UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ALPHA PHI ALPHA FRATERNITY, INC., ET AL.,
PLAINTIFFS,
-VS-
BRAD RAFFENSPERGER,
DEFENDANT.

DOCKET NO. 1:21-CV-05337-SCJ
VOLUME 4 - A.M.

COAKLEY PENDERGRASS, ET AL.,
PLAINTIFFS,
-VS-
BRAD RAFFENSPERGER, ET AL.,
DEFENDANTS.

DOCKET NO. 1:21-CV-5339-SCJ

ANNIE LOIS GRANT, ET AL.,
PLAINTIFFS,
-VS-
BRAD RAFFENSPERGER, ET AL.,
DEFENDANTS.

DOCKET NO. 1:22-CV-00122-SCJ

TRANSCRIPT OF PRELIMINARY INJUNCTION PROCEEDINGS
BEFORE THE HONORABLE STEVE C. JONES
UNITED STATES DISTRICT JUDGE
THURSDAY, FEBRUARY 10, 2022

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OFFICIAL COURT REPORTER FOR THE HONORABLE STEVE C. JONES
UNITED STATES DISTRICT COURT
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APPEARANCES:

ON BEHALF OF THE PLAINTIFF:

GRAHAM W. WHITE, ESQ.
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ABHA KHANNA, ESQ.
SOPHIA LIN LAKIN, ESQ.
ARI J. SAVITZKY, ESQ.
SEAN J.YOUNG
ROBERT BOONE
ABIGAIL SHAW
ALEX W. MILLER
MAURA DOUGLAS

ON BEHALF OF THE DEFENDANT:

BRYAN P. TYSON, ESQ.
LOREE ANNE PARADISE, ESQ.
BRYAN JACOUTOT, ESQ.

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
ORVILLE VERNON BURTON	4	23	38	41
MAXWELL PALMER	44	65	74	75
LISA HANDLEY	70	101	114	

(Held in open court at 9 a.m.)

THE COURT: Sir, would you raise your right hand, and I guess we have to give him the oath.

THE DEPUTY CLERK: Do you solemnly swear that the evidence you shall give in the matter now before this Court, shall be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE DEPUTY CLERK: Thank you. Could you state and spell your name for the record.

THE WITNESS: Yes. Orville, O-R-V-I-L-L-E, Vernon, V-E-R-N-O-N, Burton, B-U-R-T-O-N.

THE DEPUTY CLERK: Thank you.

THE WITNESS: I'm getting an echo. I hope you're not.

THE COURT: We're fine. You're coming through fine.

THE WITNESS: Thank you. I'm going to turn my phone off now.

MR. WHITE: Good morning, Your Honor. This is Graham White, on behalf of the Pendergrass plaintiffs.

ORVILLE VERNON BURTON, having been duly sworn and appearing via Zoom, takes the stand and testified as follows:

DIRECT EXAMINATION

BY MR. WHITE:

Q. Good morning, Dr. Burton. Can you hear me?

A. Good morning. I can.

Q. Now, you have been retained on an expert on the Senate factor pertaining to the history of voting-related discrimination; is that right?

A. Yes.

Q. Can you briefly describe your educational background?

A. Well, I was born in Royston, Georgia, and grew up in Ninety Six, South Carolina, or in the county right outside of there. Went to public schools in Ninety Six. I went to Furman University for my BA, and while there I also participated in the Harvard Columbia Yale intensive summer studies program. And from there, after the Army, I went to Princeton University where I got my MA and Ph.D. Back in the Army briefly, and then out. For 34 years at the University of Illinois. From there I went to Coastal Carolina University for an endowed chair, and am now at Clemson University as the Judge Matthew J. Perry, Jr., Distinguished Professor of History.

Q. Can you briefly describe your professional background?

A. I did a little of it there, but I am a specialist in United States history. I specialize particularly in the American South and race relations. I have been elected by my peers to be president of the Southern History Association, Agricultural History Association, a member of the Society of American Historians.

I have received a number of awards. I've written more than 20 books, the latest is Justice Deferred, co-authored with Armand

Derfner, Race and the Supreme Court. The Age of Lincoln received a number of awards and acclaims. And I received from the American History Association their award for the best teacher; and the Carnegie Foundation for the research -- won teacher of the year and a number of others. All in my vitae which is attached in a free file.

Q. Thank you, Dr. Burton. And have you served as an expert witness before?

A. Yes.

Q. On what subjects?

A. Well, on redistricting. Certainly on intent and purpose of voting laws, racial block voting analysis, very recently in North Carolina on felony disenfranchisement. But a lot of issues dealing with discrimination, and particularly on voting, voting laws, those sorts of things.

Q. And have you offered expert testimony on the history of racial discrimination in any of these cases?

A. Yes, many of them.

Q. Do you know about how many?

A. No. I started with -- got involved as an expert witness right after Mobile v. Bolden in 1980. The first time I testified was about 1985 or '86 in Jacksonville, and that was clearly on intent. The huge county -- the Charleston County Council case about 2003 or '4. And then most recently, the South Carolina voter ID law where I was an expert for the League of Women Voters. It is in

Arlington Heights. The intent and purpose of election laws. The voter ID law in Texas, and the felony disenfranchisement case I just spoke about, was all about voting laws and intent, discrimination.

Q. Thank you, Dr. Burton.

MR. WHITE: Your Honor, I tender Dr. Burton as an expert on the history of race discrimination and voting.

THE COURT: Does anyone wish to voir dire for the plaintiffs? For the State, does anyone want to voir dire?

MS. PARADISE: Your Honor, no. No objection.

THE COURT: I'll allow him to testify as an expert.

MR. WHITE: Thank you, Your Honor.

BY MR. WHITE:

Q. Dr. Burton, let me direct your attention to Plaintiffs' Exhibit 7. Do you have that in front of you?

A. I do.

Q. Briefly, what is it?

A. It is my report that I did for this case on redistricting.

Q. And let me direct your attention to Exhibit 7, page 2 to the section titled, "Statement of inquiry." Is this an accurate summary of what you were asked to do in this report?

A. Yes.

Q. And what was it that you were asked to do here?

A. To look at and analyze the history of discrimination as it related to the State of Georgia in voting, and to put that into a

locality of the circumstances or into the historical context.

Q. And I'm going to direct your attention to pages 6 and 7. Is this an accurate summary of the sources you reviewed to form your expert opinions in this report?

A. Yes.

Q. Now, at a high level, Dr. Burton, what did you conclude about the history of voting-related discrimination in Georgia?

A. That since the end of the enslavement of human beings, that Georgia as a state, both parties over time have worked to both disenfranchise, that is, to keep the franchise from particularly African-Americans and other minorities later or to dilute the impact of their vote in ways that they could not easily elect candidates of their choice. That is continued to the present day in different voting discriminatory techniques that are used.

Q. I believe you analyzed this pattern in your report chronologically; is that right?

A. Yes.

Q. Now, because your report is in the record, let's just identify some of your key findings and conclusions starting with page 9 where you analyze the reconstruction period after the Civil War.

And just briefly, could you explain for the Court, how did the State of Georgia treat black voters during this period?

A. Well, the first constitution of 1865 was very explicit, only white men were enfranchised, and the constitution even went further and put into the constitution that African-Americans could

not hold office in the State of Georgia. With the Military Reconstruction Acts, because of the intimidation and violence, as well as the election of former Confederates, including vice president Adlai Stevenson to the Congress, they refused to seat those, and military reconstructionists gave African-Americans the vote for the first time. They voted in 1867 for the 1868 constitution. About 25 black people were elected. Immediately -- a huge amount of violence was going on even at this time. Immediately Democrats and Republicans got together and expelled all of the black state legislators except for four who did not look black. Those were reinstituted in 1870 by Congress, but then immediately Reconstruction ends in 1871.

Georgia Legislature quickly changes the local election and puts accounting systems in charge, and, in particular, with that overthrow, they controlled the local elections.

Then with the -- immediately the first state at all institutes a poll tax as a way to particularly disfranchise African-Americans. In 1877 they rewrite a new constitution, and they made that poll tax cumulative, which is very hard. It means that in order to vote you have to pay an accumulative poll tax from the time -- every -- every year back to vote. For landless people, Georgia had the least number, that is, the smallest percentage of land -- black landowners of any state.

Q. Thank you, Dr. Burton. Section C of your report starting on page 15 discusses the populous and early progressive movement.

Dr. Burton, again, just briefly can you explain for the Court how the State of Georgia treated black voters during this period?

A. Because the Populous Coalition was a coalition that grew out of the Granger movement and particularly black and white farmers came together, there was a black franchise, and in reaction, in fact, immediately the Democratic Party ceded the primary elections to the party itself which was started. Then in 1898 it went to a state-wide primary. And then in 1900 it made it a white primary; the second state after South Carolina, in fact, to make it a white primary. And, of course, why that matters in a one-party state, it's that vote and the only vote that really counts, and blacks are excluded from it.

And then in 1908 you have what is called the Felder-Williams Bill, often known as the "Disenfranchising Act," and in that one it makes exceptions so whites will be able to vote, because the 1870 15th Amendment says you cannot say that blacks cannot vote, black people, but you can use neutral language, which is what's been done pretty much ever since. By using neutral language by saying only landowners.

As I mentioned, Georgia has a -- if you had fought in the Confederate Army, if you understand the Constitution -- in other words, there is a literacy test that goes with that. And then you had a new registration. And extraordinarily important in Georgia, continuing today, is what is called by some people the pure election law, the Georgia Challenge Law of 1910, which changes the

way it was done. The registration books were open to any citizen to challenge for any reason anyone who tried to register to vote. And it was stated at the time that was to keep black people from voting.

You have to remember, this tradition of violence, intimidation, terror was rampant, particularly at this time that went in with that law as a result of all of this. Again, with the poll tax still there, was that -- it really was Jim Crow, and African-Americans were pretty much disfranchised except for a few in sort of the metro -- what we think of the Atlanta area today, in the urban areas where people are a little safer today than they were out in rural, more white areas.

Q. Thank you, Dr. Burton. And let's jump ahead to the Voting Rights Act era. And your report on page 29 discusses how Georgia apportioned its Congressional and Legislative Districts in the decades leading up to that passage of that statute in the 1950's and '60's.

Can you describe to the Court how Georgia treated black voters during its apportionment of its Congressional and Legislative districts?

A. Well, because of the particular county unit system, it really was malapportioned with rural and urban, and African-Americans, it was to a great extent where it worked to -- if they could vote at all or have representation, that it was extremely malapportioned in the state because -- because the apportionment favored the

white rurals in the state. One example I give is -- if I remember -- seven counties, most of them have become in the rural -- what becomes part of the metro Atlanta later, but in those seven counties you had 41 percent of the population, and yet in the Georgia House, they represented only 12 percent of the elected legislators from those counties.

And in 1960, Fulton County was the most underrepresented county in all of the United States, in the State Legislatures. DeKalb County was the third of all counties in the United States underrepresented in their state.

The same thing about the Congressional Legislative. And the example I gave in my report was the 5th, which is again the 5th District, Fulton, DeKalb -- about three counties. It was the second most populous Congressional District in the United States. It had close to 800,000 inhabitants, whereas a very rural 9th District in Georgia had about a third of that or about 238 or 239,000. So you can see just how malapportioned it was before the Voting Rights Act and before Baker v. Carr.

Q. And, Dr. Burton, the Voting Rights Act was passed in 1965; correct?

A. Yes.

Q. And just briefly, what was it designed to address?

A. It was designed to address the kind of technique that I talked about that were established after Reconstruction and after the populous conservancy of the interracial coalition that was growing

in Georgia. Things like the primary, particularly, literacy laws that disfranchise people, all of these kinds of franchise devices are devices that diluted the vote of minorities.

Q. And Section G of your report focuses on the Voting Rights Act, the preclearance requirement; right?

A. What page is that?

Q. This is starting on page 32 of your report.

A. Yes.

Q. Was Georgia subject to preclearance?

A. Yes.

Q. Why was that?

A. Well, it -- there is a -- Section 4 of the Voting Rights Act had a formula that was put together, for instance, literacy, and Georgia had a literacy test that automatically made coverage -- every county in Georgia, because one of the states -- the entire state was covered because it used diluted and different techniques and devices to disfranchise and to limit the impact and influence of particularly black voting at that time.

Q. Now, let's take a look at table 1 on page 34, if you could pull that up.

Dr. Burton, can you describe for the Court what this table shows?

A. Yes. Those are the states that are completely covered by Section 5, and this is in 1976. It is the -- 11 years after the passage of the Voting Rights Act, and it shows the percentage of

registered voters, black and white for all of those states, and then it shows the percentage difference between black and white registration. And you will note that Georgia has the second, only after Alabama, disparity between black and white voting, that white voters are much more -- still registered -- able to register to vote, are registered to vote than are black voters, and that actually Georgia's percentage of black voters is the lowest registration of any of those covered states.

Q. And, Dr. Burton, why did this underrepresentation persist after the Voting Rights Act was passed?

A. Well, there are a number of reasons, but you still have and have today this challenge law, which if you put it into the context of the violence, the intimidation and the threats of violence that existed and continues to exist, is one of those reasons. But another is that so many jurisdictions just ignored preclearance.

In the Congressional testimony, for example, Union Bond, for the 1982 renewal of the voting -- there were at least 400 that had been documented that just never put in for preclearance in Georgia. Plus there were also using different techniques about polling places, and a number of things like that, as I said, did not go through preclearance registration, as well as with the Voting Rights Act, they went to at-large elections.

Q. And, Dr. Burton, I want to jump ahead to page 36 of your report where you discuss statistics on the preclearance

requirement from 1965 to 1981. Can you pull that up?

A. Page 36?

Q. Page 36, yeah, the last paragraph of the page.

A. Yes.

Q. Dr. Burton, can you describe for the Court what you discussed here?

A. The number of objections, how many objections came -- rather, the number of preclearance and then the number of objections of all of the objections in this period, let's see, 1965 to 1981, 30 percent for all preclearance objections were to the State of Georgia, which is an extraordinarily high number. Louisiana is second, and it is about half, a little bit more than half. So it gives you an idea of how many objections there were by the Department of Justice during that time period right before the renewal of the Voting Rights Acts in 1982.

Q. And, Dr. Burton, were Georgia's Legislative and Congressional redistricting plans among the voting changes that were subject to preclearance?

