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

ALPHA PHI ALPHA FRATERNITY, INC., ET AL., PLAINTIFFS, -VS- BRAD RAFFENSPERGER, DEFENDANT.	DAY 6 - P.M. SESSION DOCKET NO.1:21-CV-05337-SCJ
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 BENCH TRIAL
BEFORE THE HONORABLE STEVE C. JONES
UNITED STATES DISTRICT JUDGE
FRIDAY, SEPTEMBER 12, 2023

STENOGRAPHICALLY RECORDED BY:

PENNY PRITTY COUDRIET, RPR, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
ATLANTA, GEORGIA

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I N D E X

WITNESSES: PAGES:

JOHN B. MORGAN

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(Proceedings held in open court at 1:47 p.m., Atlanta, Georgia.)

THE COURT: Anything before we get ready for the next witness?

MR. TYSON: Your Honor, Ms. Khanna and I have discussed an issue she's going to raise with the Court.

MS. KHANNA: Your Honor, the -- all of us counsel have discussed over the break about kind of the order of questioning for the witness. And I think where we landed, without objection on anybody's side, subject to the Court's agreement, is that while Mr. Tyson's direct examination, we'll proceed in the APA, Grant, Pendergrass order we've been using.

For the cross-examination, I will cross first, first on behalf of Grant, and then Pendergrass, and then Mr. Savitzky will then cross on behalf of all plaintiffs and then APA.

THE COURT: Fine.

MS. KHANNA: Thank you, Your Honor.

THE COURT: Call your next witness.

MR. TYSON: I call Mr. John Morgan to the stand.

Your Honor, while Mr. Morgan is approaching, I have notebooks and slides for everybody, if I could distribute those, please.

THE COURT: Yeah.

THE DEPUTY CLERK: Could you raise your right hand,

please.

JOHN B. MORGAN

a witness herein, being first duly sworn,

was examined and testified as follows:

COURTROOM DEPUTY CLERK: Have a seat. If you could please state and spell your name for the record.

THE WITNESS: Okay. My name is John Morgan, J-O-H-N, M-O-R-G-A-N. Middle name Bennett, B-E-N-N-E-T-T.

THE COURT: Proceed.

DIRECT EXAMINATION

BY MR. TYSON:

Q. Good afternoon, Mr. Morgan. We are apparently continuing our series of afternoons with maps in this trial, so hopefully we can keep everybody awake.

A. It sounds like a podcast.

Q. Can you briefly summarize for the Court your background and experience --

MR. TYSON: And, Your Honor, I'll pause here to make sure we're very clear, this is on behalf of all three cases, Alpha, Grant and Pendergrass.

THE COURT: Gotcha.

THE WITNESS: Sure. So I've had a lot of experience in redistricting. I've done redistricting work in 20 states.

I received a bachelor of arts from the University of Chicago. And I've traveled all over the county doing work for redistricting. I've also done analysis using census data and election data for campaigns.

BY MR. TYSON:

Q. And, Mr. Morgan, we appreciate you being here. I know you're a little bit soft-spoken, so please make sure you're speaking into the microphone --

A. Okay.

Q. -- as slowly as you can for the benefit of our court reporter.

In how many redistricting cycles have you drawn redistricting plans?

A. I've drawn redistricting plans after the 1990 census, the 2000 census, the 2010 census and the 2020 census, this most recent one.

Q. Have you had experience drawing redistricting maps without a computer?

A. Yes, I have. When I first began, I would use -- sometimes we'd use like a paper map and we'd use like a grease pencil, so we'd have like an acetate sheet. And we would mark things and we'd have like a separate printout of populations and a calculator. So that's how we would do some redistricting.

And things like that would be done at the same time in

the 1990 cycle. The computers were not as fast. So sometimes you would have the computer crunch the numbers and we'd take a lunch break or we'd use our paper maps to work on another area while we're waiting for the computer to do its thing.

Q. Have you worked for any State redistricting commissions in the 2020 cycle?

A. State redistricting in the 2020 cycle. I've worked for the Michigan Independent Citizens Redistricting Commission. I was hired to work on the Virginia Redistricting Commission, the New Jersey Congressional Commission and the New Jersey Legislative Commission in the 2020 cycle.

Q. And were you in a capacity of a map drawer for all those commissions?

A. Yes.

Q. Have you been considered for appointment as a special master by any courts regarding redistricting plans?

A. Yes. My name has been submitted by counsel as a potential special master in New York, Connecticut, North Carolina, and Virginia.

Q. Have you done work in Georgia on redistricting in the past?

A. Yes, I have. I did redistricting work in Georgia in the 2021 cycle and the 2002 cycle, after the 2000 census. I spent a lot of time in the state capitol.

Q. Have you worked on any Georgia political campaigns?

A. Oh, yes. I've done a lot of work on Georgia political campaigns. I worked with Newt Gingrich. I worked with Johnny Isakson, Jack Kingston. These are all Congressmen. In Isakson's case, he was running for Senate in 1990.

I've also worked with Congressman Bob Barr and John Linder. I've also worked on State Senate and State House elections in the 2000s and the '90s, I think.

Q. Through the work that you've done in Georgia over time, have you acquired familiarity with the geography and demographics of Georgia?

A. Yes, I have. I've actually been to every county in Georgia. As part of my travels throughout the state, I've been all over Georgia.

Q. Have you evaluated redistricting plans drawn by others as part of your work?

A. Yes.

Q. Is the process of redistricting and analyzing demographic data topics that require technical and specialized knowledge?

A. Yes. In my experience, it requires a lot of specialized and technical knowledge, yes.

Q. And are there particular principles and methods you use to draw redistricting plans and analyze demographic data?

A. Yes.

Q. Have you been admitted as an expert witness previously in redistricting and the analysis of demographic data?

A. Yes, I've been an expert witness before.

Q. Do you testify often as an expert witness?

A. No. It's very rare that I testify as an expert witness. I've been called into court settings in context of having drawn a plan, but it's rare that I'm called as an expert witness. Redistricters are a little bit like cicadas, I think. They come out every ten years after the census.

MR. TYSON: So, Your Honor, pursuant to Federal Rule of Evidence 702, we would move that Mr. Morgan be qualified as an expert on redistricting, the analysis of demographic data and the analysis of redistricting plans.

THE COURT: Do you wish to voir dire?

MR. SAVITZKY: No, Your Honor.

MS. KHANNA: No, Your Honor.

THE COURT: Without objection, he's allowed to testify as expert in those areas.

MR. TYSON: Thank you, Your Honor.

And, Your Honor, at this time we would also move for the admission of the following reports of Mr. Morgan. For the Alpha Phi Alpha case, we would move the admission of Defendants' Exhibit 1, Defendants' Exhibit 2 and Defendants' Exhibit 5.

THE COURT: Any objections?

MR. SAVITZKY: None to Exhibits 1 and 2. And let me just, with Your Honor's indulgence, just check Exhibit 5.

MR. TYSON: And, Mr. Savitzky, it's his preliminary injunction report.

MR. SAVITZKY: No objection, Your Honor.

(Defendants' Exhibits 1, 2 and 5 were admitted and marked into evidence.)

MR. TYSON: So, Your Honor, then, for the Grant case, we would move the admission of Exhibit 1, Defendants' Exhibit 3 and Defendants' Exhibit 6.

MS. KHANNA: No objection, Your Honor.

THE COURT: All right. It's admitted without objection.

(Defendants' Exhibits 1, 3 and 6 were admitted and marked into evidence.)

MR. TYSON: And then for the Pendergrass case we would move the admission of district -- I mean -- district, I'm sorry.

For the Pendergrass case, we would move the admission of Exhibit 4 and Exhibit 7.

MS. KHANNA: No objection, Your Honor.

THE COURT: All right. It's admitted without objection.

(Defendants' Exhibits 4 and 7 were admitted and marked into evidence.

BY MR. TYSON:

Q. So, Mr. Morgan, we're going to begin with an overview of

Maptitude and begin the process of talking about the process of drawing a plan. If you could open your notebook there and turn with me to tab number 1.

THE COURT: This notebook 1?

MR. TYSON: Yes, Your Honor.

BY MR. TYSON:

Q. Can you discuss for the Court the general process of how you use mapping software in the redistricting process?

A. Sure. So usually you would use what's called a GIS system, a geographic information system. Although, as we've pointed out, it's not necessary, it's just really, really helpful and convenient to have a computer system that carries the data along with it.

So I would say that in my experience, I've used all kinds of these types of GIS systems for redistricting. Whatever the State commonly used, I learned how to use it. If I have a choice, I use Maptitude, which we've heard discussed here in this case, and specifically Maptitude for Redistricting.

Q. And in your report at paragraph 16, you discuss something called a geographic hierarchy and a layer. What do those terms refer to?

A. So the idea here is you start with a state, such as Georgia, and it's subdivided into regions like counties which don't overlap. So, again, counties are the layer that's underneath the state. And then beneath that there'll be

precincts and there'll be municipalities. And then we talk about census tracks, census block groups and census blocks. And so that all creates a hierarchy where the blocks fit into block groups and the block groups fit into tracks, and the tracks fit into -- usually into -- not always into precincts, but into counties, or precincts can fit into counties. So it's a hierarchy.

Q. And so each layer includes all the pieces of the layer below it?

A. Yes. And that's the type of hierarchy that's established. And in the case of the geographic information systems, you would have data associated with that. So you're going to have population data. There's demographic data. But you can add any other data you want. You could have voter registration data and there could be other information as well.

Q. So in your report you talk about some factors that are generally used in map drawing. What are those referred to?

A. They're often referred to as traditional redistricting factors or traditional redistricting principles.

Q. In paragraph 19 of your report you discuss the concept of preserving cores of existing districts. What does that process involve?

A. So in this paragraph I'm discussing the idea of constituencies and the idea that, in a representative

democracy, the districts are built upon constituencies, or geographic areas. And so when I talk about preserving the cores of a district, I'm talking about what was the district before and how much of that is in a new district.

Q. And as a map drawer what are some of the conflicting considerations that you have to consider as you draw a plan?

A. Well, you have to balance all sorts of considerations. We talk about population equality. We've talked about -- you've heard in this case, of course, splitting of geography, such as counties and precincts. You also talk about incumbency, the preserving of previous districts. And we talk a lot about compactness as well, which is something that is considered.

Q. And what do compactness scores do in the map drawing process?

A. So the compactness scores are generally comparative. You'll be looking at comparing one shape to another shape. So in the case of a compactness test, it's usually comparing the district that's been drawn to an idealized shape, which would be like a circle or a square, but circles are usually used. So most of the tests that I'm familiar with, there are others, but certainly the Reock and Polsby-Popper scores are referring to aspects of circles.

Q. Is there such a thing as an objectively non-compact district?

A. In my experience, I've seen districts that wouldn't score well on compactness scores and don't look compact, but I haven't experienced a situation where it's objectively not compact.

Q. So in your December 5th report you created some illustrative plans for state legislature; is that right?

A. Yes.

Q. And so if you could begin, let's start with the House illustrative plan. And I'm putting the map 1 on page 12 of your report on the screen.

Can you explain to the Court what map 1 shows?

A. Yeah. So in my report what I've tried to do is I've tried to describe the process of redistricting. And so starting here, I'm looking at the population distribution across Georgia. So in this case, this map is a themed map and it's a hot to cold theme. So the areas with higher population are in the red areas, so those -- the areas in red on this map have over five House seats. So Gwinnett, Cobb, Fulton, DeKalb and Clayton all have five seats or more. For example, on the map it says Clayton has enough population for exactly five House seats, 5.00.

And then the next category is three to five seats. So Richmond here on the map, Richmond County, Bibb County has -- I'm sorry -- Richmond-Augusta has 3.47. So three and a half House districts.

So this gives a good idea of the population distribution around the state. And then you'll see a lot of counties are blue and those are less than one district or of two-one district.

Q. And then looking at map 2 on page 15, is this your House illustrative plan?

A. Yes. After I followed the process that I outlined in my report to draw the illustrative plan, this is the product of that full statewide view of an illustrative House plan.

Q. And could you explain to the Court the process that you used to create this plan?

A. Sure. Well, going back to the ratios on the other map, I was informed by the knowledge of how many districts -- how many ideal districts there would be in each of the counties. And so I endeavored to draw a blind plan based on population and also trying to keep counties and precincts generally not split where possible.

And then I would draw districts within those boundaries. So obviously there will be split counties and there will be split precincts, but I would draw the whole plan. And when I drew this plan, it's consistent throughout. I didn't use a different set of methodology in Atlanta versus South Georgia. It's all consistent throughout the drafting of this plan.

MR. TYSON: And, Your Honor, I realized when we switched to the illustrative plan, this is for Alpha and Grant

only, not for the Pendergrass case.

THE COURT: All right. Thanks.

BY MR. TYSON:

Q. Mr. Cooper -- I mean, sorry.

Mr. Morgan, did you consider race as part of the drawing process of this illustrative plan?

A. Not in this plan, no.

Q. Now, did you draw this plan to be used in an actual election?

A. No, that was not my intention.

Q. So what was your purpose in creating this illustrative plan?

A. Well, I think this helps to explain a little bit of how the population is arrayed throughout Georgia, how you could construct well-formed compact districts in the population without using race at all. And then after I drew the plan, I then looked at what kind of districts were produced and I looked at the racial data after I had completed drawing the plan.

Q. And you then proceed to analyze your plan in your report. In your analytical process were you trying to create this illustrative plan as some sort of statistical analysis to exclude all other possibilities in the configuration of a plan?

A. No. I was using my experience as a map drawer to draw

1 districts. And, again, I believe that the districts are well
2 formed and they're generally compact and they follow county
3 boundaries and precinct boundaries to a large degree. And
4 then I produced some charts showing what the top line results
5 of those are. And that's one of the charts here.
6 **Q.** Let's turn to that chart, chart number 1 on page 17.
7 What do those summary statistics show about the
8 illustrative plan?
9 **A.** So in this case, I've got the statistics for the
10 illustrative plan that I drew. And then also the same
11 statistics for the House enacted plan, the one that was passed
12 in 2021.
13 **Q.** And how many county splits are on the illustrative plan
14 versus the enacted plan?
15 **A.** So there are 54 split counties and the enacted plan has
16 69.
17 **Q.** So that's fewer split counties on the illustrative plan?
18 **A.** That's right. Fewer split counties. And then the next
19 line shows that the plan I drew has fewer split voting
20 precincts, 106 to 184.
21 **Q.** What about the mean compactness scores of the two plans?
22 **A.** So, again, this is looking at -- every single district
23 has a compactness score using the Reock test and using the
24 Polsby-Popper test. And what this does is it calculates the
25 mean of all of those districts. So it calculates the mean of

the 180 House districts. And so those numbers are .45 on the Reock and .33 on the Polsby-Popper. And those are higher than the enacted plan, which is .39 on Reock and .28 on Polsby-Popper.

