

No. 22-807

IN THE
Supreme Court of the United States

THOMAS C. ALEXANDER, ET AL.,
Appellants,

v.

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP, ET AL.,
Appellees.

**On Appeal from the United States District
Court for the District of South Carolina**

JOINT APPENDIX

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(continued from front cover)

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TABLE OF CONTENTS

Relevant Docket Entries, South Carolina State Conference of the NAACP v. Alexandria, No. 3:21-cv-03302 (D.S.C.)	1
Third Amended Complaint for Injunctive and Declaratory Relief, Dkt. # 267 (May 6, 2022)	5
Excerpts of Dkt. # 323-39 (Aug. 19, 2022).....	67
Response to Plaintiffs’ <i>Motion in Limine</i> to Preclude Defendants from Introducing Evidence or Argument Supporting a Rationale for Congressional Map Based on Voting Rights Act Compliance, Dkt. # 371 (Sept. 9, 2022).....	71
Defendants’ Response to Court’s Order Regarding Census Data, Dkt. # 460 (Oct. 21, 2022).....	75
Plaintiffs’ Status Report Concerning the Technical Expert’s Data Submission, Dkt. # 461 (Oct. 21, 2022)	78
Excerpts of Senate Defendants’ Demonstrative Aid for Closing, Dkt. # 491-1 (Nov. 25, 2022).....	82
Transcript Excerpts of Bench Trial Proceedings Before Three-Judge Panel, Volume I (Oct. 3-14, 2022)	84
Transcript Excerpts of Bench Trial Proceedings Before Three-Judge Panel, Volume II (Oct. 3-14, 2022).....	94

Transcript Excerpts of Bench Trial Proceedings Before Three-Judge Panel, Volume III (Oct. 3-14, 2022)	130
Transcript Excerpts of Bench Trial Proceedings Before Three-Judge Panel, Volume IV (Oct. 3-14, 2022).....	158
Transcript Excerpts of Bench Trial Proceedings Before Three-Judge Panel, Volume V (Oct. 3-14, 2022)	199
Transcript Excerpts of Bench Trial Proceedings Before Three-Judge Panel, Volume VII (Oct. 3-14, 2022)	205
Transcript Excerpts of Bench Trial Proceedings Before Three-Judge Panel, Volume VIII (Oct. 3-14, 2022).....	224
Excerpts of Senate Exhibit 9, Emails to Senate Redistricting Email Address.....	268
Excerpts of Senate Exhibit 10, Emails to Senate Redistricting Email Address	284
Excerpts of Senate Exhibit 14, Emails to Senate Redistricting Email Address	290
Senate Exhibit 32d, Senate Staff Plan Partisan Analysis	292
Senate Exhibit 33h, House Staff Plan Demographic Statistics	293
Senate Exhibit 239, Senate Redistricting Subcommittee Meeting (Nov. 29, 2021)	295
Senate Exhibit 242, Senate Floor Debate (Jan. 20, 2022)	296
House Exhibit 86, Dec. 13-16, 2021 Text Messages.....	297

Plaintiffs' Exhibit 17, Expert Report of Joseph Bagley, Ph.D.	299
Excerpt of Plaintiffs' Exhibit 116, Transcript of Video-Recorded Proceedings (Jan. 20, 2022)	409
Population Data Excerpted from Dkt. # 473.....	411

**General Docket
United States District Court,
District of South Carolina
Columbia Division**

Civil Docket #: 3:21-cv-03302-MGL-TJH-RMG

The South Carolina State Conference of the NAACP, et al.,
v. Alexander, et al.

* * *

The South Carolina State Conference of the NAACP,
Taiwan Scott, on behalf of himself and all other similarly
situated persons,

Plaintiffs,

v.

Henry D. McMaster, in his official capacity as Governor of
South Carolina; Harvey Peeler, in his official capacity as
President of the Senate; Luke A. Rankin, in his official
capacity as Chairman of the Senate Judiciary Committee;
James H. Lucas, in his official capacity as Speaker of the
House of Representatives; Chris Murphy, in his official
capacity as Chairman of the House of Representatives
Judiciary Committee; Wallace H. Jordan, in his official
capacity as Chairman of the House of Representatives
Elections Law 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.

Date Filed	#	Docket Text
10/14/2022	456	TEXT ORDER. Counsel for the parties shall consult with the Court's technical expert, Mr. Frank Rainwater, concerning the data he prepared on the 2010 census, 2012 plan, 2020 census, and 2022 plan. On or before October 19, 2022, the parties shall advise the Court regarding the data that is not in dispute. In regard to any disputed data, the parties must identify such disputed data, explain the basis of the dispute, and recommend with specificity what data should be used. AND IT IS SO ORDERED. Entered at the direction of the Honorable Toby J Heytens, Honorable Richard Mark Gergel, and the Honorable Mary Geiger Lewis on 10/14/22. (ltap,) [Entered: 10/14/2022] * * *
10/20/2022	459	TEXT ORDER. The Panel, by order dated October 14, 2022 (Dkt. No. 456), directed the parties to review the data produced by the Court's

technical expert, Mr. Frank Rainwater, concerning the 2010 census, 2012 congressional plan, 2020 census, and 2022 congressional plan and to advise the Court on or before October 19, 2022, of (1) the data that is not in dispute; and (2) the data that is in dispute, with an explanation of the basis of the dispute and the data that should be relied upon by the Court in its stead. No response has been received from the parties. The parties are directed to file their responses on the ECF on or before October 21, 2022. AND IT IS SO ORDERED. Entered at the direction of the Honorable Toby J. Heytens, Honorable Richard Mark Gergel and Honorable Mary Geiger Lewis on 10/20/22. (ltap,) [Entered: 10/20/2022]

* * *

10/27/2022 472 TEXT ORDER. The Panel has consulted with the parties to this action concerning the inclusion in the trial record as a Court exhibit data prepared by Mr. Frank Rainwater, the Panel's technical expert,

concerning the 2010 census, 2012 congressional plan, 2020 census, and 2022 congressional plan. (Dkt. Nos. 456, 459). The parties have advised the Court that they have reviewed the data prepared by Mr. Rainwater and do not dispute the accuracy of that data. (Dkt. Nos. 460, 461). Consequently, the Panel hereby admits the aforementioned data prepared by Mr. Rainwater as a Court exhibit. AND IT IS SO ORDERED. Entered at the direction of the Honorable Toby J Heytens, Honorable Richard Mark Gergel, and the Honorable Mary Geiger Lewis on 10/27/22. (cper,) [Entered: 10/27/2022]

* * *

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

THE SOUTH CAROLINA
STATE CONFERENCE OF
THE NAACP, and

TAIWAN SCOTT, on behalf of
himself and all other similarly
situated persons,

Plaintiffs,

v.

THOMAS C. ALEXANDER, in
his official capacity as
President of the Senate; LUKE
A. RANKIN, in his official
capacity as Chairman of the
Senate Judiciary Committee;
JAMES H. LUCAS, in his
official capacity as Speaker of
the House of Representatives;
CHRIS MURPHY, in his
official capacity as Chairman
of the House of
Representatives Judiciary
Committee; WALLACE H.
JORDAN, in his official
capacity as Chairman of the
House of Representatives
Elections Law Subcommittee;
HOWARD KNAPP, in his
official capacity as interim

**Case No.
3-21-cv-03302-
MBS- TJH-RMG**

**THIRD
AMENDED
COMPLAINT
FOR
INJUNCTIVE
AND
DECLARATORY
RELIEF**

**THREE-JUDGE
PANEL**

Executive Director of the South Carolina State Election Commission; JOHN WELLS, Chair, JOANNE DAY, CLIFFORD J. EDLER, LINDA MCCALL, and SCOTT MOSELEY, in their official capacities as members of the South Carolina Election Commission,

Defendants.

INTRODUCTION

1. The South Carolina Legislature has yet again used its redistricting power to harm South Carolina voters and discriminate against Black voters. First, following the release of the 2020 decennial Census data, the Legislature waited months to pass any maps at all, depriving voters of the ability to know which candidates would represent them and organize accordingly. The Legislature's unreasonable postponement of their constitutional duties forced Plaintiffs South Carolina State Conference of the NAACP ("South Carolina NAACP") and Taiwan Scott (collectively, "Plaintiffs") to seek redress in court.

2. Next and consistent with previous redistricting cycles, the Legislature enacted a racially gerrymandered congressional map that also intentionally discriminates against Black voters. It did so by ignoring the many South Carolinians who implored lawmakers to draw fair and nondiscriminatory maps that comply with the U.S.

Constitution when redrawing congressional and state legislative maps. Instead, the Legislature chose perhaps the worst option of the available maps in terms of its harmful impact on Black voters that it proposed or were proposed by members of the public. Accordingly, Plaintiffs are compelled to file this Third Amended Complaint.¹

3. Defendants’ racial gerrymandering and intentional vote dilution continue South Carolina’s persistent legacy of discrimination against Black voters. Although South Carolina has made important progress on voting rights over the past fifty years—in no small part, due to private lawsuits and/or the U.S. Department of Justice’s intervention—Defendants continue to evade their constitutional obligations for redistricting. In *every* redistricting cycle since Congress enacted the Voting Rights Act of 1965 (“VRA”), courts have needed to adjudicate racial discrimination claims relating to South Carolina state and/or congressional redistricting plans. This cycle proves no different.

4. Senate Bill 865 (“S. 865”) enacted racially gerrymandered congressional districts into law and was motivated, at least in part, by a discriminatory purpose. It is the latest example of a decades-long pattern by the Legislature of proposing or enacting

¹ Because the Senate is not holding elections until 2024, Plaintiffs in this lawsuit are not currently challenging any Senate districts adopted in H. 4493. Plaintiffs do not waive their right to challenge these districts later. Plaintiffs have voluntarily dismissed their claims in the Second Amended Complaint regarding challenged state House districts adopted in H. 4493 based on an agreement pending legislative action.

congressional districts that discriminate against Black South Carolinian voters to limit their electoral opportunity.

5. S. 865 discriminates on the basis of race by appearing to preserve the ability of Black voters to elect in Congressional District 6 (“CD”) while working adeptly to deny the ability of Black voters to elect or even influence elections in any of the other six congressional districts. For example, S.865 purposefully moves a disproportionate number of white voters from CD 1 and CD 2 into CD 6, as compared to Black voters from the same areas. In CD 2, for example, the movement of white voters into CD 6 was not driven by pure partisan motivation because the Legislature selected Voting Tabulation Districts (“VTDs”) with significant populations of white voters, who in recent elections have voted for Democratic candidates. Conversely, they did not do the same to VTDs comprised of significant populations of Black voters who also have preferred candidates running on the Democratic ticket in recent elections. In this decision and others, the enacted congressional map thus relies on race as the predominant factor over all other considerations.

6. Black and white voters were sorted among the congressional districts under the guise of correcting for CD 1’s significant over population and CD 6’s underpopulation. But various alternatives were proposed to the Legislature which reapportioned South Carolina’s congressional map without locking in the majority’s advantage in six of the seven congressional districts and harming Black voters to achieve that objective. Because of Defendants’ unlawful discrimination, S. 865 dilutes the voting

strength of Black South Carolinians in CDs 1, 2, and 5.

7. The consideration of race in drawing districts lines is permissible and necessary in many areas of South Carolina to ensure compliance with Section 2 of the VRA. But the Legislature’s consideration of race in the drawing of congressional districts in S. 865 was not narrowly tailored for a compelling governmental interest such as complying with the VRA. Indeed, there is no indication that the Legislature conducted a racially polarized voting analysis (“RPV”) or any other analysis key to compliance with the VRA to determine whether the high Black voting-age populations (“BVAPs”) present in the districts that pack Black voters were necessary to comply with the VRA or whether cracking Black voters at BVAPs too low would render their votes essentially meaningless in the presence of RPV.² Instead, S. 865 represent the

² An RPV analysis considers whether there is a pattern of voting along racial lines in which voters of the same race tend to support the same candidates, which usually differs from the candidates supported by voters of a different race. This is the key consideration in determining whether a redistricting plan dilutes the vote of racial minority voters. *See N. Carolina State Conf. of NAACP v. McCrory*, 831 F.3d 204, 221 (4th Cir. 2016) (noting that RPV is “[o]ne of the critical background facts of which a court must take notice” in Section 2 cases); *Collins v. City of Norfolk*, 816 F.2d 932, 936-38 (4th Cir. 1987) (emphasizing that RPV is a “cardinal factor[]” that “weigh[s] very heavily” in determining whether redistricting plans violate Section 2 by denying Black voters equal access to the political process). As general matter, the U.S. Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30 (1986), found probative for assessing RPV elections in which voters have been presented

Legislature's intent to use race to maintain political power by unnecessarily packing Black South Carolinians into certain districts and cracking Black voters in other districts.

8. In the downtown and West Ashley areas of Charleston, for example, the Legislature moved a disproportionate share of white voters from CD 1 into CD 6, as compared to Black voters in the same area. The Legislature's line-drawing, as well as an analysis of how Black and white voters in the precincts moved out of CD 1, for example, share party preferences, but were sorted differently between these districts, makes clear that race drove the selection of voters brought into CD 6 over those left in CD 1 from areas of Charleston.

9. The Legislature subordinated racially redistricting principles and used race as a predominant factor to enact South Carolina Congressional Districts 1, 2, and 5 (the "Challenged Congressional Districts"). The Challenged Congressional Districts are not narrowly tailored to comply with Section 2 of the VRA or any other compelling governmental interest. They are therefore unlawful.

10. S. 865 also results from intentional racial discrimination because it was motivated, at least in part, by a discriminatory purpose. Indeed, the Legislature went forward with the proposed plans even though, during the legislative process, Black legislators and members of the public repeatedly

with a choice between at least one candidate who is a member of the minority group at issue and at least one candidate who is not.

warned that they would harm Black South Carolinian voters. Alternative proposals existed which would satisfy the Legislature's criteria and not dilute Black voting strength, and this post-2020 redistricting for Congress is part of a continuum of using various harmful stratagems over decades to minimize Black voting power in the state.

11. Accordingly, the Challenged Congressional Districts violate the Fourteenth and Fifteenth Amendments of the U.S. Constitution and must be enjoined.

PARTIES

12. Plaintiff **THE SOUTH CAROLINA STATE CONFERENCE OF THE NAACP** is a nonprofit, nonpartisan membership organization in South Carolina. The South Carolina NAACP is a state subsidiary of the National Association for the Advancement of Colored People ("NAACP"), a national civil rights organization. The South Carolina NAACP was chartered in 1939 and is the oldest civil rights group in South Carolina.

13. Consistent with the national NAACP's mission, the South Carolina NAACP, on behalf of its members and the other constituents it serves, seeks to remove all barriers of racial discrimination through democratic processes and the enactment and enforcement of federal, state, and local laws securing civil rights, including laws relating to voting rights. For example, on behalf of its members and other constituents, the South Carolina NAACP has held and has sponsored voter education and voter registration activities for years and has been credited with

registering thousands of voters throughout South Carolina.

14. The South Carolina NAACP has 77 branches comprised of adult members across the state, including at least one branch in each of South Carolina's 46 counties.

15. Together, the South Carolina NAACP has more than 13,000 members across all 46 counties, who are predominantly but not exclusively Black people. Its membership also includes other racial and ethnic minority residents, as well as white South Carolinians.

16. Its members and constituents reside in and congressional legislative districts that the Legislature has racially gerrymandered and intentionally diluted and will be harmed by the Defendants' actions. Specifically, members live in each of the Challenged Congressional Districts. These members have been and, if S. 865 is not enjoined, will continue to be harmed by their assignment to unconstitutionally racially gerrymandered districts and purposefully dilutive districts. The South Carolina NAACP's members include registered voters in the Challenged Congressional Districts.

17. Plaintiff **TAIWAN SCOTT** is a U.S. citizen and Black, registered voter, and resident of Hilton Head in Beaufort County, South Carolina. Specifically, Mr. Scott resides in newly formed CD 1. Mr. Scott and members of his family, who have lived in Hilton Head for seven generations, are Gullah people, descendants of West African people who were enslaved and forcibly brought to America's southeastern coast, including South Carolina's coastal plain and Beaufort Sea

Islands. While living and contributing to South Carolina in a myriad of ways, Black South Carolinians, including Gullah community members like Mr. Scott, have endured discrimination and other harms relating to taxation, heirs' property, land seizures, highway construction, lack of business and development opportunities, and many other issues.

18. The Legislature used race as the predominant factor motivating its decisions to place a significant number of voters, like Mr. Scott, within or outside of the Challenged Congressional Districts. CD 1 is not narrowly tailored to satisfy the VRA or any other compelling interest. Mr. Scott is further harmed by the congressional map that is intentionally designed to dilute Black voting power in South Carolina.

19. Defendant **THOMAS C. ALEXANDER**, in his official capacity as President of the South Carolina Senate, is a proper defendant as leader of the Senate, which drafts and passes redistricting legislation, including for Congress, for consideration by the General Assembly, such as S. 865.

20. Defendant **LUKE A. RANKIN**, in his official capacity as Chairman of the Senate Judiciary Committee, is a proper defendant as leader of the committee responsible for drafting and passing redistricting legislation, including for Congress, for consideration by the full Senate, such as S. 865.

21. Defendant **JAMES H. LUCAS**, in his official capacity as Speaker of the South Carolina House of Representatives, is a proper defendant as leader of the House charged with presiding over the House and ratifying bills upon passage by both houses of the

Legislature pursuant to Article III, Section 18 of the South Carolina Constitution, such as S. 865.

22. Defendant **CHRIS MURPHY**, in his official capacity as Chairman of the Judiciary Committee of the House of Representatives, is a proper defendant as leader of the committee responsible for drafting and passing redistricting legislation for consideration by the full House, such as S. 865.

23. Defendant **WALLACE H. JORDAN**, in his official capacity as Chairman of the Election Laws Subcommittee of the House of Representatives, is a proper defendant as leader of the subcommittee responsible for drafting and passing redistricting legislation for consideration by the Judiciary Committee of the House of Representatives and the full House, such as S. 865.

24. Defendant **HOWARD KNAPP**, in his official capacity as the interim Executive Director of the South Carolina State Election Commission (“SEC”), is a proper defendant as the head of the South Carolina agency responsible for implementing and conducting elections pursuant to S.C. Code Ann. §§ 7-3-10, et seq. and 7-13-10, et seq., as amended. Specifically, S.C. Code Ann. § 7-13-45 requires the SEC Executive Director to administer and S. 865 by (1) accepting filings for U.S. Congressional candidates and (2) publicizing certain details related to the filing period. In practice, the Executive Director also provides guidance to the 46 directors of the county boards of voter registration and election regarding their acceptance of filings for U.S. Congressional candidates, as well as their publicization of details

related to the filing period, including to implement S. 865.

25. Defendants **JOHN WELLS, JOANNE DAY, CLIFFORD J. EDLER, LINDA MCCALL, and SCOTT MOSELEY**, in their official capacities as SEC members, are proper defendants as persons charged with the powers and duties of the SEC pursuant to S.C. Code Ann. §§ 7-3-10, et seq. and 7-13-10, et seq., as amended. In addition, S.C. Code Ann. § 7-11-15 requires the SEC to design, distribute, and process forms for the statement of intention of candidacy, which candidates for U.S. Congressional seats under S. 865 candidates must file during a specified time period.

JURISDICTION AND VENUE

26. This action arises under the Fourteenth and Fifteenth Amendments of the U.S. Constitution.

27. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), 2201, 2202, and 2284, as well as 42 U.S.C. §§ 1981, 1983, and 1988.

28. A three-judge panel has been properly appointed pursuant to 28 U.S.C. § 2284(a) because this action challenges “the constitutionality of the apportionment of congressional districts” and “the apportionment of any statewide legislative body.”

29. Venue is proper pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 2284.

30. This Court has personal jurisdiction over Defendants, who are sued in their official capacities as state officials. The violations complained of concern their conduct in such capacities.

STATEMENT OF FACTS

31. After much delay, on January 26, 2022, Governor McMaster signed into law S. 865, which redistricted the South Carolina congressional districts for the next decade as Act 118. Before turning to this enactment, discussion of the background and circumstances surrounding S. 865's enactment is warranted.

Brief History of State Legislative Redistricting in South Carolina

32. S. 865 is the latest iteration of South Carolina's long pattern of official acts of racial discrimination including its enactment of various discriminatory voting rules that deny and abridge the voting rights of Black South Carolinians. One of many examples, an 1892 South Carolina voter registration law "is estimated to have disfranchised 75 percent of South Carolina's [B]lack voters."³ Three years later, South Carolina "was a leader in the widespread movement to disenfranchise [eligible Black citizens]."⁴ Lynching of Black people and other acts of racial violence also served as impediments to Black voters as they attempted to exercise their right to vote. Until the VRA's historic passage in 1965, South Carolina enforced both a literacy test and a property test that were "specifically designed to prevent [Black people]

³ *Condon v. Reno*, 913 F. Supp. 946, 949 (D.S.C. 1995) (citing J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restrictions and the Establishment of the One Party South, 1880–1910*, p. 49 (New Haven: Yale University Press 1974)).

⁴ *South Carolina v. Katzenbach*, 383 U.S. 301, 310 n.9 (1966).

from voting.”⁵ South Carolina promptly challenged the VRA’s constitutionality as part of its effort to deny equal voting rights to Black people.

33. Racial discrimination against Black South Carolinians has diminished their ability to participate politically and elect their preferred candidates up to the present day. Since 1982, Black candidates have run for statewide offices, including for Governor, Attorney General, Secretary of State, and Treasurer. Yet South Carolina failed to elect a single Black official to a statewide office in the twentieth century. Prior to the 1992 creation of a district comprised of a majority of Black voters (“majority-Black district”) for the Sixth U.S. Congressional District, *no* Black candidate served in Congress from South Carolina in the twentieth century. And before Senator Tim Scott’s historic election in 2014, *no* Black candidate had been elected to statewide office since Reconstruction.

34. Until the U.S. Supreme Court’s decision in *Shelby County, Alabama v. Holder*, 570 U.S. 529 (2013), Section 5 of the VRA played a vital role in safeguarding against proposed retrogressive voting plans—that is, plans that weakened the ability of racial and ethnic minority voters to participate politically. With this preclearance requirement in place for South Carolina and its sub-jurisdictions, the U.S. Department of Justice (“DOJ”) objected 120 times between 1971 and 2013 to proposed racially discriminatory changes in voting practices or

⁵ Tom Henderson Wells, *The Phoenix Election Riot*, 31 *Phylon* 58 (1970).

procedures in South Carolina. The DOJ has objected to proposed practices that would have affected nearly every aspect of Black voters' participation in South Carolina's electoral processes, including discriminatory redistricting, annexations, voter assistance regulations, changing county boundaries, eliminating offices, reducing the number of seats on a public body, majority vote requirements, changing to at-large elections, using numbered posts or residency requirements, staggering terms, and the schedule of elections.

35. Of these DOJ objections, at least 27 of them involved a proposed state or local redistricting plan that “ha[d] the purpose of or w[ould] have the effect of diminishing the ability of . . . citizens of the United States on account of race or color . . . to elect their preferred candidates of choice.”⁶ Three objections specifically challenged post-census House redistricting plans in three redistricting cycles in 1971, 1981, and 1994, including maps that would have resulted in the fragmentation and dilution of Black voting strength.

36. From 1996 until *Shelby County*, DOJ interposed a total of 13 Section 5 objections, 12 of which concerned voting changes that had the effect, and sometimes also the purpose, of minimizing the opportunity of Black citizens to elect their preferred

⁶ *Voting Determination Letters for South Carolina*, U.S. Department of Justice, <https://www.justice.gov/crt/voting-determination-letters-south-carolina> (last updated: Aug. 7, 2015); John C. Ruoff & Herbert E. Buhl, *Voting Rights in South Carolina: 1982-2006*, 17 S. Cal. Rev. L. & Soc. Just. 645, 655-57 (Spring 2008); 52 U.S.C. § 10304(b).

candidates. In addition, four lawsuits under Section 2 of the VRA were brought to challenge discriminatory at-large election schemes, all of which led to the adoption of single-member district election systems to provide Black voters with equal electoral opportunities.

37. In the past 25 years, South Carolina has continued to implement or seek to implement at-large election systems, redistricting plans, and municipal annexations that minimize and dilute Black voters' electoral opportunities in the State's "long and well-documented" context of racially polarized voting, or "RPV."⁷ As a few examples, public officials in Charleston, Cherokee, Greenville, Lexington, Richland, Spartanburg, Sumter, and Union Counties have changed district lines or voting rules in ways that would diminish the ability of Black voters to elect candidates of their choice. Some of the lines in these counties are at issue in this suit.

38. South Carolina also has discriminated against Black voters by drawing malapportioned maps. And for the last five redistricting cycles—*every* cycle since Congress enacted the VRA—courts have needed to adjudicate racial discrimination claims relating to South Carolina's state legislative and/or congressional redistricting plans. *Backus v. South Carolina*, 857 F. Supp. 2d 553 (D.S.C. 2012), *aff'd*, 568 U.S. 801 (2012); *Colleton Cnty. Council*, 201 F. Supp. 2d at 618, *opinion clarified* (Apr. 18, 2002); *Burton v. Sheheen*, 793 F. Supp. 1329, 1337 (D.S.C. 1992); *S.C.*

⁷ *Colleton Cnty. Council v. McConnell*, 201 F. Supp. 2d 618, 640-41 (D.S.C. 2002).

State Conf. of Branches of the NAACP v. Riley, 533 F. Supp. 1178 (D.S.C. 1982), *aff'd* 459 U.S. 1025 (1982); *Twigg v. West*, No. 71-1211 (D.S.C. Apr. 7, 1972). More often than not, courts have found that South Carolina broke the law.

39. Because of South Carolina’s record of malapportionment and racial discrimination across numerous redistricting cycles, this Court has acknowledged that “judicial intervention in the South Carolina redistricting process has been frequently unavoidable.” *Burton*, 793 F. Supp. at 1337.

South Carolina’s Redistricting Criteria

The House’s Redistricting Criteria

40. On August 3, 2021, the South Carolina House’s Redistricting Ad Hoc Committee (“House Redistricting Committee”)—the body responsible for preparing and developing redistricting plans for the House for the post-2020 redistricting cycle—adopted its guidelines and criteria for U.S. Congressional and state legislative redistricting.⁸ The Committee did not hold *any* public hearing to receive feedback and public comment on guidelines or criteria before any were adopted.

41. These guidelines begin by listing requirements under the U.S. Constitution, other federal law, and state law.

⁸ S.C. House of Rep. Judiciary Comm. Redistricting Ad Hoc Comm., *2021 Guidelines and Criteria for Congressional and Legislative Redistricting* (Aug. 3, 2021), *available at* <https://redistricting.schouse.gov/docs/2021%20Redistricting%20Guidelines.pdf>.

42. In discussing federal requirements, the Redistricting Committee's guidelines state that "race may be a factor considered in the creation of redistricting plans, but it shall not be the predominant factor motivating the legislature's decisions concerning the redistricting plan and shall not unconstitutionally predominate over other criteria set forth in these guidelines."

43. The guidelines further state that "[a]ny proposed redistricting plan that is demonstrated to have the intent or effect of dispersing or concentrating minority population in a manner that prevents minorities from electing their candidates of choice will neither be accepted nor approved."

44. In addition to listing legal compliance, the guidelines identify five criteria for redistricting. The first guideline listed is "equal population/deviation," which states that Congressional districts "shall be as nearly equal in population as is practicable."

45. The next guideline is "contiguity." This states that each district must be "comprised of contiguous territory," and although contiguity "by water is sufficient," areas that "meet only at the points of adjoining corners are not considered contiguous."

46. The next guideline is "compactness" and states that each district must also be "reasonably compact in form and should follow census geography" under the criteria.

47. The next guideline is "communities of interest." That guideline states that these communities should be "considered and balanced." Under the criteria, "[c]ounty boundaries, municipality boundaries, and precinct lines (as represented by the Census Bureau's

Voting Tabulation District lines) may be considered as evidence of communities of interest to be balanced, but will be given no greater weight, as a matter of state policy, than other identifiable communities of interest.” The Redistricting Committee provides that the following factors may contribute to a community of interest, “including, but not limited to the following: (a) economic; (b) social and cultural; (c) historic influences; (d) political beliefs; (e) voting behavior; (f) governmental services; (g) commonality of communications; and (h) geographic location and features.”

48. The guidelines also allow “incumbency considerations” to be considered and instruct that “[r]easonable efforts may be made to ensure that incumbent legislators remain in their current districts. The guidelines are clear that “incumbency considerations shall not influence the redistricting plan to such an extent as to overtake other redistricting principles.”

49. The guidelines end with an instruction that the Redistricting Committee “should make reasonable efforts to be transparent and allow public input into the redistricting process.” Moreover, “any deviation from the criteria shall not be any more than necessary to avoid the violation of law, and the remainder of the redistricting plan shall remain faithful to the criteria.”

Senate’s Redistricting Criteria

50. On September 17, 2021, the South Carolina Senate Judiciary Redistricting Subcommittee (“Senate Redistricting Subcommittee”)—the Senate’s body responsible for preparing and developing

redistricting plans for the post-2020 redistricting cycle—adopted its guidelines and criteria for U.S. Congressional and state legislative redistricting.⁹

51. These guidelines begin by listing requirements under the U.S. Constitution and federal law.

52. In discussing the requirements of federal law, the Senate guidelines state a “redistricting plan for the General Assembly or Congress must not have either the purpose or the effect of diluting minority voting strength and must otherwise comply with Section 2 of the Voting Rights Act, as expressed through *Thornburg v. Gingles* and its progeny, and the Fourteenth and Fifteenth Amendments to the U.S. Constitution.”

53. The guidelines further state that “race must not be the predominant factor in that race-neutral considerations are subordinated to racial considerations, unless that subordination is narrowly tailored to serve a compelling state interest.”

54. The next guideline is “contiguity.” It states that each district must be “composed of contiguous geography,” which may include point-to-point contiguity “so long as adjacent districts do not use the same vertex as points of transversal.”

55. The guidelines also identify additional considerations that “should be given consideration, where practical and appropriate, in no particular order of preference.” The first additional

⁹ S.C. Senate Judiciary Comm. Redistricting Subcomm., *2021 Redistricting Guidelines* (Sep. 17, 2021), <https://redistricting.scsenate.gov/> (document available via “2021 Senate Redistricting Guidelines” hyperlink).

consideration is “communities of interest.” Under the guidelines, “[a]reas defined by geographic, demographic, historic or other characteristics that cause people to identify with one another, including economic, social, cultural, language, political, and recreational activity interests common to the area’s population may constitute communities of interest.” And communities of interest “may be overlapping and may consist of one or more formally, or informally, defined geographic areas with unifying common interests.”

56. The next additional consideration is “constituent consistency,” which the guidelines define as “[p]reserving the cores of existing districts, keeping incumbents’ residences in districts with their core constituents, and avoiding contests between incumbent legislators.”

57. The next two additional considerations are “minimizing divisions of county boundaries” and “minimizing divisions of cities and towns.”

58. These additional considerations also include “minimizing divisions of voting precinct boundaries.” The guidelines state that “[b]oth existing lines and pending precinct boundary realignments should be considered.” But if “precincts are split, every effort should be made to divide precincts along recognizable and demonstrable boundaries.”

59. The final additional consideration is “district compactness.” The guidelines state that to determine “the relative compactness of a district, consideration should be given to geography, demography, communities of interest, and the extent to which parts of the district are joined by roads, media outlets, or

other means for constituents to communicate effectively with each other and with their representative.”

The Process Leading to the Enactment of S. 865

60. The Legislature’s process for enacting a map for South Carolina’s seven congressional districts was marked with a lack of transparency and limited opportunities for public input. Moreover, the Legislature also unnecessarily delayed and postponed proposing and then adopting a congressional map to the point where South Carolina is among the last set of states to enact such a plan. Indeed, as described below, both the House and Senate proposed maps and then enacted S. 865 within a six-week timeline. Yet the Legislature waited until mid-December 2021 to begin publicly posting maps and holding relevant hearings on those maps.

61. On July 23, 2021, the Senate Redistricting Subcommittee announced that it would hold ten public hearings to receive public testimony about interests to be considered in redrawing Congressional and state legislative districts. The first hearing was held on July 27 and the last on August 12. Each hearing was held on weekday nights from 6:30 p.m. until 8:30 p.m. with opportunities for in-person and remote testimony.¹⁰ No congressional maps were considered or proposed during the hearings.

62. On August 2, 2021, Plaintiff South Carolina NAACP, along with other advocacy organizations, sent a letter to the Senate Redistricting

¹⁰ S.C. Senate Judiciary Comm., *Meeting Information – Public Hearings*, <https://redistricting.scsenate.gov/meetinginfo.html>.

Subcommittee reminding members of their affirmative obligations under the U.S. Constitution and Section 2 of the VRA.¹¹ The August 2 letter highlighted the Subcommittee’s obligation to conduct RPV analyses to ensure compliance with Section 2 of the VRA. The letter also provided recommendations for ensuring transparency and opportunities for public input during all stages of the redistricting process.

63. On August 9, 2021, Plaintiff South Carolina NAACP, along with other advocacy organizations, sent a letter to the House Committee reminding them of their affirmative obligations under the U.S. Constitution and Section 2 of the VRA, highlighting the House Committee’s obligation to conduct an RPV analysis and to refrain from developing maps that unnecessarily “pack” Black voters into districts with high Black populations or “crack” them into districts with unnecessarily low ones, explaining that both stratagems can illegitimately elevate race over other considerations and diminish the political power of Black voters.¹² The letter also recommended ways to ensure transparency and opportunities for public

¹¹ Letter from the South Carolina NAACP, et al., to the S.C. Senate Judiciary Comm.’s Redistricting Subcomm. (Aug. 2, 2021), <https://www.naacpldf.org/wp-content/uploads/Letter-to-South-Carolina-Senate-Judiciary-Redistricting-Subcommittee-8-2-21.pdf>.

¹² Letter from the South Carolina NAACP, et al., to the S.C. House of Rep. Judiciary Comm.’s Redistricting Ad Hoc Comm. (Aug. 9, 2021), https://www.naacpldf.org/wp-content/uploads/Letter-to-SC-HouseRedistricting-Ad-Hoc-Committee_08.09.2021_final.pdf.

input during all stages of the redistricting process—before, during, and after proposing maps.

64. On August 30, 2021, Plaintiff South Carolina NAACP, along with other advocacy organizations, sent a follow-up letter to the House Redistricting Committee reiterating concerns about the Committee’s failure to transparently conduct its redistricting process and provide opportunities for meaningful public participation.¹³

65. Prior to the release of U.S. Census data in August and September 2021, the Redistricting Committee held House Redistricting Committee conducted eleven public hearings on redistricting before any congressional plans were proposed from September 8 until October 4, 2021.¹⁴ But hearings were largely inaccessible to members of the public. The first few meetings were announced with less than a week’s notice, which left insufficient time for community members to adjust their schedules and prepare meaningful testimony. Moreover, the first ten meetings did not offer any opportunities for remote testimony, which excluded community members who could not attend meetings in person or did not live close enough to the meeting to attend in-person. These hearings, which had the purported goal

¹³ Letter from the South Carolina NAACP, et al., to the S.C. House Judiciary Comm.’s Redistricting Ad Hoc Comm. (Aug. 30, 2021), https://www.naacpldf.org/wp-content/uploads/Second-Set-of-Supplemental-Comments-on-House-Judiciary-Committees-Proposed-House-Plan-11-30-21.final_.pdf.

¹⁴ South Carolina House of Representatives Redistricting 2021 Public Hearings, <https://redistricting.schouse.gov/publichearing.html>.

of gathering public input on the redistricting process, were scheduled during a resurgence of COVID-19 cases in South Carolina, yet only the last two hearings (on September 28 and October 4) had a remote-testimony option. But these two hearings were still scheduled on weekdays and started during normal business hours at 4:30 p.m.

66. These choices effectively limited participation to those who lived near the location, had access to transportation, and were willing to chance the potential risk of exposure to COVID-19. If people could not attend these sessions, they could not testify or meaningfully engage with other people's testimony during most of the House Redistricting Committee's public hearings. Similarly, the two hearings at which a remote testimony option was available began at 4:30 p.m. and ended at 6:30 p.m. on weekdays, making it unlikely that working people and people with children or other family obligations could attend.

67. On September 17, 2021, as described above in ¶ 50, the Senate Redistricting Subcommittee met and adopted its redistricting criteria and guidelines without any public input. The criteria and guidelines were available only to Subcommittee members before the meeting.

68. On October 8, 2021, Plaintiff South Carolina NAACP, along with other advocacy organizations, proposed two U.S. Congressional redistricting plans, along with a submission letter to the House and Senate.¹⁵ These proposed plans corrected for

¹⁵ Letter from the South Carolina NAACP, et al., to the S.C. House Judiciary Comm.'s Redistricting Ad Hoc Comm. (Oct. 8, 2021), <https://www.naacpldf.org/press-release/ldf-submits->

population disparities between districts following the 2020 decennial Census and preserved majority-Black districts or otherwise developed districts that would have continued to be effective for Black voters (that is, enable them to elect candidates of their choice), among other considerations and requirements that complied with the House Redistricting Committee's and Senate Redistricting Subcommittee's criteria and the U.S. Constitution and other federal law. In the submission letters, the groups further reiterated the House Redistricting Committee and Senate Redistricting Subcommittee's affirmative obligations to comply with the U.S. Constitution and Section 2 of the VRA, as well as reminded each body that it must conduct RPV analyses.

69. In particular, the letter detailed how RPV patterns persist in various parts of South Carolina. On the state level, for example, according to an RPV analysis of the 2020 election for U.S. Senate, Jamie Harrison, the candidate of choice of Black voters across South Carolina, received only approximately 25% of white voter support and lost, despite receiving approximately 98% of Black voter support. Similar

proposed-submitting-proposed-congressional-and-senate-maps-to-the-south-carolina-senate-judiciary-redistricting-subcommittee-and-the-house-redistricting-ad-hoc-committee/ (documents available via hyperlinks); Letter from the South Carolina NAACP, et al., to the S.C. Senate Judiciary Comm.'s Redistricting Subcomm. (Oct. 8, 2021), <https://www.naacpldf.org/press-release/ldf-submits-proposed-submitting-proposed-congressional-and-senate-maps-to-the-south-carolina-senate-judiciary-redistricting-subcommittee-and-the-house-redistricting-ad-hoc-committee/> (documents available via hyperlinks).

patterns were present in elections featuring Black-preferred candidates in other key elections, including in the 2018 elections for the Secretary of State and State Treasurer. For example, in the 2018 election for Secretary of State, Melvin Whittenburg, the candidate of choice of Black voters across South Carolina, received only approximately 23% of white voter support and lost with approximately 95% of Black voter support. In the 2018 election for State Treasurer, Rosalyn Glenn, the candidate of choice of Black voters across South Carolina, received only approximately 21% of white voter support and lost, despite receiving 95% of Black voter support.

70. An RPV analysis demonstrates that similar patterns also exist at the county level in most parts of the state for these elections. That is, Black voter-supported candidates have been defeated because of insufficient white cross-over voting for those candidates in counties across the state from Anderson to Greenville, to York, to Berkeley, to Georgetown, to Charleston.

71. On October 19, 2021, the Senate Redistricting Subcommittee announced that it was actively soliciting proposed congressional maps from members of the public.

72. Almost a month later, on November 12, 2021, the Senate Redistricting Subcommittee met to receive public testimony on congressional maps that were submitted by members of the public. During this hearing, members of the public, among other points, reiterated that the Subcommittee has an obligation to conduct a RPV analysis for any redistricting plans, especially because federal courts have repeatedly

found RPV patterns existing throughout South Carolina.¹⁶

73. Consistent with previous correspondence, Plaintiff South Carolina NAACP also urged the Senate Redistricting Subcommittee during the November 12 hearing to not “pack” Black voters into districts with unnecessarily high Black populations or “crack” them into districts with populations that are insufficient to provide Black voters an opportunity to elect candidates of their choice or even influence elections. Members of the public also urged the Subcommittee that Charleston County must remain whole in CD 1 because of shared communities of interest.

74. At the end of the November 12 hearing, the Senate Redistricting Subcommittee approved a motion for its staff to begin drawing a congressional redistricting map.

75. On November 23, 2021—the Tuesday before Thanksgiving—the Senate Redistricting Subcommittee announced that it had released its “Staff Senate Congressional Plan” and would hold a

¹⁶ See, e.g., *Colleton Cnty. Council*, 201 F. Supp. 2d at 643 (“Voting in South Carolina continues to be racially polarized to a very high degree . . . in all regions of the state and in both primary elections and general elections.”); see also, e.g., *United States v. Charleston Cnty.*, 365 F.3d 341, 350 (4th Cir. 2004) (county voting “is severely and characteristically polarized along racial lines”); *Jackson v. Edgefield Cnty., S.C. Sch. Dist.*, 650 F. Supp. 1176, 1196 (D.S.C. 1986) (observing that “the outcome of each [election] could be statistically predicted and reasonably explained by the race of the voters”); *id.* at 1198 (“The tenacious strength of white bloc voting usually is sufficient to overcome an electoral coalition of black votes and white ‘crossover’ votes.”).

hearing on it at 10:30 a.m. on Monday, November 29, 2021.

76. On November 29, the Senate Redistricting Subcommittee received public testimony on its Staff Senate Congressional Plan. To begin, the Senate Redistricting Subcommittee’s cartographer, Will Roberts, provided a brief description of the proposed congressional map.

77. Next, Sen. Harpootlian raised a concern about a lack of transparency, explaining that he had only received the proposed map the Tuesday before Thanksgiving. He then referred to proposed CD 6 as being next to the definition of gerrymander in the dictionary, explaining that it represented a “racial overlay” and warned the Subcommittee that it should “be very conscious about the fact of—about the issue of packing African Americans into one district.”

78. During public comment, former CD 1 Congressman Joe Cunningham testified that the proposed map made sure that significant “Black population would be packed into the Sixth Congressional District” and asserted that the Subcommittee “made sure that the first [CD] was almost entirely white.” He further described proposed CD 1 by saying how he “saw up close and personal how the district was just chopped up, based upon one thing, race. You could drive down Chapel Street . . . —the current district boundary right now and look on one side and see the African American community, and the other side and see a white community. The white community was in the First Congressional District, and the Black community was in the Sixth Congressional District.” He questioned “why is

Charleston County split into two different districts” with “one for white residents and one for black residents.” He implored the Senate to draw “fair maps, keeping communities of interest together and not dividing communities based on the color of their skin.” Senator Bright Matthews, a Black legislator, replied, “I don’t understand why on this map, those Black voters in Charleston County were carved out.” Mr. Cunningham also questioned why proposed CD 1 had the lowest Black population of any proposed CD in the Staff Senate Congressional map.

79. Senator Harpootlian also remarked that members of the Subcommittee, including himself, were not consulted before the Staff Senate Congressional Plan was published.

80. Next, testifying on behalf of the League, Ms. Teague and Dr. John Ruoff explained that the proposed map packed and cracked Black communities. As one example, Ms. Teague explained how the map unnecessarily cracked Charleston County by moving the city of North Charleston into proposed CD 6, which did not adhere to communities of interest principles. Ms. Teague also said the proposed map split Black communities in Northwest Richland County to keep Fort Jackson within proposed CD 2, which Dr. Ruoff testified achieved a goal that appears unclear to him to be based on traditional redistricting principles.

81. After public testimony on the Staff Senate Congressional Plan, the Senate Redistricting Subcommittee took no further action.

82. More than two months after some members of the public submitted proposed congressional maps,

the House Redistricting Committee finally released its proposed “Staff House Congressional Plan” on December 13, 2021. At approximately 4:54 p.m. the same day, the Committee announced that it would hold a hearing on December 16 at 12:00 p.m., less than 72 hours after releasing its map.

83. During the December 16 hearing, the House Redistricting Committee received public comment on its proposed congressional map. Members of the public affirmed the need to keep Charleston County whole, explaining that it is an important community of interest. Other members of the public testified that Beaufort County should remain in CD 1, claiming that it is very similar to Charleston County.

84. On December 22, 2021, the House Redistricting Committee posted an alternative congressional map (“Congressional House Staff Plan Alternative 1”) map on its website, as well as provided public notice that it would conduct a hearing on December 29, 2021.

85. On December 29, the House Redistricting Committee received public testimony on its original and alternative congressional maps, as well as the Senate’s proposed Staff Senate Congressional Plan. To begin the hearing, Rep. Jordan explained that the Committee received oral and written feedback on its original House Staff Congressional Plan. Representative Jordan stated that Committee created the alternative map because of concerns about Beaufort County being included in CD 2 under its original map. He also claimed that the alternative map included “some positive features” from the Senate’s proposed map.

86. During the hearing, the House Redistricting Committee heard that its alternative congressional map unnecessarily splits Black communities in northern Richland County and parts of Sumter County, among other areas. Along the same lines, members of the public, including Plaintiff South Carolina NAACP, repeated concerns about splitting Charleston County, including explaining why it is important to keep the cities of Charleston and North Charleston together. And members of the public voiced concern that the proposed CD 1 in the alternative map also unnecessarily reduced the BVAP by splitting Black communities.

87. Plaintiff South Carolina NAACP also reiterated concerns that Congressional House Staff Plan Alternative 1—like the Staff Senate Congressional Plan—ended CD 6’s status as a district where a majority of Black voters reside. Plaintiff South Carolina NAACP reminded the Committee that it received proposed congressional maps from that organization and other members of the public that maintained CD 6 as a majority-minority district, while also correcting for malapportionment, respecting communities of interest, and following other criteria.

88. After the public-comment portion, Rep. Bernstein stated that the Congressional House Staff Plan Alternative 1 was drafted “unbeknownst” to her. She also explained that she was unsure why the Committee was even considering the alternative map because it replicated the Senate Staff Congressional map, “which received numerous complaints” and “vocalized concerns.”

89. In response to a question from Rep. Bernstein, Rep. Jordan said that national partisan groups' "plans and inputs were received, and as a result, were available for consideration." But the House Redistricting Committee only posted four plans submitted by members of the public, including two by Plaintiff South Carolina NAACP, one by the non-partisan organization League of Women Voters of South Carolina, and one by an individual named Michael Roberts.

90. Representative Jordan also could not answer whether any current Congressman submitted plans or provided input into the creation of Committee's two congressional maps. Instead, he claimed that "staff can probably get us to the bottom of that at an appropriate time." But he did not offer any more details or timelines, including whether such information would be publicly shared.

91. On January 5, 2022, the House Redistricting Committee gave public notice that it would hold a hearing on January 10, 2022 at 1:00 p.m. Although the Committee invited members of the public to submit written testimony and other relevant information up until January 9, it did not indicate that there would be any public-comment portion for the January 10 meeting. The same notice also stated that there would be a House Judiciary Committee on January 10 at 3:00 p.m.

92. On January 10, 2022, the House Redistricting Committee met to consider congressional maps. During the meeting, Rep. Henegan, a Black legislator, asserted that Black voters only have the possibility to elect their preferred candidate in proposed CD 6.

93. In response to a question by Rep. Bernstein, Rep. Jordan said that he did not think the “math works” to keep Beaufort and Charleston Counties whole in a proposed CD 1. Representative Bernstein also reiterated concerns that the Congressional House Staff Plan Alternative 1 packs Black voters in Charleston County into proposed CD 6 by carving out Black communities in proposed CD 1, particularly in the city of North Charleston.

94. After testimony by just Committee members, the Committee voted to amend S. 865 and H. 4492 to include Congressional House Staff Plan Alternative 1 and gave the map a favorable report.

95. Less than two hours later, the House Judiciary Committee met to discuss the Congressional House Staff Plan Alternative 1. To begin the meeting, Rep. Newton stated that he would be serving as Chair because Rep. Murphy could not attend. He explained that he had just received a letter from Rep. Murphy designating him to serve as Chair during the meeting due to purported “extraordinary circumstances.” In response, Rep. King, a Black legislator, asked for a point of order to understand why he, as House Judiciary Vice Chair, would not serve as Chair in Rep. Murphy’s absence as prescribed under the House Judiciary Committee’s rules. Because of this alleged rule deviation, Rep. King formally objected to the meeting moving forward without him serving as Chair. The meeting proceeded.

96. Next, Rep. Jordan offered a strike-all amendment to S. 865 and H. 4492 that would replace each bill’s previous text with Congressional House Staff Plan Alternative 1. In doing so, he summarized

the House Redistricting Committee's efforts to date. He explained why the Committee recommended Congressional House Staff Plan Alternative 1, including because it attempted to address concerns raised by Beaufort County residents, shared features with the Senate's Congressional map, and aligned with the configuration of district lines that were "approved by the Department of Justice and passed judicial scrutiny in 2011." This map, he also said, complied with the House Redistricting Committee's redistricting guidelines and criteria. Following Rep. Jordan's remarks, Rep. King raised concerns that Congressional House Staff Plan Alternative 1 cracked Black voters in Charleston County by removing them from proposed CD 1 and unnecessarily packing them into proposed CD 6. He argued that communities in Charleston and Richland Counties do not have shared interests. He asked why the BVAP in other proposed CDs could not be higher.

97. Next, Rep. Bernstein reiterated concerns about Congressional House Staff Plan Alternative 1. Because this plan is "very similar to the Senate map," she reminded the House Judiciary Committee that the Senate's map had been highly criticized during a recent Senate Redistricting Subcommittee meeting. She further explained that members of the public expressed those concerns to the House Redistricting Committee during recent hearings. In addition to these concerns, she also expressed reservations about the process for recommending Congressional House Staff Plan Alternative 1, which she explained was presented to the public at the same time it was presented to House Redistricting Committee members. She questioned why the House

Redistricting Committee could not have just continued its process with its initially proposed congressional map and amend that map based on continued public feedback and input.

98. After Rep. Bernstein's testimony, Rep. Thigpen, a Black legislator, raised concerns about characterizations that there were "many" responses by community members in Beaufort County. He asked why input by community members from one county were considered so weighty that it generated the creation of an entirely new proposed congressional map. More specifically, he asked, "what about the information, input, and feedback made it rise to the level that we would draw another map." In response, Rep. Jordan claimed the points made by Beaufort County community members were "well taken" and that the House Redistricting Committee was trying to "get this done as quickly as possible."

99. Representative Wetmore then asked if the House Redistricting Committee received feedback from Charleston County community members, and if so, how that feedback was weighed compared to feedback from Beaufort County community members. Representative Jordan acknowledged that the House Redistricting Committee "did hear from folks in Charleston that expressed displeasure" with the Congressional House Staff Plan Alternative 1. But he claimed it was not the same "number-wise degree" and the "volume wasn't quite as high perhaps."

100. Afterwards, Rep. Thigpen again reiterated concerns about the process leading to the creation of Congressional House Staff Plan Alternative 1, explaining that he was not sure the concerns by

Beaufort County community members were weighty enough or outweighed complaints from other South Carolina community members to trigger the creation of a new proposed congressional map.

101. Despite the reservations discussed above, the House Judiciary Committee voted to pass the strike-all amended incorporating Congressional House Staff Plan Alternative 1 into S. 865 and H. 4492 and issued a favorable report.

102. On January 11, 2022 at approximately 4:20 p.m., the Senate Redistricting Subcommittee announced that it posted two more proposed Congressional maps. The notice said the Subcommittee would hold a hearing on those maps at a meeting scheduled for January 13, 2022 at 12:00 p.m.

103. On January 12, 2022, the House did a first reading of S. 865 and H. 4492.

104. The next day, the House reconvened to debate S. 865 and H. 4492. To begin, Rep. Jordan gave an overview of the House Redistricting Committee's work and the Congressional House Staff Plan Alternative 1 map, which was being considered as an amendment to S. 865 and S. 4492. In doing so, he referred only to public feedback about keeping Beaufort County within CD 1. In closing, he claimed that maps submitted by the public "d[id] not offer superior alternatives."

105. Rep. King then testified that nobody spoke for CD 5 on the Ad Hoc Committee because the Representative assigned to the Committee withdrew because of an important familial obligation. Representative King explained that the Committee

could have assigned another Representative within CD 5 to ensure its representation.

106. Representative Brawley, a Black legislator, explained that the House Judiciary Committee did not follow its rules when it voted to approve the Congressional House Staff Plan Alternative 1 map. Representative King concurred, explaining that the vote “constituted a breach of decorum in the House of Representatives” by not having the first Vice Chair preside over the meeting the Chair’s absence.

107. Representative Garvin, a Black legislator, explained that he watched all the House Redistricting Committee hearings. Based on those, Rep. Garvin asked Rep. Jordan whether he knew that many people were pleased with the House Redistricting Committee’s initial proposed map. Representative Jordan said: “we heard from some folks that said it was not that bad.” Then he remarked that people who gave feedback on Beaufort County described that initial map as “awful.” In response, Rep. Garvin asked “what made the concerns of the Beaufort folks more prevalent to change the action of a committee, versus the folks in Charleston.” Speaking only for his vote, Rep. Jordan responded by asserting that the concerns raised about Beaufort County were “compelling” because “it wasn’t fair to ping pong them back and forth” between two CDs.

108. Throughout the debate, several Representatives reminded the full House that it was possible to keep Beaufort and Charleston Counties whole, as some proposed maps did. Others reminded the full House that this was a point the House

Redistricting Committee repeatedly heard through public testimony.

109. Representative Garvin also reiterated that Congressional House Staff Plan Alternative 1 “mirrors” the Senate’s Congressional map with a “few minor tweaks.” He explained that the Senate map was “wildly criticized.”

110. During the session, several Representatives voiced opposition to Congressional House Staff Plan Alternative 1 because it, among other issues, “cracks” and “packs” Black voters throughout the state. Others voiced concerns that the proposed CDs in the Congressional House Staff Plan Alternative 1 were designed to ensure districts were not politically competitive.

111. Responding to these concerns, Rep. Jordan repeated that the district lines look “very, very similar” to the 2010 Congressional district lines, which he said were approved by the U.S. Department of Justice. During an exchange with Rep. Matthews, however, Rep. Jordan conceded that Charleston County is being split differently than under current district boundaries. Then, Rep. Matthews, a Black legislator, asserted that proposed CD 1 is being given “the white areas” and that CD 6 will keep Charleston County’s predominantly Black areas. To explain these splits, she directed the chamber to visual representation of Census tracts 51 and 54. She also said that she did not understand why the area of West Ashley was cut in half or Johns Island put in CD 6, because this would not keep communities of interest together. Representative McDaniel, a Black legislator, echoed similar concerns, noting that North

Charleston and Charleston are communities that should remain together.

112. Next, Representative Cobb-Hunter, a Black legislator, asked Rep. Jordan whether the House's criteria was applied "uniformly across the board at all levels" or whether there were different applications depending on districts. Without a direct response from Rep. Jordan, Rep. Cobb-Hunter posed the question again, asking whether criteria was similarly weighted and applied consistently from one district to another. In response, Rep. Jordan said, "I would say, the criteria is the criteria. I don't mean to be trying to avoid the question, but we put that before the Ad Hoc Committee."

113. Representative Cobb-Hunter then asked whether the House Redistricting Committee did any VRA Section 2 analysis on the proposed maps. Rep. Jordan answered: "we did everything in compliance with the law that we were told and required to do." Based on that answer, Rep. Cobb-Hunter asked Rep. Jordan for a yes or no response. Again, Rep. Jordan stated, "to my knowledge, we did everything possibly needed to do under the terms of the law." Representative Jordan never responded to Rep. Cobb-Hunter's question whether she could see a Section 2 analysis. Later, Rep. Cobb-Hunter reiterated her concern that she never received a yes or no answer on whether a Section 2 analysis had been conducted. That analysis, she explained, was necessary to ensure that communities of color are not "cracked" and "packed" into districts. She ended by saying that neither the House nor the House Redistricting Committee could sign off on a proposed Congressional map without a Section 2 analysis.

114. Representative Jordan also disclaimed that any “outside partisan stuff took place” during the House Redistricting Committee’s process for drawing proposed Congressional maps.

115. The House voted to adopt S. 865 as amended with Congressional House Staff Plan Alternative 1.

116. Afterward, Rep. Govan provided a brief overview of the history of racial discrimination in South Carolina and repeated concerns about the state’s failure to comply with the U.S. Constitution and Voting Rights Act in previous redistricting cycles by proposing and enacting maps that diluted Black voting rights.

117. After Rep. Govan’s testimony, the House conducted a second reading of S. 865 as amended.

118. On January 13, the House conducted a final reading of S. 865 as amended, which it passed and transmitted to the Senate.

