

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD AGEE, JR., et al,
Plaintiffs,

vs.

Case No. 1:22-cv-272

JOCELYN BENSON, et al,
Defendants.

VOLUME II

TRIAL

HELD BEFORE THE HONORABLE JANET T. NEFF, PAUL L MALONEY, and
RAYMOND L. KETHLEDGE

Kalamazoo, Michigan
November 2, 2023

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2 November 2, 2023

3 8:53 a.m.

4 *PROCEEDINGS*

5 THE CLERK: All rise, please. The United States
6 District Court for the Western District of Michigan is now in
7 session. The Honorable Paul Maloney, the Honorable Raymond
8 Kethledge, and the Honorable Janet Neff presiding.

9 All persons having business with this Court, draw
10 near, give attention, and you shall be heard. God save these
11 United States and this Honorable Court.

12 You may be seated.

13 JUDGE MALONEY: We are back on the record in
14 22-cv-272, Agee, et al versus Benson, et al. We are ready to
15 proceed. Counsel for the parties are present.

16 Mr. Bursch, you may call your next witness.

17 MR. BURSCH: Thank you, Judge Maloney. We call Sean
18 Trende to the stand.

19 JUDGE MALONEY: All right. Mr. Trende, please step
20 forward and be sworn.

21 *SEAN TRENDE,*

22 *having been sworn by the Clerk at 8:54 a.m. testified as*
23 *follows:*

24 THE CLERK: Please be seated. State your full name
25 and spell your last name for the record, please.

1 THE WITNESS: It's Sean, S-E-A-N, Patrick Trende,
2 T-R-E-N-D-E.

3 DIRECT EXAMINATION

4 BY MR. BURSCH:

5 Q. Good morning, Mr. Trende.

6 A. Good morning.

7 Q. We'll jump right into it. Can you tell us about your
8 education through 2001?

9 A. Yeah. I graduated with a bachelor's degree in history and
10 political science from Yale University in 1995. I graduated
11 from Duke University with a JD in 2001, and Duke offers a
12 joint degree program where if you do some summer work you can
13 get a master's degree. So at the same time that I earned my
14 JD, I also earned a master's degree in political science.

15 Q. Okay. And then what did you do after law school
16 graduation?

17 A. I clerked for Chief Judge Tacha on the Tenth Circuit for a
18 year. I worked at Kirkland & Ellis in Washington, D.C. for
19 three years, and then Hunton & Williams in Richmond for
20 another three years.

21 Q. And then after that?

22 A. After that I retired from the legal profession and started
23 writing for RealClearPolitics.

24 Q. And what's your title there?

25 A. I'm senior elections analyst.

1 Q. Okay. And if I use the term RCP to refer to
2 RealClearPolitics, you'll know what I mean?

3 A. Yes.

4 Q. Okay. What is RCP?

5 A. So, RCP produces a website and has for the past 20 years
6 that aggregates articles, political data, and produces
7 original product as well.

8 Q. Okay. And you produced some of this original content?

9 A. That's right. I've been a writer -- I've written for them
10 for 12 years now.

11 Q. Okay. About how many employees?

12 A. About 50 employees.

13 Q. And a physical office?

14 A. There's a physical office in Washington, D.C.

15 Q. Okay. Any other employers that you're currently
16 affiliated with?

17 A. I'm a non-resident visiting fellow at the American
18 Enterprise Institute and have been for six years now.

19 Q. Okay. Now, we left off with your education in 2001 when
20 you got the double degree. You've done some more since then?

21 A. Yeah. So in 2016 I enrolled in a PhD program at -- and
22 I'm sorry I have to say it this way -- The Ohio State
23 University. I -- when I got there, I looked at -- they looked
24 at my stats work that I had done for my master's degree and
25 suggested that rather than go through the political science

1 statistics progression, I go do some work in the statistics
2 department. And so three years and 40 credit hours later I
3 emerged with a master's degree in applied statistics, and I've
4 also completed comprehensive exams in political science in
5 both political methodology and American politics.

6 Q. Okay. And were Bayesian statistics part of that
7 curriculum as well?

8 A. They were.

9 MR. BURSCH: Bayesian, B-A-Y-E-S-I-A-N.

10 BY MR. BURSCH:

11 Q. And can you explain what --

12 MR. BURSCH: Statistics.

13 THE WITNESS: Yes.

14 BY MR. BURSCH:

15 Q. Can you explain what that is?

16 A. So just like in legal constitutional thought there's kind
17 of a split between living constitutionalists and originalists.
18 The main split in statistics is between what we call
19 frequentists, just the word frequent with I-S-T-S on it, and
20 Bayesians. And it is really just two different ways of
21 looking at the uncertainty we're studying and how to approach
22 it.

23 Q. Can you tell the panel about your PhD work?

24 A. Yes. So I have been working on my dissertation and
25 completed it this summer. I defended my dissertation

1 successfully a few weeks ago. So I will be receiving my PhD
2 in mid December.

3 Q. Okay. So if we were in Europe, you would be Doctor
4 Trende, but here in the states I can -- I have to wait until
5 December 17th?

6 A. We have to wait, yes.

7 Q. All right. I know that part of your work covered
8 political methodology. Could you please describe what that
9 is?

10 A. So political methodology is the application of statistics
11 to political work. It's basically statistical analysis, what
12 we call it in political science.

13 Q. Okay. What was the format of your dissertation?

14 A. So it's a three-paper dissertation. Rather than the
15 typical book length dissertation there's an alternate form you
16 can do where you write three papers and use that as your
17 dissertation.

18 Q. And the first paper was?

19 A. The first paper was looking at Supreme Court voting
20 patterns from 1900 to 1945 and the development of -- the
21 advent of what we might call ideological voting on the court.

22 Q. Okay. And number two?

23 A. Number two was the application of a Bayesian technique for
24 estimating spacial relationships to voting patterns in the
25 United States.

1 Q. And number three?

2 A. And the third was incorporating communities of interest
3 into redistricting simulations.

4 Q. Okay. Did you study a variety of simulation techniques
5 for this?

6 A. I did.

7 Q. And did you write your own simulation codes?

8 A. I did.

9 Q. Have you taught college level courses?

10 A. Yes.

11 Q. Why don't you tell us about those.

12 A. So, I taught mass meeting United States politics at Ohio
13 Wesleyan University for a semester. I taught intro to
14 American politics at OSU for four semesters. I have taught
15 survey methodology one semester and I'll be teaching it again
16 next semester. And I taught kind of my own class, voting
17 participation and turnout, three times now.

18 Q. Did I hear you say that you're going to be teaching next
19 semester after you get your PhD?

20 A. That's right. I've been asked to stay on as a lecturer.

21 Q. Okay. Tell me about the political participation
22 and voting behavior class. Does it cover gerrymandering?

23 A. It does. The first half of that class looks in depth at
24 the literature on why people choose to turn out and how they
25 make their choice on how to vote. The second half of the

1 class looks at the interaction between those decisions and the
2 law. So it looks at gerrymandering. It looks at racial
3 gerrymandering, the Voting Rights Act, and then some of the --
4 photo ID and those types of situations.

5 Q. All right. Have you ever been appointed by a Court as an
6 expert?

7 A. Twice.

8 Q. Okay. What was the first?

9 A. The first I was appointed by the Supreme Court of Belize
10 as the Court's own expert in their version of *Baker v Carr*,
11 and then was also asked to draw three sets of remedial maps
12 for the Court.

13 Q. All right. And the second?

14 A. The second time I was appointed by the Supreme Court of
15 Virginia along with Bernie Grofman to redraw the maps at the
16 State House, State Senate, and congressional level for
17 the state -- commonwealth of Virginia.

18 Q. Are those maps still in effect?

19 A. They are.

20 Q. Okay. Ever been appointed by a Redistricting Commission?

21 A. Yes. I served as one of the Voting Rights Act experts to
22 counsel for the Arizona Independent Redistricting Commission
23 this cycle.

24 Q. Okay. Now, aside from Court appointments as an expert,
25 have you served as an expert witness for parties?

1 A. Yes, multiple times. I served -- I served -- in the
2 gerrymandering context I was involved in both the Wisconsin
3 and the North Carolina cases that went to the Supreme Court.
4 At the state level, I've done quite a bit of work, but the --
5 I guess the biggest cases were the New York case this cycle
6 that redrew those lines and then the Maryland case in state
7 court as well that caused those lines to be redrawn.

8 Q. Have you ever been excluded from testimony?

9 A. I have.

10 Q. Tell the Court about that case.

11 A. I was excluded once in Georgia. It was the case that was
12 brought by Stacey Abrams' political group challenging
13 redistricting -- or challenging the voting registration
14 practices in that state.

15 Q. Okay. So did that involve redistricting?

16 A. It did not.

17 Q. Okay.

18 MR. BURSCH: Your Honors, at this time I would like
19 to tender Mr. Trende as an expert in the fields of political
20 methodology with an emphasis on Bayesian methods, American
21 politics, and an emphasis on voting behavior, redistricting,
22 and the VRA.

23 JUDGE MALONEY: Any objection?

24 MR. LEWIS: None from the Commission, Your Honor.

25 JUDGE MALONEY: Mr. Grill?

1 MR. GRILL: None.

2 JUDGE MALONEY: Thank you.

3 JUDGE NEFF: Mr. Bursch, just to make sure I
4 understand where we are here, political methodology and what
5 else?

6 MR. BURSCH: With an emphasis on Bayesian methods,
7 American politics with an emphasize on voting behavior and
8 districting, and the Voting Rights Act.

9 JUDGE NEFF: Bayesian, spell it.

10 MR. BURSCH: B-A-Y-E-S-I-A-N.

11 JUDGE NEFF: Thank you.

12 JUDGE MALONEY: The witness may express his opinions
13 pursuant to 702.

14 MR. BURSCH: Thank you. And also pursuant to
15 agreement with the Commission's counsel, we tender the
16 admission of Mr. Trende's initial report, which is contained
17 in Plaintiffs' Exhibit 20, and that also contains a
18 supplemental report. We're not moving for the admission of
19 that, although I will talk about the first five pages of that.

20 It's pages 120 of Plaintiffs' Exhibit 20.

21 JUDGE MALONEY: Mr. Lewis.

22 MR. LEWIS: Your Honor, the parties did reach an
23 agreement if experts testify, that their reports can come in
24 evidence. So the Commission has no objection to the admission
25 into evidence of the initial report. We just note that what

1 plaintiffs have marked for identification purposes as
2 Plaintiffs' Exhibit 20 contains both the original expert
3 report and the supplemental and rebuttal report dated
4 September 26th. It sounds like counsel is going to remove the
5 latter part of that document. And with that, we have no
6 objection.

7 MR. BURSCH: Correct.

8 JUDGE KETHLEDGE: So the supplemental report is not
9 in evidence? Is that where we are at, though? I mean, the
10 excluded portions not --

11 MR. BURSCH: Correct. Yeah. So the first five pages
12 I think you allowed in, and we'll be talking about that --

13 JUDGE KETHLEDGE: Okay.

14 MR. BURSCH: -- later in the presentation. But, yes,
15 the rest of it is out.

16 JUDGE KETHLEDGE: Okay. I just want to make clear
17 that hadn't changed based on stipulation.

18 MR. BURSCH: Correct. No.

19 JUDGE KETHLEDGE: Thank you.

20 MR. BURSCH: I don't believe they stipulated to the
21 part you excluded.

22 JUDGE MALONEY: Pursuant to the stipulation, you may
23 proceed.

24 MR. BURSCH: Okay. If we can dim the lights a little
25 bit, we're going to be going through a bunch of slides here,

1 and these are all from that initial expert report.

2 JUDGE MALONEY: The exhibits are received.

3 *(At 9:04 a.m. Exhibit No. 20 was admitted.)*

4 BY MR. BURSCH:

5 Q. And, Mr. Trende, before we get to your opinions I would
6 like to walk through some background on the Hickory and Linden
7 maps with you.

8 On page 12 of your report we have this figure 1. Can
9 you explain what this is?

10 A. Yes. So, this is Michigan precincts, the 2020 version,
11 and they're shaded by black voting age population or BVAP.

12 Q. And why is this important?

13 A. Well, it shows the racial geography of the state of
14 Michigan. You can see that there are a couple clusters of
15 black residents on the western side of the state, more
16 prominent on the eastern side in Saginaw, Flint, Pontiac, and
17 then the big cluster around the city of Detroit.

18 Q. Okay. In your report you gave some further perspective on
19 this. Can you explain?

20 A. Yeah. Outside of those clusters in eastern Michigan,
21 Saginaw, Flint, Pontiac, and Detroit, 96 percent of the
22 precincts in Michigan are -- are less than 30 percent BVAP, so
23 we -- when we're talking about racial redistricting in
24 Michigan, we really are talking about those few areas of the
25 state.

1 Q. Okay. And just so we have our acronyms clear, what does
2 BVAP, B-V-A-P, mean?

3 A. It's black voting age population.

4 Q. And I noticed with your color chart here the BVAPs cut off
5 at 30 percent and 70 percent. Why is that?

6 A. Well, it's because if you -- I found that if you let
7 the -- two reasons. First, if you let the range run from zero
8 to a hundred, gradations in the zero to 5 percent or 5 to
9 10 percent range will overwhelm the map and you can't see the
10 gradations in the places you really care about, which are the
11 places that are kind of towards the center.

12 A change from BVAP from zero to 10 percent for
13 redistricting purposes doesn't mean nearly as much as a change
14 from 40 percent to 50 percent, so this just emphasizes that
15 range.

16 Q. Okay. We'll also be talking about compactness today. Can
17 you talk a bit about compactness metrics?

18 A. Yeah. I reference three in the report. The first is --
19 the three are the Reock score, the Polsby-Popper score, and
20 what we've come to call the Magik score.

21 Q. Why don't you start with Reock.

22 A. So the Reock score asks you in effect how circular the
23 district is. It's a -- thank you. So the idea is you take
24 the district, and that came out a little oval, but you draw a
25 circle.

1 Q. They were round.

2 A. Yeah, they were round. You draw a circle around the
3 district, the smallest circle you can draw without cutting off
4 part of the district and you look at the area of that circle.
5 You compare it to the area of the district.

6 So, all the Reock score is is the percentage of that
7 minimum boundary circle that the district would fill. And so
8 you can see from these two examples here, you know, the kind
9 of long distended Hickory District 5 only fills up
10 17.2 percent of that minimum bounding circle.

11 The Hickory District 43, which I think just from the
12 eye test most people say looks more compact. That fills up
13 54.6 percent of that minimum bounding circle. So the Reock
14 store is kind of capturing the intuition that the more
15 box-like or circular a district is, the more likely people are
16 to consider it compact.

17 Q. The second compactness method, the Polsby-Popper, tell us
18 about that.

19 A. Yeah. So, the Polsby-Popper metric says, well, that's all
20 well and good but you can imagine a circular district. It's
21 actually -- it's more Pac-Man shaped. A wedge is taken out of
22 it. That district would still have a pretty good Reock score,
23 because the Pac-Man portion is going to fill in most of that
24 district and yet there's a -- that circle, but there's a huge
25 chunk missing from it.

1 So what the Polsby-Popper district says that, instead
2 of the minimum bounding circle, let's find a circle that has
3 the same perimeter as the district. So as you increase the
4 perimeter of the district, that circle is going to get bigger
5 and bigger and bigger. And so the Polsby-Popper score
6 measures arms and inlets, basically.

7 If you draw tentacles coming out of the district or
8 take out a Pac-Man like wedge it's going to increase the
9 perimeter of the district and make it harder for that district
10 to fill the circle with the same perimeter.

11 Q. Okay. And so the scores here, 1,527 versus 7,857, that's
12 because of these cutouts?

13 A. Yeah. District 5 has a lot of arms and inlets and so
14 doesn't fill the circle as well, whereas the square district
15 has no arms and inlets and so it fills the circle, you know,
16 80 percent.

17 Q. Okay. And just to make it clear, we're not talking about
18 hypotheticals here. This is the actual Hickory District 5
19 versus the benchmark District 35?

20 A. Yeah. So it's an illustration of how these metrics
21 actually fill -- they aren't just numbers. They fill an
22 intuition about what compactness is. The districts with fewer
23 arms and inlets look more compact to us and the Polsby-Popper
24 score captures that.

25 Q. The third method, the Magik score, and that's an acronym,

1 M-A-G-I-K, named after the creators' authors, can you just
2 tell us about that score?

3 A. Yeah. It's a more recent metric by Aaron Kaufman, Gary
4 King, and Mayya Komisarchik. And what they said was, well,
5 you know, there's an opinion on maybe it should be circular,
6 there's metrics for squareness, there's metrics for arms and
7 inlets, but why should we let mathematicians make those
8 decisions?

9 And so what they did was actually generated thousands
10 of computer simulated districts and showed them to judges and
11 attorneys and experts and lay people and asked them to give an
12 opinion on how -- on whether the district was compact or not,
13 which district -- you know, they would show comparisons and
14 ask people which do you think is more compact.

15 And from that, they used that as the data that they
16 drew the -- that they ran the computer program on to determine
17 what people were looking for when they're compact and not. So
18 it just kind of -- it incorporates real world persons and
19 actual subject matter experts' ideas of compactness into the
20 metric.

21 Q. Great. Now let's turn to the Hickory and Linden plans.
22 You understand that Michigan drew new maps in 2021 for the
23 state legislature?

24 A. That's right.

25 Q. And those maps are named?

1 A. The Hickory and the Linden plan.

2 Q. And Hickory is the House?

3 A. Hickory is the House, Linden is the Senate.

4 Q. Have you compared the BVAPs for the Hickory and Linden
5 maps to the previous maps?

6 A. I did, and I called them -- even though this isn't a
7 Section 5 case, I just referred to the previous map since they
8 weren't named as the Benchmark plan, but just for point of
9 reference. Obviously, it's not Section 5.

10 Q. Okay. And what do you see -- what do you see here with
11 this chart?

12 A. So you can see from 2010 -- from 2011 to 2020 there were a
13 number of districts drawn in this area that were majority
14 black, and the Hickory plan reduces that down to seven
15 districts that were majority BVAP.

16 The other thing you notice is that between District 6
17 at 50.9 percent BVAP and District 29 at 34.3 percent BVAP on
18 the Benchmark plan, there's only one district that falls in
19 that range. That also is the range that a lot of the Hickory
20 plan districts fall into, so in terms of determining whether
21 districts would perform, what was required, there's not a lot
22 of data from those districts directly for us to draw on or for
23 the Commission to have drawn upon.

24 Q. So is it fair to say that based on the historical
25 statistics, the Commission is flying blind with respect to

1 districts drawn in the 35 to 40 percent range?

2 A. That's right.

3 Q. Okay. Now turning to page 14, figure 3 of your report,
4 what are we looking at here?

5 A. So this is a zoom in of that first map we looked at. This
6 is Detroit precincts from 2020, and I removed the precinct
7 boundaries because they clutter up the map, but the shapes
8 that are filled in are precinct shapes for Detroit in 2020 by
9 BVAP.

10 Q. Okay. What about the cities?

11 A. The city -- the blue dotted lines represent -- the county
12 lines are fairly simple. It's an upside down T between
13 Oakland, Macomb, and Wayne Counties. The other dark blue
14 lines are municipalities.

15 Q. So moving from this, same map but using dot density, can
16 you explain what this shows?

17 A. So one of the problems with the previous maps, we call
18 those Choropleth maps, is that you can have a district that's
19 a hundred percent BVAP but there's only one resident in it,
20 and it will show the same as a district that as a thousand
21 residents in it that's a hundred percent BVAP.

22 So to try to illustrate this, and it's really a belt
23 and suspenders thing, you want to do -- you want to look at
24 both, but to illustrate that, what this does is for every 50
25 residents in a precinct who are white it places down an orange

1 X, and for every 50 black residents of voting age it places
2 down a blue dot. For every 50 Hispanic residents of voting
3 age, it's a teal dot. And for every 50 Asian residents of
4 voting age, it's a black dot.

5 Q. Great. Now let's talk about the map drawing process.
6 This is figures 5 and 6 from page 17 of your report. What do
7 these represent?

8 A. So this allows us to see how the districts actually
9 changed with respect to the black population of the Detroit
10 area, between the Benchmark plan and the Hickory plan.

11 Q. And what does this tell you?

12 A. So, you can see under the Benchmark plan, the Wayne County
13 borders almost never crossed. The districts are centered on
14 the black population. And then Hickory -- the Hickory plan
15 takes a completely different approach drawing these bacon-like
16 districts that stretch out from the black population, combine
17 them with almost entirely white portions of Macomb and Oakland
18 Counties.

19 Q. So when you're referring to bacon, I guess like 5, 6, 7,
20 8, 4, 1, 10?

21 A. Yeah.

22 Q. 14, 13, 12, 11? Pretty much all of these?

23 A. Yeah. It's more the districts that are on the Wayne
24 County, Oakland and Wayne County, Macomb boundary, but it also
25 curves, to some extent, on the western portion into the south.

1 Q. Moving ahead to figure 7 and 8, what do these show?

2 A. So this is the same map, except instead of shading the
3 precincts, the districts themselves are shaded. So you can
4 see on the left, figure 8, you have some very dark blue,
5 purple districts that are very high BVAPs. It illustrates
6 what happened with these districts; again, showing them
7 transforming to districts with relatively low BVAPs,
8 particularly on that Wayne County, Macomb County boundary.

9 Q. Okay. Moving to the Senate plan, Linden, we've got
10 another one of these tables here. This is table 2, page 22
11 from your report. What do you infer from this?

12 A. So it's much the same story. You can see that there were
13 five districts with BVAPs above 45 percent under the previous
14 plan. Under the Linden plan there's no districts with BVAPs
15 higher than 45 percent. And only one district -- if you look
16 at those top six -- there's kind of a cluster between
17 43 percent and 52 -- 52 and a half percent in the Benchmark
18 plan. There's only one District in the Linden plan that falls
19 into that range and the rest are all drawn below that.

20 Q. Okay. And so if I'm looking at, say, the top, you know,
21 five or so, we can even go to six in the Linden plan, you're
22 not going to find a lot of data over here for districts in
23 that range, are you?

24 A. That's exactly right.

25 Q. So the Commission was flying just as blind with the Senate

1 plan as they were with the House?

2 A. That's exactly right.

3 Q. And then these maps tell the same story for the Linden
4 map?

5 A. That's right. This is the precincts in the Detroit area
6 with the Linden and Benchmark plan overlaid. The Benchmark
7 plan actually never traversed the Wayne County boundary,
8 whereas the Linden plan traverses the Wayne and Macomb and
9 Wayne and Oakland County boundary alone eight times total.

10 Q. Now, as I'm looking at this I see, you know, six right
11 here, eight right here, two right here, one right here, three
12 right here. It's almost like a pinwheel. Is that fair?

13 A. That's right. It splits up the black population around
14 Detroit in a pinwheel population so that that population is
15 split up or cracked between multiple districts in this version
16 of the plan.

17 Q. Okay. Now we know the lay of the land. Let's get into
18 the Fourteenth Amendment qualitative analysis. As you know,
19 plaintiffs have brought claims under the Voting Rights Act and
20 the Fourteenth Amendment, as well as the VRA; is that correct?

21 A. That's correct.

22 Q. And you teach those in your classes?

23 A. I do.

24 Q. So you'll know what I'm talking about here?

25 A. Yes.

1 Q. Great. Let's talk about the Fourteenth Amendment claim.
2 What are your opinions?

3 A. It's -- that these districts, both the Hickory and the
4 Linden plan, were drawn with race as the predominate factor.

5 Q. What approaches did you use to come to these conclusions?

6 A. I used both a qualitative approach and a quantitative
7 approach.

8 MR. BURSCH: Let's start with Hickory, the House
9 plan. And this is figure 15, page 15 of your report. There
10 we go, figure 15.

11 BY MR. BURSCH:

12 Q. Why don't we start with this. What do you see here?

13 A. So what you can see is that under this map the black
14 population of Detroit and then around Southfield on southern
15 Oakland County is split up between -- depends how we count
16 District 27, but it's split up between either 10 or -- I'm
17 sorry -- 11 or maybe 12 state legislative districts.

18 Q. Okay. Moving to 16, this is the Hickory plan, that
19 changes dramatically, doesn't it?

20 A. That's right. It depends how you want to count
21 District 19, but I count -- if you count 19 as one of the
22 districts, splitting that population up, there's 18
23 districts that -- or -- yeah, 18 districts that this
24 population is split between. If you want to call it pinwheel
25 or bacon-shaped districts or spaghetti-shaped districts, these

1 districts all function to take the black population of
2 Detroit, crack it between multiple districts, and then pair
3 that population with almost exclusively white portions of
4 Oakland and Macomb County.

5 Q. Okay. Now, bacon-mandering is the term that you used in
6 your report. What does that mean?

7 A. So among map drawers that is a term that is frequently
8 used for drawing these bacon-strip districts that connect
9 portions of a city with outlying areas.

10 Q. Now, Chair Szetela, when she was testifying yesterday,
11 said that it looked like strings of spaghetti.

12 For a layperson, is that an accurate
13 characterization?

14 A. Strings of spaghetti, spokes on a wheel. There's lots of
15 different ways you can describe this, but they all tell the
16 same story.

17 Q. Okay. And is bacon-mandering sometimes -- is it a sign
18 for gerrymandering?

19 A. It can be, because, you know, if you're drawing neutral,
20 you just tend to draw more compact districts. To draw --
21 there has to be a reason you draw a district that looks like
22 this, and as we'll see, race is the story here.

23 Q. Well, yeah. What do you notice with respect to race?

24 A. So, you can see that those districts, like I said, in the
25 Detroit area all take in heavily black populations, and

1 then in -- where they can -- where they have to they actually
2 go out of their way to avoid black populations in Oakland,
3 Macomb Counties. So that fifth district goes up and it skirts
4 the black population of Southfield, then it actually goes into
5 Southfield where it takes that west turn. That's actually in
6 the city of Southfield but avoiding the heavily black
7 population before proceeding out to some more heavily white
8 areas around Birmingham.

9 Q. So it goes into Southfield but avoids the black precincts
10 in Southfield?

11 A. That's correct.

12 Q. Okay. As a factual matter, how many municipalities does
13 this district go through in Oakland County?

14 A. In Oakland County alone it goes through seven
15 municipalities.

16 Q. Seven? Is that typical?

17 A. No.

18 Q. Okay. Tell us about Districts 7 and 8, which are right
19 next door here.

20 A. So you can see they -- they go deeper into Wayne County,
21 although District 8 carefully avoids the white population in
22 Wayne County that's used to dilute the black population in
23 District 9, and then both those districts extend into some of
24 the whitest portions of Oakland County to offset that black
25 population.

1 Q. Okay. So five, six, seven, and eight, you know, they're
2 all roughly similar bacon strips, they're lying next to each
3 other, they have this same gerrymandering feature to them.

4 Would data, election data, from one be probative with
5 respect to the others?

6 A. That's right. It's all part of the same approach, and if
7 I'm wanting to know -- first off, my understanding from
8 Supreme Court law is that you can look at statewide or
9 regional areas, although you want to focus on specific
10 districts. And just in general, if I want to know what the
11 Commission's thinking, it's useful to look at the whole, what
12 they were doing consistently in this region.

13 Q. Okay. Why don't you tell us about 10.

14 A. So 10 is the same. It starts out by the Detroit River in
15 Detroit and then wanders up through overwhelmingly white
16 cities, the Grosse Pointes.

17 Q. Okay. How about 11 through 14?

18 A. So, 11 through 14, they all come down -- 14 in particular
19 comes down right to the boundaries of the white population in
20 Detroit, which, again, is used for District 9. They're a
21 little fatter because they're taking up more of the Wayne --
22 they don't go deep into Wayne County so they're wider, but
23 they have the same feature, then, of going up into Macomb
24 County and taking in heavily white precincts there.

25 Q. Okay. How about District 1?

1 A. District 1 is the same scope -- spoke feature where
2 southwestern Wayne County is clustered together and then you
3 go through -- actually, that's a Hispanic portion of Wayne
4 County down into some white areas.

5 Q. Okay. And, again, just to make the point like we did with
6 five, six, seven, and eight, because these are all coming out
7 of the same core, you know, four and one would be probative of
8 some of these other districts but also of each other and same
9 with 11 through 14?

10 A. It's -- yeah, it's the same approach to the black
11 population of Detroit.

12 Q. Okay. So what's your overall takeaway from this?

13 A. That these bizarrely shaped districts can really only be
14 accounted for by race.

15 Q. Okay. Now, this may skip ahead a little bit and we're
16 going to have to come back, but for *Gingles* prong one you did
17 draw a sample map, right?

18 A. I did.

19 Q. And you were trying to find 50 percent plus one districts?

20 A. That's right.

21 Q. And were you able to draw 16 or 17 black majority
22 districts?

23 A. I was not. I drew 10, and I thought if I had played a
24 little fast and loose I might have been able to do 11 but not
25 16 or 17.

1 Q. Okay. So what does that disparity tell you?

2 A. That these were not -- these are -- you know, the VRA
3 would demand 10 or 11 districts drawn with race consciousness,
4 not 16 or 17.

5 Q. Okay. And you did a dot -- dot density map here. Can you
6 tell us about this?

7 A. Yeah. So this is to allow the Court to view this plan
8 with individuals, not just the filled in districts. And so
9 you can see it's the exact same approach looking at where
10 individuals are located as well as the precincts as a whole.

11 Q. Okay. Now, Mr. Trende, you've heard the Defendant
12 Commission say that this is all driven by politics, not race?

13 A. That's right.

14 Q. Have you responded to this suggestion qualitatively?

15 A. I have.

16 Q. This is figure 19, page 48 of your report. Why don't you
17 tell us what it shows?

18 A. So, that really is a spurious claim, and the way you can
19 tell it's a spurious claim is by looking at the precincts
20 contained in these districts by politics. And as it turns
21 out, with the exception of the Grosse Pointes and some of the
22 precincts in St. Clair Shores, these are all Democratic
23 precincts. It didn't matter how you drew these districts.
24 You were not going to draw a Republican district here because
25 there just aren't enough precincts to draw a Republican

1 district. You could draw boxes and you would produce
2 Democratic districts throughout, particularly in Oakland
3 County where they drew the most egregious district lines.
4 These are just all almost -- almost all overwhelmingly
5 Democratic districts that did not demand these bizarre shapes.

6 Q. And if we look back before 2020?

7 A. If you go before 2020, it doesn't matter because district
8 votes are so heavily correlated.

9 Q. Okay. Yesterday Chair Szetela testified that the
10 partisanship measure in their software wasn't even turned on
11 until the maps had basically been racially gerrymandered.

12 Is that consistent with what you're seeing here?

13 A. Yeah. You'll see that more with respect to the
14 simulations, but for this, I mean, there's just -- even if the
15 politics had been turned on, it wouldn't matter because you
16 would always be drawing Democratic districts no matter what
17 you did.

18 Q. Okay. What other factors did you look at?

19 A. So I looked at the compactness of the districts.

20 Q. Continuity -- continuity splits --

21 A. Continuity -- yeah. The traditional redistricting
22 criteria, county splits, contiguity. Obviously all these
23 districts are contiguous -- yeah.

24 Q. Okay. What did you see with respect to compactness?

25 A. So I looked at the -- looked to see if there was a

1 correlation between BVAP and compactness, and there was on a
2 statewide level between all three metrics and the BVAP of a
3 district. And in the Detroit area there was a correlation
4 between the Reock score for the district and the BVAP for the
5 district, meaning that as the BVAP increased, the districts
6 became less compact.

7 Q. Okay. So just so that I'm clear, lower BVAPs, more
8 compact; higher BVAPs, less compact?

9 A. Correct.

10 Q. And what does that suggest?

11 A. Well, again, it suggests that there was some particular
12 attention being paid to how these districts were drawn that's
13 different than what was being paid to districts where there
14 weren't heavy black populations.

15 Q. How about county splits?

16 A. Yeah. So the county splits, as we -- as I noted here, you
17 have the Macomb boundary -- the Macomb/Wayne boundary being
18 traversed four times. I'm not sure if 10 traverses it or not.
19 It would be five. I don't know if the -- the Grosse Pointe
20 city there goes -- has a little finger going up there. So to
21 make the county -- the city intact you would have to traverse
22 there. And then the Wayne County boundary with Oakland is
23 traversed four times.

24 Q. Okay. Let's turn to the Linden plan. This is the
25 benchmark?

1 A. That's right.

2 Q. Okay. Tell us about it.

3 A. So, you can see in the Benchmark plan the black population
4 of Detroit and Oakland County is split between six districts,
5 Districts 1 through 5 and then 11 in southern Oakland County.

6 Q. And so this is figure 42. Moving to figure 44, this is
7 the Linden plan, and how have things changed?

8 Why don't we start with District 1?

9 A. So, District 1 takes the black population of south
10 Detroit, goes through a heavily Hispanic area, and then into
11 some heavily white areas south of Detroit.

12 Q. Okay. And three?

13 A. Three, it goes from the Detroit River all the way to
14 8 Mile Road and then crosses over into both Oakland and Macomb
15 Counties --

16 Q. So this is the county line right here?

17 A. Yeah. That's -- that's the -- yeah. And goes into
18 heavily white areas to reduce that BVAP.

19 Q. Okay. And District 6?

20 A. District 6 takes western Detroit, the black population
21 there, merges it with some heavily white areas of Wayne County
22 before going up into -- I think that's Farmington Hills.

23 Q. And District 8?

24 A. District 8 takes just east -- just west of downtown
25 Detroit, the black population there, merges it almost up to

1 Pontiac through some heavily white spots, again, you know,
2 avoiding Southfield and the black population.

3 Q. I don't want to get sidetracked by this, but how would you
4 compare the wealth disparity between these black residents and
5 these white residents?

6 A. It's some of the poorest areas of Detroit matched up with
7 some of the wealthiest suburbs of Detroit.

8 Q. Is that a community of interest?

9 A. I don't think so.

10 Q. Okay. How about District 10?

11 A. District 10, more of the same. You can see it takes the
12 black population of eastern Detroit right up to the Grosse
13 Pointes, you know, carefully skirts that boundary and then
14 goes up well into Macomb County into almost exclusively white
15 precincts.

