

Exhibit 25

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.

VIDEOCONFERENCE

DEPOSITION OF: SHANE MASSEY

DATE: August 2, 2022

TIME: 10:43 a.m.

LOCATION: Edgefield, SC

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: ERIC GLAZIER, Court Reporter

1 A. No, I think -- I think Fort Jackson is
2 definitely a community of interest. There's a
3 large military population at the fort and around
4 the fort, and having them stay together -- and they
5 are all familiar -- I mean, Congressman Wilson has
6 been in that position for 20 years. I mean, having
7 them be represented by the same person that they've
8 always known, I mean -- and I don't think it's
9 specifically spelled out, but I think that's
10 communities of interest and keeping core
11 constituencies together.

12 Q. And protecting republican advantage in
13 Congressional District One, that's not in the
14 guidelines either, is it?

15 A. Well, one of the things in the
16 guidelines was that -- was political -- as part of
17 the communities of interest definition, if I
18 remember, referenced political. And so I think
19 that's part of it. I mean, you know, frankly, not
20 doing that -- not protecting the First is political
21 malpractice.

22 So, I mean, I think you can -- I think
23 it fits into that category that you and I talked
24 about under, I think it was, paragraph A of Roman
25 numeral three. But, you know, from my perspective

1 as a senator, that's something that's very
2 important to me, you know, is -- even though I
3 don't represent anybody who lives in the First,
4 it's important to me that we protect the First, and
5 I suspect that I was not alone in that
6 consideration.

7 Q. You mentioned earlier trying to make
8 sure that Nancy Pelosi isn't Speaker of the House
9 any longer than necessary. Apart from that, why
10 was it important to you to preserve the First, so
11 to speak?

12 A. Isn't that enough?

13 Well, I mean, look, California's not
14 giving up -- not giving republican seats. Right?
15 New Jersey's not giving up seats. Illinois is not
16 giving up seats. I'm not giving up a seat. I
17 mean, I think it would be political malpractice for
18 the republican-controlled legislature to allow
19 for -- especially something like what Senator
20 Harpootlian proposed. But it would be political
21 malpractice to draw a district such that the
22 democrats were more likely to win that district
23 than not.

24 And so I think that it was certainly
25 one of my concerns but, I think, also our

1 obligation to protect the First.

2 Q. Does that really have anything to do
3 with communities of interest?

4 A. Well, I mean, it's part of the
5 definition that they had included in there,
6 political. I think that -- that factors in. I
7 mean, those folks -- most of those folks were -- of
8 course, you know, the First was prob- -- I think,
9 the First was the most overpopulated, so it was the
10 one that had to give up some people. But most of
11 those people have been in that congressional
12 district forever.

13 I mean, the First, as it relates to
14 Charleston, Berkley -- Berkley's been split some,
15 and Dorchester and Beaufort -- Beaufort way back
16 was split, but -- but yeah, I mean, I think that
17 factors into the political communities of interest.
18 But regardless, like I said earlier, I didn't even
19 really know that there were specific guidelines
20 that were developed by the subcommittee. Frankly,
21 I don't care what those guidelines are. I'm not
22 voting for something that's going to give away the
23 First.

24 MR. HIRSCHER: Okay. I want to
25 introduce another exhibit. I might come back to --

1 Q. Do you recall whether there were any
2 particular points that you sought out to make in
3 presenting an opposition to Senator Harpootlian's
4 amendment?

5 A. I read through these comments again
6 yesterday when I was preparing, and what that
7 reminded me of is that what I did -- and I find
8 this hard sometimes, but I listened to Senator
9 Harpootlian and I -- because -- well, when I read
10 the transcript of my comments, I see that I
11 responded to a number of the comments that he made
12 in his remarks or in his colloquies with other
13 senators, things which I would not have been able
14 to prepare for.

15 And so I don't know that anybody gave
16 me talking points to respond to Senator
17 Harpootlian, other than what I had, and then I
18 remember there was some demographic data available
19 in the notebooks that they provided for all of us
20 that I used also in talking about these things.

21 But I think my -- my comments here were
22 mostly in response to the comments that Senator
23 Harpootlian made on the floor minutes earlier.

24 Q. And so what point or points were you
25 setting out to make here?

1 A. Do you want me to read my comments?

2 Q. Not necessarily. I'm asking you,
3 whether from familiarity with reviewing them
4 yesterday, or if you'd like to review them now, or
5 if you happen to personally recall from being there
6 what your objectives were, what points you were
7 trying to make.

