

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 11, 2022
	:	
Plaintiffs,	:	
v.	:	VOLUME V (PAGES 1082 - 1326)
	:	
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 *Tuesday, October 11, 2022, at 9:00 a.m.)*

3 JUDGE GERGEL: Good morning. Please be seated.

4 Good morning, everyone. I hope everyone had a
5 restful Indigenous People's Day. Are there matters that the
6 parties need to raise with the Court before we proceed with
7 the next witness?

8 First, from the plaintiffs.

9 MR. CHANEY: Your Honor, I just wanted to let the
10 Court to know -- I know the Court was aware that we asked to
11 take Dr. Imai out of sequence because of scheduling. He will
12 be back on Wednesday and will be available to testify.
13 However, the Court wants to accommodate it with the
14 defendants' case on Thursday or Friday, and so, I just wanted
15 to let everybody know that.

16 JUDGE GERGEL: Y'all work it out. It's really of no
17 consequence to us one way or the other. So, whatever works
18 for the parties. If y'all can't work it out, let us know, we
19 certainly will.

20 Anything else we need from the plaintiff?

21 MR. CHANEY: That's it, Judge. Thank you.

22 JUDGE GERGEL: From the defense?

23 MR. GORE: Good morning, Your Honor.

24 JUDGE GERGEL: They moved you to the back row, but it
25 doesn't shut you up, does it?

1 MR. GORE: Judge, they put me in my rightful place.

2 Two matters that we wanted to raise this morning with
3 your Honor. Last week, the Court requested demographic data
4 for precincts. And we're working with Mr. Rainwater --

5 JUDGE GERGEL: He showed me, as he'll show y'all
6 maybe during a break. But he's working on it. Seems like it
7 made sense, but I wanted to make sure it was something
8 acceptable to both sides.

9 MR. GORE: Yes. And we've done a preliminary review
10 of a draft this morning. We noticed a couple of
11 discrepancies, but we'll work those out.

12 JUDGE GERGEL: That's exactly why you're being shown.
13 We just want a playbook off what we're working on, and we also
14 want -- on terms, I know there are these distinctions I never
15 heard before between "DOJ Black" and "any Black." And I want
16 to kind of make sure we're all using the same data. And I
17 know the legislature, am I right, used DOJ Black; is that
18 right?

19 MR. GORE: Yes, Your Honor.

20 JUDGE GERGEL: I think I would prefer to just sort of
21 stay on that, simply to be consistent with analyzing the
22 plans. Unless there's a reason to point out otherwise, I'm
23 glad to hear that. But consistency -- when we get to working
24 on an order, y'all can be a little imprecise, but we really
25 can't. We need to be very accurate.

1 Yes, Mr. Freedman.

2 MR. FREEDMAN: Your Honor, I'll just say that we're
3 reviewing the data Mr. Rainwater sent. We do think it's
4 important -- it's really not difficult as far as we understand
5 to add. So the Court has both the "DOJ Black" and the "any
6 part Black." The reason that we think it's important for the
7 Court to have both is that our experts consistently use "any
8 part Black."

9 JUDGE GERGEL: Yeah. And I think that's a legitimate
10 point. We'll do both. That's fine. I get it. You know,
11 what worries me just a little bit is we're writing an order
12 and we look at an expert report, and it's using a different
13 body of data, and we just need to be careful about it to be
14 precise. It doesn't look like, to me, the numbers are
15 dramatically different.

16 MR. FREEDMAN: No. But it does understate -- the DOJ
17 Black does understate -- the any part Black can understate by
18 putting people who designate multiple race in the other
19 category. And it's really just -- I think there's a very easy
20 way to just add a couple columns so that you can have both
21 numbers right there.

22 JUDGE GERGEL: We're fine with that. You know, when
23 I'm trying to evaluate a legislative plan, the legislature
24 used "DOJ Black." It's the one my instincts tell me to work
25 off of. But to the extent there's a difference, I'd like to

1 know it and see what it means.

2 Anything else, Mr. Gore?

3 MR. GORE: Yes. There's a second data issue we
4 wanted to raise with the Court. We think the Court also
5 should have access to the political and election result data
6 that the General Assembly used.

7 JUDGE GERGEL: Okay.

8 MR. GORE: It is publicly available on the Senate
9 redistricting website, both at the precinct -- or VTD --
10 level, but also at the census block level.

11 JUDGE GERGEL: Why don't you offer it as an exhibit.

12 MR. GORE: Okay.

13 JUDGE GERGEL: And that would be easy for us to
14 access. And if it can be done by congressional district, that
15 would be helpful.

16 MR. GORE: It can be done in any kind of way that
17 you'd like it to be done.

18 JUDGE GERGEL: I think by congressional and by county
19 might be helpful to see if a county is split, you know, since
20 that's a part of the defense. You know, I think that's an
21 important thing to also have. All we want is, we've got lots
22 of information, and it's clear that the experts had access to
23 that data but didn't put it in. And for us to critically -- I
24 mean, there are some disputes among the experts. To sort it
25 out ourselves, we need to have access to the underlying data.

1 Not that we want to become mathematicians. Everybody who went
2 to law school avoided medical school and didn't have to take
3 organic chemistry. You know, it's always a challenge, but we
4 do want that information.

5 MR. GORE: That's great. And I'll just note that
6 there are a couple different formats in which the data is
7 available, including a GIS format that I think the technical
8 advisor would be able to use.

9 JUDGE GERGEL: Y'all talk to Mr. Rainwater. I have a
10 great deal of confidence in his office. I've known him for
11 many years. And they've helped me on cases previously. I had
12 a prior local reapportionment case that actually involved some
13 of the precincts in Jasper County that are at issue here. So,
14 I have a great deal of confidence in that office's work. So,
15 work with him and y'all get a sign-off so we'll have the
16 underlying data. And to the extent we need more information,
17 like "any part Black" or partisanship, just make sure all
18 that's in the record so we'll have it, and so when you make an
19 argument, we can actually compare it to the hard numbers,
20 okay?

21 MR. GORE: We'll do that. Thank you, Your Honor.

22 JUDGE GERGEL: And let me just say an observation
23 I've had. I want to commend both sides for allowing young
24 lawyers to participate in this. It's such a lack of
25 opportunity for attorneys -- young attorneys to get access to

1 stand up in court. And both sides have just done a wonderful
2 job of allowing younger attorneys to participate. And, the
3 Court very much appreciates y'all doing that. I think it's
4 just a wonderful training mechanism. I've heard argument
5 before -- people say, well, I should have oral argument in
6 cases to allow young attorneys to come in and argue. And,
7 frankly, I don't have enough time for that. So, I do like the
8 idea and encourage this type of situation. And I think the
9 young attorneys have just done a great job for both sides. So
10 I want to commend everybody for that.

11 Okay. Plaintiff, call your next witness.

12 MR. MOORE: Your Honor?

13 JUDGE GERGEL: Oh, Mr. Moore, I should have known.

14 MR. MOORE: I don't want to disappoint. Just two
15 quick housekeeping matters. First of all, as I made the
16 plaintiffs aware this morning, I learned Friday that one of
17 our witnesses has COVID-19, was diagnosed on Friday.

18 JUDGE GERGEL: Helpful, yes. Good to note it on
19 Friday rather than today.

20 MR. MOORE: And so he's still testing positive as of
21 yesterday. I think he believes his symptoms began on
22 Wednesday of last week. And so, one of the things we
23 discussed with the plaintiffs -- and I think the plaintiffs
24 are comfortable with him testifying remotely.

25 JUDGE GERGEL: Rule 43(a) provides for extraordinary

1 circumstances. I think COVID falls into that category. And I
2 don't want to -- we're having people masked to prevent the
3 spread. And we're not bringing a COVID-positive witness into
4 the courtroom.

5 MR. MOORE: That's what I assumed. I wanted to note
6 that for the record.

7 JUDGE GERGEL: The plaintiffs okay with the testimony
8 remotely?

9 MR. CHANEY: We are, your Honor. And we told Mr.
10 Moore that as well.

11 JUDGE GERGEL: I want you to know in my multidistrict
12 litigation, they've taken 200 depositions and they've done all
13 of them remotely. And they tell me it's now second nature.
14 And I think it's one of those areas of impact of COVID that's
15 going to teach us how to do it more efficiently. And so, I'm
16 completely game for y'all -- for you doing that.

17 MR. MOORE: And so, we're just going to have to find
18 a way to work with the court staff to get it done. I would
19 think he would be testifying Thursday or Friday morning.

20 JUDGE GERGEL: Talk to Ms. Perry. She's very
21 familiar how to do that. We do remote stuff all the time.

22 MR. MOORE: And the other thing is just a
23 housekeeping matter. But, you know, I don't know whether --
24 as your Honor said last week, none of us know whether we're
25 going to finish this week or not. You know, an issue that I

1 simply want to flag for the Court is these deposition
2 designations. We have been exchanging e-mails back and forth.
3 We're still fairly far away on a number of them. We thought
4 about the possibility of stipulating to a witness's testimony.
5 And we had a stipulation to the plaintiffs and we sent our
6 advocate a stipulation back. And it just doesn't appear that
7 it's going anywhere, your Honor. So, my point is --

8 JUDGE GERGEL: I mean, if you get down to sticking
9 with a couple witnesses and you just can't work it out, just
10 give us the whole deposition. I mean, really, I don't want
11 y'all spending too much time on it, but I'd want both sides to
12 highlight to me what they think is important in that, if
13 you've got to give us the whole deposition.

14 MR. MOORE: And so my point then becomes, if we give
15 the Court the whole -- and what we may do, your Honor, is we
16 may -- I think we might just be able to give you the portions
17 where we disagree on. And there's one issue that's fairly
18 important to the House, and we're trying to work through it
19 and if we can't, we'll let you know. It's the testimony of
20 one witness. And --

21 JUDGE GERGEL: I mean, I'm inclined, when we have a
22 three-judge panel and something's important to one party, I
23 want to hear it. I mean, even though the other party doesn't
24 really like it, and I'm be glad to hear why you don't think
25 it's appropriate. It's not like we're going to -- you know,

1 if it's not admissible, we'll disregard it. I just hate for
2 y'all to spend a lot of time on something, because our
3 inclination is to hear evidence if one side thinks it's
4 important.

5 MR. MOORE: And so, we're trying to work through a
6 stipulation on that. And some of that may be resolved. I
7 guess my point is, I do think that before we close, we have to
8 know what is in versus what is out of the record.

9 JUDGE GERGEL: Absolutely. Absolutely.

10 MR. MOORE: And that is the point that I'm making,
11 your Honor. Because, I understand your Honor is going --
12 whatever is in, including deposition designations, they're
13 going to be public on the website.

14 JUDGE GERGEL: Correct.

15 MR. MOORE: Okay. And so, we may have to at some
16 point deal with that issue this week, and so I just wanted to
17 flag that for the Court. We are working diligently to try to
18 reach agreements, and hopefully we're going to be able to
19 reach some. Again, as I made it clear to the plaintiffs,
20 while we have some differences with them on some witnesses,
21 there's one that's a particular issue that's kind of a
22 sensitive issue. And I don't think we need to deal with it
23 now, but we will be prepared.

24 JUDGE GERGEL: What is the issue? Don't get into it,
25 just tell me what the issue is.

1 MR. MOORE: There is a text chain involving one of
2 the parties in this case, Representative Murphy, and some
3 other legislators and lobbyists. And at least one of those
4 legislators is a Democratic legislator. And there are some --
5 I think the plaintiffs would argue that these legislators are
6 making fun or making light of their redistricting
7 responsibilities. I'm sure your Honor wonders why I spent so
8 much time with Senator Harpootlian on sarcasm, and the fact
9 that sarcasm is often used and doesn't mean that you're not
10 taking something seriously. That's the reason I spent that
11 time with him.

12 And so, we've worked out a couple of things with the
13 plaintiffs that they've agreed to certain redactions. And I'm
14 very appreciative of that. Because, no one needs to embarrass
15 someone who's not a participant, okay, and I think we all
16 agree on that point. And so, that's the issue, your Honor.

17 JUDGE GERGEL: Well, just know that we can read
18 something, and if you say it's sarcastic and they don't think
19 it's sarcastic, we can weigh that. Don't spend a lot of time
20 trying to protect our delicate ears or eyes from something.
21 You know, we've got filters too, okay?

22 MR. MOORE: I'm less concerned -- I have no problem
23 with your Honor seeing all of it in camera, okay. And I don't
24 know if that's appropriate --

25 JUDGE GERGEL: That's not the culture of the federal

1 courts, though.

2 MR. MOORE: Right. But we've sent the plaintiffs a
3 stipulation that removes names this morning -- or a revised
4 exhibit that removes names. If we can reach agreement on that
5 and we can perhaps change some of that in the transcript, then
6 I think we're good to go. But I just wanted to flag that
7 issue for the Court.

8 JUDGE GERGEL: Well, our basic thing is if one side
9 thinks it's important, we're inclined to take it, hear the
10 other side's objection and weigh it, okay? That's generally
11 our approach. And to the extent it's not serious, tell us why
12 you don't think it's serious. If the other side thinks it's
13 serious, tell us why you think it's serious. And then we'll
14 weigh it all.

15 Let me say, this case is not going turn on one fact.
16 It's just not. It's a totality of facts. So, again, don't
17 expend unusual time on something to protect us from any
18 sensitivity. So, our inclination on both sides is to let
19 stuff in and to weigh it ourselves if the parties disagree.
20 I'm kind of neutral on who's doing it. If one party tells me
21 it's important, I want to know about it.

22 MR. MOORE: I understand that, your Honor. I would
23 point out -- and, again, we can discuss this. We'll see where
24 we get on agreement --

25 JUDGE GERGEL: Good. I'm hoping to give you some

1 guidance to help y'all get to the end.

2 MR. MOORE: And I very much appreciate that, your
3 Honor. The other point that I would make is, it's all about
4 House redistricting and the House districts, not about
5 Congress. But we'll get to -- I understand that also goes to
6 the weight and perhaps not the admissibility.

7 JUDGE GERGEL: Correct. That is correct.

8 Okay. And just lastly, we're planning to break --
9 depending where the witnesses are -- at about 12:30, and at
10 about 1:00, I'll do a little history talk in the historic
11 courtroom, which is courtroom number three. And the court
12 security can give y'all guidance on how to get over there.
13 But we'll do it about 1:00 o'clock, about 30 minutes after we
14 break. That will give y'all a chance to grab a bite. And if
15 you want to bring your sandwich or whatever into the courtroom
16 to eat while I'm talking, you won't be the first people to eat
17 while I talk. I'm a frequent luncheon and dinner speaker.

18 MR. MOORE: We appreciate that, your Honor. We've
19 made arrangements to have food brought in around 12:30. So
20 maybe we can scarf down those sandwiches before we meet.

21 JUDGE GERGEL: Okay. Glad to have y'all. Glad to
22 have everyone together.

23 Okay. Plaintiff call your next with witness.

24 MR. INGRAM: Your Honor, plaintiffs call the next
25 witness, Dr. Joseph Bagley.

1 **JOSEPH MARTIN BAGLEY, M.D. having been first duly**
2 **sworn, testified as follows:**

3 MR. INGRAM: Your Honors, I would like to tender Dr.
4 Bagley as an expert witness in political history, legal
5 history, political --

6 JUDGE GERGEL: Hold on. Slow down. Political
7 history.

8 MR. INGRAM: Legal history.

9 JUDGE GERGEL: Yes.

10 MR. INGRAM: Political analysis, historical
11 methodology.

12 JUDGE GERGEL: Hold on a second. Historical
13 methodologies?

14 MR. INGRAM: And history of racial discrimination and
15 voting.

16 JUDGE GERGEL: Do the defendants have objections
17 other than previously raised in the *Daubert* motion?

18 MR. TRAYWICK: Your Honor, we stand on those
19 objections. Of course, I would note in his deposition, he
20 said: American political history, southern race relations,
21 and history of southern politics and law. So, this seems to
22 be a little different cluster than --

23 JUDGE GERGEL: Hold on a minute. Let's -- Mr.
24 Traywick, go back through again. What was the first one he
25 said?

1 MR. TRAYWICK: Yes, your Honor. During his
2 deposition, he testified that he was being offered as an
3 expert in American political history --

4 JUDGE GERGEL: Hold it. American political history.
5 Okay.

6 MR. TRAYWICK: Southern race relations.

7 JUDGE GERGEL: Okay.

8 MR. TRAYWICK: And history of southern politics and
9 law.

10 JUDGE GERGEL: And southern politics and law?

11 MR. TRAYWICK: Yes, your Honor. But those are a
12 little broader than we're getting here, and also just seems
13 very broad and not specific to South Carolina.

14 JUDGE GERGEL: Well, he's only going to -- I've read
15 his reports, really a South Carolina-focused report. And so,
16 I think this may be a legal distinction without material
17 effect. Let's figure this out.

18 Rather than expert in political -- what was your
19 first one?

20 MR. INGRAM: Political history.

21 JUDGE GERGEL: Do you object to using American
22 political history?

23 MR. INGRAM: No.

24 JUDGE GERGEL: Good. I didn't think so. And then
25 legal history, is there an objection to legal history?

1 MR. TRAYWICK: Close enough. History of southern
2 law, I guess.

3 JUDGE GERGEL: It's legal history --

4 MR. TRAYWICK: Obviously reserving our motion.

5 JUDGE GERGEL: I got you. Southern law. Okay.

6 Political analysis, any objection to that?

7 MR PARENTE: Yes, your Honor. And the House joins in
8 all these objections also.

9 JUDGE GERGEL: I got you.

10 MR. PARENTE: But, political analysis. Dr. Bagley
11 testified that he's a history professor, not a social
12 scientist. Didn't use any data. I really don't know what the
13 analysis is that Dr. Bagley's offering.

14 JUDGE GERGEL: What's your answer to that?

15 MR. INGRAM: Dr. Bagley synthesizes the legislative
16 record and provides an analysis to the Court regarding the
17 political history of the recently enacted legislation.

18 JUDGE GERGEL: Yeah. I think that's a reasonable
19 analysis of American political history. And how about
20 historical methods? Is there an objection to that?

21 MR. TRAYWICK: What do they mean by that?

22 MR. INGRAM: We're referring to the application of
23 the *Arlington Heights* factors and the standards that are
24 common historiography, which the expert report lays out.

25 JUDGE GERGEL: Okay. Any objection to that?

1 MR. TRAYWICK: Not other than our *Daubert* motion,
2 your Honor.

3 JUDGE GERGEL: I got you. History of racial
4 discrimination and voting?

5 MR. TRAYWICK: That wasn't listed among the topics
6 that he had in his deposition.

7 JUDGE GERGEL: Well, I've read the report. I think
8 it would be accurate to say South Carolina history of racial
9 discrimination and voting. But that's in the report.

10 MR. PARENTE: And, your Honor, I believe the report
11 focuses on -- and the history section focuses on redistricting
12 instead of voting as a whole. So --

13 MR. INGRAM: That is inaccurate.

14 JUDGE GERGEL: Let's save this for cross-examination.

15 The Court recognizes Dr. Bagley as an expert in
16 American political history, southern legal history, political
17 analysis, historical methods, the history of race
18 discrimination and voting with a particular focus on South
19 Carolina, and southern race relations, and southern politics
20 and law.

21 Please proceed.

22 MR. INGRAM: May I approach the witness, your Honors?

23 JUDGE GERGEL: Yes.

24 **DIRECT EXAMINATION**

25 **BY MR. INGRAM:**

JOSEPH BAGLEY, M.D. - DIRECT EXAMINATION BY MR. INGRAM 1102

1 Q. Dr. Bagley, what did I just hand you?

2 A. It appears to be a copy of the report that I entered in
3 this case.

4 Q. And is it a copy of how many reports?

5 A. I believe it is the copy of my initial report and then
6 the rebuttal report that I also submitted in this case.

7 MR. INGRAM: Your Honors, I would like to move those
8 copies into the record. That is Plaintiff's Exhibit --

9 JUDGE GERGEL: Are they not already in the record?

10 MR. PARENTE: They are.

11 MR. INGRAM: Yes.

12 JUDGE GERGEL: What's the number?

13 MR. INGRAM: PX-17 and PX-18.

14 **BY MR. INGRAM:**

15 Q. Dr. Bagley, on page three of your report, what did you
16 describe as the scope of your work in this case?

17 A. I was asked to examine the General Assembly's enactment
18 of S.865 and place that in a socio-historical context, and to
19 determine if it was my opinion that there was evidence here of
20 a possible discriminatory motive in the enactment of S.865.

21 Q. On the bottom of page four of your expert report, what
22 did you say guided your analysis?

23 A. I'm guided by -- of course, as a historian -- the common
24 standards of historiography.

25 Q. And what are those standards?

JOSEPH BAGLEY, M.D. - DIRECT EXAMINATION BY MR. INGRAM 1103

1 A. Well, to begin with, we don't take any one source as the
2 gospel, we weigh a myriad of sources against one another. We
3 meticulously footnote those sources, as I think I've done in
4 my report, and we try to examine different kinds of sources
5 and then weigh those against the existing historiography in
6 the field that is secondary versus primary sources.

7 Q. And what materials did you rely on in this report?

8 A. Well, I'm guided initially by, like I say, the existing
9 historiography. So that would be secondary source works,
10 voting rights, monographs on South Carolina, other monographs,
11 the history of South Carolina, race relations in the South and
12 so on. But also scholarly articles; case law, including, you
13 know, briefs, memoranda; public statements in the record, and
14 the sequence of events, and then, of course, in terms of the
15 sequence of events, the video of the relevant hearings and the
16 transcripts, the relevant hearings and meetings.

17 Q. And are these sources relied on typically by historians?

18 A. Yeah. All of these would be sources that historians
19 would typically rely upon.

20 Q. And what process did you use to collect secondary sources
21 for this report?

22 A. In terms of secondary sources, a lot of that I was
23 already familiar with. But with those, you can sort of trace
24 one to the other, and if you have a sort of general
25 familiarity with the historiography, you can follow that down

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1 into more specifics.

2 Q. And what process did you use to collect the public record
3 and more recent history in this report?

4 A. Well, counsel provided me with links to the General
5 Assembly's relevant website. So, the Senate Redistricting
6 Subcommittee's website, the House Ad Hoc Redistricting
7 Committee's website, obviously those are places I would have
8 gone anyway, because those have, as I say, links to the videos
9 of all the relevant hearings, meetings, and then transcripts
10 of those as well. So I reviewed, you know, hours and hours of
11 video relevant to this, and hundreds and hundreds of pages of
12 transcripts in order to have a full grasp of the sequence of
13 events.

14 Q. And why did you review both videos and read transcripts?

15 A. Well, obviously as a historian, we typically are working
16 with written documents. That's what we do. But it's so much
17 more valuable for us to have the video as well. For one,
18 occasionally there will be mistakes in transcription. Two,
19 you can glean a lot more, I think, from the expression,
20 mannerisms, sort of the tenor of the room. And really, more
21 broadly, I would say it's such a valuable tool for us as
22 historians that we don't typically have if we're trying to get
23 to the truth of a matter, to have those videos in addition to
24 just the transcript. So, for me, it was important to really
25 undertake a careful study of both.

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1 Q. And did you use a framework to analyze these sources?

2 A. Yes. The framework that I used was that put forth by the
3 Supreme Court in the *Arlington Heights* decision. And, that
4 sort of guides me as a historian. But at the same time, the
5 framework that *Arlington Heights* gives us, obviously it's a
6 framework for courts in making determinations, right. But for
7 me, it's a framework for me as an expert. And what's, I
8 guess, advantageous about that is it really sets forth what we
9 would do as historians anyway, right. And so I was very
10 comfortable with this framework. And also having worked with
11 it before. So, this really dovetails with what we do as
12 historians anyway.

13 Q. And what does *Arlington Heights* require you to look at as
14 a historian?

15 A. So, there are, broadly speaking, kind of five
16 non-exhaustive factors that the Court set out in *Arlington*
17 *Heights*. The Court said you can use as a starting place the
18 potential impact of the official action and whether or not it
19 bears more heavily on one race than the other. But the court
20 said, you know, you could potentially in that inquiry find
21 just sort of blatant evidence of racial discrimination, like
22 in the *Yick Wo* case or in the *Gomillion* case. But it said
23 that this is rare, and so, therefore, there are all these
24 other steps that you could take. There are these other,
25 again, non-exhaustive factors that you could look at.

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1 So, that would include, number one, the historical
2 background. That would include, number two, the specific
3 sequence of events leading up to an official action. That
4 would include any departures from the normal procedural
5 sequence. And that would include potentially the legislative
6 or administrative history, especially where there are
7 contemporaneous statements by members of the decision-making
8 body.

9 Q. And in your report, which of these factors do you cover?

10 A. So, I focused on -- those were five there. I focused on
11 two through five. So, I felt like, for me, as a historian, I
12 leave it to others -- you might say numbers crunchers -- to
13 perform a systematic inquiry of the impact of the official
14 action, which would be represented by *Arlington Heights* factor
15 one.

16 Q. And do you understand these factors to be exhaustive?

17 A. No.

18 Q. And when using this framework, can evidence relate to
19 more than one of the factors?

20 A. Yes. And I think when you look at the structure of my
21 report where I'm presenting, you know, my view of the relevant
22 history as a historian, as context for this sequence of events
23 leading up to the enactment of this bill, you can see others
24 of these factors included in either of those two sort of broad
25 pieces, if that makes sense.

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1 Q. And when drafting your report, did you interview any
2 legislators, voters or advocates?

3 A. No. There are historians who undertake what we call oral
4 history, and it's becoming increasingly -- I don't want to say
5 common, but you see it more than say 30, 40 years ago. But in
6 this case for me, it's what's said in real time in the record
7 that's more important and perhaps more reliable. And, two,
8 just as a sort of practical matter, I mentioned that as
9 historians, we would try not to take any one piece of evidence
10 and, you know, base an opinion on that. Rather, we would like
11 to, you know, look at myriad evidence and weigh it against
12 each other.

13 And so, in other words, in terms of interviewing anyone,
14 I wouldn't want to go and interview one legislator, two,
15 three. I mean, it would have had to have been meaningful and
16 impactful for this analysis and it would have had to be a ton
17 of these historical actors. And that was simply not
18 practical.

19 Q. And, Dr. Bagley, did you examine evidence of racial
20 animus or hostility of any particular legislator when
21 conducting your report?

22 A. No. For me, that's not really what *Arlington Heights* is
23 asking us to do as experts in these inquiries. I'm not trying
24 to point the finger at any one actor in this and say: This
25 person is a racist. That's not really what I feel like we've

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1 been asked to do at all.

2 Q. And in your expert opinion, can legislators have more
3 than one reason for supporting or opposing a bill?

4 A. Of course. I think that's, you know, very often the
5 case.

6 MR. INGRAM: Next slide, please.

7 MR. PARENTE: Your Honor, we have to object to the
8 use of this demonstrative. It was not disclosed to defense
9 counsel. We have not seen this before. We don't know if it's
10 an accurate summary of the report.

11 JUDGE GERGEL: Are these demonstrative findings?

12 MR. PARENTE: We have not seen any of these slides.
13 I don't know what comes after this, your Honor. These have
14 not been disclosed or shared to the defense.

15 JUDGE GERGEL: Well, perhaps plaintiffs' counsel
16 could describe the origin of this and how you plan to use it.
17 It looks to me like bullet points from the report.

18 MR. INGRAM: Your Honor, this demonstrative is a
19 pedagogical tool that illustrates solely the contents from the
20 report that's in evidence. This is not being used as
21 evidence. This is solely a tool for the Court to help
22 elucidate the report.

23 JUDGE GERGEL: Generally speaking, one party shares
24 it with the opposing party before you show it to the Court.

25 MR. INGRAM: We disclosed that we were going to have

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1 a demonstrative in our exhibit list on file.

2 JUDGE GERGEL: Did you show them these reports?

3 MR. INGRAM: We did not.

4 JUDGE GERGEL: You know, you want to take a minute
5 and show it to him and see if there are any objections? I
6 hate holding up the trial for this, but really the proper
7 practice is to share anything you're going to put in front of
8 the Court with the opposing party so they can raise any
9 objections.

10 MR. TRAYWICK: And to be clear, your Honor, the
11 reason we didn't ask -- I mean, they used the demonstrative
12 the other day that had specific quotes from the report. This
13 isn't a quote of the report. This seems to be a synopsis, and
14 we don't know whether it's changed or not.

15 MR. INGRAM: So, as we go through the demonstrative,
16 we have exhibit citations that track the report. And so, this
17 is not sort of innovated, it is literally sort of summarizing
18 the contents of the report.

19 JUDGE GERGEL: Keep the trial moving. Do you object
20 to what he says is findings? It looks very consistent with
21 the report.

22 MR. PARENTE: Your Honor, if it's a copy from the
23 report, I don't understand why we can't just use the report
24 and show the report on the screen.

25 JUDGE GERGEL: Because it's simpler for us to see it.

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1 Don't be on obstructionist about it. I mean, I want to be
2 fair with you. But if it's just to tie us up, it doesn't
3 accomplish anything. Could you look at this very quickly?
4 I've read it. It appears very consistent.

5 Do you object to it?

6 MR. CHANEY: And, your Honor, while we're looking, I
7 think this brings up the fact that Mr. Gore used a
8 demonstrative during his opening statement. We've asked a
9 number of times. We weren't shown beforehand. We would like
10 to look at it. We haven't been able to look at it.

11 JUDGE GERGEL: After this, everybody show everybody
12 else your demonstrative exhibits just so we don't have this
13 hold up.

14 Is there an objection to the findings?

15 MR. PARENTE: No objection to this slide, your Honor.

16 JUDGE GERGEL: Very good. Please proceed.

17 **BY MR. INGRAM:**

18 Q. Dr. Bagley, we'll go through your findings in details.
19 But could you please summarize the conclusion of your report
20 as you have on page four?

21 A. Sure. So, with respect to the historical background,
22 there is a general historical consensus that South Carolina
23 has a long history of discrimination against its Black
24 citizens, including in voting and including in engaging in not
25 only vote denial, but vote dilution. In terms of the sequence

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1 of events, the public record reveals numerous concerns, a
2 chorus of voices concerned about the timing of the release of
3 maps; the very existence of certain maps; the limited or
4 selective in the minds of certain of these individuals'
5 incorporation of public feedback; general issues with regard
6 to transparency of the process, including concerns about
7 departure from normal procedural sequence; and contemporaneous
8 statements by members of both the public and the legislature
9 in the record that buffers those concerns about procedural
10 irregularities and transparency.

11 Q. And, Dr. Bagley, what are you asking the Court to do with
12 these findings?

13 A. So, I present my findings to the Court and say that, in
14 my opinion, there is evidence here for the Court to make a
15 determination of discriminatory intent.

16 Q. And, Dr. Bagley, regarding the historical portion of your
17 report, how would you describe the level of dispute among
18 historians regarding the history of racial discrimination and
19 voting in South Carolina?

20 A. There really is no dispute. Now, there are things in
21 American historiography where there are one or two or even
22 three different camps that strongly disagree about things.
23 And that is not really the case here.

24 Q. And why is history relevant to your analysis?

25 A. Because I'm a historian, right, I understand that for

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1 courts and within the law, that much more recent history is
2 more relevant. And I've tried to appreciate that in this
3 report. But I come to this as a historian and not a lawyer or
4 a judge. And so, for me, the history even going back, as I
5 do, to the founding of this South Carolina as a colony is
6 still relevant. Now, naturally, the actions of individuals in
7 the 18th century are not necessarily directly indicative of
8 the intent of someone in 2022, but at the same time, I don't
9 feel like you can discount something simply because it is
10 relatively longer ago. For us as historians, that's what it's
11 all about. And so, one generation -- well, one set of actions
12 impacts another. And so I've, again, just presented this as a
13 historian would.

14 Q. And, Dr. Bagley, I'm now going to walk you through a
15 brief portion of your report regarding the history of race
16 relations in South Carolina.

17 MR. INGRAM: Next slide, please.

18 BY MR. INGRAM:

19 Q. Dr. Bagley, who was the first state to secede from the
20 Union?

21 A. South Carolina -- and if you read my report, I hope this
22 is clear -- has been not just a former confederate state, but
23 consistently in the vanguard when it comes to the oppression
24 of Black people in America, from the introduction of mass
25 chattel racial slavery for cash crop production to

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1 nullification based upon the value of -- America's most
2 valuable export, rice, at the time, to, yes, the secession
3 from the Union based upon the protection of property rights,
4 property in that case being enslaved human beings.

5 South Carolina was the first, after the Civil War, or
6 among the first, to enact -- and among the most severe -- what
7 we understood as Black Codes, that is, laws that were intended
8 to single out freed men, former slaves, Black people, and to
9 limit what rights they had as citizens, including voting in
10 state or local elections.

11 And after a brief period of what W.E.B. Du Bois called
12 "Black Reconstruction," where Black people in South Carolina
13 were able to actually participate in the political process,
14 South Carolina was, as historians have said, unsurpassed in
15 the sort of brutality and totality in what's known as "The
16 Redemption." And that is the Democratic Party, which was at
17 the time the party of -- unabashedly of White supremacy taking
18 power from the Republican Party, which was a party founded to
19 prevent the spread of slavery prior to the war. And there are
20 individuals in South Carolina, whose names I think are well
21 known, who were among the most virulent and most successful in
22 that process of redemption, the point of which was to entrench
23 White supremacy and the complete disenfranchisement of African
24 Americans. And that was certainly the case by the 20th
25 century.

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1 Q. Dr. Bagley, who was the first state to challenge the
2 constitutionality of the Voting Rights Act?

3 A. South Carolina was, again, in the vanguard there
4 challenging the constitutionality of the Voting Rights Act.
5 And once that challenge, of course, failed, South Carolina is
6 among the first states that you see begin to, at the state and
7 local level, switch to at-large voting systems for the
8 purposes of the dilution of the political power and voting
9 ability of Black citizens to participate on an equal footing
10 in terms of the election of candidates of their choice.