16 Q. Okay. And we've seen that same dip with 11?

17 A. That's right. Now, 11 comes down, takes in -- soaks in
18 some of that black population and makes it so that none of the
19 black population in -- is it Eastpoint -- goes into either 10
20 or 12, and then just goes way up into Macomb County through
21 almost exclusively white precincts.

22 Q. Okay. And just to emphasize the point we made with the
23 House map, because these are all drawing from the same core of
24 voters in the center in these pinwheel-like shapes, you know,
25 we'd expect that if we looked at voting records in six, eight,

1 three, one, that those would all be mutually reenforcing?

2 A. That's right.

3 Q. Okay. And you did a dot density map for this as well?

4 A. That's right. And so instead of splitting the black
5 population up between six districts, now it's cracked between
6 nine.

7 Q. Okay. And how would you compare the benchmark in the
8 Linden in terms of county splits?

9 A. Well, the Benchmark plan doesn't cross the Wayne County
10 boundary at all. The Linden plan crosses the Wayne County
11 boundary with Oakland and Macomb Counties alone eight times.

12 Q. Okay. And how about the way the black population is kept
13 together?

14 A. Like I said, it's now split up between nine districts
15 instead of six.

16 Q. All right. You also drew Senate districts?

17 A. Yes.

18 Q. And were you able to draw nine majority black districts?

19 A. No. No. To draw -- to keep the districts reasonably
20 compact, getting to five, I'm fairly confident, is the outer
21 boundary of what you can do.

22 Q. Okay. Can you explain this map by partisanship?

23 A. No. No. It's roughly the same story as we just saw.

24 Q. Well, in fact, we've got figure 46 here, and it's all
25 purple and dark blue again?

1 A. Yeah. It is the exact same story. These are -- with the
2 exception of the Grosse Points, St. Clair Shores, which are
3 now put in District 12. District 11 gets out to some
4 Republican areas but districts -- doesn't matter how you draw
5 Districts 10, 3, 8, 6, 1, 2, there aren't even Republican
6 precincts there, so you can draw box districts there and you
7 are not going to draw a Republican district.

8 Q. Has this always been the case?

9 A. If you go back to the 2000s it's probably a different
10 story, because Wayne County was much more Republican then.
11 One of the big national stories of the last decade is wealth
12 suburbs drifting towards the Democratic party, sharply in
13 2016. So maybe back then, but today, no, no. Not for most of
14 the last decade has any of this territory been Republican.

15 Q. Okay. I want to shift now to your quantitative analysis,
16 so all the math majors in the room sit up and pay attention.

17 Can you explain this a bit more?

18 A. So for the quantitative analysis I employed computer
19 simulations, which is kind of the emerging way of doing this
20 type of analysis with quantitative metrics.

21 Q. And did you learn that analysis for this litigation?

22 A. I did not. I learned this for purposes of my
23 dissertation.

24 Q. Did you write it?

25 A. I didn't write the code, no. Doctor Imai at Harvard wrote

1 it.

2 Q. Okay. Has it been peer reviewed?

3 A. I-M-A-I.

4 It has been peer reviewed.

5 Q. Tell the Court about the simulation analysis.

6 A. So what the simulation analysis does -- you know, one of
7 the big problems we have is we don't know the counter factual,
8 right? We can speculate what these districts would look like
9 if you're drawing without respect to race or without respect
10 to politics, but we don't really know, and there's so many
11 different maps you can possibly draw. I can hand draw a
12 couple of example maps, but there are literally more maps that
13 can be drawn in this area than there are atoms in the earth.

14 And so the way to get around that is basically to
15 conduct a poll of maps. And so what these computer
16 simulations do is, you withhold information from them, so you
17 don't give them any racial data, you don't give them any
18 political data so that you know that they're not drawing with
19 respect to race or politics.

20 And then you tell the computer map, okay, within
21 certain constraints draw a bunch of maps for me, and you can
22 say I want these districts to be compact, I want these
23 districts to minimize the number of times that it crosses
24 county boundaries. You can set all -- there's a variety of
25 restrictions you can place upon them.

1 So you have them draw thousands of maps in the same
2 way that you might call thousands of people for a poll,
3 because it's not feasible to talk to all 300 million Americans
4 to get Donald Trump's -- Joe Biden's job approval. And then
5 you use that as the basis for evaluating the districts.

6 Q. And just so I'm clear, those thousands of map, that's
7 called the ensemble?

8 A. We call that the ensemble, that's right.

9 Q. So when you refer to an ensemble, you're talking about the
10 set of computer created maps?

11 A. That's correct.

12 Q. All right. What is the goal of simulation analysis?

13 A. It's to create that counterfactual. And then after the
14 maps are drawn -- what the computer is doing is generating
15 lists of precincts that go into each district.

16 Now, I haven't given the computer the political or
17 the racial data, but I know what the political and racial
18 composition of those precincts are. So after the 50,000 maps
19 are drawn, I say, okay, here's the political data, here's the
20 racial data, match it to the districts, add it up and tell me
21 for these districts that were drawn without respect to race or
22 politics, what was their racial composition, what was their
23 political composition.

24 And the idea is if the -- you know, we have 50,000
25 options. If the Commission were really not drawing with a

1 heavy reliance on race it should look like those randomly
2 generated maps. If it looks nothing like that, well, you say
3 race was probably playing a role.

4 And the same thing with politics. If what the
5 Commission came up with looks like this ensemble, you say,
6 okay. The Commission probably wasn't relying heavily on
7 politics, because if it was, it would have deviated from the
8 politics blind maps.

9 JUDGE KETHLEDGE: You're doing these separately?

10 THE WITNESS: You draw them out -- you have the
11 computer draw them first and then it feeds the political data
12 in.

13 JUDGE KETHLEDGE: You're doing separate simulations
14 just taking out race, just taking out politics?

15 THE WITNESS: They were drawn completely without
16 respect to race and politics.

17 JUDGE KETHLEDGE: At the same time?

18 THE WITNESS: At the same time, that's right. And
19 then you feed both sets of data into the same ensemble and
20 compare it.

21 JUDGE KETHLEDGE: I don't mean to hijack. I just
22 wanted to clarify.

23 MR. BURSCH: Any questions, we welcome those. We're
24 going to be running through a number of these figures, and I
25 think that will help elucidate once you see these pictures.

1 BY MR. BURSCH:

2 Q. Mr. Trende, you used one word that I'm not familiar with;
3 counterfactual. What's that?

4 A. So the counterfactual is what would happen without the
5 intervention. If -- and here it's what we don't get to see.
6 It's the universe where a Commission draws without respect to
7 maps or a universe where we know the Commission drew without
8 respect to politics. Because this isn't -- well, I'm going to
9 make a Rick and Morty reference, but because it's -- we don't
10 get to see that outside universe, we have to try to create it
11 through other means. And the ensemble is one way of doing
12 that, just taking a poll of randomly simulated districts and
13 seeing if the map that was drawn resembles these districts.

14 Q. And if a district would show up, say, at the 25th or 75th
15 percentile of the ensemble, how do we know when that's enough
16 to show gerrymandering?

17 A. So what's nice about this approach is that it helps us
18 answer the question of how much gerrymandering is too much,
19 which is a question that's bedeviled courts. Because we're
20 taking a poll and we have solid math behind this metric
21 suggesting it is creating a representative sample of maps, we
22 can use traditional techniques of estimation, so the typical
23 cutoff in political science is 5 percent. If it's more
24 extreme than 5 percent, you reject the possibility that it's
25 all random chance.

1 So, if we see these maps show up as more extreme than
2 5 percent of the maps that are drawn, you're sufficiently
3 certain within the guidelines of the political science
4 discipline to say, Yes, this isn't random chance, there really
5 is something at work here.

6 Q. How do communities of interest fit into it analysis?

7 A. So, communities of interest are tough, particularly
8 because they can so often -- it's widely understood in
9 political science and the literature that they can easily be
10 used as pretexts. But one way you can program them in and one
11 way that's been suggested in the political science literature
12 is by using municipal boundaries and county lines. Because
13 those -- these municipalities and counties often reflect
14 communities, that is one way to get at them.

15 Another way to get at them and what I've done here is
16 if the -- if the Commission chose to keep a township or
17 municipality intact, I ran a set of simulations that would
18 also keep those municipalities and townships intact in a
19 hundred percent of the plans. If the Commission split one,
20 the ensembles were free to split them or not split them. But
21 because communities are considered in political science one
22 pure expression of -- of communities of interest, I employed
23 that approach.

24 Q. Okay. Last preparatory question and then we'll get into the
25 meat of this. Have courts relied on simulations for a racial

1 gerrymandering analysis?

2 A. Yeah. The South Carolina case that's before the Supreme
3 Court has used it. They've been used widely in political
4 gerrymandering, but the South Carolina case before the Supreme
5 Court employed them in the racial gerrymandering. And there's
6 a few other cases percolating through the lower courts that
7 used them as well.

8 Q. Now I would like to ask you about the simulations that you
9 ran. First, where did you run them?

10 A. I ran them on -- so the three kind of counties we've been
11 talking consistently about, the precincts that are involved
12 in -- the precincts that are contained in Wayne County,
13 Oakland County and Macomb County. And then also the adjacent
14 counties, the districts that are contained there.

15 And I use the districts -- I used the precincts that
16 are in the districts that the Commission drew, so we are
17 only -- first it's guaranteed to create whole districts that
18 way. If I only ran it in Wayne, Macomb, and Oakland County
19 there might be, you know -- the math might not work out to
20 create whole districts.

21 So I followed the precinct boundary -- the district
22 boundaries that the Commission drew, pulled all those
23 precincts out and ran the simulations on the appropriate
24 number of districts.

25 Q. Why not do a statewide analysis?

1 A. Well, two reasons. The first is that the Supreme Court
2 does want us to focus in on the districts that are challenged
3 in this particular area, so it keeps us from going too far
4 afield. The other reason is that if you do see something off,
5 running a statewide analysis, you have no idea whether that's
6 occurring in Grand Rapids or in Lansing or in Detroit. So by
7 keeping it to the metro Detroit area we know any deviations
8 that we see are occurring in the Detroit area.

9 Q. Okay. So if I think about this like Goldilocks, if you
10 did the entire state, that was too hot, if you did just Wayne,
11 Oakland and Macomb County, that was too cold, but you picked
12 the place in the middle, that's just right?

13 A. Yeah. You don't want to do just Wayne, Oakland, and
14 Macomb districts because there are second and third order
15 decisions the Commission may make. So you kind of let the --
16 I use the term you let the simulations breathe a little bit by
17 saying, Okay, you didn't necessarily have to draw it
18 specifically with those boundaries in Wayne and Macomb, maybe
19 you make the districts a little shorter in western Oakland
20 County and push a little further into Macomb County. You're
21 basically limiting the simulations in this region less by
22 taking it to the surrounding counties as well.

23 Q. Let's start with your analysis of the Hickory map first;
24 50,000 maps under a variety of conditions. So tell us about
25 the conditions.

1 A. So, the first set of simulations just required the
2 districts to be contiguous on compact. The second set of
3 simulations say, Okay. Let's keep them contiguous and compact
4 but also minimize the number of county splits that are
5 involved. And then the third set of simulations -- excuse me
6 -- does all that, plus it has the communities of interest
7 that -- constraint that I talked about where if the Commission
8 chose not to split a city or a township or a municipality, the
9 simulations don't split them either.

10 Q. Now, the Commission's definitions of communities of
11 interest has been a moving target, so how did you decide what
12 list to use?

13 A. Like I said, I just looked at the -- I had the computer
14 look at the Hickory and Linden maps and it was able to
15 identify communities that were kept intact as well as
16 communities that were split -- or cities or municipalities or
17 townships that were intact or split and those were frozen into
18 place. The precincts were melded together basically so those
19 municipalities couldn't be split.

20 Q. Now, you present this data in a number of different
21 formats, so why don't you tell us about figure 27 from page 67
22 of your report.

23 A. Okay. So, this is a dot plot, and it takes some thinking
24 to get, but once you get the intuition behind how it works,
25 it's pretty straightforward. So, the idea is you have your

1 50,000 maps. You say, okay, computer, let's take map one and
2 we're going to feed the racial data into all those districts,
3 give me the racial breakdown of all the districts in map one,
4 what is the highest BVAP on that map?

5 And what I want you to do is take -- and on the far
6 right, put a dot at that BVAP. And then the second highest
7 BVAP, take it, put a dot there. The third highest BVAP,
8 fourth, and so forth.

9 Q. Can I just stop you there? Just explain to the panel.
10 Like, take this first example right here, the highest BVAP,
11 each of the dots in this bar represents one of the 50,000
12 sample maps the computer drew?

13 A. That's exactly right. And in some places it looks solid,
14 just because that's where the maps tended to cluster and so
15 you get over-plotting of the dots, but it gives you the range
16 of what -- and so you do that for map one and then map two,
17 map three, map four through map 50,000. And it will give you
18 the range of the BVAPs for -- that were -- that are in your
19 ensemble for each -- for the most -- most heavily black
20 district, second most heavily black district, and so forth.

21 Q. So I'm looking down here where the BVAPs are low, and here
22 all the districts are falling within the range of the 50,000
23 simulations. What does that mean?

24 A. Okay. So the numbers represent the Hickory plan. So the
25 highest BVAP in the Hickory plan is District 4. The second

1 highest is District 5, third highest is six, fourth highest
2 is -- I think that's 16, to get to what you're saying, so
3 where the BVAPs are low, where you're in heavily white areas
4 of the state, the Commission didn't draw with respect to race.
5 We can say that pretty confidently because the Hickory map
6 looks almost exactly like a district drawn with -- like the
7 50,000 maps drawn without respect to race.

8 All the districts in the Hickory map down on the left
9 end of the tail fall within the range of the ensemble. They
10 look like race blind draws in the heavily white portions.

11 Q. So if this over here, Hickory District 4, was done blindly
12 like the computer did, where should that number be?

13 Shouldn't it be in the band up here?

14 A. There should be a district way up there, exactly. Of
15 these 50,000 maps, the most -- the highest BVAP district tends
16 to range between 75 percent BVAP and looks like, say,
17 92 percent or 93 percent up there at the top. The
18 Commission's highest BVAP district was in the mid 50s, nothing
19 like the race blind districts.

20 Q. So earlier when you said that if the number fell outside
21 the fifth or 95th percentiles that was good evidence of
22 gerrymandering, that 95th would be like all the way up here at
23 the 75 percent BVAP line?

24 A. It would be above the 75 because I think there's one dot
25 below 75 percent.

1 Q. Okay. So this District 4, I mean, this is so far past
2 anything on the chart you can hardly see it?

3 A. It is a severe outlier.

4 Q. And the same with five, six, 16?

5 A. Right. Now, when you get to, like, District 9, District 9
6 is somewhere in the middle, but then when you get to the left
7 side you see it on the other extreme. These districts are
8 drawn with much higher BVAPs than you would expect in a race
9 blind draw.

10 Q. All right. Is there any significance to where they
11 flatten out?

12 A. They -- they flatten -- that deviation jumps up sharply
13 and then flattens out around 40 to 42 percent.

14 Q. Hmm. How about that.

15 Would you be surprised to hear that Chair Szetela
16 testified yesterday that the Commission used a racial target
17 about that very range?

18 A. I would not.

19 Q. Okay. So can you tell where the gerrymandering is
20 occurring?

21 A. The gerrymandering -- so there's two things. The first is
22 this kind of staircase pattern where you see the district's
23 kind of pushed up toward the 50 percent range and then there's
24 a break and then they start falling below the ensemble BVAPs,
25 that's been referred to as the signature of gerrymandering. I

1 call it the DNA of gerrymandering where around that kind of
2 crucial area of 50 percent you start to see heavy deviations
3 from what the race neutral ensemble draws, as opposed to the
4 heavily white areas where the Commission was just drawing
5 districts.

6 Q. And just to put a fine point on this, looking at
7 District 53 again, if the 95th percentile is about here, we're
8 talking about a completely different planet?

9 A. Exactly. This is -- this is the cracking of the black
10 population on the right side and then the packing of it on the
11 left side.

12 Q. Okay. Now, how about when you held county lines intact?

13 A. It's the same story.

14 Q. In other words, the high BVAPs are way out of whack there,
15 the lower BVAPs are way out of whack there?

16 A. Exactly. It didn't matter when I tried to account for
17 county boundaries.

18 Q. What if you keep communities of interest intact?

19 A. Even granting the Commission that every township,
20 municipality, city that was held together should have been
21 held together, it still shows as an extreme gerrymander.

22 Q. This is stacking the deck in their favor, and these
23 districts over here, again, they're on a different planet from
24 the range?

25 A. That's correct.

1 Q. Okay. So how do you know if race predominated?

2 A. Well, first, when you have deviations this extreme it
3 tells a pretty consistent story, but if you really want to be
4 sure there's something that I have employed in cases and that
5 has been suggested in the literature called a gerrymandering
6 index.

7 Q. Okay.

8 A. Okay.

9 Q. What cases have you used it where it's been accepted?

10 A. I used it in both the New York case and the Maryland case.

11 Q. Okay. Now you can explain the index.

12 A. All right. So what the gerrymandering index does, it's
13 similar to a common statistical concept called the root mean
14 square error. I know that's a mouthpiece -- a mouthful but
15 I'll explain it. It looks at the ensemble -- actually, can we
16 go back to help explain?

17 Q. Oh, yeah.

18 A. So looking at the most heavily -- highest BVAP district,
19 it looks at what the average score is, okay, or the average
20 BVAP is, and then for each of those 50,000 maps it measures
21 the deviation, okay?

22 So how far -- if the average BVAP for the most
23 heavily black district is around 87 percent, which looks about
24 right, let's say map one, the highest BVAP is 46 percent.

25 JUDGE KETHLEDGE: Can I ask a question?

1 THE WITNESS: Yes.

2 JUDGE KETHLEDGE: I don't know what you mean by the
3 highest BVAP in the most heavily black district. Is that what
4 you just said? Like, what district and what plan or what part
5 of the ensemble -- I don't know what district we're talking
6 about.

7 THE WITNESS: Okay. Right.

8 MR. BURSCH: If you look at the chart up here -- why
9 don't you do that with respect to four?

10 JUDGE KETHLEDGE: I don't know what district you're
11 referring to --

12 MR. BURSCH: This is Hickory District 4.

13 JUDGE KETHLEDGE: -- and I just want to make sure I
14 can follow what you're saying.

15 THE WITNESS: Right. Now -- and this is an important
16 point. So, for every map it's just looking at the district
17 with the highest BVAP for all the ensemble.

18 JUDGE KETHLEDGE: For the ensemble maps?

19 THE WITNESS: Yes.

20 JUDGE KETHLEDGE: I got it.

21 THE WITNESS: Okay.

22 JUDGE KETHLEDGE: So when you say district, you're
23 talking about in a particular ensemble map, the district in
24 that map with the highest BVAP?

25 THE WITNESS: That's correct, Your Honor.

1 JUDGE KETHLEDGE: Thank you.

2 THE WITNESS: So it looks at the 50,000 ensemble maps
3 and finds the average BVAP for the most heavily black
4 district, and then it looks at the deviation. So the average
5 BVAP in this ensemble for the most heavily black district is
6 around 87 percent.

7 BY MR. BURSCH:

8 Q. Right where the laser pointer is?

9 A. Probably a little higher.

10 Q. Right. Oh, yeah. Because it's -- at the top.

11 A. There. And so -- then it says -- okay. The average is
12 87 percent. Map one, let's say it landed at 86 percent, okay,
13 that's a 1 percent deviation. It's 1 percent off on average
14 what the ensemble produced.

15 Let's say map two is at 93 percent. That's a
16 6 percent deviation. So it says, okay, map two, the most
17 heavily black district, was 6 percent off what the ensemble on
18 average produced, okay?

19 It will calculate -- for each map it will calculate
20 those deviations for all the districts, squares them and adds
21 them up, okay? So it's a measure of how far, generally
22 speaking, these -- the ensemble maps are from the average of
23 those districts. So what it does -- what it's saying is that,
24 look, there's a whole lot of ways you can draw these maps and
25 not be paying attention to race. I mean, the range on that --

1 on the most heavily black district runs from 75 percent up to,
2 you know, 92 percent. That's a feature, not a bug.

3 The ensemble is allowing a wide variety of ways for
4 these districts to be drawn without looking at race, okay?
5 But after -- and so it kind of looks at, okay, what is the
6 range of deviations you see in these ensemble districts?
7 Okay. We've done that for the ensemble, now let's do that for
8 the Hickory plan, okay?

9 So it looks at the average for the most heavily black
10 district in the ensemble, which we said was around 87 percent,
11 and then it looks at District 4 and that is going to be about
12 a 30 point difference. It looks at it for the second most
13 heavily black district in the ensemble, takes the average,
14 compares it to District 5, the second most heavily black
15 district in the Hickory map. That's going to be probably a
16 25 percent deviation.

17 And so it adds up the deviations in the Hickory plan
18 and then we can compare that gerrymandering index score, the
19 total of the deviations, we can compare that to what we saw in
20 the ensembles.

21 Q. So moving to figure 28, page 70 of your report, is this
22 the visual depiction of what you've just been describing?

23 A. Yeah. And this is great. This is called a histogram, and
24 basically what the computer is doing is counting up that
25 gerrymandering index, that total of the deviations, and

1 creating bars, basically, and stacking them on top of each
2 other. So each one of those bars is a very small range for
3 the gerrymandering. This tells you the number of plans in the
4 ensemble that fell in that very small range.

5 And so you can see the gerrymandering indices here
6 cluster pretty heavily in the ensemble around point -- between
7 zero and .1, okay? And then there's some outliers that go out
8 and range out to about .3 to .35, okay?

9 The Hickory plan is way beyond that. Its
10 deviations -- you could fit an entire other set of that
11 ensemble before you even got to the Hickory plan. It's
12 running around .67 for its gerrymandering index. So it's not
13 even -- we don't even have to look at that 5 percent cutoff
14 because it's just completely outside of what the ensemble
15 drew.

16 Q. And now this particular graph that we're looking at,
17 figure 28, this was without the restrictions on counties and
18 communities of interest and so forth?

19 A. Exactly. This is just draw compact districts out of the
20 precincts.

21 Q. All right. So what happens when you hold the counties
22 intact?

23 A. It is the same story. It is well outside of the
24 distribution for the ensemble.

25 Q. And when communities of interest --

1 A. So this is starting -- you know, we're making a big
2 concession to the Commission on what these maps should look
3 like by keeping the townships and cities intact that they
4 chose to keep intact, but it's still an extreme outlier.

5 Q. Have you used the term reverse gerrymandering before?

6 A. Yes.

7 Q. And what do you mean by that?

8 A. So reverse gerrymandering is where -- well, I don't mean
9 to step on his punch line, but Doctor Rodden was part of a
10 famous political science piece called unintentional
11 gerrymandering that suggested that due to geographic
12 clustering, you might draw political gerrymanders even if
13 you're drawing without respect to politics because of the
14 clustering of partisans in this country.

15 And so reverse gerrymandering is kind of drawing with
16 respect to politics to try to undo that unintentional
17 gerrymandering that might occur.

18 Q. Okay. So this is to differentiate maps drawn through
19 politics rather than race because sometimes there is overlap?

20 A. There is.

21 Q. Okay. So if we use political data, this is now figure 32,
22 page 75, why don't you tell us about this?

23 A. So, this allows us, then, to test the idea that what's
24 really going on here is politics, and we should have an
25 expectation that this -- this isn't going to tell us -- there

1 isn't going to be a huge deviation, because no matter how you
2 draw those districts in the Detroit area, you're going to draw
3 Democratic districts, and that's what we see here.

4 You know, if they were really trying to engage with
5 the partisan fairness metrics you would expect to see heavy
6 deviations around that 50 percent line trying to take areas
7 that would naturally create Republican districts and instead
8 draw Democratic districts there, and we just don't see that.
9 The --

10 Q. They're right in the middle of the band?

11 A. They're right in the middle of the band. I think they
12 drew one more Democratic district than you would expect from a
13 politics neutral draw, and even then it is -- even then it's
14 within the band of what you might draw if politics weren't a
15 big factor on how you drew your districts.

16 Q. So the biggest deviations seem to be up here in the most
17 heavily Democrat districts. Does that make any sense?

18 A. Not if you're trying to manipulate the partisan fairness
19 metrics because -- for example, the efficiency gap, which
20 looks at wasted votes, if you go from a 51 percent Democratic
21 district to a 49 percent Democratic district, there's a huge
22 shift in wasted votes. That's where you're really going to be
23 able to even out the efficiency gap score, not by the things
24 that are occurring on the right side of the tail. They're
25 just drawing different types of Democratic districts, and not

1 only that, but, you know, in this area we also know these are
2 the most heavily black areas of the state. So you do see some
3 deviations from politics in these heavily black districts from
4 what you would expect from a politically neutral draw, but not
5 enough to create Democratic districts where you would expect
6 Republican districts. And that makes sense because we know
7 that in these -- this area of the state they were looking at
8 entirely Democratic precincts. So politics just isn't a good
9 explanation here.

10 Q. Is it fair to say they're just moving Democrat districts
11 around like chairs on the deck of a boat but race is what's
12 really driving all this?

13 A. Exactly. You see huge deviations out here from what you
14 would expect with respect to race, because they're taking
15 white Democrats and mixing them with black democrats. So the
16 racial composition of these districts is very different from
17 what you would expect from a race neutral draw, but because
18 it's white Democrats and black Democrats it looks a lot like
19 you would expect from a politics neutral draw.

20 Q. And if we keep the counties?

21 A. Yeah. That's a mislabel. That's --

22 Q. Use of interest here, right?

23 A. Yeah.

24 COURT REPORTER: I cannot understand when both of you
25 are speaking at the same time. And please slow down.

1 BY MR. BURSCH:

2 Q. This chart, figure 37, page 80, this is keeping
3 communities of interest intact?

4 A. Yes.

5 Q. And you see the same thing?

6 A. Yes.

7 Q. The outliers are just moving the Democratic chairs around
8 the deck?

9 A. Yes.

10 Q. What about the gerrymandering index?

11 A. So you do see deviations and it's not surprising that we
12 see deviations, because in the heavily black areas of the
13 state you are reducing the Democratic performance somewhat,
14 but down from 90 percent to 80 percent, not from 90 percent to
15 50 percent. And so you see gerrymandering index scores that
16 are large, but nothing like what we saw with the racial
17 predominant scores.

18 Q. So just to put this in the same form that we had before,
19 but what I hear you saying is when it came to race, the red
20 line representing the Hickory plan, you know, was out here in
21 another continent. And here, it's an outlier, but it's still
22 within the acceptable range of a partisan distribution?

23 A. It's still within the range, yeah. It's still within the
24 range of the partisan distribution there.

25 Q. So what does that mean?

1 A. It's consistent with the idea that what was -- what was
2 really driving these maps was race. And that, yes, when you
3 play with the racial composition of districts, you do have
4 some political impact, but it was race that was really doing
5 the work here because they weren't changing things around
6 enough to flip districts from Republican to Democrat or
7 vice-versa, because the precincts are all Democratic.

8 Q. Switching to the Linden plan, and hopefully we can move
9 through these fairly quickly. These are the same bands for
10 the BVAP districts. Why are these numbers all way down here?

11 A. So it's the same story. You would expect to see at least
12 one heavily black district and probably three majority black
13 districts if you were drawing completely blind to race. They
14 had to do some work to make that number zero and to create
15 these three districts that are well below the average of what
16 a race blind draw would create.

17 And then on the flip side on the left you see these
18 districts where the -- not the far left, I'm sorry, but around
19 Districts 2, 1, 6, 8, those are the districts that are pushed
20 up, so you have the cracking of black voters on the right and
21 they're packing on the left. That's what this represents.

22 When you get into the heavily white areas of the map,
23 again, it looks exactly like what you would expect from a race
24 blind draw, because race just wasn't important to the
25 Commission there.

1 Q. You're saying down here they're all squarely within their
2 bands?

3 A. That's correct.

4 Q. And same if the counties are kept intact?

5 A. Exactly.

6 Q. And this is figure 55. Figure 60 if the communities of
7 interest are kept intact?

8 A. Exactly.

9 Q. So then back to these charts. This is just the base
10 ensemble?

11 A. That's right.

12 Q. And, again, where do we find the Linden plan?

13 A. I think there's one map that had a larger gerrymandering
14 index in the ensemble.

15 Q. So 50,000 maps, and there's one map to the right, is that
16 still well outside the 95 percent boundary?

17 A. Yeah. That's going to be well outside the 95 percent
18 generally accepted boundary.

19 Q. So they're not saved by the fact that open -- yeah, okay.

20 A. No.

21 Q. And then figure 56.

22 A. Same story except this time everything -- this is outside
23 all the ensemble maps.

24 Q. 61, this is with the counties intact?

25 A. Well outside the ensemble maps.

1 Q. Again, looking like the House map?

2 A. That's right.

3 Q. All right. Tell us about figure 57.

4 A. It's the same story as we saw with the Hickory plan. You
5 can see that around the 50/50 line where you might expect a
6 politics drawn Commission to be taking a bunch of Republican
7 districts and transforming them -- where you would expect in a
8 politics neutral draw to take Republican districts and
9 transform them into Democratic districts, the Commission
10 didn't do that. It created one more Democratic senate
11 district in this region than you would expect from a politics
12 neutral draw.

13 And even that district fell well within the normal
14 range of what a politics neutral draw -- look, if you showed
15 this to just any political scientist, that's politics neutral
16 on the center. The only place you see big deviations is in
17 the heavily Democratic areas of the state, which happen to be
18 the heavily black areas of the state.

19 So the Commission did achieve some change in the
20 composition of the districts out there, which it would if it's
21 trying to dilute the black population of these districts, but
22 not enough to create a bunch of Republican districts, and,
23 again, that is completely consistent with our qualitative
24 assessment. It was only moving around Democratic districts.
25 It was moving around black Democrats and white Democrats, so

1 it produced the same number of Democratic districts as you
2 would expect from a politics neutral draw.

3 Q. Same with counties intact?

4 A. That's right.

5 Q. Same with communities of interest intact?

6 A. That's right.

7 Q. Back to these fun little mountain charts. You see the
8 same thing here?

9 A. That's right. The histograms, you can see now the line is
10 closer to the center of the distribution. There are more
11 districts out to the right. There are deviations, because the
12 Commission did achieve deviations, just not in the place it
13 would achieve deviations if it were looking to alter the
14 partisan fairness metrics.

15 Q. Okay. Counties?

16 A. Same story.

17 Q. All the same story. So why don't we wrap up this portion
18 of the exam. What do you conclude from all these charts?

19 A. Yeah. Without getting bogged down in the details, the
20 Linden plan and Hickory plan do not look like race neutral
21 plans. They look like plans that cracked the black population
22 in some districts and packed them, because that's where the
23 deviations from the race neutral ensemble occur.

24 They do not look like districts that were drawn with
25 heavy political intent, because around the place where the

1 politics makes an impact, that 50/50 political line, the maps
2 look like politics neutral draw. The only place you see
3 deviations, big deviations with respect to politics are in the
4 overwhelmingly Democratic portion of the map, which also
5 happens to be the heavily black areas.

6 Q. Now, Chair Szetela said that, with frequent reference to
7 the Commission hearing transcripts, that race was the
8 predominant criteria used to draw the maps and that the
9 politics button wasn't turned on until later. Is your
10 analysis consistent with that testimony?

11 A. That's exactly what this shows, because the maps are
12 politics neutral. The maps look like politics -- they look
13 like maps drawn with the politics button turned off, because
14 that's what the ensemble is, and that's what these maps look
15 like. They do not look like maps drawn with the race button
16 turned off.

17 Q. All right.

18 MR. BURSCH: At this point I'd like to pivot from
19 equal protection to VRA, and so I guess I would ask the
20 panel -- it's a little early for a break, but do you want to
21 have a stoppage here, because the VRA is going to be another
22 fairly long examination.

23 JUDGE KETHLEDGE: It doesn't matter to me.

24 JUDGE NEFF: Me either.

25 JUDGE MALONEY: We'll take a break. 15 minutes.

1 Thank you.

2 THE CLERK: All rise, please. Court is in recess.

3 (*Recess taken at 10:08 a.m.; reconvened at 10:25 a.m.*)

4 THE CLERK: All rise, please Court is in session.

5 You may be seated.

6 JUDGE MALONEY: We're back on the record in

7 22-cv-272. Counsel for the parties are present.

8 Mr. Bursch, you may continue.

9 MR. BURSCH: Thank you, Your Honor.

10 BY MR. BURSCH:

11 Q. Mr. Trende, as I'm sure you know, the VRA is also part of
12 this case.

13 A. Yes.

14 Q. Now, when you structured your report, you proceeded with a
15 particular legal framework in mind, right?

16 A. That's right. It's the framework that I teach in my class
17 and that still governs Voting Rights Act claims, the *Gingles*
18 or *Gingles* framework. People disagree.

19 Q. Why don't we use *Gingles*.

20 A. Okay.

21 Q. And can you elaborate on that?

22 A. So, the *Gingles* case sets forth a three factor -- the
23 Voting Rights Act claim is ultimately about the totality of
24 the circumstances evaluated through the Senate factors, but
25 the Supreme Court set up sort of a three-prong gatekeeping

1 test that the courts look at before they proceed to evaluate
2 the totality of the circumstances.

3 The first is numerosity and compactness. Can you
4 draw a district where the minority group would be 50 percent
5 plus one of the population where that population is reasonably
6 compact?

7 The second prong is whether the minority group votes
8 cohesively. And then the third prong is whether the majority
9 group votes as a bloc sufficiently to defeat the minority
10 candidate of choice. Two and three often get merged together
11 as polarization, but they are distinct factors.

12 Q. And then is that the end of the inquiry?

13 A. No. If the *Gingles* factors are met, the Court will then
14 proceed to evaluate under the totality of the circumstances
15 whether the minority group has an equal opportunity to
16 participate in the political process, but I was not asked to
17 look at the Senate factors that govern that inquiry or guide
18 that inquiry.

