

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

- - -

THE SOUTH CAROLINA STATE	:	3: 21-cv-03302-MGL-TJH-RMG
CONFERENCE OF THE NAACP,	:	
<i>et al.</i>	:	OCTOBER 3, 2022
	:	
Plaintiffs,	:	VOLUME I (PAGES 1 - 265)
v.	:	
	:	
THOMAS C. ALEXANDER, <i>et al.</i> ,	:	
	:	
Defendants.	:	
	:	
	:	

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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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PLAINTIFFS' EXHIBITS

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1 *(The following bench trial proceedings commenced*
2 *Monday, October 3, 2022, at 9:00 a.m.)*

3 JUDGE GERGEL: Good morning, everyone.

4 We're in the matter of United States vs. Alexander.
5 Case No. 3:21-3302. We're here for the pretrial.

6 Could counsel for the plaintiff who will be speaking
7 identify himself or herself for the record, please?

8 MR. FREEDMAN: Good morning, your Honor.

9 JUDGE GERGEL: I'm sorry. By the way, let me give
10 you a little ground rule. If you are speaking, you can take
11 your mask off, okay?

12 MR. FREEDMAN: Thank you, your Honor. John
13 Freedman --

14 THE COURT: I'm sorry?

15 MR. FREEDMAN: John Freedman, from Arnold and Porter,
16 for the plaintiffs. I will be doing most of the speaking for
17 the pretrial.

18 JUDGE GERGEL: Very good. And why don't you identify
19 your other colleagues at the table there for us.

20 MR. FREEDMAN: Yes. My other colleagues are Allen
21 Chaney, from the ACLU of South Carolina; and Leah Aden, from
22 the NAACP Legal Defense Fund.

23 JUDGE GERGEL: Thank you very much.

24 And for defense counsel?

25 MR. TYSON: Good morning, your Honor. My name is Rob

1 Tyson, from Robinson Gray. John Gore, from Jones Day, will be
2 doing most of the discussion on the pretrial conference.

3 Also with us is Attorney Carlisle Traywick, from
4 Robinson Gray; and Jessica Stringfellow, from Robinson Gray,
5 here on behalf of Senate defendants, Alexander and Rankin.

6 JUDGE GERGEL: And for the House?

7 MR. MOORE: Good morning, your Honor. Mark Moore.

8 JUDGE GERGEL: I knew you weren't going to be quiet.

9 MR. MOORE: Well, you know, I mean, sometimes you
10 have to behave as expected.

11 Mark Moore, from Nexsen Pruet, for House defendants.
12 With me at counsel table is Andrew Mathias, from my law firm;
13 Michael Parente. And I would expect, depending on what comes
14 up at the pretrial conference, myself and Mr. Parente will be
15 speaking mostly, Your Honor.

16 JUDGE GERGEL: Very good. Are there other counsel
17 who will be speaking today?

18 MR. BURCHSTEAD: Yes, your Honor. Michael
19 Burchstead, from Burr and Forman, for the Election Commission
20 defendant. I will be here intermittently, along with
21 Elizabeth Crum, also from Burr and Forman.

22 JUDGE GERGEL: Very good. Thank you.

23 Okay. We got a request for some information
24 protocols for the trial. It was a checklist of all the things
25 I normally say in pretrial. So, I don't know if there are

1 going to be issues on the sort of protocols, but in a minute,
2 if there are things y'all raise with us, questions, we'll do
3 our best to answer it. We want to try to operate in an
4 orderly, logical way.

5 Let me tell you what I normally do on trials, and
6 let's see how much of this we can do here. Where parties have
7 significant numbers of exhibits, I ask them: Are there
8 exhibits the opposing party does not contest? And for those
9 that are uncontested at the beginning of the trial, the
10 plaintiff moves exhibit so-and-so, so-and-so into evidence,
11 defendants say, "We don't object." The defendants then stand
12 up and do the same thing. And we get rid of all the
13 objections that -- all the exhibits in which there are no
14 objections. That usually is the great majority of exhibits.

15 And then for those in which there are contested
16 exhibits, what we say is: Wait till the time of trial. At
17 the trial, when you offer the exhibit, I will hear any
18 objections at that point, and we don't deal in the abstract
19 with objections out of context. We don't know the factual
20 relevance. We don't know how it fits in. And sometimes we'll
21 be arguing about things that never even get admitted into
22 evidence anyway.

23 So, does that suit everyone?

24 Yes, sir, Mr. Freedman.

25 MR. FREEDMAN: Thank you, your Honor.

1 So, certainly with regard to the uncontested
2 exhibits, that was the plaintiffs' plan. We sent the
3 defendants a list yesterday of what we believe the uncontested
4 exhibits are with a suggestion that we file it jointly. They
5 are, I think, evaluating the list and are supposed to let us
6 know today.

7 JUDGE GERGEL: Well, what I'd like to do is -- you
8 know, maybe we'll take a break after the pretrial, and y'all
9 kind of work it out, because I'd love to open the trial and
10 just cleanly take care of those exhibits so y'all don't spend
11 all your time with a checklist about what you got in and what
12 you don't have in.

13 Let me say this. Y'all have probably observed this.
14 Y'all are a little voluminous on the exhibits. I'm sure that
15 y'all didn't notice that. It fills up my law clerk's office,
16 by the way. Thank you y'all very much for that. And so, I
17 would really like to put that aside so we can focus on
18 actually the evidence that is relevant, rather than arguing
19 about admissibility or going through the mechanics of
20 admissibility on issues that aren't contested.

21 Does that make sense to you, Mr. Freedman?

22 MR. FREEDMAN: It does, your Honor. But I would like
23 to address the contested exhibits.

24 JUDGE GERGEL: Okay. Go ahead.

25 MR. FREEDMAN: So, there are several exhibits that

1 are on our list that are, I think, in the nature of party
2 admissions. They are not specific as to any particular
3 witness, so I don't know that we would necessarily introduce
4 them in a traditional sense through a witness. We've --

5 JUDGE GERGEL: You can offer them at any time.

6 MR. FREEDMAN: Yes.

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

14 MR. FREEDMAN: Thank you, your Honor.

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

17 First, from plaintiff.

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

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

1 say, y'all have your backs to the gallery, and I want to warn
2 you, you're responsible for keeping witnesses -- because
3 sometimes witnesses will show up and are interested and
4 they'll want to come sit, and that'll violate the
5 sequestration order. So, it's up to each of y'all to enforce.

6 And so, do you know who your party witness will be?

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

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

12 MR. FREEDMAN: Brandon Murphy, for the NAACP.

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

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

18 JUDGE GERGEL: Very good. That'll be fine.

19 And, Mr. Moore?

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

22 JUDGE GERGEL: I don't need anybody.

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

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

1 party representative for that.

2 MR. MOORE: Thank you.

3 JUDGE GERGEL: Okay. Let me ask you about these
4 deposition designations. Normally under Rule 43, we value
5 live testimony. But there are exceptions, obviously, if you
6 can't obtain the compulsory attendance and the people will not
7 voluntarily appear. It looked like these deposition things
8 were pretty voluminous. I mean, you know, it's pretty hard to
9 ask us to understand reading hours of depositions about what
10 might be important.

11 Tell me about, on the plaintiff's side, what kind of
12 deposition are you offering, if any.

13 MR. FREEDMAN: Your Honor, there are several
14 witnesses that we identified, primarily defense witnesses, who
15 we deposed, who we don't think that they would add much for
16 the panel to hear them live. Senate staffers, House staff,
17 and in a couple cases, individual Senators or House members
18 who are not otherwise on the defense list. I believe there
19 are -- and we have not submitted our designations yet. We
20 were actually -- I have a proposal, and was going to explain
21 how we were going to submit it in a way that I hope will
22 facilitate the panel's review. But I do think it's a handful
23 of individuals.

24 There are also several third-party witnesses: Mr.
25 Kincaid from the National Republican Redistricting Trust,

1 who's out of the jurisdiction; Mr. Oldham, who is based in
2 Columbia but outside the hundred-mile bubble -- and his
3 attorney has told us would not -- would resist a subpoena.

4 JUDGE GERGEL: Okay. Okay. And how about for the
5 Senate?

6 MR. GORE: Likewise, your Honor. We've been working
7 with the plaintiffs on some Senate staffers and Senators who
8 are outside of the hundred-mile bubble or otherwise
9 unavailable to come to trial. We'd hoped, during the
10 deposition designation, to facilitate a shorter trial as well.

11 JUDGE GERGEL: Please don't dump us with hundreds of
12 pages. I mean, whoever was trying to make a point, it's very
13 hard to make it when you're looking for a needle in a
14 haystack.

15 MR. GORE: I understand.

16 JUDGE GERGEL: Maybe I'll have y'all do some summary
17 for us to identify why you think it's important.

18 Mr. Moore?

19 MR. MOORE: Yes, sir, your Honor. There are
20 substantial deposition designations. And, you know, we have
21 Wednesday off because it's a holiday, and perhaps --

22 JUDGE GERGEL: For some of us it is, yes. Nobody
23 volunteers, by the way, because it's the day we fast.

24 MR. MOORE: I understand, your Honor. I understand.
25 But perhaps, you know, we can take advantage of -- some of us

1 can take advantage of Wednesday. You know, there are, in the
2 House defendants' opinion, in the plaintiffs' designations, a
3 lot of portions that are irrelevant and/or hearsay. And there
4 are one or two that we might really want to argue about.
5 Hopefully, we won't have to. What I hope we can do right from
6 Wednesday is have a meeting and maybe thumb through some
7 deposition designations so that we can try to reach an
8 agreement on that. I would say maybe that might be an
9 efficient way to proceed.

10 JUDGE GERGEL: Also, I think, Mr. Moore, I like that
11 idea very much. The other idea I think would be helpful is,
12 at some point, y'all might point out to us, once y'all have
13 made the designations, where you really want us to look, so,
14 you know, we're not looking for the needle in the haystack.
15 But I've got to tell you, six pages of designation is a lot
16 better than 60. Okay. And, you know, it's the old joke about
17 the judge says -- he says, "Can I extend my brief from 25 to
18 50 pages?" He says, "You can do as long as you want. I just
19 stop reading at 25."

20 So, I think y'all will help yourself, if there's
21 points you want to make, to help us get there.

22 Yes, sir.

23 MR. FREEDMAN: Your Honor, I think in response to
24 that, I've got two proposals. The first is that we know that
25 the House defendants and the Senate defendants have both

1 submitted separate depositions. In the House case, they've
2 submitted excerpts, and in the Senate case, they presented
3 full depositions according to theirs. Our thought was, we
4 could submit -- when I've done this in other matters, submit
5 one set of transcripts that highlights our designations, their
6 designations, have the objections reprinted.

7 JUDGE GERGEL: I think that would be helpful. Please
8 don't give us whole depositions unless there's really is
9 something discrete. It just overwhelms us, you know. Let me
10 just say, as a practical matter, it's very hard to absorb,
11 even if we had time to read them all, a full deposition. And
12 I know there are points y'all want to make, so let us know
13 what those points are.

14 MR. FREEDMAN: So, we are checking -- that work has
15 basically been done. We're just checking it today, and hope
16 to have it in tonight or first thing tomorrow. Obviously, if
17 the defendants take issue --

18 JUDGE GERGEL: Wednesday, because that sounds like a
19 great workday to help sort that out. I like Mr. Moore's idea.

20 MR. FREEDMAN: And then the second thing is, we're
21 happy to submit summaries of what we think the highlights are.

22 JUDGE GERGEL: We may take you up on that. Orally,
23 I'd like to -- I think, initially, just for us to kind of make
24 a focus, because we may have questions to understand the
25 point. But it may be that a summary might be helpful as well.

1 MR. FREEDMAN: So, we can certainly work on that for
2 ours, and I assume the defendants can work on that for theirs.

3 MR. MOORE: We could, if that would be helpful to the
4 Court. I guess what I would say back to that, your Honor, is,
5 if we could take some time on Wednesday to try to narrow the
6 field --

7 JUDGE GERGEL: That would be very helpful, number
8 one.

9 MR. MOORE: Then -- then -- and I don't want to spend
10 a whole lot of time creating a summary that ultimately we're
11 not going to even come in here and argue about.

12 JUDGE GERGEL: Well, here's my question: If you're
13 not going to argue it, if it's not important enough to argue,
14 why are you submitting it? I think y'all need to ask yourself
15 that question.

16 MR. MOORE: Thank you. There are, in our opinion,
17 substantial swaths of testimony where there were like 60 pages
18 of testimony the plaintiffs brought in, and I can see five
19 pages, why they may want it, and not 60, but we can have that
20 dialogue. What I would ask, your Honor, is that, with respect
21 to these summaries at issue to be submitted, that we have
22 Wednesday to work through those before we do it.

23 JUDGE GERGEL: I think that's a good idea.

24 MR. MOORE: And with respect to exhibits that may be
25 offered that are contested, perhaps we could also use

1 Wednesday to try to work through that as well and, perhaps,
2 have a number of exhibits that are uncontested. Perhaps we
3 can agree to certain redactions. There are, obviously,
4 certain things that we really care about that we want to
5 discuss, redactions, etc., and things that we're less
6 concerned about.

7 JUDGE GERGEL: I think that's a good idea.

8 Yes, sir.

9 MR. GORE: And if I might, your Honor, just agree
10 with Mr. Moore on that point and raise two other smaller
11 points. I think with respect to the highlighting of the
12 transcripts, that should also wait until after our meeting on
13 Wednesday.

14 JUDGE GERGEL: Let's do it on Wednesday. I think if
15 y'all come back, and -- and hopefully, we'll have this thing
16 refined. But we just need some help. Just to give us a
17 document dump of a bunch of depositions isn't going to help
18 anybody. It's just not -- you know, we're not going to get
19 it, why you want us to do it or -- and if you don't argue it,
20 particularly, how do we understand it's of any importance?

21 And just think about this, folks, critically: What's
22 really important here, right? I mean, as reapportionment
23 cases go, this is a relatively simple case. It's only seven
24 districts. The House Plan, which we were working on so hard,
25 had 124 districts. Many of them were involved in this. This

1 should be a lot simpler, frankly. And if I read the
2 plaintiffs' pretrial brief correctly, there are only very
3 discrete challenges to these districts.

4 So, you know, I just want to urge everyone to work on
5 simplification. I mean, I think that's important.

6 MR. GORE: And to that point, your Honor -- thank you
7 for that clarification -- I just wanted to add, I think some
8 of the designations are a little redundant. There may be that
9 multiple witnesses gave testimony about the same thing that
10 all corroborated each other. So, there may be a way to reduce
11 the --

12 JUDGE GERGEL: Mr. Gore, I was also going to ask
13 y'all to avoid, on your witnesses, redundancy. You kind of
14 make the point, make it. Having multiple witnesses say the
15 same thing that's particularly not really challenged, just
16 extends trial time for no good reason.

17 And also, you know, we've got two sets of defendants.
18 I don't want to limit y'all's cross-examination, but, you
19 know, kind of coordinate a little bit on that so you don't
20 spend a lot of time, you know, essentially covering the same
21 territory.

22 MR. GORE: We are, your Honor. We're actively
23 coordinating on cross-examinations.

24 MR. MOORE: That's right, your Honor. What I was
25 going to add to that is: We sort of designated a lead

1 cross-examiner for each plaintiffs' witness, and the lead
2 person will do the primary cross, and then the other person
3 will simply follow up. I assume -- I think that shortens the
4 trial for everybody.

5 JUDGE GERGEL: I'm all for that. Yeah.

6 Yes, sir, Mr. Freedman.

7 MR. FREEDMAN: I just want to note, your Honor, I
8 think certainly what has been proposed makes sense and we can
9 work with the defendants on it.

10 On the question of redundancy, there's a lot of
11 evidence here, and I don't want the Court losing sight of
12 that. And I think that the fact that multiple witnesses
13 testify to the same thing, in some cases, corroborates and
14 demonstrates the strength of the --

15 JUDGE GERGEL: I'm okay with that for contested
16 things. But things that aren't really contested, let's trim
17 them down and let's focus on the things that really are
18 contested.

19 MR. FREEDMAN: I also want to assure, your Honor,
20 that we have withdrawn -- we are not going to be submitting
21 designations for a number of witnesses who, after evaluating
22 and thinking about it, we don't have any interest in their
23 testimony showing up in our case. I know that the defendants
24 have submitted designations for witnesses who are available
25 and are going to be testifying. So, I would think, in the

1 ordinary course, that testimony could also be dispensed with
2 at all.

3 JUDGE GERGEL: Right. We're not doing depositions of
4 people -- if they're testifying -- unless they're being
5 offered for impeachment or something, they're not going to be
6 used.

7 MR. FREEDMAN: Thank you, your Honor.

8 JUDGE GERGEL: Thank you.

9 Okay. Are there other matters that any of the
10 parties wish to bring before the panel before we commence with
11 the trial of this case?

12 MR. FREEDMAN: Not for the plaintiffs, your Honor.

13 JUDGE GERGEL: Mr. Gore?

14 MR. GORE: Yes, thank you, your Honor.

15 There is still an outstanding issue regarding the
16 length of the trial. We've been working with the plaintiffs
17 to understand better their case. They have been providing us
18 48 hours' notice of the witnesses and exhibits they're going
19 to bring on each day. They have not yet provided us a full
20 list of the witnesses they plan to call in their
21 case-in-chief, nor committed to a timeline. They've told us
22 it would be five or six days, I believe, for their
23 case-in-chief. Our understanding is that there are only
24 eight days allocated to the trial in this matter. If the
25 plaintiffs take five or six days --

1 JUDGE GERGEL: They're not going take five or six
2 days. And they better have witnesses ready to go because
3 we're going to move them quicker than you think they are. So,
4 one of the things that's very important is, I want the next
5 witness sitting out there in the hall ready to go. And at the
6 end of the day, that witness may not get called till the next
7 day. But we're going to move this thing. It should not take
8 five or six days to put up the plaintiffs' case. That's just
9 not necessary. I'm just telling you that right now. I've
10 tried a lot of cases. That is not necessary.

11 Do the plaintiffs hear me?

12 MR. FREEDMAN: Yes, your Honor. I will tell you that
13 our current plan is five trial days, and the sixth is just
14 depending on length of cross-examination.

15 JUDGE GERGEL: Well, you better have people
16 available. I don't want to come at 4 o'clock and have gone
17 through the witnesses, and you're saying, we don't have any
18 more witnesses. You need to have your witnesses ready to go
19 one after another.

20 MR. FREEDMAN: That's our expectation, your Honor.

21 JUDGE GERGEL: Okay. Thank you.

22 MR. GORE: Thank you, your Honor.

23 JUDGE GERGEL: Mr. Moore?

24 MR. MOORE: Just very briefly. And this is a
25 personal issue. I hope the Court will accommodate me. I

1 recently had a health issue, and so I would need to get up and
2 walk around some. I don't want to be distracting, but --

3 JUDGE GERGEL: You can get up and walk around any
4 time you want to.

5 MR. MOORE: I appreciate that. Thank you, your
6 Honor.

7 JUDGE GERGEL: Anyone else? And let me say about
8 comfort, I always tell my jurors, you know, if you've got an
9 issue, kind of let us know. When you need a break, just let
10 us know. We'll work with you.

11 MR. MOORE: And, Judge, the only other issue for us
12 is, because we're sort of tucked in over here, it would be
13 helpful if we had a large monitor. I mean, this one is
14 difficult for us to see. I'll put on -- Mr. Mathias and I
15 will put on our glasses.

16 JUDGE GERGEL: I'll ask my tech people, but we've got
17 limits. You know, the irony, of course, is you're on the
18 wrong side of a very large monitor. And I may ask our folks
19 during a break to see if we can't get it angled. But it's big
20 and that's good and not good. But we'll see what we can do.

21 Yes, sir, Mr. Gore.

22 MR. GORE: Your Honor, I do have one more issue I'd
23 like to raise. Both sides filed pretrial motions to exclude
24 the other sides' experts. Those motions were denied without
25 prejudice, with leave to renew those motions at trial.

1 JUDGE GERGEL: You can, but we're going to hear them.
2 I've reviewed the issues. We're going to decide at trial.
3 We'll going to hear it, then we'll weigh it, and if it doesn't
4 meet *Daubert* standards, we won't consider it. But, you know,
5 *Daubert* is designed as a protection -- a gatekeeper for the
6 jury. And we've read these reports of all the parties. I
7 just think there's sufficient there that we -- we're going to
8 hear the evidence and make a decision.

9 So, you're welcome, when they put them on, to raise
10 the issues, but we're going to hear the evidence.

11 MR. GORE: And that was kind of our question, your
12 Honor, as to whether the Court would like us to renew those
13 motions formally on the record at trial or --

14 JUDGE GERGEL: You've now renewed them on the record,
15 okay? So, you don't need to do that. I've read all the --
16 all of us have read all the reports. All of them are
17 sufficient to survive *Daubert* in our view. And they don't
18 really need to survive *Daubert*, but they're sufficiently
19 reasonable that we're going to hear the evidence. I'm sure
20 there are going to be a lot of attacks on a lot of them, and
21 that's why we're having a trial.

22 Yes, sir, Mr. Moore.

23 MR. MOORE: Just for the record, I'm going to join in
24 his --

25 JUDGE GERGEL: You're joined. And plaintiffs are

1 joined, too, in that. All the objections are on the record
2 regarding the experts.

3 Anything else?

4 MR. FREEDMAN: Your Honor, one logistics question.
5 So, when we move the uncontested exhibits in, I know there was
6 some dialogue over the weekend about whether to push those on
7 the docket or how best to convey those to the Court. The
8 Court, obviously, has sets of everything. One of the pretrial
9 orders suggested that you wanted additional binders of the
10 uncontested exhibits. So, some guidance as to --

11 JUDGE GERGEL: Yeah. I'll talk to my courtroom
12 deputy about exactly the best way to do this. We normally
13 have hard copies, plus we have access to digital. Frankly,
14 the volume here is -- we would have no room in the courtroom
15 to put all these exhibits. In fact, I want to tell you how
16 many you have. My clerks normally would bring a set of
17 exhibits for them to have access to, and there's not room in
18 the courtroom for them to do it, okay? So, we're kind of
19 reliant on the digital. But I'll talk to Ms. Perry when we
20 break, and we'll figure the best way to get those exhibits in.

21 And let me talk to you some about -- I know there's a
22 lot of back and forth about what's public and not public. In
23 the federal court, an exhibit, unless under very extraordinary
24 circumstances, is public information, protected by the First
25 Amendment. And it's in.

1 I appreciated the defendants' concern about issues
2 that may not come in. Just because they were allowed in
3 discovery, they should not be public if they weren't going to
4 be admitted. But if they meet the standard for admission,
5 they're public. They're public. This is the culture of the
6 of the federal court system. The First Amendment case law is
7 very clear on this. There are very rare exceptions to
8 in-camera admission. I can't say, in my 12 years on the
9 bench, I've ever had such a document. I suppose the Coke
10 formula might fall into that category, but there are very few
11 things that would fall into that.

12 But one reason we're having uncontested things come
13 in is -- that's all public. That's going to be public. And
14 to the extent there's an objection on some basis, it's got to
15 be regarding under the Federal Rules of Evidence, it's got to
16 be protected.

17 We've already ruled on legislative privilege. We
18 already ruled about the standard for that. So, I don't want
19 endless evidentiary battles over this. Everything I've looked
20 at, it doesn't look too much super secret in all this anyway.
21 A lot of this is on maps and data and that kind of thing
22 anyway. But, I would like -- I think all of us would like to
23 avoid endless fights over things that don't matter much on
24 admission.

25 MR. FREEDMAN: We certainly agree with the Court's

1 analysis and we're prepared to file electronically or on
2 paper, whatever the Court wants.

3 JUDGE GERGEL: We'll talk with Ms. Perry about the
4 best way to do that, dealing with the sheer volume of all
5 this.

6 Okay. Anything further?

7 Mr. Moore?

8 MR. MOORE: I have a question, your Honor. I'm
9 assuming you want us at the lectern when we're addressing --

10 JUDGE GERGEL: I would. I would. Particularly
11 because they didn't give you a microphone.

12 MR. MOORE: I usually don't need one, but some of the
13 folks at my table might.

14 JUDGE GERGEL: Yeah. Okay.

15 Okay, anything further?

16 MR. FREEDMAN: Not for plaintiffs, your Honor.

17 JUDGE GERGEL: Mr. Gore?

18 MR. GORE: No, your Honor.

19 JUDGE GERGEL: Mr. Moore?

20 MR. MOORE: No, your Honor.

21 JUDGE GERGEL: Okay. Opening statement for the
22 plaintiff.

23 You can state your name for the record, please,
24 ma'am.

25 MS. ADEN: Good morning, your Honors. I'm Leah Aden.

1 JUDGE GERGEL: Yes, ma'am. Please proceed.

2 MS. ADEN: Thank you, your Honor.

3 Again, I am Leah Aden of the Legal Defense Fund, on
4 behalf of plaintiffs: The South Carolina State Conference of
5 the NAACP, and Mr. Taiwan Scott.

6 Your Honor, plaintiffs' constitutional challenge to
7 certain districts in South Carolina's enacted congressional
8 map is the latest iteration in the state's long, persistent,
9 and continuing record of suppression of the political power of
10 black voters. Every decade since 1970, minority voters, like
11 plaintiffs, have sought relief in federal court because of
12 illegal redistricting. This cycle, unfortunately, is no
13 different.

14 In 2022, South Carolina enacted a congressional map
15 that effectively and unnecessarily limits black voting
16 strength to a single congressional district, CD 6, for the
17 next -- at least the next 10 years. That is so, even though
18 black South Carolinians are about 25 percent of the voting age
19 population, and a 2020 census showed significant growth in
20 black population in places like Columbia and parts of
21 Charleston. But limiting black voting power to a full
22 congressional district was not inevitable, nor can it be
23 explained by population growth, the law, or South Carolina's
24 own adopted redistricting criteria.

25 Rather than addressing malapportionment in CDs 1 and

1 6 by moving populations between those districts, the decision
2 makers, instead, engaged in a series of strategy decisions to
3 crack black communities. The South Carolina General Assembly
4 achieved a diluted map by engineering the border of CD 6 in a
5 way to suppress the power of black voters in adjacent
6 districts, particularly Districts 1, 2, and 5. In doing so,
7 it cracked black communities in those three districts to
8 ensure that there were no new electoral opportunities for
9 black voters. To that end, the South Carolina General
10 Assembly split parts of areas resided in by black voters, like
11 North Charleston, from the rest of Charleston County; Sumter
12 City from the rest of Sumter County; and Columbia from the
13 rest of Richland County. While responding to the demand of
14 largely white residents in majority white areas like Beaufort
15 County to remain whole in CD 1, the General Assembly
16 disregarded similar requests by communities with significant
17 black populations, thereby preserving and entrenching the
18 political status quo, which limits black voters' voices to CD
19 6.

20 Various alternative nondiscriminatory maps were
21 available to the General Assembly that complied with federal
22 law, prohibiting non-dilution of black voting strength and the
23 criteria the General Assembly purportedly used to guide the
24 maps that it considered, such as healing split counties and
25 communities. The majority ignored or rejected those

1 alternatives one after the other. Later in the legislative
2 process, or in some cases, during this litigation, legislative
3 defendants have attempted to explain their engineering. But
4 as the evidence will show, these explanations are pretextual.
5 During litigation, they have advanced that the congressional
6 map was drawn to advantage Republican legislators in six of
7 the seven congressional districts. This after-the-fact
8 rationalization cannot pass muster.

9 The Supreme Court, this Circuit, and other courts
10 made clear that it is unconstitutional to harm black citizen
11 voters in service of any political party's quest for power.
12 And it's too late to justify what was actually said and done
13 during the legislative process. Members of the public
14 repeatedly warned again and again that the maps proposed by
15 the General Assembly would have foreseeable racial harm. The
16 legislature was also warned repeatedly that the map
17 disregarded traditional redistricting principles.

18 For this and other reasons that I will detail
19 momentarily, the Court should rule in plaintiffs' favor and
20 declare Districts 1, 2 and 5 as illegal racial gerrymanders
21 and intentionally dilute of districts, order the General
22 Assembly to redraw a legally compliant map that practically
23 would require the State's congressional map to simply
24 accurately reflect that black communities geographically exist
25 in the state alongside their neighbors, and order the relief

1 requested in plaintiffs' complaint.

2 Now I will provide a little more detail about the
3 case plaintiffs will present, including testimony that is
4 already admitted by deposition designations.

5 The General Assembly did not need to cabin black
6 voters to a single congressional district. The evidence will
7 show that the State was not compelled to draw the lines that
8 it did by population changes throughout the state. The result
9 was not compelled by the State's House or Senate redistricting
10 criteria. The result was not compelled by public input and
11 testimony. The result was not compelled because the General
12 Assembly had various nondiscriminatory alternatives available
13 to it. Instead, as the evidence will show, the General
14 Assembly, again, made a series of deliberate choices that were
15 shrouded in secrecy and that were designed to minimize black
16 political power.

17 First, plaintiffs' expert, Dr. Moon Duchin, will
18 demonstrate that, as of the 2020 census, South Carolina's long
19 contributing and vibrant black voting age population is
20 25 percent. And the data reflects that there has been growth
21 of the black population in Charleston and Richland Counties
22 among other select district areas of the state. Dr. Duchin
23 will testify that Congressional District 1 was overpopulated
24 by approximately 80,000 voters, and Congressional District 6
25 was underpopulated by 80,000 voters. If balancing and

1 maintaining core districts were the primary goals, as
2 legislative defendants claim, then the General Assembly could
3 have moved voters primarily between CDs 1 and 6. But the
4 legislature didn't simply redistribute voters between CDs 1
5 and 6 to address the malapportionment. They shifted hundreds
6 of thousands of voters and shuttled hundreds of precincts
7 around the state. The General Assembly moved 150,000 people
8 from CD 1 when CD 1 was, again, overpopulated by 80,000
9 people. It didn't have to be this way. As Dr. Duchin, and
10 Dr. Kosuke Imai and legislators will testify, there were a lot
11 of alternatives capable of achieving the necessary
12 redistribution of population in a race-neutral way.

13 Second, you will hear testimony from South Carolina
14 community members, including the South Carolina State
15 Conference president, Brenda Murphy, on behalf of 13,000 State
16 Conference members, and other individual voters. They, too,
17 will tell that you the public urged the legislature to protect
18 black communities of interest in reapportioning areas of the
19 state and not crack or minimize their influence. As the
20 evidence will show in the full legislative record, these
21 concerns were repeatedly raised by members throughout the
22 state, at public hearings, and in written correspondence to
23 legislators.

24 Based on Dr. Duchin's discussion about population,
25 along with the testimony of community members in the public

1 record, it would have been natural, absent the excessive use
2 of race, to see increased opportunity for black voters in
3 congressional districts, like 1 and 5, which would have been
4 competitive politically based upon recent elections. Instead,
5 however, Congressional District 1 now has the lowest, the
6 lowest black voting age population of all seven districts.
7 This is not only unusual, as the testimony of Drs. Duchin and
8 Imai will show, but according to the testimony of plaintiffs'
9 experts, Dr. Duchin and Dr. Baodong Liu, the black voting age
10 population of districts, like CD 5, have been kept at a level
11 that ensures it cannot perform electorally for black voters.

12 While reducing the BVAP in Congressional District 6,
13 as the testimony of Drs. Duchin, Imai, Liu and Jordan Ragusa
14 will show, the General Assembly cracked black voters along the
15 borders of the CDs 1 in Charleston and North Charleston,
16 Congressional District 5 in Sumter, and Congressional District
17 2 in Richland. The General Assembly ripped through these
18 communities, the cities within them, and the communities
19 within those counties and cities -- all of them with
20 significant black population -- to keep the BVAP in CDs 1, 2
21 and 5 unnecessarily diminished.

22 Third, you will hear testimony that the General
23 Assembly applied its adopted criteria in contradictory and
24 inconsistent ways, and they elevated and prioritized secret
25 considerations never disclosed to the public. Members of the

1 public acted in good faith and they sought to make public
2 proposals of maps using the public criteria that the
3 legislature adopted, and the factors the legislators discussed
4 during their presentations of what considerations will go into
5 the map drawing process.

6 The chair of the Judiciary Committee and Senate
7 Redistricting Subcommittee, Senator Rankin, declared at the
8 beginning of the redistricting cycle that the criteria is
9 going to serve as guardrails. The truth is that the
10 guardrails weren't guardrails for black voters at all, because
11 complying with them would have derailed their efforts to
12 minimize black political power.

13 Fourth, the record will show that the General
14 Assembly's efforts to obtain public input in testimony was
15 little more than window dressing. Both the House and Senate
16 conducted a series -- albeit, in limited ways -- a public
17 hearing to gather public input about communities of interest
18 throughout the state. Instead of synthesizing that material
19 and implementing it, they effectively sat on it and shelved
20 it, nor did they create digestible maps that track the public
21 testimony. Instead, the record will show that the General
22 Assembly prioritized a secret set of nonpublic requests. The
23 testimony of Senate and House staff counsel, Andrew Fiffick,
24 Will Roberts, and Thomas Helget, and Charles Terrine, show
25 that Representative Joe Wilson, he wanted a hook in Richland

1 County to keep Fort Jackson. That request was implemented and
2 split Richland in a way to harm black voters. Nor did
3 Representative Wilson want Beaufort County in Congressional
4 District 2. That request was implemented, and done in such a
5 way as to unnecessarily split Charleston County.

6 The testimony of House counsel Patrick Dennis shows
7 that Representative Nancy Mace wanted to make Congressional
8 District 1 safer for her. That request was implemented in a
9 way that disproportionately moved black voters out of her
10 district. The testimony of Senate and House staff and
11 counsel, Mr. Fiffick, Mr. Roberts, Mr. Helget, and
12 Mr. Terrine -- Charlie Terrine -- show that Senator Rankin
13 instructed the Senate's map drawer to not touch Congressional
14 District 7. That request not only impacted the adjacent
15 First, Fifth, and Sixth Districts, but it also limited
16 opportunities to redraw lines and -- that served all voters
17 throughout the state.

18 And the testimony of House staff, Mr. Helget, shows
19 that Representative Jordan instructed him to abandon a draft
20 map that the House staff had prepared, that provided more
21 electoral opportunities in favor of a harmful Senate map.
22 Frankly, a map that the public thought was the worst map of
23 all the maps that the legislature proposed. And
24 Representative Jordan did so after he was contacted by
25 Representative Duncan and advised that the congressional

1 delegation preferred the Senate map.

2 These requests were not all that were kept from the
3 public. The Senate staff received three maps from the
4 National Republican Redistricting Trust early in the drafting
5 process, with the message that they were supported by the
6 Republican members of the congressional delegation. Two of
7 those maps were shared with House staff.

8 While this Court is going to have evaluate the
9 credibility of defense witnesses, who vociferously deny that
10 these maps had any impact or influence on the mapmaking, these
11 plans speak for themselves, particularly in the way that they
12 depart from traditional redistricting guidelines, much like
13 the enacted plan. And it is undisputed that these proposals,
14 again, were never released to the public. Other legislators,
15 like Representative Jordan and Senator Rankin, publicly
16 pronounced all testimony would be given equal weight, all
17 criteria would be considered. The General Assembly
18 subordinated traditional redistricting criteria to accommodate
19 the request from the six Republican members of Congress. And
20 this accommodation was at the expense of black voters.

21 Fifth, the General Assembly have plenty of maps
22 available to it that address population deviation and comply
23 with relevant redistricting principles, while also providing
24 electoral opportunity for black voters. Indeed, you will hear
25 from President Murphy of the South Carolina NAACP and others

1 about just a few of those nondiscriminatory maps that they
2 proposed to the General Assembly. Senator Harpootlian also
3 introduced a plan later in the legislative session that
4 responded to the drumbeat of public demands to keep Charleston
5 County whole in CD 1, as well as Beaufort County in CD 1, and
6 that would have created opportunities in other parts of the
7 state outside of CD 6 for black voters.

8 You will also hear from Dr. Duchin and Dr. Imai about
9 how the enacted congressional map is an outlier, compared to
10 thousands, thousands of other alternative maps generated using
11 race-neutral, objective criteria. Ultimately, the challenge
12 map the governor signed into law did what the public urged it
13 not to do, split counties and cities within them, which the
14 public identified as communities of interest like Charleston,
15 Sumter, Richland and Orangeburg. It splits those counties and
16 cities to crack minority voters, but it kept whole Beaufort,
17 resided in largely by white voters, and in CD 1, as voters
18 preferred. It split cities with sizable black populations,
19 like Sumter, North Charleston and Columbia, within their
20 respective counties. So, not just splitting the counties,
21 splitting the areas of black voters within those counties,
22 which voters urged it not to do during the legislative
23 process.

