

1 *IN THE UNITED STATES DISTRICT COURT*
2 *FOR THE WESTERN DISTRICT OF MICHIGAN*
3 *SOUTHERN DIVISION*

4 DONALD AGEE, JR., et al,

5 Plaintiffs,

6 vs.

Case No. 1:22-cv-272

7 JOCELYN BENSON, et al,

8 Defendants.

VOLUME IV

9 TRIAL

10 *HELD BEFORE THE HONORABLE JANET T. NEFF, PAUL L MALONEY, and*
11 *RAYMOND L. KETHLEDGE*

12 *Kalamazoo, Michigan*
13 *November 6, 2023*

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2 November 6, 2023

3 8:49 a.m.

4 *PROCEEDINGS*

5 THE CLERK: All rise, please. The United States
6 District Court for the Western District of Michigan is now in
7 session. The Honorable Paul Maloney, the Honorable Raymond
8 Kethledge, and the Honorable Janet Neff presiding.

9 All persons having business with this Court, draw
10 near, give attention, and you shall be heard. God save these
11 United States and this Honorable Court.

12 You may be seated.

13 JUDGE MALONEY: We are back on the record in case
14 number 22-272. Counsel for the parties are present. We broke
15 for the day on direct examination of Mr. Adelson.

16 Counsel, you may proceed.

17 MR. BRADEN: Thank you, Your Honor. There was some
18 confusion on Friday, which I probably created myself, on the
19 testimony related to an exhibit that was a report of the
20 expert for the Commission, Doctor Handley, so I've shared with
21 the plaintiffs a demonstrative which will, I think, help the
22 Court and everyone present to have a handle on the timing, and
23 we'll be asking questions about each of the presentations of
24 Doctor Handley with Mr. Adelson. I think this clear --
25 hopefully will clear up any of the confusion I might have

1 created on the timing. For some reason I decided to start
2 with the last report and go that direction. I've now been
3 convinced by the Court that was the wrong way to do it, so
4 I'll start with the first and go to the last.

5 It's demonstrative DDX001, and if you could just
6 bring it up? And we also have hard copies of this which we
7 could provide to the Court. I don't think it made it to the
8 exhibit book, but maybe that would be useful for you to have,
9 too, if we could have our assistant approach the Court?

10 *DIRECT EXAMINATION (CONTINUED)*

11 BY MR. BRADEN:

12 Q. Mr. Adelson, does this document look familiar to you?

13 A. Oh, thank you. Yes, it does.

14 Q. Okay. Do you recall two Commission meetings where
15 partisan fairness measures were discussed before the receipt
16 of census data?

17 A. Yes. In the summer of 2021.

18 Q. And if you look at the chart, is it correct that one was
19 on July 9th and one was on August 8th?

20 A. Yes, as I recall, that's correct.

21 Q. Yeah. And did the Commission receive two presentations on
22 this issue before the map drawing process began?

23 A. Yes. It was before. As you said, it was before this
24 census data was released.

25 Q. Yeah. And were those presentations related to any

1 specific Michigan constitution criteria?

2 A. It's criteria number four, the criterion concerning
3 partisan fairness.

4 Q. Okay. Were you present during Commissioner Eid's
5 testimony on Friday?

6 A. Yes.

7 Q. Do you remember that there was some discussion about using
8 independently available sources for partisan fairness; do you
9 recall that testimony?

10 A. Yes.

11 Q. Do you remember that one was Dave's Redistricting and
12 another was PlanScore; do you recall that?

13 A. Yes, I do.

14 Q. And can you characterize what those two things are?

15 A. Yes. Those measures are measures that redistricting
16 professionals routinely use. And just for an example, Dave's
17 Redistricting is a website that offers lots of different tools
18 concerning redistricting. In fact, I had my subcontractors in
19 redistricting in other parts of the country actually use
20 Dave's Redistricting to draw maps for the jurisdiction, and
21 those are the maps that were eventually approved. PlanScore
22 is the same. These are two very widely used, respected
23 metrics websites that are consistently used in redistricting.

24 Q. Okay. Do you recall Doctor Handley's October 1st memo,
25 Mathematical measurements for determining if a redistricting

1 plan disproportionately advantages a political party? That's
2 Defendant Exhibit Number 14. We can probably bring that one
3 up? Yep.

4 Do you remember that document? Do you need to take a
5 look at it?

6 A. Yes, I remember this.

7 Q. Yeah. And that's a long title. Can you tell the Court in
8 your own words what that report talked about?

9 A. Sure. This report introduces the partisan fairness
10 metrics that I think we discussed last week, the metrics that
11 Doctor Handley recommended to the Commission, and we endorsed
12 metrics that are generally well known and used and accepted.

13 Q. And let me bring up Defendant Exhibit 55. Were you
14 present at the October 5th meeting?

15 A. Yes, I was.

16 Q. And do you recall this presentation? Could you explain to
17 the Court what it was generally about?

18 A. Yes. I believe that -- I do recall this. This was the
19 presentation Doctor Handley gave to the Commission concerning
20 and going into more detail about the specific measures and
21 what the scores represented and what the measures can actually
22 be utilized for and what their results reveal.

23 Q. And was it your understanding that getting acceptable
24 partisan fairness scores was a requirement?

25 A. Oh, absolutely.

1 Q. I'd like to go to -- were you present for the testimony of
2 Commissioner Szetela?

3 A. Last week, yes.

4 Q. Yeah. So you were present for all of her testimony?

5 A. Yes.

6 Q. Okay. Do you remember hearing testimony from the
7 commissioner about being asked to sign a nondisclosure
8 agreement?

9 A. Oh, yes, I do.

10 Q. Did you draft any nondisclosure agreement?

11 A. No.

12 Q. Did you sign any nondisclosure agreement?

13 A. No. I don't remember signing any agreements during the
14 time I was with the Commission in person.

15 Q. And did you have anything to do with the
16 commissioners signing any -- assuming any that did sign them,
17 did you -- were you encouraging them to sign some type of
18 document like that?

19 A. No. I don't recall encouraging anyone to sign anything
20 during my in-person time with the Commission.

21 Q. Commissioner Szetela testified that you insisted on
22 sidebar meetings with the commissioners. Did you insist on
23 sidebar meetings with the commissioners outside of the public
24 meetings?

25 A. No. Frankly, I don't recall insisting really on anything.

1 Now, there were sidebar meetings that would routinely be held,
2 including with Commissioner Szetela when she was the chair
3 about, let's say for example, contractor issues or meeting
4 locations, and there would always be the occasional meeting to
5 discuss some issue that may have arisen the day before. And I
6 say meetings, these are just chance encounters in the hallway,
7 but I was not insisting on any off-the-record meeting, and as
8 I said, I don't recall really insisting on anything.

9 Q. Any effort on your part to provide any advice on these
10 issues outside the Commission's regular procedures?

11 A. I don't recall that.

12 Q. Yeah. To quote Commissioner Szetela or to paraphrase
13 her -- let me ask the question, did you ever yell at any
14 commissioners?

15 A. No. I don't recall yelling at anybody.

16 Q. Commissioner Szetela indicated that there had been some
17 question regarding a political contribution to the Secretary
18 of State's campaign, the present Secretary of State. Is it
19 true that you made a contribution?

20 A. Yes, I did.

21 Q. And how much was that contribution?

22 A. A hundred dollars, 125. I really don't recall the
23 specific amount, but it was certainly in that range.

24 Q. And why did you make the contribution to her campaign?

25 A. Well, I had met Secretary Benson several years before when

1 she was at Wayne State and I had come to Michigan on business.
2 Of course, this was well before there was any notion on my
3 part about working on redistricting in Michigan. So, while I
4 had business in the state, she and I met at Wayne State and we
5 talked about voting rights, the Voting Rights Act, we talked
6 about my experience with the justice department, and it was a
7 very pleasant conversation. Then we parted and I went on to
8 conduct my business in Michigan.

9 Q. Did a contribution have anything to do with your work for
10 the Commission or getting hired by the Commission?

11 A. No. Because, as I said, this was long before any of this
12 came up, and as I testified last week, I never planned to work
13 for the Michigan Redistricting Commission until the chair of
14 the Arizona Redistricting Commission contacted me and said,
15 Bruce, you know, this is something I think you would be good
16 at, I think you would be interested in, why don't you consider
17 it, and that was in early 2021, February or March, so there's
18 no connection between the two.

19 Q. And Commissioner Szetela also testified that you directed
20 commissioners to lie about what they were doing. Did you ever
21 instruct any commissioner to lie?

22 A. No. And, frankly, I was thinking about this over the
23 weekend, and I had a long conversation with my wife about it,
24 and this is something that, excuse me, is a little different
25 than the other things that we're talking about. To be

1 categorical, no, I absolutely did not advise anyone to lie,
2 direct anyone to lie, that I lied, and I have to tell you that
3 in my 40 years of practicing law, no one has ever -- client,
4 organization, Court, nobody has ever said that I've done
5 anything like that, so I find it quite disreputable and
6 offensive, and I also have to say, frankly, that being in this
7 state where I began my legal career and being in this court in
8 particular, I think this was the first court that admitted me
9 to practice, this is also the first court where I filed my
10 first enforcement action on behalf of the United States of
11 America, so all those factors make this particularly
12 unpleasant, we'll put it that way, but I strongly disagree
13 with that. That, frankly, did not happen.

14 Q. On Wednesday Commissioner Szetela testified that -- that
15 your -- testified that you -- he, you, particularly with
16 Detroit, actually controlled a lot of the decisions we made.

17 First, let me ask you some preparatory questions and
18 you can respond. Did you draw any maps?

19 A. No.

20 Q. Did you even draw any districts?

21 A. No.

22 Q. Did you control the decisions of the Commission in
23 Detroit?

24 A. No. And I would say that as an attorney, as far as I
25 understand, I'm not supposed to control anything that my

1 clients do. I advise, provide guidance, answer questions, and
2 if a client chooses to go a different way, I always tell them,
3 this is your matter, this is your choice, and that's how it's
4 left, so the idea that I controlled anything is, frankly --
5 it's just ludicrous and beyond the pale.

6 Q. In the context of your voting rights advice to the
7 Commission, are you familiar with the term packing?

8 A. Oh, yes.

9 Q. Is it true that Michigan has in recent years had 90-plus
10 percent black voting age population districts in the Detroit
11 metropolitan area?

12 A. Yes.

13 Q. What was your advice to the Commission about what they had
14 to do in order to comply with the Voting Rights Act,
15 particularly in regard to the potential of drawing 90-plus
16 percent black voting age population districts?

17 A. After Doctor Handley's presentation and she introduced her
18 analysis and discussions about the Voting Rights Act, we
19 talked about -- and she mentioned that day in Ann Arbor packed
20 districts. There was several commissioners, in particular I
21 can recall Commissioner Clark and Commissioner Eid, who came
22 up to us and said, what can we do about this? This is
23 something that, you know, we're very interested in this, and
24 we said that as the process goes forward we'll talk more about
25 it, but we -- yes, we did discuss the potential of unpacking

1 Detroit's districts, particularly since in this redistricting
2 with brand new criterion and -- brand new criteria, excuse me,
3 and the realities that come with those new criteria, that that
4 was something that we thought would -- was certainly worthy of
5 discussion.

6 Q. Let me take a little different spin on Commissioner
7 Szetela's testimony, or possibly we'll have a different view
8 on this. Did Commissioner Szetela -- stated that you
9 encouraged the commissioners to unpack Detroit's black
10 districts. Did you encourage the commissioners --

11 A. I advised the Commission and, as I said, suggested that
12 might be an area for them to look at, so that's my job as the
13 attorney, is to provide advice.

14 Q. Are you aware there's been testimony about whether or not
15 there were racial targets provided to the Court -- to the
16 Commission?

17 A. Yes, I'm aware of that.

18 Q. Did you ever give the Commission a racial target to get to
19 in particular districts?

20 A. No. As I testified last week, I never told the Commission
21 that they must hit X percentage of minority population, black
22 population. I never said that.

23 MR. BRADEN: If we can pull up on the screen now the
24 testimony of Commissioner Szetela on November 1st. This will
25 be the trial transcript number one at pages 122 starting at

1 line -- we'll start at line 19. This does, I think, flip over
2 slightly to another page. Yes, on to line 11 on page 123.

3 BY MR. BRADEN:

4 Q. Could you take a moment to look at that?

5 A. Sure. I'm done with this page.

6 Q. Okay.

7 MR. BRADEN: And if you can flip over to the next
8 page for him so he can see the whole context?

9 THE WITNESS: Thank you.

10 BY MR. BRADEN:

11 Q. Now, did you see where the commissioner discusses and uses
12 the word pretext?

13 A. Oh, yes.

14 Q. Okay. If you look at this, what do you believe
15 Commissioner Szetela was referring to?

16 A. Well, frankly, since there was no pretext I never
17 recommended a pretext, I never advised about pretext.

18 Frankly, I've never done that in any of the work that I do,
19 whether it's regarding redistricting or other aspects of the
20 law so I --

21 Q. What part of the state were they actually talking about?
22 What districts were they talking about here?

23 A. I mean, I'm presuming that because Flint is mentioned
24 earlier in the paragraph that this is about Flint, and Detroit
25 is mentioned in the middle of the paragraph that it may

1 reflect a discussion about Detroit.

2 Q. So you were present for the drafting of the plan during
3 the creation of the existing districts in the Flint area?

4 A. Yes.

5 Q. Okay. Was putting together Flint and creating a black
6 majority district in Flint done for community of interest
7 reasons primarily or predominately or is it a pretext for
8 something else?

9 A. Well, there is no pretext so that's something that can be
10 easily disposed of, but as far as Flint is concerned, the
11 Commission received myriad of public comments, both in person,
12 online, in person as far as meetings, in person at the
13 Commission about Flint with residents imploring the Commission
14 to create a district keeping Flint whole. That the residents
15 viewed -- and this would be black people and white people or
16 other people, regardless of race, that because of the
17 situation and problems that Flint has had concerning their
18 water, that they really felt it was important for their
19 community to have one district that encompassed Flint.

20 Now, the discussions were not -- had nothing to do
21 with being able to elect because, as we've discussed
22 previously, I'm sure we'll discuss today, that had already
23 been established by Doctor Handley. We already had the
24 information about population and the Voting Rights Act and
25 ability to elect, so that's a done deal in the sense that

1 that's information that the Commission already had.

2 Q. So, the creation of the Flint district which created the
3 majority-minority -- majority black district was driven
4 principally by the community of interest that was -- from your
5 perspective, by the community of interest that was expressed
6 to the Commission during its hearings?

7 A. Well, if I could amend that a bit, it had nothing to do --
8 it had all to do with communities of interest and nothing to
9 do with the ability to elect. As I said, that information was
10 already present, but the testimony from the people in Flint
11 was particularly eloquent, passionate, and this was a strong
12 priority.

13 We discussed this at several meetings so the -- it
14 was only concerning communities of interest while we had the
15 information, as I said, about the Voting Rights Act and
16 ability to elect.

17 Q. Were you present in the room on Friday for Commissioner
18 Eid's testimony?

19 A. Yes.

20 Q. And present for all of his testimony?

21 A. Yes.

22 Q. Was there anything that Commissioner Eid said with regard
23 to the configurations of districts in the Michigan plans that
24 you didn't agree with?

25 A. No. In fact, Commissioner Eid's testimony reminded me of

1 comments from Commissioner Rothhorn, I believe at the end of
2 September 2021, where -- in describing -- I think this was in
3 a conversation with Commissioner Curry in describing the shape
4 of the districts and he said that, yeah, the districts, you
5 know, look funny, and he said, but, remember, this is because
6 we're keeping these communities of interest together, and if
7 you look at the map, this community is connected to this
8 community.

9 So, I think Commissioner Curry had a concern that the
10 districts were shaped, I'll just use the word that I recall
11 from the meeting, funny and he said, well, remember, this is
12 about the communities of interest. That's what we've talked
13 about and that's why we're doing this.

14 So Commissioner Eid's testimony reminded me of that
15 and that was something that Commissioner Curry certainly took
16 with great interest and was appreciative of Commissioner
17 Rothhorn explaining, that that's why the district is shaped
18 the way it is.

19 Q. Do you remember hearing Commissioner Eid talk about
20 populations, communities of interest, partisan fairness,
21 general geography and population changes, that these were all
22 involved in the process? Do you remember that testimony
23 generally?

24 A. Oh, yes.

25 Q. So any of that discussion, any of the add-ins I listed to

1 you a pretext for racial gerrymandering?

2 A. No. All the conditions and the criteria you mentioned are
3 all listed in the constitution. Commissioners were
4 consciously conscious on their own of what these criteria
5 were, and they took very seriously the vote in Michigan, which
6 not being a Michigan resident I'm not familiar with what
7 happened during that election and what the campaign was all
8 about, but they and other people told me, there's a lot of
9 interest in this -- creating this Commission, a lot of
10 interested in the partisan fairness issue. So this concern
11 about the constitutional criteria and how they mesh together
12 came up time and time again organically by the commissioners.

13 Q. When in the process did the Commission begin in earnest
14 the representational the districts in the Detroit metropolitan
15 area?

16 A. I believe that was mid September, on or about, let's say,
17 the 13th or 14th. Yeah, that's my best recollection.

18 Q. And do you know why it was so late in the process or is it
19 correct to say it was late in the process?

20 A. Well, as I had to explain to a lot of very angry clients
21 across the country, the census data were late. That pushed
22 everything back, changed the schedule, affected deadlines. It
23 was a significant concern in every state that was -- which
24 every state was redistricting.

25 So there was that delay, but then also since, again,

1 we talked last week about the Commissioners being lay people,
2 they had never done redistricting before, but that's certainly
3 a situation that I'm well familiar with, I've encountered many
4 times, and in my career I have done dozens of redistrictings
5 affecting tens of millions of people across the country, but
6 it is customary for me to encounter redistricting bodies where
7 people have never done this before and the terminology is new
8 to them.

9 Q. So where do they begin? I guess -- inform me if I'm
10 wrong, they had to actually start the process geographically
11 somewhere in the state. Where did they begin the process?

12 A. Exactly. We discussed with the mapping consultant and
13 with the Commission that why don't we start in the Upper
14 Peninsula because it's geography is huge, low population, and
15 it's a good place to, I don't know, kind of get your feet wet
16 and start the process.

17 Also, remember, too, that that happened after Doctor
18 Moon Duchin did her presentation during the summer of 2021,
19 July or August, I'm not sure, where she had her heat maps, she
20 was helping the Commission identify what are communities of
21 interest and where are they. That was of great interest to
22 the Commission, so I guess you can look at chronologically
23 that that happened during the summer, then we moved to the UP
24 and that's where the Commission really started to, oh, now we
25 see that we move this precinct here, it affects these numbers

1 there and that began -- whether it was in either late August
2 or early September, I don't remember.

3 Q. So is it correct that the Detroit metropolitan area is
4 effectively the last area of the state drawn?

5 A. As far as if you looked again through the whole process
6 with the final maps -- not the final maps, but with the maps
7 being approved by the Commission or voted on by the Commission
8 in early November, that that was the last area, and, frankly,
9 the most complex area as far as making adjustments, because
10 it's an enormous urban center, and having done urban
11 redistricting in cities that are much larger than Detroit,
12 it's very complicated and very involved because you have so
13 many people just wall to wall.

14 Any motion of any -- not motion, any movement of
15 precincts or otherwise is going to have a tremendous affect on
16 an adjoining district or on a particular district that you're
17 working on.

18 Q. So, let's go to Detroit. Let me ask, was the Commission
19 focused on communities of interest in the Detroit metropolitan
20 area?

21 A. Yes. Commissioners focused on communities of interest
22 throughout but particularly in Detroit, that's where -- and I
23 don't recall if Commissioner Eid testified to this last
24 week -- the neighborhood overlay that the contractor
25 developed, the mapping consultant developed --

1 Q. Let me interrupt. Would that --

2 MR. BRADEN: Your Honor, can I approach here and I
3 can put it up on the easel. It might help, if that would be
4 okay?

5 JUDGE MALONEY: Sure.

6 MR. BRADEN: Forrest is quicker than I am.

7 BY MR. BRADEN:

8 Q. Can you identify, again, to the Court -- this is
9 exhibit -- Defendant Exhibit Number 21. Do you recognize that
10 map?

11 A. Yes. This is the Commission's Linden Senate plan, State
12 Senate plan.

13 Q. And I think that the Court is familiar with it, but can
14 you just tell again what the black lines are on the map?

15 A. Yes. The black lines, that's the neighborhood overlay.

16 Q. And the colors represent districts -- different districts?

17 A. Yes. So the overlay concerns -- or overlays Detroit, and
18 it is just a tremendously useful tool to see where the
19 neighborhoods are, what their geographic boundaries are. The
20 commissioners who were most involved certainly in Detroit
21 redistricting, but then all the commissioners used this
22 regularly and --

23 Q. Was this useful to the individual commissioners who were
24 from the Detroit area?

25 A. Oh, absolutely, because it's a big city so knowing where

1 every neighborhood necessarily is and what its boundaries are
2 is a difficult task, particularly since the people involved,
3 they'd never looked at a map like this before. They'd never
4 did redistricting before, so why would they necessarily know
5 where all the boundaries of all these neighborhoods would be.
6 Frankly, I don't know what the boundaries are in neighborhoods
7 where I live, so it was the same for them.

8 Q. So, it is your understanding that the commissioners used
9 this map -- type of map on a regular basis in their drawing of
10 the plans to deal with the constitutional requirement to
11 consider communities of interest?

12 A. Oh, absolutely, as well as the requirement that's in the
13 same criterion concerning diversity.

14 Q. So let us take a look -- I'd like to bring up Defendant
15 Exhibit Number 7, and we're going to try to do the elmo rather
16 than the electronic version because people have been
17 complaining, like me, with limited old person eyesight that
18 it's not as clear as we might be able to get from the elmo, so
19 let's see if I can make it work, and if it's clearer for the
20 Court to use the electronic, we'll do that. That will be
21 available, but I'm thinking we'll want to get into a level of
22 detail that this might be better for the Court.

23 JUDGE KETHLEDGE: I haven't heard that term for about
24 20 years.

25 MR. BRADEN: You didn't expect anything original from

1 me. Okay. I'll inquire to the Court as to whether this is
2 easier for the Court to visually use or the electronic copy we
3 have in the record? I will go whichever way the Court
4 desires.

5 JUDGE MALONEY: Why don't we go ahead and try it and
6 see what happens.

7 MR. BRADEN: Great.

8 BY MR. BRADEN:

9 Q. So, do you recognize this map?

10 A. Yes. This is the Linden Senate District 1.

11 Q. And what district is this?

12 A. Senate District 1.

13 Q. Commissioner Eid stated that the Commission looked at
14 keeping communities like the core area of downtown Detroit
15 together. Does this look like the core area of downtown
16 Detroit?

17 A. Yes. In the upper quadrant of the map, yes.

18 Q. Yeah. As well as the Downriver communities of interest
19 around Taylor, Allen Park, Lincoln Park, River Rouge, Ecorse?

20 A. Ecorse.

21 Q. Ecorse, my apologies, and drawing for population reasons.
22 Do you agree with that testimony?

23 A. Yes, I do.

24 Q. And you were in the -- were you in the room when this
25 district was being worked on?

1 A. Oh, I was in the room for the vast majority of
2 configurations for this district, yes.

3 Q. And do you remember or not whether this was a district
4 that Doctor Handley would identify as an opportunity district
5 for minority voters to elect candidates of their choice?

6 A. I believe so, yes.

7 Q. Yep. Okay. We'll go on to seven -- three. Yeah, three.
8 It is Exhibit Number 7. Do you recognize this district on
9 exhibit number -- Defendants' Exhibit 3?

10 A. Yes. Could you move -- lower -- move this down a little
11 bit, please?

12 Q. Does that do it?

13 A. No. I mean vertically. Yes. Oh, yes, okay.

14 Yeah, this is Linden Senate District 3.

15 Q. Yeah. Commissioner Eid stated that when drawing
16 District 3 the Commission was working to preserve downtown
17 Detroit's educational hub as well as drawing for population
18 reasons. Do you agree with that testimony?

19 A. Yes.

20 Q. Do you understand what the population reasons were in
21 particular? Was there something unusual about the population
22 in Detroit --

23 A. Well, I -- I'm sorry.

24 Q. -- about the -- here I believe he was talking about
25 general population numbers. Do you understand the concern in

1 drawing districts in Detroit on the population issue?

2 A. Yes. Well, let's just reference the general population.
3 One of the things that the commissioners became aware of
4 pretty quickly and regularly is in a large city, you make any
5 shift, you're going to shift the population deviation in the
6 district that you're shifting to and the district you're
7 shifting from, and there were many times that they were
8 surprised that, wow, the population deviation just jumped
9 .50 percent, let's say, so that was something that was an
10 ongoing process and they did certainly eventually come to a
11 pretty good understanding that these shifts created
12 additional, perhaps, unexpected issues as far as population
13 deviation.

14 Q. In your recollection, is -- in this part of Detroit in
15 this district area, has there been a significant population
16 loss in comparison to other areas of the state?

17 A. Well, my understanding is from the data that I've seen
18 that the communities in this part of Detroit, yes, they did
19 suffer a significant population loss, and my recollection is
20 that Detroit lost between 60 to 70,000 people over the last
21 decade, according to the census, so that's a significant drop.
22 Frankly, that's the largest drop offhand of any of the
23 jurisdictions that I worked in during this round of
24 redistricting.

25 Q. So what's the -- do you recognize what the green line --

1 the horizontal green line is?

2 A. Yes. That's 8 Mile Road.

3 Q. Okay. And so it would not have been possible to configure
4 this district to meet population requirements without going
5 past 8 Mile Road, without going to other districts?

6 A. Well, yes. And that's not just true for this district,
7 because, remember, that the -- if you go east or west you're
8 dealing with areas that also lost population. You can't go
9 south and cross the river, and going north. That's where the
10 population shifted, that's where the population moved, so
11 that's the place you have to go for population for myriad
12 reasons.

13 Q. Is it fair to say that the districts expanded to go where
14 the population went?

15 A. Yes, which is a typical part of redistricting. I've done
16 that in other parts of the country, too.

17 Q. Okay. And we'll turn to Defendant Exhibit 6, which is
18 Linden Senate -- Linden Senate -- am I getting the sixes right
19 here? Linden Senate District Number 6. I'll orient it where
20 it makes sense.

21 Do you recognize this?

22 A. Yes.

23 Q. Commissioner Eid testified that when drawing District 6
24 the Commission preserved a community of interest between
25 Farmington Hills, Livonia, and Redford. I messed up that

1 again, pronunciation apparently. And do you agree with that
2 testimony?

3 A. Yes.

4 Q. And can we look at Exhibit Number 8, which would be Linden
5 District Number 8? Do you recognize this district?

6 A. Yes.

7 Q. Commissioner Eid testified the district preserved a
8 community of interest between Royal Oak, Ferndale, and
9 Berkley. Do you agree with that testimony?

10 A. Yes.

11 Q. Can you identify where they are on the map?

12 A. Royal Oak is north of 8 Mile in the eastern quadrant of
13 the map tending to the northeast.

14 Q. And is some of -- some of those areas south of 8 Mile?

15 A. Yes.

16 Q. So you combine -- this district combines areas on both
17 sides of 8 Mile?

18 A. Yes, that's my recollection.

19 Q. Yeah. And do you remember whether or not Doctor Handley
20 identified this as an opportunity district for minority voters
21 to elect a candidate of choice?

22 A. Well, I think that the way I would put it is that, again,
23 in Doctor Handley's analysis in the information she provided
24 about crossover voting generally, about the ability to elect,
25 so this certainly falls within that geographic area, and the

1 percentages along with information that Doctor Handley
2 provided about ability to elect and crossover voting, so that
3 unlike in -- 10 years ago when we still had Section 5, there
4 were clearly districts that were identified as -- what were
5 called Voting Rights Act districts that had to be preserved,
6 and if not preserved, replaced with a comparable district
7 someplace else. So I would say that this is certainly a
8 district that falls within the geographic area and the
9 population ranges -- population information that Doctor
10 Handley provided.

11 Q. So is this a district that's combining an area that is
12 losing population or is growing very slow with an area that
13 has more quick -- or quicker or larger population growth?

14 A. Well, yes. And I would also say that, again, as is
15 customary in redistricting throughout the country, if you have
16 an area that's losing population, you need to get population,
17 so you need to go to areas that have more population or
18 population growth, and that's certainly what happened here.

19 Q. Let me make a -- move and just go to the northern area of
20 this district. See if we can -- this helps any.

21 Would it -- would you characterize the northern end
22 of this district as appearing regular in shape?

23 A. I would describe this district as being -- as Commissioner
24 Rothhorn described at a Commission meeting, that the shape of
25 the district is funny, and as he described it, that's because

1 of community --

2 Q. Do --

3 A. -- of interest --

4 Q. -- you under --

5 A. -- not --

6 Q. -- stand --

7 COURT REPORTER: I cannot do this with both of you
8 talking.

9 THE WITNESS: Oh, I'm sorry.

10 BY MR. BRADEN:

11 Q. Oh, sorry.

12 A. Sure. As being funny because of community of interest
13 considerations.

14 Q. And do you remember that this was driven and these shapes
15 were driven by the shapes of various political subdivisions
16 and their impact on the shapes of the districts --

17 A. Yes, we do. Yes, that can affect map drawing. Again,
18 that's at the discretion of the Commission, and city
19 boundaries, it's a -- if the Commission decides to keep cities
20 within existing boundaries on the district map, that's
21 certainly something they can do.

22 Q. And do you remember whether that was a higher criteria
23 than compactness?

24 A. No. Offhand I don't.

25 Q. And we'll go to Exhibit 10, Defendant Exhibit 10. Do you

1 recognize this exhibit?

2 A. Yes.

3 Q. And do you recognize what district it is?

4 A. Can you move the map?

5 Q. Yes.

6 A. Yes. This is one of the Macomb districts. Yes, it's
7 Linden Senate District 10.

8 Q. Yeah. And Commissioner Eid testified that District 10 was
9 affected by the lakeshore district of District 12 and also
10 preserved the Chaldean community in the northern portion of
11 the district. Was that your understanding of the -- was
12 important in the line drawing process?

13 A. Yes. And I remember Commissioner Eid's testimony
14 certainly about the Chaldean population and keeping the
15 municipalities together. And you mentioned the lakeshore
16 district and, again, I think that one of the interests that
17 people have in this state is that you've never seen
18 redistricting done publicly. Redistricting done publicly is
19 quite involved because the -- you know, we have the lake to
20 the east so if you want to create a lakeshore district that's
21 going to impact population in a cascade for all the districts
22 that are adjoining that district. It has to because there
23 will be shifts of population for population deviations and
24 other reasons, so it is axiomatic that the lakeshore district
25 would be affected by any district that's created next to or

1 adjoining that district.

2 Q. Do you -- I may be testing your memory too much here, but
3 do you remember where the Chaldean community is and what are
4 the discussions regarding keeping it together?

5 A. Offhand, no. I know that there were discussions in and
6 around Hamtramck, for example, and this particular area, I do
7 have a recollection of that, but I couldn't tell you
8 specifically right now based on my recollection where that is.

9 Q. Again, is this a district combining below 8 Mile --
10 there's an area, correct, that is slower or losing population?

11 A. Well, yes. And, again, as we talked about in one of the
12 previous districts, this is an area that has lost population.
13 Detroit lost a lot of people, according to the census, so in
14 order to balance out population you have to go someplace, and
15 you go to the place where population is rising and where many
16 of the people who moved out of Detroit, based on census data,
17 for example, where there have been increases so there's really
18 no alternative. It's from a population standpoint to do so.

19 Q. Could you go east if you're going to preserve the
20 lakeshore district for population?

21 A. Well, see, that's the point that we were talking about
22 earlier. If you're going to preserve the lakeshore district
23 and look at the Pointes, for example, if you take population
24 from that area to use in Senate District 10, then it is very
25 likely that the lakeshore district would not be kept whole

1 because they would be losing population to provide population
2 in this district.

3 Q. And going south presents some of the same problems? It
4 goes into the lakeshore district, it would present problems
5 regarding population because that's an area that's lost
6 population?

7 A. Yeah, exactly. That in order to compensate for the loss
8 of population, as I said, you go where the population is.
9 That is certainly one aspect of what the Commission was doing.

10 Q. And, again, the new population is north of 8 Mile?

11 A. Yes. That's where a lot of the population growth has been
12 over the last 10 years.

13 Q. Okay. Lastly -- at least lastly for the Senate, we'll
14 bring up Defendant Exhibit Number 11, and I'll see if I can
15 orient it for you here. There we go.

16 Do you recognize this map?

17 A. Yes. Linden Senate District 11.

18 Q. And Commissioner Eid testified that District 11 contains
19 the communities of interest, combining them together, and
20 Eastpointe and Roseville. Do you agree with that testimony or
21 do you remember that?

22 A. I do remember his testimony. I do remember that as part
23 of the discussion, and I agree with him.

24 Q. Do you remember whether or not Eastpointe and Roseville
25 contained significant black population?

1 A. Yes. I recall that they do. Relative to other
2 communities in the immediate area, yes, they have larger black
3 populations than other communities in that area.

4 Q. Yeah. And they're not on the Wayne County side of 8 Mile?

5 A. No. In this map they're on the Macomb County side, north
6 of 8 Mile.

7 MR. BRADEN: I'll give the Court a little respite
8 from maps, although I'm threatening you with the House maps
9 shortly.

10 BY MR. BRADEN:

11 Q. When these districts, the Senate Districts were being
12 drafted, do you remember the Commission using partisan
13 fairness or election data in drawing the plans?

14 A. The Commission as a whole or individual --

15 Q. The Commission as a whole.

16 A. Yes. I think that one of the things that came up last
17 week is the Commission was looking at partisan fairness issues
18 virtually throughout the process. Whether they were using
19 PlanScore, election results, the metrics that Doctor Handley
20 recommended, this was an ongoing process so it wasn't limited
21 to, we can't do anything, look at anything, or think about
22 anything regarding partisan fairness until the metrics were
23 there.

24 Commissioner Eid testified, and I agree with what he
25 said, that he put the plan through -- a map through PlanScore.

