

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 4, 2022
	:	
Plaintiffs,	:	VOLUME II (PAGES 266 - 532)
v.	:	
	:	
THOMAS C. ALEXANDER, <i>et al.</i> ,	:	
	:	
Defendants.	:	
	:	
	:	

- - -

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

- - -

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INDEXPLAINTIFFS' WITNESSES**MOON DUCHIN, PhD**

DIRECT EXAMINATION CONTINUED BY MS. ADEN.....	271
CROSS-EXAMINATION BY MR. GORE.....	377
CROSS-EXAMINATION BY MR. MATHIAS.....	489

**TAIWAN RAMON SCOTT**

DIRECT EXAMINATION BY MR. Ingram.....	493
CROSS-EXAMINATION BY MS. STRINGFELLOW.....	507
CROSS-EXAMINATION BY MR. INGRAM.....	519

**HENRY GRIFFIN**

DIRECT EXAMINATION.....	521
CROSS-EXAMINATION.....	525
CROSS-EXAMINATION.....	529

PLAINTIFFS' EXHIBITS

Exhibit	Description	Identified
PX-68	Dr. Duchin April 11th Report	278
PX-69	Figure 2 - Dr. Duchin April 11th Report	279
PX-70	Table 1 - Dr. Duchin April 11th Report	288
PX-71	Table 2 - Dr. Duchin April 11th Report	293
PX-72	Table 3 - Dr. Duchin April 11th Report	296
PX-73	Table 4 - Dr. Duchin April 11th Report	299
PX-74	Table 5 - Dr. Duchin April 11th Report	301

**PLAINTIFFS' EXHIBITS**

<b>Exhibit</b>	<b>Description</b>	<b>Identified</b>
PX-75	Figure 3 - Dr. Duchin April 11th Report	305
PX-76	Figure 4 - Dr. Duchin April 11th Report	309
PX-77	Figure 5 - Dr. Duchin April 11th Report	312
PX-78	Figure 6 - Dr. Duchin April 11th Report	314
PX-79	Figure 7 - Dr. Duchin April 11th Report	316
PX-80	Figure 8 - Dr. Duchin April 11th Report	317
PX-81	Figure 9 - Dr. Duchin April 11th Report	318
PX-82	Figure 10 - Dr. Duchin August 9th, 2022 Supplemental Report	336
PX-83	Figure 11 - Dr. Duchin April 11th Report	344
PX-84	Table 7 - Dr. Duchin April 11th Report	349
PX-85	Figure 12 - Dr. Duchin April 11th Report	360
PX-86	Figure 13 - Dr. Duchin August 9th Supplemental Report	331
PX-87	Dr. Duchin May 4th, 2022 Report	368
PX-120	Dr. Duchin Supplemental Report	280
PX-121	Figure 1 - Dr. Duchin August 9th Report	340
PX-122	Table 1 - Dr. Duchin August 9th Report	352

**PLAINTIFFS' EXHIBITS**

<b>Exhibit</b>	<b>Description</b>	<b>Identified</b>
PX-123	Table 2 - Dr. Duchin August 9th Report	352
PX-124	Probative Contests Diagram	355
PX-125	Probative Contests Diagram	355
PX-126	Dr. Duchin August 9th Supplemental Report	320
PX-175	Section 9 - House Guidelines	287
PX-489	Enacted Map	500

**SENATE DEFENDANTS' EXHIBITS**

<b>Exhibit</b>	<b>Description</b>	<b>Identified</b>
SX-229-A	Beaufort Senate Hearing Transcript	421
SX-231-A	Transcript of August 10, 2021 Senate Hearing	417

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DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

271

1                   *(The following bench trial proceedings resumed on*  
2                   *Tuesday, October 4, 2022, at 9:03 a.m.)*

3                   JUDGE GERGEL: Please be seated.

4                   Okay. Welcome, everyone, to day two of the trial in  
5                   The South Carolina State Conference of the NAACP vs.  
6                   Alexander.

7                   Are there any matters counsel need to take up with  
8                   the Court before we proceed with the continuation of Dr.  
9                   Duchin's testimony?

10                  MR. CHANEY: Nothing for the plaintiff, your Honor.

11                  MR. GORE: Good morning, your Honor. Nothing from  
12                  Senate defendants.

13                  MR. MOORE: Good morning, your Honor. Nothing from  
14                  the House defendants.

15                  JUDGE GERGEL: Very good. Okay. Let's bring Dr.  
16                  Duchin back in, if we could. Please continue.

17                  MS. ADEN: Thank you, your Honor.

18                  ***MOON DUCHIN, PhD, having previously been duly sworn,***  
19                  ***testified as follows:***

20                                   **DIRECT EXAMINATION (Continued)**

21                  **BY MS. ADEN:**

22                  Q. Good morning, Dr. Duchin.

23                  A. Good morning.

24                  MS. ADEN: Your Honor, may I please give Dr. Duchin  
25                  the items that I gave her yesterday, which include PX --

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

272

1 JUDGE GERGEL: Yes. The answer is yes.

2 MS. ADEN: Okay.

3 **BY MS. ADEN:**

4 Q. When we left off yesterday, I believe that we were  
5 focusing on page three through four of your April 11th report.  
6 And if I recall, we had been talking about why you obtained  
7 information about the previous 2012 map that is identified on  
8 the top right of that page. Do you recall that?

9 A. Yes.

10 Q. Okay. Is it your regular practice to look at the  
11 previous map, which I'll call "the benchmark plan," in doing  
12 the analysis that you do when you conduct redistricting work?

13 A. Yes. I would say that's a standard element.

14 Q. And why?

15 A. In order to illuminate the choices that were made in  
16 forming the new plan, because it shows you what the kind of  
17 now malapportioned planned from the previous cycle was that  
18 had to be changed in order to conform with the rules.

19 MS. ADEN: And you can take that down for a moment.

20 **BY MS. ADEN:**

21 Q. At the end of the day yesterday, we were going through  
22 the various sources and materials that you relied upon in  
23 conducting your initial report. And I believe that you had  
24 mentioned that you had used electoral data with shape files.  
25 Do you mind briefly explaining to the Court what that is?

1 A. Sure. So, the way that cast votes are recorded is in  
2 units that are called precincts. Now, the Census Bureau has a  
3 data product every 10 years that approximates those precincts  
4 and aligns them with census geography. That's called VTDs, or  
5 voting tabulation districts. We talked about those yesterday.  
6 And so, if you want to make a study of how the boundary lines  
7 of districts have electoral consequences, it's important to  
8 know where those votes were cast. And so, the basic object  
9 that you use to study that is a format called a shape file,  
10 which shows you where all those precincts are, and then  
11 attached to that as attribute data, is the record of cast  
12 votes from previous elections.

13 Q. And are you doing any statistical work with those, or are  
14 you -- what are you doing with that data?

15 A. Well, it will primarily come into my reports in the form  
16 of electoral effectiveness analysis.

17 Q. Okay. So, yesterday you identified a host of resources  
18 and materials that you worked on. Just to close the loop on  
19 this subject, I just want to ask: Are these the sources and  
20 materials that you typically use in your redistricting work?

21 A. Yes. I think all of these kinds of materials are  
22 standard for the kind of analysis that I do.

23 Q. And yesterday afternoon, you also identified the  
24 assignment that you were asked to do, the scope of your work  
25 in this case. And I would like, before we dive into your



*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

274

1 report, for you to summarize the key conclusions in your  
2 initial report please.

3 A. Sure. So, as we discussed, the assignment was to look  
4 for signs of cracking, in particular, to look for signs that  
5 the electoral effectiveness of the map for Black voters had  
6 been reduced by the race-conscious choices made in configuring  
7 the lines. And I studied that, as we heard, through  
8 demographic analysis and electoral analysis. I used  
9 qualitative techniques and quantitative techniques. I used  
10 ensemble methods and a host of others. And all signs pointed  
11 to the same conclusion, which is that strong signs of cracking  
12 are present that give evidence of intentional vote dilution.

13 Q. So, I want to turn to a discussion of your analysis of  
14 the demographics of South Carolina. And before we  
15 specifically talk about South Carolina's demographics, can you  
16 please tell us briefly about how race is categorized in a  
17 census?

18 A. Sure. So, it's fairly complicated, especially since the  
19 1990s. The way that it works is that race has six different  
20 categories for which a respondent can select yes or no. And  
21 so, those are White, Black, Asian and so on. I can name them  
22 all, if you'd like. After making a selection from those  
23 categories, separately there's an ethnicity question, which  
24 asks a respondent if they're Hispanic or not. And so, if you  
25 put it all together, that's six yes-or-no questions, so that's

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

275

1 two to the six, that's 64. But you can't select no for all of  
2 them. So, there are 63 races on the census, times two for the  
3 ethnicities. So, there's 126 different race and ethnic  
4 identification categories, which is quite a lot.

5 Q. Can you tell me about the "any part Black" category?

6 A. Sure. It's actually quite simple. The idea is for all  
7 respondents who answer yes to the question, are you Black,  
8 that's who's included in the category "any part Black." So,  
9 encountered with the yes-or-no question, are you black, it  
10 includes everyone who said yes, possibly in combination with  
11 other racial identities, and whether Hispanic or not.

12 Q. And when did the census start recording that category?

13 A. So, that's not tabulated in the PL. But the way that I  
14 just described the racial categories, that's been used by the  
15 OMB, the Office of Management and Budget, since the mid 1990s.

16 Q. And just to be clear, does the "any part Black" category  
17 include Hispanic people?

18 A. If they indicated that they are Black, then they're  
19 included in that category, yes.

20 Q. Which category of Black did you use in this case?

21 A. For almost everything that you'll find in my report,  
22 that's what I used, the "any part Black" category. Although,  
23 when I introduce the demographics of South Carolina on page  
24 five, I report also the "Black alone" just for contrast.

25 Q. And what does "Black alone" mean?

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

276

1 A. "Black alone" would mean respondents who selected Black,  
2 made no other racial category selection, and did not indicate  
3 Hispanic ethnicity.

4 Q. So, Dr. Duchin, did you examine South Carolina's  
5 demographics?

6 A. I did.

7 Q. And as of the 2020 census, what is the total population  
8 of the state?

9 A. So, referring here to page five in my report, the total  
10 population is just over 5 million. So, 5,118,425 people.

11 Q. And as of the 2020 census, what portion of South  
12 Carolina's total population is "any part Black"?

13 A. Let me make sure I'm getting this right. So, that's  
14 1,370,542 or 26.78 percent of the population.

15 Q. And as of the 2020 census, what portion of South  
16 Carolina's voting age population is "any part Black"?

17 A. Okay. So, that is 25.28 percent.

18 Q. And what portion of South Carolina's citizen voting age  
19 population is "any part Black"?

20 A. There, the number goes back up again a little bit to  
21 25.99 percent.

22 Q. And why did you look at citizen voting age population?

23 A. Well, in this part of the report, I'm try to be complete.  
24 Census data products give so many different ways to approach  
25 the question of demographics. So, here, I'm trying to give a

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

277

1 number of different angles. I'll note that CVAP -- or citizen  
2 voting age population -- is more commonly used in states and  
3 in context with larger immigrant populations, such as Latino  
4 or Asian populations, that are large enough to be part of the  
5 inquiry. It won't be the basis of most of my report here,  
6 because the bulk of this inquiry has to do with Black and  
7 White South Carolinians.

8 Q. And what data source did you use to report citizen voting  
9 age population?

10 A. That's derived from another Census Bureau data product  
11 called the ACS, or American Community Survey.

12 Q. Did you find anything with respect to any changes in the  
13 White voting age population?

14 A. Well, I think you can make conclusions about changes in  
15 White voting age population from the numbers that are  
16 presented in the report. But those weren't my primary  
17 presentations. I mostly focused on the Black population.

18 Q. Can I focus you on your May 4th rebuttal report at note  
19 four?

20 A. Yes.

21 Q. Did you make any findings about the White voting age  
22 population in that report?

23 A. Yeah. So, this is an example. Here, I note that the  
24 White share of South Carolina's population has been dropping.  
25 With the WVAP, or White voting age, share dropping from

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

278

1 66.7 percent to 64.9 percent between the last two censuses,  
2 from 2010 to 2020.

3 Q. Thank you.

4 MS. ADEN: Mr. Najarian, can you put up on the screen  
5 PX-68, which is Figure 1 of Dr. Duchin's April 11th report?

6 BY MS. ADEN:

7 Q. Dr. Duchin, what are you showing in Figure 1?

8 A. So, this is the kind of visual called a choropleth map.  
9 And the meaning of that word is that the units are shaded  
10 according to, in this case, the share of Black voting age  
11 population. And so, what's shaded here is those VTDs, or  
12 precincts, but I also show county lines and mark certain  
13 cities in the visual.

14 Q. You mentioned VTDs. Are VTDs synonymous with precincts?

15 A. Well, that's a complicated story. Around the country in  
16 most places, precincts can and do change regularly. In many  
17 places, the control of precinct boundaries is local. It might  
18 be at the county level or even the sub-county level, towns can  
19 control their precinct boundaries. In some states, like  
20 California, they change on a weekly basis.

21 The VTDs should be thought of as a once-in-ten-years  
22 snapshot that's made by the Census Bureau, and as I said  
23 before, aligned to census geography. So, they're an extremely  
24 useful data product but they're not exactly synonymous with  
25 precincts, they're just an authoritative snapshot.

1 MS. ADEN: You could take that down Mr. Najarian.  
2 And I would like you to put up PX-69, which is Figure 2 on the  
3 next page 6 of Dr. Duchin's April 11th report.

4 **BY MS. ADEN:**

5 Q. Dr. Duchin, what are you showing in this figure?

6 A. So, these figures are showing changes in Black  
7 populations. And I'll note -- we'll probably see this next,  
8 but there is a typo here. This is actually Black citizen  
9 voting age population. So, it's marked BVAP, but it should be  
10 BCVAP. And here what I'm doing is I'm showing the county  
11 level on top or at the census tract level on the bottom. I'm  
12 showing whether the Black population has gone up or down in  
13 between, in this case, 2010 and 2019.

14 Q. And are there any notable findings here?

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

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

280

1 I see when I look below is fewer intense blues. And so, most  
2 of that population growth is spread out over those counties.

3 Q. Dr. Duchin, did you have occasion to supplement your  
4 findings about the shifts in Black population in South  
5 Carolina?

6 A. I did. This is revisited in my supplemental report from  
7 August.

8 Q. Thank you.

9 MS. ADEN: Mr. Najarian, could you pull up page seven  
10 of Dr. Duchin's August 9th supplemental report, PX-120, which  
11 has been admitted? And page seven. Thank you.

12 **BY MS. ADEN:**

13 Q. Dr. Duchin, what are you showing on these pages?

14 A. It's just exactly the same kind of information, but now  
15 I've shown it at all the intercensal increments --  
16 intercensal, meaning between censuses. This is possible  
17 because the ACS comes out every year and it gives a rolling  
18 average of different population totals that are gotten from  
19 survey data. So, you can get more fine-grained information  
20 about how that population growth is happening.

21 I've corrected the typo, so now it's marked "BCVAP." And  
22 also I've extended it to 2020, because the 2020 ACS came out  
23 in between my first report -- as I recall, in between my first  
24 report and the supplement. And so, the function of this  
25 picture is just to give a little more context and see that

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

281

1 those demographic shifts are happening really gradually over  
2 time.

3 Q. And can you tell the Court are there any areas of  
4 interest that you found with respect to the Black citizen  
5 voting age population changes over time here in South  
6 Carolina?

7 A. Well, in this report -- and let me pull it up on paper.  
8 Without wanting to go into great length, what I did want to do  
9 was give some examples by looking at one or two counties of  
10 how that growth compares to the population overall. And so, I  
11 think I do that in footnote 3, on page 6, where I note that,  
12 for instance, in Richland County -- just to give one  
13 example -- I give the year-by-year totals. And then what we  
14 can see is that the BCVAP goes up by over 30,000 people, which  
15 is more than a quarter. That's quite substantial growth over  
16 that period of time. That well outpaces the overall rate of  
17 population growth in the county and in this state. So, that's  
18 just one example. If we zoom in on Richland County, we can  
19 see that the growth that was visible in those pictures really  
20 is substantial, relative to the population trends overall.

21 MS. ADEN: Mr. Najarian, do you mind going back to  
22 page seven of the August 9th supplemental report?

23 BY MS. ADEN:

24 Q. And where would the Court see this represented on this  
25 page?



DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

282

1 A. Well, you can see Richland County, if you notice in the  
2 2011 picture, it's already showing up as having substantial  
3 growth right away. And that's maintained over the course of  
4 the increments that we saw.

5 MS. ADEN: Your Honor, I got a note that the screen  
6 in the break room isn't working and I didn't know if I needed  
7 to bring that up.

8 JUDGE GERGEL: Hold just a second.

9 MS. ADEN: Okay.

10 *(Pause)*

11 **BY MS. ADEN:**

12 Q. Did you want to say anything else about what should be  
13 found on this page?

14 A. No. I think that covers the Richland County visual.

15 Q. Okay.

16 MS. ADEN: You could take this down for a moment.

17 **BY MS. ADEN:**

18 Q. How does what you found looking at the --

19 THE WITNESS: Did you want a break for the fix there?  
20 Oh, we're good? Okay.

21 **BY MS. ADEN:**

22 Q. How does what you found -- when you were looking at the  
23 comparison of changes in Black citizen voting age population  
24 over time, how does that compare to what you've seen in some  
25 of the other states where you've worked?

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

283

1 A. I would say this is a strong trend. It's -- the fact  
2 that -- well, nationally, we saw a few trends that include  
3 South Carolina, but there are others that are distinctive.  
4 One national trend, that perhaps many of us read about in the  
5 press, is the number of people who are identifying biracially,  
6 with two or more races, is going up around the country. And  
7 that's true here as well. The White share of population in  
8 many states is reducing. As I already mentioned, we see that  
9 here in South Carolina as well. But the population  
10 concentration in places that are really important for  
11 congressional redistricting that you see here, that we just  
12 described, I have not always found that to be the case. So,  
13 that creates the conditions for more favorable congressional  
14 outcomes in terms of Black voting strength.

15 Q. Given the growth in the areas of the state that you  
16 found, would you have any expectation about how the  
17 congressional map might change from 2011 to the post-2020  
18 census cycle?

19 A. Well, I mean, what I can say, building on what I said a  
20 moment ago, we have now two sets of facts: One is that the  
21 concentration of Black population is going up in relevant  
22 areas, and another is, as we will, no doubt, be discussing at  
23 some length, is that the map which used to have CD 6 as a  
24 majority Black district, the state's enacted map now drops  
25 that below 50 percent. That's still, as we'll see in the

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

284

1 effectiveness analysis, comfortably effective for the moment.  
2 But putting those two facts together, they really create quite  
3 an opportunity to have more electoral success for Black voters  
4 in other districts. So, that is between the reduction of  
5 Black voting age population in CD 6 while remaining effective.  
6 And the increased concentration of Black voters in relevant  
7 areas, there's more opportunity than ever to have Black voting  
8 power reflected in other districts.

9 Q. Dr. Duchin, I'd now like to turn to your review of  
10 metrics and demographic data against specific congressional  
11 plans. So, yesterday, we talked about House and Senate  
12 criteria at length. And at the end of the day, we looked  
13 briefly at the 11 maps that you identified on pages 3  
14 through 4 of your April 11th report.

15 Having done both of those things, did you have occasion  
16 to examine maps and apply certain criteria to your analysis of  
17 those maps?

18 A. I did. Section 3 of my initial report attempts to make a  
19 comprehensive review.

20 Q. Okay.

21 A. I'm sorry. Section 3 reviews the criteria themselves,  
22 and Section 4 comprehensively presents metrics and scores.

23 Q. And in Section 4, can you just briefly describe which  
24 criteria did you apply in this section of your report?

25 A. Sure. In 4.1, I look at racial demographics that isn't

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

285

1 directly cited in any of the guideline criteria, but it's  
2 relevant to understanding electoral opportunity.

3 In 4.2, I look at population deviation, which, of course,  
4 is very important for valid redistricting plans. In 4.3, I  
5 review some metrics of compactness. In 4.4, I report on  
6 political subdivisions, counties, county subdivisions, cities,  
7 and towns. In 4.5, I discuss incumbency and the pairing -- or  
8 sometimes called "double bunking" -- of incumbents in the  
9 various plans. And that's what we find in this section.

10 Q. Why did you examine those criteria against these plans?

11 A. It's an attempt to take everything I can that's  
12 measurable from the criteria and discuss, especially the ones  
13 that are higher tier here. Now, there are a few criteria that  
14 I do discuss elsewhere in the reports, such as core retention,  
15 so we'll come to that later. But these are the kind of  
16 high-ranking and a few lower-ranking criteria as well.

17 Q. And are these criteria different than the traditional  
18 redistricting principles you talked about at the beginning of  
19 your testimony yesterday?

20 A. So, these are they, except that incumbency, as I  
21 mentioned yesterday, might or might not be considered one of  
22 the standard TDPs, or traditional districting principles.

23 Q. I believe yesterday you testified that not all  
24 communities of interest can be satisfied. But with respect to  
25 traditional redistricting principles overall, can all

1 traditional redistricting principles be satisfied in a map?

2 A. Well, I would say this is the heart of redistricting, and  
3 what's challenging about it is that we have a large number of  
4 rules. Some of them are qualitative, some of them are  
5 wholistic, some of them are numerical, like population  
6 deviation, it's very easy to count, if we take the census data  
7 as our basis. And the nature of redistricting is to try to  
8 balance this large number of different rules. So, you won't  
9 find a plan that's optimal on every criterion simultaneously.  
10 The nature of redistricting is to weigh tradeoffs.

11 Q. And you mentioned that you did not look at core retention  
12 in this section, but in others. Did you look at VTD splits in  
13 this section of your report?

14 A. I did not address VTD splits here. But it does come up,  
15 for example, in my response report from May.

16 Q. Okay. And did you look at partisan performance in this  
17 section of your report?

18 A. Not in this section, but it's discussed later when I try  
19 to compare racial to partisan explanations.

20 Q. And did you consider criteria outside of those identified  
21 in the House or Senate guidelines in this section of your  
22 report?

23 A. Well, I suppose, you could say that by giving metrics of  
24 compactness, I go outside the guidelines, which I prefer not  
25 to use metrics of compactness. But as I mentioned yesterday,

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

287

1 I still think that can be helpful to the Court.

2 Q. I want to briefly show you the House Criteria 716.

3 MS. ADEN: And yesterday I think I indicated that  
4 this had been admitted. I don't think it had yet been but I  
5 believe the Senate defendants do not object to it being  
6 admitted. It's the Senate Criteria --

7 JUDGE GERGEL: What's the number?

8 MS. ADEN: 716.

9 MR. GORE: Your Honor, let me note, for the record,  
10 it was admitted yesterday as Senate Exhibit 3.

11 JUDGE GERGEL: Senate 3 is already in. You can use  
12 it as Senate 3. Okay.

13 MS. ADEN: And if we could put that up on the screen.

14 **BY MS. ADEN:**

15 Q. I want to direct your attention to -- having looked at  
16 these Senate guidelines in detail, did you find anything that  
17 suggests how a mapmaker should respond if criteria conflicted  
18 with what was in these guidelines?

19 A. Let's see.

20 MS. ADEN: Actually, can we take this down and put up  
21 the House?

22 THE WITNESS: I was going to say I think that is more  
23 directly addressed in the House.

24 MS. ADEN: Which is PX-175.

25 THE WITNESS: Yeah. So, there that's addressed in

1 Section 9, Priority of Criteria.

2 **BY MS. ADEN:**

3 Q. Okay. And what do you find?

4 A. Well, so here, it's clearly said that if there's a  
5 conflict, then the requirements addressed in Sections 1, 2, 3  
6 and 4 should be given priority. And I'll note that that is  
7 precisely including in Section Roman numeral II, non-dilution  
8 of racial and ethnic minority voting strength. So, it's  
9 clearly stated here that that is to be given priority over  
10 other considerations, such as incumbency, core preservation,  
11 and so on.

12 Q. And do you have an opinion -- you can take that down --  
13 about whether the legislature could or should consider  
14 criteria outside of its own guidelines?

15 A. Well, they certainly could. As to should, I think we  
16 talked about this a little bit yesterday, the guidelines are  
17 the way that the public can know what standards maps are being  
18 assessed by. And so, I would say that, just as a matter of  
19 sound state policy and good government practice, there should  
20 be an effort to reflect accurately in the guidelines, all of  
21 the considerations that will be used to choose among maps.  
22 So, I think that addresses both could and should.

23 Q. Okay. So, you mentioned that you examined the maps for  
24 their racial demographics?

25 MS. ADEN: Mr. Najarian, will you pull up PX-70,

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

289

1 which is Table 1 on page 9 of Dr. Duchin's April 11th report.

2 **BY MS. ADEN:**

3 Q. Dr. Duchin, generally what are you showing in this first  
4 table?

5 A. Okay. So, this shows the Black voting age percentage in  
6 every district of every plan that was available to me at that  
7 time.

8 Q. Okay.

9 MS. ADEN: If you can go down to the second table on  
10 that page, Mr. Najarian.

11 **BY MS. ADEN:**

12 Q. Tell me, Dr. Duchin, what are you trying to show in this  
13 second table?

14 A. So, this is just a summary. And here, I read off from  
15 the previous table how many districts have at least  
16 30 percent, at least 40 percent, or at least 50 percent BVAP.  
17 Let me emphasize that those aren't special numbers, those  
18 aren't targets. They have no particular significance as kind  
19 of thresholds for this kind of inquiry. It's just meant to  
20 summarize and give us a view of how things changed. So, for  
21 example, if you compare the first two rows, you can see that  
22 between the benchmark plan and the enacted plan, this shows  
23 that one district -- and we know that that's CD 6 -- which  
24 used to be over 50 percent, is now under 50 percent, but that  
25 no other districts go over 30, so that remains the only



DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

290

1 district over 30 percent BVAP; whereas, some of the other  
2 alternative plans that were proposed by members of the public  
3 and by NGOs do have two and, in one case, even three districts  
4 over 30 percent.

5 Q. Dr. Duchin, looking back at the first table on page 9,  
6 what are some of your keys findings with respect to racial  
7 demographics and the congressional plans that you reviewed?

8 A. Well, I think here -- this is a good moment to note that  
9 BVAP does not tell the whole story. I always try to do a  
10 demographic analysis and an electoral analysis and to make  
11 sure that they talk to each other to try to have them work  
12 hand in hand. So, this is only part of the story. However,  
13 we already see, I think, some interesting things if we just  
14 look at these numbers. So, we see that drop from 52.5 to just  
15 a shade under 47 percent BVAP in CD 6, from benchmark to  
16 enacted. And then scanning the other plans, we see that  
17 several of them stay over 50 percent, while others drop into  
18 the 40s and 30s, and the Robert's Plan looks very different  
19 from the others here and in many regards.

20 Now, given that drop, we might expect for the difference  
21 to be made up in other districts in places where it might  
22 boost opportunity to elect. And so, scanning across the other  
23 districts, what we can see is that there's modest rise in CD 2  
24 and CD -- let's see -- 4.

25 Q. So, you're looking at the second row and then at the

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

291

1 enacted 2022?

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

5 Q. Thank you.

6 A. And the question I was just addressing is: If the Black  
7 voting age population came down in CD 6, where did it go up?  
8 Right. And so, it goes up some in CD 4, a hair in CD 3, goes  
9 up some in CD 2, stays just about the same in CD 1. And  
10 later, we'll have an opportunity to see whether that very  
11 dispersed increase in BVAP corresponds with electoral  
12 opportunity in those districts. And what we'll find later  
13 when we look at election results, is that it does not, it does  
14 not correspond to any meaningful opportunity across the other  
15 districts in the state.

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

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

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

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

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

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

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

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

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

293

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

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

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

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

14 **BY MS. ADEN:**

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

18 A. I did.

19 Q. Okay.

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

22 **BY MS. ADEN:**

23 Q. Dr. Duchin, what did you find?

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

1 between the censuses. So, it used to be population balanced,  
2 but when the new data was released, we can see that its  
3 largest and its smallest districts have over 80,000 people  
4 deviation from the ideal size. By contrast, the enacted plan  
5 and the next few publicly submitted plans up to Muscatel, all  
6 have five people or fewer as the top-to-bottom deviation from  
7 the most populated district to the least populated district.

8 Maybe this is a good time to point out that the  
9 guidelines specify -- and as I mentioned, it's standard  
10 practice in most states across the country to seek one-person,  
11 top-to-bottom deviation. And I'd just like to note that any  
12 of these plans could be tuned to one-person deviation very  
13 easily in a matter of minutes.

14 Q. Is it fair to say, though, that the enacted plan, the  
15 South Carolina South Carolina NAACP 1 Plan, the South Carolina  
16 NAACP 2 Plan, the Harpootlian Plan, the League of Women Voters  
17 Plan, the Foster and Muscatel plans all achieved close to  
18 one-person deviation?

19 A. Yes. They all have five or less as their top-to-bottom  
20 deviation.

21 Q. Did you look at the compactness amongst the districts of  
22 the proposed plans?

23 A. I did.

24 Q. And which statistical metrics that you introduced us to  
25 yesterday did you apply in this section of your report?

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

295

1 A. So, here I give the average Polsby-Popper score of the  
2 district, average Reock score of the district, and the  
3 Scissors Complexity, otherwise known as the Block-cut Edges  
4 score of the district.

5 Q. And yesterday you briefly explained to us what each of  
6 them means and how they're measured?

7 A. Yes.

8 Q. Those are no cut-offs -- I think yesterday you agreed  
9 with me that there's no magic number to these scores?

10 A. No. Certainly not in the South Carolina framework.

11 Q. Do you agree, though, that the Polsby-Popper, the Reock  
12 scores, the closer you get to one, what -- is there any  
13 significance to getting close to one under the Polsby-Popper  
14 and Reock scores?

15 A. Yes. In both of those two scores, the only way to  
16 achieve a perfect score of 100 percent, or one, is to be an  
17 exactly round district. And that's not very practical. And  
18 so, you'll see that very compact districts might have scores  
19 in the -- depending on the state and how they fit together  
20 with the natural geography, you can have scores in the 20s,  
21 and 30s, and 40s. Those would be considered fairly compact.

22 Q. And what about the Block-cut Edges, what will we look  
23 for?

24 A. So, Block-cut Edges is different, because it's measuring  
25 how many pairs of edges were assigned to different districts.

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

296

1 So, that's a score where lower is better. You'd like a  
2 simpler cut, fewer separations.

3 MS. ADEN: Mr. Najarian, would you please put up on  
4 the screen PX-72, which is Table 3 on page 11 of Dr. Duchin's  
5 April 11th report.

6 BY MS. ADEN:

7 Q. And I would like you to explain to us what you were  
8 trying to show in this table.

9 A. Sure. So, the two images below, they show the enacted  
10 plan, CD 6, just as an illustrative example. And on the left  
11 is the figure that you would use to compute the Polsby-Popper  
12 score, while the right-hand figure is for computing the Reock  
13 score. What I've done here is, on the left, that's the circle  
14 that has the same perimeter as the district. And the fact  
15 that that circle is so much bigger means that the district is  
16 not doing a very efficient job of enclosing areas. And so,  
17 you get the Polsby-Popper score by the ratio, the purple area  
18 to the circled area. On the right is the Reock score,  
19 where -- as I mentioned yesterday, where you take the smallest  
20 bounding circle and take the ratio of those areas. So, you  
21 see this figure illustrates why the Reock scores are somewhat  
22 higher than the Polsby-Popper scores.

23 Q. And what did you find about the compactness of the plans  
24 that you examined according to these measures?

25 A. Well, I find that neither the benchmark plan nor the

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

297

1 enacted plan stands out as especially compact, relative to  
2 other alternatives. They do look a little bit better by Reock  
3 than by the other two scores. But I'll note, for instance, in  
4 the Polsby-Popper column that the Harpootlian Plan, NAACP 2,  
5 Harrison Plan, all of these are significantly more compact  
6 than the State's Plan. In the Reock's score, we have, again,  
7 NAACP 2; the League's Plan; the Harrison Plan looked more  
8 compact than the State's Plan. And in Block-cut Edges, where,  
9 again, lower is better, again, it's outperformed in  
10 compactness by quite a few alternatives. Harpootlian Plan  
11 comes up again, Foster's Plan and so on.

12 Q. So, is it fair to say that, looking at these various  
13 plans, certain plans score better on some measures, and other  
14 plans score better on different measures? Is that fair to  
15 say?

16 A. Yes. That's the nature of these scores. They're picking  
17 up on different aspects of the geometry.

18 Q. But yesterday you identified Block-cut Edges as -- and  
19 today, as having value in areas where boundaries may be  
20 irregular; is that fair?

21 A. Yes, that's right. So, especially if you're in a state  
22 with a lot of coastline, as we have here, that's going to be  
23 penalized in the contour scores. So, the Polsby-Popper score  
24 or the Reock's score is going to take a district along the  
25 coast and find it to be not very compact, just because that's



DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

298

1 a winding boundary. Block-cut Edges fixes that problem by not  
2 penalizing coastlines, for instance.

3 Q. And what does that mean for the enacted plan according to  
4 these scores?

5 A. Well, I would just, you know, repeat what I said a moment  
6 ago, which is that the enacted plan is not one of the most  
7 compact. It's a bit more compact than the benchmark in some  
8 ways but not others, and it's definitely outperformed in  
9 compactness by several of the publicly submitted plans.

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

12 **BY MS. ADEN:**

13 Q. Did you, in other sections of your report, consider  
14 compactness based on nonstatistical measures?

15 A. Well, yes. I would say the other notions of compactness  
16 do enter into the report in various ways. For instance,  
17 so-called functional compactness has to do with whether it's  
18 easy to transit around a district, whether one can efficiently  
19 get from some areas in the district to some others. And  
20 that's implicitly discussed in the qualitative district review  
21 by looking at the ways that the districts are cut, whether  
22 they are long major roads and kind of cognizable divisions of  
23 territory, or whether the cuts seem arbitrary and unrelated to  
24 the way people actually move around.

25 Q. And we'll get to that. Dr. Duchin, in this section of

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

299

1 your report, did you look at various proposed plans' respect  
2 for political subdivisions?

3 A. Yes.

4 Q. And which subdivisions in particular?

5 A. So, I look at the splits of counties. The way I -- one  
6 of the ways that I get at municipal splits is by looking at  
7 the census category called county subdivisions, and then I  
8 also separately look at cities and towns.

9 Q. And as you testified to yesterday, the House, as compared  
10 to the Senate, considers respect for political boundaries to  
11 be a community of interest?

12 A. Yes. It's mentioned under community of interest  
13 consideration in the House guidelines in particular.

14 Q. Okay.

15 MS. ADEN: I'd like to look at Table 4, which is  
16 PX-73. This can be found on page 4 of Dr. Duchin's April 11th  
17 report.

18 **BY MS. ADEN:**

19 Q. What did you find -- before you jump into the findings of  
20 this plan, can you detail how you measure adherence to  
21 political subdivisions?

