

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

COMMON CAUSE FLORIDA, FAIR DISTRICTS )  
NOW, FLORIDA STATE CONFERENCE OF THE )  
NATIONAL ASSOCIATION FOR THE )  
ADVANCEMENT OF COLORED PEOPLE )  
BRANCHES, CASSANDRA BROWN, PETER ) Case No: 4:22-CV-109-AW  
BUTZIN, CHARLIE CLARK, DOROTHY )  
INMAN-JOHNSON, VEATRICE HOLIFIELD )  
FARRELL, BRENDA HOLT, ROSEMARY MCCOY, ) Tallahassee, Florida  
LEO R. STONEY, MYRNA YOUNG, and NANCY ) October 2, 2023  
RATZAN, )  
)  
Plaintiffs, ) 8:33 a.m.  
)  
v. )  
)  
)  
CORD BYRD, in his official capacity )  
as Florida Secretary of State, )  
)  
Defendant. )  
\_\_\_\_\_ )

**TRANSCRIPT OF BENCH TRIAL  
BEFORE THE HONORABLE ADALBERTO J. JORDAN  
UNITED STATES CIRCUIT JUDGE  
HONORABLE M. CASEY RODGERS, UNITED STATES DISTRICT JUDGE  
HONORABLE ALLEN C. WINSOR, UNITED STATES DISTRICT JUDGE**

**(Pages 503 through 776)**

*Julie A. Wycoff, RMR, CRR  
Official United States Court Reporter  
(850) 470-8196 \* julieawycoff@gmail.com*

APPEARANCES:

For the Plaintiffs:

Patterson Belknap Webb & Tyler, LLP  
by: **GREGORY L. DISKANT**

**H. GREGORY BAKER**

**MICHAEL K. HALPER**

**CATHERINE J. DJANG**

**ALVIN LI**

1133 Avenue of the Americas

New York, New York 10036

(212) 336-2000

*gldiskant@pbwt.com*

*hbaker@pbwt.com*

*mhalper@pbwt.com*

*cdjang@pbwt.com*

*ali@pbwt.com*

Southern Coalition For Social Justice

by: **KATELIN KAISER**

**CHRISTOPHER SHENTON**

1415 West Highway 54

Suite 101

Durham, North Carolina 27707

(919) 323-3380

*katelin@scsj.org*

*chrisshenton@scsj.org*

Holtzman Vogel Baran Torchinsky &

Josefiak, PLLC

by: **MOHAMMAD O. JAZIL**

**JOSHUA E. PRATT**

**MICHAEL BEATO**

119 South Monroe Street

Suite 500

Tallahassee, Florida 32301

(850) 274-1690

*mjazil@holtzmanvogel.com*

*jpratt@holtzmanvogel.com*

*mbeato@holtzmanvogel.com*

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

*(Call to Order of the Court.)*

THE COURT: Good morning. Welcome back. Please be seated.

JUDGE RODGERS: Good morning. I'll be handling matters today. I hope everyone had a nice weekend. Welcome back.

Before we get started, where we left off last week was in the plaintiff's direct case. We'll pick up there this morning, I presume.

But I would like to ask you, Mr. Diskant and Mr. Jazil, have you had discussions over the weekend about your schedule?

MR. DISKANT: Yes, we have, and I think we feel pretty comfortable where we are. We have three witnesses left in our case. First we'll hear Fentrice Driskell, Democratic leader of the House this morning, followed by Cynthia Slater, our representative of the NAACP -- she'll be very short -- followed by Matthew Baretto, who is our mapping expert, and that's it for our case. We will rest today, maybe tomorrow morning, and that will be it.

Their case consists of two experts, who will be short -- half hour each, probably, maybe a little bit more. They may or may not call back Mr. Kelly. Then we're done with witnesses, and I think we talked about breaking and summing up then on Wednesday morning, if that's agreeable with the Court.

1 JUDGE RODGERS: All right. Well, let's -- I mean, I  
2 think we decided we would allow you to present your summations  
3 fresh on the following day after the evidence portion of the  
4 trial is concluded, so I think that still remains to be the case  
5 for us.

6 Can I have the names of the three witnesses again,  
7 Mr. Diskant?

8 MR. DISKANT: Yes, you may. Fentrice,  
9 F-E-N-T-R-I-C-E, Driscoll, D-R-I-S-C-O-L-L.

10 K-E-L-L. I apologize.

11 Cynthia Slater, S-L-A-T-E-R.

12 JUDGE RODGERS: Okay.

13 MR. DISKANT: And Matthew Baretto, B-A-R-E-T-T-O.

14 JUDGE RODGERS: Okay. Very good.

15 MR. DISKANT: Or -- sorry. B-A-R-R-E-T-O.

16 JUDGE RODGERS: Mr. Jazil, do you agree as far as that  
17 assessment of the schedule?

18 MR. JAZIL: Yes, Your Honor.

19 JUDGE RODGERS: And your two witnesses' names?

20 MR. JAZIL: Yes, Your Honor. It will be Dr. Johnson  
21 and Dr. Owens. And Mr. Kelly may make an appearance just  
22 briefly.

23 JUDGE RODGERS: All right. Very Good.

24 Anything else to add?

25 MR. JAZIL: No, Your Honor. Thank you.

1 THE COURT: All right. Then we'll get started this  
2 morning.

3 MR. LI: And also we have the exhibits for day 3.  
4 May I approach?

5 JUDGE RODGERS: Yes, sir.

6 THE COURT: Just one thing before we start. We have  
7 talked but not decided whether to ask you for proposed findings  
8 and conclusions, so be ready to address that issue and timing if  
9 we decide to go that route and how long you want, and we'll take  
10 it into account. Like I said, we haven't made a decision, but  
11 in case that's something we want you to think about --

12 MR. DISKANT: Well, thank you, Your Honor.

13 THE COURT: -- timing and the like.

14 MR. DISKANT: As it happens, we've also been thinking  
15 about if, and we're going to suggest that it might be helpful to  
16 do that. And I think we were thinking in terms of -- I don't  
17 know if I'm -- if today's October --

18 THE COURT: 2nd.

19 MR. DISKANT: -- 2nd. Seven is a week -- two weeks  
20 from next Monday is what we were thinking about, but we'll do  
21 whatever Your Honors wishes.

22 THE COURT: You can change your minds, obviously, and  
23 the same goes for you, Mr. Jazil, about the timing, but I just  
24 wanted to put it on the table so we can talk about it when the  
25 time comes.

1 MR. DISKANT: Thank you, Your Honor.

2 JUDGE RODGERS: All right. We're ready to proceed  
3 with your next witness.

4 MR. DISKANT: We call Fentrice Driskell, and she will  
5 be examined by my colleague, Chris Shenton.

6 JUDGE RODGERS: Pronounce the name again, please?

7 MR. DISKANT: Fentrice Driskell.

8 JUDGE RODGERS: No, your name.

9 MR. SHENTON: Shenton, S-H-E-N-T-O-N.

10 JUDGE RODGERS: Thank you, sir.

11 MR. DISKANT: Thank you.

12 **FENTRICE DRISKELL, PLAINTIFF WITNESS, DULY SWORN**

13 DEPUTY CLERK: Be seated, please.

14 Please state your full name and spell your last name  
15 for the record.

16 THE WITNESS: Fentrice Driskell, D-R-I-S-K-E-L-L.

17 JUDGE RODGERS: All right, Mr. Shenton. You may  
18 proceed.

19 MR. SHENTON: Your Honor, with your permission, I'd  
20 like to distribute the binders with the exhibits for  
21 Ms. Driskell's direct.

22 May I proceed?

23 JUDGE RODGERS: You may.

24 ///

25 ///

**DIRECT EXAMINATION**

BY MR. SHENTON:

Q. Leader Driskell, good morning.

A. Good morning.

Q. Are you a member of the Florida House of Representatives?

A. Yes.

Q. What district do you represent?

A. District 67.

Q. Where is that located in the state of Florida?

A. In North Tampa and North Hillsborough County.

Q. How long have you been a member of the Florida House?

A. For five years.

Q. And what positions have you held during your time as a member of the Florida House?

A. I served as a ranking member on various committees. I've also served as policy chair for the Florida House Democratic caucus, and I currently serve as minority leader for the Florida House of Representatives.

Q. What is your understanding of what this case is about?

A. We are here to discuss the federal redistricting map and the process that led to the passage of that map into law.

Q. Does that focus on any particular area of the state?

A. Yes, North Florida.

Q. Leader Driskell, how would you describe your style as a legislator?

1 A. Commonsense, practical, solution-oriented. A consensus  
2 builder, and willing to work across the aisle.

3 Q. Have you ever served as a member of the majority in the  
4 Florida House?

5 A. In my dreams? No. No, I have not.

6 Q. So you've been the member of minority during your entire  
7 tenure?

8 A. Yes.

9 Q. Have you sponsored any legislature that's successfully  
10 passed into law?

11 A. Yes.

12 Q. Can you give me an example?

13 A. Sure. So one example might include in 2021, we were able  
14 to pass a police reform bill. We'd came back after the COVID  
15 lockdowns and shutdowns and after the murder of George Floyd and  
16 all those protests and wanted to do something together. So I  
17 was able to lead the Florida legislative Black caucus, the  
18 Florida House Democratic caucus, and work hand in hand with the  
19 speaker at the time to develop a police reform bill that all  
20 sides could be happy with that would provide greater  
21 transparency to communities, particularly communities of color  
22 who were demanding that, but that would also support our law  
23 enforcement, who, you know, needed more support in their  
24 processes too, just trying to do their jobs and just trying to  
25 bridge the gap between the two communities. So we were able to



1 get that bill passed unanimously in both chambers.

2 Q. And can you describe a little bit the process of building  
3 the consensus that led to the passage of that bill?

4 A. Yes, absolutely. So it involved a lot of work,  
5 particularly reaching out to and speaking with shareholder -- I  
6 mean stakeholder groups, so talking to community organizations  
7 like the NAACP, talking to different communities around the  
8 state, working with the Sheriffs Association and different  
9 sheriffs around the state, working with police chiefs, certainly  
10 working with the majority, the majority office. The speaker and  
11 I worked very hard on this together and met working with  
12 committee chairs in working the bill speaking with different  
13 members to make sure that we had something we could all be proud  
14 of.

15 Q. Sounds like it took a lot of time.

16 A. It did take a lot of time.

17 Q. Are there any other experiences as a legislator you would  
18 highlight that illustrated your style as a legislator?

19 A. You know, sure. Maybe I could talk a little about the  
20 budget and how that gets passed.

21 So I currently serve as ranking member -- Democratic  
22 ranking member on the appropriations committee, and so that's  
23 another example of a significant piece of legislation that  
24 requires a lot of hard work and buy-in, working with the chair  
25 of that committee, working with my members, you know, advocating

1 for their projects to be included in the budget bill. All sorts  
2 of conversations with stakeholders, making sure we've got a  
3 budget we can all be proud of.

4 Q. And was that budget process successful? Did it lead to the  
5 passage of a budget this year?

6 A. Actually, it did. For the first time in a very long time,  
7 the budget passed unanimously.

8 Q. Were there any techniques you found particularly effective  
9 as a legislator to pass those efforts?

10 A. Yes. So it requires communication, a clear communication  
11 style and a willingness to talk to anybody and work with anybody  
12 who's willing to work with you.

13 Q. And are there any efforts or techniques you would consider  
14 particularly important as a member of the minority party for  
15 passing legislature?

16 A. Yes, that's a great question. So in the minority party, it  
17 necessarily means that you don't have the votes on your own to  
18 carry your own legislation, and so you have got to be able to  
19 get the buy-in of the majority party, so that means having  
20 conversations at the outset, making sure that you're headed  
21 towards a work product where you can have the buy-in from some  
22 members of the majority party to get your legislation through.

23 Q. I want to turn now to the redistricting process from 2021.

24 When did you first learn you would serve on the House  
25 Redistricting Committee?

1 A. It would have been sometime in the summer, probably,  
2 because we started meeting, if I remember, in the fall.

3 Q. And what were your duties and responsibilities in your  
4 capacity as a committee member?

5 A. As a committee member, we're responsible for, you know, of  
6 course, preparing for the committee meetings, attending the  
7 committee meetings. And on the full redistricting committee, it  
8 meant that we consider any sort of -- any of the maps that pass  
9 in the subcommittees they rolled up to the big committee for our  
10 consideration.

11 Q. Are you familiar with the Florida Fair Districts  
12 amendments?

13 A. Yes.

14 Q. Could you tell me in brief what your understanding of what  
15 they cover is?

16 A. Sure. So I wouldn't want to take a law school exam on it  
17 right now, but I certainly was very familiar with it at the  
18 time, and I can tell you that, you know, at bottom it focuses  
19 on -- there's an intact antidiscrimination provision there, and  
20 then there's also the provision to make sure that we're not  
21 drawing maps in a way that's gerrymandered and that might favor  
22 one party over the other.

23 Q. Are you familiar with the nondiminishment provision of the  
24 Fair Districts amendments?

25 A. Yes.

1 MR. SHENTON: Can we pull up Joint Exhibit 12.

2 Can we pass the AV to our --

3 Thank you.

4 BY MR. SHENTON:

5 Q. This is the transcript of the House Redistricting Committee  
6 on November 2, 2021. If we could go to page 7, please. And  
7 you'll see here we're at line 10.

8 Ms. Driskell, take a moment to familiarize yourself  
9 with the passage that's excerpted.

10 A. Thank you.

11 Q. Does this description look like it's talking about the Fair  
12 Districts Amendments?

13 A. Yes.

14 Q. And was it your understanding that this is an accurate  
15 description of what the Fair Districts Amendments do?

16 A. Yes.

17 MR. SHENTON: You can take that down.

18 BY MR. SHENTON:

19 Q. I'll note for the record that that excerpt is -- or I'll  
20 represent to you, Leader Driskell, that that excerpt is being  
21 spoken by Mr. Andy Bardos at the invitation of the redistricting  
22 committee leadership describing the legal provisions of the Fair  
23 Districts Amendment.

24 A. Thank you.

25 Q. You testified a moment ago that you familiarized yourself

1 with the Fair Districts Amendments as you moved through the  
2 redistricting process?

3 A. Yes.

4 Q. What did that preparation consist of, to your recollection?

5 A. Sure. At the time I would have, of course, read the  
6 provisions of the Florida Constitution. And then we also had  
7 case law. I remember reading case law to just be prepared for  
8 what this process might be like.

9 Q. And do you recall when the first meeting of the House  
10 Redistricting Committee was?

11 A. It was sometime in September 2021.

12 Q. And what did the committee discuss during that first  
13 meeting?

14 A. Like many committees, it was an intro meeting, so it's  
15 where the chair would outline the way that he would want the  
16 committee to go. We talked a lot about the legal standards that  
17 we would need to understand as proceeding through the  
18 redistricting process. There was a great emphasis on that.

19 I can remember that it was the first time we learned  
20 about the Florida redistricting.gov website as a method for  
21 receiving public feedback.

22 So it very much was an intro with the chair setting  
23 forth the standards and procedures in terms of how he wanted  
24 this committee to operate.

25 Q. Great.

1 MR. SHENTON: If we can pull up Joint Exhibit 3. It's  
2 a transcript of that first meetings. Looks like it's on  
3 September 22, 2021. And if we could go to page 12, please.

4 BY MR. SHENTON:

5 Q. You'll notice there's an excerpt highlighted on the screen.  
6 I'll go ahead and read it aloud now. And this is Chairman Leek  
7 speaking to the committee.

8 "This important work occurs only every ten years, and  
9 it is worth noting the legislature has only two constitutional  
10 requirements: To pass a balanced budget and to redistrict."

11 Do you remember Chair Leek saying this?

12 A. Yes.

13 Q. What impression did that make on you at the time?

14 A. Well, the impression that I had is that the redistricting  
15 process is very important. We certainly all understood how  
16 important the budget was; we had all experienced that before.

17 But then redistricting, as a process that only comes  
18 once every decade, is huge, and the Constitution requires us to  
19 do it. So he was trying to drive that point home that this is a  
20 important process.

21 Q. And the Constitution requires the legislature to do that,  
22 right?

23 A. That's correct.

24 MR. SHENTON: You can take that down.

25 BY MR. SHENTON:

1 Q. What was your impression of the role that transparency  
2 would play in the redistricting process?

3 A. That it would be very important. And I can remember that  
4 that's something that we talked about during that first meeting.

5 Q. And do you remember anything specifically that Chair Leek  
6 might have said with respect to transparency?

7 A. He talked quite a bit about records retention, for example,  
8 and that he and the speaker were lockstep in this, from what I  
9 remember, and that they wanted to make sure that we kept our  
10 records, anything regarding redistricting, even if it was a  
11 communication that came from the outside to us. Make sure you  
12 keep all of your records, and that this is a process that would  
13 be done effectively in the sunshine.

14 Q. Do you remember any basis for the concern with  
15 transparency?

16 A. Yes. So they were very concerned -- "they" being the  
17 majority. So this was Chair Leek speaking on behalf of -- of he  
18 and the speaker.

19 From what I recall, they were very concerned about  
20 litigation and not wanting to have a repeat of what happened  
21 with the prior litigation cycle where there was litigation.

22 Q. And could you describe briefly how transparency came up in  
23 that prior litigation?

24 A. Sure. So in that prior litigation, they got flat-footed,  
25 if you will, because there were a number of communications that

1 took place out of the sunshine, records that had to be produced  
2 and that ultimately, I think, were -- had a persuasive impact on  
3 what happened in the outcome of those cases.

4 Q. What was your impression of the role that legal precedent  
5 would play in the redistricting process?

6 A. So my impression was that legal precedent would guide us,  
7 that it would be not just actually the -- provide the guidepost,  
8 if you will, but they would also be the boundaries. And Chair  
9 Leek was very clear about this. In fact, in that first meeting,  
10 we spent a great deal of time talking about how we would only --  
11 it would only be after we had really established a firm legal  
12 platform, really understanding what the requirements were, that  
13 we would even talk about considering maps.

14 So they really wanted to drill that into the members  
15 and make sure that we had a strong foundation.

16 Q. Let's talk about one of those instances.

17 MR. SHENTON: If we could go back to Exhibit 3, page  
18 6. And line 20 you see at the top, starting there, and then  
19 going over to the next page.

20 BY MR. SHENTON:

21 Q. I'll go ahead and read a brief passage.

22 This is Chairman Leek speaking again to the committee.

23 "It is important to remember that during the 2012  
24 redistricting cycle, the members and staff were implementing two  
25 brand-new substantial constitutional amendments. They did not



1 have the benefit of historical reference or Court precedent to  
2 guide them through this process.

3 "However, now we do. The speaker and I have made it  
4 consistently and abundantly clear that the House will conduct  
5 this process in compliance with the Florida Constitution and  
6 relevant federal and State legal standards, including relevant  
7 Court precedents.

8 "Let me read that again.

9 "The speaker and I have made it consistently and  
10 abundantly clear that the House will conduct this process in  
11 compliance with the Florida Constitution and relevant federal  
12 and State legal standards, including relevant court precedents."

13 Do you remember Chair Leek saying this?

14 A. I do.

15 Q. What impression did it make on you at the time?

16 A. Well, that it was very important. He repeated it, right?  
17 Like he repeated himself. He read that passage twice.

18 I remember it being a very dramatic moment when he  
19 said, "Let me read that again," and he wanted to make it very  
20 clear to us that the House would follow the law when it came to  
21 the redistricting process.

22 Q. And that was inclusive of the Fair Districts Amendments?

23 A. That's correct.

24 Q. What was your impression of the role that public outreach  
25 would play in the redistricting process?

1 A. Well, in doing research in terms of trying to understand  
2 what redistricting is like and how it goes in the legislature,  
3 it was my understanding that in prior cycles, there would --  
4 there was a road show where the legislature would actually  
5 travel the state and get input from the public about the  
6 map-drawing process.

7 So prior to that meeting, I thought that that would be  
8 the process that we would embark upon in order to get public  
9 feedback in the redistricting process.

10 Q. Was there a road show in 2021?

11 A. There was not a road show in 2021.

12 Q. Was there any discussion of having a road show in 2021?

13 A. I can remember it coming up in committee where we asked the  
14 question. I think I maybe even asked the question about whether  
15 or not there would be a road show and public outreach.

16 I think the feedback that we got was probably not, and  
17 that instead, the committee intended to rely on the website for  
18 the redistricting.gov as the primary method from which to  
19 receive public input.

20 Q. And why was the road show important, in your view?

21 A. The road show's important because, I mean, just practically  
22 speaking, Florida is a very large state. So when you're talking  
23 about drawing new boundaries, new district lines, it's important  
24 to understand what you're doing. And if you look at it, you  
25 know, just plainly on a map, sure, you may see one road and

1 think that it's a good boundary, but without understanding what  
2 it's like on the ground for that community, we could be making  
3 mistakes and chopping up and dividing communities in ways that  
4 are ineffective.

5 And I think it's important to hear from the public  
6 too. I mean, the public went through the prior redistricting  
7 process. They see what the legislature did wrong. They saw  
8 what happened when, you know, we had these Court opinions that  
9 basically led to the redrawing of maps. It's important to hear  
10 from the people. It's the people who really hold us  
11 accountable.

12 Q. And without the road show, what were the opportunities for  
13 people to make themselves heard in the redistricting process?

14 A. The only way was really through the website. I mean,  
15 people could come and give comment in committee, but let's be  
16 honest: Tallahassee is not the easiest to travel to. We meet  
17 during the week. People have work, right? You know, so really  
18 it was down to the website at that point.

19 Q. Could you tell me a little bit about the website?

20 A. Sure. So the federal -- I mean, not federal. Excuse me.

21 The Florida redistricting.gov website would allow  
22 users to perhaps draw their own maps. They could see the maps  
23 that the legislature had drawn. And that was about it. It  
24 lacked certain functionality, which was problematic to me.  
25 Again, Florida is a very diverse state. You're talking roughly

1 22 million people, people who speak many different languages. A  
2 flaw of the website was that it did not have those capabilities  
3 of communicating with the public in the language of their  
4 choice. So it had many shortcomings.

5 Q. And did you raise these concerns at the time?

6 A. I did.

7 Q. And were you told they would be worked on, considered?  
8 What was the response?

9 A. The response was that they would take a look and see what  
10 they could do. You know, I was particularly concerned about  
11 Haitian Creole speakers, because they are a significant language  
12 minority in the state, and from what I saw of the website,  
13 initially there was no way to communicate with those voters.

14 Q. And the Fair Districts Amendments protect language  
15 minorities, don't they?

16 A. That's correct.

17 Q. Summing up that first meeting, what was your understanding  
18 of the goals that the legislature had at the outset of the  
19 redistricting process?

20 A. My understanding was the goal was to get through the  
21 process in a legal way, again using legal precedents as not just  
22 the guidepost, but also as the boundaries, and to draw maps that  
23 satisfied both the federal Fair Voting Act standards and the  
24 legal precedent following that, and then also the Fair Districts  
25 Amendments and any legal precedent following that.

1 MR. SHENTON: Pull up Joint Exhibit 3, page 14 -- or  
2 I'm sorry. Page 83.

3 BY MR. SHENTON:

4 Q. Here's one more statement from Chair Leek in this first  
5 meeting. He says:

6 "We will do this right. The speaker expects that this  
7 committee will do it right. I expect that each of you will do  
8 this right, that we will do this right and within the law."

9 Do you remember Chair Leek saying this?

10 A. I do.

11 Q. Is it a fair summation of the impression you had from that  
12 first meeting?

13 A. It is.

14 Q. What impact did it make on you at the time as a committee  
15 member?

16 A. Right. So at that point I'd served on a number of  
17 committees and had sat through a number of these sort of interim  
18 meetings that we have. And the tone in this meeting was far  
19 more serious. It was may be somber, even, that we were about to  
20 embark on a great responsibility. It's not typical that a  
21 committee chair will say that, "I expect you to do this right."  
22 He was really trying to set up the framework in which we  
23 operated in and really trying to hold us accountable to making  
24 sure that we stayed within the law.

25 Q. But as you just testified, there was some discussion about

1 how best to stay within that framework, right?

2 A. That's right.

3 Q. Would it be fair to say there were some disagreements about  
4 how to best do that?

5 A. Yes.

6 Q. Were those disagreements about whether to follow the law  
7 whatsoever?

8 A. No, there was never a disagreement about whether to follow  
9 the law.

10 Q. Only about how to follow the law?

11 A. That's correct.

12 Q. So there were a few more meetings in that initial learning  
13 process, right?

14 A. Yes.

15 Q. I want to go to Joint Exhibit 12. This is the November 2,  
16 2021, meeting, one of those meetings that we were just  
17 discussing.

18 If we could go to page 36. It's the excerpt from the  
19 bottom of that page. It's Representative Fine speaking.

20 "Thank you, Mr. Chairman. This is a question I think  
21 might be helpful for the committee to ask.

22 "If you follow the six standards that you laid out, do  
23 you come up -- would one come up with one map? Is there only  
24 one answer or is there some -- an infinite number of  
25 possibilities that could be devised that would meet all six

1 standards?"

2 Chairman recognizes Mr. Bardos, who we were discussing  
3 earlier. He says:

4 "Thank you, Mr. Chairman. A very good question.

5 "Yes, there would be, if not, an infinite, a very,  
6 very large number of potentially compliant configurations of  
7 districts."

8 Do you remember this colloquy between Representative  
9 Fine and Mr. Bardos?

10 A. Yes.

11 Q. I want to show one more quote from this part of the  
12 hearing.

13 MR. SHENTON: Could we go to page 37.

14 BY MR. SHENTON:

15 Q. This is, again, Representative Fine speaking.

16 "So to be clear, the map that we propose could be  
17 compliant if we follow all six of these standards. But others,  
18 other members of the committee, the public, they could also have  
19 ideas for other compliant maps as well. There's not one answer  
20 to the question."

21 Chairman Leek recognizes Mr. Bardos, who says:

22 "That's correct."

23 Taking these quotes together, was that your  
24 understanding of how you could produce compliant maps in the  
25 House Redistricting Committee?

1 A. Yes. I'd say it's my understanding that -- or was my  
2 understanding that it would be possible to have multiple maps  
3 drawn that could potentially be compliant.

4 Q. And what would the distinctions between those different  
5 legally compliant maps look like?

6 A. Well, they could be different district lines, for example,  
7 where folks decided to, you know, divide communities or  
8 different boundaries for the districts.

9 Q. And they would be the product of different policy choices,  
10 different legal interpretations? How would you describe the  
11 different inputs that could produce those maps?

12 A. Sure. So it could be the result of the different policy  
13 choices. For example, the data that could have been considered  
14 to go into the map-drawing process. There were policy choices,  
15 for example, that the legislature made about which data to  
16 consider. It also could have been a question of, you know, what  
17 types of analyses were run or whether functional analyses were  
18 done on particular districts.

19 So there was a lot of different input that could have  
20 gone into that.

21 But again, I would just say that Chair Leek made it  
22 very clear that the one thing that would never be in question  
23 was whether or not we adhered to the federal and State standards  
24 when it came to redistricting.

25 Q. I want to show you one more quote from this



1 November 2nd meeting.

2 MR. SHENTON: If we could go to page 41.

3 BY MR. SHENTON:

4 Q. And this is you speaking in that committee hearing.

5 It sounds like -- and you can tell me if I'm reading  
6 this wrong, but --

7 "It looks to me like the Court made a legal decision  
8 that allows for the legislature to make the policy decision to  
9 go back and look if it wants to -- that's the 'may' piece.

10 "But the decision is very clear that the legislature  
11 does not have to -- that's the 'must' piece -- go back and  
12 revisit that policy decision."

13 Do you recall saying this in that  
14 November 2nd meeting?

15 A. Yes.

16 Q. Is it a fair summary of how you understood those different  
17 policy choices to work?

18 A. Yes.

19 Q. Does it hold true through some of those topics that we've  
20 been discussing today about the process and different ways to  
21 conduct that?

22 A. Yes.

23 Q. And was your understanding that those different procedures  
24 that you were discussing, the road show, different ways of  
25 getting input on the website -- all of those could lead to

1     legally compliant maps?

2     A.    Yes.

3     Q.    What was the thing the legally compliant maps had to have  
4     in common?

5     A.    Well, I mean, they had to be legally compliant, right?  So  
6     they had to make sure that they satisfied not just the federal  
7     voting rights standards, but the Fair Districts Amendment  
8     standards.

9     Q.    And after this November 2nd meeting --

10                 MR. SHENTON:  You can take it down.  Thank you.

11     BY MR. SHENTON:

12     Q.    -- did map drawing begin at that point?

13     A.    Probably.

14     Q.    Could you describe that initial map-drawing process for the  
15     Court?

16     A.    Sure.  So initially -- and it's important to note that as  
17     members of the committee, we really did not have any input on  
18     the map-drawing process.  What would happen is that, you know,  
19     there was staff assigned to that committee who was responsible  
20     for drawing the maps, and then those maps would get presented to  
21     the committee initially in the form of a workshop.  And so, for  
22     example, we would be shown maps that had different -- I don't  
23     know if you would call it like different little call-outs, so  
24     you could see a region and you could see how a map might be  
25     drawn differently based on some of those different inputs.

1           And so we would have options to consider and think  
2     about as the maps were work-shopped.

3     Q.   And you testified that -- a moment ago that the maps were  
4     mostly drawn by legislative staff.

5           Are those the maps that were being considered by the  
6     committee?

7     A.   Yes.

8     Q.   Who controlled which maps came before the committee?

9     A.   The committee chair.

10    Q.   Was there any opportunity to consult on that topic, or were  
11    you just receiving agendas?

12    A.   We just received the agenda with whatever map we were  
13    considering for the day.

14    Q.   And as a member of the main House Redistricting Committee,  
15    did you have jurisdiction over just the congressional, just the  
16    State legislative maps, or both?

17    A.   Both.

18    Q.   How did that process work, in brief?

19    A.   Sure. So once the subcommittee voted on a map, it would  
20    then come up to the full redistricting committee, who would  
21    consider that map.

22    Q.   And up to this point, the kind of intro of the map-drawing  
23    process, would you identify any differences between the process  
24    for the State legislative maps and the process for the  
25    congressional maps?

1 A. No.

2 Q. How would you describe the tenor in the legislative process  
3 to that point?

4 A. It had been as the chair said it would be: That we would  
5 follow the law. We would take the time to really understand the  
6 legal standards. You know, the process moved at a reasonable  
7 pace, and we had an opportunity to absorb information before  
8 moving on to the next phase in the process until we got to the  
9 map-drawing process.

10 Q. At the outset of the process, when you first started  
11 considering maps, did the Senate and House agree on exactly how  
12 the congressional maps should look?

13 A. No. There were some differences.

14 Q. Could you give me an example?

15 A. Sure. One I can think about maybe was in CD10, which was  
16 in the Central Florida area, and there was a distinction between  
17 the Senate and the House on whether or not Congressional  
18 District 10 was a protected Black district.

19 So that was one example of where there was a  
20 difference of opinion.

21 Q. That was a difference in legal interpretation, right?

22 A. That's right.

23 Q. Not whether the law applied?

24 A. Right. There was never -- still never a question of  
25 whether or not the law applied.

1 Q. I want to go to that first workshop session on  
2 January 13th.

3 MR. SHENTON: If you could pull up Joint Exhibit 25,  
4 and if we could go to page 13.

5 BY MR. SHENTON:

6 Q. Take a moment to familiarize yourself with the paragraphs  
7 on the screen, Leader Driskell.

8 A. Could we get that zoomed in, please?

9 Thank you.

10 Q. Can you see where it's talking about Congressional  
11 District 3?

12 A. Yes.

13 Q. Is it your understanding that that corresponds to  
14 Congressional District 5 in the benchmark map?

15 A. Yes.

16 Q. And a moment ago you were testifying about how there were  
17 different options presented to the committee in these sessions  
18 about different legal configurations of different areas in the  
19 map, different choices.

20 Did you receive two options for Congressional District  
21 3 in this meeting?

22 A. I don't know that we received that at first. I know at  
23 some point we did receive two different options for  
24 Congressional District 3.

25 Q. Why do you think you only received one option in this first

1 meeting?

2 A. Well, because what they presented was a legally compliant  
3 way to look at District 3, which is the analogue for District 5  
4 now. And they were explaining in this passage that it goes from  
5 Duval County all the way over into Gadsden County, which is one  
6 important policy consideration, because Gadsden County is a  
7 majority minority county.

8 And so this is an explanation for why that district,  
9 as proposed, was shaped in the way that it was, and so they were  
10 articulating that they were trying to maintain that protected  
11 congressional district with the configuration that they showed  
12 us at that meeting.

13 Q. And that configuration was based on Court precedent; is  
14 that right?

15 A. Yes.

16 Q. Do you think there was only one way to comply with the Fair  
17 Districts Amendments in Northern Florida?

18 A. No, not necessarily.

19 Q. It's more just that this was a clearly compliant way?

20 A. Yes.

21 MR. SHENTON: Can we go to page 26.

22 BY MR. SHENTON:

23 Q. This is Ms. Kelly, one of the members of the legislative  
24 staff, discussing some of the considerations in the map at line  
25 17. Take a moment to familiarize yourself with that, and then

1 we'll go to the next page.

2 A. Okay.

3 Q. Ready?

4 A. Yes.

5 Q. Can we go to the next page, page 27. Take a moment to  
6 familiarize yourself with that as well.

7 A. If we could zoom in, please.

8 MR. SHENTON: Zoom in just the top half of the page  
9 and then go to the bottom.

10 THE WITNESS: Thank you.

11 MR. SHENTON: You can move to the bottom now.

12 THE WITNESS: Thank you.

13 MR. SHENTON: Pull up the bottom half of the page.

14 And if we could just go to the first line on the next  
15 page to finish out the sentence.

16 BY MR. SHENTON:

17 Q. Do you remember this discussion in the  
18 January 13th meeting?

19 A. Yes.

20 Q. And could you tell the Court who Ms. Kelly is in this  
21 process?

22 A. Yes. Ms. Kelly, that's a reference to Leda Kelly. She was  
23 the staff director for the redistricting committee.

24 Q. And she was one of the main legislative staff working on  
25 the redistricting process?

1 A. Yes.

2 Q. What did you take this discussion of compactness to mean?

3 A. So this discussion of compactness was an explanation that  
4 compactness is a factor that we should consider, but that no one  
5 method of determining compactness is superior to the other.

6 So Ms. Leda was explaining the eyeball test, but she  
7 also was letting us know that we'd probably hear about other  
8 compactness standards that we could consider.

9 Q. And she also spoke about how compactness is a little bit in  
10 the eye of the beholder, right? There's different people who  
11 have different opinions about what is a compact map or not?

12 A. That's right, and that's why it would be important to  
13 consider different options for compactness.

14 Q. She said to keep an open mind about how you think about  
15 compactness and whether -- how you evaluate particular districts  
16 on those metrics, right?

17 A. That's right.

18 Q. Can we go to page 36.

19 So at this point in the hearing, you had asked Chair  
20 Leek a question about how to determine minority access seats and  
21 whether a district would be protected and then how a district  
22 would be protected in a particular configuration of the map, so  
23 figuring out which districts to protect and then figuring out  
24 how to draw them so that they remained that way, and this is the  
25 response that Chair Leek gave to your question.



1           He said: "Yeah, Representative Driskell, that was an  
2 excellent question. I also think it was an excellent answer, so  
3 thank you guys both. That's what we're doing here today, right?

4           "So we have put workshop maps in front of you that  
5 take different approaches that are both legally compliant, but  
6 one focuses more on compactness, one focuses just roughly on  
7 political and geographical distinctions.

8           "But that question that you asked, I thought, was  
9 very, very good and helpful."

10          Do you remember Chair Leek saying this?

11       A. Yes. I always remember when I have good questions.

12       Q. And what was your takeaway from this interaction with Chair  
13 Leek?

14       A. So my impression, though, in terms of what he was saying  
15 was that it was a clear example of how two different  
16 configurations could be legally compliant, and that is what they  
17 were trying to get us to understand at this stage, that there  
18 are different ways to draw these maps that are legally  
19 compliant, and so they were giving us options and the framework  
20 to consider how to evaluate that.

21       Q. And you've testified throughout this morning about the  
22 different configurations for legal compliance that were  
23 available to you.

24          Would it be fair to say this is an example of that  
25 sort of discussion?

1 A. Yes.

2 Q. And are you familiar with Tier I and Tier II requirements  
3 under the Fair Districts Amendments?

4 A. Yes.

5 Q. And do you understand Chair Leek to be talking about Tier I  
6 requirements or Tier II requirements here?

7 A. Tier II with respect to compactness.

8 Q. And is it your understanding that Tier II requirements  
9 interact with Tier I requirements somehow?

10 A. They do. You have to make sure you satisfy Tier I first,  
11 though.

12 Q. Great. And so in those legally compliant configurations  
13 that were discussing how best to comply on Tier II requirements,  
14 both of them would comply with Tier I requirements, right?

15 A. That's right.

16 MR. SHENTON: And if we can go to page 43, please.

17 BY MR. SHENTON:

18 Q. So I'm going to read this passage. This is a question that  
19 you had asked about Haitian Creole voters in the maps, so...

20 "Okay. And the comment is just -- and thank you for  
21 that, because we should absolutely do what we can to protect the  
22 Black districts.

23 "It's just that I think within language minorities,  
24 you know, the Black population is not a monolith, and it's the  
25 Haitian community. I'm not a part of it, but I would imagine it

1 has some specific, you know, issues that are specific to them.  
2 And so, then, it sounds like, Mr. Chair, going back to I think a  
3 comment that you made two questions ago that perhaps it's that  
4 we need to hear some community feedback about those maps and  
5 hear from the community that may be the language minority about  
6 what -- what they think of the maps, et cetera, and if they feel  
7 protected or not."

8 Do you remember saying this?

9 A. Yes.

10 Q. Did you flesh out the concerns that you had for the Haitian  
11 Creole community for the Court?

12 A. Yes. The Haitian Creole community is a language minority,  
13 a significant language minority in size. I forget if it's a  
14 second or third, but it's a large language minority in the  
15 state. And when you consider Tier II standards, it's important  
16 to protect our language minorities.

17 And I wanted to make sure that as a committee we were  
18 doing what we could to protect the Haitian Creole community, and  
19 I wanted to speak up to make sure that that was a consideration  
20 that the committee knew and that we could consider as a policy  
21 decision as we moved forward in creating these maps.

22 MR. SHENTON: And if we can go to page 56, please.

23 BY MR. SHENTON:

24 Q. And here's a little bit more further on in the discussion  
25 about the Haitian Creole community. You say:

1           "Thank you, Mr. Chair, and I think you may have just  
2 anticipated the question that formulated in my mind based on the  
3 exchange we just had with you and Representative Omphroy, which  
4 is -- so it sounds like that information is available to us.  
5 We're not required to use it, but we can make a policy decision  
6 as a legislative body to use it?"