8 A. Well, without having to -- without
9 looking back at Senator Harpootlian's comments and
10 the PTSD that would ensue from having to revisit
11 that, it seemed to me that there were two main
12 points that Senator Harpootlian was making, and I
13 tried to address those.

14 It seemed like to me that his first
15 comment, his first point that he was making, was
16 that the maps that were proposed -- which at this
17 point were the maps the senate had just voted to
18 accept. Senator Harpootlian alleged that that map
19 was all about race and that that was, if my
20 understanding from his comments -- his allegation
21 was not that that was the predominant factor. His
22 allegation was that that was the only factor. And
23 so I wanted to address that.

24 And then the second argument -- and I
25 remember this -- Senator Harpootlian spent some

1 time talking about supreme court opinions, and he
2 talked about Shelby in particular, and said that
3 there was no requirement from Shelby that we use
4 the benchmark maps, that we use the 2011 maps, as a
5 starting point.

6 And then he drew the conclusion from
7 that, he extrapolated and went further and said,
8 well, since there's no requirement that we use the
9 2011 maps as a starting point, we shouldn't use the
10 2011 maps as a starting point.

11 And so I wanted to address that I
12 thought that was an incorrect conclusion to draw
13 from Shelby, that just because it's not required
14 doesn't mean you can't do it.

15 So those were the two points that I
16 wanted to make.

17 Q. So to summarize, the two points you
18 wanted to make were, just because it's not required
19 to start from the previous map doesn't mean you
20 can't, and --

21 A. Right.

22 Q. -- the map that was passed was not only
23 about race. Is that --

24 A. Well, I think the first statement you
25 made is correct. Just because Shelby said you

1 don't have to start there doesn't mean you can't
2 start there. Shelby didn't say that you can't
3 start at the original maps, so therefore it was
4 permissible for us to do that.

5 The second part was -- and this is -- I
6 mean, your comment was that I said it wasn't only
7 about race. I would disagree with that. It wasn't
8 about race, period.

9 Like when you look at the First, the
10 issue in the First is not race. There's no reason
11 to -- there's no reason to draw a map based on race
12 in the First. That's not the issue. The issue is
13 growth.

14 And so what I wanted to point out here
15 is that Senator Harpootlian was alleging that the
16 maps were drawn entirely based on race, and I
17 wanted to rebut that, and I did that by looking at
18 the demographic data that had been provided.

19 Senator Harpootlian, I remember, as
20 part of his argument used the term, that we had
21 bleached the First, and I wanted to make the point
22 that if anything, the First was -- under the '22
23 map, was less white than the 2011 map.

24 So his allegations were just wrong.
25 Factually, they're just wrong.

1 suspect, the same in '11. So he's really
2 criticizing the '11 maps that have already been
3 approved.

4 MR. HIRSCHER: It's been almost two
5 hours since we came back from lunch. I've got not
6 too, too much more.

7 (After a recess, proceedings were
8 continued as follows:)

9 BY MR. HIRSCHER:

10 Q. Senator Massey, forgive me if you've
11 already said this. Is it your testimony that race
12 was not considered during the mapmaking process?

13 A. Well, again, I wasn't involved in the
14 mapmaking process. It wasn't part of my
15 consideration. And I think if you look at the
16 statistics, it didn't -- I mean, if that was their
17 goal, they failed miserably, is what it appears to
18 me.

19 Q. So you don't know whether the
20 subcommittee was considering race?

21 A. No, I wasn't involved in any of that,
22 the subcommittee process.

23 Q. Prior to January 19th or so, had you
24 reviewed any race data for any of the proposed
25 maps?

1 voting doesn't necessarily mean that black voters
2 prefer a black candidate and white voters prefer
3 white candidates. It's more about that among black
4 voters, they overwhelmingly prefer a particular
5 candidate, regardless of that candidate's race, and
6 same story for white voters.

7 A. Okay.

8 Q. So having said that, would you agree
9 that analyzing data about how black voters vote as
10 a bloc would be helpful to determine the impact on
11 black voter strength of moving a particular number
12 of black voters from one district to another?

13 MR. TYSON: I'm going to object to the
14 form. That was a pretty convoluted question, so
15 maybe you can help break it out a little bit.

