

EXHIBIT 45

Grant, Annie Lois, et al.v. Raffensperger, Brad, E

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

ANNIE LOIS-GRANT et al.,)
)
Plaintiffs,)
)
vs.) CIVIL ACTION FILE
) NO. 1:22-CV-00122-SCJ
BRAD RAFFENSPERGER, in his)
)
official capacity as the)
Georgia Secretary of State,)
et al.,)
)
Defendants.)
_____)

Deposition of Blakeman Esselstyn
(Signature is reserved.)
February 16, 2023
9:00 a.m.

Remote via Zoom technology

Reported by: Carla J. Hopson, RPR, CCR-1816

1 generally shifted District 25 to the north and west
2 into areas including those that had been occupied by
3 Senate District 17.

4 And so it's kind of swapping areas that
5 had been in Senate District 25 in the enacted map
6 into illustrative District 17, and in doing so
7 making Senate District 25 significantly more
8 compact.

9 So that was a kind of a long answer to
10 the question of why. And always -- I'm getting into
11 the broken record here, but doing this while
12 considering other traditional redistricting
13 criteria.

14 Q And in talking about considering other
15 traditional redistricting criteria, looking at
16 Senate 17 on the illustrative plan, it looks to me
17 like it has four split counties in it: Greene,
18 Baldwin, Newton and Walton Counties.

19 How did you take into account the
20 traditional principle of avoiding county splits in
21 the creation of Senate District 17?

22 A I considered it in balance with the
23 other principles, and weighing the other
24 considerations and factors that I was trying to
25 adhere to, I ended up with that number of county

1 splits in that district.

2 I'm just going to see if Figure 3 -- it
3 looks like previous incarnation of District 17 might
4 have had three splits. It's a little hard to say
5 from Figure 3. I'm going to zoom in.

6 Q My count was that Senate 17 on the
7 enacted had three county splits and Senate 25 on the
8 enacted had two county splits.

9 A Okay. So that might have been part of
10 my consideration as well just its predecessor ha
11 three county splits.

12 Q And so adding a county split you felt
13 was still complying with the traditional principle
14 of avoiding jurisdiction splits?

15 A Taken in conjunction with all the other
16 considerations, yes.

17 Q On Figure 4 -- this is going to be a
18 little bit harder to see. Because I don't think
19 it's another map that really shows it. But District
20 20 on the illustrative plan begins, I believe, in
21 Jenkins County just south of Senate District 23 and
22 runs all the day past Macon. And I believe that's
23 into Dooley County.

24 Can you explain what community of
25 interest explains the configuration of Senate

1 District 20 on the illustrative plan?

2 A Let me take a moment. To answer your
3 question, I don't think it's possible to say that
4 there is a community of interest that explains the
5 configuration of District 20, not one -- one
6 community of interest.

7 Q Then can you walk me through then
8 what -- what does explain the boundaries of Senate
9 District 20 as you've drawn in on the illustrative
10 plan?

11 A So, again, I can refer back to Figure 3
12 showing the enacted plan, and you can sort of
13 see how District 20 looks in the enacted plan. I
14 think it's also instructive to look at 26 in the
15 enacted plan and then compare that in Figure 3 with
16 Figure 4 and see how much smaller District 26
17 becomes.

18 So 26 goes from spanning pieces of,
19 what? Seven counties, I think, to being just in two
20 counties. So that -- and I know you can't see in
21 Figure 4, but I'm pretty sure that Senate District
22 26 is just in Macon-Bibb and Houston Counties.

23 So in making District 26, the
24 configuration that it has, and removing the splits
25 from Bibb County, which as I recall was split three

1 ways, there's kind of a void that needs to be filled
2 and expanding the area of District 20 in that
3 direction, I guess to the north, was -- that's part
4 of why it was done the way it was as well as changes
5 to District 23.

6 I'm just looking back and forth. But,
7 yeah. So it was kind of a way of trying to
8 harmonize the shape of District 20 as it was
9 adjacent to Senate District 26 and Senate District
10 23.

11 Q Do you recall, did you draw Senate
12 Districts 23 and 26 first and then fill in around
13 them with 17 and 20?

14 A That's an interesting question, Mr.
15 Tyson. You don't really draw the districts one at a
16 time. Well, you can. But the way that I typically
17 work in the software is to take census geography and
18 assign it -- change its assignment from being in one
19 to being in another.

20 So if I'm changing the southern edge of
21 Senate District 23, I'm going to either assign --
22 and depending on whether I'm removing areas or
23 adding areas, the adjacent district is going to get
24 those -- the areas that were removed, for example.

