

# **Exhibit 17**

Moon Duchin , PhD  
The South Carolina State Confvs.McMaster/Alexander

July 14, 2022

Page 1

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF SOUTH CAROLINA  
3 COLUMBIA DIVISION

4 THE SOUTH CAROLINA STATE  
5 CONFERENCE OF THE NAACP

6 and

7 TAIWAN SCOTT, ON BEHALF OF HIMSELF  
8 AND ALL OTHER SIMILARLY SITUATED  
9 PERSONS,

10 Plaintiffs,

11 vs.

12 Case No. 3:21-CV-03302-JMC-TJH-RMG

13 THOMAS C. ALEXANDER, IN HIS OFFICIAL  
14 CAPACITY AS PRESIDENT OF THE SENATE;  
15 LUKE A. RANKIN, IN HIS OFFICIAL CAPACITY  
16 AS CHAIRMAN OF THE SENATE JUDICIARY  
17 COMMITTEE; MURRELL SMITH, IN HIS OFFICIAL  
18 CAPACITY AS SPEAKER OF THE HOUSE OF  
19 REPRESENTATIVES; CHRIS MURPHY, IN HIS  
20 OFFICIAL CAPACITY AS CHAIRMAN OF THE HOUSE  
21 OF REPRESENTATIVES JUDICIARY COMMITTEE;  
22 WALLACE H. JORDAN, IN HIS OFFICIAL CAPACITY  
23 AS CHAIRMAN OF THE HOUSE OF REPRESENTATIVES  
24 ELECTIONS LAW SUBCOMMITTEE; HOWARD KNAPP,  
25 IN HIS OFFICIAL CAPACITY AS INTERIM  
EXECUTIVE DIRECTOR OF THE SOUTH CAROLINA  
STATE ELECTION COMMISSION; JOHN WELLS,  
JOANNE DAY, CLIFFORD J. EDLER, LINDA MCCALL,  
AND SCOTT MOSELEY, IN THEIR OFFICIAL  
CAPACITIES AS MEMBERS OF THE SOUTH CAROLINA  
STATE ELECTION COMMISSION,

Defendants.

20  
21  
22 DEPOSITION OF: MOON DUCHIN, PHD  
(Via Videoconference)

23 DATE: Tuesday, July 14, 2022

24 TIME: 10:13 a.m.  
25

1 files. And so it's a little bit insubstantial to  
2 talk about whether things were in separate files or  
3 the same one, but it was all in the same data  
4 package. It was all in the same delivery.

5 Q. And before I go to section 5 I want to  
6 go back and just round out a few questions on this  
7 section 4.

8 A. Yes.

9 Q. Did you omit from section 4 any  
10 traditional criteria contained in the General  
11 Assembly's Guidelines?

12 A. I made an effort to address all the ones  
13 that had high billing. There isn't a numerical  
14 discussion of core retention. But again, as we  
15 reviewed when we looked at the Guidelines before,  
16 core retention is kind of packaged with other  
17 considerations in the Guidelines, and it wasn't a  
18 clear heading, in particular, in the House  
19 Guidelines. So I do not give core retention  
20 statistics across the plans but I do give core  
21 retention statistics in places where I think they  
22 are relevant in the report.

23 Q. And what about VTD splits, did you give  
24 statistics on VTD splits here?

25 A. It does not look like I did give

1 statistics on VTD splits. I certainly could if that  
2 would be helpful.

3 Q. And did you give any statistics on  
4 partisan performance?

5 A. Not in this section because, indeed,  
6 partisan performance is not listed among the  
7 criteria in the Guidelines. But I certainly do  
8 discuss partisan performance later in my report.

9 Q. You said that you focused on the  
10 criteria that had, quote -- "high billing" I think  
11 was your phrase. Is that a phrase you used a moment  
12 ago?

13 A. I believe you.

14 Q. If I'm wrong you can correct me on the  
15 transcript. But how did you determine which  
16 criteria do or do not have high billing or otherwise  
17 merited inclusion here in section 4?

