

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 7, 2022
	:	
Plaintiffs,	:	VOLUME IV (PAGES 799 - 1081)
v.	:	
	:	
THOMAS C. ALEXANDER, <i>et al.</i> ,	:	
	:	
Defendants.	:	
	:	
	:	

- - -

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

- - -

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1 *(The following bench trial proceedings resumed on*
2 *Friday, October 7, 2022, at 9:00 a.m.)*

3 JUDGE GERGEL: Please be seated. Good morning.

4 Any questions before we begin with the witness?

5 MR. CHANEY: I just wanted to update the panel in
6 terms of where we're at in our pace. We still fully
7 anticipate being able to close our case on Tuesday. We told
8 the defendants that, and they plan to have at least a witness
9 ready to go in the event that we end early on Tuesday.

10 JUDGE GERGEL: Okay. Let me say something. Our
11 goal, though, that is not binding, is to finish next week. If
12 for some reason the defendants have not had a chance to put up
13 their case by then, then we're going to have to resume at some
14 later point. They're going to have a chance to put up their
15 case. The plaintiffs don't get to hog all the time. But
16 that's not our preference. I'm sure it's not y'all's
17 preference. We're all working hard, we want to get through,
18 but we're going to do what we can. If we have to come back --
19 we've got three complicated schedules. Judge Heytens got a
20 round for a Fourth Circuit argument coming up. I've got
21 multiple trials. But we'll work it out. If we have to do
22 that, we will. But we're going to push hard to get through as
23 much as possible.

24 One of the limits is, I can't kill my staff. If you
25 think this is hard work, tell me about Ms. Smith sitting there

1 pounding away for hours at a time, taking down every word.
2 And I love how precise she is, she makes everybody slow down
3 so she gets every word, which is right. And that's exactly
4 the kind of transcript we want. But it is a practical
5 limitation.

6 So, anyway, let's do as much today obviously as we
7 can. We've got a couple airplane rides that my friends from
8 Virginia have to make. But it's not an early flight, so we
9 can go for a little while. And let's plow through. And I
10 like the emphasis on less repetition and more pointed
11 examination, direct and crosses.

12 Okay. With that, let's resume and let's call the
13 witness.

14 MR. TYSON: Your Honor, can I just comment to that
15 please real quick --

16 THE COURT: Yes, sir.

17 MR. TYSON: -- while we're talking about scheduling?

18 I just wanted to mention that they've got seven more
19 witnesses we think that they've got to get through by the end
20 of the day Monday, and then they've got -- I mean, by Tuesday.
21 And then they've got an expert later in the week. And Mr.
22 Chaney just said that, if possible, we'd like to have -- the
23 defendants can have a witness to start on Tuesday.

24 So for the Court's information, the Senate's first
25 witness is going to be Will Roberts. And he's going to take a

1 pretty good bit of time, because, as the Court knows, this is
2 about maps. And he'll be the first guy that'll stand up and
3 talk about maps. And you'll be able to see why the
4 legislature drew the lines. We don't really think it's a wise
5 thing to start on Tuesday at 3:30 or 4:00 to have him go,
6 because our direct is going to take a while.

7 JUDGE GERGEL: Mr. Tyson, I'd say with a jury, that's
8 probably true. But with us, if we're at 3:30 and they've
9 finished their case, I'm going to want you to call your
10 witness. We're paying attention. Don't worry about that.
11 And it's going to take a while for these detailed witnesses to
12 go through. We've got so much trial time, and we're going to
13 spend what we can reasonably. Don't worry, if we're tired, we
14 won't do it or something. But, you know, I'm doing fine. I
15 mean, maybe I'm a little bit on the compulsive side. I would
16 concede that. You know me well, you probably would agree.

17 MR. TYSON: Yes, your Honor.

18 THE COURT: But I'm not going to break up -- I'm not
19 going to miss multiple hours of potential trial testimony,
20 because, like the witness yesterday, I mean, I took very
21 careful notes of what she said. And we'll pick right back up
22 with her today.

23 MR. TYSON: I understand, your Honor. But just our
24 preference would be to --

25 JUDGE GERGEL: I don't blame you. If I were in your

1 shoes, I'd want exactly the same thing.

2 MR. TYSON: Very good. Thank you, your Honor. I
3 just wanted to bring that to the Court's attention to help us
4 move forward and get done.

5 JUDGE GERGEL: Mr. Moore?

6 MR. MOORE: Yes, sir. Just briefly, your Honor. I
7 heard your Honor loud and clear yesterday about this is a
8 Senate -- I think you said more than one time, this is a
9 Senate matter.

10 JUDGE GERGEL: Exactly.

11 MR. MOORE: Okay. But I keep hearing a lot about the
12 House.

13 JUDGE GERGEL: I can't control the presentation of
14 the case.

15 MR. MOORE: I understand that, your Honor.

16 JUDGE GERGEL: I've tried to make the point that --
17 there may be things that go in the House, obviously there's
18 some similarity. There's a way of treatment and stuff. I
19 know why the plaintiffs are putting it up.

20 But let me just say, as a practical matter, when we
21 started hearing from Senators who were participating in the
22 debate on the plan that was adopted and the one that was not
23 that was essential, it then went over to the House and got
24 adopted, that seems like the most probative evidence.

25 MR. MOORE: I would agree with your Honor. Of

1 course, we didn't get to that till yesterday. And that's just
2 where we are, okay. My point is, you know, I've got four
3 witnesses, and if I have to call them -- and I'm going to try
4 to streamline them. As I made the point to my colleagues on
5 the other side, you know, and I appreciate the fact that if we
6 don't finish next week, but we still have a lot of work to do,
7 a lot more work than I thought we would have to do on these
8 deposition designations and cutting. Because what I thought
9 was a productive meeting Wednesday, I didn't see as much
10 productivity in what we've gotten back from them so far.

11 So, again, I hope that understanding that this is way
12 more about the Senate than the House, that that will help us,
13 because I'm prepared to cut my case to the bone. I can do
14 that.

15 JUDGE GERGEL: Well, I mean, you know, I can't tell
16 anyone how to try their case, either the plaintiffs or you,
17 Mr. Moore. You've got to make your own call about that.

18 MR. MOORE: Yes, sir.

19 JUDGE GERGEL: But I tried to make the point early in
20 the trial: Isn't this a Senate plan? I mean, it just struck
21 me as being -- the evidence to be most un-probative. But I
22 understood why the plaintiffs put some of the other evidence
23 up. And some of these witnesses, the experts, you know, are
24 on the plan. So, that's relevant. So, it's not that much. I
25 just thought the first day we just dragged way more than we

1 needed to. And I think everybody went home that way feeling
2 that way. And we've all done better since. So, that's good.

3 MR. MOORE: Thank you, your Honor.

4 JUDGE GERGEL: Okay. Let's resume.

5 Mr. Gore, I don't want to leave you out, sir.

6 MR. GORE: Good morning, your Honor. I have one
7 other issue that we'd like to raise. May I approach the
8 bench?

9 JUDGE GERGEL: You may. If you could hand it to Ms.
10 Perry.

11 MR. GORE: I'm handing your Honor Plaintiff's
12 Exhibit 330, which is in evidence. We have an objection to
13 one of the witnesses that plaintiffs are proposing to bring
14 today.

15 JUDGE GERGEL: Who is that?

16 MR. GORE: Mr. Joey Oppermann.

17 JUDGE GERGEL: Who is Mr. Oppermann?

18 MR. GORE: Mr. Oppermann was hired by Senator
19 Harpootlian to draw the Harpootlian Plan.

20 JUDGE GERGEL: Okay.

21 MR. GORE: And we believe that he's being now used as
22 a backdoor expert in this case. He was not disclosed as an
23 expert. There's no expert report filed under Rule 26 (*sic*) or
24 Rule 37. I'll cite the Court to docket entry 352. The
25 plaintiffs moved to preclude lay witnesses from offering

1 expert testimony. They define expert testimony as testimony
2 that touches on issues like compactness, core retention,
3 partisan performance and effectiveness of redistricting plans.
4 And they say: "Unlike an opinion on the speed of a car before
5 the crash, the application of redistricting principles to a
6 given map requires much more than mere perception."

7 This exhibit is a document that Mr. Oppermann filed
8 in the legislative record. That's why it's in the record in
9 this case. He had a right to do that under the First
10 Amendment, to advocate for whatever plan he wanted to advocate
11 for. The *Daubert* standards in Rule 36 and Rule 37 are not
12 applicable to legislative hearings, but they are applicable to
13 this Court. And if you flip through this document, which
14 plaintiffs disclosed to us as one of the exhibits they want to
15 discuss with Mr. Oppermann, it looks an awful lot like an
16 expert report.

17 JUDGE GERGEL: Well, let me say this. First of all,
18 just the way the witness Mr. Tyson referred to as describing
19 why lines were drawn, I don't consider him an expert. I
20 consider him a fact witness describing why lines were drawn a
21 way. That's an issue people can cross-examine him on or
22 whatever. That's what it is. And what was said during the
23 debate and considered to the debate is not offered for the
24 truth of the matter, it's offered to show what was in the
25 debate. And just like, you know, the Senator here yesterday,

1 she has her own opinions about -- her own observations, her
2 own conclusions about what motivated people and why things
3 were done. But that's her opinion. That's just one of many.
4 And she's not being offered as an expert.

5 So, if this was offered in the legislative process,
6 it's offered for that purpose, and I don't regard it as an
7 expert report. And to the extent he starts offering expert
8 opinions, then you raise an objection, because they didn't
9 file a report. But just remember, you know, there's certain
10 lay testimony -- you know, the classic situation is the
11 treating doctor, and the treating doctor can explain why he
12 provided treatment. And one might say, well, that sounds like
13 expert testimony. But it's considered, under 701, to be
14 permissible.

15 So, let's, in real time, you let me know. I'm kind
16 of talking more to the plaintiffs than to you right now, you
17 know, that to the extent he wants to explain why he drew lines
18 in a certain way, that's fine. That's relevant. It's the
19 plan I know least about right now, and I am curious about it,
20 just like I was with Ms. Teague, curious about the League
21 Plan, not so much as "the plan," but that it just shows
22 possibilities of what could be done should there be a
23 determination that the plan has constitutional defects. I
24 mean, that's the only relevance to it.

25 So, Mr. Gore, I can count on you not being bashful,

1 okay?

2 MR. GORE: Thank you, your Honor.

3 JUDGE GERGEL: And I'm very impressed with you, Mr.
4 Gore. I wanted to tell you, I think it's really great to have
5 you practicing in front of us. You bring a lot of expertise
6 in this, and we appreciate it very much. So, just let me
7 know. But I'm not going to keep -- I think we all agree on
8 it, we're not going to keep Mr. Oppermann out.

9 Judge Lewis is making the point that this is all the
10 stuff that went into the mix to create the plan. This is what
11 these submissions were and what information they had. You
12 know, one of the worst points you can make against a claim of
13 discrimination is, you never raised it at the time. You know,
14 this is sort of like post-hoc explanation that can be argued
15 for both sides. These are post-hoc explanations that carries
16 less credibility than one that was made contemporaneous.

17 So, I'm curious what was said at the time. I don't
18 know. I know very little about this. Because the lack of
19 coverage of the press these days, we get very little
20 information about what happens in the legislature. So, I
21 don't really know what went into this, so I'm counting on all
22 of you. We all -- the panel is counting on you to tell us
23 what happened, because we don't know.

24 MR. GORE: I appreciate all that, your Honor. Thank
25 you.

1 JUDGE GERGEL: Thank you, Mr. Gore.

2 MR. GORE: I'll just note I think part of the issue
3 here is that Mr. Oppermann's document, the legislative record,
4 contracts his plan with the enacted plan, and he's going
5 through splits and compactness, and he's making judgments
6 about --

7 JUDGE GERGEL: That's fine. And it's offered to know
8 what the General Assembly knew and considered at the time.
9 And it's not offered for the truth of the matter. It's
10 offered to show what was in consideration, because we've got
11 to make a determination ultimately about legislative intent.
12 Never an easy proposition under the best of circumstances.

13 Yes, sir.

14 MR. FREEDMAN: Your Honor, I know we've won, so I
15 should just sit down, but I --

16 JUDGE GERGEL: Yeah. Don't buy it back, Mr.
17 Freedman.

18 MR. FREEDMAN: I just want you to know we are
19 offering Mr. Harpootlian's just to offer factual testimony,
20 and on the defense side --

21 JUDGE GERGEL: That's all you're going to be able to
22 do, so don't act like it's a gift.

23 MR. FREEDMAN: On the defense side, we did note that
24 there were a couple similarly situated witnesses.

25 JUDGE GERGEL: We've heard enough about this. We'll

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1 hear objections.

2 Okay. Let's bring the witness back.

3 MR. TRIVEDI: Thank you, your Honor. The plaintiffs
4 recall Senator Margie Bright Matthews.

5 THE COURT: Thank you.

6 MR. TRIVEDI: She's coming in, your Honor.

7 **MARGIE BRIGHT MATTHEWS, having been recalled as a**
8 **witness and duly sworn, testified as follows:**

9 JUDGE GERGEL: Good morning, Senator.

10 THE WITNESS: I'm sorry. I ran to the restroom.

11 JUDGE GERGEL: Please continue.

12 MR. TRIVEDI: Thank you.

13 **DIRECT EXAMINATION**

14 **BY MR. TRIVEDI:**

15 Q. Good morning, Senator.

16 A. Good morning.

17 Q. I know you have your daughter's volleyball game today, so
18 we'll try to hurry you out of here.

19 A. Thank you.

20 Q. If you recall, yesterday we were talking about your
21 testimony -- or your statement at the January 19th Judiciary
22 Committee meeting about congressional redistricting. Do you
23 remember that?

24 A. Yes.

25 Q. Okay. Did you raise concerns about the congressional map

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1 proposal at the time of that meeting?

2 A. Yes, I did. I think it was pretty obvious that I was a
3 little surprised -- no, a lot surprised about the map, the
4 timing, and the fact that we did not have any input -- at
5 least some of us members on the committee did not have any
6 direct input on how the maps were drawn for the congressional
7 districts.

8 Q. Okay. Great. I'm going to show you some transcripts
9 from that meeting.

10 MR. TRIVEDI: Mr. Najarian, can we pull up
11 Plaintiffs' Exhibit 115 and go to page 24, line 24, and then
12 on to page 25, line 7.

13 BY MR. TRIVEDI:

14 Q. Senator, would you mind reading that entire excerpt?

15 A. "According to the numbers, it appears that this is a
16 typical gerrymandered Congressional Seat 6, where you packed
17 all of -- you went in under -- into Charleston and pulled out
18 areas of West Ashley and other areas in North Charleston just
19 to put blacks into Congressional District 6. And it creates a
20 -- it looks like -- I don't know what it -- it looks like a
21 funky boot print that goes into Congressional District 1."

22 Q. What did you mean when you said "a typical gerrymandered
23 congressional seat"?

24 A. I didn't say it eloquently, and I apologize. But
25 basically, it looks like they went in and grabbed --

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1 strategically grabbed the Black areas of Charleston and
2 created a funky boot -- a funky boot at the top of District 1.

3 MR. TRIVEDI: Mr. Najarian, can we now move to
4 Plaintiff's Exhibit 116, which is the January 20th full Senate
5 hearing.

6 BY MR. TRIVEDI:

7 Q. Senator, do you remember speaking at that hearing as
8 well?

9 A. Yes, I do.

10 Q. Okay.

11 MR. TRIVEDI: Can we go to page 66, lines 12 through
12 21?

13 BY MR. TRIVEDI:

14 Q. And, Senator, would you mind reading that as well?

15 A. "So what confused me when I first saw your amendment is
16 then, if you have gained properly in the Lowcountry, and we
17 need to gain about the same amount with the difference of
18 3,000, why did you go and snake in or salamander into a
19 portion of Charleston to grab your votes? Because, we're not
20 going to get into a racial gerrymandering thing because you
21 and I both know in Charleston it matters not about your race,
22 it is just that you went by how those folks voted in West
23 Ashley."

24 Q. So, could I start with that bottom part? What did you
25 mean by the piece starting with "because" and ending with

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1 "West Ashley"? What did you mean by that part?

2 A. As I read it, I'm not sure what I meant. But what I was
3 talking about was it looked like they were using West Ashley
4 only, that portion of West Ashley only, maybe because of the
5 voting patterns or whatever. I'm not sure.

6 And it was -- this is -- and I forgot what -- I think
7 this is on page 66. This was further into the debate. I've
8 been standing for quite some time trying to make sense of
9 this, because we were assured in subcommittee, when we let
10 this map out, that we would give due consideration and debate
11 on the floor to really go through this.

12 But what I meant specifically to your question was, we
13 needed -- we lost on CD 6, 86,000 or something like that, and
14 we gained 80-something thousand in District 1. So, that first
15 paragraph was saying: Why didn't we just make up the
16 difference that way instead of going into Charleston? There,
17 I was just saying that they were using the West Ashley votes
18 to make it look good, so to speak.

19 Q. Do you think this contradicted your testimony from the
20 prior day about pulling Black voters out of Charleston?

21 A. Absolutely not. Nor did it contradict what we said
22 before the transcript even started, because there was
23 communications then too.

24 Q. And what did you mean by "snaking" or "salamander"? Now
25 we've got a funky boot, a snake, and a salamander.

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1 A. Gerrymandering. Snatch the Black voters out.

2 Q. Senator, I just have one last question. Do you think the
3 enacted congressional map harms Black voters in South
4 Carolina?

5 A. Of course, it does. I feel that it does. And it harms
6 the ability of us, as members of the General Assembly, the
7 Senate, to properly -- this process harmed our ability to
8 properly represent our constituents. In looking at this
9 transcript -- and I just looked at it earlier yesterday before
10 I took the stand -- I was astounded. That hadn't been asked,
11 but I was astonished that about an hour and a half to
12 two hours of what was on video in the Senate is not a part of
13 this transcript. Because the comparison map -- the comparison
14 chart that the Senate -- that Charlie Terrine had, I had to
15 demand and stop the Senate in order for the Democratic
16 Senators, and all the members of the Senate, to get a copy of
17 what they had taken a lot of time to prepare, to compare the
18 Senate map that we wanted, without the gerrymandering, that
19 kept Charleston whole, and the Senate map that they rushed out
20 of subcommittee without a vote.

21 We were promised that we would have an opportunity to
22 tweak the map to make sure it was right. But instead -- I
23 went to the Senate early that day, because I have these dreams
24 sometimes, unfortunately. And I went probably 10 minutes
25 early. And I was one of the first ones there. The

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1 Republicans, they were there, most of them. The Senator from
2 Edgefield stood up. He's the majority leader. And after we
3 did the implication and what not, the first order of business
4 we knew was going to be redistricting. And I told you I
5 didn't feel that -- I had to learn a lot about this process,
6 being a new senator. The first thing he asked was for
7 unanimous consent to permit their staff members within the
8 well -- beyond the rail -- and their attorney, Mr. Terrine.
9 Well, when I came through the library, I saw that they were
10 huddled there, and they had charts. I didn't have a chart. I
11 was on the committee. So, at that point when he stood up and
12 asked access to the rail, I objected, meaning Senator Massey.
13 And then, as other senators flowed in, and he stood up and
14 asked it another way, I objected again. That is not a part of
15 your transcript there. My position was simple. I just want
16 to represent my constituents. This is a 10-year deal. It is
17 important to me.

18 Not to go on, but the next thing that happened was my
19 leader came in and asked me what's the deal. I told the
20 Senate president as well as the leaders that if the state of
21 South Carolina is paying for this work to be done, meaning
22 these charts to be created, and paying for staff, every
23 senator in there is entitled to the documents.

24 So, what took us a long time starting -- and it was on
25 the record -- was the fact that I objected that the senators

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1 on the majority party did not want to provide us with the --
2 they had it in a notebook. They didn't want to provide us
3 copies of it. We had to recess to allow us all. And as a
4 part of their chart, it said in the middle, make sure -- it
5 has a notation in the middle about gerrymandering and that it
6 must be -- it can be according to party, but there could not
7 be racial considerations. So, in other words, they had a
8 cheat sheet that they didn't want to provide to us.

9 Sorry. I don't know what question you asked, but when I
10 saw the transcript, that really did bother me, that that
11 portion was not provided to the Court.

12 Q. And did you think there were racial considerations?

13 A. Yeah. Racial considerations to remove the Black people
14 from Charleston County and certain areas of Charleston County,
15 further down into Beaufort and Jasper County, moved them into
16 Congressman Clyburn's, which is CD 1 -- and that's Richland
17 and Sumter. Why would you put coastal counties in with the
18 middle of the state?

19 Q. Thank you, ma'am. I have no further questions.

20 A. Thank you.

21 JUDGE GERGEL: Cross-examination.

22 **CROSS-EXAMINATION**

23 **BY MR. GORE:**

24 Q. Good morning, Senator.

25 A. Good morning.

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1 Q. My name is John Gore, and I represent the Senate
2 defendants in this action. I don't believe we've met before,
3 but I appreciate the pleasure this morning.

4 A. Thank you. Nice to meet you.

5 Q. Yesterday I believe you mentioned the forthcoming Senate
6 plan, the new Senate redistricting plan. And you voted in
7 favor of that plan, right?

8 A. Give us which -- tell me which one you're talking about.

9 Q. Sure. So, the Senate passed both a Senate redistricting
10 plan and a congressional redistricting plan, right?

11 A. Yes.

12 Q. And the Senate redistricting plan, you voted in favor of,
13 right?

14 A. Oh, I'm sorry. The senatorial lines, yes.

15 Q. Oh, senatorial lines.

16 A. And, if you would recall, on that one, I don't know if I
17 said it yesterday, but there was a lot of work that went in.
18 I see Mr. Roberts here. I must have harassed him, drove up
19 from Walterboro three times, went in the map room. They moved
20 the map room around. Went in there, and in some of those
21 meetings, I asked: When are we going to get to the
22 congressional lines -- congressional maps? Yes, I approved
23 it.

24 Q. Okay. So, you knew how to find Mr. Roberts?

25 A. And I know what the process was for drawing those

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1 senatorial lines. And unfortunately, the process -- there was
2 no process for the congressional lines that we were involved
3 in -- at least, me.

4 Q. Okay. Thank you. So, you were an active participant on
5 the subcommittee, correct?

6 A. I tried to be.

7 Q. And you attended public hearings and meetings; is that
8 right?

9 A. Yes, I did.

10 Q. And you heard you from your constituents, I take it,
11 about redistricting as well?

12 A. Got a lot of e-mails, and we listened to a lot of folks.

13 MR. GORE: Can I get Senate Exhibit 3, which is the
14 Senate redistricting guidelines.

15 BY MR. GORE:

16 Q. And you testified that you had some input on the
17 redistricting guidelines; is that right?

18 A. I did.

19 Q. And you attended the meeting -- I believe it was
20 September 17th -- where the guidelines were discussed and
21 adopted; is that right?

22 A. Yes.

23 MR. GORE: If we can go to page two of this document.

24 BY MR. GORE:

25 Q. Communities of interest is on 3A. Can you see that,

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1 Senator?

2 A. I can.

3 Q. And I believe you testified yesterday that you asked that
4 certain -- you moved for certain language to be added to this
5 definition; is that right?

6 A. And removed.

7 Q. And removed.

8 A. There were other considerations in there.

9 Q. Okay. The draft that you received before that meeting on
10 the 17th, did it contain a definition of communities of
11 interest? If you can recall.

12 A. I can't recall. Sorry.

13 Q. And do you recall which language you asked to be added or
14 removed?

15 A. There were several -- I think it was two or three that I
16 asked to be removed. I think they gave me a different sheet
17 here. And off the top of my head -- I'm sorry, Mr. Gore, you
18 said?

19 Q. Yes.

20 A. I can't remember exactly the language of the draft, but
21 we did tweak it. That's all I remember.

22 Q. Okay. So, if I said to you that I believe you moved for
23 the word "language" to be added to the definition of
24 communities of interest, does that sound about right?

25 A. Yeah. You're exactly right, because, like I was talking

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1 about yesterday, in my area we have the Gullah Geechee and
2 other types of language issues, yes.

3 Q. And did the subcommittee adopt your proposed amendment,
4 Senator?

5 A. I think they did. It's my memory that they did.

6 Q. And Senator Harpootlian, do you recall that Senator
7 Harpootlian -- actually, let me ask you a question about this
8 communities-of-interest definition while we're at it. I think
9 Mr. Trivedi yesterday asked you about this word, "political."

10 A. Uh-huh.

11 Q. Is that right?

12 A. Yes.

13 Q. And I believe your testimony was you understood that to
14 relate to issues?

15 A. Yes.

16 Q. I think you used abortion and water issues maybe as
17 examples. Do you recall that?

18 A. Yes, just one of several.

19 Q. And do you recall whether any member of the subcommittee
20 adopted or agreed with that particular definition in the
21 public record?

22 A. No. I just remember that we did not put intentionally in
23 there parties, like Republican, Libertarian or Democratic
24 parties. I don't remember that particularly. I just know we
25 didn't put that in there.

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1 Q. We'll scroll down to part four at the bottom of this
2 page. There's a section here called "data." Can you see
3 that?

4 A. Yes.

5 Q. Can you read the last sentence? It starts, "other."

6 A. "Other succinct and importable sources of demographic and
7 political information may be considered in drafting and
8 analyzing proposed redistricting plans."

9 That is probably why we were on the floor so concerned
10 about some of the data that had not been provided to us
11 regarding the plan.

12 Q. And you did receive some data about plans on the
13 subcommittee, right?

14 A. Say that again?

15 Q. Did you ever receive binders as a member of the
16 subcommittee about redistricting plans?

17 A. Yes. On the day that we appeared, yes, we received
18 binders. And on the back of -- after each map, they had data
19 attached to it.

20 Q. Was some of that data political data; correct?

21 A. You mean like BVAP and Trump voters, Biden voters?

22 Q. Yes.

23 A. Yes, we did receive that information.

24 Q. And that was given to you as part of those binders; is
25 that correct?

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1 A. Correct.

2 Q. I'd like to take you back to that September meeting where
3 the guidelines were discussed. We heard about your amendment,
4 which was adopted. Do you recall that Senator Harpootlian
5 also proposed several amendments to the guidelines?

6 A. Yes, he did.

7 Q. And one of those involved Section 2 of the Voting Rights
8 Act, correct?

9 A. Yes.

10 Q. And you voted in favor of that amendment too, right?

11 A. Yes.

12 Q. And the subcommittee adopted that amendment; is that
13 right?

14 A. Yes.

15 Q. Senator Harpootlian also proposed a variety of other
16 amendments; do you recall that?

17 A. Yes.

18 Q. And do you recall whether one of those amendments would
19 have required staff to conduct a racially polarized voting
20 analysis as part of the plan?

21 A. Yes, I recall that. And I recall him, again, requesting
22 the information.

23 Q. And did you vote in favor of that amendment?

24 A. I don't think I did. I cannot remember. I don't think I
25 did. Partly -- I can't remember, but I don't believe that I

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1 voted on that one.

2 Q. And the subcommittee did not adopt Senator Harpootlian's
3 amendment; is that right?

4 A. Right. And because I think there was additional
5 conversations about them and the timeline and them trying to
6 get the information to us.

7 Q. And Senator Harpootlian proposed a number of other
8 amendments during that meeting; is that correct?

9 A. He did. And Senator Rankin. And we were trying to get
10 as much information as we could, and they came to us and said
11 -- and so we could not proceed on with it. There were some
12 other issues there.

13 Q. Okay. So, do you recall whether you voted in favor of
14 any of Senator Harpootlian's other amendments?

15 A. I don't think I did.

16 Q. And none of those other amendments passed the
17 subcommittee; is that right?

18 A. Correct.

19 Q. And at the end of that September meeting, you seconded
20 Senator Sabb's motion to adopt the guidelines, correct?

21 A. Correct.

22 Q. And you voted in favor of the guidelines at the
23 subcommittee, correct?

24 A. Yes.

25 Q. And the guidelines passed the subcommittee on a vote of

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1 six to one; is that right?

2 A. If the record shows that, that's what it is, but I have
3 no independent knowledge of it.

4 Q. I believe Senator Harpootlian was the only member of the
5 subcommittee to vote against adoption of the guidelines --

6 A. Okay.

7 Q. -- maybe because they didn't incorporate his amendment.

8 So, you generally agreed with the guidelines, you didn't
9 see a problem with the guidelines as amended; is that right?

10 A. Generally, yes.

11 Q. And do you recall at that meeting that the subcommittee
12 also voted on a public submissions policy, for the public to
13 propose plans?

14 A. Yes.

15 Q. And Senator Harpootlian had a motion to require senate
16 committee staff to help every single member of the public draw
17 plans; do you recall that?

18 A. No. I'm sorry, I don't.

19 Q. I'd like to ask you a little bit about the staff plan
20 that was released in November 2021; do you recall that?

21 A. What is the date of release?

22 Q. I believe it was November 23rd of 2021.

23 A. That was around Thanksgiving.

24 Q. This was Thanksgiving.

25 A. Yeah. I was -- I didn't even know that they had sent

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1 that via e-mail. It was during the Thanksgiving holidays, and
2 no heads-up, no direct contact. Before, we had direct
3 contact, meaning they would send us messages or something
4 along that line. But it was sent to my business e-mail and my
5 Senate e-mail, the plans. We had been requesting them the
6 week before, now, asking when they would be coming. But they
7 didn't come until the Thanksgiving holidays.

8 Q. And you testified that you never saw that staff plan
9 before it was released publicly; is that right?

10 A. Right. We never had it, saw it, nor were we called in to
11 give input as members, at least the Democratic members,
12 because we discussed it. We were never called, like we were
13 with the Senate plans, to come in and give our input to our
14 distinctive areas.

15 Q. Are you aware that, in fact, no senator -- Democrat or
16 Republican -- saw that staff plan before it was released
17 publicly?

18 A. Mr. Gore, at that first meeting that we had, when we
19 looked at these plans that were placed in our binders with the
20 data, it was at that time that I did learn that the other
21 Republican senators, too, had not received that map that was
22 released. As a matter of fact, that's when we start -- all of
23 us started asking questions, and one of the staff members
24 said, oh, that's the plan that was sent to us by this guy with
25 the Republican National Party, and he sent it. And then there

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1 was a: Be quiet.

2 Q. In fact, I believe the record was just the opposite, that
3 the staff said they didn't receive that map from the
4 Republican Redistricting Trust; isn't that right?

5 A. No. No. Mr. -- I asked the question. I don't know
6 what's on your record, but what happened on that particular
7 day is the gentleman right behind me -- when Senator
8 Harpootlian further questioned after I questioned where did
9 these maps come from, they then said -- and he asked for the
10 name of the person. And I don't have the name of the guy, but
11 they said that it came -- first, they started out, and it said
12 it was sent to us from the Republican National -- whatever --
13 regarding redistricting. And then Senator Harpootlian pressed
14 them further and asked for the name, and that's when we got a
15 name.

16 Q. And, in fact, it was former Congressman Cunningham who
17 made an allegation that the Republican Trust had provided the
18 map; do you recall that?

19 A. Yes. But that was after.

20 Q. And, in fact, the staff said that the map did not come
21 from that group?

22 A. No. No. I don't know about the Republican Trust or what
23 -- I know there was a gentleman's name provided on who -- when
24 Senator Harpootlian asked -- when Senator Harpootlian pressed
25 them after I asked staff members about it, he gave the name of

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1 who drafted it.

2 Now, I don't know what's in your record. I don't have
3 any control. Because just like the transcript from the Senate
4 doesn't have an hour and a half to two hours of the record in
5 it, I can't control it. But I know what the communication was
6 between me, staff members, as well as Senator Harpootlian.

7 Q. I think we'll come back to that, Senator.

8 MR. GORE: Can we see now Plaintiff's Exhibit 98?
9 Let's go to page 23 if we can.

10 BY MR. GORE:

11 Q. And I'd like to call your attention to lines six
12 through 20. And Mr. Trivedi asked you about a portion of this
13 testimony yesterday, but I'd like to get the rest of it into
14 the record as well.

15 This is a statement from you on November 29th, which was
16 the Monday after Thanksgiving. And you're discussing here the
17 staff plan that you had received and reviewed that morning.
18 Would you mind reading that for us, Senator?

19 A. "As far as Charleston County, I represent Charleston
20 County too. I represent this side of Main Road in Charleston
21 County. I don't understand why on this map those Black voters
22 in Charleston County were carved out, and the more affluent
23 areas went to make this a more representative map where repub-
24 -- a Republican could be elected.

25 I'm also concerned about the BVAP and the WVAP on this

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1 and how it totally switches. Out of this, the -- the
2 percentages that we have, it gives this 1st Congressional
3 District, from what I'm seeing, it totally makes it an
4 electable and secure Republican district. I -- "

5 Q. Thank you, Senator. So, your comment here was about the
6 staff plan, correct? You were looking at the plan you
7 received Thanksgiving week?

8 A. I think so. I mean, I can't say for sure.

9 Q. Sure.

10 A. It's out of context, but it would make sense that that
11 was what I was looking at. I don't know.

12 Q. And would you agree with me, Senator, that in November,
13 you weren't commenting on the plan that was released in
14 January and voted on two months later; is that right?

15 A. Isn't this the November 29th or something like that?

16 Q. Yes, that's correct.

17 A. I don't know. I don't think so. Of course, I don't
18 think -- say that question again, please?

19 Q. Sure. Let's maybe establish a timeline. So, I believe
20 that the record reflects that the staff plan was released on
21 November 23rd, which was the week of Thanksgiving, and the
22 Senator Campsen Plan was released later in January; is that
23 right?

24 A. Yeah. Yes. If I recall correctly, they sent it out
25 Thanksgiving. Then we had to meet that next week on Tuesday,

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1 I believe. And this is the meeting you're talking about
2 here --

3 Q. Uh-huh.

4 A. -- when we first saw those plans. And then the Campsen
5 Plan, I thought it was pretty much close to -- and I'm not a
6 cartographer, but I thought they were pretty much doing the
7 same thing.

8 Q. Thank you for that clarification. Now, I believe you
9 testified before that you met with Mr. Roberts about drawing
10 Senate districts for the Senate Plan; is that right?

11 A. Several times. I mean, I know he's sick of me.

12 Q. I'll let him speak to that, but I think he's --

13 JUDGE GERGEL: He's shaking his head no.

14 MR. GORE: That doesn't sound like Mr. Roberts to me.

15 **BY MR. GORE:**

16 Q. Did you also meet with Mr. Roberts about congressional
17 districts?

18 A. No. As I said earlier, they said they wanted to get
19 through the Senate map. I kept asking about: When are we
20 going to do the congressional maps? When are we going to meet
21 and talk about those? That process never happened. It never
22 happened.

23 Q. Did you ask to meet with Mr. Roberts about the
24 congressional plan?

25 A. Thanksgiving -- I think you gave me the timeline and

1 cleared it up in my head. Thanksgiving. I told you what I
2 was doing then. I'm a mama of four, and I cook a lot. But,
3 Thanksgiving. Then we had the subcommittee meeting. Then
4 Christmas comes. Then we have -- December, we're starting
5 session. We were on a press to take care of the
6 certificate-of-need argument. And we were being pressed about
7 that, CONs. And then we were pushed regarding this. We only
8 had, from my memory, only one meeting, one public hearing,
9 regarding these congressional maps, whereas we had 10 for the
10 Senate.

11 And they commented on -- the overwhelming comments we
12 received -- and I don't remember the exact date of that. The
13 overwhelming comments regarding the congressional maps was the
14 carving out and why is Richland -- CD 6 going all the way down
15 to the coast.

16 Q. Thank you. And even if you didn't meet with Mr. Roberts,
17 did you make a request through Mr. Fiffick or someone else
18 that Mr. Roberts draw a congressional plan for you?

19 A. No. I'm just telling you, there was a lot of, oh, we're
20 taking care of this first. And there were maps that were
21 floating around. I also -- I had forgotten about it, but I
22 also was working on what I thought to be a more representative
23 map of the area in which I represent, meaning CD 1 versus CD
24 6. And I floated that around. And there was a lot of
25 opposition to it, because the chairman of the committee, he

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1 didn't like the way my idea of the congressional maps would
2 affect the Horry, upper part of the -- I think that's 5. But
3 mine kept Charleston together, it kept Colleton together, it
4 kept Beaufort together, and a good portion of Jasper.

5 Q. So, a couple of followup questions on that, if I might.
6 You refer to the chairman. Is that a reference to Senator
7 Rankin?

8 A. Yes. Chairman of judiciary, I'm sorry, and chairman of
9 the subcommittee.

10 Q. And Senator Rankin lives in Horry; is that right?

11 A. That's right.

12 Q. Do you remember what you called your plan that you had
13 drafted and that you were just discussing?

14 A. I think it was just MBM.

15 Q. And did someone assist you in drafting that plan?

16 A. Yes. I can't remember. I'm thinking his name was Clark.
17 Back before -- you remember when I told you on direct
18 examination that, being new to this process and realizing that
19 most of the members from the Democratic Caucus that were on
20 the subcommittee were pretty new senators? I had us do a
21 retreat, and we talked to several people and had them come in
22 and first talk about the law, then talk about potential ways
23 to draw, and programs. And so, this was a guy that had a
24 computer program, knew how to work the computer program. And
25 I can't think of his name. Sorry.

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1 Q. Okay. Thank you. Did you offer that plan as an
2 amendment either in the subcommittee or on the floor?

3 A. I think I did it either in the general committee --
4 Judiciary Committee. I don't know why my memory is bad, but
5 that's when it was put up and pulled down.

6 Q. I'd like to return to this exhibit but go to a different
7 page, if we might. Can we start on page 32? If we can start
8 there on line 9. And I'll go ahead and read the rest of this
9 page and probably some of the next page as well, just to make
10 sure the record is clear on one point.

11 This is an exchange involving Senator Harpootlian,
12 Congressman Cunningham, and some other folks you'll see on the
13 next page.

14 A. Is this after the meeting?

15 Q. This is the same meeting.

16 A. Okay. The subcommittee meeting, or the general?

17 Q. Subcommittee, November 29, 2021.

18 A. Okay.

19 Q. And Congressman Cunningham and Congressman Harpootlian
20 are having colloquy here. And starting on line 9, Senator
21 Harpootlian: "We just -- some independent Republican group
22 submitted a plan they indicated had no negligible -- it had
23 negligible result, negligible impact. But I certainly would
24 like to see that plan, find out who those folks were, and
25 whether there was any communication from other than that

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1 e-mail to people that were involved."

2 Congressman Cunningham says: "So, Senator Harpootlian,
3 in drawing these maps?"

4 Congressman Cunningham: "So the members of Congress were
5 consulted about the lines, but the members of this committee,
6 tasked with drawing those lines, were not; is that correct?"

7 And we can go to the next page, page 33. And Senator
8 Harpootlian says, all the way down to line 16: "Correct.
9 Never heard about it till we saw it after it had been
10 published. I didn't -- I don't think Senator Sabb did
11 either."

12 Senator Sabb says: "No."

13 Senator Harpootlian: "Maybe our Republican brothers and
14 sisters."

15 Mr. Roberts: "(Inaudible) scrolling on the contact list
16 (inaudible). If you go right, you can see the staffers that
17 received the information that (inaudible)."

18 Senator Harpootlian: "What's the Republican
19 organization?"

20 Mr. Roberts: "I'm going to pull that right now. We
21 didn't talk. I didn't speak to them."

22 Did I read that correctly?

23 A. Is that a question?

24 Q. Yeah.

25 A. I'm sorry.

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1 Q. Did I read that correctly, that transcript?