24 The General Assembly responded to Sun City's
25 preferences with it's largely white population in Jasper

1 County, urging the legislature to keep Sun City whole and out
2 of Congressional District 6, the latter being, again, where a
3 significant number of black voters live and contribute.

4 Sixth, as the House defendants and Senate defendants
5 concede, the map they enacted wasn't compelled by the Voting
6 Rights Act. Indeed, they didn't conduct any assessment of
7 compliance with Section 2 of the Voting Rights Act by
8 attempting to draw a second majority/minority district for
9 black voters outside of CD 6. Mr. Helget, Mr. Fiffick, and
10 Mr. Dennis, among other decision makers, admitted the
11 legislature made no effort in that regard. Despite repeated
12 calls from civil rights organizations, like the South Carolina
13 NAACP, as well as legislators like Representative Cobb-Hunter
14 and Senator Harpootlian, the legislature failed to perform a
15 racially polarized voting analysis. That's the heart of the
16 Section 2 analysis.

17 As Dr. Liu will testify, a racially polarized voting
18 analysis provides context for understanding the impact of line
19 drawing on black voters. This is an analysis of whether black
20 voters bloc vote for their preferred candidates and non-black
21 voters usually -- not always -- usually bloc vote against
22 black voters' preferred candidates.

23 Without RPV, according to Dr. Liu and members of the
24 public, there's likely no harm in cracking black voters among
25 white voters so that they are the minority of the voting

1 population, because they do not have differing candidate
2 preferences in blocs. But if there is RPV, cracking submerges
3 black voters among a white voting population that will have
4 the opportunity, unlike black voters, to control all the
5 elections and practically and potentially, the policy
6 decisions, the life decisions that flow from that
7 representation.

8 Give me a second, your Honors.

9 The evidence will demonstrate un-rebutted RPV in this
10 case. Defendants do not contest the existence of racially
11 polarized voting. Unable to explain the lines in the enacted
12 map based on population changes, other federal law,
13 redistricting criteria like communities of interest, public
14 testimony, alternative maps, defendants use core retention to
15 rationalize their actions in redistricting, an after-the-fact
16 justification. In truth, legislative defendants did not raise
17 core retention as a primary consideration during multiple
18 public hearings and committee hearings until January 2022,
19 after multiple maps had been introduced both by the public and
20 by the legislature.

21 As with the post-hoc-partisan excuse for
22 redistricting lines, legislative defendants' belated reliance
23 on core retention to explain its redistricting choices, it
24 must be rejected. Plaintiffs' expert, Dr. Joe Bagley, will
25 show this core retention idea wasn't advanced as a key

1 explanation for the line until very late in the legislative
2 cycle in January 2022, nor does the record reflect that
3 preservation of district core, allegedly a facet of
4 constituency, played a central role in the House and Senate
5 redistricting guidelines. It's not listed at all in the House
6 guidelines, and it's only listed under additional
7 considerations in the Senate criteria, far below, far below
8 the mandates of federal, constitutional, and statutory law.

9 Legislative defendants' assertion that core retention
10 precludes illegality is factually incorrect, especially given
11 the drastic population imbalance between the population
12 migrations back and forth and back again in Congressional
13 Districts 1 and 6 that made changes to the prior map
14 necessary, and that the map removed from CD 1, the city of
15 Charleston, which had, in fact, been the core of CD 1 going
16 back to over a century.

17 Nevertheless, even if core retention was a top
18 redistricting criteria for legislative defendants -- and it
19 was not -- Dr. Duchin will explain that it would not lock in
20 the dilutive effects found in the congressional plan. Indeed,
21 Dr. Duchin will explain an alternative plan -- amongst many,
22 many others -- that retains 92 percent of the population
23 assigned to the districts in the enacted map. But by changing
24 just one single boundary line between two districts, two
25 districts in the entire plan, that alternative plan will

1 outperform the congressional map in terms of electoral
2 opportunities for black voters. And, again, that's just one
3 of many alternatives available.

4 To summarize, even if core retention had been the
5 actual contemporaneous justification for the enacted map,
6 which it was not, and core retention was a legitimately
7 elevated guiding criteria for legislative defendants, which
8 the record will show it was not, core retention still did not
9 make it necessary to harm and dilute black voting opportunity
10 in the challenged districts.

11 Partisan advantage has also been advanced by
12 legislative defendants' lawyers and their expert, Mr. Trende,
13 -- Sean Trende -- as the justification for the harmful lines,
14 but it, too, doesn't explain the choices. Partisan advantage
15 isn't an express goal in either the Senate or the House's
16 criteria. To the extent it is, maybe it's related to a desire
17 to protect incumbents. But incumbency protection, much like
18 core retention, is a low priority in both the House and
19 Senate's criteria. And federal courts have recognized that
20 it's simply a much lower traditional redistricting principle,
21 if it is one, than the protection of minority voters, which
22 both guidelines, at least in theory, elevate as first
23 priority. Dr. Joseph Bagley will show that partisan advantage
24 consideration was never publicly advanced during the
25 legislative process. In fact, the record will show that

1 partisan advantage was disclaimed. It was disclaimed by
2 officials like Senator Campsen during the legislative debate,
3 as well as throughout the discovery process by other key
4 legislators and their staff.

5 Significantly, the Supreme Court, this Circuit, and
6 other courts in cases like *Cooper v. Harris* and *North Carolina*
7 *v. McCrory* make clear that partisanship, that cannot be the
8 goal if the rights of minority voters are trampled upon to
9 achieve that advantage.

10 As Dr. Liu and Dr. Duchin will show, that's exactly
11 what happened here. For example, based on electoral data, Dr.
12 Lui will show that black voters who participated in the 2018
13 Democratic primary were moved disproportionate to their share
14 of the population in Congressional Districts 1 and 2, as
15 compared to white voters. Dr. Duchin will show that, when
16 compared to a neutral set of alternative plans, the enacted
17 plan performs worse for black candidates of choice of black
18 voters than for generic candidates in general elections. Put
19 plainly, when black voters prefer black candidates in recent
20 contested elections in South Carolina are at issue, those
21 candidates fared far worse in districts in the enacted plan,
22 the generic candidates in Dr. Duchin's analysis, and you'll
23 hear about that later today.

24 Over the days ahead, this Court is going to hear from
25 six experts: Five for plaintiffs, and one for legislative

1 defendants. Plaintiffs' experts have performed detailed
2 voting analysis of voting data, they've run extensive
3 simulations, and they've applied rigorous statistical rules to
4 each of their conclusions to be sure. Defendants will
5 continue to try to attack and discredit their work, much of
6 what we've seen them try to do in the motions in limine, but
7 what defendants will not do is come forward with meaning
8 analyses of their own. They won't have an expert that
9 analyzed the same data in the same way and reached a different
10 conclusion.

11 In sum, this evidence -- along with much, much
12 more -- notably, from the testimony of impacted black voters,
13 will show that race was the predominant factor motivating the
14 General Assembly's placement of a significant number of black
15 voters within the challenged Congressional Districts 1, 2, and
16 5, and without them, and without a compelling interest that is
17 narrowly tailored, which violates the Fourteenth Amendment of
18 the U.S. Constitution, and that the General Assembly's
19 enactment of the challenged districts was motivated in part to
20 discriminate against black voters, in violation of the
21 Fourteenth and Fifteenth Amendments of the U.S. Constitution.

22 Plaintiffs come to this Court understanding their
23 burden under those constitutional provisions. But to be
24 clear, the burden will show that the enacted plan at issue was
25 designed to consign black South Carolinians to be able to

1 impact elections in a single congressional district for
2 another decade and deprive them of an opportunity and a voice
3 in every other district. There are many remedies that correct
4 for the unconstitutional racial gerrymandering and intentional
5 vote dilution that will have life-changing impact on black
6 South Carolinians and, therefore, all South Carolinians.

7 As plaintiff, President Murphy of the South Carolina
8 NAACP, and Tai Scott, Mr. Angene Davis, as well as South
9 Carolina NAACP state branch presidents and other witnesses
10 will share with this Court, black voters, under a fair,
11 legally compliant map, will have the opportunity to elect
12 representatives of their choice who could be responsive to
13 their needs for improved education, prevention of further land
14 loss, housing, and fully and fairly funded historic black
15 colleges and universities programs, infrastructure programs
16 and affordable healthcare. The congressional map in South
17 Carolina matters to the lives of these American citizens. It
18 must be constitutional. The enacted map is not, and that's
19 what brings us here today.

20 Thank you, your Honor.

21 JUDGE GERGEL: Thank you. I have a couple of
22 questions, if I could, to clarify.

23 MS. ADEN: Yes, your Honor.

24 JUDGE GERGEL: I noticed -- we noticed that CD 6 in
25 the 2022 enactment has a lower BVAP than 2012. First of all,

1 is there a challenge to CD 6?

2 MS. ADEN: There is no challenge to CD 6.

3 JUDGE GERGEL: And what is the explanation for the
4 lower BVAP?

5 MS. ADEN: In the record? Potentially the need to
6 move voters between -- to readjust apportionment between CDs 1
7 and 6. But as our experts and fact witnesses will show, one
8 would think that if you reduce black voting population in that
9 district, you would see it show up in other areas of the
10 state. But what you'll hear from Dr. Duchin later this
11 morning, that of certain districts -- CD 7 is one, I believe,
12 CD 5 or 2 -- the black voting age population is completely
13 stagnant, and you don't see it show up in other districts.
14 So, that is what is emblematic of the cracking, the
15 disbursement of black voters, outside of CD 6 to 1, to 2, 5,
16 and so forth.

17 JUDGE GERGEL: Well, *Cooper*, a 2017 case, addressed
18 the issue of packing and cracking --

19 MS. ADEN: Yes.

20 JUDGE GERGEL: -- and indicated that racial conscious
21 line drawing required a show of compelling state interest.
22 And the Voting Rights Act could be a compelling state
23 interest, correct?

24 MS. ADEN: That is correct.

25 JUDGE GERGEL: Okay. So, is one way to read the

1 lower BVAP that the legislature was, in fact, responding to
2 *Cooper*, that it had maintained essentially the same numbers it
3 would require a low level of racial line drawing and it could
4 not have survived a racial polarized voting analysis?

5 MS. ADEN: There's no evidence in the record, your
6 Honor, that that was on the minds -- or if that was disclosed
7 to the public as a justification for the drop in CD 6.
8 There's no evidence that they looked at the requirements of,
9 not only Section 2, but anything to implement a racial
10 gerrymandering analysis. No analyses, no studies, nothing to
11 show that that is what motivated the decision to reduce the
12 black vote in --

13 JUDGE GERGEL: But in prior years, it would have been
14 very controversial to have moved a historically black
15 congressional district --

16 MS. ADEN: Absolutely.

17 JUDGE GERGEL: -- from a majority to a non-majority
18 position, correct?

19 MS. ADEN: Absolutely.

20 JUDGE GERGEL: And at one point, that would have been
21 considered a retrogression under the Voting Rights Act,
22 correct?

23 MS. ADEN: Yes.

24 JUDGE GERGEL: But under *Cooper*, you can't do that
25 under the Fourteenth Amendment unless you can demonstrate the

1 need for the racial polarized voting analysis, correct?

2 MS. ADEN: Which was not done -- at least publicly
3 done and disclosed to the public, despite repeated requests.

4 JUDGE GERGEL: Well, that then raised the question --
5 you were talking about core. If, in fact, the change from
6 2022, from 2012, was the legislature's -- perhaps unstated but
7 proper compliance with *Cooper*, what would we make of using
8 cores if the 2012 plan probably wouldn't meet *Cooper* standards
9 in 2022?

10 MS. ADEN: It seems like they would run into conflict
11 with one another.

12 JUDGE GERGEL: You see where I'm -- the question I
13 have here is, normally, one would expect that with these
14 changes in the BVAP, that the plaintiffs would be raising cane
15 about it. But there may well be an argument that the
16 legislature was complying with *Cooper* -- maybe not stated, but
17 you're not here challenging that the vote is unnecessary. You
18 think that -- I think it said in y'all's brief that you think
19 at 46-point-whatever percent, that it would perform to allow
20 African Americans to elect a candidate of their choice,
21 correct?

22 MS. ADEN: At least in the short term, there's no
23 evidence that the district would not perform at 46 percent.
24 But what the evidence will show is, despite that drop and
25 despite where black people live in other parts of South

1 Carolina, such as in Charleston, such as in the
2 Columbia/Richland area, such as in Sumter, there is no
3 explanation for why there is no electoral opportunity outside
4 of CD 6, besides cracking, to maintain power in one area of
5 the state.

6 JUDGE GERGEL: Well, *Cooper* requires not necessarily
7 a look at the impact of -- the defendants make the point that
8 African Americans aren't entitled to be in a coalition, they
9 don't have a constitutional right. But *Cooper* doesn't really
10 require that now, does it? It just simply says: Are we
11 moving voters from one congressional district to another
12 because of their race? We're placing them in a district
13 because of their race, correct?

14 MS. ADEN: Yes.

15 JUDGE GERGEL: And that could be allowed only if
16 there was a showing of a compelling state interest?

17 MS. ADEN: Yes.

18 JUDGE GERGEL: So, you assert that the split, say in
19 Sumter or Richland, are not necessary to maintain CD 6 as a
20 performing district in which African Americans can elect a
21 candidate of their choice?

22 MS. ADEN: Correct.

23 JUDGE GERGEL: You mentioned various plans. And one
24 thing you didn't expressly mention, but Dr. Duchin mentioned,
25 was the League of Women Voters Plan. Tell me about that plan.

1 You know, we don't have a lot of detail about it, but it was
2 described in Dr. Duchin's report as having the fewer splits,
3 it was more compact than a lot of the other plans, etcetera.

4 Why does no one seem to want the League of Women
5 Voters Plan?

6 MS. ADEN: I don't think it's no one seems to want
7 it. I think it was one of many that were proposed. I think
8 that the record will reflect that when they proposed that map,
9 they sent it in with a letter that defined how each of the
10 maps performed better than, or comparable to the State's
11 stated criteria. I think one rationalization for why it was
12 rejected was, initially, there was one incumbent who was
13 paired, but then they corrected the record and they unpaired
14 them. So, on many accounts, the map was a completely fine
15 alternative that met all of the State's criteria.

16 JUDGE GERGEL: It just didn't seem to have a lot of
17 the racial splits that the other plans had, even the NAACP
18 plans.

19 MS. ADEN: And I will just say that your Honor will
20 hear more about that map from both Dr. Duchin, as well as
21 from, perhaps, Lynn Teague of the League of Women Voters who
22 can discuss that map. And the record is also replete with
23 comparisons of that map to the State's map, and it does
24 perform better than or comparable to the map. And it was
25 disregarded, in large part, because we also think the record,

1 as I tried to explain, had criteria that had to be met. And
2 once those criteria became the foundation for the map, all of
3 the legitimate reasons for placing voters within and out of
4 districts fell by the wayside.

5 When you lock in CD 7 so that you can't do anything
6 in that area of the state, that limits your ability to do more
7 in other parts of the state. When you hear people say,
8 there's a map that can satisfy the folks in Beaufort who want
9 to stay in CD 1, and here's a map -- and that same map that
10 can satisfy the voters in Charleston and keep them whole, even
11 though they haven't been whole in the previous map, and that
12 map, otherwise, doesn't make a lot of changes in other parts
13 of the state, and it reapportions people, but it's rejected
14 because it would create a chance at opportunity -- not a
15 guarantee, but just a chance that an election would not be a
16 sure thing --

17 JUDGE GERGEL: Again, you may be asking more than
18 *Cooper* requires. *Cooper* requires: Did you place African
19 Americans in a district -- or remove them from a district for
20 predominantly racial reasons? If there are not predominantly
21 racial reasons, it's lawful. It's at least not a violation of
22 the Fourteenth Amendment. But if it was predominantly racial,
23 then the question is: Is there a compelling state interest
24 narrowly tailored, correct?

25 MS. ADEN: Correct.

1 JUDGE GERGEL: You talk about the divisions in
2 Charleston. There's an appendage that comes down into -- and
3 according to the complaint, plaintiffs' complaint, and in the
4 report of Dr. Duchin, it comes into -- at least the entirety
5 of North Charleston. It splits --

6 MS. ADEN: Yes. Very erratically.

7 JUDGE GERGEL: -- the city of Charleston --

8 MS. ADEN: Yes.

9 JUDGE GERGEL: -- and it goes out to the Sea Islands,
10 south part of the county, correct?

11 MS. ADEN: Correct.

12 JUDGE GERGEL: Do we know the percentage of African
13 Americans in Charleston County that are in CD 6 versus CD 1 as
14 a result of that?

15 MS. ADEN: Yes. I think one of our experts,
16 Dr. Ragusa, is going to be able to testify and answer your
17 questions on that. I'm not the expert here. We actually
18 hired some, your Honor.

19 JUDGE GERGEL: I'm eyeballing it here. It looks like
20 the predominant African-American boxes in the county are all
21 included in those splits, both the split of City of
22 Charleston. Wasn't Charleston already split, though, in 2012?

23 MS. ADEN: It was. But there is plenty of case law
24 that maintaining the boundaries, the cores of boundaries, as
25 in a per se defense, every new redistricting cycle, there's

1 new data. There's a chance to look at new districts.

2 JUDGE GERGEL: There's *Cooper*. So does *Cooper*.

3 MS. ADEN: So does *Cooper*, yes, and in many other
4 cases.

5 JUDGE GERGEL: With *Cooper* today, could the 2012 plan
6 actually survive its 52 percent? It's clearly -- it seems a
7 frank racial gerrymander under *Cooper*'s analysis. I mean, a
8 racial gerrymander is okay if there is a compelling state
9 interest, but you'd have to prove it with racial polarized
10 voting. Would you really need it in 2012, 52 percent worth of
11 CD 6 to perform?

12 MS. ADEN: We don't have that analysis in the record,
13 but I think -- the evidence that we believe exists is that
14 that would be a sufficient population but is not a necessary
15 population, and it should not be an explanation for the choice
16 to crack black voters in particular areas.

17 I do want to also focus the Court on the fact that we
18 have an intentional vote dilution claim, where the Court has
19 to look at direct and indirect circumstantial evidence of
20 discrimination and whether or not these lines make sense,
21 whether or not the reasons that --

22 JUDGE GERGEL: This is an *Arlington Heights* analysis?

23 MS. ADEN: Under an *Arlington Heights* analysis, where
24 the Court could look --

25 JUDGE GERGEL: Wouldn't *Cooper* control -- I mean, are

1 you telling me there's going to be -- you know, in an election
2 setting, we're not going to have to -- the plaintiffs aren't
3 going to have to show predominance?

4 MS. ADEN: Under a separate claim? Yes, that is my
5 explanation. And I'll let you know if I'm wrong. But there
6 are separate --

7 JUDGE GERGEL: Very dubious on that one. I think
8 you're going to have to show predominance.

9 MS. ADEN: The Constitution -- the Equal Protection
10 Clause, as I understand it, frowns upon and prohibits any
11 intentional discrimination if you harm one voter, if you harm
12 five voters, if you harm a disparate impact, because that is
13 supposed to be forbidden activity.

14 JUDGE GERGEL: But *Cooper* says any significant bloc
15 of voters -- a single voter. It's not a single voter. I hear
16 what you're saying. You know, even one -- if you said I'm
17 going to get an African-American voter and move it, that would
18 seem to violate, even if it was one person, right?

19 MS. ADEN: It should under our Constitution, your
20 Honor.

21 JUDGE GERGEL: But that would be the predominant
22 purpose?

23 MS. ADEN: And I think that we can show through our
24 expert and fact testimony that that is, indeed, what happened
25 in that area, as well as CD 2 and CD 5. But we will be

1 grappling with these questions and, hopefully, answer them as
2 we continue to move forward.

3 JUDGE GERGEL: Thank you, ma'am.

4 MS. ADEN: Thank you, your Honor.

5 JUDGE GERGEL: Okay. Mr. Gore, for the Senate.

6 MR. GORE: Good morning, your Honors. John Gore, for
7 the Senate defendants. We were hoping to share a visual aid
8 this morning.

9 JUDGE GERGEL: Good luck. The rule in courtrooms is:
10 If it can break, it will.

11 MR. GORE: A rule I've learned the hard way on
12 several occasions, your Honor. I'm sure you have.

13 Your Honors, redistricting is primarily the duty and
14 responsibility of the state. And states must have discretion
15 to exercise the political judgment necessary to balance
16 competing interests. That's a Supreme Court's holding in
17 *Miller v. Johnson*. The Court further explained in *Miller* that
18 this Court must presume the good faith of the General Assembly
19 and must exercise extraordinary caution in adjudicating
20 plaintiffs' claims that the General Assembly drew the enacted
21 plan on the basis of race.

22 The Supreme Court has also clarified the plaintiffs
23 here face a demanding burden of proof on their racial
24 gerrymandering and intentional discrimination claims. The
25 evidence will show that the plaintiffs have failed to carry

1 that burden and the Court should enter judgment for the
2 defendants.

3 Plaintiffs are trying to make this case a lot more
4 complicated than it is. This case is about a map. It's about
5 a congressional districting map that the General Assembly
6 adopted to balance population and to achieve other goals in
7 South Carolina's seven congressional districts, following the
8 belated release of the 2020 census results. Plaintiffs allege
9 that the General Assembly engaged in racial gerrymandering and
10 intentional discrimination when it drew and adopted this map.
11 But the undisputed evidence alone will show that plaintiffs'
12 plans failed. This is a map of the enacted plan. Each of the
13 districts has its own unique color: Purple for District 1;
14 blue for District 2; green for District 3; pink for District
15 4; yellow for District 5; gray for District 6; and aqua for
16 District 7.

17 JUDGE GERGEL: It says the Benchmark Plan. Isn't
18 this the 2012 plan?

19 MR. GORE: The colors are the enacted districts, and
20 the dark blue lines that you see cutting through there are the
21 benchmark line. So, this is the enacted plan with the
22 benchmark line superimposed over it.

23 JUDGE GERGEL: I got you. Thank you.

24 MR. GORE: And in 2012, as the Court is well aware, a
25 three-judge panel of this Court in *Backus* upheld the benchmark

1 plan against a variety of racial gerrymandering and
2 discrimination claims. The U.S. Supreme Court summarily
3 affirmed that judgment. The justice department, under the
4 Obama Administration, also pre-cleared the benchmark plan
5 under Section 5 of the Voting Rights Act.

6 Fast forward to the 2020 U.S. Census results. There
7 had been population growth in South Carolina, but that growth
8 had been uneven in different parts of the state. So, the
9 General Assembly had to balance the population across the
10 seven districts. District 1 was overpopulated by
11 approximately 80,000 people due to growth on the coast, and
12 District 6 was underpopulated by approximately 80,000 people
13 due to a relative loss of population in those areas of the
14 state.

15 Ms. Aden mentioned in her opening statement that the
16 black voting age population -- total population number
17 increased in South Carolina --

18 JUDGE GERGEL: But the percentage decreased.

19 MR. GORE: The percentage did decrease, your Honor.
20 And that's because the white voting age population increased
21 even more over that intermediate decade. And in the areas --
22 that was true in the areas covered by District 6.

23 So, to answer your Honor's question, at the time that
24 the 2020 census results were released, recall that District 6
25 was only 88 percent of the district. It was 12 percent

1 underpopulated. That's why it looked like it had 52-percent
2 black voting age population -- or 51, whatever it was at that
3 time -- still remaining in the district. But when the
4 district was redrawn due to population shifts, the black
5 voting age population decreased in that area.

6 JUDGE GERGEL: Mr. Gore, what was it in 2012 when it
7 was adopted?

8 MR. GORE: It was -- I think it was slightly over
9 52 percent.

10 JUDGE GERGEL: I thought it was in the 52-percent
11 range.

12 MR. GORE: Fifty-two-percent range. And even under
13 the 2020 census results, it was still over 50 percent. But
14 the denominator was too small. The denominator was only 88
15 percent of the district because that district was
16 underpopulated. And because of population shifts and patterns
17 in the state over the end of the decade, when the General
18 Assembly redrew the district, the district lines encompassed a
19 black voter population.

20 JUDGE GERGEL: There was an area, as you know,
21 Mr. Gore, where there was a thought you couldn't retrogress
22 from a prior plan, voting rights required it. And very
23 odd-shaped districts were drawn all over the country to comply
24 with that mandate, because a lot of these historically
25 majority African-American districts were in rural areas which

1 were losing population every decade. And maybe I'm misreading
2 *Cooper*, but *Cooper* kind of seems like you can do that only if
3 you can demonstrate the need for those numbers. I mean, you
4 can't just sort of no retrogression or must be more than
5 50 percent is no longer good enough. In any racial line
6 drawing, you have got to demonstrate, through a racial
7 polarized voting analysis, that it's required. And maybe I'm
8 misreading it. I took the General Assembly's response to
9 creating a 47-percent African-American district was in
10 recognition that you couldn't maybe draw a district just like
11 you did in 2012 because it couldn't be justified with racial
12 polarized voting.

13 Doesn't that seem like a reasonable interpretation of
14 that?

15 MR. GORE: That's a very reasonable interpretation,
16 your Honor. District 6 complies with *Cooper*. There hasn't
17 even been a challenge to District 6 in this case, as your
18 Honor has pointed out. The non-retrogression mandate came
19 from Section 5 of the Voting Rights Act, which is no longer
20 operative after the *Shelby County* decision from the U.S.
21 Supreme Court. So, there's no justification to avoid
22 retrogression.

23 JUDGE GERGEL: You know, a lot of the so-called
24 packing was meeting the non-retrogression requirements of
25 voting rights of *Shelby* -- pre-*Shelby*.

1 MR. GORE: Absolutely.

2 JUDGE GERGEL: And once you did that, then it's not
3 so critical. What you've got to show is that the district
4 will still perform, and though there's no racialized polarized
5 voting in the record that I've seen -- maybe there is
6 something buried under all that and we'll hear -- everybody
7 seems to assume it's a performing district.

8 Is that a reasonable assumption, that CD 6 is a
9 performing district?

10 MR. GORE: Absolutely it's a reasonable assumption,
11 your Honor. And as I'll lay out in a couple of moments, the
12 Senate staff also received a request from Mr. Dalton's
13 president, who is a staffer for Congressman Clyburn, who asked
14 for minimal changes to District 6. So, there's no dispute
15 that District 6 is a performing district at its current BVAP
16 level, and the plaintiffs don't even dispute that.

17 Because there was no dispute on that question, there
18 was no justification for the General Assembly to engage in
19 race-based line drawing to try to increase the BVAP in
20 District 6. That, in and of itself, would have been a racial
21 gerrymander. To have drawn District 6 intentionally to
22 increase the BVAP beyond this level wouldn't have had any
23 justification for the reasons your Honor has indicated. The
24 district already performed, and so there was no justification
25 to increase that number, particularly in the lack of a

1 non-retrogression mandate under Section 5, which is no longer
2 operative.

3 JUDGE GERGEL: Just eyeballing your map here, it
4 looks like some of the more aggressive line drawing in the
5 2012 plan, the Senate did not pursue in 2022. It came into
6 Charleston County, for instance, one time instead of twice.
7 And before, it looked kind of like two claws of a crab, but it
8 now comes in, in one area of Charleston County.

9 Am I reading that right?

10 MR. GORE: That's absolutely correct, your Honor.

11 JUDGE GERGEL: And I asked the question to the
12 plaintiffs. Maybe you know this. When looking at that
13 appendage, what percentage of the African-American vote in the
14 county -- in the city of Charleston -- is in CD 6 versus CD 1?

15 MR. GORE: I don't have that data off the top of my
16 head, your Honor, but that is something that I imagine we can
17 glean from the record.

18 JUDGE GERGEL: I mean, there was discussion about
19 cores and the importance of cores and all of that. If the
20 prior plan would today be a gerrymander and that's why the
21 legislature didn't pursue it, then it seems to me remaining
22 the core of a prior district that wouldn't be *Cooper* would not
23 be such a high priority. Do you understand what I'm saying?

24 MR. GORE: I believe I understand your Honor's
25 question. But let me point out something that's very

1 important. In the Virginia cases, the *Bethune-Hill* cases that
2 ended in the Supreme Court, the Supreme Court has said that
3 the *Shelby County* decision rendering Section 5 inoperative
4 doesn't taint the prior plan. It doesn't turn the prior plan
5 into some kind of racial gerrymander, because, of course, at
6 the time --

7 JUDGE GERGEL: It was lawful at the time.

8 MR. GORE: Right, it was lawful.

9 JUDGE GERGEL: It would have been unlawful not to
10 have done it.

11 MR. GORE: Absolutely.

12 JUDGE GERGEL: But my question is -- then we look at
13 the residues of that and we're saying we want to at least
14 change plan. Well, today under *Cooper*, it wouldn't be
15 allowed, then we wouldn't allow a residue of that plan, unless
16 it, otherwise, met constitutional standards under *Cooper*. Is
17 that fair?

18 MR. GORE: Sure. But I think you would focus on the
19 changes to see whether the changes to the map satisfied *Cooper*
20 or otherwise ran afoul of racial gerrymandering, because, of
21 course, preserving the core is a traditional districting
22 principle. So, pursuing that policy doesn't subordinate that
23 principle to race, it complies with that particular tradition.

24 JUDGE GERGEL: Well, the question is -- and you can
25 tell us this, y'all would be able to tell us is: Did the

1 lines drawn here in the 2022 plan, splitting the city of
2 Charleston and the county, did it predominantly place race --
3 the African-American voters in one district versus -- and then
4 basically excluded them from the other?

5 MR. GORE: It was -- it was not done for a racial
6 reason. And we will hear evidence --

7 JUDGE GERGEL: Well, the question is: What are the
8 numbers? I mean, nobody's ever admitted in the history of
9 reapportioning that they intentionally did it for that reason.
10 So, the question is: What do the numbers show us? And I'm
11 raising it for all parties to give us those numbers.

12 MR. GORE: And we'll certainly look into that, your
13 Honor. But let me walk through what the evidence also will
14 show with respect to the 2022 plan. The General Assembly
15 pursued other legitimate policy goals in adopting this map.

16 Let's go to the next slide. It's undisputed that the
17 Senate and House adopted guidelines. The guidelines identify
18 traditional race-neutral criteria that each body would use to
19 draw and consider congressional plans. They didn't pull these
20 out of thin air. These came from the Court's prior decisions
21 in *Backus* in Colleton County, as well as in the decisions of
22 the United States Supreme Court.

23 Let's talk about preservation of cores. The enacted
24 plan is the best core-preservation plan in the record. The
25 Senate guidelines identify preserving the cores of existing

1 districts as a traditional principle. This Court identified
2 that as well in Colleton County and mentioned it again in
3 *Backus*. The enacted plan outperforms all alternatives
4 identified by the plaintiffs on core retention. Moreover,
5 preserving the district cores is the clearest expression of
6 respecting communities of interest, as this Court reasoned in
7 Colleton County. And communities of interest are also a
8 traditional districting principle under the guidelines. So,
9 by preserving cores, the General Assembly is doing many things
10 at once. It's preserving cores, it's protecting incumbents,
11 it's respecting communities of interest that are formed around
12 the benchmark districts. So, avoiding incumbent pairs, it's
13 keeping the incumbents with the cores of their districts.

14 Let's turn to county and VTD splits. The guidelines
15 identify avoiding county and VTD splits with traditional
16 principles. The enacted plan improves on the benchmark plan
17 on both of these metrics. It reduces the number of county
18 splits from 13 to 10, and the number of voting tabulation
19 district of VTD splits from 52 to 13. And the enacted plan
20 outperforms both of the NAACP proposed plans on county and VTD
21 splits. The enacted plan also respects communities of
22 interest. The guidelines direct the General Assembly to
23 preserve those communities of interest. And as I mentioned
24 before, preserving the cores of the benchmark districts is the
25 clearest expression of the enacted plan's respect for those

1 communities. There are other communities of interest that the
2 enacted plan protects.

3 We heard a little bit from Ms. Aden about Fort
4 Jackson in District 2. That's the hook shape in Richland
5 County. This Court, in Colleton County in 2022, actually drew
6 the plan and approved that hook shape to keep Fort Jackson in
7 District 2 with Congressman Wilson. Congressman Wilson is a
8 member of the House Armed Services Committee. That shape
9 existed in the benchmark plan that was upheld against all
10 legal challenges and pre-cleared, and it's preserved here
11 again in the enacted plan.

12 We heard a little bit about Sun City. There was
13 public testimony from members of the public, and there's
14 legislative testimony that Sun City is a community of interest
15 across the Beaufort/Jasper County line. There are two
16 precincts in Jasper that are part of the larger Sun City
17 community. The General Assembly united that community all in
18 District 1. There was also testimony in the record at one of
19 the public hearings about the two Limestone precincts in
20 Orangeburg. Those precincts were moved to District 2 as part
21 of the community of interest they formed there. And no plan
22 identified by the plaintiffs respects these communities of
23 interest as well as the enacted plan.

24 Let's go to our next slide. The enacted plan is
25 contiguous and compact, as the guidelines require, and as a

1 simple review of the map itself shows. The enacted plan also
2 achieves the General Assembly's political goals. The Senate
3 guidelines authorize the General Assembly to maintain
4 political communities of interest and to consider political
5 data and information in drawing a congressional plan. The
6 General Assembly, as we'll hear from numerous witnesses,
7 pursued the political goal of making District 1 a more
8 Republican-leaning district. The enacted plan achieves that
9 goal by increasing the Republican vote share in District 1 by
10 about 1.4 percent on the 2020 presidential results. And no
11 plan identified or proposed by the plaintiffs in the
12 legislative process or this litigation achieves that result.

13 The enacted plan also protects incumbents better than
14 the plaintiffs' alternatives. The guidelines authorize the
15 General Assembly to keep incumbents, residences and districts
16 with their core constituents and to avoid contests between
17 incumbent legislators. The enacted plan keeps incumbents with
18 their core constituents. It avoids pairing incumbents and it
19 protects incumbents by maintaining a 6-1 Republican/Democratic
20 split in the congressional delegation. And no plan identified
21 or proposed by plaintiffs protects incumbents as well as the
22 enacted plan.

23 We heard a little bit this morning about the
24 legislative process, so let me address that. The General
25 Assembly engaged in robust legislative process to adopt the

1 enacted plan. The General Assembly held public hearings in
2 cities and towns across the state over the course of months.
3 Each chamber established special committees to draft
4 redistricting plans and handle redistricting legislation. The
5 committees adopted redistricting guidelines. They held
6 subcommittee hearings, committee hearings and core debates.
7 They established special redistricting websites with maps,
8 plans and data. And they received proposed plans through that
9 website, as well as thousands of public comments to dedicated
10 redistricting e-mail addresses. Those public comments were
11 very valuable in the General Assembly's process. And as you
12 can imagine, there were various communities of interest that
13 were identified.

14 Ms. Aden mentioned that some members of the public
15 wanted to see Charleston all in a single district. It hasn't
16 been in a single district for decades, at least. And there
17 were, of course, as you might imagine, public testimony in
18 favor of keeping Charleston split between two districts.
19 There were some members of the public who believe that
20 Charleston is better served by having two representatives than
21 one, especially if those representatives are of different
22 political parties, which means that one of those
23 representatives at all times can wield influence and political
24 power on behalf of Charleston.

25 So, these undisputed facts alone show that plaintiffs

1 cannot carry their demanding burden to defeat the presumption
2 of good faith here. The undisputed facts show that the
3 enacted plan complies with traditional districting principles,
4 so it doesn't subordinate those principles, let alone, to
5 race. And the undisputed facts also show that the General
6 Assembly's legitimate race-neutral line drawing didn't have
7 the effect or intent of discriminating on the basis of race.

8 And to your point, your Honor, we do agree that on
9 that claim, plaintiffs bear the burden still to show
10 predominance.

11 There's another reason that the plaintiffs cannot
12 carry their burden. Their own evidence will show that they
13 can't carry their own burden. They have no direct evidence of
14 racial gerrymandering or discriminatory intent. Instead, they
15 offer a circumstantial case. But the evidence will show that
16 their circumstantial case ignores the circumstances. The main
17 thrust of their case is the testimony of their putative expert
18 witnesses. The defendants move to exclude those witnesses,
19 but in any event, their testimony is insufficient to discharge
20 the plaintiffs' demanding burden.