7           And Chair Leek responds: "Yeah, kind of. Remember,  
8 because the survey information is not as precise as is necessary  
9 for the required legal data that we have to use, right? But it  
10 is a community of interest that is not really measured in any  
11 other way other than a survey. And I'll turn it over to  
12 Ms. Kelly at that point."

13           She's says: "I'm right. I always like it when that  
14 happens." And you thank him for his answer.

15           When you talk about the information being available to  
16 the legislature but not being required to use it, what were you  
17 referencing?

18           A. So I was talking about the American Community Survey, which  
19 is something that --I believe the census owns it, but it's not  
20 the census. Right? The census is a head count -- where are  
21 these community surveys that issue more frequently that provide  
22 data about communities, including language minority communities  
23 like the Haitian Creole community.

24           And what I was asking for clarity on from the chair is  
25 whether or not that data was available to the committee and

1 whether or not we could use it.

2 And Chair Leek's response is that, yes, it's  
3 available, but then he goes on to explain why he doesn't really  
4 like that data and effectively said we wouldn't be using it.

5 Q. And what did you take Chair Leek's concerns with that data  
6 to be?

7 A. Well, he expressed that, in his belief, the survey  
8 information was not as precise as other information, including,  
9 perhaps -- I don't know -- maybe the census data.

10 But, again, that's a policy decision that he made, not  
11 one that was voted on or vetted fully by the committee.

12 Q. Was it your understanding that the committee could use both  
13 sources of data in drawing the maps?

14 A. Yes. It was absolutely permissive.

15 Q. And so it was a choice to use one set of data alone or to  
16 bring in the American Community Survey data to help?

17 A. That's right.

18 Q. Would it be fair to describe this as another instance of a  
19 time where the law gave the legislature two options to choose  
20 between?

21 A. Yes.

22 Q. And both of them would have been legally compliant?

23 A. Yes.

24 MR. SHENTON: Go to page 93.

25 BY MR. SHENTON:

1 Q. I'm going to read this out loud as well. Ms. Kelly is  
2 speaking. She says:

3 "Thank you, Mr. Chair, and thank you, Representative.  
4 That's actually a very good question.

5 "Whenever we perform our functional analysis and  
6 whenever we're addressing the question that you posed, it really  
7 is district by district. Every district has different voting  
8 patterns, voting strengths, and a different amount of voting age  
9 population that reside within that district. The Courts have  
10 actually been very clear that there is no bright line test for,  
11 you know, if you're over 50 percent, you're in a performing  
12 district. They actually have struck down maps that try and  
13 apply those arbitrary thresholds.

14 "So unfortunately, it's not quite as cut-and-dry as  
15 that. It truly is a district-by-district analysis."

16 MR. SHENTON: And if we could go to page 98, please.

17 BY MR. SHENTON:

18 Q. This is it Chairman Leek speaking, short time later. He  
19 says:

20 "Yeah, that's right. Majority/minority is not the  
21 determining factor of whether it's protected. It's performance.

22 "Any other questions?"

23 Do you remember these statements in that meeting?

24 A. Yes.

25 Q. What did you take these statements to mean?

1 A. So I took it to mean that we were going to focus on  
2 performance when it came to evaluating minority districts.

3 Q. And that that analysis needed to be tailored to the  
4 particular district that you were talking about?

5 A. Right, that it would be a district-by-district analysis.

6 Q. And that you couldn't apply a bright line rule and ensure  
7 that you were legally compliant?

8 A. Yes.

9 MR. JAZIL: Objection, leading.

10 JUDGE RODGERS: It was leading.

11 MR. SHENTON: I can rephrase my question.

12 JUDGE RODGERS: Sustained.

13 BY MR. SHENTON:

14 Q. Was it your understanding that you could apply a bright  
15 line rule?

16 A. It was my understanding you could not apply a bright line  
17 rule and that instead, the functional analysis would need to be  
18 performed district by district, based on the individual  
19 characteristics of those districts.

20 Q. And the conclusions would change based on which district  
21 you were talking about?

22 A. That's correct.

23 Q. I want to turn now to the January 26, 2022, redistricting  
24 committee meeting.

25 Do you recall broadly what you discussed in that

1 meeting?

2 A. Sir, could you repeat the question?

3 Q. Sure. Talking about the January 26th meeting now, two  
4 weeks later.

5 A. Yes.

6 Q. Do you recall what the committee discussed in that meeting?

7 A. So as we were proceeding -- as it's getting later and  
8 later, we would have been talking about the state maps.

9 Q. Was it your understanding that the maps you were  
10 considering in that meeting complied with the Fair Districts  
11 Amendments?

12 A. Yes.

13 MR. SHENTON: Can we go to Joint Exhibit 31. This is  
14 a transcript of that meeting.

15 And if we could go to page 60, please.

16 BY MR. SHENTON:

17 Q. I won't read this all, because it's quite long, but I'll  
18 let you take a moment to familiarize yourself with it and let me  
19 know when you're ready.

20 A. Okay.

21 Could we blow up that on the screen, please? The  
22 challenge is this monitor is a little blurry, so it's better to  
23 see it here.

24 Q. Start with that section on page 60.

25 A. Thank you.



1 Q. Once you're ready for the next page, let me know.

2 A. Yes, thank you.

3 Could we scroll down, please.

4 Q. To the bottom of the page.

5 A. Okay.

6 Q. Do you remember this exchange with committee leadership?

7 A. Yes.

8 Q. And could you summarize it briefly for the Court?

9 A. Yes. So in this exchange, I'd asked for additional clarity  
10 about whether or not the American Community Survey data had been  
11 used in evaluating whether or not these minority majority  
12 districts should be pretexted and certainly whether or not we  
13 should be protecting the Haitian language minority community.

14 And the feedback that I got was that the ACS data --  
15 at first it was that: Well, the ACS data is old and so we don't  
16 want to apply it. And then the feedback I got was: Well, the  
17 ACS data doesn't really exist. And ultimately, I got the  
18 feedback that the ACS data doesn't exist at the level of  
19 granularity that's necessary in order to do this task. What  
20 this represented to me, as a member of the committee, is that  
21 committee leadership made a policy choice on whether or not to  
22 consider the ACS data and that ultimately they decided not to  
23 use it.

24 The other thing that I had asked about in this  
25 exchange is whether or not member feedback was taken into

1 account when drawing these maps, and the answer that I got  
2 really was no.

3 Q. These examples of that sort of distinction you were  
4 testifying about a little bit earlier between legally compliant  
5 options --

6 A. Yes.

7 Q. -- did you disagree with Chair Leek and Vice-Chair Fine  
8 about the best way to comply with the law?

9 A. I did disagree with him.

10 Q. What was your understanding of the nature of the  
11 disagreement?

12 A. Sure. Well, from my perspective, if this is an important  
13 function of the legislature and we only get to do this once  
14 every ten years, then we should be using as much data as we  
15 could to make sure that we actually got this right. More is  
16 more. More data is more data that we could consider in making  
17 sure that we were capturing the way the population in Florida  
18 had evolved, the way that, you know, people had moved, the way  
19 that they engage in community, whether that's through shared  
20 language or in other ways, and we needed more data in order to  
21 draw A-plus maps.

22 But the feedback that I kept getting back the way that  
23 it -- I received it was that they were content with drawing maps  
24 that would just barely pass. They were okay with a  
25 D-plus/D-minus map. As long as it satisfied the legally

1 criteria of the federal Voting Rights Act and the Fair Districts  
2 Amendment, they were not going to go above and beyond that.  
3 They were not going to make policy decisions to consider as much  
4 data as we legally could.

5 Q. And was it your understanding that leadership viewed their  
6 approach as consistent and compliant with the law?

7 A. Yes. Even though I disagreed with their perspective in  
8 terms of the best way to draw the maps, I believe what they  
9 thought they were doing was legal.

10 Q. And it certainly didn't facially violate the Fair Districts  
11 Amendments?

12 A. That's correct.

13 MR. SHENTON: I want to go to page 92, stretching over  
14 into 93.

15 BY MR. SHENTON:

16 Q. This is a colloquy between Representative Goff-Marcil and  
17 the leadership of the committee.

18 Representative says: "Could you tell me how much of  
19 the public input from the website was used in making these  
20 maps?"

21 And Vice-Chair Fine recognizes Chairman Leek, and he  
22 says:

23 "Yeah, I don't think we can quantify it, because we  
24 left it to members like you and the other members in this  
25 committee, the members in the legislature, to go out into their

1 community and retrieve that information and charge them with  
2 bringing it forward. So to the extent that you did that or any  
3 other member did that with staff or anyone else, it was  
4 considered."

5 JUDGE WINSOR: Is this still Exhibit 35?

6 MR. SHENTON: This is Exhibit 31.

7 BY MR. SHENTON:

8 Q. Do you remember this exchange?

9 A. Yes.

10 Q. How did this exchange strike you at the time?

11 A. This exchange struck me as odd, because in the initial  
12 meetings where we learned about the website, the Florida  
13 redistricting.gov, it was presented as a way that members of the  
14 community could share information, and our understanding was  
15 that we would consider that information as a committee, but we  
16 never actually did.

17 The other thing about this exchange that struck me as  
18 strange is that Chair Leek seemed to suggest that it had been up  
19 to the members to go out and retrieve information from the  
20 community and bring it back. This was inconsistent with what  
21 we'd been told in terms of being very careful about our  
22 conversations regarding redistricting, being very careful about  
23 public records, and certainly just the extent to which we would  
24 be leaning on the website as the primary method of gathering  
25 information.

1           So this exchange, what Chair Leek said, actually  
2 struck me as very odd because it seemed to be a departure,  
3 perhaps even an about-face, from what we were instructed at the  
4 beginning of the redistricting process.

5 Q.   And did it seem, based on that about-face, that public  
6 input was an important consideration in the process up to this  
7 point?

8 A.   Well, we certainly thought that it -- we thought that it  
9 was supposed to be, but then it became very clear that actually  
10 the public input wasn't very important at all.

11           MR. SHENTON: I'd like to go to page 109 of this same  
12 transcript.

13 BY MR. SHENTON:

14 Q.   And this is a statement that you made in the committee at  
15 that time.

16           You say: "Mr. Chair, the reason I'm asking those  
17 questions is because it speaks to public input, and the website  
18 is our only opportunity for public input. So, for example, I  
19 noticed on the website as of this afternoon, I can still only  
20 find the redistricting suggestion form in a PDF, and it's only  
21 in English. Would we be able to update that so that the public  
22 could provide input through that way before these get to the  
23 floor?"

24           Do you remember saying this?

25 A.   I do.

1 Q. Can you describe a little bit what you're talking about the  
2 website PDF form?

3 A. Sure. So keep in mind that we're getting to the point  
4 where this state map is about to be voted on on the floor before  
5 the full legislature, you know, in very short order.

6 And what I'm asking -- I'm kind of expressing my  
7 frustration that the website was never updated in such a way to  
8 make it easier for people to communication with us in terms of  
9 their feedback.

10 So with this suggestion form only being in a PDF,  
11 right, and only in English, there could have been voters in  
12 Florida who perhaps don't read English or speak English who were  
13 not able to provide their suggestions.

14 So there could have been public information and public  
15 feedback that we missed out on, and this certainly was a missed  
16 opportunity by the legislature to live up to its responsibility  
17 to get public feedback. So this was a miss.

18 And what I'm doing here is asking if we can get that  
19 form updated so that to the extent there's any opportunity, any  
20 time left on the clock to get feedback from the public that  
21 perhaps we could do so or make it a little easier for the public  
22 to provide their feedback by getting that form updated in other  
23 languages and perhaps also making it a format that's more  
24 accessible than a PDF.

25 Q. And these concerns about language availability and

1 accessibility on the website -- you had raised these at the  
2 outset of the process?

3 A. That's right, in the very first committee meeting.

4 Q. And you were told at the time that they would look into it?

5 A. That's correct.

6 Q. What did it represent to you that this problem still  
7 existed as the maps were being voted on?

8 A. Well, a couple of things. The first thing is that perhaps  
9 my feedback wasn't very important to the committee and that it  
10 was not taken seriously, because the follow-up work clearly had  
11 not been done.

12 And then the second would be that public feedback was  
13 not very important, because if it was, the website would have  
14 been updated months ago.

15 Q. Is it fair to say this example is a good indicator of the  
16 importance of public feedback in the process?

17 A. I would say yes, but the way that I would couch it is that  
18 it would show that public input and feedback wasn't very  
19 important to the committee.

20 Q. Do you think this approach to receiving public input or not  
21 receiving public input was illegal?

22 A. No, I don't think it was illegal.

23 Q. But it wasn't, in your view, the best practice?

24 A. No.

25 Q. Would it be fair to say that this is two technically

1 different ways of complying with the law?

2 A. Yes.

3 Q. What happened with the legislative maps after this hearing?

4 A. So the state maps went to the floor and ultimately were  
5 voted on, and they passed out of the House.

6 Q. And what happened after that?

7 A. So the state map then would go to the Florida Supreme Court  
8 for a facial review, and it passed.

9 Q. And do you remember anything about that facial review from  
10 the Florida Supreme Court?

11 A. I remember that the Supreme Court noted that there hadn't  
12 been any challenges to it. Again, it was just a facial review,  
13 but there hadn't been any challenges.

14 And I can remember the speaker, either at the start --  
15 it was one day when we were on the floor for session -- really  
16 trying to take a victory lap on, that there had been no  
17 challenges, that the legislature had done its job, we succeeded,  
18 mission accomplished, no challenges, we drew a legally compliant  
19 state map.

20 Q. And was it your understanding that the lack of challenges  
21 was a typical thing to happen in Florida?

22 A. So that was not typical, and I think maybe even the Court  
23 had noted that. But the speaker certainly made a big deal out  
24 of it, that the House had gotten this right and how uncommon  
25 that was from previous redistricting cycles to not have had a



1 legal challenge at this time for this map.

2 Q. And you mentioned that people had the opportunity to  
3 challenge the maps. Would the Governor had had the opportunity  
4 to challenge the maps?

5 A. Yes.

6 Q. And did he do so?

7 A. No.

8 Q. And when you're talking about legal compliance, that  
9 includes the Voting Rights Act?

10 A. Yes.

11 Q. And the federal constitution?

12 A. Yes.

13 Q. And the Florida Constitution?

14 A. Yes.

15 Q. Including the Fair Districts Amendments?

16 A. Yes.

17 Q. I want to turn back now to the congressional redistricting  
18 process that we're here about today.

19 When did you first become aware of the Governor's  
20 involvement in the redistricting process?

21 A. The Governor actually submitted his own map back in  
22 January.

23 Q. And do you recall how the legislature received that map  
24 initially?

25 A. I do, and for clarity, that would have been January 2022.

1 And from what I remember, we just kind of continued with our  
2 business as usual. His map was just kind of out there.

3 Q. Have you ever heard of a Governor submitted their own map  
4 before?

5 A. No.

6 Q. Was it your understanding it was something that could  
7 happen or just hadn't happened?

8 A. You know, honestly, it was not something that I'd never  
9 even contemplated, particularly because the Florida Constitution  
10 says that it's up to the legislature to draw the maps.

11 I'll tell you what did happen. I did a little  
12 research, you know, talked to folks, did a little research,  
13 couldn't find any legal precent of it. It struck me as strange.

14 Q. But the process stayed on track, as it had been?

15 A. Yes.

16 Q. What happened after the Governor's map kind of landed  
17 without comment in the legislature?

18 A. We just kind of kept moving in our process.

19 Q. Do you remember the Governor requesting an advisory opinion  
20 from the Florida Supreme Court?

21 A. I do remember that.

22 Q. Had you ever heard of anything like that before?

23 A. No. That also struck me as strange.

24 Q. What impression did that have on you as a legislator?

25 A. So, you know, it's one thing for the Governor to have drawn

1 his map, but it was another thing for him to request an opinion  
2 from the Supreme Court. So at that point I started to think he  
3 really seems to want in on this process and really try to  
4 influence it.

5 Q. What did the legislature do in response to the advisory  
6 opinion request?

7 A. Right. So Chair Leek effectively said that we would stop  
8 our process and put any map drawing on hold until the Supreme  
9 Court ruled on the Governor's request.

10 Q. And did you think that was a necessary step?

11 A. No. I think we could have continued with our job.

12 Q. But it wasn't -- it wasn't an absurd step to take?

13 A. No, it wasn't absurd.

14 Q. And what happened with the advisory opinion request? Do  
15 you recall?

16 A. I do recall. The Supreme Court declined to issue one.

17 Q. And how did that effect the legislature's process for map  
18 drawing?

19 A. So once the Supreme Court declined to honor the Governor's  
20 request -- I mean, they didn't have any maps to consider -- they  
21 declined his request, and so then as a committee, we went back  
22 to our function of trying to draw maps.

23 Q. The process restarted?

24 A. That's right.

25 Q. And what happened from that point forward?

1 A. So at that point forward -- and I know I keep saying "We  
2 went back to our process of drawing maps." But to be very  
3 clear, I was not involved in the process of drawing any map; it  
4 was committee staff that was drawing these maps. So I really  
5 should be saying our process for considering maps.

6 So we resumed that process. What was interesting is  
7 that the conversation then started to change and evolve, where  
8 we saw the legislature -- the committee, I should say -- start  
9 to put forward two options: One where they were very much  
10 trying to thread the needle to keep the Governor happy and  
11 another that, you know, was just another example of how you can  
12 take different methodologies to draw two legally compliant maps.

13 Q. When you say "thread the needle," could you tell me a  
14 little bit more about what you mean by the legislature "trying  
15 to thread the needle"?

16 A. Sure. There was a map that was presented that was a nod to  
17 the Governor's map.

18 Q. How so?

19 A. Oh, with respect to Congressional District 5, which is the  
20 old Congressional District 3 in North Florida.

21 Q. And how did you understand that proposal to be a nod to the  
22 Governor's map? What about it?

23 A. Yeah. So what was interesting was that it resulted in the  
24 committee presenting redistricting in the alternative, if you  
25 will. And they were putting forward two different maps, which

1 was very strange, and I also couldn't find any precedent for it.

2 Q. And so the Governor had raised concerns about CD-5?

3 A. Yes.

4 Q. And that first map was responsive to those concerns?

5 A. Yes.

6 Q. Why do you feel that your -- that the legislature felt the  
7 need to respond to those concerns?

8 MR. JAZIL: Objection, Your Honor. Leader Driskell  
9 was asked what the legislature thought, and I don't think that  
10 Leader Driskell can speak for the legislature.

11 JUDGE RODGERS: I disagree. I think she can speak to  
12 what she heard in committee meetings.

13 So your objection is overruled.

14 JUDGE WINSOR: Would you repeat the question?

15 MR. SHENTON: Absolutely, Your Honor.

16 BY MR. SHENTON:

17 Q. What was your impression of why the legislature felt the  
18 need to respond to the Governor's concerns?

19 A. Right. So what was happening -- what it felt like and  
20 seemed like at the time from what we were seeing and what we  
21 were hearing was that the legislature itself, legislative  
22 leadership, was starting to yield to the Governor somewhat.

23 And you have to keep in mind, the Governor -- there's  
24 always this context in the legislature the Governor has a veto  
25 pen. He can line item veto any budget request. He can veto any

1 bill. It was the worst kept secret in Tallahassee that he  
2 wanted to run for President someday, that he had higher  
3 ambitions.

4 And so there always was this tension between the  
5 legislature having its own autonomy versus the legislature kind  
6 of going along with the Governor because he seemed to be  
7 somewhat of a rising star in his party.

8 So it just seemed to me that they were trying to keep  
9 him happy. They didn't want a veto of these maps. And so from  
10 that perspective, they were going to yield some to what he  
11 wanted to do.

12 Q. But they wanted to ensure they were following the law in  
13 that process?

14 A. That's right.

15 MR. SHENTON: Can you pull up Joint Exhibit 38. This  
16 is a transcript from the House Redistricting Committee meeting  
17 on February 25, 2022.

18 And if we can go to page 24, please.

19 BY MR. SHENTON:

20 Q. This is Chair Leek speaking, and he says:

21 "So why two maps and one amendment, you may be asking?  
22 The primary map was put forward as a way to address the novel  
23 legal theory raised by the Governor while still protecting a  
24 Black minority seat in North Florida. If this configuration of  
25 CD-5 and the primary map is struck down by a Court, the

1 secondary map is postured to take immediate effect and contains  
2 a district configuration similar to the benchmark district."

3 Do you recall Chair Leek saying this?

4 A. Yes.

5 JUDGE RODGERS: I'm sorry. What page is this, please?

6 MR. SHENTON: This is on page 24.

7 BY MR. SHENTON:

8 Q. Was it your impression at the time that the Governor hadn't  
9 convinced the legislature that his theory was correct?

10 A. Yes.

11 Q. What gave you that impression?

12 A. It gave me the impression -- or what gave me the impression  
13 was the fact that the legislature took the extraordinary step of  
14 redistricting in the alternative, right? And so they gave a nod  
15 to the Governor, a significant nod in terms of putting his -- I  
16 don't want to say "his configuration," but the configuration  
17 that they were trying to put forward that they thought would  
18 satisfy what he was looking for. They put that as the primary  
19 map.

20 But they took that extraordinary step of having a  
21 secondary map that they thought was legally compliant, and so if  
22 the first got struck down, the secondary would presumably, under  
23 their theory, go into effect, and either way they would have had  
24 a legally compliant map.

25 Q. Did you agree with that course of action?

1 A. No. It seemed to me that you were charged with drawing a  
2 map -- we, the legislature, were charged with drawing a map, a  
3 singular legally compliant map. And clearly they must not have  
4 thought that the Governor's theory was necessarily sound enough  
5 to pass judicial scrutiny or else we would not have had the need  
6 for the secondary map.

7 Q. To your knowledge, had there ever been a two-map  
8 redistricting in the alternative proposal in the legislature?

9 A. No, never.

10 Q. Did you do any research to figure out that had ever  
11 happened anywhere?

12 A. Yes. So I guess I should say not that we could find, yeah.

13 But no, this was completely a new thing.

14 Q. What was your sense of the reaction to the two-map proposal  
15 in committee?

16 A. I know that a lot of members were shocked, because we never  
17 would have anticipated that the process would have gone this way  
18 and that we would have had two maps.

19 Q. And why do you think the majority proposed the two maps at  
20 the same time?

21 A. I think that the majority proposed two maps at the same  
22 time, again, to try and appease the Governor but also make sure  
23 that they were putting forward some proposal that contained  
24 legally compliant maps.

25 Q. Did you view the two-map proposal as consistent with the



1 commitments and goals that the legislature laid out at the  
2 beginning of the process?

3 A. No. This appeared to be a departure from those goals.

4 Q. Did you think it was transparent?

5 A. No, I absolutely thought this was not transparent, because  
6 consider -- consider being a member of that committee and, you  
7 know, the process has been kind of proceeding along a particular  
8 track. We passed the state map. It was a single map. And then  
9 you show up in committee one day and, all of a sudden, there are  
10 two proposed maps. It's something that we never talked about as  
11 a committee, it was never contemplated, and certainly there was  
12 never any feedback about this process that was sought from the  
13 minority party.

14 Q. I want to talk about one of the options that was presented  
15 in that two-map proposal. If I say "the Duval-only map," do you  
16 know what I'm talking about?

17 A. Yes.

18 Q. What did you think of the Duval-only option in the two-map  
19 proposal?

20 A. Well, the problem with the Duval-only option is that it  
21 effectively cut the other Black voters in the panhandle out of  
22 the process. And you got to consider Gadsden County, which is  
23 Florida's only minority majority county, and they also deserve  
24 the ability to elect the representative of their choice.

25 So the Duval-only map, while it probably would have

1 performed, right? Like it probably would have performed -- it  
2 wasn't the best way to draw that district in North Florida.

3 Q. In your view, did those voters in Gadsden and Tallahassee  
4 and Leon Counties, did they share common interests with the  
5 voters in the Duval area?

6 A. Sure. You know, Florida is a very big state. Sometimes  
7 people say we're multiple states in one.

8 When you think about North Florida, there could be  
9 shared interests in the public education system, the healthcare  
10 system, the access to it or the lack of it, broadband access --  
11 a whole host and variety of issues that are shared by that  
12 particular region of the state, and those voters certainly  
13 deserve to have a member of Congress who understands those  
14 concerns, those shared concerns, in that region.

15 Q. If it had been up to solely you, would you have drawn the  
16 Duval-only district in Northern Florida?

17 A. No.

18 Q. Why not?

19 A. Well, because there was a better way to draw that district,  
20 and you didn't have to cut out the voters from Gadsden and Leon  
21 and the other counties in North Florida. There was a better  
22 way, I thought, to draw that district, much more similar to the  
23 benchmark district.

24 Q. But was it your view that the Duval-only option would have  
25 violated the Fair Districts Amendments?

1 A. No, not necessarily. I mean, that's -- that's a district,  
2 again, that probably would perform, and when you're considering  
3 minority districts, that's the standard that you have to look  
4 at. But that doesn't mean that it was the best way necessarily  
5 to draw that district.

6 Q. Would it be fair to describe this as another choice between  
7 two legally compliant alternatives?

8 A. Yes, that's fair.

9 Q. And you preferred one of those alternatives?

10 A. Yes.

11 Q. But they both would have been compliant?

12 A. Yes, technically, probably both would have complied.

13 Q. What happened after this committee hearing?

14 A. So after this committee hearing, we moved forward. The map  
15 gets voted -- the maps, plural -- gets -- they get voted out of  
16 committee, and then it was up to the full body to consider them  
17 on the floor.

18 Q. And what did the full body do with the maps?

19 A. So the full body, though -- so we passed the maps, but  
20 there was some intervening interference, I would say, from the  
21 Governor.

22 THE COURT: You're talking about the House now, right?

23 THE WITNESS: I'm talking about the House only. Yes,  
24 sir.

25 MR. SHENTON: If we could pull up one of those

1 examples. If we could go to Plaintiffs' Exhibit 2017. It's a  
2 video clip. If we could just play it.

3 *(Video recording played in open court.)*

4 MR. SHENTON: And then if we could pull up Plaintiffs'  
5 Exhibit 2108. This is a Tweet that the Governor sent. If we  
6 could zoom in on the tweet.

7 BY MR. SHENTON:

8 Q. It says: "I will veto the congressional reapportionment  
9 plan currently being debated by the House. DOA."

10 Do you remember the Governor's statements?

11 A. I do.

12 Q. How did you react to them at the time?

13 A. So, again, I thought it was very strange that a governor  
14 would be trying to insert himself so fully into the  
15 redistricting process. As I understood it, the redistricting  
16 process is up to the purview of the legislature, but here we had  
17 a Governor who was clearly and consistently trying to insert  
18 himself. I thought that his comments at the podium were  
19 bombastic, but probably worse or at least equally as bad was  
20 this Tweet that he put it out while we were debating the maps.

21 And I remember in the minority party, of course, we  
22 were like: What just happened? Even the majority party like:  
23 What just happened? What are we going to do?

24 Ultimately, the proceedings continued and the maps  
25 were voted out off of the House floor, but it certainly felt

1 like things were very uncertain.

2 And I took that "DOA" statement to mean "dead on  
3 arrival," and it was basically a threat to the legislature that  
4 he would veto anything that we passed.

5 Q. And did the Governor veto that plan?

6 A. He did.

7 Q. What happened next?

8 A. So what happened next, again, was a period of uncertainty.  
9 And then we received word from House leadership that we would be  
10 called back for a special session dedicated solely to the  
11 congressional redistricting process.

12 Q. And about how much time passed between the veto and that  
13 special session?

14 A. Not a lot. Like maybe a month and a half, like six weeks  
15 or so.

16 Q. And what happened during those six weeks?

17 A. Really nothing. I mean, there weren't any committee  
18 meetings. There weren't any -- you know, there was no road  
19 show. There was no opportunity for public feedback. We weren't  
20 getting calls from the committee chair or the speaker saying,  
21 Hey, what do you think we should do in the redistricting  
22 process? It was effectively total silence.

23 Q. What was your impression of the mood in the legislature  
24 during that period concerning the congressional map?

25 A. Oh, the mood had certainly shifted.

1 Q. How so?

2 A. Thank you. Sorry about that.

3 The mood had certainly shifted, because it felt  
4 like -- it felt like, certainly like, the speaker was no longer  
5 in the driver seat, right? The Senate president is no longer in  
6 the driver seat. It felt like the Governor was in the driver  
7 seat and like we were going to do whatever it is that he wanted  
8 us to do.

9 MR. SHENTON: If we could pull up Plaintiffs' Exhibit  
10 3040 and go to the second page.

11 BY MR. SHENTON:

12 Q. This is a memo sent from President Simpson and Speaker  
13 Sprowls. I want to direct your attention to that fourth  
14 paragraph and read the first couple of sentences.

15 "At this time, legislative reapportionment staff is  
16 not drafting or producing a map for introduction during the  
17 special session. We are awaiting a communication from the  
18 Governor's office with a map that he will support."

19 Do you remember receiving this memo?

20 A. I do.

21 Q. What was your reaction to this memo?

22 A. My reaction to this memo was disbelief. I couldn't believe  
23 that in writing, we had the heads of the Florida legislature  
24 saying that they effectively were abdicating their duties and  
25 that they were going to wait on the Governor, who is the

1 executive branch and who is not charged with participating in  
2 the redistricting process, to draw maps.

3 Q. And at this point, had you heard anything about what maps  
4 would be considered in the special session?

5 A. No.

6 Q. Was this your first indication of what sorts of maps would  
7 be considered?

8 A. Yes.

9 Q. Would you describe that as "transparent"?

10 A. No.

11 Q. Why not?

12 A. Again, there's no -- there's no communication. You have to  
13 understand what that's like as a lawmaker, where, you know,  
14 you're there to do a job. You thought that you did your job.  
15 Now you're being called back for a special session away from  
16 your home, your family, your day job, your community, to do the  
17 Governor's bidding. That's what it felt like.

18 And it felt like to me, too, well, what the heck  
19 changed? Right? I thought we were going through this process  
20 in a legal way. We had our guardrails. We had our boundaries  
21 and our guideposts. And then everything got blew up by the  
22 Governor in the end.

23 Q. How does that compare to the first half of the  
24 redistricting process, in your experience?

25 A. Complete departure, night and day. Right? So if you

1 consider the beginning of process, just to kind of take it back  
2 a little bit, we spent several meetings making sure that we had  
3 a foundational understanding of the redistricting process.

4 The -- not the speaker, but the committee chair -- the chair  
5 made it very clear that we were to stay compliant within the  
6 law, be transparent. You know, we thought that we were really  
7 in this process together, is how I would describe it.

8           And then in the end, it totally felt the opposite. It  
9 felt like they had aligned with the Governor. They were being  
10 very tight-lipped about what was happening. We got no  
11 information ahead of time. There was no way to prepare for  
12 this. There was no opportunity for public feedback. We would  
13 just be going to Tallahassee -- I mean, I could tell you  
14 everything from this memo. I'd have to wait in Tallahassee to  
15 know how this was going to go. We would go to Tallahassee and  
16 basically just see what the Governor introduced, and that would  
17 be it. That would be the process.

18 Q. And that was your impression the moment you read the memo?

19 A. Yes.

20 Q. Is that how it happened?

21 A. That's exactly how it happened.

22 Q. How long was special session?

23 A. Only a few days, I think. Couple, few days.

24 Q. And in brief, what happened during that session?

25 A. So during that session, there was a congressional



1 subcommittee meeting for the redistricting committee. They  
2 voted on a map. It came to the full floor for the full House to  
3 vote on the map.

4 Q. Did the Governor's staff testify during the special session  
5 at all?

6 A. They did. And so that also was a departure, right?  
7 Previously you had the congressional staff leading the meetings,  
8 presenting the information, sharing their homework, if you will,  
9 like showing their homework about how they had drawn the maps.

10 Once we got back for special session, it was the  
11 Governor's show. It was his people, his experts, his map  
12 drawers. There was really nothing for the legislative committee  
13 staff to do.

14 Q. Were the Governor's staff making arguments you hadn't heard  
15 before?

16 A. Yes.

17 Q. How so?

18 A. Well, they were presenting a legal theory that to me --  
19 yeah, actually, I will comment on what I thought about it, that  
20 it was a legal theory that effectively would be reducing Black  
21 representation in North Florida, and they were trying to set up  
22 a legal challenge to effectively undo the Fair Districts  
23 Amendments.

24 Q. And had anything changed in the legislature's consideration  
25 of those arguments?

1 A. I mean, no. You know, I think that the legislature knew  
2 and understood the issue with respect to Section 5, but we're  
3 going to follow the law, because this is the law as it exists.

4 And then you just have the Governor come in and try  
5 and effectively use this process to make new law, which, again,  
6 is not his purview. He's the executive branch.

7 Q. When did it become clear to you that the Governor's map  
8 would pass?

9 A. Oh, the minute this memo came out.

10 Q. Was there any debate on the bill during the special  
11 session?

12 A. A little, but it was cut short.

13 Q. What cut it short?

14 A. So in the midst of the debate on the congressional map and  
15 the redistricting process, there were some members who engaged  
16 in a peaceful protest on the House floor, and I just -- can I  
17 just -- describe what happened?

18 Q. Please describe it for the Court.

19 A. Okay. Let me describe what happened, and you have to  
20 understand this in the greater context of what was happening in  
21 the legislature.

22 So prior to the 2021 legislative session, the House  
23 rules had always allowed for members to debate -- certainly  
24 within certain time limits. You can't just go on for hours and  
25 hours, but every member has the opportunities to say their piece

1 and debate would go on past midnight if it needed to. And  
2 certainly on big-ticket items, you know, if there was like a  
3 contentious social issue or a bill where there was a lot of  
4 heated back-and-forth, we would have the respect to have the  
5 time to say our piece, to represent not only our own minds but  
6 what we thought was best for our communities, to be the  
7 advocates that we were sent there to be.

8 Starting in the 2021 session, the House moved us  
9 towards something called "structured debate." And there aren't  
10 any real negotiations over the time that we get. Keep in mind,  
11 we're the minority party. Okay? So we're the party of  
12 opposition. It's our job to try to hold the majority  
13 accountable, and really the only way that we have to do that is  
14 through our debate.

15 So when structured debate entered the picture, it  
16 really took away a tool that we have as a -- the minority party  
17 to try to hold the majority accountable. And it's never like,  
18 you know, Hey, majority -- minority party, how much time do you  
19 want? Do you think, you know, 90 minutes is enough? And we can  
20 say, no, we think we need 120, and we'd get that agreement.  
21 It's like, it's 90 minutes -- you know, basically you have to  
22 take it. There's some back-and-forth, but usually not a lot of  
23 room for movement.

24 And so the members were already feeling so silenced  
25 and they were feeling suppressed and like they're not able to

1 get their feedback out.

2 I would just also state that the tone in the  
3 legislature just felt a lot more contentious than it had in the  
4 time since I'd been there since 2018.

5 So there were a lot of changes happening. People were  
6 feeling like their voices weren't being heard, and certainly  
7 voices were not being heard in the redistricting process.

8 So we're there. We're about to vote on the Governor's  
9 map, which is taking away two Black districts. Please keep in  
10 mind that the greater -- this is happening in the greater  
11 context of other policy as well. Right? Like you had -- there  
12 was this bill, former House Bill 1, which was like a -- we  
13 viewed it as a crackdown on protesters in the wake of the murder  
14 of George Floyd and other unarmed Black people. You had just a  
15 lot of bills that felt like it was suppressing people's stories.

16 And so there were some members of the minority party  
17 who felt like the peaceful protest was the only way for their  
18 voices to be heard. It's the only way for their voices to be  
19 heard. They weren't really heard in committee. Their feedback  
20 wasn't taken into account. Heck, I was on the committee and was  
21 asking for even just the website to be updated so people could  
22 provide feedback, the public could provide feedback in a real  
23 way, and even my concerns weren't being addressed.

24 So they erupt in this peaceful protest. It was a very  
25 emotional moment. We were even singing Black Negro spirituals

1 at one point, just trying to bring the legislature to a pause to  
2 think about what we were about to vote on and to really consider  
3 and understand what was about to be lost.

4 Q. What was the reaction to that protest in the special  
5 session?

6 A. So the speaker effectively stopped the proceedings, so we  
7 took a recess, and then there were communications in the  
8 speaker's office with some of the Republican leadership and  
9 Democrat leadership about what was happening and about how to  
10 move forward.

11 JUDGE WINSOR: Did you say the Governor's map  
12 eliminated two Black districts?

13 THE WITNESS: Yes.

14 JUDGE WINSOR: What were they? What were those  
15 districts?

16 THE WITNESS: Well, CD-5, and then there was a  
17 question about CD-10 down in the Orlando area.

18 BY MR. SHENTON:

19 Q. What happened after those conversations amongst leadership?

20 A. So after those conversations, it was clear that we were  
21 going to move forward with the day's proceedings. I think as  
22 leadership in the minority party, we thought we were going to  
23 have a moment or two to consult with the folks who had initiated  
24 the protest and see what they wanted to do, but that didn't  
25 happen. Effectively, we came back on the floor. The speaker

1 took the gavel. He moved the question, which ended all debate.  
2 They voted to move the question, which ended all debate. The  
3 majority party was able to do that; they didn't need the  
4 minority party to do that. Debate was cut off, and they voted  
5 and passed the map.

6 Q. Was it the legislature -- was it your understanding as a  
7 legislator that the Governor's map was compliant with the Fair  
8 Districts Amendments?

9 A. No. I felt like the Governor's map was a direct attack on  
10 the Fair Districts Amendments.

11 Q. So it wouldn't be an example of two different approaches to  
12 compliance with the law?

13 A. No.

14 Q. It was something different?

15 A. It was something completely different.

16 And to be clear -- sorry. To be clear, the difference  
17 was he was trying to undo the Fair Districts Amendments. It  
18 wasn't a question of if we draw it this way, then, perhaps we  
19 might be legally compliant with it. It was that this is  
20 wrong -- from his perspective, his legal theory was that this  
21 was wrong, void *ab initio*, and he drew a map to try to challenge  
22 that and set up a legal challenge for the Court.

23 Q. And what happened after the legislature passed the map?

24 A. So the legislature passed the map and the Governor signed  
25 it into law.

1 Q. Did you view that enacted plan as the result of a  
2 compromise between the Governor and the legislature?

3 A. I mean, I could see that both ways. Like, yes, in the  
4 sense that they compromised and agreed to what he wanted.  
5 That's not a compromise. It was basically, like, you take it or  
6 leave it.