119. On January 13, the Senate Redistricting Subcommittee held a hearing on Congressional maps, less than 48 hours after publicly disclosing two new proposed maps. To begin, Sen. Rankin acknowledged that the Subcommittee just posted two proposals—House Congressional Plan 2 Senate Amendment 1 (“Senate Amendment 1 Plan”) and House Congressional Plan 2 Senate Amendment 2 (“Senate Amendment 2 Plan”)—less than 48 hours before the hearing. He also stated that the House voted to amend S. 865 with the House redistricting map.

120. During public testimony, Joey Opperman testified that he had been hired by Sen. Harpootlian to draw the Senate Amendment 2 Plan. He then explained the map’s details, including by noting that

it complies with the Senate's redistricting criteria and does better on certain criteria than the Senate Amendment 1 Plan. In the Senate Amendment 2 Plan, Mr. Opperman explained that Charleston County remained whole. Splitting Charleston County, he explained, did not follow traditional redistricting criteria.

121. Mr. Opperman also testified that proposed CDs in the Senate Amendment 1 Plan suggest that race may have been a predominate factor, which he explained is unconstitutional.

122. Ms. Teague of the League raised concerns that proposed CD 1 in the Senate Amendment 1 Plan received poor ratings for proportionality, compactness, efficiency, and other standard redistricting measures. She then voiced support for the Senate Amendment 2 Plan, explaining that proposed CD 1 is "consistent with real regional relationships in" the state. More than two-thirds of the remaining members of the public who testified supported Amendment 2 for similar reasons. Witnesses testified that keeping Charleston County whole is important and explained that splitting cities like North Charleston would harm Black communities.

123. Less than a third of the remaining members of the public supported the Senate Amendment 1 Plan. A delegation of elected city and county council members justified their support for Amendment 1 because it kept their respected bodies in either Berkeley or Dorchester Counties within CD 1. About four members stated their support for Amendment 1 because it kept Beaufort County within proposed CD

1. But they did not address the fact that, as other members of the public pointed out, the Senate Amendment 2 Plan also kept Beaufort County whole within proposed CD 1. After the public-comment portion, the Senate Redistricting Subcommittee voted to approve both the Senate Amendment 1 and Senate Amendment 2 Plans and send them to the full Senate Judiciary Committee for debate and consideration.

124. On January 19, 2022, the Senate Judiciary Committee met to consider the Senate Amendment 1 and Senate Amendment 2 Plans. To begin, Sen. Rankin explained that “there does not appear” to be a court deadline “hanging over” the Committee to resolve the congressional map.

125. Then Sen. Campsen provided an overview of the Senate Amendment 1 Map, which he authored. At a general level, according to Sen. Campsen, it “restores key aspects of the Senate Staff plan and is intended to be responsive to some of the public input received by the subcommittee.” Senator Campsen, however, did not provide any other information about how the map responded to public input, or whose public input.

126. Senator Bright Matthews, a Black legislator, explained to the Senate Judiciary Committee members that “speaker after speaker” at the Senate Redistricting Subcommittee public hearings wanted to keep Charleston County whole because it aligned with the principles of keeping communities of interest together. Senator Bright Matthews also explained that Senate Amendment 1 led to pulling out Black communities in West Ashley and other areas in the city of North Charleston to pack them into proposed

CD 6. Echoing similar concerns, Sen. Kimpson, a Black legislator, also explained that the people of Charleston County want their community to be kept whole, explaining that she represents more people from Charleston County than anyone else in the Legislature.

127. According to Sen. Campsen, the pieces of Charleston County being moved into proposed CD 6 are comprised of roughly a 50% BVAP, though Sen. Kimpson stated that the BVAP in Charleston County is about 30%.

128. During an exchange with Sen. Harpootlian, Sen. Campsen acknowledged that any redistricting map must comply with a VRA Section 2 analysis. But he conceded that neither he nor the Senate Redistricting Subcommittee conducted an RPV analysis in compiling the Senate Amendment 1 map, claiming the Subcommittee “decided not to do that.” Instead, Sen. Campsen claimed that an RPV analysis would have “happened if and when a plan is litigated,” claiming that this is something a plaintiff would do if they filed a lawsuit. In response to a follow-up question about whether an RPV analysis would be productive to avoid a lawsuit, Sen. Campsen responded that such an analysis “would have resulted in us perhaps taking race into account and having racial targets.”

129. At the end of the meeting, the Senate Judiciary Committee voted down a motion that would have carried both the Senate Amendment 1 and Senate Amendment 2 Plans to the full Senate for debate. Then the Committee voted in favoring of

adopting the Senate Amendment 1 Plan and issued a favorable report.

130. On January 20, 2022, the Senate reconvened to consider a strike-all amendment that would incorporate the Senate Amendment 1 Plan into S. 865. To begin, Sen. Rankin provided an overview of the Senate Redistricting Subcommittee’s plan and a brief overview of the Senate’s redistricting criteria.

131. Then, Sens. Rankin, Massey, Talley, and Campsen gave an overview of the Senate Amendment 1 Plan. Following this presentation, Sen. Scott asked Sen. Campsen to provide a working document because he explained it was hard to follow the presentation without one. Senator Bright Matthews also moved for unanimous consent to pass out the Senate’s redistricting guidelines because she explained that “quite a few members in the chamber do not have the guidelines.”

132. Sen. Campsen claimed that the Senate could not gerrymander if it created “very little change on the existing map” because that is a legitimate reapportionment principle. But he conceded that the Senate’s criteria do not mention any principle that the Senate should begin with the benchmark or existing map.

133. In response to a question by Sen. Harpootlian, Sen. Campsen confirmed for the full Senate that his plan did not include any RPV analysis. According to Sen. Campsen, he “didn’t even look at race numbers” or even ask for “what’s the BVAP” of this or that district. Senator Harpootlian also noted during the floor session that even state agencies like the South Carolina Revenue and Fiscal Affairs Office advises

counties, cities, and school boards to conduct an RPV analysis as part of their redistricting processes.

134. Senator Bright Matthews reminded the full Senate that 90% of the public testimony the Senate Redistricting Committee received at its last meeting were to keep Charleston County whole. Along the same lines, based on his representation of the majority of residents in Charleston County, he explained that the majority of his constituents want Charleston County to remain whole.

135. Several Senators repeatedly characterized the Senate Amendment 1 Plan as being designed to limit political competition by cracking and packing Black communities into CDs.

136. Senator Harpootlian questioned the process leading to the creation of the Senate Amendment 1 Plan. As one example, he explained that, even as members of the Senate Redistricting Subcommittee, neither he nor Sens. Bright Matthews or Saab, both Black legislators, saw the plan before it was publicly shared. He also explained that he never had any input into the plan, discussed it, or was called back into the “map room.”

137. Following debate, the Senate adopted the Senate Amendment 1 map.

138. Next, the Senate considered a strike-all amendment by Sen. Harpootlian that proposed a map like the Senate Amendment 2 map. Before explaining the map, Sen. Harpootlian outlined parts of the state redistricting history, as well as its history of racial voter suppression. In this map, Sen. Harpootlian, among other points, confirmed that Beaufort and Charleston Counties remain whole.

139. The Senate voted to table this amendment. The Senate then voted to table another amendment, which, according to Sen. Harpootlian, was the League of Women Voters of South Carolina’s map with some slight tweaks that would have allowed Dorchester, Berkeley, and Charleston Counties to remain whole. To close, the Senate voted to table five additional strike-all amendments to amend S. 865 with a new proposed Congressional map—one amendment offered by Sen. Martin and four by Sen. Hutto.

140. To close, the Senate approved S. 865 as amended and transmitted it back to the House.

141. On January 26, 2022, the House reconvened and voted to concur with S. 865 as

amended by the Senate.

142. The next day, January 26, the House reconvened and voted to concur with S. 865 as amended by the Senate. Hours later, Gov. McMaster signed S. 865 into law.

Congressional Districts 1, 2, and 5 are Racially Gerrymandered

143. Recent Census results show that South Carolina experienced significant population shifts and growth in the past decade. These changes created unequal apportionment among South Carolina’s seven congressional districts. Most significantly, CD 1 was nearly 12% overpopulated, while CD 6 was 11.59% underpopulated. Below are the population shifts in all seven congressional districts.

Distri- ct	2010 Populat i-on	2020 Populat i-on	Shift	Deviatio n from Ideal	Percent Deviati- on
-----------------------	----------------------------------	----------------------------------	--------------	--------------------------------------	------------------------------------

				2020 Populat ion	
			+158,127		
1	660,766	818,893		+87,689	11.99%
2	660,766	721,829	+61,063	-9,375	-1.28%
3	660,767	706,785	+46,018	-24,419	-3.34%
4	660,766	760,233	+99,467	+29,029	3.97%
5	660,766	736,286	+75,520	+5,082	0.70%
6	660,766	646,463	-14,303	-84,741	-11.59%
7	660,767	727,936	+67,169	-3,268	-0.45%

144. The Legislature repeatedly heard from members of the public and legislators that any lawful congressional map must preserve CD 6 as a district that provides Black voters with an effective opportunity to elect their preferred candidates—that is, an effective minority-opportunity district—consistent with Section 2 of the VRA. The Legislature was also repeatedly reminded that it could not needlessly pack Black voters into CD 6 from CD 1 or any other district to correct for malapportionment in CDs 1 and 6. More specifically, as described in ¶¶ 73-139, members of the public and legislators warned against splitting Black voters from their communities of interest in Charleston, Richland, and Sumter Counties to correct the population disparities among the districts.

145. Members of the public and legislators, for example, repeatedly urged legislators not to crack Black communities of interest in CD 1, including the areas in which Black people have historically lived in West Ashley, or split the cities of North Charleston and Charleston because these cities form a single

community of interest based on shared history, voting patterns, and socioeconomic realities. Public testimony also emphasized a strong preference by residents to keep Charleston Counties whole in CD 1.

146. Members of the public and legislators also urged legislators to ensure that Black voters, who represent 29% of voters statewide, had an opportunity to elect candidates of choice or at minimum influence elections outside of just CD 6, the sole majority-Black district in the state. In one of Plaintiff South Carolina NAACP's proposed maps, for example, the BVAP in CD 1 was 34%.

147. But the Legislature discounted and ignored this testimony. Instead, it enacted a map that does the bare minimum to correct for population deviations, particularly in CDs 1 and 6, while harming Black voters not only in those two districts, but in almost all of the other ones.

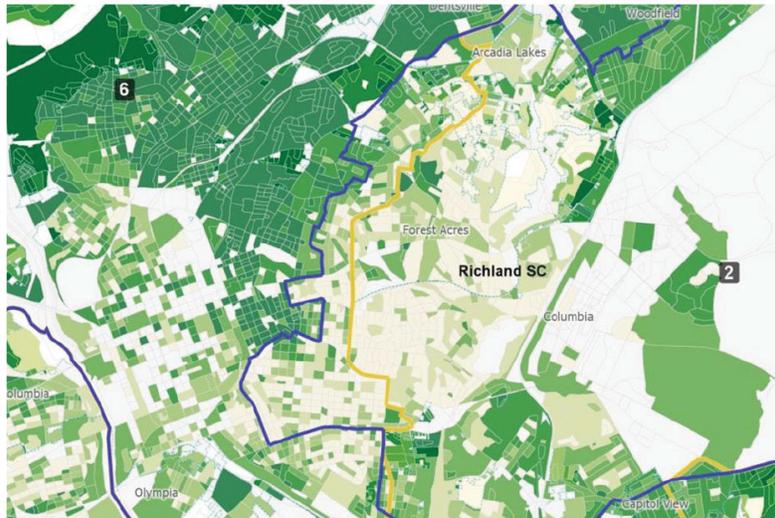
148. The Legislature significantly dropped the BVAP in CD 6, and, given RPV patterns, also ensured that *no* other district would have a meaningful opportunity for Black voters to elect candidates of their choice. These changes result in a significantly reduced BVAP in CD 6, but *no* benefit of increasing Black voters' ability to meaningfully elect or even influence the election of candidates of choice in other CDs—benefits which various maps submitted by members of the public did provide.

149. While CD 6 now has a 46.9% BVAP that may still be an effective district for Black voters, the Legislature used race as a predominate factor to draw the Challenged Congressional Districts in a way that was not narrowly tailored to comply with Section 2 of

the VRA or any other compelling governmental interest.

150. The Legislature moved a disproportionate number of the white VAP (“WVAP”) from CD 2, particularly in Richland County, into CD6. More specifically, based on an analysis, the Legislature moved VTDs with a significant majority of white voters, who have preferred Democratic candidates in recent elections from Richland County in CD2 and brought them into CD 6 from Richland County. At the same time, it left VTDs with a majority of Black voters who prefer Democratic candidates in recent elections in Richland in CD2, though those VTDs were available to be moved into CD 6. There is thus an inference that race, not party, drove the selection of voters that were moved into CD 6 and left in CD 2.

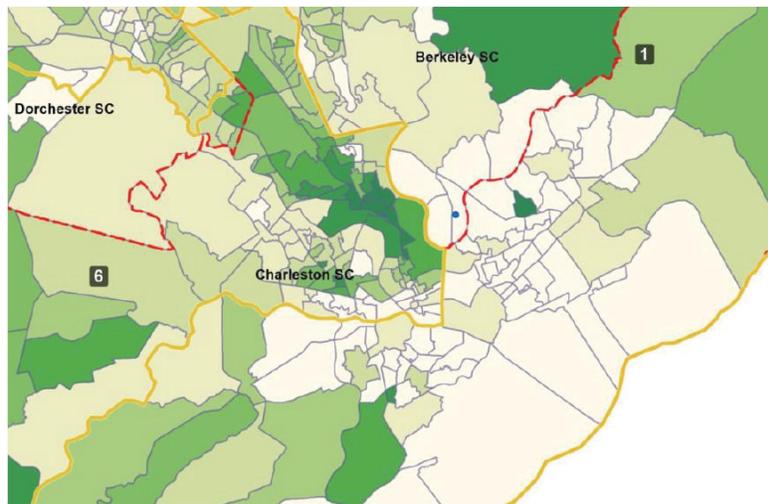
Richland



151. Under S. 865, the Legislature also moved Black voters out of CD 6, including from Berkeley,

Orangeburg, and Richland Counties. Based on the level of RPV discussed above in ¶¶ 186-87, 208, the Legislature’s actions here will result in subsuming Black voters in the minority among a majority of white voters, who, based on an analysis of recent elections, consistently vote against Black-preferred candidates in congressional and other elections.

152. Under S. 865, despite a purported concern in the redistricting criteria for keeping municipal boundaries whole, the Legislature also split the municipal boundaries of Charleston between CDs 1 and 6. This deviation from the Legislature’s own redistricting principles was done to grab Black voters from CD 1, such as the Black population of West Ashley, and bring them into CD 6. As a result, CD 1 now has a disproportionately small portion of the Black population of Charleston County, limiting the ability of Black voters to influence elections in CD 1.



No compelling governmental interest, including compliance with Section 2 of the VRA, justifies the use

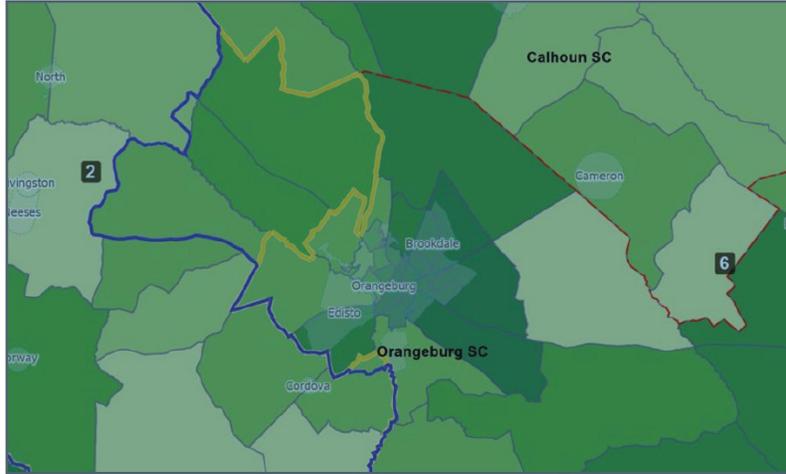
of race to move Black voters into CD 6 by cracking communities of interest CD 1.

153. Under S. 865, despite a purported concern for keeping counties and municipalities whole according to its criteria, the Legislature unnecessarily splits Florence, Orangeburg, Richland, and Sumter Counties and, in at least one case, a municipality within Sumter County. In so doing, Black communities within these areas are dispersed among CDs 2, 5, and 7, purposefully subsumed in congressional districts with a majority of white voters, which, in the presence of RPV patterns, will render Black voters unable to meaningfully influence congressional elections in those districts.

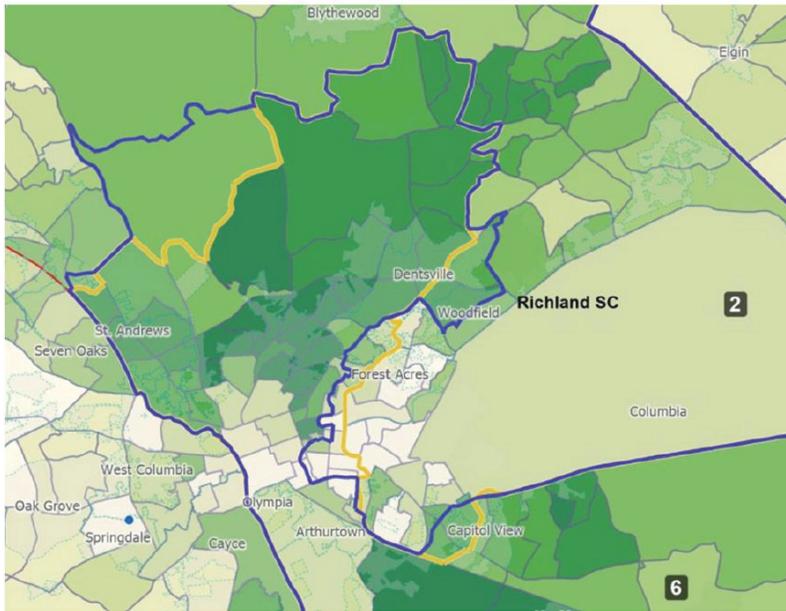
Florence



Orangeburg



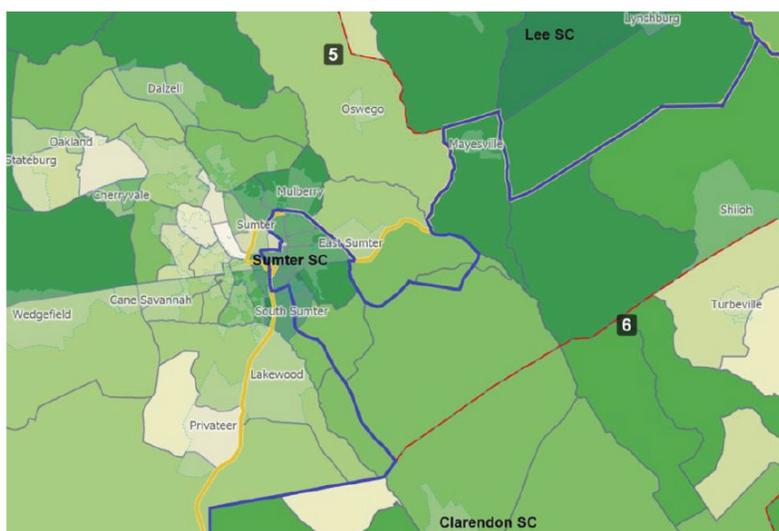
Richland



As one example, under S. 865, CD 6 reaches into Sumter County to grab VTDs with significant

populations of Black voters in the city of Sumter. In so doing, the Legislature left other Black voters in Sumter in CD5 where they lack any opportunity to elect given the known voting patterns in congressional and other elections. No compelling governmental interest, including compliance with Section 2 of the VRA, justifies the use of race to crack Black voters in CDs 2, 5, and 7.

Sumter



154. In comparison to S. 865, Plaintiff South Carolina NAACP proposed two plans to the Legislature. One of them kept Charleston County whole within CD 1, like other maps proposed to the Legislature. The other map split Charleston between CDs 1 and 7 to allow the creation of a second minority-opportunity district for Black voters. However, as enacted, CD 1 splits Charleston while developing *no* new opportunity and maintaining approximately the same level of BVAP in CD 1 as under the benchmark

plan. S. 865 flies in the face of the geography of the state post-2020 which reflects the movement of Black people to the South Carolina coast. It also disregards the various alternative plans that showed that the severe imbalance in population between CD 1 and CD6 could be corrected, while at the same time preserving the ability of Black voters to continue to elect candidates of their choice in CD 6, respecting communities of interest in CD 1, and developing the BVAP in CD 1 to as high as 34%.

155. Although the Legislature did not significantly change CDs 3, 4, and 7, notably it did design a CD 5 that disproportionately moved white voters in and Black voters out. The result is that the Legislature slightly decreased the BVAP of CD 5 to even lower than it had been under the post-2011 benchmark plan.

156. S. 865 subordinated public input and made race the predominate factor in drawing CDs 1, 2, and 5. The use of race was not narrowly tailored to comply with Section 2 of the VRA or any other compelling governmental interest. The Legislature also subordinated traditional race-neutral redistricting principles, including but not limited to, compactness, respecting county and municipal boundaries, and respecting communities of actual shared interests.

157. For example, out of all voters in the “envelope” of possible counties in which CD 6 includes at least a part, Defendants chose to keep the majority of Black voters—whether Democrats or Republicans—inside CD 6, while keeping a much smaller percentage of white voters—also whether Democrats or Republicans.

158. Defendants did the opposite in CD 1. There, out of all voters in the envelope of possible counties, Defendants kept the vast majority of white voters inside CD 1, regardless of partisan affiliation. Conversely, Defendants only kept a much smaller percentage of possible Black voters in CD 1, again regardless of partisan affiliation.

159. In other words, keeping partisan affiliation constant, the probability that VTDs were moved into or kept inside CD 6 increased as BVAP increased. On the other hand, the probability that VTDs were moved into or kept inside CD 1 increased as BVAP *decreased*.

CAUSES OF ACTION

COUNT ONE

S. 865's violations of the Fourteenth Amendment of the U.S. Constitution U.S. Const. amend. XIV; 42 U.S.C §1983 (Racial Gerrymandering)

160. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

161. The Fourteenth Amendment of the U.S. Constitution provides in relevant part: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 2.

162. Under the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution,

racial classifications are prohibited unless narrowly tailored to serve a compelling state interest.

163. Race was the predominant factor in the creation of CDs 1, 2, and 5.

164. Race predominated over traditional redistricting principles such as maintaining communities of interest, respecting county and municipal boundaries, and having compact districts.

165. The use of race as the predominant factor concerning CDs 1, 2 and 5 is not narrowly tailored to serve a compelling state interest, including compliance with the VRA.

166. Thus, S. 865 violates Plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

167. Plaintiffs have no adequate remedy at law other than the judicial relief sought here. The failure to temporarily and permanently enjoin enforcement of S. 865 will irreparably harm Plaintiffs' constitutional rights.

COUNT TWO

S. 865's violations of the Fourteenth and Fifteenth Amendments of the U.S. Constitution U.S. Const. amends. XIV and XV; 42 U.S.C §1983 (Intentional Discrimination)

168. The relevant allegations contained in the preceding paragraphs are alleged as if fully set forth herein.

169. The Equal Protection Clause of the Fourteenth Amendment and the Fifteenth Amendments of the U.S. Constitution forbid states from enacting laws for

which a racially discriminatory intent or purpose is a motivating factor.

170. The facts alleged herein reveal that the Challenged Congressional Districts were adopted, at least in part, with a racially discriminatory intent to discriminate against Black voters in violation of the U.S. Constitution.

171. S. 865 will have a discriminatory impact on Black South Carolinians—a fact that was foreseeable when Defendants drafted and passed the Challenged Congressional Districts. Elected officials in South Carolina have limited Black voters' ability to elect or even influence elections through the purposeful cracking and packing of Black voters.

172. Moreover, other circumstantial evidence raises a strong inference of a discriminatory purpose motivating the enactment of S. 865, such as: South Carolina's well-documented history and ongoing record of discrimination against Black South Carolinians in redistricting, particularly state legislative redistricting, and other voting practices; and the sequences of events and flawed and non-transparent process which resulted in the enactment of S. 865, including the disregard for constitutionally-compliant alternative maps offered by the public and amendments offered by legislative members.

173. Plaintiffs have no adequate remedy at law other than the judicial relief sought in this case. The failure to enjoin the conduct of elections under S. 865 and ordering of remedial maps will irreparably harm Plaintiffs by subjecting them to intentionally racially discriminatory districts for the next decade.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully requests that this Court:

- i. Declare the Challenged Congressional Districts adopted in S. 865 to be unconstitutional as violating the Fourteenth Amendment of the U.S. Constitution as racially gerrymandered districts;
- ii. Declare the Challenged Congressional Districts adopted in S. 865 to be unconstitutional as violating the Fourteenth and Fifteenth Amendments of the U.S. Constitution as passed with discriminatory intent as a motivating factor;
- iii. Preliminary and permanently enjoin Defendants and their agents from calling, holding, supervising or certifying any elections under S. 865 until a constitutionally and VRA-complaint remedial plan is adopted for the 2024 elections or any special election in 2023;
- iv. Order expedited hearings and briefing, consider evidence, and take any other action necessary for the Court to order a VRA-complaint for new South Carolina Congressional districts;
- v. Set an immediate and reasonable deadline for Defendants to adopt and enact a congressional redistricting plan that (1) does not dilute, cancel out, or minimize the voting strength of Black South Carolinian

voters or subject them to intentionally discriminatory districts, and (2) does not violate the VRA, federal and state constitutions, and other applicable law;

- vi. Order new redistricting maps if Defendants fail to adopt maps that conforms with this Court's judgment;
- vii. Order changes to any relevant election-related deadlines to allow the adoption of congressional and state legislative maps that conform with this Court's judgment;
- viii. Retain jurisdiction over this matter until Defendants enact compliant maps by this Court's deadline;
- ix. Retain jurisdiction over this matter for such a period it deems appropriate and require Defendants to submit future congressional and state legislative redistricting plans for preclearance review from this court or the U.S. Attorney General under Section 3(c) of the VRA, 52 U.S.C. § 10302(c);
- x. Award Plaintiffs' attorneys' fees and costs in this action; and
- xi. Grant such other and further relief as this Court deems just and proper in the circumstances.

Dated: May 6, 2022

Respectfully submitted,

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** Motion for admission
Pro Hac Vice
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Transcription of Video File:
20211129SJudiciaryRedistrictSubcommittee11582_1

Date: November 29, 2021

Video Runtime: 1:32:48

* * *

[Page 20]

When I represented the first District, I can't tell you how many people came up to me and said, "I—I feel like my vote doesn't even matter. I—you know, I feel—why vote? Why should I vote? Why should I partake democracy? I feel like the—you know, the die has been cast." And you know what? They have a—they have a damn good point. When you look at these congressional maps, and these lines that have been drawn by a partisan hack in Washington D.C., and released to the general public hours before Thanksgiving break, with a public hearing called hours after thanksgiving break ends? The whole process reeks. And South Carolinians deserve a hell of a lot better.

You've got two options. You know, you can pour kerosene on the fire that's up in Washington D.C.—the dumpster fire that exists—because nobody can leave this committee room and condemn partisanship in Washington D.C., and at the same time, put the stamp of approval of partisan gerrymandering that lays before us. You can't do that. So, you can watch the

[Page 21]

parties continue to move to the extremes.

The far left, the far right, and nothing gets done, and our infrastructure crumbles, all health care prices go up. All the problems that need to get solved, go ignored. Or—or you can simply ignore the partisan hacks in Washington D.C., you can say, “to hell with what they want.” And focus on what the people of South Carolina want. Fair maps, keeping communities of interest together, not dividing communities based upon the color of their skin. Not packing black voters into one district. The future of this country, the future of this state, and our politics, rest entirely in your hands. And I would beg that you handle it with care. I yield back.

CHAIRMAN RANKIN: Alright, questions of Mr. Cunningham? Representative Cunningham? Otherwise,—yes, ma’am, Senator?

SENATOR MATTHEWS: Just a couple of questions. Joe, you know, we’ve had to work together a lot for the better of South Carolina many times. But I listen to our cartographer talk, and yes, you’re exactly

[Page 22]

correct as it relates to the scheduling and timing. I want you to know that as a member of this Subcommittee—and I’ve tried to be present and work with the committee as much as possible—I was not involved in the preparation of this map at all. No input into the six counties that I’ve represented over the years. Because the first glaring problem that I see is yes, we went to public hearings, and one or—and in my area, I paid much, much more attention.

If you looked at the bottom of the map, where it refers to Sun City. Sun City in Jasper County, and that leads from Hilton Head. We heard it over and over when we went there, that Sun City, the area that includes Palmetto Bluffs, Margaritaville, all of those areas down there, they spec-even though they're at Jasper County per say, they felt that they had more in common with Beaufort. Hilton Head area. So, therefore the committee on the Senate maps, we all understood that they needed—that part of Jasper, which grew very much, needed to be with Beaufort. So, it makes no sense

[Page 23]

in this map why just the opposite was done on this congressional map. So, I agree with you on that. And out of candor, I want to make sure that it's on the record that I agree.

As far as Charleston County, I represent Charleston County too. I represent this side of Main Road in Charleston County. I don't understand why on this map, those black voters in Charleston County were carved out, and the more affluent areas went to make this a more representative map, where repub—a republican could be elected. I'm also concerned about the BVAP and the WVAP on this, and how it totally switches. Out of this, the—the percentages that we have, it gives this first Congressional District from what I'm seeing, it totally makes it an electable and secure republican district. I go by the affluence, I go by the districts, and the community. I understand your concern, but I want you to know as a member of this committee, I don't agree with this map, I haven't had an opportunity to view,

[Page 24]

I'm still going to inquire of staff who they consulted with in drafting this map, because I would think that since six and one go straight through my six counties, that I would have at least had some input into this map.

Last part, I want to say this. On Tuesday, when I received notice, my office was winding down, I knew I had depositions this morning—this afternoon, and had to be in court this morning. I had to cancel everything immediately, because this is critically important, because it astounded me that no more notice was—was—should have—was given. But we're all here. We're going to figure out how we work through this big disparity, and this protection of the first Congressional District. The last—

CONGRESSMAN CUNNINGHAM: And I—

SENATOR MATTHEWS: —question—

CONGRESSMAN CUNNINGHAM: —and I appreciate your work on that, Senator Margie Bright Matthews.

SENATOR MATTHEWS: —how is it—in

* * *

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

THE SOUTH CAROLINA
STATE CONFERENCE
OF THE NAACP, *et al.*,

Plaintiffs,

v.

THOMAS C.
ALEXANDER, *et al.*,

Defendants.

Case No. 3:21-cv-03302-
MGL-TJH-RMG

SENATE
DEFENDANTS' &
HOUSE
DEFENDANTS'
RESPONSE TO
PLAINTIFFS'
MOTION IN LIMINE
TO PRECLUDE
DEFENDANTS FROM
INTRODUCING
EVIDENCE OR
ARGUMENT
SUPPORTING A
RATIONALE FOR
CONGRESSIONAL
MAP BASED ON
VOTING RIGHTS ACT
COMPLIANCE

Plaintiffs' Motion *In Limine* To Preclude Defendants From Introducing Evidence Or Argument Supporting A Rational For Congressional Map Based on Voting Rights Act Compliance (Dkt. No. 357) is unnecessary and never should have been filed. Contrary to Plaintiffs' misrepresentation, the parties were able to resolve the issues "raised in [Plaintiffs'] motion" during their meet-and-confer. Dkt. No. 357 at 2 n.1. Senate Defendants' counsel confirmed on

that call that the Senate Defendants and the House Defendants have not asserted, and are not asserting at trial, a defense that any alleged use of race to draw the Congressional Plan or the lines Plaintiffs challenge was “reasonably necessary” to comply with the Voting Rights Act. *Miller v. Johnson*, 515 U.S. 900, 921 (1995).

Indeed, as the Senate Defendants and the House Defendants have explained, Plaintiffs’ claims fail at the threshold because the General Assembly complied with traditional redistricting principles and did not “subordinate[] [those principles] to racial considerations.” *Id.* at 916; *see also* Dkt. No. 323. Moreover, Plaintiffs, rather than the Senate Defendants and the House Defendants, are the parties who have made repeated, inaccurate, and improper invocations of Voting Rights Act concepts in this case, which does not present a Voting Rights Act claim or defense. *See* Dkt. No. 323.

The Court should deny as moot Plaintiffs’ Motion *In Limine* To Preclude Defendants From Introducing Evidence Or Argument Supporting A Rational For Congressional Map Based on Voting Rights Act Compliance.

September 9, 2022 Respectfully submitted,

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

THE SOUTH CAROLINA
STATE CONFERENCE
OF THE NAACP, *et al.*,

Plaintiffs,

v.

THOMAS C.
ALEXANDER, *et al.*,

Defendants.

Case No. 3:21-cv-03302-
MGL-TJH-RMG

**SENATE
DEFENDANTS' &
HOUSE
DEFENDANTS'
RESPONSE TO
COURT'S ORDER
REGARDING CENSUS
DATA (459)**

The Senate Defendants and the House Defendants respectfully respond to the Court's October 20, 2022 Order regarding the Census data compiled by the Court's technical expert, Mr. Frank Rainwater (ECF No. 459). The parties have worked cooperatively with Mr. Rainwater and, as of this morning, successfully resolved all issues related to the data Mr. Rainwater compiled. The final data circulated today appears accurate to the Senate Defendants and House Defendants, and the Senate Defendants and the House Defendants are not aware of any disputes regarding it.

October 21, 2022 Respectfully submitted,

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**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

THE SOUTH CAROLINA
STATE CONFERENCE
OF THE NAACP, and

TAIWAN SCOTT, on
behalf of himself and all
other similarly situated
persons,

Plaintiffs,

v.

THOMAS C.
ALEXANDER, in his
official capacity as
President of the Senate;
LUKE A. RANKIN, in his
official capacity as
Chairman of the Senate
Judiciary Committee;
JAMES H. LUCAS, in his
official capacity as Speaker
of the House of
Representatives; CHRIS
MURPHY, in his official
capacity as Chairman of
the House of
Representatives Judiciary
Committee; WALLACE H.
JORDAN, in his official
capacity as Chairman of

Case No. 3-21-cv-03302-
MGL-TJH-RMG

**THREE JUDGE
PANEL**

**PLAINTIFFS' STATUS
REPORT
CONCERNING THE
TECHNICAL DATA
SUBMISSION**

the House of
 Representatives Elections
 Law Subcommittee;
 HOWARD KNAPP, in his
 official capacity as interim
 Executive Director of the
 South Carolina State
 Election Commission;
 JOHN WELLS, Chair,
 JOANNE DAY,
 CLIFFORD J. EDLER,
 LINDA MCCALL, and
 SCOTT MOSELEY, in
 their official capacities as
 members of the South
 Carolina Election
 Commission,

Defendants.

Pursuant to the Court's orders of October 14 and October 20, 2022 (ECF 456 & 459), Plaintiffs hereby advise that (i) they do not dispute the data prepared by Mr. Rainwater (as conveyed to the Parties on October 20, 2022 at 5:27 pm), and (ii) are not aware of any pending dispute concerning that data. Plaintiffs review of the data reflects that issues previously raised have been resolved.

Dated: October 21, 2022	Respectfully submitted,
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** <i>Admitted Pro Hac Vice</i>	
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<i>Counsel for Plaintiffs the South Carolina Conference of the NAACP</i>	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was served on all counsel of record through the Court's CM/ECF system on the October 21, 2022.

s/ Allen Chaney _____
Attorney for Plaintiffs

S.C. NAACP v. Alexander et al.
Senate Defendants' Closing Argument

* * *

**PLAINTIFFS SEEK A CROSSOVER DISTRICT 1:
BVAP & BLACK-PREFERRED CANDIDATE VOTE SHARE: (2020 PRES.)
(FOF 464, 486, 640, 643, 656, 660, 680, 684, 705, 710)**

SC NAACP PLAN 1

34.02% BVAP – 52.6% VOTE

ENACTED PLAN

16.72% BVAP – 45.6% VOTE

SC NAACP PLAN 2

23.26% BVAP – 52.5% VOTE

AMENDMENT 2A (HARPO)

20.57% BVAP – 51.8% VOTE

LWV

22.57% BVAP – 51.7% VOTE

JUDGE GERGEL: Any time you want to do that—you can do it in your opening statement. After your opening statement, we're going to move—after the opening statements, I'm going to allow y'all to move things into evidence. And if, at that time, you'd like to say, we offer certain stipulations, or we offer certain party admissions or whatever, you're welcome to do that.

MR. FREEDMAN: Thank you, your Honor.

JUDGE GERGEL: Okay. Now, any questions you have on the protocols of the trial? Any issues anyone has on that?

First, from plaintiff.

MR. FREEDMAN: Your Honor, I believe the only housekeeping issue that we wanted to clarify is we would like a sequestration order for witnesses—fact witnesses not to be present in the courtroom.

JUDGE GERGEL: Okay. You know, under the rules, a sequestration order by—or a request by any party is permitted and granted. Parties are not excluded, and y'all need to identify who that party might be. But let me just

[Page 10]

say, y'all have your backs to the gallery, and I want to warn you, you're responsible for keeping witnesses—because sometimes witnesses will show up and are interested and they'll want to come sit, and that'll violate the sequestration order. So, it's up to each of y'all to enforce. And so, do you know who your party witness will be?

MR. FREEDMAN: Yes. I believe for us—for the NAACP, it will be Ms. Murphy. And then Mr. Scott is an individual plaintiff.

JUDGE GERGEL: Okay. He's a named—then—and for the entity, is who?

MR. FREEDMAN: Brandon Murphy, for the NAACP.

JUDGE GERGEL: Okay. And how about for the Senate? Do you have someone you want to designate?

MR. GORE: Yes, your Honor. We do have Will Roberts here as our client representative, on behalf of the Senate defendants.

JUDGE GERGEL: Very good. That'll be fine. And, Mr. Moore?

MR. MOORE: Your Honor, we don't have him here today, but he can get here quickly if you need him.

JUDGE GERGEL: I don't need anybody.

MR. MOORE: I didn't think so. But it's Patrick Dennis. And he will also be testifying at some point.

JUDGE GERGEL: Okay. That's fine. So, he'll be the

* * *

[Page 108]

MR. COLEMAN: Thank you, your Honor. Nothing further.

JUDGE GERGEL: You may step down. Thank you, sir. Call your next witness.

MS. ADEN: Your Honors, plaintiffs call Representative Gilda Cobb-Hunter.

MR. MOORE: Your Honor, just a housekeeping matter. I understand the plaintiffs invoked the rule of the sequestration. One of their experts, Dr. Duchin, has been in throughout this. I'm assuming experts are able to—

JUDGE GERGEL: Well, they generally are not. And this is what I warned parties about, is, you've got to keep -I don't know who anybody is. And generally, experts are excluded; it's only the party witnesses. I've had, you know, that issue come up before where people didn't want the experts because they wanted to hear—now, if y'all want to address the issue, I'm glad to hear it. But normally, it would be everybody.

MR. MOORE: Again, I noticed that she was here for the entire duration of the first witness's testimony. And so, perhaps we take that up at break, but I—

JUDGE GERGEL: Well, I believe it's the plaintiffs who moved to sequester. Am I right about that?

MR. FREEDMAN: Your Honor, to be clear, I asked for sequestration of fact witnesses.

[Page 109]

JUDGE GERGEL: Well, that's not what the rule says, right? The rule says sequestration.

MR. FREEDMAN: Your Honor, I guess, my experience—I will defer to your experience. In my experience, experts can sit through.

JUDGE GERGEL: Y'all tell me. I mean, if you want to modify it, and the parties agree, fine. But the rule says, you invoke it, it applies to all the witnesses. You don't want to sequester, that's another question, but we're not doing part of the witnesses and not part of the other witnesses. I mean, one of the purposes of

sequestration is you don't draw upon the cross-examination of another witness and so forth.

MR. MOORE: I agree, your Honor. I think it's a one-size-fits-all rule.

JUDGE GERGEL: It's exactly what the rule provides. Now, we can modify it by agreement, but you tell me. If the defendants don't consent, and you've asked for it, that's what you get.

MR. FREEDMAN: We will ask her to step out now and touch base with you at the break.

JUDGE GERGEL: Very good.

MR. MOORE: We can, obviously, discuss it at the lunch break, your Honor, but I did want to point that out.

JUDGE GERGEL: Thank you, Mr. Moore.

* * *

[Page 162]

MR. CHANEY: I will also tell the panel, we've instructed our experts to obey the sequestration order. And we apologize for that.

JUDGE GERGEL: It's just impossible. You're sitting here staring at me, they come in the back of the room. It's what I've always warned lawyers. It's always a problem when they—and it's always the lawyer who wanted the sequester that does it, nobody else. It's kind of like the guy who complains to the police about people speeding on his street, and he then gets caught speeding when the police come and check.

Okay. Let's proceed. Ms. Cobb-Hunter can return to the stand.

DIRECT EXAMINATION (*Continued*)

BY MS. ADEN:

Q. Representative Cobb-Hunter, before the lunch break, we were discussing the enacted map. My question to you is: Did you end up voting for the enacted map when it came back over to the House from the Senate?

A. No.

Q. Were the concerns that you raised about the enacted map largely about how they impacted black voters in key areas of the state?

A. Yes.

Q. And those are the areas that you discussed in your

* * *

[Page 255]

record, about how many pages of the transcription of COI testimony did you review?

A. I should have counted, but I would say it must be over a thousand pages.

Q. Why did you consider this public testimony as a source of information in your analysis?

A. Because I think it's what the public record has. It's the best source of information we have about what everyday South Carolinians—some of them members of community organizations, some of them elected officials, and some of them just every day folks, what they had to say about what matters to them in the redistricting process. And I think both sets of guidelines make it clear that that's to be created with importance in the process.

Q. And based upon your review of all the COI testimony, can you describe briefly to the Court what some of your general findings were?

A. Sure. I would say, for example, having looked at COI testimony in a number of states, one thing I noticed about the South Carolina testimony is that, here, even more often than in other states, people are likely to cite their county as their community. I noticed that a great deal. Other than that, it was, as you'll always see, a voluminous and heterogeneous collection of descriptions from the microlocal to the regional.

[Page 256]

Q. Do you recall a significant amount of community-of-interest testimony talking about not cracking, not packing of minority communities in South Carolina?

A. That was definitely a theme in the testimony. In particular, there was a lot of discussion of black neighborhoods and communities that were being split, that had historically been split, and that legislators were entreated to keep whole.

Q. And were there any specific counties that come to mind based upon your review of the community-of-interest testimony?

A. Yes. Well, as part of the ensemble analysis that I provided, I wanted to understand what would happen if we took that COI testimony seriously, if we tried to extract some communities that came up or were cited a large number of times, and if we took those as COIs and prioritized keeping them whole, would that kind of move the baseline in one of these sets of comparison maps. So, to the things that I was measuring, I took a few COI examples—and I'll go over those in a moment

—and I asked: What if I put an extra priority on keeping these whole and what if I didn't? So, that's a test that you can do as a filter to turn on and off and see how much it kind of moves the baseline. And the ones that I chose are Richland, Sumter, Berkeley and Charleston Counties. And then the fifth the Lowcountry, which I took to be a collection of four counties.

* * *

[Page 258]

I wanted to make a serious effort to see whether some communities that I could extract from the public testimony could be the reason that the plan had particularly measurable properties, in this case, signs of cracking. And I find that it did not. And I find that—as a candidate explanation for why the plan behaves as it does, COIs don't seem to be explanatory.

Q. Did you find that any of the House or Senate criteria contemplated the use of race data?

A. Yes, they do. Let's see if I can find it. It says in the House guidelines that: Race may be a factor considered in the creation of the redistricting plan, but it shall not be the predominant factor, etcetera. And I think—I can't quickly find the corresponding statement on the Senate side, but it may be there.

Q. Can you look at page seven? Do you see—actually, that doesn't make sense. Strike that.

Are you familiar with the concept of core retention?

A. I am.

Q. Can you tell the Court what it means to you?

A. Sure. So, core retention, broadly, means that a new plan and an old plan should substantially overlap in their assignment of people or territory to districts.

Q. And did you find that any of the criteria under the House or Senate guidelines contemplated core retention?

[Page 259]

A. Yes. Again, treated slightly differently in the two sets of guidelines. And let's see if we can find it.

Okay. So, let's start with the Senate guidelines, which talk under additional consideration under the subheading of constituent consistency. So, this is 3B in the Senate guidelines. What it says is: Preserving the cores of existing districts, keeping incumbents' residences in districts with their core constituents, and avoiding contests between incumbent legislators should be considered. And so, what that does that's interesting is it takes two at least potentially separable considerations and treats them together, the protection of incumbents or respect for incumbency, in some sense, is considered together with this kind of least-changed core presentation property.

On the House side, under incumbency consideration, here, I think it's only implicit that core preservation is to be considered. It says incumbency may be considered. Reasonable efforts may be made to ensure that incumbent legislators remain in their current district and so on. So, I think it's easy to imagine that keeping districts very much as they used to be is a form of respect for incumbency. But I don't think it's called out explicitly as such in that set of guidelines.

Q. And where you were looking to identify how core

retention shows up or not in the House and Senate criteria, were those under the required first-tier criteria that you identified?

* * *

next, but there is a typo here. This is actually Black citizen voting age population. So, it's marked BVAP, but it should be BCVAP. And here what I'm doing is I'm showing the county level on top or at the census track level on the bottom. I'm showing whether the Black population has gone up or down in between, in this case, 2010 and 2019.

Q. And are there any notable findings here?

A. Well, I think you can see—there are a few things that I notice when I look at this. And one is, so, those darker blue areas are the ones where the Black population has been rising. And so, you can see that there is a rise in Black population, particularly you can notice in the Charleston area and the Columbia area, and in many other parts of the state. What I see when I go to the lower figure, is breaking those counties up into their census tracks, we can try to figure out whether that population growth is really localized. Is it happening only in certain neighborhoods, where maybe there's new development or is it spread out over the county? And what

* * *

[Page 291]

enacted 2022?

A. That's right. Maybe we could highlight just the first two rows of the table, because, right now, I'm comparing benchmarks to the enacted plan. Thank you so much.

Q. Thank you.

A. And the question I was just addressing is: If the Black voting age population came down in CD 6, where did it go up? Right. And so, it goes up some in CD 4,

a hair in CD 3, goes up some in CD 2, stays just about the same in CD 1. And later, we'll have an opportunity to see whether that very dispersed increase in BVAP corresponds with electoral opportunity in those districts. And what we'll find later when we look at election results, is that it does not, it does not correspond to any meaningful opportunity across the other districts in the state.

Q. And looking at the demographics of this chart and focusing on the column CD 1, do you find that it's unusual to have CD 1 in the 20 percent range?

A. Well, we can see as we look—now, I should note, a lot of the meaning we'd like to take from this chart hinges on the fact that the numbering of the districts is kind of consistent across these maps. In other words: Is CD 1 coastal? Does it have part of Charleston? And it, for the most part, does. So, just stipulating that it is the case in most of these maps that the numbering is fairly consistent.

[Page 292]

So, looking at your question, we can see it's much more common to have CD 1 with a BVAP in the 20s. It can be as high as the 30s. It can be as low as about 17 percent. But in the main—and this is true in the ensemble approach as well, as we'll see later—it's pretty normal, when you're following the other rules and principles, to have a somewhat higher Black voting age population in CD 1 than we see in the State's plans.

Q. And this chart reflects that CD 1 has the lowest voting age population by a hair, as compared to CD 3; is that your finding?

A. That's right. In the enacted plan, CD 1 now has the lowest Black voting age population of any district in the state.

Q. And going to the second table on page—are there any other findings that you want to point out from this table before we move to the second one on that page?

A. No. I think I'll just sort of echo what I said a moment ago, which is the inquiry that I'm making is one about cracking. And cracking is about dispersing Black populations. And so, what I just described, where the BVAP comes down significantly in CD 6 but the gains are dispersed across the other districts, that is characteristic of what you might expect in a cracking scenario.

Q. And looking at the second table on that page, are there

[Page 293]

any key findings with respect to what you're seeing in the plans that you analyzed using this framework?

A. Well, I think one thing you can note is that it's quite common for these alternative plans—including, for example, the Harpootlian Plan—not to have 50 percent BVAP in any district; and so, in particular, in CD 6.

And, again, when we come back and cross reference that with electoral opportunity later, we will see that 50 percent isn't necessary for a performing district. It's possible while still adhering to the traditional principles, but not necessary, as we'll discover.

MS. ADEN: Okay. You can take that down, Mr. Najarian.

BY MS. ADEN:

Q. Now we're going to briefly turn to the application of the TRPs in Section 4 of your report. Did you look at the population distributions among the proposed plans?

A. I did.

Q. Okay.

MS. ADEN: Mr. Najarian, if you could pull up PX-71, which is Table 2 on page 10 of Dr. Duchin's April 11th report.

BY MS. ADEN:

Q. Dr. Duchin, what did you find?

A. So, here we see, as you'd expect, that the benchmark plan has become somewhat malapportioned over the 10-year period

* * *

[Page 310]

to TDPs and I've shown you where they occur. And so, A is showing a split in Jasper County. And this is actually a new split. Jasper County used to be the whole in the benchmark plan and is now split with just two precincts in one district and the rest of the county in another.

B is showing a split in Dorchester County. And that one I found to be particularly striking. There are six split precincts in Dorchester. So, it's not just that the county is split, but six of the VTDs are split. And when you actually go and look, how are those VTDs split, the pattern is quite clear that they're split into a part with higher Black population and a part that's mostly White, and the part of the precinct with the

higher Black population is exactly the part that ends up in CD 6. So, those splits are really racially distinctive.

In C, I'm just highlighting, generally, the coastal and Lowcountry areas that came up so often in the community-of-interest testimony. And I feel those are not very well attended to in the formation of this district, whereas by contrast, I mentioned a moment ago, the Harpootlian Plan seems to have taken that much more into account, keeping three of the four counties that I identified as Lowcountry in my map, together in a district.

D, finally, is those splits to Charleston County that we were discussing a moment ago, where both Charleston and North

[Page 311]

Charleston are split in fairly erratic ways that cut through Black neighborhoods.

Q. Are any parts of Dorchester in CD 6? Forgive me if you mentioned that but—

A. Yes, I did mention that. That's where I mentioned that there are six precinct splits, and those are racially disparate—split into racially disparate pieces.

Q. Are different parts of Dorchester in different districts?

A. That's right. So, Dorchester is split. And as I said about those split precincts, it's the Blacker parts of those precincts, the parts with higher residential concentration of Black residents, that end up in CD 6, and the Whiter parts that end up here in CD 1.

Q. Okay. Is there anything else that you want to say about this figure?

JUDGE GERGEL: I'm going to ask a question. You mentioned that the city of Charleston was split erratically. Is there anything that gave you that number of 79 percent of African Americans in CD 6 in the county? How about in the city? Have you run that number?

THE WITNESS: I don't have that in front of me, but I'd be happy to look that up later.

JUDGE GERGEL: Okay. And you said—is North Charleston split?

THE WITNESS: It is. And you can see that—

[Page 312]

actually if we go back to Figure 5.

MS. ADEN: So, back to PX-77, which is Figure 5 on page 17.

JUDGE GERGEL: Yeah.

THE WITNESS: I think this is intended to illustrate that. Let me narrate how this does so.

In red you're seeing the municipal boundaries. So, that's both Charleston and North Charleston that are shown here, and those are the city boundaries. Now, if the district design followed those municipal boundaries, the Black line, that's the district line, would stick with the red line. You can see that it does that for a little while, but it deviates quite a bit. It cuts right through both Charleston and North Charleston and it does so especially—you know, the area covered by the label, "Charleston," is heavily Black, and you can see that the city line and the district line both kind of play independently around the areas of these two cities.

JUDGE GERGEL: Is the North Charleston split, in your view, a racial split?

THE WITNESS: Well, let's see if we can read that off of this figure. I wouldn't say that the North Charleston split in particular is cutting through Black neighborhoods as much as the Charleston split is.

JUDGE GERGEL: The Charleston split. Okay. Thank you.

* * *

[Page 331]

decisions.

Q. So, to be clear, is it your testimony that these ensembles can satisfy South Carolina's preference of one-person deviation for each district?

A. Yes. I satisfied myself that all these plans are easily tuneable to one-person balance.

Q. With respect to the rules in geography that you operationalized in these ensembles, did you consider communities of interest?

A. I did. That was one of the toggles that I turned on and off. And so, I'll just mention—this is already addressed yesterday, was kind of presaged yesterday—the communities of interest at play here were not identified by the State, at least in any form that I saw, that is, the State never compiled all that public testimony into a list of COIs to be used in the process. And so, what I did as we heard before, was to make one not necessarily authoritative, but good-faith effort to take areas that were covered by a great deal of community testimony, treat them as discrete concrete COIs and add a filter that prioritizes keeping

them whole. And then I check to see whether that changes the findings that the State's plan is demographically unusual, and it does not.

Q. And are the communities of interest that you considered in these ensembles those that you report at Figure 13 of your April 11th report, PX-86?

* * *

[Page 334]

A. Because I'm testing hypotheses about racial statistics. And so, the method here is to build what some have called "race blind plans" and to see if the plans are made with no attention to race, what would we expect to see just as a natural consequence of the human geography of South Carolina?

Q. Did the ensembles consider any other rules in geography, like preservation of cores?

A. No, I did not build the ensembles to prioritize core preservation. I did address core preservation in the reports, but in different ways. This is probably a good opportunity to say: It's just not the case that the ensembles are like a giant cannon that you point at all the problems of redistricting, simultaneously. It's a device that allows you to measure the consequences of the rules. And it's quite well used, it's quite effective when layering those rules in a few at a time. And so, I didn't choose to use core preservation in that way, but I do, of course, discuss it in the reports in other ways.

Q. Did the ensembles consider partisan performance?

A. Building the plans was done also in a party-blind way. But I used the ensembles to make conclusions

about whether the plans are unusual in partisan ways as well as racial ways.

Q. And did the ensembles consider incumbency?

A. No. Building the ensembles was not done in a way that was sensitive to locations of the incumbents, because the

[Page 335]

algorithm was not provided with incumbent addresses.

Q. Is not applying core preservation, partisan performance, and incumbency what you would consider a weakness of these neutral ensembles that you developed?

A. No. On the contrary. Some properties are built into the alternative plans, and others are measured over the alternative plans. And party, race, and incumbency are measured over the alternative plans, not built into their creation.

Q. Is it fair to say that the rules that you apply to these ensembles reflect the rules that you reviewed when you looked at the House and the Senate criteria?

A. That's right. So, the ensembles are built to take some of the rules that are either highly listed in the guidelines provided by the State, or are otherwise fundamental, in my experience, in redistricting, generally.

Q. Dr. Duchin, is it important to look at all of the individual plans within an ensemble that you developed?

A. No. That's not how the ensemble method works. And it's key to emphasize, you should not think of these ensembles as a hundred-thousand plans, each

ready to be adopted. That's not what they're for. They're for understanding the central tendencies created by the framework. And so, what I have done is reviewed statistics over the ensembles, reviewed summaries of metrics, reviewed properties, and in some cases, picked out

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[Page 346]

more meaningful electoral opportunity for Black voters.

BY MS. ADEN:

Q. Is this a section of the report where you would say you were aware of core retention?

A. I think this speaks to core retention, not only because I've only redrawn part of the state while keeping the other three districts intact, but because I only moved a single boundary line. I measured the core retention of this alternative plan and found it to be over 92 percent in agreement with the State's Plan. And that means, even if you took the extremely high bar of agreeing more than 90 percent with the State's map, this passes that test. So, with very high core retention and a minimal redrawing, we're able to get a much more demographically typical and much more electorally promising map for Black voters.

Q. And I just will direct you to Footnote 8 on page 23 of that PX-67.

A. Yes.

Q. And is that where you provided some information about the electoral performance of the redrawn alternative district?

A. That's right. That's because I feel strongly—and I hope this comes up over and over again. BVAP does not tell the whole story. You need to know more about voting patterns, turnout matters, crossover matters. And so, just because District 5 has more Black population, would not automatically

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[Page 349]

THE WITNESS: So, these are four contests that, again, were identified as especially informative. And I want to say, while I did not select them, this exactly follows the criteria that are common in the literature. These are four recent elections. They were reasonably competitive. These were not landslide contests. And all four of these have a Black candidate on the ballot. In the case of President 2020, it's Kamala Harris as vice president, but all four do have a Black candidate. And it's been repeatedly found by courts that elections where the Black candidate of choice—where there's a Black candidate who is an alternative for Black voters, those may be especially informative. So, I find this selection to be entirely reasonable.

