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

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DONALD AGEE, JR., et al,
4
Plaintiffs,
5
vs.   Case No. 1:22-cv-272
6
JOCELYN BENSON, et al,
7
Defendants.   VOLUME V
8   _____/

9   *TRIAL*

10   *HELD BEFORE THE HONORABLE JANET T. NEFF, PAUL L MALONEY, and*
RAYMOND L. KETHLEDGE
11
Kalamazoo, Michigan
12   *November 7, 2023*

13

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1   Kalamazoo, MI

2   November 7, 2023

3   8:48 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 Jane M. Beckering, United States

8   District Judge, presiding.

9   All persons having business before 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 22-2272.

14   Counsel for the parties are present, and we are ready to

15   proceed with further direct examination of Doctor Handley.

16   Counselor, you may proceed.

17   MS. McKNIGHT: Thank you, Your Honors.

18   *DIRECT EXAMINATION (Continued)*

19   BY MS. McKNIGHT:

20   Q.   Good morning, Doctor Handley.

21   A.   Good morning.

22   Q.   Yesterday afternoon there were some questions from the

23   Court about the timing of when you received certain analyses,

24   when you -- pardon me, not received, but you relayed certain

25   analyses to the Commission or its counsel. Do you remember

1   those questions?

2   A.   I do.

3   Q.   Okay. I'd like to address the timing of when you provided

4   the Commission or its counsel with the results of your

5   analysis. Let's pull up DTX number 1 and -- and let this

6   guide some of our discussion here.

7   Doctor Handley, do you remember seeing this

8   demonstrative yesterday in court?

9   A.   Yes.

10   Q.   Okay. And, now, I'm going to talk to you about four

11   different pieces of your analysis and when you completed it or

12   relayed it to counsel.

13   The first type of analysis I'd like to ask you about

14   is your analysis of all statewide general elections and the

15   sole statewide democratic primary. By when did you relay the

16   results of that analysis to the Commission or its counsel?

17   A.   The analysis was done in August, completed by the end of

18   August, and counsel and the Commission got the results at the

19   same time on September 2nd, 2021.

20   The presentation -- the second determining if a

21   redistricting plan complies with the Voting Rights Act.

22   Q.   I'd like to move on to a second type of analysis you did

23   or second type of information you analyzed.

24   Your analysis of congressional and state legislative

25   general elections, do you have a sense of when you relayed

1   that -- the results of that analysis to the Commission or its

2   counsel?

3   **A.**   I did the analysis in the first couple of weeks,

4   thereabouts, first three weeks, maybe, of September and was --

5   I was talking to counsel on a regular basis. I would say at

6   least once a week, sometimes more than once a week, and

7   relaying the information -- relaying my progress and then the

8   information as I received it, so certainly by the end of

9   September they had heard all about the legislative general

10   elections.

11   Q.   Okay. I'd like to move on to the third type of elections

12   that you analyzed and when you conveyed your results of the

13   analysis to the Commission or its counsel. That is your

14   analysis of legislative primaries. Do you remember conducting

15   that analysis in the fall of 2021?

16   **A.**   Yes. Now, again, that data had to be collected county by

17   county. It was more complicated to put together. The

18   database was ready maybe about the third week in September, so

19   I had begun the analysis by the time I came to Michigan on

20   October 1st, and at that point I could discuss some of the

21   preliminary results. I completed it by about mid October.

22   And, again, in phone calls that were at least weekly with the

23   counsel of the Commission I was relaying what was happening

24   and what I was finding.

25   Q.   Okay. And about how many calls did you have with counsel

1 to the Commission on the topic of your analysis of the

2 legislative primaries?

3 **A.** I would say that I spoke to counsel at least a couple of

4 times a week through October, and some of that was about the

5 primaries, some of that was about the next set of elections

6 that I would be doing, which was sort of a complicated

7 analysis of select minority groups that they had asked me to

8 do.

9 I would say over, maybe, September and October, at

10 least a dozen calls.

11 Q. Okay. And, finally, the fourth type of analysis you

12 conducted, the analysis of select minority group voting

13 patterns, do you remember by when you shared the results of

14 that analysis with counsel to the Commission?

15 **A.** Either right before or maybe not until the presentation

16 that I gave on November 1st. I might have completed the

17 analysis right before November 1st, because that was also a

18 complicated piece of work to put the database together.

19 Q. Okay. And now of the middle two types of analysis that

20 you were describing you did, the analysis of congressional and

21 state legislative general elections and your analysis of the

22 legislative primaries, I heard you discuss that you were

23 working on that throughout September and October; is that

24 fair?

25 **A.** Yes.

1   Q.   Okay.   And do I understand correctly that you were

2   conveying those results as they were coming about to the

3   Commission's counsel?

4   A.   Yes.

5   Q.   Okay.   And did anything about those results change the

6   conclusions that you made and provided to the Commission in

7   your September 2nd report?

8   A.   No.

9   Q.   And, pardon me, by report I think I mean presentation.

10   A.   Yes.

11   Q.   Okay.

12   JUDGE KETHLEDGE: Can I ask a question since we're

13   going through this?   This is helpful.   Doctor Handley, the

14   second and third categories we're talking about, the analyses

15   of, I guess, primaries that you're doing, as you said, kind of

16   throughout October, is it fair to say that that information

17   was not provided to the Commission itself -- commissioners?

18   THE WITNESS: Now, that I don't know.

19   JUDGE KETHLEDGE: By you, I guess?

20   THE WITNESS: By me, that is correct.

21   JUDGE KETHLEDGE: And it was not -- we don't -- we

22   don't see that in any written form before the December report;

23   is that accurate?

24   THE WITNESS: Yes.

25   JUDGE KETHLEDGE: Okay.   Thank you.   I'm just trying

1   to understand the facts.

2   BY MS. McKNIGHT:

3   Q.   Thank you, Doctor Handley. We can take this down.

4   I'd like to move on to the topic of threshold of

5   representation. Let's pull up a document so I can ask you

6   some questions about it. Let's pull up the September 2nd

7   report at DTX48 page 19.

8   Now, Doctor Handley, we heard some testimony last

9   week from Commissioner Szetela on the threshold of

10   representation table so I'd like to get an explanation from

11   you about what this table actually shows.

12   A.   This table was provided in the presentation that I gave

13   after I had gone through the percent needed to win tables, one

14   of which we visited yesterday. The idea behind this is simply

15   a sort of check on the percent needed to win tables.

16   This simply looks at the -- the results of the last

17   general election and it indicates the percent black VAP of the

18   district, the person who won that district, and the race and

19   the party of the person who won, and the percentage of the

20   votes that they won by.

21   So, again, the idea was this is a check on the

22   percent needed to win numbers. This reflects the 2020

23   election for the State House in the chart that's up.

24   Q.   Okay. I'd like to start with the testimony that the Court

25   has heard so far from Commissioner Szetela about what this

9

1 shows. I'd like to start with her testimony and make sure --

2 get a sense of whether she got it right or if she had a

3 misunderstanding of what this showed.

4   We're going to pull up a transcript from day one of

5 the trial. This is ECF number 100, page ID 2373, and we'll

6 start at line 13.

7   Doctor Handley, I'm starting at line 13 to orient the

8 Court that this testimony is related to a draft map in

9 September 28, 2021. Do you see that?

10 A.   I do.

11 Q.   Okay. Now, let's go to the next page and I'll ask

12 Mr. Williamson to highlight lines 10 through 18.

13   And during this testimony plaintiffs' counsel asked,

14 But what evidence did the Commission have at this time that

15 black candidates in Detroit could win the polarized primary

16 elections if the BVAP was between 38 and 47 percent?

17   Do you see that?

18 A.   I do.

19 Q.   Okay. And to summarize Commissioner Szetela's

20 understanding at the time, Commissioner Szetela claims that as

21 of September 28th and, quote, as shown by Doctor Handley's

22 threshold tables; do you see that?

23 A.   Yes.

24 Q.   The Commission, quote, just really had nothing, end quote,

25 to support the drawing of districts in Detroit at BVAP levels

1   between 38 and 47 percent. Do you agree that the Commission

2   had nothing at this point on September 28th?

3   **A.**   They had the presentation I gave on September 2nd and the

4   percent needed to win tables that were presented in that

5   presentation.

6   I think that she is misusing the threshold tables

7   here and ignoring the percent needed to win tables.

8   Q.   Okay. And so for reference also let's go back to one of

9   those percent needed to win tables that was in your

10 September 2nd presentation.

11   MS. McKNIGHT: Can we pull up DTX48, page 17?

12 BY MS. McKNIGHT:

13 Q.   The information provided in this analysis, turn out --

14 sorry, pardon me, percent black VAP needed to win, does this

15 provide the Commission with anything as far as support to draw

16 districts at BVAP levels between 38 and 47 percent?

17 **A.**   When -- as I discussed when I discussed this table, this

18 includes all 13 general elections, the elections in which I

19 concluded that voting was racially polarized and, therefore,

20 the relevant elections for drawing these districts. That at

21 35 percent black, the black-preferred candidate won all of the

22 contests that I had analyzed.

23   JUDGE KETHLEDGE: You're talking about that last

24 table there?

25   THE WITNESS: The last column in that table indicates

1 the percentage of the vote given the turnout levels of black

2 and white voters, given the cohesion of black voters, and the

3 crossover of white voters. That is the percentage of votes

4 that a candidate preferred by black voters would receive in a

5 35 percent black VAP district.

6 JUDGE MALONEY: If I may, who were the white

7 crossovers in this table?

8 THE WITNESS: This is white voting age population

9 voters who came out and voted for the candidate preferred by

10 the black voters.

11 JUDGE MALONEY: Do we know what the partisan makeup

12 of that group was?

13 THE WITNESS: We don't know that they're registered

14 to vote -- in fact, I don't even know if you have party

15 registration in Michigan, but the crossover vote is the vote

16 for the Democratic candidate.

17 JUDGE MALONEY: Could a large portion of that

18 population be white Democrats?

19 THE WITNESS: The percentage reflects in the column

20 B-P under white votes, those are only white voters.

21 Presumably they are all Democrats or at least voting

22 Democratic in that particular election.

23 JUDGE MALONEY: Did they not vote Democrat in any of

24 those elections?

25 THE WITNESS: They voted Democrat in -- well, all of

1   them by a certain percentage, so in the first election, the

2   2020 presidential election, 47.5 percent of the white voters

3   voted for President Biden.

4   JUDGE MALONEY: But I'm not sure that's responsive to

5   my question. My question is -- you talk about white

6   crossovers. What percentage of the white crossovers are

7   Democrats and what does that say about the efficacy of this

8   table as it relates to the issues before the Court?

9   THE WITNESS: This tells you the percentage of the

10   whites who are voting for the Democratic candidate. You can

11   see that it varies as you go down the column, so in some

12   instances you're talking about a minority of the white voters

13   and in some instances you're actually talking about a majority

14   of the white voters voting for the Democratic candidate.

15   JUDGE MALONEY: Thank you.

16   THE WITNESS: In Wayne County. Sorry.

17   BY MS. McKNIGHT:

18   Q.   Let me ask you this, Doctor Handley, this chart focuses on

19   general election. Would your analysis have changed if you

20   analyzed primary elections?

21   A.   So, this analysis is based on the statewide general

22   elections. As I mentioned, there's only one statewide primary

23   election, and in that election minorities -- black voters were

24   not cohesive. In fact, they preferred -- depending on the

25   county you looked at, the preferred candidate varied, and at

1   no point was a majority supporting any of the candidates, I

2   believe.

3   In terms of the primaries, as I mentioned, a majority

4   of the primaries were not polarized, and you couldn't have

5   calculated percent needed to wins in a primary with more than

6   two candidates anyway because the way this algebraic model

7   works is that you have to set the vote to 50 percent, and in a

8   primary you don't necessarily need 50 percent to win.

9   Certainly when there are more than two candidates you don't,

10 so you couldn't do a table like this for a number of reasons,

11 and you wouldn't because voting wasn't polarized in the

12 majority of elections.

13 Q.   And so earlier when you were saying that your analysis in

14 September and October of local primary elections wouldn't

15 change the results of your September 2nd presentation, does

16 that mean that it wouldn't change any of the -- your

17 conclusions related to this chart?

18 A.   That's correct.

19   JUDGE KETHLEDGE: I would say kind of what I said to

20 counsel on the other side, which is that it's better for us to

21 have the witness characterize than have a question that

22 characterizes what we've heard. It's just their original

23 characterization is more useful.

24   MS. McKNIGHT: I appreciate it, Your Honor. Thank

25 you.

14

1   JUDGE KETHLEDGE: That's fine. Thank you.

2   BY MS. McKNIGHT:

3   Q.   Let's go back to the threshold of representation table at

4   DTX48-19. Why did you produce a table like this and provide

5   it to the Commission?

6   A.   Again, this was a check on the percent needed to win

7   numbers that I calculated.

8   MS. McKNIGHT: Let's turn to page DTX26, pages 24 --

9   sorry, Defendants' Exhibit 26 at pages 24 to 25, so this is

10   tab B, DTX26 at pages 24 and 25.

11   BY MS. McKNIGHT:

12   Q.   Doctor Handley, what is this?

13   A.   This is the report I prepared that summarized all of my

14   analysis. I prepared it and presented it to the Commission on

15   the 28th of December, 2021.

16   Q.   And as you were compiling this December 2021 report, did

17   you have a discussion with legal staff and other Commission

18   staff about your review of all proposed maps?

19   A.   Yes, I did.

20   Q.   And we heard Commissioner Szetela say that the

21   Commission's general counsel received information from you in

22   this meeting that the BVAP of the districts drawn was far too

23   low. Is that what happened in this meeting?

24   A.   That is not what I said in the meeting, no.

25   Q.   Okay. Was Commissioner Szetela in the meeting?

1   **A.**   Commissioner Szetela was not in the meeting. She was,

2   obviously, provided either misinformation or misunderstood

3   what was discussed in the meeting.

4   **Q.**   Do you think the districts as proposed by the Commission

5   needed to be drawn at higher BVAP levels?

6   **A.**   No, I did not.

7   **Q.**   Did you think the districts as proposed by the Commission

8   needed to be drawn at 50 percent BVAP?

9   **A.**   Certainly not.

10   **Q.**   Let me ask you, Doctor Handley, Commissioner Szetela

11   claimed that she started to have concerns about Voting Rights

12   Act compliance in early October and so she started to dig into

13   things. Did she reach out to you in October with questions

14   about your September 2nd report?

15   **A.**   No, she did not.

16   **Q.**   Did she reach out to you at all in October?

17   **A.**   She has not -- she did not reach out to me at all until I

18   received an e-mail from her in mid December, maybe.

19   **Q.**   And would other commissioners reach out to you with

20   questions?

21   **A.**   I believe that I've spoken to every commissioner while I

22   was in Michigan or in discussions on Zoom except for

23   Commissioner Szetela, and I also probably -- I never met the

24   two commissioners who were attending the meetings via Zoom.

25   **Q.**   And who were those two commissioners?

1   A.   Commissioner Lange and Commissioner Wagner.

2   Q.   Okay. Let's move on to a next topic, Doctor Handley. I

3   would like to ask you some questions about partisan fairness.

4   I understand that you presented to the Commission at

5   least twice on partisan fairness; is that right?

6   A.   At least three times, I think.

7   Q.   We heard testimony from Commissioner Eid about the idea of

8   unpacking Democratic voters from the City of Detroit. Was

9   this something you discussed with the Commission before they

10   began drawing maps?

11   A.   This subject came up, I think, in the first presentation

12   that I gave on partisan fairness with the Commission, maybe in

13   August.

14   Q.   Okay. Could you have given a presentation in early July

15   on this topic?

16   A.   Even earlier than I thought, yes.

17   Q.   Let's look at a clip and then I'll ask you some questions

18   about it.

19   MS. McKNIGHT: This will be a clip of the video of

20   the public meeting of the Commission on July 9, 2021, and we

21   are starting at timestamp 2 hours 45 minutes, 10 seconds.

22   *(9:11 a.m., audio played.)*

23   BY MS. McKNIGHT:

24   Q.   Commissioner Handley, do you remember participating in

25   this meeting on July 9, 2021?

1   A.   Vaguely. I certainly now know that part of it.

2   Q.   And what does this clip tell about the timing of when the

3   Commission was aware of the need to unpack Democratic votes

4   from packed Democratic districts?

5   A.   Well, they certainly had been told this as of -- I think

6   you said this was in July, but I think that the Commission had

7   already heard from other experts -- I know that the Secretary

8   of State's office had put together quite a list -- impressive

9   list of people to speak to the Commission beginning when the

10 Commission was first formed, so this was the latest at which

11 they would have heard about packing.

12 Q.   And under your understanding, was this before map drawing

13 even began?

14 A.   I don't think they started drawing until September -- it

15 was certainly before they started drawing, yes.

16 Q.   Okay. And did you have a second presentation related to

17 partisan fairness on August 6, 2021?

18 A.   Probably, yes. I'm not great with dates here.

19 Q.   Let's look at a clip from August 6th to see whether you

20 presented on partisan fairness on that day.

21   MS. McKNIGHT: This will be clip 1 from August 6,

22 2021, timestamp 44 minutes and 40 second.

23   *(9:14 a.m., audio played.)*

24   MS. McKNIGHT: Can you pause it? Just pause. Pardon

25 me. I want to set the table a little bit. We're diving right

1   in the middle of things.

2   BY MS. McKNIGHT:

3   Q.   Are you on this screen as participating in the meeting?

4   A.   I think I'm not on the screen. You can maybe see my

5   hands. I'm way over on the left side.

6   Q.   Is that you?

7   A.   Yes. I think this is after the presentation that I gave

8   or during the presentation I gave, but the person speaking is

9   not me.

10   Q.   And who is the person speaking?

11   A.   This is the head of Election Data Services, the firm that

12   brought me in on this project.

13   Q.   Okay. And is he sitting nearby you in the meeting?

14   A.   He's sitting next to me.

15   Q.   Okay.

16   A.   I can see him better than you can see me.

17   Q.   Is that Mr. Brace?

18   A.   Yes.

19   Q.   Okay. And so down in the lower left-hand corner, was this

20   a presentation that you gave on August 6, 2021?

21   A.   It's a slide from the presentation, I think.

22   Q.   Okay. And so it says efficiency gap. Can we understand

23   that the topic was partisan fairness?

24   A.   Yes.

25   Q.   Okay.

1   MS. McKNIGHT: Please start again.

2   *(9:15 a.m., audio played.)*

3   BY MS. McKNIGHT:

4   Q.   So, Doctor Handley, what does this clip show about whether

5   the Commission was advised about looking at recompiled

6   election results for statewide elections as part of their

7   effort to create fair maps?

8   **A.**   Mr. Brace described to them how it would be an automated

9   tool, as they're drawing they would see recompiled election

10   results each time they made a change. Each time they assigned

11   a bloc they would see the impact of that on the recompiled

12   election results.

13   Q.   Okay. So we heard testimony about the map drawers needing

14   to wait until they had a final map to rely on the partisan

15   fairness tools. Do you recall that testimony?

16   **A.**   I believe so.

17   Q.   And then -- but this is a little different in that they

18   don't have -- please correct me if I'm wrong. I'm trying to

19   understand if this is right. Is it correct to say that they

20   did not need to wait for a final map in order to check

21   recompiled election results for the districts as they were

22   drawing them?

23   **A.**   As they were drawing the districts they could get

24   recompiled election results which indicated, essentially, the

25   Democratic performance of the districts as they drew them

1   according to these recompiled results.

2   The partisan fairness measures themselves are

3   designed to be calculated over entire plans, so they would

4   have to finish an entire plan before they could get things

5   like the efficiency gap, but in terms of Democratic

6   performance of a particular district or groups of districts

7   that they had drawn, that was shown on the screen.

8   Q.   Okay. Let's look at another clip from that day. This is

9   clip 2. So this is August 6, 2021, minute mark 46, seconds

10   48, so 46-minute 48 second.

11   (9:19 a.m., audio played.)

12   BY MS. McKNIGHT:

13   Q.   Who was that speaking, Doctor Handley?

14   A.   That's Kent Stigall who was also brought in by EDS

15   and was -- there were two mappers -- at any given point there

16   was a mapper working with the Commission that EDS brought in

17   and the two regular mappers were Kent Stigall and John Morgan,

18   and that was Kent.

19   Q.   And what does this tell the Court about the use of

20   recompiled election results to assess political performance

21   and whether it was a standard practice for map drawers?

22   A.   We've been using recompiled election results since I've

23   been doing this, which is a very, very long time. I think

24   Kent mentioned the 1990s. Certainly we had recompiled

25   election results as soon as we had GIS.

21

1   JUDGE NEFF: Could you just define that term for me?

2   Somewhere along the line I missed that.

3   THE WITNESS: You take existing elections, like the

4   13 elections that I analyzed, you take the results of those,

5   which are reported at the precinct level, and you disaggregate

6   them down to the bloc so that each time you draw a map you can

7   add the election results for each of the candidates to follow

8   the boundaries. So you're just simply taking those election

9   results, bringing them down to the bloc level, then

10   automatically -- the computer does this for you -- automatic

11   so that you know how many votes each candidate got in the

12   district as you draw it, because you've brought the election

13   results through an algorithm down to the bloc level.

14   JUDGE NEFF: Which is the lowest common denominator?

15   THE WITNESS: It's what you have to draw. You

16   can't -- well, I guess you could split blocs but not using

17   GIS. So when you're drawing these maps, you're usually using

18   blocs to draw them, census blocs.

19   JUDGE NEFF: Right.

20   THE WITNESS: And so this is a way of taking the

21   election results down to the bloc level so you can know what's

22   happening every time you make an assignment because you're

23   making an assignment with the bloc, not with the precinct.

24   JUDGE NEFF: Okay. Thank you.

25   JUDGE KETHLEDGE: Just while we are at it here, this

22

1   is very interesting. So my understanding was that the

2   precinct level was the smallest level at which we receive a

3   batch of results in an election; is that right?

4   THE WITNESS: That's correct.

5   JUDGE KETHLEDGE: So are you doing some kind of

6   estimate, then, sort of -- I think we've heard about these

7   sorts of estimates where you're then trying to figure out,

8   okay, what was the composition for this particular bloc?

9   THE WITNESS: Yes. So you're going to use an

10 algorithm. You're -- an allocation formula, and you're going

11 to say, okay, so for this precinct we know that candidate A

12 got 50 votes and candidate B got 60 votes, and then the bloc

13 makes up, in terms of population, say, 20 percent of that

14 precinct, so 20 percent of candidate A's votes will go to that

15 bloc.

16   JUDGE KETHLEDGE: Okay.

17   THE WITNESS: And 20 percent of candidate B's votes

18 will go for that bloc.

19   JUDGE KETHLEDGE: I see. So you're not changing the

20 vote allocation within the precincts. You're just -- if you

21 divide that precinct, you're just giving a -- that

22 proportionate share to each candidate?

23   THE WITNESS: That's exactly right. So, if you

24 created a district and, say, 90 percent of the precincts

25 weren't divided, you have an exact count, an accurate count,

1   for those 90 precincts that weren't divided --

2   JUDGE KETHLEDGE: Okay.

3   THE WITNESS: -- and you're only using the algorithm.

4   JUDGE KETHLEDGE: So you don't have to do an

5   estimate. You're just dividing it -- you know, you're just

6   assigning a share to the new district. You know, if

7   it's 20 -- if it has 20 percent of the precinct, you just give

8   20 percent with that same vote per, you know, share between

9   the candidates to the new line you're drawing?

10   THE WITNESS: That's right. Now, it would only --

11   when a precinct is kept whole, and it's often by accident

12   because you're drawing with -- but, you know, in the center,

13   most of a district -- most of those precincts are whole, so

14   you're -- that's not even an estimation process. The

15   estimation process only comes in if you've divided a precinct,

16   and then you use the allocated votes to determine what you

17   think the candidate would get in that newly formed district.

18   JUDGE KETHLEDGE: Okay. Thank you.

19   BY MS. McKNIGHT:

20   Q.   On the topic of partisan fairness, we heard testimony last

21   week from Commissioner Eid about testing maps on certain

22   third-party websites, and I'd like to ask you to take a look

23   at a clip and answer some questions about that practice.

24   MS. McKNIGHT: So, let's look at clip number five.

25   This is from August 6, 2021, time stamp is minute 54, second

1   57.

2   *(9:25 a.m., audio played.)*

3   BY MS. McKNIGHT:

4   Q.   So, Doctor Handley, what does this tell the Court about

5   whether the Commission had access to partisan fairness

6   information prior to September 2021?

7   **A.**   They were certainly aware -- at least Commissioner Eid was

8   certainly aware of the kinds of websites. I think that the --

9   some of these websites were discussed yesterday with Doctor

10   Rodden, too. Political scientists turn to these websites.

11   They're pretty well known if you're a redistricting -- if

12   you're interested in redistricting.

13   Q.   And did you vouch for the practice of loading maps onto

14   these third-party sites to test these numbers?

15   **A.**   Yes.

16   Q.   Okay. Let's move on to another topic, Doctor Handley.

17   I'd like to ask you questions about complying with the Voting

18   Rights Act, and specifically about how your analysis helps

19   that happen. In all these questions I'm not looking for a

20   legal opinion, I'm looking for your expert opinion when you

21   provide advice to commissions or map drawers.

22   Is it fair to say that complying with the Voting

23   Rights Act is not a simple exercise?

24   **A.**   It is not. It's not -- the analysis that I do is not

25   simple, and I think they -- the job of the lawyers is even

1   more complicated these days, but, no, it's not simple.

2   Q.   Can you describe at a high level how your analysis ties

3   into the *Gingles* three prong test?

4   A.   The analysis that I do in terms of racial bloc voting is

5   related to the second prong and the third prong of *Gingles*.

6   The second prong of *Gingles* says that the minority group must

7   be politically cohesive, so racial bloc voting analysis will

8   tell you if, for example, in the Detroit area, if black voters

9   are voting cohesively; that is, are they supporting the same

10   candidates.

11   And the third prong is are white voters bloc voting

12   against these candidates, and the racial bloc voting analysis

13   is telling you whether white voters are supporting the

14   candidates preferred by black voters or different candidates.

15   Q.   And you conducted a racial bloc voting analysis for the

16   Commission, correct?

17   A.   That's correct.

18   Q.   And did that inform your September presentation and any

19   other analysis you did for the Commission?

20   A.   That's correct.

21   Q.   And what did you conclude as part of that racial bloc

22   voting analysis?

23   A.   That voting in the general elections across the four

24   counties was polarized by varying degrees and that -- I think

25   I mentioned that -- I'm sorry, did you ask me about general

1   elections or elections in general?

2   Q.   Yeah.   We can -- it's okay.   We can start with general and

3   then let's break it down by general and primary elections.   So

4   in general, what did you find?

5   **A.**   In the general elections I found that voting was polarized

6   in all of the four counties for which I could produce reliable

7   estimates.

8   Q.   Okay.   And when you say polarized, how does that relate to

9   the second and third prongs of *Gingles*?

10   **A.**   Again, racial bloc voting analysis will show you the --

11   the actual -- estimate for you the actual percentage of black

12   voters who supported a given candidate, and you would look

13   over a series of elections to see if a majority -- if a larger

14   than majority, maybe 60, 65, 70, don't have to -- there is no

15   bright line, but in this case, of course, when you remember

16   the percent needed to win tables, we're talking about cohesion

17   levels over 90 percent in the general elections.   So, that's

18   directly relevant to the second prong.

19   The third prong are white voters supporting those

20   candidates is also found in the racial bloc voting tables

21   which were summarized in the percent needed to win tables, and

22   you're looking to see how often the majority of white voters

23   support the black-preferred candidate.

24   Q.   So that's statewide general elections.   Did your analysis

25   of local legislative primaries change your conclusion about

1   the statewide general election?

2   **A.**   No.   The majority of the Democratic primaries that I

3   analyzed, both in general and in the Detroit area

4   specifically, were not, in fact, racially polarized and about

5   half of those that were polarized did not result in the defeat

6   of the black-preferred candidate, so even if a contest was

7   polarized, the candidate preferred by black voters usually

8   won.

9   JUDGE KETHLEDGE: Are these the analyses that were in

10   the second and third categories that we discussed at the onset

11   of today's testimony?

12   THE WITNESS: The third category, yes. These are the

13   primary elections that are discussed actually at length in my

14   expert report.

15   JUDGE KETHLEDGE: For this case?

16   THE WITNESS: For this case, yes.

17   JUDGE KETHLEDGE: Thank you, ma'am.

18   BY MS. McKNIGHT:

19   Q.   Let's bring up DDX4. This is Defendants' Demonstrative 4.

20   MS. McKNIGHT: And, Your Honors, I made a mistake

21   yesterday in not offering a paper copy of this. Would it be

22   helpful to have a paper copy of this demonstrative?

23   JUDGE KETHLEDGE: Is it in the binder?

24   MS. McKNIGHT: I don't believe it's in the binder.

25   JUDGE MALONEY: This is different than what you gave

1 us yesterday?

2   MS. McKNIGHT: This is the same as what -- what --

3 this is the same as what we put up yesterday, but I'm saying I

4 think I made the mistake in not giving it to you yesterday so

5 I'm happy to --

6   JUDGE KETHLEDGE: Sure.

7   MS. McKNIGHT: -- pass up -- okay.

8   JUDGE KETHLEDGE: It's one page, right?

9   MS. McKNIGHT: Yes.

10   JUDGE KETHLEDGE: Go for it.

11   MR. BURSCH: Can I have a copy as well?

12   MS. McKNIGHT: Of course. Just give him a minute.

13 Thanks, Patrick.

14 BY MS. McKNIGHT:

15 Q.   So, Doctor Handley, when you -- you talk about the results

16 of your primary analysis and whether it alters or not your

17 analysis of the general elections. Are the results shown on

18 the screen part of your conclusion about the primary results?

19 A.   Yes. This is just taken from my expert report, and it

20 just tells you the success rates of the black-preferred

21 candidates in the primaries in districts that fall in the

22 various ranges as indicated in the first column.

23 Q.   Okay. So on your review were the -- did the primaries act

24 as any sort of barrier to black voters' candidates of choice

25 winning?

1   **A.**   You can see that even in -- there's no cell in this table

2   in which the black-preferred candidates won less than

3   50 percent of the time.

4   JUDGE MALONEY: Counsel, do we know what the end

5   number is for each of those categories?

6   THE WITNESS: You do in the expert report. It's

7   listed in the expert report.

8   JUDGE MALONEY: Thank you.

9   MS. McKNIGHT: Would it be helpful for us to cite --

10   pull that up for Your Honor?

11   JUDGE MALONEY: If it's in the report, that's fine.

12   JUDGE KETHLEDGE: I think there's a cite in the

13   footnote.

14   MS. McKNIGHT: Okay. Okay.

15   THE WITNESS: I should say there's not very many

16   elections...

17   JUDGE MALONEY: Well, that was -- that was part of my

18   thought process. How many 35 to 39.9 are there?

19   THE WITNESS: It would say in my report. I should

20   also say I -- what I attempted to do was try and create a

21   table separate for the House and the Senate, the State House

22   and the State Senate. That's why I borrowed the estimates

23   from Mr. Trende's report, because he looked at some contests,

24   primaries, in 2014 and 2016, and that would have added to the

25   number of cases that I could put in a table like this, and I

1   discuss the success rates when I add those. I discuss the

2   success rates for black-preferred candidates in the House and

3   the Senate separately, and you get some really odd cells when

4   you do that, because it turns out when you look at the House

5   and the Senate separately, the number of cases is small, and

6   you get absolutely no relationship at all between the

7   percentage BVAP in the districts and the success rates.

8   JUDGE KETHLEDGE: I think Judge Maloney asked how

9   many case -- how many in the backup data, so to speak, how

10 many elections were there in the 35 to 39.9 percent?

11   THE WITNESS: Yeah. I can look in the report. It is

12 in the report. Let me see if I can find it for you.

13   JUDGE KETHLEDGE: Okay. If it's laid out, you know,

14 plainly so that nonexpert -- you know, people like us can sort

15 it out --

16   THE WITNESS: It tells you how many districts and how

17 many elections that went into each of --

18   JUDGE KETHLEDGE: Okay.

19   THE WITNESS: -- this. Overall I only -- I analyzed,

20 I think it was about 30 election -- 30 elections, so this

21 table has to cover 30 elections.

22   JUDGE MALONEY: That's helpful. Thank you.

23   JUDGE KETHLEDGE: Thanks.

24 BY MS. McKNIGHT:

25 Q.   Okay. Stepping back for a moment, Doctor Handley, what

1   does it mean when a certain election is a barrier in Voting

2   Rights Act cases?

3   **A.**   So, typically -- most of my work is in the south, and the

4   general election is at the firm barrier and the primary is not

5   a barrier, because the primary in the south, a Democratic

6   primary is composed -- the majority of voters in the

7   Democratic primary are black voters because white voters have

8   fled the Democratic party in the south and now vote

9   Republican.

10   Here, it's -- the situation is slightly different.

11   The Democratic primary is not the barrier, but it's not

12   because white voters have fled the Democratic party. It's

13   because the majority of white voters who are voting in the

14   Democratic party are voting for the black-preferred candidates

15   in the majority of the cases.

16   So it's not a barrier, but it's not a barrier -- the

17   Democratic primary is not a barrier for a different reason

18   than is the case in the south. Here, the white voters are

19   supporting the black-preferred candidates often in the -- in a

20   majority of the cases in the Democratic primaries.

21   Q.   And to break it down one step further, what does -- what

22   is the barrier we're talking about?

23   **A.**   The barrier is the barrier to getting a black -- the black

24   voters' candidate of choice into office. You have to go

25   through two elections. You have to go through the primary and

1 you have to go through the general, and it may be the case

2 that the primary is the barrier, so, for example, in New York

3 City it's the primary because everybody in the general is a

4 Democrat in New York City but voting is polarized in the

5 primary. But in most places it's the general election that's

6 the barrier for black voters to get elected. And in the four

7 counties that I looked at here, that was the barrier.

8 Q.   And what does it mean for the map drawers if voting was

9 polarized in general elections?

10 A.   So, the point is to look at the recompiled election

11 results for the general elections, determine if the minority

12 preferred candidate would be elected.

13   As I mentioned, I analyzed all 13 general elections,

14 and the bellwether elections -- a bellwether election is an

15 election that was polarized and the black-preferred candidate

16 was actually black, and the bellwether election here -- the

17 best bellwether election for determining whether the -- a

18 proposed district would elect a candidate of choice of black

19 voters was the 2014 Secretary of State's contest that included

20 Godfrey Dillard. He got the least amount of white vote in the

21 general election. He had the least amount of white crossover

22 vote, so that would be your bellwether election.

23   We had the results -- they had the results for all 13

24 elections, but, again, that was the most important election

25 simply because that was the candidate that got the least

1 | amount of white vote.

2 | JUDGE MALONEY: And the candidate was running against

3 | the incumbent, Ruth Johnson, correct?

4 | THE WITNESS: I'm going to trust your memory on that.

5 | I suspect it's better than mine.

6 | JUDGE MALONEY: I think that's right, but somebody

7 | will check me.

8 | THE WITNESS: But he did -- Dillard got over

9 | 90 percent, 95 percent of the black vote in that case, so he

10 | was the black-preferred candidate.

11 | BY MS. McKNIGHT:

12 | Q.   So if you find that voting is polarized in the general

13 | elections, does that ---in your understanding, does that

14 | trigger some sort of obligation on the part of the map

15 | drawers?

16 | A.   Because voting was polarized I did tell the map drawers

17 | they did have to pay attention to race and create districts

18 | that would elect black-preferred candidates.

19 | Q.   And is it your understanding that they needed to create

20 | districts that always elected black candidates of choice?

21 | A.   You can't do that really. I mean, there are

22 | circumstances -- you know, individual circumstances of

23 | particular contests that will mean that they won't usually --

24 | you know, the goal is that they will usually be elected.

25 | Q.   And how does your work guide map drawers in the process of

1   drawing districts to provide black voters with an opportunity

2   to usually elect their candidate of choice?

3   **A.**   So, I do two types of analyses. The first is the percent

4   needed to win kinds of tables that you saw from my

5   presentation. This you can do prior to drawing boundaries.

