84,
11 the road that goes sort of east and west to there, that's
12 Highway 84, right?

13 A Yeah.

14 Q And are you aware that there's a town of Whatley about
10:28:23 15 six miles east of Grove Hill?

16 A I am aware of it.

17 Q On Highway 84?

18 A Yes.

19 Q Okay. And so as an example, my cousins in Grove Hill or
10:28:42 20 north of Highway 84 in Grove Hill would have been represented
21 by you, right?

22 A Depending upon exactly where they live, probably so. But
23 if they were northeast, they wouldn't be represented by me.

24 Q And if they were northwest, they would be?

10:28:57 25 A They would be.

1 Q Okay. And my cousins in Whatley, Alabama, six miles to
2 the east in the same county, would have been represented by
3 Congresswoman Sewell?

4 A I think that's right, yes.

10:29:09 5 Q Okay. And I want to be clear. This question is not meant
6 to disparage either you or Congresswoman Sewell. You would
7 agree, I think you already have, that she is an outstanding
8 congresswoman?

9 A She is an outstanding congresswoman.

10:29:26 10 Q But wouldn't you agree, sir, and I think this has been
11 your testimony, that if you had combined Clarke County, that my
12 cousins in Whatley and my cousins in Grove Hill would have been
13 better represented regardless of whether it was you or her?

14 A By having just one congressman?

10:29:52 15 Q Yes?

16 A Yeah. I think that's what I have been saying in previous
17 testimony. I think it's better for a county to have one
18 congressman and not to be split up. But what Congresswoman
19 Sewell and I did was from the very beginning we said we will

10:30:05 20 work together, and we did. We worked together very well. We
21 used to do joint town halls together for example. Thomasville
22 was not in my district, but the mayor of Thomasville would come
23 and see me every time he was in Washington. He is a personal
24 friend, and if Congresswoman Sewell needed help from
10:30:22 25 Thomasville, she got it from me 100 years ago percent of the

1 time. That's just the way we worked things out.

2 Q But despite that fact, your testimony is that it would be
3 better off to keep counties together?

4 A Yes. That's my position.

10:30:34 5 Q And you believe that it would be better to keep Tuscaloosa
6 so it's not split, for example?

7 A Yes.

8 Q And the same for other counties in Alabama that are split,
9 such as Montgomery?

10:30:46 10 A Yes. Now, I understand that when you're trying to balance
11 out population, sometimes you can't make that happen. But to
12 the maximum extent possible, counties should be kept whole and
13 contiguous in congressional districts.

14 Q And you were asked specifically about the -- about
10:31:09 15 Montgomery not having a Congress person. Do you recall that?

16 A I don't remember the question just put that way, no.

17 Q In any event, Montgomery currently does not have a member
18 of Congress living there, correct?

19 A No one that lives there, yes, that's correct.

10:31:26 20 Q Yes. I'm sorry. I wasn't clear with my question.

21 A They had Martha Roby previously, and now their present
22 member is from Coffee County.

23 Q And was it your testimony that by splitting or splitting
24 any county you might make it less likely that a congressperson
10:31:44 25 reside there?

1 A Yeah.

2 Q Okay.

3 A You start splitting counties like that, and that county
4 loses its influence. That's why I don't want Mobile County to
10:31:55 5 be split.

6 Q And --

7 MR. DAVIS: Give me one second. Sorry to interrupt,
8 Mr. Whatley. Judge, I just want to check on Mr. Byrne. We
9 have been going about two hours.

10:32:05 10 JUDGE MARCUS: We have been going a long time.

11 Let me ask you, Mr. Whatley: How much longer you have
12 with Mr. Byrne. Perhaps this would be a convenient time for a
13 short break.

14 MR. WHATLEY: It's fine for me to take a short break,
10:32:20 15 Your Honor.

16 JUDGE MARCUS: All right. We will take a break for
17 15 minutes, and then we will pick up the balance of your
18 examination.

19 Question, though, Mr. Whatley: How much longer do you
10:32:32 20 think you have with Mr. Byrne?

21 MR. WHATLEY: I would guess about 10 or 15 minutes.
22 Perhaps the break will make it shorter.

23 JUDGE MARCUS: I'm sorry. I didn't mean to cut you
24 off.

10:32:41 25 MR. WHATLEY: I said perhaps the break will make it

1 shorter and more organized.

2 JUDGE MARCUS: All right. We will break for
3 15 minutes and then pick up the thread of the cross by
4 Mr. Whatley and any redirect by Mr. Davis.

10:32:53 5 Thank you. We will in a 15-minute recess.

6 (Recess.)

7 JUDGE MARCUS: Mr. Whatley, are you ready to proceed
8 at this point?

9 MR. WHATLEY: Yes, sir.

10:48:40 10 JUDGE MARCUS: Mr. Byrne, you all set to go forward?

11 THE WITNESS: Yes, sir, I am.

12 JUDGE MARCUS: Thank you very much. Mr. Whatley, you
13 may complete your cross.

14 MR. WHATLEY: Thank you, Your Honor.

10:48:51 15 Suzanne, will you put back up for just a minute the 2011
16 plan? I think it's Caster Exhibit 12, Your Honor.

17 JUDGE MARCUS: Just so I'm clear, Mr. Whatley, this is
18 the plan that actually was enacted by the state Legislature in
19 2011, correct?

10:49:23 20 MR. WHATLEY: Yes, sir. Yes, sir, Your Honor. And
21 just to put it in context, Mr. Byrne, it's the plan that
22 existed when you served in Congress, correct?

23 THE WITNESS: Yes, sir.

24 BY MR. WHATLEY:

10:49:34 25 Q Okay. I want to focus back on Clarke County for just one

1 second.

2 And I don't think I asked you about the economy of Clarke
3 County. In Clarke County, a big part of the county also
4 focuses on the tree, correct?

10:49:52 5 A Yes.

6 Q And so a paper mill and lumber mill in Jackson?

7 A Yes.

8 Q In the southern part of the county, correct?

9 A That's correct.

10:50:05 10 Q And there is a paper mill -- I don't know if you can see
11 it -- it's in the edge of Wilcox County and Pine Hill, not far
12 from Thomasville that you mentioned, correct?

13 A Yes. Yes.

14 Q And so they make paper, and they produce lumber in Clarke
10:50:28 15 County, and they don't make ships, correct?

16 A They don't make ships in Clarke County.

17 Q But they do make paper, and they do produce timber?

18 A That's correct.

19 Q Okay. We can take that down.

10:50:39 20 Mr. Byrne, I think in your -- you have clearly said before
21 -- I don't remember if it was in your testimony in the previous
22 case, or in your deposition, that you think it's important that
23 each of the urban or Metropolitan -- or each of the cities in
24 Alabama have its own congressional district or be in a separate
10:51:12 25 congressional district?

1 A Yes. I think that the four metro areas in the state, plus
2 Dothan, Tuscaloosa, Auburn, all those areas need to have sort
3 of at the center of their community adequately represented in
4 the United States Congress.

10:51:26 5 Q So there ought to be in separate -- and to be clear, there
6 ought to be separate congressional districts or Huntsville,
7 Mobile, Montgomery, and Birmingham should each be located in a
8 separate congressional district from each other?

9 A Yes.

10:51:45 10 Q Okay. And going to Congressman Palmer, I think there was
11 some questioning about Congressman Palmer earlier maybe by both
12 counsel. Isn't it correct that Congressman Palmer currently
13 lives in Shelby County?

14 A To be honest with you, I don't know exactly where he
10:52:06 15 lives. He either lives in the southern part of Jefferson
16 County or in Shelby County. I don't know.

17 Q Were you aware that at one point he did live in Jefferson
18 County and he moved to Shelby County?

19 A I am not aware of that.

10:52:18 20 Q You are not aware of that. Okay.

21 MR. WHATLEY: Your Honors, I think that's all I have.

22 JUDGE MARCUS: Thank you. Redirect, Mr. Davis?

23 MR. DAVIS: Yes, Your Honor, briefly.

24 REDIRECT EXAMINATION

10:52:30 25 BY MR. DAVIS:

1 Q Mr. Byrne, did you turn down any meeting requests from the
2 Alabama NAACP?

3 A No.

4 Q Would you have been happy to meet with them had they asked
10:52:38 5 for a meeting?

6 A Absolutely. I meet with just about everybody.

7 Q We talked about the third districts -- and the Third
8 District and the Fourth Congressional District when you were
9 speaking with Mr. Osher. Do you consider the areas encompassed
10:52:54 10 in Alabama's Third Congressional District to be part of a
11 community of interest?

12 A I do. That's east Alabama, and it got a common set of
13 industries and things that they're interested in, and they
14 largely look to Auburn as their university.

10:53:09 15 Q What about the Fourth Congressional District, do you
16 consider those areas to be part of a community of interest?

17 A They are. We have similar industry in all those areas all
18 tied to the automobile industry, for example. And they have
19 very similar -- when you go from one of those towns to the
10:53:27 20 next, walking from the east side of the state to the west, the
21 towns are very similar to one another.

22 Q Do you consider the more urban parts of Mobile County to
23 be part of the same community of interest with Montgomery,
24 Macon, and Barbour counties?

10:53:47 25 A I have been up and down those other places. They just

1 don't have a connection to Mobile or so.

2 Q And what about the more rural parts of Mobile County? Are
3 they part of a community of interest with the Wiregrass in
4 Dothan?

10:54:02 5 A No, they are not.

6 Q When you are considering --

7 A Let me give an example there. One of the maps I saw of
8 Covington County in the First Congressional District, there's
9 really no connection between Covington County and the main
10:54:20 10 interest that you can see in the First Congressional District.

11 So I don't see that it makes any sense to put a Wiregrass
12 county like Covington in with a district that's primarily
13 centered with Mobile and Baldwin County. It's hard to get to
14 Andalusia from Mobile, very hard. And so as the result, very
10:54:38 15 few people go back and forth between Andalusia and Mobile.

16 Q Which districts would allow a Congressman or congresswoman
17 to more effectively represent the constituents of District 1,
18 whether they're black, whether they're white, Republican,
19 Democrat, rich or poor? Would that be the districts as passed
10:54:59 20 in Alabama's plan, or the districts that plaintiffs are
21 proposing that we viewed a little while ago?

22 A The Legislature plan by far. And as I said before, I
23 testified before that committee, and I listened to other people
24 talk while I was there. And the Legislature effectively did
10:55:17 25 what we were asked to do, which was to keep our part of the

1 state together.

2 Q Uh-huh. And would your ability as a Congressman to
3 represent your constituents, would it be negatively impacted if
4 your district changed at the last minute to a vastly different
10:55:34 5 structure, including different areas of the state?

6 A Very definitely so, yes.

7 Q We talked about a lot issues, Mr. Byrne. Is there
8 anything else you would like to bring to the Court's attention
9 as they consider these various plans?

10:55:47 10 A Yes, sir. I would want to say this. I have great respect
11 for the Court and this proceeding, and I know the Court's got
12 some difficult decisions to make. But we're pretty far along
13 into this campaign cycle. And I have seen what it does to
14 congressmen in other states when at the last minute, courts
10:56:05 15 start moving things around. And I think it hurts the
16 effectiveness of congressmen when that happens. I am not
17 saying the Court may not have a good reason to do it.

18 But as I said earlier, we are just a few months away from
19 primaries. And it would be very difficult to start shifting
10:56:22 20 this thing around. It was hard enough as it was when the
21 Legislature pass these districts. People held back and held
22 back and held back. And now, they're right in the meat of
23 these campaigns. And I just think it would be terrible if we
24 change course on all these candidates running for these various
10:56:40 25 offices, Democrat, Republican, doesn't matter. It's going to

1 have the very same detrimental effect on those candidates and
2 on those congressmen, sitting congressmen if all of a sudden
3 these things are moved around some more.

4 And the second thing I would say is, I've tried to say a
10:56:55 5 little bit earlier, Covington County doesn't fit with the First
6 Congressional District. They're wonderful people over there.
7 I have good friends. I worked with a lot of them when we were
8 replacing the president of the community college. But I don't
9 think they would want to be in a district with Mobile because
10:57:09 10 they look to Dothan. They look to the Wiregrass.

11 So that map that has Covington County with Mobile, that
12 just doesn't fit. And I think the way the Legislature has
13 drawn the First Congressional District makes all the sense in
14 the world, given the needs that they have to try to take a few
10:57:26 15 areas away from that district presently because of the growth
16 in Baldwin County. I think they did the best they could
17 possibly do.

18 MR. DAVIS: Thank you, Your Honor.

19 MS. WELBORN: I'm sorry. We just objected to that
10:57:38 20 last line of questioning and move to strike it as beyond the
21 scope of Mr. Byrne's direct. Asking, you know, anything else
22 he wanted to add was not in Mr. Byrne's direct examination.

23 JUDGE MARCUS: It would have been wiser to object
24 before the question was asked, but while the question I think
10:57:58 25 did go beyond, the answer, I think bore upon the stuff that

1 came up in cross. So the objection is overruled, and we will
2 not strike that portion of the testimony. But thank you.

3 Any other questions, Mr. Davis, that you have for
4 Mr. Byrne?

10:58:13 5 MR. DAVIS: No, Your Honor. That completes redirect.

6 JUDGE MARCUS: Any other questions any of the lawyers
7 have for Mr. Byrne?

8 All right. Judge Moorer, Judge Manasco, did either of you
9 have a question for Mr. Byrne?

10:58:30 10 JUDGE MANASCO: None from me.

11 JUDGE MOORER: No, sir.

12 JUDGE MARCUS: Mr. Byrne, I have got a question for
13 you. Perhaps you can help me with this.

14 On your direct examination by Mr. Davis, you were asked
10:58:47 15 about the 2021 map that the Legislature adopted for the State
16 Board of Education.

17 THE WITNESS: Right.

18 JUDGE MARCUS: And it was observed that -- you
19 observed that you testified, if I heard you right, with regard
10:59:06 20 to that and urged the Legislature not to split Mobile County.
21 Did I have that right?

22 THE WITNESS: Yes, sir, that's what I said.

23 JUDGE MARCUS: And then the testimony came out that,
24 in fact, the Legislature in 2021 split Mobile County in the
10:59:29 25 maps that it drew for the board of education, and it

1 specifically split Mobile County between Districts 1 and 5.
2 This is the board of ed map I am talking about. Do you recall
3 all of that discussion?

4 THE WITNESS: Yes, sir, I do.

10:59:47 5 JUDGE MARCUS: I just have one question, if you know
6 the answer. I was curious, do you know why the Legislature
7 actually split Mobile County between Districts 1 and 5 when
8 they drew the board of education maps?

9 THE WITNESS: Yes, sir. They actually did this in
11:00:09 10 2011. The other district -- District 1 is the one down here.
11 District 5 I guess is the other one. That district lost a lot
12 of population, and they had to pick it up somewhere. And they
13 believed that the best way to pick it up was to go south into
14 Mobile County.

11:00:25 15 So while I was sympathetic to the fact the Legislature had
16 to make some significant changes to that district, I didn't
17 like the fact that they were splitting Mobile County because of
18 the fact the Mobile County school system is so big and has so
19 many issues as any big school systems does.

11:00:41 20 I would like to see a school board member that's focused
21 on that primarily as their job.

22 JUDGE MARCUS: Thank you much.

23 Any follow-up questions from any of the lawyers based on
24 the question that I had asked Mr. Byrne? Mr. Davis?

11:00:55 25 MR. DAVIS: No, Your Honor.

1 JUDGE MARCUS: Mr. Whatley?

2 MR. WHATLEY: No, Your Honor.

3 JUDGE MARCUS: Mr. Osher? Counsel for --

4 MS. WELBORN: No, Your Honor.

11:01:03 5 JUDGE MARCUS: -- for Milligan?

6 All right. We thank you very much for your time and

7 efforts this morning, Mr. Byrne, and you are excused.

8 THE WITNESS: Thank you, Your Honor.

9 JUDGE MARCUS: Does that close the presentation of
11:01:20 10 evidence for the state?

11 MR. DAVIS: It does, Your Honor.

12 JUDGE MARCUS: And that would be for both the
13 Secretary of State as the party defendant and for the
14 intervening defendants McClendon and Pringle, correct?

11:01:38 15 MR. DAVIS: That's right, Judge.

16 JUDGE MARCUS: Okay. Did -- before we get to
17 exhibits, which I wanted to talk about before we went on to
18 closing arguments, was there anything by way of rebuttal either
19 from the Milligan plaintiffs, the Caster plaintiffs, or the
11:01:55 20 Singleton plaintiffs?

21 MR. BLACKSHER: Singleton plaintiffs, no, Your Honor.

22 JUDGE MARCUS: Thank you. Milligan?

23 MR. ROSS: No, Your Honor.

24 JUDGE MARCUS: And for Caster, Ms. Khanna?

11:02:09 25 MS. KHANNA: No, Your Honor.

1 JUDGE MARCUS: Okay. So, then, we can turn to the
2 question of the objections on some of the exhibits. I think
3 that was one open piece of business that you flagged late
4 yesterday for us, Mr. Davis, and I think it is -- there are
11:02:29 5 some open questions. I wanted to give you all a chance to
6 address the exhibits to which you are objecting. We will
7 generally take it under advisement, and the three judges will
8 have a chance to discuss it, and we will give you our answer or
9 answers in any written opinion or opinions that we may present.

11:02:53 10 But let's talk first about the -- I guess the exhibits
11 with regard to Milligan. There was an objection to -- we
12 received M-1 to 46, 48, 49, 50. There was an objection to 47,
13 if I recall that right. Mr. Ross, that was a transcript of the
14 Alabama Senate floor debate on November the 3rd, 2021. And I
11:03:35 15 think the objection was simply based on authenticity. Do I
16 have that right, Mr. Ross?

17 MR. ROSS: Yes, Your Honor. We were waiting to hear
18 back from Mr. Davis. He was supposed to, I guess, listen to
19 the recording and review the transcript.

11:03:52 20 JUDGE MARCUS: Gotcha. Mr. Davis, where are we on
21 M-47?

22 MR. DAVIS: Judge, I haven't had a chance to listen to
23 the recordings, but I think the cat's out of the bag on this
24 one, anyway. I think this same transcript is in the record
11:04:06 25 elsewhere as an exhibit to a deposition. So for purposes of

1 the preliminary injunction, we will withdraw the objection.

2 JUDGE MARCUS: Okay. So we -- so the record is clear,
3 Mr. Ross, we will receive M-47, that transcript.

4 I think that was the only objection there were to your
11:04:25 5 exhibits. Have I got that right, or did I miss something?

6 MR. ROSS: That's right, Your Honor.

7 JUDGE MARCUS: Okay. Let's turn to the Singleton
8 exhibits, if we could.

9 Mr. Quillen, I take it you will be commenting on those as
11:04:41 10 we go along.

11 MR. QUILLEN: Yes.

12 JUDGE MARCUS: Okay. Help me with this. As I recall
13 this, and I reviewed our original discussion at the beginning
14 of the trial, Singleton 1 to 31 was received. 35 to 41 was
11:04:57 15 received. 44 and 45 were received. There was no objection to
16 46 to 50 and 53 to 59. Although some of those overlapped with
17 exhibits that the defendants had already put in. Do I have
18 that right?

19 MR. QUILLEN: That's right.

11:05:15 20 JUDGE MARCUS: Okay. So the first objection or
21 objections that I saw that were interposed were the Singleton's
22 32, 33, and 34. And that concerned some mapping software that
23 was used that was the DRA acronym if my recollection has that
24 correct. And that was data drawn from the DRA created to use
11:05:47 25 the maps and the software. There were objections to relevance

1 and authenticity. I think they really -- the arguments were
2 the same on 32, 33, and 34.

3 Did you want to address those three exhibits, Mr. Quillen?
4 And then we will give Mr. Davis a chance to interpose his
11:06:13 5 objections.

6 MR. QUILLEN: Yes. And I think I can probably
7 accelerate the discussion. There were nine exhibits that were
8 objected to, and that was 32, 33, and 34, 42 and 43, 51 and 52,
9 60 and 61. We don't intend to rely on those in our proposed
11:06:38 10 findings of fact and conclusions of law. And we did not refer
11 to them in this hearing. So we are fine with just withdrawing
12 them for purposes of this preliminary injunction hearing.

13 JUDGE MARCUS: Okay. So 42, 43, 51, 52, 60, 61, and
14 32 to 34 are not offered and not received. Do I have that
11:06:58 15 right?

16 MR. QUILLEN: That's right. There is one other issue
17 that we wanted to cover, though.

18 JUDGE MARCUS: Sure.

19 MR. QUILLEN: On ECF number 70, on the Singleton
11:07:10 20 docket, is a set of stipulations of fact between the Singleton
21 plaintiffs and the state that was not on the exhibit list, but
22 it's been agreed to by the Singleton plaintiffs and the state.
23 So just to make sure that it is, you know, reflected in the
24 record here, we would like to introduce that as Exhibit -- I
11:07:34 25 guess we will call it S-70.

1 JUDGE MARCUS: That would be Singleton 70, right?

2 MR. QUILLEN: Yes. We will call it Singleton 70. And

3 I think our understanding would be consistent with the other

4 exhibits that have come in, that the other plaintiffs wouldn't

11:07:49 5 be bound by it, but could use it if they saw fit.

6 JUDGE MARCUS: But it would be coming in to the record

7 in these proceedings?

8 MR. QUILLEN: Yes, it would.

9 JUDGE MARCUS: Any objection, Mr. Davis?

11:08:00 10 MR. DAVIS: Mr. Quillen, is this the second set of

11 stipulations that we entered into?

12 MR. QUILLEN: That's correct.

13 MR. DAVIS: No objection from the defendants, Your

14 Honor.

11:08:07 15 JUDGE MARCUS: Does anyone else have any objection to

16 the receipt of Singleton 70?

17 MR. ROSS: Your Honor.

18 JUDGE MARCUS: Yes.

19 MR. ROSS: The Milligan -- I wanted to be clear that

11:08:18 20 this is -- that those stipulations will not be used in the

21 Milligan case at all. We just -- we didn't have any part of

22 drawing up those stipulations.

23 JUDGE MARCUS: I understand. So you are not relying

24 on them and you are not using them. I understand the point.

11:08:33 25 MR. ROSS: Yes.

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1 JUDGE MARCUS: This is just a piece of evidence that
2 the Singleton plaintiffs have offered, and the state has no
3 objection to it.

4 Anything else on that, Ms. Khanna, for the Caster
11:08:47 5 plaintiffs?

6 MS. KHANNA: Only to echo what Mr. Ross said. This
7 has no part of the Caster case, and we certainly have not
8 agreed or stipulated to any of those.

9 JUDGE MARCUS: Okay. With that, let's turn,
11:09:00 10 Mr. Davis, to your exhibits. Most of them were received, but
11 there were some objections, and I wanted to go briefly to those
12 to see where we were.

13 My record shows we have received following: Defendants' 1
14 to 14, 19 to 26, 31 to 48, 50 to 67, 69 to 71, Defendants'
11:09:30 15 Exhibits 72 and 73 inclusive to 91, Defendant's Exhibits 98 and
16 99, Defendants' Exhibits 107 to 137 inclusive, Defendant 138,
17 Defendant 142, Defendant 144, Defendant 145, Defendant 147 to
18 149, Defendant 155, Defendants' 159 to Defendants' 161,
19 Defendant 164, 165 inclusive to 71. There had been an
11:10:18 20 objection to Defendants' 72, but that objection was dropped, if
21 I recall that and have that properly listed. And so Defendant
22 172 will come in.

23 Do I have all of these of these correct, Mr. Davis? I'm
24 sorry, Mr. Davis. You are muted.

11:10:43 25 MR. DAVIS: Apologies. Yes, Your Honor. That's

1 consistent with my notes.

2 JUDGE MARCUS: Okay. So let's go to the couple that
3 are -- or appear to still be in dispute.

4 The first one I have was Defendant Exhibit 15. That was a
11:11:00 5 public hearing transcript of the joint legislative committee on
6 reapportionment going back to the '92 drawings. This was a
7 hearing that occurred on June the 14th, '91, if I have that
8 right. Do I have that right, Mr. Davis?

9 MR. DAVIS: Yes, Judge.

11:11:20 10 JUDGE MARCUS: And the objection I think the Milligan
11 folks raised was A, it wasn't relevant, at least as far as they
12 could see; and, B, that it was hearsay to the extent you were
13 offering it for the truth of its contents.

14 Do you want to tell me your response to the relevance and
11:11:43 15 hearsay objection, assuming Defendant 15 is still objected to
16 by the Milligan folks. Mr. Ross?

17 MR. ROSS: Yes, Your Honor. We also have foundation
18 objection, as well.

19 JUDGE MARCUS: Okay. Mr. Davis?

11:11:59 20 MR. DAVIS: Well, the foundation objection is new. It
21 wasn't raised until yesterday. On the joint status report,
22 it's only relevant hearsay that were addressed.

23 JUDGE MARCUS: Correct.

24 MR. DAVIS: I would say this: All of these historical
11:12:14 25 documents about the congressional records were 15 plus many

1 others. We think, of course, their relevant when talking about
2 the districts. We have said many times that Alabama is
3 preserving the core of districts. Knowing how they got the way
4 they got we think is directly relevant to the considerations
5 before the Court. And if the Court chooses to put less weight
6 on some of it than others, it certainly can do so. But, of
7 course, of these records of how the '92 plan got developed, how
8 the 2001 plan got developed and the 2011 and the 2021 are
9 relevant.

10 As far as hearsay, these are official transcripts -- 15,
11 16, and 17 were the public hearings. And the Court has a great
12 deal of leeway to consider hearsay evidence and preliminary
13 injunction hearing.

14 I would add, too, in terms of foundation, authenticity,
15 pardon me, these are 30-year old documents. We can give you a
16 declaration that says when we got the request for production
17 from the Milligan plaintiffs, we went as they requested us to
18 do and looked for records related to preclearance of these old
19 congressional plans and any other documents that we had about
20 congressional districting. We found these in our filing
21 cabinets and our storage records in the office. We think
22 that's sufficient for -- to consider these 30-year old
23 documents authentic.

24 But also, believe it or not, for 15, 16, and 17, yesterday
25 afternoon, we found the reporter who took down these

1 transcripts and we can give you a declaration from him, as
2 well. So I don't know why we need to fight over these. That's
3 --

4 JUDGE MARCUS: In connection with what Mr. Davis said,
11:14:11 5 does that satisfy you on authenticity, Mr. Ross?

6 MR. ROSS: I believe so, Your Honor. We --

7 JUDGE MARCUS: You still have your objections. That's
8 not -- your objection still should be addressed regarding
9 relevancy and hearsay, but let me ask you a couple of questions
11:14:29 10 about that.

11 Why wouldn't it be relevant insofar as it bears on the
12 issue of intent for the drawing of the '92 maps since the claim
13 has been made that essentially the successive iterations or
14 maps built on the foundation of the '92 map, and doesn't this
11:14:54 15 bear on the intent of the Legislature back then, the
16 transcript? And on the equal protection claim you've raised?

17 MR. ROSS: The racial predominance claim? Your Honor,
18 my concern is that it appears that Mr. Davis is intending to
19 use this not with respect to the racial gerrymandering claim,
11:15:12 20 but with respect to the Section 2 claim. We don't think that
21 it has a bearing on our current Section 2 claim, which is
22 solely about discriminatory effects.

23 I understand your point, Your Honor, that it could have
24 some bearing on why they drew the majority-black district that
11:15:32 25 they drew, and that they have -- from our perspective carried

1 forward to today.

2 But as I said, we don't think it has any bearing on our
3 Section 2 claim at all.

4 JUDGE MARCUS: Are you offering it on both or just on
11:15:45 5 the equal protection claims that have been made?

6 MR. DAVIS: I do not know, Your Honor, for sure if we
7 will cite to these documents addressing the Section 2 claim. I
8 think we could. There could be history of the districts could
9 relate to communities of interest which we think would be very
11:16:08 10 relevant to the Section 2 claim. But the Court will be able to
11 discern whether it's due any weight for one claim or another.

12 JUDGE MARCUS: I understand. I will say in a
13 preliminary injunction hearing, the law is pretty clear that
14 hearsay may be considered and received insofar as the materials
11:16:32 15 are sufficiently relevant and insofar as there is a sufficient
16 indicia of reliability and trustworthiness.

17 We will -- I take it the argument on 15 is the same as the
18 argument on Defendant Exhibit 16, which is the public hearing
19 from the same joint legislative committee, August 21, '91, and
11:17:01 20 the same argument for the public hearing transcript of the
21 joint legislative committee on October 2nd, '91, the same
22 objections -- relevancy, hearsay -- pertain to all three, so
23 there will be nothing more we have to say about those.

24 Do I have that right, or is there something you wanted to
11:17:22 25 add, Mr. Ross?

1 MR. ROSS: That's right, Your Honor, 15, 16, and 17.

2 JUDGE MARCUS: All right. We will reserve, give the
3 judges the opportunity to address it, and decide.

4 I should say parenthetically that you can make use of
11:17:36 5 whatever exhibits we've reserved on if you deem it appropriate
6 in the course of your closing argument. This is a three-judge
7 panel. We are the triers of the fact and the law, and we do
8 not have a jury here.

9 The next one was Defendants' Exhibit 18. That was --
11:18:03 10 Mr. Davis, but my question is, wasn't that already received in
11 evidence? Wasn't this a duplicate of what came in, in one of
12 your other exhibits?

13 MR. DAVIS: I don't know if that's the case or not. I
14 have no interest in a duplicate exhibit. If someone can assure
11:18:21 15 me...

16 JUDGE MARCUS: I just -- what's the objection to that,
17 Mr. Ross, the DOJ objection letter?

18 MR. ROSS: That was the only objection, Your Honor. I
19 believe it already came in through one of the Milligan
11:18:31 20 exhibits. But if not, our only objection was to flag for them
21 that it was a duplicate of something we thought had already
22 been admitted into evidence.