19 Q. Your understanding that Professor Lockerbie will address
20 those?

21 A. That's my understanding.

22 Q. Okay. Then why don't we start with prong one. If I refer
23 to numerosity and compactness, you know what I'm talking
24 about?

25 A. Yes. Numerosity would be whether the minority voting

1 group is 50 plus one of the voting age population and
2 compactness has to do with compactness.

3 Q. What are your opinions with respect to *Gingles* prong one
4 with respect to the House?

5 A. That it's possible in the House to draw 10 districts
6 where -- with reasonably compact black populations that would
7 comprise 50 percent plus one of the voting age population.

8 Q. And with the Senate?

9 A. That is possible to draw five such districts.

10 Q. And is that relatively consistent with the way it had been
11 historically done in Michigan?

12 A. It is.

13 Q. Okay. How did you demonstrate this?

14 A. I did this by drawing demonstration plans for both the
15 House and the Senate.

16 Q. Okay. And with respect to the House, what did you
17 examine?

18 A. So, with the House, I set forth to draw districts that
19 would be equi-populus laws or within -- since we're talking
20 about state legislatures, within the acceptable boundary of
21 plus or minus two and a half percent population deviation that
22 would be obviously contiguous, that would minimize county
23 splits, and -- as well as municipal splits, would be
24 reasonably compact.

25 Q. Did you redraw the entire map for the state of Michigan?

1 A. So, I did not. Again, going back to the very first map we
2 looked at, their Voting Rights Act issues aren't really raised
3 outside of the area that I ran the simulations on, and that's
4 not where the challenges were brought so I just redrew the
5 districts in the greater Detroit area.

6 Q. Fair to say that the portion of the map that we can't see
7 is the same as the Commission's map?

8 A. Those districts are basically granted to the Commission or
9 frozen in place, but they're still there.

10 Q. Okay. So, now, if we can turn the lights down just a
11 hair, we're looking at figure 12 on page 23 of your report.

12 Is this your demonstration map --

13 A. This is.

14 Q. -- for Hickory?

15 A. That's right.

16 Q. Did you have any other criteria other than the 50 plus
17 one?

18 A. Like I said, I tried to keep the districts compact, tried
19 to keep them within the acceptable population deviations, kept
20 them contiguous, and then minimized the number of -- tried to
21 minimize the number of times that I would cross county
22 boundaries as well as municipal/township boundaries.

23 Q. Are you familiar with the phrase traditional redistricting
24 principles?

25 A. I am.

1 Q. And in your experience, are those things that you just
2 listed the traditional redistricting principles?

3 A. They are.

4 Q. How does this map compare in terms of compactness to the
5 Hickory map that the Commission drew?

6 A. It's similar in compactness to what the Commission drew.

7 Q. Okay. And that's based on the Reock score and the
8 Polsby-Popper score?

9 A. That's correct.

10 Q. Okay. What about county splits?

11 A. Well, you can see it dramatically reduces the number of
12 county splits. The Wayne/Macomb boundary is traversed once
13 with District 1, and then the Wayne/Oakland boundary is
14 traversed once with District 10.

15 Q. Great. Did you look at the BVAPs for these districts?

16 A. I did.

17 Q. And if we look at table 3 from page 24 of your report, are
18 these the BVAPs?

19 A. That's right. This table continues over four pages
20 because it has all the districts, but for our purposes this is
21 the one that is relevant.

22 Q. Okay. And if I draw a line right here, that would show
23 that there are 10 districts with a BVAP of 50 percent or
24 above?

25 A. That's correct.

1 Q. We didn't talk about this, but there's a 92 percent here,
2 an 81, a 74. These are pretty consistent with what the
3 computer drew in those 50,000 simulations, isn't it?

4 A. Yeah. As it happens in the Senate -- in the core of
5 Detroit, it's very natural to draw these majority black
6 districts.

7 Q. What's the significance of the population in deviation
8 columns?

9 A. It keeps it within the plus or minus two-and-a-half
10 percent.

11 Q. Okay. Have you also looked at addresses for the
12 plaintiffs?

13 A. I did.

14 Q. And what can you tell us about those?

15 A. That all the plaintiffs were either placed in a majority
16 BVAP House district or a majority BVAP Senate district with
17 the exception of Ms. Smith and Mr. Stephen-Atara.

18 Q. Okay. Now, this was in your supplemental report and there
19 were also two maps that showed where all of the plaintiffs fit
20 within your House and Senate demonstration maps; is that
21 correct?

22 A. That's correct.

23 MR. BURSCH: To save time, Your Honors, since your
24 opinion on the expert report already declared the first
25 five pages of the report admitted, I'm not going to go through

1 the maps. Again, defense counsel has stipulated to the
2 admission of just those first five pages, and so we'll give
3 you an exhibit that includes the entirety of his first expert
4 report plus those five pages, including the two maps, but to
5 save time we'll just keep going.

6 JUDGE MALONEY: Thank you.

7 MR. BURSCH: Great.

8 BY MR. BURSCH:

9 Q. Did you look at communities of interest?

10 A. I did not.

11 Q. Why not?

12 A. Well, first, as I said -- I should say, not directly.

13 First, as I said, communities of interest are often,
14 you know, used as a proxy for other ends. Second, as I said,
15 political scientists have considered county lines and
16 municipal boundaries to be pure expressions of communities of
17 interest. So to the extent that these maps reduce and
18 minimize county municipal splits, they do conform with at
19 least what political scientists have considered a valid metric
20 of communities of interest.

21 And then the third, I just -- as I said before, I'm
22 skeptical that the Commission's maps taking the poorest
23 portions of Detroit, matching it with some of the wealthiest
24 portions of Oakland County are really community of interest
25 driven.

1 Q. And we'll be talking about the county and municipal
2 boundaries and the comparison between the demonstration maps
3 and the other maps, but before we get there, what about
4 politics, did you take that into consideration?

5 A. I did not.

6 Q. How come?

7 A. Well, first, as we saw, when you're drawing in this area
8 you're going to draw Democratic districts because it is all
9 Democratic precincts. The other is just when I was thinking
10 of traditional redistricting principles, that's not a
11 traditional redistricting principle, and the idea that you
12 could reduce minority opportunity to participate in the
13 political process to achieve partisan ends is exactly what the
14 VRA is supposed to combat, so I didn't consider that.

15 Q. So partisanship cannot trump the VRA?

16 A. I -- I mean, that's for you all to fight about, but I
17 cannot imagine it could.

18 Q. Okay. Did you consider 2020 to be anomalous in the
19 Detroit area?

20 A. No. As I testified earlier, these elections tend to be
21 correlated, especially in the last few cycles, so it's a good
22 benchmark and certainly the most predictive for political
23 scientists to be using.

24 Q. Okay. Moving to your benchmark map for the Senate, we've
25 got figure 39 on page 82 of your report. How many majority

1 black districts are here?

2 A. Five. Districts 1 through 5.

3 Q. Again, consistent with the historical maps in Michigan
4 prior to the most recent maps?

5 A. Yes.

6 Q. Now, in this one you do cross the Macomb/Oakland boundary
7 with Wayne County; is that correct?

8 A. I do, yes.

9 Q. But does it still reduce the number of splits?

10 A. That's right. It reduces the number of splits. It
11 doesn't completely eliminate them.

12 Q. Okay. And if we go to table 15 from page 83 of your
13 report, again looking at the BVAP column, you can see that
14 there are four districts at 50 percent and above. Same story
15 regarding population and deviation?

16 A. That's right. And this is why earlier I testified that I
17 was pretty confident you couldn't draw more -- that there were
18 no more than five districts demanded by the VRA. You can see
19 these are all close to 50 percent BVAPs. So you couldn't draw
20 more without splitting that population further.

21 Q. And how does your map compare to the Commission's Senate
22 map, the Linden plan, based on compactness?

23 A. Again, it's comparable to it.

24 Q. And same explanations about politics and communities of
25 interest?

1 A. Yes.

2 Q. Great. So now I want to move to *Gingles* two and three,
3 and I'd like to start with the Senate.

4 Were there unique problems with exploring those
5 factors here?

6 A. Yes. So, the kind of traditional, at least in recent
7 years, VRA analysis you would look at general elections.
8 There's a Republican candidate, a Democratic candidate. You
9 know, one group is going to prefer one or the other because
10 there's only two choices. And -- and there's typically a
11 candidate -- you know, two candidates running in every
12 election. They'll have at least some level of funding.

13 The primaries are much tougher because you will have
14 up to 14 candidates running, so cohesion can mean something
15 very different because you don't need 50 percent to win the
16 election. Some candidates -- you know, because these races
17 are further down ticket, you get candidates that don't even
18 raise \$5,000 or races where no candidate raises more than
19 \$5,000 except perhaps the incumbent. And you lack the
20 partisan cue that you have with a general election. You know,
21 you have the label of Republican and Democrat. In the
22 primaries we're talking exclusively about Democrats, so
23 definitely complicates the inquiry, but I think as you examine
24 this you do see the five -- the three *Gingles* factors emerging
25 pretty clearly.

1 Q. And the reason that we don't focus on general elections in
2 Detroit is because it's all Democrat. It doesn't matter
3 whether you're talking about black or white voters. We all
4 know how they're going to vote for a President Trump versus a
5 President Biden?

6 A. It's all Democratic voters, and Doctor Handley shows that
7 there's not much general election polarization in the area
8 we're talking about of Wayne and Oakland County.

9 Q. So we do the best that we can with primaries?

10 A. Yes.

11 Q. Now, there's one thing that gives us an advantage here in
12 a traditional redistricting case. You don't actually have
13 performance under the new maps, and we do have that here.
14 We've got a '22 election in both the Senate and the House?

15 A. Yes. So, because this case has kind of dragged on a bit,
16 we now have election data to look at for 2022 so we can see
17 whether there was polarization in these districts.

18 Q. Okay. So this is a chart from the 2022 Senate results
19 under the Linden plan.

20 MR. BURSCH: Maybe you can dim the lights just a hair
21 so we can see the percentages a little easier. There we go.
22 Great.

23 BY MR. BURSCH:

24 Q. So, first of all, these numbers about who black and white
25 voters choose, that's not something you can get from a

1 database so where do those come from?

2 A. So, what we do -- there's a variety of techniques that
3 political scientists have used to try to extract the vote
4 shares from the data. The problem we have, it's called the
5 problem of ecological inference, because all you have are vote
6 totals for Moss and Foster, and you have districtwide the
7 number of black residents of voting age and the number of
8 white residents of voting age in the district.

9 But from that information alone you can't say a
10 hundred percent with confidence who black voters voted for,
11 who white voters voted for. So, without going into a bunch of
12 jargon, there's a technique called ecological inference that's
13 been developed and is kind of the gold standard approach to
14 statistically extract the information of how different
15 minority groups -- different minority and majority groups
16 voted.

17 Q. And you and Doctor Handley don't really disagree about
18 these numbers, do you?

19 A. That's right. One thing I did at the outset was to see if
20 my ecological inference estimates -- it's a slightly different
21 flavor of ecological inference I used, whether it produced the
22 same results that she came up with, and we're pretty much in
23 agreement as to what the vote shares were in 2018 and 2020,
24 which she published in her report. So that gave me confidence
25 that in the places I performed estimates that she didn't

1 perform estimates, that we were still on the same page. Where
2 we both estimated a race, we came up with the same answer.

3 Q. So let's talk about this table 21, page 89, in some
4 detail. Let's first talk about what the columns represent.
5 Column 1.

6 A. Column 1 -- so, this chart packs a whole lot of
7 information into one chart. Column 1 is the district number
8 under the newly configured map.

9 Q. Okay. BVAPs, I think we know what that is?

10 A. Yes.

11 Q. What about Columns 3 and 4?

12 A. So Column 3 and 4 are the results of the ecological
13 inference inquiry, and so that is an estimate for every
14 candidate -- well, sorry.

15 That is who black voters preferred in that district
16 in 2022 in the primary -- this is all primary data -- and then
17 what percent of the vote they're estimated as having received.

18 Q. So just looking at these first two rows here, Moss and
19 Chang, two popular incumbents?

20 Is that what the star means, an incumbent -- or an
21 asterisk?

22 A. Stars are incumbents, yes.

23 Q. Okay. So, this means that Moss was the first choice of
24 black voters, and roughly 91 percent of the population in
25 Chang was 81 percent?

1 A. That's right.

2 Q. Okay. So then we move -- let's see, one, two, three,
3 four -- Columns 5 and 6. Now, these are the white voters?

4 A. 5 and 6 is the black second choice and their percent.

5 Q. Oh, I'm sorry. I was going by the big column.

6 So you're counting -- 5 and 6, second choice of the
7 black voters?

8 A. That's right.

9 Q. 7 and 8?

10 A. So 7 and 8 are the first choice of white voters and their
11 voting share.

12 Q. 9 and 10?

13 A. 9 and 10 are the second choice of white voters and their
14 vote shares.

15 Q. And 11?

16 A. 11 is the margin by which -- if there was polarization,
17 the margin by which the black candidate of choice won or lost
18 the district.

19 Q. And polarization is any row that's marked red or green?

20 A. That's right.

21 Q. So just sticking with this final column here, what this
22 shows is is that Marshall Bullock was the top black choice in
23 a BVAP with 40.20 percent and yet lost by 37 percent?

24 A. That's right.

25 Q. Okay. We'll come back to that.

1 Now that we've got our terms down, why don't we start
2 with Linden 1. Senate District 1 has a BVAP of 35 percent.
3 And who was the black first choice?

4 A. The black candidate of choice there was Brenda Sanders who
5 received an estimated 43.62 percent of the black vote.

6 Q. And the second choice?

7 A. Was Erika Geiss who received 18.41 percent.

8 Q. Would you call this cohesive among black voters?

9 A. In the context of a multi-candidate primary, the fact that
10 you had a candidate running 25 points ahead of the second
11 choice in that context is cohesiveness.

12 Q. Maybe even more so because Geiss was an incumbent?

13 A. And Geiss is an incumbent, yeah.

14 Q. So what about the white voters? I don't see Brenda
15 Sanders anywhere over here?

16 A. No. She didn't register among white voters. White voters
17 conclusively rejected her, she got 7 percent of the vote.

18 Q. Wow. So would you say that's racially polarized?

19 A. That is bloc voting rejecting the black candidate of
20 choice, because Laberki (sic) and Geiss together, you can see
21 add up to 88 percent of the vote.

22 Q. And what was Liberti's race?

23 A. Oh, is it -- Liberti is white.

24 Q. White. And he doesn't show up anywhere in the black first
25 or second choice?

1 A. No. No, he didn't register among black voters.

2 Q. So we would say that this is both cohesive and polarized
3 with respect to Linden 1?

4 A. Along with the bloc voting on the parts of the white
5 voters, yes, to reject the minority candidate of choice.

6 Q. Now, this BVAP was 35 percent. The Commission tells us
7 that that's going to be a district that elects a black
8 candidate of choice every single time. The button that they
9 pressed on the software, Chair Szetela told us, will tell them
10 the black candidate always wins. How did that work out for
11 Ms. Sanders?

12 A. She lost. And that's why -- so the colored lines are
13 where black and white candidates of choice are different. The
14 red line means that the black candidate of choice lost. The
15 green line means the black preferred candidate won.

16 Q. Okay. We're going to come back to 6 and 8 in just a
17 moment, but I want to hop up to Linden 3 and Stephanie Chang's
18 race. She seems pretty popular with white and black voters
19 now?

20 A. She is now, now that she's an incumbent.

21 Q. Now that she's an incumbent. Now, Doctor Handley talked
22 about Stephanie Chang in her expert report. There was a 2018
23 Democratic primary for the former Senate District 1 and she
24 was not the black candidate of choice. Do you know who was?

25 A. It was not Stephanie Chang. I don't remember the name.

1 We'll see it in a second.

2 Q. Was it Alberta Talabi?

3 A. That's right. That's right. Alberta Tinsley-Talabi.

4 Q. That race had a 45.1 percent BVAP. Doctor Handley
5 reports, and we'll get into this with her report, that Chang
6 won the support of 76 percent of white voters but was a
7 distant second choice among black voters at 27 percent. Do
8 you remember seeing that in her report?

9 A. I do.

10 Q. And so now in this election where Chang is now the
11 incumbent, that black candidate of choice in the previous
12 election, Talabi, endorsed black candidate Reeves who we see
13 right here against the incumbent. How much support did Reeves
14 get among white voters?

15 A. Seven percent.

16 Q. Okay. So even in this race, which isn't that probative
17 because it involves a popular incumbent, we see some racial
18 polarization based on that history, don't we?

19 A. There are differences in how white and black voters vote
20 there, yes.

21 Q. Let's go back to Linden 6 now. Cavanagh was the black
22 candidate of choice?

23 A. That's right.

24 Q. And how much did she prevail by?

25 A. She won by eight points.

1 Q. Okay. Now, if we go back to the 2020 Democratic primary
2 election for former House District 10, Cavanagh was the clear
3 white district -- I'm sorry, white candidate of choice, wasn't
4 she?

5 A. She was.

6 Q. But she defeated two black preferred candidates, Kevin
7 Harris and --

8 A. We will see that in a little bit, that's correct.

9 Q. So she was not the black candidate of choice until after
10 she became an incumbent?

11 A. Until she won her House race, that's right.

12 Q. So Darryl Brown right here who came in second among the
13 black voters, he was a black man from Detroit?

14 A. That's right.

15 Q. Former Detroit Police Commissioner?

16 A. I don't know that but --

17 Q. Okay. According to Doctor Handley's data -- Darryl Brown
18 doesn't show up on this chart here -- only 4.2 percent of
19 white voters supported him while 96 percent favored either
20 Vicki Barnett, who's white, or Cavanagh who is White-Hispanic;
21 is that right?

22 A. That's right. You can see from the support of Barnett and
23 Cavanagh, that adds up to 95.65 percent, which doesn't leave
24 much for Darryl Brown.

25 Q. So that's why when you look at these percentages kind of

1 across this row, they're all kind of in line, but yet if you
2 dig down deeper you see that there is intense racial
3 polarization in Linden 6?

4 A. Yes. White voters were rejecting the black candidate in
5 that race.

6 Q. Okay. Now let's move to this red line, Linden 8. Is this
7 one of particular interest?

8 A. It's pretty striking.

9 Q. Why is that?

10 A. So this is a race where you had two incumbents paired
11 together, so --

12 Q. That's why they both have the asterisks?

13 A. That's why they both have asterisks. Marshall Bullock is
14 an incumbent state senator from Detroit. Mallory McMorrow is
15 an incumbent white senator from Oakland County, and their two
16 areas were combined together in a single district.

17 So, what's nice about this race is you only have two
18 candidates. You don't have to deal with the multi-candidate
19 field. You have two incumbents, so you have two candidates
20 who are capable of raising funds and have a base of support,
21 and they're paired together in a 40 percent BVAP district,
22 kind of right in the middle of where the Commission was
23 drawing its BVAPs.

24 Q. Who was the black candidate of choice?

25 A. Overwhelmingly, Marshall Bullock.

1 Q. 80/20?

2 A. 80/20.

3 Q. Would you say that's cohesive?

4 A. Certainly the 80 percent support for Bullock is cohesion,
5 yes.

6 Q. And then how about among white voters?

7 A. Overall rejection of Bullock. He got 4 percent of the
8 white vote.

9 Q. 96 to 4, overwhelming, that may be understating it?

10 A. Yes. This looks like something out of Alabama in the
11 1960s.

12 Q. Polarized?

13 A. Overwhelmingly.

14 Q. Okay. So what was the overall margin in this race?

15 A. Bullock lost this district right in the middle of the
16 racial target the Commission had set by 37 points.

17 Q. Wait a minute. They set the BVAP at 40. I thought that
18 was an automatic win for the black candidate of choice. How
19 did that work out for Mr. Bullock?

20 A. White voters bloc voted against the black candidate of
21 choice who was also black.

22 Q. Okay. Just looking at the numbers, can you give us a
23 rough estimate of what the BVAP would have had to have been
24 for Bullock to have prevailed in this black incumbent versus
25 white incumbent race?

1 MR. LEWIS: Objection, Your Honor. This goes beyond
2 the witness' expert report.

3 MR. BURSCH: I think he can look at the math and make
4 that calculation.

5 JUDGE MALONEY: Rephrase the question, Mr. Bursch.
6 I'm sorry.

7 MR. BURSCH: The question is, how large would the
8 BVAP percentage have to be, roughly, for Mr. Bullock to have
9 prevailed given these disparities in white and black voting?

10 JUDGE NEFF: That's going to require some
11 speculation, isn't it?

12 MR. BURSCH: It's actually just a math calculation,
13 Your Honor. We know how many black voters there were. We
14 know how many white voters there were, and we know roughly how
15 they broke among racial lines.

16 JUDGE MALONEY: Counsel, go ahead.

17 MR. LEWIS: Yeah, Your Honor. So, we renew the
18 objection that the amount needed to elect is a specific
19 analysis that is performed in Section 2 cases. Mr. Trende
20 does not perform that analysis in his expert report in
21 January.

22 JUDGE MALONEY: Is that right?

23 MR. BURSCH: That's correct.

24 JUDGE MALONEY: Okay. Sustained.

25 MR. BURSCH: Okay.

1 BY MR. BURSCH:

2 Q. Now, in their summary judgment briefing the Commission
3 suggested that this lopsided 37 percent loss for a candidate
4 who had 80 percent of the black vote might have been due to
5 McMorrow's impassioned defense of the transgender community.

6 Is this something that would cause you to revisit
7 your conclusion about cohesion and polarization?

8 A. Not at all.

9 Q. Why is that?

10 A. Because the fact that there are issues that white
11 candidates can use to drive a wedge between themselves and the
12 black community is exactly what the Voting Rights Act is
13 trying to forestall. In the 1960s it was racial areas --
14 racial issues in the south. The fact that a white progressive
15 has their own issues that they can use to drive a wedge
16 doesn't change my analysis.

17 Q. White progressive voters and candidates may have different
18 issues of importance than black voters in Detroit?

19 A. That's exactly what was suggested, and the fact that you
20 can create a 96/4 split by using these issues wouldn't defeat
21 a VRA analysis, I don't think.

22 Q. Okay. So we've kind of hit 1, 6, and 8 here. You know, 3
23 we don't have a lot of data, but as we discussed earlier,
24 because of the pinwheel shape of the Linden districts, would
25 you opine that with respect to cohesion and polarization, it's

1 present with respect to all four of those challenged
2 districts, 1, 3, 6, and 8?

3 A. Obviously, yes.

4 Q. Okay. But we don't stop with the 2022 data. There is
5 some older data that we can look at. Was 2018 of interest to
6 you?

7 A. Yes.

8 Q. Why is that?

9 A. So, first off, the challenged districts occupy a lot of
10 the same area as the 2018 districts. Second, it tells us what
11 the Commission might have reason to believe or good reason to
12 believe or not have in 2018. And, third, it's just a general
13 illustration of how primaries in the Detroit area work. And
14 you can see consistently, especially in open races, white
15 voters will not accept black candidates and black-preferred
16 candidates, especially when they're given a white candidate to
17 choose from.

18 Q. Okay. So this next chart, this is going to be using those
19 ecological inferences. Just as a side light, can those
20 estimates change a little bit on the margins?

21 A. They can. They're estimates and so they do change over
22 time. Now, this is actual vote shares for the different
23 candidates as well as their race, so this tells you that --
24 that Ms. Alexander was African American, won District 5 with
25 54 percent of the vote. I will not try to pronounce the

1 incumbent Senator's name, but he -- he lost. He got
2 45.3 percent of the vote, and he was white and so forth.

3 Q. Got it. And this is table 20, page 88, of your report?

4 A. That's correct.

5 Q. Okay. I'm going to, rather than go through this in
6 detail, go to a -- I think a more easily digestible chart.
7 This is table 19 on page 87.

8 Does this look familiar?

9 A. Yes. This is the same chart as we saw for 2022 except
10 used for 2018.

11 Q. Okay. Why are the BVAPs slightly different than on the
12 previous chart?

13 A. Well, these are the 2018 districts. This is the Benchmark
14 plan.

15 Q. Okay. It looks like almost all of these seats are open.
16 I'm not seeing many asterisks for incumbents.

17 A. That's correct. Because of term limits in Michigan, just
18 the luck of the draw, there were a lot of open seats this
19 year.

20 Q. Okay. And those are more probative?

21 A. They are, because you don't have to consider the
22 incumbency advantage.

23 Q. Okay.

24 A. And we know that as the district -- as the decade
25 progresses all these seats that are drawn under Linden are

1 going to become open.

2 Q. And I don't want to steal your punch line, but with red
3 and green bars representing polarization, this looks like it's
4 lit up like a Christmas tree?

5 A. Yes. The -- these races polarized -- generally polarized
6 badly.

7 Q. All right. Let's start with prior Senate District 5.

8 What race is Alexander, the black first choice?

9 A. She is black.

10 Q. And Knezek?

11 A. He is white.

12 Q. Okay. And what percentage did the black candidates of
13 choice receive?

14 A. 68 percent.

15 Q. To?

16 A. 32 percent for Knezek.

17 Q. Okay. Would you say that's cohesive, more than double?

18 A. Yes.

19 Q. Okay. How about the white vote share?

20 A. Overwhelmingly rejected as a bloc. The black candidate of
21 choice and the black candidate --

22 Q. Completely flip-flopped?

23 A. -- in favor of the white candidate.

24 I'm sorry.

25 Q. Completely flip-flopped?

1 A. Yes.

2 Q. The black and white votes?

3 A. A complete flip-flop, yes.

4 Q. So you would say this is polarized as well?

5 A. It is. Knezek received 73 percent of the white vote.

6 Alexander received just 28 percent of black -- of the white
7 vote.

8 Q. Okay. Now, Alexander did prevail here by 9 percent, but
9 what was the BVAP?

10 A. This was a majority black district that could sustain her
11 even with that degree of polarization.

12 Q. And she would have lost this race most likely if the BVAP
13 had been 42 percent?

14 A. That's just math, yes.

15 Q. Okay. And this prior Senate 5, if we did an overlay, that
16 feeds into the current Linden Senate District 6?

17 A. That's correct.

18 Q. Okay. Now, I see prior Senate District 3 down here, the
19 Santana race. Who is the black candidate of choice?

20 A. Sylvia Santana.

21 Q. And her race?

22 A. Black.

23 Q. How about Anita Belle?

24 A. She got 25 percent. I'd have to look at the previous
25 chart for her race, but I believe she's black as well.

1 Q. I can confirm to you that she is.

2 How about the top white choice?

3 A. So, I apologize if it is not Woronchak, but Mr. Woronchak
4 was the white candidate of choice, and he received 76 percent
5 of the white vote.

6 Q. Okay. White candidate, top white choice?

7 A. That's right.

8 Q. And then here's Ms. Santana again.

9 A. Bloc voting against her. She received just 19 percent of
10 the vote from white voters.

11 Q. So you would say this is cohesive and it's polarized?

12 A. Cohesive, bloc voting rejecting, the black candidate of
13 choice, and polarization.

14 Q. Okay. Now, I don't see Woronchak in the first two choices
15 of black voters. Do you recall how he did?

16 A. Well, again, you can add 60 and 25 and you get
17 85.7 percent, so he could not have gotten more than 15 percent
18 of the vote from black voters.

19 Q. Okay. Now, I notice that Santana pulls it out by
20 2.8 percent with a BVAP of 46.70 percent. She wouldn't have
21 made it in a 42 percent BVAP district, would she?

22 A. No. That's just math. She did not have much margin for
23 error.

24 Q. And if we did the map overlay, this district feeds into
25 the Linden Senate Districts 1, 6, and 8?

1 A. Correct.

2 Q. Okay. Finally, District 1 right here, the Talabi race,
3 how many candidates here?

4 A. There were a lot. It was a fractured primary.

5 Q. Okay. But who is the top black choice with a strikingly
6 high margin for a multi-candidate race?

7 A. Talabi got 47 percent of the black vote outpacing second
8 choice by 20 points.

9 JUDGE KETHLEDGE: Counsel, if I could just ask you to
10 just refrain from characterizations yourself, you know,
11 particularly after an answer or something. It just -- it's a
12 cleaner record if the witness characterizes and not the
13 lawyer.

14 MR. BURSCH: Happy to do that. Thank you.

15 JUDGE KETHLEDGE: Thank you.

16 BY MR. BURSCH:

17 Q. So second choice?

18 A. The second choice is Stephanie Chang who ran 20 points
19 behind Talabi.

20 Q. So this is what you were talking about earlier as far as
21 Chang being the voters -- the black voters' first choice?

22 A. Right. When we're talking about 2022, once she took on
23 the veil of -- or the mantle of incumbency it was a different
24 story, but when it was an open race, she was not the black
25 candidate of choice.

1 Q. And then what happens on the white voters side with this
2 race?

3 A. So Stephanie Chang is the clear bloc white vote candidate
4 of choice, 77 percent. The white voters rejected the black
5 candidate of choice and also the black candidate.

6 Q. So would you say this is cohesive?

7 A. You see cohesion on the black side; you see bloc voting on
8 the white side. As a matter of fact, you can do the math
9 here, 76.7 plus 8.7 is 85.4, so Talabi couldn't have gotten
10 more than 14 percent of the white vote. In fact, she got
11 three.

12 Q. How do we know that?

13 A. From Doctor Handley's table and from the ecological
14 inference that was run.

15 Q. Okay. Now, this is 43.10 percent BVAP. Under the
16 Commission's theory that's a -- a black candidate of choice
17 always wins, what happened to Ms. Talabi?

18 A. Because Talabi was just overwhelmingly rejected by white
19 voters in the district she lost by 23 points.

20 Q. And this prior 6 Senate 1 feeds into current Linden Senate
21 Districts 1 and 3?

22 A. That's right.

23 Q. What would have happened in prior three and prior five if
24 those BVAPs had been lowered into the lower 40s?

25 MR. LEWIS: Objection, again, Your Honor. This goes

1 into percent needed to elect and is beyond the scope of the
2 witness' expert report.

3 MR. BURSCH: Okay. I'll withdraw that.

4 BY MR. BURSCH:

5 Q. All right. Let's move ahead to table 18 on page 86. This
6 is from the 2014 Democratic state Senate primary. Can you
7 just briefly describe what you see here?

8 A. Yes. So this is a year that Doctor Handley didn't
9 estimate, and I should say these data are not provided in
10 spreadsheet form. It had to be recreated from the -- pretty
11 time-intensive process, so it's not like Doctor Handley was
12 hiding the ball. I don't mean to accuse her of anything.

13 Q. We didn't think you were.

14 A. We recreated the spreadsheet from the paper file and ran
15 the ecological inference on 2014.

16 Q. Okay. And then you also made this table 16 which is on
17 page 84 of your expert report?

18 A. That's right.

19 Q. So looking at these, prior Senate District 5, who was the
20 black candidate of choice?

21 A. Shanelle Jackson.

22 Q. And was she black?

23 A. She was.

24 Q. What about David Nathan?

25 A. I'd have to refer back to the previous page, but I believe

1 he was.

2 Q. Yeah. He's also black. I will confirm that.

3 So two black candidates. How did they perform with
4 white voters?

5 A. So, yeah, Jackson and Nathan combined get 66 percent of
6 the black vote. You can see Nathan is the second choice and
7 got 3 percent of the white vote, which means that Shanelle
8 Jackson got less than 3 percent. Otherwise, she would be
9 second.

10 Q. And David Knezek is white?

11 A. Just overwhelming bloc voting, rejecting the two black
12 candidates and the top two black candidates of choice.

13 Q. So, this is highly polarized?

14 A. It is highly polarized. You have the black vote in this
15 fractured primary poll around two candidates, and white voters
16 just overwhelmingly rejecting those choices allowing Knezek to
17 emerge by eight points.

18 Q. By eight points in a district with what BVAP percentage?

19 A. 52.5 percent.

20 Q. Rather than going through the rest of the table, I want to
21 move along so that we can get to the House yet.

22 Based on your analysis of all these races in 2014 and
23 2018, how many black candidates ran incumbent and
24 nonincumbent?

25 A. I'd have to look at the tables, but there were a lot.

1 Q. Does 30 sound about right?

2 A. Somewhere in that range, if you added all the black names
3 in those two tables.

4 Q. And how many times in any of those roughly 30 races did
5 they ever give a candidate who was black more than a third of
6 the white vote?

7 A. Never.

8 Q. Well, never. What about Bert Johnson?

9 A. That's -- Bert Johnson is an incumbent, and I believe he
10 is also running against a black candidate, John Olumba.

11 Q. Right. So one candidate who got more than 50 percent was
12 an entirely black field?

13 A. That's right. And that's also true of Marshall Bullock's
14 race back in 2018.

15 Q. And then what about Erika Geiss?

16 A. So Erika Geiss received more than a third, but she was not
17 the black candidate of choice in that race.

18 Q. And she was an incumbent?

19 A. And she was an incumbent, that's correct.

20 Q. Okay. So that's who white voters support.

21 On the black voters side, did they ever prefer a
22 white candidate over a black candidate?

23 A. I think Moss, maybe. He seems to be a political athlete,
24 but beyond that...

25 Q. What about Cavanagh?

1 A. Cavanagh is white Hispanic.

2 Q. Okay. So, excluding the races involving all black fields,
3 you know, like the Bert Johnson, how many of these races would
4 the black candidate of choice won with BVAPs in the low 40s?

5 A. Perhaps Bert Johnson where he's an incumbent.

6 MR. LEWIS: Pardon me, Your Honor. I want to lodge
7 the same objection to the fact that there's not been an
8 opportunity -- you know, percent needed to elect analysis
9 here.

10 MR. BURSCH: Okay. That's fine. I'll withdraw.

11 BY MR. BURSCH:

12 Q. So based on all the data that we've been looking at from
13 2014, 2018, 2022 for these Senate districts, what conclusions
14 do you draw?

15 A. Particularly in open seats, and we know that the Hickory
16 and Linden map districts will become open at some point, white
17 voters will coalesce around a white candidate given the
18 opportunity. They'll reject the black candidate who is an
19 incumbent.