11 Q. And did the DOJ object to any of South Carolina's
12 proposed changes after the passage of the Voting Rights Act?

13 A. Right. So, South Carolina was subject to Sections 4 and
14 5 of the Voting Rights Act from 1965, when it was enacted, to
15 2012, meaning it had to seek preclearance for any kind of
16 changes in electoral law or electoral procedures or practices,
17 to make sure that those wouldn't discriminate or limit the
18 ability of Black voters to participate equally and fairly in
19 the political process. And during that time, the State was
20 subject to 122 of those objections under Section 5.

21 Q. Now, Dr. Bagley, I want to turn to the redistricting
22 litigation portion of your report.

23 MR. INGRAM: Next slide, please.

24 BY MR. INGRAM:

25 Q. Dr. Bagley, in review of the legislative enactment of

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1 Senate Bill 865, do you remember any legislators invoking the
2 history of redistricting?

3 A. I do. Representative Govan.

4 Q. Thank you.

5 MR. INGRAM: Can we please play the video?

6 *(Video played.*

7 BY MR. INGRAM:

8 Q. Dr. Bagley, who is Representative Govan?

9 A. Representative Govan is a member of the General Assembly
10 on the House side who was speaking there on the House floor,
11 giving a bit of a history lesson, explaining how going back
12 all the way to the beginning of redistricting as we know it,
13 that this process has been contentious, that in his words,
14 we -- meaning the General Assembly -- didn't do it the right
15 way, meaning that, in his opinion, it was done in such a way
16 as to discriminate against Black voters in South Carolina, and
17 for those reasons, that each redistricting cycle, you see
18 either civil rights division objections under Section 5 or
19 litigation brought by -- challenges brought by Black
20 plaintiffs and sometimes both.

21 Q. Now, Dr. Bagley, I want to walk through a brief portion
22 of your report regarding the legal history from the 60s to the
23 present.

24 MR. INGRAM: Next slide, please.

25 BY MR. INGRAM:

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1 Q. Dr. Bagley, can you provide a high level overview of the
2 significance of these two cases in the 1960s in South
3 Carolina?

4 A. Sure. *Reynolds v. Simms* is the Supreme Court decision
5 that establishes the principle of one per one vote, the idea
6 of equal protection under the Fourth Amendment means that
7 legislative districts need to be roughly if not very close to
8 exactly equal in size. And so, this results in states like
9 South Carolina having to redistrict to get their State House
10 or Senate or Congressional Districts in line with that. The
11 first challenge brought in South Carolina under this in the
12 60s was *O'Shields*. The upshot of that is that this is when we
13 began to see -- and I think I mentioned this earlier, but both
14 at the state level and then through localities, county
15 commissions and school boards and what not, switching to
16 at-large voting systems or using, in the case of the South
17 Carolina Senate, multi-member districts with majority vote
18 requirements, rather than having single-member districts. And
19 the thinking there, or the purpose there, is to allow White
20 majorities to elect only White candidates.

21 Q. Next slide. Can you provide an overview for the major
22 cases in the 1970s?

23 A. Sure. The upshot of *Twiggs* is -- this is a challenge to,
24 again, the Senate's use of multi-member districts with the
25 majority vote requirement that ultimately fails. So, the

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1 Senate remains an all-White body in South Carolina into the
2 1980s.

3 Now, a challenge was also brought that ultimately results
4 in the Supreme Court's decision in *Stevenson v. West*, which
5 overturns the House of Representatives in South Carolina as
6 use of multi-member districts and majority vote requirement.
7 Also, during this process -- and it is complicated and, at
8 times, convoluted, but the State attempted to use what they
9 call an anti single-shot law. This is a device where if you
10 have a body or a multi-member district where numerous people
11 are running for places on that body, Black voters realized
12 that they could concentrate their vote or their power to elect
13 someone by focusing on just one candidate and leaving other
14 slots blank. And anti single-shot law would require that you
15 cast a vote for each place. And so you could not do that. It
16 would nullify Black voters' ability to do that.

17 A numbered place law is essentially the same thing. And
18 during this decade, you see the State immediately wants the
19 anti single-shot law struck to try to replace that with a
20 numbered place law. This would force candidates to run for
21 place one, place two, place three, so that every contest is
22 head to head, which, again, would empower a White majority
23 even at, you know, 51 percent.

24 But, again, the upshot of all of this is, this is the
25 point where finally you have break-through in the South

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1 Carolina House of Representatives. Black voters in South
2 Carolina had not been able to elect candidates of their choice
3 since before the redemption, of which I spoke earlier, from
4 the late 19th century via this litigation.

5 Finally in the 1970s, you see -- I think 14 may be the
6 number in 1974 -- Black legislators who were elected to the
7 house. Three had been previously elected, but only in 1970.
8 So, again, I think the broad takeaway here is there is
9 breakthrough in the House.

10 Q. Next slide please. Can you provide the broad takeaway
11 from the 1980s?

12 A. Sure. In the 1980s, Black plaintiffs filed litigation,
13 their civil rights division objections as well. There are
14 challenges brought in terms of the State House, the State
15 Senate, and Congress. One of the broad takeaways here from
16 the 80s cycle is that, finally, after multiple civil rights
17 division objections and the threat of court action by
18 litigation, the South Carolina Senate finally relents and
19 begins to use single-member districts. And you see a small
20 handful of Black senators elected for the first time and a
21 slight increase in the number of Black candidates that are
22 elected to the House of Representatives.

23 And there is this challenge brought that you see here,
24 *South Carolina State Conference of Branches v. Riley*, to the
25 congressional map. Ultimately, the court in that case adopted

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1 its own plan, and the congressional delegation for the state
2 of South Carolina in Washington continued to be all White into
3 the 1990s.

4 Q. Next slide please. Can you please provide a brief
5 takeaway of these major cases in the 1990s?

6 A. Sure. The *Burton* litigation in the 90s encompasses both
7 the State House, the State Senate, and Congress. The upshot
8 here, or I guess the broad takeaway, is that the General
9 Assembly passed plans for the State House and the State
10 Senate, and the governor at the time Carol Campbell, vetoed
11 those. What Governor Campbell said is that he felt like these
12 plans wouldn't past muster under Section 2 of the Voting
13 Rights Act. He felt like there weren't enough
14 majority/minority Black districts. This is a moment where you
15 have to step back as a historian and sort of understand the
16 broad occurrence in terms of political history.

17 And so, we talked about -- or I talked about earlier
18 South Carolina and the Vanguard. And I don't want to belabor
19 this and get too far back into the less recent history, but
20 Strom Thurmond was the first to leave -- at least temporarily
21 at that time -- the Democratic Party in the 1940s for the
22 Republican Party. And the reason for this is that the Truman
23 Administration had made the mistake of supporting very limited
24 civil rights overtures. And Thurman and the Dixiecrat's
25 stance was: Don't do this or you will lose your White

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1 southern brothers, if you will. And so the relevance of that
2 here is that that began what was at that time a relatively
3 slow trickle of White voters out of the Republican Party -- or
4 excuse me, out of the Democratic Party to the Republican
5 Party. At first, that is, you would see White voters voting
6 for Republican candidates for president but staying loyal to
7 the Democratic Party at the local level. But by this time, by
8 the 1990s -- and really accelerating after the enactment of
9 the Civil Rights Act and the Voting Rights Act -- you begin to
10 see that trickle turn into more of a stream. And so, for
11 critics of Governor Campbell at that time, they said this is a
12 cynical move and what you're really attempting to do is, you
13 know, say you support more majority/minority districts so you
14 could whitewash other districts so that they're so safely
15 White that they vote for Republican candidates.

16 In any case, the Court in *Burton* ultimately adopts plans
17 for the State House and the Senate, and those are eventually
18 overturned. Eventually you come out with plans that see a
19 slight increase in terms of the number of Black
20 representatives in this House and in the Senate. There is a
21 deal brokered -- and this gets back to this shift to the
22 Republican Party of White voters. The Black Caucus at the
23 time was somewhat disaffected with the Democratic Party and
24 they struck a deal with the Republican Party to come up with a
25 plan that's ultimately enacted. Now, I think the reason you

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1 have *Shaw* and *Miller* on there is that there are challenges
2 brought to those plans. And the Supreme Court, under *Shaw* and
3 *Miller*, had determined you couldn't take race primarily into
4 account and draw sort of funky-looking districts, even if the
5 purpose was to get Black candidates elected. And so, some of
6 those districts that were drawn as a part of that process
7 ended up being struck.

8 And in terms of Congress, though, the upshot here -- and
9 we can move on, if you want, from the 90s -- is that, of
10 course, CD 6 is drawn as much for the first time.

11 Q. And who was elected to CD 6 in the 1990s?

12 A. James Clyburn.

13 Q. And what was the documented racial reaction at Clyburn's
14 election?

15 A. Well, I talk about in the report that, you know, Mr.
16 Clyburn was subject to what he felt like were racist appeals
17 during the election itself. He and his campaign manager took
18 issues with some of his opponents' campaign materials that
19 they viewed as plainly motivated by racial animus. And so,
20 even though Representative Clyburn is part of this sort of
21 breakthrough in Washington for the first time, there are these
22 racial issues that he has to deal with in the process of the
23 campaign.

24 Q. Next slide please. Can you please tell the Court your
25 upshot of the 2000s' legal history of redistricting

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1 litigation?

2 A. Sure. The General Assembly in the 2000s passes plans for
3 the State House and the Senate and for the State's
4 Congressional Districts. But the governor -- in this case,
5 Jim Hodges, who was not Republican, he was a Democrat --
6 vetoed those. And his argument was, there -- especially in
7 the case of the State House and Senate, there were not enough
8 opportunity districts, that is, districts where, you know,
9 Black voters may not make up 51 or 60 percent, but could be in
10 enough numbers to still get a candidate of choice elected,
11 which, of course, would benefit at that time the Democratic
12 Party. So, with his veto then, this ends up again before the
13 Court. The Court in the *Colleton* case finds notably for the
14 first time overwhelming evidence of racially polarized voting
15 throughout the state and ends up adopting plans of its own for
16 State House, Senate, and Congress. In the case of the
17 Congressional District, that mirrors what had been adopted in
18 the 90s.

19 Q. Next slide please. Can you please explain to the Court
20 the takeaways from the redistricting litigation in 2010 cycle?

21 A. Sure. In 2010, of course, South Carolina gained a
22 congressional seat, and CD 7 was created: The Grand Strand
23 and Pee Dee. The General Assembly passes through plans for
24 the State House and Senate and, as I say, Congress. A
25 challenge is brought to those that sort of -- it was sort of a

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1 kitchen-sink approach in terms of how that was challenged.
2 And that ultimately failed. Those plans were pre-cleared by
3 the Obama Justice Department. And ultimately, the court
4 determined that plaintiffs' expert had focused too much on
5 changes in the Black voting age population in districts and
6 not enough on trying to prove how traditional redistricting
7 principles had been subordinated to race.

8 Q. And why is this relevant to your work as a historian?

9 A. Well, this gets back to my overarching point, and also to
10 what Representative Govan was saying in the clip that you saw,
11 that if you look at redistricting from *Reynolds* and *O'Shields*
12 to the present day, every decade this had been highly
13 contentious. And, you know, I'm not trying to talk about
14 *Backus* in such a way as to say, you know, failed lawsuits are
15 indicative of discrimination or discriminatory intent, but I'm
16 also not looking in this case in a historical vacuum either.
17 In the same way that, you know, one decision, one case,
18 one piece of evidence wouldn't prove discriminatory intent,
19 nor does one failed lawsuit indicate that there hasn't been
20 contention over issues of race and discrimination and
21 redistricting from the beginning to present.

22 Q. I want to now shift gears to the legislative history
23 around enactment of S.865. Next slide, please.

24 Dr. Bagley, can you summarize some general observations
25 that you made in this portion of your report?

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1 A. Sure. From my review of this process, it's clear that
2 there are a chorus of voices that speak to their concerns,
3 that little time in the process to review maps that staff are
4 producing, that staff are producing in minds of members, even
5 of the relevant committee's maps out of nowhere, that they had
6 nothing to do with the drafting of or did not know of the
7 existence of. There are concerns -- repeated concerns
8 expressed about general lack of access to the actual
9 map-drawing process. There are repeated concerns voiced about
10 selective incorporation of public feedback or selected
11 application of adopted guidelines, committee members reporting
12 being blind-sided by the publication or modification of maps,
13 and then decisions being made without support that's in the
14 sort of documentary or public record.

15 Q. And who made the observations that you just summarized?

16 A. So, these would be members of the public, both in public
17 hearings and in meetings of legislative committees that were
18 open to the public, but also members of the relevant
19 committees and members of the larger legislative bodies.

20 Q. Now, Dr. Bagley, I'm going to go through the hearings
21 that you observed chronologically, but I want to first make
22 sure that we understand who the players are.

23 Next slide. Dr. Bagley, who is represented on this
24 slide?

25 A. These are the members of the Senate Redistricting

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1 Subcommittee that was charged with overseeing the process of
2 drawing maps for the 2020 cycle.

3 Q. And does the record reflect any of these senators
4 identifying as African American?

5 A. Senator Sabb and Senator Matthews.

6 Q. Next slide. And what does this slide depict, Dr. Bagley?

7 A. These were members of the House Ad Hoc Redistricting
8 Committee that were charged with the same.

9 Q. And does the record reflect any of these representatives
10 identifying as African American?

11 A. Representative Bamberg and Representative Henegan.

12 Q. And does the record reflect any procedural irregularities
13 in the composition of this committee?

14 A. Yes. At some point in the process, Representative
15 Brandon Newton stepped down for the birth of his child. And
16 he did not have the requisite time to commit to this.
17 Representative King and others expressed their concern that he
18 should have been replaced on the committee. The committee was
19 designed to have representation from the different
20 Congressional Districts. And Representative King felt like
21 when Representative Newton stepped down, someone should have
22 been put in his place. He was also from -- I believe it was
23 -- CD 5. And he felt like that should have been him. But
24 that was not done.

25 Q. And why is it called an Ad Hoc Redistricting Committee?

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1 A. Well, it was created ad hoc, right, it was created as
2 such. Both of these committees exist under their respective
3 judiciary committees. And in the case of the House,
4 previously, there was an Election Law Subcommittee of that
5 Judiciary Committee that handled redistricting. But in this
6 particular cycle, this committee was created to handle this
7 instead.

8 Q. So now, Dr. Bagley, I want to start with the public
9 hearings. Next slide.

10 So, Dr. Bagley, where did the Senate Redistricting
11 Subcommittee hold its public hearings?

12 A. There were hearings held throughout the state. And that
13 would include in Aiken, in Conway, in Orangeburg, in Beaufort,
14 in Florence, in Greenville, Rock Hill, Sumter and, of course,
15 in Columbia.

16 Q. And what were the purpose of these public hearings?

17 A. The purpose was to -- the stated purpose was to gather
18 input from the public about the redistricting process.

19 Q. And what was the relationship of the public in terms of
20 feedback? What did you hear in the records?

21 A. So, at these hearings, there are common themes. Of
22 course, people will speak to what they view as important COIs,
23 or communities of interest, that they feel like ought to be
24 kept together in districts, be they State House districts, or
25 Senate districts, or Congressional Districts. People

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1 expressed concerns about limiting splits in voting precincts
2 and this kind of thing. At just about every hearing, people
3 speak to their concerns about packing and cracking Black
4 voters, that is, packing certain districts with a large number
5 of Black voters so that you could turn around and then limit
6 their numbers in other districts and so on. And then there
7 were, you know, generally speaking, consistent concerns
8 expressed about the transparency of the process.

9 Q. And did the subcommittee accept real time and written
10 public testimony?

11 A. Yes. The public were allowed to submit written testimony
12 at these hearings.

13 Q. And did the committee during these meetings communicate
14 how that input would be assessed?

15 A. No. There's no real sense given as to once it was
16 received, you know, systematically how this would be analyzed,
17 interpreted, acted upon and sort of -- it was stated at these
18 hearings that we're here to just listen, we're not going to
19 give feedback in real time. But also there's no indication of
20 how feedback would be given or how analysis would be performed
21 and sort of intermediate or long term either.

22 Q. Next slide. Can you provide sort of where the House Ad
23 Hoc Redistricting Committee held their public hearings?

24 A. Sure. Similarly, the idea here was, you know, staff
25 prepared a list of hearings that was designed to, you know,

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1 traverse the state to be, as they say, a sort of road show for
2 the committee to go and listen to the public. And in the case
3 of the ad hoc committee, hearings were held in Myrtle Beach,
4 Florence, York, Greenville, North Charleston, Bluffton, Aiken,
5 Greenwood, Orangeburg and, of course, Columbia.

6 Q. And what issues does the record reflect being raised at
7 these hearings?

8 A. It's the same as with the Senate hearings. People talk
9 about COIs, people talk about their concerns of splitting
10 precincts or splitting counties or municipalities. There is,
11 consistently, concern expressed about packing and cracking the
12 Black voters. There are concerns, again, expressed about the
13 general transparency of the process and so on.

14 Q. And did this committee provide a collection of written
15 testimony for the public to access?

16 A. I believe the committee accepted public written feedback.
17 But if I remember correctly, the Senate published that on
18 their website. I don't think the House did.

19 Q. And did the committee talk about how they would
20 incorporate feedback?

21 A. No. There was no real sense given as to how this would
22 be analyzed, interpreted, acted upon. And it was stated that,
23 you know, we're here to hear from you. We want to maximize
24 the time to do that. And so there's not really any give and
25 take or back and forth there.

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1 Q. In addition to the public testimony, did the House Ad Hoc
2 Redistricting Committee and the Senate Redistricting
3 Subcommittee solicit maps from the public?

4 A. Yes, they did.

5 Q. And do you remember which group submitted maps?

6 A. If I remember correctly, the NAACP submitted a couple of
7 maps, the League of Women Voters submitted a map or two.
8 There were some students from Stanford who submitted a map.
9 Those would be among those that I could recall off the top of
10 my head.

11 MR. INGRAM: And can we please pull up Plaintiff's
12 Exhibit 606 and 607.

13 BY MR. INGRAM:

14 Q. Dr. Bagley, do you remember any discussion in the record
15 about these two maps?

16 A. No, not really. These maps are presented. There's a
17 meeting of the Senate Redistricting Subcommittee where people
18 could come forth and talk about the maps that they submitted.
19 But there's not really much of a back and forth or a give and
20 take about them.

21 Q. Now, Dr. Bagley, I want to talk about the first hearings
22 held by the Senate and House Redistricting Committees,
23 starting with the July 20th, 2021. Next slide please.

24 What did you learn about the 2020 census data at this
25 meeting?

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1 A. So, that was discussed. This is at the very first
2 meeting of the Senate Redistricting Subcommittee. And it was
3 clear, once the census data was received, that CD 6 had lost
4 population and was underpopulated by a figure I can't recall,
5 but some thousands of people, and that CD 1 had grown and was
6 overpopulated by roughly about the same number.

7 Q. Now, I want to turn to the first House Ad Hoc Committee
8 meeting on August 3rd. Next slide please.

9 What occurred at this first meeting of the House?

10 A. So, the staff presents a sort of schedule for the road
11 show, the public hearings. And then the committee adopted
12 guidelines that were presented by staff there as well.

13 Q. And did these guidelines mention core retention?

14 A. I don't think so. I think that is one of the additional
15 considerations in the Senate guidelines. But if memory
16 serves, I don't think that's in the House guidelines.

17 Q. And did the adopted guidelines mention creating a
18 Republican advantage?

19 A. No.

20 Q. Next slide please. What occurred on September 17th,
21 2021?

22 A. So, at this hearing of the Senate Subcommittee, there was
23 some discussion of adoption of guidelines here for this
24 committee. Senator Harpootlian expressed his concern that
25 sort of things had changed since the *Shelby County vs. Holder*

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1 decision, and that, you know, in his view, perhaps you could
2 go back to the drawing board, so to speak, and correct some of
3 what he said were kind of misshapen districts, that in his
4 view, you know, were not consistent with the Supreme Court
5 *Shaw* decision that I talked very briefly about. And he also
6 expresses his concern that this whole process might be in his
7 words, "a Pulooki theater" (*phonetic*), that there is not going
8 to be any real value in these meetings of the committee or
9 anything done with regards to what input was received at the
10 public hearings.

11 Now, he did also propose amending the guidelines to
12 include a consideration of the Supreme Court's *Gingles*
13 decision and its progeny, and that was adopted. I believe
14 here as well, Senator Matthews, she and Senator Harpootlian
15 both, I believe, expressed their concern that perhaps the
16 committee ought to perform a racially polarized voting
17 analysis. She also proposed adding to the guidelines
18 consideration of the, you know, linguistic or cultural
19 communities as COIs, like the Gullah Geechee communities.

20 Q. And did these guidelines mention core retention?

21 A. Yes. As I said earlier, I believe that core retention is
22 in the senate guidelines under -- I believe it's III,
23 additional considerations.

24 Q. And were any issues raised at this meeting about the map
25 room?

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1 A. Yes. Senator Harpootlian, you know, asks can the public
2 have access to the map room, we don't want this to be, you
3 know, a sort of backroom deal that nobody knows what's going
4 on, and we're not going to -- I'm paraphrasing here -- raise
5 the hood on what's going on in the map room and so on.

6 Q. Thank you. Next slide. What occurred on November 12th,
7 2021?

8 A. This is the third Senate Redistricting Subcommittee
9 meeting that was held with the express purpose of getting
10 feedback from members of the public who had submitted maps of
11 their own, which was a relatively small number of people,
12 because -- there's a sort of technical acumen that one would
13 have to have to submit maps that are compliant, I guess you
14 could say, in terms of their technical aspects.

15 Q. And what feedback did you hear at this hearing?

16 A. There's not a lot of feedback. There is some back and
17 forth between Chairman Rankin; and staff attorney, Mr.
18 Terrine; and the map drawer, John Roof, who was there with
19 Lynn Teague of the League of Women Voters. Otherwise, you
20 have people who are sort of presenting the pros of the maps
21 that they had presented. And, again, it's sort of like an
22 input session, if you will.

23 Q. Did members of the public make any requests regarding
24 Charleston?

25 A. Yes. So, you begin to see -- or not begin to see,

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1 because these concerns are raised in the public road show
2 hearings as well. But people are expressing their concern
3 that Charleston be kept whole in a new congressional map, and
4 that the committee not lob off Black voters from North
5 Charleston and include them in a district with, say, Black
6 voters from Richland.

7 Q. How did the committee respond to these comments?

8 A. As I said, there is not a lot of give and take there.
9 This is more of a: We're here to hear from you and let you
10 present your maps.

11 Q. And did the committee defend splitting of Charleston?

12 A. Yeah. The general response there is, well, this is the
13 way that it was in the 2010 map, and that that was cleared
14 through the Obama Justice Administration and the *Backus*
15 decision.

16 Q. Did you hear any comments about partisanship at this
17 meeting?

18 A. I don't recall anything to that effect, no.

19 Q. Did anyone make comments opposing partisanship?

20 A. Yeah. Members of the public routinely -- and this would,
21 again, go back to the road-show hearings as well, say, we
22 don't want to see you draw a map that advantages one party
23 over the other.

24 Q. And what occurred on November 23rd, 2021?

25 A. So, this is the fourth meeting of the Senate

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1 Redistricting Subcommittee --

2 Q. Sorry. November 23rd, 2021?

3 A. Yes, November 23, 2021, the fourth meeting of the Senate
4 Redistricting Subcommittee.

5 Q. Dr. Bagley, when was the first Senate congressional map
6 published?

7 A. This was -- yeah. So, that map was published on, I
8 believe -- ah, yes. Sorry. The Senate staff published their
9 map on November 23rd.

10 MR. INGRAM: Could we please bring up Exhibit 486?

11 BY MR. INGRAM:

12 Q. Do you remember any discussions of this map at the next
13 meeting the Senate had? And now we can go back to the time
14 line, November 29th.

15 A. Right. Sorry. So, the staff on the Senate side
16 publishes their first map on the week before -- or the week of
17 the Thanksgiving holiday. And the Senate Redistricting
18 Subcommittee holds its next meeting on November 29th. The
19 public feedback there was, I would say, overwhelmingly
20 negative.

21 Q. And were there any concerns around the timing of the
22 release of the map?

23 A. Yes. People who spoke -- and not just people who spoke
24 from the public, but also members of the committee --
25 expressed their serious concern as to why this map was put out

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1 just before the Thanksgiving holiday.

2 Q. And do you remember any comments by Mr. Cunningham?

3 A. Yes. Former Representative Cunningham was among the
4 first to speak and expressed sort of I guess I would say
5 unabashedly his belief that this was a race-based political
6 gerrymander, that it was created for the sole purpose of
7 ensuring Republican victories in all CDs, except for 6, and
8 that it had been conceived of by what he calls a, quote,
9 "partisan hack" from Washington.

10 Q. And were any other comments made at this meeting
11 regarding race?

12 A. Senator Matthews expressed her concern that Black voters
13 had deliberately been, I think in her words, "carved out" of
14 Charleston for purposes of being put in with Black areas of
15 Richland into CD 6 while the -- again, in her words -- "more
16 affluent areas" or the Whiter areas of Charleston were
17 included with CD 1. Senator Harpootlian I think echoed those
18 concerns along with asking staff if they had had input from
19 sitting members of Congress or national political groups and
20 this sort of thing.

21 Q. And did anyone raise creating a partisan Republican
22 advantage regarding this map at this meeting?"

23 A. I believe the only person who raised that was former
24 Representative Cunningham.

25 Q. And did members of the committee affirm his proposition?

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1 A. They did not.

2 Q. Next slide please.

3 MR. INGRAM: Can we also bring up PX-487?

4 BY MR. INGRAM:

5 Q. Do you recognize this map, Dr. Bagley?

6 A. Yeah. That's the initial staff plan put out on the House
7 side.

8 Q. Thank you.

9 MR. INGRAM: Next slide, please.

10 BY MR. INGRAM:

11 Q. What occurred on December 16th, 2021?

12 A. The staff on the House side published their plan on
13 December 13th, and the Ad Hoc Committee met three days later
14 to discuss that plan.

15 Q. And when was their previous meeting before this one?

16 A. Gosh, it would have been back before the road show public
17 hearings, so back maybe in August.

18 Q. And what public comments did you hear implicating race
19 regarding this new map that had been published on the 13th?

20 A. The general tenor of the public remarks at this meeting
21 was that this map was not perfect, but it represented a
22 significant improvement from the Senate map in terms of its
23 treatment of Black voters.

24 Q. Did you hear any comments from residents of Beaufort?

25 A. At this particular meeting, yes, there were a handful of

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1 individuals who came forth and said, you know, we don't want
2 to be moved over from CD 1, we would like to remain where we
3 are.

4 MR. INGRAM: Next slide, please. And can we please
5 pull up Exhibit 488?

6 BY MR. INGRAM:

7 Q. Dr. Bagley, do you recognize this map?

8 A. Yes. This is the staff plan put out on the House side,
9 Alternative 1. So, the second plan put out by staff on the
10 House side.

11 Q. Thank you.

12 MR. INGRAM: Next slide, please.

13 BY MR. INGRAM:

14 Q. What was discussed on December 29th, 2021, at the third
15 House Ad Hoc Redistricting Committee meeting?

16 A. The plan that you just showed. So, that was put out by
17 staff just prior to the Christmas holiday. And then the ad
18 hoc committee comes together after that holiday to discuss
19 that alternative map that was pushed out.

20 Q. Did any legislators or community members raise issues
21 about timing at this meeting?

22 A. Yeah. It's similar to what you saw in terms of the
23 Thanksgiving holiday, this question of -- which is a very
24 important process, concerns are raised -- why would you
25 release this, in the words of some of those people, out of

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1 nowhere. Members of the committee expressed their concern of
2 being sort of blind-sided by this, that they didn't know an
3 alternative plan was even being created. I believe
4 Representative Bernstein says: I don't even understand why
5 we're entertaining this. And so, as chairman Jordan said, the
6 plans put out by staff are starting points, then why do we
7 then produce a wholly new map rather than coming together as a
8 committee, having a discussion and amending the map that we
9 have.

10 Q. And what did members of the public communicate to the
11 committee about this map?

12 A. So, similar to the discussion from the public -- the
13 feedback from the public with the Senate's map, the response
14 here is overwhelmingly negative. In fact, members of the
15 public state their belief that this map is actually incredibly
16 similar to, if not almost identical to, the Senate's original
17 map. And so, the feedback mirrors the feedback that members
18 of the public had given when that first Senate map was pushed
19 out.

20 Q. And did a member of the Ad Hoc Redistricting Committee
21 express having not been shown the map before the hearing?

22 A. Yes. Representative Bernstein expressed her concern and
23 said she didn't know that this map was being produced, didn't
24 know why it was being produced. Like I said, she says at one
25 point: I don't even know why we're entertaining this.

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1 Doesn't even understand the purpose of creating an entirely
2 new map to begin with.

3 Q. And based on the record, what is the relationship between
4 the Staff Plan Alternative 1 from the House and the final
5 enacted map?

6 A. I think there are some minor changes or tweaks, but, more
7 or less, this is what becomes the enacted map.

8 Q. Next slide please.

9 MR. INGRAM: And can we play the video?

10 *(Video played.*

11 MR. INGRAM: Next slide please. January 10th, 2022,
12 fourth Ad Hoc Redistricting Committee meeting. Go back one
13 slide please.

14 **BY MR. INGRAM:**

15 Q. Dr. Bagley, what date did this exchange take place on?

16 A. So, that was the January 10th meeting of the House
17 Redistricting Ad Hoc Committee. What you see there is the
18 very beginning of the video -- and that's also where the
19 transcript picks up -- the meeting was actually already in
20 progress. So, that is the first thing that you see, this
21 exchange where Representative Bernstein is asking, hey, isn't
22 it possible for Beaufort and for Charleston to be included
23 whole in CD 1? And as you saw there, Chairman Jordan and
24 Representative Newton indicated it was their belief that that
25 was not possible.

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1 Q. And why do you find this portion of the record
2 significant?

3 A. Well, because if you follow the record through in
4 subsequent meetings, Representative King and others, other
5 Black legislators, expressed their belief that that was not
6 true, that, in fact, Beaufort and Charleston could be kept
7 whole in CD 1. And I believe that is borne out with, once it
8 gets to sort of final consideration on the Senate side of two
9 maps, the one that becomes the enacted map and then the map
10 put forth by Senator Harpootlian, the latter, I believe does
11 include all of Beaufort and all of Charleston.

12 Q. And did you hear any comments at this January 10th
13 meeting about Sumter and Richland?

14 A. Yes. There are concerns expressed as to why those two
15 areas had to be split as well.

16 Q. Thank you. Next slide. What took place on January 10th
17 at the full House Judiciary Committee meeting?

18 A. So, that meeting follows upon that -- it's the same day,
19 of course, and it's the full House Judiciary Committee. That
20 is the meeting which is presided over by Representative Newton
21 on the basis of instruction from Chairman Murphy, and
22 Representative King expresses his concern that he should have
23 chaired that meeting.

24 Q. And did legislators express any concerns at this full
25 House committee meeting about Charleston?

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1 A. Yes. They echoed concerns that had been coming from the
2 public about splitting Black Charlestonians off and including
3 them in CD 6, and sort of the coastal areas of Charleston with
4 the rest of the Tri-County in the CD 1.

5 Q. And was there any discussion of Beaufort at this meeting?

6 A. Yes. So, there are questions raised by members of the
7 committee as to, you know, what made the concerns of those
8 residents of Beaufort who had come forth at that previous
9 meeting and said, hey, we don't want to be moved out of CD 1.
10 The question raised by members of the committee is: What
11 makes their concerns raised to the level of producing, you
12 know, an entirely new map? Representatives like
13 Representative Thigpen, you know, A, we could have amended the
14 map that we had; or B, considering we've heard continuously
15 throughout the process from people who are concerned about
16 splitting Charleston, why didn't we produce, say, a third
17 alternative map to reflect those concerns as well?

18 Q. And did a vote take place at this meeting?

19 A. Yes. And the vote there was 13 to six in favor of the
20 plan as such, the alternative plan.

21 Q. And did any Black legislators vote for this plan?

22 A. No.

23 Q. Next slide please. What was the purpose of the
24 January 12th full House of Representatives meeting?

25 A. So, the vote you were just talking about is to have a

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1 favorable report on this plan. And so, it advances then to
2 the full House of Representatives.

3 Q. Did you observe any concerns from Black legislators at
4 this hearing?

5 A. Yes. And, in fact, really the dynamic of this meeting of
6 the House is that Chairman Jordan is, of course, presenting
7 the map in what he views as the positive components of the
8 map. And all the questions that he hears and all the debate
9 that transpires are from the Black members of the House.

10 Q. Who is Representative Crystal Matthews?

11 A. Representative Crystal Matthews is a Black member of the
12 House who is among those who expressed concerns.

13 MR. INGRAM: And we'll play a video, please.

14 *(Video played)*

15 BY MR. INGRAM:

16 Q. Does Representative Crystal Matthews's comments echo
17 other comments you heard from Black legislators?

18 A. Yes. That was among one of the most prominent concerns,
19 that Charleston metro is being split along racial lines.

20 Q. And did they both take place at this schoolhouse meeting?

21 A. Yes. There was a vote.

22 Q. And how many Black legislators voted for Congressional
23 House Alternative Staff Plan 1?

24 A. I believe Representative Chris Hart was the lone Black
25 member to cast an "Aye" vote in the final vote that was held.

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1 Q. Next slide please.