Q. So would you consider the illustrative House plan more compact on the whole than the enacted plan?

A. Yes. Viewed this way, as a mean of the compactness scores of all of the districts, viewed this way, it would be considered to be more compact as a whole plan.

Q. And you list the number of paired incumbents, and that's a very high number.

A. Yes, it is.

Q. What are you referring to in the paired incumbent category here?

A. So in this case, both in the preliminary injunction phase and now in this report, I was given the addresses of the incumbent members. And what they do is you can run a Maptitude report which shows -- at the end of it, it will show which incumbents are in which district. So if a district has two incumbents, you would consider them paired. And I list in my report the -- I'm sorry -- my -- in my report in the exhibit area, I have the entire list of paired incumbents. And this is a summary of that. So in the illustrative plan that I drew, 74 incumbents were paired; whereas the enacted House plan pairs 20.

Q. And during the preliminary injunction proceeding, we had an analysis of some incumbents who weren't running for reelection. Is that accounted for in your paired incumbent count?

A. No. In the preliminary injunction phase, I did have knowledge and indication of incumbents who were not running for reelection that was known at the time. In this case, I'm just having the addresses of the incumbents from the same database, but I didn't flag any of the incumbents who had said they were not running again and that was known at the time.

Q. And are you just trying to compare these plans on various metrics?

A. Yes. These are some top line numbers that I'm looking at.

Q. What happens to the number of majority Black districts on the enacted plan to the illustrative plan?

A. Sure. So, again, to be clear, I didn't look at race at all in this drawing of the plan. So afterwards I imported the plan that I drew into another plan so that I could analyze it and calculate the number of majority Black districts. So here it shows that the illustrative plan that I drew had 35 majority Black districts on the AP voting age Black population. And, of course, the enacted plan here has 49. So I compare those two numbers in this chart.

Q. And so that's a decrease of 14 districts that are

majority Black?

A. Yes.

Q. And then you report the summary by the voting age Black population. What does that show?

A. Yeah. So the breakdowns here are every 10 percent. So there are six districts in the illustrative plan that I drew that are over 90 percent Black voting age population. There are four that are 80 to 90 percent. There are five that are 70 to 80. There are nine that are 60 to 70. And there are 11 that are 50 to 60.

Q. And this is when you did not consider race in the drawing of the illustrative plan?

A. That's right.

Q. Mr. Morgan, you then selected a couple of regions to analyze. Was there a particular process you followed in how you selected the districts in particular regions?

A. Yes. What I tried to do is I tried to look at the counties in the same area. So on the map 3 on page 19 and the map 4 on page 20 of my report, they have metro area region 1, and it's primarily defined based on county. So, for example, DeKalb County is in Clayton, Henry, Rockdale, Newton and Walton. And you'll see that in my plan there's a -- I'm sorry -- the illustrative plan that I drew, there's a small portion of Walton County that's not accounted for in that. And then you'll see also that there is a small piece of Fulton

that is included. But, generally speaking, these districts as I drew them in the illustrative plan cover those counties.

And then when we flip over to the enacted plan, I've got the same counties, DeKalb, Clayton, Henry, Rockdale, Newton and Walton, and the districts here in the enacted plan cover basically the same area, with a few differences. There's a district that crosses into Fulton and not as much territory as accounted for in Newton and Henry.

Q. And so were you trying to achieve some exact overlay of geography when you were creating these regions?

A. No. There -- it's not a one-to-one congruence.

Q. So looking at region 1 as you've selected it here, what are some differences in these two plans, the enacted on the left and the illustrative on the right?

A. So if we look, starting in Clayton County, in the illustrative plan, which is on the right, I have five districts entirely within Clayton County. And on the enacted plan, you can see that five districts are basically in Clayton County, but there's a few crossovers.

So you have one precinct is in the purple District 116 to the south from Clayton. And then one precinct of Henry is in the yellow District 78. So it crosses the county here.

So, in a general sense, the illustrative plan that I drew, it keeps the districts contained within counties, it doesn't cross the county line often; whereas, the enacted plan

1 does cross county lines.
2 For example, let's look at DeKalb. In the illustrative
3 plan on the right, I have one district that's crossing out of
4 DeKalb County, District 82, which has a small piece of Fulton.
5 Whereas, in the enacted plan, I believe there are six
6 districts that cross out of DeKalb, 91, 92, 93, 95, 94, 88,
7 and 52, they all cross out of DeKalb. So I observed that.
8 And then also I both looked at the compactness scores and
9 I observe here that the illustrative plan, the districts
10 appear to be more compact generally. And in the enacted plan,
11 the districts are much more elongated. And you can see this
12 clearly in DeKalb and also in -- to some extent in Clayton.
13 So you have districts like 89, 84, 86, 87, 88, all there
14 in DeKalb. And they're all elongated, less-compact districts
15 in that area. And, again, one more would be 93, which crosses
16 through Rockdale into Newton from DeKalb.
17 **Q.** You then report the various racial percentages and
18 compactness scores in the region 1. Looking at some of these
19 districts in South DeKalb County, they're over 90 percent on
20 Black VAP numbers. District 87, 90 and 92. Why is that?
21 **A.** Well, in this area of Southern DeKalb County, in this
22 area, for example, around Stonecrest, Panthersville, those
23 areas are compact districts in the plan that I drew, the
24 illustrative plan, and they have very high concentrations of
25 Black populations. So this shows an example of what a compact

1 district in that area would look like. And then when you look
2 at the racial percentages, they're clearly very high Black
3 voting age population.
4 **Q.** Let's look on the other side of Metro Atlanta, region 2.
5 What can you identify about the differences in the enacted
6 plan on the left and the illustrative plan on the right?
7 **A.** Okay. So, again, I drew districts that are generally
8 compact. So you'll see that the districts in Fulton County
9 are -- you know, they're small, compact districts. And then,
10 for example, if you look at Fayette County, I have two
11 districts exactly in Fayette County. There's a north Fayette
12 district and a south Fayette district. And it's entirely
13 contained within Fayette County. And, let's see, what else
14 would I say here.
15 These are -- again, the counties in this area, of course
16 you have Fulton, you have Douglas, Coweta, Fayette and
17 Spalding are generally in this area. And you'll see that in
18 my illustrative plan I have a little bit of population from
19 Cobb County, a little bit from Forsyth in the north, and I
20 don't have every piece of population accounted for in Coweta.
21 Then if we go over to the enacted plan, you'll see that
22 the districts cross county lines much more frequently and the
23 districts are less compact. And I would point to District 73,
24 District 67, which is Fulton to Coweta; District 58 and 59 in
25 Fulton County; and even District 52. But those are some of

the differences that I noticed.

So, in general, the illustrative plan is more compact and doesn't cross counties as much. And the enacted plan is less compact and crosses counties more.

Q. And then looking at the racial percentages on the illustrative plan in your chart 6, there's a number of districts there that are high 80s, up to 95.6 percent on Black VAP; is that right?

A. Yes. If you look in -- you have the Atlanta area Districts 59, 60 and 61 are very high. Two of them are over 90 percent. And District 68 is also over 90 percent. And, again, that's a -- that's a compact district on the southern edge of Fulton and Fayette and Clayton.

Q. Are Districts 59, 60, 61 and 68 as high Black percentages as they are because of some effort on your part?

A. No. I didn't make any effort to look at race at all. And I didn't make any effort to include or exclude anything based on race. I just drew based on the population and keeping things compact and keeping splits lower than otherwise necessary.

Q. Looking at District 69 on this plan, that's a district wholly in Fayette County?

A. That's right. It's on the north side of Fayette County.

Q. What does it mean that the Black population in that district is 42.1 percent as you've reported?

A. Well, I would look at both the north and the south. So 74 and 69, yeah. So, again, those two districts account for Fayette County.

Let's see, I'm sorry. Which chart are we on? I lost the chart.

Q. On chart 6.

A. Chart 6 for the illustrative plan. Okay. Sorry, I was on the second page.

Yeah, it's 42 percent Black voting age population.

Q. And then turn to paragraph 34 on page 29 of your report. What did your analysis of this comparison between the enacted and the illustrative plans lead you to conclude about the enacted plan?

A. So generally speaking, in this area, in this region, the enacted plan has districts that are less compact and they are a different minority composition. They're generally not as high Black percentages as in the illustrative plan.

Q. And what did you conclude about the creation of additional majority Black districts in region 2?

A. That creating additional Black majority districts in this region led to lower compactness scores in the region.

Q. Let's move to your illustrative Senate plan.

Did you engage in the same process to create an illustrative Senate plan as you did for a House plan?

A. Yes. Same process. I started with looking at the

population distribution. And, again, looking a little more carefully at it, I would point out here as a good example, Richmond County, which is Augusta, is in the yellow, it's one to three Senate seats. And looking at the small little type there, it's 1.08 percent. So Richmond has enough for one Senate district and a little bit more that would have to go to another district following this methodology.

Q. And so map 7 is not a racial map, it's a population map?

A. That's right. It's a hot-to-cold theme. So the higher population is in the red designation. And then yellow is one to three ideal Senate seats. And then the green are basically from half a Senate seat to a whole.

And this helps understand how you can combine, maybe you can combine a group of whole counties to make a district. And with this kind of analysis, you can piece together groups of whole counties or, again, in the case of Richmond County, I'm describing that I would really only need to take a fraction of it out and the rest -- entirety of Richmond is a district.

Q. Then looking at map 8, is this the illustrative district you drew for State Senate?

A. Yes.

Q. What factors did you consider in the creation of the Senate illustrative plan?

A. Well, I was looking at not splitting counties; generally speaking, where possible, I try to avoid county splits. And

also to keep the number of voting precinct splits low. And then I built on my experience keeping other communities together, such as municipalities and cities. And that's not always apparent when you look at it from this view.

But when you look a little more closely, that's something that becomes apparent, generally.

Q. Did you use race as part of your drawing process in this plan?

A. No, I didn't look at race at all.

Q. And like the House plan, did you use the -- draw this map to be used in an actual election?

A. No. This is -- basically it was designed as an overview, as an instructional tool.

Q. And so you then proceed in chart 8 to purport the same top line numbers as you did for the House plan.

A. Yes. So in the illustrative Senate plan, there are 21 county splits. In the enacted Senate plan, there are 29. The illustrative plan that I drew splits only 15 voting precincts and the enacted Senate splits 47. And on the compactness metrics, the Reock measure is 46 on the illustrative and 42 on the enacted. 36 on Polsby-Popper, 29 on the enacted.

So, generally speaking, the -- well, clearly here on these top line numbers, the illustrative plan splits fewer counties, it splits fewer precincts, and is more compact when looking at the mean compactness scores.

Q. And looking at the number of majority Black seats, how do the two plans compare?

A. So this illustrative Senate plan has 11 majority Black seats that are over 18-plus of voting age population.

Q. And that's -- is that lower than the enacted plan?

A. Yes. The enacted plan is 14 and this illustrative plan has 11.

Q. And like the House plan, were you approaching this illustrative plan as some sort of statistical exercise to exclude possible causes for the shapes of districts?

A. No. I basically -- in the -- in my experience in the preliminary injunction phase, it seemed to be a useful exercise to show the distribution of the minority population around the state by creating a series of compact districts that are generally following county boundaries and not splitting precincts.

Q. You then selected some districts for a regional analysis. And did you follow the same process as in the House?

A. Yes. Generally, I'm covering the same group of counties. And I'm looking at the illustrative districts in that area. And then the enacted districts in that same general area based initially on counties, but acknowledging that there are differences. These are not completely congruent areas.

Q. And you weren't trying to achieve some exact overlay of the population in these regions?

A. No. I'm comparing them, looking at them. And you can see in the illustrative plan the districts appear more compact than the enacted plan. And they cut the county lines in fewer places.

Q. So then you looked at the racial makeup of the illustrative districts in the metro region. And it appears that some of these districts in South Fulton and South DeKalb are over 90 percent Black voting age population; is that right?

A. Yes, that's right. For example, that illustrative District 5 in the southern part of DeKalb County drawn in that way is 93 percent voting age Black and then 39, which is not the southernmost part of Fulton, is -- but the next section is 39 -- District 39 is 92 percent Black. So these areas have high concentrations of Black population, clearly.

Q. Would you consider District 39 and District 55 to be packed districts?

A. Well, we've had a lot of discussion about that.

MS. KHANNA: Objection, Your Honor, to the extent this calls for a legal conclusion on what is defined as "packed."

MR. TYSON: And, Your Honor, we believe that we've had a lot of discussion on what does packing mean for each map drawer. I think Mr. Morgan can help the Court understand his definition of packing, even if it's not the legal definition

of packing through these plans.

THE COURT: I'll let him give his definition of packing.

THE WITNESS: Well, definitely starting at the basic situation here, the numbers are very high, clearly. And these districts, these are the naturally occurring compact districts in that area. And in my experience, I believe, and we've heard other people say something similar to this, there would need to be some sort of intent for packing. So, for example, providing these, again, are very high districts. And if there was a district that was, say, 70 percent and somebody drew it to be 85 percent and the district, the actual area there is 70 percent, then maybe something like that would be considered packing.

THE COURT: How do you come to the conclusion there has to be an intent for packing?

THE WITNESS: So I would say that if an area -- there's -- again, there's an area of high Black concentration in South DeKalb. And so if you drew a district that was 90 percent or 80 percent, that's the naturally occurring district in that area. So if you were to add additional population to that, then I would say, yeah, you could consider something like that packing.

And in the case of the enacted plan, I see situations where the enacted plan lowers the Black population and doesn't

draw these type of districts that I've drawn in my illustrative plan. It's clear to me that the legislature didn't draw districts like this at this high a level.

I don't know if there's more I can add to that that would be instructive, Your Honor.

BY MR. TYSON:

Q. Mr. Morgan, looking at the district -- paragraph 46 of your report on page 42, what did your analysis of the comparison between the enacted plan and the illustrative plan lead you to conclude about the enacted plan?

A. That the enacted plan creates additional Black majority districts in this region and it leads -- it has -- they have lower compactness scores in this area.

Q. And you mentioned that there was a -- I think you said elongating of districts on the enacted plan. How does that interact with what you've discussed in this report?

A. Well, again, using a map as a guideline, if I look at the map on page 39, which shows the enacted plan in the metro area, District 44 is elongated and District 10 is elongated. It's stretching from Southern DeKalb, following the Clayton County line. And then on the other side of that, District 10's also in Southern DeKalb and follows the Henry County line down to the end of Henry County.

MR. TYSON: Mr. Morgan, thank you.

Your Honor, at this point we're going to move to

Mr. Morgan's report on the Alpha Phi Alpha case, which is tab number 2 in the notebook.

BY MR. TYSON:

Q. Mr. Morgan, in your report in the Alpha Phi Alpha case, did you evaluate plans Mr. Cooper drew for State House and State Senate?