6   This simply looks at looking at past election results, what

7   could we expect, but it's not looking at proposed district

8   boundaries, because we don't have proposed district boundaries

9   at this point.

10   The percent needed to win tables were done prior to

11   drawing to give you sort of a guideline how to go about

12   creating the districts that might elect candidates of choice

13   of black voters.

14   But once you actually have proposed districts, then

15   you have another tool, and that is recompiled election

16   results. The recompiled election results look at what would

17   happen in those elections in that very specific district,

18   taking into account only the voters that would be within that

19   proposed district boundary, so that is the advantage of

20   looking at recompiled election results rather than looking at

21   the percent needed to win tables, so, of course, I told the

22   Commission as they're drawing to make sure that they look at

23   the recompiled election results and particularly for those

24   elections in which the black -- in which the -- in which the

25   black voters' candidate of choice was black, and in particular

1   the Dillard election, because he was the one who got just as

2   many black votes as all of the other candidates, but the

3   fewest amount of white votes. So they had that tool to look

4   at once they had the proposed districts.

5   Q.   And along with your analyses conveyed to the Commission or

6   its counsel, did the Commission have these two tools at hand

7   when drawing the maps?

8   A.   Yes. Yes.

9   Q.   Finally, Doctor Handley, we've heard some discussions in

10   this case, claims that there was a lack of data to perform the

11   analysis necessary for Voting Rights Act compliance. Do you

12   believe you still were able to develop a reliable set of

13   analyses for the Commission based on the data you had?

14   A.   Yes.

15   MS. McKNIGHT: Thank you. I have no further

16   questions at this time.

17   JUDGE MALONEY: Mr. Bursch, you may inquire.

18   *CROSS EXAMINATION*

19   BY MR. BURSCH:

20   Q.   Good morning, Doctor Handley.

21   A.   Good morning.

22   Q.   My name is John Bursch. I represent the plaintiffs in

23   this matter.

24   You testified that you presented your initial VRA

25   report to the Commission on September 2nd, 2021, correct?

1   A.   Yes.

2   Q.   Could you turn to tab A of the witness binder that you've

3   been using?   This is Defendants' Exhibit 48, Plaintiffs'

4   Exhibit 15.   This is the presentation that you gave at that

5   September 2nd meeting, correct?

6   A.   That's correct.

7   Q.   Now, you clarified this morning that other than the 2018

8   gubernatorial Democratic primary, this report included no

9   primary data; is that right?

10   A.   This presentation did not discuss anything other than the

11   2018 gubernatorial primary, that's correct.

12   Q.   So no Wayne County Senate or House primaries, right?

13   A.   That's correct.

14   Q.   No Oakland County Senate or House primaries, correct?

15   A.   Correct.

16   Q.   No Macomb County state or Senate House primaries, correct?

17   A.   That's correct.   Now, let me say for Macomb County I

18   didn't do any analysis.   I attempted to do some analysis for

19   Macomb County and there was not a sufficient number of black

20   voters or sufficient number of variation in the percentage

21   black voters to actually produce numbers for Macomb County.

22   Q.   Thank you for bringing that up.   We'll be getting to that,

23   but not quite yet.

24   I want to start with that 2018 Democratic

25   gubernatorial primary.   If you could turn to page eight of

1   this December -- Defendants' Exhibit 48. And if you look in

2   the bottom left-hand corner here it says, 2018 Democratic

3   primary for governor. Is that the primary we're talking

4   about?

5   A.   Yes.

6   Q.   Who were the three candidates and what were their races?

7   A.   Well, Abdul El-Sayed was Middle Eastern. Shri Thanedar is

8   Indian Asian, I believe, and Gretchen Whitmer is white.

9   Q.   And I believe you testified that black voters were not

10 cohesive in this race which had no black candidates; is that

11 accurate?

12 A.   Correct.

13 Q.   Could you say whether there was white crossover voting for

14 the black candidate of choice, then?

15 A.   No. You can't say because there's no black candidate of

16 choice.

17 Q.   So, your analysis in this September 2, 2021, report does

18 not rely on this primary?

19 A.   My analysis -- repeat the question.

20 Q.   Because there was no black cohesion and because you could

21 not analyze white crossover voting, this 2018 Democratic

22 primary for governor played no role in your conclusions in

23 this report, did it?

24 A.   That's correct, yes.

25 Q.   Okay. Very good. Now, as you mentioned, your analysis

1   did not include Macomb County; that's correct?

2   A.   Correct. You could not produce reliable estimates.

3   Q.   Are you aware that in the Linden plan that the Commission

4   adopted, Senate Districts 3, 10, 11, and 12 all included parts

5   of Macomb County?

6   A.   I -- I'll believe you.

7   Q.   All right. Are you aware that in the Hickory plan that

8   the Commission adopted House District 10, 11, 12, 13, and 14

9   all included parts of Macomb County?

10 A.   Again, I'll believe you.

11 Q.   Okay. Let's go back to your global analysis in this

12 September 2nd report. Leaving aside the 2018 Democratic

13 gubernatorial primary that we've discussed, you considered 13

14 general elections; is that correct?

15 A.   I analyzed all general elections between 2012 and 2020.

16 Q.   And that was 13 general elections? I've got page 13 of

17 your report here if you want to double check that number.

18 A.   Yes, that's correct.

19 Q.   Okay. Now, six of those races included a black candidate

20 or a candidate with a black running mate; do you recall that?

21 A.   Yes.

22 Q.   But in two of those six it involved John James, who was

23 running for the Senate in 2018 and 2020, and you concluded he

24 was not the black candidate of choice, correct?

25 A.   That's correct.

1 Q.   Okay.   So, the four general elections that are left, make

2 sure I've got this, the 2012 presidential, the 2014 secretary

3 of state, the 2018 governor, and the 2020 president, all as

4 reported on page seven of your report, which is on the screen

5 and also in your binder; is that correct?

6 A.   Yes.

7 Q.   These four elections, 2012 president, 2014 secretary of

8 state, 2018 governor, 2020 U.S. president, you've referred to

9 as the bellwether elections; is that right?

10 A.   Yeah.   Yes, I believe so.   Yes.   I mean, the most

11 important being the 2014 secretary of state, but I think I did

12 refer to all four of them as bellwether.

13 Q.   Sure.   So if I use bellwether elections, you know those

14 are the four general elections I'm referring to?

15 A.   Yes.

16 Q.   Very good.   Now, in those four bellwether elections, the

17 black candidate of choice prevailed in three; President Biden,

18 Governor Whitmer, and President Obama, correct?

19 A.   Do you mean that they won the election?

20 Q.   Yes.

21 A.   Yes.

22 Q.   Okay.   So, did these bellwether elections show what BVAP

23 level would be necessary for a black-preferred candidate to

24 prevail in a specific Wayne County State House or Senate

25 Democratic primary?

1   **A.**   That's what we compiled elections results to, yes.

2   **Q.**   You're saying that in three of the four bellwether

3   elections where the candidate of choice prevailed you can use

4   that to set BVAPs for State Senate, and House primaries?

5   **A.**   I'm sorry, for primaries?

6   **Q.**   Yes. State, House, State Senate primaries.

7   **A.**   There are no bellwether elections for primaries. There

8   are no statewide -- sorry, I'm losing my voice. No statewide

9   Democratic primaries that you could use as a bellwether.

10   **Q.**   Okay. So just so we're clear on the record, these four

11   bellwethers do not tell you if a -- if black voters collect

12   the candidate of their choice in a State House or State Senate

13   primary; yes?

14   **A.**   That's correct.

15   **Q.**   Very good. All right. Let's look at your chart on page

16   nine of this report. This is still Plaintiffs' Exhibit 15,

17   Defendants' Exhibit 48, page nine.

18   This is titled, Number of Racially Polarized

19   Elections, correct?

20   **A.**   Yes.

21   **Q.**   And this was your basis for concluding that the Commission

22   had to pay attention to race, as you just testified, correct?

23   **A.**   Yes.

24   **Q.**   Okay. If we look at all statewide general elections here,

25   so we'll give you the benefit of all 13 races, in Oakland

1 County you report that 13 of 13 races were racially polarized?

2 A. Correct.

3 Q. Now turn to page 16 of this same report. This is the

4 breakdown of those results in Oakland County, correct?

5 A. Yes.

6 Q. Okay. And be patient with me because this is going to

7 take a little time.

8   In the very first race, President Trump and President

9 Biden, President Biden received 93.4 percent of the black

10 vote, yes?

11 A. Correct.

12 Q. But white voters did not sufficiently vote as a bloc to

13 defeat the black candidate of choice?

14 A. I don't know who won Oakland County. Can you tell me who

15 won Oakland County?

16 Q. I can tell you that President Biden won Oakland County.

17 A. Then that's correct.

18 Q. Okay. So *Gingles* three not satisfied.

19 A. Well, not on the basis of one contest.

20 Q. Sure. Let's look at contest two, the 2020 U.S. Senate.

21 This was between Senator Gary Peters and Representative John

22 James. Senator Peters received 92.1 percent of the black

23 vote; is that correct?

24 A. Yes.

25 Q. And yet Senator Peters prevailed in Oakland County,

1 correct?

2 A.   I don't know.

3 Q.   Okay. In the third race, 2018 governor, Governor Whitmer

4 and Attorney General Schutte, Governor Whitmer received

5 94.1 percent of the black vote; is that correct?

6 A.   Yes.

7 Q.   And yet Governor Whitmer prevailed in Oakland County; do

8 you know that?

9 A.   I don't know that, no.

10 Q.   All right. Because you don't know the Michigan election

11 results that you were studying, maybe we can fast forward a

12 little bit here.

13   I will represent to you that in the 2018 secretary of

14 state race, the black candidate of choice with 94.2 percent

15 was Secretary Benson and she prevailed in Oakland County.

16   I can represent to you that in the 2018 attorney

17 general race, 93.8 percent of black voters supported General

18 Benson (sic) and she prevailed in Oakland County.

19   JUDGE KETHLEDGE: Are these statewide numbers we're

20 looking at?

21   MR. BURSCH: These are Oakland County numbers.

22   JUDGE KETHLEDGE: Okay. So this is just Oakland

23 County.

24 BY MR. BURSCH:

25 Q.   The same is true in the sixth race where Senator Stabenow

1 beat John James.

2   In the seventh race where President Clinton (sic)

3 carried Oakland County over President Trump. I would note

4 that although President Trump carried the state, Secretary

5 Clinton carried Oakland County.

6   And then we finally get to the eighth race between

7 Mark Schauer and Governor Snyder in the 2014 governor race,

8 and this is the first time that the black candidate of choice,

9 Mr. Schauer, does not prevail, and that's also true of the

10 Secretary Benson race and the Attorney General Schutte race,

11 all of which involved incumbents.

12   So, finally, in these last three races, the black

13 candidate of choice prevails in Oakland County in the 24 (sic)

14 U.S. Senate, that's Gary Peters. The 2012 president, that's

15 Obama. And the 2012 U.S. Senate, which is Senator Debbie

16 Stabenow over Hoekstra.

17   So, if I'm right about all of these, then of these

18 13 elections, white voters voted sufficiently as a bloc to

19 defeat the minority candidate of choice in only three of 13

20 elections. Does that sound right?

21 **A.**   Countywide -- if you're correct, that would be correct.

22 **Q.**   Okay. Three out of 13. That means the black candidate of

23 choice won 77 percent of these elections in Oakland County.

24 Is that math correct?

25 **A.**   Possibly. I'll trust you on that.

1   Q.   Okay. I did have a math major. Even in the three races

2   where the black candidate of choice lost, those involved

3   popular incumbents in Governor Snyder, General Schutte, and

4   Secretary Benson, did they not?

5   JUDGE NEFF: Mr. Bursch, I have a question. If these

6   are countywide -- these are countywide numbers, right?

7   MR. BURSCH: Yes.

8   JUDGE NEFF: And yet the districts that have been

9   drawn that were -- we've been talking about for the last

10 however many days do not include Oakland County as a whole,

11 right?

12   MR. BURSCH: Oh, sure, Judge Neff, but what I heard

13 Doctor Handley testify earlier is that she used the

14 polarization in these general elections, 13 out of 13 in

15 Oakland County to justify the Commission's use of race, but as

16 it turns out, in Oakland County in ten of those 13 races the

17 black candidate of choice prevailed in Oakland County. So as

18 a result, the Commission could not have used race as a

19 criteria in drafting maps that went into Oakland County.

20   JUDGE NEFF: Okay. Got ya. Thank you.

21   THE WITNESS: Can I --

22   MR. BURSCH: No, you may not.

23   JUDGE MALONEY: Counsel, you referred to the 2014

24 Republican candidate for Secretary of State as Secretary

25 Benson. I believe it was Secretary Johnson.

1   MR. BURSCH: I'm sorry, Secretary Johnson. Thank

2 you, Judge Maloney.

3 BY MR. BURSCH:

4 Q.   All right. So, if we could move to page seven of your

5 report. Again, this is that table to justify the use of race

6 in drawing the districts. You -- I'm sorry, page nine. You

7 report that in Wayne County 7 of 13 statewide general

8 elections contests were racially polarized. Is that what this

9 says?

10 A.   Yes, that's correct.

11 Q.   Okay. Now, if we move to page 17 of this report, this is

12 the same data we were just looking at but now for Wayne

13 County; is that right?

14 A.   That's correct.

15 Q.   And because you're not aware of who prevailed in any of

16 these elections in Wayne County, I will represent to you now

17 and prove in our supplemental briefing at the conclusion of

18 this trial that in all 13 of these races the black candidate

19 of choice prevailed in Wayne County.

20 A.   Okay.

21 Q.   13 out of 13. So, this is the basis, that other chart,

22 for your conclusion that the Commission could use race in

23 drafting districts in Wayne County, correct?

24 A.   I think I should specify that what's happening at the

25 county level is not necessarily happening at the district

1 level. In other words, the entire county isn't going into a

2 district --

3 Q.   Understood. But --

4 A.   -- so you need to know the voting patterns of the county

5 as a whole, and you don't know what you're going to put into

6 the district to create an effective district. The point here

7 is there are voters in Wayne County who will vote Republican

8 and you need to be careful when you draw the districts that

9 you don't draw a district -- too many districts with too many

10 Republicans in it.

11 Q.   Can we go back to page nine? Doctor Handley, I appreciate

12 the difference between counties and districts, but in

13 concluding that the commissioners could use race in drawing

14 maps, it was based on your county analysis here on page nine,

15 wasn't it?

16 A.   And the statewide analysis, that's correct.

17 Q.   There was no district-by-district analysis here, was

18 there?

19 A.   That's correct.

20 Q.   Okay. So just to sum this up, the data that we've talked

21 about here, the 13 general elections and the one not as

22 helpful, 2018 gubernatorial primary, are the only election

23 data that you reported to the Commission on September 2nd,

24 2021; yes?

25 A.   Correct.

1   Q.   Okay.

2   MR. BURSCH: Bailey, if you could pull up Defendants'

3   Demonstrative Number 1.

4   BY MR. BURSCH:

5   Q.   Dr. Handley, you testified that these were all the

6   materials that you provided to the Commission directly,

7   correct?

8   A.   These were -- this is an indication that the presentations

9   I gave to the Commission -- the discussions I'm not -- you

10   know, I'm not sure what was included in the discussions.   I'm

11   also not sure that I -- that there were not more discussions.

12   I was reminded by some commissioners that there were

13   more discussions that I haven't indicated.   This certainly

14   accurately depicts all of the formal presentations I gave but

15   not all of the discussions I had with the commissioners.

16   Q.   Understood.   I asked materials.   And these are all the

17   materials?

18   A.   The materials.

19   Q.   That's what it says at the top, materials provided.   This

20   is it.   If there was anything else, it would be on this chart;

21   yes?

22   A.   I think that that's correct.

23   Q.   Okay.   So, focus with me on September 2nd, 2021.   This is

24   the report that we've been talking about so far; is that

25   correct?

48

1   **A.**   It was a presentation, yes.

2   **Q.**   Okay. And then the October 1st materials, that related to

3   partisan measures, correct?

4   **A.**   The presentation did, yes.

5   **Q.**   October 5th, also partisan fairness measures, correct?

6   **A.**   The presentation.

7   **Q.**   November 1st, 2021, voting patterns of selection minority

8   groups in Michigan, do you recall that report?

9   **A.**   The presentation? Yes.

10   **Q.**   Okay. Did it address black voting patterns?

11   **A.**   The presentation did not. I'm not sure what the

12   discussion involved. Again, these are the --

13   **Q.**   Materials --

14   **A.**   -- formal materials, yes.

15   **Q.**   Yes. But if we went back to the October 5th -- I'm sorry,

16   November 1st, 2021, transcript, we could determine whether you

17   talked about any black voting data, couldn't we?

18   **A.**   You could.

19   **Q.**   Oh, good. All right. And then, finally, we have the

20   December 28, 2021, report. You remember this, right?

21   **A.**   Yes.

22   **Q.**   Let's turn to that now. Do you recall that December 28th

23   was also the day the Commission voted to approve the Hickory

24   and Linden plans?

25   **A.**   I don't know.

1	Q. Okay. Do you remember the e-mail that you sent to Chair
2	Szetela the day before on December 27th?
3	A. Can -- I'm not good with dates. If you show it to me and
4	show me the date, I will agree with you.
5	Q. I understand. I'll give you all the dates and all the
6	election winners that you need.
7	MR. BURSCH: If you could pull up, Bailey,
8	Plaintiffs' Exhibit 5, page 21.
9	BY MR. BURSCH:
10	Q. This was an e-mail dated December 27th --
11	MR. BURSCH: Actually, Bailey, if you could do
12	the top.
13	BY MR. BURSCH:
14	Q. From LRHandley@AOL.com. Is that you?
15	A. Yes, it is.
16	Q. And do you see the date, December 27th?
17	A. Yes, I do.
18	Q. Okay. And now we can look at the highlighted language.
19	Unfortunately, we do not have sufficient information to
20	anticipate what might happen in future Democratic primaries in
21	the proposed districts. The reason is we have only one
22	statewide Democratic primary for which we can compile results
23	and minority voters were not cohesive in this primary. We
24	simply do not know what would happen in a primary in which
25	minority voters are cohesive.

1   Did I read that correctly?

2   A.   Yes, you did.

3   Q.   And when you say one statewide Democratic primary, that's

4   the one we were talking about earlier where there was no black

5   candidate and no black candidate of choice, correct?

6   A.   Correct.

7   Q.   Very good. All right. Let's turn to your report. Behind

8   tab B of your witness binder we have your expert report in

9   this litigation marked Defendants' Exhibit 26.

10   A.   Yes.

11   Q.   Okay. I'm going to have you turn with me to page 25.

12   JUDGE MALONEY: I'm sorry, counsel, what exhibit

13   number?

14   MR. BURSCH: Defendants' Exhibit 26.

15   JUDGE MALONEY: Thank you.

16   MR. BURSCH: Page 25.

17   JUDGE MALONEY: Thank you.

18   THE WITNESS: The exhibit page 25?

19   BY MR. BURSCH:

20   Q.   Yes. And this is the first page of your December 28,

21   2021, expert report, correct?

22   A.   Yes.

23   Q.   Now, to keep everything straight between what you provided

24   to the Commission on the day the maps were approved,

25   December 28th, and what you provided to the Court in this

1   litigation, I want to focus solely on this appendix A right

2   now. Forget about the expert litigation report. Are you with

3   me?

4   A.   Yes.

5   Q.   Okay. Please turn to table one on page seven of your

6   report. The Bates stamp is Defendants' Exhibit 26, page 31.

7   Do you recognize this as the same table that we were just

8   discussing in your September 2nd, 2021, presentation?

9   A.   Yes.

10   Q.   Okay. Please turn to table two on pages eight

11   through nine. Just flip the page. This is Defendant

12   Exhibit 26, pages 32 and 33.

13   Table two is your summary of Congressional district

14   racial bloc voting analysis, correct?

15   A.   Yes.

16   Q.   Okay. Can you agree with me that Congressional

17   District 5, being in Genesee and Saginaw, is not relevant to

18   the Wayne and Oakland counties?

19   A.   Yes.

20   Q.   Okay. So let's focus on the four highlighted exhibits.

21   We have four columns of elections that you analyzed, correct?

22   A.   Yes.

23   Q.   Okay. We're going to put a pin in the 2018 Democratic

24   primary and come back to that.

25   If you look at the 2018 general election column you

1   found no polarization in any of these districts, correct?

2   A.   I'm sorry, could you repeat that question?

3   Q.   In the second column, 2018 general election, you found no

4   polarization in Congressional Districts 9, 12, 13, or 14?

5   A.   Correct.

6   Q.   Okay. Now look at the last column, the 2020 general

7   election, and here you found one polarized election in

8   Congressional District 13 but the black candidate of choice

9   won?

10   A.   Correct.

11   Q.   And that was in a Wayne County district with, if I'm

12   reading this correctly, 54.78 percent BVAP, correct?

13   A.   Correct.

14   Q.   So that's a majority black district, isn't it?

15   A.   Yes.

16   Q.   Okay. Now let's focus on the third column, the -- I'm

17   sorry. Yeah. Now let's go back to the 2018 Democratic

18   primary column. And here there was only one polarized contest

19   in Congressional District 13?

20   A.   Correct.

21   Q.   And there the black candidate of choice lost?

22   A.   Correct.

23   Q.   And in the other districts it was either no contest or all

24   white candidates; is that right?

25   A.   Correct.

1 Q.   So of these elections, Congressional District 13 would be

2 the most probative of black voters' ability to elect the

3 candidate of their choice, correct?

4 A.   The most probative? I'm not sure that I would say it was

5 the most probative. I would say that it is the election that

6 was polarized.

7 Q.   Okay. So, you would not say that a polarized election

8 where the black candidate of choice lost is more probative

9 than one where there was only white candidates?

10 A.   No. I agree that it --

11 Q.   Oh, good.

12 A.   -- not -- all white candidates would not be probative,

13 that's correct.

14 Q.   All right. And then in the other two it was no contest,

15 so surely you would agree that a polarized election where a

16 black candidate of choice lost is more probative than two no

17 contests, right?

18 A.   Yes.

19 Q.   Oh, good. All right. So we are in agreement.

20   So I want to look at the underlying data for this

21 Congressional District 13. Please turn to page --

22 defendants' -- same tab of the binder, Defendants' Exhibit 26,

23 to page 88.

24   At the top do you see where it says, recent

25 Democratic primaries, Congress?

1   **A.**   I do.

2   **Q.**   And halfway down do you see where it says 2020?

3   **A.**   Yes.

4   **Q.**   And then you see under that, Congressional District 13?

5   **A.**   Yes.

6   **Q.**   Good. All right. So in this race, who was the black

7   candidate of choice?

8   **A.**   Rashida Tlaib, right?

9   **Q.**   Yep. I think I may have given you the wrong district.

10 Give me a moment. Yes, I'm sorry. We're in 2018, not 2020.

11 In the 2018 race at the top, who was the clear black candidate

12 of choice?

13 **A.**   Brenda Jones.

14 **Q.**   And what was her share of the black vote?

15 **A.**   About 43 percent.

16 **Q.**   You had Congressman (sic) Tlaib --

17 **A.**   Sorry. About 43.5 percent of the vote --

18 **Q.**   Right there.

19 **A.**   -- was the EI estimate.

20 **Q.**   Yet Congresswoman Tlaib prevailed, correct?

21 **A.**   That's correct.

22 **Q.**   And to reiterate, this district was in Wayne County?

23 **A.**   Yes.

24 **Q.**   And the black candidate of choice lost a 54.78 percent

25 BVAP county?

1 **A.**   District.

2 **Q.**   Yes.

3 **A.**   Yes.

4 **Q.**   Okay. Now, the only nonblack candidates in this race were

5 Representative Tlaib and Bill Wild; is that correct?

6 **A.**   Yes.

7 **Q.**   Together what was their share of the white vote?

8 **A.**   Over -- it looks like about 90 percent over --

9 **Q.**   That's about what I got too, about 90 percent. So by

10 definition that means white voters voted for the black

11 candidates in only 10 percent, correct?

12 **A.**   Yes.

13 **Q.**   And Brenda Jones, the black candidate of choice, what

14 percentage of the white vote did she take?

15 **A.**   About -- a little over five percent.

16 **Q.**   Would you call that racially polarized?

17 **A.**   Yes.

18 **Q.**   Me too. So, to summarize your findings for the general

19 elections in Wayne, Oakland, Macomb County, you found that

20 there was polarization in only one of eight races?

21   Actually, let's go back to that other chart so that

22 you're not guessing here. If we could go back to pages eight

23 through nine of your report. This would be Defendant

24 Exhibit 26, pages 32 to 33. And I think I may have skipped

25 over the 2020 Democratic primary. You can verify for me that

1 all four of those races were either not polarized or no

2 contest, correct.

3 A.   Yes.

4 Q.   Okay. So, to summarize, for congressional general

5 elections in Wayne, Oakland, Macomb counties, that would be

6 column two and column four, you found there was polarization

7 in only one of eight races; yes?

8 A.   I'm sorry, repeat that. The primaries or the generals?

9 Q.   In the generals, column two and column four, you found

10 polarization in only one of eight races?

11 A.   Repeat that again. The primary or the general?

12 Q.   The general.

13 A.   The general --

14 Q.   2018 general, 2020 general, columns two and four, you

15 found polarization in only one of eight elections,

16 Congressional District 13.

17 A.   I see polarization -- oh, because I'm looking at five,

18 right?

19 Q.   Yeah. Leave out five, please.

20 A.   That's the problem. Yes, sorry. Yeah.

21 Q.   Yes, okay. Good. And the black candidate of choice,

22 again, won that primary with a 54.7 percent BVAP; yes?

23 A.   Yes.

24 Q.   And then looking at the primaries, 2018 and 2020, columns

25 one and three, you again found polarization in only one of

1   eight races; yes?

2   A.   Yes.

3   Q.   And the black candidate of choice lost that primary in a

4   54.78 percent BVAP district?

5   A.   Correct.

6   Q.   And as we just reviewed, the two white candidates in that

7   primary took 90 percent of the white vote; yes?

8   A.   Yes.

9   Q.   Very good. I know we have a lot of data to go through in

10 your report, but does this Senate Congressional district

11 analysis support a 35 percent BVAP in Wayne County?

12 A.   Well, I wouldn't make that decision on the basis of one

13 contest.

14 Q.   I wouldn't either. Thank you for that. Good.

15   Let's move to the State Senate districts. This is

16 table three in your report. It's on pages nine through 10,

17 which is Defendants' Exhibit pages 33 to 34, and because

18 that --

19   JUDGE KETHLEDGE: I'm just trying to keep up with the

20 action here. If we can pace it a little bit?

21   MR. BURSCH: Yes. You bet.

22   JUDGE KETHLEDGE: Thanks.

23 BY MR. BURSCH:

24 Q.   So, it's Defendants' Exhibit 26, pages 33 to 34, nine to

25 10 in the report numbering. You're welcome to use your

1   binder, but we're able to put the whole chart across the page

2   break on the screen and so that might be easier.

3   Now --

4   JUDGE MALONEY: At least for me the problem is

5   reading it.

6   THE WITNESS: I can't -- I can't read it either.

7   MR. BURSCH: Okay. Bailey, can you enlarge -- there

8   we go.

9   JUDGE MALONEY: Much better. Thank you.

10   BY MR. BURSCH:

11   Q.   Okay. So this is table three. So, at the bottom of this

12   table we have State Senate Districts 27 and 32, which are

13   Genesee County and Genesee and Saginaw counties respectively,

14   so we can, again, rule those out from our discussion about

15   Oakland and Wayne counties, correct?

16   A.   Yes.

17   Q.   Very good. So, I want to start here with the 2018 general

18   election column. There was no polarization except State

19   Senate District 6 and 12; is that correct?

20   A.   Yes.

21   Q.   And the black candidate --

22   A.   General election, right? Is that what you said?

23   Q.   General election.

24   A.   Yeah. You have to slow down a little bit. Yes.

25   Q.   Yeah, right there and right there. And the black

1 candidate of choice won both of those?

2 A.   Correct.

3 Q.   But based on everything we've seen so far and what you

4 know from studying the area, Doctor Handley, would you agree

5 that because Wayne and Oakland County voters almost always

6 choose the Democrat in the general election, that these

7 results are less probative of racial polarization than the

8 primary?

9 A.   Repeat the question.

10 Q.   Would you agree that because Wayne and Oakland County

11 voters almost always choose the Democrat in the general

12 election, these 2018 general election results are not as

13 probative as primary results; do you agree with that?

14 A.   No.

15 Q.   Okay.   Let's look at the 2018 Democratic primary.   Again,

16 these are the State Senate seats.   Here you identified three

17 polarized elections, Senate District 3, 5, and 1; is that

18 correct?

19 A.   Yes.

20 Q.   Now, the black candidate of choice won in District 3 with

21 a 48.14 percent BVAP; yes?

22 A.   Yes.

23 Q.   Would you concede that 48 percent is much higher than a

24 range of 35 to 40 percent?

25 A.   Yes.

1 Q.   And then in Senate District 5 the black candidate of

2 choice won with a 54.25 percent BVAP; is that correct?

3 A.   Yes.

4 Q.   In Senate District 1 the black candidate of choice lost

5 with a 44.68 percent BVAP, correct?

6 A.   Yes.

7 Q.   Again, let's look at the underlying data. We're going to

8 stick with this tab B of your binder, Defendants' Exhibit 26,

9 page 89 in the Bates stamp.

10   JUDGE KETHLEDGE: What was the third district you

11 just said where the black-preferred candidate lost in the

12 primary? I can't keep up.

13   MR. BURSCH: Okay. It's Senate District 1, Judge

14 Kethledge, and we're about to look at that data right now.

15   JUDGE KETHLEDGE: Okay.

16   MR. BURSCH: I'm sorry for --

17   JUDGE KETHLEDGE: I'm just trying to keep up. We're

18 moving -- let's just slow it down.

19   MR. BURSCH: Even more. You got it.

20 BY MR. BURSCH:

21 Q.   So, Doctor Handley, at the top of this page it says,

22 Recent Democratic primaries, 2018 State Senate, correct?

23 A.   Yes.

24   MR. BURSCH: Okay. Bailey, could you blow up State

25 Senate District 1, the district that we were just discussing?

1 BY MR. BURSCH:

2 Q.   Doctor Handley, who is the black candidate of choice in

3 this election?

4 A.   I'm going to pronounce her name incorrectly, probably.

5 Talabi. Is that -- how do you pronounce her name?

6 Q.   That's close. Alberta Tinsley Talabi.

7 A.   Talabi. Talabi gets a plurality of the black votes.

8 Q.   Yeah. I mean, if you look at the EI, she's 20 points

9 ahead of the next closest black candidate, right?

10 A.   Yeah. She's the candidate of choice, yes.

11 Q.   Okay. What percentage of the white vote did she take?

12 A.   A little less than three percent.

13 Q.   Would you characterize this as racially polarized?

14 A.   Yes, I characterized it as racially polarized.

15 Q.   Okay. Again, not holding you to this because we're going

16 to be looking at more data. Based on what we looked at with

17 the State Senate Districts, would these support a 35 percent

18 BVAP in Wayne County?

19 A.   I would not make that decision on the basis of one

20 election.

21 Q.   Me either. Thank you. Now I want to look at your

22 analysis of State House Districts. We're going to flip back

23 in this same document to the Bates stamps 35 to 36.

24 A.   Yes.

25 Q.   This is table four, Summary of State House Districts'

1 racial bloc voting analysis, correct?

2 **A.** Yes.

3 **Q.** Now, this chart is really large, it goes one and a half

4 pages because there's so many House Districts here.

5   JUDGE MALONEY: Mr. Bursch, let my colleagues get to

6 the page.

7   JUDGE KETHLEDGE: There we go.

8 BY MR. BURSCH:

9 **Q.** You know, for this one, why don't we look at the binder.

10 If everybody is at DTX26 page 35.

11   JUDGE KETHLEDGE: This, you mean?

12 BY MR. BURSCH:

13 **Q.** Right there. I think that will be easier to see than on

14 the screen simply because this is so big.

15   So, Doctor Handley, are you with me?

16   JUDGE KETHLEDGE: But I don't have my reading

17 glasses.

18   MR. BURSCH: I can't help you there.

19   JUDGE KETHLEDGE: Just kidding.

20 BY MR. BURSCH:

21 **Q.** Doctor Handley, you're with me on table four, right?

22 **A.** I am.

23 **Q.** We're going to start with the 2018 general election

24 column, column two. There is not a single polarized district

25 where the black candidate of choice lost; is that correct?

1   Just on page 11. Don't worry about flipping over yet.

2   A.   Okay. Say that again. Ask the question again.

3   Q.   There is not a single black candidate of choice who lost a

4   polarized election in the 2018 general; yes?

5   A.   Correct.

6   Q.   Okay. Now focus -- same page, the 2020 general election

7   column. Same, there's not a single polarized district where

8   the black candidate of choice lost, correct?

9   A.   Correct.

10   Q.   Now turn the page to page 12. And, again, if we look at

11   the bottom of the chart, Districts 34, 49, 95, those are

12   Genesee and Saginaw, so if you want to take your pen, you can

13   just line those out. We're not going to be talking about

14   those.

15   And, again, I want you to focus on the 2018 general

16   election, and there's not even a polarized election here, is

17   there?

18   A.   Correct.

19   Q.   And same for the 2020 election?

20   A.   Correct.

21   Q.   We seem to have discovered a theme regarding general

22   elections in Oakland and Wayne County, haven't we?

23   A.   And the theme?

24   Q.   The Democrat always wins.

25   A.   In the -- I would suggest that these are probably packed

1   Democratic districts, yes.

2   Q.   Okay. So we agree. Back to page 11 marked as Defendants'

3   Exhibit 26, page 35. Now we're going to talk about the

4   primaries. So, first, just sticking with page 11, not

5   page 12, focus on the 2020 Democratic primary column, that's

6   column three; yes?

7   A.   The 2020 is -- oh, I see. You're starting to count --

8   it's not column three but -- which one do you want me to look

9   at?

10   Q.   The second column from the right, 2020 Democratic primary.

11   You with me?

12   A.   Yes.

13   Q.   Excuse me one moment. I need a drink. You found two

14   polarized races in this 2020 Democratic primary column; is

15   that correct?

16   A.   Correct.

17   Q.   The first is House District 6 where the black candidate of

18   choice won in a 52.86 percent BVAP; is that accurate?

19   A.   Yes.

20   Q.   And House District 9, which has a 74.22 percent BVAP; is

21   that correct?

22   A.   Yes.

23   Q.   Not a surprise.

24   A.   I'm sorry?

25   Q.   Not a surprise that the black candidate of choice would

1 win in a district with a 74.22 percent BVAP?

2 A.   I'm not surprised, yes.

3 Q.   Back to page 12. Same column, second from the right, 2020

4 Democratic primary, here only one of the three relevant

5 elections was polarized in District 37; yes?

6 A.   Yes.

7 Q.   And this is Oakland County?

8 A.   Yes.

9 Q.   And the black candidate of choice lost in a district with

10 a BVAP of 17.91 percent, correct?

11 A.   Correct.

12 Q.   Again, not a surprise.

13 A.   Correct.

14 Q.   Okay. Now, for convenience, stay here on page 12 and now

15 I want you to go to the 2018 Democrat primary column. Are you

16 with me?

17 A.   Yes.

18 Q.   The black candidate of choice won a polarized primary in

19 House District 35; yes?

20 A.   Yes.

21   JUDGE KETHLEDGE: What election? I can't keep up.

22 What election are we talking about?

23   MR. BURSCH: This is the 2018 Democratic primary.

24   JUDGE KETHLEDGE: Okay.

25   MR. BURSCH: Are you on page 12 of her report, Bates

1   stamp 36?

2   JUDGE KETHLEDGE: Yes.

3   MR. BURSCH: Okay. So it's the very first election

4   column, it says, 2018 Democratic primary.

5   JUDGE KETHLEDGE: Okay.

6   MR. BURSCH: And the second race is House District

7   35.

8   JUDGE KETHLEDGE: Right.

9   MR. BURSCH: Oakland County, 62.50 BVAP, black

10   candidate of choice wins a polarized election.