1 He evaluated -- used Dave's Redistricting. He used other
2 sources of information, and I remember, too -- I know I
3 mentioned this on Friday, but it's one of the things that I
4 can't get out of my head -- that Commissioner Rothhorn said
5 that he really struggled with some of the nuances of
6 redistricting so he on his own decided, wait, I'm seeing these
7 numbers change as we make these little movements. That must
8 be a way, at least for him, to understand partisan fairness,
9 and I give him a tremendous amount of credit. That's
10 something that he developed on his own, and I know that, as he
11 testified, it helped him understand.

12 Q. Okay. So, do you have any reason to believe that when
13 people were -- the commissioners were looking at partisan
14 fairness numbers that this was some type of a proxy for the
15 use of race?

16 A. No. And I can't see why it would be. We have so much
17 data and data that relates to partisan fairness. Frankly,
18 more data than I had in other redistrictings, this cycle and
19 certainly in previous cycles, so the data are all there.

20 Yes, the metrics came in and were available for use
21 at different times, but regardless of that, there's still a
22 tremendous amount of information that they had at their
23 disposal.

24 Q. Do you remember hearing presentations to the Commission
25 expressing concerns that there were no Senate Districts over

1 50 percent black voting age population in the plan?

2 A. I remember those conversations.

3 Q. And you were present for testimony for the Commission on
4 that issue and were you present in this courtroom for
5 testimony on that issue?

6 A. Yes.

7 Q. Do you agree with the notion that in order for a black
8 candidate to win the Senate seat the district has to have a
9 black majority over 50 percent?

10 A. No, not at all.

11 Q. So, would it be safe to say your advice is based upon an
12 analysis that one size doesn't fit all?

13 A. Yes, I think that's a good way to put it. I think that
14 the -- one of the -- I don't know, I guess the misconceptions
15 that are out there is that in order to elect candidates of
16 choice by any minority group, whether it's Native American,
17 Asian, Hispanic, or black, that you must have 50 percent.
18 That's just not correct.

19 If you look around the country, particularly with
20 what has recently happened in Alabama, the Court created a
21 district that is 48 percent black voting age population
22 pursuant to the Supreme Court's order and the three-judge
23 Court's order.

24 There were districts that I participated in creating
25 that were below 50 percent that elected minority candidates of

1 choice. There were districts that I reviewed for the
2 Department of Justice that were opportunity to elect districts
3 that did not have 50 percent minority voting age population,
4 so it is a misconception that you focus on that.

5 Instead, you focus on is there a reasonable
6 opportunity for minority voters to elect, usually, their
7 candidates of choice, and, conversely, does the white -- do
8 white voters vote as a bloc, usually to prevent minority
9 voters from electing candidates of choice, because, frankly,
10 with all the technology that we have now, it would not be
11 technologically difficult to create a seemingly 50 percent
12 majority-minority district that does not elect, perhaps
13 because of low citizen engagement, for example, or low rates
14 of citizenship. I've certainly seen that in other parts of
15 the country, so you always go with -- I think I said last
16 week, this is an analytically-driven process.

17 Q. Other than population equality, do you believe there's any
18 one factor that predominated in the drawing of the Senate
19 plan?

20 A. The one factor that dominated is compliance with all the
21 constitutional criteria.

22 Q. So, do you believe the Senate plan creates more districts
23 for the black community, the Michigan black community, as an
24 opportunity to elect their candidates of choice than in
25 previous plans?

1 A. Yes. Because when you unpack districts following the
2 relevant racially polarized voting analysis and related
3 analyses, you can create districts -- this is what the
4 Commission did -- that provide opportunity beyond that
5 90 percent packed district.

6 I think it's also important to remember this is a
7 10-year plan, so looking at this plan not only now, but over
8 the course of time, over the next decade, will present various
9 opportunities, legitimate opportunities to elect candidates of
10 choice.

11 Q. Let me -- as promised, we'll go to the Hickory plan now,
12 or threaten, depending upon your perspective.

13 I would like to bring up Defendant Exhibit Number 19.
14 And we're also going to bring up -- switch the colors out on
15 you here in the plans.

16 BY MR. BRADEN:

17 Q. Can you briefly look at the demonstrative -- actually, the
18 exhibit next to you, Defendant Exhibit Number 19?

19 A. Yes.

20 Q. And do you recognize what that is?

21 A. Yes. This is the State House Hickory plan, and it has
22 that same neighborhood overlay, the black lines --

23 Q. Yeah.

24 A. -- in Detroit.

25 Q. Yeah. And it's safe to say that drawing -- or tell me

1 whether it's safe to say whether or not these type -- this
2 map -- this type of map, this overlay of neighborhoods, was it
3 used in the same way in the construction of the House plan as
4 in the Senate plan?

5 A. Oh, yes. This was -- the neighborhood overlay was used
6 for weeks and regularly by multiple commissioners with the
7 Hickory plan as well as the Senate plan to draft districts.

8 Q. So, these neighborhoods were used as part of the
9 Commission's effort to preserve communities of interest?

10 A. Yes. And, as I said previously, also that relates to the
11 other criterion and other aspect of criterion three, the
12 diversity aspect.

13 Q. Okay. And the preserving of community of interest is one
14 of the constitutional requirements in Michigan?

15 A. Yes.

16 Q. So, when drawing the Hickory plan, in addition to looking
17 at these neighborhood lines, was the Commission also looking
18 at partisan fairness and election data real-time in drawing
19 them?

20 A. Yes. Exactly. And those bits of information, those data
21 points were available in real-time every time the Commission
22 met.

23 Q. And were they looking at racial data, too?

24 A. You have to look at racial data. That's just the reality
25 of redistricting in the United States in areas that have large

1 minority populations.

2 Q. Okay. Let's look at Defendant Exhibit Number 4. I
3 believe this is Hickory House District 1. Do you recognize
4 this map?

5 A. Yes.

6 Q. And were you present when the Commission was working on
7 the Hickory map?

8 A. Yes.

9 Q. Commissioner Eid stated when drawing District 1, the
10 Commission heard public comments about preserving the downtown
11 Detroit area, Downriver neighborhoods like Delray,
12 Springwells, and Claytown. Do you agree with that testimony?

13 A. Yes. And I would add to that that the Commission received
14 a lot of public comments regarding the possibility of a new
15 and growing Hispanic community in the Downriver, in the
16 southwestern portion of the district, and that that was as a
17 direct result of the population growth over the last 10 years.

18 Q. And do you know, is the Hispanic community the fastest
19 growing population in -- piece of the Detroit area?

20 A. I believe that's correct.

21 Q. So in drawing this district, there was -- was there
22 serious discussion about keeping the neighborhoods together or
23 was that a pretext for something else?

24 A. The district represents a serious effort to keep
25 communities of interest together. There was no pretext.

1 Q. And -- so that's one. Do you recognize this Exhibit
2 Number 7, Defendant Exhibit Number 7?

3 A. This is House District 7.

4 Q. Oh, it's District 7. Do you recognize this map?

5 A. Yes.

6 Q. Do you recall Commissioner Eid's discussion of an LGBTQ
7 community of interest around the neighborhood of Palmer Park,
8 Palmer Woods, and the City of Ferndale and Royal Oak?

9 A. Yes, I do.

10 Q. And did you agree with his testimony?

11 A. Yes. And you just reminded me that, as I recall,
12 Commissioner Szetela in mid September, let's say the 13th or
13 14th, was very interested in keeping that community of
14 interest together. I believe that she testified last week
15 about that the Commission focused solely on Detroit districts
16 because of race at that time, and I remember distinctly that
17 that was an area of tremendous interest to her as a community
18 of interest, and that she brought that up to the Commission.

19 Q. Do you remember whether these areas are both north and
20 south of the famous green 8 Mile line?

21 A. I believe so.

22 Q. So if you were to use that as a firm boundary you would
23 have been dividing up those areas in the district?

24 A. Yes. And as we've talked about before and I think others
25 have testified, there was this constant balancing among the

1 criteria, and one of the realities of redistricting, which I
2 think really went to the heart of what the commissioners were
3 doing and how they felt about it, you can't please everybody
4 and there are going to be some communities' interests that are
5 disappointed that they are not -- that the maps don't
6 represent exactly what they wanted. That is a -- the flip
7 side of redistricting in a way, but that happens all over the
8 country. That's as regular as drawing a map.

9 Q. Now I'll turn to House District 8. Do you recognize this
10 map and district?

11 A. Yes. This is House District 8.

12 Q. Commissioner Eid testified that when drawing District 8
13 the Commission was looking to adjust the population for
14 population deviation and to preserve the Bengali and Asian
15 American communities' interest in neighborhood -- neighboring
16 District Number 9. Do you agree with that?

17 A. Yes. And I recall that there were many discussions and
18 many comments from the public about Banglatown, the Bengali
19 community, which is, as I learned, has a lot of concurrent
20 business interest as well as the Asian community. Yes, this
21 came up regularly.

22 Q. Can you identify where -- I'm going to test your geography
23 here on --

24 A. Please don't do that.

25 Q. Can you remember where the Bengali and Asian American

1 communities appear on this map?

2 A. I believe that's in the southeast part of the map. Can
3 you blow that up just a little bit, please? Yes, okay. Thank
4 you.

5 Q. And are these not in the adjoining -- well, maybe the
6 neighborhood map would be the best to look at. Would that
7 help you --

8 A. Sure.

9 Q. -- the neighborhood map? Okay.

10 A. May I stand up?

11 JUDGE MALONEY: Certainly.

12 THE WITNESS: Thank you, Your Honor.

13 Yes, okay.

14 BY MR. BRADEN:

15 Q. So, am I correct, after looking at the map, that the
16 neighboring District Number 9 was configured in that way
17 which, of course, impacted its adjoining district to keep
18 those together?

19 A. Yes. I think as -- you know, you can look at this as -- I
20 don't know what this is called -- oh, dominoes. If you play
21 dominoes, you line up all the dominoes and you flick one and
22 all the dominoes start falling, that -- that's like map
23 drawing. A change in one district affects a change in another
24 district. If you want to change something or retain a
25 community in one district, you may or may not be able to do

1 that because of various considerations, including population,
2 so it's like dominoes.

3 Q. So let's take a look at House District Number 10.

4 JUDGE MALONEY: For purposes of the record, counsel,
5 what's the exhibit number?

6 MR. BRADEN: Oh, I'm sorry. This is Exhibit
7 Number 10?

8 JUDGE MALONEY: Thank you, sir.

9 MR. BRADEN: I mean four. It's Exhibit Number 4.

10 JUDGE MALONEY: Exhibit 4, House District 10.

11 MR. BRADEN: Yeah. Yeah. Correct.

12 JUDGE MALONEY: Got ya. Thank you.

13 MR. BRADEN: There's the exhibit number, but I
14 don't -- exhibit number is so far out in the water, I don't
15 think I can get it on the elmo.

16 JUDGE KETHLEDGE: It's Exhibit 4.

17 MR. BRADEN: But it's District 10, it's Exhibit 4.
18 We have -- all the maps are in Exhibit 4. So I'm assuming
19 that those parts of the line here that are in Canada you don't
20 need to see or they're underwater and so I moved it around a
21 little bit here.

22 BY MR. BRADEN:

23 Q. Do you -- do you recognize this district?

24 A. Yes.

25 Q. And what is it?

1 A. It's House District 10.

2 Q. Does this district include the Pointes?

3 A. Yes. Could you move the map to the right, please? No. I
4 mean, shift the map so that it's horizontal instead of
5 vertically?

6 Q. Oh. Okay. Oh, that's probably better? Yes?

7 A. So, I'm sorry, what was your question?

8 Q. Yeah. Do you recognize this district?

9 A. Yes.

10 Q. And is this the shore district that you were talking about
11 earlier?

12 A. Yes.

13 Q. Looking at this, Commissioner Eid discussed the
14 Commission's effort to keep together the lakeshore communities
15 of interest around Detroit and the Grosse Pointes. Did you
16 agree with that testimony?

17 A. Yes.

18 Q. And was there discussions -- any various discussions as to
19 why you would want to keep a district like the lakeshore
20 together? Why have a district going up on a lakeshore?

21 A. People who live along the lakeshore will have different
22 interests, particularly if they own sailboats or other
23 recreational maritime craft compared to people who live in the
24 interior without access to such a large lake or river,
25 recognizing there are a lot of lakes in Michigan, but this

1 district has what looked like docks to the southwest, and I
2 think it has a good representation of a commonality of
3 interest, so that desire to keep the Pointes together, again,
4 to the extent possible, as well as to keep people together who
5 share lakeshore interest, maritime interest, was an important
6 point to the Commission.

7 Q. And let's take a look at House District 11, Defendant
8 Exhibit 4. I'll try not to confuse you by not screwing up the
9 geographic orientation here.

10 Do you recognize this map?

11 A. Yes.

12 Q. And what do you recognize it as?

13 A. House District 11.

14 Q. Yeah. Looking at House District 11, Commissioner Eid
15 discussed the population shift from Detroit and Wayne County
16 into Macomb County over years and the history of redlining in
17 this area. Was your understanding that one of the
18 districts -- this is one of the reasons why the district was
19 drawn this way?

20 A. Yes.

21 Q. Do you recall Commissioner Eid's testimony that this area
22 of the lakeshore was more industrial than the area in
23 District 10?

24 A. Oh, yes, I recall his -- saying that and that's also
25 consistent with my own independent knowledge.

1 Q. Commissioner Eid also testified that the shape of this
2 district was, again, affected by the Bengali community of
3 interest in neighboring District 9 and the lakeshore community
4 of interest in District 10. Was that your understanding of
5 the -- the reasons underlying this configuration?

6 A. Yes.

7 Q. Okay. Again, this is Exhibit 4. Do you recognize this
8 map of House District 12?

9 A. Yes.

10 Q. Okay. Does that -- does this district maintain the
11 communities of interest we spoke about earlier between
12 Eastpointe and Roseville?

13 A. I believe so.

14 Q. Okay. And Commissioner Eid testified that this district
15 was drawn for population reasons due to the shift in
16 population north of 8 Mile. Do you agree with that?

17 A. Yes, I agree with that.

18 Q. And this is a pattern across the whole of the districts in
19 the Detroit metropolitan area, correct?

20 A. Yes. Because, as I testified, that's by necessity.

21 Q. Lastly, let's take a look at House District 14. Do you
22 recognize this map?

23 A. Yes. It's the Hickory House District 14.

24 Q. Commissioner Eid testified that when drawing this
25 district, the commissioner -- Commission considered the

1 industrial workforce in this area and the history of redlining
2 around the 8 Mile border here. Do you agree with his
3 testimony?

4 A. Yes, as I recall.

5 Q. Again, does the decrease in the population of the City of
6 Detroit require the expansion of this Detroit area district
7 outside the City of Detroit, in your mind?

8 A. Yes.

9 Q. Is there another option to expand this district in a
10 different direction or are we hemmed in by the adjoining
11 districts?

12 A. Well, all the districts are hemmed in by the adjoining
13 districts because this is in a dense urban center. That's
14 typically true in a lot of, if not all, large cities of the
15 United States. I've done -- been involved in redistricting in
16 Los Angeles and New York. Between the two cities, they have
17 more people than the entire state of Michigan, so there are
18 some districts in those jurisdictions that are just a mere few
19 blocks because of population density. So to your point, yes,
20 absolutely, that's hemmed in by other districts.

21 Q. Were you present for -- when witnesses described some of
22 the districts as bacon strips or pinwheels?

23 A. Yes, I've been here for that.

24 Q. Do you believe the Commission could have reached its
25 partisan fairness metrics as required by the state

1 constitution without expanding districts outside of central
2 Detroit?

3 **A.** No. Because the reality, in my experience with partisan
4 fairness, is that if you have a jurisdiction that is adjudged
5 not to have a partisan fair map, through partisan
6 gerrymandering, for example, that the way to change that,
7 given the voting constraints on the Commission, is to adjust
8 areas that have -- that are heavily one partisan way or the
9 other.

10 Now, that's not a racial consideration. That's a
11 partisan consideration. If you're in an area that is
12 overwhelmingly supportive of one political party, then you can
13 change the mix so that they are less overwhelmingly favorable.

14 I think that one of the realities that is often
15 overlooked here, the Commission had a two, two, two voting
16 requirement, so I know that there's a lot of public commentary
17 about getting the partisan score to zero or as close to zero
18 as possible, but what is not explained is that that would have
19 created a map that would have been overwhelmingly favorable to
20 the Democrats and create that disproportionate advantage that
21 the Commission could not do.

22 There was no way, in my opinion, that the Commission
23 was going to approve a map like that because of the two, two,
24 two voting requirement, so, indeed, they did not, and they
25 didn't create myriad heavily Democratic districts to achieve

1 that partisan fairness because they weren't going for absolute
2 zero perfection. That would not have been possible given the
3 constitutional requirement for voting. It just would not have
4 worked.

5 Q. Is it true that for the first time since 1983 the
6 Democrats control the state legislature?

7 A. Yeah, absolutely. I know that very well because that
8 happens to relate very closely to my starting practice in
9 Michigan, being admitted to the Michigan bar and working in
10 Flint, and I think that that reality cannot be overlooked
11 because it didn't happen in 2010 -- the 2010-cycle. It didn't
12 happen in the 2000-cycle. It didn't happen in the
13 1990s-cycle, and one of the reasons for that is that you have
14 packing, and if you're just putting all the Democrats in
15 one -- one area, that's going to limit the number of districts
16 that have any type of partisan equilibrium, so that was a --
17 that was certainly something that was very noteworthy to me,
18 the date, meaning that this has not been true for 40 years.

19 Q. Do you know the race of the Michigan House Speaker?

20 A. I believe he's an African American.

21 MR. BRADEN: Give me a second here. No further
22 questions.

23 JUDGE MALONEY: Mr. Bursch, you may inquire.
24
25

CROSS EXAMINATION

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BY MR. BURSCH:

Q. Good morning, Mr. Adelson.

A. Good morning.

Q. My name is John Bursch. I represent plaintiffs in this matter. It's a pleasure to meet you.

A. Me too.

Q. We're going to be doing a performance review today for your job as the Commission's VRA attorney. So let's begin by reviewing the promises that you made to the Commission at the outset of your engagement.

You testified Friday that your first conversation with the commissioners was a Zoom interview for the position of VRA attorney; is that correct?

A. Yes.

Q. And do you recall the date of that interview?

A. No.

Q. April 8, 2021, sound about right?

A. I know it was in April 2021. I don't remember the date.

Q. Okay.

MR. BURSCH: Can we pull up, Bailey, Plaintiffs' Exhibit 45, page one?

BY MR. BURSCH:

Q. This is the April 8, 2021, Commission meeting, is it not?

A. You mean the transcript of the meeting?

1 Q. The transcript of the meeting, yes.

2 A. It appears to be.

3 Q. Okay.

4 MR. BURSCH: Bailey, could you go to page 10?

5 BY MR. BURSCH:

6 Q. And at the bottom there you can see that this is your
7 interview?

8 A. Yeah. Again, it appears to be.

9 Q. Very good. So you made a presentation to the Commission
10 this day?

11 A. Yes. Assuming April 8th is the correct day.

12 Q. That was the date on the top of the transcript, correct?

13 A. Yes.

14 Q. Okay. In that presentation you told the Commission that
15 you wanted to focus on what you believed were really keys in
16 moving forward with redistricting. Do you remember that?

17 A. No.

18 MR. BURSCH: Bailey, page 11.

19 JUDGE KETHLEDGE: You're going to have to slow down.
20 I'm going to say it before my court reporter does.

21 MR. BURSCH: Thank you, Judge Kethledge. I will.

22 JUDGE KETHLEDGE: I know it's hard.

23 BY MR. BURSCH:

24 Q. Do you see that first highlighted language there, the keys
25 in moving forward with redistricting? Did you say that?

1 A. Oh, yes, in the -- yes.

2 Q. And then in the next highlighted language you said that
3 one of those keys was, quote, having a very robust,
4 transparent record; isn't that what you said?

5 A. Yes.

6 Q. And another was that this is like elementary school math,
7 the Commission had to show its work, so to speak; is that
8 correct?

9 A. Yes.

10 Q. You also told them, you want everybody to know what you're
11 doing and then in the event of a legal challenge you can just
12 quote to the record, cite to the record to confirm what it is
13 that you actually did.

14 Do you recall saying that?

15 A. Yes.

16 Q. Okay.

17 MR. BURSCH: Bailey, page 12.

18 BY MR. BURSCH:

19 Q. You also told the Commission that the answers to all
20 questions are in the analysis, didn't you?

21 A. Yes.

22 Q. And you gave an example of when you worked with the
23 Arizona Redistricting Commission. Do you remember that?

24 A. Yes.

25 Q. That involved an Arizona district with what you recalled

1 was a minority voting population in the low thirties, correct?

2 A. Yes. Yeah, I do remember that.

3 Q. Yeah. Now, just looking at the numbers, you told the
4 commissioners it would not have been possible for minority
5 voters in that district to elect their candidates of choice;
6 is that correct?

7 A. Yes. In just looking at the numbers exclusively, yes, I
8 remember that.

9 Q. But you didn't stop there. You reached out and ended up
10 talking to an Arizona legislator; do you remember telling the
11 Commission that?

12 MR. BURSCH: Bailey, this is the next page.

13 THE WITNESS: Oh, I remember saying that.

14 BY MR. BURSCH:

15 Q. Oh, good. And from that single legislator you learned
16 that Hispanics in that district have been electing candidates
17 of choice for years, didn't you?

18 A. Well, I don't recall saying that I only spoke to a single
19 legislator and all --

20 MR. BURSCH: Bailey, go back to page 12. I'm sorry.

21 THE WITNESS: May I finish?

22 BY MR. BURSCH:

23 Q. Yeah, of course.

24 A. That all of my information came from that single person.

25 That was part of our Section 5 review at the Justice

1 Department, that one of the requirements that we operated
2 under was speaking to community representatives, including
3 elected officials.

4 Q. All right. So looking at the highlighted language there
5 in the long block, you said, I talked to -- I think you meant
6 a particular state legislator who told me, Bruce, the
7 Hispanics in this district have been electing candidates of
8 choice for years. That's what you said.

9 A. Yes, that's what I said. That's what he said.

10 Q. Okay. And then at the bottom of that page, your superiors
11 at DOJ thought there was no way this district can be an
12 ability-to-elect district because the percentage is so low.
13 Do you remember saying that?

14 A. Yes.

15 Q. But then you showed your superiors the analysis and they
16 agreed, right?

17 A. Yes. That we did -- we did our own -- we had an in-house
18 expert that did a racially polarized voting analysis. We
19 spoke to people in the community. We looked at election
20 results over a period of time. All of that combined in our
21 analysis revealed, much to our surprise, that the district
22 indeed had been electing candidates of choice.

23 Q. Thank you, Mr. Adelson.

24 MR. BURSCH: Bailey, page 13.

25 BY MR. BURSCH:

1 Q. Next you discussed Michigan's new statewide redistricting
2 criteria, didn't you?

3 A. Yes.

4 Q. And the very first one you highlighted was number three,
5 that the Commission's districts, quote, shall reflect the
6 diverse population and communities of interest, which you
7 noted was interesting because it is relatively high up the
8 list of priorities. Do you see that?

9 A. Yes.

10 Q. Okay. And then with respect to communities of interest,
11 you said you knew that, from a community of interest
12 standpoint, it can often be to maintain cities, schools, and
13 districts where possible; do you agree?

14 A. Yes. Where possible given the traditional redistricting
15 criteria of the jurisdiction.

16 Q. Very good.

17 MR. BURSCH: Bailey, page four.

18 BY MR. BURSCH:

19 Q. You also explained part of redistricting, too, involves
20 analyzing results, looking at whether or not a particular area
21 or district -- what the turnout rate is, what voter
22 registration is, do you recall that?

23 A. Yes.

24 Q. And you also told the Commission --

25 MR. BURSCH: Bailey, page 15.

1 BY MR. BURSCH:

2 Q. -- that with respect to minority population concentrations
3 you can't just randomly select 60 percent here, 80 percent
4 here, 55 percent here. The analysis has to back it up, yes?

5 A. Yes, that's what -- that's what this quote says, yes.

6 Q. Okay. Then you engaged in a discussion with the
7 commissioners; isn't that right?

8 A. I may have. Do you have a transcript of that?

9 MR. BURSCH: Bailey, if you can scroll down.

10 BY MR. BURSCH:

11 Q. Does this look like a discussion?

12 A. Yes, it does.

13 Q. Very good.

14 MR. BURSCH: All right, Bailey, page 21.

15 BY MR. BURSCH:

16 Q. In that discussion you reiterated that regarding data and
17 analysis you tend to be very cautious in the sense that, as
18 your son likes to tell you, you don't like to make
19 assumptions, it's, like, show it to me, we have to prove it.
20 That's what you told them?

21 A. Yes. That's what it says.

22 Q. Yes.

23 MR. BURSCH: Bailey, page 23.

24 BY MR. BURSCH:

25 Q. You explained to the commissioners that you would work

1 very closely with the general counsel for the Commission,
2 didn't you?

3 A. Yes.

4 Q. Who did the Commission hire as its general counsel?

5 A. Julianne Pastula.

6 Q. Did you keep your promise to work closely with her?

7 A. I did work closely with her.

8 Q. Okay. At the conclusion of this interview did the
9 Commission vote to hire you and your firm?

10 A. That's my recollection.

11 Q. Do you know whether you were the only VRA attorney
12 candidate the Secretary of State's office recommended as
13 qualified?

14 A. Well, I don't know about the recommended as qualified, but
15 I know that there were other candidates.

16 Q. Okay. Very good. Now let's examine how you performed on
17 these promises that we just reviewed.

18 We're going to start with transparency. In your
19 interview you first stated, key to redistricting was
20 transparency. We just covered that, yes?

21 A. Yes.

22 Q. Yet you actively participated in the Commission's closed
23 session on October 27, 2021, didn't you?

24 A. Yeah. The attorney/client privilege conversation, yes.

25 Q. Yeah. We listened to several audio clips from that closed

1 session meeting during this trial, haven't we?

2 A. Yes, we have heard excerpts of that.

3 Q. Okay. We'll come back to those in a moment. You
4 testified earlier today that you didn't sign any
5 non-disclosure agreements?

6 A. I don't recall doing that.

7 Q. Were you listed as a party to the non-disclosure
8 agreements?

9 A. I have no idea.

10 Q. So, if I asked the Commission to produce those NDAs -- I
11 just learned about them during Chair Szetela's testimony --
12 you don't know whether your name would appear on them?

13 A. I have no idea.

14 Q. You also testified you didn't encourage the commissioners
15 to sign the NDAs; is that correct?

16 A. I don't remember doing that at all.

17 Q. Okay. Do you remember that the clip that we played,
18 clip 19, during Chair Szetela's testimony where General
19 Counsel Pastula says, remember to sign your non-disclosure
20 agreements?

21 A. I don't recall that particular excerpt, no.

22 Q. But you worked closely with Ms. Pastula, right?

23 A. Yes.

24 Q. We're not going to waste our time by playing that clip
25 now. We can review that later.

1 Generally speaking, yes or no, do non-disclosure
2 agreements promote transparency in a redistricting process,
3 Mr. Adelson?

4 A. I'm sorry, say that again.

5 Q. Do NDA's promote transparency in a redistricting process?

6 A. I have no idea.

7 Q. Oh. But you are one of the preeminent VRA attorneys in
8 the country, right, Mr. Adelson?

9 A. Well, I appreciate the encomium, but I have no idea
10 whether they -- what they do or what they don't do.

11 Q. Okay. Did any third party request access to the closed
12 session audio recording?

13 A. I have no idea.

14 Q. You're not aware that news organizations asked for that
15 recording?

16 A. They may have, but that was beyond the purview of my
17 responsibility. I didn't do day-to-day legal advice or deal
18 with general legal matters for the Commission.

19 Q. I'm asking for general awareness. Are you not aware the
20 Michigan Supreme Court ordered the Commission to release that
21 audio recording?

22 A. That's different than what you asked me. I am --

23 Q. Go ahead, Mr. Adelson.

24 A. Of course I know about the Michigan Supreme Court
25 decision, but not living in Michigan I couldn't tell you who

1 requested or who didn't request the transcripts.

2 Q. During the closed meeting did you tell the Commission that
3 public comments on the draft maps from Promote the Vote and
4 the Michigan Civil Rights Commission were, quote, infused with
5 misinformation or lack of information?

6 A. I don't remember referring to specific organizations.

7 Q. Okay.

8 MR. BURSCH: Bailey, Plaintiffs' Exhibit 71, clip 1,
9 minute mark 22:30 to 23:09, please.

10 (10:16 a.m., audio played.)

11 BY MR. BURSCH:

12 Q. What things were not true, Mr. Adelson?

13 A. Well, I believe -- I don't know that there's -- the entire
14 context has been presented, but my recollection is that this
15 goes back to the point I made in my interview and the other
16 points that I've testified about, this arbitrary creation of
17 majority-minority districts in number and in population, that
18 the Commission received information at first, as I recall,
19 early in the mapping process that majority-minority districts
20 be created around the mid 50s. Then that changed to
21 50 percent plus one. Then it changed to just create as many
22 as you can, and my recollection of the attorney/client
23 privileged meeting was that that's just not correct. That as
24 we've advised, you can't -- cannot just arbitrarily say, yes,
25 we're going to create this number of majority-minority

1 districts at this minority population.

2 There was a lot of comments in the public, and I was
3 concerned that the Commission was just being bombarded with
4 information that did not necessarily have that legal basis and
5 that grounding that I've been testifying about.

6 Q. Back to the closed meeting, Mr. Adelson, did you ask the
7 Commission in the closing days of its process not to use
8 phrases like adding black people, subtracting black people,
9 because, quote, we are going in a different direction?

10 A. Yeah, I remember saying that.

11 Q. Did you contemporaneously tell the public that you asked
12 the commissioners not to say those things?

13 A. I'm sorry, did I tell the public that?

14 Q. You said you had a commitment to transparency. Did you
15 tell the public that you told the commissioners not to talk
16 about adding and subtracting black people?

17 A. I'm sorry, I don't understand. Tell the public, when?

18 Q. At any time.

19 A. That I made a presentation to the public that said what
20 you just said?

21 Q. Yes.

22 A. Okay. I guess I'm just confused. I really don't
23 understand.

24 Q. Did you urge the commissioners to disclose that advice,
25 not to say adding and subtracting black people to the public?

1 A. Well, we -- we considered the meeting to be
2 attorney/client privilege.

3 Q. That was transparent, right?

4 A. That it was an attorney/client privilege? Yeah. Yes.
5 There was announcement that it was attorney/client privilege.

6 Q. Mr. Adelson, at this closed meeting did you tell the
7 Commission that the 2018 gubernatorial primary showed no
8 cohesion among black voters so that the VRA might not even
9 apply?

10 A. I don't recall saying the VRA might not even apply, and
11 I'm not sure I remember that part of the conversation.

12 Q. Do you recall saying that there was no cohesion among
13 black voters in the 2018 gubernatorial primary?

14 A. No.

15 MR. BURSCH: Bailey, Plaintiffs' Exhibit 71, clip 18,
16 41:03 to 42:23.

17 (10:20 a.m., audio played.)

18 MR. BURSCH: Bailey, you can stop it there.

19 BY MR. BURSCH:

20 Q. Now, do you recall saying that there was no cohesion in
21 that election?

22 A. Yes, now I do, based on what you just played.

23 Q. And you know that cohesion is the second *Gingles* factor,
24 right?

25 A. Yes, I know that, too.

1 Q. And you also know that if the Commission did not believe
2 that one of the *Gingles* factors had been met, then the
3 Commission had no compelling interest to justify predominantly
4 using race in drawing maps?

5 A. The Commission did not predominately use race in --

6 Q. That's not my question. My question is you know that if
7 the Commission did not believe one of the *Gingles* factors had
8 been met, then the Commission had no compelling interest to
9 justify predominately using race in drawing maps, correct?

10 A. Well, again, I'm not going to address a question that says
11 the Commission -- suggests the Commission predominantly used
12 race because that's just incorrect.

13 Q. I'm not suggesting that.

14 A. May I finish?

15 Q. Of course.

16 A. In addition, I only mentioned one election. I didn't say
17 that in -- there was no cohesion in any election in Michigan
18 from 2012 to 2020. I talked about that one election.

19 Q. Since we're talking about *Gingles* factors, did the
20 Commission ever prepare or request the preparation of a
21 demonstration map that would satisfy *Gingles* one?

22 A. I don't recall that.

23 Q. Did you prepare memos in advance of the closed session?

24 A. Yes.

25 Q. Was one of those memos titled, Voting Rights Act?

1 A. Do you have a copy so I can see it?

2 MR. BURSCH: Plaintiffs' Exhibit 22, Bailey.

3 THE WITNESS: Oh, okay.

4 MR. BURSCH: Could you scroll to the top so
5 Mr. Adelson can see the title?

6 BY MR. BURSCH:

7 Q. Voting Rights Act, do you see that?

8 A. Yes.

9 Q. And where we have that highlight, you told the Commission,
10 the Voting Rights Act does not require any numerical amount of
11 majority-minority districts. Indeed, does not even require
12 majority-minority districts at all. Do you recall saying that
13 in your memo?

14 A. Yes.

15 Q. This seems like pretty important advice in a redistricting
16 process as contentious as Michigan's. Out of transparency,
17 did you release that memo to the public before the Michigan
18 Supreme Court ordered it to be disclosed?

19 A. Well, as I said, we considered this to be attorney/client
20 privilege.

21 Q. So you did not disclose it?

22 A. Not as far as I know.

23 Q. Okay. Back to the secret meeting, do you remember the
24 audio clip that we listened to during Mr. Eid's testimony
25 where Commissioner Lett explained that communities of interest

1 were nebulous and that the Commission should use them to
2 justify whatever the Commission wanted?

3 A. Yes, I remember that.

4 Q. Oh, good. That will save us some time.

5 Do you also remember the immediately following audio
6 clip where Mr. Eid said he agreed with everything Commissioner
7 Lett just said?

8 A. I don't recall Commissioner Eid saying that he agreed with
9 everything. I do remember that there were questions directed
10 to him about what Commissioner Lett said, but I don't remember
11 that he said he agreed with everything.