18 A. I'm referring, sort of generally, to  
19 things like being the heading of a section or being  
20 in boldface, things like that. So that, for  
21 example, if you review the House Guidelines you will  
22 see that core retention is nowhere a section header  
23 or in boldface. That is an informal  
24 characterization of the billing in the Guidelines.

25 Q. And was the General Assembly prevented

1 is listed here; therefore, it's a named principle.  
2 It shall not influence the redistricting plan to  
3 such an extent as to overtake other redistricting  
4 principles.

5 So though it's not made explicit, I  
6 would say that a reasonable reader would conclude,  
7 quite strongly, even, that unnamed criteria also  
8 cannot overtake the redistricting principles that  
9 are here named. But I concede to you that that is  
10 just an attempt to make sense of what's written here  
11 and not explicit text.

12 Q. And are you looking currently at the  
13 House Guidelines?

14 A. I was just reading from the House  
15 Guidelines. Correct.

16 Q. And can you see those on the screen now?

17 A. Yes.

18 Q. It takes me a moment to catch up with  
19 you, so I appreciate your patience. And the House  
20 Guidelines here, in part VII, mention Communities of  
21 Interest?

22 A. Uh-huh.

23 Q. Are you aware of any authority or any  
24 decisions treating existing districts and cores of  
25 districts as a community of interest?

1 other states. Correct?

2 A. Quite a few, yeah.

3 Q. And you said, as a result, that then  
4 affects the extent to which or whether map drawers  
5 can consider preservation of cores of districts in  
6 those states. Is that right?

7 A. That's right.

8 Q. So I'm just asking, is there anything  
9 that you're aware of in South Carolina law that  
10 functions that way and would prohibit consideration  
11 of preservation of cores?

12 A. Right. I understand. No, there is  
13 nothing in the law that I'm aware of.

14 Q. And are you aware of anything in the law  
15 that would prohibit the General Assembly from  
16 treating cores of districts as communities of  
17 interest in South Carolina?

18 A. Nothing in the law that I'm aware of.

19 Q. Are you aware of anything else that  
20 would prohibit them from doing so?

21 A. I would say that as a matter of good  
22 government best practices, that there would be some  
23 significant skepticism of using the communities of  
24 interest heading in that way.

25 Q. And which good government best practices

1 summary, section 3B is called: Constituent  
2 consistency. And it employs the phrase:  
3 "Preserving the cores of existing districts."

4 Q. I'm going to share that again for the  
5 record. I believe you're reading here off of page  
6 2, this heading B, Constituent consistency. Is that  
7 correct?

8 A. That's right.

9 Q. And how that heading also discusses  
10 keeping incumbents' residences in their districts  
11 with their core constituents and avoiding contests  
12 between incumbent legislators. Did I read that  
13 correctly?

14 A. Yes. It says that all three of those  
15 should be considered.

16 Q. And I'm going to pull up your report  
17 again if I can figure out how. And here, in section  
18 4, you discussed incumbent pairing but not  
19 preserving cores of districts. Is that right?

20 A. That's right. In this section I  
21 discussed incumbent pairing but not core  
22 preservation.

23 Q. All right. I would like to move on now  
24 to your detailed district review in section 5, if  
25 that's okay.

1           A.     Sorry.   Excuse me.   It's also addressing  
2     the South Carolina State House districts also in  
3     that report.

4           Q.     Got it.   And do you have -- is there any  
5     support or discussion of this particular method in  
6     any academic literature that you're aware of?

7           A.     That is, is there any discussion of the  
8     method of using public testimony to identify  
9     communities of interest?

10          Q.     To identify a subset of communities of  
11     interest.

12          A.     I'm sorry.   Could you rephrase?

13          Q.     Sure.   Let me ask you this:   Were these  
14     the only four communities of interest identified in  
15     the public testimony?

