

# **Exhibit 41**

Joseph Bagley , PhD  
The South Carolina State Confvs.McMaster/Alexander

June 29, 2022

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UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION  
THE SOUTH CAROLINA STATE CONFERENCE OF  
THE NAACP, et al.,  
  
Plaintiffs,  
  
vs. CASE NO. 3:21-CV-03302-MBS  
TJH-RMG  
THOMAS C. ALEXANDER, et al.,  
Defendants.

VIDEO TELECONFERENCE  
DEPOSITION OF: JOSEPH BAGLEY, PhD  
DATE: June 29, 2022  
TIME: 10:00 a.m.  
LOCATION: Virtual - Zoom  
TAKEN BY: Counsel for the Senate  
Defendants  
REPORTED BY: Roxanne Easterwood, RPR

1 largely that a lot of that, obviously, was behind  
2 the scenes and unavailable.

3 Q. Is it your position that every line in  
4 a redistricting plan must have every single  
5 criteria articulated to justify it?

6 A. Not necessarily.

7 Q. Do you believe that Chairman Rankin  
8 harbors racist motives?

9 A. No. I don't know what is in the  
10 chairman's heart, anymore than I do, you know,  
11 Chairman Jordan or anyone else. Probably more  
12 importantly, let me say, that's not what I've been  
13 asked to ascertain.

14 Q. Have you ever met any of them?

15 A. I have not.

16 Q. Dr. Bagley, just a few general  
17 questions before getting into the more specifics  
18 of your report.

19 Did you consider anything other than  
20 race in formulating your opinions in this matter?

21 A. Sure. You know, I've looked at the  
22 guidelines that were adopted by both bodies. I  
23 have considered any motives that they might have  
24 had.

25 Q. Did you consider politics?

1 Q. I mean, what is your opinion? That's  
2 why I'm deposing you today, to find out what your  
3 opinions are.

4 A. My opinion is that there is quite a  
5 bit of evidence here that the court could use to  
6 reach a finding of discriminatory intent.

7 Q. You agree that it's the court's job to  
8 conduct the Arlington Heights analysis, correct?

9 A. Yes.

10 Q. Can you please explain what you mean  
11 by "procedural irregularities"?

12 A. So departures from normal practice,  
13 departures from, sort of, best practices and good  
14 government and so on. And in this case, in  
15 particular, things that members of these  
16 legislative committees have flagged themselves as  
17 irregularities.

18 Q. Are you familiar generally with the  
19 legislative process in South Carolina, how a bill  
20 becomes a law?

21 A. Generally, yes.

22 Q. Have you ever been part of  
23 redistricting before?

24 A. You mean before this cycle?

25 Q. Yes.

1           A.     Of course not. No. I just present  
2     that as one of a number of examples.

3           Q.     Dr. Bagley, do you have any opinions  
4     as to whether the map drawing process, this cycle,  
5     differed in any way procedurally from the previous  
6     cycles in South Carolina?

7           A.     Could you restate it, Mr. Traywick,  
8     I'm sorry?

9           Q.     Sure. I'll be glad to.  
10           Do you have any opinions as to whether  
11     the map drawing process this cycle differed in any  
12     material way from the previous cycles in South  
13     Carolina?

14          A.     I understand it was generally  
15     analogous. There were some differences in terms  
16     of, like, time of day meetings were held, maybe.  
17     The things that we're talking about here, like the  
18     example with Representative King.

19           I'm, obviously, familiar with the  
20     dispensation of Backus. You know, general  
21     awareness of the hearings that were held in that  
22     cycle and the process. Obviously, not as  
23     intimately familiar with that cycle as this one.

24           But I'm not asked to opine on that  
25     cycle anyway or regardless, just insofar as it's

1 lack of transparency?

2 A. I'm not privy to any private  
3 conversations that they may have had.

4 Q. Would that affect your analysis if  
5 there was, in fact, coordination?

6 A. Sure.

7 Q. Obviously, you said you weren't  
8 retained to analyze the last cycle's redistricting  
9 process, correct?

10 A. No. Systematically, no. I discuss it  
11 in the report as part of this history of getting  
12 us up to the present.

13 Q. So you don't have any opinions  
14 regarding whether this process was consistent with  
15 prior practice or whether it was abnormal?

16 A. I understand that there is probably a  
17 general consistency, but what I'm being asked to  
18 do is review the record relevant to this cycle and  
19 identify, you know, what's asked for in the  
20 Arlington Heights framework.

21 Q. Just so I'm clear -- I want to make  
22 sure. This is my only time or might be the only  
23 time to talk to you -- your three objections that  
24 I wrote down are that, you know, some members said  
25 on the record they didn't know where maps came

1 from, some maps were dropped around the holidays,  
2 and Representative King complained that he did not  
3 preside over the Judiciary Committee meeting for  
4 the House.

5 Are there any other examples that you  
6 claim demonstrate procedural departure from the  
7 normal procedure?

8 A. If there are, they're in the report.  
9 I don't remember everything that I flagged as a  
10 potential procedural departure in the report. So  
11 I couldn't speak to that with 100 percent  
12 certainty without flipping through that whole  
13 "Sequence of Events" section.

14 Q. Is it your opinion that those three  
15 examples render the process invalid under an  
16 Arlington Heights factor?

17 A. No. I think they're simply among the  
18 things that a court would consider.

19 Q. You agree that this process was  
20 generally consistent with prior cycles, correct?

21 A. I think there are elements of it that  
22 were.

23 Q. I have written down "generally  
24 analogous" and "general consistency." Do you  
25 disagree with those prior statements?

1           A.     I would say, in terms of hearings --  
2     the public hearings being held, members of the  
3     public coming forward and saying, "There's been  
4     packing and cracking of black voters," members of  
5     the legislator saying the same, people expressing,  
6     you know, transparency concerns and that kind of  
7     thing, yes.