22 A. Sure. Here, I have done something very simple. I've  
23 given you the number of counties -- let's focus on counties  
24 first. So, the number of counties out of the 46 counties in  
25 the state, how many of them are split, meaning that they

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

300

1 belong to more than one district, and then how many pieces are  
2 they split into. And so, for instance, usually you'd expect,  
3 if things are just split in two parts, that the pieces count  
4 would be twice as much as the splits count. But, for  
5 instance, you can see in the plan called NAACP 1, there are 19  
6 splits with 39 pieces. That means one of those counties is  
7 split among three districts. That's how to read that.

8 Q. What did you find, having examined all of these plans,  
9 about how they adhere to county splits or non-splits?

10 A. Okay. Well, my goal is to understand, in particular, the  
11 enacted plan. And so, what you can see here is that, when it  
12 comes to county splits and when it comes to subdivision  
13 splits, it does somewhat better than the benchmark plan, but  
14 is definitely outperformed by a number of the other publicly  
15 proposed plans on the table. For instance, you can see that  
16 the Harpootlian Plan, which was proposed in an amendment in  
17 the legislative process, outperforms the enacted plan by three  
18 more intact counties and just really does much better on  
19 county subdivisions.

20 Q. And what about the League of Women Voters Plan?

21 A. That one is even better. So, only six counties are  
22 split. Although, here, it splits a lot of county  
23 subdivisions.

24 Q. Okay. Is there anything else that you'd want to  
25 highlight from this table?

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

301

1 A. I think that's pretty good.

2 MS. ADEN: Okay. You can take that down Mr.  
3 Najarian. Can you pull up PX-74, which is table 5 of your  
4 April 11th report.

5 **BY MS. ADEN:**

6 Q. And here, you're examining how the plan respects  
7 political subdivisions, particularly cities and towns?

8 A. That's right.

9 Q. Okay.

10 A. And here, you know, just trying to be very careful about  
11 how I report this, let me explain what the slashes mean in  
12 this table. So, municipal boundaries can often themselves be  
13 really erratic and winding due to histories of municipal  
14 annexation and so on. For many historical reasons, city  
15 boundaries can be pretty erratic. And so, here, I look at how  
16 many splits of cities there are, and then how many of those  
17 actually separate the population of the city.

18 So, to be clear, like, you might imagine a city that has  
19 a spur, a long skinny spur that doesn't actually have any  
20 people living in it. If that got split off from the rest of  
21 the city, you might or might not want to consider that, you  
22 know, a kind of relevant city split. So, I've reported it  
23 both ways. For instance, in the Harpootlian Plan, there are  
24 nine cities that are split, but only seven of those splits  
25 actually involve population.

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

302

1 Q. What about how the enacted plan compares to other plans  
2 in this table?

3 A. Well, I think the pattern holds up from before. And so  
4 let's, for instance, compare it to Harpootlian, which  
5 continues to be a strong plan here. It has fewer city splits,  
6 even fewer that affect population. It has fewer city pieces,  
7 accordingly. It has quite a bit fewer town splits. And so I  
8 think, just as an example, it outperforms the enacted plan on  
9 political boundaries.

10 Q. And how about the League of Women Voters Plan?

11 A. Also.

12 Q. Okay.

13 A. I think, you know, as we'll hear as we go through the  
14 report, one of the reasons that the Harpootlian Plan comes up  
15 a lot as a touchstone is that -- my understanding of the  
16 timeline is that it was made by a legislator, Senator  
17 Harpootlian, in full view of public testimony. And so, I  
18 regard it to be doing a good job, not only on these  
19 quantitative measures of TDPs, but also on the more intangible  
20 community of interest principle as well. So, I will probably  
21 come back to Harpootlian quite a few times as a model. It was  
22 certainly available to the state legislature in their process.

23 Q. And just to be clear on your understanding of the  
24 timeline, yesterday you talked about the public hearing  
25 testimony that you looked at extensively. And did you

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

303

1 understand that that testimony occurred prior to when the  
2 legislature proposed maps?

3 A. Yes. Well, there were many different meetings. And I  
4 don't have in mind the exact timeline of those meetings. But  
5 I think the bulk of them -- maybe all -- had been concluded by  
6 the time that these maps were being debated in the  
7 legislature.

8 Q. But the Harpootlian map that you're referencing, your  
9 understanding of the timeline is that it was a map proposed  
10 during consideration of congressional maps in the legislative  
11 process?

12 A. Yes, that's my understanding, and that it -- in the  
13 discussion, which I did not, you know, hear, but my  
14 understanding is that it was described to have been profoundly  
15 impacted by the public testimony.

16 MS. ADEN: You can take that down Mr. Najarian. And  
17 I want you to pull up page 13 of PX-67, which is Dr. Duchin's  
18 April 11th report and focus on the bottom half of that page,  
19 the Section 4.5.

20 **BY MS. ADEN:**

21 Q. Dr. Duchin, what are you examining in this portion of  
22 your report?

23 A. This is the pairing of incumbent legislators,  
24 representatives in this case.

25 Q. And what did you find?

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

304

1 A. Well, many of the plans don't pair any incumbents. The  
2 benchmark plan and enacted plan certainly don't. Harpootlian  
3 does not. And then others have some pairings, such as the  
4 League's plan, and the Robert's plan, which has three  
5 districts pairing incumbents.

6 Q. Anything else that you want to note here?

7 A. No.

8 Q. Okay.

9 MS. ADEN: You can take that down.

10 **BY MS. ADEN:**

11 Q. Now we're going to turn to Section 5 of your report,  
12 labeled "Detail District Review". So, Dr. Duchin, after  
13 looking at various criteria, population deviation,  
14 compactness, political boundaries, and incumbency, as applied  
15 to various proposed congressional maps, what did you do next?

16 A. So, in Section 5, what I do is go district by district in  
17 the area where the challenged districts are. And so, those  
18 are 1, 2, and 5. But we'll hear about District 6 a lot in  
19 this section as well because it has a lot of shared boundaries  
20 with one, two, and five.

21 Q. And generally, what was considered in your assessment of  
22 each of those districts in this section?

23 A. Well, I was trying to understand the changes and how they  
24 did or didn't adhere to the traditional districting  
25 principles. So, to compliment the metrics approach from the

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

305

1 last section, this is a more, you know, look at where the  
2 splits are, are they along major roads. This is a more  
3 granular look at how the metrics, how the TDPs are adhered to  
4 or not on the ground.

5 Q. And have you done assessments like this before in other  
6 cases you've worked on?

7 A. Yes, I have.

8 MS. ADEN: Let's pull up PX-75, which is Figure 3,  
9 found on page 15 of Dr. Duchin's April 11th.

10 BY MS. ADEN:

11 Q. Before diving into each of the specific districts that  
12 you looked at, what did you generally find about the movement  
13 of terrain between Districts 1, 2, and 5, and 6, between the  
14 2012 benchmark and the 2022 enacted plan?

15 A. Right. So, this figure does attempt to summarize that.  
16 And so, here, the question is: We're going for -- as we hear  
17 in the State's accounting -- a least-change map, one that  
18 resembles greatly the previous map. And the State has told us  
19 that an attempt is being made to have greater adherence to the  
20 traditional districting principles, to heal some of the issues  
21 that may have been present in the last maps or that were  
22 created over time. So, for instance, to heal split counties  
23 is one possible, by making them whole in the new map, to heal  
24 cities is one possible. And so, what this picture is showing  
25 us -- here, what I've done is I've color-coded terrain that



*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

306

1 was moved from one district assignment to another. And so,  
2 yellow was in CD 6, is now in CD 2; blue was moved to a 6 to  
3 1; and purple was moved into 6 from the neighbors. First  
4 thing I'd like you to notice is just that some of this moved  
5 terrain -- first of all, it's scattered in many components  
6 around the state. It's not just in one area that terrain was  
7 reassigned, but it's the result of many discreet individual  
8 local decisions that happen all over this area of the state.

9 And the second thing is -- and I've shown this by  
10 highlighting some of the cities -- some of the split cities  
11 are not made whole, are not healed in the language I appealed  
12 to a moment ago, by the change from benchmark to enacted.

13 Q. You earlier testified about where certain growth in the  
14 state had taken place. Does that overlap at all with where  
15 you're seeing the movement in this map here?

16 A. Well, definitely. We're seeing movement in some of these  
17 coastal areas in and around Charleston. We see different  
18 colors showing up there in different chunks. Also, in  
19 Richland County around Columbia, we're seeing a number of  
20 different components of reassigned terrain around there. So,  
21 yes, I would say it is happening in some of those areas of  
22 increased Black voting age concentration.

23 Q. Is there anything else you want to say about this figure  
24 before we move to the next?

25 A. No. I think the --

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

307

1 JUDGE GERGEL: Can I ask a question, Dr. Duchin, to  
2 get my orientation here? The purple area has been moved from  
3 CD 1 to CD 6; is that correct?

4 THE WITNESS: Either from six -- let's see. So,  
5 there's purple around Charleston, and so that was moved into 6  
6 from 1.

7 JUDGE GERGEL: Okay.

8 THE WITNESS: But if you look closely, there's also  
9 some purple near Columbia. And so, that comes from a  
10 different district.

11 JUDGE GERGEL: I'm just asking about this. So, do we  
12 know what areas of town -- if we could get to Charleston,  
13 please. I'm just trying to figure out is the area, the  
14 northern part, is that North Charleston? Is that where that  
15 is? Do you know enough about the geography of what we're  
16 looking at here?

17 THE WITNESS: I do, especially if we compare to  
18 Figure 5, which I can do while keeping this up on screen. So,  
19 yeah, that's exactly right. This helps us compare the purple  
20 area. So, if we could zoom back in.

21 So, let me get this right. So, the purple has a kind  
22 of long component, and then two to the north. And those are  
23 going to intersect North Charleston. So, in particular --

24 I don't know if this is possible, Mr. Najarian, but  
25 if you could highlight the top piece of purple. Not -- not

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

308

1 that one but a little bit below. Right here. Yep. Yeah.  
2 So, this is getting into the North Charleston area. That's  
3 right.

4 And I'll note that what's happening here is that,  
5 particularly, you can see this in the choropleth, which is  
6 that orange figure in Figure 5, it's particularly heavily  
7 Black neighborhoods that are being impacted here. According  
8 to 2020 census data, Charleston County has 75,000 Black  
9 adults, 60,000 of those are being assigned into District 6 in  
10 the new enacted plan.

11 JUDGE GERGEL: Slow down. So, 70,000 African  
12 Americans in Charleston County.

13 THE WITNESS: 75,000.

14 JUDGE GERGEL: 75,000. And --

15 THE WITNESS: Of which about 60,000 are being placed  
16 in District 6 in this plan. So, that's --

17 JUDGE GERGEL: So, the 2022 plan?

18 THE WITNESS: That's right. The brand new enacted  
19 plan puts about 80 percent of the Black adults in this county  
20 into District 6.

21 JUDGE GERGEL: I'm sorry. What percentage?

22 THE WITNESS: About 80 percent. Over 79 percent.

23 JUDGE GERGEL: Okay. And do we know the difference  
24 between the 2022 plan and the 2012 plan in terms of the  
25 percentage of African Americans in Charleston County, CD 6?

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

309

1 THE WITNESS: I don't know that number for the  
2 benchmark plan, but that could easily be checked. What we see  
3 here is that it is some of these Black neighborhoods of North  
4 Charleston that are being impacted by this shift.

5 JUDGE GERGEL: And it looks like it's point  
6 contiguity there; is that correct?

7 THE WITNESS: Well, you shouldn't interpret that from  
8 this picture because this is just showing the replanned  
9 territory. So, no, there isn't point contiguity in all the  
10 plans you find on contiguity.

11 JUDGE GERGEL: Thank you. Okay. Thank you.

12 MS. ADEN: So, I want to take both of those figures  
13 down for a moment and ask that PX-76, which is Figure 4 on  
14 page 16 of Dr. Duchin's report be displayed.

15 **BY MS. ADEN:**

16 Q. Before focusing on this section of your report, what  
17 counties are split in CD 1?

18 A. Okay. So, first, let me say which counties are wholly  
19 contained. So, all of Berkeley and Beaufort Counties are  
20 contained in CD 1 in the enacted plan, and pieces of Jasper,  
21 Colleton, Charleston, and Dorchester.

22 Q. In this section of your report, what are a few of the  
23 most significant findings about CD 1?

24 A. Well, what I've done here in the figure that's on screen  
25 is I've itemized four issues that I find relative to adherence

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

310

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

6 B is showing a split in Dorchester County. And that one  
7 I found to be particularly striking. There are six split  
8 precincts in Dorchester. So, it's not just that the county is  
9 split, but six of the VTDs are split. And when you actually  
10 go and look, how are those VTDs split, the pattern is quite  
11 clear that they're split into a part with higher Black  
12 population and a part that's mostly White, and the part of the  
13 precinct with the higher Black population is exactly the part  
14 that ends up in CD 6. So, those splits are really racially  
15 distinctive.

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

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

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

311

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

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

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

8 Q. Are different parts of Dorchester in different districts?

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

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

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

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

23 JUDGE GERGEL: Okay. And you said -- is North  
24 Charleston split?

25 THE WITNESS: It is. And you can see that --

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

312

1 actually if we go back to Figure 5.

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

4 JUDGE GERGEL: Yeah.

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

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

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

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

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

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

313

1 BY MS. ADEN:

2 Q. Looking at this figure, did you find anything about the  
3 cities of Summerville and Ladson that's worth noting?

4 A. Yes. So, here I think that what's interesting is  
5 Summerville and Ladson themselves, the cities, belong to two  
6 different counties, while North Charleston actually belongs to  
7 three different counties. And so, as I mentioned earlier,  
8 that highlights some of the trade-offs that you face when you  
9 are drawing district lines. You can choose to follow county  
10 boundaries, you can choose to follow city boundaries. And,  
11 here, the mapmakers have chosen neither.

12 Q. Did North Charleston's treatment in the enacted map in  
13 these figures that you've just shown square with the public  
14 testimony that you reviewed?

15 A. No. I found quite a large quantity of public testimony,  
16 specifically talking about neighborhoods in both Charleston  
17 and North Charleston that had been split, appealing for those  
18 splits to be healed, and that's not what happened in the move  
19 from the benchmark to the enacted plan.

20 MS. ADEN: We can take this figure down.

21 BY MS. ADEN:

22 Q. Dr. Duchin, is what you observed in your detailed review  
23 of CD 1 consistent with the cracking of Black communities in  
24 CD 1?

25 A. Yes, it is.



*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

314

1 Q. I want to turn to your detailed review of CD 2.

2 MS. ADEN: And if Mr. Najarian can pull up PX-78,  
3 which is Figure 6, that can be found on page 18 of Dr.  
4 Duchin's April 11th report.

5 **BY MS. ADEN:**

6 Q. Before we focus in on this congressional district, can  
7 you describe the counties that are included in CD 2 in the  
8 enacted map?

9 A. Yes. CD 2 contains all of Aiken, Barnwell, and Lexington  
10 Counties and parts of Orangeburg and Richland.

11 Q. And what did you find in your review of CD 2 that is  
12 notable?

13 A. Well, here I focused on just three items: A is the  
14 Orangeburg split, in particular with the City of Orangeburg  
15 separated from CD 2, which contains much of the rest of the  
16 county. B is this hook feature, this kind of distinctive hook  
17 feature, around and into Columbia. And C is the way that that  
18 hook splits the city and splits neighborhoods in Columbia.

19 Q. Did you find anything about the racial impact of that  
20 hook that you mentioned?

21 A. Well, the first thing that I would say about the hook is  
22 that it's a clear example of non-compactness. It's neither  
23 functionally compact, nor is it geometrically compact. And  
24 so, you might think, yes, it was present in the benchmark plan  
25 and has been a feature in South Carolina redistricting for

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

315

1 some time, but you might think that would be a candidate for  
2 healing. If the move to a new plan is an opportunity to heal  
3 certain features, this might be one that would be under  
4 consideration. But, instead, it cracks Black voters along the  
5 district boundaries. And I think you can see that here by the  
6 choropleth shading showing you high Black concentrations right  
7 around the area of that hook.

8 Q. Is there anything else about this figure you want to  
9 note?

10 A. Well, just as to -- you know, I keep talking about the  
11 opportunities for healing. And so, I think what I want to say  
12 about that, kind of in the big picture, is that all of  
13 redistricting involves choices. That's going to be a common  
14 refrain in my testimony. But, what I see here is patterns of  
15 selective healing. So, for instance, Beaufort and Berkeley  
16 Counties used to be split and are healed in the new map. I  
17 think we heard that Beaufort, in particular, was healed at the  
18 request of a representative, Representative Mace. But  
19 Orangeburg, which is one of the very small number of majority  
20 Black counties in the state, is not chosen for healing. And  
21 in particular, Orangeburg, as we see here, is neatly separated  
22 from its ring suburbs (*phonetic*) in the redistricting plan.  
23 And so that's, you know, just an indication of the priorities  
24 present for the line drawers when they thought about what to  
25 fix from the old plan in the formation of the new one.

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

316

1 MS. ADEN: You can take that down. And if we can  
2 pull up PX-79, which is Figure 7 found on page 19 of Dr.  
3 Duchin's report.

4 Q. What are you trying to show in this figure?

5 A. This is akin to the last one. So, red is the Columbia  
6 municipal boundary, and black is the district line. And those  
7 sure don't look well aligned to me. So, you see that the  
8 district line is kind of maintaining that hook feature that I  
9 spoke about a moment ago, but not in a way that seems to be  
10 particularly cognizant of either the City or of the public  
11 testimony.

12 Q. Did you find anything about the cities of Cayce, Columbia  
13 and Forest Acres in looking at this area of the state?

14 A. Yes. What I found is that not only is Columbia split,  
15 but so are those smaller cities. And I took a look at how  
16 those cities are split, trying to understand if the split  
17 happens along major roads or along features of natural  
18 geography, and it does not.

19 Q. And did you find anything in the public comment about how  
20 Columbia communities, including Forest Acres, wanted to be  
21 treated in the congressional plan?

22 A. Yes. Actually, in this part of the report, I pulled an  
23 example from the public testimony, and that's a commenter  
24 named William Maxey (*phonetic*), whose testimony went like  
25 this, in part: He said, "Do people in downtown Columbia not

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

317

1 have that much in common with people from Forest Acres or  
2 people right across the river? No, they do. That's where a  
3 lot of people live, and a lot of those people work." So,  
4 that's explicitly saying that communities are separated from  
5 each other which form part of a whole for the people on the  
6 ground.

7 Q. Okay. Dr. Duchin, is what you observed in your detailed  
8 review of CD 2 consistent with the cracking of Black  
9 communities in CD 2?

10 A. Yes. I would say this is what it looks like to crack  
11 communities.

12 Q. Okay. Anything else before I take this figure down?

13 A. No. That's good.

14 Q. Okay. We can move to your detailed review of CD 5. And  
15 if Mr. Najarian can pull up PX-80, which is Figure 8 on page  
16 20 of your April 11th report.

17 And you can describe, before we dive in, what are the  
18 counties, whole and part, included in CD 5?

19 A. Yes. The 5th District has all of Cherokee, York, Union,  
20 Chester, Lancaster, Fairfield, Kershaw, and Lee Counties, and  
21 part of Spartanburg County and Sumter County.

22 Q. What did you find with respect to your detailed review of  
23 CD 5?

24 A. Well, here, just to be very concise, I focused on Sumter.  
25 Sumter was a locust of a significant amount of public

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

318

1 testimony, describing the communities of interest there. But  
2 you can see here -- it's outlined in red again in this  
3 figure -- that the Sumter COI is not respected. Again, here,  
4 as I did before, I tried to take a closer look and understand  
5 how that split was happening and noticed, again, it's not  
6 along major roads or features of natural geography, but along  
7 low-density roads. And I named some of them in the report.

8 Q. Okay. Let's turn to PX-81, which is Figure 9 that can be  
9 found on page 21 of your report. What are you trying to show  
10 here?

11 A. Well, here, we have, again, the Sumter boundary in red,  
12 that's the municipal boundary, and then the, to me, quite race  
13 conscious district line that cuts through Sumter in black.

14 Q. And between the first figure related to CD 5 in this one,  
15 is it fair to say that both the county and the city of Sumter  
16 are split?

17 A. Yes, that's what's happening here. And Sumter, once  
18 again, is a majority Black, and one of the few localities in  
19 South Carolina that is.

20 Q. And your report references East Sumter and Mulberry.  
21 What did you find with respect to those areas?

22 A. Looking for that. Ah, yes. So, East Sumter and Mulberry  
23 are neighborhoods mentioned in the public testimony and are  
24 split in the enacted map.

25 Q. Is there anything else you want to note about this figure

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

319

1 before we take it down?

2 A. No. I think that covers that well.

3 Q. Dr. Duchin, is what you observed in your detailed review  
4 of CD 5 consistent with the cracking of Black communities in  
5 CD 5?

6 A. Yes, it is.

7 Q. Did you reach any overall findings after conducting this  
8 district-by-district review, beyond what you've already shared  
9 with the Court?

10 A. Well, it's intended to be complementary to the metrics  
11 and to paint a more complete and granular picture, as I said.  
12 And what I found is that the numbers, and a kind of more  
13 detailed look at the particulars, support each other in a  
14 picture that's consistent with the strategy of cracking.

15 Q. Now, before we turn to Section 6 of your report, I'd like  
16 to discuss another proposed congressional map that you've  
17 mentioned. Yesterday, you testified that you reviewed the  
18 Jessamine or map; is that right?

19 A. That's right.

20 Q. What is that map, as you understand it?

21 A. So, my understanding is that that's a congressional plan  
22 that was drawn by staff at the NRRT, the National Republican  
23 Redistricting Trust, and was provided to legislators in South  
24 Carolina as a draft or potential congressional plan.

25 Q. Now, your analysis of the Jessamine map is in your

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

320

1 supplemental August report; is that accurate?

2 A. Yes. It's one of the main reasons for issuing a  
3 supplemental report. I had just been provided with that map  
4 and I wanted to complete the record by giving all the same  
5 quantitative evaluations of the Jessamine Plan, as I had for  
6 the others.

7 Q. And to be clear, the maps that you posted in your  
8 original report on pages three through four, where did you  
9 find those maps?

10 A. The other 11 maps were provided by the State on their  
11 redistricting website.

12 Q. And the map -- and your review of the Jessamine map, that  
13 was not a map that you pulled from the State's website; is  
14 that fair to say?

15 A. That's correct. It was provided to me by counsel.

16 Q. And what analysis did you conduct of the Jessamine map?

17 A. So, the intention is to give all the same numbers as I  
18 had for the other maps. And so, in that August report -- this  
19 is done --

20 Q. So, this is PX-126 that I think you're going to?

21 A. Yes.

22 Q. And it is Figure 2 on page 5 of your August 9th, 2022,  
23 supplemental report?

24 A. That's right. So, Section 3 of that report is assessing  
25 the Jessamine Plan.

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

321

1 Q. And what analysis did you conduct of it?

2 A. In order to agree with the record of the other maps, I  
3 give a visual of the Jessamine Plan, I give the racial  
4 demographics, I look at the BVAP across the districts. I give  
5 the population deviation, the compactness scores, the splits,  
6 and discuss incumbent pairing. Again, just bringing it into  
7 parity with the treatment of the other plans.

8 Q. Looking at PX-126 -- if you could pull it up Mr.  
9 Najarian, on page 5 of the August 9th, 2022, supplemental  
10 report -- you show three maps together. Why?

11 A. This is just to give visual comparison of the benchmark  
12 enacted in Jessamine Plan. It lets us see that, you know, to  
13 the eye, they may look fairly similar, especially the enacted  
14 plan may look like the Jessamine Plan. And that's because  
15 most of the difference is in the interface between Districts 1  
16 and 6, that's the purple and the blue districts. To the eye,  
17 most of the rest of the districts look identical, though there  
18 are small changes elsewhere in the map as well.

19 Q. And what were the differences that you observed visually?

20 A. Well, I think the most apparent one, as we compare these  
21 maps visually, is what I called in the report a novel T-shape  
22 in the Jessamine Plan, and that's happening at the interface  
23 of Charleston, Berkeley, and Dorchester Counties.

24 Q. Outside of that novel T-shape, would you consider this  
25 map more similar or more different than to the enacted map?



DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

322

1 A. I would say it resembles the enacted map more than it  
2 resembles the benchmark. And then what I try to do throughout  
3 the rest of this report is get a little bit below district  
4 appearances and try to compare the performance.

5 Q. So, you can take that visual down. And on pages 5  
6 through 6, I believe you report some of the metrics that you  
7 just identified as having reviewed. Can you describe some of  
8 your findings with respect to the Jessamine map in terms of  
9 those metrics?

10 A. Yes. So, like the enacted plan, it keeps District 6 a  
11 little bit below 50 percent in BVAP. But the number is a bit  
12 higher. It's 49.3 percent in District 6 in the Jessamine  
13 Plan, which then drops off steeply to 25.4 percent in the next  
14 highest district. So, we see a significant drop in the Black  
15 voting age population from the one district, which will  
16 perform, to all of the others.

17 When it comes to population deviation, they've achieved  
18 de minimis top to bottom one-person deviation. So, that's the  
19 ideal. For compactness, it's fairly similar to the enacted  
20 plan and not as good, for instance, as Harpootlian. In the  
21 Reock metric, it's also similar to the enacted plan, but  
22 behind others, such as the League's plan, it's Block-cut Edges  
23 score is fairly poor, worse than both the benchmark and the  
24 enacted plan and many of the other public contenders.

25 In county splits, it's again, fairly similar to the

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

323

1 enacted plan, splitting 13 counties two ways has a relatively  
2 high number of county subdivision splits and is, again,  
3 similar in city splits and town splits. None of those numbers  
4 change whether we look at territory splits or population  
5 splits. So, overall, you know, these are a lot of numbers to  
6 have in mind, but the summary is that it's generally a little  
7 bit worse than the enacted plan on political subdivisions and  
8 definitely worse than many of the public proposals. And then  
9 I'll note that, like the enacted plan, it pairs no incumbents,  
10 as you might expect.

11 Q. We are going to return to your discussion of what you  
12 found about the electoral outcomes provided by the Jessamine  
13 map or not in another section, but before we wrap up this one,  
14 can you determine one way or the other from your analysis of  
15 the Jessamine map whether the legislature relied on this map  
16 when it drew its enacting map?

17 MR. GORE: Objection. It's beyond the scope of the  
18 expertise. It's not in any of the reports.

19 JUDGE GERGEL: Well, let's hear what she's got to say  
20 about her basis for it, first of all. It maybe reasonably  
21 inferrible or it may not. So, let me just hear a little bit  
22 more before I'll rule on that.

23 Please proceed.

24 THE WITNESS: Well, I think it's not a stretch to say  
25 I make no claims to understand any details of the process, but

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

324

1 it's my experience in redistricting broadly, that when you've  
2 reviewed a plan, it at least impacts your thinking about the  
3 choices in the trade-offs going forward. I wouldn't say  
4 anything stronger than that.

5 MS. ADEN: Perfect.

6 JUDGE GERGEL: So, she cannot testify that anybody  
7 relied on the Jessamine Plan; is that correct?

8 MS. ADEN: That's correct.

9 JUDGE GERGEL: I overrule the objection because I  
10 don't think she actually answered it in any way that went  
11 beyond what she already reported. Thank you.

12 Please proceed.

13 BY MS. ADEN:

14 Q. And just based upon your experience -- has it been your  
15 experience that when you look at one map and you look at  
16 another map, you are informed by having looked at both? Is  
17 that simply what you are saying?

18 A. Yes. That's all I meant to say. And that's very general  
19 matter. Just the more maps you closely review, the more they  
20 inform future decisions.

21 JUDGE GERGEL: Just for clarification, is there a  
22 dispute about whether anybody relied on or viewed the  
23 Jessamine map?

24 MS. ADEN: Yes, there is, your Honor.

25 JUDGE GERGEL: I thought so. So, you know, let's

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

325

1 just proceed. Whether it's relevant or not will be later  
2 determined.

3 MS. ADEN: Okay.

4 **BY MS. ADEN:**

5 Q. I'd like to turn back to your initial report, and to  
6 turn, in particular, to Section 6 of your report, which is  
7 titled, "Vote Dilution Compared to the Neutral Baseline."

8 THE COURT: Ms. Aden, we are going to take a morning  
9 break. Is this a good time to break?

10 MS. ADEN: Yes.

11 JUDGE GERGEL: I see movement. Let's take about a  
12 10-minute break.

13 MS. ADEN: Thank you, your Honor.

14 **(Recess)**

15 JUDGE GERGEL: I am advised that Senate Exhibit 222  
16 may not have been orally mentioned but was intended to be in  
17 the record. Is there an objection to the admission of Senate  
18 222?

19 MR. FREEDMAN: Your Honor, I don't believe so, but if  
20 we can check and report back on the next break.

21 JUDGE GERGEL: Okay. Just remind me.

22 Does anybody know from the Senate whether that was  
23 one intended?

24 Mr. Gore, you got any idea about that?

25 MR. GORE: I do believe it was one that was intended

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

326

1 to be included in the record, but we can work with counsel on  
2 that.

3 JUDGE GERGEL: Y'all stay on top of this. I just  
4 don't want to forget it. I'm just trying to keep the record  
5 clean. So, if plaintiffs could just check and advise me at  
6 the appropriate time whether it's in, whether there's an  
7 objection, then I'll rule on it's admissibility.

8 Okay. Please proceed, Ms. Aden.

9 MS. ADEN: Okay.

10 **BY MS. ADEN:**

11 Q. Dr. Duchin, before we took a break we were turning to  
12 Section 6 of your report titled, "Vote Dilution Compared to  
13 the Neutral Baseline." Dr. Duchin, did you consider whether  
14 the 2022 enacted plan dilutes Black voting strength as  
15 compared to some neutral baseline?

16 A. Yes. So, that's exactly what I'm trying to do here. And  
17 this is where I introduced for the first time in the report  
18 the evidence from those ensembles of alternative maps. That's  
19 how I've constructed a so-called neutral baseline.

20 Q. And what do you mean, before we delve into the details of  
21 that method as applied here, what do you mean by vote  
22 dilution?

23 A. So, here, the question that I'm addressing first is a  
24 vote dilution from a demographic angle. As I said, I always  
25 try to look at the demographics and the electoral history

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

327

1 together. So, we'll do that one at a time. First, we'll look  
2 at how the Black voting age population is distributed. That's  
3 what's happening in this section. And then in the next  
4 section, I'll turn to electoral history.

5 So, what I mean here by vote dilution is: Was the Black  
6 voting age population in South Carolina spread across multiple  
7 districts when it would have been expected under neutral  
8 conditions to be concentrated enough to have more electoral  
9 impact?

10 Q. Why do this analysis?

11 A. This is one primary way to try to measure whether  
12 cracking has occurred, is to look at whether the patterns of  
13 how BVAP shows up in the districts are characteristic of plans  
14 that are made to follow the rules, or whether the demographic  
15 patterns are highly unusual -- or you might say outliers.

16 Q. Tell the Court a little bit more about what you mean by a  
17 neutral baseline.

18 A. Sure. I think for years this has been really a deep and  
19 primary issue when thinking about how courts might handle  
20 claims of gerrymandering. For years and years, for decades,  
21 the question has been posed: Dilution compared to what? So,  
22 what is fundamental to understand is that the rules  
23 themselves, system of single-member districts or population  
24 balance rules and so on, together with the geography of the  
25 state, they might create a condition where just blind mapping

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

328

1 would put a group at a significant disadvantage. So, the  
2 intention here is to give an appropriate -- again, the term  
3 "baseline" comes up, that is, to look at many alternative ways  
4 of districting and see what are the central tendencies, what's  
5 typical, what might we expect if we were just following the  
6 rules?

7 Q. Now, yesterday when you talked about ensembles, you  
8 talked about operationalizing rules. What does operationalize  
9 mean?

10 A. Sure. That's a term that's used a lot in data science  
11 and computer science. The idea -- to make something  
12 operational is to take something that's vague or conceptual  
13 and make it concrete, or even quantitative, so that you can  
14 use and measure it.

15 Q. And how did you construct your neutral baseline in this  
16 section of your report?

17 A. Okay. So, what I do here is I build several different  
18 variations on ensembles -- that just means collections -- of a  
19 hundred-thousand alternative plans. And I do that in many  
20 ways. One is statewide, so, cutting the whole state into  
21 seven districts. Later, I'll just look at the districts that  
22 are identified in the complaint and take 1, 2, and 5, and 6,  
23 because it's in the middle, and just look at ensembles that  
24 reconfigure those four. All of the different ensemble  
25 variants will have population balance threshold at one percent

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

329

1 -- and I'll come back to that choice in a moment. All of them  
2 will enforce contiguity for the districts and don't allow  
3 point contiguity in any of the ensembles. And all of them  
4 will promote compactness by putting a higher weight,  
5 probabilistically, on districts that are more compact.

6 Again, I'd really like to talk about this in terms of  
7 best practices and data science, which involves a lot of  
8 checks of robustness. So, what I mean by that is you don't  
9 just want to do something one way and say, there, I took all  
10 the rules into account. Really a kind of comprehensive  
11 modeling effort will take the rules, approach them different  
12 ways, dial their priority up and down, turn the filter on and  
13 off, and look to see how the results change under these  
14 different kinds of variations. If the results are very  
15 stable, then we call that a robust finding.

16 And so, let me come back, because I think it might come  
17 up a few times, and talk in particular about how I handle  
18 population deviation. So, as we've heard, as we know, at the  
19 end of the day, we'd like our congressional district to be  
20 balanced to one-person, top-to-bottom deviation. But I don't  
21 build the ensembles that way. And the reason is that the  
22 method that I described earlier would be inefficient if  
23 restricted at the outset to that really tight deviation.  
24 Instead, I build the ensembles out of whole precincts so no  
25 VTDs are split at all in my ensemble. So, there's very high



*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

330

1 priority, you might say, on integrity of precincts. So, I  
2 build these variations using whole precincts, but then I check  
3 that the findings are robust. So, one way that I do that is I  
4 take one-percent deviation and I do another run at two-percent  
5 deviation, and another one at half-a-percent deviation, and I  
6 see the tightening or loosening of that population deviation.  
7 Did that have an impact on the findings that I'm making? No,  
8 it did not here, as in most states that I've ever studied.  
9 The next thing I do is check: Can I actually take plans from  
10 these ensembles and tune them down to that one-person  
11 tolerance? And I find that it's easy.

12 And so, I may have mentioned this yesterday, this is a  
13 standard check that I do, is to confirm that they're tuneable.  
14 So I both use hand tuning, where a person, me, sits and takes  
15 a map from the ensemble and tunes it to the one-person  
16 standard. And I have created programs that automatically tune  
17 population to one-person standard. And I find that we can  
18 consistently tune these ensemble plans within five minutes by  
19 hand, or five seconds by computer, without breaking any of the  
20 gross properties that I'm describing in the report.

21 Okay. So, that's an example of this kind of bigger  
22 picture of responsible modeling, which has to do with trying  
23 things many ways and checking whether the results are  
24 sensitive. It's kind of a sensitivity analysis, checking  
25 whether the results are sensitive to some of those operational

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

331

1 decisions.

