# EXHIBIT 2

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE MIDDLE DISTRICT OF LOUISIANA

3

4 PRESS ROBINSON, et al, CASE NO.
Plaintiffs,
5 3:22-cv-00211-SDD-SDJ
v
6
KYLE ARDOIN, in his
7 official capacity as c/w
Secretary of State for
8 Louisiana,
Defendant.
9 _____
EDWARD GALMON, SR., et
10 al, CASE NO.
Plaintiffs,
11 3:22-cv-00214-SDD-SDJ
v
12
R. KYLE ARDOIN, in his
13 official capacity as
Louisiana Secretary of
14 State,
Defendant.
15

16 PROCEEDINGS

17 INJUNCTION HEARING

18 Held on Tuesday, May 10, 2022

19 Before The

20 HONORABLE SHELLY DICK

21 Judge Presiding

22 Baton Rouge, Louisiana

23

24 REPORTED BY:CHERIE' E. WHITE
CCR (LA), CSR (TX), CSR (MS), RPR
25 CERTIFIED COURT REPORTER

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P R O C E E D I N G S

THE COURT:

Good morning. Be seated. Welcome back to day two. Hopefully, we won't have a situation of fire and ice like we had yesterday, and I'm referring to the temperature in the courtroom.

Okay. Do we know what the clock -- how the clock remains? Do you-all want to put that on the record so we are on the same page?

Ms. Khanna?

MS. KHANNA:

Yes, Your Honor. Plaintiffs have taken up 190 minutes and the defendants have taken up 140 minutes.

THE COURT:

Plaintiffs, 190 and defendants, 140?

MS. KHANNA:

Yes, Your Honor.

THE COURT:

Okay. All right. Next witness?

MS. BRANNON:

I have to because I haven't entered an appearance yet. Sarah Brannon,

B-R-A-N-N-O-N. And plaintiffs call Dr. Lisa Handley.

DR. LISA HANDLEY, after having first been duly sworn by the above-mentioned court reporter, did testify as follows:

MS. BRANNON:

We have agreed to stipulate to the expertise of the witnesses, so I would like to ask for a stipulation that Dr. Handley is an expert in -- an expert witness in district -- in redistricting with an emphasis on racially polarized voting. Is there an agreement?

THE COURT:

Is there a stipulation?

MR. FARR:

Good morning, Your Honor. Tom Farr from the law firm of Nelson Mullins. I'm here representing the Secretary of State, and we have no objection to that stipulation, Your Honor.

THE COURT:

Thank you, sir.

MS. BRANNON:

Your Honor, may I approach the witness?

THE COURT:

Yes. And the court will accept Dr. Handley and allow opinion testimony in the area of expert witness experience in racially polarized voting.

You may approach.

MS. BRANNON:

Your Honor, I just somehow have realized that I cut my foot.

THE COURT:

Are you bleeding all over?

MS. BRANNON:

I am. Can we take a five-minute recess?

THE COURT:

We can take a recess while you call EMS. Okay. We will take five minutes.

(A short recess was taken at 9:37 a.m.)

THE COURT:

Okay. Be seated.

MS. BRANNON:

I'm recovered.

THE COURT:

Good. And if you feel lightheaded from the loss of blood, we will take another recess. Maybe somebody brought cookies.

MS. BRANNON:

Okay. So we are going to return. For the record, I have given Dr. Handley a binder with a copy of her expert materials in this case, and we are going to walk through all of those and introduce them as we discuss them.

THE COURT:

Okay. Proceed.

DIRECT EXAMINATION BY MS. BRANNON:

Q. Dr. Handley, did you prepare a report in this case?

A. Several, yes.

Q. Can you turn to the first page of your binder?

A. (Witness complied.)

Q. Is that a copy of the preliminary report you prepared?

A. It is.

MS. BRANNON:

For the record, Dr. Handley's

preliminary report is Exhibit PR-12.

THE COURT:

Record Document 41, dash, 3, right?

MS. BRANNON:

Yes.

BY MS. BRANNON:

Q. Dr. Handley, is your CV attached to your preliminary report?

A. It is.

Q. Is this a complete and accurate summary of your background and professional experience?

A. It is.

Q. Dr. Handley, what do you do for a living?

A. I am a consultant.

THE COURT:

Ma'am, I think you might need to adjust your mic. Yeah, right there. Your mic, just adjust it.

THE WITNESS:

Just put it closer to my pad?

THE COURT:

Okay. Now we can hear better.

BY MS. BRANNON:

Q. I'll re-ask. Dr. Handley, what did you do for a living?

A. I am a consultant here in the United States and overseas. I also am a part-time academic in the U.K.

Q. Can you provide us some examples of some of your clients for your consulting business?

A. I have worked, as I mentioned, the UM. I worked for scores of states and local jurisdictions. I worked for the redistricting for the Department of Justice for several civil rights organizations, including the ACLU.

Q. Can you briefly describe some of your academic work you have done on the topic of redistricting and minority vote dilution?

A. Almost all of the articles that you'll see listed in my CV, that includes books, articles, peer-review journals, law review articles, chapters in books deal with minority representation, voting redistricting with the subjects of this case.

Q. All right. And have you testified before as an expert witness?

A. I have.

Q. Approximately how many times have you performed a racial block voting analysis as an expert witness?

A. As an expert witness, scores of times.

Q. Okay. And have you been -- have you been accepted as an expert witness before to testify about redistricting and racially polarized voting?

A. I have.

Q. Approximately how many times?

A. Scores.

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

A. I was asked to conduct an analysis of the voting patterns by race in Louisiana and to evaluate proposed districts; that is, the enacted plan and several illustrative plans to ascertain the opportunity for black voters to elect the candidates of their choice.

Q. And were you asked to analyze voting patterns in the State of Louisiana specifically?

A. Yes. I analyzed voting patterns statewide, I analyzed voting patterns in 16 congressional districts and in the enacted

congressional districts.

Q. And can you provide us a general summary of the opinions that you reached with respect to your analysis as to whether there's racially polarized voting in Louisiana?

A. Yes, there is racially polarized voting in Louisiana. There is quite stark racially polarized voting in Louisiana.

Q. What is your definition of racially polarized voting?

A. Thornburg versus Gingles tells us that voting is polarized in black voters and white voters vote differently. In other words, if black voters voting alone elected different candidates than white voters, then the contest is racially polarized.

Q. What statistical techniques did you use to analyze whether voting in Louisiana is racially polarized?

A. I used three standard techniques: Homogeneous precinct analysis, ecological regression, and ecological inference. Technically I used four because there are two variants of ecological inference.

Q. We heard details yesterday about

ecological inference, but can you provide a brief summary of homogeneous precinct analysis and ecological regression.

A. Homogeneous precinct analysis simply compares the voting patterns of precincts that are overwhelmingly one race compared to precincts that are overwhelmingly in another race.

So in this case, you are comparing precincts that are overwhelming white to precincts that are overwhelming black. It's not actually a statistical technique. It's simply comparing these two precincts. We call it an estimate because, of course, not all voters live in homogeneous precincts and might vote differently than the voters who live in more diverse precincts.

Q. Why do you use all three methods?

A. Two of the methods have been around for a very long time. When Thornburg v Gingles was decided, homogeneous precinct analysis and ecological regression was used by the plaintiffs' experts and the court approved those methods. Since then, ecological inference was developed by a professor at Harvard by the name of Gary King and courts have accepted that.

Now, this is three different techniques to arrive at estimates. If you -- if the estimates are more or less the same, despite using three different techniques, we are certain that we have grasped what the voting patterns are.

Q. Have courts accepted your expert testimony using these different statistical methodologies in voting cases before?

A. Yes. Now, again, ecological inference is more common. I've only been using that for maybe 20 years, but the others for 40 years, a long time.

Q. Okay. Let's look at your analysis a little bit more in detail.

MS. BRANNON:

Can we see demonstrative Exhibit 1.2?

TRIAL TECH:

(Complied.)

BY MS. BRANNON:

Q. Did you analyze statewide elections?

A. I did analyze statewide elections.

Q. How many statewide elections did you analyze?

A. Fifteen statewide elections.

Q. Are you familiar with this table that is demonstrative Exhibit 1.2?

A. Yes. These are the 15 contests that I analyzed.

Q. Why did you choose these elections?

A. These are all recent elections from 2015 on. They all include black candidates.

Q. Let's walk through your analysis of a statewide election.

MS. BRANNON:

Can we see demonstrative Exhibit 1.3?

TRIAL TECH:

(Complied.)

BY MS. BRANNON:

Q. Dr. Handley, do you recognize this spreadsheet?

A. I do.

Q. Is this spreadsheet part of your preliminary report as appendix A?

A. It is.

Q. Can you explain what this spreadsheet shows by walking us through the portion that has been highlighted?

A. Yes. So this is a particular contest. In this case, it's the attorney general in 2019, October 2019. You can see the two candidates, Jackson and Jeff Landry. You can see their party, you can see their race, and the next column is the actual votes they received.

Below that is the black turnout and the white turnout figures. And then the next set of four columns are the estimates derived by the four different techniques of the percentage of black voters who voted for each of these candidates.

So, for example, C 90.6 is the EIR times C estimate, 91.2 is the EI 2 times 2, 94 percent is the ER, and 87.7 is the homogeneous precinct estimate of percentage of the black voters who supported Ike Jackson. And then you see the same information for the white voters. So like EIR times 29.4 percent of the white voters that supported Ike Jackson by EI 2.2, it's 10.1 by ER, it's 9.2; and by HB, it's 12.2. So all of them are quite comparable.

For example, the estimate that the percentage of black voters who voted for Jackson was similar between 87.7 percent and 94 percent.

THE COURT:

Dr. Handley, one second. Will you help her with her mic? See if maybe we can adjust it.

THE WITNESS:

The problem is I'm leaning forward.

THE COURT:

Right. What we will do is she will -- she will just see if we -- Mr. IT is here too, so we are well. We are over prepared.

THE WITNESS:

This is going to be too far away. You can still hear?

THE COURT:

No. That's better and you can certainly adjust it. I'll stop. We may be give you some assistance, okay? Please carry on. I'm sorry I interrupted you.

BY MS. BRANNON:

Q. Dr. Handley, what are confidence intervals?

A. So the EIR times C estimates, the column next to that, we have confidence intervals. You can think of those as sort of the

margins of error that you see in a survey that we're 95 percent certain that the true estimate, the estimate being 90.6, that the true estimate is somewhere between 90.3 and 90.9.

Q. And why do you include confidence intervals only for your EIR times C calculation?

A. Those are the only confidence intervals that are generally accepted by experts in my area for -- for these kinds of estimates.

Q. Does the -- this appendix A also provide information about voter turnout?

A. It does. The italicized lines in the attorney general race, it says black turnout, slash, black VAP. That's the percentage of black voting age population that actually turned out for that particular office; and the same for white turnout of white VAP. So 35.2 percent of black voting age, of the eligible black voting age population turned out to vote and 45.2 percent of the whites.

Q. Would you characterize this 2019 attorney general election as a polarized contest?

A. I would.

Q. Why?

A. The vast majority of black voters

voted Jackson. If they had voted alone, Jackson would have one overwhelmingly. The vast majority of white voters supported Landry, and if they alone would have voted, he would have one overwhelmingly. In fact, he did win.

Q. Does the race of the candidates need to be different to determine if there's racially polarized voting?

A. No. The point is that black and white voters are for different candidates. No. It so happens in the contest that I looked at with at least one or two exceptions, the black candidate was the black preferred candidate; that is, the candidate preferred by black voters, but there are exceptions to that in the elections that I looked at.

Q. Does appendix A show the same type of data for the rest of the 14 statewide elections that you analyzed?

A. Yes. So all 15 are in this and I just described one. They are all read the same.

Q. What, if any, conclusions did you reach about racially polarized voting in Louisiana in statewide elections based on your analysis with these 15 elections?

A. All 15 contests were polarized. In every instance, black voters and white voters would have elected different candidates had they voted separately.

Q. You already explained how you looked at voting patterns in congressional elections. Why?

A. Of course, it indicated that endogenous elections; that is, elections for the office at issue, are more probative than exogenous elections.

Now, in this case, you are looking at proposed plans. There were no elections under it, but congressional elections in general would still be more probative and would be particularly so in Louisiana where the districts didn't change that much from the enacted plan from the current plan.

MS. BRANNON:

Can we see demonstrative Exhibit 1.4?

TRIAL TECH:

(Complied.)

BY MS. BRANNON:

Q. Do you recognize this table?

A. This -- yes. This is a list of the congressional election contests that I looked at. Again, this is from 2016 to the most recent contest, and it was the contest that included black candidates. There were no contests in District 1 that included black candidates.

Q. And is the analysis of these congressional districts described in your reports?

A. Yes.

MS. BRANNON:

Can we see demonstrative Exhibit 1.5?

TRIAL TECH:

(Complied.)

BY MS. BRANNON:

Q. Dr. Handley, do you recognize this table?

A. Yes.

Q. Was there a version of appendix B attached to your preliminary report?

A. Yes.

Q. Did you make any corrections?

A. I updated it by adding three elections that occurred in 2021. There were two

congressional elections in District 2 to replace Cedric Richmond and there was an election in District 5, and so this has been updated to include those elections. I also changed the date of the elections from October to the correct date, which is November, and I had to correct one of the confidence intervals because of a typo.

Q. Was revised Appendix B included with your rebuttal report?

A. Yes.

MS. BRANNON:

For the record, Dr. Handley's rebuttal report is Exhibit PR-87.

BY MS. BRANNON:

Q. Did any of these changes impact any of your opinions in this case?

A. No.

Q. Is the data as reflected in revised Appendix B that's on the screen similar to the data that is reflected in Appendix A we were just discussing?

A. If by "data" you mean precinct information, that is both the demographic information and the election returns. It's the same. If you mean reading the charts, it's read

the same as well.

Q. Yeah. Reading the charts?

A. Reading the charts.

Q. Reading the chart is the same. This chart would be read the same as Appendix A that we have walked through?

A. That's correct.

Q. Okay. What, if any, conclusions did you reach about voting patterns and congressional elections in Louisiana based on your analysis?

A. The elections in Districts 3, 4, 5 and 6 were all white polarized. The elections in District 2 less so. In fact, most of them were not polarized in District 2.

Q. All right.

MS. BRANNON:

Can we see demonstrative Exhibit 1.6?

TRIAL TECH:

(Complied.)

BY MS. BRANNON:

Q. Dr. Handley, did you conduct any analysis of the voting patterns in the newly enacted congressional map related to HB-1?

A. I did. Of course, no election has

occurred. So this reflects recompiled results using the precincts that the old elections occurred in and sort of re-running the elections as they would have occurred -- they would have occurred in the enacted congressional districts.

Q. Do you recognize the tables on this demonstrative?

A. Yes.

Q. Is there a version of Appendix C attached to your preliminary report?

A. Yes.

Q. Did you make any changes?

A. Yes. So it turns out that we had an old version of what's called a block two district equivalency file for the enacted plan, and when we discovered that it was old and we needed to fix it, I then, in a burst of caution, re-ran all of the analyses for the enacted districts using the new block to district equivalency.

Q. Does this demonstrative demonstrate your original Appendix C and your updated Appendix C?

A. That's correct.

Q. Did your new analysis of congressional districts in the enacted plan of

1 congressional district -- this is Congressional
2 District 2, correct?
3 A. Yes.
4 Q. Did any of your opinions change?
5 A. No. The -- the block equivalency
6 file was only off by about 2 percent of the
7 population. So we moved the 2 percentage into
8 the correct districts and it changed the
9 estimates barely, maybe by a percentage point, if
10 it changed them at all. As you can see, voting
11 is still quite polarized.
12 MS. BRANNON:
13 And, for the record, the updated
14 Appendix Cs are provided with plaintiffs'
15 Exhibit PR-92.
16 Can we see PX-1.7?
17 TRIAL TECH:
18 (Complied.)
19 BY MS. BRANNON:
20 Q. Did you do an analysis of the
21 enacted plan for congressional districts other
22 than Congressional District 2?
23 A. Yes. I did look at voting patterns
24 in all of the enacted districts that overlaid
25 Illustrative District 5; that is, the additional

1 black opportunity district offered by the
2 illustrative plan. And as you can see, it
3 overlaps Districts 2, 3, 4, 5 and 6.
4 Q. So --
5 A. So those were the -- those were the
6 congressional districts that I looked at. It
7 does not overlap 1, so I did not look at 1.
8 Q. And you recognize this map?
9 A. Yes.
10 Q. And it shows the overlay you were
11 just describing?
12 A. That's correct.
13 Q. All right. Did you make any further
14 changes to your analysis for the other
15 congressional districts besides CD2?
16 A. Do you mean because of the block
17 equivalent, I did it?
18 Q. Yes.
19 A. Yes. I re-ran all of the analyses.
20 Q. And those are all included in the
21 corrected materials report that we filed in this
22 case?
23 A. That's correct.
24 MS. BRANNON:
25 Which, for the record, is PR --

Exhibit PR-92.

BY MS. BRANNON:

Q. Did any of your opinions change as a result of redoing this analysis for all five of the congressional districts you looked at?

A. No. As I said, the changes were mostly less than a percentage point and voting still very polarized in these congressional districts.

MS. BRANNON:

We can take this one down.

TRIAL TECH:

(Complied.)

BY MS. BRANNON:

Q. What -- when conducting your analysis of these congressional districts in the enacted plan, what conclusions did you reach?

A. If voting was polarized in all of the districts that I looked at, there was some variation in that there was more white crossover vote in enacted District 2 than there was in 3, 4, 5 and 6, which were quite starkly polarized.

Q. What do you mean when you say "white crossover voting"?

A. I'm talking about white voters who

are voting for the black preferred candidate.

Q. Let's turn now to your analysis of black voters opportunities to elect candidates of their choice in the illustrative maps and the enacted congressional map.

Did you evaluate the opportunity of black voters to elect their candidate of choice in the enacted map?

A. I did.

Q. And what methodology did you use?

A. Of course, no elections have actually occurred in either the illustrative or the enacted plan, so I used -- I relied on what I called recompiled election results looking at how previous elections would have faired, how the candidates of choice in previous elections would have faired under the proposed districts.

Q. Have you used this method of recompiling election results when providing other expert opinions that have been accepted by courts before?

A. Yes.

Q. Why do you think it is useful to form this evaluation?

A. The only way to know if a proposed

plan will provide black voters with an opportunity to elect their candidates of choice since no elections have occurred is to do something like this, to look at recompiled election results, determine if the black preferred candidates would win, and how many elections they would win.

Q. Did you also perform this recompiled election results analysis on Illustrative Map 2A that was drawn by plaintiffs' expert Tony Fairfax?

A. I did.

MS. BRANNON:

Can we see demonstrative Exhibit 1.8?

TRIAL TECH:

(Complied.)

BY MS. BRANNON:

Q. Do you recognize these tables?

A. Yes.

Q. Can you explain the information provided on these tables starting with the enacted plan on the right side of the screen?

A. Yes. Now, when you are trying to figure out if a district is going to provide

black voters with an opportunity to elect, the elections that you want to look at are elections in which black voters and white voters agreed on who they would elect. And that happens to be the case in all 15 elections that I looked at.

So here what I did was was I determined how many of those 15 elections with a black preferred candidate either win the majority vote or win enough votes to go on to the runoff, so that's my effectiveness score one. It's just the percentage times the black preferred candidate would win or lose if there were a runoff.

The second column, the effectiveness score two is what would happen if they made it to the runoff and there were now just two candidates, would they win the runoff, and this is the percentage of times they would win the runoff.

So, for example, in District 2, the black preferred candidate in all 15 contests would have either won or proceeded to the runoff; and in the two -- two candidate contest if they had gone to the runoff, they would have won 100 percent of the time.

Now, in the other districts in the enacted plan, although the black preferred candidates in some of these districts would have proceeded to the runoff in about 25 percent of these elections, none of them would have actually won the runoff. So in the other districts, the black preferred candidate would have not ultimately prevailed in any of the elections.

Q. So can you just please explain how that works in Louisiana's voting system?

A. All right. So this is a little different than how I usually do this because you have a system that is -- well, it used to be unique. I think maybe some other states are adopting it, but you have a primary system and it includes both Democrats and Republicans; and the election might actually end there without a general election, while in most states you have the -- you go on and you have a general election with two candidates, a Democrat and Republican. Sometimes here you go on and you have an election with two Republicans, so that makes it a little bit different, and that's why I -- that's why you see these two columns.

Q. Would you characterize any of the

congressional districts an enacted plan other than Congressional District 2 as an opportunity district?

A. I would not.

Q. And then can you just briefly explain the analysis that is reflected in Table 2 on the left side of the map about Illustrative District -- Illustrative Map 2A?

A. So, again, I used exactly the same methodology, did exactly the same thing, but this time you can see that District 2 is also 100 percent of the time the black preferred candidate wins.

In District 5, 86.7 percent of the contest produced the black preferred candidate as winning or proceeding to the runoff, and in 77.8 percent of the runoffs, also two candidate contests, the black preferred candidate prevails in District 5.

Q. Would you characterize any of the congressional districts in Illustrative Map 2A as opportunity districts?

A. Yes. Districts 2 and District -- and District 5 both provide black voters with an opportunity to elect their candidates of choice.

The other districts, 1, 3, 4 and 6 do not.

Q. Is the information in Table 2 reflected in your reports in this case?

A. Yes.

Q. What conclusions, if any, did you draw about the ability of black voters to elect their candidates of choice in this illustrative plan versus the enacted plan?

A. There is one black opportunity district in the enacted plan and there are two in the illustrative plan marked map 2A.

Q. Bringing together your racial polarization analysis and your effectiveness analysis of the enacted plan and the illustrative maps, how does the racially black voting in Louisiana effect voters' opportunities to elect their candidates of choice?

A. Because voting is racially polarized, black voters can only elect their candidate of choice if the district is drawn that gives them this opportunity.

MS. BRANNON:

I also move for admission of all of Dr. Handley's materials that have been in this case, but for the record, it's PR-12,

PR-87, PR-91 and PR-92.

THE COURT:

Any objection?

MR. FARR:

No objection, Your Honor.

THE COURT:

So admitted.

BY MS. BRANNON:

Q. Dr. Handley, did you also look at the expert report of defendant's expert, Dr. Solanky? I think I'm saying that correctly, Solanky.

MR. FARR:

That's correct.

THE WITNESS:

I did.

BY MS. BRANNON:

Q. Do you think it was appropriate for Dr. Solanky to offer voting opinions about the voting patterns in East Baton Rouge from the analysis of just one election?

A. Certainly, you would look at a pattern of voting over more than one election. You would look at as many as you could.

MS. BRANNON:

Can we see demonstrative 1.10?

TRIAL TECH:

(Complied.)

BY MS. BRANNON:

Q. And Dr. Solanky did an evaluation of East Baton Rouge Parish, correct?

A. Yes.

Q. Do you recognize this map?

A. Yes.

Q. Do you think it was appropriate that Dr. Solanky looked just at East Baton Rouge Parish?

A. No, for two reasons: No. 1, East Baton Rouge Parish is not large enough to be its own congressional district, that the population is too small. You would have to add neighboring parishes to it, thus he pointed out the voting patterns in neighboring parishes is different.

And, No. 2, you can see from this map that, in any case, East Baton Rouge is not wholly contained within any congressional districts, either in the enacted or the illustrative maps. It is divided between two districts.

Q. Would it be possible to draw a

congressional district just with East Baton Rouge Parish?

A. No. The population is too small.

Q. So even if Dr. Solanky's conclusion was correct that the voting patterns in East Baton Rouge -- about the voting patterns in East Baton Rouge, do you think that that analysis is relevant to questions about performance in an Illustrative District 5?

A. No. Again, you have to add population. As he himself points out the population, the voting patterns in the parishes neighboring East Baton Rouge Parish is different.

Q. Did you also look at the report of Dr. Alford?

A. I did.

Q. Did Dr. Alford offer any criticism of the methodology in your report?

A. No.

Q. Dr. Alford's report -- Dr. Alford in his report in addressing the cause of voting patterns in Louisiana does an evaluation as to whether there is racial --

MS. BRANNON:

Excuse me, Your Honor. Can I start

again?

BY MS. BRANNON:

Q. Does any evaluation of whether there is actual racially polarized voting involve an evaluation of the causes of the voting patterns that have been analyzed?

A. No. The Voting Rights Act, I believe the Voting Rights Act was specifically amended to focus the inquiry on the electoral consequences of different voting patterns and to not -- the reason for those. Intent was specifically taken out of the equation, the intent of the legislators as well as the intent of the voters.

Q. Do you agree with Dr. Alford's suggestion in his report that the fact that black voters support Democrats and white voters support Republicans in Louisiana means that voting is not racially polarized?