2 JUDGE GERGEL: Let me mention that, as you do videos,
3 you need to identify for the record what those videos are.

4 MR. INGRAM: Okay. We have exhibit numbers.

5 JUDGE GERGEL: Thank you. But we just haven't heard
6 it in the record.

7 MR. INGRAM: Oh, okay.

8 JUDGE GERGEL: Thank you.

9 **BY MR. INGRAM:**

10 Q. What occurred on January 13th, 2022?

11 A. This was the final meeting of the Senate Judiciary
12 Redistricting Subcommittee to discuss these congressional
13 districts.

14 Q. And do you remember when the previous subcommittee
15 meeting occurred?

16 A. That would have been back when the initial Senate plan
17 was pushed out, I think, in November.

18 Q. And what happened at this meeting?

19 A. So, the purpose here was to receive public feedback on
20 what were at that posture two amendments. And so, this is the
21 point where we see it, it sort of boils down to two proposed
22 maps on the Senate side. One becomes known as Senate
23 Amendment 1/H2. This is the alternate House plan that
24 mirrored the original Senate plan. And the other proposal was
25 put forth by Senator Harpootlian. That becomes known as

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1 Senate Amendment 2, or the whole county plan. So, there's
2 feedback on one or the other, SA1/H2 or SA2/WC or whole
3 county.

4 Q. And which one of these amendments became the final
5 enacted map?

6 A. That would be SA1/H2.

7 Q. And did you hear anything in the record at this point
8 about core retention?

9 A. Yes. The map drawer that Senator Harpootlian employed,
10 Attorney Joseph Oppermann raises this issue of core retention.
11 In sort of lauding the positives of SA2 whole county, he
12 listed out the percentages of the retention of core of voters
13 in each of the congressional districts in the plan.

14 Q. And did anyone at this hearing bring up creating a
15 Republican advantage through either one of these amendments?

16 A. I don't think so, no.

17 Q. Next slide, please. What occurred on January 19th, 2022?

18 A. This is the final meeting of the full Senate Judiciary.
19 And it's the same posture. We have two maps. We've got
20 SA1/H2 versus SA2 whole county. Senator Campsen presents SA1,
21 and Senator Harpootlian presents SA2. And there's back and
22 forth between the members of the Judiciary Committee about
23 those two proposals.

24 Q. And did Senator Campsen talk about the role of race in
25 this process?

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1 A. Senator Campsen presents SA1 and says, I didn't take race
2 into account at all. I tried to be colorblind in the drawing
3 of this map.

4 Q. And based on your review of the record, were any claims
5 made at this hearing that you did not find evidence for in the
6 record?

7 A. This is where we begin to see Senator Campsen argue that
8 in terms of the split in Charleston, that in his view and in
9 the view of certain of his constituents, that it was
10 preferable or better to have two members of Congress
11 representing Charleston or one member of Congress from each
12 party representing Charleston. It may be, of course, that
13 Senator Campsen's constituents communicated that to him, but
14 in terms of the public record that was available to me, and
15 available to other people who were speaking in this process, I
16 did not see anything to indicate that.

17 Q. And did core retention come up at this meeting?

18 A. Yes. This is where you begin to see Senator Campsen and
19 others arguing that core retention is a key feature of SA1.

20 Q. And had this been a thing prior to this meeting?

21 A. I don't recall having that -- seeing that come up until
22 Mr. Oppermann brought it up in that previous meeting that we
23 talked about.

24 Q. And did a vote take place at this meeting?

25 A. Yes.

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1 Q. And do you remember what the vote was?

2 A. The bill passed out by a vote of 14 to eight.

3 Q. Did any Black senators vote yes on this bill?

4 A. No.

5 Q. Next slide please. At the floor vote on January 20th of
6 2022, did any individuals raise issues about Charleston?

7 A. Yes. There was continuing discussion of this concern of
8 why is Charleston split the way it is when we've heard so much
9 public feedback indicating that the public does not want that;
10 concerns raised about what made, again, the concerns of those
11 members of Beaufort rise to the level of producing a new map
12 that ultimately becomes -- what's going to become or is set to
13 become the enacted map, whereas nothing was done in terms of
14 splitting Charleston. Some of the senators argued that, you
15 know, Columbia and Charleston are the only urban cores that
16 are split in the plan and so on.

17 And then there are others who raise, I think, procedural
18 concerns as well.

19 Q. And did any Black senators raise procedural concerns at
20 this hearing?

21 A. Yes. Senator Malloy.

22 MR. INGRAM: Your Honor, I would now like to play a
23 video, which is Plaintiffs' Exhibit 116, at minute mark 82:21;
24 and 83:08.

25 *(Video played.)*

JOSEPH BAGLEY, M.D. - DIRECT EXAMINATION BY MR. INGRAM 1147

1 BY MR. INGRAM:

2 Q. Dr. Bagley, can you please sort of contextualize this
3 senator's comments for the Court?

4 A. What Senator Malloy is trying to the say is that the
5 posture of this was that the vote would be held at that time,
6 but once it was gone from the Senate, then it was gone. And
7 he says, you know, we've had, you know, an hour in change, as
8 he says, of discussion over this. Whereas, this was something
9 he felt warranted a lot more discussion. Particularly in
10 light of -- if you listen to his comments right before that
11 clip, there had been a back and forth between even members of
12 the redistricting subcommittee about not just the merits of
13 this plan versus the other, but who received which documents
14 when, you know, did someone have the wrong page numbers of a
15 certain document. And there had also been questions raised by
16 Black members of the Senate about certain parameters of the
17 plan. And he says, We've been told here to go to the website,
18 go to the website, you can find it on the website. Which, not
19 only did he think was dismissive, but I think his point was,
20 well, if you're asking me to go to the website and review
21 something, shouldn't we have time to go home and do that and
22 come back. And what he saw in the clip was him saying we
23 don't have the opportunity to do that. We're going to have to
24 send this thing out of here and it's gone, and the House will
25 vote on it, and that's it. So, he felt that was, you know, a

JOSEPH BAGLEY, M.D. - DIRECT EXAMINATION BY MR. INGRAM 1148

1 procedural irregularity.

2 Q. And were there any comments at this hearing about why
3 there's such an expedited timeline?

4 A. Yes. I think that the ideal was, you know, that
5 opponents of the process thought that it was being rushed
6 through. Of course, proponents of the process were saying
7 we're on a court-imposed deadline. I think Senator Malloy
8 said, though, in response, I think the deadline is passed
9 already. If we're two days passed the deadline, what's one
10 more. And so, there was back and forth on that.

11 Q. And at this senate floor vote, did any Black senators
12 vote yes?

13 A. Let me just confirm in the report here. I believe the
14 answer is no.

15 Q. Next slide please. How many Black members of the House
16 voted for the enacted map?

17 A. One.

18 Q. And what was the name of that representative?

19 A. I believe that was Mr. Robert Williams.

20 Q. What was Representative Bamberg's vote on the map?

21 A. Representative Bamberg did not vote.

22 Q. Did he make any comments in a record publicly supporting
23 the map, any review of his legislative history?

24 A. I don't remember him saying anything in support of the
25 map, no.

JOSEPH BAGLEY, M.D. - DIRECT EXAMINATION BY MR. INGRAM 1149

1 Q. Did he make any comments about partisanship during this
2 process?

3 A. No.

4 Q. Thank you. Next slide please. And one more. Now, Dr.
5 Bagley, to close, can you summarize to the Court the evidence
6 that you're presenting through your report regarding the
7 enactment of 865?

8 A. So, again, I was asked to put this enactment of 865 into
9 socio-historical context to look at this process as a
10 historian and not as a lawyer or a judge. And for me, it
11 really strikes a chord what Representative Govan had to say,
12 that, in his mind, and the view of other Black legislators,
13 that this is a continuum of Black voters having, to fight for
14 equitable representation in the political process.

15 Q. Thank you.

16 MR. INGRAM: I'll pass the witness.

17 JUDGE GERGEL: Let's have our morning break for about
18 10 minutes.

19 **(Recess.)**

20 JUDGE GERGEL: Please be seated.

21 Cross-examination?

22 MR. TRAYWICK: Thank you, your Honor.

23 I think we've got a missing witness.

24 JUDGE GERGEL: That's a problem.

25

JOSEPH BAGLEY, M.D. - CROSS-EXAMINATION BY MR. TRAYWICK 1150

1 MR. CHANEY: I'm going to go get Dr. Bagley.

2 CROSS-EXAMINATION

3 BY MR. TRAYWICK:

4 Q. Good morning, Dr. Bagley. It's nice to see you again.

5 A. Good to see you, Mr. Traywick.

6 Q. We met -- I guess this is our third occasion, correct?

7 A. Indeed.

8 Q. So, in person finally. Good to see you. Welcome to
9 Charleston.

10 I wanted to start first with some things on which I think
11 you and I can agree. So, Dr. Bagley, you agree it's the
12 Court's --

13 MR. GORE: Your Honor, I'm sorry. I don't know
14 what's on the screen. I don't believe it's part of Mr.
15 Traywick's presentation.

16 JUDGE GERGEL: Please remove that. Please proceed.

17 MR. TRAYWICK: Thank you, Mr. Gore.

18 BY MR. TRAYWICK:

19 Q. Dr. Bagley, you agree it's the Court's role to analyze
20 legislative intent, correct?

21 A. To make the final determination, yes.

22 Q. And you agree that's a question of law, correct?

23 A. Yes.

24 Q. Do you agree you're not a lawyer, right?

25 A. Of course.

JOSEPH BAGLEY, M.D. - CROSS-EXAMINATION BY MR. TRAYWICK 1151

1 Q. So, you're not qualified to offer a legal opinion, right?

2 A. I'm not here to offer a legal opinion, just to offer my
3 opinion as a historian.

4 Q. And so, you also agree that it's the Court's sole job to
5 ascertain the credibility of the witness, right?

6 A. Yes.

7 Q. Okay. You agree your report analyzes second, third,
8 fourth and fifth factors of the *Arlington Heights* test; is
9 that right?

10 A. That's correct.

11 Q. Okay. You agree it's the Court's job to conduct a legal
12 analysis under the *Arlington Heights* test, correct?

13 A. I believe it is the Court's role to make the
14 determination of discriminatory intent, but I, as a witness,
15 can use *Arlington Heights* as a framework to present my
16 opinion.

17 Q. Okay. Were you aware that the Court said it wouldn't be
18 applying *Arlington Heights* in this case?

19 A. I'm not aware of that.

20 Q. Okay. Do you agree that --

21 MR. INGRAM: Objection. Misstates testimony.

22 JUDGE GERGEL: Let me just explain, just to be clear.
23 Simply the issue of predominance, the factors are common
24 factors used to ferret out the presence or absence of
25 discrimination. But we weren't casting aside *Arlington*

JOSEPH BAGLEY, M.D. - CROSS-EXAMINATION BY MR. TRAYWICK 1152

1 Heights. Simply the question is, you know, if *Arlington*
2 Heights says racial effect may be sufficient, and what's clear
3 from *Cooper* is that racial predominance is required. That's
4 the only point. *Arlington Heights* is absolutely relevant for
5 other reasons.

6 MR. TRAYWICK: Thank you for the clarification, your
7 Honor.

8 JUDGE GERGEL: Yes.

9 BY MR. TRAYWICK:

10 Q. You agree the Senate held a lot of long hearings in the
11 process?

12 A. They did.

13 Q. And you agree redistricting is a long process and that
14 the Senate took it seriously, right?

15 A. I would agree with that.

16 Q. And you also agree that the old outdated intentions of
17 prior generations can't taint forever more legislative
18 decisions, correct?

19 A. I would agree with that in part. I would say that
20 doesn't necessarily mean that history is irrelevant.

21 Particularly for me as a historian -- now, of course, the
22 Court can do what it will with that history. But if I'm asked
23 to come at this and give my opinions as a historian, what you
24 say is outdated is still relevant to me.

25 Q. Okay. And if the courts have said otherwise, you'd defer

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1 to the court on that, right?

2 A. If this Court says otherwise. I am asked -- within the
3 parameters of this litigation, I think I did what I was asked
4 to do.

5 Q. By the plaintiffs?

6 A. Yes. And by the *Arlington Heights* framework.

7 Q. Okay. You've offered testimony as an expert twice before
8 this case; is that right?

9 A. I have been in two other cases -- three other cases
10 beyond this. But in terms of submitting reports, yes, two
11 other cases.

12 Q. Both in Alabama, correct?

13 A. That's correct.

14 Q. Were they both in the northern district of Alabama?

15 A. Yes.

16 Q. Okay. Let's go to first one. Was that *People First of*
17 *Alabama v. Merrill*?

18 A. Correct.

19 Q. That was not a redistricting case, was it?

20 A. It was a COVID case and a voting access case.

21 Q. And you weren't ever formally qualified as an expert in
22 that case, were you?

23 A. I believe I was. I can't remember exactly as to what,
24 but I did submit an expert report, provided testimony at
25 trial. That testimony was cited by the Court in its opinion.

JOSEPH BAGLEY, M.D. - CROSS-EXAMINATION BY MR. TRAYWICK 1154

1 Q. And that opinion was an injunction, right?

2 A. I believe that's correct.

3 Q. Are you aware that there are different evidentiary
4 standards at play on a truncated posture --

5 MR. INGRAM: Objection. Calls for legal conclusion.

6 JUDGE GERGEL: First of all, Ms. Smith has to be able
7 to keep up with y'all. So, first of all, when she asks you to
8 repeat yourself, let her get the record.

9 So, ask your question again.

10 MR. TRAYWICK: Sure.

11 BY MR. TRAYWICK:

12 Q. You would agree there are different standards that play
13 in an injunction posture?

14 A. Sure.

15 MR. INGRAM: Objection. Calls for legal conclusion.

16 JUDGE GERGEL: I think we can ferret it out.

17 Overruled.

18 BY MR. TRAYWICK:

19 Q. But all your testimony in that case was specific about
20 the state of Alabama, was it not?

21 A. Yes.

22 Q. And you weren't citing the Supreme Court's order staying
23 the injunction in that case, were you?

24 A. I don't believe so.

25 Q. Okay. And you're aware the plaintiffs dismissed the

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1 appeal in that case after the decision was stayed, right?

2 A. Yes, as a COVID case. So, I understand some of that was
3 rehearsed and some not. It's been a while. I haven't been
4 involved in these other cases, so the exact details of the
5 disposition of that are not super fresh in my mind.

6 Q. Sure. Well, let's go to the second case. You weren't
7 qualified as an expert on anything related to South Carolina
8 in that case, were you?

9 A. No.

10 Q. And the Court there noted you published one book, and
11 that was on the desegregation of schools in Alabama; is that
12 right?

13 A. That's correct.

14 Q. And so, the Court qualified you as an expert in Alabama
15 political history; does that sound right?

16 A. I think that that's correct.

17 Q. And with that hat on, you performed a Senate factors
18 analysis in that case, did you not?

19 A. I did.

20 Q. And all of that was specific to Alabama, was it not?

21 A. Of course.

22 Q. So just to sum it up, before today, you've offered expert
23 testimony in two cases, both were in Alabama, both concerned
24 Alabama specific cases of discrimination, and both were
25 Section 2 cases, were they not?

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1 A. That's right.

2 Q. You've never been qualified until now as an expert to
3 offer testimony in the manner in which you have today under an
4 *Arlington Heights* analysis, right?

5 A. I've submitted -- well, I have prepared an *Arlington*
6 *Heights* report, but that was for a case that was ultimately
7 settled, so it was not it submitted to the Court in the
8 record.

9 Q. Dr. Bagley, you have no personal legislative experience,
10 do you?

11 A. No.

12 Q. And you have no personal redistricting experience, do
13 you?

14 A. I have not been involved directly in that process as
15 such, no.

16 Q. Never worked for a state legislature before?

17 A. No. I've been a historian or a historian in training my
18 whole life.

19 Q. So, you never worked in Congress either?

20 A. Obviously not.

21 Q. Okay. You have never been published about a specific
22 topic of redistricting, have you?

23 A. I have not been published on the specific topic of
24 redistricting, no.

25 Q. And in formulating your opinions in this case, you did

JOSEPH BAGLEY, M.D. - CROSS-EXAMINATION BY MR. TRAYWICK 1157

1 not study the redistricting process utilized in South Carolina
2 last cycle, did you?

3 A. I wasn't asked, no, to perform a systematic comparative
4 analysis of this cycle to any previous cycle.

5 Q. And you previously testified in your deposition, you're
6 only generally familiar with South Carolina's legislative
7 process, correct?

8 A. Insofar as I couldn't offer you like an encyclopedic
9 recitation of the rules of the Senate or what not. But I
10 don't think that's necessary to do what I've been asked to do.

11 Q. Dr. Bagley, you would agree that before writing this
12 report, you had never conducted any specific research related
13 to South Carolina, correct?

14 A. Nothing with the intent of publishing something specific
15 to South Carolina on that specific topic alone, no.

16 Q. And you've never taught South Carolina history, have you?

17 A. No. Nor have I taught a course on Alabama history. It's
18 relatively uncommon, it would be provincial in the academy for
19 that to be the case.

20 Q. At your school, right?

21 A. Well, at any school. I'm sure they said have courses on
22 South Carolina history at USC. But just thinking off the top
23 of my head, I don't know that Georgia State would even have a
24 Georgia history course. Again, you don't see that kind of
25 provincialism in the history academy anymore.

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1 Q. Okay. But you don't have any firsthand knowledge about
2 USC, or Clemson, or any other institutions of higher education
3 in South Carolina, do you?

4 A. Not of their course catalog off the top of my head, no.

5 Q. You've never written any articles, books or blog posts
6 about South Carolina history, have you?

7 A. No.

8 Q. Or about redistricting, have you?

9 A. Not to this point.

10 Q. In your deposition, I believe you said you'd previously
11 read some secondary sources that might have had chapters or
12 something like that about South Carolina history; do I recall
13 that correctly?

14 A. More or less, yes.

15 Q. Okay. But all of your primary research about South
16 Carolina was conducted for the first time for purposes of this
17 litigation, correct?

18 A. Primary research, yes.

19 Q. You've never presented or participated in any round
20 tables, symposia or anything of the like about South Carolina
21 history or about redistricting, correct?

22 A. Nothing that specific, no.

23 Q. And before this case, you had never observed a
24 legislative hearing in South Carolina, correct?

25 A. No.

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1 Q. Okay. And so, before this case, you have never observed
2 any floor debate or discussion in South Carolina, had you?

3 A. Not personally, no.

4 Q. So, you've reviewed all of this stuff related to South
5 Carolina for the first time for purposes of offering your
6 opinions in this litigation, right?

7 A. In terms of the primary research, yes.

8 Q. Okay. Dr. Bagley, you're retained by the NAACP Legal
9 Defense and Education Fund; is that right?

10 A. Yes.

11 Q. Okay. And that was last fall, do I remember that
12 correctly?

13 A. I believe it was actually maybe early this year. I don't
14 remember when exactly I was retained.

15 Q. Okay. Were you retained simultaneously for congressional
16 redistricting and House redistricting?

17 A. Yes, I believe I was.

18 Q. And that was before the General Assembly started drawing
19 maps; is that right?

20 A. Yes.

21 Q. And LDF is the same entity that retained you in the two
22 Alabama cases, correct?

23 A. Correct.

24 Q. And you testified in both of those in favor of a finding
25 of racial discrimination; is that right?

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1 A. I presented Senate factor analyses in those cases.

2 Q. You've never testified on behalf of a government entity,
3 have you?

4 A. No, not yet.

5 Q. Okay. Every time you've been retained by the NAACP,
6 you've concluded that evidence supported a finding of
7 discrimination, right?

8 A. Right.

9 Q. Dr. Bagley, you conceded during your deposition that you
10 were not offering a standard for redistricting against which
11 we could judge this cycle of redistricting; isn't that right?

12 A. What I think I've done is faithfully present that where
13 there is a chorus of voices saying it is their opinion, that a
14 standard had been deviated from.

15 Q. But you agree with me, don't you, it's not proper for a
16 court to rely solely on the comments of opponents to
17 legislation, right?

18 A. Well, I faithfully reported the comments of proponents
19 insofar as they're in the record.

20 Q. Okay. We'll get to that. As far as watching videos, you
21 conceded in your deposition that you made unilateral
22 determinations as to what was relevant, right?

23 A. I determined what was relevant to me as a historian. I
24 looked at these as I would, you know, any other historical
25 inquiry.

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1 Q. But your narrative is by no means exhaustive, is it?

2 A. No. I think we'd be here a lot longer. My report would
3 be quite voluminous.

4 Q. It's already 49 pages, correct?

5 A. Right.

6 Q. And you were asked to find a history of discrimination
7 here, right?

8 A. No. I was asked if there was a relevant history of
9 discrimination to place this enactment within that context.

10 Q. Let me make sure I understand your methodology for the
11 reports that you offered in this matter. So, you would agree
12 they focused on the comments of opponents to the legislation,
13 correct?

14 A. Not necessarily. As I say in the report, those are -- by
15 and large, I mean, the majority, the vast majority of the
16 comments that are made during the process are from the
17 opponents, that the proponents of the legislation are not
18 saying a whole lot.

19 Q. At which point?

20 A. At any point.

21 Q. Okay. And then you focused on certain members of the
22 public, right?

23 A. I presented the public comments where they represented a
24 chorus of voices.

25 Q. Okay. So, you only focused on a chorus of voices for

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1 certain issues; is that right?

2 A. I don't think that's necessarily fair. I think I've
3 reported on people's comments on a myriad of issues.

4 Q. And you don't have any idea of the political affiliation
5 of a lot of the folks who testified, do you?

6 A. Some of them. Certainly not all of them.

7 Q. Okay. And you testified in your deposition, I believe,
8 that, you know, you weren't aware whether there was any
9 coordination among folks to offer a concerted effort of
10 certain kinds of testimony, right?

11 A. There are occasions where members of the legislature have
12 said things like, well, I understand certain people may have
13 had an effort to send in, you know, testimony, but I have no
14 personal knowledge of that one way or the other.

15 Q. Got you. So, you don't have any personal knowledge about
16 whether there was any coordination among Democrats, do you?

17 A. No.

18 Q. And you do don't have any personal knowledge about
19 whether there was coordination among the plaintiffs?

20 A. No.

21 Q. Okay. But you didn't do anything in your methodology to
22 control for that, did you, if that were the case, right?

23 A. I don't know that I had any way, practically speaking, to
24 ascertain that.

25 Q. Dr. Bagley, after your deposition, you're aware that the

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1 Court ordered the defendants to produce materials that were
2 previously withheld as legislatively privileged, correct?

3 A. I don't know that I am aware of that.

4 Q. Okay. So, you haven't reviewed any of that, have you?

5 A. No.

6 Q. So, your analysis and your conclusions are focused solely
7 on videos of the public?

8 A. And the transcripts and the historical context.

9 Q. Okay. All right. Let's talk about your opening report,
10 dated April 11th. You got that in front of you, Dr. Bagley?

11 A. I do.

12 Q. Okay. You agree the first part of your report discussed
13 South Carolina history in relatively summary fashion, right?

14 A. Of course.

15 Q. Okay. But you're certainly not trying to draw a straight
16 line from the Civil War, and Reconstruction, and the Tillman
17 Constitution to the General Assembly's redistricting decisions
18 in 2022, are you?

19 A. No. And that's why I talk about the redistricting
20 process when it began in the 60s and I talk about, at least
21 briefly, the period between Tillman and World War II, for
22 example. So, there are no direct lines drawn at all.

23 Q. Okay. And, you're aware of the Constitution that your
24 report claims is still in effect today has been amended over a
25 hundred times since 1895, correct?

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1 A. Of course.

2 Q. Okay. Turning back to your report, Dr. Bagley, you
3 didn't even reach the 2000s until the bottom of page 17,
4 right?

5 A. I would take your word for that.

6 Q. Okay. And after that, the last DOJ objection you
7 reference is in 2011, right?

8 A. Yes. There was no Section 5 after that, the following
9 year.

10 Q. So, you agree with me, don't you, that the discrimination
11 has to be probative of the decision at issue, right?

12 A. To me, that's a legal question. For me, as a historian,
13 I think I've done what was asked in terms of presenting this
14 within a broader context by making it relevant, making the
15 more recent history as relevant as I could.

16 Q. Okay. You said the DOJ objected to various local voting
17 practices under Section 5 some 122 times; is that right?

18 A. Not all of the 122 were local. Some of those were
19 states.

20 Q. Okay. Only 11 were after 1997. Does that sound right?

21 A. Sounds about right. There were also some Section 2 cases
22 I believe that were brought during that time.

23 Q. Okay. And the last local objection you cite is from
24 Georgetown County School District; is that right?

25 A. I believe that's correct.

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1 Q. Okay. You'd agree Georgetown County is not one of the
2 challenged districts in this litigation, correct?

3 A. Right.

4 Q. Okay. So, upon what reliable and accepted methods do you
5 draw a line from a law creating at-large districts for a
6 school board in 2008 to the General Assembly's congressional
7 districting decisions in 2022?

8 A. I would say this cuts back to that key principle in
9 historiography. I mean, if that were the only thing that I
10 was discussing in my report, that would be tenuous. But again
11 I'm presenting as one of only a much larger pattern and a much
12 larger collection of evidence, a much greater synthesis of a
13 lot more things.

14 Q. Okay. And you testified earlier about a lot of cases
15 that you've read, right?

16 A. I believe in my deposition I did, yes.

17 Q. Okay. Do you recall a case that requires that sort of
18 broad, mosaic, I think is what you called it in your
19 deposition?

20 A. You know, I don't know off the top of my head. But in
21 terms of what I was asked to do in this case, I think that
22 I've faithfully done that.

23 Q. Turning to *Backus*, I believe you testified that that was
24 haphazardly challenged?

25 A. I believe that's the word I used in the first deposition,

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1 yes, sir.

2 Q. Okay. And then you called it a "kitchen-sink approach"
3 today?

4 A. Yes, sir.

5 Q. Okay. Do you recall the lawyer who brought that case?

6 A. Senator Harpootlian.

7 Q. And, in fact, you cite him throughout your report quite
8 extensively?

9 A. I do. He was quite vocal during the process.

10 Q. And you're aware the court in *Backus* actually found the
11 General Assembly disproved that race predominated, correct?

12 A. Yes.

13 Q. Okay. Turning to more recent history, you would agree
14 that South Carolinians have elected a Black member of Congress
15 other than Jim Clyburn, correct?

16 A. Yes.

17 Q. And that would be Tim Scott, right?

18 A. Correct.

19 Q. In fact, he won the 1st District, did he not?

20 A. Yes.

21 Q. In 2011?

22 A. That's right.

23 Q. And that's the same year that you cite the DOJ's
24 objection to the Voter ID Law, isn't it?

25 A. It is. But I would point out that Senator Scott I don't

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1 believe is actually the candidate of choice of Black voters,
2 even though he himself is Black.

3 Q. Okay. But you haven't done that analysis, have you?

4 A. I have not done that analysis, no.

5 Q. Okay. In addition to Tim Scott, you're aware that South
6 Carolinians elected Nikki Haley, the daughter of immigrants,
7 twice to serve as Governor, correct?

8 A. Yes.

9 Q. And you're aware that the South Carolina General Assembly
10 has also elected John Beatty to serve as our Chief Justice of
11 South Carolina, correct?

12 A. Yes, sir.

13 Q. Okay. And you're aware that the very same General
14 Assembly you're criticizing here enacted a bipartisan voting
15 rights legislation this year? Are you aware of that?

16 A. Yes. But I know that the General Assembly has also very
17 recently been very bitterly divided over other matters along
18 racial lines.

19 Q. Also along political lines, correct?

20 A. Well, sure.

21 Q. And you're aware that that law expanded access to
22 absentee voting, correct?

23 A. Yes. I think that's following on the *Andino* Challenge,
24 but, yes.

25 Q. Right. Which you mentioned in your report, correct?

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1 A. I did.

2 Q. Okay. And what was the relevance of that case to your
3 report?

4 A. I think it's just another example of Black citizens
5 turning to the law to try to increase their equitable access
6 to the political process.

7 Q. You're aware that was solely an as-applied challenge in
8 the context of COVID-19, right?

9 A. It was.

10 Q. Okay. And what was the final result of that case?

11 A. I can't remember exactly the full disposition of that,
12 but I think, like you said, there was some expansion of the
13 process as a result of that.

14 Q. But in the court, the Supreme Court of the United States
15 stayed the injunction on the witness requirement, correct?

16 A. Correct.

17 Q. Okay. As for the current law that just passed this
18 session, it expanded early voting too, did it not?

19 A. Yes.

20 Q. All right. Let's go into the legislative sequence of
21 events. Dr. Bagley, you agree that this Court must begin with
22 a presumption of good faith, correct?

23 A. Yes.

24 Q. Okay. Where did you mention that in your report, that
25 the principle guided you?

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1 A. Could you restate the question?

2 Q. Sure. Did you mention in your report the acknowledgment
3 of legislative good faith?

4 A. I -- I didn't feel the need to do that under what I was
5 asked to do.

6 Q. Okay. You didn't apply it, did you?

7 A. Apply the principle of assumption of good faith?

8 Q. Right.

9 A. Well, of course, I did. I mean, any historian would. I
10 don't go into any of this with any preconceived notions or
11 biases.

12 Q. But in your deposition, you testified you thought there
13 was obfuscation, right?

14 A. I think that you can see numerous people attesting to
15 that, that in their view, there's obfuscation.

16 Q. Okay. So, you're just parroting what other people are
17 saying, right?

18 A. I wouldn't say "parroting." I'm faithfully conveying
19 where there are a chorus of people concerned about something
20 of great significance.

21 Q. Okay. And you mentioned earlier the benefit of videos --
22 do I recall that correctly -- of these hearings?

23 A. Yes.

24 Q. Well, you're certainly not an expert in body language,
25 human factors, anything like that, are you?

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1 A. No.

2 Q. And you can't jump inside anyone's head and say what they
3 were thinking or feeling, correct?

4 A. Nor I would attempt to necessarily.

5 Q. You agree the Senate first released the staff plan for
6 Congressional on November 23rd of 2021, correct?

7 A. That sounds correct.

8 Q. Okay. And the plan passed the body on January 20th,
9 2022, correct?

10 A. That sounds correct, yes.

11 Q. Roughly 60 days?

12 A. Sure.

13 Q. Okay. I didn't see a couple dates in the timeline Mr.
14 Ingram showed you earlier. You're aware the Senate held
15 another subcommittee meeting in October, correct, on the 21st?

16 A. Yes. That sounds right.

17 Q. Okay. And you're aware that nine days before that is
18 when the plaintiffs filed this lawsuit, correct?

19 A. Of course.

20 Q. Okay. With respect to watching the videos, Dr. Bagley,
21 you agree a layperson could go watch all these videos and
22 reach his or her own conclusions, don't you?

23 A. I think obviously a layperson -- you know, any I guess
24 Tom Dick or Harry -- could watch these and give an account.
25 But I've been asked to look at this as a historian within the

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1 context and provide for the Court a synthesis of this. And I
2 would say that what I have done is not something, in that
3 regard, that just sort of any person off the street could do,
4 no.

5 Q. But you agree the Court's equally capable of reviewing
6 the record and reaching its own conclusions, correct?

7 A. Sure. But hopefully, my report has made it easier for
8 the Court in terms of my synthetism and extraordinarily large
9 body of information.

10 Q. With an eye toward one conclusion, correct?

11 A. Not necessarily.

12 Q. Okay. Is it your position that Senator Campsen did not
13 offer justifications during the Senate Judiciary Committee or
14 on the Senate floor about Senate Amendment 1?

15 A. He did offer justifications, yes.

16 Q. You just didn't believe him, right?

17 A. No, not necessarily. I faithfully reported what Senator
18 Campsen said. And as I said in my direct, it may be that he
19 did hear at cookouts, or via personal e-mail, phone calls,
20 whatever, concerns for two representatives for Charleston or
21 whatever it may be. All I can do is report what I have seen
22 in the public record though.

23 Q. Okay. And you've also testified you thought there was
24 perhaps a selected use of criteria; did I hear that correctly?

25 A. Yes.

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1 Q. Okay. Upon what reliable and historical methods do you
2 rely to reach that conclusion?

3 A. Well, let me actually say what I'm communicating in the
4 report is that there are numerous people who themselves are
5 saying they feel like criteria have been selectively applied.
6 It's not necessarily for me to say that I'm reporting that
7 that is being said by a preponderance of people.

8 Q. Sure. And that's the folks who are members of the public
9 whom you cited in your report, correct?

10 A. And members of the legislative bodies.

11 Q. All of whom are Democrats, correct?

12 A. I don't know about the members of the public, but
13 certainly those in opposition, including the vast majority of
14 the Black legislators in both Houses of the body.

15 Q. Dr. Bagley, you've articulated what, in your view, were
16 alleged procedural irregularities, correct?

17 A. Not necessarily in my view, but in the view of those
18 people who are speaking out against them.

19 Q. Okay. And you define that in your deposition as
20 departures from normal procedure; does that sound correct?

21 A. Yes, sir. That's from *Arlington Heights*.

22 Q. Okay. But you also testified that you didn't study the
23 process from the last redistricting cycle, right?

24 A. Not systematically, no.

25 Q. So how were you able to compare what was and what was not

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1 a departure from normal procedures.

2 A. Well, what watching this whole process has allowed me to
3 do is see this rather large, you know, group of individuals
4 who, in their view, are saying over and over again that there
5 are departures from the way that it was done then.

6 Q. Okay. So, folks have criticized it, fair?

7 A. Sure.

8 Q. Is that a standard about what's normal and what's not
9 normal?

10 A. It's, in their view, a statement of deviation from what
11 ought to be standard.

12 Q. All right. So let's go through sort of the cluster of
13 what you contend are procedural irregularities. First, I
14 believe you said legislators and members of the public
15 complained about the timing of meetings and when maps were
16 posted, right?