7 So, no, I would not say that that was a compromise.  
8 The Governor kept inserting himself into the process to the  
9 point where it became clear to the legislature that he wasn't  
10 going to let up, and I think majority leadership ultimately gave  
11 in to that pressure.

12 Q. Do you view the configuration of the enacted plan in North  
13 Florida as the result of a compromise?

14 A. No.

15 Q. Why not?

16 A. Because, again, this was all about what the Governor  
17 wanted, and in the end, the Governor got exactly what he wanted.

18 Q. If you had to describe the congressional redistricting  
19 process from start to end, how would you sum it up?

20 A. If I had to describe it from start to end the way that it  
21 wound up, I felt like it started out as a legitimate process, at  
22 least with the intention of that. I think where we ended, it  
23 was a farce. It was absolutely a farce. The legislature was no  
24 longer in control, no longer in the driver seat, and was no  
25 longer doing its job. It was absolutely a farce and ultimately

1 designed to give the Governor what he wanted.

2 Q. And earlier you testified about your work on other pieces  
3 of legislature and moving those things in a bipartisan fashion.

4 How would you compare those processes to the  
5 congressional redistricting process?

6 A. The federal redistricting process, the redistricting  
7 process, was unlike any other process for any other piece of  
8 legislation that I had ever seen. Even when it comes down to  
9 contentious bills in the legislature, sometimes you'll have  
10 back-and-forth, right? Consider there was a bill -- this  
11 legislative session House Bill 1. It was a bill on school  
12 vouchers and expanding that program, which can sometimes be  
13 contentious.

14 The bill sponsors still spoke with the minority party,  
15 came to our members and said, "What do you think about this? Is  
16 there any way we can get your support on this? What do we need  
17 to change?" There was give and take. There was transparency.

18 I told you about the bill that I worked on, the police  
19 reform bill. There was communication with stakeholder groups,  
20 right? You know, it's communications with the NAACP and with  
21 the Sheriffs Association. It's conversations with activists in  
22 the community and police chiefs. Right? It's a very  
23 transparent process where more is more, more input is better,  
24 and you certainly want to do that hard work so that you have a  
25 work product that everyone can you proud of.



1 Contrast that with the redistricting process, where  
2 everything was closed door, tight-lipped. We were completely  
3 shut out. We were misled in terms of the importance of public  
4 opinion. There was no real way to people to give their input.  
5 That website ultimately was a sham. And this process ultimately  
6 was a farce and it led -- all roads at that point led to  
7 Governor DeSantis and what he wanted for that map.

8 Q. To your knowledge, was there ever a redistricting process  
9 in history like this one?

10 A. No.

11 Q. Do you think the legislature lived up to its goal to have a  
12 transparent process?

13 A. No.

14 Q. Why not?

15 A. Because, again, it completely -- the process completely  
16 went off the rails. The process completely went off the rails.  
17 There was a significant departure once the Governor got  
18 involved, a significant departure away from our guideposts and  
19 our boundaries in terms of following the law. And, no, we did  
20 not live up to that goal of transparency.

21 Q. Were those discussions happening in the open?

22 A. No.

23 Q. Where were they happening, to your knowledge?

24 A. I don't know. I wasn't a part of them. But I'll tell you  
25 that, you know, I wasn't included and no member of the minority

1 matter was included, to my knowledge, as well.

2 Q. Do you think the legislature lived up to its goal to  
3 consider all voices and inputs in redistricting?

4 A. No.

5 Q. Why not?

6 A. Because there were policy decisions made not to even  
7 include American Community Survey data, which certainly is  
8 reliable. There were policy choices made to not go out into the  
9 community and do a road show to get feedback. And there were  
10 policy decisions made about just why public input wasn't that  
11 important. If it had been important, the website would have  
12 functioned better, for example.

13 Q. Do you think the legislature lived up to its constitutional  
14 duty to redistrict?

15 A. No.

16 Q. Why not?

17 A. Because the legislature did not, in fact, carry out that  
18 duty of redistricting. It was the Governor who did. The  
19 legislature abdicated its duty with respect to redistricting.

20 Q. Do you think the legislature lived up to its goal of  
21 compliance with the Florida Constitution?

22 A. No.

23 Q. Why not?

24 A. Because in the end, the legislature passed a map that it  
25 knew was unconstitutional. Republican leadership knew that that

1 map was unconstitutional. That's why they were trying to avoid  
2 it. That's why when the Governor introduced his map, we just  
3 kept on business as usual, and when the Governor kept pushing,  
4 they tried to provide that two-map alternative, you know,  
5 legislating in the alternative to try to satisfy him. But in  
6 the end, they knew that that was not a compliant legal theory.

7 Q. When did you notice the legislature start to fall short of  
8 their goals?

9 A. When the Governor started to get involved. It was --  
10 especially when we got that -- that two-map proposal.

11 Q. And in your view, what was the point of no return for  
12 achieving those goals?

13 A. Really the point of no return was this memo, the April 11,  
14 2022, memo from Senate President Milton Simpson and Speaker  
15 Chris Sprowls.

16 Q. And why was that the point of no return, in your view?

17 A. To me, this memo represented the point of no return  
18 because, I mean, they said it would be. Effectively this  
19 document said that the legislative reapportionment staff is not  
20 drawing or producing a map for introduction during special  
21 session. We are awaiting a communication from the Governor's  
22 office with a map that he will support. Our intention is to  
23 provide the Governor's office opportunities to present that  
24 information before the House and Senate Redistricting  
25 Committees.

1           This represented, to me, the point of no return  
2 because it was a clear signal -- actually, more than a signal.  
3 It was a clear statement that the legislative leadership was  
4 going to step back and let the Governor take over and be in the  
5 driver seat.

6 Q.   What would you identify as the reason for the legislature  
7 failing to meet its goals?

8 A.   I would identify -- I mean, frankly, it's the Governor.  
9 It's the Governor factors is why we didn't -- the legislature  
10 didn't meet its goals. Once he got involved, they ultimately  
11 acquiesced to his pressure.

12 Q.   Do you think Floridians were well served by the  
13 redistricting process?

14 A.   No.

15 Q.   Why not?

16 A.   Because, again, this is a process that we only get to do  
17 every ten years. It is an extraordinarily important process,  
18 not just in terms of how our state functions, but how our  
19 democracy functions. It's a fundamental process in American  
20 government to go through reapportionment and through  
21 redistricting, and we only get one chance to do it every ten  
22 years. And the legislature absolutely failed. It delegated its  
23 duty to the Governor, which is not right.

24 Q.   If you could speak to all Floridians about the  
25 congressional redistricting process, what would you want to tell

1     them?

2     A.    I would want to tell them so much.  I would want to tell  
3     them, yes, that the legislature failed them, that the  
4     legislature passed a map that it knew would silence Black voices  
5     and Black voters and deny them the opportunity to elect  
6     representatives of their choice.

7                 I would state that this was a choice, that it was  
8     intentional.  This was done on purpose.  This was not -- this  
9     was done by the legislature with eyes wide open, and that it  
10    absolutely was a failure.

11                And I would want the people of Florida to know that  
12    they deserve better.

13                MR. SHENTON:  No further questions at this time, Your  
14    Honor.

15                JUDGE RODGERS:  All right.  Thank you, Mr. Shenton.

16                I have one question and then we'll take a recess  
17    before cross.

18                Representative Driskell, with regards to the special  
19    session and the consideration of the Governor's map, you  
20    indicated the subcommittee of the redistricting committee took  
21    that under consideration?

22                THE WITNESS:  Yes.

23                JUDGE RODGERS:  Did the full redistricting committee  
24    consider the map?

25                THE WITNESS:  Yes.

1 JUDGE RODGERS: And was there a debate on it?

2 THE WITNESS: Yes.

3 JUDGE RODGERS: And then from there, it went to the  
4 vote and went to the full House?

5 THE WITNESS: Yes.

6 JUDGE RODGERS: Okay. Thank you.

7 Any follow-up to my question?

8 *(No audible response.)*

9 JUDGE RODGERS: All right. Then let's take 15  
10 minutes, and we'll reconvene and start with cross from the  
11 defense.

12 *(Recess taken from 10:11 a.m. to 10:28 a.m.)*

13 JUDGE RODGERS: Be seated, please.

14 Representative Driskell, you're still under oath.

15 THE WITNESS: Thank you.

16 JUDGE RODGERS: And, sir, remind me of your name  
17 again.

18 MR. BEATO: Michael Beato.

19 JUDGE RODGERS: All right. Thank you, sir. If you're  
20 ready, you may proceed.

21 *CROSS-EXAMINATION*

22 BY MR. BEATO:

23 Q. Good morning, Leader Driskell.

24 A. Good morning.

25 Q. On behalf of the Secretary of State, just a few questions.

1           So, Leader Driskell, you've served in the State House  
2 since 2018, correct?

3       A.    Yes.

4       Q.    And between then and now, Democrats have been in the  
5 minority in the House, correct?

6       A.    Yes.

7       Q.    And also in the Senate?

8       A.    Yes.

9       Q.    And right. Now, Democrats are in the super minority in the  
10 Florida legislature?

11      A.    Yes.

12      Q.    Since 2018, as a legislator, you've seen the Governor veto  
13 bills before, right?

14      A.    Yes.

15      Q.    More than once?

16      A.    Yes.

17      Q.    More than ten times?

18      A.    Oh, I don't want to -- I'm not certain. I can't speak to  
19 the number.

20      Q.    Okay. You've seen the Governor call special sessions  
21 before, right?

22      A.    Yes.

23      Q.    You've seen the Governor seek advisory opinions before?

24      A.    I also don't want to speak to that. I'm not certain.

25      Q.    Do you remember the amendment for advisory opinion request

1 in 2019 that had to deal with felon voting?

2 A. I don't, not offhand.

3 Q. And between 2018 and now, you've seen the Governor or his  
4 office propose legislation, correct?

5 A. Could you clarify what you mean by "propose"?

6 Q. Sure. You would agree with me that the Governor has  
7 legislative priorities, correct?

8 A. Yes.

9 Q. This can range in a whole host of topics from economic  
10 priorities, correct?

11 A. Yes.

12 Q. Bills that deal with social media, correct?

13 A. Yes.

14 Q. And the Governor oftentimes asks the legislature to pass  
15 bills that reflect his legislative priorities, correct?

16 A. You could say that.

17 Q. And from 2018 to now, you've seen representatives from the  
18 Governor's office testify before the legislature, correct?

19 A. Yes.

20 Q. And you've seen bills that were passed that were supported  
21 by only one party, correct?

22 A. Yes.

23 Q. Leader Driskell, you'd agree with me that redistricting is  
24 of statewide importance, correct?

25 A. Yes.



1 Q. And it was your testimony that you thought it was strange  
2 that the Governor injected himself into a matter of statewide  
3 importance?

4 A. Well, actually, let me reframe. I know I said it was of  
5 statewide importance. In the case of congressional  
6 redistricting, it's actually of national importance, if you  
7 will, because it helps to determine the balance of power in  
8 Congress.

9 And I don't know that I said it was strange for the  
10 Governor to inject himself in a matter of statewide importance.  
11 I mean, he's the Governor of Florida. He has a role to play.

12 What seemed strange to me is that the Governor  
13 inserted himself in such a way that he actually was the one who  
14 drew the map and who was presenting -- representatives of the  
15 Governor were presenting the bill for the map in committee.  
16 That was strange, and that's not what happened with any of the  
17 other -- any other of the Governor's priorities -- for example,  
18 what I think you were alluding to earlier.

19 That's what made this feel different was really just  
20 how involved the Governor was. Maybe it's the magnitude of his  
21 involvement, if you will.

22 Q. But just taking a step back, it isn't strange that the  
23 Governor would inject himself into an area of nationwide  
24 importance, right?

25 A. Sure. He's the Governor of Florida. What's he doing

1 injecting himself in matters of nationwide importance?

2 Q. And, Leader Driskell, you're aware that in the enacted  
3 plan, ten districts came from the legislature, right?

4 A. In the enacted plan, ten districts came from the  
5 legislature? You mean, in other words, that the Governor's map  
6 only impacted a small number of districts? Is that what you're  
7 driving at?

8 Q. Or that in the enacted map district lines were adopted  
9 from --

10 I'll come back to that.

11 A. Okay.

12 Q. So focusing on the 2022 legislative session, this was the  
13 only time you've been involved in the redistricting process,  
14 right?

15 A. Yes.

16 Q. You weren't involved in the 2012 redistricting cycle?

17 A. No.

18 Q. 2002 cycle?

19 A. No.

20 Q. 1992 cycle?

21 A. I was a baby. No.

22 Q. But this cycle, you didn't submit any redistricting plans,  
23 correct?

24 A. No.

25 Q. You could have, correct?

1 A. I could have, sure.

2 Q. Leader Driskell, you also talked about public input during  
3 the redistricting process on direct, right?

4 A. Yes.

5 Q. Throughout the whole process, members of the public  
6 testified before the legislature, correct?

7 A. I don't know if I would say throughout the process, but at  
8 different points in the committee process, there were  
9 opportunities for feedback from the public, and certainly by the  
10 time we got to the floor, there's no opportunity for public  
11 feedback.

12 Q. And members of the public spoke during the special  
13 legislative session, correct?

14 A. During the committee hearings, correct.

15 Q. You would say over ten members of the public spoke before  
16 the House Redistricting Committee?

17 A. You know, I'd have to go back and look. I don't want to  
18 pin down a number. I just don't recall.

19 Q. And during the redistricting process, I imagine  
20 constituents emailed you about redistricting?

21 A. It's possible.

22 Q. I imagine that constituents called you regarding  
23 redistricting?

24 A. It's possible.

25 Q. You don't recall?

1 A. I don't.

2 Q. And, Leader Driskell, are you aware of the two impasse  
3 cases that were pending while the special legislative session  
4 was taking place?

5 A. I don't -- could you tell me what the impasse cases were?

6 Q. Sure. *Common Cause v. Byrd*?

7 A. No, I don't know that I was tracking those.

8 Q. *Arteaga v. Byrd or Lee*? Lee was the Secretary of State at  
9 the time.

10 A. I don't know. It's a challenge. It's been a while, so I  
11 don't remember. I imagine at the time I might have been up on  
12 that. It's possible.

13 Q. Leader Driskell, you mentioned a road show during direct,  
14 correct?

15 A. Yes.

16 Q. I believe you testified that there was not a road show in  
17 2012, right?

18 A. No. I think what I had intended to say was that there was  
19 not a road show with this redistricting cycle for the 2022  
20 cycle. If I said 2012, I misspoke.

21 Q. I think I misspoke.

22 A. Okay.

23 Q. Do you know if there was a road show in 2001 to 2002?

24 A. I don't want to -- so the answer is no. I don't want to be  
25 specific about what years or dates there may have been road

1 shows, but it's my understanding that that was a common practice  
2 of the legislature in prior redistricting cycle.

3 Q. But you don't know for certain?

4 A. No. I wasn't there.

5 Q. And same thing for 1991 to 1992? Not sure if there was a  
6 road show?

7 A. Correct.

8 Q. So, Leader Driskell, you spoke about the 8019 plan, the  
9 plan with the Duval-only district on direct, right?

10 A. I believe I was asked about that, yes.

11 Q. You oppose that configuration of North Florida, right?

12 A. Yes. I think what I had testified about is that it's a  
13 district that probably performs --

14 Q. Mm-hmm.

15 A. -- and so in that way may satisfy the legal requirements of  
16 redistricting, but that it's not probably how I would draw that  
17 district.

18 THE COURT: Excuse me. You're asking her about the  
19 so-called Duval-only map?

20 MR. BEATO: Yes, sir. Specifically 8019. That was  
21 the primary map out of the two maps.

22 Can we pull up DX98, please.

23 BY MR. BEATO:

24 Q. Leader Driskell, this is the 8019 map, correct?

25 A. I'm sure it says 8019 on there. Oh, thank you. Yes.

1 Q. I'm sure what I just did. I'm the worst with technology, I  
2 swear.

3 MR. BEATO: If we can zoom back out.

4 BY MR. BEATO:

5 Q. And this is the -- well, I won't do that.

6 And this is the map with the Duval-only district,  
7 correct?

8 A. Yes. I could see that, yes.

9 MR. BEATO: Can we go to page 3.

10 BY MR. BEATO:

11 Q. Oh, and by the way, Leader Driskell, this was presented to  
12 the Florida legislature during the redistricting process, right?  
13 This packet?

14 A. Yes, it would have been a part of a committee packet.

15 MR. BEATO: And, Madam Clerk, can we get the red lines  
16 off?

17 DEPUTY CLERK: Yes.

18 MR. BEATO: Thank you.

19 BY MR. BEATO:

20 Q. You would agree with me that this is the functional  
21 analysis section of that packet, correct?

22 A. You know, I can't really -- unfortunately, I can't really  
23 see it well, but if you represent that it is, then I will agree  
24 that it is.

25 Q. And if I could, if I could focus on this section --

1           That section which I highlighted, that tells you about  
2 whether particular districts perform in particular elections,  
3 correct?

4       A.    Yes, I do think that is what it represents.

5           MR. BEATO:   And if we can take out the lines?

6       BY MR. BEATO:

7       Q.    And you'd agree with me that in District 5 right over here,  
8 it looks like the white candidate of choice wins in a number of  
9 elections, correct?

10      A.    Could you move the red circles?  I see where you want to  
11 focus on, but they're kind of obscuring what the numbers are.

12           So you want me to look at 2016 through 2014?

13      Q.    Correct.

14      A.    Okay.  And you said the white candidate of choice.

15           Aren't all the candidates white for those elections?

16      Q.    Well, in those elections, who's the Black candidate of  
17 choice?  It would be the Democratic candidate, correct?

18      A.    Oh, sorry.  You're not saying like an actual white  
19 candidate?  You're saying who --

20      Q.    Candidate of choice, correct.

21      A.    -- won.  I gotcha.  Okay.

22      Q.    Thank you for the clarification.

23      A.    So you can see where out of at least two of those  
24 elections, the Black candidate of choice won.  I think that's  
25 right.

1 Q. I think we're looking at the -- if we could look to the  
2 next three elections to the right. So the box I'm specifically  
3 looking at is 2016 U.S. Senate all the way over to 2014  
4 agriculture commissioner. There we go.

5 And those five elections, the Republican wins those  
6 elections?

7 A. Yes.

8 Q. And it's your contention that this Duval-only district, a  
9 Black candidate could still elect a candidate of their choice?

10 Or strike that.

11 In the Duval-only district, it's your contention that  
12 there wouldn't be any diminishment concerns?

13 A. I mean, I don't know if I necessarily said that. I just  
14 said that it's possible for that map to perform. Because I know  
15 we're looking at older data, but if you look at the newer data,  
16 you see where it does perform.

17 So by "newer data," I just mean, you know, really from  
18 2016 presidential on through 2020 presidential, it looks like it  
19 performs.

20 So my contention has always been that it's probably a  
21 district that can perform, but it probably is not the best way  
22 to draw that district. It's certainly not how I would have  
23 drawn that district.

24 Q. Due to the diminishment concerns?

25 A. Well, due to the concerns of not really providing the



1 opportunity for the voters in Gadsden County and some of those  
2 other counties in North Florida, including Leon, to elect the  
3 representative of their choice?

4 Q. And, Leader Driskell, throughout the redistricting process,  
5 there were only two versions of a North Florida configuration,  
6 right? There was only a benchmark District 5-esque. Leon  
7 County to Gadsden County district, and there was also the  
8 Duval-only district. Those were the only two types of North  
9 Florida configurations that were being presented?

10 A. Being presented in committee, those two?

11 Q. Correct, or being debated by the legislature.

12 A. Those effectively are the ones we considered, yeah.

13 MR. BEATO: If we go to DX97, please. So we can make  
14 the picture fit a little bit more. Perfect.

15 BY MR. BEATO:

16 Q. So, Leader Driskell, this has already been admitted into  
17 evidence. This is just a compilation of all of the  
18 legislatively submitted congressional maps. And so in the first  
19 one, the North Florida configuration has a district that looks  
20 like Benchmark CD-5, correct?

21 A. Yes.

22 Q. And then if we scroll down, same thing with the second one?

23 A. Yes.

24 Q. Scroll down. Same?

25 A. Yes.

1 Q. And I'll expedite this a little bit. If we could slowly  
2 keep on scrolling down.

3 Same thing? Same thing, correct?

4 A. Yes, it appears to be the same.

5 Q. And then the last two maps, we have that Duval-only  
6 district, correct?

7 A. Yes, I see that.

8 MR. BEATO: Okay. We can take this down.

9 BY MR. BEATO:

10 Q. Leader Driskell, on direct you spoke about Leda Kelly,  
11 correct?

12 A. Yes, I was asked about Leda Kelly.

13 Q. She is a House staffer on the redistricting committee?

14 A. Yes.

15 Q. She's not a lawyer, is she?

16 A. I'm sorry?

17 Q. She's not a lawyer, is she?

18 A. I don't know whether or not she's a lawyer.

19 Q. And you testified on direct about doing research regarding  
20 the redistricting process, correct?

21 A. Yes.

22 Q. Did you do research on the redistricting processes of other  
23 states?

24 A. Not really. Really just kept it to Florida.

25 Q. So you don't know whether in other states -- I don't

1 know -- a Governor vetoed a map that was presented by his same  
2 party in the legislature?

3 A. Oh, I see what you mean. So I did do research or try to  
4 understand whether or not there was any precedent in Florida or  
5 really anywhere else for a governor to have inserted himself in  
6 the way that Governor DeSantis did in this redistricting process  
7 and didn't find anything.

8 In terms of looking up whether or not, you know,  
9 specific vetoes that governors made, not so much. In terms of  
10 trying to stay abreast of maybe what was happening in other  
11 states, like I've certainly watched closely what's happened with  
12 Alabama, watching those maps get rejected in some of the  
13 Carolinas and other places.

14 That's sort of what I meant -- give you a flavor of  
15 what I meant when I talk about research.

16 Q. Do you know whether there were any other states where the  
17 legislature presented two maps in one?

18 A. I couldn't find any.

19 Q. And then regarding the special legislative session, the  
20 session was more than just redistricting, correct? There were  
21 other issues that were being floated around?

22 A. There was. Disney, for example.

23 Q. And let me ask you about this: Leader Driskell, on direct  
24 you spoke of a police reform package that was passed after  
25 George Floyd?

1 A. Yes.

2 Q. Which governor signed that into law?

3 A. Governor DeSantis.

4 Q. And if I understand your testimony correctly, you stated  
5 that the Governor's map was intended to dismantle two Black  
6 districts, CD-5 and CD-10, correct?

7 A. Yes.

8 Q. You agree with me that CD-10 in the enacted map elected a  
9 Black member to Congress, right, Representative Frost?

10 A. I did -- well, yes, he's -- he's, I think Afro-Latino.  
11 Afro-Latino, uh-huh.

12 Q. And then taking a step back, Leader Driskell, you're a  
13 Democrat, correct?

14 A. Yes.

15 Q. As a Democrat, you want to see other Democrats being  
16 elected to office, right?

17 A. I want to be very careful here with that, because, yes, as  
18 minority leader, part of my role is elections. But I want to be  
19 very clear today that I'm not here in that capacity. I'm here  
20 as a member of the legislature, and more than anything what I  
21 want us to do is get our job right.

22 Q. But as an individual Democratic legislator, you want to see  
23 other Democrats being elected to congressional offices, right?

24 A. Again, I want to be very clear with respect to the  
25 redistricting process that my only goal and focus is for us to

1 get this right, that partisanship was not a factor that we were  
2 allowed to take into consideration. It's not a factor that I  
3 took into consideration. And at bottom, what matters most is  
4 that we get it right.

5 Q. Understood. But you spoke with Democratic groups during  
6 the redistricting cycle, correct?

7 A. Once again, I want to be very clear that as a lawmaker, my  
8 goal is to make sure that we get it right.

9           You know, you asked a question just a moment ago about  
10 whether or not I submitted my own map. The reason I did not  
11 submit my own map is because this is supposed to be our map,  
12 right? It is the purview of the legislature to draw this map.  
13 We're leaning on the committee to draw this map. It's my job as  
14 a minority party to help lead that charge to make sure that  
15 we're drawing maps legally, and that means to not take into  
16 partisan data.

17           JUDGE RODGERS: I think we -- we understand your goal.  
18           The question was whether you met with other Democratic  
19 groups during the districting cycle, so can you answer that  
20 question, please.

21           THE WITNESS: Sure. Thank you, Judge. Sorry. I  
22 just --

23           JUDGE RODGERS: That's all right.

24           THE WITNESS: I want to be very careful here.

25           JUDGE RODGERS: I understand. And you can qualify or

1 explain --

2 THE WITNESS: Sure.

3 JUDGE RODGERS: -- but I need you to answer.

4 THE WITNESS: Thank you. I appreciate that.

5 So yes.

6 BY MR. BEATO:

7 Q. You spoke with the National Democrat Redistricting  
8 Committee during the redistricting process, correct?

9 A. Yes.

10 Q. The National Democratic Redistricting Committee's goal is  
11 to elect Democrats to office, correct?

12 A. Their goal speaks for itself.

13 Q. You spoke with Natalie Kato?

14 MR. BEATO: For the benefit of the court reporter,  
15 K-A-T-O.

16 THE WITNESS: Yes.

17 BY MR. BEATO:

18 Q. She lobbies for the National Democrat Redistricting  
19 Committee, correct?

20 A. If you say so.

21 Q. You don't believe me?

22 A. If you say so.

23 JUDGE WINSOR: Well, do you know?

24 THE WITNESS: I -- she may have. I don't know if she  
25 still does. I don't know the nature of the relationship fully.

1 BY MR. BEATO:

2 Q. But you talk with her during the redistricting cycle  
3 regarding redistricting --

4 A. Yes.

5 Q. -- in her capacity as a lobbyist for the committee?

6 A. Yes.

7 Q. And you also spoke with Diana Ferguson, correct?

8 A. Yes.

9 Q. She, too, lobbies for the National Democratic Redistricting  
10 Committee, correct?

11 A. If you say so.

12 Q. And you spoke with her about redistricting during the 2022  
13 cycle, correct?

14 A. Yes.

15 Q. Both Ms. Kato and Ms. Ferguson offered the National  
16 Democratic Restricting Committee's assistance to you regarding  
17 redistricting, correct?

18 A. Yes.

19 Q. And, Leader Driskell, you're aware that other Democratic  
20 State legislators talked to Democratic partisans about the  
21 redistricting process during the redistricting cycle, correct?

22 A. I'm -- don't feel prepared to talk about what every  
23 Democratic legislator did.

24 Q. But you're aware of some, correct?

25 A. I know that there may have been others who may have spoken

1 with the National Democratic Redistricting Committee.

2 Q. And who were they?

3 A. I knew that's what you were going to ask. And it's been a  
4 while, and I don't know to make any misrepresentations. If  
5 you've got specifics, I'm so happy to answer those.

6 Q. But you're aware of at least some who also talked to the  
7 committee, correct?

8 A. Perhaps.

9 Q. Do you know who Christian Ulvert is?

10 A. Yes.

11 Q. He's a Democratic political consultant, right?

12 A. Yes.

13 Q. His job is to help get Democrats elected to office,  
14 correct?

15 A. Yes.

16 Q. And you know that he spoke with Democratic legislators  
17 about redistricting during the redistricting cycle, correct?

18 A. That, I don't know.

19 Q. Do you know who Matt Isbell is?

20 A. I know of him.

21 Q. He's a Democratic mapmaker, correct?

22 A. Yes.

23 MR. BEATO: If we can pull up DX70, please, and go to  
24 page 16.

25 JUDGE WINSOR: And the page number you said is what?



1 MR. BEATO: Page number is 16.

2 JUDGE WINSOR: This is in evidence?

3 MR. BEATO: This is not in evidence.

4 BY MR. BEATO:

5 Q. Okay. Take a look at this email, Leader Driskell. I have  
6 a few questions about it.

7 JUDGE RODGERS: Well, are you going to be seeking its  
8 admission? This is not her email, I don't believe.

9 MR. BEATO: Your Honor, I'm just going to ask Leader  
10 Driskell a few questions and see if we can get this into  
11 evidence.

12 JUDGE RODGERS: All right. Go ahead.

13 BY MR. BEATO:

14 Q. So, Leader Driskell, Tim Wagner works for the Florida  
15 Democrats, correct?

16 A. I can see that he has the Florida Dems website, and I knew  
17 that Tim Wagner at least used to work for the Florida Democrats.  
18 I don't know if he still does.

19 Q. And we have Christian Ulvert over here, and then we have  
20 Lauren Book. Lauren Book is the Senate minority leader,  
21 correct?

22 A. Yes.

23 Q. And this email concerns a map created by our friend Matt  
24 Isbell, correct?

25 A. So I want to be very careful with how you worded that.

1 Q. Okay.

2 A. The language in the email says Tim said that he wanted to  
3 send over a map created by our friend Matt Isbell. And maybe  
4 that's what you said, but I couldn't tell if you were trying to  
5 imply that Matt Isbell is my friend.

6 Q. Oh, no, no.

7 A. Okay.

8 Q. So, Leader Driskell, did any Democratic consultants like  
9 Christian Ulvert share maps with you during the redistricting  
10 cycle?

11 A. You know, we received a number of emails and communications  
12 throughout the redistricting process. I cannot sit here and  
13 tell you about each and every one. What I can tell you is I  
14 didn't consider any information that I was not supposed to  
15 consider.

16 Q. But you're aware of some communications with Democratic  
17 consultants regarding maps, correct?

18 A. I can't sit here and point to any specific one for you.

19 Q. Sure. Did Matt Isbell send you any maps?

20 A. I don't remember that, no.

21 Q. And did Lauren Book send you any maps?

22 A. Not that I recall.

23 Q. We can step aside from this email.

24 MR. BEATO: Can we go to page 21?

25 JUDGE RODGERS: That email -- is that DX70?

1 MR. BEATO: That is one tiny email within --

2 JUDGE RODGERS: Page 16 of it; is that right?

3 MR. BEATO: I'm sorry, Your Honor?

4 JUDGE RODGERS: Is DX70 in evidence?

5 MR. BEATO: DX70 is not in evidence.

6 JUDGE RODGERS: All right. And that exhibit that you  
7 just questioned the witness about is also not in evidence?

8 MR. BEATO: Yes, Your Honor.

9 JUDGE WINSOR: It's part of DX70; is that right?

10 MR. BEATO: Yes, Your Honor.

11 JUDGE RODGERS: Neither are in evidence.

12 JUDGE WINSOR: It was part of what's not in evidence,  
13 right?

14 JUDGE RODGERS: Correct.

15 MR. BEATO: DX70 is a compilation of different emails,  
16 and page 16 was just one tiny portion of that.

17 JUDGE RODGERS: But you weren't seeking to admit  
18 either the entire exhibit or this as a composite?

19 MR. BEATO: I wanted to see if Leader Driskell could  
20 authenticate it, but --

21 JUDGE RODGERS: I don't think she did.

22 MR. BEATO: She did not.

23 BY MR. BEATO:

24 Q. Okay. So different email, Leader Driskell. Take a look at  
25 this.

1 A. Okay.

2 Q. So again, we have Christian Ulvert over here. And looking  
3 at the -- looking at the email addresses, we have Lorraine  
4 Ausley, Randolph Bracy, Linda Stewart, right -- am I getting  
5 that right?

6 A. I think you're reading the emails correctly, yes.

7 Q. Tina Polsky, Bobby Powell, Jr., Jason Pizzo, Lauren Book.

8 All these are State Democratic legislators, correct?

9 A. They were at the time, yes.

10 Q. Is Jason Pizzo still a State legislator?

11 A. Yes.

12 Q. Are these personal addresses or official State legislature  
13 email addresses?

14 A. They appear to be personal email addresses.

15 Q. Okay. And they're talking about redistricting in this  
16 email?

17 A. Yes.

18 Q. Did you receive a similar email from Democratic  
19 consultants?

20 A. I can't recall one.

21 MR. BEATO: One moment, Your Honor.

22 JUDGE RODGERS: All right.

23 BY MR. BEATO:

24 Q. So, Leader Driskell, it's your testimony that you do not  
25 recall getting redistricting-related data in email form from

1 Democrat partisans?

2 A. As I sit here today, more than a year removed from the  
3 process, I can't recall. If you have any to show me, I'd be  
4 glad to answer any questions about them.

5 Q. And just a few more questions.

6 Leader Driskell, you're a political opponent of the  
7 Governor, correct?

8 A. I'm in a party opposite the Governor. Is that what you  
9 mean?

10 Q. You've said that Governor DeSantis "sows hate and  
11 division"?

12 A. You'd have to remind me of when I've said that.

13 Q. Would it help if I refresh your recollection?

14 A. Yes.

15 MR. BEATO: Your Honor, may I approach?

16 JUDGE RODGERS: Yes, you may.

17 BY MR. BEATO:

18 Q. Correct?

19 A. I see it.

20 Q. You've said that Governor DeSantis's policies are  
21 "draconian"?

22 A. You'd have to remind me of when I said that.

23 Q. Would it help if I refresh your recollection?

24 A. Yes.

25 MR. BEATO: May I approach again?

1 JUDGE RODGERS: Yes.

2 THE WITNESS: So looking at this Tweet -- and I  
3 realize I didn't comment on the prior one -- I can see where in  
4 this Tweet, I said that, "Over the past several years, I have  
5 fought Ron DeSantis and his draconian policies. During the next  
6 legislative session, I will work to undo the damage he has done  
7 for our state."

8 And this was presented on Twitter October 3, 2022, and  
9 so, as I think about the context of what I said, it probably  
10 includes things like this redistricting map, which did take away  
11 Black representation in Congress in Florida. I think about  
12 policies like with respect to Disney and eradicating the Reedy  
13 Creek Special District. I think about policies with respect to  
14 the LGBT community, including what we refer to or I think is  
15 commonly referred to as the "Don't Say Gay" bill in preventing  
16 classroom instruction on LGBTQ. I think about a number of  
17 policies that, in my perspective, are restricting the freedoms  
18 of Floridians, rather than expanding them. And I would call  
19 those policies "draconian."

20 Q. And just to circle back to an earlier question, you're a  
21 political opponent of the Governor, correct?

22 A. You could say -- you could probably say that generally. I  
23 mean, there are probably some issues, believe it or not, that we  
24 might actually agree on. There's certainly opportunities for  
25 bipartisanship in the process.

1           But I can go back, for example -- I just want to take  
2 a moment to go back to the other Tweet that you showed me where  
3 I said on November 8th, "You must reject the hate and division  
4 sown by Ron DeSantis. Make sure to go out and vote early to  
5 elect Charlie Chris as our next Governor." And that was sent on  
6 October 24, 2022, via Twitter.

7           And again, some of those policies that I mentioned, to  
8 me, do sow hate and division. I mean, this is a governor who  
9 would take a long time to denounce displays from neo-Nazis, if  
10 he would ever denounce them at all. Most recently, over Labor  
11 Day weekend, there were Nazis in Orlando -- I actually saw them.  
12 I actually drove past them waving his campaign banner while they  
13 were spewing their hatred. And I don't remember an announcement  
14 from this Governor. And if he hasn't --

15           JUDGE RODGERS: Sorry, ma'am. I'm going to stop you  
16 there and ask Mr. Beato to move on to the next question.

17           MR. BEATO: One further question, Judge Rodgers.

18           JUDGE RODGERS: Okay.

19           MR. BEATO: Just to follow up on that.

20 BY MR. BEATO:

21 Q. Leader Driskell, you've said that Governor DeSantis's  
22 policies further the Nazi agenda, correct?

23 A. You want to remind me?

24 Q. Would it help if I refresh your recollection?

25 A. Yes.

1 MR. BEATO: Last one, I promise.

2 THE WITNESS: No, no, that's fine. I thought that's  
3 where this might be headed.

4 MR. BEATO: Apologies for the small print.

5 THE WITNESS: Thank you. What is this?

6 JUDGE RODGERS: Since I'm not on Twitter, I didn't  
7 know where you were headed.

8 MR. BEATO: Oh, sorry.

9 THE WITNESS: So this appears to be a statement issued  
10 by the Florida Democrats.

11 BY MR. BEATO:

12 Q. And specifically with a quote from House Minority Leader  
13 Driskell?

14 A. I was going to get there.

15 Q. Oh, sorry.

16 A. That's all right. Where I said: "I was disgusted to see  
17 Nazis openly demonstrating in the Orlando area this weekend.  
18 Their chants that 'We are everywhere' has proven to be  
19 disturbingly true. Indeed, DeSantis has made so much room for  
20 them in our state that their symbols and imagery were even a  
21 part of his presidential campaign. This evil should have no  
22 place in our communities, and Florida has no need for a governor  
23 whose policies have furthered their agenda, teaching children  
24 that Black Americans benefited personally from slavery,  
25 prohibited people from saying 'gay,' and stripping women of



1 agency over their own bodies. So it's no surprise that he won't  
2 condemn a known hate group standing on a corner waving his  
3 campaign banner."

4 MR. BEATO: No further questions, Your Honor.

5 JUDGE RODGERS: Thank you, Mr. Shenton.

6 Redirect?

7 MR. SHENTON: Just a few.

8 **REDIRECT EXAMINATION**

9 BY MR. SHENTON:

10 Q. Hello again, Leader Driskell.

11 A. Hi.

12 Q. Just a few questions for you.

13 A moment ago you testified that you were not in the  
14 legislature during the 2012 redistricting process?

15 A. That's correct.

16 MR. SHENTON: Can we go to Joint Exhibit 3, page 7.

17 BY MR. SHENTON:

18 Q. And this is a quote from Chair Leek at one of the very  
19 first meetings at the redistricting committee. He says:

20 "Now, I want to point out only five members in our  
21 entire chamber were part of the last redistricting cycle, and  
22 only three of them were in the House. That creates a noteworthy  
23 responsibility for our committees to undertake a thorough  
24 educational effort to ensure that everyone has the understanding  
25 need to be able to propose, analyze, and most importantly, note

1 on legally compliant boundaries."

2 Do you remember Chair Leek saying this?

3 A. Yes.

4 Q. Is that a fair summation of the redistricting experience in  
5 the House at the time?

6 A. Yes.

7 Q. And what did you take Chair Leek to be charging the House  
8 Redistricting Committee with?

9 A. Sure. I mean, it was very clear that because most of us  
10 had not been through this before but because it was such an  
11 important process that he wanted to make sure that we got a good  
12 educational foundation of the legal standards and procedurally  
13 how things would go so that we would be able to live up to our  
14 duty of passing legally compliant maps.

