

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 I

TRIAL

(Amended only to include additional plaintiffs' counsel)

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

Wednesday, November 1, 2023

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REPORTED BY:

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Federal Official Court Reporter  
110 Michigan Avenue NW.  
Grand Rapids, MI 49503

1 Kalamazoo, MI  
2 November 1, 2023  
3 8:54 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: This is file name 22-cv-272, Agee, et  
14 al versus Benson, Michigan Independent Citizen Redistricting  
15 Commission, et al. This matter is before the Court scheduled  
16 for trial before a three judge panel appointed by Chief Judge  
17 Sutton to hear this matter. I am joined by my colleagues,  
18 Circuit Judge Raymond Kethledge and my District Court  
19 colleague, Janet Neff as presiding over these proceedings.

20 The record should reflect that the -- half of the  
21 practicing bar of the Western District of Michigan is present  
22 in court and we have attorneys Bush, Green, Pattwell, Fleming,  
23 Banks for the plaintiff. Attorneys McKnight, Atiya, and  
24 Braden on behalf of the Commission as well as Assistant  
25 Attorney General Grill representing Secretary Benson.

1           With that the Court is ready to proceed and we are  
2           ready for opening statement. Mr. Bursch.

3           MR. BURSCH: Thank you, Your Honors. If we can dim  
4           the light just a little bit?

5           Good morning. John Bursch for the plaintiffs, may it  
6           please the Court. The evidence will show that the Michigan  
7           Redistricting Commission violated plaintiffs' equal protection  
8           rights by drafting House and Senate maps based predominately  
9           on racial targets, and they violated plaintiffs VRA rights by  
10          erasing numerous majority-minority districts. Following the  
11          2010 census, the Michigan legislature provided two Senate  
12          districts with BVAPs in excess of 50 percent and three with  
13          45 percent and they provided eleven districts that all had  
14          BVAPs above 50 percent.

15          When they started drafting their new maps from  
16          scratch they began with four Senate districts that likewise  
17          had BVAPs in similar ranges. You'll see here from 47 percent  
18          all the way to 76 percent and in that draft map from  
19          44 percent all the way to 59 percent and the same was true  
20          with the Commission's draft House maps. In one draft map they  
21          had 10 districts ranging from nearly 44 percent all the way up  
22          to 79 percent, and they had 11 maps ranging from nearly  
23          44 percent all the way to -- I guess it would be 67 percent.  
24          Yet when the Commission began adjusting district lines it  
25          tried to keep as close as possible to a 35 to 40 percent BVAP

1 in Wayne County and a 40 to 45 BVAP target in Oakland County.

2 Why would they do that? It's because their expert  
3 told them to. The targets were based on analysis performed by  
4 Doctor Lisa Handley, and the problem was that her analysis  
5 consisted of four general election races, which are generally  
6 unhelpful to determine whether black voters can elect their  
7 candidates of choice because in the Detroit area black and  
8 white Democrats tend to vote for the same candidates in  
9 general elections.

10 She only analyzed one other race and that was a  
11 statewide primary that had no black candidates. In fact, the  
12 black preferred candidate, Shri Thanedar, was rejected by  
13 white voters, so just to underline what I said there, in order  
14 to set these 35 to 45 percent racial targets Doctor Handley  
15 analyzed not a single primary anywhere with a black candidate,  
16 and no local primaries at all.

17 Now, you can see the results of these racial quotas  
18 in this chart which shows BVAPs, and this red line right here  
19 represents a 35 percent BVAP. This red line right here  
20 represents a 45 percent BVAP, and you can see these are the  
21 districts that you'll be examining during trial. Every single  
22 one of them except for one adheres to these targets that  
23 Doctor Handley set based on the analysis of elections that  
24 show almost nothing probative about the ability of black  
25 voters to elect the candidates of their choice.

1           What's more, these BVAP values are shockingly low  
2           given the density of Detroit area black voters and the  
3           substantial historical evidence that black candidates of  
4           choice cannot prevail in such district primaries. Black  
5           voters told the Commission exactly that in numerous public  
6           meetings but a majority of the Commissioners lacked the  
7           courage to go against their purported experts.

8           Now, to obtain these targets the Commission had to  
9           tie itself in knots ignoring black communities of interest and  
10          any semblance of compact districts drawing in favor of long,  
11          skinny, bacon-mandered districts that represented intense  
12          racial gerrymandering rather than district lines that honor  
13          political boundaries and communities of interest, so if we  
14          zoom in on that you're going to see some of these districts,  
15          and we're going to be talking about those at great length.

16          Take House District 8 here. You can see how it  
17          reaches all the way down here to the southern part of Detroit  
18          and then follows these crazy lines all the way up into the  
19          white suburbs and this is true of every single one of the  
20          districts in this area. Here's 7. Here's 6. Here's 5. You  
21          move over here, 14, 13, 12, 11, 10 has this crazy shape where  
22          it starts down here and bends all the way up here, 1 and 4.  
23          So you can see these thin spoke-like districts coming out of  
24          Detroit pairing inner city Detroit black residences with  
25          wealthy white voters in the suburbs.

1           Now, we expect that the Commission's attorneys will  
2     tell you that the House and Senate maps were driven not by  
3     race but instead by the Voting Rights Act, communities of  
4     interest, and partisanship factors, but as I just noted the  
5     Commission lacked the VRA data to justify drawing maps like  
6     these and the evidence will show through testimony of the  
7     Commissioners and review of their transcripts that it was not  
8     until after the Commission had created these bacon-mandered  
9     districts that they even considered factors like communities  
10    of interest and partisanship. In other words, the cake was  
11    already baked based on the racial targets, and the other  
12    factors were just a complete afterthought. In fact, after  
13    they had completed the maps the Commissioners met in a secret  
14    session, keeping in mind this was supposed to be a  
15    transparent, open process, and in that secret meeting, and  
16    we've got a transcript of that for you, they agreed that they  
17    would use communities of interest as a litigation strategy to  
18    defend the racial line drawing, which is what you saw in the  
19    Commission's briefings. So, as finalized, the Linden plan  
20    reduced the number of Senate districts with BVAPs above  
21    45 percent from five to zero. The Hickory plan reduced the  
22    number of black majority House Districts from 11 to six.

23           The result was predictable. This is from M-Live but  
24    this was reported in other newspapers as well. Come  
25    January 2023 the capital will lose two of five black senators

1 and two of 15 black representatives. Detroit will not be  
2 represented by a black Congressperson for the first time in  
3 nearly 70 years. This is a result of racial targets and VAR  
4 violations, and you can see the problem in just a couple of  
5 districts that I'll highlight really quickly here.

6 The whole purpose for scrunching down these BVAP  
7 targets was Doctor Handley's supposition that there would be  
8 white crossover voting, but as you can see here, the evidence  
9 will show that white crossover voting is elusive at best. So,  
10 this is the 2022 election. These are under the new map lines.  
11 The white candidate, McMorrow, beat the black candidate  
12 Bullock, 68 percent to 31.6 percent. That's an  
13 extraordinarily lopsided margin especially in a 40.25 BVAP  
14 district which is supposed to be a district that elects a  
15 black candidate under the Commission's analysis, so how did  
16 this break down? Black voters overwhelming supported the  
17 black candidate, Bullock, nearly 76 percent to 24 percent, but  
18 what happened to that white crossover voting that we were  
19 promised? They broke 96 to four for McMorrow. You have  
20 racial cohesion. You also have racial polarization.

21 You see the same thing on the House side. This is  
22 House District 8. This has a 44 percent BVAP. Again, this  
23 should be a safe district for black voters to be able to elect  
24 a candidate of their choice. This race was a little bit  
25 bigger. Five candidates, two black, three white. You can see



1 the black voters coalescing around the black candidates, but  
2 what happened on the white voting side? By a margin of  
3 87 percent to 13 percent they rallied around the white  
4 candidates no matter how you picked them, and as a result that  
5 meant that a white candidate had an overwhelming 16 point  
6 victory in this 44.7 percent BVAP district.

7 Now, you'll hear from former state senator Virgil  
8 Smith and former state representative Lamar Lemmons that these  
9 racially bacon-mandered districts make it incredibly difficult  
10 for black candidates and black voters. They are lifelong  
11 Detroiters and firsthand witnesses to the intense racial  
12 polarization among voters in Detroit. For example, the white  
13 voters in the wealthy suburbs of Detroit tend to ignore black  
14 door knockers when they are trying to campaign there.  
15 Conversely, white candidates do not generally campaign in the  
16 inner city because they don't need black voters to support  
17 them to win a district with only 40 percent BVAP. These  
18 realities cause some black candidates to not even bother  
19 trying.

20 Senator Smith and Representative Lemmons will also  
21 explain that when black voters are unable to elect their  
22 candidates of choice, the candidates who do represent their  
23 districts tend to ignore the issues that are most pressing to  
24 the black community. Now, the evidence will show that  
25 Handley's racial bloc voting analysis did not require the

1 Commission to use 35 to 40 percent BVAP targets in Wayne or 40  
2 to 45 percent BVAP targets in Oakland. These were set using a  
3 faulty analysis based on essentially irrelevant data and so  
4 the Commission's use of racial targets violated plaintiffs'  
5 equal protection rights.

6 Now, briefly and independently about the Voting  
7 Rights Act, the evidence will show that the Commission  
8 violated that, too. On this point you'll hear from our VAR  
9 expert, Sean Trende, and he'll explain that it's possible to  
10 draw 10 reasonably compact House Districts with a BVAP of  
11 50 percent or greater and five Senate seats with a BVAP  
12 50 percent or greater and that the Commission effectively  
13 reduced the number of districts where black voters can  
14 effectively elect the candidates of their choice, and while  
15 the transcripts of the Commission's proceedings are going to  
16 be the smoking gun in this proceeding that shows racial  
17 targets were used throughout, he'll also confirm through  
18 qualitative and quantitative analysis that communities of  
19 interest and partisanship and other factors cannot be used to  
20 explain the maps that the Commission drew. The only  
21 explanation is they drew them using racial targets.

22 So in sum, the Commission's actions have devastated  
23 the voting rights of the Detroit black community. Their  
24 representation in the House and Senate has diminished and will  
25 almost certainly diminish further in the future, and as a

1 result, the historic hardships they suffered in Detroit will  
2 persist exacerbating lower turnout and eventually this  
3 downward spiral where lower turnout creating a downward  
4 spiral, which fewer drives the turnout even lower.

5 It's pretty much summed up here in Representative  
6 Lemmons' affidavit who you'll be hearing from tomorrow. He  
7 says, at present, we, the black community, stand  
8 disenfranchised as already evidenced by the 2022 democratic  
9 primary elections and the lack of the current legislature  
10 prioritizing any of the primary policy issues of the black  
11 community.

12 JUDGE MALONEY: Thank you, Mr. Bursch.

13 Ms. McKnight, you wish to make an opening statement  
14 at this time?

15 MS. McKNIGHT: Yes, Your Honor.

16 JUDGE MALONEY: You may proceed.

17 MS. McKNIGHT: Good morning, Your Honors. May it  
18 please the Court, we are here today because five years ago  
19 Michigan citizens demanded that a Commission be created with  
20 exclusive authority to create electoral maps for the state of  
21 Michigan. A driving point in the creation of the Commission  
22 was to take the map drawing process out of the hands of  
23 politicians and place it in the hands of everyday citizens of  
24 Michigan.

25 Of the 13 commissioners, four are affiliated with the

1 Democratic party, four affiliated with the Republican party,  
2 and five do not affiliate with either major political party.  
3 It turns out that redistricting is difficult no matter who  
4 does it. And the Commission's inaugural map drawing process  
5 was further hampered by a six-month delay of decennial census  
6 data.

7 This Commission faced that challenge with  
8 transparency and a devotion to the process. It held nearly  
9 140 public meetings as of the time it adopted the  
10 redistricting plans and received nearly 30,000 public  
11 comments.

12 Contrary to what plaintiffs' counsel just told this  
13 Court, the Commissioners did not lack courage. The amendment  
14 that created the Commission directs the Commission to draw  
15 districts according to seven redistricting criteria in  
16 descending order of priority. In order to comply with the  
17 Voting Rights Act in federal law, which is ranked second in  
18 order of criteria, the Commission hired two experts. First,  
19 an internationally recognized expert is Doctor Lisa Handley.  
20 She conducted the polarized voting analysis and, second, a  
21 nationally recognized voting rights attorney, Bruce Adelson,  
22 who formerly worked with the voting right section and has also  
23 advised other redistricting authorities.

24 Mr. Adelson and Doctor Handley together spoke at 36  
25 Commission meetings between April and December 2021. You'll

1 hear from both of these experts during this trial.

2 In their Voting Rights Act claims plaintiffs argue  
3 that the challenged districts must be configured as  
4 majority-minority in order to satisfy the Voting Rights Act.  
5 In their equal protection claims, plaintiffs argue that the  
6 Commission's choice to confine these districts within ranges  
7 supported by Doctor Handley's analysis amounts to racially  
8 predominant redistricting.

9 You'll hear from commissioners and other experts  
10 hired for this litigation to analyze these maps and they'll  
11 share with you that plaintiffs are wrong on both counts.  
12 They'll show that the challenged districts do not need to be  
13 configured as majority-minority to provide minority voters an  
14 opportunity to elect. They'll show that plaintiffs, as shown  
15 in the recent slideshow, rely only on elections that are not  
16 probative, elections that have too many candidates to identify  
17 one candidate of choice or that have unusually -- historically  
18 unusual candidates, and they'll show that the probative  
19 elections properly analyzed show that the maps comply with the  
20 Voting Rights Act in federal law.

21 They'll share with you that the Commission could not  
22 achieve its partisan fairness goals if they confined Detroit  
23 based districts within the city boundaries of Detroit. And  
24 they'll share with you that the Commission considered a host  
25 of issues when drawing the Detroit based districts, including

1 partisan fairness and communities of interest.

2 Your Honors, it is no surprise that in a deliberative  
3 body like the Commission and in a state like Michigan there  
4 were commissioners and citizens who did not like the maps, but  
5 you'll find that all commissioners will tell this Court that  
6 the Commission worked long and hard to draw plans that  
7 complied with the constitutional criteria. Litigation like  
8 this is part of the redistricting process. Whether the  
9 Commission accomplished its goals -- its goal to comply with  
10 the constitutional criteria is for this Court to decide, and  
11 we look forward to showing you that it did. Thank you.

12 JUDGE MALONEY: Thank you, counsel. Mr. Grill, on  
13 behalf of the secretary?

14 MR. GRILL: We do not have an opening statement, Your  
15 Honor.

16 JUDGE MALONEY: Thank you. The plaintiff may call  
17 its first witness.

18 MR. PATTWELL: Good morning, Your Honor. Mike  
19 Pattwell on behalf of the plaintiffs. I call Rebecca Szetela.

20 JUDGE MALONEY: Please step forward and be sworn.

21 *REBECCA SZETELA,*

22 *having been sworn by the Clerk at 9:12 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: Rebecca Szetela, last name  
2 S-z-e-t-e-l-a.

3 JUDGE MALONEY: Counsel, you may proceed.

4 MR. PATTWELL: Thank you, Your Honor.

5 *DIRECT EXAMINATION*

6 BY MR. PATTWELL:

7 Q. Good morning, Commissioner Szetela. I thought a good way  
8 to start out this morning was for you to tell the Court a  
9 little bit about yourself.

10 A. My name is Rebecca Szetela. I grew up in Dearborn which  
11 is one of the suburbs bordering Detroit. I lived in Wayne  
12 County my entire life, which is 50 years. I'm also a  
13 practicing attorney.

14 JUDGE NEFF: You might want to slow down just a  
15 little bit for our court reporter.

16 THE WITNESS: I'm also a practicing attorney and my  
17 areas of focus are intellectual property law, data privacy.

18 BY MR. PATTWELL:

19 Q. Thank you. And what inspired you to serve on the Michigan  
20 Redistricting Commission?

21 A. Well, I was a supporter of the ballot proposal back in  
22 2018. I thought it was a great idea to take redistricting out  
23 of the hands of the politicians, and I thought my background  
24 as an attorney and also my experience with business and having  
25 an MBA would be very helpful to redrawing these maps.

1 Q. And am I correct to understand that -- we heard Ms.  
2 McKnight talk about the different types of commissioners. You  
3 served as an independent commissioner?

4 A. Yes, I do.

5 Q. And what roles did you serve on the Commission during your  
6 tenure?

7 A. So, I was selected to be the vice-chair in March of 2021.  
8 That continued through September of 2021 and then I was  
9 elected to be the chair of the Commission from September of  
10 2021 through March of 2022.

11 Q. And could you give us a sense of the time commitment that  
12 was involved for your service?

13 A. So, it varied. When we were first starting up as a  
14 Commission back in 2020 it was part-time. As we moved into  
15 public hearings starting in about May of 2021 it moved to a  
16 full-time job. As the chair in particular it was even more of  
17 a full-time job. I was a full-time job plus, because after we  
18 would finish our workday I would be doing press interviews,  
19 also working on my own maps as well as trying to create draft  
20 districts for collaborative maps, so it was a pretty heavy  
21 time commitment.

22 Q. So of all those meetings, how was your attendance?

23 A. I attended 97 percent of all of our meetings.

24 Q. When did the Commission commence its first meetings?

25 A. So the first Commission meetings were in September of



1 2020. I was actually not picked to be on the Commission until  
2 November of 2020, and so that was when I first joined.

3 Q. And was the Commission a new -- entirely new governmental  
4 body at that time?

5 A. Yes, it was.

6 Q. Okay. And can you describe how -- or who organized the  
7 Commission's initial meetings?

8 A. The initial meetings were organized by the Department of  
9 State for the state of Michigan.

10 Q. And how were those meetings conducted?

11 A. Initially they were via Zoom. Some were also in person,  
12 so we did Zoom, in person, and everything was broadcast and  
13 open to the public.

14 Q. And were the meetings all transcribed?

15 A. If we had more than a quorum the meeting was transcribed.

16 Q. Did the Commissioners meet in less than a quorum to  
17 conduct official business?

18 A. Yes. We were instructed that it was appropriate and a  
19 right for us to speak individually as long as we were not  
20 meeting in groups that were more than a quorum, so there were  
21 many, many telephone calls, text messages, e-mails, sidebar  
22 conversations that occurred outside of open meetings.

23 Q. And were those sidebar meetings made part of the public  
24 record?

25 A. After we finished the maps some of the e-mails were

1 released. That was actually on my motion, but in general, no,  
2 the public would have no way of knowing those meetings  
3 occurred.

4 Q. Okay. Do you recall receiving an orientation packet of  
5 materials when you first joined the Commission?

6 A. We did, yes. We received a commissioner orientation  
7 packet.

8 MR. PATTWELL: And if we could pull up Plaintiffs'  
9 Exhibit 34, and a good place to start would be page 241. Give  
10 a man a laser pointer and he'll use it.

11 BY MR. PATTWELL:

12 Q. Okay. Can you tell us who prepared these orientation  
13 materials?

14 A. So, they were prepared by the Michigan Department of  
15 State, Michigan State University's Institute for Social Policy  
16 and Public Research, the University of Michigan Ford School of  
17 Public Policy, Center for Local, State, and Urban Policy, and  
18 then the Princeton Gerrymandering Project.

19 Q. Great. Did these materials make any staffing  
20 recommendations?

21 A. They did. They recommended that we hire a voting rights  
22 expert and a racially polarized voting expert, among other  
23 recommendations.

24 Q. And did the Commission follow those staffing  
25 recommendations?

1 A. We did, yes.

2 Q. And who did the Commission hire?

3 A. So, we hired doctor -- I'm sorry, Doctor Lisa Handley as  
4 the racially polarized voting analysis, and we hired Bruce  
5 Adelson as our voting rights expert.

6 Q. And did the Commission have a general counsel?

7 A. We did. We hired Julianne Pastula, P-A-S-T-U-L-A.

8 MR. PATTWELL: If we can scroll down to page 251?

9 BY MR. PATTWELL:

10 Q. Do you recall the orientation materials laying out a  
11 timeline for the Commission to conduct its business?

12 A. I do, yes.

13 Q. Is that here on the screen?

14 A. Yes, it is.

15 Q. Did that involve hiring staff?

16 A. It did, yes.

17 Q. And then public hearings?

18 A. Yes.

19 Q. And then starting to prepare draft maps?

20 A. Yes.

21 Q. And then releasing those draft maps to the public so that  
22 you could receive public comment?

23 A. Yes.

24 Q. And then updating the maps based on those public comments?

25 A. Yes.

1 Q. And then the goal was to adopt the maps by November 1st,  
2 2021; is that right?

3 A. Yes, that was the goal.

4 Q. And was that a constitutional mandate?

5 A. It was a constitutional mandate, yes.

6 Q. But there was a delay in ultimately receiving the census  
7 data, correct?

8 A. Yes. The data was quite late.

9 Q. And what did that do to the Commission's timeline?

10 A. So, because the data was late, we didn't actually receive  
11 the data until late August which was -- we were already  
12 supposed to be mapping months before that, so we ended up  
13 pushing our final date to December 28, 2021, is when we  
14 finally approved maps.

15 Q. So to sum it all up, the Commission starts in September of  
16 2020 and ends in December of 2021?

17 A. Yes.

18 Q. That's about a 16-month process?

19 A. Yes.

20 Q. Great. Okay. So if we turn to that first quarter of  
21 2021, what was the Commission's focus as a body at that time?

22 A. Our focus was hiring staff, particularly a voting rights  
23 attorney and also a racially polarized voting analyst.

24 Q. And when did the Commission hire Doctor Lisa Handley, if  
25 you recall?

1       A.    I recall the date being March 4, 2021, is when we hired  
2       her.

3       Q.    And what entity is Doctor Handley affiliated with?

4       A.    She's affiliated with EDS, which was our line drawing and  
5       mapping consultants.

6       Q.    So was Doctor Handley engaged as part of the EDS contract?

7       A.    She was. We had originally released an RFP looking for a  
8       line drawer and mapper, and even though that particular role  
9       of a racially polarized analysts was not included in that, EDS  
10       did include it so we ended up amending the RFP and hiring Lisa  
11       Handley to be that racially polarized analyst.

12       Q.    And who else is affiliated with EDS?

13       A.    Kimball Brace is affiliated, John Morgan, and Kent  
14       Stigall.

15       Q.    Can you tell us why the Commission at this time hired a  
16       racial bloc voting analyst?

17       A.    So the population in Detroit is highly concentrated with  
18       black voters. I believe it's 70 to 80 percent black, and we  
19       anticipated that at a minimum the Voting Rights Act might be  
20       implicated, and we needed to actually research that and look  
21       into it before we drew maps.

22       Q.    And what was your understanding as to how Doctor Handley  
23       would help the Commissioners work with the Voting Rights Act?

24       A.    So, my understanding was that she was going to analyze  
25       past election data with the purpose of determining if voting

1 was racially polarized, which was one of our requirements that  
2 we had to examine under the *Thornburg versus Gingles* test.

3 Q. So if Michigan had secret ballots that don't show race,  
4 how does one -- what was your understanding of how one  
5 determines whether an election is racially polarized?

6 A. So it's a bit of guesswork on Doctor Handley's part, but  
7 what she was looking to do is taking state-wide election data,  
8 breaking that down by precinct, and then looking at the voting  
9 results and also the racial demographics per precinct, and  
10 based on that determine how black voters in particular were  
11 voting and also how white voters in particular were voting so  
12 she could determine if black voters were cohesive and voting  
13 for the same candidate and if white voters were blocking the  
14 election of black preferred candidates.

15 Q. Was she determining or estimating?

16 A. She's estimating, definitely, because the ballots -- we  
17 don't really know how someone votes so it's a bit of  
18 guesswork.

19 Q. And so the Commission wanted to use this information to  
20 ensure that its maps were VRA compliant, am I understanding  
21 you?

22 A. Yes.

23 Q. And that means in the parlance neither cracking nor  
24 packing --

25 A. Exactly.

1 Q. -- Detroit?

2 A. Exactly.

3 Q. Do you recall whether the Commission interviewed Doctor  
4 Handley before hiring her?

5 A. We did, yes.

6 Q. And during her interview do you recall Doctor Handley  
7 suggesting what might be an acceptable black voting age  
8 population for Detroit area districts?

9 A. She did. She actually gave us two ranges. She said one  
10 range would be between 50 and 60 percent if there was no  
11 black -- or white crossover voting. If there was white  
12 crossover voting she estimated the range would be between 40  
13 and 50 percent black voting age population.

14 Q. So if white voters in the suburbs are not crossing over to  
15 vote for black candidates from Detroit, Doctor Handley was  
16 saying at this time upward of 60 percent BVAP would be needed?

17 A. Yes. 50 to 60 percent.

18 Q. Do you recall when the Commission hired Mr. Bruce Adelson?

19 A. Yes. I believe it's Adelson is how he pronounced it. He  
20 was hired April 8, 2021.

21 Q. And was he also interviewed at that time?

22 A. He was, yes.

23 Q. And what was your initial impression of Mr. Adelson?

24 A. I thought he was very impressive. He seemed competent and  
25 knowledgeable. He had prior experience working at the

1 Department of Justice in the area of voting rights. He also  
2 had advised the Arizona Redistricting Commission when they had  
3 drawn their maps a decade before and so he seemed credible to  
4 me.

5 Q. And was there a vote to engage Mr. Adelson?

6 A. There was. It was unanimous.

7 Q. Looking back, is there anything that stands out to you  
8 from -- about Mr. Adelson's interview?

9 A. Well, obviously I've prepared by reading transcripts and  
10 so I did go back through and reread the transcript and it is  
11 interesting to me that he appears to be signalling even in  
12 that very first interview that he was in favor of very low  
13 black voting age populations down to 30 percent and that that  
14 was something that he had fought for in the past and he  
15 believed was effective.

16 Q. And the transcripts that you reviewed, are you referring  
17 to the April 8, 2021, transcript from his interview?

18 A. Yes. April 8, 2021.

19 Q. So if we wanted to look, that's where we would look?

20 A. Yes.

21 Q. Now, after the hiring of Mr. Adelson was there any  
22 controversy regarding the Commission's decision?

23 A. There was, yes.

24 Q. Could you describe that for the Court?

25 A. So, in those early days the receipt of public comment



1 wasn't always timely, and so we had received some significant  
2 public comment opposed to Mr. Adelson in advance of the  
3 meeting that was not forwarded to commissioners until after  
4 the meeting and then we also received an entire stream of  
5 additional public comments, and these public comments were  
6 extremely negative towards Mr. Adelson, and so once we did  
7 receive them, one of our commissioners, Commissioner Rhonda  
8 Lange, wanted to reconsider the vote to hire him.

9 MR. PATTWELL: And if we could pull up the public  
10 comments that you referenced. We have PX46 and 49. I don't  
11 know if we can split screen those or one after the other.

12 BY MR. PATTWELL:

13 Q. Are these the public comments that you just referenced,  
14 commissioner?

15 A. Those are some of them. There were many.

16 Q. And what were some of the public's concerns specifically  
17 with respect to the Commission's decision to higher  
18 Mr. Adelson?

19 A. So a lot of the comments were evolving around the fact  
20 that he was supposedly an extreme partisan and we're supposed  
21 to be independent. A lot of the comments were saying that he  
22 was, you know, an extreme Democrat, that he gives very extreme  
23 legal advice, and that he would not be an appropriate hire for  
24 the Commission.

25 Q. Was one of the comments that he had made political

1 donations to the Secretary of State?

2 A. Yes. Apparently there was a relationship between him and  
3 Jocelyn Benson, that he knew her and also had made a political  
4 contribution to her campaign.

5 Q. Okay. And you said so Commissioner Lange made a motion to  
6 reconsider the hire of Mr. Adelson?

7 A. She did, yes. She made a motion to reconsider.

8 Q. Do you recall what the basis of her motion was?

9 A. She was concerned about the partisanship and the public  
10 comment. She had also come across -- I believe it was a  
11 national review article where one of his former colleagues  
12 from the Department of Justice while Mr. Adelson was being  
13 considered to be hired by the California Redistricting  
14 Commission had written a letter saying that Mr. Adelson was --

15 MS. McKNIGHT: I need to object, lack of foundation.  
16 I understand that Commissioner Lange is here to testify.

17 MR. PATTWELL: I do have a response, and thank you,  
18 counsel. The defendants have already stipulated to the entire  
19 record and I can just go ahead and pull the transcript right  
20 now where this is discussed, and the witness has already said  
21 she reviewed the transcript, so that's my response. There's a  
22 foundation.

23 MS. McKNIGHT: Your Honor, the witness was testifying  
24 beyond what she read in the transcript about what she thought  
25 this article said. We're now multiple steps beyond what the

1 transcript said. We're to what Commissioner Lange said and  
2 what article Commissioner Lange read. Again, Commissioner  
3 Lange is here and we understand plaintiffs intend to call her.  
4 We have --

5 JUDGE MALONEY: Why can't we cover this with  
6 Commissioner Lange?

7 MR. PATTWELL: We certainly could or I could pull the  
8 transcript up right now and ask the witness.

9 JUDGE MALONEY: In light of the objection, counsel,  
10 if you wish to proceed in that manner, that's what we'll do,  
11 if that's what you want to do.

12 MR. PATTWELL: Thank you, Your Honor. So if we can  
13 pull up Plaintiffs' Exhibit 48 and if we can go to pages nine  
14 and 10?

15 BY MR. PATTWELL:

16 Q. So if we look at the bottom here of the transcript and if  
17 we scroll down to the next page to the top of page ten, is  
18 this the portion of the transcript that you were referencing,  
19 commissioner?

20 A. Yes. And to also be clear I did actually read the article  
21 at the time as well and I have read it again since so it's not  
22 just relying on what Commissioner Lange said. I have also  
23 read it myself.

24 Q. And so what was the basis of Commissioner Lange's concern,  
25 then?

1       A.   Her concern was the statement in this article that said  
2       Adelson consistently pushed the most radical legal positions  
3       that were possible far beyond the scope of what the law  
4       required.

5       Q.   And then what happened next?

6       A.   There was some discussion among the Commission with  
7       respect to Commissioner Lange's motion.  In particular,  
8       Commissioner Clark who was a very, very strong supporter of  
9       Mr. Adelson advanced the view that, you know, we all have  
10      street smarts and if he's pushing an extreme legal position,  
11      we're going to recognize it.  Commissioner Steven Lett raised  
12      the point that, you know, there's three other attorneys  
13      associated with the Commission.  Obviously Commissioner Lett  
14      and I are both on the Commission and we're both attorneys, but  
15      then we also had Juliann Pastula, who is also an attorney, and  
16      he made the argument that, you know, we would recognize if  
17      Mr. Adelson was giving us extreme advice and catch it, and so,  
18      you know, there was just continued discussion about that  
19      point.

20      Q.   If we scroll down to pages 11 and 12, is that where we  
21      would find that discussion?

22      A.   Yes.

23      Q.   And did the motion carry?

24      A.   It did not.  It failed five to four.

25      Q.   And you voted opposed to the motion; is that right?

1 A. I did, yes.

2 Q. So you could be considered the deciding vote on that?

3 A. I could be, unfortunately.

4 Q. Do you have a regret about that?

5 A. I do have a regret. I think we should have looked at it a  
6 little closer, particularly because Bruce Adelson was the only  
7 person we interviewed for this role and there were other  
8 candidates we could have possibly gone back to, and ultimately  
9 we may have made the same decision but I just feel we didn't  
10 do our due diligence on this one.

11 Q. How many candidates were considered or interviewed by the  
12 Commission for this role?

13 A. Just Bruce Adelson.

14 Q. And was that based on a scoring sheet?

15 A. Can I clarify that question?

16 Q. Please do.

17 A. So, interviewed was just Bruce Adelson. Considered, there  
18 were multiple submissions. I believe, I would be guessing, it  
19 was more than five, but I want to say maybe seven total that  
20 were considered.