17 A. That was one. Yes, sir.

18 Q. Okay. You're aware that the census data came out late
19 because of COVID, right?

20 A. It did.

21 Q. Okay. And you're aware the people who retained you had
22 already sued the General Assembly on October 12th, 2021,
23 correct?

24 A. That is correct.

25 Q. Okay. And you're aware the process had already started

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1 at that point, correct?

2 A. Yes.

3 Q. The Senate Redistricting Subcommittee had already held 10
4 public hearings and met twice to pass guidelines and the like;
5 does that sound familiar?

6 A. Yes. The Senate was moving a little bit more quickly
7 than the House, yes.

8 Q. Okay. And you're aware that as a result of this lawsuit,
9 a stay was in place until January 18th of 2022, correct?

10 A. I don't know that I was aware of that, but if you
11 represent.

12 Q. Okay. After that, potential for the Court to become
13 involved on the maps, correct?

14 A. Yes, sir.

15 Q. So you would agree time was of the essence, wouldn't you?

16 A. I would say that members of the legislative bodies in
17 question did express occasionally their concern that they were
18 under the gun in terms of litigation. But also they have said
19 at other times -- you know, Chairman Jordan says we've been
20 criticized for going too slowly. And I would say that if you
21 do go too slowly, of course, at a certain point you're going
22 to have to speed up. And some of people that you hear from in
23 the record are blaming that on COVID. And that's legitimate
24 concern in terms of the census data. But there were others
25 who discounted that that was the sole reason for the pace, if

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1 you will, of the process.

2 Q. So you waived those various concerns and then reached
3 your conclusion, didn't you?

4 A. In terms of what?

5 Q. In terms of the timing issues.

6 A. Oh, I'm just conveying that when these maps were
7 produced, the very next meetings, there are a number of people
8 who expressed their concern as to why those maps came out when
9 they did.

10 Q. Okay. Would you agree the Senate first focused on its
11 own districts before Congressional?

12 A. That's correct.

13 Q. And would you believe the same is true of the House?

14 A. Yes.

15 Q. That's not unusual for redistricting, is it?

16 A. No.

17 Q. Okay. Dr. Bagley, do you remember watching the Senate's
18 public ninth hearing for the redistricting subcommittee in
19 Orangeburg?

20 A. I reviewed that transcript, I believe.

21 Q. Okay. That was on August 9th, 2021. I'm going to show
22 you a clip of that from Ms. Debbie Hammond, who's testifying.

23 MR. TRAYWICK: And, your Honor, this is Senate
24 Exhibit No. 230. Timestamps 36:00 to 37:48. Technology
25 permitting.

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1 (Video played.)

2 BY MR. TRAYWICK:

3 Q. That wasn't in your report, was it, Dr. Bagley?

4 A. No.

5 Q. Were you aware that she went through three redistricting
6 cycles as a staffer on the Senate Judiciary Committee?

7 A. I was not aware of that, no.

8 Q. She called the process a "political animal," did she not?

9 A. She did.

10 Q. So, with regard to the meetings that you've criticized,
11 are you suggesting that the staff acted in bad faith by when
12 they dropped maps or when they scheduled hearings?

13 A. That's not for me to say that anyone acted in bad faith.
14 Again, I'm just report -- synthesizing to the Court a chorus
15 of concern in terms of when those were produced.

16 Q. All right. Second, Dr. Bagley, you mentioned that
17 legislators did not know where a map came from, correct?

18 A. Yes.

19 Q. What was the title of the senate staff plan?

20 A. I believe it was the "Senate Staff Plan." So, when they
21 say that, I think they don't mean to say they don't understand
22 that staff produced the map.

23 Q. Okay.

24 A. I mean, they are trying to convey that they didn't
25 realize that staff were producing -- you know, in the case of

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1 the House alternative map especially, we're not aware that
2 that process is taking place.

3 Q. It was just a starting point, right, the staff plan?

4 A. Yes, although there are times where, for example,
5 Representative Bernstein says in reference to the first House
6 staff plan, if it's a starting point, then why did we push out
7 a second map? Why couldn't we have a meeting and then amend
8 the starting point map?

9 Q. You think it's a bad idea to have options?

10 A. I would not say that.

11 Q. Okay. In any event, that was the map that ultimately
12 passed, was it?

13 A. Which is that?

14 Q. The second staff map you're referring to.

15 A. I believe there were modifications made to it.

16 Q. Okay. And with respect to the initial senate staff plan
17 too, correct?

18 A. It was not exactly the same when it was enacted, no.

19 Q. All right. Third, I believe you pointed out the fact
20 that Representative John King did not get to hold the gavel at
21 one meeting; is that right?

22 A. Yes, sir. At that Judiciary Committee Meeting.

23 Q. Okay. And that committee meeting was not even on the
24 plan that ultimately passed, was it?

25 A. I can't recall now off the top of my head. I believe

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1 they were considering the options at that point.

2 Q. Okay. But you're certainly not suggesting that his
3 failure to preside over one meeting of dozens in the
4 legislative process somehow taints the entire process, are
5 you?

6 A. No. Not that in and of itself. That would cut back to
7 that core principle where this is just one thing considered
8 against many others.

9 Q. You didn't identify any other alleged irregularities, did
10 you?

11 A. Off the top of my head, I'm not sure, sir.

12 Q. Dr. Bagley, as for members not finding out about maps or
13 other amendments, you weren't familiar with the internal
14 protocol for staff working with members, are you?

15 A. I would say that members who aren't familiar with that
16 protocol seem to be taken aback and even blindsided at times
17 in the process.

18 Q. Again, all of them are in the minority, correct?

19 A. In this case, yes.

20 Q. Okay. But you wouldn't be qualified to opine on whether
21 and when it's proper for staff to reveal information about
22 another senator's amendment, are you?

23 A. Not necessarily of my own volition. But, again, just
24 citing what's in the record.

25 Q. All right. Dr. Bagley, I want to move on to your

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1 rebuttal report. Do you have that up there in front of you?

2 A. Yes, sir.

3 Q. Okay. Dr. Bagley, you'd agree with me that Mr. Trende
4 did not once mention you or your analysis in his report,
5 correct?

6 A. That is a fact.

7 Q. Okay. So, with whom were you arguing with in your
8 rebuttal report?

9 A. I was simply asked to examine Mr. Trende's report and to
10 determine whether it supported or undermined anything in my
11 own original report.

12 Q. You're not a map drawer or cartographer, are you?

13 A. Certainly not.

14 Q. Okay. So, you would agree you're not qualified to opine
15 on whether changes to the map were, quote, "modest" or
16 minimal, correct?

17 A. Well, not in any systematic analytical fashion, but in
18 terms of what my knowledge of the process is.

19 Q. On page two of your rebuttal report, I believe you said:
20 "I find legislators generally understood the enacted map
21 constitutes significant changes to congressional district
22 lines that were necessary to account for demographic shifts
23 between 2010 and 2020, especially in CD 1 and CD 6."

24 Did I read that correctly?"

25 A. You did.

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1 Q. You don't really know, based on a cold reading of the
2 record or watching videos, what legislators really understood,
3 do you?

4 A. I simply refer there to the acknowledgment kind of early
5 in the process that CD 6 was underpopulated by roughly about
6 the same amount as CD 1 was overpopulated.

7 Q. Respectfully, that didn't answer my question. But you
8 said you find legislators generally understood. You weren't
9 in their minds, correct?

10 A. No, sir.

11 Q. Okay. And you didn't look at any data personally
12 regarding any alleged demographic shifts between those
13 districts, did you?

14 A. I didn't crunch any numbers, no sir. That's for others
15 to do.

16 Q. Certainly. That's outside of your area of expertise?

17 A. Yes, sir.

18 Q. Okay. Also, it's your position that no member of the
19 General Assembly explained the enacted plan as a minimal
20 change; did I get that right?

21 A. I believe Mr. Roberts presented the plan as minimal
22 change.

23 Q. Okay. But you said no member, correct?

24 A. Could you show me in the report, please, Mr. Traywick?

25 Q. I believe it's in your deposition.

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1 A. Oh, I'm sorry.

2 MR. TRAYWICK: Let's go to S-242. The timestamp is
3 2:17:17 through 2:17:28.

4 Your Honors, this is from the floor debate.

5 *(Video played.)*

6 BY MR. TRAYWICK:

7 Q. So, it wasn't just staff who said it, right?

8 JUDGE GERGEL: Whose voice was that?

9 MR. TRAYWICK: Representative Chip Campsen, your
10 Honor.

11 JUDGE GERGEL: Thank you.

12 THE WITNESS: Yes. I believe that becomes -- I don't
13 want to say a talking point. But, yes, at a certain point the
14 map was presented as minimal change in certain regards.

15 BY MR. TRAYWICK:

16 Q. Okay. Dr. Bagley, I believe you said that lawmakers did
17 not seriously consider issues of core retention or adhering
18 natural geographic boundaries until extremely late in the
19 legislative process. Did I recall that correctly?

20 A. Yes. That's something that comes up repeatedly in the
21 last meetings -- in my review of the record, that's not
22 something that came up hardly at all up to that point.

23 Q. Sure. But you don't have any evidence, aside from
24 speculation, about what and when something was seriously
25 considered, right?

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1 A. Only what's in the public record. If there are things
2 that lawmakers were considering outside that they didn't bring
3 to committee hearings or floor debates, then I'm not aware of
4 that.

5 Q. So you don't know when something was seriously
6 considered, do you?

7 A. Outside of what I see in the record, no, sir.

8 Q. And is everything conducted at a committee hearing in the
9 legislative process?

10 A. Well, in the legislative process, and hearings, and on
11 the floor, you would think that these things would come up if
12 they were being seriously considered. As to what someone is
13 seriously considering outside of that, then I don't know.

14 Q. Again, you're not familiar with the South Carolina
15 legislative process or the redistricting process last cycle,
16 are you?

17 A. Not intimately familiar with the particulars. But,
18 again, if something was being seriously considered, I would
19 expect it to at least come up at some point in committee
20 meetings and floor debates and so on.

21 Q. And you also haven't reviewed the thousands of pages of
22 legislatively privileged materials produced since your
23 deposition, correct?

24 A. No, sir.

25 Q. You agree that during your deposition, you conceded you

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1 don't know the law governing ex post facto justifications,
2 right?

3 A. No. I'm not a lawyer.

4 Q. Okay. So walk me through your report where you accuse
5 Trende of offering something you said was likely an ex post
6 facto justification?

7 A. Where is that?

8 Q. It's in your rebuttal report, on page three, right above
9 the last paragraph before Section 2. Senate's beginning, "as
10 such."

11 A. Yes, sir.

12 Q. Why don't you read that into the record?

13 A. "As such Mr. Trende's opinions on these matters more
14 likely represent ex post facto justifications that were not
15 really an integral part of the lengthy legislative republic
16 discussions regarding the creation of the enacted map."

17 Q. Okay. But you concede that you're not qualified to offer
18 legal opinion on that?

19 A. Not a legal opinion on that necessarily, no.

20 Q. And you're aware that walling prohibits post-enactment
21 justifications, don't you?

22 MR. INGRAM: Objection. Calls for a legal
23 conclusion.

24 JUDGE GERGEL: I sustain. It's not worth getting
25 into ex post facto. We understand his point. He's a

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1 historian, not a lawyer.

2 MR. TRAYWICK: Okay. Thank you, your Honor.

3 BY MR. TRAYWICK:

4 Q. It doesn't really matter when attributes of the plan are
5 discussed, does it, within the course of the legislative
6 debate?

7 A. Well, for purposes of the law, I don't know.

8 Q. Why was that relevant to you?

9 A. Well, because I was asked to give my opinion of Mr.
10 Trende's report as it relates to my own, and the takeaway for
11 me is that these were not matters that were discussed for the
12 vast majority of what I reviewed.

13 Q. But you don't have any firsthand knowledge of when
14 Senators or House members first began really focusing on
15 congressional districting, do you?

16 A. If it was something they were doing outside the episodes
17 that I reviewed, no.

18 Q. Do you recall when the Senate and House Plans were passed
19 for their own districts?

20 A. Oh, yeah. At some point last fall.

21 Q. December, does that sound right?

22 A. Sure.

23 Q. Okay.

24 MR. TRAYWICK: Streamlining, your Honor.

25 JUDGE GERGEL: Take your time, Mr. Traywick.

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1 BY MR. TRAYWICK:

2 Q. December 10, 2021, if I told you that, does that sound
3 right?

4 A. Yes.

5 Q. Senator Harpootlian presented his plan at the
6 subcommittee meeting on January 13th; is that right?

7 A. Yes, sir.

8 Q. And that was also when Senator Campsen's amendment was
9 presented as well, correct?

10 A. Yes. Those two were sort of pitted against one another.

11 Q. Okay. So, come January of 2022, the Senate really had
12 two plans that were in contention, right?

13 A. Right.

14 Q. So wouldn't it make sense that that's when Senators
15 really start focusing on the various attributes of the plan?

16 A. Possibly. Although, I would say that aspects that
17 Senator Harpootlian presented of his plan represented things
18 that -- concerns that he had been voicing throughout the
19 process.

20 Q. Okay. Are you saying Senator Campsen's plan didn't
21 reflect the guidelines?

22 A. No, not necessarily.

23 Q. Dr. Bagley, you testified in your deposition about the
24 notion of two congressmen representing Charleston; do you
25 recall that?

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1 A. Yes, sir.

2 Q. Okay. And I believe you sided with former congressman,
3 Joseph Cunningham, on that issue instead of Senator Chip
4 Campsen, did you not?

5 A. Cunningham was not the only one who talked about that.
6 There were others who brought that up. I'm trying to remember
7 off the top of my head. There was another senator, a 0
8 senator, I think who expressed, you know, his view that
9 Congressman Clyburn and Congressman Mace were not exactly -- I
10 think his words were in "loxed up" when representing
11 Charleston. So, again, I would say Cunningham was not the
12 only one who spoke to that.

13 Q. Okay. And I believe you testified -- correct me if I'm
14 wrong -- that the assertion about two representatives for
15 Charleston appears out of thin air. Does that sound right?

16 A. In terms of my review of the record, that is correct. I
17 don't remember anyone stating as their primary concern in
18 regards to the drawing of CDs in that area to be that we want,
19 you know, a congressman from each party to represent the area.

20 Q. Okay.

21 MR. TRAYWICK: Mr. Gore, would you go to Senate
22 Exhibit 240. And the timestamp will be 1:13:27 through
23 1:14:22.

24 *(Video played.)*

25 BY MR. TRAYWICK:

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1 Q. That didn't come out of thin air from Senator Campsen,
2 did it?

3 A. No. Which meeting was this?

4 Q. This would have been the Senate Redistricting
5 Subcommittee on January 13th.

6 A. Right. So, this is around the same time that Senator
7 Campsen would be voicing that concern. So, this is relatively
8 late in the process.

9 Q. When his amendment was at issue, right?

10 A. Right.

11 Q. Okay. You also suggested that everybody wanted
12 Charleston whole, correct?

13 A. Not necessarily -- not literally everyone, but a rather
14 large amount of people. A good percentage of the people that
15 I heard from.

16 Q. Okay. And you believe the choir had the same refrain,
17 that Charleston County was a community of interest; is that
18 right?

19 A. There were people who talked about the Tri-County as a
20 community of interest, the Coastal is a community of interest.
21 So there are different sort of angles of attack there, if you
22 will.

23 Q. Okay. And did you discuss any of those in your report?

24 A. Yes, I believe so. In terms of the Tri-County, that's
25 something that comes up.

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1 MR. TRAYWICK: Mr. Gore, if you'll go to S-231.
2 Timestamp there will be 15:45 through 20:03. And this is the
3 Charleston public night hearing.

4 *(Video played.)*

5 BY MR. TRAYWICK:

6 Q. Mayor of Folly Beach, right?

7 A. Yes.

8 Q. Said that the beach islands have more in common with each
9 other than with Charleston, North Charleston and other areas,
10 correct?

11 A. There were people who talked about these issues that I
12 think I faithfully reported in terms of hurricane
13 preparedness, concerns about estuaries, environmental
14 concerns. So, I don't think I was hiding the ball on this
15 necessarily. But I would also say that, you know, there were
16 proposals put forth at various points where beach communities
17 in Beaufort and Charleston could be kept together that were
18 not the ultimate plan passed out.

19 Q. And you don't know what the political numbers were for
20 those plans, do you?

21 A. Not off the top of my head.

22 MR. TRAYWICK: Your Honor, I promise this next video
23 is far shorter. It's only 20 seconds.

24 JUDGE GERGEL: I would endorse that.

25 MR. TRAYWICK: S-231, timestamp 27:30 to 27:55.

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1 (Video played.)

2 BY MR. TRAYWICK:

3 Q. All right. That was Queen Quet, also at the Charleston
4 public night hearing. Did you reflect any of that testimony
5 in your report?

6 A. Not her specific testimony, no.

7 Q. Was keeping Charleston whole specified in the criteria?

8 A. Was it what? I'm sorry.

9 Q. Specified in the criteria.

10 A. The guidelines, you mean?

11 Q. Yes.

12 A. No.

13 Q. Did the guidelines say elevate that concern over all
14 other guidelines?

15 A. I don't think the guidelines speak to any specific areas
16 in any way.

17 Q. Okay. But are you suggesting senators were required to
18 the make Charleston whole just because a chorus of people in
19 public testimony said they wanted that?

20 A. Not necessarily.

21 Q. Okay. Certainly, you would agree that others took a
22 contrary position, correct?

23 A. Some did, yes.

24 Q. Okay. And counting comments is no substitute for
25 analysis, is it?

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1 A. Well, I think -- could you rephrase question?

2 Q. Are you saying just because more people on this side came
3 and talked about Charleston being whole than the ones who
4 said, we want Beaufort whole, one was entitled to the greater
5 weight than the other?

6 A. Not necessarily, although I think people expressed their
7 concern, you know, the other way around.

8 Q. Sure. And others express their concerns in some
9 communications that you haven't seen, correct?

10 A. Yes.

11 Q. Okay. Dr. Bagley, you testified in your deposition that
12 politics was never put forth as a motivating factor by anybody
13 in the materials you reviewed; isn't that right?

14 A. I never saw anyone who said the purpose of what we're
15 doing here is to draw, you know, a six-to-one Republican map.

16 Q. That wasn't my question. Politics.

17 A. I think there were accusations throughout the process
18 that things were politically motivated, and people pushed back
19 and said that was not the case.

20 Q. Okay.

21 A. But obviously this is, to a certain extent, a political
22 process.

23 Q. Of course.

24 MR. TRAYWICK: Mr. Gore, would you pull up Senate
25 Exhibit 241. The timestamp here is 56:22 to 56:57. And this

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1 is the January 19th, 2022, full committee meeting of the
2 Senate Judiciary Committee.

3 (Video played.)

4 BY MR. TRAYWICK:

5 Q. Okay. So, Senator Rankin expressly said it was based on
6 them being Democrats, correct?

7 A. In that particular instance, yes. But he wasn't speaking
8 to an overarching concern to draw a map for Republican
9 advantage in -- you know, the six-to-one advantage for the
10 Republican Party.

11 Q. Sure. Let's talk about the maps. What's the current
12 condition of South Carolina's congressional delegation?

13 A. Six to one.

14 Q. Okay. And under the enacted map, what is going to be --
15 presumably?

16 A. The same.

17 Q. And that's six to one, right?

18 A. Correct.

19 Q. Also, let's go to S-241, 29:55 to 31:54. This is Senator
20 Campsen whose amendment's at issue, speaking again in full
21 committee.

22 (Video played.)

23 BY MR. TRAYWICK:

24 Q. So, Senator Campsen there is in an exchange with Senator
25 Margie Bright Matthews about political numbers, correct?

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1 A. Yes.

2 Q. And, in fact, you would agree members of the Democratic
3 Party brought up politics a lot during the debate as well,
4 right?

5 A. I mean, I wouldn't say that politics never came up at
6 all.

7 Q. Okay. But you testified politics was never put forth as
8 a motivating factor.

9 A. A motivating factor in securing a partisan advantage. No
10 one ever outright said this is the reason why we're doing
11 this. Just having an exchange there about the numbers as a
12 result of the plan, not what motivated the plan.

13 Q. And your rebuttal report on page eight, with respect to
14 this notion of securing a 6-1 Republican advantage, you said
15 Senator Campsen himself argued this had not been the case,
16 didn't you?

17 A. What I mean is, he was -- at one point it was said that
18 this is a political gerrymander. He says that's not what this
19 is.

20 Q. Okay. So, you're changing what you said in your report?

21 A. No.

22 Q. Okay. But you're not suggesting that he didn't have
23 politics as a motivation, are you?

24 A. I'm saying that it was never stated affirmatively that
25 these lines are being drawn with the express purpose of

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1 securing a partisan advantage.

2 Q. Okay. But you recognize, don't you, that there's a
3 difference between politics being involved and the concept of
4 partisan gerrymandering in your review of legal history,
5 correct?

6 A. Sure.

7 Q. And, again, the way CD 1 was drawn in the enacted plan
8 favors Republican, does it not?

9 A. Of course.

10 Q. Just to wrap it up, you did not specifically analyze any
11 other traditional districting criteria for purposes of this
12 case, did you?

13 A. In terms of systematic analysis, no. But what I've done
14 is faithfully report what those individuals that were looking
15 at here are saying about those things.

16 Q. And you would agree that staff and legislators would be
17 better to ask about what motivated them, correct?

18 A. If you have the opportunity to hear from them, that would
19 be great.

20 Q. So, you were just guessing basing on your review of the
21 record, weren't you?

22 A. I don't think I did any guessing. No, I wouldn't say
23 that.

24 Q. Okay. But you certainly had a selective presentation of
25 events, didn't you?

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1 A. Well, selective in that I presented what I found, as a
2 historian, to be most important for the Court's review.

3 Q. Okay. Notwithstanding some of the clips we've watched
4 today, correct?

5 A. I understand that there are some sort of piecemeal
6 nitpicking here.

7 Q. Of other views that weren't included in your report,
8 right?

9 A. No, not necessarily. Again, the individuals -- the mayor
10 of Folly Beach, I talked about that in my report, people that
11 talked about coastal communities of interest and so on. And I
12 think with the political stuff, it's a little bit of splitting
13 hairs.

14 Q. Splitting hairs? How so?

15 A. Well, again, in that what I'm saying is that it was never
16 put forth affirmatively that, hey, this -- what we're going to
17 do is set forth to draw a map that gives us a partisan
18 advantage, whereas the exchange that's happening here between
19 Senator Matthews and Senator Campsen is a discussion of: The
20 map has been drawn; okay, what are the numbers?

21 Q. Constituent consistency for a 6-1 plan -- that produced a
22 6-1 plan, what do you think is at play there?

23 A. Well, it had not -- it was a 5-2 plan at one point.

24 Q. Not recently.

25 A. Well, relatively recently.

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1 Q. The last election, correct?

2 A. Right.

3 Q. Okay. All right. Dr. Bagley, I took your deposition on
4 June 29th, right?

5 A. Yes, sir.

6 Q. I asked you then to point me to portions of the record
7 where you accepted at face value what the Republicans said
8 without discounting it with what Democrats said.

9 A. Okay.

10 Q. I want an answer to my question after three months. Can
11 you point me to a specific portion of either of your reports
12 where you did that?

13 A. I could thumb through if you'd like. But I can tell you
14 off the top of my head, there are times where I'm faithful to
15 Chairman Jordan and to Senator Campsen and to their
16 justifications, and so I would reject the idea that there's
17 nowhere in the report where I'm faithful to their
18 justifications.

19 Q. Even though you called them a questionable rationale and
20 questioned when they came up, correct?

21 A. At times.

22 MR. TRAYWICK: No further questions.

23 JUDGE GERGEL: Thank you. Cross-examination.

24 Further cross. Let's avoid repetition.

25

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1 MR. PARENTE: Thank you, your Honor.

2 CROSS-EXAMINATION

3 BY MR. PARENTE:

4 Q. Dr. Bagley, my name is Michael Parente. I'm one of the
5 attorneys for the House of Representative defendants in this
6 case. Mr. Traywick asked you largely about the Senate. And
7 in order to avoid that duplication, I'm going to the focus on
8 the House portion of your report.

9 Dr. Bagley, you never attended any House meetings in
10 person, did you?

11 A. No, sir.

12 Q. And you reviewed the videos and transcripts of the House
13 sessions and based your reports on those videos and
14 transcripts; is that correct?

15 A. That portion of my report, yes, sir.

16 Q. Okay. And you were compensated by plaintiff's counsel at
17 a rate of \$150 an hour to watch those videos and read those
18 transcripts; is that correct?

19 A. That is part of the work that I did in preparing the
20 report. And that is my rate, yes, sir.

21 Q. Okay. And I think earlier you testified that you spent
22 hours and hours watching videos. Do you recall how many hours
23 you spent watching videos in this case?

24 A. Not off the top of my head, no. Although, I believe my
25 invoice is relative to the congressional phase where given

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1 over in discovery.

2 Q. Sure. And prior to this redistricting cycle, you had not
3 observed any legislation as it moved through the South
4 Carolina House of Representatives process, had you?

5 A. Not in the way that I've done with this one.

6 Q. And you had not observed any prior redistricting
7 legislation as it moved through the House; is that correct?

8 JUDGE GERGEL: Mr. Parente, we've been through this
9 with the first cross.

10 MR. PARENTE: Yes, your Honor. I will streamline. I
11 just wanted to focus on the House.

12 **BY MR. PARENTE:**

13 Q. And, Dr. Bagley, you spent about 20 pages discussing the
14 history of redistricting in South Carolina. Is that correct?

15 A. Sounds about right.

16 Q. And you said you cited news articles in that portion of
17 your report. Is that accurate?

18 A. Yes, sir.

19 Q. And I believe you testified in your deposition that all
20 of your research was done online due to the pandemic; is that
21 correct?

22 A. Yes, sir.

23 Q. So, you didn't go out and conduct any interviews, polls,
24 surveys or the like; is that correct?

25 A. No.

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1 Q. And I believe you testified in your direct that you would
2 have had to do a ton of interviews in order to capture the
3 legislative process; is that accurate?

4 A. To do a faithful oral history.

5 Q. Sure. And those interviews or polls or surveys could
6 have yielded different results than what was shown in the
7 videos or in the transcripts; is that correct?

8 A. Perhaps.

9 Q. All right. I'm going to turn to one more item on
10 history. I believe you told Mr. -- well, you mentioned that
11 the House has made great strides, and I believe you used the
12 word "breakthrough" in your testimony about South Carolina's
13 House history; is that accurate?

14 A. Yes.

15 Q. And do you know how many Black House members there
16 currently are?

17 A. Not off the top of my head.

18 Q. If I represented to you that it was 33 currently, do you
19 have any reason to doubt that number?

20 A. No, sir.

21 Q. And there are 124 House members; is that correct?

22 A. That's right.

23 Q. And are you aware that that percent of Black House
24 members roughly equals the percent BVAP across the state?

25 A. I am. And I would point you to the historical section of

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1 my report that shows you it took sustained litigation, it took
2 civil rights division action, it took a lot of fighting for
3 that to become the case.

4 Q. Okay. And I believe you told Mr. Traywick that, "the
5 vast majority of Black legislators spoke out against the
6 plan." Do you recall that testimony?

7 A. Yes, sir.

8 Q. And by my count going through your report, I found six
9 Black legislators in the House of Representatives, being
10 Representative King, Representative Thigpen, Representative
11 Garvin, Representative Matthews, Representative Cobb-Hunter,
12 and Representative McDaniel. Does that sound accurate?

13 A. I'm not sure off the top of my head, but that could be
14 the case.

15 Q. Okay. So, that's six House members who spoke out, that
16 you cited in your report, out of 33. Do you know what
17 percentage roughly that is?

18 A. Well, it's obviously not representative of the quote
19 "vast majority," but what I mean to convey there is that there
20 was opposition from the vast majority and that they voted
21 against it.

22 Q. So, you're saying the vast majority of the House voted
23 against it, or the vast majority of Black House members?

24 A. Black House members.

25 Q. Understood. Okay. And back to the history portion of

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1 your report. Are you aware that South Carolina General
2 Assembly elected Ernest Finney, the Chief Justice of the
3 Supreme Court, in 1994?

4 A. Yes, sir.

5 Q. Okay. And that does not appear in your report, does it?

6 A. I don't think that is in there, no.

7 Q. Okay. In turning to the public hearings on the House
8 side, you state in your report that the public hearings the ad
9 hoc committee was not answering questions or giving
10 information, just receiving information from the public. Do
11 you recall that statement?

12 A. Yes, sir.

13 Q. And are you aware that public hearings for any variety of
14 legislation in the House are set up the same way, to just
15 receive information from the public?

16 A. Right.

17 Q. So, it's consistent with other House hearings?

18 A. Yes. And I only report that because, you know, there
19 were concerns expressed by the public throughout the process
20 that, you know, they may have appreciated some information as
21 to how their input would be taken into account.

22 Q. And those hearings occurred before the release of the
23 census data; is that correct?

24 A. I'm not certain.

25 Q. Okay. And further in your report in this section, you

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1 make the statement that "Most committee members appear to have
2 given almost no weight to input received at these initial
3 hearings." Do you recall that statement?

4 A. Yeah. In terms of what was acted upon, yes, I would
5 stand by that. I don't know what they thought about when they
6 went home or whatever, but there's very little action in terms
7 of implementing a lot of the feedback that we saw.

8 Q. Sure. So, in terms of action, you then state that that
9 was, "based on the amendments brought and proposals put
10 forward, did not reflect the myriad comments of the public."
11 Do you recall that?

12 A. That's right.

13 Q. Okay. Are you aware that the House received over 450
14 individual comments about not wanting Beaufort County to be
15 included in Congressional District 2?

16 A. Comments in what way?

17 Q. E-mails, public submissions, written testimony, things of
18 that nature.

19 A. Well, it wasn't published that I'm aware of, so I haven't
20 had a chance to review that. I know there was a bevy of
21 information referenced by Chairman Jordan and others at times,
22 but I was not able to review it.

23 Q. And you recall Representative Newton saying at one point
24 that the sheer number of comments from Beaufort County about
25 not wanting to be included in CD 2 vastly outnumbered the

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1 public comments from any other county?

2 A. Yes, sir. And I did faithfully report that he said that.
3 Although, again, I can't say that's case or not because I
4 haven't seen that information.

5 Q. And you're aware that House Staff Alternative Plan No. 1
6 acted on those sheer volume of comments from Beaufort County?

7 A. Yes.

8 Q. All right. You then state Black committee members would
9 subsequently cite some of this testimony to support their
10 congressional proposals. Are you aware that no Black
11 committee members on the House Ad Hoc Committee put up a
12 congressional map as an amendment?

13 A. Yes.

14 Q. And then you state that the White committee members would
15 make claims about public input in general -- and this is a
16 quote -- "wildly out of line with what was said at the
17 hearings, referring instead to submitted written testimony
18 that was not available to the public."

19 Can you provide any examples of how the members' claims
20 were wildly out of line with public testimony?

21 A. This is what we were talking about earlier in terms of
22 there are claims that this mountain of information that's
23 being received that's just not in the public record that I
24 reviewed in terms of being voluminous.

25 Q. Okay. And throughout your report, you cite public

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1 testimony; is that correct?

2 A. Of course.

3 Q. And are you aware that you cited the testimony of
4 plaintiffs or plaintiffs' counsel at least eight or nine
5 different times in your report?

6 A. Sure. They appeared at one of the public hearings.

7 Q. So, you cited plaintiffs and plaintiffs' counsel eight or
8 nine times in your report, but you did not cite the testimony
9 of a former Republican candidate who was running at the time
10 in Congressional District 1; is that correct?

11 A. Which -- what would this be?

12 Q. Do you know who Lynz Piper-Loomis is?

13 A. Yeah, I remember that name.

14 Q. And did that name appear anywhere in your report?

15 A. I'm not sure if that made it in or not.

16 Q. Okay. And are you aware that that is a Republican
17 candidate who was running in Congressional District 1 at the
18 time and spoke at the public hearings?

19 A. Right.

20 JUDGE GERGEL: Mr. Parente, I don't want to interrupt
21 your cross, but we've already exhaustively -- Mr. Traywick did
22 a very good job of pointing out sort of a partisan angle here
23 in his view. Going over it, you can nitpick this thing, there
24 are a thousand pages of public record. We kind of get y'all's
25 point, unless there's something new to bring out to us that's

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1 significantly different.

2 MR. PARENTE: Sure. I'm just focusing on some of the
3 testimony at the House, but I'll try to streamline, your
4 Honor.

5 JUDGE GERGEL: I get it. I'm just saying, of course,
6 the House plan is not the adopted plan, it's the Senate plan.
7 I mean, at some point we kind of get the point that you're
8 making as to this expert. That's fine. But we get it
9 already.

10 MR. PARENTE: Yes, your Honor. I'll try to
11 streamline. Thank you.

12 **BY MR. PARENTE:**

13 Q. Dr. Bagley, I'll move on to the December 16th ad hoc
14 committee hearing, which was to receive public input on the
15 House's first staff plan; is that correct?

16 A. Yes, sir.

17 Q. And in that portion of the testimony, you sight Lynn
18 Teague and Joe Cunningham; is that correct?

19 A. Yes, sir.

20 Q. And who is Joe Cunningham?

21 A. Joe Cunningham formerly represented CD 1 in the U.S.
22 Congress.

23 Q. And what party is Mr. Cunningham with?

24 A. He's a Democrat.

25 Q. Okay. And earlier in your direct, you accused the

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1 General Assembly of selectively incorporating public feedback;
2 is that correct?

3 A. I think that I've reported where others have indicated it
4 was their view that certain testimony was weighted more than
5 others and certain criteria were used in some instances and
6 not others.