15 Q. In your experience, is it typical for most people to not  
16 have gone through redistricting before?

17 A. Oh, yeah. In the legislature, we have term limits, so it's  
18 quite impossible to have everybody who went through it the past  
19 cycle to have gone through it -- you know, in the current cycle.  
20 It's just typically not how things work.

21 Q. And a moment ago you also testified that you didn't offer  
22 any maps of your own during the redistricting committee?

23 A. That's right.

24 MR. SHENTON: Can we pull up Joint Exhibit 31, page  
25 154.

1 BY MR. SHENTON:

2 Q. While we're pulling that up, would you say you were engaged  
3 in the process, even though you didn't offer your own maps?

4 A. Yes.

5 Q. How so?

6 A. Well, as you can see, speaking up in committee, asking  
7 questions, trying to be very thoughtful about the process, and  
8 pushing the chair through questions and trying to get responses  
9 to help us all be very thoughtful in the process.

10 Making sure that we did the hard work, you know,  
11 reading the legal opinions at the time, again, to not give me an  
12 exam of that right now, but just making sure that I was well  
13 prepared. And I even talked to committee staff at one point to  
14 try to understand better the process for drawing maps and to get  
15 them to go into greater detail than time allotted during a  
16 committee meeting.

17 Q. I want to read a quote from Chair Leek, again, in one of  
18 those redistricting committee hearings. He said:

19 "I do want to give a special shout-out to  
20 Representative Driskell, because there is no member who has dug  
21 in, worked harder, and been more helpful in getting us through  
22 this process than Representative Driskell, and I thank you for  
23 it."

24 Do you remember Chair Leek saying this?

25 A. I do.

1 Q. What impression did that make on you at this time?

2 A. It was very kind. I just felt like it was very kind. It  
3 caught me totally off guard when he said that.

4 But we did try to work really hard together to get it  
5 right, I would say probably until the Governor inserted himself  
6 into the process.

7 Q. Did it feel like the work that you put into the process way  
8 being recognized by Chair Leek here?

9 A. Yes.

10 MR. SHENTON: You can take that down. Thank you.

11 BY MR. SHENTON:

12 Q. You also gave testimony about -- or my colleague asked you  
13 questions about whether you wanted to see Democrats elected.

14 Do you remember that line of questioning?

15 A. Yes.

16 Q. Is it your contention that the state legislative maps were  
17 illegal that passed through the legislature?

18 A. No.

19 Q. But they weren't the maps you would have drawn?

20 A. They weren't the maps I would have drawn, no.

21 Q. Can you describe the difference between a map you wouldn't  
22 have drawn and a map that was illegal for the Court?

23 A. Sure. So my whole thing in this -- and that's why I wanted  
24 to be so careful -- it matters what hat we're wearing.

25 Campaigning is one thing; governing is a totally different

1 thing. Once we walk into those chambers, we have to set aside  
2 the campaigning and we are there to govern. That's just what I  
3 believe.

4 And so when it came to the state maps, for example,  
5 I've always said that the legislature could have made the  
6 option -- could have followed the option of drawing A-plus maps.  
7 We could have done more functional analyses. We could have  
8 considered American Community Survey data. We could have gotten  
9 more input from the community, but there policy choices made not  
10 to do that.

11 If I were in charge of the process, I would have  
12 wanted that data. I would have liked to see it used, because I  
13 think it could have resulted in perhaps a differently configured  
14 but legally compliant map. The state map that ultimately was  
15 passed probably was legally compliant, and I do think that  
16 that's why there were no legal challenges to it, and I think we  
17 did the best we could to try to voice concerns in committee.

18 But ultimately -- and on the floor -- but ultimately  
19 that map passed.

20 Q. So it's far to say you thought the state legislative maps  
21 were not perfect but were legally compliant?

22 A. Yes, that's actually a great way to put it.

23 Q. How would you compare that to the congressional map that  
24 was passed?

25 A. So the congressional map, by contrast, was a failing map.

1 Like, it just very plainly did not follow the law, and I think  
2 that's why you've seen all sorts of legal challenges to it.

3 Q. So there's a difference between the state legislative maps  
4 not being perfect and the congressional maps not following the  
5 law?

6 A. That's absolutely correct.

7 Q. Anything that you were asked about by my colleague change  
8 your opinion on the extraordinary nature of redistricting  
9 process?

10 A. No.

11 MR. SHENTON: No further questions, Your Honor.

12 JUDGE RODGERS: All right. Thank you.

13 Ma'am, you may be excused.

14 And correct? Is she excused, Counsel?

15 MR. JAZIL: Yes, Your Honor.

16 JUDGE RODGERS: All right. Thank you, ma'am. You may  
17 be excused.

18 *(Witness excused.)*

19 JUDGE RODGERS: Plaintiffs, you may call your next  
20 witness.

21 MR. DISKANT: Our next witness is Cynthia Slater from  
22 the NAACP, and she'll be examined by my colleague Michael  
23 Halper.

24 THE COURT: We were writing things down while  
25 Mr. Diskant was speaking. Could we get your last name?

1 THE WITNESS: Yes. It's Halper, H-A-L-P-E-R.

2 THE COURT: Thank you.

3 JUDGE RODGERS: And, Counsel, would you mind taking  
4 this material down.

5 MR. HALPER: Sure. May I approach?

6 JUDGE RODGERS: I think it applied to the last  
7 witness, not this one.

8 All right.

9 **CYNTHIA SLATER, PLAINTIFF WITNESS, DULY SWORN**

10 DEPUTY CLERK: Be seated, please. For the record,  
11 please state your full name and spell your last name for the  
12 record.

13 THE WITNESS: My name is Cynthia Slater. My last name  
14 is spelled S-L-A-T-E-R.

15 DEPUTY CLERK: Thank you.

16 JUDGE RODGERS: All right. Ms. Halper, go ahead.

17 MR. HALPER: Thank you.

18 **DIRECT EXAMINATION**

19 BY MR. HALPER:

20 Q. Good morning, Ms. Slater. Where do you currently reside?

21 A. I live in Daytona Beach.

22 Q. And have you always resided in Florida?

23 A. Yes, all my life.

24 Q. Can you talk about your educational background?

25 A. Yes. I have a bachelor's degree in physical education, a

1 master's degree in visual disabilities, a master's degree in  
2 teacher leadership, and I've worked on my doctorate degree in  
3 higher education in adult learning.

4 Q. Can you talk briefly about your work experience?

5 A. Yes. After getting my undergraduate degree in physical  
6 education, I taught physical education in public schools for a  
7 couple of years, and I had a student in my physical education  
8 class who was an albino, and she was -- of course, albinos are  
9 legally blind. And it took me to a place where I believed that  
10 my calling was much higher than teaching physical education in  
11 junior high school at the time.

12 And so I went on to work with the Department of  
13 Education, the Division of Blind Services at the Rehabilitation  
14 Center for the Blind in Daytona Beach.

15 Q. So you were a State employee during that time?

16 A. Yes, yes.

17 Q. And are you currently working, or are you retired?

18 A. I'm retired.

19 Q. And are you a member of the Florida State Conference of the  
20 NAACP?

21 A. Yes, I am.

22 Q. And if I refer to an entity as "the State Conference" or  
23 "the NAACP," I'm referring to that same entity, the State  
24 Conference. Do you understand that?

25 A. Yes.



1 Q. Okay. And is the State Conference one of the plaintiffs in  
2 this matter?

3 A. Yes.

4 Q. And are you testifying today as a representative of the  
5 State Conference?

6 A. Yes.

7 Q. For how long have you been a member of the State  
8 Conference?

9 A. I've been a member of the State Conference for over 25  
10 years. About 28 years.

11 Q. And how did you come to join the State Conference?

12 A. So I -- as I said earlier, I'm from Daytona Beach, and back  
13 in the '90s or even before the '90s, there was an event, a  
14 spring break event called Black College Reunion. And during  
15 Black College Reunion, students from historically Black colleges  
16 and universities would come to Daytona for spring break, and  
17 there was a lot of discriminatory practices that was given to  
18 Black young people. There was horses, dogs they discriminated  
19 against. Hotels were -- discriminated against young people.  
20 They shut down restaurants and stores.

21 And so I felt that there was a need for me to get  
22 involved in that, and from that point, that's when I got  
23 involved in -- directly involved, actively involved, in the  
24 NAACP.

25 Q. And can you tell us a little bit more about the NAACP's

1 mission?

2 A. Yes. The mission of the NAACP is to protect the rights of  
3 African Americans and minorities through the democratic process.

4 Q. And does that include voting rights?

5 A. Absolutely.

6 Q. And do you currently hold any leadership roles in the State  
7 Conference?

8 A. Yes.

9 Q. What roles?

10 A. So in the State Conference, I serve as the lead for civic  
11 engagement. On a local level, I am the president of the Daytona  
12 Beach NAACP, the branch.

13 Q. And for civic engagement, is there a statewide committee or  
14 something of that nature?

15 A. Yes, there is.

16 Q. And does that committee include individuals from other  
17 branches?

18 A. Yes.

19 Q. And for how long have you been involved with the civic  
20 engagement committee?

21 A. I've been involved with the civic engagement for the State  
22 Conference for about 18 years, 18 -- between 20 -- 18 and 20  
23 years.

24 Q. And when you work with the committee, do you encounter  
25 members outside of your Volusia County branch?

1 A. Yes.

2 Q. Do you encounter members in North Florida?

3 A. Yes.

4 Q. Okay. Let's talk about the NAACP's membership.

5 Approximately how many members does the NAACP have in  
6 Florida?

7 A. In Florida, we have approximately 12 -- about 12,000  
8 members.

9 Q. And are those members dispersed throughout the state?

10 A. Yes.

11 Q. Does the NAACP have members in North Florida?

12 A. Yes.

13 Q. How does the NAACP keep track of its members?

14 A. Well, we -- first of all, we have membership drives  
15 throughout the state and local branches, and the membership unit  
16 or branch has a membership chair, and the secretary would  
17 collect those memberships, put them in -- insert them into a  
18 membership portal, and it goes directly to our national office,  
19 and our state has access to those memberships.

20 Q. So is it fair to say that the national office has a list of  
21 members throughout Florida?

22 A. Yes, they are the keepers of the memberships.

23 Q. So I'm going to talk now about congressional districts.

24 And I want to be clear: When I refer to a "congressional  
25 district," I'm referring to that district as it exists today

1 under the current congressional map.

2 Do you understand?

3 A. Yes.

4 Q. Was the NAACP asked to review its membership roster to  
5 confirm it had members in North Florida?

6 A. Yes.

7 Q. And you personally reviewed a list compiled by the NAACP of  
8 four members who live in Congressional Districts 2, 3, 4, and 5?

9 A. Yes.

10 Q. And did that list contain names and addresses of members?

11 A. Yes, it did.

12 Q. And were some of those members known to you personally?

13 A. Yes.

14 Q. And you knew them to be members of the NAACP?

15 A. Absolutely, yes.

16 Q. And that they resided in North Florida?

17 A. Yes.

18 Q. And did you take any additional steps to confirm the  
19 accuracy of that roster?

20 A. Yes, I did.

21 Q. What steps did you take?

22 A. Well, I made phone calls. I called them personally to  
23 match what the membership roster for the national office has in  
24 relations to what they have on -- and within their local branch.

25 So --

1 MR. BEATO: Objection, Your Honor, hearsay.

2 JUDGE RODGERS: Response?

3 MR. HALPER: Her testimony continues, she spoke with  
4 them personally about their -- and she took other steps, which  
5 will reveal personal knowledge.

6 Can I ask another question?

7 JUDGE RODGERS: Go ahead and ask another question, and  
8 then I'll rule on the objection.

9 BY MR. HALPER:

10 Q. Did you confirm their voter status online, these members?

11 A. Yes, I did.

12 Q. How many of these members did you know personally?

13 A. Out of the four, I know three of them personally.

14 Q. And you knew that they resided in North Florida?

15 A. Yes.

16 Q. How did you know that?

17 A. I know that because they serve in the leadership capacity  
18 in the NAACP, which means that we work together in the -- within  
19 the State Conference.

20 JUDGE RODGERS: Okay. Let me rule on the objection.

21 It will be sustained as to the conversations over the  
22 telephone.

23 MR. HALPER: The membership --

24 JUDGE RODGERS: Let me say I will take into account --  
25 I'll let the other judges decide, if they will, that she took

1 extra steps to corroborate. But in terms of what was told to  
2 her over the phone by the individuals, the objection is  
3 sustained.

4 MR. HALPER: Understood, Your Honor.

5 BY MR. HALPER:

6 Q. The membership roster that you reviewed, that contained  
7 names and addresses; is that correct?

8 A. Yes.

9 Q. And did you have any reason to doubt the accuracy of that  
10 roster?

11 A. No.

12 Q. Okay. And are you able to confirm that the NAACP has at  
13 least one member in each of Congressional Districts 2, 3, 4, and  
14 5?

15 A. Yes.

16 Q. And are you able to confirm that those individuals have  
17 been members of the NAACP for at least ten years?

18 A. Yes.

19 Q. And are you able to confirm that those individuals have  
20 resided in their respective congressional districts for at least  
21 ten years?

22 A. Yes.

23 Q. And do you have the names and addresses of those individual  
24 members with you here in court?

25 A. Yes, I do.

1 Q. Is there a reason that the NAACP does not disclose the  
2 names of its members publicly?

3 A. There is a reason that we don't disclose names.

4 Q. What is that reason?

5 A. Well, there is a history of disclosing memberships --  
6 members' name within NAACP. Based on the history of violence  
7 and threats, their intimidations, death threats, just, for  
8 example, going back to the 1950s under Harry T. and Harriet V.  
9 Moore for those same purposes that had a bomb placed under their  
10 home on Christmas night.

11 So we don't share those membership names to the  
12 public.

13 Q. Have you ever been threatened personally because of your  
14 membership in the NAACP?

15 A. Yes, I have.

16 Q. So regarding the names and addresses of the members, if the  
17 Court ordered it, would you be willing to share with the Court  
18 and lawyers for the Secretary those names if the Court ordered  
19 that they remain confidential?

20 A. If the Court ordered it, yes, and they remain confidential,  
21 yes.

22 MR. HALPER: No further questions, Your Honor.

23 JUDGE RODGERS: All right. Thank you.

24 Cross, Mr. Beato.

25 ///

CROSS-EXAMINATION

BY MR. BEATO:

Q. Good morning, Ms. Slater.

A. Good morning.

Q. Michael Beato on behalf of the Secretary of state. Just a few questions.

Ms. Slater, did you assist your attorneys with answering any discovery responses in this case?

A. Did I assist the attorneys?

Q. Yes, ma'am.

A. Yes, I gave them information.

Q. What information did you give them?

A. Whatever they asked.

MR. HALPER: Objection, Your Honor.

MR. BEATO: I'll --

JUDGE RODGERS: Sustained.

BY MR. BEATO:

Q. Ms. Slater, do you know whether Common Cause was served with requests for production in this case?

A. I don't know.

Q. Interrogatories? Does that ring a bell?

A. I'm not sure, no.

Q. So in terms of the membership list you discussed on direct, you stated that you reviewed the list?

A. The national office sent -- gave us -- gave me the list. I



1 reviewed the rest.

2 Q. And again, the list has names and addresses of individuals  
3 who live in CD-2, CD-3, CD-4, and CD-5, correct?

4 A. The membership roster is not specific to what congressional  
5 district they live in. It has -- the membership list has their  
6 address -- the name of the member, their address, a contact  
7 number, and an email address.

8 Q. But in terms of the list that you reviewed, it's a subset  
9 of that master list?

10 A. Yes.

11 Q. Okay. And the sublist that you reviewed with individuals  
12 in CD-2, CD-3, CD-4, CD-5, you did not create that sublist,  
13 correct?

14 A. I did not create it.

15 Q. You just reviewed it?

16 A. Yes.

17 Q. Okay. And you reviewed that in July 2023?

18 A. June, July 2023. July.

19 Q. In that sublist that we talked about, that was created for  
20 litigation?

21 A. It was created for what now?

22 Q. Litigation.

23 A. Yes.

24 Q. And, Ms. Slater, in terms of the extra steps that you took,  
25 calling these people on the list, contacting them, you contacted

1     them after July 2023, correct?

2     A.    I contacted them when I got the list.  I also -- as far as  
3     the membership is concerned, I contacted them after I got the  
4     list.  And I also -- again, the individuals I know that they are  
5     members because of the leadership role that they serve in the --  
6     within the Florida State Conference.

7     Q.    Understood.  But you can't tell me for certain whether  
8     anyone on that list will stay in their respective congressional  
9     district, right?

10    A.    Will stay in the congressional district?

11    Q.    Correct.

12    A.    As far as I know, they will.

13    Q.    But you can't tell me for certain --

14                 I apologize.  I spoke over you.

15    A.    As far as I know, they -- I mean, they've lived in those --  
16    the areas where they reside currently, they've lived in those --  
17    where they live over ten years, 15 years.

18                 So, I mean, I can't say that they'll up and move.  I  
19    can't say that, but they've been residents forever.

20    Q.    And you can't tell me for certain whether anyone on that  
21    list will vote in the 2024 election, correct?

22    A.    Yes, I can say that they will vote.  They said they will  
23    vote.

24                 One of the missions of the NAACP is access to the  
25    voting poll, access to the ballot box, and so we encourage and

1 we charge our members to get out the vote.

2 In fact, voter registration and civic engagement is  
3 one of our primary initiatives that we have in the NAACP, so we  
4 make sure that our members are registered to vote, are educated  
5 in the voter process, get out the vote, and voter protection.

6 Q. And you're also relying on your conversations with these  
7 people on the list to confirm that they're going to vote in the  
8 upcoming elections?

9 A. Yes.

10 MR. BEATO: One moment, Your Honor.

11 JUDGE RODGERS: All right.

12 MR. BEATO: No further questions. Thank you very  
13 much, Ms. Slater.

14 JUDGE RODGERS: All right. Thank you.

15 I have a quick question, ma'am.

16 When you contacted the individuals from the list --  
17 and please don't tell me anything they said to you over the  
18 phone -- but did you use the phone number that was associated  
19 with them from the list?

20 THE WITNESS: Yes.

21 JUDGE RODGERS: Okay. Thank you.

22 MR. HALPER: Just a few questions, Your Honor.

23 JUDGE RODGERS: Yes. Go ahead, Mr. Halper, when  
24 you're ready.

25 ///

**REDIRECT EXAMINATION**

BY MR. HALPER:

Q. The list that you were given to members included ZIP codes; is that correct?

A. Yes.

Q. And did you personally confirm that those ZIP codes correspond to the respective congressional districts?

A. Yes, I did.

Q. And did you testify that you checked the Florida Supervisor of Elections voter rolls as well?

A. Yes, I did.

Q. And what information did you confirm through that process?

A. I confirmed their address, their congressional district, and it had, you know, basic information as far as the year that they registered, if they were active -- if they were active voter, meaning that they're still -- they voted in the last couple of elections, so that meant that they were active.

MR. HALPER: One moment, Your Honors.

JUDGE RODGERS: Okay.

MR. HALPER: No further questions. Thank you.

JUDGE RODGERS: Okay. Thank you.

And may Ms. Slater be excused?

You may be excused.

*(Witness excused.)*

JUDGE RODGERS: And the next witness for the

1 plaintiffs.

2 MR. DISKANT: Our next witness is Dr. Matthew Barreto,  
3 and he will be examined by my colleague, Catherine Djang,  
4 D-J-A-N-G.

5 **MATTHEW BARRETO, PLAINTIFF WITNESS, DULY SWORN**

6 DEPUTY CLERK: Be seated, please. For the record,  
7 please state your name and spell your last name.

8 THE WITNESS: My name is Matthew A. Barreto. The last  
9 name is B-A-R-R-E-T-O.

10 DEPUTY CLERK: Thank you.

11 JUDGE RODGERS: All right. Ma'am, is the D silent in  
12 your last name?

13 MS. DJANG: It's pronounced "Djang."

14 JUDGE RODGERS: Djang. All right. Thank you very  
15 much.

16 Ms. Djang, when you're ready, you may proceed.

17 **DIRECT EXAMINATION**

18 BY MS. DJANG:

19 Q. Dr. Barreto, good morning.

20 A. Good morning.

21 Q. Can we begin by -- can you please begin by telling us your  
22 current occupation?

23 A. Certainly. I am a professor of political science and  
24 Chicano studies at the University of California in Los Angeles.

25 Q. Thank you.

1 MS. DJANG: And excuse me. Before you go on, we'll  
2 hand over some binders of the exhibits that we will be using in  
3 the examination.

4 MR. LI: May we approach?

5 MS. DJANG: If at any point I'm not audible, just let  
6 me know and I'll try to project more.

7 JUDGE RODGERS: You're fine. I noticed this morning,  
8 I didn't have my mic on. It's all good.

9 MR. LI: And may we approach again for slides?

10 JUDGE RODGERS: Yes, sir.

11 THE COURT: The University of California system has a  
12 lot of different institutions. You said you were at UCLA?

13 THE WITNESS: Los Angeles, that's right.

14 JUDGE RODGERS: All right, Ms. Djang. I think we're  
15 ready.

16 BY MS. DJANG:

17 Q. So Judge Jordan anticipated my next question.

18 Can you tell Is a little bit about your educational  
19 background and how you got to where you are in your academic  
20 career.

21 A. Sure. I grew up in the Midwest, around Kansas City on the  
22 Kansas side, graduated high school in Topeka, Kansas. I went to  
23 college in a small school in New Mexico called Eastern New  
24 Mexico University, majored in political science. I then went on  
25 to graduate school and worked at a research think tank in

1 Southern California. I got my Ph.D. at University of California  
2 Irvine in Orange County and then took my first job as a  
3 professor at the University of Washington in Seattle. I was  
4 there for about ten years, and in the end of 2014, beginning of  
5 2015, I started at UCLA, and I've been there since January of  
6 2015.

7 Q. Thank you.

8 And, Dr. Barreto, I understand that you worked with a  
9 professor at UC Irvine while you were getting your Ph.D. and  
10 that professor has an interesting connection to voting rights  
11 cases. Can you explain that for us?

12 A. That's right. So I was very interested in voting patterns.  
13 I wasn't sure at the time -- I didn't realize at the time I was  
14 also interested in the Voting Rights Act, but when I got to U  
15 Irvine, there was a professor there named Dr. Bernard Groffman.  
16 He eventually became my dissertation advisor. We published some  
17 papers together. And he was the lead expert witness in the  
18 famous Gingles case that we'll talk about out of North Carolina.  
19 He was the expert that helped provide data and evidence that the  
20 Court eventually established the so-called Gingles Standard.

21 So I learned a lot from him, had an opportunity to  
22 work directly with him on voting rights matters while I was at  
23 Irvine.

24 Q. And can you tell me briefly what your dissertation was  
25 about?

1 A. My dissertation concerned representation and voting  
2 patterns of racial and ethnic minorities. Primarily focused  
3 most of my dissertation on Hispanic or Latino voting patterns  
4 and representation, how those change when different candidates  
5 run and are elected. Used a variety of data from precinct-level  
6 election data to public opinion surveys.

7 Q. And what is the current focus of your work?

8 A. I've continued in a similar trajectory, continue to study  
9 voting, elections, American politics. I also have garnered a  
10 specialty in voting rights analysis where I teach courses  
11 specifically about the Voting Rights Act and the data,  
12 methodology, and techniques for everything from map drawing to  
13 analyzing results to racially polarized voting.

14 Q. And do those techniques also include researching archives,  
15 transcripts, and analyzing direct statements by officials?

16 A. Yes. Starting with my dissertation, that was a  
17 concentration back then. It's common that we would be asked to  
18 corroborate or examine why we see different patterns in the  
19 election data by talking to a combination of elected officials,  
20 reviewing statements they've made, looking at archives.

21 And that's something I've continued to do. It's in  
22 most of my published work, and it's something that I also train  
23 graduate students on.

24 Q. Thank you.

25 Do you hold any other positions at UCLA?



1 A. Yes. I'm also the faculty director of the UCLA Latino  
2 Politics and Policy Institute. It's a large institute at the  
3 Luskin School of Public affairs.

4 Within there we have of research center called The  
5 Voting Rights Project, and I serve as the faculty director and  
6 lead instructor of The Voting Rights Project.

7 Q. Dr. Barreto, do you engage in any political work?

8 A. Yes. In addition to my job as a professor, I'm sort of  
9 involved in two different types of political work, that -- what  
10 I'm doing here today as an expert witness. I've been an expert  
11 witness in a number of cases, and then also in what might be  
12 called more political consulting.

13 Q. Can you tell us a little bit more about that second  
14 category you mentioned, as a political consultant?

15 A. Yeah. In -- I think sometime around 2007, I had just  
16 finished -- yeah, 2007. I had just finished a large project  
17 coming on as a consultant in the 2006 congressional elections,  
18 and in 2007, myself and another professor decided to try to  
19 pursue survey research and public opinion polling beyond what we  
20 were doing in the academic domain and to advise advocacy groups,  
21 political groups, et cetera, on public opinion data. So we  
22 started that the '07-08 cycle and I continue to do that today.

23 Q. Thank you.

24 Dr. Barreto, are you a registered Democrat?

25 A. Currently I am, yes.

1 Q. You said "currently." When did you register as a Democrat?

2 A. I think when I moved back to California in January of 2015,  
3 I -- as I said, I had been living in Washington state for ten  
4 years. They don't have a formal party registration; you just  
5 register as a voter and then participate in whatever elections  
6 you wish.

7 And then previous to that, when I had lived in  
8 California, I believe I was registered as a "decline to state"  
9 or no party affiliation.

10 Q. Do you currently do any work related to the Democratic  
11 party?

12 A. I do.

13 Q. Can you explain what that work is?

14 A. Yeah. As a matter of my political consulting work over the  
15 years, I eventually was asked to provide data consulting to the  
16 Democratic National Committee to different candidates and groups  
17 that they work with, and so I worked with some of the different  
18 Democratic party committees, providing them primarily data  
19 analysis of Hispanic or Latino voter opinions and voting  
20 patterns.

21 Q. And does your affiliation with the Democratic party through  
22 your work and through your own political participation influence  
23 your analysis or the testimony that you will give today?

24 A. No, not at all. The data I gave them are objective,  
25 independent, neutral data. And as I said, I spent many years of

1 my career, I think, criticizing their efforts and saying that  
2 their data were not objective and neutral, and so I eventually  
3 sort of made my way in to provide that data.

4 For me and especially as a social scientist, just data  
5 accuracy and independence is a guiding principle, so whoever I'm  
6 advising, I try to bring those same standards.

7 Q. So in your work, do you work with folks on the other side  
8 of the aisle as well, on both sides sometimes?

9 A. I do regularly collaborate with Republican consultants and  
10 Republican pollsters. In fact, I've just finished a project  
11 last week for the Republican debate in Simi Valley, California.  
12 We ran a poll -- it was discussed during the debate many  
13 times -- for Univision, the Spanish language TV station. They  
14 were a cohost for the debate. Myself and a Republican pollster  
15 designed that poll, did the analysis, and advised Univision on  
16 the findings. I think that was our fourth or fifth effort  
17 collaborating together.

18 Q. Thank you.

19 You mentioned that the other type of consulting work  
20 that you do is expert testimony. Have you testified as an  
21 expert before in court?

22 A. Yes, I have, many times.

23 Q. Can you please provide an example or two of your expert  
24 work on the subjective of redistricting?

25 A. Yeah. There's a couple of recent ones on the screen, I

1 think from within the last year or so, and so I can review  
2 those. But I've been doing this for probably a little over 15  
3 years.

4 Just recently came back from trial in the summer in  
5 Galveston County, Texas. We just had a case settle in San Juan  
6 County, New Mexico. That was Navajo nation.

7 *LULAC v. Abbott*, you can see on the screen, is an  
8 ongoing matter, similar, in front of a three-judge panel in the  
9 state of Texas on the Texas statewide redistricting.

10 I've been involved in a number of cases in Washington  
11 State. *Portugal v. Franklin County* is a case in Washington  
12 state.

13 *Brooks v. Abbott* is connected to LULAC. It's a  
14 separate set of plaintiffs.

15 And then *NAACP v. Baltimore County* is a redistricting  
16 case I was involved in maybe about a year and a half ago.

17 Additional ones beyond that, but those are some of the  
18 recent ones.

19 Q. Thank you.

20 Have you ever been excluded as an expert?

21 A. I have once.

22 Q. And what were the circumstances in --

23 A. This was a state trial in Pennsylvania on the voter ID  
24 lawsuit. The district judge excluded all of the plaintiff  
25 experts with one fell swoop. It was appealed to the State

1 Supreme Court, which then sent it back to the District Court and  
2 asked them to reconsider it. The District Court ultimately did.

3 We won. The Pennsylvania voter ID law was struck  
4 down, and our testimony was ultimately credited.

5 Q. So at the end of the case, your testimony was not excluded?

6 A. That's right, and the ultimate decision -- I don't believe  
7 it's ever been excluded.

8 Q. And is it right that in every other case, your expert  
9 testimony has been accepted by the Court?

10 A. That's correct. As far as I'm aware.

11 Q. And were you generally -- excuse me.

12 Were you retained as an expert in this case?

13 A. Yes, I was retained by Plaintiffs in this case.

14 Q. And what was your assignment?

15 A. I outlined this in my expert report early on. I have a bit  
16 of a summary.

17 But generally, it was to analyze the benchmark  
18 previous congressional district map as compared to the enacted  
19 map that was passed as well as a couple of different alternative  
20 maps to understand whether or not there was any diminishment or  
21 dilution in minority voting strength throughout the state of  
22 Florida.

23 Q. When did this engagement first start?

24 A. I'd say maybe a little over a year ago. I don't recall  
25 precisely.

1           As you know, we're also engaged in a previous matter  
2 that was ultimately settled where we just missed. So it's  
3 something -- this issue here in Florida, I've been looking at  
4 for a bit of time.

5 Q.   So you're referring to the malapportionment iteration of  
6 this lawsuit?

7 A.   That's right. There was originally some delay in the  
8 districts getting approved. As a result, there was a  
9 malapportionment claim in which Florida's voters would have not  
10 enough districts if they had to stay with 27, and so we did some  
11 research on that.

12 Q.   For this matter, you prepared a report presenting your  
13 findings, correct?

14 A.   Yes, I did.

15 Q.   Did you receive any assistance in preparing your report?

16 A.   Yes. I collaborated fully on the report with Dr. Kassra  
17 Oskooii, who is a tenured professor at the University of  
18 Delaware.

19           MS. DJANG: Your Honor, at this time I'd like to offer  
20 Dr. Barreto as an expert in the areas he's described in his  
21 testimony.

22           JUDGE RODGERS: Just generally what he's described, or  
23 do you have a specific designation you're seeking? I mean, is  
24 it sort of in the field of federal and state voting rights and  
25 civil rights cases or more specific to Florida?

1 MS. DJANG: As a district mapping analyst.

2 JUDGE RODGERS: District mapping analyst.

3 BY MS. DJANG:

4 Q. Would you say that's correct, Doctor?

5 A. Yeah, I would say that's a large part of what's included in  
6 this report, as well as topics of polarized voting, map  
7 performance. I think that all generally fits under mapping  
8 analyst.

9 JUDGE RODGERS: Okay. Very good.

10 Any *voir dire*?

11 MR. JAZIL: No, Your Honor.

12 JUDGE RODGERS: All right. Then the witness will be  
13 so designated, Ms. Djang, and you may proceed.

14 BY MS. DJANG:

15 Q. Before we discuss the work you did in this case, I want to  
16 briefly review how you approached that work, what data you  
17 consulted, and your general analytical approach.

18 Can you just summarize the data and sources you  
19 considered in forming your opinion?

20 A. Sure. You can see here on this slide a wide variety of  
21 different sources and data that go from many of the transcripts  
22 and statements and memos that were included from public  
23 officials. We used as our principal data source the official  
24 Florida redistricting website and their redistricting data  
25 portal. Beyond that, we also used U.S. census data that we

1 obtained directly from the census for different levels.

2 We, like the State of Florida, also relied on a GIS  
3 program, primarily ESRI, E-S-R-I, in conducting analysis.

4 Q. So there's a lot here, and we may return in greater detail  
5 as necessary.

6 But I'd like to turn to the substance of your opinions  
7 and ask you about the changing demographics of the state of  
8 Florida over the past decade.

9 We've heard testimony that over the past ten years,  
10 the population changed enough to affect a congressional seat  
11 within the state, specifically the addition of one seat, going  
12 from 27 to 28. This slide is showing Table 1 from your report  
13 reproduced in full, correct?

14 A. Yes, this is Table 1, which is found on page 10 of my  
15 report, which is a summary of 2010 and 2020 decennial census  
16 data for the state of Florida.

17 MS. DJANG: Thank you.

18 And, Your Honors, Dr. Barreto's report is included in  
19 your binder. We're not offering into evidence at this time, but  
20 should you need to refer to it, it is included in the binders as  
21 Plaintiffs' Exhibit Number 5042.

22 JUDGE RODGERS: Ms. Djang, I'm having trouble hearing  
23 you. Is your microphone on? Is that the one closest to you?  
24 Is the red light on?

25 DEPUTY CLERK: They don't turn off. It's probably



1 because it's right there on the (inaudible) --

2 JUDGE RODGERS: Our court reporter is, too, and she's  
3 probably more important even than me. It's very important to  
4 have a record.

5 MS. DJANG: Is this a little bit better?

6 JUDGE RODGERS: Much. Much. Thank you.

7 I apologize for the interruption. Go ahead.

8 MS. DJANG: Thank you.

9 BY MS. DJANG:

10 Q. Is it correct that we're looking at the demographic data  
11 obtained from the U.S. Census Bureau from the decade of 2010 to  
12 2020?

13 A. Yes. That's what summarized in Table 1, page 10.

14 Q. And when you reviewed the decennial census data, what did  
15 you find notable about the population group?

16 A. Well, first, you know, the whole state of Florida grew at a  
17 large -- or had a large raw population growth of 2.7 million.  
18 You see that at the very top. That's the reason that they  
19 received an extra congressional district in the apportionment.

20 Of that 2.7 million growth, probably one of the most  
21 notable things is that the white population, which is about the  
22 fourth line down, grew by only 2 percent; that is, it only grew  
23 by 200,000, which means that about 2.5 million of the  
24 2.7 million growth was driven by the nonwhite population in  
25 Florida.

1           So Florida changed. They had experienced a lot of  
2           population growth in the decade, and that this was  
3           overwhelmingly the result of the nonwhite population in the  
4           state of Florida.

5           Q. Thank you.

6           Turning to the maps that you've analyzed in this  
7           case -- I'm sorry --

8           MS. DJANG: Can we remove the red lines here?

9           DEPUTY CLERK: I'll take care of it.

10          MS. DJANG: Thank you.

11         BY MS. DJANG:

12         Q. I'd like to ask you a few questions about the congressional  
13         map that was in place going into the 2022 redistricting process.  
14         We've been calling that the benchmark map, correct?

15         A. Yes. The previous map that, I think, went into effect in  
16         2016. There it is on the screen, benchmark map.

17         Q. And this is Plaintiffs' Exhibit Number 7198-1, which is in  
18         evidence.

19                 Congressional District 5 is shown here in purple; is  
20         that right?

21         A. That's correct.

22         Q. And taking a look at the location and shape of Benchmark  
23         CD-5, can you describe it for us?

24         A. Yes. It's a congressional district in Northern Florida.  
25         It primarily comes across the Northern border of Florida and the

1 Southern border of Georgia from Tallahassee on the West side  
2 over, across counties to Jacksonville, Duval area on the East  
3 side.

4 Q. Thank you.

5 And we'll just take a look at the next slide. And  
6 this is a simplified version of Figure 2 from your report; is  
7 that right?

8 A. Yes. This looks like Figure 2 on page 13 of my report.

9 Q. And this graphic all other map figures from your report,  
10 those were proposed for illustrative purposes with the ArcGIS  
11 redistricting application; is that right?

12 A. That's correct.

13 Q. And that includes -- if I'm not mistaken, that includes  
14 visualizations of census block group level data?

15 A. That's correct. This shows the geographic boundaries. You  
16 can see other political boundaries, and then it also includes  
17 racial and ethnic data derived from the U.S. Census at the  
18 census block group level.

19 THE COURT: I'm sorry to interrupt, but the census  
20 figure chart, that's from Exhibit 5042 on your side, right?

21 MS. DJANG: Correct, Your Honor, and that's  
22 Dr. Barreto's report, which we have not offered into evidence.

23 THE COURT: Right. So you're not offering this chart,  
24 either?

25 MS. DJANG: That's correct.

1 THE COURT: Okay. Got it.

2 MS. DJANG: Your Honor, we'd like to offer  
3 Exhibit 5042 into evidence.

4 Okay. Page 11, Plaintiffs' Exhibit 5042-001.

5 MR. JAZIL: Your Honor, I'd object to the introduction  
6 of the whole report, but if my friend wants to offer the table,  
7 I don't have an objection to the table being entered into  
8 evidence.

9 JUDGE RODGERS: That was my understanding, but let me  
10 confirm.

11 Is PX5042-11 -- is the table?

12 MS. DJANG: Correct.

13 JUDGE RODGERS: Okay. So you're not offering 5042 in  
14 its entirety, just the table at page 11; is that correct?

15 All right. Mr. Jazil, no objection to that, then?

16 MR. JAZIL: No, Your Honor.

17 JUDGE RODGERS: All right.

18 JUDGE WINSOR: So this will be a new exhibit  
19 designated 5042-11?

20 JUDGE RODGERS: That's the way I understand it, but if  
21 you wish to designate it something different, it's your exhibit.

22 So is there something else you would like to use as a  
23 designation for it?

24 MS. DJANG: No, that is perfectly -- I think that's a  
25 logical way to go about it.

1 JUDGE RODGERS: All right.

2 BY MS. DJANG:

3 Q. Okay. So, Dr. Barreto, what is this kind of map called in  
4 your profession?

5 A. This map here is a GIS map that we would refer to as a  
6 racial dot map. It shows a dot for different locations of  
7 racial or ethnic populations.

8 Q. Thank you.

9 And what specifically do the green dots represent?

10 A. In this case, green dots represent a concentration of  
11 African Americans within the census block group.

12 Q. And why do you use racial dot maps in your work?

13 A. Well, a racial dot map is one way to visualize the location  
14 of populations. It can show you both the density by how  
15 concentrated a population is as well as the share of that  
16 population, and so it accomplishes both of those things at the  
17 same time.

18 MS. DJANG: Your Honor, I'd like to offer Plaintiffs'  
19 Exhibit 5042-0014, which is Figure 2 in Dr. Barreto's report,  
20 into evidence. It is slightly different from what is shown on  
21 the screen. It has additional data displayed. It includes --

22 BY MS. DJANG:

23 Q. Dr. Barreto, if you want to explain the difference.

24 A. Sure. It's the same map. The one in the binder has  
25 additional congressional district lines on it so that you can at

1 the same time compare the adopted and the benchmark.