21 Q. And what went into the Commission's consideration?

22 A. So the Department of State actually had a scoring sheet  
23 that they had prepared for the Commission where they evaluated  
24 the RFP materials and they provided a score to the  
25 sub-committee for the hiring of the VRA attorney.

1 Q. And who did they recommend?

2 A. They recommended Bruce Adelson as the only qualified  
3 candidate.

4 Q. How involved in the map drawing process was Mr. Adelson?

5 A. He was extremely involved. I would say he, particularly  
6 with Detroit, actually controlled a lot of the decisions we  
7 made.

8 Q. Did he encourage commissioners to unpack Detroit?

9 A. Absolutely.

10 Q. Did he advise the Commissioners to follow a racial target?

11 A. He did, yes.

12 Q. Now, we heard counsel say that Doctor Handley and  
13 Mr. Adelson attended, I think, combined over 36 meetings. Was  
14 that Mr. Adelson that attended over 30 meetings?

15 A. Mr. Adelson attended many meetings. Lisa Handley rarely  
16 attended our meetings.

17 Q. Mr. Adelson went so far to suggest to commissioners how to  
18 shape districts, didn't he?

19 A. He did, yes.

20 Q. And did he insist on sidebar meetings with commissioners?

21 A. He did, yes.

22 Q. To talk about how to draft maps?

23 A. He did, yes.

24 Q. After hiring Mr. Adelson did the Commission look at hiring  
25 any other attorneys?

1       A.    We did.  We looked at hiring litigation counsel.

2       Q.    And would that have been around May of 2021?

3       A.    Yes.

4       Q.    Having not even drafted maps at this point?

5       A.    No.

6       Q.    And was the Commission looking for litigation counsel with  
7       any particular expertise?

8       A.    We were looking for litigation counsel with experience in  
9       the Voting Rights Act and equal protection.

10      Q.    And why is that?

11      A.    Because we anticipated that there would likely be  
12      challenges to the changes we were going to make in the Detroit  
13      area and so we wanted to have someone on deck and ready to go  
14      in case that happened.

15      Q.    So the team is set.  What does the Commission do?

16      A.    So our next step was to move on to -- we had additional  
17      hiring to do so we hired an executive director, Commission  
18      Communications Outreach.  From that point we started moving  
19      into the public hearings.

20      Q.    The listening tour, is that what it was called?

21      A.    Yes.

22      Q.    Anything particularly memorable to you about the  
23      Commissioner's listening tour?

24      A.    It was very successful.  We went to more places than we  
25      needed to go.  We traveled around the state, up to Marquette,

1 to Gaylord. We went down to Grand Rapids, over to Detroit,  
2 Flint. We basically just kind of went -- tried to hit every  
3 region in the state. Most of the comments were around  
4 communities of interest. We received lots of really good  
5 feedback from the public about what they wanted to see in the  
6 maps, what their communities of interest were. People would  
7 draw maps for us.

8 Q. What did Detroiters want to see?

9 A. Detroiters were very animate from the beginning that they  
10 were afraid that we were going to crack them up. That was  
11 specifically mentioned, don't crack us up, don't mix us with  
12 the suburbs, keep us together.

13 Q. Did the Commission deliberate on how to deal with this  
14 term, communities of interest, and how it would evaluate  
15 communities of interest?

16 A. We did. We actually had like a procedural plan that we  
17 had created.

18 Q. And, briefly, what did that entail?

19 A. So, that entailed recognizing what a community of interest  
20 was. If there was some sort are of historical, economic, or  
21 community tie that bound a group together. The group had to  
22 be within a -- kind of compact area, couldn't be spread out  
23 all over the place, and it could include racial, ethnic,  
24 religious background. Whatever the individual identified as  
25 being community of interest was something we would consider as



1 a community of interest.

2 Q. Was this reduced to a document?

3 A. It was, yes.

4 Q. Is that the communities of interest process dated  
5 April 22, 2021?

6 A. Yes.

7 Q. Okay. And so if we wanted to see how the Commission was  
8 going to evaluate communities of interest, would that be a  
9 good place to look?

10 A. Yes, it would be.

11 Q. And I think I heard you say this but I want to make it  
12 clear, one example of a community of interest is a racial  
13 group, in the Commission's mind at this time?

14 A. Yes.

15 Q. When did the Commission first begin drafting maps?

16 A. I believe it was August 20th of 2021.

17 Q. Did the Commission use the existing legislative maps as a  
18 starting point?

19 A. We did not. We received significant feedback from the  
20 public. They did not want us to do that, and we also as  
21 commissioners voted to not do that because, number one, we  
22 were working under an entirely new criteria, and, number two,  
23 the districts around Detroit in particular we recognized were  
24 highly packed and that we were going to have to do some  
25 unpacking.

1 Q. Thank you. Did the Commission create a procedure by which  
2 it would draft maps or a mapping process, if you will?

3 A. Yeah. We had a very detailed mapping process and  
4 procedure document, if you will. It was revised multiple  
5 times throughout the process of mapping and throughout the  
6 process of drawing maps.

7 Q. Would it be accurate to describe the mapping process as a  
8 funnel?

9 A. Yes. So we started with kind of our big draft maps, some  
10 of which were just regional that we moved into draft proposed  
11 maps and then we moved into proposed maps and then we moved  
12 into final maps, so it was like narrowing them down as we  
13 went.

14 Q. Can you explain the technology that the Commission used to  
15 put together these very complicated maps?

16 A. So, we -- through our line drawing vendor we had a  
17 software program called Auto Bound Edge, and it contained very  
18 detailed maps of Michigan. It had all the geographic  
19 boundaries, a lot of natural features in it as well, and it  
20 also had very specific demographic information, including  
21 racial composition. It also had political information in  
22 there as well.

23 Q. So in 2023 we're always looking at, you know, a high  
24 powered computer, Auto Bound Edge is that to the Commission?

25 A. It is. It enabled us to do our mapping.

1 Q. And if I say mapping software, that's Auto Bound Edge?

2 A. Yes.

3 Q. And when you used the technology, it has a map?

4 A. It does, yes.

5 Q. And the Commissioners can move the lines on the software?

6 A. Yes. You use the software to draw a district and you can  
7 select what level you're drawing it, if you're doing a  
8 township, if you're doing bloc, if you're doing it -- you can  
9 do whole county level, and you literally draw the lines into  
10 the map and then you can move them around.

11 Q. Okay. And there's certain data that is associated with  
12 all these proposed lines as you're moving the lines?

13 A. Yes. As you are creating a district, the matrix, we call  
14 it the active matrix, is displaying the demographic  
15 information for the district that you are drawing, so the  
16 population and then the demographic break down.

17 Q. And the municipal boundaries?

18 A. Yes.

19 Q. County lines?

20 A. All visible on the map.

21 Q. Overall population?

22 A. Yes.

23 Q. And you said racial demographics. How are those  
24 displayed?

25 A. They are displayed two ways. If you're looking at the

1 active matrix it's a spreadsheet and it has the population in  
2 the farthest left corner, and the next section is just general  
3 demographics, so white population, black probation, Native  
4 American population, and there's a second set of columns which  
5 is the voting population so you have the black voting age  
6 population, the white voting age population, the Hispanic age  
7 vote population, Asian, and then Native American.

8 Q. So just one small point. We already heard the term BVAP.  
9 It's your understanding that's black voting age population?

10 A. Yes. Black voting age population is the BVAP.

11 Q. We can take four words for the court reporter and turn it  
12 into one.

13 A. Yes, BVAP.

14 Q. Hopefully that helps. Did the Commission receive a  
15 technical demonstration how to use all this racial data that's  
16 on the screen?

17 A. We did. So Kimball Brace, who is the head of EDS, he had  
18 sort of a training session for us teaching us how to use the  
19 software and specifically how to access the racial  
20 information.

21 Q. That was on the 21st of August?

22 A. Yes.

23 Q. I'm going to talk about BVAP. In your sense as a  
24 commissioner is there any correlation between where the BVAP  
25 is set and how likely the black community in that district is

1 to elect one of its candidates?

2 A. In general, the higher the BVAP is going to be, the more  
3 likely it is that a black candidate of choice can be elected  
4 within reason.

5 MR. PATTWELL: If we can pull up this August 20,  
6 2021, transcript? It's Plaintiffs' Exhibit 53. I'd like to  
7 look at page 75 on the bottom and 76 on the top.

8 BY MR. PATTWELL:

9 Q. I'd like to direct your attention, commissioner, to  
10 Mr. Adelson's statement.

11 MR. PATTWELL: Go down to the next page, please.  
12 There we go. The part about anecdotally.

13 BY MR. PATTWELL:

14 Q. Is that generally consistent with your understanding?

15 A. Yes. If you go higher population I think that's true for  
16 any group. The higher the percentage of that population in a  
17 district the more like they are to be able to impact the vote,  
18 so 10 percent of a particular group is not going to have a big  
19 impact. 50 percent is likely to be determinative.

20 Q. Strength in numbers?

21 A. Yes.

22 Q. We can hear from all the experts in the world but it's  
23 just common sense, isn't it?

24 A. It is, yes.

25 Q. Okay. I'd like to pull up the September 2nd, 2022, racial

1 bloc voting presentation of Doctor Lisa Handley which has been  
2 marked Plaintiffs' Exhibit 15. And while that's coming up, if  
3 you can just tell the Court a sense of, you know, the  
4 presentation that you received as a commissioner?

5 A. Yeah. So this is Doctor Handley's first presentation to  
6 us about the Voting Rights Act, and she briefly had talked  
7 about the requirements under *Thornburg versus Gingles* to  
8 determine whether you needed to comply with the Voting Rights  
9 Act, and then she went into an analysis of the data that she  
10 was looking at and what her conclusions were in terms of  
11 complying with the Voting Rights Act and whether voting was  
12 racially polarized.

13 Q. And the Commission was trying to get a sense at this time  
14 whether white and black residences voted differently?

15 A. Yes.

16 Q. And to do that your expert looked at four counties?

17 A. She did, yes.

18 Q. And what four counties were those?

19 A. She looked at Saginaw, Genesee, Oakland, and Wayne  
20 Counties.

21 Q. When we're talking about the presentation, just so it's  
22 clear, I'm going to be focusing on the Wayne and Oakland  
23 Counties.

24 A. Okay.

25 Q. What type of elections did Doctor Handley look at?

1       A.    She looked at what she thought was most determinative,  
2       according to her, four general elections where there was  
3       either a minority candidate or a minority running mate and  
4       then she also looked at one primary election where there was  
5       three different candidates running, none of who were a black  
6       candidate, and they were all city-wide general elections.

7       Q.    Was that a Republican primary election she looked at?

8       A.    She did not, no.

9       Q.    It was a Democratic primary election?

10      A.    Yes.

11      Q.    And which one was that?

12      A.    That was the 2018 gubernatorial election.

13      Q.    Okay. And so what was Doctor Handley's conclusion from  
14      these elections?

15      A.    So, her conclusion was that voting was racially polarized  
16      in the counties that she looked at and because of that the  
17      Commission was going to have to comply with the Voting Rights  
18      Act.

19      Q.    And was there a recommendation as to how the Commission  
20      would comply with the Voting Rights Act?

21      A.    Yeah. She compiled a number of charts kind of showing us  
22      the thresholds that we should consider, and her ultimate  
23      recommendation was Wayne County, 35 to 40 percent was probably  
24      going to work, and that in Oakland County 40 to 45 percent  
25      black voting age population was what was going to be needed

1 for opportunities to elect.

2 Q. Don't go below that level?

3 A. No.

4 Q. Did Doctor Handley look at any elections or any  
5 information for Macomb County?

6 A. She did not.

7 Q. Knowing what you know now, do you have any concerns with  
8 Doctor Handley's presentation?

9 A. I have lots of concerns with it, and I mentioned some of  
10 them in my dissenting report and then also before we voted on  
11 the maps, but kind of generally there was a tremendous focus  
12 on general elections. And growing up in Wayne County,  
13 understanding how Wayne County and the demographics are, Wayne  
14 County is predominately Democratic. So looking at a general  
15 election isn't particularly helpful because the ability for  
16 black voters to pick their candidate of choice occurs in the  
17 primary. That is where it matters, because whoever is  
18 selected in the primary is going to take the seat for that  
19 Democratic seat, so that was one issue.

20 The other issue is the primary that she looked at, it  
21 was just one, and there was no black candidate, number one,  
22 and then the voting was not cohesive amongst black candidates,  
23 and so it wasn't very useful to us so it was effectively no  
24 data.

25 The other concern was the turnout and that black



1 voters, in particular in metro Detroit, just generally coming  
2 from that area, there's knowledge that the turnout is lower in  
3 the city of Detroit that as many people don't vote as they do  
4 in the suburbs, and I felt that wasn't adequately addressed  
5 when we were setting these percentages that Doctor Handley was  
6 recommending and, you know, I had concern about that factor as  
7 well. Like, what is the turnout, not just in the general  
8 election, but what is the turnout in a primary, which is,  
9 again, where it matters in Detroit.

10 Q. And there were other commissioners that raised concerns  
11 about Doctor Handley failing to consider low black voter  
12 turnout in this -- in setting her racial targets?

13 A. There were, yes.

14 Q. Some of them are here today, aren't they?

15 A. Yes, they are.

16 Q. I'd like to move down to pages 18 and 19 of Doctor  
17 Handley's presentation. And I'd like to focus your attention  
18 on the -- Doctor Handley's conclusions here that are based on  
19 the past legislative maps and the candidates that were able to  
20 win elections under those past maps.

21 Do you have any concerns about how Doctor Handley is  
22 conveying her conclusions?

23 A. I do. I think they're misleading, and there is a couple  
24 reasons why I think this. Number one, she's saying all  
25 districts over 48 percent black elected minority candidate.

1 So she's really just looking at someone's skin color and not  
2 whether that candidate is a black preferred candidate. A  
3 black preferred candidate doesn't necessarily have to be black  
4 nor do they have to be white. I mean, they are what the  
5 voters are voting for. So there was just a lack of data there  
6 looking into that question. It's not just about whether  
7 someone is a minority. And in case in point, Stephanie Chang,  
8 when I actually dug into that election and looked at it, she  
9 was not the black preferred candidate even though she was  
10 Asian and counted towards that minority count.

11 The other thing that struck me is we were told these  
12 districts were packed and -- Asian, and you see the  
13 54 percent, the 51 percent. She's including that in her  
14 percentages. So she's basically saying that everything above  
15 35 percent elects, she calls it, a minority candidate. She  
16 doesn't use the language black preferred candidate, but she's  
17 using those prior packed districts to bump those percentages  
18 up, and so she's basically using packed districts to tell us  
19 we should unpack, so I thought from a data perspective that  
20 was -- it's not great analysis. I questioned the analysis.

21 And then the other huge glaring issue for me is we  
22 don't have anyone between 36 percent and 44 percent, so we  
23 just simply don't have data there showing that the very ranges  
24 that she was recommending to us were actually going to be  
25 effective to allow black candidates to elect their candidates

1 of choice.

2 Q. So one thing just to make clear for the Court, Marshall  
3 Bullock is not white?

4 A. No. He's black.

5 Q. That's just a typo?

6 A. Yeah, that's a typo.

7 Q. Okay. And you had a concern that that Doctor Handley says  
8 all districts over 48 percent black elect minority candidates,  
9 but then she recommends -- so above 48 is working?

10 A. Right.

11 Q. And then she says, but go below it?

12 A. Right.

13 Q. But there's no evidence that going below it will work?

14 A. Exactly. That's exactly the point I raised in my  
15 dissenting report.

16 Q. If we can go down to the next page, page 19. I want to  
17 look at what she -- how she uses statistics to draw  
18 conclusions on the right-hand side. The bottom highlighted,  
19 that's the same issue we just discussed, same concept?

20 A. Right. That they're -- we're being recommended to build  
21 districts in these ranges, yet we have no evidence that those  
22 ranges are actually going to work.

23 Q. Well, it sounds like you can go really low. 89 percent of  
24 districts, over 25 percent elect minority candidates. Why not  
25 set them all at 25 percent?

1     A.   Well, but again, that's distorted because if you look at  
2     the black voting age population and these upper districts, you  
3     have 94 percent, 92 percent, 91 percent, and those districts  
4     are obviously successful, yet she's using them to inflate the  
5     percentage that elect and then using that to say, well, you  
6     can take the districts lower, which it just doesn't -- it's  
7     almost like a circular argument. It's like these districts  
8     are working so why would we go lower?

9     Q.   Can you explain, give me any reason how using the success  
10    of existing majority black districts to say that they're  
11    unnecessary?

12   A.   I don't -- I don't think that's supportable. I think it's  
13   almost like the opposite of what I was reading in *Cooper v*  
14   *Harris* where there you had districts at 48 percent that were  
15   performing, the Court said, no, you have no basis to increase  
16   them. Here we have districts that are performing and we did  
17   the exact opposite. It was, like, what was our basis in  
18   reducing them in a way that was unnatural? I just don't see  
19   it based on the data. I don't think we had the data to make  
20   those conclusions, especially to drive them so low, below that  
21   37th percentile or even below 40th percentile.

22   Q.   Doctor Handley met in person to give the Commission this  
23   presentation?

24   A.   She did, yes.

25   Q.   Okay.

1 MR. PATTWELL: If we can pull up that September 2nd  
2 transcript? It's PX55, and the first page I'd like to start  
3 with is page 24.

4 BY MR. PATTWELL:

5 Q. And I'd like to direct your attention, Commissioner, to  
6 the portion of the transcript where Doctor Handley explains  
7 her conclusion. It starts, racially polarized. Do you see  
8 that?

9 A. Yes.

10 Q. What's your understanding of what it means for an election  
11 to be racially polarized?

12 A. So, an election that is racially polarized is one where  
13 the black candidate and the white preferred candidate are not  
14 the same and the white voters are actually voting in a bloc to  
15 prevent the black candidates from being elected.

16 Q. If we can go down to page 25. Because of her finding of  
17 racial polarization in Wayne and Oakland Counties, what did  
18 Doctor Handley say the Commission must do?

19 A. So she said we have to draw districts that are going to  
20 allow black voters to elect their candidates of choice, and  
21 she specifically said that we need to do this  
22 district-by-district functional analysis to determine what an  
23 effective minority district was.

24 Q. I'm going to get to that. Did Doctor Handley at any point  
25 provide the Commission with a *Gingles* one analysis?

1 A. She did not.

2 Q. In fact, she's telling the Commission, don't draw any  
3 black districts?

4 A. Right. She said we didn't need to draw a single  
5 majority-minority black district.

6 Q. In the history of redistricting in Michigan, has that ever  
7 been done?

8 A. Not to my knowledge, but I'm not an expert on the history  
9 of redrawing in Michigan, but to my knowledge, no.

10 Q. What is a district-by-district functional analysis?

11 A. So, a district-by-district functional analysis, as I  
12 understand it, is that we were going to take data that Doctor  
13 Handley had disaggregated and broken down to the census bloc  
14 level of election data and create our districts, and then you  
15 test them using that election data that she had assembled.

16 Q. So this is on the mapping software?

17 A. It is, yes.

18 Q. You're drafting maps. You've got a proposed district and  
19 then you run the district-by-district functional analysis?

20 A. Yes.

21 Q. What data goes into that analysis?

22 A. It is the election results for what she called the  
23 bellwether elections, which were the four general elections  
24 and one primary.

25 Q. Every time you draw a district you run a

1 district-by-district functional analysis?

2 A. Yes.

3 Q. And it goes back to the four bellwethers and the one  
4 primary that doesn't have a black candidate?

5 A. Yes.

6 Q. And this is to see whether or not the district will  
7 perform for black voters?

8 A. Yes. That's the theory.

9 Q. Supposed to estimate which candidates are going to prevail  
10 in that election?

11 A. Right. Based on Lisa Handley's data it will provide an  
12 estimate, based on the particular way we drew that district,  
13 what the projected election results for a particular election  
14 would have been if the district had been drawn that way.

15 Q. Can you tell us what those four bellwether elections were?

16 A. The first was the 2012 Presidential election with Barack  
17 Obama. The second was the 2016 Secretary of State election  
18 with Gilchrist. The other one was 2020 Biden, Kamala Harris,  
19 and then the 2018 gubernatorial general election with Whitmer  
20 and -- I'm sorry, I just drew a blank.

21 Q. Gilchrist?

22 A. Gilchrist.

23 Q. And with respect to that 2014 general election, was that  
24 Godfrey Dillard?

25 A. 2014, treasurer -- oh --

1 Q. We don't have a treasurer.

2 A. I think that was wrong. I remember that because she said  
3 2014 treasurer, but it was, I thought, Secretary of State  
4 got -- I'm drawing a blank on the name. Sorry.

5 Q. Okay. I can help you out.

6 So, those are the four general elections?

7 A. Yes.

8 Q. And between the time frame 2012 and 2020?

9 A. Yes.

10 Q. And what was the primary that Doctor Handley built in?

11 A. It was 2018 gubernatorial with Gretchen Whitmer, El-Sayad  
12 and Shri Thanedar.

13 Q. Is that a separate tab from the bellwether?

14 A. No. It was on the same tab but it was farther away, yeah.

15 MR. PATTWELL: Are we on page 27?

16 MS. WELLMAN: 25.

17 MR. PATTWELL: Can we go down to page 27, please?

18 Can everyone see this? Okay. Can we zoom -- yeah, thank you.

19 BY MR. PATTWELL:

20 Q. So is Doctor Handley suggesting a BVAP target for Wayne  
21 County here of 35 percent?

22 A. She is, yes.

23 Q. And then 40 percent for Oakland County?

24 A. Yes.

25 Q. And just to be clear, the basis for that is the four



1 bellwether general elections?

2 A. Yes.

3 Q. And the one primary?

4 A. Yes.

5 Q. And that was a Democratic primary?

6 A. It was, yes.

7 Q. No black candidate?

8 A. No black candidate.

9 Q. Who was the -- who did Doctor Handley suppose was the  
10 black preferred candidate in the 2018 gubernatorial primary?

11 A. Shri Thanedar.

12 Q. He didn't win the primary, did he?

13 A. He did not, no.

14 Q. So who built the district-by-district functional analysis  
15 for the Commission to look at?

16 A. Kimball Brace did.

17 Q. That's Doctor Handley's colleague. Can you describe the  
18 functionality that Mr. Brace built into the mapping software  
19 with respect to this racial data?

20 A. Yeah. We basically had a button that we could click on,  
21 and for the district that we had assembled we could look at  
22 what the projected election results were for that particular  
23 district.

24 Q. If we can go down to page 31 of the transcript, if we can  
25 zoom in on Doctor Handley's statement, how does she describe

1       how to use this racial data?

2       A.    She describes it as an automatic visual that's telling us  
3       if the district we're creating is going to be effective or  
4       not.

5       Q.    So to give us a sense of it, the commissioners are working  
6       together, they're drafting maps, they've got a district, hit  
7       the button?

8       A.    Yep. Hit the button, look at the election results, decide  
9       whether it's turning out the way we think it should, if it's a  
10      black opportunity district, and then if it is, move on to  
11      another district.

12      Q.    And did the Commission use this feature while drafting  
13      maps?

14      A.    Yes. Every district we did in metro Detroit we used this  
15      feature.

16      Q.    Can you recall a time where this feature indicated that  
17      the black preferred candidate did not prevail?

18      A.    Not that I recall.

19      Q.    Now, this is a slightly different question so we're  
20      talking about the four bellwether elections. In the 2012  
21      election was Obama, Biden was Doctor Handley's black-preferred  
22      candidates?

23      A.    Yes.

24      Q.    And in 2014 the Democratic candidate Dillard for Secretary  
25      of State was the black-preferred candidates?

1 A. Yes.

2 Q. And candidate Dillard is actually black.

3 A. Okay.

4 Q. In 2018 it would have been Whitmer, Gilchrist?

5 A. Yes.

6 Q. Black-preferred candidates?

7 A. Yes.

8 Q. And then Biden/Harris are the black-preferred candidates  
9 in 2020?

10 A. Yes.

11 Q. So what this software is doing is it's predicting, for  
12 example, whether President Obama would have beat Mitt Romney  
13 in a Detroit district?

14 A. Right.

15 Q. It's telling us whether or not -- who would win in the  
16 Detroit district, Donald Trump, President Trump or President  
17 Biden; is that right?

18 A. Yes.

19 Q. Same thing for Governor Whitmer versus Attorney General  
20 Schuette?

21 A. Yes.

22 Q. So really it's predicting whether or not a Democrat or  
23 Republican is going to win a Wayne County district?

24 A. Yeah. I mean, growing up in Wayne County my entire life  
25 it's predominately Democratic. There are a lot of loyal

1 Democrats. The Democratic candidate is virtually always going  
2 to win.

3 Q. What was the point of the exercise?

4 A. In hindsight, I'm not really sure. I don't think it was  
5 very useful information because it was, in my opinion, really  
6 measuring Democratic loyalty and not measuring how black  
7 voters are going to vote and whether white voters are voting  
8 over and supporting their candidates.

9 Q. Do you recall at this meeting commissioners having  
10 questions as to how high would be an acceptable BVAP without  
11 packing?

12 A. Yes. That was a topic that was of great interest to us.  
13 We asked over and over and over again, like, what was the cap,  
14 what was the cap, and never received an adequate answer on  
15 that at all.

16 Q. Did -- do you recall Mr. Adelson giving any advice on that  
17 subject?

18 A. In terms of -- his advice -- his advice was not go above  
19 what Doctor Handley advised. He wanted us to stay in those  
20 ranges that she had offered, which was 35 to 40 percent BVAP  
21 for Wayne County and 40 to 45 percent BVAP for Oakland County,  
22 and that anything above that was packing, in his opinion.

23 Q. Were the commissioners having a really hard time  
24 understanding that advice?

25 A. We were, yes. We struggled with it.

1 Q. Okay. Let's get into the actual mapping. You mentioned  
2 regional trenches. Can you explain that?

3 A. Yeah. So to make the mapping a little bit easier, more  
4 efficient we broke the state of Michigan up into 10 regions  
5 and we actually started drawing in the Upper Peninsula and  
6 worked our way down, staying out of Detroit until we had  
7 gotten the analysis from Lisa Handley.

8 Q. You also talked about the difference between an individual  
9 map drawing and a collaborative map drawing. Can you make  
10 that clear for the Court?

11 A. Yeah. So a collaborative map is what we did on the record  
12 with everybody working on it, where it's being recorded, where  
13 the public can see, and an individual map is something that  
14 someone worked on on their own. Those individual maps could  
15 become collaborative if someone brought it in and we adopted  
16 it as a Commission, but generally they were kept in kind of a  
17 separate mental category for commissioners.

18 Q. And we have three different types of maps that the  
19 Commission is drawing?

20 A. Yes. We have the U.S. Congressional, we have the State  
21 House and the State Senate.

22 Q. And you understand we're just talking about the State  
23 House and the State Senate here?

24 A. Yes.

25 Q. Okay. I'd like to focus your attention on the --

1 beginning the process for drafting the State Senate maps.

2 A. Okay.

3 Q. Okay. And can you recall when you first began drafting  
4 the State Senate maps?

5 A. I believe it was September 7th when we started and that  
6 continued through, I believe, about September 15th for the  
7 first round.

8 Q. Okay. And is this September 15th date, is that when you  
9 start to see a foundation for the collaborative map come  
10 together?

11 A. Yes.

12 Q. And when did some of the Detroit area districts start to  
13 take formation?

14 A. Around September 13th.

15 Q. I'd like to pull up draft map 162, dated 9-13-21, version  
16 two, Plaintiffs' Exhibit 98. And what can you tell us  
17 about -- well, we'll zoom in. What are we looking at here?

18 A. So, this is starting on our Senate map, I believe at this  
19 state our Detroit area was not quite done yet. We still had  
20 some open areas but this was sort of our first venture into  
21 the Detroit area.

22 Q. Okay. And so we've got a map. We've got counties,  
23 townships, voting precincts, and we can't see it now but  
24 what's on the bottom below --

25 A. Below the map is the active matrix.

1 Q. Which contains, what?

2 A. That's all of the demographic data, so as you can see, I  
3 was describing -- you've got the district name, the  
4 population, and then the population broken up by racial  
5 demographics, and then the voting age population broken up by  
6 racial demographics.

7 Q. So if we wanted to find what the BVAP was, we're going to  
8 go down this column?

9 A. Yes.

10 MR. PATTWELL: Can we go to the next page, please?  
11 Just drop down one page. Can we zoom in?

12 BY MR. PATTWELL:

13 Q. Well, you really can't see it because it's covered up but  
14 this is the Detroit area that we're looking at here, and if we  
15 go down to the next page -- there we go. There, we did it.

16 Okay. So this is the starting place?

17 A. Yes.

18 Q. Detroit area district?

19 A. Yes.

20 Q. 13, 8?

21 A. (Non-verbal response).

22 Q. Nine?

23 A. Yes.

24 Q. And it looks like this -- what's this, is that 7? I can't  
25 read that.

1 A. Yes, that's 7.

2 Q. That's not complete yet, though, is it?

3 A. No, it's not. You can see we've got gaps in it.

4 Q. And can you recall where the BVAPs were set?

5 A. They were pretty high in this map, if I recall. I believe  
6 we had some 60s and 70s.

7 MR. PATTWELL: If you can go down all the way to --  
8 further. There we go.

9 BY MR. PATTWELL:

10 Q. So if we look at the districts we can see the black voting  
11 age population in this column, so District 8, 50 -- over  
12 50 percent; District 9, 76 percent, District -- there it is.

13 A. District 7.

14 Q. 63 percent?

15 A. Yep.

16 Q. Does this map have the same numbering regime as the final  
17 Linden plan?

18 A. It does not, no.

19 Q. Do you recall when that changed?

20 A. When we published the maps for that 45-day public comment  
21 period in November we directed the map drawers to renumber all  
22 of the districts so that they would follow in order. Because  
23 we had drawn the districts one at a time, the numbers weren't  
24 always consistent.

25 Q. So it's September 13th, you have an initial start to the



1 Senate map. What happens next?

2 A. So, I received an e-mail from Julianne Pastula telling me  
3 that her and Mr. Adelson were concerned about the packing that  
4 was happening in the Detroit districts and -- yeah, so we got  
5 that e-mail from her.

6 Q. Did she give a reason as to why she thought the maps were  
7 packed?

8 A. Because the percentages were higher than Doctor Handley's  
9 analysis.

10 Q. And Doctor Handley -- that's Doctor Handley's analysis  
11 based on the general elections?

12 A. Yes.

13 Q. And a primary without a black candidate?

14 A. Yes.

15 Q. Do you have any idea why the Commission's general counsel  
16 emailed you and not the entire Commission?

17 A. I had just been elected chair on that week. MC Rothhorn  
18 had been elected vice-chair.

19 MR. PATTWELL: If we can pull up Plaintiffs'  
20 Exhibit 5 and go to page 45, please.

21 BY MR. PATTWELL:

22 Q. Did the general counsel's e-mail to you create the  
23 impression if the Commission did not lower the BVAPs it would  
24 be sued?

25 A. Yeah. She directly threatened that.

1 Q. In the moment did you consider whether it was plausible  
2 that black voters from Detroit would sue the Commission for  
3 providing Detroit with compact opportunity to elect districts?

4 A. I didn't, no. I trusted General Counsel Pastula at that  
5 point in the process.

6 Q. At this time had the commissioners been provided with any  
7 information as to the upper threshold for the BVAPs?

8 A. No, we had not. We would draw a district and then get  
9 yelled at about it being too high but there was never any  
10 guidance of how high was too high.