7 Q. And moving to the December 29th ad hoc committee hearing,
8 you testified about Representative Bernstein's testimony; is
9 that correct?

10 A. Yes, sir.

11 Q. And one of the points that Representative Bernstein
12 raised was about national partisan groups; do you recall that
13 testimony?

14 A. I do.

15 Q. And is it possible that Chairman Jordan took that to mean
16 groups such as the NAACP and ACLU, who submitted maps on
17 behalf of their organizations?

18 A. I suppose. Although I think there were other groups that
19 came up.

20 Q. And so, this hearing was about Staff Alternative Plan 1;
21 is that correct?

22 A. I believe that's right.

23 Q. And I believe you testified earlier that, based on
24 certain feedback received from Representative Bernstein and
25 Representative Thigpen, that a, quote, "third alternative"

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1 could have been proposed. Do you recall that testimony?

2 A. I do.

3 Q. So, it's not a bad thing to have multiple choices for the
4 legislature to choose from; is that correct?

5 A. Certainly not.

6 Q. Okay. All right. I'm going to move on to the
7 January 10th, 2022, Judiciary Committee meeting. And in your
8 report, you write that there are a number of procedural
9 irregularities. Do you recall that in your report?

10 A. Yes.

11 Q. And we as discussed before, you're not an expert on House
12 procedures, are you?

13 A. I wouldn't put myself forth as such, no.

14 Q. And you have not studied the House rules; is that
15 correct?

16 A. I have not studied those voluminous rules, no, sir.

17 Q. And you have not studied the House Judiciary Committee
18 rules, correct?

19 A. I know the guidelines for the redistricting process and I
20 know what people have said about there being procedural
21 departures that I've reported on.

22 Q. Sure. So I believe the criteria that you are speaking
23 about are the ad hoc committee. I'm referring to the
24 Judiciary Committee and the House have its own rules.

25 A. Right.

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1 Q. Have you reviewed those rules?

2 A. No.

3 Q. And you do not -- so, you say that one of the procedural
4 irregularities is about Representative King not chairing that
5 meeting?

6 A. That was a concern raised by several legislators.

7 Q. And have you seen the letter that appointed
8 Representative Newton as chair of that meeting?

9 A. I have not seen that letter. I recall Representative
10 Newton saying that he had received it.

11 Q. And you do not cite Rule 14 of the House Judiciary rules
12 in your report, do you?

13 A. I'm not sure if that is in there or not. I know that's
14 what Representative Newton said that Chairman Murphy was
15 invoking.

16 Q. And earlier in your testimony you discuss Representative
17 Bernstein and Representative Thigpen. Do you recall that
18 testimony?

19 A. Yes, sir.

20 Q. And are you aware that neither Representative Bernstein
21 nor Represent Thigpen drew any alternatives that kept Beaufort
22 and Charleston County as whole and together?

23 A. And only they themselves drew any maps. No, sir.

24 Q. And you're aware that any member of the House of
25 Representatives had access to the map room and map room staff

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1 at any time during this process to draw amendments?

2 A. Yes. It was said that anyone could go to the map room at
3 any time.

4 Q. Okay. And at the end of that meeting, Staff Alternative
5 Plan 1 passed the Judiciary Committee; is that correct?

6 A. Right.

7 Q. And it was all Republican members that voted in favor of
8 that plan; is that correct?

9 A. I believe that's correct.

10 Q. And, in fact, it was a party line vote; is that right?

11 A. Yes, sir.

12 Q. Okay. I'm going to move on to the January 12th full
13 House floor hearing. And I believe you discussed earlier that
14 the House and Senate need to pass one plan in order to avoid
15 going to a conference committee; is that correct?

16 A. Chairman Jordan mentions that at one point, yes.

17 Q. Okay. And you said you were aware that the plaintiffs
18 filed a lawsuit on October 12th, and the Court imposed a stay
19 until January 18th; is that correct?

20 A. Yes, sir.

21 Q. And so, if each chamber of the General Assembly had
22 vastly different maps, they be would less likely be concur
23 with each other under those tight time deadlines, right?

24 A. If they were vastly different, I suppose that's true.
25 Yes.

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1 Q. Okay. And the panel is well aware of the testimony of
2 Representative Cobb-Hunter and Representative Garvin. So I'm
3 going to move on to Representative Matthews, who I believe we
4 saw a video of earlier. Do you recall that testimony?

5 A. Yes.

6 Q. And Representative Matthews testified about the splitting
7 of communities of color in Charleston; is that correct?

8 A. She did.

9 Q. Do you recall Representative Matthews providing any
10 examples of those communities?

11 A. She talked about I think precinct lines, but I don't
12 think she mentioned specific communities as such.

13 Q. Okay. And are you familiar with the demographics of
14 downtown Charleston, where we are now?

15 A. Relatively diverse.

16 Q. And what congressional district is downtown Charleston
17 located in in the enacted plan?

18 A. CD 1.

19 Q. Okay. Do you know what position Representative Matthews
20 is currently running for?

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

22 Q. And have you heard any of the recent controversies
23 surrounding Representative Matthews?

24 A. No. I read the *Post and Courier* every day, but I'm not
25 aware off the top of my head.

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1 Q. So you haven't heard any recordings of Representative
2 Matthews discussing the treatment of White people in her
3 district?

4 JUDGE GERGEL: Now, Mr. Parente, I just cannot
5 imagine trying to impeach someone who's not a witness on the
6 floor of the House on the issue of whether Charleston is
7 divided or not -- its just too remote. We don't need to do
8 that.

9 MR. PARENTE: I'll wrap up, your Honor. Thank you.

10 **BY MR. PARENTE:**

11 Q. Dr. Bagley, do you know if Representative Bamberg was
12 present on the House floor for the vote on January 26th?

13 A. Off the top of my head, I'm not. And if he was, I'm sure
14 that's represented or not in the report.

15 Q. And it was the Alternative Plan 1 that passed the House;
16 is that correct?

17 A. Yes, sir.

18 Q. And did that map pass the Senate?

19 A. Yes, sir.

20 Q. The House Alternative Staff Plan 1 passed the Senate?

21 A. It was amended, but I mean it ultimately passed out of
22 the Senate and then back to the House.

23 Q. But the map that came out of the House floor, that exact
24 map, is not what is enacted into law today?

25 A. Not exactly.

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1 Q. Okay. And you said that there were changes to that map;
2 is that correct?

3 A. I believe so.

4 Q. And can you explain any of those changes?

5 A. I don't recall exactly off the top of my head.

6 MR. PARENTE: Thank you, your Honors. I have no
7 further questions.

8 JUDGE GERGEL: Thank you, Mr. Parente.

9 Anything on redirect?

10 MR. INGRAM: I just have some brief redirect.

11 **REDIRECT EXAMINATION**

12 **BY MR. INGRAM:**

13 Q. Dr. Bagley, you testified earlier today that you did not
14 look at the first *Arlington Heights* factor for foreseeability,
15 correct?

16 A. Yes, sir.

17 Q. But did you hear statements in the record regarding
18 foreseeability of impact?

19 A. Yes, of course. When people are raising a lot of the
20 concern that I was talking about, naturally their concern is
21 that this will impact Black voters in terms of inequity
22 and participating in the political process.

23 Q. And, Dr. Bagley, you testified that the record reflects
24 legislators and community members describing what they viewed
25 to be procedural departures?

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1 A. Yes.

2 Q. And does the record reflect anyone in the General
3 Assembly repudiating those assessments?

4 A. Not systematically. There, of course, was the pushback
5 of Representative King in Rule 14, but...

6 Q. And based on your review of the record, why was it
7 significant that Representative King did not chair that
8 hearing in the record?

9 A. Representative King --

10 MR. PARENTE: Objection, your Honor, as to leading.

11 JUDGE GERGEL: Overruled. Folks, we have talked
12 about the Representative King thing so many times. Unless
13 there's something new, let's move on.

14 BY MR. INGRAM:

15 Q. What was procedurally significant about that hearing, Dr.
16 Bagley?

17 A. So, that was to consider the plan and if it would move
18 forward or not. And so, you know, it was significant if that
19 were going to happen and be approved on that day or not.

20 Q. And, Dr. Bagley, does the record reflect comments
21 regarding why the citizens of Beaufort were treated
22 differently than the citizens of Charleston?

23 A. Yes. Representative Thigpen and others expressed their
24 concern as to why the commentary of residents from one area
25 would rise to the level of generating a second staff map as

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1 opposed to, you know, repeated calls from residents of
2 Charleston to have a whole Charleston.

3 Q. And, Dr. Bagley, does your report mention five
4 individuals from Hilton Head testifying that they wanted to
5 keep Beaufort in CD 1?

6 A. Yes. Those are the individuals who appeared at that
7 meeting.

8 Q. And was the Republican candidate that Mr. Parente
9 described one of those individuals?

10 A. Yes, sir.

11 Q. And, Dr. Bagley, does the record reflect any legislators
12 justifying the map contours using a Republican advantage?

13 A. No, sir.

14 MR. INGRAM: I have no further questions.

15 JUDGE GERGEL: Yes, sir.

16 MR. INGRAM: But I do want to take a moment to clean
17 up the record and give your staff exhibit numbers for the
18 videos I cited.

19 JUDGE GERGEL: Thank you. That would be helpful.

20 MR. INGRAM: So, for the first video, it is PX-112,
21 starting at 1:31:18 through 1:35:10. The second video is
22 PX-112, starting at 59:10 to 59:24. The final video is
23 PX-116, starting at 82:21 to 83:08.

24 JUDGE GERGEL: Thank you, sir.

25 MR. INGRAM: Thank you.

JOSEPH BAGLEY, M.D. - REDIRECT EXAMINATION BY MR. INGRAM 1214

1 THE COURT: Okay. Folks, I think we can -- we will
2 break for lunch. Can the plaintiffs give us some forecast on
3 their next witnesses today, just so we'll have an idea?

4 MR. CHANEY: After lunch plaintiffs will present
5 Ms. Kilgore, and then President Murphy, and then conclude with
6 Mr. Felder. And that will conclude our witnesses.

7 There are some witnesses the defense intends to put
8 on that we would have called but for the fact that they're
9 calling them. So, we won't formally rest, but that will be
10 the last evidence we put on today.

11 JUDGE GERGEL: Very good. Okay, folks, we will
12 break. And anyone who wishes to join us, we'll have a
13 discussion of the Court's history at 1:00 o'clock in the
14 historic courtroom.

15 Folks, if you'll meet in the lobby of this building
16 shortly before 1:00, court security will take you over without
17 having to go through the security check again.

18 MR. CHANEY: Thank you, your Honor.

19 MR. TRAYWICK: Thank you, your Honor.

20 ***(Lunch recess.)***

21 JUDGE GERGEL: Please be seated.

22 Are there any matters that need to be addressed
23 before we proceed?

24 MR. TYSON: Yes, sir. If it pleases the Court, we're
25 trying to work out some logistical scheduling. My

JOSEPH BAGLEY, M.D. - REDIRECT EXAMINATION BY MR. INGRAM 1215

1 understanding is the plaintiffs have three more witnesses that
2 we believe will take several hours. We heard you loud and
3 clear the other day about having the witness ready, willing
4 and able to come. That's going to be Senator Shane Massey.
5 We thought we were going to be finished a little earlier. So,
6 he's on his way from Edgefield here. We'd prefer to start him
7 here first thing in the morning. And so, plaintiffs seem to
8 be fine with that, and we'll start up with him in the --

9 JUDGE GERGEL: Okay. If that suits y'all -- I tend
10 to defer to my lawyers. So, if that's -- how long will it
11 take us to put up these witnesses and cross?

12 MR. CHANEY: Obviously we can't speak to the length
13 of the cross. Two of the witnesses we expect to be on the
14 shorter side of what the Court has heard so far. President
15 Murphy, a bit longer, as the president of the state
16 conference. I think there could be some residue left, but
17 certainly don't want to, you know, bring the Senator across
18 the state for five minutes.

19 JUDGE GERGEL: What you want is you'd prefer Senator
20 Massey to be basically done in full.

21 MR. TYSON: Yes, sir. That's why he's hurrying to
22 get here. But then when we realized that we were going to be
23 a little bit later, I assume -- he's going back tonight
24 anyway.

25 JUDGE GERGEL: That's not an easy ride.

ELIZABETH R. KILGORE - DIRECT EXAMINATION BY MR. COLEMAN 1216

1 MR. TYSON: No, sir. I'd rather send him back now
2 rather than have him --

3 JUDGE GERGEL: Go ahead and send him back.

4 MR. TYSON: Thank you, your Honor.

5 JUDGE GERGEL: Okay. Plaintiffs, call your next
6 witness.

7 MR. COLEMAN: We call Elizabeth Kilgore.

8 *ELIZABETH R. KILGORE, having been first called as a*
9 *witness and duly sworn, testified as follows:*

10 **DIRECT EXAMINATION**

11 **BY MR. COLEMAN:**

12 Q. Good afternoon, Ms. Kilgore. Could you please state your
13 name for the record.

14 A. Elizabeth R. Kilgore.

15 Q. And where do you live, Ms. Kilgore?

16 A. 4400 Queen Chapel Road; Dalzell, South Carolina.

17 Q. Are you originally from South Carolina?

18 A. Yes, I am.

19 Q. What county is your address in?

20 A. Sumter.

21 Q. And how long have you lived there?

22 A. All my life, except for the few years I was out of state.
23 But I've been there now about 30 years since I came back.

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

25 A. Congressional 5.

ELIZABETH R. KILGORE - DIRECT EXAMINATION BY MR. COLEMAN 1217

1 Q. And how long have you lived in Congressional District 5?

2 A. As long as I can remember. A long time.

3 Q. Are you employed?

4 A. I am retired.

5 Q. And where are you retired from?

6 A. South Carolina Health and Human Services.

7 Q. Could you tell me what your role was at South Carolina
8 Health and Human Services?

9 A. Our agency was the agency that managed the medicaid
10 program by assisting the elderly and disabled, providing care
11 in the home for them.

12 Q. And what was your specific role there?

13 A. Mainly with the providers, because the State would
14 contract with providers of personal care aid, Meals on Wheels
15 services. And I would handle all the providers for our area
16 in Sumter. Sumter covered Clarendon, Kershaw, Lee, and
17 Sumter.

18 Q. And how long did you do that work?

19 A. About 32 years.

20 Q. And where did that work take place?

21 A. In the office in Sumter. But we covered the four-county
22 area of Lee, Clarendon and Kershaw.

23 Q. So, your work involved helping people throughout all
24 those counties?

25 A. Yes.

ELIZABETH R. KILGORE - DIRECT EXAMINATION BY MR. COLEMAN 1218

1 Q. Are you a member of any organizations, Ms. Kilgore?

2 A. Yes, I am.

3 Q. What organizations?

4 A. I'm a member of the NAACP.

5 Q. Any other organizations?

6 A. The National Council of Negro Women, the Mary McLeod
7 Bethune Section of Sumter.

8 Q. What branch of the NAACP are you a member of?

9 A. Sumter branch. Sumter County branch.

10 Q. When did you join the NAACP?

11 A. Well, I joined back in the 90s and then dropped. And
12 then I came back in 2006, and I've been there ever since.

13 Q. Why did you join the South Carolina NAACP?

14 A. Because I believe in what the NAACP stands for, for civil
15 rights, voting rights. And as African Americans, we've so
16 many times been denied that right. So, I believe in the fight
17 for voting rights.

18 Q. Do you have any positions within the South Carolina
19 NAACP?

20 A. Yes. I currently serve as secretary for the State NAACP.

21 Q. Do you have any positions on the local level?

22 A. I am president of my Sumter branch.

23 Q. What are your responsibilities as the secretary of the
24 South Carolina State Conference?

25 A. My duties as secretary is to keep track of all meetings,

ELIZABETH R. KILGORE - DIRECT EXAMINATION BY MR. COLEMAN 1219

1 minutes for all meetings, making sure that everything is
2 documented according to the agenda that has been set forth for
3 us.

4 Q. Could you tell me about your responsibilities as the
5 branch president of the Sumter branch?

6 A. The Sumter branch president operates in the absence of
7 the executive committee. When issues arise and we're not in
8 session or anything, in a meeting, I take care of that and
9 report to the executive committee as soon as possible for the
10 next meeting.

11 Q. How long have you been Sumter branch president?

12 A. Eight years.

13 Q. Is that an elected position?

14 A. Yes, it is.

15 Q. What are the term lengths?

16 A. Two-year terms.

17 Q. You've been elected four times?

18 A. Yes.

19 Q. What type of community projects does the Sumter branch of
20 the NAACP work on?

21 A. More recent projects we've worked on is assisting people
22 with their rent. Because of COVID -- COVID impacted so many
23 people so negatively and so many, as we all know -- people
24 weren't able to work or anything. So, we were able to assist
25 them with grant money for them to pay their rent and their

ELIZABETH R. KILGORE - DIRECT EXAMINATION BY MR. COLEMAN 1220

1 utility bills. And before that, we assisted them with food,
2 being able to get them debit cards for food.

3 Q. Have you worked on any other issues through the Sumter
4 branch?

5 A. The Sumter branch has and continues to work on an issue
6 at one of our rural predominantly Black schools regarding
7 science labs, making sure those children have the same
8 educational equipment as the other schools in the Sumter
9 school district. And that's still an ongoing project.

10 Q. Now, programs like the rental the assistance program and
11 the debit card food assistance program, that helps people
12 throughout Sumter County?

13 A. Throughout Sumter County, yes.

14 Q. Are you a registered voter, Ms. Kilgore?

15 A. Yes, I am.

16 Q. When did you register to vote?

17 A. 1992.

18 Q. Why did you register?

19 A. I saw a need to make a change, and since I was given that
20 right by so many before me that fought for us to have that
21 right, I saw a need to be a registered voter so that my vote
22 can count.

23 Q. And, Ms. Kilgore, do you have any other positions -- did
24 you previously have any other positions in the community?

25 A. I did. I served on the Sumter School District No. 2

ELIZABETH R. KILGORE - DIRECT EXAMINATION BY MR. COLEMAN 1221

1 Board of Trustees for 12 years.

2 Q. And what did you do in that role?

3 A. The board of Trustees sets policies for the school
4 district, which is carried out by the superintendent.

5 Q. Now, Ms. Kilgore, I'm going to ask you some questions
6 about congressional redistricting. Did you attend any
7 congressional redistricting hearings?

8 A. Yes, I did.

9 Q. What hearing did you attend, and when?

10 A. I attended the one that was held in central Carolina in
11 Sumter earlier this year.

12 Q. Why did you attend that hearing?

13 A. Because it was about redistricting, and I wanted to see
14 what the Senate panel had to offer as it relates to
15 Congressional 5.

16 Q. Did you testify at that hearing?

17 A. No, I did not.

18 Q. Why not?

19 A. Because I was looking for the Senate plan as far as
20 redistricting on what they would be offering for the redrawing
21 of the lines, and I didn't hear that. They were looking for
22 the community to talk about it.

23 Q. Do you think if you had heard their plan, you would have
24 been in a better position to give feedback?

25 A. I think that I would have, yes.

ELIZABETH R. KILGORE - DIRECT EXAMINATION BY MR. COLEMAN 1222

1 Q. When you left that hearing, did you feel like you
2 understand what their plan was for drawing the maps and the
3 factors that were going into that?

4 A. No, sir, not at all.

5 Q. Ms. Kilgore, what are your concerns about the
6 congressional map that was drawn and enacted into law?

7 A. My concern is keeping Sumter and Sumter County whole.

8 Q. So, you're concerned about how the congressional map
9 splits Sumter. Why is that a concern for you?

10 A. Because I think it takes away from my community being
11 able to elect a candidate of their choosing.

12 Q. When you say "my community," what do you mean by that?

13 A. I mean Sumter County in the Dalzell area.

14 Q. Is that a predominantly Black community?

15 A. Predominantly Black community.

16 Q. And what's your concern about your community being able
17 to elect candidates of your choice?

18 A. Currently, the way the lines are right now, the split
19 part of where I'm at with Congressional 5 goes all the way up
20 almost right at the Charlotte, North Carolina line. And I
21 don't see where my community and the communities up there have
22 anything in common to work toward as far as the needs of my
23 community.

24 Q. Ms. Kilgore, can you tell me what are some of the needs
25 of your community that could be addressed by a congressional

ELIZABETH R. KILGORE - DIRECT EXAMINATION BY MR. COLEMAN 1223

1 representative?

2 A. I'd like to see a wellness center addressed, because we
3 are in the rural area. I'd like to see a wellness center
4 addressed for my area.

5 Q. Why is that important to you?

6 A. Because we're in the rural area, and elderly seniors that
7 live in my community have to drive at least 15, maybe
8 20 minutes, depending on where they live, just to get to the
9 doctor. And I think the wellness community could benefit them
10 in that regard.

11 Q. What other issues are concerning for your community that
12 could be addressed by a congressional representative?

13 A. Broadband in the rural areas. Broadband would be a huge
14 benefit for our children that live in the rural area. If you
15 don't have broadband, you don't have a computer. And that's
16 what children are using now, computers.

17 Q. And you mentioned earlier the rental assistance program
18 and the assistance you all provided for food access. Are
19 those things you think a congressional representative could
20 help you all with as well?

21 A. Absolutely.

22 Q. And why do you think that? Could you tell me more about
23 why you think that?

24 A. During COVID, the really high point of COVID, I reached
25 out to the current representative to find out if there were

ELIZABETH R. KILGORE - DIRECT EXAMINATION BY MR. COLEMAN 1224

1 any grants anywhere that my area could get to assist with the
2 needs of the people during COVID, because no one was working
3 during that time. Businesses were closed. Employees weren't
4 working. And the only thing they were able to tell me was to
5 talk to the grant person in the city of Sumter. And, of
6 course, I did not, because I was calling my representative's
7 office. And within an hour's time after that conversation
8 ended, the office called me back and asked me if I could find
9 a meeting place for the representative in Dalzell. And I told
10 him no.

11 Q. What's the name of your congressional representative for
12 District 5?

13 A. Representative Ralph Norman.

14 Q. And do you feel that he pays attention to your community?

15 A. No.

16 Q. Can you tell me why you feel that way?

17 A. I have yet to see Representative Norman in my area. No
18 meetings are held regarding CD 5.

19 Q. Does he campaign in your area?

20 A. As hot as the campaign season is right now, there is not
21 one campaign sign of Representative Norman. However, there
22 are signs in the subdivisions of Sumter.

23 Q. And so, what's the racial makeup of these other areas
24 where there are signs?

25 A. Majority White.

ELIZABETH R. KILGORE - DIRECT EXAMINATION BY MR. COLEMAN 1225

1 Q. And so how does that make you feel that, you know, he's
2 campaigning in a White area but not paying attention or
3 campaigning in the Black community where you live?

4 A. The way it's always been, left out.

5 Q. Do you have any other examples of feeling ignored by
6 Representative Norman?

7 A. The elderly people that live in my community -- as I was
8 speaking about the wellness center -- when it was passed for
9 the insulin, the price drop for insulin -- and he voted
10 against that. There are people in my community with diabetes,
11 and they struggle to get insulin. But how would he know that?

12 Q. Just so I'm clear, you're saying he voted against a bill
13 that would have helped with insulin costs?

14 A. Yes.

15 Q. And who in your community that you know would benefit
16 from something like that?

17 A. A dear friend of mine. We call her Ms. B. And she would
18 benefit greatly from that. She's the one we celebrated this
19 year. She turned 108 years old this year.

20 Q. Do you think race was a factor in this congressional
21 redistricting process?

22 A. Yes, I do.

23 Q. And why do you feel that way?

24 A. That's the way it's been in my community for a long time.
25 It's like my Black community is left out of the process

ELIZABETH R. KILGORE - CROSS-EXAMINATION BY MR. BARBER 1226

1 altogether. We vote, but we don't count. We don't have the
2 opportunity -- I feel -- to elect a candidate of our choosing.

3 Q. And why is it important for Black people in your
4 community to be able to elect candidates of their choice?

5 A. Because I think we should have the same rights as
6 everyone else to elect a candidate of our choice. And that
7 has not been the case.

8 MR. COLEMAN: No further questions.

9 JUDGE GERGEL: Cross-examination?

10 **CROSS-EXAMINATION**

11 **BY MR. BARBER:**

12 Q. Good afternoon Ms. Kilgore. My name is Hamilton Barber.
13 I'm one of the attorneys for the House defendants. I have
14 some questions for you today.

15 A. Uh-huh.

16 Q. Ms. Kilgore, you're part of the South Carolina State
17 Conference of the NAACP executive committee, right?

18 A. Yes.

19 Q. And the executive committee voted to file this lawsuit,
20 right?

21 A. Yes.

22 Q. And you, in fact, voted to file this lawsuit against
23 the congressional reapportionment plan, right?

24 A. Yes, I did.

25 Q. But at that time, you had not reviewed the complaint that

ELIZABETH R. KILGORE - CROSS-EXAMINATION BY MR. BARBER 1227

1 was filed in this case, right?

2 A. Had we reviewed it yet?

3 Q. Had you reviewed the complaint at that time?

4 A. I -- I can't really remember whether I had reviewed the
5 complaint, because we had also been having meetings during
6 that time and talked about that.

7 Q. I understand. And you testified that you currently live
8 in Congressional District 5, right?

9 A. I'm sorry?

10 Q. You testified that you currently live in Congressional
11 District 5?

12 A. That's correct.

13 Q. And you would agree with me that Congressional District 5
14 has been part of Sumter County for at least 30 years?

15 A. Yes.

16 Q. And earlier you testified that you had only attended one
17 Senate Judiciary Redistricting Committee meeting, right?

18 A. Yes.

19 Q. But you did not attend any other public hearings or
20 meetings put on by the House Judiciary Ad Hoc Committee,
21 right?

22 A. No, I didn't.

23 Q. And you didn't watch any of the public hearings or public
24 testimony on the internet, correct?

25 A. No, I did not.

ELIZABETH R. KILGORE - CROSS-EXAMINATION BY MR. BARBER 1228

1 Q. And during the redistricting process, when the House
2 Redistricting Ad Hoc Committee, the Senate Judiciary
3 Redistricting Subcommittee proposed the congressional maps,
4 you didn't review those proposed maps, right?

5 A. Say that again?

6 Q. During the redistricting process, you did not review any
7 of the proposed congressional maps, right?

8 A. Did I review any of the maps during that time?

9 Q. Correct.

10 A. No.

11 Q. And you did not provide any written testimony on those
12 maps, right?

13 A. Written testimony?

14 Q. That's correct.

15 A. No.

16 Q. Is it fair to say -- is it a fair statement to say that
17 you believe that under the current congressional redistricting
18 plan, the representative for Congressional District 5 is
19 choosing the voters in the portion of Congressional District 5
20 where you live instead of the voters electing the
21 representative?

22 A. That is my belief.

23 Q. And you believe Ralph Norman wants Republican voters in
24 that district, right?

25 A. I'm not in Representative Norman's head.

ELIZABETH R. KILGORE - CROSS-EXAMINATION BY MR. BARBER 1229

1 Q. But he needs Republican voters to win, right?

2 A. I would say yes.

3 Q. That's just pure and simple politics, right?

4 A. I don't know if it's politics or not, but I do believe
5 that it is a bad decision when representatives -- if they feel
6 like that.

7 Q. And in your deposition, you testified that you believe
8 that Black voting age population in Congressional District 5
9 is so low, such that there is no way you could fairly elect
10 someone of your choosing for Congressional District 5; is that
11 correct?

12 A. Repeat the question again about how low something is.

13 Q. Do you believe the Black voting age population in
14 Congressional District 5 is so low such that there is no way
15 you could fairly elect someone of your choosing for
16 Congressional District 5?

17 A. The Black voting age population may be low, but even with
18 the registered Black voters in Congressional 5, they're still
19 not able to elect a candidate of their choosing. Of their
20 choosing.

21 Q. You don't know what the Black turnout will be on election
22 day, right?

23 A. No, I sure would not.

24 Q. And you can't guess what the White turnout will be,
25 right?

ELIZABETH R. KILGORE - CROSS-EXAMINATION BY MR. BARBER 1230

1 A. No.

2 Q. And you don't know how many White voters who will cross
3 over and vote for the Black voters' candidate of choice,
4 right?

5 A. No.

6 Q. Did you know that Senator Harpootlian submitted a
7 congressional redistricting plan for Senate consideration?

8 A. I'd heard about that. I have not seen that.

9 Q. Okay. Would it surprise you that in the plan submitted
10 by Senator Harpootlian, one of the congressional districts
11 with the Black voting age population percentage of less than
12 24 percent are expected to allow Black voters to elect a
13 Democrat?

14 A. What is the question?

15 Q. Would it surprise you?

16 A. Surprise me?

17 Q. That a congressional district with a Black voting age
18 population percentage of less than 24 percent will allow
19 African Americans to elect a candidate of their choice?

20 A. Electing a candidate of your choice does not have to be
21 by color.

22 Q. Okay.

23 A. Just having the opportunity for a fair and free election
24 of a candidate.

25 Q. All right. Well, I don't have any further questions for

ELIZABETH KILGORE - CROSS-EXAMINATION BY MS. STRINGFELLOW 1231

1 you.

2 JUDGE GERGEL: Thank you, sir. Cross-examination.

3 **CROSS-EXAMINATION**

4 **BY MS. STRINGFELLOW:**

5 Q. Good afternoon, Ms. Kilgore. How are you?

6 A. Fine. How are you?

7 Q. Pretty good. My name is name is La'Jessica Stringfellow.
8 I met you previously before during a deposition. I don't have
9 many questions for you, so I won't keep you here long, okay.

10 Ms. Kilgore, you were first contacted to testify at this
11 trial this past August; is that correct?

12 A. Could you state the question again? It was a little low.

13 Q. You were first contacted to testify at this trial in
14 August?

15 A. Yes.

16 Q. And you previously testified that you -- after attending
17 the redistricting hearing in Sumter, that you did not
18 understand the redistricting process; is that correct?

19 A. Not that I did not understand the redistricting process,
20 I went expecting for them to have a plan to present to the
21 community so that we could have a conversation about it.

22 Q. And as a part of -- excuse me. Because you are a part of
23 the executive committee, didn't you receive information about
24 when those maps would be released?

25 A. More than likely, yes.

ELIZABETH KILGORE - REDIRECT EXAMINATION BY MR. COLEMAN 1232

1 Q. And your congressional district has not changed with the
2 new enacted map; is that correct?

3 A. It has not. I'm still in Congressional 5.

4 Q. Okay. Would you agree with me that the money that you
5 previously testified about for the community wellness center
6 would come from the state government instead of Congress?

7 A. It could, but I also can see that it could benefit coming
8 from the congressional representative too.

9 Q. Okay. And did you ever reach out to Congressman Norman?

10 A. When I reached out to him about the grant during the high
11 point of COVID.

12 Q. And did you contact him about your thoughts about the
13 access to insulin and broadband internet?

14 A. I have not spoken to him at all.

15 Q. That's all the questions I have for you, Ms. Kilgore.

16 Thank you.

17 A. Thank you.

18 JUDGE GERGEL: Anything on redirect?

19 MR. COLEMAN: Yes, your Honor.

20 **REDIRECT EXAMINATION**

21 **BY MR. COLEMAN:**

22 Q. Ms. Kilgore, earlier I asked you about how the
23 congressional map splits the county of Sumter. Were you aware
24 that it also splits the city of Sumter as well?

25 A. Yes.

ELIZABETH KILGORE - REDIRECT EXAMINATION BY MR. COLEMAN 1233

1 Q. How do you feel about that?

2 A. I'm not just looking at the county of Sumter -- the rural
3 areas of Sumter, I should say -- I'm looking at the whole
4 Sumter city and county being kept whole.

5 Q. Do you think the splitting of the Sumter County and the
6 City of Sumter harms Black voters in your community?

7 MS. STRINGFELLOW: Objection, Your Honor. This is
8 outside the scope of the cross.

9 JUDGE GERGEL: It's within it. Overruled.

10 THE WITNESS: What was the question?

11 **BY MR. COLEMAN:**

12 Q. Do you think how the congressional map splits Sumter
13 County and the City of Sumter harms the Black community and
14 Black voters in your --

15 A. I think it does.

16 JUDGE GERGEL: Could we put up -- it would be helpful
17 when we hear from Ms. Kilgore if we could put up a map of
18 Sumter so she can describe for us the split. We just don't
19 know the geography here. Can we get a map of Sumter that
20 shows the split? Grab us one that might have some indication
21 about racial concentration or something. I'm just trying to
22 figure out -- I think I saw something earlier about this
23 somewhere. We've just heard very little about Sumter. And
24 I'd like to get an understanding.

25 I will tell you that in Mr. Imai's report -- I'm just

ELIZABETH KILGORE - REDIRECT EXAMINATION BY MR. COLEMAN 1234

1 looking at a docket 323-27, at page 21. There's a map of
2 Sumter. It looks like it's Sumter. Yes, it's Sumter. I
3 thought she might be able to describe us the geography we're
4 looking at.

5 MR. COLEMAN: If we could zoom in on Sumter, please.

6 JUDGE GERGEL: I'm not sure she's gonna be able to
7 tell from this map. Can you pull it up a little bit further?

8 MR. TRAYWICK: Your Honor, I'm not sure it's the
9 enacted map.

10 JUDGE GERGEL: Thank you, Mr. Traywick.

11 I'm just hoping we can get -- is there any kind of
12 division? I know in Dr. Imai's report, there is a map of
13 Sumter. I just think she might be been able to tell me
14 looking at it, sort of where -- you know, the divisions there.
15 Page 20. There you go right there, on the left side. Of
16 course, it doesn't show the city lines.

17 Ms. Kilgore, can you kind of orient yourself to
18 figure out what's in Congressional 6 and what's in 5? Is that
19 detailed enough for you?