11   JUDGE KETHLEDGE: Okay. Thank you.

12   MR. BURSCH: No problem.

13   BY MR. BURSCH:

14   Q.   Now, if we move one above that to House District 29, this

15   was polarized and the black candidate of choice lost; is that

16   right, Doctor Handley?

17   A.   Yes.

18   Q.   And this district had a BVAP of 36.04 percent; yes?

19   A.   Correct.

20   Q.   All right. Turn back one page to page 11. Again, I want

21   to look at the very first election column, the 2018 Democratic

22   primary. You with me?

23   A.   Yes.

24   Q.   And we have four polarized races in House District 5, 11,

25   12, and 16; is that correct?

1   A.   Yes.

2   Q.   And these are all Wayne County; yes?

3   A.   Yes.

4   Q.   In House District 5, the black candidate of choice won in

5   a district with a 54.12 percent BVAP, right?

6   A.   Yes.

7   Q.   In House District 11, the black candidate of choice won in

8   a district with only a 26.53 BVAP, correct?

9   A.   Yes.

10   Q.   But that candidate, Jewell Jones, was the incumbent,

11   wasn't he?

12   A.   No idea.

13   Q.   Okay. If I represent to you that Jewell Jones was the

14   winning candidate in State House District 11 in 2018, would

15   you agree with me that a primary with one incumbent and one

16   challenger is not as probative of a black candidate of

17   choice's opportunity to win as is an open primary with two

18   candidates, is it?

19   A.   I would not agree with you, no.

20   Q.   So you would say that an open primary and an incumbent

21   primary are equally probative?

22   A.   I would say what's probative is what the black voters are

23   doing in that primary. There's a lot of instances in which

24   black voters will vote for the challenger over an incumbent.

25   So, no, I don't think that that's -- I don't -- I think what

1   black voters are doing is what's important.

2   Q.   Okay. Finally, we have two polarized elections where the

3   black candidate of choice lost, House District 12 and 16.

4   That's correct?

5   A.   Correct.

6   Q.   I want to look at the underlying data for House District

7   12. And, unfortunately, Doctor Handley and Your Honors, the

8   paper trail gets a little weird here, because this data

9   appears in her original report but for some reason it wasn't

10   reprinted in defendants' exhibit or in this binder.

11   A.   I can explain. I'm sorry, I can explain why.

12   Q.   Sure.

13   A.   I focused on districts over 25 percent black in the expert

14   report. It says, Detroit districts over 25 percent black.

15   Q.   Okay. But in your original December 2021 report you did

16   include the data, didn't you?

17   A.   That's correct.

18   MR. BURSCH: Bailey, if you can pull up Defendants'

19   Exhibit 17, page 66.

20   BY MR. BURSCH:

21   Q.   Doctor Handley, is this the 2018 -- I'm sorry, this is

22   general. This is not the correct page. Give me one moment.

23   MR. BURSCH: Is this Defendants' Exhibit 17, page 66?

24   The Bates stamp I have from defendant is different than that.

25   Let me show it to you. Give us one moment. There we go. We

1 got it. Oh, no, these are House Districts. Why don't I use

2 the elmo, if someone can show me how to use it.

3   JUDGE MALONEY: Uh-oh.

4   JUDGE KETHLEDGE: It's a generational thing.

5 BY MR. BURSCH:

6 Q.   Okay. Doctor Handley, we have here what's marked

7 Defendants' Exhibit 17, page 66, correct?

8 A.   Yes.

9 Q.   And at the top it says, Recent Democratic primaries for

10 the State House, correct?

11 A.   I need to find it in my binder. I really -- I think I

12 found it in my binder.

13 Q.   Or I can blow up the top if that's helpful.

14   JUDGE NEFF: Is that even in the binder?

15   MR. BURSCH: It's not in the binder because she

16 excluded it from her --

17   JUDGE NEFF: Okay.

18   MR. BURSCH: -- expert report --

19   JUDGE NEFF: Got ya.

20   MR. BURSCH: -- but this is in her December 2021

21 report.

22   THE WITNESS: Yes. It would be in the binder,

23 wouldn't it?

24 BY MR. BURSCH:

25 Q.   You would think so because you appended the December 2021

1   report to your expert report, but for some reason these State

2   House primary pages were excluded. I don't know why, so we're

3   going to have to be stuck with this. It's not in the binder.

4   I've looked.

5   A.   Okay. I can barely read this.

6   Q.   Then we'll do it this way. This is the data for your --

7   at the top left, Recent Democratic Primaries, State House,

8   correct?

9   A.   Yes.

10   Q.   2018?

11   A.   Yes.

12   Q.   Okay. We're going to scroll down the old fashioned way

13   and I'll blow up -- try to blow up State House District 12.

14   This is what we've been talking about.

15   Who was the overwhelming black candidate of choice?

16   A.   Alexandria Taylor.

17   Q.   Taylor was a black candidate?

18   A.   Yes.

19   Q.   What percent of the black vote did she receive?

20   A.   61.9 percent.

21   Q.   Did she win this district?

22   A.   No.

23   Q.   Lost it by 10 points, didn't she?

24   A.   Yes.

25   Q.   What percentage of the white vote did the prevailing

1   candidate, Alex Garza, a Hispanic candidate, take?

2   A.   74.9 percent.

3   Q.   Would you say that the black voters in this primary were

4   cohesive?

5   A.   Yes.

6   Q.   Would you say that this election was racially polarized?

7   A.   Yes.

8   Q.   Okay. Doctor Handley, we've now reviewed all the

9   elections you included in your December 28th, 2021, report,

10   have we not?

11   A.   December --

12   Q.   You can look through your tables if you want. I'll

13   represent to you there are no more elections.

14   A.   Just -- sorry. Ask me the question again.

15   Q.   We've now discussed all the elections covered in your

16   December 2021 report; yes?

17   A.   December 2021 report.

18   Q.   To refresh your memory, this is the report that you gave

19   the Commission the day they approved the maps.

20   A.   It's possible across the summary tables -- I mean, we

21   certainly didn't look at them in the RBV tables. I'm trying

22   to remember if the summary tables you were looking at were

23   from my -- they were from the expert report or they were --

24   they were from -- then, yes, we did.

25   Q.   Okay.

1 **A.**   I think. I think that that's correct.

2 **Q.**   All right. So now we've looked at all the data. We're

3 not talking about Congressional district bucket, we're not

4 talking about State Senate bucket, we're not talking about

5 House bucket. We're talking about all the buckets. Does this

6 data support a 35 percent BVAP in Wayne County?

7 **A.**   I made that choice on the basis of the percent needed to

8 win tables, plus, of course, looking at recompiled election

9 results as they drew the districts. I did not do that on the

10 basis of these contests.

11 **Q.**   Yes. And the percent to win tables were all based on

12 the 13 general elections, weren't they?

13 **A.**   That's correct.

14 **Q.**   Okay.

15   JUDGE KETHLEDGE: Well, I think, if I may, the

16 question was whether this data -- apart from what you had made

17 your decision on, I think there's a question whether this data

18 supports the number, 35 percent BVAP as the percent needed to

19 win, and I'm curious whether you have an opinion as to that?

20   THE WITNESS: The 35 percent needed to win is a

21 guideline. As they draw the district they're to look at the

22 recompiled election results to actually determine if the

23 election -- if the district would --

24   JUDGE KETHLEDGE: Okay.

25   THE WITNESS: -- support the candidate of choice, if

1   the candidate of choice wins the election.

2   JUDGE KETHLEDGE: I see.

3   THE WITNESS: So the 35 percent is a guideline. It

4   is not a target. It never was a target. It's an idea that

5   you don't have to draw majority black districts but you look

6   at the recompiled election results --

7   JUDGE KETHLEDGE: I see.

8   THE WITNESS: -- as you draw districts.

9   JUDGE KETHLEDGE: I understand what you're saying.

10   THE WITNESS: So --

11   JUDGE KETHLEDGE: Thank you, Doctor.

12   BY MR. BURSCH:

13   Q.   Doctor Handley, the recompiled election results are based

14   on the data from the 13 general elections; yes?

15   A.   That's correct.

16   Q.   It doesn't include any primary data for county House or

17   Senate races, does it?

18   A.   It's not possible to do a recompiled election results

19   with --

20   Q.   Okay.

21   A.   -- anything other than statewide elections.

22   JUDGE MALONEY: Mr. Bursch, you're going to another

23   subject matter?

24   MR. BURSCH: I am. I'm about to pivot.

25   JUDGE MALONEY: Okay. Before you pivot we'll take a

1   break.

2   MR. BURSCH: Okay. Thank you.

3   JUDGE MALONEY: And we'll resume at 10 minutes to 11.

4   Thank you.

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

6   *(Recess taken at 10:38 a.m.; reconvened at 10:55 a.m.)*

7   THE CLERK: All rise, please. Court is in session.

8   You may be seated.

9   JUDGE MALONEY: We are back on the record in 22-272.

10   Mr. Bursch, you may continue.

11   MR. BURSCH: Thank you, Your Honor.

12   BY MR. BURSCH:

13   Q.   Doctor Handley, you testified earlier today about your

14   threshold representation tables, correct?

15   A.   Yes.

16   MR. BURSCH: Bailey, if you could pull up Defendants'

17   Exhibit 48, page 18.

18   BY MR. BURSCH:

19   Q.   This was your threshold of representation for the Senate,

20   yes, Doctor Handley?

21   JUDGE NEFF: What page are we on, Mr. Bursch?

22   MR. BURSCH: Yes. This is -- excuse me. Defendants'

23   Exhibit 48, page 18.

24   JUDGE NEFF: Thank you.

25   BY MR. BURSCH:

1   Q.   And so this comes --

2   MR. BURSCH: If you wanted to look at the hard copy

3   from tab A of the witness binder, this is the September 2,

4   2021, report.

5   I'll wait until the bench is caught up with me.

6   JUDGE KETHLEDGE: Yep.

7   BY MR. BURSCH:

8   Q.   So, Doctor Handley, you used this threshold of

9   representation chart to say that Chair Szetela was wrong, that

10   there was no data in the 38 to 47 percent BVAP range, correct?

11   A.   No. I said that she was wrong that -- she was wrong about

12   several things, but one was she said that there was no turnout

13   data, and of course all the percent needed to win tables

14   included turnout data. She said that there was no information

15   about crossover, and of course the percent needed to win

16   tables do include crossover voting. That is the percentage of

17   white voters voting for the black-preferred candidate.

18   I don't remember if I said she was wrong to use this

19   in place of a percent needed to win table, but that is what I

20   meant. She -- in the dissenting report she uses the threshold

21   of representation tables to calculate a percent needed to win

22   whilst recognizing that the threshold table was flawed for

23   several reasons and she points them out.

24   And now I've forgotten the question. I'm sorry.

25   Q.   Well, that's not exactly the testimony that I remembered

1   from earlier today, but since you brought it up, let's talk

2   about that.

3   So, when you said that she was wrong about turnout,

4   you said that she was right because your tables included

5   turnout data, it was baked in, right?

6   A.   Well, it's listed. The percent needed to win tables list

7   turnout, that's correct.

8   Q.   And that's all in your September 2nd report?

9   A.   That's correct.

10   Q.   But those were all general election turnout, correct?

11   A.   The threshold of representation is also a general

12   election, but, yes.

13   Q.   Yeah.   That's all general election. And same thing with

14   the crossover votes, that was all general election, correct?

15   A.   Correct.

16   Q.   So, if Chair Szetela was talking about her concern of a

17   lack of data regarding turnout and crossover and opportunities

18   for black candidates to win in Detroit primaries, none of that

19   was included in your September 2nd, 2021, report, right?

20   A.   That's correct. I had not even received the primary data

21   at that point.

22   Q.   Okay.

23   A.   I'm sorry, we had the one 2018 gubernatorial statewide

24   primary, but I had not received any of the other primary data.

25   Q.   All right. I want to go back to this December 2021

1   Commission report, so tab B, Defendants' Exhibit 26. And I

2   want you to turn to Bates stamp page 44, which is page 20 of

3   your report, and I'll give you a moment.

4   MR. BURSCH: Bailey, can you blow up the bottom of

5   this page?

6   BY MR. BURSCH:

7   Q.   So, this page, Bates stamp 44, the section is called

8   percent black VAP -- let me start that again. Percent black

9   VAP needed to win recent general elections in Michigan

10   counties, correct?

11   A.   Yes.

12   Q.   And so these are the primary conclusions of your

13   December 2021 report, correct?

14   A.   Well, there's a lot of conclusions in here. This would, I

15   guess, be the conclusions I reached in terms of the title that

16   you just read.

17   Q.   Okay. If we look at the very next page --

18   MR. BURSCH: Bailey, if you can highlight the first

19   full paragraph.

20   BY MR. BURSCH:

21   Q.   You conclude, Doctor Handley, the black-preferred

22   candidate would win every general election in a district with

23   a BVAP of 35 percent or more; is that correct?

24   A.   Correct.

25   Q.   Do you know from reading the Commission transcripts or

1   talking to Mr. Adelson whether the commissioners were using

2   this BVAP number to help them draw districts?

3   **A.**   The point of the percent needed to win is to provide a

4   guideline, so I'm -- you know, I would assume that they would

5   be looking at creating districts that were less than the

6   majority-minority but looking at the recompiled election

7   results.

8   If you're asking me was this a target I told them?

9   No, this is not a target. This is the results of the percent

10   needed to win tables.

11   Q.   That's not what I asked. I asked if you knew if they were

12   using 35 percent as a guideline or a benchmark for drawing

13   districts, if you know.

14   **A.**   I would assume they would use the information I gave them

15   in the percent needed to win tables.

16   Q.   All general election data; yes?

17   **A.**   The percent needed to win tables are based on general

18   elections, that's correct.

19   MR. BURSCH: Bailey, if you could scroll down to the

20   third full paragraph on this page.

21   BY MR. BURSCH:

22   Q.   Doctor Handley, now you're discussing Oakland County,

23   correct?

24   **A.**   Yes.

25   Q.   And you say, The black-preferred candidate does not win

1   every general election contest in a 35 percent BVAP district.

2   It is not until the 40 percent BVAP column in table seven that

3   the candidate of choice of black voters wins every election

4   examined; is that what you wrote?

5   A.   That's correct.

6   Q.   But consistent with the language and title of this

7   section, these are thresholds for all general elections?

8   A.   I wouldn't say they're thresholds. This is the results of

9   the percent needed to win tables.

10   Q.   Okay. Now, when you're talking about those tables, Judge

11   Maloney had a question about the partisan makeup of the white

12   voters in those tables; do you recall that?

13   A.   Yes, I think so. Yes.

14   Q.   Okay. And you said you didn't know about Michigan's party

15   registration for primaries, correct?

16   A.   I don't know if you have an open or closed primary.

17   Q.   That was surprising to me. As the VRA expert, wouldn't

18   that have been important for you to know about primary party

19   registration and open and closed primaries as you were doing

20   your analysis?

21   A.   No.

22   Q.   Okay. So you're not aware that to vote in the primary

23   voters have to pick a party, Republican or Democrat in

24   Michigan?

25   A.   That still doesn't answer the question of whether it's

1   open or closed.

2   Q.   Okay. Thinking back to the table for Wayne County, if you

3   did the rough math, did the white voters support the black

4   candidate of choice at roughly a 50 percent rate?

5   A.   I believe that's -- I'm sorry, a 50 percent -- in about

6   50 percent of the contests, is that what you mean?

7   Q.   Across the 13 general elections was the support by white

8   voters for the black candidate of choice roughly 50 percent?

9   A.   Sometimes it was more and sometimes it was less.

10   Q.   That's why I said average.

11   A.   I don't know what the average was. I didn't calculate it.

12   Q.   Okay. We can pull that up. This is back in tab A,

13   Defendants' Exhibit 48. Wayne County is at Bates stamp

14   page 17.

15   Are you with me, Doctor Handley?

16   A.   Yes.

17   Q.   So we've got the white votes portion of the chart, it

18   includes three columns; yes?

19   A.   Yes.

20   Q.   And the column that says B-P, that's the black-preferred

21   candidate, correct?

22   A.   That's correct.

23   Q.   So if I look down that column in these 13 general

24   elections, it ranges anywhere from 36 percent all the way up

25   to, it looks like, 57.6 percent, yes?

1 A.   Yes.

2 Q.   So on average roughly 50 percent? This isn't a math test.

3   JUDGE NEFF: Could have fooled me.

4   THE WITNESS: Sorry. I don't -- I don't know the

5 average.

6 BY MR. BURSCH:

7 Q.   The numbers are all bigger than 40 percent; yes?

8 A.   No.

9 Q.   Oh, I'm sorry. 39.7?

10 A.   No.

11 Q.   What's lower -- oh, 36.8. There it is. All right. We'll

12 go with 36. What's the lowest percentage of black voters in

13 the black-preferred candidate column?

14 A.   Let's see. 95.2? Is that right?

15 Q.   That looks right. So, if the black voters are preferring

16 the black-preferred candidate by a 95 percent plus margin and

17 the white voters are preferring the white candidate by a

18 36.8 percent margin and above, we would expect the black

19 candidate of choice to win every one of these general

20 elections, right?

21 A.   Well, it would also depend on turnout.

22 Q.   But turnout is baked in here, yes?

23 A.   I thought this was a hypothetical. I mean, the reason

24 that I take into account turnout is because that matters as

25 well.

1	Q. All right. I don't think this is going to be productive
2	so why don't we go back to your December 28th report. This is
3	tab B, and turn to Defendants' Exhibit 26, page 48.
4	MR. BURSCH: Bailey, this is Defendants' Exhibit 17,
5	page 24, I think, in your slide deck.
6	BY MR. BURSCH:
7	Q. All right. So this is page 24 of your December 28, 2021,
8	Commission report; is that correct?
9	A. I think we're in my Commission report, yes.
10	MR. BURSCH: Bailey, could you highlight the first
11	paragraph?
12	BY MR. BURSCH:
13	Q. Doctor Handley, did you write: It is important to
14	remember that winning office in the United States usually
15	requires winning two elections, a primary and a general
16	election. The tables above consider only general election
17	contests; is that what you wrote?
18	A. Yes.
19	Q. The next sentence: Producing a comparable set of tables
20	for Democratic primaries is not possible. Did I read that
21	correctly?
22	A. Yes.
23	Q. Now I want to look at the second paragraph, just the last
24	two sentences, and you can check me for accuracy here.
25	As the percentage black VAP of proposed districts

1 decreases, it may become more challenging for black-preferred

2 candidates to win not only the general election but the

3 Democratic primary, but only if voting in Democratic primaries

4 is racially polarized. Unfortunately, it is not possible to

5 ascertain exactly how much more difficult it would be or even

6 if it would be more difficult given the lack of Democratic

7 primary election data. Is that what you wrote?

8 A.   Yes.

9 Q.   Okay. At long last I would like to turn to your expert

10 report in this litigation submitted on March 8th. If you

11 could turn with me to the front of tab B. Is this the report

12 that you submitted in this litigation, Doctor Handley?

13 A.   Yes.

14 Q.   Please turn to table one, which is on page four. Do you

15 remember discussing this table one with counsel yesterday?

16 A.   Yes.

17 Q.   This is a compilation of the House, Senate, and

18 Congressional districts for the 2020 Democratic primary and

19 the 2018 Democratic primary, correct?

20 A.   Yes.

21 Q.   Now, we just went all through this granularly as we went

22 through your December 2021 report; yes?

23 A.   I think more or less, yes.

24 Q.   Okay. But I think the way that you formatted this table

25 is really helpful because you reported the districts by their

1 BVAP from a high of 94.9 all the way to a low of 26.9, right?

2 A.   Yes.

3 Q.   So let's focus on the 2020 Democratic primary column

4 first, and I'll give you a chance to look through the whole

5 column. You've put in bold where the races are polarized and

6 I only see two, House District 9 and House District 6. Can

7 you confirm that?

8 A.   I can confirm that.

9 Q.   Both of these districts were black majority districts,

10 weren't they?

11 A.   Correct.

12 Q.   House District 9 had a BVAP of 74.9 percent?

13 A.   Correct.

14 Q.   House District 6 had a BVAP of 53.6 percent?

15 A.   Correct.

16 Q.   All right. Now look at the column on the right, the 2018

17 Democratic primary. Here you have, again, bolded the

18 polarized elections, and I count nine; is that accurate?

19 A.   Yes.

20 Q.   Now, we're going to start at the top of the polarized list

21 with House District 35 polarized, black candidate of choice

22 won in a 63.0 percent BVAP; yes?

23 A.   Yes.

24 Q.   Okay. Two lines down, House District 5, polarized, black

25 candidate of choice won in a district with a 55.2 percent

1   BVAP; yes?

2   A.   Yes.

3   Q.   Right below that, Senate District 5, black candidate of

4   choice wins a polarized district with a 54.7 percent BVAP;

5   yes?

6   A.   Yes.

7   Q.   No surprises so far, correct?

8   A.   I'm not really sure what you mean by surprises. You've

9   accurately described what I've said here.

10   Q.   Would you generally expect the black candidate of choice

11   to prevail in a district with a BVAP of 54.7 or above?

12   A.   Well, I can tell you exactly how many times they

13   prevailed. I created a chart that tells you that.

14   Q.   Okay. We're going to get to that. All right. Then here,

15   Congressional District 13, this also has a black majority, a

16   52.9 percent BVAP; is that correct?

17   A.   Yes.

18   Q.   And the black candidate of choice lost?

19   A.   Yes.

20   Q.   Okay. Now let's look at the five polarized districts that

21   are not black majority, and I'll try to run through these

22   quickly.

23   In Senate District 3, the black candidate of choice

24   won, correct?

25   A.   Yes.

1   Q.   Do you know that that was the race where Sylvania -- I'm

2   sorry, Sylvania Santana edged Gary Woronchak by less than

3   three points? Sylvania, S-Y-L-V-A-N-I-A, Santana,

4   S-A-N-T-A-N-A, edged Gary, G-A-R-Y, Woronchak,

5   W-O-R-O-N-C-H-A-K, by less than three points?

6   A.   Do I know that off the top of my head, no, but that

7   information would be in the table.

8   Q.   All right. I will represent to you that if we went to

9   page 89 with all your data, that that was the case, and that

10   black voters gave Santana and the one other black candidate of

11   choice 85 percent of their vote, and white voters gave

12   Woronchak and the other white candidate more than 78 percent

13   of the white vote. Would you call that polarized, racially

14   polarized? I'm sorry?

15   A.   Yes. Sorry, my head.

16   Q.   And SD1 the black candidate of choice lost in a

17   45.1 percent BVAP; yes?

18   A.   Yes.

19   Q.   In House District 29 the black candidate of choice lost in

20   a 36.8 percent BVAP, correct?

21   A.   Yes.

22   Q.   In House District 12 the black candidate of choice lost,

23   correct?

24   A.   Yes.

25   Q.   And, finally, in House District 11 the black voter -- or

1   black candidate of choice won, but that was Mr. Jewell (sic),

2   the incumbent who we discussed earlier; do you remember that?

3   A.   No.

4   Q.   Okay. Let's turn to table two in your report. This is on

5   page seven of the same document that we've been looking at.

6   A.   I'm sorry, could you repeat that? Where do you want me to

7   go?

8   Q.   Table two on page seven --

9   A.   Got it.

10   Q.   -- of your expert report for this litigation. Now, column

11   one, 2018 Democratic primary, that was all data that we just

12   covered in the previous table, correct?

13   A.   It was included in the previous table, I believe, yes --

14   Q.   Yes.

15   A.   -- but, of course, the previous table included more

16   elections. This looks just at State Senate elections.

17   Q.   Yes. But the column -- second column of election results,

18   the 2014 Democratic primary, parentheses, Trende analysis,

19   this is new?

20   A.   You mean compared to the --

21   Q.   Compared to the previous table?

22   A.   That's correct.

23   Q.   Very good. In the first line, Senate District 5, the

24   black candidate of choice lost in a district with a

25   54.7 percent BVAP; yes?

1	**A.** I'm sorry. The 2014 column but I --
2	**Q.** Yes.
3	**A.** Okay. Is that what you asked?
4	**Q.** Yep. 2014 column, Senate District 5, black candidate of
5	choice lost in a polarized election with a 54.7 percent BVAP;
6	yes?
7	**A.** Yes.
8	**Q.** In Senate District 4 the black candidate of choice won.
9	Do you know whether that was the incumbent, Senator Virgil
10	Smith?
11	**A.** No, I don't know.
12	**Q.** Okay. And in Senate District 11 the black candidate of
13	choice lost. Do you know whether that was incumbent Vincent
14	Gregory?
15	**A.** I think that -- you mean won? I think you just said lost
16	and you meant won.
17	**Q.** Sorry, won, yeah. So let me rephrase the question.
18	Senate District 11 the black voter candidate of choice won,
19	but that was incumbent Vincent Gregory, are you aware of that?
20	**A.** No. I don't know who the winner was.
21	**Q.** And so you wouldn't know that even though he took over
22	62 percent of the black vote, his victory margin was only
23	.4 percent because he didn't even finish in the white voters'
24	top two who collectively took 88 percent of the white vote?
25	**A.** I don't even know how much of that information I knew. I

1   just took the estimates from Mr. Trende's report.

2   Q.   Okay. It's all on page 84 of Plaintiffs' Exhibit 20, but

3   in the interest of time, why don't we keep going.

4   Please turn the page to table three, and we'll try to

5   do this quickly.

6   Again, we've talked about the 2020 Democratic primary

7   and the 2018 Democratic primary at great length; yes, Doctor

8   Handley?

9   A.   I would say yes.

10   Q.   And if we're looking at the Trende analysis, there's quite

11   a few polarized elections where the black candidate of choice

12   prevailed. Will you confirm that every one of those was in a

13   black majority district with a BVAP above 50 percent?

14   A.   And -- say that again. That --

15   Q.   Let's do these one at a time.

16   A.   Oh, please let's not. Sorry.

17   Q.   I don't mean race at a time. Column at a time. We're

18   going to go quickly, I promise. Look at the 2016 Democratic

19   primary column.

20   A.   Got it.

21   Q.   Please confirm that every polarized race took place in a

22   district with a BVAP above 50 percent.

23   A.   Yes.

24   Q.   And same for the 2014 Democratic primary in the final

25   column.

1 **A.**   Yes.

2 **Q.**   Okay.   So neither of those races have evidence of black

3 candidates of choice winning or losing in BVAPs below

4 50 percent; agreed?

5 **A.**   Well, there were contests that he looked at in districts

6 below 50 percent but they weren't polarized.

7 **Q.**   So you would agree?

8 **A.**   I'm -- ask -- ask me again what I agree to.

9 **Q.**   There were no polarized races to analyze in a district

10 with a BVAP below 50 percent?

11 **A.**   But there -- there were.   Do you mean Trende did not --

12 didn't do any analysis?

13 **Q.**   Right.

14 **A.**   Right.   But there were analyses in 2018.

15 **Q.**   We were talking about the Trende columns, 2016 and 2014.

16 **A.**   Yes.   So if you specify that, that's correct.

17 **Q.**   Okay.

18   MR. BURSCH: If you could, Bailey, pull up

19 Defendants' Demonstrative Exhibit 4.

20 BY MR. BURSCH:

21 **Q.**   Now, this is the one-page demonstrative that Ms. McKnight

22 showed you earlier and passed out to me and to all the members

23 of the bench, correct?

24 **A.**   Yes.

25 **Q.**   The first column, success rate, 2018 and 2020, Democratic

1 primaries in the Detroit area, that includes all the data that

2 we've been discussing together this morning, right?

3 A.   For the 2018 and 2020 elections, yes.

4 Q.   Yes. And when you put these percentages in there, that

5 includes elections where there was no polarization, correct?

6 A.   Correct.

7 Q.   And it includes elections where there was an incumbent as

8 a candidate, correct?

9 A.   I don't know, but I wouldn't be surprised.

10 Q.   It includes elections where there was a single candidate

11 running, correct?

12 A.   No.

13 Q.   These percentages do not reflect black voter success rate

14 in the most polarized cohesive elections, do they? Let me ask

15 that another way. You're not saying that in a polarized

16 election that the black candidate of choice will prevail

17 66.7 percent of the time in a district with a BVAP between 45

18 and 49.9, right?

19 A.   I'm saying that overall the black-preferred candidate won

20 in 66.7 percent of the contests that fell within the range of

21 districts that were 45 to 49.9 percent.

22 Q.   Okay. Let's go to the 2022 column. We haven't discussed

23 this yet, correct?

24 A.   We haven't discussed this yet, that's correct. I mean,

25 this table.

1   Q.   All right. Let's --

2   A.   We discussed some -- sorry.

3   Q.   Let's turn to table four in your litigation expert report.

4   This is tab B, Defendants' Exhibit 26, page 11. So now under

5   the Linden and Hickory plans we see 10 bolded polarized

6   districts that you identified in this primary; yes?

7   A.   That's correct.

8   Q.   The very first one, the black candidate of choice won in a

9   57.2 percent BVAP district; yes?

10 A.   Yes.

11 Q.   Right below that in House District 5 the black candidate

12 of choice lost in a 56.9 percent BVAP; yes?

13 A.   Yes.

14 Q.   I want to look at the data for this. If you'll turn to

15 page 112 of this same exhibit.

16   MR. BURSCH: And, Bailey, if you can blow up House

17 District 5.

18   JUDGE KETHLEDGE: Where are we here?

19   MR. BURSCH: Same exhibit, page 112.

20   JUDGE KETHLEDGE: Thank you.

21 BY MR. BURSCH:

22 Q.   Doctor Handley, who is the black candidate of choice in

23 State House District 5?

24 A.   Reggie Davis.

25 Q.   And what percentage of the black vote did he take?

1	**A.** I can't see the top. I think it's 55.2 percent.
2	**Q.** That's what I see, too. So the black vote was cohesive?
3	**A.** Is that a question? I'm sorry.
4	**Q.** That was a question. Was the black vote cohesive?
5	**A.** I would say that Blacks were voting cohesive given the
6	number of candidates that ran, yes.
7	**Q.** Yet Mr. Davis lost by more than seven points to white
8	candidate Natalie Price; is that correct?
9	**A.** Yes.
10	**Q.** And that's because he took only 8.4 percent of the white
11	vote, right?
12	**A.** In part. It's also because she got 71 percent of the --
13	Natalie Price got 71 percent of the white vote.
14	**Q.** Yes. Racially polarized, yes?
15	**A.** Yes.
16	**Q.** That was my point. In fact, the two black candidates
17	together only got, what, about 13 percent of the white vote?
18	**A.** I'm not getting 13 percent. Where are you looking?
19	**Q.** I was looking in the final column here. I just added
20	together 8.4 and 4.6.
21	**A.** Okay. Those are the homogenous precincts.
22	**Q.** What column would you use?
23	**A.** That's why I went back to the table. The first column.
24	**Q.** This one here?
25	**A.** Yes.

1   Q. So Reggie Davis and Steel Hughes, the two black candidates

2   took 7.2 percent of the white vote?

3   A. Correct.

4   Q. Not very high, is it?

5   A. No.

6   Q. Back to your table four on page 11. So --

7   MR. BURSCH: Let me ask the Court a question. I can

8   go through every single one of these polarized races to show

9   that none of them support the conclusions that Doctor Handley

10 reached in her 2021 report, but a lot of this was analyzed in

11 Sean Trende's testimony and we've got the data that we can

12 submit to you.

13   Would you prefer that I go race by race? I'm

14 seeing --

15   JUDGE KETHLEDGE: Yes.

16   MR. BURSCH: You do want to go --

17   JUDGE KETHLEDGE: If you can do it in a, you know,

18 concise manner.

19   MR. BURSCH: Okay. Then let's do it.

20   JUDGE KETHLEDGE: I think it's important -- I think

21 it's worth hearing from this witness on this point myself. I

22 don't mean to comment.

23   JUDGE MALONEY: I agree.

24   MR. BURSCH: Okay. Thank you, Your Honors.

25 BY MR. BURSCH:

1 Q.   All right. So, Doctor Handley, House District 7, black

2 candidate of choice won with a BVAP of 49.9 percent, yes?

3 A.   Yes.

4 Q.   I want to look at the data. Why don't you keep a finger

5 here on page 11 so you can flip back to it easily and we're

6 going to look at page 113.

7   MR. BURSCH: And, Bailey, if you could highlight

8 State House District 7.

9 BY MR. BURSCH:

10 Q.   So, here Helena Scott, the black candidate, was the black

11 candidate of choice and prevailed, correct?

12 A.   Yes.

13 Q.   What was the percent of the white vote that she received?

14 A.   37.4 percent.

15 Q.   Are you aware that Helena Scott was an incumbent?

16 A.   I know I've seen her name before. I will believe you if

17 you tell me that she is.

18 Q.   I will tell you that she is. In a future election, would

19 it make a difference how the white voters are choosing their

20 candidate, that the one black candidate of -- in the field is

21 not an incumbent? Could that have a difference?

22 A.   I found that in analyzing contests in the -- this context

23 that incumbency doesn't matter as much. Particularly in a

24 polarized contest you will find that black voters will support

25 a challenger over an incumbent, vice-versa, so I -- I would

1   say, no, not necessarily.

2   Q.   Okay. Back to page 11. House District 8, BVAP

3   45.7 percent, polarized election and the black candidate of

4   choice lost; is that accurate?

5   A.   Yes.

6   Q.   If I told you that on page 113 the percentage of the white

7   votes that went to the two black candidates in this race was

8   13 percent, does that sound about right, or would you like to

9   look at that with me?

10   A.   I'm sorry. What page are you talking about?

11   Q.   If you want to look, it's back on page 113.

12   A.   Okay. What district?

13   Q.   We're looking at House District 8.

14   A.   Okay.

15   Q.   Durrel Douglas and Ernest Little are the two black

16   candidates. What was their combined share of the white vote?

17   A.   12.9.

18   Q.   Would you say that's racially polarized?

19   A.   I wouldn't look at it that way. The contest is polarized

20   but it's polarized because white voters would have elected

21   Mike McFall and -- oh, dear. I don't know who black voters

22   would have elected. Well, they wouldn't have elected McFall

23   so I would say the contest was polarized, but black voters

24   were not cohesive.

25   Q.   Right. Back to page 11. In House District 11 the black

1 candidate of choice again lost, this time in a 44.0 percent

2 BVAP district; is that correct?

3 A.   Yes.

4 Q.   Let's look at the data on page 114.

5   MR. BURSCH: Bailey, it's the top, District 11.

6 BY MR. BURSCH:

7 Q.   Now, this field was fractured with nine candidates,

8 correct?

9 A.   Yes.

10 Q.   Who was the black candidate of choice?

11 A.   Not cohesive. Hard to say.

12 Q.   What was the race of the top four candidates that black

13 voters selected?

14 A.   Black.

15 Q.   Okay. Veronica Paiz, Hispanic, she won in this election,

16 right?

17 A.   Yes.

18 Q.   She was the top vote getter among white voters?

19 A.   Yes. Apparently, but, yes.

20 Q.   How did she do with the black voters?

21 A.   6.6 percent of the vote.

22 Q.   Okay. Back to page 11, table four.

23   JUDGE KETHLEDGE: Mr. Bursch, I would just say, if

24 you're going to be asking Doctor Handley to just kind of do

25 the math on these pages, that's something I think you could

1   cover or the parties can cover in their post-trial briefing.

2   MR. BURSCH: Okay.

3   JUDGE KETHLEDGE: If there's something -- you know,

4   if there's something beyond that, then, fine, but I don't want

5   to put her through that when it's not necessary.

6   MR. BURSCH: I'll wrap this up.

7   BY MR. BURSCH:

8   Q.   Let's just look at the last three polarized elections on

9   your table number four, Doctor Handley. Senate District 8,

10   the black candidate of choice lost in a polarized election

11   41.6 BVAP, yes?

12   A.   Yes.

13   Q.   House District 26, 37.8 percent BVAP, black candidate of

14   choice lost a polarized election, yes?

15   A.   Yes.

16   Q.   Senate District 1, 36.6 percent BVAP, black candidate of

17   choice lost a polarized election, correct?

18   A.   Yes.

19   Q.   Just a few last questions, Doctor Handley. You testified

20   today about Mr. Brace's video testimony regarding the

21   automated software tool that gave recompiled election results;

22   do you recall that?

