

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4 ALPHA PHI ALPHA FRATERNITY,)
INC., ET AL.,)
5 PLAINTIFFS,)
6 -VS-) DOCKET NO. 1:21-CV-05337-SCJ
7 BRAD RAFFENSPERGER,) VOLUME 1 - A.M.
8 DEFENDANT.)

9 COAKLEY PENDERGRASS,)
ET AL.,)
10 PLAINTIFFS,) DOCKET NO. 1:21-CV-5339-SCJ
11 -VS-)
12 BRAD RAFFENSPERGER, ET AL.,)
13 DEFENDANTS.)

14 ANNIE LOIS GRANT, ET AL.,)
15 PLAINTIFFS,) DOCKET NO. 1:22-CV-00122-SCJ
16 -VS-)
17 BRAD RAFFENSPERGER, ET AL.,)
18 DEFENDANTS.)

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20 TRANSCRIPT OF PRELIMINARY INJUNCTION PROCEEDINGS
21 BEFORE THE HONORABLE STEVE C. JONES
22 UNITED STATES DISTRICT JUDGE
23 MONDAY, FEBRUARY 7, 2022

24
25 VIOLA S. ZBOROWSKI, CRR, CRC, CMR, FAPR
OFFICIAL COURT REPORTER TO THE HONORABLE STEVE C. JONES
UNITED STATES DISTRICT COURT
ATLANTA, GEORGIA
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1 APPEARANCES:

2 ON BEHALF OF THE PLAINTIFF:

3 KEVIN J. HAMILTON, ESQ.

ABHA KHANNA, ESQ.

4 SOPHIA LIN LAKIN, ESQ.

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6 ON BEHALF OF THE DEFENDANT:

7 BRYAN P. TYSON, ESQ.

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<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
WILLIAM SEXTON COOPER	33	71	94	

1 THE COURT: First of all, I'll say good morning to
2 everyone. Let me also say, first, I want to apologize to
3 everyone. I understand most of you all would have preferred to
4 have done this by Zoom, and I would have preferred to have done
5 this by Zoom as well. However, in my opinion, this is a case, a
6 hearing of such importance, I need to make sure that I understood
7 what everybody was trying to tell me, that it was coming across
8 clearly. I have used Zoom a lot in the last two years. It is
9 nice. But in a hearing of this nature, I don't quite have the
10 patience maybe to deal with some of the things that Zoom has to
11 deal with.

12 So I need to have everyone here so I can see everything,
13 make sure I'm understanding everything because I might have to
14 make a very quick decision in this case because we're all watching
15 what is going to happen in the Supreme Court regarding the Alabama
16 case. But, basically, what I'm saying to y'all, I just thought
17 this case was too important. I need to make sure things are
18 coming across, that I have them correct to do this case by Zoom.

19 Also, I will make sure you all are protected. Now, I
20 will have my mask off most of the time, because I'm constantly
21 talking and constantly making decisions. Each one of y'all have
22 to keep your mask on unless you are talking at some point. When
23 you do your opening, I prefer if you come up to the podium, to the
24 Plexiglass, you can remove your mask.

25 When you're questioning witnesses, you can remove your

1 mask. Any time you're talking, you can remove your mask.

2 I'm going to do everything possible to keep y'all safe.
3 I need you here for the full six days. So I don't want anyone
4 getting sick or going home making family members sick. As my wife
5 tells me every day, the way I'm sending you to the office, I want
6 you to come back that way. So wherever you come from in Atlanta
7 or wherever, I want to send you back as healthy as you did when
8 you arrived here. I need your help to do that.

9 Now, there are a number of attorneys involved in this
10 case, I will say. And for the record, what I like to do is ask
11 the lead attorney for each party to stand up and introduce
12 yourself and introduce everyone that is working with you in this
13 case. We want to make sure the record reflects that. Once that
14 is done, we'll proceed with the opening statements; 15 minutes
15 each.

16 There are a couple of rulings we're going to admit
17 before we begin the evidence.

18 Again, the whole point in this case, I need to make sure
19 I hear everything y'all want to tell me and get across your
20 points, because once we stop, then I have to go and make
21 decisions. With that stated, we'll start with the Alpha
22 attorneys.

23 MR. HAMILTON: Good morning, Your Honor. It's Kevin
24 Hamilton on behalf of the Pendergrass and Grant plaintiffs. With
25 me today to my left is Abha Khanna, my partner. Next to her Joyce

1 Gist Lewis, local counsel. I think you know her.

2 THE COURT: I've seen her around from time to time.

3 MR. HAMILTON: Jonathan Hawley is here as well. Graham
4 White, like Jones.

5 THE COURT: Good last name.

6 THE WITNESS: And then our paralegal who is probably the
7 most important member of the team, Trisha Marino is here as well.

8 MS. LAKIN: Good morning, your Honor. Sophia Lin
9 Lakin --

10 THE COURT: You can remove your mask.

11 MS. LAKIN: As long as you can hear me.

12 THE COURT: I can hear you.

13 MS. LAKIN: With me at counsel table is Ari Savitzki and
14 Anuradha Sivaram. Also in the courtroom we have Jenessa
15 Calvo-Friedman, Sean Young, Rahul Garabadu, George Varghese,
16 Robert Boone, and Edward Williams. I believe that's it for today.

17 THE COURT: All right. And for the Grant, Pendergrass
18 are the same people. Now, there are attorneys here also -- go
19 ahead, Mr. Tyson. Mr. Tyson, I know you have quite a few cases in
20 front of me.

21 MR TYSON: I know, Your Honor. We were supposed to be
22 here trying one case, and now we're here trying a different case.

23 Brian Tyson for the defendants in all three cases. I'm
24 joined today by my colleagues Frank Strickland, Bryan Jacoutot,
25 Loree Anne Paradise, and Taylor English. And then we also have

1 Charlene McGowan from the Georgia Attorney General's Office as
2 well.

3 THE COURT: Any attorneys I haven't heard from?

4 Now, there are also attorneys I understand from the
5 Georgia NAACP. They're supposed to be on my first bench to my
6 right. The NAACP, are the attorneys there for that? Y'all have a
7 reserved seat. Here's what we're going to do. The individuals on
8 the first bench behind the bar, I'm going to ask y'all to trade
9 seats with -- so the NAACP, y'all have your seats. You all have
10 your seats? So make sure you all have your seats set. All right.
11 Then you're fine.

12 All right. Okay. I think I've done all of the
13 preliminary. So with that stated, we will begin opening
14 statements, and Mr. Hamilton, you can go first.

15 MR. HAMILTON: Good morning, Your Honor.

16 THE COURT: Good morning.

17 MR. HAMILTON: Kevin Hamilton again on behalf of the
18 Pendergrass and Grant plaintiffs.

19 As you know, the plaintiffs in both cases, as well as in
20 the Alpha case, have moved for a preliminary injunction barring
21 the use of the newly-redrawn congressional and legislative maps
22 adopted by the Georgia Legislature.

23 There is already a voluminous body of evidence in the
24 record before the Court. Over the course of this hearing, we'll
25 highlight the key evidence supporting the pending motion that's in

1 evidence. At its conclusion, we will ask this Court to enter the
2 requested injunction. I'd like to just take a couple of minutes
3 at the outset to provide a brief overview of the case, the
4 evidence we intend to present, and a quick sketch of the order of
5 the witnesses.

6 Over the past decade, Georgia's black population has
7 increased by over 15 percent. Its minority population as a whole
8 has increased more than 25 percent. At the same time, the white
9 population has decreased by nearly a full percentage point. And
10 yet despite these significant changes in Georgia's demographic
11 makeup, the number of majority black districts in the state's
12 congressional and legislative maps has hardly moved. Effectively
13 diluting tens of thousands of black Georgians voting power.

14 The general assembly's method for this dissolution of
15 black votes is as old as the Civil Rights Act, the Voting Rights
16 Act itself. And precisely what that landmark legislation was
17 meant to prevent.

18 Some black voters have been packed into the majority and
19 super-majority black districts in the Atlanta Metro area in Bibb
20 County, while others have been packed into rural regions and
21 predominantly white suburban districts. The combined effect of
22 these line-drawing decisions is that black voters throughout the
23 state are being denied the opportunity to elect the candidates of
24 their choice, and denied equal participation in the political
25 process. These are ultimately textbook violations of Section 2 of

1 the Voting Rights Act. And Georgia's unlawful new maps can and
2 must be enjoined, which is precisely what we seek with the pending
3 motions for preliminary injunctions in these two cases.

4 The evidence already in the record and that we will
5 highlight over the next six days demonstrates both the elements of
6 the Section 2 claims and that have been proven in both Pendergrass
7 and in the Grant case.

8 First in Pendergrass, the expert testimony of mapper
9 demographer Bill Cooper, our first witness, will show that the
10 black population in the Western Mid-Atlanta metro area is
11 sufficiently large and compact enough to form the new
12 congressional district where black voters can elect candidates of
13 their choice to Congress.

14 On the legislative side in the Grant case, our second
15 witness, Blake Esselstyn, will show that the black populations in
16 both the Atlanta area and the black belt similarly allow for the
17 creation of three new majority black Senate -- state Senate
18 Districts, and five new State House Districts.

19 Mack Palmer, our third witness, will show that voting in
20 these areas is significantly and racially polarized. Black voters
21 overwhelmingly will vote together. And where there is more black
22 voters that are in the minority, white voters consistently vote as
23 a block to defeat black preferred candidates.

24 These are the three Gingles preconditions, and they are
25 readily satisfied in both Pendergrass and Grant on the record

1 before the Court.

2 As the Eleventh Circuit has reminded us, it would be an
3 unusual case where these three conditions are met and a finding of
4 dilution does not follow.

5 Your Honor, these are not unusual cases. The Senate
6 factors that guide the totality of circumstances analysis
7 uniformly weigh in plaintiff's favor and confirm what even a
8 casual observer of Georgia's history and politics already well
9 knows. Dr. Vernon Burton will demonstrate that for more than 150
10 years, the state has undertaken discriminatory actions to deny its
11 black citizens the right to vote, from poll taxes to literacy
12 tests and worse. And similarly, those efforts persist -- similar
13 efforts persist to today, and are stoked by continued racial
14 appeals in political campaigns.

15 Black Georgians have historically been underrepresented
16 in elected office. And the end result is more than a century of
17 discrimination and disenfranchisement is clear, and stark
18 discrepancies between black and white Georgians across all areas,
19 employment, education, economics, Welfare, and reduced political
20 participation by black voters. Dr. Loren Collingwood's report
21 addresses those disparities; it's in the record before Your Honor.

22 In response to this overwhelming evidence, the state has
23 worked hard to distort the controlling legal standards and
24 distracted the Court. They repeatedly question this Court's
25 jurisdiction and the ability of defendants to even seek relief

1 under Section 2. This Court has already rejected those arguments
2 as outside the mainstream and unsupported by any authority.

3 Defendants have demanded that plaintiffs make novel
4 choices; for example, that their illustrative maps are perfect
5 across all redistricting criteria or that polarization and voting
6 is caused by race, not partisanship, even though the Eleventh
7 Circuit has expressly disclaimed such requirements.

8 Defendants have even suggested that establishing a
9 Section 2 violation somehow constitutes impermissible racial
10 gerrymandering, even though the Eleventh Circuit has squarely
11 rejected that argument. Make no mistake; this is a frontal
12 assault on the Voting Rights Act.

13 Defendants have misapplied proportionality analysis in
14 the Congressional case, manipulated the numbers to hide the fact
15 that Georgia's new Congressional map falls well short of providing
16 representation equal to their numbers. And above all, defendants
17 have sounded the same disingenuous beep loudly and repeatedly that
18 it is just too late to remedy these violations of federal law.

19 This last argument is not only incorrect; it's
20 fundamentally inequitable. The State of Georgia through its
21 governor delayed the final enactment of these maps by more than a
22 month. The purpose of that delay was clear, to deny judicial
23 review ahead of this year's mid-term elections. Defendants should
24 not be allowed to use that argument to evade their obligations
25 under the Voting Rights Act and further delay the voting power of

1 black Georgians. And even setting that aside, we are still more
2 than three months from the primary election, and more than nine
3 months from the general election.

4 Your Honor, it is hardly too late to right these wrongs.
5 Whatever administrative inconveniences are placed on the State
6 pale in comparison to the irreparable harm that would come from
7 denying black voters their fundamental rights to equal
8 participation in the political process. This Court has the power
9 and, indeed, the responsibility to provide a swift and effective
10 remedy.

11 A generation ago, after decades of marches, protests,
12 and struggles, Congress adopted the Voting Rights Act to ensure
13 that federal courts like this one would have the power to act when
14 a state, like Georgia here today, acts to dilute the votes of
15 black Americans.

16 At the conclusion of these proceedings, Your Honor,
17 we'll ask for an order granting the motion for a preliminary
18 injunction enjoining the use of the adopted Congressional and
19 Legislative maps in setting a prompt schedule for the remedial
20 phase of this litigation.

21 THE COURT: Thank you, sir.

22 MR. HAMILTON: Thank you, Your Honor.

23 THE COURT: Counsel.

24 MS. LAKIN: Good morning, Your Honor.

25 THE COURT: Good morning.

1 MS. LAKIN: Sophia Lin Lakin for the Alpha Phi
2 plaintiffs.

3 Over the last decade, Georgia's black population grew by
4 nearly half a million people while the white population declined.
5 So when drawing new electoral maps, you would expect that growth
6 to matter. Yet Georgia's new legislative maps ensure that despite
7 this tremendous growth in the black population, black voters will
8 have few, if any, new political opportunities in their State House
9 and Senate elections. This is voter dilution, and the evidence in
10 the record and that we will hear this week will demonstrate that
11 the dilution of black voting strength violates Section 2 of the
12 Voting Rights Act.

13 To establish a vote dilution violation, we need to show,
14 first, that it is possible to draw new black majority districts or
15 districts based on the size and concentration of the black
16 population. The evidence will show that.

17 Second, we need to show that voting in these areas is
18 racially polarized such that black voters, even if they vote
19 together, will typically be unable to elect their preferred
20 candidates in the districts as the state drew them. The evidence
21 will show that, too.

22 Last, we need to show that looking about the broader
23 context, including historical and present-day conditions, the
24 state's districts resulted in inequality in the opportunities
25 employed by black and white voters to elect their preferred

1 candidates. The evidence will show that, too.

2 Demographics and mapping expert William Cooper, who has
3 served as an expert in over 40 redistricting cases, will testify
4 that he identified particular areas in the state where the black
5 population has become more numerous or more concentrated,
6 including in a set of counties in metro Atlanta and also in
7 counties around Augusta and Albany, part of the basis for the
8 Black Belt.

9 Mr. Cooper will explain that despite the increased
10 growth and concentration, the number of majority black Senate and
11 House Districts has been, basically, static from 2006. And he
12 will demonstrate how he was able to draw at least three additional
13 black majority Senate Districts, and at least four new majority
14 black House Districts using additional redistricting principles
15 and guidelines. As Mr. Cooper will tell us, his maps are just
16 illustrative. They simply show one way to draw additional
17 majority black districts that reflect the growth and concentration
18 of Georgia's black population.

19 We will also hear from Lisa Handley, who has 40 years of
20 experience analyzing minority vote dilution. She will testify
21 that in the areas of focus, voting is polarized by race, and that
22 because of this racial polarization, black voters in this area do
23 not have the ability to elect their preferred candidates unless
24 the district boundaries are drawn to provide these voters with an
25 opportunity to elect; opportunities the state could have drawn but

1 did not.

