

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4 ALPHA PHI ALPHA FRATERNITY,) DAY 3 - P.M. SESSION
 INC., ET AL.,)
 5 PLAINTIFFS,)
 6 -VS-) DOCKET NO. 1:21-CV-05337-SCJ
 7 BRAD RAFFENSPERGER,)
 8 DEFENDANT.)

9 COAKLEY PENDERGRASS,)
 ET AL.,)
 10 PLAINTIFFS,) DOCKET NO. 1:21-CV-5339-SCJ
 11 -VS-)
 12 BRAD RAFFENSPERGER, ET AL.,)
 13 DEFENDANTS.)

14 ANNIE LOIS GRANT, ET AL.,)
 15 PLAINTIFFS,) DOCKET NO. 1:22-CV-00122-SCJ
 16 -VS-)
 17 BRAD RAFFENSPERGER, ET AL.,)
 18 DEFENDANTS.)

19
20 TRANSCRIPT OF BENCH TRIAL
21 BEFORE THE HONORABLE STEVE C. JONES
22 UNITED STATES DISTRICT JUDGE
23 THURSDAY, SEPTEMBER 7, 2023

24 **STENOGRAPHICALLY RECORDED BY:**

25 PENNY PRITTY COUDRIET, RPR, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
ATLANTA, GEORGIA

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1 (PROCEEDINGS HELD IN OPEN COURT AT 1:42 P.M.,
2 ATLANTA, GEORGIA.)

3 THE COURT: You-all can be seated. Hope everyone had
4 a good lunch.

5 Mr. Tyson, you can proceed.

6 MR. TYSON: Thank you, Your Honor.

7 I know everyone is excited to have me and Mr. Cooper
8 talking about maps again. I do have some slides that I've
9 supplied to opposing counsel. I'll hand them up if that's all
10 right?

11 THE COURT: That's all right. Yes.

12 CROSS-EXAMINATION

13 BY MR. TYSON:

14 Q. Good afternoon, Mr. Cooper.

15 A. Good afternoon.

16 Q. I know for everybody's benefit today us talking as slowly
17 and directly as we can and not talking over each other is
18 going to make life easiest for everyone. It may put people to
19 sleep after lunch, but I guess we'll see.

20 A. I imagine so.

21 Q. That's a danger we'll have to encounter.

22 A. Including me.

23 Q. So, Mr. Cooper, I want to begin today talking about a
24 case where you previously submitted an expert report in a
25 Section 2 challenge to Georgia's congressional districts.

1 Do you recall the case of *Dwight v. Kemp*?

2 A. I do.

3 Q. And in that case, do you recall submitting an expert --

4 (Technical interruption.)

5 BY MR. TYSON:

6 Q. So, Mr. Cooper, in the *Dwight* case you submitted an
7 expert report that said Georgia should have drawn an
8 additional majority Black district on its 2011 congressional
9 plan; right?

10 A. I don't know if I said should, but could have drawn.

11 Q. Thank you. That's a reasonable correction.

12 If you could take the exhibit notebook that's in front of
13 you and turn to tab 2.

14 A. Yes.

15 Q. And if you could look at that document, is this a copy of
16 the expert report that you submitted in the *Dwight v. Kemp*
17 case?

18 A. It would appear to be a report that I wrote in 2018
19 maybe, is that -- yes, I think it is the *Dwight v. Kemp* report
20 written in December of 2018.

21 MR. TYSON: And, Your Honor, we would move the
22 admission of this report. And I apologize that I gave away my
23 exhibit notebook and don't have the number on the front of
24 tab 2.

25 THE COURT: Defendant's Exhibit 21.

1 MR. TYSON: Defendant's Exhibit 21 into evidence.

2 THE COURT: Any objections?

3 MS. KHANNA: No objection, Your Honor.

4 THE COURT: It's admitted without objections.

5 (Defendant's Exhibit 21 was admitted and marked into
6 evidence.)

7 MR. TYSON: Thank you.

8 BY MR. TYSON:

9 Q. So, Mr. Cooper, if you could turn to page 4 on the blue
10 numbers at the top of the report.

11 A. At the top of the report? Yes.

12 Q. And the sentence there that's beginning at the top of
13 that page, this report analyzed whether there was sufficient
14 Black population to allow for the creation of a majority Black
15 congressional district in Central and Southeast Georgia;
16 right?

17 A. Yes.

18 Q. And in paragraph 7, you say that in the Dwight case you
19 specifically excluded looking at counties within the Atlanta
20 MSA and the Athens MSA; correct?

21 A. Yes.

22 Q. And that was because you were trying to minimize changes
23 to that plan, the existing plan?

24 A. That, and this was a more rural area of the state, so it
25 seemed preferable not to have an encroachment on Athens or

1 Atlanta, which were metropolitan statistical areas.

2 Q. And turning to page 15 of that report and Figure 6, you
3 relied in part for your conclusions on the growth in Black
4 population from 2000 to 2010 in Central and Southeast Georgia;
5 correct?

6 A. In what paragraph are you referencing?

7 Q. Paragraph 36 and Figure 6.

8 A. Yes.

9 Q. And ultimately with this report you created two
10 congressional plans that drew new -- a new majority Black
11 congressional district by joining African-American communities
12 in Macon, Augusta and Savannah. And I'm referring to
13 paragraph 63 of your report.

14 A. Yes.

15 Q. And in preparing this report in the Dwight case I didn't
16 find any reference to the Black Belt. Do you recall including
17 that as part of your analysis?

18 A. I don't think I would have, because congressional plans
19 encompass populations. I guess in this case it would have
20 been a population over 700,000; right? I don't have the
21 numbers -- I have the numbers here somewhere, but I need to
22 find them.

23 Q. And in this case, the Pendergrass case, you only looked
24 at adding an additional majority Black congressional district
25 in Metro Atlanta, not anywhere else in the state; is that

1 correct?

2 A. I think the request was to look at the whole state, but
3 it was clear that all the population growth, or 80 percent or
4 more of the Black population growth since 2010 has occurred in
5 Metro Atlanta. So that's where I focused. And it proved to
6 be very easy to create the new additional majority Black
7 district in Metro Atlanta as opposed to some other part of the
8 state.

9 Q. And at the time of the Dwight case, Congresswoman McBath
10 had been elected from Congressional District 6; right?

11 MS. KHANNA: Objection, Your Honor. This is beyond
12 the scope of his report. He doesn't opine on how districts
13 have performed or for whom they've been -- they're elected.

14 THE COURT: I'm not quite -- state that objection
15 again.

16 MS. KHANNA: Mr. Cooper is a *Gingles* 1 expert who
17 deals in demographics and census data. While he in his lay
18 capacity may know who represents these various districts,
19 that's not part of his analysis in this case and it's not part
20 of his expert testimony in this case.

21 MR. TYSON: And, Your Honor, I'm simply looking here
22 for the decision-making process that went into Mr. Cooper's
23 decision to focus on Atlanta versus another part of the state.
24 And I think a relevant consideration to that is when
25 Congresswoman McBath was elected, the plan looked outside of

1 metro for a new Black district.

2 When she lost the election or actually moved into
3 District 7 and District 6 became Republican, then Mr. Cooper's
4 next report focused on Metro Atlanta as a place for a new
5 Black majority district.

6 THE COURT: Mr. Tyson, if you keep it to the reason
7 why he moved from North Georgia in 2018 to -- I mean, South
8 Georgia in 2018 to North Georgia in 2019 -- 2021, I'll allow
9 that, Ms. Khanna, but I won't allow you to get into anything
10 outside the scope, that's really like on the borderline of the
11 scope. But I -- if he keeps it to that, I'll allow him to do
12 that.

13 MS. KHANNA: Thank you, Your Honor.

14 MR. TYSON: Understood. Thank you, Your Honor.

15 BY MR. TYSON:

16 Q. So, Mr. Cooper, just so we're clear, in 2018, 2019 when
17 you submitted this report in the Dwight case, you drew a new
18 majority Black district in Eastern Georgia. In the 2021
19 report and 2022 reports you submitted in Pendergrass, you drew
20 a new majority Black district in Metro Atlanta; right?

21 A. Yes.

22 Q. So let's move into the process of drawing congressional
23 districts this cycle. And I've included on the screen two
24 exhibits from your report, Exhibits E and G. And this is the
25 2011 congressional plan and the 2021 congressional plan.

1 And before we get into this, Mr. Cooper, the exhibits
2 that you've attached to your expert report in this case
3 summarize the data that you relied on in forming your opinions
4 in this case; right?

5 A. Yes.

6 Q. And I just want to compare briefly, looking at the 2011
7 plan versus the 2021 plan, as you did in your report, South
8 Georgia remained, would you say, largely similar between 2011
9 and 2021?

10 A. Well, there are three districts that would be identified,
11 three, arguably four, that would be identified with South
12 Georgia, part of Macon-Bibb area in the 2011 plan was in a
13 district that extends to South Georgia. And the same holds
14 true in the 2021 plan.

15 Q. And on both plans in Metro Atlanta, Congressional
16 District 11 includes a cut kind of through the middle of Cobb
17 County, would you say?

18 A. The middle of Cobb County and extending up into Cherokee
19 County and Barrow County, I think; is that right? Yes.

20 Q. And, Mr. Cooper, if you could just try as much as you can
21 with your microphone. I know you're looking at the screen and
22 trying to see things back and forth, but answering in the
23 microphone would be most helpful for everybody.

24 A. Right. Sorry.

25 Q. And District 14 in 2011 had a piece of Pickens County,

1 but in 2021 Pickens County is made whole; correct?

2 A. Well, regarding Pickens County and which congressional
3 district?

4 Q. So just pointing here, 2011 Pickens County is split.
5 2021 Pickens County is whole; right?

6 A. Yes.

7 Q. And the 13th District on both plans includes portions of
8 Cobb, Douglas, Fulton, Fayette, Clayton and Henry Counties;
9 right?

10 A. Yes.

11 Q. And the 5th District is centered primarily on Fulton
12 County on both plans?

13 A. Yes.

14 Q. And the 4th District is centered primarily on DeKalb
15 County in both plans?

16 A. Yes.

17 Q. And would you agree that the most significant change was
18 to District 6, with it moving substantially north up to Dawson
19 County on the 2021 plan?

20 A. I think that is probable. I can't give you figures off
21 the top of my head, but that would seem to be correct.

22 Q. Mr. Cooper, I'd like to move next to your illustrative
23 plan side by side with the 2021 plan. And I know we talked
24 about this earlier in terms of which districts were changed
25 and which ones were not. But this is a plan that you're

1 offering today that is different from the illustrative plan
2 you offered with the preliminary injunction proceeding; right?