20 Black candidates, black voters will tend to prefer
21 the black candidate of choice, Senator Moss being an
22 exception. So you have cohesion among -- in the black
23 community around black candidates. You have cohesion in the
24 white community among white candidates, and particularly in
25 these open races, that cohesion, even in a 52 percent

1 district, is playing dice with black voters' ability to elect
2 their preferred candidate.

3 Q. So Chair Szetela yesterday, kind of looking forward, once
4 black incumbents in the Senate have timed out, suggested it
5 was possible there could be zero black Senators from Detroit
6 within a couple of cycles.

7 Does your analysis confirm that?

8 A. That is exactly what this analysis shows. By drawing
9 these districts down into the low 40s, there's a real
10 possibility the black Senate caucus from Detroit will fit in
11 the back of a taxi cab, not even a Uber XL, by the end of the
12 decade.

13 Q. Let's turn to the House. You did an analysis of the 2022
14 election here as well?

15 A. That's right.

16 Q. And are those reflected in this table 9 on page 42 of your
17 report?

18 A. That's correct.

19 Q. It would take us a long time to go through every line of
20 this so I'm going to try to just do some high level stuff.

21 First, the red and the green, again, is the
22 polarization, correct?

23 A. That's correct.

24 Q. And the red are the districts where the black candidate of
25 choice lost in a polarized election?

1 A. That's right.

2 Q. So what was the BVAP where the black candidate of choice
3 lost in Hickory 26?

4 A. 35.8 percent.

5 Q. Hickory 11?

6 A. Hickory 11, 42 -- where did I put my glasses? 42 percent.

7 Q. Hickory 8?

8 A. There we go. 35 percent.

9 Q. And Hickory 5?

10 A. 62 percent.

11 Q. I think I'm reading 55 up there.

12 A. 55.3 percent.

13 Q. That's a high BVAP?

14 A. Yeah. I was reading Reggie Davis -- yes, 55 percent is a
15 high vote share for BVAP.

16 Q. Looking at cohesion, would you say there was cohesion in
17 District 4?

18 A. In almost all these districts -- yes, in District 4 and in
19 almost all these districts black voters are giving one at --
20 giving one candidate 50 percent of the vote or more or
21 thereabouts.

22 Q. I do want to tick through just a couple of these because
23 it's going to be important for the record. Cohesion in
24 Hickory 5?

25 A. 62 percent of black voters preferred Reggie Davis so, yes.

1 Q. Yes, cohesion?

2 A. Yes, cohesion.

3 Q. Hickory 7?

4 A. 90 percent of voters preferred the incumbent Helena Scott,
5 so, yes, cohesion.

6 Q. Hickory 8?

7 A. Split field. 35 percent of the voters preferred Ernest
8 Little or Durrell Douglas got another 34 percent. Combined you
9 get 69 percent of the vote for those two candidates so, yes.

10 Q. You're combining them. Are they both black candidates?

11 A. They are.

12 Q. Are McFall and Soltis both white candidates?

13 A. They are.

14 JUDGE KETHLEDGE: Can I ask a question on this point?
15 What's your standard for determining whether there is cohesion
16 among black voters in a multi-candidate primary?

17 THE WITNESS: Your Honor, I looked -- I actually did
18 some research to try to figure out -- I couldn't find
19 anything. I think the panel is writing on kind of a blank
20 slate here, but I think you have to take into account the
21 fact, at the very least -- the reason I show the top two, if
22 the top two are different than white -- than what the white
23 candidates show, I think you do have -- and it's well beyond
24 50 percent, you do have cohesion and you do have bloc voting
25 by white voters to reject those voters of choice, like you see

1 in Hickory 8 or 5 -- 8.

2 JUDGE KETHLEDGE: Okay. Thank you.

3 THE WITNESS: Yes, Your Honor.

4 BY MR. BURSCH:

5 Q. And cohesion is easy in a district like 12?

6 A. Oh, yes. Where Kimberly Edwards gets 84 percent, that's
7 easy.

8 Q. And just to be clear, Edwards is black and Steenland is
9 white?

10 A. That's correct.

11 Q. And as we discussed earlier, some of these districts are
12 mutually probative, so the fact that 5, 6, 7, 8, 4, and 1 are
13 all kind of grouped together on the map and fall from the same
14 core, the polarization and cohesiveness in those districts are
15 mutually reenforcing?

16 A. That's right. You can see the trend across the entire
17 region, and you can see how racially polarized voting works in
18 Detroit.

19 Q. And so we talked through the chart on cohesion. Now
20 quickly on polarization. Let's go back up to the top with
21 Hickory 4. Whitsett and Turner are both black?

22 A. That's right.

23 Q. And Gus Tarraf is Middle Eastern?

24 A. That's correct.

25 Q. And then we've got Whitsett again, so that's black again.

1 Do you see polarization here?

2 A. Yes. White voters are bloc voting for Gus Tarraf and only
3 give Whitsett 14 percent of the vote.

4 Q. There might be a mistake on here. I see an asterisk on
5 Whitsett's name over here but not over here. She is the
6 incumbent, correct?

7 A. That's correct. I know I got it in the first column but
8 not in the second. Yes, she is the incumbent.

9 Q. What do you say about a black candidate who is an
10 incumbent who only gets 13.71 percent of the white vote in a
11 racially polarized race?

12 A. She is really rejected, heavily rejected by the white
13 community.

14 Q. Okay. So Hickory 5, Davis and Hughes both black?

15 A. That's correct.

16 Q. Price, Wooddell, both white?

17 A. That's correct.

18 Q. Racial polarization?

19 A. Davis and Hughes, the black candidates combine for
20 78 percent of the black vote, which leaves only 22 percent
21 between the two white candidates. Natalie Price and Michelle
22 Wooddell combine for 85 percent of the white vote, which means
23 that Davis and Hughes split the remaining 15 percent among
24 them and any other minor candidates, so completely different
25 vote preferences.

1 Q. All right. Hopping down to Hickory 7, Scott, black,
2 Macey, white, correct?

3 A. That's right.

4 Q. And then you see the exact opposite over here, Macey,
5 Scott. Would you say this is racially polarized?

6 A. Yes. Yes. Overwhelming black support for Helena Scott.
7 Overwhelming white rejection of Helena Scott, two to one
8 against.

9 Q. And she was an incumbent?

10 A. And Helena Scott was the incumbent, and the black
11 incumbent is rejected by white voters here.

12 Q. Okay. Hickory 8 -- so just in case I didn't ask, so
13 Hickory 7 is racially polarized?

14 A. Yes. I don't think I gave a clean answer. Yes, Hickory 7
15 is racially polarized.

16 Q. So 8, just a refresher, Little and Douglas are both black?

17 A. Yes.

18 Q. McFall and Soltis are both white?

19 A. Correct.

20 Q. Polarized?

21 A. Yes. The first and second choices are different. Here
22 you have McFall and Soltis combining for 83 percent of the
23 white vote, which means that neither Little nor Douglas could
24 have gotten more than 17 percent of the white vote.

25 Q. All right. Hickory 11, Williams is black, White is black?

1 A. That's correct.

2 Q. Paiz is Hispanic?

3 A. Yeah. Paiz, Paiz, yeah.

4 Q. And Manwell is white?

5 A. Manwell is white by the last chart, that's correct.

6 Q. Now, this was a nine candidate race, but does this still
7 show racial polarization?

8 A. So, again, it's the tricky nature of these multi-candidate
9 fields, but you can see the black candidate -- black voters
10 preferred Williams and White. They don't even register among
11 white voters who give a majority of their vote to Paiz and
12 Manwell.

13 Q. Okay. Hopping down to Hickory 12, Edwards black,
14 Steenland white?

15 A. That's right. This is a race with a black candidate
16 taking on a white incumbent.

17 Q. And then the reverse, Steenland white, Edwards black?

18 A. Correct.

19 Q. Racially polarized?

20 A. It is racially polarized. Clear cohesion for Kimberly
21 Edward. Clear bloc voting on the part of whites, two to one
22 against Kimberly Edwards.

23 Q. And then, finally, Hickory 26, Chisholm black, Wilson
24 black?

25 A. That's right. And Chisholm you have -- yes.

1 Q. Wegela, white?

2 A. Correct.

3 Q. And then Wilson black again?

4 A. Yes.

5 Q. Racially polarized?

6 A. This is racial polarization. The -- of -- you see
7 54 percent of the black voters preferring Chisholm. Doesn't
8 even appear in the top two for white voters. And, in fact,
9 white voters give around 87 percent of the vote to Wegela or
10 Wilson, which means that Chisholm couldn't have gotten more
11 than 13 percent of the white vote.

12 At the same time white voters -- black voters give
13 very little vote share to Dylan Wegela. And even the second
14 choice of black voters, Allen Wilson, only gets 9 percent of
15 the white vote.

16 Q. Now, we do have quite a few white lines here, too, where
17 there's no polarization so I just want to touch on a couple of
18 these quickly. Carter, Tobey, that was a black candidate
19 against a black candidate, correct?

20 A. Yes.

21 Q. The asterisk, that means these were incumbent races?

22 A. That's correct.

23 Q. If we skip up here we've got three more incumbent races
24 out of four?

25 A. That's correct.

1 Q. Hoskins, Jackson, that was a black candidate versus a
2 black candidate?

3 A. That's correct.

4 Q. Okay. So notwithstanding that roughly half of the lines
5 are white versus red and green, if you take this as a whole,
6 this entire area is racially polarized, or not?

7 A. It is. You certainly see consistent cohesion among black
8 voters, and where incumbents are not involved or where you
9 don't have all black fields you see rejection of those black
10 candidates by the white voters.

11 Q. Okay. So moving to some of the historical data. We've
12 got this 2014 House chart, table 7, page 40 of your report.
13 Did you prepare this?

14 A. I did.

15 Q. And, again, we're going to kind of go through this
16 quickly. Just looking at the black first choice and second
17 choice in these various races, would you say that generally
18 the black voters are voting cohesively?

19 A. Yeah. Most of these races have a single black candidate
20 that gets the majority of the vote. They all have races where
21 top two choices get a majority of the vote, and often the top
22 two -- you know, even where say Leslie Love comes close to
23 getting 50 percent of the vote in a multi-candidate field, you
24 know, the top two choices among black voters combined for some
25 80 percent of the vote.

1 Q. And the green means every single one of these races is
2 racially polarized?

3 A. That's right. Where the white first choice is different.

4 Q. And down here we have two incumbent races that were not
5 polarized and we talked about Stephanie Chang?

6 A. That's right.

7 Q. Some of these numbers struck me as a little odd. We've
8 got a 92 percent BVAP in this prior House 7 but only a
9 19 percent margin of victory. What happened there?

10 A. Some of that is turnout differential. Some of it is that
11 you do have a fractured field where, nevertheless, Garrett and
12 Stallwroth combine for -- what is that, 78 -- 79 percent of
13 the vote. And then Garrett got less than 19 percent of the
14 white vote.

15 It's just -- this rejection of black candidates of
16 choice by white voters in this district. It's only -- the
17 only reason these lines are green is because all these
18 districts are 56 percent BVAP or higher.

19 Q. So moving down to prior House 3, there's 88.60 percent
20 BVAP, but only a 3.30 margin of victory. Do you need to be a
21 VRA expert or a mathematician to know what would have happened
22 to Wendell Byrd in a BVAP of 35 to 40 percent or 40 to 45
23 percent?

24 MR. LEWIS: Your Honor, it's the same objection as
25 before. It's beyond -- it requires analysis not performed by

1 the expert in his initial report.

2 MR. BURSCH: My 16-year old daughter could opine on
3 that.

4 JUDGE MALONEY: This one is math. Overruled.

5 BY MR. BURSCH:

6 Q. Go ahead, Mr. Trende.

7 A. He would have lost badly.

8 Q. How about prior House 1, 63 percent BVAP but a 6.7 percent
9 margin?

10 A. Again, Brian Banks doesn't even register among white
11 voters. He would have lost if the white share had been
12 increased much.

13 Q. Okay. And looking at the same districts, we've already
14 gone over this, but prior House 7 feeds into current House
15 District 7?

16 A. Correct.

17 Q. Prior House 3 feeds into current House Districts 7 and 14?

18 A. Correct.

19 Q. And prior House 1 feeds into current House Districts 10
20 and 12?

21 A. That's correct.

22 Q. Okay. We're getting close.

23 2016, this is table 8 on page 41. Again, do you find
24 generally that there's cohesion among black voters in these
25 races?

1 A. Yes. In every one of these races, except for House
2 District 2, there is a clear candidate who emerges among black
3 voters even in multi-candidate fields, and in House District 2
4 it's 42 percent in a race where there were at least four
5 candidates running.

6 Q. And then as far as polarization, if you leave out
7 incumbent Stephanie Chang, who we know is kind of a special
8 exception in all black candidate races, how do you feel about
9 the racial polarization?

10 A. So, you can see with House District 9 Santana gets
11 54 percent of the black vote, 15 percent of the white vote,
12 rejection by white voters. In District 1, Brian Banks gets
13 74 percent of the black vote and 10 percent of the white vote.
14 White voters prefer Pamela Sossi 81 -- or Sossi 81 percent of
15 the vote. She gets less than 10 percent among black voters.

16 Q. And before you go on, just to put a fine point on that,
17 Banks was an incumbent?

18 A. And Banks was an incumbent, that's right.

19 Q. And he took what percentage of the white vote as an
20 incumbent?

21 A. 10 percent.

22 Q. And Banks is a black candidate?

23 A. That's right.

24 Q. Okay. So we have cohesion and polarization in 2016 as
25 well?

1 A. That's right. You see Scott is at 42 percent of the vote,
2 doesn't register among white voters. On District 5 you see
3 Durhal's at 60 percent of the vote. White voters prefer
4 Cynthia Johnson.

5 Q. Okay. And just to focus on one nonexpert, simple math
6 question, prior House 2, 56 percent BVAP, black candidate of
7 choice, Scott prevails by 6 percent. How does Scott do in a
8 35 to 40 percent BVAP district?

9 A. With almost no support among white voters, she loses.

10 Q. And as we discussed, prior House 2 feeds into current
11 House District 10?

12 A. Correct.

13 Q. And right below that, prior House 5, Fred Durhal, that
14 feeds into House Districts 1 and 7 under the Linden plan?

15 A. That's correct.

16 Q. Okay. So having gone through all this data, what
17 conclusions do you draw about black candidates of choice
18 prevailing under the current Linden plan?

19 A. The Commission was playing dice with black voters' ability
20 to elect their candidates of choice by drawing these districts
21 down into 40 percent. Particularly in open races we
22 consistently see black and white voters coalescing around
23 different candidates, and white voters in particular do not
24 vote for, in these open seat races, black candidates. By
25 drawing these districts down to 40 percent, 42 percent, when

1 these seats become open, you're flirting with an environment
2 where the House black caucus will fit into the backseat of an
3 Uber XL by the end of the decade.

4 Q. And if we put even the black House and Senate
5 representatives, could they fit in that Uber XL?

6 A. Since we're talking about potentially none in the Senate,
7 absolutely.

8 Q. Okay.

9 MR. BURSCH: I have no further questions.

10 JUDGE MALONEY: Mr. Lewis, you may inquire.

11 CROSS EXAMINATION

12 BY MR. LEWIS:

13 Q. Mr. Trende, good morning. Patrick Lewis for the
14 Commission.

15 A. Good morning.

16 Q. One of the principal sections of your report conducts a
17 racially polarized voting analysis of districts in Michigan.

18 Mr. Trende, would you agree with me that before your
19 work in this case, you had only conducted a racially polarized
20 voting analysis submitted to a Court in one prior case; is
21 that right?

22 A. That's correct.

23 Q. Okay. And that was the *Moore versus Lee* case in Kentucky;
24 is that correct?

25 A. I think I said Kentucky in my deposition, but I'm pretty

1 sure it was Tennessee. But, yes, *Moore v Lee*.

2 Q. Tennessee. Okay.

3 And that was a -- and that case involved an analysis
4 of a -- of -- or a challenge to one state representative
5 district, correct?

6 A. That's correct.

7 Q. Okay. And, Mr. Trende, in preparing your expert report in
8 this case, I understand that you reviewed Doctor Handley's
9 expert reports as well as Commissioner Szetela's dissenting
10 report; is that correct?

11 A. That's correct.

12 Q. Okay. But you didn't study the transcripts of Commission
13 meetings, did you?

14 A. That's correct.

15 Q. Okay. And so, for example, any testimony that Doctor
16 Handley might have offered to the Commission during meetings
17 would not have been incorporated into your report or relied
18 upon in your opinions in this case; is that right?

19 A. That's correct.

20 Q. Okay. So, I'd like to start with the VRA portion of your
21 analysis, and I know I'm slightly out of order from what you
22 did, but let's start there.

23 In your first task, as I understand it, was to create
24 demonstration maps to satisfy *Gingles* one.

25 Was that your understanding of why you drew the

1 demonstration maps?

2 A. Yes.

3 Q. Okay. And do you agree that when drawing districts to
4 comply with Section 2 of the Voting Rights Act, that where the
5 totality of circumstances require, the district must provide
6 the minority group in question an equal opportunity to elect
7 their candidate of choice?

8 A. Yes.

9 Q. But you'd agree that when you prepared your demonstration
10 maps and expert report in this case, you'd not conducted a
11 performance analysis for the demonstration districts that you
12 drew, correct?

13 A. No. Because *Gingles* prong one, as I understand it, is
14 only asking whether there is a sufficient minority population
15 to represent 50 percent plus one of the population in a
16 reasonably configured district.

17 Q. Okay. So you did not conduct a performance analysis to
18 determine if your demonstration maps would provide an equal
19 opportunity to elect; is that right?

20 A. That's correct, because I understand that to be a
21 different part of the inquiry.

22 Q. Okay. And is it also fair to say in your expert report,
23 Mr. Trende, that you do not perform an analysis of the
24 majority-minority districts in your demonstration maps to
25 determine if they provide minority opportunity to elect that

1 does not exist under the enacted plans?

2 A. That's right, because I'm only trying to demonstrate
3 numerosity and compactness.

4 Q. Okay. And I believe you may have testified to this on
5 direct, but just so that I'm clear, when you prepared your
6 demonstration maps and your expert report in this case, is it
7 true that you were not aware of the perform -- political
8 performance of those demonstration maps?

9 A. Yeah. For the reasons I stated in the direct, that's
10 correct.

11 Q. Okay.

12 MR. LEWIS: So I would like to display Defense
13 Exhibit DTX001 at page 3. Sorry. DTX1 at page 3.

14 Mr. Williams, I think we're looking for DTX1, and
15 it's called Exhibit 1. There we go. Okay. Go to page 3.

16 BY MR. LEWIS:

17 Q. Mr. Trende, I'll represent to you that this is a printout
18 of Article IV, Section 6 of the Michigan constitution.

19 Have you seen this before?

20 A. Yes.

21 Q. Okay. And do you understand Section --

22 MR. LEWIS: And I'll ask Mr. Williams to scroll down
23 to Subsection 13. Perfect.

24 BY MR. LEWIS:

25 Q. Now, Mr. Trende, do you understand Section 6(13) of the

1 Michigan constitution to specify the redistricting criteria
2 that the Commission was required to follow under state law?

3 A. Yes.

4 Q. Okay. Mr. Trende, the third ranked criterion, which is
5 subsection C, describes the state's community of interest
6 requirement; is that correct?

7 A. Yeah. So, subject to contiguity and then the Voting
8 Rights Act, you would take account of communities of interest,
9 that's right. That's how I read it at least.

10 Q. Okay. And you'd agree that in preparing your
11 demonstration maps, for example, you did not consider
12 preserving Detroit neighborhoods; is that correct?

13 MR. BURSCH: Objection, mischaracterizes.

14 JUDGE MALONEY: He can answer yes or no.

15 THE WITNESS: Detroit's neighborhoods, not the towns
16 or municipalities, that's correct, but I'm only operating in
17 subdivision A here for Voting Rights Act compliance which
18 trumps everything below. So I'm -- with this map I'm only
19 trying to demonstrate numerosity and compactness in reasonably
20 configured districts.

21 BY MR. LEWIS:

22 Q. Okay. And when you refer to compactness, are you
23 referring to the compactness of the district or the
24 compactness of the minority population?

25 A. In this case it's both because we're only looking at the

1 Detroit -- a contiguous group of black residents in Detroit
2 and south Oakland County, but I also tried to keep the
3 districts compact. I know there's some dispute about what the
4 proper measure is, but in this case it's both.

5 I wouldn't have drawn a compliant district,
6 demonstration district, you know, stretching out to Genesee
7 County or someplace like that.

8 Q. Okay. And so this is another example. You're familiar
9 with the practice of redlining in terms of housing
10 discrimination?

11 A. That's correct.

12 Q. Okay. And you didn't consider Detroit redlining maps in
13 drawing your demonstration maps either, did you?

14 A. I did not. I do know that there's a horrific history of
15 cities and townships excluding black residents, but
16 considering that as written into the redistricting law, and
17 for better or worse it's a traditional redistricting criteria
18 that I have to consider when I'm drawing reasonably configured
19 districts trying to keep cities and townships intact.

20 Q. And 8 Mile Road occupies a place in the history of
21 redlining in Detroit, does it not?

22 A. You can see that plain as can be in the demonstration
23 plans that I drew by race, which is part of the reason that,
24 unlike the Commission's maps, my maps don't go across it
25 trying to bring segregated white communities in to overwhelm

1 black voters in Detroit and deny them their opportunity to
2 elect their candidate of choice.

3 Why would I want to do that?

4 Q. So instead you constructed districts that followed a line
5 of historical segregation?

6 A. Which is also a county boundary.

7 Q. Okay. And for Section -- subsection E of the Commission's
8 criteria -- I'll just read it. It states, a district shall
9 not favor or disfavor an incumbent, elected official, or a
10 candidate.

11 Are you familiar with this criterion?

12 A. Yes.

13 Q. Okay. And your report doesn't analyze whether your
14 demonstration maps consider the incumbency criterion, correct?

15 A. No. Because, again, that's not a traditional
16 redistricting criteria, and I'm operating in subdivision A,
17 compliance with the Voting Rights Act, which trumps all these.
18 I'm just trying to demonstrate numerosity and compactness in a
19 reasonably configured district.

20 Q. Okay. What do you understand a reasonably configured
21 district to be for purposes of the first *Gingles* precondition?

22 A. That is a really good question under current law. For my
23 purposes, I kept the districts compact. I kept them from
24 excessively crossing city, county, and township boundaries,
25 the traditional boundaries and traditional delineations of

1 communities of interest, and I ensured that they had
2 50 percent plus one black population.

3 Q. Okay. So you mentioned that you did consider communities
4 of interest, then, in constructing your demonstrative plans;
5 is that right?

6 A. Well, as I testified earlier, political scientists
7 consider county, city, and township boundaries to be pure
8 expressions of communities of interest. So, insofar as I keep
9 those boundaries intact, which I split them a minimum number
10 of times in these demonstration maps, they will respect
11 communities of interest.

12 Q. And is it your understanding that the communities of
13 interest that are to be considered when judging if a district
14 is reasonably configured are limited to cities, townships, and
15 counties?

16 A. There may well be other communities of interest. What I
17 do know is that these maps are more respectful of them than
18 maps that combine the wealthiest part of Oakland County with
19 the poorest part of Detroit. It's at least as respectful as
20 what the Commission did.

21 Q. But you didn't actually study communities of interest in
22 Michigan beyond cities, townships, and counties, correct?

23 A. Not for the initial report, no.

24 Q. Okay. So moving on, then, to -- at the risk of
25 redundancy, subsections F and G talk about -- of Article IV

1 Section 6(13) of the Michigan constitution talk about
2 consideration of city, county, and township boundaries and
3 compactness. You did consider those criteria, correct?

4 A. Those are traditional redistricting principles and, yes, I
5 made sure that the districts complied with that, correct.

6 Q. Okay. Now, would you agree that Democratic voters in
7 Michigan are more geographically concentrated than Republican
8 voters in Michigan?

9 A. If you'd asked me that question a decade ago I would say,
10 yes. Today I'm not as sure, because places like Oakland
11 County are now voting 14 points to the left of the state. You
12 know, I testified in my deposition, if you run simulations on
13 a state like Texas, they'll show a huge geographic advantage
14 for Republicans in 2012 but not in 2020 because the suburbs
15 have moved against Republicans, so I can't say with confidence
16 that today that's true of Michigan. I'm skeptical, in fact.

17 Q. And you mentioned Oakland County. How do you think the
18 politics of Oakland County have changed in the past decade?

19 A. They've shifted towards Democrats.

20 Q. By how much?

21 A. I don't know the vote shares off the top of my head.

22 Q. Would you characterize it as a large shift?

23 A. I believe as of 2012 the state was voting -- or the county
24 was voting three or four points to the left of the state and
25 by the end it was voting 14 points to the left of the state.

1 Now, the interesting thing about that swing is that it's
2 occurring more in central and northern Oakland County than in
3 a place, like, say, Southfield, which is, of course, heavily
4 black and has been heavily Democratic all along.

5 And as those white suburban voters start
6 participating more in Democratic primaries, you're driving up
7 the white vote share, so in a polarized primary, by connecting
8 black voters in Detroit with increasingly Democratic white
9 voters in Oakland County you're diluting the black vote share
10 even more in these districts.

11 Q. But did I hear you correctly that the farther north you go
12 in Oakland County the more Republican the voters become?

13 A. Yes.

14 Q. Okay.

15 A. I guess I have to caveat Pontiac as an exception.

16 Q. Mr. Trende, I'd like to look at a few of the statistics
17 presented in your expert report from the Hickory plan and your
18 demonstration map for the House.

19 MR. LEWIS: So, Mr. Williams, I'd like you to put up
20 Plaintiffs' Exhibit 20 and turn to page 24, please.

21 BY MR. LEWIS:

22 Q. And so this is -- I believe the table that was presented
23 to you on direct was a cutout from this particular -- I have
24 to go off your report, but this is the table you talked about
25 in your direct examination, correct?

1 A. Correct.

2 Q. Okay. And so we look here and we see in the demonstration
3 plan that you've drawn, it looks like, four districts, House
4 District 1, House District 5, House District 10, and House
5 District 62 at between 50 and 53ish percent BVAP; is that
6 right?

7 A. I'm sorry, I might have misheard. Did you say House
8 District 62?

9 Q. I did say 62, but that might be on a different page.
10 Well, let's start with this. House District 1 is 51.64 BVAP,
11 correct?

12 A. That's correct.

13 Q. House District 5 is 50.34 percent, correct?

14 A. That's right.

15 Q. 50.13 percent in House District 10?

16 A. That's right.

17 Q. All right. And -- okay. That is fine. Now, at the same
18 time I think you also testified on direct examination that you
19 had three districts in here drawn at 75 percent or higher
20 BVAP; is that right?

21 A. Yes, that's right.

22 Q. Okay. And you don't offer an opinion in this case as to
23 whether black voters in Detroit require a 90 -- for example,
24 House District 8 at 92 percent, require a 92 percent district
25 to have an equal opportunity to elect; is that right?

1 A. Well, right, because all this is trying to do is to
2 demonstrate *Gingles* prong one, that there are -- there is a
3 sufficient compact black population to be 50 percent of the
4 population or more in 10 districts. That's it. That's
5 *Gingles* prong one.

6 Q. Okay. And you conclude -- and I believe your conclusion
7 was that 10 was the maximum number of such districts you could
8 draw in the Detroit area; is that right?

9 A. I thought I said that if I played a little faster and
10 looser with compactness I thought I could draw 11 but --

11 Q. Okay.

12 A. -- 10 is what I felt I could do while keeping it compact.

13 Q. Okay. So maybe 11 districts would be the outer limit; is
14 that fair?

15 A. From my experience, drawing reasonably configured
16 districts that respect county municipal lines in Detroit, yes.

17 Q. And so if we turn to page 19 of your report, which is
18 table 1, this is your computation of the BVAP in the 20 most
19 heavily black Michigan districts under the enacted Hickory
20 plan; is that correct?

21 A. Under Hickory and the Benchmark.

22 Q. And the Benchmark. I understand. Okay. So you would
23 agree, then, that Hickory contains at least, I believe, six
24 Detroit area MMDs; is that right?

25 A. You'll have to explain MMD. I think multi-member

1 district.

2 Q. I apologize. So there are at least six districts in the
3 metropolitan Detroit area that have a BVAP of 60 percent or
4 higher?

5 A. Yeah. Yeah. Because 70 isn't in Detroit. Yes.

6 Q. Correct. Okay. So we have six. And the Hickory plan
7 doesn't contain any districts with 74 to 92 percent BVAP,
8 right?

9 A. Right. Because the black population is cracked.

10 Q. Isn't it possible that in districts with 90 percent BVAP,
11 that the black population could be packed?

12 A. It's possible, but when you saw the distribution of the
13 districts drawn by a race neutral computer, it produced
14 districts with BVAPs that high. That is just the natural
15 concentration of black voters in portions of Detroit, that if
16 you don't intentionally crack you're going to get some of
17 these higher BVAP districts.

18 Q. Mr. Trende, do you understand Section 2 of the Voting
19 Rights Act to be an intent based analysis where the Court is
20 looking at the intent of the map maker?

21 A. As a straightforward claim, I don't believe so. As a
22 defense to the Fourteenth Amendment claim, I think it is
23 intent based.

24 Q. Okay.

25 A. Or at least knowledge based.

1 Q. Okay. So it's possible, let's say hypothetically
2 speaking, that the state had adopted one -- for example, one
3 of your simulated plans with 92 percent districts, that such a
4 plan could be potentially, under the right circumstances,
5 subject to a Section 2 challenge?

6 A. It's possible.

7 Q. Okay. So I'd like now to turn -- kind of do a very
8 similar quick analysis on your Senate plans. I'd like to go
9 to page 83 of your report at table 15. You have a few more
10 variables on here.

11 JUDGE KETHLEDGE: Can I ask a clarification? Sir,
12 you said 92 percent in his plan was the highest BVAP just now.
13 Is that accurate or is that just benchmark you're talking
14 about?

15 MR. LEWIS: I was referring to House District 8 on
16 table 3 of the witness' report which reported a BVAP of
17 92.15 percent.

18 JUDGE KETHLEDGE: I guess, just so I'm tracking you,
19 is that the 2010 actual plan or is that his demonstration --
20 is that district in his demonstration district so the actual
21 2010?

22 MR. LEWIS: It is in the demonstration districts,
23 Your Honor.

24 JUDGE KETHLEDGE: Okay. Thank you.

25 BY MR. LEWIS:

1 Q. All right. Oh, one other question now that I see it with
2 population deviation. You said for your districts in your
3 demonstration plans that you applied a plus or minus
4 2.5 percent population deviation; is that correct?

5 A. I believe that's right. I know it's allowable up to
6 5 percent under federal law, 5 percent either way, but I'm
7 pretty sure I kept it to 2 percent -- or two and a half
8 percent.

9 Q. Okay. How did you select that number, two and a half
10 percent?

11 A. I think that's the range the Commission drew in, but if
12 not, I just tried to keep the deviations low. I drew these
13 maps about a year ago so I don't remember exactly what it was,
14 but I thought the Commission kept its population deviations
15 plus or minus two and a half percent.

16 Q. Okay. All right. Sorry for the out-of-order questioning.
17 I forgot to ask it and it showed up on the screen so I felt I
18 had to.

19 If we look here, these are, again -- this is your
20 demonstration plan and, here again, you're showing the five
21 majority-minority districts that you said you were able to
22 create in the Senate; is that correct?

23 A. That's right.

24 Q. Okay. And so here all five of those districts are between
25 50.01 and 50.88 percent; is that correct?

1 A. That's correct.

2 Q. And so is the 50.01 district, is that literally 50 percent
3 plus one person?

4 A. It's pretty close.

5 Q. Pretty close? Okay. Now, after you get outside of the
6 five majority-minority districts, is it fair to say that --
7 I'm looking at your chart here, I believe House -- Senate --
8 your -- your Senate District 11 is the next highest BVAP; is
9 that correct?

10 A. That's right.

11 Q. And that's 31.77 percent, correct?

12 A. Yes.

13 Q. Okay. And then beneath that all the other BVAP numbers
14 are -- appear to be well below 20 percent; is that right?

15 A. Yes.

16 Q. Okay.

17 A. You definitely have to give race consideration to get it
18 to five 50 percent districts.

19 Q. Sure. And you believe -- and is it your -- I'm sorry,
20 I'll come back to that.

21 So you have, then, a total of six districts in your
22 Senate plan that are drawn at a BVAP above 25 percent; is that
23 right?

24 A. The plan that is demonstrating *Gingles* one, yes.

25 Q. Okay. And Linden has seven such districts; is that right?

1 A. That's right.

2 Q. So I'd like to turn to your racially polarized voting
3 analysis, and when you analyzed the existence of racially
4 polarized voting for this case, you studied elections under
5 both the prior decade plan and the enacted Hickory and Linden
6 plans; is that right?

7 A. That's right.

8 Q. Why did you choose to study both?

9 A. As I testified, we don't have a very rich data set of
10 stuff for the Linden plan and, like I said, when you see how
11 elections consistently work, 2014 and 2016, 2018 under the
12 Linden and Hickory plan it's, to me, probative of House in
13 more districts or lower BVAP districts perform in the 2022s --
14 or 2020s.

15 Q. Okay. And when you say the data for Michigan were not
16 particularly rich, what do you mean by that?

17 A. Well, ideally, what you want for a primary is a race
18 where -- a primary race where you have statewide white
19 candidate running against a black candidate or any election,
20 really, where you see a clean division between white voters
21 and black voters. But the truth is the statewide Democratic
22 primaries in Michigan haven't been that heavily contested so
23 we don't have a lot of gold standard data where you can --
24 where you can hold the candidates constant. That doesn't mean
25 we don't have enough data, but we don't have what we would

1 normally desire. To kind of paraphrase Donald Rumsfeld, you
2 go to war with the data you have, not the data you'd want.

