

Nos. 21-1086, 21-1087

**In The
Supreme Court of the United States**

JOHN H. MERRILL, ET AL.,
Appellants,

v.

EVAN MILLIGAN, ET AL.,
Appellees.

JOHN H. MERRILL, ET AL.,
Petitioners,

v.

MARCUS CASTER, ET AL.,
Respondents.

**On Appeal From And Writ Of Certiorari
To The United States District Court
For The Northern District Of Alabama**

JOINT APPENDIX VOLUME TWO

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**Notice of Appeal and Petition for Writ of Certiorari
filed January 28, 2022
Probable Jurisdiction Noted and Certiorari Granted
February 7, 2022**

TABLE OF CONTENTS¹

	Page
Relevant Docket Entries in <i>Milligan v. Merrill</i> , No. 2:21-cv-1530 (N.D. Ala.)	JA1
Relevant Docket Entries in <i>Caster v. Merrill</i> , No. 2:21-cv-1536 (N.D. Ala.)	JA37
Relevant Pleadings in <i>Milligan v. Merrill</i> , No. 2:21-cv-1530 (N.D. Ala.)	
Complaint (ECF 1) (November 16, 2021)	JA70
Joint Stipulated Facts for Preliminary In- junction Proceedings (ECF 53) (December 7, 2021)	JA144
Preliminary Expert Report of Baodong Liu, Ph.D. (ECF 68-1) (December 14, 2021)	SJA1
Declaration of Joseph Bagley, Ph.D. (ECF 68- 2) (December 14, 2021)	JA185
Declaration of Moon Duchin, Ph.D. (ECF 68- 5) (December 14, 2021)	SJA21
Deposition of Randy Hinaman – Excerpts (ECF 70-2) (December 15, 2021)	JA269
Declaration of Bernard Simelton (ECF 70-4) (December 15, 2021)	JA282

¹ “JA” refers to the Joint Appendix. “SJA” refers to the Supplemental Joint Appendix – a separate volume, printed on 8.5” x 11” paper, comprising documents that contain maps and charts that are easier to read in their original format. “MSA” and “CSA” refer to the Milligan Stay Appendix and Caster Stay Appendix, respectively, with pages corresponding to the booklet-format versions of those appendices.

TABLE OF CONTENTS – Continued

	Page
Declaration of Shalela Dowdy (ECF 70-5) (December 15, 2021)	JA287
Declaration of Evan Milligan (ECF 70-6) (December 15, 2021)	JA291
Rebuttal Report of Baodong Liu, Ph.D. (ECF 76-1) (December 21, 2021)	SJA37
Supplemental Declaration of Joseph Bagley, Ph.D. (ECF 76-2) (December 21, 2021)	JA299
Rebuttal Report of Moon Duchin, Ph.D. (ECF 76-4) (December 21, 2021)	JA307
Declaration of Thomas Bryan – Excerpts (ECF 82-2) (December 27, 2021)	SJA41
Expert Report of Kosuke Imai, Ph.D. (ECF 88- 1) (December 27, 2021)	SJA52
Rebuttal Expert Report of Kosuke Imai, Ph.D. (ECF 88-6) (December 27, 2021)	SJA68
Supplemental Report of Moon Duchin, Ph.D. (ECF 92-1) (December 27, 2021)	SJA74
Relevant Pleadings in <i>Caster v. Merrill</i> , No. 2:21-cv-1536 (N.D. Ala.)	
Complaint (ECF 3) (November 4, 2021)	JA312
Joint Stipulated Facts for Preliminary Injunction Proceedings – Excerpts (ECF 44) (December 7, 2021)	JA344
Declaration of William S. Cooper (ECF 48) (December 14, 2021)	SJA77

TABLE OF CONTENTS – Continued

	Page
Declaration of Maxwell Palmer, Ph.D. (ECF 49) (December 14, 2021).....	SJA116
Declaration of Dr. Bridgett King (ECF 50) (December 14, 2021).....	JA354
Transcript of Bench Trial, <i>Chestnut v. Merrill</i> , No. 2:18-cv-907 (N.D. Ala. Nov. 5, 2019) – Day 2 – Excerpts (ECF 56-4) (December 15, 2021).....	JA427
Transcript of Bench Trial, <i>Chestnut v. Merrill</i> , No. 2:18-cv-907 (N.D. Ala. Nov. 6, 2019) – Day 3 – Excerpts (ECF 56-5) (December 15, 2021).....	JA462
Transcript of Bench Trial, <i>Chestnut v. Merrill</i> , No. 2:18-cv-907 (N.D. Ala. Nov. 4, 2019) – Day 1 – Excerpts (ECF 56-7) (December 15, 2021).....	JA473
Second Declaration of Dr. Bridgett King (ECF 64) (December 21, 2021).....	SJA135
Second Declaration of William Cooper (ECF 65) (December 21, 2021).....	SJA147
Supplemental Report of Thomas Bryan – Excerpts (ECF 76-4) (December 23, 2021).....	SJA160
Deposition of James McClendon – Excerpts (ECF 84-3) (December 27, 2021).....	JA487
Deposition of Chris Pringle – Excerpts (ECF 84-4) (December 27, 2021).....	JA490

TABLE OF CONTENTS – Continued

	Page
Evidentiary Submission – Excerpts – <i>Singleton v. Merrill</i> , No. 2:21-cv-1291 (N.D. Ala.) (ECF 57-7) (December 15, 2021)	SJA204
Preliminary Injunction Hearing Transcript – Excerpts (ECF 105-105-6) (January 4-12, 2022)	
Testimony of Dr. Natalie Davis (Excerpts)	JA496
Testimony of Evan Milligan (Excerpts)	JA503
Testimony of Dr. Kosuke Imai (Excerpts)	JA538
Testimony of William S. Cooper (Excerpts)	JA586
Testimony of Dr. Moon Duchin (Excerpts)	JA620
Testimony of Thomas Bryan (Excerpts)	JA721
Testimony of Dr. Joseph Bagley (Excerpts)	JA752
Testimony of Dr. Baodong Liu (Excerpts)	JA758
Testimony of Benjamin Jones (Excerpts)	JA768
Testimony of Dr. M.V. Trey Hood III (Excerpts)	JA777
Testimony of Dr. Bridgett King (Excerpts)	JA785
Testimony of Marcus E. Caster (Excerpts)	JA788
Testimony of Bradley Byrne (Excerpts)	JA802

TABLE OF CONTENTS – Continued

	Page
<p>The following opinions and orders have been omitted in printing this joint appendix because they appear on the following page in the appendix to the Jurisdictional Statement and Petition for Certiorari:</p>	
District Court Memorandum Opinion and Order Granting Preliminary Injunction, <i>Milligan v. Merrill</i> , No. 2:21-cv-1530 (N.D. Ala. Jan. 24, 2022)	MSA-1
District Court Order Denying Motion for Stay, <i>Milligan v. Merrill</i> , No. 2:21-cv-1530 (N.D. Ala. Jan. 27, 2022)	MSA-250
District Court Memorandum Opinion and Order Granting Preliminary Injunction, <i>Caster v. Merrill</i> , No. 2:21-cv-1536 (N.D. Ala. Jan. 24, 2022)	CSA-1
District Court Order Denying Motion for Stay, <i>Caster v. Merrill</i> , No. 2:21-cv-1536 (N.D. Ala. Jan. 27, 2022)	CSA-254

JA427

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

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

TRANSCRIPT OF BENCH TRIAL
VOLUME II
BEFORE THE HONORABLE KARON O. BOWDRE
CHIEF UNITED STATES DISTRICT JUDGE

(Filed Nov. 18, 2019)

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[334] JOHN KNIGHT,
having been first duly sworn by the courtroom deputy
clerk, was examined and testified as follows:

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

THE WITNESS: John Knight, Jr.

THE COURTROOM DEPUTY CLERK:
Thank you.

DIRECT EXAMINATION

BY MS. MADDURI:

Q Good morning, Representative Knight.

A Good morning.

Q We can get started with some background information. Where do you currently live?

A Montgomery, Alabama.

Q And where were you born?

A Montgomery, Alabama.

Q And where did you grow up?

A Montgomery, Alabama.

Q Have you lived in Alabama all of your life?

A I have.

Q Did you serve in the military at any point?

A I did.

Q How long were you in the military?

A For two years.

Q After you served, did you return to Montgomery?

* * *

[337] Q What district did you represent when you were in the legislature?

A Montgomery, Alabama, District 77.

Q Is that a majority black district?

A It is.

Q Was it a majority black district when you were elected?

A It was.

Q When you were in the legislature, what committees did you serve on?

A I served on the Ways and Means Committee. I served on public safety. And I served on health. I served on local government, contract review. Those are the committees.

Q Were you a member of any caucus?

A I was a member of the legislative black caucus and the minority caucus, as well as the Democratic caucus.

Q Did you share any of those caucuses?

A I shared the legislative black caucus for eight years.

Q Did you ever serve on the reapportionment committee?

A No, I did not.

Q When you were in the legislature, what were the issues that your constituents were bringing up with you most often?

A Oh, they would bring up education, economic development in terms of jobs, making certain that jobs would come to [338] Montgomery and to Alabama.

They were also bringing up the criminal justice system, health care, the general issues that people are concerned about.

And it depended on who you're talking to. Different people would have different issues.

Q Do you think any of these issues affected the black community differently than they affected the white community?

A I do, yes.

Q In what ways?

A Well, in many ways the criminal justice system mainly because you find more blacks incarcerated than you do whites in the state of Alabama, as well as the problems that we've had in our Alabama criminal justice system.

The education issue relative to being able to get a quality education in the state of Alabama, not having to leave Alabama as you had to do years ago in order to go to graduate schools and things of that nature.

And many other things that would impact the day-to-day living of the people within the state of Alabama. These are the type things that I find that were of interest.

Q Have you observed a need for affordable housing in Montgomery?

A Yes. I also served – I forgot and left that off. I serve on the Montgomery Housing Authority Board. I have been [339] there for a number of years. And that has been one of my passions to try to provide affordable housing within the city of Montgomery.

Q And is there an area that the board focuses on in terms of housing?

A Well, right now, we are focusing away from the traditional aspect of public housing moving towards affordable housing. And what I mean by that is trying to have mixed housing communities rather than just public housing projects and trying to have market rate rents, Section 8 vouchers, and all of that combined to build communities and to strengthen communities rather than just having large – with all poor people stacked together.

So we have gone in that direction just recently under my leadership trying to make certain that we stabilize and sustain low-income areas of the city of Montgomery.

Q In terms of the people who are looking for low-income housing – and you mentioned public housing, as well – do you know approximately how many people in Montgomery are currently looking for that?

A Right now on our waiting list, the last time I checked, we had approximately 8,000 people on the waiting list for public housing or subsidized housing in the Montgomery area.

Q Do you know what the demographic makeup of that waiting list is?

[340] A Majority black.

Q In your experience – you mentioned criminal justice as an issue of interest. In your experience, have

you observed any criminal justice disparities between black and white children?

A Well, what I've observed, it seems like black children are incarcerated faster than others. They are charged with – many people are incarcerated for possession of marijuana and things of that nature. And it seems like within the criminal justice system itself there's a disproportionate number of African-Americans that happen to be criminalized within the Alabama correctional system.

Q In your time in the legislature, did you work on any issues that were affecting Mobile?

A Mobile? Well, yeah. I chaired the Ways and Means Committee for 12 years. So in that position, I would have the opportunity to work with legislators and representatives from the Mobile area relative to the things that were of interest to them, things such as the docks in Mobile. I passed a bond issue of raising money for the docks in Mobile, and a number of other things relative to the funding for the school system in the Mobile area. Just a number of things that would be of interest to the local legislative delegation of the people from Mobile.

Q Did you observe any issues that affected the black residents of Montgomery and also the black residents of Mobile?

[341] A Well, yes. Yes. That would be – in many cases, some of the same issues, with the exception of

where Mobile is located that affected Mobile or affected people in Montgomery.

When it came to the criminal justice system, people were equally concerned about that. When it comes to education, I found there was an interest in that. When it came to health care, all of these things are things that are common whether you are in Mobile or Montgomery.

* * *

[354] Q In terms of the disparities you're speaking of and the opportunities for employment in Alabama, am I right in understanding that you believe that the situation that you just described affects African-Americans differently than it affects white folks?

A Yes. That's what I am talking about – African-Americans. [355] You see, in my generation, we encourage our daughters and sons, look, you go get an education and things are going to be okay. With the anticipation that they do that, that they will be welcome and they can stay in Alabama.

But you look at Montgomery, for example. It may be a little differently in Birmingham. You look at Montgomery. You look at the banking industry. You see very few blacks as presidents of a bank or vice-presidents of a bank. You look at the high-level jobs. I am not talking about entry-level jobs. I'm talking about high-level jobs and opportunities for blacks. In many cases, they're just not there.

Because what happened is you have – so often progress comes down through the family. So where you have families who have been successful throughout their lives, had money and economic growth, then their children benefit from that. In the African-American family, you don't have as much of that.

So you have to – you have first generations of young people trying to get into the workforce, trying to get into high-level positions that they've never been in before. And a lot of that is missing as from what I have seen within the state of Alabama.

Even though we have gone out – and I worked very hard to, as a matter of fact, for the Republican governor trying to do economic development and bring industry to the state. We brought companies like Hyundai, Mercedes, Honda to have [356] manufacturing jobs and things of that nature for people to be gainfully employed. And I think it's extremely important to do that.

Q I think you mentioned that African-Americans, when they leave the state of Alabama for places like New York or California, they have different job opportunities. Can you tell me more about that?

A Well, it's almost like when I was coming up as a kid. For summer jobs, we would leave Alabama. We would go to New York, wait tables and do things of that nature to make enough money to come back home.

But now you can go to college, and you're unable – with the exception – I have nothing against this. Unless you happen to have been a star athlete at one of

the major schools – Alabama, Auburn – you can come back if you're African-American and get a high-level job. But just the average working Joe out there that go and get a quality education, it's extremely difficult for them to be able to come back within the environment that we have here in this state and be gainfully employed at that level.

Q What do you mean by the environment in the state?

A The way that the structure is set up. The – and in terms of being able to get the type of jobs that you're qualified for.

Q And so you think that African-Americans who leave Alabama [357] are able to get the jobs that they're qualified for outside of Alabama?

A Oh, yeah. I mean, I know kids that's gone to University of Alabama engineering program, get an engineering degree, but to get a job they go to Detroit. I know people that have gotten Ph.D. degrees, but to get a job they have to go somewhere else to have the type of position that they feel they're qualified for.

Q In your experience, do white folks also have to leave Alabama to get those same kinds of opportunities?

A I don't think necessarily they have to, but I think some of them do. But I think it's not a matter of choice for African-American kids. I think many of them have to because there are no jobs – the jobs are just not here and available to them in this state.

Q Do you think those disparities in job opportunities between African-Americans and white folks in Alabama, do you think that leads to income disparities?

A Oh, absolutely.

Q Can you tell me more about that?

A Well, I mean, because you have the low paying job for African-Americans in this state, they don't have the high-level jobs as I was explaining. There's certainly going to be a disparity in terms of income and wealth, and that's what you see in the state.

[358] Q These incomes – sorry. These disparities in education and income, do you believe that those affect voting?

A Oh, it does. I mean, the less education you have, the less likely you are to have faith in the system and want to go vote.

I mean, I run into people each day in the neighborhood that say, Well, why, my vote doesn't count. Why should I go and vote? Those are the type things you run into with less education. And I think that adversely impacts African-Americans in this state.

Q And what about the income disparities? Does that also affect people's voting?

A It does. It does. And it reminds me of when I first got elected to the legislature. I had no idea what I was getting into and what I would encounter.

And the first thing that I encountered was in Alabama a family of four making \$3,500 had to start paying Alabama income taxes. I mean, that was unconscionable to think if you have a family of four, you are making \$3,500, and you have to start paying Alabama income taxes. But you would have large multimillion dollar corporation that would be paying zero in taxes.

I was able to work – I tried to get it up to the poverty level. And I was able to work to get it up to \$12,500 for a family of four. And that was working with – even though – [359] working with a Republican governor to do that. So it was the black caucus and the Republican governor that worked together do that.

The other thing I have tried to do in this state that is very regressive is we have a sales tax on food and groceries. I have tried to get that removed. That is – I have not been successful over the length of time that I spent in the Alabama Legislature trying to get that done. But I hope some day that somebody will be able to get it done.

Q So these two taxes you mentioned – taxing very low incomes and also taxing food, do you think that disproportionately impacts African-Americans in Alabama?

A It does, because we are disproportionately lower incomes than others. When we elevated the tax for the family of four, I think the total amount of it at that time, I think, was \$60 million.

Q In terms of when someone has a lower income or a lower paying job, have you observed any practical

barriers that get in their way when they go to vote or want to vote?

A I'm sorry. I don't –

Q I can –

A Okay.

Q In terms of when somebody has a lower paying job or, like you said, the manufacturing job like these hourly jobs?

A Okay.

[360] Q Something like that or a lower income one, does that –

A Well, and if I'm not understanding your question correctly – but I think it depends on the type of job that you have.

There are some people that I work with they can only go vote during their lunch hour. So if you have a large election, they go during the lunch hour, when they go to the polls, they see a long line, well, on their mind, they have got to get back to work or they're going to lose their job. They are not going to stay in a long line and cast their vote. They are going to go back to their job.

The other thing is there are many people that work two and three jobs. And the polls open at 7:00, close at 7:00. There needs to be a way that the voting is more available more than just on election day, early voting, and things of that nature, so it will be

convenient for people that have jobs such as that to be able to go vote.

And there are still people that feel intimidated if they tell the people that they're working for that they want to take off to go vote because years ago it was an intimidating factor if you worked in a certain environment to tell people that you were going to go and vote without losing your job, or something of that nature.

So you still have some of those factors that's commonplace in certain areas of the state and in certain households.

[361] Q You touched on a few things, so I will take them one by one.

The intimidation you mentioned. Can you tell me a little bit more about that?

A Intimidation at the polls, or you mean intimidation to go vote, or what?

Q Either one. We can start with you said intimidation about potentially I think being discouraged from your employer or something related to your employment?

A I was talking about if a person has a job where they only have an hour off for lunch and they choose to go and vote during that hour, if they – if it's a long line and confusion at the polls, they're not going to stay there and go vote.

And then you say, Well, will you come back after you get off? Well, then most of them got to go pick up their kids or something of that nature.

There's all these types of things that come into play when it comes to that. And I think that's the reason that we have not been able to have legislation that will allow people to do early voting.

Now, we do have absentee voting. But the affidavits and all that have to be signed, that's intimidating to many people because you have to swear that you are going to be out of town or something of that nature to go vote. And people are afraid that if they do that and something happens and they're not, [362] that they will be arrested, or be charged with voter fraud, or something of that nature.

And that's been – and in the state of Alabama, there has been a lot of talk about voter fraud in the Black Belt, or absentee voter fraud, things of that nature, which puts up a red flag in the minds of a lot of good people that would love to work in the voting process but are afraid that if they do so, that they're going to be charged with a crime, in terms of absentee voter fraud and things of that nature. And you haven't found much of that.

As a matter of fact, in my experience in working in the community, I worked there for a number of years. You have to beg people almost to go vote. Nobody is running over you to go vote. To say that if it's convenient for people to go vote that you would have all this

voter fraud, I mean, it's just another way of intimidating voters and keeping them afraid of the process.

Because, see, within certain communities, there were times when people were just afraid to go to the courthouse. So when you go and you trying to get people to fill out affidavits or things of that nature, nobody wants to spend, or even have the money to hire lawyers to defend them once they're charged with voter fraud, or something of that nature.

Q When you say certain communities, what do you mean?

A In African-American communities. Those are the ones that [363] I've worked in all of my life.

Q And does the intimidation that you're talking about – intimidation and the fear in African-American communities – does that actually lead to people not voting?

A Oh, absolutely.

Q Even today?

A Yes. Yes. It's not as – it's not as pervasive today as it was years ago.

I remember in Montgomery at one time when we had a mayor there that was a very strong mayor, at certain voting places, you would have city police officers stationed out there on motorcycles in front of every polling place. Well, I mean, we challenged that. We challenged. We finally eliminated that.

One other instance during one period during the polling places, they would have a white gentleman with dark glasses standing at the front door. People are thinking those are FBI agents so they wouldn't go in and vote.

These are the type things that I have actually seen. And we've challenged a lot of that. We got it eliminated. But it's still in the minds of many. You still have a lot of things where they are intimidated about going to vote.

Q You mentioned that it can be difficult for people who have jobs where they have just an hour off at lunch or something like that to go vote. In your experience, do African-Americans disproportionately hold those kind of jobs?

[364] A Yes. Hold many of those jobs, yes, and still do. That hasn't changed in a number of years.

Q You also mentioned that there are occasions where people are working two to three jobs or something like that –

A Yeah.

Q – which might also make it difficult to vote on election day. Are those jobs also disproportionately held by African-Americans in your experience?

A Yes. You have more African-Americans having to work two and three jobs. Don't get me wrong. I don't want to imply that there are not others that do the

same thing. But disproportionately, African-Americans are affected.

Q You also discussed intimidation around absentee voting. Can you tell me more about that?

A There's been quite of that here within the state of Alabama where there have been accusations about voter fraud and illegal absentee voting especially in the Black Belt area; not as much in the Montgomery area, but in the Black Belt area of our city, which happens to be where a majority of the blacks live.

That – and most of it has not turned out to be actual or factual information. It's just been out there where people are intimidated when it comes to the absentee ballot process.

Q You've mentioned education a number of times since we began speaking. Are there disparities at the lower education [365] level in the K-12 space that you've observed?

A In the K-12?

Q Uh-huh.

A When you say disparities, you mean in funding or?

Q Either in quality of education, or funding for education, or access to education, and just generally in the education realm for that group?

A I can't speak too much on that particular on K-12. I can speak on higher ed.

But in the K-12, in Montgomery, the public school system's composed majority – I'll say 85 to 90 percent of blacks are in public education. White kids go to private schools. The public education system has been underfunded.

In Montgomery you have the lowest millage rate of any other schools in the state.

THE COURT: Have the lowest what rate?

THE WITNESS: Millage rate. Property tax.

THE COURT: Okay. Thank you.

THE WITNESS: It's the bare minimum that's required by state law, and that has been a problem in terms of funding for the educational system there in the state of Alabama.

And the reason that that has prevailed in Montgomery is because most of the white kids are in private schools. So to be able to get the rate increase there in Montgomery, we have had it on the ballot I think twice.

[366] BY MS. MADDURI:

Q And it's failed?

A It's failed, yes. Uh-huh.

* * *

[375] Q In terms of the current law that Alabama does have, do you think that disparately impacts African-Americans in Alabama?

A I think so. I think that any time you put barriers like that in place it has an adverse impact on low-income families and people that – working families, things of that nature rather than professional families. And I think African-Americans make up the majority of that. Not that it will not have an adverse impact on anybody to fill in that category, but African-Americans are more affected by it.

Q Have you observed any issues with DMV offices in the Black [376] Belt in the last few years?

A If I recall correctly, it was Governor Bentley at that time. Something came up in the legislative process that he was not satisfied with relative to the black caucus. And I think a way of punishment was closing some of the – the offices in the Black Belt.

I'm trying to think of what that issue may have been, but I don't recall at this time. But it – the Governor got very upset with the black caucus on some bill or legislation that he wanted that we were opposed to. And when we looked up, he had closed all of the voting places in some of the Black Belt areas, voter ID places in the Black Belt area.

Q How would the closing of the DMV offices impact African-Americans differently than it might white voters?

A Well, the feedback that I got – and I'm not in the Black Belt – but people would have to drive sometimes an hour to get to a location where they would be

JA447

able to get their ID to be able to vote. And I mean, that's a lot just to go get an ID to be able to go vote.

* * *

[416] MS. KHANNA: Thank you, Your Honor. Plaintiffs call Lakeisha Chestnut.

LAKEISHA CHESTNUT,

having been first duly sworn by the courtroom deputy clerk, was examined and testified as follows:

[417] THE CLERK: Please state your name for the record in the microphone.

THE WITNESS: My name is Lakeisha Chestnut.

THE COURTROOM DEPUTY CLERK:
Thank you.

DIRECT EXAMINATION

* * *

[420] Q Based on your experiences in the area, does the African-American community in Mobile have unique needs and interests related to public education?

A Yes, they do.

Q And what would – what are those?

A So – excuse me – our public schools are failing. A lot of the black students that go to predominantly black schools are basically struggling to survive,

struggling to get, you know, get their education. They are trying to do the best that they can with what they have.

We have a few of our majority black schools that are currently on the failing list. I don't think there's like a couple of white schools that are on that list from Mobile County.

But they work hard. They try their best. But and some of them want to go to really good schools. But they – some end [421] up going to community college and then transferring to a different, you know, transferring to another school. Some just go straight from high school to the workforce.

So it's – the struggle for having a really great public education is truly real.

Q And you mentioned – what about white – white students in Mobile or white families in Mobile? Do they – don't they have an interest in public education, as well?

A They do. But their needs are different than ours.

White kids don't – when I was in school – I will put it to you like this. When I was in high school, I went to Murphy High School. Murphy was, first of all, the first school that was integrated in Mobile County. Second, it was a majority white school when I went there. Now it's a majority black school because all the students that attend Murphy or were in Murphy's district are either going to private schools, like Saint Paul's or

Saint – or UMS-Wright or McGill-Toolen, or they're going to school further out west that have majority white students that attend there. So they're not going to like schools like Williamson or Blount or Vigor. They're going to like Baker or Alma Bryant. Those are the schools that they're attending.

Q And what about higher education? Are there any, in particular, interests within the African-American community in Mobile regarding access to higher education?

[422] A We can't afford it. I am a product of that. I don't have a Pell Grant. I actually had to take the semester off because I couldn't afford my classes this semester. My student loan was only enough to pay for maybe one and a half of my classes. So I have to wait until next semester to see if I have enough in student loans just so I can attend my – my classes next semester. After that, I don't even know.

I just feel like I'm going to have to give up on my dream of being a screen writer. You have to – you – student – black students have to see if they can get a scholarship just to attend school.

My daughter just graduated a few years ago. My daughter – she attended – she wanted to attend Harvard. That was her dream school. But she thought her grades weren't good enough so she could attend Harvard. So she ended up at Bishop State Community College, and then turned around and transferred to Troy and switched her major a couple of times, but now she

is a chemical engineering major. And that's because that's the only way she could afford to go to school.

So affordability, having the resources to be able to go to school, not going into debt, you know, to get our degrees? I mean, I'm 43 years old, and I'm still trying to go back to school, and I can't even afford it.

So, yes, so those are one of our immediate concerns with higher education.

[423] Q Does the African-American community in which you live in Mobile have any unique needs or interests relating to criminal justice?

A Yes.

Q And what are those?

A We're more concerned with a lot of police brutality.

My husband walks everywhere that he wants – that he needs to go. I can't begin to tell you how many times that my husband has come home and said that he's been pulled over by the police just because he looked like somebody that committed a crime. Every night when he goes out for his nightly walk, I'm afraid that he may never come home.

The last time he got pulled over by the police, they held him for an hour and a half for a shooting that happened in the opposite direction that he was going because he went to Wal-Mart to go grab dinner for the night. And when he was coming back, that's when the police stopped him.

So that's a concern. It's a concern for me.

I be at home alone sometimes. What if one of my neighbors like what happened to the young lady in Fort Worth? What if one of my neighbors got concerned and saw me in the window and shoots me in my own home? You know.

My stepson, 15 – well, actually 16, just turned 16, I worry about him.

So we worry about those things. We worry about the high [424] incarceration rates, how a lot of our black young black men are being incarcerated at higher rates than whites. It is an issue.

And I wish that we had more – somebody who actually represented us that actually addressed those concerns.

Q Has Congressman Byrne taken any actions in Congress related to criminal justice?

A Yes, he did.

Q What did he do?

A He voted against the First Step Act.

Q And what is the First Step Act, as far as you know?

A The First Step Act is a bill that was passed that allowed first-time offenders who get out on parole to get help with education opportunities, job

opportunities, housing, whatever they need once they are released from jail.

And so that's a good first step. There needs to be more.

But for him to vote against that, something that is helpful in the way, really kind of made me a little mad, little upset about it.

Q Are there any particular needs or interests among the African-American community in Mobile relating to employment?

A So Mobile is – as far as jobs are concerned, the major employers in Mobile are Austal, Airbus, and some people might consider the docks. But the two biggest ones is Austal and Airbus.

[425] And with Austal, there is an apprenticeship program for Austal. But, one, you need a GE – you know, you need a high school diploma or GED. You do need a clean record in order to – in order to be any part of this program.

Another one, of course, Airbus. You got to have a degree, I know, because I looked. Because I was thinking about working for Airbus at one point. But you have to have a degree of some sort to work for Airbus. And also, another, clean record.

And a lot of young men don't have clean records. They have a felony, and they can't get a job at Austal, or they can't get a job at Airbus.

They work – there are a lot of young men that have to either start they own business if they can, like my nephew who started his own power washing business. They have to work like a fast food, like Burger King, or McDonald's, or retail, or restaurants like Olive Garden.

I mean, there really is not a whole lot in the way of good-paying jobs in Mobile unless you're working at a call center or the other two places that I just mentioned.

Q Do you feel like the issues that you had mentioned about African-Americans in the fields of education, criminal justice, affect the abilities of African-Americans to obtain good employment in Mobile?

A Yes.

Q Are there any particular needs or interests relating to [426] health care among the African-American community in Mobile?

A This is one of my biggest issues. I am a daughter of a nurse – actually a granddaughter of a nurse. I have seen the level of care and the access to care go down since my grandmother was alive. And my grandmother passed away in 2001.

It's harder now when you go to the hospital, especially if you have to go to the emergency room, and you have to get, like get seen. If you're really sick, you have to wait. Sometimes you have to wait four, five, even six hours in an emergency room just to get seen. And even once you do get seen, you still have to wait. I have

known people that have been in the hospital six hours before they even got in the back.

My daughter has sickle cell. She gets pain episodes probably once every two to three months. She's also pregnant again. And she can't even afford sometimes to go to the hospital. She has to just grin and bear the pain at home because she can't afford it.

So, yeah. Access, limited resources, stuff like that impacts health –

Q Has Congressman Byrne taken any actions in Congress that you are aware of relating to health care?

A He voted to repeal the Affordable Care Act.

Q And do you believe that the African-American community in Mobile benefitted or benefits from the Affordable Care Act?

A I am one of those people that benefitted from the [427] Affordable Care Act. If it wasn't for the Affordable Care Act, I wouldn't be able to have insurance at all even with my job.

So, yeah. I am one of those people that would definitely – and I also have a preexisting condition. I have diabetes. And I'm – and I also had asthma as a kid.

Q Does the African-American community in Mobile have any particular needs or interests related to affordable housing?

A Yes. So the latest news out of Mobile is the Mobile Housing Board in January is closing the Section 8

department. They're firing everybody – all the staff from Section 8, and they're going to outsource it to a private company.

The waiting list for Section 8 is anywhere from five to seven years long. There have been people that have been on there for a long time.

My mom was homeless when she came home in 2017. My mother is 67 years old. My mother has two bad knees, diabetes, high blood pressure. She also has sleep apnea. My mother had to sleep in her car. My mother had to couch surf.

My mother ended up in a homeless shelter. It wasn't until October of last year she finally got hooked up with a program that put her in an apartment that she could afford.

So we have a homeless population that is insane. We don't have any public housing because they're getting – doing away with all the public housing. It's just hard to find an affordable place to live in Mobile unless you have got a really [428] great job.

* * *

[429] Q Ms. Chestnut, do you regularly follow political campaigns in Alabama?

A Yes, I do.

Q Have you observed any instances in which a candidate in Alabama has referred to race as a reason to vote for or against a given candidate?

A Yes.

Q Does that happen often in Alabama?

A Quite a few times I've heard a couple of things that kind of made me upset and mad and frustrated.

Q Let's talk about some specifics. Have you personally heard members of Congress from Alabama make any such statements about race recently?

A Mo Brooks.

Q What did you hear Mo Brooks say?

A Something about the war on white people. I'm still trying to figure that one out.

Q And where did you hear Mo Brooks talk about war on white people?

A He did an interview, radio interview I heard that I almost threw my phone clean across the room when I heard it. But I held my composure because my phone is expensive.

But I'm still trying to figure out what he means by a war on white people.

[430] Q What did that statement mean to you?

A It means that white people should be afraid of people that don't look like them, people that look like me, people that look like my husband, you know, people that look like my granddaughter. So that's what it means to me.

Fear. It incites fear.

Q Did you personally hear any such statements regarding race made during Alabama's special election for Senate in 2017?

A Yes.

Q From whom?

A Roy Moore.

Q And what did you hear Roy Moore say?

A So in September of 2018, he did a rally in Florence, Alabama. And I'm paraphrasing here. I could be wrong, but I'm kind of paraphrasing here. But that families were together and happy during the time of slavery. So that made me think that so that slavery was good.

Q Is that what you heard when you heard?

A That's kind of – that's kind of what I, you know, kind of interpreted a little bit.

I wasn't born during that time. I don't even – none of my – I think my ancestors were. But I get – I'm sorry. I just get mad when I hear things like that.

Q Did it affect you when you heard Roy Moore talk about a time of slavery is when families were happier?

[431] A Yes. I would think families were happier even during the time of Jim Crow, even during the time of Civil Rights, you know, during the '80s.

Dynamics change, yes. I was raised by a single parent. But that doesn't mean we weren't happy. We were very happy.

Q What does it mean to you when you hear – when you heard a candidate running for office indicate that families might have been happier during the time of slavery?

A Makes me mad. Makes me – you know how it makes me feel? That I don't matter. I'm sorry. It makes me feel like I'm a second class citizen in a state that I love.

I love the state. I may go away. I may be away from – for a very long time, but this is my home. And I love my home. And I want to be treated equally across the board. And I want my voice to be heard. I'm sorry.

Q That's okay. Take your time.

A I'm sorry.

Q No. You're fine. Do you need a break or something?

A No. I'm good. I'm good. I knew it was coming. I just –

Q Ms. Chestnut, did you personally hear any statements regarding race made during the most recent Alabama Supreme Court election?

A Yes, I did.

Q From whom?

[432] A Tom Parker.

* * *

[440] Q Ms. Chestnut, when you saw this ad, when you saw Justice Parker's reference to having taken on the Southern Poverty Law Center, did you view that to be a statement about race?

A Yes.

Q Why?

A Because Southern Poverty Law Center Is a Civil Rights organization.

I always felt – there is the reason why I didn't go into law. I always thought that law should be applied equally across the board, no matter if you walk in someone's courtroom whether you're white, black, Asian, pink, purple, it should be equally across the board.

So why would you go up against an organization whose main objective is to make sure that everyone in this country, in this state, have the same rights as everybody else?

Q Is it your understanding that the Southern Poverty Law Center has worked primarily on issues of racial justice?

A Yes.

Q And when you saw the portion of the ad discussing mob rule and depicting Maxine Waters giving a speech, along with the fires burning and the people

running, did you view that to be a statement or a sentiment about race?

A Yes.

[441] Q And why?

A Because they make it seem like black people are mobs. We're just unruly. We just do whatever we want to do. We don't respect nothing. We don't have – you know, we don't have no morals, no scruples, no nothing. We're out here running willy-nilly.

Q And you can take this down. Thank you, Heather.

Ms. Chestnut, how do these types of statements make you feel as an African-American voter?

A As I said earlier in my testimony, it makes me angry. Makes me frustrated. It makes me feel like I'm a second-class citizen. Makes me think that people don't care.

Q And what effect do these types of statements have on race relations in Mobile?

A It divides us. There is a lot of people who are on – used to be a lot of time when you can talk to your friends even when you guys don't agree on everything. But you still had respect for one another. You still was there for one another.

Nowadays we're so deeply divided, it's like you can't even be friends on Facebook. And I've lost quite a few friends on Facebook because I've disagreed with

JA461

them on something. I've said something, you know, your opinion's not a fact. It's just an opinion.

But they want to believe everything they hear about black people in general – that we're lazy, that we don't do [442] anything, that all we want to do is collect entitlements, and stuff like that. They just don't care.

And so my job is to prove everybody wrong.

Q Do you believe that the ads like the ones we've just seen deepen the racial divides within Mobile?

A Yes.

* * *

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

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

TRANSCRIPT OF BENCH TRIAL
VOLUME III
BEFORE THE HONORABLE KARON O. BOWDRE
CHIEF UNITED STATES DISTRICT JUDGE

(Filed Nov. 18, 2019)

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[527] Plaintiff may call your next witness.

MS. MADDURI: Plaintiffs call Senator
Hank Sanders, or Henry Sanders.

HENRY SANDERS,
having been first duly sworn by the courtroom deputy
clerk, was examined and testified as follows:

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

THE WITNESS: Sure. My name is Henry
Sanders, but nobody knows me as Henry Sanders. Every-
body knows me as Hank Sanders.

DIRECT EXAMINATION

BY MS. MADDURI:

Q Good morning, Mr. Sanders. I forgot to mention this to you before we started, but if you can try to speak into the microphone just for the court reporter's ease of taking down your testimony today.

A I will do that.

Q Thank you. Senator Sanders, where do you live?

A Selma, Alabama.

Q And how long have you lived there?

A 48 years.

Q Selma has a unique place in Alabama Civil Rights history, doesn't it?

A It does.

* * *

[551] What are some of the impacts of cases like this or instances like this where something happens that feels targeted towards the African-American community? What kind of impact does that have on the community?

A It has a powerful impact. Because when you have been prevented from voting for these hundreds of years, or hundreds and some years and then all of a sudden these charges are brought in the federal – I mean in – brought by federal officials, which we

thought ought to have been, you know, [552] helping us to expand the voting right – fear is such a powerful thing in the black community based upon all of what has happened over the years. So and people – even after we won, people were afraid to vote.

And so particularly with absentees, but they were afraid in general. And we had to work year after year to try to – try to overcome that.

Q Does that fear that results from things like this, does that have an impact on whether African-Americans actually go out to vote?

A Yes.

Q Have you seen any instances more recently where this kind of fear has prevented African-Americans from voting?

A Yes. I think it was 2017 a group of us met in Montgomery to – people who worked to try to mobilize and encourage people to vote. We have all of these theories about why people do not – not vote.

And so we decided that it wasn't enough for us just to make those assumptions. So we gathered in Montgomery. And we were – all of us had to bring some people who did not vote so we could listen to them, as well.

And we just assumed that it was because they didn't think it was going to be – was going to do any good because you would hear that. And we were amazed at the number of people who talked about fear.

[553] And much of that fear was tied to the criminal justice system in some kind of way. They thought – well, they said, Well, they probably ain't going to do something to me. But they'll do something to my son, or my daughter, or my children, or my grandchildren.

Fear is still a very powerful factor in the African-American community that suppresses the vote.

Q Do you think those fears are rational?

A Yes. They're rational when you know that they've lynched people in the past for trying to vote. When you know that people off their land for trying to vote. When you know that people have lost their jobs for it. It's absolutely rational in my opinion.

Because people – this might not make any sense. But every time I drive and I get stopped by a policeman, I don't know whether I will drive away from there.

So fear doesn't have to be rational in the sense that it's going to happen every time. Fear is rational if it can happen any time.

So I – and I've had – my wife is an attorney. And they stopped her from voting in Selma. So I had to go down there and start cursing just for her to be able to vote.

So it's real in the black community.

* * *

[559] Q How does the lack of African-Americans elected statewide affect the African-American community?

A It has a profound impact. Because in the political system in Alabama and in this country, a great number of decisions are made all the time. They're made when people act in their elected position. Then they appoint people who do regulations and other kinds of stuff.

So literally, every aspect of our life is affected one way or another by government. And from the air we breathe to the food we eat to the water we drink to birth and death, all of these things. It's impacted there.

And so when – when anybody's left out, it's a problem. But if you have been historically left out down through for hundreds of years, then it's even more important that you be represented – that that particular group be represented in government.

Because all of these decisions have that kind of impact.

* * *

[562] Q Okay. Do you believe that African-Americans in Alabama bear the effects of discrimination in education?

A Yes.

Q In what way?

A When I – when I became chair of finance and taxation, the first thing I tried to do was change the formula for educating – for allocating funds to try to make it easier for poor areas, make it easier for rural areas. And there were changes, but it was not enough.

The way Alabama fund education is much of it from the state but some of it from the local level. And so if you're in an area that's got a lot of poverty, a lot of lower income people, then you end up with less money to educate when the problems are, in fact, are greater and need more.

So it's – I think time after time you see education struggling a lot more in African-American communities. And that's, you know, one of the things that I think that strike me the most is that the farther you down on the status pole, the farther you're down on the education pole, the farther you're down on the economic pole, the less you see where your education is going to make a difference.

[563] When you higher on the status pole, you can see where more education going to help you. You can see where more education going to help you when you higher on the job, or higher on the economic scale, higher on the social scale.

When you down at the bottom, it's hard for students to be able to see that. And, therefore, all of those things come together in a way that you have a vast number of people getting less education. They need more resources, but they're getting less resources.

Q And are those people primarily African-American in Alabama?

A Yes.

Q Or more often than not?

A Yes. Primarily.

Q And how does being lower on the totem pole or the status pole in education and income, how does that impact whether or not African-Americans are able to vote?

A When you have to jump through hoops to be able to vote, then you have to see where it's going to make a difference in your life if you are able to vote.

And so if you are – if the polling place is a problem, if you have to have transportation to get there, then you need more encouragement to vote.

But, in fact, you're encouraged less because it's harder for you to see how this is going to make a difference.

[564] I – one time there was a lady, she was – I can't think of her name. But she was traveling over the country trying to encourage young people to vote. And she came to Selma. And so we went out to the 21st Century Youth Leadership camp. And we did a demonstration. We asked her – we asked the students – we had some students. And so we asked them name something that voting does not impact. That's what we asked the students.

JA470

And then they would start out with things like air. And then we would explain that people put all kind of things in the air, and you have the Environmental Protection Agency trying to stop it. So the very air that you breathe.

And then they'd say food. And we'd talk about the Food and Drug Administration.

And they'd talk about water. And we'd talk about how water, whether it's local or federal, all of that –

So they went on down to talk about religion. And then we will say, point out – how we ask them can they organize in the schools.

So what we were doing was demonstrating that every single thing is affected by voting. And you don't see that when you're poor. You don't see that when you're low on the education pole – totem pole. You don't see that when you're low on the education and economics, and all of that.

So the higher you are on those totem poles, the more likely you are able to see where voting would make a [565] difference. The lower you are on there, you worried about whether you're going to be able to get food to eat. You're worried about – whether you're going to be able to get to and from to work, to and from school, all those kinds of things.

And the one of the things that people really don't understand that if you have one of those, that that's a burden. If you have one of them, that's an obstacle. If

you have two of them, that's a burden. If you have three of those, then it's prohibitive.

You know, we see them separately. But the impact of them is collective.

* * *

[575] Senator Sanders, you testified about reasons why African-Americans may be afraid to vote. And I understand that. And we both understand that our state has a very sorry history as we go back of Civil Rights. And I don't mean to minimize that.

But you said three things: That people were afraid to vote because in the past African-Americans have been lynched for voting, and people have lost their jobs for voting, and people have lost their land for trying to vote.

A Put off the land.

Q Different from –

A The reason I say put off the land – in 1966, when I went to Lowndes County, every black person who would try to register to vote, they were put off the land. They – so they had tent city right there on 80 between Selma and Montgomery because all these people were put off the land. And so they would live in [576] tents and stuff, yeah.

Q I understand that. And you and I grew up roughly – you're a little bit older than me, but we –

JA472

A A few years on the front end and on the back end make a lot of difference. In the middle, it's not much.

Q It's been a long time since any of those things happened to a black person who tried to vote, has it not?

A It's been a long time since a person was lynched who was trying to vote. It's been a long time since people were put off the land. And it's been a long time.

But the memory of those in our collective memory is so powerful. And it's handed down from generation to generation. So it's still there in a very powerful way.

* * *

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

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

TRANSCRIPT OF BENCH TRIAL
VOLUME I
BEFORE THE HONORABLE KARON O. BOWDRE
CHIEF UNITED STATES DISTRICT JUDGE

(Filed Nov. 18, 2019)

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[212] examined and testified as follows:

THE COURTROOM DEPUTY CLERK:

Please state your name for the record.

THE WITNESS: Karen Jones.

DIRECT EXAMINATION

BY MR. OSHER:

Q Hey, Ms. Jones.

A Hey.

THE COURT: And if you would, please, how
do you spell your first name?

THE WITNESS: K-A-R-E-N.

THE COURT: Okay. There are a variety of ways to spell that name. So I just wanted to make sure we had yours correct. Thank you.

BY MR. OSHER:

Q Ms. Jones, are you a plaintiff in this lawsuit?

A Yes.

Q And do you live in Alabama?

A Yes.

Q And what county do you reside in?

A Montgomery County.

Q And do you live in the city of Montgomery?

A Yes.

Q How long have you lived in Alabama?

A I was born and raised in Montgomery, Alabama, went to high

* * *

[220] Q So let's talk about some of those issues. Based on your experience organizing in Montgomery, have you found that the African-American community in the area has particular needs and interests relating to health care?

A Yes.

Q And what are those?

A Affordable health care and Medicaid expansion. I, being a woman who doesn't have children, I had a stroke last year. And had it not been for me going to a charity hospital, waking up at 3:00 in the morning and being in line – people come from all over to go to Medical Outreach, and they only accept 12. So you have to stay in line.

And I remember one time being Number 13 and having two weeks of heart medication left without any insurance, without Medicaid because I don't have any children. I also have epilepsy.

So they provide medical services that I would not have been able to get as a woman without a child and without Medicaid in Alabama. So I thank God for them.

And since then, I have disability now. But I had to have a stroke and died three times before I got insurance and health care in Alabama.

Q Does the African-American community in Montgomery have [221] particular needs or interests relating to education?

A Yes.

Q What are those?

A Higher education. I've been – prior to me becoming ill, I had a job since I was 14 years old. So I got Pell Grant one time, I remember, \$300. So I've always had to get student loans. And now student loans are just like burdensome.

So we need someone in there who will fight for Pell Grants for low income people. Even though I had a job at 14, I had to get a permit to work because I wanted to work. You know, because I wanted to work. I wanted to go to college. I couldn't pay for it. And I really want to go back to college to get my Ph.D., but I'm out of funding.

So I think somebody who would help with education and post-secondary education is somebody we need.

Q What about lower levels of education – elementary school, middle school, high schools? Are there particular needs and interests of the African-American community in Montgomery related to those levels of education?

A Yes. I am a lay advocate for children, primarily children with special needs, as well. So I see our special needs children being thrown out to alternative schools and then really getting arrested. Most time they're autistic, ODD, ADHD combined, but severe issues in special needs that usually have those children instead of individuals who understand them, [222] pushed out into the criminal – the juvenile system. So it's really the school to prison pipeline at an early age as early as elementary, and I see that.

Q Does the African-American community in Montgomery, based on your work there, have particular needs or interests relating to criminal justice?

A Oh, yes. While working on voter registration and voter education, we have individuals to come in for expungement or to ask about expungement because they owe so much restitution. Sometimes a lot of them owe on restitution, but they can't get a job. They can't get a job because we also have a debtor's prison, debtor's court in Montgomery.

So if they don't have ID or their driver's license, even the temporary agencies, they won't hire them because you must have ID. So I say a hungry man is an angry man. They have to do what they have to do to eat.

I don't condone illegal activities. But they often find themselves in a predicament. And so the criminal is bad.

Q What about the specific relationship between the black community in Montgomery and law enforcement?

A It's bad because of the lack of jobs, accessibility to get the jobs. And if you don't have a driver's license or if you are driving, you're profiled and targeted. And usually if you get stopped, you're going to get not one ticket, usually four.

And we've basically, those of us who are in the community, [223] kind of basically know the first three things that – a pattern that the police will stop you for – not fully stopping, not using your signal, proper signal, lane, and improper turn. And so those are the three categories that we've nailed down. And then from

there, you're going to at least get three to four more tickets on top of that.

Q And have there been recent instances in Montgomery that has affected the relationship between the African-American community and law enforcement?

A Yes. Three years ago. I think it's been about three years.

My childhood neighbor, Greg Gunn, was walking home unarmed, never got charged for anything. A white officer, new officer, rookie, Aaron Cody Smith, he stopped him. They beat him with an ASP baton, and gave him a one-inch gash in the back of his head, tased him multiple times, shot at him seven times. Five bullets struck – three in the front, twice in the back. He was just only probably from me to you to his front door of his house. Never was charged for anything. He was just walking home.

So that kind of caused a schism between the community and the police department. Where we had kind of a good relationship under Chief Kevin Murphy, and he was forced to resign after he made a statement about apologizing for the action of Montgomery Police Department during the Civil Rights [224] era, and John Lewis gave him a ribbon. We had a good, good connection in the community.

But when this – just atrocious act of assassination of an unarmed black man walking back home happened, it kind of – everybody's on edge right now

because the trial hasn't started, and they moved it to Dale County where he won't have a jury of his peers.

And Ms. Gunn, she just died maybe two months ago. So we kind of in our feelings about it right now.

Q What about employment? Does the African-American community in Montgomery have particular needs and interests related to employment?

A We do.

Q What are those?

A There's little to no jobs. Job availability, again, due to people – their driver's license. And I wish they would do a work permit – would allow people if they have tickets paying on them to allow them to drive during certain hours to get to and from work that would at least help them pay on tickets. I raised that to the city council, too, before. Or the bus transportation where it would take you in a car maybe 15 minutes to get somewhere. If you ride the city line, it may take you up to two hours if that driver stops and pick you up at the stop because sometimes I don't know why they keep driving by.

[225] But it's – and nobody's really hiring now.

Q And those transportation issues, do they translate to employment issues?

A They do.

Q And why is that?

A Because most of our – and I used to be on Montgomery transportation coalition. So I kind of know that most of the transportation, they don't go to the industrialized areas, like the Hyundai subsidiaries and plants like that where they can go. They don't go out that far. And for the disabled community, and they don't go to certain communities. So it's a lot going on with our public transit system.

Q Does the African-American community in Montgomery have particular needs and interests related to affordable housing?

A Oh, yes. I tried to assist with others. Most homelessness has increased in Montgomery tremendously where if they're not living under the bridges or whatever, they are using the hotels as apartments because even if parents or a family have jobs, it's not enough to afford the apartments now. So the affordability of it, you making 7, \$8, you can't afford a nice apartment.

And then with the public housing, they closed down a lot of them, and then they're remodeling some. But the list is so long. And I couldn't believe it when I moved back to Montgomery. So I said I'm going to apply just to see. Well, I [226] got my approval letter probably year before last, and I had applied in 2009.

Q And, finally, what about access to useful utilities or sewage? Does the African-American community in Montgomery have issues related to that?

A Oh, the electricity bills are just ridiculous. And I try to refer people to 211 and call 211 and ask for

utility assistance. If they receive food stamps, they can ask their caseworker for all available assistance. But their utility bills now – I think Alabama Power went up about maybe, I think maybe 20 percent or so. But most family utility bills range from 500 to \$1,100.

We have triple – triple-digit heat. So most of the houses that some lower income families do get a chance to live in, they have – not central heat and air, but the air conditioners that you put in the windows, which draws a lot.

Q What about sewage? Are there – have there been issues relating to the black community and access to working sewage?