21 Four of those putative experts, Drs. Duchin, Imai,
22 Liu and Ragusa, offer an analysis of the enacted plan in
23 support of the plaintiffs' racial gerrymandering claim. But
24 these four putative experts committed the same failed error as
25 the putative expert that the Court excluded or disregarded in

1 *Backus*. In *Backus*, the Court held that a putative expert
2 analysis was incomplete and unconvincing on a racial
3 gerrymandering claim because the putative expert failed to
4 consider all of the traditional race-neutral principles that
5 guide redistricting in South Carolina.

6 In this case, each of those four putative expert
7 witnesses did exactly the same thing: Each failed to consider
8 several race-neutral principles that guide redistricting in
9 the state. But the Court doesn't need to take our word for
10 it. Each of those experts admitted as much. Each of the
11 experts admitted that she or he did not consider core
12 preservation, avoiding VTD splits, or incumbency protection.
13 Drs. Duchin, Imai, and Ragusa also admitted that they didn't
14 consider politics. Drs. Imai, Liu, and Ragusa admitted that
15 they did not consider communities of interest at all. And
16 Dr. Duchin considers only a handful of communities of interest
17 that she deemed important. Finally, Dr. Liu and Dr. Ragusa
18 admit that they did not consider contiguity or compactness,
19 which are basic fundamental traditional districting criteria.
20 So, the evidence will show that the plaintiffs cannot carry
21 their burden on this plan.

22 And there's yet another reason the evidence will show
23 that the plaintiffs can't carry their burden on their racial
24 gerrymandering claim. We've heard this morning about racially
25 polarized voting in South Carolina. The plaintiffs have built

1 their case around an uncontested proposition that race and
2 partisan affiliation are highly correlated in South Carolina.
3 Well, let's look at what the U.S. Supreme Court said about
4 that in *Easley v. Cromartie* and other cases. That means the
5 plaintiffs bear the burden in this case to decouple race in
6 politics. It's not a racial gerrymander to draw lines because
7 of politics. It's only a racial gerrymander to draw lines
8 because of race. So, the plaintiffs bear a burden to decouple
9 race and politics and show that the General Assembly was
10 actually motivated by racial considerations, and that racial
11 considerations predominated rather than political
12 consideration. And that requires them to show that there are
13 alternative ways for the General Assembly to achieve its
14 political objectives that are less race conscious than the
15 plan the General Assembly actually adopted.

16 But the evidence will show that the plaintiffs have
17 not even attempted to satisfy that burden. None of the plans
18 proposed by the plaintiffs in the legislative record or this
19 litigation achieves the General Assembly's political goal of
20 making District 1 more Republican leaning. In fact, they all
21 make District 1 Democratic leaning.

22 JUDGE GERGEL: Mr. Gore, what are we to make of the
23 claims during the debate that there was not a partisan
24 purpose? What do we make of that, Senator Campsen's
25 statements and others?

1 MR. GORE: So, thank you for raising that,
2 your Honor, because I did want to address that.

3 Senator Campsen said something very specific on the
4 legislative record. He said that the plan is not a partisan
5 gerrymander. That's a legal term of art. A partisan
6 gerrymander is a plan that subordinates traditional
7 districting principles to politics. That's not what this plan
8 does, because this plan complies with traditional districting
9 principles. So, a legislature can have a political purpose
10 and a political motivation, and even draw lines on the basis
11 of politics, without committing a partisan gerrymander.
12 Senator Campsen never denied publicly that politics were at
13 issue. In fact, the Supreme Court pointed out that politics
14 is inseparable from the --

15 JUDGE GERGEL: Is there anyone else, other than that
16 one comment by Senator Campsen, denying partisanship played a
17 role?

18 MR. GORE: I'm not aware of one in the legislative
19 record. And I think that was in response to legislative
20 questioning from another member of the Senate. There are
21 other members of the Senate that did say that they thought
22 that partisan motivation was at play in the enacted plan.

23 JUDGE GERGEL: They said that it was?

24 MR. GORE: Yes.

25 JUDGE GERGEL: Were they members of the Republican

1 Party or were they members of --

2 MR. GORE: They were members of the Democratic Party
3 who opposed the plan.

4 JUDGE GERGEL: Yeah. But did any of the Republican
5 members, other than Senator Campsen, address the issue of
6 whether or not it was partisan?

7 MR. GORE: I don't recall that off the top of my
8 head. Again, if all the --

9 JUDGE GERGEL: I know I'm asking you to recall a
10 question, but I noticed that specific comment was referenced,
11 so I was wondering if there are any others one way or the
12 other.

13 MR. GORE: I haven't seen any others referenced,
14 your Honor. I can't prove the negative as I stand here right
15 now.

16 JUDGE GERGEL: Yes.

17 MR. GORE: I will say that Senator Campsen will be
18 here and will testify that he, of course, did consider
19 politics as sponsor of the enacted plan, as will Senator
20 Massey, the majority leader.

21 So, the plaintiffs' alternatives don't meet their
22 burden under *Cromartie*, too, because they don't achieve their
23 political goal in District 1. They're not as consistent with
24 traditional districting principles of the enacted plan for all
25 the reasons I've already discussed, and they don't achieve

1 greater racial balance in the enacted plan.

2 And next, the plaintiffs also cannot show intentional
3 discrimination. The evidence will show that plaintiffs cannot
4 meet their demanding burden to show that the General Assembly
5 adopted the enacted plan because of, and not merely in spite
6 of, an adverse affect on African-American voters. That's a
7 tall order, as the Court is well aware. And the plaintiffs'
8 evidence won't fill it. In addition to failing to show
9 predominance, the evidence doesn't show discriminatory effect.
10 All voters in the state, the evidence will show, are treated
11 the same through the application of race and traditional
12 criteria. The evidence will show that the effect plaintiffs
13 complain about is an effect on all Democratic voters
14 regardless of their race.

15 In particular, plaintiffs aren't challenging District
16 6, they're challenging Districts 1, 2, and 5. Each district
17 contains a minority of African-American voters, somewhere
18 between the 17-percent to 25-percent range on the BVAP in
19 those districts. Those districts also contain large numbers
20 of white Democratic voters. The evidence will show that the
21 enacted plan has an effect on all Democratic voters' ability
22 to form coalitions and to elect candidates of their choice
23 regardless of their race. It doesn't matter what race the
24 Democratic voters are in that district, those districts don't
25 elect Democratic candidates because they're majority

1 Republican districts. So, the enacted plan doesn't have a
2 discriminatory effect on African-American voters. And the
3 plaintiffs' own proposed plans actually bear this out.

4 So, they've not brought a Section 2 claim. They're
5 not seeking a district in which African Americans could form a
6 majority of voters in the district. They're seeking something
7 quite different than that. They ask the Court to hold that
8 the General Assembly should have adopted a district with the
9 black voting age population as low as 21.2 percent, which is
10 the level of District 1 in the Harpoolian Plan. But that
11 district has a majority of Democratic voters. So, the
12 evidence will show that what the plaintiffs, in fact, are
13 seeking is a coalition district of African-American and
14 non-African-American Democratic voters. There's no
15 constitutional right to a coalition district. The Fourteenth
16 Amendment doesn't recognize one, the Fifteenth Amendment
17 doesn't recognize one, and the Voting Rights Act also doesn't
18 recognize one.

19 So, whatever the wisdom of such a district from a
20 policy standpoint or from a political standpoint, it has
21 nothing to do legally with proving or remedying racial
22 gerrymandering or intentional discrimination. It doesn't
23 prove an effect on the basis of race. In fact, if anything,
24 it proves just the opposite, because, as I said, it proves
25 that all Democratic voters are being affected in the same way

1 regardless of their race.

2 And the evidence will also show that plaintiffs can't
3 prove discriminatory intent. Ms. Aden mentioned a fifth
4 putative expert of plaintiffs, who is Dr. Bagley. His
5 testimony is insufficient. He lacks expertise in South
6 Carolina history. He talks about long past history in the
7 state that is not relevant to conditions today, and that the
8 Court rejected it as insufficient in *Backus* to show
9 discriminatory intent in that case. And he even concedes that
10 the General Assembly generally followed, in 2022, the same
11 legislative process it followed in 2012 to adopt the benchmark
12 plan that was upheld by all reviewers. So, the undisputed
13 evidence will show that the plaintiffs can't prove their case.
14 Plaintiffs' own evidence will show that they can't prove their
15 case. And if more were somehow needed, defendants will
16 present evidence confirming that plaintiffs can't meet their
17 demanding burden here.

18 So, we'll bring you Mr. Will Roberts, who I mentioned
19 earlier today, as a client representative in the court with
20 us. He's the Senate cartographer who drew the enacted plan.
21 Mr. Roberts is no stranger to this Court. He's assisted this
22 Court on at least four prior occasions, including two in which
23 he served as a court-appointed technical advisor. One of
24 those cases was, in fact, *Backus*. So, he'll testify that he
25 started with a benchmark plan when he drew the enacted plan.

1 He will also testify that he accommodated various requests
2 from House and Senate members and congressional members.

3 We've heard a little bit about District 7. Senator
4 Rankin did express a preference that District 7 not be touched
5 any more than necessary. That request made sense for all
6 kinds of reasons. District 7 was almost perfectly populated
7 under the 2020 census result. The lines didn't need to shift
8 very much. District 7 is also located on one side on a state
9 line, so the district can't extend that direction. And it's
10 also located on the ocean, and it can't extend in that
11 direction and pick up people either. So, District 7 was
12 almost an ideal district to build the plan around, or at least
13 not to touch, per Senator Rankin's request. I'll also note
14 that one of the NAACP proposed plans -- I believe it's Plan 2
15 -- contains a version of District 7 that's almost identical to
16 the version in the enacted plan.

17 Mr. Roberts will testify that he received a request
18 on behalf of Congressman Wilson to keep Fort Jackson in
19 District 2, where it's been since the court-drawn plan in
20 2002, and not to extend District 2 to Beaufort. And he also
21 will testify about his meeting with Mr. Tresvant that I
22 mentioned earlier. Congressman Clyburn asked that there be a
23 minimal change met in District 6. Mr. Roberts will also
24 testify that he did not use or rely upon race data or any BVAP
25 data to draw plans. He will testify that he used political

1 data based on the results of the 2020 presidential election to
2 decide which areas to move in the enacted plan and other
3 drafts. He will explain that what drove the enacted plan was
4 complying with traditional districting principles, politics,
5 and carrying out these various requests received rather than
6 race.

7 He'll also testify about the race-neutral
8 considerations in each of the counties that the plaintiffs
9 have put at issue in this case. This is Jasper County. Mr.
10 Roberts will testify that he moved the Okatie 2 and Sun City
11 precincts to District 1 in response to public testimony and
12 the legislative record regarding a Sun City community of
13 interest across the Beaufort and Jasper County lines. Next
14 he'll take us to the county of Beaufort, where he will say
15 that he made Beaufort County whole, which eliminated a county
16 split from the benchmark plan, consistent with traditional
17 district principles, and also eliminated a VTD split. He'll
18 next take us to Orangeburg. He'll testify that the plan
19 maintains a county split that existed in the benchmark plan
20 and moves the Limestone 1 and 2 VTDs to District 2 in response
21 to public testimony identifying that community of interest.
22 The enacted plan also repaired all three VTD splits that
23 existed in Orangeburg under the benchmark plan.

24 Next we'll go to Richland. Richland County, again,
25 maintains the county split from the benchmark plan, including

1 the hook around Fort Jackson that's been upheld in Colleton
2 County and *Backus*. The enacted plan also repairs 19 out of 21
3 VTD splits in Richland. And the line here between Districts 2
4 and 6 follows the line for Senate Districts 21 and 22, which
5 facilitates election administration in Richland County.

6 Next, in Sumter. Congressman Clyburn requested more
7 of Sumter, since that's where he's from and maintains roots.
8 More of Sumter was placed in District 6 at Congressman
9 Clyburn's request. At the same time, Sumter maintains the
10 county split from the benchmark plan. To eliminate the split
11 would have required splitting a county somewhere else, or
12 otherwise shifting the district in order to balance
13 population. But what happened here, instead of the enacted
14 plan, more of Sumter went to Congressman Clyburn, and the map
15 repairs five out of the six VTD splits that existed in the
16 benchmark plan, again, all consistent with traditional
17 districting principles.

18 There's mention in the third amended complaint of
19 Florence County. Here again, the plan maintains the county
20 split from the benchmark plan. Some counties have to be split
21 in order to achieve equal population. Here, the enacted plan
22 improves the district shape around Lake City and repairs the
23 split VTD.

24 We'll move next to Berkeley County. The enacted plan
25 makes Berkeley County whole. It placed all of Berkeley County

1 with incumbent Congresswoman Nancy Mace, who resided there.
2 It repaired a county split, and it repaired three VTD splits.
3 Again, core traditional districting principles. And with
4 corresponding moves involving Berkeley, Dorchester and
5 Charleston, this is how the General Assembly made District 1
6 more Republican leaning. It moves slightly more Republican
7 areas --

8 JUDGE GERGEL: Let me understand this. Berkeley
9 County is whole -- is Berkeley County whole in CD 1?

10 MR. GORE: In the enacted plan, yes. Yes, it is.

11 JUDGE GERGEL: Okay. Thank you.

12 MR. GORE: And by moving Berkeley County all into
13 District 1, and moving some more heavily Democratic areas in
14 Dorchester and Charleston into District 6, that's how the
15 General Assembly achieved the goal of making District 1
16 slightly more Republican leaning.

17 We'll next go to Dorchester County. Again,
18 Dorchester County was split in the benchmark plan, remains
19 split in the enacted plan. But improvements were made in
20 Dorchester County. The shape of District 6 was improved to
21 give a wider approach into Charleston. And as your Honor
22 pointed out earlier, that eliminates the move into Charleston
23 that had come through Berkeley in the benchmark plan. It also
24 follows the House District 98 line through parts of Dorchester
25 County, again, to facilitate election administration. And

1 it's part of the package of moves with Berkeley and Charleston
2 that made District 1 more Republican leaning.

3 And the last, but certainly not least, is our fine
4 host, County of Charleston. Charleston was split in the
5 benchmark plan, it was split in the 2002 plan, and it remains
6 split in the enacted plan. But here, the enacted plan makes
7 certain improvements. It followed natural and geographic
8 boundaries, that includes the Cooper and Stono Rivers. It
9 also placed all of coastal Charleston in a single district in
10 District 1; now placed the Charleston peninsula all in a
11 single district, here in District 6. And that Charleston
12 peninsula is a community of interest, as is coastal
13 Charleston. It also followed the county line near North
14 Charleston and Deer Park. And as our next slide shows, it
15 fixed all five VTD splits that existed in the benchmark plan
16 in Charleston. And with the corresponding moves in Berkeley
17 and Dorchester, it made District 1 more Republican leaning.

18 We also bring you Senator Campsen, as I mentioned
19 before. He sponsored the enacted plan in the Senate. He will
20 testify he didn't even look at race data, let alone consider
21 it or use it at all, in making decisions regarding the enacted
22 plan and where lines should be drawn. He will confirm that
23 the General Assembly had a political goal of making District 1
24 more Republican leaning. He'll also explain that the reason
25 the General Assembly did not conduct a racially polarized

1 voting analysis is that it was not trying to defend any of the
2 districts under Section 2. And it did not want to inject
3 unnecessary race consciousness into the redistricting process.
4 And there's been no Section 2 claim in this case. That
5 explanation comports with what's already in the public
6 legislative record, as well as the deposition designations of
7 Mr. Charlie Terrine, who's the Senate's outside counsel.
8 Senate majority leader, Shane Massey, will also come to court
9 and testify. And he will confirm that politics drove the
10 enacted plan and that he, too, did not consider race or use
11 racial data, let alone, discriminate against anyone on the
12 basis of race.

13 All of that testimony is further supported by the
14 deposition designation testimony from witnesses we heard about
15 in the plaintiffs' opening, including Mr. Fiffick, Mr. Breeden
16 John, and again, as I mentioned, Mr. Terrine. They will all
17 testify that they did not use race data or race information to
18 draw lines in the enacted plan, but instead, considered
19 politics and, even more importantly, traditional districting
20 principles when deciding how to draw the lines.

21 The defendants will also bring you Mr. Sean Trende,
22 who was mentioned earlier. He's a noted redistricting expert
23 and map drawer. He recently served as a court-appointed
24 special master in the Supreme Court of Virginia. He will
25 testify regarding the enacted plan's performance on

1 traditional criteria and its political effect in District 1.

2 Finally, various House members and staffers will come
3 to trial. They will confirm, again, that the enacted plan
4 complies with traditional districting principles and is not
5 the product of racial gerrymandering. There is no direct
6 evidence of invidious or racial intent in this case. The
7 House defendants are even going bring you Representative
8 Justin Bamberg, an African-American Democrat. He will also
9 testify that the enacted plan is not the product of racial
10 gerrymandering or intentional discrimination. He will testify
11 that politics was at play.

12 So, in sum, the evidence will show that what drove
13 the enacted plan was complying with traditional districting
14 principles, including preserving cores, repairing county
15 splits, repairing VTD splits, politics, and accommodating
16 requests from Senate and House members, Congressman Wilson and
17 Congressman Clyburn. The enacted plan is not the product of
18 race, or the use of race, or racial gerrymandering, or racial
19 discrimination. The Court should enter judgement for the
20 defendants. Thank you.

21 JUDGE GERGEL: We're going to take a brief break. It
22 will be about 10 minutes to give my staff a break.

23 **(Recess)**

24 JUDGE GERGEL: Let's hear from the House, if we
25 could.

1 MR. MATHIAS: And, your Honor, as I understood you to
2 want brief and substantive openings --

3 JUDGE GERGEL: Thank you.

4 MR. MATHIAS: -- I, hopefully, will be much more
5 brief and no less substantive.

6 Before I begin, the first time I was ever in the
7 Charleston Federal District Courthouse, the first time I
8 remember being there was actually for the South Carolina
9 Supreme Court Historical Society with you, Judge Gergel,
10 speaking about *Briggs v. Elliott*, and Judge Waring and
11 Thurgood Marshall trying the case, and Matthew J. Perry
12 onlooking. And even though we're not in that same building,
13 there still is some solemnity in trying a race-based case
14 today.

15 JUDGE GERGEL: And I'll tell you what, at some point
16 today, if people would like -- or not today, but during our
17 trial during lunch, I will go over the historic courtroom and
18 I'll talk a little bit about it if people would be interested.

19 MR. MATHIAS: Well, I would appreciate it. I'll take
20 you up on that offer. I was hoping we would be in that
21 courtroom.

22 But as much as there is this solemnity, at least on
23 my part, there are just incredibly vast differences between
24 that case, *Briggs v. Elliott*, and this case. Not downplaying
25 the seriousness of the allegations of racial discrimination,

1 but there's simply no proof that that actually took place
2 here. And because there is no direct proof, what the
3 plaintiffs rely on is circumstantial evidence, and I think
4 that they've put themselves in the *Arlington Heights*
5 framework. And the *Arlington Heights* framework, as I'm sure
6 you're well aware, is --

7 JUDGE GERGEL: Mr. Mathias, we're not going to do the
8 *Arlington Heights*. It's going to be *Cooper*.

9 MR. MATHIAS: Okay. Well, your Honor, then my
10 opening will be much, much shorter, talking essentially about
11 the positives that the House brought to bear. This was a much
12 more open process than processes have been in the past. We
13 were constrained by COVID, the census data was delayed in its
14 release. But nonetheless, the House Ad Hoc Committee was
15 initially made up of five Republicans and three Democrats.
16 One Republican member from the Rock Hill area had to resign
17 from the ad hoc committee because of a birth in the family,
18 and he didn't have time to travel the state. And instead of
19 adding another Republican member to the ad hoc committee,
20 leadership decided that it was sufficient to have a
21 four-Republican, three-Democrat comprised committee, two of
22 the Democrats being African Americans.

23 There were over 1200 e-mails to the House
24 redistricting e-mail account. Four maps were submitted. The
25 map room was opened from October 4th to November 5th. And the

1 House hired nonpolitical staff to assist in the map room.
2 Ultimately, with respect to the congressional plan, although
3 the House staff did produce two alternative plans, the House
4 adopted, more or less, the Senate plan, the plan that came
5 from the Senate.

6 JUDGE GERGEL: Wasn't there a House plan? I saw some
7 reference to a House plan that did not split Charleston. Am I
8 remembering that correctly?

9 MR. MATHIAS: I don't think so.

10 JUDGE GERGEL: I thought there was originally a House
11 plan, and then there was a House staff plan or something.

12 MR. MATHIAS: There were two House staff plans, one
13 initial, and then public comment came in and another staff was
14 drawn, but I believe both split Charleston County.

15 JUDGE GERGEL: I was unsure about that. Perhaps
16 somebody can bring it to our attention on that issue.

17 MR. MATHIAS: Well, your Honor, I simply will
18 conclude by saying this was as open a process as it could have
19 been. Eleven public hearings, opportunity for everyone to be
20 heard. And I don't know how it could have been more open.
21 And in retrospect, the plaintiffs' coalition, more than even
22 is on the pleadings, we believe litigation was coming no
23 matter what. The House Ad Hoc Committee received seven
24 letters essentially stating their demands that began back
25 before the census data was released. These letters were

1 received August 9th, 30th; September 27th; October 8th;
2 November 15th, 19th, and 30th. We believe that litigation was
3 simply unavoidable. Even after the House staff published its
4 initial map, it's clear that we were headed in that direction.
5 I believe the Court will see e-mails in the record between the
6 League of Women Voters map drawer and a representative of the
7 ACLU, where the map drawer says, "We received some good
8 concessions," and the ACLU representative response says, "But
9 they still left enough for us to sue on, correct?"

10 So, we believe that this litigation was inevitable,
11 that there is no proof of racial discrimination, and that the
12 defendants are entitled to judgment. Thank you.

13 JUDGE GERGEL: All right. Now, that is a model,
14 folks, for everyone to follow.

15 Plaintiffs, call your first witness.

16 MS. ADEN: Your Honor, plaintiffs call Mr. Angene
17 Davis.

18 MR. BURCHSTEAD: Your Honor, if it pleases the Court.

19 JUDGE GERGEL: You want to make an opening?

20 MR. BURCHSTEAD: I want to make a very brief opening
21 statement.

22 JUDGE GERGEL: Come on forward. I'm sorry. Usually
23 the Election Commission are like young children, to be seen
24 and not heard.

25 MR. BURCHSTEAD: I'll try. I'm not going to disagree

1 with that assertion, your Honor.

2 I mean, you know, we administer the election. My
3 client, the Election defendant, under Title 7 of the South
4 Carolina Code. There are no substantive allegations made
5 against the election defendants. We make no substantive
6 allegations. We take no position on the substantive issues
7 offered by either party. But if this Court contemplates
8 issuing an order that grants relief, then we are ready and
9 prepared to give our guidance and our input on logistical
10 challenges, deadlines and whatnot.

11 JUDGE GERGEL: That's way ahead of us.

12 MR. BURCHSTEAD: Absolutely, your Honor. Thank you.

13 JUDGE GERGEL: Thank you. First witness, please.

14 DEPUTY CLERK: Sir, please state your name for the
15 record.

16 MR. COLEMAN: Good morning. Santino Coleman, with
17 the Legal Defense Fund.

18 JUDGE GERGEL: I'm sorry. Did you give me your name,
19 sir?

20 MR. COLEMAN: Santino Coleman, with the Legal Defense
21 Fund.

22 JUDGE GERGEL: Please proceed.

23 **ANGENE SIDNEY DAVIS, having been first duly sworn,**
24 **testified as follows:**

25 **DIRECT EXAMINATION**

ANGENE DAVIS - DIRECT EXAMINATION

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1 BY MR. COLEMAN:

2 Q. Could you please state your full name, please?

3 A. Yes. Angene Sidney Davis.

4 Q. And where do you live?

5 A. 1919 Burton Lane; North Charleston, South Carolina 29405.

6 Q. And how long have you lived there?

7 A. Twelve years.

8 Q. Which congressional district is that currently in?

9 A. U.S. Congressional District 6.

10 Q. Are you employed, Mr. Davis?

11 A. Yes, I am, with Charleston County School District.

12 Q. And where exactly do you work?

13 A. I work at Burke High School in downtown Charleston, South
14 Carolina.

15 Q. And what is your role there?

16 A. I'm an auditory specialist at the high school.

17 Q. Which congressional district is that school currently in?

18 A. It's currently in U.S. Congressional District 6.

19 Q. Do you work anywhere else, Mr. Davis?

20 A. Yes. I have a small consulting firm called Communities
21 Solutions Consulting. And we do work with municipalities in
22 large-scale organizations.

23 Q. Who do you work with in that organization?

24 A. Mr. Eric Jackson. But client wise, we work with
25 organizations like the City of Charleston and other developers

ANGENE DAVIS - DIRECT EXAMINATION

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1 working on municipal public works plans.

2 Q. Could you tell me more about what exactly it is that you
3 do through the consulting business?

4 A. Sure. So, an example of that is we recently worked on
5 the --

6 JUDGE GERGEL: MR. Davis, could you bring the
7 microphone a little closer to you, sir?

8 THE WITNESS: Sure. Is this better?

9 JUDGE GERGEL: That's much better.

10 THE WITNESS: Okay. Thank you. Sorry about that.

11 So, an example of the type of work that we do, we
12 worked recently on the municipal comprehensive plan update for
13 the City of Charleston. And our role was to provide
14 facilitation in support of public engagement. And so, we
15 facilitated meetings in which we informed the public of the
16 plan, its importance, and gathered input to provide to the
17 City of Charleston as to what the public felt about the plan.

18 Q. And why is that important to you, that type of work?

19 A. Well, I'm also currently the neighborhood association
20 president in North Charleston. I've been civically engaged
21 since coming to Charleston about 20 years ago.

22 And so, one of the things that I understand is the
23 importance of making sure that every day people understand how
24 city growth affects their lives. So, I've done this in a
25 volunteer capacity, but decided to make a business out of it.

ANGENE DAVIS - DIRECT EXAMINATION

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1 Q. And what other organizations are you involved with?

2 A. As I said, I'm the current Neighborhood Association
3 president for the Chicora-Cherokee community in North
4 Charleston.

5 Q. Could you tell me a little bit about the Chicora-Cherokee
6 community?

7 A. Sure. It's a neighborhood that sits right outside the
8 now decommissioned naval base in North Charleston, the
9 southern end of North Charleston. It was primarily a
10 neighborhood that held the workforce of the naval base up
11 until, like, the late 70s, early 80s, when they experienced
12 white flight. When the base was decommissioned in 1994, most
13 of the black residents remained there.

14 Q. Have you founded or led any other organizations,
15 Mr. Davis?

16 A. Yeah. There's an organization I founded, Lowcountry
17 Black Parents Association, about two and a half years ago,
18 during the beginning of the pandemic here in Charleston. And
19 that organization was designed to help parents and guardians
20 navigate the complexities of virtual learning at first, and
21 then we expanded to do educational advocacy training for
22 parents and guardians to navigate the complexities of public
23 education as it was changing.

24 Q. And which congressional district does the work you do
25 with your consulting business as well as with the Lowcountry

ANGENE DAVIS - DIRECT EXAMINATION

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1 Black Parents Association involve?

2 A. We currently do business in both U.S. Congressional
3 Districts 1 and 6.

4 Q. And what counties and communities?

5 A. Right now that's Dorchester, Berkeley and Charleston
6 County.

7 Q. And how long have you done work with that parent
8 organization?

9 A. We're about two and a half years old now.

10 Q. You're very involved in the community. Could you tell me
11 why community activism and involvement is important to you?

12 A. Well, I grew up in a small rural county here in South
13 Carolina called Allendale County. And so, community was the
14 one thing that kind of kept us together. And when I came and
15 relocated to Charleston about 20 years ago, I took that same
16 attitude and brought it here and sought to be involved and
17 engaged in a positive way in my community.

18 Q. Mr. Davis, are you a registered voter?

19 A. Yes, I am.

20 Q. Is voting important to you?

21 A. Very much so.

22 Q. And why is that?

23 A. Because I want to make sure that the representatives who
24 are elected represent my interests and the interests of my
25 family.

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1 Q. Mr. Davis, I'm going to ask you some questions about
2 congressional redistricting. When did you first become aware
3 of the congressional redistricting cycle?

4 A. That would have been last summer, summer of 2021. I
5 believe I saw a social media post about a public hearing that
6 was going to be held on the campus of Trident Tech, the main
7 campus, and so I put that on my calendar to attend.

8 Q. Why did you decide to sign up for that?

9 A. Well, as a neighborhood association president, voting and
10 the voting maps is a very important part of my role. I have
11 to make sure that residents understand who our representatives
12 are and their role in their lives. So, I wanted to go to make
13 sure that I understood how this process would go, so that I
14 could then explain to the residents in my neighborhood.

15 Q. And could you tell me again what date was this that you
16 attended that hearing?

17 A. If I'm not mistaken, it was August 10th, 2021.

18 Q. And what were your concerns about congressional
19 redistricting?

20 A. Well, historically, black communities such as the one
21 that I lived in had always gotten the short end of the stick
22 when it came down to any redistricting maps that were drawn.
23 And it was a common concern amongst the residents in my area,
24 as well as throughout the county. And so, I wanted to go to
25 see if I could, perhaps, learn more about what the process

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1 would entail.

2 Q. Did you testify at that hearing?

3 A. Yes, I did.

4 Q. And what were the concerns you expressed?

5 A. Like I stated, to implore the members of the panel to
6 consider providing maps that would give equity to black voters
7 in marginalized communities, specifically, indigenous black
8 communities here in the area.

9 Q. And could you tell me more about what you mean when you
10 say "marginalized communities"?

11 A. Well, specifically, African Americans. Being a lifelong
12 resident of South Carolina, African-American voters, such as
13 myself, have always felt as though, when these maps are drawn,
14 they're drawn to put us at a distinct disadvantage, favoring
15 more of the white majority, as opposed to helping to expand,
16 or maybe even grow, the capacity of black voters.

17 Q. You also mentioned black indigenous communities. Could
18 you give me more detail about what you mean?

19 A. In that case, I'm talking about here in Charleston, the
20 Gullah Geechee, descendants of African slaves.

21 Q. What were some of the other concerns that were expressed
22 to the redistricting committee at that public hearing?

23 A. While I was sitting there, I heard some other folks
24 express concerns that were similar to mine about things such
25 as gerrymandering, which had been a long-term issue in our

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1 communities, as well as maps that were, of course, not
2 favorable to black communities and black residents.

3 Q. Do you think that the congressional maps reflect your
4 concerns and the concerns of the public?

5 A. No. No. I feel as though the they did not take into
6 consideration what was said at the public hearing, and
7 instead, continued the practice of reducing the capacity of
8 black voting communities.

9 Q. Why do you feel that way, Mr. Davis?

10 A. Looking at the map and knowing the geography of the
11 areas, you can almost draw a direct line between the
12 boundaries of the maps of Districts 1 and 6 and see them
13 basically bisect -- and sometimes trisect -- black
14 communities. And it dilutes the already marginal voting
15 capacity of those communities.

16 Q. What did you think about the transparency of the
17 congressional redistricting process?

18 A. To me, it really didn't seem transparent at all. I
19 attended the public hearing seeking to gain insight as to how
20 the maps would be drawn and what would be the factors in
21 drawing the maps, and I didn't receive any of that.

22 Q. Did you do anything to follow up after you attended the
23 hearing?

24 A. Not after. When I attended the hearing, there was signup
25 sheet for those of us that wanted to testify publicly. I did

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1 sign -- there was a blank there that asked if you wanted to
2 continue following up or getting information. So, I put my
3 e-mail there to receive any follow-up information regarding
4 the process.

5 Q. Did you receive any additional information?

6 A. No, sir, with the exception of other updates of the
7 meetings that would take place in other parts of the state.
8 That's it.

9 Q. What are some of the issues in Charleston and the
10 surrounding areas that you've become aware of through your
11 involvement and leadership in the community?

12 A. So, in the Charleston community, one of the biggest
13 issues is access to affordable housing. Living in North
14 Charleston, we are one of the leaders in evictions, as well as
15 environmental justice. Many black communities are situated in
16 industrial zones where you we have to deal with environmental
17 pollutants and things of that nature. Economic developments,
18 specifically regarding jobs and job access, quality public
19 education. In the rural parts of the county, we definitely
20 have the same issues, but also issues with broadband access,
21 and that was amplified during the pandemic when many
22 households struggled to keep up with work because they didn't
23 have broadband access.

24 Q. Do you think effective congressional representation can
25 have an impact on those issues?

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1 A. Absolutely. Absolutely, I do.

2 Q. How so?

3 A. Having someone -- or having an individual that is
4 connected to those issues and understands the importance to
5 everyday voters would allow them to also champion legislation
6 that could help alleviate that, as well as direct funding to
7 the organizations and agencies that are trying to address
8 these issues.

9 Q. Mr. Davis, what do you think about Congressional District
10 6, including parts of Richland and Charleston Counties?

11 A. For me, it doesn't seem to make sense, given the fact
12 that I live here in Charleston, and Charleston has its own set
13 of unique circumstances, as I outlined. Also, one of the
14 things that Charleston deals with, as well as the impacts of
15 climate change, having to find ways to address flooding and
16 how that impacts the belt environment, as well as some of the
17 complexities of race and how we deal with issues with that
18 here. So, it didn't make any sense for me, seeing how they
19 drew District 6, including Richland County.

20 Q. What are your thoughts about Charleston County being
21 split between Congressional District 1 and Congressional
22 District 6?

23 A. So, for me, I feel as though that was one of the most
24 blatant ways in which race was used, because it took a portion
25 of the black community away from District 1, in which it sat

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1 previously, and put it in District 6, thus, further diluting
2 the remaining black voting power in District 1. And many of
3 those communities that were left in District 1 are also
4 indigenous native black communities.

5 Q. Mr. Davis, do you think having one congressional district
6 where black voters can elect candidates of their choice is
7 sufficient to address the needs of black people in South
8 Carolina?

9 A. Absolutely not. South Carolina is one of the few states
10 that has a black population nearing 30 percent. And we have
11 seven congressional districts, of which we only have one in
12 which -- you know, we have a black representative, of course,
13 but where black people have any significant voting power. And
14 I think that the way that these maps are drawn continues that
15 pattern of lumping all the black voters -- or a concentration
16 of black voters into one particular congressional district,
17 and that's not equitable.

18 Q. Do you think race was a factor in the congressional
19 redistricting process?

20 A. Yes, I do.

21 MR. PARENTE: Objection, your Honor. It calls for a
22 legal conclusion.

23 JUDGE GERGEL: Overruled.

24 Please proceed.

25 THE WITNESS: Yes, I do think that it continued a

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1 long-standing tradition of using race to draw these maps in
2 favor of one particular group versus another.

3 **BY MR. COLEMAN:**

4 Q. Could you tell me more about why you feel that way?

5 A. In high school, my U.S. congressional representative was
6 Congressman Jim Clyburn. I graduated in 1994, and it's 2022,
7 and Congressman Clyburn is still my congressional
8 representative, even though I've moved into a completely
9 different county. And year after year, and every time a
10 congressional redistrict comes up, I don't see a change in
11 terms of the black voting power, not just in my area, but in
12 others.

13 Q. What do you think of the idea that the congressional
14 redistricting process is about politics and not race?

15 A. I've heard that. But I believe that it's race using --
16 it's using race, I should say, to benefit a particular racial
17 group politically.

18 Q. And -- well, which racial group? Could you give me more
19 of a --

20 A. White voters. White voters.

21 Q. No further questions -- well, actually, Mr. Davis, do you
22 know the specific names of the neighborhoods that were
23 bisected, as you mentioned earlier?

24 A. So, when I looked at the district maps specifically
25 between Districts 6 and 1, geographically, you go down State

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1 Highway 17, which is in the western part of Charleston County,
2 you're looking at Hollywood-Ravenel area, Edisto, Edisto
3 Beach, John's Island, Wadmalaw Island, parts of West Ashley,
4 the Ponderosa communities. If you go to the northeastern
5 side, which would be Awendaw and McClellanville, there are
6 settlement communities out there that have lesser known names.
7 But those are the two areas that I see when I look at that.
8 And then, if you exit Charleston County, you're going into
9 Colleton County, you've got some indigenous communities there.

10 Q. And those are all black communities?

11 A. Yes. Historically, they have been, yes.

12 Q. Thank you. No further questions.

13 JUDGE GERGEL: Very good. Cross-examination?

14 **CROSS-EXAMINATION**

15 **BY MR. PARENTE:**

16 Q. Good morning, Mr. Davis. My name is Michael Parente.
17 I'm one of the attorneys for the House defendants in this
18 case.