3 Q. Okay. I understand. So do you feel if you had had more
4 data that it would have made your conclusions in this case
5 stronger; is that fair to say?

6 A. I think that's almost always the case so, yes.

7 Q. Okay. And just to clarify your position briefly, do you
8 agree that a black preferred candidate does not have to be
9 black?

10 A. It doesn't -- yeah. The black preferred candidate does
11 not have to be black, that's right.

12 Q. Okay. So I'd like to turn briefly to your methodology for
13 performing your racially polarized voting analysis.

14 So, when we talk about the ecological inference
15 technique -- we've had a lot of tables, we'll have more tables
16 today -- but it reports an estimate of the percentage of
17 either the black vote or the white vote that went to a
18 specific candidate, correct?

19 A. That's right.

20 Q. Okay. Now, that's not like an election return, like, if
21 we were looking at the official election returns for Michigan,
22 right? It's not like a tabulation of votes, correct?

23 A. That's right. That's the whole problem, that we don't
24 have that.

25 Q. Okay. All right. So it's a statistical estimate that

1 you're drawing from data, correct?

2 A. That's right.

3 Q. All right. And it has a margin of error around it,
4 doesn't it?

5 A. Yeah. These are Bayesian techniques. They have credible
6 intervals not confidence intervals or margins of error, but
7 they function in something of the same way, yeah.

8 Q. Something of the same way. Okay.

9 How do you define a credible interval?

10 A. I might have to apologize in advance to the Court for this
11 one because I'm not really sure how to do this in plain
12 speech, but what you're doing with a Bayesian technique is
13 you're generating multiple, what we call, posterior draws,
14 multiple estimates of what the different variables can be.

15 And so as you sample these posterior draws, you then
16 look to see -- it's a lot like the ensemble analysis in a lot
17 of ways. You look to see what the range of the posterior --
18 the output estimates are, and you pull 95 percent of those
19 draws and that creates your credible interval. It's a lot
20 like the ensembles where you're generating repeated estimates,
21 and you use that to kind of engineer what the counterfactual
22 is.

23 Q. Okay. So it's an understanding, then, that what you're
24 reporting is -- like, the number may actually be -- it may
25 incredibly be a different number within a certain range; is

1 that right?

2 A. Yes. If the estimate is 47 but you say it's 48, I
3 wouldn't have a reason to say you're wrong with a 95 percent
4 credible -- depending where the 95 percent credible estimate
5 lies, but, yeah.

6 Q. Okay. So as long as you're within the -- we'll call them
7 the guardrails of the 95 percent credible range, any value
8 within that range, the statistical test, you'd have to say
9 that it's credible, that the number is that number, correct?

10 A. So, this is where it gets tricky. I know. Now it's
11 getting tricky, as if it hadn't been before. The 95 -- the
12 reason we use -- when we talk about error margins, the reason
13 we use 95 percent is because those are what we call the
14 frequentist analysis, and it's a different way of looking at
15 the data. And frequentists have said if -- if -- because of
16 the different techniques employed, if something is outside of
17 the 95 percent confidence interval, you could run the data 20
18 times and 19 of those times the true value would fall in the
19 confidence interval.

20 The nice thing about Bayesian techniques -- and this
21 is the punch line -- the nice thing about Bayesian techniques
22 is you're doing direct estimation. Just like with the
23 ensembles, we're directly generating plans to sample from, and
24 so you can directly say with a Bayesian technique, like,
25 50 percent is more likely than not, similar to the legal

1 standard in a way. You can't really do it with a typical
2 error margin because that has a different interpretation. So
3 the 95 percent credible interval makes it look like the
4 95 percent confidence interval, but because the
5 interpretations are so -- are different, that 95 percent
6 number isn't as crucial for a Bayesian technique as it is for
7 a frequentist technique, and that is the simplest I can
8 explain it. I apologize.

9 Q. Okay. All right. So just as a -- so you report a few
10 credible intervals in your range, do you not? And I'll put
11 one up on the screen, but you do report the credible intervals
12 in your expert report, correct?

13 A. At some places. In general, I followed the approach that
14 Doctor Handley used of doing the point estimates. In her
15 table she didn't do credible intervals, and since I was trying
16 to recreate -- first trying to recreate what she did to ensure
17 that we were on the same page and then expand it to races she
18 did not estimate, I used the same reporting approach.

19 Q. Okay. And, Mr. Trende, just to make sure we're all on the
20 same page, when you're referring to the work of Doctor Handley
21 that you were relying on, you were relying -- is it fair to
22 say you were relying on the report that she submitted to the
23 Redistricting Commission at the time that the plans were being
24 considered?

25 A. Yes.

1 Q. Okay. So we're not talking about her expert report dated
2 in March of 2023?

3 A. That's correct. That was after I did my report so, yes.

4 Q. Okay. So, just -- I just want to do one very quick
5 example and then it may be a --

6 MR. LEWIS: If the Court is amenable, it may be a
7 good time for a lunch break, but if I could just do one quick
8 example?

9 So, Mr. Williams, if I can have you put up page 30 of
10 Mr. Trende's report, table 4, and if we can zoom into that top
11 bar for District 1?

12 BY MR. LEWIS:

13 Q. Okay. So just to make sure I understand this concept,
14 Mr. Trende, so here you report -- this is your ecological
15 inference, 2018 Democratic primary in a House district, and
16 you're reporting the -- an estimate for black support for
17 candidate Thanedar.

18 Do you see that?

19 A. Yes.

20 Q. Okay. And so your estimate is 45.65 percent; is that
21 right?

22 A. Yes.

23 Q. Okay. So would it also be then credible for me to say
24 that the true value could be 46.65 percent?

25 A. Yeah. It's -- I would -- looking at this distribution and

1 the 95 percent range, it's more likely than not -- you can't
2 say that -- if you said 46 percent, I couldn't say it's more
3 likely than not that you're wrong.

4 Q. Okay. And the same would be true until you reached the
5 95 percent threshold?

6 A. Well, because it's Bayesian and you're doing direct
7 estimates and you can say more likely than not, it probably --
8 I probably am able to argue with you sooner than 51 percent,
9 but, yes, I will -- certainly by the time you get to
10 95 percent I would start disagreeing with you if you said they
11 were the same.

12 Q. Okay. All right.

13 MR. LEWIS: Your Honors, I'm at a place where we
14 could take a break if the Court wants.

15 JUDGE MALONEY: We've reached the noon hour.
16 Counsel, if you have other areas and it's a good time to
17 break, we'll do it now. Thank you. We'll take the noon
18 recess. We'll resume at 10 after 1:00. Thank you.

19 THE CLERK: All rise, please. Court is in recess.

20 *(Recess taken at 12:02 p.m.; reconvened at 1:13 p.m.).*

21 THE CLERK: All rise, please. Court is in session.
22 You may be seated.

23 JUDGE MALONEY: We're back on the record in 22-272.
24 Counsel for the parties are present.

25 Mr. Lewis, you may continue.

1 MR. LEWIS: Thank you, Your Honor.

2 BY MR. LEWIS:

3 Q. Good afternoon, Mr. Trende.

4 A. Good afternoon.

5 Q. So before the break we were talking about credible
6 intervals, and I wanted to talk about one of the tables in
7 your report where you calculated credible intervals.

8 MR. LEWIS: So if we could put up -- let's start with
9 page 38 of your report, Plaintiffs' Exhibit 20. Okay. Zoom
10 in on this page.

11 BY MR. LEWIS:

12 Q. And you say here this is the -- the 2008 primary election
13 in -- this would be House District 5, correct?

14 A. Yes.

15 Q. Okay. And here you state that black voters generally back
16 Cynthia Johnson while white voters favored Rita Ross; is that
17 correct?

18 A. Yes.

19 Q. Okay. So if we turn to the next page, this is table 6 of
20 your report showing the ecological inference results from this
21 particular race. I'd like to turn to the second set of tables
22 for black voters.

23 MR. LEWIS: If we could zoom in on that,
24 Mr. Williams? There we go.

25 BY MR. LEWIS:

1 Q. Okay. And so to orient the Court and you to this figure,
2 the -- there's three percentages here, and the left one is the
3 ecological inference estimate, correct?

4 A. Correct.

5 Q. Okay. And the number immediately to its right is the
6 lower credible interval, and the one to its right is the upper
7 credible interval, correct?

8 A. Correct.

9 Q. Okay. So just to make sure I'm understanding this, so do
10 you believe that Candidate Johnson was the black candidate of
11 choice in this primary?

12 A. Yes.

13 Q. Okay. Now, the credible intervals for -- and let me just
14 get this so the record is clear.

15 Your estimate for Candidate Johnson is 40.92 percent,
16 yes?

17 A. Correct.

18 Q. Okay. And your estimate for Candidate Ross is
19 37.59 percent, correct?

20 A. Correct.

21 Q. Okay. And the credible intervals for these candidates
22 overlap, do they not?

23 A. Oh, yeah.

24 Q. Okay. So, it's potentially -- it's credible to say that
25 Rita Ross could have been the highest vote getter among black

1 voters, correct?

2 A. No.

3 Q. No? Why not?

4 A. Because that's a common misinterpretation even of
5 confidence intervals, that if the confidence intervals
6 overlap, there's no statistically significant difference. And
7 this is also hard to explain, but the actual interpretation is
8 1.6 times the error margin, not twice the error margin. The
9 reason is, if Rita Ross is up at 40.56 percent, you don't know
10 where in that credible interval Cynthia Johnson is for a given
11 estimate.

12 So in a -- it's particularly in a Bayesian approach.
13 You would need to pull the posteriors and see what percentage
14 of the posterior draws Ross is ahead of Johnson in, if any, to
15 make that type of claim.

16 Q. I see. Okay. So there's more analysis you would have to
17 do as opposed to just looking at these two values. Is that
18 what you're saying?

19 A. If you wanted to tell me that Ross may have been the
20 candidate of choice, you would have to -- if you wanted to
21 rebut my claim that Johnson is the candidate of choice, yes,
22 you would have to do that initial work. But Johnson's point
23 estimate is higher than even the 95 percent credible interval
24 for Ross, so to convince me otherwise you would have to do the
25 work of going in, looking at the posterior draws, and doing

1 that calculation.

2 Q. Okay. All right.

3 A. But, yeah, it's a common misunderstanding with polls that
4 if the confidence intervals overlap or the error margins
5 overlap that there -- there's not a statistical significant
6 difference.

7 Q. Okay. And here we're looking at a difference, though, of
8 approximately three-and-a-half percentage points between your
9 estimate for Johnson and Ross, right?

10 A. Right.

11 Q. Okay. All right. And if we go down to the NH White
12 portion of this table, the far bottom. Okay.

13 And just to make sure I understand, when you use the
14 term NH White, that's referring to non-Hispanic white,
15 correct?

16 A. Correct.

17 Q. Okay. And so here you have some pretty wide 95 percent
18 credible intervals around both Candidate Johnson and Ross in
19 the white community; is that correct?

20 A. That's correct.

21 Q. Okay. So...

22 MR. LEWIS: Okay. We can move on from this.

23 BY MR. LEWIS:

24 Q. So I'd like now to turn to table 9 on page 42 of your
25 report.

1 All right. And this is the -- your summary of the
2 2022 House ecological inference analysis that you conducted
3 under the Hickory enacted House plan, correct?

4 A. That's right.

5 Q. Okay. And you summarize a total of 16 elections in this
6 chart; is that right?

7 A. Yeah. There's 16 races, one of them is unopposed, but,
8 yeah, sure.

9 Q. So 16. All right. And we're just looking at the primary.
10 We're not looking at the general, correct?

11 A. Well, that's right.

12 Q. Okay. And for the general elections under the Hickory
13 plan in 2022 in these districts, did you identify any
14 candidates who were black preferred candidates in the general
15 who lost?

16 A. No. I believe Democrats won these districts.

17 Q. Okay. So black preferred candidates prevailed in the
18 general election in all 16 of these races, correct?

19 A. If they made it to the general, yes.

20 Q. Okay. And is it possible that a black -- you may have a
21 black preferred candidate in a general who is not a black
22 preferred candidate in the primary?

23 A. Yes. Of the choices that black voters are given in the
24 general, those might be different than the choices that they
25 had in the primary, and it's a two-step process, right? When

1 the Voting Rights Act was passed in the south, it was all
2 Democrat so it was all about the primary.

3 So, yeah, you have to be able to win a primary and
4 then win the general election.

5 Q. Okay. And of the 16 we have on this list, you identify
6 only four districts where the black preferred candidate of
7 choice did not prevail in the primary; is that right?

8 A. That's right.

9 Q. Okay. And specifically in this case, you're aware that
10 there are a total of five House Districts under Hickory that
11 are challenged under Section 2 of the Voting Rights Act and
12 are still at issue in this case; is that right?

13 A. Yes.

14 Q. Okay. And if I represent to you that those districts
15 include House Districts 1, 7, 10, 12, and 14, would you have
16 any basis to disagree?

17 A. No.

18 Q. Okay. Of those five House Districts, were there any black
19 preferred candidates that failed to be elected in 2022?

20 A. No.

21 Q. So in those elections, then, the district performed for
22 the black candidate of choice, correct?

23 A. In 2022, yes.

24 Q. Okay. So I'd like now to turn -- okay. And of the black
25 preferred candidate losses on here, you're aware that House

1 District 26 is no longer in this case for purposes of the
2 Voting Rights Act claim?

3 A. That's my understanding.

4 Q. Okay. And Hickory District 11 is also no longer in this
5 case under the Section 2 theory; is that correct?

6 A. That's my understanding.

7 Q. Okay. And the same is true of House District 8 under
8 Hickory, correct?

9 A. That's my understanding.

10 Q. Okay.

11 MR. BURSCH: To clarify, for the VRA but not the
12 equal protection. It's in equal protection.

13 MR. LEWIS: House District 26, Counsel, was removed
14 from the case altogether.

15 MR. BURSCH: But you said 8, I thought.

16 MR. LEWIS: Yes. 8 and 11 are in the case for the
17 Shaw claim but not the VRA claim. Hopefully that record is
18 clear. I apologize if there was any confusion.

19 BY MR. LEWIS:

20 Q. So, in other words, of the four candidate -- black
21 preferred candidate failures identified on table 9, three out
22 of four occurred in districts for which there was no pending
23 voting rights challenge, correct?

24 A. That's my understanding. I'll be honest, I haven't
25 followed a lot of the procedural stuff in this case, but

1 that's consistent with my recollection, I think is the best
2 way for me to put it.

3 Q. Okay. So I'd now like to turn to page 89 of your report
4 and table 21.

5 MR. LEWIS: And if we can zoom in on table 21? All
6 right.

7 BY MR. LEWIS:

8 Q. Mr. Trende, this is the result of your ecological
9 inference analysis for the Linden Senate plan in the 2022
10 primary, correct?

11 A. That's right.

12 Q. Okay. And in the notes accompanying the table, I believe
13 you indicated you actually studied -- or looked at seven
14 different elections in 2022; is that right?

15 A. That's right.

16 Q. But you didn't report the results for Linden District 11,
17 did you?

18 A. Yes. After I'd conducted the analysis I learned that the
19 BVAP was down to 20 percent, which is getting really low to be
20 a VRA compliant district. So, that's right, I didn't include
21 it, but I kept the analysis, because I -- it would be
22 unethical to delete analyses.

23 Q. Okay. All right. And so of these six, you have a total
24 of two black preferred candidate losses out of six; is that
25 right?

1 A. There's also the unopposed district where I guess -- I
2 don't know how you would characterize that in terms of
3 preferences, but I'd say of the five contested races, black
4 preferred candidates lost two, that's right.

5 Q. Okay. And I believe that you -- there was some discussion
6 in your direct examination about the Linden 3 Senate District
7 with Candidate Chang and Reeves. Do you recall that?

8 A. Yes.

9 Q. Okay. I believe you had testified that Candidate Chang in
10 a prior -- a prior race was not the preferred black candidate;
11 is that right?

12 A. That's right.

13 Q. Was that a State Senate or State House race?

14 A. I believe it was State Senate.

15 Q. State Senate.

16 A. But I would have to see it.

17 Q. Sure. I understand. I understand. Is it possible for a
18 candidate who may not have been the black preferred candidate
19 when she was initially elected to office to become a black
20 preferred candidate when seeking reelection four years later?

21 A. Sure. It's part of my understanding of how elections work
22 in Detroit, that when you take on the mantle of incumbency, it
23 becomes much, much harder to challenge in a Democratic primary
24 to take on the incumbent. And so, yeah, I mean -- if you have
25 only token opposition, you may well become the black preferred

1 candidate. But we also know that the -- like Chang has served
2 two terms, that seat will be open next time, and that's why my
3 view is that the open races are the ones that are the more
4 probative.

5 Q. I understand. But it's possible that Chang, Candidate
6 Chang through her efforts as a state senator earned the
7 support of the black community in that district, correct?

8 A. Yes.

9 Q. And you didn't conduct an analysis in this case to
10 determine if she had undertaken such efforts, right?

11 A. No. I don't know how, at least from a social science
12 perspective, you would do that type of work.

13 Q. Sure. So I wanted to take a look as well at the Linden
14 District 1, and this had -- well, multiple candidates, but
15 you'd expressed some concern about the level of support for
16 candidate -- for now Senator Geiss; is that correct?

17 A. Yes.

18 Q. Okay. And Senator Geiss is a -- identifies as a black
19 woman; is that correct?

20 A. That's my understanding, yes.

21 Q. Okay. And are you aware that Senator Geiss heads the
22 Michigan Legislative Black Caucus?

23 A. I'm sorry, can you repeat that?

24 Q. Yeah. Are you aware that Senator Geiss heads the
25 legislative black caucus in Michigan?

1 A. Heds. Yeah. I didn't quite catch that word the first
2 time. Yeah, I was not, but I wouldn't dispute you on that.

3 Q. Okay. So if we look at -- now I would like to turn -- you
4 talked earlier about some of the prior races so I'd like to
5 talk about a few of those.

6 If we can go to table 19 on page 87 of your report.
7 I think that looks good.

8 And this is your ecological inference analysis -- or
9 summary from the 2018 Senate races under the prior decade
10 plan; is that right?

11 A. That's right.

12 Q. Okay. And so if we start with Senate District -- so it
13 looks like with Senate District 2, it looks like there was
14 both a special election and then I guess a regular election
15 that occurred in that year; is that your understanding?

16 A. Yeah. There was a general election and then an election
17 to fulfill -- to fill the remaining amount of the expiring
18 term.

19 Q. I see. Okay. And in this case -- I guess -- I guess
20 we'll start with the special first. Who would you identify as
21 the black preferred candidate of choice?

22 A. I would identify it as Brian Banks, but in a badly
23 fractured multi-candidate field. I think the more salient
24 fact is that you had two black candidates who combined for
25 55 percent of the vote who -- the main one, Brian Banks, was

1 completely rejected by the white voters.

2 Q. But the white vote appears to be fairly split as well in
3 these two elections; is that right?

4 A. No. I think Abraham Aiyash is the white preferred
5 candidate, although there was, you know, about a third of the
6 vote given to Adam Hollier.

7 Q. And Candidate Aiyash only earned -- is that 42 percent?
8 Do I have that right?

9 A. It was 42.56 in the special.

10 Q. All right. So less than a majority of white voters
11 supported this candidate, correct?

12 A. Yeah. If we go up to table 18, though, we can see how
13 many candidates were running, and that was part of my colloquy
14 with Judge Kethledge. I mean, I think it's a fascinating
15 question of how you handle *Gingles* prongs two and three in a
16 situation where you have 10 or 14 candidates running. It's
17 just fundamentally different than your typical -- your classic
18 one-on-one election, but that's a fight for you lawyers I
19 think, ultimately.

20 Q. Okay. And when you identify the top -- you know, these
21 top two vote getters, did you take into account the credible
22 intervals to ensure that -- to ensure that you can accurately
23 tell a difference between what you're saying is the top two
24 vote getters in the black community?

25 A. I'm taking the same approach that Doctor Handley took,

1 reporting the point estimates -- and reporting the point
2 estimates.

3 Q. Is there something specific about this district that led
4 to a multi-candidate primary? You don't report anything like
5 that in your report, do you?

6 A. I'm sorry, can you repeat the last part?

7 Q. Sure. You don't have any analysis in your report as to
8 any other factors that could lead to a multi-candidate
9 primary, do you?

10 A. Well, I think I said at the very beginning of my
11 *Gingles* -- of my VRA analysis that, you know, actually the
12 first step -- there's kind of three steps in becoming a
13 representative. The first step is candidate emergence, which
14 is kind of what you're talking about, how are you getting 15
15 candidates emerging in some of these races, or 14. And that's
16 really an understudied phenomenon in political science, so I
17 don't have an overarching theory of how candidate emergence
18 works here.

19 I'm looking at steps two and three, which are
20 winning -- actually, step two, winning the primary and then
21 Doctor Handley has step three, which is the general election.

22 Q. I see. Are you aware -- I'll move on from that but -- so
23 is this analysis an example -- I believe you talked about
24 before where sometimes you have to go to war with the data you
25 have and not the data you want?

1 A. Yes. I think all the experts in this case doing the VRA
2 analysis probably agree this would be a lot simpler if we had
3 some good statewide, two-candidate Democratic primaries.

4 Q. And if we talk, then, about Senate District 11 all the way
5 at the bottom of this chart, you know, would you agree here --
6 I'm sorry, strike that.

7 I'd like to turn now to table 16 on page 84, and this
8 is your 2014 for the Senate. So, here again, in 2014 you
9 analyze a total of six races and you have only one black
10 preferred candidate failure; is that correct?

11 A. I would say I analyzed four, since two of those are
12 unopposed, but there is one black preferred candidate failure.
13 It's the open seat.

14 Q. Okay.

15 A. Just saw when Senate District 2 became open, the black
16 preferred candidate lost. I think also 11.

17 Q. And in Senate District 11 there is effectively no white
18 preferred candidate in this race, is there?

19 A. Well, this is another one where you see the white voters
20 split, giving 87 percent of the vote for Ellen Lipton and
21 Vicki Barnett. Black voters gave 20 percent to Lipton and
22 Barnett somewhere under 20 percent. In these multi-candidate
23 fields, polarization looks different. Vincent Gregory got
24 62 percent of the vote and white voters outright rejected him.
25 He couldn't have gotten more than 16 percent of the vote from

1 white voters.

2 Q. Okay. And if we turn to the next page, page 85 in
3 table 17, this is your analysis of -- ecological inference
4 analysis from that fifth Senate district primary that we had
5 talked about. And if we zoom in on the black results here,
6 second chart down, you would agree with me, then, that the
7 black vote was effectively split three ways in this election,
8 correct?

9 A. We could dispute two or three ways, but I'd say you could
10 make a case for two or three. Jackson and Nathan are both
11 getting close to a third of the black vote. Stallworth is
12 right around a quarter.

13 Q. Okay. And if there had only been one -- if the black
14 community had cohered around, for example, candidate -- if the
15 black community, for example, had shown stronger support for
16 Candidate Jackson, could she have prevailed in that election
17 primary over the white preferred candidate?

18 A. Oh, I think so. It's a -- I think a 53 percent BVAP
19 district, yeah.

20 Q. And, again, your report doesn't identify anything specific
21 about this district that induces a fracturing of the black
22 vote in that district, correct?

23 A. That's right. I don't even know what a social science
24 analysis of this type of candidate emergence would look like
25 just because it is understudied.

1 Q. All right. So I would like now to turn to your racial
2 predominance testimony that you gave this morning, and if I
3 understand, you used both qualitative and quantitative
4 methodologies to evaluate the enacted Hickory and Linden plans
5 to determine the use of race in those elections; is that
6 correct?

7 A. That's right.

8 Q. Okay. So I'd like to now turn to page 45 of your report.

9 Okay. And although we have the figure here, if you
10 need to see the text beneath, but in your report you
11 principally focus on the fact that the districts in the
12 Hickory plan cross that Wayne/Oakland and Wayne/Macomb County
13 border; is that fair to say?

14 A. I don't know about principally, but that's certainly a
15 large part of the analysis, that's right.

16 Q. Okay.

17 MR. LEWIS: And if we go down to the text that's
18 beneath the figure and zoom in on that.

19 BY MR. LEWIS:

20 Q. So you're focusing here on -- on how the county
21 boundaries -- how many times the county boundaries are
22 traversed; is that right?

23 A. That's right.

24 Q. Okay. And then you're also looking at the fact that the
25 traversals are pairing Detroit with what you described as

1 white areas of the northern counties; is that right?

2 A. Yes.

3 Q. Okay. Now, that particular border that we keep talking
4 about, that's 8 Mile Road, right?

5 A. That's right.

6 Q. Okay. Now, you'd agree with me -- we talked this morning
7 about how the Michigan constitution was changed in 2018 with
8 the new Article IV, Section 6 criteria.

9 Do you recall that?

10 A. That's right.

11 Q. Okay. And would you further agree with me that one of the
12 changes in that new Michigan constitutional provision was to
13 put city, county, and township preservation toward the bottom
14 of the list of criteria for the Commission to consider?

15 A. I don't know -- I mean, I'm -- because this transcript
16 will follow me for the rest of my life, I'll be a little
17 pedantic. I don't know exactly what the previous version said
18 so I don't know what the change was. I will a hundred percent
19 agree with you that it's lower down on the list.

20 Q. Okay. And do you have any reason to believe that the
21 criteria used in the construction of the 2011 plan did not
22 prioritize city, county, or township preservation?

23 A. I don't.

24 Q. Okay. And so the point of putting city, county, and
25 township preservation toward the bottom of the list was to

1 make it subordinate to the other higher ranked criteria on
2 that list; is that fair?

3 A. Yes. It's certainly the effect.

4 Q. So I want to look at page 48 in figure 19 of your report.

5 Now, you mobilized this particular -- you leveraged
6 this particular figure in your direct examination to suggest
7 that the Commission was not attempting to draw for
8 partisanship when it constructed these districts; is that
9 fair?

10 A. That's certainly part of it, yes.

11 Q. Part of it. Okay.

12 Are you aware of what partisan data the Commission
13 utilized as it was drawing its plans?

14 A. I believe it had partisan data from 2012 to 2020 and then
15 it had key races that it was looking at.

16 Q. Okay. And it wasn't just looking at the 2020 presidential
17 vote, was it?

18 A. Oh, that's right.

19 Q. Okay. And, in fact, the Commission was also using
20 partisan fairness measures; is that right?

21 A. Yes.

22 Q. Okay. And those partisan fairness measures were not
23 computed using just the 2020 presidential vote, were they?

24 A. I don't know that.

25 Q. You don't know that. Okay.

1 And so if you were trying to judge whether the -- you
2 know, whether the partisan distribution of voters in suburban
3 Detroit supports an inference that the Commission was not
4 drawing using partisanship, wouldn't it have been better to
5 use the actual election data that the Commission was
6 considering as it was drawing the plans?

7 A. Well, since you're opening the door with this question, I
8 mean, yeah, that's why I looked at the 2012 to 2020 data and
9 found that you didn't have to draw these bacon-mandered
10 districts.

11 Q. You didn't report that anywhere in your expert report, did
12 you?

13 A. Not in the initial report, but you're asking me about it
14 now and whether it would be better, and the answer is, yes.
15 And when you do that, it doesn't change. You still don't end
16 up with Democratic districts even using 2012 to 2020. You and
17 I both know I've done that analysis, and it's factually
18 untrue. A fact, it's untrue that there are enough Democratic
19 districts using 2012 to 2020 to draw even a single Democratic
20 district. There's only a handful of precincts even using the
21 2012 to 2020 data that average out to be Republican precincts,
22 much less districts.

23 Q. Okay. None of that analysis is in your report, is it?

24 A. It's not in the initial report.

25 Q. Not in the initial report. Okay.

1 It was not used to construct your opinions in this
2 case, was it?

3 A. Not in the initial report, but if we're going to have the
4 conversation, I'll happily talk to you about it.

5 JUDGE KETHLEDGE: I think we got this point.

6 MR. LEWIS: Okay.

7 BY MR. LEWIS:

8 Q. And in your initial expert report -- I'll move on.

9 And if we go to page 93 of your report, you go -- and
10 I believe this is down towards the bottom. I apologize.

11 You then look at the Senate -- you perform a similar
12 qualitative analysis of the Senate plan; is that right?

13 A. That's correct.

14 Q. Okay. And here, too, one of the focuses of your report --
15 of your qualitative analysis is the number of times that the
16 county boundary was traversed; is that right?

17 A. That's correct.

18 Q. Okay. And the next analysis that you perform is district
19 compactness; is that right?

20 A. That's correct.

21 Q. All right. I'd like to start with your analysis of the
22 Hickory plan. If we could go to page 49 of your report.

23 Okay. And here you compare the compactness of the
24 Hickory plan districts to that of the prior decade plan; is
25 that right?

1 A. That's right.

2 Q. All right. And you concluded that the Hickory plan's
3 districts in the Detroit region were less compact; is that
4 fair?

5 A. Can you repeat that? I'm sorry.

6 Q. Sure. No problem.

7 And you concluded in this analysis that in the House
8 that the prior decade plans, Detroit regions were, quote,
9 typically compact and that the Hickory plan's districts in the
10 region were less compact; is that correct?

11 A. I think that's right.

12 Q. Okay. But as we discussed earlier, isn't it the case that
13 the Michigan constitutional criteria governing the 2020
14 process placed compactness as the lowest ranked criterion?

15 A. Yeah, that's right. That's why I'm doing this for the
16 constitutional analysis. I just know that typically when
17 you're -- in analyzing districts for racial gerrymandering,
18 this is the type of analysis you walk through so, yeah.

19 Q. So is it any great surprise, then, to you that the plan
20 was less compact if compactness was the lowest ranked
21 criterion compared to the prior decade?

22 A. Yeah. I think in the deposition when we talked about
23 this, I'm not really that interested necessarily in the
24 comparison to the benchmark. It's a good starting point and
25 gives context, but what I'm -- to the extent I'm interested in

1 the compactness analysis, it's how it interrelates with the
2 racial aspect here, which is that you have these horrible
3 bacon-mandered districts with bizarre shapes that are not
4 compact that are cracking the black vote in Detroit. That's
5 how compactness is really interesting for this claim, I think.

6 Q. Okay. And then your point here is that the relationship
7 is negative, meaning as the BVAP increases, the compactness
8 decreases. Is that -- that's your position?

9 A. Yes.

10 Q. Okay. So if we turn now to page 105, this is where you
11 look at the analysis of the Linden -- you conduct a similar
12 analysis of the Linden Senate plan; is that right?

13 A. Yes, that's right. So we were just talking about Hickory.
14 Now we're talking about Linden, right.

15 Q. Okay. And so you report these tables. We don't need to
16 cover those, but if we turn to the next page, 106, and here
17 you conclude in the first paragraph that, quote, Note that in
18 all these situations the Linden plan is more compact at least
19 in the Detroit area than the Benchmark plan.

20 Do you see that?

21 A. Yes.

22 Q. And you conclude that the fact that Linden is more compact
23 than the prior decade plan is evidence of racial predominance,
24 right?

25 A. I think I -- all I say here is that under the Benchmark

1 plan, the Detroit area African American districts tend to have
2 strange shapes. I don't see that type of conclusion drawn
3 here. The more interesting thing is that the -- the
4 supposedly VRA performing districts are towards the bottom in
5 terms of compactness in the Linden map consistently. That --
6 that last paragraph where I conclude.

7 Q. Okay. Now, separately you would agree with me that race
8 and politics are correlated in Michigan, right?

9 A. There's certainly -- yeah, there's certainly a correlation
10 overall.

11 Q. And would you agree that when race and politics are
12 correlated, that drawing for partisan affect can have a knock
13 on racial affect?

14 A. It can, yes.

15 Q. And would you agree with me that in your report in January
16 of 2023 you did not perform an analysis to determine whether
17 the compactness analysis -- you know, the -- you did a
18 regression analysis -- that regression analysis you performed
19 was picking up a relationship between BVAP and compactness or
20 between partisanship and compactness, did you?

21 A. Well, that's right. Again, this is the Fourteenth
22 Amendment claim. The traditional way you approach this is to
23 look and see if these minority -- heavily minority districts
24 were distorted. It may well be that there's a correlation
25 between partisanship and compactness as well. I mean, one of

1 the problems with the statewide analysis is that -- it may be
2 that the Commission was having to do partisan gerrymandering
3 in Grand Rapids or in Lansing and draw distended districts
4 there, areas with really low BVAPs but where you kind of have
5 to crack the Democratic core to get the partisan balance that
6 they want, and that can drive a correlation between
7 partisanship and compactness even independent of what's going
8 on in Detroit.

9 But here I'm just trying to establish that, yeah,
10 race and district shape do correlate, and the heavier the BVAP
11 in a district, the more distended the district tends to
12 become.

13 Q. But the analysis you performed in your report does not
14 include an analysis to disentangle any relationship between
15 compactness and BVAP and compactness and partisanship, right?

16 A. Right. And it may well be that there are other portions
17 of the state that the state drew -- or the Commission drew
18 distended districts purely for political reasons, and that
19 would drive that. But, again, I'm -- the separation analysis
20 or the disentangling analysis is the map we just looked at and
21 the two -- and the simulations, which I assume we'll go to
22 soon.

23 The -- this is just establishing that, yes, as
24 districts become more heavily black, they became more heavily
25 distended.

1 Q. Okay.

2 A. In general.

3 Q. Since you mentioned simulations, let's turn to those now.

4 MR. LEWIS: So if we go to -- we can take this down
5 for now, Mr. Williams, so we'll be back in a minute to that.

6 Actually, I do want to go to page 63. I apologize.
7 If we can go to page 63 of the report, and I'd like to focus
8 on the last paragraph of the page.

9 BY MR. LEWIS:

10 Q. I see where you discuss the ensemble approach and the
11 second sentence you write, quote, This creates an ensemble of
12 maps that reflect what we would expect in a state if maps were
13 drawn without respect to a certain criteria, here racial
14 criteria.

15 A. That's right.

16 Q. The next sentence says, If the map is drawn without racial
17 intent, its partisan feature should match those that appear in
18 the ensemble.

