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Coakley Pendergrass, et. al., v. Brad Raffensperger, et. al. John B. Morgan

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

-----x
COAKLEY PENDERGRASS, et al., :
: :
Plaintiffs, : Civil Action
vs. : File No.
: :
BRAD RAFFENSPERGER, in his : 1:21-cv-05339-SCJ
official capacity as the :
Georgia Secretary of State, :
et al., :
Defendants. :
-----x

ANNIE LOIS GRANT, et al., :
: :
Plaintiffs, : Civil Action
vs. : File No.
: :
BRAD RAFFENSPERGER, in his : 1:22-cv-00122-SCJ
official capacity as the :
Georgia Secretary of State, :
et al., :
Defendants. :
-----X

VIRTUAL REMOTE VIDEOTAPED DEPOSITION OF
JOHN B. MORGAN
Monday, February 13, 2023
10:34 a.m. Eastern Standard Time

REPORTER: Dawn A. Jaques, CSR, CLR

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

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14 Sarah C. Howard, Digital Evidence Group

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1 I-N-D-E-X

2 WITNESS:

PAGE:

3 JOHN B. MORGAN

4 Examination by Ms. Khanna

8

5 Examination by Mr. Tyson

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6

7 E-X-H-I-B-I-T-S

8 MORGAN DEPOSITION EXHIBIT:

PAGE:

9 Exhibit 1 January 23, 2023, Expert

10 Report of John B. Morgan

11 (63 pages)

11

12 Exhibit 2 December 5, 2022, Declaration

13 of William S. Cooper

14 (194 pages)

38

15 Exhibit 3 January 23, 2023, Expert

16 Report of John B. Morgan

17 (317 pages)

16

18

19 Exhibit 4 December 5, 2022, Expert

20 Report of Blakeman B.

21 Esselstyn (199 pages)

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22

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1 E-X-H-I-B-I-T-S, CON'T

2 MORGAN DEPOSITION EXHIBIT:

PAGE:

3 Exhibit 5 January 19, 2022, Declaration

4 of John B. Morgan

5 (17 pages)

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8

9 (Morgan Exhibits 1 - 5 were

10 premarked prior to the start

11 of the deposition.)

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

2 THE VIDEOGRAPHER: This is
3 Tape No. 1 of the videotaped deposition of
4 John B. Morgan, in the matter of Pendergrass,
5 et al., vs. Raffensperger and Grant, et al.,
6 vs. Raffensperger, in the United States
7 District Court for the Northern District of
8 Georgia, Atlanta Division.

9 This deposition is being held
10 remotely via Zoom videoconference on
11 February 13th, 2023. The time on the video
12 screen is 10:34 a.m.

13 My name is Sarah Howard, and I am a
14 legal videographer for Digital Evidence Group.
15 The court reporter is Dawn Jaques, also in
16 association with Digital Evidence Group.

17 All parties to this deposition are
18 appearing remotely, agreed to the witness
19 being sworn in remotely, unless an objection
20 is stated to this agreement.

21 Due to the nature of remote
22 reporting, please pause briefly before

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1 speaking to ensure all parties are heard
2 completely.

3 Will counsel please introduce
4 themselves for the record?

5 MS. KHANNA: This is Abha Khanna for
6 the Pendergrass and the Grant plaintiffs.

7 MR. TYSON: And I'm Bryan Tyson,
8 joined by Bryan Jacoutot, on behalf of the
9 defendants.

10 THE VIDEOGRAPHER: If the court
11 reporter will now swear in the witness.

12 THE REPORTER: Do the other counsel
13 want to list their appearances on the record,
14 or I have you on the stenographic record.

15 (No response by counsel.)

16 THE REPORTER: Okay, Mr. Morgan, if
17 you'll raise your right hand to be sworn,
18 please.

19

20 (The witness was administered the oath.)

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1 Whereupon,

2 JOHN B. MORGAN,

3 was called as a witness, after having

4 been first duly sworn by the Notary

5 Public, was examined and testified as

6 follows:

7 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS

8 BY MS. KHANNA:

9 Q Good morning, Mr. Morgan.

10 A Good morning.

11 Q As you know, my name is Abha Khanna
12 for the Plaintiffs in both the Pendergrass and
13 the Grant cases.

14 Would you please state your full
15 name for the record?

16 A John Bennett Morgan.

17 Q I understand that you have been
18 deposed before; is that right?

19 A Yes.

20 Q Including just last week in a
21 related case?

22 A Yes.

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1 Q Okay. I'm going to dispense with
2 some of the kind of formalities. I think you
3 know the drill for depositions, but I just
4 want to clarify a few points.

5 I'll trust that if you don't
6 understand a question, you will ask me to
7 repeat it. Is that fair?

8 A Okay.

9 Q If you do answer a question, I'll
10 assume that you understand it.

11 Is that also fair?

12 A Okay.

13 Q The court reporter just explained
14 that we need to be particularly careful about
15 talking over each other, so we'll both be
16 mindful of that.

17 A Okay.

18 Q And you know that you have to answer
19 with "yes" or "no" rather than a shake of the
20 head to make sure it all gets transcribed,
21 correct?

22 A Okay.

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1 Q All right. What did you do to
2 prepare for today's deposition?

3 A I reviewed my report in the -- let's
4 see. I reviewed my Expert Report of
5 January 23rd for both Pendergrass and the
6 Grant cases, and I looked at Mr. Esselstyn's
7 report from 12/05.

8 Q Okay. And did you meet with your
9 counsel?

10 A Yes.

11 Q Did you meet with anybody else in
12 preparation for today's deposition?

13 A No.

14 Q You said you reviewed your
15 January 23rd report. Was that both in
16 Pendergrass and Grant?

17 A Yes.

18 Q And then you reviewed
19 Mr. Esselstyn's report from December?

20 A Yes.

21 Q Did you review Mr. Cooper's report
22 from December?

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1 A Not specifically in preparation for
2 this.

3 Q Okay. Have you reviewed any other
4 expert reports in this matter?

5 A As I understand it, the material in
6 the other case is not in this case, so just
7 those that we talked about.

8 Q And have you reviewed any reports
9 from Dr. Palmer?

10 A No.

11 Q Or Dr. Burton?

12 A No.

13 Q Or Dr. Collingwood?

14 A No.

15 Q Okay. So you prepared a report on
16 January 23rd in the Pendergrass case, and I
17 believe that's the one that we've -- I think
18 we've premarked it, right, as Exhibit 1 to
19 this deposition?

20 A That's correct.

21 Q And you have that one in front of
22 you?

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1 A Yes.

2 Q I'm going to start by focusing on
3 your Pendergrass report or the analysis in the
4 Pendergrass case.

5 When I talk about the Pendergrass
6 case, do you understand I'm speaking about
7 Plaintiff's challenge to the congressional map
8 in Georgia?

9 A Yes.

10 Q Okay. And when I speak about the
11 Grant case, obviously I'm talking about the
12 Statehouse and State Senate challenges.

13 A Yes.

14 Q And just so you know, I'm going to
15 be looking at two screens because I also have
16 your report pulled up.

17 If you could turn to paragraph 9 of
18 Exhibit 1, which is your report in the
19 Pendergrass case. (PDF page 3)

20 Here you note that you created
21 district summary files for the 2021 adopted
22 congressional plan and the Cooper 1205

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1 congressional plan.

2 Did I read that correctly?

3 A Yes.

4 Q And then in paragraph 10 you state
5 that you ran certain Maptitude reports for
6 Mr. Cooper's Illustrative Plan as well?

7 A Yes, I believe that's correct.

8 Q Are the summary files that you
9 referred to in paragraph 9 the same as the
10 Maptitude reports you refer to in
11 paragraph 10, or are those something
12 different?

13 A I believe generally they're the
14 same. It's possible that the information on
15 the adopted congressional plan may not have
16 been included as an appendix, but I think most
17 of the materials were included.

18 Q Can you describe for me what the
19 summary files are that you refer to in
20 paragraph 9?

21 A So some of this information I
22 believe is included in the appendices, so

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1 I think it's derivative from what's included
2 in the appendices.

3 Q Derivative of the appendices you
4 said?

5 A I think so.

6 Q So have you actually produced the
7 summary files that you reference in
8 paragraph 9?

9 A I believe so.

10 Q Are they attached to your report?

11 A No, but I believe that the
12 information is available in the planned
13 component reports as summary information.

14 Q Do you have copies of the summary
15 file that you prepared? In your possession,
16 not here today.

17 A Like I said, I'm pretty sure they're
18 derivative. For example, the total population
19 is a subtotal for each district at the end of
20 the plan component reports.

21 Q So if I understand you correctly,
22 the information contained in the summary files

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1 is contained in some of the attachments to
2 your report, but the summary files themselves
3 are not?

4 A I believe so.

5 MR. TYSON: Are you talking about
6 the Population Summary Report? Is that what
7 you're referring to?

8 THE WITNESS: Yes.

9 MR. TYSON: Okay. So I think he's
10 referring to a specific map that's used to
11 report that is called the Population Summary
12 Report.

13 MS. KHANNA: Okay.

14 MR. TYSON: And if that's not
15 attached, we can definitely get that. It's
16 just the export of the population information.
17 So we'll get that to you if it's not there.

18 THE WITNESS: And if it's not there,
19 I would just say that it's -- the top line
20 information is available as a subtotal in the
21 Plan Component Report. There's a listing that
22 shows the total population of the districts,

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1 and the selected demographics as well.

2 BY MS. KHANNA:

3 Q Okay, thank you for the
4 clarification. I think I do see the
5 Population Summary Report as one of the
6 Maptitude files that you ran referenced in
7 paragraph 10.

8 I guess my confusion is just that
9 paragraph 9 refers to something else it seems,
10 some summary files, and I just wasn't sure
11 what those were or where I could find those.

12 A Yeah, I'm looking for the population
13 summary in the appendices here. Oh, yeah,
14 okay, there it is. Sorry, it's Exhibit 3. So
15 that's what I'm referring to.

16 I couldn't find Exhibit 3, and I'm
17 saying that the information I believe is also
18 contained in the Plan Component Report. It's
19 just in a more unwieldy format.

20 Q Okay. So the summary files that you
21 prepared and referenced in paragraph 9, those
22 are the same as Exhibit 3 to your report in

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1 Pendergrass?

2 A I believe so, yes.

3 Q Okay, let's go to the Maptitude
4 reports that you list in paragraph 10 that I
5 believe are included as attachments to your
6 report. (PDF page 4 of Exhibit 1)

7 I'm just going to walk through each
8 one and ask you to briefly explain for me what
9 it is.

10 The first report that you ran is
11 called the Measures of Compactness Report. Is
12 that the name that Maptitude gives it?

13 A Generally, yes.

14 Q Okay. And what is the Measures of
15 Compactness Report?

16 A In Maptitude, when you run the
17 measures of compactness, you can pick several
18 compactness tests, and in this case, I
19 selected the Reock and Polsby-Popper
20 compactness tests.

21 Q And why did you choose those two
22 metrics?

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1 A My experience, those have been used
2 in similar proceedings, and they're ones that
3 I'm fairly familiar with and have used before.

4 Q Okay. And why did you choose to run
5 the Measures of Compactness Report?

6 A I believe that is part of the
7 analysis comparing the Enacted Plan to the
8 Cooper Plan.

9 Q Next you ran a Population Summary
10 Report. Can you explain what that is?

11 A Yes, and that's the Exhibit 3 that I
12 was looking for. That shows the total
13 population of each district, the deviation
14 from ideal, and demographic information can
15 also be included. In this case, the 18+ AP
16 Black and the 18+ non-Hispanic White were
17 included in the population summary.

18 Q And why did you choose to run that
19 report?

20 A It's another standard report that's
21 in Maptitude that is often used to compare one
22 plan to another.

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1 Q The third report that you list is
2 the Political Subdivision Splits Report.

3 Can you describe what that is?

4 A Yes, that's a report in Maptitude
5 that shows the counties and voting districts
6 that were split in a plan.

7 Q And why did you choose to run that
8 report?

9 A It's another way to compare two
10 plans.

11 Q Fourth is the Plan Component Report.

12 Can you please explain what that is?

13 A The Plan Component Report in
14 Maptitude, you can choose what level of detail
15 you want for that, so I choose the county
16 level, and that shows the counties, or
17 portions thereof, that are in the plan.

18 So in this case, it will have the
19 name of the county, and the population, and
20 some demographics about that county.

21 Q What kind of demographic does it
22 include at the county level?

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1 A It is AP Black percentage of the
2 total population, and AP Black percentage of
3 the voting age population.

4 Q And why did you choose to run that
5 Plan Component Report at the county level?

6 A This is something that shows whole
7 counties and split counties, and so it allows
8 you to look at those areas that have been
9 split and those areas that remain whole within
10 a plan.

11 Q So you also then choose to run the
12 Core Constituency Report compared to the
13 PI Plan. Can you explain what that is?

14 A Yes. So Mr. Cooper submitted a plan
15 during the preliminary injunction phase of
16 this trial, and I ran the comparison to that
17 plan, I believe.

18 Q And why did you do -- run that
19 report?

20 A It shows -- it would show some of
21 the changes that were made between the PI Plan
22 and the 1205 Plan.

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1 Q What kind of information does the
2 Core Constituency Report provide?

3 A It provides information about the --
4 comparing to another plan, it shows what
5 portions of the previous plan or the
6 comparative plan are included in the new plan.

7 So, for example, if -- you could
8 have a circumstance where a district is
9 exactly the same, and that report would help
10 indicate that.

11 Q So I see that you ran -- in the next
12 sections, you ran Core Constituency Reports
13 for the 2021 plan and the 2012 Benchmark Plan.

14 You also ran a Plan Component Report
15 for the PI Plan. Can you explain what that is
16 and why you choose to run it?

17 A That's in the appendix that we just
18 showed. The same information for the PI Plan,
19 the counties and portions of counties that are
20 in the plan.

21 Q Does Maptitude allow users to run
22 other kinds of reports other than the ones

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1 listed here?

2 A Yes, I believe so.

3 Q Can you give me an example of what
4 kind of reports?

5 A There's reports showing
6 incumbencies. So if you have the location of
7 incumbents, you could run an incumbent report,
8 and it would show which incumbents are
9 included in districts.

10 Q Why did you choose these eight
11 reports to run out of all the Maptitude
12 reports available?

13 A I used similar reports in other of
14 my reports.

15 Q And why do you choose these kinds of
16 reports in your previous litigation, or more
17 specifically, this one?

18 A They allow for -- the information in
19 these reports allows for comparison between
20 two plans.

21 Q But you can compare two plans on a
22 host of metrics, correct?

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1 A Yes.

2 Q So why did you choose these metrics?

3 A As I stated, these were metrics that
4 I had chose in other reports that I submitted
5 in this case.

6 Q And why did you choose them
7 originally?

8 A To allow analysis between two plans.

9 Q So why along these metrics?

10 A As I said, these were ones that I
11 chose in the other reports, so I was being
12 consistent.

13 Q So I guess my question is, when you
14 originally chose these metrics, what was the
15 basis for your choosing these metrics over
16 others?

17 A These were the metrics that I chose.

18 Q And is there a reason why?

19 A I felt that they covered a lot of
20 ways to compare two plans.

21 Q Do you believe that all of the
22 metrics that you chose to run are relevant to

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1 the Section 2 analysis?

2 A They were relevant to using in my
3 report.

4 Q And did counsel ask you to prepare
5 these reports? Sorry, let rephrase that.

6 Did counsel ask you to run analyses
7 on these metrics versus others?

8 A No. I ended up choosing these
9 reports.

10 Q Okay. In paragraph 11 of your
11 Pendergrass report, you state that you
12 previously created these reports for the
13 Enacted Plan in your January 2022 report.

14 Did you create all of these reports
15 for the Enacted Plan as far as you recall?

16 A Not necessarily.

17 Q Do you know which ones you did
18 create?

19 A I would have to look at the
20 preliminary injunction report.

21 Q Okay. So is it fair to say that you
22 don't recall producing all of these reports

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1 alongside your January 2022 report for the
2 Enacted Plan?

3 A No, but I believe it covered a lot
4 of the same material, and I didn't necessarily
5 want to repeat them all here, although I
6 suppose I could have.

7 I suppose the idea was that those
8 reports on the Enacted Plan were probably
9 produced -- maybe not all of them, but most of
10 them were produced for the preliminary
11 injunction phase, so they would be available
12 to the proceedings here.

13 Q Okay, thank you.

14 Let me turn back to paragraph 4 of
15 your Pendergrass report, and this is where you
16 first mentioned that you had access to the
17 Maptitude for Redirecting software; is that
18 right?

19 A Okay.

20 Q In the third sentence of this
21 paragraph, you state, "I was also provided
22 with election data files available to the

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1 Georgia General Assembly during the
2 redirecting process."

3 Do you see that?

4 A Yes.

5 Q What election data files were you
6 provided?

7 A I was given by counsel the Maptitude
8 files that included some election data. My
9 understanding was that that election data was
10 available during the redirecting process.

11 Q Which election data files were you
12 given?

13 A They were given to me by counsel, so
14 they had some election data in there.

15 Q Do you recall which election data it
16 had?

17 A I would have to look at that.

18 Q Do you recall any of the election
19 data that was provided to you by counsel?

20 A I know it included some 2020
21 election results, and I believe some 2018
22 election results.

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1 Q When you say 2020 election results,
2 do you mean congressional election results?

3 A I don't know.

4 Q Were the election data files that
5 you were provided by counsel attached to your
6 report?

7 A No, but they were given to me by
8 counsel originally.

9 Q Did you consider these election data
10 files in preparing your report in the
11 Pendergrass case?

12 A They're not mentioned in my report.

13 Q Did you consider them without
14 mentioning them in your report?

15 A Generally, no.

16 Q Specifically?

17 A I don't believe so.

18 Q So for what purpose were you given
19 these files?

20 A They were included in the initial
21 dataset, so I had them available. I was
22 acknowledging that they were available to me.

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1 Q Did you use them in any way in
2 providing your analysis in the Pendergrass
3 case?

4 A Not that I know of.

5 Q Is it possible for you to have used
6 election data in a way that you're not aware
7 of?

8 A I don't recall using the election
9 data.

10 Q Did you run any analyses using the
11 election data files?

12 A It's not in my report, and I don't
13 remember running any reports based on that
14 that were not included in the report.

15 Q Did you ever compare the Enacted
16 Congressional Plan to Mr. Cooper's
17 Illustrative Plan based on election data?

18 A No.

19 Q Did you analyze any of the partisan
20 metrics of either plan?

21 A No.

22 Q Did you ever analyze the political

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1 performance of certain districts?

2 A No.

3 Q Okay, let's turn to the substance of
4 your Pendergrass report. I believe on page 4,
5 you have a section titled "Congressional
6 district plan analysis." Do you see that?

7 A Yes.

8 Q And looking at paragraph 12, the
9 first topic that you address in this analysis
10 is the number of majority non-White districts
11 for each plan; is that right?

12 A Yes.

13 Q Why did you choose to analyze that
14 metric, the number of majority non-White
15 districts in each plan?

16 A It was an available data point, and
17 I had also looked at that, I believe, in the
18 preliminary injunction.

19 Q And what relevance do you believe it
20 has to your analysis that you were providing
21 in the Pendergrass case?

22 MR. TYSON: Objection to the extent

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1 that it calls for any conversation with
2 counsel about strategy, but to the extent you
3 can answer otherwise, you may do so.

4 THE WITNESS: I recall that it was
5 used during the preliminary injunction phase,
6 and so I included it here.

7 BY MS. KHANNA:

8 Q Did you choose to analyze this
9 metric, or did counsel instruct you to analyze
10 this metric?

11 A I believe that I chose it.

12 Q And why did you choose this metric?

13 A It was one of the data points that
14 was available, and I took a look at that.

15 Q There are many data points available
16 for any given plan; is that right?

17 A Yes.

18 Q Why did you choose this data point
19 over other data points?

20 A Again, in the preliminary injunction
21 phase, it seemed like it was a relevant data
22 point to look at.

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1 Q And what made it a relevant data
2 point?

