

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 VI

TRIAL

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

Kalamazoo, Michigan
November 8, 2023

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2 November 8, 2023

3 9:34 a.m.

4 *PROCEEDINGS*

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

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

12 You may be seated.

13 JUDGE MALONEY: We are back on the record in 22-272.
14 Counsel for the parties are present. We're ready to proceed
15 with closing argument.

16 We've got some evidentiary issues that we need to
17 address first. Mr. Pattwell, go ahead, sir.

18 MR. PATTWELL: Thank you, Your Honor. So, pursuant
19 to stipulation with defendants' counsel, plaintiffs move for
20 the admission of the following exhibits: 1, 2, 3, 5, 10, 15,
21 16, 18, 19, 20. I have a notation with respect to Exhibit 20.
22 This was Mr. Trende's report. We are stipulating only to
23 pages one through 125, that includes Mr. Trende's original
24 report and the first five pages of his supplemental.

25 Exhibits 21, 22, 34, 36, 45, 46, 48 and 49, 53, 55,

1 57, 62, 63, 64, 65, 71, which is an audio file, 72, 90, 93,
2 95, 96, 96A, 98, 101, 104, 105, 130, 136, 140, 140B, 140C, and
3 then, finally, Exhibit 142, but only pages 62 through 169.
4 And Exhibit 73 and 74, my apologies. That does it.

5 JUDGE MALONEY: Thank you. So stipulated by the
6 Commission?

7 MS. ATIYA: Yes, Your Honor.

8 JUDGE MALONEY: All right. Those exhibits are
9 received.

10 *(At 9:37 a.m. Plaintiffs' Exhibit Nos. 1, 2, 3, 5, 10, 15,*
11 *16, 18, 19, 20, 21, 22, 34, 36, 45, 46, 48 and 49, 53, 55,*
12 *57, 62, 63, 64, 65, 71, 72, 73, 74, 90, 93, 95, 96, 96A, 98,*
13 *101, 104, 105, 130, 136, 140, 140B, 140C, 142, pages 62*
14 *through 169 were admitted)*

15 JUDGE MALONEY: Defendants' exhibits. Go ahead,
16 counsel. Good morning.

17 MS. ATIYA: Good morning, Your Honor. The Commission
18 will be moving in DTX1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,
19 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27,
20 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42,
21 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 55, 56, 57, 58, 59,
22 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74,
23 and 75. And 58 through 75 are clips, audio clips and video
24 clips. And then we also have DDX1, DDX2, DDX3, and DDX4.

25 JUDGE MALONEY: So stipulated?

1 MR. PATTWELL: Yes, Your Honor.

2 JUDGE MALONEY: Received.

3 (At 9:39 a.m. Defendant Exhibit 1, 2, 3, 4, 5, 6, 7, 8, 9,
4 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24,
5 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39,
6 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 55, 56,
7 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71,
8 72, 73, 74, and 75 were admitted)

9 MS. ATIYA: Thank you, Your Honor.

10 JUDGE MALONEY: Let me ask regarding the Commission
11 record of their meetings, I believe there was reference to the
12 fact that that was going to be a stipulated exhibit in the
13 record, and what's the mechanism for the panel to get access
14 to the entirety of the Commission record?

15 I appreciate the status of the website, you can't get
16 to everything on the website and we're interested in making
17 sure that we have the entire record.

18 MS. ATIYA: Your Honor, that's Defendants'
19 Commission -- or Exhibit DTX49, and it's stamped in
20 chronological order, and we've provided it to the Court on a
21 thumb drive this morning.

22 JUDGE MALONEY: Okay.

23 JUDGE KETHLEDGE: Good.

24 JUDGE MALONEY: This morning? That comes in the
25 category of breaking news. All right. Thank you.

1 Mr. Pattwell, you're on your feet, sir.

2 MR. PATTWELL: Yep. No, and plaintiffs' are good
3 with that. We would just ask for a copy of it as well. We've
4 had several technical difficulties with DTX49 for the last
5 week so we've not been able to access any transcripts in that
6 file beyond, was it, October 2020? Yep. So we'd ask for a
7 copy of that as well.

8 MS. ATIYA: Yeah. We provided that on the thumb
9 drive that we gave yesterday as well because you were having
10 issues with it, so just let me know if you have any additional
11 issue and -- okay, I'll take a look at that.

12 MR. BURSCH: The thumb drive we have for Defendants'
13 Exhibit 49, the transcripts stop in October 2020.

14 JUDGE MALONEY: We're going to fix that?

15 MS. ATIYA: Yep. Thank you, Your Honor.

16 JUDGE MALONEY: Okay.

17 MR. BURSCH: I don't know if the Court needs to
18 double check its thumb drive and make sure that its transcript
19 set is complete.

20 JUDGE MALONEY: We'll do that at some point.

21 MS. ATIYA: We also have the physical binders if
22 you'd like us to provide it in physical format as well.

23 JUDGE KETHLEDGE: You do?

24 MS. ATIYA: Yeah.

25 JUDGE KETHLEDGE: How big is that?

1 MS. ATIYA: It's nine volumes.

2 JUDGE KETHLEDGE: Yeah. Can we take it?

3 JUDGE MALONEY: Sure.

4 JUDGE KETHLEDGE: Is that all right?

5 MS. ATIYA: Yep. We're happy to do that.

6 JUDGE KETHLEDGE: We'll take it.

7 MR. BURSCH: Obviously we haven't reviewed the
8 binders. Are those all clean copies, not highlighted, no
9 notes?

10 MS. ATIYA: Yeah. No highlights, and you're welcome
11 to review them as well before we provide them.

12 MR. BURSCH: We trust you.

13 JUDGE MALONEY: All right. Okay. Thank you.

14 All right. 45 minutes for closing argument. Are the
15 lawyers going to be relying on co-counsel in terms of
16 five-minute warnings in that situation or do you want me to do
17 it?

18 MR. BURSCH: Sure, co-counsel will keep our time.

19 MS. McKNIGHT: That's fine with us, Your Honor.

20 JUDGE MALONEY: All right. Thank you. Mr. Bursch,
21 on behalf of the plaintiff, you may proceed.

22 MR. BURSCH: Thank you, Your Honors. On behalf of
23 all the plaintiffs, we thank you for the careful attention
24 you've given to this case over the last five trial days.

25 This matter began when the people of Michigan amended

1 the constitution to ensure that everyone had a seat at the
2 redistricting table.

3 As you heard from some of the commissioner witnesses,
4 they enthusiastically embraced the opportunity to make that
5 goal a reality. There was just one problem. As Mr. Adelson
6 testified, this was a particularly inexperienced group of
7 people. They didn't have the expertise that they needed and
8 so they went out and they hired experts.

9 The very first expert they hired was Mr. Adelson. On
10 April 8th he had his interview, and he promised transparency,
11 that he would not pick random BVAPs, like 80, 60, 55, that
12 they would show their work, that everything would be data
13 driven. He said they would listen to minority voters like
14 they did with the Hispanics in Arizona, and that he would work
15 closely with the general counsel of the Commission, who ended
16 up as Ms. Pastula.

17 In July, on the 9th, Mr. Adelson presented to the
18 Commission about a number of subjects, but he specifically
19 gave them guidance about communities of interest, a group of
20 people with common social, cultural, racial, ethnic, and
21 economic interests common to the population of the area which
22 are probable subjects of legislation. He said that this was a
23 fairly typical definition of communities of interest and he
24 was right.

25 Fast forward to September 2nd, 2021, and this is the

1 Doctor Handley presentation to the Commission, and this is
2 crucial to understanding the train wreck that happened after
3 that date. She did an area-specific analysis of black voting
4 patterns. She examined four counties. One of the counties
5 that she did not examine, and she admitted this, was Macomb
6 County. Perhaps she was thinking that there was no way the
7 Commission would take poor black districts in Detroit and
8 combine them with wealthy areas of white Macomb County.
9 Nonetheless, that's what happened, and she did not analyze
10 them.

11 What she did do is she looked at 13 general elections
12 and one Democratic primary for state-wide office, the 2018
13 race for governor. She quickly ruled out the governor
14 gubernatorial as being relevant because there was no black
15 candidate of choice there. Being no black candidate in the
16 race, the vote was divided. So she looked at 13 general
17 elections, and there were four in particular that she focused
18 on. These were the bellwether elections: 2020 President,
19 2014 Secretary of State, 2018 Governor, and 2020 U.S.
20 President. We'll come back to those bellwether elections
21 later.

22 You saw the blue table that she had in that report
23 where she looked at the 13 general elections and looked for
24 racial polarization. And Doctor Handley told you that it was
25 necessary to do this analysis because this was the basis to

1 allow race to predominate in the redistricting.

2 If the Commission did not have a reason to believe
3 that the *Gingles* factors were satisfied, there would be no
4 need for VRA compliance and no need to focus on race. She
5 said Oakland County, 13 of 13 races were polarized, Wayne,
6 7 out of 13.

7 She then gave you those charts, first for Wayne
8 County. These are the 13 general elections that she gave you,
9 but she testified that they don't say anything about black
10 voters' ability to get the candidate of their choice in
11 primaries. It was only for general elections. And so that's
12 why you see in this last column over here, the highlight is
13 kind of dim, we end up with the 35 percent BVAP number for
14 Wayne County districts. It came from general election data,
15 not primary data.

16 What's more, on cross exam she admitted that when you
17 actually look at the results of these general elections in
18 Wayne County, the black candidate of choice prevailed in every
19 single one. That has serious VRA implications that I will
20 address.

21 The story was the same in Oakland County. 13 general
22 elections, saying nothing about how black candidates of choice
23 get elected in primaries. The difference here -- again, I
24 apologize, the highlight is dim -- the 2014 Secretary of State
25 race only ended up with a 48 percent black vote share when the

1 BVAP was 35 percent, and so she recommended moving to this
2 column, 40 percent black VAP, and that's what became the basis
3 of the 42 to 43 BVAP recommendation for Oakland County.

4 Again, we went through all of these elections, and in
5 Oakland County ten of 13 black candidates of choice prevailed.
6 That's 77 percent. Again, serious implications for VRA, which
7 we'll come to in a few moments.