BY MS. ADEN:

Q. And to be clear, a source—to be clear, these are also elections that exhibited what you understood to be racially polarized voting, differing preferences between Black and non-Black voters in those elections?

A. In South Carolina, I did not perform a racial polarization analysis, but I think that no one in this litigation contests the high levels of polarizations that are found in general election contests.

Q. Okay. I'd like to focus on PX-84, which is Table 7, just below that, on page 25 of the April 11th report. And I'll ask you to explain to us what you were showing us here?

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[Page 360]

unusual among the opportunities available to the legislature in its strict confinement of opportunity to just CD 6.

Q. What do you think about an argument that Black electoral opportunity is dependent on White also for voting in districts like CD 1?

A. I see no contribution between that observation and the rest of the discussion that we've been having, namely, electoral opportunity, in my understanding, has always been seen to contemplate possibilities of coalitional support. We don't assume, when we do a racially polarized voting analysis, 100-percent cohesion of these or those voters. We understand that different groups of voters try to fill strong candidates and try to persuade other groups to support them. And many of the plans that were available to the State provide just such coalition opportunities.

Q. I'd like to focus you on pages 26 to 27 on your April 11th report, Dr. Duchin. Did you perform any other analysis of Black electoral opportunities, particularly involving whether party affiliation explained electoral opportunity?

A. I did. And actually, I found this set of results to be really quite striking and informative.

MS. ADEN: So, let's ask Mr. Najarian to please pull up PX-85, which is Figure 12 on page 26 of Dr. Duchin's April 11th report.

BY MS. ADEN:

[Page 361]

Q. And I'd like you, if you can keep it broad, to just tell us what we're seeing here?

A. Absolutely. So, this is my attempt to do something that's often called for but is really very difficult in general, which is to disentangle race and party in a reality in which they're highly conjoined. And so, this is an attempt to do that, that I think is quite illuminating.

Here's what we see: I've separated the four contests most probative for Black voters' preferences from the other nine, the sort of generic party ID races, and I've asked the question: Is the State's Plan unusual in its performance of the candidates who are especially important to Black voters? And how does that compare to just a generic Democrat? And this is in order to help us understand whether partisan motivation might explain all the properties that we've been observing. So, it's to help us address the counterfactual, maybe the racial properties of these plans just flow from partisan advantage being sought by the line drawers. That's not what we see. So, if you look on the top and on the bottom, on top we have the seven districts times four contests. That's why it's of the total of 28. And if you recall, the benchmark and the enacted plan only have four wins for candidates of choice. And that's why those lines are in the column marked four.

So, is that unusual? Yes. If you look at the

[Page 362]

hundred-thousand alternative plans, it's quite rare to have only four wins for the candidate of choice. I think in the caption I say this puts it in the 12th percentile of all the alternatives that could have been available. So, it's really unusually poor at providing opportunity in these probative contests.

Then we can look at the contests more broadly. So, we can look at these other Democratic races shown on the bottom and we ask the same question: Is the performance of the enacted plan unusually poor for other Democrats? And we see it's no longer unusual. Now we have eight wins out of 63. But if you look at the histogram, you'll see that there are quite a lot of neutral plans that do even worse. Now the State's Plan, instead of the 12th percentile, is actually in 47th; in other words, totally unremarkable. So, whereas the State's Plan is unusually extreme in denying opportunity for these strongly preferred Black candidates of choice, it is unremarkable in a generic party ID race.

Q. Do you mind taking one map and sort of showing us how it compares in the top table from the bottom table, just to bring it down even one level of specificity?

A. Sure. Let's look at the enacted plan, since that's the primary focus here today. And so, that's kind of a green color. And that has—

Q. Do you want tell us like where you're looking?

[Page 363]

A. Absolutely. We've just successfully highlighted it. So, in the key, you can see the enacted plan has four

wins out of 28—oh, no. It's not that bar. It's down in bar four.

Q. The wider green to the left?

A. Yes. There you go. Exactly. Thanks. I can see this is a useful demonstration. And so, what we're seeing is, yes, it has fewer wins than the other maps, but also it's unusual compared to these neutral alternatives, compared to my hundred-thousand algorithmically generated maps. It's in one of the very lowest bars that is visible here. There are some maps that have two or three wins, so it's possible to get even less opportunity. But it's infrequent. Most of the bulk of alternatives provide significantly more wins in these probative contests.

Now, let's compare that to the bottom, where the enacted plan is in bar eight. Perfect. And you can see now there's almost as much bulk of the histogram to left than to the right. It's almost equal. And that says this plan is right in the middle of the road. It's unremarkable in generic party ID contests. It's only when you single out those races with a Black candidate on the ballot, those races that are most informative for black preferences, that the extremeness of the plan's design becomes apparent.

Q. And to put a fine point on this, your characterization of certain elections as probative, where does that come from?

[Page 364]

A. Okay. Just to repeat, that was provided to me by counsel, based on the work of a different expert. But having done similar analyses myself, I agree with the principles that identified those four races as especially probative.

Q. And having done racially polarized voting analyses in the past, it's your understanding that, once again, elections featuring Black candidates have been considered by Courts to be especially probative of electoral choices of Black voters?

A. Absolutely. Those factors that make the elections probative, recency, reasonable competitiveness, a Black candidate on the ballot, all of those are widely recognized by courts as making elections more informative.

Q. And what is—

A. And if I could, I'd add one more thing here. What I'm plotting here is the number of times the Black candidate of choice won outright. Now, of course, we could make similar plots for the times the Black candidates of choice got close. We could look at times they got within five points or tenth of an eighth point, as we discussed before. I did not provide those figures, but I can tell you that the outlying effect of the State's Plan is not reduced but is actually increased when you look at those close contests. So, that's another example of doing a kind of robust look. I've only shown you this, but behind the scenes, I tried this many different ways to make sure this isn't cherry picked but is really a sound and robust

[Page 365]

finding of what's unusual in the State's Plan.

Q. And is there anything else notable about the League of Women Voters Plan and how it fares in these different histograms?

A. Well, it fares just like Harpootlian in both the top and the bottom, which is to say providing two more

wins for the candidate of choice, six rather than four in the enacted plan, and 10 rather than eight.

Q. And is there anything else you want to say about these before we bring them down?

A. No. I think we've covered it pretty well.

Q. Okay. What do you think about an argument that all Democrats lose in CD 1 whether Black or White?

A. Whether those Democrats are Black or White? Just want to understand the question.

Q. What do you think, yes, about an argument that all voters who are Democrats lose in CD 1 whether they are Black voters or White voters?

A. Okay. Let's look at that both ways. First, let's look at whether the candidates are Black or White and then also look at whether the voters are Black or White. So, it's true that CD 1, as it's configured in the State's Plan, does not provide a win for the Democratic candidate across these nonprobative elections as well, but—I kind of alluded to this before—it does allow the White Democratic candidates

[Page 366]

to get closer. And so, for example, in the governor's race, there's a 46.8 outcome. If we scan the tables, we'll see, as I alluded to earlier, that the stark finding that the candidate has been pushed below the zone where they have a reasonable opportunity to have one, that's a much clearer finding for these Black candidates than it is for White Democrats. That's one thing.

But the second half of the question that you just posed is: What about the voters? And so, as we saw, CD 1 often performs fairly well, even with quite a low

percentage of Black voters. And so, you might ask: In the State's Plan, aren't all Democrats disadvantaged—the Black Democrats, the White Democrats—everyone's disadvantaged because it's been drawn so the Republicans will prevail? What I would say to that is that it's certainly true that anybody who votes for a Democrat won't see their preferences converted to representation. That is certainly true. But when we think about how voting rights litigation operates, when we think about a racial bloc voting analysis, that asks the question of whether over time, Black voters in this case vote cohesively as a bloc. The white voters who cast their votes for a Democrat might turn out in one election and not another. They might vote for a Democrat in one election and for a Republican in another. That's not a stable identifier in the way that being Black is a stable identifier. And so, I don't know of a

[Page 367]

kind of analysis that treats White Democrats as a voting bloc in the same way that RPV traditionally treats racial and ethnic groups. So, that's just to add some nuance to the picture.

In the large, it's certainly true that anyone who votes for a Democrat will have their wishes frustrated in the CD 1, but that rises to the level of a kind of bloc-voting analysis for Black voters in that district.

Q. You have been qualified in this case and in other cases to do the analyses that you have conducted. Do you think that any of the analyses that you have done are unique to your skill set?

A. Well, I do think that I'm one of the leaders in developing ensemble methods. I wouldn't say unique

to my skill set, but I would say that's an area where I've been at the forefront of developing techniques. So, I hope there's some significant added value in other areas, but I would note ensemble analysis as a particular specialty.

Q. But the district-by-district review you did of whether the criteria were met or not met, do you think that other people with training could do that type of analysis?

A. Oh, absolutely. I think that the ability to look at the lines, to understand how they fall, which precincts are split, whether there's a distinctive difference between the census blocks on one side of a split or another, whether major roads

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[Page 369]

A. Yes, that's right.

Q. Okay. You have testified about core retention during yesterday and today. What do you understand to be Mr. Trende's opinion about core retention in this case?

A. My finding from reviewing his report—or my reading of his report, I should say, is that he treated core retention as a top echelon districting priority for the state.

Q. And please remind the Court where you found—

MR. GORE: Your Honor, I would just object at this point. Mr. Trende has not yet testified in this matter. We are bringing him live to testify. This all sounds like rebuttal testimony. And the witness is drawing conclusions about what Mr. Trende may or may not

have intended in his report, which is I understand is in evidence, but he hasn't come to testify yet.

JUDGE GERGEL: Is the report in evidence?

MS. ADEN: The report is in evidence.

JUDGE GERGEL: Overruled.

BY MS. ADEN:

Q. Can you remind the Court, please, about where you found core retention in each of the Senate and House guidelines?

A. Yes. Core retention is discussed—I feel that it's treated together with incumbency in both sets of guidelines, but that is made explicit in—I'm sorry. I think it's on the Senate side.

[Page 370]

Q. So, the House guidelines are at PX-175, and Senate's are at PX-716?

A. Yes. So, in the Senate guidelines, it's explicit in 3(b), constituent consistency, that cores and incumbents are to be considered. Again, though, it's listed as additional considerations. And cores are not even explicitly discussed at all on the House side. But you could read them in as being related to incumbency consideration, in which case it is literally the last listed of the criteria in the guidelines.

Q. So, what do you think about Mr. Trende's opinion about core retention?

A. He may well be right that it was very important to the legislators, but I would just say that that's not reflected in their published guidelines.

Q. And let's look at PX-83 very briefly one more time, which is Figure 11 on page 24 of your April 11th

report. Did you find that cores of districts can be preserved in maps you considered and/or developed?

A. Absolutely. This alternative plan shown here is just one of a vast number of options that would have had greater than 90-percent core match with the enacted plan, while providing more meaningful opportunity in districts other than CD 6. I guess I would even amplify that to say, once again, this alternative only changes the line between 2 and 5. We've heard a great deal today about 1 and 6. This alternative

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[Page 405]

the map, based on this plan?

A. No.

Q. And if we scroll to the bottom of page five, I think that what you say is that the major difference between the Jessamine Plan and the enacted plan is the interface of CDs 1 and 6; is that right?

A. Yes. That's the major visible difference, to be sure.

Q. And the Jessamine Plan has a novel T shape at that interface; is that right?

A. Yes. I think that's the phrase that I used.

Q. And if we scroll to the next page, the Jessamine Plan has a lower BVAP in District 1 than the enacted plan, right?

A. Yes.

Q. And it is less compact in the enacted plan on the Block-cut Edges measure; is that right?

A. Let's check. It is less compact than the enacted plan, yes, on Block-cut Edges.

Q. And the Jessamine Plan splits 13 counties, correct?

A. Correct.

Q. Compared to 10 in the enacted plan; is that right?

A. I believe you.

Q. And here in Section 4, if we go back to your original report, page nine, this section of your report, you did not include any metrics on core preservation; is that right?

A. That's right.

[Page 406]

Q. And you did not address VTD splits; is that correct?

A. That's right.

Q. And you didn't do any kind of partisan or political analysis of the plans in this section, correct?

A. Not in this section.

Q. And there is some discussion on the next page, I believe—actually on page 13—

A. Uh-huh.

Q. —about incumbency; do you recall that?

A. Yes.

Q. And other than incumbent pairs, you didn't consider any other forms of incumbent protection, correct?

A. What might those be?

Q. How about keeping incumbents' residences with the core of their constituents?

A. I would call that core preservation.

Q. Okay.

A. And so, as we've heard, that's not addressed in this section.

Q. The Senate guidelines specify both, preserving the core's districts, and keeping incumbents residences with the core constituents, right?

A. It's true that those are both discussed. I think those sound pretty close to the same to me.

Q. And do you agree that the General Assembly might have

[Page 407]

viewed some of these factors as more important than the factors you did consider in Section 4?

A. It's certainly true that they might have held private or collective views that weren't reflected in the guidelines.

Q. Let's go now to page 15 of your report, if we can.

A. Yes.

Q. So, this is Figure 3 from your report that you discussed with MS. Aden this morning, I believe; is that right?

A. Yes, that's right.

Q. And I believe your report uses the term "chunks and shards." Is that a technical term?

A. No. That is an informal and, I hope, colorful term.

Q. And you say that these changes that are shown here on this map do not respect traditional redistricting principles; is that right?

A. Let's see if I've written that. I say: "This produces a map that cuts those areas in a way that neither

respects traditional redistricting principles, nor publicly identified community needs.”

Q. And which principles did you consider in arriving at that state?

A. Well, here, I was looking at county preservation, city preservation. So, you might have seen in a map that prioritized the healing of city splits. You might see the reassigned territory filling in city boundaries. And that,

[Page 408]

for example, is not what we see in this picture.

Q. Is your judgment about respected traditional redistricting principles a comparison between the enacted plan and the benchmark plan?

A. Well, I would say what I’m doing here precisely is comparing those two and making the inquiry, do the changes track the principles, and finding that they don’t.

Q. I’d like to talk about that a little bit more. Do you know where Berkeley County is on this map?

A. I do.

Q. Where is it?

A. So Berkeley is next to Charleston.

Q. Is it the county that has the kind of “U” shape in blue, rotated? Or can you point it out maybe on the screen? I don’t know if the touchscreen works.

A. “U” shape in blue. Oh, I see what you mean.

Q. Like a rotated “U” shape in blue around a gray protrusion?

A. Uh-huh.

Q. And the enacted plan made Berkeley County whole, correct?

A. That's right.

Q. And that respects traditional districting principles, doesn't it?

A. That's right.

Q. Did you examine whether any of the changes you identified

[Page 409]

here, repaired split VTDs?

A. Well, we talked about this a little bit ago. I feel there's a slight moving target there, because there are two sets of VTDs in play. There's the 2010 VTDs and the 2020 VTDs. And so, I did look at whether there's a larger number of respected VTDs in the new plan than in the benchmark, and I found that there is not. They each split 13 contemporaneous VTDs.

Q. And that's based on your comparison of the 2022 plan and 2022 VTD lines, the 2012 plan and the 2012 VTD lines; is that right?

A. Yes, '22 and '20 VTDs versus 2012 and 2010 VTDs; that's right.

Q. And do you know when those VTD lines changed in South Carolina?

A. Yes. VTDs are a data product of the Census Bureau that's released around the same time as the P. L.—

Q. And how about the precinct lines, do you know when those changed?

A. As I mentioned this morning, those may change at all times. They can change in between censuses. They can change at the discretion of local officials. If you're

asking if I know the protocol for changing precincts in South Carolina, I do not.

Q. And have you examined whether any of these changes you

[Page 410]

highlight here, fix split precincts in South Carolina?

A. Not specifically.

Q. And did you examine the political or partisan effect of any of these changes?

A. Of these changes? I did, in fact.

Q. And did you examine the effect of any of these changes on incumbents?

A. The effect of these changes on incumbents is not appreciable. Incumbents are respected in this before-and-after plan.

Q. Where is your political analysis of these changes?

A. Where is my political analysis of these changes? Well, this is part—you know, I think this has come up already a few times. But, as part of best practices in my data scientific work, I do a great deal of checking other questions and variations that may not end up in the report, but they're part of my robustness checks. And so, I did look at the partisan-versus-racial character of these moved territories. It didn't end up in my report, partly because it's my understanding that that kind of question was treated by other experts. But it was part of my due diligence.

Q. I see. But your report doesn't address that here in the section, correct?

A. That's right.

Q. Does it address it anywhere else in any other section?

[Page 411]

A. No. As I said, that doesn't make its way into the report. But I'll be happy to tell you what I found.

Q. Thank you. So, Section 5 of your report is a district-by-district review of the plan, correct?

A. Yes.

Q. And you first take issue here on page 15 with the fact that the enacted plan is not aimed at healing key splits of cities and communities that were frequently cited in the public testimony, including Columbia, Sumter, Orangeburg, and Charleston, correct?

A. Right. But to be clear, a moment ago you asked if it was a district-by-district review. Let me just specify, only looking at the districts cited in the complaint. So, Districts 1, 2, and 5.

Q. Thank you. Do the guidelines say anything about these four communities: Columbia, Sumter, Orangeburg or Charleston?

A. No. The guidelines don't name these or any other communities.

Q. And these communities were split in the benchmark plan, correct?

A. Sumter was. Can you remind me the rest of the list?

Q. I'm sorry?

A. Sumter was. What else is on your list?

Q. I think you have—it's right there at the bottom of 15: Columbia, Sumter, Orangeburg, and Charleston.

[Page 412]

A. Orangeburg County was split, not the city. Charleston is split. Columbia is split. That's right.

Q. What did you do to identify these four communities of interest?

A. I read all of the voluminous transcripts and e-mails that were part of the public record provided by the State.

Q. And do you have any specialized training in reviewing public testimony?

A. I would say, actually, that I'm a leading expert on aggregating community testimony.

Q. And where did that training take place?

A. Where did that training take place? I'm not sure there are training courses on that. In fact, I run some. But I have got multiple publications on it and, as you heard earlier, have been hired and contracted by multiple states and other nonpartisan public bodies to do just that kind of work.

Q. And were these four communities of interest the only communities of interest identified by the public testimony?

A. Definitely not.

Q. And how did you select these four and not others?

A. Right. So, we addressed this a little bit earlier, but to come back to it, there's so much public testimony. Some of it is conceptual, some of it is neighborhood-based, some of it is regional. There really are different kinds of interests that are discussed, requests that are made of the line

[Page 413]

drawers. So, I would call it quite a large and heterogeneous body of evidence. But what I did was to make one good faith but far from authoritative, effort to look for places where I was consistently hearing the same kinds of messages echoed by more than one commentator, and to pull those out as examples.

Q. And did you count, or otherwise quantify, the number of comments for each community of interest?

A. I didn't. And I have actually written about this. I think comment counting is not a great metric for understanding the bulk of public testimony. Sometimes people who come to public hearings are testifying in a very personal manner, sometimes on behalf of a group or organization. So, it's really quite a complicated matter to weigh public testimony in meaningful fashion.

Q. And has this method that you used ever been endorsed in any academic literature?

A. Let's see if I understand. So, there are some methods that I've described that produce community clusters for use by line drawers. And those have been peer-reviewed. Here, I was unable to do that, so I was glad that it had done so, because all of the testimony was narrative. As far as I understand, there was no mechanism, no technological mechanism, set up by the State to help people map their neighborhoods or communities. And that means it would have not been possible to use the synthesis method that I've written about elsewhere.

[Page 414]

Q. And do you agree that the public testimony is not representative of the views of all South Carolinians or all South Carolina voters?

A. Definitely.

Q. And there were other sources of testimony and information on communities of interest that you did not review, correct?

A. In the world? Yes.

Q. Okay. Because you didn't review the legislative record related to the Congressional Plan, for example?

A. Correct. What I did was review the materials on the State redistricting website.

Q. And you did not review e-mails submitted by members of the public to the House or Senate redistricting e-mail addresses, correct?

A. Actually, that body does include e-mails sent in.

Q. And is that the full body of e-mails that you reviewed?

A. That, I have no way of knowing.

Q. And are you aware that there are thousands more e-mails

that were not in that set?

A. I would accept that easily.

Q. I think you agreed yesterday that you're not attempting to do an authoritative synthesis of these communities, correct?

A. Absolutely correct.

Q. And reasonable people could identify different

[Page 415]

communities than the ones you identified, correct?

A. There's no question. Meaning, I agree.

Q. The public hearings that you reviewed took place between July and October of 2021. Does that timeline sound right?

A. I accept that. I don't have it in front of me, but I believe you.

Q. If you'd like to double check, I think it's on page 31 of your report.

A. Let's just say that I accept the representation.

Q. Thank you. And so, all of that testimony predates the release of the House and Senate staff plans for congressional redistricting, right?

A. Well, I would hope so. I would think that would be best practice, is to conclude the intake of public testimony before drawing the draft plans.

Q. And it also predates release of the enacted plan, correct?

A. I believe you.

Q. So, none of the members of the public had seen those staff plans, or enacted plans, at the time of their testimony, correct?

A. If the timeline is what we both think, then that's right.

Q. And any plans that members of the public referred to in their testimony were some other plans, not plans that didn't exist yet, right?

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[Page 446]

being repetitive, an opportunity to prevail. In other words, a record of electoral history that shows the possibility of getting close or of getting more votes than the opponent.

Q. So, your definition does not require any particular level of BVAP percentage in a district, correct?

A. No. And I think that I've emphasized that a few times and I will continue to do so. I think BVAP is important to understand, but I think it's best used together with electoral history, which is why I do them in successive sections of the report.

Q. And so, that's different than the *Gingles* definition under Section 2, correct?

A. Definition of?

Q. Doesn't *Gingles* require a BVAP threshold of 50 percent?

A. The *Bartlett v. Strickland* ruling is what makes that threshold explicit. Is that what you mean?

Q. Yes. And thank you for correcting.

A. So, *Gingles* is a ruling from 1986. *Bartlett's* a while later. So, I think the *Gingles* framework itself did not establish demographic lines. That came later.

Q. But under Section 2, there's a requirement of a 50-percent-plus-one district, correct?

A. Yes. That is what I am identifying as dating to *Bartlett*.

Q. And you don't require that for your definition of

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[Page 492]

Q. And conceivably—well, not conceivably. It's intended to respect communities of interest, correct?

A. I'm not sure whether this was in—as you heard, there were some ensemble runs with COI preservation

and some without. And I'm not sure which run this was from.

Q. Do you think you would be able to operationalize the amount of community outcry there would be if Congressional District 2 included Chesney and Williston?

A. I wouldn't propose to predict.

Q. That's all I've got. Thank you.

THE COURT: Anything on redirect?

MS. ADEN: No, your Honor.

JUDGE GERGEL: Very good. You may step down.

THE WITNESS: Thank you.

JUDGE GERGEL: Call your next witness.

MS. ADEN: Plaintiffs call Taiwan Scott.

MR. TRIVEDI: Your Honor, while Mr. Scott is coming into the courtroom, I wanted to raise that he is Muslim and would prefer to be sworn in on a Quran, if the Court has one available.

JUDGE GERGEL: That would be great. We'd be honored to do it.

MR. TRIVEDI: All right. Thank you very much.

MR. INGRAM: Mr. Scott is in the restroom. He will be right back.

[Page 493]

TAIWAN RAMON SCOTT, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. INGRAM:

Q. Good afternoon, Mr. Scott. Can you please state your full name for the record?

A. Taiwan Ramon Scott.

Q. Would you mind pushing that mic closer to you? Thank you. Mr. Scott, how do you racially identify?

A. African American.

Q. Mr. Scott, what do you do for a living?

A. I am a licensed real estate agent and I'm also an on-site assistant property manager.

Q. And where do you reside?

A. On Hilton Head Island.

Q. And what areas of the state have you lived and worked in, aside from Hilton Head?

A. I lived in Charleston, South Carolina. And pretty much, that's it.

Q. Are you a registered voter in South Carolina?

A. Yes, I am.

Q. What congressional district do you live in?

A. Congressional District 1.

Q. Who is your Congress person?

A. My Congresswoman is Nancy Mace.

* * *

[Page 521]

MR. AUDAIN: Thank you, your Honor. We call Henry Griffin.

HENRY GRIFFIN, having first been duly sworn, testified as follows:

MR. AUDAIN: Good afternoon. My name is Raymond Audain, A-u-d-a-i-n.

DIRECT EXAMINATION

BY MR. AUDAIN:

Q. Good afternoon, Mr. Griffin. You can take your mask off.

A. Good afternoon.

Q. Can you please state your full name for the record?

A. Henry Griffin.

Q. Mr. Griffin, where do you live?

A. I live in St. Stephen, South Carolina.

Q. How long have you lived there?

A. I've lived in St. Stephen since I was two.

Q. How old are you now, sir?

A. Seventy.

Q. Are you a registered voter?

A. I am.

Q. How long have you been a registered voter?

A. Since I was 18.

Q. Why did you register to vote at such a young age?

A. Because of the struggle in the way that our grandparents and parents had to fight and struggle to get the right to

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

- - -

THE SOUTH	:	3: 21-cv-03302-MGL-
CAROLINA STATE	:	TJH-RMG
CONFERENCE OF	:	
THE NAACP, <i>et al.</i>	:	OCTOBER 3–14, 2022
Plaintiffs,	:	
v.	:	VOLUME III
	:	
THOMAS C.	:	
ALEXANDER, <i>et al.</i> ,	:	(PAGES 533– 798)
Defendants.	:	

- - -

TRANSCRIPT OF BENCH TRIAL PROCEEDINGS
BEFORE THE HONORABLE PANEL:
HONORABLE MARY GEIGER LEWIS,
HONORABLE TOBY J. HEYTENS,
HONORABLE RICHARD M. GERGEL,
UNITED STATES DISTRICT COURT JUDGES

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[Page 552]

MR. CUSICK: Sure. Thank you.

BY MR. CUSICK:

Q. Dr. Liu, I now want to discuss your role in this case.

In looking at page two of your report, what were the three questions that you were asked to assess?

A. I was asked to provide testimony on three areas: First, whether there is a pattern of racially polarized voting in the state of South Carolina.

Second, I was asked to analyze the competing redistricting plans in terms of the effectiveness in protecting the minority voters—in this case, black voters—to have the opportunity to elect candidates of their choice.

And finally, I was also asked to do an analysis about the role of race as opposed to the role of party.

Q. And I'll take these questions in turn. Dr. Liu, briefly tell the Court, what was your conclusion for your racially polarized voting analysis?

A. That there is a pattern of racially polarized voting in not only congressional elections, but also other elections in South Carolina.

Q. And going forward, if I refer to it as "RPV," you understand what I'm referring to?

A. Yes. It's a very common expression.

Q. And turning to the second question, what was your

[Page 553]

conclusion for assessing the enacted plan versus some of the competing plans for the electoral opportunities for black voters?

A. My conclusion is that, among the competing plans, the enacted plan was the least effective.

Q. And for the final question, assessing whether race or party played a greater role in the enacted map, what was your conclusion?

A. My conclusion is that between race and party, it is the role of race that is the driving factor in this enacted plan.

Q. And we'll begin now with the findings and conclusions for your RPV analysis. Before getting into

those, generally, why is RPV relevant in a case like this with intentional discrimination and racial gerrymandering claims?

A. RPV is vitally important for this lawsuit because the plaintiffs made the claim that there was racial discrimination—racial gerrymandering. However, if racial gerrymandering happens, it has to have a factor that is racially polarized voting to make racial discrimination work.

Imagine that if there is a high level of white bloc voting against the candidate preferred by Black voters, that has to have a racial polarized voting on the parts of both Blacks and Whites to make the redistricting process effective to block the Black voters from exercising their constitutional right.

* * *

[Page 557]

THE WITNESS: Yes. I'm here.

BY MR. CUSICK:

Q. And in looking at Table 1, how many elections did you review?

A. I analyzed a total of seven general elections concerning congressional elections in South Carolina.

Q. How many election cycles did you review?

A. Usually we relied on the most recent data, and we used three election cycles. But for this one, I also added the fourth. So, there are a total of four election cycles.

Q. Is there a reason you used more recent elections—for example, those before 2014—as opposed to those before?

A. Yes. There's reason for that. The most recent elections are more appropriate for the lawsuit in terms of RPV analysis, because the heart of voting rights litigations concern with how voters will vote in the near future. So, by using the most recent election data, we can make reasonable predictions about what will happen in the near future.

Q. Why is looking at biracial elections important for RPV?

A. It is important to use biracial elections. For the definition of biracial elections, we mean that elections that have featured not only the White majority candidate, but also a minority candidate at issue, so, in this case, a Black candidate.

It's important to use these elections that are biracial,

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[Page 563]

Q. What data did you rely upon to make these assessments?

A. The final component, the third component of my EA, as I said, is the average percent vote for BPC. For that, I simply used the average of the vote tally based on different plans.

Q. And what was your finding for CD 1 in the first full column?

A. As you can see from the column regarding CD 1, the enacted plan had 44 percent, which is even lower than the last rung of redistricting in CD 1, and yet, the Harpootlian Plan, the competing plan that's after the enacted plan, had 50 percent of average vote for BPC. So, it's better.

And then you can see below that, the plaintiffs' plan, plan one, has 53 percent, and plan two has 51 percent. And, therefore, the enacted plan had the lowest average percent vote for Black preferred candidate.

Q. Based on your empirical analysis here, does CD 1 require a 35-percent BVAP for a Black preferred candidate to potentially win?

A. Could you repeat that question, please?

Q. Based on your analysis here, does CD 1 require a 35-percent BVAP for a Black preferred candidate to potentially win in CD 1?

A. The first block of my Table 4 is the Black VAP. So, here, I listed all these Black VAP according to different plans. It is clear that the Harpootlian Plan has a Black VAP

* * *

[Page 567]

how the redistricting plan that is passed by the state legislature in South Carolina actually reveals whether it's race or party.

Q. Why did you rely on the 2018 gubernatorial election data?

A. As I said earlier, recent elections are important, because a redistricting plan is about how voters will vote in the near future in some jurisdictions under dispute. So, therefore, I need to use recent elections. And 2018 is a recent election. And, furthermore, 2018 elections—in this case, the gubernatorial nomination contest—allowed me to look at how voters decide, whether they decided to vote in the Democratic primary or the Republican primary. Therefore, I can see how the partisan factors play a role.

And in both the Democratic primary and the Republican primary for the 2018 gubernatorial nomination contest, there were viable candidates that were in competition with each other. So, therefore, it's a real choice voters made. And I was able to use that data from the election commission of South Carolina to engage in my empirical analysis.

Q. Could you have also used the 2020 presidential election results data in making this analysis?

A. The 2020 election data would be much less reliable and accurate because, first of all, as we know, 2020 is a presidential election year, which usually has a very high level of voter turnout. We all know that congressional

[Page 568]

elections sometimes take place in a year that is not a presidential election year. So, to use the presidential election year is not a good test.

And secondly, in presidential elections, voters may decide to vote for the candidate rather than the party. Imagine that a Democratic voter in a usual term, meaning traditional Democratic voter, may somehow decide in 2020 to vote for President Trump, a Republican candidate. That happened all the time in all the United States' states. And in this case, if I used the 2020 election in South Carolina, I cannot differentiate race and party effectively.

Q. So, Dr. Liu, I now want to look to your findings here. If you could look at Table 6 on page 16. How do you define core "into" and "out" here?

A. Yes. In Table 6, I used the so-called VTD assignments, whether the assignment being "core," or

“into,” or “out.” So, a total of three categories in terms of how VTD, which is voting tabulation district, according to the U.S. Census.

The “core” means that a VTD is determined by the enacted plan to stay in the same district as it was prior to the enacted plan. So, it becomes the core to keep it the way it was.

The “into” category, or the second row, is about the VTDs that were for the first time moved into this district, according to the enacted plan, from a district that does not

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[Page 570]

the right side, as you can see now, is the exact visual representation of how these proportions, in terms of racial and party breakdowns, reveal in the three VTD assignments.

Q. And what were your findings?

A. My finding is very clear. Let’s look at the right side of the screen, that is, the visual representation. Now, the first VTD assignment, again, is the core. That means the VTDs that stay in CD 1, according to the enacted plan. Now, there are four bars for this core. They are for the breakdown of race and party.

Now, the four bars have different colors and different heights, which allow us to make a vivid comparison. For example, in the core assignment, the tallest bar is the green bar, which is the White Republican, and the second tallest, in terms of the height, is the red, which is the White Democrat. So, in this core—which, again, means the VTDs that stay in CD 1—the White Republicans by far are the most

avored category, and White Democrats are the second favored. And in comparison, the Blacks, whether they are Black Democrats or Black Republicans, they have the lowest or the shortest bars, which suggests, in terms of proportion for the core of CD 1, Blacks are least favored in terms of being decided to stay in CD 1.

So, the core gives us the base to make comparisons. Clearly, Whites are more likely to stay in CD 1, regardless of

[Page 571]

their parties, as opposed to Blacks. When they argue it's because that there are more Whites to draw from in the first place, so, I use the second VTD assignment, which is the into category, and the third category, that is the out, to see how the movements of VTD, according to the enacted plan, display any pattern on race or party.

Now, let's move to the into category. Clearly, the green bar, again, is the highest but much shorter compared to the core, but the blue bar increased dramatically, and it becomes the second highest. What is the blue bar? The blue bar is the Black Democrats. Therefore, the into category shows that, in terms of movements of VTD into the CD 1 of the enacted plan, Blacks—especially Black Democrats—became the target. So, it's opposite to what we find in the core, that is, the redistricting plan, indeed, moved Blacks more as a target for this into assignment. And the out category, the final comparison of the four colors, showed that, among the four breakdowns of race and party, you look at Blacks—again, Blacks, that blue bar, and the red, which is the White Democratic bar, they are the same.

So, in other words, the out assignment and the into assignment showed that Blacks become disproportionately the target of movement compared to the core. And that gives us the first look at how the enacted plan spread out the Black voters among all districts. In this case, for CD 1's

[Page 572]

purposes, either moved out of VTDs into CD 1, or moved out from CD 1 to other, the Black voters are disproportionately the target of the enacted plan.

Q. Thank you, Dr. Liu. Did you conduct a similar analysis for Congressional District 2?

A. Yes, I did.

MR. CUSICK: I'll ask Mr. Najarian to pull up Table 7 in Figure 2, on page 18, and have them side by side. Thank you.

BY MR. CUSICK:

Q. Dr. Liu, what does Table 7 in Figure 2 show the Court?

A. Again, Table 7 is a summary of the statistics, raw numbers and proportions for CD 2 in terms of VTD assignments concerning core, or into, or out. And Figure 2 is simply a visual representation of how these proportions looked differently in these VTD assignments.

Once again, we can take a look at the first VTD assignment, the core. The green color, again, is the tallest, meaning the White Republican was the favored to be kept in CD 2. However, if you look at the into category, the tallest becomes blue, which is obviously Black, Black Democrat in this case. So, in the into category, you have the Blacks as the target of

movement, and then the out is the White, the red category. The red is the White Democratic category.

So, being the same party, the Democratic Party, if you

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[Page 576]

Q. I want to now look at Table 9 on page 20, which also focuses on CD 1. What does this table tell the Court, Dr. Liu?

A. This table went one step further by looking at the breakdown of race and party by using the 2018 gubernatorial primary contest for both the Democratic Party and the Republican Party. Again, I have the four categories in terms of these racial and party breakdowns—White Democrats, Black Democrats, White Republicans and Black Republicans—so that I can compare the same party, but different race, to see how things play out for CD 1.

As you can see, once again, the proportion column, which is the last column, for example, the White Democrats had as high as almost 69 percent of probability of being put in the district from the envelope. But the same party, yet different race, Black Democrats had only 50.65 percent of probability of being put into the district. Therefore, same party, different race, and different rates. Therefore, race is certainly a driving factor.

Q. You conducted similar analyses for CD 2, Dr. Liu?

A. Yes, I did.

Q. And so, let me have you turn to Table 10, which also begins on page 20. And briefly, for the Court, what's the takeaway here?

A. Consistent with the findings I showed earlier concerning

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[Page 591]

that has not only the race, but also the participation in the primaries for the gubernatorial election in 2018.

Q. But you're talking about—

A. So—

Q. I'm sorry. Go ahead.

A. Yeah. So, here, you can make whatever implication you want, that doesn't have anything to do with the location of VTDs. Whether it's a new census rung, change of partially some location or not, it's not what my analysis is about, so it has no bearing on my conclusion.

Q. So, if there was a VTD that was wholly within Congressional District 6, for instance, in 2010, but in 2020 it straddles 6 and 1, do you know if it moved into or out of 6 or 1? You don't, right?

A. If you have this hypothetical question, I would give you a much more clear answer if you show me what exactly you mean by pointing to a map, a particular VTD, that is moved in this new round of census, I'll tell you my reaction. But your hypothetical question is something I cannot answer.

Q. My hypothetical is simply exposing a flaw in your analysis. You didn't even check if there were VTDs that changed from 2010 to 2020 that straddled the districts or changed in any other meaningful way, did you?

A. I thank you for your question—

JUDGE GERGEL: Let me just ask this: Are you asking

[Page 592]

it because there are a meaningful number of districts that that occurred, because that would be relevant, or is it just a hypothetical you're positing to this witness?

MR. MATHIAS: It's a hypothetical. And I'm exposing the fact that he didn't consider it.

JUDGE GERGEL: Well, are you representing to us? The question implies to us that that, in fact, occurred. If it did in a material way, I want to know that. If it didn't, it seems—so, what question?

MR. MATHIAS: Well, it may have occurred. I don't know as I stand here.

JUDGE GERGEL: You don't know yourself. Okay. Please proceed.

MR. MATHIAS: Can you move to page 15, Denise, and zoom in on the next-to-last paragraph, beginning "the plaintiffs allege"?

BY MR. MATHIAS:

Q. The last sentence of that paragraph reads: "With the rapid population growth at 18.19-percent rate in Charleston, in the last decade, the redistricting process in South Carolina had to consider the effects on the Black community, which represents almost 22 percent of the city's population."

Are you aware that roughly 22 percent of Charleston's Black population is in CD 1 under the enacted plan?

A. These numbers are directly the result of my empirical

* * *

[Page 601]

Q. So, this is simply the number of elections exhibiting racially polarized voting divided by the number of elections you examined, correct?

A. Exactly. Yes.

Q. Okay. Let's move to the next page, which is page 14, Table 5. I think Mr. Mathias asked you some questions about the VTDs. So, as I understand the chart, the far right-hand column shows the number of VTDs split into one or more districts, correct?

A. Correct.

Q. Okay. So, what you're showing here for enacted District 1, for example, you say there are 21 VTDs split between District 1 and some other district; is that right?

A. Yes.

Q. And, similarly, for 2, you say the number is 16. And, for example, for 6, you say the number is 25, correct?

A. Yes, correct.

Q. Dr. Liu, are you aware that there are only 13 split VTDs in the enacted plan?

A. Well, once again, these are simply the tallies based on the data that I received. And I tallied those VTDs that are assigned different district numbers, and, therefore, they are split. I was not asked to do the verification on the map whatsoever, so I just faithfully reported these numbers.

By the way, why did I report these numbers in addition to

[Page 602]

the three components that are obviously shown in all the tables rather than Table 5? Well, simply, it's for me to see whether or not there is a significant problem of split VTDs in South Carolina. So, as you can see from all these rows, these numbers in the last column, these are all small numbers compared to the VTDs that are not split. So, my overall conclusion is it's not really a significant factor in South Carolina when I analyze the VTD movements.

So, yeah, you may be correct, there are—I take your word there are less than the number I reported. My numbers are based on the data I saw.

Q. Thank you. And you didn't verify, I think you said, if that data accurately conveyed the number of split VTDs in the enacted plan, correct?

A. Again, there's no reason for me to be skeptical about whatever data I received from the data team.

Q. And that was data you received from the plaintiffs' team, correct?

A. Yes, correct.

Q. And you also didn't verify whether it accurately conveyed where the VTDs are located in South Carolina, correct?

A. I didn't do a locational analysis.

Q. And you didn't verify whether the VTDs were accurately incorporated into the data set you received, correct?

A. Again, there was no reason for me to be skeptical to the

[Page 603]

data team of ACLU, which is a very reputable organization that provides the original data for me.

Q. So, as you sit here today, you can't testify that the data you received was accurate with respect to VTDs; is that correct?

A. Well, that will be a misleading—or at least somewhat a confusing statement, because I did check on the way they collected data, and the way they provided the source of data, and the process from which they merged the data, which is in my appendix. And I did go through those steps and I found no reason to be skeptical.

Q. But you didn't double check the data itself, correct?

A. As I said earlier, it's very common—in the litigations that we do as expert witnesses there are data teams, there are experts. And my job is to analyze data, and there's no reason for me to check each row, each cell. And that's just not common at all.

Q. Let's go ahead and move to page 16. I want to ask you some questions about Table 6. Now, Dr. Liu, are you aware that—well, in the 2016 election, do you know how absentee ballots were allocated to precincts in South Carolina?

A. I do not.

Q. So, you're not aware that in the 2016 election, every absentee ballot cast in the county was allocated to a single absentee ballot precinct? Were you aware of that?

A. No, I was not aware of that.

Q. And are you aware that, in 2020, absentee ballots were all allocated back to the precinct of the voter's residence? Were you aware of that?

[Page 604]

A. No, I was not.

Q. And do you know how absentee ballots were treated in the 2018 gubernatorial primary election set that you analyzed here for Table 6? Let me start that again.

Do you know how absentee ballots were allocated to precincts in the 2018 gubernatorial primary election data set that you used to create Table 6 and conduct the analysis in this section of your report?

A. I was not aware of that exact procedure concerning these absentee votes. However, I wanted to add a very important note about this. All I need to do for this case is to provide empirical evidence as accurate as it can be from an analytical point of view. And so, if the absentee vote is there and there's no way to check or double check the racial component of the absentee, then there's no way for me to put them together as I put in this report regarding Table 6 or other tables. So, I did my best.

Q. And in this table, you used the same data set with respect to VTDs that we were just discussing a moment ago, right?

A. Yes. Correct.

[Page 605]

Q. And do you know how turnout in the 2018 gubernatorial primaries in South Carolina compared to turnout in the 2020 presidential election?

A. I already addressed the turnout issue earlier in my testimony when I said that I didn't use the 2020 election data for this purpose of analyzing race versus party because the 2020 election was a presidential

year election. Actually, it's a historical election all across this country. And, therefore, voter turnout is much higher than other years.

However, this lawsuit is about congressional redistricting, and we all know a congressional election sometimes takes place in presidential elections, other times it takes place in non-presidential election years. So, one should not use the misleading, you know, historical turnout to engage in an otherwise conventional, normal congressional election analysis. So, that's why I choose –

Q. Thank you, Dr. Liu.

JUDGE GERGEL: Let's take a break, if we could. I think right now, we've been going two hours.

MR. GORE: Thank you, Judge.

JUDGE GERGEL: Ten-minute break.

(Recess)

JUDGE GERGEL: Please be seated. Dr. Liu can return to the stand.

Can we retrieve the witness?

[Page 606]

MR. GORE: He's coming right now.

JUDGE GERGEL: Good. Okay. Please proceed, Mr. Gore.

MR. GORE: Thank you, your Honor. Thank you, Dr. Liu.

THE WITNESS: Hello.

BY MR. GORE:

Q. We were discussing Table 6 on page 16 of your report. It should be on the screen in front of you.

A. Yes. I can see that.

Q. And if instead of wanting to test for partisan affiliation through the 2018 primary results, someone tested for actual election outcomes and results in the 2020 general election, this table would look a lot different, right?

A. I don't know. I didn't do, obviously, the analysis of 2020.

Q. For example, instead of White Dem, Black Dem, White Republican, Black Republican, it would say White Biden, Black Biden, White Trump, Black Trump, correct?

A. I suppose so.

Q. And the numbers here would be different, wouldn't they?

A. I suppose so.

Q. And do you know whether the map drawer used the 2020 presidential election to draw the maps in this case?

A. I'm not expert at evaluating the detail process.

[Page 607]

Q. Dr. Liu, when you were looking at the core, into, and out VTDs, did you control for the distance between the VTD and the benchmark line in the benchmark plan?

A. No, I did not.

Q. And did you control for core preservation?

A. No, I did not.

Q. How about compactness?

A. I did not.

Q. Or contiguity?

A. I did not.

Q. Protecting incumbents?

A. I did not.

Q. Or avoiding VTD splits?

A. I did not.

Q. How about where African-American voters live locationally?

A. I did not.

Q. Let's move on to the next part of your report. I'd like to go to page 19, to your verification study. And we have this Table 8 here on page 19; is that right? Do you see that?

A. Yes, I can see that.

Q. And throughout this section, there are tables on the following pages as well. Did you control for the preservation of cores in this analysis?

A. No, I did not.

[Page 608]

Q. Did you control for compactness?

A. No, I did not.

Q. Did you control for core preservation?

A. No, I did not.

Q. How about avoiding VTD splits?

A. No, I did not.

Q. Or pairing incumbents?

A. No, I did not.

Q. Or where Black voters live in the district, locationally?

A. No, I did not.

Q. All right. Does the envelope approach here—it also doesn't control for contiguity, does it?

A. No, it didn't.

Q. So, if we can go to S-76, Senate Exhibit 76, which is in evidence, on page nine of the report, which is page 10 of the PDF here, there's a map that should now be on your screen. And it shows Colleton County precincts with benchmark assignments. Do you see that map?

A. Yes, I can see a map in front of me.

Q. And toward the bottom of that map, there were two VTDs, or precincts, in Colleton County that were assigned to the 1st District in the benchmark plan. Those are Green Pond and Edisto Beach. Do you see that?

A. Yeah, I can see those.

Q. And then at other end of the county, there is a VTD

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[Page 614]

I get it, Mr. Gore.

MR. GORE: Thank you. I have no further questions, your Honor.

THE COURT: Thank you.

Anything on redirect?

MR. CUSICK: Your Honor, just a few questions?

JUDGE GERGEL: Yes. Go right ahead, sir.

REDIRECT EXAMINATION

BY MR. CUSICK:

Q. Dr. Liu, Mr. Gore asked you a couple questions about Table 5 and the VTD data set that you relied upon in your initial report. Do you recall that testimony?

A. Is it Table 5?

Q. Yes.

JUDGE GERGEL: If you're going to ask him, can we put up Table 5 so we can look at it?

THE WITNESS: Yes, I can see that.

BY MR. CUSICK:

Q. Are you aware of any expert who filed a report to dispute the data that you relied upon?

A. No.

Q. Do you recall similar questions about Table 6 that Mr. Gore asked you about the VT data set, which is on page 16?

A. Yes, I can see that. Yes, he did raise questions.

Q. Are you aware of any expert who filed a report to dispute

[Page 615]

the data that you relied upon in this table?

A. I was not aware of that.

Q. Are you aware of any rebuttal expert in this case who could have tested for such a data set?

A. I was not aware of any such a thing.

Q. Mr. Gore asked you a number of questions about whether you controlled for some traditional redistricting principles. Do you recall that testimony?

A. Yes, I do recall.

Q. And would any of those traditional redistricting principles have changed your conclusions in the three questions that you were asked to assess?

A. Given they are all important in the redistricting plan, they, however, are not the focus on my analysis. So, how those principles are followed or violated would not make any difference for me to answer the three questions raised at the beginning of my report.

Q. And you're not aware of any expert reports that challenge your conclusions in your racially polarized voting or effectiveness analyses?

A. I was not aware of any such challenge.

Q. Just a few final questions, Dr. Liu. Do you recall Mr. Mathias's questions about whether your report looked at collegiate alliance and whether you reviewed that?

A. Yes, he did raise that question.

[Page 616]

Q. You didn't look at collegiate alliance, right?

A. No.

Q. You looked at party and race?

A. Yes.

Q. And between those two, which appears to have driven the formulation of the enacted map?

A. There's overwhelming empirical evidence that race is the driving force.

Q. That's it.

MR. CUSICK: Thank you, your Honors.

JUDGE GERGEL: Thank you. You may step down, Doctor.

THE WITNESS: Thank you.

JUDGE GERGEL: Call your next witness.

MR. CUSICK: Your Honors, we call Representative John King to the stand.

JUDGE GERGEL: Very good.

JOHN KING, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TRIVEDI:

Q. Good morning, Representative King. How are you?

A. I'm doing well. And yourself?

Q. Good. Representative King, your name came up earlier at trial, so I want to briefly address those issues with you today. But, first, let's do some quick background.

* * *

[Page 690]

A. Absolutely. A congressional district is large, and there will inevitably be variation in it.

Q. Great. Thank you.

MR. CHANEY: Mr. Najarian, if we could zoom in on Charleston on each map? Thank you.

BY MR. CHANEY:

Q. Ms. Teague, are you familiar with the Charleston area?

A. I have been familiar with the Charleston area all my life, which is, at this point, a fairly long time.

Q. And how are you familiar with the Charleston area?

A. Well, I have relatives here. I've always had relatives here and family that we would visit. We vacation down here. And when I was a child, you know, as a long-time South Carolinian, I, like many people, have horror memories of the old Grace Bridge, but also many good memories throughout my life of the Charleston area.

Q. Could you succinctly describe for us the differences between the League map and the enacted map in the Charleston area?

A. Yeah. The Charleston area is one in which we were very concerned about the enacted map. We see the greater Charleston area as a very important community of interest. And that includes not just the peninsula and not just the peninsula in West Ashley, but it has always included, for centuries, James Island, what is now Mt. Pleasant, Daniel

[Page 691]

Island and so forth. And that is an area that has been united for centuries by an economic base that's heavily focused on the port.

Q. You said "for centuries." That's a bold claim. But can you tell us a little bit more about what makes you say that?

A. Yes. I could bore this Court at great lengths. But early on, there were shipwrights working out of James Island, out of West Ashley. There was a shipyard founded around 715 that was very close to where the

Wando terminal is now. At the same time, there were wharves on the peninsula that were maintained by individual merchants. And it was all very much an integrated community.

Q. Based on your knowledge of Charleston, do the district lines in the enacted map appear to be respectful of the community of interest you're describing?

A. The district maps and the enacted map do not respect that community of interest at all.

Q. How so?

A. Well, it takes the peninsula and part of West Ashley out of association with James Island, the Mt. Pleasant area and so forth, areas that have been part of the same community for a very long time and still are.

Q. When you were describing Charleston earlier, you mentioned the Port of Charleston. Can you explain why you mentioned that and whether the port is itself important to

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[Page 757]

were drawn, especially connecting Charleston County and Richland County.

Q. And on the House floor, did you ask about Beaufort County?

A. I did ask about Beaufort County on the House floor. And I believe that my question related to whether or not the concerns of the folks in Charleston County were also taken into—or given the same level of consideration as the residents in Beaufort County. And my recollection of that conversation with the chair

of the committee was that, you know, you can't make everybody happy.

Q. What did you think of that response?

A. Well, I certainly thought that the folks in Beaufort County, that their concerns were given more weight than the folks down in Charleston County in North Charleston, who did express concerns about being drawn into a Richland-County-based district that spans over a hundred miles.

Q. You mentioned listening to public hearings. Were they both the House and Senate hearings?

A. I did, yes. I listened to the public hearings where the ad hoc committee went all over the state. I listened to a majority of those in the House, and I listened to a couple of the Senate debates on the matter.

Q. And can you say more about what was your impression of

[Page 758]

the concerns around Charleston?

A. Yes. A lot of the concerns that I heard around Charleston were that Charleston was being split. It was being split from, I guess, the more Coastal areas, where we are today, and the North Charleston area. There were folks who really were baffled through their testimony as to why they were being placed, again, over a hundred miles away in Richland County, with a Richland-based district, in comparison to being connected to the—I guess it would be the 1st Congressional District. There were several concerns. And that's what I heard over and over again.

So, when I took to the floor of the House, I really wanted to be those folks' voice to get a better understanding, and to really articulate their concerns,

and to hopefully get a better understanding of the process and how we came to get the map that we had.

Q. And do you recall what the public concern was around Richland, if any?

A. The public concern around Richland was neighbors being split, obviously, and Richland not being whole. I think that remains a concern for me and many others.

Q. Do you recall any member of the public expressing a preference to split Charleston County?

A. Do I recall a member of the public expressing a desire to split Charleston County? I did not. I never heard that.

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[Page 773]

Anything on redirect?

MR. CHEUNG: No redirect. Thank you, your Honor.

JUDGE GERGEL: Very good. You may step down. Call your next witness.

MR. TRIVEDI: Are we ready, your Honor?

JUDGE GERGEL: We are.

MR. TRIVEDI: All right. The plaintiffs call Senator Margie Bright Matthews.

MARGIE BRIGHT MATTHEWS, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TRIVEDI:

Q. Good afternoon, Senator. How are you?

A. I'm great. How are you?

Q. Good. Could you tell us where you were born?

A. I was born in Walterboro, South Carolina.

Q. And is that where you grew up?

A. Born and raised.

Q. Where do you live now?

A. I live in Beaufort, South Carolina and also in Walterboro.

Q. And how long have you lived in South Carolina?

A. All of my life.

Q. And where have you gone to school?

A. I went to the University of South Carolina after leaving

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JUDGE GERGEL: I hope whoever is doing the direct of Mr. Harpootlian is prepared to ride the Bronco.

MR. FREEDMAN: Plaintiffs call Richard Harpootlian.

JUDGE GERGEL: Very good. Swear the witness.

RICHARD A. HARPOOTLIAN, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FREEDMAN:

Q. Could you state your full name for the record, sir, please?

A. Richard Harpootlian.

Q. You may want to lower the mic a little bit.

A. Richard Harpootlian.

Q. Thank you. And, sir, where do you live?

A. Columbia, South Carolina.

Q. Could you briefly describe your higher educational background?

A. Higher education? Clemson University, 1971. University

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[Page 878]

have concerns about whether this map complied with the guidelines or traditional redistricting principles?

A. I didn't think it did.

Q. In what ways?

A. Well, I thought it wasn't compact. I thought it wasn't—the idea of contiguity, it cut—I think at least 10 counties were split. Municipalities were split.

Precincts were split. You know, whatever communities of interest means, whatever definition you want to give it, it certainly was not done consistently to keep communities of interest together, unless pigmentation defines community of interest.

And, again, when you look at this Frankenstein creation of the 6th, it clearly raises the primary criteria.

Q. I want to just walk through a few things you mentioned. In terms of the county splits and the precinct splits, do you remember if they were focused on any particular area of the state?

A. The 6th District—well, I mean, primarily the 6th and the 1st; the 6th and 5th; the 6th and the 2nd; the 6th and the 7th.

Q. The 6th.

A. The 6th, yes.

Q. And you also mentioned a concern about contiguity. What was that concern?

A. Well, I mean, look at what they did in the city of

[Page 879]

Charleston.

MR. FREEDMAN: Can we blow that up?

THE WITNESS: I mean, they—and, by the way, it gets worse in the next plan. But in this one, it's clearly drawn up without the idea of contiguity or compactness. Why do you do this? For what reason do you create this Frankensteinian creation? What possible reason other than race? And the same thing at the top of the district. And, I mean, we can go around this district. I know that on the final plan they

split 10 counties. Of those, eight bordered the 6th District. Ten counties statewide, eight bordered the 6th District.

Q. You also mentioned receiving community feedback from people from Charleston. Can you just describe what you're referring to?

A. Well, they've all—virtually, everybody we heard from said, look, Charleston, Black and White, is a unit. You know, we elect county-wide officials. We have school districts within the county. We are a community of interest, this county. Please keep us together wherever you put us—6th, 1st, wherever. But it should be in one district.

Q. I think you testified earlier about the hearing process, the public hearing process?

A. Right.

Q. Did you hear that type of feedback about Charleston

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[Page 969]

objection at this point. This is starting to sound like expert testimony, and Mr. Oppermann is not an expert.

JUDGE GERGEL: No. He's describing the foundation of why he did this map. I overrule the objection. Please proceed.

THE WITNESS: Thank you, your Honor. The shape of District 6 is strange in its contours as it borders—the districts that it borders are strange. The county splits along the boundaries of District 6, that seems to be where the county splits are concentrated in this plan. They're not really visible on the

boundaries of any other districts. And the shape of 6 is like a—a dragonhead in Columbia, and then almost like a second dragonhead in Charleston with wings extending from the center of the shape, for starters.

Q. Good. And do you have any concerns with respect to contiguity?

A. Yes. In this plan, District 1, the northern and eastern portion of the district is not connected via a roadway to the southern and western portion of the district. And to specify, if you were wanting to go from one portion of District 1 to another portion of District 1, you would either have to go from the Dorchester portion, across a large part of Charleston County, in the southwestern part of Charleston County, or you would have to go across the peninsula.