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

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

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

10 A. I did. That was one of the toggles that I turned on and  
11 off. And so, I'll just mention -- this is already addressed  
12 yesterday, was kind of presaged yesterday -- the communities  
13 of interest at play here were not identified by the State, at  
14 least in any form that I saw, that is, the State never  
15 compiled all that public testimony into a list of COIs to be  
16 used in the process. And so, what I did as we heard before,  
17 was to make one not necessarily authoritative, but good-faith  
18 effort to take areas that were covered by a great deal of  
19 community testimony, treat them as discrete concrete COIs and  
20 add a filter that prioritizes keeping them whole. And then I  
21 check to see whether that changes the findings that the  
22 State's plan is demographically unusual, and it does not.

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

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

332

1 A. That's correct.

2 Q. I think that's on page 30.

3 A. That's right, page 30. And so, that's Richland, Sumter,  
4 Berkeley, and Charleston Counties, together with the  
5 Lowcountry area, covered by four counties in the southern tip  
6 of the state.

7 Q. And given what you described about how you tuned things  
8 on and off, is it also the case that you considered ensembles  
9 without these communities of interests considered?

10 A. Exactly. And so, the research question there was: Does  
11 this version of COI priority have an impact on the findings?  
12 To see that you turn it on, you turn it off and see whether  
13 the outlier status shifts.

14 And I guess one more that we haven't mentioned is  
15 counties. So, I have a way of getting the algorithms to keep  
16 counties whole. Maybe I'll just say one sentence, without  
17 belaboring it, about how to do that. So, what the algorithm  
18 does is fuse neighboring districts and then build something  
19 called a "spanning tree" that is sort of a skeleton for the  
20 double district. And that has a property -- very useful --  
21 which is that when you cut it, it gives just two pieces. And  
22 so, that's the process, you fuse, you find a skeleton, you cut  
23 the skeleton, and that gives you two new districts.

24 When I try to prioritize counties and municipalities, the  
25 way I do that is by putting weights on the edges of the

1 skeleton that makes it more likely to be contained entirely  
2 within counties. And the effect is really quite strong. The  
3 number of split counties drops until it's comparable with the  
4 publicly submitted plans and sometimes even better, using this  
5 filter on the ensemble process.

6 Q. And what standard of compactness did you use with these  
7 ensembles?

8 A. So, I just mentioned a mathematical device called  
9 "spanning trees." And so, what this does is it promotes  
10 districts that have a lot of interconnection in their census  
11 geography but are more sparsely connected between the  
12 districts. So, I've published multiple papers about this  
13 method and I've shown in those papers that it produces  
14 districts that look compact to the eye and that perform well  
15 on the traditional scores, like Polsby-Popper and Reock.

16 Q. And when you were talking about preservation of political  
17 boundaries just before I asked you about compactness, were you  
18 talking about how your ensembles account for counties and  
19 municipalities?

20 A. That's right. And that's done by promoting trees that  
21 stay within counties and county subdivisions.

22 Q. Did your ensembles consider race data?

23 A. No. Nothing in the generation of the alternative plan  
24 uses race data in any way.

25 Q. Why not?

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

334

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

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

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

19 Q. Did the ensembles consider partisan performance?

20 A. Building the plans was done also in a party-blind way.  
21 But I used the ensembles to make conclusions about whether the  
22 plans are unusual in partisan ways as well as racial ways.

23 Q. And did the ensembles consider incumbency?

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

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

335

1 algorithm was not provided with incumbent addresses.

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

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

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

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

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

19 A. No. That's not how the ensemble method works. And it's  
20 key to emphasize, you should not think of these ensembles as a  
21 hundred-thousand plans, each ready to be adopted. That's not  
22 what they're for. They're for understanding the central  
23 tendencies created by the framework. And so, what I have done  
24 is reviewed statistics over the ensembles, reviewed summaries  
25 of metrics, reviewed properties, and in some cases, picked out

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

336

1 individual plans to understand how they function. But the  
2 idea is not to review the plans one by one.

3 Q. Is an ensemble -- would you consider it a way of  
4 displaying a bell curve?

5 A. Well, if you take a statistic, as we'll see as I go  
6 through my figures, and you measure that statistic over the  
7 ensemble, one way to understand that is to plot a histogram.  
8 And for almost every statistic of interest in redistricting,  
9 that's going to fall on a bell-shaped curve.

10 Q. Okay. How does this particular ensemble analysis,  
11 comparing plans to a neutral baseline, fit into the larger  
12 scope of your report?

13 A. Well, it's just one pillar. I think it's a strong  
14 pillar. I think it gives us quite persuasive evidence, as I  
15 hope we'll see shortly. But, as we've been hearing for the  
16 last few hours, there's quite a bit more to the analysis,  
17 besides just this.

18 Q. Okay.

19 MS. ADEN: Mr. Najarian, if you could please pull up  
20 PX-82, which is Figure 10, found on page 23 of Dr. Duchin's  
21 April 11th report.

22 **BY MS. ADEN:**

23 Q. Can you describe to us what you were showing here?

24 A. Absolutely. So, this is one of these histograms -- and  
25 you can see that it's somewhat bell-shaped, as we tend to

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

337

1 expect in this kind of study. So, what we're looking at here  
2 is the gray bars are those hundred-thousand neutrally  
3 generated plans. And we're looking at the BVAP, or Black  
4 voting age population, in the second highest district. Only  
5 emphasize why the second highest. That's because in all of  
6 the plans that we're comparing, that were made by people, CD 6  
7 has the highest BVAP, or Black voting age population, of all  
8 the districts. CD 6 is also not named in the complaint. And  
9 so, setting aside CD 6, this starts to look at how Black  
10 population is distributed over the other districts. This is  
11 looking at the district that's second highest,  
12 parenthetically, after CD 6.

13 Q. Is how the second highest district fares, in your view,  
14 relevant to a cracking analysis?

15 A. Absolutely. This helps us understand how the population  
16 has been spread across the district. Later, in my  
17 supplemental report, I put this in context of all the  
18 districts in the state. And I think we'll probably see that  
19 soon. But this is the beginning of that inquiry, to look at  
20 -- as we saw before when looking at the numbers, there's  
21 nothing to really steep drop-off in Black population from  
22 District 6 to the next district. And this is taking a look at  
23 how that population falls.

24 And maybe I'll say another word or two about what we're  
25 seeing on the screen. So, the tallest bars in the histogram



1 are happening about 30 percent. And that's telling you that  
2 the most frequent level of Black voting age population in my  
3 alternative plans is about 30 percent. So, that's just where  
4 people live, in combination with the rules, would tend to make  
5 a second district that's about 30 percent Black. Instead, the  
6 enacted plan has just 25 percent, 25.4, as you see in the  
7 keys. And that's the yellow line. Note that that is in the  
8 bottom visible bar of the histogram, and that means very few  
9 of the plans in my neutral ensemble have reduced the BVAP in  
10 the other districts, besides CD 6, as low as the enacted plan.

11 Actually, one quick thing I'll mention. Focusing on the  
12 second highest district means not only is this district at  
13 25 percent, but all others in the enacted plan are at 25 or  
14 lower. This is the second highest. By contrast, the  
15 Harpootlian is at about 33, 33.7. NAACP 1 is at 34.9. And  
16 you can see that those are both somewhat higher than the bulk  
17 of the ensemble, although they're not as outlying on the high  
18 side as the State's enacted plan is on the low side.

19 Q. Now, does the South Carolina NAACP and the Harpootlian  
20 Plan maintain CD 6 with BVAP levels above those of the State's  
21 Plan?

22 A. Yes. And let me get those numbers so I can be exactly  
23 accurate. So, whereas in the highest district, CD 6, the  
24 State's Plan has about 47-percent BVAP; Harpootlian is a  
25 little higher, 49.7; and the NAACP Plan is over 50 percent.

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

339

1 So, this is now fairly striking. Even in the second highest  
2 district, they have a high Black voting age population, though  
3 in the highest district, it's more than it was for the State.  
4 Again, this fits with the observation from earlier. Since the  
5 State has reduced the Black voting age population in CD 6,  
6 there are more residents to go around in the other districts.  
7 You might expect to see them here, you do not.

8 Q. And, here, meaning the enacted plan?

9 A. Here, meaning the second highest.

10 Q. The second highest, okay. You mentioned the plans that  
11 fell to the left of the enacted plan. How many are you  
12 describing in this figure?

13 A. Well, so the gray histogram is a hundred-thousand plans.  
14 I don't have the number that's in that lowest bar, but  
15 eyeballing it, that would be less than one percent that are as  
16 depressed in their Black adult population, as we see in the  
17 State's Plan.

18 Q. Is there anything else you want to say about this figure  
19 before we move forward?

20 A. Well, I think probably next, we'll look at the rest of  
21 the districts.

22 MS. ADEN: Yes. You can take this figure down.

23 BY MS. ADEN:

24 Q. Just before we get to that figure, how does that figure  
25 that we just looked at relate to the qualitative, the

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

340

1 Section 5 district-by-district review that you described  
2 earlier of CDs 1, 2, and 5?

3 A. Sure. I think you should think of this as corroborating.  
4 It fits exactly with what we saw before. If communities are  
5 being cracked, if split precincts are being divided racially  
6 with more Black population going into CD 6, that's exactly how  
7 you'd go about suppressing the Black population level in the  
8 next district and below.

9 Q. So, did you have occasion to the provide further  
10 statewide context for the distribution of Black voting age  
11 population that you presented in that Figure 10 that we just  
12 looked at?

13 A. I did. I revisited this in the August 9th supplemental  
14 report.

15 Q. Okay.

16 MS. ADEN: If we could pull up PX-121, which is  
17 Figure 1, on page 2, of the August 9th report.

18 BY MS. ADEN:

19 Q. Dr. Duchin, what is this showing?

20 A. Okay. So, instead of a histogram, which shows bars with  
21 heights that tell you how often something happens, this is a  
22 different kind of plot. It's called a "box and whiskers"  
23 plot. And, here, I've broken down the state by districts.  
24 So, there are seven columns here, just like the seven  
25 districts in any of these plans. And then, the way I've

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

341

1 organized the figure is, once again, as we did a moment ago,  
2 we take the district with the highest BVAP, and then the  
3 second highest and then the third highest, and those end up in  
4 the different columns here. Let me emphasize that it's  
5 important to do something like that, because the alternative  
6 plans that are generated by the algorithm, they don't have  
7 district labels on them. So, it doesn't make sense to ask  
8 about CD 1 in a computer plan. You can ask about the district  
9 with the most Black population and the district with the next  
10 most Black population. And so, that's how this figure is  
11 organized.

12 Q. Okay.

13 A. So, the last column, the column marked seven, that shows  
14 us what we see in the district with the most Black population.  
15 Here's how to read a box-and-whiskers plot. The box goes from  
16 the 25th percentile to the 75th percentile of the observation.  
17 I've set it up so that the whiskers go from the first  
18 percentile to the 99th. And so, that means that 98 percent of  
19 the plans fall within the whiskers, right? So, it's  
20 98 percent of my hundred-thousand alternative plan. And so,  
21 what we see is that actually all four plans that are shown  
22 here with colored dots -- benchmark, that's red; enacted,  
23 that's pink; NAACP 1 is amber color; and Harpootlian in  
24 lavender -- those all have more Black populations than we  
25 would have tended to find just drawing according to the rule

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

342

1 that I cited before, more than 99 percent of the neutrally  
2 created plans.

3 Moving to the next column, column six, that is the second  
4 highest BVAP. So, this is the exact same data that we saw in  
5 the last figure. Now it's shown in a box-and-whiskers plot  
6 instead of a bell curve, but it's the exact same information.  
7 And so, we see the same thing we did before. We see that  
8 Harpootlian and NAACP 1 are fairly high but within the  
9 whiskers, whereas the benchmark and the enacted plan are both  
10 even below that bottom whisker, and that means more extreme  
11 than 99 percent of the neutral plans.

12 Q. And you keep referring to "whiskers and boxes." Can you  
13 just be even more descriptive about what exactly you're  
14 looking at?

15 A. Sure. Absolutely. So, you see how in the column,  
16 there's a bracket and there's a long line that extends from  
17 the top T down to a bottom T-shape. That's what I'm calling  
18 the whiskers. The whiskers are those most extreme markers  
19 there. The box is the rectangle. And you'll see a stripe in  
20 the box. That's where I've marked the median. That's the  
21 50th percentile. So, this picture is designed to make it  
22 pretty easy to eyeball the statistical position of the plans  
23 relative to the alternatives.

24 Q. Is there anything -- strike that.

25 Is there anything else that you want the Court to take

1 away from looking at Figure 1?

2 A. Yes. Actually, there is. So, most of these plans are  
3 population balance almost exactly on the same population  
4 basis. The exception is the benchmark plan, which, of course;  
5 being 10 years old, was balanced on a different population  
6 basis. But that means that for the other three, there's a  
7 fixed sum. There's a certain number of Black adults in the  
8 state. And the only question is: To which district are they  
9 assigned? And so, when we look at the colored dots, if  
10 they're higher than the ensemble in some districts, they've  
11 got to be lower in others, because it all adds up to the same  
12 toll. So, I think this really helps us understand the pattern  
13 that's characteristic of cracking.

14 Q. What would cracking look like?

15 A. It would say: If you're going to distribute the Black  
16 voting age population, that you might put it in districts  
17 where it isn't going to have an appreciable impact on  
18 opportunity. And so, let's take a look at the pink dots which  
19 show you the enacted plan, which is the primary plan we're  
20 discussing here today. What you can see is that the pink dots  
21 are high in the 7th indexed district, that's the district with  
22 the most Black population, and the first indexed district,  
23 that's the district with the least Black population. Across  
24 all the others, 2, 3, 4, 5, 6, the pink dot falls low, and  
25 often even very low, such as hitting the whiskers in the

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

344

1 districts marked 6 and 5 and maybe 3. And that is exactly  
2 what cracking looks like. It looks like dispersing population  
3 so that, in the range where it could have provided  
4 opportunity, it's spread out inefficiently, and that  
5 opportunity is not secured.

6 MS. ADEN: You can take that figure down.

7 BY MS. ADEN:

8 Q. I want to focus you now on page 23 to 24, back at your  
9 April 11th report, PX-67.

10 Did you attempt to redraw the enacted map to address the  
11 cracking of Black voters in CDs 1, 2, and 5?

12 A. I did. And we can see this in Figure 11.

13 MS. ADEN: Do you mind pulling up Figure 11, which is  
14 PX-83, that is found specifically on page 24 of the April 11th  
15 report.

16 THE WITNESS: So, this shows two different things.  
17 First, the histogram. Let me explain. I mentioned a moment  
18 ago that one of the many variations that I attempted was not  
19 to scramble all seven districts in the state, but just those  
20 discussed in the complaint, 1, 2, and 5, as well as 6, because  
21 it's in between. And so, first what you're seeing in this  
22 histogram -- and this, I should note, has considerable  
23 deference to the State's Plan. It keeps Districts 3, 4, and 7  
24 identical to how they are in the State's Plan. So, total core  
25 preservation for Districts 3, 4, and 7. And, here, I'm only

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

345

1 scrambling 1, 2, 5, and 6. And so, the first thing to notice  
2 is that in this regional ensemble, the finding is the same,  
3 that the enacted plan falls very low, compared to the neutral  
4 alternatives. What I've done here is I've picked one plan out  
5 of the ensemble. The point here is only to illustrate just  
6 how easily the State's Plan could have secured more electoral  
7 opportunity. So, what you see here -- take a look at those  
8 two maps.

9 MS. ADEN: Do you mind zooming in on the two maps,  
10 Mr. Najarian?

11 THE WITNESS: So, enacted on the left, alternative on  
12 the right. And what you'll see is that Districts 1 and 6 are  
13 virtually identical. The only significant change here is the  
14 single boundary line between District 2 and District 5 has  
15 been randomly moved. And what we find is that this -- so, the  
16 coloration is according to Black voting age population. This  
17 produces a significantly higher demographic concentration of  
18 Black adults in District 5. And this is much more typical --  
19 and here again, we can go back, zoom out to the histogram, you  
20 see the green line -- this is much more typical of a neutral  
21 plan, as you'd expect, since I redrew it at random. What does  
22 this tell us? This tells us that moving a single line would  
23 make the State's Plan look much less like a demographic  
24 outlier. Later, when we fold in electoral results, we'll see  
25 that this redrawing, alone, would have provided significantly



DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

346

1 more meaningful electoral opportunity for Black voters.

2 **BY MS. ADEN:**

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

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

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

18 A. Yes.

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

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

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

347

1 more effective. However, what I discuss in that footnote is  
2 that I looked at the four elections, identified for me as most  
3 probative for Black voters' preferences, and what I found is  
4 that those four Black candidates of choice in all four cases  
5 get at least 47 and a half percent of the vote in this new  
6 District 5. That is to say these Black candidates of choice  
7 would all have competitive outcomes in this newly drawn  
8 district.

9 And, again, this isn't a plan that's been microscopically  
10 evaluated for its adherence to particular communities and  
11 other standards, this is closing your eyes and redrawing one  
12 line illustrates just how easy it is to get more opportunity.  
13 This is far from unique. There are many many thousands of  
14 similar re-drawings.

15 Q. I now want to turn to Section 7 of your report. This is  
16 on page 25. It is titled: Electoral Opportunity For Black  
17 Voters. Dr. Duchin, did you consider electoral opportunity  
18 for Black voters under various congressional plans?

19 A. I did.

20 Q. Now, you closed out the last section by talking about  
21 BVAP not being the only measure, and that other information is  
22 necessary. Is that what you are attempting to explore in this  
23 section of your report?

24 A. Well, that's exactly right. So, I've been emphasizing  
25 this, I'll continue to do so. Demographics only tell part of

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

348

1 the story when it comes to the prospect for effective  
2 representation. So, very standard technique in the analysis  
3 of redistricting plans is to look at past elections and see  
4 what would have happened if you reran those past elections in  
5 new districts. So, that's what I do here. It's common  
6 technique in the literature. This is sometimes called  
7 "reconstituted election analysis." But it's really very  
8 simple. I have the election results precinct by precinct  
9 around the state. I can look at a new district and I can see  
10 who got more votes, the candidate of choice of Black voters or  
11 their opponent.

12 Q. And in this section, how are you defining electoral  
13 opportunity?

14 A. Okay. So, I mentioned a moment ago that there are four  
15 particular elections that were identified for me by counsel as  
16 especially probative, or giving especially strong evidence of  
17 the preferences of Black voters. And so, these were not  
18 selected by me, they were selected, as I understand it, from  
19 the analysis of another expert, who performed a racial  
20 polarization analysis. But I would like to emphasize this is  
21 the kind of analysis I often perform elsewhere. Here, we have  
22 four races. And we can bring up Table 6 maybe to show what  
23 those --

24 MS. ADEN: Table 6 is on page 25 of PX-67. The one  
25 above that, please. Thank you.

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

349

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

14 **BY MS. ADEN:**

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

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

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

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

350

1 A. Okay. Great. So, here, what I've done is I've asked:  
2 How many of those four candidates -- so again, Whittenburg,  
3 Glenn, Harrison and the Biden-Harris ticket. How many of  
4 those would have won the district? And so, you can see in  
5 virtually in all the maps, District 6 has won all four times.  
6 Later, we'll look at the margins and we'll see that it's not  
7 usually very close. The question of cracking is: How is  
8 opportunity distributed across the rest of the map? And here,  
9 you can see that if we only pay attention to whether the  
10 candidate had the most votes, there is never a win in either  
11 the benchmark or the enacted plan outside of District 6 across  
12 these four elections. So, all the opportunity to win is  
13 happening in District 6. By contrast, in many of the other  
14 alternatives, we see other districts being potentially won by  
15 the candidate of choice. For instance, in the Harpootlian  
16 map, it's not a lot, but two out of four times, the candidate  
17 of choice wins in District 1. In the Foster Plan, District 6  
18 is somewhat less effective, but we see four out of four in  
19 Districts 1 and 7. So, the plans differ in how they  
20 distribute electoral opportunity around.

21 Later, we'll nuance this by not only looking at who won,  
22 but also whether it was close. But for this, which is our  
23 first look at effectiveness, we can see that there's only one  
24 other plan among all the public submissions that confines  
25 winning opportunity completely to District 6.

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

351

1 Q. And how does the League of Women Voters map fare in this  
2 table?

3 A. Same as the Harpootlian map. It provides two out of four  
4 wins in District 1.

5 Q. Okay. And when you're defining wins here, can you tell  
6 us how you're doing so?

7 A. Sure. This is just plurality wins. So, it looks at  
8 whether the Black candidate of choice got more votes than  
9 their major party opponents in the case of these elections,  
10 therefore, more votes than anyone else.

11 Q. Anything else you want to describe about this table?

12 A. No.

13 Q. Okay. Dr. Duchin, did you have occasion to provide  
14 detailed vote shares for the Black voters' candidates of  
15 choice for the probative elections you considered in  
16 Section 76 your April 11th report?

17 A. I did. I revisited this in the supplemental report and I  
18 gave vote shares, and not just wins or losses.

19 Q. And why did you do that?

20 A. Because the question facing us is one of opportunity.  
21 It's not about drawing districts that are guaranteed to  
22 perform in a particular way, but ones that could be won by a  
23 strong candidate running a strong campaign and appealing to  
24 all kinds of voters.

25 Q. In your academic work, or other work in redistricting,

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

352

1 has that been referred to as having to pull, haul, and trade  
2 for a vote?

3 A. That's right. That's a frequent phrase that you'll hear.  
4 I believe it comes from a Supreme Court decision. And the  
5 idea is that, again, the goal isn't to draw districts that are  
6 absolutely locked down, the goal is to draw districts where  
7 the minority group in question could form coalitions with  
8 other voters in order to secure opportunity. And sometimes we  
9 refer to that as the need to pull, haul, and trade.

10 MS. ADEN: I would like Mr. Najarian to pull up  
11 PX-122 and PX-123, which are Tables 1 and 2. And this can be  
12 found on page 3 of the August 9th supplemental report and put  
13 them side by side.

14 Are you about to pull them up in black and white  
15 first?

16 **BY MR. ADEN:**

17 Q. Dr. Duchin, what are you showing here?

18 A. Okay. So, these are the numbers that show how those  
19 Black candidates of choice fared. And what you're seeing here  
20 is two of the contests. So, on the left, this is President  
21 2020, in other words, this is the Biden-Harris ticket as the  
22 candidate of choice. And on the right, you're seeing the U.S.  
23 Senate election the same year. This is Harrison as the  
24 candidate of choice. And you're seeing how that candidate  
25 fared in their major party vote share district by district

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

353

1 across all the plans.

2 MS. ADEN: Okay. And then can you put up the PX-122  
3 and the 123 side by side now?

4 BY MS. ADEN:

5 Q. So, what is this showing you with colors on these charts  
6 now?

7 A. Okay. Great. So, I chose this coloring because walls of  
8 numbers are never anyone's favorite way to learn information.  
9 And so, the coloring is intended just to make it easier to see  
10 patterns and to navigate these figures. But it's all the same  
11 numbers that we had before.

12 So, let me explain the coloring. The gray shading is  
13 50 percent and beyond. In other words, these are the ones in  
14 which Biden-Harris or Harrison would have won the district.  
15 That's shown in gray. The next zone is shown in pink. That's  
16 47.5 to 50 percent. In other words, those pink boxes show a  
17 race where the margin was less than five points. So, I would  
18 call that quite a close outcome in the pink. That's what's  
19 marked in pink. And then a little bit looser is the standard  
20 shown in amber. So, that's where you have at least  
21 46 percent, in other words, a margin of eight points or less  
22 between the candidates. That's a little bit farther from a  
23 victory, but it shows that maybe there is some potential to,  
24 as we said a moment ago, pull, haul and trade.

25 So, I hope that that really helps illuminate the patterns



*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

354

1 that we see here. Here's what I see when I look at these  
2 tables. I see that because of the shifts in population that  
3 happened over the last 10 years, the benchmark plan -- and  
4 first, you'll notice as you scan down the CD 6 column, that CD  
5 6 really is quite electorally effective. For these Black  
6 candidates of choice, they're winning quite comfortably in CD  
7 6. And that's true, despite the fact that in the enacted  
8 plan, that we keep hearing, we've dropped below that  
9 50-percent line. It's still quite effective, as we see here.

10 But what I notice when I look at these tables is that in  
11 the benchmark, CD 1 has drifted into a pull-haul-and-trade  
12 zone, that is, there's some potential opportunity for these  
13 Black candidates of choice that has developed in CD 1 over the  
14 period from the last census. All of the other publicly  
15 submitted plans retain at least some level of competitiveness  
16 in CD 1, except Jessamine, which was prepared by the NRRT, and  
17 the State's enacted plan, which cut that opportunity back in  
18 CD 1. And they do so without creating any opportunity else in  
19 the state.

20 Q. Outside of CD 6?

21 A. That's right. Any new opportunity elsewhere in the  
22 state.

23 Q. And outside of CD 1, do you see any other -- what do you  
24 see? Outside of CDs 1 and 6, what do you see?

25 A. Absolutely. I think one of the striking things is the

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

355

1 Harpootlian Plan. So, take a look at that, and you'll see the  
2 Harpootlian Plan has wins for these candidates of choice in  
3 Districts 1 and 6, but it also has some promise, some  
4 potential, for these candidates of choice in an entirely new  
5 location, namely CD 5. And this comports, if we think about  
6 it, with that alternative plan that I made with a single  
7 redrawn line before. CD 5 is an area where it's certainly  
8 possible to create an effective set of conditions.

9 Q. Do you want to say anything else about this before we  
10 take it down?

11 A. I think this is good for now.

12 MS. ADEN: Okay. If you can take it down, Mr.  
13 Najarian. And if you could pull up PX-124 and 125 -- thank  
14 you -- in black and white.

15 **BY MS. ADEN:**

16 Q. What are you showing us here?

17 A. These are the other two probative contests. So, this is  
18 the Secretary of State race, featuring Whittenburg on the  
19 left; and the Treasurer's race, featuring Glenn on the right,  
20 both from the year 2018.

21 MS. ADEN: And if you could take this down and pull  
22 up the color versions.

23 **BY MS. ADEN:**

24 Q. What do you see?

25 A. Well, these races had a little bit less success for

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

356

1 Whittenburg and Glenn than for Harrison and Biden-Harris, and  
2 you can see that in the colors. Nonetheless, the pattern is  
3 the same, which is the benchmark plan, the enacted plan, and  
4 the Jessamine Plan really confined electoral opportunity to  
5 one district, CD 6, while virtually all of the other publicly  
6 submitted plans find opportunity elsewhere in the state. Once  
7 again, we see Harpootlian as notable in that CD 1, CD 5, and  
8 CD 6, all show some potential for building coalitions to  
9 support the Black candidate of choice.

10 Q. Do you want to say anything else about this figure before  
11 we take it down?

12 A. I think that's good for now.

13 Q. Okay. Dr. Duchin, on pages 8 through 11 of your  
14 supplemental report, PX-120, did you provide additional vote  
15 shares for nine other elections?

16 A. I did. Just in the interest of having as complete as  
17 possible of a record, my full set of elections available to me  
18 that was provided, as we mentioned earlier, included not only  
19 those four probative elections, but nine others, which were  
20 general elections with a major party Democratic and Republican  
21 candidate. And so, for me it was interesting to compare the  
22 four elections that were most informative about Black voters'  
23 preferences to these others, which I sometimes call "generic  
24 partisan contests," not especially tied to Black voters'  
25 preferences. And so, I do provide the tables for these. And

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

357

1 I think it's interesting to look at them and see the general  
2 patterns are the same, but the removal of opportunity from CD  
3 1 is much less consistent in the generic races than it was in  
4 the ones that are most informative for Black preferences.  
5 We'll see that reflected a few different ways in my report.

6 Q. Before we get to that, I want to just ask you generally:  
7 Is it fair to say, from your review of the information that  
8 you have prepared for your reports, that the range of BVAP,  
9 Black voting age population, and the seven congressional  
10 districts, particularly CD 1, can range and still be effective  
11 for Black voters?

12 A. Yes. That's actually quite remarkable. We see that  
13 across the maps that were proposed as part of the public  
14 process, we see that the CD 1 BVAP, if we think all the way  
15 back to -- I think that was yesterday.

16 Q. How about we show you something?

17 A. Sure.

18 MS. ADEN: Mr. Najarian, can you pull up PX-90, which  
19 is the first chart in Table 1 -- oh. PX-67. The first chart  
20 in Table 1 on page 9. Okay. So, that top one. And can you  
21 display it beside PX-122, which is Table 1 on page 3 of  
22 PX-120.

23 THE WITNESS: Great. So, while that is getting cued  
24 up, I'll say, this is really how I like to think about plans  
25 and the opportunity they provide, is to look at the

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

358

1 demographics side by side with electoral outcomes to get a  
2 complete picture. So, something that I think is really  
3 striking here is that across the variance for CD 1, we see  
4 that the Black voting age population can dip quite low while  
5 keeping that district in play for Black voters' preferences.  
6 So, for instance, the Harpootlian Plan goes as low as  
7 21.2-percent Black population in that district while still  
8 keeping the district viable for building effective electoral  
9 coalitions.

10 And so, to the question earlier of whether 50-percent  
11 BVAP might be necessary in South Carolina, we see that's far  
12 from true, that these districts can perform quite comfortably  
13 for Black candidates of choice at significantly lower levels  
14 of BVAP.

15 Q. And is that true among other plans like the League of  
16 Women Voters Plan?

17 A. Absolutely. There you have 23 percent. Even the  
18 Muscatel plan, which dips all the way down to 16.7 percent,  
19 still provides some opportunity in CD 1. And so, we see that  
20 not only through its strikingly low BVAP in CD 1 but through  
21 exactly which voters are brought together in combinations of  
22 which others, the enacted plan has really carefully arranged  
23 its lines, and the outcome at the end of the day is one of an  
24 absence of electoral opportunity outside of CD 6.

25 Q. Based upon analyses like these -- do you have a view --

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

359

1 based upon analyses that you have done like these, do you  
2 think that voting patterns on the basis of race can be  
3 relevant to determining if Black communities are cracked?

4 A. Yes, I do. I think that when we try to understand  
5 cracking, as is relevant for electoral opportunity, it has  
6 several faces. One of them is the splitting and disruption of  
7 coherent communities, and then another one downstream from  
8 that, but very important, is the opportunity for effective  
9 representation.

10 Q. And are any of the data sources that you have identified  
11 to date any data sources that were unavailable to the State,  
12 as far as you're aware?

13 A. Oh, no. On the contrary. This kind of information is  
14 widely available, and these kinds of analyses are routinely  
15 performed.

16 Q. And you performed these analyses having reviewed the  
17 House criteria and the Senate criteria; is that correct?

18 A. That is correct.

19 Q. And to see whether the plans that were proposed by the  
20 legislative body and the public complied with the criteria?

21 A. That's right. And if we think back to those criteria,  
22 they instructed us that plans which dilute opportunity for  
23 minority voters shall not be considered. And I think it's  
24 hard to take anything else away from these tables, but to see  
25 that the Jessamine Plan but also the enacted plan is really

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

360

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

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

6 A. I see no contribution between that observation and the  
7 rest of the discussion that we've been having, namely,  
8 electoral opportunity, in my understanding, has always been  
9 seen to contemplate possibilities of coalitional support. We  
10 don't assume, when we do a racially polarized voting analysis,  
11 100-percent cohesion of these or those voters. We understand  
12 that different groups of voters try to fill strong candidates  
13 and try to persuade other groups to support them. And many of  
14 the plans that were available to the State provide just such  
15 coalition opportunities.

16 Q. I'd like to focus you on pages 26 to 27 on your April  
17 11th report, Dr. Duchin. Did you perform any other analysis  
18 of Black electoral opportunities, particularly involving  
19 whether party affiliation explained electoral opportunity?

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

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

25 BY MS. ADEN:

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

361

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

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

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

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



*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

362

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

7 Then we can look at the contests more broadly. So, we  
8 can look at these other Democratic races shown on the bottom  
9 and we ask the same question: Is the performance of the  
10 enacted plan unusually poor for other Democrats? And we see  
11 it's no longer unusual. Now we have eight wins out of 63.  
12 But if you look at the histogram, you'll see that there are  
13 quite a lot of neutral plans that do even worse. Now the  
14 State's Plan, instead of the 12th percentile, is actually in  
15 47th; in other words, totally unremarkable. So, whereas the  
16 State's Plan is unusually extreme in denying opportunity for  
17 these strongly preferred Black candidates of choice, it is  
18 unremarkable in a generic party ID race.

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

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

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

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

363

1 A. Absolutely. We've just successfully highlighted it. So,  
2 in the key, you can see the enacted plan has four wins out of  
3 28 -- oh, no. It's not that bar. It's down in bar four.

4 Q. The wider green to the left?

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

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

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

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

364

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

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

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

13 Q. And what is --

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

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

365

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

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

5 A. Well, it fares just like Harpootlian in both the top and  
6 the bottom, which is to say providing two more wins for the  
7 candidate of choice, six rather than four in the enacted plan,  
8 and 10 rather than eight.

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

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

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

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

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

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

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

366

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

8 But the second half of the question that you just posed  
9 is: What about the voters? And so, as we saw, CD 1 often  
10 performs fairly well, even with quite a low percentage of  
11 Black voters. And so, you might ask: In the State's Plan,  
12 aren't all Democrats disadvantaged -- the Black Democrats, the  
13 White Democrats -- everyone's disadvantaged because it's been  
14 drawn so the Republicans will prevail? What I would say to  
15 that is that it's certainly true that anybody who votes for a  
16 Democrat won't see their preferences converted to  
17 representation. That is certainly true. But when we think  
18 about how voting rights litigation operates, when we think  
19 about a racial bloc voting analysis, that asks the question of  
20 whether over time, Black voters in this case vote cohesively  
21 as a bloc. The white voters who cast their votes for a  
22 Democrat might turn out in one election and not another. They  
23 might vote for a Democrat in one election and for a Republican  
24 in another. That's not a stable identifier in the way that  
25 being Black is a stable identifier. And so, I don't know of a

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

367

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

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

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

13 A. Well, I do think that I'm one of the leaders in  
14 developing ensemble methods. I wouldn't say unique to my  
15 skill set, but I would say that's an area where I've been at  
16 the forefront of developing techniques. So, I hope there's  
17 some significant added value in other areas, but I would note  
18 ensemble analysis as a particular specialty.

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

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

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

368

1 are followed, these kinds of analyses are available to a very  
2 large number of practitioners.

3 Q. And does that hold true for looking at electoral  
4 opportunity as well?

5 A. Absolutely.

6 Q. Do you have any other overall conclusions about electoral  
7 opportunity that you want to offer to the Court, or have you  
8 covered them?

9 A. Well, I think we've covered them quite well. Maybe I  
10 would summarize.

11 Q. Okay.

12 A. The State's Plans severely limits electoral opportunity  
13 to one district, and not only the human-drawn alternatives  
14 that were available but even, you know, tens of thousands of  
15 automatically generated plans all easily provide more  
16 opportunity. There were not one, not two, but just a vast  
17 number of ways to be less dilutive.