8 So, the takeaway is on September 2nd this was the
9 only data, black voting data that was given to the
10 commissioners. They didn't get another one until Doctor
11 Handley's December 28th materials, which was the same day that
12 the Linden and Hickory maps were approved.

13 Now, Doctor Handley said she had some conversations
14 with Mr. Adelson and the counsel, Ms. Pastula, but she never
15 said that she gave her data to the Commission, and there is no
16 evidence in the transcripts that we've seen that that actually
17 happened. Moreover, as I'll explain later, even if she had
18 given the entire contents of the December report to the
19 Commission in September, which did not happen, it would have
20 made no difference with respect to the VRA.

21 What are the equal protection implications of this
22 presentation? Well, it's that 13 out of 13 and 10 out of 13,
23 the black candidates of choice prevailed, that means the
24 Commission had no basis to believe that VRA compliance was
25 even necessary. They had to reasonably believe that all the

1 *Gingles* factors were satisfied, but if black candidates of
2 choice could overcome low BVAPs to elect their candidates of
3 choice, they don't get the benefit of the doubt, and so they
4 could not use race in their proceedings. That's a problem.

5 There are VRA implications from this data, too. It
6 is the only basis in the record for the 35 to 40 percent BVAPs
7 in Wayne County. It is the only basis for the 42 to
8 43 percent BVAPs in Oakland County, and Doctor Handley
9 admitted that these were inappropriate to determine whether
10 black candidates of choice could prevail in primaries in the
11 Detroit area.

12 September 9, 2021. This is when the Detroit area
13 maps start taking form. How did the BVAPs move? Well, the
14 benchmark maps had five in the Senate -- we talked about this
15 in opening -- that had 45 percent BVAPs or higher, two that
16 were black majority, and 11 black majority in the House. The
17 Commission did not start with the benchmark map. They started
18 from scratch. You heard that, but, still, their initial maps
19 were remarkably close to the benchmark with four high BVAP
20 districts in each of their early Senate maps, September 14 and
21 September 15, and 10 or 11 high BVAP black districts in the
22 House on the 28th --

23 JUDGE KETHLEDGE: I'm sorry.

24 MR. BURSCH: Sure, of course.

25 JUDGE KETHLEDGE: Maybe just a little more slowly.

1 I'm trying to keep up.

2 MR. BURSCH: You bet.

3 JUDGE KETHLEDGE: Your brain is working faster than
4 mine so, thank you. I don't mean to interrupt you.

5 MR. BURSCH: So, yes. Four high BVAPs in the
6 Senate -- you good?

7 JUDGE KETHLEDGE: Yes.

8 MR. BURSCH: 10 and 11 high BVAPs in the House.

9 JUDGE KETHLEDGE: Thank you.

10 MR. BURSCH: And I'm happy to provide this PowerPoint
11 if the Court wants it.

12 Yet at the end of the process we end up with the
13 Hickory plan, and you've seen this, with all these
14 bacon-mandered districts going from the poorest areas of
15 Detroit into the wealthiest, whitest portions of Macomb County
16 and Oakland County. There is no explanation for these shapes
17 other than race, as we'll be discussing, and although the
18 Linden plan is a little different, it's not up and down, we
19 have those same bacon strips, and they radiate out like a
20 pinwheel. You can see here six, it comes out this way, seven
21 goes up that way, eight goes this way, three goes this way,
22 one goes this way, two goes this way. Same concept. Take the
23 core voters in Detroit and spread them out to white wealthy
24 suburbs.

25 This is the chart that I showed you in opening

1 argument. It is a remarkable coincidence that 10 of the 11
2 districts that we're challenging fall right in that BVAP range
3 that Doctor Handley recommended based on her 13 general
4 elections. These all fall between 36 percent and 43 percent
5 BVAP. The one exception is Senate District 11 where they took
6 a large black population and paired it with an even larger
7 white population, but as we've explained previously, that
8 could have been part of a majority-minority district.

9 You heard in the testimony four possible reasons for
10 these bacon-mandered districts: Partisan fairness,
11 communities of interest, population changes, and racial
12 predominance. Let's take a brief look at each one of these.

13 On partisan fairness you heard multiple times it was
14 the fourth criteria commissioners were considering, and it had
15 to be because the supremacy clause says that the Equal
16 Protection Clause and the Voting Rights Act govern over any
17 state redistricting factors.

18 Oh, thank you for the water.

19 Doctor Rodden testified that the Supreme Court has
20 already held that the partisan fairness measures, the metrics
21 that Doctor Handley recommended, are not reliable. They're
22 not even suitable for federal courts.

23 Critically, Chair Szetela told you that the button
24 for measuring partisan fairness was not even made live in the
25 software until after October 4th. Why is that significant?

1 October 4th was the date that the Linden map was substantially
2 settled. The Senate Districts changed in very minute tweaky
3 ways after that, but partisan fairness was not motivating that
4 map nor was it motivating the Hickory.

5 In addition, Mr. Adelson explained to you, you can
6 only run the partisan fairness software tool on statewide
7 completed maps, so when Mr. Eid talked about election data,
8 Mr. Stigall talked about election data on the bottom of the
9 screen, that wasn't relevant to a partisan fairness analysis.
10 Mr. Adelson told you that didn't do any good. You had to wait
11 until the entire map was completed to know how those metrics
12 work, so that data is just noise that you can ignore.

13 Finally, Mr. Eid talked about PlanScore. That was
14 one of the outside web apps for measuring partisan fairness,
15 and he said that he talked about that with the rest of the
16 Commission for congressional maps. Well, did he tell you that
17 he also did it for House and Senate maps? No, because there
18 is no evidence in the record that that ever happened.

19 What we do have are the Commission hearing
20 transcripts, and I'm only going to touch on a couple of these
21 because of the time considerations, relating to partisan
22 fairness. This is the general counsel, Ms. Pastula. Anything
23 higher than 40 percent for the black voting age population,
24 quote, unquote, fixes can be dealt with, and this is critical,
25 and then this map can be ready for the partisan fairness

1 analysis. The racial cake had already been baked.

2 This is Pastula again: Look at anything higher than
3 40 percent BVAP, then we will know this map is okay to have
4 Doctor Handley run the partisan fairness measures.

5 Pastula again: This language regarding
6 a proportion -- disproportionate advantage to a political
7 party prohibits the Commission from considering the election
8 results while they are mapping. That's what the general
9 counsel told these inexperienced commissioners.

10 Chair Rothhorn got it. We're going to use our time
11 today to actually have a partisan fairness. We need to have a
12 voting rights analysis first. That's the first criteria in
13 our constitution, and we want to comply with voting rights
14 before we move to the fourth criteria, which is partisan
15 fairness.

16 And then, of course, you saw this e-mail on
17 October 6th from Ms. Pastula about the partisan fairness
18 metric being hidden in the software from the commissioners
19 until after this date. Partisan fairness was not driving
20 these districts.

21 How about communities of interest? This was almost
22 Mr. Eid's entire testimony. It defies common sense when you
23 think about some of the districts that they considered
24 communities of interest. SD6, west Detroit with Farmington
25 Hills. SD11, Eastpointe with Macomb Township. HD7,

1 Littlefield with Royal Oak. HD8, Birmingham with Brightmoor.
2 HD10, the maritime districts -- or maritime interested
3 district. This is the one that flows along the water, you
4 remember that? And what Mr. Eid said was that they were
5 trying to pair people who had maritime interests, in other
6 words, the wealthy white people in the north end of that
7 district who have multimillion dollar yachts and the poor
8 black residents in the southern end of that district who do
9 not have boats; in fact, are prohibited from using them on the
10 water because it's a Homeland Security area. There are no
11 mutual maritime interests between those communities. It's a
12 fabrication.

13 Mr. Adelson's community of interest standard from
14 Kansas is violated in every one of these examples and many,
15 many more. There is no explanation for these. And we know
16 from the secret meeting, this was not a transparent proceeding
17 on October 27th when Commissioner Lett said that communities
18 of interest were like will-o'-the-wisp. They could be used
19 like jello or a wreath of smoke to justify anything after the
20 fact, including low BVAPs, and that they were the ones who
21 decided communities of interest and no one else could review
22 that. When he said that, what he meant was you, you could not
23 review communities of interest. You had to defer to that.
24 And Mr. Eid said, I agree with everything that he just said.

25 But, again, you don't have to rely on common sense.

1 You don't have to rely on the audio from the secret meeting.
2 Look at the transcripts. This is Mr. Adelson: I
3 discussed -- I'm comfortable with 35 to 40 percent BVAP. Now,
4 where do you go for -- with respect to common interest
5 preferences on keeping communities whole or not keeping
6 communities whole? I'm happy to address that, but as you
7 know, the Voting Rights Act is the number one criterion. It
8 is not complicated; race predominates over anything else.

9 How about Commissioner Orton? The only way I see to
10 make these districts -- make more of these -- I think
11 districts he meant here not directors -- more balanced
12 racially is to break up communities of interest. We need to
13 discuss what trumps, and we know that is the VRA. Mr. Adelson
14 had very attentive students.

15 Commissioner Witjes: Start by looking at VRA
16 compliance even though Doctor Adelson is not here before
17 looking at communities of interest. We need to make sure we
18 are in compliance with the VRA or it will be an endless
19 circle; race before communities of interest.

20 How about Commissioner Lange: Mr. Adelson, we're all
21 novices when it comes to the VRA. We can go online and read
22 the comments that contradict a lot of what you say just as
23 well as the next person. How does Mr. Adelson respond?
24 Adding communities of interest may dilute minority voting
25 strengths, may create voting rights issues implicating the

1 Fourteenth Amendment. Bottom line, the federal criteria are
2 the absolute priority, race over communities of interest.

3 Finally, Commissioner Curry just stating the obvious:
4 With respect to every other minority community in the state,
5 with respect to white voters, they all got their communities
6 of interest, but look at Detroit. It got chopped up and
7 there's a lot of African Americans there.

8 How about population shifts? You heard the
9 defendants talk about how Detroit in the last census lost
10 population and it migrated to the suburbs, and there wasn't
11 much testimony about that, but the implications seemed to be
12 that population shifts were driving these wild bacon-mandered
13 districts. Well, Detroit is a really big place. Yes, they're
14 bounded on one side by water, but there's a lot of places that
15 these districts could go. The population shifts did not
16 require this, and we know that, again, because Mr. Adelson
17 talks about population in the transcripts.