A. Yes.

Q. Were they ever brought before the Preclearance Department?

A. Yes, from the first time in 1970 it was objected to for forward recycling terms up through 2000.

Q. Your report discusses the use of redistricting cycles in detail from pages 37 to 41; correct?

A. That looks correct.

Q. Let's turn to page 44 where you talk about the Supreme Court's decision in Shelby County v. Holder. Why is that case significant for your analysis?

A. Well, in Shelby v. Holder, Judge Roberts basically said things are not as they used to be. And it is not that preclearance was ended, but the formula he thought was out of date, despite huge testimony, amount of testimony brought forward to show in the renewal in 2006 just how states such as Georgia has continued to use different devices and ways to diminish the vote. And the almost unanimous passage in renewal in 2006 and 2013, the Supreme Court in an vote of five/four --

THE COURT: The last part he went out.

BY MR. WHITE:

Q. Dr. Burton, could you just repeat the last thing you said. I think the Court Reporter was having trouble hearing.

A. I'm sorry. I'm rushing speaking. I apologize for that. One of the few Southerners that speaks too fast, I think.

I think what I said, if I remember, is that the formula in Section 4 was ruled unconstitutional, which then means that there was no formative term in which jurisdictions would be covered that could be objected to; so therefore, Section 5 is basically the heart of the voting right that's been gutted.

Q. Thank you, Dr. Burton. I want to turn your attention to page 46 where you talk about a 2018 assessment for the U.S. Commission on Civil Rights. And we can pull that up here.

Dr. Burton, can you describe for the Court what your report says about that assessment?

A. Yes. And I will look at the report, if that's okay. But it says that Georgia is the only state that used the five most common restrictions that impose difficulty for minority voters, and those were voter ID law, proof of citizenship requirement, voter purges, cutting the opportunity for early voting, and widespread polling place closures.

Q. And one example of these Shelby County restrictions in Georgia that your report discusses are polling place closures in 2015; correct?

A. That's right.

Q. You have an entire section of your report dedicated to those closures on page 46; correct?

A. Beginning on page 46, it runs on for quite a bit. It was huge.

Q. Can you just describe very briefly what your section discusses about those polling place closures?

A. Yes. They're mainly in areas where black voters are, and wide -- really wide effect on -- on black opportunity to vote -- vote. And it's not just the closing of polls, but social science literature has shown that even moving a polling place, not just closing it, but moving the location of it disadvantages. There is a disparity between how it affects minority voters and white voters to the disadvantage of minority voters. So it has

had a huge impact. And it continues -- and it continues to today the polling -- closing the polling places.

Q. Dr. Burton, you also have a section in your report, starting on page 48, focusing on voting purges and challenges; is that right?

A. Yes.

Q. And when did these voting purges occur?

A. Well, I documented between 2012 and 2018. I noticed that one person said that on one day it was the largest mass disfranchisement in U.S. history. At that time, the State Secretary Kemp really removed 1.4 million voters from the -- from the rolls. That is, they were purged. And when you put that together with voter challenges and intimidation that any citizen can use that voter challenge law, which again was established clearly with the intent right after the populous insurrection to keep African-Americans from voting, is pretty disturbing.

Q. Dr. Burton, you also have a section in your report discussing Senate Bill 202, and that's starting on page 50; correct?

A. Page 50, yes. Yes. Yes.

Q. And just briefly, why do you -- why -- can you describe to the Court why you have a section on S.B. 202 in your report?

A. Yes. Because it is the latest example -- it was clearly in reaction to the former president, what has become commonly called the Big Lie, that he fraudulently lost this election. That he had really won it because of -- of voter fraud, which is an old trope

that goes back to Reconstruction, continually pointing out to metro Atlanta counties and areas as to where they argue that voter fraud was.

It's become what is often called a -- a dog whistle in terms of -- instead of using racist terms, as it had been common, before the Voting Rights Act. Voting fraud has been become one of those dog whistles or code words. And what S.B. 202 has done, it targets particularly areas of black voters, things that black voters do, just as the old Disfranchisement Act after the populous party that would disadvantage minority voters.

Particularly another one is drop boxes in the areas. There's just a huge number of areas where absentee votes and ballots could have been done compared to what it was in the 2020 election.

Q. Thank you, Dr. Burton. Let's turn now to Exhibit 8. Do you have Exhibit 8 in front of you?

A. I will in just a moment. Okay.

Q. And can you identify Exhibit 8 for the Court?

A. Yes, that's my supplemental report that I was asked to do in response to the objections that the State put into the preliminary injunction.

Q. And what issues were you asked to discuss in this supplemental report?

A. The State had argued that it was partisanship, not race, that caused minority voters to not to be able to elect candidates of choice, and I was asked to address the social science and

historical literature, and look at specifics in Georgia of the relationship of partisanship and race.

Q. At a high level, Dr. Burton, what did you conclude on that?

A. You cannot separate partisanship and race. That still continues. It really matters. And also I think it needs to be said, when you look at this, it's not about the race of the candidates; it's about the race of the voter. And in statistical terms, statisticians have said there is a multipolarity between -- when you look at voting in Georgia, or most states, in fact, between race and party. And you cannot separate them at all. And there is a historical development that I tried to lay out that scholars have talked about of how this all came about.

Q. And, Dr. Burton, on page 3 of your supplemental report there is a section entitled, "Historical Foundation of the Partisan Divide Among Black and White Georgians." And in this section you talk about the Great White Switch. What was the Great White Switch?

A. Well, it was coined by two scholars, one who was at Emory, two brothers, Earl and Merle Black, and it talks about what really begins with the Civil Rights Act of 1964 and the 1965 Voting Rights Act, which were both bipartisanship in support. But with that, it begins -- what they called the Great White Switch in which, particularly African American voters, coming from the party of Lincoln, start moving to the Democratic Party and, in particular, why conservative Democrats in the South begin to move

toward the Republican Party. That, again, develops over time, becomes more and more so. You have a Southern strategy that is best associated with Kevin Phillips' book, as I stated earlier, but it was implemented by Richard Nixon, Strom Thurman's Dixiecrat run and changed to the Republican Party, and his strategies all the way down through Lee Atwater developed this Southern strategy that particularly was clear in trying to identify the Democratic Party as the party, as they said at the time, of the Negro, or African-Americans, we would say today, that that party is clearly to be identified as the party of black people in the South.

Q. And, Dr. Burton, on page 4 of your supplemental report, you say that Georgia is a focal point of the Southern strategy. What do you mean by that?

A. Well, in particular, you can see in the 1980 election, when Georgia -- former governor Jimmy Carter runs against President Reagan. President Reagan begins to use the -- what we call code words or dog whistles now at this time, and he attracted a lot of conservative white Democrats into the Republican Party, that is, to vote for him, and that really is a major shift point. And so he goes to Neshoba County, where three civil rights workers had been murdered, and he talks about states rights there. And he uses -- he uses terms like the "Welfare queen" and the "strapping young buck," that sort of goes into these coded words; it begins this big shift.

And it really, really becomes, as I said, a focal point in

Georgia today with the huge increase in minorities. And not just African-Americans, although they have certainly increased, too, but other minority voters who are often identified with Democrats. So you have all of these code words that have -- we talk about now. And you can go back still to Carter, to blessing law and order, all of that are ways that have suddenly shifted what people talk about, the poverty, fraud, lazy, criminal corruption -- immigration has become a big one in the last few years.

Q. Now, let's turn to the end of your supplemental report on page 7 to the section titled, "Divergent Race-Related Views of Members of the Democratic and Republican Parties in Georgia."

Dr. Burton, you start this section by discussing the voting record of Georgia Republican and Democratic election officials, elected officials on civil rights issues; is that correct?

A. Yes.

Q. Why do you discuss these issues?

A. Well, it's about policy. The policies that are supported by Republicans are antithetical to the policies that most minority and black voters want; that is, those around race and civil rights are what's driving the shift as it continues to the actual policymaking. And so this is a grading by the NAACP, which is an advocacy group for civil rights and for legislation and issues that would benefit minorities, and every year they grade legislatures. So I thought this was a useful way to look at a quantitative analysis. And you can see that in this table, if I

remember correct, that the highest voting record, that is, the highest reporting of those issues that minorities care about, those that involve race in some way, are those that are proxy for -- it's 13 percent, whereas among the Democrats it was 100 percent, where one of the very lowest is 81 percent, showing these sort of antithetical partisan race positions of the voting members of Congress.

Q. And what do these numbers tell us about race and politics in Georgia today?

A. That they are so intertwined that it really matters. That they play a part in separating and continue to play a part with black and white voters and the partisanship groups.

MR. WHITE: No further questions, Your Honor.

THE COURT: Your witness.

CROSS-EXAMINATION

BY MS. PARADISE:

Q. Good morning, Dr. Burton.

A. Good morning.

Q. My name is Loree Ann Paradise, and I represent the Secretary of State. Before we get started, I want to let you know I grew up in Northeast Georgia near Royston as well. I spent a lot of time over in Hart, Madison, and Franklin County. So it's unbiased, but it's a good place to be from.

A. It is. We went there almost every week to see my grandmother. We'd drive 80 miles every Sunday after church. We were regularly

in Royston. I own a farm there that I was born on.

Q. A beautiful part of the state.

So to get us started, I just have a couple of introductory questions and then we'll get into your report, if that's okay with you.

First, can you tell me when you were asked to prepare your report for this case?

A. I do not remember precisely. I would have to go back -- I can find that information for you. It may be in the report, but I think -- I am thinking it was December.

Q. Okay. So that would be after the special legislative session that was held here in Georgia, if you remember?

A. I don't remember precisely. It may have been November. I was -- I was working on another report on Georgia at the time, so a little confused as to when I shifted from one to the other.

Q. Okay. Who asked you to prepare your report?

A. It was Kristina Ford, attorney Kristina Ford.

Q. And did Ms. Ford provide you with any assumptions as to what the report should entail?

A. No. She just told me that they wanted, as I remember, Senate factor one, which is the history of voter discrimination or how discrimination in its context might have affect voting results.

Q. And what data were you specifically asked to review?

A. The history of discrimination in Georgia, and I determined as a historian and reports I've done before, what I would look at.

Q. Okay. Now, looking at your CV there on page 19, Appendix B of your report, you state that you've written a number of reports as expert witness for minority plaintiffs and voting rights and discrimination cases; is that correct?

A. Yes.

Q. Have you ever testified on behalf of a government defendant?

A. I don't believe I have. Not to the best of my recollection at this moment.

Q. In cases involving partisan plaintiffs or defendants, have you ever testified on behalf of any Republican?

A. I have not testified, but I was -- I was hired by Republicans in Illinois to do a report.

Q. Now, let's move to your report which is very linear, which I appreciate it. It made my job a little easier. And we'll start -- we'll move date by date and section by section.

So, first, you would agree with me that the first 37 pages of your 58-page report deal with the time period beginning at Reconstruction up until the 1980s; correct?

A. Can I have a moment? You said from pages one through what?

Q. The first 37 pages of your report deal with the time period from Reconstruction up until the 1990s?

A. That looks correct without, you know, reading back through it.

Q. And so that section ends around 40 years ago; yes? Approximately, 40 years ago?

A. Yes.

Q. And then jumping to page 38 of your report, we get to a section that you titled, "End of the 20th Century." Do you mind going there for me? And then we'll go through the recent redistricting cycles that you have listed.

So you mentioned both the 1980 and 1990 redistricting cycles. Do you agree that both of these redistricting maps or the redistricting maps from both of these cycles were initially rejected by the Department of Justice under Section Five Three clearance?

A. Yes.

Q. Are you aware that the Democratic Party was in control of Georgia government during both of those redistricting cycles?

A. Yes. I just dropped my report. So if you go back, I'm going to have to pick it up.

Q. That's fine. You can take time if you need it.

That brings us to a final section of your report titled, "The Modern Era." Can we go there?

A. Okay.

Q. And you start by highlighting the 2000 redistricting maps passed by the Georgia General Assembly. Do you see that?

A. Yes.

Q. And your comment there reads that, "For the fourth decade in a row, the Georgia General Assembly passed redistricting plans that would not survive preclearance." Is that accurate?

A. That's right. They finally did of course, but...

Q. And are you aware that during that redistricting cycle, the Democratic Party held majorities in both the Georgia House and Senate as well as the Georgia Governor's Office?

A. Yes.

Q. Okay. We're going to take a little history lesson down Georgia elections here.

So then in 2002 former Governor Sunny Purdue, a Republican, beat Democratic incumbent Roy Barnes; do you agree?

A. Yes.

Q. And then the Democrat plans for both the House and the Senate were thrown out as unconstitutional by a three-judge panel; yes?

A. Yes.

Q. And then beginning 2004, the 2004 elections, Republicans in Georgia won a majority in the Georgia House; correct?

A. That is correct, I believe.

Q. And then in 2005 the Republican minority redrew the Congressional map? Do you recall?

A. Yes.

Q. And that map as drawn by the Republican majority was precleared by the Department of Justice; yes?

A. Yes.

Q. And then moving to the 2010 redistricting cycles, the Republicans again had the majority in state government here in Georgia; yes?

A. Yes.

Q. And you are aware that all three of the statewide maps passed by the Georgia General Assembly and then signed by then Governor Nathan Deal in 2011 were precleared by the Department of Justice at their initial submission?

A. Yes.

Q. Okay. Let's jump to page 48, the section you labelled, "Voter Purges and Challenges." And here you specifically reference two election policies utilized here in Georgia, exact match and what you call voter purchase.

As it relates to the exact match policy, we'll start there. Are you aware that a challenge to Georgia's database matching process is currently an open matter before this Court set for trial in April?

A. I am -- I don't know if I'm aware or not. I looked at testimony in, I think, but I'm not sure -- in expert witness reports, but I'm not sure I was aware when it was said or anything like that.

Q. Okay. And then moving on to what you call "voter purges," are you aware that the Secretary of State's office calls this practice "voter list maintenance"?

A. Probably, but I don't remember at this time. But I will grant you that, if that's what it was called, and you tell me. I believe you.