2 A. Yes, you did.

3 Q. Thank you. I'd like to ask you now about some maps,
4 because we're here about redistricting maps. And you
5 testified yesterday about the Campsen Plan and the Harpootlian
6 Plan --

7 MR. TRIVEDI: Your Honor, I'm going to object. I'm
8 sorry. Mr. Gore seems to just read into the record a whole
9 bunch of statements by folks who are not the senator and who
10 are testifying by themselves. I'm just wondering what the
11 question is related to all of that.

12 MR. GORE: Well, "did I read that correctly," the
13 senator has one recollection of the transcript --

14 JUDGE GERGEL: He's laying the foundation for a
15 followup question. I'll overrule it. I mean, this is in the
16 evidence.

17 MR. TRIVEDI: I agree. I'm just asking for the
18 relevance.

19 JUDGE GERGEL: Well, we're going to see.

20 Go ahead, Mr. Gore.

21 **BY MR. GORE:**

22 Q. And so, in fact, did not Mr. Roberts say at that hearing
23 that he had not spoken to the Republican Redistricting Trust?
24 Is that right?

25 A. Let me just tell you, Mr. Roberts generally did not speak

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1 in our meetings. The conversation I'm talking about was at
2 the beginning of the meeting. It was supposed to be on the
3 record. And this was when Senator Campsen was basically
4 running the meeting because Senator Rankin, who's the chair of
5 the subcommittee, was on the phone and got up and went out of
6 the room. Mr. Roberts was not back there behind us. It was
7 Breeden John, one of the staffers; and Andy Fiffick, a staff
8 attorney. I don't remember Mr. Roberts being the one to even
9 respond to the name -- whenever the name was given of the man
10 that sent in the map that we were looking at, at the time,
11 there was a hush. There was an indication to that attorney
12 not to say anything else.

13 And this colloquy here that you've just read, it happened
14 well after that. And that is apparently the only thing that
15 is on the record.

16 Q. Okay. So, you agree with me that there may be some
17 inaccuracies in some of the transcripts you've seen today; is
18 that right?

19 A. No. It appears that some of the stuff that should have
20 been recorded as a part of the transcript, especially the part
21 on the Senate, makes some of the stuff appear out of context.

22 Q. I appreciate that clarification. I believe there were
23 videos of all those hearings; is that right?

24 A. That's exactly what I wanted to --

25 Q. And those videos are actually in evidence here in this

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1 case --

2 A. Good. Good.

3 Q. -- so we can review those videos and will be happy to do
4 so.

5 A. Good.

6 Q. Let's move on to these maps, if we can. Do you recall
7 yesterday talking about the Campsen Plan and the Harpootlian
8 Plan?

9 A. Yes.

10 Q. And you testified that Sun City residents in Jasper
11 wanted to be in the same district as Beaufort; is that right?

12 A. Yes. Yes.

13 Q. And you actually supported uniting Sun City's Jasper and
14 Beaufort parts in the same district, right?

15 A. Yes. In the 1st Congressional District, of course, yes.

16 Q. And you did that based on the testimony that you heard
17 from those Sun City residents, right?

18 A. That is right.

19 Q. Now, yesterday you testified about Charleston County as
20 well; is that right?

21 A. Yes.

22 Q. And are you familiar with the West Ashley part of
23 Charleston?

24 A. Yes.

25 Q. Is that a majority Democratic area?

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1 A. Yes. Well --

2 Q. And -- sorry. Go ahead.

3 A. Certain parts of it, yes. Yes.

4 Q. Certain parts. Okay. So, West Ashley was moved from CD
5 1 to CD 6 in the enacted plan; is that right?

6 A. Yes.

7 Q. Okay.

8 MR. GORE: Can we get Senate Exhibit 28A, which is
9 the benchmark map? And can we focus in on the Charleston
10 area. And focus in a little bit more, if that's possible.

11 BY MR. GORE:

12 Q. I believe you testified about this portion of the map
13 yesterday. You testified about, I believe, Meggett, Hollywood
14 and Ravenel; is that correct?

15 A. Correct.

16 Q. And those areas are in District 6 in the Senator Campsen
17 Plan; is that right?

18 A. Yes -- I mean, it would help if I saw it.

19 Q. Sure. Well, let me show you this first. This is the
20 benchmark plan.

21 A. Uh-huh.

22 Q. And those areas are in the pink here in the benchmark
23 plan, which is District 6; is that right?

24 A. Correct.

25 Q. So, if those areas are still in District 6 in the enacted

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1 plan, they weren't moved at all; would that be right?

2 A. That doesn't necessarily mean, in my mind, that they
3 should not have been moved. Just because it's the
4 benchmark -- the benchmark, we don't know what the guidelines
5 were for that. That doesn't mean it's appropriate and follows
6 what the public comments and what's best for the district. I
7 wasn't a senator then, I'm just telling you. That's just my
8 opinion.

9 Q. Sure. And do you think that there could be a difference
10 of opinion on what the best treatment of those areas are in
11 the plan?

12 A. Everybody has a different point of reference.

13 Q. And you wanted Charleston County to be united in a single
14 district; is that right?

15 A. There was prevailing responses from everybody, even in
16 our body, that the Coastal region needed to remain together.
17 That didn't change until January. Everybody felt that it was
18 important because communities of interest, like constituency
19 services, contiguity, all of those things, it was a prevailing
20 message. I don't know -- I don't remember offhand if there
21 was one person that said, hey, it's a good idea, let's split
22 up Charleston. Didn't hear it.

23 Q. And do you know what the total population of Charleston
24 is?

25 A. Not off the top of my head. It's a lot. But the biggest

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1 thing that we kept yelling about is, hey, you need 86 -- we've
2 grown 86,000, or something like that, around that -- in that
3 area, in CD 1. And they lost population in the middle of the
4 state, so we thought that was an easy fix.

5 Q. And do you know whether the total population in
6 Charleston is larger than it is in the two Sun City precincts
7 in Jasper?

8 A. Say that again?

9 Q. Is the total population in Charleston bigger than the
10 population of Sun City?

11 A. Yes.

12 MR. GORE: If we can get side by side Senate
13 Defendant 28A and Senate Defendant's 30A. So 28A will be side
14 by side with 30A.

15 BY MR. GORE:

16 Q. So, 28A is the map we were just talking about. That's
17 the benchmark map from 2012. And on the right is 30A, which
18 is the Harpootlian map. Can you see those maps, Senator?

19 A. Yes, I can see them.

20 Q. I'd like to ask you some questions about two districts,
21 if I can, briefly. So, District 7 on the left --

22 A. On the benchmark plan.

23 Q. On the benchmark plan -- is located in the Pee Dee
24 region; is that right?

25 A. Yes.

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1 Q. And on the right, in Senator Harpootlian's plan, it has a
2 different configuration, doesn't it?

3 A. There? Yes. Yes. I'm sorry.

4 Q. Yeah, thank you. You would agree with me that Senator
5 Harpootlian's plan is not a least-changes map for District 7,
6 wouldn't you? Is that a significant change to District 7;
7 would you agree?

8 A. Yes, it is.

9 Q. Okay. And let's also look at District 6, which is
10 Congressman Clyburn's district on the left in the benchmark
11 plan. Then we have Senator Harpootlian's plan on the right.
12 And would you agree that that's also more than a minimal
13 change to District 6?

14 A. I don't think that it changes District 6 that much, given
15 the population shift to his district. To me, it kept most of
16 the counties in District 6. He didn't split as many counties
17 there, and it kept them more contiguous.

18 Q. So, District 6 in the benchmark plan is in part of
19 Berkeley County, but there's no part of Berkeley County in
20 District 6 of the Harpootlian Plan; is that right?

21 A. You'd have to enlarge this for me. I'm sorry. I'm
22 showing my age.

23 Q. No problem.

24 MR. GORE: Let's go ahead and enlarge that one. That
25 would be great.

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1 THE WITNESS: Oh, I see it. No. You're right.

2 BY MR. GORE:

3 Q. So, this is the enlarged Harpootlian map. Is that what
4 you needed to see?

5 A. You're right. Berkeley goes into 7 on the Harpootlian
6 Plan.

7 Q. And there's no part of Charleston in District 6 in the
8 Harpootlian Plan; is that right?

9 A. And that's good.

10 Q. And there's no part of Dorchester?

11 A. That's right.

12 Q. Or Colleton?

13 A. That's right.

14 Q. And if we were to scroll over there, there's no part of
15 Jasper, I believe, either?

16 A. That's right. The primary issue was the numbers we were
17 talking about, because I'd also talked to Senator Harpootlian
18 about this map, as well as the fact that trying to keep 7 -- 7
19 and 1 would technically be the coastal areas.

20 Q. Okay. And in the Harpootlian map, District 6 moves into
21 a little piece of Georgetown, right?

22 A. Correct.

23 MR. GORE: If we can enlarge the other map. Take
24 this down and just enlarge the benchmark. Same area.

25 BY MR. GORE:

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1 Q. So, by contrast, under the benchmark map, it's got part
2 of Berkeley, part of Dorchester, part of Charleston, and part
3 of Colleton; is that right?

4 A. Yes, that's correct.

5 Q. And Jasper?

6 A. Yes.

7 MR. GORE: We can take these down for now. Thank
8 you.

9 BY MR. GORE:

10 Q. Okay. So, I want to ask you about the meetings you said
11 you attended as a member of the subcommittee. I believe you
12 testified yesterday there were 10 public hearings --

13 A. I said I think there were about 10. It was a lot of
14 them.

15 Q. Yeah. I'm not going to hold you to that you number --

16 A. That's okay.

17 Q. -- but it was a lot of meetings, right? And those took
18 place I believe in July and August of 2021; is that right?

19 A. Yes.

20 Q. And the purpose of those meetings was to collect
21 testimony about communities of interest from members of the
22 public, right?

23 A. The purpose of the public hearings, as I understood them,
24 wasn't to collect testimonies about communities of interest.
25 I just thought, honestly, we wanted to hear from the public to

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1 get their input on how they felt the map should be drawn to
2 represent them properly.

3 Q. And those meetings all occurred before any draft maps
4 were actually drawn, right?

5 A. Correct.

6 Q. Now, I think you mentioned yesterday there was one public
7 hearing on Senator Campsen's plan in January after that plan
8 was released; do you recall that?

9 A. I don't think I said January, because, quite frankly, I
10 could not remember. I just remember we had one, okay. I'm
11 sorry.

12 Q. And you recall it was on a Thursday or a Friday?

13 A. I just remember me having -- me en route to Virginia to
14 my daughter's volleyball game. That's all I remember.

15 Q. And do you recall whether that meeting took place over
16 Zoom? Were members of the public testifying by Zoom in that
17 meeting?

18 A. Some of them were. Some of them were. Because, I looked
19 at it. I attended part of the meeting, and then I had to run
20 out, and I looked at the rest of it online.

21 Q. Do you recall anyone in that meeting alleging that
22 Senator Campsen's plan was a racial gerrymander?

23 A. I don't recall, because I -- I don't recall. I would
24 have to look at my notes, and Lord knows where those are.

25 Sorry. You mean -- because we just took testimony from folks,

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1 right?

2 Q. Well, I believe there was public testimony in that
3 meeting. And I'm just asking you whether --

4 A. All I remember repeatedly on Campsen's plan was the fact
5 that they wanted Charleston and the coastal community, because
6 of those interests, to remain whole. They may not have called
7 it that. And they wanted to make sure that Charleston
8 remained whole. And they gave a lot of reasons. They talked
9 about economic alliances and a lot of different things at that
10 meeting.

11 Q. In any event, I believe the video of that hearing is also
12 in the record, so we can go back and check; is that right?

13 A. Right.

14 Q. Thank you very much. So, a couple of points you
15 mentioned today in your testimony. I think you said that
16 there was no vote in the subcommittee on the
17 Campsen-Harpootlian Plans; is that right?

18 A. I think the video could probably bear that out even more.
19 Senator Rankin came to us and asked us, because of the
20 interest of time, to just let's get this map out as a working
21 map and that we would be able to input in with amendments when
22 it gets to the Judiciary and then ultimately to the floor. I
23 think one was done on one day, and because session was just
24 starting, they rushed it on to the next day.

25 And I wasn't even sure whether or not there was a vote

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1 because of the way -- and the video would show it -- when we
2 got to the Senate, there were several folks that asked: Y'all
3 voted? Did y'all vote? And I honestly could not -- I just
4 said, We agreed by acclimation that we would -- and I don't
5 remember the -- as we usually vote, and it's recorded, or
6 saying "aye" in reference to it. But there was an agreement.

7 And I agreed to the fact, taking Senator Rankin and those
8 on their word -- because I've known Senator Rankin since law
9 school -- that we would then communicate. And, in fact, he
10 was true to his word, we were able to give input at the
11 judiciary full committee meeting the next morning. Because,
12 this was in the afternoon, I believe, when we first started
13 session.

14 Q. Okay. Thank you. You mentioned this morning Mr. Terrine
15 and a document or a chart or a binder that he may have had or
16 had in his possession; do you remember that?

17 A. Not just him. It was --

18 Q. Others had it as well, right?

19 A. The only reference I really meant as it relates to
20 Charlie Terrine was that Senator Massey made a motion -- a
21 unanimous consent motion at the beginning of session that Mr.
22 Terrine be allowed access to the rail. I mean, because of
23 protocol, you can't come beyond the rail of the Senate unless
24 you are a senator or a staff member. And he was basically an
25 outside attorney that was hired by Senate Judiciary. And so,

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1 that's it. And I objected. And because I objected, then --
2 because he was supposed to sit beside Senator Campsen. I
3 objected to that. I think the motion was made once, twice,
4 maybe three times, and then the Senate had to recess. And
5 they wanted to know why I was objecting. And I explained, as
6 I told you earlier.

7 And then once they provided to us all the documents and
8 data that Charlie Terrine had prepared, or either someone at
9 his request had prepared, then I was okay with him coming
10 beyond the rail.

11 Q. Okay. Thank you for all that. And was Mr. Oppermann --
12 Joey Oppermann -- also allowed access beyond the rail; do you
13 recall?

14 A. No, he was not allowed access beyond the rail. He was
15 only allowed to be in the cloakroom. I remember, from -- oh,
16 that's nothing. Senator Harpootlian had him there, and he was
17 available, but he did not have access beyond the rail. And
18 then the Senate didn't pay for Mr. Oppermann either.

19 Q. And I think you testified that you were given the
20 document that Senator Campsen and Mr. Terrine had when you
21 asked for it; is that right?

22 A. Not willingly. I'm just being straightforward. They
23 held it for quite some time. But I objected to anything they
24 wanted to do that morning purposefully. So, that was what I
25 just saw coming through. There was an entire binder that

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1 members on that side of the -- we call it -- one side has
2 mostly Democrats, one side has -- but they had access to
3 information. The only reason why I could tell them about that
4 chart was because it had three different colors on it, and I
5 knew that particular document to ask for.

6 Q. And do you know whether any other Democratic senators
7 received that information before you did?

8 A. No. No one received it. No one received it at all.
9 That's when a lot of chatter then came up about: Why haven't
10 y'all pressed them to get the other documents they had? And I
11 told you I felt that -- I wanted to make sure I was doing the
12 right thing.

13 Q. And do you know when the Republican senators received
14 those documents?

15 A. They had them. They had the -- the ones that were in --
16 when I came through -- I usually come up to the Senate through
17 the elevator, then I go through the library. That's where our
18 legislative staff is -- the legislative room. I take the same
19 path every time. I come up the elevator, I go through there.
20 And most of the Republican staffers are there. There are
21 several tables and sofas. They were at the table. I go in,
22 grab my coffee. And once I grab my coffee, I talk to usually
23 whoever senate staffers are there. And that's when, as I was
24 talking, I noticed that they were looking at this binder. And
25 when I saw it, that it had congressional information on it,

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1 that's when I was, like, what -- I think I jokingly said:
2 What are y'all doing? What do you have there? Or, can I look
3 on your notes, or something along that line. I don't know. I
4 was messing with them. But anyway...

5 Q. Thank you for all that. We'd now like to watch just a
6 brief clip of the floor debate on January 20th, 2022. It's a
7 colloquy between you and Senator Campsen.

8 *(Video played)*

9 JUDGE GERGEL: Can we go back to the beginning of
10 that?

11 MR. GORE: Yes, your Honor.

12 *(Video played)*

13 JUDGE GERGEL: What's the exhibit number on that
14 video?

15 MR. GORE: Exhibit 242, your Honor.

16 JUDGE GERGEL: Senate?

17 MR. GORE: Senate Defendant's Exhibit 242.

18 JUDGE GERGEL: Thank you.

19 **BY MR. GORE:**

20 Q. Senator, you agree with me that politics was involved in
21 congressional redistricting, correct?

22 A. Politics only?

23 Q. Politics.

24 A. Part of politics is the racial aspects and other aspects.
25 Politics is involved in the choir at church. Sorry. It is.

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1 It's involved in everything we do, every part of our life.

2 Q. Thank you, Senator.

3 MR. GORE: Thank you, your Honor. No further
4 questions.

5 JUDGE GERGEL: Very good.

6 Cross-examination?

7 THE WITNESS: Oh, I thought I was done.

8 **CROSS-EXAMINATION**

9 **BY MR. MATHIAS:**

10 Q. Good morning, Senator. Andrew Mathias, representing the
11 House of Representatives.

12 Real quickly, you're here testifying about the Senate
13 redistricting process, correct?

14 A. Regarding congressional lines, yes.

15 Q. And you did not participate in the South Carolina House
16 of Representatives congressional redistricting process, right?

17 A. No, I did not.

18 MR. MATHIAS: Thank you.

19 JUDGE GERGEL: Very good.

20 Redirect?

21 MR. TRIVEDI: Yes, your Honor. Thank you.

22 **REDIRECT EXAMINATION**

23 **BY MR. TRIVEDI:**

24 Q. Hi, Senator. Just a few more questions for you.

25 First, I want to clear up some issues about process. Mr.

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1 Gore asked you about some comments that you made at the
2 November 29th hearing about the first staff plan; is that
3 right?

4 A. Yes.

5 Q. And then there later came a choice between two other
6 plans in January; is that correct?

7 A. Correct.

8 Q. In your assessment, were the problems with the Campsen
9 Plan much the same as the problems with the earlier Senate
10 staff plan?

11 A. Yes.

12 Q. Okay. He next asked you about a plan that you put
13 together that we called MBM; is that right?

14 A. Yes.

15 Q. Do you recall that the person who helped you was named
16 Clark Benson?

17 A. There you go. I could just remember "Clark." I'm sorry.

18 Q. Okay. And why did Senator Rankin tell you that the MBM
19 plan would probably not become law?

20 A. It was more like don't even try it, because it went into
21 his area of the state, which is the upper part, the Pee Dee
22 area: Horry, Conway, all of those areas.

23 Q. Okay. And Mr. Gore also talked to you about a plan from
24 the National Republican Redistricting Trust. Do you remember
25 that?

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1 A. Yes.

2 Q. Did that plan, to your knowledge, ever make it on the
3 public website for redistricting?

4 A. Yes. I thought it did. And that was sort of my
5 confusion with the questioning from Mr. Gore just a minute
6 ago, because he was concentrating on the communication -- or
7 what was in the transcript between Senator Harpootlian and
8 former Congressman Joe Cunningham. But I was concentrating on
9 the plans that staff said that they received from Washington,
10 D.C., from the Republican -- the Republican Trust issue, the
11 Trust plan, I knew nothing about that.

12 Q. Okay. You remember plans from, for example, the NAACP
13 ending up on the website; is that right?

14 A. Right. Right.

15 Q. Do you remember that plan from the National Republican
16 Redistricting Trust making it up there in that same way?

17 A. I thought that it was. And, again, the information
18 regarding the Republican Trust I knew that that was what was
19 -- whether or not it was online or not, it was in our
20 notebook.

21 Q. Would it surprise you if it never made it on the website?

22 A. Nothing would surprise me, unfortunately. I'm sorry.

23 Q. Okay. Now I want to go back to the guidelines.

24 MR. TRIVEDI: And, actually, Mr. Najarian, could we
25 pull that up as Plaintiffs' Exhibit 716?

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1 BY MR. TRIVEDI:

2 Q. You spoke to Mr. Gore about the guidelines that your
3 committee helped draft; is that right?

4 A. Yes.

5 Q. And I want to make sure I'm remembering your testimony
6 correctly. Did you say that the subcommittee intentionally
7 rejected inclusion of references to partisanship or major
8 party identifiers?

9 A. Yes.

10 Q. Okay. Mr. Gore also asked you about whether certain maps
11 were least changed. Does the term "least changed" appear in
12 the guidelines?

13 A. No.

14 Q. He also had you compare the benchmark plan to another
15 plan. Is the term "benchmark" in the guidelines?

16 A. No, it is not.

17 Q. Okay. He also talked to you about the section at the
18 end, number four, called "data." Does that section contain a
19 reference to Republican gain as a goal for 2020 congressional
20 redistricting?

21 A. No. It just has a little statement regarding political
22 -- again, political information.

23 Q. And, to you, is that different than Republican partisan
24 gain?

25 A. Yes.

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1 Q. Okay. Staying with data for a second, you talked to Mr.
2 Gore about receiving a binder with some data in it in
3 September; is that right?

4 A. Yes.

5 Q. Did you ever receive similar data after map proposals
6 were publicized?

7 A. No.

8 Q. And in that data I think Mr. Gore mentioned that there
9 were numbers about Biden-versus-Trump voters; is that right?

10 A. Yes.

11 Q. And there may have been some basic racial demographic
12 data in there?

13 A. Yes.

14 Q. Was there ever a racially polarized voting analysis in
15 there?

16 A. No. And even though Senator Harpootlian asked several
17 times for that information.

18 Q. And was there ever an analysis of how certain districts
19 would perform for Black voters, or, in other words, whether a
20 plan would dilute Black voting power?

21 A. No.

22 Q. Was that ever in there?

23 A. No.

24 Q. Okay. I want to turn to some of the issues with the maps
25 that you discussed. He talked about the difference between

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1 the treatment of Beaufort and the treatment of Charleston.

2 What are the demographic differences to you between the
3 voters in Beaufort, who were able to get what they wanted in
4 Sun City, and the voters in Charleston, who weren't able to
5 keep Charleston whole in CD 1?

6 A. Sun City is White, White, White.

7 Q. And by comparison, Charleston is?

8 A. And Sun City has Margaritaville. It has Del Webb,
9 Colleton River -- or May River, and the Palmetto Bluff area.
10 It has -- those were very, very -- and they're 55 and above.
11 I can't believe I finally fit into that. But 55 and above;
12 whereas, Charleston, those voters that were pulled out of the
13 1st and snaked into the 6th, those are Blacks. The Whites in
14 Sun City and in Jasper that said that they wanted to be in CD
15 1, they got what they wanted. But the Blacks down the street
16 from here in North Charleston, right across the river, Ashley
17 River, as you go out here, they were cut off and put into the
18 same district with the folks in Richland County. I can't make
19 that make any sense to me, especially -- we know that
20 Charleston County, there's a lot of gentrification that has
21 gone on over the years. We know that most of the people who
22 work downtown in Charleston live in North Charleston, they
23 live in Berkeley, they live in Moncks Corner, Goose Creek. I
24 know you don't know where that is, but they live there. And
25 they can't live here because it's expensive to live here.

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1 And so, I don't understand why the consideration would
2 not have been to listen -- if you listen to the people in Sun
3 City, why not listen to the ones in all of Charleston?

4 Q. Thank you, Senator. And just to close out, you were
5 shown a clip of a back and forth with Senator Campsen. Did
6 you ever confront Senator Campsen about the map being about
7 politics only?

8 A. No. I listened to myself there, and that was a long day,
9 and a long day for me. I was saying it's not only -- I meant
10 to say it's not only about racial. They were trying to make
11 it look partisan primarily because of that clip that they have
12 in that brochure that they were sharing regarding the *Backus*
13 case. They were trying to make it say partisan, but it was
14 really racial.

15 Q. And did Senator Campsen, on the floor, given the
16 opportunity to say, no, this was just about Republican gain,
17 did he say that to you?

18 A. No, of course not.

19 Q. Okay. And my last question. You testified earlier that
20 you believe that Black voters were moved out of certain areas
21 of CD 1. Do you think that this was based on their race?

22 A. Yes.

23 Q. Do you think they did that on purpose?

24 A. I've said it several times.

25 Q. Thank you, ma'am. I appreciate your time.

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1 A. Yes.

2 JUDGE GERGEL: Senator, thank you. You may step
3 down.

4 THE WITNESS: You're welcome. Thank you.

5 JUDGE GERGEL: Okay. I think this is a good time for
6 a break. We'll be back in about 10 minutes.

7 **(Recess)**

8 JUDGE GERGEL: I hope whoever is doing the direct of
9 Mr. Harpootlian is prepared to ride the Bronco.

10 MR. FREEDMAN: Plaintiffs call Richard Harpootlian.

11 JUDGE GERGEL: Very good. Swear the witness.

12 **RICHARD A. HARPOOTLIAN, having been first duly sworn,**
13 **testified as follows:**

14 **DIRECT EXAMINATION**

15 **BY MR. FREEDMAN:**

16 Q. Could you state your full name for the record, sir,
17 please?

18 A. Richard Harpootlian.

19 Q. You may want to lower the mic a little bit.

20 A. Richard Harpootlian.

21 Q. Thank you. And, sir, where do you live?

22 A. Columbia, South Carolina.

23 Q. Could you briefly describe your higher educational
24 background?

25 A. Higher education? Clemson University, 1971. University

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1 of South Carolina Law School, 1974.

2 Q. Could you briefly describe your professional background?

3 A. When I graduated from law school, I went to work for the
4 Fifth Circuit's Solicitor's Office in January 1975. I worked
5 in the Fifth Circuit's Solicitor's Office as an assistant
6 solicitor and then deputy solicitor until the summer of 1983.
7 I left the solicitor's office in Richland -- the Fifth Circuit
8 was Richland and Kershaw Counties. I left that office in the
9 summer of 1973 and went into partnership with a guy named Jack
10 Swerling. I practiced with Mr. Swerling until the spring of
11 1990, when I left to run for the solicitor's job in the Fifth
12 Circuit. I did that and had my solo practice from the spring
13 of '90 until January of '91.

14 I then was elected Fifth Circuit solicitor. I did that
15 job until January of '95. I went into private practice and
16 have been there since.

17 Q. Could you tell us what your current position is?

18 A. I have a private law practice. I'm a state senator from
19 District 20.

20 Q. Could you describe Senate District 20 for the Court?

21 A. Senate District 20 goes basically from Fort Jackson in
22 Richland County down Leesburg Road to Garners Ferry Road, and
23 then comes up Garners Ferry Road through to the south, some
24 neighborhoods, and then comes to a neighborhood called Shandon
25 and then expands out after you get to Harden Street all the

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1 way up to a neighborhood called Cottontown, Elmwood Park.

2 Goes out I-26 at that point -- also takes in all of downtown
3 Columbia down to Rosewood Drive -- well, actually down to the
4 fairgrounds, and goes across the river, up I-26, taking in
5 some neighborhoods like Coldstream, Friarsgate to the left, a
6 piece of Irmo, a piece of Chapin, and then goes up and takes
7 you to some neighborhoods that border the lake, and then cuts
8 back up and goes to the Newberry County line.

9 Q. Thank you, sir. Under the congressional plan, do you
10 know what congressional district or districts Senate District
11 20 is in?

12 A. The 6th and the 2nd.

13 Q. Great. And could you describe the racial demographics of
14 your district?

15 A. The last demographics I have are 18 percent BVAP, and the
16 rest would be obviously White.

17 Q. Okay. How long have you served in the state legislature?

18 A. Since 2018.

19 Q. And what congressional district do you currently live in?

20 A. I live in the 6th.

21 Q. Have you been involved -- prior to this cycle, have you
22 been involved in redistricting in the past?

23 A. Litigation?

24 Q. Including litigation, yes.

25 A. Pretty much just litigation, yes.

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1 Q. What cycles have you been involved in?

2 A. When was the *Backus* case?

3 Q. Ten years ago.

4 A. Ten years ago. What was the one before that?

5 Q. It was ten years before that -- oh, the *Colleton* case.

6 A. I think it was the *Colleton* case. I have to look. I
7 can't remember.

8 Q. You've been involved in litigation redistricting for a
9 couple of cycles?

10 A. At least.

11 Q. Let's talk about redistricting this cycle. For this
12 cycle of redistricting, did you serve on the Senate
13 Redistricting Committee?

14 A. I did.

15 Q. What was the Senate Redistricting Subcommittee?

16 A. What do you mean by that?

17 Q. Like, what was its function?

18 A. To -- we had a number of hearings around the state to get
19 input from citizens on what they thought their congressional
20 or -- well, obviously we did Senate redistricting, our own
21 redistricting, but we also did congressional. I don't know
22 that we did many hearings on Senate redistricting, but we
23 certainly did I think at least 10 on congressional
24 redistricting to begin with. And then formulate a plan and
25 propose -- on both Senate and congressional and propose it to

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1 the body.

2 Q. Who chaired this subcommittee?

3 A. I believe it was Rankin.

4 Q. Senator Rankin?

5 A. Senator Rankin, yes.

6 Q. And do you recall who the other members of the
7 subcommittee were?

8 A. Senator Sabb, Senator Bright Matthews, Senator Adams,
9 Senator Campsen -- I'm trying to think who else. Senator
10 Talley. That's about all I can remember.

11 Q. Did Senator Young serve on the committee as well?

12 A. Yes.

13 Q. Okay. Could you provide an overview, just for the Court,
14 of the congressional redistricting process, as followed in the
15 Senate?

16 A. Well, we had those hearings. And then from that a staff
17 plan was to be proposed. We, I thought, had an opportunity to
18 get that, digest it, discuss it, and then there would be a
19 plan -- a public plan for -- I mean, a plan that would be made
20 public proposed. I thought there would be some sort of
21 ability for us to -- "us," being anyone on the committee -- to
22 have input into that initial plan, and then we would finalize
23 the plan, put it out for public comment, and then after public
24 comment, take amendments to whatever and reach a final
25 committee plan, which would then be voted on by the full

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1 Judiciary Committee and then proposed to -- I think that's
2 right -- and then proposed to the body.

3 Q. Is that how things actually worked?

4 A. Absolutely not.

5 Q. Did you have any concerns about the congressional maps
6 that were considered the cycle?

7 A. I'm sorry. I didn't hear that.

8 Q. Did you have any concerns about the congressional maps
9 that were considered the cycle?

10 A. Yes.

11 Q. Could you describe at a general level what those concerns
12 were?

13 A. Well, I had initially concerns about our guidelines, and
14 I wrote a letter to Senator Rankin expressing that. I mean,
15 it was -- it was -- the first inkling we had of a plan --
16 "we," being the members of the committee -- I mean, when I say
17 "we, the members of the committee," people like Margie Bright
18 Matthews, Ronnie Sabb, myself, the Democrats, I guess -- was
19 when it was released the week before Thanksgiving. And there
20 it was. I've jokingly referred to it in one committee meeting
21 as "the immaculate deception," because we had no inkling of
22 what was in it, how it was composed, what was weighed.

23 And so, that came out the week before Thanksgiving. We
24 had a hearing the week after Thanksgiving, which was
25 nonproductive. We then had an additional meeting early

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1 January, I think. And then -- I mean, it was a fait accompli.
2 We were nonparticipants. Our opinions didn't matter. My
3 opinion didn't matter. The answers given by Senator Campsen,
4 who was sort of the person responsible for getting it through
5 the committee, was inadequate, in my opinion, and clearly race
6 played, if not the factor, a huge factor in how this plan was
7 composed, in my opinion. That's just my opinion.

8 Q. We're going to unpack a lot of that over the course of
9 this testimony. You mentioned the guidelines. What's your
10 understanding of the guidelines?

11 A. Well, I mean, if -- do you have a copy of my letter?

12 Q. I can do it when -- why don't I introduce the guidelines
13 first, and then we can --

14 A. Yeah. Well, there are traditional redistricting
15 guidelines: Compactness, contiguity, this concept of
16 communities of interest, race should not be a factor. I don't
17 know. I don't have my --

18 MR. FREEDMAN: Why don't we pull up PX-716.

19 **BY MR. FREEDMAN:**

20 Q. Sir, would you like me to provide a copy? Senator
21 Harpootlian?

22 A. Well, obviously population equality, plus or minus, I
23 think, one vote. You can't have a Section 2 violation, which,
24 you know, is pretty obvious. Avoidance of racial
25 gerrymandering, contiguity, communities of interest,

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1 constituent consistency, minimizing division of county
2 boundaries, minimizing division of cities and towns,
3 minimizing division of precincts, and compactness.

4 Q. When these were passed, did you have an understanding
5 whether the mapmakers would follow these guidelines?

6 A. Thought so.

7 Q. Why did you think that was the case?

8 A. Because these were our guidelines that were passed.

9 Q. When members of the public submitted proposed
10 congressional maps, did you expect that they would follow the
11 guidelines?

12 A. Yes.

13 Q. When you submitted maps -- and we'll go over those in a
14 little bit -- did you believe that they followed the
15 guidelines?

16 A. I believe they followed the guidelines better than the
17 plan that the staff drafted, yes.

18 Q. Okay. Now, before these guidelines were passed by the
19 committee, did you have concerns about them?

20 A. Absolutely.

21 MR. FREEDMAN: Stephen, can you pull up Plaintiffs'
22 Exhibit 322?

23 Permission to approach and provide the exhibit to the
24 witness?

25 JUDGE GERGEL: Yes.

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1 **BY MR. FREEDMAN:**

2 Q. Senator Harpootlian, are you familiar with this exhibit?

3 A. I am.

4 Q. What is it?

5 A. It's a letter I wrote to the chairman of the committee.

6 Q. What prompted you to send this letter?

7 A. Because I thought the guidelines that they were getting
8 ready to pass were too loosey goosey, that they didn't
9 prioritize them. And, I mean, the draft said that federal
10 court sanctions are use of 10 percent population deviation,
11 plus or minus five percent. I didn't think that was correct,
12 for instance. There were a number of different points, if you
13 want to walk through the letter, that I disagreed or I
14 suggested didn't really meet the judicial constraints imposed
15 by cases that dealt with redistricting.

16 Q. One of the concerns I want to focus on in the letter is
17 the process of putting too much emphasis on the prior map, the
18 map that had been passed in 2012. Do you remember raising
19 that concern?

20 A. I did. I can't remember where I raised it, but I think
21 it's compactness and contiguity.

22 Q. You raised it in a couple places. I'll go over them.

23 A. Okay.

24 Q. Taking a step back, why was that a concern? Like, why
25 did you raise that?

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1 A. Well, because I had been involved in the previous
2 litigation, I understood that Section 4 and Section 5 were a
3 major component of how we came up with what I thought was a
4 plan that racially gerrymandered the state, especially
5 Districts 6, 1, 2, 5, and maybe 7, that it packed African
6 Americans into the 6th and resulted in a very bizarre-shaped
7 district for Congressman Clyburn's district, which went from
8 the Atlantic Ocean to Lake Murray. It made no sense from a
9 compactness, contiguity -- which I think are primary
10 objectives.

11 Q. And what, if anything, did you do about your concern
12 about too much reliance on the old map?

13 A. Well, I talked about it in this letter and I raised it at
14 every step of the process.

15 Q. Okay. I want to direct your attention, if you move from
16 the e-mail, to the top of page three, the actual letter. This
17 is the fifth page of the PDF.

18 A. Page three of the letter?

19 Q. Page three of the letter.

20 A. Okay.

21 Q. It's the fifth page of the PDF. And then at the end of
22 the first paragraph where it says "In the light of the Supreme
23 Court precedent over the last decade."

24 A. "In the light of the Supreme Court precedent over the
25 last decade, I believe our guidelines should be updated to

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1 recognize the districting decisions the legislature made a
2 decade ago under the auspices of Section 5 were based on a
3 flawed view of the VRA. It was unconstitutionally in effect
4 at the time those decisions were made." Yes.

5 Q. What were you trying to convey with this?

6 A. Well, that if you start off with the benchmark plan, the
7 benchmark plan was flawed for a number of reasons, but
8 primarily because it's no longer -- it was shaped under a
9 constitutional constraint, everybody thought, that no longer
10 was in effect.

11 Q. I want to direct you to another passage of the letter.
12 If we could go forward to the next page, page four of the
13 letter, subparagraph (d). And the language, "We should
14 recognize that maintaining district cores could simply ossify
15 problems caused by past districting efforts," do you see that?

16 A. Absolutely.

17 Q. What were you trying to convey with that language?

18 A. Well, if you start off with the benchmark plan, which,
19 again, in my opinion -- and obviously litigated and didn't
20 win, but the law changed, the population had changed. And
21 this gave us an opportunity -- I thought, a unique opportunity
22 to finally deal with this reflexive use of race as the basis
23 to redistrict.

24 Q. Now, you mentioned that, in addition to sending this
25 letter, you also raised this on the public record?

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1 A. Yes.

2 Q. I want to take a look at one of those clips.

3 MR. FREEDMAN: Stephen, can you pull up Senate
4 Exhibit 242? This is the video of the January 20th hearing.
5 And I want to play the part that starts at signature 3:23:18.

6 *(Video played)*

7 BY MR. FREEDMAN:

8 Q. Just so the record's clear, who were you interacting with
9 in that clip?

10 A. Senator Chip Campsen, from Charleston.

11 Q. Okay. And in the clip, there's somebody sitting on
12 Senator Campsen's side. Can you tell us who that was?

13 A. That's Charlie Terrent, who was the attorney hired by the
14 Senate to advise on reapportionment.

15 Q. What was your reaction -- well, actually, before I ask
16 that, what prompted you to give that statement, engage in that
17 colloquy on the floor?

18 A. Because, again, every time you asked, Why are we doing
19 this -- in the many, many other clips -- he would say, We
20 started with the benchmark plan and basically tried to do the
21 minimal amount of damage to it. Because of population
22 increase, we had to do some damage. But, basically, we wanted
23 to go forward with the benchmark plan unchanged to the extent
24 that we could make it unchanged.

25 Q. Thank you. And do you have a reaction to Senator

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1 Campsen's answers to your questions?

2 A. Then or now?

3 Q. You can tell us both.

4 A. Well, I mean, I think then I wondered -- you know, he
5 agreed with me that the legal environment has changed
6 dramatically and, yet, he doesn't change his position that the
7 benchmark plan was paramount. I think that's ridiculous then,
8 I think it's ridiculous today. And all it does is ossify
9 racial divisions in our state.

10 Q. Thank you. Now, you also raised in debate your concern
11 that no racially polarized analysis had been conducted. Do
12 you recall that?

13 A. I do.

14 Q. Why did you think it was important for the Senate to have
15 conducted a racially polarized voting analysis?

16 A. Because, I mean, the basic assumption is: Black people
17 vote a certain way, White people vote a certain way; or White
18 people may be open to voting for Blacks, or Black people may
19 be open to voting for Whites. There are some areas in this
20 state that I would agree that if you did a racially polarized
21 voting analysis, that White folks wouldn't vote for Black
22 folks, and Black folks wouldn't vote for White people. I
23 understand that. But that is not anymore. We talked about
24 when I ran for county council in '86. That was, I believe,
25 the environment of this state, that White people wouldn't vote

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1 for Black people, and Black people wouldn't vote for White
2 people. That's changed dramatically.

