

Jay Ferrin
November 15, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CASE NO.: 8:24-cv-879

KÉTO NORD HODGES, et al.,

Plaintiffs,

v.

KATHLEEN PASSIDOMO, in her official
capacity as President of the Florida
Senate, et al.,

Defendants.

_____ /

DEPOSITION OF

JAY FERRIN

VOLUME 1: (Pages 1 - 158)

Friday, November 15, 2024
9:30 a.m. - 2:45 p.m.

LOCATION:

Office of Insurance Regulation
200 East Gaines Street
Tallahassee, Florida 32399

Stenographically Reported By:
I. Iris Cooper
Stenographic Reporter

Job No.: 384146

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1 Thereupon, proceedings began at 9:30 a.m.:

2 THE STENOGRAPHER: Do you swear or affirm that
3 the testimony you are about to give in this case
4 will be the truth, the whole truth, and nothing but
5 the truth?

6 THE WITNESS: Yes.

7 Thereupon:

8 JAY FERRIN,
9 under penalty of perjury, was examined and testified
10 as follows:

11 DIRECT EXAMINATION

12 BY MR. TILLEY:

13 Q Good morning.

14 A Morning.

15 Q My name is Daniel Tilley. I represent the
16 plaintiffs in this case, which is Nord Hodges versus
17 Passidomo. I would like to go over some ground rules
18 for the deposition. You see that the deposition is
19 being transcribed by a court reporter.

20 A Yes.

21 Q Can you make sure to say yes or no, rather
22 than nodding or shaking your head or saying uh-huh or
23 uh-uh?

24 A Sure.

25 Q Also the court reporter will have trouble

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1 recording what we're saying if we're talking over one
2 another. So even if you know what I'm about to say,
3 could you please just wait until I'm finished before
4 answering the question?

5 A Yes.

6 Q And I'll try to do the same.

7 Do you understand that you are under oath and
8 that you have to give truthful and accurate answers to
9 questions, just as though you were testifying in a
10 courtroom?

11 A Yes.

12 Q If you don't understand a question, please
13 don't answer it. If you say you don't understand it,
14 I'll try to ask a clearer question. Do you understand
15 that?

16 A Yes.

17 Q If you want a break, just let me know. I'll
18 finish my line of questioning, and then we'll take a
19 break; okay?

20 A Yes.

21 Q If you want to talk to an attorney here,
22 that's okay. But I just ask that if a question is
23 pending that you answer the question before speaking
24 with your attorney, unless you're talking with them
25 about a matter of legal privilege; okay?

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1 A Okay.

2 Q Sometimes even though you've given what you
3 felt was a complete answer, you remember some additional
4 information or perhaps a clarification of an earlier
5 answer. If that happens, will you please tell me so
6 that we can address that while it's right on your mind?

7 A Yes.

8 Q And if you realize that an earlier answer you
9 gave is not completely accurate, will you stop me and
10 tell me that, too?

11 A Yes.

12 MR. MEROS, JR.: Sorry. Just one second. I'm
13 with an associate who won't fit in the room. Let
14 me call him real quick.

15 MR. TILLEY: Okay.

16 (Leila S. Oberschall joined deposition suite
17 via teleconference.)

18 BY MR. TILLEY:

19 Q Because it's so important for you to give
20 full, complete, and accurate answers today, I have to
21 ask if you're taking any medication or drugs of any
22 kind, such as cough syrup or alcohol, something that
23 contained alcohol, that might make it difficult for you
24 to understand and answer my questions today?

25 A No.

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1 Q Are you at all sick today?

2 A No.

3 Q Are you under a doctor's care for any illness
4 or condition that might affect your ability to
5 understand my questions or give full, complete, and
6 accurate answers to my questions today?

7 A No.

8 Q Is there any other reason why you would not be
9 able to give full, complete, and accurate testimony here
10 today?

11 A Not that I'm aware of.

12 Q Do you understand that you're testifying today
13 not in your personal capacity, but as a designated
14 representative of the Florida Senate?

15 A I do.

16 (Plaintiffs' Exhibit 1 was marked.)

17 BY MR. TILLEY:

18 Q I'd like to show you Exhibit 1. Have you seen
19 this notice before?

20 A Yes.

21 Q I'm told that you're here today testifying
22 with respect to Topic Nos. 1 through 7; is that
23 accurate?

24 A No. I believe two is handled, so, no.

25 Q You're here for?

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1 A One, three, four, five, six, and seven.

2 Q We can discuss that further at the break.

3 And you understand that the testimony you will
4 give in response to my questions about those topics will
5 be deemed to be the testimony of the Florida Senate?

6 A Yes.

7 Q Have you ever been deposed before?

8 A Yes.

9 Q How many times?

10 A Once.

11 Q When was that?

12 A 2015. Maybe twice.

13 Q What was the second potential time?

14 A Both of them would have been redistricting in
15 2015.

16 Q Can you describe the two instances?

17 A During the remedial map drawing sessions and
18 the hearings and legal proceedings thereafter.

19 Q At what time did those take place among that
20 series of processes?

21 A Probably in August and December.

22 Q And what did those timeline times represent
23 within that timeline of process?

24 A So in the summer of 2015, we were redrawing
25 Congressional maps, and then there was a hearing held, I

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1 believe, in August. I think I was probably deposed in
2 that instance and then again after the Senate maps were
3 done in November or December. I think the deposition
4 was probably in December of 2015.

5 Q And the subject matter of both of those
6 depositions was redistricting?

7 A Yes.

8 Q And those were the only times you've been
9 deposed, to your recollection?

10 A Yes.

11 Q How did you prepare for this deposition?

12 A I read through the various filings, the
13 complaint, the answers, read through some transcripts of
14 communicatee meetings and memoranda from the most recent
15 redistricting cycle.

16 Q So can you be more specific about which
17 filings you read? I heard the complaint, and you said
18 answers?

19 A The complaint, the answers. I don't have a
20 list of everything that I looked at and memorized.

21 Q And what about the transcripts?

22 A Looked at some of the transcripts from the
23 different meetings that were relevant to the Senate and
24 legislative reapportionment. So October -- maybe it was
25 the October 18th one where we got our directions from

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1 the chair.

2 I think I looked at the one in January,
3 January 10th, when the subcommittee was choosing its
4 plans. I think I reviewed portions of some of the floor
5 transcripts. I don't remember which days.

6 Q You mentioned memoranda as well?

7 A Yes. Some of the memoranda that memorialized
8 the instructions to staff, other communications from the
9 chairman.

10 Q So you said memoranda plural, so what were the
11 memoranda?

12 A So there was a series of things. They're all
13 published on our website. So it's when plans are
14 released, what the criteria was used to draw them.
15 There were some other notifications sent out from the
16 chairman, stuff from the Senate president. There's kind
17 of a slew of this.

18 Q What were the notifications sent out by the
19 chairman?

20 A That maps were available, what the committee
21 processes were going to be for selecting maps at the
22 subcommittee level. Again, you know, I don't have it
23 memorized, but there was a series of those that I looked
24 at and reviewed, since it was over two years ago now.

25 Q Of course. And what about from the Senate

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1 **president?**

2 A He had some memoranda relating to the release
3 of census data, again, the processes, and the member
4 conduct. Those are the ones that are jogging my memory.

5 Q **When you referenced a memoranda about the**
6 **criteria you used to draw the maps, are you talking**
7 **about the memo from Senator Rodrigues?**

8 A He sent several memos, I think. But there was
9 one that he sent, in particular, that I believe was
10 after our committee meeting on the 18th of October in
11 2021 that was memorializing the discussion of the
12 committee with the directives for staff to begin drawing
13 maps.

14 Q **Were there other memoranda that he sent?**

15 A Yes.

16 Q **Discussing criteria used to draw the maps?**

17 A That was the main one that was relied on, so
18 that's the one I looked at for that context. I don't
19 think there were other ones that were talking about
20 specific map drawing instructions.

21 Q **Can you describe your role in the Florida**
22 **legislature's 2022 redistricting process?**

23 A I was the staff director of the Senate
24 committee on reapportionment.

25 Q **During this deposition, when I reference**

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1 drawing maps, will you understand that unless otherwise
2 specified, I'm referring to the maps or plans drawn
3 during the Florida legislature's 2022 redistricting
4 process?

5 A Say that again.

6 Q When I reference drawing maps in this
7 deposition, unless I otherwise specify, I'm referring to
8 maps or plans drawn during the Florida legislature's
9 2022 redistricting process?

10 A Which would have gone from when to when? The
11 process started on the 18th when we got our
12 instructions. So the staff-drawn maps?

13 Q Correct. What criteria did you use when
14 drawing maps in the 2022 redistricting process?

15 A The criteria that my team and the committee
16 followed were the ones laid out in that memorandum,
17 which were to -- it's been two years. So other than
18 reviewing them the other day, if we have a copy here, it
19 may be easier to read from that than to try to trust my
20 memory.

21 But to adhere to tier-one and tier-two
22 standards to not consider any political data and not
23 consider any residential information about members,
24 incumbency, things like that.

25 (Plaintiffs' Exhibit 2 was marked.)

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1 BY MR. TILLEY:

2 Q We'll mark that as Exhibit 2. So you
3 recognize this as the memo from Senator Rodrigues that
4 you mentioned just before?

5 A Yes.

6 Q Did you follow the principles of the Rodrigues
7 memo when you were drawing maps as part of the 2022
8 redistricting process?

9 A Yes.

10 Q Let's walk through some of this memo together.
11 On Page No. 1 in 2nd paragraph, it says, quote, you are
12 directed to the plain language of the Constitution
13 federal law and the judicial precedent that exists today
14 in regards to that language closed quote; is that
15 correct?

16 A Yes.

17 Q What plain language of the Constitution, if
18 any, did you consider when drawing the maps?

19 A Article III, sections 20 and 21.

20 Q Is that it?

21 A As far as the plain language of the Florida
22 Constitution, that was the primary guiding principle,
23 yes.

24 Q Were there non-primary guiding principles from
25 the Florida Constitution?

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1 A Well, the Florida Constitution also lays out
2 the process for maps and the time frames and things like
3 that, so we had to stick to those?

4 Q But other than that?

5 A Other than that, that's the only part of the
6 Constitution that speaks to redistricting criteria.

7 Q What federal law, if any, did you consider
8 when drawing the maps?

9 A We have federal -- the Voting Rights Act
10 primarily. There's other, you know, case law that comes
11 out of the federal system that we had available to us.

12 Q What case law?

13 A There's a bevy of it. I don't know. I'm not
14 going to have cases memorized, but it's well documented.

15 Q Other than the Voting Rights Act and the case
16 law you were referring to, were there other aspects of
17 federal law that you used, that you considered when
18 drawing the maps?

19 A Followed the federal Constitution as it
20 relates to, you know, equal protection clause, stuff
21 like that.

22 Q And what principles apply there?

23 A One person, one vote.

24 Q Any others?

25 A Nonracial predominance, things like that that

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1 would have been impacted by the 14th Amendment.

2 **Q What is nonracial predominance?**

3 MR. MEROS, JR.: Object to the form. Calls
4 for a legal a conclusion. You can answer the
5 question.

6 THE WITNESS: That would be when you sacrifice
7 all other criteria for consideration of race.

8 BY MR. TILLEY:

9 **Q And other than nonracial predominance, any**
10 **other aspects of the federal Constitution?**

11 A I think that covers it.

12 **Q You've, in part, answered some of this. But**
13 **what judicial precedent, if any, did you consider when**
14 **drawing the maps?**

15 A The apportionment decisions 1 through 8 or 9
16 in the associated district level stuff, circuit level
17 stuff.

18 **Q Anything, other than that?**

19 A Those are what comes to mind.

20 **Q The memo references tier-one and tier-two**
21 **criteria. Can you describe those?**

22 A Sure. So tier-one was the prohibition on
23 favoring or disfavoring a political party or incumbent
24 and the prohibition on drawing plans to diminish the
25 opportunity for minorities to participate in elections

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1 and elect their candidate of choice. I'm paraphrasing
2 that because I don't have the Constitution language
3 right in front of me.

4 Q Sure. I'll read you from the Constitution.

5 A That would be great.

6 Q So you mentioned political parties or
7 incumbents. I'll read the next portion. Quote,
8 districts shall not be drawn with the intent or resolve
9 to denying or abridging the equal opportunity of racial
10 or language minorities to participate in the political
11 process or to diminish their ability to elect
12 representatives of their choice, closed quote.

13 A That sounds right.

14 Q And in this deposition, if I refer to minority
15 ability to elect, you'll know that I'm referring to a
16 minority group's ability to elect a candidate of their
17 choice. Is that fair?

18 A Yes.

19 Q The Constitution also mentions that district
20 shall consist of contiguous territory for tier-one?

21 A Yes.

22 Q And those are the only tier-one criteria?

23 A I believe that's correct, yes.

24 Q What about tier-two?

25 A Tier-two requires districts to be drawn that

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1 are compact that use political and geographic boundaries
2 where feasible and that have equal population.

3 Q Looking at the memo on the first page, third
4 paragraph, that first sentence is the directive with
5 respect to equal population; is that right?

6 A It says in accordance with the tier-two
7 standards of the Constitutional requirements related to
8 equal population, you are directed to prepare Senate
9 plans with district population deviations not to exceed
10 1 percent of the ideal population of 538,455 people and
11 to prepare Congressional plans with population
12 deviations of plus or minus one person of the ideal
13 population of 769,221 people.

14 Q And in that last paragraph regarding
15 compactness, the first part says, quote, you are
16 directed to draw districts that are visually compact in
17 relation to their shape and geography, closed quote; is
18 that right?

19 A Yes, it does.

20 Q What is the difference, if there is one,
21 between a district being visually compact in relation to
22 its shape versus in relation its geography?

23 A So the classic example that's given to that is
24 districts that involve Monroe County, which is the
25 Florida Keys, and extend way out into the Gulf of

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1 Mexico. That is a district that can only be drawn in so
2 many ways because of its geography, and its shape is
3 dictated by its geography.

4 Q Are there other examples, other than Monroe,
5 that you can think of that are relevant to the
6 distinction between shape and geography?

7 A I think that's a very good example of that. I
8 think that's the best example of that.

9 Q After that, it says, you're directed to draw
10 districts that are -- after it says you're directed to
11 draw districts that are visually compact in relation to
12 shape and geography, it adds, quote, and to use
13 mathematical compactness scores where appropriate,
14 closed quote?

15 A It does.

16 Q When is using a mathematical compactness score
17 appropriate?

18 A Well, we ran compactness scores for all
19 districts and all plans and looked at them as a whole,
20 as well as regionally. And so there are, again,
21 circumstances like the Florida Keys where the
22 mathematical scores are going to be relatively lower as
23 a result of the shape of the geography.

24 And so we wouldn't in a district like that,
25 you wouldn't place a ton of emphasis on the mathematical

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1 scores because they can't change much. There's not a
2 lot of different ways to manipulate those district lines
3 to change the compactness scores.

4 Q Is it your understanding that the first
5 directive here is to create something visually compact
6 and then to use a mathematical score where appropriate?

7 A I believe that both of those are relevant to
8 the compactness assessment, both visual and metric
9 compactness. So I don't know that I would place visual
10 compactness necessarily above mathematical scores or
11 mathematical scores above visual compactness. I believe
12 it's a total assessment.

13 Q And you mentioned that the mathematical score
14 for Monroe County might be lower; right?

15 A Yes.

16 Q And is that a justification to discount the
17 mathematical scores when considering the principles as
18 they apply to Monroe County?

19 A I don't think you have to discount the
20 mathematical scores or anything else, but it's a
21 situational awareness of why those scores would be what
22 they are.

23 Q And when you take in that situational
24 awareness, what do you do with that information?

25 A You take it at its face. It is what it is.

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1 Q So you're looking at Monroe County, you're
2 looking at certain mathematical scores. What do those
3 tell you?

4 A The mathematical scores?

5 Q Uh-huh.

6 A I don't think I understand the question. I'm
7 sorry.

8 Q Sure. What mathematical scores do you use as
9 part of the redistricting process in drawing maps?

10 A Right. So we use the Reock score, which is
11 the area of the district in relation to the area of the
12 circle. We use a convex hull score, which is kind of
13 the rubber band around the district so it measures the
14 different -- the concavities of a district, and then we
15 use Polsby-Popper, which is a ratio of the perimeter.

16 Q So using those mathematical scores, if they're
17 lower for Monroe County, what does that tell you?

18 A That tells you that the geography is dictating
19 the shape of the district.

20 Q And does that suggest relying less on the
21 mathematical scores when deciding how to map or draw
22 districts as they relate to Monroe County?

23 A It tells you that they're necessarily going to
24 be lower.

25 Q The scores tell you that, or the shape and

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1 **geography of --**

2 A The shape and geography tells you that the
3 scores -- I mean, they're correlated. They're tied to
4 each other.

5 Q **Is it ever inappropriate to rely on**
6 **mathematical compact scores?**

7 A Is it ever inappropriate to rely on them?

8 Q **(Nods head up and down.)**

9 A They inform the map drawing process,
10 generally. So I mean I think we have throughout the
11 redistricting process used those scores. I don't think
12 the appropriateness of them was ever in your question.

13 Q **If you had a district that looked visually**
14 **compact, in your view, but it scored lower mathematical**
15 **scores than you might have expected, how would you**
16 **incorporate those scores into a question of whether to**
17 **adjust the boundaries of the proposed district?**

18 A Say that one more time. I'm sorry.

19 Q **Sure. If you have a draft district that to**
20 **you looks visually compact but you notice that it scores**
21 **lower in the mathematical scores than you would have**
22 **expected, what would that tell you, if anything, about**
23 **how you should adjust -- should or might adjust the**
24 **boundaries of the district?**

25 A I think we would have looked at it in a

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1 regional scenario. So is that shape of that district
2 related to the shape of the districts around it and
3 impacted by their compactness? It's all a balancing
4 act, so you don't draw one at a time in isolation.

5 Q So if you saw those lower scores, what would
6 you be looking to see, if anything, in the surrounding
7 districts to make a decision about how to adjust the
8 line, if you felt that was appropriate?

9 A We'd be looking at the compactness metrics in
10 the surrounding districts and whether or not perhaps the
11 low scores in, I guess, the district in question is
12 related to high scores in some of the other ones. This
13 is all a balancing act.

14 And on top of that, we're looking at the usage
15 of political and geographic boundaries. So is adherence
16 to those causing some of the scores? I mean, there's a
17 ton of things that go into this. You don't look at
18 compactness in complete isolation.

19 Q Let's look at Page No. 2, paragraph 3. It
20 says, quote, you are further directed to examine the use
21 of existing geographic boundaries where feasible,
22 specifically railways, interstates, federal and state
23 highways, and large water bodies, such as those that
24 were deemed to be easily recognizable and readily
25 ascertainable by Florida Supreme Court. We recognize

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1 that these geographic features afford us an opportunity
2 to create districts with static boundaries, closed
3 quote; is that accurate?