A Oh, my God, yes. Water and the flooding and in no man's land. Believe it or not in 2019 the sewage and the flooding in what we call no man's land – that's out past Madison Park, Ty Rove area (phonetic), Hunter's Station area, community areas, the Vineyard.

Q And are these predominantly black communities?

A Predominantly black and low income areas.

[227] Q So we just ran through a long list of issues that you've told us about. Are you saying that the white residents of Alabama don't have interests in these particular issues or needs relating to these issues?

A They may do. But most times they get their situations taken care of and have resources made readily available from what I notice.

And because I'm with the Poor People's Campaign and other organizations, and as an advocate, I'm not limited to Montgomery County. I go all over the state to help parents and to help people. So I see. And as compared to Montgomery being the capital city, the capital county, is an embarrassment that we have these issues in 2019.

Q So is it – it's the level to which the African-American community is affected by these issues that sets them apart from white residents' interaction with these issues?

A It is.

Q Ms. Jones, do you regularly follow political campaigns in Alabama?

A Yes, I do.

Q And have you observed any instances in which candidates in Alabama have referred to race as a reason to vote for or against a particular candidate?

A They don't do it blatantly. But they do, do it subliminally through the pronouns. You can hear the [228] undertones, the racial undertones – “those people,” “they,” “them,” “us,” “we.”

Q Does this happen often in Alabama?

A Yes, it does.

Q Let's talk about a few specific instances. Have you personally heard a member of Congress from

Alabama make a statement invoking race as a – as part of candidacy or political campaign?

A Yeah. Mo Brooks.

Q What did you hear Mo Brooks say?

A He had a commercial, and it was something to the effect of that he would shoot immigrants – be able to shoot immigrants, and that was – I had to find it on YouTube to make sure I heard what he said. And it was – that was terrible. I think most terrible thing for somebody in government to blatantly say.

Q And when specifically did you hear him make the statement?

A Probably about 2017 when he was running – 2017, 2018.

Q What does that statement regarding shooting undocumented immigrants, what does that have to do with race?

A It has a lot to do with race, because as a person of color, to me, it implied people of color. And it invoked – it invoked to me white superiority, white supremacy. It invoked a type of racism and the green light for others who believe in what he was saying that it was okay. Because if he's in [229] government and saying it's okay to do it, it would lead crazies out here to believe it's okay to do it.

Q In the most recent race for Alabama's governor, did you hear any candidate make statements invoking race as a reason to vote for or against someone?

A It – in the gubernatorial race?

Q Uh-huh.

A I didn't hear anything about, you know, blatantly race. But Governor Kay Ivey did make a statement about preserving the Confederate monuments and statutes. And that hit kind of hard in the black community because what about our history? What about the symbolism that it reflects to black people and people of color, the Native Americans? When you say preserve Confederate statutes and monuments and memorials, you didn't say anything about enhancing black status, memorials, and any symbols that, you know, mean – matter to the black community or people of color.

Q To you and to the people in your community, based on conversations you have had in your work, what does the preservation of Confederate monuments mean to the black community?

A When I heard that commercial, it – I felt like she was saying white supremacy forever, you know, white nationalism forever, not anything to embrace unity and diversity. But clearly we're going to recognize these treasonous white [230] supremacists and hold them to a higher level, and nothing is to ever change that.

I mean, the bill says that it – forever basically you cannot do anything, remove or alter any statue or anything that has to do with a Confederate soldier. And when we as a black person have to hear that, that that

– I mean, we want to bring change, you know. It really is bad. And it's terrible.

Q And then what about in the most recent mayoral race in your town? Were there any statements regarding race, invoking race to sway people's votes?

A In the August 27th race, it was good, you know. Everything was fine. But then when it came down to a runoff between a white male, David Woods, versus a black male, Steven Reed, I don't know what happened. But the mudslinging, it was – it was ugly.

And David Woods had – it was a survey out, and they called your phone, selected people phones. And they called my mom's phone. And I was there. And asked about 24 questions.

Q Did any of those questions relate to race?

A Yes, they did. Basically, not specifically, he's black, you know, Steven Reed's black, don't vote for him.

But like it just told like where he lived, as if that mattered. That he lived in a certain community, as if black people couldn't afford to live in that community in which he lives.

[231] That was – that was – I mean, most of the questions were very incendiary and invoked some racial overtones, not undertones. It was really ugly.

* * *

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

EVAN MILLIGAN, et al.,)	
Plaintiffs,)	CIVIL CASE NO.
VS.)	2:2021-CV-01530-AMM
JOHN MERRILL, et al.,)	VIDEO DEPOSITION OF:
Defendants.)	JAMES McCLENDON

STIPULATIONS

IT IS STIPULATED AND AGREED, by and between the parties through their respective counsel, that the deposition of:

JAMES McCLENDON,

may be taken before LeAnn Maroney, Notary Public, State at Large, at the law offices of Balch & Bingham, 105 Tallapoosa Street, Montgomery, Alabama, 36104, on December 17, 2021, commencing at 1:57 p.m.

[105] Q. Okay. Based your 19 years serving in the legislature, in your view, do the views of the members of the democratic party in Alabama generally differ from the members of the republican party in Alabama when it comes to the issue of removing confederate monuments from public spaces?

A. You know, I think if you make that broad and say generally, I think I can agree with that statement. There – there are definitely

exceptions. But I think with the “general” in there, I can say I generally agree with your statement.

Q. So the answer to my question was yes?

A. Yes.

MR. WALKER: Objection to form. He answered that he can generally agree.

* * *

[109] Based of your experience in the Alabama legislature, do the views of members of the democratic party in Alabama generally differ from the members of the republican party in Alabama when it comes to criminal justice reform?

A. Okay. And your question is they have disparate or different views? Republicans have different views from democrats on criminal justice reform? That’s your question, correct?

Q. As a general matter, correct.

A. As a general matter, I agree with that statement.

* * *

[110] Based on your experience working in the legislature with members of both parties, do their views generally differ when it comes to the issue of whether there is a significant amount of discrimination against black residents of Alabama today?

A. Yes.

* * *

[112] Q. Did you instruct Randy Hinaman to be sure to include a majority black district in an Alabama congressional plan draft?

A. I did not.

Q. Did you decide ahead of time that Alabama's plan must include a majority black district?

A. I did not.

Q. Was your understanding that those districts, when drafted, would be done so without [113] consideration of race?

A. That is correct.

Q. To the best of your knowledge, was that, in fact, how it was done?

A. That is exactly how it was done.

* * *

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

EVAN MILLIGAN, et al.,)	
Plaintiffs,)	CIVIL CASE NO.
VS.)	2:2021-CV-01530-AMM
JOHN MERRILL, et al.,)	VIDEO DEPOSITION OF:
Defendants.)	CHRIS PRINGLE

STIPULATIONS

IT IS STIPULATED AND AGREED, by and between the parties through their respective counsel, that the deposition of:

CHRIS PRINGLE,

may be taken before LeAnn Maroney, Notary Public, State at Large, at the law offices of Balch & Bingham, 105 Tallapoosa Street, Montgomery, Alabama, 36104, on December 17, 2021, commencing at 9:14 a.m.

* * *

[9] EXAMINATION BY MS. WELBORN:

Q. Representative Pringle, my name is Kaitlin Welborn from the ACLU of Alabama. I represent the Milligan plaintiffs.

Could you please state your full name for the record?

A. Christopher Paul Pringle.

* * *

[81] Q. Are you familiar with the black belt [82] counties in Alabama, that term?

A. I sell timberland. I work all through the black belt.

Q. Okay.

A. I've spent more time in the black belt than . . .

Q. And what's your understanding of the black belt?

A. It's a region in the middle of the state of Alabama that got its name because of the rich soils.

Q. And what counties are in it?

A. It's like 28 counties, I think, something like that. I spend most of my time in Wilcox, Marengo, Lowndes, Perry, Hale, those areas.

Q. And if you could just describe what portion of the state are we talking about.

A. Central Alabama.

Q. Do you recall if anyone discussed the black belt at any of the public hearings?

MR. WALKER: What was –

MS. WELBORN: If anyone at the public meetings discussed the black belt.

A. It's a term that's often used in Alabama. But I don't remember specifically.

[83] Q. Would you agree that the black belt is a community of interest?

A. It's a very broad area that stretches from one side of the state to the other. I believe it has some communities of interest in it, yes.

Q. But as a whole, is the black belt a community of interest?

A. I couldn't answer that.

Q. Why not?

A. Because while I work in Wilcox and Marengo and Perry, I don't go to Macon or the counties on the other side. So I don't really know much about them.

Q. But that's true for other communities of interest in other parts of the state, right?

A. Explain that one to me.

Q. I guess if the legislature – if the reapportionment committee is tasked with approving a congressional map that keeps, you know, communities of interest together, you don't personally know about every community of interest in the same way that you do know about those particular counties, right?

A. I mean, you know, I'm from Mobile. And we run up and – it's the river system. So many of

[84] the families in Mobile come from northern counties because of the way the river system is. We have very little to nothing in common with the people in the Wiregrass. It's not – it's almost a totally different state over there.

So I don't know – if you're asking me do the people in Wilcox County have something in common with the people in Macon County, I can't answer that. But I know the people in Wilcox County. We go up and down the rivers.

* * *

[121] Q. Based on your 16 years serving in the legislature, in your view, do the views of members of the democratic party in Alabama differ from the [122] members of the republican party in Alabama when it comes to removing confederate monuments from public spaces?

A. I mean, you're asking me to suppose what other people are thinking. But I would say yes.

* * *

[124] Q. And the same question. Based on your experience in serving in the legislature, do the views of the members of the democratic party generally in Alabama differ from the members of the republican party generally in Alabama when it comes to the view of whether there's a significant amount [125] of discrimination against black individuals in the state?

A. Yes.

* * *

[132] Q. So did anyone advise you, as chair of the reapportionment committee, that in order to comply with the Voting Rights Act, the plan had to have one majority black district, at least one majority black district?

MR. WALKER: Object to the question to the extent it calls for an attorney-client communication. Otherwise, you can answer.

[133] **A. We instructed Mr. Hinaman, quoting the guidelines, to protect the core of the existing districts to the extent possible and to draw it to zero deviation.**

Q. Okay. Representative Pringle, there's absolutely no mention of majority black in the guidelines.

So the question is: In complying – the guidelines say that you had to comply with the Voting Rights Act, right?

A. Yes, sir.

Q. Okay. But it doesn't say majority black, right?

A. The guidelines, I don't recall them saying that.

Q. Right. So the question is: Were you advised that to comply with the Voting Rights Act, there had to be a majority black district?

MR. WALKER: Objection that I've made before to the extent it calls for attorney-client communication. Otherwise, he can answer.

A. Again, those plans are drawn in a race-neutral manner based on the guidelines to preserve the core of the existing congressional districts.

[134] Q. Yes, sir. I've heard that testimony.

My question, though, is were you advised that the Voting Rights Act required there to be a majority black district?

MR. WALKER: Same objection.

A. The Voting Rights Act requires that we in no way intentionally nor unintentionally diminish the ability of a protected class of minority citizens from electing or defeating a candidate of their choosing.

Q. And did that mean a majority black district?

A. It means we had – we drew a district that would allow – that maintained the core of an existing minority district. But we did it in a race-neutral way.

* * *

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

BOBBY SINGLETON, et al., *
 Plaintiffs, * 2:21-cv-1291-AMM
 * January 4, 2022
vs. * Birmingham,
 * Alabama
JOHN MERRILL, in his *
official capacity as Alabama * 9:00 a.m.
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. *

JA497

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

(Filed Jan. 18, 2022)

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Proceedings recorded by OFFICIAL COURT
REPORTER, Qualified pursuant to 28 U.S.C. 753(a)
& Guide to Judiciary Policies and Procedures Vol. VI,
Chapter III, D.2. Transcript produced by
computerized stenotype.

* * *

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

DR. NATALIE DAVIS,

having been first duly sworn, was examined and testi-
fied as follows:

* * *

[110] any part black in District 7.

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

MR. ROSS: Your Honor?

JUDGE MARCUS: Yes, Mr. Ross?

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

JUDGE MARCUS: Mr. LaCour?

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

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

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

JUDGE MARCUS: The objection is overruled. You may proceed with your question.

MR. LACOUR: Thank you.

JUDGE MARCUS: State it again just so the record is clear. I think it fairly goes to test this witness's expertise in the field that she's testifying about. You may proceed, but [111] if you would put the question again clearly to Dr. Davis again.

MR. LACOUR: Yes, Your Honor.

BY MR. LACOUR:

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

A Does this what?

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

A Yes. Yes.

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

A Yes.

Q Of District 7?

A Yes.

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

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

A I'd have to see the stats for this District 2. But, [112] again, going back to Jefferson County, it pretty much does the same thing and also takes part of Tuscaloosa County, which is black, the city, and I mean, it does the very same thing that the enacted plan does.

And going to Montgomery County, where under the whole county plan, Montgomery stays intact. It – again, it’s an effort to pull and concentrate black voters in the Second and then in the Seventh. It’s an outcome-based plan. There’s no question. And I am not as both my experience and my research tell me is not the best idea. I don’t – I am not interested in outcomes. I’m interested in process.

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

And let me find this other exhibit. Next we have Caster Exhibit 23. This is a different plan also submitted by the Caster plaintiffs.

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

A Exactly.

MR. ROSS: Your Honor, if I – I realize.

JUDGE MARCUS: I’m sorry. I’m trouble hearing you, Mr. Ross. I’m sorry.

MR. ROSS: Your Honor, I was just raising the same objection that this is outside the scope, and to the extent it [113] goes to her credibility, I understand, but she has no basis for testifying about the Cooper maps or any of the other maps except the whole county plan.

JUDGE MARCUS: You may ask the question, but let’s move along on this, Mr. LaCour.

MR. LACOUR: Absolutely.

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

MR. LACOUR: Yes, Your Honor.

BY MR. LACOUR:

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

A No, I have not.

JUDGE MARCUS: So you want to ask her a question just about how it looks; is that correct, Mr. LaCour?

MR. LACOUR: Basically, Your Honor, to the extent that I think the look of the 2021 map has featured heavily – it's a racial gerrymander.

JUDGE MARCUS: You may get right at it if you would like. Just ask the question directly.

MR. LACOUR: Thank you, Your Honor.

BY MR. LACOUR:

Q So, Dr. Davis, if you look here, we have a couple of

* * *

[121] JUDGE MARCUS: Good afternoon again, Doctor. Thanks for staying with us. Mr. Ross has some questions for you as we proceed.

With that, counsel, the floor is yours.

MR. ROSS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. ROSS:

Q Good afternoon, Dr. Davis. My name is Deuel Ross. I am from the NAACP Defense Fund. I am here on behalf of the Milligan plaintiffs. I just have a few questions for you.

Mr. LaCour showed you several perhaps. Do you recall?

A Yes. Yes.

Q Okay. And before today, you had never seen any of these illustrative maps before, right?

A I – I don't think so. They were provided, I think, in some of the materials that were given me, but I really didn't read them.

Q Okay. And you have no information about what efforts were made in drawing those maps, correct?

A Absolutely not.

Q Okay. And you have no information about the data upon which those maps relied, correct?

A That's correct.

Q Okay. And you're not a mapping expert, right?

A Absolutely not.

* * *

[125] MS. CARTER: Good afternoon. Brittany Carter.

JUDGE MARCUS: Do we have –

MS. CARTER: Brittany Carter – hello. Can you hear me?

JUDGE MARCUS: I can hear you just fine and welcome.

Let me just swear the witness. Let me ask – Mr. Milligan, if you would be kind enough to raise your right hand.

EVAN MILLIGAN,

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

JUDGE MARCUS: We can't hear you. I think you may be muted.

THE WITNESS: I do.

JUDGE MARCUS: Thanks very much. Welcome. If you could state your name for the record, please.

THE WITNESS: Evan William Milligan.

JUDGE MARCUS: Thank you. And, Ms. Carter, you may proceed. Thank you.

BY MS. CARTER: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. CARTER:

Q Mr. Milligan, where were you born?

A Houston, Texas.

Q What year were you born?

[126] A 1981.

Q What race do you identify as?

A Black African-American.

Q Where did you grow up?

A I spent the first five years of my life in Houston, Texas. Then we moved to Birmingham for about two years. And then the rest of my childhood was spent in Montgomery County, Alabama.

Q And do you currently live in Montgomery, Alabama?

A I do.

Q How long have you lived there?

A In total, about 29, 30 years, not counting time spent attending college in Birmingham. About a year and a half studying abroad in South Africa. And the time I spent attending law school in New York.

Q What schools did you attend while growing up in Montgomery?

A I attended Zelia Stephens Early Childhood Center for pre-K, which is located on the campus of Alabama State University. Second grade at Dannelly Elementary. Third through sixth grade at Forest Avenue Magnet Elementary. Seventh Grade at St. Jude Middle School. Eight and Ninth grades at Baldwin Magnet Junior high School, and 10th through 12th grade at the Sydney Lanier Academic Motivational Program.

Q Where did you go to college?

A Birmingham-Southern College.

[127] Q And what's your professional background?

A I've worked primarily in the non-profit sector here in Alabama. I mainly with groups that work around Civil Rights issues, community development, and then in my current capacity, I'm working as executive director of Alabama Forward, which is a coalition of non-profit groups working to make voting systems here in Alabama as fair and accessible as possible.

Q As executive director of Alabama Forward, what do you do?

A So I am involved in supervising our small staff team and providing sub grants, technical assistance and training, through our membership of about 28 non-profit organizations working around this state. All of those groups work towards, you know, different primary missions, but the things that brings us into – brings them into membership is a commitment to making the electorate diverse and/or participating in voter

engagement, voter education, voter protection. So we provide resources to that end.

Q Does your work give you an understanding of black communities – interests affecting black communities in Alabama?

A I would say it does. Our memberships spans the state, and it includes organizations working out of policy level at a grass roots level throughout the state. And then in my career prior to this job, my first full-time job really after college I worked as a community organizer with the Federation of [128] Childcare Centers of Alabama, which is a childcare advocacy and community development group. I worked there for three and a half years, and then spent a total of six years working with the equal justice initiative in a variety of capacities that allowed me to provide assistance to incarcerated clients, do research around the connections between slavery and segregation and current contemporary issues. So I have spent most of my career having a chance to get to know not only advocates, serving black communities across the state, but also, you know, the community members themselves.

Q What congressional district do you live in?

A I live in District 7.

Q What congressional districts represent Montgomery County?

A So under the current map, Districts 2, 3, and 7 represent the county. And under the map that was just

adopted this past fall, it would be split between Districts 2 and 7.

Q As far as you know, what neighborhoods in Montgomery County are separated into District 2 and away from District 7?

A It's really interesting. From what I can tell, there's a split between 2 and 7 that occurs above interstate 85. And then as far as on the – I guess the vertical axis of the split, it occurs at some point between Narrow Lane Road and Zelda Road, so, you know, a little past the intersection of interstates 85 and 65, maybe five miles east of there.

Q And what is your understanding of Alabama's redistricting [129] process for congressional districts?

A So what I – what I witnessed this past cycle was that the apportionment committee, the legislation apportionment committee is comprised of state House representatives and state senators from both parties who are responsible for writing and, you know, publishing the redistricting guidelines that will – that they will be prioritizing during that round of redistricting.

And once the census data is released this year, was obviously released this past August, they work with a map making consultant or someone that works on their staff to interpret that census data and begin the process of constructing maps. As they do that, they're also receiving information from members of the Legislature and also members of the general public. And that public feedback was collected during a two-week

period that they spent holding public hearings, both virtually and at community colleges around the state. They also have held one at I believe at the state House in one of the offices there. And during that period, they collected statements in person, as well as via e-mail, proposed maps from citizens and advocates.

At the conclusion of that period, they then went and, you know, prepared maps which was released – the proposed maps that emerged from that committee that the committee voted in favor of were released first to the public to my knowledge [130] shortly before the beginning of the special session that the Governor called for redistricting, which began towards the end of October of last year.

They began that session, I believe, on a Thursday, and it was concluded by that next Wednesday. Over the course of that session, there was some House and Senate subcommittee hearings. And at the House committee hearings, my colleague Khadidah and I provided some in-person testimony really asking about how racial-polarization analysis was incorporated into the maps that had been proposed by the committee. And just trying to make sure that they were aware of our concern about that information.

Q So you mentioned it a little bit, but what was the extent of your participation in the process?

A So we – I participated in public forums, education forums that were organized by a coalition of groups, including the organization I work with, Alabama Forward, as well as the NAACP, the Legal

Defense – I’m sorry – Legal Defense Fund, Alabama Values, and also the League of Women Voters.

So we – those events were focused on the general public. And they allowed us to explain the importance of just general – members of the general public becoming as informed as possible about the importance of redistricting and how it impacts their daily lives, really understand some of the principles of our redistricting.

[131] I also participated in media briefings and media facing events. I explained some of the work that we were doing within our network of organizations and some of the public education activities we were supporting. I helped to manage and facilitate a bi-weekly briefing that was held among members of the network of organizations that worked with us and our former members and also nonmembers.

This began on April 30th and took place every two weeks on Friday morning at 10:00. It was about an hour-long meeting where we would, you know, share information related to people’s experiences and needs related to doing redistricting trainings at the local level, if people knew about other speaking – speakers that were providing information, or, you know, whatever we were learning about when the census data would be released. We were able to help each other stay abreast of that in those settings.

Then we also submitted testimony to the apportionment committee on the last Thursday of the public hearings. I believe that was September the 16th, I think. That provided two proposed state House and

state Senate maps. And then also spoke about congressional maps that we had seen at that point.

Q So to your knowledge, did the Legislature conduct racial-polarization analysis?

A To my knowledge, no. When I asked – when I attended the House subcommittee hearing meeting to ask about that, I [132] received a pretty ambiguous answer. And I asked in response if there was a timeline for which the public would be provided any of the research that the committee had been doing or was planning to do with regards to racial polarization and also given an ambiguous answer then as something if I remember correctly, we don't know now, but, you know, we'll share what we find, or something to that extent. But it wasn't a firm answer or an explanation of who was conducting the study or, you know, really if they were actually conducting a racial-polarization analysis.

Q And did anyone, to your knowledge, ever share what they found?

A No. And that came up when I was watching the – the deliberation on the floor of the House and the Senate, you know, over the Internet. I saw representatives have a discussion about that. And there was no information presented then or reference to a completed study.

Q Okay. In the testimony that you said you offered, whether by e-mail or in person, did you support

any alternative plans in those – in any of those testimonies?

A I did. To that point, from the network of organizations that we were working most closely with, the congressional plan that had emerged was the whole county plan that was initially introduced to us by the leaders of the state chapter of the League of Women Voters.

[133] Our team had tried to, you know, using Maptitude and Dave's Redistricting – by our team, I'm talking about my co-worker and some of the – some of the other folks that had taken map-making training courses, had attempted to make a congressional map that would provide two districts that were majority black or majority non-white, and weren't able to do so successfully.

So when – at that point, during that last day of the public hearing, to my knowledge, the apportionment committee would basically cut off receiving information from the public at that point. And I didn't know that. What I later learned was we could continue to provide information up until the beginning of the special session.

So operating under the understanding that the reception would be cut off at the end of that business day, our team conferred and said the only map that we've seen that provides a window to two plurality districts is this – is this whole county plan map, so we spoke favorably of the map in the e-mail and in terms of its relevance to producing those two districts that would

allow black residents an opportunity to elect the candidate of their choice.

Q And did you know at the time of submitting that testimony that it was possible to draw two majority black districts?

A No. As I stated, we had attempted to do so, and were not able to do so.

[134] Q And once you learned that it was – well, how did you learn that it was possible to draw two majority black districts?

A So I mentioned that we were, you know, participating in public education events with that network of organizations. And there was actually a pretty – you know, there was a conversation among our advocates and folks that were participating in that around if we would be able to land in one place in terms of supporting one of the maps. And prior to one of the meetings, I was able to really read a letter that was submitted to the apportionment committee by a group of Civil Rights advocate organizations that featured maps prepared by LDF and also a reference to a racial-polarization study that they had – they had hired a researcher to conduct.

And that was my first time actually seeing that data and being able to look at the maps and have a better understanding of what was really possible with our demographic data. And that convinced me that that was the – of the maps that I had seen and the maps that we had attempted to draft, those were the

maps that most closely aligned with – with our organization’s concerns with regards to the voting rights of non-white voters, particularly black voters throughout the state.

Q Mr. Milligan, why did you decide to participate in the redistricting process?

[135] A Well, we’re working to really inspire new participants in civic engagement in Alabama. The state has been, you know, losing a lot of the – the folks that are born in the state over the last ten years have, you know, for the majority of that decade were leaving the state, and for Georgia, for the surrounding southern neighbors. And we want to inspire people to stay in the state, to commit to their communities. Particularly younger Alabamians, non-white Alabamians. Understanding all of our civic institutions and, you know, democratic processes are important to provide a realistic inspirational message to those folks. And redistricting is a critical part of that.

I was learning about it a lot myself and was really taken aback just by, you know, how much census data and redistricting shapes everything that I do every day and opportunities that are available to my children.

And so just playing that public education role was very important in making sure that our organizers who are a part of our network who are very concerned about it, making sure that they had resources that they needed to do grass roots engagement, and public education was also important to me.

Q Why is it important that black voters have a second district?

A It's important, first and foremost, because based on the racial-polarization data that I was able to review, our state, [136] unfortunately, has not arrived at a point where – where we have rates of cross-racial voting that can reliably sustain – sustain the election of a non-white candidate in districts where you have, you know, a close – a close margin between white and non-white voters.

And so because we have not arrived at a point where that's a reliable occurrence, then having that second majority-black district ensures that black voters, particularly in central and southwestern Alabama have an opportunity to elect a candidate of their choice, and that their votes, you know, aren't discounted, so to speak.

And I'm concerned about this because I've spent all of my career, you know, traveling and spending time in these communities. I was raised in a multi-generational household, so my great-grandparents that I was raised with were from Lowndes County which is the neighboring county west of Alabama. And that gave me access to the way that they spoke, the way they dressed, their types of clothing and just their whole – just their whole way of life and way of thinking, which has always given me an appreciation for the more rural parts of the state because I guess it connects me to those folks that I grew up with in my household.

And I think there is a direct correlation between the lack of agency that black voters feel, you know, in Montgomery and in places where you see the splitting of the districts. And [137] what folks feel throughout the Black Belt and throughout the southwest part of the state in terms of the black communities located there. And the black district would provide more buy-in for those communities and more of an incentive to make, you know, longer term commitments, and even see themselves as leaders of those communities to the highest levels.

Q In your lifetime, do you know of any black person who has been elected to Congress outside of District 7?

A I don't. The Congress members I remember who are black have been Representative Hilliard, Davis, and Sewell, all black representatives from District 7.

Q Mr. Milligan, you tell us where the black community resides in Montgomery County?

A Sure. So currently, all over the county. Honestly, there's – the county – the city is 60 – I believe 60.5 percent black African-American. And so at, you know, in any of the zip codes, there are pockets of neighborhoods or entire neighborhoods that are majority black.

And that's very different from, you know, the Montgomery where I grew up. Historically, black communities were concentrated either immediately south

or west of the downtown area and a little north of there, or in rural pockets on the rural borders of the county on the northern end that would have been Madison Park. On the eastern end, the Mount Meigs area. On the southern end, you would be looking at Hope Hull, [138] Pintlala. And on the western end, the Old Selma Road area would be those rural counties. I'm sorry. The rural parts of the county.

But again, as time as grown on and, you know, as Redlining and – was challenged and economic opportunities made it more possible for families to move over throughout the county, again, that population has spread throughout the county.

Q As far as you know, what does the black community in Montgomery County share in common?

A I would say there's a central – there's a commitment to really the center of the city, in terms of downtown and the river front area, and the areas that are immediately just adjacent to there.

So for the black community, Alabama State University, which is located just south of downtown, is a central gathering place.

I mentioned, you know, I attended Zelia Stephens Early Childhood, for example, in the late '80s, mid '80s. My mother went there in the '50s. My daughter attends there now. And so that's a school where 100 percent of the student body and faculty are African-American. And that's just one example of ASU's fingerprint within the community at large.

The Acadome there is used for, you know, cultural events ranging from funerals to high school graduations for the public schools, all of which are predominantly black schools, with the [139] exception of the magnet schools.

And then also concerts, public speaker events. And then, you know, also the college's role as a source of education and employment for many African-Americans throughout the city.

Then north of ASU, you have, you know, downtown proper, so historically black communities like Centennial Hill which were the home of Civil Rights leaders, the King family, the parsonage for Dexter Avenue Church is there. Significant Civil Rights institutions are located throughout downtown, as well as, you know, employment with the local and the state and the federal government agencies. Since Montgomery is the capital, those are also sources of employment for many African-Americans throughout the city.

The two federal military installations, as well as Alabama National Guard headquarters located just west and east of downtown are also significant because there are black service members some of whom settled in Montgomery after their tenure of service ended when they were introduced to it because of their military service. But others who grew up in the area who also became service members. They continue to use the military installations for recreational events or to shop at the grocery store there, you know, and recreational activities.

The parks, the river front amphitheater for concerts, as well as downtown being a central place for Thanksgiving activities. Alabama State has maintained the – for over [140] 80 years I think at this point, has maintained a Thanksgiving football game and parade. And so there are black families that really come back to the city generations you will see on Dexter Avenue enjoying that parade.

And then some of the city's oldest and largest black churches are located in downtown or in the surrounding adjacent areas.

So I think wherever black Montgomerians are living, there are ways that they're connecting with that downtown area and those surrounding communities at some point in their life.

Q Do you have ties to the black community in the Black Belt?

A I do. I mentioned my family's connection to Lowndes County. So that was my maternal grandmother and great-grandparents who were raised there. So, you know, it was – that was something that's connected me to the land and given me a sense of cultural legacy, cultural identity. We still maintain a cemetery that holds our loved ones on my mother's side of the family there in Lowndesboro.

And really throughout my career, that's, you know, that's a personal connection. Before I get to the career part, I will also mention that connection that I share is something that I noticed among my peers growing up.

I can't count the number of people who have a similar Lowndes County connection or a connection to another more rural part of the Black Belt. I would offer the unique part about my family is we were smaller, [141] and our connection, you know, is more historic. There aren't active cousins or grandparents down there now receiving us when we visit. In contrast, my peers have first cousins, second cousins, or elders in their family that they're still visiting in those counties.

And then I will say professionally, a lot of my work, my organizing skills and my training as far as knowing how to listen to clients and listen to community members came from time that I spent working with FOCAL and with EJI in Black Belt counties. FOCAL had a program called the Southern Rural Black Women's Initiative. And we – that is a program that, you know, all of its members or the participants are based in Black Belt counties. And so I was able to spend time interviewing women in those counties that we honored at hall of fame banquets and really getting to know their stories, stories of their children, as well as while at EJI, we started a project called the Black Belt education project where we went to all of the Black Belt counties, talked to the superintendents and different principals to sponsor high school students coming to Montgomery to spend a day or half day at the EJI office interacting with staff.

And that required us to again, you know, go to Perry County, Hale County, and all the places and make sure that they understood what EJI was and why that – why that trip would be valuable to the

students. Booking the trips, making sure we [142] were able to get funds for the buses. And just interacting with the students, you know, when they came. Some of those students went on to go to college and go to law school and credited that trip as being inspirational for their decision to do so.

So the Black Belt has been, you know, pretty central to me throughout my life, both personally and professionally.

Q As far as you know, what does Montgomery County share in common with those Black Belt counties?

A I would say the socioeconomic challenges that black communities are facing in Montgomery County are shared throughout the Black Belt at large. And, you know, to be clear, Montgomery County is a part of the Black Belt. It's a more urban part. So our rural neighbors to the east and west, when it comes to concerns about infectious disease or, you know, K through – the quality of education – public education at K-12 level, availability of job training, public transportation, access to health care, food deserts and access to quality – to quality produce, those are conversations and challenges that are shared by community members throughout central Alabama and the southwestern part of the state in the area that we refer to as the Black Belt.

So at that level, I would say, you know, the sense of frustration and sometimes isolation from opportunity is a common thread.

[143] And also the idioms and ways of speaking, quilting and sewing, traditions, music traditions, whether it's blues or four-part harmony Gospel, different traditions of story telling, family reunions, those are things that, you know, I guess in a more positive way are shared by black communities throughout that part of the state.

Q Do you have any sense of whether that's also true for black people in Mobile County?

A I would say it has been from my experience one of the things that I – that FOCAL when I was working there after college, you know, other – aside from going to Mobile for – for as, you know, playing in marching band tournaments while at high school, my time spent in Mobile was really provided to me by FOCAL because I would go down there to work with child care advocates and child care providers. And particularly in the Prichard area above the city of Mobile proper, and really seeing the pace of life, you know, physically, just in terms of optics, people on horse back, folks raising chickens further out from the city center, that layered directly on to what I was seeing Washington County, Wilcox, Dallas, and more rural parts of Montgomery County that I was describing, also Macon County, east of Montgomery County.

So just, you know, the pace of life, the tone of the – of life and what I experienced was very similar. But also, again, those socioeconomic concerns, the conversations and the [144] trainings we were doing around, you know, access to child care for working families.

Same – the same trainings, the same conversations, the same comments raised by participants in those trainings in that Mobile area, as compared to the other parts of the Black Belt and Montgomery County that I covered at the time.

And then the last thing I would say is in the way that there are sort of anchor cities throughout the Black Belt. So Selma can be that for, you know – or Demopolis or like that whereas the smaller towns, their transition stage might be to do most of their shopping or to move to one of those – one of those cities as a transition from more rural life. Montgomery is certainly that for many people throughout the central part of the state.

Mobile plays that role, and Prichard plays that role for the southwestern part of the state. So the same way that I mentioned my peers having that connection to their Black Belt relatives, in Montgomery County, I observed colleagues that I have worked with throughout my life, people that I have met personally through school who had that relationship with rural relatives and throughout the Black Belt when they may have grown up in Mobile County.

Q Thank you, Mr. Milligan.

MS. CARTER: No further questions at this time. I pass the witness.

[145] JUDGE MARCUS: Thank you. Cross-examination. Who is going to conduct the cross for the defendants?

MR. WALKER: Your Honor, this is Dorman Walker. The video says Jim Davis because we have to use his computer for technical reasons here. But I am not Jim Davis. I am Dorman Walker representing the intervenor defendants, Senator McClendon, and Representative Pringle.

JUDGE MARCUS: We are happy to have you. Fire away.

MR. WALKER: Thank you.

CROSS-EXAMINATION

BY MR. WALKER:

Q Mr. Milligan, you just heard my introduction and know who I am.

I would like to ask you a few questions. I don't think we will be long.

You were talking about concerns of the black community in Montgomery County and in Mobile County. And I think also in the Black Belt counties that included – and correct me if I quote you wrong – concerns about socioeconomic problems, about health care and health care delivery, food deserts, infection rates, COVID infection rates, child care for working families, and I think you probably listed some other. But that's – did I get your testimony correct?

A Yes, sir. Generally speaking, yes, sir.

Q Okay. And is there any county in Alabama where those are [146] not issues that people are concerned about?

A I would say I've spent most of my career covering those counties. And the unique feature that I would see when compared to other counties is the sense of isolation from opportunity.

So whereas there may be, you know, part – other counties where we will see folks as you're suggesting raising those concerns, I've seen a unique sense of almost being islanded off from opportunities in those areas that I feel like is parallel or similar in a unique way.

Q But would you agree with me that in counties all across the state there are concerns about equitable income distribution and other socioeconomic issues, health care, and rates of health care delivery in rural counties everywhere in Alabama, about food deserts in downtown Birmingham as well as in Winston County, about infection rates, and crowded hospitals and the lack of space for people who need it, and a real pressing problem across the state in child care for working families? Would you agree with me?

A I would say that there's – there are shared concerns, and then there are also you look at the similarities between the way people are articulating the root causes of those concerns. So that would be another trend that I would say is more consistent in the areas that I'm speaking about today, because if we have a conversation with those families, they start [147]

sharing stories about, you know, grandparents who didn't have access to health care because of segregation rules at the time, or they start sharing stories about the sharecropping days of their family members. So the historical thread that informs their understanding of the root causes of their problems in ways that at times the state government has enabled those problems, or failed to adequately respond to them, I think would be a pretty unique feature for the Black Belt Montgomery County and the part of Mobile County that I'm referring to.

Q Well, would you agree that those concerns that you have talked about for black residents of members of the Black Belt would be concerns that they share also with black residents of Mississippi and of Georgia and of South Carolina?

A Well, the Black Belt actually extends from east Texas all the way to South Carolina, and I guess parts of Virginia.

But to the extent that we don't have, you know, federal voting – multi-state voting districts, but we're kind of talking about commonalities between communities within our state, I would think that the comparison of communities within the borders of Alabama would be the most relevant to the discussion today.

Q Right. But what I asked you was: Aren't those issues also shared by black Mississippians and Georgians and South Carolinians?

A Unfortunately, I would – I would offer that, you know, [148] numerous communities throughout the country share some of those same experiences.

Q Including black – I’m sorry. I didn’t mean to interrupt you.

A No, no.

Q Including – my turn?

A Yes, sir.

Q All right. Thank you. Including black communities and say Detroit or Chicago; is that correct, same issues?

A No. I would – I would disagree. I think that when you’re looking at urban poverty in the Midwest and, you know, and urban centers around the country, we can’t just copy and paste contemporary discussions with – onto the historical development of those communities.

What we have uniquely here in Alabama that I think is actually an opportunity for us to knowledge it, it’s as unique as the types of accents and the types of cultural traditions that we have in our communities that have been forged over decades of close continuous relationship of different community members. And so we have an opportunity to look at patterns that have been shaped by conditions that have been unbroken over time. And I think it is more unique than just a simple comparison of this community is poor and has a high rate of violence or infectious disease, and so do they.

I think when we look at the statistical outcomes over time [149] and the stories that those individual families tell, we see more commonalities there.

Q I want to ask you some questions about the statement that you submitted that's M-17. I will pull it up if you want to look at it. But in paragraph 6, you said the black community dispersed throughout Montgomery is a community of interest. Do you recall that statement?

A Yes, sir.

Q Would you agree that there is also in Montgomery County a black and white community of interest composed of black and white people who do things together?

A I'm not sure I understand how you are defining community of interest.

Q Well, I guess that goes back to how you defined it. In your statement, you talk about a number of things that seem to be the backbone of your concept of a black community of interest; that is, participation in state government, or participation in the military, or participation in – you mentioned evening games at Crampton Bowl or participation in ASU, which is an HBCU; is that correct, historically black college or institution?

A Yes, sir.

Q And you talk about participation at Valiant Cross Academy, which is as I understand it an independent school for black males; is that correct?

[150] A Yes, sir.

Q But there are also things that parallel that, that whites and blacks together throughout the city do that I would guess for the same reasons create a community of interest. For example, you went through our city's magnet program?

A Right.

Q At Forest Avenue and Bellinger Hill and LAMP. And that – those would have been communities of interest of black and white families together, would I be correct?

A Well, I don't know that I understand it in the same way because communities, you know, there's a residential component to a community of interest. And that was one of the things that was somewhat of a unique experience for me, because when I was a part of that first wave of students who attended the magnet programs, the –

Q Uh-huh.

A – and at the time there – some of those programs were housed within traditional neighborhood schools.

And I always happened to live in the neighborhood that was like associated with Forest Avenue. I lived around the street from it or associated with Lanier.

And so I lived in the residence that my non-magnet – the community where they live, whereas many as of my peers in my actual classes lived in outside of that specific community. So my cultural proximity and my understanding of what was going on in our neighborhood [151] surrounding the school was very different than my peers who lived in a different area or much further east away from those schools.

So I think there's a residence part that plays a role, and also a cultural part that plays a role in describing communities of interest, and culture is facilitated by involvement often in institutions in ritual and traditional ceremonies. I don't think it's only defined by participation in a – you know, in a job or at a school, for example.

Q Right. But when you were at Forest Avenue when you were at Bellinger, when you were at LAMP, you were attending school every day with white children as well as black children and children of other ethnicities cities; is that correct, and presumably made friends with them?

A Yes, sir.

Q I am assuming? And participated on sports teams with them, I am assuming or maybe not?

A Marching band.

Q Or marching band and rooted for sports teams?

A Right.

Q And all across the city, those sports teams would be seen playing at our city's soccer fields and volley ball fields and baseball and softball fields; is that correct?

A I would say it's, you know, there were – there was competition among those teams. But let's just look at the [152] rates of demographically speaking the students that are enrolled in Montgomery public school now compared to when I was in those schools. They were much more – if we're talking about white and black in the '80s and '90s, that same school system was much more of a biracial sort of experience than it currently is.

And I think that reflects the very sort of concern that I am trying to articulate as those schools have, you know, and the city as a whole has it has become more black and institutions have become more black, you actually have a larger footprint throughout the city of black communities and a shared community of interest that would sort of undermine the rationale national for cutting the city into two and three districts for congressional representation.

Q Let me ask you then about Mobile. Would you agree that Mobile is a unique city, a unique county, that it has a unique culture and heritage?

A I would.

Q Okay. And in other words, it's shaped in ways that the rest of the state is not by the Colonial history of the Spanish and the French presence, correct?

A Yes. I would say that it – in all of American history, it has a unique story.

Q Yeah. And it is Mardi Gras in a few of the other Coastal counties, which are not generally celebrated in the rest of [153] Alabama but are really very, very important to the people of that area, do you know?

A Sure.

Q Yeah. And they also have uniquely access to the Gulf and to the Delta and to the hunting, fishing, and sporting opportunities that arise there, correct?

A Sure.

Q And they also have – they work in the shipyards there, and all of those are activities that do you know blacks and whites do together; is that not correct?

A I would assume so.

Q Okay. And so would you agree that there is a black and white community of interest in Mobile County?

A Well, again, I would just go back to the way I responded to your question about Montgomery County that there are also shared family and cultural and historical features that bind those black communities in Prichard and Mobile County to their relatives throughout the Black Belt in a way that's unique. And I've tried to explain that about, you know, how I've experienced that professionally and personally, both in Mobile and Montgomery County.

Q Wouldn't that also be true for someone who grew up in Montgomery who has ties in the Black Belt who is white?

A I would – I think the distinction, though, is if we're thinking about roots of the socioeconomic challenges that I was [154] describing, I don't know that the story of a random white Montgomerian with Black Belt roots is going to track on to the story of the random black Montgomerian with Black Belt roots in the same way. I'm pretty confident that if we find a black Mobile resident with Black Belt roots there would be similarities in their stories to those of the black Montgomerian with Black Belt roots in a way that is much closer.

Q As you understand communities of interest, are there any communities of interest – I'm sorry. Something just happened here. Oh, I think – are there – as you understand communities of interest, are there any communities of interest that contain both black and white citizens in Montgomery or in central Alabama?

A I don't – I don't know that I have studied it and that I can, you know, I can comment on that with any – with a real sense of confidence right now.

I think, for example, there are the nuns in Vendenburg (phonetic) in southern Wilcox County. There's an order of Mennonite nuns that's worked there for decades, right? And there's, I don't know, I think they're sponsored by a parish out in Rochester, New York. I don't know how many nuns have come through there

for training. They're predominantly white women who have worked there. They work very intimately and closely with black families in one of the poorest parts of this [155] country, let alone this state.

And if we were to say, you know, are they a part of the community of interest when we're talking about the Black Belt? I think we could – I think – I don't mean to set up some sort of litmus test that is only open to, you know, according to race. But I do think that racial experiences are shaping a lot of the features that I'm trying to describe, particularly because of the unique experiences of Alabamians.

These black residents that I am describing, they didn't ask for Jim Crow segregation. They didn't ask for Redlining. They didn't ask for some of the, you know, enforcement of certain laws that has been predominantly – well, disproportionately impacting their relatives. These aren't things that people ask for. They became racialized because of the decisions of policy makers.

And so, you know, I think that that is the most salient point because the state has had the most power with respect to shaping some of these communities. And these are communities that have endured and have continued to add to the population of the state, despite this treatment.

And I think the least that we can do is acknowledge the unique qualities they share in common.

Q I am going to share with you the declaration of Dr. Moon Duchin, and that is Exhibit M-3, and ask you to look, if you will, sir, at her four proposed maps. And we'll just look at [156] the first two right here. Can you see A and B there?

A Yes, sir.

Q In both of these, they take part of Mobile County in the western part of the state and create a district that runs nine counties over to the Georgia border; is that correct?

A Yes, sir, I think that's what I'm looking at.

Q Okay. All right. And also in C and D just, so you can see all of the – all four of the plans, the same thing. Start in Mobile County, take part of Mobile County, and run all the way over to Russell County and Barbour County and Henry County and Houston County on the Georgia border; is that correct?

A Yes, sir.

Q Let me ask you: Does a black resident of Mobile County have more in common with her white neighbor than she does with a black resident of Phenix City in Russell County?

A I don't know that I can answer the question that you're posing to me in a way that would hold any weight because I think it depends on the person.

And then let me – can I just ask for clarification? Are those maps that – can you give me some

background on where the maps that I am looking at came from?

Q Oh, I'm sorry. These are alternative maps that are being used by the Milligan plaintiffs to demonstrate ways in which two majority black districts could be drawn, and thereby the Milligan plaintiff Dr. Moon Duchin, and these were four [157] illustrative maps that she presented.

A Oh, okay.

Q I apologize.

A Okay.

Q Have you answered my question?

A Yes, sir. I just wanted to clarify that before – so I was saying that I would say the – the historical reality of unique racialized experiences among black Alabamians is a point that, you know, I wouldn't concede whether we're talking about – particularly when we're looking at central Alabama in the area of the state where the plantation economy and so many of those experiences that follow that period of time have been so well-documented and are, you know, continuing to shape the realities of these families.

So you're asking me: Can a black person in Mobile share something in common with a white person in Mobile? For sure. Blood transfusions, they might both love a certain show, whatever the case is.

But I think the other question is: Can they share something very deep and relevant and common with

their neighbors throughout the Black Belt with their relatives in similar living conditions as those Black Belt counties, which may extend as far as the Georgia line. And I think that is also true. And where we're looking at numbers of people and communities, I think that that is something that we really need [158] to take into consideration.

Q I think we're almost done. I want to ask you one last question.

A Yes, sir.

Q In the statement that you committed, which was M-17, in paragraph 16, I will read it to you.

JUDGE MARCUS: Let me stop you for a second, counsel. I take it you don't need these illustrative maps anymore?

MR. WALKER: I do not. Thank you, Your Honor.

JUDGE MARCUS: Thanks so much.

MR. WALKER: Okay. Stop share.

JUDGE MARCUS: Thank you.

BY MR. WALKER:

Q Paragraph 16 says, Khadidah Stone and I submitted e-mail testimony to the reapportionment committee on Thursday, September 16, 2021, the last Thursday of the hearings. Do you recall that statement?

A Yes, sir.

Q And at that time, the e-mail statement that you submitted to the reapportionment committee advocated for the Singleton plan with no majority-black districts. That's correct?

A Yes, sir.

Q And now you're advocating instead for the creation of two majority black districts; is that correct?

A Yes, sir. Yes, sir.

[159] Q Okay. Thank you.

MR. WALKER: That's all I have.

JUDGE MARCUS: Thank you very much, counsel. Let me ask you: Did Mr. Davis have any cross-examination on behalf of the Secretary?

MR. WALKER: He does not, Your Honor.

JUDGE MARCUS: Thank you so much, then. I guess we will go back to redirect examination. Ms. Carter.

MS. CARTER: Yes. Your Honor, may I have a few minutes before redirect?

JUDGE MARCUS: You sure may. Why don't we take a five-minute break, and we will come back. Thank you. Does that do it for you? Does that give you enough time?

MS. CARTER: Yes, sir, I believe so.

JUDGE MARCUS: Thanks. We will take a five-minute break. It's 2:15. We will come back about 2:20 or so. Thanks.

(Recess.)

JUDGE MARCUS: Is everybody hooked up and ready to proceed? I just wanted to make sure Mr. Walker – Mr. Walker, are we all set?

MR. WALKER: We are all set, Your Honor. Thank you.

JUDGE MARCUS: Thank you, Mr. Walker. And thank you, Ms. Carter. You may proceed with your redirect.

REDIRECT EXAMINATION

* * *

[163] the next witness, Ms. Ebenstein?

MS. EBENSTEIN: Dr. Kosuke Imai.

JUDGE MARCUS: Is he on?

THE WITNESS: Yes, I am here.

DR. KOSUKE IMAI,

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

JUDGE MARCUS: Thank you. And if you would state your name for the record and spell it, please.

JA539

THE WITNESS: My name is Kosuke Imai,
K-O-S-U-K-E, I-M-A-I.

JUDGE MARCUS: Thank you very much.
And you may proceed, counsel.

DIRECT EXAMINATION

BY MS. EBENSTEIN:

Q Dr. Imai, where do you work?

A Harvard University.

Q And what's your position at Harvard University?

A I am a professor in the Government Department and also in the Statistics Department of Harvard University.

Q Where did you earn your academic degrees?

A I earned a master's degree in statistics from Harvard, and I also earned a Ph.D. in political science also from Harvard.

Q Could you briefly describe your previously held academic divisions?

* * *

[170] With that, you may proceed. Thank you.

MS. EBENSTEIN: Thank you, Your Honor.

BY MS. EBENSTEIN:

Q And, Dr. Imai, I would just remind you to speak slowly so that the court reporter can capture everything that you are saying.

A Okay. Yes.

JUDGE MARCUS: I will stop you at that point to underscore this for everyone. We're located in a variety of different places, and so it's tougher for the court reporter to take everything down.

THE WITNESS: Yeah.

JUDGE MARCUS: Accurately. So we'd be much appreciative if something I had really mentioned earlier today for everyone that we speak as slowly as we can so that she can get it all down and get it accurate.

Thanks, and you may proceed, Ms. Ebenstein.

MS. EBENSTEIN: Thank you, Your Honor.

BY MS. EBENSTEIN:

Q Dr. Imai, briefly, what were you asked to do in this case?

A Thank you for the opportunity to present my analysis.

So I was asked to conduct a simulation analysis to determine whether or not race played a role in determining the district boundaries on the enacted plan.

Q How did you go about doing that investigation?

[171] A As I just mentioned, I conducted the simulation analysis by generating a large number of alternative redistricting plans that one could have drawn under the specified rules, and then comparing those alternative redistricting plans, we see enacted plan.

Q How many sets of simulations did you perform to undertake your analysis?

A So for each of the three analyses that I have done, I conducted – I generated 10,000 redistricting maps.

Q And did you form an opinion as a result of your analysis?

A Yes, I did.

Q What is that opinion in general?

A Yes. So the most important finding that I obtained is that race played a predominant role in determining district boundaries under the enacted plan beyond the creation of one majority-minority district.

And the enacted plan does this by packing a disproportionate number of black voters from Montgomery County to into the District 7, which is the one majority-minority district, and then by doing so, reduces the number of black voters in District 2. Thereby diluting the voting power of black voters.

Q And just to be clear before we get started with your report, could you explain to us your definition of a majority-minority district in this instance?

* * *

[188] that comprise the five criteria that I just described. It kept Montgomery County as a whole. And more so the case, it don't include that into District 7. In fact, the more so the case, you assign it to known MMD district. Most likely in to the District 2, and that's why you sort of see the District 2 BVAP proportion is much lower on the enacted plan. And sometimes to District 6.

