

# **Exhibit 23**

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF SOUTH CAROLINA  
3                   COLUMBIA DIVISION  
4                   CASE NO. 3:21-CV-03302-MBS-TJH-RMG

5           THE SOUTH CAROLINA STATE CONFERENCE OF  
6           THE NAACP, AND TAIWAN SCOTT, ON BEHALF  
7           OF HIMSELF AND ALL OTHER SIMILARLY  
8           SITUATED PERSONS,

9                               Plaintiffs,

10                           vs.

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

                             Defendants.

20           DEPOSITION OF:       ANDREW THEODORE FIFFICK  
21                                       (Appearing via VTC)

22           DATE:                       July 21, 2022

23           TIME:                       10:10 a.m.

1           A.    Yeah.  It was, you know, the population  
2   deviations.  There was political data.  
3   Occasionally there was demographic data so, yeah,  
4   that stuff was up there for sure.

5           Q.    And when you refer to demographic data,  
6   are you referring to something else other than  
7   population?

8           A.    We saw VDOT numbers occasionally if a  
9   member asked for them.  I don't recall Senator  
10   Campsen ever asking for that.  I think Senator Sabb  
11   and I think Senator Bright Matthews might have.  
12   But those were available.  I mean, and those were  
13   also things we produced on the website so the  
14   public could see as well.

15          Q.    You were in the room with Mr. Roberts  
16   as he was drawing maps sometimes or did you see  
17   them after he had completed drawing them?

18          A.    I'm sure there were some things that he  
19   drew when I was not around, but a lot of the time I  
20   was there in the room as he was drawing.  I mean,  
21   bear in mind I've got seven, you know, staff  
22   attorneys, you know, a dozen law clerks, and 350  
23   bills that were in my committee at the time so I  
24   wasn't with him all the time, but much of the time  
25   I would say.

1 that's probably something that's a subjective term  
2 that could be up to whatever member of the Senate,  
3 you know, wanted to interpret it as they asked us  
4 to draw the map.

5 Q. You earlier mentioned that Will Roberts  
6 and you in the map room and others had access to  
7 race data. Can you tell me a little bit more about  
8 what data you had?

9 A. I'm hardly an expert in all the DOJ  
10 black, BVAP, non-Hispanic black. It was that sort  
11 of information. I don't know the distinctions very  
12 well, but it was information from the census.  
13 There's some documents in here that y'all have  
14 shown, you know, the charts that they produced that  
15 reflected that information.

16 Q. How did Will Roberts with you in the  
17 room consider race in developing any of the maps  
18 that you drew in that map room?

19 A. I'm not aware that he did that at all.  
20 If a member of the Senate in their own mind  
21 considered it and then asked us to draft something,  
22 they may have. I don't know. The maps were  
23 drafted with the instruction numbers. So it wasn't  
24 a matter of Will considering the information, it's  
25 not a member presenting the information, and then

1 us presenting the information and the maps to our  
2 outside experts who then decided whether or not  
3 they passed federal common law.

4 Q. Are you aware of whether race data was  
5 loaded into the computer that y'all shared in the  
6 map room?

7 A. Oh, yeah. It was, yeah, for sure.

8 Q. Was it on a screen projected on the  
9 wall at any time as you were developing maps?

10 A. I was not developing maps, but as  
11 members came in and wanted to talk about maps, yes,  
12 members came in and asked about those numbers.

13 Q. For the maps that were transmitted to  
14 Mr. Terreni and Mr. Gore, did they include  
15 associated data with them?

16 A. I'm sure they did. I'm sure Charlie  
17 Terreni saw the associated data when he was in the  
18 room and I'm sure Will would bring set statistics  
19 to John Gore when they sent any map to us.

20 Q. And are you aware of whether race data  
21 was one of the categories of data that was part of  
22 that?

23 A. I believe it was, yeah.

24 Q. What other ways was race considered as  
25 maps were developed, congressional maps were

1 developed by you and the legislators during the  
2 last cycle?