19 And that's what you set out to do here, correct?

20 A. To disentangle the two, yeah. I think partisan is
21 probably a typo there. It should be, racial features should
22 match the ensemble, since we're just talking about race there,
23 and everything else in the report is disentangling them, but
24 it says what it says.

25 Q. I see. So if we go -- at the end of the sentence it'll

1 show -- go on to the next page begins, The more the map
2 deviates from, and then if we go to page 64 at the top, what
3 we observed in the ensemble, the more likely it becomes that
4 racial considerations played a heavy role.

5 You don't define what heavy role is in this report,
6 do you?

7 A. I said it predominated. That's the goal of this analysis.

8 Q. Okay. But you don't define what level of role is a heavy
9 role, right?

10 A. I'd have to look at the report. I thought that I said --
11 that I talked about the gerrymandering index and being too far
12 out or being outside the range of the ensemble dot plots. I
13 thought that was all in the report, but it's 120 pages. I
14 don't remember everything.

15 Q. It is 120 pages. Now, on page 65 -- and we'll come back
16 to that concept, I promise you, but if we go to page 65, you
17 mention that you instructed the algorithm -- and, again,
18 this -- just to orient everyone, I'm sorry -- I'm just
19 familiar -- too familiar with this. There is a computer
20 program that you run that generates these maps; is that right?

21 A. That's right.

22 Q. Okay. And you instruct the computer program what features
23 you want your simulated maps to have; is that right?

24 A. You -- yes. Yes. From a list of available commands you
25 select what features the maps will have.

1 Q. Okay. And what is the purpose for imposing those
2 constraints on the creation of the simulated maps?

3 A. Well, it's to avert an objection that assert the
4 imposition -- it is to avert a comeback, basically, or a
5 joinder that perhaps this other consideration that you didn't
6 account for is the reason that the maps have these partisan or
7 racial features.

8 Q. Okay. But the purpose -- the ultimate purpose for the
9 test is to attempt to determine if a given parameter was
10 employed by the districting authority, so let me use a
11 noncontroversial example.

12 If I was attempting to determine if a map drawer was
13 trying to constrain for city boundaries, for example, take
14 something nice and uncontroversial, the way your simulation
15 approach would do it would be to not consider that variable
16 and then see how many times the simulated plans were
17 respecting lines or not, right?

18 A. I think that's too noncontroversial. I don't know that --
19 I'm just making sure that's right because I've never seen it.
20 Yeah, I'm pretty sure that's correct.

21 Q. So for race the general idea is that you're going to draw
22 a set of plans that don't consider race, and if the resulting
23 map doesn't look like the simulations, it's an outlier, then
24 that is a signal that race may have been considered?

25 A. Yes.

1 Q. Okay.

2 A. It's a good -- I think it's more than a signal. I think
3 it's good evidence that race was a predominate factor.

4 Q. And if I'm understanding correctly, the purpose of the
5 constraint is to try to eliminate, like, confounding
6 variables, some other explanation for the -- for the unusual
7 feature of -- or what your simulation is identifying as an
8 unusual feature of a plan; is that fair?

9 A. That's right.

10 Q. Okay. So as an example in this case, you mention on
11 page 65 that one of the constraints was that you wanted the
12 districts to have a total maximum population -- well,
13 deviation of plus or minus 2.5 percent. Do you see that, last
14 paragraph?

15 A. That's correct.

16 Q. Okay. Is that population deviation?

17 A. Oh, yes.

18 Q. Okay. And I believe you testified earlier that your
19 understanding is that it's permissible under federal law to go
20 up to plus or minus 5 percent; is that right?

21 A. That's correct.

22 Q. Okay. And you also instructed the simulation to draw
23 reasonably compact districts. What is the simulation computer
24 attempting to do when you tell it to draw reasonably compact
25 districts?

1 A. I believe -- so, I'm trying to think of the most
2 straightforward way. Well, just simple. It's trying to
3 ensure that the districts that emerge from the process have a
4 higher Polsby- -- all other things being equal, we prefer a
5 district with a higher Polsy score which is more compact.

6 Q. Okay. And then we talked about the -- you know, the
7 county splits and then I'll skip past those. And then you ran
8 a second set that tried to reduce county splits, right?

9 A. That's right.

10 Q. And then the third set did the county splits and then your
11 community of interest control; is that fair?

12 A. Yes.

13 Q. You mentioned you had written a paper as part of your
14 doctoral process that talked about the use of communities of
15 interest in simulations. Do you recall that?

16 A. Yes.

17 Q. And did you attempt to use -- in your -- in your paper,
18 how did you use simulations in the -- how did you use
19 community of interest in the simulations in your paper?

20 A. So, I was using a different approach to simulation -- the
21 reason -- the type of simulation being employed here is a
22 state-of-the-art concept that was written by Doctor Imai over
23 at Harvard, but it comes with the set of commands -- I guess I
24 shouldn't leave Doctor McCartin out. It comes with the
25 commands McCartin and Imai allow.

1 I was using a different type of simulation, actually
2 developed in large part by Doctor Rodden, that you write your
3 own codes. So I wrote 20,000 lines of computer code to
4 generate these simulations, and there were -- to get to
5 answering your question -- I'm sorry, that just really is
6 necessary background. To get to answering your question,
7 there were three specifications for communities of interest
8 that I employed.

9 The first was respect to county, city, municipal
10 lines. The second was a factor analysis of census data to try
11 to see how, you know -- how people sorted themselves. And
12 then the third one was taking some good government groups who
13 have actually asked citizens what community of interest do you
14 consider yourself to be a part of and had them go online and
15 draw their communities. And so the third specification I
16 incorporated was using those shape files, so that's how I did
17 it for my dissertation.

18 Q. I see. And then you said that third piece where citizens
19 could go online and talk about their community. Was -- was
20 that part of a group at Tufts University?

21 A. No. I know the MC -- I think it's MCGG or Doctor
22 Dutchin's group.

23 Q. Yes.

24 A. No. This is representable.

25 Q. I see.

1 A. It's a different set.

2 Q. But a similar concept to Doctor Dutchin's process?

3 A. Yes.

4 Q. And you're aware the Commission used Doctor Dutchin's
5 process to gather public comment, right?

6 A. I was not.

7 Q. You were not aware of that. Okay. And in your expert
8 report in January of this year, you don't -- you didn't use
9 either of the factor analysis or the public comment analysis
10 to evaluate communities of interest in these simulations,
11 correct?

12 A. So, those are not incorporated into Doctor Imai's
13 simulation analysis. The reason I didn't use the simulation
14 analysis from my dissertation is that that approach does not
15 produce an unbiased poll of districts. So while it's very
16 flexible and you can incorporate your own ideas or constraints
17 virtually infinite, it doesn't have the math behind it that
18 Doctor Imai's approach does that proves that, yes, you will
19 get a representative poll.

20 So I don't think it would be appropriate -- in fact,
21 in my expert opinion, it would not be appropriate to use in a
22 redistricting analysis in 2023.

23 Q. Okay. So, Mr. Trende, given your testimony today about
24 racially polarized voting in Michigan, I believe you testified
25 it was your view that the VRA required racial conscious

1 drawing to at least 10 districts in the House. Do you recall
2 that?

3 A. Yes.

4 Q. And so you didn't instruct the computer in your expert
5 report in January of '23 to draw 10 race conscious districts,
6 did you?

7 A. No.

8 Q. Okay. So I'd like to turn to page 78, figure 35 very
9 briefly. I believe you testified about this figure on direct
10 examination. Do you recall that?

11 A. Yes.

12 Q. Okay. And I believe you described the fact that the race
13 blind simulations were drawing three House districts in this
14 particular example with very high BVAPs. I believe you
15 described that as a feature not a bug; do you recall that?

16 A. Yes.

17 Q. Okay.

18 A. Well, no. No. The feature not the bug was the wide range
19 of outcomes.

20 Q. I see.

21 A. The fact that it's acknowledging that there's multiple
22 ways that the legislature can draw these districts. You
23 wouldn't want up there to be, like, a very narrow band,
24 because then you've over constrained your simulation. So
25 within the realm of race unconscious districting, it's

1 allowing a wide variety of plans to be produced, and that is a
2 good thing.

3 Q. I see.

4 A. I'm sorry if I misspoke there.

5 Q. If we turn to page 67 of your report, figure 27. This is
6 reporting -- it appears, if I'm reading this correctly, that
7 your simulated -- the range of simulated districts would
8 contain approximately nine majority black districts; is that
9 correct?

10 A. That's right. And then a tenth that could be very close
11 to 50/50 but, yes.

12 Q. Could be close. Okay. I didn't want to count the tenth.
13 I would give you the nine, but all right.

14 A. It's not 10.

15 Q. Okay. And in your expert report in this case you did not
16 conduct an analysis to determine whether a plan with nine
17 majority-minority districts would be able to achieve the
18 Commission's partisan fairness goal, did you?

19 A. No. Because I don't think a state constitutional
20 requirement can subordinate the Fourteenth Amendment. No.

21 Q. Okay. So I want to talk a little bit about the partisan
22 fairness metrics. I believe you testified on direct
23 examination about one of the three.

24 But is it your understanding that the Commission
25 relied on three partisan fairness metrics; the efficiency gap,

1 the mean median difference, and lopsided margins?

2 A. Yes.

3 Q. Okay. Are you familiar with the lopsided margins test?

4 A. If I -- it's -- of the three it's the less used of the
5 group. But, as I recall, it's the average -- for the
6 districts that are carried by Republicans, it's the average
7 margin there versus for the districts carried by the
8 Democrats, the average margin there.

9 Q. I see. And what is that attempting to measure?

10 A. It's trying to measure packing and cracking, basically.
11 If you're creating a bunch of 53 percent -- more 50 -- more,
12 say, 55 percent Republican districts than they would naturally
13 be -- more 55 -- let me start over.

14 It's trying to measure whether you are creating a
15 bunch of, say, marginal or just beyond marginal Republican
16 districts by spreading out Republican voters and then packing
17 Democratic voters into a handful of overwhelmingly Democratic
18 districts, and if you were to do that, say, create a bunch of
19 55 percent Democratic -- or Republican districts and then a
20 handful of 80 percent Democratic districts, you would have a
21 lopsided margin score of whatever 80 minus 55 is. It's
22 getting late. 25 percent.

23 Q. Where in Michigan are the most politically lopsided
24 margins found?

25 A. Probably in the City of Detroit.

1 Q. Okay. So if the Commission was trying to reduce lopsided
2 margins, wouldn't it naturally go to Detroit to try to do so?

3 A. It could.

4 Q. It could, okay.

5 A. It wouldn't really do that by matching them with a bunch
6 of heavily Democratic precincts in Oakland County, but it
7 could.

8 Q. Okay. And we'll turn to the second partisan fairness
9 measure which is the efficiency gap. Can you just briefly
10 explain what the efficiency gap does?

11 A. So the motivation behind the efficiency gap is that when a
12 party is -- that when a party is gerry- -- when a political
13 party is gerrymandering, what it's trying to do is waste a lot
14 of votes for the opposing party and very few votes for itself.

15 So the way the efficiency gap is calculated is -- in
16 District 1, let's say, all the votes that the losing party had
17 are considered wasted. And then all the votes past 50 percent
18 that the winning party had are considered wasted, right?

19 Because if you don't win the district, it doesn't matter how
20 many votes you get. You get zero percent of the
21 representation. And if you go beyond 50 percent, well, you
22 would have been better off using those votes somewhere else in
23 the state.

24 So you calculate the wasted vote for the Democrats
25 and the wasted vote for the Republicans, and then you do that

1 for District 2, 3, 4. You add them up, you take the
2 difference, and you can see which party has more wasted votes
3 than the other. You also divide by the total number of votes
4 in the state so that it scales between zero and one.

5 Q. Okay.

6 A. The short of it -- you asked me how to calculate, but the
7 short of it is that it's a measure of which party had more
8 votes wasted under a plan.

9 Q. I see. And if you're trying to reduce an efficiency gap,
10 wouldn't one logical -- as a redistricter, wouldn't one
11 logical place to go would be to places where margins of
12 victory or defeat are very large?

13 A. No.

14 Q. No? Why not?

15 A. Because one of the screwy things about the efficiency gap
16 is that it flips at 75 percent. If you have a district that
17 is 75/25, the losing party -- let's say there are a hundred
18 votes cast and it's a 75/25 district. So the losing party had
19 25 votes wasted and then the winning party went 25 votes
20 beyond 50 percent. So both parties had 25 wasted votes,
21 there's a zero efficiency gap.

22 And if you go beyond that, it's all flipped. So
23 these heavily Democratic districts are actually not the place
24 you would go to get the most bang for your buck in the
25 efficiency gap. Where you really get bang for your buck in

1 efficiency gap is by taking a marginally Republican district
2 and making it marginally Democratic, because if you have a
3 district where Republicans got 51 votes and Democrats got 49,
4 Democrats waste 49 votes, Republicans waste one. By adding
5 two votes to Democrats and subtracting two votes to
6 Republicans, you completely flip that. All of a sudden the
7 Democrats waste only one vote and the Republicans waste 49.
8 So all the action for the efficiency gap is in the 50/50
9 districts.

10 Q. And that was not, however, an analysis that you performed
11 in your report in this case, right? You were not attempting
12 to minimize in your report in this case the efficiency gap,
13 were you?

14 A. No, no.

15 Q. Okay.

16 A. I -- you can -- I mean, you can see, and I, I think, went
17 on at great lengths about how when you look at the
18 partisanship there's almost no changes being made at the 50/50
19 point. So, I mean, that's where the efficiency gap gets
20 changed.

21 Q. Sure.

22 A. If they were really trying to manipulate the efficiency
23 gap you would see a whole lot of districts coming offline at
24 that 50/50 mark, not at the 75/25 mark.

25 Q. Okay. So we're going to turn now to the gerrymandering

1 indexes that you used in this case. And so you introduced
2 that, I believe, on page 68 in the third full paragraph, if we
3 can turn to that?

4 Okay. And so you describe the gerrymandering index
5 as being proposed in a 2017 paper and endorsed by Professors
6 McCartan and Imai. Do you see that?

7 A. Yes.

8 Q. Okay. And that was specifically partisan gerrymandering
9 index, was it not?

10 A. Yes.

11 Q. Okay. And you applied this technique to race as opposed
12 to politics; is that right?

13 A. That's correct.

14 Q. Okay. And you cited in your report no peer reviewed
15 publication that validates the use of the gerrymandering index
16 to measure race, do you?

17 A. Well, no, but --

18 Q. You don't?

19 A. -- it functions in exactly the same way. It is a way of
20 summarizing ensembles. Whether you're summarizing ensembles
21 with respect to race or you're summarizing ensemble data with
22 respect to politics it's the exact same application.

23 Q. Okay.

24 A. I'm sorry. The exact same process with a different angle
25 to it.

1 Q. Okay. So if we go to page 70 in figure 28, this is the
2 racial gerrymandering -- this is the histogram of the racial
3 gerrymandering index for the Hickory -- for the Hickory plan
4 compared to your simulations, right?

5 A. Correct.

6 Q. Okay. And so the idea here is that the Hickory plan is an
7 outlier because the red line, which represents the Hickory
8 plan, is outside of the 95 percentile for the districts -- or
9 for the scores of your simulated plans, right?

10 A. Yeah, that's part of it. It's more than that, though.
11 Like I said, you could take that entire distribution of the
12 ensemble and fit it between -- you could put an entire whole
13 other ensemble distribution in between the existing ensemble
14 and the gerrymandering. It's way out there. I don't know how
15 many standard deviations that is, but it's a lot.

16 Q. Okay. It makes it an outlier, correct?

17 A. An extreme outlier, yes.

18 Q. Okay.

19 And so if we then turn to figure 33 on page 76, this
20 is the partisan gerrymandering index that you calculated for
21 the Hickory plan and the simulated plans, correct?

22 A. That's right.

23 Q. Okay. And this shows the same relationship, doesn't it,
24 the red line being outside of distribution?

25 A. So, yes and no. Yes, the red line is outside of the

1 distribution. No, you can't fit an entire whole other
2 ensemble distribution between the two. And, look, we know
3 that race and politics do correlate somewhat, and if you
4 change the BVAPs of the district you will affect some change
5 in the partisanship of the district, so I'm not surprised that
6 this shows up as outside the distribution although less so.

7 That's why you really have to read -- you can't just
8 look at the gerrymandering index or just look at the dot plots
9 because they tell different facets of the story. You look at
10 this and say, okay, the racial gerrymandering index is much
11 further out there, much more extreme than political. Then you
12 look at the dot plots and you say, okay, the political story
13 makes no sense because they're not changing values at that
14 50/50 line, but the racial gerrymandering story makes a lot of
15 sense because they're making changes at the 50/50 line and
16 lining things up with that 40 percent BVAP target that the
17 fact witness testimony is discussing. It's just a very
18 compelling story when you look at everything together in that
19 sense.

20 Q. Okay. So I wanted to turn very quickly to page --
21 actually, I'll skip that.

22 I want to turn very briefly to the first five pages
23 of your supplemental report. This is the part that has been
24 allowed into evidence. And I guess we'll turn first to page,
25 I guess, 121 of this figure, just to orient.

1 Do you recognize this as the supplemental rebuttal
2 that you prepared?

3 A. Yes.

4 Q. Okay. And so if we turn to the chart on page 5, and this
5 is -- again, this is Plaintiffs' Exhibit 20 -- if we turn to
6 page 5 of the supplemental report, PX20-125, do you see this
7 list of plaintiff addresses and House and Senate district
8 assignments?

9 A. Yes.

10 Q. Okay. And you prepared this, correct?

11 A. For the initial supplemental, yes.

12 Q. Okay. Was there another supplemental?

13 A. I thought there was a second address list that was
14 submitted to address errors for Michelle Keeble and maybe
15 Kenyetta Snapp or Kenyetta Snapp.

16 Q. Okay.

17 A. But the rest of it should be identical.

18 Q. I see. And for plaintiff -- and for Plaintiff Keeble,
19 you've identified her as being assigned -- and these are the
20 assignments to your demonstration plans, correct?

21 A. Correct.

22 Q. Okay. So your view is that -- is it your position today
23 that Plaintiff Keeble is still assigned to Senate District 5
24 and House District 8?

25 A. I don't know.

1 Q. You don't know, okay.

2 Well, unfortunately I don't have a copy of whatever
3 the replacement exhibit is, but are you aware of the distance
4 that Plaintiff Keeble moved from her prior address that's on
5 this page?

6 A. I know that one of the plaintiffs moved to 7 Mile Road. I
7 don't know where the other moved to.

8 Q. Okay. I'll represent to you that Plaintiff Keeble is the
9 one that moved to east -- 7 Mile Road East.

10 A. Yeah. So -- yeah, it's -- as I recall, it is near the
11 Grosse Pointes but not in it.

12 Q. Okay. And where she used to live was not near the Grosse
13 Pointes, was it?

14 A. I don't believe so, no.

15 Q. No. And if I told you it was about 21 miles away, she
16 moved a distance of about 21 miles, do you have a basis to
17 disagree with that?

18 A. I would not.

19 Q. You would not, okay.

20 So you have confidence as you sit here today that
21 she's in Senate District 5 under your enacted plan?

22 A. I do not.

23 Q. You do not. Okay.

24 And we talk about plaintiff -- plaintiffs -- I
25 believe you said Snapp. And you agree that her address is

1 incorrect on this supplemental report as well?

2 A. That's right. These addresses were taken from the
3 complaint, and I believe she moved as well.

4 Q. She moved as well. Okay.

5 And do you have confidence as you sit here today that
6 her district assignments for the House and the Senate under
7 your -- on this chart are accurate?

8 A. I don't know.

9 Q. You don't know, okay.

10 And you have a third person identified here, Norma
11 McDaniel. Do you see her?

12 A. Yes.

13 Q. Okay. Are you aware that she was a plaintiff in the state
14 court Detroit caucus lawsuit that was filed last year?

15 A. No.

16 Q. You were not aware, okay.

17 Were you aware that the Court granted summary
18 judgment on res judicata grounds for -- as a result of that
19 particular litigation?

20 A. I knew the Court had granted summary --

21 JUDGE MALONEY: Counsel, what does this got to do
22 with the witness' testimony?

23 MR. LEWIS: Your Honor, he has a plaintiff that's
24 identified -- we believe is no longer a plaintiff in this case
25 because the Court granted summary judgment as to all that --

1 as to those plaintiffs' claims.

2 JUDGE MALONEY: Why do we need to go into that on
3 this record?

4 MR. LEWIS: Your Honor, the issue is -- I can get to
5 it very quickly but --

6 JUDGE MALONEY: Isn't that a legal issue for the
7 Court? How does it go to Mr. Trende's opinions?

8 MR. LEWIS: It only goes to the extent that he's
9 documenting where plaintiffs are. If this person is not a
10 plaintiff --

11 JUDGE MALONEY: Move on to something else, please.

12 MR. LEWIS: Understood.

13 BY MR. LEWIS:

14 Q. Okay. And, Mr. Trende, do you have any plaintiffs listed
15 in Senate District 5 in your -- in your plan besides Keeble?

16 A. Well, it's a demonstration plan not a proposed remedial
17 map, but, no, besides Ms. Keeble, I do not.

18 Q. Okay. And for Norma McDaniel, do -- she's in
19 Senate district -- you identify her as being in Senate
20 District 4 in your demonstration plan, correct?

21 A. In the demonstration plan.

22 Q. Are there any other plaintiffs on this list that you have
23 in your Senate District 4?

24 A. No.

25 Q. Okay.

1 MR. LEWIS: With that, I have no further questions,
2 Your Honors.

3 JUDGE MALONEY: Mr. Bursch, redirect?

4 MR. BURSCH: I have no questions, Your Honor. Does
5 the bench have anything?

6 JUDGE MALONEY: I'm sorry?

7 MR. BURSCH: I have no questions. Does the bench
8 have any questions?

9 JUDGE NEFF: I have one, maybe two.

10 JUDGE MALONEY: You had a question?

11 JUDGE NEFF: I do. I think only one.

12 JUDGE MALONEY: Judge Neff, go ahead.

13 JUDGE NEFF: Thank you.

14 Mr. Trende, I am by no means schooled in statistics
15 or any of the things that you've talked about here today, but
16 I want to make sure that I understand something correctly.
17 When you ran the computer to get your 50,000 maps, you had
18 50,000 maps by actual count or close to it?

19 THE WITNESS: Yes, Your Honor. It takes 50,000 --
20 50,000 draws from the poll.

21 JUDGE NEFF: Okay. What I want to know is, am I
22 correct in that one of the parameters that you fed into the
23 computer for it to make maps of, is that every one of those
24 maps had to have 50 percent plus 1 BVAPs; is that correct, or
25 not?

1 THE WITNESS: No, Your Honor.

2 JUDGE NEFF: Okay.

3 THE WITNESS: That was not -- there was no racial
4 data fed into the simulations.

5 JUDGE NEFF: Okay. I did misunderstand that
6 considerably. Okay. Thank you. That's all I have.

7 MR. BURSCH: Then we'll excuse Mr. Trende with the
8 option of bringing him back as a rebuttal witness next week.

9 JUDGE MALONEY: You have no further questions of the
10 witness?

11 MR. BURSCH: Oh, no.

12 JUDGE MALONEY: Mr. Lewis?

13 MR. LEWIS: No, Your Honor, I do not.

14 JUDGE MALONEY: Thank you. Mr. Trende, you're
15 excused for now.

16 THE WITNESS: Thank you, Your Honor.

17 *(Witness excused at 2:32 p.m.)*

18 MR. BURSCH: Plaintiffs call Professor Brad
19 Lockerbie.

20 JUDGE MALONEY: Thank you.

21 THE CLERK: Please raise your right hand.

22 *BRADD LOCKERBIE,*

23 *having been sworn by the Clerk at 2:33 p.m. testified as*
24 *follows:*

25 THE CLERK: Please be seated. State your full name

1 and spell your last name for the record, please.

2 THE WITNESS: Brad Lockerbie, L-O-C-K-E-R-B-I-E.

3 *DIRECT EXAMINATION*

4 BY MR. FLEMING:

5 Q. Good afternoon, Doctor Lockerbie.

6 A. Good afternoon.

7 Q. Could you tell us about your occupation, please?

8 A. I am a professor of political science at East Carolina
9 University.

10 Q. And how long have you taught there?

11 A. I have been there 15 years, I believe.

12 Q. Prior to that, did you teach?

13 A. Yes, I did, at the University of Georgia from 1988 to
14 2007.

15 Q. And throughout your time as a professor, what courses have
16 you taught?

17 A. I've taught research design for political science,
18 statistical methods for political science, voting behavior and
19 public opinion, intro to American politics, and religion in
20 American politics.

21 Q. Could you tell us about your education background.

22 A. Certainly. I received my bachelor of arts from the
23 University of Georgia in 1984 and I received my PhD from the
24 University of Iowa in 1988.

25 Q. What was your PhD in?

1 A. Political science.

2 Q. Was your doctorate, was it a particular specialization?

3 A. Yes. Within the American politics subfield.

4 Q. And beyond your doctorate and bachelor of arts, do you
5 have any other extended training?

6 A. I've taken several methods classes that were not for
7 credit at the University of Iowa while I was there from
8 someone like EunJung Kim who did factor analysis and was
9 considered the expert on it.

10 I took probative analysis from -- took a short
11 course, so to speak, from Forest Nelson at the University of
12 Iowa. And I have taken several courses in R programming from
13 Greg Martin who is the head of health protective surveillance
14 at Republic of Ireland online.

15 Q. Have you ever been published?

16 A. Yes, I have.

17 Q. As it relates to this case and your testimony today, in
18 what subjects were you published?

19 A. I have done a good bit of work on voting behavior. I have
20 done work on race and voting, the intersection of race and
21 religion and voting as it pertains to -- that comes in close
22 to this case, I believe, going back to 1988 through most
23 recent years.

24 Q. And have you been a peer reviewer of other published work?

25 A. Yes, I have.

1 Q. Have you provided expert testimony in court before?

2 A. Yes, I have.

3 Q. On which occasions?

4 A. Most recently in a case dealing with the joint House
5 districts in Kansas and the drawing of state legislative
6 districts in Arkansas.

7 Q. Were you admitted as an expert witness in both instances?

8 A. Yes, I was.

9 Q. Now, first for that Arkansas case, in what fields were you
10 deemed an expert?

11 A. I believe the fields listed were voting, racial
12 polarization, gerrymandering, aggregate recession analysis,
13 and ecological regression analysis.

14 Q. When you were obtained as an expert in that case, were you
15 asked to specifically review anything?

16 A. Yes, I was.

17 Q. What were you asked to review?

18 A. The primary item I was to review was the report of Doctor
19 Lisa Handley.

20 Q. Now getting to the Kansas case, what were you deemed an
21 expert there?

22 A. I was deemed an expert, I believe, on voting behavior,
23 racial voting, racial polarization and, again, aggregate
24 regression/ecological regression.

25 Q. Beyond those cases have you been retained as an expert in

1 other instances?

2 A. Yes, I have.

3 Q. And getting back -- forgive me, I forgot to ask, in the
4 Arkansas case, the report that Doctor Handley authored, what
5 did that report cover?

6 A. That looked at racial polarization in the state making use
7 of homogenous precinct analysis, ecological regression, and
8 ecological inference.

9 Q. Did you prepare a report in connection with this case?

10 A. Yes, I did.

11 MR. FLEMING: If we can pull up Plaintiffs'
12 Exhibit 19 at page 3, please.

13 BY MR. FLEMING:

14 Q. Doctor Lockerbie, do you recognize this?

15 A. Yes, I do.

16 Q. What is it?

17 A. That is the first page of my report.

18 Q. And what's the date on there?

19 A. January 15, 2023.

20 Q. And if we can scroll down to page 22, please. And when we
21 get to the end, Doctor Lockerbie, could you tell me if this
22 looks like a true and accurate copy of your report?

23 A. Yes, it does.

24 Q. Could you describe the purpose of this report?

25 A. The purpose of this report was to review the work of

1 Doctor Handley and the report -- or memorandum from Bruce
2 Adelson as well as review the transcripts of the public
3 hearings on the redistricting -- or for the Redistricting
4 Commission.

5 Q. So that's what you reviewed. What were you opining on,
6 the topic?

7 A. The topic was -- was the Senate factors that relate to
8 redistricting and racial voting.

9 Q. And tell me about the Senate factors. Why are they
10 important to this case?

11 A. Well, the Senate factors from the Department of Justice
12 are numbered as seven. There's some overlap between them but
13 the main ones -- the ones I was examining included the
14 economic/educational disparities between African Americans and
15 whites. I was looking at the incidents of racial appeals in
16 campaigns, and I was looking at racial polarization.

17 Q. And you mentioned there are other --

18 A. Other factors as well, such as slating of candidates,
19 excluding African Americans from that, and a few others that
20 are escaping me at the top of my mind right now.

21 Q. Does the history of discrimination sound like one?

22 A. The history of discrimination, I was lumping that under
23 the educational and economic disparities.

24 Q. And you mentioned -- could you repeat, again, what did you
25 review to author this report?

1 A. I reviewed the Handley report from 2021, I believe. I
2 reviewed the report -- or a memorandum from Bruce Adelson and
3 I reviewed public transcripts from the hearings as well as
4 items that were referenced in all of the above -- or some of
5 the above.

6 Q. Just to clarify a couple of those topics. So, first
7 the -- the Doctor Handley report you mentioned.

8 A. Yes.

9 Q. To the best of your recollection, is that the report to
10 the Redistricting Commission she authored?

11 A. Yes, it is.

12 Q. And the Bruce Adelson memorandum, do you recall the title
13 on that?

14 A. The title is something along the lines of memorandum to
15 the Michigan Independent Redistricting Commission, I believe.

16 Q. Does the History of Discrimination in the State of
17 Michigan and its Influence sound right?

18 A. That sounds good.

19 MR. FLEMING: Your Honor, at this time I would tender
20 Doctor Lockerbie as an expert in the field of the factors
21 discussed in the Senate report from the 1982 Voting Rights Act
22 amendments.

23 JUDGE MALONEY: Any objection?

24 MR. LEWIS: I apologize for the delay. I was just
25 struggling with the exact field in which the expert was being

1 offered but, no, we don't have an objection.

2 JUDGE MALONEY: All right. The witness may give his
3 opinions pursuant to Rule 702.

4 MR. FLEMING: Thank you, Your Honors. And because
5 the Commission has stipulated to it previously before pending
6 his testimony, tendering the expert report of Doctor Lockerbie
7 as well, which is Plaintiffs' Exhibit 19.

8 JUDGE MALONEY: Any objection?

9 MR. LEWIS: None from the Commission, Your Honor.

10 JUDGE MALONEY: Thank you, sir. Admitted.

11 *(At 2:42 p.m. Exhibit No. 20 was admitted)*

12 BY MR. FLEMING:

13 Q. Doctor Lockerbie, can you describe the overall findings of
14 your report?

15 A. Certainly. First, with regard to the history of
16 discrimination in the state of Michigan, it is long lasting
17 and pervasive going all the way back to the original
18 constitution in which African Americans were precluded from
19 voting and serving on juries.

20 Moving forward, we see incidents of discrimination
21 against African Americans with red lining of housing patterns.
22 We see the incidents of race riots where considerable damage
23 to life and property was done. I believe in 1943 there was a
24 race riot where, I believe it was -- I forget the exact number
25 of people that perished in that but it's in the report, as

1 well in inflation of adjusted dollars, \$32 million worth of
2 damage.

3 More recently in 1967 there was an additional race
4 riot where a good bit of damage occurred as well as
5 considerable loss of life. And we move forward and we see
6 educational disparities are continuing. As Bruce Adelson
7 reported, African Americans are much less likely to have a
8 high degree of education.

9 MR. FLEMING: If we can turn to the bottom portion of
10 page 7, please, of Doctor Lockerbie's report?

11 I'm sorry, can we actually move to the next page at
12 the bottom?

13 BY MR. FLEMING:

14 Q. Doctor Lockerbie, you mentioned the public comments here
15 towards the end. I'm going to ask that we flip to the next
16 page and then, Doctor Lockerbie, could you describe the public
17 comments submitted to the Commission that speak to this?

18 A. Yes. I reviewed the entirety of the public comments that
19 were made available. And throughout the report I saw many
20 instances where people referred to the impact or influence of
21 African Americans on politics had been diluted quite severely.
22 In fact, I saw reference from one individual who referred to
23 it as, quote, a high tech -- a lynching.

24 These included elected officials or -- yes, elected
25 officials as well as the executive director of the Michigan

1 Department of Civil Rights, the legislative liaison from that
2 office, and I see on the screen there, Sara Howard from the
3 AFL-CIO Fair Maps Project.

4 Oh, and I neglected to mention with regard to the
5 history of racial discrimination, Adelson makes reference to
6 Detroit as being a home of the Klan.

7 Q. So why include these public comments in your part about
8 the history of discrimination?

9 A. Many of these people who spoke spoke over more than just
10 the most recent period. They spoke over the history of
11 Michigan. So it spoke to the totality of what was going on in
12 the state.

13 Q. How did they relate the totality of that state? Because
14 these were at a public hearing regarding the new district
15 maps, why bring in the totality that you mentioned?

16 A. They were speaking to what had happened in the past and
17 how that had an influence on what was happening today with
18 regard to discrimination and the delusion of influence.

19 MR. FLEMING: If we can turn to page 16 now, towards
20 the bottom there. Oh, I'm sorry. Could we, before that, turn
21 to page 11 at the top of the page there? Maybe the previous
22 page at paragraph 32?

23 BY MR. FLEMING:

24 Q. Doctor Lockerbie, could you read that first sentence of
25 paragraph 32 and tell me if there's anything you'd like to say

1 about it?

2 A. The president of the Troy branch of the NAACP states,
3 these maps do provide for Voting Rights Act.

4 I'm guessing there is a typo in there. The word not
5 should be in there.

6 Q. And I know you're a professor. I hate having to call out
7 your typo but have to make it clear for the record.

8 A. That and the other typo that we caught earlier in the
9 deposition where I said relining and it should have read
10 redlining. I catch them in other people's work but not my own
11 typically.