[Page 970]

Now, before, you could go from one part of District 1 to another by crossing the Cooper River bridge, going through downtown Charleston and crossing the Ashley River bridge or one of the other bridges there and then going into 1. But you can't do that here. You would have to go through District 6 to get to another part of District 1.

Q. And earlier you mentioned the number of splits, county splits, municipal splits.

A. Yes.

Q. Why is that significant?

A. Yes. It's significant because you would prefer not to split counties, if possible. That's what the Senate guidelines call for. And in this plan, one, there are more splits than are necessary to comply with the law and comply with one person, one vote; and, two, almost

all of those splits occur along the boundaries of District 6 and the districts that it borders, which include 1, 2, 5 and 7.

Q. And what communities lie along that border?

A. Well, generally speaking, that part of the state, the communities are disproportionately African American relative to the rest of the state.

Q. And now, you mentioned that you reviewed Senate Amendment 1; is that correct?

A. That's correct.

MR. HINDLEY: Mr. Najarian, can you please pull up

[Page 971]

Senate Exhibit 29B?

BY MR. HINDLEY:

Q. Do you recognize this map?

A. Yes, sir.

Q. And what is this map?

A. This is Senate Amendment 1. And I recall that this was the plan that passed out of subcommittee and passed on the floor. But this is the plan that ultimately became the plan that was enacted.

Q. And about when did you first review this map?

A. I believe it would have been the first week of January of 2022.

Q. Now, the record reflects there's hearing on January 13th. Relative to that day, when did you review this map?

A. At least a work week beforehand, possibly before. I don't remember precisely.

Q. And did you have any concerns with the Campsen Plan?

A. Yes. The problems with this plan are almost exactly the same as the problems with the staff plan so far as the number of county and municipal splits and where they're concentrated. The contiguity issue is exacerbated in that, whereas in the staff plan, in theory, if you go in the Charleston peninsula, you could go back into 1 while on the peninsula, then out of 1 again and into 6 again—

THE COURT REPORTER: Sir, I need you to slow down.

[Page 972]

THE WITNESS: Thank you, ma'am.

JUDGE GERGEL: Can you move your microphone a little closer to you, Mr. Oppermann.

THE WITNESS: Yes, sir. Thank you, your Honor.

The contiguity issue is exacerbated in that one cannot get into District 1 within the Charleston peninsula. In this plan, District 1 is completely severed by land. There is no road route to get from one portion of the district to the other. And those are some of the concerns. The shaping is a little different, the sort of snout of the dragonhead that I described before it's a little rounder here, but it's the same strange shape.

BY MR. HINDLEY:

Q. So, this is a touchscreen. Do you mind explaining what you mean by round snout?

A. Yes. You see where I made the little red line? There in the Charleston peninsula, District 6 extends all the way to The Battery in this plan, whereas there's

a little bit of District 1 really about here, Broad Street and South. And that's changed, but it is very similar to the staff plan.

Q. And what were your concerns with the number of splits in the Senate Amendment 1?

A. Well, if memory serves, there are 10 county splits. What's concerning about that is that eight of the 10 county splits occur along the boundary of District 6. Only two of

[Page 973]

them are not along the boundary of District 6. And that suggested to me a certain kind of intent.

Q. Why is that?

A. Well, District 6 has for the last few decades been the congressional district with the largest percentage of African-American voters and residents. So, to depart from a guideline requirement along the boundaries of that district, it's curious and concerning.

Q. And when you say "guideline requirement," what are you referring to?

A. The Senate guidelines have a number of expressed preferences. But certainly minimizing the division of county splits, precinct splits, and municipal splits are listed. Here, eight of the 10 county splits occur along the boundaries of District 6. Ten of the 13 precinct splits, if memory serves, occur on the boundaries of District 6. And eight of the 10 municipal splits, where the split doesn't occur solely as a function of a county line, eight of the 10 of those kinds of splits also occur along the boundaries of District 6.

Q. So, with all that you described, how does that compare between the staff plan and Senate Amendment 1?

A. There are fewer county splits in Senate Amendment 1 than in the staff plan. But what they have in common is that the great majority of the municipal precinct and county splits occur along the boundaries of District 6.

[Page 974]

Q. So, your understanding of municipal splits, can you elaborate on that?

A. Sure. One can—the guidelines express a preference for not splitting a municipality. However, in South Carolina, a lot of municipalities straddle a county boundary. And if you are in any way giving preference to what you're going to prioritize as far as avoiding splits, it makes sense in a South Carolina context to avoid a county split if you have to choose between that and a municipal split. The reason for that is, in South Carolina, elections are administered by county-based agencies. So, the burden on the state and on taxpayers on voters related to county splits would be greater than with respect to municipal splits, simply because you're talking about split ballots in a precinct and that sort of thing. So, when I looked at this, I focused on municipal splitting where the split occurs for a reason other than solely based on a county boundary split. And I'll give a very specific example of that.

For instance, in Senate Amendment 1—I'll just make a mark here, at Batesburg-Leesville—a little bit of Batesburg-Leesville is in Saluda County. Most of it is in Lexington County. But when I looked at

municipal splits, that didn't raise a flag to the extent that splitting a municipality that was entirely within a county or didn't have to be split but for the county line, there's a difference

[Page 975]

there, in my view. So, I focused on that.

Q. And in Senate Amendment 1, were there certain municipal splits that did raise a red flag for you?

A. Yes.

Q. What are they?

A. Well, there are eight—let me slow down. There are 10 that I identified that occur for reasons that aren't solely based on a county line in Senate Amendment 1. And those are Simpsonville, Fountain Inn, Columbia, Forest Acres, Sumter, Scranton in Florence County, Charleston, North Charleston, and Hollywood, around Charleston County and some other areas as well, Hardeeville and—there may be one other that I'm missing.

Q. Thank you. So, earlier you mentioned that—

A. I would also add that eight of those 10 occur along the boundaries of the 6th. The only two that don't are Simpsonville and Fountain Inn—

Q. Can you repeat that?

A. Sure.

Q. You want to get closer to the microphone.

A. Sure. Of those splits that I referred to, eight of the 10 occur along the boundaries of Congressional District 6 in Senate Amendment 1. The two that don't are Simpsonville and found Fountain Inn, along the

boundaries of 3 and 4, and they indicate almost no population.

[Page 976]

Q. And for those that did indicate population, why is that significant?

A. One, they're along the boundaries of District 6, and, two, disproportionately, the municipalities that are split are municipalities that contain a significant amount of African-American population.

Q. And earlier you mentioned issues of contiguity in this map. Based on your understanding of the guidelines, is that kind of contiguity permitted?

A. With respect to municipal splits?

Q. No. Contiguity.

A. Generally speaking, well, the major contiguity issue with Senate Amendment 1 is that District 1 is in two pieces, and the only contiguity that it has is the water in Charleston Harbor. So, say from Fort Moultrie to Fort Johnson. Now, the Senate guidelines do permit contiguity by water, provided that—I think the words of the guidelines are something like: There's a reasonable opportunity to reach all parts of the district, and the water contiguity serves some other purpose under the guidelines.

In this map, the water contiguity in Charleston Harbor does not appear to serve any other purpose listed under the guidelines.

Q. Now I want to talk about the maps that you drew. So, Mr. Oppermann, how many congressional maps did you create?

* * *

Q. And where are they located?

A. Greenville, Laurens, York, Richland, Georgetown, and Berkeley.

Q. And would you say those are distributed?

A. They are evenly distributed throughout the state.

Q. And how is that compared to Senate Amendment 1?

A. In Senate Amendment 1 there are 10 county splits, and eight of them occur along the boundaries of the districts.

Q. And why is that significant?

A. Well, it's a departure from what the guidelines call for. And to see those departures clustered in one area of the state, or with reference to one district, suggests some sort of intent. Since this portion of the state has a higher African-American population relative to rest of the state, I thought it was concerning that county, precinct and municipal splits were almost entirely clustered along the boundaries of District 6.

Q. And how many municipal splits are there in 2A?

A. If you use the measure that I use, which is splits that occur for a reason other than solely due to a county line or a county boundary, then six, five of which indicate population. If you look at the total number of municipality splits, I'm sure it's higher, because, as I said, there are a number of municipalities that straddle county lines.

Q. And the splits that you describe, where do those take

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[Page 988]

split. Almost all of the population of the city of Greenville takes place or is allocated to District 3.

Q. And how about York County?

A. Rock Hill is split in York County in 2A. And if memory serves, about I would say approximately 15 percent of the city municipal population of Rock Hill is allocated to 4 and about 85 percent is allocated to 5.

Q. And how many municipal splits are there in the Campsen Plan?

A. Municipal splits of that nature, I identified 10. I think I only mentioned nine in my written testimony. But there's another one as well.

Q. And where are they located?

A. Eight of those 10—and when I answer your question, I want to be clear I'm talking about municipalities where the split occurs, and they're not solely a function of a county split. But for those kinds of splits, there are 10 in Amendment 1. They occur in Simpsonville and Fountain Inn—although those are very minimal on population impact—and the other eight occur along the boundaries of District 6. They include Columbia, Forest Acres, Sumter, Scranton, Charleston, North Charleston, Hollywood, and Hardeeville.

Q. And why are those splits significant?

A. Those municipalities implicate African-American communities to a greater extent than in other parts of the

[Page 989]

state. Since almost all of the municipal splits occur in municipalities with substantial Black population, and almost all of them occur along the boundaries of District 6, I thought that was of concern.

Q. And when you look at the Campsen Plan, is Greenville also split?

A. I can't tell if the city—just from looking at it here, I can't tell if the city of Greenville is split. Greenville County is certainly split. And two municipalities, Simpsonville and Fountain Inn, are split in Greenville County in the Campsen Plan.

Q. How many precinct splits were in Senate Amendment 2A?

A. Ten.

Q. And where are they located?

A. They are located—well, generally speaking, they're evenly distributed throughout the state. They occur in Greenville County, Lawrence County, York County—really any counties where there was a county split. It's very difficult not to have at least one split precinct if your goal is to achieve a deviation of no more than one.

But there's one in Georgetown. There's one in Berkeley. There's two in Richland. There's two in York. I think there's three in Lawrence. I don't remember precisely what all of them with are, but that is, I believe, in my written testimony that I provided to the Senate Judiciary Committee.

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[Page 1028]

MR. TYSON: No, sir. Though we continue to raise the same objections we raised moments ago for the record.

JUDGE GERGEL: And your last one was quantitative methods and what?

MR. FREEDMAN: Quantitative methods and data.

JUDGE GERGEL: Data. Oh, very good.

MR. MATHIAS: Your Honor—

JUDGE GERGEL: Yes.

MR. MATHIAS: —on behalf of the House, being an expert of data is quite broad.

JUDGE GERGEL: Mr. Mathias, let me just say he may be an expert on what that data means.

Do you want to explain what that means being an expert on qualitative methods and data?

MR. FREEDMAN: Certainly. And I'm happy to ask Dr. Ragusa foundational questions, but Dr. Ragusa has a particular expertise in use of data in political science to quantitative data and assessment of quantitative data.

JUDGE GERGEL: The application of quantitative data and quantitative methods, I think that would be fine. As long as he's not an expert on the encyclopedia or something, which would be all the data in the world or the Internet.

I'm going to overrule the objections. We've previously addressed this issue in the *Daubert* order. The Court recognizes Dr. Ragusa as an expert on congressional

elections, South Carolina politics, and quantitative methods, and the application of data to those methods. Okay.

MR. FREEDMAN: Thank you, your Honor.

BY MR. FREEDMAN:

Q. Dr. Ragusa, could you tell us what your understanding of what this lawsuit is about?

A. My understanding is that the plaintiffs allege that the redrawn map was unfairly comprised to target Black voters.

Q. Okay. And what questions have you been asked to address?

A. I was asked to ascertain whether race was a factor in the composition of the redrawn districts. Specifically, I was asked to attempt to disentangle the effects of both partisanship and race.

Q. And how did you go about answering that question?

A. I collected data on how the district lines were shifted by mapmakers in this round of redistricting and I also collected data on the demographics of the precincts and their partisanship to see whether or not those factors explain the changes that mapmakers made.

Q. Why did you approach the question in this way?

A. For a few reasons. One is that I wanted to look at the choices that mapmakers made in a sober or neutral manner using data. A lot has been said about the redrawn districts, their pros and cons of what a good map should look like, what a bad map would look like. And I wanted to take a step back and

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[Page 1031]

MR. FREEDMAN: Before we get into the details, could we pull up slide one?

THE WITNESS: So, my findings are as follows: First, race was a significant factor in the composition of the redrawn map. In my analysis, the BVAP variable is statistically significant in 12 of the 18 models that I estimated. Because this analysis controls for partisanship, the results cannot be dismissed as a simple byproduct of partisan gerrymandering.

Also, the BVAP variable in my analysis is substantively large in magnitude in a number of instances. And this indicates that race was not only statistically significant, but also substantively meaningful in a number of cases.

And my ultimate conclusion is that race factored in the design of five of the seven districts. Those are CDs 1, 2, 3, 5 and 6.

BY MR. FREEDMAN:

Q. Thank you, Dr. Ragusa. I want to walk through your methodology in some detail just so the panel understands what you did and what you did not do. What's the basis of your analysis?

A. So, the basis of my analysis are the 2,400 VTDs in the state of South Carolina. And what I did is looked at how they were moved around by mapmakers in the redrawn map. And, as I

[Page 1032]

mentioned earlier, I compared that to both the race and the partisanship of those VTDs.

Q. And just so the record is nice and clear, what is a VTD?

A. A VTD is a voter tabulation district. It's otherwise known as a precinct.

Q. Why would you look at voter tabulation districts in this context?

A. For a few reasons. One is that they are the most granular geography where we can obtain both partisan and race data. Those are the two key factors in my analysis. And those are the two key factors that I was charged with examining. But also VTDs receive special consideration from mapmakers. They are listed in the State's guidelines as political subdivisions that are to be respected. And generally VTDs are not to be split.

Q. And how did you obtain the data that you used for VTDs in your analysis?

A. From a mix of sources. On the one hand, the state publishes data on census blocks and which census blocks—which districts those census blocks were drawn into under the redrawn map. And then the United States census has data on how those census blocks fit into the prior map. So, it's a matter of merging those two sources and then comparing them.

Q. And at a very basic level, can you explain how you determined whether race was a factor and how VTDs were moved?

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[Page 1038]

county?

A. It does. In the rare circumstance that mapmakers went into a brand-new county to grab VTDs, I include those cases in my analysis.

MR. FREEDMAN: Stephen, can we go back to slide two?

BY MR. FREEDMAN:

Q. Dr. Ragusa, can you please tell us about model two?

A. So, model two then looks at the opposite phenomenon.

These are the VTDs that were drawn out of the district during redistricting. So, here, the population of interest is all of the precincts that already existed within the district.

Q. And to clarify, do you use the county envelope concept at all in model two?

A. No. Again, this just looks at all of the precincts that were already in the district.

Q. And what is model three?

A. Model three then combines both of those approaches. It looks at the precincts that were moved into the district from the county envelope and kept in the existing district. And so in theory this model looks at the full range of choices that were available to mapmakers.

Q. And when you run these analyses—models one, two and three—what are you looking for in the results?

A. I'm looking for two things. One is the sign on the coefficient on the BVAP variable. The sign of the coefficient

[Page 1039]

tells us whether there's a positive effect or a negative effect. In other words: Was the Black population a predictor of whether a precinct was more or less likely to be selected? And then, second, I'm looking to see whether or not the results are statistically significant.

Q. Okay. And when you look to see whether results are statistically significant, what does that mean?

A. When a result is statistically significant, we mean that there is a clear and consistent pattern in the data, that the pattern is not due to idiosyncratic choices or random variation, that we can be fairly certain that the pattern is what we would call meaningful.

Q. What is the threshold for statistical significance?

A. Most social scientists use the 95-percent confidence threshold, that is, we can be 95 percent certain that the results arose due to something systematic, not random chance, and thus rejecting all hypothesis of no relationship.

Q. Are there other measures of statistical significance?

A. Sure. Some researchers use different P values. Researchers might use a P value of .01. Others might use a P value of .1. But the conventional threshold of the social sciences is a P value of .05.

Q. And what is the value of a statistical analysis like this in a redistricting case?

A. It creates a fairly high hurdle for any evidence to

[Page 1040]

overcome. We assume, as social scientists, that the null hypothesis of no relationship is true. It's akin to

a presumption of innocence. And so, what we want to see is that there is a clear and consistent pattern before we say that we have found something that's meaningful.

Q. Okay. Let's turn to your results. Why don't we start with CD 1.

MR. FREEDMAN: Stephen, can you pull up PX-20, which is—and we'll start with the table at the top.

BY MR. FREEDMAN:

Q. This is, Dr. Ragusa, page eight of your report, PX-19.

So, Dr. Ragusa, you've got a series of these analyses in your report. We're going to walk through in some detail just so everybody understands what it is, and we'll cover the rest more quickly?

Can you tell us what Table 1 shows?

A. So, Table 1 contains the results for the 1st Congressional District. In the left column we have the three variables in my analysis, the Biden vote, a measure of partisanship, the BVAP—or the Black voting age population—and the total VAP, which is a measure of the total population in the precinct.

At the bottom, we have the N, or the sample size. Those are the number of precincts that are being examined in each of the three models. In the middle are the statistical results

[Page 1041]

for the three different models. Those tell us whether Black voters were more or less likely to be added to the redrawn district and then, again, whether that result is statistically significant or not.

Q. And just so we're clear, let's walk through the three variables and what they each represent.

A. Sure. So, the Biden vote is a measure of the total number of people in the precinct that voted for Joe Biden in the 2020 election. That is my measure of partisanship. BVAP is the Black voting age population. That is a raw count of the number of Black persons of voting age in the precinct. And then total VAP is the total population size of the precinct.

Q. Okay. And then the N at the bottom, what does that represent?

A. That is the sample size. So, in model one in this instance, the 133 is the total number of precincts that were outside CD 1 in the county envelope. 369 in model two is the total number of precincts in CD 1 prior to redistricting. And then 502 is just those two figures added together.

Q. How robust are these sample sizes?

A. Very robust. These are large sample sizes, certainly large enough to permit a statistical analysis.

Q. And then the columns as you go across, you've got your three models, right?

[Page 1042]

A. Correct.

Q. Now, underneath or next to some of these numbers, you've got different numbers with an asterisk. Can you just explain what the asterisks represent?

A. Yeah. The way that social scientists typically denote statistical significance is with stars. In this case three stars indicates a statistically significant result at the .01 level, that's 99 percent confidence. Two stars indicates a P value of .05. That's 95 percent

confidence. And then one star would indicate what we often call a marginally significant result. That is something that is significant at the 90-percent confidence level.

Q. Okay. And why did you include results at the 90-percent confidence level?

A. For a few reasons. P values represent a continuum. In some ways there's little difference between a P value of .051 and .049. And so, a result that is significant at the .1 level is still marginally significant. It is close to statistical significance. And so, often researchers want to note that as something that's interesting even though it doesn't cross the .05 threshold. Also, this is the default in the statistical routine that I used.

Q. Okay. Now, I want to have you walk us across each of the models and what we found. Why don't we start with model one.

A. Okay. So in model one, when we look at the BVAP
[Page 1043]

variable, it is negative, which, in this case, would indicate that precincts with a large Black voting age population were less likely to be moved into the redrawn 1st congressional district. However, here, the result is not statistically significant at any threshold.

Q. And for model two?

A. Looking at model two, the BVAP variable is positive and statistically significant. Because it's positive, that indicates the precincts with a large Black voting age population were more likely to be moved out of the redrawn congressional district, and that's significant at the .01 level.

Q. Okay. And then model three?

A. Model three is negative and statistically significant.

The negative value indicates the precincts with a large Black voting age population were less likely to be moved into the district and kept in the district. And that, too, is significant at the .01 level.

Q. Looking at Figure 1, what does this show?

A. So, these figures are a way of assessing the substantive significance of the results. What they do is they plot the prior effects of varying the black voting age population of a precinct from 100 all the way up to 1,500. On the Y axis is the probability that that VTD was selected. And so, in these figures we're looking at the slope of the line. If there's a

[Page 1044]

steep slope, it's either positive or negative. And that would indicate that as the Black voting age population changes, so too does the probability that was selected for the redrawn district. And then we have the three models. The top panel of the VTDs moved in, the middle panel is the VTDs moved out, and the bottom panel is the VTDs moved in and kept it.

Q. And just so we're clear, the X axis, 100 to 1,500, that's the number of Black persons of voting age in the precinct?

A. That's correct.

Q. Okay. And can you just explain what you're looking for here with the slope?

A. Yeah. We can look at the numbers. I mean, the numbers itself tell us the probability that a precinct of varying size with respect to Black voting age

population was selected. But, ultimately we're looking for a slope. As I said, if there's a steep slope, it indicates a substantively significant effect of race. Conversely, if it was flat, that would indicate no effect of race.

Q. Why don't we just walk through the panels one by one. For your top panel, what does that represent?

A. So, that's the result from model one. Looking at the VTDs that were moved into the 1st Congressional District, we can see that the line is negative, indicating that as the Black voting age population of a precinct increases, the probability that it was selected for the redrawn CD 1 goes

[Page 1045]

down. But we can see that the magnitude of the slope is not particularly large in magnitude, recall earlier that that result was not statistically significant.

Q. Okay. And what about the middle panel?

A. The middle panel looks at the VTDs that were moved out of the redrawn 1st Congressional District. In this case, it's positive and fairly steeply sloped. What that indicates is that, as the black voting age population of a precinct increases, the probability that that precinct was drawn out of the district also increases.

Q. And can you explain the bottom panel?

A. So, in the bottom panel we're looking at the VTDs moved in and kept in. That's model three. We see a negatively sloped line that is very steep. In this case the results indicate that as the Black voting population of a precinct increases, the probability that

it was moved into and kept in the redrawn 1st Congressional District declines.

Q. Great. And can you just summarize your findings for CD 1?

A. So, overall, the result shows that Black voters were excluded from the redrawn 1st Congressional District in both a statistically significant and substantively significant fashion.

Q. Okay. Let's turn to District 2.

MR. FREEDMAN: Stephen, can you pull up PX-21

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[Page 1051]

that was drawn out of CD 1 in both Charleston and Dorchester County, and then compares that to the portions of the counties as a whole. He shows that those two statistics are roughly the same, and therefore, concludes that the redrawn map has no effect on the 1st District's racial composition.

But my assessment of that is that it uses the wrong denominator as even a misleading statistic on the grounds that large portions of those two counties were in CD 6. Prior to redistricting, in my view, a better comparison would be to look at the portions of the counties that were actually within CD 1. And when I recalculate Mr. Trende's estimates to include just the portions that were within the 1st Congressional District, we see a of 6.6 percent gap between the Black voting age population that was drawn out of CD 1 and the portion that was in the district prior to redistricting.

Q. Just to drill down a little bit, just explain what did you mean by he used the incorrect denominator?

A. Yeah. So, he's not making a straightforward, apples-to-apples comparison. And when the question is, what happened to the Black voting age population, how were they treated by the redrawn map, how were they moved between CD 1 and CD 6, his statistics give a misleading picture of what actually happened.

Q. He's looking at the populations of Charleston and Dorchester Counties without regard to where the line was

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[Page 1053]

50 percent in CD 1 and 50 percent in CD 6?

A. Correct. In Charleston County the Black voting age population was evenly balanced between CDs 1 and 6, and that's no longer that case.

Q. What are the percentages now?

A. The percentages now are 79 percent and 21 percent in CD 6 and 1 respectively.

Q. So, your rebuttal report also talks about whether the precinct's being moved on the basis of race as opposed to partisanship. How do you know that this doesn't just reflect a political gerrymander?

A. So, my original report made a number of these claims. Specifically, I have an analysis that looks at the precincts that were moved out of the redrawn districts. And in the case of CD 1, I controlled third partisanship.

Q. Let's pull up PX-29, which is the table on page seven of your report. Dr. Ragusa, what is Table 3 from your rebuttal report. Can you just explain this?

A. Sure. This is model two, the VTDs that were moved out of the 1st Congressional District. It's simply a reproduction of what I found in my original report. Here, what we see is that even when we control for the Biden vote in 2020, precincts that had a large Black voting age population were more likely to be moved out of the redrawn 1st Congressional District.

Q. Did you do any other analysis that looked at race and

[Page 1054]

partisanship relative to this question?

A. I did.

MR. FREEDMAN: Stephen, could you pull up PX-30, which is the figure on page eight of Dr. Ragusa's rebuttal report.

BY MR. FREEDMAN:

Q. So, Dr. Ragusa, what does this figure show?

A. So this is another way of seeing the same result. Here, we are looking at a scatter plot of the precincts that were in the 1st Congressional District prior to redistricting. Each of the dots in the figure represents a precinct. There are more than 350 of them in the 1st Congressional District. I've color-coded them red if they were drawn out of the district by mapmakers and green if they were left in the 1st Congressional District.

The two axes plot the Biden vote, that's the X axis; and the Black voting age population, that's the Y axis. And then what I've done is I've added reference lines

at a thousand for both of those values. So, any dot to the right of the vertical reference line is a precinct in the 1st Congressional District that had more than a thousand Biden voters. And any dot above the horizontal reference line is a precinct that had more than a thousand Black voters prior to redistricting.

Q. And how should we interpret the data that you present here?

[Page 1055]

A. So, there are a number of things that you can look at in this figure. One particularly striking thing is, in the upper right quadrant, those dots in the upper right quadrant are VTDs that had more than a thousand Biden voters and more than a thousand Black voters prior to redistricting. There's only five of them in the 1st Congressional District prior to redistricting, but four of the five were drawn out. That's 80 percent.

But another way to look at it is to look at either side of the reference line. So, if we look to the right of the vertical reference lines, those are precincts that have more than a thousand Biden voters, there's roughly 20 of them on the Figure. Forty percent were drawn out of the 1st Congressional District.

Then if we look at the horizontal reference line for the Black voting age population, there's about a dozen dots. Sixty percent of them were drawn out of the 1st Congressional District. So, in this sense, there's evidence that both race and partisanship mattered in the design of the 1st Congressional District. In this case, race had the larger effect than partisanship.

Q. Just so that we're clear, can you compare the upper left and lower right corners again?

A. Yeah. So, in the upper left quadrant, we are looking at precincts that have fewer than a thousand Biden voters but

[Page 1056]

more than a thousand Black voters. And then in the bottom right quadrant, we're looking at precincts that have more than a thousand Biden voters, but fewer than a thousand Black voters.

Q. Okay. And you found a differential pattern regarding this?

A. Correct. In this case, if we were to look in the bottom left quadrant, the baseline is about 15 percent. In both of those quadrants, the numbers exceed 15 percent by a large margin.

Q. Did you do anything to check the robustness of these results?

A. I did. The two reference lines at a thousand is simply to make it easy to look at. And so, I looked at whether or not the results would change if we used 500 Biden voters and 500 Black voters, and what I found was that the results were identical.

Q. Let's turn to your core-retention analysis. Dr. Ragusa, can you explain your analysis of Mr. Trende's claim regarding core retention in CD 1?

A. Sure. So, Mr. Trende makes two claims. One is that the 83-percent core retention rate in CD 1 is evidence that the district kept a large share of its voting population. And he also claims that CD 1 has been anchored in Charleston for more than a hundred years.

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[Page 1058]

27 percent for Beaufort County, and 30 percent for Berkeley County.

Q. So, Dr. Ragusa, before we close, can you just recap your opinions for the Court. We'll put slide one back up. Can you just give us a recapture?

A. Sure. So, once again, I conclude that race was a significant factor in the design of the redrawn map. In my analysis, the BVAP variable is statistically significant in 12 of the 18 models that I estimated. And because this analysis controls for partisanship, the results cannot be explained as a byproduct of partisan redistricting.

Additionally, the BVAP variable in my analysis is numerically large in several places, indicating that race was not just statistically significant but substantively significant as well. And I ultimately conclude that race factored in the design of five of the seven districts. Those are CDs 1, 2, 3, 5 and 6.

Q. Thank you, Dr. Ragusa.

MR. FREEDMAN: No further questions.

THE COURT: Okay. Cross-examination.

CROSS-EXAMINATION

BY MR. TYSON:

Q. Good afternoon, Dr. Ragusa. How are you doing?

A. Good. How are you?

Q. Good. I'm Rob Tyson, lawyer for the Senate. And I took

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[Page 1064]

specifically redistricting.

Q. In fact, six of them were—I think you had they were profiles of presidential candidates, correct?

A. Correct. I wrote a book on the South Carolina primary. And one of the things that I was asked to do in the lead-up to the 2020 primaries was to analyze and handicap each of the candidates' chances in the state of South Carolina.

Q. Moving more to your methodology. Mr. Freedman asked you a question about the county envelope method. And I think you said that it had been used once before; is that right?

A. At the time of my deposition, I had reviewed an expert report of Dr. Stephen Ansolabehere, who used this methodology in prior litigation.

Q. When was that?

A. I'm sorry?

Q. I'm sorry. I didn't meant to interrupt you. When was that?

A. That was in *Cooper vs. Harris*, I believe, 2017.

Q. When was his report? I'm sorry.

A. I think in 2017, I believe.

Q. Oh, I thought you said 2000. Did I misunderstand you?

A. No. I believe Mr. Freedman was asking about whether this methodology had been used in peer-reviewed articles. At the time of my deposition I did not know the answer to the question, but I looked it up, and Mr. Ansolabehere has used

[Page 1065]

this methodology in peer-reviewed research.

Q. And just quickly on this, not to belabor the point, on this county envelope methodology, what that means is you're taking all the counties that are adjacent—or that are part of whatever the current, I guess, congressional district is, right?

A. Correct. Just to be clear, not adjacent to but within the envelope of the district.

Q. And for your model one, it talks about moving in VTDs from somewhere in those counties in that envelope that aren't in the congressional district, correct?

A. Correct. Model one looks at the choice of VTDs that are immediately outside the district within the same county but, again, not adjacent to the district.

Q. And prior to the plaintiffs asking you to do this research, did you know anything about the county envelope method?

A. No. I had not seen it used before.

Q. And I think—what was the—I'm sorry, I missed the number. What was the total number of VTDs in South Carolina?

A. It's more than 2,400. I don't have the exact statistic.

Q. And so, in the 46 counties, so, the VTDs are much smaller than the counties, correct?

A. Correct. They're fairly small in magnitude, geographically speaking.

[Page 1066]

Q. And so, you used the term “geographically proximate.” Can you help me with that to understand how that applies in your model one please?

A. Sure. So, if you recall the demonstrative of Richland County, all of the precincts that were in CD 6 that could have been added to CD 2, those are, generally speaking, within a couple dozen miles of the prior district's configuration. So I used the term geographically proximate to mean that phenomenon.

Q. So, you're taking some VTDs from somewhere on the other side of the county and running this report and moving them over into the congressional district, correct, and calling that geographically proximate?

A. In cases where a district only goes into a small portion of the county, the VTDs that are included in the county envelope could, indeed, be on the other end of a county, yes.

Q. So, does that make sense that you got to take those VTDs from way over here on the other end of the county and move them all the way over there?

A. I believe that it does.

Q. How so?

A. It is a choice that was available to mapmakers, one that complies with the principles of redistricting. The State's guidelines say that counties are boundaries that should be respected. The State's guidelines say that making counties

[Page 1067]

whole is a good thing. So, in a theoretical sense I think that that decision would be consistent with traditional redistricting principles of redistricting.

But practically speaking, I would point out that mapmakers did, in fact, in two occasions, go across counties in order to make a county whole and grab

precincts on the edge of a county that were not contiguous to the district.

Q. Let me make sure I understand that. You said there was a choice for mapmakers to use. And you're talking about this county envelope exercise that you don't know that anybody else has ever used before?

A. I'm referring to the precincts that are within the county envelope that could be added to the redrawn district while complying with traditional principles of redistricting.

Q. Let me ask you something. I think at the first deposition Mr. Moore spent some time asking you about whether you were familiar with the traditional redistricting principles. And do you recall that your answer was, no, you weren't?

A. Mr. Moore asked a question that I did not understand. He asked for a definition of the term traditional principles of redistricting. I didn't understand what he was asking. I gave a bad answer. Later in that line of questioning, I say that I'm familiar with the various principles, but I was not given a chance to define each of those terms.

[Page 1068]

Q. This was the question I had. It says: "Are you familiar with the traditional principles of redistricting?" And your answer was: "I don't know what that term means."

A. The way that he phrased the line of questioning was as if it was a single term rather than a set of principles. And, as I mentioned, I think I gave a bad answer on that question.

Q. So, you got coached up, and now you know what the traditional principles mean?

MR. FREEDMAN: Objection.

JUDGE GERGEL: It's cross-examination. Overruled.

THE WITNESS: No, sir. In fact, in other points in the deposition, Mr. Moore and I discussed the traditional principles of redistricting. So, at the time, I had knowledge of those concepts.

BY MR. TYSON:

Q. And I think one of the questions that I asked at your deposition was specifically about this data, and I think you said that's all you look at, is data, correct? You're just looking at numbers, right?

A. I would say that my analysis is based on data. But good analysts are always familiar with the context of their data. So, prior to analyzing each of the districts, I familiarized myself with where the districts were, some of their key demographic features. I reviewed the state's redistricting guidelines. So, my analysis looks at data. But as an

[Page 1069]

analyst, I'm familiar with a lot of the contextual information that's necessary.

Q. And I think you said at your deposition that you thought—you would define that VTDs are often considered communities of interests, correct?

A. I believe they are, according to the State's guidelines, yes.

Q. And that's a traditional redistricting criteria, right?

A. Communities of interest?

Q. Right.

A. Yes, correct.

Q. VTDs being defined as a community of interest?

A. Correct.

Q. Okay. But you didn't look any further beyond that. You didn't look at the geography for that VTD, though, did you?

A. I don't have a geography variable in my analysis, but basic geographic concepts are part of my analysis.

Q. How so?

A. So, if we think about the county envelope, which we've been discussing, that is a geography that is defined in the scope of my analysis. As I've testified, I believe that that is consistent with traditional principles of redistricting. Likewise, the concept of core preservation is reflected in model two. Model two looks at the decision to remove precincts from an existing district. Core preservation is a

[Page 1070]

geographic principle. And, of course, model three looks at both of those things simultaneously.

Q. Let me just step back. Help me with this. If model one—if we're having problems understanding that this county envelope methodology that's never been used before, that's what you used in model one, correct?

A. I would refute the notion that it has not been used before. I've given several examples of where it has, in fact, been used.

Q. So, if you were to buy my comment—my question, that there is a problem with that methodology, would

that also taint methodology three, since it's a part of that?

A. Again, I don't agree with the premise of your question.

Q. Do you agree?

A. But, yes, if there's a problem with the county envelope, that's also part of model 3.

Q. So, two of your models potentially could be tainted using this county envelope methodology?

A. If we accept your premise.

Q. Yes.

A. Which I do not.

Q. Correct. All right. Let's go to your report, Plaintiffs' Exhibit 19. And Mr. Freedman spent a pretty good bit of time going through this, and I don't plan to do that. It's getting late in the day, and it's Friday. I know the

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[Page 1078]

Q. And I think you take exception with the words "a large share," right?

A. Correct.

Q. But what, in your mind, is appropriate? What is a "large share"? What would be the definition of that?

A. The point that I make in my rebuttal report is that numbers are not inherently high or low. What's necessary to understand whether a number is high or low is context. And so what I said in response to Mr. Trende is that, in the context of the closeness of election results and in the context of how many

persons had to be shed from the district, the district lost many more and a potentially consequential chunk in terms of recent election results.

Q. And, Dr. Ragusa, have you looked at any of the other maps submitted to the General Assembly?

A. I'm vaguely familiar with some of the other maps. I did not analyze them.

Q. Have you analyzed the enacted plan and its core-retention statistics?

A. The plan that lawmakers enacted?

Q. Yes. Right.

A. I analyzed it in my report.

Q. You've analyzed this core retention for the enacted plan, correct?

A. What I said is that core retention is a concept that's

[Page 1079]

part of model two. But in my original report, I did not present the core retention statistics.

Q. But you did in your rebuttal, right?

A. In my rebuttal, yes, in response to Mr. Trende.

Q. And that's a traditional redistricting principle, correct?

A. Core preservation is listed among the State's guidelines, yes.

Q. And you don't have any reason to not believe that, correct—or to take exception to that, do you?

A. I'm sorry. I'm not understanding your question.

Q. It is in the Senate criteria, the guidelines. And I was just saying: Do you believe that that is a traditional criteria?

A. I do, yes.

Q. And let me just conclude. You don't have any opinion on whether the Congressional Plan was drawn with any racially discriminatory intent, correct?

A. As a social scientist, I'm not able to see into the mapmakers' heads. Intent is not something that I can authoritatively speak to. What I can speak to is effects. And what I can say consistently is that race was an effect in the design of the redrawn map.

Q. And when you are talking about some of the criteria that you analyzed, you didn't look at all of those criteria. Your

[Page 1080]

report doesn't reflect all of the criteria that the Senate and/or the General Assembly used to craft their plan, does it?

A. I don't have compactness, core retention, contiguity variables in my model, if that's what you're asking. Those principles are all embedded in the analysis that I conducted.

Q. And those are all—if the mapmakers chose to use those principles, then that's a choice that they can make that would be consistent with traditional criteria, correct?

A. Correct. To use the example of compactness, if mapmakers drew a district to be compact, my data would not necessarily challenge that. However, if compactness resulted in disproportionately drawing Black voters out or into the district, my analysis would pick up on that.

MR. TYSON: Thank you, Dr. Ragusa.

CROSS-EXAMINATION

BY MR. BARBER:

Q. Dr. Ragusa, one question. Just to confirm, prior to today, you have not been qualified by any court as an expert in any subject matter, correct?

A. Correct.

Q. All right. Thanks.

JUDGE GERGEL: That, of course, will change after today.

MR. FREEDMAN: No redirect, your Honor.

JUDGE GERGEL: Very good. Thank you, Doctor.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

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THE SOUTH	:	3: 21-cv-03302-MGL-
CAROLINA STATE	:	TJH-RMG
CONFERENCE OF	:	
THE NAACP, <i>et al.</i>	:	OCTOBER 3–14, 2022
Plaintiffs,	:	
v.	:	VOLUME V
	:	
THOMAS C.	:	
ALEXANDER, <i>et al.</i> ,	:	(PAGES 1082– 1326)
Defendants.	:	

- - -

TRANSCRIPT OF BENCH TRIAL PROCEEDINGS
BEFORE THE HONORABLE PANEL:
HONORABLE MARY GEIGER LEWIS,
HONORABLE TOBY J. HEYTENS,
HONORABLE RICHARD M. GERGEL,
UNITED STATES DISTRICT COURT JUDGES

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[Page 1112]

more relevant. And I've tried to appreciate that in this report. But I come to this as a historian and not a lawyer or a judge. And so, for me, the history even going back, as I do, to the founding of this South Carolina as a colony is still relevant. Now, naturally, the actions of individuals in the 18th century are not necessarily directly indicative of the intent of someone in 2022, but at the same time, I don't feel like you can discount something simply because it is relatively

longer ago. For us as historians, that's what it's all about. And so, one generation—well, one set of actions impacts another. And so I've, again, just presented this as a historian would.

Q. And, Dr. Bagley, I'm now going to walk you through a brief portion of your report regarding the history of race relations in South Carolina.

MR. INGRAM: Next slide, please.

BY MR. INGRAM:

Q. Dr. Bagley, who was the first state to secede from the Union?

A. South Carolina—and if you read my report, I hope this is clear—has been not just a former confederate state, but consistently in the vanguard when it comes to the oppression of Black people in America, from the introduction of mass chattel racial slavery for cash crop production to nullification based upon the value of—America's most

[Page 1113]

valuable export, rice, at the time, to, yes, the secession from the Union based upon the protection of property rights, property in that case being enslaved human beings.

South Carolina was the first, after the Civil War, or among the first, to enact—and among the most severe—what we understood as Black Codes, that is, laws that were intended to single out freed men, former slaves, Black people, and to limit what rights they had as citizens, including voting in state or local elections.

And after a brief period of what W.E.B. Du Bois called “Black Reconstruction,” where Black people in

South Carolina were able to actually participate in the political process, South Carolina was, as historians have said, unsurpassed in the sort of brutality and totality in what's known as "The Redemption." And that is the Democratic Party, which was at the time the party of—unabashedly of White supremacy taking power from the Republican Party, which was a party founded to prevent the spread of slavery prior to the war. And there are individuals in South Carolina, whose names I think are well known, who were among the most virulent and most successful in that process of redemption, the point of which was to entrench White supremacy and the complete disenfranchisement of African Americans. And that was certainly the case by the 20th century.

Q. Dr. Bagley, who was the first state to challenge the

[Page 1114]

constitutionality of the Voting Rights Act?

A. South Carolina was, again, in the vanguard there challenging the constitutionality of the Voting Rights Act. And once that challenge, of course, failed, South Carolina is among the first states that you see begin to, at the state and local level, switch to at-large voting systems for the purposes of the dilution of the political power and voting ability of Black citizens to participate on an equal footing in terms of the election of candidates of their choice.

Q. And did the DOJ object to any of South Carolina's proposed changes after the passage of the Voting Rights Act?

A. Right. So, South Carolina was subject to Sections 4 and 5 of the Voting Rights Act from 1965, when it was enacted, to 2012, meaning it had to seek

preclearance for any kind of changes in electoral law or electoral procedures or practices, to make sure that those wouldn't discriminate or limit the ability of Black voters to participate equally and fairly in the political process. And during that time, the State was subject to 122 of those objections under Section 5.

Q. Now, Dr. Bagley, I want to turn to the redistricting litigation portion of your report.

MR. INGRAM: Next slide, please.

BY MR. INGRAM:

Q. Dr. Bagley, in review of the legislative enactment of Senate Bill 865, do you remember any legislators invoking the

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[Page 1216]

MR. TYSON: No, sir. I'd rather send him back now rather than have him—

JUDGE GERGEL: Go ahead and send him back.

MR. TYSON: Thank you, your Honor.

JUDGE GERGEL: Okay. Plaintiffs, call your next witness.

MR. COLEMAN: We call Elizabeth Kilgore.

ELIZABETH R. KILGORE, having been first called as a witness and duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. COLEMAN:

Q. Good afternoon, Ms. Kilgore. Could you please state your name for the record.

A. Elizabeth R. Kilgore.

Q. And where do you live, Ms. Kilgore?

A. 4400 Queen Chapel Road; Dalzell, South Carolina.

Q. Are you originally from South Carolina?

A. Yes, I am.

Q. What county is your address in?

A. Sumter.

Q. And how long have you lived there?

A. All my life, except for the few years I was out of state. But I've been there now about 30 years since I came back.

Q. And what congressional district do you currently live in?

A. Congressional 5.

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[Page 1218]

Q. Are you a member of any organizations, Ms. Kilgore?

A. Yes, I am.

Q. What organizations?

A. I'm a member of the NAACP.

Q. Any other organizations?

A. The National Council of Negro Women, the Mary McLeod Bethune Section of Sumter.

Q. What branch of the NAACP are you a member of?

A. Sumter branch. Sumter County branch.

Q. When did you join the NAACP?

A. Well, I joined back in the 90s and then dropped. And then I came back in 2006, and I've been there ever since.

Q. Why did you join the South Carolina NAACP?

A. Because I believe in what the NAACP stands for, for civil rights, voting rights. And as African Americans, we've so many times been denied that right. So, I believe in the fight for voting rights.

Q. Do you have any positions within the South Carolina NAACP?

A. Yes. I currently serve as secretary for the State NAACP.

Q. Do you have any positions on the local level?

A. I am president of my Sumter branch.

Q. What are your responsibilities as the secretary of the South Carolina State Conference?

A. My duties as secretary is to keep track of all meetings,

* * *

Q. And what did you discover about the shapes or cores of South Carolina's districts starting in early 1900s?

A. So, there are states like Maryland, New York, my home state of Ohio, Pennsylvania, where the district lines just change radically over time. And South Carolina just isn't one of those states. The district cores—or at least the bases of the districts would be recognizable to someone who was living in 1900, because they generally keep the same anchors on these districts, even to the point of district numbers. That's not to say they're identical obviously, just they're recognizable.

Q. And has the number of districts gone up and down in South Carolina over that time?

A. Yeah. Sometimes it's six, sometimes it's seven.

Q. Let's go to page 14 of your report, if we might. This is the map of the lines for the 1990s. Can you explain to the Court what happened in the 90s congressional redistricting in South Carolina?

* * *

[Page 1679]

South Carolina maps going back to 1902, South Carolina's district cores have remained surprisingly consistent over the past century," right?

A. That's right.

Q. And I think you testified—I didn't get it exactly right, but you testified that district cores would be recognizable to someone living in 1900, they keep to the same core areas, even some of the district numbers are the same, right?

A. That's right.

Q. And you write in your report, going back to the early 1900s, the 1st District was anchored in Charleston, right?

A. That's right.

Q. And you also write in your report in the 1992 map, that the 1st District was still anchored in Charleston, right?

A. Right.

Q. Now, when you talk about the enacted plan on page 16 of your report, you don't say in your report that CD 1 in the enacted map is still anchored in Charleston, right?

MR. FREEDMAN: Stephen, can you show Senate Defendant Exhibit 75 on page 16 at the bottom.

BY MR. FREEDMAN:

Q. You talk about the 2nd District, the 3rd District, the 4th, the 5th. You don't talk about the core of the 1st District being the same, right?

[Page 1680]

A. It's not in the paragraph, no.

MR. FREEDMAN: Stephen, can you pull up image one?

BY MR. FREEDMAN:

Q. So, this is a close-up of the 1902 map in your report. And I think we can all agree that in 1902, Congressional District 1 was anchored in Charleston, right?

A. Yes.

MR. FREEDMAN: Stephen, can you put up image two, which is a side-by-side of the 1902 map and the enacted plan?

BY MR. FREEDMAN:

Q. Can we agree that in the current plan under the enacted plan, the city of Charleston is no longer in CD 1?

A. The city of Charleston is not.

Q. It's no longer in CD 1, right?

A. Right.

Q. And Charleston County is no longer the largest county, population wise, in CD 1, right?

A. Oh, that's right.

Q. Now, you also wrote in your report that, going back to the early 1900s, the 7th District was anchored in Columbia?

A. I'm sorry. What?

Q. You wrote—and we can pull it up. You wrote, going back to the early 1900s, the 7th is anchored in Columbia. Do you see that?

A. Yeah. If I did, that's—okay. Yeah.

* * *

[Page 1683]

Q. So, we see that there were 5th District overpopulated by 5,082 people. And according to your analysis, Table 4, which I don't think there's any dispute about, the enacted map moved 41,407 people, right?

A. Yeah. Yeah, I'll trust your math. 41,000 some odd people were moved out of the 5th. Right.

Q. Overpopulated 5,082 people, 41,000 people moved out, right?

A. Yeah. Yeah, mostly on the 5-4 boundary.

Q. And if you look at District 2, District 2 was underpopulated by 9,375 people, right?

A. That's right.

Q. So, the district is underpopulated, but the enacted plan moved 14,397 people out. Do you see that in Table 4?

A. Yes.

Q. And after the 2020 census, District 6 was underpopulated by 84,741 people, right?

A. Oh, that's right.

Q. And I did some quick math. Table 4—even though District 6 was more underpopulated than any other district in the state under the enacted map, 80,469 people who had been living in District 6 were moved out, right?

A. Oh, that's right.

Q. And after the 2020 census, District 1 was overpopulated by 87,689 people, right?

[Page 1684]

A. That's correct.

Q. And if we look at Table 4, the enacted plan moved—even though District 1 was only overpopulated by 87,689 people, the enacted plan moved 140,489 people out of District 1, right?

A. Oh, that's right.

Q. And just looking at Table 4, if we were to add up all the movements of people in the enacted plan, the

enacted plan moved hundreds of thousands of people from their old districts to their new districts, right?

A. Yes.

Q. Like, I did the math—

A. I believe you.

Q. You know me, I—

JUDGE GERGEL: You're going to cross a lawyer on math? I figure you're going to be a while. And I don't want to kill my staff, particularly, my court reporter. Is this a good time to break?

MR. FREEDMAN: Let me just ask this one question, Your Honor.

JUDGE GERGEL: You tell me when you're ready, but we've got to break a minute, okay?

MR. FREEDMAN: Certainly.

BY MR. FREEDMAN:

Q. Adding up all the numbers in Table 4, 334,069 people were moved from their old districts to new districts. Does that

* * *

[Page 1686]

it's Table 5. We can put it up, page 20 of the report.

You would agree with me that, under the enacted plan, the 2nd District is less compact than under the 2011 plan, right?

A. Yeah. It scores marginally less on these numeric metrics.

Q. It's less under all four metrics you looked at?

A. Yeah.

Q. And you would agree with me that, under the enacted plan, the 6th District is less compact than under the benchmark plan, right?

A. Yeah. I think the analysis in the text is that they have roughly the same scores. But, yeah, there are some marginal differences here.

Q. And under three of the four metrics that you looked at, the 6th District is less compact than any other district in the map, right?

A. Yes.

Q. And 1st District is either the least compact or second least compact under all four metrics, right?

A. That's right.

Q. Okay. And to be clear, you assessed compactness using statistical measures even though the House guidelines provide that compactness should not be judged based upon any mathematical, statistical, or formula-based calculation or determination?

* * *

[Page 1689]

A. No.

Q. Okay. And you don't know how the number of split cities compares under the enacted plan as opposed to the benchmark plan, right?

A. Well, that's right. Yeah, I didn't have the city shape files.

Q. Okay.

MR. FREEDMAN: Let's pull back up page 10, the respecting county, municipal, and precinct boundary language again.

BY MR. FREEDMAN:

Q. Now, you note that there are 10 county splits in the enacted plan, right?

A. Right.

Q. And you observed that six of those splits occur on the boundaries between Districts 2 and 7, right?

A. Correct.

Q. Now, another way of looking at the county splits is that eight of the 10 splits are on the border of CD 6, right?

A. Yeah, I think that's right.

Q. All right. You identify in your report—you write: "District 1 and District 6 split four counties," right?

A. Yeah, yeah. I was just checking. I think you're right.

Q. And Orangeburg and Richland are split between Districts 2 and 6. You talk about that elsewhere in your report?

[Page 1690]

A. Yes.

Q. And Sumter is split between Districts 5 and 6, you talk about that elsewhere in your report, right?

A. Yes.

Q. And Florence is split between Districts 6 and 7, right?

A. Correct.

Q. Now, earlier this morning, Mr. Gore asked you about Table 3 on page 18 of your report. And I believe you testified that you consider Districts 2, 3, 4, 5 and

7 to have very high levels of core retention. Do you recall that testimony?

A. That's right.

Q. Now, your report doesn't actually propose a generally accepted threshold for what is considered high core retention, right?

A. No, that's right. I don't know when stubble becomes a beard, but I'd like to think we could all agree that Rutherford B. Hayes has a very long beard. And if 99.96 percent core retention isn't very high, then the term "very high" has no meaning.

Q. Right. There's no generally accepted standard among political scientists for what is high or not high core retention, right?

A. I mean, if the proposal is you can't really use adjectives for 99.96, then I guess yeah. But I can't imagine

* * *

[Page 1701]

BY MR. FREEDMAN:

Q. And we can see from this that of the 140,489 people—it's the number you used in your report—shifted from District 1 to District 6, 35,629 were Black, right?

A. Yes.

Q. And so, of the people shifted from District 1 to District 6, 25.1 percent were Black. That's just dividing 35,629 by 140,489.

A. That sound reasonable.

Q. Okay. And looking at the voting age population of the 113,531 people of voting age shifted from District 1 to District 6, 26,617 were Black, right?

A. Correct.

Q. And this is the number you include in your report of the people of voting age shifted from District 1 to District 6, 23.4 percent were Black, right?

A. That's correct.

Q. So, let's look quickly to how that compared to what the districts looked like before these shifts.

MR. FREEDMAN: Stephen, can you pull up Senate Exhibit 28e and highlight District 1?

BY MR. FREEDMAN:

Q. So, this is the benchmark total population report from the Senate. And you see that before—in the right-most column, the benchmark Black population of District 1 before

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[Page 1708]

A. It's—one form is, and one form isn't.

MR. FREEDMAN: Let's pull up image five. Image five is a blowup of Charleston County.

BY MR. FREEDMAN:

Q. And you're aware that, under the enacted plan, you can't actually drive from the first part, northeast—the Sullivan's Island part, the northeast part of District 1, to James Island, the southwest part of District 1 without going through District 6, right?

A. Yeah. That's functional contiguity, not census contiguity.

Q. Okay. You're aware there's no bridge or tunnel that allows one to drive from Sullivan's Island to James Island, right?

A. Right, right.

Q. And it's actually a substantial drive.

MR. FREEDMAN: Stephen, can you pull up image six?

BY MR. FREEDMAN:

Q. To get from the Mt. Pleasant pier to James Island, you have to go through District 6. It's a 6.7-mile drive. Do you see that?

A. I see that, yes.

Q. Now, sir, you've testified in a lot of redistricting cases, right?

A. That's right.

* * *

[Page 1772]

article?

A. In that light, it did not help my standing in the Republican community back home.

Q. Okay.

MR. PARENTE: Denise, if we could go to House Exhibit 81.

And this has been introduced into evidence without objection, your Honors.

BY MR. PARENTE:

Q. Representative Jordan, do you recall receiving this text message?

A. I do.

Q. And starting at the top, do you know who the initials PD and JJ are?

A. I believe that refers to Patrick Dennis. And I believe I'm the JJ.

Q. Okay. Do you know if there was anyone else involved in this text chain?

A. I believe Weston Newton.

Q. Okay. And his name may not appear there if it was on his phone; is that accurate?

A. That's, I believe, correct.

Q. Okay. And what is the date of this first text message?

A. December 17.

Q. Okay. And so, is that two days after the article we just

[Page 1773]

looked at?

A. Yes.

Q. And if you could, for the Court, just read this first text message from Mr. Dennis into the record, please?

A. "After going through a dozen iterations, the truth is when all of Beaufort County is put with a significant portion or all of Charleston County, you get a 50/50 district because there isn't room for the portions of Dorchester and Berkeley that pull the first red. It is easy enough to do, but we need to settle on what our priorities are. Just good food for thought for both of you. No response—"

Q. Okay. And looking at this first page, can you explain what Mr. Dennis is saying in this text message to you and Representative Newton?

A. Yes. He's talking about the political realities of that area of the state.

Q. So, when he makes a reference to 50/50 district, what did you believe 50/50 to reference?

A. Republican/Democrat.

Q. So, nothing to do with race?

A. No.

Q. And the same with "pull the first red." What does that mean to you?

A. Republican.

Q. All right.

[Page 1774]

MR. PARENTE: And, Denise, if we could go to the second page of this text.

BY MR. PARENTE:

Q. All right. So, in blue, do you know who sent that text message?

A. That's Weston.

Q. And if you could please read that text message into the record for the Court.

A. "All of Charleston not in 1st now. I am hearing Senate will support their plan with 53 and a half CD 1. Can we tweak the margins of the Senate plan?"

Q. Okay. And can you briefly explain what Representative Newton is saying in this text message?

A. He's sort of amplifying what Mr. Dennis was saying, that 53 and a half percent—is what I'm

interpreting that CD 1 is to be, 53 and a half percent Republican. I believe that's pretty close to what Trump got in the last election. So, Republican/Democrat statistical split.

Q. Okay. And Representative Newton also makes a comment about Charleston not being in the 1st now. Is that your understanding of how Charleston was split in the benchmark plan?

A. Correct. It was split in the prior version. And he's making the point that it wasn't whole in the last round.

Q. Okay. And you read that as 53 and a half CD 1. And I

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[Page 1812]

questions.

JUDGE GERGEL: Thank you, Mr. Parente.

Just a couple questions. As I understand your testimony, the Senate was kind of driving the process here. Its map became the map, correct?

THE WITNESS: Yes, sir. I think that's fair. And if you go back to—you know, my staff was to go take the Senate plan and operate off of that.

JUDGE GERGEL: So, basically, as they would say in politics, the juice was all in the Senate. Is that fair?

THE WITNESS: Well, I don't want to answer it like that, Judge. But we definitely took the nuts and bolts of their plan.

JUDGE GERGEL: Right. And how they got there—I saw the very interesting e-mail about when

you put Beaufort and Charleston together, it created certain partisanship problems, correct?

THE WITNESS: Yes.

JUDGE GERGEL: And then you had to tweak Charleston somehow, correct?

THE WITNESS: Yes, sir.