A. Yes.

Q. And did you compare those plans to the adopted plans for State House and State Senate?

A. That's right. I compared them to the adopted plans for House and Senate and I looked at the Cooper-drafted plans.

Q. And just in -- briefly, can you describe how those plans compared?

A. Well, I ran a number of reports on these and then I compared some of the top line metrics in the series of charts.

Q. And you were present for Mr. Cooper's testimony regarding his Alpha Phi Alpha districts; right?

A. Yes, I was.

Q. So I'd like to -- we're going to walk through some of the specific areas discussed in your report, beginning with the top line numbers.

Chart No. 1, you include the number of majority Black State Senate districts on various plans. What does this number show?

A. So in the first chart I'm looking at the number of

majority Black districts in the adopted plan, the Cooper illustrative plan, I've labeled it as 1205, and then also the Cooper-drafted plan from the preliminary injunction phase. And it shows that there are 14 majority Black Senate districts in the enacted plan, 18 in the Alpha illustrative plan, and then the PI plan has 19.

Q. And next you report on a similar top line chart. What does this show in chart 2 of your report?

A. So on chart 2 it also reports some of those top line metrics that we've looked at. So it's -- there are the county splits and the precinct splits. So the Alpha Cooper plan splits 28 counties, the enacted plan splits 29. 43 split precincts in the Cooper plan, 47 in the enacted. And the mean compactness for Reock is .43, the enacted plan is .42. And the Polsby-Popper, 28 on the Cooper plan and .29 on the enacted plan. They're all very similar in those regards.

Q. Mr. Morgan, I neglected to ask you, you included a number of exhibits with your report. Can you briefly explain what those exhibits are?

A. Sure. So the exhibits here, which I list in my report on paragraph 10, using the Maptitude for Redistricting software I have reports for metrics of compactness, districts and their incumbents, population summary, political subdivision report, the plan component report, and then comparing core constituencies to the preliminary injunction plan and also to

the enacted plan. Those are all in my -- as exhibits in my report.

Q. And those are automatic -- or those are reports generated by the Maptitude software?

A. Yes, that's correct.

Q. You also created a number of maps you've attached with a racial theme on them. Do I have that right?

A. Yes. Let me see if I can find the exhibit.

So those are in -- starting at Exhibit 16 in the report, so I have Exhibit 16 shows the Augusta, east central area. And then I have other areas, metro. So I show a thematic map. And this one is themed on race, not on population.

And then I have districts that are outlined. So, for example, Exhibit 18 shows Senate District 10. Exhibit 19 has a grouping of Senate districts. And then I have individual Senate District 16 as Exhibit 20, et cetera. Districts -- I'm sorry, yeah. District 17 is Exhibit 21. So I have a number of districts broken out in the exhibits.

Q. So why did you include racial theme maps with your report?

A. Well, in analyzing the districts for my report, I thought it was important to look at the racial makeup of the districts and the general area around the districts.

Q. And do the maps that you've created cover all of the new majority Black districts proposed by plaintiffs?

A. Yes.

Q. Getting back to chart 2 of your report, Mr. Cooper's plan splits one fewer county according to your top line number, but then you broke out, I'll put on the screen, a chart that has the specific split counties; is that right?

A. Yes.

Q. And what does chart 4 regarding split counties show in your report?

A. What it shows is that these -- let me find the chart, one moment.

Q. Page 20.

A. Yeah, I was too far. Okay.

So what this shows is it shows the list of all counties that were split. And it shows which ones were split in both the enacted plan and the Alpha plan. And then some were unsplit in the Alpha plan and then were -- then there were additional counties that were split in the Alpha plan. So it shows all the counties that were split in common, and then the differences in the splits.

Q. And what did you discover about those particular splits?

A. Well, what I discovered is that there were additional splits made in areas where Mr. Cooper drafted additional Black majority seats, but there were some counties in areas that were far away from that that were unsplit.

Q. So moving next, Mr. Morgan, to Senate District 17. You

referenced this Senate district in relation to your analysis of county splits on paragraph 38 of page 21. What is -- why are you discussing county splits in relation to District 17?

A. So as I point out in the Cooper illustrative plan, this District 17 splits Rockdale County, so it has three counties, it has DeKalb, Rockdale and Henry. And in this case Mr. Cooper's plan makes Newton County whole, but it splits Rockdale. And this allows the transition from -- to connect Southern DeKalb to more distant areas of Henry County.

Q. And did you find that the addition of a county split in this area was related to the creation of an additional majority Black district?

A. Yes, clearly.

MR. SAVITZKY: Objection, mischaracterizes the witness's testimony. There was no addition. There was a switch of county splits, I believe he just testified.

MR. TYSON: I'm happy to rephrase, Your Honor.

THE COURT: Rephrase.

BY MR. TYSON:

Q. Mr. Morgan, is it your view that changing the county split from Rockdale to Newton Counties in this area was the result of the creation of an additional majority Black district?

A. Yes. I clearly say in my report that it was necessary to split Rockdale County in order to allow the creation of this

district.

Q. And why did you say it was necessary?

A. Because in order to connect to that portion of Henry County, it was necessary to split Rockdale to accomplish that.

Q. And you included in your report a racial breakdown of the components of District 17. What does -- what do the exhibits to your report show about that district?

MR. SAVITZKY: Your Honor, I just want to object at this time. There's no discussion in the text of the report about the components of District 17. I know it discusses in other districts, but there's no discussion of that in District 17.

MR. TYSON: And, Your Honor, the -- Mr. Morgan has testified the exhibits are part of his analytical process that he prepared in preparing his report. He's not offering any different opinions in this section. I've asked -- my question was specifically the racial makeup, which is a fact. He's elaborating further on what he is discussing about the splitting of Rockdale County in the creation of this district.

MR. SAVITZKY: Well, Your Honor, I think it's more than the fact he's offering expert testimony and opinion on the construction of the district. Rule 26 requires a complete statement, not only of all the opinions, but that the witness will express the basis and reasons for them. Any basis and reasons in the component splits reports for criticisms of

Senate District 17 are not articulated in the report itself.

THE COURT: Then you can ask him that when you get ready to question him.

MR. SAVITZKY: Thank you, Your Honor.

MR. TYSON: Thank you, Your Honor.

BY MR. TYSON:

Q. Mr. Morgan, what do you notice about the configuration of District 17 from the exhibits to your report?

A. Well, when I analyzed this area, I see that there is higher concentrations of Black population in DeKalb County, and this section of DeKalb County is 94 percent Black. And then the section of Rockdale is 60 percent Black. And then the section of Henry County is not majority Black, it's 41 percent Black.

Q. What is the biggest county in District 17 by population?

A. Henry County is the largest county component.

Q. Mr. Morgan, when you're evaluating plans as a map drawer, do you consider districts that are surrounding a district you're evaluating?

A. Yes, absolutely.

Q. Why is that?

A. Because it's the treatment of the entire area that's significant in analyzing the plans. Any one district looked at in isolation, there's information about that one district, but when I'm analyzing this, I'm also comparing this to the

enacted plan. And so I'm looking at changes between the illustrative plan in Alpha and the enacted plan. So I'm looking at both the enacted plan and the illustrative plan and the districts around a district that's claimed to be a new district.

Q. And so next in your report you have on page 10 of -- you have the enacted districts in South Metro Atlanta. And then page 12 you have the illustrative plans. So I'm going to put those side by side here so we can look at both together.

What did you point out in your report about the configuration of these districts in South Metro Atlanta?

A. I pointed out that -- I'm sorry, I'm looking for --

Q. I'm referring to page -- paragraph 25 on page 12 of your report.

A. So the first thing I would point out is that in the enacted plan, Clayton County is split one time. It's split into two pieces. There's a piece in Senate District 34 and there's a piece in Senate District 44. But in the illustrative plan, Clayton is split into three pieces. And I observed that, in the construction of District 16, that rather than complete a district with Clayton County, the district goes all the way through Henry and connects more far-flung areas of Spalding County in a district that stretches about 35 -- 34 miles from north to south.

Q. And so are you referring to District 28 that begins here

in South Clayton and runs all the way to the portion of Southeast Spalding County?

A. Well, first I was discussing District 16, which is as I described. But now, looking at District 28, it connects the panhandle of Clayton County and it goes through Fayette County into Spalding, including Griffin.

Q. And then you include a chart that shows various plan components for four State Senate districts. What does this chart show?

A. So in this area -- there are four districts on this chart, so you have Senate District 34. And, again, this is in the illustrative plan. So you have Senate District 34. So if I look in the column of Senate District 34, what are the components of that? One component is Clayton County, one component is Fulton County. So those two counties comprise Senate District 34. And then down at the bottom, those are the totals for that district.

The same is true with 16. So it's part of Clayton County, part of Spalding County, part of Henry County. District 28 is part of Clayton, Fayette and Spalding. And then the District 39 is going to be part of Fayette, and it's going to be to the left of District 28 and all of Coweta County. And then the district total of 39 is there at the bottom of the chart.

Then if you look across the rows, as I just said,

District -- the -- Clayton County is divided into three districts. So you have Clayton is in 34, 16 and 28. So that accounts for all the population in Clayton looking across the row.

Likewise, if you look at the next row, group of rows, Fayette County, all the population is accounted for in Fayette. So you have 74,742 is in District 28, and then 44,452 population is in District 39, which is that area in Peachtree City, south of the word "Fayette" on the map.

Then the next one, Spalding, you have 25,726 in District 16 and 41,580 population in District 28.

And then you have a piece of Fulton. So you see that there's only 52,000 in Fulton. So I'm not accounting in this chart for the entire population of Fulton, but just that portion which is in Senate District 34.

Likewise, Coweta, but that's actually the entire county.

And then down below, the portion of Henry that's in District 16. So this chart shows all of the pieces of these districts.

Q. Mr. Morgan, you say on page 15 of your report that the construction of District 28 strategically bypasses Peachtree City and Fayette County. Why did you use that term?

A. Well, clearly, you've got the panhandle area of Clayton County. And then if you had the rest -- I'm sorry. The panhandle of Clayton County, yes. And if you had the rest of

Fayette, that could be a district, but instead this District 28 avoids the area of Peachtree City and instead goes down to Spalding County and Griffin.

Q. And what did you conclude about District 28 going down to Spalding and Griffin instead of taking in Peachtree City?

A. Well, it's strategically avoiding the Peachtree City area. And in that sense, it's avoiding the addition of the -- additional white population to this district.

Q. You also say in your report that splitting off Peachtree City -- I'm sorry -- that the Black population in Spalding County in Senate District 28 is necessary to reach 50 percent Black VAP. Why do you use the word "necessary"?

A. Because basically it's not an accident that the makeup of the Spalding County portion includes -- it has African-American population in the district. You can see that it is 40 percent -- 38 percent voting age population is in the Spalding portion of the district. And without that, if, for example, you were to take Peachtree City, then it wouldn't be majority Black.

Q. Mr. Morgan, let's move next to Senate District 23 in your report. And you begin with a look at the enacted plan and discuss Senate District 22. Why do you begin with a discussion of Senate District 22 on the enacted plan?

A. Well, in analyzing the plan, the illustrative plan, the Senate District 22 and the Senate District 23 are linked

completely. The explanation for the creation of Senate District 23 is very much linked to the creation of Senate District 22.

Q. And then looking at the configuration of Districts 22 and 23 on Mr. Cooper's illustrative plan, what do you notice about first District 22 in the configuration Mr. Cooper placed it in?

A. Well, again, looking at -- I'm sorry, did we look at the enacted map before this?

Q. We did. I can put that back on the screen if --

A. Sure.

Q. Yeah.

A. So first, I guess, I didn't complete my thought. So if I will, there's a -- there's a connection between 22 and 23. And looking at the enacted plan, Senate District 22 is entirely within Richmond County. It doesn't cross outside of it. And as I discussed earlier, there is surplus population from Richmond County that is more than a Senate district. So that additional population is in Senate District 23 in the enacted plan.

Q. So then moving to the illustrative plan, page 18, paragraph 34, what do you notice first about District 22 as Mr. Cooper has configured it?

A. So in this plan, what happens is that the illustrative Senate District 22 pushes out of Richmond County. It connects

through Fort Gordon to Thompson in McDuffie County and also Warren and Glascock Counties. So what's happened here is that by pushing out into a different area, it frees up the Black population in Richmond County to be used in District 23. However, it's important to note that McDuffie, Warren and Glascock are about 38 percent Black. And as a group, that's fairly high compared to, for example, looking at the thematic map, there are precincts in Columbia County that are much lower that are right on the border with South Carolina.

Q. And what happened to the deviations of Districts 22 and 23 on the illustrative plan?

A. Both the deviations of those plans are on the negative side. So the deviation of Senate District 22 is .92, which is close to 1 percent. And District 23 is .63.

Q. You next discuss the configuration of District 23 and you discuss a split of Wilkes County. What -- how did Mr. Cooper split Wilkes County on District 23?

A. So what I see is that the split of Wilkes County includes the areas of high Black population and then the rest of the county, which is excluded from Senate District 23, is a lower concentration of Black population.

Q. And then Mr. -- going back to the overview of Senate District 23, is there anything else you observe about the configuration of what Mr. Cooper has done with that Senate district?

A. Sure. So on this map you can see that there are split precincts in Wilkes County. So there are three -- sorry -- there are two split precincts in Wilkes County. And it's got a small portion of the town of Washington in the district.

And the other split, as I mentioned, was Richmond. And the district stretches all the way over to Milledgeville and Twiggs County. So it's quite a distance from Augusta to Macon.

Q. You also say in your report that District 23 connects separate enclaves of Black population. What did you mean by that?

A. Well, in this case, I'm pointing out that you have population in Augusta and you have population in Milledgeville and Baldwin County. And they're separated by quite a distance. And also we talked about the split in Wilkes County, which is the town of Washington in that area.

Q. Mr. Morgan, moving to paragraph 41 of your report on page 22, what are your conclusions about Mr. Cooper's State Senate plan in the Alpha Phi Alpha case?

A. That the Senate plan is focused on race, prioritizing that to the detriment to traditional redistricting factors.

Q. And after hearing Mr. Cooper's testimony about this illustrative Senate plan, has your conclusion changed?

A. No. It's been strengthened in some ways.

Q. And how has it been strengthened?

A. Well, in Mr. Cooper's testimony, he specifically said in regards to Senate District 23 that it was necessary to split Richmond County in this way, that just taking a small amount of Richmond County would not allow for the creation of Senate District 23. So I think it's important to acknowledge that in his testimony he said it was necessary.

Q. So let's move next to your State House analysis.

MR. TYSON: And, Your Honor, I know we started a little bit later. It's about ten until 3:00. Should we maybe get through this plan, then take a break?

THE COURT: Yeah, let's get through this plan and then take a break.

MR. TYSON: Okay.