2 This one we're looking at on the screen only contains  
3 the benchmark lines.

4 JUDGE RODGERS: Mr. Jazil?

5 MR. JAZIL: Your Honor, I'd object to the inclusion of  
6 this particular map because it was not part of the expert  
7 disclosures in this case. If my friend wants to introduce the  
8 map that was in Dr. Barreto's report as a substitute, I wouldn't  
9 oppose that, but this isn't that map.

10 JUDGE RODGERS: Okay. So what was in his report is  
11 what is on the monitor or what is in our packet?

12 MS. DJANG: It's in the packet, Your Honor, and it  
13 contains an additional overlay on top of what is displayed on  
14 the screen.

15 JUDGE RODGERS: Is that fact going to alter in any  
16 material way your opinion?

17 THE WITNESS: Not on this map, no. At some point I  
18 talk about the comparison of the benchmark district and the  
19 enacted one --

20 JUDGE RODGERS: Sure.

21 THE WITNESS: -- which is why in my binder it has both  
22 lines, but it doesn't alter the data at all.

23 JUDGE WINSOR: Which are you moving in, from the  
24 presentation or from the binder?

25 MS. DJANG: From the binder, Your Honor. I apologize

1 for the confusion.

2 JUDGE RODGERS: Okay. And what we have, is this the  
3 binder or --

4 THE WITNESS: The binder is in this black...

5 JUDGE RODGERS: Oh, I see. I'm sorry. I'm following  
6 the PowerPoint.

7 Okay. So 5042-14 will be admitted, understanding it  
8 is from the binder which was -- which includes, obviously, the  
9 report, which is 5042, but only this page 14 and this map will  
10 be admitted pursuant to this ruling.

11 MS. DJANG: Thank you, Your Honor.

12 *(PLAINTIFF EXHIBIT 5042-14: Received in evidence.)*

13 BY MS. DJANG:

14 Q. At a high level of generality, Dr. Barreto, are you able to  
15 describe the distribution of the Black population across  
16 District 5 based on your review of the census data?

17 A. Sure. So in the benchmark map, you can see that there is a  
18 large concentration of African Americans in North Florida  
19 generally in this very Northern region, so far North that it is  
20 near the Georgia border, and that it includes a community in  
21 Jacksonville as well as Tallahassee as well as large populations  
22 or dense populations of African Americans also across the  
23 Northern Florida panhandle.

24 Q. If we could go to the next slide.

25 Dr. Barreto, what is the difference between that map

1 and a heat map?

2 A. Well, they're quite similar. A dot map and a heat map are  
3 quite similar. They're showing fairly similar pieces of  
4 information.

5 In the slide here we have a dot map on top in which  
6 each dot just represents the total population within that census  
7 block, whereas the heat map, it shades an entire census block  
8 group a certain color, so you lose a little bit of the density  
9 of the population is missing in a heat map.

10 Q. Thank you.

11 And could you just point out an example, looking at  
12 these maps right now, where that difference is distinguishable?

13 A. Yes. If you look over in the central parts of the district  
14 around Madison or Jefferson, you can see some very dark green  
15 colorings. You see the same thing in the Western area by  
16 Gadsden, wherein the heat map there's very dark green shading.  
17 That indicates that there's a high percentage of African  
18 Americans, but the dot map shows that there's just less density  
19 there.

20 And so they both show similar information but, you  
21 know, we like to use them for different reasons.

22 Q. And for the record, when you're referring to the heat map,  
23 you're referring to Defendant's Exhibit 85, which is in  
24 evidence, correct?

25 A. That's correct.



1 Q. Now, Dr. Barreto, was Benchmark CD-5 a performing Black  
2 district in which Black voters were able to elect their  
3 candidate of choice?

4 A. In the benchmark map, it was a Black performing district in  
5 which Black voters were able to elect their candidates of  
6 choice, yes.

7 Q. And is another way of phrasing that also known as a Black  
8 Opportunity District?

9 A. Yes, that's correct. It was also referred to as a Black  
10 Opportunity District.

11 Q. And what methodology did you use to determine that it was a  
12 performing or opportunity district?

13 A. Well, sometimes you hear the word "functional analysis"  
14 used. We tend to also call that a "performance analysis" to see  
15 whether or not the map performs for different communities.

16 And I employed the same methodology that I believe the  
17 State legislature also employed in their functional analysis to  
18 look at who won or lost the elections in that district.

19 Q. Thank you.

20 We'll break that down in just a second, but I want to  
21 ask: Is the Black voting age population, or BVAP, all you need  
22 to know to assess whether you have a Black performing district?

23 A. No. This is an important distinction. The population of  
24 the minority group of interest, in this case the BVAP, the Black  
25 voting age population, is only one component of understanding

1 whether or not a district performs or is functional. You, of  
2 course, also have to look at the rest of the people in that  
3 district and how they vote and take the totality of election  
4 results of all precincts, not just the Black precincts.

5 And so BVAP is one component, but it's not the  
6 determinative component.

7 Q. And you've reviewed the Governor's map drawer's testimony,  
8 Mr. Alex Kelly, from last week; is that right?

9 A. Yes, I did.

10 Q. And he testified about this point last week, correct?

11 MR. JAZIL: Your Honor, Mr. Kelly's testimony from  
12 earlier this week is outside of the expert opinions that were  
13 disclosed to us as part of this case.

14 MS. DJANG: Your Honor, he's commenting on the same  
15 exact methodology that is discussed in Dr. Barreto's report.

16 JUDGE RODGERS: And I think that's fine. And I would  
17 just save the references to -- or the distinction between this  
18 testimony and Mr. Kelly's testimony for closing argument.

19 MR. JAZIL: Thank you, Your Honor.

20 THE WITNESS: What was the question?

21 JUDGE RODGERS: I think you can ask him the question.  
22 The objection, I thought, was to the preface that -- how  
23 Mr. Kelly testified.

24 But if you want to ask him just as a factual matter, I  
25 don't think that's a problem.

1 MR. JAZIL: Your Honor --

2 JUDGE RODGERS: As long as it's covered by his report,  
3 which I have not read the entirety of.

4 Mr. Jazil?

5 MR. JAZIL: Yes, Your Honor. That was the objection,  
6 as you phrased it.

7 BY MS. DJANG:

8 Q. Okay. So I think just to close out this point,  
9 Dr. Barreto, you would agree that the same BVAP in two different  
10 districts can yield very different results; is that right?

11 A. Yes. I mean, as Mr. Kelly stated, BVAP is not the only  
12 indicator of whether or not a district performs. That is one  
13 component, but you also have to look at the rest of the voters  
14 in that district, and you take the totality of all of the  
15 election results to determine whether or not a district  
16 performs.

17 Q. Okay. So let's see how you did a functional analysis of  
18 Benchmark CD-5. This is Table A-1 from your report.

19 MS. DJANG: This is Plaintiffs' Exhibit 5042-0048, and  
20 Plaintiffs would like to move this into evidence.

21 JUDGE RODGERS: All right. Mr. Jazil?

22 MR. JAZIL: No objection, Your Honor.

23 JUDGE RODGERS: All right. That will be admitted.  
24 Plaintiff's 5042-48.

25 *(PLAINTIFF EXHIBIT 5042-58: Received in evidence.)*

1 MS. DJANG: And just for clarity's sake, we're going  
2 to look at an excerpt of that, just the top five districts here.

3 BY MS. DJANG:

4 Q. So, Dr. Barreto, can you tell us what Table A-1 shows here?

5 A. These are demographic and political statistics about the  
6 five congressional districts in Northern Florida. This right  
7 here is for the 2016 benchmark district, and so for each of  
8 those five districts, it indicates the voting age population by  
9 race and ethnicity as well as the partisan lean to let us  
10 understand whether or not a Black candidate of choice is likely  
11 to prevail.

12 Q. And can you tell us a little bit about the racial breakdown  
13 of these districts?

14 A. Yes. In the benchmark map, Congressional District 5 had  
15 the largest Black population at 46.2 percent of the voting age  
16 population. It was a majority minority district at 59 percent.

17 All of the other congressional districts in Northern  
18 Florida had a much smaller Black population, under 20 percent,  
19 ranging from 10 to 16.

20 So District 5 was the Black performing or Black  
21 Opportunity District in Northern Florida.

22 Q. So now that you have the BVAP number in hand, 42.6 --  
23 46.2 percent -- excuse me -- what's the next step in determining  
24 whether Benchmark CD-5 is a fully functioning Black Opportunity  
25 District?

1 A. Well, first thing we have to understand is the voting  
2 patterns. And so we do racially polarized voting analysis to  
3 understand how different communities in Northern Florida vote,  
4 whether or not African Americans and white voters have the same  
5 or opposing candidates of choice.

6 So we need to determine which candidates are the Black  
7 preferred candidates. As I said, that's called "racially  
8 polarized voting analysis," and this slide outlines the two  
9 methods I used.

10 Q. And how did you -- how did your results differ, if at all?

11 A. Across the two methods, they were quite consistent, which  
12 is what we've often seen is the case. The iterative ecological  
13 inference method or the row by column ecological inference  
14 method both produced roughly the same results, which were also  
15 entirely consist with the racially polarized voting estimates  
16 that the State legislature had produced in their analysis.

17 Q. Okay. We'll take a look at some of your results here.

18 This is Figure 6 from your report. It's Plaintiffs'  
19 Exhibit 5042.28.

20 MS. DJANG: I'd like to move this into evidence.

21 JUDGE RODGERS: All right. Mr. Jazil?

22 MR. JAZIL: No objection, Your Honor.

23 JUDGE RODGERS: All right. That will be admitted.  
24 Plaintiffs' Exhibit 5042-28.

25 *(PLAINTIFF EXHIBIT 5042-28: Received in evidence.)*

1 BY MS. DJANG:

2 Q. And, Dr. Barreto, can you walk us through what this table  
3 shows?

4 A. This table shows which candidates were the candidates of  
5 choice of white voters and Black voters in Northern Florida  
6 using the ecological inference method. On the right side of the  
7 chart, the bars in green demonstrate that African Americans  
8 voted quite consistently across all of these elections  
9 considered in roughly the 87 to 91, 92 percent range for  
10 Democrat candidates.

11 On the left side in the -- or gold-colored bars, we  
12 see the votes for whites in Northern Florida, and you can see an  
13 opposite pattern. They voted cohesively and consistently for  
14 the Republican candidates in the generally 69 to 75 percent  
15 range.

16 Q. Thank you.

17 And you've been following the State case where there's  
18 a different group of plaintiffs that are challenging the  
19 redistricting plans that are enacted currently in Florida but on  
20 different legal grounds, correct?

21 A. Yes, very closely.

22 Q. And do you recall whether there was anything stipulated  
23 that's relevant to the -- your conclusion here?

24 MR. JAZIL: Objection, Your Honor. Again, this is  
25 outside the scope of his expert disclosure.

1 JUDGE RODGERS: Well, I haven't heard the question  
2 yet. If it's a factual matter that you were asking about in  
3 terms of the stipulation -- I assume it is -- and is it covered  
4 in his report?

5 MS. DJANG: Your Honor, it postdates his report, so it  
6 is not included in the report itself.

7 JUDGE RODGERS: Is there another way that the  
8 plaintiffs would have had notice of this opinion?

9 MS. DJANG: No, Your Honor. We can move on.

10 JUDGE RODGERS: All right. Sustained.

11 BY MS. DJANG:

12 Q. Dr. Barreto, what's the next step in the functional  
13 analysis?

14 A. Well, once you determine who the candidate of choice is  
15 from the racially polarized voting analysis, you then take all  
16 of the precincts, all of the voting district precincts, and  
17 compile them into congressional districts to determine which  
18 candidate would have won or lost to determine whether or not the  
19 Black preferred candidate won or the white preferred candidate.

20 Q. And can you tell us what Figure 8 here on the screen shows?

21 A. Yes. Figure 8, which is on page 30 of my report. This  
22 shows the performance analysis results or functional analysis  
23 results of the existing benchmark district, the 2016 benchmark  
24 district, for the five Northern Florida congressional districts.

25 MS. DJANG: Okay. Your Honor, at this time --

1 THE COURT: Say that again. This is -- this is the  
2 old Benchmark CD-5 now subdivided into the new districts?

3 THE WITNESS: This is the existing -- excuse me -- the  
4 benchmark districts as they existed in 2016 through 2020. This  
5 is Figure 8. It demonstrates that the existing previous map  
6 that was in effect performed for Black candidates of choice in  
7 CD-5.

8 JUDGE RODGERS: So this is still a part of your  
9 performance analysis?

10 THE WITNESS: Of the benchmark plan, correct.

11 THE COURT: I understand. Thank you.

12 MS. DJANG: Your Honor, Plaintiffs would like to offer  
13 Plaintiffs' Exhibit 5042-31, which is Figure 8, into evidence.

14 JUDGE RODGERS: Mr. Jazil?

15 MR. JAZIL: No objection, Your Honor.

16 JUDGE RODGERS: Thank you.

17 That will be admitted.

18 *(PLAINTIFF EXHIBIT 5042-31: Received in evidence.)*

19 BY MS. DJANG:

20 Q. And so, Dr. Barreto, which column shows the results from  
21 Congressional District 5?

22 A. The far right column, the one all the way to the side. It  
23 says in small print up there at the top "CD-5." So that was the  
24 previously existing benchmark District 5, and I've got the other  
25 four just for comparison.



1 Q. And just running down that column, can you tell us what's  
2 apparent in terms of the results of -- you've got two different  
3 colors there. Can you explain what those are?

4 A. Sure. So the green bars indicate what the polarized voting  
5 analysis determined were Black candidates of choice, and the  
6 gold bars are what determined the white candidates of choice.  
7 These are the exact same findings that the State legislature  
8 themselves had in their own analysis of their data.

9 So in CD-5, there on the far right side of the screen,  
10 you can see that the green bars, which are Black candidates of  
11 choice, consistently exceed the gold bars. That is, when you  
12 just consider the voters in the Benchmark CD-5, the Black  
13 candidate of choice would have won all these elections.  
14 Therefore, it was an established performing Black district.

15 Q. And how does this compare to the rest of the Northern  
16 Florida districts?

17 A. Well, in none of the other four districts in Northern  
18 Florida was there a Black performing district. Districts 1, 2,  
19 3, and 4 all consistently elected white candidates of choice.

20 Q. Dr. Barreto, what conclusion did you reach after assessing  
21 vote cohesion and conducting this performance analysis?

22 A. Well, I believe my analysis and results were consistent  
23 with that of the State, that Black voters were cohesive. They  
24 vote together for candidates of choice. They were able to elect  
25 their preferred candidate of choice in Benchmark District 5, but

1 nowhere else were they able to do that, because they were  
2 opposed by white voters who had opposite political choices.

3 Q. And would you have expected to see that result, based on  
4 your knowledge of the population in the area?

5 A. It was something that I had seen in previous analyses in  
6 Florida. As with any case, I always like to get my hands on the  
7 actual data and run the analysis to see what it shows. But I  
8 would say I wasn't surprised. I had seen similar analyses in  
9 this region in Florida.

10 Q. In your opinion, do Black voters in North Florida  
11 constitute a community of interest?

12 A. Yes, definitely.

13 Q. I'd like to take a look at Table 3.

14 Dr. Barreto, can you tell us what Table 3 depicts?

15 A. Table 3 is a demographic analysis of the different  
16 characteristics of the districts in Northern Florida. It  
17 compares the benchmark, the old CD-5, to the other districts in  
18 the enacted plan.

19 Q. And just to be clear, the source of your data is the 2021  
20 American Community Survey one-year estimates?

21 A. That's right. So these are demographic characteristics  
22 taken from census data, and what is quite clear is that the  
23 Benchmark CD-5 was a bit unique. It sort of held together as  
24 its own community, had a much lower household income than any of  
25 the other districts as enacted. It had a higher rate of persons

1 below poverty, and it had a lower rate of persons with a  
2 bachelor's degree, and there's some other characteristics.

3 But this is to demonstrate that none of the enacted  
4 districts replicate what had been CD-5.

5 MS. DJANG: Your Honor, Plaintiffs would like to move  
6 to admit Plaintiffs' Exhibit 5042-17 -- and just for the  
7 record --

8 Well, actually, we'll just move this into evidence.

9 JUDGE RODGERS: All right. Mr. Jazil?

10 MR. JAZIL: No objection, Your Honor.

11 JUDGE RODGERS: That will be admitted, Plaintiff's  
12 5042-17.

13 *(PLAINTIFF EXHIBIT 5042-17: Received in evidence.)*

14 BY MS. DJANG:

15 Q. Dr. Barreto, is this -- what you've just described, this  
16 community of interest analysis, is that relevant in assessing  
17 whether a district permits Black voters to elect their candidate  
18 of choice?

19 A. Well, to determine if they can elect their candidate of  
20 choice, we really just need to look at the election results and  
21 look to see two factors: First, is the minority group in  
22 question cohesive across the district? In this case, it was  
23 across every stretch of the district. The Black population was  
24 quite cohesive.

25 And secondly, do their candidates of choice win the

1 elections? The demographic analysis tells us more about do they  
2 share common characteristics as a community, and my conclusion  
3 was they do.

4 Q. And is it your understanding that a community of interest  
5 may be considered in the general redistricting process as a  
6 traditional redistricting principle?

7 A. Yes. My experience is that it's quite common to think  
8 about communities of interest.

9 Q. Okay. So we're going to take a look at the legislative  
10 maps B015 and 8019.

11 In addition to the benchmark map, you also reviewed  
12 the congressional maps passed by the State legislature; is that  
13 right?

14 A. Yes, that's correct.

15 Q. And what we're looking at now is map 8015. This is  
16 Defendant's Exhibit 97. This image of map 8015 and the full  
17 legislative packet is in evidence.

18 So focusing your attention on CD-5, and just turning  
19 to the next slide as well, could you describe for us what  
20 changes overall does it appear to make in comparison to the  
21 benchmark map, which we have at the top of the screen?

22 A. So this slide compares the benchmark on the top that was  
23 the preexisting Congressional District 5 to that in map 8015,  
24 and it makes a number of improvements over the benchmark. You  
25 can see particularly in the Duval Jacksonville area, it is more

1 inclusive. It gets rid of what some had referred to as some of  
2 the jagged edges over there, and it has a more compact nature  
3 over in the Jacksonville area.

4 And you see the same thing in the central part. It  
5 follows political boundaries, geographic boundaries, and also  
6 cleans up some of what had been referred to as some of the  
7 jagged edges in the Western part around Tallahassee.

8 So it's similar, but I think it makes some  
9 improvements.

10 MS. DJANG: And for the record, the benchmark image  
11 that we're looking at is Plaintiffs' Exhibit 7198, which is in  
12 evidence.

13 BY MS. DJANG:

14 Q. Now let's look at the demographic composition of map 8015.

15 What does Table A-4 show here regarding the North  
16 Florida districts in map 8015?

17 A. Yes. So this is from map 8015, and just like the analysis  
18 I had done of the benchmark, I looked at the voting age  
19 population and the partisan lean to determine which candidates  
20 of choice are likely to prevail. And what this shows is that  
21 District 5 in map 8015 maintained a Black voting age population  
22 of 43.48, continued to be a majority minority at 57 percent, and  
23 that it was quite likely to elect Black candidates of choice  
24 with a Democratic lean of 58.6.

25 Q. And that's in comparison to the Benchmark CD-5, which had a

1 BVAP percentage of 42 percent; is that right?

2 A. 46.

3 Q. 46 percent. Excuse me. Thank you.

4 MS. DJANG: Now, Plaintiffs would like to move  
5 Plaintiffs' Exhibit 5042-51 into evidence, which is Table A-4  
6 from Dr. Barreto's report.

7 JUDGE RODGERS: Mr. Jazil?

8 MR. JAZIL: No objection, Your Honor.

9 JUDGE RODGERS: Okay. 5042-51 is admitted.

10 *(PLAINTIFF EXHIBIT 5042-51: Received in evidence.)*

11 BY MS. DJANG:

12 Q. Now, we've already established BVAP isn't everything. You  
13 still need to do the functional analysis. We'll get there in a  
14 second.

15 But you reviewed the legislative hearing transcripts  
16 as well, didn't you?

17 A. Yes. That's included in my report, I include many  
18 transcripts from committees and legislative hearings related to  
19 redistricting.

20 Q. Do you recall what they concluded regarding CD-5 and  
21 whether or not it performed in map 8015, the secondary map?

22 A. Yes, there was functional analysis included. It is nearly  
23 identical to the analysis I did. And they concluded the same,  
24 that map 8015 would perform for Black voters candidates of  
25 choice.

1 Q. But the Governor vetoed this map, didn't he?

2 A. That's correct.

3 Q. And in vetoing the bill, did the Governor dispute it was a  
4 Black performing district?

5 A. He did not. He did not dispute that map 8015 was a Black  
6 performing district. I believe he commented on the shape and  
7 size instead.

8 Q. Did you perform your own functional analysis for -- you  
9 actually just testified that you did.

10 So can you just walk us through your analysis. We're  
11 now looking at figure B14 from Plaintiffs' Exhibit 5042-68 which  
12 Plaintiff would like to move into evidence.

13 JUDGE RODGERS: 68, is that what you just said?

14 MS. DJANG: 68.

15 JUDGE RODGERS: Mr. Jazil?

16 MR. JAZIL: No objection.

17 JUDGE RODGERS: That will be admitted, Plaintiff's  
18 5042-68. And then, Ms. Djang, we will likely break  
19 approximately 12:30. I'll let you get through this line of  
20 testimony, and then we'll probably break for lunch, okay?

21 *(PLAINTIFF EXHIBIT 5042-68: Received in evidence.)*

22 BY MS. DJANG:

23 Q. Dr. Barreto, can you explain what your results were of your  
24 performance analysis for map 8015 in Congressional District 5?

25 A. Yes. So this is figure, 314, from my report, on the far

1 right-hand side is CD-5, that's Congressional District 5,  
2 similar to the benchmark performance analysis, we've done the  
3 same thing. We've taken all the elections that the State of  
4 Florida had on their portal, examined them through the lens of  
5 district boundaries in 805, and concluded that as shown here by  
6 the green bars, which are the Black candidate of choice, the  
7 Black candidates of choice, would easily carry this district.  
8 In particular the more recent elections are always the most  
9 relevant because they represent the current voters who are there  
10 right now. And this was easily a Black performing district.  
11 Q. Thank you.

12 MS. DJANG: Your Honor, I actually think this is a  
13 good place.

14 JUDGE RODGERS: All right. If we're finished with  
15 that inquiry, then yes, now would be a fine time.

16 So how about I would return from lunch at 1:30, an  
17 hour and ten minutes. Is that good for you all?

18 All right. Anything you need to discuss with the  
19 Court before we break?

20 All right, sir. You'll be back on the stand at 1:30.

21 THE WITNESS: Yes, Your Honor.

22 JUDGE RODGERS: Thank you. We'll be in recess.

23 *(Luncheon recess taken from 12:21 to 1:31 p.m.)*

24 **A F T E R N O O N S E S S I O N**

25 *(All parties present.)*



1 JUDGE RODGERS: All right. Be seated.

2 Sir, you're still under oath.

3 THE WITNESS: Yes, ma'am.

4 THE COURT: Go right ahead.

5 JUDGE RODGERS: Ms. Djang, go ahead when you're ready.

6 MS. DJANG: Thank you.

7 Just a piece of housekeeping, Your Honor.

8 JUDGE RODGERS: Yes.

9 MS. DJANG: We're conferred with our friends on the  
10 other side, and we will be moving to admit the remaining figures  
11 and tables that we will -- that are in the PowerPoint  
12 presentation from Dr. Barreto's report. They have no objection  
13 with the exception of one, which we will address when we get to  
14 it.

15 JUDGE RODGERS: Do you mean identifying the exhibit  
16 numbers? I know they all start in 5042.

17 MS. DJANG: Sure.

18 JUDGE RODGERS: We stopped at 68, I believe. That was  
19 the last one that was admitted.

20 MS. DJANG: So 68. We also got 16, 52.

21 JUDGE RODGERS: Hold on. 16, and then 52. Those are  
22 both new.

23 MS. DJANG: 69.

24 JUDGE RODGERS: 69.

25 MS. DJANG: 17.

1 JUDGE RODGERS: 17 has been admitted already.

2 MS. DJANG: 64.

3 JUDGE RODGERS: 64. All right.

4 MS. DJANG: 64, 65, 66, I believe 61, 14.

5 JUDGE RODGERS: I'm sorry. I didn't hear that one.

6 MS. DJANG: 14.

7 JUDGE RODGERS: That's been admitted.

8 MS. DJANG: 49. I believe that's all.

9 JUDGE RODGERS: You believe that's all? So I have 16,  
10 52, 69, 64, 65, 66, 61, and 49.

11 Mr. Jazil, you agree with that?

12 MR. JAZIL: Yes, Your Honor.

13 THE COURT: And do you want to just wait until you get  
14 to the exhibit that is the subject of dispute, or do you want to  
15 address it now?

16 MR. JAZIL: Your Honor, we can address it when we get  
17 to it. I think there are two.

18 JUDGE RODGERS: All right. Very well.

19 So thank you. Whenever you're ready, you may proceed.

20 BY MS. DJANG:

21 Q. So, Dr. Barreto, we had just analyzed map 8015. I'd like  
22 to transition to the other map, map 8019 or the primary map.  
23 And this map is Defendant's Exhibit 98 that's in evidence.

24 Could you please tell us what the purple district  
25 shows on this map?

1 A. Yes. This is a configuration of the North Florida  
2 Congressional Districts where Congressional District 5 is now  
3 contained within Duval and primarily around Jacksonville City.  
4 So it is smaller geographically and wholly contained within  
5 Duval.

6 Q. And just comparing it to the benchmark map, which we have  
7 on the next slide, how does it compare in terms of compactness?

8 A. You mean as compared to the enacted map?

9 Q. Excuse me. The enacted map.

10 A. Yes. So the enacted map is below, and they're roughly the  
11 same. You see they're about the same size, even somewhat  
12 similar shapes. They're in the same region of the state, and  
13 they're adjacent to District 4.

14 So these are fairly similar, I would say, on many  
15 mapping dimensions.

16 Q. And drawing your attention to District 2, which is shown in  
17 orange on both maps, how would you describe the overall  
18 compactness of District 2 in both maps?

19 A. Well, as a result of making District 5 sort of smaller and  
20 shifting it to the East, District 2 is now fairly large. In  
21 both map 8019 and the enacted map, it stretches from Holmes  
22 County in the Northwest all the way across to Madison and  
23 Taylor. I think that's roughly from tip to tip somewhere around  
24 190 miles, plus or minus. So now that's a fairly large  
25 geographic area.

1 Q. Now, in terms of political and geographic boundaries, I  
2 want to zoom in on CD-5 in map 8019.

3 And I believe -- Dr. Barreto, what is shown in the red  
4 dotted line here?

5 A. So this is Figure 4 from my report. And there's two  
6 different boundaries that are demarcated here. The red line is  
7 the 8019 Congressional District 5. You can see that that is  
8 wholly contained within Duval and Jacksonville City. And the  
9 black line is that of the benchmark from 2016, so the previously  
10 boundaries of that district.

11 MS. DJANG: And for the record, this is Plaintiffs'  
12 Exhibit 5042-16, which is in evidence.

13 BY MS. DJANG:

14 Q. And could you comment on how 8019, these red dots here,  
15 does or does not conform to political and geographic boundaries?

16 A. Yeah. So 8019, you can see it follows the Nassau-Duval  
17 County line there. It follows an additional political boundary  
18 on the Southern border, and so this is a map that is contained  
19 within Duval County, this district, and is also inclusive of  
20 large portions of the city of Jacksonville.

21 Q. And do you know why it doesn't contain the entirety of the  
22 city of Jacksonville?

23 A. Well, the city of Jacksonville is quite large, I believe  
24 larger than even the ability to contain one full congressional  
25 district, so it contains more, but there's even additional parts

1 of Jacksonville City.

2 Q. And do you see the river running through Jacksonville in  
3 this map?

4 A. Yes. The St. Johns, it's called.

5 Q. Can you comment on how the river factors into your analysis  
6 of the geographic boundaries that this map may or may not adhere  
7 to?

8 A. Yes. So the river is a part of the city. It's within the  
9 city. The city extends to both sides, entirely within both the  
10 city and the county. And the red dashed line here, which is map  
11 8019 District 5, you know, certainly contains an area not just  
12 there of the city and the river, but even some of the outer  
13 areas, as does the existing benchmark. It included that river  
14 inside the district because it noted that there were reasonably  
15 large African American populations on both sides of the river.

16 JUDGE WINSOR: You said it noted what?

17 THE WITNESS: The benchmark map, the existing map in  
18 the discussion of that map from 2016, that, as you can see in  
19 the picture, the river there, which is blue, is sort of right in  
20 the heart of part of the city.

21 JUDGE WINSOR: You said the map noted it. Explain  
22 that. A map is just a map.

23 THE WITNESS: Excuse me, Your Honor. I meant the  
24 legislators or the map drawers in their application of the map.

25 ///

1 BY MS. DJANG:

2 Q. So let's take a look at the demographic data, which we have  
3 on our next slide here. This is Plaintiffs' Exhibit 5042-52,  
4 which is in evidence.

5 What can you tell me about the partisan leanings of  
6 the districts that are shown here?

7 A. So this is a similar demographic and political table that I  
8 had also made for the benchmark, the 8015, and the enacted, so  
9 this is an additional series in that table. They should be  
10 viewed together.

11 What this demonstrates is that Congressional District  
12 5, which is on that last row, continues to be majority minority  
13 at 53 percent, still maintains the largest African American  
14 population in Northern Florida at 35 percent, and still retains  
15 a partisan score of electing Black candidates of choice at  
16 53 percent.

17 Q. And what did the Florida legislature conclude in terms of  
18 the performance of District 5 under this plan?

19 A. The legislature, like me, analyzed the same exact election  
20 data and concluded that this was a Black Opportunity District or  
21 a district that would likely elect Black candidates of choice.

22 Q. And did the -- in vetoing the bill, did the Governor  
23 dispute that conclusion?

24 A. The Governor questioned that conclusion. My recollection  
25 of his veto memo was that he commented on the decreased size of

1 the BVAP, of the Black voting age population. I don't believe  
2 he commented specifically about the electoral performance, but  
3 he questioned whether or not it diminished the Black vote, but I  
4 don't believe he included any data in that, more so that he  
5 commented on the -- just the percentage of Black citizens in  
6 that district.

7 Q. So in your own analysis, how did you reach the conclusion  
8 that CD-5 under plan 8019 is a performing Black district?

9 A. Well, as I said before, it's much more than just BVAP.  
10 Just looking at Black voting age population numbers alone is  
11 just one piece of information you need. It should not be the  
12 only.

13 We look at the full election results. We look at who  
14 the other voters in that district are, how the other voters  
15 vote, and compile all of the election precincts across this  
16 decade's worth of elections to determine which candidate, Black  
17 preferred candidates or white preferred candidates, who's more  
18 likely to carry this district.

19 Q. And what were your results when you looked at CD-5?

20 And perhaps you can walk us through the results --

21 JUDGE RODGERS: Could you speak up a little bit,  
22 please?

23 MS. DJANG: Yes.

24 Could you please walk us through your results  
25 regarding CD-5 on this table.

1           THE WITNESS: Yes. So here this is Figure B-15 from  
2 my report. On the right-hand side are the results of the  
3 functional analysis, or what we call the performance analysis --  
4 of previous elections. Again, just restricting to the voting  
5 precincts that would make up District 5 in map 8019, we conclude  
6 that in a majority of the elections, Black preferred candidates  
7 would win, that it represents the -- that's opportunity or a  
8 Black Opportunity District out of the five Northern Florida  
9 districts. The other four continue to support white candidates  
10 of choice.

11 Q. So you said it performed in the majority of the elections  
12 shown here. Which elections do not perform for the Black  
13 candidate of choice?

14 A. Notably, there's some -- what I would refer to as "outlier  
15 elections" in the 2014 cycle in particular, where there's still  
16 quite close election results between the Black preferred and  
17 white preferred candidate, but the Black preferred candidate did  
18 not win, some in those 2014 election years. That was and has  
19 been a well-documented, very low turnout, historically the  
20 lowest turnout election, and atypical.

21           And so in this case, when I, you know, state that I do  
22 consider it a Black performing district, I put a little bit more  
23 weight on the more recent elections, both midterms and  
24 presidentials, that are more reflective of the current  
25 population of voters who live in that district today.



1 Q. So it's true that -- so is it true that map 8015, which you  
2 testified earlier you found performed in all of the 14 elections  
3 that you analyzed, and map 8019, which performed in only nine  
4 out of those 14 -- is it true that you could conclude that both  
5 of those are Black performing districts?

6 A. Yes. In my opinion, having analyzed probably more than a  
7 hundred different types of maps and over the years, these are  
8 the kind of statistics that suggest that this is a performing  
9 district. Certainly the more recent data are more telling of  
10 the current composition of that district and gives me confidence  
11 to say that either of these, as well as potentially other  
12 configurations in this Northern Florida region, could be drawn  
13 to elect Black candidates of choice.

14 JUDGE WINSOR: Is that a different way of saying --  
15 maybe it's a term of art, but there is no diminishment or there  
16 would be no diminishment with this one?

17 THE WITNESS: I don't believe -- I agree with you,  
18 Your Honor, that in map 8019, I would not call that  
19 diminishment. I think that it still performs for Black  
20 candidates of choice and THAT when you consider both the BVAP in  
21 combination with the election results to see who would actually  
22 win, you can make that conclusion that that map would continue  
23 to perform.

24 BY MS. DJANG:

25 Q. And that's because when you're conducting this analysis,

1 Dr. Barreto, the standard isn't that the BVAP or the composition  
2 of the district has to guarantee that a certain candidate wins a  
3 particular election; isn't that right?

4 A. That's correct. Typically we just talk about having an  
5 equal opportunity to elect candidates of choice, using some of  
6 the language that Courts have handed down over the years.

7 It is our understanding as political scientists that,  
8 you know, nothing is guaranteed. They said that 2014 elections  
9 were a bit of an outlier; they were atypical, but that we look  
10 at the data to see what is the pattern and what is the most  
11 likely.

12 Here we have the partisan lean of the district, which  
13 is solidly Democrat. I believe it was 53 percent. And we have  
14 nine out of 14 elections, including the most recent election.

15 So all of that information tells me that map 8019 is a  
16 performing district for Black candidates of choice.

17 JUDGE RODGERS: Can I ask, if the 2014 election, you  
18 said, was an outlier, you said "they say that."

19 Is that in the literature? Do others agree with you  
20 in that regard? Are you talking about just Florida or  
21 nationally or --

22 THE WITNESS: I would say nationally. I'm sure that  
23 within an hour, I could probably find ten political science  
24 articles about it. It was the lowest turnout election in maybe  
25 ever, but modern history for sure, and it was contrasted with

1 the 2018 midterms only four years later, which was one of the  
2 highest turnout midterms ever.

3 And so '10 and '06 and '02, those other midterms, were  
4 sort of more in a middling point, but 2014, for a variety of  
5 reasons, has been identified as a very low turnout, atypical  
6 election.

7 THE COURT: Let me ask you a question on that same  
8 sort of line.

9 Would your view about map 8019 being a performing  
10 district for Black candidates of choice be the same, even if  
11 2014 -- if the 2014 results were not seen as outliers?

12 In other words, if you had the same -- generally the  
13 same turn out in 2014 as other elections and it wasn't  
14 historically low, but you had the nine out of 14 figure still  
15 the same, what would your opinion be?

16 THE WITNESS: I would say two things on that: First,  
17 sort of directly taking that question from you, I would say,  
18 yes, I would still conclude it is a performing district. I also  
19 do put weight on the sequence of elections, and for me, if I'm  
20 trying to understand how voters today in 2023 are going to vote,  
21 I'd rather have data from 2022 or 2020 as opposed to data that's  
22 nine years old.

23 And so it's both the number, the nine out of 14, and  
24 also the recency of elections tell me more -- I mean, it's easy  
25 to say how people back in the 1980s elections were voting.

1       Wouldn't tell us much about those voters today.

2               So we always sort of have that bias towards more  
3       recent data.

4               But secondly, I would say if 2014 had been a  
5       consistent turnout year, looking at the elections, Democrats may  
6       not have won every 2014 election, but they probably would have  
7       won some of those in 2014 if turnout had been higher in that  
8       election, and it might have been ten out of 14 or even 11.

9               We could simulate or model that by knowing what the  
10       precinct-level turnout was in '12 and what it was in '16 and  
11       creating an average.

12               THE COURT: That's it for me. Thank you.

13       BY MS. DJANG:

14       Q.     Dr. Barreto, what's your understanding of the Governor's  
15       rationale for vetoing map 8019?

16       A.     Look at the veto memo, he discusses both 8019 and 8015 in  
17       there, and my understanding was that he said that map 8019 had  
18       too low of a Black voting age population and that, in his  
19       opinion, that led to diminishment, and so he was vetoing it for  
20       the reason of reducing the Black population to only around  
21       35 percent.

22               And secondly, he called out the shape of the  
23       surrounding district of CD-4, and he said that it was bizarrely  
24       shaped and that it almost wrapped entirely around District 5,  
25       and for that reason, he said that it should not be accepted.

1 Q. And on that first point, do you agree that a BVAP at or  
2 under 35 percent makes a district unacceptable in terms of  
3 diminishment for purposes of this analysis?

4 A. No. As I said, we should not overly fixate just on the  
5 Black voting age population. We need to consider who else is in  
6 the district. Are there additional Hispanic or white voters  
7 that vote in coalition with Black voters so that their  
8 candidates of choice would be able to prevail in this district?

9 And it's -- you know, creating those thresholds are  
10 artificial. We need to look at the actual election results.  
11 And certainly, if we look at the State legislative map, the  
12 State legislative map had three or four districts that were at  
13 35 percent or less that the State called Black Opportunity  
14 Districts.

15 So even by the same logic, the State is already  
16 implementing 35 percent BVAP maps and calling them performing.

17 So -- and I agree with that. I think they're right to  
18 do that, because they looked at the totality. They looked at  
19 the election data.

20 So that's what I would do in this case.

21 Q. So on that point about other Black Opportunity Districts in  
22 these other State legislative maps, was the Fair Districts  
23 Amendment used by the legislature in the House and Senate in  
24 creating the House and Senate maps?