16          A.     I see.   No, certainly not.   Thank you  
17     for rephrasing.

18          Q.     Yeah.   Sorry.

19                 Okay.   So I want to understand how you  
20     identified these four out of the various communities  
21     of interest that were identified in the public  
22     hearing testimony.   So can you tell me why you  
23     identified these four, as opposed to other  
24     communities of interest?

25          A.     Sure.   And incidentally, if you look at



1 quantification or quantitative analysis in  
2 communities of interest. Is that right?

3 A. I think maybe a good way to answer your  
4 question would be to say what academic domain this  
5 falls in. So this falls in an area that has a huge  
6 literature called "participatory mapping" that's  
7 part of the academic geography literature. I would  
8 say there are hundreds of papers on participatory  
9 mapping and the idea of taking seriously public  
10 input, grass-roots input. So I don't know that any  
11 of those papers focuses specifically on applications  
12 to redistricting, but there is really no shortage of  
13 both qualitative and quantitate support for the idea  
14 of community mapping.

15 Q. And here I'm just looking for a simple  
16 yes or no answer to this next question.

17 A. Sure.

18 Q. Is there any academic literature that  
19 discusses the method you used here, in this report,  
20 this specific method?

21 A. I'm trying to give you the yes or no  
22 answer. I would say the detailed method used here,  
23 no.

24 Q. Okay. Thank you. And how about are you  
25 aware of any court decisions or opinions discussing

1 public testimony?

2 A. Okay. In many states anyone can. For  
3 instance, the cycle in Michigan, the commission  
4 debated whether only residents could provide  
5 testimony and decided that it would be open to  
6 anyone.

7 Q. And among the people who show up to  
8 testify, for example, are they a statistically  
9 random sample of the statewide population?

10 A. I'm not sure I understand what that  
11 would mean, but I think the spirit is are they --  
12 are there any statistics gathered on commenters. Am  
13 I understanding right?

14 Q. Well, what I really want to understand  
15 is, are commenters, whoever shows up to comment in a  
16 public -- in public hearing, can we extrapolate from  
17 that that their views represent the views of the  
18 entire state or the populous at large from which  
19 they are drawn?

20 A. Well, certainly not. With any public  
21 anticipatory effort there is always going to be a  
22 kind of small sample. And it's hard to say exactly  
23 what that might represent in terms of the overall  
24 views of all residents, all adults, all voters or  
25 some other universe.

1 Q. So if I can just briefly summarize, the  
2 public testimony does not necessarily represent the  
3 views of all voters or all residents of the state.  
4 Is that correct?

5 A. It certainly does not represent the  
6 views of all voters. It could not.

7 Q. And I think you said that you were  
8 looking for communities of interest that got  
9 particular focus or emphasis in the public hearing  
10 testimony. Is that right?

11 A. That's right. I looked for themes, is  
12 the phrase that I used.

13 Q. And so would those communities of  
14 interest necessarily be a point of focus or emphasis  
15 for all voters or all individuals in the state?

16 A. Again, I clearly concede that there is  
17 no way testimony could possibly capture everything.  
18 That's certain.

19 Q. But would the weight of that testimony  
20 be representative of the weight of the views among  
21 all residents or all voters in the state?

22 A. Well, I believe that it's the best we  
23 have, that, in fact, considerable effort was  
24 expended by the State to collect it. And it strikes  
25 me that it would be misuse of that time and those

1 resources not to take it seriously as the best  
2 record we have of residents characterizing their own  
3 communities.

4 Q. And regardless of whether it is the best  
5 we have or is something that the General Assembly  
6 should have, could have or did, in fact, take  
7 account of, I'm asking a slightly different  
8 question, which is, do the points of emphasis -- can  
9 you say, one way or the other, whether the points of  
10 emphasis in the public testimony accurately  
11 represent the views of the points of emphasis of the  
12 populous generally in South Carolina?

13 A. I think it's reasonable to assume a  
14 correlation. Is that what you mean? It's not going  
15 to be the entirety, necessarily, but I think it's  
16 reasonable to assume correlation.