19 Mr. Davis, when did you first learn about this
20 litigation?

21 A. Earlier this year, when I was contacted by members of the
22 legal defense. And I think, prior to that, I might have read
23 an article that it might be coming up.

24 Q. Do you recall about what time frame that was?

25 A. Maybe February. I'm not 100-percent sure.

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1 Q. And when did you first find out you were going to be a
2 witness at this trial?

3 A. Earlier this summer.

4 Q. Okay. And you were deposed in this case; is that
5 correct?

6 A. Yes. Yes, I was.

7 Q. And do you recall your deposition testimony, generally,
8 in this case?

9 A. Yes. Yes.

10 Q. In your deposition, you stated that you received a
11 training from the ACLU prior to that deposition. Do you
12 recall that?

13 A. Yes. Yes.

14 Q. And what did that training entail?

15 A. Just basically preparing me with questions and making
16 sure I understood how the proceedings would go.

17 Q. Okay. And did you receive a similar training prior to
18 your testimony here today?

19 A. Yes.

20 Q. And who gave you that training?

21 A. Members of the ACLU/LDF legal team.

22 Q. Okay. So, members of plaintiffs' counsel that are here
23 today?

24 A. Yes.

25 Q. And, Mr. Davis, you testified previously that you live

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1 and work currently in Congressional District 6; is that
2 correct?

3 A. Yes. Yes.

4 Q. And you also testified that you previously lived in
5 Congressional District 6 prior to this redistricting cycle; is
6 that correct?

7 A. Yes.

8 Q. So, your residence remained in the same congressional
9 district?

10 A. Yes. Yes.

11 Q. In your deposition, you also testified that you do not
12 believe that you were personally harmed by the new
13 congressional maps; is that correct?

14 A. Yes, I did say that.

15 Q. Okay. But you also stated that you had some associates
16 that were frustrated with the new congressional maps. Do you
17 recall that testimony?

18 A. Yes.

19 Q. Who are those associates that are frustrated by the new
20 maps?

21 A. I mean, it's too many people to list. But because of the
22 work that I do, I'm consistently crossing the boundaries of
23 U.S. Congressional Districts 6 and 1.

24 Q. Okay. Do you know why your associates -- I'm sorry.

25 Are your associates frustrated because Congressional

1 District 1 is more likely to elect a Republican candidate
2 after the redistricting cycle?

3 A. They're more frustrated because they feel as though their
4 vote-to-vote capacity is not counted in these districts.

5 Q. Okay. And in your deposition, you also stated that the
6 congressional maps placed African-American communities in an
7 unfair disadvantage as far as their voting power in
8 Congressional Districts 1 and 6. What is that statement based
9 on?

10 A. Looking at the maps and knowing what they looked like
11 before, in District 1 in particular, which is what I was
12 really talking about, District 6 is packed with
13 African-American voters. In District 1, basically, the new
14 map removed a significant percentage of African-American
15 voters and placed them in District 6, leaving the remaining
16 voters in District 1 and reducing the number of available
17 voters in that district.

18 Q. Okay. And you would agree that Charleston County was
19 split before this redistricting cycle; is that correct?

20 A. Yes.

21 Q. Okay. And you stated that you believe Congressional
22 District 6 is packed with black voters; is that correct?

23 A. Yes.

24 Q. And are you referring to before this redistricting cycle
25 or after this redistricting cycle?

1 A. Both.

2 Q. So, you believe, currently under the new enacted map,
3 that Congressional District 6 was packed with black voters?

4 A. Yes.

5 Q. Okay. Do you know what the BVAP of Congressional
6 District 6 currently is?

7 A. I'm not for certain. I did hear that it declined
8 slightly.

9 Q. Okay. In your deposition, you stated that you believed
10 that the map was drawn to intentionally disenfranchise members
11 of African-American communities. What evidence do you have
12 that the General Assembly intentionally drew the maps in such
13 a way?

14 A. I don't have any. I'm not a map drawer. I'm just
15 looking at what was produced. And knowing the areas and the
16 communities that are in those areas, and knowing the numbers
17 of people that I would estimate are in those areas, that's
18 what I based that statement on.

19 Q. Okay. And some of those communities that you mentioned
20 were Awendaw and McClellanville; is that correct?

21 A. Yes. Some of the communities out in those general
22 vicinities.

23 Q. Okay. And you mentioned in your deposition that those
24 are communities along Highway 17. I think you mentioned that
25 a minute ago. Do you know which counties those two

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1 communities are located in?

2 A. The communities I'm talking about are in Charleston
3 County. Yes.

4 Q. Charleston County. Okay. And are you aware that the
5 voting precincts for Awendaw and McClellanville were
6 previously included in Congressional District 1?

7 A. Some of them, yes.

8 Q. Okay. And are you aware that those two voting precincts,
9 Awendaw and McClellanville, remain in Congressional District 1
10 after this redistricting cycle?

11 A. I have not looked at the precinct map to see that.

12 Q. Okay. You also mentioned the areas of Hollywood and
13 Ravenel. Do you recall those two areas?

14 A. Yes.

15 Q. Okay. Do you know what district those two communities
16 were located in prior to this redistricting cycle?

17 A. Some them were in District 6, to my understanding.

18 Q. Okay. And are you aware that the Hollywood and Ravenel
19 areas are currently included in Congressional District 6 after
20 this redistricting cycle?

21 A. Again, I haven't looked at the new precinct map.

22 Q. Okay. You testified in your deposition that the
23 redistricting process is a political process where parties
24 draw the maps to either maintain or gain political advantage.
25 Do you recall that testimony?

1 A. I think so, yes, sir.

2 Q. And the Republican Party is the party that's in power in
3 the South Carolina General Assembly; is that correct?

4 A. Yes. Yes.

5 Q. And so, based only your expectation of this being a
6 political process, wouldn't you expect the Republican Party to
7 redistrict in a way to maintain or gain political advantage?

8 A. No.

9 Q. Why not?

10 A. I would expect the maps -- because I don't believe that
11 it would be entirely the responsibility of the Republican
12 Party to draw the maps in such a way that would provide equity
13 to all voters.

14 Q. And is your suggestion, to provide equity for all voters,
15 to make Charleston County whole?

16 A. My suggestion would be to make sure that all Charleston
17 County voters have a legitimate shot at electing adequate
18 representation to meet their needs.

19 Q. Okay. You testified at the North Charleston Senate
20 hearing. Do you recall that testimony over the summer?

21 A. Yes. Yes.

22 Q. Okay. Did you ever testify at any of the House of
23 Representatives public hearings?

24 A. Not to my knowledge.

25 Q. Were you aware that the House of Representatives held 11

1 public hearings across the state as well?

2 A. I may have seen notifications, but they all blended
3 together.

4 Q. Okay. Do you recall seeing a notification about a House
5 of Representatives public hearing that was held in the North
6 Charleston City Hall?

7 A. Not to my knowledge.

8 Q. Okay. And you did not attend --

9 A. No, I did not.

10 Q. -- the House of Representatives meeting in North
11 Charleston City Hall?

12 A. No.

13 Q. Did you submit any written testimony to either the House
14 or Senate prior to the drawing of maps?

15 A. No, I did not.

16 Q. And did you attend any other hearings that were held, in
17 person or virtually, by the House or Senate?

18 A. No, I did not.

19 Q. All right. In your testimony at that public hearing, do
20 you recall testifying that you believed gentrification had
21 occurred, specifically in downtown Charleston and the West
22 Ashley area?

23 A. Yes.

24 Q. Okay. And what do you mean by "gentrification" there?

25 A. So, I had worked on the City of Charleston's

1 comprehensive plan, and there was document that was submitted
2 -- well, created, demonstrating that from 2010 to 2018, the
3 West Ashley area, which is considered City of Charleston, saw
4 an increase of about 3500 white families and a decrease of
5 about 515 black families. For the peninsula Charleston,
6 downtown Charleston area, they saw an increase of about 315
7 white families and a decrease of about 1200 black families.
8 So, that's what I was referring to.

9 Q. Okay. So, generally, just to summarize, and correct me
10 if I'm wrong, those areas of West Ashley and downtown
11 Charleston on the peninsula had an increase in white
12 population and a decrease in black populations; is that
13 accurate.

14 A. Yes.

15 Q. Okay. What areas do you consider West Ashley to be?

16 A. The West Ashley area. For the city geographic, areas
17 west of the Ashley River. And so, you can kind of loop in
18 maybe John's island. But West Ashley, down Savannah Highway,
19 Highway 61, are probably your two main arteries.

20 Q. Okay. Do you consider the areas out to, like, Bees Ferry
21 to be West Ashley?

22 A. Yes, I would imagine.

23 Q. And do you know what the black voting age population of
24 the general West Ashley area is?

25 A. Actually, no, I don't.

1 Q. And what areas do you consider to be downtown Charleston?

2 A. Peninsula Charleston.

3 Q. Okay. Do you know what congressional district the
4 peninsula is currently located in under this enacted plan?

5 A. Yes.

6 Q. And which congressional district is that?

7 A. Six.

8 Q. And is the entire peninsula located in Congressional
9 District 6?

10 A. Yes.

11 Q. So, there's no splits in downtown Charleston --

12 A. No.

13 Q. -- is that correct? Do you believe that West Ashley and
14 downtown Charleston have a lot in common?

15 A. No. They're two distinct geographic areas.

16 Q. You don't believe that they share any economic or social
17 interests with each other?

18 A. With each other? They're both governed by, of course,
19 our city council representation. So...

20 Q. And West Ashley is -- your mailing address in West Ashley
21 would be a city of Charleston address; is that correct?

22 A. Yes, it would be. Yeah.

23 Q. All right. And do you consider West Ashley to be a
24 fast-growing suburb of downtown Charleston?

25 A. Based on the data thus far, yeah, it seems to be growing.

1 Q. Okay. So, wouldn't you agree that West Ashley and
2 downtown Charleston should be located in the same
3 congressional district based on those factors?

4 A. I'm not a mapmaker, so I can't, you know, ascertain as to
5 whether or not those factors would go into how the map would
6 be drawn.

7 Q. Okay. And I think you also testified a minute ago that
8 you didn't believe that the process set up by the General
9 Assembly was transparent; is that accurate?

10 A. Yes. Yes.

11 Q. Are you aware that the public hearings were all recorded
12 and transcribed and available online?

13 A. Yes. They did state that at the hearing.

14 Q. Did you view any of those public hearings or transcripts
15 after those public hearings?

16 A. No.

17 Q. And were you aware that there were at least two occasions
18 where Zoom was used to take public testimony remotely at
19 public hearings in Columbia?

20 A. Yes. It was actually used at the one that I testified
21 at. Yes, sir.

22 Q. Okay. And did you testify at either of the public
23 hearings that the House held when its staff maps were
24 released?

25 A. No.

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1 Q. Okay. Thank you, Mr. Davis. Those are all my questions.

2 A. Okay.

3 JUDGE GERGEL: Very good. Anything further from the
4 defendants?

5 MS. STRINGFELLOW: Nothing further, your Honor.

6 JUDGE GERGEL: Very good. And from the plaintiffs?

7 MR. COLEMAN: Your Honor, just a few questions.

8 **REDIRECT EXAMINATION**

9 **BY MR. COLEMAN:**

10 Q. Mr. Davis, do you think black voters have a right to have
11 a chance to elect their preferred candidate, regardless of
12 race or politics?

13 A. Yes, absolutely.

14 Q. Also, Mr. Davis, I asked you about transparency earlier.
15 Do you feel like at any point, you understood the factors --
16 or what would go into creating these maps, congressional maps?

17 A. No. At the hearing, pretty much what was done is they
18 listened to public input. They told us that that's what they
19 would be doing to use in the development of the map. When I
20 left the hearing, all I felt I did was just say how I felt
21 about what I think should be included in the map, and there
22 was nothing else.

23 MR. COLEMAN: Your Honor, if I could just have a
24 moment, please?

25 JUDGE GERGEL: Take your time.

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

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

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

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

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

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

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

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

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

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

6 JUDGE GERGEL: Y'all tell me. I mean, if you want to
7 modify it, and the parties agree, fine. But the rule says,
8 you invoke it, it applies to all the witnesses. You don't
9 want to sequester, that's another question, but we're not
10 doing part of the witnesses and not part of the other
11 witnesses. I mean, one of the purposes of sequestration is
12 you don't draw upon the cross-examination of another witness
13 and so forth.

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

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

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

22 JUDGE GERGEL: Very good.

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

25 JUDGE GERGEL: Thank you, Mr. Moore.

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1 GILDA COBB-HUNTER, having been first duly sworn,
2 **testified as follows:**

3 **DIRECT EXAMINATION**

4 **BY MS. ADEN:**

5 Q. Good morning, Representative Cobb-Hunter.

6 A. Good morning.

7 Q. Representative Cobb-Hunter, where are you from?

8 A. I live in Orangeburg, South Carolina.

9 Q. And where are you originally from?

10 A. I'm originally from Gifford, Florida. That's in Indian
11 River County near Vero Beach in what then was considered South
12 Florida.

13 Q. And how long have you lived in South Carolina?

14 A. My husband and I have lived in South Carolina for about
15 45 years.

16 Q. Do you identify yourself as a black person?

17 A. Yes.

18 Q. Can you briefly describe your educational background?

19 A. I finished high school in Indian River County. My
20 undergraduate degree is from the Florida A&M University in
21 Tallahassee. And I have a master's degree from Florida State
22 University, also in Tallahassee.

23 Q. And can you briefly describe your professional
24 background?

25 A. I am a social work administrator. I have, for about the

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1 last 40-plus years, worked running an agency that deals with
2 domestic violence survivors, sexual assault, a family violence
3 agency. I consider myself to be a social work administrator,
4 but also, professionally, I'm a state legislator.

5 Q. And are you a member of any civic organizations?

6 A. I'm a member of a number of civic organizations,
7 including the Branchville NAACP, the ACLU, the South Carolina
8 Democratic Party, the South Carolina Progressive Network, and
9 a member of the Democratic National -- well, I was a member of
10 the Democratic National Committee.

11 Q. And what about the National Association of Social
12 Workers, South Carolina Chapter?

13 A. I am a long-time member of NASW, South Carolina chapter.

14 Q. Are you registered to vote?

15 A. I am.

16 Q. And when did you register to vote?

17 A. I registered in the fall of 1977, when we moved here to
18 South Carolina.

19 Q. And can you briefly describe why you registered to vote
20 when you arrived in South Carolina?

21 A. I registered to vote because I grew up in a household
22 where voting was deemed important. My mother, in particular,
23 was a -- well, she was a fanatic about voting, making sure
24 that at each election, she voted. And she passed that on to
25 the seven of us. And so, I'm just one who believes very

1 firmly that civic engagement is important. In the words of
2 Shirley Chisolm: I believe service is the rent we pay for
3 being here in this fine country.

4 Q. Have you ever testified in federal court before?

5 A. Yes.

6 Q. Can you tell me briefly in what context?

7 A. I testified as a part of the Voter ID Bill before a
8 three-judge panel in the D.C. Circuit Court.

9 Q. And can you briefly summarize what position you took in
10 your testimony in that case?

11 A. My position was that the legislation that we had passed
12 in the South Carolina House, and enacted by the General
13 Assembly, was discriminatory and put up barriers to voters of
14 color. I voted against it; thought that it needed some
15 remedies that, unfortunately, we were not able to get into the
16 legislation. But, thankfully, the Court, in its ruling, kind
17 of expanded the opportunities, shall we say, for people to
18 participate in the electoral process.

19 Q. Now, turning to your position as an elected official,
20 when were you first elected to the South Carolina -- excuse
21 me.

22 Are you elected to the South Carolina House of
23 Representatives?

24 A. I am elected to the South Carolina House; first elected
25 January 28, 1992.

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1 Q. Are you the longest serving member of the South Carolina
2 House?

3 A. I am.

4 Q. Are you the longest serving black member of the South
5 Carolina House?

6 A. Yes.

7 Q. Have you held any leadership positions during your
8 three-plus decades in the legislature?

9 A. I served first as an assistant minority leader in the
10 House, then became minority leader when, then member, Jim
11 Hodges, left to run for governor. Served as minority leader.
12 I am the first vice chair of the House Ways and Means
13 Committee. Those are my leadership roles -- or have been my
14 leadership roles in the General Assembly.

15 Q. Do you chair a legislative subcommittee on ways and means
16 as well?

17 A. Yes, I do. I chair the General Government Legislative
18 Subcommittee.

19 Q. What does it mean to serve as a vice chair?

20 A. On the Ways and Means Committee, it means that, in the
21 absence of the chair, I conduct meetings and do the general
22 kinds of things a chair would do in the absence of the chair.

23 Q. Do you consider being a first vice chair of a committee
24 more than a ceremonial role?

25 A. I certainly do. I'm not much interested in ceremony.

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1 Q. And why so?

2 A. Well, I think ceremonial -- the ceremonial -- and I will
3 reframe it, if I may. I'll say I am more into substance and
4 not style. And ceremony, to me, suggests no power and no
5 influence. We have plenty of examples of ceremonial
6 opportunities, especially when we talk about people of color.
7 So, I'm not much into ceremony.

8 Q. And what do you mean by that, especially when you talk
9 about people of color?

10 A. Well, there is tendency -- and I want to be careful with
11 my words, because I don't want to be offensive. But there is
12 a tendency on the part of some to be able to say, "We've got
13 one." And so, there's a tendency to use people of color as
14 tokens without any real decision making or authority. It's
15 just a show horse versus workhorse, if you will.

16 Q. And finally, have you held any leadership roles in any
17 national legislative organizations?

18 A. I served for several years as an officer with the
19 National Black Caucus of State Legislators. I was president
20 elect of NBCSL, and later became president of the National
21 Black Caucus of legislators. And that is an organization that
22 is made up of black legislators from around the country and
23 the territories. That's what I've done legislatively.

24 I also just rotated off in CSL, which is the National
25 Conference of State Legislators. I was a part of their

1 executive committee. And just politically. You asked
2 legislatively, but --

3 Q. National legislative organizations.

4 A. Yeah. I also, for 20 years, served on the Democratic
5 National Committee. And for several of those years, served a
6 chair of the DNC's Southern Regional Caucus. That was a
7 caucus made up of members from 13 southern states.

8 Q. Now, what areas of the state do you currently represent
9 as a House member?

10 A. I represent Orangeburg County.

11 Q. Were those the same areas that you served when you were
12 first elected?

13 A. No. When I was first elected, I represented three
14 counties: Orangeburg, Dorchester, and Colleton.

15 Q. And any subsequent redistricting, did that change?

16 A. It changed in the second -- and I'll point out that when
17 I was elected, the person who I replaced was not there during
18 the redistricting process. And so, the district number that I
19 originally ran under was gone. And I also had counties other
20 than Orangeburg. When the previous member was there, it was
21 only Orangeburg County, and so that was a difference.

22 In the subsequent redistricting, it went from three
23 counties to two counties: Orangeburg and Dorchester Counties.
24 And then, in the third most recent -- not this one --
25 redistricting in 2010, I went from two counties to one,

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1 meaning just Orangeburg County, for the first time since I had
2 been elected.

3 Q. Can you tell us briefly about Orangeburg, particularly
4 any historical and present-day significance to the state?

5 A. Orangeburg is historically significant in a number of
6 ways. It was, at one point, a majority black community --
7 county. It is home to two historically black colleges,
8 Claflin University, along with South Carolina State
9 University.

10 Orangeburg has a unique history in this state, and I
11 would say in the country, in the civil rights tradition.
12 There are a number of men and women in Orangeburg County who
13 were actively involved and engaged in the civil rights
14 struggle. In 1968, unfortunately, Orangeburg was the scene of
15 what has become known as the Orangeburg Massacre, where three
16 students at South Carolina State were killed by state
17 troopers. That is something that lingers even to this day.

18 A notable civil rights figure from Orangeburg County is
19 the well-known photographer, Cecil Williams, who, at the time,
20 as a teenager, took pictures. He did freelancing for Jet
21 Magazine. And so, there are images that Mr. Williams took --
22 early images of Thurgood Marshall, of Martin Luther King, all
23 of those icons who were in and out of South Carolina during
24 that time.

25 Q. Are there issues that impact your constituents in

1 Orangeburg today that congressional representation can be
2 responsive to?

3 A. There are issues that impact my constituents that I think
4 congressional representation should respond to, could respond
5 to, and need to respond to.

6 Q. Such as?

7 A. Such as education. One that is even more critical is
8 this notion of interconnectivity. The pandemic really showed
9 glaring spots in South Carolina that did not have broadband.
10 And so, that's an area, particularly in a county like
11 Orangeburg, which is rural in nature, 1100 square miles in
12 width. And that's important. Healthcare and access to care.
13 We, as a state, chose not to expand Medicaid. That has
14 exacerbated healthcare access in rural communities. And, of
15 course, education. Orangeburg is a part of what is known in
16 some circles derisively as "the corridor of shame." And so,
17 all that that implies is also applicable to parts of
18 Orangeburg County, especially the eastern part of Orangeburg
19 County, which is along the I-95 corridor.

20 Q. Would congressional representation help improve access to
21 roads and other means of transportation?

22 A. I think congressional representation would. And the
23 reality is that that is not something that is going to improve
24 by people in Orangeburg County, by people along the I-95
25 corridor, having just one option as far as a seven-member

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1 congressional district, and having just one member who seems
2 to care about those who are the least of these.

3 Q. Can you explain that a little bit more? Who do you
4 believe that one representative is and why that is a burden?

5 A. That one representative would be the current
6 Sixth District Congressman, James Clyburn. Congressman
7 Clyburn is one of seven members of the congressional
8 delegation. And while Congressman Clyburn has seniority and
9 has been able to do some things for the district, quite
10 frankly, in my mind, there are a lot more things that could
11 have been done and could still be done if the other six
12 members of the congressional delegation were more sensitive,
13 shall we say, to the needs of marginalized communities,
14 communities of color in particular.

15 Q. And do you think congressional redistricting has a
16 relationship to additional congressional members being
17 sensitive to the needs of the communities you just discussed?

18 MR. MOORE: Objection as to leading, your Honor.

19 JUDGE GERGEL: Overruled.

20 THE WITNESS: Without question, I believe that that
21 is -- would you restate your question? Because that threw me
22 off.

23 MS. ADEN: I'll return to it.

24 **BY MS. ADEN:**

25 Q. What congressional district do you live in?

1 A. Sixth Congressional District.

2 Q. And do you know, generally, what areas are included in
3 the CD 6?

4 A. Generally, there are areas along the I-95 corridors,
5 pieces of the Pee Dee, a little bit of the Midlands --
6 including Richland, parts of Richland, Columbia, Sumter -- are
7 really that swath that is the I-95 corridor, makes up the
8 core, if I'm not mistaken, of the Sixth Congressional
9 District.

10 Q. Is this the same congressional district that you lived in
11 following the 2010 census?

12 A. It's the same congressional district I've lived in since
13 moving to South Carolina.

14 Q. Does CD 6 include similar areas of the state as in the
15 post-2010 map, as far as you're aware?

16 A. As far as I'm aware.

17 Q. Currently, does your Congressional District 6 have a high
18 concentration of black voters?

19 A. Yes.

20 Q. And after the 2010 census, did your congressional
21 district also have a high concentration of black voters?

22 A. Yes, I believe it did.

23 Q. And do you have any concerns that CD 6 is saturated with
24 voters, particularly black voters, who have a lot of needs
25 that a single congressional representative needs to responds

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1 to?

2 MR. MOORE: Objection as to leading.

3 JUDGE GERGEL: Let me just deal with this. It is
4 marginally leading, but it's a three-judge panel, it's not a
5 jury. Overruled.

6 Please proceed.

7 BY MS. ADEN:

8 Q. Do you have any concerns that CD 6 is saturated with
9 voters, particularly black voters, who have a lot of needs
10 that a single congressional representative needs to respond
11 to?

12 A. I have very serious concerns that CD 6 is saturated, if
13 you will, with voters of color, specifically black voters.

14 Q. And would you have that concern even if the number of
15 black voters has reduced in CD 6 in the 2020 congressional
16 map, as compared to the 2010 map by five percentage points?

17 A. Well, I would suggest to you a couple things. First, I'm
18 not a demographer, so I don't want to come across as an
19 expert. I try to stay in my lane. When I think about reduced
20 percentages of voters, black voters in particular, I think
21 it's important to recognize that a simple reduction in the
22 number of black voters in and of itself may or may not be
23 problematic, it depends on where that reduction came from and
24 what happened to those black voters that were taken out of the
25 Sixth Congressional District.

1 For example -- and this kind of, I think, gets to
2 something you were talking about earlier. What troubles me
3 about this congressional plan is that the ability of black
4 voters to influence -- potentially influence the outcome of at
5 least three other congressional districts has, in my mind,
6 been significantly impacted in a negative way by the current
7 district map.

8 Q. We'll get to that shortly. But briefly, as you sit here
9 today, have any black officials been elected to statewide
10 office outside of a single-member district in the 21st
11 century?

12 A. Although there have been black men and women who have run
13 statewide, there has not been a victory in any of those cases.

14 Q. And as you sit here today, have any black officials, men
15 or women, been elected to statewide office outside of
16 single-member districts in the 20th century?

17 A. Not that I'm aware of.

18 Q. Okay. Turning to a comparison between this redistricting
19 cycle and the last cycle, what role does the House of
20 Representative have in developing a congressional
21 redistricting map?

22 A. The House of Representatives is responsible for
23 developing a congressional district map, just as it does House
24 maps.

25 Q. And were you involved in redistricting in prior cycles

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1 before this current one?

2 A. Yes.

3 Q. How many?

4 A. Three.

5 Q. And how does the process for developing congressional
6 maps, this cycle, compare to the previous post-2010 cycle?

7 MR. MOORE: Objection as to foundation.

8 JUDGE GERGEL: I believe she's -- overruled. I
9 believe she's adequately -- she's been in the legislature
10 since 1992.

11 Please proceed.

12 BY MS. ADEN:

13 Q. How does the process for developing congressional maps,
14 this cycle, compare to the process following the post-2010
15 census?

16 A. The entire process this time around was slightly
17 different in a number of ways as far as the process itself and
18 the actual committee that was developed -- or created, I
19 should say, to deal with redistricting. In previous cycles,
20 redistricting has always been the purview of the Judiciary's
21 Election Law Subcommittee. This time around, that didn't
22 happen. In previous congressional redistricting efforts, as I
23 recall, input has been sought from incumbents. I clearly
24 remember in the 2010 redistricting, for example, Congressman
25 Clyburn was involved in the House's redistricting efforts.

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1 And I remember that because he was opposed to a plan that I
2 drew as a result of the newly created set of congressional
3 districts. I thought it important for us to at least create
4 an influence district so that voters of color would have an
5 opportunity to influence at least one other district. And so,
6 my point is, I don't know if there was involvement of
7 Congressman Clyburn. I can't speak to the other six members
8 of the delegation, but I'm not sure if he was involved in this
9 process. And that would be different from my experience.

10 Q. Now, you've mentioned that a different committee handled
11 redistricting in the last cycle than the current. Did that
12 same committee handle congressional redistricting in cycles
13 prior to 2010?

14 A. In previous cycles, as I stated, it was the whole
15 process, whether House or congressional, was handled by the
16 House Election Law Subcommittee of the Judiciary Committee.
17 This time around, the House and congressional redistricting
18 was handled by what was called an ad hoc committee on
19 redistricting, as opposed to the Election Law Subcommittee.

20 Q. And did you serve on the ad hoc committee?

21 A. I did not serve on the ad hoc committee. And I think
22 it's important to note that redistricting, whether by election
23 law or ad hoc, is the purview of the Judiciary Committee. I
24 am not, have not, ever been a member of the Judiciary
25 Committee, and so it would not be appropriate, in my mind, for

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1 me to have served on this ad hoc committee.

2 Q. But were you aware of the membership of the ad hoc
3 committee?

4 A. Yes.

5 Q. And how did you become aware?

6 A. As a member of the House, in particular when the
7 announcement was made. But I think I should also point out
8 that, before the official announcement was made -- I am in the
9 same office suite as my colleague, Representative John King,
10 who serves on the Judiciary Committee as first vice chair and
11 is also a member of the Election Law Subcommittee. And he
12 confided in me that this ad hoc committee had been created and
13 that he was not a part of it, that, as in previous years, he
14 had not been assigned to the Election Law Subcommittee. So, I
15 became aware of it two ways, Officially and unofficially, by
16 my suite mate sharing with me what had been done.

17 Q. And I'll return to Representative King in a moment. But
18 with respect to the membership of the ad hoc committee, are
19 you aware of whether any of the members had experience with
20 statewide redistricting from past cycles?

21 A. As I recall the members of the committee, I am not aware
22 of any of them, including the chairman, who had any experience
23 in statewide redistricting.

24 Q. And what do you think is the significance of that?

25 A. Well -- and, of course, this is my opinion. Maybe I've

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1 just been there too long and I'm jaded and cynical, but when I
2 saw the creation of that committee, to me, it sent a red flag
3 that this was going to be even more so than in the past, a
4 process that excluded people.

5 Q. Now, is Representative King a black person?

6 A. Yes.

7 Q. Okay. Are you aware of whether Representative King had
8 experience with statewide redistricting before this cycle?

9 A. Yes.

10 Q. Was the ad hoc committee represented by members from
11 geographically diverse parts of the state as well as racial
12 background?

13 A. That was the assertion of the committee.

14 Q. Did that happen in reality?

15 A. Not in my opinion.

16 Q. How come?

17 A. Well, from a geographic diversity standpoint, the makeup
18 of, they said that each congressional district was
19 represented. The 5th Congressional District was initially to
20 be represented by Representative Brandon Newton.
21 Representative Newton was expecting a new baby. And all of us
22 can appreciate the interest and the desire to spend that
23 quality time with a new baby and the wife. And so, as a
24 result, Mr. Brandon Newton did not serve on that committee.
25 There was a vacancy then for the 5th Congressional District.

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1 As I understand it, that vacancy was never filled. I would
2 point out that Rep King is from Rock Hill and is a member of
3 the 5th Congressional District. And if I recall correctly --
4 and I may be mistaken -- I think Representative King
5 approached the leadership about replacing --

6 MR. MOORE: Your Honor?

7 THE WITNESS: -- Representative Newton.

8 MR. MOORE: Just for the record, I do have to object
9 to hearsay.

10 JUDGE GERGEL: Yeah. I think this is actually being
11 offered for the truth of the matter. I sustain that
12 objection.

13 MR. MOORE: I let the last one go, but I -- as I
14 understand it, Representative King is on the plaintiffs'
15 witness list. He can obviously testify.

16 JUDGE GERGEL: I sustain the objection.

17 MR. MOORE: Thank you, your Honor.

18 **BY MS. ADEN:**

19 Q. Did you attend any hearings during the consideration of
20 the congressional map, where you observed any irregularities
21 in how the House Judiciary Committee treated Representative
22 King as first vice chair during this redistricting cycle?

23 A. I attended the committee hearing when Representative King
24 was under the impression that he would be chairing the
25 meeting, only to get there and discover that that would not be

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1 the case.

2 Q. And can you explain in more detail what circumstances you
3 learned led to that?

4 MR. MOORE: Your Honor, I'm going to object to this
5 question. I think she can only testify to non-hearsay. If
6 she's going to testify about what she learned from
7 Representative King, I think that that is out of bounds.

8 JUDGE GERGEL: Ms. Aden, I think to the extent that
9 Representative King is coming, we can certainly hear from him,
10 but Representative Cobb-Hunter can only talk about things she
11 knows firsthand and not based on what somebody else told her.

12 **BY MS. ADEN:**

13 Q. But to clarify for the record, Representative
14 Cobb-Hunter, you attended a hearing where the issue of who was
15 serving -- leading a particular meeting --

16 JUDGE GERGEL: She can testify about what she
17 observed.

18 THE WITNESS: Yes.

19 **BY MS. ADEN:**

20 Q. So, did you personally observe any irregularities in how
21 the House Judiciary Committee treated Representative King as
22 first vice chair during this redistricting cycle?

23 A. What I observed during that committee hearing was
24 Representative King prepared to chair the meeting. I
25 mistakenly had arranged for a picture to be taken, just for

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1 his records, of him chairing the meeting. And when we got in
2 there, he was handed a letter or something -- whoever -- I
3 don't remember exactly who was there. But there was a letter
4 presented that gave that responsibility of chairing the
5 meeting to someone else.

6 Q. And what did you understand happened as a result of that
7 letter?

8 A. Mr. King was not allowed to chair the meeting.

9 Q. And in your experience --

10 JUDGE GERGEL: Excuse me. Can we just clarify what
11 committee is this that you --

12 THE WITNESS: The judiciary.

13 JUDGE GERGEL: I'm sorry? Judiciary Committee?

14 THE WITNESS: This was the subcommittee of the
15 Judiciary Committee.

16 JUDGE GERGEL: Okay. Thank you.

17 BY MS. ADEN:

18 Q. In your experience in the legislature, how many times
19 have you seen a first vice chair passed over to chair a
20 committee meeting in the absence of a chairman?

21 MR. MOORE: Objection as to form.

22 JUDGE GERGEL: Overruled.

23 THE WITNESS: I have not seen that in my experience
24 as a member of the South Carolina General Assembly.

25 BY MS. ADEN:

1 Q. In closing the loop on the comparison between this cycle
2 and the last cycle, how does your role in developing
3 congressional maps compare between the last cycle and this
4 one?

5 MR. MOORE: Objection as to form.

6 JUDGE GERGEL: Overruled.

7 THE WITNESS: The last cycle, I was an active
8 participant in the congressional mapping process, because we
9 had just -- "we" meaning South Carolina -- had just gotten a
10 brand new congressional seat as a result of the population
11 growth. I thought it important that somebody draft an
12 amendment, which would create in that new 7th District, the
13 opportunity for it to be competitive.

14 The one thing about districts in South Carolina, in
15 my view, whether House or Senate, is that there are no
16 competitive districts pretty much left. And so I drew a map
17 that I believe had the 7th Congressional District with a BVAP
18 of about 46 percent perhaps, which I thought would be good and
19 would allow people in the Pee Dee, some of the I-95 corridor
20 that's on the eastern edge of Horry, to participate and be
21 able to influence the outcome. So, I was pretty excited,
22 because I thought that there was a shot. Back then, the House
23 was not as politically polarized as I think it is now, and so
24 I naively believed that it might stand a chance.

25 I mentioned before about Congressman Clyburn's

1 participation in the past. And it's relevant to this point
2 because he did not agree with me that a district that reduced
3 his BVAP in order to create a new district that would be
4 influential, he didn't agree with that assessment and made it
5 clear to members of the Democratic Caucus, made it clear to
6 members of the Black Caucus. And at that time, a former
7 chairman, Jim Harrison, in his conversation from the floor,
8 made it clear to me that he, as chair of the Judiciary
9 Committee, wanted me to know that Congressman Clyburn did not
10 support my map. So, he was engaged then.

11 Fast forward to this one. I chose not to be involved
12 in the congressional redistricting because I was more focused
13 on the House maps. I don't know if Congressman Clyburn was
14 consulted, involved. I was told he was not. But, again,
15 that's what I was told. I have no basis to know whether he
16 was consulted or not. I do know in previous cycles, he was.

17 Q. Do you see any harm in maintaining the boundaries of CD 7
18 in a map enacted this cycle like those that it had in the
19 post-2010 cycle?

20 A. I do. And, again, trying to stay in my lane, this is
21 just a layperson's opinion. When I looked at the 7th
22 Congressional District, I still see -- saw it as an
23 opportunity to create some more competitive kinds of districts
24 in this state at the congressional level, for us to lock in
25 the congressional CD 7. To me, just missed an opportunity for

1 voters in the First Congressional District, the Sixth
2 Congressional District, the Second, as well as the Fifth, to
3 have a chance to be able to influence and add to the
4 competitive nature of these congressional districts.

5 And so, if we are to maintain the Seventh in its current
6 form and its boundaries, that, to me, suggested there was no
7 opportunity to disperse some of those voters of color into
8 some those other three to four districts that I thought, just
9 looking at the map, they could have done.