3 A. Yes. That was based on 2010 census data and the plan was
4 drawn about five years ago.

5 Q. And as we covered earlier, three of the districts you did
6 not change are Districts 2, 5 and 7; right?

7 A. In the illustrative plan, vis-à-vis the 2021 plan, well,
8 I held six constant. And so there are more than just those
9 three.

10 Q. I'm aware there are more --

11 A. Right.

12 Q. -- but I'm just asking specifically, 2, 5 and 7, are
13 three of the six districts that you did not change; right?

14 A. Yes, that's correct.

15 Q. And all of those districts, 2, 5 and 7, currently elect
16 Black Democrats; correct?

17 MS. KHANNA: Objection, Your Honor. Again, this is
18 about the performance and the election of candidates out of
19 these districts which, while Mr. Cooper may know it in his lay
20 capacity, is not part of his expertise in this case. We have
21 performance experts who have testified, who will testify, but
22 Mr. Cooper's not one of them.

23 THE COURT: But that's what Mr. Tyson's -- Mr. Tyson
24 is trying to show that race was predominated. That's where
25 I'm reading these questions are going, but you answer for

1 yourself.

2 MR. TYSON: Yes, Your Honor. What I was trying to
3 get at is the districts that are already electing Black
4 Democratic members of Congress were excluded from the
5 analytical process. Mr. Cooper focused on a district that was
6 electing a Republican.

7 THE COURT: I'm going to allow the question over
8 objection.

9 MS. KHANNA: Thank you, Your Honor.

10 BY MR. TYSON:

11 Q. So, Mr. Cooper, you would agree that Districts 2, 5 and 7
12 are currently electing Black Democratic members of Congress;
13 right?

14 A. Well, I'm speaking as a layperson and so I am aware of
15 that.

16 Q. And District 7 is not a majority Black district; correct?

17 A. It is not.

18 Q. And in creating your report, you did not offer any
19 changes to District 7. You instead only offered a new
20 majority Black district as District 6; right?

21 A. Well, that's correct. I tried to keep as many districts
22 whole as in the enacted plan as I possibly could. But due to
23 the ripple effect, you know, maybe there would have been
24 another way to do it and change District 7. I did not exhaust
25 all possibilities. But the illustrative plan as drawn keeps

1 Congressional District 7 whole as it is in the enacted plan.

2 Q. You would agree that every district that touches
3 District 7 was altered on the illustrative plan; right?

4 A. I believe so. I -- I mean, certainly in some fashion;
5 right?

6 Q. And, Mr. Cooper, again, looking at these side by side as
7 to District 6 on the illustrative plan, you'd agree with me
8 that it appears most of the population of Fulton County that
9 you've placed in District 6 was already in majority Black
10 District 13 on the enacted plan; correct?

11 A. It would have been in District 13 under the 2010 plan,
12 right, or the 2011 plan.

13 Q. And Douglas County, or at least a portion of it, was in
14 District 13 on the enacted plan; correct?

15 A. Yes.

16 Q. And at least a portion of Cobb County that you've
17 included in District 6 on the illustrative plan was also in
18 majority Black District 13 on the enacted plan; right?

19 A. Yes.

20 Q. District 13 on the enacted plan does not include any
21 portion of DeKalb, Rockdale or Newton Counties; right?

22 A. It does not.

23 Q. Mr. Cooper, you talked with Ms. Khanna earlier about the
24 Atlanta MSA.

25 Do you recall that conversation?

1 A. Yes.

2 Q. And looking at the black line of the Atlanta MSA on your
3 illustrative plan, you'd agree that District 14, District 9,
4 District 10 and District 3 both include counties that are in
5 the Atlanta MSA and counties that are outside the Atlanta MSA;
6 correct?

7 A. Yes.

8 Q. And I know it's difficult to see on this particular view,
9 but you've also added a split of Cobb County by bringing
10 District 3 into part of Western Cobb; correct? I can get to a
11 closer zoom if that would help.

12 A. Well, yes. I did bring in a portion of District 3 into
13 Cobb County. All of that is in the process of balancing the
14 many different traditional redistricting principles, one of
15 which is population equality. So holding all your districts
16 constant, it became necessary to add a split -- well, to have
17 three splits of Cobb County rather than two, because it's
18 certainly possible just to have two splits of Cobb County.

19 Q. And as you were drawing the illustrative congressional
20 plan, you would sometimes display demographic information,
21 including racial makeup of component parts of areas you were
22 drawing; right?

23 A. I had information about the district-level totals, but I
24 was not examining the county components of those totals.

25 Q. Did you utilize your dots that you've discussed to mark

1 precincts that were greater than 30 percent Black?

2 A. Yes, I would have --

3 Q. And that -- I'm sorry.

4 A. Yes.

5 Q. And that would have been information displayed on the
6 screen as you were drawing the plan; right?

7 A. Yes. Not necessarily the population numbers, because I'm
8 not constantly looking at that, but I would have seen
9 precincts that were 30 percent or more Black on screen most of
10 the time, but not always.

11 Q. And in drawing the illustrative plan here, like in the
12 Alpha case, you did not have any election return data to use;
13 correct?

14 A. I did not.

15 Q. So, Mr. Cooper, looking here at the 2011 6th District and
16 the 6th District on the illustrative plan, you'd agree that
17 6th District on the illustrative plan contains almost no
18 population that the legislature included in District 6 -- I'm
19 sorry -- that was included in District 6 on the 2011 plan;
20 right?

21 A. Are we looking at the 2011 plan in the other panel or
22 what?

23 Q. So just to orient you, Mr. Cooper, the map on the left is
24 your Exhibit E, plan Congress 12. And on the right is the
25 picture from page 82 of your report, which is the illustrative

1 District 6.

2 A. Yes. And this is my exhibit, but the map itself was
3 prepared by the State, just to clarify.

4 THE COURT: Prepared by mistake?

5 THE WITNESS: By the State, State Office of -- what
6 is it called? Redistricting office, I guess, reapportionment
7 office.

8 BY MR. TYSON:

9 Q. But you would agree that illustrative District 6 contains
10 almost none of the population that was contained on District 6
11 on the 2011 plan; correct?

12 A. I think it's true, there was sort of a switch there.
13 District 6 was moved further north in the enacted plan than
14 where it had been under the 2012 benchmark plan.

15 Q. Mr. Cooper, you discussed with Ms. Khanna a line at
16 page -- paragraph 44 of your report that one of the ways you
17 knew you could draw additional majority -- an additional
18 majority Black congressional district is because there were
19 four State Senate districts near the area where you drew the
20 district; right?

21 A. Yes. And that was not a difficult thing to know, because
22 I was also simultaneously working on the legislative plan for
23 the Alpha Phi Alpha plaintiffs, so I had that information from
24 the get-go in the fall of 2021.

25 Q. And, Mr. Cooper, in looking at Figure 10 from your

1 report, these are the four State Senate districts you were
2 referring to; right?

3 A. Yes.

4 Q. And you'd agree that District 33 in Cobb County is not a
5 majority Black district; right?

6 A. No. It is a racially diverse district of about
7 43 percent Black population.

8 Q. Okay. And District 35 is encompassed within illustrative
9 Congressional District 6; right?

10 A. Yes.

11 Q. And Districts 38 and 39 only include basically the very
12 southern ends of those districts in the area encompassed in
13 illustrative District 6; right?

14 A. Yes. Recall that Congressional District 5 in the
15 illustrative plan and Congressional District 5 in the enacted
16 plan are identical. So that part of Fulton County is
17 essentially not changed. District number might change, but
18 it's not changed. The core population there stays together.

19 Q. And none of those four State Senate districts include any
20 part of Fayette County; right?

21 A. They did not, but, again, recall that in order to create
22 the illustrative District 13, I needed to remove some
23 population from Fayette County and put it into the Cobb County
24 illustrative District 6, Cobb County, Fulton and Douglas
25 County illustrative District 6. And so approximately 4500

1 people in Fayette County were placed into Congressional
2 District 6 under the illustrative plan.

3 Q. And none of these four State Senate districts go as far
4 north as Kennesaw in Cobb County; correct?

5 A. They do not.

6 Q. And you've also made Douglas County whole on this plan, I
7 think as we discussed, by bringing a portion of District 3
8 into Cobb County; right?

9 A. Yes.

10 Q. In your report at paragraph 72, you say that the dividing
11 line between illustrative District 6 and District 13 generally
12 follows the municipal boundary of Tyrone.

13 Do you recall that?

14 A. Yes.

15 Q. It actually splits the city of Tyrone; right?

16 A. In places, yes.

17 Q. So the city of Tyrone is not whole in illustrative
18 District 6; correct?

19 A. Correct. I believe that's the case. It's been some time
20 since I've looked at that part of the map.

21 Q. Mr. Cooper, on paragraph 59, you say that you included
22 district assignments by county population as Exhibit I3 of
23 your report; right?

24 A. Yes.

25 Q. And that report would show the population and the racial

1 makeup of each portion of the county you included in a
2 district on the illustrative plan; right?

3 A. Yes.

4 Q. So if you could turn to Exhibit I3 of your report.

5 A. Well, I'm in your -- oh, in my -- well, let me -- this is
6 my report; right? Okay.

7 Q. It's the same report. So whichever copy you'd like to
8 use, you're welcome to.

9 A. Either way, I've got to kind of fumble around and look
10 for it. I will get to it in a moment.

11 I'm at Exhibit I3.

12 Q. And the first page of Exhibit I3 indicates that it's a
13 report for the illustrative plan; right?

14 A. Yes.

15 Q. If you turn to the second and subsequent pages, what plan
16 name is referenced on that exhibit?

17 A. November 14, GA Congress, which is the illustrative plan.

18 Q. So it's your testimony that the November 14 GA Congress
19 is not the benchmark plan, it's the illustrative plan; right?

20 A. It is the illustrative plan, right. I mean, this is a
21 planned component report for the illustrative plan.

22 Q. So just so we're clear, the naming convention November 14
23 GA Congress refers to the illustrative plan?

24 A. Yes, it should.

25 Q. So, Mr. Cooper, if you'll turn to page 8 of that report,

1 or you can review what's on the screen if you'd like to, this
2 is the planned components report for District 6; correct?

3 A. Yes. Is that my report or someone else's?

4 Q. That's from Exhibit I3. You're welcome to --

5 A. Right.

6 Q. -- check me with the printed copy.

7 A. Right.

8 Q. In reviewing the components of illustrative District 6,
9 the Fulton County portion is 88.29 percent Black; correct? On
10 voting age population?

11 A. Voting age population it would be 88.29 percent.

12 Q. And you'd agree with me that on voting age population,
13 none of the other components of District 6 are majority Black;
14 correct?

15 A. I would agree with that. The Douglas County portion is
16 49.23 percent.

17 Q. And you'd agree that Cobb County is the largest county in
18 illustrative District 6, correct?

19 A. Yes.

20 Q. And the portion of Cobb that is included in District 6 is
21 37.40 percent AP Black VAP; right?

22 A. Yes.

23 Q. And is it your understanding that the western part of
24 Douglas County is more rural than the eastern part of Douglas
25 County?