3 And so, you need a racially polarized voting analysis so
4 that you can deal with Section 2 concerns, if you will, in
5 certain areas. But it's not -- it's not -- it's not
6 applicable to every area, every district, every county, every
7 precinct. And once you get that analysis, it allows you to
8 change the reapportionment process, understanding that no
9 White people in that precinct will ever vote for a Black, or
10 no Black people in this precinct will ever vote for a White.

11 Q. Thank you, sir. And why did the failure of the Senate to
12 prepare or consider a racially polarized voting analysis
13 concern you?

14 A. Because I think you need it to do a rational, reasonable
15 reapportionment plan. I think you need to be able to consider
16 those specific pieces of information.

17 Q. Do you remember what the response was when you asked why
18 a racially polarized voting analysis had not been conducted?

19 A. Yeah. I mean, Senator Campsen said if somebody sues,
20 that's when it becomes relevant.

21 Q. Let's take a look at a clip of that.

22 MR. FREEDMAN: Stephen, can you pull up SX-241? The
23 signature is starting at 38:18. This is from the
24 January 19th, 2022, Judiciary Committee hearing.

25 *(Video played)*

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1 **BY MR. FREEDMAN:**

2 Q. Sir, do you have a reaction to that?

3 A. That was incredulous. I mean, it made no sense
4 whatsoever: We're not going to even look at that unless we
5 get sued, and then the Court can look at it?

6 Q. At the time Senator Campsen said this on January 19th, do
7 you know whether or not a lawsuit had actually been filed at
8 that point?

9 A. I think one had been filed.

10 Q. That's the lawsuit we're here today on, right?

11 A. Yes. I'm not sure I was aware of it at that moment, but
12 I became aware of it after the hearing.

13 Q. You started to describe some of this earlier, but did you
14 have concerns when you started to see some of the draft
15 congressional maps?

16 A. You're talking about right before Thanksgiving?

17 Q. Any maps that you saw that caused you concern.

18 A. The first map I saw was the week before Thanksgiving.

19 Q. And did that concern you?

20 A. Yes.

21 Q. Why don't we talk about that now for a little bit.

22 A. By the way, it's pretty much the same map that got
23 adopted. I mean, there's not a lot of changes.

24 MR. FREEDMAN: Can we pull up Senate Exhibit 32A?

25 **BY MR. FREEDMAN:**

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1 Q. Sir, this is the Senate's staff plan. Do you recognize
2 this?

3 A. I do.

4 Q. And just so the record's clear, when do you recall first
5 seeing this map?

6 A. The week before Thanksgiving, when it was released to the
7 public.

8 Q. When it was released to the public?

9 A. Yes.

10 Q. I think the record establishes it was released to the
11 public on November 23rd, the Tuesday before Thanksgiving.
12 Does that sound right to you?

13 A. Yeah, sure. I know it was the week before Thanksgiving.

14 Q. Did you have any involvement in the development of this
15 plan?

16 A. No. None.

17 Q. Did you review this map prior to it being released to the
18 public?

19 A. No. And that's why we refer to it as "the immaculate
20 deception." We don't know how it was birthed, we don't know
21 -- it just showed up. And, again, it's so offensive to me. I
22 was, again, angry, upset. And I think at the subsequent
23 hearing, I expressed that to staff.

24 Q. We're going to spend some time on the subsequent hearing
25 about this map. Do you remember raising your concerns about

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1 the release date of the map and the failure -- your failure to
2 be able to review the map before it was released?

3 A. Absolutely.

4 Q. Let's take a look at a clip of that from the
5 November 29th hearing.

6 MR. FREEDMAN: Stephen, can you pull up SX-239 at
7 signatures 7:27? This is the video of the November 29th,
8 2022, hearing.

9 *(Video played)*

10 BY MR. FREEDMAN:

11 Q. Sir, what prompted you to raise these concerns in the
12 hearing?

13 A. Well, again, you know, I saw the plan, had basically at
14 that point had a week to look at the plan. But Thanksgiving,
15 in the middle of that week, wasn't actually a time where you'd
16 sit down and look at it and crunch it. But, I mean, it looked
17 to me like they had taken the benchmark plan and tweaked it in
18 a few places and actually made it worse, in my opinion,
19 without looking at the exact data.

20 But, again, when you look at what they did to the 6th and
21 the 1st in Charleston, it makes no sense when you look at
22 compactness, contiguity. And if you go up to Richland County,
23 you still have what we call either the hatchet or the parrot's
24 feet, that winds the 2nd District around Richland County for
25 no apparent reason. And, again, it puts African Americans in

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1 the 6th, White folks in the 2nd.

2 Q. So, I want to spend a little bit of time just unpacking
3 that, just so that we're clear. The November 29th hearing
4 we're talking about, that was just after Thanksgiving, right?

5 A. Correct.

6 Q. The Monday after Thanksgiving?

7 A. If you say so, sure. It was right after it -- whatever
8 the first hearing was after Thanksgiving.

9 Q. What kind of reactions did the committee receive?

10 MR. FREEDMAN: Why don't we put 32 back up, just so
11 the Senator can see it.

12 BY MR. FREEDMAN:

13 Q. Do you remember what kind of reactions the committee
14 received at the hearing about this map?

15 A. Well, everybody from the Charleston area was outraged. I
16 mean, except for a very few who kept talking about some sort
17 of -- how Berkeley and Dorchester and Charleston had some sort
18 of working economic. But very few people talked about that.

19 Almost everybody we heard from wanted Charleston kept
20 whole and talked about how this split the county on a racial
21 basis and put the Black folks in the 6th and the White folks
22 in the 1st. And, again, just looking at how they split up
23 other different counties, it was clear that it was done on a
24 -- in my opinion, done on the basis of race.

25 Q. So, I just want to have you unpack this also. Did you

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1 have concerns about whether this map complied with the
2 guidelines or traditional redistricting principles?

3 A. I didn't think it did.

4 Q. In what ways?

5 A. Well, I thought it wasn't compact. I thought it wasn't
6 -- the idea of contiguity, it cut -- I think at least 10
7 counties were split. Municipalities were split. Precincts
8 were split. You know, whatever communities of interest means,
9 whatever definition you want to give it, it certainly was not
10 done consistently to keep communities of interest together,
11 unless pigmentation defines community of interest.

12 And, again, when you look at this Frankenstein creation
13 of the 6th, it clearly raises the primary criteria.

14 Q. I want to just walk through a few things you mentioned.
15 In terms of the county splits and the precinct splits, do you
16 remember if they were focused on any particular area of the
17 state?

18 A. The 6th District -- well, I mean, primarily the 6th and
19 the 1st; the 6th and 5th; the 6th and the 2nd; the 6th and the
20 7th.

21 Q. The 6th.

22 A. The 6th, yes.

23 Q. And you also mentioned a concern about contiguity. What
24 was that concern?

25 A. Well, I mean, look at what they did in the city of

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1 Charleston.

2 MR. FREEDMAN: Can we blow that up?

3 THE WITNESS: I mean, they -- and, by the way, it
4 gets worse in the next plan. But in this one, it's clearly
5 drawn up without the idea of contiguity or compactness. Why
6 do you do this? For what reason do you create this
7 Frankensteinian creation? What possible reason other than
8 race? And the same thing at the top of the district. And, I
9 mean, we can go around this district. I know that on the
10 final plan they split 10 counties. Of those, eight bordered
11 the 6th District. Ten counties statewide, eight bordered the
12 6th District.

13 Q. You also mentioned receiving community feedback from
14 people from Charleston. Can you just describe what you're
15 referring to?

16 A. Well, they've all -- virtually, everybody we heard from
17 said, look, Charleston, Black and White, is a unit. You know,
18 we elect county-wide officials. We have school districts
19 within the county. We are a community of interest, this
20 county. Please keep us together wherever you put us -- 6th,
21 1st, wherever. But it should be in one district.

22 Q. I think you testified earlier about the hearing process,
23 the public hearing process?

24 A. Right.

25 Q. Did you hear that type of feedback about Charleston

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1 during that?

2 A. Absolutely. I think we had 10 hearings statewide.

3 Q. And just so the record's clear, what was your
4 understanding of the purpose of those hearings?

5 A. To get the public input. To decide, you know, what
6 communities of interest meant in the sense of different parts
7 of the state. And, of course, we also heard about Senate
8 districts, for instance. But the hearing we had after this
9 plan became public was obviously just on this plan.

10 Q. Just referring to the hearings over the summer, did you
11 actually attend any of those hearings?

12 A. I attended probably 80 percent of them either in person
13 -- and remember this was COVID. So, many of them I did by
14 Zoom.

15 Q. And in addition to the community comments about
16 Charleston, do you remember any other communities coming up
17 and --

18 A. I don't remember any other community being as vociferous
19 or vocal as Charleston. I mean, a number of them had issues
20 about not splitting their city. I think Sumter had some
21 concerns about being split. I can't remember others.

22 Richland, of course, was concerned about this bizarre --
23 people were concerned about the 2nd and 6th up there.

24 Q. Do you remember anybody from Orangeburg expressing
25 concerns?

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1 A. I don't remember a specific person, but I remember people
2 from Orangeburg testifying.

3 Q. Did you have an opportunity to dialogue with individuals
4 who testified at these hearings?

5 A. No. We were asked by the chairman not to ask questions.
6 Now, he did, but we had very little interaction. Sometimes we
7 did, but it was rare.

8 Q. By the chairman, you're referring to Senator Rankin?

9 A. Senator Rankin.

10 Q. Do you have any understanding why Senator Rankin asked
11 you not to ask questions?

12 A. Time constraints is basically what he said. But I'm just
13 not -- I mean, with 20/20 hindsight, I don't think they cared
14 what the public said. That's just my opinion.

15 Q. This might be a good time to talk about some of the
16 concerns that you expressed earlier about the process in
17 transparency. Could you give us an overview of your concerns
18 about the congressional process?

19 A. Well, I mean we had these hearings over the summer. Let
20 me compare it. When we did Senate redistricting, my district,
21 they called me, asked me to come in, look at what they were
22 going to do to my district, what did I want. And when I
23 looked at their different proposals, all of which were
24 calculated -- I mean, my district is, again, a Frankensteinian
25 monster. It was created to maximize Republican votes,

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1 diminish black votes it created for my predecessor. There was
2 no way to fix it, in my opinion, with the population increases
3 along the coast.

4 So, I agreed to move my district to Charleston,
5 apparently an unheralded, unprecedented move, which put me in
6 a district with an incumbent. But I thought that was best for
7 the State. I still think it's best for the State. May end up
8 being best for me.

9 So, when we did redistricting for the congressional plan,
10 I assumed somebody would call me, ask me to come into the map
11 room, look at it, and get my comments. So, when the plan came
12 out the week before Thanksgiving, to say I was taken aback
13 would be an understatement. I was outraged. I was
14 disappointed in the staff, the chairman, for doing this in a
15 nontransparent way. And then once it was out for public
16 comment, clearly that train had left the station. We were
17 merely waving goodbye.

18 Q. And did you learn things at the November 29th hearing,
19 where you were discussing this map that caused you additional
20 transparency concerns?

21 A. Well, apparently, there had been a national Republican
22 group that had sent a proposed plan in. We were assured by
23 staff that it played no part whatsoever in this plan or their
24 composition of a plan. I asked to see it. I was told I would
25 get to see whatever they submitted, but it was never given to

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me.

Q. Okay. So we're clear, sitting here today, do you know the name of the national Republican group?

A. National Republican Redistricting something-something Trust, maybe? I remember the word "trust" I think.

Q. And sitting here today, you believe you asked for a copy of that?

A. I know I asked for a copy of it.

Q. Okay. As of today, have you seen a copy of it?

A. No.

Q. I believe you actually asked for it on the record. Is that your recollection?

A. My recollection is I did.

Q. Why don't we take a look at that clip.

MR. FREEDMAN: Stephen, could you pull up SX-239, at signature 29:20?

(Video played)

BY MR. FREEDMAN:

Q. And, again, I don't want to repeat myself. But were you given a copy of the plan the staff received from the National Republican Redistricting Trust?

A. Never.

Q. Are you aware that Senate staff have denied in their depositions that you ever asked for a copy of the map?

A. They would be not being candid, because I did it on the

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1 record.

2 MR. TYSON: Objection, your Honor.

3 JUDGE GERGEL: Let me say this. I think this whole
4 controversy has been fully discussed. And I don't think we
5 need to keep asking the question. We just saw the clip where
6 Senator Harpootlian requested it. So, that's it. I mean, I
7 don't think we need to talk about what somebody else said
8 about something else. I just don't think it accomplishes
9 anything.

10 MR. FREEDMAN: Sure. Fair enough, your Honor. I'll
11 move along.

12 **BY MR. FREEDMAN:**

13 Q. I do want to ask just one final question about the
14 staff's claims that the map they received had no impact or
15 negligible impact on the staff plan that they drafted.

16 Do you have any reaction to that?

17 A. Well, I never saw the plan, so I can't say whether it did
18 or didn't.

19 MR. TYSON: Asked and answered.

20 JUDGE GERGEL: I think Senator Harpootlian is raising
21 your objection, Mr. Tyson.

22 MR. TYSON: Yes. Thank you, your Honor.

23 **BY MR. FREEDMAN:**

24 Q. Now, we've also talked briefly about Senator Campsen's
25 plan. I'd like to turn to that now.

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1 MR. FREEDMAN: Stephen, can you pull up Senate
2 Exhibit 29B?

3 JUDGE GERGEL: What's the number?

4 MR. FREEDMAN: It's 29B.

5 **BY MR. FREEDMAN:**

6 Q. This is the map of Senate Amendment 1, which was
7 introduced by Senator Campsen. Senator, do you recognize
8 this?

9 A. I do.

10 Q. What is it?

11 A. It's Senator Campsen's plan. I think it's the one -- we
12 saw one on the 29th. I think this is the subsequent plan, if
13 I'm correct.

14 Q. Do you remember about when you saw this?

15 A. January. I don't remember seeing anything between that
16 29th -- I may have, but -- and January 9th I think was the
17 next time we met.

18 Q. I think the record reflects that the next subcommittee
19 meeting was January 13th.

20 A. Thirteenth? Okay.

21 Q. Did you have any involvement in the development of
22 Senator Campsen's plan?

23 A. None.

24 Q. Did you have an opportunity to review this map before it
25 was released to the public?

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1 A. No.

2 Q. And you mentioned the Senate subcommittee had a hearing
3 about this map?

4 A. Yes. I think you said it was on the 13th.

5 Q. What kind of reactions did the committee receive about
6 this map?

7 A. Again, I think the folks in Charleston were apoplectic.
8 It didn't correct, it merely tweaked a couple things and made
9 it worse, not better.

10 Q. What was your reaction when you saw this map?

11 A. The train had left the station, and whatever we said,
12 whatever our concerns were, were not to be considered.
13 Because this plan -- again, if you look at Charleston -- pull
14 up Charleston for a second.

15 I mean, now in this plan, not only is it not contiguous,
16 you've got to cross water to get from one part of the 6th
17 District to the other part of the 6th District. They've
18 divided islands. It certainly divides precincts, it divides
19 county lines, it divides municipalities. It violates
20 virtually every redistricting principle concerning those
21 issues that you can conceive of.

22 And, again, if you look at why, if you go in and look at
23 the numbers, it's all about race.

24 Q. Did Senator Campsen's map reflect any of the comments or
25 criticisms of the Senate staff plan that you had heard on

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1 November 29th?

2 A. No.

3 Q. Before Senator Campsen introduced this plan, do you
4 remember him making a statement about the process that was
5 going to be followed, following the release of the Senate
6 staff plan?

7 A. Not off the top of my head, no.

8 MR. FREEDMAN: Stephen, can you pull up PX-98? This
9 is the November 29th hearing. And I want to look at page 37,
10 lines 16 to 20.

11 **BY MR. FREEDMAN:**

12 Q. So, this is Senator Campsen. And he says: "So I just
13 want those who are watching and interested in the process to
14 realize that is the process. And it's not final, it's not
15 even close to final. It is a first iteration produced by
16 staff."

17 Do you recall him saying that?

18 A. Oh, I do. And, by the way, I think that sort of gave me
19 hope that maybe the issues I'd raised might be incorporated in
20 a subsequent -- I mean, I'm raising them in a public forum on
21 the record, asking Senator Campsen, so I thought maybe,
22 foolishly, that those concerns might be in some way
23 incorporated in the next iteration, if you will.

24 Q. Now, do you have any reaction to this statement sitting
25 here today?

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1 A. It's not accurate.

2 Q. What do you mean by that?

3 A. It says not even close to final. If you look at the
4 final and look at what we had on the 29th, they're very, very
5 similar. Again, I think the subsequent plan was worse.

6 Q. Now, between when Senator Campsen said this on November
7 29th, and the January 13th hearing, as a member of the
8 subcommittee, was your opinion about the map solicited?

9 A. No.

10 Q. Did Senator Campsen or any of the Senate staff ask for
11 your input on the congressional map between the November 29th
12 hearing and the January 13th hearing?

13 A. No. And I think I said -- when we adjourned in November,
14 I said to Chip, look, you know, I've got some ideas on this;
15 you need me, just give me a call.

16 Q. Okay.

17 MR. FREEDMAN: Can we put back up Senator Campsen's
18 map?

19 **BY MR. FREEDMAN:**

20 Q. Sir, just so the record's clear, could you walk us
21 through any concerns you had about whether this map complied
22 with traditional redistricting principles?

23 A. Well, I think if you look at, again, splitting the
24 counties, splitting the cities, splitting the precincts, all
25 of those things, it violates -- I think ultimately we

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1 determined they split 10 counties, eight of which involved the
2 6th District. And what they did in Charleston, even up in
3 Richland, if you look at what they did -- where I'm more
4 familiar -- made no sense, except based on racial issues.

5 Q. Did anyone on the subcommittee ever say that the map was
6 drawn to maintain a six-to-one Republican advantage in the
7 South Carolina delegation?

8 A. No. And, as a matter of fact, I think there was a
9 specific statement made by Senator Campsen, that they didn't
10 even look at party, that this was not a map drawn based on
11 partisan concerns.

12 Q. Why don't we take a look at that clip.

13 MR. FREEDMAN: Stephen, could you pull up Senate
14 Exhibit 242 and play signature 2:22:08. This is from the
15 January 20th floor debate.

16 *(Video played)*

17 BY MR. FREEDMAN:

18 Q. What was your reaction to that?

19 A. Well, I mean, look, it increases -- two things: One,
20 he's denying that they've redistricted based on any sort of
21 party or partisan concern. You know, the answer to that is
22 that they're using party as a proxy for race, in my opinion,
23 and then denying they're using party. No party, no race. I
24 mean, that was their position. This was: Met all the
25 traditional redistricting guidelines without ever looking at

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1 partisan issues or ever looking at racial issues.

2 Q. Senator, a little bit earlier you talked about the public
3 comment process. And you mentioned Sumter. You also
4 mentioned Richland. And is there any additional detail you
5 remember about what people raised about those issues?

6 A. I mean, the split of Sumter, there were people concerned
7 about why Sumter was split between two congressional
8 districts, one being the 5th, which goes all the way up to the
9 Charlotte border, and the 6th, which goes, again, between Lake
10 Murray and the Atlantic Ocean, and that they really were just
11 sort of a third wheel. They had no real impact in the 6th
12 District whatsoever, because they were split, and, again,
13 split basically on racial lines.

14 Q. And anything about Richland?

15 A. Well, I mean, I'm familiar with Richland. There's no
16 question that there's no reason to carve Richland up on that
17 bizarre sort of parrot's feet thing other than race.

18 Q. Now, in the debate over the Campsen amendment, do you
19 remember raising your concerns about splitting Charleston
20 among racial lines?

21 A. Yes.

22 Q. I want to show a clip from the January 19th, 2022,
23 hearing. This is the final Judiciary Committee hearing.

24 MR. FREEDMAN: Stephen could you please pull up
25 Senate Exhibit 241 at signature 54:06?

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1 (Video played)

2 BY MR. FREEDMAN:

3 Q. Do you think the 10 percent that Senator Campsen just
4 mentioned is significant?

5 A. I think it's significant, and I'm not sure it's accurate.
6 Also, I think what was fascinating to me, I had forgotten how
7 Senator Rankin interrupted that process. And he was giving us
8 partisan-performance data. I mean, clearly, Campsen had
9 indicated that they didn't consider any of that, but Senator
10 Rankin, the chairman of the committee, was telling us what the
11 Democratic performance was.

12 Q. You raised a question about the accuracy of what was --

13 A. Yes.

14 Q. Did Senator Campsen, Senator Rankin, Charlie Terrine, or
15 anyone else from the Senate staff, ever come back to you and
16 tell you that they had misstated the numbers?

17 A. No.

18 Q. Did they ever tell you that the number of Black people of
19 voting age population in Charleston County, in CD 6, went from
20 37,000, or about 50 percent, to 60,000, or about 80 percent?

21 A. They did not.

22 MR. MOORE: Your Honor, I'm going to object to
23 leading. I mean, I've let this go a lot, but Senator
24 Harpootlian is more capable than anybody to --

25 JUDGE GERGEL: Can you ask the question again? I

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1 want to make sure of the question.

2 MR. FREEDMAN: Yes.

3 **BY MR. FREEDMAN:**

4 Q. So I asked the question: Did anyone ever tell you that
5 the number of Black people of voting age population in
6 Charleston County, in CD 6, went from 37,000, or about
7 50 percent, to 60,000, or about 80 percent?

8 JUDGE GERGEL: Is that question of the total
9 African-American vote, what percentage is in 6th and what
10 percentage is in 1st? Is that what the --

11 MR. FREEDMAN: It's the number of African Americans
12 of voting age population in Charleston County, in District 6,
13 before the new map and after the new map.

14 JUDGE GERGEL: I mean, I think it's an appropriate
15 question for Mr. Harpootlian to respond. If he doesn't agree,
16 he's not bashful. Go ahead.

17 MR. MOORE: My concern is that this is coming from
18 Mr. Freedman, not from Senator Harpootlian.

19 JUDGE GERGEL: Well, believe me, if Senator
20 Harpootlian thinks it's wrong, he'll let us know.

21 Answer the question, sir.

22 THE WITNESS: Thank you, your Honor.

23 Did the staff or Campsen tell me that?

24 MR. FREEDMAN: Yes.

25 THE WITNESS: No. Did I learn that later on from my

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1 own demographer and other people? Yes.

2 BY MR. FREEDMAN:

3 Q. Okay. During consideration of the congressional map, did
4 you ever learn that the Senate staff had been directed not to
5 touch the 7th Congressional District?

6 A. I mean I learned that, I'm not sure from who. But, I
7 mean, certainly from the debate, when we were debating it on
8 the floor, someone indicated that to me. I can't remember
9 who.

10 Q. Let me try it this way: Is "Don't touch the 7th
11 Congressional District" in the Senate guidelines?

12 A. Say that again?

13 Q. Is "Don't touch the 7th Congressional District" in the
14 Senate guidelines?

15 A. No.

16 Q. From what you observed, how did Senator Campsen's
17 proposal treat the 7th Congressional District?

18 A. Don't touch it. It's to remain the same.

19 Q. During consideration of the congressional map, did you
20 ever learn that Senate staff had been directed that
21 Congressman Joe Wilson didn't want to go to Beaufort and he
22 wanted to keep Fort Jackson?

23 A. Yes, I heard that.

24 MR. MOORE: I'm going to object to that. Again, this
25 is testimony that calls for --

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1 JUDGE GERGEL: Overruled.

2 THE WITNESS: And it's "Beaufort."

3 MR. FREEDMAN: So, I now owe the team \$5, because I'm
4 the first person to mispronounce it during this trial.
5 "Beaufort."

6 **BY MR. FREEDMAN:**

7 Q. Did you ever hear that?

8 A. I also heard that, that Wilson had expressed concerns.

9 Q. Are those principles in the Senate redistricting
10 guidelines?

11 A. No.

12 Q. From what you observed, how did Senator Campsen's
13 proposal treat Beaufort?

14 A. Well, it appeared that he accommodated Senator Wilson's
15 concerns.

16 Q. And same question with regard to Fort Jackson.

17 A. Oh, absolutely the same. It makes no sense for Joe
18 Wilson to reach around and take Fort Jackson.

19 Q. During consideration of the congressional map, did you
20 ever learn that Senate staff had been told that Congressman
21 Clyburn wanted a minimal-change map?

22 A. You know, I'd heard that. But I talked to Congressman
23 Clyburn, and he would accommodate a decrease in BVAP in his
24 district, a significant decrease in BVAP in his district.

25 Q. Was the concept of a minimal-change plan in the Senate

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1 guidelines?

2 A. No.

3 Q. During consideration of the congressional map, did you
4 ever learn that District 1 would have to be configured to
5 protect Representative Nancy Mace?

6 A. I'm not sure I heard that. I'd assume that, based on
7 what they did. Again, if you look at what they did in
8 Charleston, what they put in the 1st -- or left in the 1st,
9 and what they took to the 6th, no question that they were
10 concerned with minimizing African-American participation in
11 the 1st.

12 Q. During consideration of the congressional map, did you
13 ever learn that the Senate staff, in proposing maps,
14 considered that county lines are more important in some places
15 than others?

16 A. Well, obviously. I mean, plenty of places -- well, of
17 the 10 county splits, eight of them bordered the 6th District.

18 Q. You saw that reflected in Senator Campsen's proposal?

19 A. Yes.

20 Q. During consideration of the congressional map, did you
21 ever learn that the guidelines were to be applied differently
22 depending on the congressional district at issue?

23 A. I mean, it was apparent.

24 Q. That's reflecting Senator Campsen's map?

25 A. Correct. No one ever said that to me.

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1 JUDGE GERGEL: I'm having trouble hearing you too.

2 MR. FREEDMAN: Okay.

3 **BY MR. FREEDMAN:**

4 Q. The question was: During consideration of the
5 congressional map, did you ever learn that the guidelines
6 would be applied differently depending on the congressional
7 district at issue?

8 A. No one said that. But obviously, if you looked at the
9 map, it was apparent.

10 Q. And then my followup question was: Was that reflected in
11 Senator Campsen's map?

12 A. Yes. You're talking about the amendment? The original
13 and the amendment. The amendment was a minor tweak.

14 Q. Now, we talked about how Senator Campsen's map treated
15 Fort Jackson. Do you recall that?

16 A. Yes.

17 Q. And I think you testified earlier that you represent the
18 part of Richland County that is carved up in Senator Campsen's
19 map?

20 A. Yes.

21 Q. Did Senator Campsen consult with you about the fact that
22 his map split your Senate district between two congressional
23 districts?

24 A. No.

25 Q. Now, you also prepared your own maps in this case, right?

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1 A. I did.

2 Q. What prompted you to prepare your own maps?

3 A. Well, first of all, obviously, we couldn't rely on the
4 staff, because they were taking orders from Senator Campsen,
5 Senator Rankin. Never consulted with me. I mean, I went in
6 the map room and met with them on my Senate district. They
7 were very helpful. Again, I sent my district to Charleston.
8 I think they were very happy about that. So, we had some very
9 good discussions about my Senate district.

10 Never heard from them on the congressional district.
11 They were very reticent to share any information with me
12 during that hearing. They didn't follow up and give me a copy
13 of the Republican submission. So, I felt like if I was going
14 to get a plan, I needed to do it. So, I hired my own
15 demographer.

16 Q. Who did you hire?

17 A. Joey Oppermann.

18 Q. And, again, so we're clear, why did you feel that you had
19 to hire somebody other than relying on the Senate staff?

20 A. I needed somebody I could trust.

21 Q. What was your direction to Mr. Oppermann?

22 A. Well, primarily: Can you do this and keep Charleston
23 whole? Can we minimize county splits? Can we avoid any sort
24 of racial division? Can we not -- you know, can we do sort of
25 traditional guidelines, avoid county, city, precinct splits?

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1 Can we get it within the rest of the traditional guidelines,
2 but keep Charleston whole? To me, that was a critical element
3 based on all the testimony we heard. And, again, minimize
4 other county splits. The counties and cities are the basic
5 building blocks of our governmental entities in the State, and
6 people in those entities felt they were communities of
7 interest, if you will.

8 Q. Senator, did you make Mr. Oppermann available to other
9 members of the Senate?

10 A. Yes.

11 Q. Which ones?

12 A. Margie Bright Matthews, Ronny Sabb, and Brad Hutto.

13 Q. Do you remember a discussion with Mr. Oppermann and those
14 other senators?

15 A. Vaguely.

16 Q. Can you tell us what you remember being discussed at that
17 session?

18 A. Well, I mean, what I wanted and everybody seemed to be in
19 agreement that that would be an appropriate way to proceed.
20 And since I was paying for it, I mean, other than their sort
21 of opinion, I was going to have Mr. Oppermann do what I
22 thought, in having litigated reapportionment cases, unlike the
23 rest of them, had some sense of what was going to be required.

24 Q. When you said when you were paying for it, were you
25 paying for this out of your Senate office resources?

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1 A. I'm sorry? My Senate office resources? There are none.
2 I have no staff. I have no -- I think I have a mail account
3 of \$600 a year.

4 Q. Let's take a look at the map that Mr. Oppermann prepared.

5 MR. FREEDMAN: Stephen, can you pull up Senate
6 Exhibit 30A?

7 THE WITNESS: And this would be 2?

8 MR. FREEDMAN: This is Senate Amendment 2.

9 BY MR. FREEDMAN:

10 Q. Senator Harpootlian, do you recognize this?

11 A. I do.

12 Q. What is this?

13 A. A thing of beauty. It is my initial --

14 THE WITNESS: I'm sorry, your Honors. I just
15 occasionally go off script.

16 MR. FREEDMAN: You've been off script for a while,
17 sir.

18 THE WITNESS: Okay. So, this is a plan which keeps
19 Charleston whole. It puts Dorchester, Berkeley, Georgetown --
20 which in previous plans, they've been together -- in the 7th.
21 It keeps a number of counties -- again, we only have six
22 county splits as opposed to their 10. And of the six county
23 splits, I believe only two of them -- I may be wrong about
24 this, but only two of them border the 6th District.

25 Q. So, just so we're clear, what were you trying to achieve

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1 with Senate Amendment 2?

2 A. Compactness, contiguity, not using race as a basis for
3 reapportionment, not violating Section 2. Have not these
4 Frankensteinian creations to accommodate somebody's political
5 or racial goals. If you notice, all of Charleston is in
6 District 1, all of Colleton is in District -- I believe all of
7 Colleton is in District 1. Beaufort is in District 1. Jasper
8 is in District 1. So, you haven't split those counties up.
9 Richland is much more whole. Sumter is whole. Clarendon is
10 whole. As a matter of fact, some of the county splits we did
11 are in the Upstate, and, again, not done for any racial or
12 partisan reason.

13 Q. Now, there came a time when you submitted a second map.
14 Do you recall that?

15 A. I do.

16 MR. FREEDMAN: Can we pull up Senate Exhibit 31A?

17 THE WITNESS: So, this is basically the same map.
18 Our initial map was plus-or-minus four votes. This is
19 plus-or-minus one, to be in compliance with the law.

20 BY MR. FREEDMAN:

21 Q. This map meets the strict equal population requirement?

22 A. Absolutely, yes.

23 Q. Any other significant changes in this map?

24 A. No. Again, six splits, two border the 6th, as opposed to
25 the Campsen Plan, 10 splits, eight border the 6th.

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1 Q. Now, of the two maps you submitted, did either of them
2 come up for a vote on the Senate floor?

3 A. If they came up on proposed amendment, I think it got
4 tabled. I'm not sure whether it got actually voted down.

5 Q. Is it correct that only Senator Amendment 2A came up for
6 it?

7 A. Yes, that is correct. That's what came up for vote.

8 Q. And just so we're clear, what happened to Senate
9 Amendment 2A?

10 A. It died.

11 Q. Now, with regard to Senator Campsen's amendment, Senate
12 Amendment 1, did you vote for Senate Amendment 1?

13 A. No.

14 Q. Are you aware of any Black senators who voted for Senate
15 Amendment 1?

16 A. No.

17 MR. FREEDMAN: I have no further questions.

18 JUDGE GERGEL: Thank you. Cross-examination.

19 **CROSS-EXAMINATION**

20 **BY MR. TYSON:**

21 Q. Good afternoon, Senator. How are you doing?

22 A. Good morning, Rob.

23 Q. Rob Tyson, here, as you know, lawyer for the Senate.

24 And, Senator, you and I go way back, so if I refer to you by
25 your name, I apologize.

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1 A. I'm going to call you Rob. You can call me Dick.

2 Q. Thank you. I'll do that. And, Senator, let's just
3 start. I think it's kind of fun to talk about this, but this
4 is a very serious issue.

5 A. Yes.

6 Q. And, you know, I teach an election law class at the
7 university, and you came and talked about this for me, right?

8 A. If you say so. You know, my memory of a number of things
9 the older I get, but I remember vaguely, yes, speaking to your
10 class. Do I remember what I said? No.

11 Q. And I would just say, just as an aside, it was only three
12 or four months ago. But it was memorable. But the other
13 thing that I --

14 JUDGE GERGEL: Short-term memory goes first.

15 MR. TYSON: Yes, Judge.

16 BY MR. TYSON:

17 Q. But I will say the other memorable part about that was
18 that, as you started talking, one of the law students in the
19 back said: Professor Tyson, you need to make sure that the
20 monitor is not taping what he's saying.

21 But anyway, you came into this redistricting cycle
22 thinking that you were going to be in court, right?

23 A. I don't understand. That I would be in court?

24 Q. Or that there would be a challenge to the legislative
25 enacted plan, right?

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1 A. No.

2 Q. Let me restate that. You came into this that you really
3 wanted to make a difference as part of your responsibilities
4 as a senator?

5 A. Yes.

6 Q. Yeah. And I think you've said many, many times that you
7 wanted to build a record for the Court through the legislative
8 process, right?

9 A. I may have said that later on. I think, initially, I had
10 hopes that I could persuade members of the committee to do the
11 right thing.

12 Q. And we've talked about this some, but let's just make
13 sure to just go back through it. And you challenged the map,
14 the *Backus* opinion, the last time around, right?

15 A. Yes.

16 Q. And in that case, there was a 14th Amendment claim
17 alleging racial discrimination, correct?

18 A. Yes.

19 Q. And you also raised a Section 2 claim under the Voting
20 Rights Act, right?

21 A. Correct.

22 Q. You claimed African Americans were packed in the 6th
23 Congressional District, right?

24 A. Right.

25 Q. And you raised the 15th Amendment, correct?

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1 A. Sure.

2 Q. And the Obama Department of Justice didn't lodge a
3 Section 5 objection, did they?

4 A. They did not.

5 Q. And the District Court for the District of Columbia ruled
6 that the congressional plan wasn't violative of Section 5,
7 correct?

8 A. Correct.

9 Q. And then we came back and we had a trial like this before
10 a three-judge panel, and you lost there too, right?

11 A. Sure did.

12 Q. And then after that, after the three-judge panel ruled
13 against all your claims, you took a direct appeal to the U.S.
14 Supreme Court, right?

15 A. I did.

16 Q. And they didn't agree with your argument --

17 A. Once again.

18 Q. -- that the congressional plan violated the Voting Rights
19 Act of the Constitution?

20 A. Correct.

21 Q. And then we have *Shelby* in 2013?

22 A. Right.

23 Q. And so, you go back again to the U.S. Supreme Court,
24 trying again, right?

25 A. You know, I would like to say I never give up on a

RICHARD HARPOOTLIAN - CROSS-EXAMINATION BY MR. TYSON

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1 client, yes.

2 Q. And you asked the Supreme Court in 2014 to, once again,
3 throw out the congressional plan -- now the benchmark plan --
4 and then you were arguing that retrogression wasn't the law
5 now. So you tried it again, right?

6 A. Correct.

7 Q. And the U.S. Supreme Court, once again, rejected your
8 argument, correct?

9 A. Absolutely.

10 Q. So, just to recap all of that, all courts, and all
11 Department of Justice in 2012 and 2014, have resisted -- have
12 rejected your position that the 2012 congressional plan
13 violated the Constitution or the Voting Rights Act, correct?

14 A. Under the current law at that time, yes.

15 Q. And you said then -- and I think your testimony said you
16 thought it was racially gerrymandered?

17 A. I did.

18 Q. Okay.

19 A. And I do.

20 Q. Okay. But, obviously, that's not the law, right?

21 A. Under the law, as interpreted by all the courts you
22 talked about, yes, that is correct under the law that existed
23 at the time.

24 Q. So, what makes you believe today that using the benchmark
25 plan from 2012 is inappropriate, since every court you have

1 been to has rejected it?

2 A. Well, after *Shelby* -- and, again, when the Supreme Court
3 had an opportunity to apply *Shelby*, it wasn't quite the right
4 fit at the time. We now have a new plan. And the new plan
5 says we're going to use the benchmark plan and tweak it. And
6 that's basically what Campsen did. And I believe that that
7 plan incorporated racially gerrymandered constituencies. And
8 I think there's no requirement that you use the benchmark. As
9 a matter of fact, I think without any sort of retrogression
10 analysis that used to be required, that you could start off
11 with a brand-new plan without considering -- I mean, this core
12 constituency thing, or incumbency protection, those aren't
13 traditional redistricting principles. They could have just
14 taken the state, and keeping as many counties as whole, and
15 divided it up into seven districts and made them very compact.
16 But, you know, there was this reality of core constituencies
17 and incumbency protection. And my plan keeps every incumbent
18 in the district they're in now.

19 So, I mean, I disagreed with the courts back then. I
20 don't think that's the law anymore. But, you know, Rob,
21 that's really not my call. There are three judges right here
22 that are going to make that call.

23 Q. Senator, I understand that. And I guess that's the point
24 I was trying to get to. You just don't like the benchmark
25 plan, and you just want somebody else to start with a

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1 different plan, correct, with a different foundation?

2 A. I believe that the benchmark plan was -- and I still
3 believe it today -- might not have violated the law in 2012,
4 but it is a racially gerrymandered plan. There's no other way
5 to explain it.

6 Q. Except no court agreed with that position?

7 A. Yeah.

8 Q. But today, we're not arguing about the benchmark plan,
9 right?

10 A. We're not?

11 Q. No, sir. We're arguing about the enacted plan that was
12 approved by you and the members of the legislature, right?

13 A. I didn't approve it.

14 Q. Well, the legislature approved it, correct?

15 A. Over my objections, yes.

16 Q. That's right. But that's what this case is about --

17 A. This case is about -- right. How did you get to that
18 plan? How did you get to what we passed? And I'm saying
19 relying on a plan that is racially infirm, whether courts have
20 approved that previous plan under previous law or not, it
21 doesn't in any way give you a legal protection, in my opinion.
22 Again, my legal positions are irrelevant to this matter today.

23 Q. That's right.

24 A. What I did was reject theirs because I believe it was
25 racially motivated and, number two, draw up a plan that would

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1 minimize racial divisions. And, I mean, I have a long history
2 of advocating positions which would reintegrate our state.
3 This is a plan that segregates our state.

4 Q. And, Senator, let's be clear. I'm not insinuating that
5 you don't have the best objectives here. My point was just,
6 it's clear -- and in answer to almost every question you
7 talked about you don't like the benchmark, you don't like the
8 benchmark. And I just wanted to just set the foundation, you
9 don't like the benchmark and you don't like the fact that it
10 was the foundation for which the Senate and the House started
11 with the plans, correct?