18 Q. Dr. Duchin, are you familiar with Sean Trende?

19 A. We've never met, but I've certainly read a number of his  
20 reports.

21 Q. Did you have occasion to review his report in this case?

22 A. I did.

23 Q. Okay. And did you provide a response to some of his  
24 findings in a report that you provided on May 4th, 2022, at  
25 PX-87?

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

369

1 A. Yes, that's right.

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

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

8 Q. And please remind the Court where you found --

9 MR. GORE: Your Honor, I would just object at this  
10 point. Mr. Trende has not yet testified in this matter. We  
11 are bringing him live to testify. This all sounds like  
12 rebuttal testimony. And the witness is drawing conclusions  
13 about what Mr. Trende may or may not have intended in his  
14 report, which is I understand is in evidence, but he hasn't  
15 come to testify yet.

16 JUDGE GERGEL: Is the report in evidence?

17 MS. ADEN: The report is in evidence.

18 JUDGE GERGEL: Overruled.

19 **BY MS. ADEN:**

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

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



DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

370

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

3 A. Yes. So, in the Senate guidelines, it's explicit in  
4 3(b), constituent consistency, that cores and incumbents are  
5 to be considered. Again, though, it's listed as additional  
6 considerations. And cores are not even explicitly discussed  
7 at all on the House side. But you could read them in as being  
8 related to incumbency consideration, in which case it is  
9 literally the last listed of the criteria in the guidelines.

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

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

15 Q. And let's look at PX-83 very briefly one more time, which  
16 is Figure 11 on page 24 of your April 11th report. Did you  
17 find that cores of districts can be preserved in maps you  
18 considered and/or developed?

19 A. Absolutely. This alternative plan shown here is just one  
20 of a vast number of options that would have had greater than  
21 90-percent core match with the enacted plan, while providing  
22 more meaningful opportunity in districts other than CD 6. I  
23 guess I would even amplify that to say, once again, this  
24 alternative only changes the line between 2 and 5. We've  
25 heard a great deal today about 1 and 6. This alternative

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

371

1 leaves those exactly as they are in the State's Plan and  
2 manages to find more opportunity in District 5 with a very  
3 high core-retention score. What that enabled me to conclude  
4 is that priority for retaining cores does not require us to  
5 confine electoral opportunity to CD 6.

6 Q. Are you familiar with Mr. Trende's view that the State's  
7 Plan places a high priority on repairing split counties and  
8 precincts?

9 A. Yes.

10 Q. And what do you think of his opinion?

11 A. Well, I note in my response report that I find the  
12 counting of precinct splits to be quite misleading. Let me  
13 find where this is in my report.

14 Q. So, I can direct you to PX-83, page 3.

15 A. Thank you. Oh, there we are. Thanks.

16 So, Trende's report writes that the number of split  
17 precincts in the benchmark was 65, but in the enacted plan,  
18 it's just 13. And that sounds very good. That sounds like,  
19 if you take those numbers at face value, there used to be  
20 disrespect for precinct boundaries, and that has been  
21 redressed in the enacted plan, which is now much more  
22 respectful of precinct boundaries than the old one was. The  
23 problem is that those numbers rely on non-contemporaneous  
24 boundaries.

25 So, what he's done here is he's counted how many 2020

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

372

1 VTDs were split in 2012. But without a crystal ball and the  
2 ability to see into the future, it would have been hard for  
3 legislators in 2012 to respect future boundaries. If,  
4 instead, you compare the 2012 plan to the VTDs at the time,  
5 the numbers are not comparable. And if do you that, if you  
6 compare it to 2010 VTDs, the benchmark only splits 13. So now  
7 the number of split precincts is 13 before and it's still 13  
8 today. This shouldn't be regarded, in my view, as a case of  
9 healing splits.

10 Q. What about with respect to counties and cities?

11 A. Let me find those numbers.

12 Q. And just generally.

13 A. Okay. My recollection -- and I can probably find that if  
14 I look through here -- is that other than -- I believe the  
15 Trende report doesn't mention city splits at all, in any way  
16 and in any capacity, and that's probably why I can't find it  
17 on the page today.

18 Q. Let me ask you this question. And I'll return to that in  
19 a second. Would you agree that Mr. Trende's view is that the  
20 State's Plan places a high priority on repairing split  
21 counties and precincts?

22 A. Yes. The concept of healing splits is definitely  
23 present.

24 Q. And you talked about your disagreement with his view of  
25 VTDs. What do you think about his opinion with respect to how

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

373

1 the enacted plan responds to split counties and  
2 municipalities?

3 A. Well, again, I don't think that he discusses split cities  
4 and towns at all. So, I think split municipalities just  
5 aren't present in his report. And as to counties, we've  
6 talked about that already, but just as a reminder, it's true  
7 that the enacted plan heals three counties that were split in  
8 the benchmark and newly splits one other. So, that's Jasper,  
9 which was whole before and is now split in the new plan. But  
10 that's what I called earlier a case of selected healing. Some  
11 counties -- in particular, majority White counties -- are  
12 healed while others -- in particular, majority Black,  
13 Orangeburg -- are not.

14 Q. You just testified that you don't believe that Mr.  
15 Trende's report -- let me ask you this. Are you aware whether  
16 Mr. Trende's reports considers splits of cities and towns  
17 rather than just counties and precincts that you reviewed and  
18 analyzed?

19 A. Right. And I see this now at the top of page two, I say:  
20 The Trende report makes no mention at all of several issues.  
21 And one of those is city and town boundaries.

22 Q. And does his report include anything on public testimony  
23 that South Carolina collected that you reviewed and analyzed?

24 A. No discussion of public testimony.

25 Q. Does it do any comparison of the nine alternative plans

*DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN*

374

1 publicly submitted, as compared to the enacted plan and the  
2 benchmark plan?

3 A. No discussion of the public alternatives.

4 Q. Does he do anything in terms of looking at electoral  
5 opportunity for Black voters?

6 A. He does not. He does not do an ensemble analysis here,  
7 which he has done in other states, and he does not address any  
8 of the evidence that the enacted plan is more extreme in  
9 certain elections than in others.

10 Q. And does he refute your finding that the enacted plan is  
11 more extreme in elections most probative for Black electoral  
12 opportunity than performance in generic elections?

13 A. I don't think he looks at effectiveness at all, and in  
14 particular, certainly doesn't address the  
15 probative-versus-generic splits.

16 Q. So, to wrap up your testimony for the Court, Dr. Duchin,  
17 can you just briefly, in a few high-level points, describe for  
18 the Court the key changes that you saw between the 2011  
19 benchmark plan and this 2022 enacted map?

20 A. How did the map change between benchmark and enacted?

21 Q. Yes.

22 A. Okay. Well, as we reviewed, there were reassigned  
23 terrain pieces all around the state. We saw that earlier on a  
24 map, where we looked at territory that was moved from  
25 one district to another. Some of that was done to rebalance

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

375

1 population. Notably, some of that was done to heal certain  
2 issues in the old plan. That healing was selective. And in  
3 the large, the effect of the transition from one plan to the  
4 next was to reduce electoral opportunity that had emerged in  
5 District 1 while not providing it anywhere else in the state  
6 outside of CD 6.

7 So, I would say the plan -- the very highest level  
8 behaves as though Black population has been cracked among the  
9 districts, providing one district that will reliably perform  
10 and no more opportunity anywhere else in the state in a manner  
11 that's really quite unusual for the alternatives that were  
12 available to the legislature.

13 Q. And are your findings based on quantitative analysis?

14 A. Quantitative, qualitative analysis, demographic data,  
15 electoral data. I've tried to look at this problem  
16 comprehensively with as many tools as I have available to me.  
17 And all the findings are consonant.

18 Q. And is there anything else you want to share with the  
19 Court before I pass you as a witness?

20 A. I think that covers it nicely.

21 Q. Thank you.

22 MS. ADEN: I will pass the witness.

23 JUDGE GERGEL: Okay. Folks, it is the noon hour. I  
24 think it is a good time to break and allow the  
25 cross-examination.

DR. MOON DUCHIN - DIRECT EXAMINATION BY MS. ADEN

376

1 MR. FREEDMAN: As far as I can tell, plaintiffs  
2 maintain our objection to 222. What he offered yesterday did  
3 not include 222. It's 224.

4 THE COURT: So, there's an objection to Senate 222.  
5 And we'll wait -- the exhibit was admitted during Senate part  
6 of the case, and we'll address admissibility then. Thank you.

7 MR. FREEDMAN: Thank you, your Honor.

8 THE COURT: Anything else we need to address before  
9 we break? It's now 12:00. Let's return at 1:00.

10 **(Lunch recess)**

11 JUDGE GERGEL: Please be seated.

12 Does anyone have any matters that they need to  
13 address with the Court before we resume with the  
14 cross-examination of Dr. Duchin?

15 From the plaintiff, anything you need to raise with  
16 the Court?

17 MS. ADEN: No, your Honor. Not at this time.

18 THE COURT: Mr. Gore, are you ready to proceed?

19 MR. GORE: We're ready, your Honor.

20 JUDGE GERGEL: Very good. Let's go.

21 MR. GORE: Your Honor, may I approach the witness?

22 JUDGE GERGEL: You may.

23 MR. GORE: Thank you, your Honor, and Dr. Duchin.

24 I've just approached the witness to hand her copies  
25 of Plaintiff's Exhibits 67 -- is it 83 and 120 -- the three

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

377

1 reports that she filed in this case, so we can refer to them  
2 during the cross.

3 JUDGE GERGEL: Okay.

4 **CROSS-EXAMINATION**

5 **BY MR. GORE:**

6 Q. Do you have those in front of you, Dr. Duchin?

7 A. I do. I think it's 67, 87 and 120.

8 Q. Eighty-seven and 120. Thank you for that correction.

9 Dr. Duchin, I'm John Gore. I represent the Senate  
10 defendants. You and I had the pleasure of meeting over Zoom  
11 at first and in front of the courthouse for the first time in  
12 person yesterday, I believe; is that right?

13 A. That's right. Hi, Mr. Gore.

14 Q. Nice to see you. Dr. Duchin, at the end of our trial day  
15 yesterday, you remained under oath as part of your direct  
16 testimony; is that right?

17 A. Yes. That's my understanding.

18 Q. After court yesterday, did you discuss the substance of  
19 your testimony with anyone?

20 A. I didn't.

21 Q. I'm going to ask that we see now Plaintiff's Exhibit 67,  
22 which is your initial report. I'd like to go to page two of  
23 that report. Before I get there, I think you testified a  
24 little bit this morning about demographic statistics and  
25 phenomena in South Carolina; is that correct?



*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

378

1 A. Yes.

2 Q. And I believe you testified as to the Black voting age  
3 population percentages in South Carolina statewide; do you  
4 recall that testimony?

5 A. Yes.

6 Q. And I think you said that Black total population is  
7 26.78 percent statewide; is that about right?

8 A. Well, that's what it says in the report, so I hope that's  
9 what I testified.

10 Q. Okay. And you also gave a figure for Black voting age  
11 population statewide; correct?

12 A. Correct.

13 Q. Did your report contain similar statistics for South  
14 Carolina under the 2010 Census results?

15 A. It does not.

16 Q. And are you aware that, in fact, from 2010 to 2020, those  
17 percentages actually went down in South Carolina?

18 A. That seems reasonable.

19 Q. And you also testified that the White percentages in  
20 South Carolina went down between 2010 to 2020; is that  
21 correct?

22 A. Correct.

23 Q. And so, does that mean that other racial groups grew in  
24 relative size in that intervening 10 years in South Carolina?

25 A. Well, if I accept the representation, and I do, that the

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

379

1 BVAP went down, it might depend on how you count it because of  
2 that multiracial category.

3 Q. Sure.

4 A. But, if your telling me that the any-part-Black  
5 percentage went down, then that would be because other racial  
6 groups went up.

7 Q. Thank you. Thank you for that clarification. If we can  
8 go to page six of your report, which is Exhibit 67, I'd like  
9 to ask you about these choropleths, which, as we discussed in  
10 your deposition, was a new word for me. So, thank you for  
11 educating me on that.

12 You used data from the American Community Survey to  
13 generate these choropleths, is that right?

14 A. I did.

15 Q. And you didn't use the 2010 Census data; is that right?

16 A. That's right. These are using citizen voting age  
17 population, which isn't part of the 2020 data.

18 Q. How does the margin of error in the American Community  
19 Survey compare to the margin of error in the Decennial Census?

20 A. Well, they're two different data products. We don't  
21 treat the Decennial as having a margin of error, because it is  
22 based on a complete enumeration rather than a survey.

23 Usually, margin of error is a concept reserved for survey  
24 data; however, the Census Bureau does provide what's called a  
25 PES, or Post-Enumeration Survey, where they estimate how much

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

380

1 error there was in the Decennial data. This year, that has  
2 come out, and their estimated errors from the Decennial are  
3 similar to how they were in the past cycles.

4 Q. And how do you they compare to the margin of error, or  
5 estimated error, in the American Community Survey?

6 A. Well, the right way to deal with the error in the ACS  
7 depends on your geographic scale, and also depends on the time  
8 range. So, the ACS is released every year, but often, as I do  
9 in this report, it's handled in a five-year rolling average.  
10 If you use the five-year rolling average and you use large  
11 geography, as I've done here, census tracts and counties, then  
12 these are considered to be quite precise. I don't have the  
13 numbers off the top of my head, but this is a very sound way  
14 to use that data.

15 Q. So, you don't have the numbers for the ACS, off the top  
16 of your head, correct?

17 A. So, certainly not for these five-year ranges and these  
18 geographies.

19 Q. Or for the Decennial Census; is that also correct?

20 A. Right. I could probably give you ballpark figures from  
21 the PES, but I don't have any memory of the exact numbers.

22 Q. In this case, do you know whether the map drawer used the  
23 Census data, or the ACS data, to draw the enacted plan?

24 A. Well, certainly, the population is balanced with respect  
25 to Decennial, but I wouldn't be surprised if they also

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

381

1 consulted ACS data.

2 Q. But do you know one way or the other?

3 A. Oh, I certainly don't.

4 Q. And have you discussed that with the map drawer or any  
5 member of the General Assembly?

6 A. I haven't.

7 Q. Now, if we can scroll down one more page here on the  
8 screen, I'd like to go to these choropleths that show change  
9 in BVAP by county.

10 A. And, again, as we heard before, it should be "BCVAP."

11 Q. BCVAP. Thank you for that continuing clarification.  
12 Now, these changes that are being represented here are in the  
13 total Black citizen voting age population; correct?

14 A. That's right. And you can see that, if you scroll down a  
15 little bit to the color bar, that we're dealing with the  
16 number of people.

17 Q. And so, they're not percentages, correct?

18 A. That's right.

19 Q. And you have not provided similar choropleths for White  
20 citizen voting age population, correct?

21 A. I have not.

22 Q. So, these choropleths here don't tell us anything about  
23 the change in BVAP percentage -- or BCVAP percentage -- in any  
24 of these locations, correct?

25 A. Not directly. We did hear earlier, for the example of

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

382

1 Richland County, that I did provide numbers of the Black  
2 change as against the total change. But I did not provide  
3 that for every county, let alone, every tract.

4 Q. So, let's go ahead and go to that. I believe that's in  
5 your supplemental report at page six.

6 A. Sure.

7 Q. Exhibit 120. And we may need to go to the bottom of this  
8 page. There it is. And so, looking at Footnote 3 on page six  
9 of your report, this is about Richland County; correct?

10 A. That's right.

11 Q. So, it doesn't tell us anything about Charleston County;  
12 is that right?

13 A. Definitely true.

14 Q. And even in Richland County, you're comparing a growth in  
15 BCVAP to total population growth, correct?

16 A. Yes.

17 Q. So, it's not an apples-to-apples comparison; is that  
18 correct?

19 A. Against what other apple?

20 Q. Well, I think what you have here at the end, it says:  
21 The overall rate of population growth in the county?

22 A. Right.

23 Q. It's not the overall rate of citizen population growth in  
24 the county, correct?

25 A. Oh, I see what you're saying. It's true that I left that

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

383

1     ambiguous. And so, I can't be sure, but I suspect I'm talking  
2     about the same population basis.

3     Q. But you don't know that for sure right now?

4     A. It's true that I didn't word it precisely enough.

5     Q. And you point to a total BVAP growth in -- BCVAP growth  
6     in Richland County of 30,000 people; is that right?

7     A. Yes, that's right.

8     Q. And given the ideal population size in this plan, that's  
9     about four percent of a district; is that right?

10    A. Well, let's see. So, districts are about  
11    700-and-something-thousand people, so 30,000 out of 700 is --  
12    yeah, that sounds about right.

13    Q. Okay. And Richland County right now is already split  
14    between two districts; is that right?

15    A. It is.

16    Q. And so, if you unified Richland County in a district, the  
17    increase in that district's BCVAP wouldn't necessarily be  
18    30,000 people; correct?

19    A. Well, it's pretty hard to say, because, to do the  
20    counterfactual, you'd have to bring some people in and send  
21    some people out. It's pretty hard to do that in your head,  
22    considering all the possible ways to do so.

23    Q. And, of course, there would have to be offsetting changes  
24    somewhere else to balance out a population; correct?

25    A. That's right. That's what I mean.

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

384

1 Q. Again, if we can scroll down to the next page as well,  
2 you have these choropleths, based on the American Community  
3 Survey, on your rolling five-year averages for the last 10  
4 years; is that right?

5 A. Right.

6 Q. And, again, these are showing total BCVAP change,  
7 correct?

8 A. They are. They are number of people.

9 Q. And they're not showing percentage change?

10 A. That's right.

11 Q. And they don't show any changes to the White citizen  
12 voting age population, correct?

13 A. That's right. The intent, I should say, is that because  
14 Black and White make up the vast majority of South  
15 Carolinians, that that can be, more or less, inferred.

16 Q. How can that be inferred from here though, because this  
17 is just showing a total population growth, and there's no  
18 information about total growth in the White citizen voting age  
19 population, correct?

20 A. No. That's true. From shares, they can be, more or  
21 less, inferred.

22 Q. But this doesn't tell us the share -- the percentage  
23 change in Black CVAP, correct?

24 A. Yeah. If I could maybe just give context to the whole  
25 discussion, it certainly would have been possible to provide a

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

385

1 much longer, more detailed, more complete demographic report.  
2 If that had been a fundamental element of my analysis, I  
3 certainly would have done so. But, here, I gave a few -- what  
4 I thought were helpful -- indications, but don't claim for  
5 this to be a whole picture of demographic change, which would  
6 require another -- many dozens of pages.

7 Q. Thank you for that clarification. And just to be clear,  
8 it's possible that in areas that had high BCVAP -- Black CVAP  
9 -- growth could have also seen White CVAP growth; is that  
10 right?

11 A. It's possible. But that's not what we see, for example,  
12 in Richland County.

13 Q. Setting aside the Richland example, there is no other  
14 information in your report about the growth of White CVAP in  
15 any of these areas; is that correct?

16 A. That's right.

17 Q. Dr. Duchin, let's go back to your report, Plaintiff's  
18 Exhibit 67. There was some discussion this morning and  
19 yesterday about the House and Senate redistricting criteria  
20 and guidelines; do you recall that?

21 A. Yes.

22 Q. So, if we go there to -- I guess maybe page seven or so  
23 of your report --

24 A. Sure.

25 Q. -- you've divided the criteria into first tier and second



DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

386

1 tier requirements; is that right?

2 A. Yes.

3 Q. And these are your categories; is that right?

4 A. Well, I wouldn't go quite that far. These track with the  
5 priority order that's explicit in the House guidelines.

6 Q. Let me ask a better question. First tier and second tier  
7 are your words?

8 A. Those are my words. Definitely true.

9 Q. Okay. Thank you very much. And you agree, under the  
10 first tier requirements, do you not, that the General Assembly  
11 is not required to use race to draw districts; is that  
12 correct?

13 A. I think you're asking whether the guidelines require them  
14 to use race.

15 Q. Yes.

16 A. And no, they do not. They contemplate the possibility,  
17 but they don't make it a requirement.

18 Q. And outside of the guidelines, do you have an opinion or  
19 a view as to whether the General Assembly was required to use  
20 race when it drew the enacted plan?

21 A. Well, I guess I would nuance using race while drawing and  
22 using race while evaluating. So, my view generally is that,  
23 in order to safeguard minority opportunity in keeping with the  
24 guidelines, you'd have to use race in an evaluative capacity  
25 whether or not you used it in a primary capacity while drawing

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

387

1 the lines. Does that make sense?

2 Q. So, is it your view that the General Assembly was  
3 required to use race to evaluate the plan it drew?

4 A. I think -- I can't imagine any other way of complying  
5 with their own guidelines.

6 Q. Let's pull up, if we can, Plaintiff's Exhibit 175, which  
7 is the House guidelines, themselves. And if we can scroll  
8 down, still on the first page. And I believe under federal  
9 law, there's a sentence that starts about the middle of the  
10 paragraph, "The dilution of racial or ethnic minority voting  
11 strength is contrary to the laws in the United States in the  
12 state of South Carolina and is also against the public policy  
13 of this state." Did I read that correctly?

14 A. Yes, that sounds right.

15 Q. And do you know what definition of dilution of racial or  
16 ethnic minority voting strength the guidelines are actually  
17 using here?

18 A. It's not spelled out in operative detail.

19 Q. And you haven't discussed that with any legislators; is  
20 that correct?

21 A. I haven't.

22 Q. Or any staff members?

23 A. No. To my knowledge, when I wrote these reports, I'd  
24 never met any South Carolina legislators.

25 Q. Is it possible that the guidelines are using the same

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

388

1 definition as Section 2 of the Voting Rights Act?

2 A. It's possible.

3 Q. And is it possible that, otherwise, the guidelines are  
4 using a different definition than the definition you used in  
5 your reports?

6 A. Certainly.

7 Q. Now, if we can go back to your report, pages 7 to 8, you  
8 list some second-tier requirements?

9 A. Yes.

10 Q. And those include contiguity, and compactness,  
11 communities of interest, and I think political boundaries; is  
12 that correct?

13 A. That's right.

14 Q. And there are other criteria in the guidelines that you  
15 don't discuss in this section of your report, correct?

16 A. Sorry. I dropped a few of these papers. That's correct.

17 Q. And that includes preserving the cores of districts,  
18 correct?

19 A. I don't discuss that in these sections, but that  
20 certainly is addressed in other places in my reports.

21 Q. Thank you. And I look forward to discussing those as  
22 well. But it's not something you discussed here, correct?

23 A. Not here, that's right.

24 Q. Dr. Duchin, in your view, what is a map drawer required  
25 to do in the event of a conflict between increasing minority

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

389

1 voting opportunity, which you place in the first tier, and  
2 complying with the second-tier criterion such as compactness?

3 A. Well, to be careful, I don't know that it talks about  
4 increasing minority voting opportunity. It talks about  
5 non-dilution, right? So, just to be careful about phrasing.

6 But my view, to your question about what to do in case of  
7 conflict, is that the House guidelines say, if there is a  
8 conflict, the requirements addressed in Sections 1, 2, 3 and  
9 4, which includes non-dilution, should be given priority.

10 Q. And so, just if I can restate your point, when faced with  
11 a choice between safeguarding minority voting opportunity on  
12 the one hand, and complying with traditional districting  
13 principles on the other, it's your reading that the guidelines  
14 require safeguarding minority voting opportunity; is that  
15 right?

16 A. Absolutely. I think, for instance, since compactness,  
17 for example, is one of those, if the compactness could be  
18 improved at a cost to minority voting opportunity that amounts  
19 to dilution, then one is not to pursue that improved  
20 compactness, just for instance.

21 Q. And so, in your view, the General Assembly was required  
22 to prioritize minority voting strength over compliance with  
23 the second-tier criteria, correct?

24 A. Well, I think, there, it's important to remember that the  
25 priority guidance is in case of conflict. And so, the

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

390

1 question I think is: Can we have a non-dilutive map that's  
2 highly respectful of TDPs. And I think the record that we  
3 went over on direct, from my reports, shows that it is  
4 possible to have a non-dilutive map that is highly respectful  
5 of TDPs. So, I'm not sure that priority clause ever came into  
6 effect, because no conflict was, in fact, present.

7 Q. But if, in fact, a conflict were present, the choice  
8 would have to be made in favor of minority voting strength  
9 rather than the second tier criteria, right?

10 A. I think that's the plan reading of the guidelines, yeah.  
11 That's the nature of your question, what the guidelines say --

12 Q. Right.

13 A. -- and I do believe that is what the guidelines say.

14 Q. And so, in other words, if it's faced with a tradeoff  
15 between diluting minority voting strength on the one hand, and  
16 complying with second-tier criteria on the other, the choice  
17 has to be made in favor of protecting minority voting  
18 strength; is that right?

19 A. Well, complying makes it sound like a binary matter --  
20 yes, no -- when, often with these particular criteria, it's a  
21 matter of degree. And that's why I gave the example of  
22 compactness. So, it's not a question of total sacrifice of  
23 compactness, but of somewhat improving or somewhat worsening  
24 with compactness. And, there, I think we are guided by these  
25 publications to prioritize non-dilution over improvement of

1 the lower-ranked TDPs.

2 Q. Thank you. And I'll ask this question this way: Did you  
3 discuss anything in your report, or any of your conclusions,  
4 with any legislators or staff of the General Assembly?

5 A. Not to my knowledge.

6 Q. Thank you. So, you didn't discuss the guidelines, or  
7 this interpretation of the guidelines, with them, correct?

8 A. I did not.

9 Q. And do you know whether your reading of the guidelines is  
10 legally permissible?

11 A. Let's see if I address the question. Tell me if this is  
12 responsive: I'm not sure that the guidelines really make it  
13 perfectly clear what kind of situations might amount to  
14 conflicts, but the way I read the guidelines -- I guess I  
15 should carefully refrain from making legal conclusions about  
16 whether they're legally permissible. But they sound pretty  
17 strong and clear as practical guidance.

18 Q. And so, just to make sure the record's clear, do you have  
19 an opinion as to whether or not your reading of the guidelines  
20 is legally permissible?

21 A. Not being an attorney, I should continue to refrain from  
22 making such an opinion.

23 Q. Thank you. Let's go back to your report, page nine. I  
24 believe it's the start of Section 4. And you discussed this  
25 with Ms. Aden this morning, as well. And this is your review

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

392

1 of metrics for the congressional maps. Do you recall that  
2 this morning?

3 A. I do.

4 Q. And so, when discussing racial demographics here, you  
5 used the any-part-Black category from the Census; is that  
6 right?

7 A. That's right.

8 Q. And do you know whether the General Assembly also used  
9 that category?

10 A. I don't.

11 Q. And map drawers sometimes use different categories than  
12 any part Black to draw maps; is that right?

13 A. That's right. There are at least three that are very  
14 common: Any part Black, Black alone, and the DOJ definition,  
15 which is, you know, quite complex. So, there are many ways  
16 that you might count Black population.

17 Q. Let's look at this chart here on page nine. I want to  
18 ask you a couple questions about the enacted plan versus the  
19 benchmark plan. So, in District 1, it appears that the  
20 enacted plan actually increased the BVAP compared to the  
21 benchmark plan; is that right?

22 A. It might not have increased the BVAP, but it does  
23 increase the BVAP share by about a tenth of a percentage  
24 point.

25 Q. Thank you for that clarification. Let's go over to

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

393

1 District 6. There was some discussion about District 6 this  
2 morning. And you noted that District 6's BVAP share went from  
3 52.5 percent in the benchmark plan down to 46.9 percent; is  
4 that right?

5 A. That is right.

6 Q. And I believe your testimony was that's like a 5.6  
7 decrease; is that right?

8 A. I don't think that I did live subtraction, but I can  
9 attempt it now if it would be helpful.

10 Q. That would be fine. Why don't you go ahead. You can  
11 check my math.

12 A. Sure. That looks like that's just short of, yeah, 56.  
13 Is that what you said?

14 Q. I believe 5.6.

15 A. 5.6 percent points, I agree. My subtraction is very  
16 dangerous on a general matter.

17 Q. Not bad for a lawyer, huh?

18 And I believe your testimony was that this meant there  
19 was Black voting age population that could have been spread  
20 into other districts; is that right?

21 A. That's right. But that means that there's Black voting  
22 age population, which has to be assigned to some district,  
23 since all of these plans assign every Census block in the  
24 states.

25 Q. And would that have been the 5.6-percent number that



DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

394

1 would have been available to reallocate?

2 A. Yeah. You have to be a little bit careful because these  
3 plans are very closely balanced, so they have almost exactly  
4 the same population. But you should remember that, in  
5 general, when talking about districts, they're percentages of  
6 a different total.

7 Q. And that's particularly true of District 6 of the  
8 benchmark and the enacted plans, correct?

9 A. What is particularly true?

10 Q. Well, benchmark District 6 was severely underpopulated,  
11 wasn't it?

12 A. I think that's right.

13 Q. So, it was underpopulated by over 80,000 people; is that  
14 right?

15 A. Right. I think that was the most negative deviation, as  
16 I reported in the next subsection.

17 Q. So, that 52.5-percent number is using a much different  
18 denominator than the 46.9-percent number in the enacted plan,  
19 right?

20 A. Yes. And, you know, to be careful, it's true that  
21 there's a district that's underpopulated by about 84,700  
22 people. And I think -- my memory tells me that that may be  
23 District 6, and I think that you are confirming that it is; is  
24 that right?

25 Q. Yes. It is District 6.

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

395

1 A. Okay. Great. I'm perfectly prepared to accept that.

2 Q. Okay. So, if District 6 was underpopulated by  
3 12 percent, it didn't actually have 5.6-percent BVAP to move  
4 to other districts, correct?

5 A. That was exactly the point I was making before, being  
6 careful about the denominators.

7 Q. And do you know, in fact, whether the enacted version of  
8 District 6 increased the total of Black voting age population  
9 in that district?

10 A. I don't have those numbers in front of me, but, given  
11 different denominators, that is possible.

12 Q. So, in fact, if that had happened from -- in the enacted  
13 plan, there weren't extra Black individuals of voting age  
14 population to spread into other districts, correct?

15 A. I want to make sure I'm tracking your question correctly.

16 Q. Sure.

17 A. So, one thing we can do is compare just enacted to  
18 benchmarks. And, there, we have to be very careful about the  
19 denominators. Another thing that we can do is compare enacted  
20 to these other plans, which balance populations just about as  
21 closely, within five people, I think we heard before, for most  
22 of the plans. And so, you're right that it's very slippery to  
23 get the denominators right, comparing enacted to benchmark.  
24 But, for instance, it's easy to compare enacted to NAACP 1,  
25 NAACP 2, without having that concern. And that comparison

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

396

1 does definitely show exactly what you just indicated, which is  
2 that there are more Black adults for the other districts than  
3 there were in those comparative plans. And, there, we don't  
4 have to fret about our malleable denominators.

5 Q. I appreciate all that clarification, which we'll get to  
6 in a moment. I'm trying to understand your testimony from  
7 this morning.

8 A. Sure.

9 Q. You pointed to these numbers, as I recall it, and you  
10 said there were extra Black individuals of voting age  
11 population that could have been dispersed from District 6 and  
12 placed in other districts. And my question to you is: That's  
13 not exactly true on these numbers, is it?

14 A. Well, here's a way to make sense of it that doesn't  
15 require us to do all that counting. We can ask the question:  
16 How does the benchmark plan distribute Black adults, compared  
17 to one which there had still been a requirement to maintain  
18 50 percent? Well, let me pause for a moment -- it will only  
19 be a sentence or so -- and think about that comparison. So,  
20 this 47, compared to a plan that maintained 50, has more  
21 people to go elsewhere. And then it becomes perfectly  
22 comparable, cleanly comparable, to ask where did they go.

23 Q. I appreciate that clarification, but that's a comparison  
24 of the enacted plan to some other plan on this chart, other  
25 than the benchmark plan, correct?

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

397

1 A. Well, that's to hypothetical point.

2 Q. It's a hypothetical, right?

3 A. Right.

4 Q. But you but cannot say, based on this chart, that from  
5 the benchmark plan to the enacted plan, there were extra Black  
6 individuals of voting age population that could have been  
7 moved out of District 6 and placed in some other district?

8 A. Well, just to be clear, I think the spirit of the  
9 observation -- I can't remember the wording of the observation  
10 from this morning, but the spirit of the observation is that  
11 the understanding that it's possible to go below 50 percent,  
12 it gives the map makers a lot of latitude about where to put  
13 people in the state. That's the spirit of the observation.  
14 And that latitude could have been used to generate electoral  
15 opportunity, and it was not.

16 Q. But just to be clear -- and a yes-or-no answer I think  
17 would suffice --

18 A. Sure.

19 Q. -- you can't actually tell, based on this table, whether  
20 there were extra individuals of Black voting age in benchmark  
21 District 6 that could have been moved to other districts?

22 A. I think I understand your question.

23 Q. Okay.

24 A. And I think it's true that you can't tell because of the  
25 denominator issue.

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

398

1 Q. Okay. Thank you. And if it's possible, at least, that  
2 the enacted plan increased the total Black voting age  
3 population in District 6, compared to the benchmark plan,  
4 right?

5 A. Nationally, and in South Carolina, ideal district size  
6 went up.

7 Q. Thank you. So, let's look at the second chart you have  
8 on this page. You have the 11 plans listed by the number of  
9 districts with BVAP's at or above a certain level; is that  
10 right?

11 A. Correct.

12 Q. And I think you testified, before today, that the numbers  
13 in the column mark are cumulative. And so, for example,  
14 benchmark 2012, it's the same district in each of the three  
15 columns, right?

16 A. That's right.

17 Q. So, only three of the plans here had a district with a  
18 BVAP above 50 percent; is that right?

19 A. That's correct.

20 Q. And nine plans had a district with a BVAP of above  
21 40 percent?

22 A. That's right. All but two.

23 Q. And that includes the enacted plan, correct?

24 A. Yes.

25 Q. And none of the 11 plans had more than one district with

1 a BVAP above 40 percent, correct?

2 A. I agree.

3 Q. And if we go to the column on the farthest right, it  
4 looks like six of the 11 plans, a majority of the plans, had  
5 only one district with a BVAP above 30 percent; is that  
6 correct?

7 A. One, two, three, four, five, six. I agree. Six. Six  
8 has one district.

9 Q. Right. Let's go to the next page of your report and  
10 understand population deviation that you did. And you agree  
11 that the Senate guidelines require congressional plans to be  
12 drawn with a total top-to-bottom deviation of one person; is  
13 that correct?

14 A. That's right. It's explicit in those guidelines, but  
15 it's also just a national common standard.

16 Q. And, here, we see that both of the NAACP plans, the  
17 Harpootlian Plan, and the League of Women Voters Plan violated  
18 that criteria in the Senate guidelines, correct?

19 A. Yes.

20 Q. Because they have more than one person total deviation;  
21 is that right?

22 A. That's right.

23 Q. Let's go to the next page and talk about compactness for  
24 just a moment. And you assess compactness of plans based on  
25 three different measures; is that right?