A. When you determine voting is racially polarized, you do it the way that I have done it. This is the way that experts have done it for over 50 years. You look at the voting patterns of blacks and whites and you compare to see if they are voting the same candidates or

different candidates. This is how it is done. This is how you determine if voting is racially polarized.

MS. BRANNON:

Nothing further, Your Honor.

THE COURT:

Cross?

MR. FARR:

Thank you, Your Honor. Can everyone hear me?

THE COURT:

Yes, sir. Did you need to -- did you need to remain seated? I can't remember --

MR. FARR:

I just want to tell Dr. Handley nice to meet you. And through the graciousness of Your Honor, I've got a back condition, so she's agreed that I can examine you from counsel's table, and I'm grateful to her for doing that. Please let me know if you can't hear my questions and I'll try to rephrase them.

THE WITNESS:

Okay.

THE COURT:

Let me ask this. Would it be helpful -- you may be seated, sir.

Would it be helpful to be able to make eye contact? I mean, is there somebody that I can move, either counsel table move out of the way or does it matter?

MR. FARR:

I can see Dr. Handley, if she can see me.

THE COURT:

Can you see her -- him?

THE WITNESS:

I can see, yes. I don't have my glasses on, but other than that --

THE COURT:

All right. Well, then that's fine. We just want to make sure that you-all communicate well.

THE WITNESS:

Okay.

THE COURT:

Go ahead, sir.

CROSS-EXAMINATION BY MR. FARR:

Q. Dr. Handley, we haven't met before, but I've reviewed some of your prior testimony in some cases that involved our firm; and it's an honor to meet you here today.

THE COURT:

And state your name for the reporter. You may have already done that, but I just need it.

MR. FARR:

Yes, ma'am. I'm Tom Farr, and I'm from the law firm of Nelson Mullins and I'm here representing the Secretary of State.

BY MR. FARR:

Q. So, Dr. Handley, when were you first contacted about Louisiana redistricting in this cycle?

A. It's difficult to say. I was working with the ACLU in another couple of states before we started talking about Louisiana.

Q. It's not a memory test, Dr. Handley.

A. Okay. I'm sorry. I don't remember exactly when. Certainly, less than a year ago.

Q. Okay. Well, let's see if we can clarify that a little bit with some questions

I'll ask.

Do you remember who called you about working on Louisiana redistricting?

A. No.

Q. When were you actually engaged to work on Louisiana redistricting?

A. Oh, that's also a tough question because I am not even sure that I have a contract with the ACLU with Louisiana, so I can't actually answer that question.

Q. And do you know who engaged you?

A. No.

Q. Okay. You don't know the person that engaged you?

A. Well, I suppose ultimately it would have been Dale Hope, and I had conversations with him earlier; and this is the head of the voting rank division -- the voting section of the ACLU.

Q. Yes, ma'am. I know Mr. Dale Hope. I think very highly of him, so thank you for that answer.

Did you do any work on Louisiana prior to the Louisiana legislative process?

MS. BRANNON:

Your Honor, I'm just going to -- she

can answer that question, but I want to put an objection on the record to the extent it's seeking what we would consider being work product leading up to litigation, but anything that relates to not leading up to litigation, you can answer.

THE COURT:

Your objection is noted. It may be a little premature, but you-all know that she thinks you are going in the wrong direction, so there you go.

MR. FARR:

Your Honor, I'm not going to ask her about work product. I just want to know when she started working on this, and if it's -- we are all interested in other issues in the case, so --

THE COURT:

Okay. There's no objection to your current question, so if you want to restate it?

MR. FARR:

Yes, ma'am.

THE COURT:

Go ahead.

MR. FARR:

Thank you, Your Honor.

BY MR. FARR:

Q. Ms. Handley, do you remember when you started working on matters related to Louisiana congressional redistricting in this cycle? Let me try -- let me try it off a little bit.

A. I'm sorry. I -- I can't remember.

Q. That's all right. I understand. Do you think you began working before the legislative process started?

A. I have no idea. I don't know when the legislative process started.

Q. Okay. I heard you mention something. Could it have been that you were working on Louisiana redistricting sometime within the last year?

A. Yes.

Q. Okay. And you just didn't start when the plan was enacted?

A. That's correct.

Q. Did you give any input on your theories and calculations to the legislature

during the legislative process?

A. Did I? The legislature never contacted me or asked me to do any work, no.

Q. But you didn't voluntarily give any of your research to the Louisiana legislature while they were considering congressional plans?

A. I personally?

Q. Yes.

A. No.

Q. Did you talk to anybody who gave information about your plans or any advice that you may have transmitted? Did you talk to anyone who may have provided that information to the Louisiana legislature?

A. Possibly.

Q. Do you know who that would have been?

A. No.

Q. And did you perform your polarization studies that we talked about today before the plan was enacted?

A. It depends on what you mean by "enacted."

Q. Why don't you --

A. So my understanding was it passed,

but then it was vetoed and then the veto was overridden. I analyzed the plan after it was passed by the legislature.

Q. Okay. And your report's got analysis of statewide polarization rates?

A. I'm sorry. Could you repeat that?

Q. Yes, ma'am. In reading your report, it appears that you have -- you've done polarization studies on statewide elections?

A. That's correct.

Q. Did you do those before the congressional plan was enacted?

A. I don't remember in time. I'm not exactly sure what you mean by "enacted." I did it most likely before the veto was overridden.

Q. Okay. So before the initial plan was ever written, you think sometime before then you did your statewide polarization studies?

A. I probably had started them.

Q. Okay. All right. Thanks.

Now, I want to ask you some questions about what you mean by "polarization," and we can go to your report if that will help you, but when I read your report on page 1 --

MR. FARR:

Well, let me pull up PR-12 on the screen.

TRIAL TECH:

(Complied.)

BY MR. FARR:

Q. Are you there?

A. Yes.

Q. So during your testimony, you said several times that voting in Louisiana is racially polarized. Is that a fair recitation?

A. Yes.

Q. And then on page 1 of your report, you make a statement that voting in the State of Louisiana is racially polarized. You see that?

A. Yes.

Q. Now, turn to page 8. It looks like it's the second full paragraph where it says "congressional elections." Do you see that? You see that paragraph?

A. Yes, I do.

Q. Okay. And is it fair to say that your report that elections in the 2011 version of Congressional District 2 were probably not racially polarized?

A. Although the statewide elections

were polarized, the congressional elections, I think it was most of them, not all of them, were not polarized.

Q. Okay. So that's -- that's where I want to ask you some questions, Dr. Handley.

You've been doing this for a long time and you know way more than I do. Is there a difference between legally significant racially polarized voting and just simple polarized voting?

A. Now, I've written on this, but I'm not a lawyer, so I don't really know that you want me to answer this.

Q. Well, I'd like you to because I think you've explained it before. Is there a difference between significant racially polarized voting and substantial racially polarized voting?

MS. BRANNON:

I'm just going to object. I'm going to object to the extent that calls for a legal conclusion.

MR. FARR:

Your Honor, I'm just asking her for her opinion as an expert in the area of racial polarization. She understands the

two different types of racial polarization.

THE COURT:

Well, the question on the floor right now, is there a difference between significant racial polarization and substantial racial polarization, you did rephrase your question. You removed the words "legally sufficient," so I'm going to overrule the objection.

So the question is, is there a difference between significant racial polarization and substantial racial polarization, if you have an opinion on that.

THE WITNESS:

Between significant and substantial?

THE COURT:

Is -- that's -- isn't that your question, sir?

MR. FARR:

Yes, it is.

THE COURT:

Okay.

THE WITNESS:

I can't think of one.

MR. FARR:

Okay. Let me pull up a deposition that Dr. Handley gave in the Ohio Randolph Institute case on December 12th, 2018.

TRIAL TECH:

(Complied.)

BY MR. FARR:

Q. Can you see that on your screen, Dr. Handley?

A. I can.

Q. And were you an expert witness in that case?

THE COURT:

You need to know the case again?

THE WITNESS:

I need to know which case this is.

BY MR. FARR:

Q. Well, it says it's your deposition on the front page, correct?

A. Yes. I believe this is my deposition and I believe I know what case it is.

Q. Yes. And you remember being cross-examined by my law partner, Phil Strach, in that case?

A. I do not.

Q. Okay. Well, let's turn to page 104 of that exhibit. And I'll represent to you, Dr. Handley, this is a series of questions that my partner, Phil Strach, asked you in this deposition. I'm going to read the question and I'd like for you to read the answer. Would that be all right?

THE COURT:

Give us a line reference.

BY MR. FARR:

Q. I'm going to start with line 21. Are you ready?

A. Yes.

Q. So the question is "All right. Thank you. Are you aware of the difference between statistically significant racially polarized voting and legally significant racially polarized voting," and your answer is --

MS. BRANNON:

Your Honor, I'd like to object. I think this is improper impeachment. I don't think he's laid the foundation.

THE COURT:

Sir, you want to respond? Did you

hear her objection?

MR. FARR:

I think I did and I don't know really what the substance of the objection is. I'm impeaching the witness on a previous deposition that she gave to significant racial polarization versus substantial racial polarization.

THE COURT:

She's correct. It's improper foundation. It is not -- it's improper impeachment. It is not a prior consistent statement. The questions are different and you made them different. Objection sustained.

MR. FARR:

Your Honor, may I try again?

THE COURT:

You may, but take the deposition down.

TRIAL TECH:

(Complied.)

BY MR. FARR:

Q. Dr. Handley, do you agree that substantively significant racial polarization

means that the minority and the whites are voting for different candidates?

A. Yes. Yes.

Q. Do you agree that it would rise to the level of legal significance if the minority preferred candidate usually lost?

MS. BRANNON:

Again, Your Honor, I'm going to object. That calls for a legal conclusion.

MR. FARR:

I'm not asking for a legal conclusion. I'm asking for her -- the way she understands racial polarization.

THE COURT:

The question is legally significant. That is a legal question. That is a question of a legal opinion. The objection's sustained.

MR. FARR:

Well, may I ask the question again, Your Honor? I'll take the word "legal" out.

THE COURT:

And you did that and you are going

to receive the same result. You are going to have improper impeachment. You can try again, but if the word legally is in the prior question, it's -- you're not -- it's not a prior inconsistent statement.

MR. FARR:

I'm sorry, Your Honor. I apologize.

THE COURT:

Okay. No worries. Go ahead.

BY MR. FARR:

Q. So my question is would polarization rise to the level of significant polarization if the minority for a candidate usually lost?

A. Polarization is -- let's see. Let's see how -- I suppose you could say that one contest being polarized is less significant than more contests being polarized.

Q. Which if the -- if the white candidates did not vote in sufficient numbers to defeat the black candidate, preferred candidate of choice, would you consider that to be significant racial polarization?

A. I think it would depend on the circumstances. So if you had a district that -- I can't really answer that as a hypothetical.

Could you give me --

Q. Let me try again. Explain why you concluded that voting in the State of Louisiana was racially polarized while also saying that the voting in Congressional District 2 was not racially polarized?

A. So in the 15 contests that I looked at statewide, in every case the black and white voters would have elected different candidates.

In Congressional District 2, in many cases the white voters supported the incumbent black candidate, Cedric Richmond.

Q. So the white voters in Congressional District 2 did not vote as a block and defeat the black voter, the preferred candidate?

A. In Congressional District 2 when Cedric Richmond was the candidate, that's correct.

Q. Okay. And whites are the majority in Congressional District 2?

A. I beg your pardon?

Q. Are whites the majority in Congressional District 2?

A. They are not.

Q. Okay. Are there areas in Louisiana

where the level of polarization is higher and lower?

A. That the what -- I'm sorry. Repeat the question.

Q. Yes, ma'am. You reported on statewide polarization rates for statewide elections; is that correct?

A. Yes.

Q. Are there some areas of the state where the polarization rate is higher than in other areas of the state?

A. It depends on what you mean by "polarization rates." You mean the number of contests that --

Q. No.

A. -- are polarized; is that what you mean?

Q. I mean the difference between the number of whites and blacks who vote for the black preferred candidate of choice.

A. It is the case that there is more white crossover vote in Congressional District 2 than anywhere else that I looked in the state.

Q. Okay. And could there be other areas of the state where the crossover vote is

higher than the -- than the average?
A. Not at the congressional level or statewide. There may be pockets.
Q. Okay. When you did your study on racial polarization, you did not do a parish-by-parish study on polarization rates?
A. That's correct.
Q. Okay. I'll move on to another subject now, Dr. Handley.
When you talk in your report about voting age population for African-Americans, are you referring to any part black voting age?
A. It depends. I report of any part black and the DOJ definition of voting age population in my rebuttal report and in the supplemental report.
Q. Okay. So let's turn to PR-12.
A. I'm sorry. To what?
Q. I'm sorry, ma'am. Your initial report, which I think is labeled PR-12?
A. Oh, okay.
Q. And -- and can you turn to Table 3, which is on page 10?
A. (Complied.)
Q. Are you there?

A. I am.

Q. And you see on footnote 14 you say, "Black voting age population has been calculated by counting all persons who checked black or African-American on their census form"; is that correct?

A. Yes.

Q. And in making that footnote, were you referring to any part black?

A. Yes.

Q. Okay. Thank you. And using the census category part black, did that result in a higher black percentage in the districts you are looking at than if you used a single race black?

A. Yes.

Q. Now, I want to move to some questions about your appendices. And I think this is kind of a refresh or review of Appendix A which is your study of statewide elections; is that correct?

A. Yes.

Q. Appendix B was your study of percentage of black and white voters for each candidate in congressional elections from 2016 to 2020?

A. Ultimately, 2021.
Q. Okay. That was in your report you just gave us; is that correct?
A. Yeah.
Q. All right. Fair enough. And that was under the plan that was enacted in 2011?
A. The congressional elections were, yes.
Q. Okay. And then in Appendix C through G, you do a polarization study on all of the districts in the plan that was enacted in 2022; is that correct?
A. Almost. I didn't look at District 1.
Q. Oh, you didn't look at Congressional District 1?
A. That's correct.
Q. I was going to ask you just out of curiosity, why didn't you look at that?
A. Because it doesn't overlap. It supplies no voters to Illustrative District 5.
Q. Okay. And you didn't report a similar analysis for Mr. Fairfax's illustrative -- illustrative plans, did you?
A. I'm sorry. Repeat that.

Q. Did you do a similar report for the illustrative plans that Mr. Fairfax has proposed in this case?

A. A similar report? I'm sorry.

Q. Yeah. As to what you did for the 2011 congressional districts, did you do something like that for the districts in Mr. Fairfax's illustrative plans?

A. No.

Q. You didn't report that. Did you ever do that and not report it?

A. No.

Q. Okay. Now, I want to go through some terms to get the question I want to ask you, Dr. Handley.

Is it fair to say a majority black district, as the U.S. Supreme Court has defined it, means a district where the black voting age population is an actual majority?

MS. BRANNON:

Objection. Again, Your Honor, isn't that a legal conclusion?

THE COURT:

Sir?

MR. FARR:

1 May I rephrase it?
2 THE COURT:
3 You may.
4 BY MR. FARR:
5 Q. Dr. Handley, have you read the
6 Supreme Court's decision?
7 A. Many years ago.
8 Q. Do you recall how the court defined
9 the majority black district in that case?
10 A. I believe so.
11 Q. And how did they define it?
12 A. A majority black district would be a
13 black district in which the voting age population
14 was majority black at least 50 percent plus
15 1 percent.
16 Q. Okay. And a crossover district is
17 a -- is what?
18 A. A crossover district, you'll have to
19 tell me.
20 Q. Okay. Is it fair to say a crossover
21 district is a district where the black population
22 is not in the majority, but they can elect their
23 preferred candidate with the help of white
24 crossover voters?
25 A. I don't use that term. I think it

might have come out of some recent case. If you want to define it that way, you can.

Q. Okay. Well, are there districts where black voters are able to elect their candidate of choice, even if they are not a majority?

A. Yes.

Q. And in those instances, do they -- is the candidate of choice selected because there are white voters crossing over to help elect the black candidates preferred -- the black minority group preferred candidate?

A. Yes.

Q. All right. Now, have you -- have you written about something called an effective district?

THE COURT:

I'm sorry. I missed that. The what district?

MR. FARR:

I'm sorry, Your Honor.

BY MR. FARR:

Q. Have you written or described some districts as being effective districts?

A. Yes.

Q. And can an effective district be a district that has less than 50 percent black voting age population?

A. Yes.

Q. And an effective district means that the -- that the district provides the black community an opportunity to elect their candidate of choice; is that correct?

A. Yes.

Q. And that said, even when they are not a majority of the district, it could be?

A. It could be the case, yes.

Q. Now, in other cases, Dr. Handley, have you ever done something called a functional analysis to determine whether a district could provide African-Americans with the opportunity to elect their candidate of choice with a black percent that's under 50 percent?

A. Yes.

Q. And did you do such a study in this case?

A. I did not.

Q. All right. I want to turn now to some questions about your rebuttal report. Please feel free, ma'am, to pull that up in front

of you if it will be helpful. I don't know that I'll be quoting any pages, but feel free to respond to that if that helps your testimony, all right?

A. Yes.

Q. Now, you are familiar with the report Dr. Lewis submitted for the defendants analyzing crossover voting in the illustrative plans?

A. I read Dr. Lewis's report.

MR. FARR:

Okay. And, just for the record, I believe that's Exhibit LEG 2 is the report I'm referring to.

BY MR. FARR:

Q. So you had an opportunity to review Dr. Lewis's report?

A. I read Dr. Lewis's report, yes.

Q. And in your rebuttal reports, correct me if I'm wrong, the only experts you provided rebuttal testimony to are Dr. Solanky and Dr. Alford; is that correct?

A. Yes.

Q. And more specifically, you did not submit a reply to Dr. Lewis's report?

A. Correct.
Q. So if someone in this case asserted that districts with the black voting age population below 50 percent was -- will give the black community an equal opportunity to elect their preferred candidates of choice, you have no basis to disagree with that statement, do you?
A. If you mean Dr. Lewis convinced me of that, I would have to disagree with you. No, he did not convince me that a district with less than 50 percent was equal.
Q. But you yourself have not done a study to see if a district which was less than 50 percent would provide an equal opportunity to elect a black for a candidate; is that right?
A. In this case, that's correct.
Q. So you've testified about Mr. Fairfax's illustrative plans; is that right?
A. Yes.
Q. Have you studied the plans drawn by Mr. Cooper?
A. No.
Q. Okay. I'll -- let's turn. I just have a few more questions, Dr. Handley, and I'll be done.

Could you turn back to your original report, which is PR-12, and I'd like you to look at Table 1 on page 6.

A. (Complied.)

Q. Are you there?

A. Yes.

Q. And you selected the statewide races that you would study in your report and there's 15 races that are listed there; is that correct?

A. The 15 races listed there are the contests that I analyzed, that's correct.

Q. Okay. And you didn't include Governor Edwards' election in 2015 or 2019; is that a fair statement?

A. That's correct. There were no black candidates in those contests.

Q. But -- but do you think that Governor Edwards was the preferred black candidate of choice for the black community?

A. Yes. I saw Dr. Alford's report that produced Dr. Palmer's numbers, so yes.

Q. Okay. And then also, you didn't include in one of the races you studied the 2016 presidential election involving Secretary Clinton and Senator Cain; is that correct?

A. That's correct.
Q. Please bear with me, Dr. Handley. I'm trying to find one of your charts. I think we can look at Table 4 on page 11. Are you there?
A. Yes.
Q. You say, Dr. Handley, in order to determine the effectiveness of congressional districts in the enacted plan -- and then I think moving over, you did the same thing on page 13 for the illustrative plan; is that a fair statement?
A. Yes.
Q. And so all your report is who won or lost the election?
A. No, not exactly. The percentage of cases that -- the percentage of elections are in the first column in which the black preferred candidate either outright or would have proceeded to a runoff.
Q. Okay. And then what was the second column?
A. The percentage of two candidate contests in which the black preferred candidate won obviously with more than 50 percent of the

vote.

Q. And you didn't report the vote totals or the margins of victory in any of those elections; is that a fair statement?

A. No. It's not -- it's not listed in these tables, but it's certainly listed in my appendix.

Q. Okay. I'm sorry. I missed that. I apologize.

Did you report the relative fundraising by the candidates in the elections that you selected?

A. Did you say fundraising?

Q. Yes.

A. No.

Q. All right. Have you ever talked more about it's better to use a more highly visible race to calculate racially polarized voting than one that's not visible?

A. I probably have. I agree with that statement.

Q. Okay. So what would be more visible to judge racially polarized voting, the governor's elections or the Secretary of State election?

A. I would use both.
Q. Excuse me?
A. I would use both. If they had a black candidate, why would I have to choose one or the other?
Q. Would you have an opinion on which is more visible to the voters of Louisiana?
A. I would not, not if one, for example, included a black candidate and the other did not.
MR. FARR:
Okay. That's all, Your Honor. Thank you.
THE COURT:
Any redirect?
MS. BRANNON:
Yeah, just some brief redirect, Your Honor.
REDIRECT EXAMINATION BY MS. BRANNON:
Q. First, can we call up demonstrative Exhibit 1.11? Dr. Handley, are you familiar with this table?
A. Yes.
Q. Does this show the voting age population for all parts black and then also the

voting age population under the DOJ definition in Illustrative District 2?

A. Yes.

Q. Was your analysis any different about the effectiveness of Illustrative District 2, depending on the definition used for the black population?

A. No.

Q. Was your analysis any different about the effectiveness of the congressional districts enacted -- the enacted map, depending on what definition of black is used?

A. No.

Q. Okay. And counsel asked you about performing a functional analysis.

Why didn't you perform a functional analysis at this time in this case for your report?

A. I did perform a functional analysis. A functional analysis is simply looking at how black preferred candidates would -- whether they would have an opportunity -- whether black voters would have an opportunity to elect candidates of choice, depending on the voting patterns of blacks and whites, as opposed to just the voting

age population. That's what this is. Not this chart, what the effectiveness tables were.

Q. You can take that down.

A. I'm sorry.

Q. And did you do that for an analysis of the illustrative plans?

A. I did a functional analysis of several illustrative plans as well as the enacted plan.

Q. Correct. And we have already discussed that that information is in your chart -- in your report, correct?

A. Yes.

Q. And as part of the -- your analysis of the enacted plan, do any of the populations in the enacted plan have a voting age population of over 50 percent besides Congressional District 2?

A. In the enacted plan?

Q. Yes, in the enacted plan.

A. No.

THE COURT:

Under either definition or which definition?

MS. BRANNON:

Under either definition.

THE WITNESS:

No.

BY MS. BRANNON:

Q. Do any of the congressional districts in the enacted plan conform to allow black voters to elect their candidate of choice besides Congressional District 2?

A. No.

Q. Can we turn back to the Appendix C? Not Appendix C, revised Appendix C.

MS. BRANNON:

Just bear with me a minute, Your Honor. It is Illustrative District 1. -- Exhibit 1.6. And actually, can you turn to revised Appendix C in your report, which is in your binder? We can take this down.

TRIAL TECH:

(Complied.)

MS. BRANNON:

And, for the record, that's exhibit PR-92.

BY MS. BRANNON:

Q. In looking at Appendix C that's in the report, can you just refresh your

recollection as to exactly what is contained in that document?

A. You mean corrected Appendix C?

Q. Yes.

A. So this is statewide elections recompiled, reconfigured to conform with the enacted district boundaries and racial black voting analysis of the five districts that would contribute voters to the Illustrative District 2, illustrative -- additional opportunity district in Illustrative Plan 2 or Plan 2A?

Q. Is it an evaluation of the enacted plan?

A. Yes.

Q. Okay. Can you go through that, the review of that document?

MS. BRANNON:

And maybe we can pull it up on the screen, Appendix C from Exhibit R-92, PR-92. Keep going, and then keep going.

TRIAL TECH:

(Complied.)

MS. BRANNON:

Okay. Yeah, Appendix C. There.

TRIAL TECH:

(Complied.)

MS. BRANNON:

That's the right thing.

BY MS. BRANNON:

Q. This is from your report, correct?

A. Yes.

Q. Okay. Can you explain whether all of these elections are polarized or not in your analysis of the enacted plan?

A. They are all polarized for all of the districts, I believe, including District 2. If you could turn that, they are all polarized for all enacted districts, including District 2.

Q. And would a BVAP of less than 50 percent allow black voters to elect their candidate of choice in Congressional District 2 in the enacted plan, or not the enacted plan, or just based on your analysis, would --

MS. BRANNON:

Let me rephrase the question, Your Honor.

BY MS. BRANNON:

Q. Would a BVAP of less than 50 percent allow black voters to elect their candidate of choice in Congressional District 2?

A. I don't know. The -- the district was 58 percent. Oh, in Enacted District 2, it's still 58 percent, so I can't answer that for that, but in the illustrative plan, it's 50 percent and it still allows the black voters to elect their candidate of choice.