3 A It was -- the districts had -- the
4 districts I believe were being challenged on
5 some racial voting analysis, and so I was
6 looking at some racially -- the racial
7 demographics.

8 Q Okay. So you conclude that the 2021
9 Enacted Congressional Plan has five districts
10 that are majority non-White voting age
11 population; is that correct?

12 A I believe that's correct, yes.

13 Q And I'm looking specifically at
14 paragraph 12. You can take a look to make
15 sure I'm reading it correctly.

16 A Yes.

17 Q And in the same paragraph, you
18 conclude that the Cooper 1205 Illustrative
19 Plan has six such districts; is that correct?

20 A I believe that's correct. That's
21 what it says in the report.

22 Q So according to your analysis, you'd

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1 agree that the non-White population in Georgia
2 is large enough to comprise a majority of the
3 voting age population in at least six
4 congressional districts; is that correct?

5 A I report that that's what was done
6 in the Cooper 1205 congressional plan.

7 Q In paragraph 12, you state that the
8 Black voting age population of Mr. Cooper's
9 illustrative districts -- sorry. You actually
10 provide the BVAP, Black voting-age population
11 of Mr. Cooper's illustrative Districts 13 and
12 6; is that correct?

13 A I believe so.

14 Q And you can take a look to confirm.
15 I'm just referring to paragraph 12.

16 A Okay, but it's saying that I looked
17 at that, and I'm just looking to see if it's
18 in the appendices.

19 Yes, I believe I looked at that,
20 yes.

21 Q And you agree that Mr. Cooper's
22 Illustrative Plan creates six congressional

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1 districts in which a majority of the
2 voting-age population is Black; is that
3 correct?

4 A Yes.

5 Q Yes, you agree?

6 A Yes, that's what it shows.

7 Q Do you dispute any of the
8 demographic numbers provided by Mr. Cooper
9 when it comes to his analysis of his
10 Illustrative Plan?

11 A Well, I believe I was given the
12 block assignment files, which is based on the
13 same census, underlying census data, so I
14 believe what I had is the same as what he had,
15 so I would assume if he had the same census
16 data, we'd have the same numbers.

17 Q Okay. Let's turn to paragraph 16 of
18 your Pendergrass report, and actually if I
19 could pause for one second, Bryan, I realize
20 you don't necessarily have a copy in front of
21 you. Does it help for me to put it on the
22 screen?

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1 MR. TYSON: I have it right here on
2 the screen, so I'm good. Thank you.

3 MS. KHANNA: All right, thanks.

4 BY MS. KHANNA:

5 Q Back to turning to paragraph 16,
6 here you note certain changes from
7 Mr. Cooper's PI Illustrative Plan and his 1205
8 Illustrative Plan; is that right?

9 A Yes.

10 Q Can you explain your analysis in
11 this paragraph? What are you describing here?

12 A I believe that I'm describing some
13 of the differences between the plan submitted
14 with the PI time frame and the 1205 Plan.

15 Q Why did you choose to compare the
16 PI Plan to the 1205 Plan?

17 A Because it would be a continuity of
18 sorts to look at what was introduced earlier
19 in the trial and what's being introduced now.

20 Q What do you mean by "continuity"?

21 A I believe that having that
22 information to show the changes from the PI to

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1 what's in front of us would be instructive and
2 useful.

3 Q Instructive toward what end?

4 A To the Court.

5 Q To do what?

6 A To understand some of the
7 differences between the plan submitted in the
8 PI portion and the plan submitted on 1205.

9 Q What conclusions did you draw from
10 the analysis that you provide in paragraph 16
11 about the changes between Mr. Cooper's PI Plan
12 versus his 1205 Plan?

13 A I reported information on the split
14 of Douglas County and Cobb County and some
15 information there.

16 Q What information in particular?

17 A The exchange of population between
18 Douglas County and Cobb County, and between
19 the two plans.

20 Q So you observed the changes between
21 the two plans in these counties; is that
22 correct?

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1 A Yes.

2 Q Do you offer any conclusions based
3 on those changes?

4 A If there's a conclusion, it is that
5 Douglas County was made whole in the 1205 Plan
6 by introducing another split into Cobb County.

7 Q And do you provide any opinion as to
8 why Mr. Cooper might have made those changes?

9 A It's not in this report here.

10 Q So you don't offer any opinion as to
11 Mr. Cooper's potential motives in making those
12 changes.

13 A I don't believe so.

14 Q You can take a look at the paragraph
15 to make sure.

16 A Not in paragraph 16.

17 Q You state that this change reduces
18 the total number of county splits -- or splits
19 Cobb County between three districts instead of
20 two; is that correct?

21 A I believe that's correct, yes.

22 Q Do you know how many times

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1 Cobb County is split in the enacted map?

2 A I would have to look at that.

3 Q You don't recall sitting here?

4 A No.

5 Q Do you provide any analysis in your
6 report comparing the configuration of
7 Cobb County in Mr. Cooper's illustrative map
8 to the configuration of Cobb County in the
9 enacted map?

10 A Not directly, although in the plan
11 component reports, it will show the number of
12 splits, and it will show the portions that are
13 in the Enacted Plan and in the Cooper
14 1205 Plan. So I believe that information is
15 available in the appendix, and --

16 Q The information is available, but do
17 you provide any analysis of that information
18 in your report?

19 A Not specifically of Cobb County. I
20 talk about it in paragraphs 6 and 17.

21 Q You do talk about Cobb County, but
22 do you ever compare the configuration of

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1 Cobb County in Mr. Cooper's Illustrative Plan
2 to the configuration of Cobb County in the
3 Enacted Plan?

4 A It's not in the text of the report,
5 but the Plan Component Report shows that
6 information.

7 Q But you don't provide any analysis?

8 A Comparing to the Enacted Plan
9 specifically about Cobb County? I have a
10 comment about it, but not about the
11 Enacted Plan.

12 Q Okay. If we could pull up -- just
13 to make sure, Bryan, you do not -- do you have
14 Mr. Cooper's December 5th report in front of
15 you as well?

16 MR. TYSON: I don't, but I can put
17 it in front of him. Hang on.

18 MS. KHANNA: That's okay. We can
19 just pull it up on the screen. I'm not going
20 to have a lengthy discussion, I don't think.

21 So if we could pull up what's been I
22 believe premarked as Exhibit 2, which is

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1 Mr. Cooper's December 5th report. Is that
2 possible to put on the screen?

3 MR. TYSON: I can have him look at
4 this computer here, Abha, if that's easier.

5 MS. KHANNA: Oh, okay. I was going
6 to say, I'm not really sure who I'm supposed
7 to be asking. I think it's Sarah, but I'm not
8 sure.

9 THE VIDEOGRAPHER: Oh, I'm sorry.
10 Did you need me to screen share?

11 MS. KHANNA: Would you like me to
12 screen share, Bryan, or do you have it in
13 front of you?

14 MR. TYSON: I have it here.
15 Mr. Cooper's December 5th report, is that
16 right?

17 MS. KHANNA: Yes.

18 MR. TYSON: Okay, it's here.

19

20 BY MS. KHANNA:

21 Q That's fine. We don't need to
22 screen share if you have it in front of you.

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1 Let's take a look at what's been
2 marked as Exhibit 2 to this deposition, which
3 is Mr. Cooper's December 5th report. I want
4 to focus specifically on page 33, and
5 Figure 14.

6 MR. TYSON: All right, it's in front
7 of the witness.

8 BY MS. KHANNA:

9 Q Okay. Now, this figure compares the
10 political subdivision splits between
11 Mr. Cooper's 1205 Illustrative Plan and the
12 2021 Enacted Plan, as well as the 2012
13 Benchmark Plan; is that right?

14 A Yes. Is the 2012 Benchmark Plan the
15 one that was in effect, or is it the 2015?

16 MR. TYSON: 2012 is right.

17 THE WITNESS: It's 2012?

18 MR. TYSON: Mm-hmm.

19 THE WITNESS: I don't know if there
20 was a difference.

21 MR. TYSON: Yeah. And just so the
22 record is clear, for Congress, there was not a

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1 change from the 2012 plan forward. There were
2 other legislative changes.

3 THE WITNESS: Okay, I'm sorry.
4 Yeah, the legislative plans were different.
5 My apologies.

6 BY MS. KHANNA:

7 Q No, that's right. You're not the
8 only one to get the two cases mixed up.
9 There's a lot of information.

10 So looking at this figure, do you
11 see that there's a column for Split Counties,
12 and then a separate column for County Splits?

13 A Yes.

14 Q Do you understand the difference
15 between those two categories?

16 A Generally, yes.

17 Q Can you explain what the difference
18 is?

19 A Generally, if a county is split, it
20 doesn't -- in the first column, it would just
21 say it's split, yes or no, and then the second
22 it shows maybe how many fragments there are.

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1 So if a county is split -- if a
2 county is split between three districts, that
3 probably would show up as three splits as
4 opposed to two.

5 Q Okay, great. So when you say the --
6 so am I right that when -- in the example that
7 you just gave, one county is split between
8 three districts, would it be accurate to say
9 that the number of split counties in that
10 example is one?

11 A Yeah, I believe so. I have to think
12 about this, because if you counted one way,
13 you could end up doubling it.

14 So like let's say -- we know in
15 Mr. Cooper's PI Plan, Douglas County was split
16 once, so it could show up as being split one
17 time; or you could say that it's got,
18 you know, a portion in two districts, so does
19 that count as two splits? Slightly different
20 ways you could look at that.

21 But in the case of the Preliminary
22 Injunction Plan, Douglas County was split one

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1 time; and in the 1205 Plan, it was split
2 zero times.

3 Q So you'd agree that any time
4 Douglas County is split, that would count as
5 one in the category of split counties, the
6 counties that are actually split; is that
7 correct?

8 A I think so. Maybe Mr. Cooper
9 explains it in his report, but generally, it's
10 along those lines.

11 Q And then the number of county
12 splits, as you're describing, refers to the
13 individual number of times that -- or
14 individual splits within each county; is that
15 correct?

16 A I think so. So in this case, if
17 Cobb County were split between three
18 districts, that second column would probably
19 pick that up.

20 Q Okay. And that's the same for the
21 split cities versus city splits, the same
22 idea?

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1 A I think so. And again, the
2 comparison I was making in my report is that
3 Douglas County was unsplit in the 1205 Plan,
4 but it introduced -- the 1205 Plan introduced
5 a new split of Cobb County.

6 Q Got it. Do you dispute that
7 Mr. Cooper's 1205 Illustrative Plan puts the
8 same number of counties as the Enacted Plan?

9 A It appears to be that, yes.

10 Q Do you have any reason to dispute
11 that?

12 A No. It says 15 and 15. I believe
13 that's correct.

14 Q And do you dispute that Mr. Cooper's
15 1205 Illustrative Plan has fewer individual
16 county splits than the Enacted Plan?

17 A That's what his chart shows.

18 Q And do you have any reason to
19 dispute that?

20 A I haven't looked at it in that way,
21 so I don't have any reason to dispute it one
22 way or another.

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1 Q You provided no analysis of that in
2 your report?

3 A No, but I believe that in the
4 Plan Component Report, that information is
5 available.

6 Q And you did not notice or observe
7 whether that was incorrect?

8 A I didn't notice or observe anything
9 about that.

10 Q You did not check Mr. Cooper's
11 assessments of county splits when you were
12 performing your own analysis?

13 A Not directly, no. I ran the reports
14 based on the block assignment files provided.

15 Q Do you have any reason to dispute
16 that Mr. Cooper's 1205 Illustrative Plan
17 splits fewer cities and towns than the
18 Enacted Plan?

19 A That's what it reports in this
20 chart.

21 Q Do you have any reason to dispute
22 that?

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1 A Again, I didn't look at the second
2 column in detail, but I don't have any reason
3 to dispute it.

4 Q And do you have any reason to
5 dispute that Mr. Cooper's Illustrative Plan
6 has fewer individual city and town splits than
7 the Enacted Plan?

8 A That's what it shows in the chart.

9 Q Do you have any reason to dispute
10 that?

11 A No.

12 Q Do you have any reason to dispute
13 that Mr. Cooper's Illustrative Plan splits
14 fewer VTDs than the Enacted Plan?

15 A It appears that's what's in the
16 chart. I believe that's correct.

17 Q Okay, we can take down Mr. Cooper's
18 report. I don't think I'll be referring to it
19 for a little while.

20 Turning back to your report, which
21 is Exhibit 1 to this deposition, let's look at
22 paragraph 17, and here you're also comparing

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1 Mr. Cooper's PI Illustrative Plan to his
2 1205 Illustrative Plan; is that right?

3 A Yes.

4 Q What changes do you analyze here?

5 A I point out that the PI Plan,
6 District 6 is very close to 50%, and that
7 the -- 50% AP Black voting-age population that
8 is -- and that the 1205 Plan is also very
9 close to 50%, and so that in order for the
10 1205 District 6 to remain majority AP voting
11 age Black population, that care was taken to
12 avoid the overall racial combination.

13 Q Did Mr. Cooper make changes to his
14 Illustrative District 6 between the PI Plan
15 and his 1205 Plan?

16 A Yes. I talked about Douglas County.
17 So Douglas County was included entirely, and
18 then the other district that previously had
19 Douglas County took a portion of Cobb County,
20 and then his District 6 took a different
21 portion of Cobb County.

22 Q So in this paragraph, when you say

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1 that care was taken to avoid changing the
2 racial makeup of that district, do you see
3 that line?

4 A Yes, I do.

5 Q What are you referring to?

6 A Well, the population that was -- so
7 when you take the 25,000 population of Douglas
8 County into District 6, then you have to shed
9 some population, and you have to take care of
10 what you take into the district so it doesn't
11 affect the racial composition.

12 Q Can you explain to me how you
13 demonstrate that care was taken?

14 A Sure. So if, for example,
15 District -- the complementary district, which
16 I believe is -- the complementary district --
17 I need a map to figure out which one it is,
18 but I believe --

19 MR. TYSON: It's 3.

20 THE WITNESS: It's 3? So let me
21 just see what it says. Yeah, okay.

22 So District 3 is the complementary

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1 district. My point is that in order to
2 equalize the population of District 3, which
3 has just lost 25,000 population, it would have
4 been very easy for Mr. Cooper to take a more
5 southerly portion of Cobb County, for example,
6 Powder Springs, but that area has a fairly
7 high concentration of Black population.

8 If he had taken Powder Springs
9 instead of the precincts that he did take in
10 District 3, that would have made District 6
11 below 50% Black voting age 18 population. And
12 so, in my opinion, that shows that care was
13 taken to not allow to drop below 50%.

14 BY MS. KHANNA:

15 Q Can you explain to me where in your
16 report I would find that analysis?

17 A Well, I believe it's partly in the
18 Plan Component Reports, and I'd point out here
19 that it's the exchange of these three
20 districts, 3, 6 and 11, and you can see
21 which -- in the Plan Component Report, you can
22 see -- and in the Core Constituency Comparison

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1 Reports, you can see the fragments of
2 population that were moved.

3 Q So the basis for your statement that
4 care was taken is the Plan Component Report,
5 Exhibit 5 to your report?

6 A The Plan Component Report, and also
7 my own experience in Georgia.

8 Q Can you explain to me -- can you
9 explain what you mean by your own experience
10 in Georgia? How did that inform your opinion
11 that care was taken?

12 A Well, what I note is that in
13 equalizing the population by -- again,
14 starting with the idea that Douglas County is
15 made whole and absorbed into Congressional
16 District 6 in the 1205 Plan, then the district
17 that lost that 25,000 population needs to make
18 it up.

19 It could have been very easy to just
20 take a portion of Cobb County, or some other
21 proximate county. Instead, District 11
22 bypasses the southerly portion of Cobb County

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1 and goes to a more northerly portion, and I
2 was pointing out that if he had taken the more
3 southerly and more proximate portion of
4 Cobb County, it would have dropped the
5 district below 50% Black.

6 Q And so I guess where in your report
7 would I find that analysis, that if you had
8 taken the more southerly portion, it would
9 have dropped the district below 50% Black?

10 A Well, I believe it's in the Plan
11 Component Reports. It could be discussed
12 through that.

13 Q So the information is provided in
14 the Plan Component Reports?

15 A I believe so. And then, you know,
16 in the sense that I looked at what was done,
17 and I looked at the difference between Douglas
18 County, and then what replaced Douglas County,
19 and I was observing that the portion of
20 Cobb County that replaced the Douglas
21 population was far northerly instead of closer
22 to the southern border.

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1 Q So the actual analysis and opinion
2 that you're explaining to me right now, that's
3 not included anywhere in your report; is that
4 correct?

5 A It's included in paragraph 17
6 because I said that's my opinion.

7 Q So in paragraph 17, you state that
8 care was taken; is that correct?

9 A Yes.

10 Q But the idea of taking the northerly
11 versus the southerly portion, that's not
12 anywhere in your analysis, correct?

13 A I'm stating it in that paragraph.
14 I'm stating it now as well.

15 Q So in your report, you provide no
16 opinion as to the changes between the PI Plan
17 in Cobb County and the 1205 Plan in Cobb and
18 Douglas County other than that care was taken;
19 is that correct?

20 A I also point out that there was a
21 change in the splits, which we discussed in
22 paragraph 16.

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1 Q Okay. So the sum total of your
2 opinions regarding those changes are in
3 paragraphs 16 and 17 of your report, correct?

4 A I believe so.

5 Q All right. Okay, let's turn to
6 paragraph 19 of your report. I believe
7 paragraphs 19 and 20 are where you analyze the
8 split geography for the reports that you ran;
9 is that right?

10 A Yes, it looks that way.

11 Q In your experience, is preservation
12 of county boundaries considered a traditional
13 districting principle?

14 A Generally, yes.

15 Q What about avoiding precinct splits,
16 is that a traditional districting principle?

17 A In many cases, that is included in
18 traditional redirecting principles.

19 Q Do you believe it to be a
20 traditional directing principle in Georgia
21 based on your experience?

22 A Yes. My experience is specifically

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1 in Georgia, when I did this 20 years ago, in
2 many instances where there was a choice
3 between keeping a place or municipality --
4 city, if you will -- whole, or a voting
5 precinct, in many cases, the voting precinct
6 was kept whole above the city.

7 Q Okay. And you agree that
8 Mr. Cooper's 1205 Illustrative Plan splits the
9 same number of counties as the Enacted
10 Congressional Plan; is that correct?

11 A Yes.

12 Q You say as much in paragraph 20 of
13 your report.

14 A Yes. And I talked about Douglas
15 County; I believe that is what brings it into
16 agreement with the Enacted Plan in terms of
17 number of county splits.

18 Q And we also discussed how the actual
19 number of individual county splits is in fact
20 smaller in Mr. Cooper's Illustrative Plan than
21 in the Enacted Plan; is that correct?

22 A Yes, I believe that's the case.

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1 Q And you would agree that
2 Mr. Cooper's 1205 Illustrative Plan splits
3 fewer voting precincts than the Enacted Map;
4 is that correct?

5 A I believe the analysis shows that,
6 yes.

7 Q Great. And how many voting
8 precincts are there in Georgia, if you recall?

9 A About 2600.

10 Q In paragraphs 21 and 22, I believe
11 that's where you discuss the compactness
12 analysis that you ran; is that right?

13 A Yes.

14 Q In your experience, is compactness
15 considered to be a traditional redistricting
16 principle in Georgia?

17 A In my experience, yes.

18 Q And here you conclude that
19 Mr. Cooper's 1205 Illustrative Congressional
20 Plan has similar mean compactness scores to
21 the Enacted Plan. Did I read that correctly?

22 A Yes.

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1 Q And you report those mean
2 compactness scores at the bottom of chart 2,
3 which spills over onto the next page?

4 A Yes.

5 Q And there we can get Mr. Cooper's
6 1205 Plan has a mean Polsby-Popper score that
7 is identical to the Enacted Plan; is that
8 correct?