8           Q.     Can you concede that everyone had an  
9     opportunity to be heard in this redistricting  
10    cycle?

11          A.     I think there was wide opportunity for  
12    the submission of input or feedback, yes.

13          Q.     Thank you.

14                 Do you concede it would be unworkable  
15    to draft a map live with all 306 legislators in  
16    the room?

17          A.     Sure.    Yes.

18          Q.     Do you concede it would have been even  
19    more unworkable to draw a map live with all 124  
20    House members in the room?

21          A.     Absolutely.

22          Q.     Do you concede it would have been  
23    unworkable for map drawer to draw a map live in  
24    front of members of the public with conflicting  
25    views?



1 Q. Is it your contention that the same  
2 standards apply to your recitation of the history  
3 as to your review of the current legislative  
4 record?

5 A. Yes. But I would say we're looking  
6 at -- it's not just any one public hearing. It's  
7 not just any one meeting of any one subcommittee  
8 or committee. It's just as you enumerated  
9 earlier, this wide swath of hearings and meetings  
10 and, again, a chorus of voices of members of the  
11 public and members of these legislative committees  
12 within the historical context that I have  
13 provided.

14 Q. Sure. Within that sort of wide range  
15 of hearings, is it your contention that the  
16 process is generally consistent with prior cycles?  
17 Did I hear that correctly, or generally analogous?

18 A. In terms of holding public hearings  
19 across the state to receive input and then members  
20 of the public expressing that they thought not a  
21 lot of input had actually been acted upon.

22 Q. Aside from that, how about legislative  
23 procedures? Are you familiar with legislative  
24 procedure in South Carolina or not?

25 A. Generally speaking, yes.

1 Q. Any departures there?

2 A. Not in terms of, you know, a bill  
3 being introduced in one House or the other and  
4 eventually passing out of that entire body.

5 Q. So in looking at that factor, would  
6 you agree that the court has to look at the  
7 totality of the circumstances?

8 A. Yes.

9 Q. I don't want to get into the history;  
10 let me make clear on the front end, Dr. Bagley.  
11 I'm certainly not here disputing South Carolina's  
12 troubled history as relating to race, particularly  
13 relating to the Civil War and these others eras.

14 In looking at this section, it's a  
15 little light on sources. I want to know where you  
16 obtained information. Entire paragraphs cite one  
17 footnote. Is every sentence in those paragraphs  
18 related to the sources?

19 A. Yes. So a pretty common practice for  
20 me is not to litter a paragraph with footnotes.  
21 So the first paragraph in a section is  
22 introductory, apart from the quotation from  
23 Colleton.

24 The second paragraph goes to  
25 Footnote 3. It looks like there are two

1 Assembly's redistricting decisions in this case?

2 A. Well, the framework asks us to look at  
3 the history of discrimination, and it asks us to  
4 present to the court this big picture, this broad  
5 mosaic.

6 If you're discussing the history of  
7 voting rights in South Carolina, I mean, to me  
8 it's highly relevant that there were these number  
9 of objections. You know, that it -- it wasn't  
10 that long ago. I mean, a lot of the players, for  
11 example, in the 1980s are among some of the same  
12 now.

13 Even regardless of that, even, as you  
14 say, that's 40 years ago, we're asked to look at  
15 the history and to present that as part of these  
16 reports. So this is simply a part of that.

17 Q. Right. But you know the history has  
18 got to be probative of the decision at issue,  
19 right? So I'm trying to ascertain what you think  
20 the link is there. Where is the hook?

21 A. Well, I mean, I'm not being asked to  
22 draw a direct line between one Section 5 objection  
23 from 1981 and the plan at issue here. Again, this  
24 is just part of a broader picture. It's part of  
25 what would be relevant to a court's determination.

1 earlier, a lot of that, you know, passes through  
2 the General Assembly.

3 Q. With the local delegation, right? I  
4 mean, let's -- didn't you agree that that's the  
5 way things go?

6 A. I understand it's common practice for  
7 deference to local delegations, sure.

8 Q. When is the most current local  
9 objection you reference?

10 A. The most recent would have been  
11 shortly before Shelby County. The very last one  
12 was the photo ID law in 2011. So probably 2010,  
13 if memory serves.

14 Q. That was upheld in part, correct?

15 A. The photo ID, yes, after it was  
16 modified.

17 Q. Yes, sure, just to take away a certain  
18 element of proof if somebody for some strange  
19 reason didn't have an ID, right?

20 A. If I remember correctly, the court  
21 said -- or there was a concurring opinion that  
22 said this is telling, this is why we need  
23 Section 5, because if there hadn't been this  
24 challenge to this, they would not have gone back  
25 and modified to have the reasonable impediment

1 the record that's just not there.

2 Q. Certainly members of the public were  
3 free to attend the meeting in person, right?

4 A. Correct.

5 Q. On Page 38, at the very top -- we went  
6 through this earlier -- are you suggesting it was  
7 a procedural irregularity for Representative  
8 Newton to preside over the Judiciary Subcommittee  
9 meeting at the request of Chairman Chris Murphy  
10 instead of John King?

11 A. Representative King certainly thought  
12 that, as did others who later expressed solidarity  
13 with him in that matter.

14 Q. So just because John King did not  
15 personally preside over a meeting, that renders  
16 the process suspect? Is that your contention?

17 A. That was the contention of multiple  
18 members of the General Assembly.

19 Q. Was that even relating to the map that  
20 got passed?

21 A. You cut out, sorry.

22 Q. Sorry about that.

23 Was that committee meeting even  
24 related to the actual map that was ultimately  
25 enacted by the General Assembly?