Q. Do you think a BVAP of less than 50 percent in Congressional District 2 would allow black voters to elect their candidate of choice?

A. It's possible.

Q. Okay. And in looking at this analysis --

MS. BRANNON:

Maybe can we go back to Appendix B, revised Appendix B, which is in 92 -- 91? I'm sorry, Your Honor. No. Can we go to Exhibit PR-87, and then could we go to revised Appendix B at the end of this document?

TRIAL TECH:

(Complied.)

MS. BRANNON:

Maybe we don't have it. This is just -- and can we go down to look at the

next page?

TRIAL TECH:

(Complied.)

BY MS. BRANNON:

Q. And just looking at -- for example, at Congressional District 3, can you just briefly describe the white crossover voting that you found in -- when looking at Congressional District 3?

A. So the black preferred candidate in 2020 was Ryland Harris. He received somewhere between 64 and 69 percent of the black vote and he received somewhere in the neighborhood of 1.7 to 6 percent of the white vote.

Q. So that's a low amount of white crossover vote?

A. That's a very low amount of white crossover vote, yes.

MS. BRANNON:

Your Honor, I have no further questions.

THE COURT:

Okay, Dr. Handley. Thank you, ma'am.

Okay. We are going to stay on the

record until 11:30. The court has a pretrial conference at 11:30, so let's plow through. If somebody needs to use the restroom, you can certainly -- you are not going to bother me.

MS. OSAKI:

Good morning, Your Honor. I'd like to also enter an appearance. My name is Samantha Osaki, that's O-S-A-K-I, for the American Civil Liberties Union for the Robinson plaintiffs.

The Robinson plaintiffs will now call Dr. Dorothy Nairne.

DOROTHY NAIRNE, Ph.D, after having first been duly sworn by the above-mentioned Court Reporter did testify as follows:

THE COURT:

Good morning, ma'am. You'll need to adjust the mic.

THE WITNESS:

Good morning. Good morning, can you hear me?

THE COURT:

Yes, ma'am.

EXAMINATION BY MS. OSAKI:

Q. Good morning, Dr. Nairne.

A. Good morning.

Q. To start, could you please state your name for the court?

A. My name is Dorothy Nairne.

Q. And how do you identify racially, Dr. Nairne?

A. I am black. I am African-American.

Q. What town and parish do you live in, Dr. Nairne?

A. I live in Napoleonville, Assumption Parish.

Q. And how long have you lived at your current address?

A. It's a family home that I've visited all my life and I've been there full-time since 2017.

Q. And before 2017, how long have -- have you and your family traced your roots in Louisiana?

A. For generations. My mother's, mother's, mother's mothers and fathers were enslaved here in Louisiana in Assumption Parish.

Q. Could you please tell us briefly

about your education and career history, Dr. Nairne?

A. I had the benefit of going to the University of Wisconsin -- go Badgers -- and then I went to -- I studied journalism and African-American studies, then I lived in Atlanta and went to Clark Atlanta University where I got a master's in African-American studies and a PhD in economic affairs and development.

Q. And could you please describe what you currently do for a living?

A. I have a start-up business here in Louisiana that is focusing on glass recycling and taking the glass, turning it into sand and doing stormwater management and Mardi Gras beads so that we can create jobs for people coming out of prison.

Q. Thank you, Dr. Nairne. Do you belong to any civic, nonprofit or political groups?

A. I'm very active with the NAACP, with the Urban League, with Climate -- Weather For Climate and also with other start-up organizations like Fund 17 and there's one called Flight and together Louisiana and together

New Orleans.

Q. So do you consider yourself to be active in your community?

A. I am very active.

Q. Dr. Nairne, could you please describe the role that race has played in your family since your family has lived in Louisiana?

A. So first, my grandparents were on -- they were sharecroppers on different plantations in Assumption Parish, and so my grandfather could read, so he used to read to all of the other sharecroppers who couldn't read and also help them with their money.

So my grandmother used to tell stories about how on the plantations they were paid with jitney, so they would try to pay people different money so you could never get off the plantation.

So I've got that long background where my grandmother always wanted to get off the plantation and my mother did. My family, her family poured into her where she was able to go to school beyond the 6th grade all the way in New Orleans because there was no school in Assumption Parish for black children. So they

had to walk from grades one until six probably five miles each way. And the white children who were in school had the bus, all of these public schools. So my mother would tell gross stories of being spit on from the school bus and then having to go all the way to New Orleans to go to school beyond the 6th grade.

Q. Are you a registered voter, Dr. Nairne?

A. I am a registered voter.

Q. Are you registered to vote at your current address?

A. Yes, I am.

Q. Do you regularly vote in congressional elections?

A. I vote, yes.

Q. Do you plan on voting in future congressional elections?

A. Yes, I do.

Q. Thank you. I'd next like to discuss your involvement with this case. What motivated you to be a plaintiff and a witness today?

A. I grew up with the notion that where much is given, more is expected. I have been completely privileged in having an education and

knowing people in Assumption Parish, in Napoleonville who haven't had those opportunities. So for me, it's a moral imperative to give as much as I can for the people who live around me who want justice, who want racial equality and who want opportunities.

Q. Thank you, Dr. Nairne.

Let's talk a little bit about your current congressional district. Do you know what your current Congressional District is?

A. I am in District 6.

Q. And who is your current representative?

A. Graves, Garrett Graves.

Q. What is your understanding of your Congressman Graves?

A. He is a white man.

Q. In general, do you follow your congressman's actions?

A. I follow him and I have contacted his office on several occasions.

Q. In your affidavit, you note that you believe that your congressmen does not advocate for your community's needs. What did you mean by that?

A. I'm very active, as I stated, in my community and also participating widely on Zoom or for policy conferences; and I haven't seen him at any events, whether for King day, Juneteenth day or just to discuss the plight of the black community.

Q. Have you seen him campaigning in your community?

A. No. No. No. I have not seen him campaigning during the several elections that I've been around for.

Q. Thank you, Dr. Nairne. I'd now like to discuss the Enacted Maps.

MS. OSAKI:

May we please pull up the enacted -- the enacted map under HC-1, which has been moved as Plaintiffs Exhibit PR-15 on page 48.

TRIAL TECH:

(Complied.)

BY MS. OSAKI:

Q. Dr. Nairne, are you familiar with this map?

A. Yes, I am.

Q. Do you know which district you

reside in under this map?

A. It's still unclear, so there's one election where I went from school to school to school looking for, you know, am I voting, can I vote, where am I voting and they turned me away, so I learned that I was in District 6 and I'm right there on the cusp; so some of my neighbors vote in District 2 and some in District 6, so it's confusing, it's chaotic, and it doesn't help us to organize or plan.

Q. What do you mean by "on the cusp"?

A. So my house is like literally where my neighbors across the street are in District 2, so they were able to vote, but I wasn't.

MS. OSAKI:

May we please zoom in on that area?

It's Assumption Parish in Congressional District 6.

TRIAL TECH:

(Complied.)

MS. OSAKI:

Thank you.

BY MS. OSAKI:

Q. Dr. Nairne, based on your living experiences looking at this map, what is your

impression of your district, Congressional District 6?

A. So as small as Assumption Parish is, it's a big land mass but small community. We are not able to organize or able to mobilize or able to voice our -- and organize our voice in Assumption Parish.

Q. And could you describe geographically what areas your community in Assumption Parish convenes with in Congressional District 6 of this enacted map?

A. Sure. So a lot of the work that I do is with people of the river parishes: St. John, St. James, St. Charles and Jefferson and Orleans Parish. And so when it comes time to discuss candidates and voting, I'm -- I'm silent, I have nothing to say because they are in one district and I'm in another.

Q. So under Congressional District 6, you're the -- can you describe some of the parishes that you would be linked with here?

A. So St. Mary's, Iberville. I -- I have absolutely no alliance there, no community members there in those parishes.

Q. I'd like to talk a little bit more

about that. Based on your living experiences, how would you describe some of those communities that are -- that are included on circling here?

A. So a lot of the communities' work that I do is with the river parishes where we do a lot of work around environmental justice and racial justice and looking at cancer alley and looking at just what's happening with people's living experiences as well as with HIV, with crime and with how we improve each other's lives.

So I don't work with people within Terrebonne or the other parishes, so I'm kind of a sore thumb standing out there because we work together, but then we don't vote together.

Q. I see. So it sounds like you are saying you are not as familiar with these that you are included with?

A. Yes.

Q. Okay. Now, under this enacted plan and based on your living experiences as a resident of Congressional District 6, do you believe your interests would be fairly represented?

A. I do not believe that my interests are represented.

Q. And why is that?

A. I feel like I'm alienated, that I don't have associations and groups that I would work with. I would have to start over really to see who's where and doing what given this map that I'm looking at right now.

Q. Thank you, Dr. Nairne. I'd now like to discuss one of plaintiffs' illustrative maps.

MS. OSAKI:

Could we please pull up one of plaintiffs' illustrative maps which has been moved into evidence as PR-15 on page 47?

TRIAL TECH:

(Complied.)

BY MS. OSAKI:

Q. Dr. Nairne, are you familiar with this map?

A. Yes, I am.

Q. Under this Illustrative map, are you aware of what district you live in?

A. I would know -- I know where I live, but I would know what district that I am in. Sure enough, me and all my neighbors would be in District 2 according to this map.

MS. OSAKI:

May we please zoom in to Congressional District 2 on this illustrative map?

TRIAL TECH:

(Complied.)

MS. OSAKI:

Thank you.

BY MS. OSAKI:

Q. Dr. Nairne, geographically, what areas would -- would you be linked with in this Congressional District 2 of this illustrative map?

A. In this map, I would be with the people that I'm working with currently along with the river parishes all the way into Orleans and Jefferson Parishes. This maps makes sense to me.

Q. Do you have any personal connections with any of those other parishes?

A. I have personal connections, family, friends, colleagues in all of this -- this entire area.

Q. How would you describe communities in these areas, these river parish areas based on your personal knowledge?

A. We have a shared history, we have a shared cultural heritage, and we work together to make improvements along this area with community development where we are doing work around creating jobs for people, opportunities for young people, and trying to improve our health.

Q. What did you mean by that, "trying to improve your health"?

A. This area is known as cancer alley, and just so I work somewhat with the cancer index and looking at just neighbors across the street, next to me, even my own mother who had a tumor the size of a soccer ball in her belly; and so, you know, just cancer is everywhere and, you know, if it's in my own house, then is it in me too, so it really requires us to do quite a bit of work together.

Q. Can you describe some of the health -- health inequities that are similar along the river parishes? What about industries, are there industries that are similar along these communities?

A. Well, the sugar cane industry defined this area, this region, but now the sugar cane is mechanized so people don't have those

jobs anymore, so there's a lot of not much to do going on in Assumption, St. James, St. John and St. Charles.

Q. Now, under this new -- under this illustrative plan and based on your living experiences, do you believe that your community's interest would be fairly represented?

A. Under this map, yes.

Q. Why is that?

A. It would give us a base so that we can mobilize and so that we can organize and so that we have one collective voice so that we would have action together so we can move forward and improve, but not our communities, our households, our entire state.

Q. Based on your living experiences in Louisiana, does it make sense culturally, socioeconomically, historically or otherwise, for your community to settle under this illustrative map Congressional District 2 alongside these other river parish communities?

A. To me, it makes complete sense that we are in this district.

Q. Thank you. Finally, Dr. Nairne, how would you feel if a map like this illustrative

plan that is a map that enacts a second majority black congressional district were to be enacted into law?

A. I know exactly the households that I'm going to knock on their doors should this happen. There were a number of people -- so during the census and leading up to the elections for 2020, I was a block captain for Together Louisiana. So there were a couple of households that I knocked on their doors and they were like oh, good, you mean change is coming for us. So then when they see that changes are not real, their hopes are dashed. They are feeling like yet again you lied, some bad sense; no, I didn't lie to you. This process just takes a while.

So I know I would go to his home. This is somebody I've known all my life and just to see -- he's weathered and worn out and just to have him have a little bit of hope, wow, that would make my year, my day, my hour. So that's where I would go and say look, change is coming here to Assumption Parish, so we have some happy people who would have hope again in Louisiana.

MS. OSAKI:

Thank you, Dr. Nairne. No further

1 questions, Your Honor.
2 THE COURT:
3 Cross?
4 CROSS-EXAMINATION BY MR. WALE:
5 Q. Hi -- excuse me. Hi, Dr. Nairne.
6 Jeff Wales. I'm an attorney for the state, and
7 I'll be asking you a few questions today.
8 Dr. Nairne, you said you moved to
9 Louisiana in 2017; is that correct?
10 A. Yes, it is.
11 Q. So where did you live before that?
12 A. Well, I lived in South Africa.
13 Q. And -- and so where did you grow up?
14 Is that where you grew up, in South Africa?
15 A. No. I grew up between Milwaukee and
16 also between Louisiana where I would come in the
17 summer.
18 Q. So you would visit in Louisiana, but
19 you wouldn't come here full-time?
20 A. Correct.
21 Q. So when did you register to vote?
22 A. I registered to vote I think in
23 2017.
24 Q. And you are a registered Democrat,
25 correct?

A. Yes.
Q. And earlier you said something about being confused about where to vote. Did you find out where to go vote?
A. I did.
Q. So you are aware that the Geaux Vote App is where the Secretary of State lets people know where to vote?
A. Yes, I am.
Q. All right. And you live in Congressional District 6 currently, correct?
A. That's correct.
Q. And that your current congressmen is Garrett Graves?
A. Yes.
Q. And he is a Republican, correct?
A. Yes.
Q. And you testified earlier in your declaration that you are highly engaged, so you attend redistricting workshops around the state?
A. Yes, I do.
Q. And you've written letters to your congressmen, to Congressman Graves; is that correct?
A. I went to him regarding the

environment, so yes.

Q. And you've spoken about your advocacy and your work in the community.

Irrespective of the results of this litigation, will you continue to be engaged with the elected representatives who represent you?

A. Yes, I will.

Q. And regardless of what the map looks like now or will look like, you'll continue to advocate for things you care deeply about, correct?

A. Yes.

Q. In paragraph 11 of your declaration, you've stated that you have donated to congressional candidates. Can you tell me which candidates you donated to?

A. I donated to several candidates $5 here and $10 there.

Q. All right. And what is the affiliation of those candidates, the political affiliation?

A. Some are independent, a couple of green party, and a few Democratic candidates.

Q. Do you recall have you ever donated to the Democratic Congressional Campaign campaign

committee?

A. I'm not sure. Help me understand.

Q. Sure, sure. If I may, I'm going to use this system.

THE COURT:

You can use the document camera.

Mr. Wells, tell us what you are going to put up there before you just throw it up there.

MR. WALE:

Okay. Yes, ma'am. I'm going to show a document from the official government website from the Baton Rouge Federal Actions Commission, if I can get the -- did you turn it on?

BY MR. WALE:

Q. All right. Let me try again. Dr. Nairne, do you remember donating to a group called Act Blue?

A. I think I did donate to them, yes.

Q. Okay. So you would believe me if I said you had donated to Act Blue and that contained an earmark for the DCC, also known as the Democratic Congressional Campaign Committee?

A. Okay.

Q. Going back to your voting registration, you said that you are a regular voter, correct?

A. Yes.

Q. Did you ever miss an election?

A. There are so many, but I try to vote, especially locally.

Q. So it's possible that you have missed a few elections?

A. I'm pretty good at voting.

Q. Okay. And so, again, we still don't have a --

THE DEPUTY:

I'm texting them now.

BY MR. WALE:

Q. Okay. And I'm going to ask you, Dr. Nairne -- Dr. Nairne, if you remember voting in the December 2018 election that was for the Louisiana Secretary of State. It was an election between Secretary of State Kyle Ardoin and Gwen Collins-Greenup?

A. I don't remember, honestly.

Q. You don't -- you don't recall voting in that election?

A. No. I don't recall not voting

because that was a statewide election, correct?

Q. Correct.

A. Yeah. So I would not have been turned away from voting during that election.

THE COURT:

Just give us a second, Mr. Wale. She's contacted IT so they can troubleshoot it for us. Do you have any other questions you can go to?

MR. WELLS:

No. No, Your Honor.

BY MR. WALE:

Q. All right. It looks like there is light. Excuse me. Dr. Nairne, I'm going to show you a document from the Louisiana Secretary of State's office and I'm going to see if -- all right.

MR. WALE:

Well, zoom.

TRIAL TECH:

(Complied.)

THE COURT:

If you quit your day job --

BY MR. WALE:

Q. Thank you. So Dr. Nairne, I realize

the -- the first line over here is a little bit difficult to read. It's in script, but can -- can you read that for us, please?

A. Sure. As Secretary of State of the State of Louisiana, I do hereby certify that the annex hereto is true and correct voter registration information for the state of Dorothy Evelyn Nairne, and that's me.

Q. Thank you so much.

A. Uh-huh (affirmatively).

Q. And so I'm going to show you another page in here. And can you tell me what the top two lines say?

A. Did not vote 2021.

Q. Oh, I'm sorry. At the very top of the page?

A. Oh, okay. Assumption Parish.

Q. And even prior to that?

A. Louisiana Secretary of State voter election history report for Parish of Assumption.

Q. Okay. And you see about -- about eight election dates there?

A. Uh-huh (affirmatively).

Q. And do you see how many where it says you did not vote?

A. I see.
Q. All right. And how many elections did you not vote in?
A. So I voted in one, two, three, four, five, I did not vote in November 2021, July 2020, so I did not vote in three elections.
Q. Okay. And then the election I was asking you about in -- I'm sorry, in December of 2018, that was the election that was discussed earlier -- earlier by the expert. It was for Secretary of State between Kyle Ardoin and Gwen Greenup; you did not vote in that election, correct?
A. Well, I see now.
Q. Yes. And Kyle Ardoin, who won that election, is the defendant in this suit, correct?
A. Yes.
Q. So you did not participate in the election in which the defendant of this suit was elected?
A. Okay.
MR. WALE:
All right. That's all the questions I have. Thank you very much.
THE COURT:

Any redirect?

MS. OSAKI:

No redirect, Your Honor. Thank you.

THE COURT:

Okay. You may step down. Thank you for your help today, ma'am. Okay. We are going to be in recess until 1:30.

THE DEPUTY:

The court is now in recess.

(A short recess was taken at 11:23 a.m.)

THE COURT:

Okay. Please be seated. Good afternoon everyone.

Why don't we say who we are calling as our next witness because it needs to be put on the record.

Go ahead. Put it on the record who your next witness is and who you are, sir.

MR. CHAKRABORTY:

Good afternoon, Your Honor. Our next witness is Traci Burch, and I'm making my first appearance today.

I am Amitav Chakraborty on behalf of the plaintiffs.

THE COURT:

Okay. And we are waiting on the Zoom. Dr. Burch, can you hear us?

THE WITNESS:

Not yet.

THE COURT:

Can you hear me now?

THE WITNESS:

Yes.

THE COURT:

Your witness, sir.

MR. CHAKRABORTY:

Thank you.

THE COURT:

Wait. We need to swear her in. Sorry.

TRACI BURCH,

after having first been duly sworn by the above-mentioned Court Reporter did testify as follows:

THE COURT:

Now, your witness.

DIRECT EXAMINATION BY MR. CHAKRABORTY:

Q. Thank you. Good afternoon. Can you please state --

A. Good afternoon.

Q. Can you please state your full name for the record?

A. Dr. Traci Burch.

Q. And what is your educational background, Dr. Burch?

A. I am -- I first completed by undergraduate work at Princeton where I majored in politics and got a certificate in African-American studies, and I finished my PhD at Harvard in the Ph.D degree program in government policy.

Q. And what is your current occupation?

A. Currently, I am an associate professor of political science at Northwestern as well as a regents professor at the American Bar Foundation.

Q. And how long have you been a professor, Dr. Burch?

A. Since 2007.

Q. What are your principle areas of research?

A. Sorry. My principle areas of research include political behavior, political participation, barriers to voting and race ethnic politics, and I also focus on the ways that

interaction with the government can effect all those things such as participation, and I specifically have focused on how the federal justice system can effect various things.

Q. Thank you. And have you been published on any or all of these subjects?

A. Yes, I have been.

Q. Have you previously served as an expert witness?

A. Yes. I have testified at -- at trial in four cases and in -- at a deposition in an additional -- additional case.

Q. Did any of those cases in which you testified involve claims brought under the Voting Rights Act?

A. Yes.

Q. And was your testimony credited or accepted by the court in each of those cases in which you testified?

A. Yes.

MR. CHAKRABORTY:

Your Honor, pursuant to the Federal Rule 702 and the state Secretary of State parties, the Robinson plaintiffs would like to proffer Dr. Burch as an expert in

political behavior, political
participation and barriers to voting.
THE COURT:
Is there any objections?
MS. KHANNA:
No objections, Your Honor.
THE COURT:
Okay. Dr. Burch will be accepted
and be able to give testimony in the areas
of political behavior, political
participation and barriers to voting,
correct?
MR. CHAKRABORTY:
Yes, Your Honor.
THE COURT:
You may proceed.
BY MR. CHAKRABORTY:
Q. Mr. Burch, did you submit an expert
report as part of your work in this case?
A. I did. And could you excuse me for
a few minutes? I just need to close my door.
Sorry. Thank you. Yes, I did.
MR. CHAKRABORTY:
No worries at all. I'd like to
bring up on the screen, and just let us

1 know if you are not able to see it, what
2 has been premarked as PR-14.
3 THE COURT:
4 I don't know that you can screen
5 share.
6 THE DEPUTY:
7 We are supposed to be able to.
8 THE COURT:
9 Okay. I'm going to let you
10 disregard my technical input.
11 BY MR. CHAKRABORTY:
12 Q. Sorry, Dr. Burch. Just give us one
13 second.
14 Dr. Burch, are you able to see any
15 report on your screen?
16 A. Not yet.
17 THE DEPUTY:
18 Okay. Wait. Let's see.
19 THE COURT:
20 IT is coming. Is there any way you
21 can do a little bit with Dr. Burch until
22 IT gets here?
23 MR. CHAKRABORTY:
24 I can do a couple of questions.
25 THE COURT:

Okay. Great.

BY MR. CHAKRABORTY:

Q. Dr. Burch, just jumping into it a brief bit before we tackle the technical difficulties, did you submit a report for your work in this case?

A. I did.

Q. I'll show you briefly what has been premarked as PR-14, and it will be your expert report.

What did you set out to evaluate in your expert report?

A. So in my expert report, I was asked to evaluate the set factors of -- relevant to this case in Louisiana, particularly Senate factors five, six, seven, eight and nine.

Q. Thank you. And what materials did you rely on to reach your conclusions about those factors?

A. A wide variety of materials including my own analysis of the census data such as the data from the plaintiff census and the American Civil Liberties communities, various agencies of the court, demography literature, the legislative record including hearings, videos,

hearing of testimonies and road shows, other documents such as amendments and bills that were submitted, various news reports and -- and other public speeches by public officials.

Q. Thank you, Dr. Burch. I'd just like to pause there until we fix the issues.

THE COURT:

Do you think she's got a copy of her report that she could look at while you examine her? Because I have her report here. I can follow along.

MR. CHAKRABORTY:

We do, and I believe Dr. Burch does, but we were going to bring up a demonstrative.

THE COURT:

Oh. Help is on the way, Dr. Burch. Give us a minute.

MS. MCKNIGHT:

I'm sorry, Your Honor. We are going to try to log into the Zoom. We are going to try to log into Zoom at the same time to avoid a delay later on. Thank you.

THE WITNESS:

All right. I've got it.

BY MR. CHAKRABORTY:

Q. Thank you for your patience, Dr. Burch. So I'd like to jump back and -- and I know you were just talking a minute ago about the Senate factors that you examined. Are those factors displayed for you on the screen?

A. Yes, they are.

Q. And just as a reminder to the court and everybody here, which factors were those?

A. So I reviewed Senate Factor 5, the extent to which members of the minority group are suffering from the effect of different discrimination in areas such as employment, education and health that effect participation; Senate Factor 6, which revealed political campaigns; Factor 7, which is minority group representation in public office; Factor 8, which is about whether there's lack of responsiveness of the elected officials to the procedural needs of the group; and Factor 9, which is whether the state of the policy or practice is to take the position in that and is that the same.

Q. Thank you, Dr. Burch. I'd like to start with Senate Factor 5. Which specific areas of disparity did you evaluate as part of this

factor?

A. I examined education and other aspects of socioeconomic status such as employment and income. I looked at health, I looked at residents in housing, and I also examined the criminal justice system.

Q. Thank you, Dr. Burch. I'd like to begin by talking about education.

MR. CHAKRABORTY:

Matthew, can you please turn to the next slide?

TRIAL TECH:

(Complied.)