1 A. Yes, but it's -- you know, it's still one of the 11 core
2 counties in the Atlanta Regional Commission. So there are
3 connections to more suburban and exurban areas.

4 Q. And, Mr. Cooper, as you testified earlier, illustrative
5 District 6 is 50.23 percent voting age population any part
6 Black; right?

7 A. Yes.

8 Q. And the only portion of a county that's majority Black on
9 VAP in illustrative District 6 is Fulton County; right?

10 A. That would be correct.

11 Q. What did you consider to be the geographically compact
12 minority community or Black community encompassed in
13 illustrative District 6?

14 A. Well, it is the area that is defined by District 6. It
15 starts in -- basically in Fulton County, with significant
16 Black population throughout. It may not be as concentrated
17 Black population as one finds in the southwest corner of
18 Fulton County, but there is significant Black population
19 throughout that district.

20 Q. You'd agree that if the heavily Black portion of Fulton
21 County was not included in illustrative 6, it wouldn't be a
22 majority Black district; correct?

23 A. Well, yes. But you could make the same kind of statement
24 about just about any majority Black district. There's no way
25 you could draw a district that would magically encompass

1 50.2 percent Black population throughout as a homogenous Black
2 district.

3 Q. And you'd agree that in the Fulton portion of this
4 district, you have the heaviest Black concentration. And then
5 in the largest county, you have the second smallest Black
6 concentration; right?

7 A. I think that is correct, but it's a meaningful
8 population, a meaningful Black population. In other words,
9 it's obvious that a lot of Black people live there. And in
10 absolute numbers, you can see that Cobb County has 175,000
11 Black persons in that portion of District 6. And Fulton
12 County has 146,000. So in absolute numbers, Cobb County wins,
13 but it's not as Black overall as the Fulton County portion.

14 Q. And so just to go with what you were pointing out,
15 109,000 of the 123,000 approximately voting age population
16 Black individuals -- I'm sorry, let me start this over.

17 In the Fulton County portion included in illustrative
18 District 6, you'd included 123,766 individuals of voting age;
19 right?

20 A. Yes.

21 Q. And of that 123,766, 109,273 are any part Black voting
22 age individuals; right?

23 A. Yes, voting age. I gave you total population because you
24 have to -- we have to have population equality independent of
25 the voting age population.

1 Q. Certainly. And then in Cobb County, there are 131,674
2 any part Black individuals of voting age; correct?

3 A. Yes. Again, more persons of -- who are Black and of
4 voting age are in the Cobb County portion of Congressional
5 District 6.

6 Q. But that's out of 352,053 individuals of voting age in
7 Cobb; correct?

8 A. Oh, correct.

9 Q. And you'd agree that illustrative District 6 contains
10 three split counties and one whole county; right?

11 A. I would agree to that. One of them is a necessary split
12 for deviation purposes unrelated to CD6. Of course, there's a
13 ripple effect throughout the plan, but were it possible to
14 have a higher one-person, one-vote deviation than plus or
15 minus one, then perhaps Fayette County portion could have been
16 cut out and one could have picked up other parts of Cobb
17 County.

18 Q. But you didn't attempt that on this plan; right?

19 A. I didn't. Again, partly because I was trying to hold, at
20 least in this case, six districts constant, so that's not to
21 say that it wouldn't be possible. But I would probably have
22 had to change more than just the six districts to accomplish
23 that.

24 Q. And can you identify any communities of interest between
25 Fairburn and Union City in the south side of illustrative

1 District 6 and Kennesaw in the north part of District 6?

2 A. That area is part of suburban Atlanta. And if you ask
3 somebody -- if you're in Virginia and ask somebody where are
4 you from and that person happens to be from Fairburn, they're
5 probably going to say I'm from the Atlanta area. And if you
6 ask somebody from Marietta, they might just say Atlanta area
7 because everybody knows where Atlanta is.

8 And the distance between Fairburn and Marietta is pretty
9 inconsequential really if you're just driving along. I've
10 sort of driven that route myself. I got lost, because I'm not
11 Fairburn or Douglas County and so it takes me longer. But
12 it's like same neighborhood almost, speaking in terms of
13 congressional districts. Because as I think I may have
14 mentioned in this deposition we had or in another one, there
15 are some congressional districts that are really quite large,
16 like, say, Wyoming, right.

17 Q. And this district is configured to be a majority Black
18 district; correct?

19 A. It was configured to demonstrate that the first *Gingles*
20 precondition could be met.

21 Q. Mr. Cooper, I just want to look briefly at a slightly
22 different District 6 that you offered in your illustrative --
23 preliminary injunction proceeding. Can you turn to tab 3 of
24 the notebook that's in front of you? I'm sorry.

25 A. Tab 3?

1 Q. Yes, sir. It's going to be deeper in.

2 A. Oh, it's way in here. Yes, okay.

3 Q. And what's the exhibit number on that one?

4 A. It says Exhibit 1.

5 Q. Does the blue label say Exhibit 1? I'm sorry,
6 Mr. Cooper.

7 THE COURT: 154.

8 MR. TYSON: 54?

9 THE COURT: 154.

10 MR. TYSON: 154. Thank you, Your Honor. I
11 apologize. Gave away my last notebook.

12 THE WITNESS: Oh, I see now. Yes. I see the
13 Exhibit 154.

14 BY MR. TYSON:

15 Q. Mr. Cooper, is this the preliminary injunction report
16 that you offered in this case?

17 A. I'll have to look at the date of it. Dated January 12th,
18 2022, so this would have been the one I used in the
19 preliminary injunction hearing.

20 MR. TYSON: And, Your Honor, we'd move the admission
21 of Defendant's Exhibit 154.

22 MS. KHANNA: No objection, Your Honor. Also my
23 understanding is it's in the preliminary injunction record
24 already, so...

25 THE COURT: Yeah, just a number change. In the

1 injunction I think it's No. 2. So it's admitted without
2 objection.

3 (Defendant's Exhibit 154 admitted and marked into
4 evidence.)

5 MR. TYSON: Thank you.

6 BY MR. TYSON:

7 Q. So, Mr. Cooper, if you turn to page 21 of that report.

8 THE COURT: Mr. Tyson, hold on one second. I think
9 the court reporter is having a connection problem that you
10 don't know about.

11 (Pause in the proceedings.)

12 THE COURT: Go ahead, Mr. Tyson. Sorry.

13 MR. TYSON: Thank you, Your Honor.

14 BY MR. TYSON:

15 Q. So, Mr. Cooper, if you could turn to page 21 of the
16 preliminary injunction report and look at Figure 8.

17 Do you see that?

18 A. Yes.

19 Q. And the plan you submitted for the preliminary injunction
20 split Douglas County; correct?

21 A. Yes.

22 Q. And as you discussed with Ms. Khanna, it also contained a
23 different split of Cobb County than the one you're offering
24 now; right?

25 A. Yes.

1 Q. Do you know if you would be able to alter the split in
2 North Cobb County from Figure 8 of your preliminary injunction
3 plan without bringing District 3 into Cobb County and achieve
4 a majority Black status of District 6?

5 A. It's very likely.

6 Q. It's correct that the Black voting age population on both
7 illustrative District 6 on the preliminary injunction plan and
8 illustrative District 6 that you're offering in your report
9 now is the same; right?

10 A. I believe so. I'm a little surprised it is exactly the
11 same. Is there a typo in there?

12 Q. If you want to check me on this, you can go to page 22 of
13 your --

14 A. I see it, yes, I see it.

15 Q. Okay. And so you'd agree it's the same number?

16 A. Apparently so. I was not aiming to get the same number,
17 but it appears that happened.

18 Q. So it's your testimony it just happened to be the exact
19 same number on the Black voting age population?

20 A. Yes. Of course.

21 Q. Mr. Cooper, let me move to paragraph 68 of your report.
22 And you criticize the 2021 plan for, as you say, it
23 inexplicably mixes Appalachian North Georgia with
24 urban/suburban Metro Atlanta; correct?

25 A. Okay. So we're back in my 2003 declaration.

1 Q. Oh, I apologize, Mr. Cooper. Yes, we're back to your
2 2003 declaration. We're finished with your preliminary
3 injunction declaration.

4 A. Okay. And what paragraph are you referencing?

5 Q. Paragraph 68 on -- I believe it's page 27.

6 A. Yes.

7 Q. And so just so we're clear, you criticize the enacted
8 plan because you say it inexplicably mixes Appalachian North
9 Georgia with urban/suburban Metro Atlanta; correct?

10 A. Correct.

11 Q. And you have not submitted an illustrative plan that made
12 fewer changes to other districts than this one; right?

13 A. I have not submitted a plan that holds more than six
14 districts constant. I kept six districts whole in the
15 preliminary injunction hearing and I kept six districts whole
16 in this illustrative plan; right.

17 Q. So, Mr. Cooper, do any of the districts on the
18 illustrative plan that you altered mix parts of rural Georgia
19 with urban/suburban Metro Atlanta?

20 A. Parts of?

21 Q. Rural Georgia.

22 A. Well, District 3 would include, for example, Upson
23 County, which I suppose would be arguably rural.

24 Q. So you would agree that District 3 on the illustrative
25 plan includes urban /suburban Metro Atlanta mixed with rural

1 population; right?

2 A. Yes. I don't think that's anything unusual, though,
3 given that we're working with districts that are large in
4 terms of population, 765,000. So I think it's almost
5 inevitable that at some point you're going to be mixing urban
6 and some more rural areas. I mean, it just is almost
7 unavoidable. What does seem to me to be un -- what does seem
8 to be avoidable was the four-way split in Cobb County that is
9 in the enacted plan.

10 Q. Would it be --

11 A. It just doesn't make any sense to me at all that you
12 would slice Cobb County and put part of that county in
13 District 14 and put them in a district that would extend all
14 the way to Chattanooga. It just doesn't make sense to me. I
15 mean, there may be a rationale there that I don't understand.

16 Q. But you'd agree that the illustrative plan places a
17 portion of Cobb County in a district that runs all the way
18 down to Columbus; right?

19 A. Yes. But that's not as crazy as putting it in the
20 Appalachian district in my opinion.

21 Q. And what is the basis for that opinion?

22 A. There's Appalachia and there is Central Georgia. And if
23 push comes to shove, Cobb County is probably a better fit for
24 Central Georgia. I mean, there is Kennesaw Mountain, so maybe
25 there's a connection to Appalachia there, but basically I'm

1 satisfied with the way CD3 is constructed under the
2 illustrative plan.

3 Q. And to follow up on that, what is the basis for your
4 conclusion that Cobb County would have a more close connection
5 to Columbus than to Appalachia?