12 A. That would be correct, based on my view that the
13 benchmark plan, as you call it, is a racially infirm plan.

14 Q. And moving forward a little bit and talking about these
15 guidelines, you wrote a letter to the committee, right?

16 A. Right.

17 Q. And then you expressed a whole lot of observations about
18 different criteria that you would like to use, right?

19 A. Yes.

20 Q. Yeah. I think your testimony earlier --

21 A. But they're not different criteria.

22 Q. They're not different criteria, they're just saying them
23 different ways?

24 A. They're applied in a different way.

25 Q. I think earlier you said they were too "loosey goosey."

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1 A. Yeah.

2 Q. And you were trying to make them tighter, I assume,
3 right?

4 A. Correct.

5 Q. So, if we went to that exhibit, Plaintiffs' Exhibit 322,
6 there are a number of criteria that you do use that you
7 believe are traditional criteria, right?

8 A. Right.

9 Q. Compactness, contiguity?

10 A. Avoidance of racial gerrymandering.

11 Q. That's right. Communities of interest. You've got a
12 term there and how you want to define those, right?

13 A. Counties, towns, cities, voting precincts, maintaining
14 district cores, yes.

15 Q. And just a second ago, you just said maintaining district
16 cores wasn't -- preserving those cores wasn't traditional
17 criteria, but, in fact, you have it here as an item that you
18 think should be included in the criteria, correct?

19 A. "As long as we should recognize that maintaining district
20 cores should simply ossify problems caused by past
21 redistricting efforts. Accordingly, I give this some but
22 relatively low weight, yes."

23 Q. That's right. But that's a criteria that --

24 A. A very low criteria.

25 Q. A criteria, nonetheless. And in your priority system,

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1 you put it low, right?

2 A. Very low.

3 Q. Others put it high, or use it as part -- or would see
4 that differently, correct?

5 A. Which I thought was wrong, yes.

6 Q. And so after you wrote this letter, the Senate has a
7 hearing, and then you offered a number of amendments --

8 A. Yes.

9 Q. -- to essentially try to include some of these end-of
10 the-sentence drafts, right?

11 A. Right.

12 Q. And I think one of your amendments passed, correct?

13 A. Yeah. I can't remember which one.

14 Q. One of the amendments that you offered, again, was the
15 2011 benchmark plan was based on unconstitutional principles?

16 A. Yes.

17 Q. And you made an amendment to include that into the
18 guidelines?

19 A. Yes.

20 Q. And you didn't even get a second on that motion, did you?

21 A. I think you're right.

22 Q. Senator Sabb, an African American and a Democratic
23 member, didn't give you a second, did he?

24 A. He did not.

25 Q. Senator Margie Bright Matthews, who testified earlier,

1 didn't think that was important enough to even offer your
2 amendment to get to the table to be discussed?

3 A. Correct. Yes.

4 Q. So, we can't even say that it didn't pass; it didn't get
5 on the table?

6 A. Well, I mean, you know, there are competing interests
7 when members make decisions about how to vote on things or
8 second things. They obviously had some other issues that they
9 were working on. And Senator Rankin made it very clear that
10 he wanted this thing to work efficiently and quickly. And I
11 was an annoyance, and I guess they didn't want to join me in
12 being an annoyance. I was concerned -- and I should have been
13 more concerned at that point, the way that went, that the
14 train had already left the station, as I have said before.

15 Q. I understand that, Senator. But let's be fair, you did
16 have an opportunity to offer these amendments. You're not
17 saying that the Senate Judiciary Committee didn't give you an
18 opportunity to offer them, are you?

19 A. Oh, I can offer them. Yeah, sure.

20 Q. And Senator Bright Matthews testified earlier that she
21 offered an amendment, and it was approved as part of the
22 guidelines?

23 A. Yes. Right.

24 Q. So, any indication or implication that the Senate was
25 railroading you, or the committee was railroading you, is not

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1 accurate, is it?

2 A. No, it's accurate. It's absolutely accurate.

3 Q. Not on the opportunity to offer these amendments?

4 A. To offer them, but to have any real debate? There was no
5 debate on these amendments. Nobody asked questions. It was a
6 fait accompli, Rob. It was done. It was cooked. That cake
7 was baked.

8 Q. Well, Senator, with all due respect, maybe people didn't
9 agree with your opinion.

10 A. No. They had already decided what they were going to do.
11 It was clear. I mean, going back 20/20 hindsight, there was
12 no chance anybody was going to adopt anything which would in
13 any way disrupt this train leaving the station.

14 Q. One of the amendments that you offered, you wanted some
15 analysis to be done, and Mr. Freedman asked you about that,
16 that you wanted some racially polarized voting analysis?

17 A. Racial bloc voting, yes.

18 Q. To be done during the drafting of the map, correct?

19 A. Yes.

20 Q. And Senator Sabb didn't second that either, did he?

21 A. Well, you have to ask Senator Sabb about why he didn't do
22 that. I mean --

23 Q. No, I'm just saying just it's a simple fact --

24 A. Yeah.

25 Q. -- he didn't second --

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1 A. Correct.

2 Q. No. But, Senator --

3 JUDGE GERGEL: Mr. Tyson, let me just say, I want to
4 remind you that the issue is not how Senator Harpootlian was
5 treated during the debate. It is: Is the map
6 unconstitutional? That's the question. And whether or not
7 someone voted for it or didn't support his amendments to
8 something or another, I think the key issue here is let's
9 focus on the map and what deficiencies, if any, there are in
10 the map.

11 MR. TYSON: But, your Honor, with all due respect,
12 the question is he's challenged whether the Senate abided by
13 its guidelines. And so --

14 JUDGE GERGEL: Well, that's different. Abiding by
15 the guidelines and voting against his amendments are two
16 different things.

17 MR. TYSON: I understand. But I just want to make
18 sure that it's clear that the Senate passed these guidelines,
19 and these are the factors that we believe and that we're
20 putting up a defense that these are the ones that the Senate
21 used.

22 JUDGE GERGEL: I may be misunderstanding Mr.
23 Harpootlian's testimony, but I believe he said the guidelines,
24 as adopted by the Senate, were not followed. I mean, I think
25 that's the argument. Whether they didn't support his or not,

1 they had no constitutional obligation to adopt his amendments.

2 MR. TYSON: I'm with you. And, your Honor, just with
3 a little respect, I think at some point in time, I take
4 exception to have what you just said. I think Senator
5 Harpootlian did testify that the Senate did follow the
6 guidelines.

7 JUDGE GERGEL: Well, ask him that question. That is
8 not consistent with my understanding of the testimony.

9 MR. TYSON: Yes, sir.

10 BY MR. TYSON:

11 Q. Senator Harpootlian, the Senate subcommittee passed these
12 guidelines. And in the drafting of the plan, did the Senate
13 use some of these guidelines as part of their enacted plan?

14 A. Some, or all?

15 Q. Some.

16 A. Well, I will tell you that, as a general matter, no, they
17 did not follow the guidelines. Contiguity, compactness,
18 splitting cities and towns, splitting counties, splitting
19 precincts. I mean, you know, we can go through. Communities
20 of interest, they didn't follow those. They racially
21 gerrymandered. I think they violated the Voting Rights Act by
22 diluting minority voting strength.

23 And, I mean, I don't know what the final equal population
24 in legislative districts -- I don't know if that ended up as
25 plus or minus one. But if it did, that would be the only one

1 they followed.

2 Q. And, Senator, we'll get into a little more discussion on
3 that. One of the --

4 A. I want to make clear, the answer is no.

5 Q. That they didn't follow all of the criteria, correct?
6 But they did follow some of the criteria?

7 A. Maybe one. Maybe.

8 Q. The districts, you don't believe that they're compact?

9 A. No.

10 Q. And which one is not compact?

11 A. 6th.

12 Q. Okay.

13 A. 2nd.

14 Q. Well, we'll get to that.

15 A. 1st. 7th.

16 Q. Yeah. I understand where you're coming from now a little
17 bit better. Now, Mr. Freedman asked you a whole bunch of
18 questions about whether this was included in the guidelines.

19 Do you remember all that?

20 A. Yeah.

21 Q. And one of the things that he didn't ask you: Is keeping
22 Charleston whole in the Senate guidelines?

23 A. No. But compactness, contiguity, and not cutting county
24 lines were.

25 Q. But my question is, though, that you took exception --

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1 and he asked about keeping the 7th Congressional District
2 similar to what it is right now, and you said that's not in
3 the guidelines?

4 A. It's not.

5 Q. Okay. And neither is keeping Charleston whole, right?
6 It's got to go both ways?

7 A. No. I think keeping Charleston whole is in the
8 guidelines, because you shouldn't cut county lines. There's
9 nothing in here about rearranging a congressional district.
10 There's nothing that says you shouldn't change the lines on --
11 as a matter of fact, we're expected to change the lines on a
12 congressional district.

13 Q. Senator, just moving down a little bit further. One of
14 the comments that you made is that the staff wasn't available
15 for you, and so you had to go out and hire your own consultant
16 to do this?

17 A. That's not exactly accurate.

18 Q. Okay. Help me out on that.

19 A. I didn't trust the staff, so I went out and hired my own
20 consultant.

21 Q. But did you know that Senator Sabb trusted the staff and
22 had them draft amendments for him?

23 A. I was not aware of it. And Ronny is a very trusting guy.
24 You know, he's a minister.

25 Q. Senator Margie Bright Matthews had the staff draft

1 amendments. Are you aware of that?

2 A. She's a nicer person than I.

3 Q. You know, Senator, the target population for each of the
4 congressional districts was approximately 731,000 and change,
5 right?

6 A. Correct.

7 Q. And so when the benchmark came out, a lot of the
8 congressional districts were very close to that in deviation
9 to that specific goal?

10 A. The 6th wasn't.

11 Q. The 6th wasn't and the 1st wasn't, right?

12 A. Correct.

13 Q. But the 1st was only off -- I mean, the Second was only
14 off a little over one percent, right?

15 A. The which? The 7th?

16 Q. No. I'm sorry. The 3rd. I got my -- my numbers are
17 off. The 3rd. Let me just ask you, there were two
18 congressional districts that were out of whack in deviation,
19 right, the 1st and the 6th?

20 A. At least. I don't have a memory of the others.

21 Q. And the other five were very close within the ranks of --

22 A. If you say so.

23 Q. There were two districts that we know. The 1st
24 Congressional District had more population than necessary, and
25 so it has to shed approximately 85,000, correct?

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1 A. That's my memory, yes.

2 Q. And the 6th District was underpopulated --

3 A. Correct.

4 Q. -- by a similar percentage, correct?

5 A. Correct.

6 Q. But the other five were within four percent of the
7 projected number?

8 A. If you say so. I have no recollection of that.

9 Q. And so, my question is: If a district, the 7th
10 Congressional District, was within .45 percent, why would you
11 start all over to redraw it? Why wouldn't you just go from
12 there and get the population balanced?

13 A. Well, because you can't do the 6th and the 1st in a
14 rational, nonracial way without impacting the 7th, the 5th and
15 the 2nd.

16 Q. Well, that's right. Every time you touch one of them,
17 it's a tradeoff.

18 A. Absolutely.

19 Q. And so as the map drawers are drawing, they've got to
20 make these tradeoffs, right?

21 A. There's no question you have to make the tradeoffs. The
22 question is: What's the criteria? Is it race? If it is,
23 that's wrong. If it is splitting counties and cities,
24 precincts, whatever, based on race, that's wrong. And when a
25 mapmaker, in my opinion, shapes the map, starts off with --

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1 again, you and I disagree about the benchmark. But if you
2 start off with a benchmark and just tweak it, and when you
3 tweak it, you use race as a criteria, that's wrong.

4 Q. Let me just -- I appreciate that answer, Senator.

5 A. I'm glad.

6 Q. On your plan that you had Mr. Oppermann -- that you asked
7 him to draft, it wasn't ever going to pass from a political
8 perspective, was it?

9 A. You never know.

10 Q. What's the congressional makeup right now of the 7th
11 Congressional District? What's the political makeup? How
12 many Republicans are in the 7th District?

13 A. I don't know.

14 Q. Aren't there six Republicans right now that's currently
15 serving --

16 A. Oh, I thought you said in the 7th District.

17 Q. No, I'm sorry. Of the 7th.

18 A. Of the 7th, yes, there's six Republicans.

19 Q. And one Democrat?

20 A. Correct.

21 Q. And in your plan, you brought that number down to where
22 there would be only four Republicans?

23 A. No. You know, this is an important point. When you
24 split it upon race, as y'all did, you're assuming that Black
25 folks are going to vote for a Democrat. We have two senators

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1 in this state, United States Senators: One would be Tim
2 Scott, one would be Lindsey Graham. Last time I checked, Tim
3 Scott was an African American. And he picked up -- if you
4 start looking anecdotally at what's going on, he will get
5 significant African-American vote this fall. And this is
6 good. This is good that Black folks are beginning to vote
7 Republican, because it makes Republicans propose things that
8 the African-American community can buy into. That is where we
9 should be heading.

10 So, you're standing up there saying, well, these are
11 going to be Democratic districts because they've got more
12 Black folks in them. That is wrong. That is nefarious --

13 Q. That's not what I'm --

14 A. Let me finish. Let me finish --

15 Q. I just take offense with that.

16 A. Let me finish.

17 JUDGE GERGEL: Mr. Tyson.

18 MR. TYSON: But I just take offense with that.

19 THE WITNESS: Sir?

20 JUDGE GERGEL: Go ahead.

21 THE WITNESS: I live in Richland County. I live in
22 the city of Columbia. When I ran in 1986 for county council,
23 countywide, not a single Black could be elected because no
24 White person would vote for a Black, period. In 1988, the
25 justice department forced us -- and I say "forced," because

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1 that's what they did -- to go to single-member districts so
2 African Americans would have a chance to participate on the
3 Richland County Council.

4 Fast forward, the City of Columbia, majority White
5 city, elects a Black mayor within the next 15 years -- 20
6 years. This state is shifting. This plan doesn't accommodate
7 those shifts. The idea that a Black might vote for a
8 Republican, or a White might vote for a Black, this ossifies
9 us.

10 When we went to single-member districts, it was
11 supposed to be a temporary solution. It's like putting a cast
12 on a leg, if you leave that cast on for 40 years, the leg will
13 ossify and shrink and shrivel. And that's what's happening to
14 our state.

15 My goal in my plan is to make -- I know this sounds
16 radical -- White people and Black people talk in nonpartisan
17 terms, that they don't link up with a specific party. The
18 best thing, in my opinion, would be if some of these districts
19 elected Republican members to Congress with significant
20 African-American support. That is the goal.

21 **BY MR. TYSON:**

22 Q. Senator, can we go to Senate Exhibit 31D. Because, I
23 think I asked you a question about the partisan percentage in
24 the plan that you presented. I don't believe I insinuated
25 anything that you just talked about. But here's the analysis

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1 of your -- this is a Senate Exhibit. This was on the website
2 when your plan was submitted, and the Senate ran analysis.
3 And this is your amendment. And let's just go through it real
4 quick.

5 If you look at the second column over, it says
6 "percentage Biden." You see that?

7 A. Uh-huh.

8 Q. And so, if you counted how many majority of districts,
9 what's the number that would be over 50 percent when you look
10 at that chart?

11 A. The 1st and the 6th.

12 Q. And then, what is the 5th? What is its percentage?

13 A. First of all, let me say this --

14 Q. Hold on. What's the 5th, first?

15 A. The 5th is 46 to 53.

16 Q. Forty-seven percent would be a percentage that voted for
17 Biden. So, you've got -- now you've changed the complexion of
18 the districts --

19 A. Complexion, good word. Go ahead.

20 Q. Thank you. And so, you've got now in your districts in
21 your map that you drew up, you've created two districts that,
22 based on the political data, would support a Democratic
23 candidate, correct?

24 A. If you believe that the Biden/Trump numbers represent a
25 truly partisan split, then, yes. I'm not sure they do.

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1 Q. We could argue data all day long and whether it's right
2 or whether it's wrong --

3 A. Sure can.

4 Q. -- but these are the facts, that this was the analysis
5 that was used to evaluate your plan. And it was used to
6 evaluate each plan --

7 A. Who used them to --

8 JUDGE GERGEL: What is the source of this document?

9 MR. TYSON: I'm sorry. This is the Senate analysis
10 of --

11 JUDGE GERGEL: This is not Mr. Harpootlian's
12 analysis?

13 MR. TYSON: No. It's the Senate -- when each plan
14 was submitted, the Senate ran analysis on a variety of
15 different --

16 THE WITNESS: And if I might say, I've never seen
17 this data till right now. No Senate staff person ever showed
18 this to me, ever. Because, as Senator Campsen said, we're not
19 analyzing these plans based on any partisan political concern.

20 **BY MR. TYSON:**

21 Q. But that's not what he said, is it? Wasn't his
22 reference -- he said -- I think I wrote it down twice. He
23 said: "This is not a partisan gerrymandering plan." He
24 didn't talk about politics wasn't involved, did he?

25 A. Well, if it's not a partisan gerrymandering plan, you

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1 just said it was. Mine was.

2 Q. No -- that's right. I said partisan gerrymandering,
3 that's got a specific meaning under the law, doesn't it?

4 A. Yes, it does. But --

5 Q. Okay. And politics is something different --

6 A. If I could finish. My position is: We never discussed
7 any Democratic/Republican vote in any district during the
8 entire debate. No chart like this was ever submitted to the
9 Senate, or submitted to the committee, or submitted to anybody
10 as a way to either defeat a plan or pass a plan.

11 Q. Senator, with all due respect, and you just testified in
12 that clip, and you complained about Senator Rankin
13 interrupting you and giving you partisan data. So, he
14 clearly -- you clearly in your debate talked about political
15 things.

16 A. He did. That's the first time and only time I ever heard
17 about it.

18 Q. The note that was just passed up, just so you know -- you
19 might not have seen this, but I want to be clear for the
20 record, that all of these charts for every plan that was
21 submitted in a timely fashion is on the Senate website under
22 redistricting.

23 MR. TYSON: So I'll ask the Court to take judicial
24 notice of that now.

25 THE WITNESS: But let me say this: When Senator

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1 Campsen said that we weren't going to consider any of this, it
2 was irrelevant. I mean, I never -- all I looked at --

3 **BY MR. TYSON:**

4 Q. That's your opinion, though, right? You're saying it's
5 irrelevant because you didn't like it?

6 A. Show me one minute, one second of debate on either the
7 committee or on the floor, concerning partisan divisions other
8 than what Senator Rankin said.

9 Q. Senator, that's a good segue. Let me make sure I
10 understand how you decide to vote on different decisions. You
11 take in public input, don't you?

12 A. Yes.

13 Q. Okay. And you take in what the data set says, correct?

14 A. Yes.

15 Q. On whatever issues, you take in a variety of information,
16 correct?

17 A. Much of it by the advocate, saying this is why we're
18 doing it, this is what matters, it's the benchmark plan, and
19 we're just going to tweak the benchmark plan.

20 Q. And when you're making that decision -- or let's step
21 back -- any member of the General Assembly is making that
22 decision, wouldn't it be fair to say that they would look at
23 the partisan data to determine how he or she should vote?

24 A. I don't -- well, let me say this. I didn't. I didn't
25 when I drew up my plan. And they never advocated, you know,

1 that my plan would result in a partisan benefit to Democrats.
2 I never advocated that their plan would result in a partisan
3 advantage to Republicans.

4 Again, what we're trying to do, this isn't about dividing
5 the state up based on partisan concerns or race. This is
6 about coming up with a plan that doesn't cut county, or city,
7 or precinct boundaries. It's coming up with a plan that's
8 compact, which what we passed was not; contiguity, where you
9 have to cross rivers to stay in the same district, is not;
10 where race appears, to me, to have played the primary
11 concern -- and, of course, I think the problem is that some of
12 my Republican cohorts believe that race and party are the same
13 thing. I disagree vehemently.

14 Q. Senator, I'm going to move forward a little bit. At the
15 January 13th committee meeting, you and Senator Campsen had a
16 colloquy. Do you remember that? And you talked about this
17 racially polarized voting analysis?

18 A. Yes.

19 Q. I think we saw clips of it. Senator Campsen said he
20 didn't consider race when crafting the plan, correct?

21 A. Correct.

22 Q. And he told you that if he did an RPV analysis during the
23 crafting of the plan, it potentially could result into taking
24 race into account, correct?

25 A. He did.

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1 Q. And he told you several more times he didn't look at
2 race, instead, he only looked at political data, correct?

3 A. He said he looked at data.

4 Q. And you don't have any evidence here today showing that
5 Senator Campsen did use race when drawing the districts, do
6 you?

7 A. Looks like a duck, quacks like a duck.

8 Q. Do you have any specific evidence besides just saying
9 something like that?

10 A. Well, I was never in the room when the plan was drawn, so
11 I have no idea.

12 Q. You say race is the only plausible explanation for why
13 the map was drawn the way it was.

14 A. Yes.

15 Q. Have you gone to talk to Will Roberts and asked him why
16 it was drawn certain ways?

17 A. Will Roberts was sitting there while I was questioning
18 Senator Campsen. Charlie Terreni and the others were
19 providing Senator Campsen with the answers. I felt like if
20 there was some rational explanation, I would've heard it from
21 Senator Campsen or staff. It's not my job to -- my job is to
22 question the proponent of the plan, not to go to staff.

23 Q. And did you do that?

24 A. I did.

25 Q. After that meeting on September 13th, when Senator

1 Campsen tells you directly on the public record that he didn't
2 use race at all in crafting the plan, did you go talk to you
3 him after that and say, okay, you're not using race, what did
4 you use?

5 A. The benchmark plan, was his response.

6 Q. So, you did talk to him?

7 A. I did.

8 Q. Let me just look through this. I want to be cognizant of
9 the Court's time, but I want to make sure that we get plenty
10 in the record to respond to that.

11 You said your plan only had six splits. The passed plan
12 only had 10 splits of counties, correct?

13 A. The plan that passed split 10 counties, eight of which
14 were on the border of the 6th.

15 Q. And you know in the benchmark plan there were 13 county
16 splits, correct?

17 A. Terrible plan.

18 Q. So they reduced the number of county splits, right? They
19 used your criteria, they used their criteria, and they tried
20 to reduce the county splits, correct?

21 A. Yes.

22 Q. You just want them to go further, which I understand
23 that's your opinion. You've got a different plan. Your plan
24 provides a different way of doing it, correct?

25 A. And provides compactness, less county splits, less city

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1 splits, less precinct splits, contiguity, and not these
2 bizarrely shaped districts, as you see in District 6, again,
3 which goes from Lake Murray to the Atlantic Ocean. Why? I
4 mean, what are the people -- and I represent the people on
5 Lake Murray. They don't care about what's going on in
6 Charleston, or on the coast, or on an island. I mean, this is
7 the only district, the 6th, that goes that distance.

8 Q. That's a great comment. You've complained about the 6th
9 throughout your testimony today, right?

10 A. Correct.

11 Q. And you know in this complaint -- or maybe you don't
12 know. But the plaintiffs don't challenge the 6th
13 Congressional District at all.

14 A. Really?

15 Q. It's not -- they believe -- they have not challenged it.

16 A. Okay.

17 Q. Okay. On the floor, you said, "One of the attractive
18 things of my plan is that the congressional districts will be
19 competitive," right? And that's this notion that you were
20 talking about of having competitive districts with --

21 A. Yes.

22 Q. Okay. You said, "They're not Democrat or Republican
23 districts" --

24 A. Right.

25 Q. -- "they're districts in my plan where the 1st and the

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1 5th would be competitive." That was your testimony?

2 A. Well, I mean, what I'm trying to point out is, because
3 there is a homogenization, if you will -- you know, I'm over
4 70 years old. I was taught and brought up that America is a
5 melting pot, that people put aside their racial, their ethnic
6 backgrounds and come together. I believe that. I still
7 believe that. My plan would promote that. The plan we passed
8 would continue to create divisions based on race.

9 Q. And what it sounds like to me is what you're arguing or
10 advocating, I should say, is a more politically balanced plan,
11 correct?

12 A. A more --

13 Q. And that's not a bad -- I'm not --

14 A. I mean, a plan that's not as racially divisive, is the
15 way I'd put it.

16 Q. But you're talking about politics --

17 A. No. I'm talking about race.

18 Q. Okay. When you say that they're not Democrat or
19 Republican districts and they would be more competitive --

20 A. Yes.

21 Q. -- that sounds, to me, very partisan, very political.

22 A. You're entitled to your opinion.

23 Q. As are you.

24 A. Yes. Okay.

25 Q. And you know politics better than most, correct?

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1 A. There are some that believe that, and some that don't.

2 Q. You were the chairman of the State Democratic Party,
3 correct?

4 A. Yes.

5 Q. And so, you understand what partisanship means and is all
6 about, right?

7 A. As chairman of the Democratic Party, that was my job,
8 yes.

9 Q. And you're a member of the Democratic Caucus in the State
10 Senate, right?

11 A. You've got to be one or the other, yes.

12 Q. And you understand that this process of redistricting is
13 inherently political, correct?

14 A. There's a political overlay, no question. But the
15 political overlay ought to be restrained by the sense of
16 racial equality and decency.

17 Q. Mr. Freedman asked the question talking about increasing
18 the 1st Congressional District a point and a half toward the
19 Republicans, so that would lean more on the Republicans. Did
20 you hear it -- I think you testified that you understood that
21 that was the Republican objective or the majority objective,
22 right?

23 A. Well, that was the majority result, yes.

24 Q. And I think you testified earlier that you knew that
25 there was a lawsuit at the time of the meeting where you

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1 discussed this racially polarized --

2 A. Didn't know at the time.

3 Q. Okay.

4 A. I found out afterwards.

5 Q. Let me ask you about that. The plan, just on a quick
6 timeline -- let's make sure you and I are on the same page.

7 The plan was released on a Tuesday -- the staff plan was
8 released. Let me ask you -- hold on, excuse me about that.

9 The staff plan is a staff plan, correct?

10 A. Correct.

11 Q. So, the staff drafts the plan?

12 A. Right.

13 Q. So, if you had input or Senator so-and-so had input, then
14 it's not a staff draft plan?

15 A. No, it would still be a staff draft plan, they'd just
16 have input from different senators, or other people -- the
17 National Republican Party, apparently.

18 Q. But you've got to start somewhere, and so the staff
19 drafted a staff plan and put it on the table, correct?

20 A. Correct.

21 Q. And that was on November the 23rd?

22 A. The week --

23 Q. The Tuesday before Thanksgiving?

24 A. Right.

25 Q. And then you approved it on the January 20th, correct?

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1 A. I didn't approve anything.

2 Q. Well, excuse me, the General Assembly approved the map --

3 A. Correct.

4 Q. -- two months later? And you had enough time in that
5 process to go hire a consultant and draw a map, correct?

6 A. Correct.

7 Q. And then you had enough time in that process to get it up
8 at the committee level, right?

9 A. Correct.

10 Q. And then so it was part of the debate, correct?

11 A. My plan?

12 Q. Yes, sir.

13 A. Two and 2A, yes.

14 Q. Yeah. On the floor when that plan came back up, you,
15 again, asked Senator Campsen about his use of race in drawing
16 the maps, and he told you again numerous times he didn't look
17 at race?

18 A. Correct.

19 Q. Okay. And Senator Campsen also said on the floor
20 debate -- I just want to get your take on this. He said he
21 thought it was valuable to have two congresspersons
22 representing Charleston County, didn't he?

23 A. He did.

24 Q. And that's a legitimate nonracial reason, isn't it?

25 A. It's a nonracial reason.

1 Q. You might not agree with it.

2 A. Right. I don't think it's legitimate. I think it
3 violates one of the basic principles of keeping counties
4 whole.

5 Q. And you said on the floor that the plan we just passed is
6 one constructed to meet some arcane political goal, right?

7 A. Yes.

8 Q. Just quickly on just some numbers. On the 6th
9 Congressional District, the BVAP went down in the enacted
10 plan, right?

11 A. Correct.

12 Q. And then in the 1st Congressional District in the enacted
13 plan, the BVAP went up, right?

14 A. Correct.

15 Q. So, the 1st Congressional District has to lose 85,000
16 people in its BVAP to stay the same, right?

17 A. Yes. And I guess, you know, how you meet that goal, how
18 many counties you split, how many precincts you split, can you
19 keep communities of interest together and accomplish the same
20 -- and maybe have the same BVAP when you get done? And I
21 think even under my plan, Congressman Clyburn's district, the
22 6th District, the BVAP went down.

23 Q. Senator, not to belabor the point, but just on your draft
24 plan that you had drafted, it uses the criteria in a different
25 way than the enacted plan, correct?

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1 A. I'm not sure what you mean by that.

2 Q. If you take -- let's pull that up.

3 MR. TYSON: Can we pull his draft plan up?

4 THE WITNESS: You're talking about 2 or 2A?

5 MR. TYSON: 2A.

6 THE WITNESS: Okay.

7 MR. TYSON: It's Senate 30A, I think is the exhibit.

8 JUDGE GERGEL: Mr. Tyson, are we going to be much
9 longer?

10 MR. TYSON: No, sir.

11 JUDGE GERGEL: I'm just trying to figure out whether
12 we can finish Mr. Harpootlian before lunch, or whether we need
13 to bring him up this afternoon. We've been going for almost
14 two hours here, so --

15 MR. TYSON: Three minutes. Three minutes for me.

16 THE COURT: Okay. Go for it.

17 **BY MR. TYSON:**

18 Q. Senator, I'm just showing you your draft map. If you
19 look at the 7th Congressional District -- I'm colorblind, so I
20 have no idea what that color is, but the one that starts in
21 Horry County and works its way down, do you see that?

22 A. Yep.

23 Q. That doesn't look anything like the enacted plan, does
24 it?

25 A. No.

1 Q. And so, over in the far left corner is Dorchester County,
2 and then you go all the way up to Horry County.

3 A. Right.

4 Q. Are those communities of interest?

5 A. Well, you know, Dorchester and Berkeley used to be in the
6 same district with Horry and Georgetown. And certainly the
7 people from Berkeley talked about how much they work with the
8 people in Dorchester, so I felt -- and, again, they're kept
9 whole.

10 Q. I understand that.

11 A. The whole idea was: How many counties can we not have to
12 split up? Yes, that's what we did. Yes.

13 Q. And my point was, I guess in doing so, you made that
14 decision that you thought making four less counties whole was
15 okay to draw some plan that completely distorts the 7th
16 District, correct?

17 A. Distort's the wrong word. I would argue that having
18 Horry and Marion County and some of these other counties that
19 are not anywhere near the coast, have no economic interest in
20 the coast, is not a community of interest, and having the 5th
21 basically beyond the North Carolina border, I think gives them
22 much more with York, Chester, Lancaster, Chesterfield --
23 again, these are counties that are kept -- Fairfield, Kershaw,
24 Lee, Darlington, Florence, and Marion -- all together. The
25 Pee Dee is together.

1 Q. It's just a different way of doing it, though, right,
2 Senator?

3 A. A better way, yes.

4 Q. In your opinion?

5 A. In my opinion.

6 Q. And I think you testified earlier that you didn't like
7 the explanation that Congressman Wilson, for the 2nd District,
8 the General Assembly abused the 2nd District and drew it in a
9 way that encompassed Fort Jackson, right?

10 A. Right.

11 Q. I think you said it was "ridiculously absurd"?

12 A. Yes.

13 Q. But there could be somebody that would think differently
14 and want to draw it that way, correct?

15 A. Correct.

16 Q. And, Senator, I don't know if we got an answer on the
17 question I asked you, but your plan went from the 6-1 GOP
18 advantage to a 4-2 GOP advantage, using that criteria?

19 A. If you assume Black people will vote uniformly
20 Democratic, absolutely.

21 Q. Partisan. I'm not asking it on racial, I'm just talking
22 about on partisan reasons.

23 A. Again, if you assume that the pigmentation of your skin
24 is consistent with your party affiliation, yes.

25 Q. Thank you, Senator. I appreciate your time.

1 A. Uh-huh.

2 THE COURT: House, cross?

3 MR. MOORE: Yes, sir, your Honor.

4 JUDGE GERGEL: Mr. Moore, I don't want to cut you
5 off. If you're going to be a while, I think we're going to
6 need to break.

7 MR. MOORE: I'm sort of wondering what your Honor
8 means by "a while." I'm just going to be 10 or 15 minutes.
9 And I'll try to keep it under 15 minutes. And I'll try to
10 keep it under that if I could, but I can't promise you.

11 JUDGE GERGEL: Yeah. See, my difficulty here is we
12 may have redirect. So, I think we need to break. We'll be
13 back in an hour.

14 MR. MOORE: Yes, sir.

15 **(Lunch recess)**

16 THE COURT: Please be seated.

17 Let me raise a couple matters, if I might. We were
18 given the benefit of the -- I guess it's the League of Women
19 Voters Plan. And Judge Lewis and I were spending a lot of
20 time studying it yesterday. It was very worthwhile. And I
21 want to get a list here of colored maps we would like. Look
22 at y'all. You already got them. Let me tell you what we need
23 and see if you've got them.

24 I definitely need the enacted map. That's very
25 important. The 2012 map. Y'all have been putting these up

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1 for us. We have the League map, so you don't need to
2 duplicate that. They call it the Harpootlian map. I don't
3 want to keep calling it the Harpootlian map. What can we call
4 it?

5 MR. FREEDMAN: Senate Amendment 2.

6 JUDGE GERGEL: Thank you. Senate Amendment 2.

7 MR. CHANEY: It's 2A, your Honor.

8 JUDGE GERGEL: 2A. Thank you. And the NAACP map 1
9 and 2. And then we saw something called the Senate staff
10 plan, right? We would like all of those. It just helps us
11 understand the geography so much more. If you've already got
12 some of them, that's absolutely fantastic.

13 MR. FREEDMAN: We only have two of the five that you
14 asked for, Judge.

15 JUDGE GERGEL: Good. We'll take whatever you've got.
16 And I'm sure y'all can help us get the rest. Y'all throw
17 those up on the screen left and right, and by the time our
18 eyes focus on it, it's gone.

19 MR. FREEDMAN: So, we are handing up the Senate
20 Amendment 1, which is the enacted plan; and Senate Amendment
21 2A, which is the Harpootlian --

22 JUDGE GERGEL: I don't want to call it the
23 Harpootlian Plan because he enjoys it too much.

24 I also want to clarify something. I want to make
25 sure I understand a little bit of the post-*Backus* history

1 here. Mr. Tyson asked Mr. Harpootlian about that. And let me
2 give you what I understand.

3 Mr. Tyson, you were on these pleadings, so you're
4 going to be the world's expert on this. Okay.

5 As I understand it -- and I'm not going to hold you
6 to these dates, I just went through and pulled them. The
7 *Backus* panel decision was March 9, 2012. The Supreme Court
8 affirmed the *Backus* panel decision on October 1, 2012. The
9 Supreme Court issued its decision in *Shelby County* on June 25,
10 2013. On August 29, 2013, the plaintiffs in *Backus* moved to
11 set aside the prior order on the basis of *Shelby County* under
12 Rule 60(b)(5) and 60(b)(6).

13 MR. TYSON: At the district court.

14 JUDGE GERGEL: At the district court. The defendants
15 opposed that -- appropriately, Mr. Harpootlian -- on the basis
16 that's not a proper basis for relief from a post-judgment
17 decision of a court.

18 MR. TYSON: That's right.

19 JUDGE GERGEL: And the court granted that on
20 March 10, 2014. The plaintiffs then appealed to the U.S.
21 Supreme Court on a direct appeal, seeking to overturn the
22 panel's decision on Rule 60(b). Again, the defendants moved
23 to dismiss the appeal, that it was not appropriate for a
24 direct appeal from a three-judge panel on a Rule 60(b) for
25 60(b) relief. Again, that was clearly correct. And the

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1 Supreme Court, on October 6th, 2014, dismissed the appeal for
2 lack of jurisdiction.

3 Does that all sound right, Mr. Tyson?

4 MR. TYSON: Yes, your Honor.

5 JUDGE GERGEL: So, based on that, I just want to make
6 sure neither the panel nor the Supreme Court addressed on the
7 merits Mr. Harpootlian's claim that the *Shelby County* decision
8 affected the constitutionality of the 2012 plan; is that fair?
9 They never addressed the merits?

10 MR. TYSON: They didn't go back to the merits based
11 on the procedural, yes.

12 JUDGE GERGEL: Which was completely correct?

13 MR. TYSON: That's right.

14 JUDGE GERGEL: And no court has addressed the *Shelby*
15 *County* impact on either the 2012 or the 2022 plan, correct?

16 MR. TYSON: Correct.

17 JUDGE GERGEL: That's for us to determine if relevant
18 at all.

19 MR. TYSON: That's right. Thank you, your Honor.

20 JUDGE GERGEL: Okay. I just wanted to make sure I
21 had that, because the question of Mr. Harpootlian kind of
22 caught me that it was contrary to my understanding of that
23 case history, which sort of implied the Supreme Court, on the
24 merits, had rejected his *Shelby County* argument. And I don't
25 think anyone's ever really addressed it.

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1 Is that fair, Mr. Tyson?

2 MR. TYSON: I think that's fair, but -- yes, your
3 Honor, that's fair. I'm not going to argue with you.

4 JUDGE GERGEL: I'm very precise.

5 MR. TYSON: Thank you.

6 JUDGE GERGEL: Thank you. Okay. Please continue.

7 Mr. Moore?

8 MR. MOORE: Yes, sir, your Honor.

9 JUDGE GERGEL: Most people would enjoy the
10 opportunity to do what you're getting ready to do. They might
11 take numbers to line up after you.

12 MR. MOORE: As I was going to say, and as I will say,
13 I would like to say I have no questions, but I can't resist.

14 JUDGE GERGEL: No, you cannot resist. I would make
15 you ask questions.

16 MR. MOORE: Well, I appreciate that. I'm assuming,
17 as I told Senator Harpootlian outside, you're not going to
18 give me three hours for credibility issues, so I will cut to
19 the chase.

20 JUDGE GERGEL: I want you to know that one time I was
21 on a three-judge panel involving -- Mr. Harpootlian had the
22 plaintiff's case, and he was not winning the case. And he
23 asked to waive his closing argument, and I would not let him.

24 All right. Go ahead.

25

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1 MR. MOORE: So, with that in mind, your Honor.

2 **CROSS-EXAMINATION**

3 **BY MR. MOORE:**

4 Q. Senator Harpootlian, I'm going to try to be brief. I
5 promise that.

6 So, I heard your points in cross-examination and direct
7 examination about social, political, and racial
8 stratification. And I agree with your comments, okay, for
9 whatever that's worth.

10 But you have been a Democratic officeholder for a number
11 of years in various positions, correct?

12 A. Yes.

13 Q. Okay. You were elected solicitor as a Democrat, correct?

14 A. Well, county council before that, as a matter of fact.

15 Q. County council, then solicitor, ran for AG as a Democrat,
16 and you're now a sitting Democratic state senator, correct?

17 A. Chairman of the Democratic Party twice in between.

18 Q. I was going to get to those, but you helped me, so that's
19 fine. So, twice. Not just once, but twice, correct?

20 A. Correct.

21 Q. And as a lifelong Democrat, you are a little unhappy
22 about the fact that the Republican Party has become the
23 dominant political party in the state during your lifetime,
24 correct or incorrect?