So, again, here, the enacted plan splits the Montgomery County, particularly the city of Montgomery. And include the part of Montgomery, city of Montgomery into District 7, simulated plan. Most of them don't do that. And assign the Montgomery County to the other – other district, not the District 7.

Q Thank you. Based on your analysis that did not use racial data, did you form an opinion on whether race was a predominant factor in drawing the enacted plan?

A Yes. My analysis provides clear evidence that race was used as a primary factor in determining district boundaries under the enacted plan.

Q Did you then conduct simulations that did consider race data?

A Sure. Yes, I did.

Q Okay. Let's discuss that now.

Can you describe that simulation for the Court, please?

A So this second analysis is the very important analysis [189] that I conducted. As I mentioned, the first analysis is the confirmatory, and so this is just to establish that race was used.

Now, the question is: How race was used?

So the second analysis, what I call one-MMD analysis simulation. MMD stands for, again, majority-minority district. And so this simulation generates one MMD, one majority-minority district using the race as information.

So why did I do that? I'm simply following the state's approach to just create the one MMD in order to comply with Voting Rights Act. I don't take any opinion or position on whether that's a good thing to do or whether one could draw a second MMD, okay. So I'm simply following here the approach the state took to create one MMD. It is in the racial information. It is in racial information.

Now, this – for that rest of the district, so there's one MMD and six others, I am going to use the same exact approach that I used in the prior analysis, so that is race-blind. So I create one MMD and then set that aside. And I create the other six districts without using any race information at all. Okay?

So this analysis I will now repeat so I have again I have 10,000 redistricting plans. I have exactly one MMD. And the rest of the districts are generated without any information about race.

So why do I do that? Well, this analysis allows me to

* * *

[203] cracking the city of Montgomery, the enacted plan reduces the BVAP proportion of the District 2 by 4.4 percent, and these differences – combination of standards of this degree are significant.

Q Thank you. If we could take down those figures and turn briefly, Dr. Imai, to your rebuttal report. That's Milligan Plaintiffs' Exhibit 688-6. What analysis were you asked to do for this report?

A For this report, as asked by the counsel for the plaintiffs, to conduct the same one-MMD simulation so the simulation was exactly one majority-minority district and add additional constraint that two communities of interest are encouraged to be kept together in that same district. So the difference between one-MMD simulation I just showed you and this one will be just this additional constraint that two sets of counties that were given to be kept together.

Q And what were those two sets of counties?

A I understand from the counsel for the plaintiffs that the one of the experts for the defendants expressed opinion that the Baldwin and Mobile counties to be kept together as one community of interest. And I also understand from the counsel that the set of counties that constitute the Black Belt, there's opinions that they also may constitute a community of interest. So those two sets of counties. I basically told the

algorithm to keep them together in the same district whenever [204] possible.

Q Do you have any – did you do any additional research, or do you have any independent opinion on whether those counties form a community of interest or any other areas form a community of interest?

A No. I do not take any positions on this or no opinion on this.

Q Let's briefly turn to Figure 1-88-6 at 5 to review your results when taking into account those two identified communities of interest.

A Okay. So here I focus on the last graph that I showed you just moments ago for one-MMD simulation. So it's the same figure.

Looking at how the decision to split the Montgomery and to pack black voters into District 7 affects the District 2, the BVAP proportion of District 2. And you see similar results again, enacted plan District 2 BVAP is about 30 percent.

Now, by taking into account for the communities of interest these two specific communities of interest that I were given, the average BVAP proportion for the District 2 is higher, so it's now 36 percent or so compared to 34 before. So actually increased under the simulated plan, increased the average proportion of the BVAP for District 2, and you also see many more plans that achieves the higher percentage of BVAP for under the simulated plan.

[205] As a result, the difference between the simulated plan and the enacted plan is now much larger so previously was 4.4 percent, I think. Now it's exceeding 6 percentage point. And so that this shows that – again, this is advantage of simulation analysis is to be able to assess what factor how – you know, adding a factor in this case community of interest how that's going to change the conclusion of redistricting evaluation. And in here, what we see is that adding these two particular definitions of community of interest increases the difference between enacted and simulated plan that is under the simulated plan with people in District 2 could have achieved much higher BVAP proportion than the enacted plan.

Q Thank you very much, Dr. Imai, for your testimony today. One final question: If you could just please summarize the opinions you formed based on your three sets of simulations and your research for the Court?

A Yes. So my analysis shows that the race played a predominant role in determining the district boundaries under enacted plan beyond the purpose of creating one majority-minority district. The enacted plan does so by packing a disproportionate number of black voters from the Montgomery County into the District 7.

The consequence of doing that, that particular decision the way that's being – the county is split and including the District 7 is to reduce the Black Voting Age Population of [206] District 2. And this conclusion does

not change, even if we account for the community – particular community of interest that I was given.

Q Thank you, Dr. Imai.

MS. EBENSTEIN: Your Honor, could I have one moment to confer with co-counsel?

JUDGE MARCUS: You sure can.

MS. EBENSTEIN: Thank you. Your Honor, we have no further questions for Dr. Imai today. Thank you.

JUDGE MARCUS: Thanks very much.

Who is going to proceed with the cross-examination of Mr. Imai for the Secretary of State?

MR. SMITH: Your Honor, Brenton Smith representing the Secretary of State. I will be conducting Dr. Imai's cross.

JUDGE MARCUS: All right. And I take it, Mr. Walker will he have some after you?

MR. SMITH: I'm not sure. We're in separate rooms. He may, but I will be going first at least.

JUDGE MARCUS: That's okay. We will proceed in any order you and he would like. So we will begin with Mr. Smith cross-examination.

MR. SMITH: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SMITH:

Q Good afternoon, Dr. Imai.

* * *

[219] A That's correct.

Q And the guidelines further state that these shall be observed essentially to the extent that they can legally be done they legally can be; is that right?

A Uh-huh.

Q Dr. Imai, I would like to run through each of these subsections and ask you whether you considered it in putting together your simulation?

A Okay.

Q J subsection (i) states, The contest between incumbents will be avoided whenever possible. Did you observe this criteria?

A Yes. I instructed the algorithm not to pair incumbents.

Q All right. And then j(ii) has to do with contiguity, contiguity by water is allowed, but point to point contiguity and long-lasso contiguity is not. Did you observe this criteria?

A What do I mean by observe?

Q Your – are all of the districts in your simulated plans contiguous?

A Yes. But the contiguity, the definition of contiguity, you know, can be – I don't know. How do I say this? Yeah. Yeah. I guess to the best of my ability, I guess that's what I have said because the shape file has, you know, I rely on census shape files. And, yeah, so anyway, yeah. To the best [220] of my ability, I ensured that contiguity is ensured. All districts are contiguous.

Q Well, let me ask you this, Dr. Imai: What definition of contiguity did you use?

A The definition of contiguity is, you know, based on – based on the shape file. So to the extent that shape file is accurate, my – the districts that I observe, I generated are contiguous. And I obtained the shape file from the census, so.

Q So but you don't know whether they are contiguous by the point to point contiguity method, for example?

A I have to check that, yeah.

Q Or what about the long-lasso contiguity method? You're not sure about that, either?

A Yeah, no. No. Well, not 100 percent sure. I think they are, but, yeah, but I'm not 100 percent sure.

Q Okay. I would like to look at J –

A I guess if I may.

Q Sure.

A You know, the data – so the reason why I hesitated a little bit was that, you know, data is always complicated geographical data. And so as academic researcher, I am hesitant to say, you know, every data I analyze has no problem. That's all. So to my ability, to my best of my ability, district that I generate are contiguous according to these definitions. That's – that would be my answer, if that makes [221] sense.

Q Thank you, Dr. Imai.

Turning to j(iii), this criteria deals with respecting communities of interest, neighborhoods, and political subdivisions; isn't that right?

A That's right.

Q And other than the two individual communities identified in your rebuttal report, do your simulations provide any constraint for respecting communities of interest?

A No.

Q Why not?

A I am not aware of it. I am not – I wasn't given any other definition of community of interest, and I don't study community of interest, so I have no knowledge of deciding what community of interest should be provided – should be provided to the algorithm.

Q You would agree, would you not, Dr. Imai, that this is a rule that the reapportioning committee follows in conducting redistricting?

A I assume so. That's a guideline.

Q Could observing a community of interest be sort of a confounding variable on your simulations? Could it explain something that you have attributed to another factor?

A Can you clarify what you mean by confounding?

Q So you say that – well, your conclusion depends on race. [222] So you conclude that certain splits, certain compositions of districts were made on the basis of race?

A Uh-huh.

Q But your algorithm hasn't made any – or your methodology hasn't made any allowance for communities of interest. Is it possible that respecting communities of interest could explain something that your simulations are attributing to race?

A Right. So the – my conclusion is that, you know, my finding is that race played a predominant role beyond the set of factors that I considered in the algorithms. So that includes creation of one MMD, as well as two specific definitions of community of interest I were given.

So beyond those factors, race played a role.

Q So but you would agree, would you not, Dr. Imai, that you did not consider all the factors that the reapportionment committee itself is supposed to consider according to its rules?

A I'm not aware of those factors, and those factors if they exist weren't part of my algorithms, that's correct.

Q So it may be the case that the Legislature knows that certain areas share common interests and are a community of interests, but your method did not consider that, right?

A Well, that – I didn't consider it because that information wasn't provided to me. But I could consider it if you give me a specific definition of, you know, other [223] communities of interest definitions, then I could consider it and then see if that changes the conclusion.

Q As it stands today, the analysis that you performed did not do that, right?

A Yeah. So the analysis I included in the rebuttal report only uses those two specific definitions of communities of interest that I was given, yes, that's correct.

Q Right. Dr. Imai, turning to $j(v)$, Legislature shall try to minimize the number of counties in each district. Did you observe this criteria?

A Yes.

Q How so?

A So in the algorithm as I explained, this was categorized as soft constraint. I basically instructed the algorithm to prefer a redistricting plan all else

equal that has a fewer number of counties split by the districts.

Q But did you say county splits, Dr. Imai?

A Yes.

Q Is there a difference between minimizing the number of county splits and minimizing the number of counties in each district?

A Well, that a single county can be split multiple times.

Q I think I'm asking a more basic question than that.

I understand that you minimize the number of county splits.

[224] A Uh-huh.

Q But what this criteria says is that it's trying to minimize the total number of counties in each district. Do you understand those to be different things?

A Okay. How different is that? I guess? Can you explain? Sorry.

Q Well, okay. So let's say that District 2 has ten counties in it in the enacted plan?

A Uh-huh.

Q And two county splits?

A Uh-huh.

Q Is that different than if your district in your simulated plans on average have 15 counties in them, but only one county split?

A So that – so, again, I’m not aware. So I don’t want to interpret this statement because, you know, it can be interpreted different ways because what do you mean by in each district, right? So like which district? Or is it some of the districts – like some of the numbers across districts? Does it – should we double count – no double count? But that difference in the definition, maybe that’s what you’re trying to get at, doesn’t really materially affect my conclusion because the District 7 has three splits, both enacted and simulated plan focusing on District 7 because that’s the main finding. And the only difference if both splits the Jefferson [225] County as well as Tuscaloosa County in the very similar way as I stated. And the only really difference is whether you split Montgomery County or not. So this definition, which could be perhaps interpreted different ways by different people. Again, I am not a lawyer, so I am not going to take any particular stance on this. But it is not going to affect the conclusion of my analysis.

Q Let me reframe like this, Dr. Imai. Let’s assume that the Legislature prefers a district with seven counties to a district that has eight counties. Does your simulation make any adjustment for that?

A If that was given as a criteria, then I can adjust my simulation analysis and rerun it.

Q But you haven't included that in the simulation as it's been run; isn't that right?

A Well, that wasn't given as a criteria to me, so, yeah, I didn't do that.

Q Well, Dr. Imai, what I read j(iv) here to say is that the Legislature shall try to minimize the number of counties in each district. Do you understand that to mean something other than the total number of counties?

A Total number of counties. Can you provide the definition? I want to be careful because I don't know exactly definition of what you're trying to get at. Sorry. I may be confused.

Q Well, Dr. Imai, I think –

[226] A The number of counties in each district, that number is defined for each district; is that right? So then the question is what are you going to do with that, right? Because you can't have minimize seven different things.

Q Okay. So just to clarify, Dr. Imai, you haven't made any accommodation that would ensure your districts have as few counties in them as possible; is that right?

A I don't understand the question because like, okay, maybe the way – maybe I can explain what I did and then that – because that's what it is. So if that interpretation is different from your interpretation, then that, you know, that's what it is, because I don't quite

understand the different interpretation you are trying to get at. Sorry.

Q I think let's just move on. It's – let's move past this.

A If you can clarify, so I used – these are total number of counties that are being split by districts as a way to, you know, measure this number of counties in each district. So that may or may not be the same as the definition that you're trying to provide, but I couldn't really understand the difference there. But what I did, though, because it's a total number of counties that were split by the districts. And then, you know, another point I would like to make is that that decision doesn't really affect the conclusion – main conclusion of the analysis.

Q So your testimony, Dr. Imai, is that not considering some [227] of these redistricting guidelines does not affect your analysis?

A Well, different constraints will not affect the analysis possibly. You don't know until you do it, right? So there is, you know, you provide a set of inputs, and then the algorithm will give you based on those inputs. And if you are asking like what would happen if I changed the inputs, like I don't know because I haven't done that. All I can tell you is that given the inputs that I provided in my report, this is the results that I got.

Q Dr. Imai, let's move on to j(v).

A Okay.

Q And this criteria says, the Legislature shall try to preserve the cores of existing districts, right?

A Right.

Q And did you observe this criteria in your simulations?

A Yes. As I mentioned, I did incorporate this particular guideline.

Q So you did not consider this; is that right?

A That's correct.

Q Why not?

A Yeah. So as I explained, for the purpose of the analysis, okay, so this is like my – the goal – I'm trying to analyze whether or not race played a role in creating the districts under the enacted plan.

[228] In order to do that, I need to isolate other factors. So I need to isolate, you know, I want to just look at how the race played a role. So I need to isolate other factors.

If I impose this constraint, all the factors that went into the previous plan is going to be carried over, and it's going to affect my analysis. As a result, I will not be able to isolate the role the race played in, you know, in drawing the district boundaries under the enacted plan.

Q Dr. Imai?

A That's why – I haven't analyzed the previous plans, so I have no knowledge of what factors went in there.

Q So, Dr. Imai, is it right that if your methodology considered what the previous plans looked like, the cores of existing districts, that you would not be able to tell what was caused as a result of those existing districts and as a result of race?

A I would have a difficult time isolating the role of the race if I put this constraint.

As I said, many factors may have gone into the previous plan, which I haven't analyzed. And so that will – you know, I will inherit all of that into my analysis, which basically, you know, basically reduces – get rid of the whole advantage of simulation analysis is the power to isolate these different factors, so that's why I didn't do this.

Q Dr. Imai, would it be possible to set a limiting [229] constraint so that your simulations preserves 80 percent of the cores of previous districts?

A Yeah. I could – I could do that. I could incorporate that constraint, add that to my simulation algorithm, yes.

Q But that's not something that you have done?

A No.

Q Here?

A No. If someone provides – if someone wants to incorporate the specific definition of core, then, yes, the algorithm can handle that.

Q And so instead, though, your algorithm starts from a blank slate; is that fair?

A Yes. That's – blank slate meaning like, yeah, from scratch.

Q Right. Right.

A Yeah. But if I may add one thing. Is that okay? Or is that . . .

Q Sure.

A So even though I started from the blank slate in my one-MMD analysis, in my testimony, I mentioned that it was remarkable to see that one MMD, you know, overlaps in a great deal with District 7 on the enacted plan, which I assume that also means that overlaps significantly with the District 7 on the previous plan. So even though I didn't tell the algorithm where to create the MMD, when I told the algorithm to get one [230] MMD, it went there, and in the key difference was the Montgomery.

Q So, Dr. Imai, doesn't ignoring some of these factors, cores of districts, communities of interest, et cetera, doesn't that guarantee that your simulated plans may not capture a true representative sample?

A So the captures – I have a mathematical theorem that says it captures – you present a plan under the set of criteria that I specified. If you change the set

of criteria, then, you know, the population of the plans are changed so no longer my sample is guaranteed to be representative of that new population, if that makes sense.

So the representativeness is all relative to what factors are used for the simulation.

Q Thank you, Dr. Imai. I am going to take these guidelines down.

And then, Dr. Imai, I am going to direct your attention to page 9 of your report.

A Okay.

Q Milligan Exhibit 1, M-1.

You say in paragraph 26 that you show, quote, the way in which the enacted plan deviates from the simulated plan implies that race was a predominant factor in drawing the district boundaries of the enacted plan. Did I read that correctly?

A Yes.

[231] Q What do you mean by implies, Dr. Imai?

A Presents empirical evidence for that.

Q Okay. And, Dr. Imai, this conclusion would apply not only to the enacted plan, right, but any comparison plan that was compared to your simulations?

A I don't want to say that because it depends on the purpose of the analysis if that – I guess I'm not understanding exactly what you're trying to ask. Sorry.

Q So let's say an enacted plan that's different than the plan that actually is enacted, and you still did the comparison. You did the comparison exactly the same. Wouldn't your conclusions apply to that plan, as well?

A I – I feel uncomfortable speculating that because like on this, I have a plan in front of me. It's really hard for me to know whether, you know, I don't want to sort of draw conclusion about something like a hypothetical. I feel uncomfortable doing that.

Q Let me back up. I think I have asked a poor question.

A Yeah.

Q So what you conclude or what you present here is that if a plan deviates from your simulated plans, that implies race was a predominant factor; is that right?

A In this particular setting. In this particular, you know, my analysis setting. I just feel uncomfortable speculating if there is another plan that looks very different, how do I, you [232] know.

Q Sure. Okay.

A It really depends on, I don't know. If that makes sense. Because, you know, and also, yeah, so it depends like you have to carefully select what the inputs you want to use for simulation in order to – because simulation analysis is done for a particular purpose. And so, you know, I just want to – yeah,

refrain myself from making that conclusion on that, if that's okay, like a hypothetical question.

Q Sure. Let's move on, Dr. Imai. I am going to share my screen again. And this is M-1. This is a copy of your report. And I am going to go to page 10 and Figure 1?

A Okay.

Q And I would like to zoom out a little. I am going to ask you a few questions about this figure.

A Sure.

Q So any of the dots on this figure are an outlier, right?

A Yeah. That's considered as an outlier under the standard statistical definition.

Q And, Doctor, further down in paragraph 28, you conclude that race was a predominant factor in the enacted plan as a result of its BVAP outlier status as illustrated in this figure; isn't that right?

A That's right.

Q Dr. Imai, what's the highest BVAP in this district in this [233] dataset that isn't an outlier?

A Oh, I didn't – I don't have that exact number with me. I'm sorry. But – it's between somewhere 40 and 50.

Q Well, we can approximate from the graph, right? So District 2's top whisker, what would you say

that approximately to the BVAP of that point would be, maybe 43 percent?

A Yeah, maybe something like that. Yeah.

Q And none of the boxes that you talked about that have most of the data in them, none of those boxes break 40 percent BVAP, right?

A For the District 2, you mean.

Q For any of the districts.

A Box, so, yes, District 7 is slightly on it – maybe – but yeah.

Q But even if 7 is on it, it's like right –

A Yeah. That's correct, yeah.

Q So – and it looks like even the highest outlier for CD 7 is – I don't know, maybe 47 or 48 percent? Do you think that's fair?

A That's right. Yeah, that's probably fair, yeah.

Q So if CD 7 had a BVAP that was above 50 percent, would it be an outlier?

A Again, I – I'm – I don't like to speculate hypothetical because, you know, if you change one district, everything else can change, but, yeah.

[234] Q Well, I think your conclusions in this report are anything that doesn't appear in this graph is an outlier and, therefore, race predominated; isn't that a fair summary?

A You are saying if hypothetically you observe something at 50 percent?

Q Let's say that there's a district for CD 7 that's at 50.1 percent. Would that be an outlier?

A Oh, if the enacted plan you mean?

Q No. I am talking about hypothetical plan for CD 7 that has a BVAP of 50.1 percent, would that be an outlier?

A Yes, statistical outlier. So maybe I know what you are trying to say. Should I say something there what I mean by outlier or?

Q Let me ask a couple of follow-up questions. So you would agree it's an outlier, right?

A Now it depends on what you mean by outlier. So I want to clarify the definition of the outlier that I mean so that.

Q Sure. Go ahead.

A So statistical outlier doesn't necessarily mean that, you know, because it's all statistical, it's probabilistic. It doesn't mean it never happens. It could happen. So you can see even if you simulated from the actual distribution, there are black dots, those are simulated plans. So those outliers do happen. It doesn't mean it can never happen, right? But it's very unlikely to happen because there's 10,000 dots there. [235] I am not showing it so that the dots that are showing in the figure there aren't many. There are very, very few of total 10,000.

So when I say statistical outlier, I am not saying it's impossible ever to get anything like that. There is always a chance. You never know until you actually enumerate every single map in the population. I'm saying highly, highly unlikely. So that's what I mean by statistical outlier. It's highly unlikely result.

Q Let me reframe this way, Dr. Imai.

A Okay.

Q Is any data point that's not in the box or on the whisker considered an outlier?

A Yes. It's considered a statistical outlier according to the standard definition of statistics.

Q Okay. Then, Dr. Imai, let's look at District 7.

A Okay.

Q And the upper whisker, we can't see exactly where it ends, but the outlier started about 41 or 42 percent.

A That's right.

Q So we can infer from that that that's where the whisker end; is that fair?

A That's fair.

Q So if there were another outlier dot at 50.1 percent, if there was another data point there, would it be an outlier [236] based on this graph?

JA566

A Under this simulation, yes, but, you know, under different simulation, it may not be.

Q Okay. Dr. Imai, for District 2, it looks like the upper bound of the whisker cuts off like we said about 43 percent; is that right?

A Yeah, that's right.

Q And there is one data point above it that's an outlier at maybe 44; is that right?

A Yeah, that's about right, yeah.

Q If there were another data point that was at 50.01 percent, would it be an outlier on this graph?

A That's right.

Q And if those districts had a BVAP of 50.01 percent, would you conclude that race predominated in their drawing based on your simulations?

A Yeah. To this set of criteria, right? So beyond this set of criteria that I considered, yes.

Q And, Dr. Imai, I would like to look at – so Districts 1, 3, 4, 5, and 6?

A Uh-huh.

Q These all fall on the box or the whisker, right, of the district?

A Yeah, more or less, yes.

Q So they're not outliers?

[237] A Right. According to the commission of definition, it's not – they're not statistical outliers.

Q So your analysis would support that race did not predominant in the drawing of those districts; isn't that right?

A So I want to be a little bit careful here, because even though I presented this graph for each district, as you know, like if you change one district boundary, that changes another district boundary. So I have – like I want to always interpret this type of graph, this box-plot type of graph in its entirety, because everything is interconnected. If you change one district boundary, another district boundary change.

And so in this case, I'm more confident of saying race predominated because if you look at the Jefferson County and if you look at the Montgomery County, you see exactly how the district boundaries are drawn under the enacted map and how that compares with the simulated plans. So you know exactly where these outlier is coming from. Like, as I explained in my presentation, therefore, this 6, 7, it's coming from both in this case. In this case, it's both coming from the splitting of the Jefferson County and packing the Birmingham voters in the Birmingham, as well as the splitting of the Montgomery County and then packing into that District 7.

And for the District 2, the reason why it's low is because the Montgomery County split and then packed that – the rest of [238] part of the city of the Montgomery County is packed into the District 7. So that –

District 2 is right below right south of the, you know, southeast of District 7. So by taking the Montgomery County, part of the Montgomery County, which is part of – is part of the District 2, which is under the simulated plan, that's why it's lower.

So because I know all of that, like I wouldn't just look at this and say it's an outlier. It's a predominant – I would look at these maps making sure I understand where these differences come from. And then as a totality of evidence, statistical evidence, I concluded that my, you know, evidence shows that race predominated in determining this boundary, if that makes sense. I still don't like to just mechanically decide whether just because it's about the 9 or – because it's just – it's a standard definition, but not like an absolute – you don't want to make the conclusion from a statistical analysis just based on one number or one graph.

Q Thank you, Dr. Imai. So if I understood you correctly, this graph on its own you would not consider to be evidence of anything without considering the totality of the circumstances; is that right?

A Yeah. Definitely. It's part of the evidence, obviously. It's the first place I go to. Then I want to understand, you know, the reason why this is happening. And the simulation analysis is powerful because you can actually look at how the [239] simulation algorithm splits certain counties and things like that.

Q Thank you, Dr. Imai. I am going to take that down for at least a couple of minutes.

So, Dr. Imai, in paragraph 29 you say, quote, as a result of the high percentage of BVAP in District 7, the BVAP of District 2 and skip a little is much lower than?

A Uh-huh.

Q That under vast majority of simulated plans. Did I summarize that right?

A Yeah, that's correct.

Q Why is CD 2 – why is the Second District's BVAP, quote, a result of CD 7's BVAP?

A Because Montgomery County is split by the enacted plan. An the enacted plan includes, you know, big part of the western part of the city of Montgomery, which is – has a very high percentage of black population. And in the precinct that the enacted plan includes into the District 7, it's like some of them are above 90 percent. But under the simulated plan, usually that district is assigned to the District 2. And so by taking part of the Montgomery and then putting it in District 7, it lowers the BVAP population under the – for the District 2.

Q Dr. Imai –

A In this case, there was the direct trade off there.

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[266] Q Dr. Imai, I am not going to ask you any questions about Mr. Cooper's map here, but it is sort of handy as a visual aid, and so that's all I am going to

use it for at this stage. You keep Mobile and Baldwin together as one of your constraints in [267] the rebuttal report, right?

A Yeah. I was instructed that – that two counties, you know, along with the experts, and from that counsel for the plaintiffs, and my understanding is that one of the experts for the defendants thought that as a community of interest, those two counties.

Q And, Dr. Imai, you also include as part of your – as part of your – well, excuse me. As part of your definition of the Black Belt or the set of counties that you use as the Black Belt, Dr. Imai, you include each of Washington County, Clarke County, Monroe County, and Escambia County, right?

A Yeah. I'm just checking to make sure. But that's correct, yeah.

Q But, Dr. Imai, doesn't that isolate Mobile and Baldwin County by themselves so they're not contiguous to any other Alabama counties?

A If those all four kept together – well, I guess it could escape from the north on the west.

Q How so?

A If you go – oh, no, no. Choctaw, that's also included. So if you are right. So if you keep all those five counties together. But this is soft constraint. So it was discouraged, but obviously it may split once.

Q So under your soft constraint?

A Yeah.

[268] Q It's not that it is impossible to split the Black Belt, it's just discouraged?

A Right. Try to reduce the number of splits, right. So fewer splits of those communities as possible.

Q But?

A But if you have to split, you have to split because the population constraint, you know, is 50 percent. You don't want to create the district who has fewer population than the, you know, the range that I specify.

Q And so in order to include Mobile and Baldwin County in a district, it appears it's necessary to split the Black Belt, right?

A That's correct. Yeah. If necessary to split those four, of five, I guess if you reached it.

Q Is that also the case for these southeastern counties that aren't included in your definition of the Black Belt but are isolated as a result of that definition?

A So, yes, those are also – yeah. So those are not part of the definition I was given. And, yeah, those are, you know, have to be – have to go somewhere. And often I think the, you know, the District 2 under the – under the simulated plan.

Q Dr. Imai, I just have a few more questions.

So between your initial and rebuttal reports, you generated a total of 30,000 simulated plans, right?

A That's correct.

[269] Q And of those 30,000 simulated plans, 20,000 of them included an MMD by design, right?

A That's right. One MMD by design.

Q How many of your 30,000 simulated plans included two MMDs? A None. Because I didn't tell the algorithm to create a second MMD.

Q Dr. Imai, if none of your 30,000 simulated plans included two MMDs, wouldn't that indicate that race predominated in a comparison plan that did include two MMDs?

MS. EBENSTEIN: I'm sorry. Objection.

If I am understanding the question correctly, it's outside the scope of the one MMDs that Dr. Imai just testified he simulated.

JUDGE MARCUS: I am not sure I understand the question. So let's begin by having you rephrase it, Mr. Smith, and then we will see whether it's objectionable or not.

MR. SMITH: Sure, Your Honor.

JUDGE MARCUS: I don't understand the question as you put it.

MR. SMITH: Sure. I will reframe.

BY MR. SMITH:

Q Dr. Imai, none of your 30,000 simulated plans included two MMDs, right?

A That's correct.

Q So then a plan that does include two MMDs would be an [270] outlier, right?

MS. EBENSTEIN: Object – sorry.

JUDGE MARCUS: Do we have an objection?

MS. EBENSTEIN: I would object.

JUDGE MARCUS: There is an objection, and it is sustained as to the form of the question.

* * *

[283] **PROCEEDINGS**

(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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[287] THE WITNESS: Yes.

JUDGE MARCUS: Thank you, counsel. You may proceed.

MS. EBENSTEIN: Thank you, Your Honor.

BY MS. EBENSTEIN:

Q Dr. Imai, would you expect that population equality or use of census blocks if that was even possible would have changed any of your opinions in your report?

A No. It has no major impact, no substantive impact on the conclusion of my analysis.

Q And your use of population deviation was a hard constraint, so that applied to every single one of the districts in each of the 30,000 plans; is that right?

A That's correct.

Q Okay. Moving on to contiguity. Did you use census data to generate your simulated maps?

A Yes.

Q And as far as you know, does the state use census data to draw their maps?

A Yes.

Q And, in fact, I will note for you that the guidelines require the use of census data for the state to draw their maps.

So if there were any issues with the census data when it comes to contiguity, would that occur in the state's enacted map, as well as in your simulated plan?

[288] A It may. You know, it depends on the problem, I suppose. But any map drawing process whether

it's simulation or human, if there's a problem in the underlying data, it could affect the resulting map.

Q Okay. Moving on to compactness, if my colleague Eric is online, if he could briefly turn to Defendants' – sorry -Plaintiffs' Exhibit M-1, 88-1 at 23, Figure 8, there at the top of the screen. I don't believe we looked at this yesterday, but it's included on page 23 of your initial report. Could you review how you – what this figure represents, including how you measured compactness?

A Right. So the compactness is a concept that has competing measurements in the academic literature. And, you know, the most commonly used measures are the two I used here. So one is Polsby-Popper score, and one is the fraction of edges kept, and the fraction of edges kept is something that counsel Smith mentioned yesterday from the working paper that I wrote. And each measure has its own advantage and disadvantages.

For example, Polsby-Popper score can be affected greatly by the shape of particular precinct or census block, whatever the building units are. And so if you live in a coastal area, Polsby-Popper score might be higher – sorry – much lower less compact even though it's just a coast line that's not very smooth.

So for this reason it's very important to use multiple [289] measures of compactness score when you are evaluating whether or not your simulated plans or other plans are compact. So based on this figure, what you can see is that two measures essentially give the

same answer. So whether you use the Polsby-Popper score or the fraction of edges kept, the – on average, the simulated plans, which is the dark histogram is more compact than active. So these scores the higher the number is the more compact. So the one on the right, if the numbers are higher, more compact. So you can see that based on the Polsby-Popper score the simulated plan, most of them have higher compactness score than the enacted plan and then same collusion holds in the fraction of edges kept.

From this, I concluded that the simulated plan on average more compact than the enacted plan.

Q Okay. Thank you. We can take that figure down.

Moving on to county boundary splits. Do you recall Mr. Smith asking you about the treatment of counties and county splits?

A Yes.

Q How do you interpret the criteria for county splits when generating your simulation analysis?

A So according to the guideline, it's supposed to minimize number of counties within each district. That's I think what the guideline states.

Q Okay. And did you implement that criterion as you [290] understood it?

A Well, the way I implemented it in the algorithm is two ways. So one, is to just to – this is a mechanical part of the algorithm, which tries to make

sure that the district boundaries for the county boundaries whenever you can. So this is – I can describe more details, but basically sequential Monte Carlo algorithm basically imposes that. Then the second step is I added additional constraints just to make sure to reduce the number of county splits that, you know, make sure that the algorithm prefers all else equal the plans that have fewer county splits. And as a result in the appendix of my expert report, I show that county splits is much lower under the simulated plan.

Q Okay. If the map drawer testified that where possible he tried to deal in whole counties and keep counties whole, does that sound similar to what you did when you were accounting for this guideline?

A You know, I think – I mean, algorithm, so it's – in a sense, it's a little bit different from the human. Algorithm look at, you know, the sort of entire state and make sure that, you know, other factors are not compromised by doing so. But you know, I – I try to represent mathematically as much as possible that what the guidelines – I interpreted what the guideline advised.

Q Okay. Thank you.

[291] And moving on to the core of existing guidelines. You are clear in your report and your direct testimony that you did not consider the cores of existing guidelines; is that right?

A No.

Q And if race predominated in the design of prior plans, would recognizing cores and preserving cores

that racial predominance – sorry. Let me rephrase that. If race predominated in the design of prior plans?

A Uh-huh.

Q And you were to adhere to preserving the cores of prior plans, would that mask the effect of race in the current plan?

A Yes, that's possible because I would note – I would have no way of separating the race as a factor, like isolating the impact of race from what went into the prior plan.

Q Okay. And Mr. Smith asked you yesterday about whether preserving cores could be operationalized by preserving 80 percent of the previous district. Are you aware of any guideline that requires preserving 80 percent or any other threshold of previous districts?

A No.

Q Okay. Mr. Smith asked you a series of questions about your race-blind simulation. If we could just have on the screen Plaintiffs' Exhibit M-1, 88-1 at 10 which is Figure 1 in the boxplot that we discussed yesterday. Which districts in this boxplot do you consider outliers?

[292] A The clearest outlier is 7.

Q And are there any other outliers here?

A The 2 is also outlier according to the, you know, standard definition in statistics.

Q Okay. And this is in your race-blind simulation, correct?

A That's correct.

Q Okay. Does this finding in your race-blind simulation reflect any judgment about whether or not it's proper to draw a particular district, a particular way after the map is adjusted to have one MMD?

A No. So this is completely race-blind. So the conclusion on the holds with respect to – the comparison was race-blind simulation simulated plans.

Q Okay. And your race-blind analysis does not incorporate the state's guideline, which gives priority to compliance with the Voting Rights Act; is that right?

A Right. It doesn't. And that was purpose was, you know, of this race-blind simulation was just to establish as a first step whether race played a predominant factor.

Q And a few questions about your one-MMD simulation before I move back to the race-blind simulation.

Your one-MMD analysis tried to account for the fact that the state draws one MMD to comply with the VRA; is that right?

A That's correct.

Q And your simulation found that even in drawing one MMD [293] that looked like the state's MMD, District 7 included a BVAP population beyond what

was necessary to create a majority-black district; is that right?

A That's right.

Q But I believe you said yesterday your analysis did not consider whether the VRA might require two majority-minority districts; is that right?

A No. No.

Q And you didn't perform any analysis of maps that include two majority-minority districts, right?

A No.

Q So your analysis wouldn't tell us anything about whether or not containing two MMDs is an outlier or not compared to simulations constrained under two MMDs?

A No.

Q Moving back to the race-blind analysis, and we can take that boxplot off the screen.

If you have your report in front of you in case you would like to reference it. Mr. Smith asked you questions about your race-blind analysis with regard to Jefferson County. And he referenced paragraph 32 of your report. That's M-1, 88-1 at 12. And this paragraph is still in your analysis about your race-blind simulations; is that right?

A That's right.

Q Mr. Smith noted that at least eight of the 10,000

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[301] and many other clinical researchers in the discipline conducted at the precinct level, using a precinct level for congressional redistricting. We – you know, we have established that that’s a small enough unit to draw decisive conclusions on this type of analysis.

JUDGE MARCUS: Thank you. Any follow up based on what I asked either, Mr. Smith or Ms. Ebenstein?

MR. SMITH: Your Honor, not based on what you asked, but I do have a few recross I would like to ask.

JUDGE MARCUS: That’s fine so long as it bears directly on what is new or different that was brought out. We don’t mean to have re-redirect that covers the same ground unless there’s something different or new that she brought out.

With that caveat, fire away.

MR. SMITH: Certainly, Your Honor. Thank you.

RECROSS-EXAMINATION

BY MR. SMITH:

Q Good morning, Dr. Imai.

A Good morning.

Q Dr. Imai, I have just a few questions for you.

Ms. Ebenstein asked you about the core retention factor. Do you recall that?

A Yes.

Q And if I heard your answer correctly, I think you said that if race – if you took core retention into account and if [302] race predominated in prior plans, that would mask the use of race in the current plans; is that right?

A That could.

Q So, in other words, Dr. Imai, because you did not take into account the core retention guideline, you can't say for sure whether core retention might explain the racial makeup of any of the districts in the enacted plan; isn't that right?

MS. EBENSTEIN: Your Honor, I will object that that misstates his testimony.

JUDGE MARCUS: Why don't you just rephrase the question, Mr. Smith?

MR. SMITH: Sure, Your Honor.

BY MR. SMITH:

Q Dr. Imai, if the use of the core retention factor masks – if using that factor in your analysis would mask the use of race in the current plan, then you can't say for sure based on your simulations whether that

factor might explain in fact the BVAP of those districts, right?

A So if I understand the question correctly, whether or not the race affected the previous plan is the reason why I find the race predominance predominates the decision of district boundaries on the enacted plan. Is that the question? Or are you asking whether if I incorporate the core restriction, whatever that might be, whether the results will change?

Q That is what I am asking, Dr. Imai.

[303] A The latter?

Q Yes. The second. The second.

A Okay. So if – again, I don’t know what would happen if I incorporate the core constraint because I have not – I was not given and I could not find any definition of core, so I was – I didn’t do that analysis. I can’t. I don’t want to overstate, you know, what would happen. I mean the hypothetical analysis.

But the reason why I didn’t include that was as I stated is because if, you know, I incorporated the core constraint, that means that I would not be able to isolate the race.

Q Dr. Imai, can your analysis tell us whether core retention explains the demographics of any of the enacted districts?

A Retention. So in order to do that, I would have to know the definition of core constraint. Like if I want to use a simulation to know whether the core retention

explains some of my finding, I would – I would need the definition of core, and I would incorporate that in my analysis, right, and then see what happens. But the reason why I didn't do that is because I wanted to isolate the effect of race.

Q Dr. Imai, I am not asking whether you could or not. I'm asking: Does your analysis tell us whether core retention actually explains the demographics of the districts?

A Actually explains. No. Because that was not goal of my analysis.

[304] Q Thank you, Dr. Imai.

Dr. Imai, if a plan drawn that purported to observe the same criteria that you observed ended up with two majority-minority districts, wouldn't that strongly suggest that race predominated in the drawing of that plan?

A That plan – what do you mean by – sorry. What do you mean by that plan? Like which plan?

Q If a plan was drawn that purported to observe the districting criteria that you observed and that plan that was drawn ended up with two majority-minority districts, wouldn't that strongly suggest that race actually predominated in the drawing of that plan with two majority-minority districts?

A I'm sorry. I don't feel comfortable talking about the hypothetical plan that I don't have in front of me, because in order to evaluate, you know, any plan, I would need to know exactly what the plan is. And I like

to refrain from making any speculative claims about what would I do if I have some plan that's – that – don't know what it is.

MR. SMITH: Your Honor, may I have one moment to consult with my colleagues?

JUDGE MARCUS: Sure.

MR. SMITH: Your Honor, nothing further.

JUDGE MARCUS: Thank you. Ms. Ebenstein, anything further by way of re-redirect?

MS. EBENSTEIN: Your Honor, if I might ask one

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[416] JUDGE MARCUS: So you are going to put Mr. Cooper on first, and I take it you will go back and forth between you and the Milligan plaintiffs on the Section 2 case.

MS. KHANNA: Yes, Your Honor. We're trying to present it in as coherent a fashion as possible, but obviously witness availability and issues like that.

JUDGE MARCUS: I understand. So the way we will proceed is we'll proceed in the same manner we have proceeded earlier. If there's something particular to the Caster case and the Caster case alone, you can highlight it, and we can turn it at that point over to Judge Manasco. Otherwise, we will proceed this way. I take it that's agreeable with you.

MS. KHANNA: Thank you, Your Honor. Yes.

JUDGE MARCUS: All right. Let's proceed.
We have Mr. Cooper?

MS. KHANNA: He should be here.

JUDGE MARCUS: Mr. Cooper, welcome.

WILLIAM S. COOPER,
having been first duly sworn, was examined and testified as follows:

JUDGE MARCUS: Thank you. Good afternoon. And if you would state your full name for the record, please.

THE WITNESS: My name is William Sexton Cooper.

JUDGE MARCUS: Thank you, sir. And you may proceed, counsel.

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[433] Q Sorry. Let's pull up the map so that we're all looking at the same one. If we could please pull up Plaintiffs' Exhibit 1 Figure 9 on page 19. So, Mr. Cooper, this is the 2021 board of [434] education map; is that right?

A That's correct.

Q Do you know when this map was enacted by the Alabama Legislature?

A I believe in late October and signed into law in November, along with the congressional plan.

Q So this was at the same time as the 2021 congressional plan; is that right?

A Yes.

Q And so which of the districts under this plan are majority-black?

A District 4, which is the green district, and the kind of purplish color District 5, which is a district that goes from the western Black Belt Macon County then through part of Montgomery County to Mobile.

Q And is this the first time as far as you're aware that Alabama has had a State Board of Education plan with two majority-black districts?

A No. There's a long tradition of the configuration very similar to this plan. I have a map in this declaration showing the 2011 plan, if memory serves, the percentages are about the same. And the two districts look very similar between 2011 and – between 2010 and 2020 census.

Prior to that, there was a plan adopted in the early 2000s that I reference that had one district that was based on [435] single-race black slightly below 50 percent. In paragraph 34, I have 47.61 percent. That was District 4 in the north, I think. And then District 5 in the south was almost 52 percent single-race black.

And there was litigation in the 1990s. So I think there was a court ordered plan in 1996. And in that plan, District 4 was about 46.6 percent black and voting age, and District 5 was 51.75 percent. So for 25

years now, there has been two majority-black school board districts out of eight.

Q Can you please describe looking at the 2021 board of education plan, can you describe how District 5 is drawn here?

A Well, yes. It's – it's drawn from Macon and Bullock County in the east southwest through the Black Belt to Mobile County and the city of Mobile and north along the Mississippi line up to Sumter County. And then at that point, it borders District 4, which is the second majority-black district that includes the east – the western part of the Black Belt, including Tuscaloosa and part of Jefferson County.

Q Does District 5 include all of Mobile County?

A No, it does not.

Q Does the 2021 State Board of Education plan combine part of Mobile County with Montgomery County?

A Yes, it does.

Q And does it also combine part of Mobile County with Baldwin County in District 1?

[436] A Yes, it does.

Q What portion of Alabama's black population resides in these two majority-black board of education districts today?

A I believe that it is very close to half of the black population. I think I have that figure in my declaration.

Q And I can refer you to paragraph 37, if that's easier.

A Yes. There it is. 51.69 percent.

Q So more than half of the state's black population -sorry.

A No. Statewide population. Black population, right.

Q More than half of the state's black population then resides in a majority-black board of education district; is that right?

A Yes. In either District 4, which is the one in the north, or District 5, which is the one in the central and south part of the state.

Q So what did your review of this plan, the State Board of Education plan, tell you about the possibility of drawing an additional majority-black congressional district?

A Well, it suggests that it would not be at all difficult to get a second black-majority congressional district because there are only -- there are eight districts in the school board plan and seven in the congressional plan. And the state is now on record as proving a configuration much like this. So my assumption -- working assumption at the outset was that it [437] would be

possible to draw an additional district based on the 2020 census data.

Q And that's true even though this is an eight district plan and the congressional map is a seven district plan?

A Right. Right, because it's not including some areas that have significant black populations in those two districts.

Q Great. We can take this down now. Thank you.

I want to turn now to the illustrative plans that you produced in your reports.

Can you first describe to the Court what an illustrative plan is?

A Well, an illustrative plan is basically what it says it is. It's just a plan that makes a demonstrative exhibit showing how one might draw a plan given certain sets of parameters. And so I've drawn a total of seven illustrative plans, each of which has two majority-black districts.

Q So when you assess whether the black population is sufficiently large and geographically compact to allow for the creation of an additional majority-black district, is it necessary to consider race?

A Yes. One of the traditional redistricting principles is to be aware that you have – that you are not diluting minority voting strengths when you are developing a voting plan and the underlying districts. So that is – it is always a factor that one must consider no

matter where you are, or maybe not [438] Vermont, but generally speaking, you have to pay attention to it, particularly in the South.

Q And are there other considerations that you take into account when drawing illustrative plans, as well?

A Several. All districts have to be reasonably compact, contiguous, and certainly have to be relatively equal in population for congressional districts. They have to be almost 0. For school board districts, you can be kind of in a plus or minus 5 percent range, probably although some states have more restrictive requirements maybe than Alabama has with respect to the school board.

Q So you reference in your report traditional re-districting principles; is that right?

A Yes.

Q And what are – without listing them out necessarily, what does that generally refer to? What does it mean that term?

A Well, it's just a set of objectives, goals, that want you to have in mind when putting together an illustrative plan or what would ultimately become a real plan. You have to be aware of the underlying demographics of the communities you're working with, and try to produce a plan that is fair and constitutional. And that's what I believe I have done in the case of the seven illustrative plans that I have drawn for Alabama's congressional plan.

Q And you would consider traditional redistricting [439] principles whether you are drawing an illustrative plan for litigation or an actual district plan for a jurisdiction; is that right?

A That's right. Yeah. It's the same.

Q So what specific traditional districting principles did you consider in drawing the illustrative plans in this case?

A Well, I took all of them into consideration. I examined the document produced back in May by the Alabama Legislature outlining the guidelines for redistricting. But a lot of that just incorporates the general concept of traditional redistricting principles. So I didn't prioritize any of them. I tried to balance them.

Q And those principles include population equality; is that right?

A Yes.

Q And what else?

A Contiguity. The districts must be contiguous, either by land or water. I think the Alabama redistricting guidelines allow contiguity by water and not necessarily not by land or road.

And then other factors are compactness. They have – the district has to be reasonably compact. One should also, of course, very important to pay attention to political subdivisions, counties, precinct lines, municipal boundaries, sometimes the latter municipal

boundaries can be very difficult [440] to contend with in Alabama because there are some odd shapes out there. But one should try to keep communities together, jurisdictions together where possible. Obviously, if you start at the county level, which I basically did, so many of the component parts of the congressional plan involve whole counties that you are automatically including political subdivisions in toto cities, except maybe in a few rare instances like in Jefferson County and Hoover, where part of the city of Hoover dips into Shelby County. Most of it's in Jefferson County.

Q I believe you also mentioned in your report the principles of respect for communities of interest and non dilution of minority voting strengths; is that right?

A Yes.

Q So was any one factor of the ones we just mentioned predominant, the predominant factor when you were preparing your illustrative plans in this case?

A Not really. I feel like I gave them equal weighting. It would be possible to prioritize others and come up with different configurations, but perhaps at the expense of one of the key redistricting principles. So you could draw very compact districts, but they might split numerous counties because they're perfect squares. Or you draw a district that is – two districts that are maybe 60 percent black, but they wouldn't be contiguous. That, you know, so you have to balance [441] it.

Q And did race predominate in your development of any of the illustrative plans?

A No. It was a consideration. This is a Section 2 lawsuit, after all. But it did not predominate or dominate.

Q And you were balancing all the traditional re-districting principles during your development of these plans?

A I believe so. I believe so. I was thinking about a lot of different things. And all of those things kind of come together in one or more of these illustrative plans.

Q Let's talk through what – how those principles came to be.

You mentioned population equality. How is this principle reflected in your illustrative plans?

A Well, all of these plans have districts that are for all intents and purposes zero deviation plus or minus one person. One of them is minus two in one instance because I didn't want to split a county. But, you know, there's zero deviation plans. There's no – no disputing that.

Q I think you also mentioned respect for political subdivision boundaries in drawing illustrative plans?

A Yes.

Q And how did you follow that principle in drawing the plan? What was your approach?

A Well, I felt like it was important to either meet or beat [442] the county split achievement of the enacted plan. And I did so in almost all the plans I drew. The enacted plan splits six counties. And I think four of the plans I draw split six counties. One splits five. And a couple others split seven, although one of those splits is only 15 people in the one – in one of the plans involves seven county splits. So arguably, that's not a necessary split and could be left as entirely in Calhoun County instead of splitting Calhoun County.

Q Was it possible to keep the counties whole in drawing these illustrative plans?

A Yes. I do split a county here and there often just to achieve something very close to zero population deviation. So it is very easy to draw districts in Alabama for a second majority-black district that is built off of whole counties. There are splits. One split always. But for the most part, it's a very reasonable compact shape that you end up with when you draw a plan that is – contains two majority-black districts.

Q So am I understanding your report correctly when you say that you have to – you had to split a few counties in order to meet population equality; is that right?

A Oh, yes, you do. At some point, you have to split a county. You could, you know, conceivably draw a plan that maybe split four counties and had a higher deviation. I'm not – it's very unclear just to how far you can go with a [443] congressional plan above and below

zero. Certainly, though, as long as you're in the low teens, that's a zero deviation plan.

Q And certainly your plans are primarily plus or minus one person; is that right?

A Yeah. There's -- there are two that are minus two in one of the districts. And it just did not make any sense at all to go into another county with a split and move one person. Of course, you couldn't do that because the secret ballot. So you would end up having to like move 300 people from one county in one precinct into one county and split the other county so you could put 302 in that. I mean, that's just pointless to do anything other than except a minus two deviation.

Q Mr. Cooper, when you were forced to split a county to achieve population equality, what was your approach in splitting counties?

A Well, I tried to minimize precinct splits. Often that was not possible. Again, because I was aiming for zero deviation. So I think one of my plans splits 12 precincts. And I believe the state splits seven. So I didn't quite hit their number in that particular metric. But all of them are drawn to minimize precinct splits.

I drew a couple of plans that kept the city of Mobile whole. And in that case, both of those plans split around 20 or so precincts. That was partly just to follow the city boundaries of Mobile. So it's not going to create any kind of [444] administrative problem for the city of Mobile because they have city elections there, and they have already got everybody organized by whether

they're in the city of Mobile or in the county as a whole for county elections.

Q So when you did have to split precinct boundaries, did you follow other natural geographic boundaries or political boundaries?

A Yes. I would follow either precinct lines or municipal lines, primary roads, waterways, maybe, in a few instances. Also sometimes in some instances, I followed census block groups, which is an area that has been designated by the Census Bureau as having some commonality. So that's another geographic reference point that I used.

Q Mr. Cooper, you also considered geographic compactness in drawing your illustrative plans; is that right?

A Yes, I did.

Q What are the most common compactness metrics?

A The most common is just eyeballing it as you draw the plan. But if you are really obsessive about it, you can constantly get readouts of various compactness scores. The most widely relied upon are probably the Reock score and the Polsby-Popper score. So you can get instant – virtually instant readouts of what the scores are for any district you're drawing as you're drawing them from within the Maptitude program that I used.

[445] Q Can you describe in layman's terms what the Reock score is measuring?