2 The evidence will also show when considering the broader
3 social and historical context, and in these areas of Georgia in
4 particular, the state's districts result in an unequal opportunity
5 for black voters to participate in the political process.

6 Dr. Adrienne Jones, an assistant professor of political
7 science at Morehouse, will testify that Georgia's political
8 campaigns have been long characterized by racial appeals. She
9 will also testify that black Georgians have been and continue to
10 be underrepresented in elected office, particularly in the precise
11 areas of focus here. She will testify that these areas have
12 largely failed to elect black general assembly members in at least
13 the last 15 years.

14 Dr. Jones and Professor Jason Ward, a historian at Emory
15 University, also explain in their written declarations that
16 Georgia has a long and largely undisputed history of
17 state-sanctioned discrimination against black voters,
18 discrimination that extends beyond the law to harassment,
19 intimidation, and violence. And as Dr. Traci Burch, a political
20 scientist at Northwestern University, explains in her written
21 declarations, the persistent effects of discrimination in Georgia
22 are reflected in racial disparities across a litany of
23 socioeconomic categories, each of which correlated the hierarchy
24 of political participation.

25 The Court will also hear from Bishop Reginald Jackson of

1 the 6th District of the AME Church, which has long worked to
2 increase voter participation and equal opportunities for black
3 Americans.

4 Sherman Lofton, the State Director of Alpha Phi Alpha,
5 the nation's oldest black fraternity, will also testify. Both
6 will explain that fair electoral maps are critical to their
7 organizations, to their members and brothers, and to the health of
8 Georgia's democracy. Director Lofton, along with state
9 representative Derrick Jackson, will also testify as to how some
10 of the new majority black districts drawn by Mr. Cooper better
11 reflects their communities than the state's maps.

12 Plaintiffs are likely to succeed on this evidence, but
13 the State will argue that it's already too late. As Mr. Hamilton
14 explained, it is not. And for the black voters who reside in the
15 challenged districts, once an election is held under an unlawful
16 map, there is no do-over. These voters will have forever lost
17 their ability to participate in the more core expression of
18 citizenship on equal terms.

19 The Court can, and as the evidence will show, must grant
20 plaintiff's requested relief. Thank you.

21 THE COURT: Thank you, ma'am. Mr. Tyson.

22 MR. TYSON: Thank you, Your Honor. Let me get my slides
23 up here real quick. Your Honor, these are just our
24 demonstratives. So everyone has a copy of the slides. We're not
25 asking for these to be admitted.

1 THE COURT: You may proceed, Mr. Tyson.

2 MR. TYSON: Thank you, Your Honor. Good morning. Glad
3 to be here with you. We're here to talk about districts and maps.
4 I thought we might start a brief journey down memory lane in terms
5 of Georgia redistricting.

6 This is an actual district drawn by the Georgia
7 Legislature that was actually used in elections in Georgia. This
8 is District 13 from the 2001 Congressional map. And when the
9 author of the plan was asked what the community of interest was in
10 particular this district, he said, well, it is really a tourism
11 district. Because if you start up here out I-85 in Gwinnett,
12 travel down through Conyers, around McDonough, visit Griffin and
13 come back and stop in Fulton County, you pretty much took a pretty
14 good tour of Atlanta. This was a district that was part of the
15 2001 Congressional plan in Georgia that was drawn with a lot of
16 very particular partisan goals at the time. One of them was Major
17 Steve Murphy was elected or was represented by a Republican in his
18 area. But this is a map that was precleared by the Department of
19 Justice as complying with the Voting Rights Act. Georgia
20 certainly has a colorful history in the context of redistricting.

21 This is just a way to contrast the plan that the
22 plaintiffs now challenge here as violating the Voting Rights Act
23 and the congressional side of things. We, obviously, have a lot
24 to say about it. I know we can all agree that this one is at
25 least cleaner than the 2001 plan in terms of geography.

1 So you're going to hear a lot of testimony.

2 THE COURT: Mr. Strickland was involved a little bit in
3 contesting the 2001 map.

4 MR. TYSON: Excuse me, Your Honor?

5 THE COURT: Mr. Strickland, I think, was involved in
6 contesting the 2001 map.

7 MR. TYSON: He was. Yes, Your Honor.

8 We're going to hear testimony about maps and districts
9 that the plaintiffs have laid out. The first general
10 preconditions. And I think it's important for us to remember that
11 when we're talking about these districts and these particular
12 plans, the issue before the Court is about black voters. You're
13 going to hear discussions, the decrease of non-Hispanic white
14 voters in Georgia. That's true. That happens. But the
15 particular claims here don't involve all minority voters; they
16 involve black voters specifically.

17 And the other cases that you have with the other judges
18 will deal with some of those additional classes, but these claims
19 are about black voters specifically.

20 So what did the plaintiffs do in terms of proposing a
21 remedy for you? I want to walk through a couple of districts and
22 look at how they look different than the adopted plan.

23 You'll hear testimony about this from both Gina Wright
24 as an expert and then John Morgan, our map drawer.

25 So the left here, you'll see the adopted District 18.

1 This is the map that is the Chairman of the Senate's redistricting
2 committee's district, so it got a lot of attention. You can see
3 that it starts right here in Macon with population in Houston
4 County. And then has four whole counties right around the area
5 there. By Mr. Cooper's plan, he treats Senate District 18 a
6 little different. He is first of all starting in Macon, but then
7 he comes all the way over to the Alabama border to here, down by
8 Fort Benning, then travels down through Americus on down to Albany
9 and Leesburg, and ends up right around Albany and Worth County
10 there at the bottom of the district.

11 Now, this may seem a little bit unusual, and the
12 plaintiffs have said on the original illustrative, but what you'll
13 hear in terms of testimony is the reason why this district looks
14 the way it does is because of what happens on the other side of
15 the state. And so this other district here is the district for --
16 let's see if it's going to work for me.

17 THE COURT: Mine is not showing anything.

18 MR. TYSON: Let me try to reset this. I apologize. We
19 have the printed copy in front of you. Let's proceed with that.
20 So if you look at the printed copy that is there, you see District
21 26 is the pink. That is the adopted district, starts in Macon and
22 goes east. That is a majority black district and the way the
23 legislature drew it.

24 District 23, the blue district there, is not a majority
25 black district, but is one the plaintiffs say should be made

1 majority black. And so to do that, Mr. Cooper has taken and
2 turned District 26 to run west, and has brought District 23, as
3 you'll hear testimony, to bring in Augusta, Milledgeville and
4 Baldwin County, and included a piece of Warner Robins in Houston
5 County.

6 Now, in view of all of that work, though, along the way,
7 this district is barely over 50 percent. So it's 50.5 percent on
8 the "any part black" category, and takes all the effort to reach
9 that point along the way. It's also an important distinction,
10 "any part black" refers to individuals who responded to the census
11 that they identify as any part black. So for example, Vice
12 President Harris is both black and Asian. She would be any part
13 black, but would not be included in the single-race black that we
14 refer to on the census numbers there.

15 So you'll hear testimony about how putting Augusta,
16 Milledgeville, and Warner Robins together is uniting disparate
17 communities based solely on the race of the individuals involved.

18 The next on -- the next plan is an example from
19 Mr. Esselstyn's plans for the Grant plaintiffs, and that is
20 District 149 in the House. And you can see that that is four
21 whole counties going down to a small piece of Telfair County.
22 That is not a majority black district on the configuration the
23 Legislature adopted.

24 The plaintiffs have instead drawn District 149.
25 Proposed it includes both Macon, and it has that finger up into

1 Milledgeville to capture black voters that are there. This is a
2 different configuration. It's a should-have-been adopted by the
3 Legislature as a majority black district, but it requires all of
4 those different components to put those together.

5 As you'll hear testimony from Mr. Morgan and Ms. White,
6 while these are illustrative plans, the way they are configured
7 are so tight in terms of the population, there's not really a
8 whole lot of different ways to configure, for example, District
9 149 and have it still be a majority black district. But then this
10 gets even more complicated as you look at what both Mr. Cooper and
11 Mr. Esselstyn has said. The next slide there shows you --
12 Mr. Esselstyn has said there should have been an additional
13 minority black district. So one is laid up in Metro Atlanta to
14 the west there, Douglas. There's two in South Metro and two in
15 middle Georgia. When you compare that to what Mr. Cooper found,
16 though, he says there needs to be a new district in Southeast
17 Georgia in the house. Mr. Esselstyn didn't identify that. He has
18 one in middle Georgia instead of two. He has one in South Metro.

19 So even among the experts, there is a disagreement --
20 and you'll hear testimony as we work through that with them about
21 where these new majority black districts should have been drawn.

22 And the last one I'll make about these districts,
23 they're very, very close in population. The next slide shows you
24 the population report. Even with all of the effort that went into
25 District 149 for Mr. Esselstyn's plan, you're still only 200ths of

1 a point above majority status. 50.02 percent even with all of the
2 efforts with Milledgeville and separating Baldwin County and the
3 way that was done.

4 So we're going to talk through all of these details, and
5 at the end of the day, Section 2 cannot and does not require you
6 to racially gerrymander. It doesn't require that you draw the
7 maximum number of majority black districts on a particular plan.
8 That's why the Supreme Court has talked about the importance in
9 looking at the communities that are involved. That's why in Lou
10 Lack (phonetic) you couldn't unite disparate communities based
11 solely on the race of those involved.

12 But even if you agree with the plaintiffs on the merits
13 of that piece, the next slide gives you a little overview of some
14 of the timing problem. We've had references here, although the
15 elections are nine months away, we have three months until the
16 primary. We began the process of districting in Georgia in the
17 summer, holding hearings. There was a committee education day
18 that dealt with hearing from groups like the NAACP, the ACLU and
19 others to talk with the Legislature about the process. They held
20 a special session in November. The Governor signed the maps in
21 December. But while all of that is going on, county election
22 officials are looking at early voting sites and Election Day
23 precinct locations. They are getting contracts with those venues
24 wherever they may be and getting those set. They are bringing in
25 poll workers for particular days.

1 So, yes, the election is still a little ways out, but
2 these process are already underway and have been underway for
3 awhile. Not only that, we have the process starting in -- January
4 13 of nominating petitions for candidates. Obviously, voters who
5 are eligible to vote in a particular election can vote and can
6 sign a nominating petition, and that process has been underway for
7 candidates trying to get on that petition since January.

8 We are now in a season where election officials have
9 started reassigning voters based on the new districts. And on
10 that you will hear testimony from Ms. Bailey on Richmond County
11 elections. That is a manual process. You have to touch each
12 component of the streets in your county to update those district
13 numbers.

14 So election officials have to undertake that process so
15 we know which House, Senate, Congressional, local districts, all
16 those different -- are set for each combination of ballots in that
17 particular jurisdiction. And when that's finished, then the
18 Secretary's Office begins working through ballot styles and
19 building the actual database for those ballots.

20 You'll hear testimony from Mr. Barnes about how the
21 Secretary has set the deadline of February 18 for County officials
22 to finish updating all the districts so that we can still have
23 time to build those ballots in combinations before qualifying
24 starts on March the 7th.

25 And one distinction you'll hear testimony about from

1 Ms. Bailey and others, is that Georgia is in a different position
2 than, say, Alabama where the three-judge court delayed qualifying
3 for a couple of weeks. In Georgia, once you hit the end of
4 qualifying on March 11, you're on a mad dash to -- the voter
5 deadline for mailing out absentee ballots on April the 5th. So in
6 that time period, you'll have elections officials getting proofs
7 of ballots, working through those proofs, making the edits. You
8 have to proof the Republican ballot, the Democratic ballot, the
9 non-partisan ballot, get those back to the secretary, work through
10 that process with them, get those all set so you have time to
11 print them and get them sent to voters. So even if there was a
12 delay in the qualifying process, you'll hear Ms. Bailey testify to
13 this, you're placing the timely holding of the May election at a
14 great risk. And if you delay qualifying, you might have to also
15 delay the primary. And delaying the primary would work a massive
16 disruption in terms of early voting sites, election date sites,
17 voter confusion, candidates who have relied on that for strategy,
18 all of those different components. Those are the timing issues
19 that you will hear about as we move through this.

20 So we began on January 13 in terms of the election. We
21 are now well into the process of updating voter registration
22 databases, and this is -- this election is so far out of the train
23 station at this point, it would be dangerous to try to pull that
24 back and change things now.

25 As I wrap up, I want to remind you, there's kind of a

1 slide here that has different complicated legal issues we have to
2 decide, we have to look at. Denial or abridgement of voting on
3 account of race or color, that's what we're trying to get at that
4 question.

5 We talked about the Gingle's preconditions that have to
6 be worked through with drawing the district, the political
7 cohesion, and the plaintiffs don't believe that the cause of that
8 is relevant. It's part of at least the totality and the
9 circumstances of what is happening in Georgia and trying to answer
10 the question: Is voting equally open to black Georgians on these
11 redistricting plans, in particular. That's where all these
12 totality factors come into play at the end. And so those are all
13 of the things that have to happen in the next six days
14 essentially, how to work through all these different legal issues
15 along the way.

16 So we believe plaintiffs will not be able to show that
17 they are clearly entitled to relief. We have to go through this
18 long discovery process. We can get to the question by 2024, but
19 let's not try to do this on a rushed PI basis right now.

20 So in conclusion, the evidence will show you that the
21 plaintiffs cannot prevail on their motion. They have not
22 presented with proper remedies that can be used there, the
23 improper focus on race when drawing districts makes these
24 unconstitutional racial gerrymandering. And we'll talk through
25 that.

1 The voting patterns in Georgia, you'll hear testimony is
2 polarized by party, not by race. That's the key question. The
3 totality of the circumstances show that black Georgians are able
4 to participate fully in the election processes in Georgia. But
5 even if the plaintiffs show they're likely to succeed on those
6 issues, they can't show the other factors necessary to get the
7 preliminary injunction. The equities and the public interest
8 massively favor avoiding the confusion and chaos that will result
9 by changing the district maps at this late date.

10 So, Your Honor, the way to sum this up is, Section 2
11 require this intensely local appraisal of the facts on the ground.
12 That is the point of a Section 2 case, why we do it through a
13 bench trial with significant discovery. It's almost like it
14 requires hours of time watching gaming film. It requires weeks
15 and weeks and weeks of practice reps getting ready for the game.
16 What the plaintiffs are essentially asking you to do is join them
17 in the arm chair, yelling at coaches, pull out Stetson and put in
18 JT and not recognizing that these are questions that the
19 Legislature studied. They looked at the game. They studied the
20 issues. They took the time to hear from Georgians and draw these
21 maps.

22 We would urge the Court not to second-guess the
23 Legislature's decision especially on this timeline and especially
24 on the evidence that you'll hear. Thank you, Your Honor.

25 THE COURT: Thank you, Mr. Tyson.

1 A couple of matters. There was a motion filed to
2 exclude or strike the testimony of the three state's experts. The
3 Court is going to deny that motion. The three experts will be
4 allowed to testify. I note your exception to my ruling.

5 Last night I received Document 95, plaintiff's unopposed
6 motion to take judicial notice. I would have taken that judicial
7 notice at the proper time in this case. I received the
8 stipulations. Thank y'all, and I also saw the declarations.

9 As indicated, this hearing will deal with whether or not
10 the Court is going to grant the injunction. As y'all three have
11 already indicated, the Court will also have to make what I call a
12 precis decision as well. And so keep that in mind as you address
13 the Court.