10 Q. Are you familiar with the public hearings that the House
11 held in August through September of 2021?

12 A. Yes.

13 Q. What did you understand was the purpose of these hearings
14 before -- what was the purpose of these hearings?

15 A. The stated purpose was to receive public input on the
16 redistricting maps.

17 Q. Did you attend any of these hearings?

18 A. I did.

19 Q. Which one?

20 A. Orangeburg County.

21 Q. Did you provide any testimony?

22 A. Yes.

23 Q. I'm asking Mr. Stephen Najarian, who's supporting us
24 today, to pull up PX-556, which is the September 21, 2021,
25 transcript of the Orangeburg redistricting hearing, and to

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1 focus --

2 JUDGE GERGEL: Ms. Aden, I was going to say, this
3 highlights the fact that, I think, in our starting witnesses,
4 we did not put exhibits into evidence, as I intended to. We
5 just proceeded, and that's my oversight. And we're now
6 looking at an exhibit which is not yet in the record. Why
7 don't we, just for the moment -- so, is this one contested by
8 the --

9 MR. MOORE: It is not, your Honor.

10 JUDGE GERGEL: Okay. What I'd like to do, after we
11 come back from lunch, let's be ready to put these in. What
12 number is that exhibit?

13 MS. ADEN: PX-556.

14 JUDGE GERGEL: You're offering Exhibit 556.

15 Is there an objection from defendants?

16 MR. MOORE: There is not, your Honor.

17 JUDGE GERGEL: Very good. Plaintiffs' 556 is
18 admitted.

19 ***(Plaintiffs' Exhibit PX-556 was admitted into***
20 ***evidence.)***

21 MS. ADEN: Thank you, your Honor.

22 And I'd like Mr. Najarian to focus on page 30, lines
23 12 through 21.

24 **BY MS. ADEN:**

25 Q. And if you could take a moment to review that,

1 Representative Cobb-Hunter.

2 Representative Cobb-Hunter, what prompted you to provide
3 these remarks?

4 A. As a part of my work with the South Carolina Progressive
5 Network, we've done a lot of research looking at barriers to
6 voter participation, a whole social justice movement. We
7 focused because we knew redistricting was coming up. A couple
8 years ago, we turned our attention to this notion of the
9 redistricting and reapportionment process. As a result of
10 that research, what I discovered was that we are the only
11 state in the union that does not codify the redistricting
12 process. We don't have any laws -- any statutes governing
13 redistricting. We have what we call guidelines. And from my
14 perspective, and that of the network, it is too subjective to
15 just have arbitrary, in my view, guidelines that could change
16 or not. It just seemed, to me, a good idea to safeguard the
17 integrity of the process, to safeguard participation by
18 creating, in statute, guidelines that must be adhered to in
19 the redistricting process. I thought it important to put it
20 into law, as opposed to allowing discretion, shall we say, in
21 the creation of those guidelines.

22 Q. Now, did you participate in a January 12th, 2022, House
23 hearing on congressional redistricting?

24 A. Yes.

25 MS. ADEN: I would ask Mr. Najarian to pull up a not

1 yet admitted PX-112, your Honor, which is the January 12th,
2 2022, transcript of a House hearing.

3 JUDGE GERGEL: Are you offering it, Ms. Aden?

4 MS. ADEN: Yes, your Honor.

5 JUDGE GERGEL: Is there an objection?

6 MR. MOORE: No, your Honor.

7 JUDGE GERGEL: Plaintiffs' Exhibit 112 admitted.

8 *(Plaintiffs' Exhibit PX-122 was admitted into*
9 *evidence.)*

10 JUDGE GERGEL: Please proceed.

11 MS. ADEN: And if you could focus on page 63, lines 8
12 through 19.

13 **BY MS. ADEN:**

14 Q. And take a moment to review that, please. What prompted
15 you to have this colloquy with Representative Jordan?

16 A. I was interested in whether or not Section 2 of the
17 Voting Rights Act had been applied or done, I should say, on
18 this congressional plan. And he and I were going back and
19 forth, with me trying to get a definitive yes-or-no answer on
20 whether the Section-2 analysis had been done. I don't recall
21 Mr. Jordan saying yay or nay. And so, from my perspective, I
22 just assumed it had not been done, because I requested a copy
23 of it, if it had been done, and I have yet to receive that
24 copy.

25 Q. And focusing on this testimony, what did you mean when

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1 you asked whether the criteria had been applied consistently
2 to particular districts?

3 A. I think what I was referencing there is, again, talking
4 about these guidelines, these communities of interests and all
5 of that. It was unclear to me whether or not those guidelines
6 had been consistently applied. I had heard from the
7 testimony -- or I should say, from the conversation from the
8 well, that that was not necessarily the case as far as the
9 Beaufort decision to make whole, as opposed to the Charleston
10 decision to not make whole. And so, the lack of consistency,
11 in my view, suggested that it had been disparate in its
12 application, and I wanted to make sure that I was either right
13 or wrong in that assessment.

14 Q. Okay.

15 MS. ADEN: And turning back to the September
16 Orangeburg redistricting hearing very briefly, I'm asking
17 Mr. Najarian to pull up what has been marked as PX-556
18 again -- or, it's been admitted at this point. It's 556,
19 which is the September 21, 2021, transcript of the Orangeburg
20 redistricting hearing, and focus on page 31, lines 14 through
21 23.

22 **BY MS. ADEN:**

23 Q. What prompted you to make these remarks?

24 A. As it says there, I saw something on the news about the
25 intent to ensure a less -- to ensure that the First

1 Congressional District remained as non-competitive as
2 possible, and I was concerned about that. I had some glimmer
3 of hope, since the Democrats had won that district before,
4 that, perhaps, with the right candidate, that Democrats would
5 be able to capture the seat again. And so, I was concerned
6 about that. I also, in just private conversations with
7 Republican colleagues, was told that that was a goal, to make
8 sure that the Republicans would maintain their hold on that
9 First Congressional District.

10 Q. Did you have any concerns about the way congressional
11 redistricting would occur, given population changes after the
12 2020 census?

13 A. I was concerned about that, and that is a part of why, on
14 the House side, I introduced what was called the Fair Act.
15 And on the Senate side, Senator Mike Fanning introduced it.
16 My point is, it was very clear that there had to be some kind
17 of analysis done. And I say this because I was very troubled
18 and concerned by the gutting of -- my term, not anybody
19 else's -- of the 1965 Voting Rights Act by the removal of
20 Section 5, which required preclearance. That, to me, was a
21 real, almost death nail to having another set of eyes, if you
22 will, look at what some states were doing.

23 To me, it was important to recognize that, while I was
24 disappointed, I should not be discouraged by the elimination
25 of Section 5 from the Voting Rights Act, and should try to

1 figure out how to use the one tool that the Court left in the
2 toolkit, and that was Section 2. And so, the whole analysis
3 and all of those kinds of things, where you study voting
4 patterns, you look at issues of culture, history, and all
5 those kinds of things that would go into a Section 2 analysis,
6 I thought that was important that we do that because, again,
7 that would allow communities of color to at least have some
8 influence in who the final member, if you will, would be.

9 Q. And when you were providing these marks in September 21
10 of 2021, is it fair to say that you were warning the House not
11 to pack and crack black voters, particularly in CD 1?

12 MR. MOORE: Objection as to leading.

13 JUDGE GERGEL: That is leading.

14 Restate your question. Representative Cobb-Hunter
15 can testify without you doing anything, I can assure you of
16 that.

17 MR. MOORE: Absolutely, your Honor.

18 MS. ADEN: I will turn to another subject.

19 **BY MS. ADEN:**

20 Q. Are you aware that the House developed a congressional
21 map referred to as the Alternative House Staff Plan?

22 A. Yes.

23 MS. ADEN: Mr. Najarian, can you please pull up what
24 has been marked as PX-488?

25 **BY MS. ADEN:**

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1 Q. Are you familiar with this document?

2 A. I've seen it before.

3 Q. Okay.

4 MR. MOORE: Just this for the record, your Honor, we
5 have no objection.

6 JUDGE GERGEL: Okay. Plaintiffs' Exhibit 48, is it
7 being offered?

8 MS. ADEN: Yes, your Honor.

9 JUDGE GERGEL: Very good. And the defense do not
10 object, correct?

11 MR. MOORE: We do not object.

12 JUDGE GERGEL: Exhibit 488 is admitted.

13 ***(Plaintiffs' Exhibit PX-488 was admitted into***
14 ***evidence.)***

15 BY MS. ADEN:

16 Q. Did you have any involvement in the development of this
17 alternative staff proposal?

18 A. No.

19 MS. ADEN: You can take it down.

20 JUDGE GERGEL: Okay. Can I look at it first before
21 we --

22 MS. ADEN: Yes, we can look at it. We're going to
23 come back to it.

24 JUDGE GERGEL: Let me understand what this is. This
25 is a plan -- one of the House staff member's plans?

1 MS. ADEN: The second map that they drew.

2 JUDGE GERGEL: And it still has Charleston split; is
3 that correct?

4 MS. ADEN: That's correct, your Honor.

5 JUDGE GERGEL: Downtown Charleston through -- it
6 looks like it comes through the Sea Islands, Edisto, and then
7 comes up into downtown Charleston and North Charleston. Is
8 that correct? Is it going to North Charleston? You don't
9 know the geography?

10 MS. ADEN: I do, but I would like to ask --

11 JUDGE GERGEL: I'll bet you --

12 MS. ADEN: I'm going to ask the witness.

13 MR. MOORE: It goes into North Charleston slightly.
14 This is the second of two plans.

15 JUDGE GERGEL: Thank you very much. Okay. Let's
16 continue. I just wanted clarification of what I was looking
17 at. Okay.

18 **BY MS. ADEN:**

19 Q. Looking back at this House Alternative Plan 1, can you
20 describe what, if any, concerns -- well, let's take it down
21 for a moment. I would like to show you one other thing and
22 then we will turn very quickly to that.

23 MS. ADEN: Can you pull up PX-112 again, the
24 January 12th, 2022, transcript, page 42, lines 19 through 25?
25 Okay. And if we can take this down and, please, pull up

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1 PX-488 one more time, so you'll have it in front of you.

2 **BY MS. ADEN:**

3 Q. Can you tell me what prompted you to make those remarks?

4 A. Yes. In looking at this map, I was concerned that what I
5 perceived happening in Charleston County, in particular, with
6 North Charleston. And again, just looking at it from the
7 standpoint of contiguity, communities of interest, all of that
8 kind of thing, it seemed odd to me that this big hunk of
9 Charleston County was put into the 6th Congressional District
10 when, in my eye, it would have made more sense just to come
11 and take one and keep it -- just include that, that was cut
12 out, and put into the 6th.

13 I also thought it interesting that the -- again, Seventh,
14 we've already talked about. But it just looked to me in this
15 map that there were a lot of counties in the 6th Congressional
16 District, and they could easily have, I believe, drawn a map
17 that would have given voters in the 1st Congressional District
18 in particular, an option to at least influence the outcome of
19 that district. But by removing North Charleston, which, as a
20 result of the gentrification of downtown Charleston, where
21 there used to be a lot of black folk in the city of
22 Charleston, and they've now been dispersed and moved to North
23 Charleston, that, to me, just made it real difficult for those
24 former downtown Charleston residents to have any say over
25 something that, in their voting history, I would think -- and

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1 this is why Section 2 was so important -- would have shown
2 some kind of culture, you know, the similar cultures,
3 communities, all of those kinds of things.

4 And, quite frankly, again, you're talking to somebody who
5 serves a district that is one county, that's 1100 square
6 miles. It just seemed to me totally unreasonable to expect
7 people in North Charleston, voters in North Charleston, to
8 have some degree of commonality with people in Richland
9 County. That was a stretch, in my view. And it just seemed
10 to me to suggest, well, you know, they're all black people, so
11 it won't really matter.

12 JUDGE GERGEL: Representative Cobb-Hunter, I want to
13 see if I can understand. Are you proposing that -- what are
14 you proposing should be different about this map? I'm just
15 confused what your -- would you want Charleston County whole?

16 THE WITNESS: Yes, sir.

17 JUDGE GERGEL: And in what district would you propose
18 it in?

19 THE WITNESS: The First.

20 JUDGE GERGEL: Thank you. Okay.

21 THE WITNESS: Sorry, Judge. I appreciate that
22 clarification. My concern with the map is that, with the
23 exception of this plug out of Charleston County, that
24 Charleston County should have been made whole just as Beaufort
25 County was made whole. And I thought it odd that the request

1 from Beaufort County residents was honored, yet the request
2 from Charleston County residents, particularly those voters in
3 North Charleston, was not honored.

4 **BY MS. ADEN:**

5 Q. Did you have any observations about Congressional
6 District 5 in this alternative plan?

7 A. Yeah. Yes, I did. Congressional District 5, again, the
8 same kinds of things -- I mean, the same kind of concerns
9 apply, from my perspective. When I look at Congressional
10 District 5 -- and this kind of goes back, Ms. Aden, to the
11 point about locking in Congressional District 7 and not having
12 any changes there. Because of that, it, in my mind, decreased
13 the options for voters of color to have some influence in
14 Congressional District 5. This map, in my view, reduced the
15 competitiveness of CD 5, just as it did CD 1.

16 Q. Were there particular areas of this map that caused you
17 concern?

18 A. Not particular areas. And if I could have that blown up
19 a bit? These county names are pretty light, and I'm not --
20 oh, thank you so much.

21 As I look at it, there are options. For example, I think
22 there -- and again, this would have affected Sumter County --
23 in my view, would have been -- should have been in the Sixth
24 Congressional District. I think there were opportunities for
25 Newberry to be a part of the Fifth. And so, again, I'm

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1 looking at the lack of competition in these CD districts. And
2 I think this map just further ensured that there would be very
3 few competitive congressional districts.

4 Q. What about CD 2? Did you have any observations about CD
5 2?

6 A. Yes. In CD 2, I thought -- again, when we look at CD 2,
7 I thought that it made sense to me for that district to not be
8 split. Lexington County had a growing -- a lot of population
9 growth, as I recall. And again, thinking about contiguity,
10 communities of interest, cultural, all of that good stuff, it
11 seemed to me that, rather than take Barnwell and lead the
12 other two, that it made sense to me to either -- if you could
13 raise that up a bit -- to either include Bamberg and
14 Allendale, or at any rate, to include Allendale and Hampton.

15 There were some changes, I think, that could have been
16 made in CD 2, based on that terrific growth in Lexington
17 County, that if the idea was to keep communities of interest
18 together in the Tri-County area of Bamberg, Barnwell, and
19 Allendale -- they have been historically been considered
20 Tri-County communities. And so, I thought, because you've got
21 all that population in Lexington, why not take these two
22 low-growth counties that are rural and had lost population,
23 why not include them as well.

24 MS. ADEN: You can take that down, Mr. Najarian, and
25 look at what is been admitted as PX-112, which is, again, the

1 January 12th, 2022, transcript of the House hearing, and look
2 at page 36, lines 14 through 17.

3 **BY MS. ADEN:**

4 Q. Do you recall posing this question during the hearing?

5 A. Yes.

6 Q. Okay. What prompted you, at the time that you made this
7 comment, to ask that question of Representative Jordan?

8 A. I asked that question based on conversations with
9 colleagues, especially those from Charleston County, who were
10 upset with the North Charleston split, who were upset that
11 Beaufort County's pleas had been heard and, in their view,
12 their pleas about Charleston County specifically, that taking
13 away North Charleston, the majority black voting bloc, they
14 were concerned that their pleas had fallen on deaf ears. And
15 so, I'm always one who is interested in clarity, and I wanted
16 to make sure, from the chair of that committee, what the
17 rationale was for making Beaufort whole but not Charleston
18 County. Because, when I think of Beaufort/Charleston, I think
19 of the Lowcountry, I think of cultural significance,
20 historical significance, all of those kinds of things. And it
21 just seemed odd to me that one county would be made whole, and
22 yet, right next door, the other county would not.

23 Q. Do you recall Representative Jordan responding that the
24 treatment of Charleston and Beaufort is similar to how those
25 areas were treated in the 2011 map?

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1 A. Yes.

2 Q. And what did you think of that explanation?

3 A. I was more -- at that point, more interested in having
4 just a really direct yes-or-no answer to the question, because
5 I was trying to figure out if what my colleagues were saying
6 was accurate or not. And so, it was hard for me to
7 understand, if the changes were similar to what was done in
8 the previous cycle, why there was such a concern.

9 And then, again, when I think about the whole notion of
10 the moving of people of color from downtown Charleston into
11 the North Charleston area, that, to me, suggested there's
12 something else going on here, from the standpoint of my
13 colleagues, because it's not just about black people and black
14 voters, there's an issue of communities of interest. The
15 whole notion of cultural. I mean, here in the Lowcountry,
16 that's pretty significant. That's an identification. That's
17 a badge of honor that people down here seem to wear,
18 regardless of whether they are black, white or otherwise.

19 Q. Are you aware whether it was possible to draw a
20 congressional map with the population balance that kept
21 Beaufort and Charleston whole and in CD 1?

22 A. Yes.

23 MS. ADEN: Can you pull up PX-112 again, turn to page
24 120, and focus on lines 13 through 16?

25 BY MS. ADEN:

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1 Q. What were you trying to convey here?

2 A. Well, I had heard that the Senate -- Senator Harpootlian
3 in particular -- had drawn a map that had kept both counties
4 whole. And my thought was: Well, if they could do it on the
5 Senate, certainly, as a House member -- no disrespect to the
6 Senate. I certainly thought if the Senate can do it, surely
7 on the House side, we could do it or even do it better. So, I
8 was concerned about being told by the House Committee, ad hoc
9 committee, that it couldn't be done, that's why it wasn't
10 done. And then to have, on the Senate side, a Senator draw a
11 map that actually did what we were being told on the House
12 side could not be done.

13 Q. And who told you on the House side it could not be done?

14 A. As I recall, those were conversations that came from the
15 ad hoc committee, from the chair of the committee, from
16 members of that ad hoc committee.

17 Q. Now, you have talked about Section 2.

18 MS. ADEN: And I would like to ask Mr. Najarian to
19 play what has been marked as HX-152. This is House
20 defendants' exhibit. It's a video and it's a
21 less-than-two-minute video clip of --

22 JUDGE GERGEL: This is a defense exhibit?

23 MS. ADEN: House defendants.

24 MR. MOORE: I think we marked it also as an exhibit
25 as did plaintiffs. I have no objection.

1 JUDGE GERGEL: What's the plaintiffs' number?

2 MS. ADEN: Can we wait to maybe move to admit it and
3 look at this, and then I can get that answer for you from my
4 team?

5 JUDGE GERGEL: That would be fine. Do we have a
6 defense number?

7 MR. MOORE: I don't.

8 MS. ADEN: Oh, HX-152.

9 JUDGE GERGEL: HX-152.

10 MS. ADEN: And it's minute marks 1:41:54 to 1:43:40.

11 JUDGE GERGEL: Okay. And is there any objection from
12 any party to the admission of HX-152?

13 MR. MOORE: Not from House defendants, your Honor.

14 MR. GORE: No, your Honor.

15 JUDGE GERGEL: Very good. HX-152 is admitted.

16 ***(House Defendants' Exhibit 152 was admitted into***
17 ***evidence.)***

18 ***(Video played)***

19 **BY MS. ADEN:**

20 Q. Do you want to explain anything different beyond what
21 you've already explained about why you were requesting --
22 about what prompted you to have that colloquy?

23 A. I'm not sure that there is anything different. I do want
24 to make it clear that, again, because I've been around for a
25 minute, I recognize that, for the record, we needed to ensure

1 that everything that could be done was done, and because
2 Mr. Jordan kept talking about they complied with the voting
3 rights compliance. Then, to me, that meant doing a Section-2
4 analysis. And it was troubling to me that if they were
5 complying with the Voting Rights Act, which included a
6 requirement of Section 2 -- which is permanent, not like
7 preclearance, only applying to a few states and expiring -- it
8 just seemed to me like, given what Section 2 -- my
9 understanding of what Section 2 does, and that is, looking at
10 a whole variety of things, not just race, but voting patterns,
11 performance, all that kind of good stuff, it seemed to me that
12 we were doing a disservice to voters in South Carolina if we
13 were not complying with the Voting Rights Act by doing
14 Section 2.

15 Mr. Jordan kept talking about they complied. That, to
16 me, seemed like a stock lawyer answer. I'm just a social
17 worker, perhaps it was not. But, to me, it seemed like he was
18 going to great lengths to say yes or no.

19 JUDGE GERGEL: Let me ask this. Ms. Cobb-Hunter, are
20 you basically asking -- when you say "Section 2," are you
21 asking whether it was a racial polarized voting analysis? Is
22 that what you're asking?

23 THE WITNESS: Yes, sir, among other things.

24 JUDGE GERGEL: Okay. What are the other things,
25 other than a racial polarized voting analysis?

1 THE WITNESS: Other than racially polarized voting
2 patterns, I think it's important that communities of -- the
3 whole cultural piece of it. We talk about communities of
4 interest, and a lot of times we assume that means the same
5 race, and that's not necessarily the case, especially as
6 communities become more diverse and more integrated. And so,
7 I just thought there were some cultural issues, some historic
8 issues. The whole bit about competitiveness is important to
9 me, because I serve in a body where more than 71 percent of
10 the seats are not competitive and are won in primaries.

11 And so, I just saw it as an opportunity for us to do
12 some things differently. And I saw it as a real omission that
13 we didn't choose -- if we're saying we're complying with the
14 Voting Rights Act, then show me the Section-2 analysis.

15 **BY MS. ADEN:**

16 Q. Did you think a Section-2 analysis during consideration
17 of congressional redistricting was needed to help understand
18 how moving voters in and out of districts could impact their
19 ability to participate?

20 A. Yes.

21 MR. MOORE: Objection to the form.

22 JUDGE GERGEL: Overruled.

23 MS. ADEN: Mr. Najarian, I want to play briefly one
24 last clip that is one minute total. It's HX-152 again, minute
25 marks 2:55:57 through to 2:57:04. This is from the same

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1 January 12th, 2012, House hearing, page 118, 14 through 119.

2 **(Video played)**

3 JUDGE GERGEL: I wanted to hear that about the
4 amendment.

5 MS. ADEN: I think that was not the one I was looking
6 for.

7 If you're going to complete that, I will take a look
8 at my notes and figure out why that's a different video than
9 the --

10 MR. MOORE: I may not be completing it during her
11 cross-examination, because I have to make sure when I can
12 complete it, but I have no objection.

13 JUDGE GERGEL: That's okay. It was a line, and the
14 most important thing, and everybody's waiting, and then it
15 stops. I don't want to slow you down, so you can go ahead.

16 **BY MS. ADEN:**

17 Q. Let me ask you another question, and then have my
18 colleague see where that would end. I don't want to have a
19 video playing indefinitely.

20 Did you ever receive the Section-2 analysis that you
21 asked the legislature for?

22 A. No.

23 Q. Okay. Did you vote for the House alternative map?

24 A. No.

25 Q. And are there any additional reasons why you did not vote

1 for the House alternative map beyond the reasons that you
2 explained when you were pointing out some of the areas of
3 concern with your Honors and the rest of the court?

4 A. No. Again, voted against it because I didn't think it
5 was fair to voters of color, and I thought it just further
6 reduced the competitiveness of congressional districts in
7 South Carolina.

8 Q. And are you familiar with the congressional map that the
9 governor signed into law, the enacted map?

10 A. I've seen it.

11 MS. ADEN: And I'm going to ask to pull up what has
12 been marked as PX-489, the enacted map. And I would like to
13 offer this into evidence.

14 MR. MOORE: No objection.

15 JUDGE GERGEL: Plaintiffs' 489 is offered. With no
16 objection, Plaintiffs' 489 is admitted.

17 ***(Plaintiffs' Exhibit PX-489 was admitted into***
18 ***evidence.)***

19 BY MS. ADEN:

20 Q. Are you familiar with this document?

21 A. I've seen it.

22 Q. Okay. Do you have any concerns about the enacted map as
23 you sit here today?

24 A. My concern remains with what I perceive as packing voters
25 in the 6th Congressional District, what I see as an omission,

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1 a lack of opportunity for voters in the North Charleston area
2 by taking them out of the First. And so, again, when I see
3 this map, as signed by the governor, it just continues the
4 concerns that I had with what you put up as Alternative 1. I
5 think we missed a golden opportunity in this state to really
6 give voters across the state an opportunity to influence, or
7 at least think they can influence who represents them in
8 Congress.

9 Q. Do you have any observations about how Orangeburg is
10 treated in the enacted map?

11 A. Orangeburg is split in this map. It is split into the
12 2nd Congressional District. I believe that, rather than
13 splitting Orangeburg County in the way that it has been split,
14 that the 2nd Congressional District would have been better
15 served by the inclusion of Bamberg and Allendale Counties.
16 They have a lot more in common with Barnwell than the piece of
17 the western part of Orangeburg County that they split.

18 JUDGE GERGEL: Can we zoom in on Orangeburg so we can
19 see it more clearly?

20 MS. ADEN: Where the pink and orange meet in the
21 center, to the right of 2.

22 JUDGE GERGEL: Let's take our lunch break now, and be
23 back at 2:00 p.m.

24 ***(Lunch Recess)***

25 JUDGE GERGEL: Please be seated. Is Representative

1 Cobb-Hunter back on the stand?

2 MR. CHANEY: Your Honor, we had a couple
3 administrative matters we wanted to bring to the Court.

4 THE COURT: Yeah. And I want to do the thing with
5 these exhibits if that's possible. Can we do that?

6 MR. CHANEY: Certainly. We can start with that. Mr.
7 Freedman can do that for us.

8 THE COURT: Okay. Mr. Freedman, what are we doing on
9 exhibits?

10 MR. FREEDMAN: So, your Honor, I have a filing that
11 we will put in tonight, so the record is nice and clear. And
12 we have exactly the exhibit numbers. I am going to read
13 through the plaintiffs' exhibits that we understand there's no
14 objection to, which will take me about 90 seconds.

15 JUDGE GERGEL: Okay.

16 MR. FREEDMAN: I will then endeavor, unless they
17 would rather do it themselves, to read the Senate exhibits and
18 the House exhibits. It's up to them whether they want me to
19 do it.

20 THE COURT: Do it slow enough so both my court
21 reporter and I can keep up with you, okay?

22 MR. FREEDMAN: Yes, your Honor. And I'm going to ask
23 to come up to the podium.

24 JUDGE GERGEL: Come up to the podium. That's fine.

25 MR. FREEDMAN: And we will put in a filing tonight

1 that has all the numbers, so the record is nice and clear.

2 JUDGE GERGEL: Thank you.

3 MR. FREEDMAN: So, for plaintiffs, the exhibits that
4 are going without objection are: PX-1, 3; PX-5 through
5 PX-137; PX-139, which is subject to the stipulation of ECF
6 416; PX-175 to 176; PX-181 through 183; PX-186; PX-190 and
7 191; PX-194; PX-203; PX-209; PX-216; PX-231; PX-244 to 247;
8 PX-261; PX-265 to 267; PX-284; PX-286; PX-288 through 298;
9 PX-302; PX-304 to 307; PX-309; PX-311 and 312; PX-317; PX-320
10 to 327; PX-329 to 330; PX-333 to 336; PX-344 to 348; PX-351 to
11 352; PX-368 to 370; PX-372; PX-387; PX-392; PX-411; PX-424;
12 PX-430; PX-434 to 437; PX-444 and 445; PX-460 and 461; PX-474
13 and 475; PX-483 through 494; PX-514-A; PX-521; PX-523; PX-535;
14 PX-540 to 585; PX-600 to 602; PX-604; PX-606 and 607; PX-614
15 through 619; PX-621; PX-624 and 625; PX-628 and 629; PX-631
16 and 632; PX-634; PX-636 through 647; PX-649 and 650; PX-652;
17 PX-654 through 657; PX-660 --

18 JUDGE GERGEL: Hold on a sec. 654 to 57?

19 MR. FREEDMAN: 654 through 657.

20 JUDGE GERGEL: Okay. Keep going, but a little
21 slower, okay?

22 MR. FREEDMAN: I'm almost done.

23 JUDGE GERGEL: Good.

24 MR. FREEDMAN: All right. PX-660; PX-662; PX-668
25 through 693; PX-695; PX-797 (*sic*) through 714. And I skipped

1 one --

2 JUDGE GERGEL: Wait. Is it 697?

3 MR. FREEDMAN: 697 through PX-714.

4 JUDGE GERGEL: Okay.

5 MR. FREEDMAN: And then I skipped 214.

6 JUDGE GERGEL: 214?

7 MR. FREEDMAN: 214. That is plaintiffs' list.

8 JUDGE GERGEL: Okay, Defendants. Plaintiffs have
9 provided us a list of exhibits offered. Are there any
10 objections?

11 MR. MOORE: I beg your pardon, your Honor. I think
12 that there may be one or two that we have.

13 MR. PARENTE: So, 216 is objected to.

14 JUDGE GERGEL: 216 is objected to?

15 MR. MOORE: Yes, sir, it is.

16 JUDGE GERGEL: Okay.

17 MR. MOORE: I think that there were objections to the
18 expert reports, which I assume have probably been mooted by
19 your Honor's earlier ruling --

20 JUDGE GERGEL: Correct.

21 MR. MOORE: -- and the reports are coming when these
22 witnesses are testifying.

23 JUDGE GERGEL: Yes. They're all going to be --

24 MR. MOORE: So, to the extent that there were
25 objections to those, I would assume that those objections are

1 overruled and they are coming in; is that correct?

2 JUDGE GERGEL: They are overruled. They're coming
3 in, and then you can cross-examine the old-fashioned way.

4 MR. MOORE: I'm going to need to see that list.

5 MR. FREEDMAN: We e-mailed it to you last night.

6 MR. MOORE: One moment, your Honor. I'm sorry.

7 MR. GORE: May I pose a question to Mr. Freedman?

8 JUDGE GERGEL: Go right ahead.

9 MR. GORE: Did you read 710?

10 MR. FREEDMAN: I did include 710, yes.

11 MR. GORE: What is 710 on the version of the list
12 you're working off of?

13 MR. FREEDMAN: 710 -- oh, I'm sorry. 710 is the
14 deposition of Patrick Dennis, so that should come off.

15 JUDGE GERGEL: So, it's 697 through 709, and then 711
16 to 714; am I right?

17 MR. FREEDMAN: Yes, your Honor.

18 JUDGE GERGEL: Okay.

19 MR. GORE: Thank you, Counsel.

20 MR. MOORE: So, 181, we object.

21 JUDGE GERGEL: 181. Let's object not just because we
22 could object, but because there is some real reason to object.

23 MR. MOORE: Other than that, I think we're good,
24 Judge.

25 JUDGE GERGEL: So, we're excluding 181. So, it would

1 be 182 to 183 rather than -- so, 181 is not coming in at this
2 moment, until offered. It can be offered, of course.

3 Okay. That list, is there an objection with those
4 adjustments we've made from the Senate?

5 MR. GORE: No, not from the Senate, your Honor.

6 JUDGE GERGEL: From the House?

7 MR. MOORE: With those changes, no, your Honor.

8 JUDGE GERGEL: Very good. I'm not going to read back
9 that list, to save everybody here, but that list is admitted.
10 Once you get a printed list, I want you to check it against it
11 and make sure y'all are all satisfied with it. But all those
12 exhibits offered by the plaintiff, with the adjustments made
13 after the objections of the Senate, are admitted into
14 evidence.

15 ***(Plaintiffs' Exhibit List was admitted into***
16 ***evidence.)***

17 JUDGE GERGEL: Now, do the defense have exhibits?

18 MR. FREEDMAN: Do you want me to do it?

19 MR. MOORE: Yeah, I think it's fine for you to do it.

20 MR. FREEDMAN: All right. And they will let me know
21 if I get anything wrong. But for the Senate, it's Senate
22 Exhibits 1 through 46. That includes a lot of subdocuments.
23 But 1 through 46 are all in.

24 MR. GORE: May I just suggest, there are some that we
25 had taken off of the list, so maybe I should do it for us.

1 MR. FREEDMAN: Okay. All right.

2 JUDGE GERGEL: Okay. Why don't you do it, Mr. Gore.

3 MR. GORE: If that would be okay. Thank you, your
4 Honor.

5 JUDGE GERGEL: Yes.

6 MR. GORE: We have Senate Exhibits 1 through 16-G,
7 including sub-exhibits. We have 28-A through 46-G, including
8 sub-exhibits; 61 through 73; 74 to 76 are subject to a
9 reserved objection on the motion in limine, which has now been
10 mooted, I believe.

11 MR. FREEDMAN: Yes.

12 JUDGE GERGEL: Yes.

13 MR. GORE: So, 77 through 120; and 224 to 242, which
14 are videos. And we will be providing official transcripts,
15 where available, and sub-exhibits within that exhibit range,
16 with the agreement of the plaintiffs.

17 JUDGE GERGEL: Okay.

18 MR. FREEDMAN: And plaintiffs have no objections to
19 any of those.

20 JUDGE GERGEL: Does the House have any objections to
21 the Senate exhibits?

22 MR. MOORE: No, your Honor, we do not.

23 JUDGE GERGEL: Mr. Gore's list on behalf of the
24 Senate defendants, those exhibits are admitted.

25 ***(Senate Defendants' Exhibit List was admitted into***

1 *evidence.)*

2 JUDGE GERGEL: Mr. Moore?

3 MR. MOORE: Your Honor, actually, Mr. Parente, if you
4 don't mind, will do those.

5 JUDGE GERGEL: I don't mind at all.

6 MR. PARENTE: Your Honor, for the House defendants,
7 Exhibits 1 through 28 are without objection. Numbers 81
8 through 96 are without objection. Number 120 doesn't have an
9 objection, unless I have that wrong from your side. I don't
10 see any objection there.

11 MR. FREEDMAN: I'm using my list as your old exhibit
12 numbers, so I need you to go back over this again just so I
13 can double check.

14 MR. PARENTE: Okay. The old --

15 MR. FREEDMAN: I can do the new numbers, but I --

16 MR. PARENTE: That's old Exhibit No. 217.

17 MR. FREEDMAN: No objection to that.

18 MR. PARENTE: Okay. And then Exhibit Nos. 150 to 153
19 have no objection.

20 JUDGE GERGEL: Okay. Is that it?

21 MR. PARENTE: That's it for our list. Thank you.

22 JUDGE GERGEL: Okay. The House has offered the
23 following exhibits into evidence. Any objection from the
24 plaintiffs?

25 MR. FREEDMAN: Sorry. I need the old -- I can do it

1 more quickly if you can give me the old exhibit numbers --
2 original exhibit numbers.

3 MR. PARENTE: The first batch is 20 through 65, for
4 the old exhibit numbers. And some were taken out, but that's
5 the range.

6 MR. FREEDMAN: Okay. Hold on.

7 MR. PARENTE: And the exhibit list we filed has both
8 numbers.

9 MR. FREEDMAN: Yes. That's fine.

10 MR. PARENTE: And then old Exhibit No. 150
11 through 168.

12 MR. FREEDMAN: Those are all fine.

13 MR. PARENTE: Okay. And we discussed 217?

14 MR. FREEDMAN: Yes.

15 MR. PARENTE: And then 150 to 153 did not have all
16 the exhibit numbers. Those were added to complete the public
17 record.

18 MR. FREEDMAN: And those are all fine. Thank you.

19 JUDGE GERGEL: Okay. Just so that we don't have any
20 confusion, House Exhibits 1 through 28; 81 through 96; 120;
21 and 150 through 153 are offered.

22 Do plaintiffs have an objection?

23 MR. FREEDMAN: No objection.

24 JUDGE GERGEL: Does the Senate have any objection?

25 MR. GORE: No objection, your Honor.

1 JUDGE GERGEL: The exhibits I just listed are
2 admitted.

3 *(House Defendants' Exhibit List was admitted into*
4 *evidence.)*

5 JUDGE GERGEL: Okay. Now, are there any housekeeping
6 things we need to deal with?

7 MR. CHANEY: Yes. And apologies to the Court, we
8 probably should have brought this up this morning. One of the
9 text orders from this morning from the panel denied a motion
10 for reconsideration. And that pertains to the opposition to
11 summary judgment in the related exhibits. We just wanted, in
12 abundance of caution, to ask the Court if it's now appropriate
13 for us to file those unredacted filings?

14 JUDGE GERGEL: Yes.

15 MR. CHANEY: Okay. And then the other is just
16 bringing to the Court's attention, there is an outstanding
17 motion, the Senate's motion for reconsideration as to the
18 production of five privileged documents the Court previously
19 ordered --

20 JUDGE GERGEL: We're working on that one. An order
21 is coming.

22 MR. CHANEY: Okay. Great. Thank you.

23 JUDGE GERGEL: Okay. Any other matters,
24 housekeeping, before we put Representative Cobb-Hunter back on
25 the stand?