23 JUDGE MARCUS: Thanks very much. So the record is
24 clear, Mr. Davis, Defendant 18 is received.

11:18:44 25 MR. DAVIS: Thank you.

1 JUDGE MARCUS: Whether it's a duplicate or not. This
2 way we will make sure we haven't made a mistake in that.

3 MR. DAVIS: I appreciate that.

4 JUDGE MARCUS: Defendant 27, there was an objection
11:18:54 5 to. That was the 2011 plan cited in *Alabama v. Holder*.

6 What were you seeking to put in there, Mr. Davis, and why?
7 There was an objection on the grounds of relevance, and the
8 question was what relevance this has to the 2021 map and the
9 Section 2 claim.

11:19:25 10 MR. DAVIS: And, Judge, in 2011, Alabama sought
11 preclearance, both through the administrative process and
12 through the judicial process. To our way of thinking, this was
13 just part of the story of how the maps came to be what they
14 are.

11:19:38 15 JUDGE MARCUS: And your objection, Mr. Ross?

16 MR. ROSS: Your Honor, we stipulated that the maps
17 were precleared, and as the Court well knows, Section 5
18 preclearance doesn't mean anything. It has no bearing
19 whatsoever on the current process at all.

11:19:53 20 So we don't think that these -- the fact that the state
21 filed this lawsuit is relevant at all, particularly because we
22 have already stipulated that it gained preclearance in 2011.

23 JUDGE MARCUS: Help me with this what happened here.

24 Did the Department of Justice basically give its blessing
11:20:09 25 to the 2011 plan? And if the answer to the question is yes,

1 wouldn't that bear on the 2021 plan insofar as it basically
2 copied in the main -- the plan from '11? Just help me
3 understand this.

4 MR. ROSS: Two points, Your Honor. One, as I said,
11:20:31 5 and as you know, Section 5 of the Voting Rights Act expressly
6 says that preclearance does not mean that the Justice
7 Department is giving its blessings. The Section 2 standard is
8 separate from the Section 5 standard, so the Section 5 standard
9 was only essentially retrogression, did you decline to draw a
11:20:49 10 majority-black district. It doesn't consider whether or not
11 you failed to draw a second majority-black district. And so
12 that -- that is our the basis of our -- I mean, it's not the
13 basis for our relevance objection, but is why I said we didn't
14 think the prior clearance is relevant at all.

11:21:08 15 JUDGE MARCUS: I understand. Mr. Davis, anything
16 further on that?

17 MR. DAVIS: Judge, whether preclearance or not has any
18 legal significance, the Court can sort out. These documents
19 related to the preclearance effort contain a lot of helpful
11:21:19 20 information. Because we told the Department of Justice, here
21 are the districts, here are the demographics of the districts.
22 We think it provides a lot of helpful information within those
23 documents about the plan that was being submitted.

24 MR. ROSS: Your Honor, if I may.

11:21:34 25 JUDGE MARCUS: Sure.

1 MR. ROSS: We -- we can't -- the fact that they filed
2 a complaint doesn't establish any facts whatsoever. We filed a
3 complaint. That doesn't mean that in ten years someone could
4 we rely on it and say all the things in our complaint are true,
11:21:49 5 so we don't think it has any bearing except perhaps to show
6 they filed a complaint.

7 JUDGE MARCUS: I understand. We will reserve on that.
8 I take it the same issues obtained for Defendant 28 and 29,
9 same objection, right? Mr. Ross?

11:22:13 10 MR. ROSS: Yes, Your Honor.

11 JUDGE MARCUS: Okay. We will reserve on 28 and 29.

12 And I guess 30 falls into the same thing. That was simply
13 an errata sheet correcting Defendant 27, if I have that right.
14 Do I have that right, Mr. Davis? You're muted, Mr. Davis.

11:22:34 15 MR. DAVIS: Yes, Your Honor, that's correct.

16 JUDGE MARCUS: Okay. So we will reserve on 27 to 30
17 inclusive.

18 The next one was Defendant 49. That was the annual report
19 -- 2020 annual report of the state personnel board issued by
11:22:54 20 the Alabama State Personnel Department.

21 If I understood the objection, it was a relevancy object,
22 right?

23 MR. ROSS: Yes, Your Honor. And there was a
24 foundation issue. We don't know where the document came from
11:23:13 25 or who created it.

1 JUDGE MARCUS: Mr. Davis?

2 MR. DAVIS: Well, as for relevance, Your Honor, the
3 plaintiffs' experts have made various contentions, including
4 whether there's discrimination in state government in the
11:23:25 5 employment of state government. And this report provides
6 statistics for how many people who work in state government are
7 African-American. And African-Americans are disproportionately
8 represented in government.

9 As far as foundation, that's not raised until today. And
11:23:40 10 so we think it's too late to add that objection. If it had
11 been raised earlier, I might have been able to address it
12 between now and the date that our objections were due.

13 MR. ROSS: The only additional point on that is that
14 our experts testified about federal court cases finding that
11:24:02 15 Alabama engaged in racial discrimination. And so this has no
16 bearing whatsoever about how many black people may work for the
17 state if they're being discriminated against as federal courts
18 have found repeatedly.

19 JUDGE MARCUS: I think we have our objection. We will
11:24:16 20 reserve on it.

21 The next one is Defendants' 68. That was the application
22 of a former Secretary of State back in 1992 who was an
23 appellant in the Supreme Court in the *Wesch* litigation.

24 And there was an objection there.

11:24:41 25 Your objection there, Mr. Ross, was?

1 MR. ROSS: Your Honor --

2 JUDGE MARCUS: One was --

3 MR. ROSS: Your Honor, I -- the basis for the hearsay
4 objection was the same concern that I just raised with the
11:24:54 5 complaint. The fact that you filed a complaint or filed a
6 brief in court doesn't mean that the Court can take anything
7 from the allegations or facts in that brief for complaint. And
8 so we just have a concern that the state as Mr. Davis said is
9 trying to rely on this for facts and anything else.

11:25:13 10 JUDGE MARCUS: Mr. Davis?

11 MR. DAVIS: Judge, we think this is part of the
12 history of the *Wesch* litigation. It's not just relying on what
13 Secretary Kemp said or what he alleged in his pleadings, but
14 the fact of who was doing what -- who was for the plan, who was
11:25:30 15 opposed to the plan, who was appealing, who was seeking a stay.
16 We think that's part of the story of the '92 plans and ought to
17 be considered for making the record complete.

18 JUDGE MARCUS: I take it the same issues obtained with
19 regard to Defendants' 92 and Defendants' 93 to 97. That
11:25:52 20 appears to be an appendix to a brief submitted in the *Wesch*
21 litigation from the appellees in the case. 92 was a letter as
22 best I can tell from the Department of Justice to the Alabama
23 Attorney General regarding the '92 map. It was a single
24 document. There the question was really what relevance this
11:26:22 25 has.

1 I know as a general matter it tells a story about what
2 happened in '92. But this -- does this letter from the
3 Department of Justice have any bearing on any issue in this
4 case?

11:26:37 5 MR. DAVIS: I'm sorry, Your Honor.

6 JUDGE MARCUS: It may, but it just didn't jump off the
7 page at me when I looked at it.

8 MR. DAVIS: Which exhibit are you referring to at the
9 moment?

11:26:46 10 JUDGE MARCUS: 92. Defendant 92.

11 I moved on from 68 to the Defendant 92, which, as I
12 understood it, was an appendix to the brief of one of the
13 parties in the *Wesch* litigation. And the only thing in that
14 exhibit was a single letter from the Department of Justice to
11:27:15 15 the Alabama Attorney General regarding the '92 map, and in it,
16 there was apparently no objection interposed by the Department
17 of Justice. It bore on a deadline, the qualifying deadline,
18 and that struck me as having nothing to do with even the story
19 in the broadest sense.

11:27:40 20 MR. DAVIS: Oh. I -- 92, I am looking at, Judge,
21 seems to have more to it than that.

22 JUDGE MARCUS: That was the only thing. I may have
23 missed it.

24 Now, with regard to 93 to 97, there are other pieces of
11:27:56 25 the appendix to the jurisdictional statement filed by Alabama.

1 And I was just talking about 92 appeared to be only a
2 single letter from the Department of Justice regarding a
3 qualifying deadline that didn't seem to me to have any bearing
4 on this case taking the broadest view of relevance that I could
11:28:22 5 think of. I mean --

6 MR. DAVIS: I will share if I can, Judge. I show a
7 motion to dismiss or affirm and who was asking to do so or not.

8 JUDGE MARCUS: Is this part of 92?

9 MR. DAVIS: Yes, Judge. It's part of 92 on the pdf I
11:28:38 10 have.

11 JUDGE MARCUS: Okay. So I may have not properly
12 characterized it.

13 What's in Defendant 92? Why don't you lay that out for
14 me?

11:28:46 15 MR. DAVIS: It is -- I'm struggling to keep all these
16 separate.

17 JUDGE MARCUS: Sure. Take your time.

18 MR. DAVIS: It's part of -- it is appellee Wesch's
19 motion to dismiss or affirm. I show it as a 15-page pdf. The
11:29:06 20 letter you are referring to -- the letter is part of it.

21 JUDGE MARCUS: Okay. So it includes the letter, but
22 it was the brief, the whole brief?

23 MR. DAVIS: Correct, Judge.

24 JUDGE MARCUS: Is there an objection to that,
11:29:20 25 Mr. Ross? You can take that down. Thanks.

1 MR. ROSS: Your Honor, again, our concern is obviously
2 the Court can take judicial notice of someone having filed a
3 brief. Our concern is that the state is trying to use it for
4 more than that. It's trying to say that the things that are in
11:29:35 5 the brief are true or not true, and we don't think that's
6 appropriate at all.

7 JUDGE MARCUS: Anything further on that? If not, we
8 will reserve.

9 Okay. The next grouping was Defendants' 93 to Defendant
11:29:50 10 97 inclusive. And I saw that as a series of attachments in an
11 appendix to the jurisdictional statement filed in the Supreme
12 Court. Again, it related to 1992. Do I at least have an
13 accurate description of what's in 93 to 97?

14 MR. DAVIS: Yes, Judge. We think it has helpful
11:30:21 15 information about the procedural history of the *Wesch*
16 litigation.

17 JUDGE MARCUS: Anything further on the point,
18 Mr. Ross, beyond what's already been said?

19 MR. ROSS: No, Your Honor. The same relevancy and
11:30:35 20 hearsay arguments.

21 JUDGE MARCUS: We will reserve on 93 to 97.

22 The next grouping were Defendants' exhibits 100 to 106
23 inclusive. Those were the preclearance submissions made by
24 Alabama to the Department of Justice, regarding the 2011 maps.
11:30:57 25 Have I described it accurately?

1 MR. DAVIS: Judge, these were exhibits to a
2 preclearance submission.

3 JUDGE MARCUS: Right.

4 MR. DAVIS: Each is a different map that was proposed.

11:31:08 5 JUDGE MARCUS: Right. Right. Now, as I understood
6 the objection, it was a singular objection by Mr. Ross, maybe
7 fell into the category of the doctrine of completeness. He
8 didn't object to what you offered. He objected because you
9 only chose a small piece of it, and you wanted it all in. Do I
11:31:30 10 have that right, Mr. Ross, or have I mischaracterized that?

11 MR. ROSS: I think that's generally true, Your Honor.
12 I think it also was that we frankly may not have had the
13 opportunity to confirm or whether or not this was everything
14 that was submitted with the map, and, you know, again these are
11:31:45 15 things that are older. And so that was the basis of our
16 concern, yes.

17 JUDGE MARCUS: So if he puts everything in and shows
18 it to you, you will have no objection, if I hear you right?

19 MR. ROSS: That's right, Your Honor. We can withdraw
11:32:02 20 the objection, just to make things easier for the Court.

21 JUDGE MARCUS: Okay. So let's make sure, Mr. Davis,
22 that you include the whole kit and caboodle, not just picking
23 your way through the preclearance submission. Does that work
24 for you?

11:32:17 25 MR. DAVIS: Of course. I don't know of anything this

1 is missing. I don't think anything is. If there is, Mr. Ross
2 has it, and he's welcome to put it in. Produced.

3 JUDGE MARCUS: Mr. Ross, is there something missing
4 that you cannot isolate and point out?

11:32:32 5 MR. ROSS: At this moment -- I'm sorry. At this
6 moment, Your Honor, I guess I would -- this is more of a -- we
7 were working on this quickly over the holiday, so that may have
8 been the issue. I'm sorry.

9 JUDGE MARCUS: All right. We will receive Defendants'
11:32:45 10 100 to 106. We will give you the opportunity to speak with
11 Mr. Davis and come back with something else if it has been
12 excluded. And we will give you until the end of business
13 tomorrow just to let us know if you would be kind enough on
14 that.

11:33:00 15 With that caveat, Mr. Davis, we receive Defendant 100 to
16 106 inclusive.

17 The next item was Defendant 138. That was the
18 reapportionment committee guidelines from 2011.

19 I think the objection there was relevancy, Mr. Ross?

11:33:22 20 MR. ROSS: Yes, Your Honor. Yes. That was our
21 concern was that if it were relevant or not.

22 JUDGE MARCUS: I think it came up in the course of an
23 examination of one of the witnesses.

24 Mr. Davis, comment about 138.

11:33:44 25 MR. DAVIS: Yes. Trey Hood was -- Dr. Trey Hood was

1 asked yesterday about the 2011 guidelines and whether it did or
2 it did not include observing the core of districts as a
3 guideline. Right.

4 MR. ROSS: Your Honor -- sorry. Just to save time, we
11:34:06 5 will drop the objection.

6 JUDGE MARCUS: All right. We will receive Defendant
7 138.

8 139 from the defendant related to the *Thompson v. Merrill*
9 litigation, if I have that right. And what it was, was an
11:34:21 10 interrogatory to the Alabama board of pardons. And I wasn't
11 sure that I understood what the relevance was in that regard.
12 And I think the same issue came up with regard to Defendant
13 140. Do I have that right, Mr. Ross, the basis of your
14 objection?

11:34:49 15 MR. ROSS: Yes, Your Honor.

16 JUDGE MARCUS: Mr. Davis?

17 MR. DAVIS: We agree those two should be considered
18 together.

19 The relevance is responding to plaintiffs' experts. Their
11:35:03 20 Senate Factor experts talk about the proportionality of people
21 who have been disenfranchised because of felony convictions.
22 This is sworn testimony. I do not know as I'm sitting here if,
23 in fact, we will cite to it. But we do think that because this
24 sworn testimony addresses the felon disenfranchisement and --
11:35:25 25 that it does relate to what plaintiffs' experts have alleged

1 concerning felon disenfranchisement in Alabama.

2 JUDGE MARCUS: The heart of the objection was
3 relevancy and hearsay or just relevancy?

4 MR. ROSS: Relevance and hearsay, Your Honor, but, you
11:35:43 5 know, I think the primary concern was that the state should
6 have someone come and testify about what this is and where it's
7 coming from and shouldn't just be allowed to drop in all these
8 documents which we have never seen before and have not heard
9 anyone testify about today. And I think, again, there's a
11:36:00 10 relevance concern, because this is from, again, from some other
11 litigation -- actually, this Court -- that the state is trying
12 to bring in.

13 JUDGE MARCUS: Mr. Davis, how do we know that it is
14 what it purports to be from the Alabama Board of Pardons and
11:36:16 15 Parole? That is one of the points that he's at least raising.

16 MR. DAVIS: It's sworn testimony, Judge. And these
17 are documents from this litigation. It's --

18 JUDGE MARCUS: I'm sorry. Could you help me? Whose
19 sworn testimony does it embody?

11:36:33 20 MR. DAVIS: Lee Gwaltney a member of the Alabama Board
21 of Pardons and Paroles.

22 JUDGE MARCUS: Okay. We will reserve on 139 and 140.

23 The next one was Defendant 141, which was an article from
24 the BBC News purporting to address or explain why President
11:37:04 25 Trump got support from minorities in 2020.

1 Were you offering that for the truth of its contents,
2 Mr. Davis?

3 MR. DAVIS: Yes. And I don't think that's -- I don't
4 think this came up in any exam. I'm told maybe it did.

11:37:23 5 JUDGE MARCUS: It did, but only -- if my recollection
6 is right, only very, very briefly.

7 Is there any objection to this, Mr. Ross?

8 MR. ROSS: Yes, Your Honor. They said they're trying
9 to use it for anything that's -- we don't think it's relevant.
11:37:39 10 We think it has multiple layers of hearsay.

11 JUDGE MARCUS: Mr. Davis? Why should we take the BBC
12 report, news report as telling any -- us anything about why
13 President Trump got support from minorities in 2020? It all
14 may be absolutely true and easily provable. His objection is
11:38:05 15 this isn't the way to prove it.

16 MR. DAVIS: I have nothing to add to what Mr. Barrett
17 may have added yesterday.

18 JUDGE MARCUS: We will reserve on 141.

19 The next one was Defendant 143, if I have it right.
11:38:20 20 Supplemental stipulation in the *Wesch* litigation in '92. There
21 was a statement that according to the 1990 data, the district
22 was large enough to create -- or the population was large
23 enough to create a single majority-minority district. I think
24 the objection there was relevancy. Do I have that right,
11:38:54 25 Mr. Ross?

1 MR. ROSS: Your Honor, we could drop the objection to
2 -- I think this is -- the same information is already in the
3 opinion in the case, so we will drop the objection.

4 JUDGE MARCUS: Without objection, Mr. Davis, 143 is
11:39:05 5 received.

6 144 and 145, those concern the deposition of Mr. Hinaman,
7 which we have. Is there some reason we shouldn't consider
8 this, Mr. Ross?

9 MR. ROSS: Your Honor, I believe we included a copy of
11:39:26 10 that yesterday.

11 JUDGE MARCUS: Okay. So 144 and 145 are received.
12 Those were the -- Mr. Davis, can you hear me okay?

13 MR. DAVIS: I can now, Your Honor. You faded out on
14 my screen.

11:39:54 15 JUDGE MARCUS: I'm sorry. 144 and 145 are received.
16 Those are the two parts of Mr. Hinaman's deposition.

17 The next item I have to which there was an objection was
18 Defendant 146. That was the 2000 map of the population
19 regarding the State Board of Education and the state of
11:40:23 20 Alabama, and it was broken down by counties, and there were
21 various statistics that were being offered. If I understand
22 the objection, that was relevancy, Mr. Ross?

23 MR. ROSS: Yes, Your Honor. And it's also -- frankly,
24 looking at the exhibit, it's difficult to even tell what one
11:40:44 25 can take from it since the lines -- it's not -- you can't

1 really tell what the State Board of Education lines were.

2 JUDGE MARCUS: We're having trouble -- Mr. Ross, we
3 are having trouble hearing you.

4 MR. ROSS: I'm sorry. Give me one moment, Your Honor.

11:40:59 5 JUDGE MARCUS: Sure. Take your time.

6 MR. ROSS: Sorry, Your Honor. Can you hear me now?

7 JUDGE MARCUS: Hear you perfectly. Mr. Davis, are you
8 able to hear Mr. Ross?

9 MR. DAVIS: Yes, Judge. I can hear.

11:41:29 10 JUDGE MARCUS: Thank you.

11 MR. ROSS: Thank you. So I think our primary concern
12 just looking at the document is that it's difficult to tell
13 what it even purports to represent since there's -- it's not
14 clear what the district lines are that they're showing. And so
11:41:47 15 the rest of the information also doesn't appear to be
16 particularly helpful or relevant.

17 JUDGE MARCUS: Mr. Davis?

18 MR. DAVIS: The maps appear elsewhere in the record,
19 Judge, and just the statistics of the plan. The plaintiffs are
11:42:03 20 arguing that because Alabama made certain decisions in its
21 board of education map that it would be okay to make those same
22 decisions in the congressional map, and we strenuously disagree
23 with that. But we want to tell the story of how these board of
24 education maps got to be the way they are. And Your Honor
11:42:21 25 asked Mr. Byrne about that briefly just today. And we think we

1 can tell the story that how it didn't split Mobile County in
2 the '90s, it didn't in the 2000, it did for the first time in
3 the 2010s because they needed to add population and because
4 Alabama was subject to Section 5. This is part of that story.

11:42:41 5 JUDGE MARCUS: Let me ask one question: If I heard
6 Mr. Ross right, one of the concerns he had was just it wasn't
7 clear, legibility, the lines weren't clear. Are they clear in
8 this report? 146?

9 MR. DAVIS: I would say that the map itself is not
11:42:58 10 very clear. It's hard to tell the difference between a county
11 line and a district line. These districts statistics are quite
12 clear, and we believe that the historical map's presented
13 elsewhere in the case, including in Mr. Cooper's report.

14 JUDGE MARCUS: Thank you. We will reserve.
11:43:14 15 Defendant 150. This purported to be a study showing
16 morbidity rates. This came from the CDC. I think it was March
17 of '21 that it came from. I take it you are offering it as a
18 public record.

19 MR. DAVIS: Yes, Judge. It was referenced in
11:43:40 20 Dr. McIntosh's declaration that we submitted and that is in
21 evidence.

22 MR. ROSS: We will drop our objection.

23 JUDGE MARCUS: No objection? Without objection,
24 Defendant 150 is received.

11:43:50 25 152, it had been marked for identification. We have

1 already sustained that objection. That was the Wall Street
2 Journal article being offered for its truth, if I have that
3 right.

4 Did you want to say anything more about that?

11:44:07 5 MR. DAVIS: No, Your Honor. We consider that issue
6 resolved.

7 JUDGE MARCUS: Okay. Defendant 153, that was an
8 article that came from a sentencing project think tank, if I
9 have that right.

11:44:24 10 Anything further on that one? Mr. Ross or Mr. Davis?

11 MR. ROSS: No, Your Honor, just reminding the Court
12 that we don't think anything about other states is relevant.

13 JUDGE MARCUS: Mr. Davis, any comment you had wanted
14 to make, to make this record complete?

11:44:41 15 MR. DAVIS: No, nothing to add, Judge.

16 JUDGE MARCUS: All right. The next one was 154. That
17 was another newspaper article.

18 Any comment about that?

19 MR. ROSS: Just the layers of hearsay, Your Honor.

11:44:59 20 MR. DAVIS: Judge, I do not think this came up in any
21 -- in any witness examination. We thought it of import that a
22 congress -- a state representative from Mobile, an
23 African-American Democrat woman was talking about keeping
24 Baldwin and Mobile County together, but we didn't have the
11:45:21 25 opportunity to question any witness about that.

1 JUDGE MARCUS: Are you still offering it?

2 MR. DAVIS: Sure. I will offer it for the record.

3 JUDGE MARCUS: All right. We will reserve on it.

4 Just so the record is clear, this was a newspaper article about
11:45:38 5 what a congressman may have said.

6 Defendant 155, voter determination letter from the
7 Department of Justice. I think the date was May 18, 2020.

8 MR. ROSS: I believe we dropped that objection if it's
9 -- I think it's just the list of Section 5 objections in
11:45:59 10 Alabama. And if so, we dropped that objection.

11 JUDGE MARCUS: He has got that description right, does
12 he not, Mr. Davis?

13 MR. DAVIS: Yes, that is correct.

14 JUDGE MARCUS: We will receive Defendant 155.
11:46:11 15 Defendant 156, that was the felony voting rights statement
16 prepared by the Alabama Secretary of State apparently. Do we
17 have an objection to that at this point, Mr. Ross?

18 MR. ROSS: Your Honor, it was the same relevance
19 concern. I don't think any of our -- anyone on our side
11:46:31 20 testified about that or anyone else from the Secretary of
21 State.

22 JUDGE MARCUS: Is it a public record under 803(8) of
23 the Federal Rules of Evidence, Mr. Ross?

24 MR. ROSS: Yes, Your Honor. We will drop the
11:46:45 25 objection.

1 JUDGE MARCUS: All right. 156 is received.

2 157 was an article, Mr. Davis, you had offered from the
3 Montgomery Adviser. It was an Alabama Senate profile, and
4 there was a comment by Robert Kennedy, Jr. That was in 157.

11:47:08 5 The objection was, I take it, hearsay, Mr. Ross?

6 MR. ROSS: Hearsay and relevance, Your Honor.

7 JUDGE MARCUS: Mr. Davis?

8 MR. DAVIS: Your Honor, this -- Mr. Kennedy was a
9 candidate who -- or the voting rights expert, Dr. Palmer, and
11:47:33 10 Dr. Liu looked at the election, so we wanted the profile in to
11 confirm his race and the opponent in the election and that he
12 also ran in 2017 in an election that I don't think was
13 considered by one or both of plaintiffs' experts.

14 JUDGE MARCUS: So you're offering it for the truth of
11:47:52 15 its contents as to each of those points?

16 MR. DAVIS: For the characteristics of Mr. Kennedy and
17 for which elections he was a candidate in, yes.

18 JUDGE MARCUS: Mr. Ross, objection? Is that your
19 objection is hearsay?

11:48:04 20 MR. ROSS: Yes, Your Honor. And just to be clear that
21 plaintiffs obviously -- not obviously, but we understand that
22 Mr. Kennedy is African-American, and I believe that the
23 Secretary may have already put in evidence of who ran in the
24 2017 primary election. So we also, again, renew our relevance
11:48:21 25 and hearsay objections for those reasons.

1 JUDGE MARCUS: Just one question, Mr. Davis: Does
2 this duplicate what's already in the record?

3 MR. DAVIS: I'm not sure that the 2017 information is
4 there, but it very well could be, Judge. There's a lot to keep
11:48:36 5 up.

6 JUDGE MARCUS: We will reserve on Defendant 157.
7 Defendant 158, that was the article from the economic
8 policy institute. As I understand it, that's a D.C. think
9 tank, not a public record. We've reserved on that.

11:48:54 10 Any further comment about that, Mr. Ross, Mr. Davis?

11 MR. ROSS: No, Your Honor.

12 MR. DAVIS: Nothing further, Judge.

13 JUDGE MARCUS: All right. We will reserve on 158.

14 162, that Mr. Davis offered was a report from the U.S.
11:49:10 15 commission on Civil Rights dated September 2007, if I have that
16 right. And there was a completeness objection, I believe the
17 defendant put in the front page and only six pages, but
18 apparently the claim is that there was more. And if you put
19 that in, he suggested you wanted to put the balance of it in,
11:49:37 20 as well, Mr. Davis. Do I have that accurate?

21 MR. ROSS: Yes, Your Honor. Although I am having some
22 computer issues, I can't see -- we'll just drop the objection,
23 Your Honor. If it's a government document, it's fine.

24 JUDGE MARCUS: All right. Without objection,
11:49:57 25 Mr. Davis, Defendant 162 is received.

1 The next one was Defendant 163. Isn't that already in the
2 docket sheet, which the Court obviously can take notice of,
3 Mr. Ross?

4 MR. ROSS: Yes --

11:50:17 5 MR. DAVIS: 163 is not needed. We can withdraw
6 offering 163.

7 JUDGE MARCUS: All right. 163 has been withdrawn.

8 Same question I have on Defendant 164. All it is, is the
9 notice of the Hinaman deposition. It's noted on the docket.
11:50:32 10 I'm hard pressed to see an objection to that.

11 MR. ROSS: We had dropped that objection, I believe,
12 Your Honor.

13 JUDGE MARCUS: 164, Mr. Davis, is received.

14 I think that covered your -- your exhibits. Do I have
11:50:51 15 that right?

16 MR. DAVIS: I think that's right, Judge.

17 JUDGE MARCUS: The only thing that was left out from
18 our discussion -- so we have covered Singleton, Milligan. The
19 defendants' exhibits were the Caster exhibits, Ms. Khanna, and
11:51:10 20 we discussed them at the beginning. Just so the record is
21 clear, and you tell me if I have misapprehended any of this.

22 Caster Exhibits 1 to 93 have been received, and 95 to 104
23 have been received. The only objection was to plaintiff Caster
24 Exhibit 94, which was a COVID-tracking project from the
11:51:40 25 Atlantic, if I have that right.

1 MS. KHANNA: Yes, Your Honor. And we will withdraw
2 Exhibit 94.

3 JUDGE MARCUS: Okay. So 94 is not being offered?

4 MS. KHANNA: That's correct. Then I think the only
11:51:51 5 other outstanding issues for Caster plaintiffs' exhibits are --
6 Caster Exhibit 105, I believe, was also admitted into the
7 record during the course of testimony. I believe those were
8 the DOJ guidelines that Mr. Bryan referred to.

9 JUDGE MARCUS: Yes, I believe that is correct. Do I
11:52:12 10 have that right, Mr. Davis?

11 MR. DAVIS: That is my recollection, as well, yes.

12 JUDGE MARCUS: It's in.

13 MS. KHANNA: And then Caster 106 is the amicus brief
14 that Mr. Bryan co-authored in the *Evenwel* Supreme Court case,
11:52:25 15 and I believe that Mr. Davis and I were supposed to confer on
16 what redactions would be appropriate. We sent him a copy just
17 this morning. I know he was in with Representative Byrne, so
18 happy to work that out over the course --

19 JUDGE MARCUS: What's your sense of this one,
11:52:41 20 Mr. Davis?

21 MR. DAVIS: I am confident we will work it out. I
22 have not had a chance to look at the document yet.

23 JUDGE MARCUS: If you would let us know in the next
24 day or two, we would be much appreciative.

11:52:51 25 MR. DAVIS: Gladly.

1 JUDGE MARCUS: Ms. Khanna, was there another one, 107?

2 MS. KHANNA: I believe that's it. I think we have
3 everything resolved for Caster plaintiffs.

4 JUDGE MARCUS: Okay. We have covered the exhibits.

11:53:01 5 The ones we have reserved on, as I said, the judges will confer
6 and give you a ruling when we give you written opinion in the
7 -- in the case.