12 Q. All right. We listened to it during Mr. Eid's testimony
13 so I will not repeat it now.

14 We also listened to an audio clip from that meeting
15 where Commissioner Orton also agreed that commissioners should
16 use communities of interest as pretext for racial changes. Do
17 you remember that?

18 A. I don't recall Commissioner Orton saying that the
19 Commission should use a pretext for racial changes.

20 MR. BURSCH: Bailey, Plaintiffs' Exhibit 71, clip
21 eight at minute mark 38:03 to 39:12.

22 *(10:24 a.m., audio played)*

23 BY MR. BURSCH:

24 Q. Do you remember Commissioner Orton saying those things?

25 JUDGE NEFF: I didn't hear the word pretext in there

1 anywhere, Mr. Bursch, which is what you implied when you asked
2 the question.

3 MR. BURSCH: Judge Neff, you're correct, the word
4 pretext did not appear in her exact testimony, that's true.

5 BY MR. BURSCH:

6 Q. Mr. Adelson, you used an exhibit binder to give your
7 testimony Friday and today; is that correct?

8 A. No, it's not correct that I used it today.

9 Q. Okay. Is it in front of you?

10 A. The one from Friday is right here.

11 Q. Wonderful. If you could turn to tab B with me? This is
12 Defendants' Exhibit 17, correct?

13 A. Yes.

14 Q. Report to the Michigan Independent Citizens Redistricting
15 Commission is the title; is that correct?

16 A. Yes.

17 Q. Do you remember when Mr. Braden first asked you about this
18 on Friday I interrupted because it lacked a date?

19 A. Yes. Yes, I do remember that.

20 Q. And Mr. Braden told the Court that you would be able to
21 give that detail. Do you remember that, too?

22 A. That I would be able to provide the date?

23 Q. The detail is -- that detail, is what he said.

24 A. I don't recall saying that I could provide a date.

25 Q. Okay. You then testified, and I want to get this right,

1 quote, I don't recall the specific date that was submitted by
2 Doctor Handley but this was submitted during the mapping
3 process. Is that what you said?

4 A. That seems to be what I said.

5 Q. In fact, we know from the demonstrative that Mr. Braden
6 showed you today that Doctor Handley submitted this report on
7 December 28, 2021, didn't she?

8 A. I believe so, yes.

9 Q. What date did the commissioners vote on the Hickory and
10 Linden plans, do you recall?

11 A. I think it was December 28th.

12 Q. So when you represented to the Court that Doctor Handley's
13 December 27th -- I'm sorry, December 28th report was
14 submitted, quote, during the mapping process, that was not a
15 true statement, was it?

16 A. No, you're incorrect. There are -- Doctor Handley's
17 analysis from the Ann Arbor meeting in September is here, and
18 the way I judge the mapping process is a continuum of events
19 that included December 28th because that was the date that
20 they were voting on the maps, so that's, in my description, in
21 my vernacular of what the Commission was doing, I include
22 December 28th.

23 Q. Mr. Adelson, Doctor Handley's September 2nd presentation
24 was an appendix to this report, correct?

25 A. Yes. It's in the report.

1 Q. You testified that this report was submitted during the
2 mapping process. Do you still believe that to be true
3 testimony?

4 A. Well, I just answered that.

5 Q. Okay. Let's stay with this demonstrative exhibit. So,
6 Doctor Handley's initial presentation with data to the
7 Commission was on September 2nd, according to this chart,
8 correct?

9 A. Yes. That's -- yes.

10 Q. On October 1st there was a partisan analysis discussion;
11 is that correct?

12 A. Yes.

13 Q. Same on October 5th?

14 A. Yes.

15 Q. And then on November 1st she presented, Voting Patterns of
16 Selection Minority Groups in Michigan; is that correct?

17 A. Yes.

18 Q. That November 1st report discussed Hispanic voters; yes?

19 A. In part. It also discusses, as I recall, Chaldean voters,
20 Arab American voters, and there may have been a discussion
21 about Asian American voters but I'm not sure.

22 Q. That's a remarkably close memory. Did it discuss black
23 voters?

24 A. I don't believe so.

25 Q. And, in fact, if we pulled up Defendants' Exhibit 56,

1 which is that report, we would not find black voters anywhere
2 in there, would we?

3 A. I would have to read the report.

4 Q. Okay. You can look at that later. So, then,
5 December 28th, the very last entry on here is the Handley
6 report that we were just discussing behind tab B?

7 A. Yes, I believe so.

8 Q. All right. We are done with your promise of transparency.
9 Now I want to move to your commitment to prove everything with
10 analysis.

11 On Friday you testified that Doctor Handley presented
12 her VRA analysis to the Commission on September 2nd, 2021,
13 correct?

14 A. Yes.

15 Q. That -- that was on the demonstrative we were just looking
16 at?

17 A. On -- in her report that she delivered in Ann Arbor, yes.

18 Q. Yes or no, the Commission needed that analysis if race
19 predominated in drawing the challenged districts, right?

20 A. Again, I'm not going to answer a question that suggests
21 the Commission used race predominately in redistricting
22 because that is incorrect.

23 Q. Okay. Doctor Handley's analysis included four counties,
24 correct?

25 A. I --

1 Q. Would it help if we pulled up the exhibit?

2 A. Sure. Let's go for it.

3 MR. BURSCH: Bailey, Plaintiffs' Exhibit 15,
4 page six.

5 BY MR. BURSCH:

6 Q. Wayne, Oakland, Genesee, Saginaw, are those the four
7 counties she analyzed?

8 A. Yes.

9 Q. Doctor Handley did not conduct an area-specific analysis
10 for Macomb County, did she?

11 A. Not in the same way as here, that's correct.

12 Q. Do you recall that in the Linden plan Senate Districts 3,
13 10, 11, and 12 all included parts of Macomb County?

14 A. Yes, I recall that.

15 Q. And do you recall that in the Hickory plan House Districts
16 10, 11, 12, 13, and 14 all included parts of Macomb County?

17 A. I believe so.

18 Q. Was it robust analysis for Doctor Handley to leave out
19 Macomb County given how many districts bridged Detroit and
20 Macomb County?

21 A. Well, I think, as I've testified today and on Friday, that
22 there were various bases of analysis that we used that
23 included, whether it was census data, statewide data, various
24 accounts of population shifts over the last 10 years. So
25 there were a lot of data points that the Commission had and

1 did use. Is Macomb County included in this particular
2 analysis? It is not.

3 Q. Thank you. Back to Doctor Handley's analysis, it included
4 four general elections and one state primary; do you remember
5 that?

6 A. I'm sorry. In her analysis, do you mean in this document?

7 Q. Yes.

8 MR. BURSCH: If we can turn to page seven, Bailey?

9 JUDGE KETHLEDGE: What's the date of this document
10 you're talking about?

11 MR. BURSCH: September 2nd, 2021. This is a
12 presentation that Doctor Handley -- September 2, 2021, and as
13 we reviewed in the demonstrative, Judge Kethledge, this is the
14 only data about racial voting that the Commission had until
15 December 28th, the day that they voted for the maps.

16 BY MR. BURSCH:

17 Q. So on page seven --

18 MR. BRADEN: I object to that statement. I don't
19 believe -- that mischaracterizes the record.

20 JUDGE MALONEY: You can cover it on cross, counsel.

21 MR. BURSCH: On page seven -- my apologies, Judge
22 Maloney.

23 BY MR. BURSCH:

24 Q. On page seven, Mr. Adelson, she includes four general
25 elections and one statewide primary; is that correct?

1 A. No. She says at the top, all federal and statewide
2 general elections contests --

3 Q. And then she --

4 A. Excuse me. May I finish?

5 Q. Sure.

6 A. 2012 through 2020. And she highlights these four
7 elections, but she analyzed more than four elections.

8 Q. Really?

9 A. It says four election contests including minority
10 candidates.

11 Q. Okay.

12 A. And then at the top, all federal and statewide general
13 election contests in 2012, 2020. These four don't include --
14 do not include all general election contests in Michigan.

15 Q. All right. Let me be clear because the highlighting on
16 this may have been confusing. The 2018 and 2020 U.S. Senate
17 races Doctor Handley disregarded; is that correct?

18 A. I don't recall that she disregarded them.

19 Q. Because the black candidate, John James, was not the
20 candidate of choice among black voters; do you remember that?

21 A. My recollection is that's correct, he was not the
22 candidate of choice.

23 Q. Okay. So that leaves 2012 U.S. president and 2014
24 secretary of state in the first batch, correct?

25 A. Correct about what?

1 Q. All right. So, in the discussions with the Commission as
2 they were drawing maps, there were four so-called bellwether
3 elections; do you recall that?

4 A. I recall that conversation, yes.

5 Q. Okay. Were the 2012 U.S. president and 2014 secretary of
6 state two of those four bellwethers?

7 A. Yes, they were.

8 Q. Very good. And then the unhighlighted bullet points, the
9 2018 governor and the 2020 U.S. president, those were the
10 other two of the four bellwethers, correct?

11 A. I believe so, yes.

12 Q. So these were the four general elections that Doctor
13 Handley analyzed in this September 2nd report, correct?

14 A. Well, again, I think she analyzed all federal and
15 statewide general election contests in the date parameters
16 provided in the report.

17 Q. Okay.

18 MR. BURSCH: Bailey, could you please turn to
19 page 13?

20 BY MR. BURSCH:

21 Q. Is this the data analysis of Doctor Handley's to which
22 you're referring?

23 A. I think this is part of it, yes.

24 Q. And she plucked from these races the four that involved
25 black candidates of choice -- or black candidates and those

1 were the four races we were just talking about, correct?

2 A. Yes. That is a best practice in this type of analysis.

3 Q. Okay.

4 MR. BURSCH: Back to page eight, please, Bailey. I'm
5 sorry, page seven.

6 BY MR. BURSCH:

7 Q. She also analyzed the Democratic primary for statewide
8 office this past decade, the 2018 race for governor; is that
9 correct?

10 A. Yes. That was only the statewide -- that was the only
11 statewide primary available in the time parameters included.

12 Q. That Democratic primary, the 2018 race for governor, this
13 is the election where you told the Commission in the closed
14 session that it did not show black cohesion, the clip we just
15 listened to; is that correct?

16 A. Across the election -- yes, that's true, the black voters
17 did not consistently, as *Gingles* two talks about, support the
18 same candidate.

19 Q. Okay. So, that leaves us with the four so-called
20 bellwether elections. In the first Doctor Handley concluded
21 that white voters from Wayne and Oakland County crossed over
22 to vote for President Biden, a Democrat, instead of President
23 Trump, a Republican, right?

24 A. That there was crossover support, yes.

25 Q. In the second she concluded that white voters from Wayne

1 and Oakland County crossed over to vote for Governor Whitmer,
2 a Democrat, instead of Attorney General Schuette, a
3 Republican, yes?

4 A. Again, there was crossover support.

5 Q. In the third, Doctor Handley concluded that white voters
6 from Wayne and Oakland County crossed over to vote for Godfrey
7 Dillard, a Democrat, instead of Secretary of State Ruth
8 Johnson, a Republican, correct?

9 A. There was crossover support.

10 Q. And in the fourth and final election, Doctor Handley
11 concluded that white voters from Wayne and Oakland County
12 crossed over to vote for President Obama, a Democrat, instead
13 of Mitt Romney, a Republican, true?

14 A. There was crossover support.

15 Q. So of these races, which one shows that white voters voted
16 as a bloc to defeat black candidates of choice in a general
17 election?

18 A. Just looking at this screen I can't answer it.

19 Q. All right. I will look through the data with Doctor
20 Handley.

21 Based on this general election data do you think
22 there was sufficient information, and by that I mean robust
23 analysis, to justify 35 to 40 percent BVAPs in a Wayne County
24 precinct?

25 A. I think in this analysis and I think I testified on Friday

1 that we had additional conversations, the general counsel and
2 I, with Doctor Handley, both in person, by phone, as she
3 continued with her analysis throughout the process to learn
4 additional information. All of that came in to the advice
5 that -- and guidance given to the Commission, so it wasn't
6 just one piece of paper or one analysis on one specific date,
7 but this was clearly a very important part of her analysis.

8 Q. But, Mr. Adelson, there was no data about black voting
9 presented to the Commission after September 2nd, 2021, by
10 Doctor Handley until December 28th, right?

11 A. No, I didn't say that. You asked me a question previously
12 about that specific document on November 1st that included
13 data about other populations in Michigan that had come up
14 regularly to the Commission through community comments,
15 written comments, and this was something that the Commission
16 was very interested in as they proceeded with redistricting.

17 So the Commission had significant data and
18 information about black voting patterns and election results,
19 but they did not have that same information about, for
20 example, the Arab American community. Now, I think that
21 Commissioner Eid testified on Friday that Arabs are not
22 separated out in the census the way Hispanics are, for
23 example, and Blacks are, so because of that she had to take a
24 deeper dive into the scrum of data, if you will, about
25 election performance, election results, and population.

1 That's what she did for the November 1st report.
2 That was something the Commission was, as I said, very
3 interested in, so as the process continued and wound down, the
4 Commission had analyses, election results, information, which,
5 frankly, Doctor Handley's report about Arab American voting
6 behavior, I used that in another jurisdiction, which, frankly,
7 shocked the experts that were retained by the redistricting
8 jurisdiction because they had never seen an analysis like
9 that, that as far as I know that was one of the first and most
10 comprehensive analyses similar to that that described Chaldean
11 voting behavior, Bengali voting behavior, and Arab American
12 voting behavior. So we did use that in another jurisdiction
13 in a far different part of the country that --
14 Q. Can I stop you there?
15 A. Excuse me. May I finish my sentence?
16 Q. Are you close?
17 A. May I finish my sentence?
18 Q. Yes, you may.
19 A. That Dr. Handley provided to the Commission.
20 Q. Mr. Adelson, in that two-minute soliloquy you did not
21 answer my question. So, first, yes or no, did the
22 November 1st Doctor Handley presentation include data about
23 black voting?
24 A. May I see the presentation?
25 Q. It was in your demonstrative. I can pull it up if you

1 want to, but you don't remember?

2 A. Well, if you're asking me a question whether it included
3 information about black voting behavior, I'd like to see
4 the --

5 Q. Okay.

6 MR. BURSCH: Bailey, Defendants' Exhibit 56. Page
7 two.

8 MR. BRADEN: Your Honor, if he's going to have a
9 reasonable opportunity to comment on this he needs an
10 opportunity to actually read the whole document.

11 MR. BURSCH: We'll go one page at a time. I'll give
12 you as much time as you need.

13 BY MR. BURSCH:

14 Q. Are black voters discussed on page two?

15 A. Could you expand this, please? My vision is not as good
16 as it used to be.

17 Q. How about this, Mr. Adelson. What's the title on this
18 page?

19 A. Hispanic voting patterns, Detroit area.

20 Q. Okay.

21 MR. BURSCH: Bailey, next page.

22 BY MR. BURSCH:

23 Q. What's the title?

24 MR. BRADEN: Again, I object. If he's going to be
25 asked to comment on a whole document, he needs to be given

1 enough time.

2 JUDGE MALONEY: Here's what we're going to do in
3 light of Mr. Braden's statement. We're going to take a break
4 for 15 minutes. We'll give the witness an opportunity to take
5 a look at 56 and we'll take it from there.

6 MR. BURSCH: Thank you, Judge Maloney.

7 JUDGE MALONEY: 15 minutes.

8 THE CLERK: All rise, please. Court is in recess.

9 *(Recess taken at 10:43 a.m.; reconvened at 11:00 a.m.)*

10 THE CLERK: All rise, please. Court is in session.
11 You may be seated.

12 THE COURT: We're back on the record. Mr. Bursch,
13 you may continue.

14 MR. BURSCH: Thank you, Judge Maloney.

15 BY MR. BURSCH:

16 Q. Mr. Adelson, before the break we were looking at
17 Defendants' Exhibit 56, correct?

18 A. Yes.

19 Q. Have you had a chance to review it?

20 A. Yes.

21 Q. I have it up on the screen, page two. Is this titled,
22 Hispanic voting patterns: Detroit area?

23 A. Yes.

24 MR. BURSCH: Bailey, page three.

25 BY MR. BURSCH:

1 Q. Is this titled, Hispanic voting patterns: Grand Rapids
2 area?

3 A. Yes.

4 MR. BURSCH: Bailey, page four.

5 BY MR. BURSCH:

6 Q. Is this page titled, Arab American voting patterns?

7 A. Yes.

8 MR. BURSCH: Bailey, page five.

9 BY MR. BURSCH:

10 Q. Is this titled, Scatter plot of proportion Arab American
11 and proportion of votes for Biden in 2020?

12 A. Yes.

13 MR. BURSCH: Bailey, next page.

14 BY MR. BURSCH:

15 Q. Is this titled, Bengali American voting patterns?

16 A. Yes.

17 MR. BURSCH: Bailey, next page.

18 BY MR. BURSCH:

19 Q. Is this page titled, Chaldean voting patterns?

20 A. Yes.

21 MR. BURSCH: Bailey, next page.

22 BY MR. BURSCH:

23 Q. Is this one titled scatter plot of proportion Chaldean and
24 proportion of votes for Biden in 2020?

25 A. Yes.

1 Q. Other than the title page, is this the entirety of the
2 document?

3 A. Of the document, yes, but not of the presentation.

4 MR. BURSCH: Bailey, would you please pull up
5 Defendants' Demonstrative 1?

6 BY MR. BURSCH:

7 Q. So, the document we were just discussing was the one
8 titled, Voting Patterns of Selection Minority Groups in
9 Michigan dated November 1, yes?

10 A. Yes.

11 Q. All right. I want to turn now to the time frame of her
12 final report on December 28th. Do you recall an e-mail that
13 Doctor Handley sent to Chair Szetela on December 27, 2021?

14 A. I know one was sent. I don't think it was sent to me so I
15 can't speak to the contents of the e-mail.

16 MR. BURSCH: Bailey, please pull up Plaintiff's
17 Exhibit Number 5 and turn to page 21. If you can highlight
18 the top, Bailey?

19 BY MR. BURSCH:

20 Q. Mr. Adelson, you were cc'd on this e-mail, correct?

21 A. Yes, it appears so.

22 MR. BURSCH: Bailey, if you can scroll down to the
23 middle.

24 BY MR. BURSCH:

25 Q. I'm going to read this paragraph for you, Mr. Adelson.

1 Please tell me if I'm reading it correctly.

2 Unfortunately, we do not have sufficient information
3 to anticipate what might happen in future Democratic primaries
4 in the proposed districts. The reason is that we have only
5 one statewide Democratic primary for which we can compile
6 results and minority voters were not cohesive in this primary.
7 We simply do not know what would happen in a primary in which
8 minority voters are cohesive.

9 Did I read that correctly?

10 A. Well, you said compile results. I believe it says
11 recompile results.

12 Q. With that correction, did I read that correctly?

13 A. Yes.

14 Q. This was one day before the Commission voted on the maps
15 on December 28th, correct?

16 A. Yes.

17 Q. On Friday you told the Commission (sic), there is no magic
18 BVAP number that you could give the Commission; do you recall
19 that?

20 A. Yes. That's consistent with things that we talked about
21 here.

22 Q. Okay. I'm going to focus on your comments to the
23 Commission and a few from general counsel Pastula, not those
24 of the commissioner in the following questions.

25 MR. BURSCH: Bailey, please pull up Plaintiffs'

1 Exhibit 55, page 30.

2 BY MR. BURSCH:

3 Q. I will represent to you, Mr. Adelson, that this is a
4 transcript from September 2nd, 2021. That's the date of
5 Doctor Handley's presentation to the Commission; yes?

6 A. September 2nd, yes.

7 Q. Okay. I will also represent to you that this is you
8 speaking, but to the point about packing, remember that the --
9 if a district can be established through analysis to be able
10 to elect candidates of choice of the minority community at,
11 let's say, 40 percent, if you add on population to that, that
12 the courts constitute that as packing.

13 Is that what you said?

14 A. That's what the words say, yes.

15 Q. Okay.

16 MR. BURSCH: Bailey, let's skip to the
17 September 14th, 2021, transcript, Plaintiffs' Exhibit 140,
18 page 1574.

19 JUDGE KETHLEDGE: Do you have a page number for this
20 document just so we know where we are at here?

21 MR. BURSCH: That was Plaintiffs' Exhibit 55,
22 page 30, September 2nd, 2021.

23 BY MR. BURSCH:

24 Q. This is Plaintiffs' Exhibit 140, page 1574. Mr. Adelson,
25 again I'll represent that this is you speaking.

1 And what I would suggest in moving forward in the
2 areas where you are now, typically aim for black populations
3 in the roughly 40 to 45 percent range.

4 Did I read that correctly?

5 A. Yes, you did.

6 MR. BURSCH: Bailey, page 1589.

7 BY MR. BURSCH:

8 Q. By the way, Mr. Adelson, this transcript is dated
9 September 14th, 2021. Did you tell us earlier that this is
10 about the time that the Commission began drawing maps in
11 earnest?

12 A. Yes, I believe -- well, not maps in earnest. I believe I
13 testified that this was the time that the Commission's
14 attention started to turn to Detroit.

15 Q. Here I'll represent to you, again, that this is your
16 language.

17 But 36 is, like, close to the line and, yeah, as I
18 said, I always like to be cautious and not do it exactly, 35
19 percent, 36 percent, right on the nose. I like to build in a
20 little bit of cushion. Is that what you said?

21 A. Yes, that's what the words say.

22 Q. Okay. This isn't a magic BVAP number, though, is it?

23 A. No.

24 Q. Okay.

25 MR. BURSCH: Bailey, September 20, 2021, page 49.

1 And can you scroll down to the bottom so we can get the
2 exhibit number and the page? That's not going to help us.
3 This is part of Defendants' Exhibit 49, which is a compilation
4 of all the Commission hearing transcripts, and I'll represent
5 that this is the transcript from September 20, 2021, page 49.

6 BY MR. BURSCH:

7 Q. Mr. Adelson, we actually have your name here. You say, I
8 had noticed that Dearborn was in two, but what I find is
9 particularly notable is it's approximately 35, 37 percent
10 black, which is -- that's pretty good.

11 Did I read that correctly?

12 A. Yes, that's what the words say.

13 Q. And when you say 35 to 37 percent black, are you referring
14 to a BVAP?

15 A. You know, I don't recall whether it was BVAP or overall
16 population.

17 Q. Let's continue. Now, I know that in one the black
18 population is higher. I think it's in the mid 50s so, you
19 know, I think that I would suggest that is something to look
20 at additionally.

21 Does that refresh your discussion that this was about
22 BVAPs?

23 A. Not necessarily, but it is, as I say in the transcript, it
24 is something to look at additionally, just as there were many
25 things to look at additionally.

1 MR. BURSCH: Okay. Bailey, page 64.

2 BY MR. BURSCH:

3 Q. Mr. Adelson, at the bottom here you say, so if they work,
4 then if the minority population, the black population is in
5 the 40s, in the mid 40s, that has the potential to be okay.
6 Did I read that correctly?

7 A. Yes.

8 MR. BURSCH: Page 80.

9 BY MR. BURSCH:

10 Q. At the top, again, this is you. I don't think this is the
11 right page.

12 MR. BURSCH: Okay. Let's skip this one and go to the
13 September 21st transcript. This is also from Defendants'
14 Exhibit 49.

15 BY MR. BURSCH:

16 Q. At the bottom here, Mr. Adelson, the difficulty is since
17 it would be so much higher than the population needed to elect
18 candidates of choice safely, then you would have to justify
19 perhaps 40, 35 percent. Why did you add that?

20 Did I read that correctly?

21 A. Yes.

22 Q. And the next page at the top, it's one thing having
23 49 percent or 52 percent district, but something that high
24 would be difficult to justify.

25 Did I read that correctly?

1 A. Yes.

2 Q. Okay.

3 MR. BURSCH: Bailey, the September 22nd transcript,
4 pages 92 through 93.

5 BY MR. BURSCH:

6 Q. This is the bottom of 92. Mr. Adelson: I appreciate
7 that. I think, like she and I had discussed at the time, is
8 that the creating a district and presuming that it can elect
9 at 30 percent, that, in my experience, that can be a
10 fraught -- accurate so far?

11 A. Yes.

12 Q. Assumption so I'm not really comfortable with assuming
13 that a district can elect at a 29 percent, 30 percent VAP.
14 VAP is a voting age population? Mr. Adelson, VAP is a voting
15 age population?

16 A. Oh, yes.

17 Q. She and I had talked about having 35 percent as
18 potentially -- I don't want to say as a bottom line because
19 there really aren't any specific bottom lines of what we were
20 talking about. I had seen, in my experience, districts elect
21 in the 35 percent range.

22 Did I read that correctly?

23 A. Yes.

24 MR. BURSCH: Bailey, September 22nd transcript -- I'm
25 sorry, that's the one we were just on. The September 23rd

1 transcript, again from Defendants' Exhibit 49.

2 BY MR. BURSCH:

3 Q. At the top here, this is your words, Doctor Handley's
4 analysis comes in Genesee County for ability to elect based on
5 racially polarized voting study 35 percent to 40 percent. Did
6 I read that correctly?

7 A. Yes.

8 Q. And this statement right here, are you relying on Doctor
9 Handley's September 2nd, 2021, study?

10 A. I believe so.

11 Q. 35 to 40 percent is not a magic number, is it?

12 A. There are no magic numbers.

13 Q. Okay.

14 MR. BURSCH: If you could continue to scroll down
15 onto page 28, Bailey?

16 BY MR. BURSCH:

17 Q. That 35 to 40 percent range is something that I think we
18 would agree is the goal. Is that what you said?

19 A. Yes, that's what the words say.

20 Q. Okay. But a goal is not a magic number?

21 JUDGE NEFF: You know, Mr. Bursch, you can cut the
22 sarcasm. It really is not befitting a good lawyer on cross
23 examination, okay?

24 MR. BURSCH: Thank you, Judge Neff.

25 BY MR. BURSCH:

1 Q. Page 31, I have to go back to what Doctor Handley analyzed
2 and concluded in early September that her threshold is the 35
3 to 40 percent. Is that what that says?

4 A. Yes.

5 Q. Page 60. And I think with Oakland County, I think that
6 we -- yeah, one of the candidates of choice lost actually at
7 35 percent so I would say -- and that was one of the
8 bellwether elections -- I think 40 percent is probably a
9 better starting place. Is that accurate?

10 A. Yes. I also have to add that I'm not suggesting that
11 there are errors in transcription with the substance that I'm
12 saying, but I'm not -- I don't agree that this is a verbatim
13 transcription of what I said, because, frankly, I don't speak
14 like that, but I'm not suggesting that there is an error with
15 the substantive aspects. I just want to make it clear that
16 this is not an accurate reflection of my actual speech.

17 Q. These hearings are all on YouTube so we could confirm them
18 that way, if necessary.

19 A. If you'd like to, sure.

20 MR. BURSCH: Bailey, page 61.

21 BY MR. BURSCH:

22 Q. Commissioner Eid, so we are at 46 percent now. We are
23 trying to get a little lower to about 40 percent; is that
24 accurate?

25 A. Yes. That's what -- that's what the words say.

1 Q. Commissioner Eid, I think with following Doctor Handley's
2 analysis, 40 percent is the area that I would look at. Did I
3 read that correctly?

4 A. Yes.

5 Q. Not a magic number?

6 A. There are no magic numbers. This is about Voting Rights
7 Act compliance and this is about adhering to our expert's
8 racially polarized voting analysis and her ability-to-elect
9 analysis.

10 MR. BURSCH: Bailey, pages 69 to 70, same transcript.

11 BY MR. BURSCH:

12 Q. So I think to your point, yes, according to Doctor
13 Handley's analysis that in Wayne County, Wayne County can
14 elect candidates of choice at 35 percent VAP. Did I read that
15 correctly?

16 A. Oh, on the other page. It's on page 70.

17 Q. I'm sorry, yes, I was using page 70, right.

18 A. Could you move down a little bit, please? Okay. So
19 you're asking me about, which? I'm sorry.

20 Q. The very top here, did I read that correctly? Maybe I
21 should do it again.

22 A. Yeah, that would be good. Thanks.

23 Q. So I think to your point, yes, according to Doctor
24 Handley's analysis that in Wayne County, Wayne County can
25 elect candidates of choice at 35 percent VAP; is that correct?

1 A. Yes. That's what it says.

2 MR. BURSCH: Bailey, pages 107 to 108.

3 BY MR. BURSCH:

4 Q. Middle of the page, Mr. Adelson: I think that I would
5 recommend focusing on the percentages and comparing them to
6 Doctor Handley's percentages for Wayne County which, as I
7 recall, is 35 to 40 percent.

8 Accurate?

9 A. Yes.

10 Q. And then again, this is exactly right. The voting age
11 population that is needed to elect candidates of choice and
12 her range in what we discussed, what she and I discussed,
13 which I'm comfortable with, is that 35 to 40 percent.

14 Accurate?

15 A. Yes, those are the words.

16 Q. Okay.

17 MR. BURSCH: Bailey, Plaintiffs' Exhibit 64. This is
18 the October 4th, 2021, transcript.

19 BY MR. BURSCH:

20 Q. Mr. Adelson, do you recall October 4th being the day that
21 the Linden map was being addressed?

22 A. Offhand, no.

23 Q. Okay. You confirmed previously that you worked closely
24 with General Counsel Pastula as you had promised, correct?

25 A. In general that's true.

1 MR. BURSCH: We need page 20 of this Exhibit 64.

2 BY MR. BURSCH:

3 Q. So this is General Counsel Pastula, and she begins, so,
4 Mr. Adelson has confirmed that he didn't sign off on either
5 the Senate or the congressional plan. Is that accurate?

6 A. Yes.

7 Q. What Doctor Handley's racial bloc voting analysis has
8 given the Commission is the benchmarks and the guide rails for
9 each of the counties that need to be adjusted. It's Wayne
10 County is 35 to 40 percent; is that accurate?

11 A. Those are the words, yes.

12 Q. Genesee is 35 to 40. Is that accurate?

13 A. That's what she said.

14 Q. Saginaw is 40 to 45. Is that accurate?

15 A. That's what she said.

16 Q. Oakland County is 42, 43 percent; that's accurate.

17 A. Yes. Those are the words.

18 Q. Later on this same -- no. Please turn to -- it will be
19 Plaintiffs' Exhibit 140, page 0734.

20 This is still that same day. Again, General Counsel
21 Pastula: So, I believe Mr. Adelson did say if the effort was
22 to be made to get those metro Detroit districts closer to the
23 30 to 40 percent range, that would be an excellent use of
24 time; is that correct?

25 A. Those are the words on the page, yes.

1 MR. BURSCH: Okay. Back to Plaintiffs' Exhibit 64,
2 page 139, please, Bailey.

3 JUDGE KETHLEDGE: What page again?

4 MR. BURSCH: Page 0139 of Exhibit 64.

5 JUDGE KETHLEDGE: Thank you.

6 BY MR. BURSCH:

7 Q. Mr. Adelson, this is you speaking again. The range that I
8 believe Doctor Handley and I talked about in Wayne, the Wayne
9 County part of greater Detroit, would be 35 to 40, but, again,
10 I have to stress there is no absolute drop dead number.
11 That's what you said?

12 A. Yes.

13 Q. Same transcript, page 0075. Mr. Adelson, this is you.
14 Okay. Doctor Handley in her analysis referenced Oakland
15 County as having a 40 percent, approximately, threshold not
16 35 percent. Is that what that says?

17 A. Yes, that's what it says.

18 Q. And Vice Chair Rothhorn responds: We had 42 to
19 43 percent; is that correct?

20 A. That's what it says.

21 Q. And you respond, that is a good kind of benchmark guide
22 post; is that correct?

23 A. Yes.

24 MR. BURSCH: Bailey, sticking with Plaintiffs' 64,
25 page 0062.

1 BY MR. BURSCH:

2 Q. Mr. Adelson, this is you again. Having a range 35 to
3 40 percent, 40 to 45, yeah, I think that's more advisable.
4 Did I read that correctly?

5 A. Yes.

6 MR. BURSCH: Bailey, we're going to fast forward
7 one day to October 5th, Plaintiffs' Exhibit 140, page 1844.

8 BY MR. BURSCH:

9 Q. Mr. Adelson, this is you. That gives us an additional
10 leeway because, remember, it's 35 to 40 percent in Wayne
11 County, 40 to 45 percent in Oakland, so I think that should be
12 looked at as well. Did I read that correctly?

13 A. Yes.

14 Q. Not a magic number?

15 A. There are no magic numbers. This is about Voting Rights
16 Act compliance, because if we don't -- if we're not creating
17 districts that align with racially polarized voting analysis,
18 then we're just picking numbers out of a hat. That does not
19 give minority voters a reasonable opportunity to usually elect
20 their candidates of choice.

21 MR. BURSCH: Bailey, same transcript, page 1837.

22 BY MR. BURSCH:

23 Q. Mr. Adelson, looking at the law says, and what Dr. Handley
24 analyzed and Doctor Handley's analysis is, in Wayne County
25 BVAP and black voters can elect candidates of choice at

1 35 percent. Did I read that correctly?

2 A. Yeah, that's what I said.

3 Q. Okay. All right. Mr. Adelson, we've discussed your
4 commitment to proving everything with robust analysis and not
5 randomly selecting BVAPs. I now want to cover the experience
6 you touted with the Arizona Redistricting Commission.

7 You recall how you discussed with the Commission your
8 experience about the district in Arizona with a Hispanic
9 voting age population in the low 30s?

10 A. I discussed with which commission, Michigan or Arizona?

11 Q. With the Michigan Commission.

12 A. Oh, yes, I remember that.

13 Q. Okay. And how you listened to the Hispanic legislator and
14 determined that it was true, that Hispanics could elect
15 candidates of choice even with a BVAP in the low 30's, right?

16 A. As I testified earlier, it's not -- I didn't just speak to
17 the legislator. I spoke to other people in the community. My
18 team spoke to other people in the community and other
19 legislators, and we did racially polarized analysis and other
20 demographic analysis. So it wasn't as if I spoke to the
21 legislator, he said we can elect at 30 percent, and I said
22 we're good, so let's go meet with the assistant attorney
23 general and tell him that. That is incorrect.