11 Q. Draw it to the floor?

12 A. Draw it to the floor.

13 Q. Do you recall when the bellwether election button was  
14 actually added to the software?

15 A. I believe it was September 14th.

16 Q. And on that day did the Commission continue working on the  
17 Senate map?

18 A. We did, yes.

19 Q. Do you recall whether Mr. Adelson was at that meeting?

20 A. He was, yes.

21 Q. And what was his focus?

22 A. He was highly focused on the bellwether tab and analyzing  
23 the draft districts that we were drawing?

24 MR. PATTWELL: If we could pull up the transcript  
25 from the September 14, 2021, meeting? This is Plaintiffs'

1 Exhibit 140. And I'd like to go to pages 1574. There's a lot  
2 of transcripts.

3 BY MR. PATTWELL:

4 Q. This is Mr. Adelson here. Do you see what he says?

5 A. Yes. He says that -- moving forward in areas where you  
6 are now typically aimed for black populations in the roughly  
7 40 to 45 percent range.

8 Q. And if we could go down to the top of page -- what does he  
9 say about the law?

10 A. So, this was something I heard frequently, but he says  
11 that the requirement of the law is to avoid packing minorities  
12 into districts above and beyond the percentage at which  
13 analysis is determined they need to elect candidates of  
14 choice.

15 Q. So if you create a district that's majority black you're  
16 going to get sued?

17 A. That was the implication here and that was also stated to  
18 us multiple times.

19 Q. If -- I'd like to ask you about Mr. Brace. Did Mr. Brace  
20 actually show you how to use this functionality?

21 A. He did, yes.

22 Q. This bellwether functionality? And I'd like to go to the  
23 highlighted portion. Oh, here we are. Do you see that?

24 A. Yes.

25 Q. He's saying you can use the functionality to unpack the

1 districts?

2 A. Yes.

3 Q. That was the purpose of it?

4 A. Yes.

5 Q. So, with respect to the district, what was the focus of  
6 the map drawing for the remainder of the day?

7 A. We were focused on reducing the black population in the  
8 districts we had already drawn and looking at this bellwether  
9 tab to see the changes -- or the impact of those changes.

10 Q. And does Mr. Brace go further when telling you how to  
11 unpack the districts?

12 A. Yes. He starts to suggest that we need to stretch out  
13 into the suburbs surrounding Detroit, so go into Macomb  
14 County, Oakland County to unpack the districts, go into where  
15 the white population is.

16 Q. Because that was not the Commission's initial instinct,  
17 was it?

18 A. Absolutely not.

19 Q. But the functional analysis and Doctor Adelson and  
20 Mr. Brace, that's what they're suggesting?

21 A. Right.

22 Q. So how much of the rest of the day is used to lower the  
23 BVAPs in the Detroit districts?

24 A. All of it.

25 MR. PATTWELL: If we can pull up draft map 170,

1 Plaintiffs' Exhibit 104?

2 BY MR. PATTWELL:

3 Q. And I'll just represent to you this is draft map 170. You  
4 can see it up in the top right-hand corner dated 9-14-21 and  
5 it's version 14SD. Are you familiar with this draft?

6 A. Yes. We had obviously been through several iterations at  
7 that point because we're on version 14.

8 Q. And this is the product at the end of the day on  
9 September 14th?

10 A. It is, yes. Every day when we finished a map -- at the  
11 end of every day we would post what we had worked on that day.

12 Q. So if we want to see the changes that were made all we  
13 have to do is look at the transcript, right?

14 A. Right.

15 Q. And all of this is collaborative?

16 A. Yes. This is a collaborative map.

17 Q. What's the major consideration in putting together the  
18 Detroit districts in this map?

19 A. At this point it's about reducing the black voting age  
20 population per the directions of Mr. Adelson.

21 MR. PATTWELL: And we can take a look at the BVAPs  
22 for the new districts, if we scroll down to the BVAP table?  
23 Actually, if you go to page -- there we go.

24 BY MR. PATTWELL:

25 Q. So the BVAPs are significantly lower. We've got Senate

1 District 6, 49 percent?

2 A. Yes.

3 Q. Senate District 8 is now 47 percent?

4 A. Yes.

5 Q. Senate District 9 and 13, they're still really high. They  
6 don't look like they've changed yet?

7 A. No, they haven't changed yet.

8 Q. And, again, all these district numbers, they get  
9 renumbered in the final Linden plan?

10 A. They do, yes.

11 Q. So we still have some districts above Doctor Handley's  
12 initial racial target?

13 A. We do, yes.

14 Q. If we can go up to page 3? So why do some of these  
15 districts stretch way out into the white suburbs?

16 A. So, the entire purpose of that was we were trying to pull  
17 in white population. If you recall from the prior map, that  
18 District 6 wasn't even going into Detroit at all. It was up  
19 in Macomb County. And we pulled it down to cut off part of 8  
20 to reduce the black population in 8. And also create this new  
21 District 6 with a lower BVAP than 8 had had originally. So  
22 we're stretching out, pulling in white population and then  
23 skimming off the districts as we go.

24 Q. If we can look back at the transcript, PX57 at page 41.  
25 Let's see what your general counsel has to say about going

1 into the suburbs.

2 So the districts do not appear to be able to be  
3 unpacked unless you go into the suburbs. Do you recall that?

4 A. Yes, I do.

5 Q. And while we go outside of the city limits -- how I should  
6 say, While I certainly acknowledge and respect the public  
7 comment received, the Voting Rights Act being the first  
8 criteria is going to need to be respected and adhered to; is  
9 that right?

10 A. That was what we were directed, yes.

11 Q. You recall that?

12 A. Yes.

13 Q. And what is your general counsel confirming here?

14 A. That we have to ignore community interests and that we  
15 need to go into the suburbs even though both the suburbs and  
16 black Detroiters do not want to be combined in a single  
17 district.

18 Q. You heard that from the public comments?

19 A. Over and over again, yes.

20 Q. If we turn to the September 15th, the next date, does the  
21 Commission continue mapping?

22 A. We do, yes.

23 Q. And what was the primary focus of the Commission on this  
24 mapping day?

25 A. Bringing down the black VAP in those districts we hadn't

1 brought down yet.

2 Q. Down to Doctor Handley's racial target?

3 A. Right. Bringing them down to 35 to 40 percent.

4 Q. And was that a challenging --

5 A. It was extraordinarily challenging.

6 Q. Why was it challenging?

7 A. Well, number one, it was requiring us to set aside all  
8 these communities of interest that we had been told about when  
9 we went on our listening tour. And then it required us to  
10 make longer, skinnier, thinner districts that just looked very  
11 unnatural and so it was a huge challenge.

12 Q. Let's look at the next iteration. This is draft map 165.  
13 It's Plaintiffs' Exhibit 101 and this is dated 9-15-21. Now,  
14 this is version 16A. Do you see in the right-hand corner?

15 A. Yes.

16 Q. Okay. You're familiar with this map?

17 A. I am, yes.

18 Q. If we can go down to the third page. So the districts are  
19 really starting to take different shapes, aren't they?

20 A. They are. So, District 13 and District 9 -- District 13  
21 was originally entirely up in Oakland County with just a very  
22 small amount in Detroit. We've now brought it down, almost  
23 half of it into Detroit. We reconfigured District 9 to bring  
24 it farther over into kind of the Livonia area, bring in white  
25 voters there, because Southfield has a significant black



1 population so we needed to go west on that one to reduce the  
2 BVAP.

3 And so, again, we're just stretching things out into  
4 areas where we know that white voters are making these  
5 districts in Detroit skinnier, narrower to cut down on the  
6 black population.

7 Q. So we see three different iterations. Are all of the  
8 changes in the Detroit population based --

9 A. Absolutely.

10 Q. What does the Commission move to next?

11 A. We then moved to congressional for a few days and then  
12 went to the House.

13 Q. And can you recall the time frame within which the  
14 Commission started to draft the House collaborative plans?

15 A. September 28th.

16 MR. PATTWELL: If we could pull up draft map 183,  
17 this is Plaintiffs' Exhibit 90, and it's dated 9-28-21,  
18 Version 1.

19 BY MR. PATTWELL:

20 Q. This is a collaborative map?

21 A. Yes.

22 Q. And do we see the Detroit area districts starting to take  
23 formation? If we look on page 3 --

24 A. Yes.

25 Q. -- should we see that? Now, if we go down to the BVAP

1 table from those districts we just looked at, am I correct in  
2 saying you got eight districts with BVAPs between 54 and  
3 79 percent?

4 A. Yes.

5 Q. And we've got another five with black voting age  
6 population between 38 and 47?

7 A. Yes.

8 Q. That was the starting place?

9 A. It was, yes.

10 Q. But what evidence did the Commission have at this time  
11 that black candidates in Detroit could win the polarized  
12 primary elections if the BVAP was between 38 and 47 percent?

13 A. We didn't. As shown by Doctor Handley's threshold tables,  
14 there were no districts that were currently in that bucket  
15 where we could look to for evidence. And then the other  
16 elections we were looking at were general elections for the  
17 one primary where black voters weren't cohesive. So we just  
18 -- we really had nothing.

19 Q. Eight black majority districts is still significantly less  
20 than the legislative maps that were currently in existence,  
21 right?

22 A. It is, yes.

23 Q. But what does Mr. Adelson say?

24 A. Go lower.

25 MR. PATTWELL: Let's take a look. If we can pull up

1 Plaintiffs' Exhibit 62. If we can go to page 73?

2 BY MR. PATTWELL:

3 Q. This is an example of advice to go lower?

4 A. Yes. So, he's, again, telling us that the districts are  
5 packed, that we have to address it, and that that's -- he says  
6 that is one of the changes I envisioned so go lower.

7 MR. PATTWELL: And if we go to page 107, please?

8 BY MR. PATTWELL:

9 Q. Now, this is you, you're describing what's taking place.

10 A. Right.

11 Q. What are you describing?

12 A. So I'm basically describing that our effort is to  
13 reduce -- reduce the maps, so --

14 Q. Trying to lower the black voting age population in these  
15 specific districts, 14, 15, and 17; is that right?

16 A. Yes.

17 Q. And if we go down to the bottom of page 107, so you've got  
18 the BVAPs down and you're calling those numbers out. And then  
19 what does Mr. Adelson say?

20 A. Yeah. So I basically list three districts, 14, 15, 17,  
21 and I'm listing off the drop. I'm saying it dropped from  
22 74 percent African American to 61. 15 dropped from 62.7 to  
23 50.2. 17 dropped from 69.29 to 46.4. And I describe them as  
24 being more balanced, and Bruce Adelson says, they're  
25 definitely a little more balanced.

1 Q. But he says -- if we scroll down to the next page, what  
2 does he say?

3 A. Go lower. So he's saying that he recommends focusing on  
4 the percentages and comparing them to Doctor Handley's  
5 percentages for Wayne County, which, as I recall, is 35 to  
6 40 percent.

7 Q. And he says, Look at the functional analysis, right?

8 A. Yeah.

9 Q. And what does that always show us?

10 A. It always shows us that Democrats are going to win because  
11 Wayne County is predominately Democratic.

12 Q. So you're sitting there and you're running the functional  
13 analysis and you're thinking black preferred candidate is  
14 going to win or lose in this district?

15 A. It's always going to win, because Wayne County is  
16 Democratic as is Oakland County.

17 Q. So you can keep on going lower?

18 A. Right.

19 Q. I'd like to go down to -- back up to page 100.

20 And I'd like to draw your attention and ask you to  
21 explain what Commissioner Rothhorn is doing here.

22 A. So he's questioning putting together District 2 and  
23 District 10. And I had mentioned that I tried that and that  
24 the problem and the reason why Banglatown, which was an area  
25 within Detroit, we were trying to keep together as a community

1 of interest, and Hamtramck are in 2 right now is to balance  
2 out the African American population. So we had split up a  
3 community of interest to try to balance out the African  
4 American population.

5 Q. If we can go down to page 110?

6 What is Commissioner Rothhorn describing?

7 A. He's saying that we made these changes to comply with the  
8 VRA, bringing down the black voting age population to a range  
9 that is closer to 40 percent, actually reducing it in some --  
10 reducing it. And in some cases to 50 but not quite to  
11 40 percent, so he's just talking about the districts and how  
12 we're really focused on the race and really focused on  
13 reducing them to these benchmarks we were given of 35 to  
14 40 percent.

15 Q. But this wasn't his idea?

16 A. No, absolutely not.

17 Q. This is what you're being told?

18 A. It's what we're being told, and we're being told if we  
19 don't do it we're violating federal law.

20 MR. PATTWELL: Okay. I'd like to pull up the next  
21 iteration of the race map, 193. This is marked Plaintiffs'  
22 Exhibit 93 and it's dated 9-30-21.

23 BY MR. PATTWELL:

24 Q. Are you familiar with this map?

25 A. Yes.

1 Q. Is this a collaborative map?

2 A. It is collaborative, yes.

3 Q. Does it represent the changes that were made on that date?

4 A. It does.

5 Q. And what were those changes?

6 A. So, again, we're just focused on bringing down the black  
7 population in Detroit, stretching those districts out into the  
8 suburbs surrounding Detroit to add white voters, making the  
9 districts thinner and skinnier within Detroit to reduce black  
10 voters and trying to hit those targets of 35 to 40 percent and  
11 45 to 50 percent.

12 Q. And if we go down to the BVAP table, please?

13 So you're making some progress. Does it fit with  
14 your recollection that at this point you've got seven majority  
15 black districts?

16 A. Yes.

17 Q. And that's between 50 percent and 67 percent?

18 A. Yes.

19 Q. But now you have seven influenced districts; is that  
20 right?

21 A. We do, seven districts that we had successfully brought  
22 down to those targets.

23 Q. Okay. So you succeeded somewhat in drafting districts  
24 between 36 and 49 percent?

25 A. Yes.

1 Q. Well, succeeded in the sense of meeting Doctor Handley's  
2 racial target?

3 A. Yes.

4 Q. And what evidence did the Commission have at this time of  
5 black Democratic candidates winning primaries in that BVAP  
6 range?

7 A. Still none.

8 Q. I think it's obvious, but was there any redistricting  
9 factor that dominated the process up until now?

10 A. No. Once we had received that analysis from Lisa Handley  
11 it became all about race.

12 Q. Meeting her racial targets?

13 A. Right. At the direction of Mr. Adelson.

14 Q. Okay. Let's see if it's good enough.

15 MR. PATTWELL: Let's pull up PX63 and go to page 18.

16 BY MR. PATTWELL:

17 Q. I'd like to draw your attention to Mr. Adelson's  
18 commentary. Specifically we're talking about House Districts  
19 6 and 18.

20 A. So he mentions that District 6 has 64 percent black voting  
21 age population and that District 18 has almost 77 percent  
22 black voting age population, and he describes those as two  
23 serious districts that have significantly more population than  
24 Doctor Handley recommended in her analysis. That he and her  
25 have discussed it, and that it does not comply with her

1 analysis.

2 Q. This starts a really long conversation, doesn't it?

3 A. It does, yes.

4 Q. Okay.

5 MR. PATTWELL: If we could scroll down to page 21,  
6 the part where the general counsel chimes in?

7 BY MR. PATTWELL:

8 Q. Do you see that highlighted language?

9 A. I do.

10 Q. What is your general counsel directing the Commission to  
11 do?

12 A. She's directing us to be systematic, and starting with  
13 District 1, go down the list, identify anything that is higher  
14 than 40 percent for the black voting age population and start  
15 fixing those districts to bring them down.

16 Q. But less black voters for the districts --

17 A. Yeah. To reduce -- sorry. To reduce...

18 Q. My apologies.

19 My question is, what is -- is General Counsel Pastula  
20 directing the commissioners to put less black voters in  
21 Detroit districts?

22 A. Absolutely.

23 Q. And she's telling you to do it in a systematic way?

24 A. Right. To be systematic, start at District 1 and go down  
25 the active matrix, identify anything more than 40 percent and



1 start fixing it and bringing it down to 35, 40.

2 Q. She's not telling you to look at the compactness or the  
3 municipal boundaries or communities of interest or any of the  
4 other redistricting factors. She's telling you to look at  
5 what in the data?

6 A. Just the race.

7 Q. So if we go down to page 22, Commissioner Orton has a  
8 question. What's -- what's Commissioner Orton's question?

9 A. So she, like many commissioners this day, was very  
10 frustrated. We were being pushed hard to bring down these  
11 numbers, and it was difficult and wasn't making a lot of  
12 sense, and so she was asking, like, what is the specific --  
13 like, what is the percentage? Is there -- you know, can  
14 we give -- give us a specific percentage of how much more we  
15 have to reduce these districts.

16 Q. And if we go down to the next page, what does the general  
17 counsel say?

18 A. So she's again telling us to reduce the numbers down to  
19 that 35 to 40 percent.

20 MR. PATTWELL: Oh, the previous page, not the  
21 paragraph.

22 THE WITNESS: Previous page, yeah.

23 MR. PATTWELL: Sorry about that. You get kind of  
24 dizzy standing and looking up at this.

25 Keep going down. One more down, please.

1 THE WITNESS: The next page.

2 BY MR. PATTWELL:

3 Q. That's why I was confused. Well, there's probably other  
4 reasons, but...

5 Okay. So she wants you to minimize the black voting  
6 age population?

7 A. Yes.

8 JUDGE MALONEY: Counsel, at this point we've been on  
9 it for almost two hours so we'll take a 15-minute break.

10 MR. PATTWELL: Of course. Thank you.

11 JUDGE MALONEY: Thank you.

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

13 *(Recess taken at 10:40 a.m., reconvened at 10:59 a.m.)*

14 THE CLERK: All rise, please. Court is in session.  
15 You may be seated.

16 JUDGE MALONEY: We're back on the record in  
17 22-cv-272. Counsel for all parties are present.

18 Counsel, you may resume.

19 MR. PATTWELL: Thank you, Your Honor.

20 BY MR. PATTWELL:

21 Q. So before we left off, we're back in time on  
22 September 30th, 2021, and we're talking about the House draft  
23 collaborative maps. And to this point, the Commission had  
24 started to lower the black voting age population in its  
25 collaborative map, and there's some discussion regarding how

1 low to go. And if we could look at the part from --

2 MR. PATTWELL: Are we on page 24?

3 MS. WELLMAN: Yes.

4 MR. PATTWELL: Great.

5 MR. BURSCH: Actually, this is 22.

6 MR. PATTWELL: No, this is page 22.

7 MR. BURSCH: This is good. Right here.

8 MR. PATTWELL: I'd really like to go to page 24.

9 BY MR. PATTWELL:

10 Q. On the bottom -- so you're looking -- so the confusion  
11 here is we have page 24 --

12 MR. PATTWELL: There we go.

13 BY MR. PATTWELL:

14 Q. So do you see what the general counsel is saying here  
15 about a 40 percent target?

16 A. Yes. Yes.

17 Q. And then Commissioner Lange has a question and you  
18 provided clarification.

19 Do you see that on the bottom?

20 A. Yes.

21 Q. And what's your clarification?

22 A. So Commissioner Lange was questioning, you know, what is  
23 the actual target? As I was mentioning before the break,  
24 there was a lot of frustration because commissioners were  
25 feeling like we were told to adjust the maps, we brought them

1 lower, and then we were being told lower. And so she was  
2 frustrated and she just wanted a range. So she said, If you  
3 can give me something that said 35 to 45 percent, if you stay  
4 within that, you're good -- I'm sorry.

5 So Commissioner Lange was saying that if we could  
6 identify a range of, like, 35 to 45 percent and tell her to  
7 stay within that, that would be helpful to her. And so I  
8 explained back to her that it was my understanding of what we  
9 are looking for is we are trying to bring things between 35  
10 and 40 percent because based on Doctor Handley's analysis of  
11 racially polarized voting that those percentages would enable  
12 minority candidates to elect their candidate of choice in the  
13 metro Detroit area because it's so highly concentrated and so  
14 highly Democratic.

15 Q. But the real confusion that's taking place here is  
16 initially the general counsel directed --

17 MS. McKNIGHT: Your Honor, I'm going to assert an  
18 objection here. Pardon me, counsel.

19 We've given a lot of leeway. We're at the point now  
20 where under Rule 611, the Federal Rules of Evidence 611(c),  
21 leading questions are no longer appropriate. We have a  
22 witness here, and it's not an ordinary circumstance where we  
23 have a witness here who appears to be very friendly to the  
24 other side, and we'd say leading questions are improper under  
25 that rule.

1 MR. PATTWELL: I was summarizing previous testimony  
2 but I'm happy to --

3 JUDGE MALONEY: Tighten up the questioning.

4 MR. PATTWELL: -- tighten it up. Yeah.

5 MS. McKNIGHT: Thank you, Your Honor.

6 BY MR. PATTWELL:

7 Q. So if we scroll down to page 25, could you -- and  
8 specifically with respect to the response that the general  
9 counsel gives, what is she explaining here? What nuance?

10 A. So Ms. Pastula basically is providing the guide blocks for  
11 what we're supposed to draw the districts to. So for Detroit,  
12 it's 35 to 40 percent. Oakland County she says 40 percent,  
13 and then -- I believe farther down in this she says 42 to  
14 43 percent is what we should be looking for for Oakland  
15 County. It may be later in the transcript.

16 But basically she's giving us these ranges that if  
17 you're in Wayne County, 35 to 40. If you're in Oakland  
18 County, it can be a little higher with 40 percent.

19 Q. And is she saying that 40 percent is in the middle of  
20 those two?

21 A. Yes.

22 MR. PATTWELL: If we could go down to page 76 and  
23 look at how Mr. Adelson describes the Commission's method of  
24 targeting districts with BVAPs above 40 percent. If you could  
25 scroll down further. Scroll down a little bit further. I

1 think I might have the wrong page number here.

2 BY MR. PATTWELL:

3 Q. Do you remember at all from this transcript how  
4 Mr. Adelson was describing the process of going through and  
5 looking for districts that were above 40 percent BVAP?

6 A. I do, and it actually is on this page. I'm really  
7 familiar with these transcripts at this point. It's farther  
8 up. He says that we need to use a systematic approach. So it  
9 is farther up on this page. Right there.

10 But I think it is important to keep to that  
11 systematic approach straight down the line for compliance and  
12 not jump among districts.

13 Right there. Yep.

14 Q. There we go. Okay.

15 So this is a systematic approach of racial targeting?

16 A. Yes.

17 Q. And why was the Commission engaging in a systematic  
18 approach of racial targeting?

19 A. Because we had been directed that we needed to reduce  
20 these districts to the benchmarks given by Doctor Handley's  
21 report. Otherwise we would be packing and violating the  
22 Voting Rights Act. And that in order to make sure we caught  
23 everything, Mr. Adelson wanted us to be systematic and just go  
24 district-by-district. Anything above 40 percent BVAP he  
25 wanted us to look at again.

1 Q. And is that what the Commission did?

2 A. That's exactly what we did.

3 Q. And how, from a mechanical perspective, did the Commission  
4 accomplish that advice?

5 A. Just by looking at the active matrix, which is in the  
6 draft maps and literally going down the list and identifying  
7 those districts. I also, at the same time that this was  
8 happening, I had created a list on a legal pad listing the  
9 districts, listing the black voting age population, and then  
10 had another column as we were reducing it and the percent that  
11 we had reduced it.

12 Q. And how did the Commission actually reduce the BVAPs when  
13 changing the lines?

14 A. So same process we had used with the Senate map. We  
15 stretched out into the suburbs. We looked for white  
16 population on the western and northern, southern edge of  
17 Detroit and then we skinnied out those districts within  
18 Detroit.

19 MR. PATTWELL: If we can turn to page 67, please?

20 Yeah, the highlighted language. There we go.

21 BY MR. PATTWELL:

22 Q. So, can you describe for the Court what's sort of taking  
23 place here?

24 A. So several times throughout the process Bruce sort of gave  
25 us a kind of rah-rah-rah speech, and this was one of those

1 where he's telling us that we're leveling the playing field,  
2 that, you know, we're doing something historic, and more  
3 specifically we're not just packing people of color together  
4 willy-nilly, that we're doing the exact opposite.

5 Q. He says that what you're doing is not typical?

6 A. Right.

7 Q. And what you're doing is not willy-nilly?

8 A. Exactly.

9 Q. In your opinion, were the maps that the Commission had --  
10 the districts that the Commission had drawn before  
11 Mr. Adelson's intervention, were those willy-nilly?

12 A. Absolutely not. We had --

13 Q. What were they based on?

14 A. They were based on communities of interest, population,  
15 trying to keep municipal boundaries together. We were  
16 considering many traditional redistricting factors along with  
17 race in drawing those initial districts that we had done.

18 Q. Do you have any idea how long it would take for us to go  
19 through each spot in the transcript where the Commission is  
20 talking about its racial target and implementing it?

21 A. No. We had so many meetings, and the references are  
22 ubiquitous throughout the transcript where we're specifically  
23 talking about specific racial targets and struggling to meet  
24 those targets and discussing adding white population. I mean,  
25 it's just -- it's throughout all of the transcripts.



1 Q. So it's September 30th. Were there any meetings that took  
2 place off of the record about this issue?

3 A. There was. And I touched on this in my dissenting report.  
4 This is kind of the day I feel like the hammer came down on  
5 the Commission by Mr. Adelson and Ms. Pastula, because they  
6 were pulling me, in particular, out in the hallway and I was  
7 specifically told that we had to stop thinking about  
8 communities of interest, to stop thinking about keeping  
9 municipal boundaries together, that we had to solely focus on  
10 race because we needed to bring these districts down.

11 JUDGE NEFF: Just one question. When did this  
12 happen?

13 THE WITNESS: September 30th.

14 JUDGE NEFF: Of?

15 THE WITNESS: 2021.

16 JUDGE NEFF: Thank you.

17 THE WITNESS: And then after they spoke to me and we  
18 had a back-and-forth about, you know, what was the actual  
19 number he wanted us to go to, Julianne Pastula then directed  
20 me to go pull individual commissioners out in a group because  
21 they wanted to talk to them about the same message. So she  
22 told me to pull MC Rothhorn, Cynthia Orton, Doug Clark, and  
23 she told me to go get them in a group and send them out in the  
24 hallway so that they can talk to them as well.

25 BY MR. PATTWELL:

1 Q. You're the chair at this time?

2 A. I am the chair, yes.

3 Q. And you're helping them do this at this time?

4 A. Yes.

5 Q. And did you pull those other commissioners out in the  
6 hallway?

7 A. I did, yes.

8 Q. Same advice?

9 A. I wasn't at the meeting, but when MC Rothhorn came back  
10 in, he confirmed that was what was discussed.

11 Q. Was it mechanically difficult to create districts inside  
12 of Detroit, Michigan, that had low BVAPs?

13 A. It was. It was incredibly difficult. People were  
14 incredibly frustrated by it, and, I mean, we were getting to a  
15 point where we were, like, how narrow of a district are you  
16 going to make it to try to get white population, because some  
17 of these districts were just so narrow and just reaching  
18 out -- I was calling them spaghetti noodles, that's how thin  
19 some of them were.

20 Q. From a legal perspective was the Commission told that the  
21 Voting Rights Act and meeting Doctor Handley's targets trumped  
22 other criteria?

23 A. Yes. We were told specifically to disregard communities  
24 of interest and that they were the third ranked criteria and  
25 Voting Rights Act was first. Any time there was a conflict

1 between a community of interest and Voting Rights, the Voting  
2 Rights Act prevailed.

3 Q. I'd like to go to page 138 and 139 of the September 30th  
4 transcript. I think this is toward the end of the meeting,  
5 and I'd like you to describe, when we get there, for the Court  
6 what you were -- what you were doing.

7 A. So, as I mentioned on this day, September 30th, people  
8 were very frustrated and for the first time we started having  
9 commissioners actively passing.

10 We had been taking turns to redistrict and multiple  
11 commissioners were saying, I pass, I can't do it. I pass, I  
12 can't do it. And so I had worked to try to bring down these  
13 districts and carry the water and I was just kind of  
14 discussing that at the end, that we can do it, that it is  
15 difficult, it's not pretty, they're not going to be beautiful,  
16 but we can hit these targets. It is possible, it's just we're  
17 not going to have pretty districts.

18 So that's what I was talking about, that we can do  
19 it, it's just going to be hard.

20 Q. And this is page 138. Could we scroll down a little bit  
21 further? And what are you saying here in this highlighted  
22 text?

23 A. So I say some of these districts are crazy. They are  
24 long, they are narrow and skinny, but if you look at the  
25 voting age population, we're bringing them down. We're

1 bringing them down. So I'm just going through the districts  
2 and talking about how I'm bringing them down and making them  
3 more balanced.

4 Q. And what was the predominant factor in making those  
5 downward adjustments to the black population?

6 A. It was a hundred percent about race.

7 Q. Okay. I'd like to draw your attention to the October 4th  
8 and 5th timeframe, and I'd first like to talk about this next  
9 meeting that took place with respect to the Senate.

10 So, do you recall working on the Senate collaborative  
11 maps on October 4th?

12 A. I do.

13 Q. Is this an important date in your mind?

14 A. It was, yes.

15 Q. And what was the purpose of the October 4th Commission  
16 meeting?

17 A. So we had fixed the House according to what Mr. Adelson  
18 wanted and now we needed to do the same thing for the Senate  
19 because we still had districts that were too high, according  
20 to Mr. Adelson.

21 Q. You mentioned that you read some transcripts before coming  
22 here. Do you recall reading this transcript?

23 A. I do, yes.

24 Q. And do you recall the commissioners stating on the record  
25 the reason that they were lowering the black voting age

1 population?

2 A. Yes.

3 Q. So this is a good place to look?

4 A. Yes.

5 Q. Let's do it.

6 MR. PATTWELL: If we can please pull up Plaintiffs'  
7 Exhibit 64, and the first page I'd like to look at is page 15.  
8 If we can kind of zoom in here. That's great.

9 BY MR. PATTWELL:

10 Q. This is Commissioner Clark. And what's Commissioner Clark  
11 indicating?

12 A. So Commissioner Clark is asking what are the metrics that  
13 we're trying to get to. If you recall, we had worked on this  
14 map on September 15th and already reduced a lot of the metrics  
15 then and so now we were coming back to it, and his impression  
16 was that -- his understanding was that back on September 15th  
17 Bruce Adelson had told him that this map was okay.

18 Q. Is Commissioner Clark saying that the Commission has a  
19 target?

20 A. Yes.

21 Q. And then what do you say?

22 A. So I go through and I specifically am kind of refreshing  
23 his memory, so I say, Do you remember Doctor Handley's report  
24 where she broke down for Wayne County the racial polarized  
25 voting and gave a chart with percentages? That is what Bruce

1 is mentioning last week and that's what I'm referring to.

2 The very last page where she listed the percentage of  
3 voters in that particular demographic that you needed in order  
4 for it to be an opportunity to elect district, and for metro  
5 Detroit region, it was 35 percent. So that is what Bruce was  
6 saying to us last week and said it repeatedly, we should aim  
7 between 35 and 40 percent African American because those  
8 numbers, it is VRA compliant. They can elect their candidate  
9 of choice, and his point that he mentioned was why would you  
10 put 50 to 60 percent African American in a population if you  
11 can achieve compliance with 35? So that was kind of his  
12 point.

13 Q. So we've got a target and you've told us what that target  
14 is, and then what does Commissioner Clark ask?

15 A. He asks, You're trying to reduce the African American  
16 population, and then I responded, To 35 to 40 for VRA purposes  
17 per the direction of Bruce Adelson.

18 Q. It's getting a little repetitive, but we're talking about  
19 a racial target?

20 A. Yes.

21 Q. If we go down to the next page, page 16, and, again, this  
22 is the October 4th transcript. What does your general counsel  
23 say about the racial target?

24 A. So she confirms what I just said, and she says that she  
25 believes Mr. Adelson did say if the effort was to be made to

1 get those metro Detroit districts closer to the 30 to  
2 40 percent range, that would be an excellent use of time.