25 A. Yes. I mean, these districts I was just sort of referring

1 to, the State legislature regularly -- when I reviewed the  
2 record, the testimony in committee and elsewhere, they regularly  
3 referred to the Fair District Amendments to justify the  
4 nondiminishment standards in maybe as many as 40 districts, I  
5 think the Court counted when they approved the plans.

6 And so that was something that they took seriously.  
7 They did the same type of analysis that I did and Dr. Oskooii  
8 did in his report -- looked at the voting patterns, looked at  
9 the performance or functional analysis.

10 And as I just mentioned, there was at least three or  
11 four districts that were around the 35 percent range, a couple  
12 others that were in the 39 or 40 percent range, that were  
13 counted as performing or opportunity districts under the FDA.

14 Q. I think I can help you be a little bit more precise there.

15 If you turn to Plaintiffs' Exhibit 4034 in your  
16 binder.

17 A. Is it in the black binder?

18 Q. In the black binder, yes.

19 A. What was the number again?

20 Q. 4034. And it's quite a lengthy document, so we've only  
21 printed an excerpt here.

22 But do you recognize this document?

23 A. I do, yes.

24 Q. What is it?

25 A. This is the actual package that was submitted by the

1 Florida legislature that contained all of the data, what we call  
2 the "shape files" or the boundaries of the maps, the underlying  
3 data for their plan.

4 MS. DJANG: Your Honor, I'd like to move Plaintiffs'  
5 Exhibit 4034 into evidence.

6 JUDGE RODGERS: Mr. Jazil?

7 MR. JAZIL: Your Honor, I'd oppose to the introduction  
8 of this exhibit into evidence. Dr. Barreto does not discuss  
9 this specific functional analysis in his expert report. He did  
10 you see not reproduce it in (inaudible).

11 MS. DJANG: Your Honor, if you'd like to turn to  
12 Plaintiffs' Exhibit 5042 in your black binder, I would direct  
13 you to page 5042-41, in which Dr. Barreto discusses the  
14 submissions to the Supreme Court from the House and Senate with  
15 respect to the State legislative maps.

16 JUDGE RODGERS: I'm sorry. You're going a little  
17 fast. Did you say page 41 or 42? 41. Okay. Go ahead.

18 And this would be in?

19 MS. DJANG: It's paragraph 72.

20 JUDGE RODGERS: Got it. Okay.

21 MS. DJANG: So for the record: "The submissions to  
22 the Supreme Court from the House and Senate with respect to  
23 State legislative maps contained extensive data supporting the  
24 legislature's compliance with the nondiminishment standard  
25 suitable for the Court to rely on in judging the map."

1           And later, on in paragraphs --

2           JUDGE RODGERS: Well, let me stop.

3           Mr. Jazil, is that not -- 4034, is that not included  
4 in that statement?

5           MR. JAZIL: Your Honor, he's simply noting in his  
6 report that the data was submitted. There's no further  
7 discussion of how the functional analysis played out. What the  
8 various percentages were, we don't need. And the data itself is  
9 not reproduced anywhere in the report.

10          JUDGE RODGERS: Well, he references extensive data.  
11 I'm not sure what his testimony is going to be. I guess part of  
12 that is --

13          MS. DJANG: Well, Your Honor, the specific BVAP  
14 percentages that we'll be looking at are cited in the report at  
15 paragraph 81. If you'd like...

16          MR. JAZIL: Your Honor, perhaps our friend can just  
17 ask questions about it and this would be used to refresh the  
18 witness's recollection about the BVAP numbers --

19          JUDGE RODGERS: Well, paragraph 81 is fairly  
20 comprehensive in terms of its discussion of the BVAP.

21          So for now, the objection's overruled. Again, listen  
22 to the testimony carefully. If there's something you hear that  
23 you believe is not covered in one of these paragraphs in his  
24 report, please alert me to that.

25          MR. JAZIL: Understood, Your Honor. Thank you.



1 BY MS. DJANG:

2 Q. Dr. Barreto, do you recall that the Duval-only district in  
3 map 8019 was about 35 percent BVAP?

4 A. That's correct.

5 Q. Were there any performing districts in the State  
6 legislative maps that were 35 percent BVAP or less?

7 A. Yes, there were. As I just mentioned a few moments ago, my  
8 recollection from reviewing those was that there were three or  
9 four. I can see on this slide here. It looks like there were  
10 three in the House maps and one in the Senate maps that fell  
11 below the 35 percent mark that were listed as FDA-compliant  
12 nondiminishment districts by the State of Florida.

13 Q. And I apologize. On the slide it's a little small, so I  
14 can actually pull up on the ELMO.

15 JUDGE WINSOR: So when you're saying they're  
16 performing, are you saying that's somebody else conclusion, or  
17 you did an analysis and called it possibly performing?

18 THE WITNESS: I would say both. And just to clarify  
19 the questions that the attorneys were speaking of, all of the  
20 data that Florida submitted is on a redistricting website.  
21 That's the exact same dataset that Dr. Oskooii and I downloaded  
22 and used for our entire report, which is why in many instances  
23 the numbers to the decimal point are identical, because  
24 they're -- we tabulated some data and someone at the State  
25 tabulated the exact same dataset, so they're the exact same data

1 points.

2           So we took these at their word after having replicated  
3 those ones in Northern Florida as well some other ones in  
4 Central Florida in our report, and these data pieces, these  
5 tables show quite clearly that in these areas -- this is a table  
6 the State put together. In these areas that are below  
7 35 percent, they still have a performance or a functional  
8 analysis showing that the minority candidate of choice won.

9           And that was the reason it was included.

10           JUDGE WINSOR: That wasn't my question. You said -- I  
11 think you said you take them at their word, so you did not do an  
12 analysis similar to what you did in the congressional side to  
13 say this will perform in this many out of this many things;  
14 you're just saying this is what someone else called a performing  
15 district?

16           THE WITNESS: That's correct. We only analyzed the  
17 congressional districts. You're exactly right. But when we  
18 analyze the congressional districts, we noted that to the second  
19 decimal point their tables often matched ours.

20           And so when we reviewed these tables, we concluded,  
21 using the exact same dataset we were using, that for the House  
22 or Senate, if the State legislature concluded that they were  
23 performing districts, we trusted that analysis.

24 BY MS. DJANG:

25 Q. And, Dr. Barreto, that performance analysis is in the

1 materials that you reviewed in preparing your report; is that  
2 right?

3 A. Yes, that's correct.

4 Q. So just for the record, I'm displaying Plaintiffs' Exhibit  
5 4034, page 456, and this is in evidence.

6 So just so that we can you know -- it would fall on  
7 the other side, but if you could just point to us the districts  
8 to which you were referring?

9 A. For example, starting with the House districts, District 21  
10 has a BVAP of only 29 percent. District 98 has a BVAP of  
11 34.9 percent.

12 And then you also see there at the bottom House  
13 District 117. It has a BVAP of just 28.9 percent. And you also  
14 see there in the list a couple others, such as 105, which is at  
15 only 38 percent. There's another one in the 30s, I can see.  
16 62, which is only a 39.8.

17 So there are a number of districts where they applied  
18 a Florida Districts Amendment analysis to that considered  
19 nondiminishment and recommended and implemented, ultimately, as  
20 performing districts ones that were below 40 percent for sure  
21 and others that were below 35 percent.

22 MS. DJANG: We can take that down.

23 JUDGE RODGERS: I need clarification, please, on the  
24 exhibit.

25 4034, is that in, in its entirety or just as to 456?

1 MS. DJANG: I moved to include it in its entirety a  
2 few minutes ago.

3 JUDGE RODGERS: And that was all of the materials --

4 MS. DJANG: The entirety of it, yes.

5 JUDGE RODGERS: All right. That --

6 Oh, go ahead, Mr. Jazil.

7 MR. JAZIL: Your Honor, I would oppose the inclusion  
8 of 4034 in its entirety. I believe that is an appendix that the  
9 Florida legislature submitted to the Florida Supreme Court. It  
10 was late disclosed, and we object to it on that ground as well  
11 as relevancy, hearsay. It's the whole appendix. If that's what  
12 they're moving in, we object to that.

13 JUDGE RODGERS: You say it was "late disclosed."

14 What do you mean by that?

15 MR. JAZIL: Yes, Your Honor. There was an exhibit  
16 disclosure date of September 5th, and this was disclosed after  
17 that date.

18 JUDGE RODGERS: Okay.

19 Ms. Djang, was it late disclosed?

20 MS. DJANG: It was, Your Honor. It was inadvertently  
21 left off the list initially.

22 But I will note that the entirety of the contents of  
23 the appendix, again, are referenced throughout Dr. Barreto's  
24 report. He not only discusses the submissions and the fact that  
25 the House and the Senate came to certain conclusions; he also

1 discusses that the Court relied upon those conclusions, so it's  
2 no surprise to defendant that Dr. Barreto would be up here today  
3 testifying as to the details of that data.

4 JUDGE RODGERS: Well, he can and has testified,  
5 certainly, as to 456. But as to the entirety of the appendix, I  
6 don't have it. I don't know if Mr. Jazil said some of this is  
7 hearsay. Just because an expert, you know, analyzes something  
8 doesn't mean the entirety of an exhibit comes in. His testimony  
9 comes in, but...

10 MS. DJANG: Okay.

11 JUDGE RODGERS: All right. I'm going to sustain the  
12 objection.

13 456, though, is in.

14 MS. DJANG: Thank you, Your Honor.

15 *(PLAINTIFF EXHIBIT 4034-456: Received in evidence.)*

16 JUDGE RODGERS: Did you seek to introduce 437?  
17 Because they're sort of companions on this.

18 MS. DJANG: I have not, but I will display that now.

19 JUDGE RODGERS: And I apologize. For the record, when  
20 I say "437," I'm referring to 4034-437.

21 JUDGE WINSOR: Is that not the same?

22 JUDGE RODGERS: We were just talking about 4034-456.  
23 They're on the same page. We were talking about -- you're  
24 right, Judge Winsor. We were talking about -- the expert talked  
25 about 437, but there's also 456, and that's what me and

1 Ms. Djang were just talking about.

2 So I'm going to admit both of them. Mr. Jazil, I'm  
3 going to admit 456 and 437.

4 MR. JAZIL: Thank you, Your Honor.

5 JUDGE RODGERS: Thank you.

6 *(PLAINTIFF EXHIBIT 4034-437: Received in evidence.)*

7 BY MS. DJANG:

8 Q. Dr. Barreto, if you don't mind turning to Tab 4037 in your  
9 black binder. This document is in evidence.

10 What did the Supreme Court conclude when they -- when  
11 the Supreme Court reviewed the House and Senate legislative  
12 maps?

13 A. The Court concluded -- they supported the maps. They  
14 concluded specifically, I think on page 13, that the legislature  
15 had done a proper analysis of the Florida districts, the  
16 districting amendment of the nondiminishment standard  
17 specifically, and they cite, I believe, upwards of 40 districts  
18 that were created to comply with the nondiminishment standard.

19 And sort of paraphrasing, so I'd like to turn to page  
20 13. I remember that explicitly that was there. Yes, it is page  
21 13 of this exhibit where they talk about -- they support the  
22 conclusions of the legislature.

23 Q. And did anyone challenge these maps when they were  
24 submitted to the Supreme Court?

25 A. No. There was no formal challenge. There's certainly

1 opportunity for that, but no challenge was set forward.

2 Q. Okay. I'd like you to turn to Tab 7037.

3 Do you recognize this document?

4 A. I do.

5 Q. What is it?

6 A. We reviewed this as well. This is the Supreme Court of  
7 Florida, on the last day of January, January 31st directing the  
8 clerk to open the case in anticipation of the Attorney General  
9 petition, and so they're calling on this to start the process of  
10 reviewing the maps.

11 MS. DJANG: Your Honor, Plaintiffs would like to move  
12 Plaintiffs' Exhibit 7037 into evidence.

13 JUDGE RODGERS: Mr. Jazil?

14 MR. JAZIL: No objection.

15 THE COURT: Okay. Thank you. That will be admitted.

16 *(PLAINTIFF EXHIBIT 7037: Received in evidence.)*

17 BY MS. DJANG:

18 Q. So where does this document fit into the timeline of the  
19 submission and everything else that's going on in redistricting  
20 in Florida?

21 A. Well, here on the 31st of January, the plans are submitted  
22 by the State legislature. The Court is giving an opportunity  
23 for parties to issue objections if they want.

24 And it is the exact following day, February 1st, that  
25 Governor DeSantis requests his advisory memo on how to interpret

1 the Florida districts amendment in terms of nondiminishment.  
2 And so right as this is happening, it really ohms the start of  
3 that process. Clearly the Governor's staff were prepared for  
4 that. They have approximately a five- or six-page memo that  
5 they issued the following day, February 1st. But that was only  
6 pertaining to advice on the congressional district, as I recall.

7 MS. DJANG: And for the Court, that's Joint  
8 Exhibit 52, which is in evidence.

9 BY MS. DJANG:

10 Q. But, Dr. Barreto, did the Governor express any view  
11 regarding the State legislative districts?

12 A. No. There was no view at all regarding the State  
13 legislative districts. It was certainly something within his  
14 purview, as he outlined in his memo of February 1st. He stated  
15 very clearly that he was the supreme executive of the Department  
16 of State and the Division of Elections and that it was his  
17 job -- I'm paraphrasing a bit, but that it was his job to  
18 control the administration of elections to ensure that they were  
19 done in a uniform manner. And certainly past executive branches  
20 have chimed in and filed objections. I believe that was the  
21 case in 2002.

22 So it's certainly something that could have been done,  
23 but there were no objections to the State legislative maps.  
24 They were allowed to go forward by the Governor's office.

25 Q. And to be clear, the districts that are displayed on the



1 slide that we discussed with BVAP percentages below 35 percent,  
2 those were enacted by the State legislature, correct?

3 A. They were enacted by the State legislature and they were  
4 put into practice by the Secretary of State and the Division of  
5 Elections. They were -- been implemented. Primary and general  
6 elections were held. And so they were deemed lawful and, you  
7 know, acceptable by the State of Florida and the Department of  
8 State, Secretary of State.

9 Q. So what's your conclusion regarding the Governor's view of  
10 these districts after reviewing the series of events?

11 A. As I outlined in that section of my report, there are  
12 extreme inconsistencies by the Office of the Governor in the  
13 rationale for objecting to the multiple different attempts of  
14 the legislature to create CD-5, Congressional District 5, as  
15 compared to numerous other state legislative districts in both  
16 of state Senate and the state House, which used the same logic  
17 and in some cases the same boundaries and shapes in BVAP  
18 percentages to ensure nondiminishment and comply with federal  
19 and state laws.

20 And there was no objection at all. In fact, they were  
21 enacted and implemented with the support of, you know, this  
22 office which is supposed to "control" the administration of  
23 elections, by his own word in his memo.

24 So it's entirely inconsistent, and I outline with some  
25 specific examples, including some of these, but as was noted, I

1 reference some other very specific House and Senate legislative  
2 examples which I find to be entirely inconsistent.

3 Q. Sure so we can take a look at those.

4 Beginning with -- or staying with map 8019 and the  
5 Duval-only District 5, though, could you just specify exactly  
6 what the objection was with respect to compactness here?

7 A. So as it related to compactness, the objection was not  
8 necessarily to District 5, which, you know, visually and through  
9 all the compactness scores of the software program performs  
10 quite well. There's no question that District 5 is compact.

11 The Governor objected to District 4 and said that it  
12 was bizarrely shaped and that it went entirely around an  
13 otherwise smaller compact district in this Duval County region  
14 of Florida. So it was really 4 going around District 5 that he  
15 found objectionable.

16 Q. And you just alluded to the fact that this might be  
17 consistent with other districts in this map and others with --  
18 that have similarly -- perhaps you might call it irregular  
19 shapes or shapes that wrap around another district?

20 A. Yes. I found many examples, including one in this exact  
21 same region of the state.

22 Q. Okay. If we could look at the next slide.

23 What can you tell us about the boundaries of the State  
24 legislative Senate district in Jacksonville, also called  
25 District 5?

1 A. Yes. So this Figure 5 from my report shows the boundaries  
2 of State Senate District 4 and 5, which are found in the exact  
3 same region of the state of Florida as Congressional District 4  
4 and 5. And here you can see they're including a similar  
5 population and, in fact, when the State legislature drew Senate  
6 Districts 4 and 5, they took the nondiminishment standard into  
7 account in order to create a district that would allow Black  
8 voters the opportunity to elect candidates of choice. That  
9 ultimately became Senate District 5, which includes much of  
10 Jacksonville City.

11 You can see Senate District 4 has the almost virtually  
12 identical shape to Congressional District 4 in that it surrounds  
13 Senate District 5 almost in its entirety, yet no objection or  
14 problem was found with this configuration, again, in the exact  
15 same region of the state.

16 Q. And for the record, we're looking at Plaintiffs' Exhibit  
17 5042-17, which is in evidence.

18 Now we're turning to a direct side-by-side comparison  
19 of map 8019 and the State Senate map with State Senate Districts  
20 4 and 5, and these are Defendant's Exhibit 98, which is in  
21 evidence, and Plaintiffs' Exhibit 7064-1, which is in evidence.

22 So this is exactly what you were just describing; is  
23 that right?

24 A. Yes. So here you can see quite clearly, you know, going to  
25 that Northeast corner of the state. On the left side of the

1 screen is map 8019, which the Governor claimed that District 4,  
2 in yellow, wrapped around District 5, and that was not an  
3 acceptable shape. Specifically said that in his veto memo.

4 Senate District 4, also shown here in yellow on the  
5 right side of the screen, does virtually the exact same thing.  
6 It wraps entirely around Senate District 5 in order to create  
7 this sort of exurban outlying probably community of interest.  
8 And that was acceptable and that was fine, and it was enacted  
9 and it was implemented with no objection.

10 And so I found this to be one of the strongest pieces  
11 of, you know, conflicting evidence to suggest that this was an  
12 insincere attempt at making arguments against Congressional  
13 District 5.

14 Q. Let's take a look at a few others districts. This is  
15 Figure B-9 from your report, which is Plaintiffs' Exhibit  
16 5042-64, which is in evidence.

17 Can you please comment on this district?

18 A. Yes. B-9, Figure B-9, is a State Senate district. You can  
19 see here from the map it includes Districts 16, 14, and 18 are  
20 adjacent, and in particular, in my report, I call attention to  
21 Senate District 16, which the State legislature said they  
22 created for nondiminishment reasons.

23 This district is quite interesting because it's not  
24 contiguous. You can see the Clearwater-St. Petersburg peninsula  
25 has been cracked and is adjoined to some mainland portions on

1 the other side of the bay that are not connected. They're not  
2 directly connected to St. Petersburg, and you can see that  
3 they're not even directly connected to parts of Tampa, which  
4 continue to be located in District 14.

5 And so here's an example where, as you can see from  
6 the shading of the map, green dots indicate African American  
7 populations. There were, you know, Black populations in two  
8 different portions of the same region that the State legislature  
9 looked to join together in a community. Not even contiguous.  
10 They applied the FDA and nondiminishment standard to move this  
11 forward, and no objection was filed. It was accepted, said that  
12 the shape is fine, that this grouping of two Black populations  
13 was fine, and it was implemented.

14 Q. And another map you look at -- or excuse me -- another  
15 district you look at is State House District 62, which is  
16 Figure B-11 from your report, which is Exhibit 5042-65, in  
17 evidence.

18 Can you comment on the shape of that district and  
19 surrounding districts?

20 A. Yes. This is in the same region, in the  
21 Tampa-St. Petersburg region. This is even a bit more  
22 disconnected, because you can see that because House districts  
23 are smaller in size, they have to have a smaller population.  
24 You can see District 70 there. That had formerly been a part of  
25 the previous Senate District 16, but in this case, that portion

1 of African American population in St. Petersburg is connected  
2 just even further miles away across water, and it doesn't appear  
3 to have any bridge connecting it to the sort of mainland part on  
4 the other side of Tampa.

5 And so just another example in the same region where  
6 the same theory was sort of applied. And again, this was --  
7 there was no objections. It was moved forward. It was stated  
8 that this was done for protecting Black Opportunity Districts.

9 Q. And just one more. Figure B-12 of your report, Plaintiffs'  
10 Exhibit 5042-66. State House District 117.

11 A. Yes. This is a State House district that -- again, it has  
12 some of the features or design features, I guess, that Governor  
13 DeSantis objected to in his veto memo in that -- you know, he  
14 said that originally when he was speaking of 8015 that it was  
15 too long and that it appeared to try and find African American  
16 populations to connect together along the corridor.

17 Well, this is exactly what State House District 117  
18 does. You can see that it's careful to find Black communities,  
19 to draw them together in a district along a long corridor. It  
20 stretches many miles and connects those together in one  
21 district.

22 And so I use this, again, as an example of just the  
23 inconsistency of the logic that the veto memo by the Governor  
24 was applying. It appeared that it was really just singling out  
25 Congressional District 5, but if the State legislature used that

1 same nondiminishment standard elsewhere, the Secretary of  
2 State's Office, which he told us he directly controls, was okay  
3 with all that and they implemented these. And they've had  
4 elections.

5 Q. And it's your view that in looking at these maps, the  
6 reason that they were drawn this way or one explanation for  
7 their configurations is that the Senate and the House were  
8 attempting to comply with the FDA?

9 A. Definitely. They state that in their testimony, the -- and  
10 the Supreme Court in their approval note, as I said on page 13,  
11 says that there were as many as 40 districts that the State  
12 legislature complied with the nondiminishment standards in the  
13 FDA and that that was proper, and the Supreme Court says that  
14 they have no reason to oppose their conclusion.

15 So if they were taking these steps and the Governor's  
16 Office was okay with this, was implementing these maps, was not  
17 objecting these maps, my conclusion is that it calls into  
18 question why the same types of decisions that were made about  
19 Congressional District 5 were suddenly disallowed.

20 Q. And is race evidently used in how these districts that  
21 we've just been looking at, House District 117, State Senate  
22 District 5, House District 62, and Senate District 16 -- is race  
23 evidently used in how those districts are drawn?

24 A. I would say that the map drawers were aware of racial  
25 considerations, that they were probably taking other factors

1 into account. They specifically cited the FDA and the  
2 nondiminishment standards when talking about these districts and  
3 the need to create these districts. But by looking at the  
4 boundaries --

5 JUDGE WINSOR: Who did?

6 THE WITNESS: In the record during the committee  
7 hearings --

8 JUDGE WINSOR: You're talking about the map drawer?

9 THE WITNESS: The testimony of the legislators in  
10 discussing the maps and the reason for the creation of these  
11 districts. There's an extensive section about the need to  
12 observe the nondiminishment standards, and various legislators  
13 are questioning either persons from the Governor's Office or the  
14 persons involved in that drawing.

15 JUDGE WINSOR: Okay.

16 THE WITNESS: So I think it was -- I think that, you  
17 know, they were certainly aware of race. You know, I don't  
18 think that from looking at the maps and the boundaries it was  
19 the only factor. It appears to be a factor that -- one of the  
20 factors that they were aware of.

21 BY MS. DJANG:

22 Q. And looking now at State Senate District 5, what was the  
23 BVAP of that district? And you might need to go back to the  
24 other exhibit here, but --

25 A. Yeah, I might need to look at the exact table, but I



1 believe it was somewhere around 40 percent Black voting age  
2 population. I know it was lower than 50 percent because that  
3 was another argument that the Governor had used about having to  
4 hit 50 percent to be a BVAP district.

5 41.6. I see it there. It's the top line of this  
6 table. This district, Senate District 5, was -- looks like  
7 41.6.

8 Q. Okay. Thank you.

9 Okay. And you also found that race was used in the  
10 drawing of other congressional districts; is that right? Within  
11 Florida?

12 A. Yes. We argue in -- I believe it's Section 3 towards the  
13 end of our report that it appears that the map drawers were well  
14 aware of race when drawing other congressional districts in  
15 other parts of Florida based on the district boundary lines.

16 Q. So, for example, another opportunity district where Black  
17 voters can elect their candidate of choice is Congressional  
18 District 24; is that right?

19 A. Yes. Congressional District 24 had been in the benchmark  
20 as well as in the enacted plan, considered a Black Opportunity  
21 District, a Black performing district, where Black voters could  
22 elect candidates of their choice.

23 Q. So for the record, we're looking at Plaintiffs' Exhibit  
24 5042-61.

25 And can you tell us again what these -- what the green

1 is showing here in this map?

2 A. So this is a map -- there's a lot of things going on in  
3 this map.

4 This map, first of all, I'll start with the  
5 boundaries. The black boundaries are the benchmark boundaries,  
6 what the district used to look like before the 2022  
7 redistricting cycle.

8 The red dashed lines --

9 THE COURT: I'm sorry. The black is the former 24?

10 THE WITNESS: The former 24th under the 2016 plan.

11 The red dashed lines are the new 24th congressional  
12 under the enacted.

13 And then below that --

14 THE COURT: That's -- I'm sorry.

15 THE WITNESS: No problem. Please.

16 THE COURT: That's the dotted lines?

17 THE WITNESS: Yes. The red --

18 THE COURT: Because there's some solid red.

19 THE WITNESS: We would call them dashed lines, but,  
20 yes, also dotted.

21 THE COURT: Okay. That's fine. That's the new --

22 THE WITNESS: That's the new.

23 THE COURT: -- configurations of the new 24?

24 THE WITNESS: New 24th. That's correct, Your Honor.

25 And then under that is census block group data of the

1 race and ethnicity of a population, and you can make out here in  
2 this part of South Florida pink dots, portions that represent  
3 the white population; orange, which represent Hispanic  
4 population; and green, which represent the African American  
5 population.

6 BY MS. DJANG:

7 Q. And what did you observe regarding the changes made from  
8 the benchmark Black district lines and the enacted red dashed  
9 lines?

10 A. Well, there's numerous instances in which the boundaries of  
11 24 appear to get tighter and closer to the green dots or to  
12 expand to include more green dots. And I start with the  
13 Southern portion of this district, where you can see the black  
14 lines of the old 24th went a little bit further South, and in  
15 the new area there, right where you're drawing, that line has  
16 been pushed up, and it's been pushed up just to tuck in just  
17 underneath where the green population is.

18 If you follow that line North, you can see it just  
19 sort of hugs the green dots and follows that boundary, again, to  
20 create the 24th district as an even tighter population of  
21 African Americans.

22 On the Northern part of the district there's a portion  
23 in the old district where the -- there was a substantial  
24 Hispanic population. That has been cut off. You see the red  
25 dashed line where it just goes directly up and down has been

1 tucked in so that it's --

2 THE COURT: Tell me where that is.

3 THE WITNESS: If you go a little bit lower with the  
4 pen, right -- yeah, that orange area --

5 THE COURT: Got it.

6 THE WITNESS: -- there has been cut off and that red  
7 line is now tucked in closer, you can see, to the green dots.

8 And then the final portion I noted is where you had  
9 been going with the illustrator is there's an additional area  
10 that was not included in the old 24th, a very heavily African  
11 American community, and the new line extended so as to include  
12 that, presumably because it was shedding Hispanic populations in  
13 all these places that we show that they came out and saw the  
14 district needed to be balanced population-wise.

15 So I think this is an example they cited -- when I say  
16 "they," to be clear, the legislators who was discussing this  
17 district during the committee testimony -- the need to comply  
18 with nondiminishment standards and retain a Black performing  
19 district.

20 And it would appear that the map drawers really became  
21 aware of the Black population and recreated the 24th by taking  
22 into account race. And so if this was something that was  
23 objectionable up North in Jacksonville, it did not seem to be  
24 objectionable here in Southern Florida.

25 Q. Thank you.

1           THE COURT: What was the Black -- I know it's -- you  
2 say it's not the only factor, but what was the Black voting age  
3 population, if you know, of the new 24th?

4           THE WITNESS: I know I have that in my report. I'm  
5 going to turn to that and see if I can find that exact number  
6 for you. In my appendix I have the BVAP of all of the four  
7 district plans that we've been discussing today. Give me just a  
8 minute.

9           So in the benchmark enacted, this is Table A-1 of my  
10 report. The 24th district had been 44 -- 43.6 percent Black.

11          THE COURT: The new?

12          THE WITNESS: That was the benchmark. That was the  
13 old one --

14          THE COURT: Sorry.

15          THE WITNESS: -- with the Black lines, 43.6. That's  
16 according to Table A-1.

17          In the adopted, it was 42.2. So went down by about a  
18 point even after adjusting the lines.

19 BY MS. DJANG:

20 Q. Okay. So I'm just putting these up on the ELMO. For the  
21 record, we're looking at Plaintiffs' Exhibit 5042-48 for  
22 Table A-1 and 5042-49 Table A-2.

23          MS. DJANG: Your Honor, we'd like to move to offer  
24 those both into evidence.

25          JUDGE RODGERS: Okay. Mr. Jazil?

1 MR. JAZIL: No objection, Your Honor.

2 JUDGE RODGERS: So 5042-48 is already in evidence, but  
3 I don't -- I'm not sure about -- yeah, 49 is as well.

4 MS. DJANG: Okay.

5 JUDGE RODGERS: Those are both in evidence. I'm  
6 sorry.

7 MS. DJANG: Okay. Covering my bases.

8 JUDGE RODGERS: No, that's all right.

9 BY MS. DJANG:

10 Q. So turning now to the enacted plan and just focusing on  
11 Northern Florida, how would you describe the changes that the  
12 enacted map makes relative to the benchmark map?

13 A. Well, it quite clearly cracks the African American  
14 population in two ways from the benchmark plan. The first is by  
15 shifting parts -- and this is in the Duval region -- by shifting  
16 parts into CD-4, dividing the districts right along the river  
17 and shifting the rest of the Black population into CD-5. You  
18 can see that quite visually on this chart. There's a large  
19 African American population there in and around Jacksonville,  
20 which has been cracked by following the river there.

21 The second area is on the more Western portions of the  
22 district, this district in the benchmark. As we recall, it  
23 included some of these more medium-sized towns along the  
24 Georgia-Florida border, all the way over to Tallahassee, where  
25 we sit today. So that portion of the African American community

1 which had been in CD-5 is now primarily in CD-2, Congressional  
2 District 2. So parts of it were sent over into Congressional  
3 District 2. The part that remained in Jacksonville, Duval area,  
4 was then also cracked in half between 4 and 5.

5 MS. DJANG: And for the record, this is Plaintiffs'  
6 Exhibit 5042-14, which is in evidence.

7 BY MS. DJANG:

8 Q. Let's take a look at the demographic information.

9 MS. DJANG: For the record, this is Plaintiffs'  
10 Exhibit 5042-49, which is in evidence.

11 BY MS. DJANG:

12 Q. Dr. Barreto, can you walk us through the racial makeup of  
13 the North Florida districts --

14 JUDGE RODGERS: I'm sorry. I need you to repeat your  
15 question. I just couldn't hear it. Do you mind please starting  
16 over?

17 BY MS. DJANG:

18 Q. Could you please walk us through the racial composition of  
19 the North Florida districts under the enacted plan?

20 A. Yes. This is Table A-2, which we were just referring to  
21 the lower portion of this table when we were talking about  
22 District 24.

23 At the top of this table are Districts 1 through 5.  
24 These are the districts in Northern Florida, and what it  
25 demonstrates is that none of the districts has the combination

1 of Black voting age population and performance to create a Black  
2 performing district.

3 All five of the districts are reliably Republican, as  
4 evidenced from the election results in 2022. They elected five  
5 Republican candidates. Two African American Democrat candidates  
6 ran and lost. The Black population has been split, as we just  
7 discussed in the visual of the map. District 2 is now  
8 23 percent Black, District 4 is now 31 percent Black, and the  
9 remaining districts also have a smaller population.

10 So there's no district that has a large enough  
11 concentration of Blacks and has the ability to elect a candidate  
12 of choice.

13 Q. So which district here has the highest BVAP?

14 A. In the enacted and implemented plan, that would be  
15 Congressional District 4 at 31.7 percent.

16 Q. Okay. And how does that compare to the Duval-only CD-5?

17 A. The Duval-only CD-5 -- that was map 8019 -- was in about  
18 the 35 percent range, and it not only had a higher Black  
19 population, but it also had more crossover votes that voted in  
20 coalition with African Americans which allowed it to perform.

21 Q. So you're saying that it was a result of both the BVAP  
22 percentage as well as these other factors that lead to differing  
23 performance?

24 A. Correct. There's no question. You can -- there's a lot of  
25 different iterations you could draw if you wanted a Duval-only



1 district that would perform, depending on if you shifted it a  
2 little bit to the East, a little bit to the South.

3 In this case, it has a 31 percent Black population,  
4 but it does not have nearly as many other voters who were either  
5 white, Hispanic, or other who vote in coalition with Blacks.

6 So the BVAP by itself is misleading. We really need  
7 to look at the functional analysis of the performance, which is  
8 over highlighted in red, at least on the partisan lean composite  
9 score that shows that this is still a very reliably Republican  
10 district.

11 Q. Thank you.

12 So taking a closer look at the enacted Districts 4 and  
13 5.

14 MS. DJANG: I'm sorry. If you could remove that red  
15 notation there.

16 BY MS. DJANG:

17 Q. What do you observe regarding county splits, if any,  
18 between Districts 4 and 5 in the enacted map?

19 A. Well, you can see the kind of gray dashed lines are county  
20 boundaries there, and here, this District 5, which is in purple.  
21 you know, covers parts of Duval County, parts of Jacksonville  
22 City. As we said, it splits right along the river and then it  
23 extends into St. Johns County to the South, and so it splits  
24 Duval County and it splits the Black population in half.

25 MS. DJANG: So for the record, we're looking at

1 Plaintiffs' Exhibit 7190-2, which is in evidence.

2 BY MS. DJANG:

3 Q. Taking a look at this same area with the demographic  
4 information, could you please tell us what you observed?

5 A. Yes. So this map overlays the racial demographics as  
6 indicated by the dot plats. It also overlays the former  
7 benchmark boundaries. Those are, again, in solid black lines.

8 And what's evident here is that District 5 has a  
9 portion of the Black population that had formerly been connected  
10 with the rest of Jacksonville but is otherwise grouped in with a  
11 large number of white voters who vote in contrast to Black  
12 candidates of choice and that the remainder of what had been  
13 Congressional District 5 in the benchmark is also expanded to  
14 the North and to the South, to be grouped with a large number of  
15 white voters who vote in contrast to Black candidates of choice.

16 So both in District 4 and District 5 you have shares  
17 of Black populations, but none of them are large enough or are  
18 in coalition to be able to elect candidates of choice in the  
19 enacted map.

20 Q. Okay. So it's fair to say that Districts 4 and 5 split the  
21 Black community in Jacksonville into two different districts?

22 A. Yes, for sure. Just in this part of the state. Not to  
23 mention splitting part in Tallahassee.

24 But just over here, yes, over in Jacksonville Duval.

25 Q. And neither District 4 nor District 5 perform for Black

1 candidates of choice?

2 A. No, they do not. I don't think there's any debate over  
3 that.

4 Q. Dr. Barreto, have you ever heard of a map drawer who was  
5 unable to figure out how to turn on the racial demographic data  
6 in the program they were using to draw a map?

7 A. No.

8 MR. JAZIL: Your Honor, this is not in his expert  
9 report. I object to this question as beyond the scope.

10 JUDGE RODGERS: Sustained.

11 MS. DJANG: Withdrawn.

12 No further questions.

13 **CROSS-EXAMINATION**

14 MR. JAZIL: Your Honor, with your permission?

15 JUDGE RODGERS: I apologize. I thought you were still  
16 getting your materials together. I apologize, Mr. Jazil.

17 Yes, go ahead.

18 MR. JAZIL: Thank you.

19 BY MR. JAZIL:

20 Q. Good afternoon, Dr. Barreto.

21 A. Good afternoon.

22 Q. Dr. Barreto, if I heard correctly, you put your expert  
23 report together with Dr. Oskooii? Did I pronounce that right?

24 A. Correct.

25 Q. And you and Dr. Oskooii together worked up the report?

1 A. That's correct.

2 Q. And the report that you presented to the Court and the  
3 opinions you presented to the Court are your joint opinions? Am  
4 I understanding that correctly?

5 A. They're my opinions. I would say he agrees with them.  
6 It's not uncommon in this line of work to have collaborators.

7 Q. And, Dr. Barreto, you'd agree with me that Dr. Oskooii took  
8 a little bit more of a role in the section on Northern Florida  
9 in the report that you presented?

10 A. I would agree that he took a little bit more of a role in  
11 the Northern Florida section and that we both worked on it  
12 together and drew those conclusions together, but as we divided  
13 up the report, he did some more of the writing in that section,  
14 yes.

15 Q. Okay. Doctor, I'd also like to talk a little bit about the  
16 State legislative process for the State House and State Senate  
17 maps. Do you recall that testimony with my friend earlier?

18 A. Yes.

19 Q. You'd agree with me that the Governor could not veto the  
20 State House maps or the State Senate maps under the Florida  
21 Constitution, right?

22 A. That's correct.

23 Q. They went straight to the Florida Supreme Court; isn't that  
24 right?

25 A. As we just discussed.

1 Q. And, Doctor, am I correct in understanding that you took a  
2 look at the legislative record that was compiled as part of your  
3 review in this case?

4 A. We looked at a number of pieces of information. I don't  
5 know how you define "the record," so I'll sort of describe what  
6 we looked at, which was a lot of testimony before committees.

7 Q. Okay.

8 A. The accompanying attachments that may have come up; Q and A  
9 sessions, it seemed with people who were drawing the maps or  
10 giving speeches about maps.

11 Q. Uh-huh.

12 A. And so we attempted to look at as much as we could at the  
13 time we were writing this that related to the redistricting  
14 process.

15 Q. And you took a look at the Governor's written  
16 correspondence with the Florida Supreme Court, right?

17 A. Yes. I believe there were two specific things the Governor  
18 asked the Supreme Court to rule on: An interpretation on  
19 February 1st, and I believe later, sometime in late March, he  
20 issued a veto memo.

21 Q. Okay.

22 A. Both of those, I think, had a signature. I recall reading  
23 both of those.

24 Q. And did you, through your counsel, also get ahold of the  
25 Google Drive file that was kept by the Governor's Office as they

1 were drawing maps?

2 A. We relied on data that we were able to download directly  
3 off the Florida redistricting website --

4 Q. Okay.

5 A. -- which my understanding is that all parties involved use  
6 that central database.

7 Q. But you didn't get any other public records from the  
8 Governor's office that you reviewed?

9 A. I did not do any public records requests. I mostly used  
10 stuff that I believed was in the public domain.

11 Q. Okay.

12 A. Or testimony, and sometimes those legislative testimony  
13 transcripts were provided to us from counsel. I believe I  
14 explained earlier.