8 Which brings us then I take it we're at the point where
9 we're ready for closing argument. It may be appropriate to
11:53:20 10 break. It's just a little bit before 12:00. I have 11:53
11 Central Standard Time.

12 So perhaps we should take our lunch break now, and then
13 come back in one hour and proceed with closing. That works for
14 everyone?

11:53:40 15 MR. BLACKSHER: Yes, Judge.

16 MR. DAVIS: Yes, Judge.

17 JUDGE MARCUS: Okay. Have you for the plaintiffs
18 decided how you're going to break up your argument or
19 arguments?

11:53:52 20 MR. BLACKSHER: Yes, Your Honor. The Caster and
21 Milligan plaintiffs have graciously allowed me to proceed
22 first, followed I think by the Caster plaintiffs, and then the
23 Milligan plaintiffs in our closing arguments.

24 JUDGE MARCUS: And as I said, we gave you a total of
11:54:12 25 an hour and a half to be divided up any way you want. Have you

1 reached any determination about that?

2 MR. BLACKSHER: I guess we were thinking it was just
3 30 minutes apiece, and, you know, I'm not sure that I will take
4 30 minutes, but I commit not to do more than that.

11:54:33 5 JUDGE MARCUS: All right. We will leave that to you.
6 And who will be making the argument for Caster, and who will be
7 making the closing argument for Milligan?

8 MS. KHANNA: Your Honor, I will be making the argument
9 for Caster.

11:54:48 10 MR. ROSS: And, Your Honor, it will be myself and my
11 colleague who will be doing the closing for Milligan.

12 JUDGE MARCUS: And you are free to split up your
13 arguments between your lawyers any way you see fit. That's not
14 an issue.

11:54:59 15 One final question before we break for lunch that I have:
16 Did you intend to reserve any of your time for rebuttal? We
17 have given the hour and a half, Mr. Davis, Mr. LaCour, you have
18 that full 90 minutes to respond to the three closing arguments
19 by each of the three sets of plaintiffs.

11:55:21 20 I just wanted to know whether they intended to reserve any
21 time for rebuttal.

22 MR. BLACKSHER: Singleton would like to reserve a
23 little time, maybe five minutes or ten minutes at most.

24 JUDGE MARCUS: Okay.

11:55:34 25 MS. KHANNA: Same with Caster, Your Honor, about

1 five minutes, maybe 15 to 20 between all three of us, I would
2 imagine.

3 MR. ROSS: Same, Your Honor.

4 JUDGE MARCUS: All right. We will leave that to you
11:55:44 5 folks.

6 And with that, it is 11:55, if I have it right. We will
7 bring you back in one hour and proceed. Does that give you
8 enough time to prepare and proceed with your closings for each
9 of the plaintiffs and the defendant?

11:56:06 10 MR. BLACKSHER: Yes, Your Honor.

11 MS. KHANNA: Yes, Your Honor.

12 MR. DAVIS: Yes, Your Honor.

13 MR. ROSS: Yes, Your Honor.

14 JUDGE MARCUS: I should say Mr. LaCour. That works
11:56:15 15 for you?

16 MR. LACOUR: Yes, Your Honor.

17 JUDGE MARCUS: We will see you folks back here in
18 one hour, and we will take up closing argument at that point.
19 Thank you all much.

11:56:26 20 (Recess.)

21 JUDGE MARCUS: I take it the parties are ready to
22 proceed with their closing statements?

23 MR. BLACKSHER: Yes.

24 JUDGE MARCUS: Mr. LaCour, you are ready, as well, and
13:00:16 25 counsel for Caster and Milligan, as well?

1 MR. LACOUR: Yes, Your Honor.

2 MS. KHANNA: Yes, Your Honor. Although I can't -- for
3 some reason, I can't see the Court, any of the judges on the
4 Court.

13:00:27 5 JUDGE MARCUS: Can you see me? Mr. Blacksher?

6 MR. BLACKSHER: I see you, Your Honor, and I see Judge
7 Moorer, and I see Judge Manasco.

8 JUDGE MARCUS: All right. Mr. Ross, are you also
9 ready to proceed?

13:00:29 10 MR. ROSS: Yes, Your Honor.

11 JUDGE MARCUS: All right. We asked Judge Manasco's
12 deputy clerk to give you a five-minute warning when you run up
13 against your 30 minutes.

14 Having said that, Mr. Blacksher, we would be delighted to
13:01:07 15 hear from you. You may proceed.

16 MR. BLACKSHER: Thank you, Your Honor. And first of
17 all, I want to thank the Court, Judge Marcus, Judge Manasco,
18 Judge Moorer, for, first of all, giving us this hearing so
19 promptly. And secondly, for your patience as we spent, what, a
13:01:31 20 week almost in trial.

21 There is a problem here. I am getting Joe Bagley on the
22 screen and not Judge Marcus.

23 But can you see me, Judge Marcus?

24 JUDGE MARCUS: I see you and hear you just fine. Just
13:01:50 25 tell me whenever you are ready to proceed.

1 MR. BLACKSHER: I am ready to proceed now.

2 JUDGE MARCUS: Thanks so very much.

3 MR. BLACKSHER: So it is important for the Court to
4 keep in mind that the Singleton plaintiffs have sought a
13:02:09 5 preliminary injunction based solely on Count One of their
6 amended complaint, which alleges a racial gerrymander, not
7 Count Two of the complaint, which alleges intentional
8 discrimination.

9 And the difference is important for the purposes of
13:02:29 10 understanding the racial gerrymander claim because unlike
11 intentional discrimination, the injuries suffered or found to
12 be unconstitutional in a racial gerrymander claim is the mere
13 segregation of individual voters based on their race separating
14 one from the other based on their race.

13:03:00 15 It is not an injury of vote dilution or any other
16 practical injury to the voter herself. Whereas in our second
17 count, we are alleging that the state purposefully
18 intentionally continued to adopted the 2021 plan for the
19 purpose of discriminating against black voters by denying them
13:03:31 20 an opportunity to elect members of Congress in at least two
21 districts.

22 So the issue in the racial gerrymander case resolves
23 around the 1992 decision. And think Your Honors sort of put it
24 correctly and when we were just before lunch.

13:03:56 25 There's no dispute that the 1992 gerrymander was enacted

1 not for the purpose of discriminating against blacks, but
2 allegedly for the purpose of providing them an opportunity to
3 elect at least one candidate of their choice. And it did so by
4 splitting four counties -- Clarke, Jefferson, Tuscaloosa, and
13:04:29 5 Montgomery -- for the express purpose of creating a
6 majority-black district.

7 And the issue in this case is whether that district drawn
8 and authorized by the Voting Rights Act allegedly in 1992 can
9 still be justified by the Voting Rights Act in 2021. Because
13:04:58 10 there's no dispute -- there's no dispute that the 2021 plan
11 carries forward the 1992 racial gerrymander.

12 In their opposition to our motion for preliminary
13 injunction, the defendant said, quote, both the 2001 and 2011
14 maps maintain the cores of districts, changing them only to
13:05:26 15 equalize population. The 2011 map largely built off the 2001
16 map, which itself, built off the 1992 map.

17 JUDGE MARCUS: Mr. Blacksher, can I ask you a question
18 about what you are raising?

19 MR. BLACKSHER: Certainly.

13:05:45 20 JUDGE MARCUS: If I hear the argument clearly, you
21 seem to be saying that we have to go back to 1992 for the heart
22 of your argument, because that plan was infirm, and it
23 essentially was carried forward in each successive iteration --
24 in 2000, 2011, and 2021. That much I have right, correct?

13:06:14 25 MR. BLACKSHER: Not exactly, Your Honor.

1 JUDGE MARCUS: Okay. Put it to me exactly.

2 MR. BLACKSHER: Well, you used the word infirm. We
3 don't allege that the 1992 *Wesch* plan was constitutionally
4 infirm at that time. At that time, the parties stipulated and
13:06:33 5 the Court agreed that the gerrymander could be justified by
6 complying with Section 2 of the Voting Rights Act.

7 The three-judge district court in *Wesch* specifically said
8 they were not addressing the merits of that question, but it
9 was going to accept the stipulation of the parties that the
13:06:58 10 Voting Rights Act justified it.

11 But the next year, 1993, the Supreme Court in *Shaw v. Reno*
12 announced the racial gerrymandering cause of action, the racial
13 gerrymandering equal protection violation. That the state
14 continued to use the Voting Rights Act to justify perpetuating
13:07:30 15 the 1992 intentional gerrymander based on Section 5 of the
16 Voting Rights Act as counsel has said numerous times, the state
17 felt like it could not reduce the size -- could not reduce that
18 black-majority district District 7 because it would cause
19 retrogression in the ability of blacks to elect candidates of
13:08:00 20 their choice, and, therefore, it was -- it was in compliance
21 with Section 5, and the Justice Department signed off on their
22 submissions under Section 5.

23 But the question of whether Section 5 actually required
24 perpetuating their racial gerrymander was never litigated in a
13:08:24 25 court. It is now before the Court that precise question

1 whether the intentional separation of voters based on their
2 race in District 7 today in 2021 still can be justified by the
3 Voting Rights Act.

4 Now, to be clear, the state's position in their response
13:08:51 5 to our complaint is not that the -- not that the Voting Rights
6 Act can justify gerrymander, but that the 2021 plan now is no
7 longer a gerrymander because the division -- the creation of a
8 majority black CD 7 in 1992 has over the years developed into
9 basically a new set of traditional redistricting principles.
13:09:30 10 It is now the core of what are traditional in the congressional
11 redistricting of Alabama districts. And that -- that is simply
12 wrong as a matter of law. And if I could -- if the Court would
13 allow me to share my screen for a second.

14 JUDGE MARCUS: Sure.

13:10:07 15 MR. BLACKSHER: Share -- I don't want to do that.
16 Sorry. Okay. Now I'm ready. I'm sorry, Judge.

17 JUDGE MARCUS: You take your time.

18 MR. BLACKSHER: So this is *Bartlett vs. Strickland*,
19 2009. And it says, Our holding also should not be interpreted
13:10:42 20 to entrench majority-minority districts by statutory command,
21 for that, too, could pose a constitutional concern. That is
22 essentially what the state is arguing in this case. That over
23 the years, that gerrymander, which was carried out under
24 authorization allegedly of the Voting Rights Act in 1992 is now
13:11:09 25 so entrenched that it is -- that it -- that the Voting Rights

1 Act still justifies it.

2 As you can see, the majority-minority districts are only
3 required at all if all three *Gingles* factors are met.

4 In fact, the law now is that before -- well, let me just
13:11:50 5 back up here. Before we get to strict scrutiny, we want to
6 establish first of all that what we have with the 2021 plan is,
7 in fact, a racial gerrymander.

8 So there's no dispute among the parties that the 2021 plan
9 perpetuates the 1992 majority-black district in CD 7.

13:12:19 10 And the fact that it was drawn color blind allegedly by
11 Mr. Hinaman by not looking at racial figures does not undermine
12 the fact that it's carrying forward the intentional separation
13 of voters based on their race that was started in 1992. That's
14 *North Carolina vs. Covington* at page 2553.

13:12:48 15 So it is a gerrymander, and the question is based on race,
16 and the question is whether the 2021 plan can survive strict
17 scrutiny.

18 JUDGE MARCUS: Can I stop you at this point,
19 Mr. Blacksher?

13:13:05 20 MR. BLACKSHER: Yes, sir.

21 JUDGE MARCUS: If I heard you right in response to my
22 question, when the plan was adopted in '92, drawing District 7
23 the way it does, adopted by a three-judge district court, and
24 summarily affirmed by the Supreme Court of the United States
13:13:27 25 thereafter, that plan was not unconstitutional, it did not

1 constitute a racial gerrymander. Do I have that right?

2 MR. BLACKSHER: Not at that time. That's correct.

3 JUDGE MARCUS: So there came a point in time when it

4 became unconstitutional, violated equal protection of laws

13:13:52 5 because it was a racial gerrymander. My question to you is:

6 When did it come to be unconstitutional -- when the Supreme

7 Court decided *Shaw*, or when they decided *Barlett v. Strickland*,

8 or when the plan was redrawn in 2000, or when the plan was

9 redrawn in 2010, or when the plan was redrawn in 2020? I'm

13:14:20 10 just trying to get my arms around how what started out

11 constitutional morphed into an unconstitutional racial

12 gerrymander. Was it the Supreme Court opinion in *Shaw* that did

13 it, or were there additional changes in circumstances on the

14 ground? When did it become unconstitutional to carry that

13:14:46 15 forward?

16 MR. BLACKSHER: It should have been or could have been

17 challenged as constitutional after 1993 *Shaw v. Reno*, and

18 *Miller vs. Johnson*. But it was never examined. That is, the

19 question of whether the *Shaw* jurisprudence had rendered the

13:15:08 20 racial gerrymander approved in 1992 was still in compliance

21 with the Equal Protection Clause. That question was not

22 examined in the Section 5 process.

23 The Justice Department preclearances simply looked at the

24 question of retrogression.

13:15:28 25 No one raised the issue of whether the *Shaw* jurisprudence

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1 now placed that plan in constitutional question.

2 JUDGE MARCUS: So if I have the answer, your answer to
3 my question correct, once *Shaw* was decided, and thereafter each
4 of the iterations in 2000, 2010, and '21 were unconstitutional
13:15:57 5 racial gerrymandering, they just didn't get challenged until
6 you challenged it in this suit. Do I have that right?

7 MR. BLACKSHER: Almost. I can't say that they were
8 unconstitutional without having examined whether they could
9 have been justified by a narrowly-tailored compelling
13:16:17 10 objective. That's another -- that's the next step.

11 JUDGE MARCUS: Okay. So at least by this point, by
12 the time they drew HB-1 in '21, it was a racially gerrymandered
13 map in violation of equal protection. That's your position,
14 correct?

13:16:35 15 MR. BLACKSHER: Yes, Your Honor.

16 JUDGE MARCUS: Okay. Thank you.

17 MR. BLACKSHER: In which event, it should be subjected
18 to strict scrutiny. And as the Court knows, in *Cooper vs.*
19 *Harris*, and *Abbot vs. Perez*, the Supreme Court held that for
13:16:58 20 compliance with Section 2 to be a compelling state interest,
21 there must be a, quote, meaningful legislative inquiry into
22 whether a district drawn without regard to race would run afoul
23 of Section 2, and that just assuming that Section 2 requires a
24 minority majority district isn't enough.

13:17:21 25 But that is, in fact, what happened. The state never did

1 a meaningful inquiry into whether Section 2 of the Voting
2 Rights Act still justifies perpetuating the 1992 gerrymander.

3 In fact, counsel for the reapportionment committee advised
4 the leadership that merely because it still contained a
13:17:48 5 54 percent black majority, the Voting Rights Act was complied
6 with. But as we know under *Cooper v. Harris*, *Abbott vs. Perez*,
7 and earlier cases for that matter in the *Shaw* jurisprudence, it
8 is not enough simply to look at whether or not there's a
9 majority like district. The question is whether it was

13:18:12 10 necessary, because all three of the *Gingles* conditions were
11 present, not just the ability of a compact majority-black
12 district to be drawn, but whether or not there was
13 racially-polarized voting sufficient so that the white majority
14 usually could be counted on to defeat the choice of black
13:18:41 15 voters.

16 That question was never examined in this case. Even
17 though even that on September 27th, the Singleton plaintiffs
18 filed their complaint and spelled out this line of cases under
19 the *Shaw* jurisprudence demonstrated that by eliminating the
13:19:04 20 gerrymander, namely, making whole those counties that were
21 split, there appear two districts in which blacks can elect
22 candidates of their choice even though neither of those
23 districts has a black-voter majority.

24 Nevertheless, the leadership under the advice of counsel,
13:19:31 25 I think, simply refused to consider that argument, and that's

1 why we are here.

2 So no one disputes in this case -- we have no evidence
3 that -- and I don't think any of the parties have disputed that
4 District 6 and 7 in the whole county plan that was contained
13:19:58 5 and is still contained in the Singleton complaint performed as
6 opportunity districts for black voters, namely, all you have to
7 do -- this is not a case where you have to examine
8 racially-polarized voting. You don't have to identify what
9 constituted black person or not a black person. You don't have
13:20:22 10 to do algorithms. All you have to do is look at the election
11 returns, which is what Professor Davis did. And they show
12 clearly 55, 56 percent majorities for the Democratic candidates
13 in those two districts based on the election returns, and
14 there's no dispute in this case that black voters in Alabama,
13:20:55 15 over 90 percent, support the candidates who are Democratic.

16 So it is the Singleton plaintiffs' contention that because
17 there are without -- without having to persist and perpetuate
18 that 1992 racial gerrymander, by going back to whole counties,
19 which is what the state had been using before the 1992
13:21:31 20 gerrymander, it becomes apparent that Section 2 of the Voting
21 Rights Act can be complied with, and, therefore, any effort to
22 violate traditional districting principles by splitting county
23 boundaries in order to reach a black majority is an unjustified
24 and unconstitutional racial gerrymander.

13:22:01 25 For us, the question for this Court is what is the remedy,

1 what should have the Legislature have done, what should this
2 Court do? And we think that *Abrams vs. Johnson* the 1997
3 decision, provides the best guidance. It says, of course, that
4 the remedy should use traditional districting principles. That
13:22:26 5 was the case you recall where a three-judge district court in
6 Georgia had to draw a congressional plan because a Legislature
7 had failed to do so.

8 *Abrams* says that the Court should give no deference to the
9 gerrymandered plan. And *Abrams* says whole counties should be
13:22:46 10 used as building blocks.

11 In fact, in *Wesch v. Hunt* in 1992, the opinion quoted the
12 guidelines that were in place that were put in place by the
13 1991 reapportionment committee that said that counties -- and I
14 am quoting now -- counties should be used as district building
13:23:08 15 blocks where possible.

16 So the state's expert demographer, Tom Bryan, demonstrated
17 by his examples, first of all, that you can't draw a
18 majority-black district simply using whole counties to -- I
19 think what Mr. Bryan demonstrates is that the Singleton plan
13:23:53 20 comes closest to achieving the smallest practicable equal
21 population among districts using whole counties. And,
22 therefore, it should be the plan that any remedy should start
23 with. And I will stop there.

24 JUDGE MARCUS: Thank you. And so we're clear, you
13:24:13 25 have reserved five minutes for rebuttal, Mr. Blacksher.

1 All right. We will proceed with -- are we going next with
2 Caster?

3 MS. KHANNA: Yes, Your Honor. Thank you.

4 JUDGE MARCUS: All right. Thank you. And you may
13:24:26 5 proceed.

6 MS. KHANNA: Thank you, Your Honor, and I would also
7 like to reserve five minutes for rebuttal.

8 I wanted to -- the Court has heard a lot of testimony and
9 received a lot of evidence in three different cases on a very
13:24:40 10 condensed time frame. And I understand that sifting through
11 the record probably feels like a Herculean task at this point.
12 So I want to use my time today to simplify the issues and cut
13 right to the heart of the matter, because at the end of the
14 day, plaintiffs' claim under Section 2 of the Voting Rights Act
13:24:59 15 is straightforward, largely undisputed, and compels just one
16 outcome.

17 Section 2 prohibits congressional maps that dilute
18 minority votes. It doesn't matter why that dilution occurs,
19 whether it was intentional or inadvertent, only that it does
13:25:18 20 occur.

21 Dilution of black-voting strength might result from
22 limiting black voters opportunity to elect to a single
23 district, or from dispersing black voters across districts,
24 where their voices are drowned out.

13:25:33 25 The question before this Court is whether as a result of

1 the 2021 congressional plan, black-voting strength in Alabama
2 is unlawfully confined to a single district, 14 percent of the
3 state's congressional delegation, in a state where black
4 residents comprise over a quarter of the population.

13:25:53 5 Here, Your Honor, both the law and the evidence make clear
6 that the answer to that question is a resounding yes.

7 In *Thornburg vs. Gingles*, the Supreme Court set out three
8 evidentiary preconditions for claims brought under Section 2.
9 This Court would be hard pressed to find another case that so
13:26:14 10 readily illustrates each one.

11 First, plaintiffs must establish that black voters in
12 Alabama are sufficiently numerous and geographically compact to
13 form a majority of the Voting Age Population in a second
14 congressional district.

13:26:29 15 Here, plaintiffs' expert demographer, William Cooper, has
16 produced not one, but seven such plans. Defendants suggest
17 that Mr. Cooper's illustrative districts count individuals who
18 did not fit their preferred definition of black. But that
19 argument is both incorrect and ultimately irrelevant.

13:26:51 20 As a legal matter, the Supreme Court instructed in *Georgia*
21 *v. Ashcroft* that when examining vote dilution of a single
22 racial group as we are here, courts should look at all
23 individuals who identify themselves as black.

24 The principled matter, when Alabama citizens self identify
13:27:09 25 as black on the census, the state should not be in the business

1 of telling them that they're wrong, or deciding that who is
2 sufficiently black to warrant the protection of federal law.

3 But as a practical matter, this debate is immaterial to
4 plaintiffs' claim. Whether you count the any-part black
13:27:27 5 population, the black registered voter population, or even just
6 the single-race non-Hispanic black citizens of voting age, all
7 of Mr. Cooper's illustrative plans contain two majority-black
8 districts.

9 In short, plaintiffs satisfaction of the numerosity
13:27:46 10 requirement of *Gingles I* is beyond dispute.

11 The compactness element of *Gingles I* meanwhile is
12 satisfied when plaintiffs' proposed majority-minority districts
13 are consistent with traditional districting principles. As
14 Mr. Cooper has testified, each of the Caster plaintiffs'
13:28:06 15 illustrative plans maintains population equality, includes
16 contiguous districts, have compactness scores comparable to the
17 enacted congressional plan and other Alabama statewide plans,
18 splits the same number or fewer political subdivision
19 boundaries as the enacted plan, minimizes pairing of
13:28:29 20 incumbents, and complies with the principles of non-dilution of
21 minority voting strength.

22 Defendants offer very little to dispute these facts. In
23 fact, Mr. Bryan did not even evaluate Mr. Cooper's plans on the
24 vast majority of these principles because he recognized that
13:28:48 25 they had all been satisfied.

1 So instead, he and the state emphasized a handful of them.
2 Core retention. Mr. -- defendants and Mr. Bryan fault
3 plaintiffs for failing to maintain the status quo in their
4 illustrative plans. But, of course, that is precisely what
13:29:07 5 this case challenges, the status quo for Alabama's
6 congressional plan that dilutes the voting strength of black
7 voters.

8 Defendants next turn to incumbency protection suggesting
9 that Section 2 cannot interfere with the chosen residences of
13:29:23 10 existing members of Congress, but Mr. Cooper's Illustrative
11 Plan 5 pairs no incumbents at all. And all of his remaining
12 plans pair only two incumbents, both of whom have served in
13 office for one year, undermining Mr. Bryan's apparent personal
14 preference for continuity of representation above all else.

13:29:47 15 Defendants' last resort in attempting to upend plaintiffs
16 showing under *Gingles I* is to focus on communities of interest.
17 And, in fact, just one community of interest on which the bulk
18 of their case appears to rest, that's between Mobile and
19 Baldwin counties.

13:30:04 20 But as the evidence demonstrates, defendants' argument on
21 this point fails at every level.

22 First, under the reapportionment committee's own
23 guidelines, communities of interest like the other principles
24 the defendants highlight comes toward the end of a long list of
13:30:21 25 factors to be considered in drawing a redistricting plan.

1 And it certainly comes well after compliance with the
2 Voting Rights Act.

3 JUDGE MARCUS: Wouldn't it be true to say more
4 accurately, Ms. Khanna, that communities of interest are often
13:30:42 5 discussed, conceptualized, and considered along with
6 compactness, geographic compactness?

7 MS. KHANNA: I do believe --

8 JUDGE MARCUS: If one's heads on the coin, and the
9 other tails on the same coin?

13:30:59 10 MS. KHANNA: I'm not sure if I would quite
11 characterize that way, but I completely agree, Your Honor, when
12 discussing the compactness under *Gingles I*, the Court doesn't
13 look at the number, the Reock score. It looks at whether these
14 districts makes sense, and whether they make sense is a
13:31:15 15 question that involves, well, what are the boundaries of it?
16 Are they generally keeping together political subdivision
17 boundaries? Do they encompass a community of interest, or are
18 they kind of randomly picking and choosing from disparate
19 portions of the state.

13:31:28 20 I agree it's part of the inquiry. But it certainly is on
21 the Alabama redistricting criteria not something that on its
22 own can subordinate the very important criteria of complying
23 with the Voting Rights Act. So it's a little bit of -- it
24 certainly is something to be considered, but it is not
13:31:49 25 something that can outweigh the question and --

1 JUDGE MARCUS: I wasn't so much asking you to put a
2 weight on each -- as I was suggesting that when you ask about
3 the question of reasonable compactness, it's often considered
4 in tandem with communities of interest. You would agree with
13:32:11 5 that, would you not?

6 MS. KHANNA: Yes, Your Honor. Under *Davis v. Chiles*
7 in the Eleventh Circuit, the question of reasonable compactness
8 is whether or not the maps are drawn consistent with
9 traditional districting principles. And communities of
13:32:23 10 interest is one of those traditional districting principles.

11 JUDGE MARCUS: I reference it because if you look at
12 Justice Kennedy's opinion, in LULAC, it's clear that when he's
13 talking about reasonable compactness, in the very same
14 discussion, he reviews the problem of community of interest and
13:32:46 15 suggests that part of the problem with how one of those
16 districts was drawn was that not only were they disparate in
17 terms of geography, but communities of interest were equally
18 separated. I am suggesting the two frequently come together in
19 the analysis. Is that a fair way to look at this?

13:33:11 20 MS. KHANNA: Yes, Your Honor. I think communities of
21 interest like many of the other factors we have discussed are
22 one of the traditional districting criteria that courts look at
23 when evaluating compactness under *Gingles I*, and my
24 understanding of the LULAC opinion is it was informative, that
13:33:27 25 there wasn't really any evidence. That there was a community

1 of interest if this district was trying to encompass other than
2 just sheer -- merely trying to get wrangle up a bunch of
3 minorities in different pockets of the state. That's certainly
4 not what we have here.

13:33:40 5 And, indeed, the Alabama criteria make clear that -- or
6 rather the guidelines made clear that if there's ever a
7 conflict between complying with the Voting Rights Act and
8 communities of interest, core preservation, incumbency
9 protection, those principles should gave way to the broader
13:33:57 10 principle of complying with minority voter rights.

11 JUDGE MARCUS: I have it. You were talking about when
12 I interrupted you the community of interest proffer combining
13 Mobile County and Baldwin County in the same district.

14 MS. KHANNA: Yes, Your Honor. And I would also -- in
13:34:17 15 addition to the guidelines on this point, the Caster plaintiffs
16 have offered reams of evidence and testimony about the shared
17 communities of interest between Mobile and Montgomery,
18 particularly for black residents who face many of the same
19 challenges in education, employment, criminal justice reform in
13:34:34 20 both areas.

21 Plaintiffs have offered the *Chestnut* trial testimony of
22 witnesses like former State Senator Hank Sanders and former
23 State Representative John Knight who explain that the urban
24 center of Mobile shares more in common with the urban center of
13:34:50 25 Montgomery with economically and culturally than suburban

1 Baldwin County. Community organizer Karen Jones, precisely the
2 sort of person that Mr. Bryan testified is best situated to
3 provide testimony on communities of interest further confirm
4 this fact.

13:35:05 5 But plaintiffs do not need to disprove that a community of
6 interest exists in the areas that defendants emphasize. At the
7 very least, the evidence indicate that there are divergent
8 views in Alabama -- how voters in Alabama view their
9 communities, which only exemplify the fact that communities of
13:35:25 10 interest across the state can overlap and sometimes conflict
11 with one another.

12 There's nothing sacred about the one community of interest
13 that defendants choose to focus on. Indeed, defendants'
14 suggestion that the Gulf Coast counties comprise an invaluable
13:35:45 15 community of interest is directly undermined by the State's
16 Board of Education plan which splits Mobile County the same way
17 plaintiffs propose here and yet was governed by the very same
18 criteria as the congressional plan.

19 Defendants may not like plaintiffs' illustrative plans as
13:36:02 20 a policy matter. But Legislature may choose to prioritize
21 different communities in the map drawing process and will
22 likely have an opportunity to do so if this Court enjoins the
23 current map.

24 But the state's policy preference as to which communities
13:36:18 25 merit representation and which do not has no bearing on

1 plaintiffs' showing under *Gingles I*. Plaintiffs illustrative
2 maps are just that, illustrative. We are not asking the Court
3 to order that one of them be selected or adopted. The only
4 question is whether a second majority-black district is
13:36:35 5 feasible, consistent with traditional districting principles,
6 and plainly it is.

7 Plaintiffs have proved there are many ways to draw such a
8 district in Alabama while balancing a variety of all the
9 different redistricting principles, including but not limited
13:36:49 10 to avoiding minority vote dilution.

11 The second and third *Gingles* preconditions are simply
12 beyond dispute. Defendants have presented no evidence
13 contradicting plaintiffs' racially-polarized voting experts,
14 both Dr. Palmer and Dr. Liu. Between those two experts, they
13:37:07 15 examined 30 elections between 2008 and 2020. And they found
16 racially-polarized voting in every single one.

17 That result held whether examining the single-race black
18 population, or the any-part black population.

19 In fact, the state's own expert, Dr. Hood, conducted a
13:37:24 20 racially-polarized voting analysis for some of the same
21 geographical areas and elections as plaintiffs' experts, and
22 found the same extremely high levels of racially-polarized
23 voting.

24 On *Gingles III*, Dr. Palmer and Dr. Liu provided unrefuted
13:37:39 25 testimony that not only does the white majority usually defeat

1 black-preferred candidates in both congressional and statewide
2 elections, it always defeats those candidates in every district
3 except for Congressional District 7, the state's one
4 majority-black district.