3 Q. And then I'd like to go down to the -- page 20. Let's  
4 start on page 20. And I'd like you to explain for the Court  
5 what information your general counsel is conveying to the  
6 Commission here in this transcript.

7 A. So, there was a bit of back and forth at this meeting.  
8 Some commissioners believed that Bruce Adelson had said the  
9 plan we worked on on September 15th was good and they weren't  
10 understanding why we needed to go lower. And so Mr. Adelson  
11 was not at the meeting and so General Counsel Pastula had been  
12 trying to reach out to him, and she did eventually get ahold  
13 of him and confirmed that he did not sign off on either the  
14 Senate or the congressional plan, and then she says that she  
15 wants to address again the narrative that 50 percent minority  
16 is what we're supposed to be doing, and she said that that's  
17 not what we're supposed to be doing and then, again, gives  
18 these benchmarks, these rails for Wayne County, 35 to  
19 40 percent, Genesee, 35 to 40, Saginaw, 40 to 45, Oakland  
20 County, she says, 42, 43 percent. And that's what we need to  
21 give an opportunity to elect.

22 Q. So she actually says not only go below 50 percent, but  
23 what does she say about the courts?

24 A. Is it in here?

25 Q. I can highlight it for you right here. Actually, you can

1 see it this time.

2 A. Yeah. Oh, yeah. So she's saying the courts have not  
3 supported a wholesale adoption of 50 or 51 percent. So this  
4 concept of 50 plus, which had come up a lot, she was saying  
5 the courts don't endorse that and we can't do it.

6 Q. That's how the districts in Michigan had always been?

7 A. Right.

8 Q. Never struck down?

9 A. Not to my knowledge, no.

10 Q. And she provides a nuance here with respect to Oakland  
11 County. Can you highlight that?

12 A. Yeah. She basically is giving us two percentage points to  
13 have Oakland County, so 42 to 43 percent.

14 Q. So 42 to 43 is the specific pinpoint of the target; is  
15 that right?

16 A. Yes.

17 Q. But you testified earlier and we saw in the transcripts  
18 earlier that that was stated between 40 and 45 percent more  
19 generally?

20 A. Yes.

21 Q. Okay. Let's go look at some specific districts. If we  
22 can go back to page 18, and I'd like to draw your attention to  
23 the discussion between you and Vice-Chair Rothhorn. And what  
24 districts are you and Vice-Chair Rothhorn discussing?

25 A. So I had specifically identified District 13, District 9,



1 District 6, and District 8 as ones we needed to bring the  
2 percentages down on.

3 Q. And what's your impression as to the legality of  
4 District 6 at this time?

5 A. Well, based on the advice from Ms. Pastula and  
6 Mr. Adelson, we were in violation of the Voting Rights Act.

7 Q. And so we've got Senate District 9 has a 50 percent BVAP.  
8 What's your impression as to the legality of that?

9 A. That that's not supported by the counts and we need to  
10 change it.

11 Q. Really, at 50 percent?

12 A. According to our counsel.

13 Q. And what about Senate District 13 with a 57 percent BVAP?

14 A. It's in violation of the Voting Rights Act.

15 Q. Now, was the Commission lowering the black voting age  
16 population in these Detroit districts at this meeting for  
17 partisan fairness goals?

18 A. Absolutely not.

19 Q. I'd like to go to page 13, please. I'd like you to take a  
20 look at what Commissioner Witjes says.

21 A. So someone had brought up the concept of starting to look  
22 at partisan fairness, and Commissioner Witjes basically was  
23 protesting that, saying we need to do VRA first because the  
24 VRA is our first criteria, and that if we do anything else or  
25 we look at communities of interest or anything else and change

1       those first, we're still going to have to come back to VRA so  
2       we should fix VRA first and then go on to other criteria.

3       Q.    Bake the cake, you can put icing on it later.

4       A.    Exactly.

5               MR. PATTWELL:  If we can go down to page 13,  
6       please -- that would be up to page 13.  Thank you.

7       BY MR. PATTWELL:

8       Q.    Do you see this discussion about why the Commission is  
9       actually following the racial target?  You're explaining that.  
10      Do you see that?

11      A.    Yes.

12      Q.    Can you explain that to the Court?

13      A.    So, again, it's coming back to Doctor Handley's report,  
14      Mr. Adelson's direction, and that we need to reduce these  
15      districts to 35 to 40 percent voting age population of African  
16      American and just to go ahead and make those modifications.

17      Q.    Because Doctor Handley's report said there was going to be  
18      white crossover voting for black candidates of choice, right?

19      A.    She did for general elections.

20      Q.    She said at the racial target there will be white  
21      crossover voting that would allow black candidates of choice  
22      to be elected?

23      A.    Yes.

24      Q.    And that's the point you're making here in this  
25      transcript?

1 A. Yes.

2 Q. The reason we're doing this is white crossover voting?

3 A. Right.

4 MS. McKNIGHT: Again, Your Honor, I'd object on the  
5 basis of leading questions and --

6 JUDGE MALONEY: Overruled. Go ahead.

7 MS. McKNIGHT: Thank you.

8 BY MR. PATTWELL:

9 Q. I want to draw your attention back to that September 2nd,  
10 2021, presentation of Doctor Handley. She had observed white  
11 crossover voting for President Biden?

12 A. Yes.

13 Q. She observed white crossover voting for Governor Whitmer?

14 A. Yes.

15 Q. Because those were the black candidates of choice that  
16 Doctor Handley had identified?

17 A. Yes, in the general elections.

18 Q. Those candidates are white?

19 A. They are, yes.

20 Q. I want to ask about your mental state. Is it surprising  
21 to you that white voters from Wayne and Oakland County crossed  
22 over and voted for Joe Biden?

23 A. No.

24 Q. Is it surprising to you that those white voters crossed  
25 over and didn't vote for Donald Trump?

1       A.    No.

2       Q.    What does it tell us?

3       A.    It tells us that white voters in the metro Detroit area  
4       are Democratic and they're going to vote for Democratic  
5       candidates.

6       Q.    As you sit here today, do you think the use of the -- use  
7       of the Bellwether elections provided any benefit to the  
8       Commission's decisionmaking in this regard?

9       A.    No.

10      Q.    Are you able to show me anywhere in Doctor Handley's  
11      report where there is white crossover voting for a black  
12      candidate?

13      A.    No, because it doesn't exist in her report.

14      Q.    So it's October 4th, you're working on the Senate maps.  
15      Do you recall actually calling out the BVAPs on the record?

16      A.    I do, yes.

17      Q.    If we can take a look at page 26?

18               Why are the black voting age populations being called  
19      out for a district on the record?

20      A.    Because that was our sole focus that day was to bring  
21      these districts into compliance with the ranges that were  
22      given by Doctor Handley as directed by Bruce Adelson.

23      Q.    Did the Commission continue to lower the black voting age  
24      population in the collaborative Senate map during this  
25      meeting?

1 A. We did, yes.

2 Q. And from a mechanical perspective, how did the Commission  
3 accomplish that goal?

4 A. Stretch out into the suburbs, narrow the districts in  
5 Detroit.

6 Q. After the Commission would lower the black voting age  
7 population in a district, did it use the Bellwether  
8 functionality?

9 A. We did, yes.

10 Q. And who would suggest using it?

11 A. Bruce Adelson. Sometimes commissioners, but mostly Bruce  
12 Adelson.

13 Q. And what did it always show?

14 A. It always showed that the district was going to be  
15 successful.

16 Q. For black candidates?

17 A. For Democratic candidates who would also be the black  
18 candidate if it's a general election.

19 Q. I'd like to bring you to the end of the meeting. At the  
20 end of the October 4, 2021, meeting was the Commission's  
21 collaborative Senate map close to a final form?

22 A. It was, yes.

23 Q. At this point were the BVAPs in the Detroit area Senate  
24 districts lowered for a reason other than complying with the  
25 racial target?

1 A. No.

2 Q. It's October 4th. Can you tell us the extent of the  
3 Commission's partisan fairness evaluation up until this point?

4 A. We actually hadn't done one because the functionality  
5 wasn't enabled.

6 MR. PATTWELL: If we could pull up Plaintiffs'  
7 Exhibit 5 at page 73?

8 BY MR. PATTWELL:

9 Q. Do you recall receiving an e-mail from your general  
10 counsel around this time frame?

11 A. Yes.

12 Q. Is that the e-mail?

13 A. Yes.

14 Q. Describe the conversation that's taking place here for the  
15 Court.

16 A. So, unbeknownst to the Commission, on August 6th the  
17 general counsel had directed our map drawers to hide the  
18 political data and the partisan data within our software from  
19 commissioners, so we had a version installed that did not  
20 allow us to access the partisan fairness data.

21 Q. Partisan fairness was eventually evaluated, correct?

22 A. It was, yes.

23 Q. Was it evaluated district-by-district or for the whole  
24 plan?

25 A. We were instructed that we could not evaluate partisan

1 fairness in any other way other than based on a complete plan.

2 Q. In any event, the October 4th meeting concluded with a new  
3 collaborative version of the Senate map?

4 A. It did, yes.

5 MR. PATTWELL: If we can pull up Plaintiffs'  
6 Exhibit 105. This is draft map 199.

7 BY MR. PATTWELL:

8 Q. Do you see the identifier up in the top right-hand corner?

9 A. Yes, I do.

10 Q. What's the date there?

11 A. 10-4-21.

12 Q. Are you familiar with this map?

13 A. I am, yes.

14 Q. Is that the map that the Commission worked on during the  
15 October 4th meeting?

16 A. It is.

17 Q. And what does this map accomplish?

18 A. It reduces the black voting age population in metro  
19 Detroit to the ranges that we had been instructed to reduce  
20 them to.

21 Q. If we could go down to the BVAP table, please.

22 What's the BVAP for Senate District 6?

23 A. 41.2 percent.

24 Q. Could you please tell me what the BVAP is for Senate  
25 District 8?

1 A. 43.35.

2 Q. Can you please tell me what the BVAP is for Senate  
3 District 9?

4 A. 40.03.

5 Q. Senate District 13?

6 A. 13 is 42.45.

7 Q. Senate District 14?

8 A. 47.74.

9 Q. And Senate District 17?

10 A. 36.73.

11 Q. The numbering on this changes in the future.

12 A. It does, yes.

13 Q. So there's no Detroit area district with a BVAP above  
14 50 percent?

15 A. Yes.

16 Q. And was race the predominant factor in making these  
17 revisions?

18 A. Absolutely.

19 Q. And how close is this map to the final Linden plan?

20 A. This is extremely close. There was very little changes  
21 made to the districts. They're almost identical.

22 Q. It's not a trial balloon, is it?

23 A. This is not a trial balloon. This is an almost final map  
24 that we adjusted for minor things, like, you know, small  
25 changes in population and correcting precincts that were split



1 and things like that, but at this point, to use your analogy,  
2 the cake was baked. This is the Linden map with very minor  
3 changes to it.

4 Q. Did any of the commissioners object to the lower BVAPs in  
5 this map?

6 A. They did, yes.

7 Q. And who do you recall having concerns with the low black  
8 voting age population in this map?

9 A. Commissioner Juanita Curry.

10 Q. And Commissioner Curry is from Detroit?

11 A. She is, yes.

12 Q. And do you recall how she said these maps looked?

13 A. She said they were crazy. They were cracked up. Yeah,  
14 she was quite upset.

15 Q. Do you recall Commissioner Curry expressing her sentiment  
16 as to how Detroit was being treated by the Commission?

17 A. She felt the rest of the Commission didn't care about  
18 Detroit and expressed that, you know, we were spending a lot  
19 of time working on issues outside of Detroit and listening to  
20 the public and that we were not listening to the public at all  
21 in Detroit.

22 Q. And do you recall Commissioner Curry drawing a comparison  
23 between how white communities were treated versus the black  
24 communities?

25 A. Yeah. She felt that the commissioners were giving

1 preferential treatment to the white communities and ignoring  
2 the black communities and what the black communities wanted.

3 Q. Do you recall whether anyone addressed Commissioner  
4 Curry's concerns at this meeting?

5 A. So, Bruce Adelson did respond to her. I don't think that  
6 how he responded was particularly addressing her concerns,  
7 particularly one of the concerns she raised was about the  
8 voter turnout in Detroit and that it was significantly lower  
9 than the suburbs, and I don't really think he adequately  
10 addressed that.

11 MR. PATTWELL: Let's take a look. If we could turn  
12 to page 62 of Plaintiffs' Exhibit 64.

13 BY MR. PATTWELL:

14 Q. Do you recall this being part of that discussion?

15 A. I do, yes.

16 Q. I'd like to draw your attention to Mr. Adelson's  
17 statement. Remember, you're unpacking the districts. What  
18 does he say next?

19 A. He says, You are not concentrating minority voters on the  
20 basis of race or color.

21 Q. Is that a true statement?

22 A. No. That's exactly what we were doing.

23 Q. If we go down to page 363.

24 What's Commissioner Eid's instinct here?

25 A. So Commissioner Eid, who also has lived in Detroit for

1 10 years, is concerned because -- he shared the same view I  
2 did, which is that in Detroit the primary is what matters and  
3 it's the Democratic primary that matters, that's going to be  
4 where the choice is, so he's stating that he's increasingly  
5 uncomfortable with the recommendations that were being given  
6 and, you know, really questioning what we're being told.

7 Q. If we can scroll down to page 64.

8 Let's look at Mr. Adelson's response. What does Mr.  
9 Adelson say?

10 A. So, he says that talking -- that Commissioner Curry is  
11 talking about areas where people don't vote and he makes the  
12 comment that we don't have analysis about what the voter  
13 turnout is.

14 Q. If we can scroll down to the next page, page 65.

15 How about the part about him and the Secretary of  
16 State's office?

17 A. So he basically says from the Secretary of State's  
18 perspective and his own research there are no more contested  
19 primary elections statewide in Michigan that we have, and that  
20 we only have the one, the 2018 gubernatorial, which he  
21 describes as being revealing. And he's just generally  
22 remarking that he's never been somewhere where there's so few  
23 contested primary elections. And then, again, he finishes up  
24 with, you know, he recommends a cushion because 35 is an  
25 estimate.

1 Q. So just to recap, Commissioner Eid points out the  
2 primaries are the issue and Mr. Adelson says we really don't  
3 have a lot of primary data. What were you thinking at this  
4 time?

5 A. Well, I mean, throughout this entire process we had been  
6 told that this was a data driven legal analysis and he's  
7 admitting we don't have the data to support our data driven  
8 analysis. It's ridiculous.

9 Q. Let's turn to page 6, please.

10 Let's see how Commissioner Curry feels about the no  
11 data response.

12 A. So, Commissioner Curry, you know, basically says that such  
13 as data, it's common sense, we know that black people in  
14 Detroit turn out at lower numbers. We don't even need to look  
15 at the data, that everyone knows it, it's common knowledge,  
16 which I agree as someone from metro Detroit, it is. And so,  
17 you know, sometimes common sense is more important than just  
18 data.

19 Q. And in retrospect, in your opinion, who was right,  
20 Commissioner Curry or Mr. Adelson?

21 A. Commissioner Curry.

22 Q. She's from Detroit?

23 A. She is.

24 Q. Commissioner Curry wanted the BVAPs to be raised, right?

25 A. She did, yes.

1 Q. Did the Commission raise the BVAPs?

2 A. No.

3 Q. Okay. I'd like to move on to the next day, October 5th.

4 Do you recall what maps the Commission worked on on  
5 October 5th?

6 A. I believe we moved back to the House again.

7 Q. Do you recall what the purpose of the Commission's work on  
8 October 5th was with respect to the Detroit Senate districts  
9 in the House?

10 A. Continuing to refine the maps to bring down the black  
11 voting age population into metro Detroit.

12 Q. Just to clarify, I said Senate. I meant House.

13 A. Yes. This was the House on October 5th.

14 MR. PATTWELL: If we could look at that transcript?  
15 It's Plaintiffs' Exhibit 140, and the page I'd like to start  
16 with is 1843.

17 BY MR. PATTWELL:

18 Q. And there's a discussion here between you and Commissioner  
19 Rothhorn. Can you tell us what's going on here?

20 A. So we were discussing a district in -- that was stretching  
21 into Oakland County. So for the districts that were starting  
22 to stretch into Oakland County we were given a little latitude  
23 to have the BVAP in those districts, because they were half  
24 Oakland County, be between 40 and 45, and so that's what we're  
25 discussing here is that Oakland County is 40 to 45, and then

1 again she comes back to this odd 42 to 43 is what we're  
2 supposed to be pinpointing.

3 Q. And that's your general counsel?

4 A. Yes.

5 Q. And the racial target for Oakland County is pinpointed at  
6 42 and 43 percent?

7 A. Yes.

8 Q. I'd like to move on to page 1832, please.

9 What is this an example of here?

10 A. Of changes that we were making to the districts that day  
11 and what the focus was, which was increasing or changing the  
12 African American population in one district and reducing it in  
13 another.

14 Q. Is this an example where the commissioners are looking to  
15 add predominately white precincts to a Detroit area district?

16 A. So if you're trying to increase the African American  
17 population and reduce it in another you could do it either  
18 way. You could be adding white population into the one and  
19 shifting black population into the other.

20 Q. Is that what's taking place here this day?

21 A. Yes, I believe so.

22 Q. And was this easy to do or was this a difficult task?

23 A. That was always difficult.

24 Q. If we could go down to page 1837. I'd like you to look at  
25 the part of the transcript that starts with Commissioner

1 Clark.

2 What's Commissioner Clark expressing here?

3 A. Just his frustration with -- you know, we're trying to  
4 make these changes to do what Bruce is directing us to do, and  
5 it's frustrating because the population is highly concentrated  
6 and you move one group some -- some area to one district and  
7 it makes the other district then off balance of where it's  
8 supposed to be, and it just was extremely frustrating for  
9 commissioners to try to hit these targets.

10 Q. We are going in a circle; one reduces the other, it goes  
11 way up high. Why is that?

12 A. Because the population is just so concentrated that if you  
13 pull black people out of one neighborhood and move them into  
14 another neighborhood in Detroit, it's just not going to fix  
15 the problem because that's where people live.

16 Q. If we could please go down to 1850?

17 I'd like to ask you to explain what's going on here  
18 starting with Commissioner Orton's commentary.

19 A. So, Commissioner Orton is observing that the districts are  
20 so skinny that they almost -- she references it as  
21 discontinuous, that they're not following our second  
22 constitutional criteria because they're so stretched out. And  
23 Commissioner Witjes is basically saying that, listen, there's  
24 nothing else we can do. We have to comply with the VRA and,  
25 you know, we don't want them to be skinny but we don't have a

1 choice, and then Commissioner Clark agrees, we don't have a  
2 choice.

3 MS. McKNIGHT: Your Honor, I'm going to object here,  
4 misstating what is written on the page. She was just  
5 describing a line that says nothing about VRA.

6 BY MR. PATTWELL:

7 Q. What's your understanding --

8 JUDGE MALONEY: You don't think -- well, there's no  
9 direct reference, is your point?

10 MS. McKNIGHT: Correct, Your Honor.

11 JUDGE MALONEY: Okay.

12 MR. PATTWELL: I think I can clear up the record.

13 JUDGE MALONEY: Go ahead.

14 MR. PATTWELL: Yeah.

15 BY MR. PATTWELL:

16 Q. So what's being discussed here is what the revised  
17 districts look like, right?

18 A. Correct.

19 Q. And you've testified pretty much all morning that they  
20 look the way they look because, why?

21 A. Because of race.

22 Q. And why was the Commission looking at race?

23 A. Because we were directed to by Bruce Adelson.

24 Q. Thank you.

25 So I'd like to really look at this language here.



1 This is who saying this? Commissioner Witjes?

2 A. Yeah.

3 Q. What does he say?

4 A. He says, if you look at the maps currently now, it doesn't  
5 matter what state you look in, in heavily populated areas  
6 there are districts drawn that are maybe blocks wide just to  
7 do something. So, yeah, ideally do we want it to be skinny?  
8 No. But I think we just don't have a choice.

9 Q. You don't have a choice?

10 A. Right.

11 Q. Were the House districts in the Detroit area modified for  
12 a reason other than race?

13 A. No.

14 Q. If we could please go down to page 1853?

15 And just some context, this is October 5th. How late  
16 are we in the process?

17 A. We've got another month before we have to do draft  
18 proposed maps.

19 Q. I'd like to have you explain your commentary in this  
20 transcript.

21 A. So, Commissioner Curry had at one point said that I was  
22 just moving blocks around without feeling, and I made the  
23 commentary that, I'll be honest with you, at this point we are  
24 just moving blocks back and forth. So I don't know what else  
25 you need to know about the area because it's literally a

1 racial equation that I'm looking at, and I'm trying to take  
2 black people from one area and put them in another or white  
3 people from one area and put them in another. And, you know,  
4 at that point, based on how we were being pushed, the  
5 communities just didn't matter, the district -- or the -- you  
6 know, the municipal lines didn't matter. It was just about  
7 getting people into the districts to get the numbers we  
8 needed.

9 Q. In retrospect, though, we're talking about people, right?

10 A. Right.

11 Q. But the Commission was so focused?

12 A. Yes.

13 Q. Or you'd get sued, right?

14 A. Or we would get sued. That's what we were told. No one  
15 wanted to violate the Voting Rights Act.

16 Q. Did this meeting conclude with a new version of the  
17 collaborative map?

18 A. It did, yes.

19 MR. PATTWELL: If we could pull up Plaintiffs'  
20 Exhibit 95, please?

21 BY MR. PATTWELL:

22 Q. If we look in the right-hand corner, do we see an  
23 identification there? Do you see that?

24 A. Yes. 10-5-21, version one, HD.

25 Q. And you're familiar with this map?

1 A. I am, yes.

2 Q. And this is the map that the Commission continued to  
3 revise on October 5th?

4 A. Yes.

5 Q. If we could please go down to page 3?

6 Do you recognize these districts?

7 A. I do.

8 Q. How would you describe them?

9 A. They're just spaghetti noodles. They're so skinny,  
10 especially the ones going into Oakland County.

11 Q. Are there any majority black districts in this map?

12 A. No.

13 Q. And we can verify that if we go down to the BVAP table in  
14 this exhibit -- but in the interest of everyone's time, I'm  
15 not going to make you go through all the districts -- but  
16 that's where it's at.

17 What happens next?

18 A. We ended up moving on to public hearings.

19 MR. PATTWELL: If we could pull up Plaintiffs'  
20 Exhibit 130?

21 BY MR. PATTWELL:

22 Q. Are you familiar with this MLive news article?

23 A. I am, yes.

24 Q. Why are you familiar with the article?

25 A. Well, we received what we called the clips every day which

1 would show us the local articles talking about our work, and  
2 this was one that I read, along with a number of others, that  
3 were actively calling out the work that we were doing around  
4 Detroit.

5 Q. And what's your recollection of what this article  
6 discusses?

7 A. If this is the article I remember, there was a comment  
8 made in it saying that what we were doing was equivalent to  
9 building a bridge with the lowest technical requirements  
10 possible and building at the minimum and then questioning  
11 would anyone want to drive on it. So we're building districts  
12 at the lowest possible amount and, you know, are they going to  
13 work?

14 Q. So the Detroit lawmakers are concerned about the  
15 Commission's draft maps?

16 A. They're very concerned.

17 Q. Do you recall them holding a press conference before the  
18 public hearings?

19 A. I do remember them being outside of TCF Center having a  
20 press conference, yes.

21 Q. And how would you characterize -- or what was your  
22 understanding of their concerns with respect to the maps?

23 A. Their concerns were that the BVAPs were too low and that  
24 we needed to consider the primaries. That was specifically  
25 mentioned, we have to look at the primaries. And based on the

1 voter turnout in Detroit, that these numbers we were setting  
2 were so low that black voters would not be able to elect their  
3 candidates of choice in the primaries.

4 Q. And then do you recall the Commission having a public  
5 hearing in Detroit?

6 A. Yes.

7 Q. Do you recall when that was?

8 A. October 20th, 2021.

9 Q. And could you describe for the Court what took place at  
10 that public hearing in Detroit?

11 A. So, we had almost 10 hours of public comments, almost all  
12 of them were negative, a lot of comments about these districts  
13 we had drawn in Detroit, basically telling us that they were  
14 not going to be able to elect their candidates of choice.

15 One of the comments that in particular stood out to  
16 me is that one of the people who was commenting said this was  
17 like a return of Jim Crow and that we were actively repressing  
18 the vote.

19 We also had -- I believe his name is Johnson from the  
20 Michigan Department of Civil Rights who came out and spoke,  
21 and he specifically advised us that we were violating the  
22 Voting Rights Act if we continued with these districts. We  
23 also had voters, not politicians, make a statement. They also  
24 said that we needed to revisit our analysis because they also  
25 felt that we were about to violate the Voting Rights Act, and

1 voters, not politicians in particular, directed to -- us to an  
2 independent report that had been prepared by Michigan State  
3 University, that very same institute that trained us, where  
4 they also were questioning this data we were relying on or the  
5 absence of data and imploring us to reconsider what we were  
6 doing.

7 Q. Is there anything else from the public comments that you'd  
8 like to tell the Court?

9 A. No.

10 Q. Okay. Did you personally take any action in response to  
11 these comments?

12 A. I did. I started digging into Doctor Handley's report. A  
13 lot of the comments, as someone who grew up in a suburb that  
14 borders Detroit, they really resonated with me. I agreed with  
15 them. You know, it was something I hadn't really thought  
16 about before, but once they started talking about primaries, I  
17 agreed. I was, like, they're right. They're absolutely  
18 right. Living in this area the primary is where it was at,  
19 and I dug into Lisa Handley's analysis.

20 MR. PATTWELL: So we're about at the noon hour. I  
21 could go into another line of questioning but it's fairly  
22 lengthy, so I would defer to however the Court would like me  
23 to proceed.

24 JUDGE MALONEY: All right. If the next line of  
25 questioning -- you're telling me it's going to go beyond,

1       like, 15 or 20 minutes?

2               MR. PATTWELL: More like 30 minutes.

3               JUDGE MALONEY: Okay. Then we'll break for lunch at  
4 this time, and we'll resume at one o'clock.

5               MR. PATTWELL: Thank you.

6               JUDGE MALONEY: And just be mindful that the members  
7 of the panel need to get this done by the date that we set,  
8 okay? Thank you.

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

10              *(Recess taken at 11:55 a.m.; reconvened at 1:02 p.m.)*

11              THE CLERK: All rise, please. Court is in session.  
12 You may be seated.

13              JUDGE MALONEY: We are back on the record in  
14 22-cv-272. Counsel for all parties are present. Counsel, you  
15 may resume direct examination.

16              MR. PATTWELL: Thank you, Your Honor.

17 BY MR. PATTWELL:

18 Q. We just talked about the conclusion of the House and  
19 Senate maps in October and then the public hearings that took  
20 place. Shortly after the public hearings did the Commission  
21 meet in closed session?

22 A. We did.

23 Q. And what was the purpose of that meeting?

24 A. There were several purposes. The first, from my  
25 impression, was that Mr. Adelson and Ms. Pastula had become

1 concerned about the record that we had in place with respect  
2 to our discussions of race as a redistricting criteria, so  
3 that was one aspect.

4 They also, I think, were trying to get us all on the  
5 same page in terms of our story moving forward about race  
6 being used in redistricting, and then also there was a focus  
7 on getting us to stop talking about race. And, lastly, about  
8 ignoring everybody else but them. So everybody else who was  
9 complaining we needed to disregard and focus on their advice.

10 Q. And who arranged for the closed session meeting?

11 A. Julianne Pastula.

12 Q. And were the commissioners asked to sign any sort of an  
13 agreement in order to participate in the agreement?

14 A. We were.

15 Q. And what agreement was that?

16 A. We were asked to sign nondisclosure agreements.

17 Q. Between who and who?

18 A. Between the Commission and individual commissioners and  
19 Julianne Pastula and Mr. Adelson.

20 Q. To participate in the closed session meeting you were  
21 asked to sign an NDA with Mr. Adelson and General Counsel  
22 Pastula?

23 A. Yes.

24 Q. Did they say why?

25 A. I did actually ask Julianne Pastula and she had said that



1 it was because the staff weren't covered by attorney/client  
2 privilege, and I then protested and said, well, why are you  
3 asking the commissioners to sign, and she never really gave me  
4 a valid reason.

5 Q. Have the closed session audio minutes been made open to  
6 the public at this point?

7 A. They have.

8 Q. And why is that?

9 A. Because the Commission was sued by several media  
10 organizations to release the minutes -- originally it was  
11 about the memos that were being discussed in the meeting.

12 Q. And what was your position as to whether or not the  
13 Commission should have made all this public?

14 A. So before we went into the meeting I didn't have a full  
15 understanding of what we were going to discuss. I was just  
16 told it was going to be attorney/client privilege. After the  
17 meeting I felt very strongly that there was no basis for  
18 having a closed meeting and that both the memos and the  
19 content of that meeting should have been disclosed to the  
20 public.

21 Q. Not the transparent process we were promised?

22 A. No.

23 Q. I take it you didn't sign the NDA?

24 A. I did not sign the NDA. Steven Lett, who is the other  
25 attorney on the Commission, came over to me and told me he had

1 refused to sign the NDA, and then because I was being asked to  
2 sign the NDA as the chair of the Commission, on behalf of the  
3 MICRC I actually refused to sign any of them for anybody who  
4 was in that meeting. So I actually still have the partially  
5 executed copies of the NDAs that were given to me by Julianne  
6 Pastula.

7 Q. Have you gone back to the Commission's website and pulled  
8 up the audio of the closed session and listened to it?

9 A. I have, yes.

10 Q. Do you know why it's hosted by a third party site?

11 A. I do not.

12 Q. Do you know why it requires personally identifiable  
13 information to access it?

14 A. I do not.

15 MR. PATTWELL: If we could please pull up Plaintiffs'  
16 Exhibit 21?

17 JUDGE MALONEY: Counsel, is this an audio?

18 MR. PATTWELL: This is not an audio.

19 JUDGE MALONEY: When we get to the audio, if you  
20 could just alert me, because I need to place something on the  
21 record.

22 MR. PATTWELL: Yes, Your Honor.

23 BY MR. PATTWELL:

24 Q. Can you identify this document for the record, please?

25 A. So, this is one of the two memos that were provided to us

1 for the purposes of discussion during the closed session.

2 Q. And you've reviewed this memo?

3 A. I have, yes.

4 Q. You're familiar with it?

5 A. Yes.

6 Q. And what does it describe?

7 A. It describes the Voting Rights Act and its application and  
8 the need to draw minority-majority districts.

9 Q. Does it talk about how black residents of Detroit have  
10 historically been discriminated against?

11 A. Oh, this is -- I'm sorry. The history of discrimination.  
12 Sorry, wrong memo.

13 Yes. This is a very detailed memo that contains  
14 information about the history of discrimination in Michigan.

15 Q. And does it talk about how black residents of Detroit have  
16 been discriminated against in a various degree of ways?

17 A. It does, yes.

18 Q. Does it talk about how all of that historical information  
19 has led to impacts we see today?

20 A. It does, yes.

21 Q. Can you recall some of the impacts that were detailed in  
22 this memo and discussed?

23 A. Yeah. So the concept of redlining was discussed, how  
24 areas of Detroit in particular and surrounding suburbs were  
25 rated as being high risk for mortgages, therefore preventing

1 black people from obtaining mortgages.

2 There was discussion about deed restrictions in a lot  
3 of Detroit in the metro area, which is something I have  
4 personal experience from living in Dearborn because I lived in  
5 a home that had a deed restriction that prevented it from  
6 being sold to black people.

7 It talks about impacts on education. It talks about  
8 impacts on resources such as, like, infrastructure and also  
9 voting as well.

10 Q. Does it talk about how historic discrimination has  
11 adversely impacted the ability of black residents to  
12 participate in our electoral system here in America?