23   A.   Yes. Yes, that was included. I didn't testify to it, but

24   that was included in the -- one of the -- at least one of the

25   clips, yes.

1   Q.   That's fair. You testified that tool would give the

2   Democratic performance of a particular district; yes?

3   A.   Yes.

4   Q.   Based on general elections?

5   A.   Yes.

6   Q.   So that tool says nothing about whether black voters would

7   be able to elect their candidate of choice in that district's

8   primary; yes?

9   A.   Again, we only had one Democratic primary that was

10 statewide so recompiled election results did not solve that

11 particular -- would not answer that particular question.

12 Q.   You used the best data you could at the time, and that was

13 all general election data; yes?

14 A.   There was only 14 statewide contests, including the

15 Democratic primary. That's the recompiled election results

16 that were included in the GIS software.

17 Q.   The 13 general elections; yes?

18 A.   The 13 general elections and the one and only primary,

19 that was also included. Every statewide election that

20 Election Data Services had data for that was statewide was

21 included in the GIS software.

22 Q.   Just to make sure we're clear, that primary you mentioned,

23 the statewide primary, no black candidate; yes?

24 A.   There was no black candidate in that primary, that's

25 correct.

1   Q.   No black cohesion, correct?

2   A.   Correct.

3   JUDGE NEFF: Can I just interrupt for a second? When

4   we're talking about the primary that involved Governor Whitmer

5   and --

6   MR. BURSCH: Judge Neff, can you put your microphone

7   down?

8   JUDGE NEFF: Sorry. Why do we always ignore the fact

9   that the lieutenant governor candidate is an African American

10   in that election?

11   MR. BURSCH: Are you asking me or Doctor Handley?

12   JUDGE NEFF: Anybody who can answer the question. I

13   mean, we keep -- everybody keeps saying this is an election in

14   which there were no minority candidates, but there was.

15   MR. BURSCH: I --

16   THE WITNESS: Well, there were two minority

17   candidates, actually, and then there was a -- this is the

18   primary so the -- the -- Gilchrist --

19   JUDGE NEFF: Yeah.

20   THE WITNESS: -- was not included in the Democratic

21   primary. He -- I don't think --

22   JUDGE MALONEY: He gets nominated at the state

23   convention.

24   THE WITNESS: Yep. I don't think that he was running

25   with her in the primary; is that correct?

1   JUDGE MALONEY: Correct.

2   THE WITNESS: Yes. So he --

3   JUDGE MALONEY: Gilchrist was nominated by the

4   Democratic party after the primary election which Whitmer

5   prevailed. The state convention was held, and the convention

6   nominated Gilchrist as the lieutenant governor.

7   THE WITNESS: So he's included in the general

8   election but he did not run in the primary. There were,

9   again, two minority candidates, but not Gilchrist.

10   JUDGE NEFF: Thank you. I would always bow to Judge

11   Maloney on questions political.

12   JUDGE KETHLEDGE: We're taking judicial notice of all

13   this.

14   BY MR. BURSCH:

15   Q.   So, Doctor Handley, you testified that much of your

16   experience has been in the south of our country where general

17   elections make all the difference, correct?

18   A.   A lot of my experience has been in the south -- I'm sorry,

19   a lot of my litigation experience has been in the south.

20   Q.   Here in Michigan, did you anticipate that by drawing BVAPs

21   down to the lowest possible levels based on general election

22   data would result in a significant reduction in black

23   representation in the Michigan legislature under the Linden

24   and Hickory maps?

25   A.   Okay. Let's break apart this question. First of all,

1   what do you mean -- are you suggesting that there was a

2   significant decrease in the number of black candidates -- I

3   mean, in the number of black representatives?

4   Q.   You do not know whether that's true?

5   A.   I looked at the number of black-preferred candidates that

6   were elected, and in a number of instances, even when black

7   voters could have voted for a black candidate in the primary,

8   they did not, they voted for a white candidate.

9   Q.   Okay.

10   A.   So there are some white candidates that were selected

11   specifically by black voters.

12   Q.   I want to focus on black candidates in the Detroit area.

13   The newspapers reported that the number of black legislators

14   from Detroit decreased from 20 to 16 following the 2022

15   election.

16   I don't want you to agree or disagree because I know

17   you don't know. My question is, did you anticipate that by

18   drawing BVAPs down to the lowest possible level based on

19   general election data, the result would be a significant drop

20   in black legislators from Detroit?

21   A.   Again, I'm going to take issue with the question. I don't

22   know what you mean by the lowest possible level. I don't

23   think they drew the black districts at the lowest possible

24   level, right?

25   I mean, we could have drawn probably no districts

1   more than 35 percent black -- that's not possible, but I don't

2   agree with the phrasing of the question. Maybe you could try

3   it again.

4   Q.   We'll let the Commission transcripts speak to how they

5   drew the lines.

6   MR. BURSCH: I have no further questions at this

7   time.

8   JUDGE MALONEY: Ms. McKnight, you may inquire.

9   MS. McKNIGHT: Thank you.

10   *REDIRECT EXAMINATION*

11   BY MS. McKNIGHT:

12   Q.   Doctor Handley, earlier today I heard questions about

13   whether you could determine the percent of white voting for

14   black candidates of choice, and I would just like to confirm

15   where that exists in the record.

16   MS. McKNIGHT: Could we turn to DTX48 page 17?

17   BY MS. McKNIGHT:

18   Q.   Is this where you show your percent black VAP needed to

19   win for Wayne County?

20   A.   Yes.

21   Q.   And if anyone had a question about the details in the

22   underlying data of this chart, particularly percentage of

23   white votes for Democratic candidates, could they look at the

24   underlying data?

25   A.   If you mean -- I'm not sure what you mean by the

1   underlying data.

2   Q.   If you set this to the side.

3   MS. McKNIGHT: And could I ask Mr. Williamson to pull

4   up side-by-side DTX26 at 71?

5   BY MS. McKNIGHT:

6   Q.   So what we have here, Doctor Handley, on the left is

7   DTX48, your December -- pardon me, your September 2nd report,

8   and on the right-hand side we have DTX26, your expert report

9   in this matter that attaches your December report.

10   Is it fair to say that the data on the right-hand

11   side of the screen at DTX26-71 and the following pages is the

12   data that is related to the chart on DTX48-17?

13   A.   That's correct.

14   Q.   Okay.

15   A.   The estimates came from the racial bloc voting tables that

16   are appended, that's -- it was taken directly from there,

17   that's correct.

18   Q.   But when you talk about racial bloc voting tables, is page

19   -- DTX26, page 71, is that an example of a racial bloc voting

20   table?

21   A.   Yes.

22   Q.   Okay. And just for the record, let's just do one more

23   example.

24   MS. McKNIGHT: Mr. Williamson, on the left side could

25   you put up DTX48-16 and on the right side could you put up

1   DTX26 at 68?

2   BY MS. McKNIGHT:

3   Q.   So, similarly, Doctor Handley, here is on the left side is

4   your percent black VAP needed to win in Oakland County at

5   DTX48-16 and on the right side is data at DTX26-68. Is the

6   data on the right side the data that fed into the table that

7   is appearing on the left side at DTX48-16?

8   A.   Yes. The estimates were derived from the racial bloc

9   voting analysis in the tables on the right.

10   Q.   Thank you for your patience with that record issue of

11   showing where the data existed.

12   Let's go to DTX48-16. You were asked some questions

13   on cross about Oakland County. Do you remember those

14   questions, Doctor Handley?

15   A.   I remember I was asked questions. I don't remember the

16   questions, though.

17   Q.   Fair enough. Now, as I'm looking here on this chart for

18   Oakland County, did you see any pattern emerge about white

19   voting in Oakland County? And here I'm looking at the columns

20   under white votes, B-P, and all others.

21   I can ask a more specific question --

22   A.   Maybe --

23   Q.   -- to keep this moving. How many elections show that the

24   majority of white voters in Oakland County supported the black

25   candidate of choice?

1 A.   There was not a -- I don't see a single election in which

2 white -- a majority of the white voters supported the

3 candidate of choice of black voters.

4 Q.   Okay. So in all of the elections you analyzed here, the

5 majority of white voters voted against the black candidate of

6 choice, is that correct, in Oakland County?

7 A.   Against the black voters' candidate of choice, yes.

8 Q.   Thank you. Now, I heard plaintiffs' counsel look at a

9 table like this and state that we should expect to see black

10 candidates of choice win every time where levels of B-P voting

11 are so high, meaning both the B-P under black votes and the

12 B-P under white votes. Do you remember him saying that?

13 A.   Vaguely.

14 Q.   Okay. But, of course, this is countywide; is that right?

15 A.   That's correct.

16 Q.   Okay. So would you have any concern that if map drawers

17 drew a smaller district within Oakland County and they

18 captured too much white vote that they would risk the black

19 candidate of choice losing?

20 A.   Exactly.

21 Q.   Okay.

22   MS. McKNIGHT: Let's turn to DTX26 at 36. And let's

23 enlarge the table at the top.

24 BY MS. McKNIGHT:

25 Q.   I see here State House Districts drawn in Oakland County,

1   the first three rows. Do you see that, Doctor Handley?

2   A.   Yes.

3   Q.   Okay. And by my read, there's -- you reviewed State House

4   District 29; do you see that?

5   A.   Yes.

6   Q.   And is the percent BVAP in that district drawn within

7   Oakland County 36.04 percent?

8   A.   Yes.

9   Q.   And what happened in the first column election?

10   A.   The election was polarized and the candidate of choice of

11   black voters lost.

12   Q.   So is this an example of what we were just discussing

13   about Oakland County overall, that the majority of white

14   voters in Oakland County voted against the black-preferred

15   candidate?

16   A.   Yes.

17   MS. McKNIGHT: Thank you. I have no further

18   questions.

19   JUDGE MALONEY: Mr. Bursch?

20   MR. BURSCH: Very quickly.

21   Bailey, can you pull up that same DTX48, page 16 that

22   we were just looking at?

23   *RECROSS EXAMINATION*

24   BY MR. BURSCH:

25   Q.   Doctor Handley, are you with me?

1   A.   Yes.

2   Q.   Okay. You said that this is countywide. It doesn't go

3   precinct by precinct, correct?

4   A.   Precinct -- the analysis is done with precincts.

5   Q.   But it's countywide, not districtwide?

6   A.   The results are countywide, that's correct.

7   Q.   Okay. I know you've testified that you and Mr. Adelson

8   did not give the Redistricting Commission any BVAP targets,

9   correct?

10   A.   I did not give the Redistricting Commission any targets.

11   I did give them these tables.

12   Q.   Did you give them ranges?

13   A.   No, I did not give them ranges. I gave them these tables.

14   Q.   You gave them these charts. So this 35 percent VAP column

15   over here, what you're telling me is this would be good

16   countywide but not district-by-district?

17   If the map drawers were trying to pick up a portion

18   of the county, this wouldn't even tell them whether 35 percent

19   BVAP was safe or not, would it?

20   A.   Again, recompiled election results after you draw a

21   proposed district will tell you whether the minority preferred

22   candidate would win. It includes only those people within the

23   district. That's why that's an important tool.

24   Q.   All right. Let's do this a different way. All 13 of

25   these races are general elections, correct?

1   A.   Yes.

2   Q.   So the recompilation tool that you were just describing is

3   based on general election data; yes?

4   A.   These tables include only general election tables.

5   MR. BURSCH: Okay.   DTX26, page 36.   Could you blow

6   up the chart, Bailey?

7   BY MR. BURSCH:

8   Q.   You and Ms. McKnight were talking about this box right

9   here, House District 29 in the 2018 Democratic primary,

10 correct?

11 A.   Yes.

12 Q.   In the previous chart we were talking about general

13 election results, correct?

14 A.   The tables were made using general elections, that's

15 correct.

16 Q.   This is a Democratic primary, correct?

17 A.   Yes.

18   MR. BURSCH: No further questions.

19   JUDGE MALONEY: Ms. McKnight, anything further?

20   MS. McKNIGHT: Nothing further.

21   JUDGE MALONEY: Thank you.   You may step down, Doctor

22 Handley, with the Court's thanks.

23   *(Witness excused at 11:52 a.m.)*

24   THE COURT: All right.   Counsel, we'll break for

25 lunch.   It's a little early, but in light of the fact we're

1   going to start a new witness, we'll break now and resume at

2   10 minutes to 1.   Thank you.

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

4   *(Recess taken at 11:52 a.m.; reconvened at 12:55 p.m.)*

5   THE CLERK: All rise, please. Court is in session.

6   You may be seated.

7   JUDGE MALONEY: We're back on the record in 22-272.

8   Counsel for the parties are present. The Commission may call

9   its next witness.

10   MR. LEWIS: Your Honors, good afternoon. Patrick

11   Lewis for the Commission defendants. The Commission calls

12   Doctor Maxwell Palmer to the stand.

13   JUDGE MALONEY: Doctor Palmer, please step forward

14   and be sworn, sir.

15   *MAXWELL PALMER,*

16   *having been sworn by the Clerk at 12:56 p.m. testified as*

17   *follows:*

18   THE CLERK: Please be seated. State your full name

19   and spell your last name for the record, please.

20   THE WITNESS: Maxwell Palmer, P-A-L-M-E-R.

21   *DIRECT EXAMINATION*

22   BY MR. LEWIS:

23   Q.   Good afternoon, Doctor Palmer. The Commission hired you

24   as an expert in this case; is that right?

25   **A.**   Yes.

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

2   A.   I did.

3   Q.   Okay. If we can display Defendants' Exhibit 24?

4   A.   Can I please have a copy of my report?

5   Q.   Yes, I'm sorry. Let's -- we did prepare an exhibit

6   notebook.

7   MR. LEWIS: Your Honors, may we approach and provide

8   the Court and the witness a copy?

9   JUDGE MALONEY: Indeed.

10   MR. LEWIS: Thank you.

11   JUDGE MALONEY: Has anyone done an environmental

12   impact study on...

13   JUDGE NEFF: Oh, my goodness. This is heavy.

14 BY MR. LEWIS:

15 Q.   So, Doctor Palmer, can you identify this document for the

16 record?

17 A.   This is my expert report in this matter.

18 Q.   Okay. And if we could turn to page DTX24-101? Okay.

19 Doctor Palmer, I'll represent to you this is an appendix to

20 your report. Is this your CV?

21 A.   Yes.

22 Q.   All right. And can you tell the Court a little bit about

23 your educational background?

24 A.   I received my undergraduate degree in mathematics and

25 government and legal studies from Bowdoin College in Maine and

1 my PhD in political science from Harvard University.

2 Q.   Okay. And, Doctor Palmer, where are you presently

3 employed?

4 A.   I'm currently an associate professor of political science

5 at Boston University.

6 Q.   Okay. And how long have you been employed by Boston

7 University?

8 A.   For 10 years.

9 Q.   Okay. Are you tenured?

10 A.   Yes. I was tenured and promoted to associate professor in

11 2021.

12 Q.   Okay. And what do you teach at Boston University?

13 A.   I teach courses on American politics, including Congress

14 and American political institutions, and I also teach courses

15 on data science and data analysis and political methodology.

16 Q.   Okay. And, Doctor Palmer, have you published on the topic

17 of redistricting?

18 A.   Yes. I've published several articles on redistricting,

19 including on traditional redistricting principles, on

20 compactness, and I have a new article forthcoming on

21 simulations and partisan gerrymandering.

22 Q.   Okay. And are those publications in peer reviewed

23 academic publications?

24 A.   Two of them are in peer reviewed academic journals, one of

25 them is in a law review.

1   Q.   Okay. Doctor Palmer, in the course of your professional

2   work have you utilized statistical techniques to study racial

3   voting patterns?

4   A.   Yes. I've used many different statistical techniques to

5   study voting patterns, including ecological inference,

6   different regression models, and other methods.

7   Q.   Okay. And have you written any computer software to help

8   perform those analyses?

9   A.   Yes. Every project that I work on requires writing some

10   computer code, typically in the language R. That's just the

11   letter R. But in other programs as well in order to do that

12   analysis.

13   Q.   Okay. And, Doctor Palmer, in the course of your

14   professional work, have you utilized computer simulation

15   techniques to study problems in redistricting?

16   A.   Yes. I have a new paper forthcoming at Political

17   Analysis, which is a highly ranked journal in political

18   science using simulations to think about partisan

19   gerrymandering, and in that paper and in several other ones

20   related to it I have spent hundreds of hours writing code and

21   performing simulations.

22   Q.   All right. And, Doctor Palmer, have you served as an

23   expert witness in redistricting litigation?

24   A.   Yes.

25   Q.   Okay. And if we turn to DTX, I believe it is -- I believe

1   it may be the last page -- I believe it's maybe DTX108, and I

2   believe it continues onto DTX109. Is this a list of the cases

3   where you've served as an expert?

4   A.   Yes. As of this CV when I filed my report in March and

5   there's a few additions to it since then as well.

6   Q.   Okay. Okay. So I just want to go through just briefly a

7   couple of the cases you worked in.

8   The first is the *Bethune-Hill versus Virginia State*

9   *Board of Elections* matter that's now being highlighted. What

10   did you testify -- what did you analyze in this particular

11   case?

12   A.   I was retained by the plaintiffs in this case for the

13   second trial in 2017 to prepare expert reports on racial

14   predominance in how the State House of delegates districts

15   were drawn and on racially polarized voting in the areas for

16   that case.

17   Q.   Okay. And did the district court in that case credit your

18   testimony?

19   A.   Yes.

20   Q.   Okay. The next case I'd like to bring up is *Caster v*

21   *Merrill*, which is on here somewhere -- on page 109, I believe

22   it's the top one. And can you describe what your role is in

23   this particular case?

24   A.   I prepared an expert report and testified on racially

25   polarized voting in selected districts of the 2021 Alabama

1   Congressional map.

2   Q.   Okay. And this case went to the Supreme Court; do I have

3   that right?

4   A.   It did under a different name.

5   Q.   All right. So if I said the *Allen v Merrill* case, does

6   that sound right in the Supreme Court?

7   A.   I believe that's right.

8   Q.   Okay. Did the district court in this case credit your

9   testimony?

10   A.   It did.

11   Q.   Okay. And then last I'll just point -- I guess generally

12   to the -- there are two cases from the Northern District of

13   Georgia, last year. One is *Pendergrass* and the other is

14   *Grant*. Do you see those?

15   A.   Yes.

16   Q.   Can you describe what your role was in these cases?

17   A.   Those were two cases on -- two Section 2 cases in Georgia

18   following the 2021 redistricting cycle. *Pendergrass* was on

19   the Congressional district map and *Grant* on both of the State

20   legislative district maps. I testified in the hearing in 2022

21   there and then again in a trial this past October -- or

22   September.

23   Q.   Okay. And did that Court enter a ruling after the trial?

24   A.   It did.

25   Q.   All right. And did the Court credit your testimony in

1   that ruling?

2   A.   Yes.

3   Q.   And I believe you mentioned you had a few other cases that

4   were maybe more recent, were not on the CV. Could you briefly

5   identify those?

6   A.   Yes. I don't have the captions, but I testified by

7   deposition and submitted a report in a case challenging

8   Georgia's SB202 voting laws, and in that case I performed a

9   racially polarized voting analysis, and I testified in that

10 earlier this year.

11   And then I've also worked on two cases, a state case

12 in Washington and a state case in Colorado, involving

13 signature matching laws, and those cases, while voting rights

14 related, did not involve racially polarized voting.

15 Q.   Okay. And, Doctor Palmer, has any Court ever excluded you

16 as an expert witness?

17 A.   No.

18 Q.   Okay.

19   MR. LEWIS: Your Honors, at this time I'd move for

20 the admission of Doctor Palmer as an expert in the fields of

21 political science, data analysis, racially polarized voting,

22 and redistricting.

23   JUDGE MALONEY: Any objection?

24   MR. PATTWELL: No objection, Your Honor.

25   JUDGE MALONEY: So noted.

1   MR. LEWIS: And then, Your Honors, just pursuant to

2   the stipulation, you know, we would at this time move for the

3   admission of Exhibit DTX024, Doctor Palmer's report.

4   MR. PATTWELL: No objection, Your Honor.

5   JUDGE MALONEY: Received.

6   *(At 1:06 p.m. Exhibit No. 24 was admitted)*

7   BY MR. LEWIS:

8   Q.   So, Doctor Palmer, you've authored a total of one report

9   in this case; is that right?

10   **A.**   Yes.

11   Q.   Okay. And we've -- and so I would like to just start with

12   that report, DTX24, and I'd like to go to page -- DTX4-4.

13   Okay. And I believe in paragraph five at the top of the page

14   you identify what -- what work you performed in this case.

15   Can you tell the Court what that is?

16   **A.**   Yes. I was asked to opine on the report submitted by

17   Mr. Trende in which he looked at racially polarized voting in

18   the Detroit area and on the extent to which race predominated

19   in the drawing of the Hickory and Linden plans.

20   Q.   Okay. And I believe in your report you look only at

21   primary elections for studying racially polarized voting; is

22   that correct?

23   **A.**   Yes.

24   Q.   Okay. And can you summarize for the Court the principal

25   conclusions that you reached in your report?

1   **A.**   Overall I do not find a consistent pattern of racially

2   polarized voting in the challenged districts in this matter,

3   and I also don't find that race predominated in the drawing of

4   either the Hickory or the Linden maps.

5   Q.   Okay. So I'd like to focus on the racially polarized

6   voting section of your analysis first.

7   Doctor Palmer, I recognize we've had a lot of

8   testimony in this trial about what racially polarized voting

9   means, and I want to be respectful of everyone's time and

10   avoid repetition. Nonetheless, can you briefly describe in

11   your view what racially polarized voting is.

12   **A.**   As a social scientist I approach racially polarized voting

13   by focusing on the idea of a candidate of choice, and racially

14   polarized voting is when voters from different racial or

15   ethnic groups have clear candidates of choice in an election

16   and when those candidates are different, so if a substantial

17   percentage of, say, the black voting population prefers one

18   candidate, a substantial percentage of the white voting

19   population supports the other candidate, then that might be an

20   example of racially polarized voting where each group has a

21   different candidate of choice.

22   Q.   Okay. So you've used the term candidate of choice, and

23   how do you define a candidate of choice?

24   **A.**   This is a complicated question, and I generally think

25   about it as if there is one candidate who is preferred above

1 all the other candidates in that election, and in general

2 elections this is a relatively simple matter. If there's only

3 two candidates, one of them will generally get a majority of

4 the vote from each racial or ethnic group, and finding that

5 candidate isn't too difficult assuming this is a substantial

6 majority.

7 In primaries it's a more challenging concept to think

8 about. It usually starts at looking at which candidate gets

9 the highest share of the vote from each group, but it can be a

10 little bit harder to conceptualize what a candidate of choice

11 means in a primary with many candidates.

12 Q.   Okay. And I believe around paragraph 11 of your report on

13 page DTX24-5 you also discuss the concepts of white bloc

14 voting and white crossover voting. How do you define those

15 concepts?

16 A.   White bloc voting is if white voters vote as a bloc to

17 defeat the black-preferred candidate; that is, do -- are white

18 voters cohesively supporting a different candidate than black

19 voters and does that lead to the defeat of the black-preferred

20 candidate, and then white crossover voting we think about as

21 when there are some white voters who support the black

22 candidate of choice, and in doing so they're crossing over and

23 voting for that black-preferred candidate, and that can allow

24 black-preferred candidates to win even in districts that are

25 not majority black.

1 Q.   Okay. All right. So turning to the section on racially

2 polarized voting in primaries, we've heard some discussion in

3 this case about some of the complexities of using primary

4 elections when studying the question of racially polarized

5 voting.

6   Before I get there, though, as an initial matter, why

7 did you not study general elections in Michigan for your

8 analysis.

9 A.   I was focused on responding to Mr. Trende's report, and he

10 only looks at primaries here, and my understanding is that

11 there's already clear evidence of polarization in the general

12 elections.

13 Q.   Okay. All right. So, turning, then, to the concept of

14 using primaries, can you summarize -- and I believe you have

15 it sort of set out in paragraphs 12 to 14 of your report, on

16 pages DTX5 and DTX6, but can you summarize some of the

17 complexities of studying primaries compared to general

18 elections?

19 A.   Absolutely. So, there's a few different things, and I

20 think the first thing I think about is majority versus

21 plurality rule, and in a general election one candidate can

22 easily be the majority winner for each group, but in a primary

23 with more than two candidates, the top candidate for each

24 group might not be a majority winner. They might just win a

25 plurality, the most votes but not a majority.

1   And that creates some conceptual difficulties when

2 thinking about what exactly does cohesion mean in this case.

3 I think I have an example, if we can show that?

4 Q.   Yes.   Why don't we put up DDX2, Defendants' Demonstrative

5 2.

6   Okay.   All right.   Doctor Palmer, I believe this is

7 the example.   Can you walk us through this example.

8 **A.**   So this is just a simple hypothetical where we have black

9 and white voters and three candidates.   And if we look at the

10 first column under black voters, we see that candidate A gets

11 40 percent of the vote from black voters.   They are the

12 plurality winner, and so we can say they would be the

13 candidate of choice if we're fine with plurality rule as being

14 what identifies cohesiveness.   For white voters, instead

15 candidate B is the majority winner and there's stronger

16 evidence of cohesiveness there.   And what's tricky in thinking

17 about cohesiveness and candidates of choice in a primary is,

18 well, candidate A gets the most votes from black voters.   So

19 in one sense they might be the logical candidate of choice,

20 but a majority of black voters are also not supporting or

21 voting against candidate A in this primary, so that makes that

22 concept a little bit more difficult to think about.

23 Q.   Okay.   And so maybe we can illustrate this point with a

24 real world example.   So I'd like to turn to page DTX24-85,

25 which is in the appendix to your report.

1   MR. LEWIS: We'll probably want to zoom in on that,

2   Mr. Williamson. There we go.

3   BY MR. LEWIS:

4   Q.   So, before we get too far, can you explain to me how this

5   and the other figures like it in your appendix were created?

6   A.   So this figure, and there's many other tables with this

7   exact same format, are all produced by code that Mr. Trende

8   produced with his report. That is, his report came not just

9   with the document but a large number of data files and of code

10   files with scripts that I could then run on my own computer to

11   reproduce his results.

12   And what I found when looking at his code was that

13   there were many, many analyses that Mr. Trende conducted where

14   he generated tables that look exactly like this but that he

15   did not include in his report. And so I reproduced all those

16   tables in my report here, but they are all generated by

17   Mr. Trende's data and by his exact racial polarized

18   methodology, and each table has the same format.

19   There are four different groups for the four

20   different racial ethnic groups that Mr. Trende examined.

21   Under each group we list all the candidates in that primary.

22   I think some exceptions. I think he's dropping candidates

23   that received a very, very small percentage of the vote.

24   Then the estimate column, that first numeric column

25   is the average estimate that the ecological inference models

1 produce of the level of support for that candidate from that

2 group.

3 So, for example, if we look at the first row under

4 the heading, black, the estimate is that Mike McFall received

5 23 percent of the vote from black voters. And then the

6 following two columns are a confidence interval or credible

7 interval, a measure of uncertainty about that estimate. And

8 it's really important to think about that uncertainty and

9 where it comes from and why we can't just ignore it.

10 Because of the secret ballot, we never get to see how

11 individuals vote. We only get to see the totals in every

12 precinct, and in Michigan, Mr. Trende is relying on population

13 data about each precinct matched up with election results.

14 And what ecological inference tries to do is estimate from

15 that aggregate data voting behavior or preferences for each

16 group. But there's uncertainty here. We don't know the true

17 answer. We're trying to estimate it as best we can, and

18 depending on the number of candidates, the number of

19 precincts, the level of polarization, and many other factors,

20 we can get more or less precise estimates. And so the bigger

21 the range between these numbers, the bigger the interval, the

22 less certainty we have about where the true value lies, and

23 the smaller the interval, the more certainty we have about

24 where it lies.

25 But, for now if we just look at the estimate column

1   alone we can see under the black heading here that there are

2   two candidates, Douglas Little getting 33 percent and

3   34 percent of the vote, respectively. We might conclude here

4   that Little is the black candidate of choice. He gets the

5   highest share of the vote, but this is clearly a very

6   fractured group here. Black voters are not cohesive, they're

7   split between Douglas Little and then to a lesser degree the

8   other candidate as well.

9   In contrast, white voters at the bottom of the table,

10   and the NH here means non-Hispanic white, are much more

11   cohesive. We have Mike McFall receiving a majority of the

12   vote in this case so he's a clear candidate of choice for

13   white voters, but black voters don't have a clear candidate of

14   choice here.

15   Q.   Okay. And so does a similar problem of a fractured

16   support among a racial group, can that also happen among white

17   voters?

18   A.   Yes. It can happen among any group.

19   MR. LEWIS: I'd like to pull up DDX3, which is our

20   second demonstrative with him.

21   BY MR. LEWIS:

22   Q.   And, Doctor Palmer, can you walk through this example for

23   us.

24   A.   So, this is another purely hypothetical example where

25   there's three candidates and where both black and white voters

1 are highly fractured. And I set up this example to make two

2 different points. First, we can say that black voters, the

3 highest level support is candidate X. They would be the

4 candidate of choice by plurality rule. And for white voters,

5 the white preferred candidate would be candidate Y by

6 plurality rule.

7   But one thing to note here is it's a really tricky

8 notion to say, well, then, this would be an example of a

9 racially polarized election, because actually black voters and

10 white voters both support candidate Y at the exact same rates.

11 And this is just to show the complexity of thinking about

12 primaries with multiple candidates, and why it's not so easy

13 to just look at a top candidate and say, this is the preferred

14 candidate of one group, this is the preferred candidate of the

15 other group, and, therefore, it's polarized.

16 Q.   All right. Thank you for that, Doctor Palmer.

17   In Mr. Trende's direct examination testimony, volume

18 two, pages 99 to 100 of the transcript, Mr. Trende described

19 the HD11, House District 11, primary election 2022, as an

20 example of a racially polarized election. I would add, I

21 believe this particular election was also used in Doctor

22 Handley's cross examination this morning.

23   Is this one of the elections that you looked at?

24 A.   Yes.

25 Q.   Okay. I'd like to turn now to page DTX24-88 of your

1   report. Now, Mr. Trende characterized black voters as

2   preferring candidates White and Williams in this election and

3   white voters preferring Piaz and Manwell in this election. Do

4   you agree with Mr. Trende's view that this is evidence of

5   polarization?

6   **A.**   No, I do not.

7   **Q.**   And why not?

8   **A.**   Can we zoom in on just the black section --

9   **Q.**   Sure.

10 **A.**   -- of this table?

11   So, first of all, there's not one preferred candidate

12 here. White and Williams get incredibly similar shares of the

13 vote, and if we look at the confidence intervals we see that

14 they overlap substantially, and that overlap alone isn't

15 evidence that these candidates necessarily got the same vote

16 or that one got more than the other, but they're an indicator

17 of that, and we can do a more precise statistical test to see

18 how confident we are that Williams got a larger share of the

19 vote than White. But, regardless, they're incredibly close.

20 There's no evidence here of cohesion among black voters. At a

21 minimum, they're almost perfectly split between White and

22 Williams.

23 **Q.**   And if we take a look at how the white vote broke out

24 according to these estimates in this selection, what does that

25 show us?

1   **A.**   That shows us that Piaz received the highest share of the

2   vote, but only 30 percent, but could be considered the white

3   candidate of choice as long as we're fine with using a

4   plurality rule where more than two thirds of the voters didn't

5   support her.

6   Q.   Okay.   I understand there's also been a claim made in this

7   case that you could find polarization here because the top two

8   vote getters estimated among black voters differ from the two

9   top vote getters among white voters.   Essentially, you can,

10   like, aggregate candidates to find cohesion.

11   In your review, is that a reasonable way to define a

12   polarized election?

13   **A.**   No.   I find it a very puzzling way to think about a

14   polarized election, and I've never seen any other expert or

15   any other academic try to make that argument in this kind of

16   context.   And one reason why is it implies that we have some

17   knowledge about who black voters prefer other than their first

18   choice.   That is to say, the top two candidates for black

19   voters represent some sort of cohesive bloc, implies that

20   black voters who supported white would also support Williams

21   as their second choice or vice-versa.

22   It implies some thinking that there is some cohesion

23   by looking at the top vote getters, but we don't know that.

24   We have no evidence whatsoever of how the white voters who

25   supported any one candidate feel about any of the other

1 candidates in this primary.

2 Q.   Okay. So I believe we've covered the first concern that

3 you've identified with the use of -- or complexities with the

4 use of primaries, and I'd like to return now to paragraph 15

5 on page DTX24-6.

6   Now, I believe in this paragraph you discuss the idea

7 of, quote, idiosyncratic elections as a complexity of studying

8 primaries. Can you describe what idiosyncratic primary might

9 be.

10 A.   What I mean by this is that each primary is -- has its own

11 complexities, and in the general election we usually have one

12 Democratic candidate and one Republican candidate. We can

13 look at a whole big sample of candidates and make comparisons

14 across them fairly easily.

15   In a primary, that's not the case. And one important

16 driver here is that there can be a very wide range in the

17 number of candidate. Some primaries are uncontested, we have

18 one candidate. Others have two. Others might have 10 or 12

19 or more candidates in it, and making comparison across these

20 primaries is difficult, and on the next page on figure one I

21 have a graph of the number of candidates in some prior House

22 Districts from the previous map.

23 Q.   All right. So I think we have that now displayed on page

24 DTX24-7. And so, Doctor Palmer, what is this figure

25 reporting?

1 **A.**   I collected the number of primary candidates from the

2 election returns for each district in the years that the prior

3 map was in effect, and just each bar shows you how many

4 candidates there were in that year for each district. And so

5 in some districts, like this bottom row, there is one

6 candidate in many years and maybe contested primary in one or

7 two years.

8   In others like HD4 in the top right, we see dramatic

9 swings in the number of candidates, and that makes it really

10 hard to make inferences about voter preferences and behavior

11 in just this 1st District or across districts because of this

12 high level variability.

13 Q.   Okay. So it's variability both within specific, in this

14 case House Districts, but also across all districts; is that

15 right?

16 **A.**   Yes.

17 Q.   Okay. And then just for the sake of the record,

18 figure one refers to the prior decade plan in the State House;

19 is that right?

20 **A.**   Yes.

21 Q.   Okay. I'd now like to turn to figure two on page DTX24-8.

22 If we can zoom to figure two.

23   I believe this figure refers to the Democratic

24 primary elections for the State Senate, 2012 to 2020. What is

25 this figure showing us?

1 **A.**   This is the exact same as the prior figure but showing

2 Senate elections instead. We only have two because of the

3 timing of the 4-year election cycles, but we see that

4 variability across districts and across time here as well.

5 Q.   Okay. And did you look at the variability in candidates

6 under the enacted Hickory and Linden plans?

7 **A.**   I did in figure three.

8 Q.   Okay. So if we can go to figure three, which is on the

9 same page, DTX24-8. Can you describe this figure?

10 **A.**   This is the same analysis but for the challenged House and

11 Senate districts in this case. And we can see high

12 variability here as well. In HD2 there was not a contested

13 primary, and House District 11 we had 11 candidates.

14 Similarly, in the Senate there was some uncontested races,

15 some with two candidates and up to six candidates in the first

16 Senate district.

17 Q.   Okay. And, Doctor Palmer, how can the number of

18 candidates in a Democratic primary affect a racially polarized

19 voting analysis?

20 **A.**   This makes it difficult to identify candidates of choice

21 and to know how voters would have voted if, say, there was

22 only two candidates in a primary, so it just makes it more

23 challenging to think about and to find evidence of

24 polarization.

25 Q.   Okay. And I believe you provided a table, table one at

1   the bottom of page DTX24-9, if we can go there.

2   And, Doctor Palmer, what are -- what is this table

3   telling us?

4   **A.**   This is another hypothetical example or pair of examples.

5   Think of it how primaries are -- the number of candidates can

6   fracture the vote and make it harder for a candidate to win.