25 A. A little unhappy about the Republican Party? I mean, I

1 think the older I have gotten --

2 Q. Yes, sir.

3 A. -- the less I blame it on the Republicans.

4 Q. I'm not talking about casting blame, okay?

5 A. But you say "unhappy." But let me explain. When we were
6 doing the Senate reapportionment plan, I went to a number of
7 my colleagues, African-American colleagues, and indicated to
8 them that rather than attempting to keep an African-American
9 population of 50 percent or close to it, that they could do
10 themselves and their constituents a service by getting down to
11 something where they would still -- the minority community
12 still would have the opportunity to pick their candidate of
13 choice but put them in a position where they would be able to
14 talk to White voters and try to build a multiracial
15 constituency. Roundly rejected. Not even close.

16 So, when this plan came up, it was clear to me the
17 problem lies not with a dominance of one party or another
18 party, the problem is that those of us that draw these plans
19 are interested in perpetuating what has happened in the past.
20 And maybe it's like thermodynamics or the law of physics.
21 People do not give up or risk the loss of political power
22 willingly, even if it is in the best interest of the people in
23 the state. To prove my point, I gave up my district. I mean,
24 I was not -- putting my money where my mouth was. And no one
25 -- and I explained that. Got nowhere.

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1 Q. But with respect to giving up your district, you're now
2 paired with a Democratic incumbent, correct?

3 A. Yes.

4 Q. Okay. But that Democratic incumbent isn't running in two
5 years, correct?

6 A. No. He's running.

7 Q. Okay. All right. I may have heard differently from his
8 daughter, but I'll keep going.

9 A. Well, I talked to him, he told me he's running.

10 Q. Okay. All right.

11 A. So, he's not running? Wait a minute. Wait a minute.
12 His family has indicated he's not running? So I can stop
13 raising all this money?

14 Q. I can't answer this question, Senator Harpootlian.

15 THE WITNESS: Your Honor, this is very valuable to
16 hear.

17 MR. MOORE: You and I can have this discussion later,
18 Senator Harpootlian.

19 THE WITNESS: Thank you.

20 **BY MR. MOORE:**

21 Q. And so your current House district --

22 A. Senate.

23 Q. Excuse me. I'm sorry. Your Senate district, your
24 previous Senate district -- or I guess it's your current, but
25 in the enacted plan covers both Richland and Lexington

1 Counties, correct, parts of it?

2 A. Yes.

3 Q. And you've brought suits in the past -- and Judge Gergel
4 just went over the history of *Backus* -- because you care
5 passionately about redistricting issues, don't you?

6 A. I have.

7 Q. Okay. And, as I think you told the Senate in your
8 comments on January 20th, you ran for the Senate in part to
9 try to use the legislative process to change the map issue
10 that you saw, correct?

11 A. Absolutely.

12 Q. Okay. And when you couldn't change it, you did what you
13 very effectively do, which is point out what you saw as
14 vulnerabilities in that plan on the record, correct?

15 A. I saw it more as trying to persuade people there were
16 vulnerabilities and they should change their position, and we
17 should adopt a different plan.

18 Q. But ultimately when you -- I think you used the phrase,
19 "train was out of the station."

20 A. Right.

21 Q. When you saw that, you did point out the vulnerabilities
22 that you saw on the record, correct?

23 A. Well, you know, I held out hope -- and I look back on it
24 now, foolishly -- that some of the members, the more
25 reasonable members of the Republican Caucus would see this for

1 what it was. And, by the way, they really didn't have a dog
2 in the fight -- the senators didn't -- on the Congressional
3 Plan. I mean, as far as I know they weren't running for
4 Congress. So, I thought maybe I could persuade them to
5 persuade Senator Campsen and the rest of the Republicans to
6 tweak it, modify it. The Charleston piece just made no sense.
7 But, you know, even at my age, I, perhaps, have a bit of
8 naivety left in me.

9 Q. And because you care passionately about these issues, you
10 paid money out of your own pocket to get Mr. Oppermann to help
11 you draw a map, right, that you thought would be more
12 competitive, correct?

13 A. Well, I don't know if it's because I care passionately
14 about these issues. I just thought we were getting
15 railroaded, and I thought we ought to have a -- well, take
16 that back.

17 Is there -- was there an alternative which met all the
18 criteria which would do the sorts of things -- keep Charleston
19 whole, minimize, county, city, precinct, all the criteria
20 we're talking about, contiguity, compactness, is there an
21 alternative? And he came back with one.

22 My primary concern was, if the benchmark plan is not
23 where you start or necessarily start -- well, I mean, you
24 start there, but are you committed to -- are you mandated to
25 starting there and tweaking it? If not, then what would it

1 look like? And my plan, 2A, was that.

2 Q. Okay. And I'm going to get to that point in a few
3 minutes. So, when you ran for the legislature, you ran for
4 the Senate, not the House, correct?

5 A. Correct.

6 Q. Okay. And you were elected to the Senate, not the House,
7 correct?

8 A. Yes.

9 Q. And you would agree with me that the enacted map, which
10 was I guess Senator Campsen's Amendment 1, is a Senate map not
11 a House map, correct?

12 A. Correct.

13 Q. Okay. And you didn't involve yourself with the House
14 process, did you?

15 A. Oh, we don't -- in the Senate we don't involve ourselves
16 with the House. It is a disagreeable idea, actually.

17 Q. I understand that, Senator Harpootlian. And so, you
18 can't speak to its process, can you?

19 A. The House?

20 Q. Yes, sir.

21 A. In the general terms I could, but not on this
22 specifically. The reason we're coming back next week --
23 two weeks from now on abortion is because of the House
24 process.

25 Q. Yeah. I'm talking about this bill.

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1 A. No, no, I don't know about this bill specifically.

2 Q. Okay. All right. And you would agree with me, I hope,
3 that you're a lawyer, right?

4 A. It's rumored.

5 Q. Okay. You're a talented lawyer, right?

6 A. Oh, I think so.

7 Q. Okay. And you're a skillful cross-examiner, are you not?

8 A. Oh, I suppose.

9 Q. Okay. And we've seen an example of that today --

10 A. Is there more?

11 Q. Yes, there is. There is. There is. Don't worry. Okay.
12 There is.

13 And we've seen an example of that today because you sort
14 of engaged with a skillful cross-examination of Senator
15 Campsen on the Senate floor, didn't you?

16 A. Well, you know, Senator Campsen is a lawyer, I'm a
17 lawyer. I had questions for them. If you think that was
18 skillful, thank you so much. By the way, I think you're a
19 very skillful cross-examiner and lawyer. You and I have done
20 a number of cases together on -- I don't know if on the same
21 side, but on a number of times on different sides.

22 Q. We've usually been on different sides.

23 A. Yes.

24 Q. And I think you spent about nine pages doing that
25 cross-examination, right or wrong, give or take?

RICHARD HARPOOTLIAN - CROSS-EXAMINATION BY MR. MOORE

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1 A. It seemed so much quicker.

2 Q. All right.

3 MR. MOORE: One second, your Honors. Excuse me.

4 **BY MR. MOORE:**

5 Q. And throughout the process -- correct me if you disagree
6 -- you took an opportunity to educate your Senate colleagues
7 about redistricting and the laws applicable to it from your
8 own perspective; is that right or wrong?

9 A. Yes.

10 Q. Okay. All right. And I think you may agree with this
11 next point, Senator Harpootlian. Let me know if you disagree.
12 Like a number of people, you occasionally use sarcasm to make
13 a point, correct?

14 A. I've heard that characterization.

15 Q. Okay. I mean, I think -- correct me if I'm wrong --
16 we've heard immaculate conception --

17 A. Immaculate deception.

18 Q. Okay. Then I heard it wrong. Immaculate deception.

19 A. Right.

20 Q. Okay. We've heard Frankensteining?

21 A. Frankensteinian.

22 Q. Frankensteinian.

23 A. I'm not sure -- that's not really a word, but I think
24 I've coined that word for this particular plan.

25 Q. And I believe that with respect to your plan, which I

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1 guess we're now referring to as Senate Amendment 2, you called
2 it "a thing of beauty," correct?

3 A. Well, I guess I got that from the former president, you
4 know, who kept saying: It's a beautiful thing, it's a
5 beautiful this, it's a beautiful that. It's rubbed off on me.

6 Q. But so, you sometimes use sarcasm to make points in
7 matters that you believe are important to you, correct?

8 A. Occasionally.

9 Q. Okay. And you've done so as a lawyer in court?

10 A. Yes.

11 Q. Okay. You've done so as a party chair, correct?

12 A. Oh, absolutely.

13 Q. Okay. And you've done so as a lawyer legislator,
14 correct?

15 A. Yes.

16 Q. Okay. And so, you would agree with me that just because
17 a public official uses sarcasm or levity in regards to an
18 important matter, that doesn't mean that they don't care about
19 the matter at issue, does it?

20 A. No.

21 Q. Okay.

22 A. I mean, I agree with you.

23 Q. So, I just want to make sure I went over all of my
24 points.

25 And, as I believe you told Mr. Tyson, you agree that,

1 whether we all like it or not, redistricting is a political
2 process, correct?

3 A. Absolutely.

4 Q. Okay. All right. And you certainly discussed politics
5 in your remarks on January 20th, 2022; is that correct?

6 A. Politics?

7 Q. You discussed political issues. That's probably a better
8 phraseology.

9 A. You'd have to be more specific. I mean, everything
10 that's done in the Senate has a political overlay, whether
11 it's this bill or any other bill.

12 Q. Okay. And that's a part of our political process, like
13 there's a political overlay on everything that happens in a
14 legislature, in your opinion; is that correct or incorrect?

15 A. It's correct.

16 Q. It's all political overlay?

17 A. Yeah. I mean, we're political -- we're elected, which is
18 politics, and then we participate in dealmaking -- I know that
19 sounds shocking -- but trading votes, etc., that's a political
20 process.

21 Q. It's all about compromise, at the end of the day, right?

22 A. It should be.

23 Q. It should be about compromise.

24 A. It should be, but this bill was not.

25 Q. Okay. I understand your point, Senator Harpootlian.

1 And, whether someone said it or not, you understood that
2 Republican senators were interested in preserving their
3 six-to-one advantage in Congress, correct? You understood
4 that?

5 A. In spite of using racial gerrymandering, yes, or, I mean,
6 the only way you get there, I believe -- I mean, again, if you
7 assume African Americans will only vote for a Democrat, yes.

8 Q. But, again, you understood that they were trying to
9 preserve that six-to-one advantage, correct?

10 A. Using racial preference as a way to get there, yes.
11 Which, look, if they hadn't cut lines in precincts and
12 counties and done all this stuff to move Black people
13 around -- you know, it happens all the time up north. Nobody
14 challenges it -- or rarely challenges it. But when you start
15 using race as a proxy, or a party as a proxy for race, that's
16 wrong.

17 Q. And, correct me if I'm wrong, okay, your proposed map,
18 which is, I guess Senate Amendment No. 2 --

19 A. Right.

20 Q. -- was designed, at least in part, to counter that
21 proposal and to make -- let me finish my question -- and to
22 make certain districts more competitive; is that correct or
23 incorrect?

24 A. Competitive for both Black and White votes.

25 Q. Okay. All right.

RICHARD HARPOOTLIAN - CROSS-EXAMINATION BY MR. MOORE

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1 MR. MOORE: Now, Ms. Leclerc, we can pull up that
2 map, because I have a couple of questions about it.

3 THE WITNESS: You're on 2A?

4 MR. MOORE: Yes, sir.

5 **BY MR. MOORE:**

6 Q. Okay. And so, one of the things that you set out to do
7 was to keep the county of Charleston whole; is that correct?

8 A. Yes, uh-huh.

9 Q. Okay. But if you look with me sort of in the corner here
10 -- you see the point I put? You split York County in your
11 map; is that not correct?

12 A. Yes.

13 Q. Okay. And York County is a Republican-leaning county,
14 correct?

15 A. Yes.

16 Q. Okay. It's the source of extreme population growth in
17 the last census, correct?

18 A. Yes.

19 Q. Just like Charleston County was the source of extreme
20 population growth in the 2020 census, correct?

21 A. Correct.

22 Q. Okay. And you also -- and I have to get to this I guess
23 pink and blue that's sort of the juxtaposition of four and
24 three. You split Greenville County in your proposal; is that
25 correct?

RICHARD HARPOOTLIAN - CROSS-EXAMINATION BY MR. MOORE

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1 A. Yes, uh-huh.

2 Q. Okay. And that is also a large populous county, correct?

3 A. Correct.

4 Q. Okay. And you split the city of Greenville from a
5 portion of the county, correct?

6 A. Correct.

7 Q. And Congressional District 4, for better or for worse,
8 has usually been Spartanburg and Greenville, or substantial
9 portions of both of those, correct?

10 A. Correct.

11 Q. Okay. And so, do you know, Senator Harpootlian, if in
12 doing your split you would pair two incumbents, Representative
13 Timmons and Representative Duncan Meggett?

14 A. Yes.

15 Q. Okay. All right. And do you know Ralph Norman is the
16 current incumbent for Congressional District 5, correct?

17 A. Correct.

18 Q. Okay. It appears that you moved him into Four; is that
19 right or wrong -- or do you know?

20 A. I don't think -- I think that's wrong.

21 Q. All right. You think that's wrong. But, again, just so
22 we're clear, you preserved Charleston, but you split York and
23 you split Greenville?

24 A. Yes.

25 Q. Okay. And both of those are typically viewed as

1 Republican counties and Republican strongholds; correct or
2 incorrect?

3 A. Correct.

4 Q. Okay. All right.

5 A. But can I explain?

6 Q. Absolutely, you can.

7 A. So, Charleston was split on the basis of race. There's
8 no other way to explain it --

9 Q. And I understand that's your opinion.

10 A. Could I finish, please?

11 Q. Yes, sir. Absolutely.

12 A. These other splits were based on -- there's no racial
13 component to that. They were split because of huge population
14 growth in Greenville and Spartanburg. Too much population for
15 them to be in one district. Too much. So, they had to be
16 split. And York County suffers from the same population
17 explosion.

18 And, again -- and I think you'll hear from Mr. Oppermann
19 later on, and he'll give you the specific ward and precinct,
20 why we did this and why we did that. I wasn't taking notes at
21 the time. But as I reviewed it, it made sense to me. Again,
22 the idea was, Charleston had been split under *Backus* because
23 of race.

24 Q. In your opinion.

25 A. Well, I'm drawing the map, so that's the only opinion

1 that mattered at that point.

2 Q. On this map, right?

3 A. Correct.

4 Q. Okay.

5 A. So, if you adopt the position that race -- and, again,
6 the new map is even more egregious than the benchmark map, in
7 terms of splitting it on race. If you're going to keep
8 Charleston whole and not split it on race -- it has a diverse
9 population, we've heard the numbers -- York, Greenville,
10 Spartanburg, they're all white people, primarily. And so,
11 there's not this racial split that we've talked about down
12 here.

13 And, again, my goal, to reiterate, is to have districts
14 in which white and Black people work together for the
15 Democratic or Republican candidate. I'm not worried about
16 electing Democrats. That's not why I did this plan. This
17 plan is to counter what began with -- and I think wrongly was
18 begun as a good, well-intentioned effort in the 70s and 80s by
19 the justice department to give African Americans a chance to
20 pick their candidate of choice. With -- I'm not done.

21 Q. I'm waiting.

22 A. Okay. You weren't going to.

23 Q. I was. But I'm waiting.

24 A. What has transpired since then is -- and, you know, the
25 *Backus* case is the best example of it -- is when the justice

1 department stepped in and ratified this continued
2 balkanization of our state by race. The justice department --
3 you know, I don't know if there are 70s liberals still out
4 there or not, but their idea is: A Black person can't get a
5 white vote in South Carolina.

6 That is no longer true. Steve Benjamin is an example of
7 that. We've seen other African Americans elected in other
8 places in the state where the district was majority Black -- I
9 mean, majority white. So, when we do something like this and
10 ossify that racial division, we don't give a chance for those
11 seeds to take hold and develop.

12 And, by the way, the African-American leadership that
13 continues to insist on a 50-percent-plus district is just as
14 much at fault for perpetuating this system as those who insist
15 that white people don't need to have Black people in their
16 district. Okay. I'm done.

17 Q. Are you finished now?

18 A. Pretty much.

19 Q. So, can I move on?

20 A. Yep.

21 Q. But I believe you said -- I counted three times in direct
22 and the first cross -- that you shouldn't split county lines,
23 right?

24 A. Yes.

25 Q. Okay. But your plan does split county lines, correct?

1 A. Correct. But I split six, they split 10. Of their 10,
2 eight are around the 6th, two are around the 6th on mine.
3 And, again, if racial gerrymandering is what motivated me to
4 do this, my plan resolves -- or partially resolves -- those
5 issues, at the expense, I would concede, of dividing some
6 counties but less counties than the Republican Plan had.

7 Q. Okay. And you refer to the other plan as the Republican
8 Plan, right?

9 A. Well, the Republican majority passed it. No Democrats
10 voted for it.

11 Q. Yes, sir. And so here's my point: You knew this plan
12 wouldn't pass the Senate, right? You knew it?

13 A. No, I didn't.

14 Q. And you knew even if it passed the Senate, it wouldn't
15 pass the House, right? You knew that?

16 A. I don't ever consider what the House is going to do.

17 Q. Okay. All right. So, you didn't consider that at all?

18 A. Ever.

19 Q. Okay. But you would agree with me again that if
20 Republicans are trying to maximize the ability to preserve the
21 six-to-one advantage that they currently have in Congress,
22 your plan did not do anything to help that, correct?

23 A. Well, two things I'd say about that. The first is this:
24 I mean, I know a number of Republican senators who I know
25 don't care about preserving a six to one. They're concerned

1 about their district, their state, their county, their city.

2 This was something -- apparently orders came down from
3 Washington, in this plan that everyone says they never looked
4 at, to do that. That was the goal of the leadership. I think
5 there's some senators had there been any -- any lead given by
6 leadership to consider this stuff they would have modified the
7 Campsen Plan. That's my belief from my personal discussions
8 off the floor with other Republican senators who just said,
9 you know, I'm on this committee, I won't be on this committee
10 anymore, or, you know, this is leadership putting the heat on
11 us to stay together.

12 Q. And you know Lynn Teague, correct?

13 A. I do.

14 Q. And you communicated with her during the redistricting
15 process, correct?

16 A. I did.

17 Q. Okay. And her organization was kind enough to produce a
18 number of documents to us. But you had telephone
19 conversations with her about the fact that you were developing
20 your own map, correct?

21 A. Yes, uh-huh.

22 Q. Okay. And I think you sent some shapefiles to her; is
23 that correct? Someone on your behalf sent a shapefile --

24 A. Kelly may have. I don't know.

25 Q. Okay. That's fine.

1 A. She may have asked for something. I may have instructed
2 -- I mean, if she asked for something, I would have told Joey
3 Oppermann to send her whatever she wanted.

4 Q. Okay. And did you look at her map?

5 A. I did.

6 Q. Okay. And you would agree with me, would you not, that
7 her map -- or the League map -- and I guess there are two,
8 neither of those assist Republicans in maintaining a
9 six-to-one advantage, correct? You would agree or disagree
10 with that?

11 A. I'm not sure about that.

12 MR. FREEDMAN: Objection. Beyond the scope of
13 direct.

14 JUDGE GERGEL: Overruled. He's almost finished.

15 MR. MOORE: I am almost finished. I think I have one
16 more question.

17 JUDGE GERGEL: That was a suggestion, Mr. Moore.

18 MR. MOORE: I understand, your Honor. But I think I
19 have one more question.

20 JUDGE GERGEL: Overruled.

21 THE WITNESS: My response to that question was: I
22 don't know.

23 MR. MOORE: Okay. And I have one more topic. It may
24 have two questions, your Honor. And it's completely off topic
25 from this.

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1 JUDGE GERGEL: Go ahead.

2 **BY MR. MOORE:**

3 Q. You're very familiar with Congressman Clyburn, correct?

4 A. Yeah.

5 Q. Okay. And you know that Congressman Clyburn zealously
6 advocates for the rights of people in South Carolina beyond
7 the lines of those who live in CD 6, right?

8 A. Absolutely.

9 Q. Okay. You're also a senator, correct?

10 A. Yes.

11 Q. State senator. You advocate for the rights of South
12 Carolinians beyond not just the folks who live in the borders
13 of your own senate district, correct?

14 A. Correct.

15 Q. Okay. All right.

16 A. That's it?

17 MR. MOORE: That's it, your Honors.

18 THE COURT: Thank you very much, Mr. Moore.

19 Redirect?

20 MR. FREEDMAN: No redirect, your Honor.

21 JUDGE GERGEL: Very good. Mr. Harpootlian, you may
22 step down.

23 Call your next witness.

24 THE WITNESS: Your Honor, may I be excused?

25 JUDGE GERGEL: You may be excused, sir.

ROBERT OPPERMANN - DIRECT EXAMINATION BY MR. HINDLEY

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1 THE WITNESS: Thank you.

2 MR. FREEDMAN: Plaintiffs call Robert Joseph
3 Oppermann.

4 **ROBERT JOSEPH OPPERMANN, having been first duly**
5 **sworn, testified as follows:**

6 **DIRECT EXAMINATION**

7 **BY MR. HINDLEY:**

8 Q. Good afternoon, Mr. Oppermann.

9 A. Good afternoon.

10 Q. Could you state your full name for the Court.

11 A. Robert Joseph Oppermann.

12 Q. Where do you live?

13 A. Anderson, South Carolina.

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

15 A. My entire life.

16 Q. And can you describe your educational background.

17 A. Yes. I graduated from the University of South Carolina
18 School of Law in 2008. I received a Bachelor of Arts in
19 History from the University of South Carolina in 2004 and
20 graduated from Westside High School in Anderson, South
21 Carolina.

22 Q. And what is your occupation?

23 A. I'm an attorney.

24 Q. And where do you work?

25 A. Anderson, South Carolina.

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1 Q. And what firm do you work for?

2 A. It's my firm, Oppermann Law Firm.

3 Q. And where else did you work before Oppermann Law Firm?

4 A. I previously have worked at the Tenth Circuit Public
5 Defender's Office in Anderson for several years. Before that,
6 at the South Carolina Department of Social Services I was in
7 the legal office as a staff attorney in the Greenville office.
8 Prior to that, I was at the 11th Circuit Public Defender
9 Office in Lexington, where I served as a juvenile defender and
10 did a number of other assigned tasks mostly in Lexington, but
11 also in Edgefield, Saluda and McCormick Counties. And prior
12 to that, I had a firm with a friend and colleague from law
13 school called Willow Oppermann Law Firm.

14 Q. Do you work for the state or national Democratic Party?

15 A. No.

16 Q. And do you work for the State Conference of the NAACP?

17 A. No.

18 Q. Do you work for the Legal Defense Fund or the American
19 Civil Liberties Union?

20 A. No.

21 Q. And before going into the 2020 redistricting cycle, could
22 you describe your involvement in redistricting?

23 A. Yes. I was somewhat involved in the cycle after the 2010
24 census release, but more so in the 2020 cycle. But in the
25 2010 cycle -- and this would have been in 2011 -- I drafted

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1 the county council plan for Kershaw County, and I also did
2 some work for the South Carolina Democratic Party, drafting
3 alternative redistricting scenarios for the State House, State
4 Senate and U.S. House of Representatives.

5 Q. So, during the times you worked for city councils, were
6 those partisan or nonpartisan bodies?

7 A. Well, I've worked for several local government bodies.
8 In the 2011 cycle, I worked for the Kershaw County Council.
9 That was a partisan body. In South Carolina, county councils
10 all have partisan elections, but cities, municipalities,
11 school boards, that sort of thing, it's elective.

12 So, for the county governments that I've worked for, in
13 2011 I worked for Kershaw County, which was partisan. And
14 subsequent to 2020, 2021 and 2022, I worked for Kershaw, York,
15 Lancaster, and Bamberg counties. And those were all partisan
16 bodies. The municipalities in the school district that I've
17 worked for have nonpartisan elections.

18 Q. And have you worked with both Democrats and Republicans?

19 A. Yes.

20 Q. And was your role with these councils nonpartisan?

21 A. Yes. I think of the four counties that I worked with in
22 this cycle -- usually you would be retained by the county
23 attorney or administrator, but of the four counties I've
24 worked for three had Republican majorities and one had a
25 Democratic majority.

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1 Q. Let's turn to the 2020 cycle. How did you become
2 involved?

3 A. With respect to?

4 Q. The 2020 redistricting congressional --

5 A. I was retained by Harpootlian Law Firm to assist in the
6 drafting of maps.

7 Q. And when were you retained?

8 A. That would have been late May or early June of 2021, if
9 memory serves.

10 Q. And on a general level can you describe what you did as
11 part of that retention?

12 A. I want to speak carefully so as not to violate
13 attorney/client privilege and confidentiality. But since some
14 of my interactions with my client were in the presence of
15 others, and I don't deem describing that to be violating the
16 privilege, I can say, for those instances, I generated maps,
17 analyzed data, and spoke to groups or spoke to others about
18 the redistricting process generally, particularly with respect
19 to senate districts and congressional districts.

20 Q. And in doing your work, what data did you look at?

21 A. The census data.

22 Q. And from your review, what did you see concerning
23 population shifts in South Carolina?

24 A. Broadly, populations in South Carolina grew from 2010 to
25 2020. In some counties it grew dramatically so that there

1 were a number of counties -- although kind of a surprisingly
2 small number of counties -- where the pace of growth was
3 higher than the state as a whole. There were some counties
4 where population declined, and there were other counties where
5 population grew slowly but didn't keep pace with the pace of
6 growth statewide.

7 Q. And can you describe which counties had this growth?

8 A. The dramatic growth -- hopefully I'm covering all of
9 them -- generally was in Horry County around the Grand Strand.
10 It was in the Charlotte suburbs in York County and Lancaster.
11 Also in the Charleston area -- this is visible in Charleston,
12 Berkeley, and Dorchester, and Beaufort, and around a little
13 bit in southern Jasper County as well.

14 Q. And how about Charleston County?

15 A. Dramatic growth in Charleston County.

16 Q. And now you mentioned you studied maps; is that correct?

17 A. Yes.

18 Q. And what maps do you recall reviewing?

19 A. Prior to becoming directly involved in this process,
20 certainly would have reviewed the enacted map from 2011, which
21 is governed for the last 10 years. And I also followed the
22 General Assembly's redistricting website, so I had an
23 opportunity to see the proposed staff plan, several
24 alternatives, and maps as they were posted on the website.

25 Q. Did you review the Campsen Plan?

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1 A. I take it when you say "Campsen Plan," that you refer to
2 the plan that was ultimately enacted and was also called
3 Senate Amendment 1. Yes, I did.

4 Q. Let's turn to those plans.

5 MR. HINDLEY: Mr. Najarian, can you please pull up
6 Senate Exhibit 32A?

7 BY MR. HINDLEY:

8 Q. Mr. Oppermann, do you recognize this map?

9 A. Yes, sir.

10 Q. What is it?

11 A. This appears to be the Senate Judiciary Committee's --
12 the staff plan for U.S. House districts.

13 Q. And approximately when did you first review this map?

14 A. It would have been late November or early December of
15 2021.

16 Q. And when you reviewed it, did you have any concerns with
17 the staff plan?

18 A. Yes.

19 Q. And in general, can you describe those concerns?

20 A. Certainly. There are a number of county splits here that
21 are above and beyond what would be necessary to comply with
22 the law and certainly comply with one person, one vote. The
23 shape of some of the districts is strange. Particularly, the
24 problems that I identified with this plan have to do with --

25 MR. GORE: Your Honor, I'd just like to raise an

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1 objection at this point. This is starting to sound like
2 expert testimony, and Mr. Oppermann is not an expert.

3 JUDGE GERGEL: No. He's describing the foundation of
4 why he did this map. I overrule the objection.

5 Please proceed.

6 THE WITNESS: Thank you, your Honor.

7 The shape of District 6 is strange in its contours as
8 it borders -- the districts that it borders are strange. The
9 county splits along the boundaries of District 6, that seems
10 to be where the county splits are concentrated in this plan.
11 They're not really visible on the boundaries of any other
12 districts. And the shape of 6 is like a -- a dragonhead in
13 Columbia, and then almost like a second dragonhead in
14 Charleston with wings extending from the center of the shape,
15 for starters.

16 Q. Good. And do you have any concerns with respect to
17 contiguity?

18 A. Yes. In this plan, District 1, the northern and eastern
19 portion of the district is not connected via a roadway to the
20 southern and western portion of the district. And to specify,
21 if you were wanting to go from one portion of District 1 to
22 another portion of District 1, you would either have to go
23 from the Dorchester portion, across a large part of Charleston
24 County, in the southwestern part of Charleston County, or you
25 would have to go across the peninsula.

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1 Now, before, you could go from one part of District 1 to
2 another by crossing the Cooper River bridge, going through
3 downtown Charleston and crossing the Ashley River bridge or
4 one of the other bridges there and then going into 1. But you
5 can't do that here. You would have to go through District 6
6 to get to another part of District 1.

7 Q. And earlier you mentioned the number of splits, county
8 splits, municipal splits.

9 A. Yes.

10 Q. Why is that significant?

11 A. Yes. It's significant because you would prefer not to
12 split counties, if possible. That's what the Senate
13 guidelines call for. And in this plan, one, there are more
14 splits than are necessary to comply with the law and comply
15 with one person, one vote; and, two, almost all of those
16 splits occur along the boundaries of District 6 and the
17 districts that it borders, which include 1, 2, 5 and 7.

18 Q. And what communities lie along that border?

19 A. Well, generally speaking, that part of the state, the
20 communities are disproportionately African American relative
21 to the rest of the state.

22 Q. And now, you mentioned that you reviewed Senate Amendment
23 1; is that correct?

24 A. That's correct.

25 MR. HINDLEY: Mr. Najarian, can you please pull up

ROBERT OPPERMANN - DIRECT EXAMINATION BY MR. HINDLEY

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Senate Exhibit 29B?

BY MR. HINDLEY:

Q. Do you recognize this map?

A. Yes, sir.

Q. And what is this map?

A. This is Senate Amendment 1. And I recall that this was the plan that passed out of subcommittee and passed on the floor. But this is the plan that ultimately became the plan that was enacted.

Q. And about when did you first review this map?

A. I believe it would have been the first week of January of 2022.

Q. Now, the record reflects there's hearing on January 13th. Relative to that day, when did you review this map?

A. At least a work week beforehand, possibly before. I don't remember precisely.

Q. And did you have any concerns with the Campsen Plan?

A. Yes. The problems with this plan are almost exactly the same as the problems with the staff plan so far as the number of county and municipal splits and where they're concentrated. The contiguity issue is exacerbated in that, whereas in the staff plan, in theory, if you go in the Charleston peninsula, you could go back into 1 while on the peninsula, then out of 1 again and into 6 again --

THE COURT REPORTER: Sir, I need you to slow down.

1 THE WITNESS: Thank you, ma'am.

2 JUDGE GERGEL: Can you move your microphone a little
3 closer to you, Mr. Oppermann.

4 THE WITNESS: Yes, sir. Thank you, your Honor.

5 The contiguity issue is exacerbated in that one
6 cannot get into District 1 within the Charleston peninsula.
7 In this plan, District 1 is completely severed by land. There
8 is no road route to get from one portion of the district to
9 the other. And those are some of the concerns. The shaping
10 is a little different, the sort of snout of the dragonhead
11 that I described before it's a little rounder here, but it's
12 the same strange shape.

13 **BY MR. HINDLEY:**

14 Q. So, this is a touchscreen. Do you mind explaining what
15 you mean by round snout?

16 A. Yes. You see where I made the little red line? There in
17 the Charleston peninsula, District 6 extends all the way to
18 The Battery in this plan, whereas there's a little bit of
19 District 1 really about here, Broad Street and South. And
20 that's changed, but it is very similar to the staff plan.

21 Q. And what were your concerns with the number of splits in
22 the Senate Amendment 1?

23 A. Well, if memory serves, there are 10 county splits.
24 What's concerning about that is that eight of the 10 county
25 splits occur along the boundary of District 6. Only two of

1 them are not along the boundary of District 6. And that
2 suggested to me a certain kind of intent.

3 Q. Why is that?

4 A. Well, District 6 has for the last few decades been the
5 congressional district with the largest percentage of
6 African-American voters and residents. So, to depart from a
7 guideline requirement along the boundaries of that district,
8 it's curious and concerning.

9 Q. And when you say "guideline requirement," what are you
10 referring to?

11 A. The Senate guidelines have a number of expressed
12 preferences. But certainly minimizing the division of county
13 splits, precinct splits, and municipal splits are listed.
14 Here, eight of the 10 county splits occur along the boundaries
15 of District 6. Ten of the 13 precinct splits, if memory
16 serves, occur on the boundaries of District 6. And eight of
17 the 10 municipal splits, where the split doesn't occur solely
18 as a function of a county line, eight of the 10 of those kinds
19 of splits also occur along the boundaries of District 6.

20 Q. So, with all that you described, how does that compare
21 between the staff plan and Senate Amendment 1?

22 A. There are fewer county splits in Senate Amendment 1 than
23 in the staff plan. But what they have in common is that the
24 great majority of the municipal precinct and county splits
25 occur along the boundaries of District 6.

ROBERT OPPERMANN - DIRECT EXAMINATION BY MR. HINDLEY

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1 Q. So, your understanding of municipal splits, can you
2 elaborate on that?

3 A. Sure. One can -- the guidelines express a preference for
4 not splitting a municipality. However, in South Carolina, a
5 lot of municipalities straddle a county boundary. And if you
6 are in any way giving preference to what you're going to
7 prioritize as far as avoiding splits, it makes sense in a
8 South Carolina context to avoid a county split if you have to
9 choose between that and a municipal split. The reason for
10 that is, in South Carolina, elections are administered by
11 county-based agencies. So, the burden on the state and on
12 taxpayers on voters related to county splits would be greater
13 than with respect to municipal splits, simply because you're
14 talking about split ballots in a precinct and that sort of
15 thing. So, when I looked at this, I focused on municipal
16 splitting where the split occurs for a reason other than
17 solely based on a county boundary split. And I'll give a very
18 specific example of that.

19 For instance, in Senate Amendment 1 -- I'll just make a
20 mark here, at Batesburg-Leesville -- a little bit of
21 Batesburg-Leesville is in Saluda County. Most of it is in
22 Lexington County. But when I looked at municipal splits, that
23 didn't raise a flag to the extent that splitting a
24 municipality that was entirely within a county or didn't have
25 to be split but for the county line, there's a difference

1 there, in my view. So, I focused on that.

2 Q. And in Senate Amendment 1, were there certain municipal
3 splits that did raise a red flag for you?

4 A. Yes.

5 Q. What are they?

6 A. Well, there are eight -- let me slow down. There are 10
7 that I identified that occur for reasons that aren't solely
8 based on a county line in Senate Amendment 1. And those are
9 Simpsonville, Fountain Inn, Columbia, Forest Acres, Sumter,
10 Scranton in Florence County, Charleston, North Charleston, and
11 Hollywood, around Charleston County and some other areas as
12 well, Hardeeville and -- there may be one other that I'm
13 missing.

14 Q. Thank you. So, earlier you mentioned that --

15 A. I would also add that eight of those 10 occur along the
16 boundaries of the 6th. The only two that don't are
17 Simpsonville and Fountain Inn --

18 Q. Can you repeat that?

19 A. Sure.

20 Q. You want to get closer to the microphone.

21 A. Sure. Of those splits that I referred to, eight of the
22 10 occur along the boundaries of Congressional District 6 in
23 Senate Amendment 1. The two that don't are Simpsonville and
24 found Fountain Inn, along the boundaries of 3 and 4, and they
25 indicate almost no population.

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1 Q. And for those that did indicate population, why is that
2 significant?

3 A. One, they're along the boundaries of District 6, and,
4 two, disproportionately, the municipalities that are split are
5 municipalities that contain a significant amount of
6 African-American population.

7 Q. And earlier you mentioned issues of contiguity in this
8 map. Based on your understanding of the guidelines, is that
9 kind of contiguity permitted?

10 A. With respect to municipal splits?

11 Q. No. Contiguity.

12 A. Generally speaking, well, the major contiguity issue with
13 Senate Amendment 1 is that District 1 is in two pieces, and
14 the only contiguity that it has is the water in Charleston
15 Harbor. So, say from Fort Moultrie to Fort Johnson. Now, the
16 Senate guidelines do permit contiguity by water, provided that
17 -- I think the words of the guidelines are something like:
18 There's a reasonable opportunity to reach all parts of the
19 district, and the water contiguity serves some other purpose
20 under the guidelines.

21 In this map, the water contiguity in Charleston Harbor
22 does not appear to serve any other purpose listed under the
23 guidelines.

24 Q. Now I want to talk about the maps that you drew. So, Mr.
25 Oppermann, how many congressional maps did you create?

1 A. Well, I submitted two plans to legislative committees.
2 And one was Senate Amendment 2, and then an amendment to that
3 amendment, Senate Amendment 2A. I did more scenarios than
4 that, but those were the two that were submitted.

5 Q. And when you made this map, what software did you use?

6 A. ESRI for redistricting.

7 Q. And how did you get the guidance for drawing your maps?

8 A. Well, as I said, I was retained by Harpootlian Law Firm.
9 And Harpootlian Law Firm was my client. But I did receive
10 guidance -- I want to be careful not to breach confidentiality
11 or privilege. Prior to submitting Senate Amendment 2, which
12 later become Senate Amendment 2A, I had a phone conference
13 where in I reviewed three different scenarios that I had
14 prepared, the goal of which was to comply as much as possible
15 with the Senate's guidelines. I reviewed those three
16 scenarios with some of the folks on the phone conference and
17 received feedback before submitting Senate Amendment 2.

18 Q. And who were the people on the phone call?

19 A. I recall Senator Hutto, Senator Harpootlian, Senator Sabb
20 and Senator Matthews, although I don't believe they were all
21 on the phone at the same time.

22 Q. And approximately when did this meeting take place?

23 A. It was the Friday before I gave subcommittee testimony,
24 and I think that was the 7th of January.

25 Q. And what guidance did you receive on that phone call?

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1 A. The preeminent guidance that I received from the folks I
2 was talking to on the phone conference was: Comply as closely
3 as possible with the Senate guidelines and keep Charleston
4 County whole, and that these priorities were to be primary,
5 and anything else would be secondary.

6 Q. And what was your understanding of what they meant by
7 "comply with the Senate guidelines"?

8 A. Do not depart from what the guidelines call for any more
9 than necessary. It's impossible to draw a perfect plan
10 according to really any set of criteria. But don't depart any
11 more than is absolutely necessary to comply with the law,
12 balance all the other guidelines. And since I was given a
13 specific request to include a whole and unsplit Charleston
14 County, I understood that to be part of what they were asking
15 me for as well.

16 Q. And what was your understanding of why they wanted to
17 keep Charleston County whole?

18 A. The public input had overwhelmingly called for keeping
19 Charleston County whole, and that seemed to be why they wanted
20 Charleston County whole. That's, in fact, specifically what
21 they said on the phone conference.

22 Q. And what guidance did you receive with respect to issues
23 like partisanship?

24 A. Well, the four senators that I named are all Democratic
25 Senators. And I'm sure that was a subject that was of

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1 interest to them. They believed, according to what they said
2 on the conference, that if you followed the guidelines and
3 made every other concern secondary, you would be more likely
4 to get a plan where there's a greater opportunity for voters
5 to impact the outcome of various districts.