9 A Yes, using two decimal points.

10 Q And Mr. Cooper's 1205 Plan has a
11 mean Reock score that is actually higher than
12 that of the Enacted Plan; is that correct?

13 A I'm sorry, could you repeat that,
14 please?

15 Q Sure. Based on your chart, Chart 2,
16 Mr. Cooper's 1205 Plan has a mean Reock score
17 that is higher than that of the Enacted Plan?

18 A That's not what the chart shows.

19 Q Oh, sorry, that was the other way
20 around.

21 The Enacted Reock mean is .01 higher
22 than the Illustrative Plan; is that correct?

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1 A That's what the chart shows.

2 Q And you considered that .01
3 difference to mean that the two mean Reock
4 scores are similar, correct?

5 A Yes, they're very close.

6 Q In Chart 2, you also provide the
7 compactness scores of the individual districts
8 in Mr. Cooper's Illustrative Plan versus the
9 Enacted Plan; is that right?

10 A Yes.

11 Q And are you aware of which district
12 reflects the new majority-Black district in
13 Mr. Cooper's Illustrative Plan?

14 A I believe it's District 6.

15 Q According to your report,
16 Mr. Cooper's Illustrative District 6 is more
17 compact on the Reock Scale than Enacted
18 District 6?

19 A Yes.

20 Q And that difference is .03; is that
21 correct?

22 A Yes.

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1 Q Do you consider Illustrative
2 District 6 and Enacted District 6 to be
3 similar in terms of their Reock compactness
4 scores?

5 A Mr. Cooper's 1205 Plan is higher
6 than the Enacted Plan.

7 Q When you were discussing the mean
8 Reock scores, you opined that a .01 difference
9 was similar between the Enacted Plan; is that
10 correct?

11 A That's what I said in that
12 paragraph, yes.

13 Q Do you believe that the .03
14 difference in District 6 is similar between
15 the two plans?

16 A I said that the Cooper 1205 Plan is
17 higher than. It's .03 higher.

18 Q And do you believe that that .03 is
19 a significant difference, or renders the two
20 districts similar on the Reock compactness
21 measure?

22 A I didn't observe in the report that

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1 they were similar.

2 Q Do you have any opinion as to
3 whether they are similar?

4 A There's a difference of .03. I
5 would say that they're close, but not --
6 they're not as close as the mean scores are.

7 Q According to your report,
8 Mr. Cooper's Illustrative District 6 is also
9 more compact on the Polsby-Popper Scale than
10 the Enacted District 6; is that correct?

11 A Yes.

12 Q That difference is .07?

13 A Yes.

14 Q Do you have any opinion as to
15 whether that .07 difference is similar between
16 the two plans?

17 A It's higher in the Cooper 1205 Plan
18 than it is in the Enacted by .07.

19 Q And do you have any reason -- or did
20 you have any opinion as to whether .07 is a
21 similar difference between the two?

22 A It differs by .07. It's a greater

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1 difference than the .03 in the Reock and the
2 .01 in the mean scores.

3 Q So when you described the .01
4 difference as "similar," what is the highest
5 difference between two Reock scores or
6 Polsby-Popper scores that you would consider
7 to be similar?

8 A I hadn't really considered that. In
9 the report, I observed that in the mean it's
10 .01 difference, and in my report, I said that
11 was similar.

12 Q Okay.

13 A If we don't have a pending question,
14 I'd like to take a break?

15 Q Sure.

16 A Okay.

17 THE VIDEOGRAPHER: The time is
18 11:28 a.m. Off the record.

19 (A break was taken.)

20 THE VIDEOGRAPHER: The time is
21 11:36 a.m. Back on the record.

22 BY MS. KHANNA:

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1 Q All right, Mr. Morgan, we just went
2 through your Pendergrass report, and I believe
3 we discussed your report's examination of
4 compactness, political subdivision splits, and
5 you also examined core constituency; is that
6 right?

7 A Yes.

8 Q You don't examine population
9 equality in Mr. Cooper's Illustrative Plan; is
10 that right?

11 A Not specifically, but that
12 information is in the appendix.

13 Q Do you dispute that Mr. Cooper's
14 Illustrative Plan achieves population
15 equality?

16 A Well, I have the numbers of what the
17 deviation is. It looks like it ranges from
18 positive 1 to negative 1.

19 Q So my question was, do you dispute
20 that Mr. Cooper's Illustrative Plan achieves
21 population equality, based on your experience?

22 A Based on experience, it seems okay,

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1 +1/-1. I've seen other examples where it's
2 going to be zero and 1, not +1/-1, for a
3 congressional plan.

4 Q Do you dispute that Mr. Cooper's
5 plan achieves population equality?

6 A I don't have any basis to dispute
7 that. It's plus one person, minus one person.

8 I'm pointing out, however, that
9 other circumstances I've seen have a zero and
10 1 and not a -1/+1.

11 Q You also don't examine contiguity in
12 Mr. Cooper's Illustrative Plan; is that right?

13 A I didn't run any reports on that.

14 Q Do you dispute that Mr. Cooper's
15 Illustrative Plan -- illustrative districts
16 are contiguous?

17 A No, I didn't look at that.

18 Q Your analysis in the Pendergrass
19 report does not examine the extent to which
20 Mr. Cooper's Illustrative Plan respects
21 communities of interest; is that right?

22 A I don't think I address that

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1 directly in the report.

2 Q Do you address it indirectly in the
3 report?

4 A Well, again, the Plan Component
5 Report does show the areas that were split at
6 the county level, and I didn't make any
7 reference to that in the written text of the
8 report.

9 Q You don't provide any analysis of
10 communities of interest in your report; is
11 that correct?

12 A Not in the written portion, no.

13 Q Do you dispute that Mr. Cooper's
14 Illustrative Plan respects communities of
15 interest?

16 A I didn't look at that specifically,
17 and I don't know that I have anything to say
18 about that in the report.

19 Q So you have no opinion either way?

20 A I didn't look at that.

21 Q In paragraph 23 of your Pendergrass
22 report -- do you have that in front of you?

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1 A Yes.

2 Q Here you provide a summary of your
3 analysis, and you state in the first sentence,
4 "In summary, the Cooper 1205 congressional
5 plan differs in meaningful ways from the
6 2021 plan adopted by the General Assembly."

7 Did I read that correctly?

8 A Yes.

9 Q Can you explain what those
10 meaningful ways are?

11 A I think I addressed it later in the
12 paragraph about retaining less of the core
13 constituencies from the 2012 plan, and that
14 there are significant boundary changes from
15 the Enacted 2021 Plan.

16 Q So the meaningful ways that you're
17 referring to refer to the core constituency
18 reports compared to the 2021 plan and the
19 2012 plan?

20 A Yes, and also the boundary changes.

21 Q If I could turn back to Mr. Cooper's
22 report from the Pendergrass case. I believe

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1 you might have that in front of you.

2 A I do.

3 Q That's Exhibit 2 to this deposition,
4 paragraph 34 -- sorry, page 34, paragraph 86.

5 Do you see where I am?

6 A Paragraph what number, please?

7 Q Paragraph 86, the CONCLUSION
8 paragraph.

9 A Okay.

10 Q And here Mr. Cooper concludes, "The
11 Black population in Metro Atlanta is
12 sufficiently numerous and geographically
13 compact to allow for the creation of an
14 additional majority-Black congressional
15 district consistent with traditional
16 districting principles, anchored in Cobb,
17 Fulton and Douglas Counties, without reducing
18 the number of majority-Black districts in the
19 2021 Plan."

20 Do you see that?

21 A Yes.

22 Q Do you dispute any part of this

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1 conclusion?

2 A I didn't analyze that in my report.

3 Q So nothing in your report disputes
4 any portion of this conclusion?

5 A It appears to be his opinion.

6 Q I understand that's his opinion. Do
7 you dispute the accuracy of his conclusion
8 there?

9 A I didn't analyze that in my report.

10 Q So your report offers no dispute of
11 Mr. Cooper's conclusion in paragraph 86 of his
12 report?

13 A It neither supports nor refutes it.

14 Q All right, I think we can put
15 Pendergrass to the side, and I'll now turn to
16 your Grant report from January 23rd, 2023, and
17 I believe we've premarked that as Exhibit 3 to
18 this deposition.

19 MR. TYSON: He has a paper copy in
20 front of him.

21 BY MS. KHANNA:

22 Q Let me pull it up myself.

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1 All right, so you have a copy of the
2 Grant report in front of you; is that correct?

3 A Yes.

4 Q Turn to paragraph 10 of that report.

5 Here you list seven Maptitude files
6 that you ran for Mr. Esselstyn's
7 December 5th, 2022, House and Senate
8 Illustrative Plan, correct?

9 A Yes.

10 Q I think the only one that's listed
11 here that we haven't already discussed in the
12 context of your Pendergrass report is the
13 District & Incumbents Report.

14 Can you explain to me what that is?

15 A Yes. In Maptitude, there's a report
16 that shows where incumbents are in a district,
17 so it will show if there's more than one
18 incumbent in a district.

19 Q Is that all that it shows, the
20 Districts & Incumbents Report?

21 A It shows, again, this dataset of the
22 incumbents at the time before the 2022

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1 election results. They have the physical
2 address of the incumbents, and the report uses
3 that information to determine whether the
4 incumbents -- or which district those
5 incumbents are in.

6 And so that information says,
7 you know, the name of the incumbent; the
8 district that that incumbent resides in; and
9 then also it has the political affiliation, I
10 believe, of the incumbent.

11 It's in the appendix.

12 Q So do you understand -- why did you
13 choose to run this incumbent report in your
14 analysis in the Grant case?

15 A It was something that was also run
16 in the preliminary injunction phase of the
17 trial, I believe, so I wanted to be
18 consistent, and I included it here.

19 Q And do you recall why you originally
20 chose to run it in the preliminary injunction
21 phase?

22 A It was something that was looked at

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1 by the legislature, I believe.

2 Q Okay. Do you consider avoiding
3 incumbent pairings to be a traditional
4 redistricting principle?

5 A I would say attention to incumbents
6 is. And one way you could give attention to
7 the incumbents would be their residence and
8 whether they're in a district with another
9 member.

10 Q You believe attention to incumbents
11 is a traditional redistricting principle?

12 A In general terms, yes.

13 Q And what do you mean by "attention
14 to incumbents"?

15 A Well, you could have a circumstance
16 where two incumbents are listed as being in
17 the same district, but perhaps it's 95% of the
18 territory of one of the incumbents, so it's
19 really -- while they're paired, it's not an
20 equal pairing.

21 So there's a lot of different ways
22 to look at the incumbency, and the physical

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1 presence is one way. It's a simple way of
2 looking at that, and it's a standard report in
3 Maptitude.

4 Q In your opinion, what value does it
5 serve to avoid pairing incumbents?

6 A Well, it talked about this in other
7 circumstances, but continuity of
8 representation is something that's often
9 talked about as being important in the
10 redistricting process.

11 So that if an incumbent has
12 represented a district, then that incumbent
13 has often formed bonds with the voters in the
14 district, and so there's some importance to
15 keeping the continuity of representation.

16 Q Okay, if we could turn to
17 paragraph 4 of your Grant report on page 2.

18 Here you state again, "I was also
19 provided with election data files used by the
20 Georgia General Assembly during the
21 redistricting process."

22 I believe we discussed this a little

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1 bit in the Pendergrass context. Can you
2 explain what election data files you were
3 provided?

4 A Yes. There's some election data
5 information there. I believe they're from
6 2018 and 2020 elections.

7 I believe I mentioned there's also
8 information about voter registration possibly.

9 Q These are data files that you were
10 provided by counsel?

11 A Yes.

12 Q Are they attached to your report?

13 A No, they're in the underlying data
14 that I was given by counsel at the beginning
15 of this process.

16 Q When you say that you looked at 2018
17 and 2020 election data files, do you recall
18 which elections? Like for what office?

19 A I said I was provided with that
20 information.

21 Q And when you were provided with that
22 information, do you recall what office the

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1 elections were for?

2 A No.

3 Q Were they for statehouse and state
4 senate elections, do you recall?

5 A I don't know.

6 Q Did you consider these election data
7 files in preparing your report in the Grant
8 case?

9 A I was acknowledging that I had
10 access to the data, and I don't believe I
11 referenced it in this report.

12 Q But did you consider the election
13 data that you were provided in performing your
14 analysis, even if you didn't reference it in
15 your report?

16 A I don't believe so.

17 Q Did the election data files have any
18 relevance to the analysis that you chose to
19 perform in this report?

20 A I don't believe so.

21 Q Were you asked to compare the
22 Enacted House and Senate Plans to

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1 Mr. Esselstyn's plans based on any part
2 of the metrics?

3 A I didn't do that in this report.

4 Q All right, let's move on to the
5 portion of your report entitled "State Senate
6 Plan Analysis." I believe that begins on
7 page 5.

8 A Okay.

9 Q So in paragraphs 13 and 14, you
10 state that Mr. Esselstyn's Illustrative Senate
11 Plan contains 17 majority-Black districts,
12 correct?

13 A Yes.

14 Q And that's three more than the
15 Enacted Plan; is that correct?

16 A Yes.

17 Q You don't dispute that the Black
18 population in Georgia is large enough to
19 create three additional majority-Black senate
20 districts; is that correct?

21 A I analyzed what was in
22 Mr. Esselstyn's plan.

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1 Q And you do not dispute that the
2 Black population in Georgia is large enough to
3 create three additional majority-Black senate
4 districts as reflected in Mr. Esselstyn's
5 plan?

6 A That's what his plan did.

7 Q And you don't dispute that fact,
8 correct?

9 A I just said that's what his plan
10 did. I answered your question.

11 Q You don't dispute the fact that --
12 you don't dispute any of Mr. Esselstyn's
13 demographic numbers about his districts, do
14 you?

15 A That's correct. I indicate what the
16 numbers are here in the chart on page 5.

17 Q And do you provide any reason to
18 dispute that the Black population in Georgia
19 is in fact large enough to create three
20 additional majority-Black senate districts?

21 A I observed that that's what
22 Mr. Esselstyn did in his plan.

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1 Q And you provide no reason to dispute
2 that that is possible, correct?

3 A He did it in his plan, so it seems
4 like it's possible.

5 Q Paragraphs 15 through 20 then
6 discuss the changes in Mr. Esselstyn's plan
7 from the PI phase to the December 5th map; is
8 that correct?

9 A Yes.

10 Q Now, you first discuss changes
11 between Districts 16 and 34, correct?

12 A Yes.

13 Q What do you conclude about the
14 changes -- or what do you conclude from the
15 changes between Illustrative Districts 16 and
16 34?

17 A I show the differences in a chart,
18 and I have in the text of the report the
19 deviation in the AP Black voting-age
20 population.

21 Q So you observed the factual
22 differences between the two plans; is that

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1 correct?

2 A It looks that way, yes.

3 Q Do you offer any analysis or
4 conclusions based on those changes?

5 A Regarding Districts 16 and 34, it
6 doesn't appear to be that.

7 Q Do you know why Mr. Esselstyn made
8 those changes?

9 A It's not in my report why he made
10 those changes.

11 Q And you don't offer any opinion as
12 to his potential motives in making those
13 changes, correct?

14 A It's not in my report.

15 Q And then in paragraphs 19 and 20,
16 you discuss the changes between Districts 17
17 and 23 in the two versions of Mr. Esselstyn's
18 Illustrative Senate Plans; is that right?

19 A Yes.

20 Q And what do you conclude from the
21 changes made between Illustrative Districts 17
22 and 23?

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1 A I point out that the Black
2 percentage has increased in both districts.

3 Q Any other conclusions that you draw?

4 A Yes. I discuss the deviation that
5 the new District 23, compared to the PI, has
6 the lowest deviation of any district in the
7 entire plan.

8 Q Do you know why Mr. Esselstyn made
9 those changes?

10 A I didn't comment on that in my
11 report, but I did observe that it increases
12 the Black percent between the PI Plan and the
13 1205 Plan.

14 Q So then do you offer an opinion
15 regarding Mr. Esselstyn's potential motives in
16 making those changes?

17 A I didn't say anything about his
18 motives in the report.

19 Q In paragraph 20, you state in the
20 second sentence, "In this exchange, both
21 districts 17 and 23 show an increase in
22 18+ AP Black %. While that might not seem

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1 possible from a logical point of view, it is
2 possible because the deviation of Senate
3 District 23 is lowered to make it the lowest
4 deviation in the entire plan at -1.67%.
5 Having a lower total population, but
6 approximately the same AP Black population
7 results in a higher AP Black %."

8 Did I read that correctly?

9 A Yes.

10 Q Why might that not seem possible
11 from a logical point of view?

12 A Well, because if the two districts
13 exchange population, and you take Black
14 population away from one district and put it
15 into the other district, it would seem that
16 the district you took it from would have a
17 change in its Black population and might go
18 down, but that's not what happened here.

19 Q So in your opinion, logic would
20 dictate that the district that gives
21 population should lose BVAP percentage, and
22 the district that gains population should gain

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1 BVAP percentage?

2 A I said that it seems that way from a
3 logical point of view.

4 Q And so in your opinion, logic would
5 dictate that outcome, correct?

6 A I didn't say it would dictate it.
7 It said it seems that it's possible. It might
8 not be possible, but it is in fact possible.

9 Q Do you believe -- go ahead.

10 A It seems like an assumption that one
11 could make.

12 Q Is it an assumption that you would
13 make?

14 A It seems like a reasonable
15 assumption to make starting out, yes.

16 Q So you believe it's a reasonable
17 assumption that the district that gives
18 population should lose BVAP percentage, and
19 the district that gains population should gain
20 BVAP percentage?

21 A It can vary on percentage. I mean,
22 that's what happened here. So I point out

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1 that the deviation is a factor in this
2 discussion.

3 Q Do you believe that it is illogical
4 for both districts to gain BVAP percentage?

5 A No. I was just pointing out that it
6 might not seem logical if you start from that
7 initial assumption, but when you actually see
8 it happen, it's clearly happened.

9 Q So it would not seem logical to you?

10 A As a starting point, it would seem
11 that if you take Black population away from
12 one district and add it to another, that it
13 would probably lower the Black percentage of
14 the initial district from which it is taken,
15 but that's not what's happened here in the
16 percentage numbers.

17 Q But, in fact, wouldn't what's
18 happened here, wouldn't the increase in both
19 districts' BVAP percentage, wouldn't that
20 happen every time a precinct that is given is
21 lower than the BVAP percentage of the donor
22 district and higher than the BVAP percentage

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1 of the recipient district?

2 A I don't know if I could follow all
3 that and say that would always happen. I
4 really don't know.

5 Q Okay. Well, I'm just curious about
6 the word "logical" here and what you think
7 would be logical.

8 And I guess my question is, isn't it
9 logical that the BVAP percentage of two
10 districts would increase if the BVAP
11 percentage of the precincts given from one
12 district to the other was lower than the donor
13 district and higher than the recipient
14 district?

15 A I don't know, because if you hold
16 the deviation the same, that might be true,
17 but if you allow a greater deviation, that
18 might not be true, so it's difficult to know
19 what you're postulating there.

20 Q At the end of paragraph 20, you
21 write that "[h]aving a lower total population,
22 but approximately the same AP Black population

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1 results in a higher AP Black %," correct?

2 A Yes.

3 Q Do you know what the difference in
4 Black population is?

5 A It's probably in the reports, but I
6 would have to look at it. It's not in the
7 table that I provided.

8 Q You can take your time to look at
9 the reports, if that would help. I am curious
10 to know if you know the absolute number
11 difference in black population.

12 A I don't know.

13 Q Do you have an estimate as you sit
14 here?

15 A No.

16 Q What certain -- do you have -- how
17 would you ascertain whether the Black
18 population is approximately the same?

19 A I would look at those numbers. And
20 I'm not saying that that -- like I'm just
21 saying that that is a general -- it's a
22 general statement. Having a lower total

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1 population, but approximately the same number,
2 will yield a higher AP Black percentage.