BY MR. CHAKRABORTY:

Q. Dr. Burch, what does this slide display?

A. So this -- this slide displays a -- a couple of the charts from my report in which I am documenting contemporary disparities in education. And on the left, this slide shows the difference in scores on standardized tests for Louisianians who are in 8th grade over time.

And for each map, for each graph, I'm sorry, the top one is for mathematics and the bottom is for English, and the white students are

at the top and the red dots and the blue dots -- blue crosses are black students. And, as you can see, there's a persistent gap over time and that determines the students' scores on these achievement tests, and that gap is pretty persistent and consistent over time.

Q. And what's displayed on the right here?

A. And so on the right, as you can see here, I -- this is just part of one of the charts that I have that shows educational attainment by race scores 25 and older, and white Louisianians are much more likely to have earned a bachelor's degree or higher than black Louisianians.

Q. Thank you, Dr. Burch. Based on these selected examples and other citings in your report, what were your conclusions about the existence and extent of educational disparities that exist in Louisiana between black and white populations?

A. Yes. So I concluded that there were still great disparities in education and educational attainment between black and white Louisianians, not only related to these factors that I state here, but also with respect to

1 persistent segregation in education as well; and
2 those factors, those disparities are given by
3 both historical and contemporary discrimination
4 in the education realm.
5 Q. Thank you.
6 MR. CHAKRABORTY:
7 Next slide please, Matthew.
8 TRIAL TECH:
9 (Complied.)
10 BY MR. CHAKRABORTY:
11 Q. Dr. Burch, what does this slide
12 show?
13 A. So this slide shows more evidence of
14 disparity with respect to socioeconomic status
15 between black and white men. And consistent with
16 the prior set of graphs, white Louisianians are
17 shown here in the print and black Louisianians
18 are shown here in the teal.
19 And as you can see on all of these
20 factors, black Louisianians are worse off than
21 white Louisianians. Unemployment rates, the
22 unemployment rate is nearly double from black
23 Louisianians. Family poverty is nearly three
24 times as high for black Louisianians than for
25 white Louisianians. White house -- Louisiana

households on average, median household income is tens of thousands of dollars higher than that of black Louisianians' households, and there's definitely disparity in terms as to ethnicity, vehicles, there is -- black households are more than four times or three times as likely, sorry, almost four times as likely in black households than white households.

Q. And based on these conclusions in your report, what was your conclusions about socioeconomic disparity between white and black Louisianians?

A. Again, I concluded that there are socioeconomic disparities that exist today and that those disparities relate to both contemporary and historical disparities between black and white Louisianians.

MR. CHAKRABORTY:

Next slide, please.

TRIAL TECH:

(Complied.)

BY MR. CHAKRABORTY:

Q. Dr. Burch, what information is displayed on this slide?

A. So this slide shows some of the

information that I wrote about with respect to disparity in housing.

Q. And what types of examples or disparity did you examine in your analysis of this factor or this -- this issue?

A. So in particular, I looked at disparity in -- in residents and where people live because it's so important to policies and -- and political participants.

And so here, you can see in the map on the left, I had a historical map that was used by the Homeowners Loan Corporation dated since the 1930s and 1940s. And several cities of Louisiana that -- and this map was used to determine lending and the risk of lending. Red areas typically are those that were high risk and -- and not suitable for lending and happen to be neighborhoods where black people lived.

And so looking at these maps and -- and these areas of segregation and -- and these historical maps as continues to present day, as you see on the left where it shows that there is still metro areas and cities in Louisiana that are highly -- marked by high segregated by race; and that includes New Orleans, the New Orleans,

Metairie metro area, Baton Rouge, the Shreveport/Bossier cities and Lake Charles, and those cities are -- are highly segregated by race as well.

Q. Thank you, Dr. Burch. Can policies effect -- I know you -- I just wanted to know, can government policies effect the -- the level and placement of segregation between black and white Louisianians in housing?

A. Yes. Even present contemporary policies or just voting decisions on where and how to build, especially as I give an example in my report about decisions about how to rebuild after Katrina. That coupled with other issues such as seeing the pace at which disaster relief was given effect the ability of black people to rebuild in areas that have been hurt by natural disasters, for example. So these areas -- so housing is effected in several areas.

Q. Thank you.

MR. CHAKRABORTY:

Please turn to the next slide, Matthew.

TRIAL TECH:

(Complied.)

BY MR. CHAKRABORTY:

Q. Dr. Burch, what's on this slide?

A. So these -- this slide discusses several of the disparities in health that I talked about in my report. And, in particular, we can see here in the left report -- chart that mortality for black Louisianians from diseases such as cancer, cardiovascular disease and diabetes is higher than that of those mortality rates for white Louisianians. Overall, as in the second slide, the disparities in health translate into a disparity in life expectancy.

So on average, white Louisianians -- white Louisiana men are about -- expected to live about seven years longer than black Louisiana men; and with respect to women, there's a large gap as well. White Louisiana women are expected to live about five years longer than black Louisiana women. Infant and child mortality for blacks versus white Louisiana children is higher as well.

Q. And can environmental factors contribute to racial health disparities such as these?

A. Yes. So in my report, I talk a lot

about both the fact that natural disasters can have differential effects and have had differential effects in terms of mortality on black versus white Louisianians, and I also talk about disparity related to exposure to pollution particularly in the area of Louisiana known as cancer alley which is between Baton Rouge and New Orleans.

And research has shown that for black residents in those areas that higher exposure to environmental pollution and the like is related to higher rates of COVID-19, asthma and -- and cancer.

Q. Thank you. So on this topic, would you say that black Louisianians have worse outcomes overall than white Louisianians?

A. Yes.

MR. CHAKRABORTY:

Next slide.

TRIAL TECH:

(Complied.)

BY MR. CHAKRABORTY:

Q. Dr. Burch, what does this slide display information regarding?

A. So this slide discusses disparities

with respect to the criminal justice system in Louisiana. And as you can see from this graph on the left, black Louisianians are about -- about a third of Louisiana's overall population but are over represented among prison, probation and parole populations. In fact, black representation in Louisiana's prison and parole population is double their representation in the overall population.

Q. And so what are your conclusions about the kinds of disparities that exist between black and white Louisianians in the realm of criminal justice?

A. That there are dramatic disparities in the involvement with the criminal justice system between black and white Louisianians with black Louisianians being much worse off, and these factors, these -- these disparities can't be explained by just crime rates alone and, in fact, are related to those that they are both historical and contemporary discrimination in the criminal justice system.

Q. And just to confirm. I know you just mentioned for criminal justice there, but would you say that all of the disparities that

you talked about today, you know, education, health, socioeconomic status and -- and criminal justice, all are tied to historical trends but also are exhibited currently and are existing disparities?

A. Yes. So -- so for all of the disparities that I mentioned, the research shows that both historical discrimination as well as contemporary discrimination by the state and other factors feeds and contributes to those areas.

Q. And finally, last question on this topic, Dr. Burch. All of these disparities, how do they effect political participation in black Louisianians in the state?

A. So, and I've done it for each factor that was in my report, but overall if you think about the fact that political science -- think about the decision to participate in politics to effect a rationale choice, we think that voters weigh cost and benefits of these disparities, the disparities of these factors tend to make voting much more costly. So it would effect the education, for instance, it's much more difficult for someone to -- having to navigate

bureaucracies and the like if they have lower educational attainment. It's difficult for people to get to a polling place if they don't have access to a vehicle or a -- or a household that has access.

The criminal justice system effects political participation because of loans and franchise laws. People aren't allowed to vote if they are serving a sentence in prison, for instance, and so all of these factors are interrelated, but also definitely have an effect on political participation and the literature shows that quite clearly.

Q. Thank you, Dr. Burch.

MR. CHAKRABORTY:

I'd like to move on to the next slide, Matthew.

TRIAL TECH:

(Complied.)

BY MR. CHAKRABORTY:

Q. I'd like to move on to -- ask you about your analysis of racial appeals and political campaigns. And before we get to this slide, what is a racial appeal?

A. So a -- a racial appeal in a

political campaign is an aspect of either a speech or a -- a campaign ad, for instance, that would prime voters to think about racial concerns when making decisions about candidates in policy. And those can be either implicit, which means that race isn't mentioned, but you could see code words or black exemplars, for example, that would prime or still prime words to think about race to make political decisions or they can be explicit, which means they refer for specifics for the race.

Q. And based on your experience and review of the relevant literature, are appeals effective or do they effect voting behavior?

A. Yes. Racial appeals are both explicit and implicit and have been shown to heighten the way voters pay attention to or think about race and -- and it also effects how voters think about candidates when they think about this issue.

Q. Did you examine the racial appeals in Louisiana?

A. Yes. I looked at a recent statewide campaign, which is the 2019 gubernatorial election.

Q. And what did you conclude about this race?

A. I found evidence of several of -- sorry. I'm getting feedback. I -- I found evidence of several campaign ads and statements that could be characterized as a racial appeal.

Q. Can you give us some of those examples?

A. Yes. So a prominent one has still -- and here is from a campaign ad that was run by the Eddie Rispone running for governor campaign. And in it there's several aspects that calls for (inaudible) they characterize racial appeal.

So, for instance, you have there in the middle a picture of a mugshot, a black that infers, activates on your particular serial type such as black commonality. You have an image of a candidate with all white constituents, and also you have the use of language such as sanctuary city and crimes that have been shown in particular to crime racial ads, among others.

Q. Thank you, Dr. Burch. What were your conclusions about the existence of racial appeals as it exists in Louisiana?

A. Based on the several examples that I

found from that political campaign, that racial appeals -- that there are still racial appeals that characterize these things in a political campaign.

Q. Thank you.

MR. CHAKRABORTY:

Next slide, Matthew.

TRIAL TECH:

(Complied.)

BY MR. CHAKRABORTY:

Q. I'd like to ask you about your examination of Senate Factor 7, which is the extent to which black Louisianians have been elected to public office.

Which elected offices did you evaluate in reaching your conclusions?

A. I evaluated several -- several offices as well as offices at the state and local levels as well.

Q. Let's start at the federal level. What did you find with respect to federal positions and black representation in those?

A. As shown up here, I -- I found that there's been associated destruction; no black senators and only four black Louisianians elected

to Congress at the -- at the federal level.

Q. And what about state and municipal positions?

A. Similarly, there have been no black governors or lieutenant governors in Louisiana, and as with respect to the state legislature, currently about a quarter of state legislative seats are held by black members. Louisiana mayor is less than a -- a quarter of all black -- black mayors are less than a quarter of all Louisiana mayors. State court judges are about 20.1 percent of all state court judges and a quarter of the elected court members are black as well.

Q. Thank you. What were your conclusions from the analysis of this factor of the intended representation of black Louisianians in office?

A. Given the fact that they're about a third of the population and it seems to be there is no -- none of the offices that I examined has there been a black representation of Louisianians. It's measured a third of that body or that group.

Q. Thank you.

MR. CHAKRABORTY:

Next slide, please.

TRIAL TECH:

(Complied.)

BY MR. CHAKRABORTY:

Q. Dr. Burch, did you look at the responsiveness of elected officials to the needs of black Louisianians?

A. I did.

Q. And which sources of evidence did you look to as part of that analysis?

A. I looked at my examination of -- of -- that I conducted for Senate Factor 5 as well as really the voices of black Louisianians themselves as represented in the road shows.

Q. I know we already covered your -- your Senate Factor 5 evidence. What have you learned from the latter that you reviewed the testimony of these road shows?

A. Consistently across different areas of the state, black Louisianians stood up at these road shows and discussed their concerns about race representation in their state and talked about how they felt like things haven't been improving. I have some examples here that

have been pulled from my -- my report that comes from the road shows where -- where people stood up and talked about how they felt as though they weren't -- they were overlooked, they weren't represented fairly and they were concerned about the lack of representation and concern for, in effect, the government policies that would help them throughout the state.

Q. Thank you. And so what were your conclusions based on these sources that you reviewed in response to the elected officials to the needs of the black Louisianians?

A. Based on the policies and the persistent gaps that I found with respect to Senate Factor 5 as well as based on voices of black Louisianians themselves, that -- that black Louisianians (inaudible) publicly elected officials were not responsive.

Q. Thank you, Dr. Burch.

MR. CHAKRABORTY:

Next slide, Matthew.

TRIAL TECH:

(Complied.)

BY MR. CHAKRABORTY:

Q. Dr. Burch, did you look at Senate

Factor 9?

A. I did.

Q. And what is Senate Factor 9?

A. Senate Factor 9 examines whether the legislature had proper justification listed for HB-1 and SB-5.

Q. And what source of evidence that you knew then did you examine to draw conclusions on this factor?

A. I looked at the legislative record, the hearings, the (inaudible) dates, the road shows, the bills, the amendments, amendments themselves, and I also examined some other public statements by legislators.

Q. And have you conducted an analysis for state records, either in your academic work or in other cases?

A. Yes, both.

Q. So based on your review of legislature statements, what are your conclusions about the -- this factor?

A. So I concluded that there were several factors that I laid out in my report that were advanced in various points that were important for justification that the legislature

was considering when discussing HB-1 and SB-5. Those would be the -- the minimizing the population deviation across districts, such as keeping parishes -- parishes and precincts together and getting no -- no -- not splitting previews when splitting a parish's compactness.

They did say at first that they were interested in these traditional legislative principals; however, when they were presented as maps, that performed better on the traditional legislative principles, that did not have -- that contained few majority-minority districts. They either, for the record, backed off from some of those traditional legislative principles or said that they were left.

Q. Thank you. I think you briefly touched on it. Can you provide just one example of such a shifting justification perhaps on the slide?

A. Yes. So, for instance, with respect to the population deviation, to hear Chairman Sklefani do one of several examples that write about making the population down to as close to the nearest person as possible to the possible district when -- later in the process, when

presented, I believe by -- in Amendment 88 as well as in Amendment 91 with maps that were actually lower population deviations but contain two majority-minority districts, for instance, made the statements backing away from those a commitment, saying that well, it's not -- you know, yes, this map is lower in terms of population, but that's not -- that's not as important as -- that's not the thing that matters like just difference is as important.

Q. Thank you.

MR. CHAKRABORTY:

You can take the demonstrative down and put up what has been premarked as PR-89.

TRIAL TECH:

(Complied.)

BY MR. CHAKRABORTY:

Q. Dr. Burch, I'd like to close by asking you a couple of questions about your supplemental report. Do you recognize this document?

A. Yes.

Q. And what is it?

A. It is the supplemental report that I

submitted.

Q. What does your supplemental report examine?

A. I was asked to examine the relationship between race partisanship.

Q. And what did you review in order to reach your conclusions on this topic?

A. The scholars, the scholars and literature as well as some -- as -- as well as an examination of registration of patterns, registration by race.

Q. And based on your review, did you reach any conclusions about the historical length between race and party and/or the contemporary relationship between the two?

A. Yes. So the literature itself tends to locate the link that there is -- that there is a link between race, racial attitudes and partisanship, and then the contemporary or the current, the substantiation of that starts with the assignment, real lineup of parties beginning in The New Deal and solidifying in the 1960s and resulting bill of rights. And over time, that realignment, particularly the realignment of white southerns away from the Democratic party

1 into the Republican party is a hallmark of
2 politics, obviously the civil rights throughout.
3 Moreover, I conclude that there's
4 growing strong evidence in the literature that
5 that relationship between partisanship and race
6 and racial attitudes is getting stronger and has
7 been getting stronger since 2008. Any phenomena
8 or the data show as well as the road shows that
9 trends are happening in Louisiana as well.
10 Q. Thank you, Dr. Burch.
11 MR. CHAKRABORTY:
12 Your Honor, at this time, I'd like
13 to introduce PR-14 and PR-89 into
14 evidence. They are Dr. Burch's main and
15 supplemental expert reports.
16 THE COURT:
17 Any objection?
18 MS. MCKNIGHT:
19 No objection.
20 MR. CHAKRABORTY:
21 And no further questions,
22 Your Honor.
23 THE COURT:
24 Cross-examination?
25 MR. CHAKRABORTY:

Thank you, Dr. Burch.

CROSS-EXAMINATION BY MS. MCKNIGHT:

Q. Good afternoon, Dr. Burch. I'm not sure if you can see me.

A. Yes, I can see you.

Q. I'm sorry. This is a bit awkward. It's an honor to meet you. I'll have a few questions for you this afternoon. I'm sorry, I can't look you in your face.

A. Okay. And I'm just grateful you guys were able to accommodate me.

Q. Absolutely. So Dr. Burch, I'd like to start with something you've written in the past which is that voters in a given racial or ethnic group cannot be assumed to share policy preferences. You wrote that, didn't you?

A. You'll have to show it to me.

MS. MCKNIGHT:

Okay. Let's bring up. This would be Burch 1, Mr. Williamson.

TRIAL TECH:

(Complied.)

BY MS. MCKNIGHT:

Q. Do you recall writing a book entitled Creating a New Racial Order?

A. Yes. I -- that was my co-authors book.

Q. Okay. And that -- I think I'll wait for him to bring up the cover of the book for you, Dr. Burch.

A. Uh-huh (affirmatively).

Q. I think Mr. Williamson just needs to share his screen.

THE COURT:

Can you give me the quote again? It's voters?

MS. MCKNIGHT:

Sure. Voters in a given racial or ethnic group cannot be assumed to share policy preferences.

THE COURT:

Thank you.

MS. MCKNIGHT:

Burch 1. Hold on one moment, Your Honor.

THE COURT:

That's okay. We are going to be patient today.

MS. MCKNIGHT:

Thank you, Your Honor.

BY MS. MCKNIGHT:

Q. Dr. Burch, we have before you an electronic version of your book entitled Creating a New Racial Order. Do you see that?

A. I do.

Q. And if we can flip to the next page, here's a copyright page for that book. Does this look right to you, Dr. Burch, copyright 2012 by Princeton University Press?

A. Yes.

Q. Okay. Now, Dr. Burch, this is an electronic version so you can see at the bottom there are a number of pages because it's electronic, but if we turn to the next page, find the quote, page with your quote on it, I'm not -- I've highlighted the section for you to see. Are you able to read that Dr. Burch?

A. Yes.

Q. Okay. So Dr. Burch, thank you for your patience. In the highlighted section, it's three lines down. Voters in a given racial or ethnic group cannot be assumed to share policy preferences. Do you see that?

A. Oh, wait. I'm sorry. You were -- I'm sorry. You put something over the whole

quote that -- if you could, just remove that bottom line so I can see it.

Q. Sure.

A. Okay. That is -- that is definitely not a (inaudible).

Q. You can take that down. Does that refresh your recollection that you thought in the past voters in a racial or ethnic group cannot be assumed to share policy preferences?

A. Yes, I agree with that.

Q. Okay. And now, your report in this case, does not examine whether a plaque voter in rural Louisiana will vote the same way as a black voter in urban Baton Rouge, for example, correct?

A. No. I examined research that looked at voting patterns by race.

Q. Okay. And your report does not examine white crossover voting that is white voters who vote for the candidates of choice of black voters, correct?

A. No. I'm looking at both party registration as well as the other people readers as to those kind of questions.

MS. MCKNIGHT:

Okay. Now, turning to your report,

this is PR-14 at page 25 through 28.
Mr. Williamson, we can just go to page 25, the header of the section.
Pardon me. I think you need to go PR-14, page 25, but unfortunately the numbers -- there you go.
TRIAL TECH:
(Complied.)
BY MS. MCKNIGHT:
Q. So, Dr. Burch, I heard you testify on direct that you believe there are still racial appeals that characterize elections in Louisiana. Did I hear you right?
A. Yes.
Q. Okay. So in reviewing the section Senate Factor 6, racial appeals and campaigns, over the past 30 years you identified only one candidate who made a racial appeal in an election, correct? And that candidate --
A. No. Could you switch to -- could you go to the next page, please?
Q. Sure.
A. So I have both during this gubernatorial campaign in the middle. I'm talking about Eddie Rispone here, but also, if

you go to the next page, I also have here, racial appeals that targeted -- that were run by the Louisiana Republican party and for -- for instance, the quotation at the bottom of that page that's from the -- the party not from Eddie Rispone and the next page is another racial appeal that was made by a different candidate.

Q. Okay. Let's turn to the next page so I can understand what you meant by that third example?

A. Uh-huh (affirmatively).

Q. And so the third example was which other candidate, Dr. Burch?

A. So here you have Conrad Apple was talking about -- that making the appeal that African-Americans should support Republicans better than Democrats because of issues regarding racial -- concerns about racial.

Q. Okay. And going back a page, those racials appeals had to do with a candidate for Eddie Rispone; is that right?

A. I think that the one for -- the second one was probably more general, but it probably referred in general to support of black people for (inaudible) Democratic parties.

Q. So I just want to make sure I understand, that the second one here, I'm seeing reference to candidate Rispone here and then 2019 gubernatorial race, are you referring to something else?

A. No. What I'm saying here is that in the RNC, the -- the Republican -- the Louisiana GOP coalition is with respect to John Bel Edwards. But the quote on the next page is more general.

Q. I see. And so are you aware whether candidate Rispone won or lost his election?

A. I believe he lost.

Q. And do you know whether the last two elections for governor, whether the candidate of choice for black voters won?

A. Yes. John Bel Edwards did win.

Q. Now, let's turn to another Senate Factor, Senate Factor 9. Now, I understand that Senate Factor 9, you studied whether the legislatures rationale for drawing its congressional plan was supported by the evidence or if it was quote, unquote, tenuous; is that right?

A. Is that an exact quotation from

somewhere?

Q. Well, the word tenuous is a quote from Senate Factor 9; is that right?

A. Yes.

Q. Okay. And so in doing your work on this report for Senate Factor 9, you developed an opinion that the legislature's rationale for drawing its congressional plan was tenuous, correct?

A. I don't know if I used those exact words. Can you show me where I said that exactly?

Q. Well -- well, let me step back. Is it your position that their rationale was not tenuous?

A. My position is that the rational was not supported by evidence or they would back off certain rationals, but I don't believe I ever said that whether it was tenuous or not.

Q. Okay. Okay. Well, I think -- I think it may make sense to just get to Factor 9, so you can understand my questions, you've written a very thorough report. I just want to make sure we are understanding each other.

So if we would turn to PR-14,

page 32. And so here, you begin your section on Senate Factor 9, tenuousness. Do you see that?

A. I do.

Q. Okay. In here, you write that the sponsors and advocates of two bills provided several justifications and you go onto show that you believe that they are proper justifications lack support; is that right?

A. Empirical support, yes.

Q. Okay. And now, in preparing your report you studied the legislative record related to redistricting this year in order to develop your conclusions, right?

A. I did.

Q. In fact, studying legislative history is part of your research practice. You've identified it in another part of your report in your background, correct?

A. Yes.

Q. Okay. And let me step back. When studying a legislative record to understand legislative intent, you don't want to cherry pick certain pieces of the record and ignore legislative priorities that have been repeatedly stated because you want to get a full picture of

the record; would you agree with that?
A. Yes.
Q. And your report quotes from the legislative record, correct?
A. Yes.
Q. You reviewed the state government affairs committee hearings, correct?
A. Yes.
Q. And you reviewed the Florida Bates, correct?
A. I did.
Q. And during the committee hearings and Florida Bates, the legislature repeatedly described the plan as a continuity of representation plan; isn't that right?
A. Not repeatedly. That actually started to enter the record at the end, and I believe I do have quotations to that effect in the report.
Q. Okay. Let's start with where you have quotations that effect in the report and then we will get to repeatedly so can you identify in your report where you have those quotations?
A. So I'm going to refer. I have my --

I have my report here so I'm going to flip through it and look.

Q. Take your time.

A. So on page 39, I have some information to that effect.

MS. MCKNIGHT:

Mr. Williamson, would you mind turning to page 39 so we can all follow along.

BY MS. MCKNIGHT:

Q. Is this the page 39 you are referring to or is it the exhibit number below?

A. It's the page yes, this is 39.

Q. Okay. Great.

A. So I write here, during the -- I believe it's the Florida debate which might be the one -- which I think might be the final transcript or close to it or represented that he was presenting the bill that day. He said that the primary criterion for drawing the congressional districts have become, quote, they honor traditions as best as possible, and this did create massive disapproval and so he -- and then later on in that moment he said that 1, HB-1 was designed to, quote, maintain traditional

boundaries. So yes, I do talk about the fact that has become a part of the (inaudible).

Q. Okay. So you quote -- you quote Representative Mickey, but where do you talk about that as becoming a priority?

A. So on page 39 I said, by the end of the process, a quarter of HB-1 in particular had shifted their legislative priorities. Instead of compactness or other measures, Representative Mickey stated a primary criteria for drawing congressional districts to come was to honor (inaudible) as best as possible to create this message was equal with the people. Representatives (inaudible) records of PB-1 prioritized the traditional ballots after looking at all the other criterias.