JUDGE GERGEL: And the details of how they tweaked Charleston was not something you were involved in?

THE WITNESS: No. Again, we relied on—how they got to where they got to was in reliance on them.

[Page 1813]

JUDGE GERGEL: And how they did it, you didn't really know?

THE WITNESS: No, sir.

JUDGE GERGEL: Thank you, sir.

Any questions occasioned by the Court's questions, Mr. Parente?

MR. PARENTE: Nothing from the House, your Honor.

MR. CEPEDA DERIEUX: Nothing from plaintiffs, your Honor.

JUDGE GERGEL: Not to leave out the Senate. Any questions?

MR. TYSON: No, your Honor.

JUDGE GERGEL: Okay. Thank you, Mr. Jordan.

THE WITNESS: Thank you.

JUDGE GERGEL: Okay. Call your next witness.

MR. GORE: Your Honor, Defendants call Senator Chip Campsen to the stand.

JUDGE GERGEL: Well, you know, it's 3:15 right now.

We've been—why don't we break right now for our midafternoon break before we have Senator Campsen.

MR. GORE: Thank you, your Honor.

(Recess.)

JUDGE GERGEL: Defense, call your next witness.

MR. GORE: Your Honor, we are retrieving the witness right now.

* * *

[Page 1893]

Q. Mr. Traywick asked—

A. I took it very personally, actually. I took very personally that allegation, and it was unfounded.

Q. Mr. Traywick asked you and showed you a number of e-mails. Do you recall those discussions?

A. Today?

Q. Yes.

A. Well, he showed me a lot of e-mails. Which ones are you referring to?

Q. Fair. Poor question on my part. Do you remember looking at talking points that you created and sent out?

A. That I sent to like constituents? Yes, I do remember—I remember him showing some e-mails to that effect.

Q. And you testified about doing affirmative outreach to make people aware about Beaufort County being whole and remaining in CD 1, correct?

A. Yes.

Q. In your words, the Republican Party at the state level was doing nothing, and that's what prompted you to begin that outreach?

A. That's correct.

Q. You initiated calls, you created scripts, right?

A. I created probably just two scripts and maybe 10 calls or something. I mean, I didn't have time to—I called people who I knew would go do something. Like, Xiaohan Li, I knew

[Page 1894]

that she was very energetic and would take the ball and run with it, and she did. I didn't have time to have any kind of campaign. I just let them know the ball's in play, y'all may want to show up—show up for the game.

Q. Those e-mails started the day or to two before that January 13th hearing, right?

A. I don't know. I don't know. I mean, I guess. The e-mail date would—I'll defer to whatever the date is.

Q. You were aware that Senate Amendment—

A. But I want to say, the main reason—really my connection with Xiaohan Li was she and other folks from Beaufort testified at the House, and I know that they felt like they had a good showing. And I was pretty confident that they didn't realize they needed to go make their case at the Senate as well. So, that's really the main thing I was telling them: You need to go make the case to the Senate. Because the Senate

doesn't listen to the House testimony, and the House doesn't listen to the Senate testimony. So, you need to do it twice. Just, inside baseball procedure. I let them know that. And I knew that she'd take the ball and do something with it.

Q. You were aware that Senate Amendment 2 had Beaufort and Charleston Counties whole in Congressional District 1, right?

A. Yes.

Q. And in your outreach, you didn't disclose that fact to

[Page 1895]

people who were concerned about Beaufort County being whole and kept in Congressional District 1?

A. I was talking to Republicans in Beaufort, and I knew that they wanted—in the 1st District, they wanted their district to remain a Republican district.

Q. Do you represent Charleston County constituents?

A. Yes.

Q. You didn't reach out to anyone in Charleston County?

A. Yes, I did.

Q. You have e-mails that you sent to folks in Dorchester County, right?

A. Yes.

Q. Berkeley County?

A. Yes. Because, if you kept Berkeley and Beaufort whole, you couldn't draw a—if you kept it in the 1st, you couldn't draw a Democratic district. And I did talk to people in Charleston County.

Q. You're aware that your Charleston residents, some of them supported it being whole in Congressional District 1, right?

A. Yes. I'm aware that my constituents are very diverse opinions, polar opposite opinions among my constituents on this issue. I'm aware of that. And so, some support that, some didn't support it.

Q. And from a representational standpoint, you would have served those constituents and your Beaufort County

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MR. CEPEDA DERIEUX: Correct. Yes, your Honor.

JUDGE GERGEL: Okay. Beyond the *Daubert* motion—filed in response to the *Daubert* motion, do the defendants have any other objections to Dr. Imai as an expert?

MR. GORE: No further objection, your Honor.

JUDGE GERGEL: Very good. Dr. Imai is recognized as an expert in political science statistics, computational social sciences, and causal research inference methods.

MR. CEPEDA DERIEUX: Sorry, your Honor. It's causal inference research methods.

JUDGE GERGEL: Causal inference research methods.

Sorry to get that backwards.

MR. CEPEDA DERIEUX: Not sure that matters, but just wanted to—

JUDGE GERGEL: I'm not sure it doesn't either, but I want to get it right. It's kind of like the VTD splits.

MR. MATHIAS: And, your Honor, just for the record, no further objections from the House on that.

JUDGE GERGEL: Thank you. I was treating y'all as one. Sorry. Thank you, Mr. Mathias.

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[Page 1931]

MR. CEPEDA DERIEUX: And, Stephen, if we could go to the next slide. And I guess I'll give defense a second to look at this.

MR. GORE: Thank you. No objection.

BY MR. CEPEDA DERIEUX:

Q. And, just briefly, what did your localized district analysis find?

A. Yes. So, my simulation is race-blind in the sense that I did not use race to generate the simulated districts, which means that race is not—it's a race-neutral baseline. And compared to that, I find that the enacted plan is unusual in the way that the Charleston County is split, by placing a disproportionately large number of Black voters who live in Charleston County into District 6, and as a result, lowering the Black voting age population in District 1.

Q. Okay. So, can we go to your second analysis? And what was that analysis, Dr. Imai?

A. Yes. So, the second analysis is also race-blind in the sense that I did not use race as an input in my algorithm when generating simulated districts. Again, I'm focusing on Districts 1 and 6 while holding the other districts as exactly the same as under the enacted plan. And here, unlike the first simulation analysis, I'm focusing just on Charleston County. So, the way that—I'm just generating alternative ways, 10,000 of them, ways of splitting Charleston County.

[Page 1932]

And the enacted plan splits Charleston County, so that's what I'm looking at. And I basically generated 10,000 race-blind boundaries within the Charleston County.

Q. Okay. And, in brief, what were your findings on this analysis?

A. So, my finding basically confirms the finding from the first analysis by showing that the enacted plan puts a large number of—a disproportionately large number of Black voters who live in Charleston County into District 6, and, again, lowering the Black voting age population of District 1.

Q. Thank you. And you said you did three analyses. What was the third?

A. Right. So, the third analysis is a statewide simulation analysis. So, by statewide, what I mean is that it's not just simulating Districts 1 and 6, I'm simulating all seven districts at the same time. But this analysis is done to address the possibility of the enacted plan trying to be compliant with the Voting Rights Act. So, I made sure that all simulated plans have a District 6, which the Black voting age population proportion is between 45 and 50 percent, which is in the same range as the Black voting age population proportion of District 6 under the enacted plan.

Q. And may I call this your “statewide analysis” or your “statewide VRA compliance analysis”?

A. Sure.

[Page 1933]

Q. Thank you, Dr. Imai. Let's take a step back and work through some of the basics in what you just said. What are simulations?

A. So, simulation analysis is basically the idea that to evaluate the characteristics or biases of the enacted plan, you can basically compare the enacted plan with a large number of alternative plans that are compliant with a set of specified redistricting criteria. So, in this

case, I'm interested in how the race played a role in drawing the district boundaries under the enacted plan.

Q. And how is your simulation analysis different from traditional redistricting analysis?

A. Right. So, for many decades, the traditional methods that compare the enacted plan of a particular state with some other plans from other states, or perhaps compare the enacted plan from the plans from the previous decades, the problem of these traditional comparisons is that you're comparing apples and oranges. States are different. You can't compare South Carolina with New York or Alabama. They're different in terms of population, they're different in terms of redistricting laws. And over time, comparison is also problematic. The laws can change, or the population can also change.

And so, the advantage of simulation analysis is we're using—I'm using the same exact rules as the enacted plan uses and the same exact population data and be able to the

[Page 1934]

generate alternative—a large number of an alternative set of plans that serves as a benchmark for comparison.

Q. What about political geography? Does it use the same political geography?

A. Yes. So, it uses same exact data. So, it's population figures, racial composition, and election data, if such data are used in some analyses.

Q. Is there anything your simulations are not intended to do?

A. So, this is a very important point I'd like to emphasize, is that simulation analysis is—the whole purpose of that is to evaluate the characteristics of the enacted plan. It's not meant to be used for generating a plan that can be enacted and practiced. So, the whole purpose of this is an evaluation of the enacted plan.

Q. So, is the purpose of simulations to replicate a legislature's process for drawing a map?

A. No.

Q. All right. So, let's work through your methodology. What method did you use to generate the simulated plans in your report?

A. So, I used the algorithm that belongs to a broader family of so-called Monte Carlo methods.

Q. And, Dr. Imai, what is the Monte Carlo method?

A. So, the Monte Carlo method is—the key characteristic

[Page 1935]

of the Monte Carlo method is its ability to obtain a representative sample of redistricting plans that comply with a set of redistricting criteria—in this case, myself—specified. And this is important because there is a large number of redistricting plans that could comply with a set of redistricting criteria. It actually exceeds the number of atoms in the universe. So, even with a powerful computer, you can never enumerate all of them. However, Monte Carlo methods allow you to obtain a representative sample from this population of all possible redistricting plans that are compliant with a set of rules. And it's almost—it's very similar to the idea of, you know,

surveying something where you only interview 1,000 people to figure out what the United States population is thinking, instead of interviewing every single person who lives in this country.

Q. And do you have experience using Monte Carlo method in redistricting simulations?

A. Yes. So, I was one of the very first researchers who used Monte Carlo methods for the purpose of evaluating redistricting plans. This was about 10 years ago. And I have developed several methods in this area as well as software packages that are widely used by researchers and other experts.

Q. How many Monte Carlo methods that can be use for redistricting simulations are there?

[Page 1936]

A. So, there are several of them. They can be divided into two types. One is called Markov Chain Monte Carlo. It's called MCMC, for short. And that's the first family. And then, the second type of Monte Carlo is called Sequential Monte Carlo, SMC methods. And SMC is the algorithm that I actually developed myself. And I've also developed some of the MCMC as well.

Q. And have both of these algorithms, or types of algorithms, been peer-reviewed in the use of redistricting simulations?

A. Yes. So, many of these algorithms have been written in papers that have been published in the peer-reviewed journals. The main SMC paper is still currently under review, but its applications have been published in a couple of different journals as well.

Q. The simulations you generated with your MCMC algorithm in this case, are they replicable?

A. Yes. So, this is one of the important things that I try to do in my own academic work as well as expert-witness work. I developed open-source software packages that implement these algorithms. So, open source means that the code is open so everyone can just see what the code looks like and its extent. And it's freely available, so anyone can download from the website and install on your personal computers. So, all my analyses, both my academic work, as well as my expert-witness

[Page 1937]

work, are based on this package that I've developed. It's been used by many other researchers and other experts and been downloaded more than, you know, 30,000 times. And so, everything I did in this case, as well as in other cases, are duplicable, using this software package.

Q. Thank you. And you said you developed SMC, but you used MCMC in this report. Why did you do that?

A. Right. So, the choice of the algorithms for any analysis is important, and it has to consider what type of an analysis one is doing. In this case, as I summarized earlier, my first two analyses focuses on Districts 1 and 6. So, there are two districts that I'm investigating. In those cases—I'm not going to go into the detail, unless you'd like—but SMC and MCMC are essentially the same, so there's very little difference between the two. So, I could have used either one of them.

The statewide analysis, however, is a little bit different. So, statewide analysis, as I explained earlier, is trying to keep the BVAP proportion of District 6 in between 45 and 50 percent. So, it's a very

specific constraint about specific districts. And those types of constraints are much easily incorporated into MCMC methods. So, that's why I used the MCMC method for the statewide analysis. And, for the sake of consistency, I decided to use the same for the first two analyses, even though in those two analyses the two methods

[Page 1938]

are essentially the same.

Q. Okay. Let's talk about some of the materials or sources you used. Can you describe the sources you relied on to prepare your work in this case?

A. Yes. So, the sources that I relied on to develop constraints that would be used for the algorithms are the State House and the State Senate redistricting guidelines. I also used the software package that I developed. As I explained earlier, that's how you implement the algorithms that I used. And then I also used the data from the census, which includes shapefiles and population figures, population counts, racial information. And I also used the data on incumbency residency location.

Q. What about the enacted South Carolina congressional plan?

A. Oh, yes. So, the enacted plan is also used to evaluate its characteristics. I didn't use that to, you know, directly generate the alternative plans, but when you compare—when you evaluate the enacted plan, you have to use that to compare with the simulated plans.

Q. And are these the type of material you usually use in your work?

A. Yes. So, this is a very typical data source I use. What's nice about it is that, you know, census data is all public. And the guidelines obviously are not public, but—or, well, may be public. But I use them to inform the

[Page 1939]

constraints that I used for the algorithm.

Q. And are these materials you've used in other cases where you've appeared as an expert?

A. Yes.

Q. So, you mentioned you used the House and Senate guidelines.

MR. CEPEDA DERIEUX: I'm going to ask Stephen to please pull up Plaintiffs' Exhibit 175.

BY MR. CEPEDA DERIEUX:

Q. Dr. Imai, do you recognize this document?

A. Yes.

Q. What is this document?

A. This is the House guidelines.

Q. Did you rely on this document to prepare your findings in this case?

A. Yes, I did, to conduct the constraints.

Q. And we'll speak on that a little more later.

MR. CEPEDA DERIEUX: Stephen, I'll ask you to please pull up what I believe is Senate Exhibit 3.

BY MR. CEPEDA DERIEUX:

Q. Dr. Imai, do you recognize this document?

A. Yes.

Q. What is this?

A. This is the Senate guidelines.

Q. And did you rely on this document to make your findings?

[Page 1940]

A. Yes, I did.

Q. So, let's talk about how you used the House and Senate guidelines to set up the simulations that your algorithm ran. What did you understand the purpose of the House and Senate guidelines to be?

A. I understand that these guidelines are used when drawing the enacted plan.

Q. And so, let's focus on the House guidelines first. Dr. Imai, does this document list criteria to be used in redistricting in South Carolina?

A. Yes.

Q. And did you understand all the criteria listed in this document to be equally important?

A. No.

Q. And could you say more? What do you mean by that?

A. I think if you go to the next page, there's a section that's called the "priority of criteria." So, there, as written, the requirements given in sections one, two, three, and four should be given the priority.

Q. And just what are sections one, two, three, and four?

A. So one, two, three, and four are—well, it's hidden there. But U.S. Constitution, federal law, state law and eco-population.

Q. Thank you. And what about the Senate guidelines, Senate Exhibit 3, does that document—did you understand it to list

[Page 1941]

several criteria to be used in redistricting in South Carolina?

A. Yes.

Q. Did you understand that all criteria listed in that document were equally important?

A. No.

Q. Could you say more about that?

A. Yeah. So, on the Section 3, under the heading of “additional considerations,” I said there are other criteria that should be given consideration where practical and appropriate. So, I take this to understand that these criteria that are listed as additional considerations are not given the priority, and the ones that are listed in the earlier sections—the sections one and two—are given the priority.

Q. Thank you. So, let’s talk about how you implemented criteria in these guidelines in your algorithm. So, did your algorithm treat all constraints equally?

A. No.

Q. And say more about that. How were they treated differently?

A. So, in these type of algorithms, there are two types of constraints. The way to think about this is one is the hard constraints, and the other one are the soft constraints. And the hard constraints are constraints that every simulated plan

[Page 1942]

is satisfied. So, if you place it as a hard constraint, every simulated plan that I generate would satisfy that constraint.

The soft constraint is a little bit different. So, there, you're basically encouraging the algorithm to draw a certain type of district—not, you know, strictly enforcing. So, depending on the strengths, there are certain type of redistricting plans that are more likely to be generated.

Q. All right. So, hard constraints and soft constraints. Easy enough. Let's take those in turn. What were the hard constraints in your simulation?

A. Right. So, there are three hard constraints in my localized simulation analysis as well as statewide analysis. The first one is the contiguity, which means that every simulated district that I generate is contiguous. I also have the population deviation constraint. And this one is set to the .1 percent. So, what that means is that every simulated district that I generate has the population within the range of .1 percent of the target population. So, here, the target population is the total population of South Carolina divided by seven, which is the total number of districts in this state. So, that's the second hard constraint.

The third hard constraint is the “avoidance of incumbency pairing.” So, I made sure that no incumbent is paired with another incumbent in the same district in every simulated plan that I generated. For the statewide analysis, I have one

* * *

[Page 1951]

hard constraints. Let's focus on your soft constraints. And just if you could explain, what are soft constraints?

A. Right. So, soft constraints are basically the constraint that encourages the simulation algorithm to generate certain types of redistricting plans.

Q. And what encourages whether a certain redistricting plan will do what your soft constraints want it to do?

A. Yes. So, there is a parameter that the analyst—in this case, myself—specifies for each soft constraint. So, that parameter represents the strength of the constraint. So, the stronger the constraint is, the encouragement to the algorithm would be stronger.

Q. And what determines the strength of those parameters?

A. So, in my analysis, what I did was to use the enacted plan as a benchmark and determined the strength of the soft-constraint parameters. So, in my analysis, I used the enacted plan as a benchmark to determine the parameter values for each soft constraint.

Q. All right. And what specific soft constraints did you build into your analysis?

A. So, the first one is compactness. So, I set the—I specify the parameters such that the simulated districts are at least as compact as the enacted districts on average.

Q. And any the others? What are the other soft constraints?

A. The other soft constraint is the number of split

counties. So, I set the parameter values so that the number of split counties in the simulated redistricting plans are no greater than those in the enacted plan, on average.

Q. Any others?

A. And I did the same thing for the municipality splits.

Q. So, when you say you did the same thing—

A. Yes. So, I made sure that the number of split municipalities is no greater than that of the enacted plan, on average.

Q. Okay. So, let's talk about compactness a little more.

MR. CEPEDA DERIEUX: Stephen, if you could go to paragraph 58 of Dr. Imai's report.

BY MR. CEPEDA DERIEUX:

Q. I just want to ask you, Dr. Imai: How did you measure the compactness of your simulated plans?

A. Yes. So, to measure compactness, I used two measures that are widely used in the academic literature. One is called Polsby-Popper Score, and the other one is called Fraction of Edges Kept.

Q. And what is Polsby-Popper?

A. Practically speaking, Polsby-Popper basically compares

the district with the circle that has the same length of the perimeter, and essentially see if the district is close to a circle. So, the idea is that if the district is not compact, it may not be very close to the circle.

* * *

plan reflects the configuration of the prior plan, the simulated plan should be similar in terms of the compactness, as defined in this section.

Q. Okay. So, second soft constraint, how did you constrain the number of county boundaries in your simulations?

A. Oh, yeah. I also should mention that the algorithm—you know, soft constraints in terms of the split counties and split municipalities. So, compactness is controlled in there as well by preserving those geographical units.

And for your question about split counties, essentially what I did was to make sure to choose the parameters such that the simulated plan, on average, have, you know, fewer number of split counties than the enacted plan.

Q. And you did that for both counties and municipalities?

A. That's correct. So, my simulation—all simulations have those two constraints as soft constraints.

Q. Dr. Imai, what about core retention? Did you impose a constraint to consider the cores of existing districts?

A. Not directly.

Q. Could you say more about that, please?

A. Yes. So, first of all, if you consider my localized analysis, so that my first localized analysis focuses on Districts 1 and 6 and freezes the other five districts as the same as under the enacted plan. So, to the extent that the enacted plan has core preservation, my localized simulation

[Page 1955]

analysis follows exactly that in those five districts.

Now, in my second localized analysis, I further restricted such that the only thing that's changing—the only thing that I'm generating is the boundary within Charleston County. Everything else, not just those five districts, but also the District 1 and 6 outside of Charleston County, is exactly the same as the enacted plan. So, to the extent that the enacted plan preserves the core, my simulation analysis also preserves the core.

Q. And, Dr. Imai, in reviewing the guidelines, did you see an objective definition of the cores of existing districts in there?

A. No, I did not see any sort of operationizable instruction about how cores should be either defined or preserved.

Q. And I'll ask: In your broader work, is retaining the cores of specific districts something you build into your simulations?

A. No. I never, in my expert-witness work—not just in this case but in other cases that I've done, I did not incorporate the core retention constraint directly.

Q. And why is that?

A. So, the reason—again, this is important because the goal of the simulation analysis is an evaluation of the enacted plan. And in particular, a racial gerrymandering case like this one, we're trying to isolate the lower rate spread

[Page 1956]

in determining the district boundaries under the enacted plan. So, in order to isolate the role race

played in determining the enacted plan, I did not want to input directly any plan, whether it's a previous plan any other plan as a constraint. Because, if you do that, you would inherit—the result simulated plans would, in fact, inherit all factors that went into this, say, previous plan, right, which may include race or some other related factors. And since I did not analyze the previous plan in this report—my goal is to analyze the enacted plan—I have no idea what factors went into the previous plan. Therefore, I focused on the constraints that are listed in the guidelines that are clearly operationalizable in the objective matters. So, things like population deviations, compactness, number of split counties and so on. And I used those as input as an effort to isolate the role race played beyond the set of traditional redistricting criteria. So, I did not use the core retention. That's a function of the previous plan.

Q. Thanks, Dr. Imai. So, let's talk about the conclusions of your analyses. And let's start with the first one, the localized Districts 1 and 6 simulation. Why did you choose to focus on District 1 and District 6?

A. Right. So, as you know, the largest change from the previous plan happened under the enacted plan, is Districts 1 and 6. The other five districts are largely kept the same as

* * *

[Page 1962]

A. Oh, yes. So—yeah. Under the enacted plan, a little bit above 15,000 Black voters are in District 1; whereas, you know, on average under simulation, about 25,000 Black voters. So, this is just focusing on

Charleston County and not changing any other district boundaries. So, just in terms of, you know, calibrating this number, that's what it shows.

Q. So, taking all of this together, what are your conclusions on the localized Charleston County simulations?

A. Yeah. So, second localized simulation analysis basically confirms what I found in the first simulation analysis, in that the way that the district boundary is drawn within Charleston County is highly unusual, compared to the race-blind simulated plans. And it is a statistical outlier in terms of placing a disproportionately large number of Black voters who live in Charleston County—in particular, city of Charleston and city of North Charleston—placing them in District 6 instead of District 1, which basically leads to low BVAP proportion of District 1 under the enacted plan.

Q. So, let's focus on the conclusions of your statewide simulation. And now that we've gone through your localized analyses, I'll ask you again: Why did you do the statewide simulation?

A. Right. So, the statewide analysis tries to put another stress test on the finding that I obtained in my localized simulation analysis. In the localized simulation analysis,

* * *

[Page 1964]

at Richland County and Sumter County, where, as you'll see, the enacted plan splits the Black community. So, I focused on those two counties, which

basically is the district boundary between 2 and 6 as well as district boundary between 5 and 6.

Q. So, let's stay in Charleston for a second, which we've already talked about, but now you're looking at it within statewide simulations. What were your findings in Charleston County with the statewide simulations?

A. Yes. So, statewide simulation basically confirms, you know, usual findings from the localized simulation analysis in that the district boundary between Districts 1 and 6 is highly unusual compared to the statewide simulation analysis. And so, the compliance with the VRA cannot explain the role race played in drawing the district boundary. So, in other words, race played a role in determining the district boundary between Districts 1 and 6 beyond the purpose of traditional redistricting criteria as well as the compliance with the Voting Rights Act.

Q. So, I'll ask Stephen to focus on Plaintiffs' Exhibit 36, which is Figure 4 in your report.

Dr. Imai, what does this histogram tell us?

A. Yeah. So, this histogram is strikingly similar to the localized simulation analysis histogram I showed you, and it shows the enacted plan is a statistical—clear statistical outlier in terms of the BVAP proportion of District 1. And as

[Page 1965]

I said earlier, the District 1 BVAP proportion in the enacted plan is about 17 percent in contrast, and the simulated plan, which accounts for the possible VRA compliance, keeping the District 6 at the same level of BVAP proportion as the enacted plan. So, you cannot

reduce it. Even if you put that constraint, you see the clear difference between the simulated and the enacted plan in terms of BVAP proportion of District 1. So, this shows that the compliance with VRA cannot explain the fact that the enacted plan has an extremely low BVAP proportion of District 1 compared to the simulated plan.

Q. So, did this analysis in any way change your conclusions from the prior analyses that we've discuss?

A. No. Actually, it enforces it. It basically bolsters the finding that I obtained in my localized simulation analysis.

Q. And I'll briefly ask if Stephen can pull up Plaintiffs' Exhibit 37, which is Figure 5 in your report.

And, Dr. Imai, I think we've seen one of these before. But could you just tell us what this represents?

A. Yes. So, this is exactly the same figure I showed you earlier, the localized simulation analysis. So, here, we're looking at the statewide simulation analysis. And I'm, again, coloring each precinct based on the proportion of simulated plans where the precinct is placed in District 1. So, the darker the blue are, more likely to be part of District 1. And, again, I would like you to focus closely on the area of

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[Page 1977]

A. I don't use it in the legal sense because I'm not a lawyer.

Q. And you don't know one way or the other whether the General Assembly actually used race to draw the enacted plan, do you?

A. My analysis doesn't address, you know, like what intent the General Assembly had when drawing the enacted plan.

Q. And your analysis doesn't try to get in the mapmaker's head, right?

A. No. I can't.

Q. You're not trying to figure out why the mapmaker drew the map a certain way, correct?

A. No.

Q. And you're not looking at the intent of the map drawer or legislators; is that right?

A. That's correct.

Q. And so, you also don't draw any conclusions about whether the General Assembly intentionally discriminated, right?

A. No.

Q. And I believe you mentioned before there are two Monte Carlo methods for simulation analysis, correct?

A. That's correct. Speaking of those two types.

Q. So, if I refer to sequential Monte Carlo as SMC, does that work?

A. I developed that. SMC works, yes.

[Page 1978]

Q. And for Markov Chain Monte Carlo, is it ok if I refer to them as MCMC?

A. That's what we call them.

Q. Wonderful.

MR. GORE: Mr. Traywick, can you pull up the first tab on the screen here?

BY MR. GORE:

Dr. Imai, this is a paper of yours that I downloaded off the web. Do you recognize this paper?

A. I wrote that paper.

Q. You did write that paper. And this draft is dated June 14th of 2022, correct?

A. That's correct.

Q. And I believe you said earlier that there's an SMC paper currently under peer review; is that right?

A. This is the one that's currently under peer review.

Q. Thank you for confirming that. And in this paper you discuss SMC and MCMC methods, right?

A. That's correct.

Q. Okay. And you generally take the position that SMC is a superior method, correct?

A. I would like to say yes because I developed SMC, but it depends on the context.

Q. Okay.

MR. GORE: So, let's scroll down first, Mr. Traywick,

[Page 1979]

if we can, to page three of the article.

BY MR. GORE:

Q. And at the bottom here of this page, you include a critique of the MCMC method. So, I've highlighted it here. Do you mind reading that for the record?

A. Sure. "First, distribution that some of these algorithms sampled from are not made explicit are leaving open the possibility that the generated ensemble is systematically different from the true set

of all valid plans. Second, even when the District 6 is known, MCMC algorithms used to sample from it may be prohibitively slow to mix and cannot be a representative sample.”

Q. So, Dr. Imai, here, you’re taking the position that MCMC algorithms in certain cases don’t yield a representative sample, right?

A. In certain cases, yes.

Q. And in other cases they generate plans that are systematically different than the true set of all valid plans; isn’t that right?

A. In other cases, yes.

Q. You, nonetheless, chose to use MCMC method in this case, correct?

A. That’s correct.

Q. Let’s go back to the first page of this article, if we might, in the abstract. And I’ve highlighted here a sentence

[Page 1980]

in the abstract. Can you see that, Dr. Imai?

A. Sure.

Q. Do you mind reading that into the record as well?

A. “For successful application, sampling methods must scale to large maps with many districts incorporated realistic legal constraints and accurately and efficiently sample from a selected target distribution.”

Q. So, you agree, don’t you, Dr. Imai, that to be instructive, simulation analysis has to incorporate realistic legal constraints, right?

A. It depends on the context and purpose. But, generally, yes.

Q. Generally, yes. But in this case, you didn't incorporate all the realistic legal constraints, did you?

A. I'm not sure why you say that.

Q. Well, we'll talk about that a little bit more in a minute.

A. Okay.

Q. But did you do anything to confirm that your simulation plans satisfied legal requirements?

A. So, I did my best to account for the explicit rules given in those guidelines, the State and House guidelines (*sic*).

Q. But you didn't consider all the rules in the guidelines, correct?

A. Well, it depends on which rule you're talking about.

[Page 1981]

Q. Okay. We'll get into that more here in just a minute.

MR. GORE: Let's go to the next tab, if we could, Mr. Traywick.

BY MR. GORE:

Q. This is another of your articles: "The Essential Role of Empirical Validation in Legislative Redistricting Simulation." Did I read that correctly?

A. Yes.

Q. And one of your co-authors here is Ben Fifield?

A. That's correct.

Q. And who is Mr. Fifield?

A. He's my former student.

Q. Did you have any dealings with Mr. Fifield in connection with this case?

A. What do you mean by "dealings"?

Q. Was Mr. Fifield part of the ACLU data team?

A. Oh, I see. Yes. So, he was—I don't think he is any longer, but he was part of the data team for ACLU.

Q. And as a member of the data team, Mr. Fifield compiled data and shared it with you, right?

A. I don't know exactly what he did, but he did send me the data. You know, he shared the data by e-mail links with—you know, cc'd to counsel.

Q. So, you had some e-mail exchanges with Mr. Fifield about the data you received from the ACLU; is that right?

[Page 1982]

A. He did send me the data. I'm not sure—well, we never had e-mail exchanges without counsel being cc'd about the data. And I don't recall if he ever—you know, in those e-mails if he ever had written to each other. But I did receive the data from him—the link to the data. But I don't know what role he played in preparing that data set.

Q. Let's move on the next page of this, if we can. We have a highlighted portion, I hope. Here in the left column.

Dr. Imai, will you also read this from this article you're co-author of?

A. Yeah. "And yet, if there exists no scientific evidence that these simulation methods can actually yield a representative sample of valid redistricting

plans, we cannot rule out the possibility that the comparison of a particular plan against the sample plan yields misreading conclusions such as gerrymandering.”

Q. So, when the simulation methods aren't scientifically validated, they can yield misleading conclusions, right?

A. That's correct.

Q. And so, what did you do to scientifically validate the data you received from the ACLU?

A. Oh, data, or the simulation methods?

Q. I'm asking you now about the data. You didn't do anything to validate that data, did you?

A. What do you mean by “validate”?

[Page 1983]

Q. Did you do anything to check whether the data was accurate?

A. I checked with a lot of sources to make sure—other people who use the same source—in this case, census data—to make sure that the numbers, you know, add up. But, like, I didn't validate every single data point, if you mean by validation. By validation, if you mean that.

Q. Yeah. I do mean that. So, you didn't go through the data point by point to see if the data was accurate?

A. No, I didn't do that.

Q. Okay. So, Dr. Imai, I believe you testified earlier that you reviewed the House and Senate guidelines as part of your report, correct?

A. Yes.

MR. GORE: Mr. Traywick, can we go to the third tab, which is Dr. Imai's report. It's in evidence as Plaintiffs' Exhibit 32.

BY MR. GORE:

Q. Now, you reviewed the House and Senate guidelines, but you didn't actually control in your simulations for all the criteria in the guidelines, correct?

A. Like, which criteria are you talking about?

Q. Sure.

MR. GORE: Let's go two more over, if we can, Mr. Traywick, to Senate Exhibit 3. It may be the easiest way to

[Page 1984]

do this. Let's go the second page.

BY MR. GORE:

Q. And there, at 3b, "constituent consistency." So, let's start with one of these—the second piece of that says: "Keeping's incumbents' residents in their districts with core constituents"; do you see that?

A. Yes, I do.

Q. And did you add a control to your algorithm for that, for keeping incumbents' residents with their core constituents?

A. Not directly.

Q. Not directly. And, in fact, you allow in your model for the districts to cover different geography than the enacted plan, correct?

A. Right. Because, otherwise, it wouldn't be different from the enacted plan.

Q. Right. So, even though each incumbent gets a district in your approach, the district they get might be different, correct?

A. Different from the enacted plan, yes.

Q. Yes. So, that's true by geography and by the voters in the district, correct?

A. That's correct.

Q. Okay. And, before, I think you discussed with Mr. Cepeda that you also didn't control for preserving the cores of existing districts; is that right?

[Page 1985]

A. Not directly.

Q. And if we go up and look at 3A, you didn't control for communities of interest, correct?

A. Not directly. However, some of the guidelines mention the counties and administrative boundaries. So, those are being controlled.

Q. Right. And those are separate parts of the guidelines, right? If we scroll down, that would be C or D or E here. And communities of interest are separately identified as criteria, correct?

A. Oh. But in the other guideline, I think it's part of the community of interest definition.

Q. I see. So, you're referring to the House guidelines because the Senate guidelines, there is a different criteria?

A. That's correct.

Q. Okay. And you didn't control for that criterion; is that right?

A. Not directly.

Q. And did you control for natural geographic boundaries and how that might affect how the plan is drawn?

A. What do you mean by “natural”?

Q. Rivers, water features, anything like that.

A. Not directly.

Q. And, here, if we look at 3E, one of the Senate criteria is minimizing divisions of voting precinct boundaries,

[Page 1986]

correct?

A. That’s correct.

Q. And you didn’t control for that either, did you?

A. Not directly. However, the simulation is based on precincts. So, all precincts, unless they are split by either municipalities or the enacted plan itself, are kept intact.

Q. But even though you drew by VTD, some of your simulation plans split VTDs, right?

A. Right. But only when they’re split by municipalities or the enacted plan itself.

MR. GORE: Mr. Traywick, can you take us back to that third tab, Dr. Imai’s report, take us down to page 27? And scroll up a little bit here—right there. Figure 14.

BY MR. GORE:

Q. You have these histograms that compare the enacted plan VTD splits to your simulations, right? And you have three different simulations, Districts 1

and 6, Charleston County, and statewide; is that right?

A. That's correct.

Q. Okay. So, according to these histograms, the enacted plan performs better than most of the simulation plans on VTD splits, correct?

A. That's correct.

Q. And if we scroll down a little bit more, that's true in all three of the simulations, correct?

[Page 1987]

A. Yes. On average, yes.

Q. On average. And let's scroll down to paragraph F.

And this is called precinct splits of simulated districts. And paragraph 61, which is under Section F, do you mind reading that last sentence for us?

A. Yes. "This is, in part, due to the fact that many municipalities split VTDs, implying that there is often a direct tradeoff between municipality and precinct splits."

Q. So, you acknowledge that there are tradeoffs between municipality splits and VTD splits, correct?

A. That's right. In South Carolina, municipalities split local precincts.

Q. And, yet, you control for municipality splits but you didn't control for the tradeoff with VTD splits, correct?

A. That's correct.

Q. And you also used in that sentence both the term, VTD, and precincts; do you see that?

A. Yes.

Q. And are you using those interchangeably?

A. That's correct.

Q. Dr. Imai, you also didn't consider politics in your simulations, correct?

A. What do you mean by "politics"?

Q. Partisan performance of districts.

A. I did not use any election data.

[Page 1988]

Q. And so, you didn't consider how districts would perform for Republicans or Democrats, correct?

A. I did not analyze election data.

Q. And you also didn't conduct a racially polarized voting analysis, correct?

A. I was not asked to do that. I just wasn't asked to do that.

Q. And you didn't control for racially polarized voting in any way in your analysis, correct?

A. No.

Q. And so, you don't have an opinion as to whether what you observed is race rather than politics in the enacted plan, correct?

A. I have no opinion on what role the politics played in the enacted plan—drawing the enacted plan.

Q. And the analysis in your report also doesn't contain any constraint for the benchmark plan, correct?

A. That's correct.

Q. But if the map drawer started with the benchmark plan, wouldn't the benchmark plan be a relevant constraint in the analysis?

A. So, my analysis doesn't try to emulate what the map drawer did.

Q. But what if the map drawer had started with the benchmark plan, wouldn't that affect the range of plans available to the

[Page 1989]

map drawer?

A. Might be. But, again, I don't analyze the process in which the map drawer drew the enacted plan.

Q. And it was possible to include a benchmark-related constraint in your model, right?

A. That's possible.

Q. And you could do that by population or geography, correct?

A. That's correct.

Q. Now, you actually did at some point run a simulation that included a benchmark-related constraint, correct?

A. At some point, the counsel asked me to do that.

Q. And you compared that simulation to the ensemble plan, correct?

A. What do you mean by "ensemble"?

Q. I'm sorry. The enacted plan. You compared your simulation to the enacted plan, which would have included the benchmark-related constraint?

A. At one point I think that happened, yes.

Q. And do you recall what the results of that simulation analysis was?

A. I don't recall the specifics.

Q. But you didn't include that in your report, correct?

A. Right, for the reason that I don't use, you know, any other plan in any of my expert reports. For the reason I

[Page 1990]

stated earlier.

Q. So, in your report, the only plan you compared to the simulations is the enacted plan, right?

A. That's correct.

Q. And you don't compare any other plans submitted by the public, correct?

A. No.

Q. So, you don't compare the Harpootlian Plan, correct?

A. No.

Q. Or the LWV plan, correct?

A. No.

Q. Or either the NAACP plans, correct?

A. No.

Q. So, before, when you were talking to Mr. Cepeda, I think you acknowledged that your plans are drawn to a 0.1 percent population deviation; is that right?

A. That's the maximum deviation that's allowed in my simulation.

Q. And you agree with me that that violates the Senate guidelines, correct?

A. I think consistent with the population deviation requirement in the Senate guidelines.

MR. GORE: Mr. Traywick, can you take us to page 10 of Dr. Imai's report?

BY MR. GORE:

[Page 1991]

Q. I want to understand how your model works a little bit better, if you'll indulge me for a minute.

A. Uh-huh.

Q. So, you impose constraints in the algorithm and you assign strengths to the constraints, correct?

A. That's correct.

Q. Okay.

A. For the soft constraints, you're talking about?

Q. Yes, the soft constraints. Because I understand the hard constraints are hard. It's a maximum strength?

A. Yes, there is a constraint on that.

Q. So, changing the strength of a constraint in a model will change the output and will result in a different set of simulated plans, correct?

A. That's correct.

Q. And that's true if we were to change the strength of two constraints, right?

A. That's correct.

Q. Or if we change the constraint of all the constraints, correct?

A. It made no change but it may change, yes.

Q. Okay. But your model did not attempt to approximate the strength that the General Assembly assigned to these criteria, right?

A. I'm not sure what you mean by "strength the General

[Page 1992]

Assembly assigned.”

Q. Well, I think we just agreed that redistricting involves tradeoffs, correct?

A. Uh-huh—yes.

Q. So, the General Assembly, when it makes that tradeoff, has to decide which criterion is more important to it, correct?

A. I don't know. I have no opinion on how the General Assembly drew the plan.

Q. And you, yourself, don't draw maps, correct?

A. I'm not a map drawer either.

Q. But certainly you assigned strengths to the model. And why did you do that?

A. Why did I do that?

Q. Yeah. Why do you assign strengths to the constraints?

A. Right. Because I wanted to make sure that the simulated plans are as compliant with the traditional redistricting criteria as the enacted plan in terms of those constraints that I was considering.

Q. Right. But you can't really judge whether the General Assembly would have assigned the same strengths to those constraints, correct?

A. My algorithm is publicly available, but I don't think they're using it. I hope not.

Q. And when you did the analysis, you weren't trying to

[Page 1993]

mimic what the map drawer had done, correct?

A. No.

Q. And you weren't trying to mimic how the General Assembly might have weighted particular factors, correct?

A. No. I'm just evaluating the characteristics of the plan.

MR. GORE: Mr. Traywick, if you could scroll up to the bottom of page nine, top of page 10.

BY MR. GORE:

Q. So, this is a list of your constraints; is that right? I think this is for the statewide simulation, correct?

A. Okay. Yes, that's right.

Q. And the only difference between the statewide and the local simulations for constraints is that the statewide simulation includes your Voting Rights Act constraint, correct?

A. That's correct. I mean, aside from the fact that the localized simulation focuses on two districts, and statewide does the whole state.

Q. Sure.

MR. GORE: Mr. Traywick, if you'll scroll down to the top of page 10.

BY MR. GORE:

Q. In this bullet point here at the top, you say the number of split counties is, on average, no greater than the corresponding number in the enacted plan, correct?

* * *

[Page 2026]

Q. And you know it's still split in the enacted plan, right?

A. Yes. It's showing here.

Q. But you don't know why; is that right?

A. No. I don't analyze intent.

Q. And do you know whether any of the changes to Sumter County that were made in the enacted plan reflected requests from Congressman Clyburn?

A. No, I don't. I didn't analyze any of that.

Q. Thank you, Dr. Imai.

JUDGE GERGEL: Does the House have any questions?

MR. MATHIAS: Mr. Gore took all the good questions. Nothing from the House.

JUDGE GERGEL: That's not surprising. Mr. Cepeda, redirect?

MR. CEPEDA DERIEUX: Thank you, your Honor.

REDIRECT EXAMINATION

BY MR. CEPEDA DERIEUX:

Q. Dr. Imai, Mr. Gore said several times that you drew maps in your simulations. You didn't draw maps, did you?

A. I simulated maps.

Q. And could you remind us again what the purpose of your simulations are? Is it to—I'm sorry. What's the purpose of your simulation?

A. Yeah. So, the purpose is to evaluate the characteristics of the enacted plan, not to generate the plan that can be

[Page 2027]

enacted.

Q. Thank you. And Mr. Gore said several times that the simulated maps were based on race. When you set a parameter between 45-and-50-percent BVAP, what were you setting out to do?

A. Right. So, the only thing I was doing was to make sure that District 6 had the similar level of BVAP proportion as in under the enacted plan.

Q. So, you were trying to reflect District 6's BVAP in the enacted plan, right?

A. That's right.

Q. Okay. Mr. Gore tried to point out that some of your simulations split Charleston County; do you remember that?

A. Yes; in the statewide simulation analysis.

Q. Sure. Is the legislature's particular split of Charleston County still a statistical outlier across your simulations?

A. Yes.

Q. Now, Mr. Gore identified some portions of your draft paper on SMC. Do you remember that?

A. Yes.

Q. Do any of the critiques you raised in that paper undermine the methods or findings in this case?

A. No.

Q. He also suggested that SMC is better than MCMC; do you

[Page 2028]

remember that?

A. Yes.

Q. You developed SMC, didn't you?

A. Yes, I did.

Q. But you chose to use MCMC here, right?

A. That's correct.

Q. If you believed SMC would have produced more reliable results, would you have used that method?

A. Yes. Because that's what I developed and generally try to promote my own work.

Q. Makes sense. And SMC is open source, right?

A. Yes.

Q. So, if Mr. Gore wanted to test his hypothesis, he has the tools to do so, right?

A. Yes. He has data and he has the package that can be done.

Q. Thank you, Dr. Imai. You'll recall that Mr. Gore mentioned you tried to use a core retention constraint at some point; do you remember that?

A. I remember that.

Q. And why did you eventually choose not to use that constraint?

A. Oh, because I don't believe in, you know, imposing the constraint that's motivated by any other plan, for the reason that the I suggested, which is that, essentially, if you use

[Page 2029]

this directly, you end up inheriting all the factors that went into the previous plan and you have no ability to isolate the role race played.

Q. Would using a core retention constraint mask the effect of race in the current plan?

A. That's another way of saying that. If you do that, and if race was used in the previous plan, that could mask the role race plays.

Q. You'll recall, Mr. Gore brought up Mr. Ben Fifield. Do you remember that?

A. Yes.

Q. Is it actually Dr. Fifield?

A. Yes. He's defended PhD's successfully a few years ago.

Q. Good to hear. And he asked you about validating your data after he read your quote about your simulation model. Do you remember that?

A. I remember that.

Q. The data you used was census data, right?

A. That's correct.

Q. Is census data generally considered reliable in the field?

A. Yes. I mean, that's basically the data we all rely on.

Q. And Mr. Gore asked you about controlling for communities of interest; do you recall?

A. I remember that.

[Page 2030]

Q. Do you know Mr. Sean Trende?

A. I've never met him in person, but I know his name.

Q. Are you aware Mr. Trende used your methods in his New York report?

A. I know that somebody told me that he used.

Q. And are you aware that, in Mr. Trende's New York reply report, he describes communities of interest as a notoriously difficult concept to nail down because they have vague definitions?

A. I agree with that statement.

Q. Okay. Mr. Gore talked to you about your statewide map simulations, and he suggested that they're only tied down by incumbency; do you remember that?

A. Yes.

Q. But that simulation is still constrained by all the other constraints we discussed during my previous examination, right?

A. That's correct. Additional constraint was given, but all the other constraints are maintained.

Q. So, it still respects municipal boundaries in the enacted plan?

A. That's right.

Q. It still respects county boundaries in the enacted plan?

A. That's right.

Q. It's contiguous?

[Page 2031]

A. Yes.

Q. Compactness?

A. Yes.

Q. Mr. Gore challenged your methods, Dr. Imai. How many redistricting cases have you worked on?

A. Oh. Seven or eight or something like that. I can't —

Q. Were any of those racial gerrymandering cases?

A. Yes. I submitted an expert report in the Alabama case, which is now at the Supreme Court. And most recently—this case obviously, and most recently, Jacksonville case in Florida, as well as, I guess I did the State House for South Carolina as well.

Q. All right. In this action, sure. And in those cases, did you perform a similar analysis that you did here?

A. Yeah. Very similar.

Q. And do you know how the district courts resolved those cases?

A. So, in all those cases, the district courts credited my analysis and made a decision in support of the plaintiffs, for which I was working for.

Q. And how do your findings in those reports compare to the strength of your findings in this one?

A. In comparison terms? What do you mean by that?

Q. How sure are you of your findings in this case?

A. Oh, I see. Well, I only put forward the conclusion I

[Page 2032]

feel strongly—you know, strongly believe in. So, not just other cases, but in this case as well. In any of my academic work, I don't put out evidence that's fragile. I only put in evidence that is robust (*phonetic*).

Q. Thank you, Dr. Imai. I have no more questions.

JUDGE GERGEL: Thank you. Thank you, sir.

Okay, folks. As we leave today, I want to congratulate everyone on their hard work. I know everyone is exhausted and I expect tonight everyone will sleep very well. In five days, we're going to either stipulate as to data, or you're going to tell me why—you're going to tell me what you agree on and what you

disagree on, why you disagree, so the Court can make findings of fact, conclusions of law, due on November 3rd. Closing argument, 9:00 a.m., November 22nd.

Everyone travel safely.

Yes?

MR. MATHIAS: Your Honor, I'll just briefly renew the House's motion for a directed verdict.

JUDGE GERGEL: The record is not closed yet because I need the data in first before I rule on that. We'll take that up—you and Mr. Gore will raise that at the closing argument, because only then will the record be complete.

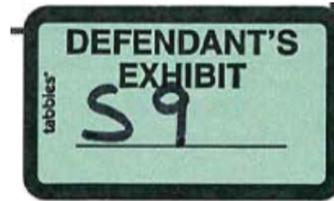
And what's this thing about last night? Remind me again what the issue is.

MR. TRAYWICK: Your Honor, if I might?

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Message

From: Senate Redistricting
[/O=EXCHANGELABS/OU=EXCHANGE
ADMINISTRATIVE GROUP
(FYDIBOHF23SPDLT)/CN=RECIPIENT
S/CN=C314E5EA85E441A9858EEF7E9
B46C813-SENATE REDI]

Sent: 1/20/2022 9:15:01 AM

To: Maria Brainard [mbrainard1@yahoo.com]

Subject: RE: Charleston Resident Support Senate
Congressional Amendment Map 1

Good morning,

We have received your testimony and have submitted it to the Committee. Your written testimony will be included in the record.

Thank you for your participation,
Madison Faulk

From: Maria Brainard <mbrainard1@yahoo.com>
Sent: Monday, January 17, 2022 04:16 PM
To: Senate Redistricting
<Redistricting@scsenate.gov>

Subject: Charleston Resident Support Senate Congressional Amendment Map 1

I do not support Map 2, this does not representative the whole of Charleston, just the Democratic arm of the party

1. Charleston has always been with Berkeley and Dorchester in the same Congressional District. Our economy and other communities of interests are aligned and intertwined;
2. Historically, Charleston has two Congressional representatives to advocate for the residents well-being, regardless they are Republican or Democrats. Our voices will be stronger with two than with one. The “Whole Charleston” concept doesn’t really make sense if we want more visibility in Washington;
3. “Whole Charleston” has little in common with inland counties of Colleton and Jasper, and
4. Senate Amendment Map 1 resembles the current Congressional District 1 boundaries, which was upheld by Obama’s DOJ a decade ago. Why do partisans want to redraw a new Congressional District map and throw South Carolinians in an ugly legal fight? Senate Map 2 is more about political gerrymandering than helping minority residents.

Sent from Yahoo Mail for iPhone

SCSENATE_00000069

* * *

Message

From: Senate Redistricting
[/O=EXCHANGELABS/OU=EXCHANGE
ADMINISTRATIVE GROUP
(FYDIBOHF23SPDLT)/CN=RECIPIENT
S/CN=C314E5EA85E441A9858EEF7E9
B46C813-SENATE REDI]
Sent: 1/20/2022 9:39:16 AM
To: Gale Matthews [galem13@outlook.com]
Subject: RE: House Congressional District Plan 2
with Senate Amendment 1

Good morning,

We have received your testimony and have submitted it to the Committee. Your written testimony will be included in the record.

Thank you for your participation,

Madison Faulk

From: Gale Matthews <galem13@outlook.com>
Sent: Monday, January 17, 2022 09:51 AM
To: Senate Redistricting
<Redistricting@scsenate.gov>
Subject: House Congressional District Plan 2 with
Senate Amendment 1

I support the above-referenced Congressional reapportionment plan with Senate Amendment 1 because this maintains the long-term “Tri-County” association between Charleston, Berkeley, and Dorchester counties. This will also provide 2 Member

representation in Congress, which, in my view, is absolutely necessary for a major metropolitan county that is growing as rapidly as we are, and which “2 Member” representation we see with other major metropolitan counties in SC.

Gale Matthews
613 King Haven Lane
Johns Island, SC
29455

SCSENATE_00000146

* * *

Message

From: Senate Redistricting
[O=EXCHANGELABS/OU=EXCHANGE
ADMINISTRATIVE GROUP
(FYDIBOHF23SPDLT)/CN=RECIPIENT
S/CN=C314E5EA85E441A9858EEF7E9
B46C813-SENATE REDI]
Sent: 1/20/2022 10:27:08 AM
To: Thomas Holcombe
[tom_holcombe@yahoo.com]
Subject: RE: Congressional District 1 changes

Good morning,

We have received your testimony and have submitted it to the Committee. Your written testimony will be included in the record.

Thank you for your participation,
Madison Faulk

From: Thomas Holcombe
<tom_holcombe@yahoo.com>
Sent: Saturday, January 15, 2022 08:38 PM
To: Senate Redistricting
<Redistricting@scsenate.gov>
Subject: Congressional District 1 changes

Dear Chair Rankin and Senate Redistricting Subcommittee Members,

I strongly recommend Senate Amendment Map 1 as the preferred alternative for redistricting the state. I have been in Mt. Pleasant for the past 15 years and have lived in the low country for over 45 years. Map 1 more closely represents the current district layout which preserves many community interests that has been intertwined in the tri-county area of Charleston, Berkeley and Dorchester Counties. Charleston and Mount Pleasant share many critical infrastructure and economic interests and the state has historically benefitted from the increased visibility and influence in Washington DC with two congressional representatives. The “whole Charleston” concept of Map 2 will shade our Washington visibility by proposing a single congressional representative. Also, the “Whole Charleston” concept ignores that there is little in common with inland counties of Colleton and Jasper. The radical changes proposed under the whole Charleston concept suggests these changes are more about political gerrymandering than meeting the states redistricting goals. This becomes more apparent when considering that Senate Amendment Map 1 resembles the current Congressional District 1 boundaries, which was upheld by Obama’s DOJ a decade ago.

For the reasons stated above, I support Senate Amendment Map 1 and am concerned that further consideration of the whole Charleston concept will result in unneeded litigation.

Sincerely,
Thomas Holcombe
1357 Hidden Lakes Drive
Mount Pleasant, SC 29464

tom_holcombe@yahoo.com

SCSENATE_00000225

* * *

Message

From: Senate Redistricting
[[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP \(FYDIBOHF23SPDLT\)/CN=RECIPIENTS/CN=C314E5EA85E441A9858EEF7E9B46C813-SENATE REDI](mailto:/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C314E5EA85E441A9858EEF7E9B46C813-SENATE REDI)]

Sent: 1/20/2022 10:41:50 AM

To: Donald Muglia
[donmuglia318@gmail.com]

Subject: RE: Keep Senate Amendment 1 map

Good morning,

We have received your testimony and have submitted it to the Committee. Your written testimony will be included in the record.

Thank you for your participation,

Madison Faulk

-----Original Message-----

From: Donald Muglia <donmuglia318@gmail.com>

Sent: Saturday, January 15, 2022 09:27 AM

To: Senate Redistricting

<Redistricting@scsenate.gov>

Subject: Keep Senate Amendment 1 map

1. Charleston has always been with Berkeley and Dorchester in the same Congressional District. Local economies and other communities of interests are aligned and intertwined;

2. Historically, Charleston has two Congressional representatives to advocate for the residents' well-being, regardless of whether they are Republican or Democrat. Our voices will be stronger with two rather than with one. The "whole Charleston" concept doesn't really make sense if we want more visibility in Washington;

3. "Whole Charleston" has little in common with inland counties of Colleton and Jasper

Thank you!

Donald Muglia

SCSENATE_00000242

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Message

From: Senate Redistricting
[/**O**=EXCHANGELABS/**O**U=EXCHANG
E ADMINISTRATIVE GROUP
(FYDIBOHF23SPDLT)/**CN**=RECIPIEN
TS/**CN**=C314E5EA85E441A9858EEF7E
9B46C813-SENATE REDI]

Sent: 1/20/2022 10:42:11 AM
To: ljsn@aol.com
Subject: RE: Redistricting

Good morning,

We have received your testimony and have submitted it to the Committee. Your written testimony will be included in the record.

Thank you for your participation,
Madison Faulk

From: ljsn@aol.com <ljsn@aol.com>
Sent: Saturday, January 15, 2022 05:32 AM
To: Senate Redistricting
<Redistricting@scsenate.gov>
Cc: Jacqueline Edgerton
<jacquelinelapan@hotmail.com>
Subject: Redistricting

Beaufort County is a unique and wonderful place to live. My husband and I chose to move to and live on Hilton Head Island in January of 1989. Beaufort's character and long history, from its initial founding, the Revolutionary War, Civil War and up to today, incorporates distinct coastal living. Coastal living is different from inland living and we would not change anything about it.

It is important that all of the coastal districts share the same Congressman because of the common problems we face, such as hurricanes, coastal flooding, care for marine life and habitats therefore.

Historically, Charleston has had two Congressional representatives to advocate for the residents' well-being, regardless of whether they are Republican or Democrat. Our voices will be stronger with two rather than with one.

Please, keep Beaufort County in District 1 together with coastal Charleston and adopt Senate Congressional Map 1.

Very respectfully submitted,

Lisa Scarlata-Naatz
19 Yellow Rail Lane
Hilton Head Island, SC 29926
843-384-0678

SCSENATE_00000245

* * *

Message

From: Senate Redistricting
[mailto:EXCHANGELABS@EXCHANGE.ADMINISTRATIVE.GROUP (FYDIBOHF23SPDLT)/RECIPIENTS/C314ESEA8SE441A9858EEF7E9B46C813-SENATE REDISTRICTING]

Sent: 1/20/2022 10:51:15 AM

To: Bradham Wilder
[mailto:bradham.wilder@gmail.com]

Subject: RE: Redistricting of Berkley and Dorchester County

Good morning,

We have received your testimony and have submitted it to the Committee. Your written testimony will be included in the record.