12 Q. Now, if we could now turn to page 16 towards the bottom
13 there, I'd like to talk to you about the Senate factor that
14 speaks to the extent of racial polarization.

15 Now, you mentioned having reviewed the report of
16 Doctor Lisa Handley titled, The Report to the Michigan
17 Independent Citizens Redistricting Committee.

18 Is that the -- as you understand, the report authored
19 as part of and in preparation of the redistricting process?

20 A. Yes.

21 Q. If we could turn to Plaintiffs' Exhibit page -- I'm sorry.
22 Plaintiffs' Exhibit 16 at page 25.

23 Could you identify this for me, please?

24 A. That is the report that I reviewed, I believe.

25 Q. Of Doctor Lisa Handley?

1 A. Yes.

2 MR. FLEMING: And if we could turn now to page 41 of
3 this, please? Up towards the top there. Yep.

4 BY MR. FLEMING:

5 Q. Doctor Lockerbie, could you read that first full sentence
6 there for us, please?

7 A. Yes. Because voting in Michigan is racially polarized,
8 districts that provide minority voters with an opportunity to
9 elect candidates of choice must be drawn.

10 Q. And does that surprise you given the history of
11 discrimination you investigated?

12 A. No, it did not.

13 MR. FLEMING: If we can turn back now to Plaintiffs'
14 Exhibit 19, please, at page 5?

15 BY MR. FLEMING:

16 Q. And, Doctor Lockerbie, looking at paragraph 4B of this
17 report -- of your report now, did you find evidence of racial
18 polarization in Wayne County?

19 A. Yes, I did.

20 Q. And what about for Oakland County?

21 A. Yes, I did.

22 Q. Did Doctor Handley conclude that as well?

23 A. Yes, she did.

24 Q. What was Doctor Handley's basis for that conclusion?

25 A. She made use of statewide general elections from 2012

1 through, I believe, 2020 looking at presidential elections,
2 secretary of state elections, attorney general, and such.

3 Q. Are general elections the most probative?

4 A. No. I would prefer to make use of primary elections where
5 you can disentangle the effects of race and partisanship.

6 Q. What other reasons would you prefer primary elections?

7 A. They have the opportunity for new candidates to arise, and
8 we can get a greater bead on the voting of minority
9 candidates.

10 Q. What are secret ballots?

11 A. Ones where nobody knows how you vote unless you spout off
12 about it.

13 Q. Is that what Michigan has?

14 A. Yes, it does.

15 Q. Do secret ballots impact predicting racial voting patterns
16 at all?

17 A. They make it more -- or they make it difficult to do it
18 with perfection simply because we can't match up a ballot with
19 the race of the person who voted it, so in turn we have to
20 make use of estimates of racial voting.

21 Q. If we could turn now to pages 13 and 14.

22 I'd like to talk to you now about the history of any
23 voting discriminatory practices or procedures. Did you find
24 any evidence of this as part of your report?

25 A. I found evidence that there were racial appeals made that

1 candidates made reference to, quote, Getting the blacks out of
2 Southfield. I forget whether it was in here or elsewhere that
3 I saw that. I saw evidence of people in these reports arguing
4 that the current process was racially discriminatory.

5 Q. Do you recall anything about your report about the initial
6 Michigan State constitution?

7 A. As I think I may have said before, the Michigan --
8 original Michigan constitution prohibited African Americans
9 from serving on juries and I believe from voting.

10 Q. Do you know if segregation continued in the Detroit area
11 post civil rights movement or bans?

12 A. Yes. I believe the Adelson memorandum made reference to
13 the fact that segregation, for example, in schools was legally
14 prohibited but the school system in Detroit was, nonetheless,
15 segregated. And also we can look at the residential patterns
16 with regard to redlining and see the same thing.

17 Q. Do you recall if Michigan was added as a state covered by
18 Section 5 of the Voting Rights Act?

19 A. Michigan was added in, I believe, 1976 to the Voting
20 Rights Act preclearance provision.

21 Q. And was there any activity from the Department of Justice
22 relative to Michigan and Section 5 after that time?

23 A. I believe in 2006 the Secretary of State's office was
24 stopped from closing a branch office of the Secretary of
25 State's office.

1 Q. Are there any other discriminatory voting practices or
2 procedures you can think of off the top of your head?

3 A. I'm not certain what you're getting at there. Nothing
4 that -- I don't have anything that comes to my mind at this
5 point right now. Maybe you can refresh my memory.

6 Q. I just wanted to make sure we --

7 A. Oh, as I tell my students, I was -- I'm southern, but I
8 was raised by northerners so we speak at a rapid clip.

9 To mind at this point, no.

10 Q. I just wanted to make sure we covered everything.

11 A. I think we have. But my report was written on -- in
12 January which was a while ago.

13 Q. If we could turn to page 15 now, please?

14 Doctor Lockerbie, in your opinion, does the black
15 community still face disparities today?

16 A. Yes, they do. For example, educational disparities are
17 quite dramatic. Whites are, I believe, 172 percent more
18 likely to have a college degree. There is still the legacy of
19 the redlining that has taken place in the past carried on to
20 today.

21 Q. Was Detroit ever -- excuse me, let me restart that.

22 And have you noticed as part of your report -- did
23 your review any racial harassment findings or statistics?

24 A. Yes. In the public hearings with regard to the
25 Redistricting Commission, at least one candidate made

1 reference to being racially harassed or racial intimidation
2 when he went to door to door in a district. Also, I recall
3 reading about the campaign in, I believe it was Southfield,
4 where one of the candidates in the flyers apparently
5 repeatedly placed said, quote, Let's get the blacks out of
6 Southfield.

7 Q. Which goes to my next question about if you reviewed
8 evidence of racial appeals in elections to southeast Michigan,
9 so I will rephrase that now to ask you, can you think of other
10 examples of that?

11 A. We can look at examples from general election campaigns
12 where the courts have held that there were clear racial
13 appeals made in, for example, the 2016 presidential election.
14 I believe that was in the *A. Philip Randolph Institute* case.

15 Q. Was that out of the Eastern District of Michigan in 2016?

16 A. I believe so, yes.

17 Q. In your opinion, were black candidates or -- having a low
18 election success rate, will that affect candidate emergence?

19 A. Yes, it will. We know from the limited studies that have
20 been done on candidate emergence that they go hunting where
21 the game are, so to speak, and if African Americans think that
22 they don't stand much of a chance to win because previous
23 African Americans running for office have had a hard road to
24 hoe, they too will not run and it will become a
25 self-fulfilling prophecy down the road, so it will cycle.

1 African Americans lose so they -- you don't get the high
2 quality candidates running for office. African American
3 candidates who do run do even worse and it just cycles
4 downward.

5 Q. Does this affect voter turnout as well?

6 A. Yes. We know that when there are candidates who are
7 appealing to racial minorities, the turnout goes up. For
8 example, when President Obama ran for office, the African
9 American turnout went up. When he was off the ballot, African
10 American turnout went, comparatively speaking, down compared
11 to the white turnout in 2016.

12 MR. FLEMING: Can we pull up page 9, please? And if
13 we can just zoom in a little bit just so we can see everything
14 towards the middle, that would be great.

15 BY MR. FLEMING:

16 Q. Doctor Lockertie, based on your report and public comments
17 like these, do you think black voters in Detroit think that
18 their elected officials are responsive to their needs?

19 A. Most certainly not. I think it was -- I don't recall a
20 single incident where a positive statement was made, and I
21 know there were a multitude of negative statements made about
22 the Redistricting Commission drawing plans such that Blacks
23 would not have their voice heard.

24 Q. That is to say what the -- based on the materials that you
25 reviewed, would the new maps make these fears worse?

1 A. The new maps made them worse in that there would be far
2 fewer African Americans elected to office by the estimation of
3 the people referenced in the public hearings.

4 MR. FLEMING: Could we pull up Plaintiffs'
5 Exhibit 21, please?

6 BY MR. FLEMING:

7 Q. Doctor Lockerbie, could you please identify this?

8 A. That is the report from Bruce Adelson that I reviewed, I
9 believe.

10 Q. And could you describe the overall findings from
11 Mr. Adelson's memorandum here?

12 A. That there is a clear and convincing history of racial
13 discrimination in the state of Michigan. That African
14 Americans suffer severely from economic privation as well as
15 economic privation -- or educational privation.

16 MR. FLEMING: Could you scroll up to the top just a
17 little bit?

18 BY MR. FLEMING:

19 Q. And just so we're clear, this is a memorandum from
20 Mr. Adelson to the Redistricting Commission. Is that your
21 understanding?

22 A. Yes, it is.

23 Q. And, in your opinion, after reviewing this, does this
24 memorandum conclude a pattern and history of discrimination
25 against the Detroit black community?

1 A. Yes, it most certainly does. In fact, when I read it the
2 first time I thought I may have gotten the wrong report in
3 that it seemed to be very contrary to the interest of the
4 Commission and upholding its district lines.

5 Q. And do you agree with that overall opinion?

6 A. I have no reason to dispute anything that Adelson has in
7 his report. Every fact that I see in there that I was
8 knowledgeable of beforehand is confirmed and nothing was
9 contrary to what I know.

10 Q. Is it your overall opinion that the plaintiffs satisfied
11 the Senate factors?

12 A. Yes, it is.

13 MR. FLEMING: Thank you. I have nothing further at
14 this time.

15 JUDGE MALONEY: Mr. Lewis, you may inquire, sir.

16 MR. LEWIS: Before I get started, Your Honor, is the
17 Court intending to take a midafternoon break or --

18 JUDGE MALONEY: How long do you anticipate your cross
19 will take?

20 MR. LEWIS: Probably 10 to 15 minutes.

21 JUDGE MALONEY: Let's keep going. Thank you.

22 *CROSS EXAMINATION*

23 *BY MR. LEWIS:*

24 Q. Doctor Lockerbie, my name is Patrick Lewis. It's nice to
25 meet you. I represent the Commission.

1 A. Good to meet you.

2 Q. Thank you.

3 Your report on paragraph -- so if we go to
4 Plaintiffs' Exhibit 19, PX19-4 -- or excuse me, PX-5, I
5 apologize.

6 Okay. So your report offers a total of three
7 conclusions as to Senate factors; is that correct?

8 A. That is correct.

9 Q. Okay. And so conclusion A, would you characterize that as
10 addressing Senate factor one?

11 A. I don't have the numbers matched up with the Senate
12 factors, but I would concur that it is the history of
13 discrimination in the state of Michigan.

14 Q. Okay. And you talk about polarization. And we'd agree
15 that's Senate factor two, right?

16 A. I'll trust you on that.

17 Q. Sir, you are the expert in the Senate factors.

18 A. I understand that but the --

19 Q. Thank you.

20 A. -- but the -- there are seven of them and there is some
21 overlap to how the numbers and the subject matter correspond
22 with each other.

23 Q. Sure, sure. And then you talk about in C, that addresses
24 factor five; is that correct?

25 A. I believe so.

1 Q. Okay. And for the purposes of the official
2 discrimination, I believe I heard you testify on direct that
3 you largely concurred with Mr. Adelson's report which we saw
4 earlier; is that correct?

5 A. That is correct.

6 Q. And you believe that he did an appropriate job in
7 preparing that report; do you agree?

8 A. I believe it was, yes.

9 Q. Okay. And turning to racial polarization, you described
10 reviewing the report of Doctor Lisa Handley, correct?

11 A. Correct.

12 Q. Okay. And are you familiar with Doctor Handley?

13 A. I've met her once or twice. We were on opposite sides in
14 the case involving the state of Arkansas.

15 Q. Okay. And are you familiar with her work?

16 A. Yes, I am.

17 Q. Okay. Would you characterize her as an experienced
18 political scientist?

19 A. Yes, most certainly.

20 Q. Okay.

21 A. Given that we co-authored with the same person at least
22 once, yes.

23 Q. Okay. And would you broadly agree with Doctor Handley's
24 findings in her report?

25 A. With regard to racial polarization in the state and the

1 Detroit area, yes.

2 Q. Okay.

3 A. Though I would have expanded it beyond general elections
4 to primary elections to get further evidence on that.

5 Q. Okay. So what other Senate factors do you believe that
6 your report speaks to here today?

7 A. I believe just the ones I've outlined here.

8 Q. Okay. So one, two, and five?

9 A. I believe those are the numbers, yes.

10 Q. Great. Okay. Now, in your official -- I don't know if
11 this is the right term for it, we'll call it the official
12 discrimination section of your report, history of
13 discrimination beginning on PTX19-7, which is paragraph 10, is
14 it fair to say that the examples of official discrimination
15 that you identify in this section of the report up through
16 paragraph 18 refer to events occurring in 1967 or before?

17 A. I'd have to look at the remaining paragraphs there. Let's
18 see. Other than paragraph 18, yes. 18 makes reference to the
19 public hearings where people made reference to history of
20 racial discrimination, sometimes with specific times and
21 dates, other times more general statements of racial
22 discrimination.

23 Q. Sure, sure. And you testified on direct that you reviewed
24 the transcripts of Commission proceedings; is that correct?

25 A. The public hearings.

1 Q. The public hearings, I see. And how many public hearing
2 transcripts did you review?

3 A. I believe it was all of them.

4 Q. So if I --

5 A. A rather laborious process, I can tell you that.

6 Q. Okay. And you spent between 10 and 20 hours preparing
7 your expert report in this case; is that correct?

8 A. I don't recall off the top of my head how much time I
9 spent.

10 Q. Okay.

11 A. That sounds close, but I wouldn't -- I'd have to go back
12 and look at my billing records.

13 Q. Okay. And do you recall providing an estimate of 10 to
14 20 hours in your deposition?

15 A. I think that's what I said then, yes.

16 Q. Okay. Are you aware of how many pages of Commission
17 transcripts there are?

18 A. I did not make a count, no.

19 Q. Okay. We actually created an exhibit for this case, and I
20 won't put it in front of you other than to say it exists;
21 DTX49. Actually, I'll have my paralegal hold up the first
22 binder containing the first volume of that exhibit. It looks
23 like a lot of paper, doesn't it?

24 A. Yes, it does.

25 Q. Nine more where it came from; do you disagree?

1 A. No. I did not make a count of the pages.

2 Q. Okay.

3 A. And that's why I -- I would reiterate that I was making a
4 guesstimate at my deposition because I did not have my actual
5 records with me at that time.

6 Q. I see. And what methodology did you employ to study using
7 these Commission records, the extent of official
8 discrimination in Michigan?

9 A. I'm not certain what you mean by that question, other than
10 the fact that I read the reports and looked for statements
11 that expressed attitude about racial discrimination or
12 arguments about it.

13 Q. I see. And arguments in favor of the proposition that
14 there was racial discrimination?

15 A. I looked for statements regardless of the direction of the
16 argument.

17 Q. I see. And the only ones you --

18 A. That I recall -- there may have been some, but I don't
19 recall.

20 Q. May have been some that --

21 A. That said that these were fine and dandy.

22 Q. I see. Okay. And you --

23 A. But I don't recall those.

24 Q. I'm sorry, I should not talk over you. I apologize,
25 Doctor Lockerbie. But none of the contrary examples made it

1 into your report, did they?

2 A. I don't believe there were any, but none did.

3 Q. Okay. And in the study of official discrimination, is the
4 review of public comments in a Commission meeting a generally
5 accepted source to review?

6 A. As far as getting public opinion on the state of racial
7 discrimination in the state, it strikes me as a quite
8 reasonable way of doing it absent -- or even with public
9 opinion polls. This would be additional evidence on that
10 point, because you have both sort of citizen responses as well
11 as official responses, such as from the executive director of
12 the Michigan Department of Civil Rights.

13 Q. Okay. I just had a few more questions for you. So I'd
14 like to turn to page PX19-9 and I want to focus on
15 paragraph 22, kind of in the middle of the page.

16 Do you recall testifying about this particular
17 paragraph in your direct examination?

18 A. I believe I do, yes.

19 Q. Okay. And what made you select this comment from Ms.
20 Howard for inclusion in your report?

21 A. Imagine what prompted me to do it was that she was a named
22 person who was involved in the drawing of maps from an
23 organization that is of some repute, the AFL-CIO is a major
24 labor union in the American labor movement, and their interest
25 in maps and elections is well known.

1 Q. I see. And you paraphrase her concern as being that the
2 Commission was, quote, preparation maps that led to a
3 retrogression regarding minority representation. Do you see
4 that?

5 A. Yes.

6 Q. Okay. Retrogression is a Section 5 concept, is it not?

7 A. I believe so.

8 Q. Okay. And what do you understand retrogression to mean?

9 A. To reduce the number of elected black officials.

10 MR. LEWIS: And I'd like now to turn to paragraph --
11 to page PX19-11, and the paragraph 31, if we can zoom in on
12 that, please?

13 BY MR. LOCKERBIE:

14 Q. Okay. Doctor Lockerbie, I believe you're paraphrasing a
15 member of the Wayne County Commission here; do you see that?

16 A. Yes, I do.

17 Q. Okay. And this commissioner, you paraphrase -- this
18 commissioner is expressing the concern that, quote, with the
19 maps submitted you would have the lowest number of black
20 elected officials in the state's history. Do you see that?

21 A. Yes, I do.

22 Q. Okay. I believe your direct examination testimony is that
23 when Michigan became a state black Americans were not even
24 permitted to vote in the state of Michigan; is that correct?

25 A. That is correct.

1 Q. Okay. Do you have any reason to believe that even in the
2 first -- even at any time in the 19th century that a black
3 elected official was elected in the state of Michigan?

4 A. I have no reason to believe there were any.

5 Q. Okay. And the state today retains many elected officials,
6 correct, black elected officials?

7 A. Yes, I believe so.

8 Q. And what made you include this particular comment?

9 A. Because this was an elected official which gave him some
10 credibility of making arguments about racial voting in the
11 state as opposed to -- without putting it -- I don't mean it
12 in a pejorative sense, but the random person off the street
13 compared to an elected official. I would assume an elected
14 official has a little bit more insight.

15 MR. LEWIS: I have nothing further, Your Honors.

16 JUDGE MALONEY: Redirect, counsel.

17 MR. FLEMING: Very, very briefly, Your Honor.

18 JUDGE MALONEY: Go ahead, sir.

19 *REDIRECT EXAMINATION*

20 BY MR. FLEMING:

21 Q. Doctor Lockerbie, you testified on cross exam that you had
22 three conclusions at the beginning paragraphs of your report.

23 A. (Non-verbal response).

24 Q. But your report discusses or references all seven factors,
25 correct?

1 A. I believe it makes reference to them, but it's
2 specifically focused on the -- the major focus was on those,
3 yes.

4 Q. And you mentioned there was a lot of overlap, right?

5 A. Yes.

6 Q. And, finally, turning back to Mr. Adelson's memorandum,
7 Mr. Adelson concludes the Senate factors are met, as do you,
8 and given that, would you agree there's no dispute between the
9 parties regarding the Senate factors?

10 A. I agree there is no dispute whatsoever between Mr. Adelson
11 and me with regard to that.

12 Q. And you concluded earlier on -- at the end of direct that
13 Senate factors were met, yes?

14 A. Yes, that is correct.

15 MR. FLEMING: Nothing further.

16 JUDGE MALONEY: Mr. Lewis?

17 MR. LEWIS: Nothing further, Your Honors.

18 JUDGE MALONEY: Thank you, Counsel. Doctor
19 Lockerbie, you may step down with the Court's thanks.

20 THE WITNESS: Thank you very much.

21 MR. BURSCH: So, Your Honors, we've got Senator Smith
22 and Representative Lemmons here from Detroit. If you want to
23 take a short break, I don't know that we can get them both in
24 within an hour, because I'm not sure how long the cross will
25 be, but if we could just stretch today long enough that we can

1 get them both finished, we will then close the plaintiffs'
2 case.

3 JUDGE MALONEY: All right. We'll get those two
4 witnesses in.

5 MR. BURSCH: I appreciate that.

6 JUDGE MALONEY: For purposes of their convenience, if
7 nothing else.

8 MR. BURSCH: Thank you, Your Honor.

9 JUDGE MALONEY: We'll resume at 3:30. Thank you.

10 THE CLERK: All rise, please. Court is in recess.

11 *(Recess taken at 3:15 p.m.; reconvened at 3:33 p.m.)*

12 THE CLERK: All rise, please. Court is in session.

13 You may be seated.

14 JUDGE MALONEY: We are back on the record in 22-272.
15 Counsel for the parties are present. Plaintiff may call its
16 next witness.

17 MR. FLEMING: Thank you, Your Honor. Plaintiffs call
18 Senator Virgil Smith.

19 THE COURT: Please step forward, sir, and be sworn.

20 VIRGIL SMITH,

21 *having been sworn by the Clerk at 3:33 p.m. testified as*
22 *follows:*

23 THE CLERK: Please be seated. State your full name
24 and spell your last name for the record, please.

25 THE WITNESS: Virgil, V-I-R-G-I-L, Smith, S-M-I-T-H.

1 JUDGE NEFF: Now, Mr. Smith, I'm going to caution
2 you, right at the beginning, after listening to you say your
3 name, that court reporter has to write down everything you say
4 so please try to say it slowly so that she doesn't work her
5 little fingers off her hands, okay?

6 THE WITNESS: Yes, ma'am. Yes, Your Honor, I should
7 say. Yes, Your Honor.

8 *DIRECT EXAMINATION*

9 BY MR. FLEMING:

10 Q. Good afternoon, Senator Smith.

11 A. Good afternoon.

12 Q. Just want to start off with your background.

13 Where do you reside?

14 A. City of Detroit, 19476 Helen.

15 Q. How long have you lived in Detroit?

16 A. Basically the duration of my life except for the time I
17 spent at Michigan State.

18 Q. And other than Michigan State, where did you go to school?

19 A. Western Michigan.

20 Q. Before that, how about high school?

21 A. I graduated from Benedictine High School.

22 Q. Is that Detroit Benedictine High School?

23 A. Yes, sir.

24 Q. And could you tell us about your background in public
25 service?

1 A. Born and raised in public service. Worked on my first
2 campaign in 1988, got elected to the Michigan State House in
3 2002.

4 Q. And did you run for office after you were elected in 2002?

5 A. Yes.

6 Q. Can you talk about that, please?

7 A. I've run for office 2001, 2002, 2004, 2006, 2010, 2014,
8 and 2017.

9 Q. And when you ran, were any of those elections for Michigan
10 State representative?

11 A. Michigan State House was 2002, 2004, and 2006; Michigan
12 Senate was 2010 and 2014.

13 Q. But ultimately you were elected to the Michigan House of
14 Representatives, correct?

15 A. Correct.

16 Q. And the same for the Senate?

17 A. Correct.

18 Q. And did you say that your first campaign experience was in
19 1988?

20 A. Yes, sir.

21 Q. Whose campaign was that for?

22 A. My father's senatorial campaign. It was a special
23 election in the winter.

24 Q. Did your father have any other public service?

25 A. He was a state representative previously to that.

1 Q. Other than state representative and senator, any other
2 offices your father held?

3 A. Yes. My father was also -- he's still a current visiting
4 judge. He was a judge in the Third Circuit Court. He was
5 ultimately the Chief Judge -- the first African American Chief
6 Judge in the Third Circuit Court.

7 Q. In Third Circuit Court, that's Wayne County, correct?

8 A. Wayne County Court.

9 Q. Could you remind me in what years were you in the State
10 Senate?

11 A. 2011 through 2016.

12 Q. And during your time in the State Senate did you serve on
13 the Senate committee on redistricting?

14 A. Yes, sir.

15 Q. Did you have any objection -- objectives or -- during your
16 time on that committee?

17 A. My main objective was to keep our districts over
18 51 percent. We were starting with the mean around 55 percent
19 African American.

20 Q. Now, when you say our districts, what do you mean by that?

21 A. I mean the districts -- African American -- you know,
22 minority, minority seats -- let me back up. Minority -- the
23 majority/minority seats.

24 Q. In Detroit?

25 A. In Detroit and Flint, Saginaw. There are others in the

1 state of Michigan, but mainly Detroit.

2 Q. Was keeping Detroit in compliance with the federal Voting
3 Rights Act also one of your objectives?

4 A. Yes, sir.

5 Q. And you alluded to this a little bit before, but based on
6 your experience and observations on that committee, what was
7 necessary to achieve that compliance?

8 A. We had to stay -- we did not cross county lines. We were
9 opposed to crossing county lines in 2011. Our main focus was
10 to carve out -- with the population loss in Detroit was to
11 carve out five Senate majority/minority seats based on current
12 population at that time.

13 Q. And you had mentioned before running in the election for
14 Senate District 4 in 2014. What areas made up that district?

15 A. Northeast, northwest, North Central Detroit, basically
16 Drexel, Linwood, southwest Detroit, Lincoln Park, Allen Park,
17 Southgate.

18 Q. Could you tell us about your experience during that
19 campaign?

20 A. We campaigned heavily in the Down River section, Lincoln
21 Park, Allen Park, Southgate. I was surprised to only receive
22 30 percent of the vote in that area, and I was met by a lot
23 heavy -- or I should say, heavy resistance.

24 Q. And why were you surprised to receive 35 percent of the
25 vote in that area?

1 A. Because I spent the majority of my time down there. I
2 figured the -- this was the area that they did not know me. I
3 felt I had to introduce myself to these voters. I was just
4 shocked that I could not get over 30 percent.

5 Q. Based on your observations, was it -- is that a
6 predominantly white area?

7 A. Yes. Lincoln Park, Allen Park, and Southgate are all
8 predominantly white areas.

9 Q. And you mentioned resistance earlier. Do any particular
10 instances stand out from that campaign?

11 A. Yes. Allen Park directly, the police were called on me.
12 I had to actually get -- they have a no solicitation ordinance
13 in Allen Park. So somebody reported on me as soliciting.
14 Campaigning and soliciting are not the same thing. My -- I
15 don't want to -- well, I'll say this, my Caucasian campaign
16 worker did not have the same problem. I had to literally get
17 a pass in Allen Park to campaign, which was laughable.

18 Q. And when the authorities were called on you, were you
19 donned in campaign attire?

20 A. I had my campaign T-shirt on. I had a clipboard with what
21 we call walk sheets and my campaign literature.

22 Q. Moving forward a little bit, 2018, were you involved in
23 any campaigns during that election cycle?

24 A. Yes. I was the campaign manager for Marshall Bullock.

25 Q. Were you involved in any campaigns for the 2020 election

1 cycle?

2 A. Yes. I was the campaign manager for Shri Thanedar for
3 state representative in House District 3 -- Shri Thanedar,
4 House District 3 at the time.

5 Q. What about 2022?

6 A. In '22 I was the campaign manager for reelection for
7 Marshall Bullock in the new Senate District 8 and Reggie Davis
8 in the new House District 5.

9 Q. Let's talk about Senator Bullock's race in District 8.
10 Can you describe the area of that district?

11 A. Starting at Schoolcraft at the southern tip, not really
12 going past Woodward, going north all the way to Birmingham,
13 Michigan.

14 Q. Is that parts of Detroit?

15 A. When I say part -- starting at Schoolcraft, that is
16 Detroit. So Schoolcraft all the way to the 8 Mile border,
17 going all the way to Greenfield in Detroit, stopping at
18 Greenfield and going north. So this western end is
19 Woodward -- I mean, Greenfield, eastern end around Woodward,
20 southern end Schoolcraft, north -- on the other side of 8 Mile
21 all the way to Birmingham -- City of Birmingham. It includes
22 portions of Clawson, Royal Oak, Ferndale, Royal Oak Township,
23 Oak Park, and Berkley.

24 Q. In your view as his campaign manager, did the area -- did
25 the makeup of the area impact the campaign for Senator

1 Bullock?

2 A. Yes. In my opinion, I call it connection rate. Our
3 connectivity on doors -- when I say connection rate, I mean
4 door to door -- our activity on doors is significantly lower
5 in the suburban territory than it is in Detroit. We have a
6 hard time getting them to answer the door for us, and if we
7 can't get them to answer the door for us, how can we sell
8 ourselves as a candidate to the new voters?

9 Q. And could you speak a little more about campaigning in the
10 primarily suburban areas?

11 A. I would say our connectivity rate was around 20 percent on
12 doors.

13 Q. When people would open the door for you, what was the
14 reception like?

15 A. It varied but most -- like, in Berkley, Michigan, they
16 were angry we were out there. Same thing in Birmingham. They
17 felt we had no business being out there trying to represent
18 them.

19 Q. Why is that?

20 A. Because we're out of Detroit and we need to leave -- you
21 know, leave our Detroit problems in Detroit, and we have no
22 business being out there. You know, you don't understand us.
23 How could you represent us? The issues are completely
24 different.

25 Q. Tell me about that.

1 A. Give you an example. I've noticed a lot of talk around
2 red line. You know, I chaired the insurance committee in the
3 state of Michigan in 2006 in the State House. Insurance on
4 inner-ring and outer-ring suburbs is sometimes double, if not
5 triple lower in cost than on our side of 8 Mile. So when
6 we're arguing over how do we lower insurance rates, our
7 suburban counterparts don't have the same problems and are not
8 seeing the issue from the same lens that we are.

9 Q. Can you think of other issues that --

10 A. Plenty.

11 Q. -- are likewise not viewed in the same lens?

12 A. Charter schools. Michigan public school academies. I've
13 seen them -- I've heard a lot of talk around education here.
14 In my opinion, charter schools were sent in to destroy our
15 public school system and our suburban counterparts do not want
16 to hear that argument and are not usually willing to vote with
17 us and against charter schools.

18 Q. Getting back to campaigning for Senator Bullock in
19 District 8, did you notice people that were home but just
20 wouldn't open the door for you?

21 A. Correct. It happened all the time or they'll come to the
22 door and just close it. I've had that happen a lot.

23 Q. And who were the other candidates in that race?

24 A. Mallory McMorrow. State Senator Mallory McMorrow from
25 Royal Oak.

1 Q. Do you know the race of each candidate?

2 A. I'm kind of confused by the question.

3 Q. The Senate District 8 primary --

4 A. When you say the race -- oh, one was white, one was black.
5 So Mallory was white, Marshall was black.

6 Q. And based on your perception and experience as the
7 campaign manager, who did the black community support?

8 A. The black community supported Marshall Bullock.

9 Q. And what was the result of the election?

10 A. Almost 70/30 Mallory McMorrow. The district is basically
11 65 percent suburb and 35 percent Detroit.

12 Q. Both candidates, were they incumbents?

13 A. Correct.

14 Q. So you talked about campaigning with Senator Bullock in
15 predominately white neighborhoods. Did Senator McMorrow do
16 that in predominantly black areas?

17 A. No. Senator McMorrow doesn't even know who I am.

18 Q. Let's talk about the other election you were involved with
19 that year, the 2002 Democratic primary for House District 5.
20 In your time as campaign manager for Reggie Davis, could you
21 describe the area of that district?

22 A. Similar to Senate District 8 but smaller. A smaller
23 microcosm of it. Starting in Detroit, its southern border is
24 just a little north of Schoolcraft and that district also goes
25 all the way out to Birmingham north, its northern border.

1 Q. And how did the area make -- area makeup impact the
2 campaign?

3 A. Reggie Davis was the only candidate in Detroit that
4 received over a thousand votes. Directly he received close to
5 4,000 votes in the city of Detroit so much so that people
6 thought he won that race, but in the suburban territory, which
7 was more, we barely got 15 percent of the vote.

8 Q. Did you campaign in those suburban areas in that district?

9 A. Correct.

10 Q. Could you talk about that, please?

11 A. We thought we may have a shot in that race because with
12 the African American population in Oak Park, that makes it a
13 majority/minority seat, but we quickly learned that the
14 population on the other side of 8 Mile, even if they are
15 African American, they do not vote like us in Detroit.

16 Q. I want to back up a second and then I want to talk more
17 about 8 Mile. You mentioned House District 5 was a
18 majority/minority district. Do you recall the BVAP off the
19 top of your head?

20 A. I think it's barely over 51 percent.

21 Q. If I told you it was 55 percent, would that sound
22 accurate?

23 A. It's a little higher than I thought, but it sounds a
24 little bit accurate.

25 Q. And despite the BVAP, the black candidate of choice, being

1 Reggie Davis, lost that election, correct?

2 A. Correct.

3 Q. Now, could you speak more about the significance, if any,
4 of that 8 Mile north line?

5 A. Yes. You know, starting in the 1970s we had black flight
6 out of the City of Detroit. And in the inner-ring suburbs,
7 what we learned quickly out there is that they move to the
8 suburbs for numerous reasons; education for children, escape
9 violence, but they wanted no part of what, you know, our
10 quote/unquote, Detroit issues were. And they were more likely
11 to support whoever the suburban candidate was even if they
12 were white, which was shocking to us because coming out of
13 Detroit we're all about electing us.

14 Q. And people told you from Berkley they didn't want to elect
15 people from Detroit, right?

16 A. Correct. We heard that. It wasn't just Berkley. It
17 really was predominately Birmingham. The more affluent the
18 territory got, the more they did not want us out there.

19 Q. Are you familiar with the previous district maps?

20 A. Correct.

21 Q. Does that include the demographics of the previous maps?

22 A. I'm pretty knowledgeable on the Wayne County section, and
23 I was very involved in the drawing of the 2011 Wayne County
24 map.

25 Q. So the maps that were in place previous to the Linden and

1 the Hickory plans, you were on the committee that drafted
2 those?

3 A. Correct.

4 Q. And as it relates to the Detroit area districts, you're
5 familiar with the geographical boundaries, generally?

6 A. Correct.

7 Q. And have you had an opportunity to compare the previous
8 area districts with the Hickory and Linden plans?

9 A. Yes.

10 Q. What did you observe?

11 A. I observed -- one thing in the redistricting process, you
12 cannot recreate the land, so with the population loss in the
13 City of Detroit, where do you go if you want to keep
14 majority-minority seats?

15 So in 2011 we went south because we were not going to
16 break county lines, because the various issues -- you know,
17 people just -- or, I should say, Oakland County and Macomb
18 County didn't seem too excited about welcoming us out there,
19 so we were not breaking county lines. We went south.