7   So here is a hypothetical district that is 60 percent black

8   and 40 percent white, and in the top row, scenario one,

9   there's just two candidates in this primary, X and Y, and X is

10   the clear black candidate of choice getting 75 percent of the

11   black vote, Y is the clear white candidate of choice, gets

12   75 percent of the black vote. This would be a sharply

13   polarized election, but the black-preferred candidate X would

14   win because it's a black majority district.

15   Now suppose a new candidate Z entered this election

16   and they just take the vote from candidate X. They just bleed

17   off the vote from candidate X but candidate Y isn't affected

18   by this new entrant. Now black voters are more divided.

19   Candidate X is still their candidate of choice, the plurality

20   winner with 45 percent of the vote, but now in the aggregate

21   candidate Y would win this election. So the exact same

22   voters, exact same turnout, but one candidate coming in

23   fracturing support for another leads to a different outcome,

24   leads to the white preferred candidate winning instead of the

25   black-preferred candidate winning. And this is just an

1 example of how candidate entry and which candidates run in a

2 primary can make it really hard to think about racial

3 polarized voting in primaries.

4 Q.   And what's the -- is there a term in political science

5 that talks about candidate coordination?

6 A.   We might call that a failure to coordinate or a

7 coordination failure, and that one role of political parties

8 might be to try to avoid problems where there's many

9 candidates in the primaries fracturing the vote.

10 Q.   Okay. So, for example, is this something where -- I've

11 heard the term just used like clearing a primary. Is that the

12 idea, that a party might help reduce the number of candidates

13 in an election?

14 A.   Potentially, yes.

15 Q.   Okay. And in your experience, Doctor Palmer, is a

16 scenario of a large candidate field, is that a question of

17 equal voting opportunity or a question of politics?

18 A.   It's a question of politics. The district lines don't

19 determine, at least directly, who runs for office in that

20 district.

21 Q.   Okay. All right. And if we turn now to page DTX24-10 and

22 figure -- let's see, we'll start with figure four. I believe

23 you discussed a third obstacle of using -- or challenge,

24 rather, of using primaries to study racially polarized voting

25 and it related to general elections. Can you elaborate on

1 this complexity?

2 **A.**   Absolutely. And figure four illustrates this key point

3 that turnout in primaries is much lower than turnout in

4 general elections, and what that means is that when we think

5 about racially polarized voting in a general election, we're

6 thinking about the preferences of all the voters who

7 participated in the general election -- I'm sorry, can we have

8 the figure above that? Thank you.

9   And when we think about turnout -- racially polarized

10 voting in primaries, we're only learning about the preferences

11 of the people who voted in that primary, and so what this

12 graph shows is the percentage of voters -- of a number of

13 voters who voted in the primary and statewide for each recent

14 election in Michigan, both statewide and in Wayne County, and

15 those green bars are the primary voters. And at most we see

16 51 percent in 2018, below 50 percent in every other election

17 that I looked at. And what this means is we can't infer

18 anything about the preferences of the voters who only vote in

19 the general election from the voters who voted in the primary

20 election.

21   We know that primary voters are not representative of

22 general election voters across various demographic categories.

23 And so what we can learn about the preferences of the voters

24 in the primary, we don't know what the preferences of all

25 those other thousands and thousands of voters who vote in the

1   general, what they would have wanted and who their candidate

2   of choice would have been.

3   Q.   Okay. Now, Doctor Palmer, you've identified some of these

4   complexities. Are you suggesting that primaries should not be

5   looked at in an RPV analysis?

6   A.   I'm not saying they shouldn't be looked at. I'm saying we

7   need to be really careful and thoughtful in how we think about

8   primaries, and that it's much more complicated than looking at

9   general elections.

10   Q.   Okay. So, Doctor Palmer, I'd now like to turn to your

11   analysis of Mr. Trende's racially polarized voting study in

12   this case, and specifically I'd like to turn to page DTX24-12

13   of your report.

14   You may have touched on some of this already, but how

15   did you go about analyzing Mr. Trende's racially polarized

16   work in this case?

17   A.   Mr. Trende provided with his report all of his replication

18   data and code, and this is standard practice in the social

19   sciences and when writing a report as an expert in the social

20   sciences. And this code is a computer code that I can also

21   run on my computer. The only real difference is I have to

22   change in his code to run it on whatever my hard drive is

23   named instead of what his computer hard drive is named, and

24   otherwise it works without much in the way of changing it.

25   And so beyond reading his report, I ran all of his

1 code, I reproduced all of his analyses, and I was able to see

2 exactly how he ran his racially polarized voting analysis.

3 And everything I do in this report on RPV from this point is

4 using his exact analysis and his data, and I do this so that

5 we don't have to argue about methodology at all. We're

6 agreeing on the methodology. We're agreeing on the data, and

7 really I have a very different interpretation of his results

8 than he does.

9 Q.   Okay. And although we'll go through each one in detail

10 here in a moment, I believe you summarized three significant

11 errors you identified with Mr. Trende's analysis, and can you

12 identify what those are?

13 A.   Sure. The first and most common error is he ignores

14 measures of statistical uncertainty such as the confidence

15 intervals that he refers to as credible intervals that he

16 calculated for each EI model, and he frequently identifies

17 candidates of choice even when this finding is not supported

18 by the statistical results that he relies on.

19   JUDGE KETHLEDGE: Is that one error or two? Is that

20 two distinct things or are you saying the same thing somehow?

21   THE WITNESS: That's one error, that he's ignoring

22 uncertainty, and in doing that it lets him identify candidates

23 of choice that are not supported.

24   JUDGE KETHLEDGE: I see. Thank you.

25   THE WITNESS: The second error is that even when

1 there are statistically significant results he ignores what I

2 call the importance of substantive significance; that is, we

3 can run regression models that are statistically significant,

4 that is, there is some statistically identifiable difference

5 in the level of support for two candidates, but that

6 difference might be trivially small, and in the political

7 context, talking about cohesion, as a political concept it

8 might not be a substantively important difference.

9 BY MR. LEWIS:

10 Q.   And I believe there was a third?

11 A.   Yes.   Third, there's several analyses that Mr. Trende

12 runs, that is, he has the code and data, he prepared tables,

13 but he doesn't actually include them in his report, and the

14 districts that he excludes from his report, if I do an

15 analysis, are generally cases where he doesn't find racially

16 polarized voting or that contradict other statements in his

17 report.

18 Q.   Okay.   So, I'd like to begin with a discussion of the 2018

19 Democratic primary for governor.   We've heard about that this

20 morning.   And I'd like to turn, in that respect, to

21 paragraph -- yeah, paragraph 28 on page DTX24-13 of your

22 report.

23   And can you explain this sort of primary --

24 Mr. Trende's analysis of this primary result and what it tells

25 us?

1 **A.**   So, Mr. Trende looks at this primary in two ways. First,

2 looking at Wayne County as a whole, and then looking at it

3 district-by-district, and when you look at this primary for

4 Wayne County as a whole, he finds that Whitmer is the clear

5 candidate of choice for white voters, and he estimates that

6 41 percent of black voters supported Thanedar and 37 percent

7 of black voters supported Whitmer in that primary.

8   Now, this difference, that 41-37 difference is

9 statistically significant. That is, we can be confident from

10 these models that Thanedar was slightly preferred by black

11 voters to Whitmer, but it's not what he calls a clear

12 preference for one over the other. This is a four percentage

13 point difference, and I would say this is not substantively

14 significant in the political context. To me, a difference of

15 only four percentage points would not be strong evidence of

16 black voters voting as a cohesive bloc in this primary.

17   JUDGE KETHLEDGE: Can you -- I mean, just can you

18 define what you mean by substantively significant?

19   THE WITNESS: So there's not some clear cut off where

20 something goes from not significant to significant. I think

21 it's really context dependent. I think in a three candidate

22 primary where the difference in the top two candidate is only

23 four percentage points, that's an extremely close election.

24 To me that doesn't say black voters are cohesively -- or even

25 a significant plurality of black voters are cohesively

1   supporting one candidate over the other.

2   If it was, for example, 45 percent supporting

3   Thanedar and 30 percent supporting Whitmer, a really

4   substantial margin there, that to me would indicate either it

5   is not a majority winner among black voters, a higher level of

6   substantive significance.

7   JUDGE KETHLEDGE: So I'm just trying to understand

8   what you mean by the term. Do you mean substantive

9   significance means it's something you can base a conclusion on

10 regarding racially polarized voting?

11   THE WITNESS: Yes. I think it's drawing a conclusion

12 in context and not just from the statistics.

13   JUDGE KETHLEDGE: Okay. Thank you.

14 BY MR. LEWIS:

15 Q.   I believe you also looked at a similar -- reviewed

16 Mr. Trende's results where he looked at that 2018

17 gubernatorial primary in each -- in a series of House and

18 Senate Districts; is that right?

19 A.   Yes.

20 Q.   And I understand that you reported your detail findings in

21 table six of your report; is that right?

22 A.   Yes.

23 Q.   Okay. But just -- at a very high level, what did you

24 find?

25 A.   Mr. Trende looked at 21 different districts, different

1   House Districts under the prior map for this primary, and I

2   find that only five of those districts do we find a

3   statistically significant level of racially polarized voting.

4   In eight of the districts there is a -- white voters

5   have a preferred candidate but black voters do not; that is,

6   we can't identify the black-preferred candidate.

7   In two districts black voters have a preferred

8   candidate but white voters are divided, we can't identify a

9   white preferred candidate.

10   In five of the districts, neither group has an

11   identifiable preferred candidate, and then in one district

12   both groups have the same identified preferred candidate.

13   So, overall, across 21 districts less than a quarter

14   of them do we find evidence of racially polarized voting.

15   Q.   Okay. I'd now like to turn to your findings in -- I

16   believe you did also conduct an analysis of Mr. Trende's

17   analysis in the prior decade state legislative races; is that

18   correct?

19   A.   Yes.

20   Q.   Okay. So I'd like to look now at paragraph 30 on page

21   DTX24-14. And I believe here you quote Mr. Trende saying that

22   he analyzed seven different House Districts but only reported

23   detailed results for two; is that fair?

24   A.   Yes.

25   Q.   Okay. What did you find of noteworthy about that

1   analysis?

2   **A.**   What I find noteworthy is that Mr. Trende is looking at

3   seven different districts, only reports two where he claims to

4   find evidence of polarization, and doesn't report anything on

5   the others other than describing them as difficult to

6   interpret.

7   **Q.**   Okay. And we'll go through each one, but just to start, I

8   believe you looked at -- you reported figures here for House

9   District 2 and House District 5 in that 2018 Democratic

10   primary, and I'd like to turn to that, if we could.

11   MR. LEWIS: So this is DTX24-15, the top figure,

12   figure six, if we could start there.

13   BY MR. LEWIS:

14   **Q.**   Doctor Palmer, what is this figure showing us about

15   Mr. Trende's analysis of black voter support for candidates in

16   this particular primary?

17   **A.**   So, this is a case where black voters are divided across a

18   number of candidates, and in particular, the top two

19   candidates, Tinsley-Smith and Banks, get very similar vote

20   shares from black voters in the EI estimates. And each bar,

21   the height of the blue bar represents that estimated average

22   level of support from the ecological inference models. And

23   the black lines, these tall I's in the middle of each bar are

24   the credible intervals, they are the measure of uncertainty we

25   have around that estimate.

1   And what we can see is that those bars overlap, and

2 that's indicative of there not actually being a statistically

3 significant difference between the levels of support for

4 Tinsley-Smith and the level of support for Banks; that is, we

5 could not reject the hypothesis that they got the same level

6 of support. We cannot be confident that Tinsley-Smith

7 received a higher level of support than Banks did.

8 Q.   Okay. And then if we go down to figure seven, I believe

9 you report a somewhat similar table for prior House District 5

10 in that 2018 Democratic primary. What is this showing us?

11 A.   This shows us levels of support by both black and white

12 voters -- and I apologize, the caption should include white

13 support there as well -- in House District 5 between these two

14 candidates, and the -- Mr. Trende identifies Johnson as the

15 black-preferred candidate and Ross as the white-preferred

16 candidate and concludes that this election is polarized. In

17 fact, neither one is a statistically significant preferred

18 candidate for black or white voters. The estimates are

19 relatively more precise for Johnson and Ross, but actually we

20 can't statistically differentiate their levels of support.

21   For white voters we see these huge confidence

22 intervals that really span a wide range, and that reflects a

23 high level of uncertainty we have about who white voters

24 support in this election, and we just cannot reach a

25 conclusion about if there is a white-preferred candidate or

1   not, let alone who it is, and so we can't find that this

2   election is polarized.

3   Q.   Okay.

4   JUDGE KETHLEDGE: May I ask a quick question?   I'm

5   sorry to interrupt.

6   MR. LEWIS: Sure.

7   JUDGE KETHLEDGE: Just since we have it right here.

8   As a statistical matter, I'm a neophyte, I'll confess on this,

9   can one say that it's more likely than not that black voters

10   supported Johnson more than Ross and white voters supported

11   Ross more than Johnson?

12   THE WITNESS: Yes.   I have some tables in the back

13   here where I do that exact calculation.

14   JUDGE KETHLEDGE: So you can say it's more likely

15   than not, but you're -- what you're emphasizing, if I

16   understand your testimony, is that it's getting close, it's

17   kind of shaky; is that fair?

18   THE WITNESS: Yes.   In the social sciences we

19   wouldn't use a more likely than not 51 percent threshold.

20   JUDGE KETHLEDGE: We do.

21   THE WITNESS: When -- during statistical analysis in

22   saying if there is a meaningful difference here we would use a

23   95 percent threshold, and the reason is that there's

24   uncertainty in these models, and if something were 51,

25   60 percent, 70 percent, that really could just be all

1   statistical noise. We really could not draw a real conclusion

2   about the differences --

3   JUDGE KETHLEDGE: Okay.

4   THE WITNESS: -- in an estimate like this.

5   JUDGE KETHLEDGE: All right. Thank you. I'm sorry

6   to interrupt but just want to understand as we go.

7   MR. LEWIS: No. Thank you very much, Your Honor.

8   JUDGE MALONEY: Counselor, what's the significance of

9   95 percent?

10   THE WITNESS: 95 percent is a convention that's used

11 in the social sciences and often used in expert testimony in

12 court cases where we're looking to say, is there a relatively

13 high probability that the result that we're looking at is

14 meaningful or not due to chance. In academic publishing we

15 might be looking for a much higher level of certainty,

16 sometimes 99 or 99.9 level of certainty instead, and it's --

17 it's a different notion of certainty that we might think about

18 of more likely than not. It's really thinking about the

19 probabilities that the results we see are due to chance.

20   JUDGE MALONEY: Thank you.

21 BY MR. LEWIS:

22 Q.   And so, Doctor Palmer, I asked some questions of

23 Mr. Trende about this concept and he discussed the concept of

24 posterior draws and the number of -- a calculation that must

25 be performed to assess statistical significance. Are you

1 familiar -- you reviewed that testimony; is that correct?

2 A.   Yes.

3 Q.   Okay. And did you perform a statistical analysis to

4 determine statistical significance?

5 A.   I did. I, in fact, did the exact test that Mr. Trende was

6 suggesting should be done in his testimony last week.

7 Q.   Okay. And so maybe now is a good time. Why don't we go

8 to table -- I believe it's table 10 of your report appearing

9 on page DTX24-33.

10   And maybe we'll -- since there was a question -- why

11 don't we look, for example, at the results, for example, in

12 HD8 as just one example. Do you see here a -- and

13 specifically just can you -- first of all, let me have you

14 orient me to the table. You have -- for black voters and for

15 white voters it appears you have five columns for each

16 district; is that right?

17 A.   Yeah. So what this table does is it lays out in three

18 steps how I think about finding racially polarized voting. So

19 each set of rows is for a district, and then I first look at

20 black voters, and there's -- the top two candidates are listed

21 with their estimated percentage of the vote from black voters

22 and then a 95 percent CI following that, and that's our

23 interval.

24   And then I do a statistical test, and that's the

25 column labeled PR, for probability, C one greater than C two,

1 the probability that candidate one got a higher vote share

2 than candidate two in the ecological inference analysis. And

3 as Mr. Trende mentioned, EI, especially run this way for many

4 candidates, is a really complex procedure using some very

5 complicated statistics under the hood. What it ultimately

6 produces is a large number of results that are sort of

7 different simulated draws of plausible black and white vote

8 shares and the other groups as well for each candidate, and we

9 take the average of those to get the estimate.

10 We can also, though, use those draws to do other

11 calculations, and so what I say in this fourth column is, what

12 percentage of the draws does the first candidate get a higher

13 share of the vote than the second candidate from that group?

14 And so, for example, if we look at row eight, we can highlight

15 it here, the first candidate has an estimate of 76 percent,

16 the second candidate has an estimate of 8.5 percent. There is

17 no overlap there whatsoever. In fact, in 100 percent of the

18 draws, and I think it's 50,000 draws per model but it's many

19 thousands, the first candidate received a higher share of the

20 vote from black voters, and so I label that COC, for candidate

21 of choice, that I can identify a black candidate of choice in

22 this contest.

23 Then I do the same thing for white voters. Here

24 what's interesting is that the top two candidates are the

25 same, but I'm not actually very confident that the first

1 candidate really is preferred to the second candidate by white

2 voters; that is, in only 58 percent of the posterior draws

3 does the first candidate get a higher share of the vote than

4 the second, and I would need that to be above 95 percent to

5 have any statistical certainty in that result. And so I would

6 classify this election as there's no white candidate of choice

7 here, and so I can't find -- I don't find polarization because

8 there is no white candidate of choice.

9 Q.   All right. And just as one quick follow up just on the

10 way that the ecological inference model runs, you mentioned it

11 does some large number of draws. What is a draw?

12 A.   A draw is essentially a set of values for every candidate

13 and every racial ethnic group of level of support that all

14 come from the same similar distribution of what we think the

15 true votes are. We're trying to get at what is the true level

16 of support for each candidate from each group. That's a very

17 complex distribution. There's many different values that

18 could work, that could fit that, so the model creates that

19 distribution and then tries to sample from it, and that's what

20 the draws are, are thousands of sets of plausible values.

21 Q.   Okay. So if we just go back out to the full table at this

22 point, you mention in your report that Mr. Trende

23 characterized the other HD-- well, excuse me, the other 2018

24 Democratic primary races in House Districts that he looked at

25 is, quote, difficult to interpret. And do you agree with his

1   characterization?

2   A.   No.

3   Q.   Okay. So I'd like to go through it. I'll -- to avoid

4   making you flip back and forth, I'll identify the districts

5   that we looked at.

6   We've talked about House District 2. Do you view

7   that as difficult to interpret?

8   A.   No. But I find that it's not polarized whereas Mr. Trende

9   concludes that it is polarized, but I find that black voters

10   here do not have an identifiable candidate of choice.

11   Q.   Okay. And House District, I believe, 4 was another

12   example. What about this election?

13   A.   In District 4 this is a case where Mr. Trende did not

14   include this result in his report but he did run this -- he

15   did collect the data and analyze it and produce a resulting

16   table.

17   Here I find evidence of racial polarization; that is,

18   I find that there is a black-preferred candidate and a

19   white-preferred candidate and they are different but the

20   black-preferred candidate wins this election.

21   Q.   Okay.

22   JUDGE KETHLEDGE: Can I ask a question just as we are

23   going along because it's so hard to cycle back into this?

24   THE WITNESS: Yes.

25   JUDGE KETHLEDGE: So I'm just trying to understand

1   the standard you are applying when you say there is or is not

2   a candidate of choice, and correct me if I'm wrong, it looks

3   like you're saying that if we can identify one candidate who

4   gets more votes from the particular group than another

5   candidate or any other candidate, if we can do that

6   identification with 95 percent confidence, you're saying there

7   is a candidate of choice; am I understanding correctly?

8   THE WITNESS: Yes. That's right.

9   JUDGE KETHLEDGE: And it could be -- you know, the --

10   it might be a plurality that the candidate of choice has or

11   majority support, right?

12   THE WITNESS: Absolutely. This example that's

13   highlighted now is a good one where Robinson received

14   39.8 percent of the vote but because of their lead over the

15   next highest candidate for black voters, we can confirm that

16   they're the candidate of choice by plurality rule.

17   JUDGE KETHLEDGE: So it actually doesn't seem to have

18   anything to do with the percentage that a particular candidate

19   gets in an absolute sense, it's just relative between two

20   candidates? It's about our ability to identify which of two

21   candidates gets more to a certain degree of confidence rather

22   than the percentages that they're -- you know, this could be

23   happening at 22 and 24 percent or it could be happening at 52

24   and 48, it's just whether we can identify, not whether there

25   really is a candidate of choice?

1   THE WITNESS: Yes. I'm trying to follow Mr. Trende's

2 approach of taking the top candidate.

3   JUDGE KETHLEDGE: I see.

4   THE WITNESS: And I'm saying they have to be

5 distinguishable as that top candidate.

6   JUDGE KETHLEDGE: I see. Okay.

7   THE WITNESS: We could further refine this and say we

8 also want to see a certain margin of support difference, and

9 that would take some of these races where we found candidate

10 of choice and say actually there is not a candidate of choice

11 here.

12   JUDGE KETHLEDGE: Okay. So you're -- you're

13 accepting some of his premises or part of his standard but

14 you're applying more -- a more demanding statistical measure

15 to it; is that fair?

16   THE WITNESS: Yes. I -- I think he ignores the

17 statistics the -- that standard entirely.

18   JUDGE KETHLEDGE: Okay.

19   THE WITNESS: I'm saying with his standard, his

20 conclusions don't hold up when you look at the uncertainty.

21   JUDGE KETHLEDGE: I see. That's very helpful. Sorry

22 to interrupt again. Thank you, sir.

23   MR. LEWIS: And thank you, Your Honor. You are the

24 audience.

25 BY MR. LEWIS:

1   Q.   All right. So if we look -- we looked at four. We talked

2   about five, right?

3   A.   Yes.

4   Q.   Okay. And just for the record, what do you conclude about

5   House District 5?

6   A.   That there are no clear candidates of choice, and so it is

7   not a polarized election.

8   Q.   Okay. The next one Mr. Trende looked at was House

9   District 6. Is that difficult to interpret?

10 A.   No. This is a case where both black and white voters

11 share the same candidate of choice, and that candidate of

12 choice won so there is not polarization because black and

13 white voters agree on their top choice.

14 Q.   Okay. And then the next one he identifies is House

15 District 10. Is that difficult to interpret?

16 A.   No. Here we have a black candidate of choice who wins and

17 a white candidate of choice -- or I'm sorry, two candidates

18 where we're sort of on the line between simply significant or

19 not. It's under 95 percent so I would say there's no white

20 candidate of choice here, but the top vote getter by the

21 average estimates is the same as the black candidate of

22 choice, so not a polarized election.

23 Q.   Okay. And it appears in Mr. Trende's report he refers to

24 House District 35, but I don't believe that appears on this

25 table; is that correct?

1   **A.**   He referenced District 35 in his report. I could not find

2   any data or analysis of District 35 in his code.

3   **Q.**   Okay. So I want to skip ahead now to the -- your -- the

4   Senate Districts under the prior decade plan, those Democratic

5   primaries in the Senate, and specifically referring to

6   paragraph 42 appearing at page DTX24-18. Let me know when you

7   get there.

8   Okay. So, here again we talk about that 2018

9   Democratic gubernatorial primary. What did you find when you

10   looked at Mr. Trende's analysis of the 2018 Democratic primary

11   for governor at the Senate District level?

12   **A.**   Mr. Trende looked at racial polarized voting in seven

13   districts. I find that four of them have significant levels

14   of polarization. In two of them white voters -- I'm sorry, in

15   two of them black voters don't have a preferred candidate.

16   And in one district neither group had a preferred candidate.

17   **Q.**   Okay. I actually need to go back to the House. I

18   apologize. I overlooked something I wanted to ask you about,

19   so we'll put a pin in this and let me rewind a little bit to

20   the House.

21   Now, Doctor Palmer, in tables 8 to 14 of your report,

22   do you analyze and report the credible intervals and the

23   statistical significance calculations for all of Mr. Trende's

24   EI analysis in this case?

25   **A.**   Yes.

1   Q.   Okay.   And I'd like now to turn to page DTX24-17 and table

2   two, if we can zoom that in.

3   So, Doctor Palmer, if I'm looking at this table, what

4   are you showing me here? What's on this table?

5   A.   This table brings together the results from the appendix

6   tables for the 2014, '16, '18, and '20 House primaries for the

7   ten districts where Mr. Trende looked at this for all of these

8   elections. And in each I'm just reporting that final column,

9   was this election polarized, uncontested, did black, white

10   voters with the same candidate of choice, no candidates of

11   choice, or did just one group not have a candidate of choice.

12   And so overall there's 40 elections in this table;

13   eight of them are polarized, two are uncontested, and in 30 of

14   them they're not polarized, either because one group didn't

15   have a candidate of choice, both groups didn't have a

16   candidate of choice, or both groups agreed on the same

17   candidate.

18   Q.   Okay.   So we only have about 20 percent of the elections

19   here that are polarized?

20   A.   Yes.

21   Q.   Okay.   And of the -- I believe -- of the eight polarized

22   elections that are reported here, in how many did the

23   black-preferred candidate prevail?

24   A.   I think I would have to flip back to my tables to double

25   check that number.

1   Q.   All right.

2   A.   In 2014, there are three polarized primaries, the black

3   preferred candidate prevailed in all of them.

4   In 2016, there are two polarized primaries and the

5   black candidate -- black-preferred candidate prevailed in both

6   of those.

7   In 2018, there are two -- I'm sorry, there's only one

8   here for that table and the black-preferred candidate

9   prevailed there.

10   And then in 2020, there are two and the

11   black-preferred candidate prevailed in one of them. So in

12   nine -- in seven of the eight the black-preferred candidate

13   won the polarized primary.

14   Q.   Okay. Thank you for that. So now I want to skip back

15   into the Senate. And, again, I apologize for the back and

16   forth. So going back to paragraph 43 of your report, Doctor

17   Palmer, appearing on page DTX24-18, I believe in paragraph 43,

18   Doctor Palmer, you describe Senate results for selected

19   Democratic primaries in 2014; is that right?

20   A.   Yes.

21   Q.   Okay. And how many elections do you identify here as

22   polarized?

23   A.   Two of the four.

24   Q.   And of those two polarized elections, how many had a

25   failure of a black preferred candidate?

1   A.   Only one.

2   Q.   So now looking at the analyses of the prior -- the prior

3   maps, the 2011 plans and all of those elections that you

4   looked at, do you find a consistent pattern of racial

5   polarization in district level primary elections?

6   A.   No.

7   Q.   And does -- do those primary elections at the district

8   level --

9   MR. PATTWELL: I'm just going to place an objection

10   on the record. I think if we go back to the witness'

11   testimony and we look at pages 12 and 21 of the good doctor's

12   report, his opinions in this case relate to Mr. Trende's

13   analysis, and what counsel is trying to do right now is he's

14   trying to go outside of the scope of the witness's expert

15   report and he's trying to take a review of Mr. Trende's

16   analysis and then form an overall opinion as to the entire

17   case. It's totally inappropriate and it's well outside of the

18   scope of the opinion that's been offered in the report.

19   MR. LEWIS: Your Honors, Doctor Palmer took

20   Mr. Trende's data, performed an analysis, and is offering his

21   conclusions based on the evidence Mr. Trende presented. It is

22   entirely in his report. We are looking at every one of his

23   tables. Everything was produced back in March. You know,

24   if -- his opinions were properly disclosed in accordance with

25   Rule 26, and he is testifying completely within the scope of

1 his role in this case.

2   MR. PATTWELL: And I just want to keep it within his

3 written report.

4   JUDGE MALONEY: Are you eliciting testimony that's

5 within his written report?

6   MR. LEWIS: Your Honors, yes. I mean, he's been -- I

7 mean, not wanting him to literally read his report into the

8 record, I think we've been -- I've been very careful to follow

9 his report and his analysis, if for no other reason to make

10 sure the record is very clear for this Court. I know this is

11 complicated information.

12   JUDGE MALONEY: All right. Well, let's -- objection

13 is noted. You go ahead and proceed with your examination,

14 Mr. Lewis, and the Court will make a decision on that after we

15 hear the testimony and view the trial briefs and objection in

16 more detail, perhaps. Go ahead.

17 BY MR. LEWIS:

18 Q.   All right. And let me just ask a slightly different

19 question and see if that might help resolve some of

20 plaintiffs' counsel's concerns.

21   Doctor Palmer, when you look at Mr. Trende's analysis

22 of the prior -- performance under the prior plans, does that

23 evidence allow -- does that evidence support a finding of a

24 consistent pattern of racial polarization in district level

25 elections?

156

1 **A.** No. When what I look at across all of the elections and

2 districts that I examined in this report, which are the same

3 set as Mr. Trende's, I do not find a pattern -- a consistent

4 pattern of racially polarized voting in the primaries.

5 Q. Okay. Now, Mr. Trende in his report also examines

6 elections conducted in -- primary elections, pardon me,

7 conducted in 2022 under the enacted plans; is that right?

8 **A.** Yes.

9 Q. And did you review his results as to those elections?

10 **A.** Yes.

11 Q. Okay. And so I'd like to now turn to page DTX24-35 of

12 your report, and this is table 12 of your report. And what

13 results are you reporting on this table?

14 **A.** These are the ecological inference results for the

15 analysis of the 2022 Hickory House District that Mr. Trende

16 examined in his report.

17 Q. Okay. And what -- I believe there are a total of 16 on

18 this page; is that correct?

19 **A.** Yes.

20 Q. Okay. And of the 16 elections that Mr. Trende analyzed,

21 how many do you conclude are polarized?

22 **A.** Four.

23 Q. Okay. And can you identify for the record which four you

24 identify as polarized?

25 **A.** Districts 4, District 5, District 7, and District 26.

1 Q.   Okay. And of the four polarized elections that you've

2 identified, in which were there a black-preferred candidate

3 failure?

4 A.   The black-preferred candidate lost in District 5 and

5 District 26 and one in District 4 and District 7.

6 Q.   Okay. So, I'll represent to you, Doctor Palmer, that

7 there is a Voting Rights Act claim pending as to House

8 Districts 1, 7, 10, 12, and 14 in this case. Of those five,

9 are there any that are polarized with a black-preferred

10 candidate failure?

11 A.   Can you just repeat that set of districts one more time?

12 Q.   Sure. 1, 7, 10, 12, and 14.

13 A.   No.

14 Q.   Okay. And of the elections that you analyzed in -- or,

15 you know, you reviewed Mr. Trende's analysis in 2022, how many

16 elections had the same where black and white voters shared a

17 candidate of choice?

18 A.   Four.

19 Q.   Okay. So I would like to flip the page to DTX24-36.

20   JUDGE KETHLEDGE: Before we leave that, for HD1,

21 you're saying that's not polarized because you have a

22 92.98 percent confidence interval, that the whites prefer one

23 candidate over the other? Is that why? I mean, otherwise you

24 have, you know, the sort of summary numbers, 90 to 9, 66 to

25 33, but that's not polarized because we're at 93 percent not

1   95 percent? I mean, is that a fair summary of where we're at?

2   THE WITNESS: You're correct about the probability

3   very close to 95, not quite. If it were above 95 they would

4   have the same candidate of choice so it would not be polarized

5   regardless. Carter is the same.

6   JUDGE KETHLEDGE: Never mind. Sorry to bother you.

7   BY MR. LEWIS:

8   Q.   That's funny. All right. So I would like to move on now,

9   Doctor Palmer, to table 14 appearing on page DTX24-36. And is

10 it fair to say this is the results of your review of

11 Mr. Trende's analysis of the Linden Senate -- selected Linden

12 Senate elections in the primary of 2022?

13 A.   Yes.

14 Q.   All right. So I believe we have a total of six here; is

15 that right?

16 A.   Yes.

17 Q.   Okay. And in how many of these districts are you

18 identifying polarization?

19 A.   One.

20 Q.   And how many of these districts do you identify that black

21 and white voters support the same candidate of choice?

22 A.   Two.

23 Q.   Okay. And in the one polarized election, is that a black

24 preferred candidate failure or success?

25 A.   The black-preferred candidate lost.

1   Q.   Okay. And was there anything unique about that election,

2   Senate District 8?

3   A.   My understanding is that McMorrow, the white preferred

4   candidate, had a viral speech that somewhat nationalized the

5   race and brought a lot of attention to it.

6   Q.   Okay. And how does that potentially impact this election?

7   MR. PATTWELL: I'm just going to object. This is, I

8   believe, outside the scope of his report.

9   JUDGE MALONEY: Sustained.

10 BY MR. LEWIS:

11 Q.   And so I just want to -- before we move off this figure,

12 Doctor Palmer, I'll represent to you that Senate Districts 1,

13 3, 6, and 8 are the four districts where there's a Voting

14 Rights Act claim challenge present in this case. Of those

15 four districts, how many are polarized?

16 A.   One.

17 Q.   And that's SD 8 that we just talked about?

18 A.   Yes.

19 Q.   So if we add up the number of House Districts in Hickory

20 and the number of Senate Districts in Linden that Mr. Trende

21 analyzed, how many elections is that total?

22 A.   16 in the House, six in the Senate.

23 Q.   Okay. And of the 22, I'm just trying to tally this up, do

24 I have it right that we only have three elections that are

25 racially polarized with a black-preferred candidate failure?

1   **A.**   Yes.

2   **Q.**   Okay. And what do these results as a whole say about

3   Mr. Trende's conclusions about cohesion and polarization in

4   the primaries?

5   **A.**   Across these primaries I don't find consistent evidence of

6   racially polarized voting.

7   **Q.**   Okay. I'd like to now turn to your analysis of

8   Mr. Trende's racial gerrymandering analysis in his report. So

9   I'd like to turn to paragraph 55 appearing on page DTX24-22,

10   and I believe it may split the page onto the next page.

11   And so did you review Mr. Trende's analysis of

12   district compactness as a way to assess racial gerrymandering

13   in this case?

14   **A.**   Yes.

15   **Q.**   And what are your conclusions about his analysis?

16   **A.**   I don't find this analysis to be persuasive. Mr. Trende

17   claims that districts with higher black voting age population

18   are less compact and suggests that this relationship, this

19   correlation should be evidence of predominance in how the

20   districts were drawn.

21   I find that that's not the case. There is a

22   relationship, but I don't think that's evidence of anything.

23   If we look at Mr. Trende's simulated race neutral maps, and

24   just like with the gradual inference he provided all of his

25   code for the simulations. I reran his simulations exactly as

1   he did so I could analyze the ensemble of maps.

2   I took a random sample of the maps and did compact

3   the calculations on them. I looked at the relationship

4   between black voting age population and compactness and found

5   that same negative relationship in random maps that could not

6   have had race be a factor because racial data was not in those

7   simulations. The relationship he's observing is about

8   political geography and shapes and population distributions

9   and not about race.

10 Q.   And just for the sake of the record, Doctor Palmer, I'll

11 turn now to -- I'd like to highlight table four appearing on

12 page DTX24-23. Is this the regression analysis you described?

13 A.   Yes.

14 Q.   Okay. And when I see you have the three stars next to the

15 negative numbers on the BVAP column, what does that mean?

16 A.   That indicates a -- a statistical significance level of

17 99.9 percent.

18 Q.   Okay. And, again, just for the sake of the record, I see

19 the second P value with the one star is P less than .05. What

20 does that number reflect?

21 A.   That would reflect a 95 percent confidence level.

22 Q.   Okay. And I'd now like to turn to your analysis of

23 Mr. Trende's use of county splits as a vehicle to measure

24 racial gerrymandering in this case, and I believe that appears

25 on page six -- on page DTX24-23, paragraph 60 and 61, if we

1   could highlight that.

2   And so did you review Mr. Trende's analysis of county

3   splits?

4   A.   Yes.

5   Q.   And what did you conclude?

6   A.   Mr. Trende suggests that the larger number of county

7   splits in the enacted plans compared to the prior plans is

8   evidence of racial gerrymandering, but all these comparisons

9   to the past plans assume the past plans are some neutral

10   benchmark.

11   Mr. Trende provides no evidence that that's the case,

12   and I quote here as well as elsewhere, a Republican operative

13   involved with -- in drawing the maps in 2011 talking about how

14   they used keeping counties and cities intact for partisan

15   advantage. And so in a map that's trying to undo a past

16   partisan gerrymander we should expect to see more splits.