15 Q. And, Doctor, in any of that material that you reviewed,  
16 both the legislative material, both the material from the  
17 Governor's office, did you see any document that suggested to  
18 you that the Governor's office was focused on the 160 State  
19 House and State Senate maps?

20 A. Did I see any -- can you repeat that? I don't understand  
21 the question.

22 Q. Did you see anything in your review of all this material  
23 you've described where the Governor's office was focused on any  
24 of the State House or State Senate maps?

25 A. Well, yes. I believe the Governor had representatives

1 before the legislature describing and participating in debate or  
2 Q and A related to the State legislative maps. There were  
3 certainly people from the Secretary of State's or elections  
4 division who would have had to have been involved in, you know,  
5 creating those boundaries.

6 Q. So it's your testimony that in your review of the  
7 legislative record, you saw representatives of the Governor's  
8 office testifying about the State House and the State Senate  
9 maps? Is that your testimony? Am I understanding that right?

10 A. That wasn't the question you asked me before.

11 Q. Okay.

12 A. You asked me was anyone focused, not testifying.

13 Q. Okay?

14 A. I said that they certainly would have had to have had some  
15 focus on it, because they had to ultimately implement it.

16 Q. But you didn't say anyone in those legislative debates from  
17 the Governor's office talking about the State House or State  
18 Senate maps, did you?

19 A. I don't recall that, no.

20 Q. You saw members of the Government's office talking about  
21 the Congressional District 5 before the legislature, right?

22 A. There was a lot of that included, yes.

23 Q. And remind us: How many congressional districts are there  
24 in Florida?

25 A. There are 28 now.

1 Q. And I believe you'll agree with me there are 160 State  
2 Houses and State Senate districts, right?

3 A. That's correct.

4 Q. And you did not see any evidence anywhere of the Governor's  
5 office testifying about the 160 State House or State Senate  
6 districts, did you?

7 A. I think that's correct.

8 Q. And you discussed with my friend the Florida Supreme  
9 Court's opinion on the joint resolution concerning legislative  
10 apportionment, right? Do you recall that?

11 A. Yes.

12 MR. JAZIL: Could we pull up Plaintiffs' Exhibit 4037,  
13 please.

14 BY MR. JAZIL:

15 Q. And this is that opinion you discussed with my friend,  
16 right?

17 A. With Plaintiff's counsel, yes.

18 Q. And you walked us through some of the districts that were  
19 approved by the Florida Supreme Court as part of its review of  
20 the State House and State Senate redistricting process, right?

21 A. Yes.

22 Q. And you specifically noted page 13 of this opinion --

23 MR. JAZIL: If we can go there --

24 BY MR. JAZIL:

25 Q. -- has a place where this discussion occurred, right?



1 A. I did reference page 13. I don't know that it's the only  
2 place it occurred, but I recall them drawing some conclusions  
3 there.

4 Q. Okay. I'd like to draw your attention to Footnote 7 of  
5 this opinion. Here, the Florida Supreme Court says:

6 "Governor Ron DeSantis recently sought an advisory  
7 opinion from this Court in part seeking our views on the meaning  
8 and application of the nondiminishment standard in Article III,  
9 Section 28. For the reasons we explained, an advisory opinion  
10 to the Governor regarding whether Article III, Section 28, of  
11 the Florida Constitution requires the retention of a district in  
12 Northern Florida, we declined to issue the advisory opinion.  
13 Our decision today should not be taken as expressing any views  
14 on the questions raised in the Governor's request."

15 You see that last part, that last sentence, sir?

16 A. Yes.

17 Q. And you didn't mention this sentence in your colloquy with  
18 my friend for the plaintiffs, did you?

19 A. Well, I believe the Court is saying that they're not  
20 weighing in on the federal questions because my understanding is  
21 that this was a State Supreme Court. They probably didn't feel  
22 equipped to answer some of the questions he answered [sic] about  
23 the federal law.

24 Q. They're not expressing any views on the questions raised in  
25 the Governor's request, right?

1 A. If we can pull it back up, we can look at exactly what they  
2 say. I mean, I have no reason to doubt anything they've said in  
3 their footnote. They've obviously written that and they stand  
4 by it.

5 Q. I'd like to discuss the demographics that you discussed.  
6 That was part of your charge, right, is when you were providing  
7 an expert opinion, you look at the demographics in the region?

8 A. Yes, we did that in, I think, both Northern Florida and  
9 Central Florida.

10 Q. Sure.

11 MR. JAZIL: Let's pull up slide 5 from the  
12 presentation.

13 BY MR. JAZIL:

14 Q. Sir, you testified -- and correct me if I've got this  
15 wrong -- that Florida's population has grown and the nonwhite  
16 population is responsible for that growth. Right?

17 A. I think I said the nonwhite population contributed the most  
18 and that the white population grew by 215,000 and that the  
19 nonwhite population grew by about 2.5 million.

20 Q. Got it. And if we take a look at Hispanics in this chart,  
21 it shows that in 2010, they made up 22.5 percent of the  
22 population of the state, right?

23 A. Correct.

24 Q. And in 2020, they made up 26.5 percent of the population,  
25 right?

1 A. Correct.

2 Q. And if we go down to Black, it says that in 2010, they made  
3 up 15.2 percent of the population, right?

4 A. Correct.

5 Q. But in 2020, they made up 14.5 percent of the population,  
6 right?

7 A. Correct.

8 Q. So the Black population in Florida actually went down?

9 A. The Black alone, not in combination, population went down.  
10 I think the Black in combination might have stayed exactly the  
11 same, which I think we have in Table 2.

12 Q. Okay. So the Black population as a percentage of total  
13 population of the state either stayed flat or went down  
14 slightly, right?

15 A. I would say when you consider the two or more race, which  
16 shows a large African American population -- that's in Table 2,  
17 as I said -- most likely it stayed about the same in terms of  
18 its share. It grew in raw numbers, but the share stayed about  
19 the same.

20 Q. Or declined slightly?

21 A. According to Black alone, not in combination, it declined  
22 by 0.6.

23 Q. Okay. And the Hispanic population as a percentage grew the  
24 most, according to this chart, right?

25 A. No.

1 Q. No? How would you characterize the change in the Hispanic  
2 population in this chart, sir?

3 A. I would say that the Asian population grew at 41 percent,  
4 so as a percentage -- I think is how you phrased it -- I would  
5 say that the Asian population grew the most.

6 We also have two other categories, which is "other,"  
7 which is difficult to categorize, or "two or more races," which  
8 also grew at a larger rate than the Hispanic population.

9 Q. Got it. And as an aggregate number, the Hispanic  
10 population grew about how much, according to this chart?

11 A. 1.4, 1.5 million.

12 Q. And as an aggregate number, the Asian population grew by  
13 how much, according to this chart?

14 A. 184,000.

15 Q. Okay. So the Hispanic population as a aggregate number  
16 grew more than any other race, according this to chart?

17 A. That's correct. There's no question about that.

18 Q. So you'd agree with me that the population growth in  
19 Florida is being driven by the Hispanic population, then, right?

20 A. I would say it accounts for a substantial amount, just over  
21 half. You can see the denominator would be 2.7 above. And so  
22 probably somewhere about 55 percent of the growth is  
23 attributable to just the Hispanic population growth.

24 Q. Understood. And, sir, for Hispanics, you'd also agree with  
25 me that figuring out their partisan preferences is harder than

1 figuring out the partisan preference of other races, right?

2 A. I would not agree with that.

3 Q. You wouldn't agree with me that Hispanics tend to split  
4 their votes between Republicans and Democrats?

5 A. I would agree with that, but you asked if it was hard to  
6 figure it out. It's not hard to figure it out, because you sign  
7 up your partisanship and your race on the voter plat.

8 Q. Fair enough. I stand corrected.

9 So for Hispanics, Hispanics do split their vote  
10 between Republicans and Democrats, right?

11 A. Depends on the region of the state. In many regions of the  
12 state, the Hispanic vote is much more cohesive, and in other  
13 regions of the state, it is much more divided, as you just  
14 described.

15 Q. But, sir, you'd agree with me that Governor DeSantis won  
16 the Hispanic vote in 2022, right?

17 A. In 2022, I would agree that he did win probably somewhere  
18 in the 50s, maybe even high 50s --

19 Q. Okay.

20 A. -- percent of the Latino vote.

21 Q. And looking statewide, you'd agree with me that Hispanic  
22 candidate of choice, Marco Rubio, was elected to the United  
23 States Senate more than once, right?

24 A. He has not historically been the Hispanic candidate of  
25 choice statewide. He has historically been the Hispanic

1 candidate of choice of Cuban Americans. He has tended to lose  
2 the vote in Orlando in Puerto Rican areas. He has tended to  
3 lose the vote in Mexican-American population areas in Northern  
4 Florida and elsewhere.

5 But he has been historically the Hispanic candidate of  
6 choice of Cuban-Americans.

7 Q. And you'd agree with me in the 2022 election, he won by  
8 double digits statewide, right?

9 A. Statewide he won by double digits. His largest margin of  
10 support was undoubtedly with white non-Hispanic voters. As I  
11 said, he did win with heavily Cuban-American regions in South  
12 Florida. He received very strong support.

13 But in Orlando and Tampa, St. Pete, and both  
14 Hillsborough and Pinellas County in majority Hispanic precincts,  
15 he was not the preferred candidate.

16 Q. So, sir, just to sum up, when we're looking at Florida's  
17 demographics, we see that Hispanic voters are the principal  
18 driver of growth in the state's population?

19 A. I'd say they contributed the most.

20 Q. Okay.

21 A. 50 -- somewhere around 55 percent of the 2.7 million.

22 Q. And you'd agree with me that tended -- at the very least  
23 split their votes between Democrats and Republicans, right?

24 A. It depends on the region. I would say in South Florida,  
25 even within South Florida, there are different areas where there

1 is very high concentrated pockets of Republican Hispanic vote  
2 into the 75 percent range.

3           Once you get outside of Miami City and get a little  
4 further South, there are pockets where majority Hispanic  
5 precincts are voting 65 percent Democrat, and then there are  
6 many in Dade County that are split equally 50/50. If you get to  
7 Orlando, Orange or Osceola Counties, you're going to get usually  
8 around 68 to 72 percent Democrat Hispanic vote, fairly cohesive.  
9 Those are places like where Darren Soto was elected, Puerto  
10 Rican Democrat.

11           So I don't necessarily agree with the conclusion that  
12 Hispanics "split their vote," because there's such a diverse  
13 Hispanic community here in Florida that you have to go region by  
14 region.

15           At the statewide level, when you zoom out that far, it  
16 might look that way, but that's not the way we would analyze it.

17 Q.   So the statewide level might look that way, right?

18 A.   I think that's what I just said.

19 Q.   Yeah. I'm just agreeing with you.

20           So when you're talking about the change in Florida's  
21 demographics being driven by minority voters, we're really  
22 talking about Hispanic voters driving the increase in the  
23 demographics, and I believe you just agreed with me that at the  
24 statewide level, Hispanics do tend to split their votes between  
25 Republicans and Democrats, right?

1 A. So if you look at Table 2 in my report, which is on page 11  
2 of 5042. This uses the census ACS data to try and get closer to  
3 when the redistricting happened, so it uses 2011 and 2021 as the  
4 ten-year marks.

5 And this is probably the most informative data to  
6 understand the demographic changes in the state. As I said, it  
7 comes from the census. It continues to show that the Hispanic  
8 population grew by about the same amounts, 1.47 million. But it  
9 also demonstrates that Black alone or in combination also grew  
10 pretty substantially by about 600,000. And so when you add  
11 Black alone or Black in combination, it actually increased.  
12 Their population increased by .6.

13 So I'm not disputing that the Hispanic population grew  
14 quickly and the most. It's a fact, by about 1.4 million. But I  
15 think it's a mistake to say that that's the only reason -- I  
16 know it's a mistake to say that's the only reason Florida got an  
17 additional congressional district. It was the entire growth,  
18 including the 600,000 additional African American population  
19 growth in the state, that contributed to the Florida getting an  
20 additional district.

21 Q. Sure. And that wasn't my question. Right? Because --

22 A. Well, you said they were driving it, and I was trying to  
23 explain that that seems to imply that it was just overwhelmingly  
24 Hispanic population growth, and so I was disagreeing with  
25 that -- you know, verb in that sense that they were certainly a



1 large contributor, but I also agree and conclude that the  
2 African American population did grow substantially.

3 Q. In aggregate numbers?

4 A. Correct. I mean, that's how you get another congressional  
5 district.

6 Q. And the white population also grew in aggregate numbers,  
7 right?

8 A. The white non-Hispanic alone grew the smallest in aggregate  
9 numbers of any of the four racial groups.

10 Q. Understood.

11 A. Even smaller than Asian.

12 Q. But it also contributed to Florida getting the additional  
13 congressional seat, right?

14 A. It probably didn't. If the white population had been zero,  
15 Florida would still have gotten the additional congressional  
16 district.

17 Q. And the Asian population also grew in aggregate numbers,  
18 right? We just talked about it. 184,000, right?

19 A. 237,000, according to Table 2?

20 Q. And 184,000 according to Table 1?

21 A. That's right.

22 Q. I'd like to go on to slide 17 from the presentation.

23 Do you recall this slide, sir?

24 A. I do.

25 Q. And here, if I understood it correctly, you were trying to

1 show how there was a common community of interest among  
2 benchmark District 5, 2 -- benchmark District 5 and enacted  
3 Districts 2, 3, 4, and 5, right?

4 A. I was -- I mean, the mean purpose -- we have to look at the  
5 text surrounding this table in my report to get specific.

6 But the questions that I was asked earlier today, I  
7 think, revolved around contrasting benchmark 5 to the other four  
8 that are listed here in the columns.

9 Q. But your point was to show that this links the various  
10 parts of North Florida into a community of interest, right? Or  
11 did I misunderstand that?

12 A. That benchmark 5 had.

13 Q. That benchmark 5 was a community of interest, right?

14 A. I believe that the point of this was to say that benchmark  
15 5 had grouped together a group of voters that are distinct from  
16 any of the other enacted districts in that they have a lower  
17 median income, a higher poverty rate, a higher percentage of  
18 children living in poverty, and a lower educational attainment  
19 grade, that it had a unique characteristic that we don't see  
20 replicated in any of the enacted districts.

21 Q. But you'd agree with me that this comparison is limited to  
22 the enacted Districts 2, 3, 4, and 5? We don't know anything  
23 else about the other 24 enacted districts to use as a comparison  
24 in this chart, right?

25 A. I was just comparing them to the four districts where the

1 Black population had been cracked into, so none of the persons  
2 who were formerly in District 5, benchmark, were distributed to  
3 anything except these four districts. These were the places  
4 that they were distributed.

5 And my point was to say this is what benchmark 5 used  
6 to look like. When you redistribute those folks into one of  
7 these other districts, they're no longer in a similar district  
8 that they used to be in. They have been shifted into either a  
9 higher income or a lower poverty district.

10 Q. Okay. But looking at this chart, we can't tell whether or  
11 not benchmark District 5 is similar to or dissimilar from the 24  
12 other enacted districts in the congressional map, right?

13 A. No. I wasn't attempting to make that comparison. I was  
14 just attempting to make the comparison in the Northern Florida  
15 region where those District 5 voters were shifted.

16 Q. Okay. Now, Doctor, you talked about Northern Florida in my  
17 last answer [sic].

18 MR. JAZIL: And just so we're clear, can we pull up  
19 slide 7, please.

20 BY MR. JAZIL:

21 Q. Doctor, am I right in understanding that you're describing  
22 Northern Florida as what were benchmark Districts 1, 2, 3, 4,  
23 and 5?

24 A. I would say most of the -- at least counties that are  
25 pictured here, I know it starts to get to probably in the

1 Northern reaches of Central Florida there.

2 Q. Okay.

3 A. But looks like probably -- I can't tell if that's 6 in dark  
4 green to the right and 11 in light green. Probably also would  
5 include at least the Northern parts of Florida.

6 But I would agree that 1 through 5 is the main focus,  
7 yes.

8 Q. Okay. So from right here in Escambia County to Duval  
9 County, right?

10 A. What was the question?

11 Q. So part of how you're describing Northern Florida is from  
12 Escambia County to Duval County, right?

13 A. The sort of East-West boundaries of the Northernmost part  
14 of Florida, certainly.

15 Q. And then the Southern boundary would be around here,  
16 Marion County, right?

17 A. Somewhere in there. As I just said in my answer, that dark  
18 green district to the right, you know, probably looks like it  
19 might be part of Northern Florida. I don't know that there's an  
20 official demarcation, but it would appear to be in the sort of  
21 Northern part of the state.

22 Q. Okay. And I'm just trying to set a common parlance for my  
23 next line of questioning.

24 So we're defining Northern Florida is being from  
25 Escambia County in the West to Duval County in the East and

1 South to Marion County, right? Can we agree on that?

2 A. Generally.

3 Q. Okay. I'll take the "generally."

4 MR. JAZIL: Can we go on to slide 15.

5 BY MR. JAZIL:

6 Q. And, sir, this is a slide where you showed us your racially  
7 polarized voting analysis, right?

8 A. Yes.

9 Q. And you use this racially polarized voting analysis in your  
10 functional analysis for the benchmark map 8016, 8019, and the  
11 enacted map, right?

12 A. I think that's right.

13 Q. So this racially polarized voting analysis is a critical  
14 ingredient of the functional analysis that you've conducted for  
15 every map that you've looked at, right?

16 A. It's one of the ingredients.

17 Q. But it is one of the critical ingredients, wouldn't you  
18 agree with me? Without the racially polarized voting analysis,  
19 you can't do your functional analysis, can you?

20 A. You'd need to know which candidates were supported by Black  
21 or white voters, which in our case, one of those sources is the  
22 racially polarized voting analysis.

23 Q. Okay. And for this racially polarized voting analysis, you  
24 looked at voters in what we talked about as Northern Florida,  
25 right?

1 A. I think we specifically said Northern Florida congressional  
2 districts.

3 Q. Sure.

4 A. So I think we, as we just discussed, limited those to  
5 Districts 1 through 5.

6 Q. Districts 1 through 5 from Escambia in the West to Duval in  
7 the East and South to Marion, right?

8 A. Wherever those boundaries were, that's the voters we  
9 brought into the dataset.

10 Q. Okay. And let's take a look at this racially polarized  
11 voting analysis. Let's focus on one, the gubernatorial race  
12 from 2018 between Governor DeSantis and Mayor Gillum.

13 Do you see that, sir?

14 A. I do.

15 MR. JAZIL: And can we blow that up a little?

16 JUDGE WINSOR: Which slide is this, Mr. Jazil?

17 MR. JAZIL: It's slide 15, Your Honor.

18 JUDGE WINSOR: Thank you.

19 BY MR. JAZIL:

20 Q. And so this racially polarized voting analysis for North  
21 Florida is showing that white voters would vote for Mayor Gillum  
22 30.4 percent of the time and for Governor DeSantis 69.6 percent  
23 of the time, right?

24 A. That's what it shows, yes.

25 Q. So about three in ten voters in North Florida who were

1 white would cast their ballot for Mayor Gillum, right?

2 A. Correct.

3 Q. And that's three in ten voters from Escambia in the West to  
4 Duval in the East all the way South to Marion, in what you've  
5 defined as Northern Florida?

6 A. It's the average of the entire region.

7 Q. Okay. And, sir, if we were to focus only on, let's say,  
8 Leon County, if we were doing our racially polarized voting  
9 analysis, wouldn't you agree with me that the white share for  
10 Mayor Gillum would go up?

11 A. We would have to look at the data. Whatever the data told  
12 us is what the answer would be.

13 Q. Okay. So if we defined the region narrowly and focus more  
14 on the counties that were part of, say, benchmark District 5,  
15 and that focused analysis included Leon County with its large  
16 universities, its large student population, wouldn't you agree  
17 with me that the white share for Mayor Gillum would go up?

18 A. We would have to look at the data. I mean, if you go get  
19 the data, we can run it right now, and I'll agree that whatever  
20 the answer is is the answer.

21 But without looking at the actual voting data, I don't  
22 know, sitting here, how folks, you know, in specific precincts  
23 voted.

24 But all of that data for Leon County goes into the  
25 functional analysis.

1 Q. Together with the data from Escambia County, right?

2 A. No.

3 Q. Escambia County wasn't part of Northern Florida in your  
4 analysis?

5 A. There's two different parts here. This is just telling  
6 us -- this data doesn't get fed in in some sort of model into a  
7 functional analysis. This is just answering the question for  
8 us: Who did white voters prefer; who did Black voters prefer?  
9 It's just telling us the answer to a question.

10 For the functional analysis, when we look at whether  
11 or not any configuration of districts function, like 8015, which  
12 goes over into Leon County, those exact precincts that you're  
13 talking about would be included in the functional analysis,  
14 which may be why it still performs and continues to perform,  
15 because there might be some white voters who vote in  
16 coalition -- I explained this earlier -- with Black voters.

17 So only the precincts which are included in a district  
18 are included in the functional analysis.

19 Q. And we'll get to the functional analysis in a bit.

20 For the racially polarized voting analysis, if you  
21 focused just on Leon County, do you have any reason to doubt  
22 that the share of the white vote for Mayor Gillum would go up?

23 A. I would have to look at the data, and whatever it told me  
24 the answer was is what we could put in the table. It wouldn't  
25 be difficult to do.



1 Q. But the racially polarized voting analysis that you have  
2 listed here includes Leon County together with all of the  
3 counties from Escambia to Duval, right?

4 A. It's the average of the entire region. And the entire  
5 point of this is to tell us in the region as a whole, which my  
6 understanding is that the State agreed to all this in the other  
7 case. There's no dispute over these facts. These are facts.

8 In the region as a whole, white voters block vote  
9 against Black voters' candidates of choice, that this is  
10 happening in this area, and that none of the congressional  
11 districts enacted support Black candidates of choice.

12 And so we're only trying to answer that question with  
13 racially polarized voting data: Who is the Black candidate of  
14 choice, and who is the white candidate of choice?

15 But to your point, you can confine that region however  
16 you want. If the central question of this Court was only about  
17 Leon County and that was it, we would only be analyzing data  
18 from there.

19 Q. Doctor, did you define the phrase "Northern Florida" for  
20 purposes of your report? You chose how to define it, right?

21 A. I said it's the five congressional districts here.

22 Q. Okay.

23 A. We have that in the parentheses under every table to make  
24 sure we're being clear.

25 Q. I got it. And you're the one who picked, or Dr. Oskooii is

1 the one who picked how best to define the phrase "Northern  
2 Florida"?

3 A. We were looking at the districts in the region where the  
4 voters had been distributed, as I said.

5 Q. And no one told you to focus specifically on Leon County or  
6 focus specifically on Duval County, right? You all chose to  
7 define "Northern Florida" the way you do?

8 A. We chose to define it in where the voters in the benchmark  
9 map had been split into. So if the voters in Benchmark CD-5, if  
10 people had drawn North-South districts so that a district went  
11 from Tallahassee down to Orlando, then we would need to consider  
12 part of that.

13 But they didn't. The voters in benchmark District 5  
14 were only redistributed to these other congressional districts.

15 MR. JAZIL: Can you pull up slide 71, please.

16 BY MR. JAZIL:

17 Q. So you're saying, Doctor, that the voters from benchmark  
18 District 5 were split into a congressional district that  
19 included Escambia County?

20 A. They were included in congressional districts that were  
21 split, and that's why in the other table we show exactly  
22 functional analysis for 1, 2, 3, 4, and 5.

23 But the voters in Congressional District 5 were  
24 split -- we just discussed this earlier -- some into District 5  
25 in the enacted, some into District 4. That's on the Eastern

1 part. A lot into District 2, which is in the sort of Central  
2 Western part, and then the balance came into District 3.

3 Q. And who went into District 1?

4 A. District 1 is largely unchanged.

5 Q. Okay. Thank you.

6 Can we go on to -- Doctor, I'm going to get into the  
7 functional analysis in a bit, but I did have a question for you.

8 MR. JAZIL: If we go to slide 14, please -- pardon me.  
9 Slide 20.

10 THE COURT: What document did you say, Mr. Jazil?

11 MR. JAZIL: Pardon me?

12 THE COURT: What number did you say?

13 MR. JAZIL: 20, please.

14 THE COURT: 20?

15 MR. JAZIL: Yes, sir. Slide 20.

16 BY MR. JAZIL:

17 Q. Doctor, this is the demographic and political data  
18 statistics by congressional district that you provided.

19 And in here, this is for plan 8015, right?

20 A. That's correct.

21 Q. And in here it says that the minority share of the  
22 population in Congressional District 5 is 57.46 percent.

23 Do you see that, sir?

24 A. I do.

25 Q. And, Doctor, I was hoping you could explain to us why it is

1 that when I sum up Black, Hispanic, Asian, native, and Pacific,  
2 the number doesn't quite add up to 57.46. I get 58.56.

3 Why the discrepancy, sir?

4 A. Well, as you probably know, Hispanic is not a racial group;  
5 it's an ethnicity. And so there's a small percentage, it sounds  
6 like maybe one, that might have marked Hispanic and Asian or  
7 Hispanic and Black. And so "Hispanic" refers to anyone who  
8 marked the Hispanic ethnicity question.

9 Q. Okay. Fair enough.

10 Doctor, I'd like to now turn to the functional  
11 analysis that you did. We talked about the racially polarized  
12 voting analysis, which you agree with me is an ingredient in the  
13 functional analysis that you conducted for the benchmark plan,  
14 plan 8015, plan 8019, and the enacted plan, right?

15 A. It gets you to the total answer, but as I said, it's a  
16 stand-alone piece that just answers the first question: Who do  
17 Black voters prefer; who do white voters prefer?

18 The real meat of the performance analysis is just  
19 taking the precincts and just tallying up the votes.

20 Q. And the racially polarized voting analysis is how you know  
21 that the Democrat is the Black preferred candidate of choice and  
22 the Republican is the white preferred candidate of choice,  
23 right?

24 A. That's correct.

25 Q. That's how we know when we're looking at functional

1 analysis that where we see the Democrat winning, that is a test  
2 election where the Black preferred candidate of choice won or  
3 lost, right?

4 A. That's correct.

5 MR. JAZIL: And so if we pull up slide 21, please.

6 BY MR. JAZIL:

7 Q. This is the functional analysis result for plan 8015,  
8 right? This is the Leon to Duval configuration that the  
9 legislature passed as a secondary map during the 2022 cycle,  
10 correct, sir?

11 A. Yes. 8015 is the map that improves upon what is similar to  
12 the benchmark for CD-5.

13 Q. Okay. And looking at this, we see that the last column  
14 looks at CD-5, right?

15 A. That's correct.

16 Q. And here we see that in 14 out of 14 test elections, the  
17 Black candidate of choice prevails, right?

18 A. That's correct.

19 Q. And we have the test elections on the far left column,  
20 correct?

21 A. Correct.

22 Q. And then as you're doing your functional analysis for plan  
23 8015, plan 8019, the enacted plan, the benchmark plan, the test  
24 elections all remain constant, correct?

25 A. That's right.

1 Q. So we have this list of 14 test elections that we use to  
2 gauge whether or not the Black preferred candidate of choice won  
3 or lost, right?

4 A. I would say there's one other election that we reference,  
5 which is just the outcome of the 2022 congressional election. I  
6 believe a couple of times in here, we say that the two Black  
7 candidates who ran in '2 and '5 lost and that all five Northern  
8 congressional -- Northern Florida districts elected white  
9 candidates of choice.

10 Q. Okay. So this is for 8015, right? And I'm not going to  
11 pull this up again because I think we'll agree on the answer.

12 For the benchmark plan, when we looked at the  
13 functional analysis for the former Congressional District 5, you  
14 agree with me that that benchmark district also performed 14 of  
15 14 times, right?

16 A. I believe that's correct, yes.

17 Q. So let's take a look at plan 8019 now.

18 MR. JAZIL: If we go on to Figure B-15.

19 Pardon me. I don't remember the slide.

20 Slide 26.

21 THE WITNESS: This is 8019?

22 MR. JAZIL: Yes, sir.

23 BY MR. JAZIL:

24 Q. And it should be up on your monitor.

25 A. Yeah. Got it.

1 Q. Okay. And you talked to my friend about this particular  
2 election -- pardon me -- this particular functional analysis,  
3 and we agree that there were five elections, 2016 U.S. Senate,  
4 2016 Governor, 2014 --

5 A. 2014 was Governor.

6 Q. 2014 Governor. Pardon me.

7 I apologize. There were five elections where the  
8 Democrat candidate of choice was not elected, right, in 8019?

9 A. That's correct.

10 Q. Okay.

11 A. Most were in 2014, but the 2016 U.S. Senate was not,  
12 although the 2016 U.S. president was in the same cycle.

13 Q. So we had one, two, three, four of those elections in 2014,  
14 one in 2016. And in 2016, as you just pointed out, sir, the  
15 Black preferred candidate of choice won in one election and lost  
16 in the other, right?

17 A. In map 8019, CD-5, yes.

18 Q. And I have a few questions about this, but before I go on  
19 to them, sir, can you --

20 Do you have a copy of your expert report in front of  
21 you?

22 A. I do.

23 Q. Can you point me to the page in your report where you  
24 discuss the 2014 elections being "outliers"?

25 A. I don't know if I discussed that in there. That was in

1 response to a question.

2 MR. JAZIL: Your Honor, since it wasn't included in  
3 Dr. Barreto's report, I'd ask that the Court ignore that portion  
4 of Dr. Barreto's testimony about the 2014 election being  
5 outliers.

6 JUDGE RODGERS: All right. We'll take your request  
7 under advisement.

8 MR. JAZIL: Thank you, Your Honor.

9 BY MR. JAZIL:

10 Q. And then, Doctor, I notice in here that under plan 8019,  
11 for Congressional District 2 and Congressional District 3 for  
12 the 2012 election, the Black preferred candidate, Senator  
13 Nelson, wins.

14 Do you see that, sir?

15 A. I do.

16 Q. And you concluded that Congressional District 5 in plan  
17 8019 was a Black performing district because it performed in  
18 nine of 14 elections, right?

19 A. Yes.

20 Q. Do you think that Congressional District 2 and  
21 Congressional District 3 are Black performing districts if they  
22 perform in one of 14 elections?

23 A. I do not.

24 Q. But you agree with me that if a district performs in 14 of  
25 14 elections, it is, beyond doubt, a Black performing district,



1 right?

2 A. Sure.

3 Q. So there's some continuum where we have zero performing  
4 elections on one end, which is very clearly not performing,  
5 right, and we have 14 of 14 on the other end, which is very  
6 clearly performing for Black voters, right?

7 A. I would say zero out of 14 and 14 out of 14 are certainly  
8 different from each other.

9 Q. Great. And would you not agree with me that we can place  
10 this on a continuum where, on one end, you have zero and the  
11 other you have 14?

12 A. Well, I don't think that was the task that I was asked to  
13 consider. It was whether or not, from the perspective of a  
14 political scientist, if you looked at this district, would you  
15 conclude that it's a performing district.

16 And the answer is yes, it is a performing district.

17 Q. Okay. So you're bringing some expertise, some subjective  
18 expertise, when you're saying that nine out of 14 is a  
19 performing district, one out of 14 is not?

20 A. I would say I'm bringing, you know, my entire experience  
21 writing and publishing and teaching about this topic.

22 I also mentioned earlier that it's not just the raw  
23 number; it's the recency, and I explained that the 2014  
24 elections, for anyone interested in knowing facts, are outlier  
25 elections -- they were quite atypical -- and that the more

1 recent elections that we've had would inform me more.

2           So you have to consider all those pieces of  
3 information. When were these elections that Democrats lost?  
4 What were the conditions and why -- in which they lost them? Is  
5 this just randomly happening? Is every election a 50.5 to 49.5  
6 toss-up, or do we see a pattern here where Democrats, at least  
7 in most recent elections, are comfortably winning by double  
8 digits? Which is the case?

9           All of those pieces of information lead me to believe  
10 and conclude that this is a performing district.

11 Q. Okay. And, sir, you talked about the recency of the  
12 elections. But you'd agree with me that you and the Florida  
13 legislature selected all 14 of these particular elections as  
14 appropriate test elections to run your functional analysis,  
15 right?

16 A. I would agree that these are the 14 elections that were in  
17 the Florida redistricting data website that we downloaded. We  
18 probably ran them because that's what they included, and I have  
19 no problem with including these elections in my analysis. I'm  
20 just telling you it's also the case, even in instances of zero  
21 out of 14, or 14 out of 14, that more recent elections are  
22 undoubtedly telling you more about how the current voters who  
23 live there today will perform as opposed to those elections back  
24 in 2012, 2014.

25 Q. Okay. Sir, you'd agree with me that this subset of test

1 elections does not include elections from the '60s, the '70s,  
2 the '80s, the '90s, and the 2000s, does it?

3 A. Exactly. It does not.

4 Q. Yeah. So these 14 test elections that have been selected  
5 to run the functional analysis and tell us whether or not a  
6 district is Black performing or not are all recent elections  
7 when considered within the wide scope of --

8 A. Well, I mean, compared to the founding of the State of  
9 Florida they're recent. But it's undeniable that the 2020  
10 election is more recent than the 2012 election.

11 All I'm -- I'm not against any of the data in here.  
12 I'm just saying that if you are trying to draw a conclusion,  
13 you're naturally going to look at how is the district trending?  
14 Is it moving in this direction? Are the voters more supportive  
15 of these candidates today?

16 And, you know, if we could -- if the State would have  
17 provided data on 2022, we would have loved to have considered  
18 that 2022 data.

19 Q. Let me ask the question another way.

20 Did you, in your review of the Florida legislative  
21 materials, see anywhere a statement from the Florida legislature  
22 saying that they are weighing the more recent elections more  
23 than the ones from 2012 or 2014?

24 A. I don't recall if they gave an assessment, but I'm telling  
25 you from a political science perspective, they should have,

1 because what if they had gone to 2010? That's only two more  
2 years back. What if they had gone to 2008?

3 It's without question, that, how the district looks  
4 today in 2023 is most similar to how the district looked in  
5 2020. So those elections, they tell us more about how the  
6 district is trending.

7 JUDGE RODGERS: Mr. Jazil, we've been going two hours.  
8 Is this a good stopping point for a recess? If you have another  
9 question or two --

10 MR. JAZIL: Yes, Your Honor. I was going to move on  
11 to another slide.

12 JUDGE RODGERS: All right. Thank you.

13 Ladies and gentlemen, we'll be in recess for, you  
14 know, 15 minutes. We'll be back at 3:45.

15 *(Recess taken from 3:31 p.m. to 3:48 p.m.)*

16 JUDGE RODGERS: Be seated please. You're still under  
17 oath.

18 And, Mr. Jazil, you may proceed.

19 MR. JAZIL: Thank you, Your Honor.

20 Can we go to Dr. Barreto's report, Plaintiffs' Exhibit  
21 5042-31.

22 BY MR. JAZIL:

23 Q. Doctor, before the break, we were talking about the  
24 functional analysis results that you presented in your expert  
25 report, and we went through a few of them. I'd like to focus on

1 the functional analysis results for the enacted map that the  
2 Florida legislature passed and Governor DeSantis signed in April  
3 of 2022.

4 A. Okay.

5 Q. And you'd agree with me that Figure 8 from your report  
6 shows the functional analysis results for the enacted map,  
7 right?

8 A. I think Figure 8 is the benchmark and Figure 9 is the  
9 enacted.

10 Q. Pardon me. I stand corrected.

11 Figure 9 is on page 31, is the enacted map?

12 A. Now I would agree.

13 Q. Great. Thank you, Doctor.

14 And before I ask questions about this, Doctor, did you  
15 see a functional analysis result presented anywhere by the  
16 Governor of Florida for the enacted map?

17 A. I don't believe in the two memos that I refer to -- I don't  
18 believe the Governor included any data at all.

19 Q. And so this functional analysis that you did for the  
20 enacted map, this is your work product, right?

21 A. I believe the State legislature also reviewed the districts  
22 when considering the districts.

23 Q. Okay.

24 A. That was a part of what they considered.

25 But this Table 9, Figure 9, is definitely my work

1 product.

2 Q. Sir, can you point me to where the Florida legislature  
3 conducted a functional analysis for the districts in the enacted  
4 plan?

5 A. I don't know off the top of my head. I just know that  
6 there was a great deal of functional or performance analysis  
7 done over the districts. That was something that was discussed  
8 and debated during the legislative record.

9 Q. But you don't know whether the legislature did a functional  
10 analysis for the enacted map as presented to them in April of  
11 2022, right?

12 A. I don't recall if they did one in April or not. I know  
13 that they did conduct analysis of the other two maps we  
14 discussed, 8015 and 8019.

15 Q. And, Doctor, as we look at this functional analysis for the  
16 enacted plan from Figure 9 of your report, which you put  
17 together, you'd agree with me that for the 2012 U.S. Senate  
18 race, CD-2, CD-3, and CD-4 performed for the Black candidate of  
19 choice, right?

20 A. Correct.

21 JUDGE RODGERS: Is this in evidence?

22 THE COURT: Yes, 5042-31.

23 JUDGE RODGERS: This is 32. I don't think 32 --

24 THE COURT: Oh, you've shifted to another one?

25 JUDGE RODGERS: Let's just get it straight.

1 Are we on 32 -- I think it was page 31, maybe.

2 MR. JAZIL: Your Honor, it's Figure 9 from page 31.

3 The numbering conventions that I believe my friends are using is  
4 5042-32.

5 JUDGE RODGERS: 32 is not in evidence.

6 MR. JAZIL: It is not in evidence. I'll move it into  
7 evidence, Your Honor.

8 JUDGE RODGERS: Okay.

9 MS. DJANG: No objection.

10 JUDGE RODGERS: Thank you. 5042-32 is now in  
11 evidence. Thank you.

12 *(PLAINTIFF EXHIBIT 5042-32: Received in evidence.)*

13 BY MR. JAZIL:

14 Q. And, Doctor, in looking at the functional analysis for  
15 CD-4, when we look at the 2020 race, we see that the split  
16 between President Biden and President Trump in that election was  
17 46 percent to 52.7 percent, right?

18 A. In CD-4?

19 Q. Yes, sir.

20 A. That's correct.

21 Q. Would you characterize that as a competitive race in CD-4?

22 A. Well, if it had been a congressional race, it would have  
23 been close, probably close to competitive. I believe the  
24 congressional candidate in 2022 carried the district by 20  
25 points.

1 Q. Okay.

2 A. And so this, you know, aggregation of precinct results in  
3 CD-4 suggests that there's somewhat of a support for Black  
4 preferred candidates. They get up to 46, but not quite enough  
5 to be able to win that election.

6 Q. Okay. Let's take a look at the 2018 gubernatorial race in  
7 CD-4, where Mayor Gillum got 47.1 percent of the vote and  
8 Governor DeSantis got 52 percent of vote.