20 In 2020, the Redistricting Commission, in my opinion,
21 directly went north diluting us in Detroit and making it very
22 difficult for us to win primary elections. And, see, that's
23 the key. These are all what we call winner take all primary
24 elections. The general election does not matter in Detroit,
25 Michigan.

1 Q. In your review of the Detroit area maps in the Linden and
2 Hickory plans, did the redistricting committee draw the -- how
3 Detroit is boundaried the same way for other places?

4 A. No.

5 JUDGE MALONEY: Counsel, I didn't understand the
6 question.

7 MR. FLEMING: It was poorly phrased.

8 BY MR. FLEMING:

9 Q. As part of your experience on the committee on
10 redistricting, you're familiar with the other heavily
11 populated black areas and how they are redistricted, correct?

12 A. Yes. I was the campaign manager for Sheldon Neeley,
13 reelection for Flint mayor -- I shouldn't say campaign
14 manager, but I was a heavily involved campaign strategist. I
15 also worked with his wife, so that's House District 70, she
16 was the state representative, Cynthia Neeley out of Flint.

17 Q. And based on everything you've observed, how successful
18 can black candidates from the Detroit area be under the
19 Hickory and Linden plans?

20 A. The longer these maps stay in play, we won't have any
21 black representation in the Michigan Senate. We may have one
22 in District 1, maybe, but we're going to lose District 3,
23 Sylvia Santana. We will also lose -- well, we have -- well,
24 Sarah Anthony is from Lansing, so we only have two,
25 technically, from Detroit. Erika Geiss is from Taylor. She's

1 not from Detroit, so we won't have any representation out of
2 Detroit. And I bet after Sarah Anthony is termed out, I don't
3 know if we'll have any black representation in the Senate at
4 all. And then the House would just completely -- will also
5 dwindle.

6 Q. In the interest of our time here, Senator Smith, do you
7 recall preparing an affidavit in connection with this case?

8 A. Yes, sir.

9 Q. Would you recognize it if I showed you it?

10 A. Yes, sir.

11 MR. FLEMING: If we can please pull up Plaintiffs'
12 Exhibit 10?

13 BY MR. FLEMING:

14 Q. Senator Smith, can you identify this, please?

15 A. That is my affidavit.

16 Q. And if we could scroll down to the last page there,
17 page 12. Is that your signature there?

18 A. That is my signature.

19 Q. Could you identify the date on there?

20 A. March 8, 2023.

21 Q. Was everything that you said in that affidavit 100 percent
22 true when you signed it?

23 A. Yes, sir.

24 Q. Is it still true today?

25 A. Yes, sir.

1 Q. Would you change anything?

2 A. No, sir.

3 Q. Does it reflect the testimony that you've given today?

4 A. Yes, sir.

5 MR. FLEMING: Your Honors, at this time I would move
6 for the admission of Plaintiffs' Exhibit 10.

7 JUDGE MALONEY: Any objection.

8 MS. McKNIGHT: Yes, Your Honor, we would object.
9 This is an affidavit. This is an issue that came up in the
10 pre-trial conference about whether affidavits can supplant
11 live testimony, and for a witness they've called live, we
12 object to also submitting an affidavit.

13 JUDGE MALONEY: Response.

14 MR. FLEMING: Your Honors, I'm happy to keep going
15 for 30 more minutes and ask Senator Smith about the entirety
16 of this affidavit, but in the interest of time, and clearly
17 that Your Honors have the authority to admit this, I'm just
18 hoping to get through this as efficiently as possible and not
19 ask him every part of the affidavit.

20 JUDGE MALONEY: Well, I appreciate the desire for
21 efficiency, but how is -- under what evidence rule is the
22 affidavit admissible?

23 MR. FLEMING: Your Honor, as a bench trial it's
24 presumed that everything you consider as part of your ultimate
25 decision will be admissible and relevant evidence.

1 JUDGE KETHLEDGE: Where does that come from?

2 MR. FLEMING: I have the citation if you'd like.

3 That is *Brown v. Pitcher*, 19 --

4 JUDGE KETHLEDGE: Under the rules -- I'm sorry, I
5 shouldn't talk.

6 MR. FLEMING: It's from the case law so, granted,
7 it's not a federal rule but it's from a Sixth Circuit opinion.

8 JUDGE KETHLEDGE: Rules of Evidence or law?

9 JUDGE MALONEY: The objection is sustained. I
10 recognize that this may require longer examination of the
11 witness, but in light of the objection, I don't think we have
12 a choice.

13 MR. BURSCH: Can you give us 30 seconds?

14 JUDGE MALONEY: Sure.

15 BY MR. FLEMING:

16 Q. Senator Smith, you talked a little bit about the 8 Mile
17 Road line becoming blurred as time has gone on. Can you talk
18 more about the impact that will have on black candidates in
19 future elections?

20 A. I noticed you had Vincent Gregory's race up there. In
21 2018 and 2014 that was the southern area of Oak Park. With
22 the population loss in Detroit, the migration of African
23 Americans has went north, and whether east side or west side,
24 between 8 and 10 Mile African Americans have populated those
25 inner-ring suburbs to the degree where they're even electing

1 themselves as mayor and getting elected to city council in a
2 lot of those cities.

3 Q. You talked a little bit about public policy concerns most
4 important to the black community. Are there any others that
5 come off the top of your head you'd like to mention?

6 A. I mean, just as recent as Mayor Duggan tried to get this
7 land value tax through the Michigan legislature and failed --
8 I won't say failed yet, but hasn't been able to garner the
9 support that it needed to pass the Michigan House of
10 Representatives. And that is partly due to the fact that we
11 have so many suburban people representing Detroit, they don't
12 understand Detroit issues.

13 Q. And in your experience, are those voters -- I'm sorry, are
14 those issues prioritized by the Detroit black community also
15 important to white voters from the suburban areas?

16 A. I wouldn't say they're important to the white voters of
17 the suburban areas, but it was a lot easier -- easier for us
18 to get them to vote with us when we had hard numbers. So you
19 have 10 black state reps, you're counting to 56, so you only
20 need 46 more votes, so to speak, in theory. So now we're down
21 to -- they just don't respect us the way they did previously
22 because our numbers are dwindling.

23 Q. Who is they?

24 A. Our colleagues or the colleague -- you know, other -- our
25 counterparts in other parts of the state.

1 Q. So can -- do you think black representation in the state
2 legislature can help address issues most important to the
3 black community?

4 A. Yes. I'll give you another one. Emergency manager law.
5 You know, we have a Trifecta. The Democrats are in complete
6 control, and you can make the argument, is what is the African
7 American community gaining? So the emergency manager law has
8 decimated school districts and cities in African American
9 communities throughout this whole state.

10 The bill was introduced in February by State
11 Representative Brenda Carter out of Pontiac and has not even
12 received a hearing. It's just been sitting there. Meanwhile,
13 we've done Right to Work, we've done Prevailing Wage, we've
14 dealt with LGBT issues. What do we getting?

15 Q. In your experience, is voter turnout lower in the black
16 community?

17 A. Yes.

18 Q. In your experience, is general political engagement lower
19 in the black community?

20 A. I wouldn't say that political engagement is lower, but our
21 population numbers have dwindled so, say, take Senate District
22 8, Senator McMorro actively campaigned on the fact that her
23 precincts outperformed our precincts two to one, so how could
24 Senator Bullock win?

25 Q. Does loss of population affect the ability to participate

1 in the political process?

2 A. Yes.

3 Q. And does that have an impact on electing black candidates?

4 A. Yes.

5 Q. And will the Hickory and Linden plans impact future
6 political engagement of the black community?

7 A. I would say in state elected offices -- state legislative
8 races it will affect us because we will have a hard time
9 fielding candidates. That was played out with Senate District
10 10. You know, you guys noticed we had that one up. We
11 couldn't even fill a candidate in Senate District 10.

12 Q. Why is that?

13 A. The incumbent, Senator Paul Wojno. It's tough running
14 against incumbents. Incumbents are entrenched, so to speak,
15 in theory. So fielding a candidate against Paul Wojno, who is
16 my state senator, is hard -- especially on the east side where
17 the population loss -- we don't necessarily have qualified,
18 I'll use that word, candidates to compete sometimes.

19 Q. Why do you think that is?

20 A. Brain drain. I can go anywhere in this country from high
21 school to college and I can run into somebody in urban America
22 that I know.

23 Q. Do you think when -- when black candidates have a low
24 success rate, could that impact finding a candidate for a
25 particular race?

1 A. Correct.

2 Q. In what way? Negatively?

3 A. Negatively.

4 MR. FLEMING: Thank you. I have nothing further at
5 this time.

6 JUDGE MALONEY: Ms. McKnight, you may inquire.

7 MS. McKNIGHT: Thank you, Your Honor.

8 *CROSS EXAMINATION*

9 BY MS. McKNIGHT:

10 Q. Good afternoon, Senator Smith.

11 A. Good afternoon.

12 Q. Thank you for your service to the state and for your time
13 today.

14 A. Thank you.

15 Q. You've already touched on a lot of topics I wanted to ask
16 you about so I've been able to pare down a little bit. I'm
17 going to ask you some questions. You currently reside in
18 Senate District 10 and House District 14; is that correct?

19 A. Yes, ma'am.

20 Q. In 2010 and 2014 you ran for elected office in Senate
21 District 4; is that right?

22 A. Correct.

23 Q. The 2010 election was under the prior decades plan; is
24 that right?

25 A. Correct.

1 Q. You won both those elections, right?

2 A. Correct.

3 Q. You believe that -- now turning to the Commission's work.
4 You believe that the Commission employed a partisan strategy
5 to maximize the electoral success of Democrats generally at
6 the expense of the opportunity of black voters to elect their
7 candidates of choice.

8 Do you agree with that?

9 A. Say that one more time.

10 Q. You believe that the Commission employed a partisan
11 strategy to maximize the electoral success of Democrats
12 generally at the expense of the opportunity of black voters to
13 elect their candidates of choice?

14 A. Yes.

15 Q. And you would agree that the Commission's plans touching
16 on the Detroit metropolitan area mark a radical change from
17 the State House and Senate maps adopted by the state
18 legislature during your tenure as state senator, right?

19 A. Correct.

20 Q. And is it safe to say that most incumbents from the
21 Detroit area districts do not like the Commission's maps?

22 A. I have not met one.

23 MS. McKNIGHT: Thank you. No further questions.

24 JUDGE MALONEY: Redirect, counsel?

25 MR. FLEMING: One moment.

1 JUDGE MALONEY: Certainly.

2 MR. FLEMING: Thank you, Your Honor.

3 *REDIRECT EXAMINATION*

4 BY MR. FLEMING:

5 Q. Senator Smith, you testified on cross examination that you
6 believe the Commission engaged in a partisan strategy in
7 drawing the maps. Would it surprise you to learn that the
8 Commission used a racial target in drawing the maps as far as
9 Detroit?

10 MS. McKNIGHT: Objection, misstates testimony.

11 JUDGE MALONEY: I'm sorry?

12 MS. McKNIGHT: Objection, misstates prior testimony.

13 JUDGE MALONEY: Overruled.

14 Go ahead.

15 THE WITNESS: Can you ask the question again, please?

16 BY MR. FLEMING:

17 Q. You testified on cross examination that the Commission
18 engaged in a partisan strategy as it relates to drawing
19 Detroit.

20 Would it surprise you to learn that the Commission
21 set a racial target in drawing the Detroit maps?

22 A. No, it would not surprise me.

23 Q. And would it surprise you to learn that when the
24 Commission was drawing the Detroit maps, they didn't turn on
25 the partisan metrics of their software until after the

1 thresholds had already been set?

2 A. That would not surprise me either.

3 MR. FLEMING: Thank you. I have nothing further.

4 JUDGE MALONEY: Ms. McKnight?

5 MS. McKNIGHT: Nothing further, Your Honor.

6 JUDGE MALONEY: Judge Kethledge has a question.

7 JUDGE KETHLEDGE: Sir, I just have one question for
8 you so I make sure I understand your earlier testimony.

9 Did you say that you as a member of the state
10 legislature were part of the body that drew the lines for the
11 2010 State House and Senate maps?

12 THE WITNESS: Yes, Your Honor.

13 JUDGE KETHLEDGE: Okay. Thank you.

14 JUDGE MALONEY: Anything further from either counsel
15 for Senator Smith?

16 MR. FLEMING: No, Your Honor. Thank you.

17 MS. McKNIGHT: No. Thank you, Your Honor.

18 JUDGE MALONEY: Senator Smith, you may step down.

19 *(Witness excused at 4:07 p.m.)*

20 JUDGE MALONEY: Plaintiff may call its next witness.

21 MR. FLEMING: Your Honor, at this time we would call
22 LaMar Lemmons, III.

23 JUDGE MALONEY: Please step forward, sir, and be
24 sworn.

25 LAMAR LEMMONS, III,

1 both Denby because Denby had classes that Finney didn't so I
2 had to go to both schools at the same time.

3 Q. Other than that, did race have an impact on your
4 upbringing?

5 A. Well, when I lived on the east side there were unofficial
6 lines of demarcation that we would not cross, such as Chalmers
7 at one point, and it kept moving eastward as the black
8 population, with some pushback and resistance, began to move
9 eastward and take up more parts of the city.

10 Q. Now, you mentioned you grew up on the east side?

11 A. Yes. Near the Ossian Sweet house.

12 Q. And I'm not from Detroit originally. I don't know it
13 well. Could you describe more what you mean by that?

14 A. Okay. Ossian Sweet was the -- a famous case with Clarence
15 Darrow and Frank Murphy. And Ossian Sweet moved into a -- was
16 a doctor who moved into a white working class neighborhood and
17 was -- his home was attacked by the white community. That's
18 significant because I began to live that -- it was passed on.
19 Even though we eventually eclipsed that neighborhood, as we
20 moved eastward, the similar resistance that Ossian Sweet had
21 we met with a similar resistance as we moved into areas that
22 had previously been all white.

23 Q. Can you recall any instances of that sort that stand out
24 to you growing up?

25 A. Certainly. I do remember at one point there was a cross

1 burnt on the lawn east -- when we were going further east --
2 east of Alter Road within the city of Detroit, and that's
3 ironic because later on I began -- I -- as the demographics
4 changed, I grew up and represented that area as a state
5 representative.

6 Q. When were you state representative?

7 A. I was elected as a state representative in 1998. Prior to
8 that I had worked on numerous campaigns. I was part of the
9 original founding of the Black Slate in 1973, which we also
10 supported Coleman Alexander Young. I was with the youth
11 Coleman Young at the age of 18, and so that was the -- just
12 two years earlier 18 year olds were granted the right to vote
13 from 21, and so we were able to assist in getting the first
14 black mayor elected.

15 I started working in politics even as a paperboy
16 delivering for Richard Austin who ran for mayor ill -- in his
17 ill-fated campaign for mayor. He later, of course, became the
18 Secretary of State. When he ran for mayor against Roman
19 Gribbs as the first legitimate candidate for mayor -- African
20 American candidate for mayor, and so I got involved in
21 politics during the civil rights era. That was my entre.

22 Q. Now, you mentioned -- other than serving as a state
23 representative, did you continue to work in the legislature
24 after that?

25 A. Yes. I worked for Barbara-Rose Collins in 1975. I

1 assisted Carolyn Cheeks Kilpatrick in 1978. I worked for the
2 Speaker of the House, Curtis Hertel, in 1995, and so I've been
3 involved. I founded the Eastside Slate in 1980 after being
4 part of the original Black Slate at the Shrine of Black
5 Madonna in 1973.

6 Q. Do you recall ever serving as a chief of staff?

7 A. I served at -- oh, most recently, because I -- I served as
8 the chief of staff for State Senator Betty Jean Alexander, and
9 that's one of the districts that you have in your model that
10 you showed today.

11 I also worked for Sherry Gay-Dagnogo as her policy
12 assistant, and she is one of the plaintiffs, I believe.

13 Q. Have you -- and you mentioned you got involved in
14 political campaigns.

15 A. A --

16 Q. Can you tell us a little bit about that?

17 A. Yes. I worked in a myriad of campaigns. The first black
18 woman to become a Congresswoman, Barbara-Rose Collins, I
19 worked on her campaign. Her successor, Carolyn Cheeks
20 Kilpatrick, I also worked on her campaign and have known them
21 since I was a teenager.

22 Q. And in what capacity have you worked on campaigns?

23 A. I've worked on -- I primarily worked in the operation --
24 in the fields operations, the strategy, and things have
25 changed with the advent of the internet. So I've been around

1 a long time, a lot longer than the internet.

2 Q. How many campaigns do you think you've been a part of?

3 A. Probably -- probably 200 in some form or the other,
4 including with the slates, because people still come to me,
5 even to this day, for endorsements.

6 Most recently I also assisted one of the other
7 candidates. I orchestrated Kimberly Edwards' state
8 representative's campaign. That was one of the models. I
9 also assisted and made sure that in Donavan McKinney's race
10 that he was the sole candidate by getting other people to pull
11 out so that we didn't dilute the black vote in an area that
12 now is no longer a -- had a high BVAP. So we had to make sure
13 we only ran one black candidate to even have a modicum of
14 chance of winning, and we did prevail in that one and -- in
15 both those examples.

16 Q. And I want to talk more about those, but first I would
17 like to ask you, were you present in the courtroom this
18 afternoon for the testimony of Senator Virgil Smith?

19 A. I was.

20 Q. Did you listen to it?

21 A. I did.

22 Q. Did Senator Smith's testimony -- did you find it to be
23 truthful?

24 A. Absolutely.

25 Q. Do you agree with it?

1 A. I do.

2 Q. Now, throughout your time being involved with campaigns,
3 were most of these campaigns that take place in the Detroit
4 area?

5 A. Yes, for the most part. I have been a hired gun to work
6 in other states in other campaigns in field operation, but my
7 home base has always in the city of Detroit, and I've always
8 believed to be -- believed I should be active in all the
9 campaigns, including as of last year and some campaigns
10 currently going in the local suburbs as we try to increase our
11 black representation in suburban districts.

12 Q. Could you describe your experience campaigning with black
13 candidates and staff in areas that were predominately white?

14 A. Yes. On the ground the -- there's been -- there's always
15 some difficulty in reaching out to the white community, even
16 when it was in the city. They're less likely to open the
17 door. Even when you can see them inside, they're -- in the
18 suburbs they have been hostile, including pulling guns on
19 people who knocked on their doors, even though they have on
20 aprons, T-shirts, hats, buttons, clipboards. So they clearly
21 see that this person is there to talk to them, but I know of
22 several candidates in the suburban areas where guns were
23 pulled on them, they were cursed out, and they were called the
24 N word. It was reminiscent to my earlier childhood where I
25 experienced that within the city and now much of that occurs

1 outside the city, and the further you go across -- you go deep
2 into the suburbs, the more hostile you find people to your
3 presence.

4 Q. Now, when canvassing in these predominately white areas,
5 do you employ any specific strategies?

6 A. Absolutely. We try to hire white canvassers to work the
7 white neighborhood whenever we can, and we've even noticed
8 that you can be on the -- a white canvasser, they would open
9 the door and a black canvasser had just knocked on the door
10 earlier and -- without response, as if no one was home. But
11 then a white canvasser working with us doing the same thing,
12 they would get a response and be greeted.

13 Q. And in your experience and observations conducting
14 campaigns, how do you assess a candidate's level of support
15 from the black community?

16 A. If it's a black/white -- strictly a black/white, then the
17 African American community overwhelmingly supports it. I just
18 did it with a candidate to -- who took out a white Democratic
19 incumbent in favor of a black one by doing a similar strategy,
20 having one candidate and hoping that the -- enough of the
21 white population would not vote in the Democratic primary.

22 And so our nightmare is that the -- someone in the
23 legislature may try to get a fix, if you will, and then either
24 have runoff where the white community can come together across
25 party lines and that would wipe us out almost immediately or

1 come up with some other strategies, nonpartisan primaries, et
2 cetera, which could also have the same effect of eliminating.

3 When you don't have a 50 percent guarantee of African
4 Americans, then there are other strategies that will -- will
5 be -- will be or could be possibly employed by the white
6 majority to assure that seat and completely eliminate most
7 black candidates.

8 Q. Are you familiar with the previous district maps?

9 A. I am.

10 Q. Does that include the demographics?

11 A. That does.

12 Q. And the geography?

13 A. It does.

14 Q. Have you had an opportunity to compare the previous
15 district maps with Linden and Hickory Plans?

16 A. Absolutely. The previous district plans ensured that you
17 would have African American -- a probable African American
18 candidate that could -- would prevail or at least if not -- if
19 they were not African American, they would be the African
20 Americans' candidate of choice, depending on policy,
21 neighborhood, et cetera.

22 MS. McKNIGHT: Your Honor, if I may briefly? We're
23 treading a very thin line between Rule 701 and 702. The
24 702 -- 701 relates to a lay opinion testimony and where that
25 opinion testimony relies on scientific -- a need to apply

1 scientific methods and methodology to determine that opinion.
2 That belongs in the realm of Rule 702, expert witnesses. We
3 have plenty in this case. I'd just like to note that line and
4 to stay clear on the side of 701.

5 JUDGE MALONEY: Counsel?

6 MR. FLEMING: Representative Lemmons has a lifetime
7 of experience in politics and in the area and he's speaking
8 about who the black community supports in all of the elections
9 throughout that time that he's been involved with. He has the
10 life experience and can speak on who the black community in
11 Detroit prefers.

12 MS. McKNIGHT: Your Honor, life experience talking
13 about who he understands a community to prefer is one thing.
14 What I hear him testifying about now are candidates of choice
15 prevailing at what percentage they need to prevail, and we
16 have plenty of experts on both sides conducting statistical
17 analysis on precisely that point.

18 JUDGE MALONEY: I'm -- I'm interpreting his testimony
19 to mean that the -- when he refers to candidates of choice,
20 candidates of choice are his opinion based on, what, 50 years
21 of experience in politics in the City of Detroit? I don't
22 understand the problem.

23 MS. McKNIGHT: The problem is, as I said before, it's
24 one thing to testify about experience, and I'm not denigrating
25 his experience --

1 JUDGE KETHLEDGE: Or perception.

2 MS. McKNIGHT: Or perception. What I'm saying is we
3 have multiple experts, we have at least three in this case who
4 have calculated percentages of BVAP to determine candidates of
5 choice and how -- what percentage they need to prevail, and,
6 Your Honor, again, I understand it's a line --

7 MR. FLEMING: If I may, Your Honor?

8 JUDGE MALONEY: Counsel, this -- I appreciate the
9 fact that we're -- have heard and going to hear a lot of
10 expert testimony regarding candidates of choice, but it just
11 seems to me that given the fact this witness is highly
12 experienced in the City of Detroit politics and how things
13 work on the ground, if you will, in the city, I think the
14 testimony is totally legitimate.

15 Objection is noted but overruled.

16 MS. McKNIGHT: Thank you, Your Honor.

17 JUDGE MALONEY: Go ahead, counsel.

18 BY MR. FLEMING:

19 Q. Mr. Lemmons, is the historic North 8 Mile Line Road, does
20 that have any significance?

21 A. Absolutely. In fact, we talked about earlier the rap
22 artist, Eminem, made a whole movie about that line of
23 demarcation and how he crossed that line to get a cultural
24 experience that enabled him to become a billionaire as a
25 direct result of cultural appropriation within the African

1 American community.

2 So 8 Mile was an unofficial border, and only when
3 conditions in Detroit became such that they began to creep
4 across 8 Mile, which now I would say it's 696. It's still an
5 unofficial line and things are happening that keep the real
6 estate companies, banking, and lending practices that
7 determine how far we can expand and African Americans can move
8 into communities and at what rate.

9 Q. What are some of the public policy concerns most important
10 to Detroit voters?

11 A. That is key, because when they draw these lines, even
12 black legislators have to take into account that new white
13 community and not to get their ire so that all of them will
14 turn against them, because there's always -- as you showed,
15 there was always a small percentage of white population that
16 voted with the black population. Not enough, but sometimes a
17 significant amount just based on the race in a multi-candidate
18 race.

19 Example, affirmative action. Total difference in how
20 we're seeing. Reparations, total difference in the community.
21 Criminal justice reform, total difference and particularly in
22 the priority. Prison reform. Whether prisoners should be
23 allowed to vote. Prison gerrymandering.

24 All of these are some of the issues that now some of
25 the African American candidates won't bring up for fear that

1 it may alienate a part of their constituents and particularly
2 when those constituents are now the majority due to the BVAP.

3 Q. And perhaps related to that, how responsive are white
4 suburban state legislators to the -- those specific needs you
5 talked about of the black voters?

6 JUDGE NEFF: You're painting with a pretty broad
7 brush, Mr. Fleming.

8 THE WITNESS: I can tell my experience on that.

9 JUDGE NEFF: I know, but that's ridiculous to ask
10 that question; how responsive are suburban legislators. Well,
11 who are they? How many are they? That's -- that's -- you've
12 got to find a better question than that.

13 MR. FLEMING: Thank you, Your Honor. Understood.

14 THE WITNESS: I can testify about what happened in
15 caucus. And so historically when caucus, the suburban
16 candidates, with the 8 Mile line of demarcation, they would
17 always come to us, and Senator Smith would attest to it as
18 well, and say, I would -- I agree with you, I would support
19 it, but my constituents won't allow me. I said, So your
20 constituents are racist, does that make you racist, because
21 we've had these heated debates within the caucuses of the --
22 within the caucus of the Democratic caucus and I can attest to
23 that. That's why that question was pertinent to me.

24 BY MR. FLEMING:

25 Q. In your experience and observations, is voter turnout

1 lower in the black community?

2 A. Absolutely.

3 Q. And is the level of political participation lower in the
4 black community?

5 A. Absolutely.

6 Q. How does that impact electing black candidates?

7 A. It means you actively should have a higher percentage of a
8 population until you can engage that -- the black population.
9 I think it's -- also a matter of education and poverty, so if
10 you -- but because we compact it, then it reflects that -- it
11 reflects that exact paradigm where there's a lower turnout and
12 the white community is more diverse, in general, and so you
13 can have pockets of white similar social economic class that
14 vote the same way at the same low rates but they're not likely
15 to be concentrated in one big city with poverty and lack of
16 educational opportunities.

17 It's basically a phenomena called the trailer park
18 versus projects. They're the same social economic thing and
19 they respond the same way except when you're in a concentrated
20 area it's going to be more -- the African American population
21 is going to have a greater percentage and the trailer parks
22 are scattered throughout the state.

23 MR. FLEMING: If I can have a moment, Your Honor?

24 BY MR. FLEMING:

25 Q. Are you familiar with the Senate District 10 primary

1 election on the Democratic side of 2022?

2 A. I am.

3 Q. Were you ever involved in that race?

4 A. I was. My wife was a candidate. Is that the Paul Wojno;
5 is that the district?

6 Q. That is the district, yes. Could you tell me a little bit
7 about that?

8 A. Certainly. My wife was going to run. She felt it was her
9 time. She was a member of the Detroit school board. We were
10 the first husband and wife team to serve both on the school
11 board at the same time.

12 Anyway, she was -- I didn't even mention that whole
13 history on that political in that 50 years, but anyway, she
14 was going to run, and because I worked as chief of staff for
15 State Senator Betty Jean Alexander, there was pressure put on
16 us to get her to withdraw from the race.

17 Q. Why do you think that was?

18 A. Because it was essentially an incumbency protection plan
19 and we were running because we were a great -- running because
20 we were in fear that there were not going to be any black
21 state senators from Wayne County. Fortunately two did
22 prevail.

23 Q. Who was the incumbent in that district?

24 A. The -- the lines were drawn before -- Adam Hollier had
25 been our state senator, but the lines were drawn and so --

1 redrawn and so he would not have been.

2 Q. So you mean under the new district maps?

3 A. Under the new district being redrawn they went well into
4 Macomb County.

5 Q. You mentioned it, but just to clarify, you were -- you
6 were your wife's campaign manager?

7 A. I was a campaign manager. She was a 30-year public school
8 teacher. She retired and was a school board member at the
9 time.

10 Q. Did she complete the race?

11 A. No. She was -- we -- the pressure was enough to get us to
12 withdraw.

13 Q. In addition to the pressure, why -- why did you feel the
14 pressure was that you had to dropout, other than people
15 telling you not to do so?

16 A. Well, actually, remember, I worked for the Senate so the
17 Senate --

18 Q. Did you -- did you think she could win?

19 A. Absolutely. I thought that she could win. Even if she
20 couldn't win, we needed to see exactly where -- where the
21 votes were for the African American population. Absolutely
22 she would have been the black candidate of choice.

23 Q. But given that, did you think that the BVAP was high
24 enough for her to prevail in the primary?

25 A. I wasn't sure based -- let me say this, even though the

1 BVAP was low, we were hoping enough would vote on the other
2 side. And so if enough people voted on the other side of the
3 aisle, the other -- the other party, then we could prevail.
4 That was our only hope.

5 If it was open, then, no, the BVAP would have been
6 too low, but because our -- the African Americans are more
7 loyal -- strictly loyal to the Democratic party to a point of
8 90 percent. And the white population -- and there actually
9 was at least 60/40 for the Republicans, we thought we had a
10 shot.

11 Q. And what was the race of the incumbent for the primary?

12 A. White and Polish.

13 Q. Did he run unopposed in the primary?

14 A. He ran unopposed.

15 MR. FLEMING: Thank you. I have nothing further at
16 this time.

17 JUDGE MALONEY: Ms. McKnight.

18 MS. McKNIGHT: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MS. McKNIGHT:

21 Q. Good afternoon, Representative Lamar.

22 A. Good afternoon.

23 Q. Thank you for your service and for your time today. Could
24 I start by asking you has the population of Detroit dropped
25 meaningfully in recent years?

1 A. Absolutely.

2 Q. Okay. And if there is a requirement when drawing
3 districts to equalize population around the districts, how
4 would that impact Detroit representation?

5 A. Could you rephrase the question?

6 Q. Sure. If there's a requirement to balance population
7 equally across districts and Detroit population has dropped in
8 recent years, how would that impact Detroit representation?

9 A. Well, obviously if it was strictly Detroit it would be
10 reduced.

11 Q. Okay. A question about the 2012 plan. You agree that the
12 2012 plan compacted African American districts to a greater
13 degree than need be, right?

14 A. I do.

15 Q. Okay. And by that do you mean that the 2012 districts in
16 the Detroit area concentrated or packed black voters in a
17 higher degree than necessary?

18 A. Probably so.

19 Q. Now, for the 2022 plan, to fast forward a decade, you
20 believe that the Commission chose partisanship over black
21 electoral opportunity, isn't that right?

22 A. That is correct.

23 Q. And you believe that the majority of the Commission was
24 motivated by partisanship; is that right?

25 A. I do.

1 Q. Okay.

2 A. Of my party, too, by the way.

3 Q. Is it your belief that black voters need a minimum of
4 48 percent BVAP to have a performing district?

5 A. I would say 50 percent.

6 Q. Okay. Would it be safe to say that most Detroit area
7 incumbents do not like the 2022 plans?

8 A. I would agree with that.

9 Q. Would you agree that over time the line of residential
10 segregation that resided at 8 Mile has moved north to 10 Mile
11 or further?

12 A. Absolutely. That's what we said, yes.

13 Q. I'd like to go to the issue of canvassing. You would
14 agree that when a voter does not answer the door, you don't
15 know why they don't open the door, right?

16 A. That's true.

17 Q. And you would agree that it is not race alone that affects
18 a door open rate in canvassing?

19 A. I would agree.

20 Q. Now, you live in House District 13, correct?

21 A. Correct.

22 Q. Okay. And you live in Senate District 12, right?

23 A. That's correct.

24 Q. Okay. Do you know that neither of those districts are at
25 issue in this case?

1 A. Senate District 10 is my district, right? Paul Wojno is
2 my senator.

3 Q. Okay. So you're in Senate District 10 not 12?

4 A. Right. 10, not 12.

5 Q. Okay.

6 A. And 10 is -- was one that you showed.

7 Q. Yes, that's correct. There may have been an error in the
8 deposition transcript, so thank you for clarifying that now.

9 Representative Lemmons, I have no further questions.
10 Appreciate your time.

11 A. Thank you.

12 JUDGE MALONEY: Counsel, redirect?

13 MR. FLEMING: One moment, please, Your Honor.

14 *REDIRECT EXAMINATION*

15 BY MR. FLEMING:

16 Q. On cross examination you testified that the Commission
17 chose partisanship over black voters. Are you aware that the
18 Commission used racial targets to draw those maps?

19 A. I was not aware.

20 Q. But you're aware now?

21 A. I am.

22 Q. And are you aware that the Commission did not turn on the
23 partisan metric when drawing the maps until after they were
24 decided?

25 A. I am aware of that now or earlier today.

1 MR. FLEMING: Thank you. I have nothing further.

2 Thank you.

3 JUDGE MALONEY: Ms. McKnight?

4 MS. McKNIGHT: Nothing further, Your Honor.

5 JUDGE KETHLEDGE: Nothing.

6 JUDGE MALONEY: Thank you, Representative Lemmons.

7 You may step down. Thank you, sir.

8 *(Witness excused at 4:38 p.m.)*

9 JUDGE MALONEY: Mr. Bursch.

10 MR. BURSCH: Plaintiffs close their case in chief.

11 There is evidence that we're going to put in through cross so
12 it's not as though our cake is baked quite yet. For example,
13 the cross of their experts is going to be important to our
14 case, but we're done calling witnesses at this point.

15 JUDGE MALONEY: Thank you. We've reached 4:35 in the
16 afternoon so we'll break for the day. We're going to start at
17 8:30 tomorrow morning so, sorry, we're going to cut your time
18 having coffee, but we'll see you at 8:30 tomorrow morning.

19 Thank you.

20 THE CLERK: All rise, please. Court is adjourned.

21 *(Whereupon, hearing concluded at 4:39 p.m.)*

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REPORTER'S CERTIFICATE

I, Genevieve A. Hamlin, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true and correct transcript of the proceedings had in the within entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

/s/ Genevieve A. Hamlin

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