6 But I was specifically told that factors that didn't have
7 to do with the guidelines and keeping Charleston County whole
8 were to be secondary to those concerns and factors.

9 Q. And what did you do with the feedback you received from
10 that phone call?

11 A. I drafted what became Senate Amendment 2. As I said, I
12 had shared a few different scenarios prior to the phone
13 conference, and I was able to work roughly from one of them,
14 because I had been seeking to comply with the guidelines in
15 those scenarios. But I drafted Senate Amendment 2.

16 MR. HINDLEY: Mr. Najarian, could you please pull up
17 Senate Exhibit 30A?

18 BY MR. HINDLEY:

19 Q. Mr. Oppermann, do you recognize this map?

20 A. Yes.

21 Q. And can you tell us what it is?

22 A. This is the map that I drafted subsequent to the phone
23 conference and submitted to Senate judiciary.

24 Q. And when did you submit Senate Amendment 2?

25 A. It would have been after the phone conference but before

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1 the subcommittee meeting the next week. So, probably anywhere
2 between January 7th and 10th or 11th, would have been
3 somewhere in there.

4 Q. And you mentioned you drafted Senate amendment 2A; is
5 that correct?

6 A. Yes.

7 Q. And why did you draft Senate Amendment 2A?

8 A. Senate Amendment 2, because there was a need to submit a
9 plan prior to the redistricting subcommittee hearing, was done
10 rather speedily. And Senate Amendment 2, in my view, the
11 worst feature of it is -- since the guidelines call for a
12 deviation of no more than one, I wanted to achieve that.

13 Senate Amendment 2 has a total deviation of four. And
14 Senate Amendment 2A was designed to get the deviation down to
15 one, as the guidelines call for, and also reduce the number of
16 precinct splits. And so, that's why I drafted 2A. It's the
17 same plan but adjusted for deviation and reducing precinct
18 splits -- substantively the same plan, I should say.

19 Q. Thank you.

20 MR. HINDLEY: Mr. Najarian, can you please pull up
21 Senate Exhibit 31A?

22 BY MR. HINDLEY:

23 Q. Now, is this the map you mentioned?

24 A. Yes. That's 2A.

25 Q. And when did you draft Senate Amendment 2A?

1 A. After the redistricting subcommittees meeting, where I
2 gave testimony, one of the things I mentioned in my testimony
3 is that I thought the weakness of Senate Amendment 2 was that
4 it didn't have a deviation of one, which is what the
5 guidelines called for, and I felt that that could be adjusted.
6 So I did it I think almost immediately -- I got to work on it
7 almost immediately after I finished my testimony. So, it
8 would have been Wednesday, Thursday, Friday, around that
9 subcommittee meeting. Probably Wednesday or Thursday.

10 Q. Okay. So, when you were drafting the map for Senator
11 Harpootlian, what was your starting point?

12 A. Since I had the guidance of follow the guidelines and
13 keep Charleston County whole, I certainly kept that in mind.
14 But if you're drafting a Congressional Plan, you need to keep
15 in mind that one person, one vote really does mean one person,
16 one vote, that there's very little margin for error in
17 population deviation. So, that was a major concern as a
18 starting point.

19 And I also was working with reference to the enacted plan
20 passed by the legislature in 2011. The reason for that is one
21 of the Senate guidelines with respect to constituent
22 consistency calls for three things: One, keeping incumbents
23 in their original districts with reference to the 2011 plan;
24 two, avoiding pairing incumbents; and, three, preserving
25 district cores in the language of the guideline. And so, in

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1 order to comply with that guideline, it is necessary to work
2 with reference to the 2011 plan, or what sometimes gets called
3 "the benchmark plan."

4 Q. Then why did you not only make minor changes to the 2012
5 plan?

6 A. That would have violated the guidelines, in my judgment.

7 Q. And so, where did you go next in drafting your map?

8 A. Since I had been given specific guidance to keep
9 Charleston County whole, I began by drafting a District 1
10 where Charleston County is intact. And I took as a principle
11 that one should use counties as building blocks of districts.
12 So, if you're doing this, then you look for clusters of
13 counties that can get you to 731,204, which I believe is the
14 main district size after the 2020 census in South Carolina.

15 So, if you're doing a District 1 where Charleston County
16 is whole, it's a Lowcountry district, as in the 2011 plan, and
17 that also respects the community of interest of the coast and
18 also the Gullah Geechee corridor. If you're building a
19 district like that and you're using counties as building
20 blocks, then, of necessity, you would have Charleston County
21 and Beaufort County.

22 But, also, along the coast, with coastal boundaries, are
23 Colleton and Jasper County. So, you would build a District 1
24 that includes Jasper, Beaufort, Colleton and Charleston if
25 you're doing that, and then you only have about 65,000 or so

1 people left before you hit 731,204.

2 Since Congresswoman Mace, who was at this time the
3 incumbent -- and still is -- in District 1 and lives in
4 Berkeley County, it's necessary then, if you're following
5 those principles, to get the balance of the population in
6 Berkeley County. She lives, generally speaking, in the Daniel
7 Island area. So, rather than splitting another county, I felt
8 that it was right to do the balance of the population for that
9 District 1 in Berkeley County, built out from where
10 Congresswoman Mace resided.

11 Q. And when you were drawing CD 1, was there anything else
12 important that you kept in mind?

13 A. Well, following the guidelines, which specifically would
14 go towards keeping counties, municipalities and precincts
15 unsplit to the greatest extent possible. There is a distinct
16 coastal interest, a distinct Gullah Geechee Corridor interest,
17 there. Those were factors that I considered.

18 Q. And what did you keep in mind when you drew CDs 6 and 7?

19 A. As I said -- and I did move on to 6 and 7 next after 1,
20 because you're building out. But, as I said, I tried to build
21 with the idea that the best building blocks were counties.
22 That was the method that was least likely to create precinct
23 and municipal and county splits.

24 So, I looked at how do you get to 731,204 using counties
25 as building blocks -- or at least get close. Because, if you

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1 can't get precisely on it, but you can get close, it's easier
2 to identify how do you avoid a precinct split or how do you
3 avoid a municipal split when you tie off the district, as it
4 were, once you get to 731,204, thereabouts.

5 Q. And why did you keep Dorchester and Berkeley together
6 rather than split them apart?

7 A. You're talking about the greater Charleston area. That
8 is a distinct metropolitan community. And it is impossible to
9 have Charleston, Dorchester, and Berkeley County -- those
10 three counties -- completely together, unsplit in one
11 congressional district, because the population is just too
12 big. So, there's no way of drawing a district where you can
13 have those three counties altogether unsplit in a district.

14 You're going to have to have at least two districts
15 however way you do it, but it would not be appropriate, in my
16 judgment, to distribute them across three districts. So, if
17 you're drawing this way, Dorchester and Berkeley need to be
18 together. If you put them in 7, it works from the point of
19 view of using counties as building blocks. As you can see,
20 Dorchester, Georgetown, Horry, and a balance of Berkeley,
21 almost perfectly hit 731,204; whereas, if you put them with 6,
22 you run into issues of creating more county, and municipal,
23 and precinct splits.

24 Q. And what was the historic reason for keeping Dorchester
25 and Berkeley together?

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1 A. Generally speaking, Charleston, Berkeley, Dorchester have
2 tended to be together in districts, even when they're split.
3 In the last few decades, a piece of Dorchester and Berkeley
4 will be in 6, a piece of Dorchester and Berkeley will be in 1.
5 But, historically, Dorchester and Berkeley have been together
6 in some kind of iteration.

7 Q. And what counties are left whole in CD 6?

8 A. All of them, but Richland and Georgetown. So,
9 specifically, Hampton, Allendale, Barnwell, Bamberg,
10 Orangeburg, Calhoun, Williamsburg, Clarendon, and Sumter.

11 Q. And after drawing CDs 1, 6 and 7, what did you keep in
12 mind in drawing the rest of the map?

13 A. Trying to follow the guidelines and use counties as
14 building blocks and avoid municipal county and precinct
15 splits. There are, of course, other guidelines that one keeps
16 in mind. One person, one vote is always important, because
17 the law requires that. Keeping incumbents separate,
18 preserving the cores of districts. Keeping incumbents in
19 their original seats, if you're making reference to 2011 in
20 that plan.

21 MR. HINDLEY: Mr. Najarian, can you please do a side
22 by side with Senate Exhibit 29B?

23 BY MR. HINDLEY:

24 Q. So, how many county splits are there in 2A?

25 A. Six.

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1 Q. And where are they located?

2 A. Greenville, Laurens, York, Richland, Georgetown, and
3 Berkeley.

4 Q. And would you say those are distributed?

5 A. They are evenly distributed throughout the state.

6 Q. And how is that compared to Senate Amendment 1?

7 A. In Senate Amendment 1 there are 10 county splits, and
8 eight of them occur along the boundaries of the districts.

9 Q. And why is that significant?

10 A. Well, it's a departure from what the guidelines call for.
11 And to see those departures clustered in one area of the
12 state, or with reference to one district, suggests some sort
13 of intent. Since this portion of the state has a higher
14 African-American population relative to rest of the state, I
15 thought it was concerning that county, precinct and municipal
16 splits were almost entirely clustered along the boundaries of
17 District 6.

18 Q. And how many municipal splits are there in 2A?

19 A. If you use the measure that I use, which is splits that
20 occur for a reason other than solely due to a county line or a
21 county boundary, then six, five of which indicate population.
22 If you look at the total number of municipality splits, I'm
23 sure it's higher, because, as I said, there are a number of
24 municipalities that straddle county lines.

25 Q. And the splits that you describe, where do those take

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1 place?

2 A. In 2A?

3 Q. Yes.

4 A. They take place in the city of Greenville, the city of
5 Lawrence, the city of Clinton -- though the Clinton split
6 implicates no population -- the City of Rock Hill, the City of
7 Goose Creek -- make sure I'm -- Greenville, Lawrence, Clinton,
8 Rock Hill, Goose Creek -- oh, and I also included Irmo.

9 Now, Irmo is split by the Richland and Lexington county
10 line, but the reason I include it is because the Richland
11 County portion of Irmo in fairness it is split in 2A. A very
12 small portion of the Richland side of Irmo is in District 2,
13 along with the Lexington side, and the greater bulk of Irmo is
14 in District 6 piece in Richland County. So, I would include
15 that. I think it's fair to include it in that measurement.

16 Q. So, when Senator Harpootlian was questioned, House
17 Defendants brought up the splits in Greenville and York
18 County. Can you provide a little more detail for those
19 splits?

20 A. Yes. In the Greenville County split where that occurred,
21 to follow the guidelines -- since you have a county split, you
22 still want to avoid precinct splits and municipal splits to
23 the greatest extent possible. The city of Greenville is split
24 in this plan, but it is minimally split. Very little of the
25 population of the city of Greenville is implicated by this

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1 split. Almost all of the population of the city of Greenville
2 takes place or is allocated to District 3.

3 Q. And how about York County?

4 A. Rock Hill is split in York County in 2A. And if memory
5 serves, about I would say approximately 15 percent of the city
6 municipal population of Rock Hill is allocated to 4 and about
7 85 percent is allocated to 5.

8 Q. And how many municipal splits are there in the Campsen
9 Plan?

10 A. Municipal splits of that nature, I identified 10. I
11 think I only mentioned nine in my written testimony. But
12 there's another one as well.

13 Q. And where are they located?

14 A. Eight of those 10 -- and when I answer your question, I
15 want to be clear I'm talking about municipalities where the
16 split occurs, and they're not solely a function of a county
17 split. But for those kinds of splits, there are 10 in
18 Amendment 1. They occur in Simpsonville and Fountain Inn --
19 although those are very minimal on population impact -- and
20 the other eight occur along the boundaries of District 6.

21 They include Columbia, Forest Acres, Sumter, Scranton,
22 Charleston, North Charleston, Hollywood, and Hardeeville.

23 Q. And why are those splits significant?

24 A. Those municipalities implicate African-American
25 communities to a greater extent than in other parts of the

1 state. Since almost all of the municipal splits occur in
2 municipalities with substantial Black population, and almost
3 all of them occur along the boundaries of District 6, I
4 thought that was of concern.

5 Q. And when you look at the Campsen Plan, is Greenville also
6 split?

7 A. I can't tell if the city -- just from looking at it here,
8 I can't tell if the city of Greenville is split. Greenville
9 County is certainly split. And two municipalities,
10 Simpsonville and Fountain Inn, are split in Greenville County
11 in the Campsen Plan.

12 Q. How many precinct splits were in Senate Amendment 2A?

13 A. Ten.

14 Q. And where are they located?

15 A. They are located -- well, generally speaking, they're
16 evenly distributed throughout the state. They occur in
17 Greenville County, Lawrence County, York County -- really any
18 counties where there was a county split. It's very difficult
19 not to have at least one split precinct if your goal is to
20 achieve a deviation of no more than one.

21 But there's one in Georgetown. There's one in Berkeley.
22 There's two in Richland. There's two in York. I think
23 there's three in Lawrence. I don't remember precisely what
24 all of them with are, but that is, I believe, in my written
25 testimony that I provided to the Senate Judiciary Committee.

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1 Q. And how do the precinct splits compare to the Campsen
2 Plan?

3 A. Well, there are 13 precinct splits in the Campsen Plan.
4 But 10, maybe 11 -- it's either 10 or 11 -- of those precinct
5 splits are along the boundaries of District 6. In the Campsen
6 Plan, the precinct splits are not evenly distributed
7 throughout the state. They occur almost entirely along the
8 boundaries of District 6.

9 Q. And why is that important?

10 A. It's significant, again, because I think it shows a
11 certain kind of intent, given the history of District 6, the
12 makeup of District 6, the communities that are implicated. If
13 you were just following the guidelines, generally speaking,
14 you would see splitting occurring in an even way throughout
15 the state. A remarkable feature of Senate Amendment 1 is that
16 there's very little precinct or municipal splitting that
17 doesn't occur along the Congressional District 6. But almost
18 all of that happens on 6.

19 Q. Thank you, Mr. Oppermann. So, let's turn to your
20 testimony before the subcommittee.

21 A. Sure.

22 Q. And did you submit testimony to the subcommittee?

23 A. I did.

24 Q. And did you testify?

25 A. I -- I gave testimony over a Zoom at a subcommittee

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1 meeting. And at that time I was asked to submit written
2 testimony because time was limited. There were a lot of
3 people who needed to speak, so I was asked to submit written
4 testimony. And I did that the following Monday, which would
5 have been maybe the 16th or the 17th, I think.

6 Q. So based on that, was this the January 13th subcommittee
7 meeting?

8 A. Yes. And then I was asked to give written testimony at
9 that time and did so a few days later.

10 Q. And who did you send that to?

11 A. I believe I sent that to Andy Fiffick.

12 Q. And who is Andy Fiffick?

13 A. He works for the Senate Judiciary Committee.

14 MR. HINDLEY: Mr. Najarian, can you please put up
15 Plaintiff's Exhibit 330?

16 Your Honor, permission to approach?

17 JUDGE GERGEL: You may.

18 BY MR. HINDLEY:

19 Q. Mr. Oppermann, are you familiar with this document?

20 A. Yes, sir.

21 Q. What is it?

22 A. This appears to be an e-mail that I sent to Andy Fiffick
23 on Monday, January 17th, with an attachment called written
24 testimony-Oppermann. And that the document appears to be the
25 written testimony that I provided as requested.

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1 Q. At a high level, what are you trying to convey in this
2 written testimony?

3 A. I was providing a comparison of Senate Amendment 1 and
4 Senate Amendment 2A according to the Senate's redistricting
5 guidelines. And I concluded that Senate Amendment 2A
6 performed better. I describe 2A as 2 in the plan, but there's
7 a footnote, footnote 1, where I say: Herein, I analyze Senate
8 Amendment 2 as amended. So, I'm referring to 2A in this
9 comparison.

10 Q. And what criteria did you compare in your analysis?

11 A. I tried to go section by section in the Senate
12 guidelines, so hopefully I compared all of them. And I could
13 go through the document and list those if that would be
14 helpful.

15 Q. Sure.

16 A. Population equality, the guidelines call for a deviation
17 of no more than one, 2A achieves that. Voting rights, the
18 guidelines call for compliance with state and federal
19 Constitution's Voting Rights Act. So, I addressed that.
20 Avoidance of racial gerrymandering, contiguity, communities of
21 interest, constituent consistency, minimizing divisions of
22 county boundaries, minimizing divisions of municipal
23 boundaries, minimizing divisions of voting precinct
24 boundaries, compactness, reliance upon the 2020 census data.

25 Q. And did your written testimony discuss racial

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1 gerrymandering?

2 A. Yes.

3 Q. And how do the two plans compare with respect to racial
4 gerrymandering?

5 A. I concluded that Senate Amendment 1 likely was --

6 MR. GORE: Your Honor, I'm going to object on this.
7 He's now going to talk about whether the enacted plan is a
8 racial gerrymandering. That's --

9 JUDGE GERGEL: He's talking about what the Senate
10 considered. We've got to get the legislative intent. And
11 we've been putting into the record what the Senate received.
12 I overrule the objection on the basis that it's -- but his
13 opinion is of -- is not what's material here. What's material
14 is the Senate had this report. But I take what you say, and
15 he's not being offered as an expert. Thank you, Mr. Gore.

16 MR. GORE: Thank you.

17 JUDGE GERGEL: Overruled.

18 BY MR. HINDLEY:

19 Q. Which plan performed better with constituent consistency?

20 A. I felt that the plans performed equally with respect to
21 constituent consistency, and I'd be happy to tell you why.
22 And I said so in the written testimony.

23 Q. And which plan performed better with respect to
24 compactness?

25 A. I felt and wrote that 2A was a more compact plan.

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1 Q. And how do the plans compare with respect to contiguity?

2 A. Certainly 2A outperformed 1 with respect to contiguity.

3 Q. And were there any differences in how you calculated core
4 constituencies?

5 A. Well, I think that the state ought to speak for itself on
6 that. And I don't want to characterize their view or their
7 opinions on it. But this is how I saw it. I followed the
8 text of the guidelines. And the Senate guideline on
9 constituent consistency makes reference to keeping incumbents
10 in their districts from the 2011 plan, avoiding pairing
11 incumbents, and preserving district cores.

12 So, the question is: What is a core? A core, if you
13 think of the plan and the ordinary meaning of core, core is
14 the inner part of a thing as distinct the from the enveloping
15 part of the thing. If you imagine -- what you think normally
16 with core is an apple core, a baseball core, or the planet's
17 core. A core is something that usually -- that always has a
18 lesser volume than the thing that it refers to. It's the
19 inner portion of a thing as distinct from the enveloping
20 portion of the thing.

21 So, I found that consistent with -- consistency was sort
22 of a minimum threshold measure. Do they all keep their
23 incumbents in their respective districts? Do they avoid
24 pairing incumbents? Is the inner part of the district
25 preserved in both plans? On that basis, I concluded that they

1 performed equally. They were attempting to meet a minimum
2 threshold. Since both of them met that, to compare how each
3 plan exceeds the threshold, when all the guideline calls for
4 is a minimal threshold, would be duplicative and unnecessary,
5 as I deemed.

6 Q. And did you communicate this with the Senate?

7 A. I did.

8 Q. Who did you communicate with?

9 A. Well, I did through my written testimony.

10 Q. And who do you send that to?

11 A. Mr. Andy Fiffick and Mr. Will Roberts.

12 Q. Who is Mr. Will Roberts?

13 A. Well, this is on the 17th. I followed up, I believe, a
14 day or two later to both Mr. Fiffick and Mr. Roberts. Mr.
15 Roberts is -- I believe he's a cartographer who's worked both
16 with the legislature and also with the Revenue and Fiscal
17 Affairs Office.

18 JUDGE GERGEL: Let's take a ten-minute break.

19 **(Recess)**

20 JUDGE GERGEL: I want to ask counsel a question. And
21 if not, y'all can supplement the record on this.

22 Do we have the enacted plans for 2012 and 2022, by
23 precinct, with the racial makeup of each of those precincts in
24 the record? Is that in the record?

25 MR. FREEDMAN: So, the maps are in the record. I

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1 don't believe a precinct-by-precinct breakdown.

2 JUDGE GERGEL: I know, for instance, Senate Bill 865
3 is in the record. So, I have the precincts. But the -- I'm
4 hearing a lot of discussion, and I'm trying to verify what
5 people are telling me, that there appears to be some conflict.
6 And I just want to be able to check it by having it in the
7 record. So, I'm confident the state has the racial data.

8 Can we put that in the record if it's not in? I'm a
9 little surprised it's not in.

10 MR. GORE: Yeah, I think the issue, your Honor is --

11 MR. FREEDMAN: I was going to say I think we can work
12 with the defendants to put it in. It's just a question of
13 putting it in a form that's going to be helpful for the Court.

14 JUDGE GERGEL: That would be very important, having
15 it mean something. But I just want to be able to take the
16 data, and when I'm looking at, for instance, a precinct --
17 there are discussions about precincts being in and out, I want
18 to look at the racial nature of those. Are they or are they
19 not of racial character? I just need to know that.

20 MR. GORE: Your Honor, if it suits your Honor, maybe
21 we could -- I know the Court has appointed a technical
22 advisor, Mr. Rainwater.

23 JUDGE GERGEL: Yes.

24 MR. GORE: Maybe we could ask Mr. Rainwater after
25 court today or a break --

1 JUDGE GERGEL: Yes, that would be fine.

2 MR. GORE: It's also a voluminous amount of data
3 between the census data and the block equivalency files and
4 things like that.

5 JUDGE GERGEL: Well, I think Mr. Rainwater could
6 probably get it for us. I mean, that's the kind of data that
7 he uses all the time. So, why don't y'all just get with him
8 and stipulate that it's accurate, and we'll put it in the
9 record. How about that? I think Mr. Rainwater can help us on
10 that.

11 MR. FREEDMAN: And, your Honor, just so I'm clear, so
12 what would be helpful for the Court, and what I'm envisioning
13 or what I'm -- I would certainly welcome defense counsel's
14 views. There are approximately, I think, 2,500 precincts in
15 the state. We could certainly provide data identifying which
16 congressional district they're assigned to and then the
17 demographics of each one.

18 JUDGE GERGEL: Right. So, if you look at Senate Bill
19 865, it lists all the precincts, and it tells us which
20 precincts are in which congressional district. So, I have
21 that for 2022, but I don't have any racial data. And I
22 presume we could take judicial notice of the 2012 bill, but
23 I'd prefer somebody just put it in the evidence.

24 And then if y'all could talk to Mr. Rainwater and
25 just -- I want to make sure y'all feel comfortable. I hear

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1 these debates about how we're going to count and what do we
2 call people and all that. I just want something -- I think
3 whatever the Senate uses is what we ought to use. And I'm not
4 talking about any Black or Black -- whatever that is, I just
5 want to --

6 What did the Senate actually use?

7 MR. GORE: The Senate used the category called DOJ
8 Black --

9 JUDGE GERGEL: DOJ Black.

10 MR. GORE: -- both in 2012 and 2022.

11 JUDGE GERGEL: I think it would be helpful to use a
12 consistent -- so we would have it consistent through that.
13 I'm just trying to be able to double-check back, because I'm
14 hearing some conflicting evidence, and the only way I'm going
15 to do it is to go back and look at it myself.

16 So, if y'all could work that out, talk with Mr.
17 Rainwater. And maybe early next week y'all can put it in,
18 okay? Thank you.

19 MR. HINDLEY: Thank you, your Honor. Just a couple
20 more questions.

21 Stephen, can you pull up Plaintiff's Exhibit 721?

22 BY MR. HINDLEY:

23 Q. Mr. Oppermann, do you recognize this?

24 A. Yes, sir.

25 Q. And what does it do? What does this document do?

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1 A. This is an e-mail. I had updated my written testimony by
2 adding a second footnote. And it explains what that update
3 refers to.

4 Q. Does this written testimony provide a comparison between
5 Senate Amendment 2A and Senate Amendment 1?

6 A. Yes.

7 Q. And does it provide a good roadmap in that comparison?

8 A. I think so, yes. And the reason for this was I thought
9 very courteously the staff had reached out to me and said
10 we're getting number that are a little different than your
11 numbers so far as percentages, and we want to identify why
12 that was. And I think the footnote number 2 covers that.

13 Q. And to the understand the two plans, would you recommend
14 that they review your written testimony?

15 A. Oh, yes.

16 MR. HINDLEY: No further questions.

17 THE COURT: Cross-examination?

18 **CROSS-EXAMINATION**

19 **BY MR. GORE:**

20 Q. Good afternoon, Mr. Oppermann.

21 A. Good afternoon.

22 Q. I'm John Gore. I represent the Senate Defendants. I
23 don't believe you and I have had the pleasure to meet before,
24 so I'm grateful for this opportunity.

25 A. Likewise. It's nice to meet you.

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1 Q. So, Mr. Oppermann, I want to start by asking you a little
2 bit more about your background.

3 A. Yes, sir.

4 Q. You haven't been offered as an expert in this case,
5 correct?

6 A. That's right.

7 Q. And Mr. Hindley asked you whether you'd worked on behalf
8 of nonpartisan groups in the past. Do you recall that?

9 A. Yes.

10 Q. And you've also worked on behalf of partisan groups,
11 though, too, right?

12 A. Yes.

13 Q. Including the state Democratic party?

14 A. Yes. In 2011, yes, sir.

15 Q. And Senator Harpoottian is also a proud Democrat?

16 A. Yes. And he was the Chair in 2011.

17 Q. And you've made political contributions to the Democratic
18 Party; is that right?

19 A. Yes, I have.

20 Q. And have you made any to the Republican Party?

21 A. I've made contributions to Republican candidates, but not
22 to the Republican Party.

23 Q. And would you say you've made more contributions to
24 Democratic candidates than to Republican candidates?

25 A. Yes, sir. And, perhaps, this would help clear up your

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1 line of questioning. I am not -- the precinct committeeman
2 for my county Democratic Party in the Denver Sandy Springs
3 precinct. I have worked for candidates on both sides, but I
4 usually work for Democrats. And I'm the precinct committeeman
5 for the county Democratic Party in my county.

6 Q. And did you also have the honor of being nominated as a
7 presidential elector for the Democrats?

8 A. I think I was. I had forgotten about that, but yeah, I
9 guess around 2008. Yeah.

10 Q. All right.

11 A. It didn't seem likely that I would be able to serve in
12 that capacity, so that might be why I forgot about it.

13 Q. Hope springs eternally, though, right?

14 A. That's right.

15 Q. So, I believe you testified earlier that the only two
16 plans you released publicly were Senate Amendment 2 and Senate
17 Amendment 2A; is that right?

18 A. Yes, sir.

19 MR. GORE: Can I get Exhibit 68A up on the screen?
20 That's Senate Defendant's Exhibit 68A.

21 BY MR. GORE:

22 Q. Do you see that, Mr. Oppermann?

23 A. Yes, sir.

24 Q. So, this called the Oppermann LWV map. Do you see that?

25 A. Yes, sir.

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1 Q. And this was offered as Senate Amendment 3 on the floor
2 of the senate; is that right?

3 A. Yes.

4 Q. And this is what we've been calling the LWV plan; is that
5 right?

6 A. I don't know. I haven't been here.

7 Q. But you drew this plan as well; is that correct?

8 A. No, it is not. The reason this plan seems to have my
9 name on it is that, in the presence of others, Senator
10 Harpootlian asked me to send the League of Women Voters
11 updated plan to the senate staff, because he didn't want to
12 deal with the shapefiles or whatever. He was busy. He didn't
13 have -- as I understood it, have time to mess with the
14 technical details of it. So, he asked if I would send the
15 League of Women Voters Plan to senate staff so that he might
16 introduce it as a possible amendment on the day of floor
17 debate. And I think that's why my name is attached to it.
18 But I did not draft this plan.

19 Q. Are you, otherwise, familiar with the plan?

20 A. Not extensively, but I recall it, having sent it and
21 looked at it.

22 MR. GORE: If we can get Exhibit 68D up on the
23 screen?

24 BY MR. GORE:

25 Q. This is the partisan analysis report for that League of

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1 Women Voters Plan. Do you see that?

2 A. Yes, sir.

3 Q. And in District 1, what are the Biden and Trump vote
4 shares for that district?

5 A. The Biden vote share -- do you mean percentages, or
6 total?

7 Q. Percentage would be great.

8 A. 51.75 for Biden and 48.25 for Trump.

9 Q. And approximately how many percent difference is that?

10 A. 3.5.

11 Q. And so, that's more than 1 percent; is that right?

12 A. Yes.

13 Q. And do you have a view as to whether or not this League
14 of Women Voters Plan complies with traditional principles?

15 MR. HINDLEY: Objection, your Honor. This is not Mr.
16 Oppermann's data, so he doesn't have any background.

17 JUDGE GERGEL: Well, this is cross-examination.
18 Overruled.

19 THE WITNESS: Thank you. Would it be all right if I
20 could see the map again?

21 MR. GORE: Can we go back to 68A? We can come back
22 to that in just a minute.

23 THE WITNESS: I will say that my general recollection
24 upon seeing the map was that it did at least as good a job as
25 2A and a better job than Senate Amendment 1 with regard to

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1 general redistricting principles and certainly the senate
2 guidelines. That's my recollection.

3 Q. Okay. And so, you would agree with me that there's more
4 than one way to draw a plan that complies with the Senate
5 guidelines?

6 A. Yes, sir.

7 Q. And that's because redistricting involves tradeoffs,
8 right?

9 A. Always.

10 Q. And so, sometimes you're trading off county splits
11 against preservation of cores; is that right?

12 A. Possibly, yes.

13 Q. Or VTD splits against compactness; is that right?

14 A. Potentially, yes, sir.

15 Q. So, those tradeoffs involve policy judgments, don't they?

16 A. Yes.

17 Q. And reasonable minds can differ as to what the best
18 policy judgments are with respect to various plans; is that
19 right?

20 A. Yes, sir, subject to the rule of law.

21 Q. So, as long as a plan complies with legal requirements,
22 there are myriad ways to draw a particular plan that complies
23 with the guidelines or traditional district principles, right?

24 A. I think that would be a fair statement, yes, sir.

25 Q. And that's particularly true nowadays that we have all

1 this technology that helps draw redistricting plans, right?

2 A. I think that's also a fair statement, yes, sir.

3 Q. So, I think you testified before that as originally
4 drafted, your Senate Amendment 2 did not comply perfectly with
5 the one-person deviation; is that right?

6 A. Yes, sir.

7 Q. And then you drafted Senate Amendment 2A; is that right?

8 A. Yes, sir.

9 Q. Did you have any assistance from senate staff in drafting
10 amendment 2A?

11 A. I had feedback from senate staff after I sent 2, because
12 when I originally sent it to them, I sent it to them as a
13 shapefile instead of a block equivalency file, because I was
14 using ESRI for redistricting and they were using Maptitude, it
15 didn't interpret just perfectly. When I sent them a block
16 equivalency file, based on their feedback, their map
17 accurately corresponded to the map that I had in my software.

18 But with respect to 2A, I did not have any assistance
19 from the senate staff, other than, you know, these are the
20 numbers that we're getting based on your plan; is that right?
21 Or they provide, you know, sort of a markup for the
22 legislators 'various plans. And they did that with 2A just as
23 they with other plans that were submitted.

24 Q. Okay. And we're talking about just the senate staff.

25 Was it Mr. Fiffick and Mr. Roberts who you received the

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1 feedback from, if you can recall?

2 A. Yes. That seems right. I don't recall talking to
3 anybody else on the phone or via e-mail other than Mr. Fiffick
4 and Mr. Roberts. I may have, but don't recall anyone else.

5 Q. Sure. And were they courteous and professional in
6 dealing with you?

7 A. Always.

8 Q. And you mentioned that they generated reports and data
9 off of your file for amendment 2A; is that right?

10 A. That's correct.

11 Q. And do you know whether that was posted on the Senate
12 redistricting website?

13 A. Yes, except with respect to municipal divisions. I think
14 the municipal division document was only present on the floor.
15 I did never see it on the website. But with respect to
16 everything else it is posted on the website.

17 Q. Great. I'd like to understand a little bit more of the
18 instructions that you said you received as you drafted
19 Amendment 2. I believe you said you had a call with Senators
20 Hutto, Harpootlian, and Sabb; is that right?

21 A. And I believe Senator Matthews was also on the phone at
22 some point.

23 Q. Okay. Great. And you mentioned that they gave you
24 instructions to comply with the guidelines and to keep
25 Charleston County whole; is that right?

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1 A. Yes.

2 Q. And is keeping Charleston County whole in the guidelines?

3 A. No, sir, it's not.

4 Q. Did they give you any other instructions or make any
5 other requests of the plan that you were to draw?

6 A. With respect to specific geographies, or just any other
7 instructions?

8 Q. Anything else you can think of.

9 A. Implicit in meeting with a group of Democratic senators,
10 one understands that their hope is that more competitive plans
11 might emerge vis-à-vis the staff plan. And I understood that
12 to be a concern. But I was directly told that that was
13 secondary to following the guidelines in keeping Charleston
14 whole.

15 Q. Okay. So, you received maybe a hierarchy of
16 instructions; is that fair?

17 A. I think that would be a fair characterization.

18 Q. And at the top of the hierarchy was complying with the
19 guidelines; is that right?

20 A. Yes.

21 Q. And then keeping Charleston whole; is that right?

22 A. Yes, sir.

23 Q. And then drawing competitive districts or fusing some
24 notion of competitiveness into the plan?

25 A. I think they would have been happy to see that, yes, sir.

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1 Q. And did you receive any instructions or requests with
2 respect to the use of race in the plan?

3 A. No, sir. I didn't, except to the extent that I shouldn't
4 propose something that would likely violate the Voting Rights
5 Act or run afoul of the 14th Amendment prohibition on racial
6 gerrymandering.

7 MR. GORE: If we can go back to Plaintiffs'
8 Exhibit 330, which I believe is the e-mail you talked about
9 before to Mr. Fiffick, where you attach your written
10 testimony.

11 BY MR. GORE:

12 Q. And I'd like to scroll down to page three. But I believe
13 you testified that you provided an analysis of traditional
14 districting principles, is that right?

15 A. An analysis of the Senate guidelines, yes, sir.

16 Q. Thank you very much. Let's go down one more page. I
17 think it's page three of the document, page four of the PDF.

18 So, you start here with contiguity; is that right?

19 A. Yes, sir.

20 Q. And you would agree that the enacted plan is contiguous
21 under the Senate guidelines, right?

22 A. I would respectfully disagree with respect to District 1.
23 And the reason for that is it didn't appear, from my review of
24 Senate Amendment 1, that the water contiguity was designed to
25 meet any other guidelines that were listed publicly or that

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1 were in the Senate guidelines.

2 Q. And did you discuss that position with any senator or
3 staffer?

4 A. I believe I included this here in my written testimony.

5 Q. But did you ask --

6 A. Not precisely those words.

7 Q. Okay. Other than presenting your testimony, did you
8 discuss that view of contiguity with any senator?

9 A. I don't specifically remember that. I do remember
10 putting that in my written testimony.

11 Q. And do you recall anybody on the public record or
12 otherwise expressing the view that District 1 is not
13 contiguous in the enacted plan?

14 A. I did not see all of the written testimony or hear all of
15 the public testimony. But I don't have a specific
16 recollection of that. I do recall a number of people having
17 concerns about the shape of Charleston County in that it
18 didn't appear to connect during the redistricting subcommittee
19 meeting on the 13th.

20 Q. And would uniting a community of interest over water meet
21 this particular requirement of water contiguity being designed
22 to meet other criteria?

23 A. Hypothetically. But if it's not necessary to unite the
24 community of interest by having only water contiguity, that
25 would seem to violate the guideline.

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1 Q. Do the guidelines say water contiguity is only
2 permissible when it's required?

3 A. The guidelines say contiguity by water is acceptable to
4 link territory within a district provided that there's a
5 reasonable opportunity to access all parts of the district,
6 and the linkage is designed to meet the other criteria as
7 stated herein.

8 Q. So, is it your view that the General Assembly adopted an
9 enacted plan with a noncontiguous district?

10 A. Because it appears to me that the linkage is not designed
11 to meet the other criteria, yes.

12 Q. And how about following natural geographic boundaries,
13 would that be a reason that water contiguity is permitted?

14 A. Hypothetically, yes.

15 Q. And did any member of the Senate agree with or espouse
16 your definition of contiguity in public or otherwise or even
17 in private to you?

18 A. Because I wasn't -- I recall hearing general concerns
19 about that. I can't recall a specific conversation. And
20 because I wasn't present during all discussions, I wouldn't be
21 able to answer that question with respect to who said what in
22 public.

23 But I want to answer your question as precisely as
24 possible. I generally recall this concern being brought up,
25 but I don't specifically recall by whom or when.

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1 Q. Let's scroll down next to communities of interest. I
2 believe you testified that you think the plans are equivalent
3 on communities of interest; is that right?

4 A. I think that would be a reasonably fair characterization.

5 Q. Okay. Great. We'll come back to this in a moment.

6 Now we get to constituent consistency. You would agree
7 that your plan, Senate Amendment 2A, retains less of the core
8 of each district, percentage wise, than the enacted plan,
9 right?

10 A. I would not.

11 Q. And that's because you take the view that the core is
12 just the inner part of the district and not the enveloping
13 piece around the district. If I've mischaracterized your
14 testimony --

15 A. No. I think that's a fair characterization. Thank you.

16 Q. And do you know whether any member of the Senate held
17 that view of the definition of district cores?

18 A. I do not.

19 Q. And do you know whether courts or other authorities have
20 upheld a broader definition of core to encompass the entire
21 predecessor district?

22 A. That may be the case. But I was relying on the text of
23 the guideline in its plain and ordinary meaning.

24 Q. You would agree with me that your plan retains less of
25 the benchmark districts than the enacted plan, correct?

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1 A. Yes.

2 Q. And that would be true in every district; is that right?

3 A. I believe so, yes.

4 Q. And, here, it says that District 6 retains only
5 61.4 percent of its core; is that right?

6 A. I would respectfully disagree with the characterization
7 of that is retaining it. I would say what I say here is that
8 District 6 retains 61.46 of the population that was in the
9 2011/'12 District 6. I was using a bit of shorthand for what
10 I meant.

11 Q. So, District 6 retained 61.46 percent of the benchmark
12 district?

13 A. Yes, sir.

14 Q. Would you describe that as a minimal change plan for
15 Congressman Clyburn in District 6?

16 A. I would not describe that as minimal change, no, sir.

17 Q. And District 7 in your plan retains 56 percent of the
18 benchmark district; is that right?

19 A. Yes.

20 Q. And would you describe that as the least changed plan for
21 District 7?

22 A. I would not describe it that way, no, sir.

23 Q. All right. Let's scroll down to the next page and talk
24 about county boundaries. And I believe you mentioned that the
25 Senate Amendment 1 has more county splits than Senate

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1 Amendment 2; is that right?

2 A. Yes.

3 Q. And if we keep scrolling down, you mentioned minimizing
4 divisions of municipal boundaries; is that right?

5 A. Yes, sir.

6 Q. And you mention here several municipalities that are
7 split in either plan; is that right?

8 A. Yes, sir.

9 Q. And in your view, as you stated, municipal boundaries
10 often do not follow precinct or county lines, right?

11 A. That is unquestionably true, yes, sir.

12 Q. And counties administer elections in precincts, right?

13 A. Yes, sir.

14 Q. And so that could be a reason to favor keeping precincts
15 and counties whole rather than municipalities; is that right?