13:37:54 5 The evidence thus establishes that each of the three
6 *Gingles* preconditions is easily satisfied. The Eleventh
7 Circuit has said in Fayette County that it will be only the
8 very unusual case in which the plaintiffs had kind of
9 established the existence of the three *Gingles* preconditions,
13:38:12 10 but still had failed to establish a violation of Section 2
11 under the totality of circumstances.

12 We submit, Your Honor, that this is not an unusual case.
13 To the contrary, it is a textbook case. All of the relevant
14 Senate Factors weigh in favor of a finding of vote dilution, in
13:38:31 15 many cases, based on undisputed and objective facts.

16 Let's begin with the sheer numbers. While the state is
17 correct that the Voting Rights Act does not mandate
18 proportionality, the Supreme Court has held this factor is
19 relevant in the totality of circumstances analysis. And here
13:38:47 20 the disparities between the black and white populations and
21 their share of congressional districts are glaring.

22 Black residents make up over 27 percent of Alabama's
23 population. But they are a majority of voters in just
24 14 percent of its congressional districts.

13:39:03 25 White residents make up 63 percent of the population. But

1 they are a majority of voters in over 85 percent of the
2 congressional districts.

3 Just 30 percent of the black population lives in a strict
4 where they have an opportunity to elect their preferred
13:39:20 5 candidates. By contrast, 92 percent of white residents reside
6 in a district where they can elect their preferred candidates.

7 And if Alabama were to draw an additional black-majority
8 district, black representation would be approximately
9 proportional to the black share of the population. While
13:39:38 10 whites would still have a greater share of congressional
11 districts than their share of the population by nearly 10
12 percentage points.

13 The Senate Factors tell the compelling story behind these
14 numbers. Senate Factor 1 examines Alabama's history of
13:39:53 15 official discrimination. Any student of American history knows
16 that state-sponsored discrimination as denied the franchise to
17 black citizens since the early 20th Century and before.

18 Dr. King surveyed Alabama's history of poll taxes,
19 literacy tests, white primaries, and the brutal violence that
13:40:12 20 confronted black residents who were brave enough to attempt to
21 cast a ballot.

22 And while those specific tools are no longer in place for
23 sure, racial discrimination in voting is unfortunately not just
24 a thing of the past. Only a few years ago, the U.S. Department
13:40:28 25 of Transportation had to intervene after the Governor made it

1 harder for black voters to comply with the state's voter ID law
2 by closing motor vehicle locations in disproportionately black
3 areas.

4 And just this decade, a federal judge lamented that
13:40:43 5 Alabama remains vulnerable to politicians setting an agenda
6 that exploits racial differences and that political exclusion
7 through racism remains a real and enduring problem in the
8 state. That was in *U.S. vs. McGregor*.

9 Senate Factor 2 examines the extent to which voting is
13:41:03 10 racially polarized in the region. Dr. Palmer demonstrated that
11 voting in the region is not only racially polarized, it's
12 significantly so with over 92 percent of blacks voting for
13 their preferred candidates while nearly 85 percent of white
14 voters voting for the opposing candidates.

13:41:19 15 Now, the state contends that this undisputed evidence of
16 racially-polarized voting is merely reflective of partisan
17 interests that just so happened to fall on racial lines. But
18 both the Supreme Court and the Eleventh Circuit have held that
19 Section 2 plaintiffs do not have to prove that racial
13:41:36 20 polarization is driven by biracial animus.

21 Even if the reasons why black and white voters are
22 polarized were relevant under Section 2, the burden would be on
23 defendants to affirmatively prove under the totality of the
24 circumstances that race is not one of those reasons.

13:41:56 25 The record here cannot support such a conclusion. The

1 state's own expert, Dr. Hood, has expressly agreed both in his
2 published work and on the witness stand that race remains very
3 much a part of the calculus for voters today, even if it is not
4 the sole factor in voter traces.

13:42:12 5 Senate Factor 3 asks whether Alabama has used voting
6 practices that enhance the opportunity for discrimination such
7 as at-large elections, majority vote requirements, anti-single
8 shot provisions, and Alabama has checked all of those boxes.

9 Senate Factor 5 examines the extent to which
13:42:30 10 African-Americans in Alabama bear the effects of discrimination
11 in areas such as education, employment, and health, which
12 hinder their ability to participate effectively in the
13 political process.

14 It should come as no surprise that the vestiges of
13:42:45 15 discrimination continue to plague blacks in Alabama on
16 virtually every dimension as shown by Mr. Cooper, Mr. Jones,
17 Dr. King, and Dr. Caster, and is echoed in the testimony in
18 *Chestnut* by Dr. McCrary, Senator Sanders, Representative
19 Knight, Commissioner Tyson, Karen Jones, and Lakeisha Chestnut
13:43:04 20 herself.

21 This evidence confirms what we all know: Because black
22 Alabamians have less flexible work schedules, less access to
23 affordable type child care, fewer educational opportunities,
24 and unstable housing arrangements, it is harder for them to
13:43:19 25 access and navigate the voting process.

1 Senate Factor 6 asks whether Alabama's elections have been
2 characterized by overt or subtle racial appeals, and they have
3 been. Dr. Bagley noted several examples such as politicians
4 running ads saying that white men are blamed for everyone
13:43:38 5 else's problems. Dr. King's report similarly surveys the
6 various ways that Alabama politicians have recently used race
7 to negatively stereotype minorities and prey upon the fears of
8 white voters.

9 Senate Factor 7, the extent to which the minority group
13:43:53 10 members have been elected to public office weighs decidedly in
11 favor of plaintiffs' claim.

12 Alabama's congressional delegation has never included more
13 than a single black representative, and then too from the
14 state's one majority-black district.

13:44:09 15 And the absence of a single black statewide elected
16 official in the last quarter of a century is glaring in a state
17 with such a large black population.

18 Senate Factor 8, Alabama's nonresponsiveness to the needs
19 of black voters is readily proved by the number of issues that
13:44:29 20 the state has not addressed. Refusing to expand Medicaid under
21 the Affordable Care Act, which would disproportionately help
22 uninsured black Alabamians of all ages, ignoring environmental
23 pollution that black Alabamians in Lowndes County and the Gulf
24 Coast experience. These realities demonstrate the state's
13:44:50 25 disinterest in solving the problems that have a

1 disproportionate and grave effect on black Alabamians.

2 As for Senate Factor 9, the tenuousness of the state's
3 justifications for the enacted map, it is telling that all of
4 the justifications provided by defendants and the witnesses in
13:45:09 5 this case flatly ignore the prioritization of criteria in the
6 state's very own guidelines.

7 Ultimately, in evaluating the totality of the
8 circumstances under the Senate Factors, this Court need not
9 equate racial differences and disparities with racism.

13:45:29 10 Rather, this Court can review the -- former Senator
11 Sanders' testimony in *Chestnut* side by side with former
12 Congressman Byrne's testimony. And it will see are two very
13 different political realities. From Senator Sanders'
14 perspective, race has defined not only his childhood growing up
13:45:51 15 in Alabama, but also his present reality, his right to vote,
16 his personal experiences in education, criminal justice, and
17 the sting that he feels from Confederate monuments, and his
18 continued fight for equality in all aspects of his
19 professional, political, and civic life.

13:46:10 20 From Congressman Byrne's perspective, race has not been a
21 salient issue. He didn't know the black composition of his
22 district when he was in office. He doesn't notice Confederate
23 flags and monuments in the halls of Alabama's government. He
24 does not -- he's not confronted on a daily basis with the stark
13:46:28 25 socioeconomic disparities between black and white communities

1 in Alabama.

2 THE COURTROOM DEPUTY CLERK: Ms. Khanna, you have
3 5 minutes of your 25.

4 MS. KHANNA: Thank you.

13:46:38 5 Your Honor, this Court does not have to disbelieve either
6 of these two gentlemen. Both of them, long-time, hard-working
7 representatives of Alabama's residents to see that the reality
8 in life of life in Alabama for blacks is just different than
9 the reality of life in Alabama for whites.

13:46:55 10 It should come as no surprise that many well-intentioned
11 white representatives believe that the Voting Rights Act has
12 done its job and solved the problem of racial inequity to
13 access to the franchise, while many black representatives
14 believe that the struggle for racial equality in voting and so
13:47:12 15 many other areas is an ongoing battle they continue to fight
16 every day.

17 Your Honor, I reserve the balance of my time for rebuttal.

18 JUDGE MARCUS: Let me ask you a question, Ms. Khanna.
19 And you are on our time, not yours.

13:47:26 20 MS. KHANNA: Okay.

21 JUDGE MARCUS: One of the arguments the state has
22 made, and it has been explained by some witnesses, including
23 Mr. Byrne, former Congressman Byrne this morning, is that even
24 assuming arguendo you were right about Section 2 and that you
13:47:53 25 could draw two majority-minority districts that were reasonably

1 compact and otherwise complied with *Gingles II* and *III* and that
2 the Senate Factors in the aggregate tilted in your favor, even
3 if assuming all of that is true, that it is late in the day and
4 the Court sitting in equity as this Court is doing would have
13:48:18 5 to and must take into account the timing, the closeness of the
6 primary, which is scheduled for late May, I think it was the
7 24th, and the election, which is about ten months off, and the
8 argument they make, simply put, is it's too late in the day to
9 be fussing with new maps. Even if everything you say is true,
13:48:48 10 they dispute that, but they say even assuming it were so, it's
11 too late in the day.

12 What's your answer?

13 MS. KHANNA: Your Honor, I think that's just wrong.
14 The fact is this is not the -- we are not in a last minute
13:49:04 15 before the election moment right now. We are a full four --
16 more than four months away from the primary election. There's
17 a congressional filing deadline coming up.

18 JUDGE MARCUS: Let me stop you. The primary election
19 is 24 May. Do I have that right?

13:49:19 20 MS. KHANNA: I believe that's right.

21 JUDGE MARCUS: So we are about four-and-a-half months
22 from then.

23 MS. KHANNA: Exactly. And while Alabama has imposed a
24 congressional filing deadline for the end of January, that is
13:49:31 25 perhaps one of the longest spans between a congressional filing

1 deadline and the congressional primary that I am aware of in
2 the country and is certainly not at all necessary.

3 If this Court were to find that plaintiffs have
4 established a sufficient likelihood of success on the merits
13:49:48 5 and that the plan should be enjoined, it would have maximum
6 flexibility to postpone that filing deadline, give the
7 Legislature an opportunity to adopt a remedy, have a
8 court-imposed remedy, whatever the remedial process will be,
9 there will be ample time for candidates to file and to not have
13:50:06 10 to touch the election deadlines at all. The primary would stay
11 in place.

12 You know, there are a lot of redistricting and voting
13 rights cases litigated across the country in election years.
14 And when people talk about the eve of an election or what's
13:50:21 15 coming at the last minute, they do not mean four months before
16 a relevant election. They're talking weeks at that point. And
17 here, the Court has just ample discretion and ample amount of
18 time to not disrupt anything in the election calendar, but
19 still achieve or recognize the Voting Rights Act violation
13:50:42 20 that's in the enacted plan and alleviate plaintiffs of the
21 injury that they're bound to suffer from any election that's
22 going to be held under that map.

23 JUDGE MARCUS: Let me ask a final question. It's
24 something you touched on already, and all of the parties have,
13:50:59 25 and that is weighing the various and sometimes competing

1 communities of interest.

2 In this case, we have heard substantial evidence of -- at
3 least two communities of interest, one shaped by the Black Belt
4 and environs, the second shaped by the Gulf Coast -- Baldwin
13:51:21 5 and Mobile counties. And it's been pointed out to us that
6 those communities of interest in some ways are overlapping, and
7 in some ways are competing with each other.

8 How does a court in your view go about weighing, if we
9 have to weigh at all, the relevant strengths of these competing
13:51:48 10 communities of interest?

11 MS. KHANNA: I don't think that the Court has to
12 decide that one community of interest trumps another.

13 Communities of interest, the definition provided by
14 Alabama and hosts of other states, is purposefully vague and
13:52:05 15 can mean a lot of different things to a lot of different
16 people. And I don't think there's any objective standard by
17 which to say this community of interest is more important than
18 this community of interest. We all belong to different
19 communities, all of which have different importance to
13:52:21 20 different people.

21 I think that the question for the Court is whether or not
22 -- the only question for the Court is whether or not plaintiffs
23 have satisfied their burden to show that a second
24 majority-black district can be drawn consistent with
13:52:34 25 traditional districting principles, including communities of

1 interest.

2 And where plaintiffs have established sensible districts
3 that meet a host of traditional districting criteria and
4 supported those with the testimony from community members
13:52:49 5 explaining how they view their communities to comport with
6 those districts, I believe that's all that is required to
7 satisfy *Gingles I*.

8 If there are policy preferences about, well, I think we
9 want to prioritize community over that community for this
13:53:05 10 reason or that reason, I believe those policy preferences are
11 not for this Court to make and not -- and certainly are up to
12 the Legislature to make in adopting a remedy plan. But they
13 have to do so consistent with the Voting Rights Act.

14 It cannot be the case that because the people in power
13:53:22 15 have a preference for some communities of interest that they
16 claim is most important and inviable contrary to their own
17 guidelines, contrary to their board of election plan, that
18 everything else falls away. We cannot have a second
19 majority-black district because these two areas really, really
13:53:41 20 want to stay together. I think is important to stay together.

21 There are a lot of competing factors here. But minority
22 voting rights cannot be relegated to the bottom of that
23 consideration, and if anything, need to be weighted at the very
24 top, and as long as we have shown which I believe we have that
13:53:57 25 communities of interest can -- are consistent in -- with those

1 districts, I believe we satisfied *Gingles I*.

2 JUDGE MARCUS: All right. Thank you. And you have
3 reserved your five minutes for rebuttal. We will turn to
4 Mr. Ross.

13:54:12 5 JUDGE MANASCO: Judge Marcus, I have a question for
6 Ms. Khanna. Ms. Khanna, I want to make sure that there's one
7 precise detail that I understand about the Caster plaintiffs'
8 request for relief. To the Caster plaintiffs, is there a
9 difference, and if there is, please comment on it for me,
13:54:31 10 between an injunction that expresses a ruling that there have
11 to be two districts in which black Alabamians have an
12 opportunity to elect a representative of their choice, and an
13 injunction that expresses ruling that there have to be two
14 majority-black districts?

13:54:51 15 MS. KHANNA: I --

16 JUDGE MANASCO: Feel free to postpone the answer to
17 the question until the post hearing submissions. I'm genuinely
18 not trying to put anybody on the spot. I just need to fully
19 understand the difference, if there is one.

13:55:06 20 MS. KHANNA: No. I think it's a very important
21 question, Your Honor, and it really does pinpoint kind of the
22 nub of the issue of the difference between plaintiffs' standard
23 to liability and what exactly is the proper remedy, right? So
24 there's no question that in order to show liability under
13:55:22 25 Section 2, we need to establish that it's possible to create a

1 majority-minority district over 50 percent, which I believe we
2 have done in states.

3 On the question of remedy, I actually it's believe as a
4 matter of law that there are multiple ways to remedy a Section
13:55:37 5 2 violation, and that they do not have to be hinged to that
6 *Bartlett* standard for proving liability. I think we have seen
7 it in other states like Texas, which in areas where the courts
8 has fully agreed that there's no question of the Voting Rights
9 Act applies, no question Section 2 applies where you can draw
13:55:54 10 50-plus districts either for black residents or Latino
11 residents. But where the ultimate remedy has been a 49 percent
12 district or a 48 percent district, that the Court feels is --
13 has sufficiently provided black voters an opportunity to elect
14 their preferred candidates. I believe there is a little bit
13:56:11 15 more flexibility on the remedy than there is on the liability.

16 But I do believe that making sure -- making clear that the
17 Voting Rights Act requires two districts in which black voters
18 have an opportunity to elect their preferred candidates is
19 really important to guide whatever remedy that is. I would
13:56:28 20 also say the evidence here -- I don't have -- I don't have an
21 answer off the cuff about what exactly is the best percentage
22 for such a second district or the right percentage, but I will
23 say that the racially-polarized voting evidence here does
24 indicate that it's very hard for black voters in Alabama to get
13:56:46 25 an opportunity to elect unless and until they are a majority of

1 the eligible voters.

2 JUDGE MANASCO: Thank you.

3 JUDGE MARCUS: I am still not sure, Ms. Khanna, that I
4 understand the answer to that question. So let me come at it
13:57:02 5 one more time.

6 You say, and I think it's clear that for purposes of
7 Section 2 under the Voting Rights Act, you have to establish
8 first as an evidential matter the circumstances surrounding
9 *Gingles I*. That requires you to prove that you can establish
13:57:28 10 on the record two majority-minority districts. It's not enough
11 simply to say you can create two opportunity districts. That
12 wouldn't get you to home plate with regard to establishing a
13 *Gingles* Section 2 analysis. I have that correct.

14 MS. KHANNA: Absolutely. Under *Bartlett v.*
13:57:52 15 *Strickland*, we have to pass 50 percent.

16 JUDGE MARCUS: If I understand what you are asking
17 this Court to do, assuming you otherwise can circumnavigate all
18 of the circumstances in *Gingles*, not just *I* but *II* and *III*, and
19 the Senate Factors, as well, you are asking us one, to say
13:58:14 20 preliminarily that HB-1 violates the Voting Rights Act. That's
21 the first thing you are asking, correct?

22 MS. KHANNA: Yes.

23 JUDGE MARCUS: And then the second -- and this is
24 where I want to be sure I understand you with clarity -- what
13:58:35 25 would you have us say to the Legislature, if we were to

1 otherwise agree? What is it that they have to do?

2 Do they have to draw two majority-minority districts in
3 order to comply with the Voting Rights Act? Is that what you
4 would have us tell them? Or would you have us simply say it's
13:58:57 5 enough for them to draw two opportunity districts?

6 MS. KHANNA: I will certainly try. You're right, Your
7 Honor, that the first thing we are requesting is the
8 declaratory relief that says there is a violation of Section 2.

9 The next thing we would request is an injunction that says
13:59:19 10 there cannot -- you cannot use this map in the upcoming
11 election, the enacted map.

12 The next thing after that, frankly, does not require the
13 Legislature to do anything. It would not be an injunction
14 against the Legislature to then go and come up with a different
13:59:35 15 map. It would be a chance -- the Court would need a remedy for
16 the violation. We believe there's ample time to impose a
17 remedy, and the Court could and likely should give the
18 Legislature an opportunity to develop that remedy, to develop a
19 remedy that is consistent with Section 2.

13:59:54 20 JUDGE MARCUS: All of that is clear. The question,
21 though, remains open: If you are otherwise right, and I
22 underscore if, what is it you would have us say to the
23 Legislature? This map is no good, we'd ask you to go back and
24 draw another map, and what, if anything, would you have us say
14:00:15 25 beyond the fact that this map violates Section 2 because two

1 majority-minority districts could be drawn? Would we say
2 anything further? Ought we to in your view?

3 MS. KHANNA: Yes. I believe that the instruction
4 should be that the -- that Alabama must adopt a map, that any
14:00:34 5 map that Alabama adopts must comply with Section 2 by
6 containing two congressional districts that provide black
7 voters an opportunity to elect the preferred candidates.

8 I don't -- as a legal matter, I believe that is the --
9 that's the remedy for a Section 2 violation.

14:00:57 10 As an evidentiary matter, and as a localized matter in
11 Alabama, I believe that the evidence shows that in order to
12 have an opportunity to elect the preferred candidate, black
13 voters need to be a majority of the Voting Age Population or
14 somewhere very, very close to that, given the sheer levels of
14:01:19 15 racially-polarized voting. It would not be sufficient to call
16 a 42 percent or 38 percent district necessarily an opportunity
17 to elect district, given the evidence here.

18 So I think that while there -- while legally I think the
19 answer is Section 2 requires the creation of an additional
14:01:40 20 opportunity to elect district, practically, I think that might
21 -- that that will likely be an additional district in addition
22 to the one that currently exists that is over 50 percent Black
23 Voting Age Population or very close to that.

24 JUDGE MARCUS: Thank you very much. We will proceed
14:02:02 25 now with the argument from the Milligan plaintiffs.

1 MR. ROSS: Thank you, Your Honors. I will provide the
2 closing for the Milligan plaintiffs on our Section 2 claim. My
3 colleague Davin Rosborough will address our racial
4 gerrymandering claim. We reserve five minutes for rebuttal.

14:02:18 5 Your Honors, this lawsuit concerns two of our most
6 fundamental constitutional rights; the right to vote, and the
7 right to be free from racial discrimination.

8 This is not a new fight in Alabama. The state has an
9 undeniable history of discrimination against black voters,
14:02:30 10 including a decades' long pattern of passing discriminatory
11 redistricting plans.

12 Yet despite black voters' calls for a second
13 majority-black district, last year the Legislature ignored
14 those requests and enacted HB-1 which continues the long
14:02:46 15 pattern of discrimination. Indeed, no one disputes that black
16 people are about 27 percent of Alabama's population, but
17 because of racially-polarized voting, they can elect their
18 candidates of choice in only one of the state's seven
19 congressional districts.

14:03:02 20 And no one disputes that about one-third of black voters
21 are packed into District 7 which has an unnecessarily high
22 59 percent black registered voter population, and that HB-1
23 cracks the rest of the Black Belt across for another three
24 congressional districts preventing the creation of a second
14:03:19 25 majority-black district.

1 As Ms. Khanna aptly explained, these facts and others
2 plainly show a violation of the Voting Rights Act.

3 Although rights involved are important, the claim is quite
4 simple. In 1982, a bipartisan Congress passed the amended
14:03:37 5 Voting Rights Act. And the Supreme Court in *Thornburg vs.*
6 *Gingles* laid out the straightforward framework for proving
7 these claims.

8 As Ms. Khanna already explained, first, black voters must
9 show that they are numerous, sufficient numerous and
14:03:53 10 geographically compact enough to constitute a majority and an
11 additional district. Second and third, they must show that
12 voting is racially polarized. Once these preconditions are
13 established, the Court must examine the totality of the
14 circumstances.

14:04:08 15 Majority of the factors do not need to point one way or
16 the other.

17 Your Honors, the overwhelming and undisputed evidence
18 shows that plaintiffs have satisfied both the *Gingles*
19 preconditions, and that under the totality of the
14:04:23 20 circumstances, HB-1 impermissibly dilutes black-voting
21 strength. With respect to the *Gingles* preconditions, the
22 Milligan plaintiffs' expert Dr. Moon Duchin and the Caster
23 plaintiffs' expert Mr. Bill Cooper offered ten illustrative
24 plans containing two majority-black districts with black
14:04:40 25 registered voter, black single-race voter, black any-part voter

1 populations over 50 percent.

2 All of the plans are geographically compact, and the plans
3 attempt, unlike HB-1 to keep the Black Belt whole. The plans
4 also were drawn consistent with the state's own traditional
14:05:01 5 redistricting principles. This alone is sufficient to satisfy
6 *Gingles I* requirements.

7 With respect to *Gingles II* and *III*, the plaintiffs' expert
8 Dr. Baodong Liu showed that across seven congressional primary
9 and general elections from 2008 to today, black people gave an
14:05:17 10 average of 88 percent of their votes to black-preferred
11 candidates. In contrast in the same seven elections, white
12 people gave an average of 13.5 percent of their votes to the
13 black-preferred candidates.

14 Outside of the majority-black District 7, black-preferred
14:05:33 15 candidates enjoyed no electoral success at all.

16 These same pattern held in ten statewide elections. Stark
17 racially-polarized voting was apparent in both statewide
18 general and primary elections for President, U.S. Senate,
19 Lieutenant Governor, Secretary of State, and other offices.

14:05:51 20 Dr. Palmer, the Caster expert, found the same pattern of
21 RPV so too did the defendant's expert Dr. Trey Hood. Indeed,
22 Dr. Hood agreed with Dr. Liu and Dr. Palmer that voting is
23 racially polarized and that black voters cannot consistently
24 elect their candidates of choice in districts below a majority.

14:06:10 25 Your Honors, these statistics are at the heart of the

1 Voting Rights Act case. And these statistics are unrefuted by
2 the defendants. No black person, regardless of their party or
3 qualifications, has ever won a majority white congressional
4 district in Alabama. As the Eleventh Circuit has repeatedly
14:06:30 5 stated, The surest indication of race conscious politics is a
6 pattern of racially-polarized voting.

7 Your Honor, with respect to Senate Factors, plaintiffs'
8 Mr. Evan Milligan and Captain Shalela Dowdy testified Alabama's
9 Legislature has ignored the advocacy of black community calling
14:06:50 10 for two majority-black districts, that the current plan leaves
11 black voters without responsive representation in Congress,
12 that HB-1 ignores the shared history, the shared familial and
13 cultural bonds, the shared experiences, and the shared concerns
14 about racial inequities in education, health, employment, and
14:07:11 15 other areas that establish a shared interest of communities
16 amongst black people in Montgomery County, Mobile County, and
17 across the Black Belt.

18 In addition, Dr. Bagley plaintiffs' historian confirmed
19 that the shared history of the Black Belt exists between Mobile
14:07:28 20 County.

21 He also testified that at least seven of the Senate
22 Factors support a finding of vote dilution, including Senate
23 Factor 1, the state's long and intense history of de jure and
24 de facto racial discrimination, including a 2017 opinion by
14:07:43 25 three-judge court that Alabama state legislative maps were

1 enacted with racially predominant motive, including racial
2 discrimination and redistricting in five of the six
3 redistricting cycles from 1960 to 2010, and several recent
4 court decisions finding that the state or its local
14:08:00 5 jurisdictions violated the Voting Rights Act or the
6 Constitution.

7 Your Honors, with respect to Senate Factor 5, no one can
8 dispute there's a history of discrimination in voting -- or
9 excuse me -- in education and employment, health, and every
14:08:14 10 other area of Alabama, and that stark socioeconomic disparities
11 between black and white people continue to exist.

12 Indeed, Your Honors, in the 2020 elections, black voter
13 registration and turnout rates were about 10 points below those
14 of white voters. That even ignoring this lower level of black
14:08:34 15 participation in the state, socioeconomic disparities have made
16 it much more difficult for black voters to financially
17 contribute to political campaigns or otherwise engage in
18 politics.

19 As Ms. Khanna already explained, there's been some
14:08:47 20 startling examples of racial appeals in just last ten years.
21 White congressional candidates have accused the political
22 opponents of conducting a war on whites. They have called for
23 the repeal of the Reconstruction amendments, which gave black
24 people their freedom after the Civil War. They ran campaigns
14:09:06 25 with burning images of out-of-state black Congress people, and

1 other minority members of Congress, and accused them of trying
2 to tear this country up. They used other overt and subtle
3 appealed to call for block voting. Because of block voting, no
4 black candidate has ever won an election for Congress outside
14:09:27 5 of District 7.

6 As of Senate Factor 8, the congressman who were elected
7 from the majority white districts have been unresponsive to the
8 specific needs of black voters. As we heard, these
9 congressmen, including Congressman Byrne opposed bipartisan
14:09:44 10 infrastructure laws that provided important resources to the
11 Black Belt. They have opposed the bipartisan effort to restore
12 the Voting Rights Act. And they have opposed the Medicaid
13 expansion that would allow 220,000 disproportionately black
14 voters to receive health insurance despite the fact that 39
14:10:05 15 other states have agreed to this expansion.

16 Your Honor, despite this overwhelming and largely
17 undisputed evidence, the defendants tried to make a number of
18 arguments which are irrelevant or distractions. Defendants
19 will claim that the plaintiffs' illustrative plans do not
14:10:26 20 contain true majority-black districts, but, again, under any
21 measure plaintiffs' plans have two compact majority districts
22 even using the most restrictive definition of black.

23 Defendants will claim that plaintiffs' plans do not
24 respect traditional redistricting principles, but this is
14:10:45 25 merely an attempt to graft the standards from the *Shaw* claims

1 on to Section 2.

2 The Eleventh Circuit has specifically rejected this
3 approach in *Davis vs. Chiles*.

4 Even so, Dr. Duchin and Mr. Cooper testified that
14:10:59 5 plaintiffs' plans respect the black community -- Black Belt
6 community of interest unlike HB-4. The plaintiffs' plans are
7 as compact or more compact than HB-1. The plaintiffs' plans
8 split the same or fewer counties than the six county split in
9 HB-1, that plaintiffs' plans keep the Black Belt's core in two
14:11:18 10 districts rather than four, that Dr. Duchin's plans split the
11 same or fewer majority black cities in HB-1, and that the plans
12 either do not pair incumbents or can be easily adjusted to not
13 do so.

14 Indeed, as been said many times, plaintiffs' plan looks
14:11:35 15 very similar to the Alabama State Board of Education plan. And
16 the State Board of Education plan and the congressional plan
17 were both drawn by the same Legislature pursuant to the same
18 traditional redistricting criteria.

19 Your Honors, with respect to *Gingles II* and *III*, Dr. Liu's
14:11:54 20 methodology has been questioned. Dr. Hood testified on
21 cross-examination that he used the exact same method as Dr. Liu
22 in conducting his racially-polarized voting analysis. Dr. Liu
23 also found that whether you use any-part black or single-race
24 black, voting is racially polarized, and black people prefer
14:12:15 25 the same candidates.

1 Dr. Liu also testified that the fact that he found that
2 black people, whether he used any-part black or single-race
3 black, voted for the same candidates was consistent with his
4 own research finding that black people, whether you look at
14:12:29 5 black Latinos or other people with varied racial or ethnic
6 identities tend to vote the same.

7 Defendants also allege that partisanship not racism
8 explains white block voting in Alabama. But no precedent
9 supports the state's theory the plaintiffs are required to
14:12:47 10 prove or disprove why voting is racially polarized.