3 Q So that last sentence of
4 paragraph 20 does not actually refer to your
5 analysis of Mr. Esselstyn's plan?

6 A I think it's something that helps
7 explain what might not seem logical from first
8 appearance if they could both go up in
9 percentage.

10 And more to the point, I made a
11 point of saying it's higher AP Black percent,
12 because I'm talking about population, not
13 voting-age population, in that sentence.

14 Q So in this sentence, when you say
15 having a lower total population, but
16 approximately the same AP Black population,
17 you are not referring to the changes in
18 Mr. Esselstyn's plan?

19 A I think it could refer to that. I
20 mean, I'd like to look at it and see what the
21 actual numbers are, but I'm saying that that
22 general case makes sense.

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1 If you kept the total population
2 approximately the same -- I'm sorry, if you
3 have a lower total population, if you change
4 the denominator and keep the numerator roughly
5 the same, then you would have a different
6 percentage.

7 Q And I guess I'm trying to figure out
8 how do you determine whether the AP Black
9 population is approximately the same?

10 Is there a number that would render
11 the population to be approximately the same?
12 5? 10? 100?

13 A Again, it's a general statement, and
14 I believe it may be true in this case, but I'd
15 have to look at it.

16 Q Okay. Can you take a look at it?
17 You have your report in front of you, right?
18 You have the exhibits that would allow you to
19 confirm?

20 A I have to look.

21 Q Sure.

22 A So I'd say that -- I may not have

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1 the information for the PI report in this, but
2 the PI information would be in another report,
3 so I don't know that this report shows that.
4 I'd have to reference the PI report, I think.

5 Q I mean, you did run Maptitude
6 comparisons of Mr. Esselstyn's 1205 Plan to
7 his PI Plan, correct?

8 A Yeah, but I need to -- I don't know
9 if in this report I have the plan components
10 for just the PI. I think that's in another
11 report.

12 Q But at the time that you drafted
13 this report, you concluded that the AP Black
14 population between Mr. Esselstyn's previous
15 district and his current -- and his 1205
16 illustrative district was approximately the
17 same?

18 A I mean, it could be approximately
19 the same. I'm pointing out that that's
20 something that that happens, and if it
21 happened in this circumstance, then it did,
22 and if it didn't, it didn't. I would have to

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1 look at it.

2 Q So your analysis here is a general
3 statement, it's not actually talking about
4 what did happen in Mr. Esselstyn's map?

5 A It may have -- it may have happened.
6 I'd have to look at the information that I
7 provided in the PI report.

8 I also have that information in the
9 population summary, but again, I'd have to
10 look at the population summary for the
11 PI Plan. So I don't know if the PI Plan
12 information is attached to this. I don't see
13 it here.

14 Q Did you have that information
15 available when you drafted this report?

16 A Yes.

17 Q And when you drew that -- when you
18 made this -- when you wrote this sentence,
19 were you basing it off of your information of
20 Mr. Esselstyn's report?

21 A Again, I'd have to look at the
22 report and see.

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1 Q So you don't recall when you drafted
2 this sentence whether or not you were actually
3 speaking of Mr. Esselstyn's report or just
4 generally, correct?

5 A It could be both. It could be
6 generally, and it could be specifically. I'd
7 have to look. And also, it's possible that
8 they're approximately the same.

9 Q It's possible, but you don't know
10 that sitting here?

11 A Again, I have said I would like to
12 look at the data from the preliminary report,
13 and I do have that.

14 In the analysis I did, I did look at
15 that, and the summary table has a portion of
16 that information, but there could be
17 additional information that's not in the
18 summary table.

19 Q When you drafted this report and
20 submitted it on January 23rd, did you know
21 whether the -- did you know the data to
22 know whether or not the AP Black population

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1 was approximately the same?

2 A Again, I would have to look at the
3 reports and see.

4 Q You don't recall whether, at the
5 time you drafted this report, you had that
6 information in front of you?

7 A I will be clear. I did have that
8 information in front of me, and I did not
9 include it in the summary table and Chart 2.
10 But I did have that information available, and
11 I would have looked at it.

12 Q So do you recall whether having that
13 information available, the sentence that you
14 drafted at the end of paragraph 20, refers
15 specifically to Mr. Esselstyn's report?

16 A Again, I would have to look at the
17 data.

18 Q Do you recall at that time whether
19 it was referring specifically to
20 Mr. Esselstyn's report, even if you don't
21 recall the data right now?

22 A Again, I don't recall the data right

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1 now. I recall that I did have that data
2 available to me when I was drafting this
3 report.

4 Q And you had that data available to
5 you when you were drafting this particular
6 sentence?

7 A Yes.

8 Q And when you were drafting that
9 particular sentence, was it based on the data
10 available to you from Mr. Esselstyn's report?

11 A The data that I had was from the
12 block assignment files, which is the same
13 underlying data, so I had that data, yes.

14 Q So this last sentence of
15 paragraph 20 was intended to refer to your
16 analysis of Mr. Esselstyn's Illustrative Plan?

17 A It's definitely referring to my
18 analysis of his plan, and I think that is a
19 general example of a technique where lowering
20 the total population will result in a higher
21 Black percent. And I believe that happened in
22 this case, but if it doesn't bear out, it's

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1 probably pretty close.

2 Q All right.

3 A Again, I would like to have the data
4 to reference it. I know I do have access to
5 that data.

6 Q All right, if we can turn to Chart 3
7 on the next page, on page 8 of your Grant
8 report, and here you provide top-line
9 summaries of Mr. Esselstyn's Senate Plan
10 versus the Enacted Senate Plan; is that right?

11 A Yes.

12 Q Would you agree that the two plans
13 have similar mean compactness scores on both
14 the Reock and Polsby-Popper metric?

15 A Yeah, I discuss that in paragraph 22
16 that the compactness scores are close to, but
17 slightly lower, than the Enacted Senate Plan.

18 Q And in the context of the
19 Congressional Plan, you referred to that .01
20 difference in mean compactness scores as
21 similar, correct?

22 A In that context, I did.

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1 Q Is it different in this context?

2 A I reported the numbers as they are.
3 They're within .01 of each other.

4 Q Do you believe that .01 is similar
5 in some contexts, but not in others?

6 A I suppose I'd have to look at the
7 circumstances surrounding it, but in this
8 case, it seems similar.

9 Q Okay. In this chart, you also state
10 the number of incumbent pairings in each plan;
11 is that right?

12 A Yes.

13 Q If we could turn back to paragraph 8
14 of your report, here you say that, in
15 preparing this analysis, you were given the
16 incumbent databases used by the General
17 Assembly in 2021; is that right?

18 A I believe that's correct.

19 Q So the incumbents that you refer to
20 in Chart 3 are the incumbents as of 2021?

21 A Yes, that's what I had access to.

22 Q So Mr. Esselstyn's plan from

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1 December 5th, 2023, pairs six people who were
2 incumbents as of December of 2021?

3 Is that what your analysis shows?

4 A Yes.

5 Q And you'd agree that some of those
6 six people are no longer in office?

7 A I don't know.

8 Q Did you conduct any analysis on the
9 extent to which Mr. Esselstyn's Illustrative
10 Senate Plan pairs current incumbents?

11 A I wasn't given that information, so
12 I didn't analyze that.

13 Q You did not have access to
14 information on existing incumbents in the
15 Georgia Senate?

16 A That's correct.

17 Q Do you believe that it's a relevant
18 analysis to the discussion of avoiding
19 incumbent pairings?

20 A I think it's relevant because that
21 was what was available at the time of the
22 drafting of the redistricting plan.

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1 Q When you were evaluating
2 Mr. Esselstyn's plan on the metric of avoiding
3 incumbent pairings, do you believe the 2021
4 incumbents are more relevant, or the 2022
5 incumbents?

6 A I don't know that there's a more or
7 less relevant. I think it's certainly
8 relevant to consider because this is what the
9 General Assembly had available at the time.

10 Q I believe when I asked you earlier
11 what value is served by avoiding incumbent
12 pairings principle, you said it was continuity
13 of representation; is that right?

14 A That's one of the factors that I
15 named.

16 Q What are the other factors?

17 A I think that's the easiest one to
18 talk about, and the continuity of
19 representation I think is what many people and
20 voters would probably think too.

21 You talk about incumbency. I
22 mentioned an example where you could have two

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1 incumbents that are in a district, but the
2 district skews to favor one over the other, so
3 there's an analysis that could be made about
4 that.

5 Q Where Mr. Esselstyn is drawing a
6 plan in December of 2023, do you believe it
7 would be relevant to his analysis of the
8 avoiding incumbent pairings principle to look
9 at incumbents who are no longer in office?

10 A Again, I'm using the data that was
11 available to the redistricting drafters and
12 the legislature at the time that they were
13 drafting the plan, so I think it's still
14 relevant.

15 Q So in evaluating Mr. Esselstyn's
16 adherence to avoiding incumbent pairings as a
17 principle, you believe it is relevant to look
18 at incumbents who are no longer in office?

19 A It's information that I had
20 available, and I included that.

21 If I have information about the 2022
22 members, I could look at that as well.

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1 Q Did you ask for information about
2 the 2022 members?

3 A I was not provided with that
4 information.

5 Q Are you aware that Mr. Esselstyn
6 provided that information in his report?

7 A Did he provide the addresses of the
8 incumbents?

9 Q That I don't know. I do know that
10 he did discuss the pairing of current
11 incumbents. But you don't discuss any pairing
12 of the current incumbents in your report,
13 correct?

14 A Well, some of the current incumbents
15 are the same, so, yes, I did.

16 Q But you performed no analysis on the
17 incumbents who are still in office as of the
18 drafting of Mr. Esselstyn's 1205 '23 report?

19 A I believe that many of them are
20 still in office. I think there's usually a
21 lot of incumbent retention in elections.

22 Q And so you relied on that belief

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1 when you were drafting this plan -- sorry,
2 this report on January 23rd?

3 A I didn't need to rely on that
4 belief. I had the data that I had access to,
5 which was the incumbents that were provided to
6 me that the legislature had access to during
7 the process.

8 Q And you did not seek out more recent
9 incumbent information in providing this
10 report?

11 A No.

12 Q You also note in paragraph 8 that
13 you were given information on incumbents who
14 were not intending to run for re-election in
15 2022; is that right?

16 A Yes.

17 Q What did you do with that
18 information in this analysis, in your Grant
19 report of January 23rd, 2022?

20 A I didn't reference it.

21 Q Why not?

22 A I'm just acknowledging that I had

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1 access to that information.

2 Q You did use that information in
3 preparing your PI report in this case; is that
4 right?

5 A Yes.

6 Q But you didn't use it in this
7 report; is that correct?

8 A I didn't specifically reference it,
9 that's correct.

10 Q So why the difference? Why did you
11 not reference that information in preparing
12 this report?

13 A I would probably have to get that
14 information again and look at it.

15 Q Can you explain what you mean by
16 that?

17 A So I was given a list of incumbents
18 that were -- my understanding was they were
19 not seeking re-election at the time of the
20 legislative redistricting process.

21 I didn't refresh my recollection of
22 that while I was drafting this.

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1 Q Why not?

2 A I didn't do that.

3 Q I'm asking why not?

4 A Okay.

5 Q Can you tell me why you didn't do
6 that?

7 A No, I don't have an answer for that.
8 I didn't do that.

9 Q You believed this was relevant
10 information in preparing your PI analysis,
11 correct?

12 A Yes. And for continuity sake, I
13 thought it was useful to include the same
14 information that was looked at in the
15 preliminary injunction as this phase as well.

16 Q But then you did not include the
17 information that you were given about who
18 intended not to run?

19 A No, but that's readily available in
20 the PI portion of the trial, and that could be
21 extracted from that if it's needed.

22 Q But it's not something you chose to

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1 examine here?

2 A Not specifically. It's available if
3 it's needed.

4 Q In Chart 3, you state that the
5 Enacted Plan pairs four incumbents.

6 Do you see that?

7 A Okay.

8 Q I'll represent to you that in your
9 PI report, you stated that the Enacted
10 Senate Plan pairs no incumbents.

11 Do you recall that?

12 A Probably.

13 Q And I'm happy to -- we can pull that
14 up, Bryan, if you have that. We've marked
15 that as Exhibit 5 to this deposition. And if
16 we turn to your PI report, page 16, Chart 3.

17 MR. TYSON: Is this the Grant
18 report, Abha?

19 MS. KHANNA: This is the -- I
20 thought it was one report, but it's the
21 PI report from -- was it January of 2022?
22 Page 16, Chart 3. Did that show up?

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1 MR. TYSON: Hang on just a second.

2 Page 16 is taking me to his CV on

3 Exhibit 5.

4 MS. KHANNA: You know what, maybe we
5 can just screen share it.

6 MR. TYSON: Here, I have
7 paragraph 15 on page 7 of the chart, but --
8 here we go, Chart 3.

9 MS. KHANNA: I think I'm screen
10 sharing. Do you see that on my screen?

11 MR. TYSON: There we go, yes. And
12 that is on page 9, Chart 3.

13 BY MS. KHANNA:

14 Q All right, so this is Chart 3 from
15 your PI report from earlier in the Grant case.

16 Do you see here that you state that
17 the Adopted Senate Plan pairs no incumbents;
18 is that correct?

19 A Yeah, I believe that was the case,
20 that it paired no incumbents that were running
21 for re-election.

22 BY MS. KHANNA:

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1 Q Okay. So what accounts for the
2 discrepancy between your PI report and the
3 number of paired incumbents and your
4 January 23rd, 2022, report on the number of
5 paired incumbents in the Enacted Senate Plan?

6 A The information about seeking
7 re-election. So in this case, it appears that
8 there were four incumbents that were paired,
9 but presumably they're not all seeking
10 re-election.

11 Q And you don't know whether those
12 four incumbents still exist -- or rather are
13 still incumbents in the Georgia Legislature?

14 A I'd have to look at the PI report to
15 see the names of the incumbents, or I'd have
16 to look at the names of the incumbents that
17 are in the appendix to this report.

18 So the names of the incumbents could
19 be compared to those who were re-elected in
20 2022.

21 Q But if I were looking in your
22 reports, I would not find any information on

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1 current incumbents in the Georgia Senate,
2 people who hold office in the Georgia Senate
3 today, correct?

4 A Yes, you would find some information
5 because some of those that were there before
6 the 2022 election are still there.

7 Q But I wouldn't know which ones those
8 were?

9 A No.

10 Q And you note here that
11 Mr. Esselstyn's Senate Plan pairs six
12 incumbents; is that correct?

13 A With the dataset that I was given,
14 that's what the information shows.

15 Q So it pairs six incumbents as of
16 2021?

17 A The data that I was given is from
18 that time period, and it was what the General
19 Assembly would have had at that time.

20 Q So you don't know how many
21 incumbents Mr. Esselstyn pairs when it comes
22 to current sitting incumbents; is that

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1 correct?

2 A No. And in the case of the
3 legislature, the legislature could not have
4 known in 2021 that it had paired an incumbent
5 from 2022 or not.

6 Q Okay. All right, I'm about to dive
7 into the next portion of the report, which
8 I think is a different kind of substantive
9 area.

10 I'm aware on your time zone it's
11 12:20. Do you think it's a good time for a
12 lunch break?

13 A Sure.

14 MR. TYSON: Okay.

15 MS. KHANNA: Should we do that?

16 MR. TYSON: Sure.

17 MS. KHANNA: Okay, we can go off the
18 record.

19 THE VIDEOGRAPHER: The time is
20 12:20 p.m. Off the record.

21 (Lunch break taken.)

22 THE VIDEOGRAPHER: The time is

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1 1:07 p.m. Back on the record.

2 BY MS. KHANNA:

3 Q All right. Good afternoon,
4 Mr. Morgan.

5 A Hello.

6 Q Okay, so I think we had left off
7 talking about Chart 3 on page 8 of your Grant
8 report from January 23rd, which is marked
9 Exhibit 3 to this deposition.

10 And over the course of the next few
11 pages, starting at the bottom of page 8 and on
12 page 9, you select certain districts to
13 compare between the Enacted Senate Map, and
14 then Mr. Esselstyn's Senate Map, isn't that
15 right?

16 A Yes.

17 Q What was your basis for choosing
18 certain districts for comparison? Was there a
19 reason that you chose some districts and not
20 others?

21 A I chose example districts to make a
22 comparison.

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1 Q What was the basis for choosing
2 those example districts?

3 A I chose many different districts in
4 the plan, but in this area, I'm choosing
5 districts that are based starting out in
6 DeKalb County and southern DeKalb.

7 Q Okay, let's start with the first.
8 The first district that you compare is SD-10
9 in the Enacted Plan compared to SD-10 in
10 Mr. Esselstyn's plan; is that right?

11 A Yes.

12 Q Why did you choose to compare Senate
13 District 10 between the two plans?

14 A I just answered that. They're both
15 anchored in southern DeKalb.

16 Q So that would be the qualification
17 for choosing those districts?

18 A I chose those two districts, and I
19 wouldn't describe that as a qualification.
20 You asked me, and that's what my answer was.

21 Q Okay. Why did you want to choose
22 districts that were anchored in southern

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1 DeKalb?

2 A It's an example, and I pointed to
3 how the districts are elongated, and
4 Mr. Esselstyn's District 10 goes from southern
5 DeKalb all the way to Butts County.

6 Q So you chose the example in which
7 you believe districts were elongated in
8 Mr. Esselstyn's plan?

9 A No, there were other examples. I
10 just chose an example district.

11 Q And I'm still just trying to
12 understand why did you choose SD-10 versus any
13 other district to compare?

14 A They're both anchored in southern
15 DeKalb, as I just said.

16 Q Are you aware that the new
17 majority-Black district in Mr. Esselstyn's
18 Illustrative Senate Plan is adjacent Senate
19 District 25?

20 A Yes. He called that a new district,
21 yes.

22 Q Did you compare Enacted Senate

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1 District 25 to Illustrative Senate

2 District 25?

3 A It's not in my report, so no.

4 Q So why did you choose -- why did you
5 choose not to compare those two districts?

6 A They're I believe in different
7 geographic areas.

8 Q So when you were looking at
9 Mr. Esselstyn's map, why did you choose to
10 analyze or use as an example Senate
11 District 10 instead of adjacent Senate
12 District 25?

13 A Again, I answered that. They're
14 both anchored in southern DeKalb.

15 Q Any other reason?

16 A They're fairly comparable. They're
17 anchored in southern DeKalb.

18 Q You contend that Senate District 10
19 is less compacted in Mr. Esselstyn's
20 Illustrative Plan than in the Enacted Plan?

21 A I mean, I report the compactness
22 scores, and I discuss the differences between

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1 the districts.

2 Q Are you aware of how the two plans
3 compare on Senate District 25 when it comes to
4 compactness?

5 A I didn't analyze that in my report.

6 I think in the appendix there may be
7 pictures of those senate seats possibly.

8 Q But you didn't choose to discuss
9 that analysis in your report?

10 A Not in the written portion of the
11 report. I picked an example district, and I
12 talked about it.

13 Q And the reason you picked that
14 example district was because it is anchored in
15 southern DeKalb County?

16 A Yes.

17 Q And you were particularly interested
18 in southern DeKalb county?

19 A I answered your question. That's
20 why I chose it. That's one -- it's the
21 primary reason why I chose it.

22 Q And why were you particularly

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1 interested in southern DeKalb County?

2 A There's a high concentration of
3 African American population in that area. I
4 was aware of that.

5 Q So you chose to focus on an area
6 where you believe there to be a high
7 concentration of Black population?

8 A That's an additional reason. I
9 already said that I chose those districts to
10 compare because they're anchored in similar
11 areas.

12 Q You next compare Senate Districts 22
13 and 23 in the Enacted Plan, and Senate
14 Districts 22 and 23 in Mr. Esselstyn's
15 Illustrative Plan; is that right?

16 A Yes.

17 Q Why did you choose to compare this
18 set of districts?

19 A I think that 22 and 23, taken
20 together, shows the way that the districts
21 were drawn differently, and in particular, how
22 District 23 is drawn, because District 22 is

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1 adjusted to take it out of Richmond County.