Q. And are you aware that in a separate case, Fair Fight Action and other plaintiff groups have challenged the Secretary of

State's voter list maintenance practices here in Georgia?
A. I believe -- I believe I looked at that.
Q. So are you also aware that those claims were dismissed two years ago in December 2019?
A. I don't believe that I was aware.
Q. Okay.
A. I may have been but, you know, I didn't have focus on it.
Q. And then the next section you have is labeled, or subsection, I should say, on page 50 is labeled, "Senate Bill 202." Are you aware that piece of legislation is involved in ongoing litigation?
A. Yes.
Q. And are the plaintiffs in this case challenging any of the other provisions of S.B. 202, in this case?
A. I'm sorry, repeat your question. I'm a little lost.
Q. I should have phrased it better. I apologize.
Are you aware, are the plaintiffs in this case challenging provisions of S.B. 202?
A. The same plaintiffs?
Q. Yes, sir, in this case.
A. I don't know if they're the same plaintiffs or not. I guess that's what's throwing me off. I do know that S.B. 202 is being challenged.
Q. Is it being challenged in this case is my question?
A. Oh, oh, no. It's just being used as evidence of -- of examples of the history of how voting discrimination is employed

and used and continue to show the patterns of it, and, hopefully, helping people to understand the historical context of the repeated patterns and what the formerly -- kind of things done, such as the Franchising Act of 1998, the similarities and things and what the effects would be.

Q. And I want to jump briefly to your supplemental report and then I just have a couple of -- I'll finish up with one or two questions of Appendix A of your initial report.

So going to your supplemental report, you are not a political scientist, are you?

A. I do political history. And I would like -- can I explain?

Q. Of course.

A. No, I'm not a political scientist, but I have sat on many political science Ph.Ds at the University of Illinois committees. I have been asked to teach in the political science department at the University of Illinois and come in and do lectures on the Voting Rights Act and racial discrimination.

So I'm very familiar with the literature. But, no, my Ph.D. isn't.

Q. And going to page 4 of your supplemental report, can you define for me what a subtle racial appeal is, the technical definition for that?

A. Can you point me to where the -- to where the statement you said --

Q. Of course. It's page 4, your third paragraph -- third

paragraph, excuse me, that starts with, "The Southern strategy continued after Nixon." Do you see that paragraph where you talk about Ronald Reagan, President Reagan and his campaign in the 1980 presidential race?

A. Yes.

Q. Okay. Can you just provide a definition for me?

A. Yes. And I thought that I had in the report, but maybe I didn't. It was done so quickly. But it's using term -- Lee Atwater explained it better than anyone in what is now a famous interview that has been published. And that is, when you learn that you can't use the old racial appeals that have been used before, so you use words that become associated and carry the same meaning. And I tried to give those examples in my direct testimony, such as, Reagan used "Welfare queen," and "strapping young buck" and "busing" became one of those, the opposition to busing. Law and order. In the latest book I did, there is a good explanation of this, in fact the co-author of the book, Justice Deferred: Race and the Supreme Court on how busing became -- with law and order, and, particularly, President Nixon decided to use "law and order" as a terminology in a way that pointed to minorities. And the old tropes that came out of Reconstruction of the dangerous black man, of the dangers of black people, of criminality being associated with black people and old trope in language built upon it. So it's these coding words. And I can send you the page numbers to my book where I have a whole section

on this. And it's not unique to me. It's been done by a number of scholars that I believe are cited in the footnotes here.

Q. And I apologize if I just missed it, but what did you say the source of that was? And would you able to provide the source for that definition? Not right now.

A. Sure. Absolutely. And I can also -- these footnotes discuss it really in detail. One of the most famous is Ian Haney Lopez, Dog Whistle Politics, have coded racial appeals, have reinvented racism, and wrecked the middle class. It's a 2013 book, and there has been a discussion of it. But it's common among political scientists, law professors and others is the way -- there is a good bit on the Lee Atwater interview where he actually talks about all of this, more or less is apologizing for it.

Q. Skipping to -- thank you for that.

Skipping to page 7 where you have the chart that you provided some direct testimony on, the chart titled "Pro-Civil Rights Votes Among Georgia's Congressional Delegation, 2017 to 2019."

Do you see that?

A. I do.

Q. And you divide this chart into two columns, Republican members and Democratic members. And would you say that effectively this chart, this chart is you taking the data that the NAACP compiled in its scorecard and putting it into a form in your report? Yes?

A. Yes.

Q. You have no idea what votes the NAACP looked at to determine

these findings; correct?

A. No. I did have some ideas. I mean, I didn't do them all, but I looked at the reports and they -- they have over the years, they have done this. And they looked at legislation that they consider civil rights legislation or rights that would benefit the social, economic and political advancement of minority groups. So it's those sorts of -- of -- they don't necessarily become legislation, but focus on those issues that are policy issues.

Q. Right. But you don't know specifically -- what votes that these members of Congress took on proposed pieces of legislation in their chambers for the NAACP to determine these findings; correct? You don't know the specific votes that were taken?

A. I couldn't list them, but I'm sure we could -- we could find them in the record if we went back, spent the time to do it. The NAACP has already done that, so...

Q. And you have the dates here 2017 to 2019, but during that range, you aren't even aware of what year these specific votes were taken in that date range; correct?

A. No, that's a cumulative voting period.

Q. Okay. So you don't really know the process that the NAACP used to compile and create this scorecard; yes?

A. No, I would not agree to that. I have looked at this scorecard for years, over the years, different dates and, you know, over time have seen it. I did not go in and look at each and every one or anything like that. I just took it as it was

done. But I would not agree that I don't understand what they were doing or, you know...

Q. Right. And I apologize if I misphrased my question.

You've looked at these, and I know you have extensive knowledge of these score cards, but you don't know what votes or what years these votes were taken that the NAACP used?

A. I know they were taken in 2017 to 2019. I don't know which vote was taken when. This is -- this is a -- this is a way social scientists would put together a table or the other things, all the data, every single one listed with every person. It would be hard to interpret. You want to put it together in an average form, if I'm understanding your question like this.

Q. Yes, sir. Yes, sir. Okay.

My final couple questions, we'll scoot back over to your report, specifically Appendix A, and there you have -- you have replicated a chart titled "Representative Discriminatory Voting Tactics in Georgia." I will give you a few minutes to get there, and I will do the same.

And this chart you have three columns, which are labeled "Voting Mechanism Adoption." Then you have "Name of Georgia Jurisdiction," is the second column, and then the third and final column says, "Details;" is that correct?

A. Yes.

Q. And in the "detail columns" you list discriminatory practices that were enacted in Georgia cities and counties; yes?

A. Just Georgia cities and counties, yes, I think that is correct. You have things like Board of Education, but I assume that would still be city and county. Sometimes school districts can be a little different.

Q. And I will be more specific and use your phrasing.

You have the "details column" and then with dates that reflect two discriminatory practices that were enacted in Georgia jurisdictions -- to stay on your wording that you have in your report -- is that correct?

A. Correct. Yes.

Q. So in that details column, you provide dates of implementation for each of these practices listed; yes?

A. I tried to, to the best of my ability working, you know, with the data. And much of this is taken from two sources, which were done by Laughlin McDonald.

Q. Can you repeat that, Dr. Burton? I apologize.

A. No. The source is listed at the bottom of the table at page 58. They come from Laughlin McDonald, "Voting Rights in the South," "Ten Years of Challenging Continuing Discrimination Against Minorities," was put out by ACLU Southern regional office in 1982. And then Laughlin McDonald's book, A Voting Rights Odyssey, which was Cambridge University Press in 2003, which actually was the reason for the press, the publication of that book. So I studied that.

Q. You would agree that the most recent date located in the

details column of your chart for Appendix A is 1981; correct?

A. I have not looked -- if you say so, you know, I would -- I will accept what you say. I haven't looked back to make sure the latest one is 1981. But if you say so, I agree. Certainly, the majority of the table came from McDonalds' book which was put together for the renewal of Voting Rights Act -- the ACLU book which was put together for the renewal of the voting rights in 1982. So that would make some sense. I would think that there would be some others from the later publication, but I haven't read this.

Q. If you want to take a minute or two to comb through that details column and look at those dates, that's fine.

A. No, I will accept what you say if you looked through it.

Q. And you would agree that 1981 was 41 years ago?

A. Yes.

MS. PARADISE: Your Honor, I just want one second to confer.

Those are all the questions I have, Dr. Burton. Thank you very much for your time. I appreciate it.

THE COURT: Any redirect?

MR. WHITE: Yes, Your Honor, very briefly.

REDIRECT EXAMINATION

BY MR. WHITE:

Q. Dr. Burton, you were asked about some of the methods and sources that you considered in writing this report, do you recall

that?

A. Yes.

Q. Can I direct your attention to pages 6 and 7 of your expert report. That's Exhibit 7.

A. This is embarrassing, but can you give me a moment. I dropped the report and it's sort of a -- I apologize.

Q. No problems. Do you have it in front of you?

A. Yeah. I've never testified remotely, so it's a little different not having a binder. Okay, I'm ready.

Q. So do you have the section, Section C on page 6 is titled, "Methodology of Sources." Do you have that page in front of you?

A. I do.

Q. And just briefly could you describe for the Court the kind of sources you considered in putting this report together?

A. Yes. As I explained it there, this is just an overview. But I do what I do if I was writing "Justice Deferred: Race in the Supreme Court," that page --

(Reporter asks for a clarification.)

A. I'm sorry, I'll slow down. This Boston accent throws most folks in the north.

What I have done is used the standard methodology that I think any expert, political science historian, political sociologist would use to do the kind of report or investigate the questions that I was asked to investigate. It is, in fact, what I would do as if I were writing the book I just co-authored, Justice

Deferred: Race in the Supreme Court, or with The Age of Lincoln or the book I did on Penn Center or any other.

And so I looked at all of the secondary, that is, the work by scholars that have been done before and used those by other social scientists, the literature that they had worked on, I looked at, as primary sources as well. Particularly using newspapers, trying to look at multiple sources.

As a historian I think we are the best trained to get at the truth through newspapers, to evaluate them. I looked at the Constitutions of Georgia, the Legislative debates. I looked at laws that were passed. I looked at court cases, some of which I was just asked about, including, you know, expert witness reports on different cases and times. Looking at the actual bills themselves, trying to put these things in chronological order. And through this sort of totality of the circumstances, one way to look at it as a historian, we come at this to put together the narrative and the story to help the Court.

Q. And, Dr. Burton, do you believe that you had a sufficient opportunity to study all of the materials you've listed on pages 6 and 7 in preparing your report?

A. Yes.

Q. And Dr. Burton, you were asked about the voter registration purges that occurred around 2015. Do you recall that?

A. I do.

Q. And you were asked if you recalled whether the Secretary of

State's office called those purges "voter list maintenance"? Do you recall that?

A. I do.

Q. And isn't it true that the State of Georgia used neutral terms to describe its discriminatory voter purge laws in the 20th century, the registration purge laws?

A. Yes.

Q. And, Dr. Burton, you also testified that about -- testifying about Georgia's history of voting discrimination, is it your testimony that voting-related discrimination has been limited just to one party?

A. No. It doesn't matter. One of the -- one of the sad things in our history is like the populous party, the Reconstructionist civil rights movement, and now the -- what's happened with Georgia and other states moving toward a majority/minority, whichever party has been in power has sadly used these neutral-sounding -- that is, the word does not say we're disenfranchising black voters or minorities, but it has that effect. It doesn't matter. It could be Martians, as far as I am concerned. I don't want to find that, but we do. You asked about recent laws. I mean, just last month, I believe, maybe two months ago in Lincoln County, Georgia, they closed -- I think it's 13 polling places and -- and left one. And that one is removed or further away from where most African-Americans live in that county, making it more difficult. So this is -- even though this table is around 1982, I tried to

point out that these processes have continued. This is where the work had been documented at that time.

Q. Is it fair to say that because you just testified that the discrimination you discuss in your report was perpetrated by both Democrats and Republicans, is it fair to say that that is because the discrimination you discuss in your report is on the basis of race, not party?

A. Yes.

Q. Dr. Burton, you were also asked about Appendix A in your report and various -- various discriminatory practices that occurred around the 1970s and '80s. Do you recall that?

A. Yes.

Q. Is it fair to say your report discusses significantly discriminatory practices in the State of Georgia that occurred after 1981?

A. Yes, and that was what I was trying to say in the previous answer, that was as far as it is had been documented by someone at the time. And I built upon that to show the parallels and the continued discrimination with the voter challenge law, with the purges, with the reregistration, and particularly the polling places which continue -- as I said, the last one I saw was this Lincoln County. I believe it's -- I think it was last month. But it's very recently where you closed 13 polling places, leaving only one. And you can see in the report that at the time Secretary Kemp said to people, to the registrars and others, now

that you no longer have Shelby County, I would recommend you close polling places. I mean, that's on the record. It's stated. It's huge. As I said, it was a huge purge in Georgia. It really affected the 2018 election in terms of the number of voters who were removed from the rolls. And when you think about the voter challenge law still in effect and still with groups using that as a way to try to challenge and discourage voters in an era that has grown in terms of the context -- from the Georgia's enslavement, the violence and intimidation and threat, it's really sad.

Q. Thank you, Dr. Burton.

MR. WHITE: No further questions, Your Honor.

THE COURT: Any Recross?

MS. PARADISE: Just one.

RECROSS-EXAMINATION

BY MS. PARADISE:

Q. Dr. Burton, I just have one final question for you. You just said that the then Secretary of State Kemp recommended closing polling locations to counties. What is your authority? What is your source for that comment? Can you provide that?

A. Yeah, it's in my report. Can you guide me -- because I dropped the report -- what page this article starts on?

Q. I can find that.

A. Yeah, I've just got to sort this out.

Q. Your subsection -- polling place closures, Subsection A, is on page 46 of your report.

A. Okay. It goes to Footnote 165. The leadership offers educational -- I'm reading Footnote 165, and this is a quote from Secretary of State Kemp. "As a result of the Shelby v. Holder Supreme Court decision," and then this is -- to make sense, my words in brackets -- "counties are," end of bracket, "no longer required to submit polling place changes through the Department of Justice for preclearance," and the footnote is the Leadership Conference Education Fund, Democracy Diverted. Polling Place Closures and the Right to Vote, September 2019, page 32.

Q. Thank you, Dr. Burton, for highlighting that footnote. And I see your comment -- your comments in the report here on page 46. But your comments just now were that then Secretary of State Kemp recommended two counties to close polling places. Do you agree that's different than his quote saying, "as a result of the Shelby decision, counties are no longer required." Do you agree, that's not recommending closing polling locations?

A. The word I used in the quote was to focus to encourage counties to reduce voting locations, and my memory that is accurate from what was the source I used. I don't have that source with me at the moment, but the other way you can look at it, it's certainly encouraging if you are told you no longer have to submit polling places changes. But I have to go back to find the words. But I will change that word to saying that this is the statement that he made that I quoted, if that makes you feel more comfortable.