14 And with that stated, are both sides invoking the rule
15 of sequestration? I understand y'all want to keep your experts in
16 at certain times. All other witnesses, are you invoking the rule
17 or are they allowed to start courtroom? I'll start with Mr.
18 Hamilton first. What is your position?

19 MR. HAMILTON: Our position is the sequestration rule
20 should be waived.

21 THE COURT: Okay. Ms. Lakin?

22 MS. LAKIN: With respect to the experts, we gave one
23 expert in the room. We join in the request that any experts can
24 be in the room.

25 THE COURT: Mr. Tyson?

1 MR. TYSON: We would invoke the rule as to non-expert
2 witness, but we are fine with the experts staying in the room.

3 THE COURT: Experts can remain in the courtroom, but all
4 other witnesses are to make sure they are in the witness room to
5 my right across the hall. There is an overflow courtroom for
6 individuals to hear, not see, on the 21st floor. It's Room 2105.
7 With that stated, you can call your first witness.

8 MR. HAMILTON: A couple of housekeeping things. I
9 wanted to note that in the interest of efficiency, the state has
10 and Alpha plaintiffs have agreed with the plaintiffs to introduce
11 Dr. Collingwood's report without requiring him to testify. So I
12 just wanted to note that for the record.

13 THE COURT: Is that correct, Mr. Tyson?

14 MR. TYSON: Yes, Your Honor. It is.

15 THE COURT: Alpha?

16 MS. LAKIN: No objection.

17 THE COURT: All right. That will happen.

18 MR. HAMILTON: Thank you, Your Honor. Because of health
19 conditions, Dr. Burton would like to be able to testify remotely,
20 which we've already discussed with the courtroom deputy
21 Ms. Wright. That won't happen today. That will be later this
22 week.

23 THE DEPUTY CLERK: I need to know at least a day in
24 advance.

25 MR. HAMILTON: At least a day in advance?

1 THE COURT: We have to let our IT people know. First of
2 all, is there any objection coming from Alpha?

3 MS. LAKIN: No, Your Honor.

4 THE COURT: From the State?

5 MR. TYSON: None here, Your Honor.

6 THE COURT: If he's going to testify tomorrow, we need
7 to know today. One day in advance.

8 MR. HAMILTON: Thank you. And then our first witness is
9 going to be Dr. Cooper. My colleague, Ms. Khanna, will be
10 examining Dr. Cooper. And as you know, we've proposed and the
11 Court has directed that we present the evidence organized by topic
12 with mapping experts going first and then the experts addressing
13 racially polarized voting, and then, finally, a number of
14 witnesses to address the Senate factors.

15 Our first witness, Dr. Cooper, has been retained as an
16 expert by both sets of plaintiffs to address the Congressional map
17 on behalf of the Pendergrass plaintiffs, and separately to address
18 the Legislative maps on behalf of the Alpha plaintiffs. So for
19 the sake of clarity, we intend to elicit Dr. Cooper's testimony
20 this morning with respect to the Congressional map in our case and
21 the Pendergrass case, allow the State to cross-examine him on that
22 topic. Then the Alpha plaintiffs would call Dr. Cooper in their
23 case, elicit Dr. Cooper's testimony on the Legislative map, allow
24 the State to cross-examine. For the remaining witnesses that the
25 Pendergrass and Grant plaintiffs will call, we'll address the

1 Congressional and Legislative issues in one examination, given the
2 overlap. But I just wanted to flag how we intended to proceed
3 with Dr. Cooper and make sure there is no objection.

4 THE COURT: I appreciate that. Thanks a lot. It
5 clarifies for me, everything I need. So thank you.

6 MR. HAMILTON: And then the last thing, Your Honor, in
7 the interest of efficiency to try to move it along. There are a
8 number of Plaintiff's exhibits as to which there have been no
9 objections by any party. And so at the outset, we would like to
10 move all of them into evidence. And I've circulated a list to the
11 State and to other counsel, and I will hand one to Court Clerk.

12 THE COURT: Mr. Tyson, do you agree there is no
13 objection to that list?

14 MR. TYSON: Yes, Your Honor. These are the ones we have
15 not made any objection to.

16 THE COURT: Mr. Hamilton, I hate to ask you to do this,
17 but for the record very quickly, if you could just say -- not a
18 whole lot about it, but what they are --

19 MR. HAMILTON: By number?

20 THE COURT: Yes.

21 MR. HAMILTON: So at this time, plaintiffs move Exhibit
22 Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17,
23 18, 19 and 20, 21, 22, 23, 24, 25, 26, 38, 39, 40, 53, 55, 56, 57,
24 58, 60, 62, and 66.

25 THE COURT: All right. They're admitted into evidence

1 without objection.

2 (Government's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10,
3 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, 21, 22, 23, 24, 25, 26,
4 38, 39, 40, 53, 55, 56, 57, 58, 60, 62, 66 were received and
5 marked into evidence.)

6 MS. LAKIN: Your Honor, before we call the first
7 witness, we would also like to move in the Alpha Plaintiff's
8 exhibits that also have no objection, just for purposes of
9 housekeeping.

10 THE COURT: That's fine. No problem with that, Mr.
11 Tyson?

12 MR. TYSON: We exchanged the list last night. It
13 contains the list. We have no objection.

14 THE COURT: Mr. Hamilton, no objection?

15 MR. HAMILTON: No objection.

16 THE COURT: Counsel? I'm allowing this counsel to state
17 which ones are. If you could move over for a second. I'm trying
18 to keep all of these protocols up and keep you safe.

19 MS. LAKIN: Just for purposes of reading this into the
20 record, for the Alpha exhibits, I will refer to them as "A"
21 exhibit number. So exhibit numbers A1, A2, A3, A4, A5, A6, A7,
22 A8, A9, A10, A11, A12, A13, A14, A15, A16, A17, A18, A22, A37,
23 A46, A47, A48, and A49.

24 THE COURT: All those exhibits are admitted into
25 evidence without objection.

1 (Alpha Exhibits Nos. A1, A2, A3, A4, A5, A6, A7, A8, A9,
2 A10, A11, A12, A13, A14, A15, A16, A17, A18, A22, A37, A46, A47,
3 A48, A49 were received and marked into evidence.)

4 MS. LAKIN: Thank you, Your Honor.

5 THE COURT: Mr. Hamilton, you can come back and call
6 Dr. John Cooper, I think, to the stand.

7 MR. HAMILTON: Yes, my colleague Ms. Khanna is going to
8 call Dr. Cooper.

9 THE COURT: I wanted to make sure I get it right. I
10 would rather be called Jones instead of Smith.

11 MS. KHANNA: I will call Dr. Cooper at this time.

12 THE COURT: Dr. Cooper, if you will come up. You can
13 remain standing.

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

18 THE WITNESS: I do.

19 THE DEPUTY CLERK: Could you please state and spell your
20 name for the record?

21 THE COURT: One second. Would you grab those baggies.

22 What we're doing, sir, I'm going to ask you to put one
23 of the baggies on the mic.

24 THE WITNESS: Okay.

25 THE COURT: Ms. Wright, will you tell him again what you

1 want him to do?

2 State your name.

3 THE WITNESS: William Sexton Cooper.

4 WILLIAM SEXTON COOPER, having been sworn,

5 testifies as follows:

6 DIRECT EXAMINATION

7 BY MS. KHANNA:

8 Q. Good morning, Mr. Cooper.

9 A. Good morning.

10 Q. You've been retained as an expert on behalf of the Pendergrass
11 plaintiffs in this case; is that right?

12 A. Yes.

13 Q. And you prepared two expert records in the Pendergrass case;
14 correct?

15 A. Yes.

16 Q. An initial report and a supplemental report?

17 A. That is correct.

18 Q. I want to pull up on to the screen Plaintiff's Exhibit 1. Can
19 you please identify this exhibit on the screen?

20 A. This is the initial declaration I prepared.

21 Q. And if I can now pull up Plaintiff's Exhibit 2.

22 A. And this is the second declaration.

23 Q. And you have both of those exhibits in front of you in a
24 binder with all of the Plaintiff's Exhibits; correct?

25 A. I do.

1 Q. If we can pull up page 29 of Plaintiff's Exhibit 1. And you
2 can just look at it on the screen for now. Is this a copy of your
3 CV?

4 A. Yes, it is.

5 Q. Is it a complete and accurate summary of your background and
6 professional experience at least with a date at the very top of
7 it?

8 A. Yes, as of October 31, 2021.

9 Q. Wonderful.

10 Mr. Cooper, I'm just going to ask you a few questions about
11 your background and expertise without combing through your resume.
12 What is your profession?

13 A. I provide consulting services using geographic information
14 system software to analyze demographic data and prepare election
15 plans. I do it for various entities, governments, civil rights
16 groups, non-profits. Self-employed. And I live in Bristol,
17 Virginia, which is just due north of here by about 300 miles.

18 Q. Mr. Cooper, is it fair to say that you draw maps for a living?

19 A. Yes. Lots of them.

20 Q. Have you been accepted as an expert witness in cases involving
21 redistricting before?

22 A. Yes.

23 Q. Approximately how many cases have you testified in?

24 A. I've -- I've either testified in trial or by declaration in
25 something approaching a hundred. I started doing this in 1986.

1 So over the years numerous cases have accumulated.

2 **Q.** So over 30 years of experience in testifying in court?

3 **A.** Right.

4 **Q.** Have you served as an expert in any other Georgia
5 redistricting cases?

6 **A.** I have. At least ten, I think, are listed on my CV that was
7 just submitted.

8 **Q.** Do you have any examples --

9 **A.** Way back to the 1990s.

10 **Q.** Do you have any examples of the areas and the kind of cases
11 you've litigated in Georgia, or, I'm sorry, you've served as an
12 expert for in Georgia?

13 **A.** Yes, I think my first case involved a little town in Telfair
14 County called Lumber City, and I testified at trial in Augusta in
15 that case. That was in 1989, I think. It might have been '90,
16 but I think it was '89. Throughout the '90s I testified in
17 several cases in Georgia. One in Rome. Another one in Cook
18 County, another one in Bulloch County. Also filed a brief
19 declaration in Miller v. Johnson, but I was not very active in
20 that case until the very end, and probably leaving an important
21 one out here. I did lot of voting plans in Georgia during the
22 '90s, not necessarily litigation-related, for counties and towns
23 for civil rights organizations during that time period.

24 **Q.** And over the last decade did you also testify as an expert
25 witness in the Fayette County case?

1 **A.** Oh, yes, moving forward this decade I testified in the Section
2 2 case involving Fayette County, Georgia. I also provided test --
3 declarations in a case that did not finally go to trial in
4 Gwinnett County, Georgia. I testified via declarations for two
5 state level cases, one involving State House Districts, NAACP, I
6 believe, and another one involving a Georgia congressional plan.
7 Both of those cases were in 2017/2018 time period. I provided
8 declarations in a lawsuit involving the school board in Emanuel
9 County, Georgia, and I developed a consent decree plan for that
10 particular locale. I also developed along with input from the
11 defendants for century plan for Fayette County in 2015, I believe
12 was the date that it finalized. So I have been active in Georgia.

13 **Q.** Have any of the Section 2 lawsuits in which you served as an
14 expert resulted in statewide redistricting plans?

15 **A.** Yes, approximately four. In the 1990s, a new House district
16 in west Tennessee was created in a Section 2 lawsuit I was
17 involved in. In the 2000s -- and really my work started in the
18 1990s, I was involved in statewide legislative Section 2 lawsuits
19 in Montana and South Dakota and the upshot of those two cases
20 were -- was that in Montana two additional House districts were
21 drawn as a remedy for a Section 2 violation and another Senate
22 seat.

23 And the same is true in South Dakota later that decade where
24 the Court simply ordered my illustrative plan into effect because
25 the defendants failed to produce a remedial plan.

1 Q. And you also served as an expert in a Mississippi case Section
2 2 case as well?

3 A. That's true. In 2019 I testified in federal court in
4 Mississippi, and that was a Section 2 case involving a state
5 Senate case in the Delta part of the state, and the Court ruled in
6 our favor, and the state redrew the boundary for that state Senate
7 District.

8 Q. Mr. Cooper, when was the last time you testified as an expert
9 map drawer in a Section 2 case?

10 A. That would have been early January. I testified in the
11 Alabama congressional case that is now with the Supreme Court.

12 Q. Just a few weeks ago?

13 A. Yeah.

14 Q. Did the court credit your testimony in that case?

15 A. Yes, it found me to be credible.

16 Q. Did you recall the outcome of the district court opinion in
17 that case?

18 A. Favorable to the plaintiffs.

19 Q. Have you only done work on behalf of plaintiffs in litigation?

20 A. No, I've worked on behalf of local governments and state
21 governments.

22 Q. Do you have any examples of cases where you've worked on
23 behalf of the defendant jurisdictions?

24 A. Well, the most recent example would be in the Northern
25 District of Florida in the summer of 2020 where I was the expert

1 for the city of Quincy, Florida in a Section 2 lawsuit that was
2 filed against that particular locality. Earlier in the decade I
3 worked for the state of Maryland and the state of Pennsylvania
4 regarding parts of gerrymanders or parts of redistricting trials.
5 And I have done other work for local governments even since the
6 2020 census was released. I developed the election plan that is
7 now in place in San Juan, Utah, San Juan County, Utah which is a
8 rural county in the southwest part of the state. I drew a three
9 district commission plan for that entity. And also provided an
10 analysis of the election plan for the City of Wenatchee,
11 Washington. I drawn a plan for Wenatchee, Washington, in 2018
12 that was adopted, and they have wanted me to take a second look
13 with the release of the 2020 data to determine whether or not it
14 was mal-apportioned. I discovered it was not mal-apportioned. So
15 that was a short project.

16 MS. KHANNA: Your Honor, I would like to now proffer
17 Mr. Cooper as an expert in redistricting and with reference to
18 census data to the Court.

19 THE COURT: Voir dire?

20 MS. LAKIN: None.

21 THE COURT: I know you probably wouldn't, but I still
22 have to ask.

23 From the State?

24 MR. TYSON: No objection, your Honor. We'll ask some
25 questions of Mr. Cooper in cross. No objections to his

1 qualifications.

2 THE COURT: He's allowed to testify as an expert. For
3 the record, I'm kind of guessing that Pendergrass and Grant does
4 not. If Alpha is not going to object, I could do one of two
5 things; I can go ahead and make an assumption and not ask you, or
6 I can do the procedure that I have to ask you on the record.
7 Which one would you prefer?

8 MS. LAKIN: Your Honor, for purposes of the record,
9 please go ahead and continue asking.

10 THE COURT: Okay. Thank you.

11 BY MS. KHANNA:

12 Q. Mr. Cooper, can you please tell the Court what you were asked
13 to do in this case, in the Pendergrass case?

14 A. Well, I was asked to examine the demographics of the state of
15 Georgia based on the 2020 census and also looking back in time.
16 And to determine whether today in 2022, it would be possible to
17 draw an additional Congressional district in Georgia that would be
18 majority black voting edge. So I proceeded to analyze the
19 demographics and developed an illustrative plan for the plaintiffs
20 that shows it's extraordinarily easy to make a new majority black
21 district in Georgia.

22 Q. And is there any -- what region in particular did you examine
23 when you were determining the question of whether it is possible
24 to draw an additional majority black district consistent with
25 traditional principles?

1 **A.** Well, I focused on metro Atlanta, where all the population
2 growth of the African-American population over the past decade has
3 occurred. And specifically the western part of metro Atlanta and
4 the Counties of Fayette, Cobb, Douglas, and Fulton.