16 A. Yes, sir.

17 Q. And, in fact, you provide two different categories of
18 municipality splits, those that involve county split and those
19 that don't, right?

20 A. I would be a little bit more precise with that in order
21 to correctly answer your question. I made a distinction
22 between a municipal split that only occurs as a result of a
23 county split versus a municipal split that occurs for another
24 reason.

25 So, for instance, Irmo and Columbia in 2A are both split,

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1 but Columbia is only split by the Richland-Lexington line,
2 whereas, Irmo 2A is split by a precinct line within Richland
3 County. So, I just want to be really precise about answering
4 your question. But I think, generally speaking, that you
5 characterized my position accurately.

6 Q. Thank you. I appreciate that position. And I think you
7 testified earlier -- you talk about here on page five there
8 are municipal divisions of this nature in Senate Amendment 2
9 in Greenville, Laurens, Clinton, Rock Hill, Irmo, and Goose
10 Creek; is that right?

11 A. Yes, sir.

12 Q. And all of those are in Republican-leaning areas of the
13 state; is that right?

14 A. I don't think that it would be fair to characterize the
15 city of Greenville, the city of Rock Hill or the city of Irmo
16 as Republican leaning.

17 Q. But they're certainly in counties that are Republican
18 leaning, correct?

19 A. Irmo, not on the Richland side. The region of Greenville
20 County, where the city of Greenville is, not necessarily, no.
21 And Rock Hill, generally speaking, might be fairly
22 characterized as the Democratic part of York County.

23 Q. All right. Let's scroll down just to the next paragraph
24 if you can. And you say: Senate Amendment 1's municipal
25 divisions of this nature include Sumter, Columbia, Forest

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1 Acres, Charleston, North Charleston, Hardeeville, Scranton,
2 Simpsonville and Fountain Inn; is that right?

3 A. Yes, but I left out Hollywood.

4 Q. So you would add Hollywood to this list?

5 A. Yes, sir.

6 Q. Can you just explain to us what you mean by municipal
7 divisions of this nature? What's the antecedent of this
8 nature?

9 A. A municipal split where the split doesn't occur solely as
10 a function of a county line being split. So, an example of
11 this would be if you have a district boundary, say, at Hampton
12 and Beaufort, the town of Yemassee is on the boundary of
13 Hampton and Beaufort. So, if you split Hampton and Beaufort,
14 you're splitting the town of Yemassee, which is regrettable,
15 but that split happens there only as a function of those
16 counties being split.

17 If one, on the other hand, were to split a municipality
18 that's entirely within one county, that would be different.
19 If one were to, say, split Irmo, as I do in 2A, that Irmo
20 split, while Irmo is in both Lexington and Richland, the
21 Richland portion of Irmo is split. So, that municipal split
22 isn't solely a function of a county boundary. I hope that
23 answers it adequately.

24 Q. And both Charleston and North Charleston span over three
25 counties, I believe, correct?

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1 A. I think that's right.

2 Q. And then the North Charleston portion in Charleston
3 County is wholly within District 6 of the enacted plan,
4 correct?

5 A. I'd have to look at it to be a hundred percent sure. I
6 think it's fair to ask about those. I think that I identified
7 splits occurring within a county where the split wasn't just a
8 function of a county split.

9 Q. Let's go to the next page, if we can, VTD splits. And I
10 think you mentioned these different split numbers. And
11 there's just one thing in particular I'd like to ask you
12 about.

13 A. Yes, sir.

14 Q. You say 11 of 13 precinct divisions for Senate Amendment
15 1 occur on the boundaries of District 6. Did I read that
16 correctly?

17 A. Yes, sir.

18 Q. And have you investigated whether seven of those VTD
19 splits in Dorchester are due to the fact that the District 6
20 line follows the House District 98 line?

21 A. I have not investigated that. I did notice that there
22 were a large number of precinct splits in Dorchester, but I
23 didn't realize that that was the reason for it. That's
24 interesting.

25 Q. If we can scroll down a little bit more. You included in

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1 this report an appendix, if i recall correctly. It's going to
2 be one more page down. And the appendix addresses the third
3 *Gingles* factor; is that right?

4 A. Yes, sir.

5 Q. And you conducted an analysis and you determined that
6 white bloc voting is not present in the Harpootlian Plan's
7 District 6, correct?

8 A. I concluded that it wasn't sufficient to enable that
9 group usually to defeat the minorities' preferred candidate.

10 Q. And you did not conduct an ecological inference to reach
11 that conclusion, did you?

12 A. No, I didn't. I would have loved to have had the time to
13 do that, but I didn't.

14 Q. Or a regression analysis?

15 A. If I had the time to do so, I would have loved to have
16 done so, but I didn't. If I had been advising the state as an
17 attorney, I certainly would have said you got to do that
18 before you enact, but I wasn't. And I didn't have the time or
19 resources to do so. But i really wish I'd been able to. I'd
20 love to.

21 Q. About how long -- so, as I understand it, you looked at
22 some election returns in the relevant areas; is that right?

23 A. Yes.

24 Q. And about how long did it take you to do this particular
25 analysis?

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1 A. Not very long, because the building blocks were counties.
2 So, the reason I did this is the guideline calls for
3 compliance with Section 2, and I think mentions *Thornburg vs.*
4 *Gingles* because I didn't have an RPV to share, and I very much
5 would have liked to have been able to do that. And if I had
6 been advising a state actor like a state government or a
7 county government or local government, I certainly would have
8 advised that. But since I didn't have that, I wanted to
9 provide at least some feedback on Section 2 compliance, which
10 is why I provided this.

11 And so, since counties were building blocks, it was
12 pretty easy to get county election results. And it was pretty
13 easy to identify a minority-preferred candidate using
14 homogenous precinct analysis, which is pretty easy to do.
15 You're just looking at 90 percent precincts one way or the
16 other.

17 Q. And did you ever conduct this kind of analysis on the
18 enacted plan?

19 A. No, I didn't.

20 Q. I'd like to run through these factors one more time if we
21 can scroll back up to page four of the PDF, page three of your
22 written testimony. I noticed here that you're comparing the
23 enacted plan to Senate Amendment 2A; is that right?

24 A. Yes, sir.

25 Q. And you did not here compare the enacted plan to the

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1 benchmark plan, did you?

2 A. No. The goal of the written testimony was to compare 2A
3 with what was then Amendment 1 before it was the enacted plan,
4 and so that's what I did.

5 Q. But you have reviewed the benchmark plan, right?

6 A. Yes.

7 Q. And you're aware that the benchmark plan like Senate
8 Amendment 1 uses water contiguity, right?

9 A. In some places, yes.

10 Q. Let's scroll down to the next category, which is
11 constituent consistency. And we've already discussed that the
12 --

13 A. I would say not as egregiously as Senate Amendment 1, I
14 think would be a fair answer to that.

15 Q. And we already discussed before that the enacted plan
16 preserves more of the benchmark districts than Senate
17 Amendment 2A, right?

18 A. Yes. That would be an accurate statement.

19 Q. Let's scroll down to the next page. County boundary
20 splits. The enacted plan performs better on county boundary
21 splits than the benchmark plan, right?

22 A. I believe so. If memory serves.

23 Q. Because there were 13 in the benchmark plan and 10 in the
24 enacted plan; is that right?

25 A. That sounds right.

ROBERT OPPERMANN - CROSS-EXAMINATION BY MR. GORE

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1 Q. And if we scroll down to VTD splits, the enacted plan,
2 again, performs better than the benchmark plan on this metric
3 as well, correct?

4 A. I think that's right. But in my written testimony, I was
5 comparing 2A to what was then Senate Amendment 1, and that was
6 the goal of my written testimony.

7 Q. Because the benchmark plan had 52 split VTDs, and the
8 enacted plan has 13; is that right?

9 A. I don't think that was the number of split VTDs when the
10 plan was enacted. I think it was the case at the end of the
11 decade after some VTD lines had changed.

12 Q. But certainly amending the plan to get to 13 VTD splits
13 rather than 52 is improvement under the guidelines, right?

14 A. Yes. But what the guidelines call for is minimizing the
15 number of splits.

16 Q. But you certainly would agree with me that the enacted
17 plan performs better than the benchmark plan under the
18 Senate's own guidelines, right?

19 A. Relative to the number of VTD splits at the end of the
20 last decade, yes.

21 Q. And also the number of county splits, correct?

22 A. Yes.

23 Q. And also some of the other factors we've just talked
24 about, right?

25 A. I would have to compare the maps and go through them one

ROBERT OPPERMANN - CROSS-EXAMINATION BY MR. GORE

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1 by one to be sure. But I'm not in a position to disagree with
2 you right now without doing that.

3 Q. Fair enough. Let's go to Plaintiff's Exhibit 114,
4 PX-0114. This is the transcript of the hearing at which you
5 testified. I believe you mentioned that you testified in
6 person before the Senate; is that right?

7 A. Yes, sir.

8 Q. Let's see if can scroll down to page 20.

9 A. The Senate's redistricting subcommittee.

10 Q. Plaintiffs' Exhibit 114. That's right, the subcommittee.
11 I admire your precision. So, thank you.

12 I'd like to ask you to read a portion of your testimony,
13 and then I'd like to ask you questions about it. It starts on
14 line 7. Can you see that on your screen? Would you mind
15 reading that through about 21, line 10?

16 A. Seven through 21 you said?

17 Q. Yeah. Page 20, line 7, through page 21, line 10.

18 A. Okay. "As to communities of interest, the whole county
19 map" -- which refers to what was at that time 2 -- "more
20 closely hues to the regions, the distinct regions, of the
21 state, specifically by drafting District 1 and District 7 with
22 minimal splits. And, again, there's only six county splits
23 statewide in this plan. The coastal region is more cleanly
24 and directly represented. By having two districts that
25 represent the high-growth corridor of the upstate, that region

1 is directly represented. The midlands is directly
2 represented. The north central portion of the state is
3 directly represented. Moreover, the map, as drawn closely,
4 hues to the traditional congressional districts in the history
5 of our state. For instance, District 1 is drawn very closely
6 to the old Mendel Rivers Mendel/Davis District. District 7 is
7 drawing hues very closely to the old Tommy Hartnett, Henry
8 Brown, first congressional service period of Congressman
9 Sanford district. The addition of the west central South
10 Carolina counties to the 2nd District connects those districts
11 with Aiken county, which were traditionally associated with
12 Aiken for decades. So in that sense the plan adheres closely
13 to communities of interest."

14 I think in line 6 there I meant to say "counties" rather
15 than "districts." I misstated.

16 Q. So, you would agree that preserving, or maintaining, or
17 reconstituting prior districts, respects communities of
18 interest, correct?

19 A. That would be one way of respecting communities of
20 interest.

21 Q. And the enacted plan does that with respect to the
22 benchmark plan, correct?

23 A. The enacted plan is much closer to the benchmark plan
24 than 2A.

25 Q. And do you know who Mendel Rivers was?

ROBERT OPPERMANN - CROSS-EXAMINATION BY MR. MATHIAS

1023

1 A. He was a Congressman who represented the 1st
2 Congressional District.

3 Q. And we're here today in the J. Waites Waring Courthouse.
4 Are you familiar with any of his history with Judge Waring?

5 A. I know who Congressman Davis was and I know who Judge
6 Waring is.

7 Q. How about between Congressman Rivers and Judge Waites
8 Waring?

9 A. I don't know for sure, but I knew that Judge Waring was
10 considered a controversial figure amongst the political
11 establishment of Charleston in his time. And I would suspect
12 that his relationship was, perhaps, not great with Congressman
13 Rivers. But I could be wrong about that. I just don't know
14 for sure.

15 Q. And here on pages 20 and 21, you don't say anything about
16 District 6; is that right?

17 A. In referring to the midlands being directly represented,
18 I'm specifically referring to that.

19 Q. But when you go through the districts in particular, the
20 1st, the 7th and the 2nd, you don't include the 6th in that?

21 A. That's correct.

22 MR. GORE: We have no further questions, your Honor.

23 THE COURT: Thank you.

24 **CROSS-EXAMINATION**

25 **BY MR. MATHIAS:**

ROBERT OPPERMANN - CROSS-EXAMINATION BY MR. MATHIAS

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1 Q. Mr. Oppermann, my name is Andrew Mathias. I'm here on
2 behalf of the House Defendants.

3 A. Hey, Mr. Mathias.

4 Q. You used to be a consultant for the House Democratic
5 Caucus, right?

6 A. I have, on a couple of occasions, served in that
7 capacity, yes, sir.

8 Q. Okay. And I couldn't go back any further because I ran
9 out of time. But from 2018 forward, is it not true that you
10 gave 43 political donations all to Democrats?

11 A. I don't know if they were all to Democrats. I think I
12 probably gave some to nonpartisan candidates. But I wouldn't
13 be surprised if I gave that number of contributions.

14 Q. Well, would you have any reason to disagree with me if,
15 according to the Federal Election Commission records and state
16 and local records, that all 43 of those were Democrats?

17 A. No, I wouldn't have any reason to disagree with you.

18 Q. Okay. And did you testify before the House Ad Hoc
19 Redistricting Committee with respect to the congressional
20 redistricting process?

21 A. The ad hoc redistricting committee?

22 Q. Did you testify before any House committee with respect
23 to the congressional redistricting process?

24 A. I don't believe so, no.

25 MR. MATHIAS: That's all I've got.

ROBERT OPPERMANN - REDIRECT EXAMINATION BY MR. HINDLEY 1025

1 THE COURT: Thank you, Mr. Gore.

2 Anything on redirect?

3 MR. HINDLEY: Couple questions, your Honor.

4 THE COURT: Okay.

5 **REDIRECT EXAMINATION**

6 **BY MR. HINDLEY:**

7 Q. Hello, Mr. Oppermann. So, in drawing a map, did you have
8 to compromise any guidelines in keeping Charleston whole?

9 A. I think the choice to keep Charleston whole, you're
10 picking what county you want to split at that point. You can
11 get a plan that only has six county splits whether you keep
12 Charleston whole or not. But in keeping Charleston whole,
13 you're choosing to split some other county, rather than
14 Charleston itself.

15 Q. And Mr. Gore asked you about city splits within county
16 splits. Do you remember that?

17 A. Yes.

18 Q. Did Senate Amendment 1 do both in Sumter County?

19 A. Yes.

20 Q. And did it do so on racial lines?

21 A. This is important to keep in mind in answering a question
22 like that. Where a fence is built, the precise land that it's
23 on is less important than what it's separating. So, keep that
24 in mind as I answer that question, because that's how I think
25 of it and that's what I mean when I answer.

ROBERT OPPERMANN - REDIRECT EXAMINATION BY MR. HINDLEY 1026

1 Generally speaking, yes, in the sense that the tendency
2 was to include the more African-American portion of this or
3 that municipality in 6 rather than the district that it
4 bordered. Now, to go through municipality by municipality and
5 answer that question precisely, I would need to have data in
6 front of me that I don't have right now.

7 But does that answer your question?

8 Q. Yes, Mr. Oppermann. Thank you.

9 So, when you had your meeting with the Democratic
10 senators, you were told not to prioritize the party's
11 advantage over the guidelines in keeping Charleston whole?

12 A. That is correct.

13 Q. And if you were to prioritize a Democratic advantage over
14 the guidelines, is it possible to create a map that benefits
15 the Democrats more?

16 A. Absolutely.

17 Q. And could you have drawn a four-three Democratic map?

18 A. Yes.

19 Q. And Senate Amendment 2A, does that do that?

20 A. No.

21 MR. HINDLEY: No further questions.

22 THE COURT: Thank you. You may step down, sir.

23 THE WITNESS: Thank you.

24 JUDGE GERGEL: Call your next witness.

25 MR. FREEDMAN: Plaintiffs call Dr. Jordan Ragusa.

DR. JORDAN RAGUSA - DIRECT EXAMINATION - BY MR. FREEDMAN 1027

1 **JORDAN RAGUSA, having been first duly sworn,**
2 **testified as follows:**

3 **DIRECT EXAMINATION**

4 **BY MR. FREEDMAN:**

5 Q. State your full name for the record.

6 A. Dr. Jordan Ragusa.

7 Q. Where are you presently employed?

8 A. I'm an associate professor in the political science
9 department at the College of Charleston.

10 Q. Just up the road?

11 A. Yes.

12 MR. FREEDMAN: Consistent with the Court's prior
13 guidance, we are offering Dr. Ragusa as an expert in
14 congressional elections, South Carolina politics, and
15 quantitative methods and data. We're prepare to establish a
16 record on that if there are objections.

17 JUDGE GERGEL: Let's go again. Congressional
18 elections --

19 MR. FREEDMAN: South Carolina politics.

20 MR. TYSON: I'm sorry. The first one was
21 congressional what?

22 MR. FREEDMAN: Congressional elections, South
23 Carolina politics, and quantitative methods and data.

24 JUDGE GERGEL: Is there an objection beyond what was
25 previously asserted on the *Daubert* motion?

DR. JORDAN RAGUSA - DIRECT EXAMINATION - BY MR. FREEDMAN 1028

1 MR. TYSON: No, sir. Though we continue to raise the
2 same objections we raised moments ago for the record.

3 JUDGE GERGEL: And your last one was quantitative
4 methods and what?

5 MR. FREEDMAN: Quantitative methods and data.

6 JUDGE GERGEL: Data. Oh, very good.

7 MR. MATHIAS: Your Honor --

8 JUDGE GERGEL: Yes.

9 MR. MATHIAS: -- on behalf of the House, being an
10 expert of data is quite broad.

11 JUDGE GERGEL: Mr. Mathias, let me just say he may be
12 an expert on what that data means.

13 Do you want to explain what that means being an
14 expert on qualitative methods and data?

15 MR. FREEDMAN: Certainly. And I'm happy to ask Dr.
16 Ragusa foundational questions, but Dr. Ragusa has a particular
17 expertise in use of data in political science to quantitative
18 data and assessment of quantitative data.

19 JUDGE GERGEL: The application of quantitative data
20 and quantitative methods, I think that would be fine. As long
21 as he's not an expert on the encyclopedia or something, which
22 would be all the data in the world or the Internet.

23 I'm going to overrule the objections. We've
24 previously addressed this issue in the *Daubert* order. The
25 Court recognizes Dr. Ragusa as an expert on congressional

DR. JORDAN RAGUSA - DIRECT EXAMINATION - BY MR. FREEDMAN 1029

1 elections, South Carolina politics, and quantitative methods,
2 and the application of data to those methods. Okay.

3 MR. FREEDMAN: Thank you, your Honor.

4 BY MR. FREEDMAN:

5 Q. Dr. Ragusa, could you tell us what your understanding of
6 what this lawsuit is about?

7 A. My understanding is that the plaintiffs allege that the
8 redrawn map was unfairly comprised to target Black voters.

9 Q. Okay. And what questions have you been asked to address?

10 A. I was asked to ascertain whether race was a factor in the
11 composition of the redrawn districts. Specifically, I was
12 asked to attempt to disentangle the effects of both
13 partisanship and race.

14 Q. And how did you go about answering that question?

15 A. I collected data on how the district lines were shifted
16 by mapmakers in this round of redistricting and I also
17 collected data on the demographics of the precincts and their
18 partisanship to see whether or not those factors explain the
19 changes that mapmakers made.

20 Q. Why did you approach the question in this way?

21 A. For a few reasons. One is that I wanted to look at the
22 choices that mapmakers made in a sober or neutral manner using
23 data. A lot has been said about the redrawn districts, their
24 pros and cons of what a good map should look like, what a bad
25 map would look like. And I wanted to take a step back and

DR. JORDAN RAGUSA - DIRECT EXAMINATION - BY MR. FREEDMAN 1030

1 just look at what the data show.

2 Also, I thought the question of how the map was changed
3 was particularly interesting. A lot of the discussion about
4 the redrawn map is that it is consistent with the map that was
5 drawn ten years ago. And that's certainly true, if we zoom
6 out, at the state level. But when we adopt that kind of more
7 granular approach, what we see is that there was actually a
8 lot of change beneath the surface.

9 Q. Dr. Ragusa, did you prepare a report in this case?

10 A. I did.

11 MR. FREEDMAN: Permission to approach to hand the --

12 JUDGE GERGEL: You're permitted.

13 MR. FREEDMAN: I'm handing the witness Plaintiff's
14 Exhibit 19.

15 JUDGE GERGEL: Very good.

16 **BY MR. FREEDMAN:**

17 Q. Dr. Ragusa, do you recognize Plaintiffs' Exhibit 19?

18 A. I do.

19 Q. What is it?

20 A. This is my report.

21 Q. Okay. And did you prepare some demonstrative slides in
22 this?

23 A. I did.

24 Q. I want to ask you to -- what you found in this case
25 broadly.

DR. JORDAN RAGUSA - DIRECT EXAMINATION - BY MR. FREEDMAN 1031

1 MR. FREEDMAN: Before we get into the details, could
2 we pull up slide one?

3 THE WITNESS: So, my findings are as follows: First,
4 race was a significant factor in the composition of the
5 redrawn map. In my analysis, the BVAP variable is
6 statistically significant in 12 of the 18 models that I
7 estimated. Because this analysis controls for partisanship,
8 the results cannot be dismissed as a simple byproduct of
9 partisan gerrymandering.

10 Also, the BVAP variable in my analysis is
11 substantively large in magnitude in a number of instances.
12 And this indicates that race was not only statistically
13 significant, but also substantively meaningful in a number of
14 cases.

15 And my ultimate conclusion is that race factored in
16 the design of five of the seven districts. Those are CDs 1,
17 2, 3, 5 and 6.

18 **BY MR. FREEDMAN:**

19 Q. Thank you, Dr. Ragusa. I want to walk through your
20 methodology in some detail just so the panel understands what
21 you did and what you did not do. What's the basis of your
22 analysis?

23 A. So, the basis of my analysis are the 2,400 VTDs in the
24 state of South Carolina. And what I did is looked at how they
25 were moved around by mapmakers in the redrawn map. And, as I

DR. JORDAN RAGUSA - DIRECT EXAMINATION - BY MR. FREEDMAN 1032

1 mentioned earlier, I compared that to both the race and the
2 partisanship of those VTDs.

3 Q. And just so the record is nice and clear, what is a VTD?

4 A. A VTD is a voter tabulation district. It's otherwise
5 known as a precinct.

6 Q. Why would you look at voter tabulation districts in this
7 context?

8 A. For a few reasons. One is that they are the most
9 granular geography where we can obtain both partisan and race
10 data. Those are the two key factors in my analysis. And
11 those are the two key factors that I was charged with
12 examining. But also VTDs receive special consideration from
13 mapmakers. They are listed in the State's guidelines as
14 political subdivisions that are to be respected. And
15 generally VTDs are not to be split.

16 Q. And how did you obtain the data that you used for VTDs in
17 your analysis?

18 A. From a mix of sources. On the one hand, the state
19 publishes data on census blocks and which census blocks --
20 which districts those census blocks were drawn into under the
21 redrawn map. And then the United States census has data on
22 how those census blocks fit into the prior map. So, it's a
23 matter of merging those two sources and then comparing them.

24 Q. And at a very basic level, can you explain how you
25 determined whether race was a factor and how VTDs were moved?

DR. JORDAN RAGUSA - DIRECT EXAMINATION - BY MR. FREEDMAN 1033

1 A. So, I have data on the racial composition of the VTDs in
2 addition to their partisanship. And I perform a statistical
3 analysis to see whether there's a systemic pattern in which
4 VTDs were selected for the redrawn districts with respect to
5 race.

6 Q. How are you measuring race in this analysis?

7 A. In this analysis I'm using the census data. And the
8 census asked individuals to identify their race. And so, in
9 the way that I measure it, it's simply a count of the number
10 of individuals in a VTD that list Black as their race.

11 Q. Do you have a term to refer to that?

12 A. I refer to that as the BVAP, the Black voting age
13 population.

14 Q. And what other factors did you consider in your analysis?

15 A. Both partisanship and precinct size.

16 Q. Why is it important to take partisanship into
17 consideration?

18 A. So, partisanship and race correlate quite highly in the
19 state of South Carolina. And so, one possibility is that any
20 correlation between race and the VTDs that were selected could
21 be, instead, the effect of partisanship. So, I wanted to
22 guarantee that any time I say that race is a factor that takes
23 into account the possibility that partisan motivations were
24 actually at work.

25 Q. Why was it important for you to take precinct size into

DR. JORDAN RAGUSA - DIRECT EXAMINATION - BY MR. FREEDMAN 1034

1 consideration?

2 A. My measure of the racial composition of the VTDs is a
3 count of the number of Black voters. And so by controlling
4 for precinct size, I wanted to ensure that mapmakers weren't
5 simply selecting precincts based on whether they were
6 numerically large or small.

7 Q. How did you conduct the analysis to control for the three
8 factors you've identified?

9 A. I used a technique called "multivariant logistic
10 regression."

11 Q. And what is that?

12 A. So, the multivariant part refers to the fact that we have
13 multiple independent variables in the analysis. Independent
14 variables are otherwise known as predictor variables. In this
15 case, there are three: Race, partisanship and precinct size.
16 And the logistic refers to the fact that the dependent
17 variable being analyzed is a one-zero dependent variable, that
18 is, whether a VTD was selected or not selected by mapmakers.

19 Q. Is multivariant logistic regression a common technique in
20 these social sciences?

21 A. Yes. It's one of the most common techniques in all of
22 the social sciences.

23 Q. And why did you use that technique here?

24 A. In this case, it is the appropriate statistical test
25 based on the question that I'm attempting to answer and the

DR. JORDAN RAGUSA - DIRECT EXAMINATION - BY MR. FREEDMAN 1035

1 nature of the data.

2 Q. Okay. In your report, you describe three models. I
3 believe you prepared another demonstrative for this.

4 A. Correct.

5 MR. FREEDMAN: Stephen, can we put up slide two?

6 BY MR. FREEDMAN:

7 Q. Can you tell us about model one?

8 A. So, model one adopts the methodology known as "the county
9 envelope." Here, the question is which precincts were moved
10 into the redrawn district. And what it does is it looks at
11 all of the precincts that surround the district within a
12 county in which the district previously sat.

13 Q. You used the term "county envelope." Can you describe
14 what that term refers to?

15 A. Sure. So, if a district sits partially within a county,
16 all of the precincts that are outside of the existing
17 district's boundaries are considered part of that county
18 envelope. In other words, they're just outside the district
19 and they are those that could be added, and while mapmakers
20 stay within the same county.

21 Q. Where did the idea of the county envelope come from?

22 A. So, several people have used similar approaches. But
23 Dr. Stephen Ansolabehere, at Harvard, has used this
24 methodology in several papers. One of them that's considered
25 the seminal article is the 2000 piece in the American Journal

DR. JORDAN RAGUSA - DIRECT EXAMINATION - BY MR. FREEDMAN 1036

1 of Political Science. He and his co-authors used counties and
2 how counties were shifted around during redistricting to
3 understand how redistricting affects election outcomes.

4 Q. Do you remember who his co-authors on that article were?

5 A. James Snyder and Charles Stewart.

6 Q. And who are they?

7 A. They are also well-established professors. Charles
8 Stewart is at MIT, and James Snyder is at Harvard.

9 Q. Was that article peer-reviewed?

10 A. It was. It appeared in the American Journal of Political
11 Science.

12 Q. And can you describe the theory behind the county
13 envelope?

14 A. Sure. In order to understand the choices that mapmakers
15 made, we need a baseline of the VTDs that could have
16 reasonably been selected for the redrawn district. And to do
17 that, I look to traditional principles of redistricting. In
18 this case, the county envelope consists of VTDs that are
19 geographically proximate to the prior district. They are ones
20 that, if selected, would comply with compactness and
21 contiguity. They often have demographic features in common
22 with the district. And so, in that sense, there's a lot of
23 communities of interest in the VTDs in the county envelope.

24 Q. I believe you prepared a demonstrative to help explain
25 this?

DR. JORDAN RAGUSA - DIRECT EXAMINATION - BY MR. FREEDMAN 1037

1 A. I did.

2 MR. FREEDMAN: Can we see slide three?

3 BY MR. FREEDMAN:

4 Q. What is slide three, and how does it help explain the
5 county-envelope concept?

6 A. So, in this slide we are looking at the contours of CDs 2
7 and 6 in Richland County. CD 6 is in yellow, and CD 2 is in
8 blue. What's important here are the red squiggly polygons.
9 Those are the VTDs in Richland County. And so in the case of
10 CD 2, which had to gain population this round of
11 redistricting, the question is: Which of those precincts in
12 Richland County that were in CD 6 were selected?

13 Q. Okay. And just so we're clear, why are you examining
14 VTDs in a county that are outside the district?

15 A. So, in cases where a district had to gain population, or
16 in an effort to rebalance a district mapmakers added new
17 precincts to a district, we need to know which ones are
18 geographically proximate, have communities of interest in
19 common. And so, all of these precincts are in the immediate
20 vicinity of the district. And for that reason, they are
21 logical choices.

22 Q. I believe you discussed earlier that the county envelope
23 only extends to VTDs in the counties that were part of the
24 previous district. Does your analysis account for VTDs that
25 may have been drawn into the district or extending to a new

DR. JORDAN RAGUSA - DIRECT EXAMINATION - BY MR. FREEDMAN 1038

1 county?

2 A. It does. In the rare circumstance that mapmakers went
3 into a brand-new county to grab VTDs, I include those cases in
4 my analysis.

5 MR. FREEDMAN: Stephen, can we go back to slide two?

6 BY MR. FREEDMAN:

7 Q. Dr. Ragusa, can you please tell us about model two?

8 A. So, model two then looks at the opposite phenomenon.

9 These are the VTDs that were drawn out of the district during
10 redistricting. So, here, the population of interest is all of
11 the precincts that already existed within the district.

12 Q. And to clarify, do you use the county envelope concept at
13 all in model two?

14 A. No. Again, this just looks at all of the precincts that
15 were already in the district.

16 Q. And what is model three?

17 A. Model three then combines both of those approaches. It
18 looks at the precincts that were moved into the district from
19 the county envelope and kept in the existing district. And so
20 in theory this model looks at the full range of choices that
21 were available to mapmakers.

22 Q. And when you run these analyses -- models one, two and
23 three -- what are you looking for in the results?

24 A. I'm looking for two things. One is the sign on the
25 coefficient on the BVAP variable. The sign of the coefficient

DR. JORDAN RAGUSA - DIRECT EXAMINATION - BY MR. FREEDMAN 1039

1 tells us whether there's a positive effect or a negative
2 effect. In other words: Was the Black population a predictor
3 of whether a precinct was more or less likely to be selected?
4 And then, second, I'm looking to see whether or not the
5 results are statistically significant.

6 Q. Okay. And when you look to see whether results are
7 statistically significant, what does that mean?

8 A. When a result is statistically significant, we mean that
9 there is a clear and consistent pattern in the data, that the
10 pattern is not due to idiosyncratic choices or random
11 variation, that we can be fairly certain that the pattern is
12 what we would call meaningful.

13 Q. What is the threshold for statistical significance?

14 A. Most social scientists use the 95-percent confidence
15 threshold, that is, we can be 95 percent certain that the
16 results arose due to something systematic, not random chance,
17 and thus rejecting all hypothesis of no relationship.

18 Q. Are there other measures of statistical significance?

19 A. Sure. Some researchers use different P values.
20 Researchers might use a P value of .01. Others might use a P
21 value of .1. But the conventional threshold of the social
22 sciences is a P value of .05.

23 Q. And what is the value of a statistical analysis like this
24 in a redistricting case?

25 A. It creates a fairly high hurdle for any evidence to

DR. JORDAN RAGUSA - DIRECT EXAMINATION - BY MR. FREEDMAN 1040

1 overcome. We assume, as social scientists, that the null
2 hypothesis of no relationship is true. It's akin to a
3 presumption of innocence. And so, what we want to see is that
4 there is a clear and consistent pattern before we say that we
5 have found something that's meaningful.

6 Q. Okay. Let's turn to your results. Why don't we start
7 with CD 1.

8 MR. FREEDMAN: Stephen, can you pull up PX-20, which
9 is -- and we'll start with the table at the top.

10 BY MR. FREEDMAN:

11 Q. This is, Dr. Ragusa, page eight of your report, PX-19.

12 So, Dr. Ragusa, you've got a series of these analyses in
13 your report. We're going to walk through in some detail just
14 so everybody understands what it is, and we'll cover the rest
15 more quickly?

16 Can you tell us what Table 1 shows?

17 A. So, Table 1 contains the results for the 1st
18 Congressional District. In the left column we have the three
19 variables in my analysis, the Biden vote, a measure of
20 partisanship, the BVAP -- or the Black voting age
21 population -- and the total VAP, which is a measure of the
22 total population in the precinct.

23 At the bottom, we have the N, or the sample size. Those
24 are the number of precincts that are being examined in each of
25 the three models. In the middle are the statistical results

DR. JORDAN RAGUSA - DIRECT EXAMINATION - BY MR. FREEDMAN 1041

1 for the three different models. Those tell us whether Black
2 voters were more or less likely to be added to the redrawn
3 district and then, again, whether that result is statistically
4 significant or not.

5 Q. And just so we're clear, let's walk through the three
6 variables and what they each represent.

7 A. Sure. So, the Biden vote is a measure of the total
8 number of people in the precinct that voted for Joe Biden in
9 the 2020 election. That is my measure of partisanship. BVAP
10 is the Black voting age population. That is a raw count of
11 the number of Black persons of voting age in the precinct.
12 And then total VAP is the total population size of the
13 precinct.

14 Q. Okay. And then the N at the bottom, what does that
15 represent?

16 A. That is the sample size. So, in model one in this
17 instance, the 133 is the total number of precincts that were
18 outside CD 1 in the county envelope. 369 in model two is the
19 total number of precincts in CD 1 prior to redistricting. And
20 then 502 is just those two figures added together.

21 Q. How robust are these sample sizes?

22 A. Very robust. These are large sample sizes, certainly
23 large enough to permit a statistical analysis.

24 Q. And then the columns as you go across, you've got your
25 three models, right?

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1 A. Correct.

2 Q. Now, underneath or next to some of these numbers, you've
3 got different numbers with an asterisk. Can you just explain
4 what the asterisks represent?

5 A. Yeah. The way that social scientists typically denote
6 statistical significance is with stars. In this case three
7 stars indicates a statistically significant result at the .01
8 level, that's 99 percent confidence. Two stars indicates a P
9 value of .05. That's 95 percent confidence. And then one
10 star would indicate what we often call a marginally
11 significant result. That is something that is significant at
12 the 90-percent confidence level.

13 Q. Okay. And why did you include results at the 90-percent
14 confidence level?

15 A. For a few reasons. P values represent a continuum. In
16 some ways there's little difference between a P value of .051
17 and .049. And so, a result that is significant at the .1
18 level is still marginally significant. It is close to
19 statistical significance. And so, often researchers want to
20 note that as something that's interesting even though it
21 doesn't cross the .05 threshold. Also, this is the default in
22 the statistical routine that I used.

23 Q. Okay. Now, I want to have you walk us across each of the
24 models and what we found. Why don't we start with model one.

25 A. Okay. So in model one, when we look at the BVAP

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1 variable, it is negative, which, in this case, would indicate
2 that precincts with a large Black voting age population were
3 less likely to be moved into the redrawn 1st congressional
4 district. However, here, the result is not statistically
5 significant at any threshold.

6 Q. And for model two?

7 A. Looking at model two, the BVAP variable is positive and
8 statistically significant. Because it's positive, that
9 indicates the precincts with a large Black voting age
10 population were more likely to be moved out of the redrawn
11 congressional district, and that's significant at the .01
12 level.

13 Q. Okay. And then model three?

14 A. Model three is negative and statistically significant.
15 The negative value indicates the precincts with a large Black
16 voting age population were less likely to be moved into the
17 district and kept in the district. And that, too, is
18 significant at the .01 level.

19 Q. Looking at Figure 1, what does this show?

20 A. So, these figures are a way of assessing the substantive
21 significance of the results. What they do is they plot the
22 prior effects of varying the black voting age population of a
23 precinct from 100 all the way up to 1,500. On the Y axis is
24 the probability that that VTD was selected. And so, in these
25 figures we're looking at the slope of the line. If there's a

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1 steep slope, it's either positive or negative. And that would
2 indicate that as the Black voting age population changes, so
3 too does the probability that was selected for the redrawn
4 district. And then we have the three models. The top panel
5 of the VTDs moved in, the middle panel is the VTDs moved out,
6 and the bottom panel is the VTDs moved in and kept it.

7 Q. And just so we're clear, the X axis, 100 to 1,500, that's
8 the number of Black persons of voting age in the precinct?

9 A. That's correct.

10 Q. Okay. And can you just explain what you're looking for
11 here with the slope?

12 A. Yeah. We can look at the numbers. I mean, the numbers
13 itself tell us the probability that a precinct of varying size
14 with respect to Black voting age population was selected.
15 But, ultimately we're looking for a slope. As I said, if
16 there's a steep slope, it indicates a substantively
17 significant effect of race. Conversely, if it was flat, that
18 would indicate no effect of race.

19 Q. Why don't we just walk through the panels one by one.
20 For your top panel, what does that represent?

21 A. So, that's the result from model one. Looking at the
22 VTDs that were moved into the 1st Congressional District, we
23 can see that the line is negative, indicating that as the
24 Black voting age population of a precinct increases, the
25 probability that it was selected for the redrawn CD 1 goes

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1 down. But we can see that the magnitude of the slope is not
2 particularly large in magnitude, recall earlier that that
3 result was not statistically significant.

4 Q. Okay. And what about the middle panel?

5 A. The middle panel looks at the VTDs that were moved out of
6 the redrawn 1st Congressional District. In this case, it's
7 positive and fairly steeply sloped. What that indicates is
8 that, as the black voting age population of a precinct
9 increases, the probability that that precinct was drawn out of
10 the district also increases.

11 Q. And can you explain the bottom panel?

12 A. So, in the bottom panel we're looking at the VTDs moved
13 in and kept in. That's model three. We see a negatively
14 sloped line that is very steep. In this case the results
15 indicate that as the Black voting population of a precinct
16 increases, the probability that it was moved into and kept in
17 the redrawn 1st Congressional District declines.

18 Q. Great. And can you just summarize your findings for CD
19 1?

20 A. So, overall, the result shows that Black voters were
21 excluded from the redrawn 1st Congressional District in both a
22 statistically significant and substantively significant
23 fashion.

24 Q. Okay. Let's turn to District 2.

25 MR. FREEDMAN: Stephen, can you pull up PX-21?

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1 BY MR. FREEDMAN:

2 Q. Dr. Ragusa, This is page nine of your report. What does
3 Table 2 show?

4 A. Table 2 contains the results for the 2nd Congressional
5 District.

6 Q. What did you find?

7 A. So, if we look at the BVAP variable in model one, it is
8 negative and statistically significant. What that tells us is
9 that in CD 2, Black voters were less likely to be moved into
10 the redrawn district. In model two, it's negative again, but
11 only marginally statistically significant. The negative
12 effect would tell us that Black voters were less likely to be
13 moved out of the redrawn district.

14 But when we look at the combined model, model three, we
15 see a negative and statistically significant result. That
16 indicates that Black voters were less likely to be moved into
17 the redrawn district and kept in.