Q. That's fine, Dr. Burton. I just want to go on the record that you agree that where you say then Secretary of State Kemp encouraged counties, that's your word, and his quote was, from your footnote provided here, "As a result of the Shelby v. Holder Supreme Court decision, counties are no longer required to submit polling place changes to the Department of Justice for preclearance." So "encouraged" is your phrasing, not the then Secretary of State Kemp's; correct?

A. That -- that is correct, but I also believe that I use that word having read the context of what was said in that report's footnote.

Q. Understood. But you would agree that "encouraged" as it is written on page 46 of your report, is your phrasing, not then Secretary of State Kemp's?

A. That is correct. That is how I wrote it.

Q. Thank you, again. I appreciate your time.

MS. PARADISE: Nothing further, Your Honor.

THE COURT: Is this all for this witness?

MR. WHITE: Yes.

THE COURT: Thank you, Doctor. Have a great day. We will stop right here and take a 15-minute break and start back here at 10:35.

(A discussion is held off the record.)

THE COURT: Do you want to call your next witness?

MR. HAWLEY: Good morning, Your Honor. Jonathan Hawley

on behalf of the Pendergrass and Grant plaintiffs. We would like to call Dr. Max Palmer.

THE COURT: All right.

THE DEPUTY CLERK: Sir, could you remain standing and raise your right hand, please. Do you swear that the evidence you shall give in the matter now before the Court shall be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE DEPUTY CLERK: If you could have a seat, and please state and spell your name for the record.

THE WITNESS: Maxwell Palmer, M-A-X-W-E-L-L, P-A-L-M-E-R.

MAXWELL PALMER, having been duly sworn, takes the stand and testified as follows:

DIRECT EXAMINATION

BY MR. HAWLEY:

Q. Good morning, Dr. Palmer. You've been retained as an expert in both the Pendergrass Congressional case and the Grant Legislative case; is that correct?

A. Yes.

Q. And you prepared two expert reports, one in the Pendergrass case and one in the Grant case; is that right?

A. Yes.

Q. Could we please pull up Plaintiffs' Exhibit 5. Dr. Palmer, can you identify this?

A. That is my expert report in the Pendergrass case.
Q. Thank you. And let's now please pull up Plaintiffs' Exhibit 6. Can you do the same?
A. That is my expert report in the Grant case.
Q. And do you have copies of these reports in the binder there in front of you? I think it might be in the white binder there.
A. I do.
Q. Tabs 5 and 6. Okay. Is your CV included in these reports?
A. It is.
Q. And is that CV a complete and accurate summary of your background and professional experience?
A. Yes.
Q. I am going to ask you a couple of questions about those topics. Can you first summarize your educational background, please?
A. I received my undergraduate degree in mathematics and government and legal study from Bowdoin College in Maine, and my Ph.D in political science from Harvard University.
Q. And, Dr. Palmer, feel free to leave your mask on, or you can take it off if it makes things easier for you.
And where are you currently employed?
A. I'm currently an associate professor of political science at Boston University.
Q. Are you tenured?
A. Yes.

Q. What classes do you teach at Boston University?
A. I teach classes on American politics and political methodology, including introduction to American politics, Congress, American political institutions, data science, and formal theory.
Q. What are your principal areas of research?
A. American political institutions, Congress and voting rights, and local and urban politics.
Q. Have you been accepted as an expert witness in cases involving redistricting previously?
A. Yes.
Q. Have you ever been rejected as an expert by any court?
A. No.
Q. I believe -- sorry. On the first two pages of your report, does that list the cases in which you previously served as an expert?
A. Yes.
Q. And in approximately how many of those cases did you conduct a racially polarized voting analysis?
A. I think all of them, including Bethune-Hill v. Virginia, Thomas v. Bryant in Mississippi, Chestnut v. Merrill in Alabama, Dwight v. Raffensperger in Georgia, Bruni v. Hughes and Texas Alliance for Retired Americans v Hughes, both in Texas, and Caster v. Merrill in Alabama.
Q. And in those cases did the courts previously credit and rely

on your analysis?

A. Yes.

Q. Have you ever served as an expert for a jurisdiction?

A. Yes. I worked as the independent racially polarized voting analyst for the Virginia Independent Redistricting Commission.

Q. And was that commission bipartisan?

A. Yes.

MR. HAWLEY: Your Honor, pursuant to Federal Rule of Evidence 702, the Pendergrass and Grant plaintiffs would like to proffer Dr. Palmer as an expert in redistricting and data analysis.

THE COURT: Do any of the Alpha Phi attorneys wish to voir dire?

MS. LAKIN: No, Your Honor.

THE COURT: Does the State wish to voir dire?

MR. JACOUTOT: No, Your Honor, we might have some questions about his methodology on cross.

THE COURT: He'll be allowed to testify as an expert in that area.

BY MR. HAWLEY:

Q. Dr. Palmer, let's talk specifically about the work you performed in these cases. What were you asked to do in Pendergrass and Grant?

A. I was asked to offer an expert opinion on the extent to which voting is racially polarized in different parts of Georgia, and I

was also asked to evaluate the performance of the new black majority district in the plaintiffs' illustrative maps.

Q. At a high level, what did you conclude about racially-polarized voting in the areas of Georgia you examined?

A. I find strong evidence of racially-polarized voting in all of the different counties areas that I examined in both cases, and I find that all the new black majority districts in all the new illustrative maps would perform for black-preferred candidates.

Q. And did you reach any conclusion about the success of black-preferred candidates in the areas that you examined?

A. I do. I find that black-preferred candidates are generally unable to win elections in these areas, except in the black majority districts.

Q. And you mentioned that you concluded that in the illustrative -- the additional districts in the illustrative plans, that black-preferred candidates would be able to win election in those new districts; is that correct?

A. Yes.

Q. And is that true in both the Congressional map and the Legislative map that has been introduced in these cases?

A. Yes.

Q. Before getting into the specifics of the cases, let's discuss racially-polarized voting analysis more generally.

What is racially-polarized voting as you understand it?

A. I think of racially-polarized voting as when majorities of

voters of different racial or ethnic groups vote cohesively, that is, majorities of each group vote for the same candidates. And then polarization is when they're supporting -- voters of different groups are supporting different candidates.

Q. Now, is it always the case that each racial group you examine has a preferred candidate?

A. No.

Q. Is that the purpose of this analysis in part to find that out?

A. Yes. First to find out if there are preferred candidates for each group, and then if those candidates are the same or different across groups.

Q. In the past cases that you testified in, have you ever conducted a racially-polarized voting analysis and found that there was no racially-polarized voting?

A. Yes. For example, in Bethune-Hill v. Virginia, I was looking at several different districts for the House of Delegates, and in some of those districts there was evidence of racially-polarized voting and in others there was not.

Q. And how do you go about examining racially-polarized voting?

A. I use a statistical technique called Ecological Inference, often referenced to as EI, which seeks to estimate group level behaviors, that is, what percentage of black voters are supporting each candidate, what percentage of white voters are supporting each candidate based on aggregate data, the precinct level elections returns and data on voter turnout by race that we have

available.

Q. And can you explain the ecological inference or EI at a high level?

A. So EI is a statistical technique, and it's used -- I analyze many, many different elections for many different geographies in my reports, and for every different election and geography, I run this model called EI. And it takes aggregate data. And the challenge we have in our elections is that we have the secret ballot. We don't get to see how any one person votes, but we have aggregate-level data. We get to see at the precinct level the votes cast for each candidate, and we also get to see the voters who turned out. And in Georgia because of the way that voters report their race on the voter registration form and the State makes that data available, we can see voter turnout by race as well as those precinct levels.

So what EI does, it takes all those levels, precinct level election results, precinct level voter turnout by race, and use that to estimate what percentages of voters of a racial group are supporting each candidate.

Q. Do scholars and experts regularly use EI to examine racially-polarized voting?

A. They do.

Q. In your opinion, what is the best available method for assessing racially-polarized voting?

A. Ecological inference.

Q. Is it your understanding that Courts regularly rely on EI analysis to determine whether there is racially-polarized voting in a particular area?

A. Yes.

Q. Now, what kind of results does an EI analysis produce?

A. So the results of the EI analysis, and this is done for each separate election and geography, is for each group -- I get a mean estimate or an estimate of the level of support for that group for each candidate, and then I also get a confidence interval, a measure of uncertainty in the estimate.

Q. And which racial groups did you examine in the cases here?

A. I looked at African-American voters, white voters, and then all other groups combined into the other category, which includes Native Americans, Asian Americans, Hispanic voters, and any other ethnic group.

Q. And which elections do you examine in the course of your analysis?

A. I looked at 31 general elections from 2012 through the 2021 runoff elections.

Q. What kinds of data did you use?

A. I used two kinds of data. First, I have these precinct level election returns. Every precinct and every separate contest, the number of votes cast for each candidate. And then second, for every precinct in every election year, the number of voters by race who turned out to vote, and I merge those two data sources

together so that my data is ultimately for every election precinct and contest. The votes cast for each candidate, and the number of voters by race who participated in that election.

Q. Thank you, Dr. Palmer.

Now, let's talk about your analysis of the Congressional map in the Pendergrass case. Which geographic regions of Georgia did you examine in Pendergrass?

A. I looked at a focus area defined as the 3rd, 11th, 13th, and 14th Congressional Districts under the newly-enacted maps.

Q. And what was the reason behind this focus area?

A. My understanding was that this was the area from which the new black majority district would be drawn.

Q. That would be the new black -- majority black district that is drawn by Mr. Cooper in his illustrative plan for the Pendergrass case; correct?

A. That's right.

Q. Overall, what did you find in your analysis of those 31 elections in this Congressional focus area?

A. I find strong evidence of racial polarized voting in this focused area as a whole. I estimate more than 98 percent of black voters support the same candidate in each contest, and only 11 or 11 and a half percent of white voters support those candidates.

Q. Let's please pull up figure 2 on plaintiffs 6. Dr. Palmer, is this a figure from the Pendergrass report?

A. Yes.

Q. What does it show?

A. So this figure illustrates the ecological inference results in a relatively compact way. I present the estimates for each group separately, and I don't include the election labels here just to get into a smaller figure, but there are 31 points for each racial group.

The dark blue dots represent the ecological inference estimates for black voters. And they show that in every election, 95 percent or more of black voters are supporting the same candidates. They're all up at the top of the "Y" axis, which is the percentage of voters voting for the black preferred candidate. So that is evidence that black voters are highly cohesive in these elections and have a clearly defined preferred candidate.

And then the white circles show the level of support from the white voters for these same candidates, and they're all down at the bottom of the "Y" axis around the 10, 15 percentage range. And so we see high cohesion among white voters against or in favor of the opponent of the black preferred candidate. And the difference between them in the fact that these are on the opposite ends of these axis shows this is a very, very high level of polarization in every election that I looked at.

Q. Let's please pull figure three on page 7 on Plaintiff's Exhibit 5.

Dr. Palmer, is this also a figure from your Pendergrass report?

A. Yes.
Q. Can you tell us what it shows?
A. So this figure shows the exact same results as in figure two, just in a larger format. And here I'm breaking out each electoral contest separately with a label which election corresponds to what result. But the evidence here is the exact same. We see high levels of cohesion among black voters in all 31 contests. There is a clear black preferred candidate in every election, and we see very low levels of support from white voters for those same candidates.
Q. So ultimately what do figures two and three tell us about racially polarized voting in this area of Georgia in these elections?
A. That there is a high level of polarized voting in all these elections.
Q. Does your report contain the precise numbers for the elections depicted in these two pictures we just looked at?
A. Yes. Table one on page 13 has the numbers used to make these figures.
Q. I believe we just pulled that up on the screen. Can you explain the chart in a little more detail?
A. So each row of this table is a separate election and represents a separate run of the ecological inference model. And then there's three sets of numbers, one for black voters, and then for white voters, and then for the other group. And with each set

of numbers is first the estimate. That's the number followed by the percentage sign. So, for example, on the top row for the 2012 presidential election, I'm estimating that 97.9 percent of black voters supported their candidate of choice. And then in parentheses after that estimate is the 95 percent confidence interval, and these are measures of uncertainty in the estimates that come out of the EI model.

Q. You mentioned earlier that your focus area consisted of four Congressional Districts in the enacted map. Did you also conduct racially polarized voting analysis for each of those districts individually?

A. I did.

Q. And what were your results?

A. I find the same pattern across all four Congressional Districts. I think I have this in figure four.

Q. Yes, please. Let's pull up figure four, which is on page 8 of Plaintiffs' Exhibit 5.

And, Dr. Palmer, can you describe this -- this figure?

A. So this figure is designed in the same way as figure two. We have the blue circles represent the level of support for black preferred candidates from black voters, and the white circles, the level of support for black preferred candidates from white voters. Behind some of the dots you'll see a vertical black line, and those represent the bounds of the confidence interval of that range of uncertainty. Those are actually in figures -- figure two

as well, but they're so small when we have the whole focus area, that they're usually covered up with the dots. Here with each Congressional District, we have a little bit less data for each district; then we combine them altogether, so we have a level of uncertainty in those estimates.

Q. Does your report contain the precise figure that correspond with the dots depicted in figure four?

A. Yes. Tables 2, 3, 4, and 5 are the same format as table 1, and present the results for each district separately.

Q. After looking at racially polarized voting in each of these four Congressional Districts, what was the conclusion that you drew?

A. There is a high level of racially polarized voting in all four districts.

Q. And after you made the conclusion about the focus areas and the individual districts, what did you do next in your analysis?

A. I then looked at the ability of black preferred candidates to win elections in the focus area as a whole and in each of the four districts.

Q. And -- thank you. And what was your conclusion there?

A. I find that the black preferred candidate lost all 31 elections in the focus areas as a whole, and in the 3rd, 11th and 14th Congressional Districts, the black preferred candidate was only able to win in the 13th Congressional District, which is the only black majority district in the focus area.

Q. Could we please pull up table 6 on page 18 of Plaintiff's Exhibit 5.

Dr. Palmer, could you please describe this table?

A. This lists the election results for the 31 elections I examined in the focus area as a whole and in each of these four Congressional Districts. In the focus area, we see all of the numbers are in the 40 percent range, showing that the black preferred candidate lost all of these elections. Only in the column for the 13th Congressional District are these numbers above 50 percent.

Q. And again across the focus area, the black preferred candidates were defeated in all 31 elections that you looked at; correct?

A. Yes.

Q. And in each individual district, the black preferred candidate was only able to win in the 13th Congressional District, which is the only majority black district in your focus area; correct?