5 **Q.** Let's talk a little bit about those demographics that you just
6 mentioned over the last decade. Can you please describe at a high
7 level the population growth patterns among the different racial
8 groups in Georgia since 2010?

9 **A.** Well, yes. The average American population has increased by
10 about a half-million, 500,000 persons. So that's more -- well
11 over what would be half of a congressional district. The minority
12 population on the whole has grown by over a million. I think it's
13 1.76 million. And the non-Hispanic white population during that
14 same time frame has actually declined by about one percent or
15 52,000 people.

16 **Q.** Actually let's pull up Plaintiff's Exhibit 1, page 7, which is
17 figure one of your report, your initial report in this case. And
18 I believe this reflects some of the numbers that you just
19 mentioned.

20 **A.** Yes.

21 **Q.** What does this figure tell us about the demographics of the
22 population growth of all of the population that was gained in
23 Georgia over the last decade?

24 **A.** It's been exclusively the population that is non-white or
25 minority.

1 Q. And you mentioned earlier that approximately 55 -- 500,000 of
2 that growth of over a million was attributable to the black
3 population?

4 A. Yes.

5 Q. Is that accurate?

6 A. Yes.

7 Q. The non-Hispanic white population, I think you testified it
8 dropped by almost a percentage point. How does that -- how did
9 that account for in absolute terms?

10 A. Almost 52,000 persons.

11 Q. And I see on this chart you have at the bottom two categories,
12 SR blacks, single-race black, and AP black, which I believe is any
13 part black. Can you explain the difference between those two
14 metrics?

15 A. Yes. A person who is considered to be single-race black would
16 have checked the census form on April 20 -- on April 1, 2020 or
17 thereabouts to indicate that they were of one race, black. If you
18 are part of the -- any part black category, then those are persons
19 who are either one race, single-race black, or persons who checked
20 black and some other race, like black and white or black and
21 indigenous.

22 Q. What metric do you use in your analysis when determining
23 whether the black population is sufficiently large to create an
24 additional large majority district?

25 A. In this case, I used the any part black population and any

1 part black voting age population metrics.

2 **Q.** And why do you use that metric instead of the single black?

3 **A.** Well, there is case law now that I think requires one use any
4 part black in most instances. There is a Supreme Court ruling
5 Ashcroft v. Georgia from 2003 where the Supreme Court specifically
6 relied on the any part black definition and the three-judge panel
7 in Alabama three weeks ago also agreed that the any part black
8 category was the appropriate metric to use in a Section 2 case.

9 **Q.** You mention the Alabama case as a court that also used the any
10 part black metric in determining whether the first Gingle's
11 precondition has been satisfied. Have there been any other
12 Section 2 cases where you recently testified where the Court
13 determined that the any part black metric was the appropriate
14 metric to use?

15 **A.** Yes. The Fayette County Georgia case specifically also relied
16 on the any part black definition.

17 **Q.** And what about in the Ferguson School district cases?

18 **A.** In the Ferguson school district case in Missouri that I was
19 involved in around 2014 or 2015 also relied on the any part black
20 definition.

21 **Q.** Looking back at figure one, what is each racial group's share
22 of the population in 2020 under the census data?

23 **A.** We're focusing in figure one in part because I have a typo in
24 this.

25 **Q.** I don't believe it's in this one actually.

1 A. I'm sorry, you're right. It's 33.03 percent for the state.

2 Q. The black population is about a third of the entire population
3 of Georgia, correct?

4 A. Yes.

5 Q. What about the white population?

6 A. It is 49 -- I'm sorry, 50.06 percent, so it's just about 50
7 percent. Razor-thin majority.

8 Q. Georgia is almost a majority/minority state; is that right?

9 A. Almost.

10 Q. Is there any particular region of the state that seems to
11 hydrate Georgia's population growth?

12 A. Yes, clearly metro Atlanta.

13 Q. If we can turn to page 14 of Plaintiff's Exhibit 1 and figure
14 five. So we can focus a little bit more on the demographic trends
15 in metro Atlanta. Can you explain what this figure shows?

16 A. Yes. This figure shows the change in the ethnicity of the
17 population in metro Atlanta. In other words, as I defined metro
18 Atlanta, I'm using the term to apply to what is known as the
19 Atlanta MSA, a 29-County region as defined by the census bureau
20 and the Office of Budget Management, the U.S. government. So it's
21 a well-known, well-established --

22 THE COURT: At the appropriate time I would like you to
23 put the names of those 29 Counties in the record. We don't need
24 to do it right now, but it needs to be a part of the record, but
25 we'll do that a little bit later. Okay.

1 MS. KHANNA: Thank you, Your Honor. We will.

2 BY MS. KHANNA:

3 Q. You mentioned -- you referred to the 29-County MSA. What does
4 the MSA stand for?

5 A. Metropolitan statistical area.

6 Q. That area you said is defined by the U.S. census bureau?

7 A. Yes.

8 Q. As well as the Office of Management and Budget?

9 A. Yes.

10 Q. I looked at the last line of figure five here. It looks like
11 the 2020 percent of the population that is black is actually a
12 little lower than the 2010 percent of the population that was
13 black. Is that accurate?

14 A. Yes, that was unfortunate a copy and paste error. The number
15 is higher. It should be almost 36 percent, 35.9 1 percent for
16 metro Atlanta.

17 Q. Okay. Thank you, Mr. Cooper. Let's turn to page 55 of your
18 report, let's take a look at the enacted congressional plan. This
19 is the plan as a whole, and I think maybe we should zoom in also
20 closer on metro Atlanta. This is on page 56 of Plaintiff's
21 Exhibit 1. Mr. Cooper, what is notable about the enacted maps
22 treatment of the Atlanta metro area? You can look at the figure
23 on your screen if that's easier for you.

24 A. I've got it in my exhibit book, too. Well, it's notable that
25 many -- that the proposed plan creates a District 13 that extends

1 from around Fayette County and beyond east, and also north into
2 Cobb County. So Fayette is kind of the center of the district,
3 although not the whole County, just the northeast part. The key
4 point is this District 13 is packed with African-American voters.
5 Under the 2021 plan it's almost 65 percent, a little bit over 65
6 percent black voting age.

7 And so it's clear to me based on my demographic analysis that
8 it would be very easy to unpack that population so that there are
9 fewer African Americans living in the district but still a clear
10 majority black voting age population district. And in so doing
11 create an additional majority black district in western metro
12 Atlanta that would include a little part of Fayette County and
13 south Fulton County, west -- eastern Douglas County and central
14 Southern Cobb County.

15 **Q.** I believe I think you might have misspoken when you said the
16 proposed plan. This is the enacted plan we're talking about,
17 correct?

18 **A.** The exhibit said proposed. But it is clear by the state we
19 got it, it was the enacted plan.

20 **Q.** Understood.

21 THE COURT: Hold on. Go back over the Counties you're
22 talking about in the proposed plan.

23 THE WITNESS: The Counties I'm talking about for the
24 proposed plan include Henry County, Clayton County, part of
25 Fayette County, south Fulton, eastern Douglas County, and part of

1 south Cobb. I think I've included all those Counties.

2 BY THE ATTORNEY:

3 Q. I'm sorry. Just to clarify what Counties were you listing
4 there?

5 A. District 13.

6 Q. Oh, the current District 13, under the enacted plan?

7 A. Yes.

8 THE WITNESS: That was your question, Your Honor?

9 THE COURT: Yes.

10 BY MS. KHANNA:

11 Q. You mentioned the packing that you observed in the enacted
12 plan District 13. Did you also observe any cracking in the
13 enacted plans treatment of the metro Atlanta area?

14 A. Yes, to the extent that the areas in the south Fulton and
15 eastern Douglas County and southern and central Cobb County have
16 significant black populations, and some of those areas
17 have -- well, they've been placed in Fulton County in District 13
18 and that is, in fact, packing to a large degree. So that the real
19 cracking, which is the fragmentation of the black population,
20 is -- is most evident in Cobb County. Cobb County has been split
21 four ways under the enacted plan when, in fact, it is almost
22 impossible to create an entire congressional district within Cobb
23 County. And the illustrative plan we'll see a little bit later,
24 I've drawn a district that creates an additional black district
25 that would include part of Cobb County and just split Cobb County

1 two ways. As it now stands, the enacted plan takes population
2 that is just a few minutes away from downtown Atlanta in western
3 Cobb County and puts it in District 14, which goes all the way to
4 the suburbs of Chattanooga.

5 THE COURT: What does the southwest Cobb County have in
6 dealing with the people of the western part Congressional District
7 14? Let me change it. What other similarities did you find that
8 the people of southwest Cobb County have with the people in
9 western District 14, if any?

10 THE WITNESS: I think you would be hard-pressed to find
11 anything with relation to south Cobb County that would connect
12 that part of District 14 to the remainder, particularly since
13 District 14 extends way to the north. So it's really -- it's
14 really getting into an Appalachian Regional commission territory.
15 It's just not the same.

16 THE COURT: How would you describe southwest Cobb
17 County?

18 THE WITNESS: Suburban.

19 BY MS. KHANNA:

20 Q. Mr. Cooper, you mentioned you also drew an illustrative plan
21 in this case; is that right?

22 A. That's right.

23 Q. Could you describe to the Court what is an illustrative plan?

24 A. It's simply a demonstration plan showing how one could produce
25 a plan with an additional minority/majority district to take the

1 Gingle's precondition, in other words, the population is
2 significantly numerous and sufficiently compact to allow for a new
3 district.

4 **Q.** So when you are drawing an illustrative plan to determine
5 whether the black population is sufficiently numerous and
6 geographically compact to form an additional majority black
7 district, do you consider race?

8 **A.** Yes. That is something that one does consider as part of
9 traditional redistricting principles.

10 **Q.** So why do you consider race in drawing an illustrative plan?

11 **A.** Well, you have to be cognizant of race in order to develop a
12 plan that respects communities of interest, as well as complying
13 with the Voting Rights Act because one of the key tenets of
14 traditional redistricting principles is the importance of not
15 diluting the minority vote.

16 **Q.** Are there other considerations that you take into account in
17 addition to race when drawing an illustrative map?

18 **A.** Oh, yes.

19 **Q.** And are those the traditional redistricting principles?

20 **A.** Yes.

21 **Q.** Can you generally define what that term means and refers to?

22 **A.** Well, it's just a set of guidelines, general guidelines,
23 general principles for developing a redistricting plan. And
24 normally those are listed out as part of a statement by the
25 Legislature or some other government body to advise plan drawers

1 how to draw a plan.

2 **Q.** What specific traditional redistricting principles did you
3 consider in drawing your illustrative plan in this cases? Can you
4 list them out?

5 **A.** Yes. I, of course, had to be aware of the population of the
6 districts with -- with congressional redistricting plans,
7 population equality is almost an ironclad rule in a sense that you
8 have to draw districts that are within plus or minus one person of
9 the ideal district size. You can't deviate from that number, or
10 if you do so, it has to be very small. So that's -- that's the
11 probably the most absolute of all the principles. So that's
12 number one.

13 **Q.** What other traditional redistricting principles did you
14 consider in drawing your illustrative plan in this case?

15 **A.** Other traditional redistricting principles include congruent,
16 the districts have to connect to one another. You can't have a
17 piece in Cobb County and another one in Raymond County. Also, you
18 need to draw districts that are reasonably compact.

19 THE COURT: What?

20 THE WITNESS: Reasonably compact, reasonably shaped.
21 That is another important factor. And another factor of
22 traditional redistricting principles one should consider, must
23 consider, on par with population equality is the non-dilution of
24 the minority vote because you have to abide by the Voting Rights
25 Act. So that's another traditional redistricting principle that

1 is always uppermost in one's mind.

2 I also am aware of, to the extent possible, where
3 incumbents leave. It's not exactly a redistricting principle but
4 one that should be at least taken into consideration, one should
5 also avoid splitting cities and towns where possible or other
6 political subdivisions, counties, too, and to the extent possible
7 follow precinct lines which are constantly changing oftentimes,
8 but to the extent you can use present-day precinct boundaries,
9 that is better in drawing a plan.

10 BY MS. KHANNA:

11 **Q.** What about communities of interest?

12 **A.** That is another -- that is another, more subjective principle.
13 One needs to at least be aware of historical components that might
14 go into how one would draw a plan, regional interests,
15 transportation corridors that may connect one part of a district
16 to another. The economic base of the region you're looking at,
17 the kinds of employment, so there are a lot of different factors
18 that go into the mix with community of interest, and it is
19 possible for two different people to have or two different plan
20 drawers to have a different perspective of what amounts to a
21 community of interest for a given place.

22 **Q.** Was any one of these factors the predominant factor when you
23 were drawing your illustrative plan in this case?

24 **A.** No. I tried to balance them all, as I always do. And so I
25 did not -- I did not prioritize anything other than specifically

1 meeting the one-person, one-vote zero population ideal district
2 size.

3 Q. Did race predominate in your drawing of the illustrative plan?

4 A. No, I was aware of the racial demographics for most parts of
5 the state, but certainly did not predominate.

6 Q. Let's take a look at your illustrative plan. Can we pull up
7 Plaintiff's Exhibit 1, page 65. This is a map of all of Georgia.
8 I see there is a black outline toward the northwest portion of the
9 state. Can you explain what that is? And again it's up on the
10 screen if it's easier for you.

11 A. Well, that's the -- the black outline shows the 29-County
12 metro Atlanta MSA area that we've discussed previously. And this
13 is a map of my illustrative plan that I developed that did not
14 change the 2021 plan adopted by the state in toto. It actually
15 leaves Districts 2, 8, 1, 12, and District 5 intact without any
16 changes at all, as well as District 7, which is mostly within
17 Gwinnett County. So we changed six districts. I'm sorry, I
18 changed eight districts.

19 Q. So you did not redraw the whole map of Georgia?

20 A. No, I did not.

21 Q. If you could turn to page 63 of Plaintiff's Exhibit 1 --

22 THE COURT: Go back one second. No, this map I can ask
23 my question off, and then you can proceed.

24 MS. KHANNA: Going back to page 63?

25 THE COURT: Yes, I want to make sure inside of the black

1 is your proposed additional district.

2 THE WITNESS: All of the districts that I have proposed
3 that are majority black are in the -- inside that black perimeter
4 which represents the 29-County Atlanta metropolitan area.

5 THE COURT: So that would be the new majority/minority
6 district?

7 THE WITNESS: The new majority black district is
8 actually District 6, that is kind of a beige color. That is
9 Fulton, part of south Fulton, a bit of north Fayette County,
10 eastern Douglas County and southern and central Cobb County.

11 BY MS. KHANNA:

12 Q. So Mr. Cooper, you just mentioned illustrative district --

13 THE COURT: Hold on. Hold on. Wait a second. Go
14 ahead.

15 BY MS. KHANNA:

16 Q. You mentioned illustrative District 6 is the new majority
17 black district that you drew in your illustrative plan; is that
18 right?

19 A. That is correct.

20 Q. How does the illustrative plan address the cracking and
21 packing of black voters that you identified in the enacted plan?

22 A. Well, the illustrative plan reconfigures Districts 4, 13, and
23 6. District 5, as I mentioned, stays exactly the same as it is in
24 the adopted 2021 plan. So in order to undo the packing in
25 District 13, I did modify District 14, also, and that district is

1 actually in Newton and DeKalb, and a little bit in Fulton, also.
2 And then progressing south, I reconfigured District 13, so it's
3 only about 51 percent any part black, AP, instead of 56. From
4 there it is just a matter of looking at south Fulton, Douglas and
5 Cobb and working at the precinct level basically developing the
6 new majority black district. It was extremely easy to do this.
7 It is not a complicated plan drawing project. I did it probably
8 in an afternoon.