4 A Yes.

5 Q Based on this language, is it accurate to say
6 that the memo's directive includes a preference for
7 geographic boundaries that are easily recognizable and
8 readily ascertainable?

9 A So we describe the geographic boundaries that
10 are easily recognizable and readily ascertainable as
11 those that were established by the Florida Supreme
12 Court, which were primary and secondary roads, which are
13 coded in the census bureau data, to be federal and state
14 highways, interstates as well.

15 Railways were mentioned in the Supreme Court
16 briefings. The political boundaries -- well, we're
17 talking about geographic boundaries. The large water
18 bodies were for this cycle used. We used water areas
19 that were contiguous and greater than ten acres in area.

20 Q And were those the ones deemed to be easily
21 recognizable and readily ascertainable by the Florida
22 Supreme Court?

23 A That is how we applied their order.

24 Q And does the memo also include a preference
25 for static boundaries?

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1 A It does in relation to municipal boundaries.

2 Q What do you mean by that?

3 A Florida cities regularly annex territory and
4 sometimes recede their boundaries. And some of our
5 research indicated that some cities had changed their
6 boundaries like 350 times between census geography data
7 sets.

8 An so that led us to the conclusion that in
9 all likelihood the municipal boundaries that were in
10 place for the redistricting cycle would not be there or
11 at least were not static. And so one of our approaches
12 was to deemphasize the use of city boundaries.

13 Q Do you consider a city boundary to be a
14 non-static boundary?

15 A Yes.

16 Q Let's look at Page No. 2, paragraph 2, the
17 language there saying, you're directed to, quote,
18 explore concepts that were feasible, keep cities whole,
19 while also considering the impermanent and changing
20 nature of municipal boundaries, closed quote. Is that
21 what you were just referring to?

22 A That is what I was just explaining, yes.

23 Q And that's a directive that you followed?

24 A Yes.

25 Q In the first paragraph on that same Page No.

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1 2, it says you are, quote, directed to examine the use
2 of county boundaries where it feasible, closed quote.

3 It then says, you're directed to, quote,
4 explore concepts that where feasible result in districts
5 consisting of whole counties in less populated areas,
6 closed quote.

7 And then it adds, quote, and to explore
8 concepts that were feasible, keeps districts wholly
9 within a county in the more densely populated areas,
10 closed quote.

11 A Yes.

12 Q I want to ask what it means to, quote, examine
13 the use of county boundaries?

14 A That means that as we were drafting things to
15 keep that in mind and use county boundaries.

16 Q Does it mean complying with those two
17 directives that came after the directive to examine the
18 use of county boundaries when feasible to -- the next
19 sentence?

20 A Well, within the Constitutional criteria,
21 those boundaries are all placed on equal footing.

22 Q All the county boundaries?

23 A County boundaries, city boundaries, water
24 boundaries, railroads, roads, interstates, et cetera.

25 Q So county boundaries and city boundaries are

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1 placed on equal footing?

2 A With rivers, roads, railroads, yes.

3 Q I thought you said that there was a preference
4 for static boundaries and that cities were a non-static
5 boundary?

6 A Within the directives, yes.

7 Q I'm sorry. I'm not following.

8 A So the Constitutional criteria says use
9 political and geographic boundaries where feasible. The
10 Supreme Court opinions also helped us define -- and this
11 is the last fortunate cycle -- what those political and
12 geographic boundaries were.

13 The directives to staff say to use political
14 and geographic boundaries where feasible and take into
15 consideration the more permanent nature of some of the
16 county boundaries, geographic boundaries, rather than
17 these municipal boundaries which keep changing. It
18 doesn't mean that we weren't allowed to use them or
19 couldn't use them or didn't use them.

20 Q When you say them?

21 A Municipal boundaries.

22 Q So does the reference to impermanent and
23 changing nature of municipal boundaries mean that they
24 were discounted in favor of more permanent and less
25 changing boundaries?

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1 A Not necessarily discounted. But when we had a
2 choice and we were looking at trying to draw plans and
3 be consistent throughout the state, sometimes we opted
4 to rather than follow a very small portion of a city
5 boundary, follow a road or interstate or something that
6 may have cut through it.

7 **Q And under what circumstances would you make**
8 **that decision?**

9 A We would probably look at how much population.
10 You know, this is all in the context of balancing
11 population and districts and balancing compactness and
12 other things as well.

13 So in circumstances where there was a sliver
14 that was either unpopulated or didn't have a -- even if
15 it had a significant population and if it was needed to
16 equalize a district, we would just use a road, a
17 railroad, a river to cut through the city if it was --
18 you know, made the configuration of the district more
19 compact and better population balanced, things like
20 that.

21 **Q If it was feasible to keep a city whole**
22 **without impacting other criteria, was it a directive to**
23 **explore keeping the city whole?**

24 A I don't recall it being a specific directive,
25 but it was something that was under consideration. So

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1 areas in the panhandle where you have cities that are
2 parts of all counties, sure, or wholly contained within
3 a county.

4 Q And when you say it would be under
5 consideration, under what circumstances?

6 A Well, we measured the metric. And we looked
7 at it when we were assessing and evaluating plans, you
8 know, how many cities does the plan keep whole is an
9 element of the -- it's a characteristic of the plan.

10 Q It would be a goal to explore keeping cities
11 whole; is that right?

12 A It was a concept that was measured and
13 reported and considered.

14 Q A concept that was measured because that was a
15 goal; is that right?

16 A Because it was an element that was considered
17 by the Supreme Court in prior cycles. There was lots of
18 discussion about plans that kept cities whole being --
19 this court showed a preference for that, I think would
20 be a fair way to characterize that. And so it was a
21 metric that we continued to report on and evaluate it as
22 we were drafting plans and comparing iterations of these
23 things.

24 Q So if the court showed a preference for it,
25 did you show a preference for it?

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1 A We measured the statistic and considered it in
2 relation to the other plans, yes.

3 Q **Considered it with the goal of preferring it?**

4 A There was never a mandate to keep as many
5 cities as whole as possible. That was not the goal.

6 Q **Is it accurate to say you did not have a goal**
7 **to keep as many cities whole as possible?**

8 A I think that's what I just said.

9 Q **On Page No. 2, third paragraph, second**
10 **sentence says, quote, we recognize that these**
11 **geographic features afford us an opportunity to create**
12 **districts with static boundaries, closed quote?**

13 A Yes.

14 Q **Just so I'm clear, were static boundaries**
15 **avored over non-static boundaries?**

16 A There's very few circumstances in which I
17 would say we have a direct choice. So it's as you're
18 drawing, are you looking for a city boundary or are you
19 looking for a geographic boundary.

20 And as you're drawing trying to equalize
21 population and draw compact boundaries, you know, I took
22 that directive to mean, you know, look for a road, look
23 for a river. If there's not one of those available, use
24 a city boundary.

25 Q **And just so I'm following, would the idea**

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1 behind that be that the river and road are less static
2 boundaries than a city boundary, is that what you're
3 saying?

4 A Yes.

5 MR. MEROS, JR.: Did you mean more static, the
6 river and the road are more static?

7 MR. TILLEY: I'm sorry. Yes.

8 THE WITNESS: Yeah.

9 MR. TILLEY: Thank you.

10 BY MR. TILLEY:

11 Q On Page No. 2, paragraph 3, I guess the rest
12 of that sentence says, quote, would ask that staff
13 present the boundary analysis report with each plan so
14 that we can determine coincidence of districts'
15 boundaries with these features, closed quote. What is a
16 boundary analysis report?

17 A That's a report that we created as part of our
18 processes to measure the coincidence of a district
19 boundary with each category of political and geographic
20 features that we've been discussing.

21 Q What are all the uses of a boundary analysis
22 report?

23 A The uses of it?

24 Q (Nods head up and down.)

25 A To measure the coincidence of the district

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1 boundary with each of those features.

2 **Q What does the score tell you?**

3 A I'm sorry. It gives you a percentage. So it
4 gives you a percentage of the district boundary that
5 overlaps a road or a primary and secondary road,
6 percentage of a district boundary that overlaps a
7 railroad, percentage that overlaps water bodies, county
8 boundaries, and a percentage for municipal boundaries.

9 And then it also reports the kind of inverse
10 of that, which is the portion of the district boundary
11 that does not follow any of those features.

12 **Q And what would you use that number for?**

13 A To try to gauge compliance with the
14 Constitutional criteria to follow political and
15 geographic boundaries.

16 **Q So to you, a high boundary analysis score**
17 **would suggest higher compliance with the principles laid**
18 **out in the Rodrigues memo; is that accurate?**

19 A Yes, except we measured the inverse. So we
20 reported each of the individual categories and then to
21 avoid sort of double counting where there was a waterway
22 and a county boundary, for example, or a county boundary
23 and a municipal boundary or a municipal boundary and a
24 water boundary, et cetera.

25 We reported the inverse as a non-political and

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1 geographic score, and that would be -- you know, if we
2 had a district that was 100 percent made of counties,
3 the non-political geographic boundary score for that
4 would be zero percent, and that would indicate a high
5 compliance.

6 Q Are there any limitations to looking to that
7 score to assess compliance with the principles laid out
8 in the Rodrigues memo?

9 A Any limitations, I don't know if I understand
10 what you mean by limitations.

11 Q Sure. So if you had a district that followed
12 the water and a highway and had a couple of county lines
13 as the boundaries, but it cut through a of bunch of
14 cities, for example, and therefore it had, I guess, a
15 zero percent non-polygeo score, would you say that's --
16 I guess is there -- is there -- do you think there's
17 anything missing from what that score tells you to
18 determine compliance with other aspects of what you're
19 required to do under the Rodrigues memo?

20 A I don't think so. I think given the fact that
21 Florida, to my knowledge, is one of the only states that
22 has that kind of a Constitutional requirement and we've
23 had to come up with a metric to measure that, I think we
24 did a really good job.

25 Q So are there any limitations to the boundary

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1 **analysis score?**

2 A I mean, no.

3 Q **Let me just --**

4 A Try again.

5 Q **Before, you gave an example of Monroe County?**

6 A Right.

7 Q **And the three mathematical compactness scores?**

8 A Uh-huh.

9 Q **And you said that because of -- tell me if I'm**
10 **misrepresenting that -- the unique shape and geography**
11 **of Monroe County, the scores are lower for Monroe**
12 **County; is that right?**

13 A Yes.

14 Q **But the fact that they're lower doesn't mean**
15 **that it's improper to draw a district that includes**
16 **Monroe County and maybe some other county; is that fair**
17 **to say?**

18 A Yes.

19 Q **So I'm asking a similar question. Well, let**
20 **me back up. Because normally a lower scores in the**
21 **mathematical compactness score might signal something to**
22 **you that something is amiss; is that fair to say?**

23 A Repeat that one more time.

24 Q **Sure. Low mathematical compactness scores are**
25 **something that you would be looking for generally to**

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1 determine whether to make adjustments; is that fair to
2 say?

3 A I think so.

4 Q And so I'm asking a similar question about the
5 boundary analysis. Is there something that the score
6 might not be telling you about compliance with the
7 Rodrigues memo because of the way a particular district
8 is drawn, if that makes sense?

9 A I don't think so. I think in circumstances
10 where there was a district with a low noncompliance
11 score or a high noncompliance score, low political and
12 geographic boundary usage, that's something that we
13 would have looked to improve as a measurement of
14 compliance.

15 So, you know, I think in all the districts
16 throughout the state, we did a really good job of
17 complying with that. So I don't think there were
18 circumstances in which you would say, wow, that one was,
19 you know, because of the geography or whatever. Bearing
20 in mind that all of this has to have some level of
21 flexibility when it comes to Tier One.

22 Q And what does that mean in the context of a
23 boundary analysis score?

24 A That in certain circumstances when considering
25 diminishment or other factors like that, really that is

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1 the factor, compliance with a non-diminish reprovion
2 in Tier One, you would look at that through -- if you
3 had a low boundary usage score, you would look to see
4 whether or not that district is a tier-one protected
5 district, and that might have something to do with the
6 boundary usage score.

7 Q I'm sorry. Can you repeat that?

8 A I can try. So if you're drawing a district
9 generally, we're looking at maximizing the boundary
10 compliance score. If there are circumstances in which
11 you see a lower score, we would look to see, well, was
12 this a tier-one district that we're trying to avoid
13 diminishment in, is that what we may have come off of
14 certain political or geographic boundaries.

15 (Plaintiffs' Exhibit 3 was marked.)

16 BY MR. TILLEY:

17 Q I see. Thank you. I would like to ask you
18 about a quote from Senator Rodrigues during the October
19 11, 2021 meeting. Let's go to the yellow flag, which is
20 Page No. 108 starting at line 16.

21 Quote, specifically, if you go back and look
22 at what we received in public input during those tours
23 on the last two redistricting cycles, it was primarily
24 the public letting the legislature know these are the
25 communities of interest that we want you to keep

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1 together. So what I said was it is no longer required.
2 Now, what I raise was the question, now that Fair
3 Districts has passed and the court made clear in the
4 2012 litigation that the Fair Districts Coalition
5 brought fourth that the legislature can't consider
6 communities of interest because it's not in the
7 objective standards spelled out in the Fair Districts
8 Amendments, closed quote.

9 Did I read that accurately?

10 A I believe so.

11 Q Does the Senate agree with that statement?

12 A I'm trying to recall the context of the
13 conversation, so bear with me while I read the rest of
14 this.

15 Q Sure.

16 A So this is in the context of questions of the
17 chair related to a public road show. And I believe that
18 this is Chair Rodrigues talking about the road show that
19 was -- and the road show being a last cycle of the
20 legislature went to I think it was 26 different cities
21 to hold public hearings and take commentary from the
22 public prior to drawing any districts.

23 And one of the things that I think was brought
24 up at those public hearings was keep my community of
25 interest together. And the legislature offered some of

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1 that as justification for the boundaries that were drawn
2 in the 2012 cycle to which the Florida Supreme Court
3 rejected that as justification because it was not
4 enumerated in the Constitution. And, therefore, I think
5 that's what Senator Rodrigues is trying to summarize
6 here.

7 Q Is it the Senate's view that communities of
8 interest should not be considered when drawing maps
9 because they're not, quote, in the objective standard
10 spelled out in the Fair Districts Amendments, closed
11 quote?

12 A I think so, yes.

13 Q And just so we're clear, when we're talking
14 about the Fair Districts Amendments, we're talking about
15 the principles outlined in the Rodrigues memo?

16 A We're talking about Article III, sections 20
17 and 21.

18 Q And those principles are outlined in the
19 Rodrigues memo?

20 A Yes.

21 Q Does this mean that when drawing maps as part
22 of the 2022 redistricting process, it was seen as not
23 appropriate to consider anything outside of the, quote,
24 objective standards spelled out in the Fair Districts
25 Amendments?

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1 A I believe that's correct. I think the
2 objectives -- I think the directives that we received
3 were to stick to the objectives that were spelled out in
4 the memo.

5 Q And did you adhere to that directive not to --
6 I should say did you consider anything outside of the
7 standard set forth in the Rodrigues memo?

8 A I don't believe so.

9 Q You said you don't believe so. Do you think
10 you might have?

11 A No.

12 Q Now, I would like to talk about other
13 considerations that one could consider when drawing
14 maps. Specifically, I'd like to ask you whether you
15 did, in fact, consider them when drawing maps as part of
16 the 2022 redistricting process?

17 And to be clear, with these questions I'm
18 still asking for your answer on behalf of the Senate.
19 When drawing any of the maps in the 2022 redistricting
20 process, did you seek in any way to favor or disfavor a
21 political party?

22 A No.

23 Q When drawing any of the maps in the 2022
24 redistricting process, did you seek in any way to favor
25 or disfavor an incumbent?

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1 A No.

2 Q When drawing any of the maps in the 2022
3 redistricting process, did you seek in any way to
4 preserve the cores of pre-existing districts?

5 A We did not measure or consider the district
6 core retention, no.

7 (Plaintiffs' Exhibit 4 was marked.)

8 BY MR. TILLEY:

9 Q I want to show you Exhibit 4. I want to read
10 to you Page No. 8 RFA 27. I should be clear. These are
11 the Senate's responses and objections to the plaintiffs'
12 first set of request for admission.

13 Number 27 says, admit that preserving the
14 cores of pre-existing districts was not a criterion
15 utilized in the drawing of the 2022 enacted Senate plan.

16 The response is, quote, admitted, to the
17 extent that preserving the cores of pre-existing
18 districts is not an explicit standard under Article III,
19 section 21 of the Florida Constitution but denied to the
20 extent the Florida Senate reasonably considered the
21 historical configuration of pre-existing districts that
22 have been litigated and/or upheld by the courts, closed
23 quotes?

24 A Yes.

25 Q Do you know why this response makes that

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1 **statement?**

2 A Well, yes. Because we certainly looked at the
3 benchmark plans and things that were in place. That's
4 very different than preserving cores of pre-existing
5 districts. than preserving cores of pre-existing
6 districts, when states do that or entities do that as a
7 redistricting, they're actually measuring the population
8 sort of carryover, and that's not something that we
9 considered.

10 The general configuration and prevalence and
11 performance of benchmark districts is something that I
12 think we're bound to consider. So maybe I should have
13 been more clear in my prior answer.

14 Q Thank you. When you say general
15 configuration, what do you mean?

16 A So where they were, the fact that they
17 existed, what the genesis of that district was. Some of
18 them were ordered by court. Some were settlements, I
19 think, as part of litigation, things like that.

20 Q When you say the genesis of a district, what,
21 if anything, does that encompass beyond a court order or
22 settlement that you just mentioned?

23 A Well, I guess in the current context, in 1992,
24 there was a court order that drew a district that went
25 from Clearwater through St. Pete over through Tampa

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1 through Lakeland and maybe even farther than that. I
2 don't recall specifically, but all these things are
3 posted.

4 We posted all the prior iterations of maps on
5 the Senate website, so that's all available for people
6 to look at because it's all relevant to the discussion
7 that there has been a benchmark district, a
8 court-ordered district that would allow
9 African-Americans an opportunity to participate and
10 elect candidates of their choice since 1992.

11 **Q You're talking about for that one example?**

12 A In that one example. There are others, but
13 yes.

14 **Q And did you understand -- if I understand**
15 **correctly, do you understand that part of your role in**
16 **the 2022 redistricting process was to comply in some way**
17 **with the 1992 court-ordered district?**

18 A I don't know about the term comply. You know,
19 I think that for us to ignore past litigation in the
20 area and other existence of benchmark plans through the
21 decades, I think we should have been looking at that in
22 terms of situational awareness, if nothing else.

23 **Q Situational awareness because --**

24 A Because the historic ability to participate
25 and elect candidates of your choice is relevant to the

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1 diminishment standard.