20 THE WITNESS: I can just say that I'm in
21 Congressional 5. I'm not sure where the lines are actually
22 ending there with Congressional 6, but it seems like it's
23 going down the rural area of Highways 378 in that regard.

24 JUDGE GERGEL: Where would Dalzell be in this, so I
25 can orient myself?

ELIZABETH KILGORE - REDIRECT EXAMINATION BY MR. COLEMAN 1235

1 THE WITNESS: Dalzell would be up to where the number
2 five is.

3 JUDGE GERGEL: Would it be the darker orange?

4 THE WITNESS: No. I don't think it would be the
5 darker orange. I think it would be where the five is.

6 JUDGE GERGEL: I got you. Okay. And what would be
7 that darker orange? What part of the county would that be?
8 That would be the highest African-American percentage, I
9 presume.

10 THE WITNESS: I'm thinking that would probably be the
11 Rembert area.

12 JUDGE GERGEL: Okay. Do you know about where in the
13 city of Sumter this split occurs? Do you know about that?

14 No one's got a city map of Sumter?

15 MR. MATHIAS: Your Honor, in the amended complaint,
16 page 44, paragraph 153, it looks like there might be a map
17 that describes -- or illustrates what you're asking.

18 JUDGE GERGEL: Thank you.

19 MR. MATHIAS: And I'm not sure which color is which,
20 but there's a yellow line and a blue line. One's the
21 benchmark, and one's the enacted.

22 JUDGE GERGEL: Can we bring that up? Docket 267 is
23 the third amended complaint. There we go. There we go.

24 MR. MATHIAS: And what you're looking at from there
25 is from Dr. Duchin's report.

ELIZABETH KILGORE - REDIRECT EXAMINATION BY MR. COLEMAN 1236

1 JUDGE GERGEL: Does that help you, Ms. Kilgore? Can
2 you sort of see the city of Sumter there?

3 THE WITNESS: No. Kind of -- kind of hard there for
4 the city of -- to see the city of Sumter.

5 BY MR. COLEMAN:

6 Q. Ms. Kilgore, do you see the red lines around?

7 A. Yes.

8 JUDGE GERGEL: Is that the town?

9 BY MR. COLEMAN:

10 Q. Is that the city of Sumter?

11 A. I guess it could be with the red line. The pointed and
12 going -- I guess it could be for the city of Sumter, yeah.
13 Now, this is not a good map to look at; you know that, right?

14 Q. I guess I'll just ask: You're concerned about Sumter
15 city being split as well as the county?

16 A. As well as the -- the whole -- the whole Sumter. Sumter
17 city and Sumter County. As small as Sumter is, why would
18 Sumter need to be split in two congressional districts?

19 Q. They mentioned earlier that Sumter has always been split.
20 Do you feel that during this past redistricting cycle, there
21 was an opportunity to correct that issue and make Sumter
22 whole?

23 A. I think the opportunity is always there after the census
24 when it's time for redistricting, to make the necessary
25 changes, as opposed to continuously splitting communities,

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1 mainly communities of color.

2 Q. And were you able to see the maps that were proposed by
3 the South Carolina NAACP?

4 A. Yes.

5 Q. What do you think about those maps?

6 A. I support those maps.

7 Q. Why is that?

8 A. For one thing, it kept Sumter whole.

9 Q. Thank you. No further questions.

10 JUDGE GERGEL: Thank you ma'am. You may step down.

11 Call your next witness.

12 MR. INGRAM: Plaintiffs call our next witness,
13 President Brenda Murphy, on behalf of the South Carolina
14 NAACP.

15 **BRENDA C. MURPHY, having been first called as a**
16 **witness and duly sworn, testified as follows:**

17 **DIRECT EXAMINATION**

18 **BY MR. INGRAM:**

19 Q. Good afternoon. Can you please state your name for the
20 record?

21 A. Brenda C. Murphy.

22 Q. And, Ms. Murphy, what is your racial identity?

23 A. African American.

24 Q. Where do you live?

25 A. Columbia, South Carolina.

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1 Q. How long have you lived in Columbia, South Carolina?

2 A. All but seven years of my life. I was born in a little
3 town called Ridgeway, South Carolina on the back banks of the
4 Wateree River.

5 Q. And how long has your family resided in South Carolina?

6 A. All of my life. Even though my work required me to move
7 out of state, because it was a government job, I always
8 maintained my residency in South Carolina.

9 Q. And how many generations can you trace back to residing
10 in South Carolina?

11 A. Oh, at least five.

12 Q. And have you been educated in South Carolina?

13 A. Yes, I was.

14 Q. Did you complete any higher education in South Carolina?

15 A. Yes, I did.

16 Q. And what did you study?

17 A. I have my bachelor's in nursing, and my master's in
18 nursing also, with a concentration in mental health nursing
19 and group work.

20 Q. And where did you study?

21 A. University of South Carolina; the Columbia University,
22 here in Columbia, South Carolina.

23 Q. President Murphy, what is the South Carolina NAACP?

24 A. The South Carolina NAACP is a non-partisan organization.
25 We were organized in 1939. We are actually associated with

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1 the national -- we're a subsidiary, actually, of the National
2 Association For the Advancement of Colored People.

3 Q. Is it considered the oldest civil rights organization in
4 South Carolina?

5 A. It is.

6 Q. What are some examples of the most significant work the
7 South Carolina NAACP has done to improve the lives of Black
8 South Carolinians?

9 A. We work as advocates to ensure the civil rights of Black
10 people, primarily.

11 Q. Can you give me some historical examples?

12 A. Well, for many many years, during the time when we should
13 be voting, we are educating our members and others on the
14 importance of voting and also assisting them to get to the
15 candidates in terms of allowing candidates to have the
16 opportunity to explain or discuss their platform.

17 Q. And what is the difference between the South Carolina
18 NAACP and the Legal Defense Fund?

19 A. They're two separate organizations. The South Carolina
20 NAACP -- or the NAACP, nationally, is an advocacy group that
21 advocates, as I said earlier, for the civil rights of
22 individuals. LDF is a different organization that deals with
23 attorneys' litigation.

24 Q. Are you a member of the South Carolina NAACP?

25 A. I am a member of one of the branches that belongs to the

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1 South Carolina State Conference.

2 Q. How long have you been a member?

3 A. Forty-plus years.

4 Q. And why did you join the South Carolina NAACP 40 years
5 ago?

6 A. I was living in Charleston, South Carolina, and I had
7 some challenges that were discriminatory here in Charleston,
8 so I contacted the local NAACP, and they assisted me with a
9 resolution of the matter.

10 Q. And what is your current position with the South Carolina
11 State Conference of the NAACP?

12 A. I'm currently the president.

13 Q. How long have you been the president?

14 A. Five years.

15 Q. And why did you decide to become president?

16 A. I've worked -- before becoming president, I worked with
17 the youth and college division. I thought that it was very
18 important to engage young people to help them become future
19 leaders, to become aware of our history, the importance of
20 advocating for our continued civil rights, and I also was the
21 health committee chairperson for a number of years, because
22 I'm very concerned about the health of African Americans here
23 in South Carolina, particularly in rural areas.

24 Someone mentioned to me -- and I'll say -- I guess it was
25 -- it was -- I'll just say religious divine, because a pastor

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1 talked to me about perhaps considering running for the
2 position to possibly be elected. And after my conversation
3 with him, I decided, well, I think I'm ready, so I did place
4 my petition to be considered for the position.

5 Q. And what branch do you currently belong to?

6 A. The Columbia branch.

7 Q. And have you belonged to any other branches in the past?

8 A. The Charleston branch.

9 Q. And President Murphy, are you paid for your work with the
10 South Carolina NAACP?

11 A. No. It's all volunteer.

12 Q. Are there any paid positions at the South Carolina NAACP?

13 A. No. Well, we have three part-time positions. They're
14 staff, administrative staff, but that's it. All others are
15 volunteers.

16 Q. Does the South Carolina NAACP endorse political
17 candidates?

18 A. We do not endorse political candidates.

19 Q. Why not?

20 A. We're nonpartisan.

21 Q. And why is the South Carolina NAACP nonpartisan?

22 A. We have always been. You know, we look at candidates not
23 because of their party but in terms of what it is they have to
24 offer that would be helpful and beneficial to Black people
25 especially.

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1 Q. President Murphy, what are your duties as president
2 entail?

3 A. I preside over the meetings. We have an executive group.
4 It is I and the executive committee that makes decisions about
5 what it is our priorities are going to be. And in between our
6 meetings, I have the authority to make certain decisions and
7 share them at our very next meeting in order to get them
8 approved.

9 Q. And how was the South Carolina NAACP organized?

10 A. As I said earlier, organizationally, we are a subsidiary
11 of the national office. The executive committee works
12 together. That is the leadership for the state conference.
13 I'm responsible for coordinating the meetings. Also, I select
14 all of the chairpersons for the different committees that we
15 have, which are approved by the executive committee.

16 Q. And approximately how many members does the South
17 Carolina NAACP have currently?

18 A. Approximately 13,000.

19 Q. And how many branches does the South Carolina NAACP have
20 across the state?

21 A. Eighty-plus. We've gained a few.

22 Q. And what is the racial make up of your membership?

23 A. I would say 99 percent African American, one percent
24 others.

25 Q. And as an organization, do you only serve or advocate for

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1 your members?

2 A. No. We advocate and serve all, anyone that comes to us.
3 You do not have to be a member.

4 Q. Do you have members who are registered voters in each of
5 the congressional districts in South Carolina?

6 A. We do. We have members -- we have branches actually in
7 all of the counties, sometimes more than one.

8 Q. And how do you know that there are registered voters in
9 all of those branches?

10 A. Well, many of them are the presidents in those areas, who
11 are members of the executive committee who are all registered
12 voters.

13 Q. And how many counties in South Carolina have you visited?

14 A. I can say I have visited every county in South Carolina.

15 Q. For what reason?

16 A. Meetings with members, the branches. I'm also active in
17 other organizations that have required me to visit other
18 counties. So, it's my life experiences and my work
19 experiences.

20 Q. And what are the South Carolina NAACP's advocacy
21 priorities?

22 A. Education is a priority. Criminal justice, economic
23 sustainability, and, of course, most importantly right now, is
24 voting rights.

25 Q. And what areas does the South Carolina NAACP work in that

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1 involve the U.S. congressional representation?

2 A. Well, it's important to be involved because, you know,
3 the money -- most of it comes from Congress or the United
4 States government, I will say. It filters down, even in terms
5 of educational funds, which are badly needed in our state.
6 You know, sometimes, as I've traveled through the state, I can
7 almost fall to my knees to look at the conditions of certain
8 schools in places like Allendale, Abbeville, Barnwell. You
9 know, you go towards Myrtle Beach -- Horry County -- and you
10 just look, you ride down those highways and you look at the
11 conditions that our children, primarily Black children, are
12 being educated in. And, you know, this is something that I
13 have to say more about. And the reason why I have to say it
14 is because I've been around for a while and I have seen things
15 improved in some places but not in others. You look at your
16 rural areas, the card of shame. It has not changed
17 significantly. You go to Columbia, Richland County,
18 northeast, Lexington County, you have high schools that look
19 like colleges. Like colleges. And then we have our children
20 in some of these rural counties without broadband. And when
21 the pandemic hit, they didn't make it apparent what poor
22 conditions we had, not only educationally but health wise as
23 well.

24 Because, if you look at where people died -- if anybody
25 is interested, look at those rural areas that do not have

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1 hospitals. Hospitals have been closed in this state. They
2 have miles to travel. I heard from people that traveled --
3 living in Allendale, having to come to Lexington County to be
4 hospitalized. The husband is in the hotel across the street
5 trying to wait until his wife is well enough, and then he
6 becomes ill with COVID. She has to go to the hotel. There
7 have been some horrible, horrible stories here in South
8 Carolina, as it relates to healthcare, access to care. And
9 you don't have to be blind to see it. It hits you right in
10 the face. We live it. We see it, we live it, and we
11 experience it day to day.

12 South Carolina has a lot of work that needs to be done.
13 And if anybody would just take the challenge to ride around
14 this state and look at what's happening -- and you don't even
15 have to go to the rural areas. Go to downtown Columbia, look
16 at the homeless, look at those people that they have put out
17 of the mental health facilities that needed care. Healthcare
18 in South Carolina needs to be improved. We would not -- our
19 government refuses to accept medicaid expansion. If somebody
20 looks -- just looks at what people are going through. People
21 don't have jobs. If they have a job, they have insurance,
22 they go to get an MRI because they've hurt themselves somehow
23 lifting on a job, maybe without workers' comp, and they are
24 told they have to pay \$450 deductible to get an MRI. So,
25 where are they gonna get that from when they are not working?

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1 So, healthcare, education, economic sustainability is not
2 where it needs to be.

3 Q. Thank you, President Murphy.

4 A. I'm sorry.

5 Q. I now want to shift to South Carolina's history of
6 redistricting activities in the state. How long has the South
7 Carolina NAACP worked around issues regarding around
8 redistricting?

9 A. We started in 2020. I thought it was important. I think
10 it's important to do what we can to empower individuals,
11 especially us, because we're struggling. So, how do we
12 empower individuals to move from point A to point C?

13 Q. And was 2020 the first cycle --

14 A. That was the first cycle.

15 Q. Was 2020 the first redistricting cycle that your
16 organization --

17 A. No. We worked --

18 Q. We have to slow down for the court reporter.

19 A. I'm sorry.

20 Q. Was 2020 the first redistricting cycle that the South
21 Carolina NAACP participated in redistricting activities?

22 A. No.

23 Q. What previous cycles did the South Carolina NAACP
24 participate in?

25 A. I can personally say they have participated the last 30

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1 years.

2 Q. And at what capacity did they participate in the past?

3 A. They participated probably not to the extent that they
4 did this time, but they were always engaged with the mapping,
5 providing input, providing mapping, to -- for the House and
6 for the Senate. So, this is not new.

7 Q. And for this cycle, why did the South Carolina NAACP
8 decide to get involved?

9 A. I thought we needed to know -- and I started with myself,
10 I'm going to say that. I thought we needed to know what it
11 was all about because it has such a significant impact on us.
12 And I think I've already talked about what areas, like health,
13 education and et cetera. So, in order to have an impact, you
14 need to be able to identify your area's communities of
15 interest. And did we know how to do that? Do we know how to
16 draw maps? No. We still don't know how to draw maps. But we
17 had some training. And there was another group that was
18 training on mapping and what mapping was all about and how
19 mapping should be done. And they had limited sessions. And
20 so, we continued after having those two sessions that we had
21 with them and we decided to become a coalition. And so, that
22 coalition was developed. Resources, you know, we brought in
23 groups that we had worked with before, such as ACLU, LDF,
24 Urban League, League of Women Voters. There were several.
25 And we worked together -- well, it started with just educating

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1 our -- having some education sessions with our leadership.

2 And we started that in June of 2020, just in terms of knowing
3 what -- so we could familiarize ourself with the process, and
4 continued to work on that and had multiple sessions so we
5 could include not only leadership but all of the presidents
6 throughout the state, as well as other individuals that were
7 interested.

8 Q. And what organization conducted the redistricting
9 education training you referred to just now?

10 A. It started with two people; that was LDF and Dr. John
11 Ruoff.

12 Q. And was that training technical or was that more
13 educational?

14 A. It was more educational.

15 Q. And you spoke briefly about this already. But why was
16 the coalition with ACLU and LDF and the League of Women Voters
17 formed?

18 A. These are all organizations that we have worked with
19 before and that have similar missions. And so, we asked them
20 if they wanted to be a part, and they did join us.

21 Q. And who initiated this coalition?

22 A. I did, with the approval of the executive committee.

23 Q. And what was the organizational structure of the
24 coalition?

25 A. The chair was one of our executive committee members, and

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1 the secretary was one of our executive committee members. And
2 the rest of us played an equal part. We were just members.

3 Q. And how did the coalition make decisions?

4 A. Collaboratively. Together.

5 Q. And how often did the coalition meet?

6 A. We would meet weekly.

7 Q. Starting when?

8 A. That was -- the training was in -- I think it was
9 January. It was -- no. We started in mid-September, around
10 September of 2020.

11 Q. And did the coalition submit any letters during this
12 redistricting process?

13 A. Yes, we did.

14 Q. And I would like to pull up Exhibits 632 and 629, and
15 also 612. Do you recognize these letters, President Murphy?

16 A. Yes, I do.

17 MR. INGRAM: And can we show 612 now as well?

18 BY MR. INGRAM:

19 Q. Why did the coalition submit these letters?

20 A. Well, initially they were submitted because we wanted to
21 communicate the need for both groups that were working on the
22 House and the Senate hearings. We wanted them to know that we
23 recommended that they be transparent, make sure that the
24 public was involved, and primarily to encourage that maps be
25 done in a fair equitable manner.

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1 Q. And how many members of this coalition eventually joined
2 together in litigation?

3 A. I know the League, they did their own thing. I think
4 Apple Seed did also as well as Progressive Network. So, it
5 was LDF, ACLU, Urban League, our group.

6 Q. So, in the litigation, how many members of the coalition
7 remained?

8 A. All of them remained, with the exception of Progressive
9 Network, League of Women Voters. That's pretty much it.

10 Q. And did you begin to have separate meetings once
11 litigation took place?

12 A. Yes. They were separate and apart from the coalition
13 meeting.

14 Q. And who were at the separate meetings? What
15 organizations attended?

16 A. ACLU; LDF; of course, us.

17 Q. And why did you create separate meetings?

18 A. Because litigation needs to be separated, you know, from
19 the other, because that was more technical about helping them
20 to move forward in terms of better understanding what they
21 needed in their communities, more educational. That was the
22 purpose of that initial group. So, with the litigation, that
23 was separate and apart from that group.

24 Q. And how did the South Carolina NAACP participate in this
25 cycle's redistricting process?

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1 A. Attended hearings. I attended as many as I could. If I
2 couldn't, there were other members that did. We did it
3 virtually as well as in person. And, of course, you have
4 shown the letters that we submitted -- you know, we worked on
5 them collaboratively. And they were pinned primarily by ACLU
6 and LDF, who were members of the group.

7 Q. And aside from these letters and testimony, did you have
8 any other contributions as a state chapter to the
9 redistricting process?

10 A. I think we did a -- yeah. It was a continuous process in
11 terms of reviewing, looking at the communities, when the map
12 was being developed by -- you know, we have limited resources.
13 We're not rich. The NAACP is not rich. We don't have a lot
14 of money, so we have to depend on other resources. So, LDF
15 and ACLU had resources, you know, the demographers. And so,
16 we used them to actually help us model and look at our
17 communities and come up with the maps that were submitted.

18 Q. And why did the South Carolina NAACP dedicate all this
19 time, people, and energy to this process?

20 A. I think I explained that a while ago too. It's critical.
21 Critical. We were hopeful. We were very hopeful that this
22 time it would be done right, in such a way that it would not
23 hurt Black people. And when I say that conditions were not
24 improved, you know, we didn't want them to worsen -- but I
25 think they are worsening in some places. But we were hopeful

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1 if we participated that somebody would hear us, what we had to
2 say, and would consider it, and the outcome would have been
3 maps that were created that created opportunities for us to
4 elect individuals of choice.

5 Q. And did you hope to avoid litigation?

6 A. That was never the intent, to have litigation. The
7 intent was to participate in order to voice what our thoughts
8 were.

9 Q. Do you recall the Senate Redistricting Subcommittee
10 conducting public hearings in July and August of 2021?

11 A. I do.

12 Q. And do you recall the House Redistricting Ad Hoc
13 Committee conducting public hearings in September and October
14 of 2021?

15 A. I do.

16 Q. And do you recall how many of these public hearings the
17 South Carolina NAACP and its members attended?

18 A. We had representation at all -- not in person. I can't
19 say that they were all in person. But we were present. We
20 had representation there.

21 Q. And how did members of the South Carolina NAACP
22 participate in these public hearings?

23 A. Virtually, submission of documentation and attendance of
24 meetings.

25 Q. Do you recall any concerns you had regarding when

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1 meetings were announced?

2 A. Well, my primary concern was most of the meetings were
3 held during the time that individuals were working. So it was
4 very difficult for some to attend meetings.

5 Q. And what did you do with any of the information your
6 members learned at these meetings?

7 A. I'm not quite sure I understand.

8 Q. So, after you attended the meeting, what did your
9 organization do with the information you learned at these
10 public hearings?

11 A. After the public hearings, we always -- because we had
12 those scheduled meetings, we would come together, we would
13 discuss the meetings, we would talk about issues that
14 individuals thought were not being addressed in terms of
15 certain areas and just continued to work together to
16 collaborate on how to move forward, because we were of the
17 opinion that we were not being heard.

18 Q. And was remote testimony allowed at all these hearings?

19 A. Yes. But -- well, there were fewer for the House than it
20 was for the Senate.

21 Q. And did this raise any concerns for you?

22 A. Of course, it did. You know, I think the opportunity for
23 more to participate, even sometimes during the hours of work,
24 someone may have been able to watch parts of it virtually.

25 But that opportunity did not exist in order for them to get on

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1 -- it was minimal. There were just a couple I think near the
2 end.

3 Q. Do you recall if these hearings took place during the
4 week or during the weekend?

5 A. During the week.

6 Q. And did you have any transparency concerns about these
7 meetings?

8 A. We did, in terms of how -- you know, we wanted feedback.
9 We wanted to know what was happening. Just to know what
10 progress they were making on the mapping as they had
11 discussions. It just wasn't a two-way, it was just the
12 community giving feedback. But we were not getting feedback
13 from them.

14 MR. INGRAM: Can I bring up PX-11.

15 BY MR. INGRAM:

16 Q. President Murphy, do you recognize this document?

17 A. Yes, I do.

18 Q. What is it?

19 A. That's when we submitted the proposed Congressional and
20 House map to the ad hoc committee.

21 Q. And what did you ask for in this letter?

22 A. We asked for -- again, we asked that they follow the
23 guidelines -- well, I'll say criteria -- and the Constitution
24 in terms of how they comply with development of the maps. And
25 we submitted the maps to them to consider, because two of them

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1 we submitted to, and the maps basically was not the end, it
2 was the beginning; and to convey that, you know, we were going
3 to do our part to work with them in hopes of coming out with
4 an outcome of a map that's fair and representative of the
5 people and not representative of what our legislators select
6 in the people.

7 Q. Did you express any concerns about packing or cracking?

8 A. Of course, I did. Packing and cracking was discussed. I
9 did. That was done verbally, it was done written. You know,
10 there were certain areas that were packed. We looked at the
11 splitting that was occurring in the maps, North Charleston
12 being split from Charleston. This was an opportunity to unite
13 that community. They use the same hospitals. They're all
14 right there on the coast. Schools very similar. Jobs, work
15 the same places, you know, their primary employment
16 opportunities in that area. So, that was a community we
17 thought of as being -- should have been contiguous, but it was
18 not. So that opportunity was missed.

19 Q. And did you have any inquiries regarding racially
20 polarized voting analysis in this --

21 A. Well, yes. That was a question as well, as to whether or
22 not that had been done, the analysis had been done. And to
23 this day, I have no knowledge of it being done.

24 Q. And how many maps did you submit along with this letter?

25 A. There were two.

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1 Q. And why did you submit maps as an organization?

2 A. As I said earlier, you know, these maps were submitted
3 for consideration. It demonstrated that there were different
4 ways of meeting -- keeping communities more in tact with less
5 splitting. And so, we submitted both maps for them hopefully
6 to look at and consider. Because they demonstrated -- and
7 when you look at -- and I have to say this about Charleston,
8 and I keep harping on Charleston because I lived here for a
9 number of years. And I know I mentioned North Charleston, but
10 West Ashley to be placed in another district, anybody living
11 in Charleston knows that is Charleston, that's a part of
12 Charleston. It's just over the bridge. Why put West Ashley
13 into a congressional district that's totally different, a
14 rural community? And I'm not saying that negatively, I'm just
15 saying it's not a very similar community.

16 Q. And did you ever get any feedback on the two proposed
17 maps from the legislature?

18 A. No.

19 Q. And, President Murphy, do you have any technical training
20 in mapmaking?

21 A. I did -- we just -- as I said earlier, we did some
22 training with an organization. It was very limited. It just
23 helped us to be able to look at a map. In terms of drawing a
24 map, no. We had to depend on other resources to do that.
25 Fortunately, LDF, ACLU had some of those resources, so they

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1 were brought in to help with the mapping in order to make it
2 fair.

3 Q. So, if I showed you a map and asked you about precinct
4 splits or county splits, would you be able to tell me why
5 certain decisions are made technically?

6 A. Well, I don't -- it depends. I'm going to say this: It
7 depends. I have to depend on the demographer, because maybe
8 there's a reason for it to be split, maybe there's a river
9 going down the middle of the town or the county. But I do
10 know we need to try to keep them as contiguous as possible.

11 Q. And, President Murphy, why did the South Carolina NAACP
12 submit maps separately from the League of Women Voters?

13 A. Well, I think -- well, the League of Women Voters, I
14 think their map or their thoughts were a little bit different
15 than ours. And so, they decided -- and it was a mutual
16 decision, because Ms. Teague talked to me and she told me that
17 they wanted to go in a different direction, a little different
18 than what we were proposing. So that was okay with me. I
19 mean, many people submitted maps, so I didn't see a problem
20 with that.

21 Q. At some point, did the League of Women Voters separate
22 from the coalition you talked about prior?

23 A. Well, they separated -- you know, if we're doing it one
24 way and they're doing it another, then they did their mapping
25 separately, yes.

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1 Q. And did the League of Women Voters initially express any
2 concerns to you about partisanship being involved in the
3 coalition?

4 A. There may have been a comment about that, but that was
5 addressed much earlier. I think initially when we started
6 talking about mapping, we had a representative that was on one
7 of our committees, and then there was some others, because I
8 guess redistricting was done differently. I'm not sure
9 exactly how. But there were several that wanted to have
10 input. That request was denied. And the reason why is we
11 wanted it to be nonpartisan. We wanted to look at mapping for
12 the people, not for an incumbent or potential representative
13 of some type. We wanted it to be neutral, free. So, we
14 decided that they would not be a part of our group. And that
15 was done before any mapping work was done.

16 And I'll say this for the record, too: I think I made a
17 lot of enemies because of that. I don't know if they will --
18 if we -- hopefully we'll mend those fences, but right now
19 we've got some work to do. But that was not my decision -- or
20 our decision as an executive committee to do that. Made a few
21 people angry.

22 MR. INGRAM: And can we please pull up PX-594?

23 **BY MR. INGRAM:**

24 Q. President Murphy, do you remember attending the Senate
25 Redistricting Subcommittee meeting on November 12th, 2021?

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1 A. Yes, I do.

2 Q. And do you recognize this document that's currently on
3 the screen?

4 A. Yes.

5 Q. What is it?

6 A. It's my testimony.

7 Q. And who drafted this testimony?

8 A. You know, it was written, you know, in terms of my --
9 submitted, I shall say -- by I think LDF. But in terms of the
10 content, it is the testimony of the South Carolina State
11 Conference of the NAACP, something we did in collaboration.
12 And I was the spokesperson for the South Carolina State
13 Conference.

14 Q. And in this testimony, did you express any concerns about
15 the dilution of the Black vote in South Carolina?

16 A. That's always been an issue, the dilution of votes --
17 Black votes. If you look -- this state has changed. And I
18 know, I've heard comments about we had to do this because the
19 population has shifted and the population has changed. But if
20 you look at how some of the shifting occurred, such as I'll
21 mention in Richland County, how Lexington County jumps over
22 part of the Richland that's primarily African American and
23 joins in Forest Acres, that is primarily White.

24 Q. And in your testimony that you submitted on
25 November 12th, did you make any comments about opportunity

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1 districts?

2 A. Of course, I did. I stressed the importance of joining
3 in such a manner that opportunities, districts were developed
4 for people of color, Black people; or at least the Black vote
5 could influence the outcome of who is elected in that area.

6 Q. And did you request in this testimony that the Senate
7 undertake a racially polarized voting analysis?

8 A. I did.

9 Q. Why did you request that?

10 A. Because it had not been done. And it needed to be done
11 to look at whether or not in certain communities people just
12 voted one specific way, such as the majority of the population
13 is White and it influences the outcome of the vote.

14 Q. And, President Murphy, do you recall the Senate
15 publishing a map on November 23rd, 2021?

16 A. I do.

17 Q. And did you have any concerns with this timing?

18 A. I did. It was right around Thanksgiving.

19 Q. And why is that concerning?

20 A. Well, because very few people had knowledge of it, and
21 they were busy, you know, getting ready for the holiday
22 season. And such short notice was given.

23 MR. INGRAM: Can we please pull up 488?

24 BY MR. INGRAM:

25 Q. Looking at this map, President Murphy, did you have any

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1 issues with the Congressional House Staff Alternative Plan 1?

2 A. Yes.

3 Q. What were your issues with it?

4 A. Again, if you will look at North Charleston being split,
5 how one crossed so deeply into Berkeley County, which is also
6 -- which kind of invalidates the rationale for drawing it the
7 way it is. But, you know what? We know what Berkeley County
8 is all about. That's about the money right now. And a large
9 number of White individuals moved into Berkeley County because
10 new businesses -- you know, I'm just amazed how -- how -- and
11 I'm going to say "gerrymandered" Charleston County has become,
12 because, you know, I remember when I lived in Charleston --
13 even though it was a few years ago -- and the Black population
14 and how it has been pushed out of Charleston because of high
15 taxes. And I would walk -- not the battery, but the other one
16 over near what was I guess is still the Marriott, those areas
17 were Black-owned. I remember people going out shrimping very
18 closely to their home. And if you go down there now, it's
19 million-dollar homes. All those Black poor people have been
20 pushed out of Charleston because of taxes. They can't afford
21 to live their anymore. Gerrymandered. And it's continuing,
22 because that's what's going to happen to North Charleston.
23 It's beginning to happen already. So, they'll probably be
24 incorporated back into Charleston the next go-round. I'm
25 sorry.

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1 Q. And, President Murphy, looking at Richland County, did
2 you have any concerns about that map in this?

3 A. Yeah. I spoke about that a minute ago in terms of -- if
4 you look at Lexington and how that loops around Columbia, it
5 incorporates the 4th now. It's not new, but it could have
6 been better, I think. It's no reason -- well, it has
7 decreased the number of minorities, of course, in that
8 district. And it's taken -- you look at Richland County in
9 terms of how it's done, the population has now diluted the
10 ability of Black folks to influence the outcome of elections.

11 Q. I also want to direct your attention to Sumter in CD 5.

12 A. I think Ms. Kilgore talked a little bit about this in
13 terms of, you know, you have CD 5 reaching from Rock Hill all
14 the way down to the top, near Charlotte, and it comes all the
15 way down and incorporates parts of Sumter County. And then it
16 separates similar communities from it, such as -- you know,
17 those are primarily Black folks too. So, again, we have
18 dilution of the vote.

19 Q. And you've given a lot of testimony today about rural
20 people. Do those issues implicate this area?

21 A. Yes, it does.

22 MR. INGRAM: Can we sort of bring up the map, please?

23 BY MR. INGRAM:

24 Q. What sort of counties from your sort of travels around
25 the state in CD 5 are rural?

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1 A. Okay. Lee County; Sumter, except maybe the city; Kershaw
2 is rural; Chester is rural. But then you get up there around
3 York, and it's booming, the population has increased. You
4 have more individuals that have moved in because the economics
5 there are much more improved now. I don't know if it's due --
6 well, Charlotte is, you know, right next door. So, you can
7 live in York County and work in Charlotte. So, some of
8 Lancaster is rural too. Fairfield, some of it as well.

9 Q. And is your opinion that the political power of rural
10 Black people in this district are impacted by these maps?

11 A. Yes, they are, because as Ms. Kilgore -- she and others
12 talk about it all the time, about not really having the
13 ability to -- they don't feel any assistance coming from their
14 congressmen at this time.

15 Q. Thank you.

16 MR. INGRAM: And I want to put up PX-49.

17 BY MR. INGRAM:

18 Q. President Murphy, do you recognize this document?

19 A. Yes.

20 Q. What is it?

21 A. Okay. It's the approved congressional map.

22 Q. Are the issues you've discussed today in the prior maps
23 present on this map?

24 A. Yes.

25 Q. The South Carolina NAACP claims that this map is racially

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1 discriminatory, do you still agree with that statement?

2 A. Yes, I do.

3 MR. MOORE: Well, objection to leading, your Honor.

4 I mean --

5 THE WITNESS: Yes, I do. And I think I said before,
6 we look at North Charleston --

7 JUDGE GERGEL: Let me deal with the objection here.

8 It is leading but it's what she's just said. He's
9 almost repeating what she has said. It's not like he's
10 suggesting any answer, so I'm going to overrule it.

11 Avoid leading if you can, sir, Mr. Ingram.

12 BY MR. INGRAM:

13 Q. And in this enacted map, can you summarize your feelings
14 about its impact on Black voters?

15 A. As I said earlier, there has been packing of some areas.
16 And, you know, when we look at Congressional District 6, we
17 put -- for example, North Charleston, that's primarily
18 predominantly Black at this time, into District 6. And I know
19 we needed to increase numbers of population, but I just think
20 it could have been done differently in order that it would not
21 have a diluted the Black vote.

22 Congressional District 2, again, dilution of the Black
23 vote because of how the map is drawn and wrapped around
24 Richland County, where you have a high concentration of White
25 voters. And also, again, the same thing is happening in

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1 District 5.

2 Q. President Murphy, can you compare and contrast the
3 communities of interest in Richland County compared to
4 Charleston County?