A Yeah. It's basically measuring the extent to which a district minimizes the area of the district if you circumscribe that district with a circle. So if you drew a circle, which would be a perfect compact score, the Reock score would be 1.8. Of course, if you drew a circle, you would end up splitting counties, splitting precincts, splitting most cities. There may be a couple in Alabama that are circles. There are in George. But, yeah, that would be the perfect score, though, one.

Q Okay. And how about the Polsby-Popper metric? What is that measuring on the compactness when you are looking at compactness?

A That looks at the perimeter of the district. For example, you could have a Reock score that is very close to one because you have drawn a very concentrated area in the district. But with lots of squiggly lines. So the Reock score could be very high, but that would be somewhat misleading, very misleading if you looked at the perimeter of the district and relied on the Polsby-Popper measure where it would score quite low.

Q Both of these metrics kind of capture different aspects of compactness; is that fair to say?

A Right. You have to pay attention to those. They both tell you a little something.

[446] Q So how did you – what was your approach to drawing – what was your approach to

incorporating the compactness principle in drawing your illustrative plans?

A Well, I would occasionally glance at the score, and also I was aware of the score that the state had for their plan. And so I wanted to make sure that my score was sort of in the ballpark of the state score. And I think that's generally the case.

Some of my plans are somewhat lower, slightly lower, but still certainly within the normal range if you look at districts around the country. And in one instance, the last plan I drew, illustrative plan 7 is part of my rebuttal declaration, I think my district is actually higher on a mean average score than the state's plan. And just 1/100th of a point lower on the Polsby-Popper score. So in that case, I have met the same standard that the state has. It would be unfair maybe to call it a standard, because they don't specify what a score should be. It just happens that they had a certain score, and so I looked at that as a possible yardstick.

Q You also considered the principle of contiguity; is that right?

A Yes. One good thing about Maptitude is – and all modern day GIS software, but back in the '90s, not the case. You can get an instant readout as to whether the district is contiguous in its entirety. So I took that into account.

[447] Q And are all the illustrative plans contiguous?

A Yes.

Q You also mentioned in your report communities of interest as one of the principles you took into account; is that right?

A Right.

Q How did you define communities of interest?

A Well, I – and in basically working with a computerized map, and so I consider communities of interest to include political subdivisions like counties and towns and cities. I'm also aware that the minority population in and of itself can be a community of interest. I have some knowledge of historical boundaries. For example, one of my – one of my maps here shows what is kind of generally considered to be the Black Belt of Alabama, the group mainly of rural counties plus Montgomery County in the central part of the state. So I was aware of that historical feature.

So, you know, communities of interest can cross over into many different features, but I guess the political subdivision and the importance of recognizing communities of interest in minority populations, those two items were probably top of mind as I was drawing the plan, with respect to communities of interest.

Q Mr. Cooper, you reference the 2021 redistricting guidelines in your report; is that right?

A Yes.

[448] Q Did you refer to those guidelines before developing your plans in this case?

A I did.

Q I'd like to pull those up. If you could pull up please Plaintiffs' Exhibit 82. And are these the reapportionment redistricting guidelines that we were just talking about?

A Yes. And there's a very good written description of communities of interest in the guidelines themselves.

Q And, Mr. Cooper, I think we have it up on the screen. I think that's where you will find it. I don't believe it's in your report.

Okay. If we could turn – you mentioned the description of communities of interest. If we could scroll down to I think it's page 2 to 3, section –

A I found it.

Q Where are we – j(iii). You see that?

A Yeah. I got it. Line 28.

Q Can you please read the text starting, community of interest is defined as an area? Could you read that? We will highlight that text there. Can you please read that out loud?

A Yeah. Districts shall respect communities of interest, neighborhoods, and political subdivisions to the extent practicable and in compliance with paragraphs A through I, and then the definition. A community of interest is defined as an area with recognized similarities of interests, including but [449] not limited to ethnic, racial, economic, tribal, social, geographic, or historical identities. The term communities of interest

may in certain circumstances include political subdivisions such as counties, voting precincts, municipalities, tribal lands and reservations, or school districts.

Q Thank you. We can take that –

A Oh.

Q Certainly, we can keep reading. If you look at the screen, we have highlighted certain language that I just wanted to focus on for a moment.

A Right.

Q So which of – when you were – you said you were – when you were approaching the communities of interest criterion, you specifically looked at political subdivisions, and such as counties, pre precincts, municipalities; is that right?

A Yes, among other things, that's right. I was balancing things.

Q And there are multiple ways to define various communities of interest across the state; is that right?

A True.

Q We can take this down. Mr. Cooper, in your opinion, as somebody who draws electoral districts for a living, do each of the illustrative plans comply with traditional districting principles as the ones we just discussed?

[450] A Absolutely. I think they are all worthwhile plans that are worth considering as possible remedial plans.

Q And they all balance the various criterion we just discussed?

A Yes. In my opinion. I don't think I went to the extreme in any of them.

Q Mr. Cooper, how many illustrative plans did you draw in this case?

A I drew seven. Six in my initial declaration and seven in my rebuttal declaration.

Q All right. I want to talk a little bit about the common features we see among all of the illustrative plans. And I can – we can just pull up Illustrative Plan 1, just as a visual aid. We can pull up Plaintiffs' Exhibit 18. This is attached as Exhibit G-2 of your report. You can look it on the screen here.

A Yes.

Q Where is District 7 roughly located across your illustrative plans?

A Well, District 7 is to the north. And almost always includes – it always includes Jefferson County, which I think has the largest black population in the state. And also includes part of Tuscaloosa County and part of the city of Tuscaloosa, as well as the rural counties in the western Black Belt, including, of course, Dallas County where Selma is [451] located and Wilcox County. So it's the western and northern district.

Q Where is District 2 generally located in your illustrative plans?

A In the south. Again, also including the western border, but the southern half – normally I think most of the plans for District 2 extend – all of them start in Mobile County and I think go as far north as Choctaw. There may be one that splits. I don't recall. And then west to include Montgomery County all or and in part, or in some instances such as this one, I included districts that go all the way to the Georgia state line, including Russell, Barbour, and Henry. Some of the plans only go as far as Macon and Bullock.

Q Great. And can you specifically discuss the configuration of Mobile County in your illustrative plans?

A Well, in the illustrative plans, all of the illustrative plans include a significant portion of the city of Mobile, or in the case of District 6 and 7, all of Mobile.

In illustrative plan 1, the only – the primary area of Mobile that I excluded from District 2 is the waterfront area of Mobile, which is actually a grouping of precincts that are predominantly African-American and I put into District 1 so that there was a transportation route between District 1 and Mobile County and District 1 in Baldwin County. So you don't need to drive outside of District 1 to get from one part of [452] District 1 to the other. You have a straight route going across U.S. 98 and Mobile Bay. And there are a few precincts that are split along that route I-10 area coming in to downtown Mobile. And that actually is a feature

of most of my plans, except for illustrative Districts 6 and 7 – illustrative plans 6 and 7, which keep all of Mobile whole, extending it right up to the waterfront.

Q This feature of dividing Mobile County, is that something that you observed in the board of education plan, as well?

A Well, yes. The board of education splits Mobile County.

Q Are the Black Voting Age Populations of Districts 2 and 7 in each of your illustrative plans over 50 percent?

A Yes.

Q And that is any-part black?

A That is any-part black, although I think there are a couple maybe that are also over single-race black, as well.

Q So in your report, you also report the – let me take down this figure.

You also report the non-Hispanic single-race Black Citizen Voting Age Population in your report in your illustrative plans, as well; is that right?

A That is true. That's the most restrictive definition one could identify because it requires you not only be non-Hispanic black and over 18, but you also must be a citizen. And it's also four years old. So given that the black population in [453] Alabama is a little bit younger, it's probably historically inaccurate, too. As

those cohorts age, when we see what the non-Hispanic black citizen population is for 2020, it may be a little higher than what I'm reporting because I'm reporting something with a survey midpoint of 2017.

Q So is my understanding – is my understanding correct that the non-Hispanic single-race Black Citizen Voting Age Population is the most conservative accounting for who – who is actually a black voter in that district?

A That's correct.

Q And that it's likely even higher than that given there's some time lag between the citizenship data that is available from the Census Bureau?

A Yes. That's now over four years old. The 2015-2020 ACS special tabulation, that's the name given to the citizenship report that the Census Bureau normally publishes every year about this time, it was delayed due to the pandemic, and I think it's going to become available later this year. I don't even think they have set a date yet. So it probably won't be available until late spring.

Q And are there any other ways that you determined whether black voters make up a majority of Districts 2 and 7 in your illustrative plans?

A Yes. At the time I drew Illustrative Plans 1 through 6, I did not have access to a contemporary voter registration file [454] that I could geocode. But as part of discovery, after December 10th, I received a statewide voter file, which I geocoded and was able to

confirm that the active voter registration rate in all districts that I have drawn, 1 through 6 illustrative plans, as well as illustrative 7 in those plans in Districts 2 and 7, the underlying active voter registration rate for African-Americans as a component of the total voter population is over 50 percent.

Q And in filling out their voter registration forms, do Alabama voters indicate whether they are any-part black or single-race black? How do they indicate their race?

A Well, I've seen the voter registration application, and there's just one choice. You either select black or white or Asian. I think those are the three categories. But you also have the option to check Hispanic. But if you are Hispanic black, you have to make a choice. You cannot say I am Hispanic and black and register in that fashion. You only can check one.

Q I am actually going to pull up Plaintiffs' Exhibit 104, which I believe is the voter registration form we have just been discussing. And let's zoom in right there in the middle left where it says race check one?

A Yes.

Q This is what you are referring to; is that right, Mr. Cooper?

[455] A Right. Right. Because Hispanic is actually an ethnicity.

It's not a race. But in Alabama at least, you can just check one. So you have – if you choose your – if you

choose Hispanic, then you are not really identifying the race.

Q So you only have – you can only choose one box here, and so if somebody checks off black, that's the only you marker that they have checked?

A Right. They have decided they are black, even if they are Hispanic.

Q Okay. Can we – we can pull this down. If we can pull up your supplemental report, Plaintiffs' Exhibit 59, Figure 4, which is on page 12, what does this figure show?

A That shows the geocoded percentage of African-Americans who reside – African-American voters – active registered voters who reside in District 2 or District 7. And you can see across the board there is a black registered voter majority and all seven plans for both District 2 and District 7.

Q So in each of your illustrative plans, Districts 2 and 7 are majority-black using the any-part BVAP metric; is that right?

A Using any-part BVAP metric, using a voter registration as you see here on Figure 4, and also of course, based on the American Community Survey estimates, which are older, but also clearly have shown that the non-Hispanic black citizen population in all seven plans in both Districts 2 and 7 over [456] 50 percent. So there should be no question about that.

Q Okay. Great. We can take this down. Thank you.

We've talked a little bit about how Districts 2 and 7 are configured generally across illustrative plans. What about the remaining congressional districts?

A Well, I drew the other districts to the extent I could in a fashion that was generally following the geographic areas of the state where the enacted plan has a given district. Of course, because I am drawing a new black majority congressional district that there are differences I can't match up completely. But I did by and large keep District 5 in the north part of the state in the first six plans I drew very similar, almost identical to the way the state has drawn it, because it's far removed from the areas that were reconfigured to create the second African-American majority districts. So I was able to keep that one fairly intact.

Others changed, but still in the same general part of the state.

Q And District 4, too, is largely kept in the similar configuration as it is under the enacted plan?

A For the first six districts – first six plans I drew, I took a different approach with the last one, and so District 4 is more compact in that plan as is District 5.

Q How do the illustrative plans compare to the enacted plan on the measure of county splits?

[457] A About the same. The – I drew seven plans. Four of them have exactly the same number of

county splits – six. One has just five splits. That’s Illustrative Plan 7, and then the other two I think have seven splits, which is the same number the plan had in 2011 enacted plan. As I mentioned, in one instance, one of the illustrative plan does have seven splits, but it only involves 15 people in Calhoun County, so arguably it would not be necessary to make that split for an enacted plan. It – I did it just to get it down to plus or minus one. But that seems unnecessary.

Q Okay. Let’s talk a little bit about the compactness of the illustrative plan that’s compared to the enacted plan. I will pull up figure 22 of your initial report. We will pull it up here on the screen, which is on page 36 of Plaintiffs’ Exhibit 1?

A Yes.

Q What does this table show?

A It shows compactness scores for various plans that I produced, as well as the enacted plan and also historical congressional plan, the 2011 benchmark plan and the 2011 board of education plan.

When I did this declaration on December 10th, I did not have a block equivalency file for the 2021 congressional plan or for the board of education plan. And so to avoid some sort of minor discrepancy, I didn’t report the compactness scores [458] for the 2021 board of education – I’m sorry. I had the congressional plan, but not the board of education plan. So that’s why I did not report 2021 board of education in this one. But we got the – we got the updated shape file between December

10 and 20, so that – and my next declaration, the second declaration, I do report the score for the 2021 board of education plan. It's about the same.

Q And, Mr. Cooper, in your experience, is there a bright line standard for when a district is considered compact?

A No. No. And you really have to go beyond compactness scores and take into account other factors, like odd-shaped counties, odd-shaped cities, odd-shaped precincts. There just really is not a bright line rule, nor should there be.

Q So how do your illustrative plans compare, or on the – on these metrics of compactness compared the enacted plan?

A Compared to the enacted plan, a little bit lower. But there's nothing out of order here.

And I was able to pay more attention to compactness in the Illustrative Plan 7 as a result of comments by defendants' expert Mr. Bryan. And decided to see if I could draw a plan that was more compact than 2021 plan. And I didn't draw one that was more compact, but it's clearly as compact.

So we've met that objective, as well, in Illustrative Plan 7.

Q Before we get to Illustrative Plan 7, I know that was in [459] your supplemental report, I believe you wrote in your report here that your evaluation of these compactness metrics indicated that the illustrative

plans were in the comparable range as the other Alabama statewide plans including the enacted congressional plan; is that right?

A That's right. That's right.

Q And you believe that the illustrative plans are comparable in compactness to the enacted plan?

A I think so. I mean, they're not – they're not scored quite as high, but there is no, you know, you could get a blue ribbon I guess for the best possible plan, in terms of the Reock and Polsby-Popper scores. But that doesn't mean that all the other plans are losers. They place.

Q All right. And you mentioned Illustrative Plan 7. Let's pull that one up. Plaintiffs' Exhibit 59, Figure 3. And so this is the chart that explains the metrics for Illustrative Plan 7 as well as the 2021 board of education plans, Senate plan and House plan, which you have added here, as well, additional statewide plans; is that right?

A Right.

Q So why did you draw Illustrative Plan 7?

A Well, the defendants' expert is really almost obsessed with compactness scores, so I felt like, well, you know, better show that you can do two districts in a seven district plan that have compactness scores that are equal to the 2021 plan [460] and not just a few hundredths of a point below. So that's what I did with Illustrative Plan 7. A Reock score – go ahead.

Q I was – I was going to say the same thing you were. In fact, the Illustrative Plan 7 actually has a higher Reock score than the enacted plan; is that right?

A It does. It does. .41, and the enacted plan is .38.

Q And the Polsby-Popper score is I think 100th of a point different; is that right?

A That's right.

Q And you mentioned the report submitted by Mr. Bryan in this case. That's the defendants' expert; is that right? Is that what you are referring to?

A Yes.

Q Was there anything in Mr. Bryan's report change your opinion on whether or not the illustrative plans achieve compactness?

A No, not at all. He used a methodology really an evaluating plans at least in his initial declaration that was flawed because you can't just add up the numbers. But, no, nothing there would have changed my mind.

* * *

[520] Q We can pull – oh, they are down, right? Okay.

Actually, let's go back to the guidelines and the paragraph specifically about communities of interest. I know you were asked a lot about communities of interest, as well. We talked about communities of interest during your direct, as well.

But, Mr. Cooper, would you agree that based on this definition, it is – there are many ways to comprise a community of interest in the state of Alabama; is that right?

A That's true.

Q And, in fact, any individual voter can belong to multiple communities of interest at the same time; is that right?

A Yes.

Q Those communities of interest may conflict with one another at different times; is that right?

A Yes.

Q For instance, one can belong to a one racial community of interest and a different social community of interest. That's possible, right?

A Yes.

Q Or even multiple social communities of interest?

[521] A Yes.

Q One can belong to one cultural community of interest and a different economic community of interest if they have to travel for work to a certain place; is that right?

A Yes.

Q And I think even yesterday there was, you know, we talked about a witness who had attended a magnet school, and that's an example of where one can have one different – a different neighborhood community of interest and they maybe an educational community of interest; is that right?

A Yes. Yes. I did not hear that testimony, but that's true.

Q Okay. So now more than – there's more than one way to define communities of interest and certainly more than one community of interest to which one can belong; is that right?

A Yes. And that's almost always the case no matter where you draw out the plan.

Q We can take this down. Thank you. Mr. Cooper, in your experience evaluating maps, drawing maps, looking at jurisdictions maps, are you aware of any plan that maximizes every single traditional districting criteria?

A No. The key to drawing a good plan is to balance without maximizing.

Q And, in fact, all redistricting plans require certain trade off between the multiple various district – [522] redistricting principles; is that right?

A Absolutely.

Q That includes the enacted plan for the state of Alabama's congressional districts, as well?

A It should.

Q For instance, we can't just comply with counties without also balancing that against one person one vote?

A That's true.

Q And protecting –

A Looking for the golden mean.

Q Now, as you noted in one of your maps, extending a district to protect an incumbent could sacrifice compactness in some instances; is that right?

A That's very true.

Q And all of these plans including your illustrative plans and the enacted plan requires different – demonstrates different ways to balance these varied interests; is that right?

A Yes. Yes.

Q Mr. Cooper, is it your testimony that any one of the illustrative plans that you drew must replace the enacted plan under – if the Court were to find a violation of Section 2 of the Voting Rights Act?

A No. It could. But it must – it's not a must. These are illustrative plans, demonstrative plans. And different plans [523] can be drawn for the remedial plan. That's more often the case, as I explained earlier a little bit.

Q So your illustrative plans basically provide an example of how one could draw two majority-minority

districts, not how one must draw two majority-minority districts?

A That's very true.

Q And whoever ends up drawing a remedial map in the event that plaintiffs were to succeed in their Section 2 claim could choose to balance the various traditional principles that we discussed in the same or different ways as any of your maps; is that right?

A That's true.

MS. KHANNA: Your Honor, I have no further questions. I pass the witness.

JUDGE MARCUS: Any other questions for Mr. Cooper regarding the subject matter we have covered? Anything from our colleagues? Judge Manasco, or I think you had a question.

JUDGE MANASCO: I do.

Does Judge Moorer have any though? If he does, I'm happy for him to go.

JUDGE MOORER: No. Go ahead.

JUDGE MANASCO: Great. So, Mr. Cooper, I understood you to testify that as much as is possible, you tried not to split counties. And then after that, you tried not to split precincts; is that correct? But that some splits were [524] inevitable.

THE WITNESS: I think that's true. Yes. I mean, even state splits seven precincts. I think the

plan – one of my plans splits I believe 12 precincts in six counties.

JUDGE MANASCO: So my question is: When you concluded that you had to split precincts, did you have a consistent basis for deciding where to put the line, and if you did, what was it?

THE WITNESS: To the extent that I could, I tried to follow municipal boundaries, or main thoroughfares or census block groups, which often don't necessarily follow a main thoroughfare, but they are areas that are designated by the Census Bureau as having some commonality. They're smaller than census tracks. But a census track could include as many as eight or nine block groups. And often times, a block group would only have a couple of hundred people in it.

And they're used for certain kinds of analysis because it's the smallest unit for which the American Community Survey actually presents an estimate. So block groups are used for, for example, determining the percentage of children who might be eligible for free school lunches or summer food – the summer food programs. Some of the federal poverty programs actually are designated to identify their areas of service by block groups. So that's where the – that's where the commonality might come from. There are socioeconomic features [525] about those block groups that makes them a unit that can be discerned even if it's not an incorporated entity.

JUDGE MANASCO: Okay. So do you recall any instances when after concluding that you had to split a precinct you decided where to put the line on the basis of race?

THE WITNESS: I don't think so. I mean, I did have to – I did split some block groups in some places, but it – more than anything, when that happened, it was just trying to get to zero deviation. Because precincts in Jefferson County, for example, that are very large, and so they have to be split ultimately to get to zero. Lost my light. It's coming back.

JUDGE MANASCO: Great. Thank you. That answers my questions.

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[549] that Mr. Davis and Mr. Walker have a chance to have a full day to get Bryan on. I only say that if you spill over into tomorrow with *Gingles I, II, and III*, I want to make sure that we have a chance for Bryan to be heard. That won't be a problem for you, Mr. Naifeh?

MR. NAIFEH: I don't believe so, Your Honor. We expect that we will get through all of the *Gingles* experts today. And Mr. Bryan, if we don't get to him today, he would still have all day tomorrow.

JUDGE MARCUS: So I take it, Mr. Davis, Bryan is set up for either late today or all day tomorrow starting in the morning?

MR. DAVIS: Yes, Your Honor. Whether we begin today and finish tomorrow or whether we begin tomorrow, we will be ready to go.

JUDGE MARCUS: Thanks very much, and you may proceed, counsel, with your next *Gingles* witness.

MR. NAIFEH: The Milligan plaintiffs would like to call Dr. Moon Duchin.

MOON DUCHIN,
having been first duly sworn, was examined and testified as follows:

JUDGE MARCUS: Would you be kind enough to state your name for the record.

THE WITNESS: Sure. My name is Moon Duchin, and I am

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[565] BY MR. NAIFEH:

Q Going back to the questions you were asked to consider, were you able to develop any illustrative plans demonstrating whether it's possible to create two majority-black districts in Alabama?

A Yes. My report includes plans that I called plan A, B, C, and D.

Q And did you use any software to develop the illustrative plans?

A I did. I used software in a few ways. As a first step, as an exploratory step, I used algorithms developed in my lab to create – to generate large numbers of different possibilities that would show me if it was possible to find two majority-black districts. And I found that it was possible. My randomized algorithms found plans with two majority-black districts in literally thousands of different ways.

Convinced that that was possible, I then turned to drawing by hand. And I would emphasize that the role of the maps found by the exploratory algorithms was just then inspiration. Seeing that it was possible and with some of the ideas about how it was possible, I then started with a blank slate and drew by hand.

I will say a little bit more about that. The hand drawing was done first with the second software package developed in my lab. And here, let me mention that all these software packages [566] are public, open source, available for inspection by the public and by counsel at any time.

So the second package is called Districtr. And in it members of the public can draw their own plans. And we use Districtr – I use Districtr to draw plans at the level of VTDs or precincts. We haven't talked about those yet. But those are the units of census geography that look a lot like the precincts that people vote in.

So the second stage was to draw at the VTD level. And then finally, to balance population, I used finer tools, and in particular, we have a number of Python

packages that we use to see the demographics down to the block level, and to understand the properties of plans.

Q And you mentioned Python. That is the – is that a programming language?

A Python is a common open source programming language. And it permits many packages, such as what are called Pandas for working with large data frames and GeoPandas for working with Geo-spatial data. I would say that Python is the language of choice in data science.

Q Is Python frequently used in redistricting?

A I would say that it is.

Q You mentioned that when you hand drew plans, you started from a blank slate. So just to clarify, does that mean – did you – did you start from an existing plan?

[567] A No. Only used some of the concepts I had seen in plans that were found by the exploratory algorithms, but literally started with an empty map of the state when drawing.

Q Okay. And what kind of data did you use to develop the illustrative plans?

A Again, here, as in my research, by far the largest data set is the one from the U.S. Census Bureau, called the PL 94-171. That is block level demographic data that the bureau was directed to compile

specifically for redistricting purposes. That is the express function of this data set.

In addition, there are number of other highly useful Census Bureau products, such as their TIGER/Line Shapefiles that give you the geographical units. Their American Community Survey, which is an annual survey from which we extract information about Citizen Voting Age Population and so on.

Q Okay. Are these the same types of data that you would normally use to create a redistricting plan?

A Definitely.

Q And you mentioned census geography such as census blocks. What are census blocks?

A Okay. So the census maintains a geographical hierarchy of units, which has a central spine with six levels. It starts at the nation, as you would expect, subdivides into states, from states to counties, within counties the next unit is called census tracts. Those divide into block groups which divide [568] into blocks.

So blocks are the smallest units of census geography. They're sometimes called the pixels of redistricting. They're the littlest units that you can use as building blocks. There are a great number of them. In the 2010 census there were over 11 million census blocks in the nation. They range in population from 0. They're a substantial number of census blocks 0

population to typically a few hundred people, although sometimes you will find census blocks with much larger population, such as if there are group quarters like prisons or dormitories. So that is a brief description, I hope, of census blocks.

Q And you also mentioned VTDs. Can you tell us what a VTD is, what VTD stands for and what a VTD is?

A Sure. There's a redistricting data program, an office within the Census Bureau, and they undertake every 10 years to communicate with the states and collect information on the boundaries of precincts, which are, as we all probably know, units of election administration that are maintained typically at a local level.

And so the bureau collects this information and compiles them into a product called VTDs. They say that stands for voting district, but most people call them voting tabulation districts, VTDs. And so you should think of those as the Census Bureau's version of local election administration units. [569] That makes them particularly useful for redistricting because since they're in the census hierarchy, we can accurately measure demographics, but they're also well-coordinated with local elections, local election administration.

Q And did you use beyond the information from the Census Bureau, did you use any other information

or consult any other information when preparing the illustrative plans in this case?

A I did. And some other sources are listed in my report. But in particular, I consulted the enacted plans from the state, which I obtained from the state's web sites. I looked in particular at the congressional plan, of course. But also, for example, at the school board of education plan prepared by the state, enacted.

Q And did you consult the state's redistricting guidelines?

A I did. I did consult the state's redistricting guidelines.

Q You mentioned the State Board of Education plan. What did – why did you obtain information from the State Board of Education plan?

A The board of education plan was of particular interest to me because it's an eight-district plan. We've already heard that the congressional district plan has seven districts. But the board of education plan has two that are majority-black. So I was particularly interested to see how the state would con instruct a second majority-black district.

[570] Q And were there other features in the State Board of Education plan that were relevant in drawing the illustrative plans in this case?

A One of the things that you'll notice across my plans is the – having to do with Mobile County and

with the city of Mobile. And I was interested to see how that would be handled in a second majority-black district. And so I looked to the board of education for an example.

Q Is it your regular practice to look at the redistricting plans for other governmental bodies in determining how to draw an illustrative plan for a different set of districts?

A Yes. Definitely. I would call that a standard practice of mine.

Q Okay. And you mentioned the Census Bureau's American Community Survey or ACS. What did you use ACS data for?

A In this case, I only used ACS data to estimate what's called BCVAP or Black Citizens Voting Age Population as described in my report. I suppose I should clarify. Not only Black Voting Age Population, but the Citizens Voting Age Population of various groups.

Q Okay. How did you use the data and the information that you mentioned to create the illustrative plans?

A Well, as we discussed, my main question was whether I could make plans that had two majority-black districts while showing great respect for the other additional districting [571] principles. And so the main way that all this data was used was, in fact, many of the redistricting principles touch on census and demographic data. But in particular, I needed to make

sure that the districts I was creating would be over 50 percent black.

Q Okay. And just sort of mechanically, how do you create a redistricting plan using census data?

A Well, as I described, when drawing, I started out with the District program, which lets you select a paint brush like tool and start to color in the VTDs of the state. You can also turn on a feature that captures whole counties. And because county preservation is important, as I'm sure we'll discuss, I tried to take whole counties into a district whenever possible.

So typically the way you complete a plan is by first drawing with the largest units counties in this case, getting to a place of very coarsely balanced population, and then going to the next smaller units to tune and balance. And so in this case, from counties, the next units would be VTDs.

You can draw a very reasonably balanced plan, a 1 percent balanced plan at the VTD level. But since, as I'm sure we'll discuss, it's the standard practice to balance congressional districts much more tightly. At the last stage, you then break those VTDs down to blocks in order to tune the population.

Is that what you had in mind?

Q Thank you. Yes. That's helpful.

[572] A Okay.

Q And so you – is it fair to say that you drew your illustrative plans at the census block level?

A In the end, yes. I found that it was necessary to break some VTDs in order to balance the population. And so I did so at the block level, yes.

Q Okay. And when you tune to the block level and see VTDs and then tune the population of block level, how do you decide where to split precincts?

A Right. So when splitting precincts – so, first, I tried to keep as many counties whole as possible but had to break some counties. And then when you decide which precincts to split, those would typically be within the already split counties.

By far, the largest consideration when splitting precincts is one of balancing the population. And so by far, the primary consideration is the total population of those blocks so that you can find just the right sizes to balance the population.

Q And when splitting precincts to balance the population and selecting blocks to balance the population, do you ever decide where to split the precinct on the basis of race?

A I would describe the priority order this way: When you have to split a VTD looking to balance population, as I just said, by far, the first thing that I look at is the total population of the blocks. After that, the

next consideration I [573] had was compactness, trying to make kind of less eccentric and more regular boundaries between districts.

I – over the course of the many draft maps made, I did sometimes look at race of those blocks, but really, only to make sure that I was creating two districts over 50 percent. Beyond ensuring crossing that 50 percent line, there was no further consideration of race in choosing blocks within the split VTDs.

Q Are you familiar with traditional redistricting principles?

A Yes, I am.

Q And what are they?

A Okay. Well, there are many. But I would identify what I call a big six.

So let me very briefly outline them. First is population balance, or one person one vote. And we've discussed that already. That's the idea that we should balance total population across the districts in a plan. The next and also a federal requirement is minority electoral opportunity. And that's through the lens of the Voting Rights Act of 1965, as well as equal protection in the constitution.

So those are two nonnegotiable federal requirements.

Next, I might list two that are fairly easy to measure. And those – although not unambiguous, but still readily quantifiable, and those are compactness and

contiguity. And [574] then we come to two that are a little bit I would say harder to measure, but nonetheless very important. And that's respect for political boundaries. By that, we usually mean a priority on keeping intact the counties, cities, and towns generally the municipalities, of a state. And finally, respect for communities of interest.

Q And did you consider those principles when developing the illustrative plans?

A I certainly did.

Q Did you also consider the redistricting guidelines adopted by the state's reapportionment committee?

A I did.

MR. NAIFEH: And, Mr. Ang, can you please pull up Milligan Exhibit 28? This is Document 88-23.

BY MR. NAIFEH:

Q The committee's guidelines include additional criteria beyond those you just mentioned?

A They do. And if we look at this, we can see the whole first page concerns itself with population and minority opportunity to elect and equal protection. And then if we go on to the next page, that very next on the list is contiguity and compactness, which I've mentioned. At that point, this document gets to Alabama state constitutional requirements, which repeat some of the previously listed concepts, and cite, you

know, once again cite contiguity population balance, [575] discuss the number of districts.

After that, we get to J, which within J, we introduce other principles that are frequently discussed in redistricting, such as consideration for incumbency. This is where communities of interest are cited. And if we advance to the next page, we will see in part (v) of part j. mention of preservation of the cores of existing districts.

I would note that in my reading of this, I noticed in part G here that the criteria identified within j. are stipulated not to be listed in priority order.

To me, the reading that I took from this, and I think the reasonable reading is that the ones listed before part j. should be regarded to take precedence. And so I did take this document quite seriously in listing the federal requirements first, followed by compactness and contiguity with concepts like incumbency consideration and core preservation clearly lower ranked.

Q So in your understanding, the committee guidelines create a higher hierarchy of certain principles over others?

A I think they do. And I think they do so in a manner consistent with what I see in numerous other states.

Q Thank you.

MR. NAIFEH: Thank you, Mr. Ang. We can take this exhibit down.

BY MR. NAIFEH:

[576] Q Dr. Duchin, is it possible that different traditional redistricting criteria might conflict with one another?

A Yes. It's not just possible, it's common place. The criteria are often intention. And to give just a few examples of that, I think it's clear from what I said a moment ago that exact population balance requires you to break up units and so its intention with respecting political boundaries pretty clearly.

Another classic frequently observed example is that compactness can be intention with communities of interest. If you have a well-identified community with important shared interests that itself is residentially located in kind of elongated configuration, then you have a choice to make because keeping that community whole might come at a cost to compactness of your district. That's a frequently observed instance among many where the principles can be in conflict.

Q In your experience, is it common to have to make trade offs to – in observing different redistricting principles?

A Absolutely. I would say – go so far as to say that redistricting is all about those trade offs.

Q When you prepared the illustrative plans in this case, did you use – sorry. I've got that covered.

Did you – are the illustrative plans you developed the only potential plans for a seven-member congressional district in Alabama?

[577] A Certainly not.

Q Are the illustrative plans that you developed in this case the only potential plans for a seven-member congressional redistricting plan in Alabama?

A They're far from the only plans. They're far from – as you heard me say before, far from the only ones with two majority-black districts. I've seen thousands of examples, and I know that overall, the universe of possibility in Alabama is in the many trillions of trillions. So we're talking about very large number of possible plans over all.

Q And so just to follow up on that, if you had a different set of redistricting – of priorities among the redistricting principles, you could draw – you would draw a different plan that still contained two majority-minority districts; is that right?

A That's absolutely true. And so as you heard me say a moment ago, after the – what I took to be nonnegotiable principles of population balance and seeking two majority-black districts, after that, I took contiguity as a requirement and compactness as paramount following the guidelines.

It would be completely reasonable to take plans like mine to take districts, something like my Districts 2 and 7, which then kind of forces District 1 to look more or less as it does. But with the remaining four

districts, there's quite a lot of latitude. You could adopt, then, a priority on maintaining [578] district cores, and easily produce a plan that performs better in that regard, but you would do so at a cost particularly to compactness.

So there are certainly trade offs. And I took the reading of the guidelines to put a very high priority on counties and compactness. But while retaining two majority-black districts, many other choices could be made.

Q And in seeking to draw two majority-minority districts, was your goal to maximize the Black Voting Age Population in those two districts?

A Certainly not. We've seen from the state that it's possible to have a substantially higher BVAP in a district, and I can tell you that it's possible, while having two districts to still have a substantially higher BVAP in a district, that was simply not my goal.

Q And were there times in drawing the illustrative plans when you made the decisions that had the effect of reducing the Black Voting Age Population in one of the minority-majority black districts in order to satisfy other redistricting principles?

A Definitely. I took, for example, county integrity to take precedence over the level of BVAP once that level was past 50 percent.

MR. NAIFEH: Mr. Ang, can you please bring up Exhibit M-3? This is Document 88-3, and turn to page 7.

[579] Dr. Duchin – Mr. Ang, could you zoom in on the table?

BY MR. NAIFEH:

Q Dr. Duchin, please take a look at Table 3, which is labeled, Demographics Broken Out As a Comparison of Black and White Population.

A Yes.

Q What does this table show?

A This table shows the BVAP, the WVAP, BCVAP, and WCVAP. In other words, the black and white shares of Voting Age Population and Citizen Voting Age Population by district in each plan.

Q And in each plan, that includes in the enacted plan HB-1?

A That's right. HB-1, as well as my plans A through D.

Q Okay. And turning down on the table labeled BVAP at the top left, what does this table show?

A This shows that – as I said earlier, HB-1 has one majority-black district, and then drops off to around 30 percent while my plans A through D all have two districts over 50 percent black.

Q And what definition of black is used to calculate these percentages?

A Yes. So here still I'm using that expansive definition that's sometimes called any-part black.

Q And then looking over to the table at the top right labeled BCVAP, what does this table show?

[580] A So this is the black share of Citizen Voting Age Population. I will note that sometimes in voting rights enforcement, we look to Citizens VAP, CVAP, because it's taken to be a closer proxy to the electorate because citizens are eligible to vote. And so here I look at BCVAP and find that it – generally similar that HB-1 still has only one majority-black district, and all four of my plans by this way of counting still have two.

Q And in the BCVAP table, which definition of black was used to calculate BCVAP?

A So here I'll just say very briefly, I used the ACS to calculate the citizenship share of adults for each racial group and then applied that to the any-part black population.

Q So, again, using – it uses any-part black to estimate the citizenship share of each district?

A To be exactly precise, the share, the rate of citizenship does not use any-part black because it's done from the ACS, which doesn't have the ability to count any-part black, so that citizenship rate is used with a single-race black definition, and then is applied to the any-part black map of the state.

Q Okay.

A This is described in detail in the appendix to this report.

Q Okay. And using the any-part black category for BVAP, are there two districts in each of your four plans that contained

* * *

[590] plans for those stray blocks?

A I did. So the corrections reassigned the blocks and then rebalanced the population, as I said.

Q Okay. And so do you have an opinion about whether plaintiffs' illustrative plans adhere to the equal population principle?

A They do, even by the strictest possible – mathematically possible population equality.

Q Okay. So you testified earlier that you took into account geographical compactness when you developed your illustrative plans. How do you measure compactness?

A Yes. Well, this is one of the areas of my specialization. So there are vast number of metrics in the literature. I've counted more than 35 in the political science and geography, scholarly literature, for measuring compactness.

But by far, the most common in redistricting is the use of what's called the Polsby-Popper score. And particularly, the average Polsby-Popper score over the districts in a plan.

That's one of three compactness metrics that I selected to highlight in my reports.

Q And what were the other two?

A The next most common in redistricting is a metric called Reock. It's R-E-O-C-K. And it's a metric that asks how different the shape is from the smallest circle that can contain it. So like Polsby-Popper, which compares area to [591] perimeter, both Reock and Polsby-Popper depend on the contour or the outline of the district. So I sometimes refer to them as contour-based metrics. So a second metric would be to take the average Reock score over the districts in a plan.

I also chose to highlight a third metric, which I think is becoming more popular in redistricting. And that is a discrete metric called cut edges. In this case, block cut edges. It looks as how the units, the blocks are separated from one another in the plan.

Q Okay. And is any single – any one of those quantitative measures of compactness dispositive as to whether a given district or a plan is – can be called compact?

A No. And I would note the interesting thing for someone like me who studies geometry, the interesting thing is that these metrics really do measure different things so that for any 2 of the 35 metrics, it's fairly easy to come up with a plan, an example, the shape that looks compact by one of the metrics, not so compact by the other.

And so they really do measure somewhat different things. And there's a choice of emphasis when you're talking about compactness.

For the purposes of this case, I focused on that average Polsby-Popper score that I mentioned before because it is, by far, the most common in redistricting.

Q And why did you in this case focus on the Polsby-Popper [592] score?

A So as I just mentioned, it's the most common. And so that was the choice of focus. But I can also mention what Polsby-Popper focuses on is how erratic the boundaries are of a district. And so it does have a relationship to how the districts look to the eye.

Q And did you calculate compactness measures for each district or for the whole plan?

A I did both. In the report, I give the average scores, but my back-up materials contain scores for every district in the plan.

Q And why did you calculate average scores for the whole plan, or why did you choose to report those in your report?

A Well, it's a standard way to make one plan comparable with another. If you report the set of – in this case, seven numbers, some will be higher, some will be lower. And so a standard way to make them comparable, which is reasonable for my point of view, is to average the numbers.

Q Okay. And so in this case, did you calculate an average compact Polsby-Popper score for each illustrative that you created?

A I did. I computed the scores for plans A through D and for HB-1.

Q And did you have occasion to compare the Polsby-Popper scores for your illustrative plans to the HB-1 plan?

[593] A I did. All four of my plans are significantly more compact than the state's enacted plan by this common metric, the average Polsby-Popper score. And perhaps it's worth mentioning also significantly more compact than the enacted plan from ten years ago.

Q And did you have also have occasion to compare the district level Polsby-Popper scores in the illustrative plans to the HB-1 plan?

A I did. In my plans, it is consistently the case that Congressional Districts 1 and 2 are the least compact. That's because they're elongated in an east to west fashion.

Giving them scores of roughly, if memory serves – we can pull up the numbers, but if memory serves, roughly .15. I will note that those scores, which are my least compact districts, are comparable to and in some cases better than the least compact district in the current enacted plan and the enacted plan from ten years ago.

Q Okay. And is there a particular reason why Congressional Districts 1 and 2 have lower compactness scores in your plans?

A There is. As I'm sure we'll discuss, District 2 is elongated in east to west fashion in order to contain as much as possible of the Black Belt. That Black Belt of 18 counties, it was an express goal of mine to keep that as much as possible within majority-black districts.

By doing that, because of the way the population is [594] distributed in the state, it creates District 1 to the south, which is also very elongated east to west.

So the goal of securing representation in a majority-black district for the Black Belt is what creates those relatively low, but clearly still acceptable compactness scores in Districts 1 and 2 in my plans.

Q Okay. And although they're lower than other districts in your plan, in your opinion, are Congressional District 1 and Congressional District 2 reasonably compact in all of your illustrative plans?

A Yes. I think they are. And I'll just repeat they're comparable to or better than the least compact districts in the state's enacted plan that was voted through recently, as well as the state's enacted plan from ten years ago.

Q And turning now to communities of interest, you testified earlier that another redistricting principle you bore in mind when drawing your illustrative plans was communities of interest?

A Yes.

Q How do you define a community of interest?

A Well, in this case, the Alabama guidelines have language concerning communities of interest that I found to be apt and to be consistent with definitions in other states.

If I recall correctly, the shared interests that constitute a community per the guidelines include common [595] economics, common racial and ethnic characteristics, common history, common culture and so on. These are some of the – and if we want to – that’s a paraphrase, but I would be happy to take a look if we wanted to pull that out in order to be more precise.

Q And in this case, what information did you consider when trying to preserve communities of interest?

A I will note that in some states the state or a state-affiliated office undertook a community of interest collection process from the public in which members of the public, including legislators were invited to identify communities through mapping software.

I’m not aware of any such effort in Alabama. And I did check the state’s redistricting website to see if any such thing had been undertaken.

Not finding a collection process like that, it’s hard to develop a metric around public testimony. And so I relied on two examples, two kinds of communities of interest that I have already alluded to. And one is the cores of cities in Alabama, which I believe clearly meet the definition of a community of interest provided in the guidelines. And the second is the Black Belt across

the state, which I also believe clearly to meet the definition provided in the guidelines.

Q Okay.

MR. NAIFEH: And, Mr. Ang, can you pull up exhibit [596] M-28? This is again the redistricting guidelines Document 88-23.

Mr. Ang, can you scroll down? I believe it's the third page. Back up one.

THE WITNESS: There we are.

BY MR. NAIFEH:

Q It's at the bottom of page 2. Is that the definition that you were referring to earlier?

A Yes. And so recognized similarities of interests, including but not limited to ethnic, racial, economic, tribal, social, geographic, or historical identities.

Exactly.

Q And it says there at the bottom that it can include?

A It can include in certain circumstances political subdivisions, such as counties.

MR. NAIFEH: And can you go on to the next page, Mr. Ang?

THE WITNESS: Great. Counties voting precincts, municipalities, tribal lands and reservations, or school districts.

MR. NAIFEH: Thank you, Mr. Ang.

BY MR. NAIFEH:

Q And does – in your understanding, does the community of interest principle mean that an entire congressional district must form a single community of interest?

[597] A No. And I think that's sometimes a common misunderstanding. I don't think that respect for communities of interest means that every district should itself be a single unitary community. That wouldn't work because communities can be of all sizes and are not necessarily the exact size of congressional districts, which after all, are very large, over 700,000 people.

Instead, I believe that what it means is that communities should be taken into account when you draw so that either they're kept whole within a district, or if it's appropriate, split among several in a way that amplifies their opportunity to be heard by their representative.

Q So, in other words, there may be more than one community of interest in a given congressional district?

A There certainly will, without fail, be more than one community of interest within a congressional district.

Q And are the criteria for or the definition of community of interest, is that an objective definition?

A Well, as it's written in law or in guidelines like these, it's, of course, somewhat vague. There have been efforts to try to make it more concrete and more quantifiable, that usually start with a public collection process, as I mentioned a little earlier.

Q So when you are serving the public about their communities of interest, is it possible that different people might [598] identify with different communities of interest?

A It is a certainty. When you ask people about their communities, the nature of community is that you will get many different kinds of account. Some of them will be continent and will allow you to create a kind of small consensus so that you have a community supported by the testimony of many people. But inevitably, on even more than what some of the other principles, there are trade offs, because communities can and will overlap. So sometimes it's impossible to preserve one without breaking another. So even within this principle, there are trade offs to consider.

Q When developing your illustrative plans in this case, what communities of interest did you consider?

A So the two communities of interest that I prioritized are the two that I mentioned earlier, which are urban cores and the 18 counties that constitute the rural Black Belt.

I will mention that I am aware that there are many, many other important and salient communities

in Alabama, and I prioritized these two that I believe to clearly and unambiguously correspond to the language in the guidelines.

Q And in your opinion, do the illustrative plans respect communities of interest?

A Yes. My plans A through D are designed to do so. And one way that they do so is by taking upwards of 16 out of the 18 Black Belt counties in each case and keeping those in [599] majority-black districts.

Q And you mentioned also that municipalities or counties or other political subdivisions can also constitute a community of interest. Did – in your opinion, do the illustrative plans respect those communities of interest?

A They do. There's a marked respect not only for counties, which I think is unmistakable in the plans, but also for municipalities.

And I will note there that because the technical boundaries of municipalities can be very erratic, that on a community level, it's often that urban core that's most salient from a community.

Q You also testified the guidelines – the redistricting committee's guidelines include as an additional criteria the cores of prior districts?

A Yes.

Q What does preserving the cores of prior districts mean?

A Informally, it means that new districts should resemble the previous districts. Often, that's measured in one of two ways; by looking at the area overlap or the territorial overlap between a new district and its corresponding its counterpart in the older plan, or by looking at the population that's either retained or displaced.

Q And do the illustrative plans preserve the cores of prior districts?

[600] A No. I would characterize my Illustrative Plans A through D as not particularly preserving the cores of the prior districts.

Q And why is that?

A I judge it to be impossible to have as high of a core preservation as, for instance, you see in the newly enacted plans, while also having two majority-black districts. Just to expand on that briefly, since the older plan has one majority-black district, and then a significant drop off to, you know, about 30 percent, it's again mathematically impossible to create two majority-black districts without a significant level of population reassignment from one District to another. Because I regard the protection of minority electoral opportunity to be a nonnegotiable federal requirement, that necessitates a significant level of core displacement.

Q Okay. And so that – and then in the outside of those two majority-black districts, were there – can you explain why your plans don't preserve cores to the extent it's of the enacted plan?

A Yes. Absolutely.

So I read the guidelines to put core displacement as a priority below compactness and the preservation of counties, in particular compactness. And so I would note that one could take my illustrative plans, retain something very much like my [601] Districts 2 and 7 and therefore District 1, and with the remaining four districts, one could adopt a different prioritization. And indeed if core preservation were elevated at that point, it would be quite easy to reconfigure those four districts to more resemble the previous enacted plan. I will just note that you would be doing so expressly at the cost of compactness.

Q So, in other words, you read the guidelines as requiring compact districts more than core preservation, but if you read them the other way, you could preserve cores to a greater extent than you did?

A I think it's difficult to read them another way, but if you elected to prioritize cores over compactness, you certainly could do so, and that would greatly improve those displacement numbers in my plan while maintaining two majority-black districts.

Q And you also testified earlier that protecting minority voting strength is a traditional redistricting criteria. What does it mean to protect minority voting strength for avoid dilution of minority voting strength?

A Well, in the context of *Gingles I* demonstration, it means to draw districts that have a majority of – in this case, Black Voting Age Population while still

being maximally respectful to the other traditional principles. In other words, in other words, what's at issue here is the opportunity [602] to elect candidates of choice.

Q And what do the illustrative plans do to unable that opportunity?

A Well, in particular, here they pass the threshold of 50 percent plus 1, so they create two majority-black districts in which I believe together with the evidence of other experts we can see there will be a clear opportunity to elect candidates of choice.

Q And so based on what you have told us so far today, did you form an opinion as to whether the black population in Alabama is sufficiently numerous and geographically compact to comprise a majority of voting age population in two congressional districts?

A I did. As we heard, there were two majority-black districts, and the plan as a whole is highly respectful of other traditional districting principles, and in particular, is highly compact. The compactness of the plan is itself a demonstration that the population is compact enough to do so.

Q And are the illustrative plans the only potential remedy for vote dilution in Alabama's congressional plan?

A They are far from the only possible remedy, and I leave it to the Court to determine whether majority-black districts are necessary as a remedy. And

here, they're clearly demonstrated to meet the *Gingles I* requirement.

[603] MR. NAIFEH: Thank you, Dr. Duchin. I have no more questions at this time.

JUDGE MARCUS: All right. It looks to me like this might be a convenient time for our break. I have 10:35 your time in Alabama Central Standard and 11:35 in Eastern Standard Time. We'll take a 15-minute break.

I take it, Mr. LaCour, you are going to conduct the bulk of the cross, or the cross for the Secretary of State?

MR. LACOUR: That's correct, Your Honor.

MR. NAIFEH: Your Honor, actually, there was one more issue I wanted to raise with Dr. Duchin.

JUDGE MARCUS: Sure. Let's go back so you can finish your direct, and then we'll break. Fire away.

MR. NAIFEH: Mr. Ang, can you please bring up Exhibit 48, M-48, that's Document 92-1? And I will note for the Court and for the record that this is one of the exhibits that defendants have objected to, and I would like to lay the foundation for getting it admitted.

JUDGE MARCUS: Sure.

BY MR. NAIFEH:

Q Dr. Duchin, on the screen is the document that has been marked as exhibit M-48.

MR. NAIFEH: Mr. Ang, could you scroll through? I think it's three pages.

BY MR. NAIFEH:

* * *

[622] A I did. I would clarify or expand that I took population balance and minority electoral opportunity to be nonnegotiable requirements, and after that, took contiguity and compactness to be highest ranked following the Alabama guidelines.

Q Okay. I'd like to touch on that. I mean, you also stated on page 2 – I will go ahead and pull this up.

I may have too many windows. I apologize.

JUDGE MARCUS: Take your time.

BY MR. LACOUR:

Q All right. Are we looking at – this is Milligan Exhibit 3. I am going back to page 2. So this final paragraph.

JUDGE MARCUS: Just so we're clear for the record, this is Dr. Duchin's one of her reports, right?

MR. LACOUR: Right.

BY MR. LACOUR:

Q This is your initial report, Dr. Duchin, Milligan Exhibit 3. You said, These two majority districts can be drawn without sacrificing traditional districting principles like population balance, contiguity, respect for political subdivisions like counties, cities and towns, or

the compactness of districts, and with heightened respect for communities of interest.

Now, you don't reference what I think you refer to as one of your six districting criteria, correct.

[623] A Let's see. One, two, three, four, five and so, of course, this doesn't include what was in bold in the previous sentence, which is minority electoral opportunity.

Q Correct. So I didn't – when I had read this initially, I did not read that as one of the goals that was necessarily informing the drawing of the maps, but so – but you did state before that was one of your nonnegotiable criteria, correct?

A Correct. I would call it the principle goal, and as you heard, the principle assignment in this case was precisely that question.

Q So that – how did that work with the other five criteria?

A Great. So the question is one of possibility as I have highlighted repeatedly. And so though you have trade offs among the principles, the goal was to create two majority-black congressional districts while balancing the other principles as well as possible. Is that responsive?

Q It's helpful. I think so.

So you talked before about keeping counties whole versus strict compliance of one person one vote. And

it's almost impossible – likely impossible in most plans to do both, correct?

A Correct. Fundamental trade offs exist.

Q So when you decided to strictly add here to one person one vote, that criteria took precedence over keeping counties whole?