2 **Q Would you be looking at benchmarks earlier**
3 **than 2012?**

4 A Not for a specific diminishment standard. So
5 we wouldn't run population or you can't because you're
6 stuck with the census geography, right. So the census
7 bureau releases geography that's going to include the
8 benchmark districts, meaning the most recently
9 enforceable plan.

10 And so you can look at 2020 population on the
11 benchmark plan. If you go back any further, the blocks
12 don't line up, and you couldn't even do that if you
13 tried.

14 **Q So what, I guess, is the relevance of the**
15 **situational awareness in the example that you gave?**

16 If you're not looking at benchmarks before
17 2012, what does having situational awareness around
18 something from 1992, how does that inform, if at all,
19 the 2022 process of drawing the plan?

20 A I think that that is relevant because we're
21 asked about the diminishment, and it's relevant to the
22 specific benchmark. But I think it's important to know
23 how long has that been there, is it a new thing that was
24 only around for one cycle, was it drawn specifically to
25 afford minorities an opportunity to elect, or is it

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1 something that kind of naturally became such a district?
2 I think all those things are important for base level
3 understanding as you're going into this.

4 Q Correct me if I'm wrong. I think you said if
5 the diminishment just happened in the last cycle; is
6 that accurate?

7 A We can only measure diminishment from the last
8 legally enforceable benchmark.

9 Q And maybe I just misunderstood. But I thought
10 you said one thing you would look at is whether the
11 diminishment just happened in the last cycle and not
12 before?

13 A Well, no. Yeah, whether or not that district
14 had existed prior to the last cycle, for example.

15 Q I see. And you gave one example about this
16 1992 court order with respect to one district. Are
17 there other pre-2012 circumstances, things that happened
18 that you think would be relevant for purposes of
19 situational awareness in drawing maps as part of the
20 2022 process?

21 A I'm not going to recall off the top of my
22 head. I don't think I can answer that off the top of my
23 head. I would have to look at it.

24 Q Sure. I of course understand you don't
25 necessarily remember everything that happened in the

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1 last 30 years. I ask because you did give one example
2 of the 1992 court order. My question for purposes of
3 here today is are there others that you can think of
4 here today?

5 A Nothing comes to mind in the Senate districts
6 off the top of my head.

7 Q Other than a court order, are there other
8 situations separate from a specific thing that happened
9 with that district, are there types of situations other
10 than a court order where you might draw upon that
11 situational awareness in thinking about how to do what
12 you were asked to do as part of the 2022 redistricting
13 process?

14 A Perhaps. And now that I'm thinking about it,
15 you know, having some contextual situational awareness
16 to the existence of like majority or minority districts,
17 it's probably relevant. So I know there's a couple of
18 those that were in South Florida, right.

19 We had at least two, I think, Senate
20 majority-minority districts. And so understanding the
21 history of those districts, how they came to be, when
22 they were drawn, if and when they were challenged or
23 upheld by courts is I think relevant to the task.

24 Q Any other type of situational awareness that
25 you can think of other than the existence of

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1 majority-minority districts?

2 A I mean, the districts generally of effective
3 minority districts or other type of districts that would
4 enable that is what I was talking about.

5 Q I see. Thank you. But any other categories
6 you might say of things that would constitute a
7 situational awareness that would inform what you did the
8 in the 2022 redistricting process?

9 A I think I've answered that.

10 Q Okay. When drawing maps in the 2022
11 redistricting process, did you seek in any way to rely
12 on MSAs or metropolitan statistical areas?

13 A No.

14 Q When drawing any of the maps in the 2022
15 redistricting process, did you seek in any way to rely
16 on unincorporated places like CDPs or census designated
17 places?

18 A No.

19 Q So you drew maps -- you drew all the maps
20 without regard to unincorporated places?

21 A Correct.

22 Q And without regard to Metropolitan statistical
23 areas?

24 A That's correct.

25 Q When drawing any of the maps in the 2022

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1 redistricting process, was it a goal of yours in any way
2 to keep communities of interest together?

3 A We did not consider communities of interest.

4 Q When drawing any of the maps in the 2022
5 redistricting process, was it a goal of yours in any way
6 to separate communities that have diverging interest?

7 A No.

8 Q When drawing any of the maps in the 2022
9 redistricting process, was it a goal of yours in any way
10 to connect population centers within the region?

11 A What do you mean by connect population
12 centers?

13 Q To have population centers within a region be
14 a part of one district?

15 A We drew for population equality. And so to
16 the extent we needed population to reach the ideal,
17 sure.

18 Q Separate from what you might have to do to
19 achieve population equality, did you separately have a
20 goal in any way to connect population centers within the
21 region?

22 A I don't think that was something that was
23 considered.

24 Q Apart from the directive relating to county
25 boundaries that we've discussed, did you have it as a

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1 goal to cross any county line?

2 A A goal, I don't think so.

3 Q Did you have any goals with respect to county
4 boundaries, other than those in the Rodrigues memo?

5 A No.

6 Q You didn't have a goal to cross any particular
7 boundary?

8 A No.

9 Q Is there any other criterion that I haven't
10 asked about that isn't specifically listed in the
11 Rodrigues memo or the Florida Constitution that you
12 employed when drawing maps as part of the 2022
13 redistricting process?

14 A No. I think we've covered them all.

15 Q Now, I would like to talk about the process of
16 drawing the maps. Let's take a short break.

17 (Recess 10:35 a.m. until 10:43 a.m.)

18 BY MR. TILLEY:

19 Q I'd like to talk about the process of drawing
20 the maps. And just to confirm my understanding, when
21 you drew the maps in the 2022 redistricting process, you
22 always followed the principles outlined in the Rodrigues
23 memo?

24 A Yes.

25 Q Is it accurate to say that you never deviated

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1 from them?

2 A Yes.

3 Q And is it accurate to say you never took into
4 account considerations outside of those in the Rodrigues
5 memo?

6 A That's correct.

7 (Plaintiffs' Exhibit 5 was marked.)

8 BY MR. TILLEY:

9 Q I would like to ask you about some of the
10 statements made by Senator Rodrigues. Let's give you
11 Exhibit 5. Let's go to the orange flag, Page No. 38,
12 starting at line 19.

13 Senator Rodrigues says, quote, the benchmark
14 map identifies what the existing tier-one districts are.
15 Those are the districts that we cannot diminish. So
16 once we have identified the tier-one districts, we then
17 start with a blank map, highlight the data we have
18 received from the U.S. Census Bureau by race, and then
19 the staff begin drawing around the population
20 distribution in order to ensure we had not diminished
21 the opportunity for minorities to participate or elect a
22 voter of their choice. The base maps just gave us a
23 starting point, closed quote.

24 Now let's look at Page No. 39 starting at line
25 14. Rep Rodrigues says, quote, once you have identified

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1 population distribution, you encircle it and continue to
2 grow until you have the metrics that are required to
3 protect the tier-one district, closed quote.

4 Have I read those two quotes correctly so far?

5 A That's what the transcript says, yes.

6 Q And on Page No. 40 starting at line 10,
7 Senator Rodrigues says, quote, once we highlighted the
8 racial population, we began drawing from there, closed
9 quote.

10 And then later down the page starting at line
11 22, he says, so once we had assured that we were
12 tier-one compliant, which trumps all of the other
13 tier-two metrics, then the question was which map is the
14 most tier-two compliant among the tier-one choices,
15 closed quote. Did I read that correctly?

16 A Yes.

17 Q Do these statements accurately state your
18 process for drawing maps in the 2022 redistricting
19 process?

20 A No.

21 Q How do they not?

22 A So in the particular context of this
23 conversation, this is Senator Gibson who's from the
24 Jacksonville area asking specifically about districts in
25 that area. And what was unique about that was we had

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1 identified that Nassau and Duval Counties together could
2 make up two whole Senate districts.

3 And so one of those we knew from looking at
4 the benchmark map was appropriate to draw a district
5 that did not diminish. And so because of the unique
6 nature of that circumstance, we could draw the minority
7 district in Duval County and then literally just assign
8 the rest of the blank territory to make up the other
9 district.

10 But we don't actually just like start with a
11 whole blank map of the state and go draw circles around
12 minority population and then fill out the rest. That's
13 not a correct characterization.

14 Q So is it accurate to state that in those
15 quotations from Senator Rodrigues that I just read, are
16 you saying that was a reference only to the area that
17 Senator Gibson was asking about?

18 A Yes, I think that's what he was trying to
19 explain.

20 Q So is it accurate to say that was the process
21 for considering how to draw the district that she was
22 referring to?

23 A Yes, but it's a very unique circumstance in
24 which you would be able to have a piece of two counties
25 that you could just draw one district in that had to

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1 meet certain criteria related to tier-one and then just
2 fill out the rest.

3 Q Is it accurate to state that the process that
4 Senator Rodrigues described in those quotations we just
5 read was not the process used for drawing other
6 districts?

7 A Correct.

8 Q Was your focus in drawing maps to start with
9 tier-one compliance and then proceed to tier-two
10 compliance?

11 A Not necessarily. You have to balance the two.
12 So as we start with a blank map and start filling in,
13 it's pretty typical to start at both the north and south
14 ends of the state and then fill things in as you go.

15 And so as you're doing that, you know, you're
16 looking at the tier-one considerations when you get to
17 areas of the state where there was a benchmark district
18 that we'd identified with counsel as performing and
19 needing to be protected from diminishment.

20 So you know where those areas of the state
21 are. And so as you're drawing and you get to those,
22 then maybe you focus a little bit on the tier-one issue
23 and then kind of balance.

24 I mean, the whole thing is dynamic until
25 you're done and you have a whole statewide map that's

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1 under the population deviation and you think meets all
2 the other criteria you're supposed to comply with.

3 Q So is it accurate to say that you're primarily
4 focusing on tier-two until you get to the parts of the
5 state that you already know have tier-one protected
6 districts; is that accurate?

7 A I think so. I mean, tier-one relating to the
8 diminishment standard, yes.

9 Q Right. So you're only focused -- well, is it
10 accurate to say you're only focused on tier-two until
11 you get to an area that you understand to be a protected
12 district?

13 A Yeah, I think so. I mean, that kind of comes
14 into the prior discussion about old benchmarks and
15 things like that. I mean, that's how you kind of know
16 where these areas of the state are, coupled with the
17 census demographics.

18 In the panhandle in Senate districts where
19 there are no districts that are protected from
20 diminishment, the focus is tier-two, right, and
21 compactness, local geographic boundaries, usage,
22 et cetera.

23 And as you move down the state, you start to
24 consider, you know, well, we know we have tier-one
25 district in Jacksonville, one in Orlando, one in Tampa,

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1 et cetera. And so when you get to those areas, your
2 focus shifts a little bit.

3 Q And when you say it shifts a little bit, and I
4 know you said it's a dynamic process, how are you
5 weighing tier-two and tier-one compliance when you're
6 getting to those areas?

7 A So you would start drawing a district in the
8 region that is protected from diminishment. You would
9 look at that. You start looking at population
10 characteristics, demographics and drawing a district.

11 And as you sort of -- if you picture it as it
12 starting in the middle and filling out, you're looking
13 for political and geographic boundaries that would
14 qualify under the metrics for use. You're looking at
15 compactness, you know, visually.

16 And then when you get to a full population
17 that works in conjunction with the other populations
18 around it, that's when you would start looking more
19 closely at the metrics and whether or not your
20 configuration complies with both tier-two and the
21 tier-one diminishment standards or non-diminishment
22 standards.

23 (Plaintiffs' Exhibit 6 was marked.)

24 BY MR. TILLEY:

25 Q Let's look at the January 13, 2022 transcript.

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1 So at Page No. 3, line 9, Senator Rodrigues says, quote,
2 after reviewing the recommendations of the Select
3 Subcommittee with staff and counsel, I have filed
4 amendments to SJR-100 and Senate Bill 102.

5 The substance of my amendments are
6 Congressional Plan S000C8040 and Senate Plan S000S8046,
7 which I believe most consistently adhere to the
8 directives issued to staff by the full committee, closed
9 quote. Is that right?

10 A Yes.

11 Q In general, when applying all the criteria
12 both tier-one and tier-two, were you trying to
13 consistently apply the directives of the committee as
14 stated in the Rodrigues memo?

15 A Yes.

16 (Plaintiffs' Exhibit 7 was marked.)

17 BY MR. TILLEY:

18 Q Let's look at Page No. 3, line 18.
19 Senator Burgess says, quote, the maps that we will be
20 workshopping today are not final.

21 MR. MEROS, JR.: I'm sorry. Can you repeat
22 which page you're on?

23 MR. TILLEY: Yes. Page No. 3, line 18.

24 BY MR. TILLEY:

25 Q The maps that we will be workshopping today

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1 are not final. Any alterations that are proposed,
2 whether it is guidance and feedback to the staff or as
3 an amendment offered in the future, should adhere to the
4 Constitutional principles and apply them consistently
5 throughout the state, closed quote.

6 Did I read that correctly?

7 A Yes.

8 Q Did you try to apply the committee's
9 directives in a consistent manner throughout the state?

10 A Yes.

11 Q Does that mean the Senate didn't apply a
12 certain interpretation of the criteria in one part of
13 the state and a different interpretation of the criteria
14 elsewhere?

15 A I don't think so. I think there were some
16 examples throughout the process where we had a choice of
17 roads that we could follow or something like that. I
18 think at this point, one of the examples that was given
19 related to districts in north central Florida and how
20 like Alachua County was split in and around Gainesville,
21 and there was two different ways to do that.

22 One of them I think had a different
23 compactness score or followed a different road than
24 another. And so we viewed those as still being
25 consistent with the directives, and so we put them

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1 forward for the committee's decision.

2 Q I think what you just said is that you did
3 apply the directives consistently throughout the state;
4 is that accurate?

5 A Yes. But there were still some areas where
6 there was maybe tradeoffs where, you know, we didn't
7 have a favorite compactness metric, per se. So one
8 iteration may have scored well on one metric versus
9 another.

10 Or I think in South Florida there was a
11 decision, if I'm remembering correctly, between a
12 configuration that had a majority-minority district and
13 one that was an effective minority district, both of
14 which had, you know, consistent tier-two metrics and
15 configurations around them.

16 We consistently applied those directives but
17 still wound up with a decision that we thought was
18 appropriate for the committee to make and debate
19 publicly.

20 Q And you thought it was appropriate because?

21 A Well, there was a decision between do we go
22 with a plan that has a plus 50 percent district, which I
23 think was in the benchmark plan, versus one that was a
24 little bit lower than that but still in our analysis
25 performed.

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1 And so we left it up to the members of the
2 committee to look at the surrounding -- the tier-two
3 metrics and the surrounding districts and weigh other
4 considerations about decisions that you would have to
5 make when choosing between drawing a district at or
6 above 50 percent black voting age population and let
7 them make those decisions and do it in a public setting.

8 Q So there were certain situations where you
9 applied the criteria consistently, but that resulted in
10 different options for the committee to choose from?

11 A I think that's correct.

12 Q I'd like to talk more about the tier-one
13 criteria related to racial and language minorities that
14 is on the Rodrigues memo, Page No. 2, paragraph 4. I'll
15 read, quote, that districts are not drawn with the
16 result of denying or bridging the equal opportunity of
17 racial or language minorities to participate in the
18 political process or diminish their ability to elect
19 representatives of their choice, closed quote. Is that
20 right?

21 A Yes.

22 (Plaintiffs' Exhibit 8 was marked.)

23 BY MR. TILLEY:

24 Q Let's do Exhibit 8. This is a portion of the
25 slide presentation Mr. Nordby presented at the October

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1 11, 2021 committee meeting. Mr. Nordby presented to the
2 committee on redistricting law at that meeting; is that
3 accurate?

4 A I think that's correct, yes.

5 Q So at Page Bates No. P194, this slide explains
6 a set of standards in tier-one. It's labeled minority
7 voting protection there on the left. Do you see?

8 A I think so, yes.

9 Q And it says, quote, districts shall not be
10 drawn with the intent or result of denying or abridging
11 the equal opportunity of racial or language minorities
12 to participate in the political process or to diminish
13 their ability to elect representatives of their choice?

14 A Yes.

15 Q The Florida Constitution imposes two
16 requirements that serve to protect racial and language
17 minority voters in Florida, closed quote. Is that the
18 Senate's understanding?

19 A That's what the sentence says, yes.

20 Q Is that the Senate's understanding of the
21 requirement?

22 A The Senate's understanding?

23 Q Yes.

24 A I believe so. That's what was presented to us
25 in this presentation, yes.

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1 Q And those are the principles that you adhere
2 to?

3 A Those are, yes.

4 Q And there are two pieces to this provision.
5 The slide lists one as the, quote, prevention of
6 impermissible vote dilution, closed quote; is that
7 right?

8 A Yes.

9 Q The second is the, quote, prevention of
10 impermissible diminishment of a minority group's ability
11 to elect a candidate of its choice. These two standards
12 are essentially restatements of sections 2 and 5 of the
13 Voting Rights Act respectively, closed quote?

14 A Yes.

15 Q And is that the Senate's understanding of the
16 law?

17 A I believe that's a fair characterization, yes.

18 Q With respect to vote dilution, I want to turn
19 to Bates Page No. P196. That slide, in part, says,
20 quote, the anti-vote dilution provision of the Florida
21 Constitution like section 2 of the Voting Rights Act
22 require the creation of a majority-minority district
23 where the jingle's preconditions are satisfied and, if
24 so, where the totality of the circumstances demonstrates
25 that minority voters' political power is truly diluted,

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1 closed quote?

2 A Yes.

3 Q Is that the Senate's understanding of the law?

4 A Yes.

5 Q Does the Senate consider Benchmark District
6 19 protected under the anti-vote dilution provision?

7 A I don't believe that there was a requirement
8 to draw a minority-minority district in Tampa Bay.

9 Q Meaning there was not a requirement because it
10 was not a protected district under the anti-vote
11 dilution provision?

12 A To my knowledge, the jingles factors weren't
13 present.

14 Q Does the Senate consider enacting District 16
15 protected under on anti-vote dilution provision?

16 A I don't think so, no.

17 Q What about enacted District 18?

18 A No, it's not protected.

19 Q So the anti-vote dilution provision did not
20 play a role in the Senate's drawing of enacted District
21 16?

22 A That's correct, it was not drawn to be
23 majority-minority.

24 Q Or enacted District 18?

25 A Right.

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1 Q Let's go to Bates P-197. This slide says,
2 quote, the anti-retrogression provisions of the Florida
3 Constitution provide that the legislature cannot
4 eliminate majority-minority districts or weaken other
5 historically performing minority districts where doing
6 so would actually diminish a minority group's ability to
7 elect its preferred candidates; is that right?