6 A. It's really closer to Columbus, I think. Just travel
7 time it -- Congressional District 3 doesn't extend as far
8 southwest, I don't think, as District 14 would extend
9 northwest.

10 Q. So --

11 A. District 13 almost goes east of the Chattahoochee,
12 doesn't it? I mean, it's -- as drawn in the illustrative
13 plan -- I'm not looking at it -- but it extends pretty far
14 west, I think, or -- east over the top half -- top portion of
15 the state and Appalachia.

16 Q. And, Mr. Cooper, I placed the enacted plan back on the
17 screen on the left from your Exhibit G. And what were you
18 referring to --

19 A. Oh, okay. I retract that statement, then. It does not
20 extend east of Chattahoochee.

21 Q. And so it's your belief that Western Cobb County is
22 closer to Columbus than to North Georgia?

23 A. I think so. I mean, it's a close call.

24 Q. But that was your basis?

25 A. I mean, the north -- northwest corner of Georgia is, you

1 know, a -- parts of it are suburbs of Chattanooga, which is
2 not really in Georgia. And the south portion of Congressional
3 District 3 is in Georgia around Columbus. I don't really see
4 a problem with that, but be that as it may.

5 Q. I'm sorry.

6 A. Be that as it may.

7 And I'm not saying that the illustrative plan is the only
8 way to construct a plan that would have a majority Black
9 district in Fulton, Douglas and Cobb County.

10 Q. And you would agree that the illustrative plan in
11 District 10 connects majority Black Hancock County with the
12 Appalachian Mountains in Northwest Georgia; right?

13 A. I would. And one could, I'm certain, extend District 14
14 further east to pick up towns in Rabun County so that the
15 entire northern tier of Congressional District 14 would be in
16 District 14. That would require other changes to District 14,
17 like, say, splitting part of Floyd County, but that could
18 easily be done.

19 Q. But you haven't offered that plan here; right?

20 A. I've developed one that I didn't get -- I didn't actually
21 produce it all the way down to perfect deviation, but there's
22 no question that can be done because I've done it. It's just
23 not an exhibit in this case.

24 Q. Are you aware of where any mountain ranges are along the
25 north Tennessee border with Georgia?

1 A. Basically, yes. I mean, it's rugged country.

2 Q. Do you know if you crossed a particular mountain range in
3 the configuration of District 14 on the illustrative plan?

4 A. I may well have.

5 Q. And, ultimately, Mr. Cooper, you had to reconfigure the
6 eight districts you reconfigured in order to create the new --
7 what you're calling the new majority Black District 6;
8 correct?

9 A. I changed eight districts, that's right.

10 Q. And last question on the urban to rural areas. Looking
11 at illustrative Exhibit 13 you would agree it connects urban
12 areas in Clayton with rural areas in Fayette, Spalding, Butts
13 and Jasper Counties; right?

14 A. It would include a southern part of Clayton County that
15 would be suburban, perhaps more urbanized. And it would
16 extend into an area that still was in the Atlanta MSA. So
17 it's, I think, appropriate to do that.

18 Q. Mr. Cooper, are you aware that the only majority Black
19 VAP portions of District 13, as you've configured it, are in
20 Newton and Clayton County per your Exhibit I3?

21 A. Yes. Generally speaking, it's not a surprise. But as
22 I've suggested, when you're constructing a district that has
23 765,000 people in it, it's not going to be evenly distributed
24 so that all people are -- wherever you look, are roughly
25 50 percent Black. There are towns that are predominantly

1 Black, towns that are predominantly white, towns that are
2 racially diverse. So it is what it is. And I have no
3 concerns at all about the way I've drawn the illustrative
4 plan.

5 Q. And so you'd agree that on illustrative District 6 and
6 illustrative District 13 you've included higher white
7 concentrations of voters with more heavily Black
8 concentrations of voters; right?

9 A. Well, and that's the way the state of Georgia is; right?
10 I mean, it doesn't add up to me that I could somehow avoid
11 that in drawing a congressional plan. Maybe you can enlighten
12 me on that, but I think that's just an inevitability, that
13 certain parts of counties are going to be racially mixed, some
14 are going to be predominantly white, some predominantly Black.

15 Q. So, Mr. Cooper, just kind of circling back to
16 paragraph 68 of your report. When you criticize the
17 illustrative plan because it inexplicably mixes Appalachian
18 North Georgia with urban/suburban Metro Atlanta, the
19 illustrative plan does that same thing in several districts,
20 right?

21 A. It does to a certain extent in District 10. But the
22 question is why did you need to split Cobb County four ways.
23 It just doesn't add up. Something else was in the works, I
24 don't know what. But there was -- there should have been an
25 effort to determine whether or not a majority Black district

1 could have been created in that area where the four Senate
2 districts show the concentration of the Black population.

3 Q. And you say something else was in the works. That
4 something else could have been politics; right?

5 A. Well, it could have been anything; right. But someone
6 was not paying attention.

7 MS. KHANNA: Objection, Your Honor. That question is
8 eliciting testimony about Mr. Cooper's perceptions of
9 somebody's intent. That's not -- that's beyond the scope of
10 his report in this case.

11 THE COURT: I'll say it, Mr. Tyson. He doesn't know
12 what the intent was in the General Assembly. If he did, he
13 can't say what they said.

14 MR. TYSON: Understood, Your Honor.

15 THE WITNESS: And I really didn't mean intent
16 necessarily --

17 THE COURT: In your head. In your head. Don't talk.

18 MR. TYSON: That's good advice from the judge.

19 BY MR. TYSON:

20 Q. So, Mr. Cooper, let me talk about some of the statistics
21 that you talked about with Ms. Khanna about the district plan
22 that was created.

23 You provided the individual district scores in
24 Exhibits L1 and L3; is that right?

25 A. Yes.

1 Q. And so looking at those exhibits, for the districts that
2 changed, you would agree that District 3 is more compact on
3 the enacted plan than on the illustrative plan; correct?

4 A. District 3?

5 Q. Yes, sir.

6 A. It is. But the compactness score for the illustrative
7 plan is a .39 Reock score and a .24 Polsby-Popper, so those
8 scores would certainly pass in flying colors under most
9 circumstances. And they do here as well.

10 Q. And you would agree that District 4 is more compact on
11 the enacted plan than on the illustrative plan; right?

12 A. Yes. But, again, the Reock score for District 4 is .28
13 and Polsby-Popper .22. So I think that's okay.

14 Q. And District 6, as you explored with Ms. Khanna, is
15 slightly more compact on the illustrative plan; right?

16 A. Yes, it is.

17 Q. And I believe you testified earlier that a longer
18 district may have a lower compactness score. Do I have that
19 right?

20 A. That can happen, right.

21 Q. And you'd agree the enacted District 6 is a longer
22 district than the illustrative District 6; right?

23 A. Let me look at the enacted plan. I know there's a zoom
24 on it in the declaration, but I'm struggling to find it.

25 So what was your question again?

1 Q. You would agree that enacted District 6 is a longer
2 district than illustrative District 6; right?

3 A. Well, I need to look at an exhibit, so just a moment.

4 Enacted District 6, that stretches from Marietta up north
5 through Fulton, Forsyth, Cherokee Counties and Dawson County,
6 right?

7 Q. So you would agree that enacted District 6 is a longer
8 district than illustrative District 6?

9 A. I haven't measured it, but it probably is.

10 Q. And continuing our work through the compactness scores,
11 District 9 is slightly more compact on the illustrative plan;
12 correct?

13 A. Yes, slightly more.

14 Q. District 10 is more compact on the enacted plan; right?

15 A. It would be, yes.

16 Q. District 11 is more compact on the enacted plan; right?

17 A. Yes. But just because something is more compact doesn't
18 mean it's -- does not mean that there's something wrong with
19 the way the district is constructed. These scores that I see
20 are all acceptable, generally speaking, both for the
21 illustrative plan and the enacted plan.

22 Q. And finishing this out, District 13 is more compact on
23 the illustrative plan; correct?

24 A. Yes.

25 Q. And District 14 is more compact on the enacted plan for

1 Polsby-Popper, but more compact on Reock for the illustrative
2 plan; right?

3 A. Yes.

4 Q. Moving to Figure 14 of your report, this is where you
5 report the various Black voting age metrics for both the
6 illustrative plan and the enacted plan; right?

7 A. Yes.

8 Q. And I think we've confirmed District 20 -- District 6 is
9 50.23 percent Black VAP?

10 A. Yes.

11 Q. And District 7 is unchanged, but it's 29.82 percent Black
12 VAP?

13 A. I'm sorry, what was -- could you repeat that?

14 Q. District 7 is unchanged and has a Black VAP of
15 29.82 percent?

16 A. Yes.

17 Q. And District 13, if you look at it, the non-Hispanic
18 Black citizen voting age population is actually below
19 50 percent; right?

20 A. It would be, although I also have a column for the
21 non-Hispanic DOJ Black CVAP, which I think would be the
22 preferred metric --

23 THE COURT: Can you repeat that answer? I know it's
24 kind of hard to look down and talk into the mic, but it helps
25 a little bit.

1 THE WITNESS: Yes.

2 What I said is the non-Hispanic DOJ Black CVAP is
3 actually 54.34 percent, which I think would be the preferred
4 metric when analyzing a congressional district in Georgia.

5 THE COURT: Go ahead.

6 BY MR. TYSON:

7 Q. And looking at the non-Hispanic DOJ Black CVAP, using
8 that metric, there would be four majority Black districts on
9 the enacted plan; is that right?

10 A. There -- there would be, yes. District 2 would be
11 50.001 percent. However, since that particular figure was
12 produced, the Census Bureau has released the 2017-2021 ACS
13 with CVAP information. And, in fact, now Congressional
14 District 2 is no longer 50 percent non-Hispanic DOJ CVAP. It
15 has dropped into the 49s. So it's no longer Black VAP
16 majority, it's no longer single non-Hispanic Black CVAP
17 majority, and it's no longer non-Hispanic DOJ Black CVAP,
18 according to the 2017-2021 ACS data special tabulation that
19 was released by the Census Bureau I think sometime about the
20 time we were having our deposition in February.

21 THE COURT: This is District 2?

22 THE WITNESS: Yes. Yes, that's District 2.

23 BY MR. TYSON:

24 Q. And to be clear, Mr. Cooper, that information is not
25 included in this report; correct?

1 A. It's not, but it could -- I mean, it couldn't be, because
2 that information hadn't been released at the time I developed
3 this report. It wasn't released until very late -- possibly
4 late January, but sometime in early February.

5 Q. And you have not filed a supplemental report with that
6 information in it.

7 A. Well, I can provide that information to you today if you
8 wish.

9 THE COURT: Let him finish his question.

10 BY MR. TYSON:

11 Q. So, Mr. Cooper, just so our record is clear, you have not
12 provided a supplemental report with an update on district
13 statistics from the new ACS data you've referenced; right?