GILDA COBB-HUNTER - DIRECT EXAMINATION CONTINUED

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

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

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

14 **DIRECT EXAMINATION (Continued)**

15 **BY MS. ADEN:**

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

20 A. No.

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

24 A. Yes.

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

1 testimony earlier today?

2 A. Yes.

3 Q. Thank you. I have no further questions at this time.

4 JUDGE GERGEL: Very good. Cross-examination?

5 **CROSS-EXAMINATION**

6 **BY MR. MOORE:**

7 Q. Good afternoon, Representative Cobb-Hunter. How are you?

8 A. I'm well, Mr. Moore. How are you?

9 Q. I'm fine, thank you. You and I have met before, correct?

10 A. Yes.

11 Q. And we spent an afternoon together at one point, correct?

12 A. Yes, we did. And I'm sorry I was not able to return any
13 of your calls last week. I apologize for that.

14 Q. Yes, ma'am. And we'll talk about that in a minute. But,
15 first, I want to talk about some things that I hope maybe you
16 and I can agree on, okay? That's where I want to start.

17 A. Okay.

18 Q. Okay. And I don't mean to belabor the point, but it's
19 impossible for me, in questioning you, without going back over
20 some of your impressive resumé. So, as I understand it, you
21 told Ms. Aden that you were elected in 1992 in the House and
22 you're the longest serving House member; is that correct?

23 A. Yes.

24 Q. And you are the ranking, or the chief minority member of
25 the House Ways and Means Committee; is that correct?

GILDA COBB-HUNTER - CROSS-EXAMINATION BY MR. MOORE

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1 A. I'm the ranking member.

2 Q. You're the ranking member. And unlike some folks, who
3 spend a lot of time in smaller committees, you went to the
4 Ways and Means Committee fairly early in your tenure, did you
5 not, Representative Cobb-Hunter?

6 A. I was appointed to the Ways and Means Committee as a
7 freshman in 1992.

8 Q. And you've stayed there since; is that correct?

9 A. Correct.

10 Q. Okay. And you've never ever been a member of the
11 Judiciary Committee; is that correct?

12 A. No.

13 Q. And you said you were the former assistant House majority
14 leader and also the House minority leader beginning in 1997,
15 about five years after you got into the House; is that
16 correct?

17 A. Yes.

18 Q. Okay. And I believe you testified earlier that you were,
19 for a long time, a national committeewoman on the Democratic
20 National Committee; is that right?

21 A. For 20 years.

22 Q. Okay. You were, for a time, the president of the
23 National Black Caucus of State Legislators from your web bio;
24 is that correct?

25 A. Yes.

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1 Q. Okay. And you talked about going to Florida A&M. And I
2 believe that's where you graduated with your undergraduate
3 degree; is that correct, Representative Cobb-Hunter?

4 A. Yes.

5 Q. And I believe, in 2014, you received the distinguished
6 alumnus award from that institution; is that correct?

7 A. Correct.

8 Q. And then you indicated that you have a master's degree
9 from Florida State; is that correct?

10 A. Yes.

11 Q. Okay. And so, you would agree with me, would you not,
12 that you have a reputation in the House as a highly
13 intelligent, thoughtful and strategic legislator who is
14 respected by her colleagues? Would you agree with that?

15 A. I think there are some who hold that opinion, there are
16 others who do not.

17 JUDGE GERGEL: Don't us all?

18 BY MR. MOORE:

19 Q. I agree, it does hold true for all of us. People have
20 their own opinions about me. But you would agree with me
21 that, generally, you have a reputation as an outstanding
22 legislator in the House, would you not?

23 A. Again, I would say that is the opinion of some, not of
24 all.

25 Q. And you also have a good working relationship, generally,

1 with most of the members of the House, correct?

2 A. Yes.

3 Q. I remember the floor debate that we heard so much about
4 today. And you did call out a few people who were being rude
5 to you during that time. But as a general rule, you have a
6 very good relationship with people in leadership positions,
7 correct?

8 A. I would say, Mr. Moore, that I have a good relationship
9 with all members, not just those in leadership.

10 Q. And you also have a good relationship with Patrick
11 Dennis, who is the chief of staff to the Speaker and the
12 general counsel of the House, correct?

13 A. Yes.

14 Q. I believe in one of the transcripts, you referred to him
15 as "Pee Dee." You called him that frequently, correct?

16 A. Yes, sir.

17 Q. All right. And when you raise concerns with him, he is
18 responsive to your concerns, is he not, Representative
19 Cobb-Hunter?

20 A. Well, I would say, Mr. Moore, that depends on the
21 concerns that I've raised. He is not always as responsive as
22 I'd like him to be.

23 Q. Okay. And sometimes perhaps someone tells him not to be
24 responsive, correct?

25 A. I would not know what someone sometimes tells him.

GILDA COBB-HUNTER - CROSS-EXAMINATION BY MR. MOORE

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1 Q. Okay. But as a general rule, he does take your concerns
2 seriously, does he not, and he gets back to you?

3 A. I think I would take issue with the word "seriously." He
4 usually gets back to me, but I don't know how serious the
5 issues I that raise with him are taken. He would say that
6 they are taken seriously. I would agree with that.

7 Q. And when there's a cause that you feel is important to
8 you, you can be assertive, correct, Representative
9 Cobb-Hunter?

10 A. I have never been accused of not being assertive.

11 Q. Right. And you have a reputation for advocating for
12 things that are important to you, do you not?

13 A. Yes.

14 Q. Okay. And generally, when you speak in the House, people
15 listen, at least if they're smart, right?

16 A. They used to. Not as much as they used to.

17 Q. Okay. Well, I did include the "if they're smart" part,
18 right, Representative Cobb-Hunter?

19 A. That's your comment, not mine.

20 Q. Okay. And you would agree with me that there aren't many
21 people in the House currently with reputations and resumés
22 that are as polished as yours, correct?

23 A. I would agree with that.

24 Q. Okay. And some of those are -- and that stands for both
25 parties, correct?

1 A. Yes.

2 Q. Now, as I mentioned to you earlier, you and I spent an
3 afternoon together, and that's how we got to sort of know each
4 other, correct?

5 A. Yes.

6 Q. And I did contact you a few weeks ago when I saw your
7 name on a witness list, and you and I had a brief exchange,
8 correct?

9 A. Yes.

10 Q. Okay. And you expressed some displeasure that you were
11 actually going to be a witness in this case; is that correct
12 or incorrect?

13 A. I don't recall expressing displeasure.

14 Q. Okay. But we did discuss the fact that if you actually
15 appeared on a witness list, and it looked like that you would
16 be called, you would talk to me what your testimony might be,
17 or you'd give me an opportunity to talk with you; is that
18 correct?

19 A. Yes.

20 Q. Okay. And you decided not to do that; is that right?

21 A. I changed my mind, uh-huh.

22 Q. You changed your mind, right. Everybody has a right to
23 change their mind? Did anyone ask you not to talk to me?

24 A. Not at all. No one asked me not to talk with you.

25 Q. But because of your presentation, I assume that you spent

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1 a good bit of time with Ms. Aden; is that correct?

2 A. I had a conversation with her over the weekend, maybe two
3 conversations with her.

4 Q. Okay. So, two conversations, in total?

5 A. And let me not, Mr. Moore, put a number on it. Over the
6 last few days, in preparation for this appearance, I've had
7 more than -- I would say more than two. I had to think about
8 it. I've had a couple conversations with her.

9 Q. And obviously, there's nothing wrong with that. Every
10 lawyer spends some time preparing their witnesses. You
11 probably need a whole lot less preparation than most. Would
12 you agree with me there, wouldn't you?

13 A. No, I would not agree with that.

14 Q. Okay. All right. Now, again, you are a member of ways
15 and means, correct, not judiciary?

16 A. Yes.

17 Q. And you don't go to Judiciary Committee meetings,
18 correct?

19 A. I go sometimes, depending on the item on the agenda.

20 Q. Okay. But you're not on the committee or in a leadership
21 role in that committee, correct?

22 A. Correct.

23 Q. Okay. And the current chair of that committee is
24 Representative Chris Murphy; is that right?

25 A. Correct.

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1 Q. Okay. And you prefer to be on ways and means rather than
2 judiciary, isn't that safe to say?

3 A. Yes.

4 Q. And that's basically your choice, is it not,
5 Representative Cobb-Hunter?

6 A. It's the choice of the Speaker of the House. The Speaker
7 makes appointments. Up until this point, the Speaker has seen
8 fit to put me back on ways and means. It's not my choice.
9 The decision is left to the Speaker of the House.

10 Q. Okay. And you're familiar that-- I take it ways and
11 means has its own set of rules; is that correct?

12 A. Each standing committee has its own set of rules that are
13 usually adopted at the beginning of the session.

14 Q. Okay. So, each session, the committee itself adopts its
15 own rules; is that correct?

16 A. Usually. Each two-year session, yes.

17 Q. Each two-year session. All right. Okay. And you would
18 also agree with me that in the past couple of years, we've
19 been dealing with a pandemic, correct?

20 A. Yes.

21 Q. Okay. And the pandemic has affected not only things like
22 the census, but it's also affected the operation of the House
23 to a degree, is it not?

24 A. Yes.

25 Q. Okay. And it may sometimes may get difficult to conduct

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1 hearings, session and the like, correct?

2 A. There are times when it has been challenging, but we have
3 seen to figure out a way to do it virtually.

4 Q. And because you figured out a way to do it virtually,
5 you're aware that some rules have been adopted basically to
6 deal with the COVID pandemic, correct, in a number of
7 committees, correct?

8 A. Uh-huh.

9 Q. Including the Judiciary Committee, correct?

10 A. I would not know what rules have been adopted by the
11 Judiciary Committee, but if you say so, I would tend to agree
12 with your assessment.

13 Q. Okay. So, I'm going to show you what's been marked --

14 MR. MOORE: Before I do so, I would move in House
15 Exhibit No. 153, which I believe is without objection,
16 your Honors.

17 JUDGE GERGEL: Any objection to House 153?

18 MS. ADEN: No, your Honor.

19 JUDGE GERGEL: Senate have any objection?

20 MR. TYSON: No objection, your Honor.

21 JUDGE GERGEL: Very good. House Bill 153 is
22 admitted.

23 *(House Defendants' Exhibit HX-153 was admitted into*
24 *evidence.)*

25 BY MR. MOORE:

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1 Q. Do you see that on the screen, Representative
2 Cobb-Hunter?

3 A. I do.

4 Q. Is this a document that you're actually personally
5 familiar with?

6 A. No.

7 Q. It says rules of the House Judiciary Committee 2021/2022
8 session, adopted January 26th, 2021, correct?

9 A. Yes.

10 Q. Okay. And that would have been at the beginning of the
11 2021/2022 legislative session, correct?

12 A. Uh-huh.

13 Q. And that would have been a rule that was adopted while
14 the country was in the middle of a pandemic, correct?

15 A. Correct.

16 MR. MOORE: If we could go to No. 14, which is on the
17 second page.

18 **BY MR. MOORE:**

19 Q. It says, does it not, that, "In the event of
20 extraordinary circumstances, including but not limited to
21 natural disasters, severe weather and acts of God, the
22 chairman may designate alternative meeting arrangements and
23 procedures." It says that, does it not?

24 A. It does.

25 Q. Okay. Did the Ways and Means Committee have a similar

1 rule that was enacted, if you know, Representative
2 Cobb-Hunter?

3 A. I don't know.

4 Q. Okay. But this rule does give the chairman flexibility
5 to do certain things because of the pandemic, correct?

6 A. It says "because of the pandemic." It seems to be
7 limited to the pandemic, natural disasters. But I would be
8 cautious about saying yea or nay, because I don't understand
9 what ordinary circumstances (*sic*) mean. And in the case if
10 you're referencing -- and I assume you are -- the issue with
11 Mr. King, the extraordinary circumstance was that the
12 Judiciary Committee Chair was not present for a significant
13 amount of time. I don't know that that's extraordinary.

14 Q. Correct me if I'm wrong, please. But the Judiciary
15 Committee Chair tested positive for COVID-19 on the very day
16 of the meeting that you referenced on January 10th, correct?

17 A. I don't know anything about his status, COVID-19 testing.
18 I heard later that he had COVID. But then I heard later that
19 there were some other issues that spread over an extended
20 period of time, shall we say.

21 Q. And he was actually absent for an extended period of time
22 in the spring of last year, was he not?

23 A. He was absent for an extended period of time in the
24 winter and the spring.

25 Q. And as a result of that, a number of judiciary meetings

1 were cancelled, correct?

2 A. There were no Judiciary Committee meetings scheduled.

3 Q. Okay. Thank you for correcting me there. And so, you
4 would agree with me that that gives the chairman the power to
5 make alternative meeting arrangements, including appointing
6 someone to sit in his seat if he is unavailable, correct?

7 A. I would agree with you that the second item in this list
8 you have before me gives the authority for that. I'm not sure
9 that this -- well, this says that the Chair may designate
10 alternative meeting arrangements and procedures, yes.

11 Q. And in this case, the chair designated Weston Newton to
12 chair this meeting instead of a -- let me stop there. He
13 designated Weston Newton to chair that meeting, correct?

14 A. It's my understanding.

15 Q. And you know that Weston Newton is, himself, the chair of
16 the committee, correct?

17 A. Yes.

18 Q. Let me ask you this, Representative Cobb-Hunter. And you
19 also understand that Representative Newton is the chairman of
20 a subcommittee of the Judiciary Committee, correct, the
21 Constitutional Law Subcommittee?

22 A. Yes, I'm aware of his chairmanship of a subcommittee.

23 Q. So, he has experience as a chair of a separate committee,
24 and as the chair of an important subcommittee of the Judiciary
25 Committee, correct?

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1 A. I'm certain Mr. Newton sees it as an important committee.

2 Q. And you also have experience -- because you're not only
3 the first vice chair of the Ways and Means Committee, but you
4 are the chair of a subcommittee, correct?

5 A. Correct.

6 Q. And chairs of subcommittees are used to running meetings
7 on a regular basis, correct?

8 A. For the most part.

9 Q. Okay. And chairs of committees typically have experience
10 in running meetings on a regular basis, correct?

11 A. I would say to you that that is correct, but I would want
12 to make sure that you are not insinuating that not having the
13 ability or the opportunity to run a meeting suggests one does
14 not have the ability to run a meeting, because those are two
15 different things.

16 Q. I'm not suggesting anything, Representative
17 Cobb-Hunter --

18 A. Okay.

19 Q. -- I'm simply at this point asking you some questions,
20 okay?

21 A. Okay. Sure.

22 Q. All right. And you understand that some meetings of
23 committees are more important than others, correct?

24 A. I would think all meetings are important, Mr. Moore, all
25 subcommittee meetings, because they deal with issues that are

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1 important to voters and residents of the state. So, I would
2 equate all committee meetings as important.

3 Q. Okay. And I didn't say that they weren't important, I
4 said some might be considered by some as more important than
5 others, particularly if a bill needs to be advanced to the
6 House floor. Is that right or wrong?

7 A. I would agree with that.

8 Q. Okay. And it is important when you --

9 A. And may I -- if I may?

10 Q. You may. Certainly.

11 A. I wouldn't use the words "same difference" but I would
12 use the word "priority" as opposed to important.

13 Q. Okay. I completely understand your position,
14 Representative Cobb-Hunter. And so, as I believe you told Ms.
15 Aden, you were not on the ad hoc committee; is that correct?

16 A. Correct.

17 Q. Okay. And as I believe you told her, you did not think
18 it would have been appropriate to consider you for the ad hoc
19 committee because you're not a member of the Judiciary
20 Committee; is that correct?

21 A. Correct.

22 Q. And you understood everyone appointed to ad hoc committee
23 was a sitting member of the Judiciary Committee; is that
24 correct?

25 A. Yes.

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1 Q. Now, you also mentioned to Ms. Aden that, at least in
2 your experience in perhaps other cycles, the Election Laws
3 Subcommittee functioned as the ad hoc did in this particular
4 cycle, correct?

5 A. Yes.

6 Q. Okay. And we all understand that everyone has
7 procedures, correct?

8 A. Yes.

9 Q. Okay. Procedures can sometimes be improved on, can they
10 not?

11 A. The greatest -- the biggest room in the house is always
12 the room for improvement.

13 Q. Okay. And so, again, you would not argue with me that
14 some old procedures might be best served by changing the
15 process, correct?

16 A. I'm not sure that I would not argue that point with you,
17 Mr. Moore, because there are some old processes that probably
18 should be done away with, there are some that should not. So,
19 it would depend on what the process is that we're talking
20 about.

21 Q. Okay. Well, let's talk about this Election Law
22 Subcommittee for a moment, okay?

23 A. Uh-huh.

24 Q. As it was configured in the 2021/2022 cycle, you have
25 mentioned that Representative King was on that committee; is

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1 that correct -- that subcommittee?

2 A. I have mentioned that Mr. King was not on the
3 subcommittee for the 2021 cycle.

4 Q. Well, Representative Cobb-Hunter, let me make sure that
5 we're understanding each other.

6 A. Please.

7 Q. I'm not talking about the ad hoc committee.

8 A. Okay.

9 Q. I'm talking about the Election Law Subcommittee for just
10 now?

11 A. Got you. Yes, you're right. Mr. King was a part of
12 that.

13 Q. Okay. And I believe you told us that in the past cycle
14 that you're aware of, the Election Law Subcommittee functions
15 as the ad hoc did in this particular cycle, correct?

16 A. Uh-huh.

17 Q. And so, you would agree with me, would you not, that in
18 the 2021 and 2022 cycle, the members of the Election Law
19 Subcommittee were Representative King, who's a Democrat,
20 correct?

21 A. Yes.

22 Q. Representative Bruce Bryant, who is Republican, correct?

23 A. Yes.

24 Q. Representative Jay Jordan, who is Republican, correct?

25 A. Yes.

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1 Q. And Representative Brandon Newton, who is a Republican,
2 correct?

3 A. Correct.

4 Q. Okay. And three of those -- let's put Representative
5 Jordan aside for a moment. Three of those all resided in the
6 York area, correct?

7 A. Yes.

8 Q. Okay. All right. And that Election Law Subcommittee did
9 not have geographic diversity, did it, Representative
10 Cobb-Hunter?

11 A. No.

12 Q. Okay. It didn't have any representatives from the coast,
13 correct?

14 A. Right.

15 Q. It didn't have any representatives from what you refer to
16 as the lowcountry, which is where you reside, correct?

17 A. I don't reside in the Lowcountry.

18 Q. Well, so, it didn't have any representatives from the
19 Orangeburg, Aiken, Barnwell, Bamberg area, did it?

20 A. Correct -- well, no because Representative -- oh, I'm
21 sorry. Right. No.

22 Q. All right. It didn't have anybody from the -- what is
23 traditionally referred to as the upstate, where I'm from,
24 which is Greenville, Spartanburg and Andersen, correct?

25 A. Correct.

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1 Q. And three Republicans, one Democrat, correct?

2 A. Yes.

3 Q. Okay. All men, correct?

4 A. Yes.

5 Q. Okay. And only one of those was African American,
6 correct?

7 A. Correct.

8 Q. And so, you understand that the ad hoc committee was much
9 larger than that committee, correct?

10 A. Yes.

11 Q. And you understand that the ad hoc committee was designed
12 to have geographic diversity, correct?

13 A. I understand that is what the stated goal was. And if I
14 may, let me -- if I may?

15 Q. Yes, ma'am.

16 A. Because you're talking about the composition of the
17 Election Law Subcommittee, and I think it's important from my
18 perspective that the record indicate that in the past when the
19 Election Law Subcommittee handled redistricting, geographic
20 diversity, as far as I can recall, was never included as a
21 criteria for the makeup of that committee. So, I just wanted
22 to make that point.

23 Q. I understand that, Representative Cobb-Hunter. But as I
24 believe we agreed upon a little bit ago, processes can
25 sometimes be improved upon, correct?

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1 A. Uh-huh.

2 Q. And the ad hoc committee, as it was initially
3 constituted, had five Republicans and three Democrats from
4 across the state; is that correct?

5 A. I would agree with that.

6 Q. It had Representative Jordan, who was from the Pee Dee
7 but who was the chairman of the committee, correct?

8 A. Uh-huh.

9 Q. Representative Patricia Henegan, who's also from the Pee
10 Dee, correct?

11 A. Yes.

12 Q. Okay. And who happens to be, as I understand it, the
13 chairwoman of the House Black Caucus; is that correct?

14 A. She's the chairwoman of the South Carolina Legislative
15 Black Caucus --

16 Q. The South Carolina Legislative Black Caucus --

17 A. If you'll allow me, she is the Chair of the South
18 Carolina Legislative Black Caucus, which includes House and
19 Senate members, not just House members.

20 Q. Thank you.

21 A. You're welcome.

22 Q. And it had Representative Newton, who is from the coast,
23 correct?

24 A. Yes.

25 Q. Okay. It had Representative Justin Bamberg, who is from

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1 your area, correct?

2 A. Correct.

3 Q. Okay. And it also had two representatives from the
4 upstate, Representative Neal Collins and Representative Jason
5 Elliott; is that correct?

6 A. Correct.

7 Q. Okay. And then from Columbia, you had Representative
8 Beth Bernstein, correct?

9 A. Right. Yes.

10 Q. Okay. And so, by my count -- correct me if I'm wrong --
11 five Republicans, three Democrats, two of the committee
12 members were female, two of the committee members were African
13 American, and they were from the entire breadth of the state,
14 at least as initially constituted -- and I'm going to get to
15 Representative King in a moment -- as initially constituted
16 and one from every congressional district, correct?

17 A. Yes.

18 Q. Okay. And one could argue that that's a better committee
19 to make decisions about districts that affect the entire
20 state, than a committee of four people, only one of whom is a
21 Democrat, and most of whom were from one little corner of the
22 state, correct?

23 A. No.

24 Q. You do not agree with me?

25 A. One could argue that I would not agree with the argument.

1 To make that argument, one would have to assume that that
2 geographic diversity, the gender balance, and the racial
3 diversity meant something of a substantive nature as far as
4 the actual drawing and development of plans.

5 Q. Well, you can't say that it didn't, can you,
6 Representative Cobb-Hunter?

7 A. I don't see why I can't say that if that's what I
8 believe.

9 Q. There was House redistricting as well as congressional
10 redistricting, correct?

11 A. Correct.

12 Q. Okay. And so, let's talk about the people on the ad hoc
13 committee for a moment. Would you agree with me that all of
14 the people who were initially assigned to the ad hoc committee
15 have reputations for being collaborative, cooperative and not
16 overly partisan?

17 A. I'm not sure that I would agree with that assessment.

18 Q. Okay. Well, would you agree with me that Representative
19 King does not have a reputation in the House among the
20 majority of its members for being collaborative, cooperative
21 and not overly partisan?

22 A. I think Representative King's reputation in the House
23 depends on who you're talking to.

24 Q. And people could have different views of Representative
25 King and whether he's collaborative or cooperative, correct?

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1 A. Correct.

2 Q. Okay. And you understand there are a number of people
3 that do not think he's collaborative --

4 JUDGE GERGEL: Mr. Moore, let me try to get my arms
5 around the relevance of this. The House Plan goes to the
6 Senate, and the Senate 865 is then adopted, which is the
7 Senate Plan, correct?

8 MR. MOORE: That's correct, your Honor.

9 JUDGE GERGEL: And then it goes back to the House,
10 and the House adopts it to the Senate Plan.

11 MR. MOORE: Correct.

12 JUDGE GERGEL: Why is this debate about the diversity
13 or the membership of the House Ad Hoc Committee relevant,
14 because it's not the final plan?

15 MR. MOORE: Well, I mean, there's an argument then
16 that a lot of the direct examination of Representative
17 Cobb-Hunter was not relevant. This is about process. And I
18 understand your Honor's point --

19 JUDGE GERGEL: I'm just sort of trying to figure out
20 why is all this important. I know that there was a concern by
21 Representative Cobb-Hunter the way Representative King was
22 treated.

23 MR. MOORE: Correct.

24 JUDGE GERGEL: Fine. I hear that. We've heard it.
25 You've got an explanation. I just don't know how much

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1 belaboring this issue -- because it doesn't have any affect on
2 the plan, and we're looking at the plan.

3 MR. MOORE: I agree, your Honor. I will move it
4 along. I was almost done on this point.

5 JUDGE GERGEL: Thankfully.

6 MR. MOORE: But I understand, your Honor. Because I
7 understand you might not let me go much longer.

8 JUDGE GERGEL: Probably won't.

9 **BY MR. MOORE:**

10 Q. So, again, Representative Cobb-Hunter, you understand
11 that it was well within Chairman Murphy's ability to appoint
12 an alternate chairperson, and he chose not to appoint
13 Representative King, correct?

14 A. And, Mr. Moore, I'm glad Judge Gergel asked you that,
15 because I'm sitting here trying to figure out how this relates
16 to the congressional map that was proposed and adopted that
17 came from the Senate.

18 Q. Well, I've thought the same thing, Representative
19 Cobb-Hunter, for about the last couple of months when I sat
20 through deposition after deposition of the plaintiffs covering
21 it, okay? But I understand the Court's point and your point,
22 and I'll move on.

23 A. Thank you.

24 Q. Now, you are familiar with the House map drawing process,
25 correct, Representative Cobb-Hunter?

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1 A. Yes.

2 Q. Okay. And the House had a map room, correct?

3 A. Yes.

4 Q. And the same map room was used for both the drawing of
5 the House Plan as well as the congressional plan -- at least
6 the staff congressional plans, correct?

7 A. Yes.

8 Q. Okay. And so one map room, right?

9 A. Yes.

10 Q. Okay. And representatives could make an appointment and
11 go into the map room as they chose, correct?

12 A. Yes.

13 Q. And representatives, particularly when they were focusing
14 on the drawing of the House districts, did avail themselves of
15 that opportunity, correct?

16 A. Yes.

17 Q. Okay. And you availed yourself of that opportunity, did
18 you not, Representative Cobb-Hunter?

19 A. I did.

20 Q. Okay. And that was important to you, was it not?

21 A. Yes.

22 Q. Okay. And you also understood that you could have gone
23 into the map room and drawn new congressional districts had
24 you chosen to do so, because as I believe you told us earlier
25 in your testimony, that you did so 10 years ago, and Congress

1 Clyburn was not that thrilled with your drawing, was that
2 right?

3 A. Yes.

4 Q. But you did not go into the map room to draw your own
5 planned congressional districts, did you?

6 A. No.

7 Q. Okay. And you didn't go into the map room to try and
8 draw to fix -- as I think you used the words "packing" or
9 "cracking," right?

10 A. No, I did not draw a map to address that concern.

11 Q. And then you didn't draw a map and offer it as an
12 amendment, did you?

13 A. I chose not to.

14 Q. You chose not to. Okay. And so, a point I would like to
15 make is, I heard your speech on the House floor. I was there.
16 As usual when I listen to you, I was riveted. I was. I don't
17 apologize for that. But one point that occurred to me is you
18 talked about Section-2 analysis, correct, and you asked very
19 pointed questions about whether one had been done, correct?

20 A. Yes.

21 Q. Okay. You did that on the day that the bill was being
22 debated on the House floor, correct?

23 A. Yes.

24 Q. Okay. Prior to that time and prior to that debate on the
25 House floor, you did not go to Patrick Dennis or anyone else

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1 and ask them if a Section-2 analysis had been performed, did
2 you Representative Cobb-Hunter?

3 A. That is not correct, no.

4 Q. Okay. So, you went to someone and asked them prior to
5 that debate on the House floor if a Section-2 analysis had
6 been performed?

7 A. Yes, I did. I went to several people before the debate
8 on the House floor to ask if a Section-2 analysis had been
9 done. And, Mr. Moore, as you are probably well aware, I try
10 not to blind-side people from the well with questions and let
11 them know that I'm going to ask the question. And I was very
12 adamant about the Section-2 analysis. And so, what I want to
13 make sure of is that the impression is not left that the only
14 time I raised that as a question was in my conversation with
15 Mr. Jordan that was shown earlier. That was not the first and
16 only time. And if you recall, when the committee -- the ad
17 hoc committee came to Orangeburg, I also, as a part of that
18 public hearing, raised the Section-2 analysis question.

19 Q. You raised questions at the Orangeburg meeting -- at the
20 public hearing, correct?

21 A. Yes.

22 Q. But you did not go to -- did you go to any member of the
23 ad hoc committee and say, did you folks do a Section-2
24 analysis, where is it, can I see it?

25 A. I did that individually with Chairman Jordan -- at one

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1 point, asked Mr. Bamberg, I believe. And so, my point is, the
2 impression I got from your question was that you were
3 intimating that the only time I raised the Section-2 analysis
4 was during that exchange with Mr. Jordan. I just want to the
5 make it clear that that was not the only time that I raised
6 that issue. As you well know, there are often private
7 conversations with members, both on the floor and
8 individually. And that is when those questions were raised by
9 me.

10 Q. Do you remember how long in advance of the January 10th
11 hearing that you asked those questions, Representative
12 Cobb-Hunter?

13 And please understand, we haven't deposed you, I haven't
14 had a chance to speak to you, so I'm asking these questions of
15 you for the first time?

16 A. And I'm hearing them for the first time. And because I
17 am more seasoned than I used to be, my mind is not what it
18 used to be, I really don't recall, Mr. Moore.

19 Q. Okay. All right. Now, you also made some comments about
20 CD 6, correct?

21 A. Yes.

22 Q. And your concerns -- or your stated concerns about CD 6,
23 correct?

24 A. Yes.

25 Q. And you would agree with me that the BVAP of

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1 Congressional District 6 is roughly nine percent lower than
2 the last cycle, correct?

3 A. It's my understanding it's lower. I don't know the exact
4 percentage.

5 Q. All right.

6 JUDGE GERGEL: When you say nine percent lower -- I
7 was kind of asking that question earlier, Mr. Moore -- what
8 was it at the time of the 2012 adoption of the plan?

9 MR. MOORE: Your Honor, you're going to have to let
10 me go to my --

11 JUDGE GERGEL: Because you used nine points, and I
12 had heard lower numbers.

13 MR. MOORE: I think it is nine percent, your Honor.

14 MS. ADEN: It's nine. Dr. Duchin, the next expert,
15 will have a chart showing what the benchmark and enacted
16 numbers are, and it will clear it up. I believe it was 52.5,
17 and is now 46.9.

18 JUDGE GERGEL: The 52, was that when it was adopted
19 in 2012, and/or when the census came out in 2020? That's the
20 question.

21 MR. MOORE: I believe it's the former, not the
22 latter. I don't know if anyone knows the answer to the latter
23 question.

24 MS. ADEN: Dr. Duchin will be able to tell you that.

25 JUDGE GERGEL: So, it's not nine points. The

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1 difference between 52 and 47 is five points. Most lawyers
2 struggle on math.

3 MR. MOORE: Math has never been my strongest suit,
4 your Honor. And I will have to admit that.

5 JUDGE GERGEL: Yeah. I was just a little surprised
6 at the nine points, because I didn't think it dropped quite
7 that much.

8 BY MR. MOORE:

9 Q. And let me ask you this question, Representative
10 Cobb-Hunter -- I'm going to strike that question. Give me a
11 minute. Let me go over my notes and make sure I didn't miss
12 anything.

13 THE WITNESS: Is this bottle of water for me?

14 JUDGE GERGEL: Yes.

15 THE WITNESS: Thank you, Judge.

16 BY MR. MOORE:

17 Q. I just want to make sure I understood you, Representative
18 Cobb-Hunter. You are advocating that you thought it would be
19 better for Orangeburg to be split and be in two separate
20 congressional districts so you would have two different folks
21 representing their interests? Is that correct or incorrect,
22 or did I misunderstand your testimony earlier?

23 A. I think, Mr. Moore, what I was responding to was Ms.
24 Aden's question about the map that had split Orangeburg as
25 opposed to one I saw that had it whole. My preference would

1 be for Orangeburg to remain whole.

2 Q. So, your preference would not be to have two separate
3 people in Congress representing the interests of people who
4 lived in Orangeburg; is that right?

5 A. My preference would be we currently, and have for as long
6 as I can recall, had two people in Congress representing
7 Orangeburg County. My preference, if there's an option to
8 have all of Orangeburg County whole and not split, would be to
9 have it whole, as opposed to split.

10 Q. And, of course, you've been in the House for 30 years.
11 You understand that redistricting, like many other things, is
12 a political process, correct?

13 A. Very much so, yes, sir.

14 Q. And you understand that everyone can't get all of their
15 preferences, correct?

16 A. Without question.

17 Q. Okay. I mean, there's an old Rolling Stones song that
18 goes "you can't always get what you want." Everyone can't get
19 what they want, correct?

20 A. Correct.

21 Q. Okay. All right. And you used the words, when you were
22 talking about CD 7, as a "missed opportunity." Is that right?

23 A. Yes.

24 Q. You were focusing on competitiveness, correct?

25 A. Yes.

1 Q. And by competitiveness, you, as a Democrat, want the
2 district to be possibly able to flip from Republican to
3 Democrat, correct?

4 A. No.

5 Q. No?

6 A. No. When I use the term "competitiveness" as it relates
7 to these districts, the ability to flip would apply to the
8 1st. The competitiveness as it relates to the Fifth and the
9 Seventh, would be for candidates, either party running in
10 those two districts, to have to appeal to all voters, not just
11 voters of one party. And it especially, in my mind, means
12 having the ability of voters of color to influence the outcome
13 of that election. So, it's not so much about flipping as much
14 as at least having candidates to have to compete and have a
15 message that resonates outside of their little circle.

16 Q. Okay. So, I'm going to go back to a point that Judge
17 Gergel made a bit ago, which is, Ms. Aden showed you two
18 separate maps, one which was the House staff plan number one
19 and the alternative House staff plan, correct?

20 A. Yes.

21 Q. Neither of those were passed and enacted into law, were
22 they?

23 A. Right.

24 Q. Okay. The bill that was ultimately enacted was the
25 Senate version of the plan, correct?

1 A. Yes.

2 Q. Okay. And so, your concerns about the House process and
3 your concerns about the map that was ultimately initially
4 passed by the House, those are concerns about those two plans,
5 correct?

6 A. The concern was about the House Plan, but the concern
7 also, Mr. Moore, extended to the Senate Plan because, again,
8 the process didn't change because of the redistricting,
9 whether it be House or Senate. It was still the same process.
10 And so, my concerns extended throughout the redistricting
11 process, both House as well as congressional.

12 Q. But let's speak about the Senate for a moment. You
13 didn't attend Senate hearings, did you?

14 A. No.

15 Q. Okay. And you can't speak to the Senate's process,
16 correct?

17 A. Not at all.

18 Q. Okay. And you can't speak to whether or not anything
19 that was done differently in the Senate than was done 10 years
20 ago or 20 years ago, correct?

21 A. Correct.

22 Q. Okay. You're speaking about changes to a House process
23 that you observed, correct?

24 A. Correct.

25 MR. MOORE: Can I have a moment, your Honor?

1 JUDGE GERGEL: Take your time.

2 MR. MOORE: I have no further questions at this
3 point. Thank you, Representative Cobb-Hunter.

4 THE WITNESS: You're so welcome, Mr. Moore.

5 JUDGE GERGEL: Do any other defendants have any
6 questions?

7 MR. TYSON: Yes, your Honor.

8 JUDGE GERGEL: Yes, Mr. Tyson. Please proceed.

9 MR TYSON: May it please the Court.

10 **CROSS-EXAMINATION**

11 **BY MR. TYSON:**

12 Q. Good afternoon, Representative Cobb-Hunter. I'm Rob
13 Tyson, here today on behalf of the Senate. Good to see you.

14 A. Likewise.

15 Q. I'm not going to be repetitive -- I'm trying not to be
16 repetitive, let me put it that way. But I do want to ask just
17 a question quickly to follow up where Mr. Moore was going a
18 few minutes ago.

19 When we talk about the redistricting process, I think
20 your testimony was that you would agree it's political,
21 correct?

22 A. Without question.

23 Q. I mean, it's inherently political and a part of the
24 process, right?

25 A. It's inherent that it's political as well as partisan,

1 and all of that is allowable.

2 Q. And in drawing congressional districts, unfortunately or
3 fortunately, draws out partisanship probably like nothing else
4 the legislature deals with, correct?

5 A. I would agree that we are at a point in time where that
6 appears to be the case.

7 Q. And I think you testified -- you said that, "Right now,
8 we have the politicians picking voters versus the voters
9 picking politicians," right?

10 A. I said that not from this witness stand, but as a part of
11 the legislation I introduced, which attempted to put into code
12 guidelines for redistricting.