2 Q So I'm sorry, can you explain to me
3 again why you choose to analyze these
4 particular districts as opposed to any others?

5 A Sure, because I think it shows the
6 technique that I discuss in my report about
7 moving -- the Enacted District, as I say in
8 the report, is entirely in Richmond County.

9 And so in the Esselstyn Plan,
10 District 22 is moved out of Richmond County
11 and takes additional territory in Columbia
12 County, which allows District 23 to take
13 substantially African American population out
14 of Richmond County into District 23.

15 Q And you felt that that was a helpful
16 example of what?

17 A The technique for drawing the plan
18 that I see is done here where Mr. Esselstyn
19 was moving a district and making changes to
20 draw an additional district in this area,
21 additional majority minority 50%+ African
22 American voting-age population district.

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1 Q In paragraph 31, you provide both
2 the Reock and Polsby-Popper compactness scores
3 of Enacted Senate Districts 22 and 23, right?

4 A Yes.

5 Q But you don't similarly mention the
6 compactness scores of Illustrative Senate
7 Districts 22 and 23; is that right?

8 A It's not in the written portion of
9 the report, but it's in the appendix.

10 Q But you did not actually analyze
11 those compactness scores in your analysis
12 portion of your report; is that correct?

13 A I didn't recite those specific
14 numbers in paragraph 31.

15 Q Why not?

16 A I could have. It's in the appendix.

17 Q But why did you choose not to when
18 you provided those same statistics for the
19 Enacted Plan?

20 A I can look up the information if we
21 feel like it needs to be included. It's in
22 the appendix.

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1 Q I understand the information is in
2 the appendix. I'm asking a different
3 question.

4 I'm asking why you did not choose to
5 discuss that information in the analysis
6 portion of your report.

7 A It didn't seem that it was
8 especially required for the analysis that I'm
9 making.

10 Q Do you consider it an apt comparison
11 to provide certain data for one set of
12 districts, but then omit that data from your
13 analysis of a second set of districts that you
14 are comparing?

15 A As I said, I don't know that that
16 information would change the nature of my
17 analysis.

18 Q That wasn't the question I asked.

19 A Okay.

20 Q I'll repeat my question.

21 Do you consider it an apart
22 comparison to provide certain data for one set

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1 of districts, but then omit that data from
2 your analysis of the second set of districts
3 that you are comparing?

4 A I mean, either way, it's just a
5 fact, so it's there in paragraph 31. It's
6 possible that I intended to include it and
7 didn't.

8 I mean, I thought it was included,
9 but if it's not, it's not.

10 Q Mr. Morgan, do you consider yourself
11 an expert in this case?

12 A Yes.

13 Q And what is your expertise in?

14 A My expertise is in map drawing and
15 demographics.

16 Q And does your expertise extend to
17 running reports from Maptitude?

18 A Generally, yes.

19 Q Does your expertise also include
20 analyzing those reports from Maptitude?

21 A Generally, yes.

22 Q Is that the expertise you intend to

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1 offer in this case, in the Grant case?

2 A I believe I've also had a lot of
3 experience with map drawing over three decades
4 and states, and I think that's relevant in
5 this case as well, and my map drawing
6 experience.

7 Q So you provided a number of
8 Maptitude reports in this case, correct?

9 A Correct.

10 Q Why did you also provide a written
11 report?

12 A I was asked to compare plans and
13 opine about the plans that I compared, so I
14 did.

15 Q For the written report, your
16 analysis of the factual data is included in
17 the Maptitude reports, correct?

18 A It's a written report that -- yeah,
19 it's a written report that references a lot of
20 the material from the Maptitude reports, yes.

21 Q And the intent of the written report
22 is to provide your opinion and conclusions

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1 based on the objective data?

2 A It's based on the objective data, in
3 addition to my experience in redistricting
4 over many decades, and my experience in map
5 drawing.

6 Q In your experience as a testifying
7 expert, do you believe that courts find it
8 helpful to read information in Maptitude
9 reports, or understand what the importance of
10 that information is in the text of a written
11 report?

12 MR. TYSON: Object to form.

13 THE WITNESS: I'm not sure how to
14 answer that. I'm not sure what courts decide
15 to use or not use in their determinations.

16 BY MS. KHANNA:

17 Q Why do you think that your written
18 report is helpful alongside the Maptitude
19 reports?

20 A I think it pulls some illustrative
21 examples forward, and I discuss that in the
22 report, and it helps me to visualize and

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1 analyze to have additional information in the
2 report, such as maps.

3 Q So when you choose to analyze some
4 data in the report, but not others, do you
5 believe that -- is there a reason behind that
6 choice?

7 A In some cases, I'm picking instances
8 that will illustrate some points I'm trying to
9 make.

10 There are probably other examples,
11 but in the interest of my time and the time of
12 the other parties involved, I don't look at
13 every single instance. I'm trying to give
14 some illustrative examples.

15 Q So what point are you trying to make
16 in your analysis of Senate Districts 22 and
17 23?

18 A Sure, I thought I was clear on that.
19 I'm trying to make the point that in
20 the Esselstyn Senate District 22 and 23, that
21 the Esselstyn map pushes District 22 out of
22 Richmond County, and it takes some Black

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1 voting precincts that are relatively high
2 compared to other voting precincts on the
3 border of Columbia County, and then it
4 frees up that Black population that it
5 retreated from to put into District 23, and
6 then I discuss in more detail the makeup of
7 District 23.

8 Q Do you believe that those changes
9 have an impact on traditional redistricting
10 principles?

11 A I do.

12 Q Which ones?

13 A I talked about it in the sense that
14 there's an established District 22, which was
15 entirely in Richmond County, and that this
16 discards that traditional district and moves
17 it out.

18 And I discuss that the process of
19 doing this for District 23 in particular
20 follows the contours of the underlying African
21 American population and splits that away from
22 the rest of the county, and I'm pointing that

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1 out in my report.

2 Q Do you believe that these changes
3 have an impact on compactness?

4 A Possibly, but I didn't cite that
5 specifically in my report.

6 Q Do you know if these changes made
7 the district more or less -- Senate
8 Districts 22 or 23 more or less compact?

9 A I didn't cite that in the report.

10 Q You didn't choose to analyze that
11 factor in this report?

12 A I could, but I don't think that it
13 was necessary to support the point.

14 In fact, I'm trying to not use
15 compactness reports only. I'm talking about
16 the treatment of the underlying populations,
17 and in my opinion, the way that District 23
18 takes distinct areas of Black population,
19 these enclaves, and links them together, is
20 definitely something that separates those
21 communities that are made whole in the
22 Enacted Plan and not in the Esselstyn Plan.

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1 Q And you didn't believe that the
2 compactness analysis supported your
3 conclusion?

4 A I don't know. I'm trying to say
5 that I didn't need to rely on that to make
6 this point. In fact, straying away from the
7 compactness actually allows me to use other
8 metrics to discuss this point, like the
9 treatment of the Black population underneath.

10 Specifically, I mention how
11 District 22 takes those precincts in Columbia
12 County that are higher African American
13 percentages, and it's necessary to do that in
14 order to keep District 22 above the 50%
15 threshold.

16 Q But if I heard you correctly, you
17 said that straying -- was it straying away
18 from the compactness scores actually benefited
19 the analysis here?

20 A I'm not saying that it benefited
21 analysis. I'm saying that it wasn't necessary
22 to discuss compactness to make the point that

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1 I made in my report.

2 Q And you don't know if a discussion
3 of compactness would have supported or
4 undermined the point that you were making in
5 your report?

6 A The compactness might be greater,
7 I think it may be in some of the Esselstyn
8 districts, but that is actually -- if it's
9 counter on compactness, it's still important
10 on the composition of the districts, which is
11 the point I'm trying to make here.

12 Sometimes compactness is a factor,
13 and in this case, it's not necessarily about
14 compactness, it's about the treatment of the
15 underlying populations, the splitting of
16 counties, and the need to grab enclaves of
17 Black population from all around the area and
18 put them into a single district.

19 Q So sometimes compactness is relevant
20 to your analysis, and sometimes it is not?

21 A I was saying, in this instance, it's
22 not necessary to make the point that I made.

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1 I could maybe look at other options,
2 but this is the option that I looked at in
3 this area.

4 Q So you agree that when you were
5 comparing districts in your analysis from the
6 Esselstyn Plan to the Enacted Plan, you didn't
7 always compare them on the same metric,
8 correct?

9 A Well, all the metrics are available
10 in my plan, and we have the option of looking
11 at any comparison that anyone wants to make.
12 The data is what the data is.

13 Q So you had the option of making
14 comparisons, and you did not choose to make
15 those comparisons on identical metrics for
16 each district?

17 A Again, in this area, I'm
18 illustrating another technique that I think is
19 important in how the plan was drawn, and how
20 the districts in this area specifically were
21 drawn, and I gave that information in my
22 report.

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1 Q So you do not provide objective data
2 points on compactness in your written report
3 for the Esselstyn Districts 22 and 23; is that
4 right?

5 A Again, it does not appear that in
6 District 31 that information is provided for
7 the Esselstyn Plan.

8 Q So instead, in paragraph 32, you
9 provide your descriptive analysis of what you
10 believe to be driving the Illustrative Plan;
11 is that fair?

12 A I don't understand.

13 Q In paragraph 32, what are you --
14 this is a descriptive analysis, correct?

15 A I suppose you can characterize it
16 that way.

17 Q It doesn't refer to any attachments
18 or exhibits?

19 A It refers to the maps that it's
20 associated with, very much so.

21 Q Does it refer to any numerical or
22 quantitative data points?

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1 A Yes, there's numerical data
2 contained in the maps. It shows the
3 percentage of African American population, and
4 I contend that the boundary of Senate
5 District 23 in the Esselstyn Plan closely
6 follows the underlying Black population.

7 Q Okay, you begin paragraph 32 with a
8 sentence that says "[i]n order to change the
9 racial makeup of Senate Districts 22 and 23."

10 Do you see that?

11 A Yes.

12 Q What is your basis for concluding
13 that these lines were drawn in order to change
14 the racial makeup of Senate Districts 22 and
15 23?

16 A Well, it's self-evident to me, but
17 as I state, the differences between the
18 Enacted Plan and the Esselstyn Plan show that
19 in the Esselstyn Plan, District 22 is moved
20 out of Richmond County, but also took in what
21 I would say is voting precincts that allow it
22 to retain its majority African American

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1 percentage, and then that allows other
2 stronger Black population from Richmond County
3 to be used to enhance the African American
4 voting strength in District 23.

5 Q And you opine from that that these
6 changes were made in order to change the
7 racial makeup of Senate Districts 22 and 23?

8 A Yes, that's what I wrote in the
9 plan, and that's what I believe. That's my
10 opinion.

11 Q Are you aware of any other
12 explanations for why these changes were made?

13 A I was analyzing the data that I had,
14 and that's my opinion and my conclusions.

15 Q Did you analyze any other possible
16 explanations?

17 A I certainly didn't look at all
18 possible explanations. If there are other
19 explanations, that's fine. I'm reporting on
20 what I see, and it's my opinion.

21 Q In the second sentence of
22 paragraph 32, you say that the Esselstyn 1205

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1 Senate plan strategically utilizes the Black
2 population in Columbia City [sic] in order to
3 keep SD 22 above 50% BVAP. Is that right?

4 A Columbia County, yes.

5 Q Sorry, Columbia County.

6 What is your basis for opining that
7 Mr. Esselstyn strategically utilized the Black
8 population in this way?

9 A Because on the map on page 16, I
10 show on the thematic map that those voting
11 precincts that he includes in Senate
12 District 22 have a higher African American
13 percentage than adjacent voting precincts
14 along the border in Columbia County in a
15 different area.

16 Q So that fact mean makes you believe
17 that that choice was strategic?

18 A Absolutely.

19 Q Toward what end?

20 A To keep District 22 above the 50%
21 threshold.

22 If other precincts were picked along

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1 the border, it would not be 50%.

2 Q Can you define for me what you mean
3 by "strategic"?

4 A In my opinion, I believe it was the
5 utilization of the African American population
6 in Columbia County to raise and keep the Black
7 population of District 22 at 50% or higher.

8 Q Let's turn to paragraph 36 of your
9 Grant report. Here you note that
10 Mr. Esselstyn's plan makes Bibb and Douglas
11 Counties whole in his Illustrative Senate
12 Plan; is that right?

13 A Yes.

14 Q Are you aware of why he did that?

15 A I didn't report on that in my
16 report, so I don't have -- I didn't discuss
17 that in my report.

18 Q Do you offer -- do you have any
19 opinion as to why he decided to make Bibb and
20 Douglas Counties whole?

21 A I don't have an opinion on that.

22 Q So you offer no opinions in your

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1 report about why Mr. Esselstyn made Bibb and
2 Douglas Counties whole?

3 A That's not in my report, that's
4 correct.

5 Q You next state that Mr. Esselstyn's
6 map introduces seven new county splits; is
7 that correct?

8 A Yes.

9 Q Now, can you clarify for me, are
10 those seven counties that are split, or seven
11 individual county splits?

12 A My understanding is that those are
13 counties that are split. They are not split
14 in the Enacted Plan; they are split in the
15 Esselstyn Plan.

16 Q So you're referring to seven
17 counties that are split in Mr. Esselstyn's
18 plan, but not in the Enacted Plan?

19 A That's my understanding, yes.

20 Q Are you aware why
21 those additional -- in your opinion, those
22 additional counties are split?

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1 A I indicate in my report that four of
2 the seven county splits are directly due to
3 the construction of Senate District 23, which
4 I believe I've also said and pointed out that
5 the division of those counties is such that
6 the areas with higher Black population are put
7 in District 23, and that counties split
8 outside of District 23 has lower African
9 American percentages.

10 Q But you also opine here that all
11 seven additional split counties are
12 attributable to the effort to create new
13 majority-Black districts; is that right?

14 A Yes.

15 Q What is that conclusion based on?

16 A It's based on my experience in
17 looking at the totality of the maps.

18 Q You address all seven of these
19 splits in the preceding sections of your
20 report?

21 A I have the data in the appendix that
22 supports these discussions, and in looking at

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1 the maps, it's my opinion that that is what is
2 being done.

3 Q So in the previous sections of your
4 report, we discussed -- or rather you
5 discussed Senate Districts 22 and 23 and the
6 splits that arise in that configuration; is
7 that correct?

8 A Yes, that's correct.

9 Q And you state here that that
10 accounts for four of the seven splits that
11 you're referring to in paragraph 36?

12 A Yes, Baldwin, Greene, McDuffie, and
13 Wilkes.

14 Q So at any point do you discuss the
15 remaining three splits that you refer to in
16 paragraph 36?

17 A I discuss them right here.

18 Q And the sum total of your analysis
19 of those three additional splits is in the
20 last sentence of paragraph 36?

21 A Yes, and I contend that those are
22 related to drawing additional majority African

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1 American districts in this plan.

2 Q Can you explain which districts
3 you're talking about?

4 A In Coweta -- let me refer to my
5 appendix. Senate District 28 -- sorry, that's
6 Exhibit 22, in the appendix of my report. It
7 shows Senate District 28, which takes a
8 portion of Coweta County; and then in the Plan
9 Component Reports, it has the population
10 statistics and demographic statistics on that
11 split.

12 And then Rockdale, which is
13 Exhibit 25, there's a map that shows Rockdale
14 is split in Senate District 43 in the
15 Esselstyn Plan.

16 And then I believe Wilcox is related
17 to some of those changes in another part. I
18 have to look at that.

19 So Emanuel and Jenkins County are in
20 Senate 23 in the Enacted Plan, and they're not
21 in the Esselstyn Plan, so that population is
22 pushed into other districts to the south, and

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1 that ends up making Wilcox be split.

2 Q Does that cover all of the county
3 splits that you refer to in paragraph 36, the
4 last sentence of paragraph 36?

5 A I believe so. The three additional
6 counties that were not in Senate District 23
7 are Coweta, Rockdale, and Wilcox.

8 Q So you provide no analysis of those
9 three additional counties outside of the plan
10 reports attached as exhibits to your report;
11 is that correct?

12 A In addition, I stated what I stated
13 in my report, and I believe that that is true,
14 and that's my opinion.

15 Q So when referring to those three
16 additional county splits, your analysis is
17 limited to that single sentence in
18 paragraph 36 and the information in the
19 attachments to your report; is that correct?

20 A Yes. And as I stated at the
21 beginning of the report, this is analysis and
22 opinion, and that's my opinion.

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1 Q And you offer no explanation outside
2 of the last sentence of paragraph 36 of your
3 opinion?

4 A Well, I believe that, in most cases,
5 my opinions in the report could be and would
6 be supplemented with testimony, which I'm
7 providing.

8 Q So you intend to provide an
9 explanation in your oral testimony that you
10 did not provide in your written report?

11 A I just provided the oral testimony
12 here in this deposition. I would be happy to
13 provide that at trial as well.

14 Q Do you believe this report to be a
15 complete -- to be a complete summary of your
16 analyses related to the Grant case?

17 A Generally, I believe so. As I
18 pointed out, I also have opinions based on my
19 experience.

20 Q Did you present all of the opinions
21 that you intend to offer at trial in this
22 report?

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1 A Generally speaking, yes, but as I
2 believe you may know, I may be asked questions
3 that are not contained in the report, and I
4 believe it's my responsibility to answer the
5 questions posed to me at trial.

6 Q Let's turn to paragraph 37 of your
7 Grant report, and here you offer several
8 conclusions, and I'll walk through them one by
9 one.

10 First you say that the impact of
11 engineering more majority-Black districts can
12 be seen in the overall plan metrics and the
13 differences from the Enacted Plan.

14 I'll wait for you to get to
15 paragraph 37, sorry.

16 A Okay, I'm at that paragraph.

17 Q Okay. And do you want to take a
18 minute just to read the paragraph?

19 A Okay.

20 Q Just let me know when you're done.

21 A Okay.

22 Q So in that first sentence where you

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1 say "the impact of engineering more majority
2 Black districts," can you explain to me what
3 you mean by "engineering"?

4 A In this case, "engineering" refers
5 to the construction of the districts, and so
6 I think, for example, in District 23, I
7 discuss in detail the construction of that
8 district, and that's engineering.

9 Q So engineering is basically the same
10 as constructing?

11 A It's similar. It's not a one-to-one
12 definition.

13 Q I guess you could have used the term
14 drawing more majority-Black districts,
15 constructing, creating. Why did you choose
16 the term "engineering" instead?

17 A It's pretty similar to those other
18 words.

19 Q Does it mean the same thing?

20 A It's similar. I mean, there's --
21 I think certainly in the case of District 23,
22 I'm discussing how that specific district is

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1 constructed in a particular way, and that
2 seems to be an example of engineering, but
3 it's the construction, the creation of.

4 Q In what way is the impact of
5 creating new majority-Black districts seen in
6 the overall plan metrics?

7 A Well, clearly it's seen in the
8 number of split counties, as I discuss in the
9 report. It's not just the total number of
10 split counties, but it's also which ones were
11 split.

12 Q And how else is it seen in the
13 overall plan metrics?

14 A I note in my report that the
15 deviation in the Esselstyn Plan is greater
16 than the Enacted Plan, the deviation range.

17 Q Any other ways in which the impact
18 of creating new majority-Black districts is
19 seen in the overall plan metrics?

20 A I think that helps to cover it.

21 And then also, as I say in the same
22 sentence, that it's also in the comparison

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1 between the two plans.

2 Q Have we covered all the ways in
3 which the impact of creating new
4 majority-Black districts is seen in the
5 overall plan metrics?

6 A Well, again, they're linked.
7 They're in the overall plan metrics and the
8 differences from the Enacted Plan, which I
9 discuss in the report.

10 Q Are there any other ways in which
11 the impact of creating new majority-Black
12 districts are seen in the overall plan metrics
13 other than what you've just mentioned?