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

400

1 A. Yes.

2 Q. And you agree that the General Assembly was not obligated  
3 to use these metrics to measure compactness, right?

4 A. These particular metrics? Certainly not.

5 Q. And was the General Assembly obligated to use any  
6 mathematical measurements to measure compactness?

7 A. You mean in the course of debating plans for adoption?

8 Q. Yes.

9 A. No.

10 Q. And, in fact, the House guidelines expressly state that  
11 compactness should not be computed based on mathematical  
12 measures; is that right?

13 A. They do.

14 Q. And the Senate guidelines, to use your term, adopt a  
15 concept of functional compactness; is that right?

16 A. I don't think they use that phrasing, but it's what I  
17 would call functional compactness.

18 Q. And the Senate guidelines also don't mention or require  
19 the use of mathematical measures of compactness; is that  
20 right?

21 A. I can check on "mention" but they certainly don't  
22 require. Let me check on "mention."

23 Q. Sure.

24 A. They don't mention the metrics.

25 Q. And the only analysis of compactness you conducted was

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

401

1 with these mathematical measures, correct?

2 A. Oh, no. That's not the case. So, for example, when I do  
3 the detailed district review that you heard about earlier  
4 today, compactness comes up quite a few times in that  
5 discussion. For example, that hook into Columbia is described  
6 as a non-compact feature. And so, there are several places  
7 where I use more informal, or qualitative, or functional, if  
8 you will, notions of compactness.

9 Q. And, here in this part of your report, you didn't do any  
10 of that, correct?

11 A. This part of the report is devoted to metrics.

12 Q. And the House guidelines say that compactness should be  
13 judged in part by the configuration of prior plans, correct?

14 A. Let me check.

15 MR. GORE: If we can pull up the guidelines on that,  
16 Plaintiff's Exhibit 175.

17 THE WITNESS: Yes. That is the quote: "Compactness  
18 should be judged in part by the configuration of prior plans."

19 BY MR. GORE:

20 Q. And did you do anything to judge compactness by the  
21 configuration of a prior plan in this portion of your report?

22 A. Yes, I did. I reported on these metrics for both the  
23 prior plan, the benchmark, and for the enacted plan. And so,  
24 I suppose it isn't a 100-percent clear what's intended by this  
25 sentence in the guidelines, but what I think it means is that



DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

402

1 prior plans should set a kind of baseline for what it means to  
2 be reasonably compact in South Carolina.

3 Q. And is the enacted plan more compacted than the benchmark  
4 plan on at least two of these three measures?

5 A. Let's check. So, the enacted plan has a higher average  
6 Polsby-Popper score, a lower Reock score, and a better  
7 Block-cut Edges score.

8 Q. So, it's better on Polsby-Popper and Block-cut Edges; is  
9 that right?

10 A. It's better on two in the previous plan, and worse on  
11 one.

12 Q. And even on the metrics you used, the enacted plan is  
13 also better than the South Carolina NAACP Plan 1, correct?

14 A. Well, let's see. Yes, it's better than NAACP 1 on all  
15 three scores.

16 Q. And it's better than Harpootlian on Reock, correct?

17 A. Yes -- let's see. That's right, better on Reock but  
18 worse -- substantially worse on the other two.

19 Q. Let's go to the next page of your report, where you talk  
20 about political subdivisions.

21 A. Sure.

22 Q. And you did not include in this analysis here, on this  
23 page, any analysis of any other communities of interest,  
24 correct?

25 A. That's right. Here, it's only counties and county

1 subdivisions, and then the next page, cities and towns.

2 Q. And I believe in your testimony with Ms. Aden, you  
3 acknowledged that the House guidelines say that political  
4 subdivisions are entitled to no greater weight than other  
5 communities of interests; is that right?

6 A. That's right. I think the phrase is "other identified  
7 communities of interest" or identifiable. Uh-huh.

8 Q. And if we look at this chart on page 12, the enacted plan  
9 outperforms both of the NAACP plans on county splits, county  
10 pieces, subdivision splits, and subdivision pieces, correct?

11 A. Let me look and see. I can check. But I'll say, as a  
12 general matter, it's not my intention to present NAACP 1 or  
13 NAACP 2 as a particularly sterling model plan. This is a  
14 collection of plans that were on the public record and  
15 available to legislators at the time of their debate.

16 But to your question, it is true that, with respect to  
17 counties, the enacted plan performs better than the NAACP  
18 plans. And it's really almost the same on county subdivisions  
19 as NAACP 2, 29 versus 30 splits.

20 Q. Let's go, if we can, back to your supplement report?

21 A. Yes.

22 Q. Pages 5 and 6, Section 3 of that report. We start at  
23 page five. You testified today that you did some analysis of  
24 the Jessamine Plan; is that right?

25 A. That's right. I think that's the right pronunciation.

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

404

1 I'm told it's the State flower.

2 Q. That's right. So it's J-e-s-s-a-m-i-n-e, correct?

3 A. Yes.

4 Q. And do you know who the map drawer was of that plan?

5 A. The person who drew the map, I do not know. As I've been  
6 informed, the entity who drew the map was the NRRT, the  
7 National Republican Redistricting Trust. But there were  
8 probably one or more staffers at the mouse, if you will, and I  
9 don't know who they were.

10 Q. And do you know when the map drawer drew the plan?

11 A. I do not.

12 Q. Or when it was provided to Senate staff?

13 A. All I know is when it was provided to me, which was in  
14 August of this year.

15 Q. So, you don't know whether it was provided to Senate  
16 staff after the deadline for public submissions?

17 A. Oh, I do not know.

18 Q. Or after the Senate staff plan was released publicly?

19 A. No idea.

20 Q. And do you know whether this Jessamine map was based on  
21 the November 2021 Senate staff plan?

22 A. I have no knowledge of that kind.

23 Q. And do you know who reviewed the plan?

24 A. I don't.

25 Q. And do you know whether that person made any changes to

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

405

1 the map, based on this plan?

2 A. No.

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

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

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

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

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

13 A. Yes.

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

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

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

19 A. Correct.

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

21 A. I believe you.

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

25 A. That's right.

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

406

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

2 A. That's right.

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

5 A. Not in this section.

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

8 A. Uh-huh.

9 Q. -- about incumbency; do you recall that?

10 A. Yes.

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

13 A. What might those be?

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

16 A. I would call that core preservation.

17 Q. Okay.

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

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

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

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

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

407

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

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

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

6 A. Yes.

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

9 A. Yes, that's right.

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

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

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

16 A. Let's see if I've written that. I say: "This produces a  
17 map that cuts those areas in a way that neither respects  
18 traditional redistricting principles, nor publicly identified  
19 community needs."

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

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

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

408

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

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

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

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

10 A. I do.

11 Q. Where is it?

12 A. So Berkeley is next to Charleston.

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

16 A. "U" shape in blue. Oh, I see what you mean.

17 Q. Like a rotated "U" shape in blue around a gray  
18 protrusion?

19 A. Uh-huh.

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

21 A. That's right.

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

24 A. That's right.

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

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

409

1 here, repaired split VTDs?

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

9 Q. And that's based on your comparison of the 2022 plan and  
10 2022 VTD lines, the 2012 plan and the 2012 VTD lines; is that  
11 right?

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

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

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

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

20 A. As I mentioned this morning, those may change at all  
21 times. They can change in between censuses. They can change  
22 at the discretion of local officials. If you're asking if I  
23 know the protocol for changing precincts in South Carolina, I  
24 do not.

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



1 highlight here, fix split precincts in South Carolina?

2 A. Not specifically.

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

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

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

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

11 Q. Where is your political analysis of these changes?

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

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

24 A. That's right.

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

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

411

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

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

5 A. Yes.

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

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

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

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

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

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

22 Q. I'm sorry?

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

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

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

412

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

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

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

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

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

11 Q. And where did that training take place?

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

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

19 A. Definitely not.

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

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

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

413

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

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

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

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

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

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

414

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

4 A. Definitely.

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

7 A. In the world? Yes.

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

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

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

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

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

17 A. That, I have no way of knowing.

18 Q. And are you aware that there are thousands more e-mails  
19 that were not in that set?

20 A. I would accept that easily.

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

24 A. Absolutely correct.

25 Q. And reasonable people could identify different

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

415

1 communities than the ones you identified, correct?

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

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

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

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

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

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

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

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

18 A. I believe you.

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

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

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

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

416

1 A. Well, I think a great deal of the testimony was actually  
2 about legislative plans. After all, the sessions were  
3 convened by the House and by the Senate. And you'll see, even  
4 in the excerpts that I include in the appendix to this report  
5 explicitly -- you know, it's Senate districts and sometimes  
6 House districts that are being discussed. But often, the  
7 testimony isn't about a particular plan, but about the desire  
8 to keep a community together to give it a voice.

9 Q. Sure. And have you discussed this testimony with any  
10 members of the public who gave it?

11 A. Can't be sure.

12 Q. To your knowledge?

13 A. To my knowledge, I think there may be some testimony from  
14 LDF staff in there, if I remember right. So, it's possible  
15 that I've talked to those people, but that's not part of this  
16 analysis.

17 Q. So, other than those fine people, have you talked to  
18 anybody else, to your knowledge or memory?

19 A. Not to my knowledge.

20 Q. And so, the individuals who are listed in your appendix,  
21 you haven't talked to them personally?

22 A. No. That's right.

23 Q. And you haven't discussed with them whether they believe  
24 the enacted plan respects their community of interest then; is  
25 that right?

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

417

1 A. In particular, I haven't discussed that because I haven't  
2 discussed anything with them, as far as I know.

3 Q. And if I told you, you identified 41 individuals in your  
4 Appendix B, would that sound reasonable?

5 A. That sounds reasonable.

6 Q. And do you know how many members of the public actually  
7 testified at the hearings whose transcripts you reviewed?

8 A. Oh, there must be hundreds.

9 Q. If I told you it was maybe 292 or so, would that sound --

10 A. That sounds right.

11 Q. -- in the ballpark?

12 A. Yeah.

13 Q. And some members of the public testified that they  
14 supported the existing districts and the treatment of their  
15 communities under the benchmark plan; is that right?

16 A. Under the benchmark plan? Yes.

17 Q. And that includes members of the public you identify in  
18 your Appendix B, doesn't it?

19 A. It may.

20 Q. Okay.

21 MR. GORE: Let's pull up, if we can, Senate  
22 Exhibit 231-A, which is admitted into evidence.

23 **BY MR. GORE:**

24 Q. This is a transcript of a Senate hearing in Charleston on  
25 August 10th, 2021.



DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

418

1 A. Uh-huh.

2 Q. And if we scroll down to page 18, the witness's name is  
3 Mr. Dickie Schweers, S-c-h-w-e-e-r-s, and I am hoping that I  
4 am pronouncing that somewhere in the ballpark. If we scroll  
5 down to page 21, Mr. Schweers, starting on line 6, is talking  
6 about how he's an elected representative in Charleston. He  
7 says: "I feel like I represent those folks very well. I also  
8 feel like those Senate districts need to do the same. They do  
9 now. And I would ask that you largely, at least, keep those  
10 Senate districts intact because of their relationship to the  
11 coastal communities of interest." Did I read that correctly?

12 A. Sounds right.

13 Q. Now, if we flip back to page 32 of your report, you've  
14 identified Mr. Schweers in your Appendix B. And on page 31,  
15 he's under the category "Coastal and Lowcountry COIs  
16 Disregarded."

17 A. That's right.

18 Q. And here on page 32, you cite some testimony from Mr.  
19 Schweers, but you don't cite the testimony where he says that  
20 the existing districts largely represent his community, right?

21 A. Am I misremembering? Wasn't he talking about Senate  
22 districts?

23 Q. Oh, he may have been. But, here, you're citing him as an  
24 example of someone who would claim that the coastal or  
25 lowcountry COIs were disregarded.

1 A. In the Congressional Plan -- no, that's right. Let me  
2 explain. So, the Senate Plan, which, as I understand it, was  
3 never challenged, handles districting differently, makes  
4 districts of different sizes, uses a different population  
5 balance. It's a different matter, not one that's before us  
6 today.

7 The reason that I'm citing council member, Dickie  
8 Schweers, here, is that he's one of quite a few people who is  
9 talking about this kind of coastal and lowcountry set of  
10 shared interests or shared identity. And so, that's exactly  
11 the point that I'm trying to make, is that when we look at the  
12 plans that were before the legislature, some of them do, and  
13 some of them don't configure their congressional districts in  
14 a way that seem to me to be respectful of those shared needs.  
15 That's why he cited that, and I think that's appropriate.

16 Q. And do you know whether council member, Schweers,  
17 believes that the enacted plan respects his community of  
18 interest?

19 A. I have no idea.

20 Q. And do you know whether his Senate district is wholly  
21 contained within a congressional district?

22 A. I don't.

23 Q. And if it were wholly contained within a congressional  
24 district then his community of interest would be within that  
25 congressional district as well, right?

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

420

1 A. No. That's not what I'm trying to do here. What I'm  
2 trying to do here is talk about the shared interests that the  
3 coastal communities and the Lowcountry counties have in  
4 common. That's how he's being cited. And then later, I can  
5 take various congressional plans and I can ask: Are they  
6 keeping these Lowcountry counties whole? Are they keeping  
7 them together? Are they creating a coastal district that  
8 takes some of these discussed areas and keeps them together,  
9 where possible? So, that's the analysis that I'm doing here.

10 Q. Do you know what definition of "coastal" Mr. Schweers was  
11 using in his testimony?

12 A. I haven't met Mr. Schweers.

13 Q. And so, is it possible he's using a different definition  
14 of "coastal community of interest" than you are?

15 A. Well, I think "coastal" would mean near the water.

16 Q. But what he would include or delineate is his community  
17 of interest may be different from your understanding; is that  
18 right?

19 A. Oh, that's definitely right. And I should say, that's  
20 one of the reasons I think it's so fundamentally important to  
21 ask people to draw or map the areas that they're talking  
22 about, because, otherwise, there's just a really large amount  
23 of guesswork involved.

24 Q. And we have nothing like that in the record in this case,  
25 that you're aware, correct?

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

421

1 A. Would, that we did.

2 Q. Let's go to Exhibit 229-A, if we can. This is another  
3 transcript from the Senate hearing. This one took place in  
4 Beaufort. And if we start on page 29, just to confirm that  
5 the witness here is Mr. Scott Anderson. And Mr. Anderson's  
6 testimony continues to page 32.

7 A. Oh, yes. I think I remember jellyfish harvesting.

8 Q. And he says, starting on line 2: "My point being that  
9 local issues are best understood and appreciated by those who  
10 are local. Our current representatives work extremely well  
11 together in looking out for the unique demands of the  
12 Lowcountry." Is that correct?

13 A. That's right. Although from this snippet, I can't be  
14 sure whether he's talking about congressional representatives  
15 or legislative representatives. I'm not sure.

16 Q. And if he's not saying anything about congressional  
17 representatives, then that doesn't really bear on the enacted  
18 plan, does it?

19 A. No. Again, I would say the way that I'm using this  
20 testimony is to try to understand the shared interests. Those  
21 are, after all, the basis of COIs as I understand them and as  
22 they are described here in the guidelines. What I'm  
23 extracting from these isn't so much instructions, put me here,  
24 put me with these people, don't put me with those. I think  
25 those kinds of instructions, which are frequently heard in

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

422

1 public testimony, are very hard to weigh and to synthesize.

2 Instead, I just want to be clear, what I'm doing here is

3 trying to identify what are the shared interests, especially

4 as they align with the categories in the guidelines. And so,

5 just what's on screen now, you can see the unique demands are

6 described as growth, tourism, environmental concerns along the

7 coast, just to name a few. These are the kinds of things I

8 was looking for, not so much the testimony about whether

9 they're happy with their legislative representation.

10 Q. And you don't know how Mr. Anderson defines the term,

11 Lowcountry, correct?

12 A. I don't.

13 Q. Or what he means by his coastal environment or coastal

14 community, correct?

15 A. I have not had a chance to interview him. I can only use

16 what's on the record here.

17 Q. And if we go -- sticking here at 229-A -- down to page

18 62, just to confirm on page 62, this is the testimony of Mr.

19 Murdaugh, M-u-r-d-a-u-g-h. And if we scroll down, Mr.

20 Murdaugh's testimony is at the bottom of page 64. And he

21 starts on line 22. He's talking about Colleton County on

22 line 19. And he says on 22: "I'm speaking mostly of the

23 Senate district. I'm not getting into the congressional

24 districts, and this really applies to the Senate and the

25 House." Is that right?

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

423

1 A. Again, the relevance for me is about the shared interest  
2 in the areas of the state that he's describing.

3 Q. Is it possible that Mr. Murdaugh is defining his  
4 community of interest differently for the House and Senate, as  
5 opposed to the congressional district?

6 A. Oh. Well, that's -- it's interesting to think about  
7 whether what constitutes a relevant community might be  
8 dependent on the kind of districting that you're talking  
9 about. I would say that that might be an open question. But  
10 as to where people have shared interests with policy  
11 ramifications, that's the kind of testimony I was looking for  
12 in this record.

13 Q. But you don't know whether any of these individuals  
14 shared that view of their communities of interest with respect  
15 to the Congressional Plan; is that right?

16 A. Would you mind rephrasing that?

17 Q. Sure. You didn't discuss this testimony with any of  
18 these people; is that right?

19 A. Thank you. I did not.

20 Q. And so, you don't know their views on what their  
21 community of interests would be in a congressional district;  
22 is that right?

23 A. I'm not sure that -- from the guidelines, for example,  
24 it's contemplated that the definition of "community" might be  
25 plan-specific. I'm just not sure that's contemplated here and

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

424

1 I definitely can't tell you whether that was in the minds of  
2 these commentators.

3 Q. But it's certainly possible it was in the mind of the  
4 voter or citizen who testified publicly, right?

5 A. Sure. I can imagine a citizen who would think one kind  
6 of community was relevant for one map and a different kind of  
7 community was relevant for a different map.

8 Q. Let's move on to page 16 of your report, if we can.

9 A. Uh-huh.

10 Q. I believe what you're looking at here, if we get to  
11 Figure 4, is a map of South Carolina but with emphasis on  
12 District 1; is that right?

13 A. That's right.

14 Q. And District 1, in the enacted plan -- or at least  
15 District 1 in the benchmark plan split Dorchester, Charleston,  
16 Colleton, and Beaufort Counties; is that right?

17 A. I think that's right.

18 Q. And are you aware of any public testimony that supported  
19 maintaining District 1 in its benchmark configuration?

20 A. I don't recall any as I sit here, but certainly I'm  
21 willing to believe that that exists.

22 Q. Okay. Can we go to page 33 of your report? It's a  
23 statement from a Mr. Mark Hartley.

24 A. Did you say 33?

25 Q. Yes.

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

425

1 A. Yes.

2 Q. And he says: "I represent the 1st District on the board.  
3 And the 1st District is -- congressional district is largely  
4 coastal. It runs along South Carolina coast from  
5 C-a-l-i-b-o-g-u-e Sounds in Jasper County through the coastal  
6 portions of Beaufort, Colleton, and Charleston Counties, up to  
7 the Santee River. As a 1st Congressional District  
8 representative on DNR board, I can attest to the 1st  
9 Congressional District as a community of interest." Did I  
10 read that correctly?

11 A. Yes.

12 Q. So, let's go back to page 16 of your report, if we can.

13 A. Sure.

14 Q. And I believe, on page 16, you use the phrase "coastal  
15 and Lowcountry COIs;" is that right?

16 A. Yes.

17 Q. And your definition of "Lowcountry," if you will refresh  
18 my memory, is what exactly?

19 A. Well, I took it to be the collection of four counties at  
20 the tip, which I believe are Jasper, Beaufort, Colleton, and  
21 Hampton Counties.

22 Q. And other than coastal being on the coast, do you have a  
23 more refined definition of which regions you consider  
24 "coastal" for purposes of this analysis?

25 A. Generally, the testimony that I reviewed is talking about



DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

426

1 from the Lowcountry up through Charleston County. A lot of  
2 the coastal testimony is about that part of the state.

3 Q. And are you aware of any public testimony that supported  
4 keeping coastal Charleston split from the City of Charleston  
5 or North Charleston?

6 A. I don't, as I sit here, but I don't deny that it's  
7 possible.

8 Q. If we can go back to Senate Exhibit 231-A, and start on  
9 page 14, to confirm that the witness here is Mayor Goodwin of  
10 Edisto Beach. And if we scroll down to page 17 of this, we'll  
11 pick up some more of Mayor Goodwin's testimony. And starting  
12 there on line 7, he says: "So, in closing, I request that the  
13 reapportionment committee realize beach-front communities are  
14 important communities of interest. For example, in many ways  
15 Folly Beach has more in common with Edisto Beach, Isle of  
16 Palms, Sullivan's Island, Johns Island -- I mean, excuse me,  
17 Sullivan's Island and Isle of Palms, than we do with Johns  
18 Island, the city of Charleston, or the city of North  
19 Charleston. And with that in mind we ask that you preserve  
20 our long coastal beach-front Senate districts as much as  
21 possible, Districts 43 and 34, in Charleston County." Did I  
22 read that correctly?

23 A. Uh-huh.

24 Q. And do you know where District 43 is located?

25 A. Oh, I don't. I mean, I can't provide that for you as I

1 sit here.

2 Q. And so, you're not aware that it extends along the  
3 Charleston coast but doesn't take in any of the city of  
4 Charleston or North Charleston?

5 A. Certainly willing to accept that.

6 Q. Let's go back to page 16 of your report and resume our  
7 discussion of the coastal and Lowcountry COIs. I believe you  
8 said that the Harpootlian Plan is highly cognizant of these  
9 COIs. Is "highly cognizant" a technical term?

10 A. No. I don't mean it to be.

11 Q. And you acknowledged, Doctor, I think earlier today, that  
12 redistricting involves tradeoffs, correct?

13 A. Fundamentally.

14 Q. And added emphasis on one metric can come at the expense  
15 of other metrics; is that right?

16 A. Definitely true.

17 Q. So, making these communities whole would have required  
18 tradeoffs with other objectives the General Assembly might  
19 have wanted to pursue; is that correct?

20 A. That's right.

21 Q. And that could have been preserving the core's of  
22 districts, for example?

23 A. For example.

24 Q. Or even preserving other communities of interest; is that  
25 right?

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

428

1 A. That's right.

2 Q. So, at the bottom of page 16 of your report, I believe  
3 you say in this: "Coastal and Lowcountry COI's are  
4 disregarded. COI testimony asked to keep together coastal  
5 communities and Lowcountry communities, Particularly Jasper,  
6 Charleston, Colleton, and Beaufort but these are -- Beaufort,  
7 but these are split in the State's map."

8 So, you mentioned here that Beaufort County is split in  
9 the enacted plan, correct?

10 A. I think what I mean here is, I took those four counties  
11 that I mentioned before together to constitute a Lowcountry  
12 COI. And that's what's split. So, it's not that Beaufort  
13 County itself is split, it's that it's split off from the  
14 others.

15 Q. And does your appendix cite to witnesses who identify  
16 Beaufort County as a community of interest?

17 A. It most likely does.

18 Q. And so, for any of those witnesses, their community of  
19 interest is respected by the enacted plan, keeping Beaufort  
20 County whole, right?

21 A. It's true that for anyone for whom Beaufort is their  
22 salient COI, they would be pleased that it was kept whole.

23 MR. GORE: Can we go back to page 33 of Dr. Duchin's  
24 report.

25 BY MR. GORE:

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

429

1 Q. And there's testimony here from an individual named Queen  
2 Quet. And this is testimony given at one of the public  
3 hearings about Gullah Geechee Community; is that right?

4 A. That's right.

5 Q. And she mentioned the Sea Islands, St. Helena Island,  
6 Polawana Island, Dataw Island, and that's here in Beaufort  
7 County, but we also have a kinship with Edisto Island." Did I  
8 read that correctly?

9 A. Yes.

10 Q. And are you aware that all of those island communities,  
11 coastal communities, mentioned are in Congressional District 1  
12 under the enacted plan?

13 A. That sounds right.

14 Q. Let's go back to page 16 of Dr. Duchin's report. And you  
15 mention here that Districts 1 and 6 in Dorchester split six  
16 VTDs; is that correct?

17 A. At least, because there are six that I described. There  
18 may be more.

19 Q. And you did not review the full legislative record for  
20 justifications for those splits, did you?

21 A. I did not.

22 Q. And did you examine whether the District 1 through 6 line  
23 here, follows the line for House District 98?

24 A. I did not examine that.

25 Q. Now, if we go back to page 17, you say Charleston County

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

430

1 is split erratically; is that correct?

2 A. Yes.

3 Q. And I believe you testified this morning that the black  
4 lines are district lines and the red lines are municipal  
5 lines; is that right?

6 A. That is right.

7 Q. And are these municipal lines in red true and accurate?

8 A. To the best of my knowledge.

9 Q. And are you aware that James Island is an independent  
10 municipality surrounded by the city of Charleston?

11 A. I'm not, but that is frequent. It's often the case that  
12 cities have holes in them that include either unincorporated  
13 territory or separately incorporated territory.

14 Q. And are any of those doughnut holes in the city of  
15 Charleston shown on your map here?

16 A. I don't think they're visible here. Maybe covered up by  
17 the label, but I can't be sure.

18 Q. I want to call your attention, Dr. Duchin, to the  
19 district line near North Charleston -- actually, a little bit  
20 north of North Charleston. There's a shape that looks like a  
21 flagpole -- a flag on a flagpole or maybe a dog leg left on a  
22 golf course. This one right here in black.

23 A. In black. Sure.

24 Q. Did you examine whether that shape follows the county  
25 line between Charleston and Dorchester?

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

431

1 A. I'm sure that I did examine that, but that's not visible  
2 in this picture.

3 Q. But you believe that it did actually follow the county  
4 line?

5 A. That's not the kind of thing I could tell you live,  
6 without an appropriate demonstrative.

7 Q. But it's possible, right?

8 A. It's possible.

9 Q. And you haven't shown the benchmark lines here, correct?

10 A. That's right, I have not.

11 Q. Okay. So, you're not examining only changes to the  
12 district line made by the enacted plan, correct?

13 A. That's right. I'm examining the enacted plan's lines.

14 Q. And that includes lines that the enacted plan inherited  
15 from the benchmark plan, as well as lines that have changed  
16 from the benchmark plan, correct?

17 A. That's right. I think that's come up quite a number of  
18 times already, that many features are held over while others  
19 are changed, sometimes in a manner that's thought to heal  
20 problems, and sometimes in a manner that creates new problems.

21 Q. And when we talk about things that were kept, or retained  
22 or inherited, do you know whether the city of North Charleston  
23 was changed at all in the enacted plan from the benchmark  
24 plan?

25 A. By that, I think you mean the treatment of the city

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

432

1       rather than the city boundaries.

2       Q.   Yes.  Was any part of North Charleston moved in the  
3       enacted plan from one district to another?

4       A.   I think that we looked at that earlier today.  I can't  
5       remember the answer, but I think -- well, perhaps you can tell  
6       me what you think the answer is.

7       Q.   I'm just curious as to your answer.  Do you know one way  
8       or the other?

9       A.   I can't tell from this picture, honestly.

10      Q.   And was any part of North Charleston in District 6 in the  
11      benchmark plan, to your memory?

12      A.   I'm sorry, but I'm not sure.

13      Q.   And is it possible that the portion of North Charleston  
14      in District 6 in the benchmark plan remained unchanged to the  
15      enacted plan?

16      A.   That is possible.

17      Q.   That the enacted plan did not change District 6's  
18      treatment of North Charleston; is that possible?

19      A.   That's possible.  I think that's actually addressed, that  
20      it's -- despite -- let's see if I say this here.  Public  
21      comment is particularly vocal on North Charleston, that is to  
22      say, I think what you're saying is quite right, and what I'm  
23      pointing out here, what I'm flagging, is that there were quite  
24      a number of residents of North Charleston who testified that  
25      they're harmed by the treatment of their city.  Nonetheless,

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

433

1 that was not among the features that were healed.

2 Q. So, in other words, North Charleston is the same between  
3 the benchmark plan and the enacted plan, the treatment of  
4 North Charleston is the same. And what you're pointing out is  
5 that some people advocated for different treatment?

6 A. That's exactly right.

7 Q. And were there any people who advocated for the same  
8 treatment?

9 A. I don't specifically remember anyone saying that they  
10 love the way North Charleston was divided up, but it's  
11 certainly possible.

12 Q. And have you examined whether the changes the enacted  
13 plan made in Charleston County placed all of coastal  
14 Charleston in the same district?

15 A. Again, difficult to answer that question in great  
16 specificity. But I think I already talked about this, in  
17 part, earlier today when I mentioned the way that BVAP is  
18 split between Districts 6 and 1 in Charleston County, with the  
19 bulk of Black adults in Charleston County going into District  
20 6, which extends, as we know, all the way up to Richland.

21 Q. Correct. And have you examined whether the changes in  
22 the enacted plan made in Charleston reunited the Charleston  
23 Peninsula in a single district?

24 A. I didn't specifically look at that.

25 Q. And have you examined whether those changes follow



*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

434

1 natural geographic lines in Charleston County, such as the  
2 Stono and Cooper Rivers?

3 A. I did not look at that.

4 Q. And you did not, at least in your report, say anything  
5 about the political effect of these changes in Charleston  
6 County, correct?

7 A. Well, I think what I talked about earlier is entirely  
8 consistent with the big picture story that I addressed on  
9 direct, which is it may well be the case that there were  
10 partisan goals in the division of the county, but how those  
11 partisan goals were achieved was by sorting the Black  
12 population of this county so that the bulk of the Black  
13 population falls in this district that stretches all the way  
14 through the state.

15 Q. Here on page 17, you don't say anything about whether the  
16 enacted plans changed a Republican or Democratic vote share in  
17 Charleston County in either district; is that right?

18 A. That's not -- you're right. That's not what this section  
19 is about.

20 Q. And in this section, did you examine whether the enacted  
21 plan changes in Charleston repaired split VTDs?

22 A. As I mentioned before, I don't think -- I regard the plan  
23 as healing overall more VTDs than before. I think it  
24 maintains the status quo number of splits. But if you're  
25 asking whether I looked at whether the changes tracked the VTD

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

435

1 boundary changes -- was that your question?

2 Q. Go ahead and answer that question, if you'd like.

3 A. Just trying to make sure I understand. I did not look at  
4 that specifically in this case.

5 Q. And you mentioned North Charleston, which you already  
6 spoke of Summerville and Ladson as well here on page 17; is  
7 that right?

8 A. Yes.

9 Q. And all three of those cities were split in the benchmark  
10 plan; is that right?

11 A. Let's see. I don't think it says that here, but I'm  
12 willing to accept that.

13 Q. In any event, I think you do recognize that those cities  
14 all span more than one county; is that right?

15 A. Definitely, that's correct. Summerville and Ladson span  
16 two counties, while North Charleston spans three.

17 Q. So, making those cities whole requires a tradeoff between  
18 city splits and county splits, correct?

19 A. I believe that's exactly the point I was making this  
20 morning.

21 Q. And was there any requirement in the guidelines or  
22 otherwise for the General Assembly to choose county splits  
23 over city splits or vice versa?

24 A. No.

25 Q. And are you aware that counties, rather than cities,

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

436

1 administer elections in South Carolina?

2 A. That would be in keeping with most states.

3 Q. And you testified yesterday that many South Carolinians  
4 identify their community of interest by their county, correct?

5 A. Yes. More than in some other states I've studied.

6 Q. I'd like to go now back up to page 16 of your report,  
7 where you discuss Jasper County.

8 A. Yes.

9 Q. And you note that two precincts from Jasper County are  
10 placed in District 1. Are you aware of any anything in the  
11 legislative record supporting that split?

12 A. The split of those particular precincts?

13 Q. Yes.

14 A. I don't recall.

15 Q. And are you aware of any public testimony supporting that  
16 split?

17 A. Oh, I thought that was your last question. I'm sorry.  
18 What was your last question?

19 Q. The legislative record.

20 A. Oh, okay. No, I did not read the legislative record, and  
21 I don't recall any specific public testimony either on that  
22 point.

23 Q. Can we go to page 34 of your report, which is part of  
24 Appendix B. I want to look at the testimony of Timothy Wyld  
25 (*phonetic*).

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

437

1 A. Yes.

2 Q. And Mr. Wyld says: "I live in Sun City, which should be  
3 in the dictionary as the definition of a community of  
4 interest. Unfortunately, I live on the north side of Sun  
5 City, and even the map that your wonderful cartographer has  
6 drawn over there, does not recognize our little section of Sun  
7 City that is in Jim Clyburn's district. We are not contiguous  
8 with any county other than Beaufort. We are totally  
9 surrounded by Beaufort County."

10 So, are you aware that those two precincts in Jasper are  
11 part of the Sun City community of interest that extends into  
12 the Beaufort County?

13 A. I'm willing to accept that.

14 Q. And are you aware that, in fact, those two precincts are  
15 just across the road from Beaufort County in the Sun City  
16 community?

17 A. I accept that.

18 Q. Let's go back to page 18 of your report. Before we get  
19 into this, just one more question about Jasper. Are you  
20 aware, one way or the other, as to whether that was the reason  
21 the map drawer placed those precincts into District 1?

22 A. Oh, as I've said, and as I'll repeat, I have no special  
23 knowledge of process for the map drawer.

24 Q. And let's move now to District 2, picking up on page 18.

25 A. Sure.

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

438

1 Q. Would you start with Orangeburg County?

2 A. Yes.

3 Q. And Orangeburg County was already split under the  
4 benchmark plan, correct?

5 A. That's right.

6 Q. So, making Orangeburg County whole might have required  
7 splitting another county somewhere else; is that right?

8 A. I don't know that it would. Since there are already a  
9 number of split counties, it's likely that you could have made  
10 this county whole, without an additional county split.

11 Q. But it would have required a tradeoff of some other  
12 principle, correct?

13 A. Well, not necessarily. In the meaning of worsening  
14 another principle, that's not necessarily the case, though it  
15 could be.

16 Q. And are you aware of any testimony in support of  
17 maintaining the split of Orangeburg County?

18 A. Not specifically.

19 Q. And do you know which precincts were moved from District  
20 6 to District 2 in Orangeburg County?

21 A. You mean their names?

22 Q. Yes.

23 A. No. That would be really impressive, wouldn't it?

24 Q. That would be quite impressive. Are you aware of any  
25 public testimony supporting that move?

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

439

1 A. No.

2 Q. And have you examined whether any of the changes in  
3 Orangeburg conform the district line to the VTD line?

4 A. That seems reasonable to think that they would.

5 Q. Next, you talk about on page 18, the hook into Columbia.

6 A. Yes.

7 Q. And you acknowledge that that hook has been present in  
8 the plan for quite some time, right?

9 A. I do.

10 Q. And you're aware that it was present in the benchmark  
11 plan, correct?

12 A. In particular.

13 Q. And are you aware that it was present in the 2002 plan?

14 A. I believe, I remember that from Mr. Trende's report.

15 Q. And that plan was drawn by a court?

16 A. May well be.

17 Q. Are you aware of anything in the legislative record to  
18 support maintaining that hook?

19 A. Specifically, in that language, I don't remember that.  
20 Although, again, there's just so much testimony, that I really  
21 wouldn't want to be swearing to what's not in the testimony.