9 **Q.** You mentioned I believe that the illustrative plan addresses
10 what you identified as the packing of black voters in District 13.
11 How does it address the cracking of black voters that you also
12 mentioned in Cobb County and surrounding areas?

13 **A.** Well, it undoes the cracking because instead of splitting Cobb
14 County four ways, I split it just two ways. So I included all of
15 southern and central Cobb County in District 6. Also I put the
16 eastern population of Douglas County, which is predominantly
17 African American in District 6, and, of course, south Fulton,
18 which was partly in District 13, has now shifted entirely to
19 District 6, although there was a tiny piece of south Fulton
20 County, the extreme southwest corner that was actually in District
21 3. You have to look at the map. There was some cracking in the
22 very extreme southeast part, southwest part of Fulton County.

23 **Q.** Let's take a look at the data underlying your illustrative
24 plan. If we can pull up Plaintiff's Exhibit 1, page 22, and take
25 a closer look at figure nine. Again, we see here a few acronyms.

1 Can you describe what -- explain what the acronym BVAP stands for?

2 **A.** Yes. It just means any part black voting age population.

3 **Q.** What is the BVAP or the black voting age population of your
4 new illustrative of District 6?

5 **A.** 52.3 percent.

6 **Q.** You also include an acronym here for NHBC VAP. What does that
7 refer to?

8 **A.** This is non-Hispanic citizen voting age population. This is
9 not -- that particular percentage does not come directly from the
10 2020 census. It is from a census bureau sample that is known as
11 the American Community Survey. And it's a five-year sample. So
12 it represents the 2015-2019 citizen voting age population as
13 reported in the American Community Survey. That's the most recent
14 survey available. We're still waiting on 2016-2020. So it's not
15 exactly correct. Its survey midpoint would be July of 2017.

16 **Q.** Why did you include -- why did you report the non-Hispanic
17 black citizen voting age population in describing your
18 illustrative plan?

19 **A.** Well, I think that's a metric that is often reported in
20 districts that have a fairly diverse population, and so that is
21 why I used that metric to demonstrate that not only are all of
22 these districts over 50 percent black voting age population, or at
23 least the ones -- the District 6 and 13 and 4 that I reconfigured,
24 but it was also over 50 percent black citizen voting age
25 population.

1 Q. Is it fair to say that the non-Hispanic black citizen voting
2 age population is a more restrictive definition of which -- who
3 counts as a black voter and who is actually eligible to vote?

4 A. Yes, I think it's the most -- really the most restricted
5 conservative measure you could derive using census-based data.

6 Q. What is the non-Hispanic black voting age population of your
7 new illustrative District 6?

8 A. It is 50.69 percent.

9 Q. You mentioned that the -- what is the black voting age
10 population again for illustrative District 6?

11 A. 50.2 3 percent.

12 Q. Let's talk about each of the districting principles that you
13 considered in creating the illustrative plan. You mentioned
14 population equality, Mr. Cooper. How is the principle of
15 population equality reflected in your illustrative plan in the
16 Pendergrass case?

17 A. Well, it's reflected with perfection because the districts are
18 plus or minus one person. So that's indisputable, I think.

19 Q. You also said you consider political subdivision boundaries;
20 is that right?

21 A. I did. I attempted to avoid splitting counties where
22 unnecessary and avoid splitting towns and municipalities in
23 Georgia because precinct boundaries sometimes cross into and split
24 cities and towns. Sometimes it's necessary to make sort of a
25 Hobson's choice to take the -- to keep the precinct whole or keep

1 the city whole. So in some places I chose the city over the
2 precinct and vice versa.

3 **Q.** Did you have to split counties also in your illustrative plan?

4 **A.** Yes, to meet one-person, one-vote in the congressional plan,
5 it is absolutely necessary to split some counties.

6 **Q.** When you did have to split a county, what was your approach in
7 drawing those lines?

8 **A.** I would try to split the county by precinct. But again
9 because of the one-person one-vote requirement in some instances,
10 I split precincts.

11 **Q.** When you had to split a precinct to satisfy one-person
12 one-vote, what was your approach in drawing the lines then?

13 **A.** I would follow, if possible, a municipal boundary or an
14 observable boundary like a road or waterway. And in some cases,
15 generally following observable boundaries, but also relying on a
16 census bureau boundary that is established, known as a block
17 group. And block groups are just components of census tracts and
18 are part of census tracts that are often recognized as a community
19 of some sort.

20 **Q.** Let's take a look at the number of splits that we're talking
21 about in the illustrative plan. If we could turn to Plaintiff's
22 Exhibit 1, page 25, and take a closer look at figure 11. How does
23 the number of County splits in the illustrative plan compare to
24 the number of County splits in the 2021 enacted plan?

25 **A.** Well, I split one more County in the illustrative plan. In

1 that eight-district area where I modified the districts, there is
2 one additional county split.

3 **Q.** And thank you for clarifying. This figure only addresses the
4 eight districts that you modified in the enacted plan, it doesn't
5 talk about the numbers that exist in the rest of the state?

6 **A.** Right.

7 **Q.** And I see the second column there is called unique County
8 district combinations. What does that refer to?

9 **A.** That refers to any sort of a split. For example, in a large
10 County you may have several different pieces of districts, and so
11 that's -- that's the reflection of those pieces of districts. And
12 so you can see on that metric, the illustrative plan is superior
13 to the 2021 plan. The illustrative plan splits 14 places on the
14 map versus 19 in the '21 plan.

15 **Q.** Is it fair to say that the first column refers to the number
16 of actual Counties that are split, while the second column refers
17 to the number of splits total?

18 **A.** Right.

19 **Q.** And there you mention that the illustrative plan fares better
20 than the enacted plan?

21 **A.** Yes.

22 **Q.** And what about municipality splits, how does the illustrative
23 plan compare to the enacted plan on that metric?

24 **A.** That metric, again there are fewer splits of municipalities in
25 the illustrative plan in that eight-district area than in the same

1 area under the 2021 plan which splits nine municipalities.

2 **Q.** And did you endeavor to keep municipalities whole where
3 possible?

4 **A.** I did.

5 **Q.** And then I see the last column is called 2020 VTD splits. Can
6 you explain what a VTD is?

7 **A.** A VTD is just a census bureau term for precinct. In Georgia I
8 think the number of precincts statewide in my mind, it's somewhere
9 in the neighborhood of 2800. And for the eight districts that
10 we're examining here, there are only 44 precincts split or VTD
11 splits. In the 2021 plan I split three more. So again, that's a
12 situation probably where I decided to split a precinct to protect
13 the municipality boundary and avoid the split.

14 **Q.** Does the difference between 44 and 47 VTD splits strike you as
15 a meaningful difference?

16 **A.** No, it is not.

17 **Q.** Why is that?

18 **A.** It's just three precincts. Precincts are constantly changing
19 in Georgia. Splitting a VTD should not be a problem at this stage
20 of the decade.

21 **Q.** So unlike County lines, municipality lines, VTD boundaries
22 shift over the course of a decade?

23 **A.** Yes, as Counties and cities redistrict, there will be new
24 precincts established. And if the practice is the same in Georgia
25 as it was in the decade of the 2010s, the state office that

1 handles redistricting in Georgia would produce a new statewide
2 precinct file. It might not increase the number of precincts but
3 it would merge some and split some.

4 **Q.** Thank, you, we can take this exhibit down.

5 Mr. Cooper, you also considered geographic compactness; is
6 that correct?

7 **A.** I did.

8 **Q.** What are the most common compactness metrics?

9 **A.** Well, I think the most common is just the eyeball test, but
10 beyond that, the software I use is called Maptitude for
11 redistricting, and it allows you to get an instant readout of a
12 series of compactness measures. You can actually see, okay, if I
13 move this County, and put it in that district, move this County
14 and put in the other district, how does that affect the scores?
15 There is no bright line rule as to what is necessarily a compact
16 district based on these various measures of compactness. At some
17 point visually you can see there might be problems, but there
18 are -- it is a way to look at a plan overall and develop a mean
19 score for each plan, and that's what I've done in one of the
20 tables in my declaration.

21 **Q.** You referred to some various measures of compactness. What
22 are the most common measures that demographers use or experts
23 map --

24 **A.** Well, the most common measures probably most frequently
25 referenced are REOC score, which is to -- the REOC score is,

1 basically, in simple terms, just creating a number between zero
2 and one to compare the area of a district with a circle drawn
3 around the district, and so the higher you are towards one, the
4 more compact the district would be under that measure.

5 The Polsby-Popper measure doesn't look at area, but it looks
6 at the perimeter of the district. If you have a lot of lines
7 going all over the place, that's not a compact district
8 necessarily. That's a way to take a look at that angle of
9 compactness. And again, the score goes from zero to one. And the
10 higher, of course, you are with the score, the more compact
11 district you would have you under Polsby-Popper. Sometimes those
12 two measures are in conflict; you can have a high REOC score but a
13 lower Polsby-Popper score, and vice versa.

14 **Q.** Just to clarify, in your experience is there any bright line
15 rule that determines on these metrics or any other when a district
16 is sufficiently compact or not compact?

17 **A.** No, because so many factors also enter into the equation. In
18 Georgia, the municipal boundaries in many Counties also are not
19 exactly compact. So that begins to affect the compactness of a
20 district you might be drawing. So there is no bright line rule,
21 nor should there be. You have to at some point it gets quite
22 subjective. But you know, there are some municipalities in
23 Georgia that have a Polsby-Popper score of point zero one. That
24 is as uncompact as you possibly can get. I think that one is in
25 Gordon County. So it will vary from County to County. There's

1 some Counties like Social Circle, which is almost a circle, so
2 that's nearly perfectly compact. There are lots of -- a few
3 circular towns in Georgia that I have seen.

4 **Q.** Let's take a look at the compactness data of your plan versus
5 the enacted plan. Pull up Plaintiff's Exhibit 1, page 24, and
6 zoom in on figure ten. What does this table show about
7 compactness of your plan versus in the enacted plan?

8 **A.** In short, that it shows almost no difference at all. 2021
9 plan scores 3-100ths of a point higher, point 43 versus point 40,
10 on the REOC score, and on the Polsby-Popper score the 2021 plan is
11 point 25 and the illustrative plan is point 23.

12 So practically speaking, there is no difference. The low
13 scores are also within the range of what one would expect in the
14 legislative or congressional plan. In fact, in the Polsby-Popper
15 score, the lists for the two scores are identical, 2.6.

16 **Q.** You've drawn a number of illustrative plans over the course of
17 30-plus years. Do any of these numbers strike you beyond the norm
18 or the usual range?

19 **A.** In the usual range. There is no problem with the compactness
20 per se in either plan.

21 **Q.** You also mentioned you considered contiguity; is that right?

22 **A.** Yes.

23 **Q.** What is contiguity?

24 **A.** All pieces of the County must fit -- of the district must fit
25 together. I think Georgia does allow for water, for places around

1 Jekyll Island, places like that. You have to connect the island
2 to the shore with the district. It's just the district has to be
3 in one area and connect in some fashion.

4 **Q.** Is your illustrative plan contiguous?

5 **A.** Yes.

6 **Q.** How do you know looking at the Maptitude software that the map
7 is contiguous?

8 **A.** You run a little module that will give you an instantaneous
9 analysis of whether or not the districts are contiguous. I run it
10 frequently. Sometimes -- and, in fact, you do have situations in
11 Georgia, there is something called point time contiguity involving
12 County lines. In Newton County, there is a little box that is
13 from Rockdale County, it almost looks like it should belong in
14 Newton County, but it doesn't. It belongs in Rockdale.

15 **Q.** You also mentioned communities of interest while listing the
16 various traditional principles that you considered. How did you
17 take into consideration communities of interest in drawing your
18 illustrative map?

19 **A.** Well, I looked at a couple of maps of the state that I thought
20 would be very informative. One was a map prepared by the
21 Department of Community Affairs in Georgia that shows all of the
22 regional commissions in Georgia. And that map is attached to my
23 exhibit. I also looked at the census bureau's map of metropolitan
24 statistical areas which are larger population areas in the state
25 that have a community of interest in terms of economic ties and

1 transportation ties, as well as micropolitan areas also defined by
2 the census bureau, and those are part of the state that are
3 urbanized but not large population centers, and there are a number
4 of those. I think all told there are something on the order of 36
5 metropolitan statistical areas in the state or micropolitan
6 statistical areas, actually more micropolitan than metropolitan
7 areas.

8 **Q.** You also mentioned just now the regional commission. What
9 regional commission did you consider as a community of interest in
10 drawing your illustrative plan?

11 **A.** Of course, focused on metro Atlanta, 29-County area, also
12 there is a more narrow focus on traditional Atlanta to an extent
13 that is the 11-County area that is defined by the Atlanta regional
14 commission. It used to be ten, but just residential. I think
15 last summer Forsyth County was added, so it's now an 11-County
16 area that is the core of Atlanta as many people would think of
17 Atlanta.

18 **Q.** Mr. Cooper, did you read a report submitted in this case by
19 Mr. Morgan on behalf of the defendants in this case?

20 **A.** I did review that.

21 **Q.** And he suggested that your illustrative District 6 is not
22 compact. Do you recall that?

23 **A.** I do.

24 **Q.** Did you respond to the criticism in your supplemental report?

25 **A.** I responded to some of his criticisms. I don't know if I

1 directly responded on compactness, but I will respond now and say
2 that I do not believe that District 6 is not compact. It is
3 clearly within the norm.

4 **Q.** Do you also -- sorry. Did anything in Mr. Morgan's report
5 submitted on behalf of defendants change your conclusions about
6 the compactness of your illustrative plan?

7 **A.** No.

8 **Q.** About three days ago, defendants also submitted the expert
9 report of Gina Wright. Have you seen that as well?

10 **A.** I have.

11 **Q.** I don't actually believe that that report has been submitted
12 into evidence.

13 THE COURT: It hasn't been submitted into evidence, but
14 I did read it last night.

15 MS. KHANNA: I think if we can pull that up to make sure
16 we're all reading from the same document.

17 BY MS. KHANNA:

18 **Q.** Yes. If we look at page 1 of Ms. Wright's report, paragraph
19 29. Do you see that Ms. Wright includes a single paragraph of
20 analysis on your illustrative congressional plan; is that right?

21 **A.** Yes.

22 **Q.** Let's walk through some of the things that she notes about
23 your plan. She first writes that she, quote, cannot explain the
24 decision to take District 6 into Fayette County in your
25 illustrative map. Do you see that?

1 **A.** Yes.

2 **Q.** Can you explain that decision?

3 **A.** Yes. It's real simple. To meet one-person one-vote
4 requirements, one has to split Fayette County between District 13
5 and District 6 because if you put all of Fayette County in
6 District 13, it would be overpopulated by -- I don't have the
7 number in front of me, but several thousand people. So I had to
8 split Fayette County.

9 **Q.** She also mentions here the black voter registration of the
10 area. Did you look at voter registrations statistics at all in
11 drawing your illustrative plan?

12 **A.** No, I did not look at voter registration situations
13 statistics.

14 **Q.** She next notes that your illustrative District 6, quote, grabs
15 black voters near Acworth, Kennesaw State University to connect
16 them with other black voters in south Cobb, Douglas and Fulton
17 Counties. Do you see that?