14 A Well, we've looked at compactness in
15 some areas, in some specific districts, which
16 I discuss.

17 We've talked also about paired
18 incumbents; that's something that you can look
19 at as well.

20 Q When you said that the impact of
21 creating new majority-Black districts can be
22 seen in the overall plan metrics, were you

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1 referring to the incumbent pairings?

2 A The statement is what it is. I
3 mean, I said what I said. The overall plan
4 metrics and the differences from the
5 Enacted Plan.

6 Q I understand. I'm just trying to
7 make sure I understand all of the ways that
8 you contend that the creation of new
9 majority-Black districts can be seen in the
10 overall plan metrics.

11 A Okay. Then I think I answered the
12 question.

13 Q You contend that the creation of new
14 majority-Black districts can be seen in the
15 pairing of incumbents?

16 A I didn't specifically say that in
17 the report.

18 Q No, you didn't. You said it can be
19 seen in the overall plan metrics, and I'm just
20 trying to figure out which overall plan
21 metrics are you referring to in this sentence.

22 Are you referring to the overall

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1 plan metrics on county splits?

2 A Yes.

3 Q Are you referring to the overall
4 plan metrics on voting precinct splits?

5 A Yes. And again, this is in
6 combining with the comparison between the two
7 plans.

8 Q Are you referring to overall plan
9 metrics on mean compactness Reock scores?

10 A It's not just the mean compactness.
11 In some cases, I'm looking at individual
12 districts, but the summary chart has the mean
13 compactness scores. There's a slight
14 difference there.

15 Q Right. So when you say that the
16 impact of creating new majority-Black
17 districts can be seen in the overall plan
18 metrics, are you referring to the mean
19 compactness Reock scores of the overall plan
20 metrics?

21 A In addition to individual districts,
22 the mean compactness is a top-line number

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1 that's reported in a summary table, and I've
2 also referred to individual compactness scores
3 in the appendix.

4 Q No, I understand that you've also
5 referred to other data, but I'm focusing right
6 now where you say it has been seen in the
7 overall plan metrics.

8 Is it your understanding that when
9 you refer to overall plan metrics, you're not
10 talking about individual districts?

11 A Well, again, while it seems that you
12 may be trying to separate from the rest of the
13 sentence, I'm also talking about the
14 differences from the Enacted Plan. They are
15 linked in my sentence, and that is my intent.

16 Q So if you could go back to Chart 3
17 on page 8 of your report.

18 A Yes.

19 Q I believe you refer to this as the
20 top-line statistics of the plans.

21 A Okay.

22 Q Do you believe that Chart 3

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1 summarizes the overall plan metrics as you
2 used that term in paragraph 37?

3 A Those are some of the metrics that I
4 reported in the summary table.

5 Q Are there other metrics that you're
6 referring to when you refer to overall plan
7 metrics in paragraph 37 other than the ones
8 listed in Chart 3?

9 A Generally, that covers it, in
10 addition to the differences from the
11 Enacted Plan.

12 Q But when we're talking about overall
13 plan metrics, just that term, you are
14 referring to the metrics listed in Chart 3,
15 correct?

16 A Generally, yes.

17 Q And are there any other metrics
18 you're referring to when you say "overall plan
19 metrics"?

20 A Well, I did mention the deviation
21 range as well, which is in the chart.

22 Q Are there any metrics other than

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1 what's listed in Chart 3 that you're referring
2 to when you refer to "overall plan metrics" in
3 paragraph 37?

4 A Those are the metrics that I
5 reported in the chart. It could be that
6 there's additional overall metrics, but those
7 are the ones that are in the chart, and that
8 is the principal ones that I'm looking at.

9 Q Who would know what you intended
10 when you referred to "overall plan metrics" in
11 paragraph 37?

12 A I'm saying that those are the
13 overall plan metrics that I reported in the
14 table, and then if there's additional factors
15 that I left off the table that I might also,
16 in my opinion, make some discussions about, I
17 wouldn't want to exclude those.

18 Q So it's possible that you are
19 referring to metrics that you chose not to
20 specifically analyze in your report?

21 A That's not what I said.

22 I'm just allowing for the

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1 possibility that if I have an opinion about
2 the overall plan metrics that are not in the
3 chart, that I would give that opinion.

4 At this point, I didn't write about
5 those other metrics possibly in the report, so
6 generally I'm saying that it's what's in
7 Chart 3.

8 Q Is it possible that the opinions
9 that you express in your report are based on
10 analyses not contained in your report?

11 A In the sense that I can analyze
12 something on my own and make opinions from it,
13 then certainly.

14 For example, I know lots of
15 different areas in Georgia, and so I have some
16 ideas of the makeup of the counties and the
17 populations underneath them. That might not
18 appear in a report or a statistic.

19 Q And those ideas might not even be
20 expressed in your report; is that correct?

21 A Again, this is based on my opinion
22 from my experience, as well as the data that

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1 I've analyzed on these plans, but also my own
2 knowledge.

3 Q So the opinions that you expressed
4 in your report, the basis for those opinions
5 are the summary charts attached to your
6 report, the written textual analysis, and
7 something else?

8 A Again, I made opinions that are
9 primarily based on what's in the report.

10 Q And is it possible that those
11 opinions are based on information or analyses
12 that are not contained in your report?

13 A Well, generally it's going to be
14 related to something that is in the report
15 because, for the most part, I've tried to be
16 comprehensive in the amount of data that was
17 included.

18 So, for example, when I talk about
19 the -- you know, the voting precincts that are
20 in one district or another, I do have
21 experience on some of those voting precincts
22 that might not be expressed in a specific

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1 statistic.

2 Q You next in paragraph 37 -- and you
3 can turn back to that. I'm not sure if that's
4 in front of you just yet.

5 Going back to paragraph 37, you
6 refer to your analysis of traditional
7 redistricting factors, and here you list
8 maintaining communities and traditional
9 boundaries. Do you see that?

10 A Yes.

11 Q What communities did you analyze?

12 A In many cases, I'm talking about the
13 communities that are expressed on the maps,
14 and also communities that have traditional
15 boundaries, such as counties and voting
16 districts and things like that.

17 Q Okay. So when you've referred to
18 communities expressed on the maps, what
19 communities are you referring to?

20 A Well, for example, like
21 Milledgeville is a community within Baldwin
22 County that's not explicitly -- it's a portion

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1 of Baldwin County, but Milledgeville, in that
2 area, I would believe is a community.

3 Q So how do you define "communities"
4 in the way that you've used it in
5 paragraph 37?

6 A Well, as I said, in the case I just
7 described with Milledgeville, there's what I
8 would contend is a Milledgeville community
9 that is in the center of Baldwin County; and
10 in addition, there are counties and voting
11 precincts that are fairly easily discernable,
12 so I'm talking about those as well.

13 Q So when you refer to "communities,"
14 you're referring specifically to Milledgeville
15 counties and precincts; is that correct?

16 A No. For example, when I talk about
17 southern DeKalb, and if I were to say that the
18 area of southern DeKalb has been
19 fractionalized or broken up, I can say that,
20 and that would be something I would say.

21 Q Do you consider southern DeKalb to
22 be a community?

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1 A I'm giving an example. It could be
2 a community.

3 I think in the report I talk about
4 Macon and Bibb County.

5 Q You talk Macon and Bibb County in
6 the Senate Plan?

7 A No, in the House Plan.

8 Q Okay. So I'm focusing on
9 paragraph 37, which I think is solely about
10 your Senate Plan analysis.

11 A Okay.

12 Q And here you say that "my analysis
13 of the traditional redistricting factors ...
14 supports my opinion," and among those
15 traditional redistricting factors is
16 maintaining communities, and I am just trying
17 to understand what communities do you analyze
18 in your -- you said your analysis of
19 communities. What communities are included in
20 that analysis?

21 I've heard so far Milledgeville, and
22 then certain counties and precincts.

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1 Are there other communities that you
2 mean to refer to when you refer to
3 "communities"?

4 A There could be. Again, I'm saying
5 it's primarily counties and voting districts
6 and municipalities.

7 Q And when you say the term
8 "communities," do you mean that to be the same
9 thing as communities of interest?

10 A I don't know that it's a one-for-one
11 definition, so I would say not in a
12 one-for-one sense.

13 Q What is the definition -- in your
14 understanding, how do you define "communities
15 of interest"?

16 A That can be very broad. In my
17 report of 1205, I discuss some examples of
18 communities of interest, which is fairly
19 broad.

20 Q You just told me that when you use
21 the term "communities" here in paragraph 37,
22 that that's not the same as communities of

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1 interest in your understanding; is that
2 correct?

3 A I'm saying they -- one could be
4 contained within the other. It's possible
5 that communities and communities of interest
6 overlap.

7 Q What do you mean when you say
8 maintaining communities?

9 A Communities that are defined by
10 traditional boundaries, and possibly
11 communities that exist that are defined by
12 other things than strictly boundaries.

13 For example, you could say that
14 there's a coastal community, or you could say
15 that there's -- in Georgia, there's a mountain
16 community. There's other possibilities that I
17 could be looking at.

18 Q What communities did you analyze in
19 forming the conclusions in paragraph 37?

20 A Again, I'd say primarily it's the
21 geographic communities. I mention counties
22 and municipalities and precincts, and things

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1 like that.

2 Q Do you consider southern DeKalb
3 County to be a community that you're referring
4 to in paragraph 37?

5 A It's something that I've discussed
6 in a companion part of this report.

7 Q So is that yes?

8 A Yes, southern DeKalb is one
9 potential community.

10 Q And what defines the southern DeKalb
11 community?

12 A It's in southern DeKalb.

13 Q So it's a latitude/longitude line?

14 A No, not necessarily. It's a group
15 of precincts that comprise the southern
16 portion of DeKalb County.

17 Q And what makes that a community by
18 your definition?

19 A Well, underneath that, there are a
20 handful of municipalities that are part of
21 that community --

22 Q Can you explain to me --

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1 A -- such as -- go ahead.

2 Q No, no, go ahead, finish.

3 A Okay.

4 Q Can you explain to me all of the
5 ways that you believe southern DeKalb is a
6 definable community?

7 A No, I can't explain all of the ways.

8 I would say that that's an example
9 of a community. I mentioned Stonecrest in
10 paragraph 27 of this report.

11 Q So southern DeKalb is a community,
12 by your definition, because of the
13 municipalities within southern DeKalb?

14 A And the fact that they're proximate.
15 The areas -- you know, it's a relatively --
16 it's a relatively defined area in southern
17 DeKalb.

18 Q How is it defined?

19 A It's defined by the precinct names.
20 It's defined by the municipalities that are
21 there.

22 Q And how does the precinct names

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1 distinguish it from other portions of DeKalb?

2 A Many times you'll see precinct names
3 that also refer to what you would call not
4 necessary a municipality, but a geographic
5 area. Like, you know, you could have the
6 names of the precincts also proximate
7 geographic areas.

8 Q And is that what defines southern
9 DeKalb County, the precinct names?

10 A In some cases. I'd have to look at
11 the list of precincts.

12 Q Anything else that defines southern
13 DeKalb County as a community separate from
14 other portions of DeKalb County?

15 A Uhm --

16 Q I'm sorry, did you say no?

17 A I didn't say anything.

18 Yeah, I don't know what else I would
19 add to that at this moment.

20 Q Does southern DeKalb County have
21 anything that distinguishes it from northern
22 DeKalb County?

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1 A Well, it has places, it has a
2 handful of communities there, and there are
3 other communities, such as Doraville and
4 Tucker that are in other parts of the county
5 that are not in southern DeKalb.

6 Q Southern DeKalb County has
7 municipalities that obviously are not in
8 northern DeKalb County?

9 A Yes. I talked about Stonecrest as
10 one example.

11 Q Any other distinguishing differences
12 between southern DeKalb County and the rest of
13 DeKalb County that you believe identifies
14 southern DeKalb County as a community?

15 A I would have to look at that more.
16 I think we've seen on these maps
17 that I've made that there's higher
18 concentrations of African American population
19 in southern DeKalb. That could be something
20 that you would look to if you wanted to.

21 Q Is that what you looked to when you
22 were defining community?

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1 A Not necessarily, but it's a
2 demographic fact of that area.

3 Q But it's not one that you took into
4 consideration when identifying southern DeKalb
5 as a community?

6 A Not specifically, no.

7 Q In some other way did you consider
8 it?

9 A I'm sorry?

10 Q You said "not specifically."
11 Is there some other way that you
12 considered it a community that's not specific?

13 A I guess not.

14 THE REPORTER: I'm sorry, this is
15 the court reporter. Is everyone else getting
16 that background noise?

17 MR. TYSON: We have a yard crew
18 outside the window here.

19 THE REPORTER: Oh, it's a blower,
20 okay. I just wanted to make sure it wasn't
21 just me. Okay, I'm sure it will pass shortly.
22 Thank you.

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1 MR. TYSON: Yeah, and we've been
2 going about an hour. Do you want to take
3 break? Because they should be out of the way
4 in just a few minutes. If we take 10 minutes,
5 does that work?

6 MS. KHANNA: Sure. Do you want to
7 take a 10-minute break?

8 MR. TYSON: Yeah, let's do that.

9 MS. KHANNA: All right, so back on
10 11:15, 2:15 your time?

11 MR. TYSON: 15? Yep, that works.

12 THE VIDEOGRAPHER: The time is
13 2:04 p.m. Off the record.

14 (A break was taken.)

15 THE VIDEOGRAPHER: The time is
16 2:17 p.m. Back on the record.

17 BY MS. KHANNA:

18 Q All right, Mr. Morgan, we were
19 looking at paragraph 37 of your January 23rd
20 report in the Grant case.

21 Do you still have that in front of
22 you?

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1 A Yes.

2 Q And in the second sentence you say
3 "my analysis of the traditional redistricting
4 factors," and then you list a number of those
5 redistricting factors; is that correct?

6 A Yes.

7 Q I think before the break we talked
8 about your understanding of communities, when
9 you referred to maintaining communities.

10 Do you recall?

11 A Yes.

12 Q You also say here traditional
13 boundaries. Can you tell me what you're
14 referring to when you refer to traditional
15 boundaries in this sentence?

16 A Generally speaking, voting
17 precincts, municipalities, counties. Other
18 boundaries that are traditional could be
19 rivers, could be coastal, military bases.
20 There's other traditional boundaries.

21 Q And which traditional boundaries in
22 particular are you referring to in

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1 paragraph 37 in your analysis of traditional
2 redistricting factors?

3 A I just gave a list of those.

4 Q So you are including all of those
5 what you just listed as traditional
6 boundaries, military installations, coastal
7 communities?

8 A Usually those things would have a
9 fairly definable boundary, and certainly
10 counties and voting precincts.

11 Q Can you explain to me what
12 traditional boundaries you specifically
13 analyzed in forming the opinion that you state
14 in paragraph 37?

15 A Counties, voting precincts,
16 municipalities. I think that covers it for
17 the purposes of this clause in this sentence.

18 Q What about the Benchmark Plan? Do
19 you consider those district lines, benchmark
20 district lines, to be traditional boundaries?

21 A Yes, and so I would include
22 relationship to those as well.

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1 Q Anything else?

2 A As I'm sitting here now, that's what
3 comes to mind.

4 Q You next refer to compactness. In
5 what way does your analysis of compactness
6 support your opinion that Mr. Esselstyn's plan
7 is, quote, "focused on race"?

8 A I looked at compactness in some
9 areas, and I discuss the elongation of
10 districts in some areas as well.

11 Q What specific areas are you
12 referring to?

13 A Well, the specific example that I
14 have is District 10, which is identified in
15 the body of the report.

16 Q Any other examples?

17 A There are 56 districts, and I could
18 look at more, but that's the one that I
19 specifically point to in the body of the
20 report.

21 Q So when you refer to compactness in
22 paragraph 37, the only analysis of compactness

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1 that informs your opinion in paragraph 37 is
2 regarding Senate District 10?

3 A No. I also have my own experience
4 in looking at the plan overall, but in
5 particular, I pointed out one specific example
6 earlier in the report.

7 Q You refer in the last line of
8 paragraph 37 to your opinion that the
9 Esselstyn 1205 Senate Plan is focused on race,
10 prioritizing race to the detriment of
11 traditional redistricting factors; is that
12 right?

13 A Yes.

14 Q What traditional redistricting
15 factors are you referring to in that last
16 line?

17 A I thought it refers back to what was
18 in the earlier part of the sentence generally.

19 Q So the traditional redistricting
20 factors that you believe are disadvantaged, or
21 you say to the detriment of traditional
22 redistricting factors, you believe that

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1 Mr. Esselstyn's plan is to the detriment of
2 maintaining communities?

3 A You asked what I was referring to,
4 and they're listed earlier in the sentence.

5 Q And you believe that those factors
6 that you list earlier in the sentence are
7 worse in Mr. Esselstyn's plan compared to the
8 Enacted Plan?

9 A Well, again, the actual sentence
10 reads that those traditional factors, along
11 with the boundary differences between the two
12 plans.

13 Q And you believe that the --

14 A Well, for example, in Senate
15 District 23, if it turns out, as I believe
16 you're contending that Mr. Esselstyn's
17 District 23 might have a higher compactness
18 score than Enacted 23.

19 However, I would say that the
20 differences in the boundaries between the
21 Enacted 23 and Esselstyn's 23 are significant
22 in my discussion and my analysis.

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1 Q Significant in what way?

2 A As I pointed out, Mr. Esselstyn's
3 plan breaks apart the counties in Wilkes and
4 Greene and Baldwin and McDuffie and Richmond,
5 and it takes significantly higher portions of
6 Black population out of those counties to put
7 into District 23.

8 Q And so what traditional
9 redistricting factor is hindered by that?

10 A The maintaining of communities and
11 traditional boundaries, the counties are
12 split, and they're split along racial lines,
13 as I detail in the report.

14 Q Did you consider race to be a
15 community?

16 A I didn't say that in the report.

17 Q I'm asking you now.

18 A A community of interest in this
19 sense? Not specifically.

20 I suppose there could be arguments
21 made that racial affiliation could be a
22 community of interest, but it's not often

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1 cited as a traditional redistricting factor.

2 Q So when you say that certain
3 divisions were made of a racial community, do
4 you believe that -- do you believe that the
5 division of Black population is a division of
6 a community of interest?

7 A No, I didn't say that.

8 I'm saying that by dividing along
9 racial lines in those specific counties --
10 Wilkes, Greene, McDuffie, Baldwin and
11 Richmond -- specifically are breaking up the
12 communities that are defined by those
13 counties; and potentially within those
14 counties, the boundaries are explained by the
15 need to take additional African American
16 population out of the communities that they're
17 splitting away from.

18 Q You mentioned that racial
19 affiliation can be considered a community of
20 interest; is that right?

21 A I'm not looking at this report in
22 that way, but I've heard some people describe

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1 it that way. That's not something I would
2 traditionally use.

3 Q So do you consider racial
4 affiliation to be a community of interest?

5 A Not in every case, no.

6 Q In some cases?

7 A It could be possible that a case
8 could be made for that in some cases.

9 Q So what would make a racial
10 community a community of interest in your
11 opinion?

12 A I don't know. I'd have to look at
13 the factors that are considered in that.

14 I think that in this case when we're
15 talking about communities, they're generally
16 geographically defined, and I mentioned a list
17 of them.

18 I would also include, say, military
19 areas. I mentioned mountains and coastal
20 areas. Those are often geographically
21 defined, which is why we discuss traditional
22 boundaries.

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1 Q What factors would you look at to
2 determine whether a racial group is a
3 community of interest?

4 A I don't know. I haven't really done
5 that kind of analysis for this case.

6 Q You provided no opinion as to
7 whether a racial group is considered a
8 community of interest in this case?

9 A That's correct.

10 Q No opinion one way or the other?

11 A Generally speaking, I believe that
12 is correct.

13 Q Is there some other aspect in which
14 it's not correct?

15 A I'm just saying that, generally
16 speaking, I believe that's correct in my
17 report.

18 Q Is generally speaking meant to
19 exclude another aspect of your report?

20 A No, it's not meant to exclude. I'm
21 just, if anything, being more inclusive of the
22 possibility that I might have said something

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1 that goes against the general statement that I
2 just made.