13 A. It does.

14 Q. And was any of this news to you?

15 A. No.

16 Q. You grew up in the Detroit area?

17 A. I did, yes.

18 Q. Did you observe racial discrimination or the impact of  
19 racial discrimination?

20 A. Many times.

21 Q. Do you have any examples you'd like to share?

22 A. Yeah. I can give you multiple examples. Growing up in  
23 Dearborn, Dearborn is the home of Orville Hubbard who was long  
24 known as being a racist. The slogan in Dearborn was keep  
25 Dearborn clean, which was widely regarded for being a

1 euphemism for keeping Dearborn white.

2           The neighborhood I grew up in was entirely white up  
3 until I was a teenager. At the time a black family moved in.  
4 The week they moved in every single house on their block --  
5 I'm sorry, this still upsets me -- and the block surrounding  
6 them went to real estate agents and got for sale signs and put  
7 them on their lawns as a very intentional and deliberate  
8 effort to tell that black family they were not welcome there.

9           And then, you know, just growing up in the Levagood  
10 Park area in Dearborn -- Levagood Park, L-E-V-A-G-O-O-D.  
11 There was actually a ballot proposal in Dearborn when I was  
12 around 10 years old because black boys were coming into  
13 Dearborn from Inkster, which was our western border, and  
14 Detroit, which was our eastern border, and they were coming to  
15 play basketball in the parks, and the citizens were very upset  
16 about that, and they did not want black boys coming into  
17 Dearborn to play basketball.

18           So the citizens of Dearborn actually voted to put an  
19 ordinance in place making the parks only for Dearborn to keep  
20 these black boys out, and I personally witnessed on many  
21 times -- we lived in that park as kids, we were swimming  
22 there, playing tennis there, we were there all the time --  
23 these black boys, before the ordinance went into effect, being  
24 harassed by the police, being forced out of the park for doing  
25 nothing more than just being boys trying to play basketball.

1 Q. You didn't need a memo to tell you what you already knew?

2 A. No.

3 MR. PATTWELL: I'd like to pull up Plaintiffs'

4 Exhibit 22.

5 BY MR. PATTWELL:

6 Q. Are you familiar with this memo, Commissioner?

7 A. Yes.

8 Q. What does this memo entail?

9 A. So, this is the first memo which is attorney/client  
10 privilege supposedly telling us about the VRA and  
11 minority-majority districts and that they are not required.

12 Q. And this is something that's been repeatedly told to you  
13 by Mr. Adelson at this point?

14 A. Right. Which is exactly why I didn't feel that this was  
15 attorney/client privilege because we have discussed this very  
16 topic repeatedly on the record.

17 Q. But, interestingly, at this point in time the Commission's  
18 already done away with every single black majority district in  
19 any map.

20 A. We have, yes.

21 Q. What's the impart of this advice now?

22 A. Well, I think it was very clear to Bruce and to Julianne  
23 that people on the Commission were listening to the people in  
24 the city of Detroit. After that Detroit hearing there were  
25 commissioners who were pushing to make changes in the maps,

1 and I think this was an attempt to kind of head that off at  
2 the pass and stop us from going down that route.

3 Q. Did your general counsel liken some of the legal arguments  
4 put forth by public commenters in Detroit as garbage?

5 A. Yes.

6 Q. Their opinions are not garbage?

7 A. No, they're not.

8 Q. Do you recall Mr. Adelson commenting on the reports that  
9 were submitted by some of the public commenters?

10 A. Yes.

11 Q. What do you recall of that?

12 A. He said that everybody was wrong, that it was  
13 misinformation or lack of information and that we should  
14 disregard it.

15 MR. PATTWELL: Now I'd like to play an audio, Your  
16 Honor.

17 JUDGE MALONEY: All right. For purposes of the  
18 record we'll play the audio but the court reporter is not  
19 going to make a word for word -- there will just be a note  
20 that the audio was played.

21 MR. PATTWELL: Perfectly acceptable. Thank you, Your  
22 Honor.

23 JUDGE MALONEY: With that, go ahead, sir.

24 *(At 1:14 p.m., audio played)*

25 BY MR. PATTWELL:

1 Q. What's Mr. Adelson referring to here?

2 A. Comments from the various plethora of sources that we had  
3 received comments from at that point, MSU, Voters Not  
4 Politicians, all the commenters in Detroit, all the elective  
5 representatives who had a press conference basically saying  
6 everything they're saying is wrong and I'm right and don't  
7 listen to them.

8 Q. How about the Promote the Vote comments?

9 A. Promote the Vote is wrong.

10 Q. How about the Michigan Department of Civil Rights'  
11 comments?

12 A. They're wrong.

13 Q. And what's the inference from counsel's advice?

14 A. Is that the only people we should be listening to are  
15 Bruce Adelson and Julianne Pastula.

16 Q. Were any of the commissioners dismissive of the public  
17 comments from Detroit?

18 A. Yes, some of them were.

19 MR. PATTWELL: If we could play clip two, please?

20 *(At 1:15, p.m., audio played)*

21 BY MR. PATTWELL:

22 Q. Who was that speaking?

23 A. So that was Cynthia Orton followed by Bruce Adelson.

24 Q. And do you think that black democrats in Detroit have some  
25 sort of partisan agenda for wanting higher BVAPs in their



1 homes and neighborhoods?

2 A. No. Because the districts in the Detroit area and  
3 surrounding suburbs were always going to be Democratic  
4 districts.

5 Q. So if the Commission is to disregard the public comments,  
6 who should it listen to?

7 A. Bruce Adelson.

8 MR. PATTWELL: If we can play clip three?

9 *(At 1:17 p.m., audio played)*

10 BY MR. PATTWELL:

11 Q. But their advice at this meeting is nothing that the  
12 commissioners haven't heard throughout the entire process?

13 A. No. It's exactly the same.

14 Q. Why a closed session to reiterate a point that's been made  
15 consistently for the last several months?

16 A. Well, I think -- as I mentioned, I think that Bruce  
17 Adelson and Julianne Pastula were concerned about the record.  
18 Bruce repeatedly, at least five times by my count, having  
19 listened to it again recently, specifically mentions  
20 litigation. He specifically mentions what courts look at. He  
21 specifically mentions eight days left and specifically  
22 advocating for us to, from this point forward, create a new  
23 record and a record that's going to be focusing on communities  
24 of interest instead of race to try to prevent courts from  
25 looking back at our prior transcripts where we are very

1 expressly and explicitly drawing districts based on race.

2 Q. Was it also a confidence session?

3 A. It was, yes.

4 MR. PATTWELL: If we can listen to clip four?

5 (At 1:18 p.m., audio played)

6 BY MR. PATTWELL:

7 Q. Pretty smooth. How do you interpret what was going on  
8 there?

9 A. So, I feel like there are two consistent themes coming  
10 from Mr. Adelson and Julianne Pastula with respect to what we  
11 were doing. When there was discomfort -- there was either a  
12 carrot or a stick put out. When there was discomfort the  
13 stick was, you're breaking the law, you're violating the  
14 Voting Rights Act, you're violating the constitution.

15 The carrot was, you're doing something revolutionary,  
16 you're doing something legendary, you're going to go down in  
17 history of unpacking Detroit and being the savior of the civil  
18 rights movement.

19 Q. So despite all that, do you recall there still being  
20 discussion of commissioners wanting to raise the BVAPs back  
21 up?

22 A. Yes. Commissioner Kellom and Commissioner Clark  
23 specifically mentioned that.

24 Q. And do you recall Mr. Adelson giving advice how that might  
25 be accomplished?

1       A.    Yes.    So Mr. Adelson specifically was referencing Flint  
2       and talking about Flint and saying that we had done higher  
3       black voting populations in Flint based on a community of  
4       interest, because they were talking about water issues and we  
5       should do the same thing in Detroit.   If we want to increase  
6       the BVAPs, we can do it, but just give a different excuse than  
7       we're doing it to increase the BVAPs, and that was emphasized  
8       repeatedly in the meeting, so create a different reason, which  
9       being a lawyer I'm, like, that's pretext, create a different  
10      reason and say that's the reason so we have a clean record for  
11      litigation.

12               MR. PATTWELL:   Let's listen.   Clip five, please.

13                       *(At 1:22 p.m., audio played)*

14      BY MR. PATTWELL:

15      Q.    That is the exact opposite of the advice you received with  
16      respect to communities of interest and meeting the racial  
17      targets up until this point, right?

18      A.    It is, yes.

19      Q.    Do you recall how the commissioners received this advice?

20      A.    I think a lot of them kind of latched onto it.   There were  
21      comments basically suggesting that this was a great idea and  
22      that effectively we can say what we want.   And whatever we say  
23      is going to determine why we drew the map, even if we all know  
24      snickering in the corner we actually did it for race.

25               MR. PATTWELL:   Let's listen.   Clip six, please.

1 (At 1:23 p.m., audio played)

2 BY MR. PATTWELL:

3 Q. I couldn't hear the beginning of that clip. I'm happy to  
4 have it replayed.

5 JUDGE MALONEY: Counsel, excuse me. Can we play it  
6 again from the beginning, because I agree with you, the  
7 initial piece of the audio was virtually -- at least for my  
8 hearing aid assisted ears, I couldn't hear it, so let's play  
9 it again.

10 MR. PATTWELL: Thank you, Your Honor.

11 JUDGE MALONEY: Thank you.

12 (At 1:24 p.m., audio played)

13 BY MR. PATTWELL:

14 Q. That's your recollection, right?

15 A. Yes.

16 Q. What did Commissioner Lett, he's an attorney, what did he  
17 have to add?

18 A. So, he basically said that communities of interest was  
19 deliberately created when creating these new redistricting  
20 criteria to give commissioners cover to do whatever we wanted  
21 and that we should use that. That it's like jello being  
22 nailed to the wall, and whatever we say our reason is is the  
23 reason, and no one is going to be able to question it.

24 MS. McKNIGHT: Your Honor, I would object on hearsay  
25 grounds. We'd like to see a transcript to support what she's

1 saying.

2 MR. PATTWELL: Happy to play the clip. If we can  
3 play clip 7, please?

4 (At 1:27 p.m., audio played)

5 MR. PATTWELL: I think that's it.

6 BY MR. PATTWELL:

7 Q. Do you recall any commissioners completely agreeing with  
8 Mr. Lett?

9 A. Commissioner Anthony Eid did.

10 Q. How about Commissioner Orton?

11 A. Commissioner Orton also agreed.

12 MR. PATTWELL: If we could play clip eight, please?

13 (At 1:30 p.m., audio played)

14 BY MR. PATTWELL:

15 Q. And that was Commissioner Orton followed by, who?

16 A. General Counsel Pastula.

17 Q. Oh. And everything that the Commission's done to date is  
18 just a trial balloon?

19 A. According to her, yeah.

20 Q. And what do you say?

21 A. I completely disagree with that, especially with respect  
22 to the Senate, because we made little to no changes to the  
23 Senate, and even with the House, I mean, those districts  
24 were -- weren't changed significantly.

25 Q. And we can see that in the maps?

1 A. Yes.

2 Q. And with respect to general counsel's comment that the  
3 Commission was looking at communities of interest while  
4 absolutely destroying the BVAPs in the Detroit area, what do  
5 you say?

6 A. I -- let me try to find a kinder word than what just  
7 popped into my head. That is untrue. We were not considering  
8 communities of interest at all when we were ripping apart  
9 Detroit. We were trying to hit racial quotas.

10 Q. These are talking points being provided by counsel.

11 A. That's exactly what it is. We're being coached by what to  
12 say in the next eight days to create a record for litigation  
13 where we focus on communities of interest to justify any  
14 changes we make to the map or justify the maps as they exist  
15 as of the day of this meeting.

16 Q. Because if we look back at the transcripts, what she said,  
17 we're not going to see it anywhere, it's not true?

18 A. Yeah.

19 Q. I'd like to play another clip, clip nine, and I'd like you  
20 to tell us who made this statement.

21 *(At 1:33 p.m., audio played)*

22 BY MR. PATTWELL:

23 Q. Who was that?

24 A. That's Commissioner Cynthia Orton.

25 Q. Do you recall Mr. Adelson having any specific guidance as

1 to the rhetoric the commissioners should use on the public  
2 record?

3 A. He specifically mentioned neighborhoods and creating  
4 communities of interest and basically claiming that that's  
5 what we're trying to do is reunite neighborhoods.

6 Q. Did he ever encourage the commissioners not to use racial  
7 terms?

8 A. Absolutely. He expressly said -- you know, I can't even  
9 remember the exact word but -- I'm sure you can play the  
10 clip -- do not, please, never, ever, don't use racial terms  
11 again.

12 MR. PATTWELL: I'm going to. Clip 10, please.

13 *(At 1:34 p.m, audio played)*

14 BY MR. PATTWELL:

15 Q. So at this point in time you're four days away from the  
16 constitutionally mandated deadline for maps?

17 A. We are, yes.

18 Q. You're coming down the home stretch?

19 A. Yes.

20 Q. The foundation for all the maps have already been set?

21 A. Yes, it has.

22 Q. And we spent the better part of today going through all  
23 the things that Mr. Adelson is saying we shouldn't be doing?

24 A. Right.

25 Q. And now he's trying to do, what?

1       A.   He's trying to clean up the record by coaching us to say  
2       something different for the last eight days with the hope that  
3       if we get sued, which seemed pretty likely at that point, that  
4       the defense strategy would be to claim that the changes that  
5       were made for race were actually done for communities of  
6       interest.

7       Q.   Along this same vein, do you recall Mr. Adelson talking  
8       about how important this public record is?

9       A.   Yes.

10               MR. PATTWELL:   If we can play clip 11, please?

11                       *(At 1:36 p.m., audio played)*

12       BY MR. PATTWELL:

13       Q.   144 meetings, you're going to fix it all up in the last  
14       eight?

15       A.   That's what was being suggested, yes.

16       Q.   Cover it up?

17       A.   Cover it up.

18       Q.   Now, you mentioned neighborhoods.   What do you recall  
19       about Mr. Adelson suggesting how to cover it up?

20       A.   That just claim that we were putting neighborhoods back  
21       together, because there were commissioners who did want to  
22       increase the black voting age population.   If they were going  
23       to insist on that approach and not listen to him saying don't,  
24       then it was okay for them to do that if they used  
25       neighborhoods as a cover, so say you're trying to rejoin



1 neighborhoods using the Detroit neighborhood map.

2 MR. PATTWELL: Clip 12, please.

3 *(At 1:39 p.m., audio played)*

4 BY MR. PATTWELL:

5 Q. What sense does it make -- what do neighborhoods have to  
6 do with stretching districts up to Birmingham?

7 A. It has absolutely nothing to do with it.

8 Q. Commissioner Clark knew that. What do you recall  
9 Commissioner Clark saying?

10 A. Well, the narrative that was being pushed by Julianne  
11 Pastula and Bruce Adelson is, like Flint, Detroit is really  
12 talking about communities of interest and Commissioner Clark  
13 called that out outright as just not being what he recalled at  
14 all.

15 MR. PATTWELL: Let's listen to clip 13, please.

16 *(At 1:40 p.m., audio played)*

17 MR. PATTWELL: That's good.

18 BY MR. PATTWELL:

19 Q. Neighborhoods aren't going to fix the problem?

20 A. Exactly.

21 Q. It's just cover?

22 A. It's just cover.

23 MR. PATTWELL: If we can listen to clip 14, please?

24 *(1:42 p.m., audio played)*

25 MR. PATTWELL: Stop right there.

1 BY MR. PATTWELL:

2 Q. What's he saying there? Fix the record but don't do,  
3 what?

4 A. Don't increase the black voting age population.

5 Q. Exactly. What was Mr. Adelson advising regarding the  
6 Commission's spoke concept?

7 A. He thought it was a great concept and that we should keep  
8 it.

9 MR. PATTWELL: Let's listen. Clip 15, please.

10 (1:43 p.m., audio played)

11 MR. PATTWELL: That's good.

12 BY MR. PATTWELL:

13 Q. So, we're going to change the record but we're not going  
14 to change anything on the maps?

15 A. Right.

16 Q. We're not in any way suggesting that we change the  
17 foundation of what you've created this entire process?

18 A. Right. Because according to Mr. Adelson, there's  
19 absolutely nothing wrong with what we've done, and if we  
20 change anything, we're packing and violating the Voting Rights  
21 Act so just create cover so when we do get sued, we can point  
22 to communities of interest to justify what we did.

23 Q. Do you recall Commissioner Kellom having any thoughts --

24 JUDGE MALONEY: Excuse me, counsel. It would be  
25 helpful if you would allow the witness to characterize what's

1       being said rather than have you offer your interpretation.

2               MR. PATTWELL: Understood, Your Honor. Absolutely.

3               JUDGE MALONEY: Thank you.

4       BY MR. PATTWELL:

5       Q.     So what were -- do you recall Commissioner Kellom having  
6       any thoughts on maintaining this spoke concept?

7       A.     So Commissioner Kellom is from Detroit, and I believe the  
8       phrase she used is that Detroit is jacked up, and that she  
9       felt that we were basically being coached to do nothing to fix  
10      the black voting age population in Detroit, and that she was  
11      not happy with that because she said she saw everybody nodding  
12      their heads like they weren't going to fix anything.

13              MS. McKNIGHT: Your Honor, I appreciate we're doing  
14      this part with testimony and then audio. I prefer for hearsay  
15      purposes that we have the audio and have her reaction to it  
16      rather than her characterization which will draw a hearsay  
17      objection because we haven't -- we have a record of it but it  
18      hasn't been played yet.

19              JUDGE MALONEY: Okay.

20              MS. McKNIGHT: Thank you, Your Honor.

21              JUDGE MALONEY: In light of the objection, counsel,  
22      let's handle it that way.

23              MR. PATTWELL: Sure. Absolutely. We tried to do it  
24      that way.

25              If we can please play clip 16?

1 (1:45 p.m., audio played.)

2 BY MR. PATTWELL:

3 Q. Who was that that jumped in at the last second?

4 A. Julianne Pastula.

5 Q. Do you recall there being any questions about the lack of  
6 primary data in Doctor Handley's --

7 A. I do remember that being brought up, yes.

8 Q. Do you recall whether or not you received an adequate  
9 response?

10 A. No. From what I recall, Bruce had said that --  
11 acknowledged that we don't have primary data and just said  
12 this is -- you know, it is what it is, basically. We don't  
13 have the data and it is what it is.

14 Q. I'm reordering in the way the Court asked. If we could  
15 play clip 17, and then I'll have a question for you.

16 (1:49 p.m., audio played.)

17 BY MR. PATTWELL:

18 Q. So my question, Commissioner Szetela, is can you explain  
19 how the Commission could keep a 54 percent BVAP district in  
20 Flint but throughout this entire process could not do the same  
21 with respect to Detroit?

22 A. I can't explain it because I don't think there's an  
23 explanation for it. It makes absolutely no sense why we were  
24 being pushed in Detroit to go lower and lower and lower than  
25 54 percent, yet in Flint it was somehow acceptable even though

1 we still had Doctor Handley's analysis that applied to  
2 Genesee, which included Flint.

3 MR. PATTWELL: I'd like to play clip 18 at this  
4 point.

5 *(1:49 p.m., audio played.)*

6 BY MR. PATTWELL:

7 Q. But you drafted all the Detroit districts using race?

8 A. Yeah. It's very confusing, and as we got further along  
9 towards final maps Bruce would make statements like that which  
10 would cause me to question why we're considering race and  
11 trying to create districts under the VRA if by his own  
12 admission there is no cohesion, therefore, we don't meet the  
13 *Gingles* standards.

14 Q. And it contradicts who the black -- you were told the  
15 black candidate of choice was?

16 A. Right.

17 Q. What were you told?

18 A. Thanedar. Thanedar.

19 MR. PATTWELL: Last clip. Clip 19, please.

20 *(1:52 p.m., audio played.)*

21 BY MR. PATTWELL:

22 Q. Are you good with this?

23 A. I was actually extremely uncomfortable with the advice  
24 that we had been given because I felt like we were being  
25 directed to lie about what we were doing, and this was

1 supposed to be an open and transparent process, and I really  
2 felt like we were betraying the principles of which we were  
3 created under.

4 MR. PATTWELL: At this time I would like to turn the  
5 audio off and I would like to ask Ms. Wellman if she could  
6 please pull up Plaintiffs' Exhibit 142, and if you could go to  
7 the first page to start. Actually, go down to page 109,  
8 please.

9 BY MR. PATTWELL:

10 Q. What are we looking at here?

11 A. So, this is a page from the presentation that Bruce  
12 Adelson had given to us, I believe it was back on July 9th,  
13 2021, and this was a principle he was emphasizing that day  
14 that we need to basically keep our mouths shut and not reveal  
15 information that could be damaging to us in litigation.

16 Q. And what was the context of Mr. Adelson's advice, Loose  
17 lips sink ships?

18 A. So he was describing an incident where parents in a  
19 lawsuit involving treatment of a child had been texting each  
20 other about the potential lawsuit and how it had been used to  
21 damage their case in litigation.

22 Q. And at that time in this memo was he discussing racial  
23 gerrymandering?

24 A. Yes.

25 Q. So the Commission is the ship, and then loose lips will

1 sink it?

2 A. Yes.

3 Q. So, it's the end of October, the Commission is not going  
4 to meet its deadline?

5 A. Right.

6 Q. I think we heard in the last clip someone said we're  
7 running out of daylight?

8 A. Yes.

9 Q. Was that the feeling?

10 A. Absolutely. We were feeling enormous pressure to get the  
11 maps done.

12 Q. You're feeling really uncomfortable?

13 A. Yes.

14 Q. You've got a law license.

15 A. Yes.

16 Q. So after the closed session did the Commission revise the  
17 maps to create more black majority districts?

18 A. For the Senate, no, but for the House, yes, there were  
19 some revisions made.

20 Q. It's probably no surprise at this point, but what are some  
21 of the reasons on the record commissioners gave for increasing  
22 the BVAPs in the House maps?

23 A. So, the day after our closed session on October 28th the  
24 Commission mentioned neighborhoods no less than 70 times when  
25 revising the maps.

1 Q. I don't think I have to ask the question, but for the  
2 record, were those revisions based on neighborhoods?

3 A. Absolutely not. In fact, I know they were not because the  
4 person who was making them, Commissioner Kellom and MC  
5 Rothhorn, had spoken with me before the meeting and  
6 specifically told me that they wanted to increase --

7 MS. McKNIGHT: Objection, Your Honor, hearsay. We  
8 have a hearsay assertion on this.

9 MR. PATTWELL: Party admission.

10 MS. McKNIGHT: Your Honor, a party admission -- she's  
11 talking about individual commissioners here. She's not  
12 talking about the Commission itself making a statement against  
13 the Commission.

14 JUDGE MALONEY: Is your objection that we can't hear  
15 the commissioner's statement?

16 MS. McKNIGHT: You can hear Commissioner Szetela's  
17 statements and you can hear statements that commissioners made  
18 on the record and transcripts or audio, which we've allowed,  
19 but when we get into statements that Commissioner Szetela is  
20 offering for the truth of the matter that she heard from other  
21 commissioners, one of whom is in this room and plaintiffs say  
22 they plan to call, that's inappropriate. That's hearsay.  
23 They're asserting it for the --

24 JUDGE MALONEY: Why isn't it an admission by the  
25 commissioner, who is a party, correct?



1 MS. McKNIGHT: The commissioner is --

2 JUDGE MALONEY: It's a statement made by your client,  
3 correct?

4 MS. McKNIGHT: It's a statement --

5 JUDGE MALONEY: Would you answer my question? Yes or  
6 no, is it a statement by your client?

7 MS. McKNIGHT: It's a statement by one of my clients,  
8 Your Honor.

9 JUDGE MALONEY: Overruled.

10 BY MR. PATTWELL:

11 Q. So if you could please continue?

12 A. So MC Rothhorn and Brittni Kellom had called me and told  
13 me that they wanted to fix Detroit and they wanted to increase  
14 the black voting age population and that they had had a  
15 discussion with Bruce Adelson that they could do that as long  
16 as they used neighborhoods as the basis.

17 MR. PATTWELL: If we could please pull up the  
18 November 2nd, 2021, transcript, and this is Plaintiffs'  
19 Exhibit 140. And the first page that I'd like to turn to is  
20 1060.

21 BY MR. PATTWELL:

22 Q. And the particular part of the transcript that I'd like to  
23 inquire about is your response to this pretext.

24 A. So, as I mentioned, I was extremely uncomfortable with the  
25 advice we had been given. And as Commissioner Kellom was

1 discussing on the record that she was planning on reuniting  
2 neighborhoods, this was me pushing back on her because I just  
3 felt that what was happening wasn't honest. I wanted her to  
4 increase the BVAPs. I was in favor of her doing that, but I  
5 didn't want her to use this pretext that was pushed on us by  
6 Bruce Adelson to do it, and so I said that on the record. I  
7 feel that that was not consistent with what I was hearing from  
8 Detroit. I don't remember Commissioner -- or individual  
9 commenters saying they wanted neighborhoods put back together.  
10 I remember a lot of comments about wanting minority-majority  
11 districts with more than 50 percent African American, and I  
12 don't remember much of anything about neighborhoods, honestly.

13 JUDGE KETHLEDGE: Commissioner, I'd like to ask a  
14 question.

15 THE WITNESS: Yes.

16 JUDGE KETHLEDGE: Why, in your view, was Mr. Adelson  
17 willing to increase the BVAPs under -- as you're testifying,  
18 if I understand it correctly, under this cover of the  
19 neighborhood communities of interest? Why was he willing to  
20 go up at this point?

21 THE WITNESS: I honestly don't know, because he was  
22 insisting it was a violation of the Voting Rights Act, yet  
23 also saying we could increase them to respond to Detroit, so  
24 it's very inconsistent.

25 JUDGE KETHLEDGE: Okay.

1 BY MR. PATTWELL:

2 Q. So if we just kind of scroll down here, your general  
3 counsel weighs in. This is becoming a theme.

4 A. Yes. So, you can see what she said here, but it's  
5 basically, in my opinion, recasting what we heard in Detroit.  
6 So she says -- let me find it here.

7 Q. Did you invite her to comment? You're the chair of the  
8 Commission.

9 A. No. She just would chime in whenever she felt like it.  
10 She was trying to control what we were talking about.

11 But she says, But I think what I hear Commissioner  
12 Kellom discussing is, again, the third criteria of diversity  
13 in communities of interest and those important distinctions  
14 between those two criteria and the focus of uniting  
15 neighborhoods that I believe, again, is what I hear from  
16 Commissioner Kellom attempting to do in these efforts. But  
17 that wouldn't have VRA implications, is my point, Madam Chair.  
18 They are -- that -- those are two very distinct activities and  
19 it would not have a Voting Rights Act component.

20 Q. And then you respond?

21 A. I do. I pushed back on her, and I said, I feel that  
22 doesn't really address my comment. Most of the people were  
23 complaining -- they felt we were not complaining about VRA and  
24 not complaining about neighborhoods.

25 MR. PATTWELL: If we could go down to 1109?

1 BY MR. PATTWELL:

2 Q. Oh. Sort of just asked this, but you actually asked  
3 Mr. Adelson is he comfortable with these higher BVAPs?

4 A. I did, yes.

5 Q. What does he say?

6 A. He says he is. And this is where I think this kind of  
7 goes to the Judge's point, too, is that he's basically finding  
8 cover and now saying, there's been nothing that I'm aware of  
9 where any of you have said we need to put more black people in  
10 a certain area beyond what the Voting Rights Act says. When  
11 you take that and then look at reunifying neighborhoods, that  
12 is a different consideration. That is not packing.

13 Q. Is that at all reflective of what has occurred for the  
14 last several months?

15 A. No, it's not. And it -- it feeds into the whole point of  
16 I think he was using Commissioner Kellom and her desire to  
17 increase the black voting age population to create a defense  
18 for litigation by allowing some changes to some districts.

19 Q. It's Machiavellian?

20 A. Yes, it is.

21 JUDGE NEFF: You know, it is really unnecessary for  
22 that kind of comment, Mr. Pattwell.

23 MR. PATTWELL: Understood, Your Honor. It won't  
24 happen again.

25 JUDGE NEFF: Thank you.

1 BY MR. PATTWELL:

2 Q. Now, if we could make this a little bit smaller here? So  
3 right under -- I'd like to direct your attention, right under  
4 the highlighted text, can you read that? This is Mr. Adelson.  
5 Because no one is expressing, what is that?

6 A. Because no one is expressing any will, intent, or  
7 subterfuge to put as many people we can in these places and  
8 will alter their ability to participate effectively in  
9 politics.

10 Q. Do you know why he made that weirdly defensive statement?

11 A. Because he's creating the record, in my opinion. That's  
12 what he said he wanted to do in the closed meeting and that's  
13 exactly what he's doing.

14 Q. How can you square what was said in the closed session  
15 meeting with what was taking place here?

16 A. I can't.

17 Q. Do you recall on the next day receiving a comment from  
18 Sarah Howard, who's the AFL-CIO Fair Maps project leader?

19 A. I do, yes.

20 MR. PATTWELL: If we can pull up the transcript?  
21 It's at page 1117 and 18.

22 BY MR. PATTWELL:

23 Q. Do you see this comment here?

24 A. I do. So Sarah Howard had attended almost every single  
25 one of our meetings so she was well aware of our history and

1 so she said, Last night Mr. Adelson said districts can go as  
2 high as 55 percent BVAP as long as it is a side effect of  
3 recognizing a community of interest and not an explicit  
4 attempt to create a majority-minority district. This is,  
5 frankly, I'm -- an astonishing reversal. You must reassess  
6 all VRA districts based on community of interest testimony.  
7 We doubt, for example, that Birmingham and Detroit are a  
8 genuine community of interest.

9 Q. Was it astonishing to you?

10 A. It was. It was entirely inconsistent with what we had  
11 been told and, frankly, if we could have had these higher  
12 levels all along it would have saved us an enormous amount of  
13 frustration of trying to draw down maps to 35 percent.

14 Q. And Ms. Howard wasn't aware of what took place in closed  
15 session at this time?

16 A. She was not.

17 Q. And you're done playing ball?

18 A. Yes.

19 Q. Do you recall a December 2021 exchange with General  
20 Counsel Pastula regarding the accuracy of Doctor Handley's RBV  
21 analysis?

22 A. Yes.

23 Q. Can you describe that exchange?

24 A. Yes. So I had received a telephone call from both Edward  
25 Woods individually, he was our communications and outreach

1 director, and then separately from Suann Hammersmith, who was  
2 our, at the time, executive director, with concerns that  
3 Doctor Handley had apparently conveyed that she felt our  
4 districts were not compliant with the Voting Rights Act, and  
5 that Julianne Pastula at the staff meeting where this  
6 information was revealed had instructed the staff that they  
7 could not share the information with us because it was subject  
8 to attorney/client privilege.

9 So both Suann and Edward called me, they were  
10 extremely upset, and relayed to me what had happened in that  
11 meeting to the best of their recollection, but the gist of it  
12 was that Doctor Handley said that our maps did not comply with  
13 her analysis.

14 Q. And that exchange was via e-mail?

15 A. Yeah. So then I emailed Julianne Pastula about it because  
16 I was extremely upset with her as an attorney, particularly,  
17 to know that our attorneys had received information that was  
18 relevant to our mapping and that it was being deliberately  
19 withheld from us. I was outraged with her for doing that.

20 Q. And how did Attorney Pastula respond to your confrontation  
21 of her regarding the withholding of information?

22 A. She had accused me of creating a hostile work environment.

23 Q. And was that investigated?

24 A. It was.

25 Q. And what was the finding?

1 A. It was closed.

2 Q. Other than Doctor Handley's September 2nd, 2021,  
3 presentation, how much direct contact did you actually get  
4 with Doctor Handley regarding her racial bloc voting analysis?