17 Q. And have you conducted any analysis,  
18 either survey analysis or anything like that to try  
19 to capture the views of individuals who did not  
20 provide public hearing testimony with respect to  
21 communities of interest?

22 A. In South Carolina, certainly not.

23 Q. And did plaintiff's counsel ever  
24 instruct you to focus, back on page 15, on these  
25 four communities, Columbia, Sumter, Orangeburg and

1 mean that you turned off race data in the ensemble  
2 plans or something else?

3 A. That means that the algorithm does not  
4 use the race field.

5 I want to say something that I think is  
6 very important for reasoning about ensembles and  
7 race, which is, I think that everything else that's  
8 in the ensemble has racial factors subtly proxied.  
9 For example, the boundaries of counties and  
10 municipalities can well have an important racial  
11 history. And I don't mean to deny that at all, only  
12 to say that in this collection of ensemble runs the  
13 race field and the data was simply not used by the  
14 algorithm.

15 Q. And the rest of that sentence says that  
16 the plans are neutral with respect to all other  
17 properties except those listed here. Does that mean  
18 the ensemble plans don't consider data on other  
19 traditional districting principles or those  
20 principles at all?

21 A. It does mean that. And it also means  
22 something stronger, which is that the -- those of us  
23 who study computational redistricting, we think  
24 about, as I was referring to earlier, the  
25 probability distribution from which we are sampling.

1 So I'm not only saying that we didn't use a field in  
2 the data that has to do with other features, I'm  
3 also saying that I can characterize the limiting  
4 distribution and it depends only on the named  
5 features, the limiting distribution does, which is  
6 to say -- well, let me rephrase that in a way that I  
7 think is maybe clearer. If you take two plans and  
8 you ask how much more likely is it to see this than  
9 this, I can answer that quantitatively. And I know  
10 that it depends only on the things that are  
11 described here.

12 Q. So when the algorithm is drawing the  
13 plans in the ensemble approach or in the ensemble  
14 plans does it consider preservation of cores?

15 A. I have done that in some studies. I did  
16 not do that here.

17 Q. Okay. And focusing again on what you  
18 did here for South Carolina on the Congressional  
19 plan, does the algorithm consider VTD splits?

20 A. Yes. Because it only builds from whole  
21 VTDs. It does not split any VTDs.

22 Q. And does it consider partisan  
23 performance in any districts?

24 A. Certainly not.

25 Q. How about incumbency pairing?

1           A.     Can I do that here? I did look at  
2     incumbency in the South Carolina House, but I think  
3     for Congress I did not. Let me look again at the  
4     description in appendix A. I don't see incumbency  
5     described. And that means in this report I did not  
6     look at incumbencies.

7           Q.     Section 6.1 is a statewide analysis --  
8     or at least it's headed as a statewide analysis.  
9     And you say -- and I don't mean to suggest it's not.  
10    I'm just trying to be as accurate as you are, which  
11    you're setting a high standard. The first sentence  
12    says: "Using neutral ensembles of districting maps,  
13    we can compare the properties of a plan to  
14    alternative statewide plans that were made under  
15    traditional criteria." Are these alternative  
16    statewide plans that were made under traditional  
17    criteria the ensemble plans made with the parameters  
18    we have been discussing?

19          A.     Yes, that's right.

20          Q.     Or art they different? There are not  
21    any different set of plans?

22          A.     No. We just described the comparative.

23          Q.     Okay. And as I understand what you have  
24    shown here, we will move here to District -- maybe  
25    to Figure 10, but I think it's also on page 22, what

1 BY MR. GORE:

2 Q. Dr. Duchin, did you discuss your  
3 testimony or deposition with anyone during the  
4 break?

5 A. I did not.

6 Q. I want to ask one more question about  
7 section 6 before I move on to section 7.

8 A. Yes.

9 Q. In section 6, back on page 22 you  
10 identified some of the other principles that you  
11 used to program the algorithm that generated the  
12 ensemble map. And you noted a preference for  
13 compactness and for the preservation of counties and  
14 municipalities.