Thank you for your participation,
Madison Faulk

From: Bradham Wilder
<bradham.wilder@gmail.com>
Sent: Friday, January 14, 2022 12:01 PM
To: Senate Redistricting
<Redistricting@scsenate.gov>
Subject: Redistricting of Berkley and Dorchestoer
County

I am very concerned with the proposed redistricting of the Charleston area. Historically charleston has had two Congressional Representatives to advocate for the interest of it citizens regardless of their political party. I believe the greater charleston area is best served with Two voices in Washington rather than one. The “Whole Charleston” does not make sense if we want to be properly heard in D.C. “Whole Charleston” has little in common with the inland counties of Colleton and Jasper in comparison to the commonalities of Charleston Dorchester and Berkley. The tricounty areas economy, communities, and interest align much more. Senate Amendment Map 1 resembles the current Congressional District 1 boundaries, which were upheld by Obama’s DOJ a decade ago. Why do partisans want to redraw a new Congressional District map and throw South Carolinians in an ugly Legal fight? Senate Map 2 is more about political gerrymandering than actually serving the constituents of this great state.

Thank you for you time

Bradham Wilder

Advisor
Wilder Commercial
www.wildercommercial.com
C:803.309.4709



SCSENATE_00000297

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Message

From: Senate Redistricting
[/0=EXCHANGELABS/OU=EXCHANG
E ADMINISTRATIVE GROUP
(FYDIBOHF23SPDLT)/CN=RECIPIEN
TS/CN=C314ESEA8SE441A9858EEF7E
9B46C813-SENATE REDI]
Sent: 1/20/2022 10:53:07 AM
To: David A. Manzi [damesq@earthlink.net]
Subject: RE: Senate Congressional MAP 1

Good morning,

We have received your testimony and have submitted it to the Committee. Your written testimony will be included in the record.

Thank you for your participation,

Madison Faulk

From: David A. Manzi <damesq@earthlink.net>

Sent: Friday, January 14, 2022 11:09 AM

To: Senate Redistricting
<Redistrlcting@scsenate.gov>
Subject: Senate Congressional MAP 1

Dear Senate Congressional Redistricting
Committee,

**I write in strong support of Senate
Congressional MAP 1.**

Charleston, Berkeley, and Dorchester should remain in the same Congressional District. Local economies and other communities of interests are aligned and intertwined.

Historically, Charleston has had two Congressional representatives to advocate for the residents' well-being, regardless of whether they are Republican or Democrat. Our voices will be stronger with two rather than with one. The "Whole Charleston" concept promoted by Map 2 proponents does not comport if we want more visibility in Washington. Map 2 will give our communities less representation.

Inland counties of Colleton and Jasper have different economies and interests, focusing more on farming and agriculture. To include them, but exclude Berkeley Co. would be a blatant exclusion of a community from the district that has similar economies and interests. It does not make sense.

Thank you for your time and consideration.

David A. Manzi
Okatie, SC 29909

SCSENATE_00000316

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Message

From: Senate Redistricting
[O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C314ESEA8SE441A9858EEF7E9B46C813-SENATE REDI]
Sent: 1/20/2022 11:14:00 AM
To: missmara316 (missmara316@aol.com)
Subject: RE: FW:

Good morning,

We have received your testimony and have submitted it to the Committee. Your written testimony will be included in the record.

Thank you for your participation,

Madison Faulk

From: missmara316 <missmara316@aol.com>
Sent: Friday, January 14, 2022 09:04 AM
To: Senate Redistricting
<Redistricting@scaenate.gov>
Subject: FW:

Scut from my T-Mobile 5G Device

----- Original message -----

From: missmara316 <missmara3.1.6(a)aol.com>
Date: 1/14/22 7:53 AM (GMT-05:00)
To: redistricting@scaenate.gov
Subject:

I am opposed to the proposed redistricting.

Charleston has always been with Berkeley and Dorchester in the same Congressional District. Our economy and other communities of interests are aligned and intertwined;

2. Historically, Charleston has two Congressional representatives to advocate for the residents well-being, regardless they are Republican or Democrats. Our voices will be stronger with two than with one. The “Whole Charleston” concept doesn’t really make sense if we want more visibility in Washington;

3. “Whole Charleston” has little in common with inland counties of Colleton and Jasper, and

4. Senate Amendment Map 1 resembles the current Congressional District 1 boundaries, which was upheld by Obama’s DOJ a decade ago. Why do partisans want to redraw a new Congressional District map and throw South Carolinians in an ugly legal fight? Senate Map 2 is more about political gerrymandering than helping minority residents.

Mara Brockbank

81 Ruledge Avenue Charleston SC 29401-1724

843-367-7781

SCSENATE_00000355

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Message

From: Senate Redistricting
[O=EXCHANGELABS/OU=EXCHANG
E ADMINISTRATIVE GROUP
(FYDIBOHF23SPDLT)/CN=RECIPIEN
TS/CN=C314ESEA8SE441A9858EEF7E
9846C813-SENATE REDI)

Sent: 1/20/2022 11:15:32 AM

To: burttlyer@reagan.com

Subject: RE: Ad Hoc Committee

Good morning,

We have received your testimony and have submitted it to the committee. Your written testimony will be included in the record.

Thank you for your participation,

Madison Faulk

-----Original Message-----

From: burttlyer@reagan.com
<burttlyer@reagan.com>
Sent: Friday, January 14, 2022 08:19 AM
To: Senate Redistricting
<Redistricting@scsenate.gov>
Subject: Ad Hoc committee

Dear Senate ad hoc Redistricting Committee:

I'm writing to request you adopt House Plan 2 senate Amendment 1 for your congressional redistricting maps for the following two reasons:

1. Coasting Charleston shares more community interests with Beaufort county, such as hurricanes, coastal flooding, commercial interests and educational

and environmental issues, than with inland regions of Colleton and Jasper.

2. Traditionally, Charleston County has benefited from having two congressional Representatives to advocate for our community interests. Therefore, we demand the continuity of dual representation. Please adopt House Plan 2 senate Amendment 1.

Sincerely,

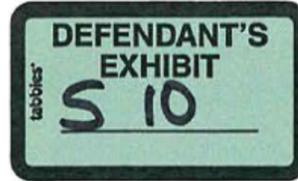
Burton Tyler
1186 Waterfront Drive
Mt. Pleasant, SC 29464
843-225-7244

SCSENATE_00000366

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Message

From: Senate Redistricting
[[/O=EXCHANGELABS/OU=EXCHANG
E ADMINISTRATIVE GROUP
\(FYDIBOHF23SPDLT\)/CN=RECIPIEN
TS/CN=C314E5EA85E441A9858EEF7E
9B46C813-SENATE REDI](#)]

Sent: 1/20/2022 11:17:45 AM

To: Linda Call [nanacallnine@gmail.com]

Subject: RE: Support senate amendment Map 1

Good morning,

We have received your testimony and have submitted it to the Committee. Your written testimony will be included in the record.

Thank you for your participation,
Madison Faulk

From: Linda Call <nanacallnine@gmail.com>
Sent: Friday, January 14, 2022 04:51 AM
To: Senate Redistricting
<Redistricting@scsenate.gov>
Subject: Support senate amendment Map 1

Charleston has always been with
Berkeley and Dorchester in the same

Congressional District. Local economies and other communities of interests are aligned and intertwined;

Historically, Charleston has had two Congressional representatives to advocate for the residents' well-being, regardless of whether they are Republican or Democrat. Our voices will be stronger with two rather than with one. The "Whole Charleston" concept doesn't really make sense if we want more visibility in Washington;

Linda Call
1584 nautical chart drive
Charleston SC 29414

SCSENATE_00000610

Message

From: Senate Redistricting
[mailto:EXCHANGELABS@EXCHANGE.ADMINISTRATIVE.GROUP (FYDIBOHF23SPDLT)/RECIPIENTS/CN=C314E5EA85E441A9858EEF7E9B46C813-SENATE REDISTRICTING]

Sent: 1/20/2022 11:21:22 AM

To: HorseDancerSC [mailto:horsedancersc@beach-run.net]

Subject: RE: Charleston Resident Support Senate Congressional Amendment Map 1

Good morning,

We have received your testimony and have submitted it to the Committee. Your written testimony will be included in the record.

Thank you for your participation,
Madison Faulk

From: HorseDancerSC <horsedancersc@beach-run.net>

Sent: Thursday, January 13, 2022 11:10 PM

To: Senate Redistricting
<Redistricting@scsenate.gov>

Subject: FW: Charleston Resident Support Senate Congressional Amendment Map 1

As a resident of Charleston County, I support Amendment Map 1. We need more representation, not less.