[624] A That's right. Counties are split in order to comply with one person one vote.

Q Okay. Why did you decide to comply so strictly with one person one vote?

A The practice as I mentioned earlier in a majority of U.S. states is to attain de minimus population deviation. And that's regarded as dominant practice in the field. And so I undertook to achieve that level of balance.

Q If Alabama's guidelines had provided greater deviation that made that possible of the 2021 map, or if the 2011 map had allowed for greater deviation, would you have potentially allowed yourself more deviation?

A I still think that as a matter of federal law, it's safest to minimize the population deviation.

Q Okay. Did you choose to stick with the strict one person one vote approach for your plans because that's what the guidelines mandate?

A But not specifically, although it's – it is compatible certainly with the language in the guidelines.

Q Okay. Next, contiguity. I mean, you adhered fully to the state's contiguity principle, correct, with the caveat, that they're the stray blocks that we have – that you discussed earlier, correct?

A That's right. So if we're talking about the corrected plans, I believe those to comply fully and to the letter with [625] the state's description of the contiguity guideline.

Q Okay. And earlier on, you had mentioned that one of the first steps you took in determining whether two majority-black districts could be drawn in Alabama was – both computers, if you will, and an algorithm to generate numerous maps; is that right?

A That's correct.

Q And my limited understanding is that what is that with these algorithms, you can plug in certain constraints, correct, or certain conditions to make a map, to make it more likely some types of maps will be either spit out by the algorithm, and certain types of maps will not be produced by the algorithm; is that fair?

A Yes, that's right. Our algorithmic code base allows for both constraints in the form of thresholds and also allows you to program a preference for a certain kind of district over another.

Q Okay. So do you – going back to one person one vote. Was that one of the constraints you put in place on the front end, say only give me maps that give me minimal deviation?

A To be precise, the constraint was 1 percent from ideal size.

Q Okay. And by there being less constraining of a constraint than minimal deviation, does that produce a greater number of maps – greater number of possible maps?

[626] A There's no question. In particular, since as I mentioned earlier, those runs were done at the whole precinct level, at the VTD level, I believe it to be either impossible or statistically nearly impossible to get one person balanced from whole precincts on a random basis.

Q Okay. Is contiguity one of the constraints you plugged in at the outset?

A Absolutely. The algorithm enforces contiguity at the VTD level.

Q Right. Next in the guidelines, you noted that they call for districting plans that respect communities of interest, neighborhoods and political subdivisions, and you stated and – I'm sorry. I will pull this up. Make sure I'm quoting you accurately here. Or at least giving the correct page numbers. This is again from your report page 53.3, you stated – in order to make seven finely population tuned districts, it's necessary to split at least 6 of Alabama's 67 counties into two pieces. Does that sound right?

A Okay. To be precise, yes. You have to split six if you are splitting them two ways. It's possible to split fewer than six if you allow for more pieces. At the

extreme, you could imagine just a single county split if it's got seven pie wedges in it.

Q Got it. So there need to be at least six county splits?

A No.

[627] Q Let me rephrase that.

A Sorry.

Q At least six times, a county must be split to get the one person one vote minimal deviation that we're looking for, right?

A I think a precise way to phrase it would be that there have to be at least six additional county pieces as a way of phrasing.

Q And that's simple math that counties rarely line up where – you're unlikely to have a county that's exactly 717,000 whatever people in it to form that one perfect district, so you are going to probably have to split it at least a little to equalize it, right?

A That's the idea, yes.

Q Okay. And I think you said earlier today that you tried to take whole counties into a district whenever possible; is that right?

A Definitely.

Q But you did have to break some counties. And first, I guess to return – like what did you mean by

whenever possible? You didn't just mean six counties, six county pieces, correct?

A Right. The way I would characterize that is that in the process of drawing, particularly when you start with a blank slate, you encounter decision junctures at many points in the process. And at each of those decision junctures, I would try [628] to keep a county whole, when possible. But in the course of drawing, there are many such decisions to make.

Q You said that you did give it a – you said very high priority for minimizing those splits, right?

A For preferring lower numbers of splits, definitely.

Q Okay. Briefly, I want to talk about splits in your VTDs. I think you said you had sort of a priority for how you did that or how you determined which VTDs and precincts? To make it look cleaner in the transcript, you had a priority for which precincts you would decide to split; is that fair?

A I would say it a little differently. Is that as I described earlier, I split VTDs late in the process.

Q Uh-huh.

A And I described a little bit the way of deciding where to do so.

Q Okay. And at least one of the things you looked at was to make sure that you were still creating two districts of over 50 percent Black Voting Age Population, correct?

A Yes. That was high up on the list in my assignment.

Q Okay. Did that same consideration drive any of your decisions to split counties?

A Do you mean of whether to split counties or where to split counties?

Q I would say let's start first with how many counties you split?

[629] A Okay. I have four demonstrative or illustrative plans, and they split different numbers of counties. If I recall correctly, my plan D splits only five. And so there's a series of decisions embodied differently in those different plans. Those plans respect various kinds of decisions at those junctures I referenced earlier about which priorities to emphasize. So plan D splits the fewest counties, and others are better by the lights of the traditional principles in the guidelines in other ways.

Q Okay. Just so we're all working off the same page, I will share my screen again, and hopefully this will go smoothly for us.

So we're looking at page 5 of your report. Milligan Exhibit 3. And here we see eight splits in counties for plan A, seven for plan B, nine for plan C, and five for plan D, correct?

A That's correct.

Q And for plan D, while there are five counties that are ultimately divided up, do you recall the –

that's the plan that splits Jefferson County between three different districts or among three different districts?

A Definitely. That's how it's possible to get just five counties that are split.

Q Okay. And now is a good time to do a broad overview of the maps. I have sort of compiled them together in this [630] document. So I won't have to switch among so many different –

JUDGE MARCUS: Mr. LaCour, take your time and speak up so our reporter can get it all, please.

MR. LACOUR: Yes, Your Honor. I apologize.

JUDGE MARCUS: That's okay. Just take your time. Keep your voice up so she can get it all down.

MR. LACOUR: Absolutely.

BY MR. LACOUR:

Q So this document has a few excerpts from your report and a couple of Tom Bryan's reports together just so we don't have to be jumping in between. But I will identify each page for the record so you know what we're looking at, and I am also happy to do it a slower way and toggle between documents if you think it would be preferable. But I'm hoping to be moving things along for everyone.

Here, this comes from Milligan Exhibit 3, your report, Dr. Duchin, page 4. Does this look like the four maps that you drew for this litigation?

A Yes, it does.

Q Okay. Next, go to page 8 of what is actually the same report. It reports the any-part Black Voting Age Population for HB-1, which is the 2021 enacted map plan A, plan B, plan C, plan D. Those numbers look correct to you?

A This does look to be an accurate copy of my report.

Q And then we have talked about splits already. Something [631] else we were looking at earlier. I think this came from page 3 of your report. Again, Milligan Exhibit 3. And this shows the shaded colors, essentially which precincts have a little higher percentage of black population within Alabama, correct?

A Yes.

Q Great. So the next document borrows from page 3 and puts it for everyone's benefit up against a similar analysis – well, I will represent to you is a similar analysis that Tom Bryan prepared for the defendants from Defendants' Exhibit 2. This is his initial report on page 40. Did you have a chance to look at Mr. Bryan's report?

A I did.

Q Okay. Does this map look familiar to you?

A Yes. And it looks – now that you have put them side by side, quite similar to mine, I am happy to say.

Q Yeah. That's – we're all working off of similar facts.

I think he is measuring black alone Voting Age Population. Do you recall if your measurements were any-part black or black alone?

A I believe this to be any-part black, which is the population basis that I use in my reports except where otherwise noted.

Q Okay. But generally, the maps look fairly similar in distribution of black Alabamians?

A They do. And I would comfortably speculate that the [632] difference, the visible difference between black alone and any-part black would be minimal in a map of this kind.

Q Okay. I'd like to turn to plan A then. So this is plan A, which, again, comes from Milligan Exhibit 3, page 4. I also have from Tom Bryan's supplemental report, which is Defendants' Exhibit 4, Page 69, his analysis that relays the lines from your plan A across the sort of race shaded precincts from the map we were looking at just a moment ago.

Do you see that?

A I do.

Q And for everyone's benefit, I have added up here the number of county splits and the any-part

Black Voting Age Population for your District 2, which I take is this tan colored district in the southern part of the state and District 7, which is the light blue sort of in the central western part of the state. Is that fair?

A Yes. That all looks reasonable.

Q Okay. The first – I may have shown this a little earlier this morning. But well, actually, this is a little bit of a different question.

Focusing on number of splits, what – do you recall what factor led you to split two more districts than necessary in this particular plan?

A I think you mean two more counties.

Q Yes. I apologize. Two more counties?

[633] A No problem. Just trying to be clear.

Q Thank you.

A The – every time you draw, you are balancing the different priorities against each other. And so it's hard to truly whether it was consideration of municipalities, which aren't visible in this map, or whether it was physical geography or some other feature. But I am testifying that the choice of which counties to split was made in a balance of all and only the criteria that had been discussed.

Q And one of those criteria was to ensure two black majority congressional districts?

A That was the question that I was asked to address.

Q Okay. So that factor might explain why if we zoom in here between – I will call the green district, District 4. Do you recall if – District 5 used to be up at the top in the enacted plan, and 4 beneath it.

Do you recall when you sort of reshuffled them if you put 4 off to the northwest and 5 to the northeast?

A I think the numbers are correct as they're reported. In Mr. Bryan's figure, would show those to be 4 and 5.

Q Great. I just want to be sure.

So if you were to close off this county split here, you could do that potentially. That would mean you would need more population for the rest of District 4 because it would be losing population District 5, correct?

[634] A Are you done? Sorry.

Q Yes.

A Yes. If you took that split county and colored it all, I think you were saying the pink color, magenta color, yes, you would lose green population or population for the green district and would have to gain it elsewhere in order to balance.

Q Okay. And if you were not going to split another county to gain that population, there's only one

place you could really look at more population for District 4, correct?

A If I'm understanding your question right, it's true that the only two split counties in 4 as I have drawn it are Jefferson County where your hand currently is.

Q Uh-huh.

A And that northern county whose name I can't currently remember.

Q Okay. So if you had to come down to Jefferson County to get more population for District 4 – I am going to zoom in. It appears that if you were going to be in population from around here, you would losing some black population from District 7, correct?

A There's now a fairly intricate counterfactual. But I think it's responsive to your question to say that the construction of District 7 definitely looks at race so as to ensure that it's majority black.

[635] Q Okay. And would it also be fair to say that the principle of splitting fewer counties was subordinated to the principle of getting two majority-black districts in Alabama?

A It's true that I regard the federal requirements of population balance and minority electoral opportunity to be nonnegotiable and, therefore, higher ranked.

Q Okay. You know whether you could draw a plan like plan A that has only six splits in counties

instead of eight and that still meets that nonnegotiable criteria of two majority-black districts?

A I think what makes that a difficult question to answer is that it's hard to say what makes one plan like another, but I would say that I made an effort here, really a strong effort to balance all of the principles that we have named.

Q Okay. I just mention – let's see. And do you know roughly how many voting age are within any given district on average? Would it be right to say it's about 560,000?

A I know it to be between 500 and 600,000 because there you are taking those 700 sum and restricting to adults. So that sounds correct.

Q Okay. I just want to defer decision. Let's switch screens I'm sharing real quick just to show you I'm not leaving you.

MR. NAIFEH: Your Honor, I would like to request that that demonstrative be marked as an exhibit.

[636] MR. LACOUR: No objections.

JUDGE MARCUS: All right. Why don't you put a number on it? That would be Defense Exhibit 2 for identification, if I have it right. Do I have that right, Mr. LaCour? The only other exhibit we marked for identification was the one you used for impeachment yesterday.

MR. LACOUR: Yes, Your Honor. I believe that is correct. But if –

JUDGE MARCUS: That's just a number. You give me any number you want, and we can move along.

MR. LACOUR: We will go with Exhibit 2.

JUDGE MARCUS: Defense Exhibit 2 for identification. You have may proceed. Thank you.

BY MR. LACOUR:

Q Turning to Defense Exhibit 4. There we go. And page 25 on the – so this is Tom Bryan's supplemental report. Have you had a chance to review this report, Dr. Duchin?

A Yes. I believe so.

Q Okay. And he reports your plan A that – looking at Table 3.2 that District 2 has a Voting Age Population – an 18-plus number, 560,170; is that right?

A It's true that that's what is written here.

Q Okay. We'll ask for you to assume that he has his numbers right, and I'm sure if he doesn't, we will hear about it later when he testifies.

[637] And he reports 562,303 for District 7; is that correct?

A Yes, he does.

Q And we will go ahead and run through on to the next page. District 2, 559,000 and some change; District 7, 762,630; for plan C, 558,296 for District 2; and for your District 7 in plan C, 562,107. To close it out, for plan 4 or plan B District 2, 560,550; and for plan D District 7, 562,391. Did I recount all of those correctly, Dr. Duchin?

A I agree that that's what's written here.

Q Okay. And if those numbers are correct, then that would mean that 1 percent of a district's Voting Age Population would be about 5,600 people, give or take, a few dozen; is that right?

A Yeah. That looks to be about right.

Q Okay.

A I should probably be careful, though. If there are any precise calculations to do, I wouldn't want to have do those on the spot, but would hope to have some time to sit and be careful, make sure everything is done correctly.

Q Correct. I'll try to keep the math as simple as possible for these purposes.

Returning just one more time to your plan A. Are you aware of any traditional districting criteria that could explain two additional county splits?

A Sure. Easily. We've heard, for instance, about [638] communities of interest, and an effort to preserve those, whereas I said before, to keep municipalities whole could certainly be a reason in particular in

Alabama as in many states, there are municipalities that cross over county lines.

Q Okay.

MR. LACOUR: Your Honor, as I see, it is almost the lunch hour. It might be a good time to stop. I am going to have a little more to go.

JUDGE MARCUS: Whatever works for you. Give me some idea, Mr. LaCour, how much do you think you have on cross, and we will have a sense of how many other witnesses we will get to today.

MR. LACOUR: Your Honor –

JUDGE MARCUS: This is not to limit you. You take all the time you need.

MR. LACOUR: Say probably another 45 minutes to an hour. I hate to overpromise and under-deliver. But whichever way –

JUDGE MARCUS: Thanks for giving me your estimate. We are not holding you to it.

It's just a little before 12:00 Central Standard, 1:00 o'clock Eastern Standard. We'll break for one hour for lunch. We'll reconvene 1:00 o'clock Central Standard, 2:00 o'clock Eastern Standard. We'll ask you, Dr. Duchin, if you would be kind enough to stick with us as we proceed into the afternoon.

[639] Thank you all. And we will be in recess until 1:00 and 2:00 respectively.

(Recess.)

JUDGE MARCUS: Okay. Mr. LaCour, you are ready to proceed with Dr. Duchin on your cross.

MR. LACOUR: And, Your Honor, thank you.

JUDGE MARCUS: Thank you. And you may proceed.

MR. LACOUR: Thank you.

BY MR. LACOUR:

Q Dr. Duchin, welcome back. I hope you had a nice lunch. We will pick up where we left off. I am going to share my screen again and start with plan B at this time. Can you see that now?

A Yes, I can.

Q So question here: So we have got seven county splits instead of the bare minimum six that would be needed if all we were trying to do was equalize population; is that correct?

A No. As we heard, you can get under six if you're willing to tolerate more pieces.

Q Splits of like – we will stipulate when we say county splits, we're referring to splits of counties. Would that be the more accurate –

A No. So the number of split counties can – I'm sorry. I don't mean to be – I want to be accurate. The number of split counties can get below six, but if you

are going to split them [640] only two ways, then six is the minimum.

Q Okay. So number of two-way county splits is one greater here than would be necessary if all you were trying to do was equalize population; is that fair?

A I'm sorry. Yes, that's fair.

Q I'd like to draw your attention, then, to District 2 in the southwest corner. And I just for the record, I'm showing Milligan Exhibit 3 at page 4, plan B, as well as Defendants' Exhibit 4 at Page 71.

So we have got a split here between what is 2 and 7. Do you recall why you didn't close this county on the west side of CD 2 and maybe give up some of this county on the east side of CD 2, or vice versa, close one of them? Because it appears you can sort of work your way around, right, and equalize across those four districts here, right?

A Let's see. I think that's Clarke County, if I remember right?

Q I think that's right, yes.

A So this is one of really innumerable choices that you face when drawing. And I think it's probably fair to say that I tried this the other way, which has ripple effects in several other places, and that the top of my consideration was to balance the principles that we have described.

Q Okay. But the principle of equal population would not require four splits among these four

districts, right? It [641] would only require three splits among these four districts?

A The nature of that and of all the requirements is that it interacts with the others to produce the choices that you see.

Q Uh-huh. Could it – I mean, tell me if I’m reading this all correctly.

Generally speaking, if we were to close this off here (indicating)?

A Uh-huh.

Q By expanding 2 out this way, that means we would need to expand 7 into Jefferson County if we were going to avoid splitting another county, correct?

A I think it’s fairly complicated, but this is one of the reasons that I provided multiple demonstrative maps, and you can see that Clarke County is whole in District 2 in some of my other demonstratives. So that might be a good place to look to explore that counterfactual.

Q Okay. But generally speaking, as a map drawer, I mean, it does work a bit like a puzzle, right? So if you push a little here, it’s going to – if you are going – it’s like moving population clockwise in this instance, right? That’s going to require population continue moving in some direction in CD 7 unless you’re going to break into a new county, correct?

A Well, I can say that moving population clockwise is certainly not how I was thinking about it as I

was drawing. But I take your more general point to be that a choice made in [642] one place has ripple effects in other places. And I emphatically agree with that.

Q Okay. And so if you picked up – if – I guess that would mean District 7 would lose some of this population here (indicating), which is generally kind of in this area, which you see some yellow and some orange and a little bit of green in that area of Clarke County on the map, correct?

A It's hard to say, but I don't have any reason to doubt you.

Q Okay. And then if you were going to – new voters for District 7 from Jefferson County – just going to zoom in here – there's not much green left to take from around here, correct?

A Well, you're describing a chain of reasoning that frankly doesn't resemble my process, so it's hard for me to follow along and agree or disagree in a principled way.

Q Okay. But if you are going to try to make some changes to this map to give more weight to the minimizing of splits in the counties, you were basically handed this map, that would be one way to do it, right, if you close off Clarke here (indicating), pick up some more people from Jefferson County here, then you have got Shelby County here (indicating), where we could come in, pick up some more people, and then you would come down to I believe this is Barbour County?

A That's right.

[643] Q Pick up a few more people here, get the one person one vote, correct?

A We are deep into speculative territory that I don't feel comfortable kind of commenting on, on the spot.

Q Okay. Do you see a reason why – just purely mathematically would not be possible to remove one of those county splits from this four-district area if you were setting aside all the other traditional districting criteria that you apply?

A Oh, on the contrary, I think you could, and that's reflected in my other demonstratives.

Q Okay. Would it be that the – sort of the nonnegotiable criteria of ensuring that two majority-Black Voting Age Population districts were created explains why there are four splits in counties in this four-district area rather than just three splits in this four-district area?

A So at the risk of being repetitive, it's – there's a balancing of that relatively long list of criteria. And in this map, there's seven splits, and the map is better in some other ways, but I also have a demonstrative plan with as few as five counties that are split.

Q Okay. But I think the question was – I mean, you have got four splits in the four-district area. You would only really need – mathematically, is it true there would only – it's potentially you could get that down to only three if you [644] weren't worried about balancing the other factors?

A Well, I think my best and fullest answer would be that I do believe other prioritizations of criteria are possible while retaining two majority-black districts. And that in particular as I think I mentioned in direct, if you kept something very much like my District 2 and 7 and, therefore, 1, you have a great deal of latitude with the other four districts to reorder the priorities as you might see fit.

Q But maybe with this particular configuration of 2 and 7, you wouldn't have latitude down to just six splits in the counties; is that fair?

A Sorry.

Q I'm sorry. Go ahead.

A Thanks. That's not something I'm prepared to answer in a speculative fashion looking at the map. But something I could certainly sit down with mapping software and explore.

Q And I'll just point you here. CD 7, this was from your report, and we looked at these numbers earlier. I am happy to go back if you want to double check them. But I put down that it was 50.24 percent any-part Black Voting Age Population, and if I think we said that 1 percent of Voting Age Population of a typical district is about 5,600 people, so we're talking less than 2,000 people would be your margin for CD 7, correct? So does that sound right?

A What exactly is the question? Is the question about [645] removing 2,000 people?

Q If you removed – so if you removed 1,000 black people of voting age from CD 7 and you replaced them with 1,000 non-black people of voting age, that would bring your number down below 50 percent, correct?

A I don't think 1,000 would be enough from the numbers you were quoting before. It sounded like maybe a few thousand would, but, again, I'd want some time to sit down and get those numbers just right.

Q Okay. In any event, the margins are at least – the margins are somewhat slim for CD 7, fair enough?

A I think that the standard is 50 percent plus one person. But 50.24 is certainly less than, say, 51 percent.

Q Uh-huh. I will move on to plan C. Zoom out just a little. Can you see that?

A I can.

Q Okay. And as with the other plans, the map on the left comes from Milligan Exhibit 3 page 4. That's your initial report. The map on the right that corresponds to it is from Tom Bryan's supplemental report, Defendants' Exhibit 4 at page 73.

So here we've got District 2, and I think this comes from page 8 of your report that shows that it is at 50.06 percent Black Voting Age Population, which by my math, equates to about 350 people of voting age? Does that sound sort of in the [646] ballpark?

A I think you're asking is it true that .06 percent of the voting age population of a district is a few hundred people?

Q Uh-huh.

A That sounds reasonable to me.

Q Okay. Great.

My question here – we have nine splits in this particular map. I wanted to first ask about the ones here in the southwest corner of the map. What traditional districting principles led you to draw that sliver through Washington and Clarke counties?

A Well, I don't specifically recall that decision juncture, but I can imagine that one possibility might have been the compactness of District 7.

Q Okay. What leads you to say that, just looking at the map here?

A Well, again, if we're looking at the Polsby-Popper measure, or indeed at the Reock measure, in either of those cases, the idealized shape is a circle.

Q Uh-huh.

A And I can see that this – it's conceivable – since you are asking me, I think, to speculate, it's conceivable that this decision was made in order to produce a somewhat rounder District 7.

Q Okay. And would another way to do that be to sort of [647] borrow from that hydraulic analogy, move

counterclockwise now to maybe pick up some of this intrusion into Jefferson County, and then in the process, make these counties whole?

A There are honestly innumerable choices that you face that's really only one of many conceivable ways to balance the decision in a different manner.

Q Okay. And so there are numerous ways you could have also potentially made either of these counties whole either as part of District 7 or as part of District 2, correct?

A That's correct. And I think that you will find some examples in the other illustrative plans.

Q Okay. And you think one reason that there are nine splits in counties in this plan as opposed to six splits in counties is because of your – the weight you gave to – I apologize to flip around there – was because of the weight you gave to the criteria of ensuring two majority-black congressional districts?

A There's no question. And I have consistently acknowledged that I took minority electoral opportunity to be a nonnegotiable principle sought in these plans.

I will mention here you're also seeing in some of these decisions a high priority on compactness and, of course, on contiguity.

Q And we'll get to that in a minute.

Turning next to plan B –

[648] MR. NAIFEH: Before we move on to plan B, I want to make sure that all of these demonstratives are being marked. So I think we had one for plan B and one for plan C.

JUDGE MARCUS: Did you want to mark this one B? This is plan B?

MR. NAIFEH: This is D. We also saw B and C.

JUDGE MARCUS: So you are asking him to mark B and C as well as D?

MR. NAIFEH: Yes, Your Honor.

JUDGE MARCUS: Any objection to doing that, Mr. LaCour? Because what you are showing is not exactly the exhibit as it appears in Milligan 3. Plan C, B, and A are what existed, except you typed in some stuff at the top, right?

MR. LACOUR: Exactly. No objections, Your Honor, for plan B.

JUDGE MARCUS: Why don't we do this: Why don't we just mark your modifications to Duchin's plans B, C, and D as Defendants' identification 3, 4, and 5? If I have the numbers right, I think that works.

MR. LACOUR: Yes, that's exactly right.

JUDGE MARCUS: Does that work for you, counsel?

MR. NAIFEH: Yes, Your Honor.

JUDGE MARCUS: All right. So the record is clear, the exhibits being shown to Dr. Duchin by Mr. LaCour are Illustrative Plans A, B, C, and D, which have been modified to [649] typing at the top of the page, county splits, and the percentage of APBVAP in each of Districts 2 and 7. Is that right?

MR. NAIFEH: In addition, they have also added a map from Defendants' Exhibit 4.

JUDGE MARCUS: That's on the other part of it. The other part of the page includes a defendants' exhibit from the report of the supplemental report of Mr. Bryan. With that caveat, exhibits 3, 4, 5 – would it be 3, 4, 5, and 6, Mr. LaCour, the four of them?

MR. LACOUR: I believe it's 2 –

JUDGE MARCUS: We have already marked – okay, so it's 3, 4, and 5 are marked as defendants' exhibits for identification. You may proceed. Thank you.

MR. LACOUR: Great.

BY MR. LACOUR:

Q Dr. Duchin, we now come to plan D. Thank you for your patience.

This is one that splits Jefferson County among three different districts, correct?

A That's correct.

Q Do you recall what percentage of Jefferson County's black residents ended up in your version of CD 7 and what percent were placed into CDs 4 and CD 6?

A I don't think I ever calculated those percentages [650] anywhere, including in my reports, but I can tell you that consideration here is to keep the core of the city of Birmingham as whole as possible. It's worth pointing out that the city boundaries here are especially contorted, and so it's very difficult, as in the state's plan, to keep the city completely whole. The city core it's easier to do so.

Q Okay. And with that caveat, I mean, does it appear here – I am zooming in a bit, and I'm sorry it's a little granary – on Tom Bryan's version of your plan D, does it appear that race predominates in how these particular lines are drawn between District 4, District 6, and District 7?

A Frankly, it's just really hard to tell.

MR. NAIFEH: Objection to the form of the question. It calls for a legal conclusion.

JUDGE MARCUS: Why don't you reframe the question if you could, Mr. LaCour?

BY MR. LACOUR:

Q Dr. Duchin, looking at the shapes of these lines that separate District 4, District 6, and District 7, is it the race of the population included within District 7,

does it appear to be a factor that was used for drawing this particular line?

A Okay. So it's very hard to tell just legitimately as a question of the image resolution. But it looks to me that I can see those green colored precincts on both sides of the District 4, District 7 dividing line. At least, that's my best [651] effort to narrate what I am seeing in this illustration. And I think you would say that if the line was drawn in some predominantly race conscious way, you might expect to see that green population included in District 7. But as I have testified, I only looked at race when drawing specific boundary lines to make sure that I was retaining the majority-black character of the districts that I was drawing.

Q Okay. And have you split any precincts in Jefferson County in this particular map?

A I think it's very likely practically certain, because as I said before, all the population balancing was done by splitting precincts in those counties that had already been split.

Q Okay. Do you recall the racial makeup of the parts of the precincts placed in District 7 versus in another district?

A Well, I certainly don't specifically recall that and never computed it. But I will continue to maintain that the race consciousness of selections was only in the service of retaining the majority-black character of the districts as I drew.

Q Okay. Take a break from the screen sharing for just a moment.

I would like to move on to compactness, and I am going to share the screen again.

Going back to Milligan Exhibit 3 and – okay. So we’ve got some compactness scores here on page 6 of your report. I [652] believe we discussed some of these this morning, or you discussed some of these this morning with counsel for the Milligan plaintiffs; is that correct?

A Yes. This is the section that discusses compactness, and, yes, we discussed it earlier today.

Q Okay. And then to summarize, on the average Reock score, the state’s plan does the best of any of the five plans here, correct?

A That’s correct.

Q Your plans on average do better than the Polsby-Popper score – on the Polsby-Popper test?

A That’s correct. All four illustrative plans are more compact than HB-1 on Polsby-Popper.

Q Okay. And then one of your four plans is more compact under the block cut edges approach, and the other three are less compact; is that correct?

A That’s correct.

Q Now, these metrics also be applied on a district-by-district basis, correct?

A No. Block cut edges is a plan-wide score, but the other two are averaged over the districts.

Q Okay. And so for Polsby-Popper, for example, if a district were shaped like a salamander would score lower on Polsby-Popper than a district shaped like a square, right?

A Yes. And there I think you're referring to the original [653] gerrymander, which was Gary's salamander and, yes, that's part of the history of compactness is the idea that reptilian districts are less compact.

Q I thought you would get the reference.

In your view, what's the lowest Polsby-Popper score a district could have and still be considered geographically compact?

A Well, as I have actually written widely, I think Polsby-Popper scores are highly context dependent. I will be very brief. I won't – I promise not to give a whole lecture. But in particular, they're subject to what some people have called the coast line penalty. And so, for instance, if you're redistricting in Maryland, you can have a district that's quite functionally compact with a Polsby-Popper score of 10 percent. And so it really depends. You know, on the other hand, if you are in Iowa, it's much – there's much less reason that you might draw a district that's considered reasonably compact while still having a very low score.

Q Okay. Now, you were retained to show that two sufficiently compact majority-black districts could be drawn in Alabama, correct?

A Perhaps more broadly as a *Gingles I* expert.

Q Right. But you don't report a compactness score anywhere in your three reports for any of the majority-black districts that you drew, correct?

[654] A That's true. I'm sure those numbers are in my backup materials, but I didn't highlight them individually in the report.

Q Okay. You think that district-by-district information might be relevant for determining whether you sufficiently compact districts that are majority-black could be drawn in Alabama?

A To be clear, actually, I don't think that's the language of *Gingles I*, which asks instead whether the minority population is sufficiently compact to enable the drawing of majority-minority districts.

Q Correct. But for the minority population to be sufficiently compact, they would need to be compact within a district, correct?

A I think the prevailing interpretation is that to witness the sufficient compactness is to draw an entire plan that's highly conformant with the traditional districting principles. And so I think the overall compactness of the plan is part of how that has traditionally been assessed.

Q You had a plan, however, that let's just say had seven districts. Six of them were perfect circles. And the seventh snaked or salamandered (sic) all around the circles, that could return an average score that in theory looked decent, correct?

A A few observations about that hypothetical. You are, I think, correctly observing that circles don't pack, they don't [655] fit together nicely to make a whole. And so it's certainly true that if you had several circular districts you would also have to fill up that negative space with something that would not be very compact.

Q Uh-huh. And that seventh filler district would not be compact, correct, even if it was part of an overall plan that scored well on average compactness score, correct?

A Yes, if I am understanding you right. I think that is the nature of averages that one thing can be lower, other things can be higher, and then there's a balance between the low and the high in the nature of an average.

Q So your scores – the scores you report don't tell us whether the majority-black Districts 2 and 7 that you drew scored better than the District 2 and District 7 that were enacted by the Legislature, correct?

A Well, I did review the district-by-district compactness scores in Mr. Bryan's report. And I do agree with them to the number of digits that he included. And so I can report having reviewed and confirmed

those numbers that the least compact districts in my plans, which are, I think, invariably not Districts 2 and 7, but Districts 2 and 1, those are always the least compact districts in my plans. Those have lower compactness scores than the other districts.

On Polsby-Popper, I am sure we can look at the exact numbers, but from memory, I believe them to be around [656] 15 percent, which I will note is comparable to or better than the least compact districts in the state's enacted plan from this cycle and from the last cycle, as well, where districts got as low as .13.

Q You think that those district-by-district scores would be relevant, however, to an overall compactness analysis at *Gingles I*?

A Yes. I'm trying to make sure I understand. Yes. Individual district scores are how you get the average. And I think it's legitimate to look at the scores individually and together, as we are now doing.

Q All right. We'll return to your maps probably not the last time. I will be honest. But let's go again to Exhibit 3, Milligan Exhibit 3, page 4.

So did you testify earlier that Districts 4 and 5 in your maps were drawn to make them more compact than they had been earlier? Scratch that.

Now, Districts 4 and 5 in each of these maps doesn't bear great resemblance to Districts 4 and 5 in the 2021 map, correct?

A That's true. The enacted map, in fact, has elongated districts in the north of the state as I do in the south.

Q Nor do they bear much resemblance to the 2011 map that was passed by the Legislature, correct?

A That's right. It is similar in that respect.

[657] Q Why was it important to you to restructure Districts 4 and 5 in your maps when neither of them were adjacent to the new majority-black district you were drawing down in the south of the state?

A Oh, I hope the reason is quite clear. It's because, as I said, I regarded compactness to be a priority higher ranked in the state guidelines and more broadly than the preservation of district cores.

But to answer that fully, I think it's worth noting that you can retain the majority-minority districts and make other choices with those four while still keeping *Gingles I* in place.

Q You didn't produce a map for the Court, though, that tried to do that, did you?

A That's right. Because of my reading, that compactness was higher ranked.

Q And why – did you say it was something in the guidelines that led you to prioritize compactness over cores of districts?

A I did.

Q Can you remind me exactly what that was, or I can perhaps pull up the guidelines, if that will be helpful?

A I'm happy to do it broadly, and then we can pull them up if you would like to quote directly.

But as I showed when we reviewed the guidelines together earlier, the first page discusses population equality and minority opportunity to elect hand in hand with equal [658] protection. Immediately after that are listed compactness and contiguity. Several parts lower is section J, which lists several criteria, including district cores, and then it is specified that within j., the priorities are unranked, which leads me to conclude in a manner that comports with practice in every other state that I've seen that the federal requirements and compactness and contiguity are to be considered higher ranked than district cores, and for that matter, the consideration of incumbency.

Q Okay. I am going to pull up the guidelines. I just want to make sure we're looking at the same thing.

This is Milligan Exhibit 28 and – so I think you're referring here – starting on page 2 at line 21, was it based in part on – if I am getting you wrong, I apologize – on this line here saying, The following redistricting policies are embedded in the political values, traditions, customs and usages of the state of Alabama, and shall be observed to the extent that they do not violate or subordinate the foregoing policies prescribed by the constitution and laws of the United States and of the state of Alabama?

A That's right. I think that it's clear both from that language and from part g. on the next page. There it is. So you see clearly here that it is specified that within j., there's no order of precedence to be inferred. And I think the plain reading of that is that, in the larger structure of the [659] document, there is an order of precedence to be inferred.

Q Okay. Is compactness listed in j.?

A No. It – indeed, this is my point. It comes before j. If you flip back to the previous page, you will see that compactness is listed up in h.

Q Okay. And then to go back to page 3, it says – and to g. The criteria identified in paragraphs j(i) through (vi) are not listed in order of precedence, and in each instance where they conflict, the Legislature shall at its discretion determine which takes priority.

Do you read that to mean that if there's a conflict among the j. criteria and the Legislature gets to decide, and any other criteria trumps the j. criteria when there's a conflict?

A The ones that are listed earlier, I would say that this indicates that the j. criteria are subordinate to the ones that are listed earlier.

And I would add to that, that it's my understanding – not being an attorney – it's my understanding that these guidelines are not part of state law, but describe the practice that the Legislature uses to draw lines.

Q Okay. Your position, looking in here at the beginning of j. refers to constitution and laws of the united States and the State of Alabama, your position is not that compactness is a constitutional requirement, correct?

A That's correct.

[660] Q Or that compactness is required by federal law or Alabama law?

A I can't speak to whether it's considered to be part of Alabama law, not being an expert in Alabama law.

Q Fair.

A But I am aware that it's not considered to be federal law.

Q Okay. Did you look at Alabama practice, either in this past redistricting cycle or past decades to see whether it looked like the Legislature has been giving compactness that level of priority as opposed to core retention?

A My principle means of learning about Alabama practice was a study of the enacted plans from 2021 and from 10 years earlier in 2011. And as one often does, when trying to understand redistricting priorities, I did infer some priorities and interpretations from the properties of those plans.

Q And was respect for core retention one of the guiding principles that you were able to infer from

looking at the 2011 map as opposed – or when compared to the 2021 map?

A Oh, I certainly agree that core retention seems to have been highly prioritized in the creation of the 2021 plan.

Q Let's see. Turning now to communities of interest.

You referred this morning to the fact that there has not been a sustained effort to map out or quantify all the different communities of interest that might be present in the [661] state of Alabama; is that correct?

A Oh, I think that goes farther than my statement. I just said I wasn't aware of a state effort, and that I had checked the state's redistricting website to confirm that.

Q Did you look at past maps to see if you could infer from them any communities of interest?

A Well, I think it would be quite difficult to read backwards to reverse engineer, you might say, communities of interest from a map, particularly since, as I said this morning, I don't think that each district itself constitutes a unitary community.

But I did get some ideas about splittings from the state's earlier plans, and as I mentioned, from the state's current board of education plan.

Q Did you get any ideas about – the opposite of splittings – keepings together, if you will, from the past maps?

A Did I get any ideas about areas that were kept together, sure. By observation I could see some areas that hadn't been split. I'm trying to stay with the spirit of your question.

Q Okay. For example, how far back did you look at past maps from – past congressional maps from Alabama?

A As I've testified, I focused on the last two, on the maps from 2011 and 2021.

I have definitely reviewed some older maps, but that would [662] be longer ago and farther from the current process.

Q Okay. So you couldn't say, for example, if two gulf counties, Mobile and Baldwin, have been together in the same district for half a century or not?

A I couldn't. Not with a high degree of certainty. But I'm willing to believe that that's true at the congressional level. It's certainly the case that Mobile County is split in the current State Board of Education map, and that parts of Mobile, city and county, are connected to parts of the Black Belt.

Q I will have a few questions for you about a map in a moment. But returning to communities of interest. You said in your report that it was possible to identify several clear examples of communities of interest of particular salients to black Alabamians.

Am I recounting your testimony from this morning correctly that the two you focused on were preserving

JA694

the cores of urban areas and preserving just the core of the Black Belt?

A I would say – the way I described it is retaining as much of the Black Belt as possible in majority-black districts.

Q Okay. Now, the Black Belt counties with the exception, perhaps, of Montgomery, do not contain those large urban centers that you were referring to, correct?

A That's right. I would say Montgomery is the clearest exception.

Q Okay. So did you take into account any other communities [663] of interest?

A The only two kinds that I considered were the two that you just cited.

Q Okay. And it's possible there are communities of interest that are relevant to white and black Alabamians alike, correct?

A No question about that. In particular, I think urban cores are relevant to black and white Alabamians alike.

Q Were you able to infer from looking at the 2011 and 2021 maps how the Legislature has applied the community of interest factor in the past?

A Well, as I've said –

MR. NAIFEH: Asked and answered.

JUDGE MARCUS: I think it has been. Sustained.

BY MR. LACOUR:

Q You know, could community of interest consideration explain why Mobile and Baldwin counties were kept together in 2021?

A Did you say could it or did it explain?

Q Could it?

A Could it. Certainly could.

Q Could a community of interest explain why the Wiregrass counties were kept together in the 2021 map?

A It certainly could.

Q Okay. And similar question, could communities of interest considerations explain why Madison and Morgan counties were [664] kept together in the 2021 –

MR. NAIFEH: Objection here to this line of questioning. It's calling for speculation.

JUDGE MARCUS: Okay to answer if she can give it to us.

THE WITNESS: I'm willing to concede that it could, but I was unable to find any systematic description of what communities were considered. I would have indeed been very happy to find such a description.

BY MR. LACOUR:

Q Could you describe the nature of your inquiry into how that guideline might have been applied? I think you said you looked for anything the state had put together. Did you do anything further?

A No, that's all that I did to ascertain whether there had been a state publication or a state collection process.

Q Okay. Now, I think you said earlier it was an express goal of yours to keep the Black Belt counties in majority-black districts to the extent you could. Is that fair?

A Yes.

Q And is it fair to say that you testified this morning that's part of the reason why your compactness scores for CD 1 and CD 2 were lower, correct?

A That's right. Oops. Sorry.

Q Go ahead.

[665] A That's right. The elongated east to west nature of the Black Belt itself is the reason that CD 2 is also elongated in east to west fashion and because that's close to the south of the state, that ends up prescribing elongation for District 1, as well.

Q Okay. So the goal of a majority-black district or rather the goal of two majority-black districts that held most of the counties in the Black Belt took precedence over compactness in District 2?

A No. I can't agree with that. In my understanding of what by Alabamalites should be considered reasonably compact, I used the state's plan as a guide where the least compact district from 10 years ago had a score, a Polsby-Popper score of .13. All of my districts are more compact than that. So I think I was able to maintain reasonable compactness by Alabama standards in my entire plan.

Q Now, none of your plans put all 18 Black Belt counties into one district, correct?

A That's correct. Although if – I'm sorry.

Q No. Go ahead.

A If I remember right, at least one plan puts all 18 Black Belt counties into either District 2 or District 7.

Q I'm not a hundred percent certain that's correct. But we can –

A I am confident –

[666] Q We can turn to the maps?

A Sure. By memory, that's plan D.

Q Okay. And – well, I've got plan D here, so . . . and Milligan Exhibit 3, page 4. So I believe this is also a Black Belt county, correct, where at least some of it is in District 3?

A Indeed, that's right. And that should be Russell, I think.

Q I believe –

A Which –

Q Correct.

A In plan C then. Russell is whole and is included in CD 2 as is the rest of the Black Belt included in either CD 2 or CD 7.

Q Pickens in CD 3 in plan C is CD 4, correct?

A So that is not one of the 18 counties traditionally identified with the Black Belt, although I agree with you that sometimes is included on secondary lists.

Q Going to page 10 of your report. I think you list here among the 18 Black Belt counties, Pickens county, correct?

A That's true that's listed there and not exactly sure which one it is from memory in the map. But I will accept your representation if you're saying that it's excluded in plan C.

Q Our count was that the 18 counties were split among at least three districts in each map, but we can certainly compare [667] and contrast that later.

A Sure. I would be happy to do that later.

Q I want to get back to – so do you recall if there was a reason why all 18 counties were not placed into just two districts instead of three?

A Well, again, with apologies for repetition, one is balancing as a mapmaker. Quite a formidable

number of different priorities, and it's possible that that goal was only attained in 17.5 counties, which is I think what we see in plan B, 17.5 out of 18.

I would submit that that's quite a ways towards the goal of securing representation in majority-black districts throughout the Black Belt. And to that I would only add one could certainly get all 18, but it would come at a cost to other principles as we keep hearing.

Q Would it potentially come at a cost to two majority-Black Voting Age Population districts?

A So now I think you're asking is it possible to get all 18 into Districts 2 and 7 in a plan where those remain majority-black, right?

Q Right.

A I am confident that that's possible. But it would require either more county splits or less compactness and more likely both.

Q Okay. So if your goal was to get most of the Black Belt [668] counties both together and into majority-black districts, would it be fair to say the community of interest you were trying to keep together was not so much the Black Belt as it was just black people more generally?

A No, I don't think so. I don't think anywhere here or ever have I identified black people, full stop, as a community of interest. Communities of interest, in

my understanding, are primarily geographical. And so that would not qualify.

Q Okay. I will take this down.

Okay. Do you recall from the guidelines a statement we were looking at just a moment ago that says contest between comments will be avoided whenever possible?

A That's right. If I recall, that's in that section j. that we discussed.

Q Right. And you didn't address incumbents anywhere in your report, did you?

A That's right. I did not, although I did obtain a list of incumbent addresses while forming the plans. Those were not part of the primary plan drawing. I did look at the number of districts pairing incumbents at the end, although that's not included in the report.

Q Okay. So you know whether the maps place one incumbent in each district or whether they put multiple incumbents in some districts?

A From memory, I think it's the case in all four of my [669] illustrative plans that there were two districts with multiple incumbents, either two incumbents or in some cases even three.

Q Okay. And if Tom Bryan's supplemental report indicated that between four and five incumbents in two different districts –

A That's consistent – sorry.

JUDGE MARCUS: Let him finish the question. Was there a question there, Mr. LaCour? If there was, let me hear it, please.

BY MR. LACOUR:

Q Yeah. So if Tom Bryan's report, Defense Exhibit 4 at page 16 indicated that your plan places four and five incumbents in districts with each other. Do you have any reason to doubt that conclusion?

A No. On the contrary, I agree with that conclusion, that there are either two districts with two incumbents making four overall, or one with two and one with three making five overall.

Q And you said you didn't consider incumbents at the outset of your map drawing process?

A That's correct.

Q Did you consider them at any point in your map drawing process?

A I did look at the end state the finalization stage to see whether it would be possible to reduce the incumbency [670] pairing – not to reduce incumbency itself. And I – I determined that it would be possible, for instance, to keep Representative Sewell in District 7, which she has represented, and I believe that my plan D does so. That was accomplished with little cost to the other principles.

I also satisfied myself that it would be possible to further reduce the incumbency pairing and indeed to reduce it to no pairing at all if we are willing to

sacrifice the higher-ranked principles of compactness, and certainly contiguity, but also if we are willing to sacrifice the county integrity.

Q And there's a lot to be accomplished if you sacrificed contiguity, correct?

A Yes. Although as we heard in the Massachusetts example, not everything.

Q Not everything. You don't think it's possible to draw a geographically – or basically you don't think it's possible to draw a map that is as compact as the maps you have produced as the other criteria to the extent you've applied them also avoids pairing incumbents and results in two majority-black districts?

A I think what I'm comfortable saying is that to reduce pairing of incumbents all the way to zero could still be accomplished with two majority-black districts, I think that it can, but at significant cost to the other principles. If I [671] could add one thing.

Q Please.

A Just to illustrate some of the tradeoffs that that requires, I note in my report that two incumbents actually live not only in the same county, but a few highway exits apart. And so it's clear that to keep those incumbents in different districts, of course one has to split that county. That's just a small illustration that it can literally require sacrifice to the other principles in order to raise the priority on incumbent protection.

Q One second. I apologize.

Okay. Turning to back to core retention. So you looked at the 2011 map and you looked at the 2021 map. Before you got started drawing your own illustrative maps. And you said earlier that it – you could infer that core retention might have been important to the 2021 Legislature. Is that fair?

A In fact I inferred that it was.

Q Okay. I think you testified earlier today that it is impossible to have as high a core preservation as the 2021 map has while having two majority-black districts; is that correct?

A Yes, I believe that to be a simple matter of numbers.

Q Okay. When you were gearing up your algorithm, did you try to preserve some degree of the core of districts in drawing your first few thousand maps or –

A That was – I'm sorry.

[672] Q Sorry. Go ahead.

A That was not a consideration.

Q Okay. What preservation like some of the other criteria – I mean, it could be a matter of degree. Would you agree?

A Yes, I would.

Q So you could try to preserve 80 percent of the cores of districts or on average try to preserve 80

percent of the cores of districts as one of your goals, correct?

A You could adopt that as a goal. That's the question?

Q Yes.

A Yes, you could.

Q And could your algorithm pull that in as constraints or as a preference in producing maps?

A Yes, I have done that in the past in other states.

Q Okay. But not in this case, correct?

A I did not include that in this case.

Q Core retention is a traditional redistricting principle, correct?

A Well, I would say that like incumbency consideration, it is expressly encouraged in some states and is prohibited in others as a consideration making it somewhat less traditional.

Q But it's not uncommon for a legislature when it sets down to draw a new set of maps to start with the old set of maps, correct?

A That requires me to speculate about process. Although I [673] do think it's a reasonable inference.

Q Okay. In any event, it was inference you made in Alabama for 2021, correct?

A That's right.

Q So you mentioned the State Board of Education map a few times today. And you said that was informative for you in drawing your illustrative plans?

A I considered it. I wouldn't put it high up on the list of considerations, but at some point in the line drawing process I became curious just how that second majority-black district was formed.

Q Uh-huh.

A And so I looked to that map to give me a sense of priorities that the state had in drawing it.

Q Okay. In trying to draw a congressional map in understanding the state's priorities, do you think the way the state drew its 2021 congressional map would be a more informative source, or the way it drew its 2021, eight-member State Board of Education map?

A I treated them both as highly informative.

Q Okay. Do you think one would be more informative than the other?

A That's hard to say. I mean, we are talking about a congressional plan, but if the question that you're seeking to answer is how to make a decision that is not present in the [674] congressional plan, then I think you would find the board of education plan to be more informative.

Q Okay. Do you know when the State Board of Education map in Alabama first featured a split in Mobile County?

A In other words, do I know what it looked like in 2011? Is that the substance of the question?

Q Yes.

A I don't actually know that.

Q I am going to show you Defendants' Exhibit 26.

So this is defense Exhibit 26. I will represent to you that this is the State Board of Education map that was drawn after the 2000 census?

A Right.

Q Do you see here Mobile County is not divided up in this map, correct?

A I thought you were just asking about the 2011 plan, but this one is 20 years old, just to be clear, yes?

Q Yes. And I'll – I am going to move from this to the '21 map and bring us all the way to the present.

A Understood.

Q So you see Mobile County is not split. Is that fair?

A That is fair.

Q And it's in a district with Baldwin County and I believe that's Escambia?

A I accept that.

* * *

[679] A Yes.

Q Does it surprise you to learn between the 2000 census and 2010 census that district lost a great deal of population when compared to other districts in the State Board of Education map?

A That would not particularly surprise me to learn.

Q And thus, if the state were to try to maintain a comparable black population within District 5, they would need to go somewhere to get that population, correct?

A That's one way of putting it.

Q Maybe not the most eloquent way of putting it.

Could that explain why District 5 thus was expanded into Mobile city in the 2011 map for the State Board of Education?

MR. NAIFEH: Object. It calls for speculation.

JUDGE MARCUS: Objection is sustained.

BY MR. LACOUR:

Q Very well.

JUDGE MARCUS: So you understand it, Mr. LaCour, you are asking Dr. Duchin to tell us to the

extent she knows why it is that the state redrew the boundary lines the way they did between '01 and '11. And I'm not sure that you have laid any foundation that she has any knowledge of doing that. The objection is sustained. Let's move on.

MR. LACOUR: Absolutely.

BY MR. LACOUR:

[680] Q Okay. So we are getting close to the end, Dr. Duchin. I appreciate your patience with me today.

Returning to something you said near the beginning. You talked about how you used your – the algorithm and algorithmic computer system to generate a large number of maps.

A Yes.

Q And you had certain constraints put in on the front end when you started generating those maps. And I believe you said minimum population deviation, I think, was it plus or minus 1 percent?

A Yes.

Q And contiguity was baked in, as well, correct?

A Correct. The algorithm always enforces contiguity at the VTD level and the population deviation threshold can be specified by the user.

Q Okay. What other constraints did you program in at the outset before you started generating maps?

A The only other constraints – okay. So I doubt that you want to hear specifics, but if you do, I’m happy to expound on any of this, so let me know.

The algorithm in general has a strong preference for compactness that’s, as you said, baked in. It doesn’t have to be set by the user. The way that districts are formed, it’s done in a manner that generally strongly favors compactness, particularly by the cut edges definition that I described [681] earlier.

The only other constraint that was added in that early algorithmic – in fact, not a constraint, but an algorithmic preference, was to prefer plans in which there would be a second majority-minority district. And I can explain how that was done, if you would like to hear.

Q That would be great.

A Sure. So if you look at the BVAP in all seven districts of a plan, we used what’s called an objective function. In other words, a function that sets a goal. And that function credited a point to a plan with a majority-minority district and then took the BVAP in the second district, second highest BVAP, and added it to that. So that, for example, a plan with one district at 52 percent and a second at 47 percent would get a 1.47 score.