8 A Yes.

9 Q And that's the Senate's understanding of the
10 law?

11 A Yes.

12 Q Does the Senate consider Benchmark District 19
13 protected under the non-diminishment standard?

14 A Yes.

15 Q Does that mean that black voters' ability to
16 elect candidates of their choice could not be diminished
17 from their ability that existed in Benchmark District
18 19?

19 A Yes.

20 Q Is it accurate to say that Benchmark District
21 19 is a tier-one protected district?

22 A Yes.

23 Q And that non-diminishment requirement comes
24 from the Florida Constitution?

25 A Yes, which mimic the Section 5 provision in

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1 federal law.

2 Q Is it important for the government to comply
3 with the non-diminishment principle from the Florida
4 Constitution?

5 A Yes.

6 Q Does the government have a compelling interest
7 in complying with the non-diminishment principle from
8 the Florida Constitution?

9 MR. MEROS, JR.: Object to the form, to the
10 extent it calls for a legal conclusion.

11 You can answer.

12 THE WITNESS: Based on my understanding of the
13 case law, courts have treated compliance with the
14 VRA to be a compelling state interest. And to the
15 extent that the provisions in the Florida
16 Constitution parallel provisions in the VRA, yes.

17 BY MR. TILLEY:

18 Q Does the Senate consider Benchmark District 24
19 protected under the non-diminishment standard?

20 A I'm trying to remember where Benchmark
21 District 24 is.

22 (Plaintiffs' Exhibit 9 was marked.)

23 BY MR. TILLEY:

24 Q You can see on that first page middle lower
25 left Benchmark District 24.

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1 A No, that would not have been considered a
2 protected district.

3 Q Does that mean that the Senate believed black
4 voters did not have an ability to elect candidates of
5 their choice in Benchmark District 24?

6 A Correct.

7 Q Does that mean a goal of the Senate was not to
8 avoid diminishing minority ability to elect in Benchmark
9 District 24?

10 A I'm sorry. What?

11 Q Did the Senate have a goal to avoid
12 diminishing minority ability to elect in benchmark 24?

13 A No. I think I just said we didn't think it
14 was a protect district.

15 Q And so the Senate did not have a goal to avoid
16 diminishing minority ability to elect in that district?

17 A Right.

18 Q Let's go back to the prior Exhibit 8 and
19 specifically Bates Page No. P-198. It says, quote, a
20 functional analysis is required to elevate retrogression
21 and to determine whether a district is likely to perform
22 for minority candidates of choice, closed quote.

23 A I think it says evaluate retrogression, not
24 elevate.

25 Q Thank you. And that, quote, requires

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1 consideration of minority population in districts,
2 minority voting age population in districts, political
3 data, how a minority population group has voted in the
4 past and no predetermined or fixed demographic
5 percentages used at any point in the assessment, closed
6 quote?

7 A That's correct.

8 Q Is that the Senate's understanding of the law?

9 A That's our understanding of what a functional
10 analysis is, yes.

11 Q Is it necessarily diminishment if the minority
12 percentage declines from the benchmark?

13 A No. According to the apportionment, case law
14 has come out of last cycle. That's where the functional
15 analysis and its use kind of stems from. So it's not a
16 specific population threshold. It's a totality of the
17 circumstances using the data that's referred to here.

18 Q Let's look back at the October 11th transcript
19 that's Exhibit 3. Page No. 70, line 16, quote, the
20 focus of the inquiry is to determine whether there are
21 districts that provided an effective opportunity to
22 elect in a benchmark plan and then to ensure that any
23 plans adopted by the legislation during this process
24 that there is not a diminishment in the actual or
25 effective ability to elect within that district.

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1 So, for example, a district that in some of
2 the case law out of Alabama and Mississippi, for
3 example, where there are districts that may be 70
4 percent voting age population of African-American
5 population, the courts have said in that context that is
6 not necessarily a diminishment to reduce that percentage
7 from 70 percent to 60 percent.

8 It is driven not only by the racial
9 demographics of this district, but by other factors such
10 as voter registration rates, turnout rates, in some
11 parts of the state citizenship rates effect the ability
12 to elect a certain minority population, closed quote.

13 Is that the Senate's understanding of the law?

14 A Yes.

15 Q And looking at Page No. 71 starting at line
16 12, quote, one of the factors that the court looked at
17 in the last cycle was whether particular racial groups
18 would have the ability to control the result in one
19 political party's primary election where the other
20 political party's primary election and then how that
21 would perform in the general election, closed quote.

22 A Where? Sorry.

23 Q Page No. 71, line 12.

24 A It is one of the factors that the court looked
25 at in the last cycle was whether the particular racial

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1 group would have the ability to control the results in
2 one political party's primary election where the other
3 political party's primary election -- and then how would
4 that perform in the general election, is that?

5 Q Yes. Is that the Senate's understanding of
6 the law?

7 A I think so, yes.

8 Q I would like to walk through the functional
9 analysis and your assessment of whether a district was
10 protected and, if so, whether it complied with the
11 non-diminishment requirement. Let's look back at the
12 benchmark plan, Exhibit 9.

13 First, how would you determine whether a
14 minority group's ability to elect candidates of their
15 choice was protected in a particular benchmark district?

16 A in a particular benchmark district, we worked
17 with counsel to identify the districts that would have
18 been protected in the benchmark plan. But generally, it
19 would be an analysis of the factors that have been
20 enumerated here, including the black voting age
21 population, the primary control for the black voting age
22 population's candidate of choice.

23 It's been a while since I've done one of
24 these. What's the term I'm looking for. The
25 performance in the general election, you're also looking

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1 at cohesion -- that was it -- cohesion in terms of
2 registration.

3 Q Going to Page No. 5 of this exhibit which is
4 Bates SEN-823. This is the list of the ten districts
5 from the benchmark plan that the Senate considered
6 protected from diminishment?

7 A Yes.

8 Q And I know you just referenced counsel, and
9 I'm not asking about conversations with counsel. But
10 where did this list of ten districts come from?

11 A Conversations with counsel.

12 Q Did it come from anywhere else?

13 A No.

14 Q Do you know what analysis went into
15 determining which districts were protected?

16 MR. MEROS, JR.: Object to the basis of
17 privilege, to the extent it would require you to
18 discuss any conversations counsel. Instruct you
19 not to answer on that basis.

20 BY MR. TILLEY:

21 Q When you're talking about ability to elect, is
22 it the ability to elect that existed at the end of the
23 decade like 2020 or the start of the decade?

24 A When you're looking at these metrics, there's
25 a lot of variables that go into it. So certain cycles

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1 may have unopposed candidates. There may be other
2 factors that lead to turnout numbers, hurricanes,
3 pandemics, et cetera.

4 So rather than try to pick the beginning, the
5 end, the middle, we tried to look at more of an average
6 or a longer kind of -- we try to normalize for that,
7 really.

8 When you look at registration, you're looking
9 at the most recent because it doesn't make sense to try
10 to average registration throughout the time period. But
11 turnout is something you try to control for with an
12 average.

13 Q And you would control for turnout with an
14 average because that could vary over time; is that what
15 you were saying?

16 A Yes.

17 Q So when you're determining whether the
18 minority group's ability to elect is the same less or
19 greater from the benchmark plan, when do you measure
20 that ability in the benchmark?

21 A I'm sorry. When do we take the measurement or
22 what year elections are we looking? I don't understand
23 your question. I'm sorry.

24 Q So when you're determining whether the
25 minority group's ability to elect is the same less or

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1 greater from the benchmark plan, is it the then existing
2 ability in 2020?

3 A I'm not sure I understand. Are you asking
4 about a data point?

5 Q Well, you're looking at the ability to elect
6 as of the end of the decade; is that right?

7 A Throughout the decade, which is why we average
8 those numbers. So there's not a single snapshot for our
9 purposes. I mean, there's probably lots of different
10 ways to do this, but we chose to try to do the averages
11 and so we would avoid people trying to cherrypick one
12 cycle over another for whatever reason.

13 So we looked at when it came to registration,
14 those are 2020 numbers because that was the most
15 recently available stuff when we were back in 2022. The
16 turnout numbers were averaged on Page No. 6 of this
17 exhibit, whatever number it is.

18 We have the average primary election turnout,
19 and that's throughout the decade, the average general
20 election turnout also throughout the decade. And then
21 we have the general election performance and statewide
22 elections 2012 through 2020 where we look at the average
23 performance, the total wins, and then the margins as
24 well.

25 Q And based on what you said about turnout, is

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1 it accurate to say that you're looking at the
2 performance from 2012 to 2020 to accommodate for
3 variability, if that makes sense?

4 A Yes.

5 Q But the registration is at the time of 2020?

6 A Yes, registration is 2020.

7 Q And what role does voting each population play
8 into this?

9 A It's not a primary consideration. It's just
10 an element of the analysis that was mentioned in
11 apportionment one or two, I think, so it's someone that
12 we would report on and consider. And it's relevant in
13 the context of whether or not you're drawing a majority
14 or minority district.

15 Q What is it relevant to, if at all, outside of
16 that context?

17 A Well, in the context of a majority-minority
18 district, it's about 50 percent. If it's below that,
19 you kind of use the black voting age population to sort
20 of describe the overall characteristics of the district.

21 So if it's in the 40s or something, you may
22 call it an effective minority district because assuming
23 the numbers bear out performing, but it's not a majority
24 status. So it's kind of just an indicator for
25 terminology purposes.

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1 Q Well, here on Page No. 5 of the benchmark
2 plan, the BVAP for District 19 is 31.33 percent; is that
3 right?

4 A Yes.

5 Q And then looking on Page No. 6, you see the
6 performance for the Democrats in statewide elections in
7 District 19 at 63.9 percent; is that right?

8 A Yes. That would have been the average vote
9 share that the Democrat candidate got based on statewide
10 elections held 2012 to 2020.

11 Q So the BVAP there is 31.33, which is
12 significantly below 50, would you say?

13 A Yes.

14 Q But still performed at a level of 63.9
15 percent; is that right? Am I understanding that
16 correctly?

17 A I think we would conclude that it allowed --
18 it gave an opportunity for African-Americans to
19 participate in elections and elect candidates of their
20 choice. That's the conclusion that we would draw, yes,
21 based on factors beyond just the 63.9 percent after --

22 Q Right. Let's talk about that. So walk me
23 through how you would think about that?

24 A Well, I think as I mentioned earlier, we would
25 look at the other factors as well. On Page No. 5 in

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1 that district, you've got -- we're looking at registered
2 voters who are black. That's 30.09 percent of the black
3 voters that are registered in the district.

4 You've got 79.33 percent that are registered
5 as Democrats that would demonstrate a reasonably high
6 level of cohesion. Of the Democrats in the district,
7 48.29 percent are black.

8 And then on Page No. 6, you'd be looking at
9 the primary election turnout where of the Democrats who
10 turned out in the primary elections held through 2012
11 through 2020, 51.41 percent of the Democrats that turned
12 out were black.

13 Q I'm sorry. Where are you reading from?

14 A I'm in the second column on Page No. 6 under
15 average primary turnout Dem who are black.

16 Q Thank you.

17 A And then you're looking at the general
18 election turnout. You've also got 53.2 percent voters
19 who are Democrats. This goes to speak to the broader
20 performance of the district, so you kind of evaluate for
21 who controls the primary.

22 And then you look at whether or not in the
23 general election the district would likely forward the
24 Democrats nominee a chance to win, so we look at the
25 turnout there. And then we look at the performance,

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1 which is the aforementioned 63.9 percent, as well as the
2 14 wins out of 14 statewide elections. You know, the
3 margins are there for comparison purposes as well.

4 Q And is what you just walked through, is that
5 the totality of what you would consider when evaluating
6 drawing the protected district based on this benchmark?

7 A This is the functional analysis of the
8 benchmark plan that we would compare the maps that we
9 were drawing for the 2022 cycle, too.

10 Q And this is how you would assess whether a
11 newly-drawn district complied with the non-diminishment
12 requirement; is that accurate?

13 A Yes, this is our functional analysis.

14 Q And just so I'm clear. Sorry. And this is
15 the totality of the functional analysis?

16 A Yes.

17 Q Is what you just described?

18 A Yes.

19 Q Let's use an example to walk through what we
20 just did with the benchmark. Let's go to Exhibit 10.
21 Let's turn to new District 16, Page No. 5, and we'll
22 compare Page No. 5 of the benchmark.

23 A I want to back up real quick. While we walked
24 through those numbers, that's the primary element of the
25 functional analysis. The other pages, Page No. 7, Page

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1 No. 8 provides the specific contest and the results for
2 primary and general elections at the candidate level.

3 Those were provided for further analysis if
4 necessary, but not heavily relied on. It's basically
5 the detail that we summarized in the right most columns
6 on Page No. 6.

7 Q That's helpful. Thank you. While we're
8 there, let's look at Page No. 7, SEN-825 on the
9 benchmark plan Exhibit 9. So it looks like we see
10 District 19 BVAP 31.33 percent. And then down with the
11 governor candidate for Democrats Gillum, it says 49.48
12 percent?

13 A That's correct.

14 Q What does that number tell you for purposes of
15 the functional analysis?

16 A So that would tell us that Gillum would have
17 won the 2018 Democrat gubernatorial primary within
18 Benchmark District 19 by -- I'm not going to do the math
19 right, but 49.48 percent to 26.3 percent.

20 Q And what does this number tell you, if
21 anything, about support from the black population for
22 this candidate?

23 A What we would be able to conclude from this is
24 that the black voters within the district had a
25 preference for Gillum in the primary.

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1 Q And how does it tell you that?

2 A Well, he won by 15 points or so. If I'm doing
3 the math right, 13.

4 Q Maybe I just misunderstand. This 49.48 is not
5 a percentage of the black population voting for Gillum?

6 A Right. But this is in a district that we
7 considered one that allowed the black voters to elect
8 the candidate of their choice.

9 Q Thank you. Let's go back to Page No. 5 of the
10 benchmark and Page No. 5 of the enacted plan. So when
11 we're comparing new District 16 to Benchmark District 19
12 step one is -- if you're trying to get to enacted
13 District 16, step one is looking to see where black
14 voters are cohesive; is that right?

15 A That's one of the steps. I don't know that
16 there's a particular order, but there's a totality of
17 circumstances you examine.

18 Q So is that one step?

19 A Yes.

20 Q And what did you conclude with respect to new
21 District 16 with respect to cohesion?

22 A The numbers are so -- in the benchmark plan
23 amongst black voters, this is voter registration for
24 2020. Black voters who are registered as Democrats,
25 you're looking at 79.33 percent. And in the enacted

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1 plan, it's 79.63 percent in District 16, so it's very
2 similar.

3 Q And is that the only thing you would look to,
4 in terms of cohesion?

5 A That's the primary indicator of cohesion, yes.

6 Q Are there others as part of this functional
7 analysis?

8 A Not as part of our functional analysis, no.

9 Q And not of anything else that you conducted to
10 determine?

11 A Correct. And that's based off of
12 apportionment. I think it was won again, but where the
13 court concluded that that was an appropriate metric to
14 use and that numbers that were in that range of 70 to 80
15 percent were indicated at a high degree of cohesion.

16 Q In looking at -- is another step looking at
17 the black voters in the Democratic party primary?

18 A In terms of turnout, yes.

19 Q And is that the only metric you looked at?

20 A No. That's one of several we've been
21 discussing.

22 Q And just making sure I understand your
23 testimony. The reason you looked at the years that you
24 did is because of changes that could occur over time; is
25 that right?

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1 A Sure. The more data points, the better, in
2 terms of trying to assess the overall performance. You
3 don't want to look at one specific election and draw all
4 of your conclusions based off that because there could
5 be an untold number of variables that lead to voter
6 turnout, and voter enthusiasm is quite subjective.

7 Q Would it be better to use more years as part
8 of the analysis?

9 A The more the better. I mean, what's available
10 to us is 2012 through 2020.

11 Q Nothing more is availability?

12 A Not when we were drawing districts in 2022.

13 Q Let's also look at District 6 in the Benchmark
14 District 5 in the enacted plan; is that right?

15 A Yes.

16 Q So looking on Page No. 6, we see that for that
17 the primary election turnout for District 6 is 69.22
18 percent in the benchmark?

19 A Yes.

20 Q With a BVAP of 43.06 percent?

21 A Yes.

22 Q And the performance is 57.5 percent?

23 A The average performance for a Democrat
24 candidate in the general elections held statewide from
25 2012 to 2020, yes was 57.5 percent.

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1 Q And that was about 12 points lower than the
2 primary election turnout; right?

3 A Hold on a second. What? I'm sorry. Lower
4 than the primary election turnout?

5 Q The 69.22 percent?

6 A You're talking about the difference between
7 turnout and election results?

8 Q Yes.

9 A Those numbers are different, yes.

10 Q Let's compare District 6 in the benchmark with
11 District 19 in the benchmark. The primary election
12 turnout is 69 percent for Democrats and 51 percent for
13 -- I'm sorry -- for District 6 and 51 percent for
14 District 19; right?

15 A You're going to have to repeat those numbers.
16 I'm sorry.

17 Q Sure. So for District 6 --

18 A Yes.

19 Q The average turnout for black voters is 69.22
20 percent?

21 A Yes.

22 Q And for District 19, it's 51.41 percent?

23 A Yes.

24 Q And then performance for the general election
25 for District 6, it's 57.5 percent; correct?

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1 A Yes.

2 Q And for District 19, it's 63.9 percent;
3 correct?

4 A Those numbers are all correct.

5 Q And even though the BVAP for District 19 was
6 33.33 percent, the performance was significantly higher
7 than 50 percent, is that right, 63.9 percent?

8 A Yes. But I don't -- I mean, comparing
9 Jacksonville to Tampa is not something that we would
10 have done or considered.

11 Q The performance for what?

12 A You're comparing Jacksonville to Tampa?

13 Q No. I'm identifying the fact that they're
14 both protected districts; right?

15 A Sure. But that's probably about all they have
16 in common.

17 Q Well, let's compare to the enacted plan. So
18 in the enacted plan on Page No. 6, looking at District 6
19 from the benchmark, let's start with District 19. In
20 District 19, the BVAP for the benchmark was 31.33
21 percent; correct?

22 A Yes.

23 Q And it went up to 33.2 percent in the enacted
24 plan; is that right?

25 A That's correct. But you need to keep in mind

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1 that the benchmark district was overpopulated, I
2 believe.

3 Q And what were the implications of that?

4 A Well, that meant that that district -- yeah,
5 District 19 had 41,946 more people in it than the ideal,
6 so it would have had to shed population.

7 Q And what population did it shed?

8 A I mean, I don't know specifically. But given
9 the fact that the percentage of the black voting age
10 population is higher, I'd venture to guess it shed
11 non-black population.