11 As the Supreme Court said in *Gingles*, the difference
12 between the choices made by black and white voters is not the
13 reason -- it's the difference between the choices made by black
14 and white voters, not the reason for that difference, that
14:13:03 15 results in black voters having less opportunity and violations
16 of the Voting Rights Act.

17 Your Honors, even if this were relevant, Dr. Liu's
18 analysis showed that there was racially-polarized voting in
19 both Democratic and Republican primaries, and that strikingly
14:13:20 20 even in some general elections, majorities of white Democrats
21 voted against black Democratic candidates to support white
22 candidates.

23 Defendants will also knit pick at the totality of the
24 circumstances analysis. They have asserted that court orders
14:13:37 25 -- certain court orders do not count, but declaratory judgments

1 and consent orders, particularly those containing liability
2 findings are binding court orders like any other.

3 The state has also attempted to argue that Alabama's
4 racial disparities in employment and education are similar to
14:13:55 5 other states. But Section 2 requires an intensely local
6 analysis of the relevant facts and not a comparison among
7 states.

8 This is because as Dr. King testified, each of the states
9 Alabama references have their own terrible histories of racial
14:14:10 10 discrimination. And these states past or ongoing instances of
11 discrimination or racial disparities does not absolve Alabama
12 of its own history.

13 Defendants do not come close to over-rebutting any of
14 plaintiffs' evidence going to the totality of the
14:14:28 15 circumstances.

16 Finally, the defendants may argue that it's simply too
17 late for relief to the plaintiffs. The evidence shows that
18 this is incorrect. The Court heard how quickly HB-1 was drawn
19 and enacted. However, no one has ever voted under the maps at
14:14:47 20 issue here. There is no risk of voter confusion. As, Your
21 Honor, already said, the primary election is nearly five months
22 away. The general election is over nearly 11 months away.

23 Your Honor, the plaintiffs have met their four
24 requirements of the preliminary injunction standard. As our
14:15:09 25 proposed findings of fact and conclusions of law will show, the

1 plaintiffs have shown a substantial likelihood of success on
2 the merits. They have shown irreparable injury in the form of
3 vote dilution as described by the Supreme Court, the Eleventh
4 Circuit, and district courts across Alabama, the equity
14:15:27 5 strongly favor plaintiffs' interest in exercising their right
6 to vote free from racially discriminatory redistricting, and
7 there is no countervailing weighty concerns the defendants have
8 identified.

9 At this stage, what we are asking the Court to do is
14:15:42 10 extend any upcoming election deadlines and give the state an
11 opportunity to devise new maps that completely cure the
12 constitutional and statutory violations.

13 In sum, this case presents the precise evil the Voting
14 Rights Act was designed to remedy, the dilution of black
14:16:00 15 voters' voting strength.

16 Federal courts, as you know, play a vital role in ensuring
17 that every citizen can participate equally in the political
18 process. And this Court has the power to order Alabama to
19 remedy the Section 2 violations here by requiring it to draw
14:16:17 20 two black districts.

21 As the Supreme Court has explained, district courts have a
22 duty to cure illegal districts -- excuse me -- districts even
23 through an orderly process in advance of elections. We simply
24 ask this Court to take up that duty.

14:16:35 25 Thank you, Your Honors.

1 JUDGE MARCUS: Thank you very much. Any questions,
2 Judge Manasco or Judge Moorer for Mr. Ross?

3 JUDGE MANASCO: I have got one. It's the same one
4 that I asked counsel for the Caster plaintiffs.

14:16:48 5 Mr. Ross, do you see a difference, and if you do, please
6 comment on it for me, between an injunction that directs the
7 use of a map that contains two districts in which black voters
8 would have an opportunity to elect a representative of their
9 choice on the one hand, and, on the other hand, an injunction
14:17:07 10 which requires the use of a map that includes two
11 majority-black districts?

12 MR. ROSS: Your Honor, we're happy to brief this in
13 our proposed findings of fact and conclusions of law, but I
14 will say that I think the answer, as Ms. Khanna said, is
14:17:23 15 complex. I think that this Court can and should issue a
16 declaratory judgment saying that the current maps violates
17 Section 2, and then give the Legislature an opportunity to draw
18 districts that cure the violation, obviously working from the
19 illustrative plans.

14:17:39 20 If the Legislature were to draw one district that looked a
21 lot like District 7 and another district that was 45 percent
22 black, or something else, then this Court would need to decide
23 with evidence or argument from the parties whether or not that
24 completely cured the violation.

14:17:57 25 And so I think my answer is simply that the Court has to

1 give -- find the Section 2 violation, give the Legislature the
2 opportunity to cure it, and whatever the Legislature comes up
3 with, whether it's a 45 percent black district and a 50 percent
4 black district, the parties will need to decide then whether or
14:18:19 5 not that cures the violation that the Court finds.

6 JUDGE MANASCO: Thank you.

7 JUDGE MARCUS: Anything further, Judge Moorer?

8 JUDGE MOORER: No, sir.

9 JUDGE MARCUS: All right. You broke up your argument
14:18:31 10 in half, Mr. Ross, and only devoted your time to Section 2. I
11 take it your colleague Mr. Rosborough is going to address the
12 constitutional claim?

13 MR. ROSS: Yes, Your Honor.

14 JUDGE MARCUS: Thank you. Mr. Rosborough.

14:18:48 15 THE CLERK: You have 10 minutes total of the 30 that
16 was given the 25 that was given.

17 MR. ROSBOROUGH: Thank you. Understood. Thank you.

18 THE COURTROOM DEPUTY CLERK: Thank you.

19 MR. ROSBOROUGH: Good afternoon, Your Honors. Davin
14:19:01 20 Rosborough for the Milligan plaintiffs.

21 My colleague, Mr. Ross, has discussed the compelling
22 evidence that HB-1 violates Section 2 of the VRA by failing to
23 create a second congressional district that will allow black
24 voters to elect candidates of their choosing.

14:19:15 25 The same packing of black voters in District 7 in

1 unjustified numbers and simultaneously cracking of many of the
2 state's black voters among Districts 1, 2, and 3, violate the
3 Fourteenth Amendment to the Constitution as a racial
4 gerrymander.

14:19:30 5 Under HB-1, District 7's registered voter population is
6 just under 60 percent black, and the district contains about a
7 third of Alabama's black voters. In contrast, Districts 1, 2,
8 and 3 systematically fracture much of the remaining black
9 population into separate districts such that the Black Voting
14:19:52 10 Age Population in each is below 30 percent.

11 This irreparably harms voters in those districts like our
12 clients by subjecting them to unfair racial divisions.

13 Of course, we agree with the Supreme Court in *Bush v. Vera*
14 that district scrutiny does not apply merely because
14:20:07 15 redistricting is performed with consciousness of race.
16 States can and should draw black-majority districts when doing
17 so serves the state's compelling interest in complying with the
18 VRA, so long as the districts are narrowly tailored to that
19 end.

14:20:22 20 But here the Alabama Legislature took no action whatsoever
21 to narrowly tailor that use of race in District 7 to comply
22 with the VRA or any other compelling governmental interest.
23 The cracking of black voters across Districts 1, 2, and 3 shows
24 the opposite of VRA compliance. These establish a violation of
14:20:41 25 the Fourteenth Amendment.

1 There's no dispute that the current districts originate
2 from the maps drawn in 1992 arriving out of the *Wesch*
3 litigation.

4 The parties there agreed that, quote, a single member
14:20:53 5 significant majority 65 percent or more African-American
6 congressional district should be created. That district was
7 District 7.

8 Mr. Randy Hinaman was the individual who drew the
9 challenged map here, and he also drew that map adopted in '92.
14:21:08 10 He worked on the 2000-cycle maps, and he drew the 2011 maps.

11 Mr. Hinaman admitted that race played a major role in the
12 design of District 7 in 1992. Other than complying with
13 population requirements, race was his top consideration.

14 He drew District 7 in 1992 with the intent to make a
14:21:28 15 majority-black district, which he accomplished by assigning
16 counties in precincts with high concentrations of
17 African-American voters.

18 Mr. Hinaman also admits that the 2021 districts can be
19 traced back to these '92 districts with each successive map
14:21:43 20 preserving most and as much as possible those districts.

21 Representative Pringle agrees concerning District 7.

22 Even as to the 2011 plans, Secretary Merrill has stated
23 that Congressional District 7 appeared to be racially
24 gerrymandered. Mr. Hinaman agreed with his assessment.

14:22:02 25 But the plaintiffs have also presented extensive expert

1 testimony of racial predominance. Dr. Imai's one
2 majority-minority district simulation showed that the state's
3 decision to pack a number of black voters from Montgomery
4 County into District 7 made it a racial outline.

14:22:19 5 Now, the state was considered -- entitled to consider race
6 for VRA compliance. But Dr. Imai's race blind maps rebut the
7 state's argument that race didn't play a role at all and
8 instead shows the predominant role did it play.

9 Dr. Williamson also found compelling evidence of racial
14:22:35 10 predominance with the three counties split in District 7
11 Jefferson, Montgomery, and Tuscaloosa and particularly the
12 manner of those splits.

13 Areas of those counties with higher BVAP were drawn into
14 Congressional District 7 with disproportionately white census
14:22:52 15 blocks within those counties drawn into other districts
16 creating a range of 25 to 45 disparities in those counties.

17 The racial predominance evidence in CD 7 is overwhelming
18 and un rebutted.

19 As to Districts 1, 2, and 3, the defendants correctly
14:23:07 20 contend that they've maintained the cores of these districts
21 since the '92 maps.

22 Yet in '92, the U.S. Attorney General objected to the
23 Alabama Legislature's plan, which they admit was quite similar
24 to the *Wesch* plan because it fragmented the rest of the black
14:23:24 25 population outside of District 7. The AG noted a

1 predisposition on the part of state political leadership to
2 limit black voting potential to a single district.

3 Since then, despite black voters in these districts making
4 up around 90 percent of the Voting Age Population necessary to
14:23:42 5 form an entire congressional district, have consistently been
6 held at or below 30 percent BVAP since the '92 maps.

7 The racial heat map from defendants' own expert Mr. Bryan
8 demonstrates the way that the district boundaries slice through
9 the middle of black communities at every turn. As you can see
14:24:02 10 from the added red lines, Districts 1, 2, 3, and 7, cut
11 directly down the middle of black communities in the Black Belt
12 that are excluded from District 7.

13 Dr. Williamson's analysis confirms this racial cracking
14 isn't due to geography or other factors. He exposed that black
14:24:19 15 Alabamians are more likely to be diffused across districts in
16 the Black Belt than other regions using multiple measures of
17 analysis, and he showed that for Districts 2 and 3, counties
18 with higher black populations were more likely to border
19 another district, a hallmark of cracking.

14:24:35 20 Dr. Imai also showed likely racial predominance in
21 Districts 1, 2, and 3. Even when drawn a majority-minority
22 district and considering Mobile and Baldwin and the Black Belt
23 as communities of interest, the second highest BVAP district
24 would tend to have a BVAP in the high 30s and up to 40 percent
14:24:55 25 as opposed to the state's cracking of black voters and

1 preventing any district above 30 percent.

2 Now, Dr. Imai's report shows nothing about the validity of
3 any illustrative plans, of course, because he did not take race
4 into account at all except for one-MMD.

14:25:12 5 Even though this is perfectly admissible under the
6 Fourteenth Amendment and necessary for VRA compliance. What it
7 does show is isolating the extent of the state's use of race in
8 its maps and how it cracked the black community.

9 In response, the defendants rely on a few primary
14:25:30 10 arguments to try to avoid what the evidence shows.

11 First, they conflate the plaintiffs' racial gerrymandering
12 claim under *Shaw* with an intentional vote dilution claim to try
13 to impose a different standard of proof. But *Shaw* recognized
14 this is an analytically distinct form of claim from a vote
14:25:46 15 dilution claim. A racial gerrymandering claim doesn't require
16 an intent to disadvantage black voters, but only that the state
17 that has used race as a basis for separating voters into
18 districts as it said in *Miller*.

19 Second, defendants argued that their maps cannot be racial
14:25:57 20 gerrymanders where they prioritize preserving existing district
21 cores and ignored race while drawing the maps. But in *North*
22 *Carolina vs. Covington*, the Supreme Court explicitly rejected
23 the argument that one can avoid racial predominance by
24 readopting cores of previous districts and not looking at race
14:26:19 25 when doing so. And it explained that it didn't matter that the

1 claim arose in a challenge to remedial rather than original
2 districts.

3 The Supreme Court rejected the argument that preserving
4 cores prevented their challenge because the plaintiffs remained
14:26:34 5 segregated on the basis of race because of those lines the
6 state readopted.

7 It explained that it is the segregation of the plaintiffs,
8 not the Legislature's line drawing as such that gives rise to
9 the claims. Just because a Legislature chooses to readopt
14:26:48 10 those lines does not mean those readopted portions are not
11 relevant. The Courts in Alabama Legislative Black Caucus and
12 *Clark vs. Putnam County* found racially gerrymander districts as
13 well despite those districts preserving the cores of existing
14 districts.

14:27:03 15 Defendants were well aware of this racial history, and the
16 state even admitted that District 7 under the 2011 plan was a
17 racial gerrymander, yet they chose to di largely readopt these
18 lines in HB-1.

19 Third, defendants argue that Mr. Hinaman didn't look at
14:27:17 20 race while drawing the 2021 maps. The Supreme Court in
21 *Covington* rejected the same defense. As is true here, it did
22 little to undermine the evidence concerning the shape and the
23 demographics of those districts that the districts
24 unconstitutionally sort voters on the basis of race.

14:27:34 25 Even looking only at the new district lines shows racial

1 disparities. The only analysis of those changes in the record
2 comes from Dr. Williamson. And he showed that for Districts 2
3 and 3 black voters were moved out of those districts in much
4 higher percentages than they were moved in.

14:27:50 5 Finally, defendants cannot rebut plaintiffs' evidence of
6 racial predominance with any other factor. Given that they
7 only changed the lines a little bit, minor changes to make a
8 district more compact or respond to incumbents would not
9 predominate. Mr. Hinaman even testified in his deposition at
14:28:07 10 page 73 that requests for congressional representatives were
11 not major.

12 Finally, a state's predominant use of race does not mean
13 the map is unconstitutional. Instead, the state now carries
14 the burden to show that its separation of voters based on race
14:28:22 15 was narrowly tailored to serve the VRA, and it has not met its
16 burden here.

17 In cases where the Court has found the state met this
18 test, the state made a strong showing of pre-enactment analysis
19 would justifiable conclusions. A majority-black district is
14:28:38 20 constitutional even where race predominates so long as the
21 state had a good reason to draw it. But narrow tailoring
22 District 7 required the state to assess performance in each
23 redistricting cycle.

24 It's undisputed that the state never bothered to ask that
14:28:53 25 question or conduct any form of tailoring for District 7 here.

1 The parties agree that no racial-polarization analysis was
2 conducted for any congressional districts. And Senator
3 McClendon testified that the state did nothing to ensure that
4 the BVAPs of such districts were not too high.

14:29:11 5 If defendants had performed a racially-polarized voting
6 analysis, it would have revealed a lack of narrow tailor.
7 Dr. Liu showed the districts just above 50 percent BVAP or
8 around 53 percent of black registered voters, as proposed in
9 Plaintiffs' Exhibit 1 maps, can perform for black voters, and
14:29:30 10 the VRA offers no safe harbor for cracking black voters among
11 Congressional Districts 1, 2, and 3. Nothing in the VRA
12 requires or could require the state to keep the black
13 populations in those districts below 30 percent.

14 All of the evidence points to district lines in the
14:29:46 15 challenged districts that separate voters based on race and do
16 not do so in a narrowly tailored manner to comply with the
17 Voting Rights Act.

18 Because HB-1 violates Section 2 of the VRA and the
19 Constitution, the Court should order defendants to redraw the
14:30:02 20 congressional map to create two districts that allow black
21 voters to elect candidates of choice in a manner narrowly
22 tailored to comply with the VRA, such this map will satisfy
23 both the VRA and the Constitution.

24 Thank you, Your Honors.

14:30:18 25 JUDGE MARCUS: Mr. Rosborough, I have two questions

1 for you.

2 You first, the same question I put earlier to
3 Mr. Blacksher. The plan as adopted in '92 by the district
4 court in *Wesch* and approved by the Supreme Court on a summary
14:30:41 5 calendar, did that plan violate the Equal Protection Clause in
6 your view?

7 MR. ROSBOROUGH: Your Honor, I don't necessarily -- I
8 don't think that that plan at that time it was enacted in 1992
9 violated the Equal Protection Clause. I think the plan became
14:30:58 10 problematic because the state was required to assess the
11 districts with each districting cycle. And over time, over the
12 last few decades, Alabama has changed. And yet the state has
13 not performed that analysis. It certainly hasn't done so in
14 this cycle or the last cycle.

14:31:17 15 And so that district very well may have been and likely
16 was narrowly tailored when it was put into place in 1992, but
17 it no longer is. And that's an obligation the state has in
18 every cycle, and it ceased to do that here.

19 JUDGE MARCUS: Second question, a different one.

14:31:36 20 You have presented two different theories traveling on two
21 different causes of action; Section 2 claim, which your
22 colleague has argued, and a constitutional claim. For the
23 purposes of this preliminary injunction hearing, if you are
24 correct on the Section 2 claim, and I underscore if, would
14:32:05 25 there be any reason for this Court by your lights to address

1 the constitutional question during this preliminary injunction
2 proceeding?

3 MR. ROSBOROUGH: Your Honor, I think the answer is no.
4 Any remedy for a Section 2 violation would have to be
14:32:27 5 constitutionally compliant. And, you know, we think our two
6 theories are consistent with each other.

7 So to the extent the state -- to the extent the Court
8 finds the Section 2 violation, no, I don't think it needs to
9 address our constitutional theory.

14:32:40 10 JUDGE MARCUS: The reason I raise the question, again,
11 assuming you are otherwise correct, which remains to be seen,
12 the reason I raise the question is because there is a long
13 standing doctrine in our court's history and the Eleventh
14 Circuit's history, the old Fifth Circuit history, and in the
14:33:02 15 Supreme Court to avoid constitutional questions, when you don't
16 have to answer them, and they might otherwise be resolved
17 through a statutory construction. Is that the correct
18 application of that principle of constitutional avoidance in
19 this case?

14:33:21 20 MR. ROSBOROUGH: I think it is, Your Honor. If the
21 Court rules that the plaintiffs have likely established -- have
22 met their burden and the Court wants to issue a preliminary
23 injunction on the Section 2 claim, I think it would be
24 appropriate and permissible for the Court to avoid a ruling at
14:33:41 25 this time on the constitutional claim under the canon of

1 constitutional avoidance.

2 JUDGE MARCUS: Conversely, if you were to lose on this
3 preliminary injunction on Section 2, then this Court would be
4 obligated to address the constitutional claim, correct?

14:33:59 5 MR. ROSBOROUGH: I think that's exactly right, Judge
6 Marcus.

7 JUDGE MARCUS: All right. Thank you. Judge Manasco,
8 any questions?

9 JUDGE MANASCO: (Shook head.)

14:34:07 10 JUDGE MARCUS: Judge Moorer?

11 JUDGE MOORER: No questions.

12 JUDGE MARCUS: All right. We thank you. The Milligan
13 plaintiffs have reserved five minutes for rebuttal, as well.

14 Mr. LaCour, I thought we would take a 15-minute break, and
14:34:21 15 then when we come back, we would be happy to hear your
16 argument. You have a full 90 minutes toward that purpose. You
17 can use as much or all of it as you see fit.

18 With that, we will be in recess for 15 minutes.

19 (Recess.)

14:48:43 20 JUDGE MARCUS: I see Mr. LaCour. Are counsel for the
21 plaintiffs present?

22 MR. BLACKSHER: Singleton is here.

23 JUDGE MARCUS: Thank you, Mr. Blacksher. I see
24 Mr. Ross and Ms. Khanna, as well. We are ready to proceed,
14:50:36 25 Mr. LaCour. Thank you.

1 MR. LACOUR: Thank you, Your Honors.

2 This case represents an extraordinary attack on an
3 ordinary map.

4 We have here an equal protection claim that lacks any
14:50:52 5 mention of the current Legislature's intent, and we have a
6 Section 2 claim in which the plaintiffs themselves have proven
7 through two of their experts that you could not draw two
8 majority-minority districts if you drew based only on
9 traditional race-neutral districting principles.

14:51:09 10 So plaintiffs' equal protection claim fails because
11 traditional race -- redistricting principles were not
12 subordinated to race in the 2021 Legislature's map. And
13 plaintiffs' Section 2 claims fail at *Gingles I* because in each
14 of their 11 illustrative plans, traditional redistricting
14:51:28 15 principles are subordinated to race.

16 But before I get into the merits any further, I did want
17 to touch on the fact that the burden is incredibly high here.
18 Not only are they seeking an injunction, which is an
19 extraordinary and drastic remedy in and of itself, they're
14:51:46 20 asking for what essentially would be a mandatory injunction
21 where the burden would need to be even higher on them.

22 Let me move to the other laptop closer. Is this a little
23 bit clearer?

24 JUDGE MARCUS: It is. Thank you.

14:52:10 25 MR. LACOUR: Thank you.

1 So we are talking a preliminary injunction which in and of
2 itself is an extraordinary and drastic remedy, what would
3 essentially be a mandatory injunction because the Legislature
4 would need to act to put in place new maps on a very expedited
14:52:31 5 time frame. And then we're adjudicating a redistricting, which
6 the Supreme Court has repeatedly said is a serious intrusion
7 into the most vital of local functions. There are complex
8 interplays here. And in addition, you must presume the good
9 faith of the Legislature and exercise extraordinary caution
14:52:48 10 particularly when you are adjudicating racial gerrymandering
11 claims like those brought by the Singleton and by the Milligan
12 plaintiffs.

13 So I will turn first to the equal protection claim because
14 I do think some of the evidence you heard from the Milligan
14:53:04 15 plaintiffs actually benefits us tremendously when it comes to
16 the Section 2 claim. So I will start with equal protection and
17 move to Section 2 after that.

18 But if the Court has any questions, I am not here to give
19 a monologue. I would love to hear what is on each of your
14:53:21 20 minds and try to answer any questions you right have.

21 But again, evidentiary burden is particularly heavy for
22 the plaintiffs for a racial gerrymandering claim. It is not
23 enough to merely prove that the Legislature was aware of race.
24 After all, the Legislature was, of course, aware that District
14:53:37 25 7 was going to contain at least one black woman, Terri Sewell.

1 They knew that District 6 was going to contain at least one
2 white man, Gary Palmer. You have to show that race
3 predominated, and that means that it subordinated traditional
4 districting principles.

14:53:52 5 And in addition, keep in mind we are looking at the -- we
6 are looking at intent of the Legislature, which any time you
7 are dealing with any law, it's going to be a particularly
8 difficult inquiry. We are talking 35 Senators, 105 members of
9 the House, the Governor, who signed this into being, and the
14:54:15 10 best intent -- the best evidence of intent of any law is to
11 look at the text.

12 Now, of course, the text here is a lot of coordinates. So
13 I think looking at the map is particularly good evidence. And
14 I will briefly share I think a map that everyone is well
14:54:32 15 acquainted with at this point.

16 If I can find it. There we go.

17 So, again, this is the map that Tom Bryan prepared that
18 was part of Defendant's Exhibit 2, and this is page 52. And as
19 we talked about a lot with a lot of witnesses this past week
14:54:55 20 and a half, this demonstrates some of the changes from the 2011
21 lines to the 2021 lines.

22 As we also establish through many witnesses and is evident
23 in a lot of the case law that we have cited in our PI response
24 that you will see in our findings of fact and conclusions of
14:55:13 25 law we submit Friday, it is a quite common thing for a

1 Legislature when it sits down to draw lines every ten years to
2 start with the previous map. That's what we have here. Again,
3 these light blue lines show where the changes were made from
4 the 2011 map to the 2021 map.

14:55:33 5 Now, the unrebutted testimony in this case from the map
6 drawer is that his goal was to start with the guidelines. He
7 was handed the guidelines by the legislative redistricting
8 committee, which I will note, those were voted on by the
9 Legislature.

14:55:50 10 So it is a brief aside, but you heard some evidence or
11 testimony suggesting that the Legislature didn't have input and
12 that its process of drawing the map was outsourced to the
13 congressional district. That's -- that's not true. What
14 happened was you had a redistricting committee that came
14:56:08 15 together, that voted on and approved guidelines by an
16 overwhelming margin. One of the Democrats who voted in favor
17 of these guidelines was none other than plaintiff Senator Bobby
18 Singleton.

19 So for him to come to this Court and express surprise that
14:56:26 20 we ended up with a map that retained the course of districts
21 that minimized population deviation down to one person one vote
22 and that it tried to minimize county splits and protect
23 incumbents while trying to be compact is -- it's not quite
24 unclean hands, but it's a little bit disingenuous.

14:56:47 25 In any event, turning back, it's clear how we got to where

1 we got in 2021 in district -- between Districts 2 and 3 here on
2 the eastern border of District 2. You have a line where
3 Montgomery County -- split Montgomery County was taken away.
4 That's consistent with the guidelines to minimize splits of
14:57:09 5 counties.

6 You have -- if you are looking down between Districts 1
7 and District 7, you had the split of Clarke County closed off
8 to return all of Clarke County to District 7 and consistent
9 with that traditional race-neutral districting principle.

14:57:27 10 Then if you look up to District 7 on the north side, as
11 Mr. Hinaman explained is undisputed here, District 7 was lower
12 on population when compared with the other districts by about
13 53,000 people. We needed to find 50,000 -- 53,000 new people
14 to add to District 7, and he did consistent with the guidelines
14:57:54 15 that says how to draw compact districts was to make this a far
16 more regular district. By this line here that you are looking
17 at, the former line of District 7 going into Jefferson County
18 was far more narrow, for less regular and instead he broadened
19 that out.

14:58:15 20 Now, that required taking away some of the northern tip of
21 that line, and as a result, there was some population from the
22 Homewood area was moved from District 7 -- District 6, rather,
23 into District 7. And then finally, to equalize population and
24 to get more population, they had to go to another
14:58:37 25 population-dense county that had already been split. That was

1 Tuscaloosa County, around here.

2 I will return to this in a moment when we talk about
3 Dr. Williamson, why his analysis really is -- easily has no
4 bearing on the ultimate issue of whether race predominated in
14:58:57 5 this map.

6 But --

7 JUDGE MARCUS: Can I ask you a question about that
8 map?

9 MR. LACOUR: Yes, Your Honor.

14:59:05 10 JUDGE MARCUS: When the map was drawn in '92, it's
11 clear that that thumb sticks all the way into Jefferson County
12 and places it in District 7, and pretty much everybody
13 including the cartographer, Mr. Hinaman, has said that that was
14 done for a predominantly race-based reason, that is to say, to
14:59:31 15 create one majority-minority district.

16 I think I have those facts right on that, right?

17 MR. LACOUR: Yes, Your Honor.

18 JUDGE MARCUS: Did race predominate when they drew the
19 map in '92?

14:59:46 20 MR. LACOUR: Yes, it did. But that only gets you to
21 the second step of scrutiny.

22 JUDGE MARCUS: Correct. So get me to the second step,
23 if you would.

24 MR. LACOUR: Yes. And so I do want to be clear. Our
15:00:00 25 argument here is not that the VRA justifies the drawing of this

1 map in -- drawing of CD 7 currently. At least, that's not an
2 argument we have developed at this point. Our argument is that
3 this is not a map in which race predominates, because a law
4 that happens to look a lot like another law from the past could
15:00:22 5 be passed for entirely different reasons.

6 What's relevant is not the intent of the 1992 Legislature,
7 or to be more accurate, the 1992 three-judge court that
8 ultimately ordered this map into effect. What's relevant is
9 the 2021 Legislature.

15:00:40 10 That's what the Court said -- the Supreme Court said in
11 *Abbott vs. Perez*. There you have a 2011 map of the Texas
12 Legislature that was deemed unlawful, a new map was put in
13 place by a court, by the three-judge court at issue there for
14 the 2012 elections, and then in 2013, you had the Legislature
15:01:02 15 enact a new map that looked a lot like the court-ordered map.
16 And then when the district court later reconsidered, said,
17 well, you didn't sufficiently purge the discriminatory intent
18 from the map that we had ordered you to conduct your election
19 on, on an interim basis, the Supreme Court said, well, no, the
15:01:22 20 2011 Legislature's intent is not the relevant inquiry here. It
21 is the 2013 Legislature's intent.

22 And I take the point from the Milligan plaintiffs that --
23 I believe the Singleton plaintiffs, too, that was an
24 intentional vote dilution claim and not a racial gerrymandering
15:01:36 25 claim. But both of those are products of the Equal Protection

1 Clause. And to state a claim under the Equal Protection Clause
2 you have to show intent. Whose intent? The intent of the
3 actor whose law you are challenging.

4 If I took one of my son's puzzles that had -- alphabet
15:01:54 5 puzzles, and I threw it up in the air, and at random, a couple
6 of words were spelled, I didn't intend to spell the words.
7 That was done at random.

8 Similarly, there could be very different -- but if I
9 purposefully arrange the letters to spell a word, there is
15:02:10 10 intent behind that.

11 And so then we have to ask, well, what was the intent that
12 led to this act, Act 2021-555? And we have excellent evidence
13 to show the race-neutral reasons that produced this map. It's
14 there in the guidelines that plaintiff Singleton voted for.
15:02:31 15 It's there. It just jumps off the face of the map if you look
16 at it.

17 And we are not really getting any sort of -- I mean, there
18 wasn't really any sustained argument against that, other than
19 the statistical analyses that you heard about from Drs. Imai
15:02:48 20 and Dr. Williamson. And I am happy and eager to address those
21 in a minute.