BY MR. TYSON:

Q. All right. So, Mr. Morgan, moving to the State House, let's begin here. You included a similar chart of majority Black House districts by category. And what does this show about Mr. Cooper's State House plan?

A. Both in the illustrative plan on 1205 and in the PI plan, there are 54 majority Black districts.

Q. And in looking at chart 6 on the summary top line information, what does this chart show?

A. It shows that the Cooper plan splits 68 counties and the enacted splits 69. The Cooper plan splits 193 precincts and the enacted splits 184. And they're the same on the Reock

compactness. And the Cooper plan is .27 versus .28 on the enacted House plan. There are a difference of five paired incumbents. We talked about the number of majority Black seats. And the Cooper plan has a greater deviation range than enacted plan.

Q. You reviewed the county splits for this plan like you did for the Senate plan, starting on page 45. What did you determine about the county splits in Mr. Cooper's illustrative House plan?

A. So, again, this is looking at plan -- counties that were split in both the Cooper plan and the enacted plan. And the chart shows which counties are split in common and lists all those. And then it shows a number of counties that were made whole -- that were split in the enacted plan but are made whole in the Cooper plan and vice versa, counties that were whole in the enacted plan but were split in the Cooper plan.

So down at the bottom you can see, again, the split counties, Burke, Colquitt, Jefferson, et cetera. And then looking at the list of counties that were made whole, Appling, Ben Hill, Cook, Dawson, Gordon, et cetera.

Q. So is it your conclusion that Mr. Cooper's plan splits more counties than the enacted plan in its effort to create new majority Black districts?

A. Yes. It's evident to me that the Cooper plan splits more counties in effort to create more Black majority seats. But

when you look at the top line numbers, you'll say, well, gosh, they're the same. But what I'm pointing out in my report is that some of these counties that were unsplit were in areas that were far distant from the areas of the new Black majority seats.

So, in essence, you have a masking effect where you have more split counties in the effort to create more Black majority districts, but then there's a masking effect, because there are additional counties that are unsplit, so that the net number, if you just look at the top line number, they are basically the same.

Q. And you reviewed one area in Northwest Georgia in your report. I put the two maps from pages 42 and 43 on the screen.

Can you explain to the Court what these maps show?

A. Sure. So in this area, these areas are exactly congruent. Unlike the areas where I'm just generally comparing county groupings, these ten districts have exactly the same areas. So on the enacted plan -- and, again, when I made these, the enacted plan is a little darker with the blue line, and then with the Cooper illustrative plan it has a purple line.

So the district boundaries of these ten districts are internally different, but the total area of the ten districts covers exactly the same population areas. So that's what I'm

observing in these maps.

Q. So the boundaries around these ten districts are the same, but what's different inside those boundaries?

A. So, again, these are areas that have nothing whatsoever to do with creating additional majority Black districts. These ten districts are completely isolated from the rest of the map that has drawn additional majority Black seats.

So Gordon County is unsplit. So you have a circumstance where, in the Cooper plan, Gordon County is unsplit. And so that results in a one fewer county split in this area. And then I also looked at a version of that on precinct splits.

Q. And before we get to precinct splits. You heard Mr. Cooper's testimony about a ripple effect.

Do you recall that?

A. Yes.

Q. Could the change in Gordon County have been due to a ripple effect?

A. Absolutely not. It's not possible. This has nothing to do with drawing districts in other areas of the state. As I show, these ten districts are completely isolated. This is exactly the same geographic area in both the illustrative plan and in the enacted plan. So there's no ripple effect. This was unrelated to any of the other district drawing.

Q. Then you put chart 9 in your report of an additional split comparison on precincts. What does this chart show?

A. So, again, what this shows on the left side are the split precincts in the enacted plan. So it lists each individual precinct. So this is the first circumstance where maybe we've seen precinct names written down, but they're 2A, Pleasant Grove, et cetera. So those are the names of the voting precincts, and it shows you how much population is in House District 2 or House District 4, et cetera.

So in looking at all that, the bottom line is that there were six split voting precincts in the enacted plan and three split voting precincts, including one with no population split, in the Cooper plan.

So the treatment of the map that Mr. Cooper drew in this area recovers one split county and it recovers three split precincts. So, again, it affects the top line numbers.

Q. So when you say it recovers those, is that the masking effect you were referring to?

A. Yes. So in this case, the effort to split -- or the effort to great additional majority Black districts results in splitting more counties. And this is an example where splits are recovered so that the top line results don't reflect that.

Q. On page 26 of your report, you evaluate the compactness scores of the new majority Black districts. What did you discover about the specific districts Mr. Cooper added as new districts?

A. So in these five districts, generally the enacted plan

1 districts are more compact. Looking at them individually, the
2 Cooper 74 is clearly more compact than the enacted district.
3 117 is the same on the Reock score, but is less compact than
4 Polsby-Popper. And then there's an example of 145 is mixed,
5 with one score being more compact than enacted and the
6 Polsby-Popper being more compact on the Cooper plan.
7 **Q.** You next look at the south part of Metro Atlanta and four
8 House districts in particular on page 29 and 30. What do
9 these two plans show about this configuration of South Metro?
10 **A.** So, again, looking at this area, I've got four districts
11 on both maps. So you see 77 in the enacted plan is in the
12 northwest portion of Clayton County. District 69 in the
13 enacted plan has a portion of Fulton County and goes down to
14 Fayetteville and Fayette County. District 73 has a portion of
15 Peachtree and goes over to the border of Newnan, and actually
16 probably a little piece of Newnan in Coweta County. And then
17 District 74 is the more rural areas of Fayette, the more rural
18 areas of Spalding. And then a small area, I think it's
19 Hampton, which is the Atlanta Motor Speedway.
20 **Q.** And what is the configuration Mr. Cooper used of
21 districts in this same area?
22 **A.** So what I observe here is that the Cooper configuration
23 of District 69 is much more elongated and it goes -- it keeps
24 the same basic area in Fulton County, but it goes much further
25 down all the way into Peachtree City. District 77, which was

previously contained in the northwest section by the airport in Clayton County, is now stretching all the way down through Fayette County into Southern Fayette County.

And then after doing that, then you have District 74, which I pointed out is more compact in the Cooper plan than in the enacted plan. And this has the panhandle of Clayton County. And then it has two precincts of Spalding and two precincts of Henry County.

Q. Are Districts 69 and 77 elongated like we discussed earlier?

A. Yes. 69 is clearly more elongated than in the enacted plan. And District 77 is clearly more elongated in the -- than the enacted plan. That is, the Cooper plans 69 and 77 are much more elongated.

Q. And then you evaluated the compactness scores for these districts. What did you discover about the compactness scores?

A. Generally speaking, the compactness scores were -- they are lower in this region for the Cooper plan than the enacted plan.

Q. You also mentioned that Mr. Cooper didn't include Griffin in District 74. Why is that significant?

A. Well, we'll see that Griffin is used; that is brought into another district in another part of the map.

Q. So let's move to that portion. Looking at -- I'm sorry.

Actually, before we leave this area, Mr. Morgan, we talked about elongation. What is the makeup of the various components of District 69 on the illustrative plan?

A. Sure. So District 69, as in the enacted plan, has a portion of Fulton and a portion of Fayette. But what I point out here, or, you know, in the splits, you can clearly see that the Fulton portion is a high concentration of Black population, 94 percent voting age. And the area going all the way down to Peachtree City is much lower concentration. It is 34 percent African-American. So the district as a whole is 54.9 percent.

Q. And for District 77, does it have the same pattern in its configuration of its county portions?

A. Yes. It takes an area of high Black concentration in the north of Clayton and the district as elongated all the way down to the south in Fayette County.

Q. And then let's move to District 117. So you mention in your report about Spalding County and the impact on District 117. What are you explaining here?

A. Okay. So let's look at the -- in my report, which paragraph are we looking at?

Q. Page 31 and 32, paragraph 56.

A. Okay. So let's start with this. So Spalding County -- and I have this in my report on page 31. Spalding County has a population of 60,306. So that's the population of the

entire county. And it's about one-third Black on voting age population, 33.6.

So I observed that Spalding County itself is more than an ideal district population. It's about 13 percent more, which, you know, was in my illustrative plan where I'm showing the population of the county.

So Spalding County as a whole has more than ideal House population, but as a whole, there's clearly not enough Black population within Spalding County to draw a majority Black district. It's just not possible.

So what I observed in the Cooper plan is that he removes the Black population and takes the area of Griffin, the area where the most Black concentration is, takes it out of the community around it and combines it with other precincts to the north in Henry County in the area around Locust Grove.

And I think we talked about this in the thematic map. So on the map those two yellow precincts around Locust Grove are yellow. And yellow was an indication that it's majority Black, it's 50 percent. So the gradations here, if it's red, it's 65 percent. If it's yellow, it's 50 percent. And then the green designation is 35 to 50 percent.

So, for example, all of those precincts on this map that are red, yellow and green are more than 35 percent Black. So I heard Mr. Cooper testify that he used a dot if a precinct had 30 percent Black population or not. So these precincts,

all of them that are red, yellow or green, would have a green dot in the Cooper method of drawing.

And some of the light blue precincts would, too, because on my map the legend indicates that the light blue precincts are -- they are up to 35 percent Black, they're 20 to 35. So some of the light blue ones would be a green dot precinct in the Cooper methodology.

Q. So just so we're clear, Mr. Morgan, looking at the map that's on the screen of House Exhibit 50 of your report, the only precincts you can say for certain would not have a dot if Mr. Cooper was displaying his 30 percent or higher precinct information on Black voting age population are the dark blue precincts?

A. That's right. The dark blue precincts are 20 percent or less. And I would say the vast majority of the light blue precincts would also not have a green dot as they are 20 to 35 percent. So a few of them would, but I would say the vast majority of the light blue precincts would not be a green dot precinct in Mr. Cooper's methodology.

So, again, getting back to District 117 here, what I'm observing is that the minority population in Griffin is taken out of the surrounding community and is paired with another area. And we've seen that it's a close area, it's Locust Grove, but I do point out that it's separating the population based on the race.

Q. Let's move next to East Georgia. In your report you begin with a look at the enacted House districts in this area. And what do you observe about the enacted House districts in East Georgia?

A. So in this area there clearly are some split counties. And I did hear Ms. Wright's testimony, and I obviously agree with this because it's a fact on the map, looking in the area of House District 132 and 126, there is a portion of Richmond County in 132, but then Jefferson County is a whole county.

Likewise, District 126 in the enacted plan has a portion of Richmond-Augusta, and it has whole county of Burke and Jenkins. So those are the splits in that area.

And then Columbia is split, McDuffie is split, Baldwin, Putnam and Jones are all split in this region. So there's six splits over several districts.

Q. And then what about the enacted plan in this same region, what's different?

A. I've just discussed the enacted plan in this region. Comparing it to the Cooper plan, hopefully I'm -- did I -- sorry, I didn't understand your question.

Q. I apologize. I believe I said the wrong name.

Looking at the illustrative plan in this region, what do you notice that's different?

A. So the -- one of the things that's very noticeable is that there are many additional county splits in this region.

So some county splits are the same, for example, Richmond, Columbia, Putnam and Baldwin are split in both plans. But the Cooper plan has additional splits in Oglethorpe, Wilkes, Jefferson, Burke, Johnson, Laurens and Screven, all in this same area.

Q. Let's begin by looking at District 133. You talk about the configuration of District 133. And what do you notice about it?

A. Well, one of the first things I noticed is that this is very different than the configuration of existing District 128 in that region, which was a district that was made of whole counties except for one split in Baldwin, and I think there was a split in McDuffie as well. So it's two splits, but now there -- the District 133 is different in that it takes the population from Milledgeville all the way up to Washington and Wilkes County in District 133. And also it goes down to Wilkinson. And this completely -- it completely changes the existing District 28 in that region, which was an existing majority Black district.

Q. And looking at the county splits you discuss in your report, what is the split of Baldwin County?

A. The split in Baldwin County has the Black population in District 133 and the more white population House District 144. The portion in 144 is 22 percent Black and the portion in 133 is 51 percent Black.

Q. And then do you notice a similar racial split of Wilkes County that you report in your report?

A. Yes. The Wilkes County portion is 47 percent voting age Black and the area -- and the other district is only 26 percent, the balance of Wilkes County.

Q. You also considered the impact of District 133 on surrounding districts in your report; is that correct?

A. Yes. So it -- in drawing the districts this way, there are many more additional county splits. For example, in District 128 there are four county splits, Burke, Jefferson, Johnson and Laurens. So in the case of District 128, the Black population in Dublin is removed and combined -- removed from the surrounding area, it's not physically removed, it's a district, it's not a person. But it's combined outside of its immediate surrounding community area and it's combined with more Black population in Jefferson and Burke County.

Q. You mention the split of Laurens County. Is that also a racial split of the county?

A. Yes. The area in Dublin is taken into District 128. And the balance of the county is in District 155. And that's 23 percent Black; whereas in the enacted plan, Laurens was whole and combined with Johnson to be a two-county district with no splits.

Q. And what about the impact on District 126 in this area?

A. So 126 still has a portion of Richmond County, which is

similar to the enacted 126. But it splits. It splits Burke County and stretches down to Screven County. And then it splits the top half of Jefferson.

So you have a situation where you've got four split counties, which is the most of any district in Mr. Cooper's plan. So this is four split counties in one House district and 128 is four split counties in one House district. And back to 128, you can still see here, it splits Johnson County along racial lines as well.

Q. And the split of Screven County, is that also a racial split in District 126?

A. Yes. The area of higher Black concentration is put into District 126 and the lower concentration is into the surrounding district.

Q. Do you believe drawing House District 133 would have been possible without these other changes in East Georgia?

MR. SAVITZKY: Your Honor, objection. I don't think he addressed the question of whether it would be possible without these changes in his report.

THE COURT: I couldn't hear that.

MR. SAVITZKY: I don't think Mr. Morgan addressed whether it would be possible to draw House District 133 without these changes in his report.

THE COURT: Mr. Tyson?

MR. TYSON: I'm looking, Your Honor.

Mr. Morgan discussed the configuration of District 133 and the surrounding districts extensively in his report, so I believe he's just elaborating on what he's describing in the report.

THE COURT: Why can't he describe more? He's already talked about it, Mr. Savitzky.

MR. SAVITZKY: It -- the question seemed to call for an expert opinion about the possibility of drawing a district that wasn't described in the report, wasn't disclosed in the report.

THE COURT: I didn't take it that way.

MR. TYSON: Maybe, Your Honor, I could ask Mr. Morgan, did you include these descriptions of other districts because of their impact on the configuration of District 133?

THE COURT: Let's try that.