24 Q. Mr. Adelson, in Michigan the Commission received comments
25 from black voters in Detroit who said they could not elect

1 their candidates of choice with the BVAPs in the draft plan,
2 correct?

3 A. I believe so, yes.

4 Q. Just to give the panel an order of magnitude, how many of
5 those types of comments did the Commission receive orally or
6 in writing?

7 A. I have no idea.

8 Q. 10, a hundred, a thousand?

9 A. I have no idea.

10 Q. Okay. In response to those comments did you do the same
11 thing you did in Arizona and tell the Commission that they
12 should take those comments seriously and look at additional
13 data?

14 A. We did more analysis here than we did in Arizona 10 years
15 ago and we provided -- we used tools that weren't available to
16 us 10 years ago, so that the -- as I testified earlier,
17 assuming that 50 percent plus one or 56 percent is needed to
18 elect candidates of choice is not analytically sound. There's
19 no basis for that, so as in Arizona we had analysis that
20 showed us, okay, this is the area that we're going to work in
21 to create districts to create an opportunity to elect, and
22 that's what we did.

23 Q. That data was from Doctor Handley's September 2nd, 2021,
24 presentation to the Commission?

25 A. The data weren't just related to her one-day presentation.

1 She provided -- as I explained earlier, we met with her --
2 when I say we, the general counsel and I met with her. There
3 were additional contacts with the Commission that I believe
4 involved telephone calls that we didn't talk about earlier.
5 There was other analysis that were election results. We
6 looked at, what, 12, 14 general elections plus one primary.

7 We spoke to her about cohesiveness among black
8 voters, typically in Wayne County, so we did not just take
9 September 2nd and say, we're done, we're not going to look at
10 anything else. That is incorrect. We continued to look at
11 robust data from that point until the Commission ended its
12 mapping considerations in early November.

13 Q. Mr. Adelson, you remember the Defendants' Demonstrative 1
14 that we discussed earlier, Doctor Handley's presentation
15 materials?

16 A. Do you mean this?

17 Q. Defendants' Demonstrative 1, the one that had the list.

18 A. Oh, the list, yes.

19 Q. You do remember that?

20 A. Sure.

21 Q. From September 2nd through December 27th, this
22 demonstrative reports only one time that Doctor Handley
23 presented voting data and that was on November 1st, correct?

24 A. That's what the document says, but as I just explained a
25 few moments ago, there were additional conversations that the

1 general counsel and I had with Doctor Handley that are not
2 listed. There are phone calls that are not listed that the
3 Commission had with Doctor Handley, so any suggestion that our
4 communication with Doctor Handley ended on September 2nd is
5 false.

6 There were significant conversations and exchanges of
7 information, and by that I mean verbal exchanges in addition
8 to the in-person meetings or Zoom meetings where we had
9 ongoing conversations, so our interactions with her from an
10 analytical perspective did not stop on September 2nd.

11 Q. Mr. Adelson, is there a single example anywhere in the
12 Commission record where Doctor Handley provided a report to
13 the Commission after September 2nd and before December 27th
14 that involved an analysis of black voting?

15 A. The November 1st document that I had a chance -- and thank
16 you to the Court for giving me an opportunity to review the
17 document. As I started to say earlier, we have her written
18 report, which is correct, there are no pages that say black
19 voting patterns, but in her oral presentation to the
20 Commission she spoke, as I recall, about cohesiveness among
21 these groups with the black community. That's my
22 recollection.

23 Q. Okay. We'll go back and look at that transcript.

24 Let's pivot to your third -- or fourth commitment,
25 criteria number 3, communities of interest in the Michigan

1 redistricting process. Do you recall that?

2 A. I recall that that was a commitment, yes.

3 Q. Okay. And you told the Commission in your interview, it
4 was interesting because that criteria was relatively high on
5 the list of priorities.

6 A. Yes, I recall that.

7 Q. And you told the Commission that, quote, from a community
8 of interest standpoint it can often be to maintain cities,
9 schools, and districts where possible; do you remember when we
10 covered that?

11 A. Yes. And that's true if the redistricting criteria in a
12 particular jurisdiction supports that.

13 Q. Now I want to pull up Plaintiffs' Exhibit 142, page 74.

14 This was the July 9, 2021, presentation you gave to
15 the Commission about racial gerrymandering and the Voting
16 Rights Act, and you talked about communities of interest in
17 this presentation, correct?

18 A. I did. The presentation included more than the
19 information that you just explained, but, yes, I did talk
20 about communities of interest.

21 Q. On page 74 of that presentation, which we're looking at
22 now, you gave the Commission 2002 guidelines that Kansas
23 offered about a community of interest, a guideline you
24 described as a fairly typical definition. Do you recall that?

25 A. Yes.

1 Q. The Kansas definition, social, cultural, racial, ethnic,
2 and economic interests common to the population of the area
3 which are probable subjects of legislation.

4 Did I read that correctly?

5 A. Yes.

6 Q. Were you present when Senator Smith and Representative
7 Lemmons gave their testimony?

8 A. Yes.

9 Q. Do you disagree with what they had to say about the common
10 interests of black Detroit residents and wealthy white
11 residents in Oakland and Macomb counties?

12 A. I don't want to suggest that -- I do not want to suggest
13 that there's only one aspect of communities of interest as the
14 slide explains, and as I testified earlier, the inescapable
15 necessity of doing something to compensate for the loss of
16 population in Detroit was one of the -- was behind the effort,
17 in part, to move the districts above 8 Mile into Oakland
18 County, for example, so I do recall that. I don't want to --
19 I'm not going to concede that communities of interest is --
20 are defined in solely the way that they describe, but clearly
21 I agree that that can be an aspect of a community of interest.

22 Q. Mr. Adelson, yes or no, do you consider Brightmoor and
23 Birmingham to have common social, cultural, racial, ethnic,
24 and economic interests that are probable subjects of
25 legislation?

1 A. Well, first of all, I can't speak to Brightmoor because
2 I'm not sure what that is, and these guidelines are from
3 Kansas.

4 Q. That you presented to the Michigan Redistricting
5 Commission as a fairly typical definition of community of
6 interest, yes?

7 A. Yes. As a talking point, but it's Kansas.

8 Q. Okay. With Mr. Braden on the Hickory map, House
9 District 10, that's the district along the river, right --
10 along the lakeshore?

11 A. Okay. It may be. Right now I'm not recalling the
12 specific numbers, but it could very well be.

13 Q. You testified that the lakeshore community was kept
14 together because all the residents have boats.

15 A. Well, no. I think I said more than that. That they share
16 maritime interests.

17 Q. Yes.

18 A. Yes. And that goes beyond just having a boat.

19 Q. The southern half of that district is poor and black. How
20 do you know that they all have maritime interests?

21 A. I also didn't say the entire district, and I think that
22 one of the things that you're suggesting is that redistricting
23 is this pristine process where we can keep together all
24 communities, create perfectly shaped districts, and that can
25 satisfy the interests of everyone. I have never been able to

1 either achieve that or see that in any of the redistrictings
2 I've either reviewed or been involved with.

3 Q. You've testified several times now that a driver of the
4 district drawing was a population shift, correct?

5 A. That was one of them, yes.

6 Q. Okay. But didn't you tell the commissioners during the
7 process that population deviations by as much as 12 or
8 13 percent are okay for state maps?

9 A. No.

10 Q. Okay.

11 MR. BURSCH: Bailey, could you please pull up
12 Plaintiffs' Exhibit page 140 (sic), page 78. I'm sorry, this
13 needs to be Exhibit 140, Bailey. Actually, I'm not sure
14 that's correct. Oh, it's the September 21st, 2021,
15 transcript, page 36. There we go.

16 BY MR. BURSCH:

17 Q. So, Mr. Adelson, again this is you talking at the top, am
18 I reading this correctly. I would suggest a bit of a mind
19 shift about that and the population deviation if they exist
20 beyond the two, three, four percent can be justified. Did I
21 read that correctly?

22 A. Yes.

23 Q. And then at the bottom, I mean, I've done districting
24 where initial districting are 12, 13 percent. Deviations are
25 not coming in close to that. Do you see that?

1 A. Yes.

2 Q. Okay.

3 MR. BURSCH: I have no further questions at this
4 time.

5 JUDGE MALONEY: Mr. Braden, you may inquire.

6 MR. BRADEN: Your Honors, I see no need for any
7 redirect of this witness.

8 JUDGE MALONEY: Thank you. Counselor, you may step
9 down with the Court's thanks.

10 THE WITNESS: Thank you, Your Honor.

11 *(Witness excused at 11:35 a.m.)*

12 JUDGE MALONEY: The Commission may call its next
13 witness.

14 MR. LEWIS: Your Honors, Patrick Lewis with the
15 Commission. The Commission calls Doctor Jonathan Rodden to
16 the stand.

17 JUDGE MALONEY: Please step forward, sir, and be
18 sworn.

19 *JONATHAN RODDEN,*

20 *having been sworn by the Clerk at 11:35 a.m. testified as*

21 *follows:*

22 THE CLERK: Please be seated. State your full name
23 and spell your last name for the record, please.

24 THE WITNESS: Jonathan Rodden, R-O-D-D-E-N.
25

DIRECT EXAMINATION

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BY MR. LEWIS:

Q. Good morning, Doctor Rodden.

A. Good morning.

Q. Okay. Doctor Rodden, were you engaged by the Commission as an expert in this case?

A. Yes, I was.

Q. Okay. And did you prepare an expert report in this case?

A. I did.

Q. Okay.

MR. LEWIS: If we can display Defense Exhibit DTX25?

BY MR. LEWIS:

Q. Doctor Rodden, do you recognize this as your report?

A. Yes.

Q. Okay. I'd like to turn to appendix A beginning on page DTX25-43. Okay. Doctor Rodden, is this your curriculum vitae?

A. Yes, it is.

Q. Can you tell the Court a little bit about your educational background?

A. Yes. It started here in Michigan at the University of Michigan in Ann Arbor where I received my undergraduate degree in political science.

After that I was a PhD student at Yale University -- or immediately after that I was a full-ride scholar in

1 Germany. After that I worked on my PhD at Yale University and
2 I received my PhD in political science there.

3 Q. I believe your undergraduate was in political science as
4 well?

5 A. Yes.

6 Q. Okay. And how are you currently employed?

7 A. I'm currently a professor at Stanford University.

8 Q. Okay. And what department are you affiliated with?

9 A. I'm in the political science department, my primary
10 appointment, but I also have an affiliation with the Stanford
11 Institute for Economic Policy Research and with the Hoover
12 Institution at Stanford University.

13 Q. Okay. And for how long have you been employed at Stanford
14 University?

15 A. I think I arrived at Stanford in -- around 2008.

16 Q. Okay. And prior to Stanford, where were you employed?

17 A. My first job after graduate school was as an assistant
18 professor at the Massachusetts Institute of Technology, and
19 then I received tenure there before moving on to Stanford.

20 Q. Okay. All right. And I see a reference, Doctor Rodden,
21 to the spacial social science lab at Stanford in your CV. Can
22 you explain that to the Court?

23 A. Yes. That's something that I created some years ago.
24 It's -- we have some space but also it's more importantly than
25 space, it's a group of people who work together. I do some

1 teaching on spacial analysis, so looking at the geography and
2 statistics. And so we have a group of undergraduates and
3 graduate students who work with us on a variety of projects
4 most of which have to do with politics, geography, a number of
5 projects related to gerrymandering. In fact, some of our work
6 on simulations emerged from that group. And it's still --
7 still something that I do to -- teaching a class on political
8 geography that teaches some spacial analysis tools, you know,
9 with a special focus on politics, something I teach every
10 other year.

11 Q. Okay. And, Doctor Rodden, have you recently received any
12 noteworthy awards?

13 A. I've had some awards for articles and books. The most
14 recent award I received was a Guggenheim fellowship.

15 Q. Okay. And what was the Guggenheim fellowship?

16 A. This is an award that -- every year a group of scholars
17 receives this award as a -- allows them to have some break
18 from teaching to work on a big project.

19 Q. Okay. Doctor Rodden, what are your areas of academic
20 research?

21 A. I'd say the most -- the theme that runs through a lot of
22 it is representation but also increasingly geography. I've
23 been working on questions related to political geography for
24 many years, so politics, representation, geography, I would
25 say are the most central themes.

1 Q. Okay. And, Doctor Rodden, when you talk about political
2 geography, what do you mean?

3 A. I mean the distribution of partisanship of voting behavior
4 but also people's preferences, their thoughts about politics.
5 The distribution of those things in space, so putting a map on
6 some things that we know about politics.

7 Q. Okay. And is gerrymandering a topic that can be studied
8 with political geography?

9 A. Yes. That has become an important part of what I've
10 worked on. I've published a number of papers on that topic.

11 Q. Okay. And do you teach on political geography?

12 A. Yes. I teach frequently both on -- at the undergraduate
13 and graduate level some classes on political geography.

14 Q. Okay. And do those classes cover topics of redistricting
15 and gerrymandering?

16 A. Yes.

17 Q. Okay. And I believe you mentioned this already, but have
18 you published peer reviewed academic research on the topic of
19 political geography?

20 A. Yes. That's the main focus of my research in recent
21 years.

22 Q. Okay. I'd like to turn now to page DTX25-45. Okay. And
23 I'd like to zoom in on the second article from the top and
24 it's titled Unintentional Gerrymandering.

25 Doctor Rodden, can you tell us a little bit about the

1 unintentional gerrymandering paper?

2 A. Yeah. This is a paper that seems to have started a bit of
3 a literature -- you know, a set of other papers in political
4 science, and this is a paper that in some ways was indirectly
5 inspired by the state of Michigan, but it was -- the focus in
6 this paper was using some data from Florida, but the basic
7 idea in this paper and the thing that got me interested in
8 trying to conduct redistricting simulations was really not
9 about gerrymandering, it was -- I viewed gerrymandering as
10 something that was getting in the way of measuring what I
11 really wanted to understand, which is the geography of voters
12 in space. And the question was, what if we get politicians
13 out of it and we don't have this concern that what we see in
14 maps is something that reflects the interest -- you know, the
15 political goals of redistrict drawers, what is just the role
16 of political geography in explaining the transformation of
17 votes to seats in representative systems.

18 And so we developed -- and this was with a graduate
19 student of mine, Jowei Chen, we developed a way of using
20 computers to simulate large ensembles of redistricting plans
21 and then see what happens.

22 And so what we found is that in a number of states,
23 including Michigan, when the party of the -- when one of the
24 parties is highly concentrated in space relative to the other,
25 that we end up with a distribution of votes to seats that is

1 rather strikingly unfair to the party that is highly
2 concentrated in space. If we believe that 50 percent of the
3 votes should correspond to 50 percent of the seats, that does
4 not happen in many U.S. states, and then I've gone from there
5 to look at lots of different places around the world and find
6 that this is something that happens rather frequently when
7 there's a high correlation between population density and
8 voting behavior.

9 JUDGE KETHLEDGE: I'm just going to interject, sir,
10 and just say what I've been saying, I'm sure, you have to slow
11 it down a little bit for our reporter, so I'm the first, you
12 know --

13 THE WITNESS: Thank you for that. And I'm
14 actually -- believe it or not, I'm actually trying, but I will
15 try.

16 JUDGE KETHLEDGE: I mean, everybody does it.

17 THE WITNESS: Can you imagine how my students feel?

18 BY MR. LEWIS:

19 Q. All right. And so, Doctor Rodden, I think we've heard the
20 topic about, you know, computer simulations or simulated
21 plans. Is that what you're referring to?

22 A. Yes.

23 Q. Okay. And was this the article Mr. Trende referred to in
24 his testimony last week?

25 A. I believe so, yes.

1 Q. Okay. And I'd like to turn -- I'm sorry to go backwards
2 on your CV, but if we can turn to page DTX25-44? Okay. And
3 I'd like to refer to the second article from the bottom, which
4 is titled, Cutting Through the Thicket. And, Doctor Rodden,
5 can you explain this paper?

6 A. This is a paper that's a couple years later and instead
7 of -- at some point rather quickly Jowei Chen and I realized
8 that when we're drawing a lot of simulations, it teaches us
9 something not only about geography but potentially also
10 something about gerrymandering, and we started to realize that
11 perhaps one way of using these simulations is to compare a
12 distribution of computer drawn plans with an actual enacted
13 plan and learned something about the intent of the map drawers
14 or at least whether -- whether partisanship was taken into
15 consideration when the maps were drawn, so this paper explains
16 how it's possible to use simulations to identify a plan that
17 is an outlier relative to a group of simulations, and that has
18 become a technique that is used frequently in court cases
19 related to partisan gerrymandering.

20 Q. Okay. All right. And have you published other peer
21 reviewed research that uses these simulations or ensembles of
22 maps?

23 A. Yes.

24 Q. Okay. I'd like to turn now just as perhaps one example of
25 that to page DTX25-46.

1 Okay. And specifically it looks like you have a book
2 chapter, it's the very first one, Political geography and
3 representation. If we can zoom on that?

4 Okay. Doctor Rodden, can you explain to us this
5 particular book chapter?

6 **A.** Yes. This was fairly recent. This is a book that was
7 edited by Moon Duchin and Olivia Walch, and this particular
8 chapter was a deep dive on the state of Pennsylvania, which
9 I've also studied elsewhere, using simulations to try to
10 understand the nature of representation in Pennsylvania and to
11 give us a sense of what the geography of Pennsylvania implies
12 for the drawing of districts.

13 **Q.** And did this publication involve the use of simulation
14 techniques to study that question?

15 **A.** Yes.

16 **Q.** Okay. And, finally, I'd like to look at page DTX25-043.
17 And I'd like to ask you about your 2019 book called, Why
18 Cities Lose: The Deep Roots of the Rural -- or excuse me, Of
19 the Urban-Rural Divide. The first one.

20 **A.** This is something that after maybe a decade or so of
21 research on this topic I pulled together a lot of the ideas
22 and analyses that I had been building on this topic, and this
23 book tries to tell the bigger story about how this works, and
24 it really starts with the industrial revolution and the rise
25 of labor unions and the -- where this concentration in space

1 of partisan support comes from, and then tries to explain how
2 that evolves over time, and there certainly are some
3 discussions of Michigan in the book, but -- Michigan is a
4 classic example of much of what I discuss in this book, which
5 is that sometime around the new deal we end up with the
6 emergence of a concentration of support for Democrats in urban
7 areas like Detroit.

8 And after the great migration and some of the other
9 transformations in voting behavior in the U.S., especially
10 after the 1980s, we see a big increase in the correlation
11 between population density and voting, and so this scenario in
12 which the party of the left is highly concentrated in urban
13 areas has grown overtime, and then the book does a lot with
14 simulations and other analyses to try to understand how this
15 matters for representation and how even without
16 gerrymandering, even without intentional line drawing in favor
17 of Republicans we will often end up with a set of districts
18 that favors Republicans in the transformation of votes to
19 seats.

20 Q. Okay. And, Doctor Rodden, you've spoken about some of
21 your publications. Do you use the simulations technique in
22 some of your other professional work as well?

23 A. Yes.

24 Q. Okay. And is there a specific simulations software
25 package or tool? I'm not sure the right way to phrase it, but

1 is there a specific, like, piece of software that you use to
2 conduct simulations?

3 A. That answer has changed over time. At the beginning when
4 Professor Chen and I were developing this technique, we were
5 developing our own approach. There was no existing approach
6 like this, and so we developed our own set of tools. Over
7 time this has become a cottage industry and there have been a
8 number of competing tools that I think do a better job than
9 what we initially had done, and I believe the same redist
10 package within the R software package that Mr. Trende was
11 reporting on, it's also one that I use and that's currently
12 the one that I find most useful and fastest and easiest to
13 work with.

14 Q. Okay. Doctor Rodden, have you previously served as an
15 expert witness?

16 A. Yes.

17 Q. If we can turn to page DTX25-50. Doctor Rodden, with the
18 proviso I think there may be one or two cases appearing on the
19 preceding page, but are these -- at least in this section of
20 your CV, are these the list of cases where you've served as a
21 testifying expert?

22 A. Yes, I believe so.

23 Q. Okay. And do these cases relate to redistricting or
24 election law?

25 A. Yes.

1 Q. I'd like to talk about just a few. You have here listed
2 near the top of the page three cases in 2022 in the Ohio
3 Supreme Court. Do you see those?

4 A. Yes.

5 Q. Okay. What was the nature of your work in those cases in
6 the Ohio Supreme Court?

7 A. The Ohio constitution is similar to the Michigan
8 constitution in that it has an explicit requirement of
9 partisan fairness. So my job in this -- in these reports,
10 which were for the congressional districts and for the State
11 Senate districts and the State House districts, was to analyze
12 the partisanship of the -- enact the plan that the legislature
13 had drawn and to -- and my argument was that -- or
14 demonstration was that the partisan fairness of those plans
15 was nowhere near what the Ohio constitution had required.

16 Additional analysis that I did was to actually
17 draw -- to try to draw a map that complied with all of the
18 very specific redistricting criteria in Ohio and show that it
19 was possible to bring the partisan unfairness scores down
20 substantially relative to what the Court had done and -- or
21 what the legislature, excuse me, had done. And so I made the
22 claim that the partisan fairness requirement in the Ohio
23 constitution had not been upheld.

24 Q. Okay. And did the Ohio Supreme Court credit your opinions
25 in its decisions in those cases?

1 A. Yes.

2 Q. So I'd like to ask you about another case on here which is
3 *Bethune-Hill* in 2017. About halfway down. There you go.

4 What was the nature of your work in the *Bethune-Hill*
5 case?

6 A. I was an expert witness for the plaintiffs in this case,
7 and this was a racial gerrymandering case. The nature of this
8 case was that the legislature when determining how it would
9 approach the Voting Rights Act, it had gone to a very rural
10 part of Virginia and identified racially polarized voting and
11 found -- found that 55 percent BVAP was necessary for electing
12 candidates of choice, but then took that BVAP from rural
13 Virginia and applied it all throughout Virginia, including in
14 places like Richmond where there's a lot of crossover voting
15 and where the BVAP required to elect candidates of choice is
16 likely much lower.

17 So the legislature had taken every majority black
18 vote tabulation district in Virginia and placed them in a --
19 in a 55 percent BVAP district, so all of these districts
20 were right at the 55 percent mark. And so my job in this
21 case was to do a holistic detailed analysis looking
22 district-by-district at each of these districts and showing
23 the ways in which race predominated in the drawing of that
24 plan.

25 This included looking at individual vote tabulation

1 districts that had been split right along residential roads
2 that provided the dividing line between black neighborhoods
3 and white neighborhoods. It went through really every VTD in
4 the plan. It was a lengthy report with a lot of maps, and the
5 goal there was to try to explain the ways in which race
6 predominated at every step of the way, and where other
7 redistricting criteria were subordinated in the construction
8 of that plan.

9 Q. Okay. And did -- and did the district court in that case
10 credit your testimony?

11 A. Yes, I believe so.

12 Q. Okay. And I'll ask you about -- I think one more case
13 really to focus on which is the *Carter v. Chapman* case in
14 Pennsylvania from last year. Do you recall that case?

15 A. Yes.

16 Q. Okay. And can you briefly describe your role in that
17 case?

18 A. This was an impasse case in which the legislature and the
19 executive couldn't decide on a map and so a proceeding was --
20 took place which was very unique. I had not taken part in
21 something like this before where lots of parties presented
22 maps to the Court and presented their maps and explained
23 features of the maps, county splits, compactness, and so forth
24 and then the Court selected a map for implementation.

25 Q. And you prepared one of the map submissions; is that

1 correct?

2 A. Yes. I was one of the experts presenting a map.

3 Q. Okay. And did you analyze partisan fairness as part of
4 your work in that case?

5 A. Yes. That was one of the features of the map that I
6 believed was attractive about it.

7 Q. And which congressional plan did the Pennsylvania Supreme
8 Court adopt in that case?

9 A. They chose my plan, and it has been implemented and is
10 still in place at the congressional level in Pennsylvania.

11 Q. Okay. And have you testified as an expert in a Section 2
12 case before?

13 A. Yes.

14 Q. Okay. And has your testimony ever been -- have you ever
15 been disqualified or excluded as an expert witness in any
16 case?

17 A. No.

18 Q. Okay.

19 MR. LEWIS: Your Honors, at this time I move the
20 admission of Doctor Rodden as an expert in the fields of
21 political science, political geography, and redistricting.

22 JUDGE MALONEY: Any objection?

23 MS. GREEN: No objection, Your Honor.

24 MR. LEWIS: Your Honors, pursuant to the stipulation
25 with counsel and given Doctor Rodden's testimony, we move the

1 admission of Doctor Rodden's report, DTX25.

2 JUDGE MALONEY: Any objection?

3 MS. GREEN: No objection.

4 JUDGE MALONEY: Received.

5 MR. LEWIS: Thank you.

6 *(At 11:56 a.m. Exhibit No. 25 was admitted.)*

7 BY MR. LEWIS:

8 Q. All right. Doctor Rodden, I'd now like to turn to page
9 two of your report.

10 A. I wonder if I might be able to have a copy of the
11 report on the --

12 Q. Yes. I apologize.

13 A. -- table with me? It might help us move faster through
14 some of these.

15 JUDGE KETHLEDGE: What's in this binder?

16 MR. LEWIS: I believe it's his report, and I believe
17 we also have Mr. Trende's report in there as well.

18 JUDGE KETHLEDGE: I already have all of this stuff.

19 BY MR. LEWIS:

20 Q. I missed my cue there, but -- Doctor Rodden, I apologize
21 for that. But now that we have this, let's turn to page -- I
22 think we have page two up on the screen.

23 Doctor Rodden, what did you understand to be your
24 assignment in this case?

25 A. My assignment was to review the report of Mr. Trende and

1 analyze his claims that race predominated in the construction
2 of both the Hickory and Linden plans.

3 Q. Okay. So, I'd like now to turn to page six of your
4 report. And you have here a section on the geography of
5 partisanship in Michigan. Doctor Rodden, can you talk about
6 the political geographic challenges the Commission faced as it
7 set out to redistrict Michigan in 2021?

8 A. Certainly. Having written this book and having worked on
9 Michigan for a number of years, I understood right away when
10 the Commission was created that they would have their work cut
11 out for them in trying to abide by the partisan fairness
12 criteria, and this was for the reasons I was trying to
13 describe earlier, that as a result of this historical process
14 through which the American parties have emerged as very --
15 with one very urban party and one that's most exurban and
16 rural, that this would create difficulties in the production
17 of a plan that has very low levels of partisan bias.

18 And for all the reasons I was discussing earlier, the
19 Democrats are highly concentrated in Michigan, primarily in
20 the Detroit area and there are, of course, also some smaller
21 cities that come into play, but the big problem for the
22 Democrats in Michigan is that a great deal of support is
23 concentrated in areas where a plan that's drawn without
24 regards for partisanship will generate extremely Democratic
25 districts and that makes for an inefficient distribution of

1 support across districts, exactly the kind of thing I've been
2 working on for a number of years.

3 Q. Okay. And just to make sure that I'm clear, when you talk
4 about voters being inefficiently distributed in space, what
5 are we talking about here?

6 A. Yes. What I mean by this is if we think about the vote
7 shares of the parties as arranged in something like a
8 histogram. So if you think about what it looks like, if
9 you've ever seen a distribution of income, an income is
10 distributed in most societies -- Aristotle was the first to
11 notice this but it's true almost everywhere. What Aristotle
12 said is that the rich are everywhere few and the poor are
13 many. And what he meant by that is if you look at a
14 distribution of income there will be a large hump with
15 relatively poor people and people in the middle and then there
16 will be a tail on that distribution way out in the extremes,
17 that is where the rich are. And this is a distribution that
18 we see in many societies. This is called a right skewed
19 distribution where there are a few people out in the tail of
20 distribution that are extremely wealthy.

21 Well, you end up with something very similar in the
22 distribution of partisanship in a place like Michigan. You
23 end up with a lot of districts where, if we think instead of
24 income, we think about the Democratic vote share, we have a
25 lot of places with a kind of a low to middling Democratic vote

1 share and then we end up with a handful of places where out in
2 the tail of the distribution where the Democratic vote share
3 is extremely high and so this creates an inefficient
4 distribution of support in the sense that the Democratic votes
5 are concentrated in districts that Democrats win by excessive
6 margins, and they often end up with districts that they lose
7 by relatively small but comfortable margins. That is
8 something that emerges from these simulations that I've been
9 talking about.

10 Q. And I'd like now to refer to figure one on page eight, and
11 specifically we have a blowup.

12 MR. LEWIS: If we can go to the first page of the
13 blowup to hopefully make this look a little clearer than
14 what's on page eight? Okay.

15 BY MR. LEWIS:

16 Q. So, Doctor Rodden, I would like to make sure we're
17 oriented to this figure. You report on the X axis, you say
18 simulated districts ranked by Democratic vote share. What
19 simulated districts are you referring to here?

20 A. What I did in working on this case is I took a similar
21 approach to Mr. Trende in that I used a similar simulation
22 approach. In fact, I adopted his code and simulated 50,000
23 redistricting plans for the Michigan House, and what I'm going
24 to do here is present the data in a similar way to how
25 Mr. Trende presented the data, although what he did is he

1 chose a part of Michigan and simulated districts for three
2 counties essentially in the southeast of Michigan, which, for
3 my purposes, is not very useful. I simulated plans for the
4 entire state of Michigan here because this is something that
5 allows me to actually analyze partisan fairness and to say
6 something about the distribution of support for the parties
7 across districts.

8 So, what we see here is we rank the districts, the
9 simulated districts, so we're running all these simulations,
10 and so for each one we're going to rank those -- those
11 plans -- I'm sorry, we're going to rank the districts within
12 the plan by Democratic vote share. So, on the left-hand side
13 we're looking at districts in rural Michigan that are
14 relatively Republican, so that 30 percent is basically -- you
15 can think of that as 70 percent Republican.

16 And so the red dots are the range of the simulation
17 results for places that are majority -- for districts that are
18 majority Republican. The blue dots are the range of
19 simulations for all of the plans that are majority Democratic,
20 and the yellow is the average of the simulation at that -- at
21 that -- at that -- average Democratic vote share in the
22 simulated plans at that rank.

23 And so I -- there's just a lot to look at here, but
24 the thing that I think is -- for now is most impressive about
25 this is to look at the far left and to look at the far right,

1 and the thing we see there is that on the far left there are
2 only a couple of districts where the Republican vote share is
3 north of 70 percent, which is to say that the Democratic vote
4 share is below 30 percent, so there are only a couple of what
5 you might think of as really strongly landslide Republican
6 districts, and on the right-hand side of the district,
7 however, there are a very large number of districts that
8 emerge from the simulations that are above 70 percent. I
9 can't remember -- I think it's 16 districts where the average
10 Democratic vote share is above 70 percent, and as you can also
11 see, there are no Republican districts that are above 80
12 percent, so no districts that are below 20 percent Democratic
13 but yet there are quite a few districts on the Democratic side
14 that are above 80 percent, and there are even quite a few, I
15 think we can count, one, two, three, four, that are above 90
16 percent.

17 So if we just let a nonpartisan -- you know, blind as
18 to party, blind as to race, we let the computer draw the
19 plans, we will end up with a great deal of concentration of
20 support for Democrats in the tail of the distribution, so
21 we'll create that situation I described where it's difficult
22 for the Democrats to receive representation in terms of seats
23 that is the same as their vote share.

24 We can also see that in the middle of this of -- in
25 the middle of the figure, somewhere around 55, which is kind

1 of the -- you know, the most -- you know, kind of the -- 55
2 will be a little bit further to the left and it's only five
3 over from 50, but we see that in the middle of the
4 distribution there we see a lot of districts where the average
5 simulation in these contested kind of pivotal districts is
6 pro -- is pro Republican, so we end up with a better -- you
7 know, we end up with fewer landslide victories for the
8 Republicans and lots of landslide victories for the Democrats.

9 Q. Okay. And just as one point of clarification, describe
10 Democratic vote share. How is that computed?

11 A. Yes. This is -- my -- throughout my report I follow the
12 practice that most political scientists would use and also the
13 practice that I understood the Commission to be using which
14 was to create an index from a variety of elections, and I
15 chose the same elections -- and I should say, these are
16 statewide elections. I chose the same elections as the
17 Commission, so there were 13 elections from the year 2012 to
18 the year 2020, and the majority of these took place since 2016
19 so they're a bit more -- they're a bit oriented towards more
20 recent elections, but these also include not just presidential
21 years but mid-term years, which I think is important to really
22 get a sense of what partisanship is. We don't want it to be
23 driven by candidate effects in a particular race.

24 Q. Okay. Okay. And does this figure provide evidence of the
25 inefficient distribution of Democratic voters in Michigan?

1 A. Yes. I think it's striking evidence of that.

2 Q. Okay. Is this what you've described elsewhere as natural
3 packing?

4 A. Yes. We could call it natural packing or in that early
5 article we talked about, Professor Chen and I referred to it
6 as unintentional gerrymandering.

7 Q. Okay. I'd like to now turn to table one from your report
8 which is on DTX25-13. If we can go to page two of our
9 blowups. Okay. Here we go.

10 And -- so, Doctor Rodden, we're -- have -- social
11 scientists have attempted to quantify the question of partisan
12 fairness; is that correct?

13 A. Yes.

14 Q. Okay. And I see here three measures of partisan fairness
15 on this page; lopsided margins, mean median, and efficiency
16 gap. Do I have that right?

17 A. Yes.

18 Q. Okay. What's the lopsided margins test, do you know?

19 A. Yes. These are -- I think these were described fairly
20 well by Mr. Trende on -- when he was testifying last week, but
21 I'll just briefly review.

22 The lopsided margins index is just taking each --
23 each party and looking at the size of victory for the victor
24 in each -- in each case -- or looking at the vote share of the
25 winner in each case and then looking at the vote share of the

1 winners -- for all the winners of the other party and taking
2 the difference between those two. It's really just only
3 capturing the extent to which a party has -- wins by more
4 lopsided margins than the other, and so thinking back to that
5 figure, it really captures the extent to which the Democrats
6 are winning more of their districts by more lopsided margins
7 than are the Republicans. In some ways it's the simplest,
8 perhaps easiest measure to understand.