18 Q. Great. Dr. Ragusa, what does Figure 2 show?

19 A. So here, too, we're looking at the size of the effect of
20 race according to the three models.

21 Q. And what did you find?

22 A. So, the key result here is in the bottom panel from the
23 combined model. Once again, like with CD 1, we see a
24 negatively sloped line that's fairly steep. And what that
25 indicates is that, as the black voting age population of a

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1 precinct increased, the probability that it was moved into and
2 kept in the redrawn district decreased.

3 Q. Can you summarize your findings for CD 2?

4 A. For CD 2, I conclude that race was a significant factor
5 in the design of the district. Specifically, Black voters
6 were excluded in a statistically significant and substantively
7 meaningful fashion.

8 Q. Okay. Let's turn to CD 3.

9 MR. FREEDMAN: Stephen, can you pull up PX-22?

10 BY MR. FREEDMAN:

11 Q. Dr. Ragusa, this is page 10 of your report. What were
12 your findings for CD 3?

13 A. For CD 3, the key result comes in model three. The BVAP
14 variable is positive and statistically significant. But what
15 that tells us is that in the 3rd Congressional District Black
16 voters were more likely to be moved in and kept in the redrawn
17 district.

18 Q. Okay. Let's turn to CD 4.

19 MR. FREEDMAN: Stephen, can you pull up PX-23?

20 BY MR. FREEDMAN:

21 Q. Dr. Ragusa, this is the analysis of page 11 of your
22 report. Dr. Ragusa, what were your findings for the CD 4?

23 A. So, CD 4, when we look at the BVAP variable, all three
24 are statistically insignificant. So, my conclusion here is
25 that race was not a factor in the design of the 4th

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1 Congressional District.

2 Q. Let's turn to CD 5.

3 MR. FREEDMAN: Stephen, can you pull up PX-24?

4 BY MR. FREEDMAN:

5 Q. And, Dr. Ragusa, this is page 12 of your report. What
6 did you find for CD 5?

7 A. In CD 5, the BVAP variable is statistically significant
8 in two of the three models estimated. In model one, the BVAP
9 variable is negative and statistically significant. That
10 indicates that Black voters were less likely to be moved into
11 the redrawn 5th Congressional District.

12 And then in model three, the combined model, it's, once
13 again, negative and statistically significant. That indicates
14 that Black voters were less likely to be moved in and kept in
15 the redrawn district.

16 Q. Okay. Let's go to CD 6.

17 MR. FREEDMAN: Stephen, can you pull up PX -- oh,
18 you've already got it -- PX-25?

19 BY MR. FREEDMAN:

20 Q. Dr. Ragusa, this is page 13 of your report. Dr. Ragusa,
21 what did you find for CD 6?

22 A. So, in CD 6, the BVAP variable is statistically
23 significant at the 95 percent confidence level in two of the
24 three models. In the case of CD 6, the BVAP variable is
25 statistically significant in two of the three models that were

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1 estimated. Those are models two and three.

2 In model two, the effect is negative, which indicates
3 that Black voters were less likely to be moved out of the
4 redrawn 6th Congressional District.

5 And in model three, the effect is positive, indicating
6 that Black voters were more likely to be moved in and kept in
7 the redrawn 6th Congressional District.

8 Q. For the final congressional district CD 7, there are no
9 tables and figures in your report, right?

10 A. Correct.

11 Q. Why is that?

12 A. CD 7 largely comprises whole counties, so, therefore,
13 there are very few observations in the county envelope, and it
14 was hardly redrawn during redistricting, so there are not a
15 significant number of observations to conduct an analysis.

16 Q. Dr. Ragusa, did you also prepare a second report in this
17 case?

18 A. I did.

19 MR. FREEDMAN: Permission to approach?

20 JUDGE GERGEL: Yes.

21 BY MR. FREEDMAN:

22 Q. I'm handing you what's been marked as Plaintiffs'
23 Exhibit 26. Dr. Ragusa, can you tell us what Plaintiffs'
24 Exhibit 26 is?

25 A. This is my rebuttal report of Mr. Sean Trende.

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1 Q. Why did you prepare a second report?

2 A. Plaintiffs' counsel asked me to read and review Mr.
3 Trende's analysis, and I did so.

4 Q. Okay. And you prepared a demonstrative summarizing your
5 conclusions for this.

6 MR. FREEDMAN: Stephen, can you pull up slide five,
7 please?

8 **BY MR. FREEDMAN:**

9 Q. What did you find broadly?

10 A. So, Mr. Trende makes several claims about the redrawn
11 map. I take issue with two of his claims, both with respect
12 to the 1st Congressional District. First, Mr. Trende claims
13 that the racial composition of the redrawn district was hardly
14 changed by mapmakers. And I believe that in his analysis he
15 uses a faulty statistic, specifically, he uses the wrong
16 denominator in one of his analyses.

17 And, second, Mr. Trende claims that CD 1 retains a large
18 share of its core and also that CD 1 continues to be anchored
19 in Charleston. I believe both of those claims are incorrect.

20 Q. Okay. Let's scroll down on the racial composition issue.

21 MR. FREEDMAN: Stephen, can you pull up slide six?

22 **BY MR. FREEDMAN:**

23 Q. So, Dr. Ragusa, can you explain your analysis of Mr.
24 Trende's claim regarding the racial composition of CD 1?

25 A. So, Mr. Trende compared the Black voting age population

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1 that was drawn out of CD 1 in both Charleston and Dorchester
2 County, and then compares that to the portions of the counties
3 as a whole. He shows that those two statistics are roughly
4 the same, and therefore, concludes that the redrawn map has no
5 effect on the 1st District's racial composition.

6 But my assessment of that is that it uses the wrong
7 denominator as even a misleading statistic on the grounds that
8 large portions of those two counties were in CD 6. Prior to
9 redistricting, in my view, a better comparison would be to
10 look at the portions of the counties that were actually within
11 CD 1. And when I recalculate Mr. Trende's estimates to
12 include just the portions that were within the 1st
13 Congressional District, we see a of 6.6 percent gap between
14 the Black voting age population that was drawn out of CD 1 and
15 the portion that was in the district prior to redistricting.

16 Q. Just to drill down a little bit, just explain what did
17 you mean by he used the incorrect denominator?

18 A. Yeah. So, he's not making a straightforward,
19 apples-to-apples comparison. And when the question is, what
20 happened to the Black voting age population, how were they
21 treated by the redrawn map, how were they moved between CD 1
22 and CD 6, his statistics give a misleading picture of what
23 actually happened.

24 Q. He's looking at the populations of Charleston and
25 Dorchester Counties without regard to where the line was

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1 before or where the line is now? Is that fair?

2 A. Correct, yeah. Another way of saying it is that by
3 including portions of the counties that were already in the
4 6th Congressional District, it inflates his baseline statistic
5 that he's comparing the BVAP down out to.

6 Q. Now, the Court has had some questions through these
7 proceedings specifically about Charleston County and what
8 happened to the Black population of Charleston County.

9 Can you explain the ramifications of using the wrong
10 denominator for Charleston County? I think you prepared a
11 slide on this as well.

12 MR. FREEDMAN: Stephen, can you pull up seven?

13 THE WITNESS: Sure. So, in my data, I have
14 information on the ratio of Black voters that were assigned to
15 both CD 1 and CD 6 in the old and new map. After
16 redistricting, what we see is that roughly 80 percent of the
17 Black voting age population in Charleston County was assigned
18 to CD 6. That compares to only about 20 percent that's been
19 assigned to CD 1. Immediately before redistricting, it was
20 roughly split 50/50 between CD 6 and CD 1. There's 49 percent
21 of the Black voting age population in CD 6 and 51 percent in
22 CD 1.

23 BY MR. FREEDMAN:

24 Q. So, is it fair to say that before under the old map, the
25 Charleston County Black population of voting age was about

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1 50 percent in CD 1 and 50 percent in CD 6?

2 A. Correct. In Charleston County the Black voting age
3 population was evenly balanced between CDs 1 and 6, and that's
4 no longer that case.

5 Q. What are the percentages now?

6 A. The percentages now are 79 percent and 21 percent in CD 6
7 and 1 respectively.

8 Q. So, your rebuttal report also talks about whether the
9 precinct's being moved on the basis of race as opposed to
10 partisanship. How do you know that this doesn't just reflect
11 a political gerrymander?

12 A. So, my original report made a number of these claims.
13 Specifically, I have an analysis that looks at the precincts
14 that were moved out of the redrawn districts. And in the case
15 of CD 1, I controlled third partisanship.

16 Q. Let's pull up PX-29, which is the table on page seven of
17 your report. Dr. Ragusa, what is Table 3 from your rebuttal
18 report. Can you just explain this?

19 A. Sure. This is model two, the VTDs that were moved out of
20 the 1st Congressional District. It's simply a reproduction of
21 what I found in my original report. Here, what we see is that
22 even when we control for the Biden vote in 2020, precincts
23 that had a large Black voting age population were more likely
24 to be moved out of the redrawn 1st Congressional District.

25 Q. Did you do any other analysis that looked at race and

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1 partisanship relative to this question?

2 A. I did.

3 MR. FREEDMAN: Stephen, could you pull up PX-30,
4 which is the figure on page eight of Dr. Ragusa's rebuttal
5 report.

6 BY MR. FREEDMAN:

7 Q. So, Dr. Ragusa, what does this figure show?

8 A. So this is another way of seeing the same result. Here,
9 we are looking at a scatter plot of the precincts that were in
10 the 1st Congressional District prior to redistricting. Each
11 of the dots in the figure represents a precinct. There are
12 more than 350 of them in the 1st Congressional District. I've
13 color-coded them red if they were drawn out of the district by
14 mapmakers and green if they were left in the 1st Congressional
15 District.

16 The two axes plot the Biden vote, that's the X axis; and
17 the Black voting age population, that's the Y axis. And then
18 what I've done is I've added reference lines at a thousand for
19 both of those values. So, any dot to the right of the
20 vertical reference line is a precinct in the 1st Congressional
21 District that had more than a thousand Biden voters. And any
22 dot above the horizontal reference line is a precinct that had
23 more than a thousand Black voters prior to redistricting.

24 Q. And how should we interpret the data that you present
25 here?

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1 A. So, there are a number of things that you can look at in
2 this figure. One particularly striking thing is, in the upper
3 right quadrant, those dots in the upper right quadrant are
4 VTDs that had more than a thousand Biden voters and more than
5 a thousand Black voters prior to redistricting. There's only
6 five of them in the 1st Congressional District prior to
7 redistricting, but four of the five were drawn out. That's
8 80 percent.

9 But another way to look at it is to look at either side
10 of the reference line. So, if we look to the right of the
11 vertical reference lines, those are precincts that have more
12 than a thousand Biden voters, there's roughly 20 of them on
13 the Figure. Forty percent were drawn out of the 1st
14 Congressional District.

15 Then if we look at the horizontal reference line for the
16 Black voting age population, there's about a dozen dots.
17 Sixty percent of them were drawn out of the 1st Congressional
18 District. So, in this sense, there's evidence that both race
19 and partisanship mattered in the design of the 1st
20 Congressional District. In this case, race had the larger
21 effect than partisanship.

22 Q. Just so that we're clear, can you compare the upper left
23 and lower right corners again?

24 A. Yeah. So, in the upper left quadrant, we are looking at
25 precincts that have fewer than a thousand Biden voters but

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1 more than a thousand Black voters. And then in the bottom
2 right quadrant, we're looking at precincts that have more than
3 a thousand Biden voters, but fewer than a thousand Black
4 voters.

5 Q. Okay. And you found a differential pattern regarding
6 this?

7 A. Correct. In this case, if we were to look in the bottom
8 left quadrant, the baseline is about 15 percent. In both of
9 those quadrants, the numbers exceed 15 percent by a large
10 margin.

11 Q. Did you do anything to check the robustness of these
12 results?

13 A. I did. The two reference lines at a thousand is simply
14 to make it easy to look at. And so, I looked at whether or
15 not the results would change if we used 500 Biden voters and
16 500 Black voters, and what I found was that the results were
17 identical.

18 Q. Let's turn to your core-retention analysis. Dr. Ragusa,
19 can you explain your analysis of Mr. Trende's claim regarding
20 core retention in CD 1?

21 A. Sure. So, Mr. Trende makes two claims. One is that the
22 83-percent core retention rate in CD 1 is evidence that the
23 district kept a large share of its voting population. And he
24 also claims that CD 1 has been anchored in Charleston for more
25 than a hundred years.

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1 My assessment of those statistics is, first, that,
2 although 82.8 percent sounds high, it actually translates to
3 140,000 residents that were drawn out of the 1st Congressional
4 District. That's in excess of the 88,000 that was necessary
5 to rebalance the district. And here, subtle deviations, like
6 the kind I just testified to, could have really consequential
7 effects on future elections in CD 1.

8 And then, second, when we look before redistricting in
9 Charleston County, 38 percent of CD 1 was in the 1st
10 Congressional District. That has declined to only 25 percent.
11 And now Charleston County ranks third for the most populace
12 portion of the 1st Congressional District.

13 Q. Why don't we take a look at PX-27, which is the table at
14 page four of your rebuttal report. What does PX-27 show?

15 A. So these are the data on the final point about whether
16 Charleston County is the anchor of the 1st Congressional
17 District. We have the six counties that comprise the district
18 either before or after redistricting.

19 In the left two columns we are looking at the data for
20 the old district. As I mentioned, prior to redistricting,
21 Charleston County topped the list with 38 percent of the
22 district's population. Beaufort and Berkeley County were a
23 distant second and third at 22 and 23 percent respectively.
24 But under the redrawn map, Charleston County now has only
25 25 percent of the redrawn district. That compares to

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1 27 percent for Beaufort County, and 30 percent for Berkeley
2 County.

3 Q. So, Dr. Ragusa, before we close, can you just recap your
4 opinions for the Court. We'll put slide one back up. Can you
5 just give us a recapture?

6 A. Sure. So, once again, I conclude that race was a
7 significant factor in the design of the redrawn map. In my
8 analysis, the BVAP variable is statistically significant in 12
9 of the 18 models that I estimated. And because this analysis
10 controls for partisanship, the results cannot be explained as
11 a byproduct of partisan redistricting.

12 Additionally, the BVAP variable in my analysis is
13 numerically large in several places, indicating that race was
14 not just statistically significant but substantively
15 significant as well. And I ultimately conclude that race
16 factored in the design of five of the seven districts. Those
17 are CDs 1, 2, 3, 5 and 6.

18 Q. Thank you, Dr. Ragusa.

19 MR. FREEDMAN: No further questions.

20 THE COURT: Okay. Cross-examination.

21 **CROSS-EXAMINATION**

22 **BY MR. TYSON:**

23 Q. Good afternoon, Dr. Ragusa. How are you doing?

24 A. Good. How are you?

25 Q. Good. I'm Rob Tyson, lawyer for the Senate. And I took

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1 your deposition in August I think, so I'm glad to see you
2 here.

3 I just want to make sure, but let me make sure I got the
4 topics right again. The three areas that you are qualified:
5 Congressional elections, South Carolina politics, and then
6 quantitative and application data. Did I miss a word in that
7 third area?

8 A. I believe that's right.

9 Q. Okay. None of those specifically address redistricting,
10 do they?

11 A. I don't agree with that.

12 Q. How so?

13 A. I think that when we talk about redistricting,
14 congressional elections are a fairly important subject matter.
15 Given the context of this case, I think South Carolina
16 politics is incredibly relevant to the matter at hand. And I
17 would say that my expertise in quantitative research methods
18 is fairly important, given that we're dealing with large
19 quantities of data.

20 Q. Do you teach a class on redistricting?

21 A. I don't teach classes on redistricting specifically. I
22 teach courses on the U.S. Congress, where we spend quite a bit
23 time talking about redistricting, several of the traditional
24 redistricting principles.

25 We spend time looking at South Carolina's congressional

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1 districts. My students write papers analyzing the districts.
2 I talk about redistricting even when I teach a course like
3 Intro to American Government. I've also taught courses on
4 South Carolina politics and elections, where we will talk
5 about congressional elections and presidential elections in
6 South Carolina, and redistricting comes up in those classes as
7 well.

8 Q. Presidential election stuff, that doesn't have anything
9 to do with redistricting, correct?

10 A. Correct. But we also talk about congressional elections.

11 Q. And do you have any formal education or training specific
12 to redistricting?

13 A. I believe I have qualifications and training that are
14 relevant to redistricting.

15 Q. What are those?

16 A. So, my second field at the University of Florida was
17 quantitative methods. I've been trained in data analysis and
18 how to use statistical computing to understand questions of a
19 political nature. Those are the tools and resources that I
20 used in this manner. My first field was American politics. I
21 took courses from people that were experts on redistricting.
22 All of those I believe are relevant here.

23 Q. I think at your deposition when we were -- you've been
24 deposed a couple times in this case, once in the House
25 litigation, correct?

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1 A. Correct.

2 Q. And then second in the -- for the congressional, correct?

3 A. Correct.

4 Q. And at one of those when you were asked about
5 redistricting, and you said, Well, you had experience of
6 somewhat related to redistricting; is that right?

7 A. I would say that my three areas of expertise all overlap
8 with redistricting in pretty important ways.

9 Q. And I think one of the other things you said at your
10 deposition was that when -- I think it was Mr. Moore that
11 asked you in your deposition. He said, What are you an expert
12 -- or how would you describe your expertise? And you said you
13 were more of a generalist, correct?

14 A. Correct.

15 Q. And how would you describe that? What does that mean?

16 A. So, there are academics who are specialists who focus on
17 one topic and very little else. And then there are
18 individuals, like myself, who often describe their expertise
19 as a generalist, that is, the study of a broader range of
20 topics. And so, the point that I made in the deposition is
21 that my three areas of expertise all converge on the topic of
22 redistricting.

23 Q. And in this case, we're look at trying to figure out how
24 the maps were drawn, correct? And what was the -- the
25 plaintiffs have alleged that the districts are improper,

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1 they're racial gerrymandering, or it's racial and
2 discriminatory intent, correct?

3 A. I would say that my analysis looks at the choices that
4 mapmakers made.

5 Q. But nothing on the front end, correct?

6 A. Can you define the front end?

7 Q. Yeah. Part of the discussion that the Court has asked us
8 a whole lot about is: How were the maps drawn? What were the
9 reasons? What were the criteria? What did the map drawers
10 do? I want to make sure your analysis doesn't have anything
11 to do with that. You're only looking at the effects after
12 it's done, correct?

13 A. Yes, that's true. I'm looking at the effects -- the
14 choices that mapmakers made. But what I would say is that we
15 can understand the process of how the map was redrawn by
16 looking at those choices on the back end.

17 Q. But you haven't gone to look more specifically at how the
18 map drawers -- what the criteria were that the map drawers
19 used, have you?

20 A. I've reviewed the guidelines that are on the State House
21 and Senate's website. I've followed press reports about the
22 redistricting process, if that's what you're referring to.

23 Q. You haven't written any books about redistricting,
24 correct?

25 A. Not about redistricting specifically, no.

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1 Q. You haven't written any articles about redistricting,
2 correct?

3 A. Not about redistricting, specifically, but about
4 Congress, congressional elections, and South Carolina
5 politics.

6 Q. And you haven't been qualified as an expert before on
7 redistricting, correct?

8 A. Correct.

9 Q. And I think you talked to -- in your CV you're writing a
10 couple of book chapters right now. Those don't have anything
11 to do with redistricting, correct?

12 A. Not about redistricting specifically.

13 Q. And I think you reported that you've had a dozen
14 peer-reviewed articles, and you've had a dozen of your
15 articles that have been peer-reviewed, correct?

16 A. That's correct.

17 Q. And none of those have anything to do with redistricting,
18 right?

19 A. They're about Congress, congressional elections and South
20 Carolina politics, but not specifically redistricting.

21 Q. And I think you said in your CV you've read approximately
22 30 op-eds, and editorials and newspapers. And none of those
23 specifically relate to redistricting, correct?

24 A. The bulk of those, again, focus on Congress,
25 congressional elections, and South Carolina politics, but not

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1 specifically redistricting.

2 Q. In fact, six of them were -- I think you had they were
3 profiles of presidential candidates, correct?

4 A. Correct. I wrote a book on the South Carolina primary.
5 And one of the things that I was asked to do in the lead-up to
6 the 2020 primaries was to analyze and handicap each of the
7 candidates' chances in the state of South Carolina.

8 Q. Moving more to your methodology. Mr. Freedman asked you
9 a question about the county envelope method. And I think you
10 said that it had been used once before; is that right?

11 A. At the time of my deposition, I had reviewed an expert
12 report of Dr. Stephen Ansolabehere, who used this methodology
13 in prior litigation.

14 Q. When was that?

15 A. I'm sorry?

16 Q. I'm sorry. I didn't meant to interrupt you. When was
17 that?

18 A. That was in *Cooper vs. Harris*, I believe, 2017.

19 Q. When was his report? I'm sorry.

20 A. I think in 2017, I believe.

21 Q. Oh, I thought you said 2000. Did I misunderstand you?

22 A. No. I believe Mr. Freedman was asking about whether this
23 methodology had been used in peer-reviewed articles. At the
24 time of my deposition I did not know the answer to the
25 question, but I looked it up, and Mr. Ansolabehere has used

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1 this methodology in peer-reviewed research.

2 Q. And just quickly on this, not to belabor the point, on
3 this county envelope methodology, what that means is you're
4 taking all the counties that are adjacent -- or that are part
5 of whatever the current, I guess, congressional district is,
6 right?

7 A. Correct. Just to be clear, not adjacent to but within
8 the envelope of the district.

9 Q. And for your model one, it talks about moving in VTDs
10 from somewhere in those counties in that envelope that aren't
11 in the congressional district, correct?

12 A. Correct. Model one looks at the choice of VTDs that are
13 immediately outside the district within the same county but,
14 again, not adjacent to the district.

15 Q. And prior to the plaintiffs asking you to do this
16 research, did you know anything about the county envelope
17 method?

18 A. No. I had not seen it used before.

19 Q. And I think -- what was the -- I'm sorry, I missed the
20 number. What was the total number of VTDs in South Carolina?

21 A. It's more than 2,400. I don't have the exact statistic.

22 Q. And so, in the 46 counties, so, the VTDs are much smaller
23 than the counties, correct?

24 A. Correct. They're fairly small in magnitude,
25 geographically speaking.

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1 Q. And so, you used the term "geographically proximate."

2 Can you help me with that to understand how that applies in
3 your model one please?

4 A. Sure. So, if you recall the demonstrative of Richland
5 County, all of the precincts that were in CD 6 that could have
6 been added to CD 2, those are, generally speaking, within a
7 couple dozen miles of the prior district's configuration. So
8 I used the term geographically proximate to mean that
9 phenomenon.

10 Q. So, you're taking some VTDs from somewhere on the other
11 side of the county and running this report and moving them
12 over into the congressional district, correct, and calling
13 that geographically proximate?

14 A. In cases where a district only goes into a small portion
15 of the county, the VTDs that are included in the county
16 envelope could, indeed, be on the other end of a county, yes.

17 Q. So, does that make sense that you got to take those VTDs
18 from way over here on the other end of the county and move
19 them all the way over there?

20 A. I believe that it does.

21 Q. How so?

22 A. It is a choice that was available to mapmakers, one that
23 complies with the principles of redistricting. The State's
24 guidelines say that counties are boundaries that should be
25 respected. The State's guidelines say that making counties

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1 whole is a good thing. So, in a theoretical sense I think
2 that that decision would be consistent with traditional
3 redistricting principles of redistricting.

4 But practically speaking, I would point out that
5 mapmakers did, in fact, in two occasions, go across counties
6 in order to make a county whole and grab precincts on the edge
7 of a county that were not contiguous to the district.

8 Q. Let me make sure I understand that. You said there was a
9 choice for mapmakers to use. And you're talking about this
10 county envelope exercise that you don't know that anybody else
11 has ever used before?

12 A. I'm referring to the precincts that are within the county
13 envelope that could be added to the redrawn district while
14 complying with traditional principles of redistricting.

15 Q. Let me ask you something. I think at the first
16 deposition Mr. Moore spent some time asking you about whether
17 you were familiar with the traditional redistricting
18 principles. And do you recall that your answer was, no, you
19 weren't?

20 A. Mr. Moore asked a question that I did not understand. He
21 asked for a definition of the term traditional principles of
22 redistricting. I didn't understand what he was asking. I
23 gave a bad answer. Later in that line of questioning, I say
24 that I'm familiar with the various principles, but I was not
25 given a chance to define each of those terms.

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1 Q. This was the question I had. It says: "Are you familiar
2 with the traditional principles of redistricting?" And your
3 answer was: "I don't know what that term means."

4 A. The way that he phrased the line of questioning was as if
5 it was a single term rather than a set of principles. And, as
6 I mentioned, I think I gave a bad answer on that question.

7 Q. So, you got coached up, and now you know what the
8 traditional principles mean?

9 MR. FREEDMAN: Objection.

10 JUDGE GERGEL: It's cross-examination. Overruled.

11 THE WITNESS: No, sir. In fact, in other points in
12 the deposition, Mr. Moore and I discussed the traditional
13 principles of redistricting. So, at the time, I had knowledge
14 of those concepts.

15 BY MR. TYSON:

16 Q. And I think one of the questions that I asked at your
17 deposition was specifically about this data, and I think you
18 said that's all you look at, is data, correct? You're just
19 looking at numbers, right?

20 A. I would say that my analysis is based on data. But good
21 analysts are always familiar with the context of their data.
22 So, prior to analyzing each of the districts, I familiarized
23 myself with where the districts were, some of their key
24 demographic features. I reviewed the state's redistricting
25 guidelines. So, my analysis looks at data. But as an

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1 analyst, I'm familiar with a lot of the contextual information
2 that's necessary.

3 Q. And I think you said at your deposition that you thought
4 -- you would define that VTDs are often considered communities
5 of interests, correct?

6 A. I believe they are, according to the State's guidelines,
7 yes.

8 Q. And that's a traditional redistricting criteria, right?

9 A. Communities of interest?

10 Q. Right.

11 A. Yes, correct.

12 Q. VTDs being defined as a community of interest?

13 A. Correct.

14 Q. Okay. But you didn't look any further beyond that. You
15 didn't look at the geography for that VTD, though, did you?

16 A. I don't have a geography variable in my analysis, but
17 basic geographic concepts are part of my analysis.

18 Q. How so?

19 A. So, if we think about the county envelope, which we've
20 been discussing, that is a geography that is defined in the
21 scope of my analysis. As I've testified, I believe that that
22 is consistent with traditional principles of redistricting.
23 Likewise, the concept of core preservation is reflected in
24 model two. Model two looks at the decision to remove
25 precincts from an existing district. Core preservation is a

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1 geographic principle. And, of course, model three looks at
2 both of those things simultaneously.

3 Q. Let me just step back. Help me with this. If model
4 one -- if we're having problems understanding that this county
5 envelope methodology that's never been used before, that's
6 what you used in model one, correct?

7 A. I would refute the notion that it has not been used
8 before. I've given several examples of where it has, in fact,
9 been used.

10 Q. So, if you were to buy my comment -- my question, that
11 there is a problem with that methodology, would that also
12 taint methodology three, since it's a part of that?

13 A. Again, I don't agree with the premise of your question.

14 Q. Do you agree?

15 A. But, yes, if there's a problem with the county envelope,
16 that's also part of model 3.

17 Q. So, two of your models potentially could be tainted using
18 this county envelope methodology?

19 A. If we accept your premise.

20 Q. Yes.

21 A. Which I do not.

22 Q. Correct. All right. Let's go to your report,
23 Plaintiffs' Exhibit 19. And Mr. Freedman spent a pretty good
24 bit of time going through this, and I don't plan to do that.
25 It's getting late in the day, and it's Friday. I know the

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1 Court is tired of looking at us and would rather talk to you
2 and not us, but let's try to get through this.

3 You concluded that five of the seven congressional
4 districts used race as a factor, correct?

5 A. In five of the seven districts, race was a statistically
6 significant factor in at least one of the models.

7 Q. Well, let me make sure of this. I want to be clear. In
8 your report -- and I think we had some questions about this at
9 the deposition -- you didn't conclude that race was the
10 predominant factor, correct?

11 A. I believe what I said in my deposition is that
12 predominance is not the language that I use as a social
13 scientist. We talk about statistically significant effects
14 and substantively significant effects. That's the language
15 that I use.

16 Q. So, the word "predominant" is nowhere in your report,
17 correct?

18 A. No, I don't believe so.

19 Q. Or in your rebuttal report, correct?

20 A. Correct.

21 Q. That's for the panel of judges to determine, right, not
22 you?

23 A. Yeah. The way that I think about predominance is that
24 it's based on the totality of the evidence. I have some
25 evidence in this matter, but, no, predominance is not a word

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1 that I use.

2 Q. And just because race might be a factor doesn't make it a
3 predominant or a controlling factor, correct?

4 A. That can be the case, yes.

5 Q. So, help me with these. Let's go to page ten of your
6 analysis. Let's go up to the top. So, we're talking about CD
7 3, correct?

8 A. Correct.

9 Q. You see that? And in this chart, walk me through. Did
10 you find -- I think the two terms that you used, or the way
11 that you describe these with Mr. Freedman, you got to
12 statistically significant, those were the two things that you
13 used to conclude whether race was a factor, right?

14 A. Correct. Just to be clear, substantively significant and
15 statistically significant.

16 Q. Thank you. Okay. And how about CD 3, is it
17 substantively significant or statistically significant?

18 A. I believe the answer is both, in the context of model
19 three.

20 Q. So, it looks just like your same analysis for 1 and 2,
21 correct?

22 A. It looks the same in terms of the mechanics of the
23 analysis. What I would say is if you look at the figures in
24 CD 1, the slope of the line indicating the effect of race is
25 much larger in magnitude than it is in CD 3. But, yes,

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1 generally speaking, there are some similarities.

2 Q. Let's go over to page 13, please. Can you scroll down a
3 few pages? This is Congressional District 6. All right. You
4 see this? And this is your analysis, the same one -- the same
5 type of analysis. And I think you concluded here that it was
6 substantively significant and statistically significant also,
7 right?

8 A. Correct.

9 Q. So, all five of those districts met your conclusion, or
10 drove your conclusion, right?

11 A. Correct.

12 Q. Okay. And did you know in this lawsuit that only three
13 of those congressional districts are being challenged?

14 A. I'm aware of that.

15 Q. Which ones are those?

16 A. I believe those are 1, 2, 3, and 5.

17 Q. Now, that's four. That would be four. Which of the
18 "three" are being challenged?

19 A. Oh, sorry. 1, 2, and 5.

20 Q. 1, 2, and 5. So, we just looked at 3 and 6, and you just
21 told us that they were substantively significant and
22 statistically significant, right?

23 A. Correct.

24 Q. And if the attorneys didn't buy your opinion, that all of
25 the five districts that you concluded race was a factor in,

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1 then how can this panel make the leap that your report is
2 relevant to any of the challenged districts?

3 A. I would make a few points. One is that, as I said
4 earlier, my analysis is one bit of evidence among many pieces
5 of evidence. So, maybe there's evidence that points in a
6 different direction.

7 Second, race can be used in the composition of a
8 district. So, in the case of CD 6, it was previously a
9 majority minority district. So, in this sense, I'm not
10 surprised that race was a factor in how the district was
11 redrawn. So, I think those are all relevant considerations.

12 And the third point that I would make is that, in the
13 cases where I found that race was not statistically
14 significant -- that is Districts 4 and 7 -- I would point out
15 that those are not challenged. So, it would be important to
16 take those into consideration as well.

17 Q. That's right. You conclude five. And they only took
18 your analysis for three of them, correct?

19 A. They decided to challenge three of the districts.

20 Q. And I think you said at your deposition there were
21 probably a lot of other factors besides race that led them not
22 to challenge those two districts, correct?

23 A. I would not know what those factors are. I presented my
24 evidence, and what is done with it, I don't know.

25 Q. And so, there could have been other factors besides race

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1 in these other districts that you did choose that race was a
2 significant factor in District 1, and District 2 and District
3 5, right?

4 A. In my mind, the issue is whether the use of race is
5 permissible in those other districts. I can find that race
6 was a factor. There might be very good reasons why that's
7 allowable, I don't know.

8 Q. Let's quickly move to the rebuttal report, which is the
9 next exhibit. I think that's Plaintiffs' Exhibit 26. And if
10 we could go back to page nine, please.

11 This is a simple chart that you have right here, and it
12 analyzes the BVAP change in the old districts, which I'm going
13 to say are the five districts in the benchmark plan versus the
14 new one, correct?

15 A. Correct.

16 Q. Let's focus on District 1. What was the BVAP in the old
17 district?

18 A. According to my numbers, 17.3 percent.

19 Q. And what's the percentage in the new map?

20 A. 17.4 percent.

21 Q. So, there's a little bit of a change in moving the Black
22 voting age population, right?

23 A. Correct.

24 Q. And is it fair to say that the mapmakers drew this plan,
25 kept the percentage of Black voting age population the same in

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1 CD 1, roughly the same?

2 A. That's certainly a reasonable conclusion. What I argue
3 later in this rebuttal report is that could have been by
4 design and thus prevented the district from having a higher
5 Black voting age population.

6 Q. But if we take your earlier comment that you only look at
7 data, those are specific facts, and we can't run from those,
8 can we?

9 A. We use data to derive substantive conclusions, so, yes,
10 this is what the data show. But, again, an alternative
11 interpretation is that mapmakers froze the BVAP at
12 17.4 percent in the new district, thus preventing it from
13 organically growing higher.

14 Q. But, Doctor, how many folks does District 1 have to lose?
15 How many folks do they have to shed?

16 A. 88,000.

17 Q. So, you're not arguing that they shed 88,000 and they
18 somehow statistically froze BVAP to be the exact same
19 percentage, are you?

20 A. I'm having trouble understanding your question.

21 Q. Let's just go back. If the district had to shed that
22 many voters, which they did -- correct -- because it meets one
23 person, one vote, right?

24 A. Correct. Just to clarify, the district had to shed
25 88,000 voters.

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1 Q. Correct.

2 A. And it actually shed 140,000 voters.

3 Q. That's right.

4 A. Excuse me. Residents, not voters.

5 Q. And with shedding that many voters, it still had the same
6 level of BVAP, correct? Or, in fact, it actually went up,
7 right?

8 A. Correct. The point I'm making is that that could be by
9 design, and thus preventing it from going even higher.

10 Q. Let's move further in your rebuttal report. You were
11 asked some questions, and I think you took exception with Mr.
12 Trende's conclusion that 82.8 percent was not a significantly
13 large share of a preservation of core, right?

14 A. I did.

15 Q. Okay. And did I hear you -- the district had to lose --
16 does that take account shedding the people and then -- well,
17 let me understand that. I'm probably not asking that question
18 well.

19 A. I think I understand your point.

20 Q. Yeah.

21 A. What I would say is that the 83-percent core retention
22 statistic that Mr. Trende cites is smaller than what it had to
23 be in order to become equipopulous. Again, 88,000 residents
24 had to be drawn out, 140,000 actually were. So, that's a
25 large percentage and number in excess of what was necessary.

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1 Q. And I think you take exception with the words "a large
2 share," right?

3 A. Correct.

4 Q. But what, in your mind, is appropriate? What is a "large
5 share"? What would be the definition of that?

6 A. The point that I make in my rebuttal report is that
7 numbers are not inherently high or low. What's necessary to
8 understand whether a number is high or low is context. And so
9 what I said in response to Mr. Trende is that, in the context
10 of the closeness of election results and in the context of how
11 many persons had to be shed from the district, the district
12 lost many more and a potentially consequential chunk in terms
13 of recent election results.

14 Q. And, Dr. Ragusa, have you looked at any of the other maps
15 submitted to the General Assembly?

16 A. I'm vaguely familiar with some of the other maps. I did
17 not analyze them.

18 Q. Have you analyzed the enacted plan and its core-retention
19 statistics?

20 A. The plan that lawmakers enacted?

21 Q. Yes. Right.

22 A. I analyzed it in my report.

23 Q. You've analyzed this core retention for the enacted plan,
24 correct?

25 A. What I said is that core retention is a concept that's

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1 part of model two. But in my original report, I did not
2 present the core retention statistics.

3 Q. But you did in your rebuttal, right?

4 A. In my rebuttal, yes, in response to Mr. Trende.

5 Q. And that's a traditional redistricting principle,
6 correct?

7 A. Core preservation is listed among the State's guidelines,
8 yes.

9 Q. And you don't have any reason to not believe that,
10 correct -- or to take exception to that, do you?

11 A. I'm sorry. I'm not understanding your question.

12 Q. It is in the Senate criteria, the guidelines. And I was
13 just saying: Do you believe that that is a traditional
14 criteria?

15 A. I do, yes.

16 Q. And let me just conclude. You don't have any opinion on
17 whether the Congressional Plan was drawn with any racially
18 discriminatory intent, correct?

19 A. As a social scientist, I'm not able to see into the
20 mapmakers' heads. Intent is not something that I can
21 authoritatively speak to. What I can speak to is effects.
22 And what I can say consistently is that race was an effect in
23 the design of the redrawn map.

24 Q. And when you are talking about some of the criteria that
25 you analyzed, you didn't look at all of those criteria. Your

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1 report doesn't reflect all of the criteria that the Senate
2 and/or the General Assembly used to craft their plan, does it?

3 A. I don't have compactness, core retention, contiguity
4 variables in my model, if that's what you're asking. Those
5 principles are all embedded in the analysis that I conducted.

6 Q. And those are all -- if the mapmakers chose to use those
7 principles, then that's a choice that they can make that would
8 be consistent with traditional criteria, correct?

9 A. Correct. To use the example of compactness, if mapmakers
10 drew a district to be compact, my data would not necessarily
11 challenge that. However, if compactness resulted in
12 disproportionately drawing Black voters out or into the
13 district, my analysis would pick up on that.

14 MR. TYSON: Thank you, Dr. Ragusa.

15 **CROSS-EXAMINATION**

16 **BY MR. BARBER:**

17 Q. Dr. Ragusa, one question. Just to confirm, prior to
18 today, you have not been qualified by any court as an expert
19 in any subject matter, correct?

20 A. Correct.

21 Q. All right. Thanks.

22 JUDGE GERGEL: That, of course, will change after
23 today.

24 MR. FREEDMAN: No redirect, your Honor.

25 JUDGE GERGEL: Very good. Thank you, Doctor.

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1 Appreciate it. You may step down.

2 Well, folks, the conspiracy of the calendar is we
3 cannot meet Monday, to my disappointment, for Columbus Day.
4 And we will start at 9:00 a.m. on Tuesday morning.

5 Anything anybody needs to the bring to my attention?

6 MR. CHANEY: Nothing for plaintiffs, your Honor.

7 Thank you.

8 MR. TYSON: Nothing, your Honor.

9 MR. MOORE: Your Honor, Tuesday is when we're doing
10 the tour?

11 JUDGE GERGEL: We're going to do it at 1:00 o'clock.
12 Judge Norton has hearings early in the morning, but we'll be
13 there about 12:30, and then about 1:00 o'clock we'll do the
14 talk in the historic courtroom.

15 MR. MOORE: Thank you, your Honor.

16 JUDGE GERGEL: Okay. Thank you.

17 * * * * *

18
19 I certify that the foregoing is a correct transcript from
20 the record of proceedings in the above-entitled matter.

21 s/Lisa D. Smith,

11/10/2022

22 Lisa D. Smith, RPR, CRR

23 Date
24
25