Am I making sense so far?

Q As much sense as you will make to me.

A Thanks for saying. I appreciate that.

So – and then the way the algorithm is what’s called a mark-off chain, and it randomly proposes a new district configuration and then flips what you can think of as a weighted coin, and so the probability of acceptance was higher if that score was greater. And in that way, an algorithm like that can be shown – there’s – my lab has published papers on this topic. An algorithm like that can be shown to do a good [682] job at finding plans that are worthy of consideration in *Gingles I* direction.

Q Okay. But you did not run the algorithm without that strong preference for two majority-black districts, then, did you?

A I did, in fact.

Q Okay. How many maps were generated when you did that?

A In fact, I have a publication where I do that in Alabama. And in that paper, we generated 2 million districting plans for Alabama, which I think we’ll agree is quite a few. And we found some with one majority-black district, but never found a second with a majority-black district in 2 million attempts. But, again, that’s without taking race into account in any way in the generation process.

Q Okay. So if you programmed into the algorithm traditional districting criteria that did not include race, and you generate 2 million maps, not one of them would have two majority-black districts in it?

A Well, I have to say that I regard minority opportunity to elect as an important traditional principle. So I don't know of a way to talk about the traditional principles that is truly race blind.

Q Would – I think you – would you characterize a map, then, that – assuming for a second that principle of avoiding – put it as minority vote dilution or creating [683] minority opportunity, how would you state the principle? I want to make sure I'm stating it as you would.

A Minority opportunity to elect, I have called it, or minority electoral opportunity.

Q Okay. So if we remove that sort of more race focused minority opportunity to elect factor from the process and you run your 2 million maps, if you were to get a map that had two majority-minority districts that was manmade, that would suggest as an extreme outlier, correct, if it was purporting to apply the same traditional race blind districting principles?

A Just – as someone who uses that term professionally quite a bit, I think that's a misuse of the term.

Q How so?

A So the term extreme outlier implies a probability distribution in which you're in the tails. If – I don't understand any way to construct a probability distribution that reflects the traditional principles and is race blind. As I've said, I think it's part and parcel, in fact, of the nonnegotiable federal level principles.

And so I don't know of a way to talk about the traditional principles as a package that is race blind.

Q Okay. So you offered no opinion in – I'm sorry. Please finish if –

A Well, I only was going to say that I don't mean to be resisting the question. I am trying to characterize it in [684] language I am comfortable with.

Q Yeah. This is helpful.

So you don't offer any opinion, then, in this case as to whether you could get – whether it's possible to draw two majority-minority districts in Alabama that respect traditional districting criteria in a race blind way?

A It is certainly –

MR. NAIFEH: Objection. That mischaracterizes what she said.

JUDGE MARCUS: Let's finish the question. Before you answer, Dr. Duchin, give us a chance. I am not sure I heard the entire question. The objection came in at the tail end of the question. Let's ask it crisply and then we will hear the objection.

MR. LACOUR: Thank you, Your Honor.

BY MR. LACOUR:

Q So Dr. Duchin, you said before that you don't really know how to take into account traditional districting criteria without also including that more race

focused criteria of ensuring minority representation, correct?

A I do know how to run algorithms that are race blind, but I don't know how to think of those as answering to the traditional principles. They equally – just to illustrate, I can also run algorithms that don't equalize populations and let some districts get ten times as big as others. But then I [685] think we've departed from the traditional principles.

Q Okay. So you offer no opinion, then, in this case, though, as to whether it's possible to draw according to all traditional redistricting criteria minus that one – the race focus criteria of two majority-black districts in the state of Alabama?

A That question I can certainly answer.

It is possible, because the world of possibility includes my demonstrative maps, which could be arrived at through a random process. So it is certainly possible.

Q Okay. But when you applied a random process in that study you referenced earlier and you drew 2 million maps, not one of them came back looking anything like one of the four illustrative maps, at least when it comes to Black Voting Age Population in two districts?

A Well, I can't answer whether one of them had a majority-black district and a second that was 49.999, in which case it could closely resemble one of the ones that I drew. But I can say that my understanding is that race consciousness is expressly permitted in order

to achieve minority electoral opportunity, and in particular, in order to draw majority-black districts, stands to reason that one must consider race. And I think the study that I referenced showing that it is hard to draw two majority-black districts by accident shows the importance of doing so on purpose.

[686] Q So – okay. Sorry. One moment, please. Are you familiar with Dr. Imai – I’m – try to say his first name – I know I’ll get it wrong. Dr. Kosuke Imai?

THE WITNESS: It’s Kosuke and certainly his – he and I have talked for many years about the development – or for districting algorithms.

BY MR. LACOUR:

Q Okay. He also engages in extreme outlier analysis, correct?

A He does.

MR. NAIFEH: I am going to object. This is outside the scope of direct and outside the scope of her opinions in this case.

JUDGE MARCUS: Are you asking her to comment on Dr. Imai’s opinion?

MR. LACOUR: Your Honor, she said a moment ago that she would reject the –

JUDGE MARCUS: I’m asking you whether you are asking her to comment about Dr. Imai’s opinions.

MR. LACOUR: Not to question his opinions, but to see if her – his opinions might affect her opinion of what is possible when it comes to drawing majority-black districts in Alabama.

JUDGE MARCUS: You might ask if she is familiar with his opinion in this case.

[687] BY MR. LACOUR:

Q Dr. Duchin, you are familiar with Dr. Imai's opinions in this case?

A Absolutely not. In fact, I only very recently learned that he was a witness in this case at all.

Q Okay. Would it surprise you if I told you that he drew 30,000 sample maps?

MR. NAIFEH: Objection.

JUDGE MARCUS: Let him finish the question, Mr. Naifeh. Please.

BY MR. LACOUR:

Q Would it surprise you if I told you that he ran an algorithm that produced 30,000 sample congressional maps in the state that adhered to certain traditional districting criteria, including incumbency which I know your maps did not, and that of the 30,000 maps, not one of them came back with two majority-black districts?

JUDGE MARCUS: The objection is sustained.

MR. LACOUR: Okay. Let me just have one moment to confer with my colleagues.

JUDGE MARCUS: Sure. Take your time.

(Mr. LaCour confers with co-counsel.)

BY MR. LACOUR:

Q Two quick final questions, and then I can let you go.

So if you were to learn that Alabama split Mobile County [688] and State Board of Education plan in order to comply with Section 5 would that affect how instructive the State Board of Education plan's current construction might be in how you were – design draw your second majority-black district for Congress?

A I think it would not affect my feeling that it's quite informative, and if I could expand on that, I would say that would be the exact kind of decision juncture that would be most informative for me. That is if in order to increase the black population in the district, they found themselves with a choice to make about what to split, their choice about how to do that would then be helpful for me in understanding something about their priorities.

Q Okay. Then – all right. I think that is all I have got. Thank you for your patience and for your time today.

A Thank you so much.

JUDGE MARCUS: All right. Thank you. You have some redirect, counsel? How long would that be? Because I wanted to – we have gone about an hour and a half and I want to make sure I give our court reporter a break.

MR. NAIFEH: I think now is – we do have some redirect. I think now is a good time for a break and it should be very –

JUDGE MARCUS: Give me some reference rough sense of timing on redirect.

* * *

[692] MR. NAIFEH: Apologize.

JUDGE MARCUS: I just want to make sure we are zeroing in on the right map at the right time.

MR. NAIFEH: Thank you. Thank you, Mr. Ang. You can take it down.

BY MR. NAIFEH:

Q Mr. LaCour asked you about communities of interest and which ones you considered. You mentioned the Black Belt and in the course of urban areas. Did you also consider counties and municipalities to be communities of interest in some cases?

A Yes. It's fair to say – well, certainly they're called out as such in the guidelines. But it's fair to say that I was also considering those under separate cover as the conforming to political boundaries. And so in a

way they get double billing, both as communities of interest and as political boundaries.

Q Okay. And Mr. LaCour asked you about avoiding incumbent pairings and you testified that, one, that you believed it was possible to create a plan with two majority-minority districts that did not pair any incumbents, but at the cost of certain other redistricting principles. Is that – am I stating that accurately?

A Yes, exactly.

Q And you could draw a plan that avoided any incumbent pairings and still contain two majority-minority districts [693] without sacrificing the principle of contiguity, isn't that right?

A That's correct. I should have specified.

Q Okay. And Mr. LaCour also asked you about the preserving the cores of prior districts, and he specifically asked you about whether an 80 percent core retention threshold could be met. Are you aware of any threshold in the redistricting guidelines about the extent to which cores should be preserved in creating a new plan in Alabama?

A First, just to correct the record, I think I was asked whether an 80 percent threshold could be sought. I don't think I was asked whether it could be met, just to be perfectly clear. Either way, I have seen nothing of the kind in the law or in the redistricting guidelines.

Q And are you aware of any such threshold in any other as a redistricting principle in any other source?

A No. Of the numerous states and localities that I have worked in, I have never seen a prescribed percentage for core retention.

Q Thank you, Dr. Duchin. And that's all of the redirect that I have.

JUDGE MARCUS: Mr. LaCour, anything further for Dr. Duchin?

MR. LACOUR: Yes. I will keep it very brief.

RE CROSS-EXAMINATION

[694] BY MR. LACOUR:

Q So talking about the thresholds and there's no threshold number in the guidelines, correct, when it comes to core retention?

A I strongly think no. We could pull it up, but I'm confident that there is no –

Q You are correct about that, I believe, but –

Now, when you were talking about compactness scores and where you were making sure your CDs 1 and 2 came in, you said that you looked at some of the least compact in terms of the enacted map as maybe not as a safe harbor, but at least as some guide for where you were pegging your scores for CDs 1 and 2, correct?

A I think the right way to say it would be since as I mentioned every state has a different state geography, I did look at those minimum scores in the state's plan to get an idea of what might be called reasonable compactness in an Alabama context.

Q Did you consider looking at the lowest core retention score of any of Alabama's districts to get a sense of what might reasonably be considered to be core retention?

A I did not because, as I said, I judged that even the minimum, you know, if – any statistic connected to core retention in the state's enacted plan that I would not be able to achieve corresponding statistics while creating a second [695] majority-black district.

Q Okay. And you don't know whether State Board of Education plan – let me rephrase that.

You don't know whether the current 2021 State Board of Education plan's District 5 was drawn to include a community of interest or rather to meet some other objective like preserving the core of existing districts, do you?

A I think we've established and I'm happy to repeat that I don't know anything directly about any of the process or conditions under which the plan was drawn.

Q Okay.

MR. LACOUR: That's all I have got.

JUDGE MARCUS: All right. Thank you again. Any re-redirect?

MR. NAIFEH: No, Your Honor.

JUDGE MARCUS: Any questions, Judge Manasco or Judge Moorer?

JUDGE MANASCO: None from me.

JUDGE MOORER: None from me.

JUDGE MARCUS: All right. Thank you, Dr. Duchin. And you are excused.

And you may proceed with your next witness. I take it this will be someone that you're putting on, Ms. Khanna, for Caster?

MS. KHANNA: Caster plaintiffs are putting on the next

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[769] MR. DAVIS: We're ready.

MS. KHANNA: Yes, Your Honor.

JUDGE MARCUS: I take it you are calling Mr. Bryan at this point.

MR. DAVIS: We are, Your Honor.

JUDGE MARCUS: All right. Thank you. Mr. Bryan, if you would raise your right hand, we will swear you in at this point.

JA722

THOMAS BRYAN,

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

JUDGE MARCUS: If you would be kind enough to state your name for the record.

THE WITNESS: Thomas Mark Bryan, B-R-Y-A-N.

JUDGE MARCUS: Thank you, sir. You may proceed.

MR. DAVIS: Thank you, Judge.

DIRECT EXAMINATION

BY MR. DAVIS:

Q Good evening, Mr. Bryan.

A Good evening, sir.

Q What is your profession?

A I am a professional demographer.

Q Do you have an educational background in demography or related to the field?

A Yes.

* * *

[853] comparable districts in the Hatcher plan, you may see a couple of instances there where the Hatcher plan is not as low, just because it does not have

boundaries that exactly follow those physical features. But in aggregate, across the board, every measure that you would look at would say the Alabama plan is superior, sometimes significantly so to the Hatcher plan.

Q Got it. But the Court, if it wants to look at Table 5.4 and 5.5 and compare the scores for each district in the Hatcher plan and the state's plan; is that right?

A Right.

Q Okay. Let's look at some of the maps you prepared for the Hatcher plan, Mr. Bryan. I want to turn now to Page 44 of your report, Page 44 according to the filing information on the top of the page.

What do we see in this map, Mr. Bryan? This Map Appendix 5?

A Sure.

Q Tell us what you are showing us in this map.

A Sure. So this is a – this is consistent with some of the other maps that we've produced for different plans. It's an outline of the Hatcher plan, and it shows the percent black alone by – let's see – this is actually mislabeled. This is a black alone by county map. So I would disregard the label within the map and refer to the map appendix, the title of the map. This is black alone by VTD – by county.

[854] Q Thank you.

Now, this District 2 – you see my cursor moving, I take it, on the screen?

A Yes, I see.

Q District 2, which takes part of Mobile County and then goes east, and District 7 which includes this finger into Jefferson County, those are the two majority-black districts in the Hatcher plan, are they not?

A That's correct.

Q Is there any county in the state that is more than 40 percent black population that is not included in either District 7 or District 2 in the Hatcher plan?

A There's only two pieces that I see. There's, again, in Jefferson, there's a little portion of the district that goes outside of 7. And then, I think similarly, you move your cursor down and over to the right, that county with 79 percent goes just over the edge. And that's slightly split by district, as well.

But other than that, yeah. And 43 right there. Other than that, there's no other 40 percent or greater wholly contained counties in any other districts.

Q Let's move to the next map, Map Appendix 6. What are you showing us here?

A Yeah. So this would be the Voting Age Population by county overlaid with the Hatcher plan, again showing the high [855] concentrations of population in Jefferson County and Mobile and Baldwin counties.

Q Where does it appear, according to this map, that District 7 is getting most of the people that populate this district? Most of the people, regardless of race.

A Yeah. The biggest piece would be coming from the area in Jefferson County.

Q And where would District 2 be getting most of its total population?

A It's a little less clear here because you've – it is intersecting the Mobile and the Baldwin counties to the southwest. But there is another also another populous county in north central – 177,427, right in there. So that's a corner, just given that we have 700-and-some thousand population, that county would be contributing disproportionately to the overall plan.

Q Yeah. This is Montgomery County, correct?

A Yeah. Correct. It's not labeled on my map, but, yeah, I believe that's correct.

Q Let's look at Map Appendix 7 on the next page.

A Sure.

Q What do we see here, Mr. Bryan?

A Yeah. So this is the – this is the plan that shows the percent black alone by the VTDs overlaid with the Hatcher plan.

Q Okay. What, if anything, is indicative to you of the map [856] drawers' intention when you look at the

splits of, say, Jefferson County, here between 7 and 6, and Mobile County between Districts 2 and 1?

A Sure. I'll be careful to put myself in the mindset or speak for the intention of the map drawer. I will speak more so to the appearance or the outcome of the map, if that is all right.

Q Assume that's what I asked. Is this any appearance here that jumps out to as an a demographer?

A Yes. I would be more precise if I focus on that than intent.

As you follow the new District 2 starting kind of over on the eastern edge of the state near the border, near where Columbus is, and you see that the northern edge of District 2 starts tracing from east to west across the central part of the state, you can see easily that that line almost precisely exactly follows the contours of the very highest black population VTDs – can literally go from one to the next and look on the northern edge of that line and see what I call the yellow, red, you know, 10 percent, 20 percent black, and then you go below that line and you immediately see a 60 percent or more black. It is literally like the di-viding line of black and much less black population.

As you follow that boundary around to the central part of the state through the Black Belt, District 2 turns south and [857] goes down towards Mobile and Baldwin counties. You can see that the map – and the map that District 2, the boundaries of it go down around Mobile. I think we have another map that may

show it in more detail. But we can illustrate that in this plan the boundaries of District 2 went around Mobile, not following a city boundary or any other administrative boundaries. It just followed the edge of where black population was and was not.

Similarly, in District 7, you can see that it captures large portions, very carefully captures large portions of black populations. And as you go into Birmingham, Jefferson County, you can see that it nearly perfectly outer bounds only the exact black population VTDs in the northeast corner of Birmingham.

Q Why don't we go ahead and look at some of the close-up maps that you prepared.

Let's look at Map Appendix 9?

A Right.

Q What do we see here, Mr. Bryan?

A Sure. So the dark line, if you can see carefully enough it's kind of dark black and a purple line. That's the existing district boundaries.

The –

Q Let me interrupt you. By existing, do you mean the 2011 plan?

[858] A Yes.

Q Okay.

A Thank you.

The existing 2011 district plan. And what I have done here is I have overlaid, again, with a blue outline where the Hatcher plan boundaries are. And if you look, what the Hatcher plan does, is it kind of follows closely along where the existing districts were, but then I have shown with little blue dots here where the Hatcher plan did what we call an outer bound. That is it went beyond the existing districts and grabbed just the precincts that had the highest concentrations of black population.

You can see that there are plenty of VTDs surrounding Birmingham that are colored yellow and orange, reflecting lower black population concentrations. And the plan just really prioritized – appears to have prioritized making sure that it got the highest black concentration VTDs into the plan.

Q Thank you.

Let's look at the next map, Map Appendix 10.

A Sure.

Q What are you showing us with this map, Mr. Bryan?

A Yeah. So one of the – in just looking at the data for the new Alabama plan, what I suspected we were going to find is that there were some VTDs – I did not know where, but there would be some VTDs where there was black population that would

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[898] Q You don't point to a single case in your report that has used the black-alone definition in determining whether the first *Gingles* precondition is satisfied, do you?

A No. And to me, it doesn't matter. This is the land of the political scientists, and it's a reflection of my experience with them. I don't advocate one as being right or wrong. The breadth – this is a secondary passing comment about the facts of my professional experience in this field. The reason that I present black alone and black in combination is to provide full, complete, context and understanding of the race alone and race in combination to help me better understand plaintiffs' representation of the black population, which is almost always not documented, inaccurate, or incomplete. That is why we do the complete job that we do. Not to try and prove a point about *Gingles II*.

Q I really appreciate that clarification. And I understand.

A Thank you.

Q What you just mentioned, that that was just a passing comment in your report. I am sure you understand that we have – I need to ask you: You wrote in your report that this is the most defensible, and as I understand you saying now, you actually don't mean to be concluding whether one is defensible – one use of a metric is defensible or better; is [899] that right?

A That is correct. I am not – I am definitely not making a judgment that one is right or wrong or better or worse.

* * *

[913] Q You note that in this section you will try to define and document the true black population of the two black districts in plaintiffs' alternative plans?

A Yeah. That's correct.

Q But at no point in your report do you conclude that the true black population in Alabama is defined as only the single-race black population?

A Yeah. That's correct. What I'm seeking to do, for example, referring to Dr. Duchin's work, where she does nicely document what her population is, I appreciate the accuracy and the clarity of her analysis. She is very transparent that her work represents all-part black, and that's great. Very frequently other plaintiffs don't. And in reading through the bodies of work that I have looked at as part of this case in Singleton, Caster, and looking at other work, for example, that Cooper has done, there are many instances where it is not clear what the black population is that they're referring to.

So part of my exercise is to do the analysis and the research to make sure I know that when I see a number that says [914] this district is 50 percent black or 55 percent black, because those are not oftentimes not documented, I take it as my responsibility as the demographic expert to find out what those true black

populations are that they are referring to. It is much of benefit for clarity and the definition. It is not a judgment of which is right or wrong.

Q And I just want to make sure that we are talking about this case and the reports in this case. You mentioned plaintiffs generally maybe even Mr. Cooper's reports in other cases. Is it your position that Mr. Cooper did not clarify in his report where and when he was using the any-part black calculation?

A No. In this particular report, it's – he provides two columns of data that show what his numbers are. But given my experience with tables that I have reviewed for Mr. Cooper and errors I have found in those tables, I felt it was important to make sure that those numbers were correct. And as I found out in my analysis, in some cases they were not. So it was still a worthwhile exercise even though he represented them as being all black or any-part black or black alone. It's still a useful purposeful exercise because it uncovers things like this.

Q And when you went back to check those figures, you would agree that using the any-part black metric as stated in the – as approved by the Supreme Court and the Department of Justice, [915] each of Mr. Cooper's maps have two majority-black districts, correct?

A I – in any-part black metric, yes, I agree with that.

* * *

[929] Q If we could turn to page 11 of your second report. This is Defendants' Exhibit 4, again, page 11. Okay. Here is where you begin your analysis of Mr. Cooper's illustrative plans?

A Right.

Q Using just three redistricting principles; is that right?

A Yeah, that's correct.

Q And those three principles that you chose to analyze are in this order: Core retention, incumbency, and compactness?

A It's because that order or that – there's no particular [930] meaning to that order, but those three were used subsequent to the establishment that they were legal plans with equally balanced population that would support one person, one vote. So checking that box, I moved on to these other issues.

Q I'm sorry. Can you explain that one more time? I am not sure I understood.

A Yes. I – there was no need to do an in-depth analysis of the equitable distribution of population because it's factual at face value. I looked at it. It is – there's no need to do a deep dive or a detailed analysis on whether they did a – the traditional redistricting principle of equally balancing population was met or not.

It was at face value, it is evident that it was. So there's no need to create a section and write in detail about if and how it was. It was.

Q Okay. We can take down the exhibit. Just to make sure

A Thank you.

Q Just to make sure I understand. As you just testified, you offer no analysis of Mr. Cooper's plans with respect to population equality, correct?

A No.

Q You offer no conclusion that Mr. Cooper's plans failed to abide by population equality, correct?

A No, the total population numbers that I reviewed in his tables and that I confirmed suggest that he meets that [931] criteria.

Q Okay. You also provide no analysis of non-dilution of racial minorities in either the enacted plan or any of Mr. Cooper's plan, correct?

A No.

Q And you certainly offer no conclusion that Mr. Cooper's plans failed to abide by the principle of non-dilution of minority voting strength?

A No. I have no opinion.

Q You also provide no analysis of the traditional redistricting principle of contiguity in any of Mr. Cooper's illustrative plans, correct?

A That is correct.

Q And you offer no conclusion that Mr. Cooper's plans failed to abide by the principle of contiguity?

A Yeah. That, again, is a fact that was self-evident and I found that to be true and not an item to write a detailed analysis on. The only analysis or time when I did focus on that was on Dr. Duchin's report where there was an instance of non-contiguity.

It was immaterial, an easy mistake and trivial. Had no material impact on the outcome, but it was simply one worth noting. Because there was no such issue with contiguity in Mr. Cooper's plan, I did not raise it as an issue to analyze.

Q You also provide no analysis of the extent to which [932] Mr. Cooper's plan split political subdivisions; is that right?

A Yes, that's correct.

Q You offer no conclusion that Mr. Cooper's plans failed to minimize political subdivision splits?

A I'm sorry. You broke up for a moment. Can you please repeat?

Q I can. Can you hear me now?

A Yeah, I can hear you. I got you. No worries.

Q And you offer no conclusion that Mr. Cooper's illustrative plans failed to minimize political subdivision splits?

A I did not, no.

* * *

[970] Q Mr. Bryan, I will be sure to direct you to any specific portion of that analysis as we go through it.

Your analysis contained in your report, your compactness analysis consists entirely of the numerical metrics of compactness on a number of different measures; is that right?

A That is correct.

[971] Q Your compactness analysis does not contain any analysis of the contours of specific districts in Mr. Cooper's illustrative plans; is that right?

A I'm sorry. I do not understand the question.

Q When you are evaluating the compactness of Mr. Cooper's illustrative plans –

A Uh-huh.

Q – you evaluate them solely based on their metrics, the Reock score, the Polsby-Popper score, the Schwartzberg score, and the convex hull score?

A Yes, that's correct.

Q You do not analyze any of the specific contours of the districts actually drawn other than their compactness scores?

A Yes. As a practice in compactness, except for diagnostics, you would not go analyze any specific

contour or detail or part of a district. There's one number that represents the plan.

Q You provide no analysis to the extent to which county or city or VTD boundaries informs the compactness of a given district in Mr. Cooper's illustrative plans?

A I do not. But the decision to comply with county boundaries or other boundaries that they create better compactness or poorer compactness, as was the case with some districts in Alabama, is solely at the discretion of the drawer of the plan.

[972] Q And you don't provide any analysis of the extent to which highways and rivers inform the compactness of any given district in Mr. Cooper's illustrative plans?

A Not in Mr. Cooper's plan. I do offer some analysis of that in other plans where it was relevant, for example, in the Alabama plan where there was some districts with lower compactness scores. Those were a result of some geographic features. I found no strong prevailing geographic features that in particular hindered Mr. Cooper's compactness scores.

Q Well, you don't provide any analysis at all of the geographic or political boundaries of his districts as it relates to their compactness?

A I did not identify any features – specific features of the plan that were specifically very detrimental, and I defer to Mr. Cooper's expertise and

judgment in drawing plans that are either compact or not compact.

Q Toward the end of your direct examination with Mr. Davis, I believe he asked you some questions about whether plaintiffs illustrative plans draw lines that appear to you to be based on race or other traditional districting principles. Am I recalling that correctly?

A That is correct.

Q But at no point in your report do you provide any analysis of the way in which specific districts in Mr. Cooper's illustrative plans are configured outside of their objective [973] compactness scores.

A Except insofar as to acknowledge how they were precisely drawn to exclude white population and include black population to achieve the majority district status that he was seeking.

Q Can you point me to where in your supplemental report you speak about that topic in Mr. Cooper's illustrative plans?

A It may be in the map – just give me a moment, let me see if I can track it.

Q Sure.

A It appears I may not have written text about that finding. I would refer to the map of the Cooper's plans to support my observation.

I cannot quickly find text if I wrote any about the observations because, as I stated earlier on my direct with Mr. Davis, the performance in the outline of these plans were very consistent with the Hatcher plan, which I did document the degree to which it followed these boundaries exactly. And in looking at the Cooper plans, as I am now, one after the next, the degree to which they follow black populations and exclude white populations around Birmingham and Mobile are consistent with every one of the other plaintiff plans that I reviewed. So I'll stick with that.

Q And that analysis that you just provided, including the analysis in response to Mr. Davis's questions are not actually –

[974] JUDGE MARCUS: I am not sure we heard the whole question. I'm sorry. Ms. Khanna? Have we frozen up completely? Mr. Davis, can you hear me? Judge Manasco?

MR. DAVIS: I can hear you, Your Honor. I just believe Ms. Khanna's screen has frozen momentarily.

MR. DUNN: I think it's Ms. Khanna's screen that's frozen, Your Honor.

MR. DAVIS: There she is. She is back.

JUDGE MARCUS: Ms. Khanna?

Hi, Ms. Khanna. I think we lost you for a moment.

MS. KHANNA: I apologize, Your Honor.

JUDGE MARCUS: That's all right. Why don't you start over and ask your question again.

MS. KHANNA: Can everybody hear and see me now?

JUDGE MARCUS: We hear you fine.

MS. KHANNA: Thanks. Give me one second to reconfigure my screen. It closed out for a second.

JUDGE MARCUS: Sure.

BY MS. KHANNA:

Q Okay. I am not sure where I got cut off, but my question was the analysis that you just provided about —

A Yeah.

Q — about how the lines were drawn in Mr. Cooper's illustrative plans —

A Yeah.

[975] Q — is not an analysis that we will find anywhere written in your report about Mr. Cooper's illustrative plans, correct?

A No. I think that part of the report and the analysis was pretty light and I think that I was mostly led by the fact that his plan and Dr. Duchin's plan, all of these plans were following a very similar pattern. And if you look at the map, you will see that they do the

same thing as in other plans that we documented, where we show it follows precisely where black population is and is not – I concede that that analysis and that finding is not – does not appear to be written up in my summary of findings.

Q You provide no analysis in any of the text about the configuration of the districts in Mr. Cooper's plans outside of their objective compactness scores, core preservation scores and incumbency protection scores?

A Yes. My observation about their consistency in performance in including or excluding black populations is as I am reciting to you right now, looking at the maps that I drew.

Q But not an opinion you expressed in your report?

A Yes, ma'am, that's correct.

Q And at no point in your report do you offer any conclusions or opinions as to the apparent basis of any individual line drawing decisions in Mr. Cooper's illustrative plans?

A I did not. Yep. That's correct.

[976] Q So your report analyzes Mr. Cooper's Illustrative Plans 1 through 6, correct?

A That's correct.

Q And just to clarify, it does not provide any analysis of the compactness of Mr. Cooper's Illustrative

Plan 7 since you did not have that plan in front of you when you wrote your supplemental report?

A Yeah, that's correct.

Q So you offer no opinions or conclusions on Illustrative Plan 7, including its compactness, correct?

A I do not. And if there is significant evidence of a revelatory or new different plan that is a breakthrough in this case, then I probably would have been alerted to that and I was not.

Q Okay. Have you actually reviewed Illustrative Plan 7?

A No.

Q Before your testimony today?

A No.

Q You have not even seen that plan?

A It's in my e-mail somewhere. I have not had a chance to review it. I'm sorry.

Q So among Mr. Cooper's Illustrative Plans 1 through 6, if I am reading your report correctly, and I am referring you to page 18 of your report, you conclude that Illustrative Plan 4 has compactness scores that you believe are comparable to the [977] enacted plan; is that right?

A May I refer to my report?

Q Please do.

A Thank you.

Q Page 18 is specifically where I am looking.

A Okay. Great. I see on page 18 the enacted plan compactness scores. Is what you are referring to? Yeah. That's it. Yeah. Terrific. Yes. Yes. I recognize this. Yep.

Q And in the paragraph, the last paragraph on page 18, you note that only Cooper plan 4 has comparable scores to the other plans. Am I reading that correctly?

A Yes. That looks like what that says.

Q And there you further conclude that Mr. Cooper's Illustrative Plans 1 to 3 and 5 and 6 have inferior compactness scores to the Duchin plans; is that right?

A Yes. That is correct. Dr. Duchin's plans, because of the additional compactness she drew into Districts 4 and 5, outperform in total Mr. Cooper's plans.

Q Okay. If we go to the next page to your conclusion paragraph on page 19 of your report.

A Yep.

Q There you say, My analysis of compactness shows that Dr. Duchin's plans perform generally better on average than the enacted state of Alabama plans –

[978] A Yes.

Q – although some districts are significantly less compact than Alabama’s and significantly better than Bill Cooper’s plans. Did I read that correctly?

A Yeah. This would be the – what I would call the – when I say in aggregate, that’s literally the summary across all districts within the plans. That is correct, yes.

Q So your conclusion as to the compactness of Mr. Cooper’s plans here is how they fare relative to Dr. Duchin’s plans; is that right?

A It is and also relative as you see in the top two lines to the 2011 existing and 2021 exact – enacted.

Q But the statement here about the Duchin plans being significantly better than Mr. Cooper’s plans, that does not apply to Mr. Cooper’s Illustrative Plan 4, which you said was comparable, correct?

A That is the only plan that was remotely close in compactness, as you can see in this Table 3, to the other plans. And then, in that regard, in Polsby-Popper and Schwartzberg, it is comparable, and Reock, it was not. Convex hull, it was. So there’s one plan where three of the four metrics were almost comparable with the enacted plans.

Q And that conclusion, of course, does not apply to Illustrative Plan 7, which you haven’t reviewed in this case?

A No, ma’am. I cannot offer an opinion.

[979] Q Okay. We can take down the exhibit. Mr. Bryan, at no point in your report do you offer any opinion or conclusion that any of Mr. Cooper's illustrative plans are not reasonably compact, do you?

A I have no opinion on what is reasonable and what is not reasonable. There's no such standard in the industry. I present it in relative terms to other potential options that the state of Alabama could consider for their redistricting solution.

* * *

[988] Q All right. Let's go back to the Hatcher plan that you discussed in your first report in this case.

If we look to Defendants' Exhibit 2, page 16. We can pull that up so that everyone is looking at the same thing. Here up in the top paragraph you say –

A Yes.

Q – no effort was made to try and conform the boundaries of District 2 to the existing city boundary of Mobile; is that correct?

A Yes. I looked at this carefully. The municipal boundaries of Mobile are complex, and, nevertheless, the boundaries of the plan slices through them. I do not have a count of how many sometimes it splits the boundaries of Mobile. Conventionally, if you were going to make this big of a deviation in a plan to go grab a piece of geography that is out of bounds, such as Mobile, you would do so by trying to include administrative geography such as the city boundaries.

This – the boundaries of the Hatcher plan, the Duchin plans and the Cooper plans in my analysis do not make appear to make any effort to conform to any other administrative geography, rather only to try and capture the most densely black population of Mobile.

Q Just to be clear. The sentence that's highlighted on the [989] screen right now is from your first report?

A Yes.

Q And it refers only to the Hatcher plan, correct?

A Yes, ma'am. That is correct. Yes.

Q You had not seen any of the Cooper plans at the time you wrote this report?

A No. My statement reflects subsequent observations of the other plaintiff plans. I'm sorry. Retract.

Q Okay. Let's pull up Mr. Cooper's Illustrative Plan 6 and let's specifically look at District 2. That's going to be Plaintiffs' Exhibit 44. This was included as an exhibit to Mr. Cooper's first report.

And if I recall your previous testimony, you did not review any of the exhibits attached to Mr. Cooper's reports; is that right?

A No, my analysis was based on the information that I received – the electronic information I received that I used in my geographic information system to perform an analysis that would be in essence a replication of this map that I'm seeing now. I did not use or

refer to this exact map. I referred to my own company's representation of this map in my analysis.

Q Okay. But looking at Mr. Cooper's illustrative plan, his map right here, you would agree that, in fact, District 2 does keep the city of Mobile whole by conforming to municipal boundaries, correct?

[990] A It's difficult to see where that boundaries of the city of Mobile are in this map. I can't give an opinion. It may be the case, but I can't tell from this map. But whether the map contains it is – would be a misleading statement because you can have a geography that can outer bound a city and capture numerous pieces of irregular geography around it. Because it contains it does not mean it follows it. And the benefit of following administrative geography in redistricting is because it captures pieces of administrative geography that enable that district to represent people with similar administrative geography and policy interests and concerns.

So stating that this outer bounds, the city of Mobile does not necessarily mean that that means that it's an accurate capture of Mobile.

A visual examination of this plan shows a highly irregular draw into the county of Mobile anyway. So some other thing was happening when Mr. Cooper drew this in this very unusual and unique way, into the otherwise very geometrical simple geography of Mobile.

Q So you don't know sitting here today whether that – the drawing of District 2 in Mobile County conforms to the boundaries of the city of Mobile; is that right?

A I – it may – I want to be precise with my language. That district may outer bound, that is, fully contain the city of Mobile. I do not believe just looking at this map, which is [991] not precise, whether it exactly follows the boundaries of the city of Mobile or not. I don't believe that it is. But I cannot say that definitively.

Q You would agree that if it does exactly follow the boundaries of the city of Mobile, that would make a significant difference between its configuration and the Hatcher plan that you criticize; is that right?

A If this exactly followed the city boundaries of Mobile, that would certainly give it some credence, but that does not change the highly irregular features and the draw that was made to go into Mobile County. There's no way a map drawer could look at this draw and not avoid the highly irregular draws in and out and around the county.

Q So when you were evaluating whether a district looks irregular, you are doing that without respect to whether or not it's following municipal boundaries; is that right?

A In this particular case, Mobile is only a part of Mobile County and so my visual observation of this

draw is showing significant irregularities that are clearly outside of the city of Mobile here.

Q So your understanding is this district – the district lines of CD 2 do not conform with the city of Mobile boundaries; is that right?

A I am not able to say with certainty whether they do or do not. It does not visually appear to, given my knowledge of the [992] area. I would have to see something much more detailed to be able to prove that or not.

My assessment is that the draw in Mobile County in this case appears, given the geometric simplicity of the county, that there was some motivation to draw a highly irregular boundary within the county. And not all of that – not – it is not possible to that all of those irregularities were determined simply by the municipal administrative unit of geography known as the city of Mobile.

Q And you mentioned there were motivations, but you, of course, have no knowledge, information or opinion about any of the motivations, correct?

A I don't know what the motivations were. All I know from my own analysis and maps are that the lines that go down into Mobile across all these different plans, I am speaking generally, not to any one particular plan, go down into Mobile and surgically go into and out of white VTDs and black VTDs, including the black ones and excluding the white ones.

If that was the motivation, I would believe that a mapmaker would have just gone into Mobile and taken the whole county. Otherwise there is no reason to have gone in here and so surgically and forensically grabbed just very precise pieces of the city of Mobile, which we know to be the most densely black portion of the county.

Q And, again, your testimony about which pieces of the city [993] of Mobile may or may not be included in District 2 –

A Right.

Q – is not about this district that we're looking at right now, you're speaking generally about some of the illustrative plans?

A Yes, ma'am.

Q And about the Hatcher plan?

A That, too.

Q Let's turn – let's actually look at your depiction of Mr. Cooper's Illustrative Plan 6. And I think that's going to be at page 88 of your supplemental report. Defendants' Exhibit 4. Does this look familiar to you?

A It does, yes.

Q This is your depiction of Mr. Cooper's Illustrative Plan 6 color coded by the concentration of black population; is that right?

A Yep, that is correct.

Q And sitting here today, you can't tell me whether the District 2 boundaries depicted in this map conform to the city of Mobile boundaries; is that right?

A I cannot determine that from this map. I could in a matter of minutes if it's an important point, but I cannot tell from this whether it definitively is or is not.

Q But you can tell from this map that Mr. Cooper's District 2 includes a lot of those red and orange VTDs on your [994] illustration here; is that right?

A Are you speaking specifically to the area around what we're going to characterize as the area around Mobile city?

Q I'm actually – I'm looking at a southwest corner of this map.

A Okay.

Q Maybe we can zoom in on it.

A Sure. Yeah.

Q If I am understanding your testimony correctly, you criticize the Hatcher plan and apparently some other plans for excluding white VTDs and including black VTDs into District 2; is that right?

A That's correct. And just – this is not one of my close-in maps. I am not sure I have a close-in map of Cooper, but even with this grainy picture, you can see that there was a – basically a fish hook where the district was run down the western edge of the state,

excluding lots of red, orange, yellow, you know, low black concentrated VTDs and then wrapping around very low population areas in the south corner and reaching up to grab, as you can see the line of the boundary of the district, grabs just the green areas exactly around the city of Mobile.

If this plane was not motivated by grabbing just that population, I would have expected the drop to go geometrically just simply straight down from the north and just capture one [995] irregular geometrically continuous space, rather than this highly irregular draw, fish hooking around just to grab this black population in this corner of Mobile.

* * *

[1040] Q And to cut to the chase with Dr. Duchin's work, you found that even using the sole-race black criteria, one of her plans qualified as a majority-black plan in both of the districts that she identified, correct?

A Yes, that's correct.

Q And if you use the any-part black test, you confirmed her analysis that all of her plans did so?

A Yes, that's correct.

Q And you understood that her plans, the four plans she presented were representative plans, right?

A Yes.

JA752

Q That were designed specifically to cross the majority threshold and demonstrate the possibility that in Alabama you [1041] could design a plan that contained two majority-black districts, right?

A Yes. She was clear that was her intent, the direction and intention of her efforts, yes.

* * *

[1064] really got to listen to my question. Do you agree the Black Belt is a community of interest?

A Yes.

* * *

[1138] having been first duly sworn, was examined and testified as follows:

JUDGE MARCUS: Would you be kind enough to state your name your full name for the record?

THE WITNESS: Yes, Your Honor. Joseph Mark Bagley. J-O-S-E-P-H, M-A-R-K, B-A-G-L-E-Y.

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

MS. SADASIVAN: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. SADASIVAN:

Q Dr. Bagley, do you know why you are here today?

A Yes. I was retained by plaintiffs' counsel in this case.

Q And what did plaintiffs' counsel retain you for?

A They have asked me to perform a set of factors analysis relative to HB-1 at issue in this mitigation.

Q Dr. Bagley, I would like to just ask you your background and experience first.

MS. SADASIVAN: Eric, can you pull up Plaintiffs' Exhibit M-5, which is ECF 68-2.

BY MS. SADASIVAN:

Q Dr. Bagley, I am showing you what's been marked as Plaintiffs' Exhibit M-5. Do you recognize this document?

A I do. That is the report that I submitted in this case.

MS. SADASIVAN: And, Eric, can you please go to page

* * *

[1161] school systems. In fact, if you look at the most recent list, almost exclusively, it's public schools in the Black Belt, in Birmingham, or in the urban core of Mobile.

Q Thank you, Dr. Bagley. What did your report determine in higher education?

A I talk briefly about the *Knight* litigation from the 1990s. The state's flagship universities were desegregated by a litigation in the 1960s. So Auburn and

Alabama were desegregated at that time. But in the 1990s, in *Knight vs. Alabama* litigation, the Court found there were still, quote, vestiges of segregation in those institutions and in the – proposed at that time satellites of those institutions that were being built in Huntsville and Montgomery respectively. And it entered in a remedial decree similar to that in *Lee v. Macon* where it oversaw the process of trying to eliminate those vestiges over the course of a ten-year period up into the 2000s.

Q So, Dr. Bagley, when you were discussing schools, you mentioned the Black Belt of Alabama on pages 1 and 2 of your supplemental report, which is Plaintiffs' Exhibit M-9, you discuss the Black Belt in Alabama. Can you tell me a little bit about the history of the Black Belt of Alabama?

A Yeah. So the Black Belt broadly speaking is an agricultural region that stretches all across the deep south.

So from all the way up into Virginia and the whole [1162] tidewater, tobacco-growing regions through the rice-growing regions of the low country and through the heart of the sort of deep south. In Alabama, it stretches through south central Alabama from roughly Russell and Barbour counties through Montgomery and widening out sort of from Sumter County down to Washington County on the Mississippi state line.

This is the area of the state when the state was very young when native Americans were forcibly removed from that area. White settlers flooded in down

the federal road from Georgia either bringing with them enslaved persons or purchasing them at slave markets at a time where people realized the deep rich black soil, where the name Black Belt comes from, and the climate of the South was perfect for growing long-staple cotton at just the right time where via mechanization industrialization cotton was becoming the go-to material in textile production. So the upshot is it made a lot of white land owners very, very rich, and the labor was being done of course primarily by enslaved black persons.

In terms of relevance to this case, as I talk about in my supplemental report, there was never a land redistribution program. Land was never systematically taken from white land owners after the Civil War and distributed to former slaves. Even when the so-called radical Republicans in Congress were in charge of Reconstruction, that never happened.

And so most of the poorer states become landless tenant [1163] farmers, sharecroppers. The legacy of that is very, very long and profound. The Black Belt remains characterized by its mostly black population by the fact that it is stricken by poverty.

And the – I should add that where I'm going with this in the supplemental report is to say that over time a lot of black people leave the Black Belt. I think that's widely known when it comes to the so-called great migration that black people leave the poorer areas of the

South and move to cities in the Midwest or the Northeast.

What I tried to emphasize, though, in my report is that also black people leave the Black Belt and move to cities in Alabama, most especially Mobile. And I cite to the imminent historians in Alabama including Wayne Flynt who have described the process whereby black people have left in large numbers in a couple of different waves the Black Belt for the city of Mobile, and they share then the current residents of the urban core of Mobile that history with black people in the Black Belt. And it's not just the migration. It's not just ancestry and heritage. It's cultural, and it's multifaceted when it comes to the history.

For example, you look at the mid-20th Century and the Civil Rights movement. Where were black people first active, in terms of organizing to bring down Jim Crow and to have access to the franchise? You would look at something like John [1164] Hewlett in the Lowndes County Freedom Association. That is in the heart of the Black Belt. You would look at John Cashin who is from Huntsville, but when he forms his National Democratic Party of Alabama, where do they first run candidates? They run them in the Black Belt. Where do they first win races? They win them in the Black Belt.

Literally at the same time, you have John LeFlore in Mobile organizing black stevedores and then organizing a local chapter of the Non-Partisan Voters League. And all of these individuals and anyone

associated with this organizational activity is facing the sort of brunt or butt end of withe backlash. So all that to see there are these important connections I feel like when it comes to the Black Belt and Mobile, and that is what I am reporting in this supplemental report.

Q Let's move now, Dr. Bagley, to page 21 of your report, where you describe the living conditions in the Black Belt. Can you take us through those?

A Sure. And I'm trying to find that page. And it is – here it is.

Q Page –

A Thank you. I cite to a report that the United Nations published in 2019. The UN sent a special representative to the United States that year to examine conditions of extreme poverty. And one of the places they looked was the Alabama [1165] Black Belt. The UN's special representative reported that there were indeed conditions of extreme poverty, especially when it came to, for example, drinking water and waste water systems. He reported widespread findings of, you know, folks having to try to fashion their own water systems with PVC pipe, drinking water systems at the same time that their septic tanks are backing up in their yard and you have got drinking water that's exposed to raw sewage, and you have got people getting sick, sometimes entire households at a time with E. Coli and hookworm and so on.

And I also talk briefly about the effects of the environmental pollution in the Black Belt. I talk about how the Court in *People First* found that black people are more likely to live in areas that suffer from the effects of environmental pollution. And I talk briefly on page 21 about the case of Uniontown in the south central Black Belt where 4 million tons of potentially toxic coal ash was dumped sometime ago with – over the protestation of then Congressman Artur Davis. And that has been fairly recently found to continue to have an adverse impact on people in that area.

Q Dr. Bagley, let's talk more then about the environmental deprivation, particularly in large areas with high black populations in the state: Can you describe your other findings?

A Yeah. I look at – the Environmental Protection Agency

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[1252] JUDGE MARCUS: Would you be kind enough to state your name for the record, please.

THE WITNESS: Baodong Liu.

JUDGE MARCUS: Could you spell that just for our court reporter.

THE WITNESS: My first name is B-A-O-D-O-N-G. Last name, L-I-U.

JUDGE MARCUS: Thank you much, Dr. Liu. And counsel you may proceed.

MR. ROSS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. ROSS:

Q Dr. Liu, did you prepare any expert reports for this case?

A Yes.

Q Do you have copies of those reports with you?

A Yes, I do.

Q Okay. How many reports did you prepare?

A I submitted my initial preliminary report on December 10th, and then I also submitted a rebuttal report on December 20th.

Q All right. So let's begin with your first report, which was previously marked as Plaintiffs' Exhibit M-4. Let's turn to page 21. Dr. Liu, what is your highest level of education?

A I received a Ph.D. in political science from University of New Orleans in 1999.

* * *

[1317] suggests there are not too many multi-racial black. But I am not demographer, so I never did any shapefile analysis or distribution or population in that nature.

Q Is this along the same lines of what you said earlier on your direct that it would be impossible for to analyze multi-racial blacks?

A It is not my job. In the first place, I am not a demographer. I don't to shapefiles or other ways of geocoding. But I form my opinion based on my RPV analysis and understanding of southern politics and U.S. history. But I am not demographer.

Q Okay. I appreciate you stopping me, Dr. Liu, if I am trying to veer out something you didn't mean to testify about. And please keep doing that. I am not trying to lead you astray.

But in your direct, you mentioned the shared black experience, I think you said?

A Yes.

Q In talking about the political cohesiveness. And I –

A Yes.

Q I think you were referring to multi-racial voters, and I could be mistaken. When you were talking about that shared black experience of racial groups, can you explain more what you were talking about?

A Certainly. I will be glad to.

[1318] The literature increasingly is paying attention to the fact America is becoming more multi-racial. So scholars such as me need to understand how the multi-racial overall picture of USA has impacted how

voters voted. And in particular, my research has brought me to the study of the black people in USA, in obviously, there are some states as like I said, Florida, Texas, you know, there are immigrants and multi-racial communities.

But the question about whether different kinds of blacks may lead to the voting decisions of these so-called different blacks differently, that's what I am interested as a scholar.

I have done research especially related to Obama's Presidential election, because there was a national dialogue about whether Obama represents all black, whether his mom is white. That represents the blackness, a sense in that nature, I have studied extensively, extensively about that. All my studies in empirical research have lead me to believe that though there are increasingly multi-racial fact in the black community itself, the shared blackness has made the Obama Presidential election a very clear piece of empirical evidence to say that they voted for Obama. Regardless whether we are talking about blacks and, say, Florida, or New York, or in Alabama, or even here in Utah, that shared blackness to me has to be reported to the Court when we talk about, you know, issues concerning racially-polarized voting especially in the context of Alabama, [1319] which doesn't have multi – too many multi-racial blacks in my research.

Q Okay, Dr. Liu, is it correct that you did not conduct an analysis in this case about the cohesiveness of

multi-racial black Alabamians and single-race black Alabamians?

MR. ROSS: Objection. Misstates his testimony.

MR. HARRIS: Please correct me. I'm –

JUDGE MARCUS: Do you understand the question, Dr. Liu?

THE WITNESS: I'm trying –

JUDGE MARCUS: Either you do or you don't. If you don't, we will have him rephrase it.

THE WITNESS: Okay. I – please do clarify your questions.

JUDGE MARCUS: Would you rephrase it, because I am not sure regardless of anyone else sitting in this virtual courtroom that I understand the question.

BY MR. HARRIS:

Q Dr. Liu, I am curious about the cohesiveness of multi-racial black voters as I think you've described them and non-multi-racial black voters. That's the premise I am getting at here. My question is whether you conducted an analysis about the cohesiveness of those two groups of voters, of multi-racial voters and non-multi-racial black voters.

A If I understand your question clearly, if you insist in

* * *

[1335] Q And so Mr. Harris was positing a scenario in which, you know, there was 49 percent white support for black candidate and 51 percent for a black candidate. That's not the scenario here in your report, right?

A Again, like I already said, when I answered his question that the hypothetical 51 versus 49, in my 20-plus years of academic research, I haven't found exact that kind. But one would be curious if that happens, why that happens. But this one certainly is not.

Q There's a large difference between the black and the white voter support, right?

A There are 53.16, that is more than 35 percent.

Q Thank you, Dr. Liu.

MR. ROSS: You can take that down, Mr. Ang.

BY MR. ROSS:

Q For the endogenous elections, I believe that you said this on the direct, but just to clarify. For the endogenous elections, you looked at both any-part black and single-race black, correct?

A Could you repeat that question, please?

Q Sorry. For your RPV analysis of endogenous elections, you used both any-part black and single-race black, correct?

A Correct.

Q And whether you used any-part black or single-race black, the RPV analysis essentially came out the same; is that right?

[1336] A Yeah. Like I repeatedly reported to the Court, including today, the results are the same, no matter whether you are doing endogenous particular elections by using single race or any part to do RPV or effectiveness analysis that I conducted for Plan A, they are the same. And that just support my belief that in Alabama they're just too few multi-racial blacks that would make any difference whatsoever.

Q Okay. And just to be clear, what you were doing in your effectiveness analysis, you were applying the results of the 2018 election to the plan adopted in 2021, correct?

A Yes.

Q And so what voter turnout might have been in a 2018 election, you were sort of – whatever that turnout was, you were making an estimate, right, because –

A Yes, yes.

Q – you were applying 2018 results to 2021 – a 2021 plan, correct?

A Yes. Those are, again, by EI technology, we estimate in the particular election given a plan if the district is drawn that way, that district has that turnout.

Q And, again, for your effectiveness analysis to determine whether or not a black or a white candidate won, you were looking at ultimately what the actual results of the election were so the turnout didn't – the turnout aspect of your RPV analysis didn't matter, right?