9 The mean median difference, I think it's helpful
10 here, again when I described that income distribution, you
11 think about a distribution where there's a big density on the
12 left-hand side of the distribution and then a tail way out to
13 the right, you have what's called a very skewed distribution,
14 and so if we take the mean of that distribution and the
15 median, the more skewed is that distribution, the larger will
16 be the gap between the mean and the median so -- and it's --
17 the same thing is true with income, and here it's with
18 district level Democratic vote shares, that when we have a lot
19 of really big landslide districts, for instance in a place
20 like Detroit, we will have a mean Democratic vote share that
21 is higher than the median Democratic vote share because of
22 that skew in the distribution, so people have taken to looking
23 at the mean median difference as another way of capturing the
24 extent to which a party has its support concentrated in those
25 excessive margin districts, so that's what the mean median

1 difference does.

2 The efficiency gap, finally, is one that we also
3 heard about. It takes the -- for each party it looks at how
4 a -- how large -- again, this concept, how large was your
5 margin of victory in the places that you won, so how many
6 surplus votes did you get in the places that you won, and then
7 looks at how many wasted votes did you have in the districts
8 that you lost, and so the more of your votes that are either
9 surplus or wasted, the more inefficient is your support.

10 And so here we're looking at that -- comparing the
11 two parties among that -- along that dimension, what share of
12 their votes were wasted or surplusd in this way, and if one
13 is much higher than the other, we subtract them and that's
14 where we get this gap

15 Q. Okay. And just to make sure I understand, for all three
16 is a higher value showing a higher degree of partisan skew or
17 partisan unfairness?

18 A. Yes. So if the unfairness favored the Democrats, these
19 numbers would be negative. So a positive number means this is
20 the -- this is the extent to which the Republicans are favored
21 by the map.

22 Q. Okay. And are these three measures of partisan fairness
23 accepted among political scientists?

24 A. Yes. There are -- some people argue about which one is
25 better and they have their -- you know, their various

1 favorites, but these are broadly used and also in the courts.

2 Q. Okay. And are these measures available to the public on
3 websites like PlanScore or Dave's Redistricting?

4 A. Yes. This has become an important part of sort of an open
5 redistricting process, especially in this last cycle we've
6 seen the emergence of tools, online tools like PlanScore. So
7 PlanScore was actually -- one of the creators of PlanScore was
8 a former student of mine and still helps work with that
9 website. They have a tool where it's possible to upload a map
10 and get accurate versions of these and other partisan fairness
11 indicators.

12 There's also something called Dave's Redistricting
13 app. I have served as a kind of -- kind of a consultant to
14 them when they are adding new tools to their very impressive
15 online platform. I mean, it's at the point where I suspect
16 the firms that create this software should be worried because
17 much of what the very costly software does can now be done in
18 something like Dave's Redistricting app, and they've added a
19 lot of very good functionality in recent years, and they also
20 have measures of partisan fairness indices and pretty good
21 descriptions for the general public to have a sense of what
22 those mean.

23 Q. Okay. And, Doctor Rodden, here generally what do you find
24 with respect to measures of partisan fairness in the 50,000
25 simulated plans that you created?

1 A. Yeah. So this -- these numbers really kind of are just a
2 way of quantifying what I was talking about earlier when I was
3 claiming that there's a lot of concentration of Democratic
4 support in the tail of the distribution. So the lopsided
5 margin index here for the House of Representatives, which was
6 the example we were just using, if we look at the line for
7 average of 50,000 simulations we see a lopsided margins index
8 of 7.4 and we see a mean median difference of 4.1 and
9 efficiency gap of 12.9, which, you know, these are considered
10 to be relatively large quantities. This is -- again, just to
11 be clear, this is from the simulations so this is -- this
12 is -- this is just from party and race neutral computer
13 simulations. We see fairly substantial bias in favor of
14 Republicans emerging.

15 Q. And you see that with -- is it fair to say you see that
16 both with respect to the House and the Senate in your
17 simulations?

18 A. Yes. If we look at the Senate we see something similar,
19 so just reading across, 6.9 for the lopsided margin index, 3.7
20 for the mean median difference, and 12.5 for the efficiency
21 gap.

22 Q. Okay.

23 MR. LEWIS: Your Honors, I'm at kind of a natural
24 breaking point if the Court is interested in taking lunch?

25 JUDGE MALONEY: All right. Thank you, counsel, for

1 the indication that we're moving on to another subject. We
2 will break for lunch and resume at 1:15. Thank you.

3 THE CLERK: All rise, please. Court is in recess.

4 *(Recess taken at 12:16 p.m.; reconvened at 1:18 p.m.)*

5 THE CLERK: All rise, please. Court is in session.

6 You may be seated.

7 JUDGE MALONEY: We are back on the record. Counsel
8 for the parties are present. Mr. Lewis, you may continue.

9 MR. LEWIS: Thank you, Your Honors.

10 BY MR. LEWIS:

11 Q. And good afternoon, Doctor Rodden.

12 A. Good afternoon.

13 Q. Before the break we were talking about the measures of
14 partisan fairness in the simulations, and I wanted to turn to
15 a slightly different topic. In addition to the unintentional
16 gerrymandering or natural packing that we discussed, can it be
17 the case that partisans can try to give their party an
18 advantage by packing the supporters of another political party
19 into a small number of districts?

20 A. Yes. So even when we see from the simulations that the
21 one party is highly concentrated in a small number of
22 districts, it's possible to go beyond what happens in a
23 simulation. So it's possible through actually paying
24 attention to party and -- and working to generate a partisan
25 map one can go well beyond the bias in favor of one party or

1 the other. That would happen in a completely nonpartisan
2 process like the simulations capture.

3 Q. Okay. And did you evaluate if something like that
4 happened in Michigan in the prior decade?

5 A. Yes. Throughout Mr. Trende's report he had been referring
6 to the previous plan as the -- what he called the benchmark
7 plan for both the House and the Senate, so for that reason I
8 also examined the benchmark plan relative to the simulations.

9 Q. Okay. And on pages nine and ten of your report, Doctor
10 Rodden -- if we can pull up the bottom of page nine and the
11 top of page 10?

12 You describe Michigan here in this section of your
13 report as a classic case of that partisan unfairness
14 phenomena. Can you elaborate on that concern?

15 A. Yes. This is an example of a case where, even though the
16 simulations end up giving us results as we saw in table one
17 that are highly pro Republican, it is possible through careful
18 crafting of district boundaries to go beyond that and create
19 larger bias in favor of the Republicans than that which is
20 indicated in those simulations.

21 Q. Okay. And who is Jeff Timmer? You reference him in your
22 report.

23 A. I believe he is a -- was an operative in the Michigan
24 Republican party and was someone who was interviewed and gave
25 some descriptions of the map drawing process in the -- for the

1 previous round of redistricting.

2 Q. Okay. And on the top of page 10 you quote part of his --
3 an e-mail that you referenced and it discusses efforts to,
4 quote, cram all the Dem garbage into four southeastern
5 Michigan districts. Can you explain what that -- why you felt
6 that quote was relevant to this case?

7 A. I think in some ways it's a very -- it's a very simple
8 distillation of this effort I'm talking about to go beyond the
9 packing that we already see in the simulations and pack the
10 Democrats even further in this case into -- he's discussing
11 four southeast Michigan districts, and he says the obvious
12 objective, putting Dems in an Dem district and Reps in a GOP
13 district.

14 Q. All right. And so I'd like now to turn to figure two on
15 page 10 of your report. Maybe we'll try your report instead
16 of our separate figures just to see if it displays clearly
17 enough.

18 So, Doctor Rodden, can you orient the Court to this
19 figure two? What is this showing us?

20 A. So this is exactly the same figure we saw before, nothing
21 has changed with the red dots or the blue dots and nothing has
22 changed with the yellow dots. Remember, the yellow dots are
23 the averages for the simulations at each rank.

24 And what I now add to the graph, if I just take the
25 benchmark House plan that was in place from 2012 to 2021 and I

1 go through the same exercise, I just layout the Democratic
2 vote shares in those districts across -- ranking from zero to
3 110, and there are a few things that stand out.

4 So, we see on the far right of the graph, if -- I
5 hope it's possible for people to make out the difference
6 between the black and the blue. It may not be as clear as it
7 should be, but on the far right, the black dots are at the
8 very high end of the simulation -- that's better I think -- or
9 even beyond the -- the most Democratic district in the
10 simulation. So this is just a visual representation of what
11 it looks like when you try to go the extra mile and do that
12 additional packing. That's what was happening in the
13 benchmark plan.

14 If we could also look -- just maybe keep the same
15 level of zoom and go more toward the middle of the map,
16 there's another thing we see is that there are a lot of
17 districts where the black dots right around the middle in that
18 crucial range where seats might flip back and forth between
19 parties, we see that the black dots are now below the yellow
20 dots. So by cramming as many of the Democrats as possible
21 into the urban districts, there are fewer Democrats now
22 available to contribute to Democratic majorities in suburban
23 districts around the cities.

24 So this is where we see those black dots now end up
25 going well below the average of the simulations, and they

1 start to look more Republican in the zone where seats are --
2 where pivotal seats are won and lost.

3 Q. And then if we return very, very briefly to that table one
4 that we looked at together on page 13 of your report.

5 MR. LEWIS: Okay. If we can zoom to the table?

6 Okay.

7 BY MR. LEWIS:

8 Q. So, Doctor Rodden, do we see on -- do you report in this
9 table, you know, evidence of this intentional gerrymandering
10 in the partisan fairness scores?

11 A. Yes. We already went through and noticed that these were
12 some pro-Republicans measures of partisan fairness for the
13 simulations, but what we can see here, if we look at the House
14 of Representatives and we look at the previous plan, we see
15 that 10 is larger than 7.4 on the lopsided margins index, six
16 is higher than 4.1 on the mean median difference, and then on
17 the efficiency gap, quite a big difference between what was
18 happening in that previous plan and the average of the
19 simulations.

20 So this tells us that, indeed, the effort to make
21 those highly Democratic districts, mostly in Detroit, even
22 more Democratic had this effect of creating greater
23 pro-Republican bias in the plan.

24 Q. Okay. And do you see a similar pattern reported for the
25 Michigan Senate on table one?

1 A. Yes. Again, we see that the numbers are higher for the
2 lopsided margins index, for the mean median difference, and,
3 again, for the efficiency gap.

4 Q. Okay. And, Doctor Rodden, your study in this case, do you
5 understand the Michigan constitution after its amendment in
6 2018 to include a requirement of partisan fairness?

7 A. Yes. This is a big difference from the way maps have been
8 drawn in Michigan in the past. Now built into the
9 constitution, amongst the criteria, is a requirement that the
10 Commission attempt to achieve partisan fairness.

11 Q. Okay. And how -- what did achieving partisan fairness
12 require the Commission to do?

13 A. I should add that the constitution explicitly commands the
14 Commission to use accepted partisan metrics, partisan fairness
15 metrics, and as I think we've established so far, these are
16 the ones they were using.

17 Now, as for what the -- what the constitution
18 required, this is what I hope this exercise and just looking
19 at nonpartisan simulations, what I hope that that reveals is
20 that had they simply implemented the kind of plan that would
21 emerge from a race-blind and party-blind process that only
22 focuses on traditional redistricting criteria, had they done
23 that they would have ended up with an efficiency gap of
24 something like 12.9 in the House or with something like 12.5
25 in the Senate and these are typically understood to be very,

1 very high unfairness scores.

2 So, if they were to do something about that, they
3 were going to have to do something about those districts that
4 we saw in those graphs on the far right side where the
5 simulations would produce 80, 90 percent Democratic districts.
6 It would not have been possible for the Commission to even
7 claim to have attempted to live up to their constitutional
8 requirement had they left those districts in anything like the
9 form they were previously in.

10 Q. Okay. And is it fair to say that, you know, unpacking
11 Detroit is one strategy that would help to achieve partisan
12 fairness in Michigan?

13 A. Yes. And I believe Commissioner Szetela, in her
14 testimony, that was one of the first things she said, that --
15 when asked why couldn't you use the previous redistricting
16 plan and start building from there, her answer was, well, we
17 understood that we had to unpack Detroit, which I think is --
18 you know, she had the same kind of starting point and just
19 knowing these facts about Michigan's political geography that
20 I have.

21 Q. Okay. So I'd like now to turn to figure three of your
22 report.

23 MR. LEWIS: And this is on the fourth page of our
24 blowup, Mr. Williamson, but it's on page DTX25-12 of your
25 report. If you can put that up on the screen?

1 BY MR. LEWIS:

2 Q. All right. So, Doctor Rodden, we're talking -- this is
3 figure three of your report. Can you explain what's going on
4 in this figure?

5 A. Yes. So, hopefully by now we're familiar enough with what
6 the basic structure of this figure is. Everything is the same
7 as the previous figures, nothing has changed, except now
8 instead of those black dots that represented the previous
9 plan, this is now -- the green dots indicate the Hickory plan,
10 and so what we -- what we can appreciate with the Hickory plan
11 is, again, if we start on the right-hand side, remember we saw
12 that those black dots in the previous plan were at the very
13 high end of the range of the simulation, so the most
14 Democratic districts have been more Democratic than the
15 simulations.

16 What we now see is that the -- on the very high end,
17 and this is all metro Detroit, these are all the very
18 Democratic districts, we now see these districts are less
19 Democratic than the average of the simulations and in many
20 cases outside the range of the simulations.

21 And then if we look to the middle of the
22 distribution, there are also some -- if we just kind of
23 look -- so, yes, around here what we see is that the green
24 dots -- it's somewhere around -- in the middle, somewhere
25 around 50, and remember, 55 is the -- is kind of right in the

1 middle. As you look here you see the green dots are now
2 closer to 50 percent than the average of the simulations.

3 So we see a number of districts in the middle of the
4 distribution that are -- really have been made into toss-up
5 districts. We have a whole range of very, very competitive
6 districts that the Commission has created and all of this --
7 all of these maneuvers so making the very Democratic districts
8 somewhat less Democratic but then also making these districts
9 in the middle more competitive. All of this has an impact on
10 the partisan fairness that they were looking at.

11 I would add that there are also a set of districts
12 here in the blue territory as we move to the right from the
13 middle of the graph, as we move across we see there are also a
14 number of districts that are more -- are more Republican than
15 this simulation, so, again, this is consistent with the notion
16 that the Commission is creating more competitive districts.

17 So right through the middle of the range we see a lot
18 of intentionally competitive districts that have been created
19 by the Commission, and this goes along with the effort to
20 unpack those districts in Detroit.

21 Q. So, Doctor Rodden, if we go back to that table one on
22 page 13 of your report, one more time, you report the measures
23 of partisan fairness for the Hickory and Linden plans; is that
24 correct?

25 A. Yes.

1 Q. Okay. And how do the partisan fairness measures look for
2 the districts under the enacted Hickory and Linden plans?

3 A. These are quantitative indicators of everything I was just
4 describing visually. That by trimming those margins in the
5 very Democratic districts, we see the lopsided margins index
6 has now fallen below that for the simulated plan, so for the
7 nonpartisan baseline.

8 Relative to that, the lopsided margins index is now
9 lower for the Hickory plan down to 5.3. The mean median
10 difference is now down to 2.7 and the efficiency gap is down
11 to 4.3.

12 If we look at the Michigan Senate, we also see
13 numbers that are significantly lower than the average of the
14 50,000 simulations. So we see 4.5 for the lopsided margins
15 index down from 7. For the mean median difference we see --
16 we see a difference of 1.2 which is down from 3.7 in the
17 simulated plans, and for the efficiency gap we see a very
18 large decrease from 12.5 in the simulated plans down to 3.3,
19 or if we want to compare it to the previous plan that was the
20 starting point for all of this, we're talking about going from
21 17.3 to 3.3 in the Senate and from 18.7 down to 4.3 in the
22 House of Representatives.

23 Q. All right. So, in other words, is it fair to then
24 characterize this as saying the Hickory plan and the Linden
25 plan achieved more partisan fair outcome than both the prior

1 decade plan and the average of this non-race and non-party
2 considered simulations?

3 A. That's correct. It's also worth noting -- remember, I
4 described earlier that negative numbers would indicate a
5 pro-Democratic bias and zero would indicate zero bias. One
6 thing we noticed, that these numbers are still positive, and
7 we don't see any plans that got all the way down to zero bias.

8 This is a -- also an experience I had in trying to
9 draw maps in Ohio and that everyone else had in trying to draw
10 maps in Ohio. It was very difficult given the political
11 geography of the Democrats and Republicans, very difficult to
12 get those numbers all the way down to zero.

13 Q. Okay. Now, Doctor Rodden, we're here -- you know, this is
14 Mr. Trende -- Mr. Trende's opinions are on racial
15 predominance, so I would like to start to discuss your
16 analysis now and set the table with the political analysis of
17 the maps, to start now looking at race.

18 So, I'd like to start on figure four of your report,
19 which is on page five of our tab, and is also, for the Court
20 and others following, is on page 14 of your report.

21 Perfect, okay. I was afraid that the yellow was not
22 going to display well but it turns out it displays quite well,
23 so that's great.

24 Doctor Rodden, can you orient us, what is figure four
25 showing us?

1 A. So, to start with, the yellow dots are by now familiar.
2 All I've done is I've translated those other -- those other
3 dots over from the other figures. Nothing has changed.
4 That's the average of the partisan -- the average of the
5 Democratic vote share of the ensemble at that rank. So that's
6 that same yellow line that we're accustomed to; again, where
7 there are a lot of districts above .8 and no districts below
8 .2, so that's kind of showing us, again, that problem for the
9 Democratic party of having a very concentrated support base.

10 And now what's happening with the rest of the graph
11 is this is something that looks very similar to something that
12 Mr. Trende produced, the -- we're now on the -- we can see on
13 the right-hand side it says, black share of voting age
14 population, gray and black. And so what that means is that
15 we're looking at -- we're looking at the simulations, so the
16 entire range of the simulations in gray and the average of the
17 simulations in black, and the first thing we might notice
18 about this graph is that these functions are very similar.

19 If we look at the way the black dots can move across
20 the page and we look at the way the yellow dots move across
21 the page, all that's telling us is something that I think is
22 probably already clear to everyone in this room after a few
23 days of testimony, that race and party are highly correlated
24 in Michigan, but, remember, what we've been talking about is
25 that in order to bring those partisan fairness indices down,

1 it was necessary to do something about the far right-hand side
2 of this graph.

3 These extremely Democratic districts could not stay
4 with 90 percent, 95 percent, really very high 90s in some of
5 these. It wasn't possible to have a bunch of districts with
6 above -- that were above 80 percent Democratic and bring those
7 partisan fairness scores down.

8 What we see here is that many of those districts that
9 are most Democratic -- again, something that will not be
10 surprising to people, those districts have very large black
11 voting age population shares, so the main takeaway from this
12 graph is if it was going to happen that these yellow dots on
13 the far right were going to move down on that graph, then we
14 couldn't continue to have a lot of districts with BVAP above
15 80 percent or in the high 70s and so forth. The BVAPs of
16 these districts would have to come down in order to abide by
17 the partisan fairness objective.

18 Q. So is the idea, then, Doctor Rodden, that when we look in
19 this sort of area of the graph here, is the idea that if the
20 redistricter is attempting to move this yellow line down, that
21 they have to do so by looking in the areas of high BVAP?

22 A. Yes. And there aren't -- there aren't really any other
23 ways to do that.

24 Q. Okay. All right. So I'd like now to turn to figure five
25 of your report, which is on the next page and the next page of

1 the figures, and this is on -- this is on page 15, again, of
2 your report, Doctor Rodden. This appears to be a similar
3 chart for the Senate. Do I have that right?

4 A. Yes.

5 Q. Okay. And can you explain what's going on here?

6 A. Yes. On this one, I apologize for translating over the
7 yellow from the other graphs because it doesn't show up very
8 well without some other -- some other colors behind it, but
9 the yellow -- this is for the Senate, and, again, the yellow
10 dots are the average of the simulations, so, again, we see for
11 the Democrats a rather severe problem where there are -- there
12 are only a couple of districts that are more than 60 percent
13 Democratic -- I mean, I'm sorry, Republican on the left-hand
14 side of the graph, so there are, you know, three or four that
15 are below .4 on the graph.

16 If we go to the right-hand side, though, and we look
17 above .6, there are one, two, three, four, five, six, seven,
18 eight, nine districts at least that are -- that are more than
19 60 percent Democratic, and so the simulation, again, is
20 spitting out 90 percent, above 80 percent, extremely
21 Democratic districts. Again, if we draw districts just
22 according to traditional redistricting criteria, we don't pay
23 attention to party or race, that's what we would end up with,
24 and so we can also see here, again, not surprisingly, this is
25 Detroit, these are districts with very high BVAP and the

1 simulations produce also very high black voting age
2 populations in these districts. So, again, the ability to
3 bring down those partisan unfairness indices requires some
4 changes to these districts.

5 Q. Okay. Now, Doctor Rodden, you -- you were present for
6 Mr. Trende's testimony last week; is that correct?

7 A. Yes.

8 Q. Okay. Doctor Rodden, we heard testimony from Mr. Trende
9 last week where he made certain claims about the partisan
10 effects of the Commission's Hickory and Linden plans, and I
11 would like to turn to those claims, so maybe the way to do
12 this is to first take a look at your figure eight which
13 appears on page 23 of your report.

14 Okay. And so it looks like we have three figures
15 here. Can you explain, first of all, what kind of figures are
16 these? What are we looking at here?

17 A. These are what we call dot density maps, and so what's
18 happening here is we're taking precinct level data, so we have
19 geocoded precinct level data -- imagine a map with precinct
20 level boundaries and some political data attached to that.
21 Instead of looking at those precincts and just lighting them
22 up by color, a nice way to see where the actual people are is
23 to draw dots for -- that represent -- that represent voters
24 within those precincts, and so this case each red dot
25 represents ten Trump voters in 2020 and each blue dot

1 represents ten Biden voters in 2020. So it allows us get a
2 nice sense of not only where the partisans are but also where
3 the people are.

4 And what I've done here is made -- this is really
5 just zooming in on the intersection of the Wayne County and
6 Macomb and Oakland County that -- the area where the three
7 come together, and I'm just putting side-by-side the 2011 plan
8 in place from 2012 to 2021 where it was described as trying to
9 cram all the Democrats into these southeast districts. Then I
10 also looked at the plaintiffs' demonstration plan where we can
11 see in some ways a rather similar configuration, and then we
12 look at the bottom at the Hickory plan and we see a transition
13 to some of these vertically arranged districts that we've been
14 looking at and contemplating and having described to us over
15 the last few days.

16 And so one of the things and how this relates, I
17 believe, to Mr. Trende's analysis is that Mr. Trende -- I
18 believe the claim he makes about why he thinks that
19 partisanship was not important in the drawing of these
20 districts, his claim seems to be that there are -- there just
21 aren't any Republicans in metro Detroit, which is something
22 that's kind of hard for me to understand. There are -- he was
23 looking at vote tabulation districts or precincts and saying,
24 well, there weren't very many that had majority -- that had
25 Republican majorities, but it's very clear that there are a

1 lot of Republicans in this suburban -- beginning to be
2 inner-ring and middle-ring suburbs as we move to the north,
3 and so it -- he described a process in which he believed it
4 was possible to draw the Detroit districts in any way you
5 wanted and it would have no impact on the partisan fairness
6 scores, and that is something that's very hard for me to
7 understand.

8 If you look at these, what happens when you pack all
9 the Democrats in the top two versus what happens when you
10 unpack them in the bottom, you see the districts like 7, 8,
11 14, 13, 12 become much more heterogeneous with respect to
12 partisanship, so what that means is that we now have
13 Republicans mixed in with some of these districts that in the
14 past would have been overwhelmingly Democratic. So this is
15 just a visual display of how it was that the right-hand side
16 of those graphs we were looking at earlier, how those vote
17 shares for the Democrats came down in the urban districts, and
18 how that led to lower partisan unfairness scores.

19 Now, it is also the case that -- and Mr. Trende's
20 view of things where I believe he described this as moving
21 around a -- chairs on a deck of a boat. His sense seemed to
22 be that none of this really creates any differences in
23 partisan outcomes, but I think it's very clear to see that
24 we -- that each move you make in Detroit has implications that
25 radiate out through the plan. It is not possible to just move

1 around some deck chairs and not have any impact on what
2 happens to the rest of the map, and so as these districts are
3 drawn that are more heterogeneous in the Detroit area, that
4 means in a district like 14 or 8 there are fewer Republicans
5 available to contribute to Republican majorities in some of
6 the districts that get further and further out from Detroit.

7 And what all of this means is more competition as we
8 saw, the creation of a large number of suburban districts that
9 are extremely competitive, and all of this has the impact of
10 bringing down the indices of partisan unfairness.

11 Q. Okay. And just to follow this up with perhaps a more
12 mundane question, but I just want to make sure we're fully
13 orienting the Court. I see a line that runs -- I'm using my
14 pointer to demarcate what appears to be this shaded line here.
15 Is that the county boundary between Wayne and Oakland/Macomb
16 County?

17 A. Yes. That's the county boundary. That's 8 Mile that
18 we've been talking a lot about.

19 Q. Okay. And then this vertical gray line that runs right
20 here, is that the east/west boundary of Oakland and Macomb
21 counties?

22 A. Yes.

23 Q. Okay. So the concept you were talking about, and sorry to
24 go back to your testimony, but you were talking about making,
25 you know, more Democrats available to contribute to victories

1 and less Republicans. Is that the concept of a knock-on
2 effect?

3 A. Yes. Again, in drawing districts nothing happens in
4 isolation.

5 Q. Okay. All right. And so if we just look very quickly,
6 and I want just to do one district as an example, if we can
7 zoom to -- if we just look at, for example, House District 8.
8 I know we've had some discussion about here -- this district
9 right here. What does this particular configuration of HD8
10 appear to -- to have on the partisanship of that district?

11 A. Well, by combining these -- by combining these -- the
12 parts of Detroit with some areas to the north we've created a
13 district really like the others I described that are now less
14 overwhelmingly Democratic. These are still Democratic
15 districts, but they are less overwhelmingly Democratic than in
16 the previous version or than in the demonstration map. And
17 this -- again, this has -- you know, that's -- one implication
18 is just that the partisan fairness score is altered by no
19 longer keeping these districts isolated within that old line
20 of residential racial segregation. By crossing that line
21 we're creating more heterogeneous districts which bring down
22 the partisan fairness scores, the pro Republican partisan
23 unfairness indices.

24 Q. Okay. I'd like now to turn to figure seven which appears
25 on page 22 of your report.

1 Okay. So, Doctor Rodden, this appears to show --
2 this appears to be a similar graph of race and district
3 boundaries in the House of Representatives; is that right?

4 **A.** Yes. And as indicated on the lower right, here we have
5 red dots indicating 10 voting age white residents, and each
6 black dot represents 10 voting age black residents.

7 **Q.** Okay. And do we see a broadly similar pattern between
8 these dot plots and figure eight for partisanship?

9 **A.** Yes. In the top two plans we see that this intense
10 concentration of Democrats in the Detroit district goes along
11 with an intense concentration of African Americans, and we see
12 that the partisan unpacking of these plans in the Hickory
13 plan, what we saw with the red and the blue dots we see
14 something similar here with the red and black dots. We see
15 that as these places become more heterogeneous with respect to
16 party, they also become more heterogeneous with respect to
17 race.

18 **Q.** Okay. All right. So is this just another visual
19 depiction of the correlation between race and politics in
20 Michigan?

21 **A.** Yes. If we toggle back and forth between those, one is
22 certainly impressed with the spacial correlation between these
23 things.

24 **Q.** Okay. So before I move on from the House to the Senate, I
25 just really quickly want to put up figure 10 on page 25 of

1 your report. And this appears to be, again, the House 2020
2 presidential results centered on Livonia. Do you see that?

3 A. Yes.

4 Q. Okay. And what is this showing us, between the prior
5 decade, the demonstration, and the -- and adopted Hickory
6 plan?

7 A. Yes. We see here that in the prior decade and in the
8 plaintiffs' demonstration map, with -- one approach is to draw
9 these kind of box-shaped districts that really follow, again,
10 the lines of residential racial segregation, and that is
11 certainly the old approach to redistricting in Michigan.
12 Follow those lines of segregation and keep the -- keep the
13 districts very homogeneous on -- in this case, say, on the
14 right-hand side of the divide.

15 What we see in the Hickory plan is by drawing some
16 districts that are a little bit less compact, because they are
17 more elongated and they have more of an east/west orientation,
18 these districts are made to be more heterogeneous with respect
19 to party and, again, this is all part of bringing those
20 indices of partisan unfairness down.

21 Q. Okay. All right. I'd like to move to the Senate. And so
22 I'd like to turn -- you have three figures on the Senate. I
23 would just like to focus on the Hickory plan for now, so if we
24 can go to figure 12C on page 33?

25 A. I assume you meant to say the Linden plan. That's what

1 we've got here.

2 Q. I -- as I was about to correct myself. Thank you. Thank
3 you, Doctor Rodden. Yes, I'm referring to the Linden Senate
4 plan, adopted Senate plan. And can you describe what's going
5 on in this figure 12C?

6 A. Here we zoomed out a little bit but in the same place.
7 We're kind of focusing on the same intersection of Wayne,
8 Oakland, and Macomb, and we see, again, the same type of
9 partisan map. Since we've zoomed out, now the dots -- each
10 dot equals 30 voters, and we've superimposed the districts of
11 the Linden plan, and so, again, we see a similar thing
12 happening, that these districts have this north/south
13 orientation, and we've seen some discussion of this and some
14 of the things that the commissioners considered when they draw
15 the districts in this way, but what we can see here, again, is
16 that in addition to whatever else these districts are doing
17 with respect to communities of interest, they are also making
18 the districts more politically heterogeneous, so they're
19 breaking up those extremely homogeneous Democratic districts
20 that we saw in the old approach to redistricting in Michigan.

21 We now have some districts in the -- Detroit
22 districts, which are much less overwhelmingly Democratic.
23 Now, they are still very Democratic, but what that also means
24 is that there are -- that since some of those districts now
25 encompass a significant number of Republicans, this means

1 there are fewer Republicans available to contribute to some of
2 the other surrounding districts, and this has left us with a
3 hypercompetitive ring of districts to the north.

4 We end up with hypercompetitive Districts 7, 9, 11,
5 and 12.

6 Q. All right. So, again, just one, you know, sort of basic
7 piece of orientation, I see this gray line running
8 horizontally. Is this the Wayne and Oakland or Macomb County
9 border?

10 A. Yes. That's the border that is not -- you know, in
11 previous approaches to redistricting was not transgressed.

12 Q. Okay. And then, again, just this vertical line here, is
13 this the county boundary between Oakland and Macomb?

14 A. Yes.

15 Q. Okay. Now, Mr. Trende testified on direct examination,
16 day two, the bottom of page 28 and the top of page 29 in the
17 transcript that politics can't explain these lines and he
18 says, quote, with the exceptions of the Grosse Pointes and
19 some of the precincts in St. Clair Shores, these are all
20 Democratic precincts. It didn't matter how you drew these
21 precincts. You were not going to draw a Republican district
22 because there just aren't enough precincts to draw a
23 Republican district. Do you recall that testimony?

24 A. Yes.

25 Q. What does your analysis on this chart show?

1 A. Well, many of these districts are very competitive, but
2 District 9 is one that was, in fact -- a Republican was
3 victorious, so I'm not sure I understand the argument there.

4 Q. Okay. And do you recall the margin of the Republican's
5 victory in Senate District 9 in 2022?

6 A. It was very close. I believe it was less than a thousand.
7 It might have been something like 700 votes.

8 Q. Okay. And I see here, this is District 12. Was this also
9 a very competitive election?

10 A. Yes. That was very close, I think within maybe
11 one percentage point.

12 Q. Okay. How about District 11, which is one of the
13 districts challenged in this case, is this a politically
14 competitive district?

15 A. That's also a very competitive district that I believe a
16 Democrat was victorious.

17 Q. Okay. And do these election results we're describing
18 under the Linden plan, is this an example perhaps of a
19 knock-on effect?

20 A. Yes. I believe that, again, as we discussed with the
21 House, when the Democratic districts in the urban core become
22 less overwhelmingly Democratic, this has knock-on effects for
23 the suburbs and it creates more competitive elections in the
24 suburbs and creates partisan fairness scores that get closer
25 to zero.

1 Q. Okay. Very quickly, I would like to skip back to
2 figure 12a appearing on page 31 of your report. And, Doctor
3 Rodden, I understand this to be figure 12a appearing on,
4 again, page 31 of your report. Is that the same chart we just
5 looked at for the 2011 Senate plan?

6 A. Yes. We've just superimposed the boundaries of that plan
7 rather than the Linden plan.

8 Q. Okay. And what does this show us about the old way
9 Detroit was drawn?

10 A. In the old way when that -- when that 8 Mile boundary is
11 respected, we end up with a series of overwhelmingly
12 Democratic districts in the urban core and we see -- as we saw
13 earlier, we saw much, much higher partisan unfairness scores
14 associated with these plans.

15 Q. Okay. So I'd like to move on now. I believe you also
16 heard claims made by Mr. Trende attempting to evaluate if the
17 plan was racially gerrymandered where he looked and analyzed
18 compactness of the district plans. Do you recall that
19 analysis?

20 A. Yes.

21 Q. If we turn to page 33 of your report, Doctor Rodden, is
22 this the section of your report where you respond to
23 Mr. Trende's compactness analysis?

24 A. Yes.

25 Q. And what do you understand Mr. Trende to be claiming about

1 compactness?