14 A. I have not. But I'm here under oath and I will tell you
15 that the number is under 50 percent, somewhere in the 49s, for
16 non-Hispanic DOJ Black CVAP in Congressional District 2 under
17 the enacted plan. And also under the illustrative plan,
18 because CD2 didn't change in the illustrative plan.

19 MR. TYSON: And, Your Honor, we would just request
20 that if Mr. Cooper is going to rely on information he has not
21 provided as part of the expert report, that he be required to
22 supplement that report.

23 THE COURT: Ms. Khanna, you-all are going to need to
24 supplement the report or I can't consider this. You've got to
25 give it to Mr. Tyson, is what I'm saying, because you've

1 probably -- you just heard this today yourself?

2 MS. KHANNA: I didn't elicit the answer or ask the
3 question, Your Honor, so I --

4 THE COURT: I guess what I'm saying is that
5 you-all -- Mr. Cooper, are you -- depending on this new
6 information, are you making your decision-making based on the
7 information you had prior to that?

8 THE WITNESS: The information I had prior to that is
9 fine. I mean, it's not really necessary to bring that into
10 this case, I don't think. You can see how close the --

11 THE COURT: Let's do this. Let's do this. Let's
12 just go with the information we have. Okay?

13 THE WITNESS: Right.

14 MR. TYSON: Thank you, Your Honor.

15 MS. KHANNA: Thank you, Your Honor.

16 BY MR. TYSON:

17 Q. Last question on Figure 14, Mr. Cooper. You would agree
18 that the illustrative plan reduces the Black voting age
19 population of District 14 by more than -- or by approximately
20 nine points; right?

21 A. Yes.

22 Q. And it lowers the Black voting age population of
23 District 13 by a little more than 15 points; correct?

24 A. Correct.

25 Q. So, Mr. Cooper, I want to ask about some of the

1 socioeconomic statistics that you include at the end of your
2 Pendergrass report.

3 A. Yes.

4 Q. And I've finished with the slides at this point, so you
5 don't need to keep referring to that.

6 The socioeconomic statistics you reference at the end of
7 the report are only available at the county level, not a lower
8 level of geography; is that right?

9 A. Yes. What page is that on? Oh.

10 Q. That is at the very end -- yeah, right -- on your current
11 report.

12 A. Yes.

13 Q. Not the preliminary injunction report.

14 A. This. Where is that information?

15 Q. Page 33, beginning on paragraph 83.

16 A. Yes.

17 Q. And so, Mr. Cooper, you've reported these statistics but
18 you're not offering any opinions about these statistics; is
19 that correct?

20 A. I believe that's correct. I think Dr. Collingwood is
21 offering opinions on similar datasets he obtained from the
22 Census Bureau.

23 Q. And you didn't rely on the socioeconomic statistics as
24 any basis for drawing the illustrative plans you've offered in
25 this case; correct?

1 A. I was aware of some of that information, but it didn't
2 control the plan drawing per se; correct.

3 Q. So, Mr. Cooper, what I'd like to do now is work back
4 through kind of the repetitive portion of this.

5 MR. TYSON: So, Your Honor, I haven't checked the
6 time.

7 THE COURT: I have to stop at 3:00 and take a phone
8 call for about ten minutes. So we'll probably try to take the
9 break at 3:00, so you've got 15 more minutes.

10 MR. TYSON: I'll see how quickly we can work through.
11 This will be a lot of questions we discussed previously in the
12 Alpha case, just so the record is complete.

13 THE COURT: Okay. And if you don't finish by 3:00,
14 we'll take a break, come back and finish. So don't...

15 MR. TYSON: Thank you, Your Honor.

16 BY MR. TYSON:

17 Q. So, Mr. Cooper, when you had prepared the illustrative
18 plans, I want to go through the data you had and didn't have
19 in the drawing process. You had racial and demographic
20 information from the census; correct?

21 A. Yes.

22 Q. And you had the ability to, as we discussed, run reports
23 on compactness and split geographies; right?

24 A. Right.

25 Q. And in the drawing process, you relied primarily for

1 compactness on how a district looks while you're drawing it
2 and then you run compactness scores at the end; is that right?

3 A. Not necessarily at the end, but I don't habitually check
4 the compactness scores while I'm drawing a plan.

5 Q. And did you utilize or have any incumbent addresses for
6 the congressional plan?

7 A. Yes. I did have what I believed to be the incumbent
8 addresses. I think there may have been some uncertainty with
9 respect to District 10, CD10, but, yes, I did.

10 Q. But incumbent addresses don't matter as much for
11 congressional districts because a member of Congress doesn't
12 have to live in the district from which they're elected;
13 right?

14 A. Right.

15 Q. And you had the boundaries of the prior and the enacted
16 plans; right?

17 A. Yes.

18 Q. And you had the guidelines from the General Assembly;
19 correct?

20 A. Yes.

21 Q. And I believe we've covered you didn't have any election
22 returns or political data; correct?

23 A. I did not.

24 Q. And you did not have the American Community Survey data
25 that you referenced at the end in a format that you could

1 display in Maptitude; right?

2 A. Well, I certainly did not have the 2017-2021 ACS -- oh,
3 you're just talking about the socioeconomic data.

4 Q. Yes.

5 A. Right. No. I was just using -- referring or reviewing
6 some of the socioeconomic data at the county or municipal
7 level; right.

8 Q. And the ACS data couldn't be displayed in Maptitude and
9 also was not available except at the county and municipal
10 level for what you've referenced in this case; right?

11 A. Right. But you could obtain bloc group-level data of
12 some of the socioeconomic information.

13 Q. And you did not review public testimony from Georgia
14 voters when you were preparing your plan?

15 A. I did not.

16 Q. So in terms of definition of terms, in this report a
17 majority Black district is a district with an any part Black
18 voting age population of over 50 percent; right?

19 A. Right.

20 Q. And as we discussed the other day, a majority-minority
21 district is not necessarily the same thing as a majority Black
22 district; right?

23 A. Correct.

24 Q. And all majority Black districts are majority-minority
25 districts, but not all majority-minority districts are

1 majority Black districts; correct?

2 A. Correct.

3 Q. Another term we talked a lot about, I'm sure everyone is
4 tired of the word by now, the word "packing." And you're not
5 opining that any of the existing districts on the 2021
6 congressional plan are packed; correct?

7 A. Well, I'm not able to really use that term in a legal
8 fashion. I think that in the enacted plan, that Congressional
9 District 13 overconcentrates Black population.

10 Q. So, Mr. Cooper, could you point me to where in your
11 report you discuss Congressional District 13 being
12 overconcentrated?

13 A. I don't know. I -- is it not in there?

14 Q. I'm asking you. I didn't find a reference to
15 overconcentration or packing, which is why I asked you if it
16 was an opinion you were offering in this case.

17 A. Yes. Well, I do have a table that shows the percentages
18 of the Black VAP in all the districts, but -- right.

19 Q. So you are offering the opinion in this case that
20 District 13 -- in District 13 Black voters are
21 overconcentrated, but you're not offering the opinion that
22 Black voters are packed in District 13?

23 A. Well, packed is sometimes a legal term. And I -- I was
24 trying to avoid, based on our conversation day before
25 yesterday, or was it yesterday, because there were some issues

1 with how I was referring to the word "packing." So I have
2 used a synonym, overconcentrate. And it doesn't have any sort
3 of a legal meaning, I don't think.

4 Q. So can you explain your definition of overconcentrate?

5 A. Well, it just means that, by reducing the Black voting
6 age population in District 13, it then becomes possible to
7 create the new majority Black district anchored in Fulton,
8 Cobb and Douglas Counties, which previously parts of it were
9 in Congressional District 13.

10 Q. And so your definition of overconcentrate is tied to the
11 fact that you can create an additional majority Black
12 district?

13 A. Not necessarily, but there -- I have no hard fast rule
14 about what constitutes overconcentration. So that's as far as
15 I can go with it. I mean, I'm just trying to explain that one
16 point, that there are -- Congressional District 13
17 historically has never had a population that was that high.
18 If you go back to the 2000 era plans, I think that
19 Congressional District 13 was only in the low to mid 50s Black
20 VAP. So it's -- it's been electing a Black member to
21 Congress, I think, for more than two decades. And at the
22 outset, Congressional District 13 was not over 60 percent
23 Black and now it is, under the enacted plan.

24 MR. TYSON: And, Your Honor, I would just ask that
25 the Court not consider Mr. Cooper's opinions about

1 overconcentration in District 13. I've just done a search of
2 his report and can't find that word anywhere. Rule 26
3 requires that be the opinions that he offers in this case, so
4 I don't think that's an appropriate opinion for him to offer,
5 unless he can point us to something in his report.

6 THE COURT: Ms. Khanna?

7 MS. KHANNA: No objection, Your Honor.

8 THE COURT: All right. Mr. Cooper, you understand,
9 since you have not provided that information in your reports,
10 don't talk about overconcentration or packing for District 13.

11 THE WITNESS: Fine. I will -- I would just as soon
12 not.

13 BY MR. TYSON:

14 Q. Mr. Cooper, you don't believe there is a metric that
15 would tell you if race predominated in the creation of a
16 district plan; correct?

17 A. I'm not sure what you mean by that, but -- so -- yeah, I
18 don't know what you mean. I...

19 Q. So when I use the term "racial predominance," that's not
20 a term that you're familiar with?

21 A. Well, how do you come to that conclusion? I mean, it's a
22 general statement, right? And I -- in drafting this plan, I
23 have attempted to balance all of the traditional redistricting
24 principles so that no one principle predominates.

25 Q. And --

1 A. Except for population equality, which apparently
2 mathematically has to be plus or minus one person in a
3 congressional district in Georgia. It could vary a little bit
4 in some of the other states, like West Virginia and Arkansas.

5 Q. Mr. Cooper, do you believe it's hypothetically possible
6 to draw a district plan prioritizing only equal population and
7 race in the drawing of that plan?

8 MS. KHANNA: Objection, calls for speculation and
9 asking about what he did in this case.

10 THE COURT: How can he answer that question without
11 speculating, Mr. Tyson?

12 MR. TYSON: I believe as an expert, he can offer a
13 hypothetical, Your Honor. Offer an answer to a hypothetical.
14 He's drawn hundreds of district plans. I'm assuming he would
15 know when race was prioritized over every other traditional
16 districting principle.

17 THE COURT: I'll allow him to answer if he can.

18 MS. KHANNA: Thank you, Your Honor.

19 THE WITNESS: Well, I believe you have to take into
20 account all the traditional redistricting principles. So it
21 would not be enough just to create a majority Black district
22 and have a perfect plus or minus one district. Just
23 hypothetically that doesn't mean anything.