25 So in essence when I'm drawing Senate

1 A Good question. I would -- I guess in
2 this -- I did use the word community. Maybe
3 population would have been a better choice of words
4 because some folks would -- would characterize
5 racial groups as a community of interest. And so I
6 think some people would say that that is -- that
7 they, as you described, could be considered one
8 community.

9 Often as I'm drawing a map I guess I can
10 think of them both as a community with a shared
11 interest or a shared characteristic I should say.
12 But also they are -- they have their distinctive
13 elements as well.

14 Q In the configuration of districts 23,
15 the counties that you split kind of starting in the
16 north, then going around are Wilkes, Greene,
17 Baldwin, Richmond and McDuffie Counties, right?

18 A Yes.

19 Q And are you aware that for each of those
20 county splits you included the highest concentration
21 of black voters in the county Senate District 23 and
22 the more white population portion of the county
23 outside of District 23?

24 A I am not aware that that's the case.

25 Q Okay. Let me mark --

1 A And, yeah, if you can just be able to
2 refer back to that wording as we -- as we go to
3 another exhibit because, again, I just wanted to
4 make sure I understand the just kind of mathematical
5 relationship you're describing.

6 Q Certainly. We're going to look at a
7 chart.

8 A Okay.

9 Q I just introduced Exhibit Number 9,
10 which is Mr. Morgan's report in this case.

11 A Yep.

12 Q And I'd like for us to go to Page number
13 17. Let me know when you're there.

14 A 17, yes.

15 Q And I believe you said you reviewed Mr.
16 Morgan's report as part of your preparation for this
17 deposition.

18 A Yes.

19 Q So on page 17 there's a chart for --
20 that has each of the five-county split with a
21 portion in District 23 and outside of District 23.
22 Do you see that?

23 A Yes.

24 Q And in each case the portion of the
25 county in District Senate 23 has a higher AP Black

1 VAP percentage in the portion outside of Senate
2 District 23 on the illustrative plan, right?

3 A Yes.

4 Q And were you aware that -- I think you
5 said you weren't -- that every county split you made
6 in Senate District 23 had this type of racial
7 differentiation on the population?

8 A Okay. I misunderstood your question. I
9 thought you were talking about the -- you said
10 something about the highest concentration, and I
11 thought you were saying that I had somehow selected
12 the highest concentration possible in isolating one
13 section of a county from the other section.

14 You used that superlative term highest,
15 and I thought you were saying that I had taken --
16 like if I was taking precincts, that there's no
17 other combination of precincts that I could have
18 taken that would have been higher than what I took.

19 So that's what I understood. And that's
20 why I wanted to maybe refer back to the way you had
21 asked the question.

22 So, yes, I have looked at this chart.
23 There is something that I don't agree with in terms
24 of Mr. Morgan's characterization here. In the
25 preceding paragraph he says that I took the lion's

1 share or the construction takes the lion's share --
2 I'm paraphrasing a little bit -- of the black
3 population of each of those counties into the
4 district.

5 But in Greene County the black
6 population outside District 23 is actually more
7 numerous, and in the case of the AP Black voting age
8 population, the fourth column of numbers, it's --
9 well, both, really. Both of the black population
10 columns of numbers show that there's significantly
11 more black people outside District 23 than inside.

12 Q And just to be clear, you're looking at
13 the raw number of individuals, not the percentage of
14 those individuals as compared to the remaining
15 population, is that right?

16 A Right. My under -- yes.

17 Q Have you evaluated whether Senate
18 District 23 would still be majority black if you
19 removed any of these county splits?

20 MR. HAWLEY: Objection to the extent
21 that, Mr. Esselstyn, your answer implicates
22 draft maps or draft reports. But otherwise,
23 you can answer.

24 A I don't recall doing so.

25 Q Okay. I'll put this one away and go

1 is that right?

2 A So -- after I'd drawn the first
3 illustrative plan. So the area in Bibb County did
4 not change from the PI plan to the December '22
5 plan. Baldwin County did change a little bit. So
6 my review of the comments and such was in late 2022.

7 Q Thank you. We've been going about an
8 hour and half and I'm going to move to District 25.
9 Do you want to take a break at this point, Mr.
10 Esselstyn?

11 A Sure. Sounds good.

12 MR. TYSON: We can go off the record.

13 (Recess.)

14 Q (By Mr. Tyson) All right, Mr. Esselstyn.
15 I want to turn next to Senate District 25, which is
16 on Figure 6, Page 13 of your report. Do you see
17 that?

18 A Yes.

19 Q And looking at Senate District 25 as
20 drawn on the illustrative plan, it includes portions
21 of Clayton County and portions of Henry County,
22 right?

23 A That's correct.

24 Q So in terms of the decision to connect
25 this part of Clayton with Henry County, can you tell

1 me what factors went into putting those two counties
2 together in District 25?