THE WITNESS: Yes. 133 and 128 and 126, they're all connected here. And specifically you asked about the Cooper 123, it is less compact than the enacted 133. The enacted 133 is Milledgeville, but it doesn't go like the Cooper district does all the way up north in -- let's see. So it goes from Wilkinson, Baldwin, and it goes I think into Oglethorpe. Or no, I'm sorry, it doesn't go into Oglethorpe. It goes up to Washington and Wilkes County.

MR. TYSON: I have two districts left, Your Honor.

Do you want to keep going and finish out this plan? I want to be sensitive to time, but I know everybody --

THE COURT: Let's take a break and come back at 3:30 and finish it up.

(After a recess, the proceedings continued at 3:14 p.m. as follows:)

THE COURT: You-all may be seated.

Go ahead, Mr. Tyson.

MR. TYSON: Thank you, Your Honor.

BY MR. TYSON:

Q. Mr. Morgan, we're going to continue our march across Georgia --

A. Are you really going to say that?

Q. I'm not going to say that. I'm sorry. Withdraw that statement.

Looking next to the Macon area, you included in your exhibits maps of the enacted House districts in Macon and the illustrative House districts in Macon; is that correct?

A. Right, Macon.

Q. And you heard Mr. Cooper's testimony about this area of the state; is that right?

MR. SAVITZKY: Your Honor, just to interject, there's no discussion of an illustrative district Macon in Mr. Morgan's report in the Alpha Phi Alpha case.

MR. TYSON: And, Your Honor, Mr. Morgan included

these maps as part of his report. He heard Mr. Cooper's testimony about this area. I don't think my questions are going to illicit new opinions. They're going to address specific issues about these plans and responding to Mr. Cooper's testimony.

MR. SAVITZKY: Your Honor, if I could be heard further. Unlike -- and I know we rose (sic) in a similar objection with Senate District 17. There was at least some reference to Senate District 17 in the report. Obviously, Mr. Cooper's report discusses an illustrative district in Macon and Mr. Morgan had the opportunity to respond to that. It is not mentioned once in the text of his report. So this is outside the scope.

THE COURT: Mr. Tyson, if it's not in the report at all, Mr. Savitzky has a good point.

MR. TYSON: And, Your Honor, we would just take the position that since this is an exhibit to Mr. Morgan's report, he included this information, he can -- he testified that his exhibits included data that he relied on for reaching his ultimate conclusion about the plan itself, that he could at least look at these exhibits to his report and respond factually to Mr. Cooper's testimony, even if he's not offering an opinion as to these specific districts.

THE COURT: Mr. Savitzky, here's the argument they're making. Tell me if you agree -- well, I think I already know

you're going to disagree, but let me hear why you're going to disagree.

He's saying he's basing it on -- he's responding to Mr. Cooper's testimony about the maps based on what he's heard and seen by sitting in here.

MR. SAVITZKY: Your Honor, I take Mr. Tyson's point to the extent that he's talking about the ultimate conclusions, he reaches about the House maps, that may be slightly different. But to the extent that he's offering opinions or conclusions about this specific illustrative district or how Mr. Cooper drew that in that particular district, there's simply no -- there's no analysis of this district. And there are no conclusions or opinions about this particular district in the report.

THE COURT: Why can't you cross-examine him on what he has testified to now that Mr. Tyson's presenting? As I understand your argument, you say, Judge, this is not part of his report, so how can he testify to something not part of his report, and I can't cross-examine him on something that's come up.

But he's testified about a number of things that's problematic today that's not in his report, based on what he's heard. Why can't you cross-examine him on that?

MR. SAVITZKY: Your Honor, I surely can cross-examine him on that if the objection's not well taken.

THE COURT: Here is the way, Mr. Savitzky, I'm taking it, is that it's not part of the report, it's something he's responding to, more or less, to Mr. Cooper's testimony.

Mr. Tyson, I don't look at it through the same eyes as to what was originally part of his report. I think Mr. Savitzky makes a good point there.

What I'm hearing is that he sat here and he heard Mr. Cooper testify and he's responding to it. So I look at it very different, not just with Dr. Morgan but with any expert sitting in the courtroom and then responding to it.

I'm going to approach it that way. If you need some time before you do your cross, I'll give it to you.

MR. SAVITZKY: Thank you, Your Honor.

THE COURT: Okay?

MR. TYSON: Thank you, Your Honor.

BY MR. TYSON:

Q. Mr. Morgan, what do Exhibits 53 and 61, these two maps attached to your report, show based on Mr. Cooper's testimony in this area?

A. Based on Mr. Cooper's testimony and my experience in Georgia, what I see here is that the population in Bibb County in the enacted plan has two majority Black districts entirely within Bibb County. And I certainly observed that in the enacted plan.

In Mr. Cooper's plan, he splits the Black community into

three pieces. So he splits the Macon Black community into three parts. And I talked about this technique as well in reference to District 2 in the Augusta area. So this is a technique that I do discuss in my report, which is splitting the existing Black community into other districts. So this is what I'm observing in this area regarding Mr. Cooper's testimony and my own observations and knowledge about this area.

Q. Thank you, Mr. Morgan.

Turning next to Southwest Georgia, in your report you included a map of the enacted districts and a map of the illustrative districts. And I put those side by side on the screen here.

Can you explain to the Court what is notable about the changes Mr. Cooper made in this part of the state?

A. Okay. So let's start with Dougherty County. In the enacted plan -- let me get my reference here in the report. What's the second -- 60 --

Q. Page 38, paragraph 64 is where you begin.

A. I'm sorry, I'm looking at two places. I'm looking at the maps and I'm looking at the report, but I want to cover both points carefully.

Q. Page 38, Mr. Morgan.

A. Okay. Yeah, this is helpful. Okay.

All right. So let's start with the enacted district. So

in the enacted plan, there is one majority Black seat entirety in Dougherty County. And in the enacted plan, there's also an existing majority Black seat next door in House District 154.

In the Cooper illustrative plan there is no Black majority seat entirely within Dougherty County. Instead the Black community is split into several different districts, and as I talk about in my report, one of the districts connects Albany all the way down to Thomasville in Thomas County.

So there are two techniques going on here. One technique is the separation of a Black community in Thomasville, which is paired with a distant Black community in Albany. So that's one thing that's going on. There's the pairing of separate communities. And there's also sorting based on race in the component of the District 170 -- sorry -- it's 171 in Thomas County. So it's split along racial lines, such that the Black population is removed from the surrounding district and combined. So there's two techniques that are occurring here.

Q. You say in your report that Mr. Cooper strategically utilizes Black population in Albany. Are you referring to the distribution of Black population you just referenced in that section?

A. So I actually have two points about this here. So I'm talking about the distribution of the Black population in Albany and Dougherty County, and it's divided in different areas; whereas the enacted district keeps one district

entirely in Dougherty County.

But there's something else going on here. And this is something that's not immediately apparent, but I think it's very significant in analyzing this area.

Generally speaking in this case, we've seen circumstances where an existing majority Black district population Black percentage is lowered. And we see that in many places in the Cooper plan, where an existing Black district, some of the population is lowered and taken out. We see this, for example, again, in Richmond, is one example where there was an existing Senate District 22, that was about 57 percent Black, and it's lowered to barely 50 percent, so that's the tendency. That was the Senate plan, here is the House plan.

However, there's an existing Black majority seat in House District 154. And this is also an unusual situation where this Black majority seat is electing a Republican, which is fairly unusual. Mr. Cooper's plan elevates the Black percentage of that district from 54 percent to 60 percent, which is very interesting to me.

THE COURT: Hold on.

MR. SAVITZKY: Objection. I mean, there's no discussion, elevation of the Black voting age population in districts other than the illustratives or the partisan implications. Just absolutely nowhere in Mr. Morgan's report.

THE COURT: We are getting a little far out there,

Mr. Tyson; I've got to agree with Mr. Savitzky on that. I'm going to sustain that objection.

Dr. Morgan, you probably didn't get the memo that I had sent to all the lawyers. The only thing -- the only liquid I allow in the courtroom is water. So the CSO is going to take your Coke and give it back to you when you get ready to go. Thanks.

THE WITNESS: Yes, Your Honor.

THE COURT: Next question.

MR. TYSON: Thank you, Your Honor.

BY MR. TYSON:

Q. Mr. Morgan, do you report the Black percentages of districts in the exhibits to your plan?

A. Yes, I do. I report the Black percentages of every district in the illustrative plan and the enacted plan. And I looked at this in my conclusions.

Q. Does Mr. Cooper's illustrative District 171 split precincts in the area?

A. Yes, it splits precincts in the Thomasville area.

Q. Mr. Morgan, based on all we've talked about here, if you could turn to page 48, paragraph 77. What is your conclusion about Mr. Cooper's illustrative plan, House plan in Alpha Phi Alpha?

A. That it focuses on race, prioritizing race to the detriment of traditional redistricting factors.

THE COURT: And what are you basing that on?

THE WITNESS: Well, Your Honor, I'm looking at a bunch of individual districts clearly in comparison to the enacted district. And in my report I make specific references to techniques. I've identified several techniques. I've talked about bypassing white population. I've talked about separating different enclaves of Black population from distant areas. That's a technique that I outline in my report.

I also talk about elongated districts, which is another technique that I'm observing. And I also see that there are instances where, when districts are very close to 50 percent, practically every instance of that is necessary in order to reach the threshold. So these are some techniques that I outlined in my report and I am applying them to specific districts and to the plan as a whole.

I looked at all of those factors. I looked at compactness, specifically and generally. And I looked at these techniques.

So I'm offering the techniques as one way to evaluate specific districts and the plan as a whole. So I can identify those techniques as we go and be as specific as needed, Your Honor.

THE COURT: Thank you.

MR. TYSON: Thank you, Your Honor.

At this point we'll conclude the portion for the

Alpha Phi Alpha plan.

THE COURT: All right.

MR. TYSON: And move next to tab 3, which is Mr. Morgan's report in the Grant case.

THE COURT: Got it.

BY MR. TYSON:

Q. Mr. Morgan, for the Grant case, did you evaluate plans drawn by Mr. Esselstyn for the State House and the State Senate?

A. Yes.

Q. And did you compare those plans to the adopted plans for State House and State Senate?

A. Yes.

Q. And so you were present for Mr. Esselstyn's testimony about his plans; is that correct?

A. Yes, I was.

Q. As in your report in Alpha Phi Alpha, you included a number of exhibits. And I know we'll be asking the same question again, but for this record, can you explain what exhibits you included in your Grant report?

A. So in the Grant report I have a series of reports that were run from Maptitude, as well as a series of maps that I produced for use in my report in my analysis.

Q. And the maps had a racial theme; is that right?

A. Yes. So in this case, it's a hot-to-cold theme. So the

maps that have a theme based on the Black population, the highest instances are 65 percent and up and they're indicated in red. The yellow is 50 to 65 percent. The green are 35 to 50. And then the light blue is 30 -- is -- sorry, 20 to 35. And the dark blue is under 20 percent voting age Black population.

Q. And did you create maps with a racial theme as you've discussed for all the new majority Black districts proposed by the Grant plaintiffs?

A. Yes.

Q. And are the exhibits and the maps included with your report all part of what you used to form your opinions?

A. Yes.

Q. So let's move to your discussion of the Senate plans. And you start first with similar charts as you did in Alpha Phi Alpha, page 5 of your Grant report looks at the number of majority Black districts. What does this show?

A. That's right. On page 5, chart 1 shows that the adopted plan has 14 majority Black Senate districts. And the Esselstyn plan has 17. And the Esselstyn plan from the preliminary injunction has 17.

Q. And what does chart 3 on page 8 show on the top line statistics for the two plans?

A. It shows that the Esselstyn plan has more county splits, more voting precinct splits and is less compact on the mean

compactness scores for Reock and Polsby-Popper. And it pairs more incumbents and has a higher deviation range.

Q. And, again, just so the record is clear, you included incumbents, but what method are you using to talk about paired incumbents on this chart?

A. So whereas in the preliminary injunction phase I made a point of pointing out that there were incumbents that were identified as not running for reelection. In this case, I'm showing just the paired incumbents. So it shows the incumbents' information that was available in the incumbent file that I understand was available to the legislature at the time of redistricting. And I'm comparing those incumbent pairings.

Q. You're not saying this shows current pairings of incumbents as of today, are you?

A. No. If you were to look at the current pairings of incumbents on the current enacted plan, it would be zero because the current incumbents, there's one for every district.

Q. And so is this -- is chart 3 just a comparison of various metrics from Maptitude?

A. Yes. These are all summary -- these are reports that are generated in Maptitude and summary information from those reports.

Q. So in your Grant report the first district you evaluate

is not one of the new majority Black districts, it's instead illustrative District 10 and enacted District 10. What is shown by the comparison of District 10 on the enacted and illustrative plans?

A. In this case, by showing these two districts, they're taking the same Black population roughly in the DeKalb area and the districts are elongated. The enacted plan elongates District 10 following the Henry County line and the Esselstyn plan elongates the district even further, all the way to Butts County.

So in this case I'm illustrating the technique of elongating districts. And I also point out that in my report I point out that the District 10 portion splits a portion of Rockdale County and avoids the balance of the population in Henry County and goes to much more distant white population in Butts County, which is 43 miles away from the section of DeKalb County that's in this district; whereas the enacted plan the distance is less.

Q. And you note that this district strategically avoids much of the Black population in Henry County. Why did you include that detail?

A. Because it would be -- it would be possible to have some of the Henry County portion here, but instead this district elongates all the way to Butts County, including Jackson, which is the county seat.

Q. Now, Mr. Morgan, you were here for Mr. Esselstyn's testimony about each of his new proposed districts; is that correct?

A. Yes, I was.

Q. And do you recall Mr. Esselstyn being -- testifying about whether he was aware of the racial makeup of Clayton and Henry included in Senate District 25?

A. Yes, I believe I recall him talking about that.

Q. And do you know what the racial makeup of Clayton and Henry portions in Senate District 25 is based on information in exhibits to your report?

A. Yes.

Q. And looking at the screen, we've collected information from Exhibit 21. What is the racial makeup of the Henry and Clayton portions that you've -- that Mr. Esselstyn included in Senate District 25?

A. So in Senate District 25 --

MS. KHANNA: Objection, Your Honor.

THE COURT: Hold on, hold on.

MS. KHANNA: I'm going to lodge the same objection for the record that Mr. Savitzky lodged, which is Mr. Morgan includes zero references to Senate District 25 in his written report. So to the extent he is now choosing to offer opinions about a district he chose not to opine on when given the opportunity to provide his complete opinions in response to

Mr. Esselstyn's map, we'd object that it is beyond the scope of his report as an expert.

I understand the Court's already ruled on a similar objection.

MR. TYSON: And, Your Honor, I referenced page 543 of the transcript. Mr. Esselstyn in his testimony wasn't sure of the racial makeup of these areas. Mr. Morgan's report includes exhibits that provide that information. And my only question was, what is that information. This is not a new opinion. This is responding to Mr. Esselstyn's testimony on Senate District 25.