2 A. He makes two claims. One is just a broad overall
3 assessment of the compactness of the plans. The second claim
4 is -- has to do with the correlation between black voting age
5 population and compactness, so the first claim is simply that
6 in the House he compares the enacted plan, the Hickory plan,
7 with the baseline, which for him is the previous enacted plan,
8 and points out that the districts are less compact in the --
9 the districts are less compact in the Hickory plan than in the
10 previous plan, and that to him -- he seems to be making the
11 claim that that is a fingerprint of racial gerrymandering, to
12 see districts that are less compact than a previous plan, and
13 so my reaction to that is simply that, you know, comparing
14 a -- comparing a plan to a previous plan that was
15 intentionally drawn for partisan purposes doesn't really tell
16 us much about the -- what might have been the motives of the
17 map drawer, but what really confuses me about the claim that
18 relatively less compactness -- relatively less compact
19 districts in the Hickory plan is a sign of something nefarious
20 is he goes on to show then in the Linden plan the districts
21 are more compact than the previous plan, which he also seems
22 to indicate is an indicator of something nefarious. And I
23 don't understand, if this is his indicator, if this is how he
24 wants to think about compactness, that, you know, that
25 non-compact plans are an indicator of some kind of racial

1 intent, I don't understand how the argument can work in sort
2 of equal and opposite ways for each of the plans.

3 Q. Now, Doctor Rodden, I believe Mr. Trende also asserted
4 that there was a statistical correlation between district
5 compactness and black voting age population, and specifically
6 as the BVAP increases, the compactness decreases. Do you
7 recall that in his report?

8 A. Yes.

9 Q. Okay. And what is your -- what analysis did you conduct
10 in your report to assess that claim?

11 A. Well, first of all, there appears to be a negative
12 correlation like that in his report for the Hickory plan. It
13 seems less clear for the Linden plan, but he does see this
14 negative correlation, but, of course, the whole conversation
15 we've just been having about partisanship suggests another
16 reason why we might see the district shapes changing in the
17 Detroit area, and so if we simply grant his same regressions,
18 and instead of black voting age population we used Democratic
19 vote share, we would get exactly the same result.

20 So there is a correlation there between a -- a
21 negative correlation between Democratic vote share and
22 compactness of the districts. So that leads me to suggest,
23 well, we really can't distinguish here between whether this --
24 we don't really know what to make of this co-efficient,
25 whether it has something to do with race or has something to

1 do with party, but that's really not the main critique I would
2 have of this approach.

3 It just turns out that that negative co-efficient
4 shows up also in all of the other plans being analyzed in his
5 report, so that led me to think, well, what happens if we just
6 look at the relationship between compactness and black voting
7 age population in the nonpartisan race-blind simulations, and
8 it turns out we get a statistically significant negative
9 correlation there as well.

10 So, this is a race-blind, party-blind set of
11 simulations. We have lots and lots of plans. We look at the
12 relationship between BVAP and compactness and we see the same
13 relationship in a set of plans that we know were not drawn
14 with race being considered whatsoever, so how that negative
15 correlation could be viewed as a fingerprint of racial
16 predominance is completely beyond me, because it's something
17 that just emerges from the geography of Michigan and something
18 that emerges from what happens when we take that geography and
19 try to draw a bunch of equal population, single member
20 districts in that geography. That's what the simulation
21 analysis tells us.

22 Q. So, in your view does the statistical correlation between
23 district compactness and BVAP shed any light on any racial
24 motive -- potential racial motive in the configuration of the
25 districts in the Hickory and Linden plans?

1 A. No, it can't do that.

2 Q. So I'd like now to turn to -- and just for the sake of the
3 record, you report that analysis on page 35 of your report; is
4 that correct?

5 A. Yes.

6 Q. Okay. So I'd like to -- Mr. Trende also discusses an
7 analysis of county splits and I believe on page 35 you have a
8 response to that; is that right?

9 A. Yes.

10 Q. Okay. So let's turn to -- and page 35 is up. Okay.

11 And here I believe Mr. -- you're responding to
12 Mr. Trende's observation that the number of county splits in
13 the adopted plans are evidence of racial predominance. What's
14 your response to that analysis?

15 A. Yes. I think, as with the compactness analysis, instead
16 of doing the kind of intense, close analysis of
17 district-by-district analysis of racial predominance, he's
18 kind of just giving us some observations about some indicators
19 that are, in fact, the lowest ranked indicators of traditional
20 redistricting criteria in the Michigan constitution. So he
21 has done that with compactness, and here he does it with
22 county splits, and the main observation he makes is that the
23 Commission's plan included more county splits than the --
24 again, the benchmark plan, the 2011 plan. That seems to be
25 the main claim here.

1 Q. All right. And I believe you mentioned -- I believe in
2 your report you reference the quote from Mr. Timmer, again,
3 about, quote, relying on county and city or township
4 geography, keeping those intact helps Republicans. How does
5 that quote factor into your analysis?

6 A. Yes. Mr. Timmer provided, again, a pretty succinct
7 description of something that I believe to be true. Relying
8 on county and city or township geography, keeping those intact
9 helps Republicans. So the idea -- I think that we now have
10 seen that as we looked at the maps, so keeping that county
11 boundary, keeping that 8 Mile line of segregation intact, that
12 helps the Republican party, and so pushing for minimization of
13 county splits is something that Mr. Timmer saw as very helpful
14 to the Republican party.

15 So, again, that subjects if we're trying to unpack --
16 I think we already saw it fairly clear in those maps, but if
17 we're trying to unpack Detroit and create more partisan
18 fairness, we are -- will end up in the Detroit area with
19 somewhat larger number of county splits.

20 Q. I see. And so I'd like to put up now figure 13 appearing
21 on page 36 of your report, Doctor Rodden. If we can zoom to
22 the figure? Perfect.

23 So, Doctor Rodden, what are you reporting in your
24 analysis here in figure 13?

25 A. This is essentially an effort to verify what Mr. Timmer

1 said. I wanted to see whether there was a relationship
2 between county splits and these partisan indicators, and so
3 what was -- what was -- what was useful to do here was to
4 take -- take, again, these simulations that I had conducted
5 that were blind as to party and race and it turns out when you
6 simulate 50,000 plans and you don't try very hard to constrain
7 for the minimization of county splits, you can get a nice
8 range of county splits coming from the simulations, so what
9 you can then do is see from those simulations, are there
10 tradeoffs between county explicit and partisan fairness.

11 And so what I'm plotting here are the range of county
12 splits that emerge from these simulations on the horizontal
13 axis, and on the vertical axis I'm graphing on the upper left
14 the lopsided margins index, on the upper right the mean median
15 difference, and in the lower graph the efficiency gap. And in
16 each case we see a negative correlation between county splits
17 and party -- the party fairness -- partisan fairness
18 indicator.

19 So what that negative correlation entails, as the
20 county splits go up, the lopsided margins index goes down.
21 Remember, that's a pro-Republican lopsided margins index so it
22 becomes closer to a fair outcome. And we see this for each of
23 the indicators. And all this indicates is that Mr. Timmer was
24 correct, there is a trade off here between -- between county
25 splits and partisan fairness, and it's something that I think

1 is becoming very clear in a lot of the testimony. You can't
2 have all good things at the same time in redistricting. There
3 are tradeoffs, and this is a visual indication of what one of
4 those tradeoffs looks like.

5 Q. So then does Mr. Trende's analysis, then, of county splits
6 help answer the question of did race, politics, or something
7 else predominate the Commission's mapmaking in this case?

8 A. No. It really tells me nothing about that.

9 Q. Finally I would like to turn -- you conducted an analysis
10 here of -- beginning on page 37 of your report where you
11 analyzed Mr. Trende's use of the simulation methodology to
12 study this question, and I'd like to focus on this for a few
13 moments with you.

14 First, let's just set the table. I mean, can the use
15 of these computer simulation methods be used to disentangle
16 the role of partisanship from other redistricting factors?

17 A. Yes. As we discussed earlier, there has been a movement
18 in court cases related to partisan gerrymandering to use
19 simulations in this way, and that testimony has been accepted
20 in some cases.

21 Q. All right. And for the use of simulations to provide
22 credible analysis of the role of partisanship in the creation
23 of a plan, what steps must the analyst go through when
24 designing those simulations?

25 A. Yes. I think this is very important and this is something

1 that I first -- from the very first time I was -- I believe
2 the first person to use simulations in court in a case related
3 to partisan gerrymandering, and this was in Florida back in
4 2013, and one of the things that we came to realize, and I
5 think has now become a standard practice in all of these
6 cases, is that in order for the simulations to be useful as a
7 benchmark with which we'd like to compare some plan that's
8 being challenged, we have to abide by the same rules that the
9 district drawers had to abide by.

10 We have to very seriously look at the guidelines, if
11 it's a constitutional guideline or a statutory guideline. We
12 have to try to understand what other things the Commission or
13 the legislature was trying to do when drawing the districts,
14 and so that means looking at city and county splits. That
15 means trying to figure out how the legislature was attempting
16 to abide by the Voting Rights Act. Anything that's in the
17 guidelines for the district drawers, that has to be built into
18 the simulation analysis or it really doesn't tell us much
19 about -- if there is an outlier, it doesn't really tell us
20 much about why it's an outlier.

21 Q. All right. And so when you talk about the other factors
22 the redistricting authority was attempting to achieve, is that
23 what we're talking about when we talk about building
24 constraints into the simulations?

25 A. Yes.

1 Q. Okay. And so here you understand Mr. Trende to be
2 attempting to use simulations to determine the use of race in
3 the construction of the Hickory and Linden plans?

4 A. Yes. In this case he's doing something that I've not seen
5 done before, which is to look at simulations and say that any
6 plan that's outside the range of the simulations with respect
7 to race is a racial gerrymander, and what he's doing is he is
8 creating a set of districts, first of all, that are only for
9 the Detroit area, it's not for the entire state, creating a
10 set of districts, drawing it completely blind with respect to
11 partisanship and race, so these are race-blind simulations,
12 these are party-blind simulations, but the Michigan
13 constitution says that -- that the districts have to be drawn
14 rather differently, so the constraints of the constitution are
15 not built into these simulations at all.

16 Q. Okay. Now, you've mentioned a few times and I just want
17 to make sure I understand the critique, but you -- a few
18 different times you've mentioned that Mr. Trende does not
19 simulate the entire state. Can you just briefly describe why
20 that's a concern for you?

21 A. Yeah. I don't think I've ever seen that before. It's --
22 again, there's this problem where in redistricting everything
23 is related to everything else, and so if I want to draw some
24 inferences with some simulations and I just take some
25 counties, I think about some approach to hiving off those

1 counties and I want to draw some inference, it could be that
2 if I just hived off those counties in a slightly different way
3 I would draw a different inference. So it gives the
4 researcher a lot of degrees of freedom, as it were, to -- to
5 decide how they'd like to conduct this analysis. So we don't
6 really know what to make of a set of simulations that focus
7 only on a part of the state, but the bigger problem here is
8 that -- I think we've already heard a lot of testimony, that
9 it doesn't make sense, and indeed it does not make sense, to
10 calculate partisan unfairness indices for just a corner of
11 Michigan. These are things that have to be done for the
12 entire state, so if one wants to do some analysis to create
13 some simulations that are useful as a benchmark for trying to
14 valuate the Michigan redistricting plans, one has to build in
15 something about the constitutional requirements, in particular
16 the requirement to -- to attempt to achieve partisan fairness,
17 so if we create a bunch of party-blind and race-blind
18 simulations that are -- we've already seen what happens. We
19 end up with very high partisan unfairness indicators. That's
20 what I was showing earlier in my analysis. So we end up with
21 something that really isn't very useful as a benchmark to
22 compare the plans to because we're not really abiding by the
23 constitution when we draw the plans.

24 Q. All right. And so Mr. Trende's own analysis in fact
25 concludes that the enacted Linden and Hickory plans are

1 partisan outliers. Is that your understanding?

2 A. Yes. He -- he uses, I believe, just the 2020 presidential
3 election and simulates a large number of districts and shows
4 that the -- that the plan -- that the Hickory plan and Linden
5 plan are outliers with respect to partisanship compared with
6 his body of neutral simulations. So, again, these are race
7 and party-blind simulations and they suggest that the -- that
8 the Democratic -- that the partisan indicators look very
9 different in the enacted plan than in the simulated plan,
10 which is exactly what we would expect given everything I've
11 explained about how it appears the Commission went about
12 trying to unpack the Detroit districts.

13 Q. Okay. So I'd now like to turn to figure 14, Doctor
14 Rodden, on page 38 of your report. And so, Doctor Rodden, do
15 I -- can you explain to the Court what these histograms are
16 and what your analysis was that went into them?

17 A. Yes. So, what we're seeing here is just -- we're
18 making -- we're making 50,000 alternative Michigan House
19 redistricting plans and we are looking at the distribution of
20 the lop -- so we're calculating for each simulated plan a
21 lopsided margins index, a mean median difference, and the
22 efficiency gap, so for each plan we can have that partisan
23 information, and, again, this is calculated using that
24 partisan index drawn from 13 elections.

25 So we -- we calculate that -- we calculate the

1 partisanship -- partisan index for each plan and then we
2 create a distribution, and that's what those histograms are,
3 and then the dotted line is the partisan fairness score for
4 the -- for the House redistricting plan -- for the Hickory
5 plan, and so that -- that line is just in the same spot as you
6 saw on that table earlier, when we looked at the table and we
7 saw what the indicator was. All this is showing is that he
8 has gone and produced a set of simulations that is no where
9 near the partisan fairness of the plan that was implemented.

10 So, again, that's just driving home the point that
11 these are not useful baseline kind of comparators for the
12 plan. If we're trying to say that we are concerned about --
13 that they look different with regards to race, they just are
14 not -- they're not at all comparable with regards to party so
15 he hasn't controlled for party in any way.

16 Q. Okay. And you also comment in your report, Doctor Rodden,
17 that Mr. Trende's simulations likewise do not deal with the
18 Voting Rights Act. Can you briefly explain what that -- what
19 your comment was about that?

20 A. Right. So that's something else that typically one has to
21 do when using simulations, say, in a partisan case. When one
22 knows that those drawing the districts have to struggle with
23 exactly the same issues that the Commission here had to
24 struggle with in -- in thinking about how to abide by the
25 Voting Rights Act, to -- to create some purely partisan

1 race -- some purely race-blind simulations that just simply
2 pretend the Voting Rights Act doesn't exist. These are of
3 very little value, so if -- and this is a case where I think
4 everyone agrees that race was considered, so if race is
5 considered, then the distribution of the -- that we get -- the
6 distribution of BVAP across districts that we would get from
7 simulations will look different than the distribution of BVAP
8 that we get from the enacted plan. That has to happen.

9 So it really doesn't tell us much. To just compare a
10 purely race-blind set of simulations with what we see really
11 can't possibly tell us that race predominated, that race
12 dominated all other factors. That every time there was a --
13 you know, a decision to make between partisanship or
14 communities of interest or something else and race, that race
15 dominated. It doesn't show us anything of the kind.

16 Q. Okay. And so I'd like now to turn -- so is it then fair
17 to say that this analysis does not allow us to disentangle
18 partisan or racial intent?

19 A. That's right. It's just -- it's just -- produces a set of
20 race and party-blind simulations and then demonstrates that
21 the enacted plan looks a little different than the simulations
22 with respect to party, and it looks a little different with
23 respect to race, which really tells us that race and party
24 were considered in this case. Everyone knows that race and
25 party were considered in this case. I think it was very clear

1 from all the testimony we've heard.

2 Q. Okay. And, to your knowledge, does the simulation
3 approach allow the analyst to distinguish between race as one
4 factor among many factors versus race as the predominant or
5 the most important factor?

6 A. So what -- the analysis that's been conducted here gives
7 us no way of doing that. It's possible that some steps could
8 have been taken to have attempted to build some party --
9 partisan constraints into the simulations, but no such effort
10 was made. In fact, partisanship was scarcely discussed in the
11 report at all.

12 Q. Okay. Mr. Trende testified and discussed in his report
13 the use of what he called a racial gerrymandering index, and
14 I'd like to ask you about that, Doctor Rodden. Are you
15 familiar with a gerrymandering index, at least more generally?

16 A. Yes. It's relatively recent construct that has been used
17 to try to capture in one term some of what I was showing in
18 those graphs earlier, so if you think about -- and I think
19 Mr. Trende also discussed in his presentation that we just --
20 with respect to partisanship, scholars have taken those graphs
21 where we look at the rank ordered districts and we look at the
22 simulations at each rank, and they look at the extent to which
23 a plan deviates from the average of those simulations at each
24 rank, and they put that together into an indicator of what
25 they call a gerrymandering index which suggests how different

1 is this plan from the simulations? It's something that
2 captures that, that really tells us whether partisanship was
3 taken into consideration in drawing the plan, so that is
4 something I am familiar with, yes.

5 Q. Okay. And so this was developed -- just to make sure I
6 understand, this was developed in the context of evaluating a
7 partisan gerrymander; is that right?

8 A. Correct.

9 Q. Okay. And to your knowledge, has this gerrymandering
10 index concept been used to study the existence of racial
11 gerrymandering?

12 A. Not to my knowledge. I have not seen it.

13 Q. Okay. And has that gerrymandering index been evaluated in
14 peer review research for use in analyzing the question of
15 racial gerrymandering?

16 A. No, not to my knowledge.

17 Q. Okay. So very quickly I want to put up figure 15 on
18 page 39 of your report.

19 Okay. All right. And so, Doctor Rodden, just very
20 briefly, what -- what analysis are you reporting here on
21 figure five on page 39 of your report.

22 A. Okay. So this is for the Linden plan, again, looking at
23 creating 50,000 simulations for the Senate in Michigan, and
24 for each of those calculating this racial gerrymandering
25 score, so how far was this plan on average from the other

1 simulations, and so there's some heterogeneity there. We see
2 a distribution of this gerrymandering score, so this is
3 something similar to what Mr. Trende has provided in his
4 report. And so what Mr. Trende is focusing on is the red
5 line.

6 So, we saw some of these graphs in court the other
7 day and he says the racial gerrymandering score for the Linden
8 plan is very far from the rest of the distribution, so he sees
9 this as evidence of racial gerrymandering, of racial
10 predominance.

11 Now, again, this is a purely race-blind set of
12 simulations. Race is not considered at all in these
13 simulations, and what he's showing us here is that, indeed,
14 the distribution of BVAP across these rank ordered districts
15 does look different in the Linden plan than it did in the --
16 in this distribution of simulated plans, but I've also
17 calculated this racial gerrymandering score for Mr. Trende's
18 proposed demonstration in the Senate plan, and that one is
19 even further away from the rest of the distribution. The
20 orange line is the previous enacted Senate plan, which is also
21 very far from the rest of the distribution.

22 So if we think about it, this is not surprising. His
23 distribution -- his analysis, he's creating a bunch of
24 race-blind simulations, and all this is telling us is that
25 race was considered in each of these plans, so if one was

1 trying to abide by the VRA, one would have to consider race,
2 and I believe in Mr. Trende's testimony he testified that it
3 was necessary to consider race.

4 So, if race is considered, you'll get one of these
5 lines that is somewhere outside of this distribution. That is
6 completely to be expected, but is that a fingerprint of racial
7 predominance? It couldn't possibly be. It's something
8 like -- it's something like a test -- it's a bit like having
9 a -- like a fire alarm that goes off every time you turn your
10 stove on and try to heat up a can of soup. It's -- it will
11 always give you the indicator of racial gerrymandering in any
12 plan that might potentially be valid, so it doesn't really
13 tell us that something -- that race predominated in the
14 drawing of a plan.

15 Q. Okay. So just in conclusion, Doctor Rodden, does
16 Mr. Trende's report taken as a whole provide you with evidence
17 of racial predominance in the configuration of the Hickory and
18 Linden districts?

19 A. No. Taken as a whole, the usual approach to racial
20 predominance that would involve a careful district-by-district
21 analysis of ways in which race was used to draw districts,
22 there's none of that in this plan. It's simply not present in
23 the report.

24 And as for quantitative analysis, there are a few
25 claims that party was -- that -- of the kind that I've been

1 discussing where he sees party as not really important, but
2 doesn't analyze it, doesn't really show us that it wasn't
3 important, and then with respect to these simulations, for the
4 reasons I just described I don't think they tell us anything
5 about racial predominance. So there's really no way of
6 disentangling all the complex things going on here and really
7 no evidence whatsoever of racial predominance in this plan.

8 MR. LEWIS: Thank you very much, Doctor Rodden. I
9 have no further questions, Your Honors.

10 JUDGE MALONEY: Ms. Green, cross examination.

11 MS. GREEN: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MS. GREEN:

14 Q. Good afternoon, Doctor Rodden. I'm Jennifer Green,
15 counsel for the plaintiffs.

16 A. Good afternoon.

17 Q. I'm going to ask you a few followup questions. When I say
18 a few, I mean like a hundred because I am a lawyer.

19 Let's start with the scope of your engagement. In
20 your own words from your report you were asked to, quote,
21 evaluate the claim that race was the predominant motive in
22 crafting the Detroit area districts, correct?

23 A. Correct.

24 MS. GREEN: And let's pull up his report. It's PX18.
25 I think it will be easier to consult that, page six.

1 BY MS. GREEN:

2 Q. Let's talk about the documents that you reviewed in
3 reaching your conclusions in your report.

4 Underneath the heading, data sources, in your report,
5 it states that you looked at three categories of documents.
6 One, files downloaded from the Commission's web page, correct?

7 A. Yes.

8 Q. And, two, files from the State of Michigan open data
9 portal, correct?

10 A. Yes.

11 Q. And, three, U.S. census data?

12 A. Yes.

13 Q. And that encapsulates the entirety of what you relied on
14 to form your opinions?

15 A. Well, I also described some data from the redistricting
16 data hub and also there were a number of files that I received
17 from Mr. Trende that I also consulted.

18 Q. What were the files you received from Trende?

19 A. A number of data files and also computer code. And I
20 don't recall whether I used his -- any of his data files, but
21 I did describe in the report that I tried to replicate his use
22 of -- tried to run similar simulations with a similar approach
23 to Mr. Trende's, so I used his code for his simulations.

24 Q. Were those the same documents that were downloaded from
25 the Commission's web page?

1 A. No.

2 Q. What did you download from the Commission's web page?

3 A. I believe there were -- there were a number of sources,
4 pieces of data that I got from that page. I also -- I
5 described that I used an index of 13 elections, so from the
6 Commission's web page there were documents describing how they
7 had gone about their business, describing which elections they
8 used, describing the partisan fairness metrics they used, and
9 so I was basing my analysis on that.

10 Those are the -- those are the data sources I recall
11 currently getting from the Commission's web page. I probably
12 also got the final versions of the shape files of the plans
13 from that page, but it's possible that came from the data
14 portal. I'm sure -- I think I hopefully described these
15 things later on in the report.

16 Q. Thank you. So in reaching your conclusions in your report
17 you did not watch the video or listen to the audio of the
18 Commission meetings, correct?

19 A. That's correct.

20 Q. You did not read the transcripts of the Commission
21 meetings?

22 A. I did not.

23 Q. And you did not physically attend the Commission meetings?

24 A. No.

25 Q. You didn't interview the commissioners?

1 A. No.

2 Q. You didn't drive around the neighborhoods in any of the
3 cities or counties on the maps?

4 A. I have in the past in my life, but not for this case.

5 Q. And you didn't review the dissenting report by the chair
6 of the Commission?

7 A. I did not.

8 Q. Let's talk about the methodology you employed here. You
9 mentioned in your direct exam that you testified in the
10 *Bethune* case in Virginia?

11 A. Yes.

12 Q. And in the *Bethune* case, according to your sworn testimony
13 in that case, the question that you were asked to opine about
14 was, quote, whether race was the predominant factor in the
15 map, correct?

16 A. Yes.

17 Q. That's the same exact question you were asked to answer
18 here?

19 MR. LEWIS: Objection, mischaracterizes the witness'
20 testimony.

21 MS. GREEN: I can read right from --

22 JUDGE MALONEY: Go ahead, Ms. Green.

23 BY MS. GREEN:

24 Q. On page one of your report, second paragraph, I believe --
25 first paragraph. You were asked to evaluate the claim that

1 race was the predominant motive in the crafting of the Detroit
2 area districts?

3 A. Yes. I was asked to evaluate Mr. Trende's claims in his
4 report.

5 Q. Okay. You agree with me that in both cases the issue was
6 whether race was the predominant factor in the drawing of the
7 maps, correct?

8 A. Yes.

9 Q. And in the *Bethune* case you stated the test for whether
10 race predominated was, quote, in your own words race is
11 predominant in a plan when race explains --

12 COURT REPORTER: I apologize. I lost my
13 concentration. I left off with, race is predominant in a
14 plan...

15 BY MS. GREEN:

16 Q. I'll just start it again. And in that case you stated the
17 test for whether race predominated as follows: Quote, race is
18 a predominant in a plan when race explains the drawing of the
19 districts beyond other factors in drawing of the districts,
20 correct?

21 A. May I ask what it is you're quoting? I just want to make
22 sure I understand.

23 Q. Your testimony from the *Bethune* case, which I can show you
24 if you don't recall.

25 A. I just want to be clear, this was from a deposition or

1 from the trial?

2 Q. The direct exam.

3 A. Okay. Okay. Yes.

4 Q. And you further stated that race is the most important
5 factor in drawing the districts, that's when we see
6 predominance, correct?

7 A. Yes.

8 Q. Okay. And in the *Bethune* case you testified for the
9 plaintiff in that matter, not the defendant?

10 A. That's correct.

11 Q. And you opined that race was a predominant factor in a
12 55 percent racial target case?

13 A. That's correct.

14 Q. And in the *Bethune* case you did something a little
15 different than you did here in terms of your methodology. In
16 that case you explained that your approach was to, quote,
17 layout for the Court what decisions were made, end quote, by
18 the map drawers so the Court could, quote, understand how the
19 drawers of the plan went about achieving the 55 percent target
20 that they, the map makers, had set out for themselves. Do you
21 recall that explanation?

22 A. I do.

23 Q. And to do that the methodology that you employed there
24 was, in your words, to, quote, show visually and descriptively
25 how the map lines were moved, how VTD were moved, what were

1 the implications of those moves, correct?

2 A. Correct.

3 Q. And when you say VTD, you mean voting tabulation
4 districts?

5 A. Yes.

6 Q. And the equivalent in that in Michigan would be a
7 precinct, correct?

8 A. Yes.

9 Q. So in that case you were taking a precinct-by-precinct
10 analysis in Virginia?

11 A. In some cases -- in many cases the vote tabulation
12 districts were split so you might even say it was a
13 bloc-by-bloc analysis, but yes.

14 Q. Fair enough. So, in your own words, the approach you took
15 in that case was to -- I'm going to quote you again -- examine
16 the districting decisions, whether those involved keeping
17 lines or moving them, end quote, and when you found, quote,
18 evidence of a stark racial split, end quote, you included that
19 in your report, your expert report, correct?

20 A. I believe that's right.

21 Q. And your analysis in that case was that you, quote,
22 started with a 55 percent target and then you explored the
23 ways in which that target shaped the decisions about which
24 VTDs in and out of districts often contrasted with or ran into
25 conflict with traditional redistricting principles, correct?

1 A. Correct.

2 Q. So, in other words, you did in that case -- what you did
3 in that case was to follow a progression of the maps and to
4 show how the maps evolved, correct, how the lines evolved?

5 A. No, I don't believe I had any information on how the lines
6 evolved through -- throughout the process. I don't believe I
7 had earlier drafts of the legislature.

8 Q. I think we're missing each other. I apologize. All I
9 meant was you were taking a -- you were showing specific
10 maneuvers and moves of population blocs?

11 A. Yes. The question is move is relative to what, and I
12 think the answer is the previous plan.

13 Q. Understood. And it was -- I think you just said a second
14 ago it was a very careful -- district-by-district analysis
15 would be the normal methodology in that type of case, correct?

16 A. Well, that was the methodology that the Supreme Court
17 called for.

18 Q. And I read your testimony and you went through in
19 painstakingly detail and explained each and every line, each
20 and every population shift, each and every move between the
21 districts, correct?

22 A. Yes.

23 Q. And I think earlier in your direct you said that you,
24 quote, went through every single VTD in the plan, correct?

25 A. In the parts of the state that were relevant, yes.

1 Q. Right. And then you also mentioned splitting along roads,
2 cities, counties in that testimony, too?

3 A. Yes.

4 Q. So you explained in granular detail city splits and
5 movement of certain voting blocks, correct?

6 A. Yes.

7 Q. And you would agree with me that the method you employed
8 there was an appropriate method to determine whether race was
9 the predominant factor, correct, or you wouldn't have employed
10 that methodology?

11 A. It was -- again, this was in very direct response to the
12 Supreme Court's understanding of what racial predominance --
13 what a demonstration of racial predominance would look like.

14 Q. But that's a yes, correct?

15 A. If you could repeat the question. I want to make
16 sure I --

17 Q. Sure, yeah. I said, you would agree with me that the
18 method you employed there was the appropriate method to
19 determine whether race was the predominant factor or else you
20 would not have employed that methodology in the *Bethune* case,
21 correct?

22 A. Yes. But I wouldn't say it's the only method that would
23 be useful. There's lots of other things one could do.

24 Q. But that is not at all what your report here sets forth,
25 correct?

1 A. No. This is a rebuttal report to Mr. Trende.

2 Q. That's not my question. Your report does not undertake
3 that methodology here, correct?

4 A. That is correct.

5 Q. You do not go through a progression of the map movements
6 or moving black voters or white voters in and out of
7 districts, correct?

8 A. Well, in some of the maps we were just looking at there
9 were images of the old maps and the new maps and there were
10 discussions of how things were moved, but the kind of very
11 lengthy careful descriptions of all those moves is not
12 something I was asked to do in this case.

13 Q. And since you're the expert, if the methodology was
14 appropriate in *Bethune*, you could have made the decision to
15 employ the same methodology here, correct?

16 A. It's not -- I could have, but it's not something I was
17 engaged to do. I was engaged to rebut a report that was
18 written by Mr. Trende which didn't engage in any of that kind
19 of analysis. Had he engaged in it, I would have probably also
20 engaged in it.

21 Q. According to your report in this case, racial
22 gerrymandering here -- the definition that you employ is
23 racial gerrymandering is typically understood as placing
24 voters within or outside a district predominately on the basis
25 of race, correct?

1 A. Yes.

2 Q. And in *Bethune* you tracked whether pockets, as you called
3 it, of African American or white voters were, quote, carved
4 out of certain areas; do you recall that?

5 A. Yes.

6 Q. And you did not in your report do that here?

7 A. No.

8 Q. Your counsel asked earlier if you had ever been
9 excluded -- or stricken in any prior testimony. Do you recall
10 that?

11 A. Yes.

12 Q. You said no. But do you recall that the judge in the
13 *Bethune* case called your credibility into question and that
14 you were chastised by the judge for crossing into the line of
15 advocacy instead of confining your testimony to that of an
16 expert?

17 A. Yeah. I believe that was a three-judge panel and that
18 judge was in the dissent.

19 Q. Judge Payne?

20 A. Yes.

21 Q. And do you recall Judge Payne admonishing you, quote, I'd
22 like to say something. I do not find it helpful for experts
23 to be advocates, for experts to go beyond the question that is
24 asked. All it does is indicate to me in my credibility
25 assessment an inability to stay on the task and perhaps an

1 indication of advocacy which I don't think is the role of
2 experts. Do you recall that?

3 A. Yes.

4 Q. Let's talk briefly about your belief that the old maps
5 from 2011 were gerrymandered and what evidence you relied on
6 to support that.

7 In your report you stated that some of the maps
8 across the country are, quote, drawn by strategic incumbent
9 partisans who wish to give an advantage to specific political
10 parties or incumbents, correct?

11 A. Yes.

12 Q. And, in fact, you accused the prior map drawers in
13 Michigan of precisely that and state that Michigan is a
14 classic case of that type of gerrymander, correct?

15 A. That's correct.

16 Q. And as evidence of that prior gerrymandering, you noted in
17 your report, and I believe it was brought up on direct, the
18 quote about cram all the Dem garbage, meaning the Democratic
19 garbage, into four southeastern Michigan districts, correct?

20 A. Yes.

21 Q. And based on that direct quote from one of the individual
22 mapmakers themselves, you drew an inference that there was a
23 partisan intent, correct?

24 A. Well, that was -- that quote added some color to the text,
25 but the real analysis was the one that I presented here, the

1 figure that included the yellow dots and the black dots and
2 showed that the -- that the Democratic vote shares were much
3 higher in the very Democratic districts and that they were
4 lower in the crucial pivotal districts.

5 Q. Okay. Later in your report you once again quote one of
6 the former map drawers in Michigan who drew the 2011 maps, and
7 you stated -- or you recited their quote that relying on
8 county and city or township geography, keeping those intact
9 helps Republicans, correct?

10 A. Yes.

11 Q. And then you did it a third time and you cited to a quote
12 from Mr. Timmer talking about a plan to pack urban voters in
13 the Democratic districts, correct?

14 A. I'm sorry. If you could just -- I didn't hear the last
15 part of the --

16 Q. You quoted Mr. Timmer about trying to pack voters into
17 Democratic districts?

18 A. Yes.

19 Q. Okay. So, by my count you've cited at least three direct
20 quotes that you seem to credit as being some sort of evidence
21 of the gerrymander in the prior maps, correct?

22 A. They were quotes by those who had drawn the maps
23 describing what they had done.

24 Q. And I think you would agree with me that the quotes from
25 people that actually drew the maps, like you just said, would

1 describe what they had done, correct?

2 A. Yes.

3 Q. And you didn't look at any of the Commission transcripts
4 to know what the map drawers here were doing when they were
5 actually making the decisions, correct?

6 A. No. In my -- in my task of rebutting Mr. Trende's report
7 that was not something that occurred to me to do.

8 Q. Okay. Well, it didn't occur to you because in your
9 Cutting through the Thicket article you talk about why the
10 most effective evidence is not just the data driven analysis
11 in isolation, to the contrary it would be most effective in
12 combination with perhaps more traditional evidence, including
13 direct testimony about intent, correct?

14 A. In many partisan redistricting cases I've been involved in
15 there have been witnesses doing what I do, which is
16 quantitative analysis, and there have been other witnesses who
17 brought forth testimony to the effect that -- you know, for
18 instance, in the Florida case it was the constitution
19 essentially says that partisanship shall not --

20 Q. I don't mean to interrupt, but that was not my question.

21 MS. GREEN: Can we -- can I redirect the witness to
22 the original question?

23 JUDGE MALONEY: Counsel, you have got to let the
24 witness finish, and, Mr. Rodden, wait for the end of the
25 question before you reply, okay?