A. Yes.

Q. Okay. We can take down Plaintiffs' Exhibit 5.

So now let's turn to the third part that you mention in your analysis, your analysis of the functionality of the new majority black district in the Pendergrass plaintiffs' illustrative map. What is functionality analysis?

A. The functionality analysis is looking at whether the black preferred candidates, who I identified for these elections using

the racially polarized voting analysis, if they are able to win in the boundaries of the new district as drawn or the new illustrative district as drawn by Mr. Cooper.

Q. And that is illustrative Congressional District 6 in Mr. Cooper's map; correct?

A. Yes.

Q. How did you perform this analysis?

A. So for each of these elections I analyzed, the other source of data I have are precinct shapefiles, which are the geographic boundaries of the precincts. And this is a little bit different from the way that the mapping experts were talking about VTDs, because precincts can change over time, and I have separate precinct shapefiles for each separate election year. But I can take those boundaries and overlap them with the boundaries of the new 6th Congressional District from the illustrative map to say which precincts would have been in this district under these boundaries. And then I add up the election results across all those precincts. So it's really figuring out which precincts fall into this district each year and then adding up those votes to figure out the vote shares of each tab.

Q. And what did you conclude about whether a black preferred candidate would be able to win in the illustrative Congressional District 6?

A. I found that the black preferred candidate would be able to win in all 31 elections that I analyzed with an average of over 66

percent of the vote.

Q. Could we please pull up figure 5 on page 11 of Plaintiff's Exhibit 5.

Dr. Palmer, what does this figure show?

A. This figure shows the results of the functionality analysis. Each row is a separate election, and the blue dot represents the vote share for the black preferred candidate. And that's the vote share from all voters, not of any one particular racial group. And we see that in every election, those blue dots are well to the right of that solid black line marking the 50 percent mark, that is, the point at which it takes to win the election.

Q. We can go ahead and take down Plaintiff's Exhibit 5.

Let's shift gears now and talk about the Grant case, which is the challenge to the new Legislative maps. Can you describe the analysis you undertook in that case compared to what you just talked about in Pendergrass?

A. The analysis is extremely similar. I'm using the exact same data sources, the exact same methodology, the same ecological inference algorithm. The only difference in these cases is I'm looking at multiple focus areas and many more districts.

Q. And in so those focus areas and districts you looked at racially polarized voting, the ability of the black preferred candidates to win, and the functionality of the illustrative new majority black districts; correct?

A. Yes.

Q. Let's talk about those analysis of those legislative focus areas. Can we pull up figure one on page 4 of Plaintiff's Exhibit 6.

Dr. Palmer, what does this figure show?

A. This figure shows the focus areas that I examined for the House map and for the Senate map, and there are three different focus areas for the House and two for the Senate, though the Senate ones partially overlap. Each one is defined as a set of districts under the newly-enacted map. And so for the House, I have -- the area I refer to as western Atlanta, southern Atlanta and then the black belt. And then for the Senate area, I refer to it as a the black belt, and the second area that I refer to as Southern Atlanta.

Q. And what was the reason behind the districts that constitutes these legislative focus areas?

A. These were the areas from which I understood the new black majority districts would be drawn.

Q. And when you looked at racially polarized voting for these new focus areas, did you look at the same 31 statewide elections that you examined in the Congressional case?

A. Yes.

Q. Overall, what did you find in your analysis of those 31 elections in these five legislative focus areas?

A. I find strong evidence of racially polarized voting across all five focus areas.

Q. Let's please pull up figure two on page 6 of Plaintiffs' Exhibit 6.

Dr. Palmer, is that a figure from your Grant report?

A. Yes.

Q. And what does it show?

A. This figure is the same format or a similar format to the ones we've looked at before except broken out by focus area instead of by district. So the blue dots are, again, the level of support for the black preferred candidate by black voters, the white circles for the support by white voters, and we see across all five focus areas and all 31 elections really high levels of racially polarized voting.

Q. And I believe the precise numbers for the elections reflected in these figures are reflected in tables 2 through 6 of the Grant report; is that correct?

A. Yes.

Q. Did you run racially polarized voting analysis on a district-by-district level within these focus areas?

A. I did for most of the districts. I did this for all of the State Senate Districts. There are a few State House Districts that didn't have enough precincts to run the ecological inference models. We didn't have enough data at the district level to run an accurate model.

Q. And what were the results of that district-by-district analysis?

A. They're all in figure three of my Grant report.

Q. Please pull up figure three on page 7 of Plaintiffs' Exhibit 6.

And what does this figure show, Dr. Palmer?

A. In the 6th House on districts where I was able to run ecological inference, I find strong evidence of racially polarized voting in all of the districts. And then in the State Senate Districts, I find very strong evidence of racially polarized voting in almost all of the districts, except in Senate District 39, I find that voting is generally not polarized. And in District 44 I find mixed results. In 18 of the 31 elections, I find that white voters don't have a clear candidate of choice. They're, roughly, split between the two candidates. And then in the 13th, I do find evidence of polarization, but a little bit weaker.

Q. Do those two individual results change your overall conclusions about racially polarized voting in these legislative focus areas?

A. No.

Q. And what is that overall conclusion?

A. That there are strong levels or high levels of racially polarized voting in the focus areas.

Q. Thank you.

Now, again, after you determined that there was racially polarized voting in these areas, what did you do next?

A. I then looked to see if the black preferred candidates were able to win elections in these districts.

Q. And how did you conduct this part of your analysis?

A. In the same way as I did before. I matched up the new district lines to the old precinct shapefiles to figure out what precincts fall into which districts, and aggregated up the election results.

Q. It looks like we are now pulling up figure 4 on page 8 of Plaintiffs' Exhibit 6. Dr. Palmer, could you describe this figure?

A. This figure shows us the percentage of the vote for the black preferred candidate. And it's not from any one particular racial group but just from all of the voters in these elections on average. So I'm not plotting results for 31 separate elections in each district. It would just be a little bit too hard to read, but showing the average levels here.

The dark blue circles indicate that this district is a black majority district, and the white circles indicate that it's not a black majority district. And what we see is that black preferred candidates are able to win. They're above the 50-percent line in the black majority districts, but not in the non-black majority districts.

Q. Let's turn to your analysis of the functionality. What did your functionality analysis examine in the Grant legislative case?

A. In the same way as with the Congressional map, I looked at

the -- if black preferred candidates would be able to win under the new black majority districts in the illustrative maps for this case.

Q. And how did you perform that analysis?

A. In the exact same way as I did in the previous report. I overlaid the boundaries of the new districts on top of shapefiles of the old precincts to figure out which precincts would fall into which districts.

Q. Can we pull up figure 5 on page 9 of Plaintiffs' Exhibit 6.

Dr. Palmer, what does this figure show?

A. This figure shows the election results across all 31 elections in each of the new black majority districts under the illustrative maps. And so each dot corresponds to one separate -- one of the 31 election results. In House Districts 64, 74, and 149, and Senate Districts 23, 25, and 28, I find that black preferred candidates won a larger share of the vote in every election that I looked at. In House District 117, I find the black preferred candidate has won the majority of the vote in all 19 elections since 2018. And in House District 145, I find that the black preferred candidate has won all 19 elections since 2018, and 27 of the 31 that I looked at overall.

Q. And just to confirm, these are the three new majority black Senate Districts and five new majority House Districts that Mr. Esselstyn drew in his illustrative plans; correct?

A. That's right.

Q. Did the changes that Mr. Esselstyn made to the enacted districts, change the ability of the black preferred candidates to win in the majority black districts already in the enacted map?

A. No.

Q. Dr. Palmer, did you review the reports submitted by Dr. John Alford in this case?

A. I did.

Q. Did anything in his report change your conclusions about racially polarized voting in the areas of Georgia you looked at?

A. No.

Q. Why not?

A. Dr. Alford is focused on the role of party in predicting how people might vote, but that's not the purpose of this analysis. The purpose of the racially polarized voting analysis is to figure out how people vote. We don't know how they vote until we do this analysis, until we try to find the levels of support among each group for each candidate. It doesn't try to understand why people vote the way they do and understands it isn't necessary to identify if racially polarized voting exists.

Q. Dr. Palmer, did anything in Dr. Alford's report change your conclusions about either racially polarized voting or any of the other issues that you examined in your reports?

A. No.

Q. Thank you, Dr. Palmer?

MR. HAWLEY: No further questions at this time.

THE COURT: For the Alpha Phi plaintiffs, do you all wish to examine?

MS. KHANNA: No, Your Honor.

THE COURT: For the Pendergrass, Grant plaintiffs, do y'all all wish to examine?

MR. JACOUTOT: Brian Jacoutot, Secretary of State. Good morning, Your Honor.

CROSS-EXAMINATION

BY MR. JACOUTOT:

Q. Good morning, Dr. Palmer. How are you?

A. Good. Thank you.

Q. So I'll start with sort of some background information before you get into your reports and the methodology that you spoke about earlier.

When you're providing expert testimony to litigants just historically for you, has it typically been on behalf of plaintiffs?

A. Yes.

Q. Okay. You never testified on behalf of a jurisdiction that was defending a Section 2 case?

A. No.

Q. And just in your involvement in this particular case, who first contacted you to be involved in the case?

A. Umm, I believe it was Abha Khanna.

Q. And about when was that?

A. I'm not sure. Sometime this fall.
Q. Sometime this fall? Would it have been November, October?
A. I don't remember when I was first contacted about it.
Q. Okay. So sometime in fall, early fall, late fall?
A. Umm, probably October-ish, roughly.
Q. And were you told what you were being hired for?
A. I don't remember when we first discussed the exact scope.
Q. Okay. Whenever you were first, you know, given the scope, what were the plaintiffs' -- what did the plaintiffs tell you that they wanted to prove?
A. I was -- I don't think they told me what they wanted to prove. I was asked to analyze racially polarized voting and the performance of illustrative maps once they were drawn.
Q. Okay. And were you told of their position on the issues in this case?
A. Umm, I was told they were challenging these maps.
Q. Okay. Anything else?
A. I don't believe so.
Q. So let's spend a little time on the data you used. You listed the facts you relied on in your reports; is that correct?
A. Yes.
Q. Did plaintiffs' counsel provide you with any facts or data that is not listed in your reports and that you considered in forming your opinions in this case?
A. I don't believe so. I think there was data that was provided

in a previous case in Dwight v. Raffensperger in 2018 or 2019. That was provided to me from -- I believe originally from the Secretary of State's office that I used, and I mentioned that in my report.

Q. Okay. Did plaintiffs' counsel tell you to assume anything that you relied on when forming your opinions in this case?

A. I don't believe so.

Q. Are there any other facts or data that you wish you would have had in creating your report, but that you didn't have access to?

A. No.

Q. All right. In your reports, you discuss with counsel for plaintiffs, that you analyzed the issue of racial polarization in selected elections; correct?

A. Yes.

Q. And with respect to that issue, is it correct to say that you only considered a limited set of geographic locations in Georgia?

A. Yes, only the focus areas that I discuss in the report.

Q. Now, throughout your report, you only consider general election contests; correct?

A. And runoff elections.

Q. And runoffs. So no primaries, though; right?

A. That's right.

Q. Is that because you don't find them useful in analyzing in terms of demonstrating racial polarization?

A. I find primaries to be the most useful election trend.

Q. You do find them useful?
A. I find general elections to be most useful.
Q. Okay. And primaries?
A. Less so.
Q. Okay. But it is somewhat useful for you?
A. No. I prefer using general elections, because that's the final choice that voters make, and the place where we have by far the largest number of voters participating in the election.
Q. Okay. Just to be clear for the record because I sort of heard somewhat useful, or you said the general elections were more useful. So we can say clearly that the primaries, in your opinion, are not useful for determining racial polarization?
A. They're certainly not necessary for what I need to do here.
Q. Have you read the other reports filed by plaintiffs' experts in this action?
A. No.
Q. Have you read Dr. Handley's report?
A. No.
Q. So you're not aware that Dr. Handley is -- are you aware that Dr. Handley is also being proffered as an expert by the plaintiffs in this action on the issue of racial polarization?
A. Yes.
Q. And since you didn't read her report, I assume you're not aware that she considered them, correct, the primaries, and she said in her report, specifically in her rebuttal expert report,

that these primaries help show racial polarization in Georgia elections?

A. I'm only aware of it from the degree that Dr. Alford mentioned it in his report.

Q. So is it fair to say that Dr. Handley is mistaken about the value of determining the primaries in her analysis in terms of determining if there is racial polarization?

A. I don't know.

Q. Let's turn briefly to your reports and they are in -- we'll look at -- since you -- as we have all seen, they're very similar in terms of what they tease out. So let's do Grant/Pendergrass Plaintiffs' Exhibit 5. And let's go -- I have it as page 16 on mine, but mine is a docket entry. I believe it is Plaintiffs' Exhibit 17, which is table 5. Make sure that that is table 5 that you see in there.

A. Yes.

Q. Okay. And you guys, you talked with counsel for plaintiffs on the ecological inference results, correct, or excuse me, sort of how ecological inference analysis work; is that correct?

A. Yes.

Q. And the table here is like others in your report, and it contains a number of election contests with projected vote by race using EI; correct?

A. Yes.

Q. You previously testified that EI was the best form of

analysis; correct?

A. Yes.

Q. And can you clarify the numbers and the brackets? Those are the confidence intervals; right?

A. Yes.

Q. And you would agree with me that inclusion of the confidence interval makes your EI analysis more precise; correct?

A. It doesn't make the analysis more precise; it's a measure of uncertainty in the analysis.

Q. So it gives you a better idea of the data, though, when you're looking at it, how the data -- sort of the upper and lower bounds of what the data is going to be; is that correct?

A. Not of what the data show; it gives you balance on your estimate.

Q. Does it give you -- if you're looking to utilize the information in this table, would you say that using confidence intervals gives the user of the data a better idea of what the limits of those - the data likely is?

A. Umm, I'm not sure I'd say what the limits are. It's about how we interpret the results.

Q. Okay. Well, do you typically use confidence intervals in your ecological inference?

A. I do.

Q. And why do you do that?

A. It's important to me to show a level of uncertainty in the

estimates. In this case, because we have really good data -- one really nice thing about Georgia is it's excellent election data. Most states don't have voter turnout by race available at all, let alone at the precinct level. And so since we have such good data, we get really high levels of precision in the estimates. But it's useful to have the confidence interval, because a wide confidence interval shows that we have less certainty or less precision in the results.

Q. So confidence intervals can help with precision, because as you just stated, a wide interval will show you have less precise results; correct?