15 A. Yes.

16 Q. Does your report contain any analysis of  
17 how the enacted plan compares to the ensemble plans  
18 with respect to those criteria?

19 A. No, it's not in my report, but it could  
20 be derived from the outposts.

21 Q. Thank you. All right. Let's move to  
22 section 7. We talked a little bit about minority  
23 opportunity during your deposition. Do you know how  
24 counsel identified these races that are shown here  
25 on page 25?



1 in saying that Table 7 shouldn't be interpreted as  
2 democratic performance because it's the performance  
3 of these four particular Democrats.

4 Q. Certainly. And are these four  
5 candidates the only Black candidates of choice in  
6 South Carolina electoral history?

7 A. No, they are not.

8 Q. Okay. So you have four elections. And  
9 you have identified -- or had identified for you  
10 four Black candidates of choice. And in each of  
11 those four elections those candidates are Democrats.  
12 Right?

13 A. Yes, these were four or five. I mean,  
14 Joe Biden and Kamala Harris being on one ticket but  
15 different people.

16 Q. So maybe we will refer to them as  
17 tickets, just to be precise. Table 7 records the  
18 number of times any of these candidates won in each  
19 district in each of the plans listed here. Correct?

20 A. Right. And just to be perfectly clear,  
21 one means that they had more votes than their major  
22 party opponent, in this case a Republican. So it  
23 does not take third-party votes into account. So  
24 it's the plurality winner, essentially.

25 Q. Thank you. And thank you for that

1 clarification. So each of these quote/unquote wins  
2 is the Black preferred candidate, who is also a  
3 democrat, prevailing in the two-party vote. Is that  
4 correct?

5 A. That is correct.

6 Q. So take the enacted plan, for example,  
7 it lists four wins in District 6.

8 A. Yes.

9 Q. And each of those wins is for a Black  
10 preferred candidate. Correct?

11 A. Yes.

12 Q. And each is also for a Democrat.  
13 Correct?

14 A. Yes.

15 Q. And in your experience have you ever  
16 seen a case or scenario where the Black preferred  
17 candidate was not a democrat?

18 A. I'm thinking. In a recent electoral  
19 history in statewide elections, that is in elections  
20 with a party ID, at the moment Black preferred  
21 candidates do strongly tend to be Democrats  
22 nationwide. That's not necessarily true for other  
23 minority groups. Are there exceptions? Well, it is  
24 definitely the case that ecological inference  
25 methods, which are usually what underpin RPV

1 analysis, show areas of the country in which Black  
2 voters have preferred Republicans at times. But in  
3 the studies that I personally have conducted I have  
4 not seen that, at least with any frequency.

5 Q. And so according to Table 7, enacted  
6 2022 and previous 2012 which I have been calling the  
7 benchmark plan, each have four wins in District 6.  
8 Right?

9 A. That's correct.

10 Q. And I'm going to flip back to page 24 --  
11 23 and 24. You identified an alternative districts  
12 plan here.

13 A. Yes.

14 Q. And do you know how many wins these  
15 districts generated?

16 A. I do. It's described in the footnote.

17 Q. I see it. Okay.

18 A. And the footnote says that the candidate  
19 of choice won outright in one of the four contests  
20 and received at least 47.5 percent of the vote; i.e.  
21 they were in that 5 percent margin in the other  
22 three.

23 Q. So that would be a total of five wins.  
24 Is that right?

25 A. Out of four? No.

1 Q. All right. So let's look at this. So  
2 the Harpootlian plan in District 1 generates two  
3 wins for the Black preferred candidate. Is that  
4 right?

5 A. That's right.

6 Q. Who also happens to be a Democrat. Is  
7 that right?

8 A. Yes. And these Black preferred  
9 candidates are all Democrats.

10 Q. I want to go back to page -- and then  
11 the Harpootlian plan does not generate any other  
12 wins for Black preferred candidates in any other  
13 districts. Correct?