22 And then this idea that there is some affirmative
23 obligation for the state to purge a gerrymander. But that's
24 directly contrary to *Abbott*. It's also directly contrary to
15:03:05 25 *Cromartie*, which a case we cited right there, page 1 of our PI

1 response. And I will find the exact quote, if you have just a
2 moment. But it's *Easley v. Cromartie*, 532 U.S. at 249. And
3 what the Supreme Court said was, the Constitution does place an
4 affirmative obligation upon the Legislature to avoid creating
15:03:28 5 districts that turn out to be heavily even majority-minority.

6 So if you follow traditional districting principles, you
7 are fine. And that's exactly what we have here. That's black
8 letter law. And I have not seen an answer to it from any of
9 the plaintiffs in the three reply briefs that we got.

15:03:47 10 Similarly, like *Miller vs. Johnson* said that adhering to
11 traditional districting principles instead of creating as many
12 majority-minority districts as possible does not support an
13 inference that the plan discriminates on race.

14 So it's not enough for them to come here and say that
15:04:04 15 there's more we could have done equal to lower the Black Voting
16 Age Population, because the Equal Protection Clause does not
17 put some sort of racial ceiling on a district.

18 I think *Cromartie* says quite to the contrary. And if we
19 were to go about unpacking, I think that would be a much more
15:04:24 20 race-conscious action. I think what they are -- what the
21 Singleton and Milligan plaintiffs are demanding of us raises
22 far more Equal Protection Clause issues than what the
23 Legislature did here, which was draw lines race neutrally, come
24 up with race-neutral districting guidelines, hand them over to
15:04:45 25 the map drawer, and expressly tell them, draw maps on a

1 race-neutral basis, and all of the testimony is that that is
2 exactly what he did. That is how the map appears, as well.

3 They have not pointed to changes in the map that would
4 suggest that they were done for some racial purpose. And if
15:05:03 5 you look at the White Voting Age Population, the trends there,
6 1992, I believe it was around 63 percent of Black Voting Age
7 Population. Then you move to 2011, we were sitting around
8 60 percent. If you move to 2021, we're down to 54 percent. If
9 we're trying to pack, we are doing a pretty bad job of it. But
15:05:25 10 the answer is, is like there was this intervention in Alabama
11 political history in 1992 that produced this map.

12 But there's no equal protection obligation to keep an eye
13 on racial demographics and make sure that we undo it at just
14 the right moment. And that's for the import of the position
15:05:48 15 that's being pushed by Singleton plaintiffs and by the Milligan
16 plaintiffs. But it's, again, directly contradicted by cases
17 like *Easley vs. Cromartie* and *Abbott vs. Perez*.

18 JUDGE MARCUS: I think you have answered my question.
19 Thank you.

15:06:08 20 MR. LACOUR: Excellent.

21 Then I will turn briefly to Dr. Williamson's analysis and
22 why it proves nothing in this case. Really, for a similar
23 reason to Dr. Imai's, neither of them started with the prior
24 map. Their analysis was based on a fanciful premise that there
15:06:28 25 was a blank slate and said if Alabama were to draw a map

1 starting at year 0, Alabama has a completely blank map other
2 than some county lines, I suppose, and they were to draw a
3 line, and they were to draw lines for the first time ever, you
4 wouldn't expect to see splits in CD 7 and in CD 2 and in CD 3.

15:06:51 5 Well, while professors might draw maps on blank slates,
6 that's not what legislatures do, and that's not what the
7 Legislature did here either. So that the obvious alternative
8 explanation to borrow language from *Iqbal* for why there are
9 splits in Tuscaloosa County and in Jefferson County and in
15:07:11 10 Montgomery County, is because they were already there.

11 And so unless there is some sort of new affirmative
12 obligation to every ten years try to unpack minority voters
13 through some race focused process, under the Equal Protection
14 Clause, which would be, again, very bizarre, his analysis
15:07:34 15 really shows nothing.

16 And then he talks about the fact that some of the voters
17 who were being added to District 7 were more likely to be black
18 voters than those who are being taken out, and I will pull up
19 the map one more time we were just looking at just to sort of
15:07:53 20 underscore why that is through a flawed way to look at things
21 or give to give the obvious alternative explanation.

22 So you have got some voters here between Districts 7 and
23 4. This is Tuscaloosa County. And you see that blue line.
24 Well, the reality is, I mean, District 7 has a population of --
15:08:15 25 a black population percentage of about 54 percent.

1 So most places you go in District 7 are going to have the
2 substantial black population, and most places just across the
3 line into District 4 are going to have a somewhat similar black
4 population percentage. So we couldn't -- because of
15:08:35 5 contiguity, we couldn't just jump over south Tuscaloosa County
6 and go pick up voters from the more predominantly white part of
7 Tuscaloosa. And so that's again another obvious alternative
8 explanation there.

9 Similar issue if you look down to Districts 2 and 3, we
15:08:52 10 were closing off Montgomery, and when you do that, like you're
11 going to pick up people based on whoever happens to be in that
12 part of Montgomery. Going back down to closing the county
13 split at Clarke County between 7 -- District 7 and District 1,
14 and Clarke County is a Black Belt county. And when they close
15:09:14 15 that split you get down to the minimal number split of six, you
16 heard about when Dr. Duchin was testifying that was an easy and
17 obviously to do that.

18 So, again, I don't think his analysis sheds any light on
19 the real world reasons why the scores of legislators who voted
15:09:36 20 for Act 2021-555 decided to vote for this particular piece of
21 legislation.

22 Now, turning to Dr. Imai, this is where it really gets
23 fun. Dr. Imai ran 10,000 -- Dr. Imai was the expert if you
24 recall who had his algorithm that could produce thousands and
15:10:07 25 thousands of maps. And what he testified to was that he

1 programmed in to his algorithm -- and I will try not to read,
2 but I think I want to make sure I really get this -- really get
3 this right.

4 So here's how the Milligan plaintiffs describe what
15:10:29 5 Dr. Imai did. This is coming from Milligan docket entry 69,
6 page 26, if you look at the ECF pagination. They said, quote,
7 he created an algorithm that produced 10,000 simulated plans.
8 His race-neutral simulation drew maps that followed the stated
9 guidelines of creating seven contiguous districts keeping
15:10:50 10 population deviations to a minimum and never above .5 percent
11 developing districts that are reasonably compact, respecting
12 county boundaries where possible, and avoiding incumbent
13 pairings.

14 Then what the Milligan plaintiffs describe as their
15:11:05 15 striking finding is that of the 10,000 generated districts, not
16 a single simulated plan had a BVAP as high as District 7. BVAP
17 being Black Voting Age Population.

18 What I would note for this Court is that it appears that
19 none of the 10,000 maps included even one district of
15:11:24 20 50 percent Black Voting Age Population, and in the Milligan
21 plaintiffs' view, they said, quote, this alone shows that HB-1
22 used race as a predominant factor.

23 Now, I will return to that in just a moment. Let me first
24 explain why that's wrong as to HB-1. It's wrong to HB-1 for
15:11:44 25 the reasons Dr. William's analysis is completely flawed, too.

1 Dr. Imai said he could have factored in core retention to his
2 algorithm. He could have included an additional traditional
3 districting principle. He decided not to. Maybe if he had
4 included it, his analysis might have shed a little bit of
15:12:05 5 light. But I think he said he wouldn't have really been able
6 to tell if race was doing anything if you had included the
7 cores of the previous districts.

8 So, again, if you start with a fanciful premise of the
9 blank slate map draw, you are going to get irrelevant results.

15:12:22 10 But interestingly, even when he's not constrained by core
11 retention, which means he has more discretion, he has more
12 ability to go out and find majority-minority districts,
13 consistent with traditional districting principles except for
14 one that he sort of arbitrarily decided to scrap, he still
15:12:41 15 couldn't find even one 50 percent BVAP district much less two.

16 And that is critical when we move to the *Gingles I*
17 analysis because what plaintiffs have essentially done -- if I
18 was the Caster plaintiffs, I might be a little upset with
19 Milligan plaintiffs at this moment, but what they have done is
15:13:01 20 they have shown to almost a mathematical certainty that if the
21 Alabama Legislature had sat down with Dr. Imai's algorithm and
22 said, let's figure out if it's possible to find a second
23 majority-minority district in Alabama, let's draw 10,000 maps
24 that all comply with our traditional nonracial districting
15:13:22 25 criteria, not one of them would have even one majority-minority

1 district much less two majority-minority districts.

2 It follows -- and then Dr. Duchin does one better. She
3 said when she ran her algorithms, the algorithms she ran to get
4 her maps here, she made it a non-negotiable factor that there
15:13:46 5 be two minority-majority districts. So wherever any
6 traditional districting criteria came into conflict with race,
7 race was going to have to predominate.

8 And we heard individual testimony -- testimony from her
9 and Dr. Cooper saying -- not from Dr. Cooper -- from Mr. Cooper
15:14:00 10 rather that there were times when they were looking to split
11 precincts and decided to do it on a racial grounds to make sure
12 that they kept hitting the racial targets to make sure they
13 keep sorting voters based on race.

14 But Dr. Duchin said she ran 2 million maps in Alabama with
15:14:20 15 traditional districting criteria, albeit not core retention,
16 and so, again, she was freer than our Legislature would have
17 been to see what was out there in the world of race neutral but
18 otherwise traditionally drawn maps. 2 million maps, and not
19 one of them had two majority-black districts.

15:14:40 20 What that means is race necessarily has to predominate if
21 you are going to get a second majority-black district in
22 Alabama. And if that's the case, I ask you to put yourself in
23 the shoes of the Legislature. They run their 2 million maps.
24 They're trying do their best to comply with Equal Protection
15:15:02 25 Clause and comply with Section 2 of the VRA. They see that it

1 is -- you can't even get a one in a million map, not even a one
2 in two million map, that has a second majority-black district
3 consistent with the guidelines.

4 So then it would fall to them to decide, okay, which
15:15:21 5 guidelines should we toss in favor of race? Core retention,
6 out the door. Incumbency protection, out the door. Which
7 should we compromise in favor of race?

8 Well, compactness. We know compactness was compromised
9 because if you look at our District 2 in the 2021 map, and you
15:15:36 10 look at their District 2, their Districts 2 do bizarre things
11 and stretch -- they split Mobile and stretch from Mobile all
12 the way to Russell County on the Georgia border.

13 Compromise at least in three of Dr. Duchin's maps on
14 county splits where she had seven, eight or nine splits instead
15:15:54 15 of six. And I think you can look at her maps and the racial
16 heat maps and see exactly why she was doing that.

17 So then the question is, like, what is the Legislature
18 supposed to do? And then second, I mean, how is the
19 Legislature supposed to know which traditional race neutral
15:16:13 20 districting criteria they are supposed to scrap in favor of
21 race, how many of them they are supposed to scrap, and how much
22 should race predominate in the districting process such that
23 they can comply with Section 2, but they're not violating the
24 Equal Protection Clause?

15:16:31 25 And then, I mean it's an unhappy task for you all because

1 how are you all supposed to decide when the Legislature has
2 struck that racial balance correctly? And I don't think -- I
3 don't think there is a judicially manageable principle that
4 would allow you to do that. I mean, look back at *Rucho vs.*
15:16:49 5 *Common Cause* just from 2019. That was the end of the long
6 journey to try to find a judicially manageable principle to
7 determine how much partisanship was too much in a redistricting
8 process.

9 And the Court finally said like, look, we just cannot
15:17:05 10 figure this out, there is not a good way to do it. How much
11 more so when you have got equal protection overlays factored in
12 here, how much -- how much should race predominate over
13 traditional districting principles? And we would contend that
14 the Court has already answered that and said none.

15:17:24 15 What Section 2 demands of a plaintiff trying to establish
16 that there is a reasonably compact district out there is that
17 they need to show consistent with traditional race-neutral
18 districting principles, you could draw that additional
19 majority-minority district.

15:17:43 20 And I think that's pretty clearly established from the
21 extensive litigation in the 1990 s over Georgia's maps. And
22 excuse me for just a second.

23 So if you will recall, there was a sort of a trilogy of
24 cases and I think if you are looking for some of our like --
15:18:10 25 cases that are really resolve this -- one of the cases that

1 really resolves this would be that *Miller*, which is the '95
2 U.S. Supreme Court case, then *Johnson*, which is the remand to
3 the Southern District of Georgia, followed by *Abrams* which
4 affirmed -- which affirmed in *Johnson*, which affirmed the
15:18:26 5 *Johnson* decision.

6 And -- and it was interesting a moment ago counsel for
7 Milligan was referencing the 1992 DOJ objection to Alabama's
8 plan and was saying, like -- I guess it is evidence that
9 Alabama could have drawn a second majority-black district and
15:18:45 10 then really should have, and there was something sort of
11 suspicious that Alabama didn't do that in 1992.

12 Well, look at the *Miller vs. Johnson* case because what
13 happened to Alabama there is exactly what happened to Georgia,
14 where Georgia had just gone from 10 districts to 11 districts
15:19:02 15 after the 1990 census. And Georgia, just like Alabama today
16 had 27 percent black population. And the Georgia Legislature
17 looked everywhere to try to find a second majority-black
18 district.

19 They had one that was sort of centered around Atlanta.
15:19:18 20 They were looking around to try to draw a second that was
21 consistent with their traditional race-neutral principles.
22 They came up with a map, sent to it DOJ, and DOJ said, no. We
23 have a max-black policy. You need to draw three districts, not
24 just two, because three will get you to proportional
15:19:36 25 representation, 27 percent, which if that sounds familiar,

1 that's essentially what the plaintiffs are asking for here is
2 proportional representation despite the fact that Section 2
3 expressly says, nothing herein shall guarantee a right to
4 proportional representation.

15:19:52 5 But, anyway, returning back to Miller, Georgia finally got
6 the message. They drew their three majority-minority
7 districts, hit that proportional representation target, but
8 they had subjugate traditional race-neutral districting
9 principles to do that. And then they got sued under Equal
15:20:12 10 Protection Clause claim, and the Supreme Court in *Miller* said
11 that they did violate the Equal Protection Clause, and the case
12 got remanded back to *Johnson* -- or back to the district court,
13 which then produced the Johnson opinion.

14 And the three-judge court there ultimately had to draw
15:20:29 15 maps itself because the Georgia Legislature dead locked and
16 couldn't pass a map. And I think what the Court did there
17 should be very instructive for this Court, too. They looked at
18 traditional districting principles of Georgia. One of them was
19 that was Georgia had a long tradition of having a district in
15:20:48 20 each of the four corners of the state.

21 Of course, here in Alabama, we have a long tradition
22 dating back to at least the '70s of having a southwestern
23 district anchored by the Gulf, a southeastern district anchored
24 by the Wiregrass, and a northern District 5 that runs through
15:21:05 25 Tennessee Valley.

1 They also looked at the tradition of having a
2 majority-black district -- or anchored by Atlanta -- looked at
3 some of the other traditional districting principles, I believe
4 core retention was mentioned, and then ultimately said as part
15:21:22 5 of its Section 2 compactness analysis, we can not even draw a
6 second compact majority-minority district.

7 Again, despite the fact they had 27 percent just like
8 Alabama today, and they have 11 districts to work with, not
9 just 7, they said, we cannot consistent with Section 2 draw a
15:21:42 10 second majority-minority district. If you look at -- and this
11 is what they said. If you look at nonracial factors, it is
12 just not going to be doable. And that was a ruling. They
13 approved new map that had only one majority-black district, and
14 that got taken up, and the Supreme Court cited -- had to
15:22:01 15 consider whether the Section 2 analysis was correct, and the
16 Supreme Court affirmed, and that's when the Supreme Court said
17 Section 2 does not required a state to draw a predominantly
18 nonracial lines a map that is not reasonably compact.

19 What that means is you start with traditional race-neutral
15:22:18 20 districting principles. And race cannot predominate. That
21 does not mean Section 2 is not going to do anything. I'm sure
22 you will hear that from Caster plaintiffs and the Milligan
23 plaintiffs when they beam back in, in just a little bit.

24 But I think, Judge Marcus, you referenced *LULAC* a moment
15:22:38 25 ago. I think *LULAC* is a great example of where Section 2 can

1 really do some work in a vote dilution case without requiring a
2 state to subordinate traditional race-neutral districting
3 principles to race in its redistricting process. There you had
4 District 23 and District 25 at issue.

15:23:05 5 District 23 is interesting in that it had a -- it had
6 52 percent Latino CVAP there. They had a sufficiently compact
7 majority-minority population that came up just shy of Alstein
8 (phonetic), an incumbent.

9 When the Texas Republican party took back the House and
15:23:29 10 the Senate, they did a they redrew the lines, and they pulled
11 100,000 Latinos out of District 23, and they plugged 100,000
12 Anglo-Texans into District 23 to try to protect the incumbent.
13 And what the Supreme Court said there was, well, clearly
14 there's a compact district. And we know it is a compact
15:23:53 15 distract -- that you could draw a compact District 23 that had
16 a majority-minority population because it was already there.
17 It had been there before.

18 And so Section 2 did some work in that instance and -- and
19 what Texas did there was deemed to be violative of -- violative
15:24:12 20 of Section 2.

21 Now, in that same case, you had District 25 at issue. And
22 the reason District 25 got drawn was because Section 5 was
23 still in effect at the time in Texas. And Texas sort of undid
24 this Latino opportunity district in 23, in order to satisfy
15:24:31 25 preclearance, they drew a new Latino opportunity District 25.

1 Now, the problem was kind of like plaintiffs' District 2
2 in this case, they were combining disparate minority
3 populations. They started around the Rio Grande. They
4 stretched north and kept whole counties. It's not that
15:24:51 5 terrible of a looking district, but stretched all the way up to
6 Austin to pull in Latino voters from Austin. And the fact that
7 these voters in Austin and these voters on the Rio Grande both
8 wanted to elect Democrats wasn't enough to make them part of
9 one big community of interest.

15:25:07 10 The -- Justice Kennedy's opinion is clear. You can't just
11 assume from a group of voters' races they think alike and share
12 the same political interests and prefer the same candidates.

13 JUDGE MARCUS: Let me ask you about that case, if I
14 can for a moment.

15:25:24 15 MR. LACOUR: Absolutely.

16 JUDGE MARCUS: The problem there as you have pointed
17 it out, and the Supreme Court highlighted it in Justice
18 Kennedy's opinion was that the Legislature took a certain
19 portion of the Hispanic population found in Austin, Texas, and
15:25:42 20 combined it with a certain portion of the Hispanic population
21 300 miles away on the Texas/Mexican border. And there was
22 nothing apparently that tied the interests of the folks they
23 took from Austin to the population they combined it with on the
24 Mexican/Texas border. That was the problem. It was a big
15:26:13 25 elongated district, covered a whole lot of geography, and like

1 a bar bell on each end, you had disparate Hispanic communities.
2 That would be a fair description of what was going on and what
3 troubled the Court there. Do I have that right?

4 MR. LACOUR: Yes, Your Honor.

15:26:31 5 JUDGE MARCUS: I want you to help me with the
6 comparison to this case.

7 The plaintiffs say the difference here is, one, the
8 district isn't as big elongated. It's nothing like 300 miles;
9 and, two, that the African-American population is equally
10 distributed throughout that entire rectangular shape; and,
11 three, that there is a recognized community of interests in
12 that district.

13 Are those observations accurate, and do they fairly
14 distinguish *LULAC* from this case in your view?

15:27:22 15 MR. LACOUR: I don't think their observations are
16 accurate. First of all, note, everything is bigger in Texas.
17 It makes sense they will be able to stretch their districts a
18 little bit bigger than we might be here.

19 I think the districts they have draw here are still like
15:27:34 20 incredibly unusual in how they stretch from Mobile all the way
21 to the Georgia border.

22 In fact, if you look back at the *Wesch* decision from 1992,
23 the Court ultimately was trying to decide between two different
24 plans -- the Reed Plan and the Pierce Plan. Ultimately,
15:27:51 25 decided against the Reed Plan, in part, because it was going to

1 split Mobile and stretch all the bay to Georgia, and the Court
2 said that's not compact. The Court also said it's going to
3 scuttle the core retention of existing Districts 1 and 2, and
4 that's as a result, it's going to do a poor job at preserving
15:28:12 5 communities of interest.

6 So we don't just make this up yesterday. This is
7 something a court in Alabama recognized 30 years ago. But to
8 return more to your question, one, I don't think their plan is
9 really all that focused on that community of interest of the
15:28:31 10 Black Belt. And this is something I really want to make sure
11 is abundantly clear for the record. There are just fundamental
12 misstatements about what their plans and our plans do with the
13 Black Belt. Both Caster and Milligan state that we split the
14 Black Belt counties among four districts. That's not true. We
15:28:51 15 split among it three.

16 In the Caster reply, they state they put all the Black
17 Belt counties into one district. That's flatly false. They
18 split into three districts just like we did.

19 Similar, the Milligan plaintiffs assert that one of their
15:29:04 20 plans puts all 18 of their Black Belt counties into just two
21 districts. That's not true either. That's Plan D. If you
22 look, part of Pickens County is in a third district. So I
23 think all the plans in terms of keeping Black Belt counties
24 together do about the same.

15:29:21 25 Most counties of the Black Belt are in just two districts

1 in our plan and in the illustrative plans, but each of the
2 illustrative plans and our plan has at least one if not two
3 that stretch into a third district.

4 So -- and I don't think that was necessarily a conscious
15:29:40 5 misrepresentation by the plaintiffs, but I do think it
6 underscores the risks of trying to adjudicate such complicated
7 factual and legal issues on such a short basis that things like
8 that can be missed. But I will return to the equities later.

9 Getting back to communities of interest. I think the way
15:30:00 10 they have tried to define communities of interest is to
11 basically make it synonymous with race. And I think LULAC
12 talks about the fact that there are nonracial communities of
13 interest. And if you are allowed to just paper over that and
14 make communities -- define community of interest so broadly as
15:30:20 15 to really be tantamount to race, then you have -- like I think
16 you start to create equal protection violation -- equal
17 protection questions within Section 2.

18 And I mean, think about it this way, as well: I mean, it
19 would invite legislatures to engage in packing and to bless
15:30:37 20 that packing. This isn't racial gerrymandering. We are just
21 putting all the black people who are all part of one big
22 community of interest into one big district. I mean, that's
23 not racial. That's just communities of interest, you guys. I
24 mean, that clearly cannot fly. The Court should be very
15:30:56 25 cautious before embracing a theory like that.

1 Moreover, Dr. Duchin said her goal wasn't just to pair
2 communities of interest or pair Black Belt counties together
3 within districts. It was expressly to put them into
4 majority-black districts, and I'm not aware of any traditional
15:31:15 5 districting principle that would say it's vital not only to
6 keep communities of interest together, but to make sure they go
7 into certain racially composed districts.

8 I mean, Mountain Brook is a like famous community in
9 Alabama. It's predominantly white. It has its own school
15:31:34 10 system and shops and other things that I am sure people find
11 sort of unique and special about it who live there. If the
12 Legislature said it's really important that we put Mountain
13 Brook a majority-white district and pair them with suburbs of
14 Huntsville, I mean, that would be an obvious equal protection
15:31:51 15 violation right there.

16 And I don't think there's any -- anything really that's
17 better about the particular proposal being pitched by the
18 plaintiffs in this case. I mean, certainly I don't think they
19 have done must have much to establish some connection between
15:32:08 20 the Black Belt and Mobile. And you heard from plaintiff Dowdy,
21 she said, my great, great, grandparents migrated to Mobile from
22 the Black Belt. But she also has family in Huntsville and
23 family in Birmingham. And I am sure she has cousins elsewhere
24 in the state and possibly elsewhere.

15:32:22 25 There are plenty of African-Americans who left the Black

1 Belt at some point for Chicago and for Detroit through part of
2 the great migration.

3 I don't think they're part of a community of interest with
4 anybody in Lowndes County or in Barbour County.

15:32:38 5 So and finally, and we have communities of interest that
6 we have proposed that really can be kept --

7 JUDGE MARCUS: Can I ask you -- before you go on to
8 those communities of interest, I take it you agree that there
9 is fairly defined a community of interest that comprehends the
10 Black Belt, however you define that geographic mass, right?
11 You agree with that?

12 MR. LACOUR: I think there's certainly evidence that
13 the Black Belt has unique aspects that could constitute a
14 community of interest.

15:33:20 15 JUDGE MARCUS: The reason I asked is we have said it
16 in opinions that the Black Belt constitutes a community of
17 interest, not the only community, but a community of interest.
18 And I just want to ask you whether you agree with that or you
19 think that's not so?

15:33:39 20 MR. LACOUR: I would not dispute what this Court has
21 said.

22 JUDGE MARCUS: And it would be marked by rural
23 agrarian rooted in the soil -- richness of the soil, et cetera,
24 that would constitute a community of interest, right?

15:33:59 25 MR. LACOUR: Yes.

1 JUDGE MARCUS: How far would that community of
2 interest extend as you see it? What would be bounded within
3 that community? 18 counties or something less?

4 MR. LACOUR: I think we have...

15:34:16 5 JUDGE MARCUS: Or something more.

6 MR. LACOUR: Stipulated to 18 counties that go from
7 Pickens over to Barbour and some of those counties in between.

8 JUDGE MARCUS: Thanks very much. I didn't mean to cut
9 you off. And you were about to turn to the Gulf Coast
10 community of interest, I think.

11 MR. LACOUR: Yes. I will note that these communities
12 of interest are not new inventions of the state. I mean, they
13 are -- you can see them if you look back at the maps from the
14 1970s. You can see them referenced expressly in the
15 three-judge court's decision in *Wesch* in 1992. And you heard
16 from former Representative Byrne today, and it was also his
17 testimony in the record from *Chestnut* litigation, former
18 Representative Joe Bonner's testimony, as well, about the
19 unique interests there.

15:35:14 20 We have heard as well from plaintiffs, like plaintiff
21 Shalela Dowdy who said, yeah, there are a lot of people from
22 Washington and Monroe County that go down to the port for work
23 and to shop. And that's not true of people who live almost in
24 Georgia. And counties themselves -- I mean, Dr. Davis talked
15:35:34 25 about the importance of counties in and of themselves as sort

1 of an organizing principle for people. All those get blown up
2 by any of the illustrative plans. There's no plan that's been
3 produced that could keep Mobile County whole, that could avoid
4 dividing it up from Baldwin County, and through combining it
15:35:58 5 nearly all the way across the state.

6 And I mean, when Representative Byrne was talking about
7 the difficulties of presenting a place like -- I mean, really
8 has echoes in the LULAC decision. I will quote it for you.
9 This is 548 U.S. at 434. And the practical consequence of
15:36:19 10 drawing a district to cover two different communities is that
11 one or both groups will be unable to achieve their political
12 goals. Compactness is, therefore, about more than, quote,
13 style points, closed quote.

14 And I think that's exactly what you were hearing about
15:36:36 15 today from the Representative, that -- and he's explained why
16 it's important to have a district sort of anchored by the Gulf
17 and anchored by the port both for everyone who lives within
18 that district, and those now five counties, also for the entire
19 state. If the port is strong, it is our avenue -- it's
15:37:00 20 Alabama's avenue to the world. If the port is strong, then
21 that is going to be -- that's going to go down to the benefit
22 of every Alabamian. I think that's the testimony of
23 defendants' witnesses and many of plaintiffs' witnesses alike.

24 I note -- I know plaintiff Dowdy said multiple times,
15:37:17 25 what's good for the port is good for all of Alabama. And we

1 would not contest that in any way.

2 I mean, if you look at some of the other problems with
3 their -- with their maps -- and we can -- I am happy to talk
4 more about with the mathematical impossibility of their map. I
15:37:36 5 think it was briefly referenced by Milligan's counsel after
6 talking about Imai and saying Imai's evidence is somehow
7 striking and proves racial predominance in our maps, but has
8 nothing to say about the illustrative plans.

9 I don't really understand that. Unless, again, their
15:37:56 10 theory is there is a traditional redistricting principle that
11 basically -- I mean, I think the approach is one that like is
12 fundamentally circular. They would allow a Section 2 plaintiff
13 to prove that it is possible to compose a district in
14 accordance with traditional districting principles by relaxing
15:38:22 15 or ignoring them, which is what their plaintiffs did to form
16 the maps that they formed in this case.

17 I mean, they, again, they scrapped core retention. They
18 said, that's too hard. It's impossible is what Dr. Duchin
19 said. I think Caster counsel said something to that effect a
15:38:41 20 moment ago. They -- no mind to incumbency protection except in
21 one of the 11 maps. Their District 2 is far less compact than
22 our District 2. And as a result, the District 1 is far less
23 compact.

24 We talked brief about communities of interest and how they
15:38:57 25 dread many long established and many judicially recognized

1 communities of interest. And I mean, Dr. Duchin testified
2 about the extra county splits and how she had a nonnegotiable
3 principle of making sure she hit her racial targets.

4 I mean, if a state came and said we had a nonnegotiable
15:39:20 5 principle of hitting nonnegotiable targets, we know what would
6 happen. It would lose equal protection claim. That's what
7 happened in the *Cooper* litigation.

8 So I did want to touch on something. There was a
9 suggestion that the *Davis vs. Chiles* case somehow undercuts our
15:39:42 10 argument. I think quite the contrary. *Davis vs. Chiles* --
11 Chiles is C-H-I-L-E-S, and I apologize for quoting. 139 F.3d
12 at 425 and then at 426.

13 What the Eleventh Circuit said was, Our precedents require
14 plaintiffs to show that it would be possible to design an
15:40:09 15 electoral district consistent with traditional districting
16 principles in which minority voters could successfully elect a
17 minority candidate.

18 Now, the problem there was that the district court said,
19 oh, well, the map drawer knew that race was -- he knew what the
15:40:26 20 race was of these two districts that he drew. And if a
21 Legislature did that and picked those maps because of their
22 racial breakdown, that would be an equal protection problem,
23 and, therefore, this fails. But that was not -- what the Court
24 explained was that's not the way to look at this.