5 A. Little to none. She was very difficult to get ahold of so  
6 I think I maybe had one or two contacts with her from  
7 September through December.

8 Q. So, of the --

9 JUDGE KETHLEDGE: Of which years are you talking  
10 about?

11 THE WITNESS: 2021.

12 JUDGE KETHLEDGE: 2021?

13 THE WITNESS: Yep.

14 JUDGE KETHLEDGE: Okay.

15 BY MR. PATTWELL:

16 Q. So of those 36 meetings that we were told in opening  
17 statement that Handley or Adelson was at, how many did you  
18 actually hear directly from Doctor Handley, that you can  
19 recall?

20 A. I believe it was three. I believe she was there  
21 September 2nd, which was the first racial polarized voting  
22 analysis. I know she came back on October 1st to talk about  
23 partisan fairness measures, and I believe there was one more  
24 meeting she attended after that talking about ethnic  
25 communities in voting such as Hispanic and Arabic and



1 Chaldean, and so we had another presentation on that topic as  
2 well, but I can't recall the date for that one.

3 Q. So between Doctor Handley and Mr. Adelson, who's driving  
4 the ship?

5 A. Dr. Adelson -- I'm sorry, Mr. Adelson.

6 Q. But you've -- at this point you've got serious concerns?

7 A. Yes.

8 Q. Do you reach out directly to Doctor Handley?

9 A. I did. I sent her an e-mail.

10 Q. And what did you say?

11 A. I relayed my understanding of what had been communicated  
12 to me from Suann Hammersmith and Edward Woods about her  
13 concerns about our maps. I had put some data into it asking  
14 her, did we really need to raise these up to 48 percent, which  
15 is what my understanding was she was recommending.

16 MR. PATTWELL: If we can pull up Plaintiffs'  
17 Exhibit 5 and turn to page 21, please.

18 BY MR. PATTWELL:

19 Q. Now, what's this document?

20 A. So, this is her response back to me, and her response was,  
21 Unfortunately we do not have sufficient information to  
22 anticipate what might happen in future Democratic primaries in  
23 the proposed district. The reason is that we have only one  
24 state-wide Democratic primary for which we can recompile  
25 results and minority voters were not cohesive in this primary.

1 We simply do not know what will happen in a primary in which  
2 minority voters are cohesive.

3 Q. What was your reaction?

4 A. So effectively she's confirmed what I had been saying all  
5 along and what other people were saying is that we don't have  
6 any data on Democratic primaries and yet, you know, we've  
7 driven these districts down so low without any data to support  
8 bringing them so low. The data just isn't there.

9 Q. So Doctor Handley issued her final report on the Voting  
10 Rights Act on December 28, 2021?

11 A. Yes. Yes.

12 Q. And what happened that exact same day?

13 A. We had our final meeting to approve the final maps.

14 Q. And the Commission took public comments at that meeting?

15 A. They did, yes.

16 MR. PATTWELL: If we could drop down to 1432 of  
17 Exhibit 140.

18 BY MR. PATTWELL:

19 Q. Is this a public comment that you recognize?

20 A. Yes. So, they're saying, There is no reason why that map  
21 draws always -- way up to Clawson, Berkley, and one other  
22 city, so reconsider because it's not realistic.

23 Q. What is the commenter saying here?

24 A. That there's no reason to draw a Detroit district all the  
25 way up into the suburbs.

1 MR. PATTWELL: If we can go down to 1447, please.

2 BY MR. PATTWELL:

3 Q. This is another public commenter?

4 A. Yes.

5 Q. And what is this public comment?

6 A. Number two, the issue that I have is, well -- which is  
7 combining suburban and city districts does not make much sense  
8 since our needs are quite different.

9 Q. And that is a retired physician from Detroit?

10 A. Yes.

11 MR. PATTWELL: If we can scroll down to 1445.

12 BY MR. PATTWELL:

13 Q. How did Commissioner Lange open the meeting?

14 A. She had mentioned that we need to revisit the maps because  
15 obviously people aren't happy with them and we're still  
16 hearing the same comments about Detroit.

17 Q. And if we scroll down to 1458, are there commissioners  
18 that are in agreement with Commissioner Lange?

19 A. Yes. I was in agreement. MC Rothhorn was in agreement.  
20 Commissioner Kellom was in agreement.

21 Q. And did you express concerns you had with Doctor Handley's  
22 report at this time?

23 A. I did, in detail.

24 MR. PATTWELL: If we can scroll down to 1461, please.

25 BY MR. PATTWELL:

1 Q. Am I in the right place here? Are these some of your  
2 comments?

3 A. Yes. So I said, We received very vigorous public comment,  
4 particularly around VRA issues and particularly with primaries  
5 and Democratic primaries and are these maps representative and  
6 do they actually provide the black community in Detroit with  
7 the ability to elect.

8 Q. And what response did you receive?

9 A. Mr. Adelson basically said that Doctor Handley's analysis  
10 was the best analysis that he had ever seen and he  
11 acknowledged, again, that there was inadequate information  
12 with respect to the primaries, but, once again, just kind of  
13 threw his hands up in the air and said, you know, it is what  
14 it is, this is the universe we're operating in. And then he  
15 really leaned into as well the fact that Doctor Handley had  
16 looked at 70 elections as somehow being probative while  
17 simultaneously acknowledging that none of those elections were  
18 Democratic primaries.

19 Q. You respond?

20 A. Oh, yes. I argued about this for quite some time.

21 Q. All the same concerns that you've already expressed at  
22 this time?

23 A. Yes.

24 Q. And Mr. Adelson disagreed, but what admissions did he  
25 make?

1       A.   Well, he said that there wasn't primary data.  He also,  
2       interestingly, said that there was no white voter bloc  
3       blocking black candidates from being elected in the Democratic  
4       general elections, which, again, brings me back to the  
5       question of why are we drawing VRA districts if we aren't  
6       meeting the test, because if there isn't white voting bloc  
7       preventing black candidates from being elected, then we aren't  
8       even supposed to be doing these districts.

9       Q.   So the dialogue is all here.  You say your peace.  What  
10      happens next?

11      A.   There was some additional discussion, but ultimately one  
12      of the commissioners moved that we make no more changes to the  
13      maps.

14      Q.   And did that motion carry?

15      A.   It did.

16      Q.   And then what happened?

17      A.   Then we went on to approve the maps, including the Linden  
18      and the Hickory, so Linden was for the Senate, Hickory was for  
19      the House.

20      Q.   Okay.

21               MR. PATTWELL:  If we can pull up PX96A, the Linden  
22      plan.  Scroll down a page, too, please.  Great.  Thank you.

23      BY MR. PATTWELL:

24      Q.   What can you tell us about the Linden plan here?

25      A.   So, this is effectively the same map that we had drawn

1 back in October. There are very few changes, just to clean up  
2 borders and such as that, but in the Detroit area this is  
3 effectively the same map we had back in October.

4 Q. This is a collaborative map that the commissioners drew  
5 working collaboratively?

6 A. It is.

7 Q. And how many BVAPs are over 45 percent in this map?

8 A. None.

9 Q. And if we go down and look at each one of these Detroit  
10 districts and the low BVAP, if you hit the bellwether function  
11 button for each one of those districts, what would it have  
12 told you?

13 A. It would have told us that the Democrat would be elected.

14 Q. So no matter how low you draw the BVAP, the bellwether  
15 button says the district performs for black voters?

16 A. Right.

17 Q. And would you characterize that as a rubber stamp?

18 A. Yeah, I would.

19 MR. PATTWELL: If we can pull up the Hickory plan  
20 next at PX96, page 3, please.

21 BY MR. PATTWELL:

22 Q. What can you tell us about the final Hickory plan?

23 A. So, there were a few districts that Commissioner Kellom  
24 was able to raise the BVAPs on with her changes, but I would  
25 say at least half of these are the same districts we had drawn

1 back in the first week of October. You know, minor changes.

2 Q. So in total we're left with how many black majority  
3 districts in the Hickory plan?

4 A. I'd have to see the chart. I believe it's five, but I  
5 could be wrong on that.

6 Q. Let's pull it up.

7 MR. PATTWELL: I'm going to put a pin in that and  
8 we're going to go through it. First, if we can pull up  
9 Exhibit 136. If we can go to page 32.

10 BY MR. PATTWELL:

11 Q. You recognize all four maps here on this demonstrative?

12 A. I do, yes.

13 Q. And can you describe them for the Court?

14 A. So, the very first map is that September 13th map. That  
15 was the first day that Bruce Adelson was really pushing on us  
16 to start changing the districts in Detroit, so as you can see,  
17 we have this District 6 which is entirely in Macomb County and  
18 then we have District 8 which stretched up a little bit into  
19 the border of Macomb and Oakland, but that was to preserve a  
20 community of interest. That was the Bangladeshi community  
21 that we were trying to tie in with Hamtramck, so that was  
22 intentional.

23 Then we have 13, which is kind of bordering Detroit  
24 and Southfield, which is also predominately black. And then  
25 we have that green district, which I believe is 9 -- yes, 9,

1 which was entirely within Detroit with a little bit of gap out  
2 of it.

3 So then we move into the 14th, you can see we're  
4 having to start to make changes. So District 8 now becomes  
5 skinnier. District 6 now reaches into Detroit. And so those  
6 were kind of the first changes we made, and that was to lower  
7 the BVAP in those two -- in that District 8, was to bring it  
8 down. It also had the function of lowering the BVAP in 7 as  
9 well.

10 Q. We can go down to the next plan, the next iteration.

11 A. So, here you can see we're stretching out even more. So  
12 that District 13, which was originally Southfield and a  
13 portion of Detroit is now taking that up and down orientation,  
14 same as District 8. And, again, this is being done entirely  
15 for black voter age population purposes. We're trying to  
16 bring down the BVAP.

17 District 8 is now stretching even farther and is even  
18 skinnier. District 6 is pretty much the same in this map and  
19 District 9 is now shifted up to take part of Southfield and  
20 then moving into Livonia, which is predominately a white  
21 community.

22 Q. And then if we move on to October 4th.

23 A. Yep. And as you can see here we have to go to District 6,  
24 which is that blue district, stretching up even farther into  
25 Macomb County. We're really reaching up. Same thing with



1 District 8, we go in and pick up even farther into Macomb and  
2 Oakland County, trying to pick up more white population.

3 Same thing with that up and down district,  
4 District 13. We now grab Birmingham, which is an  
5 extraordinarily wealthy area, white area, pulled into Detroit,  
6 again, narrowing the base that's in Detroit. And then the  
7 same thing with District 9, we're now shuffling it over and  
8 taking it out of the Southfield area and shifting it into more  
9 Farmington Hills area, again, to grab white population.

10 MR. PATTWELL: If we can scroll down just a little to  
11 show that Senate BVAP map progression.

12 BY MR. PATTWELL:

13 Q. My first question is can you explain the correlation  
14 between the draft district numbering and the final district  
15 numbering?

16 A. Yeah. So when we finally got maps done, we had our line  
17 drawers go through and renumber, starting with 1 down in the  
18 City of Detroit and moving outward kind of -- kind of, I'd  
19 say, like westerly towards the rest of the state. So the  
20 districts were renumbered. So what I see here is a  
21 correlation showing the difference between what the final  
22 number was and what the draft number was. And then below that  
23 is a listing of all the plans, and you can see how the BVAP is  
24 evolving.

25 So that very first plan, we have very high BVAPs,

1 76 percent, 63 percent, and we're pushing, pushing, pushing  
2 down as the map is progressing, and as we're doing that we're  
3 shifting that population out into other districts so that we  
4 ultimately end up with a bunch of districts that are between  
5 35 and 40 percent with the exception of District 3, which is  
6 the final, where we had a little bit higher, 42 percent.

7 Q. So just to make sure we're clear, so District 1 in the  
8 Linden plan was district 17 in all the maps -- draft maps?

9 A. Yes.

10 Q. District 3 in the Linden plan was 8 in the draft?

11 A. Yes.

12 Q. And so on?

13 A. Yes.

14 Q. So when you talked about District 13, that's actually  
15 Senate District 8 in the Linden plan?

16 A. Yes.

17 MR. PATTWELL: If we can pull up pages 36 and 37 side  
18 by side, please?

19 BY MR. PATTWELL:

20 Q. So on the left we've got the October 4th collaborative  
21 Senate map and then on the right we've got the final.

22 A. Yes.

23 Q. What can you tell us about these?

24 A. So, as you can see, I know the numbers -- or the colors  
25 are different so it makes it a little confusing, but these

1 districts are functionally the same. There's a few small  
2 changes, but if you look at, like, District 10, which is kind  
3 of brown on the right side, and then you come over and you  
4 look at the corresponding district, which is in blue and  
5 number 6, it's functionally the same district. You can see  
6 the bop out in Warren out to the left. You know, a few small  
7 changes here and there but it's functionally the same.

8 Same thing if you come over to 3, which is the green,  
9 and then come over to 8. If you compare those two districts  
10 they're largely the same. District number 8 in the final,  
11 that's the one that includes Birmingham, which is why it has  
12 that -- kind of that odd hook up at the upper left, that's the  
13 City of Birmingham. If you look at the orange district on the  
14 left map, it's the same.

15 And then if you go to District 6, which is the one we  
16 repositioned into Farmington versus Southfield, again, you can  
17 follow these lines. They're the same lines. And then  
18 District 17 on the left, which is kind of smokey blue one, is  
19 District 1 on the right, and you can see we took what was  
20 primarily a white district down in kind of Downriver area  
21 Taylor, and we pulled that up all the way into Detroit to  
22 create another district to absorb population, black  
23 population.

24 Q. If we can go back to page 32, please, and I'd like to look  
25 at a change that occurred between the 9-15 and 10-4 maps. And

1 specifically I'd like to have you look at Senate District 6  
2 and 5. You see those over on the right-hand side?

3 A. So, I'm sorry, you kind of lost me.

4 Q. The first map is -- or down lower. Yeah. So, do you see  
5 District 6 --

6 A. Yes.

7 Q. -- in blue?

8 A. Yes.

9 Q. And then do you see District 5 way up in the north there?

10 A. Yes.

11 Q. And so what -- what changes here between 9-15 and 10-4  
12 with respect to those -- the inner relation of these two  
13 districts?

14 A. So, again, we're trying to reduce black population and  
15 that requires us to grab more white population, and that also  
16 shifts some of the black population into a district where  
17 there's very little black population. So we take Eastpoint  
18 out, which is predominately black, and we put it into a mostly  
19 white district. And I believe our BVAP in that district ended  
20 up being 11 percent, so we took a majority black district and  
21 put it in somewhere versus taking where it was originally,  
22 which was a higher BVAP district.

23 Q. So you took a contiguous -- a group of people that are  
24 contiguous with Detroit and you moved them into a different  
25 district that's predominately white?

1 A. Yes.

2 Q. In fact, it's like 80 percent white?

3 A. Yes.

4 Q. And you did that for what reason?

5 A. To reduce the black population in District 6.

6 Q. For racial reasons?

7 A. Yes.

8 Q. And that Senate District -- 5 is 11, right?

9 A. Yes. I believe so.

10 Q. And 6 is 10 now?

11 A. I believe so, but I'd have to see the chart below.

12 MR. PATTWELL: If you can scroll down just a hair.

13 THE WITNESS: Yep.

14 BY MR. PATTWELL:

15 Q. Okay.

16 A. So draft District 5 is final District 11.

17 Q. So if you're black and you live in Eastpoint the reason  
18 you're in District 5 is because of race?

19 A. Yes.

20 JUDGE NEFF: You know, I just have to make a comment,  
21 Mr. Pattwell. I really think I've been pretty patient all day  
22 long, but you have really effectively been testifying today.  
23 And, you know, I know you want to get through this, but it  
24 really doesn't -- it isn't very persuasive when you do that.

25 I think if you have questions for your witness, you

1 should ask them, let her answer them, but don't yourself  
2 testify, which you've been doing all day long.

3 MR. PATTWELL: Okay, Your Honor. I can rephrase the  
4 question.

5 JUDGE NEFF: Yes.

6 BY MR. PATTWELL:

7 Q. So, if you're black and you live in Eastpoint, why did the  
8 Commission put you in an 80 percent white district?

9 A. Because we had to reduce the black voting population in  
10 the district adjacent to it.

11 Q. If you could please look at Linden 8, which was Senate  
12 District 13 in the drafts. What can you specifically tell us  
13 about this progression?

14 A. So, 8 and 13. So, yeah, as I mentioned, we were thinning  
15 this district out to reduce the black population reaching  
16 farther and farther up into Macomb County and Oakland County  
17 with the goal of bringing that black population in that  
18 district down below 50 percent.

19 Q. Real quick, if you could tell us about the progression of  
20 Senate District 9 here, which is later relabeled Linden 6?

21 A. Yeah. So District 9 is the one -- if you look at the  
22 image on the left, you can see it sort of is like a base and  
23 then a pop up on the right, and we shifted that district. So  
24 we shifted the part that was in Oakland County over to  
25 Farmington, so Southfield, which it had originally included,

1 is predominately black. That also includes Lathrop Village,  
2 which is also predominately black.

3 Because our black voting population in 9 was too  
4 high, we flip flopped that community with a predominately  
5 white community of Farmington, Farmington Hills to reduce the  
6 black voting age population in 9.

7 MR. PATTWELL: And if we could look at Senate  
8 District 8, which was Linden 3. Actually, if you show all  
9 four progressions, please. So looking at -- and the BVAPs,  
10 too, please. Just the whole chart. Thank you.

11 THE WITNESS: So you wanted District 8; is that  
12 right?

13 BY MR. PATTWELL:

14 Q. Yes, please.

15 A. So 8 it was the same thing, we're just stretching it out  
16 further making the base thinner in Detroit, so the base in  
17 Detroit is thinner because we're trying to reduce black  
18 population, which is where that is, and then stretching up  
19 farther into Oakland and Macomb Counties to make the -- add  
20 more white population.

21 Q. What's the BVAP in 8 when the Commission starts?

22 A. So, 8 -- final 8 or draft 8? Final 8?

23 Q. Draft 8.

24 A. So draft 8, the original was -- I can't read -- 50.82 and  
25 then the final is 42.09.

1 Q. And then -- let's actually start from not District 1 but  
2 let's start from left to right, so let's start with the final  
3 3. So, you start at how much?

4 A. I'm sorry, could you clarify the final 3?

5 Q. District number 3.

6 A. Okay. So the final 3 we started with 50.82 and we ended  
7 with 42.09. And then for District 6, final 6, draft District  
8 9 we started with 76.56 and reduced that all the way down to  
9 39.15.

10 For the next district, final district 8, draft  
11 District 13, we reduced the BVAP from 63.77 to 40.25. And  
12 then District 10, which was draft District 6, we actually  
13 increased the BVAP there from 18.1 to 40.43 and that was,  
14 again, to take black population from other districts. And  
15 then District 11, draft 5, the BVAP was originally 7.8 and we  
16 ended up increasing that 19.19, again, to take black  
17 population away from other districts.

18 Q. And then the same is true with respect to District 1?

19 A. Yes. District 1 was originally 10.98, and we increased  
20 the black population there to 35.03.

21 Q. Okay. And so now with respect to Linden three where we  
22 started, can you show us in the map how the shape changes?

23 A. So, Linden three, the final...

24 Q. So Linden three is draft eight.

25 A. Draft eight. So, yeah. So, again, it, like, stretches



1 out farther into Macomb and Oakland counties and gets thinner.

2 Q. And then I think if I heard you correctly with draft 17,  
3 which is Linden one, as those other changes are taking place,  
4 what is happening to draft 17?

5 A. So we took a district that was originally in mostly in  
6 Taylor and Downriver, which is mostly white, and we stretched  
7 it up into Detroit and started grabbing population out of  
8 Detroit.

9 Q. So if we look at the top, that, like, light grayish blue,  
10 that's 17?

11 A. Yes.

12 Q. And then we see -- what does it do there in the later  
13 progression?

14 A. So in the later progression it actually enters into  
15 Detroit and takes population from the center of Detroit.

16 Q. I'd like to turn next to the House map progression, and  
17 this is at page 39. Do you see what district is identified  
18 here?

19 A. Yes. This is draft District 18 which became number 7 in  
20 the final.

21 Q. And what -- what's being displayed in this demonstrative?

22 A. So, we started out with a pretty compact district, a  
23 little bit of Oak Park and part of Detroit. That was based on  
24 communities of interest, keeping those together.

25 Unfortunately, the BVAP was quite high with that

1 configuration. It was around, I think, 79 percent, so by  
2 September 30th, we had reconfigured the district, stretched it  
3 out more up into Oakland County, grabbing additional white --  
4 primarily white communities and then shortening and kind of  
5 squeezing it in in Detroit.

6 We then continued with that on October 5th and now  
7 we've really stretched it out even farther into kind of the  
8 Royal Oak area, and then again kind of narrowed the base in  
9 Detroit to make it more compact. And then once we reached the  
10 final, Hickory, you can see we even stretched it out even  
11 more.

12 Q. And what were the bases for these changes?

13 A. Racial population.

14 MR. PATTWELL: If we can move to page 40?

15 BY MR. PATTWELL:

16 Q. What district are we looking at here?

17 A. So, this is District 8 in the draft which also happens to  
18 be District 8 in the final. And, again, you see we can start  
19 out with a relatively compact district. It crosses a little  
20 bit into Oakland County. That kind of strong red line right  
21 below the red dot is the border between Detroit and Oakland  
22 County.

23 And so we start out with a little part of Detroit and  
24 part of -- of Ferndale, which actually that was intentional.  
25 That was for an LGBTQ community of interest. Once we start

1 getting pressured to drop the BVAPs, we start stretching it  
2 out more into Oakland County, again, narrowing the base a  
3 little bit. And then by the time we're at October 5th, we've  
4 really, really, really reached up into Oakland County, really  
5 decreased the base down in Detroit, and then end up with this  
6 kind of long, skinny district. Again, that green line that  
7 you see cutting through that final Hickory district, that is  
8 the border between Detroit and Oakland County, and you can see  
9 the district is now half in Oakland County approximately and  
10 half in Detroit to get those BVAPs low.

11 Q. And what was the basis for the changes?

12 A. Again, it was -- it was racial, about keeping the black  
13 voting age population below the -- the ballpark that we had  
14 been given.

15 MR. PATTWELL: If we can go to page 42, please?

16 BY MR. PATTWELL:

17 Q. Same thing here, if we look at the BVAPs where you start  
18 and where you finish?

19 A. Yep. So, again, this was District 8 in the draft and  
20 moved to District 11 in the final. And so originally we had  
21 this district that grabbed part of Detroit and went up into  
22 St. Clair Shores. Our numbers were too high so we started to  
23 pull out parts of the district, make it skinnier, stretch it  
24 out farther into St. Clair, which is predominately white,  
25 changed the base around in Detroit a little bit.

1           We also carved out the Grosse Pointes as well, which  
2           is also predominately, depending on which Grosse Pointe,  
3           white, to just create a narrow, skinnier district, again, for  
4           the purpose of lowering the BVAP.

5           Q.   Is all of these districts sort of stretch out into the --  
6           the suburbs, was that supported by public comment?

7           A.   Definitely not. Especially how we were splitting up,  
8           like, Grosse Pointe, Grosse Pointe Woods, and Harper Woods.  
9           That was not a configuration that they had wanted.

10          Q.   And what's the basis for the change?

11          A.   It was about reducing the BVAP.

12               MR. PATTWELL: If we could look at page 41, too?

13          BY MR. PATTWELL:

14          Q.   What district is this?

15          A.   So, this is District 4 which later became District 10 in  
16           the final. And so this is similar to the last one. You can  
17           see we're adjusting that line between Grosse Pointe and  
18           Detroit and taking in more and more of Detroit and stretching  
19           it out more and more into the Pointes, again, for the purpose  
20           of dropping that BVAP. We didn't need to drop it as much for  
21           this one. We brought it from 42 to 38 because the Grosse  
22           Pointes, which are basically along the upper shore there, are  
23           predominately white.

24               JUDGE MALONEY: Counsel, I don't know how many more  
25           maps you've got, but we understand the point you're making,

1       so...

2               MR. PATTWELL: I'm almost finished with this witness.  
3       We can take a break. We can do whatever you'd like.

4               JUDGE MALONEY: Finish with the witness and then  
5       we'll take a break. Go ahead.

6       BY MR. PATTWELL:

7       Q. I understand you filed a dissenting opinion?

8       A. I did, yes.

9       Q. Is there anything that you'd like to emphasize from your  
10       dissenting opinion here today?

11       A. Just that as I dug into Doctor Handley's report,  
12       particularly her final report, it really confirmed the concern  
13       that these low districts, we are lacking data, and  
14       particularly some of the information that she had originally  
15       identified as being black preferred candidates being elected  
16       was actually wrong. And she provided that data in the final  
17       report showing that even at 36 percent there were instances  
18       where the black preferred candidate was not getting elected.

19               And so that just confirmed my concerns, and I  
20       actually had a footnote on that for both the Senate and the  
21       House map that, you know, we just didn't have the evidence to  
22       confirm these -- these district ranges that we adopted.

23       Q. Did you have the opportunity to submit any additional maps  
24       towards the end of the process?

25       A. So, I did. After the kind of confrontation with doctor --

1 or I shouldn't say confrontation with Doctor Handley -- the  
2 confrontation with General Counsel Pastula about Doctor  
3 Handley's concerns about our maps, Suann Hammersmith and  
4 Edward Woods, again the executive director and communications  
5 and outreach director, had asked me to start drawing remedial  
6 Senate maps with BVAPs at 48 percent, and so I did, in fact,  
7 do that. I drafted remedial maps. I had them ready to go at  
8 our meeting on December 28th so that if we were going to make  
9 changes, I already had a draft that we could look at with the  
10 higher BVAPs.

11 Q. Were they ever put into the public record?

12 A. They were not.

13 MR. PATTWELL: If I could just have one second?

14 BY MR. PATTWELL:

15 Q. If I could direct your memory back to that moment we  
16 talked about on September 13th, 2021. Do you recall that?  
17 Receiving an e-mail at that time?

18 A. From Julianne Pastula about the packing?

19 Q. Right.

20 A. Yes.

21 Q. And you testified that the starting point for the Senate  
22 maps was how many majority black districts?

23 A. I believe we had three in the first draft.

24 Q. And then there was an intervention?

25 A. Yes.

1 Q. And that was by whom?

2 A. By Mr. Adelson and Julianne Pastula.

3 Q. And just to summarize, they said what?

4 A. That we were packing by having the districts above 35 to  
5 40 percent.

6 Q. And what would result from the districts being packed,  
7 they said?

8 A. That we would be sued.

9 Q. At that very time that the Commission was doing this work,  
10 do you know how many black Senators represented the Detroit  
11 area?

12 A. I believe it was five.

13 Q. And that was under legislatively drawn maps?

14 A. It was, yes.

15 Q. That contained how many Senate districts above 45 -- BVAPs  
16 above 45 percent?

17 A. I believe it was five.

18 Q. And Doctor Handley's report said what about Senate  
19 districts with BVAPs above 48 percent?

20 A. That all Senate districts above 48 percent elect the  
21 minority candidate of choice or the black candidate of choice.

22 Q. Following the guidance of its consultants, how many Senate  
23 districts in Detroit did the Commission draw with BVAPs above  
24 45 percent?

25 A. Zero.

1 Q. So did the Commission follow its initial instincts?

2 A. No, we did not.

3 Q. And how many black senators represent Detroit voters today  
4 under the Linden plan?

5 A. I believe it's two.

6 Q. Is that Senator Santana and Geiss?

7 A. Yes.

8 Q. And do you know if either of those senators were  
9 incumbents in the 2022 election?

10 A. I believe they both were.

11 Q. From where is Senator Geiss?

12 A. Geiss is from Taylor.

13 Q. Is Taylor predominately white or black?

14 A. Predominantly white.

15 Q. Do you know if Senator Geiss was the preferred candidate  
16 of black voters in the 2022 primary?

17 A. My understanding was she was not.

18 Q. So today we only have one black senator from Detroit who  
19 was the black preferred candidate in the last primary  
20 election; is that correct?

21 A. As far as I understand, yes.

22 Q. Do you know if Senator Santana is term limited?

23 A. She is.

24 Q. What district does Senator Santana represent?

25 A. I believe it's two.



1 Q. Linden two.

2 Do you know a lot about this district?

3 A. I know a little bit about this district.

4 Q. Is it mostly Dearborn?

5 A. It is, yes.

6 Q. And do you recall what the BVAP in Linden two is?

7 A. I do not recall.

8 Q. I can pull it up. PX2, page 25, please?

9 You can see it on the second line.

10 A. It's 24.47.

11 Q. In your opinion, is that an opportunity to elect district  
12 for black voters?

13 A. No.

14 Q. Which in the next election could leave Detroit with how  
15 many black senators?

16 A. Well, depending on what happens with Erika Geiss, one or  
17 zero.

18 Q. Knowing what you know now, do you think the Linden plan  
19 adversely affects black opportunity in Detroit?

20 A. I do.

21 Q. And should the Linden plan be revised?

22 A. I think that the plan should be revised, and I think it  
23 can be revised.

24 MR. PATTWELL: I thank you very much for your time.

25 Your Honors, thank you for your patience with me. I

1 tender the witness.

2 JUDGE MALONEY: All right. Thank you. It's 2:45.  
3 We'll take 15 minutes and resume at three o'clock for cross.

4 Thank you.

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

6 *(Recess taken at 2:48 p.m.; reconvened at 3:03 p.m.)*

7 THE CLERK: All rise, please. Court is in session.  
8 You may be seated.

9 JUDGE MALONEY: We're back on the record in Agee  
10 versus Benson.

11 Ms. McKnight, you may inquire.

12 MS. McKNIGHT: Thank you, Your Honor. We have an  
13 agreement from plaintiff that they'll provide us with a list  
14 of the audio time stamps and they'll do it by today so we're  
15 able to review them.

16 JUDGE MALONEY: Terrific. Thank you.

17 CROSS EXAMINATION

18 BY MS. McKNIGHT:

19 Q. Good afternoon, Ms. Szetela.

20 A. Good afternoon.

21 Q. Thank you for your time today and your work on the  
22 Commission.

23 A. Thank you.

24 Q. Have you corresponded with plaintiffs' counsel prior to  
25 today?

1 A. You mean writing them letters?

2 Q. Any type of correspondence.

3 A. I'm not sure what you mean by correspondence. You mean  
4 e-mails, letters?

5 Q. Any of that and then we can break it down by type.

6 A. Yes.

7 Q. What types of correspondence have you had with them?

8 A. A few e-mails.

9 Q. Have you had any calls with them?

10 A. I honestly don't think so.

11 Q. And about what time did you -- what timeframe were those  
12 e-mails sent and received?

13 A. I would say within the last month, maybe. I'm not a  
14 hundred percent sure.

15 Q. And did you e-mail them first or did they e-mail you?

16 A. I reached out to them.

17 Q. Okay. And let's start with that first e-mail of you  
18 reaching out to them. What did you say in that e-mail?

19 A. From memory, I told them that I had information that I  
20 thought might be useful to their case and that I would like to  
21 speak with them, is my recollection.

22 Q. Okay. And did you ever speak with them?

23 A. Yes.

24 Q. Okay. And so you did speak with them by phone?

25 A. No. I met with them in person.

1 Q. I see. Okay. How many meetings did you have with them?

2 A. Two.

3 Q. And about when were those meetings?

4 A. I would say within the last month or so.

5 Q. Okay. Within the last two weeks?

6 A. One was within the last two weeks. One was a little  
7 longer ago than that, like maybe four weeks ago.

8 Q. And what caused you to reach out to plaintiffs' counsel?

9 A. Because I felt that there were facts that were not being  
10 presented to the Court that I think are relevant to this case.