22 Q. And I think you said earlier today that you thought this  
23 hook shape was a candidate for change in the district; is that  
24 right?

25 A. That's right. I think that most observers would agree

1 that it's a non-compact feature.

2 Q. But if it had been upheld as legal in the past, that  
3 would be a reason a map drawer might want to keep it, right?

4 A. That, frankly, doesn't make a great deal of sense to me,  
5 just in the sense that legality of the plan overall wouldn't  
6 be a reason to maintain it's least attractive features.

7 Q. But a map drawer may not want to make changes to things  
8 that have been upheld in the past, correct?

9 A. I would think that generally the map drawer would be  
10 using the opportunity of a redraw to improve the map. In  
11 fact, I think that we've heard that repeatedly.

12 Q. And moving the hook shape might be worse for the map on  
13 other criteria, correct?

14 A. I'm sure that's true. Well, it depends on how you  
15 addressed it.

16 Q. Let's go to page 19, where you talk about splitting in  
17 and around Columbia.

18 A. Sure.

19 Q. You note the splitting of the cities of Cayce, Columbia,  
20 and Forest Acres.

21 A. Yes.

22 Q. And Columbia was split under the benchmark plan, correct?

23 A. Yes. Yes, it was.

24 Q. And are you aware of any testimony supporting these  
25 splits?

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

441

1 A. Not specifically.

2 Q. And have you examined whether any of the changes in  
3 Richland County conform the district line to the VTD line?

4 A. I think that would be the expected behavior.

5 Q. And how about whether it conforms the congressional  
6 district line to the line between Senate Districts 21 and 22?

7 A. I didn't examine that.

8 Q. Let's go now to the next page, where you discuss District  
9 5, on page 20?

10 A. Yes.

11 Q. You note the split of Sumter here; is that right?

12 A. That is right.

13 Q. And was Sumter split in the benchmark plan?

14 A. I believe that it was.

15 Q. You also mention City of Sumter, East Sumter, and  
16 Mulberry; is that right?

17 A. Yes.

18 Q. And were those communities split in the benchmark plan to  
19 your knowledge?

20 A. I think so.

21 Q. And are you aware of anything in the legislative history  
22 supporting this split in Sumter?

23 A. You mean the fact that it is split, or the way that it is  
24 split?

25 Q. How about the fact that it's split, first.



*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

442

1 A. Was there testimony saying that Sumter is better served  
2 by being split?

3 Q. Yes.

4 A. I don't recall that.

5 Q. And have you examined whether the changes the enacted  
6 plan made to Sumter place more of the city of Sumter in  
7 District 6?

8 A. I have not looked at that, specifically.

9 Q. And have you examined whether the changes in Sumter  
10 conform the district line to the VTD line?

11 A. That would be expected.

12 Q. I believe you state in your report, the bottom of page  
13 20, that one Sumter precinct is split along parts of two roads  
14 that appear to be in the middle of a cemetery?

15 A. Yes.

16 Q. Is that right?

17 A. That is right.

18 Q. And you agree, as a general matter, that people  
19 ordinarily do not live in cemeteries, right?

20 A. I believe we discussed this in the deposition.

21 Q. We did.

22 A. And my answer then and now is that it can be really  
23 surprising, as someone who studies census data, just where  
24 people are said to live. But as a general matter, I certainly  
25 agree, that we don't expect too many people to be living in a

1 cemetery.

2 Q. So, if this precinct is, in fact, split in the middle of  
3 a cemetery, you can't say for sure that it affects any  
4 population at that split, correct?

5 A. That's correct, I'm not sure. Nonetheless, it's a good  
6 principle of redistricting to try to make divisions along  
7 major roads, major features of natural geography, cognizable  
8 splits. And I think one that runs through a cemetery wouldn't  
9 qualify.

10 Q. And what did you do to locate the precise location of  
11 this split in this road?

12 A. So, generally, when I was trying to understand the  
13 character of these splits, I used various kinds of mapping  
14 software to look both at neighborhood names, to look at the  
15 presence of businesses, community centers, and other kinds of  
16 buildings. I sometimes used satellite view to try to  
17 understand if they were high density or low density areas. Is  
18 that what you mean?

19 Q. Uh-huh. Yeah. Thank you. Let's move on to Section 6 of  
20 your report, if we can.

21 A. Sure.

22 Q. It starts on page 22. And this is vote dilution compared  
23 to a neutral baseline, correct?

24 A. Yes.

25 Q. You did not conduct a *Gingles* analysis for this report,

1 correct?

2 A. That's right. A *Gingles* analysis, in full, would be  
3 suited to a VRA challenge, which this is not.

4 Q. And so, your use of the phrase "vote dilution" here is  
5 not vote dilution for purposes of Section 2 of the Voting  
6 Rights Act, correct?

7 A. No. I believe it's actually echoing language in the  
8 guidelines.

9 Q. So, here, you're intending to incorporate the guidelines  
10 and the guidelines definition rather than Section 2  
11 definition; is that right?

12 A. Well, as you noted earlier quite rightly, the guidelines  
13 aren't very precise. But I'm intending to echo the language  
14 of the guidelines.

15 Q. You're not intending to echo the language of Section 2 or  
16 *Gingles*, correct?

17 A. Some of the methodology will certainly overlap, but it's  
18 not a *Gingles* analysis, as you said.

19 Q. And so, if the guidelines were, in fact, using the  
20 Section-2 definition of voter dilution, that would not be  
21 captured within your analysis, correct?

22 A. Well, tell me if this is what you mean. I think you have  
23 on the record, alternative plans, including some that create  
24 an additional majority district. I think you have on the  
25 record a racially polarized voting analysis, not conducted by

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

445

1 me but by another plaintiffs expert. So, I think many of the  
2 ingredients are present, if not all, of the basic ingredients.  
3 But this is not intended to be a VRA analysis. It's my  
4 understanding right?

5 Q. I think so. And so, if the guidelines are referencing  
6 some kind of VRA analysis, that's not this, correct, the  
7 analysis you've done?

8 A. This would go to that.

9 Q. But it's not a *Gingles* analysis, correct?

10 A. Sure.

11 Q. And so, how do you define vote dilution here?

12 A. Right. Okay. So, what I've tried to do in this  
13 section -- we heard about this earlier, but just to  
14 recapitulate. In this section, I'm looking at demographics.  
15 I'm looking at how, in particular, the Black voting age  
16 population is distributed, and I'm looking at how we might  
17 have expected it to be distributed under the framework  
18 articulated in the rules and guidelines.

19 Q. And so, I think you used the phrases "cracking" and  
20 "electoral opportunity"; is that right?

21 A. Yes.

22 Q. And your definition of electoral opportunity means having  
23 a reasonable likelihood to prevail in elections; is that  
24 right?

25 A. Reasonable likelihood or, I would say, at the risk of

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

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

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

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

13 A. Definition of?

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

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

17 Q. Yes. And thank you for correcting.

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

21 Q. But under Section 2, there's a requirement of a  
22 50-percent-plus-one district, correct?

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

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

1 electoral opportunity, correct?

2 A. In my understanding, neither does the VRA require that as  
3 part of the definition of opportunity. I think it's a  
4 threshold test for litigation.

5 Q. And so, your definition of electoral opportunity  
6 contemplates crossover voting by non-African-American voters,  
7 correct?

8 A. Definitely. As does the VRA framework, if we continue to  
9 compare them.

10 Q. And in other words, under your definition, a district can  
11 provide minority voters electoral opportunity even if the  
12 minority group can elect its candidate of choice only in  
13 combination with non-African-American crossover, correct?

14 A. Again, this may be changing -- I believe the Supreme  
15 Court took this up just today. But under the current legal  
16 framework that's in common in my analysis here and in the  
17 standing VRA framework.

18 Q. I thought you said that *Bartlett* required a 50-percent  
19 district though, right?

20 A. Okay. Let me try to explain it the way that I understand  
21 it, once again, insisting that I am not a lawyer. But my  
22 understanding is that there are two different elements. One  
23 is a threshold test to advance to litigation. And then  
24 there's a liability phase. Later, there will be a remedial  
25 phase. And my understanding of the body of law is that, at

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

448

1 the remedial phase, there's no need at all for a 50-percent  
2 district. That was a threshold test to launch the litigation.

3 Q. Let me ask the question this way: Does your definition  
4 of electoral opportunity allow for a coalition district?

5 MS. ADEN: Your Honor, I'm just going to object to  
6 the extent that any of these questions call for a legal  
7 conclusion.

8 JUDGE GERGEL: Yeah. I'm just wondering the benefit  
9 of debating with a mathematician, legal standards.

10 MR. GORE: I'm trying to understand, your Honor.

11 JUDGE GERGEL: I think we ought to just move on.

12 MR. GORE: That's fine. I can do that.

13 JUDGE GERGEL: Yeah. She says repeatedly she's not  
14 a lawyer.

15 THE WITNESS: Thank you.

16 BY MR. GORE:

17 Q. So, just to finish out the line of question, I'm trying  
18 to understand how your definition compares to Section 2 and  
19 the Section-2 analysis.

20 A. Sure.

21 Q. But it's possible to have a district with electoral  
22 opportunity and a BVAP as low as maybe 20 percent; is that  
23 right?

24 A. Well, what I don't want to do is presume to tell you how  
25 that would be viewed by a court. I don't want to do that.

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

449

1 But what I am doing here is defining electoral opportunity in  
2 keeping with the scholarly literature that I've contributed  
3 to. And that definition of opportunity is that candidates of  
4 choice can either win or get reasonably close to winning.  
5 That's what I'm calling opportunity here. And I'm agreeing  
6 with you, that as we heard earlier, in South Carolina today,  
7 that could exist with as low as 20-percent BVAP.

8 Q. And if there are a sufficient number of crossover voters,  
9 then the BVAP in the district could be relatively low, as low  
10 as 20 percent, and still provide electoral opportunity under  
11 your analysis, right?

12 A. I think that's what I just said. But in any event, I  
13 agree with that.

14 Q. Thank you. So, let's go to the neutral baseline part of  
15 this heading.

16 A. Yes.

17 Q. And so, you agree it's necessary in a vote-dilution  
18 analysis to identify a neutral baseline; correct?

19 A. I think it's helpful.

20 Q. And you don't use the benchmark plan as the baseline for  
21 analysis here, correct?

22 A. That's correct.

23 Q. And you, instead, use the ensemble plans, correct?

24 A. That's right. I use one or, in fact, several collections  
25 of alternative plans to provide a baseline.



*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

450

1 Q. So, you're not asking whether changes to the enacted plan  
2 made to the benchmark plan are, themselves, cracking in  
3 isolation, correct?

4 A. That's right. The point of this type of inquiry is not  
5 to study things in isolation, but in the context of  
6 alternatives.

7 Q. And so, you're looking -- again, as we talked before --  
8 at all the lines in the enacted plan, both those in the  
9 enacted plan carried over from the benchmark plan, and those  
10 of change, correct?

11 A. That's right.

12 Q. And then you compare all those lines to the ensemble  
13 plans; is that right?

14 A. Well, I compare the statistics.

15 Q. And you said yesterday that the purpose of the ensemble  
16 method is not to simulate how a person draws a map, correct?

17 A. Right.

18 Q. Or how the map drawer in this case drew the enacted plan;  
19 is that right?

20 A. Certainly right.

21 Q. And it's not a cannon aimed at all problems and criteria,  
22 correct?

23 A. That's right. It's not a one-stop shop.

24 Q. And the ensembles considered some of the rules and  
25 criteria, but not all of them, correct?

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

451

1 A. Well, the ensemble method is flexible. You can layer in  
2 rules, as I was discussing earlier. And I think it's  
3 profitable to do so. But it's not a case of simply checking a  
4 number of boxes and saying, there I took everything into  
5 account.

6 Q. And I think you testified earlier that the ensemble  
7 method here didn't generate a hundred-thousand plans that are  
8 ready to be adopted; is that correct?

9 A. That's not the goal.

10 Q. And you agree that the ensemble plans were never proposed  
11 to the General Assembly, correct?

12 A. Certainly.

13 Q. Now, if we go to page 22 of your report, you mentioned  
14 that population balance and contiguity are enforced in the  
15 algorithm; is that right?

16 A. Population balance and contiguity are enforced, yes.

17 Q. So, as I understand the algorithm, you instruct it to  
18 consider certain rules, and it generates plans based on those  
19 rules, correct?

20 A. Well, I design a process for changing one plan to the  
21 next, and the next, and so on. And then I create a long chain  
22 of changes, until I have a big variety of different plans.

23 Q. And for population balance, you did not instruct the  
24 algorithm to draw the plans to a top-to-bottom deviation of  
25 one person, correct?

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

452

1 A. That's right. As I said earlier, the ensemble plans use  
2 whole precincts. There are no precinct splits at all. And  
3 so, it would not be reasonable to expect one-person deviation.

4 Q. And, in fact, you used a one-percent deviation; is that  
5 right?

6 A. That's the main basis. But as I testified earlier, I  
7 also tried it with two percent and half-a-percent to see if  
8 the findings were any different.

9 Q. So, when we look at the histogram on page 23 of your  
10 report, are those plans drawn to a one-percent deviation or  
11 some other deviation?

12 A. I think these are one percent.

13 Q. And in given our ideal district size of around 730,000  
14 people, one percent is about 7,300 people, correct?

15 A. That's right. So, you cannot exceed that amount of  
16 deviation from ideal.

17 Q. And so, the figures and histograms in your report aren't  
18 tuned to a plus or minus one-person deviation, correct?

19 A. That's right. As I said earlier, what I ascertained is  
20 that they're tuneable.

21 Q. And you said just a moment ago that no VTDs are split by  
22 your ensemble plans, correct?

23 A. That's right.

24 Q. And it's your reading of the guidelines that the General  
25 Assembly had to prioritize population equality as a first-tier

1 requirement over avoiding VTD splits as a second-tier  
2 requirement, correct?

3 A. Well, that's right. But my understanding of mapmaker  
4 process -- I've been one myself and also have talked to many  
5 mapmakers -- is that it's quite typical to first make a map  
6 out of precincts and then tune the population as a last step.  
7 I would call that standard practice.

8 Q. And you also say, on page 22, that your algorithm is  
9 implemented with a preference for preservation of counties and  
10 municipalities, correct?

11 A. That's right. I tried it with and without that.

12 Q. But your report doesn't actually provide us any data on  
13 that, correct?

14 A. No. But it's all in the materials that were disclosed.

15 Q. And so, your report doesn't tell us how the ensemble  
16 plans compared to the enacted plan on, say, county splits, for  
17 example?

18 A. That's not written up, correct.

19 Q. Or even on split municipalities, correct?

20 A. That's right.

21 Q. So, some of the ensemble plans may have more splits than  
22 the enacted plan; is that right?

23 A. Well, I can tell you that it's my standard practice to  
24 make sure that the amount of weight that's put on county  
25 preservation and municipal preservation produces numbers that

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

454

1 are in line with the plans under consideration. And so, I did  
2 that here, as I do as a matter of routine.

3 Q. And you also said that you implemented a preference for  
4 compactness, right?

5 A. That doesn't have to be implemented. That's part of the  
6 feature of how the algorithm works.

7 Q. And, again, you didn't provide any data in your report  
8 about the compactness of your ensemble plans; is that right?

9 A. That's right. But I can tell you that, again, it's part  
10 of my standard practice to be sure that the compactness of the  
11 plans is in keeping with the public alternatives. And it was  
12 here.

13 Q. And you say on page 22 that you performed two runs of  
14 this ensemble?

15 A. Well, I described two runs there. There were quite a few  
16 variants.

17 Q. And one of those prioritizes preservation of certain  
18 communities of interest, and one does not, correct?

19 A. That's right.

20 Q. And those communities of interest are the same  
21 communities of interest that we discussed before, right?

22 A. The same.

23 Q. And those were Richland County, Sumter County, Berkeley  
24 County, Charleston County, and the four counties you put in  
25 the Lowcountry; is that right?

1 A. Yes.

2 Q. And so, four of those five communities are simply whole  
3 counties, correct?

4 A. That's right. And so, by adding that as a filter in the  
5 runs, it places a higher weight on keeping those whole than on  
6 the rest of the counties.

7 Q. And because those communities are counties, and the  
8 Lowcountry is defined by counties, those communities overlap  
9 with the -- preserving those communities overlaps with  
10 avoiding county splits as well, right?

11 A. I would say it's aligned.

12 Q. And your algorithm made no use of race data; is that  
13 right?

14 A. Sure.

15 Q. And you say on page 22, that the ensemble generation is  
16 neutral with respect to all their properties; is that right?

17 A. In the sense that they're not addressed in the decision  
18 rules being made along the runs of these changes.

19 Q. I think you said earlier, that includes core  
20 preservation, partisan performance, and avoiding incumbency  
21 pairs, right?

22 A. That's fair.

23 Q. All right. If we go to 6.1, you compared the properties  
24 of the enacted plan to alternative statewide plans that were  
25 made under conditional criteria, correct?

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

456

1 A. Yes.

2 Q. And those are the ensemble plans we just discussed; is  
3 that right?

4 A. Yes. That's one of these ensembles of a hundred-thousand  
5 plans.

6 Q. And you say, on page 22, that cracking would tend to show  
7 up as unusually low BVAP in the second highest district,  
8 correct?

9 A. In particular.

10 Q. And is there a standard or technical term of art for  
11 unusually low?

12 A. No. That's intended to be informal.

13 Q. You agree with me, don't you, Dr. Duchin, that the second  
14 highest BVAP district is not necessarily the second best  
15 electoral opportunity district for Black voters, correct?

16 A. That's certainly true. We heard that throughout the  
17 testimony earlier. That's one of the reasons that I  
18 supplemented this report with that box-and-whiskers plot we  
19 saw before, that shows all the districts across the state.

20 Q. So, let me just follow up on that. So, there are some  
21 plans where it's the third highest BVAP district that  
22 outperforms the second highest BVAP district in terms of  
23 electoral opportunity, correct?

24 A. And so on down the line.

25 Q. And if we look at page 23, Figure 10, you say that the

1 enacted plan has a BVAP in it's second highest district that  
2 is especially low, correct?

3 A. Yes.

4 Q. And you haven't shown here the benchmark plan, correct?

5 A. That's right. Although, it would be easy to mentally add  
6 that just by looking at the BVAP in the benchmark plan. I  
7 think probably the reason I didn't do it is the precise one,  
8 you raised earlier, that the population balance is different,  
9 making it a little slipperier to compare.

10 Q. And so, you're not comparing the enacted plan to the  
11 benchmark plan, correct?

12 A. The goal of this section is to compare it to the ensemble  
13 plans.

14 Q. And do you have a standard for determining when BVAP is  
15 especially low in the second district?

16 A. Well, if you mean is there a kind of bright line for what  
17 constitutes an outlier, there isn't. But I think, no matter  
18 where we would draw that line, we'd agree that this, which is  
19 in the most extreme, less than one percent, would certainly  
20 qualify.

21 Q. And so, you say that the BVAP in the second highest  
22 district in the enacted plan is 25.4 percent, right?

23 A. Yes.

24 Q. So, if we can turn to page nine of your report. This  
25 chart on top gives the BVAPS in various districts in various



DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

458

1 plans, correct?

2 A. It does.

3 MR. GORE: We need a break, your Honor.

4 JUDGE GERGEL: Okay. Folks, we're going to take the  
5 afternoon break. Ten minutes.

6 **(Recess)**

7 JUDGE GERGEL: Please be seated.

8 Mr. Gore, you may continue, sir.

9 MR. GORE: Thank you, your Honor.

10 **BY MR. GORE:**

11 Q. Dr. Duchin, are you ready to proceed?

12 A. Yes.

13 Q. Now, on page nine of your report?

14 A. Yes.

15 Q. And I just want to look at a couple of plans here on page  
16 nine. Looks like in the SCNAACP Plan 2, the second highest  
17 BVAP district is District 7, at 25.4 percent, correct?

18 A. Yes, that's correct.

19 Q. And that's the same as in enacted District 7, correct?

20 A. The 25.4? Yes.

21 Q. And so, you would also consider the BVAP in the second  
22 highest district in the SCNAACP Plan 2 to be especially low,  
23 correct?

24 A. Yes. That's right.

25 Q. And how about the League of Women Voter's Plan, I believe

1 that District 7 is 24.5 percent, the second highest district  
2 there, correct?

3 A. That's right.

4 Q. And that would also be especially low, to use your  
5 terminology, correct?

6 A. That's correct.

7 Q. Okay. Let's go, if we can, to the supplemental report,  
8 to the box-and-whiskers plot which is on pages 1 and 2, Figure  
9 1 of your report.

10 A. Yes.

11 Q. Actually, page two. And so, within this, so I understand  
12 it, the highest BVAP district here isn't necessarily District  
13 2 -- or District 6, correct?

14 A. That's right. And I spent some time on that earlier,  
15 because I understand that it can be confusing. But the  
16 numbers that you see on the columns here are just positional,  
17 telling you which has -- one has the lowest BVAP, two after  
18 that, and so on up to seven. They're not geographical.

19 Q. And there's no incumbency consideration in your model,  
20 correct?

21 A. There is no incumbency consideration in the generation of  
22 the plan. That's right.

23 Q. So, for example, Congressman Clyburn resides in District  
24 6, which is the highest BVAP district in the enacted plan, but  
25 he might reside, in fact, in the lowest BVAP district in one

1 of the ensemble plans, correct?

2 A. I will regard that as quite unlikely, but it's possible.

3 Q. It's possible, right?

4 A. Yes.

5 Q. He wouldn't necessarily be in the highest BVAP district  
6 in the ensemble plan, right?

7 A. That's right.

8 Q. And if he moved from the highest BVAP district to the  
9 lowest BVAP district, that would be a pretty significant  
10 change in his district; wouldn't it?

11 A. It would probably require a pretty significant  
12 geographical change. It would certainly be a significant  
13 demographic change.

14 Q. And according to the box-and-whiskers plot here the 7th  
15 District, or the highest BVAP district in the ensemble plans,  
16 has an average BVAP of around 35 percent; is that right?

17 A. Yeah. So, just to orient ourselves to the plot, if we  
18 look at the box in column 7 and we look at the line marked  
19 across that box, that's the median, or 50th percentile.  
20 Doesn't mean it's the average. Those are not quite the same.  
21 And so, I agree that the median is at about 35 percent.

22 Q. And that is noticeably lower than any of the four  
23 human-drawn plans, you have depicted here?

24 A. Yes, it is.

25 Q. And on this box-and-whiskers plot, the active plan and

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

461

1 the benchmark plan are fairly similar across each of these  
2 districts, correct?

3 A. That's right.

4 Q. And these ensemble plans are subject to the same  
5 parameters we discussed before, in terms of the criteria they  
6 consider and don't consider, correct?

7 A. Yes.

8 Q. And so, I think you testified earlier that you consider a  
9 district to have unusually low BVAP if it's below the bottom  
10 whisker on the box-and-whisker plot; is that correct?

11 A. That put's it in the lowest, one percent, of  
12 observations.

13 Q. So, that would be true for the Harpootlian's 5th District  
14 here; is that right?

15 A. That's right. So, Harpootlian is shown in lavender in  
16 the plots. And as I said before, the way these work, because  
17 it's a fixed sum quantity, is that if you're high in some  
18 districts, you have to be low in others so that the sum can be  
19 the same.

20 Q. And it's also true of the NAACP Plan in the 1st, 3rd and  
21 4th of the districts here, right? It's in yellow?

22 A. That's right.

23 Q. Let's go back to your report at page 23. You ran another  
24 ensemble that focused on Districts 1, 2, 5 and 6, correct?

25 A. Yes, I did.

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

462

1 Q. And those are subject to the same parameters, correct?

2 A. That's right.

3 Q. And you don't know --

4 A. Page 23, did you say?

5 Q. Yeah, Page 23. Focused area 6.2?

6 A. Yes.

7 Q. And you don't know in which district Congressman Clyburn  
8 is placed in those ensemble plans either, correct?

9 A. Well, not in general over the ensemble. Although, we can  
10 see for instance, I've highlighted the enacted and an  
11 alternative plan. And you can see that District 6 is  
12 practically identical, which certainly means that Clyburn is  
13 retained in District 6. I can also tell you, because I  
14 verified this when compiling the report, that, in fact, this  
15 alternative plan maintains all incumbents in their districts.

16 Q. Let's scroll down, if we can, to page 24 of your report.  
17 And you provided this alternative map here, correct?

18 A. Yes.

19 Q. Okay. And I believe you said that, in this alternative,  
20 Districts 1 and 6 are the same as they are in the enacted  
21 plan; is that right?

22 A. They're not identical, but virtually identical. Nearly  
23 unchanged, is what it says in the caption.

24 Q. Nearly unchanged. Okay. Thank you for that  
25 clarification. So, the alternative versions of these

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

463

1 districts would also split Charleston, Colleton, Dorchester,  
2 and Jasper, correct?

3 A. Yes. I think you should regard this as having a great  
4 deal of deference to the enacted plan.

5 Q. So, it does not respect the communities of interest that  
6 you identified earlier in your report and that we talked about  
7 at some length, right?

8 A. That's right. Here, what I'm doing is prioritizing least  
9 change, that is, core retention.

10 Q. And if we move to 2 and 5 in this alternative  
11 configuration, does this alternative configuration move Fort  
12 Jackson out of District 2?

13 A. I can't be sure from this representation.

14 Q. And does this configuration keep the four Lowcountry  
15 counties split from each other?

16 A. It keeps them handled in virtually identical fashion to  
17 the enacted plan.

18 Q. And I think you testified that this alternative plan  
19 retains 92 percent of the population, compared to the enacted  
20 districts, correct?

21 A. Correct.

22 Q. But doesn't that mean that the enacted districts retain  
23 more of the benchmark districts than the alternative districts  
24 do?

25 A. Oh, that may certainly be true. I can't remember

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

464

1 offhand, but Mr. Trende's report contains a core retention  
2 figure for enacted comparative benchmarks, and I believe it to  
3 be in the upper 90s.

4 Q. But you would agree that the enacted plan is better on  
5 preserving cores of the benchmark districts than this  
6 alternative plan, correct?

7 A. That's likely, although it's not computed here.

8 Q. And do you know what the change is here, compared to  
9 here?

10 A. No. Again, this plan was picked from the ensemble, so  
11 the changes aren't a product of intention. This is just an  
12 example.

13 Q. And you haven't run any compactness measures on these  
14 districts or anything like that?

15 A. Did I? I don't seem to have reported it.

16 Q. And let's move on then to the next page, page 25. And  
17 this is the electoral opportunity for Black voters section?

18 A. Yes.

19 Q. And do you know why counsel identified these four races  
20 as particularly probative for Black electoral opportunity?

21 A. My understanding is that these flow from the polarization  
22 analysis conducted by another expert, Dr. Liu.

23 Q. And do you know whether Dr. Liu did a polarization  
24 analysis of any other districts -- or any other elections?

25 A. Oh, I think that he did. Although, I should make sure to

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

465

1 clarify that I haven't read his report.

2 Q. You haven't read his report. Okay. And you gave an  
3 effectiveness score here in this chart, which is simply the  
4 number of times the Black preferred candidate wins in each  
5 district; is that right?

6 A. That's right. This is the exact representation that's  
7 later nuanced by looking at vote shares to see whether the  
8 outcomes were close. But, here, it is only: Did the Black  
9 candidate of choice win by the plurality standard?

10 Q. Now, if we scroll back up to page 23, note eight, of your  
11 report --

12 A. Yes.

13 Q. -- there we see that you report here the effectiveness of  
14 the alternative district configuration of 2, 5, 1 and 6, that  
15 we talked about just a minute ago, right?

16 A. Yes.

17 Q. And that had an effectiveness score of five; is that  
18 right?

19 A. Let's see. Yes. You can infer that, because what I  
20 write is that the candidate receives at least 47.5 percent of  
21 the vote in each of the four elections, winning outright in  
22 one of the four.

23 Q. And you have a sentence here at the end of the footnote:  
24 "That performance corroborates the claim that this is a  
25 strengthened district for Black voters, and one in which a



DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

466

1 candidate would likely have to campaign in a way that lead to  
2 some Black support in order to prevail."

3 Did you do any analysis to determine whether this  
4 district is one in which a candidate would likely have to  
5 campaign in a way that led to some Black support in order to  
6 prevail?

7 A. The support for that conclusion is exactly the previous  
8 sentence, namely the 47.5 figure for the Black candidate of  
9 choice.

10 Q. And you didn't do any additional analysis for that half  
11 of the sentence?

12 A. That's right. So, the basis is simply what's written  
13 here.

14 Q. If we can go back to page 25, the effectiveness analysis.  
15 And so, both the benchmark and the enacted plan have an  
16 effectiveness score of four out of 28, correct?

17 A. That's right.

18 Q. And the Harpootlian Plan is six; is that right?

19 A. Yes.

20 Q. So, that's four wins in District 6 and it generates two  
21 wins in District 1; is that right?

22 A. That's right.

23 Q. And it generates no wins in any other district, correct?

24 A. That's true. However, as we heard earlier, it does  
25 generate close outcomes in District 5.

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

467

1 Q. Excellent. Let's go to that next, which is Exhibit 120,  
2 your supplemental report. Let's scroll down to page three.

3 A. Yes.

4 Q. And you talked about the shading earlier with Ms. Aden.  
5 These cutoffs you chose -- so, 46 percent to 47.5 percent are  
6 in amber; is that right?

7 A. Yes.

8 Q. And these cutoffs were not chosen based on any  
9 established standard or legal principle, correct?

10 A. I hope I made this clear earlier, but certainly I'll say  
11 now. They're not meant to represent a bright line test of any  
12 kind. These are thresholds that I developed just looking for  
13 patterns in these tables. It's an attempt to make the tables  
14 easier to read and to summarize.

15 Q. And if we scroll up to the bottom of page two, down a  
16 little bit more, right there, that last paragraph --

17 A. Yes.

18 Q. -- you report here the statewide shares for candidates of  
19 choice in these four elections?

20 A. Yes.

21 Q. And you say the average is 43.72 or nearly 44 percent,  
22 correct?

23 A. Yes.

24 Q. And so, 46 percent is only about two percent higher than  
25 the average?

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

468

1 A. Two percentage points higher.

2 Q. Percentage points, sorry. Thank you. And every election  
3 -- if we scroll back down to page three, every election where  
4 the Black preferred candidate receives less than 50 percent of  
5 the vote, is a loss for that candidate, correct?

6 A. Would have been a loss.

7 Q. Would have been a loss. Correct. Because this is  
8 reconstituted data?

9 A. That's exactly right. They did not campaign for a  
10 districted office.

11 Q. Is this the two-party vote share?

12 A. That's right. It's the major party vote, which is just  
13 Democrats and Republicans.

14 Q. So, if we look at this 2.1, just as an example,  
15 Presidential 2020, the Biden-Harris number --

16 A. Yes.

17 Q. -- in Harpootlian District 1, that's 51.8 percent,  
18 correct?

19 A. Yes, it is.

20 Q. And if we can refer back quickly to page nine of your  
21 report --

22 A. Yes.

23 Q. -- what's the -- it's the other report. It looks like  
24 the BVAP in Harpootlian District 1 is 21.2, correct?

25 A. I agree.

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

469

1 Q. So, to receive 51.8 percent of the vote in a 21.2-percent  
2 BVAP district, the Black preferred candidate must receive  
3 significant White crossover support, correct?

4 A. It's likely. Although, I'd just caution us all to  
5 remember that not every resident votes. And so, there are  
6 questions of turnout, differential turnout, for groups that  
7 make it hard to be sure of the composition of the electorate  
8 on that day.

9 Q. And did you analyze those questions of turnout as part of  
10 your report?

11 A. Well, that's the point of the reconstituted election  
12 analysis, that it takes into account both differential turnout  
13 patterns and crossover patterns. All of that is present in  
14 the cast vote totals. And that's why it's so important to use  
15 electoral history in this way.

16 Q. Right. But you would agree that the candidate here would  
17 need significant White crossover support to get 51.8 percent  
18 of the vote in this district, right?

19 A. I think it's likely that the electorate has a demographic  
20 composition not dissimilar to the adult population overall.

21 Q. And based on turnout, the candidate might actually need  
22 even more votes from the crossover voters than from the  
23 African-American voters, correct?

24 A. It's possible. It could go one way or the other.

25 Q. Now, if we look here on page nine, District 1 in the

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

470

1 Harpootlian Plan is not the second highest BVAP district in  
2 that plan?

3 A. That is correct.

4 Q. For example, District 5 is at 33.7 percent?

5 A. Just going to say, exactly, 6 is highest, followed by 5,  
6 followed by 2, followed by 1, if I'm reading right.

7 Q. And we just discussed a minute ago that District 5 in the  
8 Harpootlian Plan generated zero wins for the Black preferred  
9 candidate --

10 A. Right. If I remember right --

11 Q. -- under your model.

12 A. -- it's zero wins and at least in four of those outcomes,  
13 actually. So, four outcomes that earned the colors that we  
14 described earlier.

15 Q. So, it's zero wins in a 33.7-percent district and two  
16 wins in a 21.2-percent district, correct?

17 A. That's right. And this is why it's so important to use  
18 the demographic and electoral analysis together. Neither one  
19 stands alone.

20 Q. And that indicates that there's higher crossover voting  
21 in the areas covered by District 1 than in District 5?

22 A. Again, it's likely that might also turn out as  
23 implicated. And so, I did not study the question of the rates  
24 of crossover voting. But it is likely.

25 Q. Let's examine for a moment -- if we can go back to 120

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

471

1 page three -- oh, I'm sorry. It's 67, page 25, of this  
2 report.

3 A. Is that the initial report?

4 Q. Initial report, your effectiveness scores.

5 A. Yes.

6 Q. And for the Legal Women Voters Plan, it's also six total,  
7 correct?

8 A. Sorry, I'll be there in a moment. Yes, I can see that on  
9 the screen. Yes.

10 Q. And, again, that's four wins in District 6, and two wins  
11 in District 1, correct?

12 A. Yes. I'm just checking. That's right. And it looks  
13 like the other two times in probative contests, the League map  
14 produced very close outcomes of 49.6 and 49.3.

15 Q. So, let's go to your supplemental report at page three.  
16 And in District 1, under the LWV Plan, the Biden-Harris ticket  
17 received 51.7 percent of the vote; is that right?

18 A. Yes.

19 Q. And if we go back just one last time to page nine of your  
20 original report, we can confirm that the BVAP in the Legal  
21 Women Voters Plan in District 1 is 23.3 percent, correct?

22 A. Correct.

23 Q. And that's lower than the BVAP in Districts 5, 6, and 7  
24 in that plan, correct?

25 A. Yes. That's right.

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

472

1 Q. And so, the 23.3-percent BVAP in District 1 translates  
2 into 51.7-percent support for the Black candidate on the  
3 results that we just reviewed, correct?

4 A. That's quite right. And so, just to summarize, in case  
5 anyone is getting lost in all the numbers, higher BVAP, lower  
6 BVAP, it really depends on which people you're talking about  
7 and which contest. BVAP, alone, isn't predictive of outcomes,  
8 and that's why both elements are featured here.