18 There's five slides here. I just want you to watch
19 this progression. So, Chair Rothhorn says, Well, we could
20 under populate to try to get to that 35 to 40, there's the
21 racial target, and Mr. Adelson says, Well, remember, this
22 isn't a congressional plan so you have more leeway
23 under-populating and overpopulating. Don't let the population
24 shift be a barrier to hitting your racial targets, so this was
25 just a general comment.

1 Then he says, well, remember, if this was a
2 Congressional map, the population deviation would have to be
3 up to 2.9 percent. So that's your population deviation
4 target.

5 Then he says, well, remember, you know, 10 percent,
6 it's not a safe harbor, not a guardrail, but five percent,
7 five percent puts you in a good place.

8 Then he says, well, I mean, I've done districting
9 where the population deviations are 12 or even 13 percent, and
10 he admitted this again on the stand.

11 And then finally he puts his cards on the line, a
12 district can be created with whatever the population is. So
13 the population changes in Detroit had absolutely nothing to do
14 with how these lines were drawn. Mr. Adelson told the
15 commissioners they didn't need to worry about it.

16 So that leaves us with racial predominance. I showed
17 you the blue bar chart, that strong circumstantial evidence.
18 There is no way those districts all end in that narrow 36 to
19 44 percent BVAP range unless the commissioners were trying to
20 hit a target.

21 You heard from Mr. Adelson, Mr. Eid, and Mr. Stigall.
22 Mr. Adelson said there was no magic number, and so then we
23 showed him, what was it, a dozen or a dozen and a half
24 transcript pages where there was a magic number.

25 Mr. Eid said there was no target, and then we showed

1 you maybe two dozen clips where there was a target. He even
2 used the word target.

3 Then they brought in Mr. Stigall. We didn't know why
4 they brought in a witness who simply moved the mouse to -- to
5 move the map lines around. We couldn't understand why they
6 brought that witness, and then it became clear, they had him
7 testify that he was there for all the meetings, except for the
8 one in Traverse City, and he said, well, I didn't hear them
9 saying anything about using race. That's what he told you.
10 He said, I remember everything that happened, but as soon as
11 the cross examination started, just focusing on the portions
12 of the transcript where he was involved -- they were using
13 that portion of the software with the black dots to represent
14 black people, the African American theme to move the lines,
15 and as soon as he was asked about those questions, all of a
16 sudden he lost his memory, and he said, well, I'd be
17 speculating to say whether that actually happened. Those were
18 their three witnesses on racial predominance.

19 Now, Mr. Trende gave you expert report and expert
20 testimony showing that there's no explanation other than
21 racial predominance. Mr. Rodden disagreed with parts of that,
22 but the factors that he gave you for racial predominance,
23 things liked strangely grouped racial groups, things like
24 crossing county and district lines in inexplicable ways, those
25 all lead to the same conclusion, but you don't even need to

1 resolve that expert dispute. There's no smoking gun issue
2 here because the transcripts are replete with this evidence.
3 Target. Benchmark. Guidepost. Guardrails. Guidelines.
4 Threshold. Percentage we need to hit. And I don't have
5 enough time to go through all of these. I've got, I don't
6 know, 15 or so slides here that I'll look at quickly.

7 40 percent, look at that. Anything over 40 percent.
8 35 to 40 percent. No, actually it's 35 to 40 percent based on
9 Doctor Handley's analysis. Bring them closer to 40 percent.
10 The range for Detroit, 35 to 40. Oakland above 40. I flagged
11 40 to go through and identify what to use.

12 Commissioner Orton, I thought 35 to 40. Bruce
13 Adelson, Keep working on them. The range by Doctor Handley
14 and Mr. Adelson, 35 to 40. Doctor Handley's report, 35 to 40.
15 Bruce was saying to us last week, 35 to 40 African American.
16 35 to 40 for VRA purposes per the direction of Bruce Adelson.
17 This is the expert that these inexperienced commissioners were
18 listening to. Get to 35 percent. If we don't do that we
19 haven't done our due diligence. We may be exposing ourself to
20 legal risk. That's vice-chair Rothhorn. That's what Mr.
21 Adelson told them, you get to my targets or you're going to
22 get sued for a VRA violation.

23 40 percent, 35 to 40 percent. It's at 38.64 percent,
24 why don't we add a little bit and then we'll be at 40 percent.

25 41 percent. 40 percent. 35 to 40 percent. Just to

1 be clear here, this is general counsel. Again, Mr. Adelson,
2 worked closely with her. Wayne, Genesee. Doctor Handley's
3 presentation says 35 to 40. Oh, and by the way, Oakland
4 County is 42 to 43.

5 Here it is again, 40 percent not 35 in Oakland
6 County. We had 42 to 43. Yeah, that's a good benchmark.
7 That's a good guidepost.

8 What's the target for Macomb? Then they changed
9 their mind. Oakland? Oh, Oakland is 42 to 43. They have
10 their marching orders. They knew exactly what they were
11 looking for.

12 All right. How about number nine in Oakland County.
13 We can probably get away with 43 instead of going down to 40,
14 because they had been told 42 to 43.

15 Here's Pastula again. Wayne County 35 to 40.
16 Genesee 35 to 40. Saginaw 40 to 45. Oakland County 42, 43.
17 It was always about race from the very beginning to the very
18 end. Race predominated every aspect of this, and they were
19 targets. I don't care what language Mr. Eid uses. I don't
20 care what Mr. Adelson uses. They were targets.

21 So, two problems with respect to the VRA. Remember,
22 they need to believe that the VRA is implicated to even have
23 considered race. First, how about *Gingles* one? I asked Mr.
24 Adelson, Well, did the Commission prepare or request the
25 preparation of a demonstration map? And he says, I don't

1 recall that. They didn't even get out of the box when it
2 comes to believing that the VRA needed to be satisfied.

3 Additionally, the totality of the circumstances.
4 Remember, that's the factor that says white voters vote as a
5 bloc to prevent the election of the black candidate of choice.
6 Well, her election data, from those 13 general elections,
7 shows just the opposite. The black candidate of choice always
8 won. There was no reason to think that they even needed to
9 consider race in this.

10 Now, Doctor Handley did go back and look at some
11 historical data. This is the data that shows up in her
12 December 28th report, but in each one of these she found
13 minimal polarization and the black candidates almost always
14 won. State Senate 2018, State House 2018, State House 2020.
15 Why did the black candidates of choice win in those elections?
16 Because they had high BVAPs. That's why they won. But she
17 took that same evidence and used it to conclude that VRA
18 compliance wasn't necessary, that they didn't have anything to
19 worry about so race couldn't be used.

20 Incidentally, these also show there was no basis to
21 use race for a 35 to 40 percent BVAP in Wayne County or 42 to
22 43 percent BVAP in Oakland County. She admitted that on the
23 stand. Her initial report, inadequate, doesn't address
24 primaries. Her subsequent analysis in December, not adequate
25 to establish those specific targets.

1 The commissioners started to suspect something as
2 they moved through this process. They questioned, why don't
3 we have Detroit primary data? Why don't we have Detroit
4 primary turnout data? Doctor Handley says, Well, I had
5 turnout data in the general elections. Where was the Detroit
6 primary turnout data? There wasn't any.

7 How are black candidates going to be elected in
8 Detroit? This is what the commissioners said. Commissioner
9 Wagner in the testimony -- or during the Commission
10 proceedings and then confirmed here at trial said, I feel like
11 we're playing blackjack with black candidates of choice.

12 And you can see here, even Mr. Eid had concerns about
13 this. Mr. Adelson, I appreciate all your advice, but I've got
14 to be honest, I'm becoming increasingly uncomfortable with the
15 direction that we're going. These numbers, it makes me
16 question how we're going to work with actually electing a
17 candidate of choice. If we have a primary election with two
18 black candidates, how do you know the candidate of choice gets
19 elected? All of these districts are going to be Democratic
20 districts, that's why I understand the general election, but
21 that's not where the choice actually happens in this area.
22 It's making me uncomfortable to have to hit these percentages.
23 I would be more comfortable with 45 rather than 35.

24 Commissioner Curry, Absolutely, in full agreement
25 with you. And so how does Mr. Adelson respond to this on the

1 very next page? I have to stress, Commissioner Curry, we're
2 talking about in areas vote, do not vote. We don't have the
3 data. And, the racial bloc voting is dispositive. Go with
4 the 30 to 35 -- I'm sorry 35 to 40. Go with the 42 to 43.

5 Now, the key to making this work was the bellwether
6 elections. You heard Chair Szetela testify these were like a
7 rubber stamp. Because these were based on the four general
8 elections with black candidates or black running mates, no
9 matter how low the BVAP was in Detroit, every time they hit
10 the partisan -- I'm sorry, the black ability to vote button,
11 they got a go. You can lower it as much you want. It doesn't
12 make any difference. So not only had all the advice been to
13 lower it, but the software was jerry-rigged to make sure that
14 that's exactly what happened.

15 Now, let's pretend that notwithstanding Doctor
16 Handley's analysis that the Commission had a reason to believe
17 that the VRA was implicated. Even then, there needs to be a
18 strong basis in evidence in support of the race based choice
19 that it has made. This is the Alabama legislative black
20 caucus case. This is a direct quote from the defendant's
21 opening summary judgment briefing. These are their words, not
22 mine: Where is the strong basis in evidence for the
23 35 percent BVAP in Wayne and the 42 to 43 percent in Oakland
24 County? How about Doctor Handley's general election analysis
25 on September 2nd, she admitted it didn't show that, that she

1 would have to do primary analysis, and she didn't undertake
2 that.

3 How about her historical election analysis? Remember
4 how we walked through that painstakingly and after each batch
5 of historical elections I asked her, would this have supported
6 the BVAPs? And she said no, no, no. They had no basis in
7 evidence for these BVAP ranges, much like a strong basis in
8 evidence.

9 As a result of all of this, whether it's the lack of
10 a belief that VRA compliance was necessary or that they didn't
11 have a strong basis in evidence for their BVAPs, the
12 plaintiffs are entitled to judgment on all their equal
13 protection claims, and you can stop there. The VRA claims are
14 harder. We'll touch on those briefly, but you don't even need
15 to get to those.