3 A. I never considered it and I wasn't  
4 developing maps. I don't know the extent to how  
5 much it, you know, entered into the mind of the  
6 members that were in the map room. But I can tell  
7 you for a fact I don't remember Chip Campsen ever  
8 asking about racial data ever. And if Margie  
9 Bright Matthews and Senator Sabb and Senator Scott  
10 or some of the other folks that came to the map  
11 room asked about it, it wasn't an aforethought. It  
12 was not something that I watched Will Roberts draw  
13 a map based on it.

14 Q. Did someone tell you to never consider  
15 race data as you were developing maps?

16 A. No.

17 Q. So how did you know not to use it?

18 A. Well, I mean, that's kind of really a  
19 negative. No one asked me to use it so I didn't  
20 use it. I didn't use it because I didn't draft the  
21 map. Will did based on instruction from the  
22 senators, so...

23 Q. But how did you know to use total  
24 population data?

25 A. These guidelines, I guess, is one way I

1 Q. Have you heard of the term  
2 effectiveness analysis?

3 A. I have not. Well, I can't place it. I  
4 don't recall.

5 Q. During discussion of the initial Staff  
6 Plan or development of the initial Staff Plan, was  
7 there discussion about increasing, decreasing, or  
8 maintaining the black voting age population in  
9 particular districts?

10 A. No. I mean, I think everyone was  
11 cognizant that, you know, drastic changes in a  
12 staff map -- drastic changes meaning that we were  
13 requested to produce a least change map was always  
14 undoubtedly with problems. In answering all these  
15 questions I'm giving, that was something we thought  
16 about.

17 Q. Did you set out to preserve the same  
18 number of majority-minority districts in the  
19 initial Staff Plan as existed in the 2011 Staff  
20 Plan?

21 A. Because it was a least change map plan,  
22 I think that was sort of the necessary result that  
23 came about.

24 Q. What role did partisan considerations  
25 play in the development of the initial Staff Plan?

1           A.    I think we're cognizant -- again, this  
2   is from -- I'm pretty sure we talked to Senator  
3   Campsen about this, that he wanted the 1st district  
4   to stay a Republican-leaning district.

5           Q.    Did you set out to keep the black  
6   voting age population in CD6 the same as in the  
7   Benchmark Plan in your endeavor to do a least  
8   change map?

9           A.    It wasn't the first thing we looked at  
10   no, huh-uh.

11          Q.    Was it something you looked at down the  
12   road about whether the black voting age population  
13   in CD6 looked similar to or was the same as in the  
14   2011 benchmark map?

15          A.    I don't remember if we did. We may  
16   have. I don't remember.

17          Q.    Did someone give you a direction or you  
18   or others in the room developing that map on the  
19   number of majority-minority districts that the  
20   initial Staff Plan should include?

21          A.    No. But the instructions for least  
22   change map, I think, would follow that.

23          Q.    Did you have any target be the target  
24   in any district outside of CD6?

25          A.    I don't think we had a target do that



1 in any district.

2 Q. Did you have a goal of getting BVAP in  
3 any particular district outside of CD6?

4 A. No. We didn't have a goal in CD6 per  
5 se. There was no goal to sort of say get CD6 BVAP  
6 on any district.

7 Q. But there was a goal to keep the map as  
8 minimally changed at least as Senator Rankin --

9 A. Correct. Yes, ma'am.

10 Q. Turning to November 29th, after the  
11 Senate Redistricting Committee published the map,  
12 what, if anything, did you do on congressional  
13 redistricting from November 23rd until the 29th  
14 when it was published?

15 A. You know, I don't recall exactly what  
16 was going on at that point. That would have been  
17 around Thanksgiving?

18 Q. Around that time, yes.

19 A. Then probably not too much because that  
20 week was probably shut down or at least not very  
21 active because it was Thanksgiving.

22 Q. For the November 29th hearing, did you  
23 prepare any materials?

24 A. I did not that I recall.

25 Q. Were those materials similar to the