11 Q. And when you sent e-mails to them, did you include any  
12 attachments on the e-mail?

13 A. No.

14 Q. Okay. And then the meeting that you had that was within  
15 the last two weeks, what did you discuss at that meeting?

16 A. Exhibits and testimony.

17 Q. And then the meeting four weeks ago, what did you discuss  
18 with plaintiffs' counsel?

19 A. Just generally I directed them towards transcripts that  
20 had information that I thought might be useful to their case.

21 Q. You said that meeting was about four weeks ago. We stand  
22 here at November 1. Does October 1 sound about right for that  
23 meeting?

24 A. When did the strike against GM and Ford start?

25 Q. I'm not here to answer questions.

1       A.    I don't know exactly.  I can't tell you exactly without  
2       looking at a calendar.  I know that the strikers were striking  
3       when I went to the first meeting so it was in that timeframe.

4       Q.    And what did you share with them in that first meeting?

5       A.    Just the transcripts I thought they should look at.

6       Q.    And then at the second meeting that you had two weeks ago,  
7       did you discuss your testimony with them?

8       A.    Somewhat, yes.

9       Q.    Okay.  What did you discuss with them about your  
10       testimony?

11       A.    Just generally the flow of what they were going to ask  
12       starting from the beginning of the Commission through December  
13       of 2021.

14       Q.    Commissioner Szetela, I'd like to ask you a question about  
15       partisan fairness.

16       A.    Sure.

17       Q.    Isn't it true that partisan fairness measurements can only  
18       be done on a full state-wide plan?

19       A.    Yes.

20               MS. McKNIGHT:  Let's pull up PX15-19.

21       BY MS. McKNIGHT:

22       Q.    Commissioner Szetela, do you remember testifying about  
23       this chart in your direct testimony?

24       A.    Yes.

25       Q.    Can you explain to the Court the difference between a

1 threshold of representation table like this one and an  
2 analysis that determines the percent minority population  
3 needed in a specific area for minority preferred candidates to  
4 win a district?

5 A. Repeat the question, please.

6 Q. Sure. Can you explain the difference between a threshold  
7 of representation table like this one and an analysis that  
8 determines the percent minority population needed in a  
9 specific area for minority preferred candidates to win?

10 A. So, the threshold representation table is listing one  
11 election in a particular district with the black voting age  
12 population listed and what the result of that election was, so  
13 that's one thing.

14 The second aspect is the analysis is actually looking  
15 at more than one election and then aggregating that data and  
16 then coming up with the numbers that way.

17 Q. Okay. So, it's your position that an analysis to  
18 determine percent minority population needed in a specific  
19 area only differs from a threshold of representation table in  
20 in that it aggregates more elections; is that fair?

21 A. I did not say that, but, no.

22 Q. Okay. I want to make sure we understand what you meant by  
23 the difference between the two so could you try again for my  
24 benefit?

25 A. So, the threshold of representation, I explained to you

1     what that is. The data analysis is different because you're  
2     looking at multiple elections. You're aggregating them  
3     together and then you are coming up with an estimate based on  
4     the algebra to give a ballpark of different thresholds that  
5     you think might result in an ability to elect. So it's  
6     looking at -- something looking at what happened versus  
7     something looking at what may happen.

8     Q. So it's your understanding that the percent minority  
9     population analysis looks at multiple elections and it  
10    aggregates those elections and then it creates an estimate  
11    using algebra?

12   A. Explain that again. Could you repeat the question?

13   Q. Okay. Sure. I want to understand your understanding of  
14   an analysis for a percent minority population needed in a  
15   specific area. And we're trying to understand your  
16   understanding of how that differs from a threshold of  
17   representation table.

18             Did I understand correctly when you said that the  
19   difference is that a percent minority population needed to win  
20   analysis looks at multiple elections, aggregating data,  
21   with -- and creates an estimate based on algebra to give a  
22   ballpark estimate? Did I understand that correctly?

23   A. I mean, I think that's a simplistic way of describing it,  
24   but generally, yes. You're looking at election data  
25   estimating the black and white population based on the results

1       that you have, and then based on those estimates, coming up  
2       with an approximation of an estimate of what you might think  
3       results in an ability to elect.

4       Q.   And I'm just trying to understand your testimony. So you  
5       said it was a simplistic description. How is it more complex  
6       than that in your understanding?

7       A.   Because it involves more back work than I think you're  
8       kind of discussing. I mean, you're looking at precinct  
9       results. You're then compiling that. You're then taking the  
10      racial composition of that and breaking it up and then putting  
11      it back together, and then coming up with these estimates.

12     Q.   Anything else?

13     A.   Not that comes to mind right now.

14     Q.   I heard you testify that you thought Doctor Handley's  
15      analysis was wrong. Do you remember that testimony?

16     A.   I don't know if I used the word wrong specifically, but I  
17      think there are errors in it.

18     Q.   Do you know if Doctor Handley agrees with you that her  
19      analysis was wrong?

20     A.   I have no idea.

21     Q.   This case is focused on the State House and Senate plans,  
22      the Hickory and the Linden plans; is that right?

23     A.   Yes.

24     Q.   Okay. During your testimony I heard you say that your  
25      concerns began in early October. Do you remember that



1 testimony?

2 A. Yes.

3 Q. And I heard you say that that was when you started  
4 reviewing things more closely and digging into the analysis  
5 provided. Do you remember that?

6 A. I would say it was more the hearing in -- October 20th,  
7 the Detroit hearing, not so much early October.

8 Q. Okay. And so it was around then that you started digging  
9 into the analysis that was provided; is that right?

10 A. Yes.

11 Q. Okay. And now voting on these plans, the State House and  
12 the State Senate plans, happened in late December; is that  
13 correct?

14 A. Yes.

15 Q. And you voted for both plans, correct?

16 A. Yes, I did.

17 MS. McKNIGHT: Thanks. No further questions.

18 JUDGE MALONEY: Mr. Pattwell?

19 *REDIRECT EXAMINATION*

20 BY MR. PATTWELL:

21 Q. Could you explain why you voted for both plans?

22 A. So we had a voting procedure, and in order for a plan to  
23 be adopted you had to have two Democrats, two independents,  
24 two Republicans and then a majority. So we called it the two,  
25 two, two. If we couldn't get a plan based on that, we had

1 another procedure, and if that vote wasn't successful, we then  
2 went to a random selection.

3 I felt that all of our maps, congressional, House,  
4 Senate, all had the same deficiencies with respect to the  
5 black voting populations. Therefore, I felt they were all  
6 bad. However, both the Linden and the Hickory had aspects of  
7 them that I think were better than some of the other plans and  
8 so I voted for them, not because I didn't have a problem with  
9 the black districts in them, I did, but it was more that I was  
10 concerned if I didn't, we might not hit that two, two, two  
11 plus majority and end up going to a random selection and then  
12 ending up with a map that was much worse on other measures,  
13 like partisan fairness.

14 Q. The lesser of two evils, if you will?

15 A. Right. And we were also required to vote. It wasn't like  
16 you could just abstain. If I could have abstained I probably  
17 just would have abstained on both of them.

18 Q. And you aren't represented by Ms. McKnight, are you?

19 A. As an individual, no, I am not. She has made that clear.

20 Q. And any correspondence with plaintiffs' counsel, did you  
21 ever disclose any privileged information?

22 A. Absolutely not.

23 Q. You pointed out points in the public record that you  
24 thought were relevant?

25 A. Yes.

1 MR. PATTWELL: Thank you. No further questions.

2 JUDGE MALONEY: Ms. McKnight?

3 MS. McKNIGHT: No further questions, Your Honor.

4 JUDGE NEFF: I just have one question.

5 JUDGE MALONEY: Go ahead.

6 JUDGE NEFF: Did any other commissioner sign on your  
7 dissenting opinion?

8 THE WITNESS: So, I actually did speak with MC  
9 Rothhorn about it and asked him if he would. He said that he  
10 supported it and he wanted me to file it, but he wasn't  
11 comfortable signing onto it.

12 JUDGE NEFF: And there were a total of 13 of you?

13 THE WITNESS: Yes.

14 JUDGE NEFF: Thank you.

15 JUDGE MALONEY: Help me with the rules regarding the  
16 voting again.

17 THE WITNESS: So, the first step was two, two and  
18 two. So you had to have two Democrats, two Republicans, two  
19 independents, and then you also had to have a majority. So  
20 there were 13 of us, so you had to have seven total. And then  
21 if that didn't work, we then went to kind of a ranking system  
22 where we then tried to narrow it down. If that didn't work,  
23 we then went into this kind of random selection scenario,  
24 which I did not want us to end up there.

25 JUDGE MALONEY: Help me with the random selection

1 process. How would that have worked? I recognize you didn't  
2 get to it, but how would that have worked?

3 THE WITNESS: So every commissioner would have picked  
4 a map that was their favorite and that would have been added  
5 as a tally into basically a lottery and then one of them would  
6 have been drawn.

7 JUDGE MALONEY: These were the decisions the  
8 Commission made?

9 THE WITNESS: Yes.

10 JUDGE MALONEY: I have no further questions. Judge  
11 Kethledge?

12 JUDGE KETHLEDGE: Just a quick question. If you  
13 voted for both plans, why was your report, or whatever it was,  
14 opinion a dissenting opinion?

15 THE WITNESS: So, I was allowed to file a dissenting  
16 report with respect to the congressional map. And because the  
17 same deficiency is in all three maps, as far as I'm  
18 concerned --

19 JUDGE KETHLEDGE: Okay.

20 THE WITNESS: -- I included them as well and very  
21 intentionally referenced both the House and Senate maps  
22 because I felt they all had the same problematic framework.

23 JUDGE KETHLEDGE: So you vote- -- I gather you voted  
24 against the congressional map?

25 THE WITNESS: I did, yes.

1 JUDGE KETHLEDGE: Thank you.

2 JUDGE MALONEY: Anything further, Judge Neff?

3 JUDGE NEFF: No.

4 JUDGE MALONEY: Thank you. You may step down with  
5 the Court's thanks.

6 *(Witness excused at 3:18 p.m.)*

7 JUDGE MALONEY: The plaintiff may call its next  
8 witness.

9 MR. PATTWELL: Thank you, Your Honor. Plaintiffs  
10 call Commissioner MC Rothhorn to the stand.

11 JUDGE NEFF: One thing. Could I just point out,  
12 Mr. Pattwell, there has been a fair amount of repetition in  
13 the testimony we've heard today, and while I don't have any  
14 idea what your other witnesses are prepared to testify to, I  
15 would just caution you in terms of the amount of time that is  
16 available for these three judges to hear this case, that you  
17 think very carefully about, number one, how many witnesses you  
18 call, and, number two, how extensively you investigate them.

19 MR. PATTWELL: Thank you, Your Honor. Noted.

20 JUDGE MALONEY: Please step forward, sir, to be  
21 sworn.

22 THE CLERK: Will you raise your right hand, please?

23 *MC ROTHORN,*

24 *having been sworn by the Clerk at 3:19 p.m. testified as*

25 *follows:*

1           THE CLERK: Please be seated. State your full name  
2 and spell your last name, please.

3           THE WITNESS: So I do go by MC but my legal name is  
4 just the letter M and then Carlo, C-A-R-L-O, and then  
5 Rothhorn, R-O-T-H-H-O-R-N.

6                               *DIRECT EXAMINATION*

7 BY MR. PATTWELL:

8 Q. Thank you, Commissioner Rothhorn. I thought a good way to  
9 start would be if you could very briefly just tell the judges  
10 a little bit about your background and what inspired you to  
11 join the Commission.

12 A. So, my background, I was born and raised in Michigan. Two  
13 parents are both from Germany so I'm the first born here.  
14 Forgive me if I get emotional. It just comes on suddenly, but  
15 it's not related to the testimony. It's just happening.

16           So, my -- and I suppose I -- I am an accountant who  
17 has found his way into working with cooperatives, an  
18 alternative sort of business model, and that involves a lot of  
19 democracy, you know, in housing and making, I suppose,  
20 decisions. And my wife and I have also done that in our  
21 parenting, so I suppose what I thought when I applied was, you  
22 know, I think I am a listener, I do care about equity in  
23 distinction from equality.

24           And I also care about trying to see if we can make  
25 something -- you know, this country, yeah, feel like it's

1 working with citizens, not necessarily, I'll say,  
2 professionals, so the idea of, like, citizens democracy is  
3 very attractive, so I just thought I would do my best jury  
4 duty ever.

5 Q. And do you affiliate with any political party?

6 A. So I chose Democrat because that's the way my voting  
7 record reflects it and, no.

8 Q. I get it.

9 A. Yeah.

10 Q. Thank you. What roles did you hold on the Commission?

11 A. I'm sorry?

12 Q. What roles that you held on the Commission?

13 A. I suppose commissioner and then I was the vice-chair with  
14 Commissioner Szetela.

15 Q. During the mapping process?

16 A. During the mapping process, yeah. And then I was chair, I  
17 guess, 6 months later, but I don't remember the times.

18 Q. That's okay.

19 A. Okay.

20 Q. Did you actively participate in the map drawing?

21 A. I did. The software was challenging so active is an  
22 important distinction. Like, it -- yeah, some of us were  
23 better at the technological demands of the mapping software  
24 than others.

25 Q. And did you participate in the mapping of the Detroit

1 districts in particular?

2 A. I did.

3 Q. And did many of those revisions entail lowering the black  
4 voting age population?

5 A. Yes.

6 Q. And what was the purpose of lowering the black voting age  
7 population?

8 A. I think to comply with the Voting Rights Act -- excuse me,  
9 with the analysis that we were given in the report. Whether  
10 it's the Voting Rights Act or not, it was the report that we  
11 were given, yeah.

12 Q. And do you recall what that BVAP range was?

13 A. I'm going to have to refer to testimony that Rebecca  
14 Szetela just gave. Yeah, she knows.

15 Q. Were you here listening --

16 A. Absolutely.

17 Q. Would you say she fairly characterized the Commission's  
18 proceedings?

19 A. Gosh, yes and no.

20 Q. And what would you disagree with? What details would you  
21 have a differing opinion on?

22 A. I mean, so the idea that we did do a systematic -- I think  
23 the thing that jumped out at me, or the thing that I might  
24 highlight was that the systematic part was that we are new, we  
25 are a citizens led group, and we all have different



1       proficiencies, right, but we're citizens who are  
2       essentially -- all of us are just as qualified as the next one  
3       to sit on this Commission and draw maps, with insight from  
4       professionals who can help us comply with all the laws that  
5       are required. And so we did do a system- -- we're guided by  
6       the constitution, and so we did do a systematic methodological  
7       way of mapping because we had seven criteria that were  
8       prioritized. And so I think with the first criteria being  
9       population and the Voting Rights Act, it was very important to  
10      get that one right first, and it was very challenging to  
11      understand how we were doing that only, so that's the part I  
12      would -- I wouldn't say that we were systematically only doing  
13      systematic mapping with the VRA in mind, because there was six  
14      other criteria that we were also trying to figure out and  
15      getting different information at different times, and that's  
16      the foggy part, so I think she did a nice job of  
17      characterizing that, and her memory was really great.

18      Q.   Other than looking at population, is there any other  
19      details from Commissioner Szetela's testimony that you might  
20      see differently?

21      A.   I think there was -- we were trying to be human with each  
22      other and I think -- right? We're each -- so she and I were  
23      in the role of trying to chair a very emotionally challenging  
24      process, one that kept getting new information or old  
25      information was -- so I think what I mean to say is, I just

1 want us to recognize that we were doing something as citizens  
2 without -- none of us doing it -- all of us doing it for the  
3 first time, some of us having some familiarity with it,  
4 because we're -- of our professions, but none of us doing it  
5 with an intention to do it the way it had been done. We  
6 wanted to do it with a sense of human listening, but also  
7 doing it with the rule, so there was attention that was  
8 constantly there.

9 And so I think -- so what I want to lift up is I  
10 think it wasn't just as simple that we were only guided by the  
11 -- by the numbers. It was important and it was very clear --  
12 there was very clear attention. And we were really trying to  
13 be kind to each other, trying to understand how we were going  
14 to get a good quality product for -- and a fair transparent  
15 product for the citizens of Michigan. And I suppose that's  
16 what we're here in this courtroom to decide, right?

17 Q. And did you support Commissioner Szetela's dissenting  
18 report?

19 A. Yes.

20 Q. Do you recall a September 30, 2001, sidebar meeting with  
21 Mr. Adelson?

22 A. I do.

23 Q. And did Mr. Adelson instruct you to stop bringing up  
24 communities of interest at the meeting?

25 A. This is part where my memory gets foggy, because I think

1       there was always a nuance and I think that was the part that  
2       made it so frustrating, right? He's a lawyer, right? So  
3       pinning it down, there was always a sense of, like, I'm not  
4       going to tell you what to do, but it sometimes felt like that.

5               And I think as the pressure mounted -- so that's what  
6       I mean. My memory is that there was always nuance and, again,  
7       because Rebecca and I were both in leadership, I think we were  
8       trying to distill that and help guide and facilitate a process  
9       that was full of emotion.

10      Q.    From that nuance do you recall whether Mr. Adelson was  
11      asking you to focus on getting those BVAPs lower?

12      A.    I had a particular interest in the communities of interest  
13      and the diverse communities of Michigan, which is, I think,  
14      the third criteria, right, diverse communities and communities  
15      of interest. And so what I think I remember from that meeting  
16      was like, hey, MC, back off a little bit. We need to focus on  
17      number one. That's my memory.

18      Q.    Sincere apologies for everything that you've dealt with in  
19      the last week or so. I don't have any further questions. And  
20      I thank you for showing up and telling your story.

21      A.    Thank you.

22               JUDGE MALONEY: Ms. McKnight.

23               MS. McKNIGHT: Thank you, Your Honor.

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*CROSS EXAMINATION*

BY MS. McKNIGHT:

Q. Good afternoon, Commissioner Rothhorn.

A. Good afternoon.

Q. Thank you for your testimony today and your service on the Commission.

Do you have a sense of about how many hours the Commission spent drawing plans?

A. I'm going to say no. I mean, it was -- it seems like it was endless, though. It was endless, because we were doing it publicly with the maps that were collaborative, and then we would go home, and I think each of us, right, tried and sometimes we would try to figure out together -- anyways, it was -- it just felt endless.

Q. Okay. Did it span a period of months?

A. Yes.

Q. Did it go on daily?

A. Yes.

Q. Okay.

A. For those months it was daily.

Q. Okay. Let's bring up DTX 1. Do you recognize this?

A. Yeah. The constitution.

Q. What is it?

A. So, it's the Sixth Amendment. I'm not sure if amendment is the right word, but I just remember that -- yeah. This is

1 from the constitution. This is what we used to guide many of  
2 our decisions as well as our process.

3 Q. So is it fair to say you're familiar with it?

4 A. Absolutely.

5 Q. Okay. Let's turn to paragraph 13 on page 3. What does  
6 paragraph 13 detail?

7 A. This is our criteria, the seven in order of what we shall  
8 use to create our maps.

9 Q. Okay. And did the Commission, in your opinion, comply  
10 with this criteria?

11 A. Yes. And where we struggled was trying to prove that we  
12 were doing it this way.

13 Q. Can you describe some of the efforts that the Commission  
14 made to comply with this criteria?

15 A. Well, I think, you know, it's been alluded to, right, we  
16 tried to define -- we tried to actually define communities of  
17 interest. I think we -- we talked about how we shall comply  
18 with consideration of counties, citizens, township boundaries  
19 as the sixth and not the seventh, but it's not the fifth  
20 criteria, so I think we talked about it.

21 I don't remember coming up with something that was  
22 solid in terms of how we prioritized things. I do remember we  
23 didn't have a way of showing how do we not favor or disfavor  
24 an incumbent, right? There were real struggles.

25 Q. And so I heard you say in response to my question, Did the

1 Commission comply with this, I understood you to say yes but  
2 you struggled with showing it.

3 A. Correct.

4 Q. Okay. What did you mean by that?

5 A. I think this is where the struggle between -- like, so as  
6 Rebecca and I were trying to lead, right, there were -- Julia  
7 Pastula and Bruce Adelson were also trying to help us lead,  
8 right, and they, I think, respected the idea that we, the  
9 commissioners, are the ones that decide, and we're the ones  
10 that make these priorities happen.

11 I think they had an idea of how to prove, so to  
12 speak, that we were doing this systematically. I don't think  
13 it always felt like -- I don't think Rebecca and I could  
14 actually always feel that it was systematic and I think we  
15 struggled. That's -- yeah.

16 Q. Okay. Did the Commission let issues of race dominant its  
17 application of this criteria?

18 A. My personal memory is no, and it sure seemed like it when  
19 the testimony was being given, but my memory is no.

20 Q. And when you say, It sure seems like it when the testimony  
21 was given, are you referring to Ms. Szetela's testimony with  
22 plaintiffs' counsel earlier today?

23 A. Yes.

24 Q. But at the time when you were sitting through meetings and  
25 public hearings and the drawing sessions, at the time did it

1       seem to you like race dominated?

2       A.   No, absolutely not.

3       Q.   Now, I understand you were in the courtroom for the  
4       testimony of Commissioner Szetela. I'd like to ask you some  
5       questions about things she said.

6               Were you ever yelled at for drawing districts in  
7       Detroit that had BVAP levels that were too high?

8       A.   So, I certainly appreciate the sentiment. I don't -- I  
9       honestly don't remember, but I remember extreme tension and  
10      feelings of -- yeah, that feeling of having been yelled at  
11      or -- yeah.

12      Q.   Okay. Were you ever told to draw the BVAP in Detroit  
13      districts to the floor?

14      A.   I do not recall. I'm so sorry.

15      Q.   And you don't have to apologize, just whatever your memory  
16      offers, that's all we're looking for.

17               Was the Detroit area of the enacted maps for House  
18      and Senate, was that area completed in September 2021 or at  
19      some later time?

20               MR. PATTWELL: Objection, vague.

21               JUDGE MALONEY: Overruled.

22               Go ahead. If he understands the question.

23               THE WITNESS: Yeah. Was it completed? Help me --  
24      when you say completed, was it -- the map finished?

25      BY MS. McKNIGHT:

1 Q. Yes. Was the Detroit area of the map finished in  
2 September 2021 or at some later time?

3 A. Oh, much later. I think that's what we -- that's why we  
4 struggled, because we -- yeah.

5 Q. And so did work go into editing the Detroit area between  
6 September 2021 and the time that the maps were enacted?

7 A. Yes.

8 Q. Okay. A little bit of work or a lot of work?

9 A. The majority of the work where we as a Commission -- yeah.  
10 I'm going to say it was still a lot of work because we were  
11 listening to public comment and trying to wrestle with that  
12 human element versus, I'll say, the numbers element or the  
13 constitution, the legality versus the human side. So it was  
14 significant and different than September, yeah.

15 Q. And so focused on that time period between September 2021  
16 and when the maps were enacted, were the House and Senate  
17 districts in Detroit changed during that time for reasons  
18 other than race?

19 A. Yes.

20 Q. Okay. Do you think that race dominated the changes made  
21 to the House and Senate districts between September and the  
22 time they were enacted?

23 A. No.

24 Q. Did you consider communities of interest in drawing the  
25 maps?



1 A. Yes.

2 Q. Did you consider neighborhoods in Detroit when you were  
3 drawing the Detroit maps?

4 A. Yes.

5 Q. Did you view your consideration of communities of interest  
6 as will-o-the-wisp or as pretext?

7 A. I did not.

8 Q. Did you -- there was testimony earlier about a closed  
9 session in October. Do you recall a closed session in  
10 October 2021?

11 A. Yes.

12 Q. Okay. Did you come away from that closed session  
13 understanding that you had been directed to lie?

14 A. I came away confused.

15 Q. Okay. After that closed meeting did you work with  
16 Commissioner Kellom to change the Detroit area maps?

17 A. Yes.

18 Q. Does Commissioner Szetela speak for the entire Commission?

19 A. No. We've been very clear that each of us speaks for  
20 ourselves and the Commission speaks as one voice. How's that?

21 Q. I heard you testify earlier that you supported  
22 Commissioner Szetela submitting a dissenting report. I want  
23 to ask you if you agreed with everything she wrote in that  
24 report?

25 A. That's why I couldn't sign on. There's significant parts

1       that are -- that are important, and I do think the data may  
2       have -- it was just -- it was hard to reconcile for myself,  
3       and I think she did a very eloquent dissenting report, but  
4       that's why I didn't sign on because I didn't support all of  
5       it.

6               MS. McKNIGHT:   Okay.   Thank you very much,  
7       Commissioner Rothhorn.   I have no further questions.

8               JUDGE MALONEY:   Mr. Pattwell.

9                               *REDIRECT EXAMINATION*

10       BY MR. PATTWELL:

11       Q.   Do you recall discussing the spoke concept while drafting  
12       the Detroit area maps?

13       A.   Yes.

14       Q.   And --

15               COURT REPORTER:   I apologize.   Can you restate the  
16       question?

17               MR. PATTWELL:   Oh, the question?   Sure.   Yeah, no  
18       problem.

19               So the question was whether or not Commissioner  
20       Rothhorn recalled the spoke concept while drafting the Detroit  
21       area maps?

22               MS. McKNIGHT:   Your Honor, I would object.   It's  
23       beyond the scope of cross.

24               JUDGE MALONEY:   You going to move on quickly?

25               MR. PATTWELL:   I am, and it's very much related to

1 the -- her --

2 JUDGE MALONEY: Go ahead.

3 MR. PATTWELL: -- cross.

4 BY MR. PATTWELL:

5 Q. To achieve that spoke concept required the districts to  
6 do, what?

7 A. Move out of the Detroit area where the black population is  
8 into the suburbs where the white population is.

9 Q. Was that generally in line with concepts of compactness?

10 A. No.

11 Q. Was it generally in line with following municipal  
12 boundaries?

13 A. No.

14 Q. Was it generally in line with the interest of Detroit  
15 voters?

16 A. No.

17 MR. PATTWELL: I don't have any further questions.  
18 Thank you.

19 JUDGE MALONEY: Ms. McKnight, you may inquire.

20 MS. McKNIGHT: Thank you, Your Honor.

21 *RECROSS EXAMINATION*

22 BY MS. McKNIGHT:

23 Q. Commissioner Rothhorn, did you have an understanding of  
24 the impact of drawing districts in Detroit out into the  
25 suburbs on partisan fairness metrics?

1       A.    Yes.  And my memory is that we actually were referring to  
2       a -- you know, each district that we configured and drafted we  
3       would refer to it as partly imbalanced, and that is not a --  
4       that is not a partisan fairness measure.  So we were learning  
5       -- as we were drawing each district, because of the spokes, we  
6       were trying to look at or examine the tables, right?  We  
7       would -- me in particular, right, there was a -- there was  
8       always -- it was Democratic, but we would watch sort of the  
9       Democratic figure go lower and lower as the Republican went  
10      higher, and so it was more balanced.  And that doesn't mean  
11      that we were drawing more partisan fair districts.  We just  
12      had a measure or a way of -- I'll just speak for myself.  I  
13      had a way of sort of looking and saying, okay, we might be  
14      measuring partisan fairness here to -- or getting closer to a  
15      partisan fair district or a map in total by each of these  
16      districts, yeah.

17      Q.    I see.  So when you were drawing the districts from  
18      Detroit to pick up suburban area, you had a sense -- you had  
19      an understanding that you were drawing districts that would  
20      contribute to a more fair map; is that right?

21      A.    I had a sense, and I learned that that was not -- that was  
22      incorrect, and it still seemed to help us have a more partisan  
23      fair map at the end of -- our product was more partisan fair.

24               MS. McKNIGHT:  Okay.  Thank you.  No further  
25      questions.

1 MR. PATTWELL: How does this work? Do I get to ask  
2 two more questions?

3 JUDGE MALONEY: On those covered by cross?

4 MR. PATTWELL: This is exactly in -- what her last  
5 question was.

6 JUDGE MALONEY: If it's in response to the cross, go  
7 ahead.

8 MR. PATTWELL: Thank you.

9 *REDIRECT EXAMINATION*

10 BY MR. PATTWELL:

11 Q. When you say the word balance, are you referring to  
12 balancing the BVAPs out in the Detroit districts?

13 A. No. The -- the party, the partisan balance, so Democratic  
14 and Republican.

15 Q. At what point in time was the partisan fairness software  
16 turned on?

17 A. My -- I think -- so I think what -- whatever was -- the  
18 testimony that was given by Rebecca Szetela, I think that is  
19 accurate.

20 MR. PATTWELL: No further questions. Thank you.

21 JUDGE MALONEY: Ms. McKnight.

22 *RECROSS EXAMINATION*

23 BY MS. MCKNIGHT:

24 Q. Did you have a sense before that partisan fairness metric  
25 was turned on about the partisan makeup of the districts or

1 the map?

2 A. Absolutely. And I think that's what we were trying --  
3 that was part of the tension. We didn't have data, and we  
4 knew that we didn't have enough time to do it all right, and  
5 we wanted to get it right. And what right is is really hard.  
6 So we were -- I think each of us was -- I'll speak for myself.  
7 Like, I wanted to try to draw something that felt like we  
8 could draw one district and get as many things in it as  
9 possible that might be right, many pieces, and it was  
10 important to have a prioritization. So there was just  
11 constant tension, just in myself, I'll say that, yeah.

12 Q. Thank you, again, Commissioner Rothhorn.

13 MS. McKNIGHT: No further questions.

14 MR. PATTWELL: I'm married to a lawyer, Your Honor.  
15 I don't need to get the last word in. That's fine.

16 JUDGE MALONEY: Thank you, sir. You may step down  
17 with the Court's thanks.

18 I'm sorry, Judge Kethledge.

19 JUDGE KETHLEDGE: Sir, if I may just ask you a quick  
20 question?

21 THE WITNESS: Yeah.

22 JUDGE KETHLEDGE: Did the Commission have a 35 to  
23 40 percent BVAP target for Wayne County?

24 THE WITNESS: We had what was on the report from  
25 Doctor Handley, and I believe that is accurate but, again, my

1 memory is not as --

2 JUDGE KETHLEDGE: Okay. All right. Thank you, sir.

3 JUDGE MALONEY: Judge Neff, any questions?

4 JUDGE NEFF: Just sort of to follow up a little bit  
5 on Judge Kethledge's question, did you -- you said it was in  
6 Doctor Handley's report. Did you understand that to be a hard  
7 and fast number or percentage or something that was a goal or  
8 an objective if you could reach it?

9 THE WITNESS: I did not understand it as a hard and  
10 fast number because everything was nuanced, and it seemed like  
11 everything that came out of the -- it felt like an objective,  
12 and of course there was going to be an iterative process so we  
13 would come back to it. So we would start with this objective,  
14 and then we would keep going to the other criteria, and then  
15 we would come back to it.

16 So the idea was that it was an objective that was  
17 fluid, and we had to balance that objective with the other  
18 criteria, and we had to do that in 10 minutes or less kind of  
19 feeling.

20 JUDGE NEFF: So if I understand what you're saying,  
21 with regard to all of these decisions on mapping, you went  
22 through all of the criteria?

23 THE WITNESS: Because I was in leadership and trying  
24 to help facilitate a group process, right? As -- so we had a  
25 mapping process that we laid out and I was part of -- you

1 know, Rebecca and I were the facilitators. Rebecca primarily.  
2 I was the vice-chair.

3 The idea was that we would hold those criteria -- we  
4 would facilitate with those criteria in mind, and we would ask  
5 our -- our lawyers for guidance when we -- when we, the  
6 Commission, felt like we couldn't -- yeah, come to the -- come  
7 to some decision or come -- make a -- draw lines.