9 Q. And do you happen to know where in South Carolina White  
10 Democratic voters live?

11 A. Well, as I said before, I'm a little hesitant to talk  
12 about White Democratic voters, because people can vote one way  
13 in one election, a different way in the next. I, myself, have  
14 voted for members of both major parties. And so, to be a  
15 White Democrat isn't a permanent identity. So, I'd be careful  
16 talking about where White Democrats live. But I can certainly  
17 talk about where the inference methods that are widely used  
18 predict that White people voted Democratic, what precincts  
19 that happened in. That's definitely something we can approach  
20 with inference methods.

21 Q. And that would be in your Charleston and Columbia where  
22 those voters reside, correct?

23 A. Well, it's certainly true that near Charleston and  
24 Columbia, you see performance at lower levels of BVAP, and  
25 from that, you can conclude relatively higher patterns of

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

473

1 crossover voting. But looking back, before this congressional  
2 analysis, I did work, as I think you know, on the State House  
3 map, where the districts are smaller. And that gave me the  
4 occasion to look at the relationship between BVAP and voting  
5 patterns all across the state. And I actually found  
6 significant incidents of crossover voting in many parts of the  
7 state.

8 Q. And for a crossover voter who votes for the Black  
9 preferred candidate, their preferred candidate loses whenever  
10 the Black preferred candidate loses, right?

11 A. Right. Let me just make sure I'm unpacking that  
12 correctly. If you have a White person who votes for the Black  
13 preferred candidate in a situation with polarization, and the  
14 Black preferred candidate loses, then it follows  
15 chronologically that that White voter's preference was not  
16 actualized.

17 Q. And all of the candidates in these elections, the Black  
18 preferred candidates are all Democrats, correct?

19 A. That's true.

20 Q. So, any voter who voted for the Democratic candidate,  
21 where the Democratic candidate loses, also doesn't see their  
22 preferred candidate prevail, correct?

23 A. Yes. But, sounds like a logical syllogism, and it is.  
24 So, if you didn't vote for the candidate who won, then you  
25 didn't get your preference reflected in the outcome.



DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

474

1 Q. And that's all true, regardless of the race of the voter,  
2 correct?

3 A. Definitely true.

4 Q. Let's go now to page 26 of your first report. And we'll  
5 talk about these nine other elections that you analyzed.

6 A. Yes.

7 Q. And did you conduct an RPV analysis for these elections?

8 A. I did not conduct any RPV analysis for this case.

9 Q. But you would agree that the Black preferred candidate in  
10 each of these elections is the Democratic candidate?

11 A. Yes, I would. That's my understanding.

12 Q. And here on page 26, you're comparing performance of  
13 plans against the ensemble plans, correct?

14 A. Well, yes, and implicitly against each other, since the  
15 figure shows the collection of 11 publicly submitted plans and  
16 the ensemble.

17 Q. And the ensemble plans are drawn to be politically  
18 neutral, they don't consider politics, correct?

19 A. That's right. They're drawn in a neutral fashion.

20 Q. So, would you, in your experience, expect that  
21 politically neutral ensemble plans would generate more wins  
22 for Democratic candidates than, say, a plan that was drawn to  
23 help Republicans?

24 A. If the plan was drawn with some skill to help  
25 Republicans, then it would probably be more favorable to

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

475

1 Republicans than a plan drawn without that intent.

2 Q. And if we go scroll down to the bottom histogram, it  
3 looks like the enacted plan and the benchmark plan both  
4 generate eight wins in the 63 contest, the nine contests  
5 across seven districts, correct?

6 A. That's right.

7 Q. That's about 12.5 percent of the time; does that sound  
8 right?

9 A. Eight out of 63 is about an eighth. So, yes, that's  
10 right.

11 Q. And if we go to the histogram above that, both the  
12 benchmark plan and the enacted plan generate wins in four out  
13 of the 28 contests; is that correct?

14 A. That's correct.

15 Q. And that's about 14 percent of the time?

16 A. Just so.

17 Q. So, the enacted plan and the benchmark plan generate wins  
18 for the Black preferred candidates in the probative elections  
19 more frequently than for the Democratic candidates in the  
20 other elections, correct?

21 A. Just so we're reading this correctly, that's exactly what  
22 we'd expect, because, as noted in the supplemental report, the  
23 statewide share is a bit higher for the Black preferred  
24 candidates than for the ones called "generic Democrats". And  
25 so --

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE*

476

1 Q. Right. But --

2 A. And since -- oh, sorry.

3 Q. Sorry, go ahead.

4 A. Since the vote share's a little bit higher, you'd expect  
5 performance to be a little bit higher.

6 Q. And so, let's talk about that. Let's go back to your  
7 supplemental report, 120. And on page two, you gave the  
8 statewide vote shares for the four most probative elections,  
9 correct, the bottom of page two?

10 A. Yes.

11 Q. As you did not give the statewide vote share for the  
12 Black preferred candidate in the nine elections, correct?

13 A. That's right. I gave some information. I said sometimes  
14 as low as 37 percent, averaging 41.99.

15 Q. And, here, if we look at the set of four, that's .448 is  
16 the highest statewide share, correct?

17 A. Yes.

18 Q. And are you aware that the statewide vote share for the  
19 Black preferred candidate in one of the elections in your set  
20 of nine is actually higher than that?

21 A. I have no reason to dispute that.

22 Q. And that was around 45.98 percent in the 2018 governor's  
23 race?

24 A. Okay.

25 Q. And do you know what it was in the 2018 attorney general

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

477

1 race?

2 A. Oh, I wish had that kind of memory. I don't.

3 Q. Do you have any basis to disagree with me if I told you  
4 it was around 43.75 percent?

5 A. 43.75, that sounds believable.

6 Q. And if I told you that the average statewide vote share  
7 in the top four elections in your set of nine was  
8 43.71 percent for the Black preferred candidate, would you  
9 have any basis to disagree with me on that?

10 A. No, I won't disagree with you. But just to be clear,  
11 you're doing the major party vote share, as well?

12 Q. Yes, the two-party vote share.

13 A. Okay. Sounds good.

14 Q. And if all that's right, 43.71 is pretty much the same as  
15 43.72, correct?

16 A. It sure is.

17 Q. And if we scroll down here, you stated the average  
18 statewide vote share, the difference between 43.72 and 41.99,  
19 with a set of four in a set of nine, correct?

20 A. Yes. That sounds right.

21 Q. And that's only about two percent; is that right?

22 A. Two percentage points. I'm sorry to keep insisting on  
23 that.

24 Q. That's okay. And you did not report here in your  
25 supplemental report, or your opening report, the number of

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

478

1 crossover voters in any of these districts, correct?

2 A. I didn't measure that, and so I couldn't report it.

3 Q. Let's go back to your report -- page 27 of your opening  
4 report. I'd like to start in the first paragraph, at the  
5 third sentence. And you say: "Only 12.4 percent of maps  
6 drawn in a race-neutral fashion have as low of an  
7 effectiveness score as the State's Plan when considering the  
8 probative elections." Is that right?

9 A. That's right.

10 Q. And those are the ensemble plans, correct?

11 A. You mean the phrase, "maps drawn in a race-neutral  
12 fashion?" Yes, That refers to the ensemble plan.

13 Q. And at the end of this paragraph, you say: "The State's  
14 maps from 10 years ago, and again from this year, are the ones  
15 that are demonstrably diluted. And as we've seen, they  
16 submerged traditional districting principles in order to  
17 secure this absence." Is that right?

18 A. Yes. That's what's written.

19 Q. And if we go just briefly back to your supplemental  
20 report on page three, you say -- actually, I think this is  
21 your other report. So, let's not worry about that. Let's go  
22 back to your first report, page 27.

23 A. Okay.

24 Q. So, when you talk about submerging traditional principles  
25 in order to secure this outcome, those are the principles that

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

479

1 you considered in your reporting on the ensemble plans,  
2 correct?

3 A. Well, I think they're the principles discussed  
4 throughout. They are the ones that are discussed  
5 qualitatively as precinct splits, the nature of the precinct  
6 splits, splitting along major roads, running through  
7 cemeteries, all of this is part of the picture of how  
8 traditional principles are collectively handled.

9 Q. But your ensemble plans did not consider certain  
10 principles, correct?

11 A. That's right. If you mean they were not designed by an  
12 algorithm that operationalized those principles, that's right.

13 Q. Let's go, if we can, to Exhibit 87, which is your  
14 supplemental report.

15 A. Do you want the May 4th report or the August --

16 Q. Okay. I'm sorry. It's back on 120, on page three. So,  
17 this is your supplemental report.

18 A. Okay.

19 Q. From August. So, if we go to the top of page three, you  
20 say: "That figure illustrated that the State's enacted plan  
21 provides a far starker disadvantage in probative elections  
22 than in other general election contests, leading me to  
23 conclude that race was predominating over even partisan  
24 analysis -- partisan advantage in the enacted map."

25 Did I read that correctly?

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

480

1 A. Yes.

2 Q. And the only election day that you reviewed was for the  
3 exogenous statewide elections, correct?

4 A. That's right.

5 Q. And you didn't analyze any congressional election data,  
6 correct?

7 A. Right. So, to be clear, here, I'm referring to the  
8 relative performance in the ensemble analysis. It doesn't  
9 work to use district at election in an ensemble analysis.  
10 They're virtually always used with statewide contests. The  
11 reason -- I think it's worth explaining -- is that what we're  
12 doing is moving those district lines. And when you move the  
13 district lines, you create new districts that aren't the same  
14 terrain that voted in any particular district at elections in  
15 the past. And that's why statewide elections are the contest  
16 of choice for this kind of analysis, because they have the  
17 same candidates on either side of the new lines, just as they  
18 do of the old lines.

19 Q. And when you drew this conclusion, you were looking at  
20 all the lines in the enacted plan, not just the changes that  
21 it made to the benchmark plan, correct?

22 A. Here, the analysis does not compare to the benchmark  
23 plan.

24 Q. So, it doesn't compare to the benchmark plan. So, did  
25 you analyze what the enacted plan does to partisan performance

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

481

1 compared to the benchmark plan?

2 A. Well, yes. We can see that not only in the tables like  
3 the one on the screen now, but for what I called the "Generic  
4 Party ID Contests" in Appendix A of the same report, that  
5 would constitute the partisan performance.

6 Q. And if we look here on page three of 120, compared to the  
7 benchmark, the enacted plan in District 1 reduces the  
8 Biden-Harris vote share by about 1.4 percent, correct?

9 A. Percentage points, right?

10 Q. Percentage points. And that means that there's an  
11 increase in 1.4 percentage points in the Republican vote share  
12 in District 1 under the enacted plan, correct?

13 A. Correct.

14 Q. And if we can go back to your first report on page  
15 nine -- and we talked about this before -- in District 1, the  
16 enacted plan increased the BVAP compared to the benchmark  
17 plan -- BVAP percentage compared to the benchmark plan,  
18 correct?

19 A. Exactly right.

20 Q. Okay. So, the enacted plan both increased the BVAP  
21 percentage and the Republican vote share in District 1,  
22 correct?

23 A. That's right.

24 Q. And that indicates that the enacted plan moved the White  
25 crossover voters out of District 1, correct?



DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

482

1 A. That's not the way I would describe the situation,  
2 because, again, I don't think a White crossover voter is an  
3 identified individual or block.

4 Q. But individuals that may cross over to vote in support of  
5 a Black candidate, correct?

6 A. I wouldn't construct these sentences this way, although I  
7 do see what you're getting at.

8 Q. And so, there may have been individuals who crossed over  
9 to vote for Black preferred candidates who the enacted plan  
10 moved out of District 1 compared to the benchmark plan,  
11 correct?

12 A. May have been.

13 Q. And you haven't looked into whether that's true or not?

14 A. I haven't done an analysis to identify crossover rates of  
15 voting, let alone, to spatialize the presence of crossover  
16 voters.

17 Q. And by "spatialize" you mean figure out where they  
18 actually live and vote, correct?

19 A. That's right. I mean, to locate.

20 Q. Thank you. So, let's go back to page 27 of your report.  
21 If we go back to the first paragraph on that page, I think the  
22 last sentence we already read: "The maps are demonstrably  
23 diluted." But I want to focus on the second half: "They  
24 submerged traditional principles in order to secure this  
25 outcome."

1 With the use of the "in order" language, are you drawing  
2 an inference about the General Assembly's intent or purpose  
3 here?

4 A. Well, I think the way that I'd like you to read this is  
5 as providing evidence of intent. The conclusion of intent is  
6 one that I would leave to the Court. But I see my role as one  
7 of providing evidence. And I think what I've done here is  
8 provided the evidence of intent.

9 Q. And you're not drawing an ultimate conclusion then, one  
10 way or the other?

11 A. I don't think that's my role. I'm trying to stay in my  
12 lane.

13 Q. And if we scroll down to Section 8, I'd like to go to the  
14 first paragraph. There's a sentence about halfway down that  
15 says, "considering the strong guidance," which refers back, I  
16 think, to the guidelines: "And the increased Black population  
17 in the Columbia and Charleston areas, see Figure 2, we would  
18 expect increased electoral opportunities for Black voters to  
19 be reflected in the Congressional Plan." Is that right?

20 A. Uh-huh.

21 Q. And Figure 2 gave us the increase in total Black citizen  
22 voting age population, not a percentage change, correct?

23 A. The figure itself, that's correct. While you're looking,  
24 I'll expand on that. I think this is the strength of the  
25 ensemble analysis. What we have gotten to just here, really

1 is where ensemble analysis shines, because what it does is it  
2 compares the choices made by the legislature to actual  
3 alternative plans, that, at least for chosen criteria, are  
4 equally respectful of the traditional principles.

5 So, earlier you were talking about a vote share of 44 or  
6 43 and so on. And it used to be before ensemble analysis was  
7 available, that people talked a great deal about seats, votes,  
8 curves, and converting seats to votes, and whether you were  
9 hitting proportionality. The major contribution of ensemble  
10 analysis is to take into account where people are located and  
11 to see what's possible, given their actual human geography and  
12 political geography. And so, I'd like to sort of make sure  
13 we're taking away from all of this, that that's just what the  
14 ensemble analysis is trying to do. It's trying to see, are  
15 the plans unusual compared to actual alternatives with the  
16 same facts on the ground.

17 Q. And I appreciate that clarification, because I want to  
18 clarify something that you said. You said you're comparing  
19 the choices the General Assembly made to the ensemble,  
20 correct?

21 A. To alternatives that were available, right.

22 Q. Right. But you're not focusing -- you're not isolating  
23 just the changes that were made in the enacted plan, correct?

24 A. You mean as against the benchmark?

25 Q. Yes.

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

485

1 A. That's right. I'm looking at the enacted plan overall  
2 compared to other alternatives.

3 Q. With all the features and lines it may have inherited  
4 from the benchmark plan, correct?

5 A. It inherited some features, for sure.

6 Q. And those are among the features that you're trying to  
7 compare to the ensemble plans, correct?

8 A. That's right. But I think the question of dilution,  
9 which is the one I'm trying to address here, looks at what  
10 would have been expected or possible. So, there's an  
11 opportunity that the legislature has every time a new census  
12 data comes out, to create a whole new division of the state  
13 into voting districts. And I'm looking at what was possible  
14 in this moment of opportunity.

15 Q. Let's turn now, if we can, to your Exhibit 87, which is  
16 your May report. I have been calling it the rebuttal report,  
17 but I think you refer to it as the May report, correct?

18 A. Sure. Any of those is fine.

19 Q. And you say here on page one in the last bullet on that  
20 page, if we can get to that, you're talking about the enacted  
21 plan and the Harpootlian Plan. And you say in the last two  
22 sentences: "The Harpootlian Plan is comparable or superior to  
23 the State's Plan enacted 2022, in all traditional districting  
24 principles, Section 4, a previous report, and provides  
25 measurably greater minority opportunity to elect."

1           You acknowledge the Harpootlian Plan performs worse on  
2       core retention than the enacted plan though, correct?

3       A.   That's right. To clarify, I've said a few times that  
4       it's sort of a matter of debate, whether you'd call that a  
5       traditional principle.

6       Q.   And let's scroll down a little bit further, if we can, to  
7       I think on page two -- or perhaps page one. You suggested  
8       earlier in your testimony to Ms. Aden that Mr. Trende treats  
9       core preservation as a tier-one requirement; is that correct?

10      A.   I think the phrase I used here is -- I used the phrase  
11      "high priority" and "top priority". And I think somewhere  
12      else, I called it "first echelon." But all of these are kind  
13      of pointing in the same direction.

14      Q.   And you haven't discussed Mr. Trende's report with him,  
15      have you?

16      A.   I haven't had the pleasure of meeting him yet.

17      Q.   Let's go to the next page, if we can -- actually, let's  
18      go to page three. And here you had this discussion before  
19      with Ms. Aden about how many splits -- VTD splits that there  
20      are in the various plans; is that right?

21      A.   Yes.

22      Q.   We talked a little bit about that today?

23      A.   Right.

24      Q.   At the time the enacted plan was drawn, how many  
25      precincts of VTDs did the benchmark plan split under the 2020

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. GORE

487

1 lines?

2 A. Okay. I think you're asking how many 2020 VTDs are split  
3 by the plan from eight years earlier, from whole.

4 Q. Correct.

5 A. And, here, I think I compute that. And I have confirmed  
6 that the benchmark split 65, 2020 VTDs. That's what it says  
7 here in the last sentence of the first paragraph.

8 Q. And so, Mr. Trende's reporting of those numbers is  
9 accurate, correct?

10 A. I never said it was inaccurate. What I said is that it's  
11 misleading.

12 Q. Well, how is it misleading if it's inaccurate?

13 A. Oh, well, I think that's what misleading means.  
14 Something may be technically accurate, but may lead you to an  
15 inappropriate conclusion. Here's how I mean that here: The  
16 implication that I took from the Trende report is that the new  
17 plan is much more respectful of the guidance to keep precincts  
18 whole than the old plan was. I find that not to be reflected  
19 in the number 65, because there's no way that legislators in  
20 2012 could have predicted the 2020 VTD line.

21 Q. But, of course, if the legislators in 2020 had left 65  
22 split VTDs, that's far less respectful of that principle than  
23 fixing the number down to 13, correct?

24 A. Indeed.

25 Q. One moment, please. Okay. A couple more questions about

1 core retention.

2 A. Sure.

3 Q. And you said that it's controversial whether core  
4 retention is a traditional principle, right?

5 A. I would say -- yes. What I said is that not everyone  
6 would agree that it belongs on the list of traditional  
7 principles.

8 Q. And I think earlier -- maybe it was yesterday -- you  
9 described what you view as the standard traditional  
10 districting principles?

11 A. That's an informal list that I called "the big fix," I  
12 think.

13 Q. Right. And core preservation is not on that list, right?

14 A. It's not on that list.

15 Q. But you're aware that this Court, in prior cases,  
16 recognized core retention as a traditional districting  
17 principle, correct?

18 A. I'm aware that it's been recognized as a legitimate  
19 principle. Here, I'm just trying to be careful. I'm not  
20 trying to be pedantic. I'm just trying to be careful about  
21 the term of our TDP.

22 Q. And have courts recognized it as a race-neutral  
23 principle?

24 MS. ADEN: I'm going to object again to the extent  
25 that that calls for a legal conclusion.

*DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. MATHIAS*

489

1 JUDGE GERGEL: Yeah. Mr. Gore, we need to pick up  
2 the pace here. This is way too tedious.

3 MR. GORE: Thank you. I've got just one more  
4 question to ask.

5 JUDGE GERGEL: Go ahead.

6 **BY MR. GORE:**

7 Q. But you agree that preserving the cores of districts is  
8 in the Senate guidelines?

9 A. Yes.

10 Q. And the General Assembly was -- could treat that as a  
11 traditional or legitimate principle, correct?

12 A. They could.

13 Q. I have no further questions.

14 THE COURT: Okay. House, cross. Let's avoid any  
15 duplication.

16 MR. MATHIAS: Thank you, your Honor. Andrew Mathias,  
17 for the House.

18 **CROSS-EXAMINATION**

19 **BY MR. MATHIAS:**

20 Q. Dr. Duchin, nice to see you again. We've had some good  
21 times. This is likely our last.

22 MR. MATHIAS: Can you pull up PX-83 for me? And can  
23 you zoom in on both enacted and alternative districts, just  
24 that portion of the page. Thank you.

25 **BY MR. MATHIAS:**



DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. MATHIAS

490

1 Q. Dr. Duchin, you told me in one of the depositions we had  
2 -- I don't remember which -- what you meant by the term  
3 "operationalize." Can you remind me?

4 A. Well, I can supply a new definition and hope that it  
5 matches the earlier one.

6 Q. I'm sure it will.

7 A. Operationalize means to take something that may be vague  
8 or informal and to make it precise and possibly quantitative  
9 in such a way that you can use it functionally.

10 Q. And in your work on this case, did you attempt to  
11 operationalize communities of interest?

12 A. I did make an attempt to do so.

13 Q. And am I correct to recall that, in operationalizing  
14 communities of interests, you relied on the thousand-plus  
15 pages of comment at the various hearings, Senate and House?

16 A. That's right. I exclusively relied on that.

17 Q. Do you remember anybody talking about the  
18 Chesney/Williston community of interest?

19 A. I do not remember that, as I sit here.

20 Q. Do you know where Chesney is?

21 A. I don't.

22 Q. I think this was a touchscreen, so I'm going to write  
23 there. Chesney is about right there.

24 A. Okay.

25 Q. Do you know where Williston is?

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. MATHIAS

491

1 A. I don't.

2 Q. Williston is about right here. So, Chesney is closer to  
3 the state of North Carolina than it is Williston, correct?

4 A. That seems reasonable.

5 Q. And Williston is closer to the state of Georgia than it  
6 is Chesney, correct?

7 A. No reason to doubt you.

8 Q. And did you tell Mr. Gore that the alternative district's  
9 map was generated using your ensemble plan?

10 A. That's right. This is just an example picked out that,  
11 as I said, only illustrates how little of a change would be  
12 needed to create more electoral opportunity.

13 Q. And that very little change, to use your words, paired  
14 Chesney and Williston in the same congressional district,  
15 correct?

16 A. Yes. Well, I accept that.

17 Q. You accept that that's true?

18 A. Yes.

19 Q. And so, your algorithm that took into account -- meaning,  
20 operationalized -- communities of interest created this new  
21 District 2, that paired Chesney and Williston; that's correct?

22 A. Right. And that brings us back to an important point.  
23 The algorithm is using probabilistic or random steps. And  
24 it's expressly designed so that everything is possible. It  
25 only makes certain things more likely than others.

DR. MOON DUCHIN - CROSS-EXAMINATION BY MR. MATHIAS

492

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

3 A. I'm not sure whether this was in -- as you heard, there  
4 were some ensemble runs with COI preservation and some  
5 without. And I'm not sure which run this was from.

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

9 A. I wouldn't propose to predict.

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

11 THE COURT: Anything on redirect?

12 MS. ADEN: No, your Honor.

13 JUDGE GERGEL: Very good. You may step down.

14 THE WITNESS: Thank you.

15 JUDGE GERGEL: Call your next witness.

16 MS. ADEN: Plaintiffs call Taiwan Scott.

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

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

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

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

A. My Congresswoman is Nancy Mace.

TAIWAN SCOTT - DIRECT EXAMINATION BY MR. INGRAM

494

1 Q. How long have you lived in South Carolina?

2 A. About 25, 27 years. But I've been coming here as long as  
3 I can remember.

4 Q. In what context did you come here?

5 A. My grandmother was actually born on Hilton Head, a native  
6 islander of Hilton Head. So, I've been spending summers on  
7 Hilton Head, just like I said, as long as I can remember.

8 Q. How long has your family resided in South Carolina?

9 A. Hundreds, hundreds of years. My family is of the  
10 Gullah-Geechee culture.

11 Q. Can you briefly share with the Court the history of the  
12 Gullah community in the region?

13 A. Well, the Gullah community is one of the oldest  
14 communities that can relate our ancestors back to Africa. And  
15 my understanding is -- I think it's around 2026, I think, or  
16 27 -- Congress enacted the Gullah Geechee Heritage Cultural  
17 Corridor, which we are pretty much a part of.

18 Q. And what geographic area is comprised in that corridor?

19 A. Roughly 30 miles from the coast, from -- I want to say  
20 Wilmington, North Carolina down to Jacksonville, Florida.

21 Q. And as a member of the Gullah community, what are some of  
22 the issues that you and your community have experienced?

23 A. Historically, we experienced the difficulty with land  
24 retention, heirs property, economic development opportunities,  
25 issues with ordinances, zoning, the list goes on. Historical

*TAIWAN SCOTT - DIRECT EXAMINATION BY MR. INGRAM*

495

1 significant structures and places that have been basically  
2 erased, including encroachments on cemeteries.

3 Q. And can you share more details about the heirs property  
4 issue?

5 A. Yes. Historically, the Gullah community lived a communal  
6 life, whereas the lands would pass between the elders to their  
7 next of kin, and actually didn't leave a will. So, it was  
8 more of a community-living lifestyle. However, because of  
9 development and things that happened, that type of land  
10 ownership has become more and more difficult and has forced a  
11 lot of people's property into heirs and basically forced a lot  
12 of the properties into tax sales and land seizures and things  
13 of that nature.

14 Q. And have you worked with your community to help advocate  
15 for these issues?

16 A. Yes. Yes. It's been an ongoing issue. For example,  
17 Hilton Head -- and I'm pretty sure it's not limited to Hilton  
18 Head -- whereas, we try to explain with an example. Example  
19 with heirs property is, you have, let's say, a 10-acre tract  
20 of land that's owned by a brother and sister -- or husband and  
21 wife, rather, and they have five kids. And those five kids,  
22 when that husband and wife pass will be entitled to roughly,  
23 let's say, two acres of property a piece. What's been imposed  
24 on us has been, in order to subdivide that property, we would  
25 have to put in -- will have financial impacts on us where we

TAIWAN SCOTT - DIRECT EXAMINATION BY MR. INGRAM

496

1 would have to put infrastructure in place in order to  
2 subdivide the property. And I mentioned Hilton Head because I  
3 personally experienced it and I know that there's ways that  
4 this can be resolved or dealt with. Whereas, prior to Hilton  
5 Head Island being incorporated, families would basically take  
6 that 10-acre tract of land, hire a surveyor, would come out  
7 and survey that piece of property. They'll take that survey,  
8 showing the access point, how these five, two-acre tracts of  
9 land would be accessible, take that 10 acres -- that survey to  
10 the county, and record it and have it subdivided. And those  
11 family members would actually get their deeds -- you know,  
12 prepare deeds, have the deeds prepared -- and that property  
13 would be subdivided.

14 When the town of Hilton Head was incorporated they  
15 basically told the county, stop doing that. Before they will  
16 allow the property to be legally subdivided, the town wants a  
17 -- they want to actually go out and approve the subdivision.  
18 So, when I say "approve the subdivision," what's required is,  
19 like I said, roads, drainage, sewer, you know, all  
20 infrastructure. So, that's a financial burden that's being  
21 placed on that family in order to subdivide that property.  
22 Now, again, we started with five siblings. So, what happens  
23 if those five siblings each have five kids? So, we go from  
24 five to 25, and it just escalates and escalates and escalates.

25 So, if there was a way that we can kind of take a step

TAIWAN SCOTT - DIRECT EXAMINATION BY MR. INGRAM

497

1 back and go to the way things used to be with the County --  
2 being under the County, then that would actually help the  
3 heirs property situation. So, I think --

4 JUDGE GERGEL: Mr. Ingram, let's move on. We  
5 understand the heirs property problem.

6 MR. INGRAM: Thank you.

7 **BY MR. INGRAM:**

8 Q. And, Mr. Scott, how could a congressional representative  
9 help advocate about this situation?

10 A. I believe that there is an opportunity whereas bills  
11 could be helped drafted that can help basically reduce the  
12 amount of heirs property. Because, again, we're talking about  
13 ordinances and rules that have been put in place or policies  
14 that have been put in place that have caused the heirs  
15 property situation to escalate. If Congress feels or felt  
16 that the Gullah Geechee Heritage Corridor was significant  
17 enough to flag it as a historical designated area, then I  
18 think that there's opportunities for congressional  
19 representatives to come in and do something to help retain our  
20 property.

21 Q. And properly speaking, Mr. Scott, can you think of an  
22 example of what type of -- what this intervention would look  
23 like?

24 A. One good example is just recently. Again, when we talk  
25 about heirs property and we talk about economic development,



1 we look at, more recently, what's happening on Hilton Head  
2 with the road expansion, Highway 278 expansion, and also with  
3 the airport expansion, both happening within historic Gullah  
4 communities. Recently, we had Senator Davis come down and  
5 basically flag our area within the Gullah-Geechee community as  
6 -- to quote what he said: "Pretty much bearing the negative  
7 impacts of growth per se on the island." So, he has initiated  
8 -- it's about \$5 million worth of seed money for economic  
9 development, to help kind of loosen some of the things and  
10 give opportunities for economic development in our community.  
11 I see that as a way that congressional representatives have  
12 the possibility to impact what's happening in our community.

13 I look at the airport expansion with the \$19 million that  
14 Mace was able to secure for us. There's a great opportunity  
15 whereas the Gullah community will be able to take a part -- be  
16 a part of economic development within that airport. You know,  
17 so there are ways that representatives, in my opinion, can  
18 step in and help retain and help one of their significant  
19 cultural -- one of the most significant cultural entities or  
20 communities in America.

21 Q. Aside from airports and highways, do you have any other  
22 sort of interventions regarding Congress that your community  
23 could benefit from?

24 A. Community block grants. Those are ways that monies can  
25 come in, helping to pave roads. Even with the insurance, you

*TAIWAN SCOTT - DIRECT EXAMINATION BY MR. INGRAM*

499

1 know, with heirs property and things of that nature, where  
2 there has been, more recently, some of FEMA's requirements  
3 with heirs property and insurance as far as insurance is  
4 involved, where now that there's a possibility or opportunity  
5 that we can be afforded some of the funds to help our  
6 community. Because, historically, that has always been an  
7 issue with heirs property and in regards to acquiring  
8 insurance for like when hurricanes and things like that  
9 happen. For example, when Matthew came in, you know, there  
10 were no funds that were available for our community, because  
11 we were quote/unquote "privately owned" or within -- you know,  
12 outside the gated communities.

13 Q. And, Mr. Scott, do you have any concerns about your  
14 current congressional representation in CD 1?

15 A. My concern has been -- and continues to be -- a voice, or  
16 lack of a voice for what's been happening with land depletion,  
17 pretty much. I feel as though we are the endangered species  
18 when it comes down to gentrification and land loss. So,  
19 again, I question, you know, why isn't there more of an  
20 initiative and incentive to step in and to help pretty much  
21 right the wrong. There's more than enough opportunity there.  
22 We see that. You know, when funds are requested throughout  
23 other areas, you know, for whatever reason, they can get the  
24 attention that they deserve. But I feel as though we haven't  
25 -- we continue to lack that representation and that voice.

TAIWAN SCOTT - DIRECT EXAMINATION BY MR. INGRAM

500

1 Q. And have you raised these concerns with your current  
2 Congresswoman?

3 A. More recently, actually, for some time, we have -- when I  
4 say "we," I'm referring to the native island leadership in  
5 Hilton Head -- has reached out to representatives and actually  
6 had a meeting scheduled to continue bringing these issues to  
7 the forefront. But, you know, that particular meeting was  
8 cancelled. Senator Davis does come down a lot. But, again,  
9 it's just we know that there's, historically, an issue within  
10 our areas. And we don't feel as though there's enough  
11 attention that has been given to try to rectify these issues.

12 Q. And before Congresswoman Mace, did you have any issues  
13 with your prior representatives in CD 1?

14 A. The issues have always been there. Now, how much of  
15 attention they have gotten is always questionable. We don't  
16 feel as though there's never been enough attention that can  
17 help, you know, get our issues in the forefront.

18 Q. Mr. Scott, I want to ask you about the current enacted  
19 map.

20 MR. INGRAM: So, can we please pull up PX-489?

21 BY MR. INGRAM:

22 Q. Mr. Scott, do you recognize this document?

23 A. Yes. It appears to be the approved map.

24 Q. And what did you think when you first saw this map?

25 A. Well, I think that -- well, my first thought was -- is

*TAIWAN SCOTT - DIRECT EXAMINATION BY MR. INGRAM*

501

1 another map, you know, same of the -- I would say I didn't  
2 believe that the map is doing my community justice as far as  
3 Congressional District No. 1 is concerned.

4 Q. And what concerns did you have when looking at the map  
5 about Congressional District 1?

6 A. I look at the continued issues that we've had,  
7 historically, with the amount of growth. And when I say  
8 "growth," I'm referring to the highly tourist designated areas  
9 that continues to affect my Gullah culture, and not being able  
10 to partake in economic development opportunities, not being  
11 able to rectify or right some of the wrong that has been  
12 imposed on us, and not being able to elect someone who can put  
13 our issues in the forefront.

14 Q. And, Mr. Scott, did you have any issue with the  
15 boundaries of Congressional District 1?

16 A. Not knowing particularly the lines, understanding that  
17 the communities of Charleston and North Charleston are like  
18 communities where Blacks -- where Gullah-Geechee community  
19 people are, I think that there was an opportunity that should  
20 have been afforded to give us -- put us in a place where we  
21 can be able to elect someone that can speak up on our behalf.

22 Q. From your experience with the Gullah community, what  
23 issues does Charleston and North Charleston and its residents  
24 have in common?

25 A. Again, it all kind of goes down to the heirs property,

TAIWAN SCOTT - DIRECT EXAMINATION BY MR. INGRAM

502

1 ordinances, zoning, land use, economic development, the amount  
2 of -- how high the taxes are being raised. That's basically  
3 taxing us off, you know, of our ancestral lands. So, I look  
4 at those particular areas and say, okay, well, we have these  
5 same issues, we have these same concerns. And I still  
6 question, you know, if Congress believed that -- you know,  
7 it's important enough to identify this area, why isn't --  
8 what's the next step? It's one thing to say, here are areas  
9 of interests, let's go out and let's flag a building or let's  
10 name buildings after historical Black people, you know, but  
11 what's being -- what's in place to help us? You know, where's  
12 that voice that we have that -- I mean, these issues didn't  
13 just begin. Historically, we've had these issues going on.  
14 So, what is it going to take in order for us to get the  
15 attention that we deserve, the attention that Congress  
16 themselves said we should have?

17 Q. Mr. Scott, do you think these current boundaries are  
18 harmful to the Black community and the Gullah community in CD  
19 1?

20 A. Yes, I do.

21 Q. Why?

22 A. I believe, again, that it doesn't open up an avenue for  
23 us to elect someone who will speak up and advocate for  
24 historical concerns that continue to arise and just continue  
25 to escalate.