[1337] A Yes. That's a very important fact for the effectiveness analysis. I understand that my result is simply based on total votes if the district is joined in that way for that particular election, so there's no EI or statistical inference whatsoever when I reported that. But Dr. Hood's report used his ways of analyzing RPV, and then turnout, and then create a hypothetical election that he called his functionality analysis to get some kind of result. But those are not actual results. Mine, in my report, those are the vote tally if the district is drawn that way.

Q Thank you, Dr. Liu.

And Mr. Harris asked you about the *Pope vs. Albany County* case. I believe you already said this. Just to confirm, the district court ultimately agreed with you there was racially-polarized voting, correct?

A Yes.

Q The district court found that there was a Section 2 violation?

A Yes.

Q Okay. Thank you.

MR. ROSS: No more questions, Your Honor.

JA766

JUDGE MARCUS: Judge Manasco, any questions?

JUDGE MANASCO: None from me.

JUDGE MARCUS: Judge Moorer?

JUDGE MOORER: No, sir.

[1338] JUDGE MARCUS: I have one for you, if I might, Dr. Liu. I want to be sure that I understand this correctly.

THE WITNESS: Yes, Your Honor.

JUDGE MARCUS: You did an RPV analysis using 13 elections, correct.

THE WITNESS: Correct. For my initial report.

JUDGE MARCUS: Yes. I am talking about in report 1, and seven of those initially were endogenous elections.

THE WITNESS: Yes.

JUDGE MARCUS: And six were exogenous elections, correct?

THE WITNESS: Correct.

JUDGE MARCUS: When you did your analysis of all 13 endogenous and exogenous, did you do that analysis both based on single-race black and any-part black?

THE WITNESS: For the endogenous elections.

JUDGE MARCUS: Yes, sir.

THE WITNESS: Yes, I did. But for exogenous elections, which are supplemental evidence for me to report to the Court, I didn't have time to do both any part and single race.

So only for the endogenous elections I did both.

JUDGE MARCUS: So what did you do for the exogenous elections?

THE WITNESS: For the exogenous elections, I did the [1339] non-Hispanic VAP that is black. Some people call that single race. But that's the term I use.

JUDGE MARCUS: That was in your first report or in your second report?

THE WITNESS: In my first report.

JUDGE MARCUS: And what about in your second report? Did you address this question – just bear with me for a moment.

THE WITNESS: Sure.

JUDGE MARCUS: Did you address this definitional question in your second report?

THE WITNESS: In my second report, I believe I did also the – the non-Hispanic VAP that is black, because those are exogenous elections.

JUDGE MARCUS: Final question from me: In your analysis, did you find any difference as to racial-polarization voting, whether you used one metric of black or a different metric?

THE WITNESS: They are very close. They're not in front of me. But the results of using non-Hispanic Black VAP versus any-part Black VAP are very close.

I will be glad to report to the Court the details. But they do vary statistically, but none of them come to the point where I need to change anything at all, even the level of – or the gap of RPV is pretty close.

* * *

[1341] it in? We will go as far we can go.

MR. HARRIS: I got a thumbs up from Mr. Smith. He thinks so.

JUDGE MARCUS: Okay. Many, many thanks. We will take a ten-minute break at this point.

(Recess.)

JUDGE MARCUS: Are the parties ready to proceed?

MS. KHANNA: Yes, Your Honor. For the Caster plaintiffs, my colleague Dan Osher will be taking Mr. Jones' testimony.

JUDGE MARCUS: And, Mr. Smith, you are ready, as well?

JA769

MR. SMITH: Yes, Your Honor.

JUDGE MARCUS: And, Mr. Osher, you will be doing the questioning of Benjamin Jones, correct?

MR. OSHER: That's correct, Your Honor.

JUDGE MARCUS: All right. Thank you very much.

Mr. Jones, if you would be kind enough to raise your right hand and repeat after me.

BENJAMIN JONES,

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

JUDGE MARCUS: If you would be kind enough to give us your full name for the record.

THE WITNESS: Benjamin Jones.

JUDGE MARCUS: Thank you, sir. And you may proceed,

* * *

[1348] Q Mr. Jones, based on your experience working in Montgomery, does the black community there have unique needs relating to education?

A I would say that the black community has unique needs, because in Montgomery public school system in Montgomery County, population of blacks in the school system is probably about 85 to 90 percent, and certainly Montgomery County has for a long time

had a very low tax base for millage for the school [1349] system, and the majority of the whites in Montgomery County are in the public schools. And I mean – in the private schools – blacks in the public schools. And so with the low tax base, the school system is substandard. So the education is substandard. And so then that causes issues for blacks, in terms of getting a good quality education and going from that to getting a good quality job to serve their families.

Q What about affordable child care for kids who aren't yet of school age? Is that a problem for a unique problem – I should say – sorry. Does the black community have a unique need in that area, as well?

A Oh, absolutely. Child care is expensive for everybody.

But when you're struggling to hold more than one job or so to support your family, then it becomes extremely critical, and so with the cost of child care, it is extremely difficult on blacks who are perhaps working low – low-income jobs in the beginning. So that just makes it all the more difficult.

Q Are you aware that a recent federal legislation that would have addressed this unique – this particular need that the black community has?

A Well, I think that the bipartisan infrastructure bill had some funds in it for creating jobs and perhaps addressing some needs that could have been helpful or would be helpful or will be helpful to blacks in Montgomery County because that bill did pass.

JA771

[1350] Q Do you know if Representative Moore voted for that infrastructure bill?

A No. He voted against it. As a matter of fact, the entire delegation did, except for Terri Sewell.

Q Uh-huh. And Terri Sewell represents – am I correct, she represents a majority-black district?

A She does, yes.

Q What about the Build Back Better Act? Are you familiar with that?

A I am.

Q Yes. Do you know whether that legislation addresses the need of affordable child care?

A It does, yeah. There is affordable child care in that I think the – a few hundred billion in there, couple of hundred billion for –

Q And?

A Child tax credit and some – some that are in there for our pre-K, which is a part of what we work with, as well, so all of that would be beneficial to blacks in the low-income bracket.

Q Do you know how Representative Moore voted on the Build Back Better Act?

A He voted against it.

Q And the Build Back Better Act and the infrastructure act, did you want Representative Moore to support them?

[1351] A Absolutely.

Q And do you think that his opposition to these pieces of legislation did it serve or disserve the black community in your area?

A Definitely disserved the community.

Q You talked about this a bit. Does the black community in your area have unique needs related to employment?

A Yes absolutely.

I mean, clearly, employment for everyone was important. But if you start out with an education system that is poor, then it makes it all the more difficult to get good quality jobs, a good high-paying job, and so for the black community, for a large portion of the black community in Montgomery County, if they're seeking a job, they're seeking jobs in those areas that are going to be low wages. And so that makes it all the more difficult for them to get good quality employment.

And then that also bleeds then into affordable housing, because if you don't have a good quality job, it's difficult to get good quality housing and all the other issues that comes along with it like black health care and things of that nature.

JA773

Q Based on your experience, has the COVID-19 pandemic exacerbated the black community's needs related to employment?

A Most definitely. In our – in this agency, we've seen a tremendous increase over the last couple of years in those persons who have come to seek assistance from the program. [1352] That's true across all of racial groups in – for us, but blacks were already the higher number, and that just compounded it to be even greater. So we have seen a tremendous amount of blacks seeking assistance.

Q Are you familiar with the American Rescue Plan?

A I am. Yes.

Q Is that otherwise known as the 2021 COVID Relief Bill?

A It is, yes.

Q Did that legislation – do you know whether that legislation had provisions providing assistance to people who lost their job during the pandemic?

A It did. And had provisions for funding for our agency, as well, to assist people, so it was a bill that provided assistance for a number of families on that level, yes.

Q And how did Representative Moore vote on that piece of legislation?

A He voted against that also.

JA774

Q And did you want him to support it?

A Absolutely.

Q Did his vote against that bill serve or disserve the black community in your area?

A Definitely disserved the black community.

Q You talked a bit about health care. Is that a unique need among the black community in your area?

A Health care is a tremendous need. We have in the black [1353] community, Montgomery County, there's a lot of diabetes, a lot of preexisting conditions that was aggravated by COVID-19 or brought out or highlighted by COVID-19. And so there's a tremendous need for health care.

Q When she was in office, did Martha Roby take any actions relating to legislation dealing with health care?

A The only thing that I could think of is that she voted to repeal the Affordable Care Act.

Q Did you want her to support the repeal of the Affordable Care Act?

A Not at all.

Q Why not?

A I mean, of course, the Affordable Care Act if it was repealed would have certainly hurt a tremendous number of black families in Montgomery County. As a matter of fact, we were hoping that there would be

more support for expanding it and for Alabama accepting the expansion of Medicaid.

Q And has, to your knowledge, has Alabama expanded Medicaid under the Affordable Care Act?

A Not – not to date, no.

Q And what effect has that had on the black community?

A It's certainly has been a negative for the black community for the entire state for those who are poor and impoverished and in need of health care.

Q We spoke about the Build Back Better Act a bit ago. Do [1354] you know whether that contained provisions helping those who don't have access because of the failure to expand Medicaid under the Affordable Care Act?

A It does have provisions for health care.

Q And Representative Moore voted against that legislation?

A Absolutely.

Q What about access to utilities, quality and affordable utilities, is that an issue for the black community in your area?

A It is. As I stated earlier, the agency here at Community Action, we assist families with energy assistance, and we have a tremendous number of blacks who have – COVID has increased that number, but we

have a tremendous number of blacks that come to our agency for assistance with energy because of the need for it and the difficulty of maintaining it.

Q Any of the legislation we have talked about, did that address that need?

A Well, I think – yeah, the American Rescue Plan assisted in that area. Build Back Better will provide funding to help that, as well. And some of the climate change items that are there, as well.

Q Any other pieces of federal legislation that you believe Representative Moore's positions have been adverse to the black community in your area?

A I would say that – well, the Voting Rights Act have been [1355] something that would have been – will be beneficial to the black community if it's passed. And Representative Moore has not voted in favor of that.

Q Can you tell us a bit more about why you think those voting-related pieces of legislation would benefit the black community?

A Well, because clearly as I stated earlier, voting is one of those things that is important because it gives us an opportunity to select those representatives who would represent our interest. And if we are not clearly – if we don't have that clear right to have better access to voting, better access to voter registration, and all of those things, then it's adverse to the black community.

Q The things that we have talked about – education, health care, employment, those – you are not asserting that white residents of Alabama don’t have needs related to those areas, right?

A Oh, absolutely not. Those are things that every race will need, and every person in Alabama would really need to have access to all of those things. I guess my assertion is that blacks are behind in all of those things already. We have a higher rate of uneducated individuals. We have a higher rate of persons in need of health care, a higher rate of persons in need of affordable housing, and certainly a higher rate of blacks in prison. So criminal justice is important to us, as [1356] well, than it is whites in jail.

So we are – our representation is out of sort for a number of things. And our population in the state of Alabama is about 20-plus percent, 25, 27 percent. And our representation in the prison is about 50-plus percent.

* * *

[1378] **PROCEEDINGS**

(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,

[1379] having been first duly sworn, was examined and testified as follows:

JUDGE MARCUS: Thank you very much. And if you would state your name, your full name for the record, I would be much appreciative.

JA779

THE WITNESS: Certainly, Your Honor. It's M.V. Hood, III.

JUDGE MARCUS: Dr. Hood, thanks very much, and Mr. Smith, you may proceed with your direct.

MR. SMITH: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. SMITH:

Q Good morning, Dr. Hood.

A Good morning.

Q Dr. Hood, have you been retained as an expert in this case?

A Yes.

Q And have you prepared expert reports as part of this case?

A Yes.

Q And do you have copies of those reports handy?

A I have printed copies of the reports in front of me, yes.

Q Great. I will be referring to those periodically. And for the Court's benefit, those are Defendants' Exhibit 5 and 6, the initial and rebuttal reports.

So, Dr. Hood, your initial report, Exhibit 5, if you turn

* * *

[1445] Q Okay. And you don't dispute Dr. Palmer's conclusions that black voters in the areas he examined vote for the same candidates cohesively, correct?

A No.

Q Okay. And you don't dispute Dr. Palmer's conclusion that black Alabamians and white Alabamians in the areas he examined consistently preferred different candidates, correct?

A Correct.

Q And you don't dispute Dr. Palmer's conclusion that the candidates preferred by white voters in the areas that he looked at regularly defeat the candidates preferred by black voters, correct?

A Correct.

Q Dr. Palmer also conducted a district functionality [1446] analysis for the majority-black districts in Mr. Cooper's illustrative plans, correct?

A Yes.

Q Dr. Palmer concluded that Mr. Cooper's illustrative majority-black CD 2 and 7 would on average elect black-preferred candidates with 57 percent and 65 percent of the vote respectively. Do you recall that?

A Not those exact figures, no.

Q Do you recall that to roughly be the case?

A Well, I recall the pattern. I mean, I just don't remember the exact figures sitting here.

Q Okay. But you don't offer any – you don't offer anything to dispute Dr. Palmer's conclusions on the functionality of plaintiffs' illustrative black majority districts, correct?

A Correct. I didn't do any tests on those districts, so . . .

* * *

[1461] In your first report, you observed that Representative Paschal who is black was elected to the Alabama State House in 2021 as a Republican, right?

A Correct.

* * *

[1465] Q Okay. Are you suggesting we draw conclusions about the general electorate in Alabama based on this one election?

A Well, it is just one election, so we would have to base any kind of conclusion with a note of caution. I guess what I am stating here based on this example and, again, it's one example, I will grant – but this example in my academic work is that it appears that black conservatives – again, there we're talking about white Republicans essentially – seem to be more than

willing to vote for minority Republican candidates. This is an example of it happening in Alabama.

Q Okay. So you say this is an example of that, but you haven't provided any other examples in Alabama, right?

A This is the only example I have, yes.

* * *

[1472] Q Yeah. I can – let me ask again. So would you agree that race is one of the factors that impacts which political party voters in Alabama support?

A Well, yes. Now, differentiating between race and racism, I mean, in the South today included in Alabama, a majority of whites support the Republican Party. More than a majority of African-Americans support the Democratic Party.

So the – very much so there are racial coalitions that underlie the party structure at the state level in the South.

Q Would you agree, then, that race is one of – not just speaking about the race of the people who support the party, but the fact that race is an issue is one of the things that is involved in voters selecting which political party they affiliate with?

A It can be, yes. I mean, that's part of it. There is, you know, a multitude of things that may go into someone's calculus for which party to join.

Position on racial issues, like affirmative action, for instance, might be one of those.

Q Okay. And would you say that the position of the parties on race-related issues is contributed to that divide that you [1473] described?

A Well, the parties sort of set the tone at the national level with this switch in issue positions in about 1964. And so they – the party elite sent out the signal which, in turn, caused an exodus. I mean, before the Voting Rights Act, you really just had the Democratic Party in the South. You had factions within the Democratic Party. Again, especially in certain states, most African-Americans may have been disenfranchised. So you are really talking about a white Democratic party. When they switched issue positions in the '64 Civil Rights Act, and the '65 Voting Rights Act were passed, it did begin a slow exodus of white conservatives and later white moderates to the Republican Party. Fairly quickly, though, in the mid 1960s, African-Americans who were re-enfranchised moved very quickly to the Democratic Party.

So, you know, if you are a white conservative in order to accomplish political goals in a party that's pretty quickly becoming crowded out with issue – or opinions that don't necessarily mesh with yours, you're going to move to another vehicle for that, and that's what happened with black conservatives.

Q Okay. And I think you mentioned that the national party switched issue positions. You mean on issues related to race, correct?

A On Civil Rights, yes. Yeah. That's what I am talking [1474] about.

Q Okay. Your analysis in this case has not looked at the impact that race-related issues – how race-related issues contribute to the partisan divide between whites and blacks candidates, right?

A I didn't analyze that for this case, no.

Q And I'm sorry. I think I said candidates, but I meant voters. I can restate the question if you don't understand what I am asking?

A Well, I didn't do that analysis period in this case. I mean, that's fair.

Q Okay. And your analysis doesn't in any way suggest that race-related issues don't have an impact on the division between voters, correct?

A They may have an impact. I am not saying that they're not.

Q And would you agree that a complete understanding of southern party politics requires an appreciation of the role that race has played and continues to play in that region?

A That sounds like what I said yesterday and the first day of class, so, yes. It's not the only thing, but certainly you have to understand race to understand southern politics.

* * *

[1499] cartographer Hinaman. He has been fully deposed. I take it you are not planning to call him.

MR. DAVIS: We do not plan to call him, Your Honor. His deposition is in the record.

JUDGE MARCUS: Yes. Yes, it is.

All right. With that, it's 12:28 your time. We will proceed, then, at 1:30 Central Standard Time, 2:30 Eastern Standard Time with the Caster – the rest of the Caster case.

Thank you all. We will see you in about an hour.

(Recess.)

JUDGE MARCUS: I take it the parties are ready to proceed? Caster I take is next?

MR. OSHER: That's right, Your Honor.

JUDGE MARCUS: All right. Mr. Osher, you will be calling Bridgett King, correct?

MR. OSHER: Yes, that's right.

JUDGE MARCUS: All right. Thank you much. Ms. King, if you will raise your right hand.

BRIDGETT KING,

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

JUDGE MARCUS: Thank you very much. If you will state your name for the record, please.

THE WITNESS: Sure. Bridgett King.

JUDGE MARCUS: Thank you, Ms. King,
and you may

* * *

[1604] Q So my understanding of what you just said was that you look at the factors that have been identified in the political science literature as having some connection with negative voter participation. And then you look at whether those factors exist in Alabama without making that further step of connecting, you know, those things with actual voter participation in Alabama. Is that generally right?

A Generally.

Q Okay. And so my – would it affect your analysis, or would it give you pause as to your conclusions if white voters and black voters in Alabama participated in voting and in registration at the same rates?

A No.

Q Why not?

A So can I use an example to sort of explain why not?

Q Sure.

A Okay. So one of the examples that we – so one of the factors that we know matters in political science relative to voter participation is education. And so we know that as education increases, people are more likely to vote and/or cast a ballot.

What we also know within that literature is that while there is an effect for both black and white voters, the magnitude of the effect is not the same.

[1605] So the effect is present, but the size of the effect is present – excuse me – is not consistent across those groups.

So what the literature tells us about African-American voter turnout, and to a certain extent registration, is that in – when looking at education as an example specifically, what you actually do see is higher participation among African-Americans than you would expect relative to those disparities that I discussed in my report about education. And so how we as political scientists whose – you know, studied these things have, you know, sensed out or tried to understand them is while there is an effect, for example, of education, the magnitude is lesser for African-Americans because African-Americans have, you know, other factors that supersede or reduce what the expected effect of educational turnout might be.

So we talk about things like group consciousness and communal activities that mobilize black people to vote more than you would expect them to given what we know about education disparities in the United States. So just because voter registration is higher or voter turnout is higher for a population that is negatively impacted by those disparities, I mean, it doesn't mean that those disparities don't matter with respect to African-Americans. What the literature suggests is because of those disparities, African-Americans have

found ways to navigate systems that make voter registration and turnout [1606] higher. And so without those disparities, you probably would probably see registration and turnout higher than it is. So that's why if they were at parity as you noted, I wouldn't necessarily change my opinion.

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[1619] JUDGE MARCUS: Thank you, sir, and you may proceed, Mr. Osher.

MR. OSHER: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. OSHER:

Q Good afternoon/evening, Dr. Caster.

A Good afternoon. Good evening to everyone. Your Honors.

Q Thank you for being with us.

MR. OSHER: Your Honor, I apologize for the technicalities difficulties.

JUDGE MARCUS: That's quite all right.

BY MR. OSHER:

Q Dr. Caster, are you a plaintiff in this lawsuit?

A Yes.

Q And where do you live?

A I live in McIntosh, Alabama, which is in Washington County.

Q Great. And do you have family in Alabama?

A Yes. I have a two brothers that live in Mobile County in the city of Mobile. My mother also stays in Mobile County and Mount Vernon, Alabama, and me and if I family we reside in McIntosh, which is in Washington County, Alabama.

Q Can you tell us a bit about your childhood, where did you grow up?

A I grew up in Mount Vernon, which is a town north of

* * *

[1628] All right. Dr. Caster, you identified a few issues that people – that people in the black community have identified as particular needs that they have in the area that you live in.

You talked about employment. Can you tell us more about what the specific employment-related needs of the black community are in your area?

A Well, in my area, we have – we have three to four multibillion dollar plants. And in they generate billions of dollars each year. And these plants employ a lot of people in our – in the state. Unfortunately, a lot of individuals that stay in the community that are black does not work for the plants themselves because they don't have the training – they don't have the trades in order to get inside of these plants. But our

JA790

white counterparts are able to get these positions, get positions at these plants, and we are not able to get positions at the plants.

Q Is the result of that, that the black – members of the black community have to get lower paying and less flexible jobs?

A That's pretty much – that's pretty much throughout our community, yes. They – we work at low-wage organizations and companies where others – whites get paid more. And it just – it just the way it is – that's just where we are right now. Sad to say, but that's the truth.

Q Do you think that the COVID-19 pandemic has made that [1629] issue worse for the black community?

A Definitely, yes. COVID has impacted our community very hard. Deaths and sickness, yes. It has definitely impacted our community.

Q And in terms of employment, as well?

A Yes.

Q Are you familiar with the American Rescue Plan or the 2021 COVID Relief Bill?

A Yes, I'm familiar with it.

Q Do you know whether that legislation provided assistance to people who lost their job during the pandemic?

JA791

A Yes, it did.

Q And how did Representative Carl vote on that legislation?

A Against it.

Q Did you want him to support it?

A Yes.

Q Did you think that his vote against it served or disserved the black community?

A It was a disservice to the black community.

Q What about transportation? Is that a unique need of the black community in your area?

A Yes, it is. Transportation is a – we don't have public transportation. We don't have cabs. We don't have Uber. We don't have Lyft, anything, to get our people – even if they didn't have a vehicle to get them to, you know, transportation [1630] to a job even if they did have one. So, yes, lack of transportation is really a problem.

MR. OSHER: Mr. Walker, I think your –

BY MR. OSHER:

Q Are you familiar with the infrastructure bill that President Biden recently signed into law?

A Yes, I'm familiar with it.

JA792

Q Do you know whether that legislation had any provisions pertaining to expanding access to public transit?

A Yes.

Q Would that be something that your community would benefit from?

A Yes. Yes, definitely.

Q My apologies. I didn't mean to talk over you.

Do you know how Representative Carl voted on the infrastructure bill?

A Against it.

Q Did you want him to support it?

A Yes.

Q And did his vote serve or disserve the black community in your area?

A It was a disservice to the black community.

Q What about access to quality and affordable health care, is that an issue for the black community in particular in your area?

[1631] A Yes, it is.

Q Can you tell us a little bit more about that?

A Yes. We – our community is – first of all is – we need health care, more affordable health care. And because our communities is particularly in an area –

when I mentioned those four multibillion dollar plants, they – they also emit pollution in the area, and a lot of individuals from our community get sick from it. Most of – in fact, just about everyone that I know stays around these plants, and they're predominantly black that stays in these areas right around these plants, and they get sick easy from cancer, easy from lung disease and different ailments that they might have, and we definitely need health care because, you know, they can't afford to move out from these places. So it is very important.

Q Are you familiar with the Build Back Better Act?

A Yes, I'm familiar with it.

Q Do you know whether any provisions of that legislation are aimed to reduce pollution in disadvantaged communities?

A Yes. Yes. Parts of the bill was for pollution and things like that. But, you know, once again, the – our representative votes against all the bills that supposed to serve our community.

Q And so Jerry Carl voted against the Build Back Better Act?

A Yes.

Q And that legislation failed – or currently is not [1632] enacted, right?

A Correct.

Q Those provisions would have helped your community when it comes to the pollution that the factories in your area cause for the black community?

A Yes, sir, that's correct. We have our housing, child care, and everything.

Q Does the proximity of the factories to the black neighborhoods in your area affect the quality of drinking water?

A Yes. Actually, yes. There was – mercury was found in the water I think back in 2013. And – and back then, the drinking water was almost compared to that of Michigan. And a lot of individuals from the community actually received some type of pay behind it, but the water is still not up to par. So right now, people in the community now, they just put a filter on their water faucet and pray for the best.

Q And you referenced Michigan. You're referring to Flint, Michigan?

A That's correct.

Q Do you know whether the Build Back Better Act has provisions meant to improve the quality of drinking water in disadvantaged communities?

A Yes.

Q And, again, Representative Carl voted against it?

[1633] A That's correct.

Q You spoke about your work in Mobile with specifically the younger individuals who live there. Did you notice any issues related to criminal justice specifically in the city of Mobile?

A Yes. I mean, Mobile – Mobile has been going through a lot when it comes to criminal justice right now. A lot of – a lot of blacks being incarcerated more so than the whites.

And a lot of the bills in the – the bills that was – the first step bill, you know, was supposed to help with some of these issues. And, again, our representative just don't support these bills that is supposed – you know, that's to help our community.

Q And was that a reference to the First Step Act?

A Yes.

Q From a few years ago?

A Yes.

Q And am I understanding you that Representative Byrne voted against that?

A That's correct.

Q One more, Dr. Caster. Access to high speed Internet. Is that an issue for the black community in your area?

A Yes. That's why I – yes. Yeah. I'm at work now, so high speed Internet at my house is – is almost like dial up. So we definitely need access to high speed

Internet, more broadband connections, things of that nature to try to – you [1634] know, the more you have that, the more people can seek jobs online, things that you can just do a lot more by having high speed Internet. And like I said, we don't have – we don't have access to a lot of that being in the rural area that we're located in.

Q And with the COVID pandemic, did that lack of access to Internet harm students when they had to stay home?

A Yes. Yes. In – in Mobile County, and Mobile County actually had to – they actually put the access on a bus and had parents to if they wanted – if they didn't have Internet at home, they could pull up by the bus and get the Internet access from the – from there.

And in my area, which is the rural area of Washington County, you know, Washington County and Mobile County, they butt right up against one another, so in the rural Mobile County, like I say the Internet access, we just don't have – we just don't have the resources right now.

Q And I just want to be clear here.

You're talking about the black community specifically, blacks' access to high speed Internet?

A Yes.

* * *

[1638] different?

JA797

A Correct.

Q Do you think that black residents of Washington and Mobile County would be better served if they were a part of the congressional district that covered the Black Belt?

A Yes, I do.

Q And is that because the representative that would represent that district would better serve the interests of the black community?

A That would be correct.

MR. OSHER: Your Honor, just a moment?

JUDGE MARCUS: Sure.

MR. OSHER: Dr. Caster, that's all I have for you. Thank you for your time.

JUDGE MARCUS: Thank you. Mr. Walker, you may proceed.

MR. WALKER: Thank you, Your Honor. And I apologize to Mr. Osher and the Court for interrupting his examination.

CROSS-EXAMINATION

BY MR. WALKER:

Q Dr. Caster, hello. I am Dorman Walker. I represent the chairs of the reapportionment committee.

A Nice to meet you.

Q Nice to meet you, sir. I will ask you a few questions. You talked about a representative who would represent the [1639] interests of the black community. Could that person be black or white?

A Yes, it could be black or white.

Q And could it –

A Someone –

Q I'm sorry?

A I say, yes, it could be someone black or white, just someone that's looking out for, you know, that understand the needs of the black community and is willing to do something about it.

Q And could that person be Republican or Democrat?

A It could.

Q And –

A We have a Republican, and that's not been working.

Q Thank you, sir. Would it be someone in that area who understands the needs of – you have talked about the needs of primarily black people in Washington County, so would it be that representative be somebody from that area who could understand those best?

A Yes, it could.

Q Are you familiar with the – with the alternative districts that have been proposed in this case? Have you seen any alternative maps?

A I saw some, but I am not totally familiar with them. I did see some alternative maps.

[1640] Q Let me just show you something.

Can you see the map that I have put up?

A Yes, sir, I can.

Q Figure 10, Alabama U.S. House Illustrative Plan 1 from the Cooper Report. And you see that – you see where Washington County here is where I am moving the cursor?

A Yes, I do.

Q And you see that this proposed district, which is typical of the districts proposed by Mr. Cooper or drawn by Mr. Cooper stretches all the way over to the border of Georgia; is that correct?

A Yes, that's what – according to this map, yes.

Q How many times in the last several years have you visited Russell or Barbour or Henry County?

A Not – I visited Russell County I think it was once.

Q And when was that, sir?

A That was a few years ago.

Q Do you know anything about the demographics of those counties?

A No.

Q Do you know anything about the industries of those counties?

A No, I do not.

Q Do you know where those people go to get their health care?

[1641] A No, I do not.

Q Do you feel like you are in a community of interest with those people?

MR. OSHER: Objection, Your Honor. Dr. Caster is not a map drawer. He is not a politician. We need to lay some foundation of what community of interest means.

JUDGE MARCUS: Mr. Walker?

MR. WALKER: Your Honor, I've asked words – it's a plain simple question. Does he feel like he is in a community of interest for the people who live over in those counties. I don't think it's a legal term.

JUDGE MARCUS: You are asking it in the common usage of the words; is that correct?

MR. WALKER: I am asking it in the common usage of the words, Your Honor.

JUDGE MARCUS: The objection is overruled. You may answer the question, Dr. Caster.

THE WITNESS: Can you repeat the question, please?

BY MR. WALKER:

Q Yes, sir. Do you believe that you are in a community of interest with these people on the western – on the eastern border of Alabama in Russell County, Barbour County, and Henry County, who you have testified basically that you don't know anything about?

A That's correct. I'm not – I don't have any – I don't [1642] know anything about them, so I can't say that I am in the interest of – that community interest with them or not, so I can't adequately answer that question.

Q Thank you.

MR. WALKER: Your Honor, can I have just a second?

JUDGE MARCUS: You sure can.

MR. WALKER: Your Honor, thank you, sir. That's all we have.

JUDGE MARCUS: All right. Any redirect, Mr. Osher?

MR. OSHER: Just a moment, Your Honor, if you would indulge me.

JUDGE MARCUS: Sure.

JA802

MR. OSHER: Nothing more. Thank you, Dr. Caster. Thank you for your patience, and I am glad we were able to get you on tonight.

THE WITNESS: No problem.

JUDGE MARCUS: Thank you, Dr. Caster, and you are excused.

THE WITNESS: Thank you, Your Honor.

JUDGE MARCUS: We will break for the day, folks, and we will get started tomorrow morning at 8:30 Central Standard Time rather than 9:00.

And I take it at that point, Mr. Davis, you will be ready to proceed with your next witness.

MR. DAVIS: We certainly expect to. Mr. Byrne thinks

* * *

[1655] **PROCEEDINGS**

(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.

JA803

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.

[1656] DIRECT EXAMINATION

BY MR. DAVIS:

Q Good morning, Mr. Byrne.

A Good morning.

Q Where do you live, Mr. Byrne?

A I live in Fair Hope, Alabama.

Q How long have you lived in the Gulf Coast region?

A My entire life.

Q And what do you do for a living?

A I am a lawyer.

Q Have you ever served in public office?

A I have.

Q Would you please tell the Court about your experience in public service beginning with your earliest appointed or elected position?

A Yes. I was elected to the Alabama State School Board in 1994 and took office in December of that year because my predecessor left to go take another position, so I started that a little bit earlier.

I served the Alabama State School Board eight years. I was elected to the Alabama State Senate in 2002, and under Alabama law, you take office immediately after general election. So I became the state senator in November of 2002. I served there until May of 2007, when I became the chancellor post-secondary education for the state of Alabama.

[1657] In December of 2013, I was elected in a special election to the United States House of Representatives representing the First District, which is the

southwestern part of Alabama. I served there until January 3rd of last year, when I left office, and my term expired.

Q Thank you, Mr. Byrne.

I want to share my screen now and show you a map that has been marked as Defendants' Exhibit 55. Can you see this map, Mr. Byrne?

A I can.

Q I will represent to you that these are the congressional districts that the Alabama Legislature passed November the last districting cycle.

Does the First Congressional District look similar to the district as it existed when you represented the First District?

A It is similar. It does not include the lower half of Clarke County that I had in my district. And there's a small sliver of the eastern part of Escambia County that is now part of the Second District, but other than that, it's the same district that I had.

Q To your recollection, does the Second District look similar in structure to the way it was when you were serving in Congress?

A It does.

Q Thank you. How would you describe Gulf Coast region, [1658] Mr. Byrne? And by that, I mean what is it, if anything, that binds that region together to make it a community of interest?

A Well, we are on the water. We are on the Gulf of Mexico. We have lots of bodies of water in the district. Mobile Bay is very prominent, and Perdido Bay is pretty prominent. A number of rivers, sounds, et cetera. So water defines the district very much. It's not just any kind of water. It's salt water, brackish water, et cetera.

What that means is we have a major deep water port. We have a major ship building industry. We have major tourism industry that's related to the beaches and the water. And also a major seafood industry. And all of those are unique in terms of Alabama unique to this part of the state.

And so when you deal with the things that happen in this part of the state, you are dealing with something that's unique in the state of Alabama.

Q Do people throughout the region through the other counties in the First District commute in to Mobile for employment?

A Yeah. There are major highways that come from the northern part of the district into both Mobile and Baldwin counties. So people in what I call the collar counties, which are Washington County, Escambia County, Monroe County, and presently that lower part of Clarke County, they'll use those highways to go back and forth.

It's not just their jobs. It may be going to the doctor, [1659] the hospital, their shopping, et cetera. So there's this sort of larger community involving these

four, five counties that flow into and out of Mobile and Baldwin counties. It used to be just Mobile County. Baldwin County has grown so much. Baldwin County is now a very big part of that, as well.

Q What role does the Port of Mobile play, if anything, in binding that region together?

A Well, it's huge. Mobile started out in the 18th Century as a port. It was a port for French traders, but it was still a port, and it's been a port for 300-plus years, and the port continues to grow. In fact, it had amazing growth last year. It's not just the port itself. The port is at the very center of what is a major logistics hub. For example, we have one of Walmart's four mega distribution centers here in Mobile County. That's all related to the port.

The fact that we have Airbus in Mobile, we have it in part because they can ship directly via the ship channels directly from a port in Europe to a port right outside of their assembly facility here in Mobile. So that port is the anchor for the economy around here. And it literally directly and indirectly creates tens of thousands of jobs. So it's extremely important to this area.

Q Are there industries in the area along the rivers that flow into the port?

A Oh, yeah. We have major industries, chemical industry [1660] players, steel industry players up and down the Mobile river and as you get further north of that into the Tombigbee River. So the river, the

Tombigbee River, then on the eastern side, the Alabama River, those are very important to the economy and the culture of this area.

Q And do any of those industries rely on the port for distribution of the products?

A Well, for the distribution of their products, but also for stuff that comes in that they have to use to create their product. Maybe different types of elements that go into the chemical process. In the case of steel, we actually have steel slabs that come up from Brazil that are then offloaded off the ships and put on barges that come up to a company called AM/NS Calvert. It's a multinational company that employs well over 2,000 people in the production of coal and steel.

Q Is there anything unique about the history of this region, in terms of international influence?

A Yeah. We were founded by the French in 1702. We had 20 years in there where we were a British colony and then 30 or 40 years where we were a Spanish colony.

So unlike the rest of the state of Alabama, we have this extensive Colonial history, and it continues to form our culture today. We're far more likely to have Catholic residents here than in any other part of the state. We have Mardi Gras, which may sound like just sort of a frivolous fun [1661] thing, but Mardi Gras is big business here. There are a lot of businesses that that is what they do. So it's not unusual to find Mardi Gras parades not just here in Mobile, but you go north of

here into Washington County, you go over into Baldwin County, several of the cities in Baldwin County, and even up into Monroe County, they have Mardi Gras because there is that cultural connection between the two.

I was reading an interesting article the other day about Truman Capote. He used to have relatives in Monroe County that he would visit. Mr. Capote wrote that he actually entered into contests as a child to write stories, and those stories were part of a contest in the *Mobile Press Register*. He was in Monroe County. This is 100 years ago.

So you can see that there's this long-term connection between what I call the collar counties in the First Congressional District and Mobile itself.

Q Are Baldwin County in Mobile County closely connected?

A Oh, yeah. If you look at a map of Mobile and Baldwin counties, it looks like an inverted U. And what's in the interior of that U is Mobile Bay. And so if you go back literally centuries, you will see a connection between the two counties.

So my family is originally from Baldwin County. The Byrnes were from Baldwin County. But if you go back to the late 18th Century, you will see one of my ancestors was [1662] actually baptized in the Roman Catholic Church here in Mobile. So there's this intersection between those two counties that's been going on for a very long time.

Q Would you say those counties are more closely connected today than they were, say, in the '60s and '70s?

A Oh, yeah. For example, when – I live in Baldwin County, and I work in Mobile County.

If you were in my car with me today, you would have seen thousands of cars crossing from Baldwin County into Mobile County. So you have lots of people who live in Baldwin County, but work in Mobile County.

Not as many people, but there are people who live in Mobile County and work in Baldwin County.

So there's really strong interconnection between the two counties.

Q What are – you mentioned a few of these. Let's get on the record and say what are some of the major industries and employers in the Mobile region?

A For instance, the Port of Mobile. That's a big one. You have AM/NS Calvert, which is the steel company. There's Outokumpu, which is a stainless steel company; there's SSAB, another coal and steel company; and Earth Pipe, which is a steel pipe company, so those are steel companies.

Numerous chemical companies. I think about it. Huntsman, there's – oh, shoot. There's Shell. I can't remember all the [1663] chemical companies. It must be 20.

Q Of course.

A We have the University of south Alabama, which is a major employer in this area. We have Austal USA, which is a ship-building company. We have Airbus USA, which is major airplane assembly facility here. We have the Mitchell Cancer Research Center. We have – I mentioned the Walmart mega distribution center. We have a number of other logistic distribution centers because of the port.

And then if you go into the southern part of Baldwin County, you have major businesses are there to provide condominium access to tourists that come down here, hotels, restaurants, et cetera. In Bon Secour, Alabama and Bayou La Batre, Alabama, these are two of the largest seafood distribution places literally in the United States of America.

So Nelson Bon Secour Fishery in Bon Secour, huge distributor for seafood. I can remember eating crab meat in Washington D.C. and finding out during the meal that that crab meat came from Bon Secour, Alabama.

So you know, no other part of Alabama has industries like this. I am not saying it's better or worse than the other parts of the state. It's just unique.

Q Would you describe the First District as racially diverse?

A Oh, yes. Very much so. We have obviously long-time white and black communities, but we have Hispanic communities. Down [1664] in Bayou La Batre, we have a number of southeast Asian communities,

people that left those areas in the aftermath of the Vietnam War and settled Bayou La Batre, Alabama and formed these huge fishing communities. We have other Asian communities here. This is always been because of the port I guess a very diverse area, going back to the earliest times here.

So it's not unusual to find somebody like me who has French ancestors, you know, Scottish ancestors, Irish ancestors, German ancestors. It's not unusual to find people here that can draw their lines back to various parts of Africa. There are people here that can draw their lines back to the various nations in south-east Asia. This is a very diverse area and always has been.

Q Are there military interests in the First District?

A Yes, sir.

Q What do you have?

A We have a shipyard here called Austal USA that makes two different ships presently for the United States Navy, combat ship and the expeditionary fast transport vessel. Those are the only vessels that that shipyard makes. It employs presently about 3,500 people. At one point, it had as many as 4,500 people. Ship building has been a major part of Mobile going back to Colonial times.

We have all – you have people here who are like fifth, [1665] sixth generation ship builders. Making ships is not like any other manufacturing process

because they're so darn big. It's just a lot more to it than making a car, or even making the airplanes that Airbus makes here.

So we – that ship building for the Navy here is a big deal.

Q In the years when you were representing this area in Congress, Mr. Byrne, were there any particular issues that you would focus on?

A Sure. When you are a Congressman, you're the primary representative for the people in your district in Washington, D.C.

So there were a myriad of things that were particular to this district that I had to focus on. The shipyard, for example, very critical that we make sure those ships are authorized and appropriated year after year after year. There's nothing automatic about that. There's a fight over that every year.

But it may sound mundane. We had a huge issue here in involving the Gulf Red Snapper, which is the number one fish people like to catch out in the Gulf of Mexico. We have a huge industry in Orange Beach built up around charter boats, people that own their own boats. Think about it. It is not just the fact of the boat, it's you have to buy fuel for the boat, you have to buy ice for the boat, you have to buy bait for the [1666] boat, you have to buy beer to go out and have fun in the summer time. It's a huge industry. And we have a real problem with those seasons being artificially shortened, and we had to go work on trying to get those

seasons back to a reasonable level. For friends of mine that wanted to go fishing on Saturday, it was for that industry. It was important.

We have a program in the federal government called GOMESA. It is an acronym. But basically, it provides a certain percentage of what the federal government gets in off shore gas leases and oil leases that go to the states that border the Gulf of Mexico. That's to help them deal with what could be the very negative effect from that like with the BP oil spill that we had back in 2010. So I was constantly working on that and similar programs.

So I actually formed a caucus in Congress called the I-10 Caucus because those of us that represented districts in the Gulf Coast had sort of unique problems that we would actually work on together because those same interests weren't shared with our colleagues and our state delegations up in the upper parts of our states. So we would work together on things like that.

And then there would be just the stuff that, you know, every industry faces when you deal with federal government regulations. Ship building has all sorts of interesting issues with the Coast Guard, et cetera. So, yeah, I mean, I had to [1667] work on those. And really had to become an expert on those issues along with my staff.

Q Obviously, a longer snapper season would benefit the people who enjoy going out in the Gulf and fishing. Does it have any benefit to other residents of the First District having a healthy fishing industry?

A Okay. That's an industry around it. There are charter boat fleets, people that work on charter boats. There are people that run marinas. There are people that sell fuel. There are people that sell ice. There are people that sell bait. There are people that, you know, provide condos and hotel rooms that people stay in when they go fishing.

I mean, I remember when I was first elected and I had a meeting with the people in Orange Beach that were in that industry, and the room was just crammed full of people. I never really thought of it that clearly before just how many people were touched by the fact that we do or do not have a good snapper season. And it was a major motivation to make sure that we got that problem solved because it touched so many different lives and touched so many different jobs.

Q Would issues that you worked on such as is the snapper season or a healthy port or a healthy ship building industry, would they help both the black and the white residents of the First District?

A Oh, yeah. I mean, people down here, we have people of all [1668] races that are working in all of these industries. And it's a major source to get good high paying jobs. So it's a benefit to everybody that we do that.

Q Uh-huh. Are you familiar with the Wiregrass region in the Second District?

A I am. I told you earlier that I was a chancellor of post-secondary education for the state of Alabama.

And we had three or four colleges in the Wiregrass region. We had a number of vacancies in those colleges, so I had to go through presidential searches. When you do a presidential search for a community college, you have to involve the community. You have to get involved with the community. You have to understand that community.

So, for example, Lurleen B. Wallace Community College in Andalusia, Alabama, that's Covington County, I spent a lot of time in Andalusia because we had to build a vacancy there. So, yes, I have spent a lot of time in the Wiregrass of Alabama because of that position.

Q Tell me how the interest of the Wiregrass would compare to the interest of the counties that are in the First Congressional District.

A Well, what I described to you before is in the First Congressional District southwest Alabama, something's built around the water, okay? The Wiregrass is built around a couple of things. Fort Rucker, which an Army helicopter training base [1669] there in Ozark is a big part of the Wiregrass. Troy State University is a huge part of the Wiregrass.

People in the Wiregrass sort of revolve around Dothan down at the southern end and Montgomery at the northern end. And they have agricultural interests that are different from the agricultural interests that will be out here in southwest Alabama. They don't have a nursery industry like we have here. We have major wholesale nursery businesses here. They don't have

major watermelon crops. They don't have major pecan crops. They're more built in to peanuts and cotton and cattle.

So they face, for example, during – during in Andalusia, Alabama, you face more towards Troy or Ozark or Dothan. You don't face down here in southwest Alabama. In addition, it's kind of hard to get from Mobile to the Wiregrass. We don't have really good highway connections over there. So it's not easy for people from there to come here or for people from here to go there.

So they sort of face to the southeastern part of the state. We face to the southwestern part of the state.

Q If you were representing the Second District, would you focus on the same issues that you are focused on when representing the First?

A No, sir. For example, I was on the Armed Services Committee, and with the Navy shipyard, I am going to be focused on Navy stuff.

[1670] If I represented the Second Congressional District, I would be focused on the Army and particularly Army helicopters. That's what they do at Fort Rucker.

In this district, I was focused for higher education reasons on the University of South Alabama. If I represented the Second District, I would be focused on Troy. Now, Troy has a different mission from the University of South Alabama. They have an international presence. So working with Troy would be very different

from working for the University of South Alabama. Troy doesn't have a medical school, but it has a whole lot of other stuff that's pretty darn important. So there would – and the agricultural interests I just described are very different.

So I would think being the congressman from the Second District requires a different level of expertise and level of expertise that I feel like I had to have to represent this district.

Q I want to share another screen now, Mr. Byrne. And this is Milligan Exhibit 3, page 7 of that exhibit.

These are some proposed congressional maps that one of the plaintiffs' experts presented, I will represent to you, Mr. Byrne.

Review just say these – here's Plan A and B, and then I will scroll down to Plan C and Plan D, as well.

Focus on any of those, and tell us what's your reaction [1671] is. Do you see any issues with representing these districts?

A Yes. If you look at Plan A and Plan B, you see it takes in part of Mobile County, all of Baldwin County, and then goes east into the Wiregrass legion. So you would essential have to become an expert on two different regions altogether, two different communities of interest. I know that's important for those proceedings.

Then if you look at that district just above it, that district is essentially part of the Black Belt and part of

southwest Alabama. So the person representing that district would essentially have to have two very dramatically different sets of expertise. I think it would be very difficult to be the congressman for either of those districts not just the fact you would have this vast geographic area you would have to cover, but you would be covering two very different communities of interest.

Q Uh-huh. Why would it make it more difficult to represent a district if it encompassed different communities of interest?

A Well, for example, if you represented that blue district at the very bottom, you would have to be an expert on things involving Navy shipyards and Army helicopter bases. You would have to be an expert when it comes to agricultural issues like everything from wholesale nurseries, watermelons, pecans, to peanuts, cattle production, and cotton production. You would have to be focused on two major universities that have very [1672] different missions. You would have to be focused on Dothan. You would have to be focused on Andalusia. You would have to be focused on Brewton, Mobile, and then all of Baldwin County, which is the fastest growing county in the state.

So I am not saying you couldn't do it. It would be extremely difficult to do it, and you would find yourself somewhat diffused in your ability to be an effective advocate for that region.

Q What do you mean by diffused?

A Well, there's only so many hours in the day for a congressman and the staff that that congressman has. And there are hundreds if not thousands of issues in Washington. And you have got to figure out what your focus is going to be on. And focus is very important for a member of Congress because there's just not enough bandwidth, and there's only 435 congressmen, and you are one of them.

So you really have to figure out where am I going to put my time? Where am I going to put the resources of my staff? What fights am I going to fight. If you are fighting a whole bunch of different fights because you have to, because you have got that many interests in your district, you are not going to be effective on each one of those. The more you can sort of focus your energies, the more effective you will be.

I will give you an example. Everybody in the House of Representatives and the staff and the leadership, et cetera [1673] knew that I was interested in a bridge across Mobile Bay, fixing the snapper problem, and gaining the ships authorizing and appropriated for the shipyard here. Literally, I had the Speaker come up to me on the floor and say, we get it. It's that bridge, it's those ships, and it's those fish. Now, when they know that, they know they have got to make me happy on that to get my votes. If they don't make me happy on that, they are not going to get my votes.

Now, if I say I have 20 different things I want you to make me happy on, they will say, look, I am not going to make you happy on 20 things. You tell me what your

priorities are. We will help you get those things done, and then you will be a part of the team. That's how it works. Anybody that tries to be like out there fighting on every fight tends not to win any fight.

Q Let's say you represented – I guess I should show you the maps again. If you represented a blue district, do you see any difficulty in just getting around and visiting your constituents?

A Yeah. It's a long way from Mobile to Dothan. Actually, the way you get from Mobile to Dothan is that you get on Interstate 10, you drive east through the Florida panhandle, and then you get just north of Panama City you turn north. So it's about a three to three-and-a-half hour drive from Mobile to Dothan.

[1674] And north of there to Henry County, that's a county just north of Houston County, it's even further than that. And so in order to represent the people in Abbeville who deserve good representation, even if you just visited there for an hour, you would spend three-and-a-half, maybe four hours just to get there and that much going back, so it's a long haul.

And the interests as I said of that southeastern part of the state are very different than the interests in the southwestern part of the state.

So when you finish with having your meetings in an area like that, go back to Washington, you have to decide, all right, what I am going to focus on? What are the priorities for this sort of sprawling district with all these different interests?

And somebody is going to lose out. That's just the way it is. There's only so much bandwidth for a congressman, and that person has to decide what am I going to focus on? Am I going to help the shipyard in Mobile, or am I going to help Fort Rucker?

Q Where do you think a congressman or congresswoman who represented the blue district would want to have local offices?

A Well, you clearly want to have your main office Mobile, but you want to have as pretty significant office as you can afford in Dothan. You are only allotted so much money as a congressman for your office, staff, and your office rent. So [1675] you have got to spread that over Mobile and Dothan. And Baldwin County is the fastest growing county in the state. You have to have a presence in Baldwin County for a lot of different reasons.

Then I guess you try to find some way to put something in Andalusia. That's kind of more centrally located geographically. But as I said, and I can say it's really hard to get from here to Andalusia. Andalusia is a pretty hefty drive from here. Not as far as Dothan, but it's still a hefty drive because there's no good highway to get there.

Q Look at this yellow district or tan, the one above the blue district.

Let's say there was a primary election in that district, and someone was running to be the Democratic candidate, and that someone was from Mobile. There

was another person running in the primary from Montgomery. Do you have any thoughts on who might have a stronger base of support geographically?

A I would think that if you were from Montgomery, you would have a stronger chance than if you're representing that part that's in Mobile.

The Black Belt – what those counties primarily look like to me, the Black Belt is kind of its own thing. It's got very rural, very agricultural. And they look more to Montgomery than they look to Mobile for sure. So I would think somebody from Montgomery would have a better shot at that district than [1676] somebody from Mobile.

Q Do you think it possible, Mr. Byrne, if you had a map in Plan A or Plan B that you could have, say, a congressman for the blue district from Dothan or Andalusia and a congressman for the yellow district from Montgomery so that you had no one in Congress from the Mobile region?

A That could happen, yeah. It's kind of hard to know exactly what parts of Mobile County are being taken with those two plans. But if you dilute the vote in Mobile County, that obviously is going to make the vote of the rest of that district – those two districts more important. So, yeah, you could have a congressman from Dothan under both of those plans and a congressman from Montgomery and not a congressman from Mobile, which would be a tragedy for the people down here.

Q Why would it be a tragedy for the people down there?

A I'm not saying somebody from Dothan or Montgomery wouldn't care about this area. But as I said before, you wouldn't have somebody that's focused, focused on the port, focused on the shipyard, focused on our fishery in the Gulf of Mexico, focused on the nursery issues we have here. They just – they're just not enough bandwidth to be as focused as I was able to be focused. I could walk in a room and talk about any of those issues and master it. If I had to represent those other areas, as well, or somebody from the other areas had to represent Mobile, I just don't think that you could master it.