12 Q And the average performance for general
13 elections in Benchmark 19 is 63.9 percent; right?

14 A Yes.

15 Q And in the enacted District 16, it's 67.6
16 percent; is that right?

17 A Yes, we would have considered those to be
18 similar.

19 Q But it went up by several percentage points,
20 the performance, right?

21 A When we're looking at these things, it's less
22 than minutia, but yes.

23 Q What do you mean when you're looking at these
24 things it's less than minutia?

25 A You're looking at does the overall performance

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1 change. So if that number would have dropped below 50,
2 that would have been an indicator that our district was
3 not performing, a change from plus or minus one way or
4 another from 63 to 60 or 63 to 67 or something like that
5 probably wouldn't have raised any concern.

6 **Q Can you say that last part again?**

7 A It probably would not have raised any concerns
8 for us because the district is still clearly performing
9 for Democrats, so that's all that's indicating.

10 **Q What would not have caused concern? Sorry.**

11 A A change from 63 to 60 or 63 to 67 is not
12 going to change the status of the district.

13 **Q Would it have meant you didn't need to**
14 **increase the number of black voters to -- in that**
15 **district to maintain ability to elect candidate of**
16 **choice?**

17 A I don't think we needed to increase the number
18 of black voters in that district. I think it was a
19 coincidence associated with the overpopulation perhaps.

20 **Q A coincidence because the voters you shed were**
21 **not black?**

22 A I'm drawing that conclusion based off the fact
23 that this is a percentage. So in the benchmark, you're
24 at a percentage of the larger number of people. In the
25 enacted plan, we had to normalize and reduce the

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1 population in the district.

2 Again, this is all starting from blank maps,
3 but that's the effect is to have a different number of
4 the people in the -- 40,000 less people in the district.
5 And so I think the increase in the black voting age
6 population is as a result of that, not adding more black
7 population to the district.

8 Q All right. So you talked about looking at
9 cohesion and looking at black voters in the Democratic
10 primary?

11 A Yes.

12 Q And another staff is looking at black voters'
13 preferred candidates and the general election; is that
14 right?

15 A Yes, I think so.

16 Q And just to be clear, that's talking about
17 Democratic performance; is that right?

18 A Yes. In the context of black voters in Tampa,
19 yes.

20 Q And how did you -- can you walk me through the
21 analysis of getting to -- from enacted district -- I'm
22 sorry -- Benchmark District 19 to enacted District 16?

23 A What do you mean the analysis?

24 Q How did you make the determination to -- well,
25 let me ask this. Apart from the statistics that we

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1 discussed, did you do anything else to assess whether
2 the new district enacted -- the new enacted District 16
3 would diminish the ability of black voters to elect
4 their candidate of choice?

5 A If I understand the question correctly, no.
6 These are the numbers that we would have looked at after
7 having drawn the district, balanced the population of
8 that district, the surrounding districts, and concluded
9 that we were happy with the compactness metrics, the
10 boundary usage, all those other factors that we have to
11 consider.

12 That's when we, you know, look at this stuff
13 and say, okay, well, we've got a reasonably complete
14 plan that we're confident in that we would like to do
15 the functional analysis on. These numbers aren't up
16 while you're drawing.

17 It's a draw it the way you want it based off
18 of tier-two criteria and equal population, and then we
19 run the numbers and evaluate whether or not in relation
20 to the benchmark our district changes status is really
21 what we're looking for.

22 Q A district changing status?

23 A Yeah. So does the primary control the average
24 primary turnout, which we refer to as primary control,
25 does is fall below 50 if it's above 50? Or does it --

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1 you know, does it rise above 50 if it was below 50?

2 Or does that general election performance in
3 statewide elections drop below, you know, 50 percent or
4 close to 50 percent or something -- you know, is there a
5 precipitous drop in that? Those are the kind of things
6 that would lead us to the conclusion that the
7 configuration that we were analyzing might diminish.

8 Or if you went in BVAP, for example, from
9 above 50 to below 50, you're changing the status of the
10 district. You want to make sure that at least all the
11 other metrics are still, you know, going to work in
12 terms of preserving that ability.

13 Q Is it your understanding that going from a
14 BVAP above 50 to below 50 changes the status of a
15 protected district?

16 A It changes the terminology that we use for it,
17 for sure.

18 Q In what way?

19 A Well, we wouldn't be calling it a
20 majority-minority district anymore. It would be an
21 effective minority district, assuming it had performed.

22 Q All right. Walk me through how you went about
23 drawing the maps in the 2022 redistricting process?

24 A How we went about drawing the maps?

25 Q Yes.

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1 A So we got our directives from the committee in
2 October, and then we went and looked at those directives
3 and started with a blank map. As I think I mentioned
4 before, it's generally common practice to start drawing
5 from either end of the state and try to fill out a map.

6 Sometimes you kind of break along away if you
7 get to areas like I think I mentioned in Nassau and
8 Duval where you could draw in through isolation. You
9 know that the population of those two counties equals
10 two districts. Therefore, you could draw one and fill
11 out the rest with the other district.

12 That's how me and my staff went about the
13 process. We collaborated frequently and compared notes
14 and compared configurations and looked at a lot of the
15 tier-two metrics to start with.

16 And then once we kind of were happy with how
17 we did on tier-two stuff and we were consistently to the
18 best of our ability complying with the committee
19 directives, then we would look at the functional
20 analysis of what we deemed to be protected districts and
21 make sure that those didn't diminish and kind of rinse
22 and repeat throughout the process.

23 And where there were questions about whether
24 we should draw, for example, the minority-majority
25 district in South Florida or an affected minority

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1 district in South Florida, we kind of preserved those
2 options for the committee.

3 Q What do you mean by preserved those options
4 for the committee?

5 A Well, we produced drafts for the committee's
6 consideration that had either or.

7 Q How did you become the map drawer for the 2022
8 redistricting process?

9 A I was asked by President Simpson to return to
10 the Senate and be the staff director for the
11 reapportionment committee.

12 Q Did anyone assist you in the process of
13 drawing maps?

14 A I had staff that worked for me.

15 Q And who were those people?

16 A Yen Le and Justin Eichermuller were my
17 committee analysts. And I had an attorney on staff,
18 Jason Rojas, as well as two -- I think their official
19 titles was CAAs, one to run the meetings and one to kind
20 of man the phones and help with the website, Megan
21 Magnole (phonetic) and Dana Ivy.

22 Q Did anyone else assist you with drawing the
23 maps?

24 A Counsel. I mean, not drawing the maps, but
25 evaluating maps, talking about pros and cons, what

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1 should be protected, et cetera.

2 Q Are you talking about Jason Rojas?

3 A Mr. Nordby.

4 Q Did you take input from anyone else during the
5 process?

6 A No. The input that was -- no. We had several
7 amendments that were offered along the way by members of
8 the committee, but there was no other -- no members
9 asked us to come do things and draw different
10 configurations for them.

11 We established a protocol for members that
12 wanted to have us draw things either in a staff work
13 product or as an amendment of their own.

14 Q What was that protocol?

15 A For members to submit their requests in
16 writing and really own the issue. If they were looking
17 at a public submission, they were supposed to contact
18 the map drawer and make sure that they could vouch for
19 the map drawer's intentions.

20 Q You were present at all of the committee and
21 subcommittee meetings in the September 2021 through
22 January 2022; is that right?

23 A Yes.

24 Q You were present for the Senate floor sessions
25 when the plan was considered on the second and third

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1 readings; is that right?

2 A Yes.

3 Q You mentioned this before, but on October 18,
4 2021, Senator Rodrigues gave you the directives outlined
5 in the memo that we've discussed?

6 A Yes.

7 Q The next legislative subcommittee meeting
8 after that was on November 17, 2021; is that right?

9 A That sounds correct.

10 Q What did do in between those meetings?

11 A We took the -- so at the October 18th meeting
12 when we got the directives, that's when we starred
13 drawing maps. So I think the November 17th one was the
14 one where we produced the first staff drawing maps. I
15 believe there were four of them.

16 Q How did you, if at all, work to implement
17 input from prior meetings to prepare for the November
18 17th meeting?

19 A Sorry. Input?

20 Q Uh-huh.

21 A The input that we'd gotten at that point was
22 the memo.

23 Q And that was it?

24 A To my recollection, yes.

25 Q The next subcommittee meeting was on November

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1 29, 2020; is that accurate?

2 A It seems that those dates are correct.

3 Q Between the November 17th meeting and the
4 November 29th meeting, what did you do in between those
5 meetings?

6 A Spent some Thanksgiving with the family. But
7 took the maps that we had presented at the first
8 committee meeting. And at the chair's directive during
9 that meeting, we went back, looked at those, looked for
10 areas that we could improve both compactness, boundary
11 usage, those type of things.

12 So we produced another set of maps that were
13 sometimes subtle but also meaningful improvements on the
14 initial maps.

15 Q And I think you said this already. But is it
16 right that you didn't work with anyone outside of the
17 individuals you just named on drafting those maps?

18 A That's correct.

19 Q Did you get any additional input from anyone
20 else?

21 A No.

22 Q Not from Senator Rodrigues?

23 A No. It's a very lonely existence.

24 Q I'll ask you the same questions about the next
25 subcommittee meeting, which was January 10, 2022. Can

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1 you tell me about between the November 29th meeting and
2 the January 10th meeting?

3 A I think we got a similar set of directives at
4 the end of November meeting, to go work to continue to
5 improve and come up with options for the subcommittees
6 to consider when everybody came back in January, so it
7 was the same process.

8 Q I'll ask you to the same am questions about
9 the full committee meeting on January 13th. So between
10 the January 10th subcommittee meeting and the January
11 13th full committee meeting?

12 A It's my recollection, and it was a condensed
13 schedule, so things were happening fast. But at the
14 meeting on the 10th, if I have the date right, that's
15 when the subcommittees met and considered the four
16 recommendations or the four drafts that we had.

17 I think each committee managed to narrow it
18 down to two. Each subcommittee -- excuse me -- narrow
19 it down to two, which then Chair Rodrigues evaluated and
20 picked one of both the Congressional and the Senate
21 legislative map to bring to the committee for the
22 meeting on, I think it was the 13th.

23 And he filed those as amendments to what we
24 call shell bills, which was an act related to
25 reapportionment with no text in it.

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1 Q Anything else that took place between those
2 meetings?

3 A I don't -- I don't recall anything of note
4 right now.

5 Q Same questions with respect to when the Senate
6 took up redistricting at the second reading of the joint
7 resolution on January 19th?

8 A I guess I should back up. My recollection is
9 that we got an amendment request from Senator Gibson. I
10 think it was both in committee and on the floor to take
11 one of the iterations of the Jacksonville district that
12 staff had drawn that she had a preference for. And I
13 think we drafted it as an amendment both for committee
14 and for the floor.

15 Q Anything else that you recall?

16 A Not of note.

17 Q I would like to ask about what role the House
18 played in the development of the Senate's plan, if any?
19 What role, if any, did it play?

20 A None.

21 (Plaintiffs' Exhibit 10 was marked.)

22 BY MR. TILLEY:

23 Q I would like to ask you about the co-called
24 challenged districts in this case. So Exhibit 10, you
25 understand that when I'm referring to the challenge

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1 districts, I'm referring to the enacted plan Senate
2 Districts 16 and 18?

3 A Yes.

4 Q And this is Tampa Bay; is that right?

5 A Yes.

6 Q And when I refer to a district crossing
7 Tampa Bay, do you understand that what I mean is a
8 district that includes parts of land on either side of
9 Tampa Bay without a land connection?

10 A Yes.

11 Q And this is probably clear from prior
12 testimony, but I'll ask it again anyway. During the map
13 drawing process, Senate District 16 was initially
14 labeled Senate District 19 on the maps that you drew?

15 A I think that's correct because that's what it
16 was on the benchmark, and we kind of kept those numbers
17 until they were randomly renumbered at one of those
18 January meetings.

19 Q And Senate District 18 was initially labeled
20 Senate District 24 on the maps that you drew; is that
21 right?

22 A I think that's right.

23 Q Because they covered generally the same area
24 as the benchmark?

25 A Right. We got to have a number so we can kind

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1 of make an educated guess.

2 Q I'd like to ask some questions about the
3 legislative subcommittee meeting to November 17th, which
4 is Exhibit 7, the subcommittee transcript. At this
5 subcommittee meeting on the 17th, a map was presented by
6 Nicholas Warren; is that right?

7 A I think that's correct.

8 Q And that was Plan 42; is that accurate?

9 A I think that's right.

10 Q And Plan 42 did not include a Senate district
11 that crossed Tampa Bay; is that right?

12 A I think that's correct.

13 Q So let's look at page -- the yellow flag --
14 Page No. 55 starting at line 15. This is from
15 Senator Bracy. Do you see that?

16 A Which line?

17 Q Fifteen.

18 A Yes.

19 Q Senator Bracy says, quote, he brought up a
20 good point about crossing the bay, and I wanted to ask
21 the staff what was the motivation for doing that when it
22 didn't seem necessary. You could still comply with
23 other requirements, closed quote.

24 Then you later say, quote, that was to comply
25 with a tier-one non-diminishment standard, closed quote.

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1 Bracy says, quote, could it still be done
2 without violating the diminishment requirement, closed
3 quote.

4 You say, quote, I'm not sure. I haven't
5 reviewed the statistics for that, closed quote.

6 Bracy says, quote, is that something we can
7 look into, closed quote.

8 You say, quote, I think if that is something
9 you would like to, we can discuss that, closed quote.

10 Senator Bracy says, quote, yes. Thank you,
11 closed quote.

12 That's all accurate?

13 A I think so. That's what the transcript says.

14 Q And what, if anything, did you do after this
15 subcommittee meeting regarding the Tampa Bay area?

16 A Well, Senator Bracy, we had a conversation
17 with him after this in which we walked through the
18 functional analysis for the districts that we were at
19 that time I think considering. Senator Bracy never
20 followed up regarding a request to draft or otherwise
21 analyze anything.

22 Q When did you talk with Senator Bracy?

23 A I think it was after that meeting, but I
24 honestly don't recall.

25 Q You think it was after, but it could have been

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1 before that meeting?

2 A No, it wouldn't have been before that meeting.
3 I think it was right after.

4 Q You think it might have been right after, but
5 it may have been later?

6 A I think that's correct. I can't remember when
7 we had the conversation.

8 Q Did you say you met with Senator Bracy and his
9 staff?

10 A No. I think it was just Senator Bracy.

11 Q And did he provide you any feedback?

12 A Not that I recall. It was questions about how
13 we conduct a functional analysis and what the BVAP is,
14 diminishment, et cetera, a lot of the things we've been
15 talking about today.

16 Q But he talked to you about Tampa Bay,
17 specifically?

18 A Not really. It was more a conversation about
19 how functional analysis works.

20 Q You say not really. Did he mention that at
21 all?

22 A I don't recall if coming up in our
23 conversation.

24 Q And I think you said he never asked you to
25 draw a map that did not cross Senate bay with respect to

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1 **Benchmark District 19?**

2 A That's right. The chairman had established a
3 pretty clear protocol, as I think I mentioned, about
4 members that wanted us to consider different ideas or
5 draft things for them. And he never sent me an email or
6 followed up on any of that, so I didn't pursue it.

7 Q Did anybody else send you an email with that
8 request?

9 A Not with that request, no.

10 Q During the drafting process, did you ever draw
11 a map that did not include a district that crossed
12 Tampa Bay?

13 A No.

14 Q Did you ever analyze that as an alternative?

15 A No.

16 Q Why?

17 A Because I believe that doing so would have
18 raised questions about what would happen and whether or
19 not the population that was in Pinellas and St. Pete had
20 their opportunity diminished. And I was, again, never
21 asked to. We looked at all the prior configurations of
22 the historical plans, all of which had a district across
23 the bay going back to 1992. So I think we had some
24 reasonable assurances that doing so was, in fact,
25 Constitutional and was appropriate.

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1 **Q When you said you had reasonable assurances**
2 **that doing so would be Constitutional, based on the fact**
3 **that that had been the configuration since 1992; is that**
4 **accurate?**

5 A Yes, that was part of the consideration is
6 that was a community with historical minority
7 representation and the ability to elect their candidate
8 of choice. And so I thought and continue to think that
9 we had some cover from prior district configurations and
10 reasons to believe that we ought to recreate something
11 that preserved that opportunity for that community, yes.

12 **Q And what reasons to believe did you have?**

13 A The historical configurations, the fact that
14 it was a product of intensive litigation held last cycle
15 and that when the court ruled on it last cycle, it was
16 something that the court put forward and enacted.

17 **Q Any other reasons?**

18 A Or courts don't enact, but they order.

19 **Q Any other reasons?**

20 A Those were the primary ones?

21 **Q Any secondary ones?**

22 A No, really not. I'm trying to make sure I
23 don't leave anything out. But those are the -- that was
24 why I decided that we ought to do that again.

25 **Q And do you think that was something that was**

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1 required or just would be a good idea or something else?

2 A I thought it was appropriate. I mean, I guess
3 in the other context, doing that allowed us to draw
4 districts around the region that also had high tier-two
5 metrics in terms of compactness and boundary issues. So
6 when we put it all together, it fit nicely, made sense.

7 Q So you thought it was appropriate, but you --
8 is it accurate to say you wouldn't say that you were
9 required to do so to comply with the principles from the
10 Rodrigues memo?

11 A I think there's any number of different ways
12 to draw Constitutional compliant districts without
13 introducing new novel concepts that might raise all
14 sorts of other suspicions and concerns about what it is
15 and why we were drawing things a certain way. I thought
16 we had perfectly good reasons to draw the district the
17 way we did.

18 Q And I don't want to put words in your mouth.
19 But is part of what you're getting at is it was just
20 easier to do it this way because you had -- I think you
21 used the word -- cover from the past, the 1992 decision;
22 is that an accurate way of describing it?

23 A I think the better way to say it is that we
24 had a series of prior districts that all showed that
25 drawing a district that included parts of Pinellas and

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1 parts of Tampa and afforded minorities their ability to
2 elect candidates of choice was appropriate. So I think
3 we can start with that conclusion that it's okay to do
4 that.

5 Q I forget the exact words you used. But when
6 you were talking about the ability to -- the importance
7 of protecting the communities in the area, are you
8 referring to the black community?

9 A Yes.

10 Q And are you talking about the black community
11 in Hillsborough, in Pinellas, in Hillsborough and
12 Pinellas together, or some other configuration?

13 A Yes. There's a black community in
14 St. Petersburg, and there's a black community in Tampa.
15 And generally, the one in St. Petersburg is denser, a
16 little bit more compact than the one in Hillsborough.

17 Q And is what you're trying not to diminish, if
18 I understand you correctly, is the ability of black
19 voters in both areas?

20 A I think black voters and black population in
21 both areas would have standing for a diminishment claim
22 if we'd have taken one or the other out.

23 Q You mentioned litigation. Did the Senate
24 understand from the court around 2015 the litigation to
25 involve the district crossing Tampa Bay?