17   Q.   Okay. And, finally, I believe that you reviewed

18   Mr. Trende's use of computer simulations to analyze racial

19   gerrymandering in this case; is that right?

20   A.   Yes.

21   Q.   Okay. And so here I'd like to turn to page DTX24-24 and

22   start here with paragraph 63. And so what conclusions did you

23   reach about Mr. Trende's simulations analysis?

24   A.   These simulations cannot demonstrate that race was a

25   predominate factor in drawing the maps because they fail to

1   take into consideration many things that the Commission

2   considered, most notably party, and Mr. Trende said something

3   really useful last week when he talked about the importance of

4   a counterfactual.

5   When social scientists are trying to estimate the

6   effect of something, we need to have the right comparison

7   group. We need to make an apples-to-apples comparison, and

8   the right comparison here is what would these maps have looked

9   like if the Commission was not taking into account race or

10   taking race into account differently compared to the actual

11   map. And by not including all those factors like party in

12   constructing this counterfactual, we're not making the right

13   comparison to learn something.

14   I would -- second, I'd also say that to the degree

15   that Mr. Trende is identifying anything, he's showing that

16   race was a consideration, was a factor in drawing the maps,

17   but not predominance, and Doctor Rodden had a really nice

18   analogy yesterday about a smoke alarm that goes off when

19   you're cooking or when there's a big fire, and this test is

20   going to go off either way and not distinguish between

21   the two.

22   Q.   All right. And I believe in paragraph 64 you discuss -- I

23   don't believe you used the term counterfactual, but

24   paragraph 64 of your report, do you describe a very similar

25   concept about the use of constraints?

1 A.   Yes.   The way we would construct a counterfactual is we

2 would constrain the simulations to match things that the

3 Commission took into account so that they look more like maps

4 the Commission could have considered with all their other

5 factors that they looked at.

6 Q.   Okay.   And is the need to include constraints to model

7 what the mapmaker was doing, is that a standard practice in

8 social sciences?

9 A.   I'm sorry, can you repeat the question?

10 Q.   Sure.   So you talked about the need to create constraints

11 or the appropriate counterfactual in the idea that you want

12 the model to take into account what factors -- redistricting

13 factors the mapmaker was looking at; is that right?

14 A.   Yes.

15 Q.   Is that a standard practice in social science?

16 A.   Yes.   The general idea that we're always trying to make a

17 comparison to the right counterfactual is central to

18 identifying any effect.

19 Q.   Okay.   So now does Mr. Trende -- and you looked at

20 Mr. Trende's statistical analysis using his racial

21 gerrymandering and party gerrymandering index; is that right?

22 A.   Yes.

23 Q.   Okay.   So, now, does Mr. Trende find that the enacted

24 Hickory and Linden plans are outliers compared to his

25 race-blind, party-blind simulations on his racial

1   gerrymandering index?

2   A.   Yes.

3   Q.   Does he also find that the enacted plans are outliers

4   compared to his race-blind, party-blind simulations on the

5   partisan gerrymandering index?

6   A.   Yes.

7   Q.   Does the statistical analysis that Mr. Trende performed

8   permit the effects of partisanship and race to be

9   disentangled?

10 A.   No.

11 Q.   So does this -- does Mr. Trende's analysis allow you to

12 conclude that race was the predominant factor in drawing these

13 plans as opposed to just one factor among many?

14 A.   No.

15 Q.   Okay. And, finally -- finally, Doctor Palmer, I want to

16 turn just to the last page of your report, and on this last

17 page, it's page DTX24-27, do I understand correctly that you

18 conducted -- or you looked at Mr. Trende's demonstration plans

19 for Linden -- or, excuse me, for the State House and the State

20 Senate?

21 A.   Yes.

22 Q.   I just had a few questions for you. In any of your prior

23 work have you been asked to analyze the performance of a

24 *Gingles* one demonstration map?

25 A.   Yes. It's often a part of my reports looking at racially

1   polarized voting.

2   Q.   Okay. And does Mr. Trende include in his expert report an

3   analysis of his demonstration plans' performance akin to that

4   like you've conducted in prior cases?

5   A.   No.

6   Q.   Okay. And, therefore, are you able to form an opinion

7   about whether Mr. Trende's demonstration plans would perform

8   for minority voters?

9   MR. PATTWELL: I'm just going to note my objection

10   has been noted, right, Your Honor?

11   JUDGE MALONEY: Yes.

12   MR. PATTWELL: Okay Thank you.

13   THE WITNESS: Can you repeat the question, please?

14   BY MR. LEWIS:

15   Q.   Sure. In your opinion, does Mr. Trende's analysis in this

16   case allow you to form an opinion as to whether Mr. Trende's

17   demonstration plans would perform for minority voters?

18   A.   No.

19   MR. LEWIS: Your Honors, I have no further questions

20   for this witness. Thank you.

21   JUDGE MALONEY: Mr. Pattwell.

22   MR. PATTWELL: Thank you, Your Honor.

23   *CROSS EXAMINATION*

24   BY MR. PATTWELL:

25   Q.   Very nice to meet you, Doctor Palmer. You have a copy of

1   your report?

2   A.   I do.

3   Q.   Okay. So, the first thing I'd like to talk about is the

4   racially polarized voting analyses, and if I just say RPV,

5   we're on the same page?

6   A.   Yes.

7   Q.   Great. What -- please correct me if I'm wrong, what

8   you've essentially done is you've recreated Mr. Trende's RPV

9   analysis except you've done your credible intervals and then

10   drawn different conclusions?

11   A.   No. What I've done is I've rerun his analysis in full,

12   saved all the results so that I can then calculate credible

13   intervals where he didn't or calculate other statistical tests

14   using the results.

15   Q.   Great. So this is a story about credible intervals?

16   A.   It's a story about statistical uncertainty.

17   Q.   Okay.

18   A.   It's not just the intervals.

19   Q.   And you understand from Mr. Trende's report that he was

20   looking at the same elections that Doctor Handley was

21   looking at?

22   A.   I understand there's overlap, but I believe Mr. Trende was

23   also looking at some other elections.

24   Q.   So you just criticized Mr. Trende for not looking at House

25   District 4 from 2018, but if we pull up Doctor Handley's

1   report, which is DTX-17 at page 66, we'd see that Doctor

2   Handley did not look at that district, correct?

3   JUDGE NEFF: Are we really going to get into that?

4   You're going to attack Handley through this witness? I mean,

5   come on.

6   MR. PATTWELL: This is -- the witness said that

7   Trende cherry picked. Trende's report quite clearly states he

8   was looking at --

9   JUDGE NEFF: Why didn't you ask her that? You had a

10   chance to cross examine her. Wouldn't it be proper if you

11   wanted to attack her method or her results, she's the one you

12   should have asked, not him, not this witness.

13   MR. PATTWELL: That's not what I'm getting at. What

14   I'm getting at is that Doctor Palmer said -- criticized

15   Mr. Trende for not including House District 4 from 2018 in his

16   report. His report explains that he was looking at the same

17   elections that Doctor Handley looked at, and so this is simply

18   showing for the Court that there was no cherry picking going

19   on. Mr. Trende very clearly said he was looking at Doctor

20   Handley's elections, and I'm simply pointing out by pulling

21   up -- and I don't need to pull up the exhibit, but I'm simply

22   pointing out here for the witness that, of course, Doctor

23   Handley didn't look at that election and that's why it's not

24   in Doctor Trende's report. So I can move on.

25   THE WITNESS: Can I answer the question?

1   JUDGE MALONEY: There is no question.

2   MR. LEWIS: I was going to actually lodge an

3   objection, but -- I'm just going to object that, you know,

4   Doctor Palmer was not brought here to -- he was brought here

5   to rebut Mr. Trende. He did not offer any opinions about

6   Doctor Handley's work in this case on direct examination.

7   MR. PATTWELL: Whenever I may?

8   JUDGE MALONEY: Go ahead.

9   MR. PATTWELL: Thank you.

10 BY MR. PATTWELL:

11 Q.   If we can pull up your RPV table eight, and this is

12 looking at House Districts from 2014. We're at page 31 of

13 your report, are we not?

14 A.   Yes.

15 Q.   Great. And so I'd like to draw your attention to the race

16 for House District 7. So in the left-hand column we can see

17 that we have the House Districts, then next we have the two

18 candidates; is that right?

19 A.   Yes.

20 Q.   And then you've conducted an analysis here. What's the

21 estimate?

22 A.   41 -- 41.4 percent for Garrett and 38.2 for Stallworth.

23 Q.   Okay. And then in the next table you're comparing the

24 difference between the votes that Garrett was estimated to

25 receive and then the vote that Stallworth was estimated to

1   have received; is that right?

2   A.   I'm sorry, it's different candidates for white voters.

3   It's Cole and Garrett on the right-hand column.

4   Q.   We're not even there yet.

5   A.   Oh, I'm sorry.

6   Q.   We're simply within the black voters and we have -- maybe

7   this will help. Garrett and Stallworth, and then you just

8   explained this is an estimate of what you estimated Garrett to

9   have received in black votes?

10   A.   Yes.

11   Q.   And then here's your estimate, what you estimated

12   Stallworth to have received in black votes?

13   A.   Yes.

14   Q.   And then you have what you call the 95 -- is it confidence

15   or credit interval?

16   A.   Yes.

17   Q.   And this mathematical -- you explain this means

18   probability?

19   A.   Yes.

20   Q.   Candidate one?

21   A.   Yes.

22   Q.   Greater than?

23   A.   Yep.

24   Q.   Candidate two?

25   A.   Yes.

1   Q.   Your conclusion is that there's a 90 percent --

2   90.42 percent that Candidate Garrett received more votes than

3   Candidate Stallworth by this percent difference? No?

4   A.   Yes.

5   Q.   Oh. But because this is not over 95 percent probability,

6   you say no black candidate of choice?

7   A.   That's correct. That's saying there's a one in 10 chance

8   that this difference is due entirely to random chance.

9   Q.   Okay. And this 95 percent standard, interval standard,

10 I'm not sure exactly -- how would you refer to it?

11 A.   Level of confidence.

12 Q.   Level of confidence, thank you. So the 95 percent level

13 of confidence, this would typically be applied, would you not

14 agree, in the frequentist context?

15 A.   Yes.

16 Q.   But you understand that Mr. Trende's code -- you reviewed

17 that?

18 A.   Yes.

19 Q.   And he ran his code as MD Bayes?

20 A.   Yes.

21 Q.   And he's running a Bayesian analysis, correct?

22 A.   Yes. But that doesn't mean you can't interpret the

23 results this way. I have -- I have seen experts produce

24 confidence intervals with this exact same methodology using MD

25 Bayes, which is the technical name of the function that is

1 used in R. It's the name of the model in many reports, and in

2 fact the code that I use to calculate these intervals is the

3 exact same code that Doctor Trende uses, by which I mean he is

4 using code that I have produced in prior reports in his own

5 analysis here. This is a very commonly accepted approach to

6 looking at the results.

7 Q.   So, in this chart when you're conducting this analysis, do

8 you look at the -- the color of the candidate's skin?

9 A.   No.

10 Q.   Do you look at factors like incumbency?

11 A.   No.

12 Q.   Do you look at whether or not the candidate was a local

13 officeholder?

14 A.   No.

15 Q.   Do you look at the geography within which the candidate

16 lives?

17 A.   No.

18 Q.   So, for example, you don't look at whether or not the

19 candidate lives in the black neighborhood or the white

20 neighborhood?

21 A.   That's correct.

22 Q.   You don't look at whether the candidate has an Anglo

23 surname or an ethnic surname?

24 A.   That's correct.

25 Q.   You don't consider fundraising?

1   A.   No.

2   Q.   You don't consider community support, yard signs,

3   endorsement, things like that?

4   A.   All of these are factors that might explain the results,

5   but this is a measurement problem. We're just trying to

6   measure levels of support.

7   Q.   Understood. This is a statistic -- you're running a

8   statistical analysis?

9   A.   But I'm running a statistical analysis for a very, very

10   specific purpose. I'm not trying to understand why candidate

11   one won the race or got a certain vote share. I'm just trying

12   to measure what those vote shares were within each group.

13   It's not a causal analysis. I'm not trying to figure out what

14   caused the black -- the level of black support to be

15   something. It's purely trying to measure it, which we don't

16   know until we do this procedure.

17   Q.   And you're not looking at what the makeup of the district

18   in terms of black and white voting age percentage?

19   A.   Not in this table, no.

20   Q.   Okay. So, with respect to Garrett/Stallworth, is it not

21   more likely than not that Garrett received more votes than

22   Stallworth?

23   A.   It is more likely than not, but that is not the standard

24   we would use for a statistical analysis.

25   Q.   Okay. So in -- if we go back to the left-hand column

1   here, now we've got ten elections; is that right?

2   A.   Yes.

3   Q.   And you identify polarization in Districts 1, 2, and 10?

4   A.   Yes.

5   Q.   Then you identify an additional two elections where the

6   black and white candidate of choice are the same?

7   A.   Yes.

8   Q.   And we can see that over on the right-hand columns, right?

9   A.   Yes.

10   Q.   For the remaining five elections your table does not

11   definitively opine on polarization; is that right?

12   A.   I don't understand. What do you mean by, definitively

13   opine on polarization?

14   Q.   Well, you say there's no white candidate of choice so you

15   don't say whether or not the race was polarized.

16   A.   By my definition you must have a candidate of choice for

17   each group in order for a race to be polarized.

18   Q.   Great. So --

19   JUDGE KETHLEDGE: Can I ask a question on that, just

20   on this definitional thing, because that's what I'm trying to

21   understand as we go along. So, let's say you had black

22   candidates, 100 percent of their votes go for candidate one,

23   candidate two, and at a 93 percent confidence interval

24   candidate one looks like it's higher, or he or she were

25   higher, and then the white candidate -- or the whites vote for

1   candidates three and four, hundred percent, no overlap. Would

2   you say that is not racially polarized because we only have a

3   93 percent confidence interval as to which of the two black

4   supported candidates got the most votes?

5   THE WITNESS: That's a really interesting

6   hypothetical. And I think that, you know, in that case that

7   might be a case where more subjective judgment is useful

8   beyond the statistics, and as I said, on a purely statistical

9   level we could not identify a candidate of choice, but that

10   might be a place where thinking about the substantive results

11   would be --

12   JUDGE KETHLEDGE: Well, so does the degree of overlap

13   matter in your view in determining cohesion or polarization,

14   the degree of overlap between the candidates that each side

15   supports? I'm just trying to understand your idea of

16   cohesion.

17   THE WITNESS: So what's tricky in your hypothetical

18   is suppose that the two candidates for black voters are A and

19   B. There's an assumption there that all the supporters of

20   candidate A prefer B next, and all the supporters of B prefer

21   A next and vice versa --

22   JUDGE KETHLEDGE: Well, I'm not assuming anything. I

23   just -- yeah, well -- okay. I don't want to intrude too much

24   here. I'm not assuming that. I'm just saying there's no

25   overlap, and we just have some uncertainty about who's on top

1   in one of the, you know, voter categories, but I really don't

2   want to get in the way. I just -- I'm trying to understand

3   your definition.

4   THE WITNESS: Can I just add one thing to that? I

5   think it's a great example, and I think that it's a case where

6   if that was happening regularly, if we saw this pattern a lot

7   we might be more concerned about it, and if that was a one-off

8   blip, it's sort of a -- wouldn't really contribute to a

9   pattern of polarization either way.

10   JUDGE KETHLEDGE: Okay. Thank you.

11   BY MR. PATTWELL:

12   Q.   I'm still on House District 7, and now I'd like to move

13   over to the tab four, the white voters. In District 7 it's

14   more likely than not that the white candidate of choice was

15   Candidate Garrett?

16   A.   No. Candidate Cole.

17   Q.   And that's because you're 59.52 percent sure that Cole was

18   the white candidate of choice?

19   A.   Right. I would consider that essentially a coin flip,

20   that we don't have good evidence of who's on top either way.

21   Q.   And if we look down to the next race in House District 8,

22   there's a 60 percent chance that Sherry Gay-Dagnogo was not

23   the white candidate of choice? Did I get that right?

24   A.   Yes.

25   Q.   But she is the black candidate of choice in your

1   estimation?

2   A.   Yes.

3   Q.   And if I'm understanding this correctly, you're estimating

4   that she got a little bit over a quarter of the white vote?

5   A.   Yes.

6   Q.   And if we move down to District 9, would we be correct to

7   understand that Candidate Santana received 86 percent of the

8   black vote?

9   A.   Yes.

10   Q.   And so he (sic) is the black candidate of choice?

11   A.   Yes.

12   Q.   But you estimate that he received only 44.5 percent of the

13   white vote; is that right?

14   A.   Yes.

15   Q.   And so there's a 70 percent chance that Candidate Santana

16   was not the white candidate of choice?

17   A.   That's correct.

18   Q.   Okay.   Would you dispute that in the elections where you

19   identify clear polarization, black candidates of choice would

20   have lost if the BVAP in the districts were 40 percent?

21   A.   I'm sorry, can you repeat that, please?

22   Q.   Would you dispute that in the elections with clear

23   polarization the black candidates of choice would have lost if

24   the BVAPs had been 40 percent in that district?

25   A.   I don't know.

1 Q. Okay. In the first district, if you could accept my

2 representation that that was a -- House District 1 was a

3 63 percent BVAP district, if we were to reduce that BVAP by

4 23 percent, would you acknowledge that Candidate Banks would

5 have lost the election?

6 MR. LEWIS: I'm going to object, Your Honors. This

7 goes beyond the scope of the expert work that either Doctor

8 Palmer or Mr. Trende performed in this case.

9 JUDGE MALONEY: This is cross examination.

10 Overruled. Go ahead.

11 BY MR. PATTWELL:

12 Q. Would you like to answer my hypothetical?

13 A. Can you repeat it, please?

14 Q. So I would like you to assume that House District 1 had a

15 BVAP of 63 percent and we're going to reduce it by 23 percent,

16 so we're going to reduce it down to 40 percent. Then I'd like

17 you to look at your analysis here, and we see that in this --

18 when the district was at a 63 percent BVAP, Brian Banks won by

19 only seven points; is that right?

20 A. Where do I see Banks winning by seven points?

21 Q. I'm asking you to accept that -- let me rephrase the

22 hypothetical, because this chart doesn't have that

23 information.

24 So, assume that Banks won this election by

25 seven points and that the BVAP in the district was 63 percent.

1   I'm representing to you that that's the fact, but we can

2   assume it. If you were to have reduced the BVAP down to

3   40 percent, would he still have won? That's my question.

4   **A.**   To do that analysis you would have to make a huge number

5   of assumptions. You would have to make some assumptions of

6   turnout that I don't have here. You would have to assume that

7   when reducing the black population by a third in that district

8   that you would be reducing support for each candidate that

9   black voters voted for by a third as well; that is, that

10   support would come evenly from every candidate and not from

11   some more than others.

12   You would also have to assume that all the candidates

13   would stay the same, the dynamics of a primary election in

14   that district would be the same. And so it's a hypothetical

15   that requires a lot of assumptions to get at and is not

16   something I did in this report.

17   Q.   If we could look at page 37. These are your ecological

18   inference tables for this election, correct?

19   **A.**   These are directly from Mr. Trende's code and data. They

20   are exactly what he created for every election.

21   Q.   This ecological inference in your report shows that

22   Candidate Banks received how much of the white vote?

23   **A.**   14 percent.

24   Q.   Okay. We can move on. I'd like to go to RPV table nine.

25   And we're looking at your analysis here for the House

1   Districts in 2016, right?

2   A.   Yes.

3   Q.   And these are Democratic primaries?

4   A.   Yes.

5   Q.   And all nine elections you're a hundred percent sure that

6   there was a clear black candidate of choice in these races?

7   A.   Yes.

8   Q.   We know that just by looking down this table here and

9   looking at --

10   JUDGE NEFF: Mr. Pattwell, I'm having a hard time

11   hearing you.

12   MR. PATTWELL: Can you hear me better now, Your

13   Honor?

14   JUDGE NEFF: Yeah.

15   MR. PATTWELL: There we go.   How is that?

16   JUDGE NEFF: That's much better.

17   MR. PATTWELL: I think it was a little low.

18   BY MR. PATTWELL:

19   Q.   So my question is, we know where you identify the black

20   candidate of choice is in the right column under status?

21   A.   Yes.

22   Q.   And you're doing that based on your -- your interpretation

23   of the credible intervals?

24   A.   Not the intervals but the posterior draws that Mr. Trende

25   discussed last week.

1   Q.   But a simple way to look at it, though, is if this number

2   is above 95 percent, you're willing to make a judgment; if

3   it's below, you're not?

4   A.   Yes.

5   MR. PATTWELL: If we can pull up as a side-by-side,

6   Bailey, Mr. Trende's page 41. I'm doing this because you

7   didn't provide the voting age populations, Mr. Trende did.

8   So there it is, but if you can now just maybe zoom

9   back in to the table nine, please? Thank you.

10   BY MR. PATTWELL:

11   Q.   So you estimate that every single candidate, except for

12   Scott, received a majority of the black vote?

13   A.   Yes.

14   Q.   And what I mean by majority is over 50 percent in this

15   column, right?

16   A.   Yes.

17   Q.   I should say what you mean. But you would characterize

18   42.6 as a plurality?

19   A.   Yes.

20   Q.   Okay. And that's -- that's Candidate Scott. Now if we

21   can look back to Mr. Trende's report -- you and Mr. Trende

22   identify all the same black candidates of choice, do you not?

23   A.   I believe so. Well, there's a candidate that he calls a

24   candidate of choice that I would not necessarily identify as a

25   candidate of choice.

1 Q.   I'm speaking with respect to the black, just the black

2 candidate of choice column.

3 A.   Yes.

4 Q.   I'm about to move on to your point here. So for the white

5 candidate of choice, the only difference is that you had

6 Jackson as the second vote getter to Candidate Chang while

7 Mr. Trende had Candidate Black as the second vote getter; is

8 that right? I can help you out here.

9 A.   I'm sorry, I see it now.

10 Q.   At the bottom, do you see this?

11 A.   Yes.

12 Q.   Okay. So Trende had Black and you had Jackson?

13 A.   I have Black as well for black voters and --

14 Q.   We're on white voters.

15 A.   Yes. The reason for this difference is because of some

16 randomness in how ecological inferences run.

17 Q.   I'm going to get there. That's my next question. So I'd

18 like you to turn to page 55 of your report. These are the

19 ecological inferences.

20   MR. PATTWELL: And just for the record, I'm directing

21 the witness to DTX24 at page 56.

22 BY MR. PATTWELL:

23 Q.   And so, Doctor Palmer, the ecological inference table says

24 that Dennis Black received 10.37 percent of the white vote,

25 because that's what we're talking about, and Candidate Jackson

1   received 10.69 percent of the white vote. Are you with me,

2   sir --

3   A.   Yes.

4   Q.   -- on the bottom there? Can you validate that, my

5   statement, please?

6   A.   Can you repeat your statement again, please?

7   Q.   Candidate Black received 10.37 percent of the white vote

8   whereas Candidate Jackson received 10.69 percent.

9   A.   Yes. You just have the wrong table up on the screen.

10   JUDGE KETHLEDGE: You're not looking at the same

11   thing.

12   JUDGE NEFF: You're on 55 and you've been asking

13   questions about 56.

14   MR. PATTWELL: I don't know what's there. I'm

15   looking here, but I identified for the record that it's

16   page 56 on DTX24. I apologize. I wasn't even looking at the

17   screen.

18   JUDGE KETHLEDGE: That's okay. That's why some of us

19   were lost. Maybe you can zoom in and redo it.

20   BY MR. PATTWELL: If you can zoom in on the bottom,

21   because we're only looking here at the white, and, remember,

22   there is a difference between Doctor Palmer and Mr. Trende as

23   to who received a higher percentage of the white vote.

24   Mr. Trende said it was Jackson. Doctor Palmer said it's

25   Black, and I'm just asking him to look at these two numbers

1   and which one is bigger.

2   THE WITNESS: I'm sorry, I think we've gotten

3   confused. My report shows for black voters the second choice

4   is Dennis Black, and for white voters the second choice is

5   Jackson based on these estimates.

6   BY MR. PATTWELL:

7   Q.   That's what it says on page 56, right?

8   A.   Yes.

9   Q.   Buy if you turn back to page 36, sir, that's not what you

10   say on DTX24-32. You identify that it's Jackson?

11   A.   I'm sorry, I'm confused. On the HD6 row for the white

12   voters column I say the second choice was Jackson.

13   Q.   My point is, we're splitting hairs between 10.69 percent

14   and 10.37 percent, correct? It's a miniscule difference?

15   A.   Of which is the second place candidate?

16   Q.   Yes.

17   A.   Yes.

18   Q.   Okay. I spent way too long on that. I apologize to

19   everyone in the gallery and the Court, but very small point.

20   But we're back on page 32, table nine, you identify

21   two races where there was polarization, and what are those?

22   A.   Districts 1 and 2.

23   Q.   So with respect to District 1, like Mr. Trende you find

24   that Banks got around 75 percent of the black vote and

25   9 percent of the white vote?

1   A.   Yes.

2   Q.   And does that look like white bloc voting?

3   A.   Yes.   I describe this as racially polarized.

4   Q.   And with respect to House District 2, Scott got

5   42.6 percent of the black vote?

6   A.   Yes.

7   Q.   And just 3.9 percent of the white vote?

8   A.   I believe that's right. I'd have to go to the relevant

9   table.

10   Q.   Yeah. That's on page 52, but I'll take your answer

11   because you are right.

12   And then Ms. Tinsley Smith received 4.9 percent of

13   the white vote. Does that sound about right, too?

14   A.   Yes.

15   Q.   Then looking down to House District 4, this is the

16   Robinson/Jones contest. Do you see that?

17   A.   Yes.

18   Q.   You say there's no polarization because both the white and

19   black voters favored the incumbent; is that right?

20   A.   Yes.

21   Q.   Although there's a statistically meaningful 20 percent

22   drop off in white support vis-a-vis black support from

23   Robinson; is that right?

24   A.   Yes. But the difference in level of support isn't what

25   determines if it's a preferred candidate, especially in a

1   multi-white primary like this.

2   Q.   If we could go to House District 6.   So this is

3   Chang/Black and then Chang/Jackson.   You find no polarization

4   because the white and black voters favored the incumbent?

5   A.   Yes.

6   Q.   In the remaining five races you can't definitively opine

7   on polarization; is that right?

8   A.   I say I don't find any evidence of polarization so I would

9   conclude they are not polarized.

10   Q.   Thank you.   But with respect to HD5, you say that there is

11   a 58.26 percent chance that white voters rejected the black

12   candidate of choice?

13   A.   Yes, I would say that statistical noise.

14   Q.   And then if we look at HD9, there was a 93 percent chance

15   that white voters rejected the black candidate of choice?

16   A.   Yes.

17   Q.   We can move on to the 2018 House District elections which

18   are on table ten.   Now, here you do something Mr. Trende did

19   not.   You made summary charts for the 2018 HD elections.

20   A.   I don't have his report in front of me, but, okay.

21   Q.   Thanks.   And you estimate 11 elections here.

22   A.   These are the 11 elections that Mr. Trende looked at in

23   the code he produced with his report.   I'm not doing any

24   analyses that Mr. Trende did not do in this part of my report.

25   Q.   But you understand that Mr. Trende testified in his

1 deposition he didn't do this because Doctor Handley didn't do

2 this? Do you have any reason to dispute that?

3 A.   I'm sorry. Can you repeat what Mr. Trende said?

4 Q.   Mr. Trende testified that the reason he didn't do this was

5 that Doctor Handley had already analyzed these races. He was

6 relying on Doctor Handley's analysis.

7 A.   My recollection is that was for the 2018 Senate elections,

8 not the House elections.

9 Q.   Other than a misunderstanding between the Senate and the

10 House elections for 2018, do you have any reason to dispute

11 what Mr. Trende says?

12 A.   Mr. Trende did analyze 2018 elections in his report.

13 Whether he reported them all or not and why, I don't dispute

14 the decisions he made, but he did analyze them and talk about

15 them in the report, and he did run his own ecological

16 inference models for 2018 in the materials he produced with

17 his report.

18 Q.   Right. So if we turn to the left column we've got 11

19 elections. Seven of these elections black voters gave a

20 single candidate a majority of the vote?

21 A.   Yes.

22 Q.   In all but two elections there was a clear black candidate

23 of choice?

24 A.   Yes.

25 Q.   And the two elections where there was not a clear black

1   candidate of choice were 2 and 5?

2   A.   Yes.

3   Q.   So in House District 2 we have Tinsley Smith and Banks.

4   We just saw their name in the previous table, right?

5   A.   Yes.

6   Q.   So we have two known black candidates squaring off against

7   each other and you find that there was a 77 percent chance

8   that Tinsley Smith was the black candidate of choice over

9   Banks?

10   A.   Yes. And there's not enough evidence to conclude that one

11   was preferred to the other.

12   Q.   Even though they're both well known black candidates?

13   A.   I don't understand what them being well known or their

14   race has to do with the -- how we interpret the probabilities.

15   Q.   Because you don't look at anything other than statistics?

16   A.   Because here we're just measuring something, and the

17   numbers wouldn't change regardless of who they are.

18   Q.   And you have Joe Tate on the white side as the clear white

19   candidate of choice; is that right?

20   A.   Yes.

21   Q.   And Candidate Tate beats the black candidate of choice,

22   Tinsley-Smith, in this election?

23   A.   I don't agree that Tinsley-Smith is the candidate of

24   choice, but I do agree that he won that election.

25   Q.   Oh, that's right. My apologies. You only agree that

1   there's a 77 percent likelihood that Tinsley-Smith was the

2   black candidate of choice?

3   A.   Based on these models, yes.

4   Q.   Okay.   In HD5 you acknowledge that there was a 90 percent

5   chance Candidate Johnson was the black candidate of choice?

6   A.   Yes.

7   Q.   And so you conclude that the remaining -- excuse me, so

8   there's no polarization in 1, 6, and 9, and there is

9   polarization in 4 and 11; is that right?

10   A.   Yes.

11   Q.   And the remaining six elections were inconclusive?

12   A.   I disagree with calling it inconclusive.   I did not find

13   evidence of racial polarized voting.

14   Q.   Fair enough.   Are you aware that Doctor Handley would

15   disagree with your assessment of HD4?

16   A.   I don't know.

17   Q.   If we can pull up Doctor Handley's report, DTX17 at

18   page 11, and look at HD4.   Doctor Handley says, no accurate

19   estimates.   You say HD4 is polarized, correct?

20   A.   I do.

21   Q.   If we look at Doctor Handley's view of HD6, she disagrees

22   with you again, she says no accurate estimates.

23   If we go down to HD5 --

24   A.   I'm not seeing where it says no accurate estimates.   I see

25   NA which suggests she didn't analyze it.

1   Q.   If you can pull up as well PX16-9, go to Handley table

2   three.   It's the same analysis, different report.   Of course

3   we're in 2018 so we need to go down to --

4   A.   I see.

5   Q.   -- 64.   You got it now?

6   A.   Yes.

7   Q.   You got it before I got it.   So she's saying no accurate

8   estimates.   You were saying polarized.   If we look at HD5, and

9   this one Doctor Handley says polarized but she says the black

10   candidate of choice won in the district with a 54 percent

11   BVAP.   You, however, conclude there was no black or white

12   candidate of choice.   If we look back on Ross/Johnson, you say

13   no COCs.   Do I got that right?

14   A.   Yes.

15   Q.   Okay.   So we can just go back to Doctor Palmer's report on

16   page 33, and I have a question regarding HD2.

17   So, again, just to reorient everyone, this is

18   Tinsley-Smith, 77 percent probable black candidate of choice,

19   but my question is regardless of whether Tinsley-Smith or

20   Banks was the black candidate of choice, we can agree that it

21   was not Joe Tate?

22   A.   Yes.

23   Q.   Thank you for that.   Because if we turn to page 61 of your

24   report and we go to the black section of the ecological

25   inference, we see that Candidate Tate only received

1   nine percent of the black vote. Do you see that?

2   A.   Yes.

3   Q.   In fact, he's the fifth candidate of choice with black

4   voters in this election?

5   A.   He -- he came in fifth place.

6   Q.   Thank you. And if we go down to the white -- the

7   ecological inference for the white voters, Banks got

8   four percent of the white vote?

9   A.   Yes.

10 Q.   And what did Tinsley-Smith receive?

11 A.   Eight percent.

12 Q.   So whites overwhelmingly rejected the black preferred

13 candidates -- my words, not yours -- and bloc voted to elect a

14 candidate that black voters rejected?

15 A.   Black voters were not cohesive in this primary.

16 Q.   If we can go on to RPV table 11. Are we looking at the

17 2020 Democratic primary elections for the House Districts

18 here, sir?

19   My question was, we're looking at the House Districts

20 in 2020 in this chart?

21 A.   Yes.

22 Q.   These are Democratic primaries?

23 A.   Yes.

24 Q.   And you estimate nine elections?

25 A.   Yes.

1   Q.   So in three of these elections we have black voters gave a

2   single candidate a majority of the vote; is that right?

3   A.   Yes.

4   Q.   But I was curious, you identify a clear black candidate of

5   choice in all nine elections despite six elections only having

6   a plurality.

7   A.   Yes. Following Mr. Trende's approach, I do.

8   Q.   You find HD4 and HD10 to be polarized?

9   A.   Yes.

10   Q.   And you find HD2 and HD6 not polarized?

11   A.   Yes.

12   Q.   And that's because black and white voters both preferred

13   incumbents Tate and Carter in those elections?

14   A.   Yes.

15   Q.   In the remaining five districts you do not identify a

16   white candidate of choice?

17   A.   That's correct.

18   Q.   If we can put Doctor Handley's table up again. And why

19   don't we go with PX16-9. This is her table three. You and

20   Doctor Handley come to different conclusions regarding HD4.

21   She says no accurate estimates?

22   A.   Yes.

23   Q.   You say polarized?

24   A.   Yes.

25   Q.   You're a hundred -- excuse me, you're 99 percent sure that

1   Abraham Aiyash was the black candidate of choice and a hundred

2   percent sure Collins was the white candidate of choice?

3   A.   Based on these models, yes.

4   Q.   And if we look at the ecological inference, you report

5   that Aiyash, the black candidate of choice, only received

6   two percent of the white vote. If we can go to DTX24,

7   page 73, make sure I didn't misread that. Distinct

8   possibility. We're at the bottom table on the white

9   ecological inference.

10   A.   Yes.

11   Q.   And what percentage did the black candidate of choice,

12   Aiyash, receive in this election of white vote?

13   A.   Two percent.

14   Q.   If we can go back to DTX24 at 34 and then also Handley

15   PX16 at page nine, we can see, again, that Doctor Handley

16   disagrees with you regarding HD10. She says no accurate

17   estimates, you say the election is polarized, correct?

18   A.   Yes.

19   Q.   Now, you say you're 97.67 percent sure that Ruffin is the

20   black candidate of choice.

21   A.   Based on these models, yes.

22   Q.   You're a hundred percent sure that Mary Cavanagh is the

23   white candidate of choice, are you not?

24   A.   Yes.

25   Q.   And you report that Mary Cavanagh, the white candidate of

1   choice, defeats Ruffin, the black candidate of choice?

2   A.   Yes.

3   Q.   And you report white voters gave Ruffin 7.82 percent of

4   the white vote?

5   A.   Yes.

6   Q.   So, in this election we see white voters bloc voting

7   behind Candidate Cavanagh to defeat the black candidate of

8   choice?

9   A.   Yes.

10   Q.   Are you aware of whether that was an open Democratic

11   primary?

12   A.   I don't know.

13   Q.   Okay. We look at HD5, we've got another disagreement

14   between you and Doctor Handley. She says there's not

15   polarization. What do you say? No white candidate of choice?

16   A.   I'm sorry, where is the disagreement?

17   Q.   Oh, we don't have it up. I'm sorry.

18   MR. PATTWELL: If you could pull up that PX16, I

19   believe we're at -- it's at page nine. And we're looking

20   at HD5.