16 So, on the VRA, you're familiar with the five
17 elements. We've got the demonstration map. We've proved that
18 the plaintiffs are in that demonstration map's districts. On
19 the Senate factors, Doctor Lockerbie talked about the
20 extensive evidence of historic racial discrimination in
21 Michigan. No one disputes that. So it all comes down to
22 three things: Were black voters cohesive? Was the election
23 polarized? And what's the totality of the circumstances? And
24 we have to do this district-by-district. I'm not going to do
25 that because of time limitations, but I'm going to talk on

1 two.

2 SD8 is in the shallow end of the pool. This is easy.
3 You've got a white candidate who took 96 percent of the white
4 vote, a black candidate who took 76 percent of the black vote
5 but only four percent of the white vote. Black cohesion,
6 polarized voting, and the white voters voted as a bloc to
7 defeat the black candidate of choice.

8 You heard defendants suggest that McMorrow gave a
9 speech that went viral and so that's why she won, but as other
10 experts explained, or maybe it was -- no, it was Senator Smith
11 who explained the fact that a white candidate could make a
12 speech about a policy of interest to white voters and that
13 that would cause them to defeat the black candidate of choice
14 is exactly why we have the VRA, because white voters and black
15 voters care about different issues, so their evidence on that
16 point is on our scorecard, not them. By the way, this is at a
17 40 percent BVAP and the black candidate of choice lost by
18 37 points, so judgment as a matter of law is easy on this one.

19 Now let's take a hard one. How about House District
20 7. Here you've clearly got cohesion. Helena Scott took 87
21 percent of the black vote. And you've also got some elements
22 of polarized --

23 COURT REPORTER: I'm sorry. I need you to slow down.

24 MR. BURSCH: Yes. Clear black candidate of choice.
25 There is black cohesion. Clear polarized voting. She only

1 took 37 percent of the white vote, but in a 50 percent BVAP
2 district she won.

3 So what do we do with that on a VRA claim? Well, a
4 couple different things. First, you look at additional
5 evidence. One, that Helena Scott was the incumbent. That
6 makes 37 percent of the white vote embarrassing. If you did
7 not have an incumbent, the black candidate of choice loses
8 this same race. But there's other evidence that we'll show
9 you in the post trial briefing.

10 For example, prior House 3 and House 7 both feed into
11 House District 7 under the Hickory plan. In the 2014 House
12 Democratic primary there was intense racial polarization.
13 Wendell Byrd and Clarence Gayles, the black candidates of
14 choice -- we'll stick with Wendell, top black candidate of
15 choice, doesn't even show up in the top two among white
16 voters. The same is true for LaTanya Garrett. They both win
17 their elections. Why is that? Well, look at those BVAPs, 88
18 and 92 percent. Intense racial polarized voting in a district
19 at a 38 percent BVAP, different result.

20 What's more, you can look at other districts around
21 House District 7 as circumstantial evidence of what could
22 happen in District 7, so you can look at the bacon strips
23 around it, or in this case look at the Senate map. This is
24 Senate District 8, the one we were just talking about with the
25 96/4 split. If you look at the bacon strip, it exactly covers

1 House District 6 and House District 7.

2 So you put all those pieces together and we're
3 entitled to judgment as a matter of law on House District 7,
4 too, even though when you first look at it it may not be
5 obvious that that's the case, so we'll walk through all of
6 that in post-trial briefing.

7 So, what's the impact of all of this? This is not a
8 case about statistics and experts, even though we spent a lot
9 of time talking about this. It's about black voters and
10 candidates. Black voters who weren't able to elect the
11 candidates of their choice in 2022 and won't be able to do so
12 going forward.

13 And the problem with candidates. You heard the
14 testimony from Senator Smith and Representative Lemmons, what
15 happens to black voters when they go into white wealthy
16 suburbs? People don't answer doors. People call the police.
17 They call them the N word. They pull a gun, to the point
18 where black candidates have to hire white canvassers to go
19 knock on those doors to get any response at all. That's
20 horrible. And these white candidates are outspending the
21 black candidates by multiples because they can raise more
22 money in their wealthy white neighborhoods.

23 What does that do? When fewer black candidates are
24 elected, that discourages black candidate recruitment, and as
25 Senator Smith told you, there's a downward spiral where those

1 two things are mutually reenforcing and you end up with black
2 representation in the legislature from Detroit that could fit
3 in an Uber XL, as Mr. Trende told you.

4 It also impacts black legislative issues. As Senator
5 Smith explained, car insurance rates, the land value tax, the
6 emergency manager law. These are of intense interest to black
7 voters. And yet with a Democratic majority in the Senate and
8 the House and a Democratic governor, none of these things are
9 moving. They can't even get the Land Value Tax Bill -- to get
10 introduced in committee for a hearing even though the mayor of
11 Detroit introduced it. You reduce black representation, you
12 reduce the voice, the majority will not listen to them.

13 At bottom, we've had historic discrimination against
14 the black community since the beginning of this state's
15 founding. The original constitution prohibited Blacks from
16 voting. Doctor Lockerbie talked about all the discrimination
17 that happened up until this day, and then you heard what
18 happened in this process. Black voters poured their hearts
19 out to this Commission in numerous public hearings. They had
20 public advocacy groups stand up for them. The Michigan Civil
21 Rights Commission said this is wrong. And what did Mr.
22 Adelson say in that secret meeting, the not transparent
23 meeting on October 27th? These people are giving you false
24 information because they have partisan interests, and at that
25 point the train was so far gone it was too late for the

1 commissioners to do anything about it before they had to
2 approve the maps.

3 Senator Smith really sums this up. The Democrats are
4 in complete control. What is the African American community
5 gaining? Nothing. This is what the VRA is supposed to
6 protect against. This is what the Equal Protection Clause is
7 supposed to protect against, and this bench is the only thing
8 standing in the way of that discrimination. Thank you.

9 JUDGE MALONEY: Thank you, Mr. Bursch. Ms. McKnight,
10 you may proceed.

11 MS. McKNIGHT: Thank you, Your Honors. And thank you
12 for your time and attention to this matter.

13 May it please the Court, I told you last week that we
14 are here because five years ago the citizens of Michigan
15 demanded that a Commission be created with exclusive authority
16 to create electoral maps for the State of Michigan. The
17 driving force behind the constitutional amendment was to
18 create fair maps.

19 The Commission was made up of everyday people from
20 all around Michigan. Some of them sat here for the trial, you
21 may have seen them. You heard testimony from six
22 commissioners, and, of course, you heard transcripts from --
23 with statements from other commissioners and you'll have
24 access to that record and through our briefing.

25 You heard plenty of emotion from the commissioners.

1 This effort to draw fair maps for Michigan was a very human
2 experience.

3 I also told you that redistricting was hard no matter
4 who does it. This group of your fellow Michiganders stood up
5 every day, jumped into a very public arena of map drawing,
6 actually strove to do the deed of map drawing, figured out how
7 to work with one another, cope with an intense public
8 exposure, and completed three electoral plans in a matter of
9 six to eight weeks or so of daily map drawing. Their service
10 should be commended.

11 They always knew that their work would be subject to
12 judicial review. This is the fourth lawsuit against the
13 Commission's plans.

14 Let's start with the districts at issue in this case.
15 Plaintiffs' remaining claims in this case relate to 12
16 districts in the House and Senate plans. You heard some
17 testimony last week and this week that related to districts
18 that are not at issue in this case, and we'll deal with that
19 in briefing. Some of the districts are under claims for equal
20 protection only and others are being challenged both as
21 violations of the Voting Rights Act and of the Equal
22 Protection Clause.

23 We'll focus on each of those claims in turn, but,
24 first, let's set the table of the particular population shift
25 faced by the Commission.

1 You may remember these maps from our discussion with
2 Commissioner Eid last week. As early as August 19, 2021, the
3 Commission was being informed by its data consultant that the
4 recent census results showed that -- and this is important --
5 despite an overall statewide increase of nearly 200,000
6 people, there was a dramatic decrease in population in the
7 City of Detroit since the 2010 census. And the surrounding
8 suburban areas, here in green, around the deep purple Detroit,
9 those surrounding suburbs appeared to benefit from this
10 movement of population out of Detroit. The differences are as
11 stark as this map can represent to you.

12 Detroit is on the one end of loss with the deepest
13 purple color from the key. Its surrounding suburbs were on
14 the other end of gain with the deepest dark green number here
15 at the bottom of the key. You don't need more than this map
16 to understand why the resulting electoral maps look the way
17 they do.

18 Among others, you heard from Representative Lemmons
19 and Senator Smith about a drain of black voters from Detroit
20 to the suburbs north of 8 Mile. And so the die was cast. The
21 map needed to radically change in the area of Detroit because
22 the pop -- because of population changes alone.

23 But something else was at play. These should look
24 familiar to you from the testimony of Doctor Rodden about
25 partisan fairness. On the left-hand side you have

1 partisanship and boundaries of the old Senate districts under
2 the 2011 plan, and on the right you have partisanship and
3 boundaries of Senate Districts under the Linden plan. That's
4 the enacted plan.

5 You'll recall the testimony about how the old plan
6 adhered to the old segregation line of 8 Mile. You can see
7 the boundary line here. And you heard testimony about how the
8 Commission was trying to break through that barrier, and, in
9 fact, that was consistent with the two representatives you
10 heard saying that black voters were moving north, the city was
11 expanding and changing.

12 On this topic for a Commission tasked with creating
13 fair maps, the path to fair maps was in unpacking the densely
14 populated Democratic districts in Detroit and creating
15 districts that were more politically heterogeneous. You can
16 go to Doctor Rodden's testimony for that point. You can see
17 it here on the map. Every red dot accounts for, I believe, 30
18 Trump votes in the 2020 Presidential election. Every blue dot
19 accounts for 30 Biden votes in the 2020 Presidential election.

20 With these issues in the background, let's turn to
21 plaintiffs' legal challenges in this case. Of course the
22 Commission had constitutional criteria it was commanded to
23 follow. The first criteria the Commission was mandated to
24 follow related to equal population and compliance with the
25 United States Constitution and the Voting Rights Act.