A. Precision of the results, not precision of the data.

Q. Okay. So precision of the results. And as you've just related, the confidence interval certainly can vary, correct, sometimes widely?

A. Yes.

Q. Can you look at the 2012 presidential election on table 5. Let me pull it up here.

So the confidence interval there for the presidential election for black voters is 9 points?

A. I'm sorry. Just to be clear, we're looking at table 5, which is the results for just the 14th District?

Q. Just the 14th, yeah.

A. Yes.

Q. And if you look over at the other category, there's about a 25

point span for that analysis; correct?

A. Yes. The other group is much, much smaller. It's a much smaller percentage of the electorate. And for really small groups, depending on the distribution of that group in the area, we tend to get higher levels of uncertainty in some cases.

Q. Okay. But you would agree with me that these numbers are important in establishing the preciseness -- how did you put it, the results, not the data?

A. They're important for understanding the precision of the results, though I think I tend to pay less attention to the other category in these cases because we're really focused on polarization between black and white voters.

Q. Certainly. Certainly. And so you report -- and the other ones you provided are very similar to this one. As we saw earlier in direct, they have the black voters voting cohesively and the white voters voting cohesively as well?

A. Both of my reports show that, yes.

Q. And they both sort of tell -- you have numerous tables and charts that tell a very similar story -- each of those tables and stories, would you say?

A. Yes.

Q. Black voters are incredibly cohesive in supporting Democratic candidates in a general election; is that right?

A. Yes.

Q. And white voters are incredibly cohesive in supporting a

Republican candidate; is that right, also?
A. Yes.
Q. That's regardless of general election?
A. That's the general pattern I find.
Q. That's regardless of geographical area; is that correct?
A. Yes.
Q. The race of the party behind, the party identifier; is that correct?
A. Generally, yes.
Q. Isn't it true that political affiliation and not race could be a driving factor behind black voting behavior?
A. As we're -- as I said before, we're not trying to understand what makes people vote the way they do. The whole purpose is to figure out how people vote, not why people vote. That's a different question that would take a different analysis. We're trying to understand how people vote, and what I find is there's high cohesion among black voters and high cohesion among white voters, and they're supporting opposing candidates. It doesn't matter what the parties of the candidates are or what the racial backgrounds of those candidates. It's about the choices that voters are making.
Q. And so I understand that's why you're conducting the analysis but -- did you consider or analyze partisanship at all as part of your analysis?
A. No. The entire purpose of this analysis is about how people

vote and not why. And partisanship could be an explanation of why people choose the candidates they do, but it's not part of how they're voting.

Q. In your opinion, that's not part of how they're voting?

A. Yes.

Q. But you couldn't -- as you just mentioned, you can't rule out that partisanship is a possible cause for the polarization that you found in your analysis; isn't that correct?

A. I'm not saying anything about cause whatsoever.

MR. JACOUTOT: Okay. That's all I have, Your Honor.

THE COURT: Thank you. Direct?

MR. HAWLEY: One moment, please, Your Honor.

REDIRECT EXAMINATION

BY MR. HAWLEY:

Q. Dr. Palmer, just to tease out what that last exchange with Mr. Jacoutot was talking about.

As part of your analysis, do you know why any given voter votes for the candidate that they vote for?

A. No.

Q. Whether it's based on partisanship, race of the candidate, height of the candidate, any other endogenous, exogenous factors, that's not part of your analysis; correct?

A. No.

Q. What is your analysis?

A. My analysis is just how people vote.

Q. How people vote is determined by looking at the choices they make as voters and comparing those among different racial groups; is that correct?

A. That's right. When a voter goes to vote, they have the choices before them, and every contest is a separate choice to make, and I'm trying to identify patterns across those very choices.

MR. HAWLEY: Thank you, Dr. Palmer. Your Honor, that's all.

THE COURT: Recross?

MR. JACOUTOT: No, Your Honor.

THE COURT: Call your next witness.

MS. LAKIN: The Alpha plaintiffs call Dr. Lisa Handley.

THE DEPUTY CLERK: Would you raise your right hand, please. Do you solemnly swear the evidence you shall give in the matter now before this Court shall be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE DEPUTY CLERK: Thank you. You can have a seat. If you could please state and spell your name for the record.

THE WITNESS: Lisa Handley. L-I-S-A, H-A-N-D-L-E-Y. I wonder if you can hear me all right, if I should take my mask off.

THE COURT: Yes, you can take it off.

MS. LAKIN: Your Honor, may I approach the witness to hand the witness these binders?

THE COURT: Yes.

LISA HANDLEY, having been duly sworn, takes the stand and testified as follows:

DIRECT EXAMINATION

BY MS. LAKIN:

Q. Good afternoon, Dr. Handley.

A. Good afternoon.

Q. It's still morning. Good morning, Dr. Handley. Sophia Lin Lakin for the Alpha plaintiffs.

Have you been retained by the Alpha plaintiffs as an expert in this litigation?

A. I have.

Q. Dr. Handley, can you turn to tab one in the binder in front of you. Dr. Handley, what is this document?

A. This is the report I filed, the preliminary report I filed in this case.

Q. And for the record, this has previously been admitted Alpha Plaintiffs' Exhibit A3. Dr. Handley, can you please turn to tab 6 in your binder.

A. Yes.

Q. And what is this document?

A. This is the rebuttal declaration I submitted in this case.

Q. For the record, this is previously admitted Alpha Plaintiffs' Exhibit 4.

Dr. Handley, did you review your initial report and appendices

in preparing for today's testimony?

A. I did.

Q. And in going over your initial report and appendices, did you notice any corrections that you would like to make?

A. There were typos in Appendix A.

Q. Can you turn to tab 8 in your binder. Is this the corrected Appendix A that corrects those typos?

A. Yes.

Q. And did any of those typos affect any of the substance of your report?

A. No.

MS. LAKIN: Your Honor, we would like to move the corrected Appendix A into evidence as Alpha Exhibit A52.

THE COURT: Any objection from the Pendergrass?

MR. HAWLEY: No, Your Honor.

THE COURT: The State?

MR. TYSON: No objection.

THE COURT: It's admitted.

(Plaintiff's Exhibit A52 was received and marked into evidence.)

BY MS. LAKIN:

Q. Dr. Handley, please turn to Tab 5 of your binder, which is page 46 of Alpha Exhibit A3. What is this document?

A. This is a copy of my CV.

Q. Is this CV up to date?

A. It is.
Q. Is it a complete and accurate summary of your background and professional experience?
A. Yes.
Q. Dr. Handley, what do you do for a living?
A. I am a consultant. I started a company back about 20 years ago called Frontier International Electoral Consulting, which provides election assistance in mostly post-conflict countries. I primarily work for the U.N. in that context. I also do consulting here in the United States, and I teach at Oxford Brooks in Oxford, England.
Q. And what topics do you provide consulting services on in the United States?
A. Primarily redistricting and particularly minority vote dilution.
Q. How long have you been providing consulting services on these topics?
A. 40 years.
Q. Can you describe your educational background?
A. I have a Ph.D in political science from George Washington University.
Q. Can you turn to pages four and five of your CV, Dr. Handley. Can you describe some of the academic work you've done on the topic of redistricting and minority vote dilution?
A. The last book listed is actually my dissertation, minority

dissertation, my request for voting equality. There are over a dozen articles and peer review journals that are listed. There is another dozen chapters in edited volumes, all having to do with minority vote dilution.

Q. Have you been accepted as an expert witness in litigation before?

A. Many times.

Q. Approximately how many times?

A. Scores.

Q. How many cases in which you've served as an expert witness involved voting rights and redistricting, if any?

A. All but one that I can think of.

Q. What are you typically asked to do as an expert in these cases?

A. I'm almost always asked to do an analysis of voting patterns by race and ethnicity. I have also frequently been asked to evaluate plans for the opportunity they provide for minority voters to elect their candidates of choice. And sometimes I draw illustrative districts related to the first prong of Gingle's.

Q. Approximately how many times have you performed a racial block voting analysis?

A. Well, I would say hundreds because I not only do it within the context of court cases, but a lot of jurisdictions will approach me and ask me to do an analysis of voting patterns prior to drawing districts.

Q. How many -- how about evaluating districts for whether they provide opportunities to elect; approximately, how many times have you conducted that kind of analysis?

A. Less than hundreds, but probably scores of times. Again, both in the context of a court case and, also, for clients' jurisdictions who wish to evaluate the plans, the proposed plans that they are considering.

MS. LAKIN: Your Honor, the Alpha plaintiffs offer Dr. Lisa Handley as an expert in racial polarization analysis and analysis of minority vote dilution and redistricting.

THE COURT: Does the Pendergrass attorney wish to voir dire?

MR. HAWLEY: No, Your Honor, no objection.

THE COURT: Does the State wish to voir dire?

MR. TYSON: No, Your Honor.

THE COURT: She's allowed to testify as an expert in that area.

MS. LAKIN: Thank you so much.

BY MS. LAKIN:

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

A. I was asked to do an analysis of voting patterns by race and to evaluate the various plans to explore the opportunities they provided for black voters to elect their candidates of choice.

Q. And did you do this analysis for all of Georgia?

A. No. I did it for six specific areas in Georgia.

Q. Did you form any opinions from your analysis?
A. I did.
Q. Are those opinions accurately summarized in the reports that you submitted in this case?
A. Yes.
Q. At a high level, what opinions did you reach with respect to whether there is racially polarized voting in the areas of Georgia that you examined?
A. Voting was quite starkly polarized in the general elections that I looked at, both for the statewide contests that I looked at and in terms of the state legislative elections that I looked at. It was also polarized in the Democratic primaries that I reviewed.
Q. And at a high level, how, if at all, did that polarization affect the ability of black voters to elect candidates of their choice in the areas that you analyzed?
A. If voting is starkly polarized as it is in the areas that I looked at, districts have to be drawn to provide black voters with an opportunity to elect their candidates of choice in order to ensure that such candidates do serve in the Legislature.
Q. And that's the case in all six areas of Georgia that you analyzed?
A. In all six areas that I analyzed, voting was very starkly polarized, yes.
Q. Did you draw any conclusions about the ability of black voters to elect candidates of their choice under the illustrative plans

as compared to the enacted plans?
A. Yes. The illustrative plans in each of the areas that I looked at, there was at least one additional black opportunity district compared to the enacted plan.
Q. You mentioned you evaluated six -- areas, six specific areas in Georgia. Why did you focus on these areas?
A. It's my understanding that these are the areas that are the focus of this litigation.
Q. Turning to your analysis, let's focus on your opinion that voting in Georgia is racially polarized in the areas you analyzed. How do you define racially polarized voting?
A. Borrowing from Gingle's, I declare an election to be polarized if the outcome would be different if the election were held only among black voters compared to only among white voters.
Q. And how do you evaluate whether voting in an area is racially polarized?
A. Well, we don't have the race of the voter on the ballot. So we have to use statistical techniques to do this.
Q. What statistical techniques for doing this did you use in doing this in this case?
A. I employed three statistical techniques, these are the standard techniques. They are called homogeneous precinct analysis, ecological impression and ecological inference.
Q. Do you describe necessary statistical methods in your expert report?

A. Yes, they're described.
Q. Why do you use all three methods?
A. The courts have used all three methods. It's a matter of time. The early cases, in fact, only had homogeneous precinct and ecological regression, and EI, ecological inference was developed later. I include all three of those for two reasons. The courts have accepted all three of them, and two, even though EI is more recent and more statistically sophisticated, I think that homogeneous precinct analysis and ecological regression serve as good checks on the estimates produced using EI.
Q. And when you refer to EI, you mean --
A. Ecological inference.
Q. Are these three statistical methods, homogeneous analysis, ecological regression and ecological inference, widely used in voting rights cases?
A. Yes.
Q. And have they been accepted by courts in voting rights cases?
A. Yes, as I mentioned, the reason I use all three is because all three have been accepted.
Q. Have you used the method of ecological inference analysis you used in this case before?
A. Yes. Yes. Since it was developed by Gary King in the late -- in the mid-1990s. I've probably been using it from the 2000 around redistricting.
Q. Have courts accepted the kind of ecological inference analysis

that you have used in this case before?
A. Yes.
Q. How many times, approximately?
A. How many times have the courts accepted my analysis? Scores.
Q. Do you typically report confidence intervals for your ecological inference analysis in your written expert reports?
A. I calculate them. I have them available. I do not include them in my reports, but, of course, I supply them if requested.
Q. And did you calculate the confidence intervals in this case?
A. Yes, I did.
Q. Can you briefly explain what a -- strike that.
Dr. Handley, what data goes into your racial block voting analysis in this case?
A. The point of the analysis is to look at patterns across the demographic composition of the precincts. The election precincts are usually the units of analysis. You're going to look at patterns across these precincts in terms of the demographic composition of the precincts and the voting behavior. This means you need two pieces of information. You need to know the demographic composition, and in Georgia we have what we call the best data because we have turnout by race. So turnout by race is included in the database, and then we're going to look at patterns of voting, so we want the election returns associated with these -- the turnout race all at the precinct level. So this is how I conducted the database.

Q. Dr. Handley, what election cycles did you analyze in this case?

A. The Demographic primary and general elections in 2016, 2018, 2020, and the runoff in 2021.

Q. Did you analyze any other kinds of elections?

A. I looked at statewide elections and I looked at state legislative elections in the area as of interest.

Q. Can you turn to page 8 of your binder, which is your corrected Appendix A, and turn to the second and third pages.

Are the statewide elections you evaluated listed on these two pages?

A. Yes.

Q. And are those same elections listed on your screen?

A. Yes.

Q. Why did you look at these statewide elections, in particular?

A. Each of these elections included black candidates. And I was particularly interested in voters' responses to black candidates because the courts have determined these as the most probative. You don't want a situation where black voters can only elect their candidates of choice if those candidates are white.

Q. And Dr. Handley, you mentioned that each of these elections had -- included a black candidate. Is that correct?

A. So there is an exception to that, and that is that I looked at the Democratic primary with Ossoff where he did have black candidates competing against him. But he was clearly the black

candidate of choice. So I followed him up through the general election, and through the runoff. And also because it was a very visible election that the entire country was paying attention to.

Q. Dr. Handley, do you ever look at elections -- obviously you did in this instance. Do you otherwise look at elections that don't include black candidates in other circumstances?

A. I do. For example, I was just working in Arkansas where they only had one black candidate running statewide in the last ten years. So in that instance, white versus white contests had to be reviewed.