24 BY MR. TYSON:

25 Q. Mr. Cooper, in terms of the data that you displayed, we

1 talked about you had dots that identified the precincts or
2 areas with greater than 30 percent Black population; is that
3 right?

4 A. Generally speaking, at the VTD level. As you know I
5 don't use the shading that apparently your expert Mr. Morgan
6 uses. And I only work at the VTD level unless there's a
7 deviation issue.

8 Q. And did you display the demographic percentages of other
9 levels of geography as part of the label at any point when you
10 were drawing these plans? I'm sorry.

11 Did you display the demographic percentages of any piece
12 of geography as a label on that piece of geography while you
13 were drawing the illustrative plans?

14 A. I don't think so. I think I was basically working with
15 VTD levels. I do have the map that is shown in the opening
16 portion of my declaration that has an indication of where the
17 majority Black counties are. That's in the -- that is
18 actually in the Alpha Phi Alpha declaration. I'm not sure if
19 it's even in this declaration, is it? I don't think it is.

20 Q. And you also had a table of counties in the state that
21 included the racial information for each county; is that
22 right?

23 A. I have a table in this report that I believe breaks out
24 county population change between 2010 and 2020 in the
25 29-county MSA area. So it's not a statewide breakout, I

1 believe. I don't think it includes other counties outside of
2 the MSA.

3 Q. And is part of the process of creating the illustrative
4 plan you relied in part on the history of the experience of
5 Black Americans and the commonality that goes with that as a
6 basis for a community of interest; right?

7 MS. KHANNA: Objection, Your Honor, it
8 mischaracterizes testimony.

9 MR. TYSON: Your Honor, I believe I asked the exact
10 question in Alpha Phi Alpha and received a positive answer
11 from Mr. Cooper.

12 THE COURT: Let me hear the question again.

13 BY MR. TYSON:

14 Q. Mr. Cooper, in creating the illustrative plan, you relied
15 in part on the history of the experience of Black Americans
16 and the commonality that goes with that as a basis for a
17 community of interest; right?

18 THE COURT: Do you remember that question?

19 THE WITNESS: Well, yes --

20 THE COURT: Hold on, hold on. Do you remember that
21 question.

22 THE WITNESS: Not precisely, no.

23 THE COURT: A question that was close to that?

24 THE WITNESS: I think maybe so, yes.

25 MS. KHANNA: Well, and, Your Honor, I'm not sure how

1 Mr. Cooper did or was instructed to develop plans in a
2 different case, but in this case --

3 THE COURT: That's --

4 MS. KHANNA: Yeah, that is my objection. In this
5 case, he has not testified to that.

6 THE COURT: Well, it's two different plaintiffs,
7 Mr. Tyson. The Alpha plaintiffs, they did not object. Grant
8 and Pendergrass are objecting. So I don't know if he's
9 qualified to answer that because -- I think there's another
10 way you could ask it, though. I think commonality is a
11 question that needs to be asked. Rephrase the question.

12 MR. TYSON: Certainly, Your Honor.

13 MS. KHANNA: Thank you, Your Honor.

14 BY MR. TYSON:

15 Q. Mr. Cooper, in considering communities of interest that
16 you included as part of your illustrative plan, was the common
17 experience of Black Americans one of those communities of
18 interest you relied on?

19 A. Well, I'm not a historian, but I am aware of that
20 commonality. It was not controlling exactly how I drew the
21 plan, but I -- I can go that far and say, yes, I'm aware of
22 that common experience.

23 THE COURT: The question is did it bear on how you
24 drew the plan, though?

25 THE WITNESS: I don't think so. Not -- not -- no, it

1 did not. It's just overall in the background.

2 BY MR. TYSON:

3 Q. Mr. Cooper, you testified earlier that no one would want
4 to be in a split city. Do you recall that testimony?

5 A. That who would not want to be --

6 Q. I believe in response to a question from Ms. Khanna you
7 said no one would want to be in a split city.

8 A. Generally speaking. But some folks might want to be in a
9 split city. I will grant you that.

10 Q. And you're aware that there are cities in Georgia that
11 cross county boundaries; right?

12 A. Yes.

13 Q. And in this report in the Pendergrass case, you did not
14 provide information about splits of metropolitan statistical
15 areas; right?

16 A. I provided a split report that combined MSAs and
17 micropolitan statistical areas. In other words, core-based
18 statistical areas, all hard defined by the Census Bureau and
19 the Office of Planning and Budget. So it would include some
20 of the smaller areas that are sometimes a single county or two
21 counties, but -- and those areas would have an urban center
22 that would be between 10,000 and 50,000. And then the MSAs
23 are over 50,000 and generally include more than one county.

24 Q. So to be clear, you included that information as an
25 exhibit, but you didn't summarize it in your report; right?

1 A. Well, I did. I think I have a CBSA split table in my
2 report, unless I'm mistaken. Well, I guess I don't. I
3 included the information, I think.

4 THE COURT: Mr. Tyson, I need to stop right here and
5 take a break. Let's take a 15-minute break and be right back.

6 MR. TYSON: Thank you, Your Honor.

7 (After a recess, the proceedings continued at
8 3:16 p.m. as follows:)

9 THE COURT: You-all can be seated.

10 Mr. Tyson, you may proceed.

11 MR. TYSON: Thank you, Your Honor. Sometimes when
12 there's a break you get more questions, sometimes you get
13 fewer, so I have one question for Mr. Cooper that's left.

14 THE COURT: Okay. Maybe we should take more breaks.

15 BY MR. TYSON:

16 Q. Mr. Cooper, in your report in the Pendergrass case, you
17 did not report on the number of regional commission splits for
18 the enacted plan and illustrative plan; right?

19 A. That's right. Just before we broke I realized that I was
20 confusing Alpha Phi Alpha with this case.

21 Q. So those are not included?

22 A. They are not in the Grant report.

23 MR. TYSON: Okay. That's all the questions I have.

24 THE WITNESS: Or Pendergrass report, I should say.

25 THE COURT: Thank you, Mr. Tyson.

1 Ms. Khanna.

2 MS. KHANNA: Thank you, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. KHANNA:

5 Q. I'd like to pull up page 100 of your -- of Pendergrass
6 Plaintiffs' Exhibit 1, which I believe you walked through with
7 Mr. Tyson as well. I want to make sure I'm looking at the
8 right one. This is the plan component report for your
9 illustrative map; is that right?

10 A. Yes.

11 Q. And what is the Black voting age population of the
12 portion included -- the portion of Fayette County included in
13 your illustrative District 6?

14 A. It is -- you want voting age?

15 Q. Yes.

16 A. It is 21.73 percent.

17 Q. And that's just 652 people or Black -- people of Black
18 voting age, Black voting age people.

19 A. Right. 998 all ages.

20 Q. And 652 voters?

21 A. Right. Of Black voting age.

22 Q. And is it fair to say that the portion of Fayette County
23 included in your illustrative District 6 is not dispositive in
24 making the district a majority Black district or --

25 A. Correct.

1 Q. -- it was not needed to make that a majority Black
2 district?

3 A. Correct. And I somewhat misspoke when I said there was
4 4500 people in Fayette County that were put into District 6.
5 It's actually just 4,143 people.

6 Q. And you testified earlier that the portions of --
7 included in -- from Fayette County were meant to zero out the
8 population between the districts; is that right?

9 A. Exactly. That's the only reason I crossed the border.

10 Q. Now -- so other than Fayette County, you had mentioned
11 that the district is really anchored in three counties; is
12 that right?

13 A. Yes.

14 MS. KHANNA: And, actually, if we could go to the
15 page before this, because I think it starts on the previous
16 page with Cobb County. No? It should be page 99 of the
17 exhibit.

18 THE WITNESS: Yes. I have it.

19 BY MS. KHANNA:

20 Q. Okay. I'm just going to wait one second to get it up on
21 the screen so we make sure we're all looking at the same
22 thing.

23 Yes. Looking at the very last portion there, you see at
24 the bottom of page 99 is the Cobb County portion of your
25 illustrative District 6; is that right?

1 A. Yes.

2 Q. And Mr. Tyson mentioned that the Black voting age
3 population percentage of that portion of the district is
4 37.4 percent; is that right?

5 A. Yes.

6 Q. And I think you pointed out that the -- in terms of the
7 absolute numbers of individuals of -- with Black -- Black
8 voting age individuals, it's actually 131,674; is that right?

9 A. Of voting age, yes.

10 Q. And you would agree that without those 131,674 Black
11 individuals of voting age, you might -- you would not have a
12 majority Black district?

13 A. I might what?

14 Q. You would not have a majority Black district.

15 A. Well, true. I mean, you'd have to go elsewhere to find
16 enough population to meet one-person, one-vote.

17 Q. Well, put another way, certainly those 131,604 Black
18 individuals of voting age contributed to illustrative CD6's
19 overall Black voting age population?

20 A. Oh, yes. Of the four counties, I think as I mentioned,
21 they are the largest component that is Black of voting age.

22 Q. And if we move on again, now back to page 100, which is
23 the other -- the remaining counties in the district, and go to
24 that top portion. Now, Mr. Tyson did point out that the
25 portions from Fulton County are 88 -- over 88 percent Black

1 voting age population; is that right?

2 A. Yes.

3 Q. And you noted there that that's 109,273 Black individuals
4 of voting age; is that right?

5 A. Right.

6 Q. Also a significant contributor to the overall Black
7 voting age population percentage of the district?

8 A. Yes.

9 Q. And then the only remaining county that we haven't
10 discussed is Douglas County. And Douglas County is included
11 in full in the district; correct?

12 A. Yes.

13 Q. And the voting age population percentage there?

14 A. Is 49 -- I'm sorry, is -- it's 49.23 percent.

15 Q. 49.23 percent is the Black voting age population. And
16 that includes an absolute number of Black individuals of
17 voting age, 53,377; is that correct?

18 A. Correct.

19 Q. Also a significant contributor to the overall Black
20 voting age population percentage in your district?

21 A. Yes.

22 Q. So those three adjacent counties included in your
23 illustrative District 6 all had significant Black population?

24 A. Yes. And would have been essentially probably, what,
25 99 percent of the Black population in the district, because

1 Fayette County only has 652 persons who are Black of voting
2 age.

3 Q. If we could turn to page 110 of this exhibit, which looks
4 at the plan component report for District 13 and I believe you
5 also looked at this with Mr. Tyson.

6 And Mr. Tyson, I think, indicated that -- I don't know
7 exactly how he phrased it, that most or all of the Black
8 population -- or rather the only majority Black population
9 counties in District 13 in the illustrative plan include
10 Clayton and Newton. Does that sound right from what you
11 recall from that testimony?

12 A. I seem to recall that he identified those two counties
13 with respect to Clayton County -- with respect to District 13.

14 Q. So looking at Clayton County here in District 13, the
15 Black voting age population is 71.9 percent; is that right?