21   BY MR. PATTWELL:

22   Q.   My recollection was that Doctor Handley said there was no

23   polarization.

24   A.   Yes, I agree with that.

25   Q.   And your conclusion was there's no white candidate of

1   choice?

2   A.   Right.   We're coming to the same conclusion.

3   Q.   So HD5, and we're in 2020, not polarized, black voters'

4   choice won, and you say -- oh, you are 90 percent sure Johnson

5   was the white candidate of choice?

6   A.   Regardless of the probability, I'm saying this election is

7   not polarized and the black candidate of choice won.

8   Q.   Got it.   How about HD9?   So Handley disagrees with you

9   regarding HD9.   She says there was polarization, but you say

10   there's no white candidate of choice?

11   A.   Yes.

12   Q.   So there's a conflict there?

13   A.   Yes.   We produced different results.

14   Q.   Because Handley says the incumbent black candidate of

15   choice, Whitsett, won in the district with a 72 percent BVAP?

16   A.   I agree that the black candidate of choice won in this

17   district.

18   Q.   Thank you.   Okay.   We can move on.   Let's go to table 12

19   and I'll represent that we're looking at -- this is your

20   table 12, and we're looking at House District for the 2022

21   Democratic primary, and we're at DTX24-35.   Doctor Palmer, you

22   looked at 16 elections here?

23   A.   Yes.

24   Q.   And in 12 of the 16 elections you're able to identify a

25   black candidate of choice?

1 A. Yes.

2 Q. And Mr. Trende looks at the same elections in his table

3 nine, does he not? If you'd like, we can pull it up.

4 A. Do you have a page number? I'd like to see it in front of

5 me.

6 Q. PX20 at 42.

7 A. Can you repeat the question, please?

8 Q. Yeah. One of the things you're doing in your expert

9 report is you're looking at Trende's table nine and then

10 you're recreating his results and looking at credible

11 intervals and then drawing your conclusions?

12 A. Yes.

13 Q. Yes. And I'm just trying to confirm that Mr. Trende and

14 you are looking at the exact same races here, that's all.

15 A. Yes.

16 Q. And you're unable to identify a black candidate of choice

17 in House Districts 8 and 11; is that right?

18 A. Yes.

19 Q. So if we can kind of zoom in on House District 8 on

20 DTX24-35. This is the Little/Douglas and McFall/Soltis. So

21 you say you're 62 percent sure Little, who is black, is the

22 black candidate of choice with the other 34.5 percent of the

23 black vote -- or receiving 34.5 percent of the black vote?

24 A. Yes.

25 Q. And next in line would be Douglas, also black, who you

1   estimate to have received 33.2 percent of the black vote?

2   A.   Yes.

3   Q.   And appreciate your testimony earlier, but together Little

4   and Douglas received 67.7 percent of the black vote; is that

5   right?

6   A.   Yes.

7   Q.   And if we look at your ecological inference table, we see

8   Little only received less than five percent of the white vote

9   and Douglas received just over seven percent of the white

10 vote.   Do you recall that?

11 A.   Yes.

12 Q.   And you identify with 99.3 percent certainty that McFall

13 was the white candidate of choice?

14 A.   Yes.

15 Q.   But despite this, you deny polarization?

16 A.   I find that black voters in this primary are not cohesive.

17 They don't have a single candidate -- a single candidate of

18 choice.   They're pretty much split between -- I'm sorry --

19 Douglas and Little, and so without cohesion, we can't find

20 polarization.

21 Q.   If we can go to the next election, House District 11,

22 and -- same page, just a couple rows down, this is

23 Williams/White.   If we can zoom in there.   So, your 67.7 --

24 excuse me, 64.74 percent sure Williams, who's black, is the

25 black candidate of choice?

1	**A.** Yes. That's the probability from the model. I think we
2	should go over that doesn't mean there's an exact probability.
3	**Q.** You'll have an opportunity advocate when you get redirect.
4	I just would like you to go through and answer my questions
5	here, if that's okay, sir.
6	**A.** Yes.
7	**Q.** So you're 64 percent sure Williams, who's black, is the
8	black candidate of choice, and we know that Williams received
9	23.9 percent of the black vote; is that right?
10	**A.** Based on this model, and that's the average estimate, the
11	23.9 percent.
12	**Q.** Right. And next in line is Ricardo White, also black, who
13	you estimate received 22.4 percent of the black vote?
14	**A.** Yes.
15	**Q.** Together Williams and White received over 50 percent of
16	the black vote?
17	**A.** 45 percent.
18	**Q.** That's why you don't let lawyers do math. So, if we look
19	at your ecological inference table, though, we see Williams
20	received six percent of the white vote?
21	**A.** Yes.
22	**Q.** And 14 -- and White received 14 percent of the white vote?
23	**A.** I believe that's right.
24	**Q.** And you're 97 percent certain that Candidate Paiz was the
25	white candidate of choice?

1 **A.** Yes.

2 **Q.** Okay. And I'm assuming your answer is the same, you did

3 not find this race to be polarized?

4 **A.** Yes. Because just like in the previous one, black voters

5 are not cohesive behind a single candidate.

6 **Q.** Okay. You would agree that you and Mr. Trende agree

7 on HD7?

8   JUDGE KETHLEDGE: Can I ask a quick question? Again,

9 I'm just trying to understand the standard. Bring back,

10 please, what was just there.

11   I mean, you say there's no cohesion because the

12 candidates -- the black vote is split between Williams and

13 White, right?

14   THE WITNESS: Yes.

15   JUDGE KETHLEDGE: But elsewhere you're telling us if

16 you have a 95 percent confidence interval and both candidates

17 are in the 20s, then we do have a black candidate of choice

18 and there is racial polarization.

19   THE WITNESS: You're right. A better term than

20 cohesion here would be a clear first choice candidate. Here

21 we don't even know which one of them really got the larger

22 share of the black vote.

23   JUDGE KETHLEDGE: So just to understand the standard

24 you're applying, because this -- you know, it's a hard

25 question. You're saying if there's a 95 percent certainty

1   that one candidate was -- that black voters preferred one

2   candidate more than a second candidate, that the cohesion

3   requirement is met?

4   THE WITNESS: Not necessarily. I think what I'm

5   trying to do here is take Mr. Trende's approach where that is

6   absolutely the approach that he is taking, whichever

7   candidate --

8   JUDGE KETHLEDGE: Well, I'm just -- okay. I'm just

9   kind of asking what you're doing and your conclusions. No

10   candidate of choice means not polarized, right?

11   THE WITNESS: Right. Based on -- based on that

12   definition of --

13   JUDGE KETHLEDGE: Right. If it's -- there is a high

14   certainty and -- one person is at 25 and the other is at 21

15   but there's a high certainty then it is polarized if the

16   whites prefer other candidates, right?

17   THE WITNESS: Yes. So if we wanted a stronger

18   definition of cohesion, there would be elections here that

19   we're saying are polarized that are not actually polarized.

20   We can think of this as -- this approach as being potentially

21   biased toward finding polarization.

22   JUDGE KETHLEDGE: Okay. I just don't understand,

23   then, why you said earlier there is no cohesion because the

24   black voters are split. They could be split and we can have a

25   95 percent confidence about who's ahead but they're still

1   split, so why is splitness cohesion in one instance but not

2   cause -- I mean, splitness preventing cohesion in one instance

3   but it's not preventing it in an instance where we happen to

4   know who had the higher of 24 and 21?

5   THE WITNESS: I'm sorry, Your Honor, you're right. I

6   misspoke when I said cohesion. I should have said clear first

7   place candidate, and that's the standard that Mr. Trende has

8   been using.

9   JUDGE KETHLEDGE: Okay. Well, that resolves what was

10   bothering me. Okay. Thank you.

11   THE WITNESS: Thank you.

12   MR. PATTWELL: We're getting very close and I

13   appreciate everyone's patience. I think I have maybe ten

14   additional questions.

15   BY MR. PATTWELL:

16   Q.   I'd like to go to table 13, because this deals with the

17   Senate elections, and we have Mr. Trende's analysis for these

18   same elections at PX20-84. Just a very few number of

19   elections because this is a Senate race.

20   If we can kind of put those up? Can you read that?

21   Are you able to see -- I mean, this is what you analyzed,

22   right, Doctor Trende's ecological inference here?

23   A.   Yes.

24   Q.   Okay. And so my question is with respect to the 2014, you

25   and Mr. Trende are in agreement except for, what, Senate

1   District 11?

2   A.   Yes.

3   Q.   But you guys agree that Candidate Gregory was the black

4   candidate of choice?

5   A.   Yes.

6   Q.   And then we get over to the white candidate of choice, and

7   you identify with a 55.91 percent probability that Lipton was

8   the white candidate of choice?

9   A.   Yes.

10   Q.   But if it wasn't Lipton, it was Barnett?

11   A.   Yes.

12   Q.   Because Lipton received 44 percent of the white vote and

13   Barnett received 43.3 percent of the white vote?

14   A.   Yes.

15   Q.   So together around 87 percent?

16   A.   Yes.

17   Q.   And if we look at your ecological inference, we see that

18   Senator Gregory received how much of the white vote? I mean,

19   it's got to be less than 13 percent, right?

20   A.   Yes. 12.6 percent.

21   Q.   Okay. We're done there. Your report in this -- we kind

22   of went over this probably in a very confusing way for

23   everyone, including myself, but your report does not address

24   Trende's table 19 for the 2018 Senate elections?

25   A.   That's correct. He didn't do his own analysis there.

1   Q.   Table 14 is where you conducted the analysis for the 2022

2   Senate elections -- Democratic primary elections, excuse me,

3   and that is 36, DTX24-36. Perfect. Maybe we can zoom out

4   just a hair. Okay. We've got six Senate elections?

5   A.   Yes.

6   Q.   And you're able to identify a black candidate of choice in

7   five of six?

8   A.   Yes.

9   Q.   If we can look at the last election there, Senate

10   District 11. This is the Owens/Klinefelt primary?

11   A.   Yes.

12   Q.   And you're able to identify with a 78 percent probability

13   that Monique Owens, the first black mayor of Eastpointe, was

14   the black candidate of choice?

15   A.   Yes.

16   Q.   And you identified that Candidate Klinefelt, who's white,

17   was the white candidate of choice?

18   A.   Yes.

19   Q.   And Owens received what percent of the white vote?

20   A.   About 20 percent.

21   Q.   Were you aware that neither Trende nor Doctor Handley

22   analyzed this election?

23   A.   I believe Mr. Trende did analyze it in his code that he

24   produced with his report.

25   Q.   But it wasn't in his report?

1 **A.** I believe that's correct.

2 **Q.** Were you aware that in previous -- in a previous case, in

3 a previous report, Doctor Handley found that Monique Owens had

4 been the black candidate of choice?

5 **A.** No.

6 **Q.** If we can look at Senate District 1. Who do you identify

7 as the black candidate of choice?

8 **A.** Sanders.

9 **Q.** And what percentage of the white vote did Brenda Sanders

10 receive? It's on page 95 of your report.

11 **A.** Thank you. Four.

12 **Q.** That's four percent?

13 **A.** Yes.

14 **Q.** And in this report you acknowledge that Senate District 8

15 is polarized?

16 **A.** Yes.

17 **Q.** And you're just looking at the numbers, that's your

18 statistical analysis?

19 **A.** Yes.

20 **Q.** Couple cleanup items. On page 26 of your report you state

21 that the plaintiffs are not challenging HD7. Do you

22 understand that to be untrue?

23 **A.** That's my error, I apologize.

24 **Q.** Can you describe the configurations of House District 5

25 and 7?

1   A.   No.

2   Q.   You would accept my representation that they're very close

3   together?

4   A.   Yes.

5   Q.   On pages four through 10 of your report you lay out

6   several different scenarios that make multi-candidate

7   primaries more difficult to assess; is that right?

8   A.   Yes.

9   Q.   And you say one such scenario occurs where no candidate

10   received a majority of the vote?

11   A.   Yes.

12   Q.   In this scenario I think you say the difficulty lies in

13   assessing whether the candidate that received a plurality of

14   the minority vote share is, in fact, the minority candidate of

15   choice.   Am I understanding that correctly?

16   A.   I say that if we accept the logic that a candidate of

17   choice can be identified based on plurality alone, then it's

18   possible for a candidate of choice to be identified with a

19   very small vote share.

20   Q.   Okay.   You give an example.   40 percent of black voters

21   support candidate A, 35 percent of black voters support

22   candidate B, 25 percent of black voters support candidate C,

23   and then you say because 55 percent of black voters did not

24   support candidate A, at least statistically candidate A is not

25   the black candidate of choice; is that right?

1   **A.**   With majoritarian logic, yes, and I think I'm trying to

2   highlight here why -- this is a hard question just getting --

3   conceptually figuring out candidates of choice in a primary is

4   a hard conceptual question.

5   **Q.**   It's a statistical view of polarization, would you agree?

6   **A.**   I'm not sure I understand.

7   **Q.**   How about this. Let me try a hypothetical. I'd like to

8   modify your example. I'd like you to assume that the

9   40 percent -- that 40 percent of the black voters still

10   support your candidate A, but this time there's five remaining

11   candidates that each earn 11 percent of the black vote. You

12   still have 55 percent of black voters not supporting

13   candidate A, but isn't candidate A the black candidate of

14   choice?

15   **A.**   By plurality rule, yes, but you still don't have a

16   candidate getting the majority of the vote from black voters,

17   and so I think that other way of looking at it remains valid

18   and highlights why this is challenging.

19   MR. PATTWELL: Really appreciate your time,

20   appreciate the Court's patience. That's a wrap for me.

21   JUDGE MALONEY: Redirect, Mr. Lewis. Have you got a

22   time estimate?

23   MR. LEWIS: I would estimate 10 minutes or less. I

24   can proceed now or we can take a break. It's the Court's

25   preference.

1   JUDGE NEFF: Yeah, I would just as soon go ahead.

2   JUDGE MALONEY: Keep going.

3   *REDIRECT EXAMINATION*

4   BY MR. LEWIS:

5   Q.   All right. So I just want to highlight -- I just want --

6   just a couple very, very -- hopefully very quick questions.

7   And I'd like now to return to -- I believe one of the

8   comparisons opposing counsel used with you was one of Doctor

9   Handley's tables juxtaposed with one of yours, and I'd like to

10 go to that. So specifically I would like to turn to PX16 at

11 page nine.

12   Okay. And specifically I'd like to direct your

13 attention to the 2018 Democratic primary in House District 4,

14 and that's the fourth from the bottom in the row. And do you

15 see where Doctor Handley in her table here concludes that

16 there's no accurate estimates for cohesion in that election?

17 **A.**   Yes.

18 Q.   Okay. And then bearing that in mind -- and do you see the

19 notation for 14 candidates?

20 **A.**   Yes.

21 Q.   Okay. And so if we go into your report, DTX24 at

22 page 33 -- oh, okay, we're there. I'd like to highlight the

23 row for HD4, which of course for you is the fourth row. Okay.

24 So are we looking at that same election that we were just

25 looking at with Doctor Handley?

1	**A.** Yes.
2	Q. Okay. And here you are identifying a top choice
3	candidate or -- you have candidate of choice here and you're
4	scoring this election as polarized; is that right?
5	**A.** Yes.
6	Q. Okay. And are you doing so by adopting Mr. Trende's
7	definition of candidate of choice?
8	**A.** Yes. Mr. Trende always uses the candidate with the top
9	vote share as the candidate of choice in every case, and I'm
10	at in the refinement that there must be a statistical
11	distinction between that candidate and the second place
12	candidate, but otherwise I'm using his definition in trying to
13	respond to his report by reflecting on the importance of
14	statistical uncertainty here.
15	Q. Okay. And I think we had -- I recalled 14 candidates in
16	this one. You do report here in the tables accompanying your
17	report the complete EI result for this election; is that
18	right?
19	**A.** I do.
20	Q. Okay. And if we turn to page DTX24-63, is that where you
21	report it?
22	**A.** Yes.
23	Q. Okay. I was told never make somebody do math in public so
24	I won't, but if I tell you there are 14 candidates here, does
25	that seem reasonable?

1   A.   Yes.

2   Q.   Okay. All right. And so is this an example where -- let

3   me ask the question this way. In the field of political

4   science, is it generally understood that you can identify for

5   purposes of racial cohesion a candidate -- a candidate of

6   choice based on plurality like this?

7   A.   I don't think there's a clear universal definition of

8   this. I think it's an open research question in trying to

9   think about candidates and coalitions and polarization.

10   Q.   Okay. And so you're adopting Mr. Trende's view of how you

11   define a candidate of choice, but are you offering that as

12   your opinion as if you had done this analysis completely on

13   your own the way you would want it done?

14   A.   No. I'm adopting all of Mr. Trende's methodology,

15   including his code, including many of the choices he made in

16   how to set up his analysis, choices like which racial and

17   ethnic groups to include, that we're talking about consistent

18   things rather than fighting with each other, talking past each

19   other, with a focus on methodology.

20   Q.   Okay. And the same question where maybe the

21   statistical -- where the statistical analysis would allow you

22   to conclude, for example, that a candidate with 41 percent of

23   the black vote was the first choice and a candidate with

24   37 percent of the black vote was the second choice. Is

25   that -- so your statistical test would allow you potentially

1   to make that distinction; is that right?

2   A.   Yes.

3   Q.   Okay. But is it also possible, then, that you need to

4   look at the difference between raw statistical significance

5   and substantive significance to determine if the black voter

6   in that election was cohesive or fractured?

7   A.   Yes. I think we could do further analysis of these

8   elections and think about what these results tell us about

9   black voting in these primaries.

10   Q.   Okay. So just applying a rule might not be the right way

11   to go? If you see a significance, then you definitely have

12   polarization; is that correct?

13   A.   I think that's generally true. I think this is a -- the

14   tables I have here are the correct statistical results and

15   then how you interpret it is, you know, a question of

16   interpretation.

17   Q.   All right. Just a few more questions. So, on cross

18   examination you were asked a series of questions to -- of

19   areas where there appeared to be disagreement for one reason

20   or another between you and Doctor Handley. Even giving effect

21   any of those disagreements, does that change your opinion as

22   to whether Mr. Trende identified -- or provided evidence that,

23   you know, a significant number of primary elections were

24   polarized?

25   A.   No.

1 Q.   Okay. And then we -- could we compare your results with

2 Doctor Handley's results and just by looking at the tables

3 determine if both of you agree that most primary contests in

4 this time period were not polarized?

5 A.   I think that's right.

6 Q.   Okay. And we talked about statistical significance. I

7 know the Court has asked you many questions, as has opposing

8 counsel and as have I. I just want to finish on maybe just a

9 very basic point.

10   If you're going to use a complicated statistical

11 model like ecological inference to base conclusions, is it

12 necessary to operate within the limitations of that model?

13 A.   Yes.

14 Q.   So if you draw conclusions beyond what the model is

15 designed to allow you to do, how could that affect your

16 results?

17 A.   They could be incorrect. In this case you could be

18 ascribing a much more certainty in drawing conclusions that

19 are not supported by your evidence.

20 Q.   In Mr. Trende's own work does he not use a 95 percent

21 level of statistical significance?

22 A.   Are you referring to something specific?

23 Q.   Well, his analysis reports 95 percent confidence

24 intervals, does it not?

25 A.   It does.

1   Q.   Okay. And I believe you mentioned he ran regressions in

2   his analysis, is that right, in other parts of the case?

3   A.   Yes. I believe he has talked about these levels of

4   confidence elsewhere in his report.

5   Q.   Okay. All right. And is one limitation on the ecological

6   inference model the need to assure statistical significance of

7   your results?

8   A.   I'm sorry, can you repeat that.

9   Q.   Sure. Is one, you know, limitation of the ecological

10   inference model the need to ensure that one's results are

11   statistically significant?

12   A.   That is certainly an important part of interpreting the

13   results.

14   Q.   Okay.

15   MR. LEWIS: I have no further questions, Your Honors.

16   JUDGE MALONEY: Mr. Pattwell.

17   MR. PATTWELL: I'm going to tell you what you want to

18   hear, and that is I have no further questions.

19   JUDGE MALONEY: All right. Thank you. Let me ask a

20   question of you. Has counsel conferred regarding length of

21   closing argument?

22   MR. PATTWELL: I think we still have one other

23   witness. Were you going to call --

24   MS. McKNIGHT: We're going to call one other witness,

25   Your Honor. We have not conferred yet, but we can confer

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 1    during the break if there's going to be a break.

 2                JUDGE MALONEY:  Who's the next witness?

 3                MR. BRADEN:  Kent Stigall.  My estimation, somewhat

 4    less than a hour on direct.

 5                JUDGE MALONEY:  We'll complete with the witness

 6    tonight.  Okay.

 7                MS. McKNIGHT:  Thank you, Your Honor.

 8                JUDGE MALONEY:  Rebuttal from the plaintiff, or don't

 9    you know?

10                MR. BURSCH:  Rebuttal witnesses?

11                JUDGE MALONEY:  Yes.

12                MR. BURSCH:  Unless we're completely shocked by this

13    last witness, no.

14                JUDGE MALONEY:  Thank you.

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

16          (Recess taken at 3:50 p.m.; reconvened at 4:07 p.m.)

17                THE CLERK:  All rise, please.  Court is in session.

18    You may be seated.

19                JUDGE MALONEY:  Back on the record in 22-272.  We are

20    ready to proceed.  The Commission may call its next witness.

21                MR. LEWIS:  Your Honor, just as a point -- I just

22    want to confirm that the prior witness was excused?

23                JUDGE MALONEY:  Oh, yes, I'm sorry.  Yes.  Thanks.

24                      (Witness excused at 4:07 p.m.)

25                JUDGE MALONEY:  With the Court's thanks.  Mr. Braden,
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1 go ahead, sir.

2   MR. BRADEN: Thank you very much. We would like to

3 call Kent Stigall.

4   JUDGE MALONEY: Please step forward, sir, and be

5 sworn.

6   *KENT STIGALL,*

7   *having been sworn by the Clerk at 4:07 p.m. testified as*

8   *follows:*

9   THE CLERK: Please be seated. State your full name

10 and spell your last name for the record, please.

11   THE WITNESS: Kent Stigall, S-T-I-G-A-L-L.

12   *DIRECT EXAMINATION*

13 BY MR. BRADEN:

14 Q.   Good afternoon.

15 A.   Good afternoon.

16 Q.   Can you provide the Court with your educational

17 background.

18 A.   I attended Virginia Commonwealth University.

19 Q.   And where are you currently employed?

20 A.   I'm retired. I retired from the state in 2020 with 30 --

21 almost 36 years.

22 Q.   And what's your prior professional experience with regard

23 to redistricting?

24 A.   You got a few minutes? Okay. So, it started in 1990. I

25 was working for Legislative Automated Systems, a state agency

1   as a programer analyst, and the general assembly decided to

2   have in-house redistricting system software, on a Wang mini

3   computer, I don't know if y'all remember it, so I started

4   learning GIS over the course of the next six, eight months.

5   We worked literally 70 to a hundred hours a week aggregating

6   data, aggregating census data, customizing reports, political

7   data. You all have heard about this aggregating the election

8   or precinct data down to the bloc level, reaggregateing up at

9   the level which you're drawing.

10   And that's where -- over the course of that I

11   assisted the general assembly, House, Democrats, Republicans,

12   independents, minority, majority party, they were all our

13   bosses.

14   Then that led to a lot of GI's application for the

15   legislature as an independent agency. And in 2001 I was hired

16   by Legislative Services, because now they wanted the computer

17   technology in their office. It's an agency or division of

18   lawyers that provide legislative services to the sitting

19   members.

20   JUDGE MALONEY: Mr. Pattwell, you are on your feet.

21   MR. PATTWELL: I didn't want to interrupt the

22   witness. I wanted to clarify this is a fact witness. Mr.

23   Stigall has not been identified as an expert witness and so I

24   just wanted to make sure that we're on the same page there.

25   MR. BRADEN: Yes. We proposed him as a fact witness.

1   Obviously he's an expert in the layman's sense of the word,

2   but we're not proposing him as an expert.

3   JUDGE MALONEY: All right.

4   BY MR. BRADEN:

5   Q.   Did you also work for a special master, court-appointed

6   master in Virginia? Maybe Doctor Grofman?

7   A.   Yes, I did. Prior to that, I was with Legislative

8   Services as a project manager, bought all the hardware,

9   software, traveled the country doing research on GIs

10   application that could handle redistricting.   That was

11   Autobound in 2001.

12   Q.   So you were the project manager in the senior --

13   A.   Senior GIS specialist.

14   Q.   In 2001 and in 2011?

15   MR. PATTWELL: I'm just going to place an objection

16   on the record at this point that the witness has not been

17   tendered as an expert. I'm not sure what the relevance of

18   this is. He was a mapping technician for the Commission.

19   MR. BRADEN: I think it's pretty straightforward. He

20   is going to be explaining the advice he gave to the

21   Commission, so by listening and understanding his experience,

22   you'll be better able to judge the quality of his explanation

23   of the advice he gave to them and the work he did for them.

24   JUDGE MALONEY: All right. Well, your objection is

25   on the record, Mr. Pattwell, and we'll take the testimony over

1   the objection for purposes of completion of the record. And

2   if you want to renew your objection at some -- in the papers,

3   I guess that's fine.

4   Go ahead, Mr. Braden.

5   BY MR. BRADEN:

6   Q.   So were you using the same -- the basic same software in

7   Virginia that was used by the Commission here?

8   A.   Yes. In 2001 and then again in 2011. And then in '15 and

9   '18, working for Bernard Grofman, Doctor Grofman. He was a

10   special master appointed by the Supreme Court of Virginia to

11   redraw the districts, so I've driven a lot of maps, worked

12   with a lot of people.

13   Q.   And when you left the legislature, did the legislature

14   pass a resolution honoring you for your work?

15   A.   Yes, sir. It was referred to as a commending resolution,

16   and it was about how I helped the legislators learn the

17   application, but also aggregating data and general programing

18   and system setup.

19   Q.   Is that fundamentally the same thing that you did for the

20   Commission here?

21   A.   Pretty much, yes.

22   MR. BRADEN: Can we pull up Defendant Exhibit 57?

23   BY MR. BRADEN:

24   Q.   Do you recognize this document?

25   A.   Yes, I do.

1   Q.   Can you tell the Court what it is?

2   A.   It's my -- where I've signed on with the Election Data

3   Services with their contract with Michigan Independent

4   Redistricting Commission.

5   Q.   We have exhibit books but I'm -- and we're happy to

6   provide them to the Court if the Court would find them useful.

7   JUDGE MALONEY: Okay.

8   BY MR. BRADEN:

9   Q.   Could you turn to page 93 of this document?

10   A.   Yes.

11   Q.   Okay. And just -- what is that page?

12   A.   That's essentially my resume for the Commission, accurate

13   as of two and a half years ago.

14   Q.   Yeah. And when were you hired by the Commission?

15   A.   It was either May or first of June, essentially when I

16   started working, of '21.

17   Q.   Did you get hired directly by the Commission or were you

18   hired by part of the team?

19   A.   I was hired by Election Data Services.

20   Q.   And I think the Court probably knows what Election Data

21   Services is, but could you just briefly describe the

22   organization, the business?

23   A.   We provided all the technical expertise, computers, and

24   data, built data sets for the Commission.

25   Q.   And was there a process of you getting hired? Can you

1   just describe what that was?

2   **A.**   Well, it actually was -- I've known Kim Brace with

3   Election Data Services for a couple of decades. I met him

4   through redistricting conferences, GIS work. I also -- the

5   developer/owner of Autobound I'd worked with for well over

6   20 years, and when Kim offered me the job, I conversed with

7   Fred first, Fred Hejazi, the owner of Autobound, and he asked

8   me if I would work with them, so after being assured Fred was

9   going to be in on the job, that's when I signed on with -- I

10   told Kim I would take the job.

11   Q.   Were you present at all the Commission meetings?

12   **A.**   I know I missed one, and that was in Traverse City, but I

13   don't recall missing entire meetings.

14   Q.   Okay. So, fundamentally, you were present with the

15   exception of Traverse City for all the Commissions' line

16   drawing activities?

17   **A.**   As far as I can recall.

18   Q.   And can you just briefly explain, if there's additional

19   information necessary, your understanding, your role for the

20   Commission?

21   **A.**   My role specifically was to -- I would be directed by the

22   Commission to draw districts as they told me to. I was not

23   doing any district drawing without their direct -- you know,

24   their direction. And then it was keeping the data up-to-date.

25   After every meeting whole plans, as directed by the

1   Commission, were posted to the website, assimilated that data

2   and --

3   Q.   Were you the only hired line drawer for the Commission?

4   A.   No, sir. It was myself, John Morgan, and Kim Brace very

5   little, but John Morgan did a good bit.

6   Q.   So not to get too colorful here, but I guess it is

7   Michigan, you're sort of the person with the mouse in your

8   hand clicking on the map?

9   A.   Yes. We drove -- the Commissioners individually in

10   committee meeting -- Commission meetings weren't drawing the

11   maps. They would tell us what to do and it was all, you know,

12   recorded and video'd.

13   MR. BRADEN: Okay. Can we pull up clip one from the

14   August 6, 2021, meeting? I believe the Commission has seen

15   this before. If we can just run it for a second here?

16   (4:18 p.m., audio played.)

17   MR. BRADEN: Can we just stop there?

18   BY MR. BRADEN:

19   Q.   Since you're from Virginia your voice sounds different

20   than the other folks.

21   A.   Yes, it does.

22   Q.   So am I safe to say that's you talking there?

23   A.   Yes.

24   Q.   And can you just describe what you're talking about here?

25   We see efficiency gap, but you were talking about aggregating

1   some other election materials.

2   **A.**   Yes.   It was just taking historical election data,

3   disaggregating it down so when you drew districts in the

4   future the historical election results would accumulate for

5   that new district.

6   This meeting was very early on and that's why we're

7   kind of explaining what will be available.   These members --

8   this is first of August, something like that, and none of

9   these people really had any idea what was available -- going

10   to be available to them or even what was going to happen.   You

11   know, they heard a lot, but the little building blocks that

12   put it altogether and accumulates, they didn't have any idea

13   what was coming their way.

14   Q.   Can you tell the Court what the building blocks are?

15   **A.**   Well, the building blocks for most every state is built on

16   the census data every 10 years, and the lowest level is the

17   census bloc, and then you'll have a VDD or precinct, and then

18   the next level is a locality.

19   Well, Michigan also has townships so that fits in

20   there.   And the sum of the blocs, you know, whatever data you

21   have at the precinct level, you have at the bloc level.   So

22   the sum of the blocs equals the sum of the precincts equals

23   the sum of the localities and the -- the sum of those equal

24   the state.

25   Q.   Let me see if -- this will help the Court understand the

1   process. Was -- were -- was and were, there's a big dispute

2   when you talk about data, but was data available, election

3   data available at the precinct and bloc levels for the

4   commissioners to examine in their line drawing process?

5   **A.**   Yes, absolutely. And I think it would be shown here in a

6   little while. Maybe not at this meeting because they aren't

7   actively drawing maps, we're just laying the ground work, but

8   shortly after they started drawing maps, or maybe before, they

9   had certain election data. 14 elections, actually.

10   **Q.**   So as an example, if -- am I correct at this time this is

11   really just a practice learning session?

12   **A.**   Yes. They started with -- it was practice data because

13   the census data wasn't in yet. They couldn't get, you know,

14   current stuff, it was the ACSI, which is the American

15   Community Survey from the Census Bureau, some data from Esri,

16   or E-S-R-I, and maybe some other data, but it gave them

17   something to start learning how to assemble districts.

18   **Q.**   So if I drew -- let me use an example and see if I'm

19   explaining it correctly. If I drew in this case a sample

20   district with geography but not including the census -- if I

21   drew a district here and I put in a precinct into that

22   district, I would in real-time be able to know what the vote

23   was -- let's use an example, what the vote was in the last

24   Presidential race, Trump versus Biden, of each of the pieces

25   you put in and how it affected each district you drew?

1   A.   Yes, sir.

2   Q.   And that was available to the members of the Commission

3   before they had the line drawing process?

4   A.   Yes. Before they -- I mean, when they started drawing it

5   was there -- or drawing plans with the census data.

6   Q.   And did the commissioners -- in your observation did the

7   commissioners use this data?

8   A.   Well, they -- I don't know what they were looking at at

9   first because they didn't know what they were looking at.

10   And, you know, it takes a while to kind of -- you're going to

11   see dozens of fields in front of you at one time, so just kind

12   of realizing what you need to be looking at, the geography on

13   the screen, and the data at the bottom.

14   Q.   Would it help if we brought up clip two -- if you can

15   bring up clip two, and then maybe we can pause the screen --

16   if the Court would think it is useful -- I think it would be

17   useful for the Court for him to explain the whole screen that

18   people would be seeing during the process and talk through

19   everything they could click on.

20   This is clip two. I believe this is a clip from

21   November 4th. Does that look accurate? It looks like the

22   normal sort of screen for this?

23   A.   Yes. I mean, I don't know exactly when this screen was

24   made, but that's typical of redistricting, you know, editing a

25   map.

1   Q.   Okay. Could you, before we even run it, could you just

2   sort of walk through some of the lines and basically what's

3   there for the Court, if the Court has some questions about

4   what all these screens do? They are kind of busy.

5   A.   Yes, sir. We're looking at three districts on the screen,

6   41, 34, and 42, and the underlying lines are census bloc lines

7   for the most part. Mixed in there are also township boundary,

8   locality boundaries -- I don't know what else may be turned on

9   because it's a lot of lines, but we're just sitting here, and

10   let's say we're going to edit 34. Well, right there in front

11   of you is District 34, the total population. This tab --

12   there's tabs down at the bottom like an Excel spreadsheet.

13   This tab called the overview is the basic -- you know, the

14   total population, it's the key ingredient to drawing

15   districts, you know.

16   Until you get the total population pretty close, you

17   know, you cannot -- your analysis of any kind of political

18   data or race data, you know, it just -- it's in the background

19   for a minute until you, you know, start getting your districts

20   about where you want them to be, but in front of you is racial

21   demographics and percent of total population and then the

22   voting age population and then racial demographics as a

23   percent of the voting population or VAP.

24   Q.   From this screen could an individual commissioner tab down

25   and look at actual election data?

1   A.   Yes, sir. The final tab on the bottom right, the election

2   results that we had.

3   MR. BRADEN: If you can just run a little more of the

4   clip? There should be some sound, I think.

5   *(4:26 p.m., audio played.)*

6   MR. BRADEN: Can we stop it for one second?

7   BY MR. BRADEN:

8   Q.   Am I correct the Magnolia becomes the plan that gets

9   passed?

10 A.   That's what -- I don't remember every single district and

11 every plan, but Magnolia was a lead-in to these others. I'm

12 sure the commissioners documented the sequence.

13   MR. BRADEN: If you can go forward.

14   *(4:26 p.m., audio played.)*

15   MR. BRADEN: Okay. If we could stop here.

16 BY MR. BRADEN:

17 Q.   Could you tell the Court what this screen is?

18 A.   Yes. This is the partisan report or analysis, and the

19 table on your left is, you know, pretty much self-explanatory

20 but it lists each district, the number of Democrat votes, the

21 number of Republicans votes, the total votes, the percent, you

22 know, red and blue, Republican and Democrat, and then on the

23 far right it is which party wins. So -- and I think there's

24 somewhere is a total. Well, I know there is.

25   But you can scan down there, and if you're, you know,

1 people building these districts, at this point they're

2 probably looking at two or three districts specifically

3 because they're going to edit them, get them where they -- and

4 then move on to the next district.

5 Q.   So are these the metrics that Doctor Handley provided to

6 the Court to be used on a statewide basis to examine partisan

7 fairness?

8 A.   I believe it is, because we had to incorporate this in

9 EDS. Fretta Gazzie (sp) had to get her report and her data

10 and work out exactly what it was and how it works and implant

11 it into the application so that it was being run whenever you

12 requested it.

13 Q.   And so Defendant Exhibit 2 --

14   MR. BRADEN: If you can bring up Defendant Exhibit 2,

15 please? Okay.