Q. Okay. And do you know when the legislative redistricting session began in Louisiana?

A. You mean with the road shows and everything else?

Q. The legislative redistricting session?

A. So they started holding road shows and hearings back in 2021, but did you mean such

as when the (inaudible) started?

Q. Correct.

A. That was in February.

Q. Would -- would you have any reason to disagree with me if I told you it was February 2nd?

A. I accept that. That's fine.

Q. Okay. So just to tie this up. Is this the only place where you reference traditional boundaries on page 39 of your report?

A. Let me see. There may be some other areas in which I talk about reference to traditional boundaries, but that's the one that comes to mind.

Q. Okay. None others come to your mind at this moment?

A. In the report --

Q. Yes.

A. -- as far as that -- that being a priority? No. Again, they had in each place they started out with a list of priorities up until the end, No. 1, was always the engagement of communities of interest and other kinds of -- and the other traditional redistricting format.

Q. Okay.

A. Again, the priorities (inaudible) and here the priorities by the end of this legislative -- legislative session shifted to when they were then emphasizing the appearance to the primary -- the primary criteria was now honoring traditional boundaries so yes, that's priority.

Q. I see. So since you -- you were concerned about the end of the process. Let's go to the beginning of the legislative session on redistricting and bring up PR -- well, before I do that, let me share with you. The parties have stipulated to transcripts of certain hearings, committee hearings and floor sessions, and so what I'm about to bring up for you is an exhibit that is a transcript that has been prepared by plaintiffs of the special session SGA committee transcript dated February 2, 2022. We are going to pull up PR-52 at page 7. And now, Dr. Burch, I'm looking at lines 9 through 16.

A. Uh-huh (affirmatively).

Q. And I'll offer for you that the speaker during this hearing is president of the Senate Page Cortez. In here he states, the third tenant or principle was as best possible to

maintain the continuity of representation. What do I mean by that, if means that if your district elected you and you've done a good job they also have a right to re-elect you. Conversely, you don't get to choose who your population is they choose you. If you didn't do a good job. They have the right to un-elect you. Do you see that?

A. I do.

Q. And does that refresh your recollection about whether the legislature identified continuity on representation on the first day of legislation?

A. Yes. I said I could recall that, but again, if you see here in the -- the quotation he cited it's not the top priority it's third so as I said before, those priorities shifted.

Q. I see. Well, let's go down to lines 23 through 25 on this same page. So this reads by President Cortez, so the next principle that I tried to adhere to was with something you-all heard on the road show many times called compactness. So does this refresh your recollection about whether President Cortez and the legislature discussed continuity of

representation before they even addressed compactness on the first day of the legislative session on redistricting?

A. Yes. They did.

Q. Okay. Thank you. I'm going pull up another exhibit for you. This exhibit is a transcript stipulated by both parties to the special session SGA committee transcript dated February 3rd, 2022. It's Exhibit PR-54 at page 4. And here, I'm starting at line 13 and going down into the next page, the Line 1.

Dr. Burch, we will highlight it for you and then let us know if you need us to zoom in at all. I'm going to read the first line and then paraphrase the rest. I -- I will stop so you can have a chance to review it, but here, I'll represent to you that the speaker is chairwoman of the Senate redistricting first Senator Hewitt and she said on the floor or in this committee at that time, we talked about continuity representation a lot in these hearings and we heard again at the road show one of the kind of talking points was elected officials should not choose their voters, voters should choose their elected officials and to that again,

I would respond by saying I respect the voters in this state and know that they are in the best position to vote an elected official in or out of office based on their performance. Dr. Burch, does this refresh your recollection about whether the legislature considered notion of continuity of representation early in the legislative session?

A. I never said they that didn't consider it early, I said it wasn't the top priority so if you look at it again you didn't show me what -- like before, you didn't show me what came before that and what order it talked about continuity in the legislative session so I don't really know -- so I can't really -- so I don't really know if I could agree like I said, before that, they prioritized what they had done and then they shifted priority.

Q. I see. And so, let me do one more example, Dr. Burch, and then we can -- we can start moving on. If we could bring up PR-71. Dr. Burch, this is a special session Senate full-floor debate dated February 8, 2022. And again, this is a Senate full-floor debate and I'm looking at line 16 through the next page on -- on

line 4, but we can just start on page -- sorry. On page 88, at line 16. And so here, I'll just read the first few lines. The next principle preserve the core of the prior districts to ensure continuity of representation. You know, we heard many times on the road show and the president spoke to this a little bit earlier on the bill and then it goes on to reiterate points about voters being able to vote in or out their elected officials. Do you see that, Dr. Burch?

A. I do.

Q. Okay. And would it surprise you to know that the phrase continuity appears more than 35 times in 13 days of transcripts in this case?

A. No.

Q. Okay. So in reviewing these hearing transcripts that are dated February 2nd, February 3rd, February 8th, and that you are not surprised that continuity was references more than 35 times in 13 days of legislative transcripts, does that refresh your recollection about the fact that the legislature repeatedly described the plan as a continuity of representation plan?

A. Again, it's not -- I never said that

I didn't recall that they talked about continuity representation, what I said is that that priority shifted across time. Even the last quote -- quotation you showed me. It began with the next as if that wasn't the first thing they talked about. And as I said, hereby the time we get to the end, that traditional redistricting principle aspect was -- what they arrived on as the -- as the top priority, but that was only after all the other ones such as compactness and even the example that I gave that are correct. There was the absolutely deviation was again, supplanted by or plans that had two majority, minority districts actually performed better on the metric, so I stand by what I wrote in my report that again, that -- those priorities shifted and by the end, that had to come and those quotations you showed me those were early on they were talking about other principles before they actually got continuity of representation.

Q. I see. And -- and even if it was a third principle on the very first day of the redistricting session, you did not examine continuity of representation and whether or not the legislature fulfilled their goal of

continuity representation, correct?

A. I looked at both the plan that was there as well as the -- the full plan and of course, the boundaries had to change a little bit, but as far as whether or not they got as close as possible to the old boundaries no, I didn't look at that. And I don't believe there was any discussion as far as whether that was the plan that brings change -- these changed the boundaries of all the plans that were available. So it wasn't -- so it's not in my report is a recollection of is an issue it's that they didn't really compare bills based on you know, whether that was a -- that was a statement that in terms of like how closely that -- that plan came than say, a different bill the computer might have observed.

Q. I see. So I'll represent to you that we have experts in this case who have submitted reports that the core retention score in this plan has been calculated to be 96 percent. I'll also represent to you that that is a higher score than any of plaintiff's illustrative plans. My question to you relates to the Senate factor of tenuousness. I

understand from your earlier testimony that you were trying to understand the legislature's priority in drawing it its plan and trying to study whether those priorities played out in the ultimate plan in the at past. I understand from your testimony just now, that you did no examination of continuity of the representation in your report, correct?

A. Right. That's not those figures aren't in the record.

Q. Okay. And you did not conclude in your report that the legislature's rational to draw a continuity of representation plan was quote, unquote, anyway, right?

A. No. I said that those plans lack empirical support and that the references you just made are in the record.

Q. Okay. But you would agree with me that the references I just made to the legislature describing continuity of representation as a goal those are in the records, correct?

A. Yes. In the way that I described.

Q. And I'm going to share a fact with you. Tell me if you agree or disagree or have

knowledge about it priority plan drawn in 2011 was pre-cleared by president's Obama's Department of Justice, correct?

A. That was in the record.

Q. So you would agree with me that that's a fact?

A. Yes.

Q. Now, in this case, you did not study whether the so-called tenuous was due to political as opposed to racial choices, correct?

A. The only references that I have in this section with respect to race are I do have a discussion about the extent to which there was a new census redrawing of two majority, minority districts also I reference race when I talk about dispersions that the Senators and members of the house made with respect to what they thought about minority voting or different parts of minority positions.

Q. Okay. So I -- I think you answered a different question and so pardon me for repeating. I believe it is just a yes or no question. You did not study whether the so-called tenuous that you found was due to political as opposed to racial choices, correct?

A. Yes. I believe I talked about ways in which they were discussing race.

Q. Okay. We will move on. Dr. Burch, you believe that the legislature should have drawn maps identifying black voters as a community of interest, correct?

A. I believe what I wrote is that black voters and other people themselves said that they constituted a community of interest.

Q. Okay. Is it your position that the legislature could use race as a proxy for a traditional districting criterion?

A. It's my understanding that based on the need to ensure representation that the legislature had to consider race.

Q. Okay. But you don't have an understanding about whether race can be used as a proxy for traditional districting criterion?

A. I never made that point. The only point that I'm making is that on the record, that was brought up on the record and actually, I believe I had some point to which the legislators agreed, so my -- my point really was to just put on the record that that was discussed.

MS. MCKNIGHT:

Okay. Thank you very much,
Dr. Burch. I have no further questions.
THE COURT:
Any redirect?
MR. CHAKRABORTY:
Yes, Your Honor.
REDIRECT EXAMINATION BY MR. CHAKRABORTY:
Q. Dr. Burch, just a couple of brief questions.
MR. CHAKRABORTY:
Can we pull up PR-52, Matthew? And can we please turn to page 7?
TRIAL TECH:
(Complied.)
BY MR. CHAKRABORTY:
Q. Dr. Burch, that middle area there, the third tender principle, do you recognize that as the portion that Ms. McKnight was representing earlier with you?
A. Yes.
Q. Great. Thank you. Can we please turn to page 5? And do you see, Dr. Burch, at the very top of this page where it reads let's start with Senate bill offered by President Cortez?

A. I do.

Q. And then you see President Cortez, the Senate president start his remarks that ultimately lead onto the portions that Ms. McKnight read out to you?

A. Yes, I do.

Q. And do you have any reason to doubt that Senate Bill 1, actually deals with state legislative redistricting?

A. I -- well, yes. That's S HB-5.

Q. Right. It doesn't deal with congressional redistricting such as SB-5 or HB-1?

A. That's right.

Q. Did any of those change your basic conclusion on Senate Factor 9, that the justifications afforded by legislators were tenuous?

A. No. Nothing that I put forward here changes what I wrote.

MR. CHAKRABORTY:

Thank you. No more questions.

THE COURT:

Okay. Thank you, Dr. Burch, let's take a 15-minute recess.

(A short recess was taken.)

THE COURT:

Okay. Be seated. Next witness.

MR. HAWLEY:

Good afternoon, Your Honor. Making my first appearance, I'm Jonathan Hawley. H-A-W-L-E-Y. I represent the Galmon plaintiffs, and the plaintiffs next call, Dr. Allan Lichtman will be joining us via Zoom. Good afternoon, Dr. Lichtman.

THE WITNESS:

Good afternoon.

DR. ALLAN LICHTMAN,

after having first been duly sworn by the above-mentioned Court Reporter did testify as follows:

DIRECT EXAMINATION BY MR. HAWLEY:

Q. Can you hear me okay, Dr. Lichtman?

A. I hear you fine. I'm a little deaf, so I speak slowly and clearly.

Q. I will do that.

MR. HAWLEY:

Your Honor, the Glamon plaintiffs wish to tender Dr. Lichtman as an expert in American politics, American political history, voting rights and qualitative and

quantitative social science analysis.

THE COURT:

Any objection?

MR. BRADEN:

My name is Mark Braden, defendant intervenors for the legislature, and we have no objections.

THE COURT:

Okay. Dr. Lichtman will be accepted by the court in the fields of American politics, American political history, voting rights and qualitative and quantitative social sciences and Dr. Lichtman may provide opinion testimony in those fields.

BY MR. HAWLEY:

Q. Thank you, Your Honor. Dr. Lichtman, will you please state your full name for the record?

A. Allan J. Lichtman. That's A-L-L-A-N, J, period, L-I-C-H-TM-A-N. I'm getting an echo.

Q. We are okay on our end, Dr. Lichtman. Can you hear me?

THE COURT:

Mr. Hawley, would you like to turn the podium.

BY MR. HAWLEY:

Q. No. Can you -- can you still hear me okay, Dr. Lichtman?

A. I hear you fine. I'm still getting an echo. Maybe if I turn my --

THE COURT:

Turn your speaker down.

THE WITNESS:

-- my computer volume down a little, that might help. Let me try it. All right. Let's try it now.

BY MR. HAWLEY:

Q. Okay. Dr. Lichtman, how about now?

A. Much better.

Q. Okay. Thank you. Dr. Lichtman, you've been retained as an expert for the Glamon plaintiffs; is that correct?

A. Yes. Yes.

Q. And you prepared -- thank you. And you prepared a report in this case?

A. Yes.

MR. HAWLEY:

For the record, that is Exhibit

GX-03, which is Record Docket No. 48.

BY MR. HAWLEY:

Q. Dr. Lichtman, do you have a copy of your initial report in front of you now?

A. I do.

Q. And you also prepared a rebuttal report in this case, correct?

A. Correct.

MR. HAWLEY:

And, for the record, that is Exhibit GX-31, Record Document 120-4.

BY MR. HAWLEY:

Q. Dr. Lichtman, do you have a copy of your rebuttal report with you as well?

A. Yes.

Q. And Dr. Lichtman, is your CV included in your report?

A. Yes.

MR. HAWLEY:

And I'll say for the record that is at page 99, of GX-3, Record Document 48.

BY MR. HAWLEY:

Q. And, Dr. Lichtman, is your CV a complete and accurate summary of your background and professional experience?

A. Yes.
Q. I'd like to ask you a few brief question about that. Can you please summarize your professional background?
A. I graduated in 1967 with a BA from Brandeis University in history, but I've been a science major for three years before turning to history my senior year which may explain my interest in social science and qualitative methodology. I then got my PhD from Harvard University in 1973 with a specialty in American political history and quantitative methods.
Q. Where are you currently employed?
A. I am employed at American University in Washington, D.C. and I'm not sure if I'm pleased or embarrassed to say next year will be my 50th year of science.
Q. And I assume that means you are tenured?
A. I have been tenured since about 1980. In 2011, I was appointed distinguished professor so I made office of university rank. It's a rank above full professor there are only a handful of us out of many hundreds of faculty members at the university.

Q. And what are your principles areas of research?

A. I would say American politics, American political history, voting rights, quantitative methods, qualitative methods, political prediction.

Q. Have you previously served as an expert witness in voting rights cases?

A. Probably close to a hundred and if you count civil rights cases in general north of 110.

Q. And do those include redistricting cases?

A. Yes.

Q. Have you served as an expert in redistricting cases in Louisiana?

A. Yes.

Q. And does that include the Terrebonne Parish litigation?

A. Yes.

Q. In that case, did you undertake a Senate factor's analysis?

A. I did.

Q. And did the court in that case credit your Senate factors analysis?

A. It did.

Q. And did other courts previously credited and relied on your analysis?

A. Not every time, of course, there have been over a 110, but most of the time including the United States Supreme Court in its landmark 2006 decision in the Texas Congressional Redistricting Case, Lulac versus Perry, the court relied on my work, my analysis and doing something quite unusual and that is it invalidated a district, a congressional district in southwest Texas, based on my work on the grounds that it polluted the votes of Hispanics.

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

A. I was asked to examine the 9 Senate factors that relate to totality of circumstances in the State of Louisiana facing the opportunities for African-American voters who participate fully in the political process and to elect candidates of their choice and I was also asked to respond to any material presented by defendants.

Q. And what methodology did you employ as part of that analysis?

A. I employed standard methodologies in my fields of research over these many decades. I analyze sources like surveys, scholarly articles, books, journalistic articles, governmental reports, demographic information, election returns and similar data to reach my conclusions, and I applied quantitative methods in this case mostly fairly simple quantitative methods, for example, just looking at percentage differences to gauge racially polarized voting in Louisiana or just looking at percentage and differences to engage socioeconomic disparities between African-Americans and whites in Louisiana and then, of course, like any historian, I analyzed documentary materials, I've written a book on historical methodologies.

Q. And what are your overall conclusions?

A. My overall conclusions are that essentially all of the 9 Senate factors apply in the State of Louisiana contemporarily to impede the opportunities for African-American voters to participate fully in the political process and to elect the candidates of their choice, and I also find that these are not isolated factors

separated into watertight compartments, but that one factor synergistically influences the other to expand the impediments that I discuss.

Q. Did you read the expert report submitted by the defendants in these consolidated cases?

A. I did.

Q. And did anything in those reports change your conclusions about the Senate factors in Louisiana?

A. Not only did nothing in those reports change my conclusions, they strengthened my conclusions. None of the reports directly address the Senate factors or even mention my report by name. None of the information presented in my report was refuted by any of the expert reports submitted on behalf of defendants. Two of the expert reports, one by Dr. Alford and one by Mr. Hefner and -- and one by Mr. -- I hope I get his name right, Solanky, indirectly address some of my two Senate factors, 2 and 9, and to the extent there was information in those reports, he falls to that.

Q. Dr. Lichtman, I'd like to cover the history of your two reports and some key points

and cover the key areas of your analysis and conclusions, and we will start with Senate Factor 1.

Does the State of Louisiana have a history of voting discrimination against its black citizens?

A. It not only has a history, it has an ongoing history; and that history relates not just to direct voter discrimination, for example, the use of at-large elections with the availability of polling places for African-Americans, but it also relates right up to the present of discrimination in three areas that significantly effected the impact of voting; that is, law enforcement, discrimination in law enforcement, significantly impacted voting for a couple of reasons. No. 1, Louisiana has some pretty strict felony disenfranchise laws. You can't vote while you were incarcerated, you can't vote while you were on parole or probation and there's no automatic restoration of your voting rights after five years. You have to go through a process.

Secondly, as I point out in my report, once you've been incarcerated your

integration into a fully functioning member of society including a voting member in political participation becoming all that much more difficult, second area would be the area of education. And all this scholarly research indicates that education is a prime determinant of political participation and of course, levels and proficiency in education effect almost everything in the course of the lifestyle of proficient education, in proficiency. In addition, in education, it contributes to other socioeconomic factors which have an impact on voting.

Finally, there is racial segregation and the literature I cite in my report indicates that segregation perpetuates circle of the poverty. It expands it multiplies socioeconomic disparities that have a direct impact on the ability of African-Americans in Louisiana to participate in the political process and to elect candidates of their choice.

Q. On the topic of discriminatory voting practices, in particular you mentioned just now at-large judicial elections and closing of polling places. Are those examples of efforts

that have continued into the present day?

A. That's correct. Those are examples that continue into the 20th century, and we can also talk about as actually good in the context of another factor, what I believe to be the discriminatory redistricting plan in the post 2011.

Q. Let's move on to Senate Factor 2. Dr. Lichtman, does Louisiana have racially polarized voting?

A. Louisiana, as I point out in my report, has extreme racially polarized voting; that is, African-Americans vote almost unanimously for Democratic candidates and Republican candidates choice of African-American voters, and this racial divide between blacks and whites voting Democratic and Republican is inextricably tied to race. Party labels by themselves are meaningless. They are just labels. What matters is what those labels represent.

We know for the 19th century and well into the 20th century blacks in the south are voting Republican, the party of Lincoln, and whites were voting Democratic, the party of

redemption. That changed particularly after the Voting Rights Act of 1965. It wasn't an immediate process, but over time and certainly up to our own time the party images and representations shifted. Democrats came to represent the party of civil rights and black interests and Republicans, the opposite. I document this change in many ways in my report.

First of all, I cite scholarly literature on what they call the co-joining of race and party in recent years. Secondly, I look at political leadership and I look at two advocacies; NAACP, the oldest advocacy group in the country and the ladder conference on civil and human rights. And they have legislative score cards to what extent the legislators represent black and minority interests; and they both show the same thing: That there is extreme polarization between the positions taken by Republican leaders, legislators in the Congress and the position taken by Democrats.

It's extreme polarization, as I document in my report, that matches the extreme polarization of the voting -- voting of blacks and whites.

Second -- a third area I look at is the rank and file; that is, what are the attitudes with respect to race of Louisianians who are Republicans and Democrats. Again, I find extreme polarization on issues squarely related to race and I document this in two respected studies, the cooperative congressional election study, a standard source. And here in Louisiana, the Riley Center study, they ask different questions, but they come to the same answer again. It's the polarization reflecting the polarization in the vote.

Finally, and this is important, I look at the actual results of elections. Republicans are quite dominant in Louisiana winning almost all statewide elections. Winning essentially all legislative elections in white districts, and what is consistent in my findings is that Republicans in all of these areas have not sponsored any winning black Republican candidates.

All of the statewide executive offices are owned by whites, both U. S. Senate Offices that are voted statewide are held by whites. Whites win in the white majority

1 districts in the state, House of Representatives
2 and in the state Senate. I even drilled down for
3 more fine grain level, the level that mayoral
4 elections; that is, I looked at mayoral elections
5 in municipalities that were in Louisiana and no
6 blacks are elected in any majority white
7 municipality. Only blacks are elected in
8 majority black municipalities and there are no
9 black Republicans. So I document this at the
10 level of scholarship, at the leadership level, at
11 the rank and file level, at the level of the
12 actual results of elections.
13 Q. Ultimately, Dr. Lichtman, as between
14 race and party, which do you consider to be the
15 driving causal mechanism of Louisiana's polarized
16 voting?
17 A. The driving mechanism is clearly
18 race, as I explained. Party by itself doesn't
19 explain anything. As I said at one time, if
20 racially voting patterns were reversed, it is
21 because of what the parties represent that I
22 document in so many ways that's driving voting.
23 In other words, blacks are voting Democrat in
24 Louisiana, whites are voting Republican and this
25 is not related to Louisiana, by the way, not in

spite of race but because of race. Race is at the center of all of this.

I also cite scholarship by Dr. Bromage claiming how race is at the center of Republican political strategy. That comes down to the reading of this.

Q. You mentioned that you've read the reports written by Dr. Alford in this case, correct?

A. Correct.

Q. Did anything in Dr. Alford's report change your conclusions about racially polarized voting in Louisiana?

A. No. It strengthens it. Let me explain. All of the analyses that Dr. Alford performed show the same thing my report showed. Extreme polarization of between African-Americans and whites in terms of blacks voting Democratic, whites voting Republican in very large majorities.

Now, Dr. Alford states or at least implies that the driving force is party not race, but he stops cold there. He never explains or attempts to justify that conclusion. He doesn't look at my analysis history, doesn't look at my

analysis of leaders, doesn't look at my analysis of rank and file, doesn't look at my analysis or any analysis in these areas of the actual results of elections.

In fact, what's interesting and telling is Dr. Alford looks at, I believe, something like 28 Republican candidacies in his analysis and not one of those Republican candidacies involved a black candidate.

Dr. Alford also ignores that part of my initial report that looks at whether or not race can influence voting when the poll party is not an issue. I looked at the 2008 primary, Democratic primary where overwhelmingly blacks participate; and that involved Barack Obama, the African-American, and Mrs. Clinton, the white candidate, and a few other white candidates; and what I found is that African-Americans voted 86 percent for Obama and only 30 percent of whites voted for Obama, so within the same party, it was a sharp difference there.

I also looked at the subsequent 2008 general elections and found that black Democrats voted 98 percent for Obama, but white Democrats only voted 38 percent for Obama, so there isn't

critically and inextricably a poll party you can see voters responding on race. Again, Dr. Alford does not consider those results or present any comparable results of his own.

Q. Moving to Senate Factor 3, Dr. Lichtman, does Louisiana employ any voting practices that enhance the opportunity for discrimination?

A. It does. It employs one of them that's explicitly listed under Senate Factor 3, and that is the use of the majority vote requirement and subsequent runoff elections.

Q. What effect does the majority voter requirement have on black and black preferred candidates?

A. Well, it means even if a black candidate gets a plurality in the first round as a result of a split among more than one ambitious white candidate, that does not elect that black candidate, but rather that black candidate has to face off one -- one-on-one against a white candidate. And clearly statewide in Louisiana, the white voters dominate in that kind of contest. The African-American candidate has little chance of winning, and I gave three

examples of that in my report.

Q. You -- what are those three recent examples?

A. Yeah. We have the 2015 election for lieutenant governor. The black candidate won the first round by three percentage points, so it was close, but not eyelash, and the candidate lost 55-45 in the runoff.

We had a 2017 election for treasurer. Black candidate won the first round even more decisively by seven points and was defeated even more decisively in the runoff 56 to 44.

And, finally, we have the 2017 election, the Secretary of State. The black candidate didn't win the first round, but came really close, came within 10,000 votes or so, but got shrouds in the runoff, 59 percent.

Q. When was the majority vote adopted in Louisiana?

A. It was first adopted in 1975. And the most famous runoff, of course, was in 1991 between the Ku Klux Klan candidate David Duke, and I think it was Edwin Edwards who was against him.

Q. So was the majority vote requirement adopted in response to the U.S. Supreme Court's Foster decision?

A. No. It was adopted more than two decades before; and, as I said, kind of a highlight runoff election that got major national attention occurred several years before that in 1991.

Q. Moving to Senate Factor 4, Dr. Lichtman, what are your findings on candidate slating in Louisiana's congressional elections?