1 THE WITNESS: Sure. Thank you.

2 MS. GREEN: Can I restate -- can I re-ask my
3 question?

4 JUDGE MALONEY: You interrupted the witness in the
5 last one. So go ahead and ask your question. If he's not
6 responsive, you can follow it up after he's answered.

7 BY MS. GREEN:

8 Q. I believe that the question that I originally asked was,
9 in your article, Cutting through the Thicket, in your own
10 words you said that data driven analysis in isolation should
11 not be relied upon because, to the contrary, and this is your
12 words, it would be most effective in combination with perhaps
13 more traditional evidence, including direct testimony about
14 intent --

15 A. Did I --

16 Q. -- is that your words in your article?

17 A. Did I say it should not be relied upon?

18 Q. I said --

19 A. I would be surprised if I said that.

20 Q. In isolation.

21 A. Okay. So, if I could answer the question, I just was
22 trying to give an example of what -- what I meant -- what I
23 was trying to describe.

24 So, in a Court case typically the analysis that is
25 given that is of the kind that I've presented with simulations

1 today, for instance, often in a Court case involving partisan
2 gerrymandering, there is -- if it is a case in which
3 partisanship, for instance, is not to be considered -- in
4 Florida there is a constitutional amendment that says
5 essentially thou shalt not consider partisanship, if there are
6 fact witnesses who come in and describe the ways in which
7 partisanship was considered or provide evidence to suggest
8 that maps had been passed along to the individuals who were --
9 who were then drawing the maps and those maps came from
10 partisan operatives, then that's the kind of evidence, I meant
11 to say, often supplements the analysis of the kind that might
12 be provided through simulations.

13 Q. Understood. Thank you. So fact witnesses, particularly
14 the map drawers themselves, can provide critical evidence,
15 correct?

16 A. I believe that's true.

17 Q. But there's not a single statement or quote in your entire
18 report from the commissioners in this case, correct?

19 A. That's right. I don't believe that Mr. Trende engaged in
20 that type of analysis so, again, I was called upon to rebut
21 Mr. Trende's analysis.

22 Q. Okay. But, you're the expert. It's your methodology for
23 your report. You left out any fact witness citations to the
24 Commission transcript records, correct? Yes or no.

25 A. What I was trying to describe is that often different

1 experts do different things. It would be unusual for an
2 expert who's doing the quantitative analysis to do a summary
3 of fact witnesses, that's not something that's -- falls within
4 my purview as an expert witness.

5 Q. Well, but we agree that fact witness testimony is, in
6 fact, critical evidence to supplement the data, correct --

7 A. Yes, in --

8 Q. -- according to your own words -- sorry, according to your
9 own words in your own article, correct?

10 A. Yes. The fact witnesses provide that testimony, not me.

11 Q. Thank you. And you used the example of a partisan
12 gerrymandering case, but it would be no different in a racial
13 gerrymandering case, correct?

14 A. I believe that's correct.

15 Q. And, in fact, I think in another article that you have
16 drafted, same one, the Cutting through the Thicket, you also
17 state that the map drawers might very well argue that its plan
18 remains an outlier because of its responses to idiosyncratic
19 requests that arose in public hearings or because it felt
20 compelled to protect communities of interest beyond those that
21 were protected by the preservation of municipal and county
22 boundaries. The burden should fall upon the state, i.e., in
23 this case the mapmaker, to be specific about these claims,
24 correct?

25 A. Yes.

1 Q. And the reason you need them to be specific, according to
2 your own article, is that, quote, this allows judges to
3 evaluate whether these claims are even plausible, correct?

4 A. Yes.

5 Q. And, again, you don't have that specific fact testimony in
6 your report, correct?

7 A. Correct.

8 MS. GREEN: Let's pull up, if we can, the expert
9 report from Mr. -- Doctor Rodden. It's PX18. And
10 specifically page 39, figure 15.

11 BY MS. GREEN:

12 Q. Now, this is entitled Distribution of Racial
13 Gerrymandering Scores for Redistricting Ensembles, Linden
14 Plan, Previous Plan, and Plaintiffs' Demonstration Plan,
15 correct?

16 A. Correct.

17 Q. Now, this is a figure -- this figure is a simulation that
18 you ran, correct?

19 A. Yes. This is a simulation I ran for the entire state.

20 Q. Okay. And you ran your simulations a little differently
21 than Trende ran his, correct?

22 A. Only insofar as I used the entire state, not part of the
23 state.

24 Q. Fair enough. So, if we are -- I'm going to have to get
25 out the laser pointer, which I hope everyone appreciates the

1 considerable restraint I have exercised in these proceedings
2 not to go haywire with the laser pointer, but here we go.

3 Okay. The orange line -- so this line here right
4 before the four, that is the previously enacted Senate plan,
5 so the old 2011 plan, correct?

6 A. Yes.

7 Q. And in your mind the old 2011 plan was gerrymandered,
8 correct?

9 A. Yes. Seems to have been.

10 Q. Okay. And then the red line here, this is the Linden
11 plan, this is the new Senate plan, correct?

12 A. Yes.

13 Q. So, according to your figure, if I'm understanding it
14 correctly, as we move farther to the right, this is a higher
15 racial gerrymandering score, correct? The worst -- the
16 farther we go, the worse it becomes, right?

17 A. I wouldn't even put worst. You know, I wouldn't put any
18 normative spin on it. All this says is that the plan, it
19 varies from a race-blind simulation, so it -- the distribution
20 of race across the districts looks different than it does in a
21 race-blind simulation, so I don't know that that's bad or
22 good. It depends on how one is going about trying to satisfy
23 the requirements of the Voting Rights Act.

24 Q. Fair enough. I -- I didn't mean to put a normative spin
25 on it by saying worse. So my point is, as you go along to the

1 right side it's a higher racial gerrymandering score, correct?

2 A. That's correct.

3 Q. Okay. So, according to this figure, then, under your own
4 simulation, the orange plan is the old plan and the red plan
5 is the new plan, and that means that the new Senate plan,
6 under your own simulation, is actually a worse racial
7 gerrymander than the old 2011 map, correct?

8 A. I believe that the gist of my testimony is that this is
9 not a measure of racial gerrymandering whatsoever. This is
10 something that is called that, and Mr. Trende would like to
11 call it that, but it is nothing of the kind. So I can't say
12 that something is worse than something as a racial gerrymander
13 from this -- from this -- the whole purpose of this graph is
14 to show that this can't -- can't have that interpretation.
15 This is not an index of racial gerrymandering.

16 Q. So when it's entitled A Distribution of Racial
17 Gerrymandering Scores?

18 A. It is in scare quotes.

19 Q. So in your -- so you're saying that this is not a higher
20 racial gerrymandering score for the Linden plan compared to
21 the old plan?

22 A. The thing that Mr. Trende has produced that he calls a
23 racial gerrymandering score, there is -- indeed, there is a
24 difference between the Linden plan and the previously enacted
25 plan.

1 Q. But to be fair, this is not Trende's figure and
2 simulation, this is your simulation, right?

3 A. This is his index. This is his idea of how we should
4 quantify racial gerrymandering, but it is one that I believe
5 is not sensible in any way.

6 Q. Let's move on to the partisan fairness priority scheme
7 under the constitution.

8 MS. GREEN: It's PX1.

9 BY MS. GREEN:

10 Q. Now, in the data that you mentioned earlier that you
11 reviewed prior to issuing your report, I did not hear you say
12 that you reviewed the Michigan constitution, but I did see
13 snippets of it in your report, so I imagine you reviewed it,
14 correct?

15 A. Yes, I did.

16 MS. GREEN: Okay. If we start at the top -- not the
17 very top, scroll down to 13, Section 13. There we go.
18 Thank you.

19 BY MS. GREEN:

20 Q. If we start at the top of 13, section A says that
21 districts shall be of equal population as mandated by the
22 United States Constitution and shall comply with the Voting
23 Rights Act and other federal laws, correct?

24 A. Yes.

25 Q. And that's the very first item, criteria listed in terms

1 of priority, correct?

2 A. Yes.

3 Q. And the next criteria is that the districts shall be
4 contiguous, correct?

5 A. Correct.

6 Q. Third one is that the districts must reflect the state's
7 diverse population and communities of interest, correct?

8 A. Correct.

9 Q. And fourth along the line, we finally get to the partisan
10 fairness scores, correct?

11 A. Correct.

12 Q. So the maps must first pass subsection A for compliance
13 with federal law and the VRA, et cetera, correct?

14 A. Yes.

15 Q. And only then can you move on to the second criteria,
16 because these are in priority, and then go to the contiguous
17 nature and then next, the diverse population, and then finally
18 you get to number four, which is the partisan fairness
19 analysis, correct?

20 A. That's right. It's my understanding that if you -- you
21 know, I spoke before about tradeoffs. If you run into a
22 tradeoff, run into a moment when you have to make a choice,
23 the higher ranked considerations are the ones to be
24 considered.

25 Q. Precisely. And that tradeoff under the Michigan priority

1 scheme is the VRA or any federal law trumps the partisan
2 fairness analysis that you just explained to the Court,
3 correct?

4 A. I think that's right.

5 Q. So these criteria, to be clear, they're not equally
6 weighted?

7 A. I think that's my understanding as well.

8 Q. So if the maps fail on prong one, you never even get to
9 the partisan fairness analysis that you laid out for the Court
10 today, correct?

11 A. If it fails on prong one you never get to -- I mean, my
12 sense of the way one draws maps is that to draw -- go through
13 drawing a map with only one thing in mind and then go back and
14 try to deal with the lower ranked -- that's just not how it
15 works.

16 One is -- speaking of someone who's been engaged of
17 trying to do this, you have to be trying to consider all of
18 these things at the same time. It's not possible to just go
19 one by one, draw a map, and then sort of start thinking, after
20 you're finished, about these other considerations. You have
21 to work on them all at the same time, but understanding, for
22 instance, equal population, okay, that is something I cannot
23 give up. I have got to have equal population. Whatever it is
24 I'm trying to do, the constitution tells me something about
25 partisanship, okay? I can't worry about that, I have to focus

1 on equal population, but you have to work on all these things
2 together.

3 Q. But, as you said, the tradeoff, when it comes to it, is
4 the VRA and the federal laws and partisan fairness comes three
5 steps down the priority scheme, correct?

6 A. That's correct.

7 Q. Okay. And because you made no attempt to read the
8 transcripts of the deliberations, listen to the audio,
9 et cetera, you can't testify here today whether the Commission
10 did or did not follow the four-step priority scheme that we
11 just went through, correct?

12 A. Well, you know I've been in the courtroom and I've heard
13 things, but I will not testify to those. I will testify to my
14 report which does not consider any of those transcripts.

15 Q. Thank you. And on page four of your report, which is
16 PX18, your conclusion is that merely -- that deviations of
17 district level BVAP shares from race and party-blind computer
18 simulations could occur for other reasons, including the
19 desire to reduce partisan fairness, correct?

20 A. I just -- can we focus in on where that -- what I'm
21 responding to? Thank you.

22 Q. Right there, last sentence. And I can -- I had just asked
23 you if you had looked at -- there we go. That sentence.

24 A. Okay. Yes.

25 Q. So, in the four -- the priority scheme we just discussed,

1 the partisan fairness issue, if we don't get past the first
2 prong, I think you would agree with me that your analysis here
3 would be largely irrelevant, correct?

4 A. Which analysis? My response to Mr. Trende would be?

5 Q. Your partisan fairness analysis is irrelevant if we get
6 caught up in the VRA or federal laws, correct?

7 JUDGE NEFF: Did you say relevant or irrelevant?

8 MS. GREEN: Irrelevant if we don't make it past the
9 first prong in the constitution.

10 JUDGE NEFF: How could you ever do that? Go ahead.
11 It doesn't make any sense.

12 THE WITNESS: Yeah. The thing I was struggling with
13 earlier is this idea of that when there is a rank ordering of
14 importance, that my understanding of what the Commission needs
15 to do is try to -- you know, they're trying to achieve
16 partisan fairness at the same time that they're trying to
17 abide by the Voting Rights Act and with the understanding that
18 when those two conflict, that abiding by the Voting Rights Act
19 is more important.

20 BY MS. GREEN:

21 Q. Okay. So I think we agree on that. Thank you.

22 A. I think so.

23 Q. Let's move to generally accepted measures of partisan
24 fairness, and let's talk about what qualifies as generally
25 accepted measures of partisan fairness.

1 Now, we just looked at the constitution. Without
2 pulling it back up, do you recall that there is language in
3 the Michigan constitution that the measures of partisan
4 fairness have to be generally accepted?

5 A. Yes.

6 Q. Okay. And I believe you mentioned this in your direct,
7 but there are actually a number of measures of partisan
8 fairness in addition to the three that are in your report,
9 correct?

10 A. There are a few others, yes. Some of them are quite
11 complex, hard to understand.

12 Q. And the three that you noted in your report are the index
13 of lopsided margins, the efficiency gap, and the mean median
14 difference, correct?

15 A. Yes. Again, I indicated those because the Commission
16 indicated having used those.

17 Q. And those came from, I believe, Doctor Handley, correct?

18 A. Yes, I believe so.

19 Q. And you said that these partisan fairness measures, a
20 moment ago in your direct, that they're used by courts,
21 correct?

22 A. Yes. I believe that is true of the mean median gap and of
23 the efficiency gap. I don't recall if the lopsided margins
24 index that Professor Wang came up with, I'm not sure if that
25 one has been used in court.

1 Q. Well, Professor Wang, you actually -- you wrote an amicus
2 brief, correct, to try to convince the Michigan -- or the U.S.
3 Supreme Court to adopt some of these partisan fairness
4 measures, correct?

5 A. That brief had to do with simulations. I don't recall
6 focusing much on partisan fairness indicators.

7 Q. Maybe we're thinking of a different case. The *Rucho v.*
8 *Common Cause* case?

9 A. I've written a couple of these briefs and I might have --
10 I might have to have my memory refreshed on what was in the
11 brief in question.

12 Q. Well, I can pull it up for you, but let me just ask you
13 this question, do you remember that the partisan fairness
14 measures that you were urging the Court to adopt were rejected
15 in the opinion of the U.S. Supreme Court?

16 A. I believe the Court determined that none of the -- none of
17 the indicators of partisan fairness or the simulations or
18 really of any what we were trying to do was -- could be --
19 their conclusion was that these could not be used to conclude
20 that a plan was a partisan gerrymander.

21 Q. Correct. And I believe that the quote was that none of
22 these tests meets the need for a limited and precise standard
23 that is judicially discernible and manageable, and none
24 provides a solid grounding for judges to take the
25 extraordinary set of reallocating power and influence between

1 political parties, correct?

2 A. Yes.

3 Q. So when we say generally accepted measures for partisan
4 fairness, there is no court-sanctioned generally accepted
5 measure, correct? You'd agree with me?

6 A. By federal courts, that's right. And there are -- these
7 measures have been accepted and used extensively in state
8 court.

9 Q. Right. But we're in federal court here today, right?

10 A. That is correct.

11 Q. Okay. Let's go back to your opinion briefly.

12 MS. GREEN: PX18, paragraph 4, first sentence, I
13 believe. I think it's page two. Right there. Fourth
14 paragraph down.

15 BY MS. GREEN:

16 Q. Now, in the paragraph above it you end with this sentence
17 that says, the commissioners needed to trim the size of the
18 Democratic majorities. Do you see that?

19 A. Yes.

20 Q. And below it you say, in practice, so in reality this
21 implies reductions in the BVAP shares of the districts in the
22 urban areas with the largest black populations. Do you see
23 that?

24 A. Yes.

25 Q. And I think you later say on page 14 that in order to trim

1 the size of the Democratic majority in metro Detroit, that
2 trimming, quote, was not possible without, quote, altering the
3 distribution of race across districts, correct?

4 A. That's right.

5 Q. So did I read that right? You are outright acknowledging
6 that there was some sort of methodical altering of the normal
7 distribution of the race across the districts?

8 A. That's what this -- what we were seeing in some of these
9 indicators, is that the distribution of race across districts
10 that would come from a race-blind distribution is not the
11 distribution that we see, so any effort to abide by the VRA
12 would create some distribution that is different from the
13 race-blind distribution.

14 Q. And if moving the black vote around in order to create a
15 better partisan fairness score impacted a black voter's
16 ability to elect a candidate of choice or dilute voting
17 strength or anything along those lines, you're not offering an
18 opinion on that today, correct? That's not in your report?

19 A. I'm not offering an opinion on what, exactly? I'm sorry.
20 There was a string of things there.

21 Q. I'm sorry. I said if the effective moving or
22 redistributing the black vote to achieve partisan fairness, if
23 that impacts a black voter's ability to elect their candidate
24 of choice, you are not offering an opinion on that here today,
25 that's not part of your report.

1 A. I'm not. I was only asked to examine the issues related
2 to -- in Doctor Trende's report related to his -- his claim of
3 racial predominance. The claims about the Voting Rights Act
4 were not part of what I was asked to analyze.

5 Q. And I'm almost finished.

6 MS. GREEN: Can we pull up the figure three from this
7 report. It is on page -- there we go. Perfect.

8 BY MS. GREEN:

9 Q. Okay. So on this figure you ran simulations on all 110
10 districts, correct?

11 A. That's correct.

12 Q. And I believe the difference between your simulation and
13 Trende's is that he locked in a portion of the districts and
14 kind of controlled for those, correct?

15 A. No, that wouldn't be my interpretation. He simply ignored
16 most of the state and only conducted simulations for three
17 counties.

18 Q. Well, when you say ignored the state, he controlled for
19 those and locked those in without changing them, correct? If
20 that's what he testified to, do you have any reason to believe
21 that's not what he did?

22 A. Oh, yeah, he just ignored them. I mean, he just didn't
23 analyze them.

24 Q. Well, and then you also said on page 37 of your report
25 that ensemble simulations must, quote, abide by the same rules

1 that had to be followed by those drawing the districts,
2 correct?

3 A. Yes.

4 Q. But in your report on page 37 you cite no peer review
5 literature, no authority or anything along those lines which
6 states that you must abide by that rule, correct?

7 A. I believe I've -- in that article from the election law
8 review that you -- Election Law Journal that you were
9 describing earlier, there was a discussion in that article
10 about trying to deal with these other considerations and the
11 importance of doing so. There are other places in the
12 literature, but, no, there's no citation to the academic
13 literature in the report, if that's the question.

14 Q. So you're citing back to your own article, right? That's
15 the article you're saying?

16 A. Oh, I guess I interpreted the question to be is there any
17 research or any literature on this, and that was the first one
18 that came up in my mind, but I believe your question was
19 actually whether I cited it in the report.

20 Q. I -- and I'm sorry. I meant more like an independent,
21 objective third party, not yourself, that seems to believe
22 that this is a rule you must abide by?

23 A. I'm sure I could come up with a citation if I had time to
24 search the literature.

25 Q. Okay. Your report does not have one, correct?

1 A. That is correct.

2 Q. Okay. Now, back to this figure. If we look at this
3 figure -- for example, let's just pick one, District 25, where
4 would District 25 be in Michigan?

5 A. So that's an important thing to understand about these --
6 about this rank ordering approach, it doesn't correspond to --
7 you know, the simulations are not necessarily the same
8 geography. The 25th ranked set of simulations is not the same
9 in terms of, you know, Battle Creek, say, as the 25th ranked
10 district, which actually is a district that we can identify.
11 You know, the problem is that the simulations, the 25th ranked
12 district could be any number of places.

13 Q. And same with if we picked District 75, same answer, you
14 would not know where in the state that is, correct?

15 A. I would not for the simulations. I would be able to know
16 that for the green dot, which is the actual plan, we would be
17 able to know exactly which one that is.

18 Q. Correct. But for your simulations you don't know that?

19 A. Correct.

20 Q. So if we picked, like I said, 75, that could be Saginaw,
21 that could be here in Kalamazoo, that could be my hometown of
22 Gladwin, Michigan, we don't know, right?

23 A. Well, we know that it is a relatively -- it is a
24 relatively -- yeah, we know the vote share, so if we're
25 looking -- if it's -- you know, district -- yeah, we know

1 places that it certainly cannot be, but your general point is
2 correct, these don't correspond to specific places.

3 Q. Okay. And you did not do simulations like Trende where
4 you specifically looked at Oakland County, Wayne County, or
5 Macomb County alone, correct?

6 A. That's correct.

7 Q. And the same -- without even having to go to it in your
8 report, I believe the same would be for table one and for
9 figure 14, those are all statewide numbers, correct?

10 A. Yes. As I described, I don't know how to meaningfully
11 calculate indices of partisan fairness for only a corner of
12 the map.

13 MS. GREEN: I have nothing further for this witness.
14 Thank you.

15 JUDGE MALONEY: Mr. Lewis.

16 MR. LEWIS: Thank you, Your Honors. I have no
17 further questions for this witness.

18 JUDGE MALONEY: All right. Thank you. Doctor
19 Rodden, you may step down with the Court's thanks.

20 THE WITNESS: Thank you.

21 JUDGE MALONEY: And we'll take 15 minutes and resume
22 at 3:30.

23 THE CLERK: All rise, please. Court is in recess.

24 *(Recess taken at 3:16 p.m.; reconvened at 3:32 p.m.)*

25 THE CLERK: All rise, please. Court is in session.

1 You may be seated.

2 JUDGE MALONEY: We are back on the record. Counsel
3 for the parties are present. The defendant may call its next
4 witness.

5 MS. McKNIGHT: Thank you, Your Honor. Defendant
6 calls Doctor Lisa Handley to the stand.

7 JUDGE MALONEY: Please step forward and be sworn.

8 *LISA HANDLEY,*

9 *having been sworn by the Clerk at 3:32 p.m. testified as*
10 *follows:*

11 THE CLERK: Please be seated. State your full name
12 and spell your last name for the record, please.

13 THE WITNESS: Lisa Handley, H-A-N-D-L-E-Y.

14 *DIRECT EXAMINATION*

15 BY MS. McKNIGHT:

16 Q. Good afternoon, Doctor Handley. Have your ears been
17 burning?

18 MS. McKNIGHT: We'd like to start by passing out a
19 witness binder, if it would help the Court, with just two
20 exhibits. If the Court prefers, we can just stick with the
21 electronic presentation.

22 JUDGE KETHLEDGE: I'll take it.

23 MS. McKNIGHT: A copy has been given to plaintiffs'
24 counsel as well.

25 BY MS. McKNIGHT:

1 Q. Doctor Handley, let's start by looking at your CV. Could
2 you turn to tab 2 in the binder? This is DTX26, so
3 Defendants' Exhibit 26, and please turn to page 16.

4 MS. McKNIGHT: Mr. Williams --

5 THE WITNESS: I don't have a tab 2. I'm completely
6 lost. I'm sorry.

7 BY MS. McKNIGHT:

8 Q. That's okay. It's tab B.

9 A. B, okay.

10 Q. And then it should say DTX26 at the bottom --

11 A. It does.

12 Q. -- of Defendants' Exhibit 26, and then if you can turn to
13 page 16, please?

14 Doctor Handley, is this your CV?

15 A. It is.

16 Q. And do you have your PhD in political science?

17 A. I do.

18 Q. How many years of experience do you have in the areas of
19 redistricting and voting rights?

20 A. More than I care to admit. 40, maybe.

21 Q. Is that both as a practitioner and as an academician?

22 A. That's correct.

23 Q. Did you co-write a book with the title, Minority
24 Representation and the Quest for Voting Equality in 1992?

25 A. Yes.

1 Q. Okay. And did you co-edit a volume titled Redistricting
2 in Comparative Perspective in 2008?

3 A. Yes.

4 Q. Let's turn to DTX26, page 17, so just the next page. Have
5 you worked with clients in the United States across the
6 country since 2000?

7 A. Yes. This is a list of most of the clients.

8 Q. So, did you work with U.S. clients prior to 2000?

9 A. Yes. This is just since 2000, but I've been doing this
10 for a lot longer than that.

11 Q. Okay. And let's turn the page to 18. And have you ever
12 worked with international clients since 2000?

13 A. Yes. This is a list of some of the places that I've been
14 and some of the clients that I've worked with, primarily the
15 UN and an organization called IFES, which is funded through
16 U.S. aid.

17 Q. And let's turn to page 19 of DTX26. And looking at pages
18 19 through 21, have you published on the issues of
19 redistricting and voting rights?

20 A. Yes, I have.

21 Q. Okay. And staying on page 19, I see a reference to a 2001
22 North Carolina law review article you co-authored with Bernard
23 Grofman and David Lublin titled, Drawing Effective Minority
24 Districts: A Conceptual Framework and Some Empirical
25 Evidence. Do you see that?

1 A. Yes, I do.

2 Q. Is it fair to refer to this article as a seminal piece
3 that has been cited twice by the United States Supreme Court
4 and over a hundred times on Westlaw?

5 A. I'll take it. Seminal sounds good to me. It has been
6 cited by the Supreme Court, yes.

7 Q. Okay. Let's scroll between pages 19 and 21. Is this a
8 list of your publications on redistricting and voting rights?

9 A. Yes. I think there's a couple of things that are not
10 directly related, but almost all of them are on minority vote
11 delusionary districting.

12 Q. And let's turn to pages 22 to 23, please. And is this a
13 list of recent court cases in which you've worked as an expert
14 witness?

15 A. This is almost reflective of the last 10 years. A couple
16 have been left off because I -- this hasn't been updated
17 recently, but this is the last 10 years.

18 Q. Okay. And have you been accepted as an expert witness in
19 any recent court cases on the topics of redistricting or
20 voting rights?

21 A. Certainly all of these would qualify.

22 MS. McKNIGHT: Your Honors, at this time we would
23 like to proffer Doctor Handley as an expert in the areas of
24 redistricting and voting rights. She has submitted a report
25 in this matter, that's at DTX26, and she satisfies the

1 requirements of Rule 702.

2 JUDGE MALONEY: Any objection?

3 MR. BURSCH: No objection.

4 JUDGE MALONEY: You may proceed.

5 MS. McKNIGHT: Per agreement with plaintiffs'
6 counsel, we also at this time move for admission of her expert
7 report, again that is located at DTX26.

8 JUDGE MALONEY: Any objection?

9 MR. BURSCH: No objection.

10 JUDGE MALONEY: Received.

11 *(At 3:38 p.m. Exhibit No. 26 was admitted)*

12 BY MS. McKNIGHT:

13 Q. Doctor Handley, were you hired by the Commission to do
14 work for the most recent redistricting cycle?

15 A. Yes.

16 Q. Okay. And do you recall how you were hired by the
17 Commission to do that work?

18 A. I was actually subcontracted through Election Data
19 Services who brought in a group of people to assist the
20 Michigan Commission. One of them ultimately being me.

21 Q. Okay. And what were you tasked with doing for the
22 Commission?

23 A. Originally Kim contacted me with the idea of doing a
24 racial bloc voting analysis to determine if the Voting Rights
25 Act should play a part in the redistricting effort, and then

1 at one point I asked the Commission what they were planning on
2 doing about the partisan fairness measures that were listed in
3 the constitution, and they said they didn't know, and so I
4 suggested a few measures that they might consider and got
5 involved in helping select and incorporating the DS software,
6 some partisan fairness measures.

7 Q. And looking at tab B, this is DTX26, this is the expert
8 report you submitted in the case. We've already established
9 that. Was it submitted on or around March 8, 2023?

10 A. Yes, I believe so.

11 Q. And does this report at DTX26 attach as an appendix the
12 report you provided the Commission in December 2021?

13 A. That's correct.

14 Q. Okay. And this December 2021 report, which I'll refer to
15 for clarity as the Commission report, and I'll refer to DTX26,
16 the body of that, as your expert report. So for the
17 December 2021 Commission report, did that gather all analysis
18 you had conducted for and shared with the Commission to that
19 date?

20 A. With the Commission or the commission's counsel, yes.

21 Q. We heard plaintiffs' counsel state in cross examination
22 that no data analysis was provided by you to the Commission or
23 its staff or consultants between September 2nd and
24 December 28, 2021; is that correct?

25 A. No, it's not correct.

1 Q. Were you conducting analyses throughout the fall of 2021
2 and sharing it with the Commission or its staff or both?

3 A. Yes.

4 Q. Let's pull up DDX1. So this is Defendants'
5 Demonstrative 1. Doctor Handley, does this demonstrative show
6 some of the presentations and meetings in which you
7 participated in with the Commission or its staff?

8 A. That's correct.

9 Q. And in your view, is this complete or is there -- or could
10 there have been more meetings?

11 A. There were certainly no more trips to Michigan. I could
12 find those in my calendar. I believe there might have been
13 some additional Zoom meetings with the Commission. I
14 certainly know that there were additional Zoom meetings and
15 phone calls with the legal counsel of the Commission.

16 Q. And as a consultant for the Commission, did you conduct an
17 analysis of voting patterns in earlier general elections in
18 Michigan?

19 A. Yes.

20 Q. And as of general elections, which ones did you analyze?

21 A. So, there were 13 general elections, general election
22 contests held between 2012 and 2020, and I analyzed all of
23 those.

24 Q. Let's go to DTX26 at page three, please. Does this show
25 some of the general elections that you analyzed as part of

1 your work for the Commission?

2 A. So, I actually analyzed over 50 district level elections
3 between 2018, and by the time I created the expert report I
4 culled it down to the 31 that fit the definition of being in
5 the Detroit area and in districts with BVAPs, and you know
6 that that means black voting age population, of greater than
7 25 percent, so, again, I analyzed more than 50 and 31 of the
8 most relevant appear in the expert report.

9 Q. And did you also analyze voting patterns in earlier
10 Democratic primary elections for the Commission?

11 A. Yes. There was a total of one Democratic primary that was
12 statewide and that was the 2018 gubernatorial primary which I
13 analyzed. And then I analyzed over 30 legislative primaries,
14 and by legislative primaries I mean congressional, State House
15 and State Senate primaries, and, again, I culled the group
16 down to 22 for this expert report because those were the
17 Detroit area district elections that I analyzed in districts
18 with more than 25 percent BVAP.

19 Q. So, when we've heard statements from plaintiffs that you
20 only analyzed one primary election, is that correct?

21 A. I analyzed one statewide primary election because there
22 was only one, but, as I just said, I analyzed over 30
23 Democratic primaries at the state legislative and
24 congressional level for 2018 through 2020.

25 JUDGE KETHLEDGE: Just so I'm understanding -- I

1 don't mean to interrupt your exam. Are we talking about for
2 purposes of the expert report here or are we talking about for
3 purposes of advising the Commission?

4 MS. McKNIGHT: Good question, Your Honor, if you just
5 give me a moment.

6 JUDGE KETHLEDGE: Sure.

7 BY MS. McKNIGHT:

8 Q. Doctor Handley, did you analyze elections in Michigan,
9 general and primary elections, the ones that we were just
10 describing, did you analyze those for the Commission during
11 the time it was drawing its map?

12 A. That's correct. The only additional contests that I
13 analyzed for my expert report in this case was the 2022
14 elections. Those, of course, I couldn't analyze for the
15 Commission because the elections had not occurred.

16 Q. Okay. And so if we turn to page DTX26 at 25, is that a
17 copy of your December 2021 -- I'll wait for you to get there,
18 Doctor Handley, pardon me.

19 A. Okay.

20 Q. Is what's located and starts at DTX26, page 25, is that
21 the December 28, 2021, report you gave to the Commission?

22 A. That's correct.

23 Q. Okay. And in reviewing -- if we look through this report,
24 would we see references to your analysis of these additional
25 general and primary elections?

1 A. That's correct.

2 Q. Okay. And let me ask this -- it comes up later but since
3 we're talking about it now -- that December 28, 2021, report,
4 was that the first time you provided this analysis to the
5 Commission or its staff?

6 A. Pieces of the report were provided at different periods of
7 time. All of the report had been provided -- all of the
8 pieces of the report had been provided prior to handing over
9 this report that summarized everything on the 28th of
10 December.

11 Q. So this December 28, 2021, report, is it fair to say it
12 collected the analysis that you had already provided to the
13 Commission during the fall of 2021?

14 A. The Commission or the legal staff of the Commission.

15 Q. Thank you. Okay. Stepping back, what did you conclude as
16 part of your analysis of statewide general elections when you
17 provided that analysis to the Commission in 2021? And here
18 I'm focused -- I want to make sure it's clear -- on statewide
19 general elections.

20 A. There were 13 statewide general elections. I analyzed
21 those elections both statewide and in any county in which I
22 had a sufficient number of black voters to produce reliable
23 estimates, and that left me with four counties.

24 Anyway, I analyzed all 13 of those contests -- I'm
25 sorry, I've forgotten the question.

1 Q. That's okay. What did you -- what did you conclude as
2 part of your analysis of the statewide general elections when
3 you provided it to the Commission in 2021?

4 A. As part of my presentation I explained that the majority
5 of the contests I analyzed, both statewide and across the four
6 counties for which I could produce estimates, voting was, in
7 fact, racially polarized.

8 Q. Let's turn to tab A in your binder. This is DTX48. You
9 referenced a presentation that you gave to the Commission. Is
10 this the presentation that you gave?

11 A. This is the presentation I gave on September 2nd. I gave
12 several other presentations. This is the September 2nd one.
13 I gave a portion of this, actually, prior to this, back maybe
14 in June -- June or July. June, I think, but at that point I
15 hadn't done any analysis. We didn't have any data at that
16 point, so the first five slides or six slides I think the
17 Commission got to see twice.

18 Q. Okay. So, in concluding that most of the district -- most
19 of the elections were polarized, what did -- what did that
20 mean for the Commission?

21 A. Because voting was polarized I told the Commission that
22 the Voting Rights Act was going to be relevant to them, which
23 means that they were going to have to create districts that
24 provided black voters with an opportunity to elect their
25 candidates of choice.

1 Q. And here we're still focused on Michigan statewide general
2 elections; is that right?

3 A. In September 2nd when I gave this I had only looked at the
4 statewide elections at that point.

5 Q. And what did you determine about whether majority-minority
6 BVAP districts were necessary to be drawn under VRA?

7 A. So, once it's determined that you have to draw districts,
8 there are a couple of methods to determine what sort of
9 guidelines you should follow to create those districts, and I
10 did an analysis that indicated to me that majority-minority
11 districts were not necessary to provide black voters with an
12 opportunity to elect their candidates of choice.