18 **A.** Yes.

19 **Q.** What is your response to that observation?

20 **A.** Well, again, to ensure that District 6 met population equality
21 it is extended further north into Cobb County. But I don't think
22 there is anything unusual about doing that. It's not an area that
23 is predominately black. It is a racially diverse area that in the
24 Senate plan, that part of Cobb County is 48 percent black plus
25 Latino plus Asian CVAP; that is their District 33. I did go into

1 that area to balance the population out in terms of population
2 equality.

3 **Q.** Were there densely populated black areas in those Counties
4 that you didn't include in your illustrative map?

5 **A.** Yes, there would have been in places.

6 **Q.** So if you were seeking to grab black voters in these areas,
7 could you have done that better if you had wanted to?

8 **A.** Sure, there would be ways to enhance the black voting age
9 population, not just in District 6 but elsewhere, by changing
10 lines and perhaps splitting some additional Counties.

11 **Q.** Ms. Wright next notes that illustrative District 13, quote,
12 reaches into Newton County in an unusual way that cannot be
13 explained by normal redistricting principles. Do you see that?

14 **A.** Yes.

15 **Q.** Can you explain that configuration?

16 **A.** Well, yes. I did extend part of District 13 into Newton
17 County. The reason again was because you have to balance
18 populations out, and District 4, which is mostly in Newton County,
19 would have been overpopulated. So I had to take some population
20 from Newton County and put that into District 13. And when I did
21 that shift of population, I used whole precincts, except I think I
22 split two precincts, and again that was the issue of trying to get
23 the population down to zero because you're dealing with census
24 blocks. Some of which have 25 people, others had 34, 72, 10, and
25 so the idea is you have got to keep shifting those blocks around

1 until you get to zero.

2 THE COURT: In other words, the largest district is
3 765,189 people.

4 THE WITNESS: Right.

5 THE COURT: All of them. You're just trying to keep it
6 within that one-person of 765,000 people.

7 THE WITNESS: One single person. There are situations
8 where the state has gone beyond that, not Georgia, but recently
9 Arkansas went above zero to 3 or 400, and there was a case --

10 THE COURT: Let's stick to Georgia.

11 THE WITNESS: Okay.

12 THE COURT: So in Georgia you were keeping with that
13 one-person.

14 THE WITNESS: Right.

15 THE COURT: That's why you did what you did going into
16 Newton County?

17 THE WITNESS: Right.

18 THE COURT: How did DeKalb County, the fourth district
19 look if you hadn't gone into Newton County, if you left Newton
20 County in the fourth district?

21 THE WITNESS: Well, it would have changed -- I would
22 have had to make some additional changes elsewhere, I suppose, to
23 get DeKalb County back down to zero.

24 THE COURT: Right.

25 THE WITNESS: I didn't really run that experiment, but

1 that's another option, one could change one other County perhaps
2 other than Newton.

3 THE COURT: Okay.

4 BY MS. KHANNA:

5 Q. And finally Ms. Wright concludes in this paragraph that,
6 quote, that the divisions of Cobb, Fayette and Newton Counties do
7 not make sense as part of normal redistricting principles, and I
8 can only conclude that the drawing of this district is in service
9 of some kind of specific goal. Did you see that?

10 A. I did. And I don't understand what she meant really.

11 Q. Did you have one specific goal in drawing your illustrative
12 map?

13 A. No, I did not.

14 Q. You had several goals; is that right?

15 A. Well, yes. I mean, you asked me to determine whether or not
16 an additional majority black district could be created, but that
17 was not the goal per se. I had to also follow traditional
18 redistricting principles and then make an assessment as to whether
19 that one additional black district could be determined. I
20 determined that it could be, but that was not my goal per se.

21 Q. We can take down the exhibit. Thank you. Mr. Cooper, in your
22 opinion, as someone who draws electoral districts for a living,
23 does the illustrative map that you drew in the congressional case
24 here comply with traditional redistricting principles?

25 A. Yes.

1 Q. We discussed earlier you served as an expert in multiple
2 Section 2 cases over the last 30-plus years; is that right?

3 A. Yes.

4 Q. How does this illustrative plan compare to other maps that you
5 have drawn over the last 30 years?

6 A. Well, I think I suggested it was extraordinarily easy to draw
7 this additional majority black district in the western part of
8 metro Atlanta. It basically just draws it. It is just that easy.
9 I did it in a couple of hours in late November.

10 MS. KHANNA: Thank you, Mr. Cooper. I have no further
11 questions at this time.

12 THE COURT: I have one question. One of the things that
13 the State argues is that by doing this, you pointed out that eight
14 other congressional districts -- well, that's a problem. What do
15 you have to say about that?

16 THE WITNESS: I don't think it's a problem. It modifies
17 the other eight districts, of course. The State could choose to
18 draw those districts differently. I tried to put incumbents in
19 those respective districts. I tried to avoid comparing incumbents
20 except for Gwinnett County, where the Representative Bourdeaux
21 lives outside of that district but she can run in it because there
22 is no state requirement that you live in the district. And the
23 same with Representative McBath, who lives in Cobb County, I
24 think, but slightly out of the lines that I drew, and she's
25 planning on running in Gwinnett County right now as I understand,

1 which is about 15 miles away from where her home is as drawn.
2 Cobb County is about three miles within of where she lives. She
3 lives close to District 6, but can obviously run in District 7 or
4 elsewhere, for that matter as I understand the law in Georgia.

5 MS. KHANNA: If I may ask one follow-up question, Your
6 Honor.

7 BY MS. KHANNA:

8 Q. Before drawing an illustrative plan with a new majority black
9 district that didn't exist before, is it possible not to alter any
10 surrounding districts?

11 A. No, you would have to alter surrounding districts. It may be
12 possible to reduce it to just changing seven. That's conceivable.

13 But obviously the area west and north of Cobb County is going
14 to have to change.

15 THE COURT: It goes without saying if you change,
16 something else has to change.

17 THE WITNESS: That's right. It is a ripple effect, and
18 that exists in the congressional plans and also the State House
19 and Senate plans in Georgia.

20 MS. KHANNA: Thank you, Mr. Cooper. Thank you, your
21 Honor.

22 THE COURT: Any questions from the Alpha attorney? I'm
23 giving you an opportunity if you want to ask him any questions
24 regarding the congressional map he's testified to.

25 THE WITNESS: No, Your Honor.

1 THE COURT: Before we start the cross-examination.
2 Let's take a break. It's five after 11; we'll start back at 20
3 minutes after 11. A 15-minute break.

4 (Whereupon a break was taken.)

5 THE COURT: I'm ready.

6 MR. TYSON: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. TYSON:

9 Q. My name is Brian Tyson. It's good to see you. I think I last
10 saw you in your deposition in the Dwight case, if I recall
11 correctly?

12 A. I believe that would be correct.

13 Q. Glad to have you back. I have a couple of background
14 questions and then I want to work our way into your declarations
15 and some of the issues you talked through with Ms. Khanna.

16 Have you ever served as an expert witness on the side of the
17 government in Georgia involving the Voting Rights Act?

18 A. No.

19 Q. And I believe I last saw you in the Dwight case in 2018. Do
20 you recall what that case was about?

21 A. Are you referring to the congressional case?

22 Q. Yes.

23 A. Yes, it was about creating an additional majority black
24 district in the Georgia congressional plan that was initially
25 adopted, I think, in 2012.

1 Q. So that case, as you recall, was based on adding an additional
2 minority black congressional district to the prior plan, not the
3 current congressional district?

4 A. Right, based on the 2010 census.

5 Q. Do you know what the disposition of that case was?

6 A. It's my understanding that plaintiffs voluntarily dismissed it
7 at some point in advance of the 2020 elections.

8 Q. And you mention in your report that Georgia NAACP and Thompson
9 cases you were involved in in Georgia. Do you recall those?

10 A. I do. That would have been the state House litigation that
11 was about the same time, in 2017.

12 Q. And those cases were also seeking to add majority black
13 districts to the state House districts, correct?

14 A. I believe in one instance in Henry County and also in Gwinnett
15 County.

16 Q. And do you recall the disposition of those cases?

17 A. Also voluntarily dismissed.

18 Q. And that was after Democrats won the seats that were being
19 challenged?

20 A. I'm not sure who won the seats.

21 Q. So let's talk about your declaration. First I want to get
22 some definitions. You used the term "packed" in terms of certain
23 districts on the Georgia congressional plan. What's the threshold
24 you used to determine when a district is packed?

25 A. I'm not a political scientist, so I'm looking at it somewhat

1 subjectively. But when I see there are districts in Georgia like
2 District 2 in south Georgia, and District 5 in Atlanta that are
3 both under 50 percent black voting age population and electing
4 African Americans to Congress, it seems to me like it's completely
5 unnecessary then to create a District 13 in metro Atlanta that is
6 over 65 percent black voting age population.

7 **Q.** So your definition of a packed district is based on other
8 majority or close to majority districts in a jurisdiction?

9 **A.** It would vary from state to state and case to case. But there
10 is evidence that there is no need to have -- I think you'll hear
11 that from the Gingle's 2 and Gingle's 3 analysis that plaintiffs
12 are presenting that there are no reasons to have a district that
13 is high as 56 percent black in metro Atlanta.

14 **Q.** And so there is not a threshold then; you are just comparing
15 it and it's higher than all the others, is that fair to say?

16 **A.** From my perspective, I would have gotten feedback, I suppose,
17 from the attorneys if there was something special about those
18 Counties that required the black population to be over 65 percent
19 in order to elect a candidate of choice.

20 **Q.** And you also used the term "cracked" in Cobb County, black
21 voters who votes were being cracked in multiple districts. Again
22 what is your definition, how did you determine that those voters
23 were cracked?

24 **A.** Well, Cobb County is split four ways in the congressional
25 plan, and there is part of a congressional district in Cobb County

1 that is majority black, not all of it. And that factor, plus just
2 looking at the demographics of Cobb County, convinced me that the
3 black population was being cracked, and that one could draw a
4 reasonably compact district that was partly in Cobb, partly in
5 Fulton, partly in Douglas and partly in Fayette.

6 **Q.** I want to turn to your declaration. I put on the screen
7 paragraph 8 of your declaration, this is when you indicated in
8 your conversation with Ms. Khanna about what you sought to do.
9 And there you indicated the attorneys for the plaintiffs in this
10 case asked me to determine whether the African-American population
11 in Georgia is sufficiently large and geographically compact to
12 allow for the creation of an additional majority-black
13 congressional district in the Atlanta metropolitan area. Is that
14 a correct statement of the instructions you were given?

15 **A.** Yes.

16 **Q.** And did you start with the adopted congressional plan as your
17 baseline in drawing?

18 **A.** No. When I -- we again work -- well, yes, the 2021 plan it
19 was my baseline.

20 **Q.** When did you first begin exploring drawing congressional
21 districts in Georgia after the 2020 census?

22 **A.** I believe sometime in the later part of November. After the
23 2021 plan had been adopted.

24 **Q.** And so you started with the 2021 plan and you said you began
25 to look at metro Atlanta specifically for whether an additional

1 district could be drawn; correct?

2 **A.** Correct. I knew that over 400,000 additional African
3 Americans now reside in metro Atlanta than in 2010, so that was a
4 signal most likely a majority black district could be created.

5 **Q.** And your goal in drawing was to add an additional black
6 district, correct?

7 **A.** I was given the request to assess whether it would be possible
8 while simultaneously complying with a traditional redistricting
9 principles. It was not exactly a goal. They asked me whether it
10 could be done and I determined very quickly that it could be done.
11 It was very easy. There are no complexities here like there might
12 be in other states. This is just drop-dead obvious.

13 **Q.** And you chose to adjust the area on the west side of Atlanta.
14 Could you have taken District 7 and made it a majority black
15 district if you had adjusted the population differently?

16 **A.** Perhaps. I did not try to do that.

17 **Q.** Did you only draw one plan? Did you draw several versions of
18 this plan?

19 **A.** Well, as I told the Judge, it took me a couple of hours to
20 make the assessment that the district could be drawn. But then to
21 get the population down to zero, I did make modifications that
22 took longer because you can waste an hour or two just trying to
23 get from plus ten to minus ten down to zero, shifting census
24 blocks around. It took me longer to produce the plan in two
25 hours, but it only took me a couple of hours to know automatically

1 that that district was there. It was just a matter of refining it
2 getting into one-person one-vote compliance.

3 **Q.** You chose not to adjust District 5; correct?

4 **A.** That's correct.

5 **Q.** District 7?

6 **A.** That's correct. I tried to keep districts intact that I
7 could.

8 **Q.** And so is it your testimony that it is required to modify
9 eight districts to add a single majority black district in
10 Georgia?

11 **A.** No, it may well be you could reduce it to seven, perhaps six.
12 With further experimentation, it may be possible to just change
13 six or seven.

14 **Q.** That is not an experiment you've undertaken at this point,
15 correct?

16 **A.** No, no. I wanted to make sure that I put the present
17 incumbents in their own district, even though I understand it's
18 not necessary, and that may have impacted my ability to avoid
19 modifying the districts. It may be that I could have done another
20 configuration that might have impaired incumbents but allow, say,
21 District 10 or one of the most eastern districts to stay as it is.

22 **Q.** Let me direct you to figure one on page 7 of your report on
23 the screen. You and Ms. Khanna talked about the increase in black
24 population in different parts of Georgia. In looking there,
25 obviously there's been a dramatic growth, you indicated 400,000

1 new people joining our state. But on the next-to-last line for
2 single-race black, is that what SR stands for?

3 **A.** Yes.

4 **Q.** For single-race black you indicate that in 2010 the percentage
5 of the Georgia population was 30.46 percent, and in 2020 it was
6 31.0 percent, correct?

7 **A.** That is correct.

8 **Q.** That is zero point 54 point increase; right?

9 **A.** Yeah. That would be correct.

10 **Q.** So half a percentage point. And then on the eight key black
11 number, you have that going from 31.5 percent to 33.0 percent.
12 You agree that's one and a half percent increase?

13 **A.** One and a half percentage increase, which translates into
14 434,000 people.

15 **Q.** So when you talk about the dramatic growth, as a percentage
16 there is not a huge change in the number of black individuals in
17 Georgia that as a raw number there was a significant change?

18 **A.** It is -- it is a change, an upward change in the black
19 population in percentage terms, but the raw number, the absolute
20 number is what really jumps out.

21 **Q.** And in the far lower right of that chart, you say a
22 15.85 percent increase. Is that simply this one and a half point
23 increase in AP black being represented as a percentage change?

24 **A.** No, it's the -- the 484,048-person increase compared to 2010
25 population.

1 Q. So I'm going to move down to paragraph 40 and figure seven.
2 This is the chart in your report that shows the change in metro
3 Atlanta; is that right?

4 A. This chart shows the population change in Cobb, Douglas,
5 Fayette and Fulton Counties, four of the metro Atlanta Counties.
6 There are actually 11. There are 11, core 11, the 11-county
7 region.

8 Q. Did you look at any other metro Atlanta Counties to conduct
9 this kind of analysis, or were you always zeroed in on Cobb,
10 Douglas, Fayette and Fulton?

11 A. Well, I did look at the metro Atlanta area, as I mentioned in
12 the direct testimony in terms of the 29 Counties. And I did not
13 produce a table that would look at another set of Counties,
14 although in the legislative plans I draw in the next -- my next
15 piece of testimony, I did look at a five-county area that included
16 South Metro Atlanta, and that would have included in addition to
17 Fayette, Spalding and Newton and Rockdale, and Henry County.