A. Well, I found something rather interesting, that the way Louisiana set up its congressional redistricting plan, it kind of made slating irrelevant and unavailing for black candidates; that is, in District 2, which is overwhelmingly packed with blacks and Democrats slating is irrelevant. It's going to elect a black Democrat; whereas in the five other districts that are overwhelmingly white and have a Republican, slighting is equally irrelevant because a black candidate has no chance essentially to win in districts that are -- R plus 20 or more according to standard political analysis type. That's the partisan voting index

that measures the partisan strength of the district, and it's in my report.

Q. Next is Senate Factor 5. Dr. Lichtman, what effect does the history of discrimination you described before have on black Louisianians today?

A. It has profound effects on black Louisianians today. I document in my report that there are major today socioeconomic disparities between African-Americans and whites in Louisiana, and that extends to almost every area of significance of peoples' lives and political participation and voting. It extends to income, to unemployment, to poverty, to dependence upon welfare, to homeownership, to the availability of vehicles, the availability for broadband internet. It extends to educational attainment and educational proficiency, all these between African-Americans and whites in Louisiana in the present day, and it extends to various measures of health as well.

Q. And do these inequities impact black political participation?

A. Yes. As I explain in my report, first of all, they -- this isn't the only one,

but, first of all, and the most obvious is that they impact the participation rates of blacks versus whites in terms of turnout, and I present data in my report showing differentials between black and white turnout in recent elections in Louisiana that can extend into the double digits and that hadn't really ameliorated itself in recent elections. Other information presented by one of the experts for defendants bolsters that.

Q. Are you referring to the report Dr. Solanky and his voter turnout statistics?

A. I am. Dr. Solanky presents two tables on voter turnout. I think they are Tables 2 and 4 in his report. One of the tables looks at statewide turnout and finds substantial disparities I did between blacks and whites in their turnout rates. Similarly, he wrote that every congressional district, all six of them, and found that invariably in every one of those six congressional districts, black turnout lagged white turnout sometimes up into the double digits.

Q. Is reduced political participation demonstrated in other ways?

A. Yes. As I explain in my reports, a

lack of sources, lack of educational proficiency, attainment impedes participation in other ways. I give two examples: One is lobbying of public officials, very important for participating in the political process and influencing the outcomes, which, as we see, you know, quite different whites and blacks in Louisiana; and I present survey data showing that whites are substantially more likely in Louisiana to contact public officials. Again, a reflection of all of these many socioeconomic differences.

The second area is political contributions. Not surprisingly, the disparity in resources evident between blacks and whites in Louisiana manifests itself; and, again, I present survey data, recent survey data on this, that whites are far more likely than blacks to make political contributions. And, of course, I didn't actually present tables on this, but it certainly makes sense that groups that have lower levels of education, fewer resources makes it more difficult to find candidates to run and to run political campaigns. So while turnout is the most obvious, there are other very important ways in which these disparities reflected

discrimination impact, the ability of African-Americans in Louisiana to participate fully in the political process and elect candidates of their choice.

MR. HAWLEY:

Mr. Martinson, will you please pull up page 85 of GX-3?

TRIAL TECH:

(Complied.)

THE WITNESS:

Wow, I actually see it.

BY MR. HAWLEY:

Q. Excellent. Dr. Lichtman, does this table look familiar to you?

A. It does. It's right from the appendix of my report.

Q. And what does it show?

A. It shows that in critical areas, according to the U.S. news state rankings, these are not outlines, but in other rankings, you have similar answers; and critical areas are very important to a group that's vulnerable like African-Americans and has the burden of very significant socioeconomic disparities. Not only are they facing these present day disparities,

1 but they are dealing with a state that ranks at
2 or near the bottom in critical areas, 45th in
3 health care, 48th in education, 49th in economy,
4 50th in opportunity, 48th in infrastructure, 50th
5 in crime and corrections, 43rd in fiscal
6 stability, 50 in quality of life, 50 overall.
7 This shows the impediments faced by
8 African-Americans in Louisiana and it also
9 documents the present day ramifications of
10 historical and ongoing discrimination in
11 Louisiana.
12 MR. HAWLEY:
13 Thank you, Mr. Martinson. We can
14 pull down GX-3.
15 BY MR. HAWLEY:
16 Q. Moving to Senate Factor 6,
17 Dr. Lichtman, have Louisiana's campaigns been
18 marked been racial appeals?
19 A. Yes. They have been marked by both
20 subtle and overt racial appeal, and almost all my
21 examples except for maybe one are 21st century
22 examples. I'm not going back to the old year of
23 Jim Crow, the old ones from the 1990s. And these
24 examples go all the way up to 2022, and they
25 don't just involve French candidates. You

talking about some of the leading Republican politicians in the State of Louisiana: David Vitter, Mike Foster, Steve Scalise, one of the members of the Republican leadership, U.S. representative Mike Johnson, U.S. Senator John Kennedy as well as important Republican affiliated organizations in the State of Louisiana.

Q. Is it safe to say then racial appeals have been employed by winning campaigns in Louisiana?

A. Absolutely. David Vitter employed this in 2010, and he certainly had a lengthy campaign. Steve Scalise has consistently been winning in Louisiana. Mike Johnson is a sitting U.S. Representative, John Kennedy is a sitting U.S. Senator.

Q. Moving down to Senate Factor 7. Have black Louisianians historically been elected to public office?

A. Not historically and --

Q. Dr. Lichtman?

A. I'm sorry. I lost your question there. You -- somehow the technology failed and you blacked out.

Q. Perhaps, it was me and not the technology, so I'll go ahead and ask it again.

Have black Louisianians historically been elected to public office?

A. Not historically, really since reconstruction, and not at present.

Q. Is there a disparity between the black share of Louisiana's population and their representation in Congress and the state legislature?

A. Yes. When you look at the -- the voting representation of blacks in Louisiana, it's a little bit north of 31 percent, and there's a wide disparity in terms of black representation.

Now, I want to be clear. I'm not making a legal conclusion here. In fact, throughout my testimony in the report, I'm never making legal conclusions to the extent I look at things like briefs or court decisions, so substantive, not to draw a conclusion.

So I'm not legally saying at all that any group, including African-Americans, must have proportional representation. I am simply responding to the impact of this query which is

to consider the extent to which black representatives have been elected to public office in Louisiana.

And there is a vast discrepancy between black voting age population and black representation. No black is elected to any statewide executive office in the State of Louisiana. That's a zero percentage. No black is elected statewide to a U. S. Senate position. That is a zero percentage.

When you look at the state legislature, blacks are underrepresented by something like four to nine in Senate and house seats are only being elected in majority black districts, which really shut them off and limits their ability to expand their representation.

And in terms of the supreme court and other judicial positions in Louisiana, blacks are also substantially underrepresented. And as I mentioned and same thing in -- as I mentioned previously, these are not black Republican. Despite the political strength of Republicans, they are not electing a black Republican.

Q. Dr. Lichtman, have any black candidates been elected to office since

reconstruction?

A. Not that I'm aware of.

Q. Moving down --

A. I think there were five during reconstruction and none since.

Q. Thank you. Moving to Senate Factor 8. Based on your analysis, has the State of Louisiana been responsive to the needs of its black citizens?

A. Well, I looked at responsiveness in five areas that are fundamental and especially important to a group like African-Americans that already bears the burden of socioeconomic disparities, things like income, poverty, education, homeownership. So I looked at education, healthcare, I looked at economic opportunity, and I looked at environmental pollution and found that in all of those five areas, the state has not been responsive to the particular rights and needs of its African-American residents.

Q. And are these inequities in some cases caused by official government policy?

A. Absolutely. As I point out in many of these areas, all of these disparities, all of

these issues are part and parcel of government policies and government policy with regard to polluting industries in heavily black areas or the long delay in adopting Medicaid expansion, something critical to the health of African-Americans, and so many failures in criminal justice.

Q. Dr. Lichtman, would you consider these findings to be either limited or subjective?

A. It's certainly not limited. These are areas of fundamental importance to a vulnerable group like African-Americans and they are the kinds of things social scientists would look at. The well-being and life chances of African-Americans are fundamentally effected by criminal justice, healthcare, education, economic opportunity, and all the problems I document for health with environmental pollution, and they are not subjective; that is, for each of these five areas, I provide specific information. I just don't throw out opinion; and it is relevant, I think, that as with the rest of my report. No expert for defendants challenge any of the information that I provided under Factor 8 in my

initial report.

Q. Lastly, Dr. Lichtman, Senate Factor 9. Can the absence of a second black opportunity congressional district be justified by core retention?

A. Core retention is a criteria, criteria of choice. It's not legally required. It's not like one person, one vote conformity with the voting rights.

As a general matter, states certainly could adopt that as one of their redistricting criteria, but here's the problem: Here in Louisiana, by adopting that the district is heard as fundamental criterion redistricting, that freezes in the existing packing and cracking under the previous plan. That is the previous plan, as I explained at length in my report, packs African-Americans into Congressional District 2 far beyond what is necessary for African-Americans to elect Congress persons of their choice and then cracks African-Americans into overwhelmingly white Republican districts where they have no chance whatsoever, no matter how unhappy they might be with their white Republican representatives, they have no chance

to vote them out of office. They are freezing in the inequities that you had previously established.

In fact, if core retention was the fundamental talisman for redistricting as opposed to other requirements, then there never would have been a remedy for a discriminatory redistricting plan. You would just be replicating that plan over and over and over again like you are doing here.

Q. Dr. Lichtman, are you aware that the previous 2011 congressional plan was pre-cleared by the U.S. Department of Justice?

A. Absolutely. But all that means is that the plan was not retro-aggressive. That means that it did not go to zero African-American opportunity districts. As objection letters in this department make it crystal clear or letters not interposing an objection, a preclearance does not mean that a plan is free of violating the Voting Rights Act. It simply means that the plan was not retro-aggressive with respect to the previous plan.

Q. Can the current congressional plan be justified by an interest in compactness?

A. Absolutely not. As I point out in my original report, by freezing in essentially the same district that you had in the post 2010 redistricting plan, you are freezing in place a district that cannot be justified on the traditional ground of compactness. In fact, the district is highly non-compact, as I explain in my report. It reaches out a long finger. It is -- has areas of intrusions that are not smooth or symmetrical. And, in fact, it closely represents from way back when the Elbridge Gerry Salamander that brought on the term gerrymandering in the first place.

It was nothing about this district that's frozen in place that could be justified by creating a compact district. That's not surprising when you are packing African-Americans into a district and then cracking them elsewhere. It's not surprising that the district does not conform to compactness. Conceivably in other states and other circumstances you can have a compact district that would pack that, but not here. That's not what was done and the plan cannot be justified on that basis.

Q. And just to clarify, the district

you are referring to there is the Second Congressional District, the mass majority black congressional district?

A. That's correct. It's overwhelmingly black, overwhelmingly Democratic. It's the packed district and all the other districts are the crackers.

Q. Is the current black voting age population of that district needed for black voters there to elect their preferred candidate?

A. Absolutely not. It's way beyond what is necessary for blacks to elect candidates of choice. I think the analysis that I present in my report represents the fourth highest black population in the country. African-Americans are winning that district by an average of 80 percent or more. No chance that an African-American candidate of choice would not win that district. As I said, the Cook political reforms in terms of their partisan voter index that measures partisan strength, that's that district, about the D plus 25. That means it's 25 percent more, 25 percentage points more than the average Democratic vote in the last two presidential elections, both of which were majority Democrat.

And so -- and if you look also nationwide, as I point out in my report, black candidates of choice almost invariably win even in districts below 50 percent, 40 percent to 50 percent. And it's very simple that in the 40 percent range, blacks dominate the Democratic primary, get to nominate a candidate of their choice, they then vote overwhelmingly for that candidate. In a general election, you don't need much in the way of white crossover for that candidate to win in a district that's within the 40 percent range.

Q. Dr. Lichtman, did you review the report prepared by Mr. Hefner in this case?

A. I did.

Q. And how does Mr. Hefner attempt to analyses communities of interest?

A. Yeah. Mr. Hefner indicates in his report that he can't give us a hard and fast objective, specific definition of what constitutes a community of interest. In fact, he says to a great extent up to the perceptions of the people that we are looking at in a given area. He just ticks off some general boxes like politics, economy, culture, residence,

occupation. Then in order to analyze communities of interest in the existing plan, I presume, though, he doesn't address my report to say that it wasn't tenuous because of the respective he looks at five broad regions. These regions are much too broad to analyze what's going on within a congressional district, which, of course, cuts across these regions.

In addition, it's not good enough to look at regions as compared to one another because they are so big, five of them to the whole state. You've got to look within. This is the standard social science within differences as compared to between differences.

So I took, for example, one of his regions anchored in the City of New Orleans and I looked at the extent to which blacks and whites in the City of New Orleans, according to his criteria, basically comes to a community of interest. And, of course, they don't share a common history of discrimination, they don't share a common ancestor, they don't share common politics or political values, they don't -- let me see. They don't have the same occupations. And I drilled further, I looked at do they share

the same residence and do they go to the same schools beyond all of these other factors. In other words, to what extent are they really integrated within the City of New Orleans as a community, and I looked at the measures of segregation and found that the measures of segregation were quite extreme in New Orleans. More than 60 percent of blacks would have to relocate during integration, and that there was also similar lack of integration for the schools.

So we look at the City of New Orleans as an anchor of one of the five regions. We see blacks and whites have very little in common to constitute within that region a community of interest.

Q. And did Mr. Hefner show that black and white Louisianians in the five majority white districts in the congressional map share commonalities?

A. No. His analysis couldn't possibly show that because, again, it's based upon these broad regional -- these regional areas which congressional districts cut across and what he doesn't analyze within as opposed to between.

So I looked at the commonality

between whites and blacks across the regions; and, again, they don't have common ancestry, they don't have common politics, they don't have common experience in the history discrimination, they don't have commonality in terms of the failure of states to meet their particularized needs. I also looked at residential and school segregation across Louisiana and found that blacks and whites don't live together. They don't go to the same schools.

I also looked at a variety of other indicators highlighted by Mr. Hefner. I found that across Louisiana blacks and whites don't have the same family structure, they don't have the same levels of income or poverty or dependence upon welfare programs or unemployment. They don't live in the same kinds of homes with African-Americans far more likely to be renters than homeowners. There aren't the same access to vehicles or broadband internet. They don't have the same educational attainment and they don't have the same educational proficiency and they don't work in the same jobs and occupations, so there is no basis for -- Dr. Alford doesn't analyze it and look any deeper. There is no

basis for claiming that in these five white Republican dominated districts that the African-Americans in those districts share a community of interest with whites.

Q. At the end of the day, Dr. Lichtman, how many of the Senate factors support a finding of vote dilution in the Louisiana?

A. Essentially all of them, when I look at the slating factor; and it's important to understand the thing I alluded to earlier in my testimony, that these factors do not operate in isolation. They are suited just -- they combine to impede the opportunities for African-Americans to participate in the process and elect candidates of their choice. So this horrible and ongoing discrimination leads to socioeconomic disparities which in turn lead to impediments for African-Americans to participate in the voting process and elect candidates of their choice, some to the majority vote runoff. Requirement contributes to that and in turn that contributes to a lack of representation in a government dominated by whites at every level in Louisiana which in turn leads to the failure of the states to meet the particularized needs of

African-Americans and in turn leads to the adoption of a redistricting plan that freezes in place a plan that packs African-Americans into a non-compact district and then cracks African-Americans into other districts where they have no chance to elect candidates of their choice, standard vote dilution packing and cracking. So you can't just look at these factors in isolation you have to see how that one impacts another.

Q. Thank you, Dr. Lichtman.

MR. HAWLEY:

Your Honor, I'd like to move exhibits GX-3 and GX-31 into evidence. Those are Dr. Lichtman's initial report and his rebuttal expert report.

THE COURT:

Is there any objection?

MR. FARR:

No objections, Your Honor.

MR. HAWLEY:

I have no other questions at this time, Your Honor.

THE COURT:

Cross-examination?

MR. BRADEN:

My name is Mark Braden.

THE WITNESS:

I lost you.

THE COURT:

We still have you.

THE WITNESS:

I don't see you for some reason.

Our camera may be -- just give us a

second.

THE COURT:

Is that better?

THE WITNESS:

Much better. Thank you.

THE COURT:

Spell your last name counsel.

MR. BRADEN:

Mark Braden, B-R-A-D-E-N, and I

represent the defendant intervenor

legislature groups.

CROSS-EXAMINATION BY MR. BRADEN:

Q. Dr. Lichtman, good to see you again.

A. Good to see you again. Always a

pleasure.

Q. Thank you. I'm sorry that you were

not able to attend in person. We certainly would have enjoyed your testimony in person here rather than remote. I try not to take up --

A. Thank you.

Q. -- too much of the rest of your afternoon, but I do have some specific questions.

MR. BRADEN:

If we could go to your report, in page 28 of your report, if we could bring that up. That's GX-3 or GX-3 or 003, and if we could go to page 28.

TRIAL TECH:

(Complied.)

THE WITNESS:

Okay.

BY MR. BRADEN:

Q. So, and I believe you just testified to this, but let me just simply confirm. It's -- you testified as to white crossover voting earlier I believe?

A. I testified both to black cohesion and white crossover voting, that's correct.

Q. So on your report here, you're projecting in some races white crossover in excess of 25 percent, more than a quarter?

A. I'm not projecting. These are exit poll results subsequent to the election. They are not a projection on these elections.

Q. Okay. That's correct. And you have a chart showing this too, I believe, this would be chart one?

A. Sure. You want to go to that?

Q. You should absolutely go to that. If we could bring that up.

A. What page?

Q. I believe that is 0068, chart one. So --

A. Got it.

Q. So it's your -- it's your view that the record shows white crossover voting ranging from 20 percent to 26 percent in the three elections on the chart?

A. That's correct.

Q. Okay. So, and you also believe -- if you go to page 62 of your report, and I also believe you just testified to this, but let me just confirm it, that the black candidate of choice can win in a district as low as 40 percent minority population?

A. In the 40 percent range. You know,

maybe not quite at 40, but certainly in -- below 50 percent, in a 40 percent range, absolutely; and the crossover and cohesion numbers bear that out, so you would have 45 percent African-American voters in a district. I could do the math for you --

Q. Uh-huh (affirmatively).

A. -- as soon as I get on my --

Q. Please do.

A. Yeah. Okay. So we got 45 percent times 95, that's 42.75, then we can round that off to 43 to make it easy, okay. And then we have 55 percent non-black. And, by the way, the non-black would include not just blacks. You got to understand that it would also include Hispanics and others, but let's just assume it's just blacks and it's 25 percent. So that's 13.75 and round it off to make it simple, an even 13. That's 56 percent for the black candidate of choice.

Q. Okay. So if I understand those numbers right, there would be no compelling need for the State of Louisiana to create districts of more than 50 percent to elect a black candidate of choice in congressional analysis?

A. Well, you would have to do the district specific analysis. This is just generic, but if you could -- in my view, and this is generic, I haven't done the detail district-specific analysis, but, for example, in my North Carolina testimony in the Covington case where the court accepted it, I pointed out indeed African-American candidates could win in the 40 percent range, and that was particularized analysis of each district.

But I certainly wouldn't rule out if the state could create two districts about 45 percent in African-American in their voting age population given that there's going to be Hispanics and others in that district who do tend to vote Democratic. But, again, depending on the district-specific analysis, that could give African-Americans an opportunity to elect candidates of choice again. I'm speaking in narrative.

Q. Thank you. Doctor, when were you first contacted about working on Louisiana congressional redistricting this cycle?

A. I really don't remember. I've been involved in maybe ten cases in this post 2020 or

so, several months ago at least.

Q. Okay. Do you know if you were working on this prior to the legislative session that resulted in the passage of the first plan and second plans, the veto-override plan, do you know?

A. Refresh me. Is this February 2022?

Q. Yeah, February. Were you working in February on it?

A. I'm sure I was working in February.

Q. Okay. And do you know who contacted you in regards to that?

A. The alliance attorneys.

Q. Okay. And did you play any role or provide any information to the legislature during the process?

A. No.

Q. So is this a little like déjà vu with you? Weren't you the expert witness in 1990 on the Louisiana congressional redistricting?

A. I don't remember it very well, but that was one of those short cases when working for the United States Department of Justice, and I think it was a very different -- and I think...it was very different. I don't remember

that specific case, but I'm pretty sure I working for Justice and I don't think it was 30 years ago, but I don't remember.

THE COURT:

Just a minute. Okay. We -- she wasn't able to take any of that testimony. Dr. Lichtman, is there a possibility that you are interfering maybe with your microphone or something? Because we -- the court reporter, none of us could make out any of that, any of your last answer.

THE WITNESS:

Oh. I didn't hear anything. I can turn it down more if you want.

THE COURT:

No, I don't think it's --

THE WITNESS:

I'm 75 and technologically challenged. Is it better, Your Honor?

THE COURT:

Yes, it seems better.

THE WITNESS:

I'll try it again. Let me know if it works. I'll try to replicate it.

THE COURT:

If you have --

THE WITNESS:

So, as I said, I don't remember -- I don't remember it well, but I do remember I was hired I believe by the United States Department of Justice to defend their policies, and I don't believe that we were plaintiffs in that case. We might have been defendants and, you know, like that whole round of those short cases --

BY MR. BRADEN:

Q. You don't --

A. Defendants had very little chance.

Q. Might you have been hired by the Democratic leadership of the state, let's say the governor, the legislature, the defendants in the case?

A. Anything is possible. I know for some of those cases I was hired by justice. I don't remember, because it was 30 years ago, who I was hired by in this case. I kind of assumed it was justice, but I don't recall.

Q. I would represent to you and to the court, my understanding is that you were an expert for the defendants, which was the State of

Louisiana, at least that's the way --

A. I know I represented the defendants. I don't know if I was hired by the State of Louisiana or by justice. I won't argue with you because I don't have a recollection.

Q. Yeah.

A. So whatever you say, I'm not going to disagree.

Q. Do you remember that you were arguing on behalf of a plan, a 1990s plan that had seven districts of which two were black and five white?

A. I don't remember. I don't remember that detail; but, again, if you want to represent that --

Q. Okay.

A. -- I'm not going to argue, but I don't recall the specific composition. When you say two are black, would that be majority black --

Q. Yes, two.

A. -- or 40 percent black? I don't remember.

Q. Yes. Two black majority. There were more congressional districts, one more in

that cycle, so at that time, my understanding of reading the record and -- is that you were working as an expert for the defendants trying to defend the two black districts in the 7th District plan and that the court held that the plan was an institutional gerrymander. Does that ring any bells with you?

A. Not all of this, but definitely I treated that case like all the other cases.

Q. And now you are in the court here with the plaintiffs who are arguing for two black seats in a six member district plan, correct?

A. I have not examined any plans presented by plaintiffs, but I presume that's what we are doing.

Q. Okay. And you don't remember whether or not the court in the Hayes case versus the State of Louisiana in 1993, you don't remember whether or not the court credited your testimony?

A. I'm sure they didn't. We lost the case.

Q. Yeah.

A. Normally when you lose a case, work was not credited, your testimony, but that's all

I remember.

Q. Yes.

MR. BRADEN:

If we could -- I think maybe I can refresh your recollection. If you go to -- we can bring up a copy of the Hays versus State of Louisiana. It's at 839 FED SUP 1188. I wish I could hand you a copy of it, but I believe we can bring it up on the screen.

TRIAL TECH:

(Complied.)

BY MR. BRADEN:

Q. And just really quickly, I believe there's a Footnote 48 at page 1203, if I've got it right. So if you could take a minute and look at paragraph 48 -- Footnote 48 and see whether or not that refreshes your recollection as to the court's view on your testimony.

A. I don't see it. I'm sorry. I don't see the heading.

Q. Okay. There's a Footnote 48 either on I believe it's -- bring up page 46 of 50. I'm sorry. I'm looking at this item in my hand and it doesn't do you any good. I printed a copy out

here for you, but it doesn't do you much good to try to hand you a printed copy I presume.

MR. BRADEN:

There we are. That's Footnote 48. Could you just highlight it for him and bring it up and make it larger? He has probably the same eyesight I do.

TRIAL TECH:

(Complied.)

THE WITNESS:

Okay. Now, I can see it.

BY MR. BRADEN:

Q. Okay. Great. And it's easy to pick out, there's a couple of references to you which have been italicized.

A. Let me read it.

Q. Yeah.

A. Because I don't remember it.

Q. Great.

A. But I'm sure this will help refresh my memory, but I need a minute or two.

Q. Oh, absolutely.

A. I'm old and slow.

Q. Absolutely.

A. Got it.

Q. Okay.
A. It doesn't refresh my memory particularly, but I understand it the same, so you can ask me questions.
Q. So --
A. It's pretty self explanatory.
Q. And it should be. I believe here that the court rejected your expert testimony in support of a plan with two black seats; am I correct?
A. (Witness nodded head affirmatively.)
THE COURT:
You have to --
THE WITNESS:
That's correct. But that's the exact opposite of what we have here where the defendants have packed blacks into a single district far beyond what was necessary to elect black candidates of choice, so I don't see how this criticism -- I'm not disputing what the court says relates to the current situation in Louisiana.
THE COURT:
Counsel, Mr. Hawley is about to

internally combust.