*TAIWAN SCOTT - DIRECT EXAMINATION BY MR. INGRAM*

503

1 Q. As a 27-year-long resident of this area, can you remember  
2 a time when you did have an advocate in Congress?

3 A. I would say we've had an advocate, probably with Joel  
4 Cunningham, who actually visited multiple times the Gullah  
5 community of Hilton Head. I mean, we've actually sat down  
6 with him multiple times. But, you know, it's almost like a  
7 hit and miss. You know, when do we get the attention that we  
8 deserve? A lot of people won't -- a lot of people don't  
9 understand the impact of the decisions that are made and how  
10 it affects people on a daily. You know, we should have an  
11 advocate for us.

12 Q. And looking at this map, do you see the legislature  
13 branch increasing or decreasing Black voting power in your  
14 community?

15 A. What I see is there was an opportunity to help get us a  
16 voice. And I think we deserve an opportunity to have a voice.

17 Q. And as a plaintiff, are you alleging that the legislators  
18 have any animus or hate towards the Gullah community?

19 A. I wouldn't say there's any hate, but I will quote a  
20 native Gullah elder, who says to me: "They love the culture  
21 but not the people." You know, for me that's impactful. So,  
22 if we're looking at one of the highest -- or possibly the most  
23 impactful financial benefit to the State of South Carolina,  
24 which is tourism, and you look at a culture that's basically  
25 being pushed to the side because of quote/unquote "development

*TAIWAN SCOTT - DIRECT EXAMINATION BY MR. INGRAM*

504

1 and progress," but at the same time, you have identified this  
2 culture as -- I would say, indigenous -- I mean, we've gotten  
3 to the point where you've identified us, something's wrong.  
4 It doesn't add up.

5 Q. And, Mr. Scott, will your community face harms if these  
6 maps do not change?

7 A. I believe if we're not afforded the opportunity to elect  
8 a voice, someone who will speak up on our historical concerns,  
9 we will continue to lose our property. And without the  
10 people, you won't have the culture.

11 Q. And what communities do you believe should be in CD 1?

12 A. I believe that the areas of Charleston and North  
13 Charleston should be brought together. They should be brought  
14 in together. Just because they weren't before, doesn't mean  
15 that it's right. You know, we should have a voice. And  
16 that's all the Gullah community has been asking for, is an  
17 advocate to come out and speak up on ongoing concerns. And  
18 we're missing an opportunity to help preserve what you have  
19 already -- what Congress has already said and designated as an  
20 area of concern.

21 Q. Mr. Scott, why did you decide to become a plaintiff in  
22 this lawsuit?

23 A. Well, you know, sometimes you get pushed into things, you  
24 know, whereas, you know, it becomes bigger than yourself. A  
25 lot of people won't believe this, but I personally

TAIWAN SCOTT - DIRECT EXAMINATION BY MR. INGRAM

505

1 experienced, I would say, discrimination and racism, outright,  
2 when it comes down to Hilton Head, in being able to open a  
3 business on my property. Okay. Hilton Head was incorporated  
4 in 1983. From 1983 to pretty much last year, there has not  
5 been one native Gullah, one native islander, whose been able  
6 to open up a new business and new buildings on their property.  
7 Since 1983. Now, after a seven-year legal battle, that I'm  
8 pretty much myself coming out of, we finally broke that cycle.  
9 It truly took me to sit back and realize that it's not about  
10 me personally, it's bigger than Taiwan Scott. It's about a  
11 culture that has been systematically pushed to the side and  
12 taken advantage of.

13 And when I say that nobody listens, nobody's been  
14 listening. Everybody knows what's going on. Everybody can  
15 see that there is land loss. Everybody can see that there's  
16 heirs property. Everybody can see that. What are you doing  
17 about it? Nobody's doing anything about it. There is  
18 opportunity to help sustain the issues that you are part of  
19 accepting. I mean, what does it take to happen for us to be  
20 able to get a level playing field? That's it. Most people,  
21 they're not looking for economic development, they're looking  
22 just to continue living on their land. That's it.

23 Now, if I wanted to bring a mobile home on my property, I  
24 didn't have no problem with that. But when you're talking  
25 about economic -- sustainable economic opportunity, that's



TAIWAN SCOTT - DIRECT EXAMINATION BY MR. INGRAM

506

1 when all the roadblocks came up. I tried my best to go out  
2 and reach out to representatives; not just my own, outside of  
3 my area. But no one would step in. But there's a problem.  
4 There's a systemic problem that needs to be changed, and it  
5 goes back to "They love the culture but not the people." So,  
6 we can take advantage of the Gullah-Geechee community and the  
7 historical sites, and we can continue advertising bringing  
8 people to the Gullah Geechee Corridor, you know, because it's  
9 going to bring financial gain to the State. But what about  
10 the people? What about the people whose backs it's built on?  
11 When are we going to get an opportunity? That's all we've  
12 asked for, is a level playing field.

13 A place like Hilton Head, and we still don't have sewer  
14 in a world class resort destination. Something is  
15 systemically wrong with that. How can they even justify that?  
16 There are areas in our community that you wouldn't even know  
17 about and wouldn't even want to drive by, because they have  
18 put the facade up for the tourists not to see it. But we got  
19 bicycle paths going through our communities. You know,  
20 something is wrong with that. We can put hundreds of  
21 thousands of dollars into sea yacht basins. That's priority.  
22 What about the cemetery? What about the historic cemeteries  
23 throughout our Gullah communities? My family is buried at the  
24 18th hole in Sea Pines. Buried down there. And you wouldn't  
25 even know the cemetery exists. So, who is doing anything

TAIWAN SCOTT - CROSS-EXAMINATION BY MS. STRINGFELLOW

507

1 about it? "We love the Gullah culture but we don't love the  
2 people."

3 MR. INGRAM: Thank you, Mr. Scott.

4 I will pass the witness.

5 THE COURT: Cross-examination.

6 MS. STRINGFELLOW: May it please the Court,  
7 your Honor.

8 **CROSS-EXAMINATION**

9 **BY MS. STRINGFELLOW:**

10 Q. Good afternoon, Mr. Scott. How are you?

11 A. I'm well. And yourself?

12 Q. My name is LaJessica Stringfellow. I met you virtually  
13 not too long ago, so it's good to see you in person.

14 A. I do remember.

15 Q. So, I don't have many questions for you, just a couple.

16 Mr. Scott, you testified that you live in Congressional  
17 District 1, right?

18 A. Yes.

19 Q. And in 2012, you also resided in Congressional District  
20 1; is that correct?

21 A. Yes.

22 Q. Were you in Congressional District 1 in 2002?

23 A. If the lines weren't changed, then I would say yes.

24 Q. Well, I'll represent to you that Hilton Head was in  
25 Congressional District 1 in 2002, okay?

TAIWAN SCOTT - CROSS-EXAMINATION BY MS. STRINGFELLOW

508

1 A. Okay.

2 Q. And so, you mentioned being a part of the Gullah  
3 community in Hilton Head, right?

4 A. Yes.

5 Q. And Hilton Head, the entire area of Hilton Head and the  
6 Gullah community that resides there, it's a part of  
7 Congressional District 1, isn't it?

8 A. Yes.

9 Q. And so, your community of the Gullah community in Hilton  
10 Head is not split between two districts; is that correct?

11 A. When I look at my community, I don't limit it to Hilton  
12 Head, I look at areas that are -- I mean, I'm literally less  
13 than 150 miles from where I am now, you know, to Hilton Head.  
14 So, I still consider this area as my community.

15 Q. But your community on Hilton Head is fully within  
16 Congressional District 1, right?

17 A. Well, when you say "my community," what are you referring  
18 to?

19 Q. Where you reside in Hilton Head, it's fully within  
20 Congressional District 1?

21 A. I reside in Hilton Head in Congressional District 1, yes.

22 Q. And you're aware that the congressional districts in  
23 South Carolina significantly grew over the past 10 years,  
24 right?

25 A. Yes.

TAIWAN SCOTT - CROSS-EXAMINATION BY MS. STRINGFELLOW

509

1 Q. And so, are you aware that the congressional districts  
2 have to be numerically balanced in comparison to one another?

3 A. Yes.

4 Q. And so, are you aware that Congressional District 1 grew  
5 so much that it needed to shed some of that population to the  
6 surrounding districts?

7 A. I understand that because we grew, it needs to be  
8 dispersed in different areas, but my question still that I  
9 have is: Even though with that growth, why aren't we put in a  
10 position to be able to elect someone that will speak out for  
11 us?

12 Q. Okay. And so, you're aware that a part of Charleston is  
13 in Congressional District 1, right?

14 A. Yes.

15 Q. And so, you mentioned that you -- or you testified that  
16 you believe North Charleston should be a part of Congressional  
17 District 1; is that your testimony?

18 A. I believe that between North Charleston and Charleston,  
19 we should have had the opportunity to be within -- that area  
20 should have had the opportunity to be within Congressional  
21 District 1.

22 Q. But are you aware that North Charleston is a part of  
23 Congressional District 6?

24 A. Yes.

25 Q. Would you agree with me that the citizens of North

TAIWAN SCOTT - CROSS-EXAMINATION BY MS. STRINGFELLOW

510

1 Charleston have an ability to elect a candidate of their  
2 choice in Congressional District 6?

3 A. I would say that, because of the area there, that there  
4 should have been an opportunity afforded to bring citizens  
5 into Congressional District 1 that will give us an opportunity  
6 to elect our preferred candidate.

7 Q. Okay. But that doesn't answer the question I'm asking  
8 you. The community in North Charleston that resides in  
9 Congressional District 6, would you agree that they are able  
10 to elect a candidate of their choice?

11 A. I would agree that they are in a position to elect a  
12 candidate of their choice. I believe that they would have had  
13 a better opportunity to help Congressional District 1 by being  
14 incorporated into it.

15 Q. Okay. And --

16 A. I don't think there's an issue with Congressional  
17 District No. 6 as far as a representative is concerned. I  
18 think they have someone that's speaking out on their behalf.  
19 The problem that I have is, we don't.

20 Q. So, the Gullah community that resides in North  
21 Charleston, you would agree they do have a representative that  
22 will speak out on their behalf?

23 A. I believe that they have been given an opportunity to  
24 have someone, yes.

25 Q. Would you agree with me that North Charleston can share

TAIWAN SCOTT - CROSS-EXAMINATION BY MS. STRINGFELLOW

511

1 similarities with some of the communities that are closer to  
2 it than Hilton Head?

3 A. I believe North Charleston -- I mean, throughout the  
4 Gullah Geechee Corridor, there are issues or concerns that we  
5 all have.

6 Q. Not just considering the Gullah community but just in  
7 general, would you agree that the area shares similarities  
8 with the surrounding community that are closer to it than  
9 Hilton Head?

10 A. I believe there are similarities, but I still question if  
11 they're given the opportunity -- afforded the opportunity to  
12 prosper or to have a voice.

13 Q. And the Gullah community is not the only community within  
14 North Charleston, right?

15 A. Correct.

16 Q. Mr. Scott, you didn't participate in this redistricting  
17 cycle, did you?

18 A. I did not.

19 Q. You didn't attend any of the public input hearings that  
20 took place around the state, did you?

21 A. I did not.

22 Q. You did not convey your concerns to any of the South  
23 Carolina legislative members, did you?

24 A. That's correct.

25 Q. Mr. Scott, did you have the opportunity to review any of

TAIWAN SCOTT - CROSS-EXAMINATION BY MS. STRINGFELLOW

512

1 the proposed maps that were proposed to the legislature?

2 A. In depth? No.

3 Q. Are you aware that the South Carolina NAACP submitted  
4 proposed maps for the Congressional Plan?

5 A. I believe they have, yes.

6 Q. And do you believe that the South Carolina NAACP maps  
7 would have been more beneficial to your community?

8 A. Honestly, I can't answer that, if they would have been  
9 more beneficial or not.

10 Q. Are you aware that one of those maps that were proposed  
11 by the South Carolina NAACP had Hilton Head Island separated  
12 from North Charleston?

13 A. No, I'm not aware of it.

14 Q. Are you aware that several of the other maps that were  
15 proposed by organizations had Hilton Head separated from North  
16 Charleston?

17 A. Well, what I can remember is talk amongst the community  
18 that areas within Beaufort were taken out. And my  
19 understanding is because -- well, based on what I see, is  
20 because they stressed that they didn't want that to happen,  
21 their voices were heard. Now, we're talking about White  
22 people who spoke up and said, we didn't want this. And I  
23 believe that's why, you know, that was taken in consideration.  
24 But when you look at the areas of Charleston and North  
25 Charleston, where people of color have said, hey, you know,

1 we've got some issues here, we need a voice, in my opinion --  
2 well based on what I see, that wasn't taken into  
3 consideration. Their voice wasn't loud enough, if you ask me.

4 Q. But we've established that the citizens of North  
5 Charleston are able to elect a candidate of their choice,  
6 right?

7 A. I do understand that, but I still go back to, you know,  
8 being able to bring in the two areas -- to be able to have  
9 someone that they can elect.

10 Q. Mr. Scott, are you aware that the Black voting age  
11 population increased in Congressional District 1 with the new  
12 enacted map?

13 A. Yes. My understanding is it did increase.

14 Q. And wouldn't you agree that having an increase in the  
15 Black voting age population would be beneficial to the voting  
16 influence for Black residents in Congressional District 1?

17 A. I believe having the opportunity -- I believe just  
18 because it grew -- it growing is one thing, but being able to  
19 elect someone that's going to speak out for your concerns is a  
20 bigger concern, in my opinion. And just because it grew, we  
21 still don't have a person to stress and represent us.

22 Q. And your previous testimony was that you lack  
23 representation and you lack someone to advocate for your  
24 issues; is that correct?

25 A. I think, historically, by what we can see has been



1 happening within our community, historically, it's shown that  
2 we continue to fight for the same issues, we continue to have  
3 the same concerns, and if there was an effort, if there was a  
4 voice, then I think there would be some type of -- there would  
5 be more -- I think you would be able to see more happening  
6 within our communities.

7 Q. Okay. Mr. Scott, did you have an opportunity to meet  
8 with Representative Joe Cunningham when he represented  
9 Congressional District 1?

10 A. Yes, actually.

11 Q. Did he advocate for issues on Hilton Head Island?

12 A. We've met with Joe Cunningham multiple times. With any  
13 representative, or any proposed representative or anyone who  
14 is seeking election, we always try to meet with them to bring  
15 our issues to the forefront. To say that our concerns were  
16 addressed with Joe Cunningham, I wouldn't say that it was a  
17 priority -- it was given the priority enough that we seen the  
18 results. Was it initiated to try? Yes. I know that offshore  
19 drilling was one of our main concerns that we've had. And as  
20 far as I know and as far as I remember, that is something that  
21 he tackled. But we're talking about -- the way we look at it  
22 is, a big wheel has been turning in one direction for a long  
23 time, and in order to right the wrong, I think we collectively  
24 need voices, especially if we have representatives that  
25 represent Gullah communities.

1 Q. Okay. It's a great point that you made there. So, you  
2 testified that Senator Tom Davis visits Hilton Head often,  
3 right?

4 A. I would say more often now than ever because of the  
5 Highway 278 expansion through the historical Gullah community  
6 and the widening of the bridges. There has been some issues,  
7 I would say, between -- or disagreements between Beaufort  
8 County and the town of Hilton Head. So, yeah, Senator Davis  
9 has been coming down more often. And, again, I think it's  
10 because of that effect. It hasn't been, in my opinion, driven  
11 by ongoing Gullah concerns. Having \$5 million seed money for  
12 economic development pretty much solidifies to me that the  
13 opportunity is always there, it's always been afforded. You  
14 know, why now? You know, why not before? Historically, you  
15 know, this is something that could be addressed.

16 Q. And Senator Davis was instrumental in your community  
17 receiving that --

18 JUDGE GERGEL: Ms. Stringfellow, I don't think  
19 Senator Davis, a state senator, is going to be relevant to  
20 this case, unless you can demonstrate that.

21 MS. STRINGFELLOW: Well, your Honor, the witness has  
22 testified that he did not have -- he believes that there  
23 wasn't significant representation advocacy for his issues.

24 JUDGE GERGEL: We're not dealing with the Senate  
25 Plan, we're dealing with Congressional Plan.

TAIWAN SCOTT - CROSS-EXAMINATION BY MS. STRINGFELLOW

516

1 MS. STRINGFELLOW: Okay.

2 Mr. Scott, I think that's all the questions I have  
3 then.

4 JUDGE GERGEL: Thank you, ma'am.

5 Cross-examination by the House? Let's avoid  
6 repetition.

7 MR. BARBER: My name is Hamilton Barber, for the  
8 House Defendants.

9 **BY MR. BARBER:**

10 Q. I have a few questions for you today, Mr. Scott.

11 You said that the Gullah Geechee Cultural Heritage  
12 Corridor extends from Wilmington, North Carolina to  
13 Jacksonville, Florida, right?

14 A. Yes.

15 Q. And I presume it spans multiple districts in South  
16 Carolina, right?

17 A. Yes, it does.

18 Q. So, that means that this community has representation  
19 across South Carolina, right?

20 A. We have representatives throughout the Gullah Geechee  
21 Corridor, yes. However, we feel that we don't have  
22 representation for us, where I live, Congressional District 1,  
23 a voice for us.

24 Q. Okay. So, don't have any representative in CD 1?

25 A. We have a representative, but I believe that that

1 representative has not fulfilled -- I believe that that  
2 representative has not spoken -- has not represented the  
3 Gullah Geechee community in Congressional District 1 in our  
4 best interests, of the Gullah people.

5 Q. Okay. And with such a large district -- excuse me, such  
6 a large community, would you agree with me that this area is  
7 too large for a single congressional district between  
8 Wilmington, North Carolina and Jacksonville, Florida?

9 A. I think that, based on areas -- I mean, I don't know if  
10 it's significant, if it should have. I can't answer if we  
11 should have one representative. You're crossing different  
12 states.

13 Q. I got you. But even within South Carolina, would you  
14 agree with me that there's different cultures, different  
15 political beliefs, in such a large area?

16 A. Different -- sorry?

17 Q. Different cultures, different political beliefs.

18 A. Yes.

19 Q. But would you agree with me that there are competing  
20 different communities of interest just within Gullah community  
21 area?

22 A. Well, I know, historically, we all have the same  
23 concerns. I mean, we all have heirs property concerns, we all  
24 have rising taxes concerns, we all have sustainable economic  
25 development concerns that we haven't been able to partake in.

TAIWAN SCOTT - CROSS-EXAMINATION BY MS. STRINGFELLOW

518

1 I mean, those issues, they cross lines. They have been  
2 historically out there and they continue to be.

3 Q. And in your non-Gullah community, they also have those  
4 same issues as well, right?

5 A. I would assume, but has those non-Gullah communities been  
6 designated by Congress as culturally historical and  
7 significant? I'm talking about my community. I'm here to  
8 advocate about my community.

9 Q. I understand. And just to shift gears quickly, an  
10 attorney from the NAACP asked you to be a plaintiff, right?

11 A. I've had, like I mentioned earlier, seven years of  
12 dealing with issues on Hilton Head. I've had an ongoing  
13 conversation and I've had ongoing communications with Legal  
14 Defense Fund for every bit of probably close to six years now.  
15 I mean, they have been to Hilton Head. They have actually  
16 forded Hilton Head on our behalf for ongoing concerns. So, I  
17 have an ongoing relationship with them.

18 Q. And at that time, the plan had not even passed, right?

19 A. I'm sorry?

20 Q. And at that time, the redistricting plan had not even  
21 passed, right, when you were asked to be a plaintiff?

22 A. When -- my ongoing relationship with them?

23 Q. How did you become to be part of this --

24 A. Again, I've had multiple dealings over at least a  
25 six-year period of time with the Legal Defense Fund.

TAIWAN SCOTT - REDIRECT EXAMINATION BY MR. INGRAM

519

1 Q. Just for the sake of time, I'm going to shift gears. You  
2 had an opinion piece published September 29, 2022, in the  
3 State Newspaper online, right?

4 A. Yes.

5 Q. Did anyone other than yourself help draft that piece?

6 A. I mean, I worked with the Legal Defense Fund, I worked  
7 with counsel on that. But, I mean, that's my words. I mean,  
8 that's what's been happening. I mean, I stick by it.

9 Q. Okay. You spoke favorably about the efforts of Senator  
10 Davis, right?

11 A. Yes.

12 Q. And he's a Republican, right?

13 A. Yes.

14 Q. So, that means you have no concern with a Republican  
15 representative, right?

16 A. It doesn't matter to me if it's Republican or Democrat.  
17 All I want is a voice for my community. And that's all we've  
18 been asking for, is a voice for our community.

19 MR. BARBER: That's all the questions I have.

20 THE COURT: Thank you. Thank you, sir.

21 MR. INGRAM: I just have brief redirect.

22 JUDGE GERGEL: The word "brief" is very important.

23 **REDIRECT EXAMINATION**

24 **BY MR. INGRAM:**

25 Q. Mr. Scott, are you a member of the South Carolina NAACP?

TAIWAN SCOTT - REDIRECT EXAMINATION BY MR. INGRAM

520

1 A. No, I'm not.

2 Q. And my last question: In your view, Mr. Scott, does  
3 North Charleston have more in common with your community or  
4 with Columbia?

5 A. Definitely more with my community.

6 Q. Thank you. That is all.

7 JUDGE GERGEL: Thank you. You may step down, sir.

8 THE WITNESS: Thank you.

9 MS. ADEN: Your Honor, if you're willing, we have one  
10 more fact witness that we believe will be very brief, and can  
11 end the day and take another witness off our list.

12 JUDGE GERGEL: How brief? Folks, I want to say  
13 something to you: We can do this a lot more efficiently. I  
14 mean, I tried a lot of cases in my day, over a hundred cases.  
15 And this is tedious. Everybody's pace is just too slow.  
16 You've got to kind of get to the point and move on. You know,  
17 and I'm fussing at everybody here, not one side or the other.  
18 But y'all need to get organized tomorrow so that, when we come  
19 back, y'all are more efficiently getting it. On almost every  
20 witness, we got it in like the first hour. We knew your  
21 points, all of the points, within an hour. And y'all just  
22 kept going over and over. We all read all those reports, we  
23 listened to y'all. It's excellent, but there's just too much  
24 repetition.

25 Bring your witness in.

HENRY GRIFFIN - DIRECT EXAMINATION BY MR. AUDAIN

521

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

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

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

7 **DIRECT EXAMINATION**

8 **BY MR. AUDAIN:**

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

10 A. Good afternoon.

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

12 A. Henry Griffin.

13 Q. Mr. Griffin, where do you live?

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

15 Q. How long have you lived there?

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

17 Q. How old are you now, sir?

18 A. Seventy.

19 Q. Are you a registered voter?

20 A. I am.

21 Q. How long have you been a registered voter?

22 A. Since I was 18.

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

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



HENRY GRIFFIN - DIRECT EXAMINATION BY MR. AUDAIN

522

1 vote. So, I felt I would be denying them if I didn't vote.

2 Q. What congressional district do you live in?

3 A. Congressional District 1.

4 Q. What congressional district did you live in last year?

5 A. Congressional District 6.

6 Q. Are you a member, currently, of any civic organizations?

7 A. I am. I'm a member of the NAACP. I'm a member of the  
8 Phi Beta Sigma Fraternity. I'm a member of the Sumter Free  
9 Health Clinic. We have a Dad's Club for children who don't  
10 have fathers, at JK Gourdin Elementary School. And I'm a  
11 church member.

12 Q. Thank you, Mr. Griffin. Let's talk a little bit about  
13 your involvement with the NAACP. How long have you been a  
14 member of the NAACP?

15 A. Since about the time I started voting.

16 Q. So, since you were about 18?

17 A. About 18, yes.

18 Q. And do you currently hold any offices?

19 A. I do. I'm the President of the Upper Berkeley Branch of  
20 the NAACP. I'm also the second vice president of the South  
21 Carolina State Conference of the NAACP.

22 Q. And how many members does the Upper Berkeley Branch of  
23 the NAACP currently have?

24 A. We have about 75 members.

25 Q. And, president, is that an elected office?

*HENRY GRIFFIN - DIRECT EXAMINATION BY MR. AUDAIN*

523

1 A. It is.

2 Q. How many times have you been elected president?

3 A. I've been elected president three times.

4 Q. And what are some of the issues that the Upper Berkeley  
5 Branch is currently working on?

6 A. We're working on trying to ensure that the rural people  
7 in our area get broadband, clean water. We're also trying to  
8 deal with some of the inequities that come up with the poor  
9 people.

10 Q. Thank you for that, Mr. Griffin. So, you mentioned  
11 broadband and clean water. In what ways can responsive  
12 congressional representation help the branch address the issue  
13 of broadband?

14 A. Well, there's funding that -- or grants that have been  
15 available for broadband and clean water, and a responsive  
16 congressional leader could direct those funds to the area that  
17 we could have it done.

18 Q. So, generally speaking, why is responsive congressional  
19 representation important to Black communities in Berkeley  
20 County, in your estimation?

21 A. Our community is a rural community, and we don't have  
22 broadband and clean water, we don't have sewage. So, we're  
23 trying to get -- sewage is maybe the last one, but we're  
24 trying to definitely get clean water and broadband.

25 Q. And in what ways can your Congressman, somebody working

HENRY GRIFFIN - CROSS-EXAMINATION BY MR. TRAYWICK

524

1 in the federal government, help address these issues, as  
2 opposed to your state or your local representative?

3 A. Well, I knew -- I know through a grant from Congressman  
4 Clyburn that gave water to rural Williamsburg County. And the  
5 water was just as bad there as it is in parts of Berkeley  
6 County.

7 Q. Mr. Griffin, do you know who your new Congressperson is?

8 A. I do.

9 Q. Who is that?

10 A. Nancy Mace.

11 Q. Do you know if Nancy Mace is running for re-election in  
12 this year's midterms?

13 A. Yes, she's running.

14 Q. Has she campaigned in your community at all?

15 A. No.

16 Q. Thank you, sir.

17 MR. AUDAIN: All the questions I have, your Honors.

18 THE COURT: Cross-examination?

19 MR. TRAYWICK: May it please the Court. Lisle  
20 Traywick, from behalf of the Senate defendants.

21 JUDGE GERGEL: Now, mr. Traywick, let's show what a  
22 brief cross-examination is.

23 MR. TRAYWICK: I promise you it will be brief, your  
24 Honor.

25 JUDGE GERGEL: I pray you can do it.

1 MR. TRAYWICK: That's right. I can. I've  
2 streamlined it in realtime.

3 CROSS-EXAMINATION

4 BY MR. TRAYWICK:

5 Q. Mr. Griffin, it's nice to see you today. I have just a  
6 few questions for you. You remember your deposition on  
7 September 12th, right?

8 A. I do.

9 Q. Okay. And you testified in your deposition that the maps  
10 just passed not too long ago, right?

11 A. That's the way I -- my understanding at that time.

12 Q. Okay. So, you weren't aware that they passed on  
13 January 20th of this year?

14 A. I am now.

15 Q. Okay. You're in an executive leadership role of the  
16 South Carolina State Conference of the NAACP, correct?

17 A. That's correct.

18 Q. Okay. And so, you know Ms. Brenda Murphy, don't you?

19 A. I know her.

20 Q. Is she the president of the State Conference?

21 A. She is.

22 Q. So, in your leadership role, are the two of you in  
23 regular contact?

24 A. Sometimes.

25 Q. Okay. But you testified you heard nothing about

HENRY GRIFFIN - CROSS-EXAMINATION BY MR. TRAYWICK

526

1 redistricting until July or August of this year, correct?

2 A. I testified about congressional districting.

3 MR. AUDAIN: I'm just going to register an objection,  
4 your Honor. I don't know that that's --

5 JUDGE GERGEL: Overruled. It's okay.

6 MR. TRAYWICK: Thank you.

7 BY MR. TRAYWICK:

8 Q. And you didn't participate in the congressional  
9 redistricting process, right?

10 A. No.

11 Q. Okay. You didn't reach out to your state representative  
12 or your Senator, did you?

13 A. No.

14 Q. You testified in your deposition you didn't do that  
15 because you didn't have time; is that right?

16 A. I don't remember saying that I didn't have time.

17 Q. Okay. During your deposition, you also complained that  
18 the BVAP was not high enough in the 1st District of the  
19 enacted plan; is that correct?

20 A. I think I said that.

21 Q. You think the map drawers should have prioritized that in  
22 drawing the 1st District?

23 A. No, I don't think he should have prioritized it. But I  
24 don't think he should have minimized it to the very bare  
25 minimum either.

HENRY GRIFFIN - CROSS-EXAMINATION BY MR. TRAYWICK

527

1 Q. You were previously in the 6th District, correct?

2 A. That's correct.

3 Q. Okay. So, you were pleased with the 6th District last  
4 time, weren't you?

5 A. I was.

6 Q. Okay. You were aware one of the NAACP's proposed maps  
7 submitted this cycle put all of Berkeley County into the 1st  
8 Congressional District, weren't you?

9 A. Yes.

10 Q. Okay. And you're aware that the BVAP in the 1st District  
11 actually increased in the enacted plan from 2012; is that  
12 right?

13 A. Yes, sir. But I'm also aware that if we pour a bottle of  
14 water in the ocean, we'll have more water; but does it make a  
15 difference?

16 Q. I like the analogy. Thank you. You also testified you  
17 believe North Charleston should have gone into the 1st  
18 District instead of Berkeley, right?

19 A. I think I did.

20 Q. Okay. In your view, that would have made the map fair,  
21 right?

22 A. I'm not -- I don't know that.

23 Q. Okay. But are you aware that some people from Berkeley  
24 preferred strongly to be in the 1st and for Berkeley County to  
25 be kept whole?

HENRY GRIFFIN - CROSS-EXAMINATION BY MR. TRAYWICK

528

1 A. I'm not aware of that.

2 Q. Okay. But were you also aware that Representative Mace  
3 lived in Berkeley County at the time the maps were drawn?

4 A. So, they did the map for her to give her what she wanted.  
5 Is that how -- why -- how the map was done?

6 Q. I'm sorry, Mr. Griffin. I get to ask you the questions.

7 A. Oh, okay.

8 JUDGE GERGEL: A pretty good one, though.

9 BY MR. TRAYWICK:

10 Q. But you've never spoken with her, have you?

11 A. No, I haven't.

12 Q. Okay. So, you can't say one way or the other whether  
13 she'll be responsive to your needs, can you?

14 A. I can't.

15 Q. Okay. Nor can you say one way or another whether she'll  
16 be responsive to the needs of the Black community, can you?

17 A. I do know that she didn't campaign in the Black  
18 community.

19 Q. There's still time yet, correct?

20 A. Yes.

21 Q. Okay. Last thing, Mr. Griffin. You do agree that  
22 politics played a role in how the maps were drawn, correct?

23 A. I think it did.

24 Q. Thank you. No further questions.

25 JUDGE GERGEL: Thank you, sir.

HENRY GRIFFIN - CROSS-EXAMINATION BY MR. PARENTE

529

1 Now, Mr. Traywick did an excellent job. You got a  
2 high bar here.

3 MR. PARENTE: I'll be even more brief, your Honor.  
4 My name is Michael Parente, for the House defendants.

5 JUDGE GERGEL: You're going to show him up, aren't  
6 you?

7 MR. PARENTE: I'm going to try my best, your Honor.

8 **CROSS-EXAMINATION**

9 **BY MR. PARENTE:**

10 Q. Mr. Griffin, you testified that you lived in the St.  
11 Stephen area of Berkeley County; is that correct?

12 A. That's correct.

13 Q. And do you recall during your deposition that you  
14 testified about the Black voting age population in the St.  
15 Stephen area? Do you recall that?

16 A. I recall that.

17 Q. Okay. Do you remember what you testified the Black  
18 voting age population in the St. Stephen area is?

19 A. I think my final answer was, I wasn't sure.

20 Q. Okay. Do you recall saying that you believed it was over  
21 50 percent?

22 A. I remember. And then I recanted it saying that I wasn't  
23 sure.

24 Q. Understood. But you would agree that St. Stephen is a  
25 high-percentage African-American community; is that correct?



HENRY GRIFFIN - CROSS-EXAMINATION BY MR. PARENTE

530

1 MR. AUDAIN: Objection, your Honor. I really think  
2 this is mischaracterizing his deposition testimony.

3 JUDGE GERGEL: Overruled. Mr. Griffin is handling  
4 himself just fine. Go ahead.

5 MR. PARENTE: I'll rephrase it.

6 BY MR. PARENTE:

7 Q. Do you believe that St. Stephen has a high percentage of  
8 African-American residents?

9 A. I believe so.

10 Q. And so, adding St. Stephen to Congressional District 1  
11 does not support the idea of diluting African-American vote in  
12 Congressional District 1; does it?

13 A. I think it does.

14 Q. Okay. And you also testified that you didn't believe  
15 that the process allowed for input or transparency; do you  
16 recall that testimony?

17 A. I recall that.

18 Q. Did you attend any of the public meetings set up by the  
19 House of Representatives?

20 A. Set up by the House of Representatives?

21 Q. The House of Representatives held 11 public hearings  
22 across the state. Do you recall attending any of those  
23 hearings?

24 A. For the State House of Representatives?

25 Q. Yes. The State House of Representatives held hearings

HENRY GRIFFIN - CROSS-EXAMINATION BY MR. PARENTE

531

1 and took testimony from the public. Did you attend any of  
2 those meetings?

3 A. I think I did.

4 Q. All right. And you testified that you're a member of the  
5 executive committee of the State Conference of the NAACP; is  
6 that correct?

7 A. I am.

8 Q. And does the State Conference of the NAACP have to vote  
9 on litigation?

10 A. They do.

11 Q. And do you recall a vote of the State Conference on this  
12 litigation?

13 A. I don't recall.

14 Q. Do you recall being presented any evidence of intentional  
15 racial discrimination or racial gerrymandering prior to that  
16 vote on litigation?

17 A. I don't remember.

18 Q. Okay. Thank you, sir. Those are all my questions.

19 JUDGE GERGEL: Anything on redirect?

20 MR. AUDAIN: No, your Honor.

21 THE COURT: Thank you.

22 I want you to know, everybody else, that those  
23 lawyers did it just right. I want to congratulate all of  
24 them. Okay, folks. It's the 5:00 o'clock hour. Are there  
25 matters we need to address?

1 MR. CHANEY: Yes. One thing, your Honor. Dr. Ima is  
2 one of the plaintiffs' experts. Because of a scheduling  
3 concern, we initially were intending to put him on today, but  
4 he's not able to come back till the end of this week. We've  
5 spoken with the defendants, both for the House and Senate,  
6 about essentially taking him out of order --

7 JUDGE GERGEL: We can do it out of order.

8 MR. CHANEY: Okay. Thank you. I just wanted to flag  
9 that for the Court.

10 JUDGE GERGEL: Judges are a little more flexible than  
11 juries on that. Glad to do that. And I appreciate the  
12 defendants accommodating that as well.

13 Okay. Folks, we will be sharp, bright, and early on  
14 Thursday morning at 9:00 a.m. Everyone be safe. And y'all  
15 work together and see if we can't streamline this thing. This  
16 matter is adjourned.

17 \* \* \* \* \*

18 I certify that the foregoing is a correct transcript from  
19 the record of proceedings in the above-entitled matter.

20 s/Lisa D. Smith,

11/5/2022

21 Lisa D. Smith, RPR, CRR

\_\_\_\_\_  
Date