8 Did I answer the question?

9 JUDGE NEFF: I think you did. Yes. Thank you.

10 JUDGE MALONEY: Any questions from the lawyers?

11 MR. PATTWELL: None here.

12 MS. McKNIGHT: No, thank you, Your Honor.

13 JUDGE MALONEY: Mr. Rothhorn, you may step down with  
14 the Court's thanks.

15 *(Witness excused at 3:44 p.m.)*

16 JUDGE MALONEY: You may call your next witness.

17 MR. PATTWELL: Thank you, Your Honor. I would like  
18 to call Commissioner Juanita Curry to the stand, please.

19 *JUANITA CURRY,*

20 *having been sworn by the Clerk at 3:45 p.m. testified as*  
21 *follows:*

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

24 THE WITNESS: Okay. My name is Juanita Curry. My  
25 last name is spelled C-U-R-R-Y.



1 MR. PATTWELL: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. PATTWELL:

4 Q. Good afternoon.

5 A. Good afternoon.

6 Q. I thought we could start off, if you could just provide a  
7 little bit of background about yourself and why you served on  
8 the Commission to the Court.

9 A. Well, I served because it was a job and I wanted to work.

10 Q. And where are you from, Commissioner Curry?

11 A. I am from Detroit, Michigan.

12 Q. Were you able to listen to Commissioner Szetela's  
13 testimony today?

14 A. Yes.

15 Q. Do you think that she fairly characterized the  
16 Commission's proceedings?

17 A. Can you repeat that, please?

18 Q. Do you think that Commissioner Szetela fairly  
19 characterized the Commission's proceedings in her testimony?

20 A. When I was there, yes. When I was present.

21 Q. Did you participate in the collaborative mapping sessions  
22 in September and October of 2021?

23 A. Yes.

24 Q. And do you recall the Commission lowering that black  
25 voting age population in the Detroit Senate districts?

1 A. I do.

2 Q. And do you recall expressing concerns with the black  
3 voting age populations being lowered?

4 A. Yes.

5 Q. And could you tell the Court what some of your concerns  
6 were?

7 A. My concerns were that if they lowered it we would probably  
8 lose a lot of votes, and that -- I guess, because I've grown  
9 up in Detroit, I've watched it go up and down and I've seen a  
10 lot of things happen to Detroit, and I knew that certain  
11 people voted and certain people didn't vote because of their  
12 situations, and so I was very concerned.

13 Q. Do you recall having thoughts as to how some of the Senate  
14 districts appeared visually on the map?

15 A. Yes.

16 Q. And what were your feelings?

17 A. My concerns was that they were -- and I'm not quite --  
18 because this was new to me, but my concerns was that it was --  
19 things being taken away from us, the people in Detroit.

20 Q. Did you have a feeling as to how Detroit was being treated  
21 versus a -- white suburban communities?

22 A. Yes.

23 Q. And what was that?

24 A. I didn't think we got such a fair deal.

25 Q. Do you recall stating that you felt the black community

1 had been splintered up?

2 A. If I said it, that's what I meant.

3 Q. And that's all the while the white communities were  
4 getting to maintain whole?

5 A. I didn't try to think what the white communities were  
6 getting. I just wanted to do a fair job for the white and the  
7 black. So whenever I made a decision, it wasn't on white or  
8 black. It was what was right.

9 Q. Understood. Do you recall expressing concern about the  
10 lack of primary data in the expert reports that you were  
11 given?

12 A. Can you explain that a little bit more?

13 Q. Do you recall having any concerns about the lack of  
14 looking at primary election results when determining how to  
15 set the black voting age population in Detroit?

16 A. I remember looking at it.

17 Q. And do you recall raising any concerns regarding that lack  
18 of the primary elections?

19 A. My concerns were, I'm sure, written down, and if I said  
20 it -- I can't quite remember word for word, but if I said it,  
21 that's what I meant.

22 Q. Did you look at the transcripts?

23 A. I would like to, yeah.

24 MR. PATTWELL: If we could pull up PX64, 58, please.

25 MS. WELLMAN: I'm sorry, what was that?

1 MR. PATTWELL: Page 58, please. If you go down  
2 lower, the 58 is the starting place.

3 BY MR. PATTWELL:

4 Q. So we -- so this is a discussion that's taking place,  
5 Commissioner Curry, between you and other commissioners and  
6 Mr. Morgan; is that right?

7 A. You said Mr. who?

8 Q. Mr. Morgan and you?

9 A. Who is Mr. Morgan? I see it on there, but who is he? Was  
10 he a person that came to the meeting, or what?

11 Q. So did you attend a lot of these meetings remotely via  
12 Zoom?

13 A. I attended a lot of the meetings -- I had a lot of trouble  
14 with my computer where I would see it virtually or sometimes I  
15 would have to get on the phone and just do it from just  
16 listening, but I was there when we did Detroit.

17 Q. Okay.

18 MR. PATTWELL: If we can scroll down a little bit  
19 further and maybe this will help provide some more context.  
20 Okay.

21 BY MR. PATTWELL:

22 Q. So we see here, this is you, and you're expressing a  
23 sentiment with respect to the Detroit districts. Is that --  
24 am I understanding that correctly?

25 A. Yes.

1 Q. It was your feeling at that time that Detroit got chopped  
2 up?

3 A. I believe we got chopped up.

4 Q. You still hold that belief?

5 A. Yes.

6 Q. And was your position that the black voting age population  
7 in these Detroit Senate districts needed to be raised?

8 A. Yes.

9 Q. And was that in order for black candidates to be able to  
10 win Democratic primaries?

11 A. Win some, yes.

12 Q. And were the BVAPs in those Senate districts ever raised?

13 A. I don't remember.

14 MR. PATTWELL: Thank you for coming in. I don't have  
15 any further questions. I tender the witness to Ms. McKnight.

16 JUDGE MALONEY: Ms. McKnight, you may inquire.

17 MS. McKNIGHT: Thank you, Your Honor.

18 *CROSS EXAMINATION*

19 BY MS. McKNIGHT:

20 Q. Good afternoon, Commissioner Curry.

21 A. Good afternoon.

22 Q. Thank you for your testimony and for your service on the  
23 Commission.

24 A. (Non-verbal response.)

25 BY MS. McKNIGHT: Let's bring up DTX 1, please.

1 THE WITNESS: Okay.

2 BY MS. McKNIGHT:

3 Q. Do you recognize this document, Commissioner Curry?

4 A. The whole document? I would have to read it to recognize  
5 it. I mean, it's kind of tiny from here.

6 Q. Are you able to read the text from there? It's a little  
7 far off.

8 A. It's a little blurry, but I can see it. I do wear glasses  
9 but I don't have them on me. I can see it, though. Do you  
10 want me to read the whole text?

11 Q. If you can just read the first two titles and let me know  
12 if you recognize the document.

13 A. The state constitution excerpt, Constitution of Michigan  
14 of 1963 and it says number 6, Independent Citizens  
15 Redistricting Commission for state legislative and  
16 congressional districts.

17 Q. Have you seen this before?

18 A. I'm sure I probably have.

19 Q. Okay.

20 MS. McKNIGHT: Let's turn to page 3, paragraph 13.

21 BY MS. McKNIGHT:

22 Q. Commissioner Curry, would a hard copy be more helpful for  
23 you?

24 A. I'm trying to find -- I don't see 13 on here. Let me see.

25 JUDGE NEFF: It's right up at the top.

1 THE WITNESS: Oh, okay. I see it at the top. It's  
2 not coming up right here. Okay. I can see it from there.  
3 The Commission shall abide by the following criteria proposing  
4 and adopting --

5 BY MS. McKNIGHT:

6 Q. Pardon me, Commissioner Curry. I don't mean to make you  
7 read it aloud.

8 A. I can see it. I just wanted to prove I can see it.

9 Q. And as a person of glasses, I can appreciate, would it be  
10 more helpful for you to have a written version in front of  
11 you?

12 A. No. I can see it from here.

13 Q. Okay. Are you familiar with what paragraph 13 details as  
14 far as criteria?

15 A. Yes.

16 Q. Okay. Is it your understanding that this paragraph  
17 contains criteria that the Commission was directed to comply  
18 with in drawing maps in Detroit?

19 A. Yes.

20 Q. And do you believe that the Commission made an effort to  
21 comply with this criteria?

22 A. That's kind of hard to answer because we were under such a  
23 time limit and -- but I don't think we had enough time.

24 Q. Okay. Did the Commission try to comply with this  
25 criteria?

1       A.    I don't know what was in their head, but I tried.

2       Q.    Okay. That's fair. Thank you. In your view did the  
3       Commission let issues of race dominate in its application of  
4       this criteria?

5       A.    To my knowledge, I was not even thinking on that level at  
6       all throughout my whole process. It never dawned on me that  
7       we would even do anything like that so, no.

8       Q.    Okay.

9               MS. McKNIGHT: Thank you very much, Commissioner  
10       Curry. I have no further questions.

11              THE WITNESS: Okay.

12              JUDGE MALONEY: Mr. Pattwell?

13              MR. PATTWELL: No further questions, Your Honor.

14              JUDGE MALONEY: Thank you. Questions of my  
15       colleagues?

16              JUDGE NEFF: No.

17              JUDGE MALONEY: You may step down, ma'am, with the  
18       Court's thanks.

19                       *(Witness excused at 3:57 p.m.).*

20              JUDGE MALONEY: You may call your next witness.

21              MR. PATTWELL: Thank you, Your Honor. I'd like to  
22       call Commissioner Rhonda Lange to the stand.

23                               RHONDA LANGE,

24               *having been sworn by the Clerk at 3:58 p.m. testified as*

25                               *follows:*



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

3 THE WITNESS: My full name is Rhonda Lange, Rhonda  
4 with an H, last name is L-A-N-G-E.

5 JUDGE MALONEY: You may inquire.

6 MR. PATTWELL: Thank you, Your Honor.

7 *DIRECT EXAMINATION*

8 BY MR. PATTWELL:

9 Q. Good afternoon, Commissioner Lange. Thanks for being with  
10 us this afternoon. Can you just briefly tell the Court a  
11 little bit about yourself, where you're from and why you  
12 joined the Commission?

13 A. Sure. I'm from Reed City, Michigan, which is Osceola  
14 County. I'm a United States Navy veteran. I worked in the  
15 medical field for over 10 years until a back injury and then  
16 got my real estate broker's license, so that's my current  
17 occupation. I applied to be on the Commission -- pardon me,  
18 the Commission as one of the Republicans.

19 Q. Thank you for your service. How did you most commonly  
20 attend Commission meetings?

21 A. I was purely remote except for one meeting, a  
22 sub-committee meeting.

23 Q. Did you have any concerns regarding meetings taking place  
24 that were off the record?

25 A. Yes.

1 Q. Could you describe those concerns, please?

2 A. I felt that there were a lot of conversations taking place  
3 outside of public view. I expressed those, and if I'm being a  
4 hundred percent honest, which I have to be, I know there were  
5 conversations taking place because I was receiving text  
6 messages.

7 At one point once we got farther into the mapping  
8 procedure, though, I actually blocked all commissioners on my  
9 personal phone so I would not receive those texts anymore. So  
10 there were conversations, and our job was transparency, that's  
11 what the proposition, my understanding, is being sold on  
12 transparency, and I felt that we were lacking.

13 Q. Do you recall Mr. Adelson's July 9th presentation where he  
14 showed the loose lips sinks ships map?

15 A. Quite honestly, I did not remember that one.

16 Q. You mentioned text messages. Do you know if any text  
17 messages of any commissioners have been put into the public  
18 record?

19 A. I would think if they were on the State phones that it  
20 would be a matter of FOIA, but as far as submitted into the  
21 actual transcripts, I would say no.

22 Q. Did anyone ask for you to disclose any text messages you  
23 received on official business?

24 A. Any text messages from personal phones or from State  
25 phones?

1 Q. Maybe I understood you.

2 A. I don't understand. I'm sorry.

3 Q. I thought I said you received text messages from other  
4 commissioners trying to discuss official business and you  
5 ended up blocking them.

6 A. Yes. I blocked them on my personal phone, not my State  
7 phone. My understanding, a State phone was open to FOIA so  
8 any messages that were received on State phones would be  
9 available if they were FOIA'd.

10 However, I wouldn't say that that would be the case  
11 if it was on the private phones.

12 Q. And that was my question, were you ever asked to disclose  
13 those text messages from your private phone?

14 A. No. I believe -- I want to say that I did at one time.  
15 When there was a FOIA request, I think I gave a Snapchat --  
16 or a screenshot, I guess you would call it, of a text to our  
17 general counsel.

18 I want to say it was that or it was a Zoom message I  
19 had received, because there was no -- I had actually asked if  
20 there was a way we could get copies of Zoom messages that were  
21 being sent back and forth, and my understanding from the  
22 Secretary of State's office was there was not a way of those  
23 so I had actually screenshotted those, so one or the other,  
24 and you'll have to forgive me, it's been two years so it's  
25 hard to remember, but one or the other I did give to general

1 counsel for a FOIA.

2 Q. So other than those issues, the best place to look to see  
3 what occurred with those be the transcripts from the public  
4 meetings?

5 A. Yes.

6 Q. And do you recall observing the BVAPs being lowered in the  
7 Detroit area in September and October of 2021?

8 A. I do.

9 Q. And why was that?

10 A. We had guidelines that were given to us that -- for that  
11 particular area was 35 to 40 percent, and I know this was the  
12 guideline because I had planned on doing my own map, and I had  
13 actually sent an e-mail to our general counsel asking what are  
14 the measures that I have to follow, and that was regarding  
15 BVAP, partisan fairness, all of it. And so she sent me those,  
16 and it was for Wayne County, 35 to 40, Genesee, I believe, was  
17 40 to 45, and in the e-mail it even said that Bruce Adelson  
18 was sitting right next to her and he concurred.

19 Q. And so setting aside the rest of the map, just the Detroit  
20 districts, would you say that that racial target predominated  
21 in crafting those districts?

22 JUDGE NEFF: Did she say racial target?

23 BY MR. PATTWELL:

24 Q. Doctor Handley's 35 to 40 percent BVAP target.

25 A. The BVAP target was, what I remember, the primary reason

1 of doing what they were referring to as spokes.

2 Q. And what does a spoke mean to you, Commissioner Lange?

3 A. The way I remember it in the meeting is they kind of  
4 talked about it like a bicycle, how it has spokes and kind of  
5 goes out, and so that's where the spoke concept -- that's how  
6 I remembered the conversation going, anyways. And it was to  
7 get the BVAP. It was being stated that in order to get that  
8 BVAP into the guidelines we would have to spoke out, seemed to  
9 be the only way we could get them there.

10 Q. Were you able to listen to Commissioner Szetela's  
11 testimony today?

12 A. I was.

13 Q. Do you think that Commissioner Szetela fairly  
14 characterized the record with respect to the Detroit  
15 districts?

16 A. From what I remember, I would say that she did. I believe  
17 I was absent for one of them, but I believe what she stated  
18 was fairly accurate.

19 Q. Were there any details where your recollection is  
20 different?

21 A. Pardon?

22 Q. Any details where your recollection would be different?

23 A. No.

24 MR. PATTWELL: If we could pull up Plaintiff's  
25 Exhibit 2 at page 77, please. Go down a little bit.

1 BY MR. PATTWELL:

2 Q. Do you recognize this paragraph when looking at criteria  
3 for southeast Michigan?

4 A. Do I recognize that?

5 MR. PATTWELL: If you can go --

6 MS. WELLMAN: Sorry.

7 THE WITNESS: Yes. That's part of my dissenting  
8 report, it looks like.

9 BY MR. PATTWELL:

10 Q. And what concern are you expressing here?

11 A. I was mad, to be honest. There were so many different  
12 things that I felt were not right with all of the maps. On  
13 this particular one I felt that we were looking at numbers  
14 based on race and not what the community was asking for.

15 We had a lot of public comment. We had a lot of very  
16 emotional and thought-out public comment about the areas, and  
17 it just wasn't -- I felt like the people weren't being heard,  
18 their voices weren't being heard, and we kept hearing the word  
19 packing, packing, and, you know, my understanding of VRA at  
20 the time was packing is the intentional -- you're  
21 intentionally drawing lines to put a group in based on race,  
22 and that -- when you look at Detroit, if you just tried to  
23 draw based off what was asked, it wouldn't be hard to have a  
24 district that was 70 percent, even 80 percent because they --  
25 what I found in my experience trying to map is there are very

1 condensed places.

2 So it's not like -- in my opinion, if you had a BVAP  
3 that was above 50 percent or even 60 percent, in my opinion it  
4 wasn't packing if it was based on what the community was  
5 asking for, you know? It's not diluting their vote if it's  
6 what the community wanted. This whole process was supposed to  
7 be about the public and the public picking their politicians  
8 and not politicians picking their public.

9 Q. And so why was the Commission unable to draw the districts  
10 to reflect those concentrations of black voters?

11 A. Because of what we were told the guidelines that were  
12 given. Ultimately it's the decision -- ultimately it's the  
13 Commission's decision. We have guidance from professionals,  
14 but it was also -- I wouldn't say pushed, but these are the  
15 guidelines we're given. We are given this number and this  
16 number and told to keep it within those numbers as was stated  
17 or we're potentially looking at a lawsuit. And I'm sure none  
18 of us wanted to be in court being accused of violating  
19 anybody's rights, but, yeah, here we are.

20 Q. I don't think anybody is accusing anybody of trying to  
21 intentionally harm people. That's not what this is about.  
22 This is about the use of race, and my specific question here  
23 is when you say guidelines, are you referring to that 35 to  
24 40 percent BVAP that was in Doctor Handley's report?

25 A. Yes. Based off Doctor Handley's report, the 35 to 40 for

1 Wayne County.

2 Q. And are you saying that the Commission used that  
3 guideline -- used that guideline in order to lower the BVAPs  
4 in the Detroit districts?

5 A. Yes.

6 Q. And when you say that the Commission should not have only  
7 considered VRA, when you say VRA, are you really referring to  
8 that guideline, that 35 to 40 percent BVAP guideline?

9 A. Yes.

10 Q. Should have also considered COI?

11 A. Absolutely.

12 Q. And did -- your COI, your view of the public comments and  
13 COI, did black voters in Detroit want to be paired up with  
14 what would be predominately white districts?

15 A. From what I remember, no. They were very adamant. Some  
16 even gave their community of interest right down to streets,  
17 from this street and this street and, you know, north, south.  
18 They were very -- some were very precise.

19 Q. We've heard some about partisan fairness. Was that  
20 evaluated at a state-wide level or a district-by-district  
21 level?

22 A. I believe the partisan fairness is based -- I think you  
23 can have it both, but I believe when we initially did it it  
24 was on the state-wide once the entire map was done. I know  
25 that the -- I want to say our initial one when we first did



1 maps on one, it was like a 4, which Doctor Handley was really  
2 impressed with that and said that she hadn't seen that before,  
3 so we were within the guidelines that we were given.

4 I was basically told when it came to partisan  
5 fairness, do not go over 8, because if you go over 8 percent  
6 it would be hard to explain why. So anything under that.

7 Q. If you look at page 75. You expressed a concern that the  
8 Hickory plan also disenfranchises African American voters. Do  
9 you see that? There you go.

10 A. There we go.

11 Q. So, first sentence.

12 A. Yeah.

13 Q. Do you still believe that to be true?

14 A. I stand by my dissent report 100 percent.

15 Q. If you can look on page 77. Do you see -- down lower.

16 Do you see the sentence where you state, These maps  
17 failed because we listened to our experts and set a proposed  
18 numbers over the voices of citizens?

19 A. Yes.

20 Q. Do you still believe that to be true?

21 A. I do.

22 MR. PATTWELL: Thank you. I have no further  
23 questions. I tender the witness.

24 JUDGE MALONEY: Ms. McKnight, you may inquire.

25 MS. McKNIGHT: Thank you, Your Honor.

1 Commissioner Lange, thank you for your service in the  
2 Navy and for your service on the Commission. I have no  
3 questions for you today.

4 JUDGE MALONEY: Questions from my colleagues?

5 JUDGE NEFF: Just one thing. I want to make sure I  
6 understand. You said one of your primary concerns was that  
7 you weren't basing the maps on what the community wanted and  
8 was that -- did you believe or were you told, instructed that  
9 that was a primary concern in drawing the maps, that is what  
10 the people who lived there wanted?

11 THE WITNESS: I'm not sure I understand the question.  
12 Can you --

13 JUDGE NEFF: Well, if I understood your testimony  
14 correctly, one of the things that you felt the maps were not  
15 right about is that they should be about what the community  
16 wanted.

17 THE WITNESS: (Non-verbal response.)

18 JUDGE NEFF: And not other things. Is that something  
19 that you were instructed about or was that just something you  
20 gleaned from what was going on, because I think that's really  
21 the first time it has come up in that context.

22 THE WITNESS: I'm looking at it from a standpoint of  
23 all of our criteria that we had, and the most important  
24 thing -- you know, they were all rated, from one to -- so we  
25 had to follow the VRA, but when speaking of the Detroit area,

1 the outpouring from the area and the community members was  
2 great, about their communities of interest and how they felt  
3 that these maps were not representing them the way they would  
4 like to. And I think as a Commission and what community  
5 members, in my opinion, throughout the state were sold on for  
6 this proposition was that their voices would be heard in the  
7 mapping process. It was one of the main things where they  
8 said you can pick your politician and not the other way  
9 around.

10 So when we had such an outpouring from the community,  
11 I feel like we should have listened whatever their needs were,  
12 whatever their wants were. It wasn't all about -- I don't  
13 want anybody to think that it was all about, oh, we want this  
14 percent, you know, majority black population in this district  
15 or anything. There were some very heartfelt people that gave  
16 testimony about why they wanted their areas to stay together,  
17 whether it be, you know, some religious aspects, some just the  
18 heritage of Detroit, the -- kind of the come-back city, you  
19 know, with all that they've been through, so we had a lot of  
20 emotional testimony.

21 I remember particularly one gentleman that was in  
22 Vietnam, and I remember because I was a vet, and he was  
23 heartfelt, like, in tears, he's, like, I killed for everybody  
24 and I want my voices heard. And so when you look at testimony  
25 that's just so -- you know, when they're giving public comment

1 and it's so strong and seemed like from the heart, you kind  
2 of -- does that make sense, I guess, what I'm getting at?

3 JUDGE NEFF: There was a fair amount of emotion among  
4 the commissioners as well; is that correct?

5 THE WITNESS: Yes.

6 JUDGE NEFF: Thank you.

7 JUDGE MALONEY: Judge Kethledge?

8 JUDGE KETHLEDGE: No, sir.

9 JUDGE MALONEY: Any further question by counsel?

10 MS. McKNIGHT: No, Your Honor.

11 JUDGE MALONEY: Commissioner Lange, you may step down  
12 with the Court's thanks.

13 *(Witness excused at 4:17 p.m.)*

14 JUDGE MALONEY: Plaintiff may call its next witness.

15 MR. PATTWELL: Thank you, Your Honor. Plaintiffs  
16 will call Commissioner Wagner.

17 THE CLERK: Please raise your right hand, please.

18 *ERIN WAGNER,*

19 *having been sworn by the Clerk at 4:17 p.m. testified as*  
20 *follows:*

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

23 THE WITNESS: My full name is Erin Elizabeth Wagner.  
24 Almost gave you my maiden name. And it's W-A-G-N-E-R.

25 JUDGE MALONEY: You may inquire.

1 MR. PATTWELL: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. PATTWELL:

4 Q. Thanks for being with us this afternoon. I know it's been  
5 a long day. If we could just start off, if you could just  
6 tell us where you're from and why you volunteered to serve on  
7 the Redistricting Commission.

8 A. I am from Charlotte, Michigan. Originally from Hastings,  
9 Battle Creek area, and have lived in Charlotte from the time I  
10 was 11. My husband was Army. My dad was captain in the Army.  
11 I didn't serve. And forgive me, I'm like MC. I get  
12 emotional. Foster parent. We fostered 14, adopted all six of  
13 our children.

14 Oh, and why did I want to do this? Because at the  
15 time I was in a Facebook group and somebody had popped in and  
16 said, has anybody heard about the Michigan Independent  
17 Redistricting Committee? There's hardly any Republicans  
18 applying. If you're a Republican, go apply, and that's why I  
19 applied.

20 Q. So you answered my next question, you identified as a  
21 Republican.

22 Have you been here listening to all the testimony  
23 today?

24 A. All day long except for when I had to redo my parking  
25 outside.

1 Q. Were you able to listen to Commissioner Szetela's  
2 testimony?

3 A. I did.

4 Q. And would you say that she fairly characterized the  
5 Commission's proceedings?

6 A. I think she was pretty accurate, yes.

7 Q. Are there any details where your recollection is  
8 different?

9 A. Not at all.

10 Q. Okay. And I'd like to pull up PX57, Plaintiffs'  
11 Exhibit 57, on pages 64 and 65.

12 And before I have you -- well, we can look at this  
13 language first per the direction from the Court.

14 So, going down a little bit lower, what is that? I  
15 feel like we're playing Blackjack.

16 A. Oh.

17 Q. Is that what it kind of felt like when moving the --  
18 changing the districts in Detroit?

19 A. It absolutely did.

20 Q. And why is that?

21 A. Mainly because we were listening to all the people in  
22 Detroit and all the African American people state what their  
23 communities of interest were, and I was under the assumption,  
24 like MC, that communities of interest was the main thing, but  
25 when we were given the percentages that we had to get down by,

1 we were constantly having to drop those BVAP percentages down.  
2 So, yeah, it felt like, you know -- because you'd move it once  
3 and it -- it was a horrendous experience and not one I would  
4 recommend to anybody.

5 Q. And when you say the percentages, do you mean the  
6 guidelines or the --

7 A. The guidelines, yes. The 35 to 45 percentages depending  
8 on which county we were in, yes.

9 Q. Okay. And then I see, if we go lower, you express a  
10 concern for the African American population.

11 Do you see that?

12 A. Yes.

13 Q. And what is -- what was the concern here?

14 A. To be honest, you know, it has been two years. I would  
15 have to reread it.

16 Q. Go ahead. It starts with, My concern was the African  
17 American population in east Detroit.

18 A. Honestly, I don't know without having to -- having read  
19 Commissioner Eid's comment and everything, I cannot recall.

20 Q. How about this. Do you see the sentence that says in  
21 that, This would be a predominantly white community of  
22 interest --

23 A. Yes.

24 Q. -- but it also speaks to keeping all the Pointes together?

25 A. Yes. I think it's -- because I said it was predominately

1 white is going off Commissioner Eid's previous comment in that  
2 paragraph above where you said it's 81 percent white.

3 Q. Do you recall whether black residents of Detroit wanted to  
4 be put into a district with the Grosse Pointes?

5 A. No. Because we heard a lot that they wanted to elect  
6 people that looked like them.

7 MR. PATTWELL: It's been a long day, and I'm going to  
8 tender the witness. I really appreciate you. Thank you.

9 THE WITNESS: Thank you.

10 JUDGE MALONEY: Ms. McKnight, you may inquire.

11 MS. McKNIGHT: Thank you, Your Honors.

12 *CROSS EXAMINATION*

13 BY MS. McKNIGHT:

14 Q. Good afternoon, Commissioner Wagner. Thank you for your  
15 time today and your service on the Commission.

16 A. Good afternoon.

17 Q. I'd like to pull up PX3. And, Commissioner Wagner, I  
18 believe we have paper copies if that would be easier for you  
19 to look at?

20 A. As long as we can go --

21 Q. Zoom in?

22 A. No, we're fine. Yeah, we're fine. I've got reading  
23 glasses.

24 Q. Commissioner Wagner, do you recognize this document?

25 A. Well, not in that -- no, because when I gave that document



1 it did not look like this so...

2 Q. Understand. And let's turn the page and just make sure.  
3 This is Plaintiffs' Exhibit 3-1. I understand the format --

4 MR. PATTWELL: I'm sorry to interrupt, but just for  
5 the record, this is well outside of the direct. I didn't  
6 inquire about her dissenting report.

7 JUDGE MALONEY: Overruled.

8 Go ahead.

9 MS. McKNIGHT: Thank you, Your Honor.

10 BY MS. McKNIGHT:

11 Q. I just want to make sure that the text appears correct to  
12 you even though the formatting looks a little different.

13 A. Oh, yes.

14 Q. Do you recognize this as your dissenting report?

15 A. This is my dissenting report, yes.

16 Q. Okay. And I'd like to ask you a few questions about a  
17 paragraph. On this first page in the introduction section, it  
18 looks like it's paragraph Number 4 starting with, I do not  
19 believe.

20 A. Okay.

21 Q. Do you see that paragraph?

22 A. (Non-verbal response.)

23 Q. Okay. Do you recall writing that paragraph?

24 A. I'd have to read it again, but, yeah.

25 Q. Okay. Do you want to take a minute to read it in your

1 head and then I can ask you some questions about it?

2 A. Yes. Go ahead.

3 Q. Okay. And now I'm looking at that last sentence. It  
4 says, When certain organizations started crying out about  
5 partisan fairness, I believe we then went off on a strictly  
6 partisan tangent and discounted most all the other work we had  
7 done.

8 Do you see that?

9 A. (Non-verbal response.)

10 Q. Okay. And do you still have that opinion today?

11 A. I think -- yeah, I definitely think that we did a  
12 disservice to the whole state of Michigan.

13 Q. And do you believe it's in part because the Commission  
14 allowed partisan fairness to take priority over other  
15 considerations?

16 A. I think, yes, we did -- we did do that, but I also think  
17 that we just -- we were 13 citizens that didn't know what we  
18 were doing, and we were looking to people that were, you know,  
19 told -- we were told we were experts, so of course you're going  
20 to lean on expert's opinion.

21 Q. Well, thank you very much, Commissioner Wagner.

22 MS. McKNIGHT: I have no further questions.

23 THE WITNESS: You're very welcome.

24 MR. PATTWELL: I do.

25 JUDGE MALONEY: Mr. Pattwell.

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*REDIRECT EXAMINATION*

BY MR. PATTWELL:

Q. In September and October did you even have the partisan fairness metric tool available to you as drafting?

A. I don't believe we did. And you have to understand, too, because when -- between September and October I was diagnosed as having diabetes and it was severe, so when we were in October and November, I couldn't even see. So when I was passing on map drawing, it was because I could not see because everything was blurry from the diabetes.

Q. So when you expressed a concern about partisan fairness, does that at all impact your testimony about the guidelines, those racial guidelines having impacted the Detroit districts specifically?

A. No. If I'm understanding correctly, that does not.

MR. PATTWELL: Thank you. I don't have any further questions.

THE WITNESS: You're welcome.

MS. McKNIGHT: No further questions, Your Honor.

JUDGE MALONEY: You may step down with the Court's thanks, unless my colleagues have questions?

JUDGE NEFF: I don't.

JUDGE KETHLEDGE: No.

JUDGE MALONEY: You're excused with the Court's thanks.

1 THE WITNESS: Thank you.

2 *(Witness excused at 4:27 p.m.)*

3 JUDGE MALONEY: Mr. Pattwell.

4 MR. PATTWELL: So it's 4:27. The Court had indicated  
5 that we would stop at 4:30, and per the advice of the Court,  
6 we sped things up, and I think we've hit our bogie here for  
7 our 4:30 ending, and we don't have any further witnesses to  
8 call at this time until tomorrow.

9 JUDGE MALONEY: In light of that, your next witness  
10 is going to be?

11 MR. BURSCH: John Trende.

12 JUDGE MALONEY: That, I presume, would take a while?

13 MR. BURSCH: Yes.

14 MR. PATTWELL: That will be Mr. Bursch. My role here  
15 is done.

16 JUDGE MALONEY: All right. Thank you.

17 In light of that we will break for the day, and we'll  
18 resume at 8:45 tomorrow morning. Thank you very much.

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

20 *(Whereupon, hearing concluded at 4:28 p.m.)*

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-None-	

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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