15:40:44 25 They did explain like, and I will quote this, Certainly

1 race was a factor in various process -- he was a map drawer --
2 of designing the proposed subdistricts. But he testified that
3 it would have been difficult for him to have drawn some
4 districts for the Second Circuit and the Leon County courts
15:41:01 5 without creating at least two new majority-minority districts.

6 And the Court said, absent some evidence belying Terry's
7 characterization of his design process, Chiles cannot rely
8 solely on criticism of Terry's motivations, blocked Davis'
9 proposed remedies.

15:41:17 10 So I think what this drawing suggests is Mr. Terry here
11 had to compromise traditional nonracial districting principles
12 and subordinate them to race, then plaintiffs' claims would
13 have failed at *Gingles* 1 in *Davis vs. Chiles*, too.

14 And so I think an interesting way to think about it --
15:41:37 15 let's imagine Dr. Imai had done his analysis the right way,
16 which meant including also including core retention in the
17 algorithm, and he produced this 10,000 maps. 5,000 of them had
18 one majority-minority district, 5,000 of them had two
19 majority-minority districts -- well, all consistent with
15:41:57 20 traditional redistricting principles.

21 I am not sure if absent the VRA, the Legislature could
22 say, well, we want the one with two majority-black districts
23 just because of equal protection issues, although perhaps
24 because race might not predominate there.

15:42:15 25 Certainly, a VRA plaintiff could say, we are going to pick

1 from one of these good maps, instead of from one of those good
2 maps. But that's not what we are dealing with here. We are
3 dealing only with bad maps. They didn't produce a single good
4 map. And that's the critical difference.

15:42:29 5 So I mean, to go back to *Chiles*, I mean, again, Terry map
6 drawer said it would have been difficult for him to draw based
7 on race-neutral principles without getting at least two
8 majority-minority districts.

9 Dr. Duchin's testimony was exactly the opposite. She said
15:42:49 10 -- and this is at transcript page 685, quote, it is hard to
11 draw two majority-black districts by accident, which in her
12 view meant it showed the importance of doing so on purpose.

13 Like were not criticizing their motivations. I understand
14 that he have to keep race in mind when they're putting their
15:43:11 15 map together, but that doesn't mean race can predominate, and
16 that's obviously what we have here to a mathematical certainty.

17 And again, they -- it means what they had to do was they
18 have to bend and they had break numerous criteria to produce 11
19 racial gerrymanders.

15:43:31 20 And I don't think the Legislature would be able to draw a
21 map like that consistent with the Equal Protection Clause or
22 Section 2.

23 JUDGE MANASCO: Let me ask you a question about that.

24 So I understand the general contours of the argument. But
15:43:44 25 I took at a more granular level what Dr. Duchin to be saying is

1 that because of what she was asked to do as a *Gingles I* expert,
2 she took the 50 percent as a nonnegotiable threshold. And then
3 she only bent and broke insofar as was necessary not to come
4 under 50 percent. So, for example, I think -- and I don't have
15:44:13 5 the cite handy, but my memory is that she testified that after
6 50 percent, for example, she took not splitting counties to be
7 of greater priority.

8 Why is that inconsistent with the Section 2 mission? I
9 completely understand your argument as to why it's inconsistent
15:44:32 10 with the idea that we ought not be separating voters based on
11 race for constitutional purposes.

12 But in the limited universe of a Section 2 claim, why is
13 that hierarchy so long as it respects other traditional
14 districting principles insofar as it can along side the
15:44:57 15 50 percent threshold, why is it inconsistent with Section 2?

16 MR. LACOUR: Because I don't think that's what the
17 Court was referring to when it said reasonably compact. Again,
18 reasonable compactness analysis takes into account traditional
19 districting principles. And drawing a non-compact district to
15:45:16 20 benefit a racial group is not a traditional districting
21 principle. If it is, it makes their whole two Section 2
22 compactness argument self-referencing and really
23 indecipherable.

24 They're saying, we could draw a reasonably compact map
15:45:30 25 consistent with traditional districting principles if we ignore

1 some of them in favor of race. But that means it's not
2 reasonably compact. That's why the Supreme Court has said
3 Section 2 does not require a state to draw based on
4 predominantly on racial lines a district that's not reasonably
15:45:48 5 compact. What that necessarily means is that reasonable
6 compactness has to be without reference to race.

7 Now, like I said, if she drew two maps consistent with
8 racial -- consistent perfectly with traditional districting
9 principles, and one had two majority-minority districts and one
15:46:09 10 didn't, it would be perfectly fine for her to pick the one that
11 had the two majority-minority districts.

12 But what she testified to was that she drew 2,000 such
13 maps, 2000. Not 2000. 2 million. I am sorry. I was off by
14 the three zeros. 2 million maps where she didn't even plug in
15:46:28 15 all of our traditional districting principles into the
16 algorithm constraints. She had even more discretion than the
17 Legislature would have had to go out looking for majority
18 population to put within a district. And not one of them came
19 back above 50 percent. I mean, not one of them came back with
15:46:47 20 two districts above 50 percent.

21 And I -- so I don't know how it could be even -- how it
22 could be any clearer that race predominated.

23 I mean, it's not even a one in a million map we have in
24 front of us. These are maps you would never expect to see.
15:47:03 25 And I don't see how it could be that -- to return to the text

1 of Section 2, we are talking about equal opportunity and
2 whether anyone has had equal access so political process denied
3 them based on account of race. I mean, is the Legislature's
4 failure to completely scrap several race-neutral traditional
15:47:28 5 districting principles and bend others in favor of race, like
6 isn't a refusal to do that somehow denying someone equal
7 opportunity? I think the answer is obviously no.

8 And you look at *Abrams*, again, keep in mind, I think they
9 hone in a lot on proportional representation. And you see it
15:47:48 10 throughout. But, of course, throughout the briefing -- but, of
11 course, Section 2 expressly says proportional representation is
12 not the benchmark. And we know it can't be the benchmark
13 because Georgia in the '90s had 27 percent black population
14 just like Alabama today. They have 11 districts they can work
15:48:08 15 with. We only have seven.

16 And even then the district court said, Section 2 only
17 gives me free reign to draw one majority-minority district,
18 9 percent of the state's black population -- or 9 percent of
19 the state's congressional districts were majority black, even
15:48:27 20 though 27 percent of the state's black population -- or blacks
21 made up 27 percent of the black's population, and the Supreme
22 Court affirmed that.

23 I think then in vote dilution itself, you heard about vote
24 dilution from plaintiffs. I mean, it diluted against what?
15:48:44 25 Against what standard? And proportional representation is not

1 the standard. It was an interesting discussion with Dr. Duchin
2 talking about Massachusetts and the Republicans there. And
3 because the Republican population in Massachusetts is so evenly
4 dispersed across the state, I mean, what she testified to was
15:49:02 5 that it is literally impossible to draw even one majority
6 Republican congressional district in Massachusetts, despite the
7 fact that there are nine congressional districts from the state
8 and despite the fact that Republicans regularly register about
9 a third, 35 percent in statewide elections.

15:49:22 10 So proportion representation is not the right baseline.
11 The right baseline is what would you expect from a race-neutral
12 draw of the districts? And we didn't have time to go out and
13 get an expert with an algorithm to produce 10,000 maps. But
14 the plaintiffs did. And we know what came back. 30,000 maps
15:49:44 15 from Dr. Imai, none of which have two majority-black districts,
16 and 2 million maps from Dr. Duchin, none of which have two
17 majority-black districts.

18 So, again, unless you are going to impute race as a
19 traditional districting principle in the Section 2 compactness
15:49:59 20 analysis, which I think the Court pretty expressly rejected in
21 *Abrams* when they found the three-judge court's decision in that
22 case, there is no way they can satisfy *Gingles I*. It's a
23 mathematical impossibility.

24 JUDGE MANASCO: Thank you. I think you answered my
15:50:16 25 question.

1 JUDGE MARCUS: Let me ask a follow up if I could,
2 Mr. LaCour, on Judge Manasco's question.

3 Does this issue, then, all boil down to whether some or
4 all of the illustrative plans were drawn in a reasonably
15:50:36 5 compact way? Is that the essential question you're
6 highlighting here?

7 MR. LACOUR: Yes.

8 JUDGE MARCUS: Reasonably compact.

9 MR. LACOUR: Yes.

15:50:46 10 JUDGE MARCUS: Okay.

11 MR. LACOUR: That reasonable compactness analysis
12 takes into account traditional districting principles like
13 maintenance of communities of interest and traditional
14 subdivisions and the other guidelines that we have been
15:51:02 15 discussing today.

16 JUDGE MARCUS: Thank you.

17 MR. LACOUR: Great. Let me see if there's anything
18 else I want to say on that point before moving on to another --
19 I think in *Miller vs. Johnson* similarly supports the notion
15:51:31 20 that the traditional districting principles you are looking at
21 in a Section 2 compactness inquiry are not race-focused
22 traditional districting principles. In *Miller*, the Court was
23 look at a racial gerrymandering claim -- the Court said -- this
24 is 515 U.S. 900 at 916. So in looking at a racial
15:52:08 25 gerrymandering claim, quote, a plaintiff must prove that the

1 legislature subordinated traditional race-neutral districting
2 principles, including but not limited to compactness,
3 continuity, and respect for political subdivisions or
4 communities defined by actual shared interests to racial
15:52:21 5 considerations. Where these or other race-neutral
6 considerations are the basis for redistricting legislation and
7 are not subordinated to race, state can defeat a claim. The
8 district has been gerrymandered on racial lines, close quote.

9 Now, the Court here nowhere suggests that there are
15:52:37 10 legitimate race-focused principles that states could point to
11 as a defense race predominated in their maps. It would make no
12 sense to allow a state to rebut a charge of racial
13 gerrymandering by showing the state was promoting race-focused
14 districting principles.

15:52:55 15 Now, of course, compliance with the VRA can justify a
16 racial gerrymander, but the need to employ race to comply with
17 the Voting Rights Act does not mean that there was never a
18 racial gerrymander in the first place. So I think it's similar
19 analysis when we're looking at the compactness inquiry. Are
15:53:13 20 race-neutral principles been subordinated to race or not? And
21 here obviously were.

22 Return for a moment on communities of interest. I did
23 find that I think -- it was not -- it's clearly not something
24 that Mr. Cooper had given a lot of thought to when we asked him
15:53:57 25 about communities of interest between the Gulf and the

1 Wiregrass. He suggested, well, it's from transcript 498: Do
2 you have an opinion about whether there's a community of
3 interest that includes both voters in Houston County and voters
4 in this wider portion of Mobile County that you include in
15:54:17 5 District 1? His response: There very well should be. They
6 live in south Alabama. I suspect maybe there's more University
7 of Alabama fans down in Mobile than the eastern part of the
8 state, Auburnland.

9 And, again, I think we have got communities of interest
15:54:32 10 here that have been recognized by courts for a long time, ample
11 testimony from plaintiffs and defendants that our maps preserve
12 them, and to the extent the Court is being asked to adjudicate
13 which one should get preference over the other, I think that,
14 too, potentially raises some justiciability questions.

15 I'm not sure how the Court is going to sort of decide this
16 one is more important than the other if there isn't a healthy
17 dose of deference to the Legislature. Again, we are not
18 inventing any nuance in the 2021 map. Again, it's a map that
19 looks a lot like the map is looked for 50 years now. And I
15:55:14 20 think that is some very strong evidence of what the Legislature
21 considers to be particularly important.

22 I will address for a moment the arguments about the State
23 Board of Education plan, which has gotten some play in the last
24 couple of days.

15:55:41 25 If you will recall, I believe this is Defendants'

1 Exhibit 26. The 2001 version of the State Board of Education
2 plan, which has eight districts just like -- eight districts
3 just like the current plan has eight districts did not split
4 Mobile. Mobile and Baldwin County and I believe one other
15:56:02 5 county were kept together in that sort of southwestern
6 district. Then you fast forward to 2011. And I think the
7 record shows that split came about in 2011. And the reason for
8 that was Section 5.

9 We had -- need to show that there was not retrogression.
15:56:24 10 But that particular district, there had been a majority-black
11 district north of Mobile or -- not majority black, it was at
12 least heavy percentage black north of Mobile that had lost a
13 substantial percentage of its population. And so at that --
14 its black population at that. Its numbers had gone down, and I
15:56:48 15 believe what the preclearance submissions will show is that the
16 state had a felt need to ensure that that number stayed about
17 the same for Section 5 purposes. The only way that could
18 possibly be done was to break into Mobile and split that county
19 and the State Board of Education plan as far as I am aware for
15:57:08 20 the first time ever.

21 So if anything, that just shows that the -- actually race
22 predominated over traditional districting principles there,
23 because we couldn't consistent with them maintain or really
24 surpass the Section 5 preclearance standard. And once you sort
15:57:28 25 of understand that, I think the -- whatever you can glean from

1 the 2021 map is really quite minimal other than the fact that
2 state followed its guidelines, both for its State Board of
3 Education map and for its congressional map, because we
4 retained the cores of that district just like we retained the
15:57:47 5 cores of our congressional districts. We did not try to sort
6 of undo that or affirmatively unpack or satisfy whatever novel
7 theory of Equal Protection Clause you've been hearing about
8 from the plaintiffs today.

9 So turning briefly to *Gingles II* and *III*, just to clear up
15:58:15 10 something that I think was said somewhat dismissively from the
11 Caster plaintiffs, we don't have a preferred definition of
12 black. That is not our argument that there's one proper
13 definition and another that's not.

14 Our only point is that if you are trying to satisfy
15:58:32 15 *Gingles I, II, and III*, you are not supposed to mix and match.
16 So and if they are going to mix and match single-race black
17 versus any-part black, it's incumbent on them to establish that
18 there's some strong basis for thinking that those people who
19 identify as any-part black are going to have -- really going to
15:58:57 20 be part of that same community or have the same interests as
21 those who identify as single-race black.

22 So that's the only point we have there.

23 I would note that, I mean, this need for them to trod out
24 for you all multiple different definitions and metrics by which
15:59:13 25 to measure black population in their illustrative plans just

1 suggests how incredibly thin they are slicing things here and
2 how hard it is for them to find a majority-minority population
3 within the state, which again ties back into what I think are
4 fatal *Gingles I* problems with their case.

15:59:34 5 Now, touching on the totality of the circumstances. As
6 the Supreme Court has recognized, things have changed in the
7 South. And as the Alabama and the NAACP court, Judge Watkins'
8 lengthy and well-reasoned opinion from 2020 recognized things
9 have changed in Alabama, as well. We think that politics and
15:59:58 10 not race is relevant to whether anyone has been denied equal
11 opportunity on account of race, which is the test in Section 2.

12 The Alabama NAACP decision had after a lengthy trial and
13 multiple years of litigation far more time than we had to build
14 a record in this case came away with the conclusion that the
16:00:19 15 reason why black-preferred candidates were not winning in
16 judicial elections in Alabama was not because they were the
17 candidates preferred by blacks, but because blacks preferred
18 Democrats.

19 If you look at the *Clements* decision from the Fifth
16:00:36 20 Circuit -- this is 999 F.2d 831 at 879 -- en banc court there
21 said, To extent the candidates preferred by black voters are
22 consistently defeated because of their substantive political
23 positions, per the casualties of interest group politics, not
24 racial considerations, this is not the harm against which
16:00:56 25 Section 2 protects. Section 2 protects black voters against

1 defeat on account of race or color, not on account of political
2 platform. And I submit that we have come forth with evidence
3 to show that to the extent the black-preferred candidates are
4 not prevailing in congressional elections in Alabama is on
16:01:15 5 account of political party platform, not on account of race.

6 We do have evidence that white Republicans support black
7 Republicans. We have Kenneth Paschal's recent election to the
8 State House. He's a black Republican from the famous Shelby
9 County. We have also established that in any state where there
16:01:37 10 is a substantial black population, black voters are going to
11 vote overwhelmingly Democratic, which means that the VRA is
12 only going to kick in if there are white voters who tend to
13 support the Republican Party. And I don't think the VRA was
14 passed to give Democratic Party interests a second bite at the
16:01:57 15 apple every single redistricting cycle.

16 Touching briefly on some of the other totality of the
17 circumstances evidence, which we will address much more fully
18 to the extent we can in our findings of fact and conclusions of
19 law. I think we have shown that many of the gaps between white
16:02:16 20 the black Alabamians of our similar or even less severe than
21 what you would see between black and white Americans
22 nationwide. I know the Milligan plaintiffs think that is
23 totally irrelevant. But I have a hard time seeing how it could
24 be irrelevant if there was a gap of 1 percent of voter
16:02:38 25 registration in Alabama and 20 percent nationwide, I think that

1 would obviously be relevant on whether Alabama's history was
2 influencing a sort of disparity there.

3 So if you look at what Dr. King said, she -- and I believe
4 it was the -- I believe she was with Caster plaintiffs. I'm
16:03:00 5 sorry. I am getting a little mixed up this late in the day.
6 They referred to what they call widely disparate incarceration
7 rates in Alabama. But when you look at the source she actually
8 cited, it showed Alabama's black/white disparities in
9 incarceration rates were the second lowest in the country out
16:03:19 10 of all 50 states.

11 If you look at voter registration, voter turnout rates
12 from the Census Bureau over the last several years, Alabama is
13 doing far better than many other states that don't have
14 Alabama's regrettable history of racial discrimination.

16:03:37 15 And while the Milligan plaintiffs have said that
16 comparisons are irrelevant, both Drs. Bagley and King have
17 comparisons in their reports and said in their testimony that
18 such comparison could be helpful.

19 So I would leave you with that.

16:03:57 20 Now, one other potential way to look at Section 2 issue
21 would be to look at Brnovich. There was something from the
22 Supreme Court's most recent Section 2 case that I found
23 interesting. It's actually from Justice Kagan's dissent where
24 she was putting forward a more plaintiff-friendly reading of
16:04:19 25 Section 2, and in her -- and I will stipulate, of course, it

1 was not a vote dilution case, but it does still involve the
2 exact same statute and the exact same claim.

3 She said Section 2 demands of plaintiffs proof of a
4 statistically racial disparity in electoral opportunities, not
16:04:41 5 outcomes, resulted from a law not needed to achieve a
6 government's legitimate goals.

7 If we were to apply Justice Kagan's view of what Section 2
8 demands here, I think we would easily surpass that. We have
9 legitimate reasons for core retention. We have legitimate
16:04:59 10 reasons for incumbency protection. We legitimate reasons for
11 keeping the counties that have been CD 1 for 50 years in CD 1
12 and for not stretching CD 2 from one border of the state to the
13 other border of the state.

14 And we know that we can't pursue those legitimate goals in
16:05:21 15 compliance with the demands of the Section 2 plaintiffs in this
16 case.

17 So I think even under Justice Kagan's reading of Section
18 2, their claims would necessarily fail.

19 And I don't say that that's a controlling opinion, but I
16:05:36 20 do think it sheds some light on how the Court should be
21 thinking about Section 2 and what it is that it's really
22 supposed to be doing. And I don't think it is a black
23 maximization statute, rather DOJ thought that was the case in
24 the early '90s, and the Supreme Court disabused them of that
16:05:57 25 motion in *Miller v. Johnson* and the *Abrams* case.

1 So here again, based on maps drawn based solely on
2 race-neutral traditional principles, the most you could hope
3 for would be one majority-black district, and that's what we
4 have.

16:06:16 5 I would like to turn to the equities now unless the Court
6 has further questions about the merits.

7 So first, I think there was some suggestion that the
8 process was -- the redistricting process was rushed, that we
9 had delayed in some way. I will just simply remind the Court
16:06:43 10 that the state of Alabama did not cause COVID. The state of
11 Alabama did not cause the Census Bureau's delays in turning
12 over critical data that we needed to redistrict. We were
13 supposed to know by March 31st, I believe. We were supposed to
14 get our data by March 31st and as of -- by March 31st. But mid
16:07:11 15 to late March, the bureau announced they weren't going to give
16 us the data until September 30th. We didn't sit on our hands
17 and wait. We actually sued the Census Bureau in part based on
18 that delay and said you have a statutory obligation to give us
19 that data far sooner than September 30th. And just several
16:07:29 20 days after we brought that lawsuit, the bureau announced
21 actually they could give us to about six weeks earlier than
22 they had initially anticipated. That's how we ended up getting
23 that data in the middle of August.

24 And we immediately got to work finalizing or -- drawing
16:07:45 25 and finalizing maps. The Legislature had been told by the

1 Secretary of State the maps were going to be needed by early
2 November in order to do all the different administrative steps
3 needed to get ready for an election. I will talk about a few
4 of those in a moment. And so that was for the window the
16:08:04 5 Legislature was working in, and despite it being very tight,
6 they were numerous public hearings held.

7 Also, just keep in mind, while this litigation has really
8 centered on the congressional districts, there were three other
9 sets of maps we have to draw this particular time around.

16:08:21 10 The State House, State Senate, and the State Board of
11 Education maps, that's another 148 districts that needed to be
12 drawn, needed to be debated, needed to be voted on eventually.

13 THE COURTROOM DEPUTY CLERK: Mr. LaCour, you have
14 ten minutes.

16:08:44 15 MR. LACOUR: Thank you, Frankie.

16 With all this mind, we have been at this about two months.
17 And the election machinery is well -- is already humming along.
18 As you know, the qualifying deadline is January 28th, we're
19 talking two weeks from when our findings of fact and
16:09:06 20 conclusions of law are due.

21 Now, there was a lot of discussion about May 24th as the
22 primary election date and sort of a suggestion that we have a
23 leisurely four months by which the Legislature could come back
24 together and draw a new map that complies with either like
16:09:26 25 these violations of Section 2 alleged by the plaintiffs or by

1 an equal protection demands that the plaintiffs have we think
2 invented, but May 24th is not the critical deadline. The
3 critical deadline is March 30th. And I will tell why it's
4 because that's when you absentee ballots need to be printed and
16:09:45 5 ready to go. So we're talking seven weeks away from the
6 election beginning, not four months.

7 And April 9th, we have the federal law deadline to send
8 out our UOCAVA ballots. Those are to servicemen and women
9 overseas and other federal employees overseas. We have to get
16:10:04 10 those ballots out the door to them.

11 If you are looking for some other dates and deadlines,
12 Defendants' Exhibit 7 is the administrative calendar, the
13 Secretary of State's administrative calendar. It's included
14 with the declaration of the Director of Elections Clay Helms.

16:10:24 15 And I think his declaration is also incredibly important
16 evidence on this. And I have not heard anything from the
17 plaintiffs to really rebut it. He's explained that in -- I
18 believe it's about 40 to 45 of Alabama's 67 counties, the
19 process of assigning voters to the appropriate voting districts
16:10:46 20 is manual. It's a very time-consuming process.

21 They literally take out maps. They have their voter
22 registration information, and they say, well, you live at 123
23 Main Street. Let's look at the map. 123 Main Street is in
24 District 2. We will assign you to District 2. You will make
16:11:05 25 sure when you show up to vote you go to the right precinct and

1 you get the right ballot. So you are voting for the candidates
2 of District 2, not the ones for District 1.

3 That's the process that takes -- in the past, it took I
4 believe three to four months is what he has averred in his
16:11:23 5 declaration. And I have not heard any to the contrary deadline
6 proposed by the plaintiffs to suggest that he is pulling the
7 wool over on plaintiffs in this case. And that's consistent
8 with similar testimony he gave by declaration in our litigation
9 against the Census Bureau in the spring of 2021.

16:11:46 10 I think also this Court should take into account what
11 Bradley Byrne and what other people have testified to, which is
12 if you dramatically shift the lines and you move hundreds of
13 thousands of voters out of one district and hundreds of
14 thousands of new ones into the district, that's going to create
16:12:07 15 confusion for those voters. It will create serious problems
16 for candidates, and you will potentially have several districts
17 with no incumbent and maybe no candidate running in it, which I
18 think is not good for the Democratic process. It is severe
19 public harm.

16:12:24 20 I mean, if you look at the *Favors v. Cuomo* decision, the
21 Eastern District of New York, that's 881 F. Supp. 2d, 356,
22 there's a really key quote they have from Nate Persily, who is
23 one of the leading experts on election law issues. They said,
24 quote, A court should have as its goal the imposition of a plan
16:12:48 25 no later than one month before candidates may begin qualifying

1 for the primary ballot, which means that the court should begin
2 drawing its plan about three months before the beginning of
3 ballot -- before the beginning of ballot qualification in order
4 to build in time for possible hearings and adjustments to
16:13:04 5 plans.

6 I think that's wise, and I think we are well past that. I
7 mean, you have already heard some of the difficulties and
8 potential complications of if this Court were to enter a
9 preliminary injunction, it's not even clear if the Legislature
16:13:17 10 at this moment would need to draw two majority-black districts
11 or just two districts that would perform for -- for black
12 voters even if they weren't at 50 percent.

13 And, of course drawing map isn't the end of the story. We
14 would have to come back, and it would have to be analyzed by
16:13:35 15 this Court. We would have more experts coming in to say this
16 does perform or this doesn't perform. And keep in mind too, we
17 have three sets of plaintiffs here with some competing theories
18 of what the federal law demands.

19 So I don't expect if Singleton wins that the Caster and
16:13:51 20 Milligan plaintiffs will be really thrilled with the product
21 from the Legislature and vice versa. So we may have more
22 litigation over the remedial map. So this would not be our
23 last hearing by any means.

24 The complaints about the need for urgent action are
16:14:10 25 tempered a little by the longevity of the alleged harms. I

1 think by their theories, there have been some sort of packing
2 issue for at least a decade. There's been underrepresentation
3 or vote dilution claim for at least a decade. Lakeisha
4 Chestnut, one of the Caster plaintiffs did sue us, but it
16:14:33 5 wasn't until 2018. The Singleton plaintiffs sued over the 2011
6 map. They waited ten years to do that.

7 So I just think that, in particular, when you are looking
8 at maps and political geography that has been so settled in the
9 state for so long, equities would suggest that like courts
16:14:51 10 should do who courts have done in numerous cases when you have
11 requests for preliminary injunctive relief this late in the
12 day, and that would be to say, like if the Court were to make
13 some new law and deem this map to be unconstitutional, to allow
14 it to be used one more time, because I don't think if you adopt
16:15:09 15 the plaintiffs' approach to Section 2 *Gingles I* or if you adopt
16 this new theory of equal protection by which we have an
17 affirmative obligation to sort of undo a VRA district years
18 later, I don't think this Court will be the last word on that.

19 So and that's -- I mean something else that was noted as
16:15:31 20 well as well by the *Favors* court, that these complicated
21 record-intensive cases, complicated legal issues, and the Court
22 said, like, we have only will a few weeks to even dig into
23 this. I mean, we put together -- we were able to get two
24 experts together. We were able to get some good testimony in
16:15:50 25 front of you all. I know there's more we could say. You heard

1 from all the historians. We haven't had time to get around.
2 We haven't had time to get our own algorithmic math whiz to
3 redo or duplicate some of the stuff the Drs. Imai and Duchin
4 have done.

16:16:05 5 But I do think this claim -- before this Court goes and
6 alters the state's political geography and political destiny,
7 it needs to be very, very sure that we have done something
8 wrong here.

9 And, honestly, I think these are incredibly ordinary maps.
16:16:23 10 It's clear why they were drawn like they were drawn. It's
11 right there in the guidelines. These were race-neutral reasons
12 for doing it. And at the same time, as well, like Section 2
13 does not require anything different from what the Legislature
14 did.

16:16:39 15 As the Court in LULAC said, the purpose of the VRA was to
16 prevent discrimination and the exercise of the electoral
17 franchise and to foster our transformation to a society that's
18 no longer fixated on race.

19 Here, we know thanks to plaintiffs' own experts that if
16:16:55 20 race were not considered, it is virtually impossible to draw a
21 map with two majority-minority districts. Section 2 does not
22 require separate but equal congressional districts for
23 Alabamians; thus, because Section 2 does not require Alabama to
24 subordinate its traditional race districting principles to
16:17:09 25 race, those Section 2 claims necessarily fail.

1 JUDGE MARCUS: Thank you very much, Mr. LaCour. We
2 will take our usual break of 15-minute break and then come back
3 with the rebuttals, and we will finish up this afternoon.
4 Thank you all. We will be back in 15 minutes.

16:17:48 5 MR. LACOUR: *Favors* was the longer quote.

6 JUDGE MARCUS: Why don't you give us the full title of
7 that case that came under the Eastern District of New York.

8 MR. LACOUR: *Favors v. Cuomo*, 881 F. Supp. 2d 356, 362
9 -- or at 362. That's Eastern District of New York 2012.

16:18:20 10 JUDGE MARCUS: Thank you much. We will take a
11 15-minute break at this point.

12 (Recess.)

13 JUDGE MARCUS: The parties are ready to begin the
14 reply at this point? Do I have that right, Mr. Blacksher,
16:29:24 15 Ms. Khanna, and Mr. Ross?

16 MR. BLACKSHER: Yes.

17 MR. ROSS: Yes, Your Honor.

18 MS. KHANNA: Yes, Your Honor.

19 JUDGE MARCUS: All right. Thank you.

16:29:34 20 Mr. Blacksher? We will take it in the same order that the
21 arguments were made by the plaintiffs.

22 MR. ROSS: Your Honor, if I may, the Caster plaintiffs
23 have allowed the Milligan plaintiffs to go next.

24 JUDGE MARCUS: I'm sorry. You mean the Singleton
16:29:55 25 plaintiffs.

1 MR. ROSS: Oh I'm sorry. I believe it will go
2 Singleton, Milligan, and then Caster. I'm sorry, Your Honor.

3 JUDGE MARCUS: Thank much. Mr. Blacksher, you may
4 proceed.

16:30:04 5 MR. BLACKSHER: Judge, you made -- Judge Marcus, you
6 made a -- asked an important question.