18 Q. And you're reporting the total change of 53.27 percent of
19 black population as a percentage of the total change; right?

20 A. Right.

21 Q. So I want to look at something a little bit more specifically
22 with you. If you could grab the paper copy of the exhibits that
23 are there in front of you, the notebook, and if you could go to
24 Plaintiff's Exhibit 1, page 45. Some of the backup documentation
25 you have.

1 A. Plaintiff's Exhibit 1, page 45?

2 Q. It looks like this. A spreadsheet with various County
3 populations on it.

4 A. Yes.

5 Q. Are you with me there?

6 A. Yes.

7 Q. So I just want to dig in a little bit. I went to law school
8 so I would not have to do math, but at the risk of doing some
9 math, I want to make sure I understand this. I have an Excel
10 sheet here. I want to do this calculation with you. The way I
11 read this Fulton County line here, the 18-plus pop column has
12 847,182. Do you see that?

13 A. For the 18-plus pop in Fulton County, yes.

14 Q. And that's the number of people of voting age in Fulton County
15 on the census, correct?

16 A. On the 2020 census, right.

17 Q. The column next to that is the 18plus AP black column, that is
18 the number of any part black people of voting age in Fulton County
19 in the 2020 census, correct?

20 A. Correct.

21 Q. I entered those two numbers into my spreadsheet. If I wanted
22 to know what the percentage of people in Fulton County who are AP
23 black VAP, I would divide the 368,635 by 847,182; is that correct?

24 A. That is correct.

25 Q. So when I do that, I get a 43.51 percent number. Now you have

1 represented in the far column there that there is a 20 percent
2 change in the black voting age population; is that right?

3 **A.** In the -- in the total black voting age population African
4 -- any part black compared to 2010.

5 **Q.** So if I wanted to know the 2010 numbers, I would have to take
6 847,182 and subtract the 18-plus pop change number 146,287 number,
7 right?

8 **A.** Yes, I think you could derive it from this table.

9 **Q.** If I wanted to know the AP black VAP raw number, I would take
10 368,635 and subtract 62,029; is that correct?

11 **A.** I think so. I didn't catch everything, yeah.

12 **Q.** Okay. So then this would give me -- basically I'm taking the
13 2020 number minus the change from 2010, so we're getting the 2010
14 VAP number and then the 2010 voting age AP black VAP number,
15 correct?

16 **A.** Yeah, I'm not prepared to do calculations in my head on the
17 stand. So I'm not sure where you're leading with this.

18 **Q.** What I want to do --

19 **A.** -- the calculation error or something.

20 **Q.** It's not an error. I just wanted to understand when I do this
21 calculation here, it shows that the black VAP percentage in Fulton
22 County in 2010 was 43.74 percent, and in 2020 it's 43.51 percent.
23 So it's actually gone down by two-tenths.

24 **A.** That's possible. I can't say for sure because I'm not -- you
25 know, I don't have a calculator. I don't have the data in front

1 of me either, so...

2 **Q.** You're representing this as a 20 percent change in Fulton
3 County on the far right number, what are you showing with that 20
4 percent on your spreadsheet here?

5 **A.** Well, the -- I'm showing for Fulton County that the black
6 voting age population increased by 20.2 percent compared to 2010.

7 **Q.** And you're calculating that as a percentage of raw votes, not
8 as a percentage of the population of Fulton County by each
9 demographic group, correct?

10 **A.** Right. It's a 20 percent increase in the black voting age
11 population for 2020 compared to 2010.

12 **Q.** And it's possible other demographic groups changed in the --

13 **A.** Well, you mean other demographic groups have been part of the
14 increase in the overall non-white population in Fulton County;
15 that's true.

16 **Q.** It's possible for the black voters to go up by 20 percent but
17 actually be less of a share of population in Fulton County,
18 correct?

19 **A.** Yes, that's possible.

20 **Q.** Let's go back to your declaration and start talking about your
21 illustrative plan. I'm going to bring up paragraph 45. Actually
22 we've already covered that.

23 Let me go to a higher resolution of your plan. I want to talk
24 about here -- this is page 72 of your report. I want to ask some
25 questions about the design of District 6 as you've configured it

1 on your illustrative plan. First of all, you would agree with me
2 District 6 is just barely a majority black voting age on its AP
3 voting age population, correct?

4 **A.** Yes, it's a little over 50 percent black voting age
5 population.

6 **Q.** And so what I first wanted to ask about, you indicated that
7 this little tail running down into Fayette County -- I'm pointing
8 to it on the screen so you can see it here -- was done for
9 one-person one-vote purposes, correct?

10 **A.** Well, yes, because I had -- I had to reduce the population a
11 little bit in District 4 to bring it into compliance because it
12 was overpopulated under the 2020 census. That in turn meant I was
13 putting even more people into District 13 because that too was
14 overpopulated. So after bringing Fayette County into District 13,
15 it too did include not all of Fayette County. So I included the
16 northern part of Fayette County, a racially diverse area. That is
17 not overwhelmingly black. It's balanced to some part of Cobb
18 County where there is no racial majority.

19 **Q.** So it's your testimony the portion of Fayette you included is
20 not a heavily black area?

21 **A.** I don't have the percentages, but it does not include any of
22 Fayetteville, except maybe a little tiny part that may be related
23 to one of those precincts that turn into the town of Fayetteville
24 that I wasn't able to split, and zero population area of Tyrone,
25 and the rest of it is just suburban and probably quite similar to

1 parts of Cobb County.

2 **Q.** Do you know if the District 6 would still be a majority black
3 if this portion of Fayette was removed?

4 **A.** Well, perhaps it wouldn't be, but that doesn't mean the
5 district couldn't have been drawn. It just meant that qualitative
6 population growth rules -- and that's the cleanest and the easiest
7 way to balance the district to plus or minus one.

8 **Q.** You already had split Douglas County and Cobb County in
9 District 6; correct?

10 **A.** Yes.

11 **Q.** And so is there a reason why you went down to grab racially
12 diverse areas of Fayette County and didn't just adjust your split
13 in Douglas County?

14 **A.** Yes.

15 **Q.** Why is that?

16 **A.** Because I had to reduce the overpopulation in District 13.

17 **Q.** And District 13 likewise has splits with others -- splits with
18 other Counties in other places, doesn't it?

19 **A.** There is a split in Newton County because I had to reduce the
20 overpopulation relating to District 4.

21 **Q.** Let me ask about the portion that goes up into Cobb County.
22 Is there a reason why you took this kind of up 75 in Acworth and
23 Kennesaw as opposed to making the district more compact by taking
24 in west Cobb?

25 **A.** One could have made that decision, and I don't know how that

1 would have affected the underlying black voting age population,
2 but I really don't feel I did anything improper in going up 75 a
3 ways to pick up population in and around Kennesaw and Acworth. It
4 is not a majority black. It is a racially balanced area. And so
5 I was not trying to maximize the black voting age population of
6 District 6 by going into Kensington -- again into Kennesaw and
7 Acworth.

8 **Q.** Would it surprise you if trading the Acworth Kennesaw area to
9 west Cobb brought the district below 50 percent black?

10 **A.** It may or may not. I mean it's possible. Certainly there are
11 other possible ways to draw a majority black District 6 rather
12 than the way I've drawn this plan. This is just an illustrative
13 plan and probably represents just one of several different ways
14 that one could draw a district, that would be predominantly in
15 Cobb and Fulton Counties in term of population. Clearly you could
16 cross the line into Fulton County where District 5 is and start
17 making adjustments there. I tried to be conservative and take
18 what was given in the 2021 plan and just show with just modest
19 changes, relatively modest changes in and around metro Atlanta,
20 you could create the majority black district, and as part of the
21 illustrative plan I went out and filled out the rest of the state,
22 but the Legislature in some sort of a remedial plan can certainly
23 determine that it needs to be drawn another way.

24 **Q.** So is it your testimony that the shape of District 6 in Cobb
25 County is driven solely by population, one-person one-vote, or was

1 it driven by other considerations?

2 **A.** Well, the point also is to demonstrate that the black
3 population is sufficiently large and numerous to allow for the
4 creation of an additional majority black district.

5 THE COURT: But that's not the question he asked you,
6 though. That's not the question he asked you. Repeat your
7 question again.

8 BY MR. TYSON:

9 **Q.** My question was, what was the basis for the shape of the
10 district in Cobb County? Is it your testimony that that is only
11 for one-person, one-vote purposes?

12 **A.** Well, I had to -- I had to add population to the district, and
13 so it might have been possible to draw a more compact-looking
14 district that would have taken in areas south of Acworth and
15 Kennesaw. I was working mainly with whole precincts. And so it's
16 conceivable that one could have done another iteration and come up
17 with a more compact-looking district.

18 THE COURT: Let me actually understand what you're
19 saying. You went to Kennesaw to obtain population?

20 THE WITNESS: Yes. If I cut this off right at
21 the -- around Marietta, there would have been insufficient
22 population in District 6 in terms of meeting the zero deviation
23 requirement, and it's actually -- you know, a fairly significant
24 population that would have been short. So I had to go in some
25 direction and pick up fairly heavily populated areas, and I knew

1 Kennesaw and Acworth were racially diverse so from a community of
2 interest standpoint it made sense to include that with central
3 Cobb County, which is also racially diverse, and southern Cobb
4 County, which is more predominantly black.

5 BY MR. TYSON:

6 **Q.** And so, Mr. Cooper, in that explanation then, you said you
7 knew that there was racially diverse population in Acworth and
8 Kennesaw, you just said earlier you were trying to take into
9 account compactness. You would agree with me not having a finger
10 up in Acworth and Kennesaw would make for a more compact district,
11 right?

12 **A.** Perhaps.

13 **Q.** It wouldn't be a district that was majority black, would it?

14 **A.** I don't know. And I would also point out that municipalities
15 in Georgia have odd shapes, and so to a certain extent some of the
16 lines you see around Kennesaw and Acworth are related to
17 odd-shaped precincts or odd shaped municipality boundaries.

18 **Q.** Are the precinct boundaries in west Cobb more regularly shaped
19 than the precinct boundaries in Kennesaw and Acworth?

20 **A.** Don't know.

21 **Q.** Does Georgia in its guidelines consider municipality splits as
22 part of their drawing process?

23 **A.** I believe so.

24 **Q.** You testified earlier that south Cobb County was suburban in
25 nature; is that correct?

1 A. I believe so.

2 Q. Do you also know if Paulding County is suburban in nature?

3 A. I believe that it would be at least in part be suburban in
4 nature.

5 Q. And you've put Paulding County, which is suburban in nature,
6 in with a district that runs down into Columbus, I put the page 6
7 of your report, page 70 of your report on there, on the screen; is
8 that right?

9 A. I did.

10 Q. And what about western Douglas County, is that also a suburban
11 area?

12 A. It is suburban, right.

13 Q. So you criticize the general assembly for putting south Cobb
14 County in a district that goes up to Chattanooga, but you likewise
15 put a district in an area that runs down to Columbus; correct?

16 A. That is true. But Columbus is a Georgia city.

17 Q. And so it's your testimony that since Chattanooga is not a
18 Georgia city, it's inappropriate to put it in south Cobb County?

19 A. It just seems like an odd decision to take part of Cobb County
20 and put it in a district that goes all the way up to Chattanooga
21 and deep into Appalachian, Georgia.

22 Q. I move to your supplemental report. And on page 4 of that,
23 you had a figure one that has your BVAP and BCVAP comparison of
24 your illustrative plan. I put it on the screen for you if it's
25 easier to look at it there.

1 **A.** Yeah.

2 **Q.** So I want to direct you first to District 13. You indicated
3 that 66 percent you viewed as too high for the black VAP number.
4 You brought District 13 down to where it's barely over 50 percent
5 on the black citizen voting age population number, correct?

6 **A.** Correct.

7 **Q.** It's just 5/100th of a point over majority on that number?

8 **A.** Correct. Again, that is a historical number. It's
9 conceivable it's up a little bit since 2017.

10 **Q.** And is this non-Hispanic black citizen voting age population
11 metric any part non-Hispanic voting age population, or is it
12 non-Hispanic single-race citizen voting age?

13 **A.** It is non-Hispanic single race, and it would be possible to
14 derive with another calculation the black and white -- you take it
15 up two races but you cannot calculate the any part definition
16 using the five-year survey, which is only taken down to the census
17 block vote and it gets desegregated into blocks. You take into
18 consideration persons that are black and one other race using that
19 dataset black and one other race and non-Hispanic that is possible
20 and then that number would go up a little bit more than you would
21 see in that chart. So instead of 51.5, it would be higher, but
22 not a lot higher.

23 **Q.** So making the changes to make District 6 majority, District 3
24 is getting very, very close to that number, the status as a
25 majority district, correct?

1 **A.** District 3?

2 **Q.** I'm sorry, District 13.

3 **A.** Well, yes, it is 50.05 percent non-Hispanic black single race.
4 But as I've indicated if you really carried it out to the extreme
5 and added in the two race factor, it would be higher.

6 **Q.** Let's do a quick count there using that number on the 2021
7 plan. You would agree that District 2, District 4, District 5,
8 and District 13 are all minority non-Hispanic black voting
9 population correct?

10 **A.** Yes. Although it's razor-thin in District 2. It is four
11 people over. Otherwise, it would be a 50/50 district.

12 **Q.** You didn't alter District 2 in your illustrative plan;
13 correct?

14 **A.** I did not.

15 **Q.** On your illustrative plan essentially you're adding District 6
16 as a 50.69 percent as a non-Hispanic black voting age population
17 in a majority district, correct?

18 **A.** Yes.

19 **Q.** Instead of four out of 14 districts that would be a majority
20 black in that category, your map has five, correct?

21 **A.** Based on black -- non-Hispanic citizen voting age population,
22 yes.

23 **Q.** And again, you didn't impact District 5, which is below
24 majority on black voting age population, correct?

25 **A.** Correct.

1 Q. You didn't impact District 2, which is below majority on black
2 voting age population; correct?

3 A. Correct.

4 Q. Let's go back to your main report. I want to go through some
5 of the numbers that you discussed with Ms. Khanna on compactness.
6 Beer's now on paragraph 54, figure ten, you report those numbers.

7 A. Yes.

8 Q. And although I know you testified earlier that you view those
9 differences as very slight. It is correct to say that on the REOC
10 and Polsby-Popper scores, the average compactness of the
11 illustrative plan and the 2021 plan in comparing those, the 2021
12 plan is more compact, correct?

13 A. Apple to apples for the eight changed districts, right. That
14 is not to say that I could not draw an illustrative plan using the
15 whole state, but changing other districts to draw a more compact
16 overall plan that's certainly possible if not probable.

17 Q. So we're all clear on this, the plan that is before the Court
18 today is still less compact than the 2021 plan as to these eight
19 districts; correct?

20 A. Right, it's a matter of balancing things; because I was able
21 to avoid changing six of the districts, I might have sacrificed
22 compactness overall. The figures you see here are only for the
23 eight modified districts.

24 Q. And isn't that the two in this compactness report, a maximum
25 number, a low number and a mean number?

1 **A.** Yes, it does report a maximum number.

2 **Q.** Is there a reason why you didn't report the maximum number in
3 figure ten?

4 **A.** No, I think the lower probably is more meaningful for
5 assessing the compactness of a plan.

6 **Q.** Let me direct you to paragraph 55 and figure 11 on your
7 report. You discussed with Ms. Khanna, you agree that your
8 illustrative plan splits one more County than the illustrative
9 plan on those eight districts; correct?