16 A. Yes.

17 Q. What's the absolute number of Black individuals of voting
18 age?

19 A. 138,553.

20 Q. And let's turn to the next page, page 111, to see the
21 remainder of the district and the counties in it.

22 A. Yes.

23 Q. And he also pointed you to Newton County, and the Black
24 voting age population percentage there is 58.35 percent. What
25 is the absolute number of individuals of Black -- Black

1 individuals of voting age in that district?

2 A. 18,246.

3 Q. Now, one district that Mr. Tyson did not point out
4 is Henry County -- or sorry -- one county he did not point out
5 was Henry County in District 13. What is the Black voting age
6 population percentage in Henry County?

7 A. 49.82 percent.

8 Q. Rounded to 50 percent; correct?

9 A. Correct.

10 Q. And what is the absolute number of Black individuals of
11 voting age in the Henry County portion of illustrative CD 13?

12 A. 89,657.

13 Q. Would you call that a significant contributor to the
14 overall Black population percentage of the district?

15 A. Yes.

16 Q. Mr. Cooper, as a demographer does it surprise you that
17 majority Black districts include areas with high
18 concentrations of Black people?

19 A. No. It's almost -- call it logical. You draw a district
20 that's majority Black, there are going to be areas that are
21 majority Black.

22 Q. And would you expect there to be a uniform concentration
23 of Black people throughout every portion of a majority Black
24 district?

25 A. No, I would not. That would be highly unusual. I'm not

1 sure if there is anyplace in America where you could draw a
2 congressional district that would have a homogeneous Black
3 population of plus or minus 5 percent Black even.

4 Q. I'd like to take another look at illustrative District 6
5 of page 71 of your report. Do you have that in front of you?

6 A. Oh, I must be looking at the wrong page. That's fine. I
7 can see that.

8 Q. Do you see there's a little legend at the bottom, trying
9 to indicate how many -- I guess how much an inch is in miles?

10 A. Yes.

11 Q. Can you approximate looking -- using that legend of your
12 map about how long is District 6?

13 A. Well, if you look at the legend, it seems like it's maybe
14 25 miles. I mean, it's not very long.

15 Q. It's certainly not two of those inches --

16 A. Certainly not.

17 Q. -- is it?

18 A. It is not.

19 Q. So likely 40 miles or less from top to bottom?

20 A. It could be 40 maybe, yeah, by road, if that. If that.

21 Q. Do you know how long it would take to drive the length of
22 that district?

23 A. I -- it would depend on rush hour traffic, but --

24 Q. It is Metro Atlanta after all.

25 A. Yes. On Saturday you could -- or on Sunday morning you

1 could probably drive it in a half hour; right?

2 Q. Would you -- do you think any portion of this district is
3 far flung from any other portion of this district?

4 A. Of course not.

5 Q. Let's turn to paragraph 68 of your report on page 27.

6 And if we can just zoom in on that paragraph, this is a
7 paragraph that Mr. Tyson asked you about in some detail. In
8 particular, he focused on one sentence. Can you do me a
9 favor, Mr. Cooper, and read out loud the entire paragraph?

10 A. The entire paragraph here?

11 Q. Yes. The full context of the paragraph.

12 A. Just read the paragraph?

13 Q. Just read the paragraph.

14 A. "Going beyond these quantifiable measures of communities
15 of interest, it simply makes more sense to anchor illustrative
16 CD6 in the western part of Metro Atlanta. As the illustrative
17 plan demonstrates, CD6 can be drawn in a compact fashion that
18 keeps Atlanta area urban/suburban/exurban voters together. In
19 sharp contrast, the 2021 plan, its treatment of Cobb County in
20 particular, inexplicably mixes Appalachian North Georgia with
21 urban/suburban Metro Atlanta. In some redistricting plans, it
22 might be necessary to mix urban and rural voters in a
23 sprawling congressional district, but that is not the case
24 here. Congress -- Cobb County can be combined in a
25 congressional district with all or part of Douglas, Fulton and

1 Fayette Counties, all of which are core Metro Atlanta counties
2 under the Atlanta Regional Commission map. Illustrative CD6
3 thus unites Georgians in the Metro Atlanta with shared
4 interest and concerns."

5 Q. Okay. Thank you.

6 The first two sentences of this paragraph are your
7 explanation as to why you believe your illustrative CD6
8 respects a community or communities of interest; is that
9 right?

10 MR. TYSON: Your Honor, I'll just object to leading
11 on this one. I mean, this -- Mr. Cooper has testified about
12 his communities of interest.

13 THE COURT: That is a little leading. Sustained.

14 MS. KHANNA: I appreciate that, Your Honor.

15 BY MS. KHANNA:

16 Q. Mr. Cooper, is it fair to say that this paragraph
17 describes the community of interest that you drew in
18 illustrative CD6?

19 A. Yes. This describes the essence of the community of
20 interest. It makes no sense to put Black voters and all
21 voters in Cobb County in a congressional district that would
22 extend into what amounts to the Chattanooga MSA.

23 Q. If you look at just the first two sentences of the
24 paragraph.

25 A. Yes.

1 Q. Those are about the -- those sentences refer to the
2 community of interest that you included in your illustrative
3 District 6; correct?

4 A. Yes.

5 Q. You also describe as a comparator how the enacted map
6 treats that area; is that right?

7 A. Yes.

8 Q. Similarly, when you were analyzing political subdivision
9 splits you explained in your report how many splits your map
10 had; correct?

11 A. Correct.

12 Q. And you provided the enacted plan as a comparator;
13 correct?

14 A. Yes.

15 Q. I believe in response to some of Mr. Tyson's questions
16 you mentioned -- well, it appeared you did not like the way
17 that the enacted map treats this area; is that right?

18 A. I do not. I mean, it -- the enacted map divides Cobb
19 County four ways and splits a number of municipalities.

20 Q. You didn't think it was necessary?

21 A. Not necessary.

22 Q. I think you even said it seemed crazy; is that right?

23 A. I -- you could call it crazy.

24 Q. In your opinion; correct?

25 A. Yes.

1 Q. Mr. Cooper, were you -- when we talked about what you
2 were asked to do in this case, were you asked to opine on the
3 intent of the legislature in drawing the enacted map?

4 A. No, no. I have no intention of describing the
5 underlying -- I have no intention of describing the underlying
6 intent. I'm just making a statement about the demographic
7 reality in Western Metro Atlanta.

8 Q. Were you asked to opine on your thoughts and beliefs
9 about how the enacted map pairs communities?

10 A. No, not my thoughts and beliefs.

11 Q. You were asked to look at the size and location of the
12 Black population to determine whether it's large enough and
13 geographically compact enough to form an additional majority
14 Black district; correct?

15 A. Yes.

16 Q. Turning to District 7, Mr. Tyson asked you a few
17 questions about District 7, which remained untouched in your
18 illustrative plan; is that right?

19 A. Yes.

20 MS. KHANNA: If we could turn to the data on page 68
21 of your report. If we can get a closer look at the districts
22 there. Thank you.

23 BY MS. KHANNA:

24 Q. And I believe Mr. Tyson noted with you that District 7 is
25 not a majority Black district; is that correct?

1 A. Yes. I'm not yet at --

2 Q. Sorry. Take your time.

3 A. Yes.

4 Q. And you would agree that District 7 is not a majority
5 Black district; correct?

6 A. I agree.

7 Q. Is District 7 a majority white district?

8 A. District 7 is -- is not majority white either. It is
9 32.78 percent non-Hispanic white.

10 Q. You might be looking at a different -- wait.

11 A. I'm sorry. I'm looking at -- I'm looking at the enacted
12 plan, but that is the same thing; right? The District 7 did
13 not change.

14 Q. Right. So if I'm looking on what I have on the screen, I
15 think what I'm looking at on page 68 of your report is the
16 total population.

17 A. Oh, right. I'm looking at VAP.

18 Q. You're looking at page 69.

19 A. I'm looking at the VAP, but I see what you mean.

20 Q. You can turn to page 69 so we're all looking at the same
21 thing.

22 A. Yes. Oh, okay.

23 Q. Let's take a look at 69 instead.

24 All right. This is the -- so this is the demographics of
25 District 7 in the enacted map; is that right?

1 A. Right.

2 Q. District 7 in the enacted map is the same as District 7
3 in the illustrative map?

4 A. Yes.

5 Q. And is District 7 a majority Black district in the
6 enacted map?

7 A. No.

8 Q. What is the Black voting age population?

9 A. The non-Hispanic Black population -- voting age
10 population is 27.35 percent. And that, of course -- that
11 number would, of course, not include the any part Black
12 population, so that number will be slightly different than the
13 table I produced in my report, which breaks out the any part
14 Black VAP.

15 Q. Is District 7 a majority white district?

16 A. No. It is a plurality minority district.

17 Q. Can you explain what that means, a plurality minority
18 district?

19 A. It means that the population has a plurality of white,
20 non-Hispanic white population, but would also have a minority
21 population that, taken together, would be more than
22 50 percent. So that the Hispanic population in District 7 is
23 21.27 percent, non-Hispanic Asian is 15 percent, and then
24 there is some indigenous population also.

25 Q. And the white voting age population in District 7 is less

1 than 33 percent; correct?

2 A. Correct.

3 MS. KHANNA: You can take this down.

4 BY MS. KHANNA:

5 Q. Mr. Cooper, how many people are in a congressional
6 district?

7 A. Well, roughly 765,000, but to be precise, 765,136.

8 Q. Are you aware of any congressional district in Georgia's
9 enacted plan in which every city and community has
10 commonalities with every other city and community within a
11 765,000-person district?

12 A. I'm not aware of that.

13 MR. TYSON: I object. Sorry. I object to that as
14 beyond the scope of the opinions Mr. Cooper has offered in his
15 report. I believe Ms. Khanna just had him testify that he is
16 not offering an opinion about the enacted plan on communities
17 and those types of things.

18 MS. KHANNA: I'm acting -- I'm actually ask -- you're
19 right. I don't have to ask him about the -- I guess I'm using
20 this as a comparator, Your Honor. He was asked by Mr. Tyson
21 about what communities, what does this part of a community
22 have to do with another part of the district in the
23 illustrative plan. And I'm trying to make an understanding
24 about whether that's an applicable community of interest
25 analysis when looking at a congressional map.

1 THE COURT: You didn't ask about commonality.

2 MR. TYSON: I did, Your Honor. If that's where we're
3 going with this, I guess that's an appropriate question to
4 ask. I can follow up after that.

5 THE COURT: Yeah. As long as you keep it there,
6 you're fine.

7 MS. KHANNA: Thank you, Your Honor.

8 BY MS. KHANNA:

9 Q. Would you like me to say the question again?

10 A. You can rephrase.

11 Q. Are you aware of any congressional district in Georgia's
12 enacted map in which every city and community has
13 commonalities with every other city and community in the
14 district?