THE COURT: That's not quite the same objection as Mr. Savitzky since it's a different matter, but I note your objection, but I'm going to overrule your objection.

MS. KHANNA: Thank you, Your Honor.

BY MR. TYSON:

Q. Mr. Morgan, what is the racial makeup of the Clayton and Henry portions of District 25?

A. So the portion of Clayton County that's in Senate District 25 is the panhandle portion of Clayton County. And that portion is 77 percent voting age Black population. The Henry portion, all of the precincts in the district are 54 percent Black population voting age.

Q. Mr. Morgan, in Mr. Esselstyn's testimony do you recall him stating that he wasn't sure if he made changes to enacted

District 34 in order to create District 28 as a majority Black district?

A. Yes, I recall that. And I remember not believing that that was the case.

Q. Have you provided information in the exhibits to your report that can answer that question?

A. Yes.

MR. TYSON: And, Your Honor, looking at Exhibits 6 and 23 of Mr. Morgan's report.

BY MR. TYSON:

Q. Mr. Morgan, were changes made to enacted District 34 on Mr. Esselstyn's illustrative plan?

A. Sorry, I'm looking at my report. Just a moment.

Q. Could you tell us what exhibit you're looking at when you locate what you're looking for?

A. So one of the exhibits I'm looking at is Exhibit 23. And then I'm also looking for the enacted district, if I have the exhibit for that.

Q. Mr. Morgan, I would believe that's Exhibit 32.

A. Okay. I see.

So this is showing Mr. Esselstyn's plan in District 34 as portions of Clayton County and part of Peachtree City and Fayette County, and connects that area. Whereas, the enacted plan has a larger component of Clayton County and only the northern portion of Fayette County up to the Fayetteville

area. It does not go further south into Fayette County.

And, again, that's -- I'm looking at the enacted Exhibit 32 in my report and the Esselstyn Senate District 34, Exhibit 23 in my report.

Q. And regarding District 28, do you recall Mr. Esselstyn's testimony that he could not recall specifically the populations of each of the counties he included in District 28 on the illustrative plan?

A. Yes.

Q. And do the exhibits in your report provide that information?

A. Yes. It shows the county components and the information about those components.

Q. And looking at Exhibit 6 and Exhibit 22, what is the makeup of the county components of Senate District 28?

A. District 28 has portions of three counties -- sorry -- four counties. It has Clayton, Fayette, Fulton and Coweta. And the -- it shows that the voting age Black population in Clayton, that small portion is 83 percent Black. And that the Fulton County portion is 82 percent Black. The Fayette portion in the north is 54 percent Black, in the top area of Fayette County. And in Coweta County it's much lower, the Black percent of that group is 25 percent.

Q. Mr. Morgan, let's move next to East Georgia. In your report at page 15 you discuss enacted District 22. And I know

you've already testified about this in the Alpha case, but for purposes of this record could you explain what is notable about enacted District 22? And, again, we're on page 15 of your report.

A. Okay. So the enacted District 22, Senate District 22, is entirely within Richmond County. And it contains the Black community in Augusta. And, again, it does not cross the county boundary. The balance of Richmond County is in one Senate district and that's 23.

Q. And looking at the illustrative District 22, what changes did Mr. Esselstyn make to illustrative District 22 from the enacted plan?

A. So in my report, and here I would point out using this racial themed map, that Mr. Esselstyn pushes District 22 outside of the boundary of Richmond County. And the area that is taken in, you'll see on the theme those are precincts that are green in the theme, so that shows that they're over 35 percent Black in that small area of Columbia County and not precincts further north that are in the 20 percent category.

So of all the potential population that could have been taken in that area, the area that is selected in the Esselstyn District 22 are the precincts on the border that are proximate to Richmond County that have higher Black concentration relative to the surrounding precincts.

Q. Then in your report what does moving Senate District 22

into Columbia County enable on Senate District 23 of the illustrative plan?

A. It allows the construction of a majority Black district using the Richmond population as necessary in order to create a district that is over 50 percent Black voting age population.

Q. If you can look in your report, you also discuss county splits in Senate District 23. What does your analysis of the county splits in illustrative District 23 show?

A. The illustrative District 23 in Mr. Esselstyn's report splits Wilkes County, Greene County. It splits Baldwin County, McDuffie County. And it also splits Richmond County, which we've discussed.

Q. And then what is notable about the county splits of District 23 on illustrative District 23?

A. In each case of these county splits, the areas with higher concentrations of Black population are put into District 23. And the areas of the county that have lower Black concentrations are excluded from District 23.

Q. And that is -- is that true of every county split in illustrative District 23?

A. I believe so.

Q. You also reference in paragraph 34 on page 17 the population deviation. What is your reference to the population deviation in District 23 on the illustrative plan?

A. I point out that the illustrative Senate District 24 has the lowest population deviation in the plan at negative 1.67 percent. And that I believe that this lower deviation has an impact on the racial makeup of the district.

Q. You also reference this Senate District 23 connecting separate enclaves of Black population. Is that one of the techniques you were just discussing with Judge Jones?

A. Yes, that is definitely one of the techniques. So in this case, I see a technique of racially separating the population and connecting separate enclaves. And I also see that there are additional splits in this area.

Q. So, Mr. Morgan, moving to page 19, in paragraph 37 of your report, what is your conclusion about the illustrative plan that has been submitted by Mr. Esselstyn in the Grant case?

A. In paragraph 36?

Q. Paragraph 37.

A. Oh, sorry. In 37.

That the Esselstyn Senate plan is focused on race, prioritizing race to the detriment of traditional redistricting factors.

Q. After hearing Mr. Esselstyn's testimony about his illustrative Senate plan, has your conclusion changed?

A. No. It strengthened my conclusion.

Q. And what's strengthened about your conclusion?

A. Mr. Esselstyn in his testimony talked about the Black -- the compact Black populations within his district. And as he defined it, he seemed to define the compact Black populations of a community as being contained within a district, and only that, as definition of what a compact minority population is.

Q. Mr. Morgan, next you move to discuss the House plan. So let's begin with chart 6 and chart 8.

What does your chart of the overall majority Black House districts in the illustrative plan and other plans show?

A. The Esselstyn plan and the Esselstyn plan from the preliminary injunction phase have 54 Black majority seats, which is five more than the 49 in the enacted plan.

Q. And chart 8, does that report the top line numbers we've referenced for the other plans?

A. Yes.

Q. And does the Esselstyn -- the Grant illustrative House plan split more counties than the enacted plan?

A. Yes. One more county split, one more precinct split.

Q. And is the deviation higher than -- on the illustrative plan than the enacted House plan?

A. Yes. The illustrative plan is considerably higher deviation range than enacted House plan.

Q. And, again, you included incumbents, but did you use the same method of the 2021 incumbents for this line of your summary chart?

A. So I indicated the paired incumbents here. And this is indicating incumbents that were paired from the database that I understand the legislature had available at the time of redistricting. And I don't indicate which incumbents would be not running for reelection. And that information I did point out in the preliminary injunction phase.

Q. And so you're not saying the paired incumbents on your chart is current incumbent pairings, are you?

A. No. These are incumbent pairings; however, some of the incumbents are still there. So if their addresses are the same, then clearly they would be still paired.

Q. In chart 9 of your report, you evaluate the compactness scores for new majority Black State House districts created by Mr. Esselstyn. What does that chart show?

A. It shows that four of the five districts identified as new districts in Mr. Esselstyn's report are less compact on the Reock metric and one is more compact on the Reock metric. On the Polsby-Popper metric, two are less compact and three are more compact.

Q. So, Mr. Morgan, let's go back starting in South Metro again. You include on pages 26 and 27 a collection of four State House districts in South Metro Atlanta. What is notable that you describe in your report about the creation of new majority Black District 74?

A. So District 74 -- sorry. District 74 has a portion of

Clayton County and connects down into Fayette County. So there's -- I think they were described as wings by one of the witnesses, but there's a handful of precincts in Clayton County that are -- on the map, they show as being 65 percent Black population and then the rest of Fayette County to the south is considerably less Black.

Q. Is this an example of elongating a district that you discuss in your report?

A. Yes, this is the technique of elongating a district.

Q. You also reference the interaction between District 74 and District 69 on page 27 of your report. What are you referring to there?

A. That in order to accomplish this, there are changes made to the enacted District 69 that allows the transit from these higher concentrations of Black population in Clayton County to the more rural part of Southern Fayette County.

Q. You then evaluated the compactness scores of these four districts. What did you discover about the impact on compactness among these four districts in South Metro Atlanta?

A. The -- looking at those four districts, the mean compactness of just those four districts in the enacted House is more compact on the Reock score and is more compact on the Polsby-Popper score, the mean in that -- among those four districts.

Q. And let's move next, Mr. Morgan -- you were here for

Mr. Esselstyn's testimony about the Henry County District 117; is that right?

A. Yes.

Q. And Mr. Esselstyn indicated that he wasn't sure -- or do you recall, I'm sorry, if Mr. Esselstyn indicated that there were more heavily Black areas in the north and more heavily white areas in the south of the borders of 117?

A. I believe so.

Q. And did you include information in the exhibits in your report that would answer that question?

A. Yes.

Q. So looking at Exhibits 13 and 42, are there more heavily Black areas in the north part of District 117 on the illustrative plan and more heavily white areas in the south part of that district?

A. Yes. Looking at the theme map, that's apparent there. McDonough is a more heavily concentrated Black population and the precincts to the south are less concentrated.

Q. And before we leave Metro Atlanta, do you recall Mr. Esselstyn's testimony about the configuration of District 64?

A. Yes.

Q. And Mr. Esselstyn, do you recall that he was unable to identify specifically the racial makeup of the portions of the counties he included in that district?

A. Yes.
Q. And did you include information with that in your report?
A. Yes.
Q. And looking at District 64, what is the racial makeup of the counties in illustrative District 64?
A. The Fulton portion is 96 percent Black. The Douglas portion is 53 percent Black. And the Paulding portion is only 32 percent Black. And the district as a whole is 50.2 percent Black.
Q. And do you recall Mr. Esselstyn discussing the impact of the configuration of District 61 with the creation of his District 64 as part of the creation of his plan?
A. Yes.
Q. And looking at Exhibits 39 and 44, can you explain to the Court your view of what Mr. Esselstyn was talking about in the configuration of 61 and 64?

MS. KHANNA: Objection, Your Honor. He's now being asked to respond to Mr. Esselstyn's testimony without any indication that Mr. Esselstyn's testimony was different than what's provided in his report. There are no opinions to this matter in his report. Right now this is all an effort to funnel in opinions that Mr. Morgan never, never offered in a report.

MR. TYSON: And, Your Honor, we would just point to page 561 of Mr. Esselstyn's testimony where he's referring to

the interaction between District 61 and 64 and was relying on attachments to his report, not the text of his report. And I've simply asked Mr. Morgan to respond to Mr. Esselstyn's claims that 61 and 64 had to be reconfigured.

MS. KHANNA: I don't recall an objection from Mr. Tyson to anything about Mr. Esselstyn's testimony. So I can't speak to that. But I -- there's nothing I'm aware of that he's responding to that he could not have responded to in his report, which was our opportunity to see all of his opinions.

THE COURT: I think he's talking about the testimony that Mr. Esselstyn gave in court last week. He has a transcript here he's referring to.

MR. TYSON: I'm happy to read it, Your Honor, if that would be helpful.

MS. KHANNA: I guess I'm -- my objection stands, Your Honor, because I believe right now, by having Mr. Morgan in the courtroom, it's -- it's providing a window for him to provide opinions he never offered in his reports.

THE COURT: Well, you didn't object to him being in the courtroom.

MS. KHANNA: No. And I don't object to him being in the courtroom, but I do object to him offering opinions that are not under his report under Rule 26.

THE COURT: I'll tell you same thing I told

Mr. Savitzky. I recognize the fact that he's responding to some testimony given while sitting in the courtroom, and I look at that through different eyes than the original report that comes out. But I think he can -- that's why I let experts sit in here, because they can sit in and respond. So I'll allow it in over objection.

MS. KHANNA: Thank you, Your Honor.

THE COURT: As long as it's pertaining to what Esselstyn talked about.

BY MR. TYSON:

Q. And so, Mr. Morgan, I'm specifically asking you about the interaction between District 61 that Mr. Esselstyn talked about reaches into part of Fulton County and District 64 that he refigured as part of the creation -- I'm sorry -- refiguring of District 61 as part of the creation of District 64.

A. If you look at the enacted plan, the enacted District 61 is -- has much of the same territory of the proposed new District 64. The precincts in Fulton and the precincts in Douglas are the same, but not all the precincts in Fulton, the two precincts are the same. And then there's a new portion of Douglas County which was from -- which was -- sorry -- Paulding County which was in enacted District 64. So it stretches on the northern side of this cluster of districts. And that require the change of moving population from the

enacted District 61 into other districts.

Q. Mr. Morgan, let's move to Macon for the next part of your report, page 30. You cover the configuration of the House districts in the Macon area. And I'll begin with a view of the enacted plan. What is notable that you refer to in your report regarding enacted districts 142 and 143?

A. Sorry, I'm looking for the State House section of the report.

Q. I apologize. Page 30 is what we're referring to.

A. So in the Macon area in this case, the Bibb County population in the enacted districts, the African-American population is in two districts, two majority districts, wholly contained within Bibb County.

Q. And then looking at Mr. Esselstyn's configuration of this area, what does the illustrative plan do in this region?

A. The illustrative plan divides the Black community in Bibb County and Macon into four different districts. Two districts remain in Bibb County, but two go outside Bibb County, one all the way to Milledgeville, District 49 -- 149.

Q. And you reference in your report that the plan strategically utilizes the remaining Black population in Macon. What were you referring to there?

A. So let me see if I can explain this here. I point out in my report that all four districts are pretty low in the Black population, in particular some of the districts are barely

50 percent. So the population is strategically used to spread around into these districts. Again, one district goes all the way to Milledgeville, and this is an instance where you're connecting two separate Black communities into one district.

But, more importantly, the strategic population use is, again, it's to spread it around just so, so that each district is, in some cases, barely 50 percent.

Q. And you reference in your report, and Mr. Esselstyn references in his report, all of these districts in Macon are very close to 50 percent, aren't they?

A. That's right. Three of the four are very close, one is 50.14.

Q. And what does having a collection of districts this close to 50 percent, this barely 50 percent reference you have, tell you about the sensitivity of this area of -- in Mr. Esselstyn's plan?

A. Well, what it shows me is that there is such a sensitivity to race in this area that every move is significant. And by that I mean there's a -- there's a process maybe of trial and error, which I heard discussed, but more to the point that every district, because it's so close to 50 percent, it reminds me of an analogy I would use, would be to the movie Apollo 13, where, when the astronauts were stuck up in space and they have to rescue them and bring them back, there's a problem. They have to restart the power

systems on the capsule, the Discovery, which is going to bring them back to earth.