13 I should make it clear that they did have to create
14 districts that would allow black voters to elect their
15 candidates of choice. I merely said that they didn't
16 necessarily have to be majority black.

17 Q. And you said you gave this presentation on September 2nd,
18 correct?

19 A. That's correct.

20 Q. We heard plaintiffs' counsel earlier today make the
21 statement that the counsel that the Commission did not need to
22 draw majority-minority districts was held secretly, that it
23 was maintained and shared only secretly with the Commission,
24 only in later October.

25 Is it our understanding from what you shared in the

1 September 2nd presentation that this information was actually
2 shared publicly with the Commission earlier than that?

3 A. It is incorporated in the September 2nd presentation which
4 was public.

5 Q. Let's turn back to your expert report. We'll come back to
6 your September 2nd presentation. Let's turn back to DTX page
7 four, DTX26, page four.

8 We touched on earlier the fact that you also looked
9 at primary elections in the Detroit area. Do you recall that?

10 A. Yes.

11 Q. Okay. And what does this table one show the Court about
12 the analysis you conducted on the primary elections?

13 A. Each of the cells in this -- first, in the first column
14 you see what district it was that I was analyzing. In the
15 second column you see the percent BVAP of that district. In
16 the third column you see the results of the 2018 Democratic
17 primary analysis, what I concluded, and in the 2000 -- and the
18 last column is the same information for the 2018 Democratic
19 primary.

20 In essence, it's just a summary of the racial bloc
21 voting tables that appeared in my Commission report on
22 December 28, 2021, with the exception of pulling out those
23 district contests that I analyzed that were not in the Detroit
24 area.

25 Q. So before we get into what this table means, let me ask

1 you, was this information or your conclusions about it shared
2 with the Commission or its staff or counsel in the fall of
3 2021?

4 **A.** When I completed this analysis, and it took a while to get
5 the primary data you have to go county by county to get
6 primary data, so we didn't even have the data until October, I
7 think, and so it was mid October, maybe, before I relayed this
8 information to legal counsel.

9 **Q.** Okay. So let's turn to the table and what it shows the
10 Court. First, does this summarize the results of your
11 analysis of local Democratic primaries?

12 **A.** Yes. But it also indicates where I, for example, didn't
13 do an analysis, so any time there's a Senate District under
14 2020 you'll see no contest because, of course, there weren't
15 Senate contests in 2020, or you'll see that there was no
16 Democratic primary, the Democratic candidate was unchallenged
17 or you can see a couple of instances where I couldn't do an
18 analysis, even though there was a contest in some instances,
19 it's because there was an insufficient number of white voters
20 to actually produce reliable estimates of white voting
21 patterns.

22 In other instances it was because there were, say, 10
23 or 11 or 14 candidates with very little vote variation around
24 them, so you can't actually produce reliable estimates in
25 those circumstances so that's also indicated.

1 If I did the analysis and I got reliable estimates,
2 then the results of that analysis show up here. The details
3 show up, again, in the summary sheets appended to the
4 Commission report.

5 Q. Okay. And does this show whether you determined -- for
6 those elections that you could conduct a reliable analysis on,
7 does it show when you were able to determine whether it was
8 polarized or not?

9 A. That's correct. I indicate whether it was polarized or
10 not polarized, and if it was polarized I indicate whether the
11 candidate of choice of black voters was successful or lost.

12 Q. A simple question, but the first column says 2012
13 districts. Is that because these elections were conducted
14 using the old plan?

15 A. That's correct. The elections were actually in 2018 and
16 2020, but it means that this was the old plan, the plan that
17 the elections were held under.

18 Q. And you list percent BVAP for these districts in the
19 second column. Do you see that?

20 A. Yes.

21 Q. Okay. And did you order the districts by that BVAP
22 percentage?

23 A. Yes, it appears I did.

24 Q. And can you walk through -- I think we'll go through one
25 by one, but can you give the Court a sense of this information

1 in the remaining two columns? 2020 Democratic primary and
2 2018 Democratic primary, can you give them a sense of what
3 you're showing in these columns?

4 A. Whether the contest was polarized -- I'm sorry, I'm not
5 sure I understand your question. It tells me whether -- it
6 tells us whether the contest -- whether I was able to analyze
7 the contest and what the results of the analysis was.

8 Q. Okay. And now by my count I see that there are 22 cells
9 for which there were no results either because no contest,
10 insufficient number of white voters to conduct analysis, or
11 too many candidates to conduct an analysis. Do you agree with
12 my count?

13 A. I agree that there were 22 contests that I could analyze,
14 state legislative. I don't know off the top of my head how
15 many I couldn't analyze.

16 Q. Okay. And so by my count there are 22 districts that were
17 analyzed over the course of two elections. Does that account
18 to 44 total cells on this table?

19 A. I believe you.

20 Q. So if you recall that there were 22 of these elections
21 that you could analyze, there were 22 that you couldn't; is
22 that fair?

23 A. By my math, that's fair.

24 Q. The figure of the 22 that you couldn't conduct an analysis
25 on includes six contests where there were anywhere from seven

1 to 14 candidates in the primary. What can the Court glean
2 from these six contests?

3 A. That there were too many candidates to do a reliable
4 estimation of voting patterns.

5 Q. Was there enough variation in the votes between those
6 candidates to allow you to conduct an analysis?

7 A. That's part of it. Many of these contests don't have very
8 many votes that are cast and so there's -- you know, when you
9 have 14 candidates running and the vote is spread out,
10 sometimes, you know, the candidates have -- you know, they're
11 separated by two or three or four votes and you just can't do
12 an estimation procedure with not that much variation.

13 Q. Okay. Let's turn to DTX26, page five. So, of the
14 contests that you were able to analyze, how many contests
15 existed for what -- for which you could produce estimates?
16 Was that the 22 figure?

17 A. That's correct.

18 Q. Okay. Of these remaining 22 contests, I see 11 references
19 to contests as being not polarized. First, do you agree with
20 my count?

21 A. Yes. It's also my count. It's here at the top of the
22 page of my report.

23 Q. Okay.

24 A. Page five, yes.

25 Q. And what does this mean that these 11 out of 22 elections

1 you could analyze were not polarized?

2 A. When I say an election is not polarized, I mean that if
3 you looked at black voters and white voters separately, they
4 would have elected the same candidates. In other words,
5 they're supporting the same candidate. That means the contest
6 is not polarized.

7 Q. Okay. Stepping back a minute on the point of
8 polarization, we've heard some statements by plaintiffs'
9 counsel that I want to pressure test with you based on your
10 analysis of the state.

11 We heard plaintiffs' counsel state in their opening
12 that the whole purpose for, quote, scrunching down these BVAP
13 targets was Doctor Handley's supposition that there would be
14 white crossover voting, but as you can see here, the evidence
15 will show that white over -- crossover voting is illusive at
16 best.

17 Doctor Handley, is it correct to say that white
18 crossover voting in the Detroit area is illusive at best?

19 A. Absolutely not.

20 Q. Okay. And why not?

21 A. First let me explain what crossover voting is, at least as
22 I and I believe the literature defines it, and, that is, if a
23 contest is polarized, then the percentage of white voters who
24 vote for the minority preferred candidate -- you've got the
25 majority voting for a different candidate. It's the

1 percentage of white voters who are supporting the candidate of
2 choice of black voters, that is crossover. Sometimes it's
3 misused. Sometimes people talk about just the white vote for
4 the black preferred candidate in a non-polarized contest, but
5 more specifically what it means is the percentage of white
6 vote for the minority preferred candidate in a polarized
7 contest, and, again, there was lots of crossover voting in the
8 Detroit area.

9 Q. So, is it -- are you saying that if a contest is not
10 polarized, there's nothing to cross over, for the white voters
11 to cross over and, therefore, crossover voting isn't something
12 that happens when there is no polarization?

13 A. I think that that's how the term was derived, yes.

14 Q. Okay. So, of the 22 contests, I'm counting 11 not
15 polarized. Does that mean that there were 11 polarized
16 elections?

17 A. That's correct.

18 Q. Okay. And let's go back to table one on DTX26, page four.
19 So now focusing only on the polarized elections, in those 11
20 polarized elections how often did the black preferred
21 candidate win?

22 A. I'm looking at the second paragraph here that says -- I
23 think it would have been seven so -- but let me count. If I'm
24 counting right, of the 11 polarized contests, the black
25 preferred candidate won seven of them.

1 Q. Okay. And so in the polarized primaries in the Detroit
2 area, of the 22 that you looked at, in only four was voting
3 polarized and the black candidate of choice lost; is that fair
4 to say?

5 A. That's correct.

6 Q. Okay.

7 A. In fact, those contests are discussed on page five in more
8 detail.

9 Q. Okay.

10 A. Page five of my expert report.

11 Q. So is it a fair next step to say four losses divided by 22
12 amounts to an 18 percent rate of loss in the Detroit area
13 primaries? Do you agree with that?

14 A. I don't have a calculator, but I'm going to trust you on
15 that.

16 Q. So the reverse, in your analysis of Detroit area
17 Democratic primaries in 2018 and 2020, the black candidate of
18 choice won 81 percent of the time; is that fair to say?

19 A. The black voters' candidate of choice won, I think -- what
20 did you say, 81 percent of the time? Yes.

21 Q. We understand from your earlier testimony that you had
22 determined in Michigan that voting was polarized at the
23 statewide general election level, correct?

24 A. That's correct.

25 Q. Is it possible for voting to be polarized in a statewide

1 general election but not necessarily polarized in a Detroit
2 area primary election?

3 A. Certainly. That's what's happened here, but I've found it
4 in other jurisdictions as well.

5 Q. Okay. And the analysis of table one, is that on pages
6 five and six of your expert report at DTX26?

7 A. That's the discussion of my analysis, yes.

8 *(Off the record)*

9 JUDGE MALONEY: Counsel, you may proceed.

10 MS. McKNIGHT: Thank you, Your Honor. Let's turn to
11 DTX48 page seven.

12 BY MS. McKNIGHT:

13 Q. Doctor Handley, here we are in your September 2nd
14 presentation. Does this identify the elections you analyzed
15 to date for the Commission by September 2nd?

16 A. Again, I analyzed all 13 federal and statewide general
17 elections. What I've done in this slide is identify the
18 contests that the courts have found most probative, and that
19 is the contests in which black voters have the opportunity to
20 vote for a black candidate. And so you have four of the 13
21 elections that included black candidates and two additional
22 contests in which the running mate was a black candidate.

23 Q. Okay.

24 A. So this just identifies the most probative contests, and
25 now let's turn back so we understand what elections you had

1 analyzed and when you had provided that information to the
2 Commission by September 2nd.

3 Now I'd like to turn to what additional elections you
4 analyzed between September 2nd and the map drawing, so can we
5 turn to page -- table one in your expert report? We were just
6 discussing DTX26 at page four. We were just discussing the
7 Democratic primaries in 2018 and 2020. Do you remember that?

8 A. Yes.

9 Q. And the analysis -- I understood that you provided this
10 analysis to the Commission's counsel in the fall of 2021. Did
11 I understand that correctly?

12 A. That's correct.

13 Q. Okay. And by about what time had you provided your
14 initial analysis of primary results to the Commission's
15 counsel?

16 A. Again, it was difficult to collect the data. I think -- I
17 think that I had begun the analysis by my trip out to Michigan
18 October 1st, but I had just begun it, and I think we -- that's
19 the first time we might have mentioned it, but I did not
20 finish the analysis until later in October.

21 Q. Okay. And at that time on October 1st did you convey
22 anything to the Commission's legal counsel about your initial
23 analysis of Detroit area primary legislative elections?

24 A. I'm not sure if it was -- I think it was October 1st and
25 then reiterated it later, but it may have been a conversation

1 that was had completely later and I'm just forgetting, but I
2 did summarize my findings from the primaries, and I believe I
3 gave them at some point the racial black voting summary
4 tables.

5 Q. And did anything in your analysis of the Democratic
6 primaries in the Detroit area legislative districts alter the
7 counsel or advice you had given the Commission in your
8 September 2nd report and presentation?

9 A. No. I believe that I let the counsel know that I didn't
10 find the primaries particularly relevant to the mapmaking task
11 for a number of reasons.

12 Number one, we only had one statewide primary and you
13 a need a statewide primary in order to do what's called
14 recompile the election results. That's sort of the second
15 part determining if you have an effective district and the
16 more accurate part.

17 Second of all, half of these contests were not
18 polarized.

19 Third, the black preferred candidate was winning in
20 the contest -- many of the contests that were polarized so I
21 didn't know how it could be used to direct the map drawing.

22 Let me add another factor. When the -- when I found
23 that the black preferred candidate lost, I would say that
24 there wasn't a clear relationship between the percentage BVAP
25 of the district that they lost in and the loss of the

1 candidate. What I found was often other things explained it
2 more exactly. It was the number of candidates who ran and the
3 fact that black voters were not necessarily cohesive behind
4 one of those candidates in, say, a five candidate contest, and
5 that's not something you can draw a district to correct for.

6 Q. So by the time the commissioners were drawing the Detroit
7 maps in later October, had you informed them directly or
8 through their counsel of the preliminary results on the
9 analysis in general and primary elections in Detroit?

10 A. Yes, I believe so.

11 Q. Now, I notice in your report, your expert report, you
12 analyzed contests that Mr. Trende analyzed, additional ones,
13 including additional 2014 Senate contests and 2014 and 2016
14 House contests; is that right?

15 A. No, I didn't analyze those contests. I didn't have the
16 data. I simply borrowed his estimates to include in my expert
17 report to get more estimates of voter patterns in primaries.
18 I reviewed his estimates and I accepted them as useful for
19 including in my report without actually redoing the analysis.

20 Q. Okay. And so accepting Mr. Trende's analysis of those
21 elections as correct for the purposes of this case, did
22 anything in that analysis change your conclusions in your
23 expert report?

24 A. No. It simply added more data points.

25 Q. And because I focused that question on your expert report,

1 was there anything in those additional elections identified
2 and analyzed by Mr. Trende that altered your conclusions that
3 you provided to the Commission or Commission counsel in the
4 fall of 2021?

5 A. No.

6 Q. Okay. Now, did you analyze 2022 elections in your expert
7 report in this case?

8 A. Yes, I did.

9 Q. Okay. Let's turn to page DTX26 at 10. Can you tell the
10 Court what 2022 elections you analyzed?

11 A. Again, I focused on the Detroit area and I analyzed
12 27 district level 2022 general elections. This includes
13 congressional, State Senate, and State House elections. And
14 this is in districts with voting age populations greater than
15 25 percent.

16 Q. And did you analyze any primary elections from 2022?

17 A. Yes. 24 district level Democratic primaries from
18 districts in the Detroit area were analyzed.

19 Q. Can you tell the Court -- I'm going to focus on the
20 27 district level 2022 general elections that you analyzed.
21 Could you tell the Court of those 27 elections, how many of
22 them were polarized?

23 A. I think it was one. Let me -- yes, only one of them was
24 polarized.

25 Q. Okay. So 26 of the 27 district level 2022 general

1 elections you analyzed showed no polarization; is that right?

2 A. Correct.

3 Q. Let's turn to table four in your expert report. This is
4 located at DTX26 page eleven.

5 A. Yes.

6 Q. What does this table show, and then I'll ask you more
7 specific questions about it?

8 A. So, this table replicates the earlier tables. You can see
9 these are the 2022 districts. It lists the districts that I
10 analyzed, the percentage black of those districts, and then
11 the results of my analysis.

12 Q. Now, by my count I see only 10 of the 24 district
13 level 2022 primary contests that were polarized. Is that read
14 correct?

15 A. That's correct.

16 Q. Let's turn to page DTX26-13. I notice a paragraph here
17 starting with the word, overall, and I'd like to get an
18 understanding of your overall conclusion about your analysis
19 of the primary contests analyzed.

20 Overall, what did you find as far as black candidates
21 of choice success in the legislative primary contests you
22 analyzed?

23 A. So, what I did here was I sorted these districts by the
24 percentage black, and I was just looking at the success rate
25 of the black preferred candidates in these various ranges, and

1 this is what I'm reporting here, so, for example, in -- oh, no
2 this is something else you pulled up. I'm sorry.

3 Q. That's okay. Let me ask it a bit more specifically,
4 Doctor Handley, and then we can move forward.

5 Overall, how many contests of the 22 state
6 legislative primary state contests analyzed did black
7 preferred candidates win?

8 A. 16 of the 22.

9 MS. McKNIGHT: Could we pull up Defendants'
10 Demonstrative Exhibit 4? And, for the record, the source for
11 information on this demonstrative comes from -- if you can
12 zoom out for a moment, Mr. Williamson, comes from your report
13 at DTX26, page six and page 14.

14 BY MS. McKNIGHT:

15 Q. Do you see that?

16 A. Yes.

17 Q. So, we can zoom in now. Doctor Handley, earlier in your
18 testimony we talked about the success rate in Democratic
19 primaries in the Detroit area for 2018 and 2020. Do you
20 remember that?

21 A. Yes.

22 Q. And we just discussed the success rate for those same
23 types of districts in the 2022 election; do you remember -- is
24 that right?

25 A. Yes.

1 Q. Okay. And so what we've pulled here is text from these
2 two different pages in your report showing BVAP ranges of
3 districts and the success rates. Can you explain to the Court
4 what this -- what the columns mean and then what the results
5 show the Court?

6 A. Yes. So, I was interested in seeing if there was a direct
7 relationship between the percentage black voting age
8 population and the success rate of black preferred candidates,
9 and this reports the percentage of the black preferred
10 candidates that won in each of these ranges.

11 So, for example, in 2022, 83.3 percent of the black
12 preferred candidates were successful in the districts that
13 were over 50 percent black in which there were contests, and
14 so on and so forth.

15 Q. Okay. And so did the success rate for candidates
16 preferred by black voters ever dip below 50 percent in any of
17 the BVAP ranges analyzed?

18 A. No.

19 Q. Okay. Doctor Handley, what did you conclude about the
20 performance of black candidates of choice in the 2022 election
21 using the Commission's maps?

22 A. Do you mean with reference to this table that we're
23 looking at?

24 Q. We can talk about this table or we could go back to the
25 table with the elections, whatever you prefer.

1 A. I was just going to comment on this table. I conclude a
2 couple of things. Number one, the relationship is not linear.
3 In other words, as you increase the percentage black VAP you
4 don't necessarily increase the success rate. You can see some
5 dips in the success rate.

6 Other factors are impacting this success rate of
7 black candidate -- black preferred candidates, and I think I
8 mentioned what some of those were; that is the number of
9 candidates and the degree of cohesion that black voters had
10 behind especially multi-candidate contests.

11 I think I also would point out that a 50 percent
12 district is not a guarantee of a success for a black preferred
13 candidate.

14 JUDGE KETHLEDGE: Can I ask just another -- just an
15 understanding where we're at question? I apologize. I mean,
16 there are several reports and I'm trying to keep them
17 straight. So this is in the December 21st report, this table;
18 is that right, or am I mistaken?

19 THE WITNESS: No. This is in the expert report --

20 JUDGE KETHLEDGE: Okay.

21 THE WITNESS: Am I not --

22 JUDGE KETHLEDGE: No, this is fine. Either one of
23 you I'm happy to talk with.

24 THE WITNESS: The information for the 2018 and 2020
25 elections could be found at the Commission report, although

1 not in this format, but this table appears in the expert
2 report filed in 2023.

3 JUDGE KETHLEDGE: And that was my next question,
4 where is the backup, so to speak, for this table?

5 MS. McKNIGHT: Can you zoom out?

6 THE WITNESS: It's on two pages in the -- in my
7 expert report. It's on --

8 JUDGE KETHLEDGE: Okay. It's in your expert report?

9 THE WITNESS: Not this table. The text.

10 JUDGE KETHLEDGE: Right. I'm looking for the
11 underlying data.

12 THE WITNESS: It's on these pages.

13 MS. McKNIGHT: Your Honor, we did this for your
14 reference --

15 JUDGE KETHLEDGE: Okay.

16 MS. McKNIGHT: -- if this helps you at all?

17 JUDGE KETHLEDGE: Excellent. Perfect.

18 MS. McKNIGHT: DTX26 at page six shows these figures
19 for the 2018 and 2020 elections.

20 JUDGE KETHLEDGE: Okay.

21 MS. McKNIGHT: But it's in text format.

22 JUDGE KETHLEDGE: I'll get out of your way. That's
23 exactly what I was looking for.

24 MS. McKNIGHT: Not in my way, Your Honor. It's most
25 important you understand.

1 The next citation is DTX26-14 and I believe it may
2 span 13 to 14, but that's where you can find the percentages
3 for success rate under 2022.

4 JUDGE KETHLEDGE: Okay.

5 BY MS. McKNIGHT:

6 Q. So, stepping back from this analysis, Doctor Handley, what
7 did you conclude about the performance of black candidate of
8 choice in the 2020 election -- 2022 election using the
9 Commission's maps?

10 A. That the maps -- I would say basically the
11 majority-minority districts were not necessary to elect
12 candidates of choice of black voters.

13 Q. And let's turn to page 14 of your expert report at DTX
14 26-14. And does this reflect your conclusion about the
15 district level 2022 Democratic primary results?

16 A. It does.

17 Q. We've gone through this but let me make sure I understand.
18 In the 2022 election, is it fair to say that the majority of
19 the contests you analyzed were not polarized?

20 A. That's correct.

21 Q. Thank you, Doctor Handley. I'll move on to another topic.

22 I'd like to ask you questions about the issue of
23 turnout. Have you reviewed testimony by Commissioner Szetela
24 provided in this case?

25 A. I have.

1 Q. Okay. We heard from Commissioner Szetela a claim that
2 you, Doctor Handley, did not consider turnout in your
3 analysis. Is that correct?

4 A. That is incorrect.

5 Q. Okay. Let's pull up your September 2nd presentation at
6 DTX 48. This is at tab A in the binders. Let's turn to
7 page 17.

8 Doctor Handley, this page is a little busy. Could
9 you just give the Court an overall sense of what this is and
10 what it's meant to show?

11 A. Because voting is polarized in the four counties that I
12 looked at, I determined that the Commission was going to have
13 to draw districts that provided minority voters with an
14 opportunity to elect their candidates of choice.

15 Now, there's a couple ways of determining whether
16 districts would provide minorities with an opportunity to
17 elect their candidates of choice. One is to calculate the
18 percent black voting age population needed to elect a
19 candidate. This is something you would do prior to drawing
20 districts, and it would give you sort of a guideline for
21 drawing districts.

22 And then once you actually drew districts you could
23 use a more rigorous method called recompiled election results
24 that actually recompiles previous elections to conform with
25 the proposed district boundaries to see if the minority

1 preferred candidate would actually carry that district in an
2 election held within those proposed district boundaries.

3 So, we didn't have any proposed districts at this
4 point, and so what I did was I calculated a percent needed to
5 win, that is, what is the percentage of vote that the
6 black-preferred candidate would get in these 13 statewide
7 elections if the black voting age population was 35, 40, 45,
8 50, and 55 percent black VAP. Those are the last few columns.

9 This is just an algebraic equation that takes
10 information from the racial black voting analysis that I did.
11 That's a long way of answering your question of this includes
12 turnout figures. What goes into calculating the percent
13 needed to win is looking at the relative participation rates
14 of black voters and white -- of black voting age population
15 turning out to vote and white voting age population turning
16 out to vote, the percentage of black voters who support the
17 black-preferred candidate and the percentage of white voters
18 who are crossing over or supporting the black-preferred
19 candidate in a nonpolarized contest, so in the first column
20 you see the 13 statewide elections that I analyzed. In the
21 second column you see the race of the candidate of choice of
22 black voters. The third column indicates the turnout of the
23 black voters, so this is the percentage of the black voting
24 age population that turned out to vote in this election.

25 The next column, the column labeled VP is the

1 percentage of black voters who supported the black-preferred
2 candidate. The next column saying all others is just that
3 percentage minus a -- the rest of the votes went to all
4 others.

5 Then in the next column you see the percentage of
6 white voters who turned out and cast a vote, percentage of
7 white voting age population that turned out and cast vote.
8 Then you see in the next column a percentage of white voters
9 who voted for the black-preferred candidate and the following
10 column is the percentage of white voters who voted for the
11 other candidates.

12 And, finally, the final five columns are just using
13 that information in an algebraic equation to produce the
14 percentage of vote that the black-preferred candidate would
15 get, so, again, this is turnout included in my calculations of
16 the percent needed to win. Turnout is, of course, reported on
17 all the racial black voting summary sheets that I produced.
18 Turnout is also, at least indirectly, included in recompiled
19 election results, so turnout is a very important component of
20 this analysis.

21 Q. Is it a surprise to you that the Commission looked at BVAP
22 levels in the districts it was drawing around Detroit?

23 A. No. I told them they had to pay attention to this because
24 the Voting Rights Act -- because voting was polarized in these
25 general elections, the Voting Rights Act was going to require

1 them to ensure that there were going to be districts that gave
2 black voters the opportunity to elect their candidate of
3 choice.

4 Q. Okay. And did you ever provide the Commission a target
5 level of BVAP that they needed to adhere to in order to draw
6 performing districts?

7 A. No, I didn't provide a target. This is the information
8 that I provided, so, for example, in -- this is Wayne County.
9 What you can see is that in a 35 percent black VAP district,
10 the black-preferred candidate wins all 13 elections.

11 Q. And is that this column here?

12 A. That's correct.

13 Q. Okay. So there's no election where the black-preferred
14 candidate garnered less than 50 percent of the vote, correct?

15 A. Not even close.

16 Q. Are there any elections at any higher BVAP level -- I know
17 it seems obvious, but are there any elections at a higher BVAP
18 level where the black-preferred candidate did not garner the
19 majority vote?

20 A. Mathematically impossible.

21 Q. Let me ask you a question about those turnout columns.
22 Are these estimates of turnout by race?

23 A. That's correct. Unlike some jurisdictions I've worked in
24 in the south that actually report turnout by race, here we
25 estimate the percentage of black voting age population and

1 white voting age population that turn out using the techniques
2 I think have been described to the Court at various points,
3 maybe by Mr. Trende.

4 Q. Okay. And this method of estimating turnout by race, do
5 you understand it to be a reliable method that other experts
6 like you or you yourself have used in conducting this
7 analysis?

8 A. Yes.

9 Q. Okay. We've talked about turnout. I'd like to ask you
10 what other factors are considered and represented on the
11 screen. Could you explain what BP means?

12 A. BP under black voters is the percentage of black voter
13 support for the black-preferred candidate. This is a measure
14 of cohesion. What you can see in this column is a very
15 cohesive group of voters. There's nothing below 95 percent,
16 so on the basis of this I would say that black voters are very
17 cohesive.

18 Then, if you go over to the BP under the white
19 voters, what you're looking at is the degree of crossover
20 voting if the contest was polarized, but, of course, if a
21 candidate is getting more than 50 percent of the vote the
22 contest is not polarized, so I can see some examples here of
23 contests that aren't polarized at all because the voters --
24 the white voters are giving more than 50 percent of their vote
25 for the black-preferred candidate, but in other instances, say

1 in the 2020 election, we find that white voters are actually
2 giving a majority of their vote for another candidate and so
3 the amount of crossover vote is 47.5 percent, and this, of
4 course, is included in the calculation of the percent needed
5 to win.

6 Q. Let me pause on the issue of cohesion. What does cohesion
7 mean to you?

8 A. It means that a substantial number of black voters are
9 supporting the same candidates consistently.

10 Q. We heard plaintiffs' counsel state if black voters aren't
11 cohesive -- or stated something to the effect of if black
12 voters are not cohesive, why does the VAR even come into play?
13 Do you recall that?

14 A. Yes.

15 Q. And what's your opinion of that?

16 A. Well, black voters are cohesive. You can see that black
17 voters are very cohesive.

18 Q. So can you take one election where there's a lack of
19 cohesion and make a conclusion based on it if you see all
20 these other elections where cohesion exists?

21 A. No, no. It's a pattern, sort of a consistent pattern.
22 You wouldn't make a decision on a level of cohesion based on,
23 for example, one election.

24 Q. We heard testimony last week from a former senator from
25 Detroit who said that black voters are moving north of 8 Mile

1 and no longer preferring the same candidates as black voters
2 in Detroit. Is that consistent with your conclusion that
3 black voters aren't always cohesive?

4 **A.** Well, black voters aren't always cohesive. They're pretty
5 consistently cohesive, but especially in primaries there are
6 instances where they are not cohesive.

7 **Q.** And let me ask you what you mean by crossover voting, that
8 second point, the white BP column?

9 I heard plaintiffs' counsel say something to the
10 effect if there is crossover voting you don't need to worry
11 about the Voting Rights Act. Do you agree with that?

12 **A.** I do not.

13 **Q.** And why not?

14 **A.** My definition of crossover voting, anyway, and I think
15 this is the Court's definition, is that voting -- you're
16 assuming -- you're given that voting is polarized. There is
17 some percentage of white voters in most instances that are
18 crossing over and voting for the black-preferred candidate,
19 but it's a given that the voting is polarized, that black and
20 white voters would have elected different candidates, it's
21 just a matter of how much crossover voting there is.

22 **MS. McKNIGHT:** Your Honor, I just have a few more
23 questions -- if you're keeping an eye on the clock, I have a
24 few more questions until I hit a next topic.

25 **JUDGE MALONEY:** Go ahead.

1 MS. McKNIGHT: Okay.

2 BY MS. McKNIGHT:

3 Q. So, is it fair to say you need to have polarized -- under
4 your definition you need to have polarized voting in order for
5 white voters to crossover from something into something?

6 A. By my definition, yes.

7 Q. Okay. Just to confirm, this was all presented to the
8 Commission in an open public meeting on September 2nd,
9 correct?

10 A. That's correct.

11 Q. Okay.

12 MS. McKNIGHT: And, for the record, the transcript of
13 Doctor Handley's presentation at this meeting is located at
14 Defendants' Exhibit 49 and her presentation begins at 5378.
15 Page 5378.

16 Mr. Williamson, is it easy to pull up? It's a large
17 exhibit. Is it easy to pull up to the page? I would like the
18 witness to confirm that's the start of her testimony -- her
19 presentation and then we can move on. So this is DTX49 at
20 5378.

21 BY MS. McKNIGHT:

22 Q. Doctor Handley, do you see at the top of the page where it
23 starts, Doctor Lisa Handley, it's a pleasure to be here again?

24 A. I do. I do, yes.

25 Q. I'll represent to you that this is a transcript from the

1 September 2nd presentation. Does this look like it's the
2 start of your transcript of the presentation that is included
3 at DTX48?

4 A. It could be. I'm afraid I don't remember, but I'm sure it
5 is, yes.

6 Q. Okay.

7 MS. McKNIGHT: We can back out of this. Thank you,
8 Mr. Williamson.

9 BY MS. McKNIGHT:

10 Q. Commissioner Szetela was on the stand last week and
11 claimed that white crossover voting for a black candidate
12 doesn't exist in your September 2nd report. Was she right?

13 A. No. As I explained, there is a specific column in each of
14 these tables in which you see the degree of white crossover
15 voting.

16 MS. McKNIGHT: Let's just pull it up for the record
17 again. DTX48 at 17.

18 BY MS. McKNIGHT:

19 Q. So, where would you see white crossover voting in this
20 table in your September 2nd presentation?

21 A. Seven, the seventh column. It's under white votes, column
22 labeled BP. That is white votes for the black-preferred
23 candidate.

24 Q. Okay.

25 JUDGE KETHLEDGE: Is there any analysis of primary

1 elections in this presentation that we're talking about or is
2 it just this?

3 THE WITNESS: There is a discussion of the statewide
4 Democratic primary, the one and only that existed, but not of
5 any additional primaries. I hadn't gotten the data at that
6 point.

7 JUDGE KETHLEDGE: Right, right. You said that.
8 Okay. Thank you.

9 BY MS. McKNIGHT:

10 Q. Let me ask you a question, can a contest be polarized and
11 yet you still have crossover voting?

12 A. So, I assume -- in most contests that are polarized there
13 is at least some white voters who vote for the black-preferred
14 candidate and that would be white crossover voting.

15 Q. Okay. So, could you see a contest where a majority of
16 white voters vote for other candidates but there's sufficient
17 white crossover voting for the black-preferred candidate to be
18 elected?

19 A. Well, that is the reason that majority-minority districts
20 are not needed in the Detroit area, because there is a lot of
21 white crossover voting for the black-preferred candidates.

22 MS. McKNIGHT: Your Honors, I'm at a point where I'll
23 start a lengthy questioning about a different topic if it
24 makes sense to break.

25 JUDGE MALONEY: If this is a good time to break for

1 the evening, that's what we'll do. It's about quarter to five
2 so we'll break for the day. The panel would request of
3 counsel that they confer regarding an estimate of the amount
4 of time they're going to want for closing argument and then
5 I'll inquire tomorrow in terms of timing of the witnesses for
6 the remainder of the days that we have set aside.

7 JUDGE NEFF: Could we ask, how many more witnesses do
8 you have, Ms. McKnight?

9 MS. McKNIGHT: Your Honors, we only have two more
10 witnesses.

11 JUDGE NEFF: Do you expect either of them to be
12 lengthy such as the last two?

13 MS. McKNIGHT: Maybe a little less, maybe. Yeah,
14 close, but a little less probably for both of them.

15 JUDGE MALONEY: I don't want to hold you to it, Mr.
16 Bursch, but do you anticipate rebuttal?

17 MR. BURSCH: I don't know.

18 JUDGE MALONEY: Okay. To be determined, that's fine.
19 Okay. We'll resume at 8:45 tomorrow morning. Thank you.

20 THE CLERK: All rise, please. Court is adjourned.

21 *(Whereupon, hearing concluded at 4:46 p.m.)*
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EXHIBITS: ADMITTED

Exhibit 25 117

Dr. Rodden's Report

Exhibit 26 208

Dr. Handley's Report

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REPORTER'S CERTIFICATE

I, Genevieve A. Hamlin, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true and correct transcript of the proceedings had in the within entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

s/ Genevieve A. Hamlin

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