1 Equal population likely is the easiest to follow
2 mechanically because it was -- the map drawing software
3 calculated that automatically as they were drawing so we'll
4 set that aside.

5 Moving to compliance with the U.S. Constitution and
6 the Voting Rights Act when faced with this priority criterion,
7 the Commission hired not one but two experts; Bruce Adelson to
8 provide VRA legal counsel and Doctor Lisa Handley to prepare a
9 racial bloc voting analysis to inform Bruce's legal counsel.
10 Doctor Handley is not a lawyer. Her analysis was meant to
11 inform Mr. Adelson's counsel to the Commission, and it did.
12 Each of these consultants are preeminent in their field.

13 The first step in Doctor Handley's analysis was to
14 determine whether the Commission was required to draw
15 opportunity districts under the Voting Rights Act. She did
16 this by conducting a racial bloc of voting analysis on all
17 statewide contests over the previous decade.

18 Here are those elections analyzed. This included
19 general and one primary contest. Why did it include only one?
20 There was only one that could be analyzed. She looked in
21 different areas of the state. Why did she not include Macomb
22 County when she studied these areas of the state? Well,
23 contrary to what plaintiffs' counsel framed in his closing
24 argument, Doctor Handley testified the data was not there.
25 There was not sufficient data to conduct an analysis in Macomb

1 County and so she could not.

2 So, did Doctor Handley find polarized voting? She
3 did. Her review of these elections showed that there was
4 polarized voting in the elections in these areas shown on this
5 table. The underlying data of this conclusion for this table
6 is located at Defendants' Exhibit 26, pages 59 through 74.
7 This finding alone triggered the obligation of the Commission
8 to consider race and to comply with the Voting Rights Act.
9 There's no dispute on this issue that race must be considered
10 to comply with the Voting Rights Act. Race-blind was not an
11 option.

12 *Thornburg v. Gingles* is the framework that will guide
13 this Court's analysis of the Voting Rights Act. Doctor
14 Handley testified that her analysis informed *Gingles* prongs
15 two and three. *Gingles* two, to use shorthand, is about
16 cohesion; are black voters cohesive? *Gingles* three considers
17 whether white voters are bloc voting.

18 Doctor Handley's finding on cohesion and polarization
19 was reported to the Commission on September 2nd, 2021. This
20 slide is part of that presentation. Here's what this slide
21 means. In Wayne County, seven out of 13 contests were
22 polarized, because in those contests black and white voters
23 preferred different candidates.

24 In Oakland County, every single contest was
25 polarized. Why is that column highlighted? There is a column

1 under turnout rate for office and percent vote for
2 black-preferred candidates, white votes, all others. This
3 means that the numbers in the column highlighted shows when
4 white voters were voting for candidates other than the
5 black-preferred candidate. You'll note that every single one
6 of those numbers is above 50 percent.

7 What does that mean? That means that most white
8 voters voted against the black-preferred candidate.

9 Now, does this mean that no crossover voting
10 occurred? Do you recall the discussion about crossover
11 voting? That is shown in the line over white votes B-P,
12 standing for black-preferred candidate. The answer is, no.
13 The crossover voting, even substantial crossover voting, does
14 not erase racial polarization. It only impacts how you comply
15 with the Voting Rights Act, and crossover voting can be high
16 enough that majority-minority districts are not necessary to
17 create opportunities to elect and comply with the VRA. That's
18 precisely what Doctor Handley found here.

19 So, how did this analysis inform the drawing of
20 districts? It was necessary to draw districts that provided
21 black voters the opportunity to usually elect their candidates
22 of choice, but that majority-minority districts were not
23 necessary to provide that opportunity.

24 Again, to *Thornburg v. Gingles*. Importantly,
25 *Thornburg v. Gingles* said, stated succinctly, a bloc voting

1 majority must usually be able to defeat candidates supported
2 by a politically cohesive geographically insular minority
3 group. The VRA is not a guarantee of performance. It does
4 not require the Commission to draw districts that will always
5 elect black-preferred candidate. The districts must be drawn
6 to provide black voters with the opportunity to usually
7 elect their candidate of choice, and some losses of
8 minority-preferred candidate do not amount to a VRA violation.

9 Indeed, last week and this week we heard all sorts of
10 testimony about political barriers to districts performing,
11 such as a party posting too many candidates in a primary and
12 black voters dividing their votes, or black voters having
13 different candidates of choice. You heard that testimony from
14 Senator Smith. He said, you know, there are black voters who
15 don't share the candidate of choice as black voters that I --
16 in Detroit. In that case there's no one candidate of choice.

17 But those are not -- but those are political
18 problems. They're not problems with the election procedure,
19 and if it's a political -- if it is not a problem with
20 election procedures, it is not a problem that can be cured
21 through the Voting Rights Act.

22 You may remember Doctor Handley's testimony about
23 different primaries she reviewed in 2018, 2020, and 2022.
24 These are the local primaries. There's been a lot of
25 discussion, a lot of public discussion about primaries in this

1 case, and a lot of attention at trial about the issue of
2 primaries and whether the Commission took into account
3 primaries when drawing districts, but primaries were not the
4 barrier to black-preferred candidates' success.

5 The majority of primary elections did not involve
6 legally significant polarized voting, and those that were
7 polarized, the black-preferred candidate won far more than
8 they lost.

9 To illustrate this point we'll take this same slide
10 and we'll highlight where elections were not polarized.
11 Wherever the phrase not polarized appears, that's means that
12 the contest was not polarized, that black and white voters did
13 not prefer different candidates.

14 In 2022 alone 14 contests were not polarized, leaving
15 only ten that were. Black and white voters supported the same
16 contests in all of the contests that were not polarized.
17 Doctor Handley did not require black and white voters to be
18 cohesive in order to make the determination that a contest was
19 polarized. She only required that these voters would have
20 elected different candidates.

21 Unlike those charts of Wayne and Oakland County you
22 saw a little bit earlier in my statement, over half of the
23 general elections in Wayne and Oakland were polarized, not so
24 at the primary level. So what does this mean about primaries
25 in the VRA analysis in Michigan? It means that primaries do

1 not call for the Voting Rights Act to step in and create
2 opportunity districts because the primaries were not the
3 barrier to black candidates' success. They were not the
4 barrier to black voters having an opportunity to usually elect
5 their candidates of choice. Simply put, *Gingles* is not met at
6 the primary level alone.

7 Now, if you assume you have to create a district in
8 which the winner of the general is the candidate of choice,
9 you do have to look at the primaries, but there was no way to
10 establish the percent needed to win at the primary stage
11 because of a number of factors that I'll walk through now.

12 First, there was no statewide primary, so map drawers
13 couldn't conduct a recompiled election analysis with a
14 black-preferred candidate. Let me pause. Recompiled election
15 analysis, to be clear, requires statewide results. Recompiled
16 election analysis cannot be done on district -- on district
17 elections alone. It needs to be done on statewide election
18 results to create an apples-to-apples comparison.

19 You might remember this chart from Doctor Handley's
20 testimony. She shared with you that there was no consistent
21 pattern between BVAP and the black-preferred candidate
22 winning. This was not a linear pattern of BVAP, meaning
23 sometimes lower BVAP had higher rates of success. What she
24 found was that in primaries the black-preferred candidate lost
25 at all levels, but they also won at all levels, and at no time

1 did success rate drop below 50 percent.

2 Plaintiffs' counsel in his closing argument just
3 claimed that performance by black-preferred candidates in
4 primaries was only because of high BVAPs. You know that's
5 wrong. This chart tells you that's wrong. This chart tells
6 you that BVAP ranges below 50 percent saw performance much
7 higher than even above 50 percent.

8 Other factors, factors that cannot be anticipated and
9 cannot be addressed when constructing voting rights districts
10 come into play. These factors include -- we'll show one
11 example to illustrate them -- multi-candidate contests like
12 this one in Senate District 1 in the 2022 State Senate
13 Democratic primaries. With this many candidates, black voters
14 are spreading their vote and there is a lack of minority
15 cohesion. That's what you're seeing here.

16 There's another factor that affects whether you can
17 determine how to -- how -- the level at which to draw BVAP
18 primary districts. There are unusual candidates with unusual
19 resources in performance who, for example, give viral speeches
20 and go on a fundraising blitz. That issue cannot be addressed
21 through the Voting Rights Act. That is a political issue, not
22 a Voting Rights Act issue.

23 So where does that leave the map drawers? They
24 needed to draw opportunity districts to address the barrier at
25 the general election, and they did so using two tools

1 described by Doctor Handley. First, before they draw the plan
2 they prepare a percent BVAP needed to win analysis, and they
3 did. They relied on Doctor Handley to do that. What you see
4 on the screen now is an example of that percent black VAP
5 needed to win analysis. They can do that before they draw the
6 districts, and indeed they did. They received this analysis
7 on September 2nd. That is far before they were focused on
8 Detroit and drawing those plans.

9 Second, after the Commission draws plans they can
10 rely on recompiled election results to test the performance of
11 districts. I realize that this is all very complex, but we
12 have to be clear about what election analyses is useful and
13 when. We heard during plaintiffs' case references to the fact
14 that Doctor Handley did not perform recompiled election
15 results using local primary data. Of course that's not
16 possible. You are not supposed to use local primary data or
17 local data to conduct recompiled election results because you
18 don't know whether your new district overlaps with that old
19 district where the election existed. Recompiled election
20 analysis relies on statewide elections. It must, because as
21 you're drawing districts and moving the lines you need to have
22 an apples-to-apples comparison about precincts voting for the
23 same candidates. How did they vote together, alike or
24 indifferent.

25 So, did the Commission rely on a percent black VAP

1 needed to win analysis? They did. And after they drew the
2 plan, did they use recompiled election results to test the
3 performance? They did that, too, and you see that in the
4 transcript and in the record, and we showed you videos of
5 that.

6 So what have plaintiffs shown in their case? As you
7 recall from the summary judgment stage, this Court denied
8 summary judgment on *Gingles* one after finding that plaintiffs
9 had not yet shown that their experts' proposed districts are
10 reasonably configured. Specifically, they point to no
11 evidence that their proposed map accounts for communities of
12 interest, partisan fairness, or the affect on incumbents.
13 This Court heard nothing from plaintiffs about how
14 Mr. Trende's proposed districts account for communities of
15 interest, partisan fairness, or the affect on incumbents. Not
16 only did his -- do his demonstration districts fail to satisfy
17 *Gingles* one, but Mr. Trende himself admitted to this Court
18 that his plans did not even take into account politics or
19 communities of interest.