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1 A To involve, it was part of the plan that was
2 ordered by the court was one that crossed the bay, yes.

3 **Q Did someone challenge?**

4 A I don't recall off the top of my head. I'm
5 sure it came up. I know that there were different
6 configurations of it considered in the hearings that
7 were part of that.

8 **Q But you're not sure whether in that litigation**
9 **someone challenged the configuration of Tampa Bay?**

10 A I know that the plaintiffs put forward several
11 options. I think one of those included a district that
12 did not, and the court did not choose that
13 configuration.

14 **Q But you don't know whether the plaintiff**
15 **specifically asserted in the litigation that the**
16 **configuration of Tampa Bay would be unconstitutional in**
17 **a certain configuration?**

18 A I don't recall what the plaintiffs asserted in
19 that case.

20 MR. MEROS, JR.: I think we're getting a
21 little outside the 30(b)(6) topics with the 2015
22 litigation.

23 MR. TILLEY: Sure. I understand. I think
24 the --

25 MR. MEROS, JR.: I'm giving you some latitude.

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1 I'm just --

2 MR. TILLEY: I guess my thought is to the
3 extent he believes past material is relevant to
4 what he understands the proper considerations to be
5 and the choices that are made for the 2022 process,
6 it does seem like it's quite within the topic.

7 MR. MEROS, JR.: That's why I'm letting you
8 ask the question about specific assertions in that
9 litigation.

10 MR. TILLEY: And certainly I'm not expecting
11 him to have a perfect memory of everything that
12 happened in the past. Yes, I can certainly
13 appreciate that.

14 BY MR. TILLEY:

15 Q You mentioned having a sense of cover from a
16 prior court decision; is that right?

17 A I don't think I probably should have been used
18 the term cover. But when you've got a series of
19 districts that have spanned time that have included
20 those communities, I think it's a good reason to
21 consider re-including those communities in the map.

22 And when all those districts have been -- you
23 know, those were the ones that were legally enforceable
24 at some point. I'm not talking about the things that
25 got thrown out.

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1 Q And is the fact that the crossing of the bay
2 was involved in the 2015 case a basis for the Senate's
3 feeling that it had good reasons to think this was
4 proper in the 2022 process?

5 A The fact that the benchmark district crossed
6 the bay was relevant to our considerations.

7 Q Is that part of like a situational awareness
8 that you described earlier in the deposition?

9 A Yes.

10 Q Did the Supreme Court issue any decisions
11 about redistricting or the use of race after that 2015
12 decision?

13 A Not that I recall.

14 Q The U.S. Supreme --

15 A Are you talking about the Florida Supreme
16 Court?

17 Q The U.S. Supreme Court.

18 A There's been a lot of stuff that's come out of
19 the U.S. Supreme Court, a lot of it since redistricting
20 in 2022, and I've not followed that very closely.

21 (Plaintiffs' Exhibit 11 was marked.)

22 BY MR. TILLEY:

23 Q I'd like to ask you some questions about the
24 subcommittee meeting on January 10, 2022. Let's go to
25 Page No. 7, the yellow flag starting at line 10.

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1 Senator Bracy says, quote, I talked to staff about the
2 Tampa Bay area, and I think I brought this question up
3 in the last committee. But I wanted to see if you can
4 explain the reason for not crossing the bay or for
5 crossing the bay and all the configurations that we see,
6 as opposed to not crossing the bay in that Tampa area C,
7 closed quote.

8 And then Burgess says, quote, my understanding
9 is staff did look at those options. However, there was
10 a significant number of potential voters that would be
11 disenfranchised under not crossing the bay. And so in
12 order to avoid that potential diminishment, there was
13 just no way to make that work practically, closed quote.

14 Is that accurate?

15 A That's what the transcript says.

16 Q And then when Bracy said he talked to staff
17 about the Tampa Bay area, to your knowledge, did he just
18 -- was it just the conversation with you either right
19 after or later of that meeting?

20 A That's what I took that to mean was the
21 follow-up that we had.

22 Q And not any other conversation?

23 A Correct. Yeah, there were no other
24 conversations about that.

25 Q And is it the Senate's view that a significant

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1 number of potential voters would disenfranchised if
2 enacted District 16 did not cross Tampa Bay into
3 Pinellas County?

4 A I think that was the concern that I enumerated
5 earlier about the potential for that was something that
6 I was certainly aware of, yes.

7 Q What does it mean to say to those voters would
8 be disenfranchised?

9 A That's Senator Burgess's words, so I can't
10 answer for him. But I think from my perspective, the
11 concern would have been that their opportunity to elect
12 may have been diminished as a result of a hypothetical.

13 Q And would that mean that the district wouldn't
14 comply with the Florida Constitution?

15 A It certainly could.

16 Q Well, I guess under what circumstance if the
17 ability to elect were diminished would it comply with
18 the Florida Constitution?

19 A You're asking me to opine on how a court would
20 rule?

21 Q I'm asking for your understanding of
22 compliance with the Florida Constitution?

23 A Well, my goal in all this was to not be where
24 we are today, which is in a lawsuit. So when I was
25 asked about the hypothetical, I viewed that as people in

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1 Pinellas, particularly the black community residing in
2 St. Pete, may feel as though their opportunity was
3 diminished if they were taken out of enacted 16 or
4 benchmark 19.

5 That's to what I was speaking. I believe
6 that's what Senator Burgess was probably referring to,
7 although he may have used some terminology that gets
8 minced.

9 Q Sure. And just to be clear, it's obvious to
10 me from this process that a tremendous amount of work
11 went into this. And from all accounts, it was a
12 Herculean effort. And I think it's fair to say that you
13 comported yourself incredibly admirably.

14 And doing depositions of folks who work in
15 government, I'm consistently impressed with like the
16 phenomenal work that gets done by certain individuals,
17 and obviously yourself included. And as a taxpayer, I
18 certainly appreciate that.

19 And I don't mean this to be a castigation of
20 the project or generally your personal intentions or
21 anything. So I just want to be clear about that.

22 A Okay.

23 Q And I know it's often thankless work, so thank
24 you. When you're talking about the voters that would be
25 disenfranchised, in Senator Burgess's words, is that

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1 **black voters in both Hillsborough and Pinellas, I think**
2 **is what you said before; is that accurate?**

3 A I don't know about the black voters in
4 Hillsborough because I don't know that I've examined the
5 functional analysis of the hypothetical by the district
6 that didn't cross the bay is. But when you cut out --
7 and my rough recollection is there was somewhere around
8 60,000 to 70,000 black voting age population in southern
9 Pinellas, St. Pete area that we were roughly including
10 in the district.

11 When you cut them out, I think that raises the
12 specter that they may have an ability to bring a
13 diminishment suit. Again, our whole goal was to draw
14 things that constitutionally complied right out the gate
15 and that we wouldn't have to be here for.

16 Q **Is the reason Senator Burgess gave in the**
17 **quote I read, is that the only reason, quote, there was**
18 **no way to make that work, closed quote, referring to**
19 **crossing the bay; is that accurate?**

20 A I don't know that I would have used those
21 words in that circumstances. I think what
22 Senator Burgess was trying to communicate is that we
23 were risk averse in this sense and wanted to continue to
24 operate in such a manner.

25 Q **A risk averse manner?**

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1 A Risk averse manner, yes.

2 Q Let's look at Page No. 7, line 20. This is
3 where you say, quote, I think in looking at a
4 configuration like that, it was likely that diminishment
5 would occur based on the fact that an order to draw
6 minority districts solely within Hillsborough County, it
7 begins to look like a fairly spidery non-compact
8 configuration there. It does some damage to the
9 surrounding districts and their metrics as well, closed
10 quote. Is that what you said?

11 A That's what the transcript says, yes.

12 Q Does that statement reflect the view of the
13 Senate?

14 A I think so because when I looked at the
15 population demographics of Hillsborough County, I think
16 as I mentioned earlier, you have a much more compact,
17 condensed, high density black voting age population in
18 the Pinellas side than you do on the Hillsborough side
19 where it's more spread out and I think intermingled with
20 Hispanic voting age population and other non-black,
21 non-Hispanic voting age population.

22 So I think it would hypothetically cause the
23 district to be less visually less mathematically compact
24 and probably stray from political and geographic
25 boundaries to pick up those kind of separated pockets of

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1 African-American population.

2 Q And in what way would it be less visually
3 compact to not cross the bay?

4 A I think when I looked, particularly at the
5 distribution of black voting age population in
6 Hillsborough, it was not as dense, which would result in
7 appendages, fingers, things like that. In my
8 estimation, that's what you would have had to do to
9 capture that black population.

10 Q And what is that estimate based on?

11 A The layers in our redistricting software that
12 showed the density of black and Hispanic population.

13 Q Did you explore that in the redistricting
14 software?

15 A I'm very familiar with that as a general layer
16 that was in the application that we looked at.

17 Q But you didn't seek, I think you said, to try
18 to draw something in Hillsborough that would be a
19 protected district?

20 A Right, because I did not receive specific
21 instructions to do so.

22 Q And you had already decided not to do that
23 based on the fact that the district had crossed
24 Tampa Bay since 1992; is that accurate?

25 A Yes. Yes. There was a reason to be risk

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1 averse in that sense and we viewed the more conservative
2 approach, if you will, to keep that general
3 configuration.

4 Q So when you said it looked -- when you said it
5 begins to look like a fairly spidery non-compact
6 configuration, that was not because you put something
7 into the software and saw that. It was because how you
8 imagined it would be based on your experience with the
9 software?

10 A Based on my experience with the software and
11 the layers that we have within our application that
12 showed population density, yes.

13 Q Let's look at Page No. 8, line 1. Quote, in
14 addition to, as Senator Burgess mentioned, potentially
15 disenfranchising the voters, black voters in Pinellas
16 County that have had the ability to elect the candidate
17 of their choice since about 1992 when the courts ordered
18 a configuration that resulted in a district that did
19 cross the bay between Hillsborough and Pinellas County,
20 closed quote.

21 That's what you've been describing during this
22 deposition; correct?

23 A Yes.

24 Q And you mentioned the black voters in Pinellas
25 being more densely together; is that accurate?

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1 A Yes.

2 Q Compared to Hillsborough?

3 A I think so, yes.

4 Q And so was part of the idea that -- I mean,
5 did you consider at all that removing black voters from
6 Pinellas would make it harder to draw a district in
7 Hillsborough that included sufficient black voters for
8 them to elect a candidate of choice?

9 A Can you ask that one more time.

10 Q Sure. I think you said there was a denser
11 population of black voters in Pinellas and a more
12 diffuse black population in Hillsborough; is that
13 accurate?

14 A Yes.

15 Q And so was part of what you considered that
16 removing a denser population of black voters in Pinellas
17 if you were trying to draw a Hillsborough-only protected
18 district would be harder because you would be removing
19 the denser area; is that accurate?

20 A I think less about removing the denser area,
21 but more about the tentacles and appendages that you
22 might need to use in violation of other tier-two
23 principles which were something that we were always
24 considering as we went through this process.

25 You know, you would be crossing over

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1 interstates and city boundaries and cutting up
2 neighborhoods and things like that was, in my
3 estimation, what you would like have to do for you to
4 embark on that endeavor.

5 Q So the tier-two principles there would be
6 challenging to comply with tier-two under your
7 understanding?

8 A Yes. I think you would have to necessarily
9 sacrifice some of the tier-two principles.

10 Q And you said it would be less visually
11 compact?

12 A In my estimation, yes.

13 Q And that the mathematical scores would be
14 lower, in your estimation as well?

15 A I'm guessing if it's less visually compact and
16 there's a bunch of appendages and stuff, the mathematics
17 would reflect that.

18 Q Is it your understanding that you had to draw
19 a map that protected the ability of black voters in
20 Pinellas County to elect their candidate of choice?

21 A It was my understanding that should we not do
22 so, we would potentially open ourselves up for a
23 diminishment claim from the black voters in Pinellas
24 County.

25 Q Open yourself up to what you believe to be a

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1 valid claim or just that someone could sue or something
2 else?

3 A I went to great lengths not to get sued, so
4 the interest was in avoiding the lawsuit. I do believe
5 that whatever configuration we went with was going to
6 pass Constitutional muster, so yeah.

7 Q Let's look at Page No. 9. First line you say,
8 quote, if we look at drawing it differently, I think
9 we're looking at a situation where the black voters
10 would not be able to control the primary numerically but
11 not make up a majority of the primary turnout, and that
12 would potentially constitute diminishment, closed quote.
13 Is that right?

14 A That's what the transcript says.

15 Q And does that statement reflect the view of
16 the Senate?

17 A Yes, but I was speaking to the potential for
18 voters in Pinellas County.

19 Q Okay. And you said you think drawing it
20 differently would potentially constitute diminishment;
21 right?

22 A I think that's what we've been saying here, is
23 that if we cut those voters out, we may be vulnerable to
24 a lawsuit.

25 Q Did you seek to find out whether it would

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1 **constitute diminishment?**

2 A No, I have not drawn that, did not draw that.

3 **Q And why not?**

4 A Because I didn't receive instruction from
5 committee members to or any other legislator, for that
6 matter.

7 **Q Is it the Senate's understanding that the**
8 **diminishment standard applies county by county?**

9 A Not necessarily. I think there's the
10 diminishment standard, it's not -- I don't think it's
11 necessarily community based or county based. But it's
12 one of those things where if you have reasonably compact
13 geographically cohesive -- politically cohesive
14 community and it's in a district that has that -- where
15 the minority community has that ability to elect and you
16 cut it out, I think that's what the concern is here is
17 that you would potentially be subject to a diminishment
18 inquiry.

19 So not county by county, but certainly within
20 counties and within regions and really kind of gets back
21 to that historical ability to elect and whether or not
22 that community's had it.

23 **Q Even if black voters -- I mean, does that**
24 **apply even if black voters in the district that is drawn**
25 **can still elect candidates of choice?**

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1 A I'm not sure I understand what you're saying.

2 Q Sure. So if the voters in the district that
3 is drafted can still elect their candidate of choice but
4 there are other black voters outside that district, do
5 you think that's still diminishment?

6 A I think some of the -- you know, I'm not going
7 to try to cite to the case law. But I think there are
8 cases out there that say that you can't replace a
9 district in one part of the state, a minority district,
10 with one in another. And so I don't know to what degree
11 that distance gets measured. But I think it's relevant
12 to the discussion.

13 Q When you said that black voters didn't make
14 up -- I just want to clarify something. You're not
15 saying that a district in Hillsborough only for
16 protected District 16 could not be drawn, just that it
17 would face -- that it would result in a spidery
18 configuration that violated TR2 potentially; is that
19 accurate?

20 A I think it could, yes.

21 Q You're drawing that district based on the
22 multi-year average from the functional analysis for
23 performance; is that right?

24 A Drawing what district?

25 Q The protected district?

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1 A In the functional analysis?

2 **Q Yes.**

3 A Yes, we look at the multi-year. We look at
4 those numbers that we went through earlier on Page Nos.
5 5 and 6 and 6 and 7 of the packet.

6 **Q In the case law you mentioned just now, was**
7 **that case law you were relying upon when drawing these**
8 **districts?**

9 A Relying upon -- aware of. I mean, one of the
10 first things you do is go dig through, you know, a
11 couple decades of redistricting case law, read it,
12 familiarize yourself with it. I'm not a lawyer, so I'm
13 not trying to cite to it or anything.

14 But you want to get a general sense of what
15 the issues were and what the outcomes were. And it
16 seems to me that I recall some cases I want to say that
17 came out of Florida and related to Hispanic districts,
18 but don't hold me to that, that dealt with
19 proportionality and replacing one district with another.
20 I might be mincing things.

21 **Q I want to just review the reasons the Senate**
22 **believes it was not appropriate to redraw the protected**
23 **District 16 wholly in Hillsborough County. One, you**
24 **said it would have a spidery non-compact shape; right?**

25 A I think it could.

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1 Q Thank you. And is it accurate that it would
2 diminish black voters' ability because they would no
3 longer control the Democratic primary?

4 A I don't know. Depending on how you drew it.

5 Q But it would diminish voters in -- black
6 voters in Pinellas County would no longer be in a
7 district where they could elect a candidate of choice;
8 is that right?

9 A I think it could provide them an opportunity
10 to challenge this configuration under the
11 non-diminishment standard.

12 Q And you mentioned as a reason the conservative
13 I think risk averse reason of wanting to follow the past
14 practice of having a district that crossed the bay which
15 existed since 1992; is that accurate?

16 A Our goal throughout the redistricting process
17 was to get it right, get it right the first time, and to
18 not open ourselves up to lawsuits. So we took a risk
19 averse conservative approach to drawing districts and
20 not introducing previously untested and unknown
21 configurations.

22 Q Other than those reasons we just discussed,
23 are there any other reasons that the Senate believes it
24 would not be appropriate to redraw the protected
25 district wholly in Hillsborough County?

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1 A I don't think so. I mean, we evaluate these
2 things in terms of all the different criteria. So
3 certainly we were looking at our configuration, and we
4 thought that the configuration we came up with not only
5 protected the voters in both Hillsborough and Pinellas
6 County from diminishment, but was highly tier-two
7 compliant in terms of compactness in use of political
8 and geographic boundaries. So that would have also
9 entered into the calculus.

10 BY MR. TILLEY:

11 Q All right. One last couple of questions
12 before the break. Let's go to the January 10th
13 transcript, Exhibit 11, Page No. 8, line 21, you say,
14 quote, and the question of diminishment is less about
15 how much diminishment but is it diminished because I
16 think the courts have been clear that diminishment, any
17 diminishment is diminishment, closed quote.

18 That was what you said?

19 A Which lines are you looking at?

20 Q Line 21 on Page No. 8.

21 A Yes, that's in response to Senator Bracy's
22 question about whether or not if it was a
23 majority-minority district and then it became like a 30
24 percent district. He was trying to get a measurement of
25 diminishment.

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1 And I said, well, at that point, I think the
2 courts would consider it's diminishment because it's a
3 question of are you as able, more able, or less able to
4 elect your candidate of choice. If you're less able,
5 that constitutes diminishment, regardless of what the
6 numbers of black voting age population are.

7 **Q And so do you mean that you couldn't have a 70**
8 **percent be that district that goes to 60 percent BVAP**
9 **because that would violate the non-diminishment?**

10 A No, that's not what I'm saying at all.

11 **Q So can you say what you're saying?**

12 A So diminishment is measured by the courts as
13 evaluated as the group of voters in question as likely,
14 more likely, or less likely to be able to elect their
15 candidate of choice. That's not necessarily tied to
16 BVAP or anything else. That may be part of it. So you
17 could have a district hypothetically where you were 70
18 percent BVAP and you went to 60 percent or even up to 75
19 percent, I guess.