13 Q. And that was done to limit the political component of
14 redistricting?

15 A. It was done to allow the public to have a fair and
16 transparent and accountable process where the public had an
17 opportunity to share what they thought districts ought to look
18 like. It went further, sir, and took it out of the hands of
19 the legislators and did what some states have done, and that
20 is create an independent redistricting commission.

21 Q. And I think that was maybe your testimony in Orangeburg.
22 That's for the next cycle, that you hope that that bill or
23 that process will pass, correct?

24 A. What I testified to in Orangeburg was that it was clear
25 that at that point there was no way that my bill would even

1 get a hearing and, as such, it was something that I would
2 pursue in the next cycle. In the event that I'm reelected, I
3 do have opposition. It is my intent to re-file that bill and
4 try to get it ready for the 2030 census. It is my hope that
5 there will be a different set of faces in the House, and maybe
6 that bill will have a chance of at least getting heard and
7 sent over to the Senate for consideration.

8 Q. Very good.

9 MR. TYSON: I wanted to show what's been introduced
10 into evidence as Exhibit 175, if I can.

11 JUDGE GERGEL: Is that House or Senate?

12 MR. TYSON: That is House. House Exhibit 175. And
13 it's the House guidelines. Let me see if we can get it up
14 here. If not, I've got some hard copies to show you.

15 BY MR. TYSON:

16 Q. Representative Cobb-Hunter, this is, again, what's been
17 marked as Exhibit 175. These are the House of Representatives
18 guidelines. Are you familiar with these?

19 A. I've seen them, yes.

20 Q. Okay. Go to the second page, and there's a section that
21 describes communities of interests. Do you see that section?

22 A. I do.

23 Q. And it says there that there are a variety of factors
24 that can contribute to a community of interest. Do you see
25 that?

1 A. Yes.

2 Q. And it says -- can you read to me what D and E say?

3 A. Political beliefs, voting behavior.

4 Q. And what are the political beliefs that are considered
5 part of the communities of interests?

6 A. Are you asking me what are the political beliefs?

7 Q. Yes, ma'am. What do you believe that to be?

8 A. I believe that to be the way people think about issues
9 and the way they then take that thought into action at the
10 polls.

11 Q. Back to the partisanship issue we were talking about, or
12 the political issue that we were talking about when we first
13 started talking?

14 A. Yes.

15 Q. Okay. And how about voting behavior?

16 A. What is your question exactly?

17 Q. What does that mean to you?

18 A. How people vote.

19 Q. Okay. Republican or Democrat?

20 A. Independent, Green, Libertarian. We have other parties
21 here other than Republican and Democrat.

22 Q. And so, it's fair to say that in the House guidelines,
23 that they considered politics, political beliefs and voting
24 behavior to be a factor that can be considered, correct?

25 A. I would say that in the House guidelines, it's listed as

1 for consideration. It would be a matter of opinion in terms
2 of how much consideration was given to what is before me.

3 Q. That's right. But we started the conversation off by
4 talking about it was an inherently political process. And my
5 question to you is just to make sure that I understood that
6 it's identified as part of the criteria that the House used in
7 adopting the plan. Isn't that correct?

8 A. And I don't think that I have said anything contrary to
9 that. If I recall, what I also said was that it is a
10 political and partisan process, and that that is allowable.

11 Q. And, Representative Cobb-Hunter, if the congressional
12 plan was done to make the 1st District a little more
13 Republican leaning, that's consistent with these criteria,
14 isn't it?

15 A. I would think it is not consistent with what I believe to
16 be a Section-2 analysis that talks about voting behavior and
17 recognizing what impact voting behavior has on the process --
18 or on the outcome of an election.

19 Q. But, Representative Cobb-Hunter, in this case that's
20 before us today, you know the plaintiffs haven't brought a
21 Section-2 challenge, correct?

22 A. I am aware of that.

23 Q. Okay. And so, given that the Democratic Party candidate
24 won the 1st Congressional District narrowly in 2018, and the
25 current Republican congresswoman narrowly won in 2020,

1 consistent with this criteria, the General Assembly set out to
2 enhance the GOP characteristics of the 1st District, would
3 that be inconsistent with the criteria?

4 A. It would not necessarily be inconsistent, but it would
5 not be something that I would agree is a good thing, because,
6 again, Mr. Tyson -- I think -- the notion of competitiveness
7 is important, and I would think that that would be going a bit
8 beyond making it competitive and would have the opposite
9 effect, and that is reducing the competitiveness of the 1st
10 Congressional District.

11 Q. Let me just quickly move to talking about the 6th
12 District. It's pretty much looked the same, give or take, for
13 the past 20 years; isn't that correct?

14 A. I would agree with that.

15 Q. Okay. And Richland County, it's been split for the last
16 20 years between the 6th and the 2nd Congressional District,
17 correct?

18 A. It has. But I would suggest to you that simply because
19 something has looked and has been that way for 20 years, does
20 not mean, when one has an opportunity to approve upon it, that
21 one should not take that opportunity.

22 Q. And, Representative Cobb-Hunter, please don't take this
23 improperly, but we've just moved our office, and I've just
24 moved and packed up all of my things from the old office from
25 20 years to the new one, and I found a note from my grandma

1 that said: Rob, just because it was done that way, doesn't
2 make it right, but keep on trucking.

3 A. I won't disagree with your grandmother.

4 Q. I didn't mean any disrespect. Logically, I understand
5 where you're coming from. But it also means it's not
6 improper. We could also interpret it that way, too, correct?

7 A. There are a number of ways that it could be interpreted.
8 I think it depends on who the interpreter is.

9 Q. Correct. And the 6th District has drawn up into part of
10 north Columbia for a long time, because, at some point in
11 time, Representative Clyburn lived up there, correct?

12 A. I don't know Congressman Clyburn's residence, but what I
13 would suggest to you, since you raised that question, is what
14 has not been there for a long time are people from North
15 Charleston who have been a part of that.

16 Q. That's right. But Charleston County's been split for the
17 last -- I don't know, what -- 20, 30 years, correct?

18 A. Your history of congressional district makeup is probably
19 a lot better than mine. I don't spend a lot of time focused
20 on the congressional district, but it is my understanding that
21 Charleston County has consistently been split between the 1st
22 and the 6th, yes.

23 Q. Yes, ma'am. And I think you said earlier that Orangeburg
24 County's been split for a lengthy period of time, right?

25 A. Correct. And I also said that if the opportunity

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1 presented itself, my preference would be that Orangeburg
2 County remain whole.

3 Q. That's right. And I think Mr. Moore asked you a question
4 about the way you described the 7th District, and I think
5 "missed opportunity," or I think I heard you say you had
6 concerns with the 7th Congressional District. But you know
7 it's also not being challenged by the plaintiffs in this
8 lawsuit, correct?

9 A. And I think you would agree that I am responding to what
10 you're asking me, which is my opinion. I was not a part of
11 the lawsuit, so I am in no way in a position to say what they
12 filed on or what they should have filed on. I'm here
13 responding to the questions that you are asking me to the best
14 of my ability. I'm not an attorney. And I would not even
15 hazard a suggestion about what kind of items -- or issues,
16 rather -- should have been a part of this suit.

17 Q. And I appreciate that. But it's just a little simplistic
18 question though. The 7th Congressional District is not being
19 challenged. Do you know that to be true?

20 A. I'm not -- I'm not aware of the 7th Congressional
21 District being challenged.

22 Q. And I think you said that -- but let me ask you a
23 question. Do you know who Mr. Dalton Tresvant is?

24 A. Yes.

25 Q. And who is he?

1 A. Dalton Tresvant works for Congressman Clyburn.

2 Q. And did you know that he brought the Senate staff a map
3 expressing the Congressman's desire on what the 6th
4 Congressional District should look like?

5 A. No, I was not aware of that. And, again, I had no
6 involvement in Senate redistricting, so that is not something
7 I would be aware of.

8 Q. No. Congressional redistricting. This is --

9 A. I had no involvement in the Senate's work on
10 congressional redistricting.

11 Q. I understand. But you didn't know that Representative
12 Clyburn had presented a plan that wanted the 6th District to
13 look substantially similar to the way it is now?

14 A. I was not aware of Congressman Clyburn's plans, as shared
15 with the Senate for the congressional district.

16 Q. And I think you said earlier that your concern was that
17 the 6th Congressional District -- the way that the plan came
18 out, your concern was that it packs blacks into the 6th,
19 correct?

20 A. Yes.

21 Q. Okay. And also do you know that the 6th District -- that
22 the plaintiffs haven't challenged the 6th Congressional
23 District in this litigation?

24 A. If you say so.

25 Q. Okay.

1 A. I would imagine that that is the case.

2 Q. So, they believe it's constitutionally acceptable?

3 A. I don't know what they believe.

4 Q. Well, it's not been challenged in the lawsuit?

5 A. That does not necessarily mean that they think that it
6 shouldn't be. I can't speak for what they believe. I think
7 they are better prepared to speak for what they believe. I
8 can only speak to what I believe.

9 Q. And so, do you agree that it should not have been a
10 challenged district, like the plaintiffs believe?

11 A. I would agree that those decisions are made by attorneys
12 and the people they are working with. And far be it for me to
13 suggest any kind of the legal strategy, since I am not an
14 attorney.

15 Q. Representative Cobb-Hunter, you referenced, in response
16 to a question from Mr. Moore, something about competitive
17 districts. And I think he asked you the question about
18 whether that was politically competitive. And I think you had
19 a different answer, that that's not how you were using the
20 word "competitive." Can you help me with that?

21 A. Well, what I thought he asked me was whether it was
22 partisan, the competitiveness of a partisan nature. And
23 that's what I was responding to.

24 Q. So, when you said that you would have hoped to have seen
25 more competitive districts, you weren't talking about

1 partisanship?

2 A. Not necessarily. I was talking about the ability of
3 voters in this state, especially voters of color, to be able
4 to influence congressional districts other than the 6th.

5 Q. And did you know that there's not an obligation by the
6 legislature to draw competitive districts?

7 A. That is why, Mr. Tyson, my legislation is so important,
8 because there needs to be a requirement, in my mind, that
9 competitive districts are drawn. I think we would have better
10 public policy in South Carolina. I think voters would be
11 better served if competitive districts were more -- if we had
12 more than we currently have. Right now, with our system,
13 voters pretty much, unless they vote in any primary, either
14 Republican or Democratic, there is little option for a voter
15 in the general election as far as a competitive district is
16 concerned. I don't think that's good public policy.

17 Q. And so, Representative Cobb-Hunter, if you're trying to
18 impose that obligation to draw competitive districts, then
19 that means -- then you understand there's not an obligation to
20 draw competitive districts, currently, correct?

21 A. And if I can recall the response I just gave to that
22 question, I would -- and I don't know if the reporter got my
23 response.

24 Q. That's fine. Representative Cobb-Hunter, you discussed a
25 number of changes -- I think it was right before lunch -- and

1 you were talking about different ways that you would have
2 drawn the plan. And I think I heard you say that you would
3 have put Allendale and Barnwell together. Was that a --

4 A. Well, you heard me say two things: One, I confessed to
5 my inability, as a demographer or map drawer or anything, to
6 have any kind of technical expertise in drawing districts.

7 But what I thought I said was I would have put

8 Allendale/Bamberg with Barnwell, because, traditionally, they
9 are known as the Tri-County area. And so, I included Bamberg
10 and Allendale along with Barnwell, kind of going back to this
11 notion of historic communities of interests, history, culture,
12 economic.

13 Q. And, Representative Cobb-Hunter, if you did that, if you
14 are able to be the map drawer and draw these preferred policy
15 choices or changes that you have, you recognize you might run
16 into some one-person-one-vote issues, correct?

17 A. That's probably, sir, why I don't draw maps.

18 Q. That's right. And neither do I, let's be clear. So, I
19 was just making sure I understood. You had some other policy
20 changes that you were talking about, you wanted to make
21 Orangeburg whole, correct?

22 A. I think you just asked me that, and I think I answered
23 it.

24 Q. But my question would be: If you make any of those
25 changes, you're just doing it a different way than the

1 legislature passed, correct?

2 A. I think it's a bit more than just doing it a different
3 way. I think the results would be different in the manner in
4 which I'm talking about. Again, just eyeballing a map without
5 any expertise, I'm simply looking from a simplistic view,
6 contiguity, communities of interest, those kind of things.

7 Q. But I guess my question is: If you did a change that
8 you're talking about, it's going to impact those traditional
9 redistricting criteria. Your desired changes would maybe make
10 other policy changes, it might make other changes, it might
11 not be compact, it might split VTDs, correct?

12 A. I think what we know is that we don't know what it would
13 look like.

14 Q. That's right. Just following up to finish up my
15 questions. And I appreciate your time here with me. Just
16 talking about process. You went to the public hearing in
17 Orangeburg, correct?

18 A. Yes.

19 Q. And you testified there, correct?

20 A. Yes.

21 Q. Did you go to any of the other House public hearings?

22 A. No. I went to one in Columbia that was held there at the
23 State House, but none that were held in other parts and cities
24 and communities across the congressional district.

25 Q. In that exhibit -- I believe it was Plaintiffs' 556 --

1 you testified about how the 6th Congressional District should
2 be drawn, correct?

3 A. I would think so.

4 Q. And at that hearing, the public had plenty of opportunity
5 to provide input, correct?

6 A. I would not agree with that, simply based on the turnout
7 at those hearings. The opportunity was there for some.

8 Again, referencing the legislation that I have proposed, it
9 would require a hearing in every county, only 46. And if we
10 had enough time, I just think it's important to make these
11 hearings as assessable as possible to the public. And quite
12 frankly, I would not agree that our hearings, as scheduled,
13 were assessable to all who may have been interested. I think
14 there were a number of reasons that people were not able to
15 participate.

16 Q. Let me just quickly go to the -- when a redistricting map
17 is being approved by the General Assembly, it has to go
18 through the normal legislative process, correct?

19 A. Correct.

20 Q. And so, in this instance, there was the ad hoc committee
21 on the House side that looked at the maps, correct?

22 A. Yes.

23 Q. Drew the maps, correct?

24 A. Yes. They were drawn by Thomas. So, yes, on behalf of
25 the ad hoc committee.

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1 Q. And the ad hoc committee took public testimony, correct?

2 A. Yes.

3 Q. And then it went to the full committee?

4 A. Yes.

5 Q. And the full committee had testimony there, too,
6 probably, correct?

7 A. The full committee did not receive testimony, as I
8 recall.

9 Q. That's right. But was there a ability at the ad hoc
10 committee level and the full committee for members to offer
11 amendments?

12 A. There was the ability for members of the Judiciary
13 Committee to offer amendments --

14 Q. That's right.

15 A. -- not all members.

16 Q. And then when it got to the floor, then clearly there's
17 an opportunity for all 124 members to offer an amendment,
18 correct?

19 A. Correct.

20 Q. And, in fact, a lot of amendments were offered, correct?

21 A. There were some. I don't know that I would consider it a
22 lot.

23 Q. And if you go to the Senate side, you have a similar
24 process to pass legislation, correct?

25 A. If by similar process you mean subcommittee, committee,

1 full floor, yes.

2 Q. And so, all members of the Senate had an opportunity to
3 provide input and offer any amendments he or she might have,
4 correct?

5 A. I can't speak to what opportunities members of the Senate
6 were afforded.

7 Q. But you're not saying that any Senator didn't have a
8 chance to put forward any alternative though, correct?

9 A. I am saying I cannot speak to what opportunities any
10 member of the Senate may have been afforded.

11 Q. After a bill is passed in either body, then it goes back
12 to the other body. In this case, it was passed by the Senate
13 and came back to House, correct?

14 A. Yes.

15 Q. And then there's more debate on that, correct?

16 A. Depending.

17 Q. In this case, was there more debate?

18 A. Yes.

19 Q. Yes. Lots of debate, correct?

20 A. There was some debate, as I recall.

21 Q. And so, I just wanted to kind of just make sure I
22 understood this. So, it goes through the whole normal
23 legislative process. All members have these through the
24 process and have their opportunity at some point in time -- if
25 they're on judiciary, if they're on the committees, members of

1 the each body have an ability to participate in the process,
2 correct?

3 A. That is correct. But I would add in the
4 for-what-it's-worth department, that it would not be accurate
5 to assume that simply because the appearance of a ability to
6 participate is there, that that is actually there. And my
7 point is, one of the things about the general assembly,
8 especially when you are in the minority party and having grown
9 accustomed to losing, there are some who take that as a signal
10 that they shouldn't bother because the outcome is not going to
11 be different.

12 And I would suggest to you that more so than any other
13 issue, the reapportionment, the redistricting process this
14 year in the House, both House and Congressional, operated
15 under the guise of -- from the perspective of the Democrats I
16 talked to and a few Republicans. It was like, you know, it's
17 a done deal, why bother. And so, while the appearance of
18 participation is there, I think it would be a mistake, based
19 on my knowledge of how things work, to make the assumption
20 that that participation was perceived as real by members of
21 the House -- some members of the House.

22 Q. Representative Cobb-Hunter, on top of all that
23 legislative process, then you had at least 10 public hearings
24 on the House side, correct, all across the state?

25 A. I don't know how many of the hearings they had. They

1 were in each congressional district. There are seven. So, I
2 don't know if it was 10. And I would, again, remind you that
3 there are opinions about the level of participation afforded
4 by those House hearings.

5 Q. Understood for that. Also, on the website -- I think you
6 testified to this at the Orangeburg hearing, that people could
7 provide comments to the website, correct?

8 A. That would be true of all the hearings.

9 Q. Okay.

10 A. But what that fact, in my view, serving a rural district,
11 negates to take into account is the lack of broadband access,
12 the lack of internet, and the digital divide that is still
13 alive and well in most parts of South Carolina, particularly
14 in rural South Carolina.

15 Q. Representative Cobb-Hunter, the concern that you and Mr.
16 Moore had, and that Ms. Aden asked you questions about
17 Representative King, to the best of your knowledge, there are
18 no problems with the process or anything of that nature on the
19 Senate side, are there?

20 A. I have no knowledge of what is or is not on the Senate
21 side, sir. I serve in the House. Very glad to be serving --
22 with all due respect to the Senate folk, I'm glad to be
23 serving in the lower chamber, where the real action is.

24 Q. Representative Cobb-Hunter, thank you for your time and
25 thank you for your service.

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1 A. You're more than welcome. Thank you.

2 JUDGE GERGEL: Any redirect?

3 MS. ADEN: Very briefly, your Honor.

4 JUDGE GERGEL: Very briefly.

5 **REDIRECT EXAMINATION**

6 **BY MS. ADEN:**

7 Q. Representative Cobb-Hunter, did the House process
8 irregularities, such as the committee that led in
9 congressional redistricting on the House side, the makeup of
10 that committee, and the exclusion of Representative King as
11 vice chair to lead in the Judiciary Committee on
12 redistricting, concern you that the majority party was trying
13 to dilute black voting power through the congressional
14 redistricting process?

15 MR. MOORE: Objection as to leading.

16 JUDGE GERGEL: Sustained as to leading.

17 **BY MS. ADEN:**

18 Q. Representative Cobb-Hunter, you were asked about the
19 House process. Did the concerns about the way the House
20 conducted redistricting in this cycle impact your view of how
21 votes will fare in congressional line drawing?

22 MR. MOORE: Objection as to leading. And I don't
23 think it's responsive.

24 JUDGE GERGEL: Overruled. She can answer the
25 question.

1 THE WITNESS: I was concerned about the process,
2 especially when it came to Representative King, because what I
3 knew, and still know, is that when we talk about advocacy on
4 the part of black voters, there could be no stronger advocate
5 for black voters in South Carolina on that committee than
6 Representative King. And while there were two members of the
7 ad hoc committee who were black, I would suggest to you that
8 their level of intensity demonstrated through the years for
9 advocating on behalf of the least of these would not have been
10 as strong as Representative King's.

11 And the point that I'm making, if I may just expand
12 on that, is -- and it kind of gets to what Mr. Moore was
13 asking earlier about Mr. King's reputation in the House,
14 because he does have the reputation of, with all due respect
15 to him, being like a pit bull with an issue when it's
16 important to him. That does not apply to others. He is not
17 quite as accommodating, shall we say, as the other two members
18 of that ad hoc committee.

19 **BY MS. ADEN:**

20 Q. Do you think he would have been a pit bull about how the
21 congressional map impacted black voters?

22 MR. MOORE: Objection. Calls for speculation and
23 also not proper redirect.

24 JUDGE GERGEL: You know, let me say, in all honesty
25 with you, we're talking about a -- we've heard plenty about

1 Representative King. I understand the concerns that he was
2 the vice chair. I feel like we're kind of beating a dead
3 horse here.

4 MS. ADEN: Absolutely.

5 JUDGE GERGEL: Because you understand, the plan
6 adopted comes from the Senate. And to the extent there's a
7 process where the House wasn't fair, and it spilled over to
8 the Senate, I get it. We've heard an awful lot about this
9 today.

10 MS. ADEN: I can move on --

11 JUDGE GERGEL: Would you?

12 MS. ADEN: -- if you just bear with me for
13 30 seconds. It is relevant to the extent that the
14 congressional process excluded black members from having a
15 role in the process. And that --

16 JUDGE GERGEL: You've already made the point.

17 MS. ADEN: I'm glad you understand. Thank you, your
18 Honor.

19 **BY MS. ADEN:**

20 Q. Representative Cobb-Hunter, is it significant to you as a
21 House member whether counties lived in predominantly -- let me
22 strike that.

23 You were asked about how certain counties were treated in
24 the congressional map. Is it significant to you -- and that
25 there are many different choices that needed to be made in

1 terms of which counties would be kept whole, which communities
2 of interest would be respected. And so, my question to you
3 is: Is it significant to you, as a House member, whether
4 counties lived in predominantly by black people were split
5 when and communities lived in predominantly by white people
6 were not?

7 MR. MOORE: I just have the same objection. It's not
8 responsive to any questions previously asked.

9 JUDGE GERGEL: Well, she did address it. She said
10 yes. Let's move on to the next question. Overruled.

11 **BY MS. ADEN:**

12 Q. And did it concern you, based on the racial makeup of how
13 Beaufort, as compared to Charleston County, was treated in the
14 map?

15 A. Yes.

16 Q. And did you hear those concerns from members of the
17 public during a redistricting process?

18 A. Yes.

19 Q. And did you hear the those concerns being raised before
20 the House legislative decision makers?

21 A. Yes.

22 Q. You were asked about how Orangeburg fared in the
23 congressional map. Did Orangeburg get what it needs in terms
24 of how it was treated under this congressional map?

25 A. No.

1 Q. And that is a county that is lived in and contributed to
2 by significant population of black voters?

3 MR. MOORE: Objection as to leading.

4 JUDGE GERGEL: She's trying to get through this. I'm
5 going to overrule. We can handle it. Next question. Let's
6 calm down the leading a little bit. Representative
7 Cobb-Hunter is one of the most articulate people I know. You
8 don't need to lead her.

9 MS. ADEN: Thank you, your Honor.

10 **BY MS. ADEN:**

11 Q. Representative Cobb-Hunter, you were asked about the
12 political nature of redistricting, which I don't think anyone
13 disputes. My question is whether it concerns you if black
14 voters, like your constituents in Orangeburg, are harmed as a
15 means to achieve political advantage in the congressional map?

16 A. Yes.

17 Q. Do you think that happened here?

18 A. Yes.

19 Q. Do you think that black voters, for example, were used to
20 negate the competitiveness of CD 1?

21 A. Yes.

22 Q. To crack any influence that they may have in CD 1?

23 MR. MOORE: Objection, your Honor. Again, I just
24 don't think this is proper redirect.

25 JUDGE GERGEL: It's proper redirect, because she's

1 covering things that she testified to. I'm wondering about
2 the need of it.

3 I've already heard all this once, Ms. Aden. I don't
4 know if you need to keep going back over it again. She did
5 comment about it, so I overrule the objection. But I just
6 urge you to -- we listened. We heard this already once.

7 **BY MS. ADEN:**

8 Q. Very respectfully to everyone, you were asked about
9 whether or not it was appropriate for congressional
10 redistricting to carry forward some of the decisions of the
11 past decades. Do you recall questions along those lines?

12 A. Yes.

13 Q. Very respectfully, have institutions that you have worked
14 to pull down, like Jim Crow and other things, been part of
15 tradition of the way we've done things?

16 A. Yes.

17 Q. And have they needed to come down?

18 A. Yes.

19 Q. And you were asked about similarly maintaining the status
20 quo going into keeping lines similar to how they were drawn in
21 the last cycle. From your view, what is the point of going
22 through the exercise of redrawing the lines every decade if it
23 is to carry forward the lines of the past?

24 A. I would argue that there is no point if it is going to be
25 status quo not changed, not taking into account changing

1 demographics, changing voting patterns, economic interests,
2 all of the cultural historical -- all of the stuff we've been
3 talking about, at least I think we've been talking about here
4 today.

5 Q. And is it your view that part of the Section-2 analysis
6 that you were looking for was to help determine the impact of
7 the lines as they were being redrawn?

8 A. Yes.

9 Q. And you never got that analysis; is that correct?

10 A. Yes.

11 MS. ADEN: Thank you for your patience.

12 JUDGE GERGEL: Thank you, Ms. Aden.

13 Okay. Let's take an afternoon break. We might want
14 a drink break. Ten minutes, and hopefully put up the next
15 witness.

16 MR. MOORE: Is your Honor buying?

17 JUDGE GERGEL: Only for you, Mr. Moore.

18 **(Recess)**

19 JUDGE GERGEL: In a perfect world, I would have only
20 one case to try. I have to break at 5:00 to take up a matter,
21 an emergency in another case. So, we're going to break at
22 5:00 today. So, as we're doing the direct of Dr. Duchin,
23 we'll just have to the anticipate a break point right near
24 5:00 o'clock and we'll come back tomorrow. And I can't
25 imagine us getting through the direct and cross today in any

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1 regard. And Charleston is so nice this time of year, I'm sure
2 she'll enjoy herself. And I hate to -- I would have normally
3 wanted to go to about 5:30, but I've been working my staff
4 real hard and I've got to go to this other hearing and address
5 matters as well.

6 Okay. Call your next witness.

7 MS. ADEN: Thank you, your Honor. Plaintiffs call
8 Dr. Moon Duchin.

9 **MOON DUCHIN, PhD, having been first duly sworn,**
10 **testified as follows:**

11 **DIRECT EXAMINATION**

12 **BY MS. ADEN:**

13 Q. Please state your full name for the record.

14 A. Sure. It's Moon Duchin.

15 Q. Dr. Duchin, good afternoon.

16 A. Hello.

17 Q. Thank you for your patience.

18 JUDGE GERGEL: Move closer to your microphone, if you
19 will.

20 THE WITNESS: You bet.

21 **BY MS. ADEN:**

22 Q. What is your higher educational background?

23 A. I have undergraduate degrees in math and women's studies
24 and a PhD and master's degree in mathematics.

25 Q. Are you currently employed?

1 A. I am. I'm a professor of mathematics at Tufts
2 University.

3 Q. And what positions do you hold at the Tufts University?

4 A. So, in addition to that primary appointment in math, I
5 also hold a number of affiliate appointments around campus.
6 I'm a senior fellow in the Tisch College of Civic Life,
7 collaborating faculty in the department of race colonialism
8 and diaspora studies. And I run a lab called the MGGG
9 redistricting lab as part of Tisch College.

10 Q. What does MGGG stand for?

11 A. It stands for Metric Geometry and Gerrymandering Group.
12 Metric geometry being my specialty in mathematics that I bring
13 to bear on redistricting.

14 Q. Can you tell us a little bit more about the work that
15 MGGG does?

16 A. Thanks. It's a bit of a mouthful. Yes. So, I began
17 working on redistricting in 2016, and since then, have devoted
18 my entire research program to the computational and geometric
19 methods for understanding redistricting in context. And so,
20 my lab maintains an active research program. So,
21 peer-reviewed publications are a major part of our work. We
22 also write open-source software that we make public in order
23 to put the tools of redistricting into the hands of more
24 people. And our open source software has been used around the
25 country in this redistricting cycle, particularly in the

1 collection of public input for redistricting.

2 Q. Does MGGG also engage in the collection of census and
3 electoral data?

4 A. That's right. In fact, we received about a
5 million-dollar grant from the National Science Foundation,
6 entitled: Network Science of Census Data. So, we're a
7 leading group in understanding the structure of census data.

8 Q. Can you tell us, as a math professor and your affiliation
9 of MGGG, your leadership with MGGG, what does your research
10 focus on beyond what you've already shared?

11 A. Well, my background is as a pure mathematician where my
12 field of study are in geometry, dynamical systems. And so, I
13 have a substantial body of work that's purely abstract. But
14 what I've found is that many of those ideas can be brought to
15 bear in quite useful ways, I think, to help us understand
16 redistricting.

17 Q. You mentioned that the MGGG lab has had peer-review work
18 on redistricting. Does that mean that you personally have had
19 peer-reviewed research published?

20 A. Yes. I think just in the last two years, 16 or 17
21 peer-reviewed articles that are about redistricting in some
22 way.

23 Q. And can you provide just a few examples of where those
24 have been published?

25 A. Sure. The Harvard Data Science Review, two pieces there;

1 two pieces in the Election Law Journal; two in Statistics and
2 Public Policy, just for example.

3 Q. Do you edit for any publications?

4 A. Yes. I'm on the editorial board of Advances in
5 Mathematics and also the Harvard Data Science Review.

6 Q. Are you familiar with scholarly literature on census
7 racial and ethnic categories?

8 A. Yes. I do research and I teach in those areas.

9 Q. And have you received any awards or academic honors for
10 your work?

11 A. Yes. I'm a fellow of the American Math Society, for
12 example. I received Guggenheim Fellowship and a Radcliffe
13 Fellowship, both citing my work in redistricting, among
14 others.

15 Q. Other than for this case, have you analyzed redistricting
16 plans prepared by legislators and/or the public?

17 A. I have, in quite a few states in this cycle. Often
18 working with line-drawing bodies themselves, legislatures,
19 commissions, and parallel public processes. I've also worked
20 in litigation in a number of states in this cycle.

21 Q. And do you mind sharing a few of the states where you've
22 worked?

23 A. Sure. For instance, I was brought in by the Michigan
24 Department of State to collect and synthesize communities of
25 interest testimony from around the state for the Independent

1 Commission in Michigan. I was brought in by the Wisconsin
2 Department of Administration to support the People's Maps
3 Commission, convened by executive order in Wisconsin. Worked
4 with the Alaska Redistricting Board. Worked with the
5 legislature in Massachusetts. Worked with the commission in
6 New Mexico. These are just a few examples.

7 Q. And can you describe some of the states where you have
8 done that type of work in the context of litigation?

9 A. Yes. I have filed reports and/or done depositions or
10 testimony in Wisconsin, Pennsylvania, Alabama, North Carolina,
11 Texas, and now South Carolina.

12 Q. And South Carolina, does that include work on the House
13 redistricting as well?

14 A. That's right. I worked on the House case before turning
15 to the congressional districts.

16 Q. And other than for this case, have you prepared
17 alternative redistricting districts, or full maps, whether for
18 other litigation or outside of litigation?

19 A. I have. For example, I helped the Massachusetts
20 Legislature in drawing Voting Rights Act compliant districts,
21 particularly for the State Senate in Massachusetts. I
22 supplied numerous options of alternative plans in Wisconsin
23 for the People's Maps Commission that I mentioned earlier.
24 Often, they would ask if it's possible to have a plan with
25 certain combinations of properties. And I would leverage the

1 computational techniques, that I'm sure we'll talk about
2 today, to furnish examples. I drew Gingles 1 demonstrative
3 maps in Alabama and in Texas. These are some examples.

4 Q. Okay. Outside of your work on the South Carolina House
5 redistricting litigation, have you done any other research or
6 redistricting-related work related to South Carolina?

7 A. I would say yes. Some of my scholarly work is national
8 in scope and looks at differences between states. And so,
9 particularly in one paper called Models, Race and the Law, I
10 looked at all states that had sizable black populations, and
11 South Carolina was one of them.

12 Q. And was that related to the Senate redistricting?

13 A. I looked at -- so, in the original paper, which appeared
14 in the Yale Law Journal, I looked at all levels, Congressional
15 Senate and House. And there's a recent paper in which I
16 looked, again, at the Senate.

17 Q. So, is it fair to say that you have experienced both
18 reviewing maps other entities have drawn, and drawing
19 districts in full maps, yourself?

20 A. Yes. I think that's right. In particular, as we'll
21 discuss, I have methods that enable me to evaluate a map
22 whether or not I know the conditions under which it was
23 produced.

24 Q. And you talked about your work, I believe, with Michigan
25 and other states on communities of interests. Can you tell

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1 the Court what you understand communities of interests to be?

2 A. Sure. So, communities of interest is fairly vague as a
3 phrase, but it's important and it's cited in many states in
4 their redistricting guidelines and framework. And there's a
5 reasonable amount of case law that helps us see examples of
6 what courts have and have not found to qualify as a shared
7 interest that merits COI consideration.

8 The work that I was asked to do for a number of states in
9 this cycle had to do with making it easier for members of the
10 public to submit COI testimony not only in the narrative form,
11 but often with maps, so they might be able to draw their
12 neighborhood and describe the shared interests. And I helped
13 technologically make that more possibly for more people. This
14 was a great success. So, for instance, in Michigan, it
15 produced more than 1,500 such maps. And that's a large number
16 to think about when you do redistricting. And so, the next
17 step was to try to synthesize those into clusters that were
18 easier to take into account when drawing the lines.

19 So, I think the take-away from that that I'd leave you
20 with is that, when you have a robust and technologically
21 assisted process that can give us concrete maps, then data
22 science techniques can be used to synthesize those into
23 something that's really concrete and actionable for the line
24 drawers.

25 Q. And in your work with MGGG, or otherwise, have you done

1 work on compactness?

2 A. Yes. I think that's one of my areas of expertise.
3 That's how I got interested in redistricting in the first
4 place, because of my geometry background, thinking about
5 compactness.

6 Q. And how so have you done work in that regard?

7 A. Well, one example is to take the minute metrics of
8 compactness that exist and to compare them and think about
9 circumstances where they may be aligned or not, and also to
10 propose new ways of measuring compactness that are really
11 well-suited to computational techniques.

12 Q. Do you know what racially polarized voting is?

13 A. Yes.

14 Q. Can you briefly describe what it is?

15 A. Sure. So racially polarized voting is an inquiry into
16 whether the patterns of voting or voting preference
17 desegregate, by race and ethnicity, in meaningfully different
18 ways. And usually in the context of voting rights, litigation
19 this would be measured with statistical techniques, such as
20 the -- today's dominant technique is called Ecological
21 Inference.

22 Q. Have you used evidence of -- or findings on racially
23 polarized voting in your non-Section-2 work?

24 A. Yes, both within Section-2 work and in non-VRA cases.
25 So, an example would be, in the North Carolina litigation,

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1 which was primarily a partisan case, and in Pennsylvania -- in
2 both of those cases, my reports did include a discussion of
3 polarization patterns.

4 Q. And can you explain why it was relevant outside of the
5 VRA context?

6 A. Because in those states, the frameworks of those states
7 called for an inquiry into racial fairness, and into minority
8 electoral opportunity. But I could talk a little bit more in
9 those states. But it was part of the entire picture of
10 fairness that was considered by the courts in both states.

11 Q. Okay. And have you written about racially polarized
12 voting?

13 A. I have in peer-reviewed work. Also, my lab has produced
14 software in the Python programming language that brings
15 together all of the RTV techniques in literature into a single
16 piece of software called IDI.

17 Q. And who have some of the clients been in the
18 redistricting work that have you done?

19 A. Let's see. So, you'll help me get this right. So, some
20 of the litigation chops or groups that I've worked with
21 include LDF, the Lawyers' Committee for Civil Rights Under
22 Law. But the clients have been -- for instance, in Texas,
23 it's the Texas NAACP. In North Carolina, the League of
24 Conservation Voters was the client. And so, the clients are
25 varied, but those are some examples.

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1 Q. Have you been employed by localities in this past
2 redistricting cycle to do any redistricting work?

3 A. Yes. Actually, we've done quite a bit of work with
4 localities, 135 and counting.

5 Q. Do you always work with plaintiffs?

6 A. No. I would say the bulk of my work has not been in
7 litigation at all.

8 Q. And have you worked with government and nongovernment
9 entities in doing your redistricting work?

10 A. That's right. So, I mentioned the Massachusetts
11 Legislature and the Wisconsin Department Administration, the
12 Michigan Department of State, the Alaska Redistricting Board.
13 And so, some of these are government entities, and some work
14 with government entities.