20 We'll look forward to briefing that issue.

21 Let's move on to plaintiffs' Equal Protection Clause
22 claims. Let's start with some recent case law gathering and
23 collecting Supreme Court opinions on the matter.

24 The Equal Protection Clause steps in when there is a
25 claim that the map drawers separated citizens on the basis of

1 race. Compliance with the Voting Rights Act is a defense to a
2 Fourteenth Amendment claim. The Supreme Court has said in
3 *Allen* and elsewhere that being aware of racial considerations
4 is permissible. The question is not whether race was
5 considered -- indeed, consideration was mandated by Section 2
6 of the Voting Rights Act -- but whether that consideration
7 predominated. The answer to that question here is absolutely
8 not.

9 Commissioners Rothhorn, Curry, and Eid all told you
10 it did not predominate. Mr. Adelson, Doctor Handley, Doctor
11 Rodden, and Doctor Palmer also told you that it did not
12 predominate. But you don't need to take their word for it.
13 Listen to the only two black legislators who testified in this
14 case. They had long family histories of political involvement
15 in Detroit, decades of understanding how electoral maps in
16 Detroit affect campaigning, constituencies and candidate
17 success. What was their verdict? They told you that this map
18 was drawn by partisan decisions and that those decisions
19 subordinated issues of race. Their belief is that not only
20 did race not predominate, it was not even on equal footing to
21 partisan considerations.

22 So what has the Supreme Court said about
23 predominance? The Supreme Court has held that predominance
24 means when race was the criterion that, in the state's view,
25 could not be compromised. Respecting communities of interest

1 and protecting Democratic incumbents came into play only after
2 the race-based decision had been made. The Supreme Court
3 reiterated this nearly 11 years later saying, race may
4 predominate if race was the criterion that, in the state's
5 view, could not be compromised and race-neutral considerations
6 came into play only after the race-based decision had been
7 made.

8 It seems that plaintiffs' position is, in part,
9 asking this Court to make a finding that because VRA
10 compliance came first in the constitutional criteria,
11 therefore considerations of race always predominated the
12 latter criteria. We submit to the Court that that is a false
13 reading of governing case law of what predominance means.

14 And here we know that race was compromised. Again,
15 you heard that from the only two black legislators to testify
16 in this case. They believed that race was subordinated to
17 partisan interests in -- in the area of Detroit.

18 *Cooper v Harris*, another Supreme Court case, has
19 other language that will guide this Court. In that case the
20 Supreme Court directed courts like this, panels like this, to
21 make a sensitive inquiry into all circumstantial and direct
22 evidence of intent to assess whether plaintiffs' have managed
23 to disentangle race from politics and prove that the former
24 drove a district's line. Is it an easy burden? No. Clearly
25 not, and the Supreme Court has said so. The Supreme Court

1 described it as demanding, reiterating earlier case law in
2 *Cromartie II*. Here the Commission was following its partisan
3 fairness criteria to craft a politically balanced map. The
4 Supreme Court has said in cases like *Cooper* and *Cromartie* that
5 when ascertaining whether race and not politics was the
6 predominant consideration when placing significant numbers in
7 voters in or out of a particular district, the Court must
8 conduct this sensitive inquiry described in *Cooper*.

9 In *Cromartie II*, if you go to that case, the Court
10 observed that caution is especially appropriate in a case
11 where the state has articulated a legitimate political
12 explanation for its districting decision and the voting
13 population is one in which race and political affiliation are
14 highly correlated. That's precisely the case here.

15 Race awareness is a different concept from race
16 predominance. Using the word target does not a target make.
17 And we have guidance from the Supreme Court about what a
18 target looks like.

19 In the *Bethune-Hill* case the target was defined at
20 different levels, both at the three judge panel level and by
21 the U.S. Supreme Court. In *Bethune-Hill* where map drawers
22 were attempting to comply with a 55 percent floor, it was a
23 fixed racial target and all 12 districts in that case
24 contained a BVAP greater than 55 percent.

25 So this Court doesn't need to rely on plaintiffs'

1 definition of a target, doesn't need to rely on synonyms of
2 the word target and when they were used in transcripts or in
3 meetings. It needs to look at whether numbers of -- and
4 ranges of BVAP were used as a floor or as a fixed racial
5 target or as something that could not be compromised.

6 Plaintiffs must show this Court that the use of this
7 target, so-called target, predominated the map drawing effort
8 in all other factors, and that all other factors, including
9 partisan fairness and communities of interest, were
10 subordinated in favor of race. We know that didn't happen
11 here because partisan fairness was achieved and most districts
12 were drawn above the supposed target range.

13 You'll remember this testimony by Commissioner Eid
14 walking through all the districts that were drawn above the
15 range of 35 to 40 percent. The best evidence before the Court
16 demonstrates that what plaintiffs call a target was a rough
17 goal at best that commissioners understood could be traded off
18 with nonracial goals.

19 Now, even though most primaries were not legally
20 polarized, the Commission was guided that it still needed to
21 pay attention to creating districts that provided black voters
22 an opportunity to usually elect their candidates of choice.
23 The Commission knew that 50 percent BVAP districts were not
24 necessary to create that opportunity. We saw a slide earlier
25 of Doctor Handley's analysis showing the success rate at

1 various levels of BVAP. No surprise, there were times when
2 commissioners sought a target BVAP. They wanted one. They
3 wanted clear guidance so that could help them comply with the
4 Voting Rights Act. They sought it from Doctor Handley's
5 analysis. They sought it from Mr. Adelson, but they didn't
6 get it. They got ranges and then those ranges were not
7 slavishly adhered to.

8 They understood from Doctor Handley's two
9 presentations on partisan fairness and on VRA compliance that
10 districts that were packed in Detroit with Democrats or with
11 black voters, and we understand those are one in the same,
12 needed to be unpacked. No surprise the commissioners talked
13 about race. It does not violate the Fourteenth Amendment to
14 talk about race. The Commission also talked about communities
15 of interest, political fairness, and a variety of other
16 considerations. Nothing at trial showed that the Commission
17 committed itself to a fixed BVAP target that had to be
18 slavishly adhered to at the expense of all other
19 considerations.

20 As we see on this table, there were many districts
21 that were drawn above this purported target. Moreover, there
22 were majority-minority districts that exhibit all the features
23 plaintiffs say amount to predominance, such as House
24 District 5, which plaintiffs' experts criticized as perhaps
25 the least regular district on the map, but that district is

1 not at issue in this case. House District 5 is not challenged
2 here. There's no reason to believe the Commission intended it
3 to hit the target plaintiffs allege, and it demonstrates that
4 race-neutral considerations led the Commission to this type of
5 configuration.

6 Let's go back to what the Supreme Court guides.
7 *Bethune-Hill* guides us that the Commission did not have to
8 guess precisely what BVAP is required for a performing
9 district. That expects too much from the map drawers, so says
10 the Supreme Court. The Commission only needs a strong basis
11 in evidence.

12 In this case the Commission had all data available
13 and the best expert and evidence supporting their decisions.
14 The fact that someone or many people second guess what the
15 Commission did does not defeat the Commission's work. The
16 Supreme Court has told this Court that that would be expecting
17 too much of the Commission.

18 What else does the Supreme Court say? *Bethune-Hill*
19 insisted that the exercise in determining whether a violation
20 of the Equal Protection Clause has occurred requires a
21 consideration of all of the lines of the district at issue.
22 Plaintiffs did not rebut Commissioner Eid's line-by-line
23 testimony about why the districts looked the way they did.
24 None of plaintiffs' witnesses went through the districts on a
25 line-by-line basis. The most plaintiffs seem to muster,

1 candidly, was a character smear, but this testimony was
2 corroborated -- this line-by-line testimony was corroborated
3 by other witnesses.

4 There was also testimony that the Commission did not
5 focus on Detroit until mid to late October, so a lot of
6 plaintiffs' cites to September points in the record are
7 unrelated to when the Commission was really focused on Detroit
8 and putting it in final.

9 And why was the Commission looking at race? What you
10 heard from commissioners was that they were trying to unpack
11 Detroit and they were trying to create more opportunities for
12 black voters to usually elect their candidates of choice.
13 They viewed the old map as packing black voters. They viewed
14 their new map as providing more opportunities.

15 Your Honors, no redistricting plan can satisfy all
16 interests. You're from this state. I'm sure some of these
17 maps are familiar to you, and you may have ideas about how
18 they could look better, but any plan will divide some
19 communities of interest, and every plan will have some
20 districts that do not pass what's called an interocular test,
21 meaning there will be strange shapes in there.

22 Incumbent members may be unhappy, residents of an
23 urban area that is bleeding population into the suburbs likely
24 will be unhappy that they can no longer have districts
25 contained wholly within the urban area. The exercise of who

1 will win or lose in a district is predicting the future, which
2 we cannot do with certainty. Some districts will work the way
3 we expect and some won't. Map drawing is easy to criticize
4 but hard to do, as you've seen in some of this trial.

5 The plaintiffs' approach, a fixed BVAP target of
6 50 percent, would require this Court to effectively reject the
7 Michigan citizens' partisan fairness requirements. It would
8 certainly seem ironic for any partisan fairness efforts to be
9 blocked by an Equal Protection claim.

10 This does not mean that the Michigan constitution
11 trumps the U.S. Constitution or the Voting Rights Act, but as
12 the Supreme Court has told us, compliance with the Voting
13 Rights Act means drawing reasonably configured districts
14 pursuant to state requirements. State requirements here
15 included partisan fairness. There's no conflict between these
16 provisions. We can have fair plans in this state that comply
17 with the Voting Rights Act.

18 Simply put, Your Honors, plaintiffs have not
19 satisfied their very heavy burden here, and we respectfully
20 ask this Court to find in favor of the Commission. Thank you.