1. Charleston has always been with Berkeley and Dorchester in the same Congressional District. Our economy and other communities of interests are aligned and intertwined
2. Historically, Charleston has two Congressional representatives to advocate for the residents well-being, regardless they are Republican or Democrats. Our voices will be stronger with two than with one.
3. “Whole Charleston” concept doesn’t make sense, and Charleston has little in common with inland counties of Colleton and Jasper.
4. Senate Amendment Map 1 resembles the current Congressional District 1 boundaries, which was upheld by Obama’s DOJ a decade ago. Why redraw a new Congressional District map?

~~~~~

Ann Beauchamp  
2120 N. Dallerton Circle  
Charleston, SC  
HorseDancerSC@beach-run.net  
(843) 442-5861

SCSENATE\_00000611

\* \* \*

Message

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**From:** Senate Redistricting  
[O=EXCHANGELABS/OU=EXCHANG  
E ADMINISTRATIVE GROUP  
(FYDIBOHF23SPDLT)/CN=RECIPIEN  
TS/CN=C314E5EA85E441A9858EEF7E  
9B46C813-SENATE REDI]  
**Sent:** 1/20/2022 11:16:55 AM  
**To:** Jacqueline Edgerton  
<jacquelinelapan@hotmail.com.  
**Subject:** RE: Support for Map 1

Good morning,

We have received your testimony and have submitted it to the Committee. Your written testimony will be included in the record.

Thank you for your participation,

Madison Faulk

**From:** Jacqueline Edgerton  
<jacquelinelapan@hotmail.com>  
**Sent:** Friday, January 14, 2022 07:19 AM  
**To:** Senate Redistricting  
<Redistricting@scsenate.gov>

**Cc:** Jacqueline Edgerton  
<jacquelinelapan@hotmail.com>  
**Subject:** Support for Map 1

Dear Senate Congressional Redistricting  
Committee,

**I write in strong support of Senate  
Congressional MAP 1.**

Charleston, Berkeley, and Dorchester should remain in the same Congressional District. Local economies and other communities of interests are aligned and intertwined.

Historically, Charleston has had two Congressional representatives to advocate for the residents' well-being, regardless of whether they are Republican or Democrat. Our voices will be stronger with two rather than with one. The "Whole Charleston" concept promoted by Map 2 proponents does not comport if we want more visibility in Washington. Map 2 will give our communities less representation.

Inland counties of Colleton and Jasper have different economies and interests, focusing more on farming and agriculture. To include them, but exclude Berkeley Co. would be a blatant exclusion of a community from the district that has similar economies and interests. It does not make sense.

Thank you for your time and consideration.

289

Best,  
Jackie Edgerton  
Sullivan's Island, SC

SCSENATE\_00000615

\* \* \*

290

\* \* \*



\* \* \*

Message

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**From:** Thomas Moles [tom.moles21@gmail.com]  
**Sent:** 1/18/2022 6:29:29 PM  
**To:** Senate Redistricting  
[/o=Exchangelabs/ou=Exchange  
Administrative Group  
(FYDIBOHF23SPDLT)/cn=Recipients/cn=  
=c314e5ea85e441a9858eef7e9b46c813-  
Senate Redi]  
**Subject:** Please support Map 1 for redistricting  
Charleston County

To whom it may concern,

I am writing to voice my support for Map 1 for Charleston County redistricting. Charleston has always been with Berkeley and Dorchester in the same Congressional District. Local economies and other communities of interests are aligned and intertwined. Historically, Charleston has had two Congressional representatives to advocate for the residents' well-being, regardless of whether they are Republican or Democrat. Our voices will be stronger with two rather than with one. The "Whole Charleston" concept doesn't really make sense if we want more visibility in Washington. Finally, senate Amendment 1 map

resembles the current DC1 boundaries, which were upheld by Obama's DOJ a decade ago. Senate Amendment 2 map is more about political gerrymandering than helping minority residents.

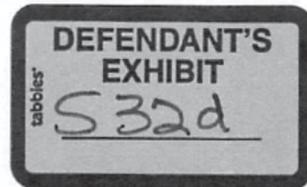
Thanks for your consideration,  
Thomas Moles  
99 Westedge Street APT 343  
Charleston, SC 29403

SCSENATE\_00002942

\* \* \*

## Partisan Analysis

| District | Biden   | %Biden | Trump   | %Trump | Total<br>Votes |
|----------|---------|--------|---------|--------|----------------|
| 1        | 168,885 | 45.27% | 204,202 | 54.73% | 373,087        |
| 2        | 160,727 | 44.31% | 201,996 | 55.69% | 362,723        |
| 3        | 105,850 | 30.97% | 235,966 | 69.03% | 341,816        |
| 4        | 137,465 | 40.57% | 201,396 | 59.43% | 338,861        |
| 5        | 146,303 | 40.78% | 212,458 | 59.22% | 358,761        |
| 6        | 221,267 | 67.15% | 108,229 | 32.85% | 329,496        |
| 7        | 145,757 | 40.76% | 211,855 | 59.24% | 357,612        |



User:  
Plan Name:ConSenateHouseStaff  
Plan Type:

**Population Summary**

Tuesday, December 21, 2021 12:56 PM

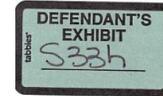
**Summary Statistics:**

|                          |                    |
|--------------------------|--------------------|
| Population Range:        | 731,203 to 731,204 |
| Ratio Range:             | 0.00               |
| Absolute Range:          | -1 to              |
| Absolute Overall Range:  | 1                  |
| Relative Range:          | 0.00% to 0.00%     |
| Relative Overall Range:  | 0.00%              |
| Absolute Mean Deviation: | 0.43               |
| Relative Mean Deviation: | 0.00%              |
| Standard Deviation:      | 0.49               |

| District | Population | Deviation | % Devn. | [Hispanic Origin] | [% Hispanic Origin] | NH_Wht  | [% NH_Wht] | NH_DOJ_Bl | [% NH_DOJ_Bl] |
|----------|------------|-----------|---------|-------------------|---------------------|---------|------------|-----------|---------------|
| 1        | 731,203    | -1        | 0.00%   | 59,265            | 8.11%               | 505,656 | 69.15%     | 123,194   | 16.85%        |
| 2        | 731,204    | 0         | 0.00%   | 50,101            | 6.85%               | 451,654 | 61.77%     | 186,582   | 25.52%        |
| 3        | 731,204    | 0         | 0.00%   | 42,512            | 5.81%               | 524,457 | 71.73%     | 132,875   | 18.17%        |
| 4        | 731,204    | 0         | 0.00%   | 77,653            | 10.62%              | 468,620 | 64.09%     | 142,090   | 19.43%        |
| 5        | 731,204    | 0         | 0.00%   | 39,825            | 5.45%               | 468,920 | 64.13%     | 182,332   | 24.94%        |
| 6        | 731,203    | -1        | 0.00%   | 47,278            | 6.47%               | 292,326 | 39.98%     | 360,610   | 49.32%        |
| 7        | 731,203    | -1        | 0.00%   | 36,204            | 4.95%               | 466,919 | 63.86%     | 196,204   | 26.83%        |

**Total: 5,118,425**

**Ideal  
District 731,204  
:**



**Senate Defendants' Exhibit 239**

Senate Redistricting Subcommittee Meeting  
(November 29, 2021)

Video available at:

<https://www.scstatehouse.gov/video/archives.php>

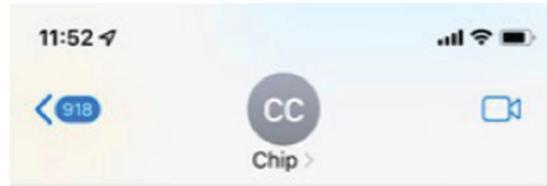
**Senate Defendants' Exhibit 242**

Senate Floor Debate

(January 20, 2022)

Video available at:

<https://www.scstatehouse.gov/video/archives.php>



Mon, Dec 13, 6:44 PM

Weston. I am so glad you are doing well. I have prayed for you intensely. You are such a fine lawmaker - a true statesman. I'm glad we didn't lose you.

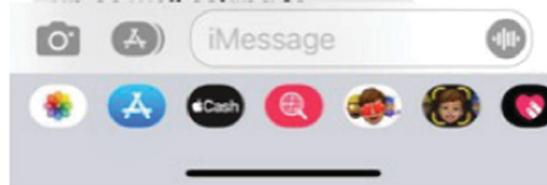
I need to discuss congressional reapportionment with you. tonight or tomorrow.

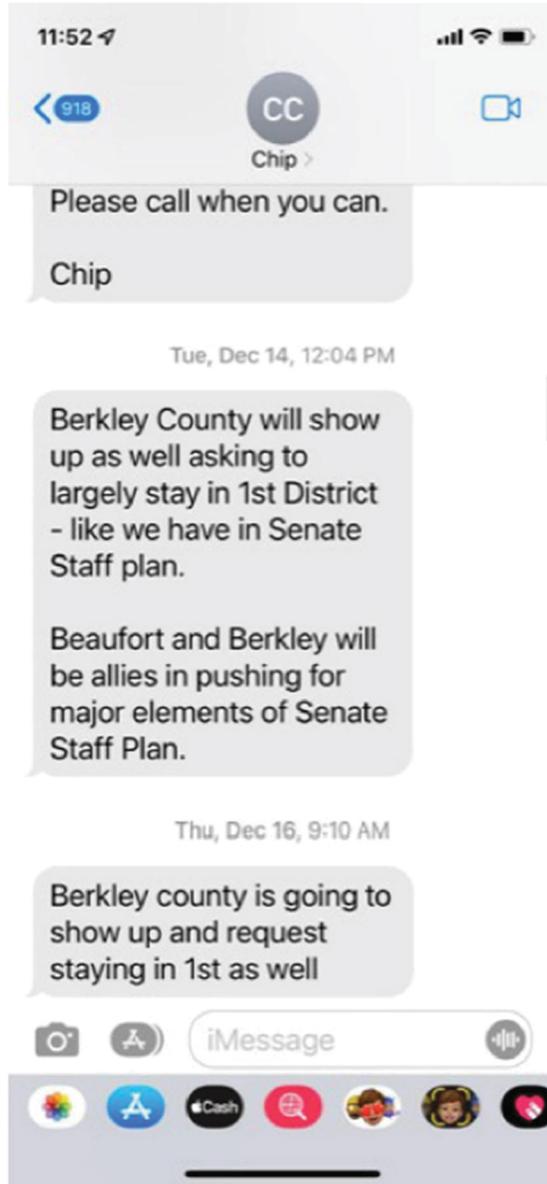
Please call when you can.

Chip

Tue, Dec 14, 12:04 PM

Berkley County will show





**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

THE SOUTH  
CAROLINA STATE  
CONFERENCE OF  
THE NAACP, and  
TAIWAN SCOTT, on  
behalf of himself and all  
other similarly situated  
persons,

Plaintiffs,

v.

THOMAS C.  
ALEXANDER, in his  
official capacity as  
President of the Senate;  
LUKE A. RANKIN, in  
his official capacity as  
Chairman of the Senate  
Judiciary Committee;  
JAMES H. LUCAS, in  
his official capacity as  
Speaker of the House of  
Representatives; CHRIS  
MURPHY, in his official  
capacity as Chairman of  
the House of  
Representatives  
Judiciary Committee;  
WALLACE H.  
JORDAN, in his official

Case No. 3-21-cv-03302-  
MBS- TJH-RMG

THREE-JUDGE  
PANEL

Plaintiffs'  
Exhibit

17

capacity as Chairman of  
the House of  
Representatives  
Elections Law  
Subcommittee;  
HOWARD KNAPP, in  
his official capacity as  
interim Executive  
Director of the South  
Carolina State Election  
Commission; JOHN  
WELLS, Chair,  
JOANNE DAY,  
CLIFFORD J. EDLER,  
LINDA MCCALL, and  
SCOTT MOSELEY, in  
their official capacities  
as members of the South  
Carolina Election  
Commission,  
  
Defendants.

**Expert Report of Joseph Bagley, Ph.D.**

I. CREDENTIALS

I am an Assistant Professor of History at Perimeter College, Georgia State University. My specific area of study is United States constitutional and legal history, politics, and race relations, with a focus on the South. I earned a Ph.D. in 2013 from Georgia State and a M.A. (2007) and B.A. (2004) from Auburn University. My first book, *The Politics of White Rights: Race, Justice, and Integrating Alabama's Schools*, was published in November 2018 by the University of Georgia Press in

the *Politics and Culture of the Twentieth Century South* series. My current projects include a book manuscript examining the history of the struggle for voting rights in the South, focusing on Alabama, Georgia, and South Carolina. I am also developing, in concert with colleagues at GSU Downtown, a grant proposal for a National Endowment for the Humanities “Public Humanities Discussions” series focused on citizenship rights and obligations in Georgia and in America.

My academic work has been cited in the *Case Western Law Review*, the *Journal of Urban History*, *Rural Sociology*, the *Alabama Civil Rights and Civil Liberties Law Review*, and in the *New York Times Magazine (NYTM)*. My doctoral thesis, “School Desegregation, Law and Order, and Litigating Social Justice in Alabama,” which formed the basis of my book manuscript, was quoted multiple times by Pulitzer Prize winner Nikole Hannah-Jones in her September 6, 2017 piece in the *NYTM*, “Resegregation in Jefferson County.”<sup>1</sup> I have also written book and

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<sup>1</sup> Wendy Parker, “Why Alabama School Desegregation Succeeded (And Failed),” 67 *Case Western Law Review*, 1091 (2017); Rebecca Retzlaff, “Desegregation of City Parks and the Civil Rights Movement: The Case of Oak Park in Montgomery, Alabama,” *Journal of Urban History* 47.4, 715 (2019); Erika Frankenberg, “The Impact and Limits of Implementing Brown: Reflections from Sixty-Five Years of School Segregation and Desegregation in Alabama’s Largest School District,” 11 *Alabama Civil Rights and Civil Liberties Law Review*, 33 (2019); Bryan Mann, “Segregation Now, Segregation Tomorrow, Segregation Forever? Racial and Economic Isolation and Dissimilarity in Rural Black Belt Schools in Alabama,” *Rural Sociology* 86.3, 523 (2021). Nikole Hannah-Jones, “The

manuscript reviews for, among others, the University Press of Kansas, *Law and History Review*, the *Journal of Southern History*, the *Alabama Review*, *Mississippi Historical Quarterly*, *Georgia Historical Quarterly*, *Urban History*, and *History of Education Quarterly*.

I have been certified as an expert by courts in all previous voting rights litigation wherein I have been retained and presented as a testifying expert. I recently submitted two reports—an initial report and a rebuttal report—and testified at a preliminary injunction hearing in *Milligan v. Merrill* (N.D. Ala.), an ongoing redistricting case involving Alabama’s Congressional districts. In a memorandum order and opinion granting a preliminary injunction, the Court found that “Dr. Bagley” was a “credible expert witness,” who “prepared [a] lengthy, detailed report that set forth substantial evidentiary bases for [his] opinion in a manner that [was] consistent with [his] expertise and applicable professional methods and standards.” The Court cited my report and testimony 32 times and observed that “[a]t the preliminary injunction hearing, Dr. Bagley explained at a high level the bases for the detailed opinions on these issues that appear in his report.” (*Milligan*, Jan. 24, 2022, pp. 80, 185). I also submitted a report, testified in a deposition and at trial, and was cited favorably in the court’s opinion in *People First of Alabama v. Merrill*, 491 F. Supp. 3d 1076 (N.D. Ala. 2020). The Court in *People First* cited to my report 26 times and quoted directly from my testimony at trial *Id.* at

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Resegregation of Jefferson County,” *The New York Times Magazine*, Sept. 6, 2017.

1106.<sup>2</sup> I have submitted previously in this litigation a report and rebuttal report pertaining to the Plaintiffs' claims challenging State House districts.

I am compensated at the rate of \$150 per hour for my work in preparing this report. This compensation is not dependent upon my findings, and my opinions stated in this report do not necessarily represent the sum total of my opinions in this matter, which are subject to change upon further research or findings. I append to this report a C.V.

## II. PURPOSE, METHODOLOGY, SUMMARY FINDINGS

Plaintiffs in this case asked me to examine the enactment of Senate Bill 865 ("S. 865"), which established South Carolina's Congressional districts using the 2020 Census results when it was signed into law as Act 118. I have been asked to consider that process alongside any relevant history of voting discrimination against Black South Carolinians. This report accordingly places the South Carolina General Assembly's enactment of S. 865 within a wider historical and contemporaneous context and considers whether this history, the ongoing record of discrimination, and the legislative sequence of events may support an inference of discriminatory intent.

Experts in cases alleging intentional racial discrimination often follow guidelines set forth by the Supreme Court in *Village of Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252 (1977). In *Arlington Heights*, the Court acknowledged that it was unusual, even at that time, to find direct evidence

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<sup>2</sup> 467 F.Supp.3d 1179 (N.D. Ala. 2020).

of discriminatory intent. The Court advised that, when assessing the constitutionality of state action relative to discriminatory intent, courts may conduct a “sensitive inquiry into such circumstantial and direct evidence of intent as may be available” by considering factors that may be relevant to ascertaining intentional discrimination, including (1) “The impact of the official action—whether it bears more heavily on one race than another”; (2) “The historical background of the decision . . . particularly if it reveals a series of official actions taken for invidious purposes”; (3) “The specific sequence of events leading up to the challenged decision . . .”; (4) “Departures from the normal procedural sequence . . .”; (5) and “The legislative or administrative history . . . especially where there are contemporary statements by members of the decision-making body, minutes of its meetings, or reports.” *Id.* at 265-266.

As a historian, under this framework, I analyzed the second, third, fourth, and fifth *Arlington Heights* factors. The historical background, the legislative sequence of events, the legislature’s procedures, and the statements made in the S. 865’s legislative history examined herein are relevant to a court’s assessment of whether the General Assembly’s actions in enacting Congressional districts (“CDs”) 1, 2, and 5 are part of a continuum of South Carolina’s longstanding acts of discrimination in voting and redistricting, particularly against Black South Carolinians.

In examining this, as a historian, I am guided by the common standards of historiography. Relying on these standards, this report draws upon existing historiographical works; public documents from the

South Carolina General Assembly’s websites, such as video recordings and transcripts of legislative committee meetings, floor debate, and public hearings from June 2021 through January 2022; other information from the state’s redistricting websites for the House and Senate; newspaper and journalistic articles; court opinions, briefs, and memoranda; public statements; and scholarly articles and books on voting rights in South Carolina. These are common sources for scholars in the humanities and the social sciences to reference, and I weigh all of these against one another, as is common in the field.

Based on my review of the evidence—the historical background of voting discrimination in South Carolina against Black citizens, the legislative history of S. 865, the irregularities in the drafting and passing of S. 865, and the statements by legislators during this process—I conclude that this all supports a strong inference of discriminatory motive, though I decidedly resist reaching the final conclusion, which is for the Court to do.

### III. HISTORICAL BACKGROUND

#### a. Pre-Civil War

South Carolina’s historical background is relevant and cannot be detached from understanding S. 865’s enactment. The State of South Carolina has a long and largely undisputed history of discrimination against its Black citizens, especially when it comes to voting. The Court in *Colleton County Council v. McConnell* in 2001 observed, “The redistricting process in South Carolina has historically been a troubled one,” and it found there to be, in that case, “extensive documentation of the history of voting-

related racial discrimination in South Carolina, which was submitted largely as a stipulation among the parties.” 201 F. Supp. 2d 618, 641-42, 649, Fn. 1 (D.S.C. 2001). I will very briefly summarize this well-documented and judicially recognized history before examining the state’s more recent history of discrimination, particularly with respect to redistricting cycles. This is relevant to the ongoing effort to achieve equal political participation for Black South Carolinians that continues today.

The colony of South Carolina was founded by wealthy, white sugar planters from Barbados who introduced to the British North American colonies the concept of replacing white indentured servant labor with Black African enslaved labor. These planters pioneered the growing of rice in the Low Country and became the richest individuals in the American colonies thanks to the labor of hundreds of thousands of enslaved Black people brought in as chattel from parts of sub-Saharan Africa and the Caribbean. These planters were among the most ardent supporters of what became the American Revolution and later, the American Civil War, in no small measure because of their interest in maintaining their practice of enslaving Black people for incredible profit. Conversely, Black South Carolinians like Robert Smalls were among the most active in seeking escape from bondage and joining “contraband” camps, like Port Royal and Hampton, Virginia, and serving in the forces of the Union while seeking freedom during the

Civil War, per the terms of the Emancipation Proclamation.<sup>3</sup>

b. Reconstruction

When the Civil War ended, the white government of the state of South Carolina led the way in enacting “Black Codes”—laws restricting the rights of freedmen, or formerly enslaved people. These laws violated what became the concept of equal protection, embodied ultimately in the Fourteenth Amendment, which invalidated them. Historian Eric Foner has described the Black Codes adopted by South Carolina as the “first and most severe” of all of those enacted in the former Confederacy. Foner described South Carolina’s as “in some respects even more discriminatory” than Mississippi’s because it “barred” Black people “from following any occupation other than farmer or servant except by paying an annual tax of \$10 to \$100 (a severe blow to the free Black community of Charleston and to former slave artisans),” and it “required blacks to sign annual contracts and included elaborate provisions regulating relations between ‘servants’ and their ‘masters,’ including labor from sunup to sundown and a ban on leaving the plantation.” South Carolina added a “vagrancy” law punishing unemployed Black

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<sup>3</sup> John J. Navin, *The Grim Years: Settling South Carolina, 1670-1720* (Columbia: University of South Carolina Press, 2019); Cate Lineberry, *Be Free or Die: The Amazing Story of Robert Smalls’ Escape from Slavery to Union Hero* (New York: St. Martin’s Press, 2017).

people and “persons who lead idle or disorderly lives.”

<sup>4</sup>

The brazenness of these laws moved members of the U.S. Congress to oppose the terms of President Lincoln’s and, subsequently, President Johnson’s Reconstruction plans and to reset the process with a focus on the rights of freedmen. Under the terms of “Radical Republican” Congressional Reconstruction, including the ratification of the 14<sup>th</sup> and 15<sup>th</sup> Amendments, and the renewed military occupation of the South, South Carolina saw its Black majority elect candidates, including Smalls, to office at the state and federal level. White backlash against these gains, however, would soon place South Carolina in the vanguard when white Democratic lawmakers, elected via violence and fraud, pursued legally-cemented white supremacy and the complete disenfranchisement of Black citizens.<sup>5</sup>

Beginning in the late 1860s and into the 1870s, white Democrats used voter fraud, intimidation, and violence, including the murder of numerous duly-elected Black state legislators, as well as low-grade guerilla warfare, to reverse the gains that Black citizens had made under Radical Republican auspices. White Democrats began to take back control of certain offices, including at the state level, and began enacting laws that made it difficult for Black people to register and vote, including a re-registration mandate

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<sup>4</sup> Eric Foner, *Reconstruction: America’s Unfinished Revolution* (New York: Harper Collins, 1988), pp. 199-200.

<sup>5</sup> Foner, *Reconstruction*, pp. 305-6.

and the consolidation of voting precincts, making travel to polling places more difficult.<sup>6</sup>

c. Redemption

The efforts of the immediate post-war period accelerated when white Democrats like Wade Hampton, Ben Tillman, and the so-called “Red Shirts” formed “rifle gangs,” like Tillman’s own Sweetwater Sabre Club, and initiated the “redemption” of the state of South Carolina. They orchestrated what one recent scholar has described as a “coordinated campaign of terror” and another has called a “violent rampage.”<sup>7</sup> This terrorism and violence were designed to undo the advancements made following the Civil War, during the brief period that W.E.B. DuBois called Black Reconstruction, in order to prevent Black people from voting and to purge the state of the Republican Party. As Dr. Peter Lau has described, “[i]n turning back the revolutionary implications of Reconstruction and fighting to restore white supremacy as a legal and historical fact of life in South Carolina, the state’s white supremacist leadership, along with its counterpart in Mississippi, was unsurpassed.”<sup>8</sup>

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<sup>6</sup> Foner, *Reconstruction*, pp. 570-72, 589, 594, 599; Orville Vernon Burton, *The Age of Lincoln* (New York: Hill and Wang, 2007), pp. 269, 293, 307-10.

<sup>7</sup> Joseph Crespino, *Strom Thurmond’s America* (New York: Hill and Wang, 2012), pp. 15-16; Richard Rothstein, *The Color of Law: A Forgotten History of How our Government Segregated America* (New York: Norton, 2017), pp. 40-41.

<sup>8</sup> Peter F. Lau, *Democracy Rising: South Carolina and the Fight for Black Equality since 1865* (Lexington: University Press of Kentucky, 2021), pp. 15-19.

Tillman spearheaded an effort in the 1890s to completely disenfranchise Black citizens of South Carolina and further entrench white supremacy. The state first eliminated its system of home rule in favor of a state legislative delegation system. This allowed white registered voter majorities, in conjunction with the white-controlled state government, to preclude the possibility of local Black electoral success. Then, in 1895, the South Carolina Constitutional Convention adopted a new state constitution establishing white supremacy. It provided for a poll tax, a literacy test that would be administered by appointed registrars with unlimited discretion, and other provisions that would disenfranchise Black citizens for generations. It also established Jim Crow segregation. It remains the state's operative constitution to this day.

Systematic violence aimed at quashing any Black political participation continued. In 1898, events in and around the community of Phoenix, in Greenwood County, according to Dr. Lau, “announced that the unfolding terms of legalized white supremacy would be maintained by any means necessary.” As Lau describes, “[f]or a period of several days, some three hundred armed white men . . . roamed the countryside, seeking out, torturing, and then murdering those they deemed Republican activists.” At least twelve Black people were killed, and many more fled the state in response to the violence.<sup>9</sup>

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<sup>9</sup> Lau, *Democracy Rising*, pp. 19-21; see also Matthew H. Jennings, “The Phoenix Riot,” *Encyclopedia of South Carolina*, University of South Carolina Institute for Southern Studies, <https://www.scencyclopedia.org/sce/entries/phoenix-riot/>.

d. From the Redemption to the Voting Rights Act

By the twentieth century, South Carolina was a one-party state and, as the political scientist V.O. Key explained, it adopted a white, localized “friends and neighbors” approach to politics. Black people were not only legally shut out of the process but were subjected to ongoing violence in the form of lynching. According to historian Joseph Crespino, between 1904 and 1918, “a lynching took place in South Carolina, on average, every four months.” Crespino further cautions, “This, of course, accounted only for murders that were actually reported. Many were never discovered, and white men regularly killed blacks with impunity.” According to the Equal Justice Initiative, between the years of 1877 and 1950, there were 191 reported lynchings in the state of South Carolina.<sup>10</sup>

Key described South Carolina as “an extreme case” when it came to “the race question” in politics. He wrote, “South Carolina’s preoccupation with the Negro stifles political conflict. Over offices there is conflict aplenty, but the race question muffles conflict over issues latent in the economy of South Carolina.” It functioned as a “diversion” from other issues, in other words. Key observed, “Mill worker and plantation owner alike want to keep the Negro in his place,” and he described a “consensus by which the Negro is kept out of politics” owing to the fact that,

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<sup>10</sup> V.O. Key, *Southern Politics in State and Nation* (New York: Sage, 1949), pp. 130-131; Crespino, *Strom Thurmond’s America*, 16-17; Equal Justice Initiative, “Lynching in America,” South Carolina, <https://lynchinginamerica.eji.org/explore/south-carolina>.

were the “Negro” not kept out of politics, “[o]ne crowd or another would be tempted to seek his vote.”<sup>11</sup>

Key explained how “latent bipartisanship [was] smothered by racism.” It was “the Negro question,” he wrote, that “suppressed the tendency of the two-party system to reassert itself after Reconstruction.” Tillman, Key describes, “drew cheers and votes from the white mill workers (who held a virtual monopoly of mill jobs) by his extraordinary appeals to race prejudice, and at the same time drew quiet and effective support from mill owners.” Key argues that this relative absence of class conflict in South Carolina politics was a function of a united white desire to forestall “the return of the Negro in politics,” meaning a desire to move permanently beyond the realities of Black Reconstruction, when the state’s Black majority was briefly able to enjoy access to the franchise and elect representatives of its choice.<sup>12</sup>

By 1902, there were *no* Black elected officials left at the state level, and Black voter registration was a fraction of what it had been at the height of Congressional reconstruction. South Carolina state law also enshrined the “white primary” until World War II. White supremacy was the order of the day until that time.<sup>13</sup> When the Supreme Court outlawed the white primary in 1944, South Carolina suppressed Black suffrage by creating a so-called private primary.

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<sup>11</sup> Key, *Southern Politics in State and Nation*, pp. 130-131.

<sup>12</sup> Key, pp. 142-44.

<sup>13</sup> J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910* (New Haven: Yale University Press, 1974), pp. 17, 27, 79-91, 145-51, 188, 232.

The governor called a special session of the legislature in order to remove all laws relating to primaries, and voters ratified a constitutional amendment erasing any language regarding primaries from the state's constitution such that the Democratic Party's exclusion of Black people would have no connection to any official state action. The NAACP challenged these actions in federal court, and the court found that the changes were made "solely for the purpose of preventing the Negro from gaining a right to vote" and thus violated the Fourteenth and Fifteenth Amendments of the U.S. Constitution.<sup>14</sup> The South Carolina legislature then applied the state's literacy test to primary elections and provided for the statewide use, in primaries, of an anti-single-shot or full-slate voting requirement and a majority-vote requirement, devices intended to dilute the strength of the "bloc" vote, meaning the Black vote.<sup>15</sup>

In the late 1940s, South Carolina's Strom Thurmond led a charge of southern white Democrats out of the party in protest of President Harry Truman's nascent overtures to civil rights. Truman had been motivated by the senseless maiming of Black veteran Isaac Woodard at the hands of a white sheriff

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<sup>14</sup> *Elmore v. Rice*, 72 F.Supp. 517, 527 (E.D. S.C. 1947), *aff'd sub nom Rice v. Elmore* 165 F.2d 387 (4th Cir., 1947), *cert. denied*, 333 U.S. 875 (1948).

<sup>15</sup> Numan Bartley, *The New South, 1945-1980: The Story of the South's Modernization* (Baton Rouge: Louisiana State University Press, 1995), pp. 15, 26-29; Orville Vernon Burton et al., "South Carolina," in Chandler Davidson and Bernard Grofman, eds, *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990* (Princeton, N.J.: Princeton University Press, 1994), pp. 191-232, pp. 195-99.

outside Aiken, South Carolina in 1946. As the nominee of the States' Rights Democrats, or Dixiecrats, in 1948, Thurmond opposed Truman and won a significant number of southern votes. He subsequently rejoined the party but, in response to the national party's embrace of similar efforts under Presidents Kennedy and Johnson, Thurmond pioneered what has been described as a "northern strategy," an attempt to force the rest of the country to face the kind of scrutiny of racial discrimination that the South had faced. And Thurmond put together a core set of political issues—opposition to any and all civil rights reform; opposition to social welfare spending; opposition to labor organization; strident anti-communism; appeals to the religious Right—that scholars now assert were at the heart of a conservative counterrevolution that went hand-in-hand with the ongoing flight of white voters from the Democratic Party to the Republican Party.

In the 1950s and 1960s, South Carolina was also at the center of the battle over segregated schools. One of the trial court cases that came under the umbrella of *Brown v. Board* originated in the state. Indeed, Judge J. Waties Waring's dissent in *Briggs v. Elliott* heavily influenced the Supreme Court when it finally held that legally mandated segregation of public schools was unconstitutional.<sup>16</sup> South Carolina and other southern states reacted with "massive resistance," using any means deemed 'legally' feasible

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<sup>16</sup> *Briggs v. Elliott*, 98 F. Supp. 529, 538-48 (E.D.S.C. 1951); Richard Gergel, *Unexampled Courage: The Blinding of Sgt. Isaac Woodard and the Awakening of President Harry S. Truman and Judge J. Waties Waring* (New York: Farrar, Strauss, and Giroux, 2019).

to avoid even token desegregation. This included, in South Carolina's case, a renewed claim to the state's power of "nullification" of federal authority, harkening back to the so-called Tariff of Abominations that slaveholding lawmakers had rejected in 1828 due to their interests in exporting cash crops grown by the enslaved.<sup>17</sup>

South Carolina resisted desegregation so effectively that by 1964 it remained one of only two states in the old Confederacy to maintain completely segregated schools. The state also orchestrated the effective banishment of the organization deemed responsible for *Brown*, the NAACP. The state did this using old laws designed to combat the Ku Klux Klan and other white supremacist groups, and using alterations of old barratry and champerty laws. The latter were developed from the common law, designed to prevent the solicitation of litigants and to punish attorneys or firms that profited from repeated and frivolous litigation.<sup>18</sup> The state also called on the NAACP to

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<sup>17</sup> Clive Webb, *Massive Resistance: Southern Opposition to the Second Reconstruction* (New York: Oxford University Press, 2005), pp. 28-32; Burton, *The Age of Lincoln*, p. 58.

<sup>18</sup> As explained by a legal scholar, analyzing these laws in 1959, "Striking directly at the ability and ubiquity of the NAACP's legal staff, Georgia, Mississippi, South Carolina, Tennessee, and Virginia have adopted statutes redefining and tightening the common law offenses of barratry, champerty, and maintenance. Barratry is the 'habitual stirring up of quarrels and suits.' Champerty describes a situation where a person with no real interest in a particular piece of litigation assists one of the actual parties by money or service in return for a share of the expected proceeds of the case. Maintenance is the more general term that encompasses 'officious intermeddling in a suit which in no way belongs to one, by maintaining or assisting either party, with

produce membership rolls, which it refused to do, knowing that this would form the basis for economic reprisal. And it charged the organization with being a foreign corporation that had not met the requirements for doing business in the state and, as such, had been “soliciting” plaintiffs for profit in violation of the barratry and champerty laws. A state court imposed a fine that the organization could not pay and refused it the administrative means to rectify the situation even if it could.<sup>19</sup>

When the Voting Rights Act was passed in 1965, there were *no* Black public officials in South Carolina, despite Black voter registration sitting at 37 percent. The State of South Carolina was the first state to challenge the constitutionality of the act. It of course lost, meaning that under Section 4’s coverage provision, South Carolina would be required to seek Section 5 preclearance review. In effect, this meant that any voting changes that state or local officials in South Carolina sought to implement would have to be pre-approved by a federal court or by the U.S. Department of Justice, which would assess whether or not the proposed changes were intentionally discriminatory or potentially retrogressive in their effect.

The state’s literacy test and provision requiring prospective voters to demonstrate “understanding” of a portion of the U.S. Constitution as read by a

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money or otherwise, to prosecute or defend it.” (footnotes omitted) Walter F. Murphy, “The South Counterattacks: The Anti-NAACP Laws,” *The Western Political Quarterly* Vol. 12, No. 2 (June 1959): pp. 371-390, p. 374, accessed from JSTOR.

<sup>19</sup> Bartley, *The New South*, pp. 162-62.

registrar were invalidated and abolished. White elected officials conceded an increase in Black voter registration and turned their attention to vote dilution practices. County governing bodies across the state switched to at-large voting systems, with multimember districts and numbered posts, as they had done across the South during the “redemption” when rolling back Reconstruction-era Republican rule.<sup>20</sup>

Bringing back the dilutive voting practices would, over decades, lead to myriad Section 5 objections.<sup>21</sup> In single-member district elections, Black voters in majority Black areas had an opportunity to elect candidates of their choice. White elected officials switched to at-large elections to avoid that possibility. In a pure at-large system, all candidates would compete with each other for the seats up for election, and all voters could cast as many votes as there were seats at issue. They were not required to cast all of their available votes. If five seats were open, for example, the five candidates with the most votes won. This allowed a group of voters to engage in “single-shot” voting, or casting one vote for the same candidate and not casting any of their remaining votes for candidates competing with that preferred candidate.

Single-shot voting provided minority voters with a better opportunity, though by no means a certainty, of

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<sup>20</sup> Burton et al., “South Carolina,” pp. 200-202.

<sup>21</sup> *See generally*, Justice Department, Civil Rights Division Section 5 Objection Letters, South Carolina, <https://www.justice.gov/crt/voting-determination-letters-south-carolina>.

winning one seat. Separating at-large seats in a multi-member body by divisions (numbered posts/places) for electoral purposes, however, enhanced the already dilutive potential of at-large election systems by precluding a minority group from single-shot voting, since each contest was head-to-head. The majority vote rule for determining a winner in each contest further ensured control of the electoral outcome in favor of the majority group, i.e. white people.

I proceed below to a discussion of the State of South Carolina's efforts to redistrict from the 1960s to the present, first focusing on the state legislature and then the U.S. Congress, with some overlap in the 1980s and 1990s cycles I include a summary of local governmental entities' efforts in seeking, via the state legislature, to enact local electoral changes that ran afoul of the U.S. Justice Department's preclearance standards. I present this in the context of the South Carolina electorate's shift from majority white Democrat, in the preceding decades, to majority white Republican, from the mid-2000s to the present.<sup>22</sup>

e. Redistricting from 1960—1990

Renewed interest in dilutive voting structures coincided with the beginnings of judicial oversight of legislative redistricting under both the mantle of the one-person/one-vote standard adopted by the Court in *Reynolds v. Sims* (1964) and the auspices of Section 2 of the Voting Rights Act of 1965. Facing the

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<sup>22</sup> J. Morgan Kousser, *Colorblind Injustice: Minority Voting Rights and the Undoing of the Second Reconstruction* (Chapel Hill: University of North Carolina Press, 1999), pp. 139, 337-38, 347-48, 351, 475.

probability of a sharp increase in Black voter registration, numerous governing bodies in South Carolina opted for dilutive at-large voting practices with multi-member districts, numbered posts, and majority vote requirements. The Justice Department began to interpose objections to many of these practices, including one devised for the South Carolina legislature.<sup>23</sup>

In the immediate aftermath of *Reynolds*, a federal court in *O’Shields v. McNair*, 254 F. Supp. 708 (D.S.C. 1966) ordered South Carolina’s Senate to reapportion itself. At the time, each of the state’s 46 counties had one senator, elected at-large, a system that failed to meet the one-person/one-vote standard. The legislature devised a plan that replaced some single-member districts under the county-based plan with multimember districts with white voter majorities. The court in *O’Shields* approved that plan on a strictly interim basis, at which time the legislature modified the plan using just five single member districts and 15 multimember districts with white-voter majorities and a majority vote requirement. The state’s congressional delegation included six members of the U.S. House of Representatives at that time—all of whom were white. In fact, the state did not elect a single Black congressional member between 1897 and the 1990s.<sup>24</sup>

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<sup>23</sup> I discuss the localized objections below, in order to keep the discussion of redistricting compact and concurrent. *Reynolds v. Sims*, 377 U.S. 533 (1964); Burton et al., “South Carolina,” pp. 200-202.

<sup>24</sup> *O’Shields v. McNair*, 254 F. Supp. 708, 715-16.

Following the 1970 Census, the legislature took up its duty to reapportion and redistrict and this time was required to submit proposed changes to the Justice Department. The legislature passed Act No. 932 in Nov. 1971, adopting a plan for the reapportionment of the state Senate. The state submitted the act to the Attorney General for preclearance review. While that was pending, several suits were filed in federal court challenging the plan as violative of the Fourteenth and Fifteenth Amendments of the U.S. Constitution.<sup>25</sup>

While those cases were consolidated before a three-judge court, under the styling of *Twiggs v. West*, in March of 1972, the Justice Department blocked Act No. 932. The Assistant Attorney General concluded that the “combination of multi-member districts, numbered posts, and majority vote (run-off) requirement” was likely to result in “an abridgement of minority voting rights.”<sup>26</sup> The court in *Twiggs* then held that the act would produce a malapportioned body and gave the legislature the opportunity to enact a new plan (*Twiggs*, unreported, Apr. 7, 1972).

The legislature then passed Act. 1205, which the *Twiggs* court upheld in May 1972. The following month, the Assistant Attorney General indicated, in a lengthy letter, that he determined that the plan

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<sup>25</sup> *Twiggs v. West*, Civ. Ac. No. 71-1106 (D.S.C. 1972).

<sup>26</sup> David L. Norman, Assistant Attorney General, Civil Rights Div., to Hon. Daniel R. McCleod, Attorney General, State of South Carolina, March 6, 1972, U.S. Dept of Justice, Civil Rights Division Section 5 Objection Letters, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/SC-1000.pdf>.

produced by Act. 1205 was violative of the Fifteenth Amendment, but he indicated that, out of deference to the court, the Attorney General would not object to the Senate plan.<sup>27</sup> Some of the *Twiggs* plaintiffs then filed a separate action in the District Court in South Carolina, asking that the Attorney General be compelled to enter an objection. The court entered that order, and the Attorney General objected to Act 1205.<sup>28</sup> The District of Columbia Circuit Court upheld the District Court decision, and a new suit was filed seeking an injunction against the use of the plan established by Act 1205. The District Court in that case held that the Attorney General's failure to render an objection within the 60-day window afforded by Section 5 satisfied Section 5's requirements and dismissed the complaint. The Supreme Court upheld the decision.<sup>29</sup>

South Carolina's efforts to redistrict its state House of Representatives in the 1970s also involved Justice Department objections and lengthy litigation. By that

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<sup>27</sup> David L. Norman, Assistant Attorney General, Civil Rights Div., to Hon. Daniel R. McCleod, Attorney General, State of South Carolina, June 30, 1972, U.S. Dept of Justice, Civil Rights Division Section 5 Objection Letters, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/SC-1010.pdf>.

<sup>28</sup> *Harper v. Kleindienst*, 362 F.Supp. 742 (D.S.C. 1973); J. Stanley Pottinger, Assistant Attorney General, Civil Rights Div. to Hon. Daniel McLeod, Attorney General, State of South Carolina, July 30, 1973, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/SC-1040.pdf>.

<sup>29</sup> *Morris v. Gressette*, 425 F.Supp. 331, D.S.C. 1977, *aff'd* 432 U.S. 491 (1977).

time, Black citizens in South Carolina had begun to capitalize on their ability to register and vote, due in large part to the Voting Rights Act, and they had organized by forming the United Citizens Party in 1969. The group was so successful in turning out Black voters that the Democratic Party made some limited overtures, including supporting the nomination of a few Black candidates in areas with significant Black populations in Charleston and Columbia in the 1970 House elections. Three of those candidates won election that fall and became the first Black representatives in the state House since the Tillman-orchestrated “redemption” of the late 19th Century.<sup>30</sup>

Three representatives out of 124 was still grossly disproportionate, however, given that South Carolina’s Black population at the time constituted approximately 30 percent of the electorate. Black plaintiffs subsequently challenged the redistricting plan adopted by the state House in Act. 1205, citing the use of multimember districts and the anti-single-shot law.<sup>31</sup> The court upheld the plan but not the anti-single-shot law, though the state simply replaced the latter with a numbered place law. The Justice Department, in the same letter in which it deferred to the court vis-a-vis the Senate plan in Act 1205, objected to the application of the numbered place law

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<sup>30</sup> Willie M. Legette, “The South Carolina Legislative Black Caucus, 1970-1988,” *Journal of Black Studies* 30, No. 6 (July 2000), pp. 839-858, pp. 840-43.

<sup>31</sup> *Johnson v. West*, No. 72-680 (D.S.C. 1972).

to contests throughout the state, including the state House of Representatives.<sup>32</sup>

Elections were held in 1972 under the state's plan for the state House, and the number of Black representatives increased from three to four, as noted above. The following year, the U.S. Supreme Court, in *Stevenson v. West*, reversed the trial court's decision to uphold the House's use of multimember districts with numbered posts.<sup>33</sup> The legislature once again produced a plan that used such devices, leading the Justice Department to register an objection due to the "submergence of significant concentrations of Negro voters into large majority multi-member districts and the magnification of this dilution of Negro voting strength by the numbered post and majority vote requirement." The state finally relented and redistricted using single-member districts. In 1974, 13 Black candidates were elected to the state House. The Senate remained comprised *only* of white members. The South Carolina congressional delegation also remained exclusively white, then comprised of two Senators and six members of the U.S. House.<sup>34</sup>

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<sup>32</sup> Norman to McLeod, June 30, 1972, *supra*, fn. 30.

<sup>33</sup> 413 U.S. 902 (1973).

<sup>34</sup> Legette, "The South Carolina Legislative Black Caucus, 1970-1988," pp. 841-42; J. Stanley Pottinger, Asst Attorney General for Civil Rights, to Hon. Daniel R. McLeod, Attorney General, State of South Carolina, Feb. 14, 1974, U.S. Dept of Justice, Civil Rights Division Section 5 Objection Letters, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/SC-1070.pdf>.

The presence of Black representatives in the state House led white legislators to abandon the longstanding system of legislative appointment of local governing bodies. As the authority to elect such bodies was handed back to counties, some switched to single-member district plans while others opted for at-large systems, most of them using dilutive devices like numbered posts, staggered terms, overly-large districts, and majority vote requirements. The Supreme Court had already declared that such systems, which enhance the ability of the quantitative majority to control election outcomes, also “enhanced the opportunity for racial discrimination.” *White v. Regester*, 412 U.S. 744, 766 (1973). The Supreme Court would soon determine that the dilutive impact of those kinds of enhancing factors constituted a continuing practical impediment to the opportunity of black voting minorities to elect candidates of their choice.<sup>35</sup>

The Justice Department registered dozens of objections to these kinds of changes and more throughout the 1970s, 1980s, and 1990s, and plaintiffs brought suits challenging these actions in the courts.<sup>36</sup> As a result, more county commissions and city councils began adopting single-member electoral methods, particularly after lengthy, costly, and well-publicized litigation in Edgefield and Sumter Counties ultimately resulted in the blocking of at-large practices. This occurred around the same time

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<sup>35</sup> *Thornburg v. Gingles*, 478 U.S. 30, 39-40, 80 (1986).

<sup>36</sup> See generally Civil Rights Division, Section 5 Objection Letters, South Carolina, <https://www.justice.gov/crt/voting-determination-letters-south-carolina>; I summarize these below.

as Congress amending the Voting Rights Act in 1982 to include a discriminatory results standard, as opposed to the racially discriminatory intent standard announced by the Supreme Court in *City of Mobile v. Bolden*.<sup>37</sup>

After the 1980 Census, and the South Carolina General Assembly's submission of plans for redistricting for the state House and Senate, the Justice Department found in the state's House plan "noticeable dilution or fragmentation of the minority vote in Florence County (Proposed District Nos. 59, 62, 63), Richland County (Proposed District Nos. 70, 72, 73, 74, 75, 76, 79), Lee County (Proposed District Nos. 50, 65, 66), Allendale-Bamberg-Barnwell Counties (Proposed District Nos. 90, 91), and Jasper-Beaufort Counties (Proposed District No. 122)." The Justice Department also noted that it was aware of alternate proposals that "would have avoided the fragmentation and dilution of minority voting strength in each of the referenced areas," and it noted having "received complaints alleging that such alternate proposals were rejected for racially discriminatory reasons."<sup>38</sup>

The General Assembly submitted its state Senate plan for preclearance and sought a declaratory judgment in the D.C. District Court. It then moved

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<sup>37</sup> *Mobile v. Bolden*, 446 U.S. 55 (1980); *Blanding v. Dubose*, 509 F.Supp. 1334 (D.S.C. 1981); *McCain v. Lybrand*, 465 U.S. 236 (1984); Burton et al., "South Carolina," pp. 208-11.

<sup>38</sup> William Bradford Reynolds, Asst Attorney General, Civil Rights Division, to Hon. Daniel R. McLeod, Nov. 18, 1981, Civil Rights Division Section 5 Objection Letters, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/SC-1460.pdf>; Legette, "The South Carolina Legislative Black Caucus, 1970-1988," pp. 858-59.

forward with the election process for the 1984 primaries under the assumption that the plan would pass muster. The Justice Department objected to that action, as did the appellate court, and the state was enjoined from moving forward.<sup>39</sup> Private litigants then filed suit in the District Court in South Carolina seeking an interim plan imposed by the court. The court provided such a plan, but the state passed a new law establishing a plan of its own. That plan included 10 districts with majority Black populations, 7 of which had majority Black voting age populations. That was the plan ultimately used in elections in 1984, and four Black senators were elected to serve Districts 7, 19, 39, and 42.<sup>40</sup> Two other Black senators were elected, in 1988 and 1990, to represent District 30 and District 45, respectively. The South Carolina congressional delegation remained all white.<sup>41</sup>

Following the 1990s Census, the legislature passed new redistricting plans for the state House and Senate. Then-governor Carroll Campbell vetoed both

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<sup>39</sup> *State of South Carolina v. United States*, 585 F. Supp. 418, D.D.C. (1984); William Bradford Reynolds, Assistant Attorney General, Civil Rights Division, to Terrell Glenn, March 20, 1984, Civil Rights Division Section 5 Objection Letters, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/SC-1540.pdf>.

<sup>40</sup> These were not quite the first Black representatives to serve in the South Carolina Senate. I. DeQuincey Newman was elected from Orangeburg in a special election in 1983; see Leggette, “The South Carolina Legislative Black Caucus,” p. 843.

<sup>41</sup> John C. Ruoff and Herbert E. Buhl, “Voting Rights in South Carolina, 1982-2006,” *University of Southern California Review of Law and Social Justice* 17.2 (Spring 2008), pp. 643-711, pp. 673-75.

plans, arguing that both would fail Section 5 preclearance review, particularly given the results standard embodied in the 1982 VRA amendment. Campbell noted that the plans did not create additional majority-minority districts, reduced the number of Black voters in existing minority districts, and cracked the Black voting population at the expense of white incumbents and at the expense of creating additional majority-minority districts. The governor's actions were characterized by his opponents as "cynical," meaning that they believed that he supported more majority-minority districts only because that would mean more safely white districts that Republicans could win.<sup>42</sup>

Unable to override the vetoes or pass new plans, the state legislative redistricting process ended up in federal court again. In *Burton v. Sheheen*, a three-judge court ordered the use of a plan for the Senate establishing 11 districts with majority Black populations, 10 of which had majority Black voting age populations. Seven Black senators were elected under the plan that fall of 1992. The *Burton* court adopted a plan for the state House that included 28 majority-minority districts, 23 of which contained Black voting age majorities. Eighteen Black House members were elected under the plan that fall.<sup>43</sup>

#### f. Redistricting, 1980—Present

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<sup>42</sup> William E. Rone, Jr., "Will Proportional Representation Improve Government," *The State* (Columbia, S.C.), Feb. 9, 1992, p. 2D; Valerie Bauerlein, "S.C. Redistricting Finalized Relatively Fast," *The State*, March 25, 2002.

<sup>43</sup> *Burton v. Sheheen*, 793 F. Supp. 1329 (D.S.C. 1992); Ruoff and Buhl, "Voting Rights in South Carolina, 1982-2006," pp. 676-82.

Following the 1980 Census, the South Carolina General Assembly failed to pass a congressional redistricting plan, with the House and Senate failing to come to agreement on a map. The South Carolina State Conference of Branches of the NAACP filed suit, as did two other individual plaintiffs, urging a three-judge federal court to adopt one of several submitted plans. The NAACP submitted three plans, two of which would create a majority-Black Sixth Congressional district (“CD 6”). The Court determined that the county splits in the NAACP plans were “radical” and opted to order the adoption of a modified version of a plan passed by the state House.<sup>44</sup>

The South Carolina General Assembly again failed to pass a congressional redistricting plan following the 1990 Census. Plaintiffs filed suit, and that case ended up before the court in *Burton*. As was the case in the 1980s, the state House and Senate each passed congressional redistricting plans but could not come together to pass one as the full assembly. The court in *Burton* determined that none of the plans submitted by parties was sufficient and, as with the state House and Senate plans, drew its own, though it also acknowledged that no parties disputed the need to draw, for the first time, a majority-minority district. CD 6 was thus drawn with a majority Black population.<sup>45</sup>

That fall, Jim Clyburn was elected to the U.S. Congress in the newly redrawn 6<sup>th</sup> Congressional District, becoming South Carolina’s first Black

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<sup>44</sup> S.C. State Conference of Branches, et al. v. Riley, 533 F. Supp. 1178, 1182 (D.S.C. 1982).

<sup>45</sup> *Burton*, at 1367.

representative in Washington in nearly 100 years. The campaign, which pitted Clyburn against a white Republican, was described in the media as having been “tinged with racial controversy.” A television ad supporting Chase featured a distorted photo of Clyburn described by his campaign manager as “reminiscent of the vaudeville days when black people were not allowed to perform and white actors were made up with blackface with their eyes rolled back and lips popped out.” The photo was placed on a “Welfare Express” card. Clyburn himself called it “a not-so-subtle way of injecting race” into the campaign and insisted that the photo made him look “like Buckwheat.”<sup>46</sup>

The Supreme Court vacated *Burton* the following year on the grounds that the District Court had not thoroughly considered a Section 2 analysis. The legislature then passed a state House plan in 1994. Governor Campbell allowed the bill to become law without his signature so that it could go before the Justice Department for preclearance review. The Attorney General objected to the plan, in part, on account of its packing and cracking of Black populations. Assistant Attorney General Deval Patrick wrote in his objection letter, “We cannot preclear those portions of a plan where the legislature has deferred to the interests of incumbents while refusing to accommodate the community of interest

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<sup>46</sup> Lisa Key, “Black Turnout Called Key to Sixth District Win,” *The State*, Oct. 29, 1992; Lisa Greene, “Race Issue Heats Up Clyburn, Chase Attacks,” *The State*, Nov. 1, 1992; Lisa Greene, “Clyburn Makes History, Promises to Work for All,” *The State*, Nov. 4, 1992; Clejeter Pickett, “NAACP Threatens Lawsuit over District 2 Voting Lines,” *The Item*, Oct. 28, 1992.

shared by insular minorities.” This problem was typically associated, Patrick wrote, with “the unnecessary fragmentation of minority communities or the needless packing of minority constituents into a minimal number of districts in which they can expect to elect candidates of their choice.”<sup>47</sup>

The *Burton* court deferred to the legislature, though with a deadline. Before the deadline expired, a coalition of legislators in the South Carolina Legislative Black Caucus and the Republican Party, which was in the process of siphoning off white legislators from the Democratic Party, passed through a plan that would increase the number of majority-minority districts by nine. Black Caucus members felt like they had been taken advantage of by white Democrats and agreed with Republicans to draw more heavily white districts that white Republicans could win and more majority-minority districts that Black candidates could win. As Columbia’s *The State* wrote, looking back, “Facing extinction, some white Democrats bolted for [the Republican Party].”<sup>48</sup> The Civil Rights Division did not object to this plan, and it

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<sup>47</sup> Deval Patrick, Asst Attorney General, Civil Rights Division, to Hon. Robert Sheheen, Speaker of the South Carolina House of Representatives, May 2, 1994, Civil Rights Division Section 5 Objection Letters, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/SC-1980.pdf>; Ruoff and Buhl, “Voting Rights in South Carolina,” pp. 676-82.

<sup>48</sup> Cindi Ross Scoppee, “A House Divided Sweats Out Remap,” *The State*, May 12, 1994; Gina Smith, “Endangered Species: South Carolina Democrats,” *The State*, Feb. 6, 2011; Tim Flatch, “Elections Expected to Give Republicans ‘Working Control’ of State House,” *Greenville News*, Nov. 9, 1994.

was adopted just before the deadline established by the court in *Burton* had passed. The General Assembly also adopted a congressional redistricting plan that reflected the plan drawn by the court in *Burton*. CD 6 under that plan had a Black population of 61 percent and a Black voting age population (“BVAP”) of 58 percent.<sup>49</sup>

In the fall of 1994, the same year, 24 Black legislators were elected to the state House, but a challenge was brought to the state House plan based on the Supreme Court’s decisions in *Shaw v. Reno* (1993) and *Miller v. Johnson* (1995). These cases challenged majority-minority districts under a racial gerrymandering theory; a framework which requires a plaintiff to show that race predominated in the development of those districts without a legally sufficient justification like compliance with the Voting Rights Act. The court in *Smith v. Beasley* in 1996 held that race had predominated to an unacceptable degree in drawing 6 of the 9 new districts. The state House redistricted again to reflect the court’s finding and adopted a plan under which all but one of the new Black legislators elected under the final *Burton* plan were reelected.<sup>50</sup>

The impact of *Shaw* and *Miller* was felt in the South Carolina Senate’s efforts as well. The Senate passed a plan in 1995 that created two new majority-minority Senate districts. In *Smith v. Beasley*, the court held that not only were those two districts the product of impermissible racial predominance, but so was one

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<sup>49</sup> Rouff, “Voting Rights in South Carolina,” pp. 707-08.

<sup>50</sup> *Smith v. Beasley*, 946 F. Supp. 1174 (D.S.C. 1996); Rouff and Buhl, “Voting Rights in South Carolina,” pp. 680-82.

additional district. The Senate then passed a plan, in 1997, that no longer provided for Black majorities in the two districts created in the 1995 plan. The Justice Department objected to the boundaries of one of the districts, observing, “[T]here are alternative configurations that would minimize the reduction in black voting strength in District 37,” and that some of these were “available to the state” and would have “substantially address[ed] the *Smith* court’s constitutional concerns,” without “significantly diminish[ing] black voting strength in neighboring senate districts.” The Justice Department also objected to the plan on the grounds that it represented a “clear violation” of Section 2 of the Voting Rights Act. Senate redistricting thus ended up back before the *Smith* court, which then ordered the implementation of its own plan, based in part on the 1997 plan and in part on the 1984 plan, with the court’s own modifications. Special elections were held that fall, and Black South Carolinians lost a seat in the Senate, District 37.<sup>51</sup>

Plaintiffs also brought a *Shaw/Miller* challenge against the drawing of the new CD 6, filing *Leonard v. Beasley* in late 1996. The parties in that case reached a settlement whereby the defendants conceded that drawing CD 6, as it was, required subordinating traditional redistricting principles to “racial considerations,” and the plaintiffs conceded that “the

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<sup>51</sup> Isabell Katz Pinzler, Asst Attorney General, Civil Rights Division, to Hon. John W. Drummond, April 1, 1997, Civil Rights Division Section 5 Rejection Letters, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/SC-2090.pdf>; Ruoff and Buhl, “Voting Rights in South Carolina,” pp. 675-77.

State has a compelling state interest in adopting [a] congressional plan that does not have the purpose, effect or result of providing minority citizens with less opportunity than other members of the electorate to elect representatives of their choice.”<sup>52</sup>

Following the 2000 Census, the General Assembly passed redistricting plans for the state House and Senate and for the state’s congressional districts, but then-Governor Jim Hodges, a white Democrat, vetoed the bill, H.3003. The governor argued that the state legislative plans lacked sufficient “opportunity” districts for Black voters, and that the congressional map split too many counties. The head of the state’s Legislative Black Caucus, Rep. Joe Neal, argued that the plans for the state legislature, in particular, were conducive to the election of candidates espousing extreme positions due to a lack of competition. The process ended up again before a three-judge federal court, with multiple parties filing suit under one-person/one-vote claims of malapportionment, due to the impasse.<sup>53</sup>

In 2002, the court in *Colleton County Council v. McConnell*, took special note of the “overwhelming” evidence of what was by then being called racially polarized voting, or what had been up to that point referred to as “bloc voting,” a term carried over from colormasked denunciations of the nascent Black vote

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<sup>52</sup> Leonard v. Beasley, No.3:96-03640 (D.S.C. Aug. 6, 1997); Ruoff, “Voting Rights in South Carolina,” pp. 707-08.

<sup>53</sup> “Democrats Push for Influence in Redistricting,” Associated Press, *Orangeburg Times-Democrat*, Sept. 11, 2001; Bauerlein, “S.C. Redistricting Finalized Relatively Fast,” *The State*, March 25, 2002.

in the 1950s and 1960s. 201 F. Supp. 2d 618, 623-36, 642 (D.S.C. 2002). Racially polarized voting occurs when a minority group votes as a block for a particular candidate who is then defeated by non-minority voters, who are usually voting as a bloc against those candidates of choice of the minority. The court in *Colleton* adopted a plan for the state Senate that included 11 majority Black districts, 10 of which had a majority BVAP, and one opportunity district that sat just below 50 percent. The court's plan for the state House established 31 majority Black districts, of which 28 were majority in BVAP.

The General Assembly modified the court's plans in 2003, and those plans were precleared under the standard of Section 5—non-retrogression. In addressing the need for a new congressional plan, the *Colleton* court acknowledged that the “benchmark” plan, drawn by the court in *Burton* in 1992 and amended and adopted by the General Assembly in 1994, had been challenged under *Shaw/Miller* as an unconstitutional plan but that a settlement had been reached wherein there was no ruling on the constitutionality of the plan. The state defendants had agreed to concede that racial considerations had predominated in drawing the plan if a new suit was brought. But the court further acknowledged that no Section 2 claim was being brought in the current case. All parties and the court had agreed, though, that Section 2 required maintenance of CD 6 as a majority-minority district. CD 6 had also lost 68,000 or so in population and would need to take in BVAP in order to remain a majority-minority district. The court held, then, that “§ 2 and § 5 of the Voting Rights Act require the maintenance of CD 6 as a majority-minority

district. We believe the minority population in the core areas of CD 6, as drawn by the court, is sufficiently compact and shares a sufficiently strong community of interest to warrant being a majority-minority district” (*Colleton County Council*, at 665).

Following the 2010 Census, South Carolina gained a U.S. congressional seat. The General Assembly enacted Acts 72 and 75 (both in 2011) establishing redistricting plans for the state legislature and Congress, respectively. The state legislative plans passed with biracial support, indicating some measure of cooperation between Black legislators and white Republicans, but also drawing the ire of Black and white Democrats who insisted that the plans packed Black voters into majority-minority districts in order to “bleach out” white Republican districts, meaning to give them a large enough percentage of white voters that candidates would not have to campaign for Black votes at all.<sup>54</sup>

The bills were signed by Governor Nikki Haley, and the plans were precleared by the Obama Justice Department under the standard of non-retrogression. The congressional plan maintained the majority Black CD 6, at 53 percent, and created the new CD 7 in the growing Pee Dee, in Horry and Georgetown Counties. Rep. Gilda Cobb-Hunter, a Black Democrat in the state House, argued that this represented packing CD 6 unnecessarily when a second Black opportunity district could have been drawn using some of the

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<sup>54</sup> Jim Davenport, “Democrat: GOP District Plan ‘Electoral Apartheid,’” *The Greenville News*, June 16, 2011; Liz Carey, “Redistricting Plan One Step Closer to Final,” *Anderson Independent Mail*, June 17, 2011.

BVAP in CD 6 and Black populations that were cracked among the remaining districts. Cobb-Hunter described a compromise reconciling conflicting state House and Senate plans for the new congressional map as a “fait accompli” at the time and said, “I hope for the people of South Carolina that this plan ends up in court.” Plaintiffs indeed brought suit, alleging Fifteenth Amendment violations against all three plans and racial gerrymandering and Section 2 violations in the enactment of the state House and congressional plans.<sup>55</sup>

With respect to the racial gerrymandering claims, the three-judge federal court in *Backus v. South Carolina* found that the “Defendants were able to disprove that race was the predominant factor by demonstrating that their decisions adhered to traditional race-neutral principles.” 857 F. Supp. 2d 553, 560, D.S.C., *aff’d* 133. S.Ct. 156, 2012. The court found the expert report and testimony of plaintiffs’ expert Dr. Michael McDonald to be lacking in credibility, particularly in that Dr. McDonald failed to consider the race-neutral redistricting guidelines adopted in the General Assembly’s relevant committees and subcommittees when he concluded that race had predominated in the drawing of the approved maps. The court also found that while the testimony of state Rep. Bakari Sellers, state Senator Brad Hutto, U.S. Rep. Clyburn, and others “strongly

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<sup>55</sup> Jim Davenport, “S.C. Legislators Seek U.S. House District Line Support,” *Anderson Independent Mail*, July 26, 2011; Tim Smith, “District Splits Upset Minorities,” *Greenville News*, July 28, 2011; Gina Smith, “Senate Passes Surprise Plan for Seventh Congressional District,” *The Herald* (Rock Hill, S.C.), June 29, 2011.

suggested” that race was a factor in the drawing of district lines, plaintiffs failed to establish that it was the *predominant* factor (at 565).

The *Backus* court concluded that the plaintiffs, in District Judge Patrick Duffy’s words, “focused too much on changes that increased the BVAP in certain districts and not enough on how traditional race-neutral principles were subordinated to race in making those changes. This approach,” the court held, “risks ignoring that race might have been an unintended consequence of a change rather than a motivating factor” (at 565). According to the court, this also “ignore[d] that race can be—and often must be—a factor in redistricting,” because South Carolina was “a covered jurisdiction under [Sections 4 and 5 of] the Voting Rights Act” (Id). The court shot down the plaintiffs’ Section 2 claims on the basis that they had not met the first “precondition” of the *Gingles* framework: “Plaintiffs have not shown that, absent the districting scheme imposed by the House and Congressional plans, African-Americans could form a majority of voters in another potential district” (567).

The *Backus* court similarly found that the plaintiffs failed to prove either discriminatory intent or effect. The court wrote, “There is no convincing direct evidence indicating that the General Assembly drew the district lines for the purpose of diluting Plaintiffs’ voting strength. Nor do the totality of the facts yield an inference that the General Assembly acted with such a discriminatory purpose. More importantly,” it continued, “Plaintiffs have failed to prove a discriminatory effect. They offered no evidence demonstrating how the House and Congressional plans dilute their votes. . . . There was no expert

testimony describing how the House and Congressional plans minimized or cancelled out minority voting potential” (568-69). As to the 15<sup>th</sup> Amendment claims, the court in *Backus* held, “[b]ecause Plaintiffs have offered no evidence, nor have they argued, that any Plaintiff was denied the ability to vote, the Court finds that the House and Congressional plans do not violate the Fifteenth Amendment” (570).

g. Section 5 Challenges and the Shift in Political Affiliation

The white flight from the Democratic Party to the Republican Party that had begun with Thurmond and the Dixiecrats continued, erratically, and less thoroughly, in South Carolina than elsewhere in the old Confederacy, into the 2010s.<sup>56</sup> As political

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<sup>56</sup> Crespino, *Strom Thurmond's America*, pp. 3-11. See also Dan Carter, *The Politics of Rage: George Wallace, the Origins of the New Conservatism, and the Transformation of American Politics*, 2nd ed. (Baton Rouge: Louisiana State University Press, 2000); Dan Carter, *From George Wallace to Newt Gingrich: Race in the Conservative Counterrevolution, 1963-1994* (Baton Rouge: Louisiana State University Press, 1999); Kevin Kruse, *White Flight: Atlanta and the Making of Modern Conservatism* (Princeton, NJ: Princeton University Press, 2005); Matthew Lassiter, *The Silent Majority: Suburban Politics in the Sunbelt South* (Princeton U.P. 2007); Joseph Crespino, *In Search of Another Country: Mississippi and the Conservative Counterrevolution* (Princeton U.P., 2009); Thomas Sugrue, *Sweet Land of Liberty: The Forgotten Struggle for Civil Rights in the North*, (New York: Random House, 2008); Thomas Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* (Princeton U.P., 2014); Michelle Nickerson and Darren Dochuk, *Sunbelt Rising: The Politics of Space, Place, and Region* (Philadelphia: University of Pennsylvania, 2014); and Lisa

scientists Merle and Earl Black have described, white folks in South Carolina initially remained loyal to the Democratic Party in state and local elections after they began to vote for candidates like Thurmond or Republicans Barry Goldwater and Richard Nixon for president. That began to change in the 1990s, and by the new millennium, white flight to the Republican Party and Black identification with the Democratic Party was significant enough that there were almost no Black Republicans and few remaining white Democrats in the South Carolina General Assembly.<sup>57</sup>

This remains the case in South Carolina today, though Republican Senator Tim Scott does represent the state in Washington. Mr. Scott was elected to the state legislature in 2009, won a seat in CD 1 in the U.S. House of Representatives in 2011, and was subsequently appointed by Governor Nikki Haley to the U.S. Senate seat vacated by Jim DeMint in 2011. He won a special election in 2014 and a full-term election in 2016. Democratic Judge Donald Beatty has also been elected by the General Assembly to the state Supreme Court (2007) and to the Chief Justiceship of that Court (2017). South Carolina maintains more white Democrats in its state legislature than surrounding states. The white southern exodus from the Democratic Party to the Republican Party, nationally, has been nonetheless repeatedly shown to be substantially the result of racial animus and backlash against the national

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McGirr, *Suburban Warriors: The Origins of the New American Right* (Princeton: Princeton University Press, 2001).

<sup>57</sup> Merle and Earl Black, *The Rise of Southern Republicans* (New York: Belknap Press of Harvard, 2002), pp. 115-17, 296-97, 317.

Democratic Party's embrace of civil rights and social welfare spending. South Carolina's congressional delegation was all Democratic as of 1899. It became all- white Republican, excepting Mr. Clyburn, in 2011. Mr. Cunningham served from 2019 to 2021. Recently, Mike Reichenbach, a Black Republican, replaced the venerable Hugh Leatherman in the Senate, winning a special election in Florence County.

By 2012, the Justice Department had objected to South Carolina state and local election changes 122 times.<sup>58</sup> Many of those involved redistricting, but others were aimed at blocking dilutive practices at the local level, many of which involved local governing bodies in the congressional districts that Plaintiffs in this case allege cracking of Black voters. In CD 2, this included Aiken County, which was blocked from using numbered posts in all multi-member bodies in the county and from maintaining at-large positions on the school board. The city of Barnwell was blocked from using at-large elections with staggered terms for aldermen and from using a majority vote requirement for mayor and city council.<sup>59</sup>

Beaufort County was blocked from using at-large elections for county council. The city of North Charleston was twice blocked from using at-large elections for its city council. It was likewise blocked, more than once, from making racially selective and dilutive annexations, accepting only white areas to the point of leaving "doughnut holes" of Black

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<sup>58</sup> Civil Rights Division, Section 5 Objection Letters, South Carolina, <https://www.justice.gov/crt/voting-determination-letters-south-carolina>.

<sup>59</sup> *Id.*

neighborhoods unannexed.<sup>60</sup> The city of Charleston was blocked from reducing its Black majority city council districts in 2001 and from making racially selective and dilutive annexations. The town of McClellanville in Charleston County was also blocked from making racially selective and dilutive annexations. The town of Hollywood was blocked from using a majority vote requirement for election to the town council. Charleston County was blocked from using, for its charter council, multi-member districts, at-large elections, a majority vote requirement, residency requirements, and numbered posts. It was likewise blocked from changing the method of electing the Board of Trustees for its school board from non-partisan to partisan elections and eliminating plurality victories by requiring head to head contests with a majority votes requirement.<sup>61</sup>

The City of Gaffney was blocked from switching to at-large elections for its Board of Public Works. Cherokee County was blocked from reducing the number of members of its school board. Chester County was blocked from switching to at-large election of the county Board of Directors with a majority vote requirement. The city of Chester was blocked from having unduly high candidate filing fees for city council and mayor. Fairfield County was blocked from increasing the number of members of its school board by adding members appointed by the

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<sup>60</sup> One objection was withdrawn when the city annexed some of the Black neighborhoods.

<sup>61</sup> Civil Rights Division, Section 5 Objection Letters, South Carolina, <https://www.justice.gov/crt/voting-determination-letters-south-carolina>.

county's legislative delegation. Kershaw County was blocked from switching from the method of filling school board vacancies to avoid the election of a Black member by way of a referendum. Lancaster County was blocked from switching to at-large elections for its board of education and for its county commissioners and school board, as was the city of Lancaster, twice, for its city council. The city of Lancaster was also blocked from instituting a majority vote requirement for judicially contested elections. The town of Bishopville in Lee County was blocked from staggering the terms of its town council in order to prevent single-shot voting. Lee County itself had its county council and school board redistricting blocked. The town of Batesburg-Leesville in Lexington and Saluda Counties was blocked from implementing a majority vote requirement for elections for mayor and town council. Finally, the Richland-Lexington School District No. 5 was blocked from adopting numbered posts and a majority vote requirement.<sup>62</sup>

Orangeburg County was blocked from implementing a racially dilutive redistricting plan for its county council, and the town of Norway in Orangeburg County was blocked from maintaining at-large election of its mayor. The town of North was blocked from making racially selective annexations. Richland County was blocked from reducing the number of seats on its county council to the detriment of Black voters.<sup>63</sup>

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<sup>62</sup> Id.

<sup>63</sup> Id.

Spartanburg County was blocked from switching from an elected to an appointed board of education. The city of Greer in Greenville and Spartanburg Counties had its redistricting blocked. Sumter County was blocked from adopting at-large for its school board and county council. Sumter also had its 2001 redistricting for county council blocked. The city of Sumter was blocked from making racially selective annexations. Union County had its 2002 redistricting blocked. York County was blocked from adopting at-large elections for its county council. The city of York had a redistricting plan blocked. The city of Rock Hill was blocked from adopting a majority vote requirement for its city council and from making racially selective annexations. Rock Hill also had its 1990s redistricting plan blocked.<sup>64</sup>

Many of these objections came between the passage of the VRA and its renewal in the 1980s. But eleven of these Section 5 objections came after the last DOJ objection to a statewide South Carolina redistricting plan in 1997, and between 1997 and 2013 there were also two Section 2 DOJ lawsuits filed, successfully challenging electoral methods for the City of Charleston's City Council and Georgetown County's School District.<sup>65</sup>

The final Section 5 objection in 2011 was aimed at the state legislature's passage of a strict voter photo

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<sup>64</sup> Id.

<sup>65</sup> See *United States v. Charleston Cty.*, 316 F. Supp. 2d 268, 272 (D.S.C. 2003), *aff'd sub nom. United States v. Charleston Cty., S.C.*, 365 F.3d 341 (4th Cir. 2004); see *United States v. Georgetown County School District*, No. 2:08-cv-00889 (D.S.C. 2008).

identification law. The Justice Department concluded that the state had submitted no evidence of its stated concern in the passage of the legislation, to wit: voter fraud, and it concluded that the state had done nothing to address the obviously disparate racial impact that the law would have if enacted. Assistant Attorney General Thomas Perez wrote, “Until South Carolina succeeds in substantially addressing the racial disparities described above . . . the state cannot meet its burden of proving that, when compared to the benchmark standard, the voter identification requirements proposed . . . will not have a retrogressive effect.”<sup>66</sup> The state applied for a declaratory judgment from the D.C. District Court. Then-Circuit-Judge Brett Kavanaugh wrote for the court in allowing the law to go into effect only with significant modification. While preclearing the law with a “reasonable impediment” exemption process, the court rejected the state’s attempt to require a reasonable impediment form be notarized because of its likely racially discriminatory harm. In a concurring opinion, Circuit Judge John Bates argued that this litigation demonstrated the continuing utility of Section 5 review, which was nonetheless suspended in *Shelby County v. Holder*.<sup>67</sup>

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<sup>66</sup> Assistant Attorney General Thomas E. Perez to C. Havird Jones, Assistant Deputy Attorney General, Dec. 23, 2011, Civil Rights Division, Section 5 Objection Letters, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/111223.pdf>.

<sup>67</sup> Mark A. Posner, “Current Conditions of Voting Rights Discrimination in South Carolina,” Leadership Conference on Civil and Human Rights, <https://andstillvote.org/wp-content/uploads/2021/09/South-Carolina-HHRG-117-JU10->

South Carolina has been accused of having an unduly strict voter registration deadline. It was forcibly brought into compliance with the “Motor Voter” or “NVRA” Act in 1993. The state has also recently been cited for requiring prospective voters to include their full Social Security number on voter registration applications. The state also enforces a restrictive felony disenfranchisement law and has been accused of obstructing the proper counting of college students and inmates. It is also one of approximately 15 states that has refused to adopt “no excuse” absentee voting and refuses early in-person voting for all voters. The state also requires a supporting witness requirement. These kinds of strictures, in the context of the COVID-19 pandemic, led Black citizens to file suit citing an undue and disproportionate burden. For the June 2020 primary, for example, the state was compelled to relax its witness requirement, partly because the court recognized that the pandemic had disproportionately affected Black citizens.<sup>68</sup>

Black voters in South Carolina have also endured extremely long wait times due to a combination of poor election administration, polling place closures, and other facts. Before the 2020 elections, wait times were abysmal. In the 2012 general election, South Carolina was reportedly tied for having the second worst

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Wstate-HendersonW-20210816-SD016.pdf, p. 5; *South Carolina v. United States*, 898 F. Supp. 2d 30 (D.D.C. 2012), at 38, 41, 53-4.

<sup>68</sup> Posner, “Current Conditions of Voting Rights Discrimination in South Carolina, p. 4; *Thomas v. Andino*, — F. Supp. 3d —, 2020 WL 2617329 (D.S.C. May 25, 2020).

polling place wait times in the country, with an average wait time of 25 minutes; Black voters disproportionately experience longer wait times within the state.<sup>69</sup> By comparison, the national average wait time was 13 minutes, and two-thirds of voters nationally waited less than 10 minutes.<sup>70</sup>

These realities are inseparable from the state of South Carolina's history of violence and disenfranchisement aimed at its Black citizens. Those citizens fought into the present century to remove the Confederate flag from the dome of the state capitol. A fight that, tellingly, and very recently, bitterly divided the General Assembly along racial lines. Lawmakers opted to remove the flag to a Confederate monument, as opposed to the top of the state house.<sup>71</sup> This is a state that reacted to Black Reconstruction with systematic violence and complete disenfranchisement. It resisted any and all efforts to roll that back in the first half of the Twentieth Century, especially through the enactment of vote denial schemes. Following the passage of the Voting Rights Act, the state and its governing localities, acting in concert through legislators in Columbia, pursued myriad vote dilution

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<sup>69</sup> Posner, "Current Conditions of Voting Rights Discrimination in South Carolina, p. 4.

<sup>70</sup> Rachel Weiner, "How Long Did You Wait to Vote? Depends on Your race," *Washington Post*, April 3, 2013, citing Charles Stewart III, "Waiting to Vote in 2012," *Journal of Law and Politics*, April 1, 2013, <https://www.washingtonpost.com/news/the-fix/wp/2013/04/08/how-long-did-you-wait-to-vote-depends-on-your-race/>.

<sup>71</sup> Stephanie McCrummen, "Confederate Flag Comes Down on South Carolina's Statehouse," *Washington Post*, July 10, 2015.

systems, many of which were struck by the Civil Rights Division of the Justice Department under Section 5 preclearance. More recently, there have been Section 2 cases litigated and a Section 5 objection to the photo ID law and backlash against long lines and other restrictions on absentee voting.

Plaintiffs of course also brought many challenges to the state's reapportionment efforts. Right before the passage of S. 865 in 2022, Rep. Govan described how the redistricting process had been challenged every single cycle since Black citizens had first won the right to actually vote and elect candidates of choice in the 1970s.<sup>72</sup> In his opinion, what is happening now is simply more of the same. Based on the documented historical and contemporaneous patterns of voting rights discrimination against Black South Carolinians, the historical record supports a discriminatory motive animating the enactment of S. 865.

#### IV. THE SEQUENCE OF EVENTS AND DEPARTURES FROM NORMAL PROCESS

The sequence of events during the redistricting process reveals transparency concerns, procedural norm departures, and inconsistencies in legislative action. As described in the legislative history below, members of the public, as well as legislators on the committees in charge of the redistricting process, had little time to review proposed maps before hearings, because staff proposed maps would sometimes be published days before hearings or just before long

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<sup>72</sup> See p. 42, *infra*.

holiday breaks. Numerous members of the public and of the committees that were tasked with producing maps complained that they lacked access to the actual map drawing process. The public was given opportunities to weigh-in via public hearings, but it is unclear how much weight their testimony was given, nor is any insight given into how those comments impacted amendments and changes to proposed maps. Committee members reported being blindsided by the appearance of maps and being at a loss for why certain changes would have taken place. Finally, leadership refers to a swell of support for two members of Congress representing Charleston that is simply not supported by the evidence available to the public. No one supported that at the Charleston public Senate hearing, and almost no one mentioned it in public testimony thereafter.

a. The First Senate Redistricting Subcommittee Meeting, June 2021

On July 20, 2021, the South Carolina Senate Judiciary Committee's Redistricting Subcommittee met for the first time in order to be briefed by Judiciary Committee staff counsel Charlie Terreni and Paula Benson. The General Assembly ensured that there were both Republicans and Democrats represented on the Subcommittee and that the various regions of the state, as reflected in congressional districts, had representation. The role of staff was revealed to be that of real-time and behind-the-scenes support for leadership and key-decision-makers. Staff played a fundamental, though often obscured, role in the process, and they appear not to have been as available to committee members beyond the leadership.

The Senate Subcommittee was tasked with adopting redistricting plans for both the state's legislative and congressional districts. The results of the 2020 Census revealed that South Carolina experienced significant, and uneven, population growth since 2010, especially effecting the state's congressional districts. In particular, the Census data revealed that CD 1 was almost 12% overpopulated and that CD 6 was almost 12% underpopulated.<sup>73</sup>

Members of the Senate Subcommittee included Charmain Luke Rankin and fellow Republican representatives Chip Campsen, Tom Young, Scott Talley, and Democratic representatives Ronnie Sabb, Margie Bright Matthews, and Dick Harpootlian. Senators Sabb and Matthews were the only Black legislators named to the 7-member committee. Mr. Terreni gave members a rundown of Census data, and Ms. Benson informed them of the schedule of public hearings. These would be held in order to collect testimony on COIs in South Carolina. In addition to Mr. Terreni and Ms. Benson, Chairman Rankin introduced staff members Will Roberts and Breeden John as individuals entrusted with drawing maps.<sup>74</sup>

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<sup>73</sup> Judiciary Committee Press Release, Aug. 12, 2021,

<https://redistricting.scsenate.gov/docs/Press%20Release%20-%20Senate%20Judiciary%20Redistricting%20Subcommittee%20-%20Census%20Data%20Available%20on%20S.C.%20Redistricting%20Website.pdf>; Census Legacy Data, House Ad Hoc Committee Website,

<https://redistricting.schouse.gov/demographicprofile.html>.

<sup>74</sup> South Carolina State Legislature, Video Archive, <https://www.scstatehouse.gov/video/archives.php>; South Carolina Senate Judiciary Committee, Meeting Information, <https://redistricting.scsenate.gov/meetinginfo.html>.

In the Subcommittee's initial press release on July 16, Chairman Rankin is quoted, "[t]he members of our bipartisan subcommittee represent a wide range of different experiences and perspectives. I look forward to our working together on a redistricting process that is fair and equitable to all South Carolinians." The release continued:

Districts for the S.C. General Assembly and the U.S. House of Representatives are redrawn every ten years, after the census is taken, to meet the requirements of federal and state law. This process ensures that members of the S.C. General Assembly and South Carolina's members to the U.S. House of Representatives are elected from districts with approximately the same population. The public is urged to attend the public hearings that will be held across the state.<sup>75</sup>

A second press release describes the purpose of the public hearings: "The mission of these public hearings is to receive testimony and gather information about how people see the areas in which they live and what factors need to be considered when the Senate Districts and the Congressional Districts are redrawn."<sup>76</sup>

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<sup>75</sup> Senate Judiciary Committee Press Release, July 16, 2021, <https://redistricting.scsenate.gov/docs/Press%20Release%20-%20Senate%20Judiciary%20Redistricting%20Subcommittee%2007-16-21.pdf>.