3 Q All right, let's turn to the House
4 Plan Analysis. It starts on the next page,
5 page 20 of your Grant report, which is
6 Exhibit 3 to this deposition.

7 A Okay.

8 Q So in paragraph 39, you state that
9 Mr. Esselstyn's Illustrative House Plan
10 contained 54 majority-Black districts; is that
11 correct?

12 A Yes.

13 Q That's five more than the
14 Enacted Plan?

15 A Yes.

16 Q So you don't dispute, then, that the
17 Black population in Georgia is large enough to
18 create five additional majority-Black
19 statehouse districts; is that correct?

20 A That's what's done in this plan.

21 Q And you do not dispute that?

22 A It was done in the plan, so I guess

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1 it's done.

2 Q So you agree that it's possible to
3 draw five additional majority-Black districts
4 based on the size of the Black population in
5 Georgia?

6 A The districts that are drawn meet
7 that criteria of being five more than the
8 Enacted Plan, so those districts that are
9 drawn are in this plan.

10 Q So those districts that are drawn
11 demonstrate that it is possible to draw five
12 additional majority-Black districts in the
13 Statehouse plan?

14 A It seems that way, yes.

15 Q Do you dispute any of the
16 demographic data provided by Mr. Esselstyn in
17 terms of the Black voting-age population of
18 his Districts?

19 A No, I believe it to be the same
20 census data that I was using in my analysis.

21 Q So in paragraphs 40 to 48, you
22 discuss the changes between Mr. Esselstyn's PI

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1 map and his December 5th illustrative
2 statehouse map; is that right?

3 A Yes.

4 Q I'm going to give you a minute just
5 to look through that. I'm just going to ask
6 you some general questions about that
7 analysis. I know there's a lot of paragraphs
8 there. Let me know whenever you're ready.

9 A Okay.

10 Q Do you draw any conclusions based on
11 your analysis of these changes between
12 Mr. Esselstyn's PI House Plan and his
13 December 5th House Plan?

14 A Well, I point out where the changes
15 occurred, and I talk about the changes in the
16 deviation, and the changes in the voting age
17 AP Black percent in each of the districts
18 affected.

19 Q So you report those factual data
20 points, correct?

21 A Yes.

22 Q Do you offer any conclusions based

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1 on those factual data points?

2 A I would point out that -- and again,
3 it's in the report -- District 66 in the
4 PI Plan was 50.6% AP VAP Black, and now in the
5 1205 Plan, it's 53.9, so that's increased.

6 And then I would point out also
7 District 149, which I detail in the report, it
8 goes from 50.0 to 51.5 AP Black voting-age
9 population. I pointed that out in the report.

10 Q So once again, you point out the
11 factual differences.

12 Do you offer any conclusions based
13 on those factual differences?

14 A Well, I just pointed out that it was
15 an increase in Black percent from 50.0 to
16 51.5, and from 50.6 in District 66 to 53.9.

17 Q Do you offer any -- sorry, go ahead.

18 A No, go ahead.

19 Q Do you offer any opinions regarding
20 Mr. Esselstyn's motives in making these
21 changes?

22 A Not in the report.

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1 Q So Chart 8 provides the overall
2 metrics of Mr. Esselstyn's Illustrative
3 House Plan and the Enacted House Plan; is that
4 right?

5 A Yes.

6 Q You say in paragraph 50 that the
7 overall compactness scores between the two
8 maps are similar; is that right?

9 A Yes.

10 Q And, in fact, they're identical?

11 A To two decimal places, yes.

12 Q Were the number of paired incumbents
13 here, am I right that you again used the
14 incumbent information that you had as of 2021?

15 A Yes. I used the database that was
16 available to the legislature during the
17 redistricting process.

18 Q So you did not analyze the incumbent
19 pairings of current incumbents in the Georgia
20 statehouse?

21 A I don't know that any would be
22 paired of current members because there would

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1 be one per district.

2 Q I mean Mr. Esselstyn's plan.

3 A Okay. No. It says -- as you
4 described, I was looking at the data that was
5 given to me that was what the legislature had
6 in 2021.

7 Q And then, too, you did not include
8 the information that the legislature had
9 regarding who would not be running for
10 re-election as of 2021?

11 A That's right.

12 Q So you did not analyze how many
13 current incumbents are paired in
14 Mr. Esselstyn's December 5th, 2023,
15 illustrative House Plan?

16 A That's right.

17 Q Do you think it's relevant in
18 assessing the Illustrative Plan's compliance
19 with traditional districting criteria the
20 number of current incumbents that are paired
21 in Mr. Esselstyn's Illustrative Plan?

22 A It could be relevant to some

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1 analysis, but it's not what the legislative
2 redistrictors had access to at the time.

3 Q Let's assume you're only looking at
4 Mr. Esselstyn's plan for compliance with the
5 traditional districting principle of avoiding
6 incumbent pairings, okay?

7 A Okay.

8 Q Let's say his plan pairs 10
9 incumbents who were incumbents as of 2021, and
10 5 current incumbents.

11 Do you believe that the more
12 relevant metric is the 10 incumbents pair from
13 the previous election cycle, or the 5 current
14 incumbents? And I realize that you can't pair
15 5 incumbents.

16 A Well, what I would say is that,
17 under those circumstances, the Enacted Plan
18 would always pair zero because you can only
19 elect one per district in 2022.

20 So you would be comparing
21 Mr. Esselstyn's number of pairings to zero in
22 all instances.

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1 Q Okay. So if Mr. Esselstyn wanted to
2 comply with the traditional districting
3 criteria of avoiding incumbent pairings, is it
4 your opinion that he should be looking at
5 incumbents who existed as of 2021 regardless
6 of whether they're still in office?

7 A I would say that if you're going to
8 analyze the Enacted Plan, that's probably very
9 significant, because at the time of
10 redistricting, that's what the legislators had
11 to work with.

12 And so the Enacted Plan exists now,
13 and as such -- again, it would not be possible
14 to pair incumbents. The Enacted Plan is a
15 fixed point in time. So I think it's relevant
16 to look at it as it was in 2021.

17 It could also be relevant to look at
18 it in 2022, but the Enacted Plan won't be
19 making any changes because it is the plan that
20 exists now and would have zero incumbent
21 pairings.

22 Q So I'm asking about Mr. Esselstyn's

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1 plan.

2 A Okay.

3 Q Do you believe that if he were
4 setting out to comply with the traditional
5 districting criteria of avoiding pairing
6 incumbents, it would make more sense for him
7 to look at incumbents from two election cycles
8 ago, or current incumbents?

9 A I really don't know because you
10 would have to factor into the situation that
11 you would potentially be comparing it to the
12 Enacted Plan.

13 On its own, in comparison to
14 nothing, I suppose you could look at the 2022
15 incumbents, but the fact is that, in most
16 cases, it would be compared to the
17 Enacted Plan.

18 Q You then go on to compare, again,
19 certain subsets of districts between the
20 Enacted House Map and Mr. Esselstyn's
21 Illustrative House Map; is that right?

22 A Yes.

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1 Q On what basis did you choose the
2 districts to compare?

3 A In Mr. Esselstyn's plan, generally
4 speaking, he uses a grouping of districts that
5 aligns with the outer boundaries of the
6 Enacted Plan.

7 So in the case of the districts that
8 I chose in Clayton, Fayette, Spalding, and
9 Henry County, those four district boundaries,
10 outside of that, they're internal -- they're
11 externally consistent; and then internally,
12 the boundaries are different. So in that
13 sense, those four districts compare exactly to
14 the outer boundaries.

15 Q Okay, great. So the four districts
16 that you're mentioning are the ones listed in
17 Chart 10 in your report?

18 A Yes.

19 Q And are there any other districts
20 that comprise that area in Mr. Esselstyn's
21 plan that are different compared to the
22 Enacted Plan?

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1 A No. What I'm trying to say is that
2 those four districts in the Enacted Plan are
3 drawn differently than Mr. Esselstyn did, but
4 outside of that, those four districts cover
5 the same geographic area in both plans.

6 Q Okay. And there are no other
7 changes adjacent to those four districts that
8 Mr. Esselstyn makes relevant to the
9 Enacted Plan?

10 A Oh, no, there are other changes, but
11 they don't affect those districts, so that the
12 external boundaries of those four districts
13 are the same in both plans. In a sense,
14 Mr. Esselstyn has modules of changed
15 districts.

16 Q So, sorry, in that region, there are
17 no changes to the adjacent districts outside
18 of those four --

19 A They have no effect --

20 Q -- in Mr. Esselstyn's --

21 A They have no effect on the internal
22 boundaries. So the external boundaries of

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1 those four districts are the same in both
2 plans.

3 Q Okay. So the second comparison that
4 you make is what you call Central Georgia
5 around Macon, and I'm looking around
6 paragraph 56. Is that right?

7 A Okay, sorry, I lost the place. Yes.

8 Q So is that another -- that area,
9 Central Georgia around Macon, is that another
10 module that Mr. Esselstyn created where he's
11 made changes to the Enacted Map?

12 A Yeah, there's a lot of districts in
13 there. And then I'd have to look to see if
14 all of them are contained or not.

15 Q I guess that's my next question.
16 Did you analyze -- I guess which districts did
17 you choose to analyze in that region, that
18 Central Georgia around Macon region?

19 A Sorry, it's just a little confusing
20 on these papers.

21 Q Take your time.

22 A Okay, so on the inset of the maps,

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1 it identifies which districts. So 133, 142,
2 143, 144, 145, 146, 147, 149, I think those
3 are the districts.

4 Q And are those all of the districts
5 in that defined area?

6 A I think there may be a couple of
7 other districts that are maybe not on the map.
8 I'd have to look. It may have been 10 or 12
9 total, but I focused in on this because this
10 is the area of most change, and the two
11 regions are fairly the same area.

12 Q Okay, so maybe just answer my next
13 question then.

14 I guess sitting here today, do you
15 know if you included all of the districts that
16 were changed between Mr. Esselstyn's House Map
17 and the Enacted Map in that region?

18 A No, I think there were a couple
19 more, but for purposes of my maps, I looked at
20 those districts which are contained on both
21 maps that are in the report, the one that is
22 after -- sorry, before paragraph 58, and the

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1 one that's before paragraph 59. Those maps.

2 Q And why did you choose those
3 districts and not the other districts that
4 were also changed?

5 A Because this is where most of the
6 change is occurring and is centralized, so
7 it's fairly easy to look at the two maps and
8 see where the boundaries are different in the
9 same area.

10 Q So you did not include the
11 equivalent of a Chart 10 for the Central
12 Georgia around Macon area; is that right?

13 A That's right.

14 Q Why not?

15 A Because I thought I could make the
16 point about the four districts in the Macon
17 area, and then made that point in the report.

18 Q What point was that?

19 A That the four districts that
20 Mr. Esselstyn creates in the Macon area are
21 each barely 50% Black, and that he is
22 strategically separating the Black community

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1 in Macon into four different districts.

2 Q Do you know if you had included the
3 equivalent of Chart 10 for that region,
4 whether it would have undermined or bolstered
5 that opinion?

6 A I don't know. I don't think it
7 would have affected that opinion because I
8 wasn't looking at compactness when I made
9 these discussions.

10 Q So you were looking at compactness
11 in Chart 10 when you were comparing the
12 regions discussed in Chart 10; is that
13 correct?

14 A Yes. In those four districts, I was
15 looking at that, yes.

16 Q But you weren't looking at
17 compactness when you were comparing the
18 Central Georgia around Macon region?

19 A I didn't say I wasn't looking at
20 compactness. I just said I didn't report the
21 compactness scores.

22 I can observe that District 149 is

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1 not as compact because it stretches from East
2 Macon to Milledgeville, but as a compactness
3 score, it probably shows pretty high because
4 it fills the circle pretty well.

5 Q But you didn't provide any analysis
6 of compactness when you were discussing -- or
7 comparing the two different maps around the
8 Macon area?

9 A Well, again, all that's in the
10 appendix, all the individual district
11 compactness are there. We can certainly
12 reference those as needed.

13 Q But you provide no opinion on the
14 compactness of the districts in
15 Mr. Esselstyn's plan versus the Enacted Plan
16 in the Macon area?

17 A I didn't put the compactness scores
18 from Reock and Polsby-Popper into a chart.

19 Q So you believe that the compactness
20 scores were relevant to the analysis you did
21 in Chart 10 for that region?

22 A I think it was instructive to look

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1 at that, yes.

2 Q But not relevant to the analysis you
3 did in the Macon region?

4 A Not necessarily. I can observe
5 compactness. I could look at compactness
6 scores, but when I'm talking about primarily
7 the Macon area is the technique of spreading
8 the Black population around into four
9 different districts.

10 Q And sitting here today, you don't
11 know if an analysis of compactness would
12 undermine or support the conclusions you draw
13 about the Esselstyn Plan in the Macon area?

14 A I don't think it's necessary.
15 Again, my point is how the population is
16 treated in the Macon area and how it's
17 dividing the minority African American
18 community into four different districts.

19 Q All right. So in paragraph 58, you
20 once again provide a descriptive analysis of
21 what you believe to be explaining the changes
22 in the Illustrative Plan; is that right?

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1 A Yes.

2 Q And you start by saying that "[i]n
3 order to create [an] additional majority" --
4 "[i]n order to create additional majority
5 Black districts in the Macon area," do you see
6 that?

7 A Yes.

8 Q What is your basis for concluding
9 that these lines were drawn in order to create
10 additional majority-Black districts in the
11 Macon area?

12 A Because the additional districts
13 were drawn in that area, and I'm observing
14 that certain African American populations were
15 moved from one area into another, specifically
16 Milledgeville and the Warner Robins Air Force
17 Base -- Warner Robins Base.

18 Q Are you aware of any other
19 explanations for why the configuration was
20 done in this way?

21 A I didn't look at that. I was using
22 the data that I was provided.

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1 Q You didn't analyze any other
2 possible explanations?

3 A This is my opinion, and I gave it in
4 the report.

5 Q And the opinion is that it was done
6 for racial purposes?

7 A Generally, yes.

8 Q And sitting here today, you can't
9 tell me whether it might also be explained by
10 adherence to traditional directing criteria?

11 A I didn't look at that specifically.
12 I gave my opinion, and my opinion is that
13 those four districts that are each barely 50%
14 were balanced, and that every change to that
15 structure would have an impact on whether or
16 not the district remains a majority African
17 American voting-age population district.

18 Q So you don't provide any analysis
19 into what else could be explaining those
20 configurations?

21 A I gave my opinion. It's in the
22 report.

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1 Q So the answer to my question is no,
2 you don't provide any other analysis?

3 A I gave the analysis that I have in
4 my report.

5 Q What is your basis for opining that
6 Mr. Esselstyn strategically utilized the Black
7 population in this area?

8 A In particular, I would say that the
9 connection -- the separation of African
10 American population out of Baldwin County, to
11 include in District 149, is separating the
12 county based on race, and it connects through
13 relatively sparsely populated counties to
14 connect to another area of high African
15 American population in Macon, and I would say
16 in both cases he's strategically using those
17 African American populations.

18 Q And can you think -- did you analyze
19 any other reasons why he would be making the
20 configuration that he did in that paragraph?

21 A I made my analysis based on the data
22 that I had in front of me.

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1 Q What is it that you believe his
2 strategy was? Strategically toward what end?

3 A To create the district's balance to
4 be four districts in that area spinning out of
5 Macon, and that each one is just barely 50%,
6 so that every decision in that matrix has an
7 impact.

8 If you had not included Warner
9 Robins, then the district that has southern
10 Bibb County would not be majority Black, it
11 would have to get Black population from
12 somewhere else.

13 And, likewise, without going to
14 Milledgeville, then District 149 would not be
15 majority African American either.

16 Q You didn't analyze the extent to
17 which any of those configurations are better
18 or worse when it comes to compliance with
19 traditional districting principles?

20 A I have my opinion, and that's my
21 opinion.

22 Q That wasn't my question.

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1 A Okay.

2 Q My question was did you analyze the
3 extent to which the configuration in this area
4 in Mr. Esselstyn's map was better or worse
5 when it comes to adherence to traditional
6 districting principles?

7 A Well, again, I'm struck by
8 District 149, which I'd say goes against
9 traditional redistricting principles in
10 particular.

11 Q What principle is that?

12 A It separates the communities of
13 Milledgeville out of Baldwin County and
14 connects it across relatively sparsely
15 populated counties to Macon, east of Macon.

16 Q So the traditional principle you're
17 referring to there is?

18 A I'm keeping communities together and
19 respecting traditional boundaries.

20 Q Do you consider Milledgeville to be
21 a community?

22 A On its own, generally, yes.

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1 Q Is it kept together in

2 Mr. Esselstyn's plan?

3 A It's separated from the surrounding

4 area of Baldwin County, and I believe the

5 actual municipality is also split.

6 Q Let's turn to paragraph 60 of your

7 Grant report. Here you note that

8 Mr. Esselstyn's House Plan makes Jones County

9 whole, but introduces two new county splits;

10 is that correct?

11 A Yes.

12 Q And again, you're referring here to

13 two additional counties that are split as

14 opposed to individual county split

15 combinations?

16 A Yes.

17 Q Are you aware why Mr. Esselstyn made

18 that configuration?

19 A Well, I contend that by creating

20 District 149, the Enacted District has

21 Dodge County as part of that configuration,

22 but in order to get more minority population

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1 out of Milledgeville and out of Macon, then
2 Dodge is split off of that; and then by
3 configuring it with other surrounding
4 districts, it's necessary to split Dodge, and
5 so it's directly related to the formation of
6 the Macon area African American districts.

7 Q You said it's directly related. Do
8 you believe that it was -- is it your opinion
9 that it was made for that purpose?

10 A I'm saying that the need to create
11 the additional majority-minority district at
12 50% African American voting-age population in
13 District 149 is what caused Dodge to be split.

14 Q Can you think of any other reasons
15 why Dodge would be split?

16 A I gave my opinion in that way. It's
17 directly related to the breakup of the Enacted
18 District in that area, and then Wilcox and
19 Dodge end up being split.

20 Q You don't analyze any other possible
21 reasons why those counties would be split?

22 A In my opinion, it's related to

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1 what's done in Macon.

2 Q At the end of the paragraph in
3 paragraph 60, you say "[b]oth additional split
4 counties are attributable to the effort to
5 create new majority Black districts"; is that
6 right?

7 A Yes, that's what I said, and I just
8 supported that with the discussion we had.

9 Q And is that discussion -- is the
10 support for that sentence included in the
11 preceding paragraphs of your report?

12 A I said both additional split
13 counties are attributable to the effort to
14 create new majority-Black districts in
15 paragraph 60.

16 Q Yep. And in paragraph -- so that's
17 what you say in paragraph 60.

18 Do you discuss both additional split
19 counties that you contend are attributable to
20 the effort to create new majority-Black
21 districts in any of the preceding paragraphs
22 to your report -- sorry, to paragraph 60?

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1 A It's in the same paragraph. Dodge
2 and Wilcox are split.

3 Q So the sum total of your analysis
4 regarding the fact -- regarding your opinion
5 that both additional split counties are
6 attributable to the effort to create new
7 majority-Black districts is contained in
8 paragraph 60?

9 A As I described and we discussed
10 here, that's what my opinion is, and I gave
11 additional information in our discussion here,
12 and would be willing and able to give the same
13 at trial.

14 Q Is there any other additional
15 information or explanation provided in the
16 text of your report?

17 A I don't believe so.

18 Q Let's turn to paragraph 61 to your
19 report. You can see we're nearing the end.

20 Here again, you say that "the impact
21 of engineering more majority Black districts
22 can be seen in the overall plan metrics and

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1 the differences from the enacted plan."

2 Did I read that correctly?

3 A Yes.

4 Q That's the same conclusion that you
5 drew with respect to the Senate Plan?

6 A Yes.

7 Q And can you explain to me what you
8 mean by "engineering" in this context?

9 A It's similar to what was discussed
10 in the Senate context. It's the construction
11 of the districts.

12 Q And in what way is the impact of
13 creating new majority-Black districts seen in
14 the overall plan metrics? And I'm focusing
15 only on the overall plan metrics.