20 But if for some reason the black voters in
21 question lost control of the primary and lost the
22 Democrats were black sliding in their ability to win the
23 elections or win most of the elections that were held in
24 that district, you could conclude that it diminished and
25 they were somehow less likely, even though potentially

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1 the minority population would have gone up.

2 Q Here Senator Bracy is asking about going from
3 50 percent to 30 percent BVAP; right?

4 A Uh-huh.

5 Q That was a yes?

6 A Yes.

7 Q And you say below any diminishment is a
8 diminishment; right?

9 A Yes.

10 Q But you could have a 30 percent BVAP district
11 that still had ability to elect a candidate of choice;
12 right?

13 A Yes.

14 Q And so how would you then say that it's
15 necessarily diminishment if the ability to elect the
16 candidate of choice is still there?

17 A Well, I don't think I would consider that
18 diminishment because, as I just said, if they're as
19 likely to elect a candidate of choice, it's not
20 diminishment regardless of what the BVAP is.

21 Q So then I guess why did you say any
22 diminishment is diminishment in response to a question
23 about a district going from 50 percent BVAP to 30
24 percent BVAP?

25 A Well, I think I was talking about diminishment

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1 in the context of their opportunity to elect not the
2 BVAP numbers. I think the context is wrong there.

3 **Q The full functional analysis?**

4 A The full functional analysis is what I was
5 referring to. There's also separate question where if
6 you're above 50 percent and then you go to 30 percent,
7 you're changing from minority-majority status to
8 something else at that point. That's a subject to
9 potentially a VRA Section 2 claim. But I think in this
10 context we were talking about the broader functional
11 analysis.

12 **Q I see. And I think this is clear from what**
13 **you said, but you're not saying that any reduction in**
14 **black population or registration or turnout by itself is**
15 **in and of itself diminishment?**

16 A That's correct. It's evaluation of the
17 totality of the circumstances, all those different data
18 points.

19 **Q But if ability to elect preferred candidates**
20 **is diminished at all, that constitutes diminishment?**

21 A Yes. And this is where you get into the
22 specific elements of that. So if you lose control of
23 the primary, I think that's a diminishment. If you lose
24 the influence on the general so that the majority of
25 candidates or most candidates or that margins or

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1 whatever start slipping into a more questionable range,
2 I think a court could very well call that diminishment.

3 Q So is that saying it's not a sliding scale
4 what constitutes diminishment? It's an on-off switch?

5 A Is the minority group in question as likely to
6 or less likely? If they're less likely and there's a
7 number of elements that that can be concluded on, I
8 think you're opening yourself up to a diminishment
9 claim.

10 Q Senator Bracy in this quote, he references 50
11 percent BVAP, but the benchmark plan for '19 was in the
12 30s; right?

13 A Yeah. I think he was asking about general
14 hypotheticals and broad-based conclusions about
15 redistricting and diminishment, not specific to any
16 districts at all.

17 Q All right. I think it's time for lunch.

18 (Recess 12:40 p.m. until 1:50 p.m.)

19 BY MR. TILLEY:

20 Q Going back to the challenge to districts, if
21 tier one wasn't a consideration, would you have drawn
22 enacted District 16 to cross the bay?

23 A I don't think I could hypothesize about that.

24 Q Why not?

25 A Because tier-one is a consideration. It's

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1 Constitutional paramount.

2 Q Knowing what you know about the area based on
3 your expertise in drafting these maps, can you say that
4 you would or would not have drawn enacted District 16 to
5 cross the bay?

6 A I don't think I can say definitively one way
7 or another. That's a circumstance where the counties
8 are next to each other. And so whatever we would have
9 had to do to equalize population or region, draw compact
10 districts, et cetera, I'm not going to speculate.

11 Q I would like to ask you more about the
12 Senate's understanding of Milan (phonetic) diminishment
13 requirement. You spoke earlier about how if enacted
14 District 16 didn't cross the bay, black voters in
15 Pinellas County would be diminished in their ability to
16 elect candidates of their choice; is that right?

17 MR. MEROS, JR.: Object to the form.

18 THE WITNESS: No. I think I said that they
19 would potentially have grounds to challenge over
20 the non-diminishment standard.

21 (Plaintiffs' Exhibit 12 was marked.)

22 BY MR. TILLEY:

23 Q These are maps showing the predecessors of
24 enacted District 16. You were talking earlier about the
25 history and going back to 1992; is that right?

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1 A Yes.

2 Q And you see that on the top of Page No. 1,
3 that is the plan that the Florida Supreme Court ordered;
4 is that right?

5 A No. I think that was the United States -- oh,
6 okay. I guess that was a preclearance determination. I
7 guess the Florida Supreme Court ordered it.

8 Q And this plan included portions of
9 Hillsborough, Pinellas, Manatee, and Polk for that
10 district; is that accurate?

11 A I think that's correct. I'm having a hard
12 time seeing the County lines, but that sounds right.

13 Q And then the map at the bottom of the page,
14 well, in 1996 there was a racial jerrymandering lawsuit;
15 is that right?

16 A Off the top of my head, I don't recall the
17 specifics of the lawsuit, but there was a lawsuit. What
18 the slide says is that the '92 districts were revised in
19 an agreement with the parties in Scott v. U.S.
20 Department of Justice.

21 Q And that resulted in the 1996 plan; is that
22 right?

23 A Without knowing any of the particulars about
24 the revised agreement, you know, it's my understanding
25 that these were the districts that were in place from

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1 '96 through 2002.

2 Q And that plan eliminated Polk County, is that
3 right, for that district?

4 A As bests I can tell, yes.

5 Q And under the 2002 plan, it's on the next
6 page, it was numbered 18 and included portions of
7 Hillsborough, Pinellas, and Manatee; is that right?

8 A I guess. I don't know that I've seen these
9 images. Where did these images come from?

10 Q These come from one of our reports, but they
11 reflect the publicly-available plans.

12 MR. MEROS, JR.: Where did they come from? I
13 don't think I've seen these before.

14 MR. TILLEY: These specific ones come from the
15 McCarton report.

16 BY MR. TILLEY:

17 Q So under the 2002 plan, you see it was
18 numbered District 18 includes portions of Hillsborough,
19 Pinellas, and Manatee; right?

20 A I will tell you that's what this image
21 appears, but I'm not going to opine on the source or
22 accuracy of it.

23 Q I understand. Thank you. And under the 2012
24 plan as suggested here, it was numbered District 19 and
25 included portions of Hillsborough, Pinellas, and

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1 **Manatee; is that right?**

2 A This image depicts District 19 and includes
3 those portions of those districts.

4 Q And you were involved in developing 2015
5 Senator Plan 1; is that right?

6 A What do you mean by involved?

7 Q Had any role in?

8 A In 2015, I was working in the remedial plan.
9 I would have to get some specifics as to what this is.
10 You're asking me if I drew this plan?

11 Q Just if you were involved in developing it?

12 A I don't know about this plan because I don't
13 know where this came from, and I haven't reviewed this
14 for accuracy. But in 2015, I was working, again, in
15 reapportionment during the remedial phase.

16 Q And so this, I'll represent, is the plan
17 proposed by the Senate to the court. And that plan
18 eliminated a portion of the district in Manatee County;
19 is that right?

20 A That's what the image reflects, yes.

21 Q Is that your recollection of the 2015 Senate
22 proposal?

23 A You're asking me about the development of
24 Senate plans in 2015?

25 Q Yes.

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1 A Is that a topic we're discussing?

2 Q If you personally remember it. We don't have
3 to take that as the testimony of the Senate.

4 MR. MEROS, JR.: We had reached a stipulation
5 that Topic No. 2, the development of the 2015 plans
6 was not a topic for the deposition today.

7 MR. TILLEY: Sure. I don't mean to cut
8 against that. I guess I go back to, to the extent
9 that he does remember, and maybe he doesn't, it's
10 relevant to the things that he was thinking about
11 and the justifications for taking certain actions
12 in 2022, if that was the case. Or it might not be
13 the case.

14 BY MR. TILLEY:

15 Q Do you remember whether the senate eliminated
16 Manatee County in its 2015 proposal to the court?

17 A I have not reviewed the 2015 proposals to the
18 court in preparation for this, so I really prefer not to
19 speak about those configurations.

20 Q Let's look at the third page. And if the same
21 is true here, you can let me know, and we'll move on.
22 But I'll represent that this page has the 2002 Senate
23 plan and that District 39 was a district in which black
24 voters had the ability to elect preferred candidates.
25 Do you have a recollection of that?

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1 A I can't -- 2002 plans in Miami-Dade County, I
2 wasn't looking at any of that in preparation for this.
3 As far as I know, we're pretty far outside the scope.

4 Q Well, you had some recollection of 1992;
5 right?

6 A In the Tampa Bay region, which was part of my
7 review for this. I was preparing looking at things like
8 that, yes, but I was not looking at Miami.

9 Q Understood. And I think you referenced
10 South Florida history earlier in the deposition; is that
11 right?

12 A What do you mean by South Florida history?

13 Q The history of the protected districts in
14 South Florida?

15 A I don't recall that off the top of my head.
16 History of which protected districts?

17 Q You tell me.

18 A I don't know what you're talking about. We
19 can go back to the transcript if you want.

20 Q Let's go to Topic No. 3. Topic 3 is each
21 state interest, if any, that the Senate believes
22 justifies the use of race. Why did the Senate use race
23 in its 2022 redistricting process, if it did so?

24 A I think race was a consideration in the
25 context of the benchmark districts that had been

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1 identified as being protected from diminishment.

2 Q So it was only used as it relates to
3 compliance with non-diminishment protections; is that
4 accurate?

5 A That's accurate. It was factored in with the
6 other criteria that we were considering as we were
7 drawing plans.

8 Q The other criteria being?

9 A The tier-two stuff.

10 Q Was the use of race to comply with
11 non-diminishment, was that an important reason for the
12 Senate?

13 A To the extent that the non-diminishment is in
14 tier-one of the Constitutional criteria and it was
15 enumerated in the memorandum and directions to staff, I
16 think all the things that were considered were
17 important.

18 Q And does the Senate believe that compliance
19 with a non-diminishment protection justifies the use of
20 race?

21 A It justifies the consideration of race.

22 Q Is there any other reasons the Senate
23 considered race in its 2022 redistricting process?

24 A I don't believe so, no.

25 (Plaintiffs' Exhibit 13 was marked.)

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1 BY MR. TILLEY:

2 Q Let's go to Topic No. 7. Do you recognize
3 this document?

4 A Yes, I think I've seen this before.

5 Q And these are the as noted on Page No. 2,
6 quote, the names and contact information of the people
7 that President Passidomo presently believes are likely
8 to have discoverable information that President
9 Passidomo may use to support her claims and defenses,
10 closed quote?

11 A Where was that quote? I'm sorry.

12 Q On Page No. 2.

13 A Yes, I see it.

14 Q So I'd like to go through the witnesses and
15 documents listed. For the subject of, quote,
16 development and passages of SJR 100 2022, closed quote,
17 it lists the witnesses as Florida State Senators 2020 to
18 2022 Jay Ferrin and Florida State Representatives 2020
19 to 2022; is that right?

20 A That's what it says.

21 Q We discussed the role that the House played.
22 I think you said it played no role; correct?

23 A That's correct.

24 Q And what knowledge, if any, would state
25 representatives have in the development of the Senate's

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1 **plans?**

2 A None to my knowledge.

3 Q For the subject of, quote, debate regarding
4 and opposition to SGR 100 2022, closed quote. The
5 Senate's initial disclosure lists two witnesses,
6 Representative Fentrice Driskell and Representative
7 Andrew Lerner. Do you see that?

8 A I do.

9 Q Tell me what role Representative Driskell
10 played with respect to that subject?

11 A With respect to debate regarding opposition to
12 SGR 100, discussions with partisan organizations or
13 political operatives or analysts regarding the Florida
14 redistricting process?

15 Q I'm asking about the first part of that,
16 debate regarding and opposition to SGR 100?

17 A I think some of her debate was referenced or
18 cited or quoted in the complaint.

19 Q Okay. And what aspects of that?

20 A We can read through the complaint if you want
21 and we'll find it. I think it's on the list because she
22 was proffered as having brought information to light or
23 something like that in the complaint.

24 Q Does anything specific come to mind?

25 A I don't have your complaint memorized.

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1 Q But based on your knowledge of Representative
2 Driskell's role in the process?

3 A I read the complaint at one point, and it had
4 some reference to her debate in it, if I'm not mistaken.
5 So I think there was question as to what -- maybe how
6 she arrived at the conclusion, if she did, in her
7 debate, which I don't specifically remember what they
8 are.

9 Q And what about the same question for
10 Representative Lerner?

11 A Same answer.

12 Q For the subject of, quote, discussions with
13 partisan organization or political operatives or
14 analysts regarding the Florida redistricting process,
15 closed quote. The Senate's initial disclosure lists six
16 witnesses, Representative Driskell,
17 Representative Lerner, Nicholas Warren, Matthew
18 Isabelle, Mary Ellen Klas, and Christian Ulvert.

19 So for that subject, what role did
20 Representative Driskell play?

21 A I think that my understanding is that this
22 stuff, a lot of this emanated out of discovery obtained
23 in a different lawsuit that showed that there may have
24 been communications amongst some or all of these
25 parties.

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1 And I think there was listed here the
2 potential need to talk to some of these folks about
3 their specific intentions and motivations.

4 **Q And is that the extent of your understanding**
5 **of Representative Driskell's role with respect to this**
6 **subject?**

7 A I think, yes.

8 **Q And the same question for**
9 **Representative Lerner?**

10 A I think that's true for all of them, yes.

11 **Q Is your understanding that all six of them**
12 **were communicating with each other as a group?**

13 A Again, there was voluminous discovery produced
14 in another case that I think alluded to or suggested the
15 fact that there may have been some coordination,
16 communication, collusion, whatever you want to describe.
17 And I think that led to, you know, an overabundance of
18 listing these as potential folks worth calling.

19 **Q Same question for Mr. Warren?**

20 A All of them. The intent matters in
21 redistricting.

22 **Q For the subject of, quote, discussions with**
23 **legislators and legislative staff regarding Florida**
24 **redistricting process, closed quote, the Senate's**
25 **initial disclosures lists two witnesses for solely the**

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1 **subject Ms. Klas and Mr. Ulvert. What role is Ms. Klas**
2 **play for that subject, discussions with legislators and**
3 **legislative staff regarding Florida redistricting**
4 **process?**

5 A So there was a pretty well publicized event
6 that took place during the process in which Mary Ellen
7 Klas appeared to be feeding questions to one of our
8 senators to ask and obtain more information for the
9 purported purposes of litigation or sorting out in
10 court.

11 **Q And can you say more about that event?**

12 A It was in a gaggle, a press gaggle after one
13 of our meetings. And the recollection is that she came
14 up to Senator Bracy and asked him to ask questions. All
15 of this is documented elsewhere. I'm not exactly sure
16 of the particulars.

17 But asked him to ask questions about certain
18 configurations and why things were or weren't a certain
19 way, particularly with regard to the Tampa Bay region in
20 the context of creating a record for litigation.

21 **Q Are there any other discussions with**
22 **legislators and legislative staff that you can think of**
23 **regarding Florida redistricting process with respect to**
24 **Ms. Klas?**

25 A Not that I know of. But I think that's part

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1 of the reason she's listed here is to find that out,
2 find out if she was asking other members to do similar
3 things.

4 Q What about Mr. Ulvert, same question?

5 A I think his name was either alluded to or he
6 was in communications with the other discovery in the
7 other cases, and so that's why he's listed here as well
8 is to figure out if he was potentially working to push
9 an agenda.

10 Q Any other reason, that you are aware?

11 A I think that covers the high level.

12 Q And when you say push an agenda, what are you
13 referring to?

14 A To push a partisan political outcome.

15 Q Mr. Warren is listed for two subjects, one is
16 discussions with legislators and legislative staff
17 regarding Florida redistricting process. And one is,
18 quote, developments of alternative district plans
19 including plan P000S0042 committee testimony regarding
20 Plan P000S0042. Do you see that?

21 A I do.

22 Q And what role did Mr. Warren play with respect
23 to those subjects?

24 A Well, he submitted a plan, came and testified
25 about it in committee, as I think we've discussed. And

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1 it appears from discovery in other cases was in regular
2 communication with other political operatives about
3 configurations like that and redistricting, in general.

4 Q What other political operatives?

5 A Matt Isabelle, in particular.

6 Q Any others that come to mind?

7 A Again, I've not memorized all the discovery in
8 other cases.

9 Q Do you think any others exist?

10 A I think we would have to talk to Mr. Warren to
11 find that out.

12 Q And who are you saying that -- so you're not
13 -- what is your understanding of what Mr. Warren
14 discussed with the individuals referenced?

15 A Redistricting generally and potentially
16 strategy, legal theories, other potentially
17 characteristics of district and plans.

18 Q And how, if at all, did that impact the
19 development of the enacted plan?

20 A As I mentioned earlier, our process is set
21 forth so that a member of the legislature would have to
22 sponsor any action in order for it to be considered, and
23 no member did.

24 Q Why did no member do so with respect to
25 Mr. Warren's plan?

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1 A Again, that's probably something we'd have to
2 ask Mr. Warren is why no members took him up on his
3 offer.

4 Q And why did no member explore a plan for
5 enacted Senate District 16 that did not cross the bay?

6 A I don't think I can answer why members didn't
7 do things. Lots of members don't file things.

8 (Plaintiffs' Exhibit 14 was marked.)

9 BY MR. TILLEY:

10 Q Have you seen this document before?

11 A Yes.

12 Q And what is the document?

13 A This is a memo from Chairman Rodrigues that
14 was issued on November 22, 2021 regarding misleading
15 committee appearance forms.

16 Q When did you first see this letter?

17 A I believe I received -- I think it was sent to
18 all Senate or all committees. I don't remember, but I
19 got a copy when the other members did.

20 Q Did the Senate take any action based on this
21 letter?

22 A What do you mean action?

23 Q Did the Senate change anything it would
24 otherwise have done based on the information in this
25 letter?

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1 A I don't know that I can speculate as to what
2 the Senate did or didn't do. This went to all members
3 of the Senate. I can't guess as to their individual
4 reactions or actions to it or things they were going to
5 do but didn't or otherwise.

6 Q Did you personally take any action because of
7 this letter?

8 A No.

9 Q Did you not take an action that you otherwise
10 would have taken because of this letter?

11 A No.

12 Q Did you personally discuss this letter with
13 anyone?

14 A Not that I recall.

15 Q Did anyone talk to you about the letter?

16 A Not that I recall.

17 Q Did anyone comment to you about it?

18 A Not that I recall.

19 Q Do you know if any senator knew that
20 Mr. Warren was an employee of the ACLU of Florida at the
21 November 16th or 17th meetings?

22 A I can't speak to knowledge that individual
23 legislators may have or may not have had about his
24 affiliation and employment.