So what they do is they send another astronaut, this is the Gary Sinise character, Ken Mattingly. They send him to the simulator to test different possibilities. They can only go up to 20 amps. So they test. This doesn't work and the alarm bells go off. Beep, beep, beep. That doesn't work. The alarm bells go off.

In this case, when the districts are so close to 50 percent, every move you make will set off alarm bells that there's too much white population. It's not 50 percent. So when I stated the population is strategically used, when I say it's sensitive to race, this is kind of an analogy that helps me explain this, is that every move that is made is significant.

Q. Mr. Morgan, going to page 34 in paragraph 61 of your report, what is your conclusion about the illustrative State House plan in the Grant case?

A. That the Esselstyn House plan is focused on race, prioritizing it to the detriment of traditional redistricting factors.

Q. And after hearing Mr. Esselstyn's testimony about the illustrative House plan in Grant, has your conclusion changed?

A. No.

MR. TYSON: So, Your Honor, at this point we will

move from Grant to Pendergrass, tab 4 of Mr. Morgan's report.

Probably much to everyone's relief, I expect this will be a much shorter portion of the testimony.

BY MR. TYSON:

Q. So, Mr. Morgan, did you evaluate the plans that were drawn by Mr. Cooper for Congress as part of your Pendergrass report?

A. Yes.

Q. And you ran, as with your other reports, a series -- or, I'm sorry.

Did you run, as with your other reports, a series of Maptitude reports about the various districts?

A. Yes.

Q. And you included those as exhibits to your report; is that correct?

A. Yes.

Q. So turning to page 6 of your report, the core constituency report, what does this particular report show?

A. So this shows the core constituency as compared to the benchmark plan; that is the plan that was in effect before the redistricting. So this shows the continuity of districts in the enacted plan and the continuity of districts from the previous decade's congressional in the proposed illustrative plan.

Q. And what do you conclude about the core retention of

these respective districts?

A. That the enacted plan retains more of the cores of districts compared to the Cooper illustrative plan.

Q. You next discuss the differences in the illustrative -- I'm sorry -- in the preliminary injunction District 6 offered by Mr. Cooper and the one offered by his report at this point.

Can you briefly explain to the Court what those differences are?

A. Yes. These differences are primarily centered on Douglas and Cobb Counties. My understanding is that in order to make these changes, looking at the plan on the left, which was the preliminary injunction plan, that District 6 retreats from going quite as far north. There's a small area of East Cobb that is not included in there. And so -- I'm sorry, yeah. So it retreats slightly in that sense.

And then what it does is it picks up the population in Douglas County to make up for that change. So it makes Douglas County whole, but in doing so, making Douglas County whole introduces a new split of Cobb County. So there's a small portion of West Cobb that's placed in Congressional District 3.

Q. Were you present for Mr. Cooper's testimony when I asked him about adding Douglas County without affecting the overall racial nature of the district?

A. Yes.

Q. Do you know whether Mr. Cooper would have been able to add Douglas County without affecting the overall racial nature of the district?

A. I think I said in my report that care must be taken to maintain that racial number.

Q. And when you say "care must be taken," what do you mean by that?

A. I mean that in order to absorb the Douglas County population, care must be taken so that it's not too much absorption of white population to drop it down below 50 percent. Because this district is so close to 50 percent, it -- it is necessary to take care. For example, if you had taken -- if Mr. Cooper had taken the area around Powder Springs, which is a higher concentration of the Black population --

MS. KHANNA: Objection, Your Honor. I'm going to move to strike all of this.

Mr. Tyson has asked about a statement in paragraph 17 that is a bare statement and has basically asked Mr. Morgan to elaborate on it. There is no such opinion about the meaning of care must be taken in his report.

MR. TYSON: And, Your Honor, Mr. Cooper -- I'm sorry -- Mr. Morgan is allowed to elaborate on what's in his report. He's explaining the terminology. Immediately above that in paragraph 16 he talks about the nature of these

various splits.

So, from our perspective, his ability to explain his conclusion in paragraph 17 about care must be taken is helping flesh out this issue of what is the impact of the changes made between the preliminary injunction plan and the current plan.

THE COURT: What pages, Mr. Tyson, are you on?

MR. TYSON: Page 7 of tab 4. Paragraph 16 notes the portion of Douglas and its Black voting age population percentage that's traded with a portion of Cobb. And then -- in paragraph 17 Mr. Morgan addresses that care must be taken regarding the switch there between Douglas and Cobb.

THE COURT: And you want to ask him what?

MR. TYSON: I want to ask him what he means by "care must be taken to ensure that the portion removed and added doesn't alter the overall Black voting age population."

THE COURT: Why can't he explain that?

MS. KHANNA: Your Honor, the very bare assertion that care must be taken, I agree it's not elaborated on or provided any explanation or opinion in his report. So to the extent that Mr. Morgan is now offering an opinion he was unable to offer at the report (sic), specifically I heard him talk about Powder Springs, things that are not in his report, the purpose of Rule 26 is for us to get a complete review of his opinions, and it sounds like he's filling in a lot of the gaps.

THE COURT: Mr. Tyson, why didn't he explain that?

In other words, he puts the statement, care must be taken to ensure the portion removed and added to that district does not alter it overall, 18 plus, AP-Black. When he was writing this, why didn't he explain that?

MR. TYSON: And, Your Honor, I'm not sure I can answer that.

THE COURT: I know.

MR. TYSON: That's a question for Mr. Morgan.

I do think if you look at the next sentence, he is talking about the racial concentrations of what was included and excluded and refers to one of his exhibits. So I believe that he can at least flesh out that piece.

It does say what he's talking about. I don't think Ms. Khanna is saying she's not on notice that he had this belief about what would be included and excluded in terms of a Rule 26 notice requirement.

THE COURT: Ms. Khanna?

MS. KHANNA: I see the paragraph. I see the exhibit and the data and information. What I don't see is the opinion that explains what it means that care must be taken.

THE COURT: Well, they're not moving away from that. They look at the next sentence. "The racial concentration of the portions included and excluded on the Cooper 1205 Congressional Plan District 6 shows that care was taken to avoid changing the racial makeup of that district."

Does that not give the answer, Mr. Tyson?

MR. TYSON: I believe it does, Your Honor. And it refers to the exhibit that includes the data about that.

THE COURT: I'm going to sustain the objection on this one.

MS. KHANNA: Thank you, Your Honor.

MR. TYSON: Thank you, Your Honor.

BY MR. TYSON:

Q. Mr. Morgan, in paragraph 18 of your report, you compare the 1205 plan to the 2021 plan. What did you discover about the population connections between those two plans?

A. That three of the districts in the Cooper 1205 plan have less than 55 percent of the population from their corresponding district numbers. In the adopted Congressional plan these are Districts 9, 11 and 13.

Q. And what did you discover about District 6 on the enacted plan versus the illustrative plan? And that's in the middle of that --

A. District 6, yeah, the core constituency report in my Exhibit 7 shows that only 2 percent of the population from enacted District 6 overlaps with the Cooper 1205 Congressional plan.

Q. And, Mr. Morgan, you also ran some compactness score summaries on chart 2 of your report. What do those compactness scores show?

A. The individual district scores, the chart shows the list of the individual district scores.

Q. And how many districts on the enacted plan score higher that's more compact on the enacted plan versus Mr. Cooper's illustrative plan?

A. Four districts are less compact on the Reock measurement and five districts are less compact on the Polsby-Popper measurement.

Q. And when you say "less compact," you're referring to less compact on the illustrative plan?

A. Yes.

Q. Mr. Morgan, going back to paragraph 17 just briefly, you described a process of racial sensitivity where districts are very close to 50 percent.

Do you recall that testimony?

A. Yes.

Q. And are you referring to that technique of addressing racial sensitivity in paragraph 17?

A. Yes, I'm referring to that technique.

Q. Mr. Morgan, turning to paragraph 23, page 10, what is your overall conclusion about the illustrative Congressional plan in the Pendergrass case?

A. That six districts were identical and matched the enacted plan. And that there were changes in eight districts in order to create one new majority Black congressional district.

Q. Did you also conclude there were significant changes from the illustrative plan -- I'm sorry -- in the illustrative plan from the boundaries of the districts in the 2021 plan?

A. That's correct, that there were significant changes to the boundaries of the districts from the '21 enacted plan to the illustrative plan.

MR. TYSON: Your Honor, Mr. Morgan, we thank you for your endurance, and everyone for their endurance during a long afternoon. That's all the questions I have on direct, Your Honor.

THE COURT: Let me ask, I'm assuming, and I hate to assume, but I'm going to assume your cross-examination is not going to be short?

MS. KHANNA: It depends on the answers, Your Honor.

But I will say my cross-examination can roughly be divided in thirds, that's Grant State Senate, Grant House, and Pendergrass.

THE COURT: All right. If you do it that way, I'll probably stop today at 5:00, because I kept you all here until 10 after 6:00 yesterday. So we'll go ahead -- let's just start your cross-examination and we'll stop at 5:00.

MS. KHANNA: Yes, Your Honor.

THE COURT: Does anybody need a break? Is everybody okay?

MS. KHANNA: And, Your Honor, we're just passing up

the PowerPoint presentations. Thank you.

THE COURT: Okay.

MS. KHANNA: It's just occurring to me, to the extent that my PowerPoint covers my entire cross and I don't get to it today --

THE COURT: Do as much as you can.

MR. TYSON: I'll be happy to hand back the slides.

MS. KHANNA: Yeah. Don't peek.

THE COURT: I, on the other hand...

MS. KHANNA: Your Honor can take a look at anything he wants.

THE COURT: I'm not handing it back to you.

Let's give it back to her.

MR. TYSON: I'm fine with that, Your Honor.

I will confess to have looked at the first two slides, but I got no farther than that. So I think we'll be okay.

MS. KHANNA: I'll keep you in suspense.

Thank you, Your Honor.

THE COURT: No problem.

CROSS-EXAMINATION

BY MS. KHANNA:

Q. Good afternoon, Mr. Morgan.

A. Hello.

Q. My name is Abha Khanna and I'm here today representing

both the Grant and the Pendergrass plaintiffs.

A. How do you spell the last name?

Q. K-H-A-N-N-A. We've met before; correct?

A. Yes. I just didn't have the H in there.

Q. That's fine.

I'm going to begin with discussing the -- your Senate analysis in the Grant case. So I'm looking primarily at Defendants' Exhibit 3, which is your Grant trial report.

So looking in chart 1 of your Grant report, Defendants' Exhibit 3, you note that Mr. Esselstyn's illustrative plan draws three more majority Black Senate districts than the enacted Senate plan; is that correct?

A. I believe that's so, yes.

Q. And so you would agree that the Black population in Georgia is large enough to create -- oh, I'm sorry -- to create three additional majority Black Senate districts?

A. Well, he drew those districts in his plan. So if that's the test, then yes.

Q. Then in paragraph 8 of your Grant report you state that you were given incumbent databases used by the Georgia General Assembly during the redistricting process; is that correct?

A. That's my understanding. That's how it was represented to me.

Q. And you were also given information about those incumbents who were not intending to run for reelection in

2022?

A. My understanding, yes.

Q. And you used that information in your preliminary injunction report; is that correct?

A. Yes.

Q. But you never examined for this report any incumbent information from -- as of the 2022 election?

A. No.

Q. So when you analyze the enacted and illustrative plans on incumbent pairing, you didn't know who, if any, of the incumbents you noted are actually still in office as of the 2022 election; correct?

A. Well, as I testified earlier in my direct testimony, if we were to look at that metric on the enacted plan, it would show zero, because there are zero paired incumbents in the enacted plan.

Q. I'm going to pull up chart 3 in your Grant report. You note here that -- the number of paired incumbents in each Senate plan, the enacted and Mr. Esselstyn's Senate plan; correct?

A. Yes.

Q. You state that the enacted plan pairs four incumbents; is that correct?

A. Yes. I identified those in the reports that are -- I'm sorry -- the exhibits that are in my report show the specific

incumbents that were paired.

Q. And in your preliminary injunction report you stated that the enacted plan paired zero incumbents; is that correct?

A. Yes. And I was clear to state that there were zero incumbents that were running for reelection at the time. I was very clear to identify that point in my preliminary injunction report.

Q. But you did not include that information in your trial report.

A. No. It's still available in the preliminary injunction if it's necessary to look at that.

Q. In your preliminary injunction report you stated that Mr. Esselstyn's preliminary injunction Senate plan paired two incumbents; is that correct?

A. I believe that's correct, yes.

Q. And those were incumbents as of 2021; correct?

A. That's the database that I was using, yes.

Q. And are you aware that Mr. Esselstyn, in preparing his most recent trial report, analyzed incumbent addresses as of the 2022 election?

A. I don't believe that data was provided to me.

Q. My question was, are you aware that Mr. Esselstyn analyzed incumbent addresses as of the 2022 election?

A. I believe he said that in his report, yes.

Q. Are you aware that those 2022 incumbent addresses were

provided by defendants' counsel?
A. No.
Q. But defendants' counsel did not provide you with those same 2022 incumbent addresses?
A. I don't believe so.
Q. Are you aware that Mr. Esselstyn's analysis of incumbents as of 2022 states that his illustrative Senate plan pairs zero incumbents?
A. Okay.
Q. You are aware of that?
A. I believe that was in his report.
Q. And do you have any reason to dispute that?
A. I don't have the data. I didn't look at that.
Q. And you would agree that the value of avoiding incumbent pairings as a redistricting principle is that it allows for continuity of representation; is that correct?
A. Generally that's correct, yes.
Q. And you would agree that the pairing or unpairing of incumbents who are no longer in office has no bearing on the continuity of representation?
A. I don't know, because you're talking about individual people. In some cases, I talk about the continuity of the district. But as it relates to the incumbents, that's correct.
Q. Going back to chart 3 on page 8 of your Grant report.

You note here that the enacted plan and the Senate plan -- sorry -- the enacted Senate plan and Mr. Esselstyn's illustrative Senate plan are similar when it comes to the mean compactness scores; is that correct?

A. That's in my report in which paragraph?

Q. I believe it's in the following paragraph. I don't have the paragraph number in front of me. As you look at them today, do they seem similar?

A. I'm sorry, you reference my report. Let me see what I said in my report, if I may.

Q. If you look at paragraph 50 of your Grant report.

A. 50? 15? 50?

Q. 50, five-zero.

A. I'm sorry, you're talking --

Q. Oh, I'm sorry, that was the wrong -- that's for the House map.

A. I'm confused. Could you ask the question again, please? I don't understand.

Q. If you look at chart 3, you would agree that the mean compactness scores of Mr. Esselstyn's plan and the enacted plan are similar?