9 Would you characterize that as a competitive race?

10 A. Well, again, Gillum and DeSantis weren't running only in  
11 that district, so I wouldn't use the word "competitive," but I  
12 would say that the election results just subset to CD-4 were  
13 close.

14 Again, this is a common tactic when we observe what's  
15 called "cracking" is that there's still a fairly large  
16 population in there, but not quite large enough to actually win.

17 Q. Got it.

18 And if one were to take a close look at this  
19 functional analysis for the enacted map that you put together,  
20 we would see some competitive races across CD-2, 3, and 4, if we  
21 were looking at specific test elections in those districts,  
22 correct?

23 A. I don't think either CD-2 or CD-4 under any scenario could  
24 be considered competitive for Black candidates of choice. The  
25 candidates who ran in 2022 lost by very large margins.



1 Q. That wasn't my question, sir. I was talking about the  
2 functional analysis results that are represented on this chart  
3 that you put together.

4 You'd agree with me that looking at the results for  
5 CD-2, 3, and 4, we see some competitive races, right?

6 A. I would say that some are close, yes. But they are  
7 consistently in the losing direction in virtually every case  
8 minus the 2012 U.S. Senate that you pointed out earlier.

9 Q. So let's take a look at the 2014 gubernatorial election in  
10 CD-2. There, Governor Scott gets just over the 50 percent  
11 threshold at 50.7 and Governor Chris was at 45.4, right? That  
12 would be a competitive election result based on a functional  
13 analysis?

14 A. Yeah, I would say anything within that five-point range is  
15 a close tallying of the election results.

16 But, again, they're consistently in one direction in  
17 that those green bars, or the Black preferred candidates, are  
18 always shorter. They're losing all of these close elections.

19 Q. With the exception -- and we can go back to it -- the 2012  
20 U.S. Senate race in CD-2, 3, and 4 were the Democrat, the Black  
21 preferred candidate in your analysis wins, right?

22 A. That's right.

23 Q. Doctor, that is the functional analysis portion of my  
24 cross.

25 A. All right. That was fun.

1 Q. That's thankful for both of us.

2 I'd like to move on to slide 19 from my friend's  
3 presentation.

4 Here, Doctor, we have the side-by-side benchmark  
5 District 5 and plan 8015, which was the secondary plan in what  
6 the legislature passed in March of '22 and which the Governor  
7 vetoed, right?

8 A. That's correct.

9 Q. And if I understood your testimony correctly, you said that  
10 the legislature in plan 8015 kept the general shape of benchmark  
11 District 5 but cleaned up the edges some, right?

12 A. I would generally agree with that. I don't remember  
13 exactly what I said, but that sounds about right.

14 Q. Yeah. So the -- the portions that it cleaned up would be  
15 in Duval County, right? If we can take a look at the benchmark  
16 district where we had the tentacles, and we take a look at this  
17 horse head in 8015, right? That's what you were referring to,  
18 where there was some cleanup done?

19 A. That's one portion, yes.

20 Q. And the other portion would be this finger in the benchmark  
21 plan, which has been eliminated in the plan 8015, right?

22 A. That's a secondary area.

23 Q. Yeah.

24 A. There's one other area around Columbia County, but those  
25 are the two larger areas.

1 Q. But this district -- and I'm sure you'll agree with me --  
2 is still retaining the core of what was benchmark District 5,  
3 right?

4 A. I would say it's fairly similar to the benchmark district,  
5 just what I said before, that they want into some of the areas  
6 where there were jagged edges and kind of smoothed them out to  
7 make improvements and follow other political boundaries.

8 Q. So you'd agree that they took the population center here  
9 and retained it in plan 8015, right? The populations center in  
10 Duval?

11 A. There's a -- I don't know how much it accounts for in the  
12 entire map, but there is a large population in Jacksonville, and  
13 it is mostly retained, if not expanded a bit, by following the  
14 Duval County boundary there.

15 Q. And likewise, in plan 8015, the legislature retained the  
16 South side of Tallahassee population center for the benchmark,  
17 right?

18 A. Correct.

19 Q. Would you characterize this as minimal changes from the  
20 benchmark plan to plan 8015?

21 A. Well, there's probably a lot of actual changes. I mean, if  
22 you look at where they had to move things around in Duval, Leo  
23 County, and Columbia. I mean, there's a number of changes, but  
24 I stand by what I said in that it's in a similar part of the  
25 state and has a similar community.

1           But I didn't get into counting how much changes they  
2     made.

3     Q.    Sir, you've drawn maps before, right?

4     A.    Yes.

5     Q.    In your expert work?

6     A.    Sure.

7     Q.    And you're familiar with the phrase "the least changes  
8     approach" or "the minimal changes approach" to map drawing,  
9     right?

10    A.    I've heard that, yes.

11    Q.    And you'd agree with me that that approach, the least  
12    changes approach or the minimal changes approach, calls on a map  
13    drawer to retain a core and make changes along the edges to  
14    smooth out unruly lines and comply on the margins with  
15    traditional redistricting criteria like adherence to political  
16    and geographic boundaries, right?

17    A.    I wouldn't say it that way. I think you said that it  
18    requires them to make changes on the edges.

19           They can make changes anywhere. The philosophical  
20    approach on a least change map would be that you're drawing a  
21    map in a district in a similar region that includes much of the  
22    same population. Usually you do make changes to comply with  
23    political boundaries or usually population shifts, but that, as  
24    compared to other redistricting options, is typically called the  
25    least changed if it has less changes, if it looks similar to a

1 previous map.

2 Q. Sir, as a map drawer, in your experience, you'd agree with  
3 me that 8015 is following a least changes approach when compared  
4 to the benchmark plan, right?

5 A. I don't know that they said they were following a least  
6 changes approach. I think they had specific reasons for trying  
7 to make changes in the Duval area to clean up and improve some  
8 of those what appear to be jagged edges, so I know that that was  
9 one of their focuses I remember some discussion about.

10 But I don't remember if they called it "the least  
11 change map." They might have.

12 Q. Sure, and I'm not asking what they called it. From your  
13 perspective, from your experience as a map drawer, does this  
14 look like the least changes approach or a minimal changes  
15 approach to redrawing a district?

16 A. I think that if you're drawing a district in a similar  
17 region and it includes similar communities, again, you would be  
18 comparing it to six or seven other options, and say this one  
19 option, when you're doing that comparison, appears to have the  
20 least changes.

21 But I don't know if that was their objective per se in  
22 this case, in this district.

23 Q. But to you, it looks like the least changes approach?

24 A. I don't know that. I think it looks similar. I think they  
25 made a lot of changes in Duval, but I do think it's quite

1 similar. I started my testimony that way. I agree it's in a  
2 similar part of the state, includes similar communities.

3 Q. Okay.

4 MR. JAZIL: We can take that down.

5 BY MR. JAZIL:

6 Q. I'd like to move on to the use of dot maps versus heat  
7 maps, Doctor.

8 A. Okay.

9 MR. JAZIL: And if we can go to slide 8, please.

10 BY MR. JAZIL:

11 Q. And, Doctor, this is a dot map showing the North Florida  
12 region in the benchmark plan, right?

13 A. That's correct.

14 Q. And, Doctor, after reading your report, I came away with  
15 the conclusion that each green dot represents 50 people of Black  
16 voting age.

17 Did I understand that right?

18 A. It depends on the level of zoom. So if you zoom in really  
19 close, then the dots might only represent ten people if you go  
20 all the way down to a neighborhood. If you zoom out, they may  
21 represent a hundred.

22 And we explained that in the report, that depending on  
23 the level of zoom, the computer automatically changes how many  
24 people each dot represents.

25 Q. Okay. So in this map that we're looking at, which is the

1 entire region, each dot represents how many people?

2 A. I don't know off the top of my head. Probably around 50.

3 Q. Well, feel free to refresh your recollection with your  
4 report. You've got that in front of you.

5 A. That wasn't something that I needed to report. This was  
6 just a visual for understanding where the population was spread.

7 Q. Okay. So you're saying each dot on this map probably  
8 represents 50 people, right?

9 A. It could. I mean, we could go into ESRI and see what the  
10 legend says.

11 The purpose of this map is just illustratively to show  
12 where the populations are.

13 Q. And I'm just repeating your words that "it probably  
14 represents 50 people"?

15 A. It could.

16 Q. And so it could be 50 people in a -- are these 50 people  
17 transposed on to a census block, or are they transposed at the  
18 precinct level? Where is the dot going in this particular  
19 picture?

20 A. The data is fed from census block group data, which is what  
21 most map programs are based on. It then attempts to lay those  
22 dots within those census block boundaries, block group  
23 boundaries.

24 When you get to quite urban areas where the census  
25 block groups are small and when you have an abstract level of

1 zoom, the program may not be able to put the dots all entirely  
2 on top of each other. But they should be roughly centered  
3 around the census block group.

4 Q. Okay. So it's -- each dot on this map probably represents  
5 50 people, and the dot is placed in the census block?

6 A. Block group.

7 Q. Block group. But am I correct in understanding that we  
8 don't know whether it's 50 out of 50 people or 50 out of 5,000  
9 people?

10 A. That's correct. The dot map, as I was explaining earlier  
11 with Plaintiffs' counsel, is showing you the raw density of the  
12 population, and so depending if you turn on -- I believe in some  
13 of the maps, we were looking at three different colors: White,  
14 Black, and Hispanic at the same time.

15 You could intuit that because if you saw more of one  
16 or the other, but really the density -- it's really showing you  
17 the density, and so you can see there's large populations, for  
18 example, in the Jacksonville area because there's just a lot  
19 more dots. So it's telling that there's a lot more people  
20 there.

21 Q. Understood. And when you say it's giving you the raw  
22 number of people, it's the raw number of people for which you  
23 set the parameters in ESRI for the dot, right? And in this  
24 instance it's Black people?

25 A. Correct. As I said, in other maps, we had illustrated



1 white or Hispanic.

2 Q. So just to make sure we're all on the same page, each dot  
3 on this map is probably showing 50 people in the census --

4 A. Block group.

5 Q. -- block group, and it's not necessarily telling us whether  
6 it's 50 out of 50 or 50 out of 5,000; we're inferring that a  
7 larger grouping of dots suggested that it's a denser area,  
8 right?

9 A. Well, there's a lot of -- let me unpack that a little bit.

10 There's a lot of different maps in our report where we  
11 also do show all of the three major racial or ethnic groups at  
12 the same time so that you are able to understand the other item  
13 you mentioned, which is which group is a majority here.

14 So if you only see green dots and you don't see orange  
15 or pink, that's telling you that.

16 But the primary purpose is to show you concentration  
17 areas of a racial dot map.

18 Q. Got it.

19 A. Just to demonstrate visually this is where different  
20 populations appear to be large in number.

21 MR. JAZIL: Got it.

22 And so if we could go to slide 24.

23 BY MR. JAZIL:

24 Q. And here, Doctor, we've got a dot map of the Duval area,  
25 right?

1 A. That's right.

2 Q. And this dot map has the outline of the former  
3 Congressional District 5, the benchmark, in black, right?

4 A. Correct.

5 Q. And this dot map has green representing Black voters,  
6 right?

7 A. That's correct.

8 Q. And you've got other colors here, purple and orange, right?

9 A. I think it's pink and orange, yes.

10 Q. Doctor, am I correct that just visually, because the green  
11 is so dark, you can't see the pink or the orange that may be  
12 mixed with the green in the Duval core there?

13 A. No, you are not correct.

14 Q. So are there no pink people in the urban core in  
15 Jacksonville? I'm just not seeing them in the really dark green  
16 portions.

17 A. The density is so high in some corridors, African American,  
18 that they have extremely large population.

19 If you zoom in and continue to zoom in so that the  
20 dots spread out a bit more, then you would see a smattering of  
21 different colors of dots. That's the purpose of this. It  
22 allows you to just sort of visually take an assessment of where  
23 populations are, but to also zoom in, you can zoom all the way  
24 down to a street and out to the whole state.

25 Q. And, Doctor, looking at what you've just described as the

1 density, am I correct that the density of Black voters on the  
2 Northern and -- let's call it the Northwestern banks of the  
3 St. Johns River is greater than that on the Southern and  
4 Southeastern banks of the St. Johns River?

5 A. There is a greater raw number on the West side.

6 MR. JAZIL: Actually, let's pull up DX89, please.

7 BY MR. JAZIL:

8 Q. And, sir, this is a heat map of the same region.

9 You've seen this heat map before, right?

10 A. Yes.

11 Q. And this heat map is telling us the Black voting age  
12 population as a percentage in specific census block, right?

13 A. Probably census block groups, but yes.

14 Q. And the dark green regions tell us that Blacks as a  
15 percentage of the -- that the Black voting age population as a  
16 percentage is 91 to 100 percent, right?

17 MR. JAZIL: If we can zoom in --

18 THE WITNESS: Yes.

19 MR. JAZIL: -- the percentages there.

20 THE WITNESS: That's right.

21 MR. JAZIL: We can zoom out.

22 BY MR. JAZIL:

23 Q. So based off that legend, we know that one part, one bank  
24 of the St. Johns River has a less dense concentration of Black  
25 voters, right?

1 A. I'm not a hundred percent sure I understand your question,  
2 but what this shows me is virtually the exact same thing as what  
3 Figure 4 shows me, that, yes, there's a large, highly  
4 concentrated Black population on the West side of the river in  
5 the city and that on the other side of the river, same as in the  
6 dot map, there are noticeable but not at the 90 percent Black  
7 population. So some of those on the other side might be in the  
8 41 to 50 or 51 to 60.

9 Q. Understood. And, sir, just so it's clear, I've tried my  
10 best to demarcate the river on this map, and you'd agree with me  
11 that there are some census blocks on one bank of the river?  
12 I'll call it the Southeastern bank of the river where the census  
13 blocks have zero to 10 percent Black voting age population,  
14 right?

15 A. It looks that way, or maybe 11 to 20.

16 Q. Or 11 to 20?

17 A. Smaller.

18 Q. Whereas the Northwestern bank of the river has census block  
19 groups where the Black voting age population is as high as 91 to  
20 100 percent, right?

21 A. I'd say the entire Northern part of Jacksonville has a much  
22 larger, much more substantial Black population on both sides of  
23 the river, and on the West side of the river, it's the largest.

24 Q. But as a percentage, the Black voting age population on one  
25 side of the river is far larger than the other side?

1 A. But if you're comparing the part in the far Northwest to  
2 the part in the far Southeast, those are quite substantial  
3 differences. If you're comparing the part in the more Central  
4 part, they're fairly similar.

5 Q. Understood.

6 A. They're more similar, I'll say.

7 Q. So even after looking at this heat map, you maintain your  
8 opinion that using the river as a boundary in the enacted map  
9 cracked the Black voters in Jacksonville?

10 A. Yes. I mean, you can see on either the dot map or the heat  
11 map, which show very similar pieces of information, a still  
12 large population of Black voters on the East side of the river  
13 in the Northern part of Jacksonville that were formerly  
14 included, as the red line shows, in the benchmark district. And  
15 those were included together because that's where a large  
16 population of African Americans in Jacksonville reside.

17 Q. So let me understand that.

18 Sir, are you saying that the lines in the benchmark  
19 District 5 map, the red lines, were intended to get as many  
20 Black voters as possible into the benchmark district? Is that  
21 what you're saying?

22 A. No.

23 Q. No, that's not what you're saying? I'm sorry. I guess I  
24 misunderstood.

25 A. I guess you did.

1 Q. Fair enough.

2 A. All right.

3 MR. JAZIL: We can take that down.

4 BY MR. JAZIL:

5 Q. Doctor, one last area of inquiry.

6 You already told my friend that you've done some work  
7 for the DCCC, right? The Democrat Congressional Campaign  
8 Committee?

9 A. Yes, I think the DNC and the DCCC I mentioned, the two main  
10 party committees.

11 Q. And then just looking at your bio, from BSB Research, seems  
12 you've done work for others.

13 But first, can you just tell us what BSB Research is?

14 A. That's the political consulting firm that I mentioned  
15 earlier. We do public opinion polling, focus groups research  
16 mostly related to national elections.

17 Q. Got it. And you're currently serving as a senior advisor  
18 to the Biden White House's C4 entity called "Building Back  
19 Together"?

20 A. That's correct.

21 Q. And through that entity, you're doing polling for the  
22 Democratic National Committee and the White House?

23 A. That's correct.

24 Q. Doctor --

25 A. Not through that entity. Through my consulting firm.

1 Q. Got it.

2 And, Doctor, you were also working for President  
3 Biden's presidential campaign in 2020, right?

4 A. That's correct.

5 Q. And you worked for the campaign of Secretary Clinton in  
6 2016, right?

7 A. Yes.

8 Q. And in 2018, based on my review, as a first-year, you  
9 started working for the DCCC?

10 A. I think 2016 I did.

11 Q. 2016. Okay. Thank you.

12 And, Doctor, in looking at your FEC filings, it  
13 appears that from 2021 to 2022 you were paid over \$500,000 --  
14 pardon me. Your entity, BSB Research, was paid over \$500,000  
15 from the DCCC for work done for them; does that sound right?

16 A. That sounds -- yeah. Could have been more than that.

17 Q. Could have been more than that? But at least --

18 A. It is quite expensive. Almost all that money passes  
19 through to our date vendors to interview people and set up focus  
20 groups.

21 Q. Understood. But over 500,000 to the BSB entity?

22 A. Yeah, probably more than that.

23 Q. Got it.

24 MR. JAZIL: Doctor, I have no further questions.  
25 Thank you for your time.

1 JUDGE RODGERS: Thank you, Mr. Jazil.

2 Any further questions on redirect?

3 MS. DJANG: Yes, Your Honor.

4 JUDGE RODGERS: All right.

5 **REDIRECT EXAMINATION**

6 BY MS. DJANG:

7 Q. Okay. Dr. Barreto, I believe you were asked whether or not  
8 you reviewed the legislative transcripts and whether this --  
9 those debates included a discussion of whether the State  
10 legislators had run a functional analysis of the enacted plan;  
11 is that right?

12 A. Yes.

13 Q. And you didn't recall whether they had done so one way or  
14 the other?

15 A. Right. I recall 8015 and 8019. I thought I recalled the  
16 enacted plan, but I couldn't say with certainty.

17 Q. So I'm going to review a portion of the transcript. Would  
18 that refresh your recollection?

19 A. That would be quite helpful.

20 Q. Okay. Great.

21 So this is Joint Exhibit 48. It is the transcription  
22 of the audio recording of the House session on April 20, 2022,  
23 10:00 a.m. This is the special session that the House -- in  
24 which the House was discussing the enacted plan, correct?

25 A. Yes. I recall it was in April. I just --



1 Q. Okay.

2 A. -- couldn't recall if there was a specific discussion of  
3 functional analysis.

4 Q. Okay. So I'm just going to read for you and display on the  
5 ELMO. I'm not as adept as Mr. Diskant is.

6 Okay. So on page 13 of Joint Exhibit 48,  
7 Representative Leek, at line 12, says:

8 "Thank you, Mr. Speaker.

9 "Members, today we'll be presenting map P000C0109.  
10 This is the map reflected in the data packet in front of you as  
11 well as being posted on the floor at our redistricting.gov  
12 website. This congressional map is an improvement upon the  
13 benchmark map with regard to Tier II metrics."

14 And, Dr. Barreto, is that the enacted plan, to your  
15 knowledge?

16 A. Yes, that's correct.

17 Q. Okay.

18 A. I recognize that number.

19 Q. So I'm going to now move to page 34 of this same document,  
20 where this line of questioning continues.

21 And Representative Davis, beginning at line 1, states:

22 "Thank you, Mr. Speaker.

23 "Representative, will either District 4 or 5 perform  
24 for Black candidates of choice?

25 "Mr. Speaker: Representative Leek.

1           "Representative Leek: Thank you, Mr. Speaker. No."

2           Mr. Speaker recognizes Representative Davis, who says:

3           "Thank you, Mr. Speaker. Has any analysis been done  
4 to prove yes or no?"

5           To which Representative Leek responds:

6           "Thank you, Mr. Speaker. Yes. Recall on the prior  
7 map that we did a functional analysis on CD-5.

8           "Representative Davis: Thank you, Mr. Speaker.

9           "So no analysis" --

10          JUDGE RODGERS: Excuse me. Do you mind moving the  
11 page.

12          MS. DJANG: I apologize.

13          JUDGE RODGERS: Thank you. Sorry to interrupt.

14          BY MS. DJANG:

15          Q. So at line 20, Representative Davis replies:

16                 "Thank you, Mr. Speaker. So no analysis, again, just  
17 for clarity, has been performed on these maps -- on this map?"

18                 To which Representative Leek responds: "Thank you.

19                 "Mr. Speaker" -- continuing on to page 15: "Yes. On  
20 CD-4 our staff did a functional analysis and confirmed that it  
21 does not perform."

22                 Does that refresh your recollection as to whether a  
23 functional analysis was conducted?

24          A. Yes. I think I said I thought there was one, but I  
25 couldn't point to something specific.

1           And as you've demonstrated, there was lots and lots of  
2 lines of questioning and back-and-forth between the officials.

3       Q.    I'd next like to return to slide 9, which we were -- and we  
4 were just looking at the top of this a moment ago.

5           MS. DJANG:   So for the record, this is Plaintiffs'  
6 Exhibit 5042-14 on the top, and below is Defendant's Exhibit 85.

7       BY MS. DJANG:

8       Q.    Dr. Barreto, can you describe the way Gadsden County is  
9 depicted in both maps?

10      A.    Yeah.   You can see it there in the Western portion of the  
11 districts.   The top map is what we've been referring to as "the  
12 dot map," where actual people are represented by dots, so it  
13 helps you understand the density.   The bottom map is what is  
14 being referred to as "a heat map," where it shades an entire  
15 census block group.

16           And the top map I think more accurately reflects the  
17 population of African Americans there.   It shows that there were  
18 certainly population of African Americans, but there's also, at  
19 the same time, not a whole lot of people there in general.

20           The bottom map, which is the heat map, you lose that  
21 understanding.   It looks as though this is a high concentrated,  
22 dark green-colored set of areas because you see all the dark  
23 green shading, which is what a heat map shows you, but you lose  
24 the perspective of exactly how many people are there.

25           And so as I said, for visual purposes, we certainly

1 counted all the population in all of our data tables, but for  
2 visual purposes, sometimes the dot map can be a little bit more  
3 informative because it shows you that there is a population  
4 there in Tallahassee, certainly, which is larger in size, as  
5 indicated by all the dots.

6 Q. So fair to say same underlying information and data; it's  
7 just presented in a different form?

8 A. Yes. I think both of these maps -- and as we were looking  
9 earlier at the two different versions of the zoom-in on Duval,  
10 they show you essentially the exact same thing. They're fed by  
11 the exact same underlying census data. It's just a matter of if  
12 you're looking more at density or share.

13 Q. Thank you, Dr. Barreto.

14 And finally, on cross you were asked about the 2014  
15 midterm election turnout numbers.

16 Do you recall that?

17 A. Yes.

18 Q. And I believe when asked by Judge Rodgers, you explained  
19 that particular sources are not cited in your report but that  
20 they would be readily available to you on a brief search for  
21 sources for the proposition that the midterm elections in 2014  
22 was a historically low turnout year?

23 A. Correct. That was my general summary.

24 Q. So I'll just represent to you that just now my colleagues,  
25 in five minutes, Googled this and that there are -- is a PBS

1 headline reading "2014 midterm election turnout lowest in 70  
2 years" and a *Washington Post* headline --

3 MR. JAZIL: Your Honor, I'm going to renew my  
4 objection, especially since my friend seems to be supporting the  
5 contention and laying a predicate for judicial notice relying on  
6 PBS and NPR.

7 JUDGE RODGERS: I'm not sure exactly where we're  
8 headed. The issue of the testimony and the admissibility of it  
9 is still under advisement.

10 I do note, though, that when the testimony came in on  
11 direct, there was no objection.

12 BY MS. DJANG:

13 Q. And the *Washington Post* headline is "Voter turnout in 2014  
14 was lowest since World War II."

15 Is that consistent with your testimony a few minutes  
16 ago about readily available sources confirming this fact?

17 A. Yeah. I mean, it's just a fact. It was by far the lowest  
18 turnout midterm we had seen in multiple generations, and so  
19 that's not really controversial. We can just go look at what  
20 the voter turnout rate was that the census reported.

21 And in addition to news headlines, which are just  
22 reporting observable facts, in my opinion -- no offense to the  
23 journalist in the back -- that's not an analysis. There's  
24 plenty of political science papers published by scholars also  
25 documenting the reasons why 2014 was an atypical election.

1 Q. And you cite voter turnout numbers in your report, don't  
2 you?

3 A. Yes. It's something we talk about, and that's why there's  
4 ebbs and flows in the functional analysis and when turnout is  
5 higher, some of the districts appear to perform better.

6 Q. And can you specify -- and just break that down a little  
7 bit more -- how low turnout can affect your analysis as to  
8 whether a district performs for the Black preferred candidate?

9 A. Well, certainly, you're looking at areas where the Black  
10 population has in presidential years historically had very  
11 strong turnout and very high turnout and has very strong  
12 mobilization, but oftentimes in midterm elections, that turnout  
13 could possibly drop.

14 And if it does and turnout is lower, usually what the  
15 political science literature finds is that the gap widens  
16 between Black and white voters. And so in a low turnout  
17 election, when there's just a general low turnout election,  
18 typically the advantage goes to white preferred candidates by a  
19 considerable margin. This was one of the reasons the 2014  
20 election was so strong for Republicans.

21 MR. JAZIL: Your Honor, I object to this answer as  
22 well. This discussion of low turnout elections being  
23 predominantly in favor of white voters is not in his report  
24 either.

25 JUDGE RODGERS: All right. I'll take that under

1     advisement, Mr. Jazil. Thank you.

2             THE WITNESS: And so the '14 election is just one  
3     example of that. Again, these are just, you know, broad facts.  
4     You can find them at the census website or the Florida Secretary  
5     of State website.

6             And in high turnout elections, such as 2018, these --  
7     when there's very high turnout, that tends to advantage Black  
8     preferred candidates, which was the case in 2018. It was one of  
9     the best election years for Black preferred candidates,  
10    especially in contrast to '14.

11            MS. DJANG: No further questions, Your Honor.

12            THE COURT: All right. Thank you, Ms. Djang.

13            Sir, you are excused. You're free to step down.

14            THE WITNESS: Thank you, Your Honor.

15            JUDGE RODGERS: Thank you.

16            *(Witness excused.)*

17            MS. DJANG: I'm sorry, Your Honor. Just one final  
18     comment.

19            If you are considering this last objection made by my  
20     friends, the turnout information from the 2018 general election,  
21     for example, is Table 7 of Dr. Barreto's expert report.

22            JUDGE RODGERS: All right. Thank you.

23            Mr. Diskant, where do the plaintiffs stand?

24            MR. DISKANT: Subject to cleaning up the exhibits,  
25     which I'm not 100 sure we've offered everything, but I'm sure

1 our friend, Mr. Jazil, will not object to cleaning up the  
2 exhibits. We rest our case.

3 JUDGE RODGERS: All right. Thank you very much.

4 All right.

5 Then, Mr. Jazil, what would you like to do?

6 MR. JAZIL: Your Honor, perhaps we might better use  
7 our time to just clean up the exhibits over the next 30 minutes  
8 and start fresh tomorrow. We have Mr. Johnson, Mr. Owens, and  
9 Mr. Kelly for very brief cameo, with the Court's permission.

10 JUDGE RODGERS: Okay. I don't have a problem with  
11 that. I don't think the other judges do.

12 Is the plaintiff at this point expecting any rebuttal?  
13 Do you know? I mean, I'm sure you have some -- expectation of  
14 what the testimony tomorrow is going to be like.

15 MR. DISKANT: I am not expecting a rebuttal.

16 JUDGE RODGERS: Okay. All right. Thank you, then.

17 Well, that is what we will do.

18 Could I take a moment, since you are going to be  
19 turning to exhibits yourselves and conferring about that and  
20 then maybe getting with Ms. Starke about the record as well.

21 But can I confirm with you all and you look at your  
22 paperwork and I'll look at mine, and I know Judge Jordan and  
23 Judge Winsor will do the same and confirm what came in today, or  
24 at least what I have as far as what came in today in terms of  
25 numbers.



1           We were presented with exhibit numbers on a list this  
2 morning, so I have those and presume there was no objection to  
3 any of those, Mr. Jazil?

4           MR. JAZIL: That is correct, Your Honor.

5           JUDGE RODGERS: Thank you.

6           And so, then, from the plaintiff's exhibits, we have  
7 5042 and then a number of sub-exhibits to 5042.

8           So I have 11, 14, 48, 28, 31, 32, 17, 51, 68, 16, 15,  
9 69, 64, 65, 66, 61, and 49, all from 5042.

10          And then we also have 4034, the subpart being 456 and  
11 437, and then we also had 7037.

12          Did I miss anything?

13          MR. JAZIL: Your Honor, I believe I moved --

14          THE COURT: And I may have, so feel free to correct  
15 me.

16          MR. JAZIL: It was --

17          JUDGE WINSOR: I show you as subset 32 of 5042. Judge  
18 Rodgers included that in what she just read.

19          JUDGE RODGERS: I did. I took it out of order. I saw  
20 it out of the bottom of my right eye and I moved it over, but I  
21 couldn't do it with all of them.

22          MR. JAZIL: I apologize.

23          JUDGE RODGERS: I did include 32. So thank you.

24          From the plaintiffs' side, is there anything that you  
25 see the Court is missing?

1 MS. DJANG: No, that covers it.

2 JUDGE WINSOR: This is the list from this morning,  
3 Judge Rodgers.

4 THE COURT: I'm going to take a point of prerogative  
5 for a second.

6 So at the end when we're done, we have various exhibit  
7 lists that you've understandably given us day by day for each  
8 witness or for the day in total, and I'm sure Mr. Jazil will do  
9 the same tomorrow for his witnesses.

10 But at the end of the trial, we need one exhibit list  
11 for the plaintiffs of admitted exhibits, one exhibit list for  
12 the defense of admitted exhibits, just so we have it docketed.

13 MR. DISKANT: We will do that, and we will also  
14 provide binders to those judges who wants binders of all the  
15 exhibits in order, and for those who want electronics, we'll  
16 provide that and we'll provide (inaudible).

17 MR. JAZIL: And, Your Honor, Judge Rodgers, you had an  
18 earlier colloquy with either Mr. Diskant about the videos from  
19 the session?

20 JUDGE RODGERS: Right.

21 MR. JAZIL: The parties have worked jointly to put  
22 together their preferred snippets from the legislative debates  
23 on thumb drives, which we will present to the Court.

24 JUDGE RODGERS: That's excellent. And that will  
25 correspond with the testimony surrounding those --

1 MR. JAZIL: Yes, Your Honor.

2 JUDGE RODGERS: -- snippets.

3 MR. JAZIL: The way we would organize it is we would  
4 give you the thumb drives with the time stamps as well as the  
5 joint exhibits that they correspond with, with the line items --  
6 with the specific pin cites in the transcript.

7 JUDGE RODGERS: Okay. That's terrific. That'll be a  
8 nice distraction from the black and white. Thank you.

9 MS. DJANG: Your Honor, one hopefully last correction,  
10 and I do apologize.

11 I misspoke. I said that Dr. Barreto's report, Table 7  
12 referred to voter turnout, and it is Table 8, which is  
13 Exhibit 5042-23, and we'd like to move to offer that into  
14 evidence as well.

15 JUDGE RODGERS: Just a moment. I'm not with the  
16 exhibit itself. It's not in his PowerPoint, obviously. This is  
17 in his report at Table 8?

18 JUDGE WINSOR: You said Figure 8?

19 MS. DJANG: Table 8 at page 23 of PX5042.

20 JUDGE RODGERS: Understanding, Mr. Jazil, that you  
21 have an objection to the whole line of inquiry, any more  
22 specific objection to this exhibit?

23 MR. JAZIL: No, Your Honor. My objection is specific  
24 to the discussion of the 2014 turnout.

25 THE COURT: You said Table 8?

1 JUDGE RODGERS: Again, where is this in the report?  
2 I'm sorry. I'm not finding it either.

3 JUDGE WINSOR: Page 23 or -- page 23.

4 THE COURT: I'm confused now, because Table 8 refers  
5 to 2020, and I thought the objected-to testimony about the low  
6 turnout was 2012.

7 MR. JAZIL: 2014, Your Honor.

8 THE COURT: Sorry. 2014. But certainly not 2020.

9 MS. DJANG: That's correct, Your Honor, and --

10 JUDGE RODGERS: And this is about the high turnout,  
11 was it not, from 2018, I believe was his testimony?

12 MS. DJANG: Correct. And we were -- we'll sort this  
13 out overnight.

14 JUDGE RODGERS: That would be great.

15 Okay. We'll hear from you in the morning about that  
16 and sort out which table it is in connection with that testimony  
17 as to whether 2014 or 2018. That'll be great -- understanding  
18 there's still an outstanding objection to it.

19 Okay. Anything else from anyone?

20 MR. JAZIL: No, Your Honor.

21 JUDGE RODGERS: All right. If not, thank you for a  
22 very productive day.

23 You have something else?

24 THE COURT: Just one thing.

25 What sort of time are you looking for for closing?

1 MR. JAZIL: Your Honor, I will quote Judge Hinkle and  
2 say 30 minutes is always --

3 THE COURT: No, no. This is an important case. We're  
4 going to finish early tomorrow.

5 I'm asking you. I don't want to put any artificial  
6 time constraints on you. We'll talk, of course, but I want to  
7 get from you what you think you need to sum up in the right way  
8 without leaving anything on the table.

9 MR. DISKANT: I would appreciate two hours, Your  
10 Honor, if you'll indulge that, but I'll do whatever you want.

11 THE COURT: Okay.

12 MR. JAZIL: Your Honor, I will go less than an hour,  
13 but I would appreciate questions from the Court, as I see my job  
14 is to help you. So I prefer to answer the Court's questions.

15 If the Court has another format in mind, I'm happy to  
16 abide by that as well.

17 THE COURT: I think you and Mr. Diskant may get a  
18 question here or there in the course of your closing, which  
19 hopefully won't throw the flow off too much.

20 But you think you'll be done by noon tomorrow on your  
21 side of the case?

22 I'm not asking you for promises. I'm just trying to  
23 figure out the day.

24 MR. JAZIL: Your Honor, I believe we'll be done with  
25 the experts. However, I'm trying to find time on Mr. Kelly's

1 schedule --

2 THE COURT: Okay.

3 MR. JAZIL: -- so I just don't have the answer.

4 THE COURT: Well, we're ahead of schedule, so  
5 depending on how things go tomorrow, you can let us know what  
6 your preference is as to closings as well.

7 MR. JAZIL: Thank you.

8 JUDGE WINSOR: I thought you said this morning the two  
9 experts were 30 or 40 minutes each, so those are short. Or  
10 maybe I'm misinformed.

11 MR. JAZIL: Your Honor, I believe that's my friend's  
12 estimate, but it may be accurate.

13 *(Simultaneous crosstalk.)*

14 JUDGE WINSOR: But they're short. You're going to be  
15 done with your experts early in the morning.

16 MR. JAZIL: Yes, Your Honor, and my hope is to get  
17 Mr. Kelly in here so that there's a seamless transition and the  
18 Court isn't waiting.

19 JUDGE RODGERS: Am I correct, you're asking to return  
20 on Wednesday regardless of what time we stop tomorrow for your  
21 summations? Is that what I heard today or not?

22 MR. DISKANT: I'm perfectly willing to sum up tomorrow  
23 if I know what my final boundaries are so I can plan summation.  
24 But I can go tomorrow and that will be fine, since I do think we  
25 should be done in the morning.

1 But I'm at the Court's disposal.

2 JUDGE RODGERS: My preference -- we can talk about,  
3 but it would be to go -- hear them.

4 THE COURT: Yeah, it's -- my preference would be to do  
5 it tomorrow too, but -- and I'm just speaking out loud -- I  
6 don't want to put either of you in a position where you're  
7 closing very late in the day to get everything done and we're  
8 going way beyond the time that we normally go.

9 So I guess it's a caveat. It depends how things go in  
10 the morning.

11 So you should be prepared to close tomorrow, but you  
12 may not need to. We'll see how the morning session goes, and  
13 then the three of us will talk and we'll see.

14 MR. DISKANT: If it's possible -- I don't mean to  
15 impose on the Court. If we are summing tomorrow, which I'm  
16 perfectly happy to do, I would appreciate some guidance tonight  
17 on whether I have half an hour or two hours or some frame of  
18 reference.

19 THE COURT: We'll see. That's part of the problem.

20 MR. DISKANT: I'll do -- I'm summing up regardless,  
21 whatever.

22 THE COURT: How about this: Why don't you -- and now  
23 I'm just taking over for my two colleagues, but I'm going to try  
24 to give you some guidance.

25 So why don't you plan on an hour and a half, which you

1 can divide into opening and rebuttal as you wish.

2 And, Mr. Jazil, you can have the same amount of time,  
3 which you may or may not decide to use.

4 And we'll let you know tomorrow as the morning session  
5 progresses where we are and where we think we're headed in the  
6 afternoon.

7 MR. DISKANT: That's perfectly fine.

8 THE COURT: If the direct and the cross and redirect  
9 take longer than we think, we may not close tomorrow afternoon;  
10 we'll close first thing in the morning on Wednesday.

11 JUDGE RODGERS: And I don't disagree with that. I  
12 said I wanted to hear the closings tomorrow, but I agree with  
13 Judge Jordan. We won't push past the normal day.

14 JUDGE WINSOR: But that's not an invitation to stretch  
15 things out.

16 JUDGE RODGERS: I also agree with Judge Winsor on that  
17 count.

18 *(Simultaneous crosstalk.)*

19 JUDGE RODGERS: All right. Anything else?

20 Thank you again for a productive day.

21 *(Proceedings adjourned at 4:43 p.m.)*

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\* \* \* \* \*

I hereby certify that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter, pursuant to the provisions of Section 753, Title 28, United States Code.



10/2/23

Julie A. Wycoff, RMR, CRR  
Official U.S. Court Reporter

Date

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**PLAINTIFF EXHIBITS**

<u>Exhibit</u>	<u>Description</u>	<u>Marked</u>	<u>Admitted</u>
4034-456	Appendix legislature submitted to Supreme Court	683	683
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5042-14	Figure 2 in Barreto report	645	645
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5042-51	Table A4 of Baretto report	660	660
5042-68	Figure B14 from Barretto report	661	661
5042-32		741	741
7037	Supreme Court directing clerk to open case	685	685