3 A I'm trying to recall. Again, this is
4 one that I did not -- I altered part of Fayette
5 County for the December 2022 plan but did not change
6 the orientation or the alignment of District 25.

7 Let me look back at what it looked like
8 under the enacted plan.

9 Yeah, I don't recall specific reasons
10 other than the kind of trial and error, as I
11 mentioned, that a lot of this is kind of iterative
12 in. I would have maybe looked at different
13 possibilities, and this one seemed to be the best
14 combination.

15 Q Okay. And creating District 25 where
16 you have -- I know we talked earlier about District
17 10 that runs down that eastern side of Henry County
18 to Butts County.

19 A Yes.

20 Q Do you see that? Are you aware of the
21 racial makeup of the components of Districts 10, the
22 different counties that you included in District 10?

23 A I'm sorry. Could you ask the -- repeat
24 the question? And I aware --

25 Q Sure.

1 A I believe so.

2 Q So can you tell me about anything the
3 geography encompassed on this Senate District 28 has
4 in common besides the racial makeup of the people in
5 it?

6 A So again, when I'm looking at
7 communities of interest and the communities of
8 interest principle, I'm not trying to make sure that
9 every piece of a district has some unifying factor.
10 So I will say I remember, for example, that the
11 shape of the part that goes down into Coweta is
12 trying to keep most of -- it's either Newton or
13 Newnan.

14 Q Newnan, yes.

15 A Newnan. Thank you.

16 -- keep most of that in one district.
17 So that was an example. That's kind of the -- in
18 thinking about communities of interest trying not
19 to, you know, cut that community in half. So that
20 was a consideration.

21 But as far as trying to ensure that
22 every -- every corner has something in common with
23 every other corner, that was not part of my
24 calculus.

25 Q And you'd agree that Newnan was whole on

1 the enacted Senate plan in 28 as well, right,
2 because Coweta was whole as a county?

3 A I think that's right. Just let me
4 quickly check Figure 3.

5 Yes. But I think that Douglas County
6 was divided. I may be getting this confused with
7 the House plan. But I believe that Douglas County
8 was divided in the enacted plan but is made whole in
9 the illustrative plan.

10 Q Which one? Douglas County?

11 A I think so.

12 Q Okay. And in the illustrative plan,
13 District 35 you know makes Douglas whole but it also
14 connects portions of Fulton County with parts of
15 south Paulding County, right?

16 A Right.

17 Q Do you know the racial makeup of that
18 part of south Paulding County?

19 A No. I mean do I know? I don't know it
20 off the top of my head. There are -- probably one
21 of the exhibits we could look at would give me a
22 clue but -- or a better informed answer.

23 Q Okay. Were you aware of any connections
24 between Paulding County and Fulton County when you
25 configured illustrative District 35 this way?

1 A Yeah.

2 Q And in the House plan here Douglas
3 County is divided to allow District 64 to connect
4 these pieces of Fulton and south Paulding, right?

5 A Yeah. I mean, if we were to look back
6 at how it was -- it's hard to see in Figure 12. But
7 I might say that there is a portion of Douglas
8 County included in the district which serves as a
9 connection between Fulton and Paulding Counties, the
10 portions in Fulton and Paulding Counties.

11 And this is an example of -- the smaller
12 population size of these districts means that I
13 don't think I could have kept Douglas County whole
14 because, as I recall, its population is around
15 145,000 people and these districts are 60,000, so --

16 Q And aside from being in the Atlanta
17 metro area, as you identified, for connecting parts
18 of Fulton and Paulding in the Senate plan, is there
19 anything else you can identify -- a community that's
20 kept whole in Senate District -- I mean, House
21 District 64?

22 A Not that I can recall. There -- not
23 that I can recall.

24 Q So let's move over to south Metro,
25 Paragraph 50. And here we have two districts.

1 First District 74 that connects portions of Clayton
2 with portions of Fayette, is that right?

3 A Yes.

4 Q Do you know if the portion of Fayette in
5 that district is majority black?

6 A I don't.

7 Q Would it surprise you if it was 16.01 AP
8 black VAP in Fayette County in District 74?

9 A That's lower than I would expect. But I
10 -- I don't know that it wouldn't surprise me.

11 Q Do you consider the south part of
12 Fayette County to be a rural area?

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

14 Q Okay. And so can you identify any
15 communities that are kept whole in House District
16 74?

17 A None that I can recall there. I think
18 -- is this the one where we talked about Irondale?
19 I -- I believe there were -- in the area in Clayton
20 County, I believe it was a census-designated place,
21 maybe not an incorporated one, but I have a, again,
22 somewhat hazy recollection that there is a community
23 that this was drawn to keep mostly intact.