[1677] Q Do Mobile and Montgomery ever compete each other, in terms of trying to recruit businesses, for example?

A Not that I know of. Their economic development plan, their industrial plan is very different from ours. Montgomery, for all the right reasons, has really focused on two things – automotive, obviously with the Hyundai plant there and all the suppliers of the Hyundai plant, but also because of their Air Force presence, they really focus on how they can magnify Maxwell Air Force Base and things that are a part of that.

I think they have made a very smart decision to do that, by the way, but that's a different economic plan than what we have done here. So we're as much trying to help them because of the port. So as anything else, I

don't really think we believe ourselves that we're competing with them.

Q Would you have any concerns with the congressional map that divided the Mobile region along racial lines?

A Yes.

Q What would those be?

A Well, when you are a Congressman, you should be representing everybody and thinking about how I do X is that going to affect everybody in my district? You shouldn't be thinking about, I am going to do this because it helps black people, or I'm going to do this because it helps white people. I am going to do this because it helps everybody. And if you help everybody, everybody rises. That's what you want.

[1678] Mobile is a little bit different from the rest of the state. We do not have the same history during the Civil Rights movement that Selma, Montgomery, Birmingham did. We had a mayor here named Joe Lang who worked with a Civil Rights leader down here named John LeFlore. And so we didn't have some of the violence, the extent of the violence that you saw in the other parts of the state. We tried to work through our issues because we thought it was more important for us to work through those issues and work together to try to figure out a way to live together harmoniously. Were we perfect about it? No, we did not. But we didn't have the problems you saw in the rest of the state because we at least made the effort to work together.

Q When you said that you worked – that you served on the state school board, correct?

A Yeah.

Q I want to share a map now which is Defendants' Exhibit 26. This is the 2001 map, Mr. Byrne. I know – I think you were in the State Senate then, weren't you?

A In 2001, I was still on the state school board.

Q Okay. So which district did you represent in the state school board?

A District number 1.

Q Thank you. Did you ever get calls from people in, say District 5 when you were on the school board?

[1679] A I did. There was some people in Monroe County, I remember, and maybe Clarke County who thought I was their state school board member, and they would call me, and I would always call the member for that district when they did and ask him or her because it changed if they wanted me to help those people, and they would say, please. And I would go up there and talk with them and explain to them I was not their school board.

Q Now, I want to share a newer map. This is from Caster Exhibit 1, which for the record, was Mr. Cooper's report. This is page 19 of that report. And I will represent to you, Mr. Byrne, this is the new state school board map that was passed by the Legislature this cycle just a couple of months ago.

What thoughts if any do you have about this map, in particular, the way the blue district includes part of Mobile and Baldwin County is constructed?

A Well, I testified before the Legislature Redistricting Committee that I felt like Mobile and Baldwin County should be kept whole and contiguous. So to the extent that this map includes a district that comes from Montgomery all the way into Mobile County, I didn't much like it.

Q Why did you not like it?

A Because Mobile County school system is the largest school system in the state. And it has unique issues because it's the largest in the state. And I felt like we needed a school board [1680] member who was focused on Mobile County as well as the other counties. I had Baldwin and Escambia as well. But there were so many issues with the Mobile County school system, a lot of my time was spent focused on that. And if you break it up into two different people, you don't really have that level of focus.

I'm not saying that the people that represent those two districts aren't working as hard as they can. I'm sure they are. But it's very difficult to be focused on the Mobile County school system if you have got almost all the Black Belt, which that district up in the northern part is and a big chunk of the Wiregrass, which the lower part of the – the lower district is.

Q Someone who has served both in Congress and on the state school board, how do the roles of those two offices compare to each other, Mr. Byrne?

A They're very different. You're on the state school board, you are focused on educational issues. That's it.

Now, there are some work force development issues that go with that, et cetera. But that's pretty much it. You are just focused on educational issues. When you are in the United States Congress, you are focused on a large number of issues. I mean, it's almost everything comes within the purview of the United States Congress from foreign policy, defense policy, health care, to internal security, and education, as well. I [1681] was on the Education and Labor Committee in the House of Representatives. And one of the problems I had as a congressman is that people expected you to be knowledgeable on so many different things.

Now, at least you have got a staff in Congress. When I was on the state school board, I had no staff. I had to rely upon the staff of the State Department of Education, and they had other things to do.

So it was difficult to me to be on the state school board. But at least I could just focus on one set of issues and try to master them.

And so it was very different being in both of those roles. But I enjoyed both of those roles.

Q Considering the different roles between the school board and the congressman, even if you

assumed it made sense to split Mobile County in a school board map, does that mean it would make sense to do so in a congressional map?

A No. It would not make sense. At least on the school board, you are focused on one set of issues. So if I'm from Montgomery and I have got half of Mobile County from Mobile and I have part of the Wiregrass, at least, I have got a geographically diverse area. At least, I'm really only focused on a very set, defined set of issues.

Now, they are very important issues. Don't get me wrong. But at least I could focus on those issues and try to make sure [1682] as I go from county to county that I am applying what I know on these issues to each one of those counties as they are very different.

Q When you campaigned for Congress in the different elections, Mr. Byrne, what parts of your district would you campaign in?

A All of them. I had a – go ahead.

Q Would you campaign in areas that were both more – would you campaign in neighborhoods or areas that had a large African-American community?

A Oh, yeah. You can't run for Congress in this district – I will just make sure – to be clear – in this district without touching every part of it. And I made a concerted effort to go everywhere. In fact, if you look at my schedule, I spent a disproportionate amount of my time in the more rural areas than I did in more populated areas, because if you want to go up to

Monroeville, you might as well spend some time in Monroe County.

There are parts of Monroe County that are almost completely African-American. There's a little town in north Monroe county called Beatrice that's 50/50. I had a town ball in Beatrice. Someone said, why in the world would you bother spending time in Beatrice because it's so small? I said they deserve to be represented, too. So I went to all parts of my district.

[1683] Prichard probably didn't give me 5 percent of the vote in my elections. I probably lost there by a huge margin. But I would go and have town hall meetings and campaign in Prichard because I believed the people in Prichard deserve to have a good congressman.

Q When you ran for Congress, Mr. Byrne, did you run as a candidate of any political party?

A Yes. I was a Republican.

Q Why are you a Republican, Mr. Byrne?

A Because the Republican Party is closer to the conservative principles that I believe in than the Democratic Party is. I started out as a Democrat, but I felt like by 1997 I guess is when I switched parties, the Democratic Party had migrated away from what were my principles. Not putting down the Democratic Party if people are Democrats. I have friends who are Democrats and work with a lot of Democrats, but I just felt like the Republican Party is more closely aligned with where I stood on issues and principles.

Q Did you work with Democrats when you were in Congress?

A Oh, yes. All the time. I will give you two examples. I served on the Armed Services Committee. Every year, the only bill the Armed Services Committee works on is the National Defense Authorization, which we have passed out of the Congress every year since John Kennedy was president. Those bills are always bipartisan 100 years ago percent of the time. We work [1684] – from the very beginning of the years, we work on that bill. We consciously work together to make sure that bill, the bill that authorizes the defense of this country is something that we can all vote for.

So we work at being bipartisan, very much so.

The other example I give you is this: Shortly after President Trump was elected, this “Me-Too” movement came out. And we discovered that we have “Me-Too” problems in United States Congress. But we also discovered that members of the United States Congress weren’t subject to the same processes that the private sector was subject to under Title VII of the 1964 Civil Rights Act.

Now, I spent a career as a labor employment attorney telling small, medium-sized businesses in Alabama what they had to do to comply with that law. And here in Congress, the body that passed that law was not holding itself under the same set of accountability processes.

So I worked with a very liberal Democrat congresswoman from California, Jackie Speier, and we put together a bill that made Congress be as accountable, even more accountable than we hold people in the private sector, and that bill that Jackie and I put together passed the United States House unanimously, passed the United States Senate unanimously, and is a law of the United States now. And those are just two examples.

I worked all the time in a bipartisan manner, because I [1685] firmly believe that the best legislation in Washington is bipartisan legislation. The hardest legislation to pass in Washington is partisan legislation. And it's always a problem, always.

So I enjoyed working the bipartisan fashion. I know you look up there now and think, they're completely divided. They can't get along. And there are problems. Don't get me wrong. But there are still people up there, former colleagues of mine on both sides of the aisle that understand what I say is true, and they're still trying to work together to make things happen and happen in the right way.

Q When you served on the delegation with Congresswoman Sewell for the Seventh District, did you have the opportunity to work with her on any issues?

A Oh, all the time. All the time. We shared Clarke County. We actually had joint town halls together.

If she had an issue that affected her district, you know uniquely, she would call on the other members of the delegation to help her, and we always did, 100 years ago percent of the time. And she always helped us. We all worked together. It wasn't like it was unique to her.

So Terry was a part of a group called Faith and Politics. I assume she is still a part of it. That's the group that brings the pilgrimage to Alabama every year around the anniversary of the Edmund Pettus Bridge March from 1965. She [1686] wanted to make sure that when that group came here to Alabama, which would bring couple hundred people, people from Congress, people from business and industry, people from foundations, she wanted to make sure that we were all working together, that they saw Alabama, the Alabama delegation working together.

So I always participated in that pilgrimage with her. Usually on Saturday mornings when she did her program either at Brown Chapel in Selma or the Dexter Avenue Baptist Church in Montgomery, she would ask me to be sort of her sidekick for it, so that we could get up and tell the people from all the other parties of America here's a Democrat and Republican, black woman and white man working together on issues that matter to the people of Alabama, in particular, matters that revolve around Civil Rights.

And I was always honored that she felt comfortable enough to ask me to do that. And I can tell you, you can sit in that room with some of the people in that

room like John Lewis who we lost last year, and you realize what people in this state went through to get us the quality of life we have got today – to get to today. I feel like a little bitty nothing compared to people like that. But it was an honor always to be with Terry and to work with her on – whether it's the pilgrimage or other things that were important to our district.

Q When you were in Congress, Mr. Byrne, were there any issues you worked on to devote your time and your political [1687] capital towards that you thought and expected to have a particular benefit to your African-American constituents?

A Just about everything. If I am doing something that's going to benefit the economy in southwest Alabama, it's going to benefit African-Americans in my district, of course, it is. If you go to the various businesses in this area, and I traveled and met with workers in every one of these industries. It was always black and white. That's the nature of our work force down here. I mean, whether you are at a chemical plant, steel plant, ship building plant, airplane, you are going to have a mixed group of people.

So every time I was doing something for the economy. But I particularly felt like I was helping them every time we worked on education issues. And this goes back to my state school board days. I think the number one Civil Rights issue in Alabama today is the fact that we don't give a quality education to black people like we do the white people. And I really feel strongly about that. We are not going to have the sort

of gains and advances and progress we need in this state until we make more improvements to our education system. That's true across the country, but I am more focused on Alabama.

Q Have you spent any time working with HBCUs, Mr. Byrne?

A Yes, sir. HBCUs are historically black colleges and universities. We had several of them in the two-year college [1688] system in Alabama include Bishop State here in Mobile. So when I was on the state school board, I worked with them. When I was chancellor of post-secondary education I worked with them. And by the way, including Tuskegee, and then when I got to Congress, a congresswoman from North Carolina named Alma Adams asked me to be a co-chair with her of the HBCU Congressional Causas. So for five years I guess it was, I was the co-chair of the HBCU Congressional Caucus.

Q Did you spend time working on community health centers?

A Oh, yes. We have several community health centers here in the district. I've gotten to know them pretty well. I am very impressed with the quality of health care that they provide to their patients. And I was a strong advocate for them and continue to be a strong advocate for them because I think that they provide quality health care close near where people live, so it's community plan, and it's the best way I think to get primary health care to people in those

communities. So I am a strong supporter of community health center.

Q Back to your co-chairmanship on the HBCU caucus, I am not suggesting this was the reason you did it, but did you receive any recognition for your service in that area?

A I did. The Thurgood Marshall Fund gave me an award three years. Probably one of the awards that I am the most proud of. Thurgood Marshall Fund works to provide funding, private funding to HBCUs across America. And I had no idea [1689] they were going to give me an award, and it just knocked me out when they did. I remain in contact with them. I still continue to work with them even though I am not in Congress because I am a huge believer in HBCUs, and I think what the Thurgood Marshall Fund is doing and the United Negro College Fund, both of them together are doing great work for those colleges, and I think they are important to America.

Q Just a few more questions, Mr. Byrne. And I will remind you. We want to make sure the Court understands your testimony that Ms. Decker can take it down. We will try to slow down just a little. I want to – when you were in Congress, did you consider yourself to be the representative of both Republicans and Democrats in your district?

A Yes.

Q Did you consider yourself to be the representative of both the white and African-American constituents in your district?

A Absolutely, yes.

Q I want to share a screen now, Mr. Byrne. This is Milligan Exhibit 5. It is the report of one of their experts, Dr. King, and she is offering opinions on certain issues. I want to read this introduction section into the record so you can get some context. Dr. King writes, White law makers in Alabama learned long ago to color mask their public statements, just as they have learned to color mask the legislation intended to protect their racial prerogatives.

[1690] Not since the high tide of brazen white supremacy when George Wallace proclaimed, segregation forever, have public figures been so bold.

MS. WELBORN: Mr. Davis, this is Dr. Bagley's report, not Dr. King's report.

MR. DAVIS: I apologize for that confusion. Yes. Thank you for the correction.

BY MR. DAVIS:

Q Then Mr. Bagley after giving some examples says this.

JUDGE MARCUS: I think you have to just – as we proceed, Mr. Davis, just take your time and speak right into the speaker.

MR. DAVIS: Thank you, Judge.

BY MR. DAVIS:

Q I will read now an excerpt into the record from Milligan Exhibit 5, the Bagley report.

Dr. Bagley writes, Representative Bradley Byrne of the State's First Congressional District when he was vying for a Senate seat aired a campaign ad in which he condemned black people by placing their images in a fire.

The television spot begins with Byrne staring into a wood fire in a backyard and lamenting the loss of his brother in the armed services. He shifts to lamenting the course the country is taking as the faces of black and brown people appear in the fire. Former national football league quarterback Colin [1691] Kaepernick appears in the fire as Byrne calls him an entitled athlete dishonoring the American flag. Members of the congressional caucus known as the Squad, Ilhan Omar and Alexandria Ocasio Cortez appear in the fire and are accused of attacking America and cheapening 9/11. No white people appear in the fire.

My question to you, Mr. Byrne, is: Is there anything you care to say in response?

A Yes, sir. That ad was about my brother. And the fire was a fire in the fire pit at our hunting camp that he and I used to sit around all the time. So that ad was about my brother.

Now, the fact that I'm contrasting a rich, NFL quarterback named Colin Kaepernick who won't stand up during the national anthem with my brother's

service who made far less than Colin Kaepernick makes and literally contracted a disease during one of his deployments with the 20th Special Forces group that killed him, I think that's a legitimate thing for me to raise. I have grave disagreements with Representative Alexandria Ocasio Cortez and Representative Omar. But I can tell you I never had any negative interaction with either one of them.

Representative Alexandria Ocasio Cortez, actually, her office was in my office building. And when she was relatively new, she couldn't find her way to her office and literally stopped me in the hallway and asked me, can you tell me where my office is? I said, yes, ma'am, and I told her where it was. [1692] And we sort of developed a personal rapport just because she got to the moment of weakness, which we all have in Congress by the way. It's easy to get lost in those buildings.

So we never really had a political conversation, but we would have these personal sort of, you know, informal social interactions. I disagree with her on the issues, but I don't have any problems with her as a person.

The same is true for Ms. Omar. Now, Ms. Omar served on the Education and Labor Committee with me. So we would have interactions about education issues, and we had some disagreements about – but there was no – that was really about my brother. It was not about those other people. And the fact that we used them was to simply contrast them and their positions

with the service that my brother had rendered to our country.

Q Was it your intention to single out anyone because of their race?

A No. I singled out Mr. Kaepernick because he won't stand up during the national anthem, and there are plenty of black athletes that stand up during the national anthem by the way. I have noticed that's not as what a lot of people try to portray it to be.

And I am singling out Ms. Alexandria Ocasio Cortez and Ms. Omar because of their attacks against America. They attack American values. And I think it's perfectly within the realm [1693] of what's appropriate dialogue to say, I expect somebody that's making this money as Colin Kaepernick to stand up during the national anthem, and I don't think members of Congress should be attacking the country.

Q Mr. Byrne, I want you to think of the people who are involved in congressional campaigns, whether it's a candidate or someone considering a run, that person's staff, volunteers, and then I want you to assume that a couple of weeks before the January 28th deadline, the congressional map changes from the way it's usually been and what the Legislature passed to all of a sudden it changes to something like what the plaintiffs are representing excuse me – what the plaintiffs are proposing.

Do you see any issues that would cause with congressional campaigns?

A Yes, sir. First of all, we have primaries in four months, general election in ten months. Once you turn the calendar to the beginning of the year, you have that primary staring you in the face, you have already set your campaign in place. You already have your plan in place. You have already got volunteers set up ready to go. You have got, you know, the campaign ad messaging already worked out. And you are hitting the ground running.

So if you change my district on me with that little time, it's going to put a substantial burden on my ability to refocus my campaign, conduct my campaign, get volunteers, et cetera. [1694] And particularly if you give me a new geographic area that I haven't represented before, where I don't have, you know, the natural contacts, et cetera, that's a huge problem for any community. And I don't – and that's true for any candidate, Democrat, Republican, people that are long-time public office holders, people that are brand new. It could be a tremendous difficulty.

Q Mr. Byrne, you said you went to a public hearing where some of these districts were at issue. Why did you go to the public hearing? Why are you here today to talk to the Court about districts?

A Number one, I am a citizen, so I have – so I am not just any citizen. I mean, I served on the state school board, held a district for eight years. I served in the United States House of Representatives representing one of the districts for seven years. I have, you know, a unique set of understandings about what it's like to

represent these areas. And I felt like I owed it to the system. I owed it to the public to stand up and say – as somebody that’s actually done this work, these districts the way I’m proposing them makes sense this way.

And the most important thing I was trying to say is keep this particular community together. Keep these communities together. Don’t pull southwest Alabama apart because we work together down here. Mobile area Chamber of Commerce doesn’t just do economic development for Mobile County. They also do [1695] it for Washington County.

JUDGE MARCUS: Let me stop you for a second, Mr. Byrne. You cut out. The sound cut out for a minute. So take your time and just repeat what you just said if you would, please.

THE WITNESS: Yes, sir. What I have been the most concerned about is that people that pull apart southwest Alabama and have different parts being represented – we work together down here in southwest Alabama. The example I used was the Mobile area Chamber of Commerce, the economic development for both Mobile County and Washington County, because we’re so closely connected.

We need to stay together down here. We have a group called CAP, Cultural Alabama partnership, that pulls together these counties so that we have common representation, common advocacy efforts with the Alabama Legislature and the members of Congress. So keep us together. Don’t pull us apart. Let us be one

group of people that work together for our region of the state and maximize the benefits that we want to get for our people down here.

MR. DAVIS: Thank you, Mr. Byrne. I have no further questions and pass the witness at this time.

JUDGE MARCUS: Thank you, counsel. Cross-examination in what order did you propose to proceed on behalf of Milligan and Caster and the Singleton? And we leave that up to you.

[1696] MS. WELBORN: I will be going first for the Milligan plaintiffs, Your Honor.

JUDGE MARCUS: All right. And, Mr. Whatley, would you be going second or the Caster folks going second?

MR. WHATLEY: Doesn't matter to me, Your Honor.

JUDGE MARCUS: I leave that up to you. So let's begin –

MR. WHATLEY: I am happy for the Caster plaintiffs to go second.

JUDGE MARCUS: All right. Thanks very much. Ms. Welborn, you may proceed with your cross-examination.

MS. WELBORN: Thank you.

CROSS-EXAMINATION

BY MS. WELBORN:

Q Representative Byrne, my name is Kaitlin Welborn, and I represent the Milligan plaintiffs. Good morning.

A Good morning.

Q So I'd like to talk about the current redistricting plan first. You had no direct role in drawing the current congressional map in Alabama, right?

A I didn't have any direct role, but I did testify before the committee.

Q But other than that, you did not do anything to –

A That's correct.

Q – help draw the congressional map?

[1697] A That's correct.

Q And you did not provide any input to Mr. Hinaman, the map drawer?

A I did not know Mr. Hinaman.

Q I'm sorry?

A I don't think I know him.

Q Okay. And you did not speak with Representative Pringle about the 2021 map?

A I did.

Q You did?

A Yes.

Q I'm sorry?

A He is the chair of the committee, and I testified before the committee.

Q Okay. But did you speak to Representative Pringle outside of the public hearing?

A I don't believe I did, no.

Q Okay. And did you not speak with Senator McClendon outside of the public hearing?

A I don't believe I did, no.

Q And you did not speak with Secretary Merrill's expert Thomas Bryan?

A No, ma'am.

Q Okay. You first ran for Congress in a special election in 2013, right?

[1698] A That's correct.

Q And at that time, you had already held state office in Alabama for some time as you had mentioned, right?

A That's correct.

Q So you were something of a known quantity to the voters in your district?

A Well, I thought I was better known than I found out that I was, but, yes, to some people, I was a known quantity.

Q And in the 2013 special election, your opponent, Mr. LeFlore was black, right?

A That's correct.

Q And he lost to you by over 30 percent?

A I don't remember the percent.

Q And then you faced Mr. LeFlore again in the 2014 general election?

A That's right.

Q And at that time, he lost to you by over 35 percent?

A Once again, I don't remember the percent.

Q Okay. As a congressional representative, don't you have to focus on multiple issues all at once?

A You do.

Q And you have to learn about all of the issues that matter to your constituents?

A You do, but there's some issue you know more about than others to be honest with you. You can't be an expert on [1699] everything.

Q And some Representatives in Congress represent entire states, right?

A That's true.

Q Is it impossible to be knowledgeable about, for example, both the University of South Alabama and Troy University at the same time?

A Well, you can be knowledgeable about them, but you can be more knowledgeable about one than two.

Q Okay. Wouldn't having two congressional representatives representing Mobile and Baldwin give the region even greater influence in Congress?

A Well, the truth of the matter is if you have two different ones, you don't have one that's just entirely focused on a particular interest. So –

Q No. You have two that are focused on that area?

A Unfortunately, when you have two, you don't have the same amount of focus. That's just the honest truth about it. So if I am only concerned about the University of South Alabama, I know I am the congressman for the University of South Alabama, and they don't have anybody but me to go up there and do what needs to be done for them. And so it really is better to have just one than to have two that are sort of split and paying attention to other things.

Q Representative Sewell and Palmer both live in Birmingham, [1700] right?

A I don't think – I know Representative Sewell lives in Birmingham. I think Representative Palmer lives outside of Birmingham, but in the metro area.

Q In Jefferson County?

A Yeah.

Q Okay. Are you aware of any criticisms of either of those representatives failing to adequately represent the rest of their districts?

A I've never heard anybody criticize either one of them for what they do for their district. Each one of them in their own way do an excellent job for their district.

Q Okay. Are you aware that District 4 stretches across the northern part of the state from Lamar and Tuscaloosa counties all the way east to Etowah and Dekalb counties?

A I am. I believe that's Congressman Aderholt's district.

Q That's right. It's Congressman Aderholt.

And presumably, Representative Aderholt campaigns everywhere in his district, right?

A I don't know where he campaigns, but Congressman Aderholt like Congresswoman Sewell and Congressman Palmer, does an excellent job in his district.

Q I would like to talk about the economics of the Mobile area.

You spoke quite a bit about the port in Mobile. Does [1701] Republican Carl your successor also work to protect ship building in Congress?

A Yes, ma'am. He is doing a good job.

Q Wouldn't you expect anyone who represented Mobile to work to protect the ship building industry in Congress?

A Oh, I think that's true. The question is, once again, it's bandwidth. How much time can you devote to that issue if you have got other competing issues? So I can't say this about Congressman Carl because I am not there with him all the time. But for me, every day that I woke up in Congress, I was concerned about that shipyard. And that's what it took because there were all sorts of people trying to take the money away from those programs that they were building ships for, for other programs. And it was a fight every day just like the red snapper fight was a fight every day.

Now, if I have got to worry about several other issues in addition to those, I am not going to be as effective in that fight as I would be if I'm focused on those.

Q Okay. But if the port in Mobile were in a different district than CD 1, it would still be true that someone would work to represent, you know, the ship – protect the ship building industry in Congress?

A I would think so, but I would think it would be a question of how much time, how much effort, and how much priority they put on it. And if they have got other things they are [1702] competing with, it wouldn't be as much. That's just the nature of things.

Q Okay. And other than the port, you mentioned a few other industries such as Airbus and fishing, and said that those are some of the largest industries in the Mobile area, right?

A Yeah. I also mentioned tourism and seafood, et cetera.

Q Okay. The largest industry in Mobile County is health care; is that right?

A I guess if you put all the hospitals together, it might – that might be true, yeah.

Q And the second largest industry is retail sales; is that right?

A In terms of numbers of employees, that may be true. I don't know about payrolls.

Q Okay. And the recent economic growth in Mobile County has attracted more people to move to the Mobile area; is that right?

A That's correct.

Q And people go to Mobile County from other counties to work?

A Oh, yes. A lot of people do.

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Q And to live?

A Yes.

Q And to shop?

A Oh, yes.

* * *

[1704] are black versus white?

Q Yes.

A I know that it's a higher percentage poverty among black people than white people in Mobile County.

Q Are you aware that over 51 percent of people living below the poverty line in Mobile County are black, even though only 36 percent of Mobile County is black?

A I don't know the figure precisely, but I wouldn't be surprised if that was the case.

Q Okay. Are you aware that the Mobile City Council had to be sued in the 1970s and 1980s to ensure black representation?

A I am well aware of that, yes, ma'am.

Q And are you aware that the Mobile County School Board had to be sued in the 1970s and 1980s to ensure black representation?

A I am well aware that, yes, ma'am.

Q You mentioned representative John Lewis and the commemoration of the Selma to Montgomery March?

A Correct.

Q But you did not support the John Lewis Voting Rights Advancement Act while you were in Congress, did you?

A I did not.

Q You are familiar with the area referred to as the Black Belt, right?

A Oh, yes, ma'am.

[1705] Q And the Black Belt is generally an area whose counties are generally majority black, right?

A It's actually called the Black Belt because of the soil. The soil is dark and rich there, so it's not called the Black Belt of race or ethnicity.

Q That's not what I asked. Is it an area whose counties are generally majority black?

A Yes. There are some exceptions to that, but yes, as a region, it's majority black.

Q Okay. And in general, the Black Belt has lower income levels than other areas of the state, right?

A Yes, ma'am, that's correct.

Q And it has lower education levels than other areas?

A There are exceptions to that, but that's true.

Q And it has worse health care and facilities than other areas?

A I don't know that. I have toured hospitals in the Black Belt, and there the number of good hospitals in Black Belt, so I can't verify what you just said.

Q Okay. That's perfect, because I would like to talk about health care now.

In December 2020, you were interviewed by al.com about your time after Congress. Do you recall this interview?

A Well, yeah, I did a lot of interviews when I was a member of Congress, but I do recall generally that interview.

[1706] MS. WELBORN: Mr. Ang, could you bring up that article?

BY MS. WELBORN:

Q Mr. Byrne, do you recognize this article?

A It's been a while since I've read it, but, yes, John Sharp. I remember the article he wrote, yeah.

MS. WELBORN: Your Honor, we would like to mark this document as Milligan Plaintiffs' Exhibit 55 for identification.

JUDGE MARCUS: Okay.

MS. WELBORN: Mr. Ang, could you flip to page 2, please?

BY MS. WELBORN:

Q And, Republican Byrne, could you please read the paragraph starting with, the daily data?

A The daily data that I've got in this – which really forced me to focus on the fact that there is a problem with the ability of black people to be able to get good, primary health care. One thing I have worked on in Congress and will continue to be interested in, is how do we get primary health care to black people? It's clear with the data we have is that black people with underlying health conditions are disproportionately affected by the novel Coronavirus virus. We should want everyone in our communities to have real access to quality primary health care.

Q Thank you.

* * *

[1715] Q And you further testified that you never paid attention to what extent your black constituents supported or opposed you in your congressional races; isn't that right?

A That's right. It didn't matter. I still had to represent them, whether they voted for me or not.

Q Sure. But you didn't pay attention to whether they actually supported or opposed you?

A No. Wouldn't matter.

Q So during your seven years in Congress, and I think you already talked about this, you got to know the other members of the Alabama delegation; isn't that right?

A Our delegation worked together very well, very closely.

Q And I – in Ms. Welborn's cross-examination, you talked about this a little bit, but I'd like to dig down a little more.

MR. OSHER: Jeff, can I have you pull up Caster Plaintiffs' Exhibit 12? Thanks.

BY MR. OSHER:

Q And, Representative, I will represent to you that this is a map of the congressional plan that was in place I believe the whole time that you were in office?

A That's correct.

Q Over a decade between 2012 and this year, or I should say last year.

So Robert Aderholt represented District 4, right?

[1716] A That's correct.

Q So looking at his district – and let's see.

MR. OSHER: Jeff, could you focus in on the purple district there? Yeah. Perfect.

BY MR. OSHER:

Q So looking at that district, it spans the width of the state. It has corners in Colbert County in north-west down to Lamar and Tuscaloosa counties, then over east to Etowah, Marshall, and Dekalb County; isn't that right?

A Yes, sir.

Q Would you say that's an accurate description of that description?

A Yes, sir.

Q Did Representative Aderholt ever express to you that it was too difficult for him to travel to the different parts of his district?

A No. I actually know that area fairly well because I have campaigned in there twice running for statewide office, and that area, it has an awful lot in common with one another.

Q Sure. That –

JUDGE MARCUS: Just let him finish his answer.

THE WITNESS: I said they're very similar.

BY MR. OSHER:

Q My apologies for – I didn't mean to talk over you, Representative.

[1717] That wasn't my question. My question was: Did Representative Aderholt ever express to you that it was too difficult for him to travel to the different parts of his district when he represented them?

A No. When you are in Congress and you are delegated to a district like that, you do what you have to do, and I am sure he does an excellent job of it.

Q And he is an effective representative of his district?

A Yes. Very much so.

Q And you testified that you got to know Representative Sewell pretty well during your time in Congress?

A Actually, I knew her before I got to Congress. But she and I worked very closely together when I was in Congress.

Q She is also a very effective Representative of her district?

A Very effective.

MR. OSHER: Jeff, can we focus on District 7 in the map?

BY MR. OSHER:

Q So, again, looking at this district, her district started out in – well, it goes down to the south in Clarke County, then to Montgomery in the east, up to Birmingham in the northeast in Jefferson County, and

then over to Pickens County in the west. Do you see that? Did I describe her district accurately?

[1718] A Yes.

Q In your time in Congress, did Representative Sewell ever express to that you it was too difficult for her to travel to the different parts of her district?

A She never said it was too difficult, but she said it was pretty difficult.

Q When did she say that?

A On several different occasions. She would talk about what her schedule was and how difficult it was for her to be able to go from Birmingham to Clarke County to Lowndes County to Choctaw County, just the difficulty in travel, and the fact that, you know, she's got parts of Jefferson County an urban county, parts of Montgomery County another urban county together with the rural Black Belt counties. It's tough, it's real tough on her, but she is very smart and very capable, and she does – she works hard.

Q And you said she's a very effective representative?

A Oh, yes very effective.

Q And let's look at District 3.

As you spoke a bit about earlier, looking at that district – and I'm sorry. Who represents District 3?

A It's Mike Rogers.

Q And he did the whole time you were in office; is that right?

A Oh, yes. Yeah.

[1719] Q So looking at his district, it has at least half of the eastern border of the state running all the way up from Cherokee County and all the way down to Russell County; isn't that right?

A That's right.

Q Okay. Did Representative Rogers ever say to you that it was too difficult for him to travel to the different parts of his district?

A No. I think he felt like his district had a lot of commonality – not necessarily easy to get from Cherokee County to Russell County, but the commonality of interests they had made it a little bit easier on him.

He does have the Anniston Army Depot, so he is going to be focused on that. But in Russell County, he has got people that are across the river from a major Army base, so he's got that to contend with, too. But he's a ranking member of the House Armed Services Committee now, soon to be the chairman, and so he will be in a unique position to help both of those.

Q Sure. That wasn't my question. My question was about the difficulty of travel to the different parts of the district. And –

A Yeah. He would say, I have had a long day or a long couple of three days because I have to go from

Cherokee County all the way down to Pike Road in Montgomery. That's a long way.

[1720] Q But he's – you think he's a very effective representative in his district?

A Oh, yeah, yeah.

Q Okay.

MR. OSHER: You can take that down, Jeff, thank you.

BY MR. OSHER:

Q In your direct examination, do you recall talking to Mr. Davis about how the illustrative plans that the plaintiffs have offered in this case may result in no congressional representative living in Mobile? Do you remember that?

A Yes.

Q And I think – I can't remember. It might have been Mr. Davis or you said that that would be a tragedy?

A It would be a tragedy if we didn't have somebody from Mobile representing the Mobile area, yeah.

Q Okay.

MR. OSHER: Jeff, could I have you pull up Defendants' Exhibit 2, which I believe is Mr. Bryan's report that was offered by the state in this case?

Can you go to page 27? Next page, please. And can you zoom in on the Figure 5.6, Alabama enacted plan. Any way to zoom in further.

BY MR. OSHER:

Q Representative, can you see that map?

A I can.

[1721] Q Okay. I will represent to you that this is the current enacted map, and it has dots as to where each of the current Representatives live. Do you see that?

A I do.

Q Can you tell me which congressional representative currently lives in Montgomery?

A I don't think anybody currently lives in Montgomery.

Q And you would agree that Montgomery is the third biggest city in Alabama?

A Actually, now, I think it's the fourth.

Q Fair enough. You would say that Montgomery is a very important city in the state of Alabama?

A Oh, yes, very important city.

Q Okay.

MR. OSHER: You can take that down, Jeff. Thank you.

BY MR. OSHER:

Q You spoke a bit about District 5 in the State Board of Education plan. Do you remember that?

A I can't remember which district it was.

Q District 5 is the one that connects Montgomery to Mobile with the Black Belt?

A Okay. I remember that one.

Q And up until a few years ago, Ella Bell represented that district for a long time; is that right?

A She did, yes.

[1722] Q Did she ever express to you that it was too difficult for her to represent a district that had both Montgomery and Mobile in it?

A Yes.

Q When did she say that?

A I think I mentioned earlier that I would get phone calls from people in her district at – thinking I was their state school board member. And asking me to come to meetings. And I would call her and I would say, it's your district, not my district. I don't want to do anything in your district you don't know about. I said, do you want me to do something? She said, would you please, because I cannot get down there. It's too far me to get from Montgomery to there. I have other things going on. And so I said, sure, I will be happy to do it. So

I would do that for her from time to time and for her predecessor.

Q And if she was a member of Congress and you were also a member of Congress and that sort of confusion arose, that would – the same thing would happen, right, you would talk to the other member of the Congress and try to figure it out?

A Yes. But I got to be honest with you, that never happened when I was in Congress. I guess people know who their Congressman is. So I never got any calls from Terri Sewell's district, for example, saying would you come meet with us except for Clarke County because she and I shared Clarke [1723] County.

Q And Clarke County is the only district – I'm sorry – the only county that your district split last re-districting cycle, right?

A That's right. And we had an understanding we would work together in Clarke County, and there was never any issue.

Q Sure. Ella Bell extremely effectively represented that district, right?

A I don't think I would agree with that.

Q Dr. Tommy Stewart succeeded Ella Bell to represent that district?

A I – yeah. I don't know him, but I – I know the name.

Q Did you ever speak to Dr. Stewart?

A Not that I can recall.

Q What about Dr. Chestnut, who currently represents that district?

A I don't recall having any interaction with Dr. Chestnut either. I've been away from the state school board for a while.

Q You voted to – in Ms. Welborn's cross-examination, you spoke about your efforts to repeal the Affordable Care Act; isn't that right?

A That's right.

Q You testified in *Chestnut* that you never tried to determine whether your black constituents wanted the Affordable [1724] Care Act to be stay in place, right?

A I didn't try to determine anybody's particular views on that. I just listened to what people were telling me. And I had a lot of people telling me they wanted to change it.

Q You never sought out the advice from the state conference of the NAACP on that issue?

A I think I testified earlier I never had any interaction with them consciously. I may have been in a room with some of them and didn't know they were members of that organization.

Q And you never even tried to figure out what their position was on the issue?

A No. I – when it came to that issue, I had plenty of people tell me what their positions was. I didn't have to reach out to people.

Q In *Chestnut*, you testified that while you were in office you never even tried to determine how many black constituents you actually had; isn't that right?

A Well, I knew them in general, but I didn't know precisely. I knew it was about 25 percent.

Q In fact, when you were asked about a percentage of your district that was black during *Chestnut*, you said, it didn't matter to me. Isn't that right?

A It didn't matter to me.

Q You voted against the First Step Act?

A You have to refresh me. I don't know what the First Step [1725] Act was.

Q The First Step Act was the criminal justice reform?

A Oh, yeah, yeah, yeah. I'm sorry. Yes, I did.

Q But you testified in *Chestnut* that you never tried to determine whether your black constituents felt that that bill would improve their lives, right?

A I never heard from anybody about that bill.

Q You didn't attempt to discern the Alabama NAACP's view on the bill?

A I never had any interaction with them. Consciously knowingly.

Q You spoke a bit about the various factories and plants that are located in Mobile?

A (Nodded head.)

Q Do you recall that?

A That's right.

Q Are you aware that there are higher rates of cancer and asthma among the black community in Mobile due to their proximity to those factories and plants?

A I'm not, but I wouldn't argue with it. In general, I know that we have an issue with regard to the quality of health care that's been available to black people in Alabama in my district.

Q Do you know who Alabama commemorates in Congress' Statuary Hall?

[1726] A Yes. It's Helen Keller, and it's – I forgot his name – a former Civil War general.

Q Joseph Wheeler?

A Yeah.

Q And Joseph Wheeler was a calvary general for the Confederate Army; isn't that right?

A I know he was a general. I don't know if it was calvary or not.

Q But he was on the Confederate side of the Civil War?

A Right. I know a lot more about Helen Keller than I know about him.

Q Did you ever try to determine how your black constituents felt about Alabama celebrating a Confederate general in the halls of Congress?

A I never asked them, but I think I can guess.

Q You never reached out to?

A No.

Q And what is your guess as to how they would feel about it?

A I don't think they would like it. That's a decision by the state, not a decision by Congress.

Q You would agree with me that members of Congress can use their influence to try to change state policy?

A Some do. I didn't. I didn't think it was appropriate. Now, when I was in the Legislature, I supported putting Helen Keller's statute in there. I actually served on the committee [1727] that raised the money to put the statue there because I think Helen Keller was a better representative of the state than the person we had there before.

Q Oh, you're referring to the Joseph Wheeler statue, or the one that was replaced by Helen Keller?

A The one replaced by Helen Keller.

Q You didn't take any action in the Legislature to remove the Joseph Wheeler statue or replace it with something else?

A No. We were kind of focused on Helen Keller when I was in the Legislature.

Q Speaking of your time in the Legislature, when did you serve in the Senate?

A From November of 2002 to May of 2007.

Q During that time, I imagine you went to the Alabama Capitol pretty often?

A Yes, sir.

Q Did you often walk by the monument to Confederate soldiers and sailors that sits in front of the Capitol?

A If I did, I didn't pay any attention to it. I didn't know that we had one.

Q So you sort of turned a blind eye to it?

A I was busy doing other things. I wasn't paying attention to stuff like that.

Q Were you aware that while you were there, the memorial was surrounded by flags of the Confederate states?

[1728] A I don't remember that, either.

Q Is it your contention that that shrine to the Confederacy does not exist in front of the Capitol?

A Oh, no. I'm not saying they don't. I just never paid any attention to them.

Q So you never tried to determine whether your black constituents had a problem with that sitting at the foot of the Capitol?

A I never had a discussion with any constituent about that.

Q And is your assumption that you described earlier the same here that you would think that your black constituents probably did not appreciate that?

A If they even knew about it.

Q Representative, you would agree that the poverty rate among black Alabamians is significantly higher than it is among white Alabamians?

A I know it's higher. I don't know I can say it's significantly higher.

Q Am I right that when you testified in *Chestnut*, you actually said you didn't know if that was the case, right?

A No. But I wouldn't be surprised if it was higher.

Q Understood. I will represent to you that the poverty rate is more than double among black Alabamians than it is white Alabamians.

What about child poverty rates? Do you know if there's a

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[1730] mind speaking up.

A Okay.

Q Thank you.

A I will move a little closer.

Q I will represent to you that one of the Caster plaintiffs' experts in this case reported that the black unemployment rate among – the black Alabamian unemployment rate is 7.8 percent, and that for white Alabamians, it's 3.8 percent. So the – so he reports that it's more than double among black Alabamians?

A I don't know.

Q So assuming the figures that I discussed there are true, you would agree that those disparities stem from Alabama's centuries' long discrimination against black people in the state?

A I think the problems that are facing the black community with regard to all these issues is a function of the failure of the state of Alabama to provide a quality education to them.

Q Does that have – is that rooted in the discrimination that Alabama had against black individuals?

A No. It's rooted in the overall failure to the Alabama public education system, which – white people

just not as much as it affects black people. It's the reason I got in public to begin with is because I thought the biggest problem facing Alabama was our inability to provide quality education to all of our citizens, and we're still not doing enough. And it's [1731] having these effects that I think hurt everybody in Alabama, but particularly the people who are not getting that quality education.

Q So is it your testimony that the disparities that I have described have no roots in the centuries' long discrimination that Alabama, the entrenched discrimination in Alabama against black individuals?

A I don't know that I can say that there's no effect. But what I'm saying is, is that the single biggest problem, the thing that's the biggest cause for them is our failure to provide quality education to everybody in the state. We live in a time when you're going to be valued by what you know and what you do with what you know. And if we don't provide quality education to all of our people, they won't get the economic value in their lives that they need. If they don't have the economic value in their lives, they can't afford quality health care and all these other stuff. So I continue to believe today as I did when I ran for state school board in 1994, if you want to address all the other issues, fix the education system in the state.

Q You agree with me that Alabama had for a very long time a strictly segregated education system?

A Oh, yes, sir, absolutely. To our great shame, we did that.

Q Just a few more questions, Representative.

[1732] You testified on direct about the – the campaign ad. Do you recall that?

A Yes.

Q Your campaign ad.

I understand your testimony that that ad was intended to be primarily about your brother; is that right?

A That's correct.

Q So regardless of your intent, do you know how that ad was perceived among your black constituents?

A I don't know that I ever had a discussion with a black person about that ad.

Q You didn't hear any feedback from the black community or the press on this?

A Not that I can recall.

Q You understand, don't you, that images of black people in a fire could trigger a connection in the minds of some to the more horrific eras of racial discrimination in Alabama?

A No.

Q You would agree that in Alabama, there is a horrific history of lynching black Americans?

A Yes, sir.

Q And that history included burning black individuals alive?

A Never heard of that.

Q You would also agree, wouldn't you, that Alabama has had a history of bombing and burning down houses occupied by black [1733] Alabamians?

A Yes, sir. To our great shame.

Q You would also agree that the KKK used burning crosses to terrorize black individuals in Alabama?

A Yes, sir. To our great shame, they did that.

MR. OSHER: Your Honor, if I can just have a minute.

JUDGE MARCUS: You may.

BY MR. OSHER:

Q Just one more question, Representative. Sitting here today, do you understand how the images included in that ad might be viewed negatively by the black community?

A No.

MR. OSHER: That's all I have. Thank you.

JUDGE MARCUS: All right. Thank you. And who will be conducting cross-examination for the Singleton plaintiffs?

MR. WHATLEY: Your Honor, I am Joe Whatley. I will.

JA874

JUDGE MARCUS: All right. Thank you, Mr. Whatley, and you may proceed.

MR. WHATLEY: Thank you.

CROSS-EXAMINATION

BY MR. WHATLEY:

Q Mr. Byrne, it's good to see you again. I have a few questions.

First of all, I, along with other counsel, I represent the Singleton plaintiffs. Are you familiar with the whole county

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[1747] A Yes. I think that the four metro areas in the state, plus Dothan, Tuscaloosa, Auburn, all those areas need to have sort of at the center of their community adequately represented in the United States Congress.

Q So there ought to be in separate – and to be clear, there ought to be separate congressional districts or Huntsville, Mobile, Montgomery, and Birmingham should each be located in a separate congressional district from each other?

A Yes.

Q Okay. And going to Congressman Palmer, I think there was some questioning about Congressman Palmer earlier maybe by both counsel. Isn't it correct

that Congressman Palmer currently lives in Shelby County?

A To be honest with you, I don't know exactly where he lives. He either lives in the southern part of Jefferson County or in Shelby County. I don't know.

Q Were you aware that at one point he did live in Jefferson County and he moved to Shelby County?

A I am not aware of that.

Q You are not aware of that. Okay.

MR. WHATLEY: Your Honors, I think that's all I have.

JUDGE MARCUS: Thank you. Redirect, Mr. Davis?

MR. DAVIS: Yes, Your Honor, briefly.

REDIRECT EXAMINATION

BY MR. DAVIS:

[1748] Q Mr. Byrne, did you turn down any meeting requests from the Alabama NAACP?

A No.

Q Would you have been happy to meet with them had they asked for a meeting?

A Absolutely. I meet with just about everybody.

Q We talked about the third districts – and the Third District and the Fourth Congressional District

when you were speaking with Mr. Osher. Do you consider the areas encompassed in Alabama's Third Congressional District to be part of a community of interest?

A I do. That's east Alabama, and it got a common set of industries and things that they're interested in, and they largely look to Auburn as their university.

Q What about the Fourth Congressional District, do you consider those areas to be part of a community of interest?

A They are. We have similar industry in all those areas all tied to the automobile industry, for example. And they have very similar – when you go from one of those towns to the next, walking from the east side of the state to the west, the towns are very similar to one another.

Q Do you consider the more urban parts of Mobile County to be part of the same community of interest with Montgomery, Macon, and Barbour counties?

A I have been up and down those other places. They just [1749] don't have a connection to Mobile or so.

Q And what about the more rural parts of Mobile County? Are they part of a community of interest with the Wiregrass in Dothan?

A No, they are not.

Q When you are considering –

A Let me give an example there. One of the maps I saw of Covington County in the First Congressional District, there's really no connection between Covington County and the main interest that you can see in the First Congressional District. So I don't see that it makes any sense to put a Wiregrass county like Covington in with a district that's primarily centered with Mobile and Baldwin County. It's hard to get to Andalusia from Mobile, very hard. And so as the result, very few people go back and forth between Andalusia and Mobile.

Q Which districts would allow a Congressman or congresswoman to more effectively represent the constituents of District 1, whether they're black, whether they're white, Republican, Democrat, rich or poor? Would that be the districts as passed in Alabama's plan, or the districts that plaintiffs are proposing that we viewed a little while ago?

A The Legislature plan by far. And as I said before, I testified before that committee, and I listened to other people talk while I was there. And the Legislature effectively did what we were asked to do, which was to keep our part of the [1750] state together.

Q Uh-huh. And would your ability as a Congressman to represent your constituents, would it be negatively impacted if your district changed at the last minute to a vastly different structure, including different areas of the state?

A Very definitely so, yes.

Q We talked about a lot issues, Mr. Byrne. Is there anything else you would like to bring to the Court's attention as they consider these various plans?

A Yes, sir. I would want to say this. I have great respect for the Court and this proceeding, and I know the Court's got some difficult decisions to make. But we're pretty far along into this campaign cycle. And I have seen what it does to congressmen in other states when at the last minute, courts start moving things around. And I think it hurts the effectiveness of congressmen when that happens. I am not saying the Court may not have a good reason to do it.

But as I said earlier, we are just a few months away from primaries. And it would be very difficult to start shifting this thing around. It was hard enough as it was when the Legislature pass these districts. People held back and held back and held back. And now, they're right in the meat of these campaigns. And I just think it would be terrible if we change course on all these candidates running for these various offices, Democrat, Republican, doesn't matter. It's going to [1751] have the very same detrimental effect on those candidates and on those congressmen, sitting congressmen if all of a sudden these things are moved around some more.

And the second thing I would say is, I've tried to say a little bit earlier, Covington County doesn't fit with the First Congressional District. They're wonderful people over there. I have good friends. I worked with a lot of them when we were replacing the

president of the community college. But I don't think they would want to be in a district with Mobile because they look to Dothan. They look to the Wiregrass.

So that map that has Covington County with Mobile, that just doesn't fit. And I think the way the Legislature has drawn the First Congressional District makes all the sense in the world, given the needs that they have to try to take a few areas away from that district presently because of the growth in Baldwin County. I think they did the best they could possibly do.

MR. DAVIS: Thank you, Your Honor.

MS. WELBORN: I'm sorry. We just objected to that last line of questioning and move to strike it as beyond the scope of Mr. Byrne's direct. Asking, you know, anything else he wanted to add was not in Mr. Byrne's direct examination.

JUDGE MARCUS: It would have been wiser to object before the question was asked, but while the question I think did go beyond, the answer, I think bore upon the stuff that [1752] came up in cross. So the objection is overruled, and we will not strike that portion of the testimony. But thank you.

Any other questions, Mr. Davis, that you have for Mr. Byrne?

MR. DAVIS: No, Your Honor. That completes redirect.

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JUDGE MARCUS: Any other questions any of the lawyers have for Mr. Byrne?

All right. Judge Moorer, Judge Manasco, did either of you have a question for Mr. Byrne?

JUDGE MANASCO: None from me.

JUDGE MOORER: No, sir.

JUDGE MARCUS: Mr. Byrne, I have got a question for you. Perhaps you can help me with this.

On your direct examination by Mr. Davis, you were asked about the 2021 map that the Legislature adopted for the State Board of Education.

THE WITNESS: Right.

JUDGE MARCUS: And it was observed that – you observed that you testified, if I heard you right, with regard to that and urged the Legislature not to split Mobile County. Did I have that right?

THE WITNESS: Yes, sir, that's what I said.

JUDGE MARCUS: And then the testimony came out that, in fact, the Legislature in 2021 split Mobile County in the maps that it drew for the board of education, and it [1753] specifically split Mobile County between Districts 1 and 5. This is the board of ed map I am talking about. Do you recall all of that discussion?

THE WITNESS: Yes, sir, I do.

JUDGE MARCUS: I just have one question, if you know the answer. I was curious, do you know why the Legislature actually split Mobile County between Districts 1 and 5 when they drew the board of education maps?

THE WITNESS: Yes, sir. They actually did this in 2011. The other district – District 1 is the one down here. District 5 I guess is the other one. That district lost a lot of population, and they had to pick it up somewhere. And they believed that the best way to pick it up was to go south into Mobile County.

So while I was sympathetic to the fact the Legislature had to make some significant changes to that district, I didn't like the fact that they were splitting Mobile County because of the fact the Mobile County school system is so big and has so many issues as any big school systems does.

I would like to see a school board member that's focused on that primarily as their job.

JUDGE MARCUS: Thank you much.

Any follow-up questions from any of the lawyers based on the question that I had asked Mr. Byrne? Mr. Davis?

MR. DAVIS: No, Your Honor.

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