<sup>76</sup> Senate Judiciary Committee Press Release, July 20, 2021, <https://redistricting.scsenate.gov/docs/Press%20Release%20-%20Senate%20Judiciary%20Redistricting%20Subcommittee%2007-20-21.pdf>.

b. The First House Ad Hoc Committee Meeting

On August 3, 2021, the House Redistricting Ad Hoc Committee met for the first time. As with the Senate Subcommittee, the Ad Hoc Committee was tasked with adopting guidelines for redistricting, with gathering input from the public, and with overseeing the process of drawing congressional and state legislative districts to replace the malapportioned maps of the last post–2010 redistricting cycle. And, again as with the Senate Subcommittee, much of the technical work done in the redistricting process was handled by staff; in the House’s case, this meant, especially, Emma Dean.<sup>77</sup>

Members named to the Committee included Chairman Jay Jordan and fellow Republican representatives Neal Collins, Jason Elliot, Brandon Newton, and Weston Newton, and Democratic members Justin Bamberg, Patricia Moore Henegan, and Beth Bernstein. Representatives Bamberg and Henegan were the only Black members of the Committee. Representative Brandon Newton subsequently withdrew from the committee upon the birth of his child.

At the inaugural meeting, Chairman Jordan listed the committee’s proposed guidelines for the redistricting process. The guidelines were adopted without debate. Rep. Weston Newton asked what data the committee would be working with, and

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<sup>77</sup> South Carolina Legislature, Video Archives by Meeting Time, <https://www.scstatehouse.gov/video/archives.php>; South Carolina House of Representatives, Ad Hoc Redistricting Committee, <https://redistricting.schouse.gov/index.html>.

Chairman Jordan explained that it would have the Census legacy data for use in public hearings and that the Committee would not get the final tabulations from the Census Bureau until September, with maps being made in October of 2021. He did not indicate who would be drawing the maps, either to begin with or to the extent that subsequent changes would be made.

c. The Senate Hearings and Second Senate Redistricting Subcommittee Meeting

The Senate Redistricting Subcommittee met for the second time on September 17, 2021, and unanimously adopted guidelines for redistricting.<sup>78</sup> It had held public hearings by that point, in July and August, across the state: in Aiken, Conway, Orangeburg, Beaufort, Florence, Greenville, Rock Hill, Sumter, and Columbia. The Subcommittee was accepting real-time and written public testimony, though without any comment or any feedback pertaining to how that input would be assessed. Members of the public held forth on issues ranging from county and precinct splits to concerns about packing and cracking Black communities to consideration of Communities of Interests (“COIs”) and incumbency. Many of them offered very specific guidance as to how they felt the legislature ought to draw certain districts. The Subcommittee members, having toured the state and heard from its citizens, as would the members of the House Ad Hoc Committee, brought their respective takeaways from these hearings to the September

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<sup>78</sup> Senate Redistricting Guidelines,

<https://redistricting.scsenate.gov/docs/Senate%20Redistricting%20Guidelines%20Adopted%209-17-21.DOCX>.

meeting. This meeting revealed that there were serious transparency concerns among the Senate Subcommittee as well as fundamental disagreement about how to handle the process with respect to the drawing of the congressional map.<sup>79</sup>

At this meeting, Sen. Harpootlian, a white Democrat and former Columbia prosecutor who litigated the *Backus* case in 2010, made note of the Supreme Court's 2013 decision in *Shelby County v. Holder* and noted that, with the end of the Justice Department's preclearance requirements, the state was no longer bound by the principle of non-retrogression in terms of majority-minority districts. He argued that the committee ought to acknowledge that the existing congressional districts were "misshapen" since they had been redrawn in the 1990s, prior to the Court's decision in *Shaw v. Reno*, in order to "pack Black voters" into the 6<sup>th</sup> District so that Black voters could, for the first time, have the chance to elect candidates of their choice to Congress. Sen. Harpootlian also expressed concern that the committee's work might become a form of "Kabuki theater," in which the only real concern was that incumbents were able to secure reelection. He proposed adopting the principles set forth in *Thornburg v. Gingles*, the 1986 case establishing the guidelines for a Section 2 vote dilution claim, and subsequent litigation as part of the committee's guidelines.

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<sup>79</sup> Senate Redistricting Subcommittee Meeting, Sept. 17, 2021, <https://redistricting.scsenate.gov/meeting/subcommittee.html?date=091721>.

To bolster his argument regarding non-retrogression, Sen. Harpootlian asked the Senate Subcommittee staff if they had conducted or planned to conduct racially polarized voting analyses. These analyses, he explained, would allow the committee to see what percentage of the Black voting age population (BVAP) would be necessary for minority voters to elect candidates of choice where white voters routinely blocked those choices by bloc voting against Black voters' preferred candidates. He termed the failure to conduct them "willful blindness." Sen. Harpootlian insisted that, without these data analyses, the Senate would not be able to successfully meet a challenge in court under Section 2 of the Voting Rights Act.

Sen. Matthews joined in these concerns. Mr. Terreni replied that he did not think it would be productive at that time to conduct such analyses, given that it would open up the "peril" of having to "meet certain racial targets" when those did not necessarily need to be met. Sen. Harpootlian asked, "Are we going to wait for somebody to sue us?" And he expressed hope that the committee was not going to "cook this up in a back room." Mr. Terreni insisted that certain data would be made available on the staff website, but that no analyses need be conducted unless the plan adopted by the legislature was challenged in court under Section 2. Sen. Sabb asked when that data would be made available, and Mr. Terreni responded that he did not yet have a timeframe for that. He noted that he was awaiting information on contests between white and Black candidates in order to make that data available, though racially polarized voting analysis would not be

limited to such contests as Black voters might sometimes prefer white candidates, even, in some cases, over Black candidates.

Sen. Harpootlian continued to advocate for guidelines that would acknowledge the state of South Carolina's history, which he said was characterized by "using unconstitutional principles to deny African Americans the right to participate in a meaningful way in the political process." He argued that not replacing the maps dating back to the 1990s with newly redrawn maps based upon RPV analysis would result in perpetuating "the sins of the past." Sen. Matthews proposed amending the guidelines regarding COIs to reflect that COIs included cultural and linguistic ties, citing especially the Gullah-Geechee community in her district. This amendment passed. Sen. Harpootlian's amendment regarding *Gingles* and "its progeny" also passed, with the committee amending the language of section I-B of the guidelines to read, "A redistricting plan for the General Assembly or Congress must not have either the purpose or the effect of diluting minority voting strength and must otherwise comply with Section 2 of the Voting Rights Act, as expressed through *Thornburg v. Gingles* and its progeny, and the Fourteenth and Fifteenth Amendments to the U.S. Constitution." These were the only two amendments to the guidelines to be brought and passed at this meeting of the subcommittee based upon public testimony at the summer public hearings.

Before the September meeting concluded, Sen. Harpootlian asked the staff if any technical assistance could be rendered to members of the public who wished to submit map proposals, citing especially

concerns from his constituents about the highly technical nature of composing such plans and the format in which they were required to be submitted. Mr. Terreni insisted that staff did not have the resources for that, referred the Senator to the website *Dave's Redistricting*, and noted the availability to testify at public hearings and to beseech one's state representative to visit the "map room." Sen. Harpootlian asked if the public had access to the staff's map room, to which the answer was no. Sen. Campsen argued that such access would tax the abilities of staff and that the public had the opportunity to testify at hearings. Sen. Harpootlian concluded, "I know we won't let average citizens look under the tent and figure out what's going on." The Subcommittee left the window for the adoption of public submissions open through the end of October and resolved to meet again in November. The House, Chairman Rankin acknowledged, was working on a much slower timeline regarding redistricting and, according to the Chairman, was not being as transparent as the Senate was in the process. There were no further legislative hearings on redistricting for nearly two months.

d. The House Public Hearings

Legislative sessions aside, over the course of September and through the first week of October 4, the House Ad Hoc Committee held hearings and heard public testimony in Myrtle Beach, Florence, York, Greenville, North Charleston, Bluffton, Aiken, Greenwood, Orangeburg, and Columbia. Like the Senate Subcommittee hearings, citizens testified about COIs that they either wanted to keep or make whole, or at the very least avoid numerous splits in

those communities. They expressed, among other things, concern about minority representation and the ability of Black voters to have an equitable opportunity to elect their candidates of choice. A number of representatives in the state House appeared at these hearings and expressed similar concerns.<sup>80</sup>

As I discuss in greater detail below, it is unclear how much weight testimony from these hearings was given in the drawing of maps by staff members. Neither staff nor the Committee provided a collection of written public testimony for the public to access. Nor did it create any COIs mapping based on oral and/or written testimony. During the hearings, Committee members offered no thoughts, responses to comments, assurances to concerns raised, and provided no information about next steps, nor did they make any mention of any mechanisms for how feedback would be incorporated. Chairman Jordan explained during the final meeting in Columbia, “[A]s I’ve told ten prior meetings, just so everyone understands, we are here to receive information. This is a forum for you, the public, to express to the committee the issues and concerns that you have related to redistricting. While I and other members of the Committee may occasionally make a comment or ask a question, we’ll strive to limit our speaking so that we can maximize the time available to you. We

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<sup>80</sup> South Carolina House of Representatives Ad Hoc Redistricting Committee Website, <https://redistricting.scsenate.gov/meeting/subcommittee.html?date=091721>.

traditionally have asked folks to keep the comments to around five minutes.”

Most Committee members appear to have given almost no weight to input received at these initial hearings. The amendments brought and proposals put forth, in other words, do not reflect the myriad comments of the public. Some Committee members would be moved by later testimony, but their concerns are not supported by the initial feedback provided at these hearings, at least with respect to the subcommittee’s congressional plan. Black committee members would subsequently cite some of this testimony to support their congressional proposals. White committee members would make claims about public input, in general, wildly out of line with what was said at the hearings, referring instead to submitted written testimony that was not made available to the public. The Senate subcommittee made public commentary submitted at its hearings available, but none of it supports assertions, for example, that voters wanted two representatives for Charleston or that voters valued the “Tri-County” COI above other considerations.

e. The Third Meeting of the Senate Redistricting Subcommittee

On November 12, 2021, the Senate Redistricting subcommittee met to hear public feedback on the Senate staff plan adopted on Nov. 4, but also to hear from members of the public who had submitted congressional redistricting plans of their own. The feedback on the submitted congressional plans focused on avoiding packing and cracking Black

populations, and thus diluting the strength of Black citizens' votes.<sup>81</sup>

Dakota Forster of Stanford University spoke first regarding a plan that she had submitted. She described it as adhering to the one-person, one-vote standard deviation, minimizing county and precinct splits, creating one majority-minority district and two Black opportunity districts, and keeping Charleston whole. Lynne Teague of the League of Women Voters spoke next, accompanied by veteran map-drawer John Ruoff. Ms. Teague explained that the League understood that most of the population that had shifted or grown was concentrated in congressional districts 1 and 6, and she indicated that its primary concern was that minority voters would have a fair and equitable ability to elect candidates of their choice. She noted some flaws in the existing map configuration, including a Congressional District (CD) 6 that was "packed" with Black voters, and a split in Charleston that separated North Charleston from the more coastal areas to the south. She and Mr. Ruoff explained that they drew a map that avoided such splits and gave no consideration to incumbency protection.

Chairman Rankin, with advice from Mr. Terreni, asked Mr. Ruoff why part of Berkeley County was in the CD 7 with Horry County and asked if Mr. Ruoff had heard any testimony in the public from folks in Berkeley who wanted to be paired with Horry. Mr.

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<sup>81</sup> South Carolina Senate Redistricting Subcommittee, Transcripts and Video. Nov. 12, 2021, <https://redistricting.scsenate.gov/meeting/subcommittee.htmHdateM11221>.

Ruoff said that he had not, but that his primary concern was keeping the Charleston metropolitan area whole and making sure each district got the numbers that they needed. He added that all congressional districts will have some discontinuities of interest and cited a few examples, suggesting that any district could be criticized for such discontinuities. Ms. Teague added, "I think at the extremes we can say they're real things like North Charleston belongs with Charleston. I mean, that's real. But yes, every congressional district will have diverse communities of interest within it." These were among the first of what would become myriad comments asking the legislative committees to keep Charleston whole, despite past splits. Lawmakers referred to these past splits in defense of subsequent plans, while at the same time lauding "improvements," such as making other communities, like Orangeburg, whole.

Brett Bursey spoke next, representing the South Carolina Progressive Network Education Fund. Mr. Bursey explained that having a packed CD 6 since the 1990s, when majority-minority districts were deliberately drawn for the first time, had subsequently allowed the legislature to crack the Black population elsewhere and ensure that only CD 6 could elect a Black preferred candidate. He argued that, given the percentage of the population of the state that is Black, when CD 7 was created after the 2010 Census, that district should have at least been competitive. Mr. Bursey insisted that the "weight of the Black vote is three-fifths of the white vote" in the state, which he compared to the Three Fifths Comprise from the 1789 Philadelphia Convention and the U.S. Constitution. He argued that by conducting

RPV analysis and departing from the existing paradigm, one could draw a map that had multiple districts that were competitive for Black voters. He explained that his organization had submitted such a map in which CDs 1, 2, 5, and 6 were competitive. There were no questions for Mr. Bursey.

Brenda Murphy followed, representing the South Carolina NAACP, along with Somil Trevedi of the American Civil Liberties Union and Leah Aden of the NAACP Legal Defense and Educational Fund. Ms. Murphy asked the subcommittee to avoid packing Black voters into one district and then cracking them elsewhere, to consider not just one majority-minority district, but the possibility of opportunity districts, to consider conducting RPV analysis to determine where such opportunity districts might be, and to consider proportionality.

Ms. Aden echoed these concerns, especially the call to conduct and consider RPV analysis to help the committee avoid packing and cracking when correcting the severe malapportionment between CDs 6 and 1. She also noted that in terms of proportionality, the state had 29 percent BVAP, but Black voters only had representation in 14 percent of the state's congressional delegation. Ms. Aden explained that the two plans submitted by the NAACP "maintain CD 6 as a Section 2 compliant opportunity district where Black voters are a majority and do not needlessly elevate CD 6 Black population." Ms. Aden told the subcommittee that these maps and others presented prior to her testimony demonstrated without doubt that "it's possible to preserve CD 6 while also ensuring the influence and the voice of black people in areas outside of CD 6. There are far

too many options on the table that this subcommittee has available to it to ensure that.” Mr. Trevedi followed, speaking specifically to the NAACP’s second map, which he described as a “least change” map when it came to all districts besides CDs 1 and 6. When adjusting those districts, he explained that the NAACP was keen to avoid packing and cracking, and diluting the voting strength of Black voters in CD 1.

Eric Johnson of the South Carolina Coalition of Black Communities was next. He explained that Black South Carolinians had been fighting for their rights to vote from chattel slavery through literacy tests and, more recently, the enactment of vote dilution mechanisms. He called for greater transparency in the redistricting process and insisted that redistricting affected policy at the end of the day, citing better wages, relief for those in food deserts, and support for anti-hate crime laws and issues of concern for Black voters. Heather Odom of the same organization followed and asked the Committee to avoid dilution of Black voting strength and to avoid any form of gerrymandering.

With that, Chairman Rankin concluded the meeting by directing staff to draft a plan to present to the Committee. He advised the public, “look for notices about the next Subcommittee and full Committee meeting which we will be setting over the next day or two with an intent of advancing this effort both on the Senate plan and the congressional plans to the full Committee with again my goal that we conclude our work in the month of November.”

f. The Fourth Meeting of the Senate Redistricting Subcommittee

Senate Judiciary Committee staff drafted a congressional plan and published that plan on Tuesday, November 23, 2021, the week of the Thanksgiving holiday, making it available to members of the committee at that time. The Senate Redistricting Subcommittee met again on November 29, the Monday following the holiday. Legislators questioned the timing of this process, arguing that the release of the map prior to a holiday was a deliberate procedural departure and wondering why an RPV analysis had not been conducted. Lawmakers also insisted that they had had no role whatsoever in the process of drafting the map. Public feedback was overwhelmingly negative. It was also revealed that a national partisan group had submitted some sort of input to the members of the staff, unbeknownst to Democratic members of the Committee.<sup>82</sup>

At the onset of the meeting, staff member and cartographer Will Roberts explained the plan to the Committee members as a “minimal change” plan in which the primary concern was adjusting populations in CDs 6 and 1 to adhere to the one-person, one-vote principle. Sen. Matthews indicated that she had not had adequate time to analyze the map and that she wanted to know why Charleston was “carved up” between CDs 1 and 6. Sen. Harpootlian echoed those concerns and indicated that he would like to see an RPV analysis that showed staff did not pack CD 6 with BVAP beyond what was necessary.

The Subcommittee then heard public feedback on the map, beginning with former Congressman Joe

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<sup>82</sup> South Carolina Senate Judiciary Committee, Nov. 23, 2021, <https://www.scstatehouse.gov/video/archives.php>.

Cunningham, a white Democrat, who won the seat in CD 1 in 2018 by one percentage point, then lost it in 2020 by roughly the same margin. Mr. Cunningham described the proposed map as “awful” and a blatant racial gerrymander whose “sole purpose” was to ensure Republican victories in all six congressional districts but CD 6 by cracking Black voters and other voters who would tend to vote for Black-preferred candidates. He stated his belief that no actual Committee members had anything to do with drawing the map, that it was more likely drawn by a “partisan hack” from Washington D.C. Committee members Senators Matthews and Harpootlian then added that they had not been consulted by staff about this proposed draft map. Mr. Cunningham also argued that the timing of the map’s release and the holding of this meeting were further evidence of things being done “in the dark.”

Sen. Matthews agreed and said that not only had she not been consulted, but that she had not had adequate time to examine the map, though she was able to see, she said, that Black voters had been “carved out” of certain areas in order to pack and crack them. She added that there were issues that came up during numerous public hearings that had not been addressed, it appeared. Sen. Matthews specifically noted that Sun City residents in Jasper County wanted to be with Beaufort and that Charleston residents wanted Charleston whole and yet, she said, Black voters were “carved out” of Charleston while “more affluent areas” were put into CD 1. Sen. Matthews explained that she would like to ask staff whom they consulted with to develop that proposed map because, she said, it was certainly not her.

Regarding the timing, she said, “On Tuesday, when I received notice [of the map’s publication and of this meeting], my office was winding down; I knew I had depositions, this morning—this afternoon, and had to be in court this morning. I had to cancel everything immediately, because this is critically important, because it astounded me that no more notice was—was—should have—was given.”

Sen. Harpootlian then asked Mr. Roberts if the Committee had any input from either sitting members of Congress or any outside groups in the development of the proposed congressional map. There follows an exchange between the two wherein Mr. Roberts is largely inaudible because his microphone is not turned on, something noted by Mr. Cunningham, who was present but also could not hear. Eventually, it was established that staff had heard from Congressman Joe Wilson and a representative of Congressman Jim Clyburn. Sen. Harpootlian asked if they had talked with any other members of the state’s congressional delegation, to which Mr. Roberts replied, “Not since this map has been out.” He likewise said that staff had heard from “some outside groups” after the map was published and that insofar as they might have heard from such groups prior to the publication of the map, it would not have affected the drawing of the map. By the end of the meeting, it was established that the Committee had input, prior to the publication of the map, from Adam Kincaid, Executive Director of the National Republican Redistricting Trust.

Sen. Harpootlian said that this was what Mr. Cunningham had meant earlier by indicating his belief that a “partisan hack had influenced the map drawing,” and Sen. Harpootlian said, “[t]hey had more

say in the design than I did, and I'm on this Committee." Mr. Cunningham added that this kind of communication was happening "in the dark." Sen. Campsen said that he had not "really" had any input either, suggesting that he had at least some input, and said that this was not a final plan in any case. At that point, the Subcommittee moved on to further public testimony.

Lynne Teague and John Ruoff appeared again on behalf of the League of Women Voters. Ms. Teague argued that the Senate map respected neither COIs nor political subdivisions. She said that even though it was being described by Mr. Roberts as a "minimal change" map, it was problematic because, for example, Charleston should not be split and North Charleston should not be put with Columbia in CD 6. She added that Black communities were split along municipal lines that had themselves been drawn for discriminatory purposes. She noted what she described as a "finger" reaching out to grab Fort Jackson for the CD 2, represented by Congressman Wilson, who serves on the Armed Services Committee. She suggested that perhaps the congressman would be interested in protecting Shaw Air Force Base or Parris Island Marine Corps Recruiting Depot.

Mr. Ruoff followed and explained that in the 1990s, oddly shaped districts were drawn that brought Black population centers together so that Black voters could elect their preferred candidates, in many cases, for the first time. He added, "We know a lot more about electable Black districts than we did" back then and reminded the Committee that this was why RPV analysis was so important. He said that drawing such districts was no longer necessary to meet the

requirements of the Voting Rights Act. He then explained his understanding of map-drawing as making a series of hierarchical policy choices, citing the inclusion of Fort Jackson as an example and then asking, rhetorically, where on the list of policy choices was it to take a competitive district, CD 1, and make it safely Republican.

Sen. Harpootlian asked Mr. Ruoff if he believed the proposed Senate map to have represented a deliberate choice to take “most African American voters” and put them in CD 6 while keeping white voters in CD 1. Mr. Rouff agreed, adding that it was his opinion that this was, then, in the Senator’s words, “a race-based reapportionment plan to benefit incumbency.” Two other members of the public spoke in opposition to the proposed plan, citing packing and cracking, and a lack of transparency, before the meeting was adjourned with Sen. Campsen reminding the committee that this was not a final plan.

g. House Redistricting Ad Hoc Committee Meeting, December 16, 2022

The House Ad Hoc Committee met on December 16, 2021, to discuss congressional redistricting after staff had posted and made available a working draft staff plan for the first time just three days earlier on December 13. Chairman Jordan indicated that the staff had received four plans from the public and was aware of the Senate’s proposed plan. With that, the Committee began hearing public testimony on its proposed map. This hearing revealed a general public perception that the House staff plan, while not perfect, was superior to the Senate staff plan, along with a call from Beaufort residents to hear their concerns. Five

individuals, most from Hilton Head, spoke in opposition to moving Beaufort County out of CD 1. They argued that it was part of a coastal COI with Charleston and shared concerns of hurricane response, flood relief, environmental stewardship, and shared ecology.<sup>83</sup>

Ms. Teague spoke and indicated that the House staff plan was superior to the Senate's plan but that it still had some problems in her mind. She argued that all of Charleston belonged in the Low Country CD 1, noting that this would make CD 1 what it ought to be, meaning "naturally competitive." She indicated that the BVAP in the House plan was far too high in CD 6 and said that, in her view, there needed to be a greater respect for the Pee Dee and Midlands as regional COIs. She took issue with bringing the Charlotte suburbs all the way down into Richland.

Mr. Cunningham also spoke and, like Ms. Teague, said that, while flawed, the House staff map was certainly superior to the Senate staff map. He described the latter as "blatant gerrymandering," reiterated his opinions that he shared with the Senate Redistricting Committee and said that his former constituents were "livid" about it. Regarding the House staff map, he said this map also seemed to "start" by splitting Charleston and then making the numbers work after that. In his opinion, there was no reason other than race to do this.

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<sup>83</sup> South Carolina House of Representatives Ad Hoc Redistricting Committee, <https://www.scstatehouse.gov/video/archives.php>.

h. House Redistricting Ad Hoc Committee Meeting, December 29, 2021

When the House Redistricting Committee met on December 29, 2021, Chairman Jordan explained, “Because of your feedback and important public input, we have released multiple options for these Federal Congressional Districts.” He noted that the initial draft staff plan for congressional districts was posted on Monday, December 13, along with the Senate’s staff plan, “as a point of comparison, and to receive input on.” He noted the December 16 meeting and the receipt of written submissions. He explained, “In response to those plans, we heard from many members of the public, concerned with the inclusion of Beaufort County in the Second Congressional District. As a result, on December 22<sup>nd</sup>, we posted an alternative draft staff plan, which attempts to address the concerns that we heard from the public, such as in Beaufort. The alternative staff plan also includes some positive features from the Senate’s draft plan, as well.”<sup>84</sup>

This meeting featured surprise and confusion among legislators and members of the public alike. People wondered why a second map was produced by staff to begin with, much less two days before a major holiday and long weekend. They seemed unsatisfied with the explanation supplied by Chairman Jordan, and also questioned why the plan so closely mirrored the widely criticized Senate plan, particularly when the House’s initial plan met with at least tacit

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<sup>84</sup> South Carolina House of Representatives Ad Hoc Redistricting Committee, <https://www.scstatehouse.gov/video/archives.php>.

approval. This meeting also reveals where the leadership of the Committee, or perhaps of the legislature in general, seems to have chosen to prioritize certain guidelines above others and the concerns of certain communities over others. The public began to call for the unification of Charleston in a single CD, but that proposal never gained any traction, unlike the concerns from Beaufort. No outcry at all called for jettisoning the House plan for the Senate plan.

Ms. Teague of the League of Women Voters spoke in opposition to the new map, calling it an “obvious racial and partisan gerrymander” and noting that it scored worse in most measures than the original House map. She noted that it was incredibly similar to the Senate’s map, which she said the Senate Redistricting Committee had “wisely” not acted upon after it received a flurry of very negative feedback. She argued that the “most obvious” example of racial gerrymandering was the splitting of Charleston and the reduction of the BVAP in CD 1 vis-a-vis the original House plan. She said, regarding Beaufort being in CD 1, that it did not need to be an either/or situation with Charleston being whole but that, if it was, then Charleston being whole ought to take precedence.

Two students from the College of Charleston, speaking separately, echoed those thoughts and indicated their belief that Charleston should be whole and with the Low Country. One referred to the “gutting” of Black voters in CD 1 as “unethical.” Brenda Murphy spoke on behalf of the state NAACP. She also criticized what she characterized as the unnecessary splitting of Charleston, as well as

Richland and Sumter, and the dilution of Black voting strength in general, but especially in CD 1. She also noted that the new map had been published on December 22, right before the Christmas holiday. Gloria Aslandis also appeared and identified herself as a longtime resident of West Ashley who could not see any reason to put her area into CD 6. She further insisted that there was no need to split Charleston County at all.

With public testimony concluded, Rep. Bernstein questioned the need for staff to draft an entirely new plan and indicated that she had not known such a plan was being drafted in the first place. Representative Bernstein said, “I think it’s important as the Committee just to get some questions answered, if possible. Because the last time we met as a public—in this public forum, we had a map that we took feedback from—public testimony and some feedback from. And then last week, as I was out of town, a new map was drafted unbeknownst to me, I’m not sure about the other members of the Committee. And so, I’ve—I guess I think it is pertinent, and prudent, to make—to ask certain questions of why an alternative map was drawn.” Chairman Jordan replied, “I can tell you, and you might remember, today we’ve heard a lot from Charleston. The previous public input we heard a tremendous amount from the folks of Beaufort with, I guess I would consider it, alternative testimony to these two different plans. It seems to me both—both Beaufort and pieces of Charleston want the same thing—or want two different things. I would tell you that this alternative plan is largely after consideration of the comments we received—staff

received, from the original public hearing, back on December, I believe, it was the 13th—or 16th.”

Representative Bernstein asked the chairman if any outside groups or sitting members of Congress had been consulted. Chairman Jordan replied, “I would tell you that as staff drew both plans, they had the benefit of lots of different testimony during the course of our roadshow back in the fall. As well as multiple proposals from individual and national groups of their own proposals. And had the benefit of the Senate plan going out first, and receiving input by way of individuals, as well as national groups. So, I would say—I guess the answer is, the staff had the benefit of those different elements in drafting both our versions.” Representative Bernstein followed up, “So that would be yes, some national partisan groups were consulted?” Chairman Jordan replied, “I don’t know that I would say they were consulted. I would say their plans and input were received, and as a result were available for consideration.”

Representative Bernstein asked if any sitting members of Congress had been consulted. Chairman Jordan replied that “at any appropriate time,” staff could “get to the bottom” of whether or not any members of Congress had been consulted before the map was released to the public. Rep. Bernstein reiterated that she had not seen the map until it was released or even been made aware that it was being created. She said that she was concerned about the new map because it “really replicates more of the Senate map, which received numerous complaints, and vocalized concerns. And I just don’t know why we are even entertaining this alternative map, unbeknownst to me as a Committee member.”

Chairman Jordan said that the new map was a “opportunity for a starting point.” He explained, “We’ve had folks from Beaufort come and say, ‘we don’t like the original plan.’ We’ve heard from folks from Charleston say, ‘we don’t like parts of this plan.’ You know, so it’s a—I would say, it’s a starting point for the conversation for the Committee to consider the pros and cons of the different concepts of where these district lines need to be drawn. And my plan and opinion on this has been the same from the beginning, we need to take—we need to push out a starting point, give everyone an opportunity to weigh in on their opinion on the different versions, we need to digest all that. And then, once we regather, you know, I’m sure we’ll go through the process just like we do on a regular piece of legislation, someone will make a motion for this version, the other version, or a different version that we receive, between now and our next meeting. And then from there, we’ll send it to the full Judiciary, to continue on its journey.”

Representative Bernstein said that if the staff’s proposed maps were “starting points,” then she saw no need to put forth an entirely new map. She added, “I think the alternative map really, does not have any competitive districts drawn at all. And I don’t think that is the purpose of our Committee to draw districts like we have on the alternative map. And I wanted to make sure that I’ve vocalized and voiced those concerns.” She thanked Chairman Jordan for the opportunity to express her concerns and concluded, “And we will continue this discussion.”

Representative Henegan asked when the Committee would next meet. Chairman Jordan replied, “Give me till the end of the day to figure that

out. Obviously, with New Year's coming, it won't be this week. It will—it will either be the end of next week, or the very beginning of the following week, trying to work with everybody's schedules. Of course, we have session looming, and we have a—obviously, a timeliness issue with moving this process forward as quickly as we can.” Representative Bernstein then asked if the Committee would be voting on a map at the next meeting, to which Chairman Jordan replied, “I would say most likely that is the case,” adding, “Again, given the timeliness of the issue, we have the full House coming back into session on the 11th, so for planning purposes, obviously, things could change, but I would plan on us attempting to have a meeting in which we could vote on a proposal.”

i. House Redistricting Ad Hoc Committee Meeting and Meeting of the Full House Judiciary Committee, January 10, 2022

The House Ad Hoc Committee next met on January 10, 2022. When the video and transcript of this meeting begin, this meeting is already in progress, with Chairman Jordan and representative Rep. Bernstein evidently having picked up their discussion from the previous meeting regarding the need for the staff's second/alternative map, which Rep. Bernstein says she will oppose. Rep. Newton indicated that he had constituents telling him that they preferred to remain in CD 1. Rep. Bernstein asked if there was a way to have both Charleston and Beaufort whole and in the same CD, to which Chairman Jordan replied, “I don't think the math works in that scenario.” Rep. Newton noted that CD 1 was overpopulated and agreed with Chairman Jordan that the numbers would not accommodate all of Beaufort and all of

Charleston. Rep. Bernstein said that she thought it was of paramount importance, in any case, to keep Charleston whole, particularly because, in her mind, North Charleston, which has a significant Black population, was cut out and put into CD 6 because CD 6 is a majority-minority district. Representative Rep. Newton and Chairman Jordan noted that that is simply the way it was on the previous map.<sup>85</sup>

j. Full House Judiciary Committee Meeting,  
Same Day, January 10, 2022

After the Subcommittee adjourned, the full House Judiciary Committee convened, with Rep. Weston Newton presiding in lieu of Chairman Chris Murphy. This was among a number of procedural irregularities in the redistricting process. Rep. John King, a Black Democratic representative, immediately took issue with this, arguing that, as First Vice-Chair of the Committee, he ought to be the one presiding over the meeting, not Rep. Newton. Rep. Newton disagreed and said he was presiding on the written instructions of Chairman Murphy. Rep. King said that this was a violation of the rules and expressed his intention to dispute in writing the validity of the meeting, which nonetheless went forth. Beyond this, the meeting featured questions again about the necessity of staff producing a new map based on the concerns of Beaufort residents when Charleston residents also

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<sup>85</sup> South Carolina House of Representatives Ad Hoc Redistricting Committee, <https://www.scstatehouse.gov/video/archives.php>.

stated concerns, and when the initial staff map was supposed to be a “starting place” after all.<sup>86</sup>

Chairman Jordan explained the Committee’s work to that point, indicating that the alternate staff plan had been put forth in response to the public comments from Beaufort residents, a majority white community, wanting to stay in CD 1. Rep. King noted that Rep. Bernstein had been told in the previous meeting that it would not be possible for both Beaufort and Charleston to be wholly included in CD 1. He indicated that he believed that it was, in fact, possible. He argued that the removal of North Charleston was “strategic” and racially motivated and insisted that that area “carved out” did not constitute a COI with Richland County. He added that too many Black voters had been “plopped” into CD 6 so that there were no other competitive congressional districts and said that this was a “slap in the face” to Black voters. Rep. Bernstein agreed, saying that she believed Beaufort and Charleston could be kept whole in a district and said, “After hearing the concerns of some of the Beaufort County residents, we could have had a discussion, worked on maybe looking at the numbers. But instead, a staff plan alternative map, very similar to the controversial Senate map, was proposed and presented to the Committee at the same time it was presented to the public. And then we took some testimony on that, and we heard some likewise criticism on this alternative map.”

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<sup>86</sup> South Carolina State Legislature House Judiciary Committee, South Carolina House of Representatives Ad Hoc Redistricting Committee, <https://www.scstatehouse.gov/video/archives.php>.

Rep. Collins responded, explaining that he was “sensitive to the racial aspect” and that he would say “it’s kind of the opposite,” meaning that the staff had done the opposite of packing. He noted that the BVAP in the NAACP and LWV plans was higher for CD 6 than the staff map. Rep. King responded to this assertion by saying that packing had to be considered alongside cracking elsewhere, which, he said, the staff’s plan did (i.e., crack Black voters elsewhere), whereas the LWV and NAACP’s plans did not. Representative Rep. Wetmore asked Rep. Jordan if it was true that the Committee had heard from people from Charleston asking to be kept whole. He said that they had but that there were not as many people in number as people from Beaufort; there was no quantification of the people speaking to Charleston as compared to Beaufort.

Rep. Thigpen questioned the reasoning for creating an entirely new map based on complaints from residents of one community (i.e., Beaufort). What made one county’s concerns, he asked, “rise to the level” of triggering a whole new map. He asked why the staff could not have simply amended the existing map and, noting that the Committee had received consistent feedback from residents of Charleston asking to be kept whole, asked why staff did not produce a third alternative map doing that. The second map was, in any case, he said, “less clear, less vetted, [and] took less time [to produce].” He suggested that there was perhaps information that the Committee members did not have, that other persons or groups had been weighing in, or that there was some distinction about the residents of Beaufort County which afforded them special treatment.

Chairman Jordan replied that great weight was accorded to Beaufort because they had just been moved into CD 1 in the previous cycle, and it was not fair to send them back. The alternative staff plan was adopted and given a favorable report by a vote of 13-6, with no Black members voting aye.<sup>87</sup>

k. Full House of Representatives, January 12, 2022

House Resolution 4781/Senate Bill 865 came to the floor of the House of Representatives on January 12, 2022. The debate on the floor further revealed Black legislators' concerns about transparency and public concern about the House's adoption of the widely-criticized Senate congressional plan. It also demonstrates the legislative leadership's tendency to weigh some guidelines and some testimony more heavily than others. The concerns of residents of Beaufort, primarily Hilton Head, are given great weight, whereas the concerns of residents of Charleston, are brushed aside with explanations that existing boundaries, "constituent consistency," and prior approval hold sway.<sup>88</sup>

Chairman Jordan summarized the process up to that point. He explained that, after the staff posted the initial plan on December 13th, 2021, it was determined that this "presented a fairly significant change to the landscape of South Carolina's congressional districts. While the Senate's plan," he

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<sup>87</sup> Voting no were Reps Bernstein, King, Thigpen, Wetmore, Wheeler, and McKnight. Not voting were Reps Bamberg, Henegan, Rose, and Chairman Murphy.

<sup>88</sup> South Carolina House of Representatives, <https://www.scstatehouse.gov/video/archives.php>.

explained,” more closely resembled the congressional districts that were enacted ten years ago.” He then claimed that, after the hearing on Dec. 16, at which five people spoke in opposition to moving Beaufort out of CD 1, staff received “hundreds of pages of written testimony” expressing that same concern. He noted that this correspondence “vastly outnumbered” concerns from other areas. This, he said, was the impetus for the alternative plan put out by staff on Dec. 22. He later responded to a question from Rep. Thigpen, saying that “roughly 85 percent” of comments received by the Committee were from Beaufort residents wanting to stay in CD 1. This plan returned Beaufort to CD 1 and, Rep. Jordan explained, “[m]ore closely aligns with the Senate’s original staff draft plan, and as a result of the configuration of the congressional districts as approved by the 2011 plan.” The chairman explained, “I think it’s important to take into consideration that, unlike our House map, the congressional map is the one that we must undertake together with our colleagues in the Senate. We do not have total autonomy over this map, and without agreement, we would have been unable to adopt a congressional plan.”

Chairman Jordan took questions, all of which came from Black members who opposed the plan for a variety of reasons, most of which had been raised in proceedings prior to that point. Rep. King asked why Rep. Brandon Newton had not been replaced by someone else from CD 5, he himself being from CD 5 and also being the senior member of the Judiciary Committee. Representative King argued that not replacing Rep. B. Newton meant that there was no voice for CD 5 on the Committee and suggested that

the reason Rep. B. Newton had not been replaced was because he, Rep. King, would have been the obvious replacement and, in his opinion, leadership did not want him on the Committee. Chairman Jordan argued that Rep. King brought his concerns about the maps to the Judiciary Committee and had input in that way. Rep. Cobb-Hunter asked about the splitting of Charleston and what the BVAP of the new CD 1 one would be under this map. Chairman Jordan said that Charleston was split in the existing plan and that the loss of BVAP in CD 1 was the result of a “ripple effect” when accounting for population shifts.

Rep. Garvin stated that he had watched all of the public hearings and that he recalled a preponderance of people saying that the Committee ought to make Charleston whole. He asked why those concerns were not addressed while those of the Beaufort residents were. Chairman Jordan explained that the staff ultimately did not want to “ping-pong” Beaufort back out of CD 1 after their recently being put into the district (for the post 2010 map) and that they made a “compelling argument” about being part of a coastal COI. Rep. Garvin replied that, in his opinion, Charleston and North Charleston were an even more logical COI and that putting North Charleston with Richland in CD 6 made less sense than putting Beaufort with the west Midlands. Rep. Garvin also expressed concern with the “process,” especially the adoption of a Senate plan that had been “wildly criticized.” He asked if outside groups had perhaps requested the change. Chairman Jordan said, “[n]o partisan group, national or otherwise, were involved in the drafting of this plan.” He added, “[a]nd I don’t know that it would have made sense right out the gate

to push out a version that simply looked like the Senate version.” And he concluded, “[w]e pushed out a version, we had a hearing on it, we had—as I’ve already stated, a large amount of input given to us from the public. We listened to the public, and we put another version up.”

Rep. Krystle Matthews spoke in support of Rep. King and indicated that, in her understanding of the rules, the process to which Chairman Jordan had repeatedly referred was not followed in that Rep. Weston Newton should not have chaired the meeting on January 10. She also spoke to Representative Rep. Cobb-Hunter’s concern with Charleston, saying, “[w]hat Rep Cobb- Hunter was asking you was, were the communities of color split? And I don’t know if you know this about me, but I’m really particular about being clear. So, let me be very clear, it was split. The 1<sup>st</sup> Congressional District was given the white areas of Charleston County, and Congressional District 6 was given the black areas of Charleston County, predominantly.” Chairman Jordan cautioned against focusing on any one small area and argued that, compared to the existing map, CD 6 was not packed.

Rep. Cobb-Hunter questioned the assertion that the Committee’s guidelines had been applied uniformly and asked Chairman Jordan if the staff had conducted a Section 2 (Voting Rights Act) analysis. Chairman Jordan replied, “[t]o my knowledge, to answer your question specifically, we did everything in compliance with the law that we were told and required to do.” Rep. Cobb-Hunter said, “[t]hat’s a nice lawyer answer. I’m not a lawyer. So, does that mean yes, you all did a Section 2 analysis? Or no, you did not?” Chairman Jordan leaned down to confer with Ms.

Dean and replied, “[r]ight. To my knowledge, we did everything we possibly needed to do under the terms of the law.” Rep. Cobb-Hunter said that she would take that as a “no,” to which Chairman Jordan replied for a third time, “[t]o my knowledge, we complied with every aspect of the law.”

Rep. Thigpen asked about the BVAP in CD 1 in the alternate staff map versus the original, and Chairman Jordan indicated that it went from 22.27 percent to 15.67 percent. Rep. McDaniel indicated that she had heard from quite a few Charleston residents who wanted Charleston whole and asked why staff did not produce an alternate map that contained both Beaufort and a whole Charleston and build around that, since a great deal of public input seemed to also support making Charleston whole in addition to just putting Beaufort back into CD 1. Chairman Jordan replied that “[y]ou have to start somewhere,” and that staff chose to start with the existing map when it drafted the alternate plan.

Rep. King repeated his assertion claim that the January 10, 2022, Judiciary Committee meeting was held in violation of House rules and constituted a breach of decorum. He added that he believed the Ad Hoc Committee was created in the first place to remove the redistricting process from the Elections Committee, of which he is a member. He joined those who acknowledged repeated calls from the public to make Charleston whole and argued that this was not considered because the Charleston split was the starting point for cracking Black areas and packing them into the 6th CD 6. He argued that the election of Mr. Cunningham in 2018, a white Democrat in CD1, was the impetus for the changes, saying, “[a]ll because

there's been a Democrat there before, we've got to go in there and we've got to make sure that no Democrat don't win that congressional seat no more." He argued that the lack of competitiveness in the state was responsible for a lack of responsiveness on the part of the state congressional delegation to the needs of Black voters and insisted that the "craziness" that went on in the state house was driving people from the state.

Rep. Matthews rose to offer solidarity, saying that she was "utterly disturbed" by "what happened to you," meaning that Rep. King had not been allowed to chair the January 10 meeting of the Judiciary Committee when that was his rightful place to do so. Rep. Gilliard raised a point of information asking if what Rep. King had said regarding his right to chair the meeting instead of Rep. Weston Newton, affected the bill being considered. Speaker Lucas indicated that the issue should have been handled at the Committee level and that there was nothing he could do on the floor. Mr. Thigpen offered his support for Rep. King, who reiterated his argument and noted with disdain that most of his Republican colleagues had left the floor after being admonished by the Speaker for talking and not paying attention. Rep. Cobb-Hunter rose again to reiterate her belief that a Section 2 analysis should have been done and to also lament that no Republican members were paying attention.

A vote was held to advance to the third reading, with 73 ayes, all Republicans, and 35 nays, all Democrats. No Black members voted aye. Rep. Govan rose and added that he too was disappointed that no Republicans were paying attention and gave his support to Rep. King, noting that the Speaker had to

confer with the Clerk on that matter because the House was a body of rules. He then said, “[t]he fact of the matter is this, for the past 50 years, in the state of South Carolina, the redistricting process has required court intervention and prolonged litigation. Let me say that again,” he added, “because I want you to understand this. For the past 50 years, the way we have handled this process has ended up in court, because we didn’t do it the right way. And at some point, ladies and gentlemen, this has got to stop.” Rep. Govan then summarized the various challenges to the redistricting process going back to the election of the first Black representatives since Reconstruction in the 1970s. A vote was held subsequently, and the bill passed 74-35, with Rep. Justin Bamberg, having previously not voted, switching his vote to no and Rep. Chris Hart casting the lone aye vote as a Black member.

1. Final Senate Judiciary Redistricting Subcommittee Meeting re: Congressional Districts

The Senate Judiciary Redistricting Subcommittee met a final time on January 13, 2022, regarding congressional redistricting. The purpose was to receive public input on two amendments representing two separate plans. Amendment 1 (“SA1/H2” or Senate Amendment 1, House Plan 2) was the plan advanced by the House, which was the original Senate plan with some modifications made by the House. Amendment 2 (“SA2/WC,” or Senate Amendment 2, Whole County Plan) was introduced by Sen. Harpootlian. This plan kept Charleston and Beaufort whole and in CD 1, and it kept Richland whole and in CD 6. The BVAP of CD 6 was 48.59, slightly higher

than that of SA1/H2, but the BVAPs of CDs 1, 2, and 5 were 20.57, 21.29, and 33.05, respectively. At the hearing, 48 people provided testimony. Of those, 31 supported SA2/WC, and 17 supported SA1/H2. Of those supporting SA2/WC, 20 said that they wanted the legislature to keep Charleston whole, and 9 of those said that they were happy to see Charleston and Beaufort together in one CD despite previous assertions that this was not possible.<sup>89</sup>

Of those supporting SA1/H2, ten said that they wanted to keep the “Tri-County” of Charleston, Dorchester, and Berkeley together. Several supporters of SA2/WC questioned the value of this maintenance of a Tri-County area if it did not include all of Charleston and noted that no Charlestonians had said they wanted to be included with Dorchester and Berkeley, only the other way around. One pointed out that nearly half of those supporting the Tri-County idea were local elected officials, whereas the vast majority, if not the entirety, of those supporting the idea of a whole Charleston were constituents, not public officials. Another supporter of SA2/WC noted that several people who had testified in support of SA1/H2 had said that their support was based upon keeping Beaufort in CD 1, despite the fact that SA2/WC also kept Beaufort whole in CD 1. A few supporters of SA2/WC noted that the plan laid out therein would likely avoid costly and “embarrassing” litigation that would possibly lead to a federal court

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<sup>89</sup> South Carolina State Senate Redistricting Subcommittee, South Carolina House of Representatives Ad Hoc Redistricting Committee, <https://www.scstatehouse.gov/video/archives.php>.

drawing districts for the state, whereas the plan laid out in SA1/H2 would possibly not.

Attorney Joseph Opperman testified, indicating that he had been retained by Sen. Harpootlian to draw a map, this being the SA2/WC map. Mr. Opperman indicated that the weakness of his map was that it used a 4-person deviation, though he noted that no plan had been struck by a court for this reason and that this would be easily fixable by way of amendment in any case. He argued that his map hewed to traditional regions, maintained the core of districts, and only contained 6 county splits, compared to 10 in S1/H2. He argued that his plan “clearly and unquestionably” complied with Section 2, whereas he believed SA1/H2 had some “bizarre choices” that might come under scrutiny. Mr. Opperman argued, “[t]hose shapes can only be reasonably explained by an overarching racial—a predominant and overarching racial policy. The point of which would be to concentrate black voting power in District 6 for the fig leaf of legal compliance, and otherwise diminish and destroy black voting power in every other part of the state.” He continued, “[t]here is no other reasonable explanation for the lines in either the House plan that was passed, or Senate Amendment. Race is the only plausible explanation for that, which suggests a predominant racial motive in those draws, which of course is unconstitutional.” Mr. Opperman indicated that he was submitting written testimony to the Subcommittee. No action was taken by the Committee at that time.

- m. Final Full Senate Judiciary Committee Meeting re: Congressional Districts

The Senate Judiciary Committee as a whole met on January 19, 2022, to consider adopting a congressional redistricting plan in light of the testimony provided at the earlier meeting of the reapportionment Subcommittee. This meeting illuminated the two sides of the redistricting debate in South Carolina, when it came to Congress, starkly. Republicans wanted to maintain the status quo with CD 6 as a majority-minority district and keep the other districts, especially the First, limited in terms of BVAP. Democrats argued that, since the Supreme Court had signaled an end to the Preclearance era of the Voting Rights Act, and since RPV analysis had been used during that period to determine what constituted racially competitive districts, state legislatures could start from scratch and begin drawing districts anew for the first time since the 1990s, limiting Black VRA districts to what RPV analysis said would allow election of a minority preferred candidate and limiting the ability of white legislators to pack white districts to get radical white candidates elected. The South Carolina General Assembly demurred.<sup>90</sup>

Lawmakers made claims that do not appear to be supported by the publicly available facts. No one at the initial Senate public hearings at Charleston, Orangeburg, or Columbia said anything about wanting two congressmen from Charleston. None of them mentioned keeping the communities together that Sen. Campsen mentions. There was some

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<sup>90</sup> South Carolina State Senate Judiciary Committee, South Carolina House of Representatives Ad Hoc Redistricting Committee, <https://www.scstatehouse.gov/video/archives.php>.

support for keeping Beaufort in CD 1 and for keeping the so-called Tri-County together with Charleston, but even at the Senate and House public hearings and meetings held after maps were released, there was no support for two representatives in the U.S. Congress for Charleston.

Sen. Campsen presented SA1/H2 and was questioned by Democrats. Sen. Hutto asked why Charleston was split, saying that he was aware of maps that kept it whole or at least kept it out of Richland. Sen. Campsen insisted that it had been this way since the 1990s and was approved by the courts in the *Backus* decision. Sen. Hutto asked why the City of Charleston had to be split when other cities like Greenville and Spartanburg were kept whole. Sen. Campsen replied, “[w]ell, we’re following—this is a—you know, a least amount of change with regards to that dynamic of the Sixth District.” He added that another concern was constituent consistency.

Sen. Stephens then questioned Sen. Campsen when the latter explained that geographical boundaries were used in drawing the split between CD 1 and CD 6 in Charleston. Sen. Stephens asked why the southern portions of Colleton and Jasper were not given the same consideration, and Sen. Campsen said that the consideration in that regard was COIs. In that same vein, Sen. Matthews asked if Sen. Campsen considered it more important to keep CDs districts the same or to “follow the flow” of the Census Data, which showed that people were moving to the coast. Sen. Campsen insisted that equal weight was afforded to those factors, along with others in the guidelines.

Sen. Matthews also said that the Committee “sat . . . through several hours’ worth of public hearings. And I seem to remember, as I took copious notes like yourself, that we had speaker after speaker—and I understand some folks have gotten together and had folks to send in written comments. But I sat through, and I listened over and over to a lot of the folks that came before our Committee that said, number one, they wanted to keep Charleston—they thought that the—one of the proposed maps that kept Charleston whole went along with the principle of keeping that community of interest together. Were you present at those hearings,” she asked Sen. Campsen replied, “[w]ell, I’ve, I’ve heard that and I’ve also heard people say they—they’d rather have two congressmen representing them than one.”

Sen. Campsen repeated this assertion later when asked the same question by Sen. Sabb. Sen. Sabb asked, “[w]ould you agree with me, particularly in the last hearing that we had, that the vast majority of the comments that we had centered around the question as to whether or not Charleston ought be whole and whether or not the plan and—and specifically the plan that’s before us now ought be the operative plan because of the—what do you call it, the tri-county group, Berkeley, Charleston, and—and Dorchester and their economic relationship.” Sen. Campsen replied:

A majority did that, voted—or expressed opinions in that fashion. Although we—we also have a lot of input from e-mails and other way—other—and letters and that have equal weight. Just because you weren’t on the Zoom meeting—the Zoom meeting is not weighted

heavier. And—it’s my understanding we have a lot of diverse opinions on that, that—which one is weighted more, I’m not completely sure. But I do know that there is a lot more input from folks who like being represented by two members of Congress instead of one because two advocates is better than one. I mean, I’ve heard that from—from constituents as well. So we can’t let the Zoom meeting be the—the final—the final determination of what type of input the public wants because I understand there’s a lot of other input that’s received electronically.

Sen. Sabb followed up, “[b]ut did the vast majority of the written communication center around a desire to either keep those three counties together or keep Charleston whole? I mean, so were those fairly consistent with what we heard on the Zoom call?” Sen. Campsen replied, “I really can’t answer that. I know there’s been a lot of input—both ways.” Sen. Kimpson added that he represented more people in Charleston than anyone else in the Senate and that it was his belief that the people of Charleston wanted to be kept whole.

Sen. Matthews followed up on that line of questioning by echoing some of the public testimony whereby people explained that, while a number of people from the so-called Tri-County expressed their desire to be with Charleston, no one from Charleston returned that sentiment. She also echoed public testimony wherein people noted that most of the people calling to remain in the Tri-County were public elected officials. Sen. Campsen said that was not his recollection and began listing various Tri-County

economic alliances, to which Sen. Matthews responded by listing similar entities from counties elsewhere that had been split, including Colleton. She concluded that, in her opinion, SA1/H2 was a gerrymandered map that deliberately went into Charleston and West Ashley and put Black voters into CD 6 via a “funky boot print.” Sen. Campsen noted that CD 6 needed to pick up population, to which Sen. Matthews replied that those numbers could have come from Berkeley or elsewhere.

Sen. Harpootlian noted that, since the *Shelby County v. Holder* decision and the elimination of the Department of Justice Department’s preclearance process, there was no longer a need to focus on non-retrogression and that states could go back to the drawing board rather than maintaining the districts as drawn beginning in the 1990s, when, he explained, the focus was on creating majority-minority districts. He explained that in that case, states would want to conduct RPV analyses and asked if this had been considered. Sen. Campsen said that “that’s something that would happen if and when a plan is litigated. . . . A plaintiff, if they were to file suit against this, would—would provide [that].” Sen. Harpootlian said, “But assuming we’re trying to avoid a lawsuit, wouldn’t it have been productive to get racial bloc voting analysis done. . . .” Sen. Campsen said, “Well, I have it—it would have resulted in us perhaps taking race into account and having racial targets. . . .” Senator Harpootlian asked, would that not be “Acceptable under Gingles?” Senator Campsen replied, “No. That’s—that’s an analysis that—that the Court is—is to apply. But we are—we are to not take race primarily into account in drawing this.”

Senator Harpootlian emphasized, “Primarily,” to which Sen. Campsen replied, “I took it hardly at all into account.” Sen. Harpootlian replied by referring to “page after page” of racial data in the notebooks given to Committee members. Senator Campsen said, “The staff have—I mean, they—they provide that,” and he insisted that he “wanted to be colorblind.”

Sen. Harpootlian continued to question Sen. Campsen, pointing out the number of county and municipal splits in his plan and its use of water for contiguity. He asked if Sen. Campsen had considered using land for contiguity in those cases and, if so, was there evidence of that in writing. Sen. Campsen said no, that he had had discussions with staff, as presumably had Sen. Harpootlian, to which the latter replied, “Not me. I had to pay somebody,” referring to Joseph Opperman, who testified at the January 13, 2022, Redistricting Committee meeting regarding SA2/Whole-County map introduced by Sen. Harpootlian. Sen. Campsen said that Sen. Harpootlian did not have to retain someone, to which Sen. Harpootlian replied, “Oh, I think so. I think I had to because we are about to do something, perpetuate a racist scheme for the next 10 years, which we had to live with. One of the reasons I ran—the major reason I ran for the Senate was that we would not replicate this race-based gerrymandering, and that’s what this plan does.”

Sen. Malloy expressed his belief that the bill should not advance to the floor of the Senate on that day because it needed more discussion. He pointed out that, because of the posture or status of the bill, it would advance to the House immediately rather than receiving second and third readings that would

provide the usual time to digest and discuss. Chairman Rankin expressed his desire to have a vote, nonetheless. Sen. Malloy entered a motion to carry the bill over, but that failed. And The bill subsequently passed out of the Committee by a party-line vote of 14-8, with all Back members voting no.

n. The Senate Floor, January 20, 2022

Chairman Rankin began his introduction of the plan coming out of the Senate Judiciary Committee by indicating that the Redistricting Subcommittee had received “over 1,000 written comments” in addition to the testimony taken at the public hearings. He then gave way to Senators Massey and Campsen for descriptions of the various elements of the map. This material was not made available to the public. The Senate did release to the public written input it received at public hearings, unlike the House, but it did not release this supposed mountain of evidence that weighs heavily in favor of consideration of Beaufort feedback and “Tri-county” feedback as opposed to Charleston feedback. There is nothing in the available public record to support this. No one at the Charleston public hearing of the Senate Subcommittee mentioned a preference for two representatives.<sup>91</sup>

Sen. Campsen reiterated the characterization that this was a “minimal change” plan and that one of the primary concerns was “constituent consistency.” He addressed the accusations of partisan gerrymandering by comparing 2020 election figures in

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<sup>91</sup> South Carolina State Senate, South Carolina House of Representatives Ad Hoc Redistricting Committee, <https://www.scstatehouse.gov/video/archives.php>.

what was by then being called the “benchmark,” or existing plan, to the one then before the Senate. And he addressed accusations of racial gerrymandering by noting that the BVAP in CD 1 remained roughly the same as it was in the existing plan. He addressed allegations of packing by noting that the BVAP in CD 6 was less in the proposed plan than what it was in the existing plan. He noted that the “coastal” and Tri-County COIs were kept together and that the splits in Charleston followed waterways.

Sen. Grooms asked why Charleston was split when it had been wholly tied to Berkely and Dorchester since the nation’s founding. Sen. Campsen said that it had been split since the 1990s and that he prioritized the Tri-County COI and keeping Beaufort in CD 1 and also keeping two representatives for Charleston for the purposes of federal funding for the area. Sen. Scott pointed out the preponderance of county splits affecting CD 6 and the fact that Columbia and Charleston were the only “urban cores” split in the plan. He asked for a document with county split information and was told to consult the website, which he had already done. He was told that Mr. Roberts would get the information for him.

Sen. Matthews had the Redistricting Committee’s guidelines distributed to the chamber and noted that the word “benchmark” was not included. She noted that minimizing city and county splits was included and noted that SA1/H2 contained more city and county splits than both the existing plan and SA2/WC. She noted that “90 percent” of the people who testified before the Committee, in her recollection, were concerned with either staying with Charleston or keeping it whole. She added that it “matters not about

your race” in Charleston and that Sen. Campsen had had to “go in and snake in or salamander into” Charleston and West Ashley because of “how those folks voted.” She argued that the population numbers that CD 6 needed following the 2020 census could instead have come from Clarendon, Orangeburg, upper Dorchester, Berkeley, or Colleton, or some combination thereof. Sen. Campsen insisted that he had followed geographical boundaries.

Sen. Harpootlian argued that the legislature had been freed from the “handcuffs” of the preclearance, non-retrogression standard by *Shelby County* and asked if Sen. Campsen had done any analysis to see what could be done to “clean up” the “weird” shapes of what he characterized as gerrymandered districts. He asked Sen. Campsen if he considered keeping Charleston whole, given the amount of testimony that the Committee had heard to that effect. Sen. Campsen said no, that he would rather have two representatives for Charleston and that it was good to have a representative from each party. Sen. Harpootlian noted that Congressman Mendel Rivers represented the unified metropolitan area for decades. He insisted that the split was perpetuated because it allowed legislators to keep most of the white portion of Charleston in CD 1 and most of the Black portion in CD 6, which he said was a racial gerrymander. Sen. Campsen repeated his assertion that he did not consider race at all, to which Sen. Harpootlian repeated his question regarding the ubiquity of BVAP charts provided to legislative members. Sen. Hutto asked Sen. Campsen if there were retrogression standards that needed to be considered “now that the

rules have changed,” to which Sen. Campsen replied no.

Sen. Malloy rose to register again his objection to moving forward with a vote. He noted again that there would be no second or third reading and said, “We had about an hour and change of discussion” and that they had been repeatedly told that “the information is online” on the website. He argued that that was not nearly enough time and consideration for something as important as a redistricting bill. He said that there had been a measure of bipartisan cooperation in 2010 because they had more time to consider things. And he noted that the process was so rushed this time that legislators were arguing on the floor over who had received what information. He concluded, “I didn’t sign up for this.”

Sen. Kimpson repeated his assertion that the people of Charleston, of whom he represented more than any other legislator, “unequivocally” wanted to be placed wholly into CD 1 and not into a “hodgepodge” district as in SA1/H2. He said that Sen. Campsen’s argument regarding two representatives fell short. He said the idea that Congressman Clyburn and Congresswoman Mace were “in lockstep” was incorrect. He noted that Congressman Clyburn was the only member of the state’s delegation to vote for the American Rescue Act, which was set to provide the state with billions of dollars for the kinds of programs that Sen. Campsen was talking about when supporting his claim that two representatives were better for Charleston. He concluded by stating his belief that SA1/H2 represented a plan designed by the national Republican Party. The Senate subsequently

voted 26-15 to adopt SA1/H2. All Black members voted no.

Sen. Harpootlian then introduced SA2/WC. He described the existing configuration of districts as “remedial” in nature in that the map that was drawn in the 1990s was part of a policy of drawing majority-minority districts in order to get Black candidates of choice elected when it was recognized that there were patterns of racial block voting preventing that from being the case. He argued, “[b]ut a remedial measure is like a cast, and if you leave the case on the body too long, it atrophies.” He explained, “[a]nd that’s what’s happened in our state and that, Senator from Charleston, is what’s wrong with using a benchmark of what we did and had to do, where we maximized and packed in order to elect an African-American, which is no longer, in my opinion, necessary.” He added, “[a]nd by not doing that . . . racial block voting analysis we talked about earlier, you don’t know and I don’t know what you could have done to change that benchmark and start over.” He indicated that the state’s Regulatory and Fiscal Affairs agency conducted such analysis in a preliminary fashion when assisting local governing bodies on redistricting and added that there was no reason to, as Sen. Campsen suggested, wait for litigation in order to have a plaintiff submit such an analysis. He also explained that, in his experience, white legislators had responded to the 1990s packing by cracking and “whitewashing” remaining districts. The result in South Carolina, he argued, was “a Frankenstein monster” of a benchmark plan that was created to meet an “arcane political goal.”

Sen. Harpootlian then explained that SA1/H2 had appeared “out of nowhere” in the Subcommittee and that neither he nor Senators Matthews or Sabb had had any input into it whatsoever. He said, “We never discussed it. We were never called back in the map room. We were never asked anything about the contours of it. It just appeared, you know, sort of an immaculate deception, if you will. It was created in a back room, literally in a back room.” Speaking to Sen. Matthews, he said, “We showed up, they handed us a plan. I think you, Senator Sabb and I were astonished to see what obviously required a huge amount of time and effort to put together and it just—it was a fait accompli.” He noted that Committee members were told, at the same meeting, when he asked about input from outside from outside groups, that the National Republican Redistricting Trust had submitted a plan “that we never saw.”

Sen. Massey argued that SA1/H2 did not pack CD 6, that CD 1’s BVAP was essentially unchanged, the SA2/WC took Fort Jackson from Congressman Wilson and split the Savannah River environmental site. He motioned to table, which carried, 26-13, with Senators Malloy and Williams being the only two Black members to vote aye.<sup>92</sup> Sen. Harpootlian briefly introduced the League of Women Voters’ plan, which failed by a voice vote. Sen. Hutto introduced one of the NAACP’s plans, which failed on a 27-12 vote, with Senator Allen being the lone aye vote among Black members and Senators Malloy and Kevin Johnson not voting. Sen. Scott introduced a plan that he argued did not pack poor voters into CD 6 and instead

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<sup>92</sup> Senator Darrell Jackson had leave.

provided the opportunity for economic growth for the poorer regions of the state. Sen. Bennett argued that the plan split Dorchester three ways and motioned to table, which carried 27-11, with Senator Karl Allen being the lone Black member voting aye, Senator Malloy not voting, and Senator Kevin Johnson having been granted leave. So quick was Sen. Bennett to dismiss the plan that Sen. Scott was compelled to say, before finishing, “You’re going to move to table it no matter what I put up here. At least wait till I sit down.”

On January 26, 2022, the House voted 72-33 to concur in the Senate’s amendment. Robert Williams was the lone Black member to vote aye, with Reps. Alexander, Bamberg, Hosey, J.A. Moore, and Rutherford not voting. Governor McMaster signed S. 865’s into law later that day.

#### V. SUMMARY OF INFORMATION FOR THE COURT TO CONSIDER

The historical background of this law reveals, unquestionably, evidence of discrimination against Black citizens in South Carolina, especially in regard to voting rights, even very recently. The sequence of events and legislative history surrounding S. 865’s enactment also reveal procedural and substantive departures, as well as statements and actions by members of the decision-making body that offers evidence of support for a finding of discriminatory intent.

I reserve the right to continue to supplement my declarations in light of additional facts, testimony and/or materials that may come to light. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury of

the laws of the United States that the foregoing is true and correct according to the best of my knowledge, information, and belief.

Executed on: 4/11/2022

*Joseph Bagley*

Joseph Bagley, PhD

**Joseph Bagley, PhD**  
**Curriculum Vitae**

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| Perimeter College, Newton | Circle               |
| Campus                    | Atlanta, GA 30345    |
| Georgia State University  | Cell: 770-815-3771   |
| 239 Cedar Lane, Covington | Office: 404-413-6364 |
| GA, 30014                 |                      |

**Education**

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PhD, History, 2013, Georgia State University

“School Desegregation, Law and Order, and  
 Litigating Social Justice in Alabama, 1954-  
 1974”

MA, History, 2007, Auburn University

BA, History, 2004, Auburn University

**Major Publications**

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*The Politics of White Rights: Race, Justice, and  
 Integrating Alabama’s Schools*

(University of Georgia Press, Nov. 2018)

**Teaching and Administrative Experience**

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Honors Program Coordinator, Perimeter College,  
 Georgia State University, 2019—Present

Assistant Professor, Perimeter College, Georgia State  
 University, 2017—Present (5/4/2 Load)

AAS 1142, African American History since 1865

AAS 2010, Introduction to Africana Studies

HIST 1111, Survey of World History to 1500

HIST 1112, Survey of World History since 1500

HIST 2110, Survey of United States History

Lecturer, Georgia Perimeter College, 2015—2017  
(6/6/2 Load)

HIST 1112, Survey of World History since 1500

HIST 2111, Survey of U.S. History to 1865;

HIST 2112, Survey of U.S. History since 1865

HIST 2110, Survey of U.S. History

Visiting Lecturer, Georgia State University, 2013—2015 (4/4/2 Load)

HIST 2110, Survey of United States History

Graduate Instructor of Record, Georgia State University, 2009—2013 (1/1/1 Load)

HIST 1112, Survey of World History since 1500

HIST 2110, Survey of United States History

Graduate Teaching Assistant,

Georgia State University, 2008—2009, 2013

HIST 1112, Survey of World History since 1500; HIST 2110, Survey of United States History

HIST 3000, Introduction to Historical Studies; HIST 4990, Historical Research (co-taught)

Auburn University, 2004—2008

HIST 1010, Survey of World History to 1789;  
HIST 1020, Survey of World History since  
1789

### **Invited Talks**

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Symposium on the Struggle for Black Freedom,  
Georgia State University, Perimeter College,  
Keynote Address, February 11, 2020, “The  
Struggle for Black Voting Rights: from  
Reconstruction to *Right Now*.”

Georgia State University Constitution Day Event,  
September 18, 2019, “‘To Abridge and Deny’:  
Vote Dilution, Section 5 Preclearance, and  
Undermining the 15<sup>th</sup> Amendment.”

Auburn University Critical Studies Working Group,  
College of Education, April 12, 2019, “*Teach Us  
All*, The Little Rock Nine, and Contemporary  
School Segregation.”

League of Women Voters of Greater Jefferson County,  
February 21, 2019, “School Desegregation in  
Alabama.”

Auburn University Caroline Marshall Draughon  
Center for the Arts and Humanities, January  
29, 2019, Book Talk.

Alabama Department of Archives and History,  
*Alabama in the Age of Aquarius* Symposium,  
August 19, 2016, “Desegregating Alabama’s  
Schools: the Montgomery Experience.”

Alabama Department of Archives and History,  
Monthly Lecture Series, May 15, 2014, “Now a  
Single Shot Can Do It’: *Lee v. Macon County*

*Board of Education and School Desegregation in Alabama.*”

### **Notable Citations**

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Nikole Hannah-Jones, “The Resegregation of Jefferson County,” *The New York Times Magazine*, Sept. 6, 2017.

Wendy Parker, “Why Alabama School Desegregation Succeeded (And Failed),” *67 Case Western Law Review*, 1091 (2017).

Rebecca Retzlaff, “Desegregation of City Parks and the Civil Rights Movement: The Case of Oak Park in Montgomery, Alabama,” *Journal of Urban History* 47.4, 715 (2019).

Erika Frankenberg, “The Impact and Limits of Implementing *Brown*: Reflections from Sixty-Five Years of School Segregation and Desegregation in Alabama’s Largest School District,” *11 Alabama Civil Rights and Civil Liberties Law Review*, 33 (2019).

Bryan Mann, “Segregation Now, Segregation Tomorrow, Segregation Forever? Racial and Economic Isolation and Dissimilarity in Rural Black Belt Schools in Alabama,” *Rural Sociology* 86.3, 523 (2021).

### **Expert Witness**

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*Milligan v. Merrill* (N.D., Ala. 2021), Submitted an expert report, Certified as an expert, Testified at hearing for preliminary injunction (Ruling pending)

*People First v. Merrill* (N.D., Ala. 2020), Submitted an expert report, Certified as an expert, testified

in deposition and at trial, Findings adopted by the Court in opinion (479 F.Supp. 3d 1200)

### **Service**

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Newton Academic Community Engagement, 2019—present

Chair, Search Committee, Lecturer in History, Fall 2019

Search Committee, Adjunct Faculty in African American Studies, Summer 2019

Search Committee, Faculty Associates to Center for Excellence in Teaching and Learning, Summer 2018

Search Committee, Lecturers in History, Spring 2018

Panthers Vote Presidential Election Panel, Fall 2016

History 2110 Assessment Committee for the Georgia State-Georgia Perimeter Consolidation, 2016—2017

Consultant, Shiloh Community Restoration Foundation, Notasulga, Alabama, 2014—2015

Coordinating Committee, First Annual Atlanta Graduate Student Conference in History, Emory University, 2012

### **Conference Presentations**

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“‘We Have Had a Dream, Too’: School Desegregation Litigation, Racial Innocence, and Politics in Alabama,” Organization of American Historians Annual Conference, St. Louis, Missouri, April 16, 2015.

“‘Life, Liberty, and the Pursuit of Alabama’s Happiness’: School Desegregation, the ‘Law and Order’ Narrative, and Litigating Social Change in Alabama, 1954—75,” Midwest

Political Science Association Annual Conference, Chicago, Illinois, April 12, 2013.

“Black Alabamians’ Efforts to Desegregate Schools, 1954—1963: Civil Rights, Litigation, and the Road to *Lee. v. Macon*,” presented at the University of Alabama History Department’s Graduate Conference on Power and Struggle, March 3, 2012.

### **Solicited Manuscript and Book Reviews**

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Outside Reader for Book Manuscript, Brian K. Landsberg, *Revolution by Law: The Federal Government and the*

*Desegregation of Alabama Schools*, University of Kansas Press (Spring 2021)

Camille Walsh, *Racial Taxation: Schools, Segregation, and Taxpayer Citizenship, 1869—1973* (UNC Press, 2018), *The Alabama Review* (Pending, Spring 2021)

Outside Reader for Essay Manuscript for *Urban History* (Fall, 2019), Anonymous

Stephanie R. Rolph, *Resisting Equality: The Citizens’ Council, 1954—1989* (LSU Press, 2018), in *The Journal of Mississippi History* (Fall, 2019)

Wayne A. Weigand and Shirley A. Weigand, *The Desegregation of Public Libraries in Jim Crow South: Civil Rights and Local Activism* (LSU Press, 2018), in *Georgia Historical Quarterly* (Summer, 2019)

Leeann G. Reynolds, *Maintaining Segregation: Children and Racial Instruction in the South*,

1920—1955 (LSU Press, 2018), in *The Alabama Review* (Summer, 2019)

Outside Reader for Essay Manuscript for *History of Education Quarterly* (Fall, 2018), Anonymous

James Turner, Selma and the Liuzzo Murders: The First Modern Civil Rights Convictions (University of Michigan Press, 2018), in *Law and History Review, The Docket*, Vol. 1, Issue 2 (August, 2018)

### **Solicited Manuscript and Book Reviews Cont**

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Tracy E. K'Meyer, From Brown to Meredith: The Long Struggle for School Desegregation in Louisville, Kentucky, 1955—2007 (University of North Carolina Press, 2013), in *The Journal of Southern History* 80, No. 4 (Nov, 2014): pp. 1019-20

Frank Sikora, The Judge: The Life and Opinions of Alabama's Frank M. Johnson, Jr. (New South Books, 2007), in *The Alabama Review* 61, No. 2 (April, 2008): 153-4

### **Awards**

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- John M. Matthews Distinguished Dissertation Award, 2013, Georgia State University

### **Examination Fields**

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- 19th—20th Century United States History
- United States Legal and Constitutional History
- History of South Africa

### **Professional Organizations**

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- Organization of American Historians

- American Historical Association
- American Society for Legal History
- Southern Historical Association
- Alabama Historical Association

**Languages**

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- Spanish: Reading, Good
- French: Reading, Good

SC NAACP v. MCMASTER

TRANSCRIPT OF VIDEO-RECORDED  
PROCEEDINGS

SENATE OF SOUTH CAROLINA

January 20, 2022

(Transcription Time 1:43:00—6:32:20)



\* \* \*

[Page 3]

read.· Publish the first amendment.

THE CLERK: First amendment is Amendment No. 1 by Senators Campsen and Rankin, amends a bill by striking all enacting words and inserting them.

PRESIDENT ALEXANDER: Senator from Horry, what purpose do you rise?

SENATOR RANKIN: Request to be recognized.

PRESIDENT ALEXANDER: So granted.· Senator from Horry is being recognized.· The senator from Charleston, Senator Campsen?

SENATOR CAMPSEN: I'd ask unanimous consent for a table and chair to be permitted on the floor for Mr. Terreni.

PRESIDENT ALEXANDER: Without objection.

Staff to have access to the floor, without objection.· Senator from Horry.

SENATOR RANKIN: Happy Thursday, happy early Thursday and happy hopeful quicker Thursday here after.

I rise to speak to the report that has just been announced and make some general comments about this, as well as an overview of our redistricting process to this point, specifically regarding the congressional plan itself and again, the amendment that you have before you.

And so I plan to make some over general comments and then yield to a question.

\* \* \*

**Population Data Excerpted from Dkt. # 473  
South Carolina Population, Benchmark Plan,  
2010 Census Data**

|                            | <b>TOTAL<br/>POP</b> | <b>NH DOJ<br/>BLK</b> | <b>% NH<br/>DOJ<br/>BLK</b> |
|----------------------------|----------------------|-----------------------|-----------------------------|
| <b>STATEWIDE<br/>TOTAL</b> | 4,625,364            | 1,305,971             | 28.2%                       |

**South Carolina Population, Enacted Plan,  
2020 Census Data**

|                            | <b>TOTAL<br/>POP</b> | <b>NH DOJ<br/>BLK</b> | <b>% NH<br/>DOJ<br/>BLK</b> |
|----------------------------|----------------------|-----------------------|-----------------------------|
| <b>STATEWIDE<br/>TOTAL</b> | 5,118,425            | 1,323,887             | 25.9%                       |

**Charleston County Population,  
2010 Census Data**

| <b>Bench-<br/>mark<br/>District</b> | <b>TOTAL<br/>POP</b> | <b>NH<br/>WHT</b> | <b>%<br/>NH<br/>WHT</b> | <b>NH<br/>DOJ<br/>BLK</b> | <b>%<br/>NH<br/>DOJ<br/>BLK</b> |
|-------------------------------------|----------------------|-------------------|-------------------------|---------------------------|---------------------------------|
| 1                                   | 245,876              | 181,660           | 73.9%                   | 48,706                    | 19.8%                           |
| 6                                   | 104,333              | 35,600            | 34.1%                   | 56,278                    | 53.9%                           |
| <b>TOTAL</b>                        | <b>350,209</b>       | <b>217,260</b>    | <b>62.0%</b>            | <b>104,984</b>            | <b>30.0%</b>                    |

**Charleston County Population,  
2020 Census Data**

| <b>Enacted District</b> | <b>TOTAL POP</b> | <b>NH WHT</b>  | <b>% NH WHT</b> | <b>NH DOJ BLK</b> | <b>% NH DOJ BLK</b> |
|-------------------------|------------------|----------------|-----------------|-------------------|---------------------|
| 1                       | 179,743          | 145,698        | 81.1%           | 18,463            | 10.3%               |
| 6                       | 228,492          | 117,862        | 51.6%           | 76,141            | 33.3%               |
| <b>TOTAL</b>            | <b>408,235</b>   | <b>263,560</b> | <b>64.6%</b>    | <b>94,604</b>     | <b>23.2%</b>        |

**Berkeley County Population, 2020 Census Data**

| <b>Enacted District</b> | <b>TOTAL POP</b> | <b>NH WHT</b>  | <b>% NH WHT</b> | <b>NH DOJ BLK</b> | <b>% NH DOJ BLK</b> |
|-------------------------|------------------|----------------|-----------------|-------------------|---------------------|
| 1                       | 229,861          | 137,840        | 60.0%           | 54,440            | 23.7%               |
| <b>TOTAL</b>            | <b>229,861</b>   | <b>137,840</b> | <b>60.0%</b>    | <b>54,440</b>     | <b>23.7%</b>        |

**St. Andrews VTDs (West Ashley), 2020 Census  
Data**

| <b>Enacted District</b> | <b>TOTAL POP</b> | <b>NH WHT</b> | <b>% NH WHT</b> | <b>NH DOJ BLK</b> | <b>% NH DOJ BLK</b> |
|-------------------------|------------------|---------------|-----------------|-------------------|---------------------|
| 6                       | 81,718           | 55,853        | 68.3%           | 16,531            | 20.2%               |

**St. Andrews VTDs (West Ashley), 2020 Census  
Data**

| <b>Enacted<br/>District</b> | <b>VOTING<br/>AGE<br/>POP<br/>(VAP)</b> | <b>VAP<br/>NH<br/>WHT</b> | <b>%<br/>VAP<br/>NH<br/>WHT</b> | <b>VAP<br/>NH<br/>DOJ<br/>BLK</b> | <b>%<br/>VAP<br/>NH<br/>DOJ<br/>BLK</b> |
|-----------------------------|-----------------------------------------|---------------------------|---------------------------------|-----------------------------------|-----------------------------------------|
| 6                           | 66,719                                  | 46,801                    | 70.1%                           | 13,073                            | 19.6%                                   |