21 JUDGE MALONEY: Thank you, Ms. McKnight. Mr. Bursch,
22 you have 12 minutes.

23 MR. BURSCH: Thank you, Your Honors. I have a
24 hundred points. No, just -- I'll be brief.

25 Defendants say that redistricting is hard. It's only

1 hard when you're trying to draw all the Detroit districts down
2 to a 35 to 40 percent or 42 to 43 percent BVAP. That's what
3 makes it hard.

4 I heard Ms. McKnight say there were 12 districts at
5 issue here. It's actually 13. I think she just misspoke.
6 She suggested that the population shifts were the reasons for
7 the map lines. I've already addressed that. Mr. Adelson said
8 that the population deviations could be as big as 12 or
9 13 percent, and then he said they could be whatever you want
10 them to be at all. Certainly did not dictate how the lines
11 were drawn, and the Commission transcripts prove that.

12 Ms. McKnight said partisan fairness cannot be pursued
13 or that this was a partisan fairness issue, but partisan
14 fairness cannot be pursued at the expense of black voting
15 rights. The Commission transcripts show -- and I gave you a
16 couple of examples, we'll give you more in the post-trial
17 briefing -- that race was always first and partisan fairness
18 was second. Remember, they didn't even have the partisan
19 fairness button until after the Linden map was completed.

20 Mr. Adelson and Doctor Handley; preeminent in their
21 field? Absolutely, but they did not understand how elections
22 work in Michigan. Doctor Handley told you that her experience
23 was in the deep south and that's where general elections
24 matter. Presumably, that's why all of the data that she
25 provided to the Commission in September was general election

1 data. Completely worthless for determining what happens in
2 Michigan primaries. It was, frankly, negligent.

3 Defendants say that table one in Doctor Handley's
4 September 20 -- or September 2nd, 2021, report triggered
5 compliance with the Voting Rights Act. That's that blue chart
6 that we were looking at with the number of Macomb -- I'm
7 sorry, Oakland and Wayne Counties that showed that there was
8 racial polarization, but as Doctor Handley admitted, the black
9 candidate of choice won 100 percent of those elections in one
10 county and 77 percent in the other, and so the Voting Rights
11 Act compliance was not triggered, so the fact that race was
12 used so thoroughly throughout these proceedings is dispositive
13 on the equal protection claim, and, again, you don't need to
14 go any farther than that.

15 Defendants suggest that maybe the real problem here
16 is because defendants -- I'm sorry, not the defendants but the
17 party is posting too many candidates. And, frankly, that's
18 just offensive, that white candidates in predominately white
19 areas don't have to worry about how many candidates they put
20 up, but if you're black voters in a black community you better
21 limit your candidates to one. And yet you heard Mr. Eid make
22 that suggestion when he was on the stand.

23 Defendants say that you can resolve all of this by
24 looking at Doctor Handley's tables three and four in her
25 December 28, 2021, report because the 2018, 2020, and later in

1 her March report the 2022 primaries, all show that black
2 voters can elect the candidates of their choice, but you need
3 to be very careful as you parse that information.

4 When she says that there were 25 races that were not
5 polarized and therefore the black candidate of choice
6 prevailed, those had incumbents, all black candidates, all
7 white candidates, black candidates who had ten times or more
8 funding disparities from white candidates. It doesn't mean
9 anything. But when you actually look at those tables, three
10 and four in Doctor Handley's September 2021 report, look for
11 the low BVAPs.

12 Remember, these are the historical districts. The
13 high BVAPs, they usually win. In the low BVAPs when you look
14 at the polarized races, the probative races, what you'll see
15 is lost, lost, lost, lost, and yet it's the districts with
16 incumbents, no opponents, all black candidates, all white
17 candidates that make up the chart in defendants' demonstrative
18 number four. There could not be a more inapposite data set to
19 show what actually happens in these elections.

20 Ms. McKnight, again, emphasized the recompiled
21 election analysis. Those were all involving general
22 elections. We know that they're worthless for determining who
23 wins in Detroit area primaries. That might work in Alabama.
24 It certainly doesn't work in Michigan, and Doctor Handley
25 admitted that.

1 The demonstration map. First, Mr. Trende did not
2 talk about communities of interest. He said that in
3 traditional districting, those are usually best represented by
4 municipal lines, county boundaries, township boundaries,
5 municipal boundaries, and there's nothing in the law that
6 requires a demonstration map under *Gingles* one to prove
7 partisan fairness or effects on incumbents. All he had to
8 prove is he had a map that followed traditional redistricting
9 principles that could create these majority-minority
10 districts, and that's exactly what he did.

11 Conversely, the Commission never commissioned a map,
12 a demonstration map, and so, again, they lose at the very
13 first step of being able to use race because they can't
14 demonstrate they believed that VRA compliance was necessary.

15 One of Ms. McKnight's quotes from the U.S. Supreme
16 Court made the point that when you're talking about an equal
17 protection analysis where race was considered, and it clearly
18 was here -- whether it was predominate or not, it was
19 considered -- that means strict scrutiny. Apply strict
20 scrutiny to 35 to 40 percent BVAPs in Wayne and 42 to 43 BVAPs
21 in Oakland County and these fail. They simply lack the data
22 to show that those percentages were necessary other than in
23 general elections, which Doctor Handley admits are irrelevant.

24 And the comment about Senator Smith and
25 Representative Lemmons admitting that this was all partisan,

1 not race, that's not what they said, and they also weren't in
2 the room. All you have to do is look at the Commission
3 transcripts.

4 The defendants say that plaintiffs' position is that
5 because the VRA came first, race predominated. That's not our
6 position. Our position is that the transcripts are replete
7 with racial targets, and on that point, *Bethune-Hill*. Ms.
8 McKnight summarized what the definition of a *Bethune-Hill*
9 violation is, and we encourage you to use it. I wrote it
10 down. Whether percentages were used as a target. If that's
11 the standard, they violated *Bethune-Hill*.

12 And she says, well, there were some districts that
13 may have been above the targets. Well, as this Court reminded
14 everybody in the summary judgment briefing, this is a
15 district-by-district analysis. And for the districts we're
16 challenging, the BVAPs hue remarkably close; slavishly, I'll
17 say it again, to the targets that were set.

18 Mr. Eid's line by-line testimony regarding
19 communities of interest. That was entirely consistent with
20 the pretext that they cooked up at the secret meeting on
21 October 27th. You're going to have the nine binders. Go back
22 and look through those and see how often the Commission
23 referred to those maps to determine whether communities of
24 interest were in play when they were drawing lines. I'll
25 suggest that you're not going to find them.

1 And then finally about the mapping dates. We didn't
2 say this -- this started in October. I think I told you in my
3 opening it was in September, and the mapping progression that
4 Chair Szetela talked about in Plaintiffs' Exhibit 136, that
5 might be the most important exhibit you look at to see how the
6 maps changed over the critical times when these race-based
7 targets were being used in the meeting.

8 Two concluding points. First, in defendants' closing
9 argument you'll notice that they didn't cite a single page of
10 the nine volume Commission transcripts. Our entire trial
11 strategy has been based on that record. It's very difficult
12 for two parties to even engage on the relevant factual and
13 legal issues when one party is using the record that everyone
14 acknowledges controls this case and the other party ignores
15 that record and relies on testimony from witnesses at trial
16 that blatantly contradict everything that happened in the
17 transcripts.

18 The second is that as you go through all these
19 factual and legal issues, the plaintiffs just urge you to use
20 common sense.

21 UNIDENTIFIED SPEAKER: Amen.

22 MR. BURSCH: When you crack black districts you end
23 up with fewer black candidates of choice elected. That's
24 common sense. That's what legislatures in the deep south used
25 during the Jim Crow era, and some would say even since then to

1 provide black opportunities to elect candidates of choice, and
2 that was illegal. And it's just as illegal because the
3 Commission did the same thing in Michigan. Thank you.

4 JUDGE MALONEY: Thank you, Counsel. I've polled my
5 colleagues and Judge Neff has a question for the lawyers.

6 JUDGE NEFF: It's actually a request. I would like
7 copies of your slides, both of you, please.

8 JUDGE KETHLEDGE: I second that.

9 JUDGE MALONEY: Okay. Unanimous. All right. Thank
10 you. The case is submitted to the panel. We'll look forward
11 to the post-hearing briefs due on the 4th of December. We --
12 Mr. Grill has been very quiet during the course of proceedings
13 but the panel recognizes the constraints on the Secretary of
14 State that may develop, who knows, but we'll get it out as
15 soon as we can. All right. Thank you very much.

16 THE CLERK: All rise, please. Court is adjourned.

17 *(Whereupon, hearing concluded at 11:04 a.m.)*
18
19
20
21
22
23
24
25

I N D E X

WITNESS: PAGE

-None-

* * *

EXHIBITS: ADMITTED

PLAINTIFFS:

*** (Descriptions from exhibit index)*

Exhibit 1 4
Lessons Learned & Recommendations
From the Inaugural Commission
October 2022, and all attachments

Exhibit 2 4
Michigan Independent Citizens
Redistricting Commission Report on
2021 Redistricting adopted on
August 18, 2022, and all attachments.

Exhibit 3 4
Dissenting Report by
Commissioner Erin Wagner.

Exhibit 5 4
Dissenting Report by
Commissioner Rebecca Szetela

Exhibit 10 4
Affidavit of Virgil K. Smith
Dated March 8, 2023.