10 **A.** Yes.

11 **Q.** And at least one of the reasons why there is an additional
12 County split is because of your goal of drawing an additional
13 black district; correct?

14 **A.** No, I disagree. I'm fairly certain that I can reduce the
15 County splits perhaps to 12. I don't know for sure, but I was
16 very cognizant and attempted to avoid pairing and compassing for
17 the remainder of the plan.

18 **Q.** But you have not tried that exercise; correct?

19 **A.** I did not try that exercise, no. This is an illustrative
20 plan. So, you know, I don't -- I don't think it's necessary to
21 game out every possible scenario to prove Gingle's one.

22 **Q.** Mr. Cooper, is this the maximum number of majority black
23 districts that can be drawn on a congressional plan in Georgia on
24 your illustrative plan?

25 **A.** I don't think you could draw an additional majority black

1 district and also adhere to existing redistricting principles.
2 There are sufficient population perhaps, but it would not be a
3 compact district.

4 **Q.** You're not opining in your report or your testimony that the
5 district you've drawn would definitely elect the candidate of
6 choice in the black community, are you?

7 **A.** No.

8 **Q.** And for purposes of this case and this declaration, the
9 Pendergrass issue specifically, your compactness relates to the
10 districts, not to the underlying black population; is that
11 correct?

12 **A.** I'm not sure if I've ever seen a Section 2 lawsuit where
13 there's ever been a calculation of the underlying minority
14 population. I think that's an unusual way to examine things, and
15 I don't think there's a way to meaningful produce a metric other
16 than to demonstrate that you can draw a majority black district.

17 **Q.** Did you undertake any analysis of connections between Acworth
18 and Kennesaw and north Fayette County, for example?

19 **A.** No.

20 **Q.** So you strictly were focused on drawing the districts you
21 drew, you didn't consider connections and communities in
22 underlying population?

23 **A.** I looked at some -- some information, but these -- these
24 Counties are all part of core Atlanta, and they're not -- the
25 distances are fairly small. This is an illustrative plan, and if

1 certain communities like Acworth should not be included in the
2 majority black district based on a community of interest, probably
3 an alternative configuration could be developed. This is not
4 something that has to be ordered into place. It's simply an
5 illustration.

6 **Q.** So along that line, Mr. Cooper, back to your supplemental
7 report, District 6 is 50.23 percent on its black voting age
8 population; correct?

9 **A.** Correct.

10 **Q.** And so is it your testimony there are other ways to configure
11 District 6 that would maintain its majority character apart from
12 the way you configured it?

13 **A.** I think there would be.

14 **Q.** But you haven't done that analysis yet, have you?

15 **A.** I have not, no.

16 **Q.** If we're moving Kennesaw and Acworth below 56 percent and an
17 alternative configuration was not possible, would that impact your
18 decision about the ability to redraw that district?

19 **A.** If it were not possible. But I have no reason to think it's
20 not possible.

21 **Q.** But again, you haven't done that analysis yet?

22 **A.** I have not -- I have not produced a plan that is any different
23 than an illustrative plan that we see here today, but that doesn't
24 mean that I couldn't if given the challenge, but I presented one
25 illustrative District 6. Simple.

1 MR. TYSON: Let me check with my co-counsel briefly, but
2 I think I may be finished, Your Honor.

3 THE COURT: Okay.

4 MR. TYSON: Thank you, Mr. Cooper. I don't have any
5 other questions at this time.

6 THE COURT: Ms. Khanna, any redirect?

7 MS. KHANNA: Thank you, your Honor.

8 REDIRECT EXAMINATION

9 BY MS. KHANNA:

10 Q. Mr. Cooper, if we could turn to page 5, Plaintiff's Exhibit 1
11 of your report and look at footnote 3.

12 And Your Honor, I was reminded that I requested that we read
13 into record the 29 Counties that comprise the Atlanta MSA, so I'm
14 just directing Mr. Cooper to that portion of his report.

15 THE COURT: Thank you.

16 BY MS. KHANNA:

17 Q. And Mr. Cooper when you have it in front of you we can pull it
18 up on the screen as well, whatever is easier for you to read.

19 Would you mind reading into the record the 29 Counties that make
20 up the Atlanta MSA?

21 A. Allow me to get a drink of water.

22 Q. It could take awhile.

23 A. They are in alphabetical order, Barrow, Bartow, Butts,
24 Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas,
25 Fayette, Forsyth, Fulton, Gwinnett, Haralson, Heard, Henry,

1 Jasper, Lamar, Meriwether, Morgan, Newton, Paulding, Pickens,
2 Pike, Rockdale, Spalding and Walton.

3 Q. Thank you. You also mentioned that in drawing your
4 illustrative District 6, you considered the 11-county Atlanta
5 regional commission boundaries as well; is that right?

6 A. That's true.

7 Q. On page 13 of your report, Plaintiff's Exhibit 1 you have a
8 footnote there listing the website for the regional commission.
9 Do you see that there?

10 A. Yes.

11 Q. And I don't think in your report you actually list out those
12 Counties.

13 A. No, I should have, but I didn't.

14 Q. But going to that website would produce such a list; is that
15 right?

16 A. I think you will immediately see a map, and actually if you
17 look at Plaintiff's Exhibit showing the regional commissions in
18 Georgia, I think that's Exhibit -- I'm not sure what the Exhibit
19 number is here, maybe D, maybe F, something like that. Early on
20 there is a statewide map showing the regional commissions, and
21 that map does show the Atlanta regional commission and the 11
22 underlying counties.

23 Q. So if I use this website and pull that up, would it -- would
24 it surprise you if the following 11 Counties were included in the
25 ARC? And I would list them for you here. I don't think you're

1 going to find them looking at the report. Is there a specific
2 exhibit that you're referring to?

3 THE COURT: Let's do it this way. Mr. Tyson, would you
4 stipulate to the 11 counties that Ms. Khanna is going to read?

5 MR. TYSON: Yes, Your Honor, the ARC is made up of 11
6 counties. I'm happy to stipulate to those 11.

7 MS. KHANNA: Thank you. Your Honor, if I may list off
8 those counties, Mr. Cooper. Cherokee, Clayton, Cobb, DeKalb,
9 Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry and Rockdale.

10 THE WITNESS: That sounds correct to me.

11 BY MS. KHANNA:

12 Q. Four of those counties, Cobb, Douglas, Fulton and Fayette,
13 make up your new congressional District 6 in the illustrative
14 plan, correct?

15 A. Yes.

16 Q. Is that right?

17 A. Yes.

18 Q. Paulding is not included in that 11-county ARC; is that
19 correct?

20 A. It is not included in the core Atlanta district in the core
21 Atlantic counties.

22 Q. As you just mentioned you would characterize that 11 County
23 Atlanta regional commission area as the core Atlanta area; is that
24 correct?

25 A. Correct.

1 Q. You spoke with Mr. Tyson on cross about the configuration of
2 congressional District 6 and it's approach to Kenworth and
3 Acworth -- I'm sorry, Kennesaw and Acworth?

4 A. Yes.

5 Q. Did you -- when you were drawing that district, were you
6 seeking to grab black population also wherever you could?

7 A. No. I was not. That was an area with relative racial
8 diversity. I thought it would fit into a majority black district.
9 But I was not trying to identify majority black blocks to put into
10 District 6 from that area.

11 Q. If you wanted to grab black population in those areas or
12 northward in Cobb County, could you have done it differently?

13 A. Perhaps. So I could have changed District 5 in Fulton County
14 and done further -- done further changes to the plan that was
15 adopted, perhaps, splitting an additional County or something to
16 find other areas to draw a majority black district, an additional
17 majority black district. It would still be Cobb and Fulton based,
18 or to include more Fulton County, a portion of Fulton County that
19 is now in District 5.

20 Q. Thank you. I want to take another look at your illustrative
21 District 6 if we could turn to page 63 of Plaintiff's Exhibit 1.
22 So I believe you spoke with counsel on cross about the treatment
23 of the western part of Douglas County here and how it was
24 connected to the westward district of District 3 here; is that
25 right?

1 **A.** Yes.

2 **Q.** If we could now turn to page 55 of your report of Plaintiff's
3 Exhibit 1 which is the enacted map. And do you see here how the
4 western -- in the enacted map, the State of Georgia also split
5 Douglas County and included its western portion in that westward
6 district; is that right?

7 **A.** That's true.

8 **Q.** If we turn back to page 3 of your initial report, Plaintiff's
9 Exhibit 1. Let's look at paragraph 8 here. I believe you read
10 this on cross as well. Where it says that "the attorneys for the
11 plaintiffs in this case asked me to determine whether the
12 African-American population in Georgia is sufficiently large and
13 geographically compact to allow for the creation of an additional
14 majority black congressional district in the Atlanta metropolitan
15 area." Did I read that correctly?

16 **A.** Yes.

17 **Q.** Were you asked to draw as many majority black districts as
18 possible --

19 **A.** No.

20 **Q.** In the congressional map?

21 **A.** No.

22 **Q.** Were you asked to draw every conceivable way of drawing an
23 additional majority black district?

24 **A.** No.

25 **Q.** The word "whether" is used in your paragraph 8. If the answer

1 to the question was no, would you have reported that to counsel in
2 this case?

3 **A.** Yes. I've done that in other cases.

4 **Q.** And you anticipated my question. Have you in other cases when
5 asked to do a Gingle's one analysis, come back and said no, it
6 does not appear to satisfy the Gingle's one criteria?

7 **A.** Right, this is prelitigation. I have a clear memory of
8 someone asking me in the early '90s to draw a majority black
9 commission district in Henry County when Henry County was nine
10 percent black, and so -- well, I did it for them, then told them
11 it was just too crazy-looking, couldn't consider it.

12 **Q.** The question you were asked was not please draw an additional
13 majority black district, correct?

14 **A.** No, no, this person insisted that I show him what the district
15 looked like.

16 **Q.** The question in this case was not --

17 **A.** Whether.

18 **Q.** -- can you draw a majority black district, correct?

19 **A.** Right.

20 **Q.** It was whether you could draw a majority black district, this
21 is -- sorry. As you wrote here, whether the black population is
22 both sufficiently large and geographically compact to draw an
23 additional majority black district?

24 **A.** Right.

25 **Q.** And how did you determine the answer to that question?

1 **A.** Well, I looked at all of the factors that are part of the
2 traditional redistricting principles and tried to balance them.
3 So I tried to draw a compact district, a district that didn't
4 split very many political subdivisions, and we already seen that
5 the plan that I've drawn splits fewer municipalities than the
6 adopted 21 plan. And I looked at other factors, like congruity,
7 the various traditional redistricting factors. The idea was to
8 balance those factors and show that a district could be created if
9 it could be created.

10 MS. KHANNA: Thank you, Mr. Cooper. I have no further
11 questions.

12 THE COURT: Recross.

13 MR TYSON: Very briefly, yes. Very briefly, Your Honor.

14 RECROSS-EXAMINATION

15 BY MR. TYSON:

16 **Q.** Mr. Cooper, you said you knew in response to a question of
17 Ms. Khanna, that areas of racial diversity, does Maptitude display
18 census information or racial data if you command it to do that?

19 **A.** It does show -- you can color-code maps to show racial
20 diversity, sure.

21 **Q.** Did you have a color coded map with demographic information on
22 it when you were drawing or conducting your analysis in this case?

23 **A.** No, I did not have a color-coded map on screen.

24 **Q.** How did you determine what areas had racial diversity then?

25 **A.** Sometimes I used little dots that show where the diverse

1 population lives.

2 **Q.** So in draw your District 6, you would have had dots showing
3 where, for example, a black population was?

4 **A.** Occasionally. However, I knew that anyway from just looking
5 at your Senate plan. Senate District 33, which runs from central
6 and south Cobb County up into Acworth and Kennesaw, is -- is
7 roughly 48 percent non-Hispanic Asian, Latino, and black CVAP.
8 It's almost majority non-white. The white CVAP in that area is 33
9 or 34 percent. And that's for your district that you drew,
10 District 33, I believe in Cobb County for the state Senate.

11 **Q.** So in conducting your analysis you looked at demographic
12 information of state legislative districts as part of your process
13 in drawing congressional?

14 **A.** I was aware and knowledgeable of that information in part
15 because I was also working on the other side of this case looking
16 at legislative districts.

17 **Q.** And at various points you had dots showing you where black
18 population was around metro Atlanta; correct?

19 **A.** Occasionally, yes. I mean, I have a map in the next -- the
20 next section of my testimony that shows percent black by County.

21 **Q.** Ms. Khanna asked you about your analysis, whether the
22 population was geographically compact. Do you recall that line of
23 questioning?

24 **A.** Yes.

25 **Q.** And your way to answer whether the black population was

1 geographically compact was by drawing a majority black district,
2 correct?

3 **A.** Drawing a majority black district that adhered to
4 redistricting principles. I think if you look at the compactness
5 scores, if you look at the number of political subdivisions that
6 are split in order to draw that plan, it's possible, and I have
7 come to the conclusion that one can draw an additional majority
8 black district in that area.

9 **Q.** And so again, your methodology for answering the question
10 posed in the declaration was creating a majority black district
11 that you believe is consistent with traditional redistricting
12 principles, correct?

13 **A.** Yes.

14 MR. TYSON: I don't have anything further, Your Honor.

15 THE COURT: Thank you. What I'm going to ask you to do
16 is take that baggie and put it in the trash can. It's 12:15. I
17 was going to stop for lunch at 12:30, but I think it would be a
18 good idea to stop now instead of starting another witness which
19 will be the same witness. Before we move on from this
20 congressional part, is there anything else anybody wants to ask?
21 Because when we come back, we'll move to the Senate and House
22 District portions, I think.

23 MS. KHANNA: Your Honor, may I ask one follow-up
24 question?

25 THE COURT: Mr. Tyson, you can also ask a follow-up.

1 MR. TYSON: Thank you.

2 REDIRECT EXAMINATION

3 BY MS. KHANNA:

4 Q. Mr. Cooper, in response to the question from Mr. Tyson just
5 now, you mentioned that you were aware of the Senate map that was
6 enacted by the Legislature in 2021 as well; is that right?

7 A. Yes.

8 Q. And you were aware that in the Senate map there were at least
9 four Senate districts in western metro Atlanta that were majority
10 black; is that right?

11 A. Right.

12 Q. You also talked about an additional district, Senate District
13 33, that was 40 percent black voting age population?

14 A. Right.

15 Q. You were aware when you were drawing your illustrative map in
16 the congressional case that the State of Georgia had drawn
17 majority black districts in western Atlanta in the Senate,
18 correct?

19 A. Yes, because four Senate districts is one congressional, 14
20 times four is 56. So that's why I was so confident at the outset
21 that it was going to be likely that I could draw the additional
22 majority black district in that part of the state.

23 Q. But it did not draw an additional black majority in western
24 metro Atlanta on the congressional map; correct?

25 A. Correct.

1 MS. KHANNA: Thank you, Your Honor.

2 THE COURT: Mr. Tyson.

3 MR. TYSON: Nothing further, Your Honor.

4 THE COURT: We'll stop right here for the lunch break.

5 We'll start back at 1:30. Thank you all. Have a good lunch.

6 (Whereupon, the hearing concluded at 12:15 a.m.

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

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

This the 8th day of February, 2021.

/s/Viola S. Zborowski
VIOLA S. ZBOROWSKI, CRR, CRC, CMR, FAPR
OFFICIAL COURT REPORTER.