14 A. That's right. Although, again, this  
15 table doesn't show you instances of getting close  
16 but it just shows you whether you cross the line to  
17 having plurality support. You're right. There are  
18 no other instances of plurality support.

19 Q. So let's go back to page 9, if we might.

20 A. We might.

21 Q. And in the Harpootlian plan, what is the  
22 BVAP of District 1?

23 A. 21.2 percent.

24 Q. So for the Black preferred candidate to  
25 prevail in a 21.2 percent BVAP district, that means

1 District 5 has maybe 12-and-a-half-percent higher  
2 BVAP than District 1. And in District 5 there are  
3 zero wins for those four candidates and in District  
4 1 there are two wins for those four candidates.  
5 Right?

6 A. Right. I think this completely supports  
7 the point discussed earlier, that BVAP is an  
8 imperfect proxy for electoral opportunity.

9 Q. And does it also support the point that  
10 what is driving wins for Black preferred candidates  
11 is the presence or absence of White crossover  
12 voting?

13 A. I wouldn't say that drives. I would say  
14 it contributes.

15 Q. And you would say that it's a  
16 significant factor. Right?

17 A. That White crossover voting is a  
18 significant factor in outcomes?

19 Q. Yes.

20 A. No question, yes, it certainly is.

21 Q. And how significant a factor is it?

22 A. Could you maybe rephrase the question?

23 Q. Probably not. That was my  
24 characterization, significant factor. And so maybe  
25 we can just leave it at that --

1 A. I agree with significant factor.

2 Q. -- that you agree with the significant  
3 factor.

4 A. (Witness nods head).

5 Q. And do you happen to know where, in  
6 South Carolina, White Democrats live?

7 A. Well, first I would say that I resist  
8 characterizing people -- people as either Democrats  
9 or Republicans because, for example, I live in a  
10 state where people vote one way for Senate and  
11 wildly differently for governor. And so party  
12 affiliations are not immutable. But I have looked  
13 at where, in the State, it's possible to find  
14 historically effective districts, in the sense that  
15 I discuss here in section 7, that are affected  
16 despite a relatively low BVAP. I have seen places  
17 in the State, especially near Charleston and  
18 Columbia, where there are significant historical  
19 levels of crossover support.

20 Q. And is it accurate to say, at least in  
21 South Carolina, that those areas of crossover  
22 support and crossover opportunity are concentrated  
23 in particular areas of the State, as opposed to  
24 being diffused evenly across the state?

25 A. I would really have to do an analysis

1 little bit of a term of art, as I understand it, at  
2 least in my areas of expertise. So "candidate of  
3 choice" is the overall preference of a racial,  
4 ethnic or language group. I don't think it just  
5 means the candidate that you voted for. Right? And  
6 so White voters' candidate of choice in South  
7 Carolina is, to my understanding, always the  
8 Republican in a party ID contest. But having said  
9 that, just to set out the terms of discussion,  
10 you're asking, I think, if White voters who voted  
11 for the Democrat can prevail in a district in which  
12 the Republican always wins. Am I understanding --

13 Q. Go ahead and answer that. Yeah.

14 A. If you're a White voter who voted for a  
15 Democrat but your district always goes Republican,  
16 then your favorite candidate is not being elected.

17 Q. And so the way you describe that is the  
18 candidate of choice or candidate for whom they  
19 voted, that candidate is not prevailing.

20 A. Right. Any voter who voted for a  
21 Democrat is not seeing their preferred candidate  
22 elected in a district that always elects  
23 Republicans.

24 Q. And that's true, regardless of the race  
25 of that voter. Correct?

1           A.     That has nothing to do with the race of  
2     the voter. I agree.

3           Q.     Let's move to page 26, Figure 12. And  
4     it looks like this top chart in 12 -- or this top  
5     histogram, to be more precise, is a histogram of  
6     Table 7. Is that right?