5 A. Richland County is very different than Charleston County.
6 We're right in the center of the state. We're the capital.
7 Very different in terms of schools, hospitals. Hospitals,
8 even though I have to say in District 1, when I come to coast,
9 you know, I have -- if I want -- and I'm just going to say
10 this: If I want, I will say, comprehensive care, I have to
11 the drive all the way to number 1. But at least when you look
12 at Congressional District 2 compared to some of the other
13 areas, its healthcare is not quite as great. It's good, it's
14 excellent in 1 in many ways. I still think their educational
15 opportunities -- I'm comparing 2, though. In 2, it's very
16 different when you go beyond Richland County when you're
17 looking at Lexington County. And I know it's not highlighted
18 on here. But you have a lot of rural areas over in that
19 Lexington County area. But it is a predominantly White area.
20 And as I said, to wrap over Richland County and gain
21 additional White voters does dilute the capability for some
22 influence on voting outcomes.

23 Q. And, President Murphy, what are the harms that the South
24 Carolina NAACP's members will face if this current enacted map
25 stands for the next decade?

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1 MR. MOORE: Objection. Calls for speculation.

2 JUDGE GERGEL: Overruled. She is competent to
3 testify. Please proceed.

4 MR. INGRAM: Do I need to repeat the question?

5 THE WITNESS: Go ahead.

6 **BY MR. INGRAM:**

7 Q. President Murphy, what are the harms that the South
8 Carolina NAACP's members will face if the enacted map stands
9 for the next decade?

10 A. We will still have negative health outcomes in those
11 rural areas. Education will continue to be problematic in
12 particularly those rural areas. And I'm not just saying 6,
13 I'm looking at 7 as well in terms of education, economic
14 sustainability, healthcare. It's just not going to improve.

15 Q. And, President Murphy, what would you say to legislators
16 who allege they passed a map to keep it as much as the 2011
17 map as possible?

18 A. Well, things have changed. It's not the same as 2011.
19 And as I said earlier, this is and was an opportunity for them
20 to get it right in terms of trying to help our state become
21 better in terms of maybe the funding that we need. A lot of
22 money is coming into this state for infrastructure, but if you
23 look now how it's being spent, we have some challenges. And
24 I'm concerned that that will continue to happen.

25 Q. And, President Murphy, what would you say to members of

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1 the General Assembly who say that they passed this map to
2 advantage a Republican majority?

3 A. Well, maybe they did. I can only look at the outcome.
4 And the outcome is we are going to continue to hurt those
5 areas, those populations, especially in the rural areas and
6 some other areas when it comes to -- this is just overpowering
7 in terms of what our needs are here in South Carolina, and how
8 we have changed. I think we could do more with our children.
9 I challenge some of you to visit some of these schools.
10 That's what our representatives need to do, and look at how
11 our children are being educated and how the public classrooms
12 are being filled with children.

13 Now, I am a nurse. And I do believe that we need to
14 provide what we need to provide for our young people, even
15 when it comes to education. But when you start talking about
16 mainstreaming one teacher with greater than 20 students in her
17 class, that is a difficult job, to keep students focused. Not
18 only is that problematic, children don't learn when they are
19 in a situation like that. And we're talking about problems in
20 our schools. Now we -- you know, we talked about the schools
21 to prison pipeline. Now we're talking about schools with
22 guns. And we let it get to this point. We let it get to this
23 point because we have not paid attention to what is happening.
24 Or maybe it was intentional for this to happen. I'm not quite
25 sure. I'm still trying to figure that out.

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1 Q. And, President Murphy, did the South Carolina NAACP
2 propose a map in the 2011 cycle?

3 A. Did they propose maps?

4 Q. Did the South Carolina NAACP propose a map to the General
5 Assembly in the 2011 cycle?

6 A. From my understanding, yes.

7 Q. And did that map create additional opportunities outside
8 of CD 6 for Blacks to impact elections?

9 A. South Carolina State Conference NAACP has had to go to
10 trial -- I almost said "to church" -- to trial every single
11 time in terms of change being made in this state.

12 Q. But the map that you all submitted in 2011, did it
13 provide more opportunities for Black voters --

14 A. Eventually, it did.

15 MR. TYSON: Your Honor, I just wanted to raise an
16 objection.

17 JUDGE GERGEL: Yes, sir.

18 MR. TYSON: It sounds like we're asking questions
19 about whether the NAACP did something back 10 years ago. And
20 I thought the questions need to be looking at today's map, not
21 what they submitted 10 years ago.

22 JUDGE GERGEL: What's the point, Mr. Ingram?

23 MR. INGRAM: We're talking about their commitment to
24 advocacy in the state regarding redistricting.

25 JUDGE GERGEL: I don't think there's a question about

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1 the NAACP's commitment.

2 MR. MOORE: We stipulate to their advocacy.

3 JUDGE GERGEL: I don't think it's even in dispute.

4 And that Ms. Murphy is a great spokesperson for it.

5 MR. MOORE: So, we stipulate to that as well,
6 your Honor.

7 **BY MR. INGRAM:**

8 Q. One last question, President Murphy. What would you say
9 to the members of the General Assembly who say these maps do
10 not hurt Black voters?

11 A. I don't know what to say, because I know it does. I know
12 it does. We live it every day.

13 Q. And what maps would the NAACP like to see submitted or
14 enacted for your community?

15 A. Maps that are fair and conform or abide by the
16 Constitution and the Voting Rights Act.

17 MR. INGRAM: Thank you. I'll pass the witness.

18 JUDGE GERGEL: Very good. We'll take our afternoon
19 break.

20 *(Afternoon recess.)*

21 THE COURT: Please be seated.

22 Ms. Murphy can return to the stand please.

23 JUDGE GERGEL: Cross-examination, Mr. Tyson.

24 **CROSS-EXAMINATION**

25 **BY MR. TYSON:**

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1 Q. Good afternoon, President Murphy.

2 A. Good afternoon.

3 Q. How you doing?

4 A. I'm good.

5 Q. You know I'm Rob Tyson with the Senate defendants. I'm
6 glad to see you. We've done this a few times. But to start
7 off, just remember I'm not Mark Moore, okay? He was the one
8 who took the eight-hour deposition to start off, I was the
9 short one. I just wanted you to know that.

10 JUDGE GERGEL: We're going to set a time limit on Mr.
11 Moore. He can't exceed you.

12 MR. TYSON: Your Honor, I didn't mean that. We get a
13 fair shot here now, come on.

14 BY MR. TYSON:

15 Q. But in all seriousness, thank you, President Murphy. And
16 I am Rob Tyson.

17 You said you've been president five years. And maybe I
18 missed. How much longer do you have to go?

19 A. We have terms of two years, so there will be an election
20 November next year.

21 Q. November next year. Okay. And prior to that, were you
22 active -- and I assume you've been active in the State
23 Conference for many years; is that right?

24 A. Yeah.

25 Q. Can you tell us a little bit about your background and

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1 leadership positions that you've had? I know there are many,
2 but just hit some of the highlights.

3 A. Leadership positions?

4 Q. Whatever positions or involvements --

5 A. In the NAACP, is that what you mean? Or do you mean
6 personally?

7 Q. In the State Conference.

8 A. All right. I'll just share. I was commission officer in
9 the U.S. Army Nurse Corp. I was responsible for training in
10 the Reserves. I also was a charge nurse.

11 JUDGE GERGEL: President Murphy, I think he's asking
12 you about leadership positions within the NAACP.

13 THE WITNESS: Oh, okay. I'm sorry. I thought he was
14 asking me in general.

15 MR. TYSON: I'm sorry. I didn't ask that question
16 very well.

17 THE WITNESS: Okay.

18 **BY MR. TYSON:**

19 Q. I know you've been president for five years. I just want
20 to know: Before that, what was some of your involvement with
21 the State Conference?

22 A. Okay. I think I shared that earlier, but I will restate
23 it. I was the state advisor for the Youth and College
24 Division. I worked with the Youth and College Division --
25 that is the NAACP Youth and College Division. I think it's

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1 important to engage young people with what we do in all
2 aspects, in order for them to become good effective leaders in
3 the future. So, I did that for a number of years. I was also
4 the health committee chairperson for a number of years. And
5 that was a statewide position as well. And locally, here in
6 Charleston, I was the treasurer for the Charleston branch for
7 a while, until I moved to Columbia.

8 Q. Okay.

9 A. And labor relations chairperson.

10 Q. Thank you for that. So, you understand the organization
11 well clearly, right?

12 A. Yes. Yes.

13 Q. And there was some discussion about what involvement or
14 what role the State Conference had 10 years ago. And were you
15 involved in that process?

16 A. Superficially. And that was because at that time I was
17 working with the Youth and College Division. We attended the
18 State Conference Executive Committee meetings just to know --
19 I made sure they were there to know what was going on. But
20 not that involved in the process.

21 Q. Let me just step back a little bit. I apologize if I
22 jump. I have notes here too that I realize I might get out of
23 line. But one of the things that I believe I heard you say,
24 one of the main purposes of the State Conference was on voting
25 rights?

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1 A. Yes. That's something we've been doing for the many many
2 years. And when I say that, that's more in terms of educating
3 them about the laws, educating them why voting is important
4 and their right to vote, and just making sure we encourage
5 them to vote, because that's very important.

6 Q. And educating them about laws. We had a change in our
7 law concerning early voting last year, didn't we?

8 A. Yes.

9 Q. And did you advocate on behalf of that?

10 A. Yes, we did. In terms of the change in the laws?

11 Q. Yes, ma'am.

12 A. Okay. We made it known that the changes are going to
13 impact -- you know, you'd have to be very careful in terms of
14 how you help someone. Where it is we may have been able to go
15 out and maybe assist 10 disabled people, we can only do that
16 for five now, as an example.

17 Q. Yes, ma'am. But with early voting, now you're able to go
18 out and vote a couple weeks prior to election day and not have
19 to vote by absentee ballot; isn't that right?

20 A. Well, that's true.

21 Q. And that was an important priority for you, and the
22 General Assembly listened to it and passed it I believe almost
23 unanimously, except for one vote?

24 A. Yeah. But in terms of the time span, the early voting is
25 now collapsed. It's not as great.

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1 Q. After the new legislation passed?

2 A. Yes.

3 Q. So, you're not in favor of the new bill; is that what I
4 hear you saying?

5 A. I'm not saying I'm not in favor of it, but there are
6 aspects of it that I think need to be different, that we need
7 to rethink.

8 Q. Understood. And going back to just the organizational
9 structure, I think I heard you explain this, that you've
10 partnered with LDF in this litigation, right?

11 A. Partnered with them? More than LDF. You have ACLU as a
12 part of it also.

13 Q. But -- yes, ma'am. That's right. But in this specific
14 lawsuit -- who are the State Conference's lawyers?

15 A. We have a combination: ACLU, LDF. And we also have like
16 -- I just can't think of it right now, but there is a private
17 firm also.

18 Q. Let me move on to the discussion that you had with Mr.
19 Ingram about the State Conference's participation in the
20 process. And your organization was heavily involved this
21 redistricting cycle, correct?

22 A. Yes, we were.

23 Q. Your organization provided notices of all legislative
24 meetings to your members, correct?

25 A. We did, yes.

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1 Q. And you wanted your members to be a part of the process,
2 correct?

3 A. Yes.

4 Q. And they were, correct?

5 A. Yes.

6 Q. And you provided training to your members, correct?

7 A. Yes.

8 Q. And included in part of that training was sample forms of
9 testimony on how they should testify, correct?

10 A. When you say "testimony," I think what we had samples of
11 was what to communicate back in their communities to their
12 representatives, you know, just how to put the words together
13 in order to make it clear to them, to help them be able to get
14 the message to their representatives.

15 Q. And I think we had a long discussion at your deposition
16 about this form that is now talking points for testifying in
17 July and August to 2021. Do you remember that?

18 A. Yes.

19 Q. And so, your attorneys helped you, and you put your words
20 together, and y'all came up with talking points for your
21 members to present to the legislature, correct?

22 A. Yes. Talking points in terms of -- and those are just
23 talking points, because they had to make it specific to their
24 area or their community. So, those are suggested comments,
25 not to be spoken specifically as written. It's just a guide.

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1 Q. Just some points that they need to raise when they go
2 talk to their legislator.

3 A. Not necessarily. Their issue might be a little
4 different. It was examples of some of things that might be
5 said.

6 Q. Okay. And included in that there were discussions about
7 various congressional districts, right? Talking points on
8 various districts, right?

9 A. If there were talking points on various districts, it was
10 more in terms of what they had communicated, and there may
11 have been some help to frame it.

12 Q. And so, just to finish this point, which I think you
13 corrected me when I asked you some questions in the
14 deposition. You said there's nothing wrong with this. Do you
15 remember saying that? And I think my answer was, no, I don't
16 think there's anything wrong with you providing talking points
17 to your legislature; do you remember that?

18 A. Yeah, I do. Uh-huh.

19 Q. So, you did have talking points that you are able to
20 provide to help get your point across?

21 A. I think you are somewhat misrepresenting what I'm saying.
22 I am saying those were samples that were given to them. They
23 could use those. We talked about those. And then they had to
24 tailor those to their specific areas.

25 Q. Yes, ma'am. And you went to some of the Senate hearings,

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1 correct?

2 A. I did.

3 Q. There were 10 of them across the state, right?

4 A. I didn't go to all of them. You know, the local, I
5 attended the virtual.

6 Q. Okay. So yourself, personally, you went to some of those
7 Senate hearings?

8 A. I did. And some of the representatives from the
9 executive committee as well.

10 Q. And then the House of Representatives also had public
11 sessions all across the state. And did you go to any of
12 those?

13 A. Yes, I did.

14 Q. Okay. In person, or virtually, or both?

15 A. Both. But are we talking about the House or are we
16 talking about the Senate?

17 Q. I started off with the Senate, that the Senate held these
18 public hearings all across the state. And my understanding --

19 A. But this hearing is about the Senate maps, right?

20 Q. Yes, ma'am, this litigation. You have sued the General
21 Assembly complaining about the congressional map.

22 A. The South Carolina State Conference has sued.

23 Q. Yes, ma'am. That's right.

24 A. Okay.

25 Q. But I'm asking about the process. And as part of the

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1 process, the two branches of the legislature, the House of
2 Representatives and the Senate, both of them held public
3 hearings all across the state. Isn't that right?

4 A. They did.

5 Q. And you participated in them, correct?

6 A. I did.

7 Q. And your members participated in both of them, right?

8 A. They did.

9 Q. Okay. And --

10 A. Not in all of them, but some of them.

11 Q. That's right. They had the opportunity to go participate
12 and they did, correct?

13 A. We had representation at all.

14 Q. Yes, ma'am. At those public hearings, you heard a lot of
15 people giving a lot of different opinions, didn't you?

16 A. I certainly did.

17 Q. Some of them didn't agree with each other, right, on how
18 a map should be drawn, right?

19 A. Maybe a few didn't.

20 Q. And you testified before the legislature too, correct?

21 A. I did.

22 Q. And your attorneys provided lots of testimony before the
23 legislature, correct?

24 A. They also testified.

25 Q. And they provided lots of letters to the legislature?

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1 A. We, the coalition, provided letters.

2 Q. That's right. Stating your legal position, right?

3 A. The legal position was not stated in August. That was
4 later. What we said was basically to -- initially was to
5 encourage them to follow -- to abide by the Constitution,
6 create maps that were fair and equitable. And that was what
7 we did initially to both the Senate and the House.

8 Q. And to further all the involvement that you had in the
9 process, the State Conference had the opportunity to provide
10 maps to the legislature, correct?

11 A. And we did.

12 Q. And you did. Both the House and the Senate, right?

13 A. Yes, we did.

14 Q. The State Conference had the opportunity to review all of
15 the maps that were presented to the state legislature,
16 correct?

17 A. Yes, they did.

18 Q. And, in fact, you did review the various maps and options
19 that the General Assembly --

20 A. Yes, we did.

21 Q. And you had an opportunity to provide comments on those
22 maps, right?

23 A. I didn't provide comments on every map, I was looking
24 primarily at the map that was done by the House and the Senate
25 Committee.

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1 Q. Yes, ma'am. But my question was: But you had
2 opportunities to provide comments on some of those maps,
3 right?

4 A. Well, I don't know what that -- how does that pertain to
5 what we're talking about? My concern was what my legislators
6 were doing.

7 Q. That's right. And so, I'm just trying to just close this
8 loop about this process.

9 A. Okay.

10 Q. So, the legislature, at least in the Senate, they
11 produced a map on November, the 23rd, right?

12 A. Yes.

13 Q. The first congressional staff map. And you had the
14 opportunity to review that, right?

15 A. Yes.

16 Q. And provide comments on it?

17 A. Yes.

18 Q. Which you did, and write a letter about it, right?

19 A. Yes.

20 Q. Okay. And over on the House side, Mr. Moore is going to
21 ask you about that. But, presumably, you had the same
22 opportunity over there too, to review the House staff maps,
23 the House alternatives, and provide comments, right?

24 A. Yeah, we did.

25 Q. Okay. One of the comments that you testified to, or one

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1 of the statements that you made earlier in your public
2 comments, that you are not being heard; do you remember that,
3 that you didn't feel like the legislature was listening to
4 you?

5 A. It wasn't that early. I think when the mapping began, it
6 didn't reflect -- it continued to reflect drawings that were
7 detrimental to Black people.

8 Q. Yes, ma'am. Let me -- my question was poor. I apologize
9 for that. But your comment about that you weren't being
10 heard, you had every --

11 A. Well --

12 Q. Hold on. Hold on for a second.

13 A. Okay.

14 Q. You had every opportunity to be heard by the legislature,
15 correct?

16 A. You provided the opportunity for us to make comments. Do
17 I think we were heard? No.

18 Q. And is there a legal obligation or legal duty to be
19 heard?

20 MR. INGRAM: Objection. Calls for legal conclusion.

21 JUDGE GERGEL: I think that's a little
22 over-technical. Overruled.

23 MR. TYSON: Sorry about that. Strike that question.

24 BY MR. TYSON:

25 Q. Lets go to a couple maps. When the NAACP -- you

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1 submitted a couple different maps, right?

2 A. Yes.

3 Q. And you had to come up with criteria to develop those
4 maps, right?

5 A. Yes.

6 Q. And some of them, you used traditional redistricting
7 criteria, right?

8 A. As I said earlier, we had demographers. Fortunately,
9 some of our partners were able -- because the NAACP has
10 limited funds. So, our partners did have the resources to get
11 the demographer. And so, they helped us with the drawing of
12 the maps. They drew the maps based on the feedback that we
13 were giving them.

14 Q. Based on the what?

15 A. On feedback. Feedback about the communities.

16 Q. I'm sorry. Just wanted to make sure I heard you.

17 A. Yeah.

18 Q. So, your maps had to be based on equal population for all
19 the districts, right?

20 A. That was one of the criteria.

21 Q. And if I understood your testimony at your deposition,
22 you said you didn't look at incumbent protection, right?

23 A. We did not look at people that were in positions, that's
24 right. We wanted the maps drawn in such a way that they were
25 reflective of what the people needed, considering population.

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1 It was done so -- I can think of one where there was, in terms
2 of incumbents and impacts on incumbents, there was very little
3 impact.

4 And then there was another one that was done that was
5 done differently. But as I have said earlier, we were
6 presenting maps, maps to be considered, maps to be reviewed,
7 in hopes that the Senate and the House would come up with
8 acceptable maps that would not harm Black people.

9 Q. And, President Murphy, I think earlier you said you're a
10 nonpartisan organization; is that right?

11 A. We are.

12 Q. So, you didn't look at any partisan data as criteria for
13 your map, did you?

14 A. I'm not a demographer. I wasn't looking at that, no, I
15 was not.

16 Q. And so --

17 A. And the person that did it considered all of the
18 variables that they needed to. That's why we had the
19 resources to do that.

20 Q. Yes, ma'am. And so, we're going to talk about some of
21 the maps. I was just trying to understand exactly what the
22 criteria was that you used. But it's my understanding, based
23 on how you responded at your deposition, that you did use race
24 as a criteria for drawing the maps, right?

25 A. What I said was the maps were drawn in such a way that

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1 they were -- and I'm going to say much fairer than what is
2 drawn now. It minimized dilution of the Black vote in order
3 for them to have -- to at least influence the voting outcome
4 or elect a person of their preferred choice.

5 Q. So, race was a big factor that you used in drawing your
6 maps to end up with this result?

7 A. I'm going to say: What was the biggest factor was to
8 draw fair maps in order for Black people to have an influence
9 over what happens to them.

10 Q. At your deposition, I asked you this specific question:
11 "Race was used in a way by the NAACP maps to draw its
12 districts, correct?" And you --

13 A. I don't recall that, sir. I'm sorry. If you say I did,
14 maybe I did, maybe I didn't understand your question.

15 Q. I can show you your deposition if you need me to.

16 A. You don't have to.

17 Q. Okay.

18 A. I believe what you're saying.

19 Q. All right. Well, let's go to a couple of maps then. I
20 don't want to belabor the point about the NAACP using race.
21 Let's look at the first map that the NAACP submitted. It's
22 Senate Exhibit 34A?

23 A. I will -- well, I will say this --

24 Q. Yes, ma'am.

25 A. The outcome of the maps that was drawn by the Senate and

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1 the House -- by the Senate, because, you know, they have been
2 approved, they're now law -- those are the ones that I'm
3 really concerned about in terms of race being used, not so
4 much the NAACP, because, you know, you're inferring -- no, I
5 won't say that.

6 Q. All right.

7 MR. TYSON: We've got -- can we find 34?

8 Okay. So, this is what's been marked as 34A. And I
9 think the plaintiffs have it in an exhibit number also. And I
10 apologize, I don't have it. But it's Senate Exhibit 34A.

11 BY MR. TYSON:

12 Q. This was the NAACP's first map that you submitted,
13 President Murphy. And I've got to apologize right off the
14 bat. I can't see colors, so I'm going to need your help on
15 this one.

16 What's the color of the district that starts up there in
17 Horry County and that goes all the way down the coast to
18 Beaufort County? What color is that? Over there close to the
19 ocean. Is that green? I don't know.

20 A. No. The pink?

21 Q. Pink. All right. So, that district you've drawn right
22 there goes almost from the North Carolina border to Georgia,
23 correct?

24 A. Yes.

25 Q. Is that compact?

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1 A. Well, you look at it, it's communities that are very
2 similar. And as I mentioned earlier, we gave two maps, one
3 that we thought was much more similar in terms of least
4 changed. And that's the other map that you don't have on
5 here. But this is one where, you know, you look at those
6 areas, communities of interest is all on the coast, similar
7 jobs. So, yes.

8 Q. But my question was a different question. Is that a
9 compact district?

10 JUDGE GERGEL: Mr. Tyson, you know, nobody has spent
11 a lot of time looking at the maps that actually got adopted.

12 MR. TYSON: That's right. But I just wanted --

13 JUDGE GERGEL: And, you know, obviously this is not a
14 compact map. You don't really need to question her about
15 that. I think we can see that it's not compact. And she's
16 all but told you it wasn't really serious, it was just showing
17 you one option. But I think it would be more productive for
18 us -- I mean, I'm not going to tell you -- if you want to
19 question her, you can do this all day. Nobody's going to
20 consider this map. The point is: What about the map that got
21 enacted? And I was asking about Sumter County. I mean, no
22 one's getting into -- either side -- into the details. What
23 are these splits like? What are the racial compositions? It
24 seems to me that's the relevant part of this case. And
25 everybody's flying at 30,000 feet. I think we need to get

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1 down and look in these particular districts, and what is the
2 nature of these changes.

3 MR. TYSON: Judge Gergel, that's a very appropriate
4 question. My comment back though is that President Murphy
5 just commented on some of the communities of interest and how
6 they were out of whack. And we just wanted to also signify
7 that maps that they produced didn't meet that. But let me
8 just say that --

9 JUDGE GERGEL: Well, fine. I don't think anybody
10 will quarrel with -- no one would take this map seriously.

11 MR. TYSON: Judge, can I tell you one more thing?

12 JUDGE GERGEL: Yes, sir.

13 MR. TYSON: The good news for you and the panel is
14 tomorrow you're going to have somebody that actually knows
15 something about maps.

16 JUDGE GERGEL: That would be very nice.

17 MR. TYSON: Yeah. And Mr. Will Roberts is going to
18 be able to go line by line all the way through this. And
19 respectfully, your Honor, that's not our burden. It's their
20 burden to show that.

21 JUDGE GERGEL: I made the observation about both of
22 you, because we just haven't had a lot of comment about the
23 map itself. And I was asking Ms. Kilgore the questions,
24 because I just couldn't understand what the Sumter map is all
25 about. I'm going to get some data. But I was wondering:

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1 What are we splitting here? If it's the city of Sumter, how
2 is it split? I just don't understand it.

3 MR. TYSON: Well, your Honor, yes, sir. We won't
4 belabor the point.

5 If we go to 35A, this is the second map that the
6 NAACP created.

7 THE WITNESS: Your Honor, I'd like to make a
8 statement, if possible.

9 JUDGE GERGEL: Yes, ma'am.

10 THE WITNESS: You know, I'm not a demographer, but I
11 will say this: I did look at populations in terms of African
12 Americans, exactly how and what was in different districts. I
13 did that because I thought that was important to look at so I
14 would be familiar with the areas, and if I could see when
15 things were split and how they were split, how it was going to
16 impact on that district and influence the Black vote.

17 Now, that's as deep as I can get, but we depend on
18 the demographers to do the rest.

19 MR. TYSON: Thank you, President Murphy. I
20 appreciate it.

21 And I hear the Court's suggestions, and we'll move
22 quickly.

23 BY MR. TYSON:

24 Q. This is the second map that the NAACP produced. Let me
25 just look down there. I can't tell the color down there in

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1 the bottom, but I know that's Beaufort County down there in
2 the bottom, right? You know where Beaufort County is, down
3 there in that bottom?

4 A. Yes.

5 Q. What color is that?

6 A. That's blue.

7 Q. All the way down.

8 A. Oh, the orange?

9 Q. Well, Beaufort County. Okay. That's right. Beaufort is
10 the blue. I'm sorry. You're right there. Let's go back up.
11 Let's move up to Horry County then. Up at the top, that's the
12 7th Congressional District. And I think you testified a
13 second ago when you said this map recognized some of the least
14 change, and that it didn't change much from --

15 A. No, I did not. This is not the map.

16 Q. Oh, I'm sorry. So, what does that 7th District look
17 like?

18 A. Why don't we look at the other map?

19 Q. All right. Let's look at the enacted map.

20 A. You know, these maps don't mean very much to me without
21 numbers.

22 JUDGE GERGEL: Yeah.

23 MR. TYSON: I understand.

24 JUDGE GERGEL: You know, the difficulty is,

25 Ms. Murphy is very knowledgeable at sort of the general view,

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1 but she's not the demographer.

2 MR. TYSON: That's right.

3 JUDGE GERGEL: And you're getting into real details.
4 She's didn't draft the map. And, you know, she's probably not
5 the best witness to be asking these really granular details.

6 MR. TYSON: Yes, sir. But when she testified earlier
7 about some of the communities of interest that the enacted map
8 didn't cover, I think it's real important that she looks at
9 the map and that we understand that. We've got to get both
10 sides of the story, your Honor.

11 JUDGE GERGEL: I'm completely for it, but let's look
12 at the enacted map.

13 MR. TYSON: All right. That's going to be coming
14 up. Well, before we do that, I've got one more map, your
15 Honor. I'm going to beg your indulgence.

16 Can we look at 37A -- or 37. Excuse me.

17 BY MR. TYSON:

18 Q. So, this is a map that's been styled as Senate
19 Exhibit 37. Let me just lay some foundation for this,
20 President Murphy. Representative Clyburn is a supporter of
21 the NAACP, isn't he?

22 MR. MOORE: Your Honor, I think we're having some
23 issues getting it on.

24 DEPUTY CLERK: We have access.

25 THE WITNESS: What does that have to do with this?

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1 MR. TYSON: Hold on. Hold on. We have technical
2 issues.

3 BY MR. TYSON:

4 Q. Let me ask that question again. Representative Clyburn
5 is in support of the NAACP, isn't he?

6 A. I -- why -- what does that have to do with mapping? I
7 didn't discuss mapping with him.

8 MR. INGRAM: Objection. Relevancy.

9 MR. TYSON: Your Honor, he provided a map and --

10 THE WITNESS: I have not seen Representative Clyburn
11 draw a map.

12 MR. TYSON: Hold on. Hold on.

13 MR. INGRAM: She did not draw this map.

14 MR. TYSON: I didn't ask that. I'm going to ask two
15 questions about it, and we're going to move on.

16 JUDGE GERGEL: Is there a foundation about this map?

17 MR. TYSON: Yes, that's right.

18 BY MR. TYSON:

19 Q. We talked about this at your deposition --

20 A. No, we did not.

21 Q. Let me step back, President Murphy.

22 A. Okay.

23 Q. I asked you a number of questions about Representative
24 Clyburn's approval of the enacted plan. Do you know whether
25 he --

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1 A. You didn't talk to me about that, sir.

2 Q. Well, let me ask you now. Do you have any information
3 concerning Representative Clyburn's approval of the map that
4 is --

5 A. No, I do not.

6 Q. Okay. Then we won't belabor this point.

7 MR. TYSON: Let's go to the enacted plan, which is
8 back to 489.

9 BY MR. TYSON:

10 Q. President Murphy, if we look in Richland, you started to
11 testify -- let's go back to Horry. When I asked you a
12 question about the NAACP map and whether it looked like
13 Congressional District 7, I think you responded, "Let me see
14 what Congressional District 7 looks like." So I want to just
15 kind of highlight that area, Congressional District 7, up in
16 the upper right corner. You see that district?

17 A. Yes.

18 Q. And are you aware whether that looks like the plan that
19 you submitted, whether that district looks very similar to it?

20 A. Seven hasn't been an issue for us. We did not even --
21 the districts that we contested are 1, 2 and 5.

22 Q. That's right. But your testimony, I was just making sure
23 that I understood it.

24 A. 1, 2 and 5.

25 Q. Understood, President Murphy, but I'm asking you a

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1 different question. The map that was provided by the NAACP
2 recognized that a least changed map -- or districts that
3 didn't have to change maps would be acceptable, correct?

4 A. Didn't have to change?

5 Q. They didn't have to change that much because the
6 population wasn't -- the deviation wasn't that much, wasn't
7 that far off.

8 A. Where? District 7?

9 Q. Or any of the districts.

10 A. There was a need for a change because there were
11 population shifts.

12 Q. That's right. And that's a consistent traditional
13 principle, right --

14 A. Yeah.

15 Q. -- that you don't have to change much if the population
16 doesn't deviate, right?

17 A. Well, it depends on who's living where, because where
18 people live also shifts.

19 Q. This map was passed by the legislature and signed by the
20 governor on January the 20th, 2022. Does that date -- do you
21 have any reason to object to that or disagree with me?

22 A. With this map as the one being --

23 Q. No, the day. January the 20th, 2022.

24 A. Oh, no.

25 Q. And the three districts you just said that are the basis

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1 of your complaint are Districts 1, 2 and 5, correct?

2 A. Yes.

3 Q. Not 6, right?

4 A. No.

5 Q. All right. So, after the map was passed on January,
6 the 20th, did a member of the NAACP come up to you and say
7 they had a specific problem with Congressional District 1
8 after the map was passed?

9 A. Yes.

10 Q. Who?

11 A. I have members -- I have presidents, as I've shared with
12 you before. I'm not going to give you the name. But, yes, I
13 can identify, if I have to, a person.

14 Q. After the map was passed?

15 A. Yeah, after the map was passed.

16 Q. Because you had already sued way back in October, right?

17 A. I don't understand what you're talking about.

18 Q. I guess that was a poor foundation. Part of the concern
19 in trying to understand the timeline is, there was a lawsuit
20 that was brought in October, correct, by the State Conference
21 of the NAACP against the legislature, right?

22 A. That was not the congressional map.

23 Q. That's when this lawsuit that we're in today was brought,
24 right? And then it was amended later to complain about the --

25 A. The lawsuit initially was very different. It was on

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1 timeliness. And then we had the lawsuit regarding the
2 congressional maps, and it was modified in January.

3 Q. That's right.

4 A. I think I got that right.

5 Q. And then the congressional map passed. And so, my
6 question is I was trying to understand whether from when the
7 litigation ensued in October until the congressional map
8 passed in January, after you are able to review the map and
9 assess the map, was there a person in each of those
10 congressional districts that came to you to complain about
11 that map?

12 MR. INGRAM: Objection. Asked and answered.

13 MR. TYSON: Not about the process --

14 JUDGE GERGEL: Overruled. She answer the question.

15 THE WITNESS: There are still complaints about this
16 map, yes.

17 BY MR. TYSON:

18 Q. By whom? I understand your general comments. I'm trying
19 to understand --

20 A. I'm saying --

21 Q. Hold on, hold on, Ms. Murphy.

22 A. -- members within that congressional district.

23 Q. And how are we to know who those folks are after this map
24 was enacted?

25 MR. INGRAM: Objection. Irrelevant.

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1 JUDGE GERGEL: Potentially relevant. She can answer
2 the question. Overruled.

3 THE WITNESS: Okay. Where is Hilton Head Island on
4 this map? In what district?

5 MR. TYSON: Let's blow it up down there and let's
6 look at it. Beaufort County ought to be in Congressional
7 District 1.

8 THE WITNESS: He's sitting in this room, sir. You
9 should know that.

10 BY MR. TYSON:

11 Q. Plaintiff Taiwan Scott, correct?

12 A. That's right.

13 Q. Okay. How about in District 2?

14 A. Yes, I can.

15 Q. Okay. And who is that?

16 A. A member of the NAACP.

17 Q. President Murphy, if we look at the top of Congressional
18 District 2 in Richland County, that hook has been -- that's
19 gone across from Lexington County, over into Fort Jackson --

20 A. Yes, it has. And I wonder why.

21 Q. It's been there for approximately --

22 A. This was an opportunity to make things right. Did it
23 have to stay the same? Did it have to stay the same?

24 Q. You're raising good questions, Ms. Murphy. But my
25 question would be: Does it have to change?

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1 A. I am saying to you the way that it's drawn is minimizing
2 the Black vote in Lexington in that way, the fashion that
3 comes around Richland, and it influences the ability for even
4 those people to elect a person of choice or influence the
5 vote, Black people.