Q. Why do you look at primary elections?

A. So we have a two-stage election process here, and black preferred candidates have to get through both of them. Now in some cases, where I worked in northeastern Ohio, for example, where lots of white voters vote Democratic, it's actually the primary that is difficult for the candidates of choice to get through. But here in Georgia, where a lot of white voters actually vote in the Republican primary, it's easier for black voters to get through the Democratic primary than it is through the general election.

Q. Dr. Handley, I'd like to ask you a few questions about the geographical areas that you focused on. Let's turn to table 1 on pages 6 and 7 of your initial report.

What does table 1 show?

A. This is a more detailed explanation of the areas that I

focused on. So the first column provides the name that I gave that particular area. The second column is the illustrative districts in that area. The third column is the enacted districts in that area, and the final column indicates the counties that encompass those districts.

Q. And why are some of the districts numbers bolded in the illustrative district column?

A. These are the districts that are the additional minority opportunity districts offered by the illustrative plan compared to the enacted plan.

Q. Would you walk us quickly through each of the areas of interests.

A. So the first area is the eastern Atlanta metro region. The second area is the Southern Atlanta metro area.

Q. And if you could pause for a moment. Why is there an area here with striped lines in the corresponding map?

A. The striped lines are Fulton County. A small portion of, at least one illustrative or enacted district falls within that county. However, that county is very large, and only a small portion of the residents of that county were in one of these districts. So rather than to include them in the analysis and have them sort of overwhelm the analysis when only a few residents of that county were in it, I left that county out of the analysis.

Q. Can you walk through the rest of the areas?

A. The third area is east central Georgia. Now we're going to

turn to the State House plan, and the fourth area is the southeastern Atlanta metro region. The fifth area is central Georgia, and the sixth area is southwest Georgia.

Q. And so just to be clear, the top three areas are in relationship to the State Senate Districts?

A. That's correct.

Q. And the last three areas are for the State House plans?

A. That's correct.

Q. Let's walk through your racial polarization analysis of statewide elections in one of these areas. Can you turn to page 4 of tab 8, which is your corrected Appendix A.

A. Okay.

Q. What does this table show?

A. So this table indicates, first, you can see up in the left-hand corner, the region that we're talking about, along the first column you'll see the year and the election contest and the candidates listed for each of those election contests. Then you see the race and the party of those candidates. And then the next six rows report my estimates of voting patterns. The first three for black voters, the final three for white voters, HP stands for homogeneous precinct analysis, ER for ecological regression, and EI for ecological inference.

Q. Okay. What is the first election on this table?

A. This is the 2021 runoff for U.S. Senate with Warnock and Loeffler.

Q. Can you walk us through what this table shows for this election?

A. So the ER estimate is 114.3 percent. I should mention EI and ER have advantages and disadvantages. One of the disadvantages of ER it can produce estimates outside of the possible. We don't believe that more than 114.3 percent voted for Warnock. So those are the ER estimates.

The next is the EI in which we estimate 99.2 percent of the black voters supported Warnock. And then if you go over to the white voters, the ER estimate for white voter support for Warnock is 6.8 percent and for EI it's 8.1 percent.

Q. Can you explain why there is no estimates in the HP column?

A. Because there were no homogeneous precincts, no overwhelmingly white or overwhelmingly black precincts in this area for this election.

Q. So for this first election, would you characterize this as a polarized contest?

A. I would characterize this as a starkly polarized contest with the vast majority of black voters supporting one candidate and the vast majority of white voters supporting the other candidate.

Q. What is contained in the remaining portion of this table?

A. The rest of the statewide elections, general elections and primaries that I looked at for each area.

Q. Did you analyze voting patterns in the five other areas of interest that you identified earlier?

A. Yes. The estimates would show up in identical tables.
Q. And are those identical tables contained in your report?
A. In Appendix A, yes.
Q. What if any did you conclude about racially polarized voting in these six areas based on your analysis of statewide elections?
A. All of the statewide general elections that I looked at in all six areas were starkly polarized.
Q. You mentioned earlier that you also analyzed state legislative contests for your racial polarization analysis?
A. That's correct.
Q. What state legislative contests did you analyze?
A. If a state legislative district from the old plan, 2021, was included -- wholly contained within the area, I analyzed that state legislative contest. I also if it overlapped with the illustrative plan, the additional illustrative district, I also analyzed those state legislative elections for a total of 26 state legislative elections.
Q. Did you look at all of these state legislative contests or a subset, depending on the race?
A. Yes. So these 26 contests, were contests that included black and white candidates.
Q. What opinions if any did you form about racial polarization in the state legislative general election races you analyzed?
A. These contests were just as starkly polarized as the statewide elections that I looked at.

Q. Let's turn now to your analysis of black voters opportunity to elect candidates of their choice in the illustrative and enacted plans. How do you evaluate opportunities to elect given to black voters in a plan?

A. There are two overriding things that you're looking at, overarching. You're going to look at the black voting age population or minority age population, if you're not in a jurisdiction that you're interested in black voters specifically. And the other thing you're going to do as part of the district specific functional analysis, you're going to look at the voting patterns in that district. So I have a couple of methods of looking at the voting patterns in the districts, and it depends on whether I have proposed district boundaries or not. In both cases, I want to look at participation rates and voting patterns for black preferred candidates. But if I don't have proposed boundaries, I'm simply going to use algebra to calculate the black voting age population needed to elect candidates of choice.

If I do have proposed boundaries, then I can look at historical elections and do something I call recompile election results to see how these black preferred black candidates would do in these newly-proposed districts from either the illustrative plan, enacted plan, any plan that hasn't had elections already in them.

Q. And just to be clear, what approach did you use here?

A. Here we had proposed boundaries. So I used recompiled

election results to make a determination whether the districts, the proposed districts would provide black voters with an opportunity to elect their candidates of choice.

Q. And just to be clear, with respect to the enacted plan, you mention that we had proposed districts, and that's because no elections has ever been run on those yet?

A. I'm using "proposed" to encompass both the illustrative and the enacted. I'm using it to describe any districts that we have not had elections in.

Q. Have you used recompiled election analysis before?

A. I have.

Q. And has recompiled election analysis been accepted by courts?

A. Not only has it been accepted by courts, but it's been used by special masters for the courts specifically for this purpose.

Q. Do other experts use this analysis to examine opportunity to elect?

A. Yes.

Q. Let's walk through your analysis in one of the areas of interest. Can we turn to page 14 of your initial report, which is under tab 1 of your binder.

Which area of interest is represented by the maps here?

A. So this is the eastern Atlanta metro region.

Q. And can we pull up Plaintiffs' demonstrative Exhibit PDX2.17. Dr. Handley, what does the demonstrative on the screen show?

A. Here we've overlaid the two maps you've seen on the previous

page overlaid here so you see the illustrative, enacted plan and the general area that they encompass. And the dotted lines are the old district that most overlaps with the new minority opportunity district offered in the illustrative plan.

Q. What district number in the previous plan is that most overlapping district in this area?

A. Repeat the question.

Q. What district number in the previous plan is that most overlapping district in this area?

A. It's the State Senate District 17.

Q. What can you tell us about the historical voting patterns in the state legislative general elections in this area?

A. All of the state legislative elections that I looked at in this area were starkly polarized.

Q. What, if anything, can you tell us about the success of the lack of preferred candidates in the state legislative general election contests in this area?

A. If the district was not a minority black district, the black preferred candidate did not win in this area.

Q. I'd like to take a quick look at the historical state legislative general election contests in the prior District 17 we were just talking about before which overlapped most with the new black opportunity district in the area. Can you turn to tab 7 in your binder. And Dr. Handley, what is this document?

A. This is Appendix B, which reports the results of the state

legislative elections that I analyzed.

Q. Can you turn to page 2 of this document?

A. Yes.

Q. And what is this table?

A. This is the results of the State Senate elections that I analyzed.

Q. In looking at this table, what can you tell us about the historical general election contests in prior Senate District 17?

A. The two that are included in this table are starkly polarized. There's one that is not. The most recent one that had only white candidates, that was also starkly polarized. These two candidates are starkly polarized with the vast majority of black voters supporting the black candidate, and the vast majority of white voters in both instances supporting the white candidate.

Q. Were black voters successful in electing their candidates of choice?

A. So the column that is labeled "vote" provides the actual results of the election. And you can see that in both instances, the black -- preferred black candidate lost the election to the white preferred white candidate.

Q. Did you look at these historical state legislative general election contests in all six areas of interest?

A. Yes.

Q. And what, if anything, can you tell us about the success of black candidates in these historical state legislative contests in

all six areas?

A. In these six areas, if the district was not majority black in composition, the black preferred candidates did not win.

Q. Let's turn back to the maps of area one again. Can you explain what the color shading in the two maps represents?

A. If a district is shaded pink, it means it's a majority black voting age population district. If it is shaded gray, it means it is not.

Q. So you mentioned earlier that you used recompiled election analysis to evaluate the opportunity to elect for black voters in the districts under the illustrative and enacted plans. How did you go about conducting that analysis?

A. I identified based on my racial black voting analysis, the black preferred black candidates that were in racially polarized contests, and then this is reported at the precinct level. When you draw new districts, they don't necessarily follow the precinct boundaries. So you have to disaggregate the election results from the precinct down to the block level and then reaggregate them up to reflect the proposed district boundaries in order to determine if the black preferred black candidate would win.

Now, in this particular instance, this is the average of the five black preferred black candidates that ran in the general election, and for the -- for the primary, it was the six black preferred black candidates that ran in the Democratic primary.

Q. How do you go about determining based on these -- these scores

that you calculated, how did you go about determining opportunity to elect once you've done that calculation?

A. So looking, for example, at a GP --

Q. Sure, we can go ahead and look at an example. Can you look at the comparison table for the illustrative plan in this area. And can you walk us through District 17 in this table?

A. Looking at District 17 you can see that the black voting age population of this district is 62.5. The GE score is .635 and the DPr score is .631. What that can be read as is my estimate of how the percentage of votes a hypothetical black candidate would get in that district would be 63 percent in the primary and 63 or 64 percent in the GE, in the general election. I'm just rounding up because that .635 can be read as a percentage.

Q. What do these scores mean for the black preferred candidates and their ability to be successful?

A. So in this district, the black preferred candidate would win both the primary and the general election and represent this district.

Q. What about the two other districts in this illustrative plan table?

A. They also have -- there are at least majority black in voting age population and they also have GE and DPr scores of above .5. It would of course take at least 50 percent of the vote to carry the district. So you're interested in making sure that these scores are above .5.

Q. Would you characterize these other illustrative districts as opportunity districts?

A. Yes, they are.

Q. Can we now take a look at the comparison table for the enacted plan in this area.

Can we start with District 17 again and walk us through what this table shows for District 17 in the enacted plan?

A. The enacted plan 17 is 32 percent black in voting age population, while the primary score is above .5. It is .575. The GE score is point 352. And obviously with only 35 percent of the vote, the black preferred candidate would lose in this district.

Q. What about the other districts in this enacted plan comparison table?

A. Districts 10 and 43 would both provide black voters with an opportunity to elect their candidates of choice.

Q. Based on these analyses summarized in comparison table one, did you draw any conclusions about black voters' opportunity to elect in this area under the two different plans?

A. In this particular area, the illustrative plan offers one additional minority black opportunity district than the enacted plan.

Q. Could you tell us which district is the additional black opportunity district?

A. District 17.

Q. Did you do this analysis in the five other areas of interest?

A. I did.
Q. How does your analysis in these other areas compare to your analysis of the eastern Atlanta metro region?
A. In each of the other areas, there was also at least one additional black opportunity district offered by the illustrative plan compared to enacted plan.
Q. In these six areas, what can you say about the black voting age population in the districts that you have found to provide black voters with an opportunity to elect?
A. In these six areas, the black opportunity districts were all at least 50 percent black in voting age population.
Q. Bringing your racial polarization analysis and this opportunity to elect analysis together, how does racial block voting in these areas affect black voters' opportunity to elect?
A. Because voting is so starkly polarized, this impedes the ability of black voters to elect their candidates of choice unless districts are drawn specifically to provide black voters with an opportunity to elect their candidates of choice in these areas.
Q. Thank you, Dr. Handley. You identified a rebuttal report that you provided in this litigation. What was the subject of that report?
A. This was a response at that time to a comment in the defendants' brief that party rather than race explained the voting patterns.
Q. Can you summarize the opinions in your rebuttal case for the

Court?

A. Yes, I can.

Q. What were those -- please provide that summary, thank you.

A. First, I think that saying something like it is either party or race is incorrect. It's simplistic. The two variables are not competing. They are highly correlated.

Second, to suggest that without any analysis is to do so without any evidence, but it is also ignoring the fact that race impacts political attitudes and partisan voting choices. So race has a direct impact on the vote choice, but it also has an indirect impact that's being ignored by saying it's either race or party, but an indirect impact through party to vote choice.

And finally, I offered some evidence of what happens when a party is removed because I had analyzed Democratic primaries. I found that even when party is not an issue, voting is still polarized between black and white voters.

Q. And just to be clear, when you -- were you asked to look at causation of voting patterns in this case?

A. I have never been asked to look at that, and I was not asked to look at that in this case.

Q. Dr. Handley, are you aware that the defendant in this case has submitted a declaration by Dr. John Alford that responds in part to some of the opinions and analysis that you have offered in this case?

A. Yes.

Q. Have you reviewed Dr. Alford's declaration?
A. Yes.
Q. Dr. Alford suggests that uncertainty about the width of confidence intervals in your analysis means, quote, that we are not able to say with any assurance which candidate a group of voters preferred. What, if any, response do you have to that statement?
A. As I mentioned earlier, I did calculate confidence intervals. I did look at them. They were very tight. They were very small around the estimate. And there were only a handful of instances in which you could say that confidence intervals overlapped. So that's one thing.

Second of all, of course, the best estimate you have is the point estimate. And third of all, of course I think that caution is irrelevant in this case. And I'm only offering the Democratic primary in rebuttal to the argument that it is party, not race.
Q. How if at all does Dr. Alford's argument about racially polarized voting change the opinions you've reached about racially polarized voting in this case?
A. Racially polarized voting is very stark in the general elections. It's somewhat less stark in the primaries, but it is very stark in the general elections, both statewide and state legislative.
Q. And how, if at all, does any of the questions that Dr. Alford raises about your Democratic primary elections analyses change

your opinion that there is some evidence of racial polarization in the Democratic primaries in the areas you looked at?

A. It doesn't change it at all.

MS. LAKIN: Thank you, Dr. Handley. No further questions at this time.