7           A.     That's right. It shows, I hope, if I  
8     don't have any typos, the numbers that you see in  
9     the key should match the total effectiveness numbers  
10    in the table.

11          Q.     And this bottom chart is a histogram  
12    that shows other Democratic -- outcomes for other  
13    Democratic candidates in 63 other races. Is that  
14    right?

15          A.     It is --

16          Q.     Or perhaps it's nine races disaggregated  
17    over or reconstituted over seven districts.

18          A.     We were just rushing to agree with each  
19    other. It is nine contests times seven districts.

20          Q.     So this is nine statewide races.

21          A.     Correct.

22          Q.     Reconstituted in the seven districts in  
23    each of the plans.

24          A.     That's right.

25          Q.     And the total numbers are the number of



1 minority opportunity as opposed to higher core  
2 retention, yes. I think that is directed, but I  
3 wouldn't say required.

4 Q. So let me rephrase and see if I  
5 understand your point. Is it your reading that the  
6 Guidelines direct the General Assembly not to trade  
7 off compliance with some other principle at the  
8 expense of minority voting opportunity?

9 A. So sorry, but I think my entering got  
10 cut out in the middle of your sentence. Can you  
11 repeat that?

12 Q. It was such a good sentence, I don't  
13 know, but I will try. Is it your reading of the  
14 Guidelines that the Guidelines direct the General  
15 Assembly not to trade off less minority voting  
16 opportunity for better compliance with the other  
17 principles in the Guidelines or considerations in  
18 the Guidelines?

19 A. Well, an exception might be population  
20 balance, which is in the first tier here. But  
21 specifically as to core retention, my reading is  
22 that they are directed to prioritize minority  
23 electoral opportunity over core retention. That's  
24 correct.

25 Q. And what about over other principles

1 that you have placed in the second tier?

2 A. Okay. Let's review. Yes. I think it  
3 says the requirements addressed in sections 1, 2, 3  
4 and 4 should be given priority if there is a  
5 conflict.

6 Q. So on your reading, the Guidelines  
7 direct the General Assembly to maximize voting --  
8 minority voting strength to the extent it can do so  
9 while trading off compliance with the second-tier  
10 considerations?

11 A. I would shy away from the word  
12 "maximize" which has a very specific meaning for me.  
13 I don't think there is maximization here. But I do  
14 think that, again, to quote, if there is a conflict,  
15 the requirements that include minority electoral  
16 opportunity should be given priority. So they are  
17 directed, in case of conflict, to prioritize  
18 minority electoral opportunity over compactness over  
19 district cores and so on.

20 Q. So this is helpful, but let me ask it  
21 another way, if that's okay. We talked earlier that  
22 redistricting involves tradeoffs. Right? That the  
23 criteria may cut in different directions or that a  
24 map drawer may prioritize one criterion or  
25 consideration over another and that tradeoffs are

1 part and parcel of redistricting. Is that right?

2 A. Yes.

3 Q. Is it your reading that the Guidelines  
4 direct the General Assembly, when faced with such  
5 tradeoff between minority voting strength on the one  
6 hand and a second-tier consideration on the other  
7 hand, to choose the option that prioritizes minority  
8 voting strength?

9 A. I think that's the plain language here.  
10 And let me stipulate that I might not have written  
11 it exactly this way. But reading the way they wrote  
12 it, I do think that's what they say.

13 Q. Okay. And have you discussed the  
14 Guidelines with whoever wrote them?

15 A. I certainly haven't. And I have no idea  
16 who wrote them.

17 Q. And do you know one way or another  
18 whether the standard in the Guidelines was simply  
19 meant to be an articulation of what Section 2 of the  
20 Voting Rights Act requires?

21 A. Not simply. It says that it goes beyond  
22 the Voting Rights Act. And both sets of the  
23 Guidelines reference other principles such as equal  
24 protection. So it's not simply a recording of  
25 Section 2.