A. Yes. One is -- the Esselstyn plan is .41 and the enacted plan is .42 on the Senate plan. And you're referring to the Senate plan, right?

Q. Yes. Yes.

A. And then the Esselstyn plan is .28 and the enacted plan is .29 on the Polsby-Popper. Those are very close, yes.

Q. Now, on pages 8 to 12 of your report, you compare enacted Senate District 10 to Mr. Esselstyn's Senate District 10; is that correct?

A. Yes.

Q. Senate District 10 is not one of Mr. Esselstyn's new majority Black districts; is that correct?

A. He did not identify it as a new district.

Q. And it was majority Black in the enacted map; correct?

A. Senate District 10 in the enacted map is majority Black, yes.

Q. And it remains a majority Black district in the illustrative map; correct?

A. Yes. It is a different configuration, but it is majority Black, yes.

Q. I'm pulling up Mr. Esselstyn's table 3, which is Grant Exhibit 1, page 17. I believe you have a binder of the exhibits in front of you. You're welcome to look at that yourself or you can just look at the screen.

A. Okay. Where is it in this binder?

Q. It's going to be at the very beginning, Grant Exhibit 1, page 17.

A. So this is table 3 on page 17.

Q. That's correct.

A. And that's what you have on the screen?
Q. It is.
A. Okay.
Q. And you would agree that illustrative Senate District 10's Reock score is higher than the least compact district in the enacted map; is that correct?
A. Okay. I don't -- okay. So the least -- the Esselstyn District 10 is greater than the least -- I don't understand the question.
Q. In paragraph 27 of your report, you report Senate District 10's -- illustrative Senate District 10's Reock score as .25; correct?
A. Yes, I guess. Yeah.
Q. You would agree that the .25 is higher than the least compact district in the enacted map on the Reock score?
A. Where is the least compact district?
Q. It's that first row on table 3, enacted plan, least compact score.
A. So this is the illustrative -- the Esselstyn Senate District 25 compact -- sorry -- Senate District 10 compactness score of .25 on Reock, compared to .17, yes, it's greater than that.
Q. And you would agree that illustrative Senate District 10's Polsby-Popper score of .19 is higher than the least compact district in the enacted map on that metric?

A. Sure.
Q. Looking at Mr. Esselstyn's illustrative Senate map. Illustrative Senate District 10 is adjacent to illustrative Senate District 25; is that correct?
A. Yes, it's adjacent in most parts.
Q. And illustrative Senate District 25 is actually one of the new majority Black districts in Mr. Esselstyn's illustrative plan?
A. Yes, he describes it as a new district.
Q. And you don't even mention Senate District 25 in the text of your report; is that correct?
A. No, I don't believe I mention the Senate District 25 in the text of the report.
Q. You provide no opinions or analysis of Senate District 25 in your report; correct?
A. I have information about the Senate District in my report.
Q. You provide no opinion or analysis of illustrative Senate District 25 in your report; is that correct?
A. I don't have a specific opinion in the text of my report, but, as I mentioned, I did consider all the districts in the plan and I looked at a lot of data in making my opinions and my conclusions.
Q. You provide no specific opinions about the shape or configuration or communities in Senate District 25 in the

illustrative plan; correct?

A. I have provided opinions here.

Q. But you provide no such opinions in the actual text of your report; is that correct?

A. Right. That wasn't what you asked, but now that you phrase it that way, that's correct.

Q. Thank you for clarifying.

Now, illustrative Senate District 5 is located in just two counties. That's Henry and Clayton; correct?

A. Yes.

Q. So I want to compare enacted plan compactness score to the illustrative plan's compactness score. There are a lot of different tables that this came from for your reference. On the left I have the enacted scores from Attachment H starting on page 79 of Grant Exhibit 1.

A. Is this -- I'm sorry, is this in the text of Mr. Esselstyn's report?

Q. It is in the report, the exhibits attached to Mr. Esselstyn's reports.

A. But it's not in the text of the report? So I can look in the exhibits to find this information?

Q. You're welcome to look -- you can test me here. I will assert to you that the figures I'm putting on the screen right now I pulled for the enacted map, the compactness scores I pulled from Attachment H from Mr. Esselstyn's report. And the

illustrative Senate plan compactness scores I pulled from your Exhibit 2 to your report.

A. And you don't identify that here, that you're pulling from my report and his report?

Q. I'm identifying it to you right now. You can take a look yourself.

A. Okay. So I'm going to look at Exhibit H in his report?

Q. Yes. Starting on page 79.

A. For one of these values.

Q. And you can see I'm specifically referencing Senate District 25.

A. Do you have a page number you said for that --

Q. Starting on page 79 are the compactness scores. Grant Exhibit 1, page 79. They're numbered at the bottom.

A. Okay. Starting on page 79, I see the compactness report, and that shows all of the districts.

Q. And I think you can turn to Senate District 25.

A. Okay. And that's on the bottom of page 80.

And we're looking at both the Reock and Polsby-Popper on the right side, the illustrative Senate plan.

Q. I'm looking at the enacted plan.

A. The enacted plan.

Q. That's what you have in front of you.

A. Let me see what this is referencing. This says Georgia Senate 000.

Q. I'll represent to you that's the enacted plan.
A. This is the enacted plan?
Q. Yes.
A. Not Mr. Esselstyn's plan.
Q. Correct.
A. Okay. And this is where I'm getting two numbers here. So I should be looking for .39 and .24.

All right. I see the Reock score is .39 and the Polsby-Popper score is .24. And that agrees with what you have on the screen and that's in the exhibit in Mr. Esselstyn's report.

Q. Let's compare that to your assessment of the Reock and Polsby-Popper score in the illustrative Senate plan. And you can turn to your own Exhibit DX-3, Exhibit 2.
A. Okay. So the illustrative compactness scores, the actual numbers are not in Mr. Esselstyn's report?
Q. They are. I'll be honest with you, Mr. Morgan, I could not find the enacted compactness scores in your report, so I had to -- I went to Mr. Esselstyn's report. I'm sure your counsel will let us all know if I've misunderstood something.
A. Okay. So we're now looking for, in my report, where -- so I need to find this in my report.
Q. It's in Exhibit 2 to your report, DX-3, Exhibit 3.
A. Okay.
Q. And I don't see an individual page number there, so

you'll have to find Senate District 25.

A. They're sorted in numerical order.

All right. So this is the Esselstyn Reock score is .57 and .34. So that's correct. And that's from my report and from Mr. Esselstyn's report.

Q. Exactly.

A. Okay.

Q. So you don't dispute, Mr. Morgan, that illustrative Senate District 25 is significantly more compact than enacted District 25.

A. Yeah, that's correct.

Q. On both the Reock and the Polsby-Popper scores?

A. Yes.

Q. If we look at Senate District -- illustrative Senate District 25 on the map in front of you -- this is, for reference, Attachment D to Mr. -- it's Esselstyn's exhibit, Grant Exhibit 1 -- you'll see that Senate District 25, in fact, overlaps with Senate Districts 10 -- sorry -- with enacted Senate Districts 10, 17, 34 and 44.

Does that look right?

A. So are these proposed Senate districts or are they enacted Senate Districts?

Q. These are the enacted Senate districts that I have in front of you right now. And I'm just trying to explain that the Senate -- illustrative Senate District 25 that we just

examined overlaps with these enacted districts, Districts 10, 17, 34 and 44.

A. That's okay. I just -- I haven't seen this before, so let me reference it in the report. Page 57?

Q. Yes.

A. Okay. So this is from Legislative Congressional Reapportionment Office. It's identified as proposed Senate districts. And you're saying this is the enacted districts; that's fine.

And so we're saying that the illustrative Senate District 5 overlaps with which districts did you say?

Q. Enacted Senate Districts 10, 17, 34 and 44.

A. I'm not sure about that. 34? I don't know. I'd have to look about 34. I'm really not sure about that.

Q. Okay. We can come back to this point. And maybe I can streamline that a little bit once I confer with your counsel about finding the numbers in your map.

I'm going to turn to paragraph 31 of your report. And here you analyze Senate Districts 22 and 23 in both the enacted and the illustrative plans; is that correct?

A. Yes. So you're referring to my report, but that's not the image on the screen; right?

Q. The question I asked you was whether or not you're referring to 22 and 23 in paragraph 31.

A. In my report, yes.

Q. I'm pulling up on the screen now the enacted map alongside Mr. Esselstyn's illustrative map in this area.

Just to clarify, Senate District 22 is not one of the new majority Black districts in Mr. Esselstyn's illustrative plan; is that correct?

A. It is not a district that he identifies as a new district. It is a district that is changed from the enacted districts.

Q. Senate District 22 is majority Black in the enacted plan?

A. Yes, that's correct.

Q. And it remains a majority Black district in the illustrative plan; correct?

A. Yes, that's correct.

Q. Adjacent Senate District 23 is the new majority Black district in Mr. Esselstyn's illustrative plan; correct?

A. Yes. He identifies that, 23, as a new majority Black district, yes.

Q. If you look at paragraph 31 of your report in this Grant case -- you have that in front of you?

A. Yes.

Q. You note the compactness scores of enacted Senate District 22 and enacted Senate District 23; is that correct?

A. Yes.

Q. But you provide no comparison to the compactness scores of illustrative Senate District 22 or illustrative Senate

District 23; is that correct?

A. I don't compare that in the body of the report.

Q. You don't mention those scores at all?

A. No.

Q. Let's take a look at those scores.

A. Okay.

Q. Now, in paragraph 31 of your report, you state that enacted Senate District 22 has a Reock score of .41 and a Polsby-Popper score of .29.

Did I read that correctly?

A. Yes.

Q. If you turn to Exhibit 2 to your report, we can find the compactness scores of illustrative Senate District 22.

A. Okay. So we're looking at illustrative Senate 22. Okay. So it's .33 on Reock and .3 -- sorry -- this is 22. Yeah, and .32 on Polsby-Popper. Okay.

Q. Is that correct?

So it's more compact -- the illustrative district is more compact on one measure and less compact on the other?

A. Yes.

Q. Also in paragraph 31 of your report you have the enacted Senate 23 Reock score of .37 and the enacted Senate District 23 Polsby-Popper score of .16; is that correct?

A. Yes.

Q. And is it correct also that the illustrative plan,

illustrative Senate District 23, has a Reock score of .34 and a Polsby-Popper score of .17?

A. Yes. And that's in the exhibits of my report where this is.

Q. So in the text of your report where you are comparing the enacted map to the illustrative map, you provide the compactness scores of the enacted districts; correct?

A. Yes.

Q. But you do not provide the compactness scores of the illustrative districts corresponding to those; correct?

A. No. I'm not stating that I'm comparing those two districts on compactness. It doesn't say that in my report.

Q. In paragraph 33 of your report you refer to the Cooper 1205 Senate plan. Am I right that you mean the Esselstyn 1205 Senate plan?

A. Yes. I'm sorry if I didn't submit an errata, but I do mean the Esselstyn Senate plan in this area, yes.

Q. And here you note that illustrative Senate District 23 stretches 80 miles from Milledgeville to the eastern part of Augusta. Did I read that correctly?

A. Yes. Using the map tool, I measured that and that's what I believe to be true, yes.

Q. In this district you note the length of illustrative Senate District 23, but you don't mention the length of enacted District 23; correct?

A. No.

Q. Would it surprise you to learn that enacted Senate District 23 is more than 115 miles from the northern tip of Taliaferro County to the southernmost point of Screven?

MR. TYSON: Objection, Your Honor. This is assuming facts not in evidence. Also, one direction is east-west, the other direction is north-south. So I think it's not an appropriate comparison.

MS. KHANNA: I'm happy to point him to the map itself and he can look at the legend and estimate with it.

THE COURT: Let him look at the map and this will be the last question for today.

MS. KHANNA: Yes, Your Honor.

BY MS. KHANNA:

Q. So I've pulled up here figure 3 in Mr. Esselstyn's report. And this is the enacted map. Isn't it -- if you look at the legend at the bottom, you can approximate the length of the districts. I understand it's not the perfect tool that you would use with a computer. But is it fair to say that Senate District 23 is more than 115 miles from the tip of Taliaferro County to the southernmost point of Screven County?

A. Let me approximate this. And you're measuring diagonal distance, or are you measuring north-south bounded distance?

Q. I'm measuring the length, at the highest length of the district.

A. Okay. So really you're measuring the -- the lowest point in the district is not Screven County, it's Emanuel County. So is that where you're proposing to make a measurement?

Q. How long do you believe this district to be, according to your rough measurements on the legend?

A. Okay. Let me make it -- so now we're measuring from the bottom of Emanuel County to the tip of Taliaferro County?

Q. Yes.

A. Okay. I think I'm going to have to bend around to do that. I don't know if I can do that with a straight line. Hang on.

THE COURT: Let's do this. He can measure it tonight.

MS. KHANNA: Absolutely, Your Honor.

THE COURT: You can ask him in the morning.

MS. KHANNA: Do your homework tonight.

Thank you.

THE COURT: Anything administrative before we stop for today?

MR. SAVITZKY: Yes, Your Honor. Just very briefly on the question of the transcript which you discussed with Mr. Williams this morning. There's one line in the transcript that we were just not sure about, would very much like to double-check against the recording if that's possible.

THE COURT: Here's what we're going to do. I

actually talked to the administration here. As they point out, errata sheets are only done in state courts, not in federal courts.

So what we're going to do is this: At the end of the trial, at the close of all the evidence, at the close of the argument, any mistakes you-all think are in the transcript, put them together on a list, give them to the court reporters. If the court reporters and you-all can come to an agreement on what needs to be corrected, fine. If you-all cannot, then that will be given to me and I will make the decision.

So what they suggested I think is a good suggestion. All the plaintiffs' lawyers get together and say, look, these are the ones that we think are in error. The State has any, the same way. And present them to the court reporters.

Again, one more time. If you-all can work it out, fine. If not, then I'll work it out and make corrections.

MR. SAVITZKY: Thank you very much, Your Honor.

I do want to be clear. I don't know if it's an error. We just want to double-check. We'll follow the procedure you laid out.

And if I may have the Court's indulgence for one more second, I would just say we are so grateful, and I'm sure all the parties are, for the incredibly diligent work and the long hours the court reporters have put in this case.

THE COURT: That last statement is going to carry you

a long way in life. They have been working very hard.

Ms. Penny sent me a transcript at 3:15 one morning. And I -- last night I left here at 6:30 and I turned to her before I left and said, I need a rough draft of the arguments they made on Rule 52(c). I had it by 8:00. So that last statement is very well appreciated.

Anything else?

MR. TYSON: Not from the defendants, Your Honor. We would just join in our gratitude for the court reporters and all the court staff. Thank you.

THE COURT: Thank you, all. We will start back in the morning at 9:00. Everybody have a good evening. And see you in the morning.

(Proceedings recessed at 5:02 p.m.)

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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 13th Day of September, 2023.

PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER

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