MR. HAWLEY:

I'm sorry. Mr. Braden, do you have another copy of the --

THE COURT:

Mr. Hawley, we can't hear you.

MR. HAWLEY:

I'm sorry. I was just asking Mr. Braden for a copy of the demonstrative.

MR. BRADEN:

My apologies. I actually should have given it to you upfront.

MR. HAWLEY:

Thank you.

THE COURT:

Okay. Emergency averted. You may continue.

BY MR. BRADEN:

Q. And so you don't remember holding this case rejecting the plan as a racial gerrymander, had two black seats; you just don't have any recollection of that?

A. I do remember the state lost the case. I don't remember the details of the

finding, but it probably was racial gerrymandering. I think it's the same case as what the state is doing now.

Q. If you can't remember, we will just move on from there.

In -- in your report in this case, do you provide any geographic analysis showing whether or not the black population has become more compact in the case or geographically concentrated since the 1990 geography?

A. I've not analyzed plans --

Q. Okay.

A. -- in this case, so --

Q. It's really more --

A. -- I can't answer that question --

Q. Okay.

A. -- one way or the other. You have to ask the plan drawers.

Q. I really wasn't asking you about the plans. I was asking you about the dispersion of the black population in the State of Louisiana. Do you have any familiarity with that?

A. I didn't look at that.

Q. Okay. And I just -- let me use Maryland as an example. So maybe this will

enable you to answer the question as to whether there's been a change in that.

In Maryland, the black population is essentially concentrated in -- in one or two urban areas, depending how you define urban areas, the Washington Baltimore corridor and the rest is predominantly white.

A. Washington, although it's not quite the corridor because you have in the Washington suburbs two very large counties, Prince George's County and Montgomery County, so not necessarily the corridor. And Prince George's County is very heavily back; and while Montgomery County is not majority black, it has a very substantial black population as well and it's very big. It's got over a million persons in-large geographically, so it's certainly not true that in my home state the African-American population is very narrowly concentrated in confined geographical areas.

Q. So you wouldn't -- you don't believe that a majority of the black population in Maryland lives in -- in what would be considered to be urban or suburban areas?

A. It's -- you know, Montgomery, you can call urban. It's really suburban. Certainly

there is a correlation between geographic area and black population, absolutely. There certainly is a degree of concentration there that can effect the drawing of districts.

Q. So --

A. But it's not just confined to a very narrowly circumscribed city.

Q. And so you don't understand -- I'm going to waste your time here for just a second. You don't understand or not -- you didn't opine in any way that the -- that Louisiana is different than many other states in the sense that it has large urban black populations in a couple locations but very dispersed rural black populations in virtually every parish in the state?

A. I can't answer your question. As I told you, that's beyond the scope --

Q. Beyond the scope?

A. -- of my expertise.

Q. So do you happen to know how many black elected officials there are in the state?

A. Not for every jurisdiction, but I can tell you there is none statewide, none in the U. S. Senate, one in Congress and something like

34 maybe in the legislature and something like 7 in the -- I forget how many, but over 20, close to 30 mayoral situations and municipalities that are comfortable overall.

THE COURT:

Mr. Braden, I'm going to ask that you speak up or use the microphone. I'm having trouble hearing you and I know Dr. Lichtman has already said that he has a -- a little bit challenge in determining his ability in hearing.

MR. BRADEN:

My apologies.

THE COURT:

Thank you.

BY MR. BRADEN:

Q. Now, as to gubernatorial elections in Louisiana, did the candidate of black choice win?

A. In which elections?

Q. The last two gubernatorial races.

A. In the majority races?

Q. Last two races for governor in the State of Louisiana.

A. Oh, yes, of course.

John Bel Edwards, you know, one swallow does not make a sprig, and he's not black.

Q. Okay. And you talked about racial -- from the 1990s, the runoff race between the Klan candidate and Edwin Edwards; and I guess we could come up with some colorful descriptions of that race, but we won't go that way. But my understanding is you testified that it showed the impact of slating, but didn't the black preferred candidate win in that race too?

A. I did not testify at all about that race as an example of slating. I simply said in a different factor, factor relating to runoff and at-large elections. And it's Factor 3 not Factor 4 that that was an example of a runoff election that caught nationwide attention. That was well before the Foster decision. I didn't put it in the context of slating at all.

Q. And so I heard you say that -- that black candidates don't win at-large elections.

Do you know whether the mayor -- I don't think I can see it. I don't think we are in East Baton Rouge. I think we are in Baton Rouge parish. I could be wrong about that, but my understanding is that the mayor of East

Baton Rouge is black. Do you know that?

A. Let me check. I might have that information. I'm not sure.

THE COURT:

We are in -- we are in East Baton Rouge Parish, and the Mayor Broome, over greater Baton Rouge --

THE WITNESS:

Yes, ma'am.

THE COURT:

-- is African-American.

THE WITNESS:

You are talking about the mayor of Baton Rouge city?

MR. BRADEN:

I don't know. The judge graciously answered the question for us.

THE COURT:

No, I didn't answer. I just was correcting you that we are not in Baton Rouge Parish. There's an East Baton Rouge Parish and there's a West Baton Rouge Parish and the Mississippi River, and one bridge connects those. Actually, it's two bridges I guess.

BY MR. BRADEN:

Q. And I understood from you that the mayor of East Baton Rouge is black?

A. I can answer you. Yeah, Baton Rouge is a black city and likely a black mayor. That's exactly my point. Blacks can win in black jurisdictions and they are getting shut out in white districts, statewide in white jurisdictions, and none of the blacks are Republicans.

Q. Is it your position that it's a majority black parish?

A. I didn't look at the parish. I looked at the city.

MR. BRADEN:

Okay. No further questions, Your Honor.

THE COURT:

Okay. Is there any redirect?

MR. HAWLEY:

It's brief, Your Honor. Thank you.

REDIRECT EXAMINATION BY MR. HAWLEY:

Q. Dr. Lichtman, just a few moments ago Mr. Braden asked you about some of the particulars of your expert testimony in the Hays

case in the '90s. Do you recall that?

A. I recall the questions, yeah.

Q. Yes?

A. And it did help me refresh a bit on Hays, which I didn't remember in detail.

Q. Here I will represent to you, since we no longer have it on the screen, that the court characterized the defendants' objective in that case as to, quote, prove that factors other than race could explain District 4."

My question is, is that the inquiry you were asked to undertake in this case, to explain what factors explain a challenged district?

A. If you correctly -- and I don't remember, but I assume you correctly characterized that my query here is quite different.

Q. And what is your inquiry here?

A. Well, my inquiry here is to look at the Senate factors and with respect to the tenuousness of the plan to determine whether or not the five white majority districts established communities of interest between blacks and whites to assess the rationale of maintaining continuity

of districts and to assess the rationale with respect to the traditional redistricting requirement of the factors, all eight or the Senate factors related to different matters.

Q. And ultimately the Senate factor inquires assist in considerations; that is to say, no matter what the particular legal claim or a particular district at issue; is that fair to say?

A. I don't want to give you a legal opinion. I can say I have done Senate factor analyses under very different cases and situations.

MR. HAWLEY:

Thank you, Dr. Lichtman. No further questions. Thank you.

THE COURT:

Okay. Thank you, Dr. Lichtman. We are going to let you go for the afternoon. Okay. It's --

THE WITNESS:

Thank you, Your Honor.

THE COURT:

Thank you, sir. It's quarter to 5:00. Have we got any other witnesses

that we can go until 5:30?

MR. RIZZUTO:

Yes, Your Honor. My name is Ryan Rizzuto, and I represent the Robinson plaintiffs. This is my first appearance before the court.

THE COURT:

Give me the last name, spell it for me.

MR. RIZZUTO:

R-I-Z-Z-U-T-O.

THE COURT:

Okay. Mr. Rizzuto, your witness.

MR. RIZZUTO:

Plaintiffs call Dr. R. Blakeslee Gilpin, G-I-L-P-I-N.

ROBERT BLAKESLEE GILPIN, Ph.D, after having first been duly sworn by the above-mentioned Court Reporter did testify as follows:

DIRECT EXAMINATION BY MR. RIZZUTO:

Q. Could you please state your full name for the record?

A. Yep. My name is Robert Blakeslee Gilpin. The standard spelling of Robert,

B-L-A-K-E-S-L-E-E, G-I-L-P-I-N.

THE COURT:

Go ahead, counsel.

DIRECT EXAMINATION BY MR.

Q. Good afternoon, Dr. Gilpin. Could you please introduce yourself to the court?

A. Yes. My name is Dr. Robert Blakeslee Gilpin. I am an associate professor of history at Tulane University and the director of graduate studies at the history department there.

Q. Can you tell us about your educational background?

A. Yes. I received my BA and MA simultaneously from Yale University in 2001 in American history, M fill from Cambridge University in 2002 in British history, and then an M fill and a PhD from Yale University in 2009 in American History.

Q. And you mentioned that you were at Tulane. Could you speak to your role there?

A. Yes. So I teach a variety of classes on American history, U.S. history and the laws, civil War reconstruction, southern intellectual and cultural history and mentor and advise undergraduate and graduate students.

Q. And do any of those courses you just mentioned cover Louisiana's history of official discrimination against black voters?

A. Yes. All of the courses that I just mentioned touch directly on that subject.

Q. Have you ever written anything that has covered the history of voters registration in Louisiana?

A. Yes. I've written chapters and volumes about the reconstruction period moving into the 20th century that deal directly with that subject matter.

Q. Professor Gilpin, is this your first time testifying as an expert witness in a case?

A. It is indeed.

MR. RIZZUTO:

Your Honor, we tender Professor Gilpin as an expert in southern history.

THE COURT:

Any objection?

MS. MCKNIGHT:

We have no objection.

THE COURT:

Okay. Dr. Gilpin will be admitted without any objection on that matter.

MR. RIZZUTO:

Your Honor, if it please the court, may I approach the witness to hand him what we marked as PR-13 and 88?

THE COURT:

You may.

BY MR. RIZZUTO:

Q. Now, Professor Gilpin, I just handed you what is marked as PR-13 and PR-88. Do you recognize those?

A. Yes, I do.

Q. What's PR-13?

A. PR-13 is the main report I was asked to produce for this case.

Q. And PR-88?

A. Is the supplemental report I was asked to produce.

Q. Now, let's start with your first report, PR-13. Can you speak to its purpose?

A. The purpose of the report was to talk about the State of Louisiana's long history of discrimination against its black citizens and specifically how that history fed into voter discrimination, particularly after the franchise was granted in the late 1860s.

Q. And what was the scope of your inquiry in that report?

A. So my report began in pre-American Louisiana, which is really when the racial categories that are going to later be used by the State of Louisiana both pre-suffrage and post-suffrage were created and sort of honed by the state and are used up until the present day.

Q. Broadly speaking, what were your conclusions?

A. So from the very beginning, the state has been quite seriously invested in categorizing its citizens by race and specifically to use those categories to discriminate against black freedoms and after the 1860s, particularly or specifically against the right to vote. So that was really the target of a huge number of efforts by the State of Louisiana throughout the post 1868 period.

Q. I'd like to start at the beginning of that history. Dr. Gilpin, can you speak to the historical roots of racial discrimination in Louisiana?

A. Yeah. So, as I was just mentioning, that process began with categorizing its

citizens; and there was a period of fluidity before the state became much more rigid about defining who was black and who was white and there was a middle category that basically began to be erased in the 1840s and '50s when the state became very concerned with the influx of immigrants that didn't really fit any of the categories they had.

And that was when the State of Louisiana created a lot of methods and tools that they would use to disenfranchise black voters, so property requirements, poll taxes, and things like this, literacy tests were actually developed in the 1840s and '50s and then repurposed later on. So that's really the antebellum roots of modern voter discrimination in the State of Louisiana.

Q. What's the purpose within your report of letting out this antebellum history?

A. Well, as I was just mentioning, the sort of connection between these things is often quite concrete. So literally the white elites in the post-bellum period simply just sort of went back into their own history to find these tools and repurpose them, but basically that the -- the

1 foundation of both racial categorization and
2 voter discrimination itself is really firmly
3 established in the antebellum period and then
4 carried through very kind of unintentionally into
5 the post-bellum period.
6 Q. Now, moving forward in history to
7 efforts of before, how did voter discrimination
8 against black Louisianans evolve after the Civil
9 War?
10 A. So in the first constitutional
11 regression, which had actually happened in the
12 middle of the Civil War, was the first effort by
13 white Louisianans to kind of refashion old laws
14 and maintain some of the racial hierarchies that
15 they established in the antebellum period.
16 The black codes that were written in
17 1865 are the first examples of that and are
18 really quite explicitly understood as a way of
19 commonly bringing together as much of the slavery
20 rules that they could. It's not until the 1890s
21 that those had kind of taken a much more
22 explicitly political form, and that is most
23 notably with the adoption of the grandfather
24 clause, which was created by white Louisianians
25 in 1898 that establishes a rule where black

voters have to be able to trace their ancestry of either a father or a grandfather that had to have voted before January 1st of 1867, which was an illogical impossibility because black people can't -- could not vote before that date. So it was an effective way of taking black Louisianans out of politics.

At the time of the grandfather clause, they represented about 44 percent of the electorate in Louisiana, which has never been reached ever since then. Within two years, that was below 1 percent because of the effectiveness of the grandfather clause, so it took black voters from about 130,000 down to about 5,000 in two -- just two years.

Q. And did tactics like the grandfather clause and the other tactics you mentioned continue into the 20th century?

A. Yes. The grandfather clause was struck down by the Supreme Court in 1915, but the variety of total conventions that Louisianians had developed in the 1840s and '50s, there were some tests, poll taxes. Understanding clauses and really investing a lot more power in white registrars of voters was something that was --

really the weight of the state was putting behind that, so to the degree where you could have a white registrar reject a voter if they could not count the number of jelly beans in a jar that was at the polling station.

Q. Now, moving a bit farther into the 20th century, how did voting discrimination in Louisiana change after the Voting Rights Act was passed in 1965?

A. So it's not so much the discrimination change, especially in terms of magnitude or the determination by the State of Louisiana to disenfranchise its black voters. What the Voting Rights Act really did was make both citizens in Louisiana in both the state and federal government aware of these attempts to disenfranchise black voters. And this is particularly through the pre-clearance clause that made it possible for the -- where sort of the kind of dizzying extent of these efforts were kind of brought to light, and then also it gave a possibility for those efforts to disenfranchise black voters, to actually contest it in court.

Q. Can you speak about any of these Section 2 violations that you note in your

report?

A. Yeah. So I think the one that I find most compelling is the -- is the Chisom versus Roemer case of 1991, because it bears such a strong resemblance to things that have happened in the last calendar year in the State of Louisiana, whether up in West Monroe or in Baldwin.

So these are the exact same themes 30 years apart. The first one we were made aware of because of pre-clearance. The second one is just through the doggedness of -- I'm sure some of the people in this room could actually bring those kinds of things to light because the determination of the state has remained inexplicably unaltered. The mechanism of making us aware of them has drastically changed after 2013.

Q. Now, turning to your second report, PR-88, what was the purpose of that report?

A. So that report is -- the purpose was to talk about the history of racial classification by the State of Louisiana, again, stretching back to the pre-American Louisiana, which is when these racial categories sort of

1 started to be formulated; but particularly after
2 the Treadaway case of 1910, which is when the
3 State of Louisiana adopted this one-drop rule.
4 If anyone could be proven to have 1 percent
5 ancestry, they were going to be considered black
6 by the State of Louisiana.
7 Q. Now, how long was this one-drop rule
8 on analog and in place in Louisiana?
9 A. So that remained in place until 1970
10 when it was replaced by the 132nd law. That was
11 very vigorously contested in the 1970s actually
12 by white Louisianians or people who considered
13 themselves white who sued the state to try and be
14 reclassified. That law was changed in 1983 to
15 try to lower the standard by which -- what the
16 state would accept, although during that case I
17 think quite interestingly the state was citing
18 ancestry going back to Mobile, Alabama in 1760 to
19 prove that the citizen in question was black, at
20 least by the standards of the state.
21 So, again, it's really interesting
22 how invested the State of Louisiana is in those
23 categories and how they were used quite
24 explicitly then to disenfranchise voters.
25 Q. Stepping back a moment to something

more generally, what was your conclusion in your report?

A. Most particularly that those categories have been used over -- certainly over the course of the 20th and 21st centuries to disenfranchise black voters, but overall that there is just such a basic absurdity to racial categorization because there's no real science behind it, but the state remains very invested in making those distinguishing categories so that they then can be used in cases like this.

Q. Did you find anything related to how the history may effect the ways that multiracial Louisianians might identify today?

A. Yeah. Well, I think one of the things you have to take into consideration, we are talking about over 300 years of history and Louisianians of all colors are keenly aware of the consequences of what their category is both in terms of their self identification and how the state identifies them. And so there's just -- there is an enormous amount at stake in terms of what they identify as and what the state identifies them, and they are very aware of that and that sort of guides a lot of the idea going

forward.

Q. And just to be clear, this history timeline is the history you discussed in your original report?

A. Yes. I mean, I think it is -- it's pretty much -- it's a real cornerstone of everything that's discussed in the first report is what I'm discussing in the second report.

Q. Dr. Gilpin, how would you respond to the critique that your reports don't include enough examples of race discrimination?

A. Well, I disagree pretty fundamentally with that premise most particularly because after the Voting Rights Act was renewed in 1982, to me, everything that's come since then -- and we are talking about the last four decades -- I recall in recent history and also particularly I recall that because of the remarkable consistency with which white Louisianians have attempted to disenfranchise black voters. This is not something that sort of stopped at any given point, but it's really been a through line in the entire history of Louisiana even if we are talking about pre-suffrage, but particularly when we are talking about post 1982

where the state has just displayed a remarkable degree of continuity, doggedness, determination to stop black people from voting.

Q. Could you please outline for the court one of the examples of recent discrimination that you outline in your report?

A. Sure. I mean, I mentioned a few minutes ago the West Monroe Baldwin case which I think is probably the most scrutinized thing that's been used by the Louisiana politicians to try and disenfranchise black voters. That is the method of elections in the state and in West Monroe. The Hardy versus Edwards case is also a very, very recent example. We are talking about in the last calendar year of these, of a variety of schemes, basically whatever people can come up with in order to disenfranchise black voters. That's always the goal and it's really whatever tools are at their disposal to do that they will try to utilize.

Q. Dr. Gilpin, in your view, are similar practices made by -- made against black voters a thing of the past?

A. I would say they are very much the defining characteristics of Louisiana politics

past, present and certainly it looks like in the future.

MR. RIZZUTO:

Thank you, Dr. Gilpin. At this time, we move PR-13 and PR-88 into evidence.

THE COURT:

Any objections?

MS. MCKNIGHT:

No objection, Your Honor.

THE COURT:

PR-13 and PR-88 admitted.

MR. RIZZUTO:

Thank you, Your Honor.

THE COURT:

Any cross?

MS. MCKNIGHT:

Yes, ma'am.

CROSS-EXAMINATION BY MS. MCKNIGHT:

Q. Good afternoon, Dr. Gilpin. I'm Kate McKnight with legislative intervenors, and I have a few questions for you this afternoon or this evening.

A. Okay.

Q. Let's start with PR-13, your report

in this case. We are going to start on page 39.

MS. MCKNIGHT:

He needs to be switched.

TRIAL TECH:

(Complied.)

MS. MCKNIGHT:

Thank you.

BY MS. MCKNIGHT:

Q. So, Dr. Gilpin, you include in your report a section titled Voting Rights in Louisiana, 1982 to 2013. Do you see that?

A. I do.

Q. Okay. And in this section, you study case law developments related to the Voting Rights Act, right?

A. Yeah. I think that's one of the things that are examined in this section.

Q. Okay. Now, during this time period following the 1990 census, Louisiana tried to comply with a Voting Rights Act by drawing two majority-minority congressional districts, correct?

A. I mean, I am aware of this. I'm not sure it's discussed at any length in the report.

Q. Okay. And Louisiana's effort to

draw a second congressional district after the 1990 census was struck down by courts as a racial gerrymander, correct?

A. Again, I'm not sure if that's in the scope of this report. I'm dimly aware of this, otherwise.

Q. Okay. So a Voting Rights Act case in the early 1990s would not be within the scope of your report, which includes a section titled Voting Rights in Louisiana, 1982 to 2013?

A. No. I mean, it would fall under that heading perfectly comfortably, but it may not have been included for whatever reason.

Q. And what might that reason be?

A. Possibly that I overlooked it; possibly that the report was getting quite long. I'm not entirely sure.

Q. Okay. So I understand that in your report you do not address Louisiana's effort to comply with the Voting Rights Act by creating a second majority-minority district following the 1990 census, correct?

A. I mean, if you didn't find it, I'm not sure that it's in there.

Q. Okay. And, in fact, you do not even

-- you cite a lot of case law, but you did not even cite one of the Hays cases in the Hays line of cases, correct?

A. No. I don't believe that I did cite any of the Hays cases.

Q. Okay. Thank you. Let's move on to page 45 in your report.

A. (Complied.)

Q. Dr. Gilpin, you note toward the end of the fourth paragraph, the one that starts "The hotly contested," you note, quote, the changes to the VRA in the wake of Shelby County meant that states were no longer under the burden of proving their laws to be nondiscriminatory." Do you see that?

A. Yes, I do.

Q. Okay. So before Shelby County, which was a 2013 Supreme Court opinion, Louisiana was under a burden of proving its voting laws to be nondiscriminatory, correct?

A. Yeah. That's my understanding of the Section 5 pre-clearance.

Q. Okay. And in 2011, so before Shelby County, Louisiana's Congressional Map was pre-clear, correct?

A. I'm not sure that I discuss that in this report. I mean, I heard it in the courtroom today.

Q. Okay. So you understand that to be true?

A. Sure.

MS. MCKNIGHT:

Okay. Thank you. No further questions, Dr. Gilpin.

THE COURT:

Any redirect?

MR. RIZZUTO:

No redirect, Your Honor.

THE COURT:

Okay. Thank you. Dr. Gilpin, you may go or you are released. Next witness?

MR. SAVITT:

Good afternoon, Your Honor. I'm making my first appearance. I'm Adam Savitt. That's S-A-V-I-T-T, on behalf of the Robinson plaintiffs, and we would like to call Ashley Shelton.

ASHLEY SHELTON,

after having first been duly sworn by the above-mentioned Court Reporter did testify as

1 follows:
2 THE DEPUTY:
3 And would you please state your name
4 and spell it for the record, please?
5 THE WITNESS:
6 Sure. My name is Ashley,
7 A-S-H-L-E-Y, Shelton, S-H-E-L-T-O-N.
8 DIRECT EXAMINATION BY MR. SAVITT:
9 Q. Good afternoon, Ms. Shelton.
10 A. Good afternoon.
11 MR. SAVITT:
12 Could we please pull up PR
13 Exhibit 11?
14 TRIAL TECH:
15 (Complied.)
16 BY MR. SAVITT:
17 Q. And do you recognize this document,
18 Ms. Shelton?
19 A. I do.
20 Q. And what is it?
21 A. It is my declaration.
22 Q. Okay. Thank you very much. We can
23 put that down. Ms. Shelton, where do you live?
24 A. In Baton Rouge.
25 Q. And how long have you lived in

Baton Rouge?

A. My whole life.

Q. Okay. And thank you. And what is your current job title?

A. I am the president and CEO for the Power Coalition of Equity and Justice.

Q. And what does the Power Coalition do?

A. We are a voting educational organization. We work with historically disenfranchised communities throughout Louisiana engaging, helping connect them back to their voice, their vote and their power.

Q. Thank you. And would you say you focus on communities of color in your Power Coalition?

A. Yes.

Q. And, Ms. Shelton, why are you -- are you here today?

A. I am here today because we did a ton of work working across communities in the State of Louisiana. I participated in redistricting last cycle, and I probably could have shot a cannon through the capital and not hit one person. And this particular Power Coalition

engaged over a thousand citizens across the state that participated in this process from census all the way to the road show and then the special session, and so I am here today to represent the folks that consistently asked for a fair and equitable redistricting process and did not receive that.

Q. Thank you, Ms. Shelton. And you mentioned that the Power Coalition works predominantly with communities of color.

Based on your experience working with Power Coalition, do black voters face discrimination related to voting?