24 Q Okay. Do you recall if that
25 census-designated place was in Clayton or Fayette

1 Q And you don't know because you didn't
2 look at political data if Districts 117 and 74
3 currently have Republican incumbents?

4 A I did not.

5 Q Is there any community you can identify
6 in District 117 that is being kept whole in its
7 configuration on the illustrative plan?

8 A Not with the information I have in front
9 of me or based on memory, but there may be some. I
10 just -- I don't have -- as I said, not based on what
11 I have in my mind or in front of me.

12 Q Who would you need to have to determine
13 that?

14 A Maps of things like incorporated areas
15 or census-designated places, other campus-type
16 things, whether they are educational institutions
17 or military facilities, that sort of thing, other
18 parks, those -- those kinds of communities of
19 interest that have clearly defined boundaries as
20 opposed to the kind that --

21 Well, that would be a layer, if they
22 were also a layer of kind of community -- defined
23 communities, that would be another thing I could
24 look at and specify.

25 Perhaps minority groups, if -- sometimes

1 deviation number in your written report, just in the
2 exhibits, right?

3 A That's right.

4 Q Is the way that you determined that the
5 illustrative plan complied with the traditional
6 principle of population equality for the House the
7 same as the methods you used for making that
8 determination for the Senate illustrative plan?

9 A I think generally, yes.

10 Q In paragraph 57 you talk about
11 compactness. And we, again, have the average scores
12 for four of the five metrics and then a cut edge
13 score. Would you expect average compaction scores
14 to be the same if 155 of the 180 districts on a plan
15 are the same?

16 A No. I mean, it could be. But --

17 Q Okay.

18 A -- that's saying that --

19 Q Okay. So you didn't break out the
20 compactness scores for the 25 districts that you
21 changed. You only reported here in Table 6 the
22 average for all 180 districts for four of those five
23 measures, and then over on Table 7 the scores for
24 just the new majority black districts, right?

25 A That's right. In the text of the

1 report. But the -- the attachments include
2 compactness scores for all the districts in both
3 enacted and illustrative as well as other summary
4 and metrics.

5 Q And was your method of determining that
6 the plan complied with the traditional principle of
7 compactness generally the same process for the House
8 illustrative plan as for the Senate Illustrative
9 plan?

10 A Yes.

11 Q And for Figure 17, like the Senate,
12 these charts -- the only districts on these four
13 charts that are from the illustrative plan are the
14 colored lines. And the gray lines are districts on
15 the enacted plan, right?

16 A That's right.

17 I'm sorry. If you -- if you wouldn't
18 mind repeating that question again. I just tuned
19 out for a moment.

20 Q Sure. In Figure 17, the --

21 A Yes.

22 Q -- in all four charts the only districts
23 from the illustrative plan on those charts are the
24 colored lines. The gray lines refer or are
25 districts on the enacted plan, right?

1 A That's correct.

2 Q Do you recall that Mr. Tyson asked you
3 about the Maptitude software's ability to shade
4 racial demographic information while you're
5 undertaking map drawing?

6 A I do.

7 Q And you mentioned that you have used
8 that shading, including in the development of your
9 illustrative plans, correct?

10 A Correct.

11 Q My question is: Do you always have that
12 shading function on when you're map drawing?

13 A No.

14 Q Did you always have that shading
15 function toggled on when you were drawing your
16 illustrative Senate and House maps in this case?

17 A No.

18 Q Does Maptitude provide other means of
19 assessing racial and other demographic information
20 other than shading?

21 A Yes.

22 Q Did you use that shading function to
23 make any outcome determinative line drawing
24 decisions? Let me phrase that a different way.

25 A Okay.

1 Q When you -- when you had that shading
2 function toggled and you could see it, did you use
3 the information that that shading provided -- did
4 that information predominate in any given line
5 drawing decision you made when you were preparing
6 you illustrative maps?

7 A No, it did not.

8 Q I'd like to talk briefly now about some
9 of the comparative characteristics, particularly
10 kind of the more general discussion that you had
11 with Mr. Tyson earlier in the deposition. And
12 again, just so it's clear in the record, is it fair
13 to say that some of the traditional redistricting
14 principles that you drew in accordance with and
15 analyzed in your report can be understood in
16 isolation for a single map?

17 A I'm sorry. Could you repeat the
18 question?

19 Q Certainly. Are there certain
20 redistricting criteria that can be analyzed -- the
21 compliance with which can be analyzed simply by
22 looking at a single piece of information from a
23 given map?

24 A Oh, yes. Yeah, for like contiguity.
25 And, again, it's helpful to use the Maptitude