Exhibit 15 4
September 2, 2021 Presentation
To the MICRC - "Determining
if a Redistricting Plan Complies
with the Voting Rights Act,"
by Dr. Lisa Handley

1	EXHIBITS	ADMITTED
2	Exhibit 16	4
3	MICRC's Expert Report of	
4	Dr. Lisa Handley, including	
	CV and Appendices	
5	Exhibit 18	4
6	MICRC's Expert Report	
	Of Jonathan Rodden, Ph.D	
7	Exhibit 19	4
8	Report of Dr. Brad Lockerbie	
	Including all Attachments	
9	Exhibit 20	4
10	Report of Sean P. Trende	
11	Curriculum Vitae, Attachments	
	And Pages 1-5 of supplemental	
	Report	
12	Exhibit 21	4
13	"The History of Discrimination	
14	in the State of Michigan and	
	its Influence on Voting," by	
	Bruce L. Adelson	
15	Exhibit 22	4
16	"For the Michigan Independent	
17	Citizens Redistricting Commission	
	Voting Rights Act,"	
	By Bruce L. Adelson	
18	Exhibit 34	4
19	September 17, 2020	
	MICRC Meeting Transcript.	
20	Exhibit 36	4
21	September 25, 2020	
	MICRC Meeting Transcript	
22	Exhibit 45	4
23	April 8, 2021 MICRC Meeting	
	Transcript.	
24	Exhibit 46	4
25	Written Public Comment	
	April 8, 2021	

	EXHIBITS	ADMITTED
2	Exhibit 48	4
3	April 15, 2021 MICRC Meeting Transcript	
4	Exhibit 49	4
5	Written Public Comment April 15, 2021	
6	Exhibit 53	4
7	August 20, 2021 MICRC Meeting Transcript	
8	Exhibit 55	4
9	September 2, 2021 MICRC Meeting Transcript	
10	Exhibit 57	4
11	September 13, 2021 MICRC Meeting Transcript	
12	Exhibit 62	4
13	September 29, 2021 MICRC Meeting Transcript	
14	Exhibit 63	4
15	September 30, 2021 MICRC Meeting Transcript	
16	Exhibit 64	4
17	October 4, 2021 MICRC Meeting Transcript	
18	Exhibit 65	4
19	October 6, 2021 MICRC Meeting Transcript	
20	Exhibit 71	4
21	Audio/Transcript from October 27, 2021 MICRC Closed Session Meeting	
22	Exhibit 72	4
23	October 29, 2021 MICRC Meeting Transcript	
24	Exhibit 73	4
25	November 2, 2021 MICRC Meeting Transcript	

	EXHIBITS	ADMITTED
1		
2	Exhibit 74	4
3	November 3, 2021	
4	MICRC Meeting Transcript	
5	Exhibit 90	4
6	Draft State House Map	
7	183 9-28-21 v1 HD	
8	Exhibit 93	4
9	Draft State House Map	
10	193 9-30-21 HD	
11	Exhibit 95	4
12	Draft State House Map	
13	204 10-05-21 v1 HD	
14	Exhibit 96	4
15	Final State House Map 280	
16	Hickory plan	
17	Exhibit 96A	4
18	Final State Senate Map 281	
19	Linden plan	
20	Exhibit 98	4
21	Draft State Senate Map	
22	162 9-13-21 v2 SD	
23	Exhibit 101	4
24	Draft State Senate Map	
25	165 9-15-21 v16A SD	
	Exhibit 104	4
	Draft State Senate Map	
	170 9-14-21 v14 SD	
	Exhibit 105	4
	Draft State Senate Map	
	199, 10-4-21 V2 SD	
	Exhibit 130	4
	Gibbons, Lauren, Detroit lawmakers	
	Call redistricting commission's	
	Draft political maps 'unacceptable'	
	MLive (Oct. 12, 2021)	

1	EXHIBIT	ADMITTED
2	Exhibit 136	4
3	Senate and House Collaborative	
4	Map progressions - pages 32-44	
5	Demonstratives	
6	Exhibit 140	4
7	MICRC Meeting transcripts	
8	Exhibit 140B	4
9	9/21/21 MICRC Meeting	
10	Transcripts	
11	Exhibit 140C	4
12	9/22/21 MICRC Meeting	
13	Transcript	
14	Exhibit 142	4
15	"Redistricting, DOJ, and	
16	Cautionary Tales"	
17	Bruce Adelson, pages 62	
18	through 169	
19	DEFENDANTS:	
20	<i>**(Description from exhibit index)</i>	
21	Exhibit 1	5
22	Michigan Constitution	
23	Article IV, Section 6	
24	Exhibit 2	5
25	MICRC Hickory Criteria data	
26	Exhibit 3	5
27	Statewide Hickory Map	
28	Exhibit 4	5
29	Detroit area Hickory	
30	District Maps	
31	Exhibit 5	5
32	MICRC Linden Criteria data	
33	Exhibit 6	5
34	Statewide Linden Map	
35		

	EXHIBIT	ADMITTED
1		
2	Exhibit 7	5
3	Detroit area Linden District Maps	
4	Exhibit 8	5
5	Wayne County map	
6	Exhibit 9	5
7	Macomb County map	
8	Exhibit 10	5
9	Oakland County map	
10	Exhibit 11	5
11	Sept 2, 2021, meeting Transcript	
12	Exhibit 12	5
13	October 1, 2021, meeting Transcript	
14	Exhibit 13	5
15	"MICRC Measuring Partisan Fairness" presentation by Dr. Lisa Handley, 10/1/21	
16	Exhibit 14	5
17	MCRC Handley memo on Three partisan fairness by Dr. Lisa Handley 10/1/21	
18	Exhibit 15	5
19	"The History of Discrimination In the State of Michigan and its Influence on Voting" by Bruce Adelson, 10/26/21	
20	Exhibit 16	5
21	Minutes of the 12/28/21 Meeting of the Michigan Independent Citizens Redistricting Commission	
22	Exhibit 17	5
23	Report to the MICRC by Dr. Lisa Handley 12/28/21	
24		
25		

1	EXHIBIT	ADMITTED
2	Exhibit 18	5
3	Report on 2021 Redistricting Adopted on 8/18/22	
4	Exhibit 19	5
5	MICRC State House Hickory Plan with Detroit neighborhoods	
6	Exhibit 20	5
7	Trende State House Plan With Detroit neighborhoods	
8	Exhibit 21	5
9	MICRC State Senate Linden Plan with Detroit neighborhoods	
10	Exhibit 22	5
11	Trende State Senate #1 Plan with Detroit neighborhoods	
12	Exhibit 23	5
13	Trende State Senate #2 Plan with Detroit neighborhoods	
14	Exhibit 24	5
15	3/8/23 Report - Dr. Palmer	
16	Exhibit 25	5
17	3/8/23 Report - Dr. Rodden	
18	Exhibit 26	5
19	3/8/23 Report - Dr. Handley	
20	Exhibit 27	5
21	Plaintiffs' 3/6/23 Objections and responses	
22	Exhibit 28	5
23	Plaintiff Agee objection And responses	
24	Exhibit 29	5
25	Plaintiff Bennett objections And responses	
	Exhibit 30	5
	Plaintiff Black objections And responses	

	EXHIBIT	ADMITTED
1		
2	Exhibit 31	5
3	Plaintiff Burbridge's	
	Objections and responses	
4	Exhibit 32	5
5	Plaintiff Burrell's	
	Objections and responses	
6	Exhibit 33	5
7	Plaintiff Cotton's	
	Objections and responses	
8	Exhibit 34	5
9	Plaintiff Dubose's	
	Objections and responses	
10	Exhibit 35	5
11	Plaintiff Ferguson's	
	Objections and responses	
12	Exhibit 36	5
13	Plaintiff Keeble's	
	Objections and responses	
14	Exhibit 37	5
15	Plaintiff Knott's objections	
	And responses	
16	Exhibit 38	5
17	Plaintiff London's	
	Objections and responses	
18	Exhibit 39	5
19	Plaintiff McDonald's	
	Objections and responses	
20	Exhibit 40	5
21	Plaintiff Overall's	
	Objections and responses	
22	Exhibit 41	5
23	Plaintiff Radden's objections	
	And responses	
24	Exhibit 42	5
25	Plaintiff Sherard's Objections	
	And Responses	

	EXHIBIT	ADMITTED
1		
2	Exhibit 43	5
3	Plaintiff Smith's Objections And Responses	
4	Exhibit 44	5
5	Plaintiff Snapp's Objections And Responses	
6	Exhibit 45	5
7	Plaintiff Stephen-Atara's Objections and Responses	
8	Exhibit 46	5
9	Plaintiff Wilson's Objections And Responses	
10	Exhibit 47	5
11	Plaintiff McDaniel's Objections and Responses	
12	Exhibit 48	5
13	Dr. Handley Presentation to MICRC, September 2, 2021	
14	Exhibit 49	5
15	Composite Exhibit Consisting Of Transcripts of All MICRC Commission Meetings On Or 16 Before January 4, 2022	
17	Exhibit 50	5
18	Notice of Contract between MICRC and Federal Compliance Consulting May 13, 2021 19 MICRC Meeting Packet	
20	Exhibit 51	5
21	"What Do We Do Now? Bias, Race, and Tolerance at Work, School, & In Society," by Bruce 22 Adelson dated July 8, 2021	
23	Exhibit 52	5
24	"The Law of Redistricting, DOJ, and Cautionary Tales," 25 By Bruce Adelson, July 9, 2021	

	EXHIBIT	ADMITTED
1		
2	Exhibit 55	5
3	"Partisan Fairness Measures: Possible Unacceptable Scores"	
4	By Dr. Handley 10/5/21	
5	Exhibit 56	5
6	Voting Patterns of Select Minority Groups in Michigan"	
7	By Dr. Handley 11/1/21 meeting Packet	
8	Exhibit 57	5
9	Election Data Services Contract 5/27/21	
10	Exhibit 58	5
11	Handley Clip 1 8/6/21	
12	Exhibit 59	5
13	Handley Clip 2 8/6/21	
14	Exhibit 60	5
15	Handley Clip 5 8/6/21	
16	Exhibit 61	5
17	Handley Clip 6 7/9/21	
18	Exhibit 62	5
19	Eid Clip 1 8/19/21	
20	Exhibit 63	5
21	Eid Clip 2 8/19/21	
22	Exhibit 64	5
23	Eid Clip 3 8/19/21	
24	Exhibit 65	5
25	Eid Clip 4 8/19/21	
	Exhibit 66	5
	Eid Clip 5 8/19/21	
	Exhibit 67	5
	Eid Clip 6 8/19/21	
	Exhibit 68	5
	Eid Clip 7 8/19/21	

	EXHIBIT	ADMITTED
1		
2	Exhibit 69	5
3	Eid Clip 8 9/14/21	
4	Exhibit 70	5
5	Eid Clip 9 9/20/21	
6	Exhibit 71	5
7	Eid Clip 10 11/4/21	
8	Exhibit 72	5
9	Eid Clip 11 11/4/21	
10	Exhibit 73	5
11	Stigall Clip 1 8/26/21	
12	Exhibit 74	5
13	Stigall Clip 2 11/4/21	
14	Exhibit 75	5
15	Stigall Clip 3 11/4/21	
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