A. Yes.

Q. And could you describe that discrimination?

A. Sure. I mean, you know, Gosh. So for, you know, just in our own experiences, we -- during COVID, so 70 percent of the deaths from COVID early on were African-American people, so disproportionately black people were dying from COVID; and in that -- you know, in that process of, you know, the then -- the Secretary of State then put into place during the primary several reasons that votes could -- you know, could

1 request an absentee ballot especially if they
2 have underlying conditions, but when we got to
3 the general election, they did not want those
4 reasons to stand and so we ended up having to
5 organize and sued the Secretary of State.
6 And the governor did stand with us,
7 even though we had to name him in that lawsuit,
8 that at the end of the day with so many
9 African-American votes dying early on, had COVID
10 continued -- this was before vaccines, before we
11 understood how it was going to continue to grow
12 and change. We were able to ensure that black
13 voters that disproportionately had underlying
14 conditions had access to their vote.
15 Also, there is an example in Baker,
16 where Baker is right outside. It's one of the
17 many unincorporated areas of Baton Rouge right
18 outside. And during the 2020 election, there was
19 a white man who sat in his chair with a very
20 large gun outside of a black precinct. He was,
21 you know, 600 yards away or feet away, which is
22 the law, but clearly sitting there with a large
23 gun in proximity to a black -- black precinct,
24 you know, was alarming. And very squarely the
25 police were called, FBI, State Troopers. I mean,

everyone was there, but no one, you know, took action because it clearly was, you know, voter intimidation, but nobody took action on that. And so basically multiple -- you know, multiple, you know, police groups just kind of sat and watched him instead of removing him which black voters were comfortable making their vote.

Q. Thank you. And was Power Coalition and its constituents present at that Baker roll eight poll?

A. Yes. We were there, had two staff members and several mens of the community and we had to move them back so they could be in a safe distance as the police kind of worked out what was going on, but, again, he was able to sit there for a good bit of the day.

Q. And so is it fair to say that you didn't feel like your needs were adequately responded to by the Louisiana officials?

A. They were not.

Q. Thank you. In your experience, are there greater obstacles for black voters than for white voters?

A. Yes.

Q. Could you describe some of them?

A. So in -- you know, in Louisiana, we have transportation issues, you know, if you -- like even New Orleans, which probably has our best transit system, is still lacking, you know, in many ways. Baton Rouge has a system that is not -- you know, that works, but is not meeting the needs of our entire city, and Shreveport has even less of an transit system. Those are our three largest metros with Jefferson, but -- you know, but Jefferson has none either. And so the idea that black voters have to -- like we provide rides to the polls so that we can ensure that black voters can actually vote in elections.

But, again, black voters disproportionately experience poll closures and poll changes. They -- also too, whenever they have a polling location, they also experience that their polling locations also have issues with disability accessibility; and so for us, the ability to be able to engage black voters ensure black voters and ensure that they have access to their voice and their vote is really critical for us.

And one of the things that I love in New Orleans is we get to work with a funeral home

that they have old vehicles that they donate to the process, not the hearse. So people understand the importance of getting people to vote. And in the rural communities, it's even harder, but we do work with partners and churches across the state to make sure that people can access their right to vote.

Q. So is it fair to say that lack of access to transportation makes it harder for black Louisianians to participate in the political process?

A. Yes.

Q. And, Ms. Shelton, does Power Coalition work to contact Louisianians about voting?

A. Yes.

Q. Can you describe some of Power Coalition's efforts in that front?

A. Absolutely. So we work -- we basically build what we call a universe; and usually for statewide elections, it's about 500,000 people. And we do text messages, phone, phone banking, phone calls as well as canvasing where we are door knocking and talking to communities. We also do candidate surveys and

candidate forums. We also do candidate surveys and candidate forums.

Q. And, Ms. Shelton, do black voters need this extra out each in your experience?

A. Yes.

Q. And why is that?

A. One of the things that we found in our work is that nobody was talking to black voters or brown voters or indigenous or ABI and that the work that -- you know, we know that of our universe of voters that we are reaching, we are sure, you know, historically disenfranchised communities, that we can get up to about 55 percent of our universe to turn out to vote, which proves to me that no one was talking to them, no one was addressing them, no one was including them in the process. And, you know, a lot of our work is reconnecting people to their agency as a voter.

Q. Thank you. In your experience working with Power Coalition, are there technology barriers that make it difficult to reach black voters?

A. Yes. We -- I mean, many folks have talked about and it's no secret that broadband is

an issue throughout our rural communities, but it's also an issue in our urban communities.

You know, we work with the voter files. Phone numbers change, you know, constantly. You know, folks are dealing with housing, security and other issues, and so, again, it certainly is an issue of access and whether or not -- you know, whether or not they can afford a cell phone, a house phone or whatever, rent, so those are some other ways that we would try and contact them.

Q. Thank you, Ms. Shelton. And you mentioned the impact of poll closures on the communities you served. Are you aware of poll closures that resulted from precinct consolidation?

A. Yes.

Q. Could you speak to that issue?

A. So, I mean, we have one, you know, instance, you know, that kind of comes to -- clearly to mind in New Orleans east. They were closing and consolidating a polling location that was predominantly African-American; and in that polling location, you know, we tried to work with the Secretary of State to make it -- make sense

for those voters that were chronic voters, many of them in that area. And what -- ultimately, you know, their argument was well, we are just moving it a couple of miles, but in moving it a couple of miles meant that the community would have to, you know, cross a dangerous highway.

And so, again, on paper, it doesn't look like it is this big deal, but to those voters that are -- are trying to access their vote and used to walk to the polls, can no longer do that in a safe way if they have got to cross a major interstate to access their vote.

Q. Thank you, Ms. Shelton. I'd like to shift gears. Could you please provide a brief overview of Power Coalition activities relating to the 2020 redistricting process?

A. Yes. We started our process and worked all over the state to engage rural communities in the Power census, in being counted, try to address some of the fear and fear monitoring that was happening about what did it mean to take the census; and we did that work throughout the census process and then shifted gears, you know, shortly thereafter to start teaching people what redistricting was. So we

had -- we held redistricting academies where we taught folks the language, cracking, packing or other definitions.

And we also, you know, worked with them to actually learn the map system. They learned how to draw their own maps. We also have three redistricting fellows that also did trainings across the -- you know, across the state. I think they did like 43 trainings in individual small clusters, different parts of the state.

And I think most importantly we supported, you know, people to participate in the road shows. And so, I mean, again, there were -- at almost every road show, there were at least a hundred people that came and testified at each stop; and overwhelmingly, the majority of the testimony at every single road show, white and black, old and young, was they wanted a fair and equitable plan and they wanted a second majority district. It was clear. It was real that people said this all over the State of Louisiana, and they were ignored by House governmental affairs and Senate governmental affairs.

Q. Thank you, Ms. Shelton. As part of

Power Coalition's efforts, did it submit districting maps to the legislature that contained more than one majority black district?

A. We did.

Q. And why was it important to provide those maps to the legislature?

A. It was important for us to prove that it could be done, that -- that, you know, again, we lost 5 percent in white population, we gained almost 3 percent in black and other, you know, populations; so for us, this was about honoring the fact that we have the second largest black population in the country and that actually that it could be drawn in many different ways to prove that it wasn't just an idea or something that -- you know, that I wanted, but that it actually was something that was possible and necessary for fair and equitable maps in Louisiana.

Q. Thank you, Ms. Shelton. How did Louisiana state officials treat Power Coalition and its constituents during the road shows in the legislative sessions?

A. We were treated -- it was unfortunate, because I think for many of the road

shows, you could see how the House governmental affairs, Senate governmental affairs members, they were, you know, doodling, not looking up and these people are telling their story of generations of voting rights work, the work that they had to ensure that they had a right to vote; and, you know, folks are looking down and not paying attention.

And then when we went to the capital and we -- also, you know, we had over -- you know, for the opening of the redistricting session, there were over 250, you know, people of color, white allies that showed up to say we are here, we are watching you, and this is what we said we wanted and we are going to continue to say what we want. And even in the legislative commute rooms, legislators walking around, not paying attention, basically waiting to see when all of the testimony would be done so they could vote.

Not one map that included a second majority-minority district came out of that committee. They wouldn't even allow it to be discussed on the floor.

Q. And, Ms. Shelton, were there any

other instances that you felt that you were not heard by the legislature during this -- during that time?

A. Yes. So on the day when they were overriding the veto, we were all at the Capitol. We were in -- the House voted before the Senate. You know, the House voted -- I mean, it came down to a couple of votes, right. And at the end of the day, we didn't -- you know, the veto was overturned.

Basically, they knew in the house that it was overturned because they hadn't voted on the Senate side. And once that happened, once the vote was made, they cheered, they celebrated. The vote was a long racial line.

And then you walk across the hallway to the Senate chamber and it is like a funeral; it is somber, it is quiet. The black Senators testified and said, you know, we can't change their mind, but this is the historical nature of what we are trying to do here. And, again, the vote, of course, the governor's veto was overturned.

Q. And just, for the record, who cheered?

A. The conservative members of the House and -- and members of the Senate because they both came to both sides.

Q. And could you please describe what it felt like to you and Power Coalition's constituents when the legislature overrode the veto?

A. I mean, I think it's, you know, deflating and it's also, again, like a true sign of disenfranchisement. And so how is it thousands of people participate and they say specifically two very key messages, and that message is that -- I gave them the messages that were on their card that were messages that had -- you know, again, like a familial fight for them around having their voice -- their voice and their vote.

And to then, you know, one, get a community outcry for the governor to veto and then to have that -- that veto overturned, it just basically tells voters that we have worked so hard to give agency to as a voter and remind them that their vote and voice actually has power, it just basically says to them it's politics as usual, it doesn't matter, you know,

and so they disengage and so it makes our work doubly hard.

Q. And following up on that, Ms. Shelton, how did the legislature's enacted congressional map impact the Power Coalition's work?

A. So the Power Coalition, again, you know, we have got midterms coming up in the fall, and so this current -- you know, like so we do a lot of education work with our communities, the historically disenfranchised communities in Louisiana. And in the process of doing that work, right, like we've got to -- you know, like we've got to educate them on like what district do they live in, what changes have happened, and then also too, engage them in, you know, the process of understanding, you know, what and when they are going to vote.

And I think that specifically for Power Coalition, again, we are -- we are doing touches, right. Like, you know, last -- last year we did over -- I want to say over a million touches. And when you talk about a million touches, that means that, you know, we are touching voters at least three times, so a phone

call, a door knock, you know, a text message or a whole bunch of other things.

And so the difference is me having to do double work because I'm dealing with disenfranchised voters: You told me that if we engage and we provided our voice that it would be okay, and so they are deflated and disconnected. And so, again, double work, right, versus working with a population and -- and group of voters who don't feel disenfranchised, who feel like they do have a voice and power and that they are going to be able to elect a candidate of choice. And we know that being able to elect a candidate of choice drives voter interest and voter excitement in these processes. And so on -- you know, so, again, this map that is enacted, I've got both a disenfranchised and deflated group of people who feel the system does not work.

Q. Thank you, Ms. Shelton. Shifting gears, you said you lived in Baton Rouge your whole life?

A. Yes.

Q. Are there differences between north Baton Rouge and south Baton Rouge?

A. Yes. I think it's -- Baton Rouge is

a tale of two cities. Here we basically have the worst and the best quality of life within a few square miles of each other in that, you know, north Baton Rouge being predominately African-American, south Baton Rouge being predominately white. You know, and the income matching, you know, certainly with north Baton Rouge's community poor and moderate income and south Baton Rouge is a much more wealthy community.

And then, you know, also too politically it's been interesting because basically voters in the State of Louisiana and in the City of Baton Rouge, basically they have voted to secede from north Baton Rouge is the best way I could put it. It is currently in court, but -- but, I mean, it gives you an idea of how powerful that difference is or that -- or this division between communities in Baton Rouge Parish.

Q. Thank you. And you mentioned that north Baton Rouge was predominantly people of color.

Would you say that north Baton Rouge or the people of north Baton Rouge have common

needs that go beyond race?

A. Yes.

Q. And could you speak to those, please?

A. Yeah. I mean, I think that, you know, we've -- again, you know, second, we are the second poorest state. I think maybe some of the data we saw today, maybe we beat Mississippi, unfortunately, to be the poorest state. You know, in north Baton Rouge, we have got housing insecurity, we have got food insecurity, we have absolutely, you know, food desserts as well as, you know, just not -- no opportunities for economic -- you know, economic growth and, you know -- and yeah.

Q. Thank you, Ms. Shelton. Shifting gears again, the defendants argue that political party rather than race is responsible for voting patterns in Louisiana.

In your experience as president and CEO of Power Coalition, do you find that black voters vote for Democrats just because they are Democrats?

A. No. I think they vote for -- I mean, I think they vote for who is going to care

about their self interest. Does that happen to be democrats? Most -- most of the time, more than likely. However, I think it is also true that I don't think the black community is served well by either side.

Q. Thank you, Ms. Shelton. Just one more topic. Why is it important to Power Coalition's constituent to be an additional black majority district?

A. Because, again, I think that one of the things that was so beautiful was that when we started the redistricting journey as an organization and trying to engage people in very dense content, it's not like anything that we have been talking about. It's not easy to understand and multiple definitions.

And so to be able to engage that many people in the process, to have them show up at the Capitol every day and have them engaged and feel like they are empowered and like that this was what was right, I mean, the way that --

Again, there was several different ways that they could have gotten a second district, and then to have the legislature tell them no at every turn from the road show to the

redistricting special session to the veto override.

And so the Power Coalition, this is about voice and power and, you know, about black people being able to have -- to elect their candidates of choice. And by packing us all into one district, we basically minimize the ability of black voters to elect candidates of choice.

MR. SAVITT:

Thank you, Ms. Shelton. No further questions, Your Honor.

THE COURT:

Yeah. I have two just before cross, if you don't mind. One is you mentioned the precinct consolidation in New Orleans east. You said it moved a few miles but across a dangerous highway. Can you tell me what highway that was?

THE WITNESS:

I'm pretty sure it was -- it's I-10. I think it's still I-10.

THE COURT:

It's I-10.

THE WITNESS:

Yeah.

THE COURT:

You said a highway and I didn't know if it was actually the interstate or a highway.

THE WITNESS:

Yeah.

THE COURT:

My other question was: You said that two messages came through in these road shows from various people that Power Coalition encouraged to participate in the political process. You didn't say what those two messages were.

THE WITNESS:

Oh, sorry. That they wanted a fair and equitable redistricting process, and that they wanted a second majority-minority district to honor the change in population and shift in population.

THE COURT:

Okay. Thanks. That may have provoked additional questions, which I'm certainly going to allow counsel to have. Cross?

MR. WALE:

Thank you, Your Honor.

CROSS-EXAMINATION BY MR. WALE:

Q. Hi, Ms. Shelton. My name is Jeffrey Wale. I'm an attorney for the state, and I'll be asking you a few questions this afternoon.

A. Hi.

Q. Hi. How long has the Power Coalition -- the full name is Power Coalition for Equity and Justice, correct?

A. Yes.

Q. But you just call it Power Coalition?

A. Yes.

Q. That's what everybody refers to it as, Power Coalition?

A. Right.

Q. How long has Power Coalition existed in the state?

A. Gosh, since so about 2015.

Q. 2015. Okay.

A. And I think there's a little bit of gray because we did spin out of another nonprofit organization onto our own and so -- and so -- and also too, we are physically sponsored by another

nonprofit. And so, again, probably within the, you know, Secretary of State's registry, that date might be different.

Q. What are that -- what is that nonprofit that you-all split from?

A. It's called One Voice.

Q. One Voice?

A. Uh-huh (affirmatively).

Q. And what's the nonprofit that you are financially sponsored by?

A. Public Allies.

Q. Public Allies. And so from that, is that the sole source of your funding or do you have other contributors and donors and things of that nature?

A. No. They are our individual sponsor and we raise own like through foundations, donors and individuals.

Q. Okay. Do you disclose or publicly release your foundation's donors?

A. It is -- it is released within Public Allies within their 990, and, I mean, they have to still report our -- our grants and our information because we are a fiscally responsible project.

Q. Okay. And -- and I've been looking at your website, and so I know you partner with several organizations. What are some of those organizations that you primarily partner with?

A. Yes. Power Coalition is a voting educational organization. It is our belief that in order to serve people and to -- to address policy advocacy issues you have to actually work with directly impacted people. So voice of experience holds, you know, they all have specific content area expertise. So Vote Works around criminal justice, the Louisiana Alliance around housing, the -- I'm trying to think, go around the table. Basically it networks within the Vietnamese community in New Orleans east. And so, again, you know, it's a broad spectrum of groups that have specific issues, area of content, expertise.

Q. And was the Louisiana Budget Project mentioned as one?

A. Oh, yes. Yes. And Louisiana Partnership For Children and Families as well as Louisiana Policy Institute and women with a vision, so yes, there are several -- several different groups. And the budget project,

1 although not a base building group, does provide
2 foundational expertise on budget and fiscal
3 issues that impact poverty stricken communities
4 across Louisiana.
5 Q. So in paragraph 15 of your
6 declaration that you made in this case, you state
7 that your member organization was directly
8 impacted by vote dilution.
9 And so my question for you, are
10 organizations voters? In other words, do
11 organizations have a right to vote?
12 A. Organizations do not have a right to
13 vote. I think what we are specifically talking
14 about is that these organizations represent a
15 base, which means that they have a membership.
16 And so, for example, Vote has several hundred
17 members in New Orleans, they have about a hundred
18 members here in Baton Rouge, they have got
19 members in Shreveport and all over the state.
20 And so, again, it's not -- the
21 individual organization is the people that they
22 represent and the people that they work with.
23 Q. So you had testified that you were
24 engaged in the redistricting process and Power
25 Coalition was engaged in the redistricting

process -- in the most recent --
A. Yes.
Q. -- redistricting session, correct?
A. Right.
Q. And so at the road show and at the Capitol, every member of the Power Coalition who attended could turn in a card in support or opposition to any bill proposed, correct?
A. Correct.
Q. And everyone had the opportunity to provide public comment at those events?
A. Most of the time. I mean, there were a lot of people some days and so we couldn't. They had to break and we couldn't get to everybody, especially on the first day, but for the most part.
Q. Okay. And does the Power Coalition typically engage in the legislative process?
A. We do.
Q. On many different issues?
A. Yes.
Q. And as far as legislative activity, would that include encouraging the governor to veto bills that you were in opposition to?
A. Yes. I mean, it's advocacy. I

mean, you have the power. We are the Power Coalition, so we look for the path that will get -- get people what they deserve and what they need.

Q. And, in the future, you would continue to fight for laws or bills that you support or oppose, either support or oppose at the legislature, correct?

A. Restate.

Q. So in the future -- let me restate that. If this enact -- the enacted map goes forward, the enacted map is allowed, you will continue to fight for issues that the Power Coalition cares about, correct?

A. We will. And I think the difference, though, that's very important that I want to continue to make is that I am working to, you know, move people that are excited and feel like they are living in a state that's listening to them and giving them equal voice or are they living or -- you know, or are they actually living in a state that, again, like does not do that.

So it's about moving disenfranchised folks, which is the work we have done for years,

and so it makes us compromise and forces us to have to do double work because we have got to reconnect to their agency as a voter.

Q. So for the -- the past decade you've had the previous congressional map that only had one majority maritime district, correct?

A. Correct.

Q. And the Power Coalition was able to encourage individuals to register to vote under that map?

A. Yes.

Q. All right. And you had attempted -- as you had stated earlier, you reached out and did text messages, phone calls encouraging both registration and turnout, correct?

A. Uh-huh (affirmatively).

Q. All right. And you had said something earlier about candidates of choice. Are -- so the Power Coalition members does have candidates of choice?

A. I mean, the members that live in District 2.

Q. All right. In District 2, they do?

A. I mean, in that district, yes. That's a majority African-American district,

Congressional District 2. But I currently live in Congressional District 6, and I do not actually have the opportunity to pick a candidate of choice.

Q. So you don't have an opportunity to elect a candidate of choice in District 6; that's your testimony?

A. Yes.

Q. And is your candidate of choice, is that limited to any particular political party? Can your -- stated across the way, can your candidate of choice be a conservative Republican?

A. My candidate of choice is anybody that is going to center around the issues that I care about. I mean, I am a black mother. I have a beautiful, goofy 6'4 son that's 200 pounds. I mean, anybody that's going to care about those issues.

If you look at Garrett Graves, my current congressman, if you look at his record, his voting record does not vote for anything that I care about, including the fact that the infrastructure bill that just passed, he voted against that. And our city is crumbling -- I mean, our state is crumbling in terms of

infrastructure; and so even when it makes sense, even when it made sense to vote for that bill, he voted against it.

Q. But you would say a candidate of choice could be conservative and could be Republican?

A. Yes.

Q. And they could be white?

A. I mean, it's not been my experience to date, but, I mean, I guess it's possible.

Q. All right. I just have one more question for you. On December 14th, you wrote a letter to the legislature stating "We conducted an analysis of recompiled election results and determined that the two repetitive majority white community districts in the coalition maps CD2 and CD5 were reliably performed to provide an opportunity for a candidate preferred by a black voter to prevail." Do you recall this letter?

A. Yes. But, I mean, I don't -- I mean, if you want to put it up.

Q. Yeah, we can. We can go to Exhibit 9, if that helps at all.

But my question was basically there's a mentioned analysis in there which is on

page 2 of the letter, there's an analysis mentioned. Why was this analysis never provided to the legislature?

A. So as we sat in committee day after day throughout the redistricting process, you know, Representative Sklefani, you know, asked that question; and I think that's part of what -- even in that space, you know, like I think it is -- the work is there, right.

Like maps were drawn by a nationally-recognized demographer whom this court has had the opportunity to talk to. The -- you know, it's like at the end of the day, like why did we have to do the state's work for them. I mean, at the end of the day, we were able to show what was necessary for the record and what was necessary for them to make a decision about whether or not -- you know, whether or not these seven maps that met all of the traditional redistricting principles that showed a second majority-minority district, all of those things were met, and so --

Q. But you didn't feel the need to show that to the legislature?

A. Again, I mean, we worked with lots

of partners and so I don't want to -- you know, I mean, it wasn't my decision, but I do think that at the end of the day, I do agree it's not our job to -- to do every single part.

I mean, like we have done every single part of this process for the state to fight for African-American communities to have voice. And the idea that like I got to also show you my math and show you my homework, even though I do in the sense that there were seven maps submitted with that letter that show that it's possible for African-Americans, for a second majority-minority district, to honor the growth in the black population, which is the purpose of redistricting, which is to honor changes in population.

Q. You said the court had heard from that demographer who drew that for you. Which one was that?

A. Well, I mean, one of the two that's -- but either one of the two that spoke today. I want to say it was Tony Fairfax, but I -- but one of the two that were here today, well, yesterday.

Q. And just short, just some -- just a couple more really quick questions. How long

have you lived in Baton Rouge?

A. All my life. I'm 46.

Q. All your life?

A. I'm 46.

Q. So you were here when Kip Holden was elected?

A. Yes.

Q. And Sharon Broome was elected, obviously?

A. Yes.

Q. And they were elected parish wide, correct?

A. Yes.

Q. And was Kip Holden elected when East Baton Rouge Parish was majority white?

A. I'm not sure.

MR. WALE:

Okay. Thank you very much. That's all the questions I have.

THE COURT:

Any redirect?

MR. SAVITT:

No, Your Honor.

THE COURT:

All right. You are free to go.

Thank you for your help, ma'am.

Okay. We will adjourn. It's almost 5:40. We will reconvene at 9:30, but before that, can you give the court a sense on whereabouts you are? It's looking like that you are going to be able to close this thing out on Friday? I have -- I haven't counted heads, so I don't have a sense in my mind how many -- how many -- how many witnesses we are into on your witness lists.

MS. KHANNA:

I believe we will be fine to close out on Friday, Your Honor. Tomorrow the plaintiffs will have, I would say, no more than one to two relatively short witnesses, and I imagine the defendants will be able to put on their case in chief in the morning.

THE COURT:

The plan tomorrow is we will convene at 9:30. Yeah, that's correct. We will be able to convene at 9:30. We will break early tomorrow. There's a court-wide function that I'm really -- really need to

go to, but I'll play it by ear. I can go late. I mean, my goal would be to break around 3:30, but if we are in a spot where we need to go until 4:00 or a little after 4:00, we can -- we can do that, okay, but we do need to plan to break a few minutes early tomorrow. All right. Rest well. See you in the morning at 9:30 a.m.

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REPORTER'S PAGE

I, CHERIE' E. WHITE, Certified Court Reporter, in and for the State of Louisiana, the officer, as defined in Rule 28 of the Federal Rules of Civil Procedure and/or Article 1434(B) of the Louisiana Code of Civil Procedure, before whom this sworn testimony was taken, do hereby state on the record;

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