7 If the Court rules for the plaintiffs, what should it tell
8 the Legislature to do? Because whatever this Court tells the
9 Legislature -- what it tells the Legislature it did wrong, and
16:30:39 10 what it tells the Legislature it must do right in the future is
11 going to be the benchmark for redrawing congressional districts
12 probably for several more decades.

13 So it seems to us that the choice is between telling the
14 Legislature that it must draw districts by beginning with a
16:31:05 15 racial target, or whether it should draw districts by beginning
16 with traditional districting criteria, we believe that if this
17 Court were to rule for the plaintiffs -- the Milligan and
18 Caster plaintiffs on their Section 2 claims without addressing
19 their Fourteenth Amendment claims, that necessarily says to the
16:31:35 20 Legislature the 2021 enacted plan violated the Voting Rights
21 Act because it did not contain two majority-black districts,
22 per *Bartlett vs. Strickland*. Now, that's going to say to the
23 Legislature that they should begin any remedial plan with a
24 racial target.

16:32:01 25 What the Singleton plaintiffs have proposed is that the

1 Court say to the Legislature the problem with your 2021 plan is
2 that it perpetuated a gerrymander that violated traditional
3 districting principles by splitting Jefferson, Tuscaloosa, and
4 Montgomery counties for the purpose of reaching a racial
16:32:29 5 target, namely a black-majority district. And, therefore, you
6 should begin again solely with race-neutral principles which
7 are historically in Alabama, whole counties, and see what kind
8 of plan you can draw, and then to achieve the lowest
9 practicable population deviation, and then look to see whether
16:33:01 10 or not it complies with Section 2 of the Voting Rights Act.

11 If it does not comply Section 2 of the Voting Rights Act
12 by providing blacks the opportunity to elect candidates of
13 their choice that Section 2 guarantees, then your plan must be
14 modified however is necessary to accomplish that statutory
16:33:24 15 objective.

16 So that's critical to us. We have been interested from
17 the beginning in the Singleton case, our clients are interested
18 in trying not only to win a lawsuit for 2022, but to try to get
19 our redistricting process back on track. That's something that
16:33:54 20 legislators and ordinary citizens and incumbent members of
21 Congress can understand and apply without having to have a
22 statistician with algorithms next to their elbow.

23 Let me respond to something that Mr. LaCour said. He's
24 characterized the Singleton plaintiffs' claims as a novel
16:34:31 25 Fourteenth Amendment claim. It is nothing but novel. And let

1 me, if the Court would permit, let me share the screen with
2 you.

3 So, Your Honor, what I have on the screen is Section 2G of
4 the redistricting guidelines. And let me read what it says.

16:34:59 5 No district will be drawn in a manner that subordinates
6 race-neutral districting criteria to considerations of race,
7 color, or membership in a language-minority group, except that
8 race, color, or membership in a language-minority group may
9 predominate over race-neutral districting criteria to comply
16:35:22 10 with Section 2 of the Voting Rights Act, provided there is a
11 strong basis in evidence in support of such a race-based
12 choice. A strong basis in evidence exists when there is good
13 reason to believe that race must be used in order to satisfy
14 the Voting Rights Act.

16:35:43 15 Now, what the state is saying, that is essentially the
16 statement of law that the Singleton plaintiffs in this action
17 are attempting to enforce. What the state is saying is that
18 the 1992 racial gerrymander done for good reasons, thinking it
19 was required by Section 2 of the Voting Rights Act, is now a
16:36:19 20 race-neutral districting criteria.

21 And as I pointed out, the Supreme Court has said you
22 cannot entrench -- that is entrenching a racial gerrymander,
23 precisely what the Supreme Court has said the state may not do.

24 But that is the state's defense here. They are not
16:36:40 25 claiming, as Mr. LaCour emphasized, that perpetuating the 1992

1 racial gerrymander is justified by the Voting Rights Act. They
2 are saying there was no gerrymander at all because that 1992
3 plan has become race-neutral criteria.

4 Finally, let me just respond to Mr. LaCour's concern about
16:37:19 5 the problems of election officials assigning voters to the
6 correct precincts if the Court orders a remedy in time for use
7 in the May 24th primary.

8 In the case of the congressional districts, if the
9 Legislature adopts, either by enacting a new plan or by a court
16:37:47 10 order, the whole county's plan that the Singleton plaintiffs
11 have provided or one like it, there's very little problem
12 assigning voters to their precincts in each county because they
13 all have the same congressional representative to vote for.
14 There's no precinct split.

16:38:12 15 So what the plaintiffs in the Singleton case have asked
16 this Court to do at the end of their motion for preliminary
17 injunction and amended motion, is if it finds for us that --
18 the plaintiffs, that the 2021 plan perpetuates a racial
19 gerrymander without justification, that it should tell the
16:38:42 20 Legislature that the plan proposed by the plaintiffs -- the
21 whole county plan -- is constitutional, or in that if they
22 thought that the whole county plan has too large a population
23 deviation, then they can lower the population deviation in the
24 way Singleton 2 and 3 plans do, or in some other way that
16:39:10 25 splits just a few thousand people out of a couple of

1 counties -- something that I don't like at all, Your Honor. I
2 call them deviation orphans.

3 But that is unquestionably what this Court must do,
4 because the Supreme Court time and time again has heard from
16:39:31 5 dissenting members of the Court that we are just encouraging
6 gerrymandering for the sake of mathematical equality. And so I
7 don't think this Court has any choice but to consider lowering
8 the deviation to a level below -- probably below the 2.46 or
9 2.47 that the Singleton plan itself has unless *Tennant vs.*
16:39:56 10 *Jefferson County* suggests that the Supreme Court is finally
11 backing down enough to provide some fairness and common sense
12 for ordinary citizens.

13 But, in any event, that's not an issue that we can give
14 you any policy guidance on, because you have to look at the
16:40:13 15 cases and decide that that's a decision for the Court, it's a
16 question of law.

17 I think that's the end of my --

18 JUDGE MARCUS: Thank you, Mr. Blacksher.

19 We will hear now from counsel for Milligan.

16:40:25 20 MR. ROSS: Yes, Your Honor. There's a lot to respond
21 to, so --

22 JUDGE MARCUS: Will you take down from the screen
23 that -- thanks very much.

24 MR. BLACKSHER: Sorry.

16:40:37 25 JUDGE MARCUS: Quite all right.

1 Mr. Ross, you may proceed.

2 MR. ROSS: Thank you, Your Honor.

3 Your Honor, it is the state that presents circular
4 arguments. First, it's the defense that says that for Section
16:40:47 5 2 -- a Section 2 claim to be viable, plaintiffs must satisfy
6 *Gingles I* without considering race.

7 And then, secondarily, they say that on the racial
8 gerrymandering claim, that race can predominate, even when it's
9 necessary to comply with the Voting Rights Act.

16:41:05 10 But Mr. LaCour's only right as to the second point. The
11 Supreme Court has repeatedly said that compliance with the
12 Voting Rights Act means that a state can consider, it's not,
13 per se, unconditional to purposefully draw majority-black
14 districts.

16:41:22 15 This is because even if race does predominate, a state
16 will still -- a map can still be constitutional if it's
17 narrowly tailored to comply with the Voting Rights Act.

18 Indeed, the state's own redistricting guidelines and the
19 state's own expert, Mr. Hinaman, considered race, required the
16:41:41 20 consideration of race, and Mr. Hinaman drew the majority-black
21 District 7 intentionally to create a majority-black district.
22 He plainly said so in his testimony. He also plainly said that
23 even if that district had not turned out majority black, he
24 himself would have adjusted it so that it would still be a
16:42:01 25 majority-black district.

1 So that is very similar to what Dr. Duchin did here. Like
2 the state, she considered race only to the extent necessary to
3 draw the two majority-black districts and to satisfy *Gingles* 1.
4 Dr. Duchin didn't consider other redistricting principles. She
16:42:19 5 said that her non-negotiables were compactness, maintaining
6 communities of interest, particularly the Black Belt, and that
7 the reason her maps are cut across the state is because the
8 Black Belt, a community of interest that has existed in Alabama
9 for 200 years, itself cuts across the state.

16:42:35 10 Dr. Duchin also prioritized not cutting -- splitting
11 counties and she did so in one map, and split fewer counties
12 than the state's map.

13 Only after considering all of these other factors did she
14 look at race to satisfy *Gingles* I. And even if Dr. Duchin
16:42:53 15 didn't draft -- even so, she drafted two majority-black
16 districts with bare majority black populations, even though she
17 testified that it would be possible for her to draw two
18 majority-black districts with higher black populations. She
19 drew them with lower populations because she was trying to
16:43:09 20 narrowly tailor them, as is required by the Constitution.

21 Moreover, again, nothing is per se constitutional about
22 even setting racial targets. The Supreme Court said in *Bethune*
23 *Hill* and the *Alabama Legislative Black Caucus* case that the use
24 of racial targets are valid means of complying with the Voting
16:43:31 25 Rights Act.

1 Indeed, in *Bethune Hill* the Supreme Court upheld the
2 state's use of a 55 percent BVAP racial target, where the state
3 had good reason to set that target to comply with the Voting
4 Rights Act.

16:43:44 5 Here, again, Alabama's own redistricting principles,
6 consistent with its recent Supreme Court precedent, require the
7 state to take into consideration Section 2. And the state's
8 own guidelines when talking about communities of interest
9 discuss that race is one thing that can be considered.

16:44:04 10 Second, there's been a lot of talk about communities of
11 interest, but as the state and other -- as many witnesses who
12 testified today have said over the last few weeks, not every
13 district has to contain a single community of interest. Many
14 of the districts that currently exist have multiple communities
16:44:24 15 of interest in them.

16 Huntsville may have different interests than Franklin
17 County. Birmingham may have different interests an Selma. And
18 so there's no requirement, either under the state's
19 redistricting guidelines, or under the considerations that
16:44:38 20 Mr. Hinaman or the Legislature took into consideration that
21 every congressional district must contain a single community of
22 interest.

23 Here, however, the Black Belt, as I said, is a community,
24 a black community that has existed in Alabama for 200 years.
16:44:56 25 Nearly every witness, including Representative Byrne, testified

1 that the Black Belt is a community of interest. Every witness,
2 including Representative Byrne, testified that there is a clear
3 community of interest that exists between black people and the
4 community in Mobile and the Black Belt in the northwest of the
16:45:13 5 state.

6 But the state split Mobile County to comply with the
7 Voting Rights Act to draw the two majority black board of
8 education districts is compelling evidence that, consistent
9 again with the state's own redistricting criteria, that the
16:45:29 10 state could and should draw split Mobile County in order to
11 draw two majority black congressional districts.

12 Third, I want to talk a little bit about Dr. Imai. As
13 Dr. Imai himself testified repeatedly, his analysis tells us
14 nothing about whether or not drawing two majority-black
16:45:51 15 districts complies with the traditional redistricting
16 principles.

17 Dr. Imai said that he did not consider race in drawing his
18 district -- even though as again the Supreme Court has said
19 that you can do so, even though the state itself has said that
16:46:08 20 you should consider race when doing so to comply with the
21 Voting Rights Act, when considering communities of interest,
22 and indeed Dr. Imai said that even he took into consideration
23 as many redistricting principles as he could, but he didn't
24 take into consideration all of them.

16:46:23 25 One important consideration is communities of interest.

1 And Dr. Imai did not -- wasn't able to identify every community
2 of interest in Alabama, because the state does not provide a
3 list of those things. And those communities may include large
4 places with large black or other racial group populations like
16:46:44 5 the Black Belt.

6 Your Honor, Mr. LaCour also talked about the *Miller* case,
7 which is a Supreme Court case, a series of Supreme Court cases
8 from the 1990s. First of all, *Miller* involved a Section 5
9 objection for the Supreme Court, where the Department of
16:46:59 10 Justice had repeatedly rejected maps drawn by Georgia because
11 they had failed to draw three majority-black districts. The
12 Supreme Court said that that was unnecessary.

13 The reason why the Supreme Court said it was unnecessary
14 to comply with the Voting Rights Act to draw three
16:47:16 15 majority-black districts is because in Georgia, unlike in
16 Alabama, black Congressmen had repeatedly won from majority
17 white congressional districts. In fact, today black
18 Congressmen are elected in Georgia from a majority white
19 congressional districts.

16:47:29 20 That is not and has never been the case in Alabama.
21 Again, no black person in Alabama has ever won a majority white
22 congressional district. That was not the case in the *Miller*.
23 It is not the case today in Georgia. And Alabama has a very
24 different history than Georgia.

16:47:45 25 Finally, on the racial gerrymandering claim, Mr. LaCour

1 ignores the fact that in *Alabama Legislative Black Caucus*, the
2 Supreme Court made very clear and said that states, when
3 they're drawing a district to comply with the Voting Rights
4 Act, must ask to what extent must we preserve existing
16:48:08 5 minorities percentages in order to maintain the minority's
6 present ability to elect the candidate of choice.

7 The Supreme Court has required Alabama and other states,
8 when they're drawing majority-black districts, to consider at
9 what percentage they need to draw those districts. The problem
16:48:21 10 in ALBC was that Alabama chose to draw 60 percent black
11 districts, and didn't consider whether or not a black district
12 would comply with the Voting Rights Act and perform at a level
13 of 50 percent or something else.

14 That's the same issue here. Alabama has drawn a
16:48:37 15 majority-black district that's 60 percent black registered
16 voter population. Plaintiffs shown that districts with as low
17 as 51 or 52 percent black registered voter populations could
18 perform in the same way as District 7 today.

19 Alabama, though, never bothered to consider that question.
16:48:57 20 We have testimony from the Legislature, we have stipulations
21 that Alabama didn't conduct any sort of racial polarization
22 analysis or any other analysis to determine whether or not
23 continuing to pack District 7 was necessary to comply with
24 Voting Rights Act.

16:49:10 25 Your Honor, unless you have any other questions, I

1 appreciate your time.

2 JUDGE MARCUS: Thank you, Mr. Ross.

3 Finally, Ms. Khanna.

4 MS. KHANNA: Thank you, Your Honor.

16:49:26 5 As I mentioned in my previous argument, Caster plaintiffs
6 have established each of the Section 2 elements step by step,
7 methodically proving a Section 2 violation.

8 To say that there's a strong basis in evidence to believe
9 Section 2 requires a second majority-black district would be a
16:49:45 10 glaring understatement in light of the overwhelming evidence in
11 this case.

12 So instead of addressing the Section 2 standard,
13 defendants pivot straight to a hypothetical claim under the
14 Equal Protection Clause, arguing that plaintiffs' illustrative
16:50:01 15 plans are racial gerrymanders.

16 But the Eleventh Circuit has made clear in *Davis* that the
17 question posed under *Gingles I* in a Section 2 case, whether an
18 illustrative plan was created consistent with traditional
19 districting principles is wholly distinct from the question
16:50:18 20 posed in racial gerrymandering cases of whether or not race
21 predominated in drawing district lines. You simply cannot
22 conflate the two. A court adjudicating a state Section 2
23 liability considers only the first question, not the second.

24 Mr. LaCour talked a lot about *Miller v. Johnson*. *Miller*
16:50:37 25 was a racial gerrymandering case, which is very telling. Since

1 the Eleventh Circuit in *Davis* made clear -- and I will direct
2 quote -- The District Court's attempt to apply authorities such
3 as *Miller* to this Section 2 case is unpersuasive because the
4 *Miller* and *Gingles* lines address very different context, end
16:50:58 5 quote.

6 Defendants' decision to lean into *Miller* only underscores
7 their attempt to turn away from the actual Section 2 legal
8 standard, which we have readily satisfied.

9 But even if defendants could ignore this find binding
16:51:14 10 precedent, they point to no evidence that race predominated in
11 Mr. Cooper's illustrative plans, all of which balance a host of
12 traditional redistricting criteria in myriad ways in accordance
13 with the law and Alabama's own redistricting guidelines.

14 Mr. Cooper testified during the hearing and in his reports
16:51:32 15 that he drew districts to follow county boundaries. And where
16 he had to divide counties to achieve population equality, he
17 followed municipal boundaries. That's with the city of Mobile.
18 Or VTD boundaries, or other objective geographic borders.

19 Mr. Bryan could not point to a single line in Mr. Cooper's
16:51:53 20 illustrative maps that was explainable based on race alone. He
21 conducted no analysis of the extent to which traditional
22 boundaries -- counties, municipalities, VTDs, highways,
23 rivers -- informed those district lines.

24 Mr. LaCour stated several times that plaintiffs' plans
16:52:12 25 scrapped traditional districting principles. But there is zero

1 basis in evidence for that claim. Mr. Cooper considered and
2 balanced every single principle, and certainly the defendants
3 have not established otherwise.

4 It is true that core retention had to compromise to give
16:52:27 5 way to plaintiffs' obligation to create a new district that
6 didn't exist before. But even there Mr. Cooper kept Districts
7 4 and 5 as untouched as possible.

8 He didn't cast aside incumbent consideration. He avoided
9 pairing them in one of his plans, and he paired only two in his
16:52:45 10 other plans.

11 Defendants' complaint is not any of the traditional
12 districting principles were broken or scrapped. Instead, it is
13 that not every traditional principle was maximized. And that
14 is just not the standard.

16:53:01 15 Under defendants' theory, the fact that Mr. Cooper was
16 able to draw a plan with fewer political subdivision splits
17 than the enacted plan will be proof enough that the enacted
18 plan is an unconstitutional racial gerrymander.

19 But clearly, they have taken the opposite position. That
16:53:19 20 is not the law.

21 All defendants have for their claim that racial
22 gerrymandering is what -- is what the plaintiffs' maps provide
23 is that plaintiffs charged with the task of drawing an
24 additional majority-black district in order to advance their
16:53:36 25 claim and be in this court knowingly drew an additional

1 majority-black district.

2 If that not only sounds backwards as an intuitive matter,
3 it is backwards as a legal matter. The Eleventh Circuit has
4 held in *Davis* to penalize plaintiffs for attempting to make the
16:53:56 5 vert showing that *Gingles* demands would make it impossible as a
6 matter of law for any plaintiffs to bring a successful Section
7 2 claim.

8 Contrary to defendants' suggestion, the consideration of
9 race does not equate to the predominance of race. And even if
16:54:12 10 the Eleventh Circuit hadn't made this clear, hadn't already
11 addressed this issue, the fact is that race may predominate in
12 redistricting consistent with the Constitution in order to
13 comply the compelling state interests, which is Section 2 of
14 the Voting Rights Act.

16:54:27 15 The state of Alabama is well aware of this fact. Indeed
16 the Legislature incorporated it verbatim in their redistricting
17 guidelines. To hold otherwise would mean that states could
18 point to the fact that any one principle could have been
19 better, could have been more compact, could have been more
16:54:46 20 maximized to escape liability under Section 2 of the Voting
21 Rights Act, but that is clearly not the law.

22 Mr. LaCour also brought up the Alabama NAACP judicial
23 redistricting case. And I think it's important to call out
24 some very important distinctions between that case and this
16:55:06 25 one.

1 Again, back to *Davis*, that was a redistricting case for
2 judges who tried to move from an at-large judicial system to
3 entirely new restructured election system, not move district
4 lines this way or that, but to totally revamp the way that
16:55:22 5 judges are elected. And with what the Eleventh Circuit said in
6 *Davis*, and I quote, thus, in this circuit, Section 2 of the
7 Voting Rights Act frankly cannot be said to apply in any
8 meaningful way to at-large judicial elections.

9 So right from the outset, we're just dealing with a
16:55:41 10 different, substantively different kind of issue under Section
11 2 as recognized by the Eleventh Circuit.

12 In that case, in the Alabama NAACP case, there was a
13 dramatically different evidence. The Court criticized the
14 plaintiffs for emphasizing population equality in judicial
16:56:01 15 districts. But that's required in congressional districts.
16 The Court criticized the plaintiffs' racially-polarized voting
17 expert for only looking at races with black candidates. But of
18 course, Dr. Palmer looked at all races.

19 In concluding that partisanship -- that partisanship drew
16:56:18 20 or drove some of the voter choices, the Court there relied
21 heavily on evidence that has not been offered in this case. It
22 pointed to defendants' evidence involving multi-varied analysis
23 controlling for partisan variables, data regarding
24 straight-ticket voting and the impact on judicial elections,
16:56:35 25 and specifically the successes of black-preferred candidates in

1 judicial races.

2 Here, defendant offered no such evidence. And defendants'
3 own expert agrees that race and party are inextricably
4 intertwined.

16:56:51 5 And finally, Your Honor, for that case, it's important to
6 know that case committed a significant legal error in its
7 totality of the circumstances analysis. Even if we put aside
8 all the way that it's factually distinguishable, although it
9 begins with the correct statement that it is not the law that
16:57:07 10 Section 2 plaintiffs must prove racial bias is driving election
11 results, in evaluating the case, it doesn't completely misapply
12 that legal standard, suggesting that plaintiffs need to present
13 evidence of individual voters, quote, subjective voting
14 motivations. The Section 2 effects test was meant to rely on
16:57:27 15 objective evidence and results and ultimate results without
16 creating the evidentiary burden, and, frankly, the divisive
17 atmosphere of having to prove discriminatory intent.

18 This Court is well aware, that district court opinion is
19 not binding here, but the Eleventh Circuit legal standard is.
16:57:48 20 And we would invite the Court not to make the same errors that
21 that Court made.

22 The last point, Your Honor, on timing. Mr. LaCour talked
23 a lot about how a lot of people -- a lot of things might need
24 to get done to allow for a change in the electoral process --
16:58:04 25 in the redistricting maps at this point. But the fact remains

1 there is absolutely nothing unusual about this redistricting
2 case. These cases almost always proceed on expedited schedules
3 once plans are passed and before elections are held.

4 And, yes, the state might have to veer from its planned
16:58:23 5 administrative calendar. But that is not enough to outweigh
6 the fundamental and irreparable harm to plaintiffs' voting
7 rights. When the Legislature -- from when the Legislature took
8 up redistricting last fall to when it passed the enacted maps,
9 it took nine days. Nine days to pass the map that we have been
16:58:45 10 litigating.

11 The Legislature now has some 11 examples of how to draw a
12 map that complies with Section 2. How to draw a map that
13 provides black voters an opportunity to elect in two
14 congressional districts. It can choose any, it can choose
16:59:00 15 none. It can base some portions of its remedy on any one of
16 those.

17 But at the end of the day, even if it were too late, even
18 if January before a May primary, two-and-a-half months before a
19 single ballot needs to be printed were too late, defendants
16:59:18 20 cannot deny that if we have established liability, plaintiffs
21 are entitled to relief at some point. It can't always be too
22 late or too soon. The Court cannot just shrug at the legal
23 violation sit on its hands so as not to inconvenience election
24 officials people or candidates' campaigns.

16:59:37 25 When will it ultimately be the right time to vindicate

1 this Voting Rights Act violation? It wasn't before the last
2 election. That's what they it told us then. It's not before
3 the next election. That's what they're telling us now. But
4 eventually, Your Honor, relief must be granted, and we would
16:59:52 5 submit that it must be granted as soon as possible to avoid the
6 vote dilution that is certain to result from the use of the
7 enacted map in any future elections.

8 Thank you, Your Honors.

9 JUDGE MARCUS: Thank you very much. A couple of
17:00:09 10 observations from me, and then I will turn to my colleagues to
11 see if they have anything to add or address.

12 First, I wanted to take a moment to commend all of the
13 lawyers in this case for having done a really outstanding job
14 in preparing and marshalling an enormous body of evidence for
17:00:36 15 this Court to consider in this preliminary injunction hearing.
16 You have presented a very thorough and detailed set of facts,
17 broad and deep that will allow this Court hopefully to reach an
18 appropriate answer. The record is lengthy and detailed.

19 The second, I hope and expect that we will give you an
17:01:09 20 opinion in this case within two weeks of the date when we get
21 the proposed findings of fact and conclusions of law from the
22 parties, which have been set for the end of the day on January
23 the 14th. But I did really want to take a moment to commend
24 all of the lawyers for having done a really outstanding job in
17:01:42 25 this case.

1 With that, Judge Manasco, any questions or comments?

2 JUDGE MANASCO: Thank you. First, I will echo what
3 you said about the commendation of the lawyers. I think, you
4 know, what all of you were able to accomplish would have been
17:01:57 5 remarkable under any circumstance in this amount of time. But
6 I am mindful that there were holidays, and there was pandemic
7 duress, and so I think it was all the more remarkable under the
8 circumstances.

9 The other thing is I still do have one question. And I
17:02:13 10 will direct it to Mr. Davis, if he's still with us.

11 But, Mr. Davis, you are free to punt it to any other
12 person on your team, if you think appropriate. And it's really
13 just sort of an evidentiary question about the logistics. We
14 have heard a lot today about timing. And I recall you saying
17:02:35 15 at one of our earlier proceedings early on in the life of the
16 case that if any relief were ordered, the Legislature would
17 want the opportunity to take the first cut at another map. And
18 so my question is: Is there anything in the record or any
19 argument you want to make about how long that might take if --
17:02:59 20 and I underscore the if -- any relief were ordered?

21 MR. DAVIS: Your Honor, there is nothing in the record
22 to my knowledge that would address that question. I can share
23 that you would -- we got the census data -- the day we got the
24 census data is in the record, and the draft congressional plan
17:03:18 25 was completed soon before the reapportionment committee met.

1 That's not quite apples to apples because the map drawer was
2 also working on other maps.

3 All I can tell you -- I think it would take at least a
4 couple of weeks to confer to meet with legislators. The
17:03:36 5 Legislature will be in session, so we won't have to go through
6 the Governor to call. But you have to draft the plan, then it
7 will take several days to get to the Legislature.

8 Mr. Walker, do you have more information that you can
9 share? I will give you this seat.

17:03:49 10 MR. WALKER: No. Just saying there will be -- it will
11 be more difficult because --

12 MR. DAVIS: Oh. I think -- it may -- I take it
13 Mr. Walker's point is however long it took last time had he
14 been doing just the congressional plan, might take longer since
17:04:07 15 inevitably an order would require drastic changes. It would
16 not be a least change. So there would be more the Legislature
17 has to weigh because it would blow up the map. It would be
18 completely different from the way things were before.

19 So I couldn't give you anything more than a guess. I
17:04:26 20 don't see how it could possibly be done within less than a
21 couple of weeks. But it could be much longer. It could be a
22 little quicker. That's the best I could do, Judge.

23 JUDGE MANASCO: Understood. Thank you.

24 JUDGE MARCUS: Any other comments or questions about
17:04:45 25 that from anyone, or, Judge Moorer, any questions?

1 MR. LACOUR: I am I guess depending on the ruling the
2 legislative redistricting committee could even potentially pass
3 new guidelines and do new things. One of the guidelines in
4 North Carolina at issue in the *Rucho* case was partisan
17:05:06 5 advantage, for example. And they used that to draw the present
6 gerrymander. That's not what we did in this case despite
7 having a supermajority of Republicans in both houses.

8 But in any event, there are multiple considerations that
9 through no fault of the Legislature at that point if we are
17:05:27 10 enjoined from using our current map.

11 JUDGE MANASCO: Understood.

12 MS. KHANNA: Your Honor, if I may.

13 JUDGE MARCUS: Ms. Khanna?

14 MS. KHANNA: If I may just touch briefly on this. At
17:05:40 15 the time of the Legislature drew the enacted plan, it also drew
16 a State House plan, a State Senate plan, a State Board of
17 Education plan. It was drawing a lot of plans at the same
18 time. I can imagine it would take less time to focus just on
19 the one plan and the violation that this Court would specify if
17:05:56 20 it were to find in favor of plaintiffs.

21 Mr. LaCour also brought up North Carolina. North Carolina
22 I believe has a statute that says if the Court -- when and if a
23 Court strikes down an enacted redistricting map, the
24 Legislature gets two weeks to provide a remedy. North Carolina
17:06:12 25 legislatures have done this multiple times and I think well

1 under two weeks several times. So this is -- like I said, the
2 expedited process here not new. The need to redraw maps is not
3 new. The need to make clear that any new map regardless of
4 what the state's preferred guidelines are needs to comply with
17:06:29 5 Section 2 of the Voting Rights Act is certainly not new and is
6 required by law.

7 JUDGE MANASCO: Thank you.

8 JUDGE MARCUS: Any other questions or comments? Judge
9 Moorer?

17:06:42 10 JUDGE MOORER: No. I just want to echo the comments
11 of my colleagues about the lawyers' performance in this case.
12 Your help has been very, very good and very helpful to the
13 Court.

14 JUDGE MARCUS: Anything further from any of the
17:06:57 15 parties? If not, we will be adjourned. Mr. Blacksher for the
16 Singleton plaintiffs?

17 MR. BLACKSHER: No, Your Honor. Thank you very much.

18 JUDGE MARCUS: Mr. Ross for Milligan?

19 MR. ROSS: No, Your Honor. Just thanking the panel
17:07:13 20 for their time and attention to these issues.

21 JUDGE MARCUS: Ms. Khanna?

22 MS. KHANNA: No, Your Honor. Same thing. I just want
23 to thank the Court for its flexibility, time, and patience.

24 JUDGE MARCUS: Mr. Davis, anything further or
17:07:24 25 Mr. LaCour?

1 MR. DAVIS: Nothing else from the defendants, Judge.

2 JUDGE MARCUS: Thank you all much. I am sorry.

3 Mr. LaCour, was there anything further?

4 MR. LACOUR: Just thanking you all as well.

17:07:35 5 JUDGE MARCUS: Thank you all again for your
6 considerable efforts. This Court is adjourned.

7 (Whereupon, the above proceedings were concluded at
8 5:07 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

01-12-2022

Christina K. Decker, RMR, CRR

Date

Federal Official Court Reporter

ACCR#: 255