15 Q. Now, you talked about compactness being one of your areas
16 of expertise. Did I get you right?

17 A. Yes.

18 Q. Can share with the courts any more subject areas that you
19 think you have an expertise in?

20 A. Within redistricting?

21 Q. Within redistricting.

22 A. Sure. I think that I've worked really hard to think
23 about ways to operationalize -- in other words, to make
24 concrete, to make quantitative where appropriate -- all of the
25 redistricting criteria that I've encountered in the law and in

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1 states guidelines. And so, particularly, I'm quite
2 comfortable talking about standards for population balance,
3 about the different bases of population balance that can
4 sometimes be considered. I've worked with reapportioning
5 prison population. I am very comfortable with different
6 standards of contiguity. We talked about communities of
7 interest. That's a particular interest of mine. I've also
8 worked with alternative election systems as possible remedies,
9 such as Ranked Choice Voting. And when it comes to census
10 data, I'm an expert in the new disclosure avoidance systems,
11 called Differential privacy that were employed by the Bureau
12 in this cycle for the first time. So, I'd like to think
13 that's a pretty broad knowledge base across redistricting.

14 Q. Have you done any work on the topic of the
15 competitiveness of redistricting?

16 A. Yes. I have a paper dedicated just to different ways of
17 measuring competitiveness, and comparing different standards
18 that states might consider implementing as policy statements.

19 Q. And would you consider racial fairness rules and analyses
20 part of your expertise?

21 A. Definitely. That's particular interest.

22 Q. And have you previously testified as an expert witness at
23 trial in federal court?

24 A. Yes. In Alabama.

25 Q. And was that before a three-judge panel?

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1 A. Yes, it was.

2 Q. And have you previously testified as an expert witness at
3 trial in state court?

4 A. Yes.

5 Q. And which states?

6 A. In North Carolina; in Pennsylvania in this cycle, and
7 also in 2018 in the previous cycle. And I think that's it.

8 Q. Has every court for which you've been offered as an
9 expert allowed you to testify as an expert?

10 A. Yes.

11 Q. And has your testimony ever been rejected or excluded by
12 a court?

13 A. No, it has not. I can give more information about the
14 ways that it was discussed. But, no, it's been accepted
15 generally and found persuasive.

16 Q. Dr. Duchin, did you provide a CV as part of your work in
17 this case?

18 A. Yes, I did.

19 MS. ADEN: Your Honor, may I approach the witness?

20 JUDGE GERGEL: Yes.

21 MS. ADEN: I have some hard copies of materials.

22 THE WITNESS: Thank you.

23 **BY MS. ADEN:**

24 Q. Dr. Duchin, I've handed you what has previously been
25 entered into evidence I believe as PX-67, 87 and 120. Do you

1 recognize these documents?

2 A. Yes, I do.

3 Q. What is PX-67?

4 A. Exhibit 67 is my first report in this case, dated
5 April 11th.

6 Q. And does PX-67 include your CV?

7 A. It does. It's at the end.

8 Q. And are there any updates to your CV since you provided
9 it?

10 A. There are a few. Several of the papers mentioned here
11 have made their way further through the publication process.
12 For instance, my most recent paper, which is entitled:
13 Aggregating Community Maps -- and it's exactly about a data
14 science process for communities of interest -- is recently
15 accepted in Computer Science Journal.

16 Q. And are there any additions to the court cases that you
17 have been involved in since providing your CV?

18 A. So, I think this CV doesn't explicitly list the court
19 case. Instead, that can be found in the report itself on page
20 two. And looking at that, I think the South Carolina State
21 House case happened after this was initially filed. And other
22 than that, this looks complete.

23 Q. What about Texas?

24 A. Thank you. You're right. I have filed several reports
25 in Texas since this report was disclosed.

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1 Q. And what is PX-87?

2 A. Eighty-seven is my second report, dated May 4th.

3 Q. And what is PX-120?

4 A. PX-120 is the supplemental report, dated August 9th.

5 MS. ADEN: Your Honor, I would like to tender Dr.
6 Duchin as an expert witness in redistricting, data science,
7 statistical methods, geographic and computational --

8 JUDGE GERGEL: I want you to start over again.
9 Redistricting. What else?

10 MS. ADEN: Data science.

11 JUDGE GERGEL: Yes.

12 MS. ADEN: Statistical methods, geographic and
13 computational redistricting analysis --

14 JUDGE GERGEL: You're going to have to give me that
15 last one again. What's the last one?

16 MS. ADEN: Geographic and computational redistricting
17 analysis.

18 JUDGE GERGEL: Okay. Next?

19 MS. ADEN: Demography and cartography, and the
20 structure and use of --

21 JUDGE GERGEL: Demography. And what else?

22 MS. ADEN: Cartography.

23 JUDGE GERGEL: Cartography. Okay. Keep going.

24 MS. ADEN: And the structure and use of census data.

25 JUDGE GERGEL: Okay. And is there an objection?

1 MR. GORE: Your Honor, I don't believe there is any
2 further objection beyond what we already raised on motion in
3 limine.

4 JUDGE GERGEL: Very good. From the House?

5 MR. MOORE: The same, your Honor.

6 JUDGE GERGEL: Okay. Very good. The Court has
7 previously allowed the testimony. The Court recognizes Dr.
8 Duchin as an expert in redistricting, data science,
9 statistical methods, geographic and computational
10 redistricting, demography and cartography, and statistical
11 uses of census data. She may proceed.

12 MS. ADEN: Thank you, your Honor.

13 **BY MS. ADEN:**

14 Q. Now, Dr. Duchin, I'd like to turn to your role in this
15 case. If at any time you'd like to reference your reports
16 that you have, please let us know.

17 Focusing first on PX-67, your April 11th, 2022, initial
18 report, can you describe to the Court, what were you asked to
19 opine on?

20 A. Yes. So, I discussed the assignment also on page two in
21 Section 1.1. But I'll say, broadly, what I was asked to do is
22 to compare and evaluate various congressional plans,
23 particularly looking at the enacted plan, but comparing it to
24 not only the benchmark plan from the previous cycle, but also
25 to various plans proposed as part of the process of

1 legislation and litigation. And so, that includes a host of
2 plans that appear in this report. Later, that expanded to
3 include the Jessamine Plan. But I presume that we'll get to
4 that in due time.

5 My focus was to look at what I call in this paragraph the
6 possibility of excessively accessible raised conscious line
7 drawing. In other words, to look at evidence of cracking of
8 black voters' political power and ability to elect candidates
9 of choice. And I did so by looking both demographically and
10 using electoral history to try to understand the patterns of
11 how population was distributed across the congressional
12 districts.

13 Q. Did you also consider as part of your analysis of whether
14 the state's enacted map was excessively race conscious,
15 whether it adhered or not to traditional redistricting
16 principles?

17 A. Yes. To me, that's an important element in trying to
18 understand what it might mean to be excessively race
19 conscious. That has to be with sacrificing traditional
20 principles to race-conscious goals.

21 Q. And I think you referenced traditional redistricting
22 principles -- or we will continue to do so. Can you briefly
23 describe what they are and what that means to you?

24 A. Sure. I think for traditional districting principles,
25 I'll outline what are maybe, broadly, a big fix. There is

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1 population balance over the districts; compactness, which is a
2 very broad set of metrics and ideas, but generally has to do
3 with the shape and distribution; contiguity, which is
4 connectedness of the districts in various census; then there's
5 respect for political boundaries, frequently, county
6 boundaries, municipal boundaries; respect for communities of
7 interests; and very importantly, racial fairness, which takes
8 various shapes in redistricting, but includes the Voting
9 Rights Act of 1965 and constitutional protections that have to
10 do with electoral opportunity and fairness.

11 Q. And in your assignment in this case, did you also look at
12 whether race, as compared to party, explained some of the
13 lines in the enacted map?

14 A. I did. I looked at a race-versus-party comparison, using
15 some of the ensemble analysis that, presumably, we'll talk
16 about in due course.

17 Q. In the traditional redistricting principle that you
18 broadly described, have you done an analysis like you did here
19 in other cases where you have provided other cases or
20 redistricting work where you have provided analyses?

21 A. Most of the kinds of analysis that I do here have come up
22 in several other states. Was that the question? Did I get
23 that right?

24 Q. Yes. Are you familiar with ensembles?

25 A. Yes.

1 Q. Can you very broadly, generally, describe to the Court
2 what ensembles are?

3 A. Yes. I'll try to keep it at a fairly high level. But
4 so, the idea is this: That if you want to understand a
5 redistricting plan, it's not good enough to just measure a
6 suite of scores, you also need --

7 JUDGE GERGEL: Start your answer over. You were
8 explaining ensembles.

9 THE WITNESS: Yes. Okay. So, motivating the idea of
10 ensemble analysis is that, if you want to understand the
11 redistricting plan, it is not good enough to simply measure a
12 suite of scores. You need, instead, some kind of baseline or
13 a sense of a normal range for those scores so that you can
14 know when a score is exceptional, when it's an outlier, when
15 it's unusual. So, the idea of ensemble analysis is to create
16 a large collection of alternatives that you can use for
17 comparison. And I am one of the leaders, I would say, in the
18 methodology that is used to produce large collections of
19 alternatives.

20 And this is a science that's been kind of invoked in
21 concept since 1960s, but where the methodology has really
22 caught up with a lot of the aspirations has been only in about
23 the last five years. So, the kind of methods that I've
24 developed and that others in the scientific community have
25 developed -- this is a very active area -- they allow a

1 computer algorithm to start with -- in the case of my methods,
2 to start with a plan and to make changes to that plan while
3 adhering to the framework of rules and priorities that's given
4 in law and in the guidelines. And so, we might start with a
5 plan and change it by fusing two districts, splitting them in
6 a new way, and then repeat, take two other districts, infuse
7 them and split them, and iterates this many thousands of
8 times, hundreds of thousands of times. I can tell you because
9 I was working on it while waiting outside the court today,
10 that now we're at the point where the methods are so fast, you
11 can get to the billions in the span of a day.

12 But the mark of a good ensemble is not just its size.
13 The science of computational redistricting is about the
14 ability to draw representative samples of maps. And the point
15 of this is to be able to understand the consequences of not
16 only the rules, such as equal population, compactness, but
17 also the specificity of the political geography of each state.
18 And that's really something just deeply fascinating, is that
19 the human geography and political geography of states, in
20 other words, where the actual votes are located within that
21 network of census data, that really has a strong effect on
22 determining whether the expected outcome of redistricting
23 looks like one might have expected. And that's the power of
24 these methods, is it gives you a baseline that takes into
25 account, and holds constant, the facts on the ground and the

1 rules in play.

2 Q. You mentioned rules and I think you mentioned population
3 balance. Can you tell us generally what are the rules or
4 inputs that go into ensembles and how they work?

5 A. Sure. Although I'll say, you know, there are many
6 methods for doing this kind of work, one thing I want to
7 emphasize, having spent a great deal of time investing in this
8 science, is that not all computers are equally going to
9 produce good methods for this. This is something that takes
10 thought and care. You need to operationalize the rules in
11 effective ways. It's not one size fits all.

12 So, for the methods that I'm describing, which are called
13 recombination methods, the better-off rules are contiguity --
14 so, that's enforced in these algorithms that the districts are
15 connected. Compactness is handled with a waiting or a
16 priority, so that districts that are more compact are much
17 more likely to occur in these random algorithms, and
18 population balance, which is usually enforced with a
19 threshold.

20 Q. Has the ensemble method been accepted by courts?

21 A. Yes. I would say it's been found quite persuasive.
22 Although, not uniformly, of course, because practitioners vary
23 in how well they do it. But as a general method, it's been
24 repeatedly found quite persuasive.

25 Q. Have they been accepted in any of the cases that you've

1 worked on?

2 A. Yes. Probably all of them. But let me think about that.
3 They were important evidence in Pennsylvania, in North
4 Carolina. In fact, there were so many ensembles in North
5 Carolina, the local papers called it "a parade of
6 mathematicians," I believe that was the quote. And ensemble
7 evidence came up in each of the cases that I've been involved
8 in.

9 Q. Can you tell the Court what ensemble analyses are not
10 intended to do?

11 A. Well, many things. But, in particular, I would say one
12 thing that's important to understand -- so, I use the term
13 ensemble. You also will hear the term, "simulation." That's
14 almost synonymous. But one reason I prefer to use the term
15 "ensemble" is that I'd like to emphasize that we're not trying
16 to simulate how a person draws a map. The idea is not to get
17 a computer that acts like a person. The idea, instead, is to
18 do some hypothesis testing and understand how the rules
19 interact, which I think we can all agree is very complicated
20 in the case of redistricting. We have many rules. Sometimes
21 they work together, sometimes they're intentioned with each
22 other. And the idea of ensemble analysis is to understand the
23 consequences of the framework, not to act like a person would
24 act when drawing a map.

25 Q. And is the ensemble method peer-reviewed?

1 A. Yes. Quite a number of my publications and many other
2 publications are devoted to these methods that I'm describing.

3 Q. Did you use any particular software for your ensemble
4 work in this case?

5 A. I did. I used a Python package developed by my lab
6 that's been published since 2018, called the GerryChain. And
7 that is accompanied with high performance implementations in
8 other languages. But that's the code base that I use for
9 these reports.

10 Q. And in this case, and based upon the assignment you have
11 described, did you have a single test for assessing the
12 possibility of excessive race conscience line drawing?

13 A. No. There's no single test, and I that's quite important
14 to understand. I think of the ensemble work here as a pillar
15 of the analysis, but not the only element. It's important to
16 me to do this kind of analysis wholistically, and that means
17 marshaling all the kinds of quantitative modeling that I can,
18 but also using qualitative study to work together with that
19 and give me more of a complete picture of the state of
20 affairs.

21 Q. Okay. Let's turn to the sources of materials you used in
22 this case. Can you describe some of the materials that you
23 relied upon in preparing your work in this case?

24 A. Yes. And, here, I'm drawing on the list in Section 1.2,
25 also on page two of the first report. And I cite census data

1 products, and there are quite a few of those, especially the
2 P.L. 94-171, which is the redistricting data release of the
3 census block level. I spent a good deal of time with the
4 guidelines published by the South Carolina Legislature. Both
5 the House and the Senate had a set of published guidelines
6 that I used heavily in trying to build the framework for
7 understanding the plans. The State of South Carolina made a
8 number of plans available on its website. And so, that's the
9 source for the State's congressional plan and for the publicly
10 submitted alternative plans that I discussed in the report.

11 Later, the Jessamine Plan was provided to me by counsel.
12 And then I spent an enormous amount of time trying to read and
13 contend with the community testimony that was collected in the
14 public hearings by both the State House and the State Senate.
15 That, although most of it was oral, is provided in transcript
16 form. And so, I had transcripts of the oral sessions. The
17 record included e-mails and other forms of public comment.
18 And so, I read all of the public testimony that was made
19 available by the State.

20 Q. And was electoral data one of your other sources of
21 information?

22 A. That's right. And so, I was provided by counsel with a
23 shape file of precincts in South Carolina with electoral
24 history joined to those precincts.

25 Q. I want to take some of those sources briefly, just one at

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1 a time. I think you talked about the census data that you
2 used and the House and Senate criteria that you used.

3 MS. ADEN: I'd like to ask your Honors if I may
4 approach the witness once again?

5 JUDGE GERGEL: You may.

6 **BY MS. ADEN:**

7 Q. Dr. Duchin, I have handed you what has previously been
8 marked as PX-175 --

9 MS. ADEN: And if I could say, your Honor, we noticed
10 that PX-175, which has now been admitted, we disclosed as 146,
11 which had been redrawn, they're the same. But it's the same
12 document that -- I think on our Friday or Saturday morning, we
13 told you we were going to look at 146. It's 175 and is now
14 admitted.

15 JUDGE GERGEL: And we've admitted Plaintiffs' 175?

16 MS. ADEN: Yes.

17 JUDGE GERGEL: Very good.

18 **BY MS. ADEN:**

19 Q. Do you recognize PX-175?

20 A. Yes.

21 Q. What is it?

22 A. These are the guidelines for redistricting, provided by
23 the South Carolina House of Representatives.

24 Q. And what is PX-716?

25 A. So, 716 is the counterpart document, provided by the

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1 Senate.

2 Q. Okay. And these are the documents that you considered in
3 making some of your findings in this case?

4 A. That's right. These are what I will call the guidelines.

5 Q. Okay. Can you tell the Court, with respect to these
6 guidelines, generally, what did you find?

7 A. Well, both documents enumerate various criteria and
8 principles to be considered. They're guidance -- as the name
9 guidelines indicate -- for line drawers in what to take into
10 account. And both documents give a kind of implicit, or
11 explicit, priority order to these principles. I would say
12 that they're quite similar to each other but not identical.
13 And so, in my report, I try to summarize the similarities and
14 note the departures where there aren't any.

15 Q. And you talked about priority of criteria. Can you tell
16 us a little bit more about what you mean?

17 A. Yes. Both documents broadly start with constitutional
18 rules with federal law and state law. And particularly, in
19 the House version, there's actually a section of the
20 guidelines numbered Roman numeral IX, called "priority of
21 criteria." And, there, it's made explicit that Sections 1, 2,
22 3 and 4 -- which are the constitutional federal and state
23 rules, in addition to equal population, which gets its own
24 heading -- that those are to be considered what I would call
25 in my language, "first tier." What it says here is that they

1 should be given priority where they come in conflict with the
2 lower listed criteria.

3 Q. And does that hold true for the other set of guidelines?

4 A. So, on the side of the Senate, there isn't a separate
5 subhead that makes explicit, the priority order; however,
6 Roman numeral III has the heading: Additional considerations.
7 And it says here: Other criteria that should be given
8 consideration were practical and appropriate. And then it
9 goes on to itemize those. And so, I think I would call this a
10 consonance between the two documents, that he give a kind of
11 first tier and then a second tier, or, as it's phrased here,
12 additional considerations.

13 Q. Did you find that both criteria instructed against racial
14 vote dilution?

15 A. Yes. That is explicitly discussed in both the House and
16 the Senate guidelines.

17 Q. Did you find that non-dilution is expected to be given
18 higher priority than compactness, contiguity, incumbency
19 considerations in your review?

20 A. Yes. I think that's quite clear as a plain reading of
21 the structure of the documents on both the House side and the
22 Senate side.

23 Q. What does safeguarding minority -- as part of the first
24 tier of requirements, what does safeguarding minority
25 electoral opportunity mean to you, based on your background

1 and training?

2 A. Well, it means that there shouldn't be either the intent
3 or the effect of diluting the vote, of cracking the vote, of
4 reducing minority electoral opportunity below the kind of
5 baseline that would be provided by the neutral roles and
6 framework.

7 Q. And were there any meaningful differences between the
8 Senate and the House regarding minority electoral opportunity?

9 A. I found the language to be quite strong on both sides.
10 In particular, in the House document, it says: "The dilution
11 of the racial or ethnic minority voting strength is contrary
12 to the laws of the United States and of the State of South
13 Carolina, and also is against the public policy of this
14 state." It goes on to say: "Any proposed redistricting plan
15 that is demonstrated to have the intent or effect of
16 dispersing or concentrating minority population in a manner
17 that prevents minorities from electing their candidate of
18 choice, will be neither accepted nor approved." I find that
19 to be quite strong and broad guidance.

20 Q. And what does population balance mean to you?

21 A. Well --

22 Q. After this criteria.

23 A. Okay. So, population balance generally is about whether,
24 according to your source of data, which is typically, as I
25 said, the P.L. 94 release from the census. According to that

1 data, does the population in any district greatly exceed the
2 population in any other? Typically, nationally, congressional
3 plans are balanced to within one-person deviation, from the
4 highest district to the lowest. And that is also made
5 explicit in these documents. On the House side, it says: The
6 districts shall be as nearly equal as practicable. The ideal
7 size is cited, rounded to the nearest whole number. And every
8 effort should be made to achieve strict equality.

9 On the Senate side, I believe it's made explicit that we
10 should seek one-person deviation, which, as I said, is common
11 practice when it comes to congressional plans.

12 Q. And in terms of the second tier requirement, what does
13 contiguity mean to you?

14 A. Contiguous means connected. And so, when it comes to
15 district, it means that the district is in one piece and not
16 several components. There are some gray areas about what
17 contiguity should be -- understood to be, such as whether
18 contiguity through water is acceptable, or whether units can
19 meet at a corner -- sometimes called "point contiguity." Both
20 sets of guidelines discuss contiguity. Both allow for the
21 possibility of water contiguity, although the circumstances
22 for water contiguity are a little bit more restricted in one
23 document rather than the other. I'm trying to remember which
24 is which.

25 So, it's the Senate guidelines that are a little bit more

1 particular, saying that water contiguity is acceptable,
2 provided that there's a reasonable opportunity to transit the
3 district and the full linkages designed to meet the other
4 criteria. And similarly, they discuss point contiguity a
5 little bit differently, but it's referenced in both sets of
6 documents.

7 Q. And with respect to point contiguity, do you mind taking
8 a look and just telling the Court whether or not the House and
9 Senate treat point contiguity the same?

10 A. Not quite the same. So, in the Senate document, it says:
11 Point contiguity is acceptable so long as the adjacent does
12 use the same vertex as points-- basically what that means is
13 that we shouldn't have a checkerboard situation, where two
14 districts both meet at the same point. That's what we hear in
15 the Senate guidelines. In the House guidelines, we have that
16 point contiguity is not acceptable.

17 Q. So, based on your experience, would it be fair to say
18 that if a proposed map complied with the Senate criteria and
19 achieved point contiguity, it may violate the House criteria,
20 which prohibits it?

21 A. That's right. You'd have to at least take a very close
22 reading. And here, I think the plain text does prohibit just
23 point contiguity on that.

24 Q. So, is this an example of where the House and the Senate
25 criteria could conflict if attempting to implement both?

1 A. Yes. That's one example where one is more permissive
2 than the other.

3 Q. We've talked about compactness, and you have shared
4 generally what it means. Can you tell us whether there are
5 meaningful differences between how the House and the Senate
6 guidelines treat compactness?

7 A. Yes. There's some difference. And mainly, that
8 difference is both sets of guidelines talk about compactness
9 in very generally framed terms. They use not only shape, but
10 also what's sometimes functional compactness as a way to
11 understand that criterion. But a difference that I found
12 interesting is that one set of guidelines, the House one, says
13 explicitly that numerical formulas are not to be used.

14 Q. What do you think about that?

15 A. I understand that that's the choice that's made for
16 guiding line drawers in this document, but I would note that,
17 very frequently, courts have relied on quantitative and
18 numerical measures. And in any event, good quantitative
19 measures do comport with eyeball compactness fairly well. And
20 so, I do still think they'll be relevant for us relevant when
21 discussing these plans.

22 Q. And just to be clear, is eyeball compactness like visual
23 compactness?

24 A. That's exactly right. Eyeball compactness is: Does it
25 please your eyes?

1 Q. And can you briefly describe some of the metrics that are
2 used to evaluate compactness that you're familiar with?

3 A. Yes. There's just a large, large number of compactness
4 metrics that have appeared in the political science and
5 geography literature over the course of the last many decades.
6 In my report, I chose to focus on three measures of
7 compactness. One of those is the one that's most frequently
8 cited in litigation. It's called the Polsby-Popper score
9 that's named for some authors in the 1990s, but it's an idea
10 that's literally ancient mathematics that you can understand
11 the shape of a district by comparing its area to its
12 perimeter. That's the Polsby-Popper score.

13 Another one, which I think is the second most common in
14 -- I've reviewed a large number of expert reports trying to
15 understand how compactness has played out in courts. And I
16 think the second most popular has been something called the
17 Reock score, which takes a district and compares it to its
18 smallest bounding circle and asks how much it fills out that
19 area. Something to note about both of those scores, they're
20 both in the category that I call contour based. We just
21 really look at the outline of the district. And both of those
22 scores idealize the circle. Only a circle achieves a perfect
23 score in either of those metrics.

24 So, the third one that I referenced in my reports is
25 something called the cut edges score. And I particularly used

1 block-cut edges. And that's a discrete score that I'm one of
2 the people who has promoted the importance of, I would say.
3 The idea there is that real redistricting isn't being done
4 just abstractly on a chalkboard, it's being done by dividing
5 up the pieces of census data. So, block-cut edges actually
6 looks at how complicated the division of census geography is,
7 many pairs of census blocks are next to each other in the
8 state but were divided into different districts. I sometimes
9 call it the scissors complexity of the plan, because it looks
10 at how many units you'd have to separate if you wanted to cut
11 out the plan.

12 Q. So, is it fair to say that there are advantages and
13 disadvantages to the measures?

14 A. Absolutely. There's no one score to kind of summarize
15 them all, but it can be helpful to look at multiple scores.

16 Q. And is it fair to say that you use, in your practice,
17 compactness measures in order to make comparisons between
18 different maps, rather than to rule out a particular map?

19 A. That's right. It's very rare, either in guidelines or in
20 court rulings that I'm aware of, to have a threshold, a
21 quantitative threshold, that you have to be this compact.
22 Instead, compactness is usually a matter of comparison, as we
23 say. It's a way to sort of put something behind the intuition
24 that one plan has kind of nicer shapes than the other.

25 Q. And we talked about communities of interests and your

1 experience working with them. Under these guidelines, how
2 does South Carolina define communities of interest?

3 A. So, communities of interests are defined quite broadly in
4 both sets of documents. And so, I won't read it out, but will
5 just say that many different kinds of shared interests are
6 cited as being salient. One thing that I think is worth
7 noting about the COI description is that what is often
8 separately enumerated as protection of political boundaries is
9 here included under the COI heading. And so, we see, for
10 instance, in the House guidelines that counties,
11 municipalities and precinct lines can be considered evidence
12 of communities of interest, but will be given no greater
13 weight than other identifiable communities of interest. So,
14 the interesting thing that I'm citing here is that what is
15 sometimes two criteria are kind of merged into one under the
16 COI banner.

17 Q. And that's under the House guidelines?

18 A. That's the House guidelines. If we compare that to the
19 Senate guidelines, we see that counties and cities are split
20 out separately but are also cited in these guidelines. Here,
21 I think an interesting thing to note about the way COI's -- or
22 communities of interests -- are described is that it is noted
23 explicitly that they may be overlapping and maybe formal or
24 informal.

25 Q. You mentioned some political boundaries, counties and

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1 cities. Do you know what voting tabulation districts are?

2 A. Yes.

3 Q. Are those political boundaries?

4 A. They are explicitly described here as relevant political
5 boundaries.

6 Q. And what is the goal, generally, with respect to
7 political boundaries in redistricting?

8 A. So, I think that the concept is that -- you know,
9 interestingly, this varies around the country. If you go to
10 Texas, everybody knows the name of their county. In
11 Massachusetts, where I live, nobody knows what county they
12 live in. So, counties just have a different kind of community
13 salience in different parts of the country. But in most of
14 the country, county is part of how someone thinks about where
15 they live. And the idea is that it's a good practice in
16 redistricting to try not to cut those up for several reasons.
17 One is to make the districts more cognizable. Should be easy
18 to describe the district and to understand who lives in one
19 district and who lives in another. And counties can be a real
20 effective way to make the districts more easier to understand.
21 But also people who have shared interests, as residents of the
22 same county often do, might want to be kept together so that
23 they have more voting strength and they have more kind of
24 voice with their representative.

25 Q. In these guidelines, just to be clear for the record, are

1 communities of interest, based upon your experience, defined
2 using objective criteria?

3 A. Well, that also varies a great deal. I would say what
4 ever state has in common in its COI process, when it has one
5 at all, is that informal communities are considered. But some
6 states have endeavored to turn that into something more
7 concrete and quantitative. In South Carolina, as I mentioned
8 earlier, there was an enormous amount of public testimony, but
9 I didn't see an aggregation process on the part of the state
10 to turn that into something that kind of constitutes the
11 accepted community for the process of redistricting.

12 Q. Can communities of interest sometimes overlap?

13 A. Yes. That's absolutely characteristic of the way people
14 conceptualize their community.

15 Q. And can all communities of interest be respected in a
16 map?

17 A. No. And I think an example would be: I mentioned the
18 Michigan process that produced 1500 maps. They covered every
19 square inch of the state. And so, that means that by the
20 nature of redistricting, you're going to draw lines that cut
21 some communities. And so, it's a question of synthesis and
22 balance.

23 Q. Now, you mentioned as part of your sources in this work,
24 that you reviewed the General Assembly's collection of
25 communities of interest testimony. To be clear for the

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

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

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

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

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

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

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

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

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

11 A. Yes. Well, as part of the ensemble analysis that I
12 provided, I wanted to understand what would happen if we took
13 that COI testimony seriously, if we tried to extract some
14 communities that came up or were cited a large number of
15 times, and if we took those as COIs and prioritized keeping
16 them whole, would that kind of move the baseline in one of
17 these sets of comparison maps. So, to the things that I was
18 measuring, I took a few COI examples -- and I'll go over those
19 in a moment -- and I asked: What if I put an extra priority
20 on keeping these whole and what if I didn't? So, that's a
21 test that you can do as a filter to turn on and off and see
22 how much it kind of moves the baseline. And the ones that I
23 chose are Richland, Sumter, Berkeley and Charleston Counties.
24 And then the fifth the Lowcountry, which I took to be a
25 collection of four counties.

1 And I want to emphasize that I don't take this to be an
2 authoritative synthesis of all of that testimony. That is not
3 my intention at all. Instead, it was one good-faith effort,
4 having read a massive amount of what folks had to say about
5 what matters to them. It was one effort to operationalize
6 that I think that reasonable people could come up with a
7 different set of key communities. But my research question
8 was: For this one particular effort to take that testimony
9 seriously, does it move the curve?

10 MS. ADEN: So, let's look at Mr. Najarian, PX-86,
11 Figure 13 of your April 11th report.

12 **BY MS. ADEN:**

13 Q. Tell me what this figure is.

14 A. Well, this is exactly what I was just describing. These
15 are the five COIs that I chose for this test, this toggle, to
16 see whether it moved the baseline in my ensembles analysis.

17 Q. And what did you find?

18 A. I find that it did not. The findings were the same in
19 terms of the outlying properties of the enacted plan, whether
20 I put this COI filter on or off.

21 Q. And what should the Court take from that finding?

22 A. Well, I think that goes to the heart about how I think
23 about the relevance of ensembles. It's to help you understand
24 whether properties flow from the rules. And here, because I'm
25 a big advocate of the importance of communities of interests,

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

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

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

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

18 Are you familiar with the concept of core retention?

19 A. I am.

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

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

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

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

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

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

23 Q. And where you were looking to identify how core retention
24 shows up or not in the House and Senate criteria, were those
25 under the required first-tier criteria that you identified?

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1 A. No. Definitely not. In the Senate case, it's under
2 additional considerations, which I've already explained I
3 considered the lower tier. And in the House guidelines, it's
4 Roman numeral IIV -- and here, again, it's only implicit,
5 which is explicitly a lower priority criterion.

6 Q. And based upon your experience in redistricting, what do
7 you think about core retention as a criteria for drawing
8 lines?

9 A. Right. I would say that of many of the ones that we've
10 discussed, cores and incumbents are controversial. Certainly
11 they should be considered traditional if what we mean by that
12 is commonly invoked. But as to whether they're good
13 government properties, I think there would be substantially
14 more debate. And some of the good government groups, like the
15 National Conference of State Legislatures, which maintain
16 lists of districting principles, they say so explicitly, that
17 incumbency and core preservation may or may not align with
18 good government goals.

19 Q. In your experience, has core retention been related to --
20 strike that.

21 In your experience, has compliance with core retention
22 been related to demographic changes in an area?

23 A. Well, yes. Generally, if you have extremely high core
24 retention -- in other words, if you have a new plan that
25 greatly resembles an old plan -- then it will inherit many of

1 the properties of the old plan. So, if the old plan had a lot
2 of electoral opportunities for minority groups, core retention
3 will tend to maintain that. And if the old plan was dilutive,
4 then a plan with high core retention will tend to maintain
5 that. The same is true for communities of interests. If you
6 have a plan with least change, then whether that respect
7 communities might have a great deal to do with whether the
8 benchmark plan did. And so, I would say it's probably fairly
9 obvious that core retention preserves the status quo. Whether
10 that status quo is positive or negative, that's certainly what
11 core retention is going to do in most cases.

12 Q. Regardless of whether incumbent protection is permissible
13 or not, like core retention, do you understand it to be a
14 lower priority in the House and Senate guidelines?

15 A. I do. And actually, I'd like to take a moment and nuance
16 my previous comment. So, my previous comment, which is
17 definitely true to first order, is that core retention
18 privileges the status quo. That's certainly true. But the
19 nuance is that the reason we redo a census every 10 years is
20 that there are population shifts, and what's possible may
21 change. Demographics may change, voting behavior may change.
22 And so, it's certainly possible for a plan to have very
23 different properties than it would have had 10 years earlier
24 just based on ambient changes in the state. I just wanted to
25 get that on the record. I think that's something you have to

1 take into consideration when you consider the effects of the a
2 least-changed plan. But as to this question, definitely
3 incumbency is explicitly in that lower tier of priorities that
4 should not take precedence over minority opportunity in either
5 set of guidelines.

6 Q. Did you find that any of the criteria contemplated
7 partisan performance advantage?

8 A. It does come up. And we can see that under the
9 communities-of-interest banner in both sets of documents. And
10 so, in the Senate guidelines, we see that political interests
11 are mentioned as a kind of shared interest that constitutes a
12 COI. So, that's a passing reference to partisanship. It's a
13 bit more explicit in the guidelines, where we can see that
14 both political beliefs and voting behavior are itemized as
15 salient shared interests.

16 Q. And, once again, do you read the Senate and House
17 guidelines to place partisan performance, however it's defined
18 by them, as lower-tier priorities in the criteria?

19 A. If you read them in at all, there's certainly lower tier
20 on both sets of guidelines.

21 Q. In your experience, why, if at all, is it important that
22 guidelines for redistricting be publicly posted?

23 A. Well, that's a great question. I think it's part of
24 public confidence in the redistricting process. It's part of
25 transparency. It's part of the good faith expressed by the

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1 legislature in stating its own framework and priorities before
2 it undertakes redistricting. It also provides a means -- and
3 maybe the only means -- for members of the public, if they're
4 going to submit feedback on a plan, or if they're going to
5 submit alternative plans. That's the only way they have to
6 know whether those plans will rate among the State's
7 priorities and criteria. So, I think it's a very important
8 enterprise that's undertaken in most states and one that I
9 take to be a good-faith expression of the relevant framework.

10 Q. And in terms of your sources, you mentioned "publicly
11 posted plans." Do you recall how many there were that were
12 publicly posted?

13 A. Well, we can check, but my memory says there were 11 in
14 my initial report. Let me check if that's true. Yep. I see
15 11. And then later a 12th plan, the Jessamine Plan, was added
16 to that list.

17 MS. ADEN: Mr. Najarian, can you pull up page three
18 of Dr. Duchin's April 11th report, PX-67.

19 **BY MS. ADEN:**

20 Q. What do you report here?

21 A. So, in this figure, what I've done is I've taken six of
22 the plans on the public record and I've showed their
23 districts. You can see county boundaries are shown in these
24 diagrams a little bit lighter in the background. And then
25 I've colored and numbered the districts so we can tell which

1 is which.

2 MS. ADEN: And if Mr. Najarian can go to the next
3 page.

4 **BY MS. ADEN:**

5 Q. What are you doing here?

6 A. The same thing for five more plans, submitted by members
7 of the public.

8 Q. Now, flipping back to page three, I notice that there is
9 a previous 2012 plan identified here. Can you tell the Court
10 why you obtained information about a 2011 or 2012 map?

11 A. Yes. That's the benchmark, that is, that's the plan that
12 was in effect before the new census data became available.
13 And so, we can understand some of the choices made in this new
14 enacted map by comparing it to its predecessor.

15 JUDGE GERGEL: I'm getting to the point where I'm
16 turning into a pumpkin. I've got to go to another hearing.
17 And this is important testimony you're getting ready to get
18 into, so let's start it in the morning. And we will begin at
19 9:00 a.m. tomorrow morning. And I hope you enjoy Charleston
20 this evening.

21 MS. ADEN: I will. I think I will. Thank you.

22 JUDGE GERGEL: Very good. This hearing is adjourned.

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I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

s/Lisa D. Smith,

11/1/2022

Lisa D. Smith, RPR, CRR

Date

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