16 BY MR. BRADEN:

17 Q.   Can you tell the Court what this is?

18 A.   Yeah. This is another tab that was available -- well,

19 actually just maybe going across the previous tab, and you can

20 see she's running through the tabs now, but at the -- at

21 the -- this is just a total, but what I wanted to show you was

22 the --

23   MR. BRADEN: Yeah. If we can stop them when we have

24 all the --

25   THE WITNESS: -- elections --

1   MR. BRADEN: -- Election data --

2   COURT REPORTER: I'm sorry. Can you repeat that?

3   MR. PATTWELL: I'd like to place another objection on

4   the record. We obviously don't have access to their software.

5   This is Exhibit 2, which this is what we have, and to the

6   extent that they're going to go beyond the native file that we

7   were never really even able to open and start playing with the

8   website, I mean, that's -- that's not a disclosed exhibit.

9   MR. BRADEN: We provided this to them a week ago.

10   It's available on the website. They can log into it. I don't

11   know about their software abilities. I'm glad I don't have to

12   do it, but we have people who can do it. I assume they have

13   people that can do it, too.

14   This is in the public domain, was available, as you

15   can see on the video, and so they had access to it as did

16   everybody in the state of Michigan.

17   JUDGE KETHLEDGE: Did they know you were going to

18   manipulate it this afternoon?

19   MR. BRADEN: I would, in all honesty, not say it's

20   manipulation.

21   JUDGE KETHLEDGE: Whatever we're doing.

22   MR. BRADEN: Showing the different pieces of it. I

23   assume they would have thought we were going to show the

24   political data since that appears to be one of the fundamental

25   issues in dispute here.

1   JUDGE MALONEY: What went across the transom to the

2   plaintiff?

3   MR. BRADEN: Exactly?   We can probably pull it up.

4   MR. PATTWELL: I just point out that we advised

5   yesterday or the day before that we couldn't access what was

6   provided to us.

7   MR. BRADEN: It's a native Excel file that was

8   provided to them.   I did not realize that they were not

9   capable of opening up the file, so I just don't understand

10   where there would be a problem.   This is, again, something

11   available online in addition to them from us and we sent it to

12   them, and, again, these go through the tapes.   You'll see lots

13   of this.

14   MR. PATTWELL: We don't have the software.   We got

15   sent a file that was not capable of being opened.   They were

16   advised of it.   We were not given any advance notice that they

17   were going to start going through the software.   We don't have

18   the ability to do the same thing on cross.   It's not --

19   MR. BRADEN: It's available on the Commission's

20   website.

21   JUDGE MALONEY: But you were obligated to alert

22   plaintiff to what you were going to use, correct?

23   MR. BRADEN: No, I don't believe so.   We provided

24   them an exhibit telling them that we're going to use this

25   Excel file.

1   JUDGE MALONEY: And apparently 48 hours ago they had

2   advised you that they couldn't open it.

3   MS. McKNIGHT: No.

4   MR. BRADEN: That's the first I've heard of this,

5   standing here right this moment.

6   JUDGE MALONEY: How did that information get

7   across --

8   MR. PATTWELL: Right here. It was the other exhibit

9   and the other native file that -- in a previous witness.

10   MR. BRADEN: I have to admit that I'm flabbergasted

11   that they're unable to access the publicly available file of

12   the Commission that we told them we were going to be able --

13   we were planning on using.

14   And, to be candid with you, if -- I think this is a

15   very important point for the Court to understand. These

16   extended election data, which we've talked about repeatedly,

17   is clearly a fundamentally important point in this case.

18   There's an implication that this -- there was a pretext in

19   using political data. We had and they used -- political data

20   was coming out the Commission's ears.

21   JUDGE MALONEY: Well, but, Mr. Braden, if it's so

22   critical, why aren't the I's dotted and the T's crossed to

23   make sure the plaintiff has access to what you're going to

24   use. Just because it's on the public record -- would you

25   expect them to plow through the entire public record to get to

1   what you're doing now?

2   MS. McKNIGHT: Your Honor, may I? May I? Because

3   there are other attorneys who have handled productions in this

4   matter and it could shortcut some of the discussion.

5   JUDGE MALONEY: Go ahead.

6   MS. McKNIGHT: Thank you, Your Honor. On

7   October 30th the parties exchanged exhibits. On that date we

8   exchanged this marked as Exhibit DTX number 2. We exchanged

9   it as a native file. It is an Excel file, does not require

10   special software other than the Microsoft Word family of

11   products, which we understand they have.

12   We reached out to plaintiffs and said, if you have

13   any trouble opening this, let us know. They identified a

14   different document. They never identified this one. We were

15   never under an obligation to tell plaintiffs which exhibits we

16   would use today.

17   MR. PATTWELL: And if I may, it was -- I'm just

18   advised a different native file that we did advise on, except

19   I think where I lodged my objection was not the Excel

20   spreadsheet, it's when they're actually pulling up software

21   and, you know, running through the software that -- we don't

22   have access to that software to utilize that, so perhaps I

23   understood, but --

24   MS. McKNIGHT: It's okay, counsel. Let's make sure

25   we're very clear about what this is. This is the Hickory

1   matrix. It's all of the data in an Excel spreadsheet, so the

2   only software you need is the Excel program to open it.

3   The Commission posted on its website after the plans

4   were final public versions of this document. It's an Excel

5   file that any member of the public can go on and download and

6   look at this information. So it's not special software. It's

7   not weird data. It has to do with the Hickory matrix numbers

8   that the Commission put on its website months ago, if not

9   over, you know, years ago. And it's what we identified as an

10   exhibit for plaintiffs' counsel.

11   MR. PATTWELL: I'm going to withdraw the objection at

12   this time.

13   JUDGE MALONEY: Okay. That makes it easy. Go ahead,

14   Mr. Braden.

15   BY MR. BRADEN:

16   Q.   Kent -- Mr. Stigall, can you just very briefly -- and

17   we'll go on quickly because I think the point is easily made,

18   could you simply just tell the Court what this is and what

19   this shows and how many fields are here of election data?

20   A.   So, this plan has been completed so it -- the numbers work

21   well, so that's -- line one, District 1 is showing you that

22   district vote is 92.6 percent Democrat, 7.4 percent

23   Republican. Those numbers come from these presidential races

24   2016 and '12 with -- the first two columns is Biden's election

25   results, whole number and percentage, Trump 2020. The next

1   column is Clinton and Trump in '16. The next column is Obama

2   and Romney in '12. That's showing you, you know, each race's

3   result for the new District 1, and as you scroll to your

4   right, there's more of these races. There's a total of 14

5   races up here that were discussed. So now we have the Senate

6   2020, 2018, 2014, and 2012 races. I don't know all the

7   people. I may not say their names exactly right, but we have

8   Peters and Jamison (sic) in '20. We have Stabenow and James

9   in '18. We have Peters and Land in '14. And then I guess

10   Stabenow and Hoekstra again in '12.

11   Q.   And, again, I may be --

12   A.   There's more to the right.

13   Q.   Yep.

14   A.   Just scroll more until we got all of them. So just to

15   make it shorter, here's the governor 2018 and '24 (sic), the

16   Democrat and Republican candidates for 2018 and then 2014, and

17   then attorney general, 2018, 2014, and again the Democrat and

18   the Republican candidates for each of those years.

19   The pound sign there is just that column is narrow,

20   and that's what Excel does, so if they widen that column, the

21   numbers come through there. It's not a thing. It's just make

22   the column -- anyway, we can move on to the secretary of

23   state, 2018, 2014, the Democrat and Republican candidates in

24   each of those respective years, and then the governor

25   Democratic primary and the candidates in the primary.

1   Q.   And am I correct that this data set was available to the

2   commissioners before the line drawing process began in

3   earnest?

4   A.   I can't say exactly when it was there. It was there

5   fairly early. The thing about the line drawing process, that

6   first third of line drawing, they were just learning it, just

7   learning how to operate the software, and then they go through

8   a phase where -- you got 13 people. Not all of them but some

9   of them start getting a grip on it, so now they know how to

10 draw districts, and then everybody catches up, but still they

11 haven't gotten to Detroit yet, and, you know, they're

12 learning, but it was certainly there long before Detroit or

13 even maybe the middle of the first real plan, not the practice

14 stuff.

15 Q.   And from your observation do you have any reason to doubt

16 that there weren't commissioners looking at this data?

17 A.   I'm certain there was. Should have been, once they

18 learned how to go across the tabs and look at everything.

19 Q.   Okay.

20   MR. BRADEN: Can we pull up Defendant Exhibit DX2?

21 Okay. Can we go -- go here -- let me see. Okay. Okay.

22 Let's turn back to clip number two, the November 4th meeting

23 again.

24   (4:40 p.m., audio played.)

25 BY MR. BRADEN:

1 Q.   Okay.   And that was your voice we were hearing there?

2 A.   Yes.   Mine and Commissioner Szetela spoke, because she was

3 writing down the numbers, MC Rothhorn started out speaking.

4 Q.   And is the little clip similar to -- if we went through

5 the Commission's record, would we see -- be able to pull out a

6 number of clips exactly like this?

7 A.   Every single plan --

8   MR. PATTWELL: I'm going to object on form and

9 hearsay.

10   MR. BRADEN: I don't know that it's hearsay since he

11 was sitting there in the meetings.

12   JUDGE MALONEY: I agree. Go ahead. Overruled.

13 BY MR. BRADEN:

14 Q.   This is a common occurrence in the meetings you were at?

15 A.   Yes. This was run on every plan, especially once a plan

16 was anywhere near whole or completed. You know, it's not

17 something you're going to look at when you've only done one or

18 two districts in the upper UP because the significance of it

19 doesn't weigh.

20 Q.   And do you have any reason based upon your experience

21 being in the room and hearing the discussions and moving the

22 mouse around that political data in this matrix were in any

23 way some type of proxy for race?

24   MR. PATTWELL: Objection, form, calls for

25 speculation.

1   JUDGE MALONEY: I'm sustaining that objection.

2   MR. BRADEN: Okay.

3   BY MR. BRADEN:

4   Q.   Did you hear -- do you have any reason to believe that

5   there was any other reason they -- did you hear anyone say

6   that this material was for any other use than partisan

7   fairness?

8   MR. PATTWELL: Objection, hearsay.

9   MR. BRADEN: That's not hearsay. I'm only asking him

10 what he heard. I'm not asking him as to the truth of the

11 statements.

12   JUDGE MALONEY: So you're asking whether that was

13 uttered?

14   MR. BRADEN: Yes. In the room.

15   JUDGE MALONEY: Okay.

16   MR. BRADEN: He was in the room during virtually

17 every discussion so we're trying to find out whether people

18 were present saying, I'm doing something else with this other

19 than politics.

20   MR. PATTWELL: Over a three-month period that he was

21 at half the meetings?

22   MR. BRADEN: First of all, that's a

23 mischaracterization. He said he was at every meeting to the

24 best of his recollection but one, so that's a misstatement. I

25 don't know -- it seems quite likely to me that you could

1   remember someone was talking about something that wasn't --

2   was off target.

3   JUDGE MALONEY: This is important, why?

4   MR. BRADEN: Because they're arguing that partisan

5   fairness and some of the other things, such as community of

6   interest, were a proxy for race. They, in fact, made that

7   argument, and we're trying to explain that present in the room

8   doing the line drawing with somebody listening to the

9   discussion --

10   JUDGE MALONEY: And everything that happened during

11   the meeting is in the record already, correct?

12   MR. BRADEN: Yes.

13   JUDGE MALONEY: That's sufficient, isn't it?

14   MR. BRADEN: I think it's sufficient. We're just

15   trying to save you having to listen to the 3,000 hours of

16   tape.

17   JUDGE MALONEY: Fine. But this -- this witness'

18   opinion on the subject matter that you're trying to get to, I

19   don't think is appropriate, so the record of the Commission is

20   the record of the Commission.

21   MR. BRADEN: Okay. Could we pull up clip number

22   three from November 4th?

23   *(4:45 p.m., audio played.)*

24   MR. BRADEN: Let's stop for a second. Can we pause

25   it for a second? If you want -- he can identify at the end, I

1 think would be most sufficient, or do you want me to identify

2 at the beginning? This is a clip that we're going to show of

3 him drawing plans.

4   JUDGE MALONEY: You said clip, November 6th, right?

5   MR. BRADEN: November 4th.

6   JUDGE MALONEY: November 4th. As far as I'm

7 concerned, that's sufficient. Go ahead.

8   MR. BRADEN: We'll run it.

9   *(4:45 p.m., audio played.)*

10 BY MR. BRADEN:

11 Q.   And so in that clip can you briefly explain what you were

12 doing? That is your voice, correct?

13 A.   Yes, sir.

14 Q.   And there was a discussion of various areas and

15 communities. Can you just fill in on that discussion of what

16 was going on?

17 A.   Yes. This is Detroit. The black lines there are the

18 neighborhoods that the Commission was provided, I believe from

19 the city, and we put into the application, so you could turn

20 this layer on at any time. There had been discussion about,

21 you know, now that they have this layer they want to make

22 neighborhoods whole as much as they can, so now the

23 commissioners from Detroit are leading me -- or telling me,

24 you know, let's go find these split neighborhoods and unsplit

25 them to the best of their ability, and we're moving census

1   blocs in here.   That's what those little blocks were with

2   population numbers, so those were just the total population

3   numbers you saw momentarily.

4   Q.   And that's illustrated in the demonstrative next to you.

5   So, is this an effort -- your understanding,

6   participating in this process, did you understand this to be

7   an effort to keep communities of interest together?

8   A.   Yes.   That is said all through the video clip.   The

9   members are saying it, I believe, the commissioners.

10 Q.   Okay.   And you were attempting to follow the directions of

11 them to keep together Bangalore communities, is that an

12 example of one?

13 A.   Well, there was -- yeah.   I found out -- it was

14 interesting to me, but anyway, it was Bangalore, there was

15 Middle Eastern, Arab communities, Chaldean communities, and

16 some others, quite diverse, in different parts of Chicago

17 (sic) and that's -- was involved in making whole

18 neighborhoods.

19 Q.   Did the Commission use this neighborhood --

20   JUDGE NEFF: Chicago or Detroit?

21   THE WITNESS: Did I say Chicago?   My apologies.   I

22 never worked in Chicago either.

23   JUDGE KETHLEDGE: The Midwest.

24   THE WITNESS: Yeah.   Y'all are all the same.

25 BY MR. BRADEN:

1 Q.   Did the Commission use the neighborhood overlay often?

2 A.   Yes.   Once it was available they would -- it was applied

3 to every map that they looked at, as far as I can remember.

4 Q.   So did you understand your direction from the Commission

5 here and you are, in fact, trying to unify neighborhoods using

6 this matrix of this -- these neighborhood lines?

7   MR. PATTWELL: Objection, form.

8   THE WITNESS: Yes.

9   MR. BRADEN: I'm trying to have him express what he

10 thought he was being directed to do.

11   MR. PATTWELL: That's very compound in, like, 30,000

12 different ways.

13   JUDGE MALONEY: In light of the objection, why don't

14 you rephrase. Go ahead.

15   MR. BRADEN: Sure.

16 BY MR. BRADEN:

17 Q.   What -- how did the Commission -- how were you using this

18 line -- these lines in your process at the direction of the

19 Commission?

20 A.   Well, when a district crossed over a neighborhood boundary

21 and split what appeared to be a boundary -- a neighborhood

22 boundary, they would look at it, and then I would move those

23 few census blocs, like you see on the screen right here, to

24 the district they desired it to be in, so the neighborhood

25 would be in one entire district.

1 Q.   When the -- were there occasions where the Commission had

2 to split neighborhoods based upon population?

3 A.   Oh, absolutely.

4 Q.   And when they did that, did they attempt to follow natural

5 boundaries or roads?

6 A.   The best I can recall, and, you know, in an urban area

7 like this it's predominantly roads, but there are parks and

8 school areas and they used institutional knowledge and -- you

9 know, they would discuss where they wanted something to go and

10 then tell me where to put that census bloc.

11 Q.   Commissioner Szetela testified that the use of communities

12 of interest was a pretext for race. Did you see any

13 indication in the work you were doing that it was a pretext

14 for race?

15 A.   That was never mentioned, that I can recall.

16 Q.   Were you present for Commissioner Eid's testimony?

17 A.   Yes, sir.

18 Q.   Do you recall Commissioner Eid speaking about the LGBTQ

19 community between Palmer Park, Palmer Woods, Ferndale, Royal

20 Oak in District 7 of the Hickory plan?

21 A.   I can't recall exactly which district it was, but as far

22 as talking about keeping that community whole, yes.

23 Q.   Would it help you if we brought up Defendant Exhibit 7 --

24 or District 7 on Defendant Exhibit 4? Can you recognize this

25 map?

1   A.   Yes, sir.

2   Q.   And can you tell the Court what it is?

3   A.   It's District 7 of the House plan named Hickory, and the

4   lower half of seven is Wayne County and the northern half is

5   in Oakland and --

6   Q.   And is that the green dividing line?

7   A.   Yeah. That's 8 Mile, right? Yes. Yes, it is.

8   Q.   And do you know, remember -- you were the one working

9   on -- you worked on actually creating this plan and making the

10   clips, right?

11   A.   Yes.

12   Q.   Okay. And so are there parts of the -- that community on

13   both sides of 8 Mile?

14   A.   And that's the way I understood it from Commissioner Eid.

15   Q.   Okay. Let's pull up -- yeah.

16   JUDGE KETHLEDGE: Sir, I'm sorry. Are we just

17   reiterating through another witness testimony we've already

18   heard?

19   MR. BRADEN: To some extent that's true, because we

20   have contradictory testimony from one of the commissioners

21   whose credibility we think is subject to doubt based upon

22   conflicting testimony which he would provide.

23   MR. PATTWELL: And our position is any conflict can

24   simply be resolved by looking through the transcripts, or if

25   they wanted to call other commissioners they could have done

1   that, but to have a third party come in and say what somebody

2   else said when we've got a public record is just ludicrous and

3   I've objected constantly.

4   JUDGE MALONEY: Counsel, do we really need this,

5   seriously?

6   MR. BRADEN: The answer is we don't need to go

7   through all of it, and I wasn't actually going to go through

8   all of it. I only have actually one more district I would

9   like to bring up to which he has something unique to talk

10   about.

11   JUDGE KETHLEDGE: Deal. I'm sorry, I don't mean to

12   take over. We're not going through all of these again.

13   MR. BRADEN: No, no. I'll represent something

14   useless to represent. He's going to say the same thing you

15   were expecting he was going to say about all those other ones,

16   but that I won't go to.

17   Let's go to District 8 in the Linden plan, if we can

18   bring that up on the screen. It's Exhibit 7.

19   BY MR. BRADEN:

20   Q.   And I will ask -- we'll try something a little different

21   here, can -- do you recognize this?

22   A.   Yes, I do.

23   Q.   And are there -- there seems to be some questions about

24   the irregular shape of this district. Could you explain why

25   this district is shaped the way it is in the northern part of

1   the district?

2   MR. PATTWELL: Same objection, hearsay. He's not a

3   commissioner.

4   MR. BRADEN: It's certainly not hearsay if he was the

5   one who was asked to click on it and, in fact, part of that

6   clicking on process is him discussing with them and advising

7   them on how they would do certain things, such as keeping

8   political subdivisions together. So it's not hearsay for him

9   to say exactly what he was doing at the direction of the

10   Commission.

11   JUDGE MALONEY: Okay. Go ahead.

12   THE WITNESS: Okay. In this instance I think this

13   was a district that was identified as somebody --

14   commissioner -- somebody calling it funny shaped. Well, it's

15   not unusual to hear something like that, but in this case that

16   top left-hand corner, all those irregular protuberances and

17   indentations, that is actually the boundary of Birmingham.

18   It's not splitting off into other townships, it's just that.

19   So if you're going to keep -- if you want to keep something

20   whole, you have -- it is what it is. If it's shaped like

21   that, there it is.

22   And then you can also look at and see that some of

23   these township boundaries, which are in magenta, are

24   irregularly shaped. I can't see through the black lines, but

25   I think those are likely township boundaries.

1 BY MR. BRADEN:

2 Q.   So is there anything here, this unusual shape would

3 indicate to the Court anything other than trying to follow

4 political subdivision boundaries?

5 A.   That is political subdivision boundaries.

6 Q.   Okay. I think we identified, you worked for the

7 Legislative Service Division of Virginia, correct?

8 A.   Yes, sir.

9 Q.   And you drew maps for both Republicans and Democrats?

10 A.   Yes.

11 Q.   Was that process quite similar to the job you had here in

12 many ways?

13 A.   Very much so.

14 Q.   Yeah. And were you the actual line drawer on the map that

15 was rejected by the Supreme Court in *Bethune Hill* as a racial

16 gerrymander?

17 A.   In that case I didn't draw all those boundaries, per se.

18 The members, the joint assembly members were -- you know,

19 brought me a plan, we put it in, and in Virginia it was like

20 bill drafting. It was a bill, and then as they edited it and

21 amended it, I made those edits for them and, yes, I was

22 involved on that plan.

23 Q.   And did that map have a voting -- black voting age

24 population target of 55 percent?

25 A.   Yes, sir.

1   Q.   And it's your understanding that's the reason why the

2   Supreme Court tossed it out?

3   A.   I think that was clearly written.

4   Q.   And is your experience here in regards to the use of race,

5   was there any target you were aware of --

6   MR. PATTWELL: Objection. Same objection.

7   MR. BRADEN: I don't know how you could actually

8   participate in advising the Commission unless you knew -- if

9   they had a target, you had to know it.

10   JUDGE MALONEY: Sustained.

11   BY MR. BRADEN:

12   Q.   When you were drawing the plans, did people, commissioners

13   specifically ask you to do certain things in drawing the

14   districts? Click on a certain precinct or seek to unify a

15   particular community?

16   A.   Yes, they would.

17   Q.   Did they talk to you about trying to deal with raising --

18   affecting actions -- actions to affect partisan fairness?

19   A.   They -- yes, they would -- were looking at and telling me

20   to do things to move the partisan fairness numbers, yes.

21   Q.   Okay. And did anybody advise you to move any census bloc

22   or any precinct based upon a racial target?

23   MR. PATTWELL: Same objection.

24   JUDGE MALONEY: We've been there. I sustained that,

25   right?

1   MR. PATTWELL: He said he had one more question and

2 now he's continuing to do it.

3   JUDGE MALONEY: Well, I never hold lawyers to one

4 question even when they say they only have one more question.

5 I know that's not in the rules of evidence, but I've sustained

6 this inquiry before so --

7   MR. BRADEN: Okay. I will -- we'll stop there.

8   JUDGE MALONEY: Mr. Pattwell.

9   *CROSS EXAMINATION*

10 BY MR. PATTWELL:

11 Q.   Very pleased to meet you, Mr. Stigall. Am I pronouncing

12 your name correctly?

13 A.   Stigall, yes.

14 Q.   Thank you. You had a role in preparing the neighborhood

15 overlay?

16 A.   I just put it in the application so that they could

17 utilize it.

18 Q.   If you look over your left shoulder, is that an example of

19 what was utilized?

20 A.   Yes, I believe so.

21 Q.   And, to your knowledge, are all these neighborhoods within

22 the City of Detroit?

23 A.   I don't have that -- I don't know.

24 Q.   Okay.

25 A.   I just did what they told me to do.

1   Q.   You talked briefly about the software, and we saw a

2   version of the software.   Could you describe what racial data

3   and reference points were included in the software?

4   A.   It displayed some of the census data results, accumulated

5   race categories -- I can't name them all right now, but that

6   census data was in there, yes.

7   Q.   How about -- we've heard about the BVAP tables and we've

8   seen those today, correct?

9   A.   Yes, sir.

10   Q.   How about racial dots, ring a bell?

11   A.   Dots as in --

12   Q.   Was that a term that you were familiar with the

13   commissioners asking you to call up and look at the African

14   American thematic?

15   A.   Yeah, yeah.

16   Q.   And can you describe what that was?

17   A.   That was -- I don't remember actually doing the African

18   American one.   What I remember doing -- and I may very well

19   have, but anyway, it doesn't matter.   Based on some

20   parameters, the size of dot would reflect the population in a

21   census bloc.   I remember it being more of showing, like, the

22   Hispanic or some other ethnicity.

23   Q.   Not the black population?

24   A.   I -- no.

25   Q.   Let's see.

1   MR. PATTWELL: If we can pull up PX140B at page 29.

2   BY MR. PATTWELL:

3   Q.   I'd like to direct your attention to that highlighted

4   language up at the top.

5   A.   Yes.

6   Q.   That highlighted language up at the top. Is that the

7   thematic map I just asked you about?

8   A.   In that paragraph? I don't know. I'm going to highlight

9   that region you spoke of and not assign it, but the

10   highlighted numbers will at least show you how many people are

11   there.

12   Q.   Okay. Well, if you look down at the next line you say,

13   significant black population, do you not?

14   A.   Yeah. Okay. Then it was the black population.

15   Q.   Yep. And if we go down further we see Commissioner

16   Rothhorn. We can assume it's going to be a high black

17   population or a large and significant; do you see that?

18   A.   That appears to be what Commissioner Rothhorn said.

19   Q.   And the Commission is actively working on maps at this

20   time, correct?

21   A.   I don't know what the date of this transcript is, but I

22   would --

23   Q.   I would tell you it's September 21st --

24   A.   Okay.

25   Q.   -- 2021. Do you recall that?

1   A.   I was there so much -- I mean, I was there, yes.

2   Q.   And the Commission was drafting House maps at that time,

3   correct, sir?

4   A.   I guess, if that's what this is referring to.

5   Q.   If we can turn to 82, please. I'd like to direct your

6   attention up to the top. Commissioner Lett, he says, So we're

7   looking at 25 percent white, 63 percent non-Hispanic black,

8   75 percent total minority. Do you know what Commissioner

9   Lett's talking about there?

10   A.   He is talking about why non-Hispanic black, 75 percent

11   total minority.

12   Q.   He's identifying that there's a very large black

13   population that everyone is looking at in this mapping

14   session, is he not?

15   A.   I mean, I don't know, because if it's -- he's talking

16   about a census bloc with eight people in it, then 75 percent

17   is not a high number.

18   Q.   Okay. So we see Commissioner Orton is trying to be

19   helpful. She says, maybe the African American theme would

20   help that. Would that be the African American racial dot

21   feature on your mapping software, sir?

22   A.   Could be, yeah. Probably.

23   Q.   Commissioner Lett says, Sure, the dots, please. And then

24   Commissioner Clark says, Yeah, you will find Eastpoint to be

25   predominantly African American. Do you see that?

1   A.   Yes.

2   Q.   This was -- this racial software was a way that the

3   commissioners could visualize how significant the black

4   population was as they were moving the lines; yes?

5   A.   Is that a question?

6   Q.   It is.

7   A.   I don't know what they were thinking.

8   Q.   Oh. So we see that Commissioner Rothhorn is talking about

9   Eastpoint; gee, he says, Even though it's African American --

10 wait, no. He says, Mr. Lett, Eastpoint does identify with

11 Detroit, so to not put it with Detroit maybe, even though it's

12 African American, I don't think we want to sort of cut it off

13 from Detroit. So if you move east -- do you see that language

14 there? Do you recall that?

15 A.   No. I got so many hours sitting behind that computer, I

16 really didn't listen to a lot of conversations. I didn't

17 listen to conversations.

18 Q.   Okay. I'd like to move on to page 88. Do we see in this

19 transcript another example of a commissioner calling for your

20 African American dot theme?

21 A.   Where is that at?

22 Q.   The highlighted language where it says, Commissioner

23 Orton, right under Mr. Kent Stigall?

24 A.   Yes, she does. The commissioner makes that statement.

25 Q.   And how is she using the racial dot theme that you put

1   into the software?

2   A.   She's looking at it.

3   Q.   I think she tells us, if you look at that highlighted

4   language -- I would like to read it to you. So it looks to me

5   like in order to try to balance it more racially we would have

6   to split this into two and do two spokes up. Do you see that?

7   A.   Yes.

8   Q.   And she's gathering that information from looking at your

9   racial dot software, is she not?

10   A.   Yes.

11   Q.   Thank you. If we could turn to page 122. Is this an

12   example of Commissioner Rothhorn using your African American

13   dots?

14   A.   Well, they're not mine. I didn't do anything in this

15   application that -- so they're not mine per se. They're

16   census data representations.

17   Q.   You created that -- helped create that software, though,

18   this application that the commissioners would utilize?

19   A.   I would move data in as requested or display it as

20   requested.

21   Q.   I'd like to pull up the next day, so we're moving on to

22   September 22nd now. This is PX140-C, and I'd like to start on

23   page 22. The highlight of that language, is this another

24   example of Commissioner Orton calling for the racial dots?

25   A.   Let's see here. I don't know that because it's thematic

1   dots, but exactly which ones.

2   Q.   Well, she says, I'm wondering if the thematic dots would

3   help so that if we can see moving west would give us some more

4   balanced population because we have pretty high non-Hispanic

5   black population right now. She's saying the black population

6   is too high, we need to go west, we're going to use your dots,

7   correct?

8   A.   I mean, that's what it appears to say in the transcripts.

9   Q.   Okay. And then Chair Szetela say, can we put up the

10   thematic dots for the African American population?

11   I'd like to move down. I'm going to skip a little

12   bit here. I'd like to move down to page -- go to page 30,

13   please.

14   So the commissioners would take turns doing their

15   mapping session, right?

16   A.   At times, yes.

17   Q.   So here it looks like it might be Chair Szetela's turn.

18   What does the Chair Szetela say to MC?

19   A.   MC says to put up the thematic dots again.

20   Q.   What do you think those are?

21   A.   Thematic dots.

22   Q.   And then Commissioner Szetela says, he was teasing me

23   because he said, do you want to put them up and Szetela says,

24   no, I don't need them, but then she says, well, we need them

25   so okay, laughter. Do you see that?

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

2   Q.   Why do you think they needed to see the racial dots?

3   **A.**   Speculation on my part.

4   Q.   Sure. But we're going to find out. Let's look at the --

5   MR. BURSCH: Bottom of the page.

6   MS. GREEN: Bottom of the page.

7   MR. PATTWELL: Scroll all the way down. There it is.

8   BY MR. PATTWELL:

9   Q.   Commissioner Clark, take them out of Detroit and add in

10   Huntington Woods, what is the logic for that, and Chair

11   Szetela says trying to balance the population black and white;

12   do you see that?

13   **A.**   Yes.

14   Q.   I'd like to skip a few here and go to down to page 57.

15   Are we on page 57? Great. And you see Commissioner Lett, he

16   calls for the African American dots up in this mapping

17   session, do you see that?

18   **A.**   Yes.

19   Q.   And then we see Mr. Adelson chimes in, he says -- he says,

20   thank you, Commissioner Orton; do you see that?

21   **A.**   Yes.

22   Q.   And he's talking about the difference between the BVAP and

23   population, do you see that?

24   **A.**   That's what it says.

25   Q.   That's not, of course, to say the overall population isn't

1 important, but what I do when I look at these, my eyes go to

2 the VAP first. Then I will look at the overall to get

3 additional content. Do you see that?

4 **A.**   That's what it says.

5 Q.   Okay.

6   MR. PATTWELL: I don't have any further questions.

7 Thank you.

8   JUDGE MALONEY: Mr. Braden.

9   MR. BRADEN: It's after five. I have no further

10 questions.

11   JUDGE MALONEY: Thank you. Mr. Stigall, you may step

12 down with the Court's thanks.

13   THE WITNESS: Thank you.

14   *(Witness excused at 5:12 p.m.)*

15   JUDGE MALONEY: Does the Commission rest?

16   MR. BRADEN: The Commission rests.

17   JUDGE MALONEY: Any rebuttal from the plaintiff?

18   MR. PATTWELL: The party -- the counsel for the

19 parties agreed we were going to discuss tonight the moving of

20 certain exhibits into the record, and we would do that in the

21 morning. Is that okay, Your Honor?

22   JUDGE MALONEY: That's fine.

23   MR. PATTWELL: Great.

24   JUDGE MALONEY: You have no witnesses?

25   MR. PATTWELL: No. We do rest, yes.

1   JUDGE MALONEY: All right. Thank you. All right.

2 You were to have a discussion about closing argument. Trust

3 me, the Court has a particular view about that, but go ahead,

4 Ms. McKnight.

5   MS. McKNIGHT: Your Honor, we expect only to need

6 about 15 or 20 minutes. We understand that plaintiffs are

7 looking for more than that.

8   MR. BURSCH: We had proposed an hour. We can still

9 get you out of here by lunch.

10   JUDGE MALONEY: Okay. 45 minutes.

11   JUDGE KETHLEDGE: Each side or per --

12   JUDGE MALONEY: Each side gets 45. You get 45 total.

13   MR. BURSCH: Yes. For opening and rebuttal,

14 understood.

15   JUDGE MALONEY: Exactly.

16   MR. BURSCH: Thank you, Judge.

17   JUDGE MALONEY: We're going to start -- just the kind

18 of guy I am, Mr. Bursch. We'll start -- we'll give you a

19 little extra coffee tomorrow, so we're going to start at 9:30,

20 okay?

21   Now, I'm going to ask -- post trial briefs are due

22 December 4th. I'm going to ask my colleagues whether there's

23 any particular issues that they would like to have the parties

24 address during the course of the trial briefs. Judge Neff?

25   JUDGE NEFF: Let me look at my notes a minute.

1   JUDGE MALONEY: Judge Kethledge --

2   JUDGE KETHLEDGE: Yes.

3   JUDGE MALONEY: -- while Judge Neff reviews her

4   notes.

5   JUDGE KETHLEDGE: I'm not aware of another case in

6   which the Court had to determine the existence or not of black

7   voter cohesion in Democrat -- or in a primary. This may be

8   the first case where a Court has to determine what cohesion is

9   in a primary with more than two candidates, and so I would

10   like the parties to brief in their post trial briefing what

11   they think the legal standard ought to be for determining the

12   existence of cohesion under *Gingles* precondition two in a

13   primary where there are more than two candidates.

14   JUDGE NEFF: Did you want to add to that also, Judge

15   Kethledge, where the -- where the primary is the final word,

16   where the primary is the election, essentially?

17   JUDGE KETHLEDGE: And that's fine. That is this

18   case, I think, undisputedly, so, sure.

19   JUDGE MALONEY: All right. Very good.

20   JUDGE NEFF: I have one thing -- I just have a

21   request.

22   JUDGE MALONEY: Judge Neff.

23   JUDGE NEFF: I think that in litigation like this,

24   and we've heard it for the last, what, five days, there's a

25   lot at stake, and we all know that, and it often results in

1   bringing out the -- not the best of us in terms of how we

2   treat each other, and I have noticed in briefs over the many

3   years that I've been reading briefs that the ones that don't

4   get into personality or attacking one expert or party or

5   another are the ones that are the most persuasive.

6   Just stick to what we have to do decide. I mean, we

7   have some things here to decide that are very important and I

8   don't want to be picking through complaints or allegations.

9   Just keep it civil, okay? That's all.

10   JUDGE MALONEY: All right. We'll --

11   MR. BURSCH: One clarification. Is there a word

12 limit on the opposing brief?

13   JUDGE MALONEY: Two and a half pages. No.

14   MR. BURSCH: How big is the page?

15   JUDGE NEFF: There should be. Definitely should be a

16 limit.

17   JUDGE MALONEY: Okay.

18   JUDGE NEFF: 25 pages.

19   JUDGE MALONEY: 25? Okay.

20   MR. BURSCH: All of that in 25?

21   JUDGE KETHLEDGE: What's the word limit at the Court

22 of Appeals these days?

23   MR. BURSCH: In the Sixth Circuit it's 13,000 words.

24   JUDGE KETHLEDGE: Don't you think 10 would be ample

25 here?

1   MR. BURSCH: I think 10,000 words sounds just right.

2   JUDGE KETHLEDGE: You okay with that?

3   MS. McKNIGHT: Yes, Your Honor.

4   JUDGE MALONEY: We'll stick with that.

5   JUDGE KETHLEDGE: Okay. 10,000 words. You don't

6 have to use them all. Shorter is often a better document.

7   JUDGE MALONEY: All right. We'll see you at 9:30

8 tomorrow. Thank you.

9   THE CLERK: All rise, please. Court is adjourned.

10   *(Whereupon, hearing concluded at 5:17 p.m.)*

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