THE COURT: Anything from the Pendergrass?

MR. HAWLEY: No, Your Honor.

THE COURT: Your witness.

CROSS-EXAMINATION

BY MR. JACOUTOT:

Q. Good afternoon, Dr. Handley. We've passed the noon mark.

A. Good afternoon. I'm going to take a sip of water here.

Q. Certainly. Are you ready to proceed?

A. I am.

Q. So I've got a few opening questions for you and then we can get into the reports and your testimony earlier. My name is Brian Jacoutot. I represent the Secretary of State.

Is it correct to say that you've never testified for jurisdiction that was defending a Section 2 case?

A. I don't think that's correct, no.

Q. You don't think that's correct?

A. Repeat the question.

Q. I'll phrase it differently. Have you ever testified for a jurisdiction or on behalf of a jurisdiction that was defending a Section 2 case?

A. I have.
Q. Okay. And which case was that?
A. Several cases. A case -- Holyoke case. Several cases in Florida. I don't -- I couldn't tell you off the top of my head.
Q. Multiple cases, though, you would say?
A. Yes.
Q. Who first contacted you to be involved in this case?
A. The person?
Q. Yes.
A. Well, it's somebody at the ACLU, probably Dale Ho. I don't remember.
Q. Okay. Do you recall when that was?
A. I do not.
Q. Okay. Do you recall when you drafted your expert report or when you began drafting your expert report?
A. It depends on how exact you want me to be. I could probably identify -- I would say January, but that's a guess.
Q. Okay. January of 2022?
A. Yes.
Q. And when did you begin drafting your rebuttal declaration?
A. You could probably guess that better than me. It would have been after the State's brief.
Q. Okay. And you've covered some of this in your direct so we can skip.
So you listed the facts you relied on in your reports;

correct?
A. I'm sorry?
Q. You listed the facts that you relied on in making your reports, you listed those in the reports; correct?
A. Yes.
Q. Okay. Did Plaintiffs' counsel provide you with any facts or data that is not listed in your reports and you considered in forming your opinions?
A. No.
Q. Okay. Did Plaintiffs' counsel tell you to assume anything that you relied on when forming your opinions in this case?
A. No.
Q. Okay. Before we get into your findings, I want to talk a little bit about your methods. In your initial report you sort of break down the three basic statistical analyses used in voting rights cases, and just to clarify, homogeneous analysis, ecological regression and ecological inference; is that correct?
A. Yes.
Q. And you used some version of each of these in your report where they were available?
A. I used -- I'm sorry?
Q. You used some version of each of these methods in your report where it was available, so for instance, as you said homogeneous analysis is not always available?
A. I see. Yes. So if there were not any overwhelmingly

homogeneous precincts, I couldn't report those. Occasionally EI estimates are not produced using the default settings in the program that I use. So those would have been represented with an NA. So now I've forgotten the question, but I think that's responsive.

Q. Yeah, yeah, that is. Thank you.

So you mentioned with counsel on direct that you did not include confidence intervals in your ecological inference, but you do have them?

A. They are not included in my report because, of course, the program does produce them. But I did review them.

Q. You said that's because only a handful of instances in which they overlapped with, I guess 50 percent; was that right? Is that a correct characterization?

A. There were a few instances in which the confidence intervals for the two candidates for a particular race overlapped. By race I mean black or white. In fact, it was only four black voters.

Q. So to be clear, the confidence intervals overlapped in a way that it changed who sort of had the majority vote, share of the vote; is that right?

A. No.

Q. Can you explain --

A. No. What it means is that you have point estimates, and what I gave you in the report are the point estimates. Confidence intervals are intervals around these point estimates in which you

are 95 percent sure that the true value might lie.

Q. And so when you say overlap, what do you mean by that?

A. So if you had, say, an estimate of 50.1 and an estimate of 49.9, it would almost have to be the base of the confidence intervals would overlap such that the true estimate is somewhere between, say, 49.9 and 51.1 for both, both estimates.

Q. Okay. And in your recollection, were they that close, the 51.1 and 49.9 and they had an overlap, or they were a little further apart and still had an overlap, if you recall?

A. I think I understand your question. If the estimates were very close, it is possible, in fact it's likely that the confidence intervals overlapped but only if they were very close.

Q. Okay. Would you agree with me that confidence intervals are generally wider for primaries -- for primary elections than they are in the general elections?

A. Yes, though I'm going to add the caveat that that was true of white voters in the Democratic primaries and not so much for black voters.

Q. And if the confidence intervals overlapped in your data that you didn't present in the report, would you have considered that at any point -- would you consider that particular race where they overlap polarized, or would you say that's not polarized?

A. If the outcome would have been different among black and white voters, I would have called that polarized.

Q. Okay.

A. Using the point estimates, the EI point estimates.
Q. Isn't it fair to say those are pretty important to include where that occurs where it would change the outcome?
A. It would -- I still have the point estimates and it doesn't change the outcome. I'm not sure what your question is.
Q. Let me make sure I understand your response. You said the confidence interval could -- the overlapping of the confidence interval could change the polarization of the race whether you consider it polarized or not. Did I mishear that?
A. Yeah.
Q. Okay. Go ahead and let me know then did -- at any point did any of the confidence intervals in the data that you have, overlap in a way that caused you to change whether you consider that race polarized or not?
A. I made the decision as to whether it was polarized on the point estimates, on the EI point estimates.
Q. Okay. Okay. I think I have you.
Can we turn to the tables on page 26 of your initial report. This is the eastern Atlanta metro area one table; is that right?
A. Well, it depends on your numbering. If you tell me where you want me to look at the eastern Atlanta metro area.
Q. Yeah, this is page 25 as the Plaintiffs have labeled it.
A. So the first page of the eastern Atlanta; right?
Q. Yes.
A. Yes.

Q. Okay. So can we just look at the Warnock general election.
A. The Warnock what?
Q. The Warnock general election. It's labeled as special Senate, but it was the first version, and then they had the runoff.
A. Okay.
Q. Look at U.S. special Senate. Here is the black candidate, but it's somewhat unique. There was an election with many different candidates with multiple parties on the ballot; correct?
A. Yes.
Q. Where we have multiple parties represented by black and white candidates, the white vote doesn't coalesce very well, does it?
MS. LAKIN: Objection, your Honor. The question is a little vague. What do you mean by "coalesce"?
MR. JACOUTOT: I'll rephrase it.
BY MR. JACOUTOT:
Q. In this race in this contest where we have multiple parties represented by both white and black candidates, it doesn't appear that the white vote is polarized.
Would you say so?
A. If the election were held only among white voters, Loeffler would have won, so that is a polarized contest.
Q. That's polarized because you were combining candidates?
A. Well, because you have a runoff in this particular instance but if you didn't have a runoff, Loeffler would have won. In this particular instance it's polarized, because I talked about who

would have won and who would have lost.

Q. Okay. So -- I'm sorry.

Looking at this -- let's just look at the EI numbers, too. We have Loeffler at 40, Doug Collins at 23.5 and Raphael Warnock at 27.2?

A. Correct.

Q. You characterize that particular contest there as white voters being polarized?

A. As black and white voters being polarized, yes.

Q. I'm not asking specifically just about the white. My initial question was it doesn't coalesce very well. I'm trying to say are white voters voting as a block in this election?

A. Define what you mean by "block."

Q. Are you familiar with the term "racial block voting"?

A. Yes, I am.

Q. So would you say that the white voters are cohesively voting?

A. White voters are not. A vast majority of white voters are not supporting a single candidate.

Q. Okay.

A. Does that answer your question?

Q. It does. Thank you.

If we move up to the 2021 runoff for Senator Warnock, the Democrat in this race was clearly the black preferred candidate; isn't that right?

A. Yes.

Q. And it's to a far higher degree in the general where we had many candidates from both parties; right?

A. Repeat the question.

Q. The cohesiveness of the black vote in the general is far more apparent than it was in the special Senate race; isn't that correct?

A. There is a higher percentage of black voters supporting Warnock in the runoff than in the special Senate contest, if that is responsive to your question.

Q. Okay. And even in the statewide election here in the general, whether the white voters were polarized or not in their vote, they didn't vote as efficiently as the black to defeat the black candidate; right?

A. That's correct. I'm nervous about you talking about white voters being polarized, since it's a -- it's a matter of comparing white and black voters.

Q. But either --

A. But Warnock won the contest.

Q. Okay. Now, you mentioned in your initial report that the Democratic -- the recent Democratic primaries were consistently racially polarized in all six areas; is that correct?

A. Yes.

Q. That's page 2 of 8 of Plaintiffs' Exhibit A-4. And in that report, you have -- you have a graph. I'm just looking for it. One second.

A. Are we talking about my rebuttal declaration?

Q. Your rebuttal declaration, yes. Okay. So we're kind of going back and forth here. In your initial report, you state that Ossoff and Parksdale were sort of the exception of the role -- let me rephrase.

In your initial report, you state that the recent Democratic primaries were consistently racially polarized in all six areas; is that correct?

A. Yes.

Q. And then you list the exception of Ossoff and Parksdale; correct?

A. Yes.

Q. Which were the only contests that you considered that had only white candidates running; is that correct?

A. In the primaries there were black candidates running in those contests.

Q. In the general, were they?

A. No. I thought you were talking about the primaries. Are we talking about the primaries or the generals? I'm sorry, you're going back and forth.

Q. We are. We're going to go back to the rebuttal real quick. So the rebuttal election you have the chart where it shows -- this is back to the primaries, by the way -- this chart says 62.5 percent of racially polarized primaries for eastern metro one, eastern Atlanta metro you have 75 percent, 75 percent, 75 percent,

62.5 percent and 62.5 percent?

A. Yes.

Q. Is that what you deem consistent racial polarization?

A. Consistent... is that what I deemed consistent polarization? Yes.

Q. So those are referring to that like --

MS. LAKIN: Your Honor, I'm not sure if he asked the question if that is what it was. Just for clarification of Dr. Handley's answer, I want to make clear what it is that she's referring to.

BY MR. JACOUTOT:

Q. Certainly. The chart here refers to the same races that you were referring to in your initial report where you said Democratic primaries are consistently racially polarized in all six areas; is that correct?

A. Democratic primaries are consistently polarized. I don't know where that sentence probably appeared in my initial report. It might have appeared in the rebuttal report as well.

Q. And so you are -- it's your testimony then that eastern Atlanta region has 62.5 percent racially polarized primaries by your count. That's consistent racial polarization?

A. Yes.

Q. Okay.

A. Let me rephrase that. It's consistent polarization across all of the areas.

Q. Okay.
A. So we're talking about what is it, 33 contests out of 48 contests across the whole area.
Q. Okay. So you -- would you not make the claim then that within the eastern Atlanta metro area that those Democratic primaries are racially polarized consistently? And I can rephrase that if you would like.
A. I guess it would depend on your definition of "consistently." I would say that five out of eight were polarized.
Q. Yes, and I'm using the word "consistent" very deliberately because you use it in your report. So I'm asking you if your definition of "consistent" is such that 62.5 percent racial polarization rate within the eastern Atlanta metro region is consistent?
A. I'm saying to you, I used the word "consistent" to describe the patterns described across all areas, not in a single area.
Q. So you are saying that the eastern Atlanta metro region is not consistently racially polarized; is that correct?
A. I'm saying that five out of the eight contests were polarized but I'm not -- I think that I would want more contests to talk about consistency.
Q. Okay. I understand you. Thank you.
Now you noted you were not asked to consider causation in your reports about causation of voting habits, I believe it was?
A. I was not asked to look at causation, no.

Q. Okay. So then you didn't look up -- you didn't look at partisan as possible rationale for racial polarization? Excuse me. You didn't look at partisan polarization as a possible rationale for the behavior of black and white voters in Georgia?

A. I did what you do in a minority vote dilution case, and that is I looked at whether blacks and whites were voting differently.

Q. And you mentioned at the end of your testimony -- I want to make sure I have this right -- that you only offered primaries as a rebuttal, primary results as a rebuttal to John Alfred's testimony; is that correct?

A. Well, again, I do look at primaries in general -- in general in a broad sense as opposed to in general elections. I look at primaries because this is a two-stage election process, and you want to see what happens in the primaries. But it is, in fact, not a particularly arduous process to get through a primary in this area. But it is certainly the case in other cases that I have been involved in that the primary is the election in which it is difficult for black preferred candidates to be elected. So that's the only reason for looking at primaries.

Q. Is a reason that you looked at the primaries to help establish your conclusion that there's racial polarization in these contests that you analyzed?

A. There is racial polarization in the primaries, but no, it is the stark polarization in the general elections that I would say is the stumbling block to black voters being elected -- to black

voters being able to elect their candidates of choice.

Q. I'm not sure that answered my question. So is one of the reasons or is the reason that you included primary contests in your rebuttal declaration to demonstrate racial polarization in Georgia?

A. And I think I did answer it. I said the reason that I did that was I typically do that to see if primaries are polarized to the degree that it makes it difficult for black voters to elect their candidates of choice. That is not the case in many instances, in the instances that I looked at here in Georgia.

Q. Is it fair to say that the answer to my question is yes?

A. Repeat the question.

Q. Is the reason you utilized primary data, primary races in your rebuttal declaration in order to prove your conclusion that there's racial polarization in Georgia, yes or no?

A. No.

Q. No? Okay. Thank you.

MR. JACOUTOT: No further questions.

THE COURT: Any direct?

MS. LAKIN: Just very briefly.

REDIRECT EXAMINATION

BY MS. LAKIN:

Q. Dr. Handley, do you typically look at primary elections when you conduct racial block voting analyses generally?

A. I do generally.

As I said, it's a matter of determining where the problem areas might be for minorities in term of electing their candidates of choice.

Q. So looking at Democratic primaries is a typical aspect of your racial block analysis?

A. Yes. Because minorities typically vote in the Democratic primaries.

MS. LAKIN: No further questions.

THE COURT: Recross?

MR. JACOUTOT: No Recross.

THE COURT: Thank you. We'll stop right here for lunch, and we will start back here at 1:30. Thank you.

(Whereupon, the hearing broke for lunch at 12:30 p.m.)

C E R T I F I C A T E

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

I do hereby certify that the foregoing pages are a true and correct transcript of the proceedings taken down by me in the case aforesaid.

This the 10th day of February, 2021.

/s/Viola S. Zborowski

VIOLA S. ZBOROWSKI, CRR, CRC, CMR, FAPR
OFFICIAL COURT REPORTER