16 MR. HIRSCHER: Yeah, I'm happy to do
17 that.

18 BY MR. HIRSCHER:

19 Q. Do you think it would be helpful in
20 assessing the impact on black voters of moving them
21 from one district to another or placing them in
22 one district or another to analyze how black voters
23 vote?

24 A. Well, I mean, I think that assumes they
25 vote as a bloc, and I don't think that's fair,

1 but -- because I -- I mean, I don't think it's fair
2 to assume that any group votes in a bloc, although
3 sometimes that happens with different groups,
4 but -- look, my goal of this -- and I don't
5 remember this conversation between Campsen and
6 Harpootlian, but I -- from what we've read, what
7 you read to me, I agree with Campsen, and that is,
8 I would prefer that race not be a consideration at
9 all.

10 And so in that respect, I don't think
11 we ought to engage in the analysis that you've
12 asked about in your question, right, because I
13 don't think that's -- I don't know that that's the
14 legislative role.

15 And beyond that, I think with us and
16 with me -- I should probably just speak for me. I
17 mean, the issue in the First, again, was not about
18 race at all. The issue with the First was growth
19 and where that growth is going, where it's likely
20 to go in the future, and what we do now, what's
21 that district going to look like in 2028 not from a
22 racial dynamic, but from a growth dynamic.

23 That was the -- because, look, if
24 republicans lose in the First, it's not going to be
25 because of black voters all voting for democrats.

1 It's going to be because we got a lot of growth
2 coming into that area that's voting for democrats.
3 So I want to know how we're going to manage that.
4 That was my concern.

5 Q. You recall that the Voting Rights Act
6 requires that a map not have the effect of diluting
7 minority voting strength, right?

8 A. I'll take your word for that. I'm
9 not -- by no means an expert on the VRA. I have a
10 general understanding of it.

11 Q. And I understand your position on
12 whether racial groups vote as a bloc, but wouldn't
13 you need to analyze whether racial groups vote as a
14 bloc in order to assess the impact on minority
15 voting strength of any particular map?

16 A. Oh, man, you're getting into more of a
17 legal analysis. I think that's why we hire
18 lawyers. I mean, I don't know the answer to that.
19 I don't know.

20 Q. Do you know whether any
21 district-by-district analysis of the ability of
22 black voters to elect their candidate of choice was
23 conducted?

24 A. I don't.

25 Q. Do you know whether sufficient data was

1 When you started talking -- you were
2 answering a number of questions about January 20th,
3 and when you started talking about race on
4 January the 20th, that was in response to Senator
5 Harpootlian's comments, correct?

6 A. Yeah. I mean, I don't remember ever
7 having any conversation or hearing any conversation
8 about race until now. When Mr. Hirschel was
9 showing me the transcript of January 19, it seems
10 like Senator Harpootlian brought it up on the 19th
11 then too.

12 I just try very hard in general to tune
13 out Dick Harpootlian as much as I can, but -- so I
14 had forgotten the committee conversation, but I
15 remember the conversation about race on
16 January 20th for the floor debate because Senator
17 Harpootlian brought it up, and I was responding to
18 it.

19 Q. But you didn't factor race into your
20 decision to approve the congressional map, correct?

21 A. No, that had no consideration from me.

22 Q. And you don't know of any evidence that
23 the general assembly used race in the crafting of
24 the plan?

25 A. No. And in fact, I think if you look

1 at the results, it shows the exact opposite.

2 Q. What do you mean?

3 A. Well, if you look at the demographic
4 data that we saw from the plan adopted, that the
5 senate adopted, that Mr. Hirschel and I spent some
6 time talking about, it shows that -- I mean, as
7 long as the -- if the data is correct, that there's
8 actually a higher BVAP in the First than under the
9 2011 plan, which is contrary to what Senator
10 Harpootlian was arguing.

11 Q. We're going to look at that chart in a
12 few minutes, but let me just ask you a couple of
13 general questions.

14 You don't think the general assembly --
15 or are you aware of any evidence that the general
16 assembly racially gerrymandered the congressional
17 map?

18 A. No.

19 Q. There were some questions about
20 candidates of choice for minority persons. Do you
21 remember those questions?

22 A. I do.

23 Q. Did you know there's not a Section 2
24 Voting Rights Act claim in the complaint?

25 A. I did not know that.