25 Q Have any of the senators ever interacted with

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1 **him before?**

2 A I wouldn't know the answer to that.

3 (Plaintiffs' Exhibit 15 was marked.)

4 BY MR. TILLEY:

5 Q **Have you seen this letter before?**

6 A Yes, I think I did see a copy of this.

7 Q **Let's just be clear. This is Exhibit 15?**

8 A Yes.

9 Q **When did you see this letter?**

10 A I don't recall a specific day, but it would
11 have been sometime after it was sent. It probably would
12 have been delivered to me for recordkeeping purposes.

13 Q **Did the Senate take any action based on this**
14 **letter?**

15 A Not to my knowledge.

16 Q **Did you personally take any action because of**
17 **this letter?**

18 A No.

19 Q **Did you not take any action that you otherwise**
20 **would have taken because of this letter?**

21 A I don't think so, no.

22 Q **Did you have any interaction with anyone about**
23 **this letter?**

24 A No, other than somebody gave me a copy.

25 Q **What did the Senate do with this letter?**

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1 A I don't know the answer to that.

2 Q Did this letter affect the process in any way?

3 A Not to my knowledge.

4 Q Does the Senate find the assertions in this
5 letter persuasive?

6 A Can you elaborate on what you would mean by
7 that?

8 Q Sure. Does the Senate believe that the
9 assertion in the letter that Mr. Warren appeared on his
10 own behalf and not as a representative of ACLU of
11 Florida when he testified and submitted materials?

12 A I think there are some questions related to
13 that. The Senate has indicated it would like to ask
14 Mr. Warren.

15 Q Does the Senate contest the veracity of the
16 claims in this letter?

17 A In terms of whether or not he appeared in his
18 personal capacity or that on behalf of the ACLU?

19 Q Correct.

20 A I think there are questions about that, yes.
21 (Plaintiffs' Exhibit 16 was marked.)

22 BY MR. TILLEY:

23 Q I'll show you what's marked as Exhibit 16.
24 Have you seen this letter before?

25 A I think I have seen a copy of this, yes.

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1 **Q And when did you see this letter?**

2 A Probably sooner than the other one. It was
3 eventually brought to my office. I think it appears to
4 be sent -- I guess it was sent to all members of the
5 Senate. I don't remember how I would have gotten a
6 copy, but I'm sure we had one for our files.

7 **Q Did the Senate take any action based on this**
8 **letter?**

9 A I don't believe so, no.

10 **Q Did you personally take any action based on**
11 **this letter?**

12 A No.

13 **Q Did you not take any action that you otherwise**
14 **would have taken because of this letter?**

15 A No.

16 **Q Did anyone ever speak to you about this**
17 **letter?**

18 A Not that I recall.

19 (Plaintiffs' Exhibit 17 was marked.)

20 BY MR. TILLEY:

21 **Q I'll show you what's marked Exhibit 17. Have**
22 **you seen this email exchange before?**

23 A I don't know whether or not -- I mean, I'm
24 assuming it was produced in discovery. Other than that,
25 I don't know that I would have seen it. I don't see

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1 myself addressed on it anywhere.

2 Q Is this the type of communication that
3 ordinarily would be forwarded to you?

4 A I'm sorry. This is just the email with the
5 letter attached to it? What is this?

6 Q It's an email that was provided in discovery,
7 SEN 1629. It's forwarded from someone in Senator
8 Rodrigues's offices to Jason Rojas and you?

9 A There it is. Yes, that's probably how I got a
10 copy of whatever the letter is. Is this Exhibit 15
11 that's attached to this? I don't know what's attached
12 to this. I'm sorry.

13 Q The letter to Kirk Bailey.

14 A That's probably how I got a copy of it.

15 Q And why were these emails forwarded to members
16 of the staff?

17 A I think for preservation purposes to ensure
18 that we had a copy. I mean, all this stuff is things
19 that you retain in these sort of circumstances.

20 Q Mr. Isabelle is listed, going back to the
21 initial disclosures, for the subjects of, quote,
22 discussions with the legislators and legislative staff
23 regarding Florida redistricting process, closed quote,
24 and, quote, development of alternative district plans
25 including the 2021 Isabelle plan described in the

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1 complaint committee testimony, closed quote. Do you see
2 that?

3 A Let me get back to that exhibit, see if I can
4 find it. Ask your question again.

5 Q Sure. Mr. Isabelle is listed for the subjects
6 of, quote, discussions with legislators and legislative
7 staff regarding Florida redistricting process, closed
8 quote, and, quote, development of alternative district
9 plans, including the 2021 Isabelle plan described in
10 complaint committee testimony, closed quote. Is that
11 right?

12 A Yes.

13 Q What role did Mr. Isabelle play with respect
14 to those subjects?

15 A Well, I think his plan -- and I don't know
16 where that resides or came from. But to the extent that
17 he submitted a plan or produced a plan that was
18 referenced in the complaint, I think it would be
19 relevant to ask him about his motivations and intents
20 when we drew that.

21 Q Is there anything else that comes to mind as
22 to his role with respect to those subjects?

23 A We have obtained discovery of communications
24 between him and Mr. Oren (phonetic), so I think that's a
25 topic of discussion as well.

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1 Q Anything else beyond that?

2 A I don't want to preclude anything from being
3 talked about, but I think that covers the highlights.

4 Q Well, this topic is also part of what you're
5 here to testify about. Is there any other way in which
6 Mr. Isabelle is relevant to those listed topics?

7 A Not that I know of. But, again, I think a lot
8 of this would come out in a discussion with him.

9 Q Let's go to Topic No. 5.

10 (Plaintiffs' Exhibit 18 was marked.)

11 BY MR. TILLEY:

12 Q I'll show you what's marked Exhibit 18. Do
13 you recognize this document?

14 A Yes.

15 Q This is President Passidomo's answer and
16 affirmative defenses; correct?

17 A Yes.

18 Q Who drafted this document?

19 A Counsel and I worked on it.

20 Q And I don't want to ask about any
21 attorney-client privileged conversations or attorney
22 work product, but I would like to ask you a few
23 questions about the Senate's defenses identified on Page
24 No. 20. The first affirmative defense says, plaintiff's
25 requested relief is barred by the Purcell principle?

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1 A Yes.

2 Q And the second says, plaintiff's requested
3 relief is barred by the doctrine of latches?

4 A Yes.

5 Q What is latches?

6 MR. MEROS, JR.: I'm going to object to the
7 extend it would require you to disclose attorney
8 communications. I'd instruct you not to answer to
9 that. If you can answer the question without
10 relying on that, though, you're free to do so.

11 THE WITNESS: The question is what is latches?

12 BY MR. TILLEY:

13 Q Yes.

14 A High-level understanding is that it's not a
15 timely suit in the sense that more time has passed and
16 it substantially disadvantages the defense in a suit.

17 Q Under that understanding of latches that you
18 just said, do you know of any facts that support the
19 statement here that plaintiff requested relief is barred
20 by that understanding of latches?

21 A Well, certainly my memory of all the events
22 surrounding the redistricting process and activities
23 around it would have been much fresher had this occurred
24 in a timely manner and in the automatic review process
25 that's built into the Florida Constitution.

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1 Q So your memory would have been better, is that
2 what you're saying?

3 A I'm sure it would have. I've done a lot of
4 different things in the last two years and put most of
5 the stuff behind me.

6 Q Is there any other fact you can think of that
7 supports the statement here that plaintiff's requested
8 relief is barred by laches, based on your articulation
9 of your understanding of what laches is?

10 A Not off the top of my head.

11 Q Can you identify how, if at all, the
12 Senate has been prejudiced by the alleged delay in the
13 plaintiffs bringing suit?

14 A Well, I think as I mentioned, it sort of
15 disadvantages me as a witness on behalf of the Senate to
16 not have immediate recollection and to have been fresh
17 out of this. And I just -- yeah.

18 Q So similar reason that your recollection would
19 have been fresher had it been brought earlier?

20 A My recollection primarily, and yes.

21 Q Any other thing or any other fact that you can
22 think of or any other way in which you can think of that
23 the Senate has been prejudiced by the alleged delay of
24 plaintiffs in bringing suit?

25 A Not off the top of my head.

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1 **Q What is the Purcell principle?**

2 MR. MEROS, JR.: Same objection. To the
3 extent it would require you to disclose
4 attorney-client privileged communications, I'll
5 instruct you not to answer. If you can answer
6 without disclosing those, then feel free to do so.

7 THE WITNESS: The Purcell principle is a
8 principle that limits the interference of a court
9 within an election or election-related laws close
10 to an election.

11 BY MR. TILLEY:

12 **Q What do you understand plaintiffs' requested**
13 **relief in this case to be?**

14 A Redrawing of certain legislative districts.

15 **Q Do you know the dates for trial in this case?**

16 A Not off the top of my head.

17 **Q The trial dates in this case are June 9th**
18 **through 13th. If the court rules in plaintiff's favor**
19 **following trial, do you know what happens after that?**

20 A I think it depends on what the order is and
21 when the order comes out. There's a series of other
22 factors that I don't think we can control when we would
23 actually go about enacting new districts based on
24 favorable opinion.

25 **Q If there is a decision on liability and the**

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1 court gives the legislature a chance to propose a
2 remedy, is that your understanding of one possibility?

3 MR. MEROS, JR.: Object to the form.

4 THE WITNESS: There's probably an infinite
5 number of possibilities that this could go. And I
6 also can't guarantee that a legislative enactment
7 would occur based on the fact that we have 160
8 members of the legislature that all get an equal
9 vote. And asking me to commit to doing something
10 on a certain time frame on behalf of the senate or
11 legislature is not something I can do.

12 BY MR. TILLEY:

13 Q So you're saying, correct me if I'm wrong,
14 that if the court orders there to be a remedial -- rules
15 in plaintiffs' favor and there's a remedial phrase,
16 there might -- it might not be possible for the
17 legislature to draw a new map, is that what you said?

18 A The Purcell principle might bar that from
19 happening on a certain time frame. It depends on a lot
20 of different things that I can't speculate about.

21 (Plaintiffs' Exhibit 19 was marked.)

22 BY MR. TILLEY:

23 Q Let's take a look back at the 2022
24 redistricting process. This is Exhibit 19. This is the
25 2022 redistricting process timeline. So based on this

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1 exhibit, you see February 3, 2022, the legislature
2 passed SGR 100?

3 A Yes.

4 Q And that's your recollection?

5 A Yes.

6 Q And on March 3, 2022, the Supreme Court issued
7 its automatic review decision on SGR 100?

8 A Yes.

9 Q And that's your recollection?

10 A Yes.

11 Q On April 21, 2022, the legislature passed the
12 Congressional map. Is that your recollection?

13 A Yes.

14 Q And then on April 22, 2022, the governor
15 signed the Congressional map. Is that your
16 recollection?

17 A That sounds right.

18 Q And on May 16, 2022 that was the deadline for
19 legislative and Congressional candidates qualifying by
20 petition method to submit their petitions?

21 A Yes.

22 Q And that's your recollection?

23 A Yes.

24 Q And June 13 through 17, 2022 was the candidate
25 qualifying period that year. Is that your recollection?

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1 A I don't pay close of attention to the
2 candidate qualifying period, but sure that sounds about
3 right.

4 Q So the Florida Supreme Court issued its
5 decision on 2022's SGR 100 on March 3, 2022. An
6 election was held based on the redistricting of that map
7 on November 8, 2022; is that accurate?

8 A Yes.

9 Q Meaning certain individuals who were running
10 for state Senate races in 2022 were running in districts
11 defined according to 2022, SGR 100; is that right?

12 A That's right.

13 Q And they were running in those districts based
14 on the map that was final as of March 3, 2022, the date
15 of the Florida Supreme Court's decision; is that
16 accurate?

17 A Yes.

18 Q Are you aware of any problems in that election
19 based on the amount of time between March 3, 2022 and
20 November 8, 2022?

21 A No. But there's a special qualifying period
22 in redistricting years established by law. I don't
23 remember the particulars about that. I'd have to look
24 it up, but I know that there's a special qualifying
25 period that's associated with that.

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1 Q And what is the relevance of that?

2 A Just that there's a unique qualifying period
3 for redistricting years.

4 Q Does that have any -- what impact does that
5 have on election administration, if any?

6 A I'd probably want to consult with the
7 supervisors of elections as it relates to that. But I
8 think when they have any change to their processes, they
9 certainly like to talk about it and the inconvenience
10 that it causes them.

11 Q And if we follow the 2022 timeline for the
12 Senate map, is it fair to say that having a map ordered
13 by the district court in this case by March 3, 2026
14 would provide sufficient time to hold an election based
15 on that new map without implicating the Purcell
16 principle, as you defined it?

17 A I don't know. I mean, I'm assuming that a
18 decision would get appealed, so I don't know how long
19 that would take.

20 Q Assuming there was a final map as of March 3,
21 2026, would it be fair to say that that would provide
22 sufficient time to hold an election based on that new
23 map without implicating the Purcell principle as you
24 defined it?

25 A I can't speculate as to that. It's going to

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1 be a decision for the courts in that circumstance.

2 Q It's the testimony of the Senate that that's a
3 decision for the courts?

4 A Whether or not that principle would apply?

5 Q Yes.

6 A I think that is. I think we've reserved the
7 right to raise that, as I understand the defense.

8 Q My question is whether the Senate's view is
9 that the concerns are implicated in the circumstance if
10 the final map is issued as of March 3, 2026?

11 A If you're asking if it would be possible to
12 pull off an election if the map was in place by March 3,
13 2026, I'll venture to guess yes.

14 Q And if we follow the 2022 timeline for the
15 Congressional map where the governor signed the
16 Congressional map on April 22, 2022, is it fair to say
17 that having a final map ordered by April 22, 2026 in
18 this case, it would provide sufficient time to hold an
19 election based on that new map without implicating the
20 Purcell principle as you've defined it?

21 A Understanding that the Senate doesn't conduct
22 the elections. It's done by the supervisors, it seems
23 like it would be a similar time frame.

24 Q And that --

25 A That supervisors were able to hold an election

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1 as they were in 2022.

2 Q What date would the Senate need in order for
3 the district court on liability to be confident that the
4 Purcell principle as you defined it would not being
5 implicated?

6 A I don't know that I can identify a specific
7 date.

8 Q I think we just need a quick conference, and I
9 think we'll be wrapping up.

10 (Recess 2:35 p.m. until 2:39 p.m.)

11 (Plaintiffs' Exhibit 20 was marked.)

12 BY MR. TILLEY:

13 Q One final exhibit. I've handed you
14 Exhibit 20.

15 A Yes.

16 Q This is President Passidomo's categorical
17 privilege log?

18 A Yes.

19 Q Looking on Page No. 3, it's providing a
20 category description of what has been withheld due to
21 privilege. And on Page No. 3, it says or refers to,
22 quote, communications with counsel involving the
23 exchange of draft correspondence addressed to members of
24 the media containing attorney work product and
25 pertaining to legal services, legal advice, and mental

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1 impressions of counsel, closed quote; is that right?

2 A That's what it says, yes.

3 Q Is that suggesting that there was
4 correspondence directed to the media that contained
5 attorney work product and was pertaining to legal
6 services, legal advice, and mental impressions of
7 counsel?

8 A I think that was -- I mean, I don't have all
9 of these documents memorized. It's been two years, two
10 and a half years -- well, three years since November of
11 2021, and I've not memorized the production. So I don't
12 know off the top of my head exactly what that document
13 is referring to or what that is referring to.

14 MR. MEROS, JR.: All right. Thank you.

15 (Recess 2:41 p.m. until 2:45 p.m.)

16 MR. MEROS, JR.: After consultation, we've
17 decided we don't have any questions. The witness
18 will read.

19 (Thereupon, the taking of the deposition
20 concluded at 2:45 p.m.)

21

22

23

24

25

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1 CERTIFICATE OF OATH

2

3 STATE OF FLORIDA

4 COUNTY OF LEON

5

6 I, I. Iris Cooper, Notary Public, State of
7 Florida, certify that JAY FERRIN appeared before me
8 on November 15, 2024 and was duly sworn.

9

10 Signed this 5th day of December, 2024.

11

12

13



14 I. Iris Cooper, Stenographic Reporter
15 Notary Public, State of Florida
16 Commission No. 1366674
Expires: February 7, 2028

17

18

19

20

21

22

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25

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1 CERTIFICATE OF REPORTER

2

3 STATE OF FLORIDA

4 COUNTY OF LEON

5

6 I, I. IRIS COOPER, do hereby certify that I
7 was authorized to and did stenographically report
8 the foregoing deposition of JAY FERRIN; that a
9 review of the transcript was requested; and that
10 the transcript is a true record of my stenographic
11 notes.

12

13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney, or counsel of any of the
15 parties, nor am I a relative or employee of any of
16 the parties' attorney or counsel connected with the
17 action, nor am I financially interested in the
18 action.

19

Dated this 5th day of December, 2024.

20

21



22

23

I. Iris Cooper, Stenographic Reporter
Notary Public, State of Florida
Commission No. 1366674
Expires: February 7, 2028

24

25

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1 ERRATA SHEET
DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES ON THIS PAGE

2

Deponent: JAY FERRIN

3 Date: November 15, 2024

CASE NO.: 8:24-cv-879

4 CASE: Keto Nord Hodges vs. Kathleen Passidomo

5

6 PAGE LINE REMARKS

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20

21 Under penalties of perjury, I declare that I have read the
foregoing document and that the facts stated in it are true.

22 Signature of Witness _____

23 Dated this _____ day of _____, _____.

24

Job No. 384146

25

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1 December 5, 2024

2 George N. Meros, Jr., Esq.
3 Shutts & Bowen
4 Phone: 850-241-1717
5 Email: gmeros@shutts.com

6 WITNESS: JAY FERRIN
7 CASE NO.: 8:24-cv-879
8 Date: November 15, 2024
9 CASE: Keto Nord Hodges vs. Kathleen Passidomo

10 The transcript of the above proceeding is now available and
11 requires signature by the witness. Please e-mail
12 fl.production@lexitaslegal.com for access to a read-only PDF
13 transcript and PDF-fillable errata sheet via computer or use
14 the errata sheet that is located at the back of the
15 transcript.

16 Once completed, please print, sign, and return to the email
17 address listed below for distribution to all parties. If
18 you are in need of assistance, please contact Lexitas at
19 888-811-3408.

20 If the witness does not read and sign the transcript within
21 a reasonable amount of time (30 days if Federal court), the
22 original transcript may be filed with the Clerk of the
23 court.

24 If the witness wishes to waive his/her signature now, please
25 have the witness sign on the line at the bottom of this
letter and return to the email address listed below.

Very truly yours,

20 

21 I. Iris Cooper, Stenographic Reporter
22 Lexitas
23 fl.production@lexitaslegal.com

24 I do hereby waive my right to read and sign.

25

JAY FERRIN

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