6 Q. And my question was: That hook that's gone across that's
7 been to Fort Jackson -- or, more importantly, Congressional
8 District 6 that has come up into Columbia, has been a part of
9 the last two --

10 A. You're the one that's talking about protecting
11 incumbents.

12 Q. That's right.

13 A. Okay.

14 Q. And so, that's why this map was drawn, and that would do
15 that, correct?

16 A. Well, it didn't have to be that way.

17 Q. How about Congressional District 6 in Charleston County?
18 We've heard lots of discussion about that. It also -- this
19 map splits Charleston County just like it split the last two
20 cycles, right?

21 A. Sir, compacted, it -- you know, when you look at packing
22 of Black voters, I guess that was the intent, White was left.
23 And I guess I keep saying to you, because what has happened in
24 Charleston, which is still in District 1, what has happened is
25 the Black folks that lived in Charleston now live in North

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1 Charleston or either Summerville. So, you impacted -- or
2 compacted again with the drawing of these maps, whoever the
3 map drawer was.

4 Q. And so --

5 A. And maybe they didn't know. Maybe they just don't know
6 the communities and who lives where. Maybe that's the
7 problem.

8 Q. President Murphy, just a quick question. Congressional
9 District 6 has split Charleston County for the last 20 years,
10 correct?

11 A. What's the question again?

12 Q. Congressional District 6 has come into -- well, let me
13 say it differently. Charleston County has been split between
14 two congressional districts --

15 A. And what I am saying to you is that section has been, you
16 know, in terms of Black people moving out and from the
17 peninsula up into a Black community already and is more, you
18 know, in terms of crowding Black people together and pushing
19 them into the 6th District, then, yeah, it minimizes the
20 ability to elect more than one representative in our state,
21 because they're all in one area.

22 Q. Yes, ma'am. President Murphy, we talked at your
23 deposition about the reapportionment coalition meetings that
24 you held. Do you remember that? You had a bunch of those
25 meetings. I think you said earlier that y'all met monthly,

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1 correct?

2 A. We meet weekly.

3 Q. Weekly. The reapportionment coalition meets monthly -- I
4 meant weekly? Excuse me.

5 A. Yeah. We don't only look at congressional maps, we look
6 at local mapping as well.

7 Q. Thank you. And there were minutes from your meeting of
8 September, the 30th, and there was an update from the
9 president. And remember we talked about this. It says:
10 "President Murphy reported she and SC NAACP political action
11 group would go through identified areas to discuss and
12 identify potential plaintiffs."

13 That was your update. Do you remember when the committee
14 approved that y'all would go out and try to identify potential
15 plaintiffs?

16 A. I remember that, but that was something that was never
17 done. And I think I told you that as well. Because, at that
18 point, we were still -- we were talking about all the areas in
19 terms of making sure we could identify individuals that live
20 within certain congressional districts if we needed to.

21 Q. And so, at some point in time on your minutes of
22 September, the 30th, and you're talking about trying to
23 identify members that live in congressional districts, the
24 congressional map didn't come out to November, the 23rd --

25 A. That was not congressional maps.

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1 Q. I'm sorry?

2 A. That was not. That was to look at people living in
3 specific areas, who would -- you know, that might be impacted.

4 Q. But it wasn't -- then you weren't hunting for plaintiffs
5 then for the --

6 A. I don't know. If "plaintiffs" was used, that might have
7 been the wrong terminology, because we didn't have a lawsuit
8 filed then.

9 Q. Well, this was September, the 30th. And who is your
10 assistant secretary? Is it Ms. Eloise Jensen (*phonetic*)?

11 A. Yeah.

12 Q. And she certified the meeting minutes, right?

13 A. She wrote the minutes.

14 Q. That's right. And that was on September, the 30th. And
15 you filed the lawsuit 12 days later --

16 A. Sir, we did not identify plaintiffs.

17 MR. TYSON: Judge, respectfully, can I just get a
18 real question out before Ms. Murphy starts answering?

19 JUDGE GERGEL: Just ask the question again.

20 BY MR. TYSON:

21 Q. So, when you wrote that on September, the 30th, you
22 hadn't identified the plaintiffs quite yet?

23 A. No, we had not. I don't know what plaintiffs we needed
24 to the identify.

25 Q. When we were talking about the 6th Congressional District

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1 and the Charleston area, you don't happen to know the BVAP
2 percentages of the Charleston peninsula, do you?

3 A. I know it's much greater. The BVAP is much lower in the
4 peninsula than it was -- well, I think it's maybe a fraction
5 higher, like a point something.

6 Q. So, the Black voting age population is higher in the
7 peninsula?

8 A. No, no. What I'm saying is the White voting has always
9 been higher for quite some time. Now, even though the Black
10 BVAP changed, it was just minimal, like a .1.

11 Q. For the whole congressional district, right. But I'm
12 talking about just the Charleston precincts and the peninsula.

13 A. Oh, I can't give you that.

14 Q. How about West Ashley? Do you know the BVAP of West
15 Ashley?

16 A. No. I have it written down, but I don't remember it.

17 Q. Let me wrap this up then, Ms. Murphy. I know it's
18 getting late in the day. It's accurate to say that the NAACP
19 and its members participated in this process, right?

20 A. Yes.

21 Q. In this redistricting cycle. And it's also accurate to
22 say that you recognize politics plays a role in this process,
23 correct?

24 A. When you say "plays a role," what do you mean?

25 Q. That the majority party is going to try to ensure that

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1 its population -- or its districts are drawn in a way to help
2 it, or a minority party draws districts that are going to be
3 able to help it, for political reasons?

4 A. And I will answer that. I'm going to say to you: The
5 goal was that it was not politically -- our decision wasn't
6 influenced by that. It was never a discussion about political
7 parties. We basically were -- you know, our thought is, the
8 representatives, they serve us, not we serve them. And, yes,
9 that's true, because I think what I'm hearing from you is that
10 I should understand that the politicians are going to draw
11 lines in such a way to serve them. And that should not be
12 true. I would hope that is not true.

13 Q. Yeah. I -- I appreciate that, President Murphy. I had a
14 simple, just a more basic question. You understand politics
15 plays a part of the legislative process --

16 A. Oh, I don't know. I wouldn't know --

17 Q. Hold on, President Murphy. I need to -- let me get my
18 question out. The court reporter can't write my question down
19 while you're talking.

20 A. Okay.

21 Q. But you understand that the legislative process -- in a
22 legislative process, politics is going to play a role, right?

23 A. I would hope that politicians would be concerned about
24 their constituents.

25 Q. So, you agree?

BRENDA MURPHY - CROSS-EXAMINATION BY MR. TYSON

1303

1 A. And would draw a map that is fair and equitable.

2 Q. President Murphy --

3 A. Because they're there to represent their constituents.

4 Q. You understand the legislative process, don't you?

5 A. We elect them, yes, to serve us.

6 Q. And legislators take in all types of information to help
7 them make their decisions, don't they?

8 A. I have no idea. I don't -- I would hope they use good
9 criteria to make decisions --

10 Q. Well, you submitted --

11 A. -- and to help those that live in these communities, and
12 to move our state to a much better position than it currently
13 is educationally, economically, especially when it comes to
14 Black people. And if anybody cannot understand that, then,
15 you know, that just -- it bothers me a lot. It bothers me a
16 great deal.

17 Q. But my question was even more basic than that. You, as
18 the president of the NAACP, provided information to your
19 legislators so that they would --

20 A. Listen.

21 Q. -- would listen. And that's exactly right. But that
22 doesn't mean just because you provided that information, they
23 have to do what you said.

24 A. They serve the community.

25 Q. That's right.

BRENDA MURPHY - CROSS-EXAMINATION BY MR. TYSON

1304

1 A. We should not be serving them. They should listen to us
2 as their constituents. I still say that.

3 Q. What if they have other criteria and other factors --

4 A. Well, then they need to communicate --

5 Q. Hold on. Hold on, President Murphy. What if they have
6 other factors and other criteria that they have to make their
7 decisions on?

8 A. Well, they need to communicate it better to their
9 constituents, because right now all we see is Black people
10 hurting and continuing to hurt, and our state's condition
11 continuing to worsen in terms of crime and everything else.
12 Because our young children, we're not preparing them to be
13 educated to the point -- many of them -- that they can
14 economically support themselves. We got major problems in
15 this state, and here we are fussing about a map, spending all
16 of this time and energy on mapping that is not fair, that
17 needs to be fair to help people in general.

18 Q. Yes, ma'am. And I appreciate your strong advocacy for
19 policy positions. But we're here in a court of law, and I
20 just want to make sure that I understand. It's the
21 legislature's ultimate duty to make a decision, correct? And
22 they base that on --

23 A. Input from their constituents.

24 Q. That's right. And that includes taking into account
25 political information, right?

BRENDA MURPHY - CROSS-EXAMINATION BY MR. TYSON

1305

1 A. What's the political information they need to take into
2 consideration?

3 Q. How the districts voted, what voting behavior is in the
4 various districts.

5 A. Well, did they do that?

6 Q. Yes, ma'am.

7 A. No, ma'am -- no, sir. I don't have any evidence. I
8 didn't hear it. I didn't see it.

9 Q. And then they also need to take into account a whole
10 bunch of other --

11 A. Can you show me that? You've shown me other things. So
12 show me where they showed that.

13 JUDGE GERGEL: Mr. Tyson, I don't think this is
14 productive.

15 MR. TYSON: Thank you, President Murphy, for a little
16 bit of understanding and letting me ask my questions. Thank
17 you.

18 MR. MOORE: And I'm going to do everything I can to
19 avoid repetition, your Honor.

20 JUDGE GERGEL: Thank you, sir.

21 MR. MOORE: I believe I know what you were going to
22 tell me.

23 CROSS-EXAMINATION

24 BY MR. MOORE:

25 Q. Good afternoon, President Murphy. How are you?

BRENDA MURPHY - CROSS-EXAMINATION BY MR. MOORE

1306

1 A. I'm good, sir.

2 Q. You and I have spent a lot of time through this process
3 together, have we not?

4 A. Yes, we sure have.

5 Q. All right. And I hope you believe me when I say it is
6 really nice to see you, as it always is.

7 A. Thank you.

8 Q. And I thank you last week for asking about my health
9 situation. And I hope that the next time you and I see each
10 other, it will not be in relation to this case and we can have
11 a good productive discussion.

12 A. Okay.

13 Q. Because I wanted to say amen to a lot of the points you
14 made about education, and about criminal justice and the like.
15 And, frankly, someday when you want to talk to the next
16 prosecutor about seeing the light about criminal justice
17 reform, I'll be glad to talk to you about it.

18 A. Okay.

19 Q. I'm going to try to be very short with you, President
20 Murphy.

21 A. Okay.

22 Q. First of all, you would agree with me, would you not,
23 that every community can't always get everything it wants in a
24 redrawn map, correct?

25 A. That's true.

BRENDA MURPHY - CROSS-EXAMINATION BY MR. MOORE

1307

1 Q. Okay. All right. And every person or every citizen
2 can't always get everything they want in a map, correct?

3 A. That's true. May I make a statement?

4 Q. And unfortunately --

5 A. No?

6 Q. I'm sorry. Let me --

7 JUDGE GERGEL: She asked to the explain her answer,
8 and she can do that.

9 MR. MOORE: No. I didn't mean to cut you off. What
10 were you --

11 THE WITNESS: I was going to say: And we didn't ask
12 for everything we wanted in this map. We only focused on
13 three of the districts.

14 **BY MR. MOORE:**

15 Q. I understand, President Murphy.

16 A. Okay.

17 Q. And so, every person, every interest group, doesn't get
18 exactly what they want out of each drawn district; correct or
19 incorrect?

20 A. Correct.

21 Q. Okay. And I don't mean to belabor any of Mr. Tyson's
22 points, I'm going to go back to a point that he made, though,
23 with respect to the representatives. And I don't want you to
24 give me the names of any SC NAACP member who's not been
25 previously identified, okay?

BRENDA MURPHY - CROSS-EXAMINATION BY MR. MOORE

1308

1 A. Uh-huh.

2 Q. All right. When he was asking questions about a
3 representative from CD 1, I believe you identified Mr. Scott;
4 is that correct?

5 A. Correct.

6 Q. Okay. He's not a member of the SC NAACP, is he?

7 A. Did he say member?

8 Q. Yes, ma'am.

9 A. Okay. But he is -- well, was a member of our coalition.

10 Q. I understand that. My question is: He's not currently a
11 member of the SC NAACP, correct?

12 A. No, he's not.

13 Q. Can you identify a person from CD 1 who, after
14 January 22nd, 2022, came to you to complain?

15 A. I can.

16 MR. INGRAM: Objection. Your Honor, we have a
17 protective order for NAACP member names. We've already turned
18 over these, and they're for attorneys eyes only. We object to
19 this line of questioning.

20 JUDGE GERGEL: Let me understand. Because we're not
21 party to these disclosures, what was the nature of the
22 disclosures that were made up pursuant to protective order?

23 MR. INGRAM: We provided names of members who are
24 registered to vote and every congressional district who are
25 members of NAACP South Carolina branches.

BRENDA MURPHY - CROSS-EXAMINATION BY MR. MOORE

1309

1 JUDGE GERGEL: Okay. And, Mr. Moore, you're
2 suggesting that, in addition to that, the NAACP can only bring
3 a lawsuit if after an enacted map is adopted, that they have
4 to come to the NAACP before they can be -- before NAACP can
5 represent their interests?

6 MR. MOORE: No, your Honor, I'm not suggesting that.
7 And, of course, as your Honor made the point, those
8 disclosures are not part of a record, okay, before the Court.
9 And I'm simply following up on Mr. Tyson's questions.

10 JUDGE GERGEL: I don't want that effort to protect to
11 create a hole in this record. I'm concerned about that,
12 because what we were trying to do was -- there's obviously --
13 and I'm not accusing the defendants of this remotely. But
14 there was a sad history in the past of attacks on the NAACP
15 membership retaliation and that type of thing. And it's a
16 strong case law about protecting the privacy in that
17 situation. I thought we had put to bed the issue because you
18 were satisfied that you had NAACP members in each
19 congressional district.

20 If you are not satisfied, we will put in camera in
21 the record that information. So it's not an issue. But
22 sitting here and asking Ms. Murphy to name people after the
23 enactment, I know of no legal requirement for that and I don't
24 think it's relevant.

25 MR. MOORE: And I wasn't asking her to name any

BRENDA MURPHY - CROSS-EXAMINATION BY MR. MOORE

1310

1 names, your Honor.

2 JUDGE GERGEL: You were. So was Mr. Tyson.

3 MR. MOORE: I thought I made that clear, I don't want
4 any names.

5 JUDGE GERGEL: But why is it relevant if she's got
6 members -- if they've got members in the NAACP in each of the
7 congressional districts, and that has been provided to you,
8 where is the legal authority that they have to come to the
9 president after the enactment and voice their concern? I know
10 of no such requirement.

11 MR. MOORE: I don't know of any such requirement off
12 the top of my head, your Honor.

13 JUDGE GERGEL: Then I think I'm going to rule it's
14 not relevant.

15 MR. MOORE: Okay. All right.

16 JUDGE GERGEL: Let me say this. If there's a
17 question -- you tell me now -- about whether that information
18 provided pursuant to a protective order is not satisfactory to
19 the plaintiffs, we'll enter an order allowing that to be
20 produced in camera, if that is a question in the record. I'm
21 glad to do that.

22 MR. MOORE: May I confer with Senate counsel --

23 JUDGE GERGEL: Go right ahead.

24 MR. MOORE: -- for a moment before I do that, your
25 Honor?

BRENDA MURPHY - CROSS-EXAMINATION BY MR. MOORE

1311

1 JUDGE GERGEL: Yes.

2 *(Pause.)*

3 MR. MOORE: So, your Honor, I think our unified
4 position is that simply giving us a list of names, and giving
5 us a list of names there, does not demonstrate identifiable
6 harm suffered by any of those individuals. That is our
7 concern. We do not believe that simply providing a list of
8 names gives a record of any particular person suffering
9 individualized harm.

10 JUDGE GERGEL: Yes. The case law indicates that if
11 you are drawn into a district predominantly because of race,
12 there's injury. So, the question, we're really getting at is
13 -- and this is -- I'm frustrated with both sides on this.
14 I've got to be honest. The issue is: Did race predominate?
15 Asking these questions about was there was partisanship, of
16 course, there was partisanship. But what predominated? Did
17 race predominate? If it didn't, anything was not
18 unconstitutional under *Cooper*. If race predominated, it's
19 unconstitutional. And if they have members of the district
20 drawn into a district because of their race, that's
21 unconstitutional and they have standing. That's sufficient
22 for organizational standing as I understand it.

23 So, do we have a dispute about whether the NAACP has
24 members in each of the challenged districts? Is there a
25 dispute about that?

BRENDA MURPHY - CROSS-EXAMINATION BY MR. MOORE

1312

1 MR. MOORE: Is there a dispute about that particular
2 issue, your Honor?

3 JUDGE GERGEL: Yes.

4 MR. MOORE: No, there is not.

5 JUDGE GERGEL: You stipulate that they have members
6 in each of the districts?

7 MR. MOORE: We so stipulate. Both defendants
8 stipulate.

9 JUDGE GERGEL: Mr. Gore, you stipulate for the
10 Senate?

11 MR. GORE: Yes, your Honor.

12 JUDGE GERGEL: Okay. So, the question is: Have
13 these individuals suffered injury, when I thought
14 organizational standing was tied to them having membership.
15 And the issue then is -- and you tell me if you've got
16 authority to the contrary: If the district is predominantly
17 based upon race, they have an injury; if it's not, they don't
18 have a claim or an injury. That's the way I understand the
19 law.

20 MR. MOORE: I understand your Honor's point.

21 JUDGE GERGEL: So, the key issue is: Does race
22 predominate? Isn't that the question at the beginning and the
23 end of this discussion?

24 MR. MOORE: I think it is, your Honor. Of course,
25 we've gone a lot of other places other than that point.

BRENDA MURPHY - CROSS-EXAMINATION BY MR. MOORE

1313

1 JUDGE GERGEL: Believe me, I am the world's expert on
2 that, okay? All three of us sat here and listened to a lot of
3 stuff that didn't seem particularly relevant. We've tried to
4 give y'all a lot of latitude. But you raised this issue with
5 Ms. Murphy about who came after the enactment and talked to
6 her. I rule that's not relevant. And we have a stipulation
7 that they have members in each district. I feel like that's
8 satisfactory for organizational standing if there's an actual
9 constitutional injury. And if there's not, they have neither
10 standing nor a claim.

11 MR. MOORE: I understand your Honor's point. And I
12 will move on with that ruling.

13 JUDGE GERGEL: Thank you.

14 **BY MR. MOORE:**

15 Q. So, President Murphy, as the president of the South
16 Carolina State Chapter of the NAACP, you worked with the
17 executive committee to implement the goals of the National
18 NAACP; is that correct?

19 A. Correct.

20 Q. And you've talked about this coalition, so I'm not going
21 to belabor the fact that you were a party of and part of and
22 established this coalition.

23 But you had a reapportionment committee that was composed
24 of members of your organization and members of other
25 organizations, correct?

BRENDA MURPHY - CROSS-EXAMINATION BY MR. MOORE

1314

1 A. Correct.

2 Q. Okay. And you had meetings, correct?

3 A. Yes.

4 Q. You had regular meetings?

5 A. Yes.

6 Q. And some those meetings -- I guess perhaps most of them
7 because of COVID -- were conducted via Zoom and were recorded;
8 is that correct?

9 A. Some were, yes.

10 Q. And you understand that eventually after we served a
11 subpoena on the National LDF and the ACLU, we got copies of
12 the recordings of those meetings, correct?

13 A. Whenever we discussed litigation, we did not do
14 recordings.

15 Q. But you do understand ultimately we got copies -- we got
16 recordings of some of those meetings, correct?

17 A. I know you requested recordings, yes.

18 Q. And have you listened to or looked at any of those
19 recordings, President Murphy, to prepare for your testimony?

20 A. No, no.

21 Q. Okay. All right. And so, let me ask you this point.
22 When the ACLU joined your commission, were you aware, okay,
23 that the ACLU assumed that they would be litigating racial
24 gerrymanders as early -- excuse me, alleged racial
25 gerrymanders as early as February 4th, 2021? Did you know

BRENDA MURPHY - CROSS-EXAMINATION BY MR. MOORE

1315

1 that?

2 A. No.

3 Q. Okay. And I believe what you told me earlier -- correct
4 me if I'm wrong, please -- is that you actually wanted -- you,
5 President Murphy -- wanted to avoid litigation; is that right?

6 A. Yes; myself and the executive committee.

7 Q. Okay.

8 A. The goal was to advocate for a fair enactment.

9 Q. All right. And let me ask you this question: You know
10 Dr. John Ruoff, correct?

11 A. Yes.

12 Q. Okay. Was he authorized to discuss post-map litigation
13 with the ACLU on behalf of your organization in April of 2021?

14 A. No.

15 Q. Okay. Do you know if he was talking to the ACLU about
16 planning litigation as early as April of 2021?

17 A. No.

18 JUDGE GERGEL: Mr. Moore, what is the relevance of
19 this and whether there's a constitutional map enacted by the
20 legislature? It just seems very far field to me. If the
21 NAACP has standing, whether or not Mr. Ruoff or somebody else
22 was talking to somebody at the ACLU in April of 2021, it just
23 doesn't seem relevant at all to this issue. Either the map is
24 constitutional or it's not. And I'll be genuine, I don't
25 know. I'm trying to hear the evidence, and no one's talking

BRENDA MURPHY - CROSS-EXAMINATION BY MR. MOORE

1316

1 about it. You're spending it about things that are not
2 relevant.

3 MR. MOORE: I understand, your Honor. I was simply
4 reacting to direct testimony about the fact that she hopes to
5 avoid litigation. That is the --

6 JUDGE GERGEL: But whether she is or not, she's here,
7 the case is here, and the question is: Is the map
8 constitutional? How they got here, it seems to me,
9 irrelevant. They have standing, in my view. If race
10 predominates, then we've got to address the issue: Does race
11 predominate? Let's focus on that issue. Focusing on the map,
12 not other people's maps and all that. Did race predominate?

13 MR. MOORE: I understand, your Honor. I'm going to
14 attempt to move on as best I can. And I'm sure if I don't
15 move on quickly enough, your Honor will stop me.

16 JUDGE GERGEL: I'm not trying to shut you up, I want
17 it to be relevant.

18 MR. MOORE: I'm simply trying to respond to direct
19 testimony, and that's part of what a defense does.

20 JUDGE GERGEL: Yeah. But I'm not sure -- some of the
21 direct testimony, if you had objected, I wouldn't have
22 sustained it.

23 MR. MOORE: I probably should have considered that
24 position about a week ago, and maybe we wouldn't still be
25 here, right? But it is what it is, your Honor.

BRENDA MURPHY - CROSS-EXAMINATION BY MR. MOORE

1317

1 BY MR. MOORE:

2 Q. Let me ask you a couple of other questions, President
3 Murphy. Are you telling me, two. I'm probably going to have
4 more than two, I hate to disappoint you.

5 But you would agree with me that that Census Bureau
6 released its data much later in the cycle than is normal,
7 correct? You'd agree with that?

8 A. Yes.

9 Q. Okay. And you'd agree with me that that was due, in
10 large part, to COVID and other reasons, correct?

11 A. Yes.

12 Q. Okay. And you would agree with me that the population in
13 South Carolina has shifted --

14 A. Yes.

15 Q. Based on the census results, the population in South
16 Carolina has shifted, correct?

17 A. Yes.

18 Q. And you would agree with me that based on census results,
19 the census shows that many of the new residents of South
20 Carolina happen to be White; is that correct?

21 A. In certain areas.

22 Q. Okay. And you would agree with me that what is typically
23 referred to as BVAP -- and you know what I mean by that term,
24 right?

25 A. Uh-huh.

BRENDA MURPHY - CROSS-EXAMINATION BY MR. MOORE

1318

1 Q. That it went down over the last 10 years across the state
2 as a whole?

3 A. Now, I wouldn't -- not significantly, no.

4 Q. And you would agree with me that, you know, a number of
5 rural areas lost population based on the census results,
6 correct?

7 A. Yes.

8 Q. And you would agree with me that among the communities
9 that gained population were coastal communities in CD 1,
10 correct?

11 A. Also 5.

12 Q. Also 5. But right now I'm focusing on CD 1. I'll get to
13 5.

14 A. Okay.

15 Q. Okay? But a number of the -- a lot of population growth
16 that we saw was in CD 1, correct?

17 A. May I say something?

18 Q. Yes, ma'am, you may.

19 A. CD 1 increased primarily because of individuals moving to
20 that area, particularly in the Beaufort area and the
21 Charleston area as well.

22 Q. And real estate values have boomed, correct?

23 A. Well...

24 Q. Okay. And a number of those people who moved to the
25 coast happen to be White; is that correct?

BRENDA MURPHY - CROSS-EXAMINATION BY MR. MOORE

1319

1 A. That's true. And what happened to the Black folks that
2 were on the peninsula?

3 Q. I can't answer that question.

4 A. I can.

5 Q. I know where you're going, though, Representative Murphy,
6 and I'm happy for you to go there. So, please tell me what
7 you'd like to say.

8 A. I'd just like to say, as they moved in, things became
9 much more expensive to live on the peninsula. They were
10 pushed more into the North Charleston and Summerville areas.
11 And we all know that.

12 Q. Okay. I'm not going to disagree with you. I read an
13 article in the *Post and Courier* this weekend about rent and
14 what's happened to rent not only on the peninsula and not only
15 in Mt. Pleasant, but all the way out to Summerville and
16 beyond. Right?

17 A. That's correct.

18 Q. So, let me ask you this question -- I'm just not going to
19 ask this one.

20 You would agree with me that the NAACP did not bring a
21 Section 2 Voting Rights Act claim, correct?

22 A. Well, I think when you look at it in terms of what has
23 happened in terms of minimizing or diminishing the vote, that
24 did occur.

25 Q. I understand. My question is a very simple one.

BRENDA MURPHY - CROSS-EXAMINATION BY MR. MOORE

1320

1 A. Section 2.

2 Q. There is a Section 2 claim --

3 JUDGE GERGEL: I think it speaks for itself.

4 MR. MOORE: All right. I'll move on, your Honor.

5 BY MR. MOORE:

6 Q. You'd agree with me, would you not, President Murphy --
7 I'm not trying to promote you or demote you, by the way, okay?

8 But you would agree with me that different people define
9 communities of interest in different ways, right? You'd agree
10 with that?

11 A. Yeah, I would.

12 Q. All right. And you would agree with me that the
13 congressional plan as enacted, the enacted plan that we're
14 talking about, did not take away the ability of any Black
15 person to cast a vote in any election? Would you agree with
16 that?

17 A. Maybe a -- maybe a -- when you look at someone being able
18 to cast a vote, it's not so much the casting of the vote, it's
19 the influence that the vote has, the power of the vote.

20 Q. I understand that. That was not my question.

21 A. Population, equitable, as much as possible.

22 Q. Yes, ma'am.

23 A. So --

24 Q. I'm sorry. I'm going to let you finish. I'm not going
25 to talk over you.

BRENDA MURPHY - CROSS-EXAMINATION BY MR. MOORE

1321

1 A. Okay. As equitable as much as possible, and also not to
2 dilute the Black vote.

3 Q. Okay. And we've heard a lot about the House and the
4 House process. You attended some of the House meetings,
5 correct? I believe you've spoken at at least one of them; is
6 that right?

7 A. Yes, I did.

8 Q. And other members of the SC NAACP and your coalition
9 attended those meetings, correct?

10 A. Correct.

11 Q. Okay. And I'm not going to belabor these points. But
12 Mr. Tyson showed you two maps that your organization proposed
13 with the assistance of some demographers, correct?

14 A. Who?

15 Q. Your organization proposed with the assistance of some
16 outside demographers.

17 A. Yes. That were a part of our coalition, yes.

18 Q. And in one of those, the BVAP of CD 6 was over
19 50 percent; is that right?

20 A. Yes.

21 Q. And you would agree with me that the BVAP in CD 6 does
22 not need to be at least 50 percent in order to allow
23 African-American voters the opportunity to elect the candidate
24 of their choice; would you agree with that?

25 MR. INGRAM: Objection. No foundation.

BRENDA MURPHY - CROSS-EXAMINATION BY MR. MOORE

1322

1 JUDGE GERGEL: I overrule. Go ahead.

2 BY MR. MOORE:

3 Q. Would you agree with that?

4 A. Are you saying that a BVAP of 43 will -- may be able to
5 elect a person of choice?

6 Q. This is my --

7 A. Potentially it could, yes.

8 Q. All right. You would agree with me that that BVAP
9 doesn't have to be 50 percent or higher in order for --

10 A. I would agree that it doesn't have to be.

11 Q. Okay. And you've referred to -- you've used the word
12 "fair" a number of times in your testimony, correct?

13 A. Yes, I have.

14 Q. Okay. And you have very strong views about what is and
15 what is not fair, correct?

16 A. Yes, I do.

17 Q. And believe you, me, I believe that, having spent a lot
18 of time with you, okay? And I respect your views. You would
19 agree with me that other people might see fairness in
20 different ways, correct?

21 A. Depending on you who they are, that's true. Correct.

22 Q. All right. And you would agree with me that different
23 people can have different opinions about what is or is not
24 fair, correct?

25 A. Yes.

BRENDA MURPHY - CROSS-EXAMINATION BY MR. MOORE

1323

1 Q. And different legislators who are considering the
2 testimony -- or considering the input that they receive from
3 various members of the community might have different views
4 than you do about what is or is not fair, correct?

5 A. May I make a comment to that?

6 Q. I'd ask you to answer my question, if you would, and then
7 make your comment. That's what I would ask.

8 A. Well, yes, they would. But I would hope that they would
9 not be in such a manner that the outcome is impacted on the
10 voting abilities to influence for Black people. Now, when it
11 gets to that, I disagree.

12 Q. And I understand your point, President Murphy. Let me
13 ask you this, okay. You've mentioned a couple of issues that
14 are very important to you and your organization, correct?
15 Healthcare and access to healthcare, for one, correct?

16 A. Economics.

17 Q. Economic advantages, correct?

18 A. Yes.

19 Q. Education, correct?

20 A. Criminal justice.

21 Q. Okay. Criminal justice reform. Okay. You can't say
22 with any degree of certainty that any of those areas, that you
23 could expect positive advancement in any of those if the maps
24 that you're advocating were passed, can you?

25 A. I think so, because the maps that were drawn -- in terms

BRENDA MURPHY - REDIRECT EXAMINATION BY MR. INGRAM

1324

1 of the potential to influence the outcome?

2 Q. Yes, ma'am.

3 A. The potential does exist there.

4 Q. I understand that.

5 MR. MOORE: One moment, your Honor?

6 JUDGE GERGEL: Yes.

7 MR. MOORE: Thank you so much for your time and your
8 patience, President Murphy. I appreciate it. I don't have
9 any further questions.

10 JUDGE GERGEL: Any more on redirect?

11 MR. INGRAM: Very brief, your Honor.

12 JUDGE GERGEL: Very brief is very good.

13 **REDIRECT EXAMINATION**

14 **BY MR. INGRAM:**

15 Q. President Murphy, you were asked what BVAP is necessary
16 for CD 6 to perform, correct?

17 A. Yes.

18 Q. Do you have the expertise to answer that?

19 A. Well, no. I'm not a demographer. You know, I've heard
20 statements about that, but in terms of being an expert in it,
21 no, I'm not.

22 Q. And in your opinion, why were these maps drawn that we're
23 litigating right now?

24 MR. MOORE: Objection. Goes beyond the scope of
25 redirect.

BRENDA MURPHY - REDIRECT EXAMINATION BY MR. INGRAM

1325

1 MR. INGRAM: It's about intention, which he asked
2 many questions about.

3 JUDGE GERGEL: Overruled.

4 THE WITNESS: What was the question again?

5 BY MR. INGRAM:

6 Q. In your opinion, why was the enacted map drawn?

7 A. In order for Black people to influence the outcome of
8 elections in such a manner that it is not going to minimize, I
9 should say, discriminatory outcomes.

10 Q. And last question, President Murphy: Have you seen the
11 General Assembly asked the question about what number is
12 needed in CD 6 for it to perform?

13 A. No.

14 Q. Thank you. That is all.

15 JUDGE GERGEL: Okay. Folks, I think we've had a long
16 day. I think we will all be grateful for a break until
17 tomorrow.

18 How many more witnesses do the plaintiffs have?

19 MR. CHANEY: We have one, your Honor, that we had
20 expected to be able to put on this afternoon. Obviously,
21 we're not going to be able to at this point. But we expected
22 it would be Mr. -- one of your favorite of our counsel, king
23 of brevity, will be doing it. So, I don't expect it will take
24 long in the morning.

25 JUDGE GERGEL: And that's Mr. Felder?

1 MR. CHANEY: That's correct, Judge, yes.

2 JUDGE GERGEL: Very good. And we'll be ready to go
3 with Senator Massey and others thereafter. Thank you.

4 Adjourned for the day.

5 * * * * *

6 I certify that the foregoing is a correct transcript from
7 the record of proceedings in the above-entitled matter.

8 s/Lisa D. Smith,

12/6/2022

9 Lisa D. Smith, RPR, CRR

Date

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