16 A Well, there's a higher deviation
17 range which is in force throughout the entire
18 plan. I think that's a factor.

19 We talked about the slight
20 difference in county splits and voting
21 precinct splits. The mean compactness scores
22 are roughly the same.

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1 And there's some difference in
2 paired incumbents.

3 Q You next refer to traditional
4 redirecting factors, and again you list
5 maintaining communities and traditional
6 boundaries.

7 What communities did you analyze in
8 forming the conclusion in paragraph 61?

9 A Well, I looked at the communities
10 and traditional boundaries, and we've had some
11 discussion about Milledgeville and Macon,
12 Bibb County. I talked about Warner Robins.

13 And I talked about -- I didn't talk
14 about it directly, but in the earlier
15 discussion of the Clayton County area
16 districts, if I go back in my report to the
17 discussion of that.

18 So looking at the Enacted
19 District 74 -- it's southern Fayette, it's
20 Spalding, and it's two precincts of Henry
21 County -- and in Mr. Esselstyn's
22 reconfiguration of that area, to the extent

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1 that that District 74 was a community, it's
2 been broken up.

3 District 74 is changed in its
4 composition, and it's split, so that the
5 Spalding-Fayette portions are split apart, and
6 the new district connects to the tail of
7 Clayton, and then also to central Clayton. So
8 you have two districts that are taking pieces
9 of Clayton, whereas the previous district
10 didn't have any of Clayton, District 74.

11 Q I believe you just said that to the
12 extent District 74 is considered a community.

13 Do you consider District 74 a
14 community?

15 A In my experience, yes.

16 Q And what's that based on?

17 A It's based on -- they're essentially
18 exurban, almost rural areas of those counties.

19 Q You next refer to compactness.

20 In what way does your analysis of
21 compactness support your opinion that
22 Mr. Esselstyn's House Plan is, quote, "focused

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1 on race"?

2 A As far as the compactness scores in
3 Chart 10 on page 28, I look at the compactness
4 scores there. That's an example where
5 compactness is compromised to some extent in
6 the creation of the new African American
7 majority districts in that area.

8 Q Anywhere else? I'm sorry.

9 A Yeah, there are other areas as well.

10 Q So just for the record, I had asked
11 in what way does your analysis of compactness
12 support your opinion that Mr. Esselstyn's plan
13 is focused on race, and you mentioned the
14 analysis in Chart 10.

15 Is there any other analysis of
16 compactness that supports that opinion?

17 A I think that's the example that was
18 shown in the written portion of the report.

19 Off the top of my head right now,
20 I'd have to look at more detail to see if I
21 have other examples that I can show, but it's
22 possible that I had others in mind when I made

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1 that statement.

2 Q But no others that you explain in
3 your report?

4 A Generally speaking, that's correct.

5 Q And specifically speaking, it's also
6 correct?

7 A As far as what's in the report, the
8 appendices have all sorts of information
9 that's also in the report.

10 In the written part of the report, I
11 have the example in Chart 10.

12 Q Okay. If we can take a break, we
13 can go off the record.

14 THE VIDEOGRAPHER: The time is
15 3:02 p.m. Off the record.

16 (A break was taken.)

17 THE VIDEOGRAPHER: The time is
18 3:11 p.m. Back on the record.

19

20 BY MS. KHANNA:

21 Q All right, Mr. Morgan, do you have
22 in front of you what I believe has been

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1 premarked as Exhibit 4 to this deposition,
2 Mr. Esselstyn's December 5th report in Grant?

3 MR. TYSON: Let me get that for him.
4 Just one moment.

5 BY MS. KHANNA:

6 Q And I'm specifically looking at
7 paragraph 13, called "Summary of conclusions."

8 A All right, looking at Exhibit 4.

9 Q All right. And do you see
10 paragraph 13 in Mr. Esselstyn's report?

11 A Yes.

12 Q Paragraph 13 reads, "It is possible
13 to create three additional majority-Black
14 districts in the State Senate plan and five
15 additional majority-Black districts in the
16 State House plan in accordance with
17 traditional redistricting principles."

18 Did I read that correctly?

19 A Yes.

20 Q Do you dispute any portion of that
21 conclusion?

22 A It's not the conclusion that I

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1 reached in the sense that I said that his plan
2 prioritizes race to the detriment of the
3 traditional redistricting principles.

4 Q And which plan are you referring to?

5 A Both the House and the Senate, and
6 this is the State Senate.

7 Q So do you believe it is possible to
8 create -- sorry.

9 Do you agree that it is possible to
10 create three additional majority-Black
11 districts in the State Senate Plan?

12 A Yes, it was done in Mr. Esselstyn's
13 plan. I've seen it done in other plans.

14 Q Do you believe it is possible to
15 create three additional majority-Black
16 districts in the State Senate Plan in
17 accordance with traditional redistricting
18 principles?

19 A I'm not sure that that's been
20 judged, but, I mean, that's his opinion. He's
21 stating that.

22 Q And what is your opinion? Do you

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1 agree with that statement?

2 A I had a different conclusion in the
3 sense that I believe that the Esselstyn House
4 and Senate plans, the racial focus is to the
5 detriment of the traditional redirecting
6 principles.

7 Q And what specific traditional
8 redistricting principles is that?

9 A I talked about those in the report.
10 And I talked about the communities, the
11 splitting of communities, the way the
12 population is treated with the underlying
13 populations by comparing the two plans between
14 the Enacted and the Esselstyn plans.

15 Q Do you agree that it is possible to
16 create five additional majority-Black
17 districts in the State House Plan?

18 A Yes, that was done in the Esselstyn
19 Plan, and I've seen it done in other plans.

20 Q Do you agree that it is possible to
21 create five additional majority-Black
22 districts in the State House Plan in

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1 accordance with traditional redistricting
2 principles?

3 A I say that could be in dispute.

4 Q You dispute it?

5 A I do to some extent, yes.

6 Q To what extent?

7 A I detailed it in my report.

8 Q Do you believe it is possible to
9 create one additional majority-Black
10 District in the State Senate Plan consistent
11 or in accordance with traditional districting
12 principles?

13 A I don't know. I'd have to see that
14 plan.

15 Q Are there any additional
16 majority-Black districts that Mr. Esselstyn
17 drew in his Illustrative Plan that you believe
18 are drawn in accordance with traditional
19 redistricting principles?

20 A I would say just looking at
21 districts without regard to any other plans, I
22 can see that some of them appear to be

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1 relatively compact and don't split
2 communities, so there could be some that did
3 that, yes.

4 Q Some of the three additional
5 majority-Black districts?

6 A You just said one.

7 Q Oh, I'm sorry. I guess my question
8 was do you believe it is possible to create
9 any additional majority-Black districts in the
10 State Senate Plan in accordance with
11 traditional redistricting principles, and is
12 your answer yes?

13 A I think so, but my answer was I'd
14 have to see what those were. Like,
15 for example, if the single district were
16 District 23, I'd say no are.

17 Q What about District 25?

18 A In isolation, without comparing it
19 to the Enacted Plan, it's entirely within
20 Henry County, and it seems to be a
21 majority African American population.

22 But, you know, in comparison --

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1 factoring in the benchmark districts in the
2 Enacted Plan, it's not as apparent that it
3 follows traditional redistricting principles.

4 Q So you believe Illustrative Senate
5 District 25 in Mr. Esselstyn's plan, on its
6 own, is drawn in accordance with traditional
7 districting principles?

8 A Generally it's contained in one
9 county. It doesn't split additional
10 communities to speak of, but as I said, if you
11 look at the totality of the districts in the
12 region, if you look at the comparison of the
13 Enacted Plan, then the opinion would change.

14 Q What about Senate District 28? Do
15 you believe that Illustrative Senate
16 District 28 in Mr. Esselstyn's plan is drawn
17 consistent with traditional districting
18 principles?

19 MR. TYSON: Just for purpose of the
20 record, Mr. Morgan is flipping through his
21 exhibits I think to locate District 28.

22 MS. KHANNA: Take your time.

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1 THE WITNESS: Actually, looking at
2 the Henry County District 25, I would revise
3 my opinion. I didn't realize it also goes
4 into Clayton County. I thought it was only in
5 Henry.

6 BY MS. KHANNA:

7 Q So you would revise your opinion in
8 what way?

9 A I wouldn't say that it completely
10 comports with traditional redistricting
11 factors because of the inclusion of the
12 Clayton County portion.

13 Q And how about compared to the
14 Enacted Plan, does it comport with traditional
15 districting principles when compared to the
16 Enacted Plan?

17 A Well, that's my point. I would say
18 that District 25, as drawn in the Esselstyn
19 Plan, is not very far off traditional
20 redistricting principles. I see again the
21 inclusion of the tail of Clayton County is
22 something I would want to look at more

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1 carefully, and I haven't analyzed this in
2 isolation like you're asking me to do here on
3 the fly.

4 So District 28, in looking at that,
5 I would say that it departs from traditional
6 redistricting factors by taking African
7 American population out of Coweta County and
8 combining it with Fulton, Clayton, and Fayette
9 in the way it does.

10 Q Do you believe it is possible to
11 create any additional majority-Black districts
12 in the State House Plan in accordance with
13 traditional redistricting principles?

14 A I believe so.

15 Q Do you have an opinion as to how
16 many can be drawn in accordance with
17 traditional districting principles?

18 A No, I haven't been asked to analyze
19 that, and I don't have an opinion at this
20 time.

21 Q Do you have an opinion as to whether
22 Mr. Esselstyn's House District 64 is drawn in

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1 accordance with traditional districting
2 principles?

3 A Just a moment.

4 MR. TYSON: Can I just show John the
5 districts from Mr. Esselstyn's report?
6 I think that's the quickest way to do it.

7 MS. KHANNA: Sure.

8 MR. TYSON: Mr. Morgan, I'm showing
9 you from Exhibit 4, Figure 14 on page 26,
10 which is Esselstyn House District 64.

11 THE WITNESS: Okay.

12 Well, I would say that knowing what
13 I do about Georgia and the Enacted Plan, in
14 comparing that, I think that there's some
15 problems with District 64.

16 BY MS. KHANNA:

17 Q What problems in particular?

18 A That it spans three counties, a
19 relatively large geographic area, it's
20 elongated. It combines relatively high
21 concentrations of African American voters in
22 Fulton County, and stretches all the way into

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1 Paulding County, in the southern part of
2 Paulding.

3 Q Do you believe Mr. Esselstyn's House
4 District 74 is drawn in accordance with
5 traditional districting principles?

6 MR. TYSON: We're looking at
7 Figure 15 of Exhibit 4.

8 THE WITNESS: Generally, that's
9 something I took issue with in my report.

10 BY MS. KHANNA:

11 Q In what way?

12 A The way that it stretches from the
13 urban centers all the way down to the county
14 boundary of southern Fayette.

15 And again, it's in combination with
16 the other discussions that I've had in my
17 report.

18 Q Do you have an opinion whether
19 Mr. Esselstyn's House District 117 is drawn in
20 accordance with traditional districting
21 principles?

22 A I would say that generally, from

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1 what I see here, it's pretty close to what I
2 would expect from following traditional
3 redistricting principles.

4 Q And what about Mr. Esselstyn's House
5 District 145? In your opinion, is that drawn
6 in accordance with traditional districting
7 principles?

8 MR. TYSON: Looking at Figure 16 of
9 Exhibit 4.

10 THE WITNESS: No, I'd say that
11 there's an issue with putting the Warner
12 Robins Military Base into that district, as I
13 discussed in my comments this afternoon.

14 BY MS. KHANNA:

15 Q And what about Mr. Esselstyn's House
16 District 149? Do you believe that district is
17 drawn in accordance with traditional
18 districting principles?

19 A Decidedly, no.

20 Q In what way?

21 A As I said in my report and in our
22 discussion, it separates the African American

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1 community out of Baldwin County and connects
2 across two relatively sparsely populated rural
3 counties to connect to East Macon.

4 Q Okay, I think you can put aside
5 Mr. Esselstyn's plan.

6 I have one last line of questioning
7 for you. You produced your own Statehouse and
8 State Senate illustrative plans in December of
9 2022; is that correct?

10 A Yes.

11 Q You produced them in the Grant case?

12 A The 1205 report, yes.

13 Q And those illustrative plans are
14 identical to the illustrative plans that you
15 submitted in the Alpha Phi Alpha case?

16 A I believe so. I think they were
17 co-submitted. Is that the correct
18 terminology?

19 Q I just wanted to make sure, because
20 I know that you were deposed last week by
21 Mr. Slavitsky. I just want to make sure that
22 we're talking about the same maps that you

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1 produced both in that case and this case per
2 the illustrative maps that you produced.

3 A Yes, that's correct.

4 Q In your opinion, do the Illustrative
5 Statehouse and Senate plans that you drew
6 inform whether it is possible to draw
7 additional majority-Black districts consistent
8 with traditional districting principles in
9 either map?

10 MR. TYSON: Object to the form.

11 You can answer.

12 THE WITNESS: I don't know. I
13 wasn't really asked to opine on that.

14 BY MS. KHANNA:

15 Q We just discussed how Mr. Esselstyn
16 concluded that it is possible to create three
17 additional majority-Black districts in the
18 State Senate Plan, and five additional
19 majority-Black districts into the State House
20 Plan in accordance with traditional
21 redistricting principles; is that right?

22 A Yes, that's in his report.

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1 Q And in your opinion, do your
2 illustrative plans undermine or support that
3 conclusion?

4 A Mr. Esselstyn's conclusion?

5 Q Yes.

6 A I hadn't really been thinking about
7 putting those two things together. I don't
8 know. I couldn't make that determination.

9 Q Okay. So in your opinion, are your
10 illustrative plans relevant in any way to the
11 analysis of Mr. Esselstyn's illustrative
12 plans?

13 MR. TYSON: I'll object to form.

14 You can answer.

15 THE WITNESS: They could be. It's
16 possible to look at them and make some
17 analysis and comparisons.

18 BY MS. KHANNA:

19 Q Did you make any analysis or
20 comparisons between your illustrative plans
21 and Mr. Esselstyn's illustrative plans?

22 A That would not have been possible

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1 because they were submitted at the same time.

2 Q What was your purpose in drawing
3 illustrative plans of your own in the Grant
4 case?

5 MR. TYSON: I'll object to the
6 extent that calls for privileged information.

7 You can answer otherwise.

8 THE WITNESS: I was asked to draw
9 the plans as I described in the report, and I
10 drew those plans.

11 MS. KHANNA: All right, that's all I
12 have.

13 MR. TYSON: I just have a few
14 questions.

15 EXAMINATION BY COUNSEL FOR DEFENDANTS

16 BY MR. TYSON:

17 Q Mr. Morgan, let me start kind of
18 where we ended. Ms. Khanna was asking you
19 about several of Mr. Esselstyn's various
20 statehouse plans.

21 Do you recall those questions?

22 A Yes.

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1 Q I put Exhibit 4, Figure 15, in front
2 of you, House District 117. (PDF page 27)

3 I believe you said that it was
4 pretty close to what you'd expect from
5 following traditional districting principles.

6 Is that what you testified to?

7 A Yes. I said that the -- I'm looking
8 at one map that doesn't have any data
9 associated with it, so just on a cursory
10 glance, that's what I said.

11 Q So you're not offering an opinion
12 that this district is a district that can be
13 drawn consistent with traditional districting
14 principles, are you?

15 A No.

16 Q Ms. Khanna also asked you about,
17 both for the House and the Senate Plan, about
18 compactness scores and how they were included
19 with some regions in House and Senate analysis
20 and not with others. Do you recall that?

21 A Yes.

22 Q Were you trying to hide information

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1 from the Court by not including compactness
2 scores in all of those different regions?

3 A No. All the compactness scores are
4 available in the appendices to the reports,
5 and I address them in portions of the written
6 portion of the report as well.

7 Q Were you explaining different things
8 in each region or group on the House and
9 Senate Plan in your report?

10 A Generally, there was a different
11 tact to the discussions of the different
12 regions.

13 In the Macon area, I was talking
14 about the -- comparing the Enacted Plan to the
15 Esselstyn Plan, and it didn't rely on
16 compactness scores in that area, and I was
17 making a point about the racial composition of
18 those districts and how they spin out of
19 Macon.

20 Q And Ms. Khanna asked you about
21 whether your December 5th report undermined or
22 supported Mr. Esselstyn's conclusions.

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1 Do you recall that?

2 A Yes.

3 Q And I believe you said this, but you
4 didn't have copies of Mr. Esselstyn's current
5 illustrative plans when you submitted your
6 12/5 expert report, right?

7 A That's correct. My understanding is
8 that both Mr. Esselstyn's report and my report
9 on that date were submitted at the same time.

10 Q And you and Ms. Khanna also
11 discussed, for both the House and the Senate
12 plans, the conclusions that you reached that
13 the Esselstyn House and Senate plans are
14 focused on race, prioritizing race to the
15 detriment of traditional redistricting
16 factors. Do you recall that?

17 A Yes.

18 Q And is that conclusion based on the
19 entirety of your review of Mr. Esselstyn's
20 House and Senate plans?

21 A Yes.

22 MR. TYSON: All right, that's all

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1 the questions I have.

2 MS. KHANNA: I think we're all set
3 here.

4 MR. TYSON: Okay, great.

5 THE VIDEOGRAPHER: The time is
6 3:31 p.m. This concludes today's deposition.
7 We're now off the record.

8 (Whereupon, at 3:31 p.m. EST, the taking
9 of the deposition was concluded.

10 Reading and signature were

11 RESERVED.)

12

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1 CERTIFICATE OF NOTARY PUBLIC

2 I, DAWN A. JAQUES, a Notary Public in and for
3 the Commonwealth of Virginia, before whom the
4 foregoing deposition was taken, do hereby certify
5 that witness whose testimony appears in the
6 foregoing pages was duly sworn by me; that the
7 testimony of said witness was taken by me in
8 shorthand at the time and place mentioned in the
9 caption hereof and thereafter reduced to typewriting
10 under my supervision; that said deposition is a true
11 record of the testimony given by said witness; that
12 I am neither counsel for, related to, nor employed
13 by any of the parties to the action in which this
14 deposition is taken; and, further, that I am not a
15 relative or employee of any attorney or counsel
16 employed by the parties thereto, nor financially or
17 otherwise interested in the outcome of the actions.

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Dawn A. Jaques, CSR, CLR
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20 My commission expires:
21 August 31, 2023
22 Registration No. 132328

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1 John B. Morgan, c/o

TAYLOR ENGLISH DUMA LLP

2 1600 Parkwood Circle-Suite 200

Atlanta, Georgia 30339

3

4 Case: Coakley Pendergrass, et. al., v. Brad Raffenspenger, et. al.

Date of deposition: February 13, 2023

5 Deponent: John B. Morgan

6

7 Please be advised that the transcript in the above

8 referenced matter is now complete and ready for signature.

9 The deponent may come to this office to sign the transcript,

10 a copy may be purchased for the witness to review and sign,

11 or the deponent and/or counsel may waive the option of

12 signing. Please advise us of the option selected.

13 Please forward the errata sheet and the original signed

14 signature page to counsel noticing the deposition, noting the

15 applicable time period allowed for such by the governing

16 Rules of Procedure. If you have any questions, please do

17 not hesitate to call our office at (202)-232-0646.

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5 Witness Name: John B. Morgan

Deposition Date: February 13, 2023

6

7 I do hereby acknowledge that I have read
and examined the foregoing pages
8 of the transcript of my deposition and that:

9

10 (Check appropriate box):

() The same is a true, correct and
11 complete transcription of the answers given by
me to the questions therein recorded.

12 () Except for the changes noted in the
attached Errata Sheet, the same is a true,
13 correct and complete transcription of the
answers given by me to the questions therein
14 recorded.

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7

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9 Witness Name: John B. Morgan

10 Deposition Date: February 13, 2023

11 Page No. Line No. Change

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