15 A. No.

16 Q. Based on your redistricting experience more broadly are
17 you aware of any congressional district in the country in
18 which any -- every city and community has commonalities with
19 every other city and community across the 760,000-plus people
20 in the district?

21 A. I am not aware of any place like that.

22 Q. Earlier during your direct examination you and I talked
23 about how you defined and considered community of interest in
24 drawing your illustrative plan.

25 Do you remember that?

1 A. Yes.

2 Q. And I asked you what communities of interest you
3 considered in drawing your illustrative plan; is that right?

4 A. Right.

5 Q. And if I recall correctly, you noted two categories, one
6 was political subdivisions, municipalities --

7 census-designated places, counties, and the other was the
8 Atlanta MSA and ARC 11-county region.

9 A. Right.

10 Q. Is that right?

11 A. Right.

12 Q. And are those the communities of interest you considered
13 when drawing your illustrative plan?

14 A. Yes. I was also aware of other MSA, CBSA or, in other
15 words, micropolitan lines as I was drawing the plan.

16 Q. You didn't also try to connect or disconnect urban and
17 rural areas when drawing your illustrative plan, did you?

18 A. I did not. I mean, you're going to have a mix almost
19 invariably once you get outside of the core Atlanta counties.

20 Q. And when you were considering communities of interest in
21 drawing your illustrative plan you didn't go door to door to
22 get residents' views of their communities of interest, did
23 you?

24 A. No, I did not.

25 Q. When you were considering communities of interest in

1 drawing your illustrative plan, did you cherry-pick certain
2 kinds of communities to favor or disfavor in the plan?

3 A. No.

4 Q. The communities of interest that you did consider are all
5 objectively defined communities; correct?

6 A. Yes. These communities are defined by Census Bureau
7 boundaries showing the municipal lines.

8 Q. And showing county lines?

9 A. Of course. Yes. County lines for sure. And
10 census-designated places, which would be unincorporated
11 communities.

12 Q. And the MSA is a federally defined community; correct?

13 A. Correct. A broad region.

14 Q. And the 11-county core Atlanta Metro area is defined by
15 the Atlanta Regional Commission; correct?

16 A. I think so. I don't know the exact procedure, because
17 some counties have been added over time. As I mentioned, I
18 think Forsyth County was added at some point in the 20 -- late
19 2010s.

20 Q. I believe Mr. Tyson asked you a hypothetical question
21 about whether one could prioritize race and population
22 equality in drawing a map in disregard of other traditional
23 districting principles.

24 Do you recall that question?

25 A. I think so. I said no, I hope.

1 Q. Well, I think your answer was, no, that's not how you
2 should do it; is that correct?

3 A. Right.

4 Q. But one could prioritize race and population equality in
5 disregard to other traditional districting principles;
6 correct?

7 A. Right. But then --

8 THE COURT: Hold on, hold on, hold on.

9 MR. TYSON: I'll just object. When I tried to
10 explore this line of questioning with Mr. Cooper, it was
11 objected to as a legal conclusion here, so --

12 THE COURT: It was objected to.

13 MS. KHANNA: And I believe this is the exact
14 hypothetical that Mr. Tyson asked that I objected to as
15 calling for speculation and I think I was overruled.

16 THE COURT: I have to think back on all my rulings.
17 You-all have been quite active this afternoon.

18 MR. TYSON: We have, Your Honor. Now I'm trying
19 think back.

20 THE COURT: I think she's right. I overruled it.

21 MR. TYSON: Actually, I believe Ms. Khanna is
22 correct, Your Honor. And I'll withdraw my objection, I
23 apologize.

24 THE COURT: All right.

25 BY MS. KHANNA:

1 Q. So to repeat the question, it is hypothetically possible
2 for a map drawer to draw a map that prioritizes only race and
3 population equality in disregard of other redistricting
4 principles; correct?

5 A. Well, it's hypothetically possible, yes.

6 Q. Did you do that here?

7 A. No.

8 MS. KHANNA: Thank you. No further questions.

9 THE COURT: Recross?

10 RECROSS-EXAMINATION

11 BY MR. TYSON:

12 Q. Mr. Cooper, I just have a couple more questions for you
13 here. And I'm going to take a great personal risk and try to
14 do some math on the spot with you.

15 Going to Exhibit I3, the plan components report that
16 Ms. Khanna reviewed with you.

17 A. What page is that on?

18 Q. I do not have a page number. I apologize. I can get it
19 pulled up on the screen.

20 A. We're back on your exhibit now?

21 MS. KHANNA: You're looking at page 99 to 100 of our
22 exhibit.

23 BY MR. TYSON:

24 Q. 99 to 100 of the exhibit, Mr. Cooper.

25 A. Right. Okay.

1 Q. And on that exhibit Ms. Khanna asked you questions
2 regarding the racial makeup of the individuals involved in a
3 number of different counties.

4 Do you recall that -- those questions?

5 A. Yes.

6 Q. And if you go to the bottom of that, it shows you the
7 totals for the district; is that correct?

8 A. Yes.

9 Q. And the total number of Black voters of voting age in
10 District 6 as you've drawn it is 294,976; right?

11 A. In District 6?

12 Q. Yes.

13 A. No. It should be -- oh, voting age. Okay. Voting age;
14 right.

15 Q. And then the total number of individuals of voting age is
16 587,247; right?

17 A. Yes.

18 Q. So if I divide 587,247 by two, I will get 50 percent of
19 the population of the district; right?

20 A. Yes.

21 Q. And using my trusty calculator, I've calculated that at
22 293,623 and a half.

23 Does that sound right to you?

24 A. I will take your word for it.

25 Q. And if we then subtract 294,976 from that number, we get

1 roughly 1,353 Black individuals above 50 percent.

2 Does that sound right to you?

3 A. I'll accept that it sounds reasonable, if not precise.

4 Q. And so in a district that's 50.23 percent Black, if
5 1,350, approximately, individuals were white instead of Black
6 of what's included in the district, the district would not be
7 a majority Black district; right?

8 A. That is true.

9 Q. And so when you testified that the 652 Black
10 individuals --

11 A. Well, let me -- yeah, if the 1,000 or so people who are
12 any part Black were of some other race, then, yes, it would no
13 longer be majority Black.

14 Q. And 1,350-odd people is almost half of -- I mean, 652
15 Black individuals in Fayette County is almost half of that
16 number that puts the district over majority VAP status; right?

17 A. Well, it -- that's true. It is a bloc of persons of
18 voting age who are in Fayette County. And in that area there
19 are 652 persons who are of Black voting age. And that area
20 that I include there was only 21.73 percent Black voting age.

21 Q. I'm sorry.

22 A. Only 21.73 percent Black voting age.

23 Q. But you would agree that in a district of more than
24 765,000 people, a change in as few as 1353 people could take
25 that district below majority Black status; right?

1 A. Well, theoretically. But I could have also expanded it
2 further north, if I weren't dealing with the deviation issue
3 in Congressional District 13, and added enough people to match
4 one-person, one-vote in Cobb County.

5 Q. But you didn't offer a map that does that and remains
6 that district as a majority Black district; right?

7 A. Well, I couldn't, because you have to factor in
8 one-person, one-vote.

9 Q. Ms. Khanna also asked you about Congressional District 3
10 in paragraph 68 of the report.

11 Do you recall those questions?

12 A. Yes.

13 Q. And I believe you testified that you didn't know of any
14 district on the enacted plan where every city and county
15 shared commonality with every other part of the city and
16 county in that district; is that right?

17 A. That is correct.

18 Q. Did you analyze the enacted plan to determine an answer
19 to that question?

20 A. Not in totality, I did not.

21 Q. And you didn't change districts like District 5 on the
22 enacted plan; right?

23 A. No, I -- that's correct. I left districts intact in
24 order to at least acknowledge the efforts of the legislature
25 and how they chose to draw the plan.

1 Q. Is it your testimony that District 5, the -- it's on the
2 screen if you need to look at it -- does not share
3 commonalities with each part of the population included in
4 District 5?

5 A. I think there are probably areas that are different for
6 sure. North Fulton County.

7 Q. So it's your testimony that District 5 goes into North
8 Fulton County?

9 A. It does extend into parts of North Fulton County. And
10 that's a little different than core Atlanta, city of Atlanta.
11 And that was drawn by the State; right.

12 MR. TYSON: Mr. Cooper, let me check with my
13 co-counsel. I think I may be finished with questions for you.
14 Just a moment, please.

15 THE WITNESS: Sure.

16 MR. TYSON: Mr. Cooper, thank you for your endurance
17 this afternoon. That's all the questions I have for you.

18 Thank you, Your Honor.

19 THE COURT: Thank you.

20 Alpha and Pendergrass and Grant people, do you plan
21 on calling Mr. Cooper for anything else?

22 MR. SAVITZKY: Not for Alpha.

23 MS. KHANNA: We're all done, Your Honor. Thank you.

24 THE COURT: Mr. Cooper, I'm going to give you those
25 great words that most witnesses want to hear: You are

1 excused.

2 THE WITNESS: Thank you so much, Judge.

3 THE COURT: Thank you.

4 (Witness excused.)

5 THE COURT: Call your next witness.

6 MS. LAKIN: Your Honor, Sophia Lakin for the Alpha
7 Phi Alpha plaintiffs. Alpha Phi Alpha plaintiffs call
8 Dr. Lisa Handley.

9 THE COURT: Dr. Lisa Handley.

10 Oh, no objection, Mr. Tyson?

11 MR. TYSON: Oh, to releasing Mr. Cooper? None
12 whatsoever, Your Honor.

13

14

LISA HANDLEY

15

a witness herein, being first duly sworn,

16

was examined and testified as follows:

17

18

DEPUTY CLERK: You can have a seat and please state

19

and spell your name for the record.

20

THE WITNESS: Lisa Handley, H-A-N-D-L-E-Y. Lisa,

21

L-I-S-A.

22

DEPUTY CLERK: Thank you.

23

DIRECT EXAMINATION

24

BY MS. LAKIN:

25

Q. Good afternoon, Dr. Handley.

1 Have you been engaged by the Alpha Phi Alpha plaintiffs
2 to offer an expert opinion in this case?

3 A. I have.

4 MS. LAKIN: Your Honor, the Alpha Phi Alpha
5 plaintiffs call Dr. Lisa Handley. And she will be testifying
6 as to *Gingles* 2 and 3, as well as to the totality of the
7 circumstances as we had discussed earlier this week. And I
8 will endeavor to be clear where there is a distinction.

9 THE COURT: All right. Thank you.

10 MS. LAKIN: Your Honor, I have some witness notebooks
11 and slides to provide. Can I approach?

12 THE COURT: Thank you. Yes.

13 BY MS. LAKIN:

14 Q. Dr. Handley, can you open to the document behind the
15 first tab of your binder labeled APA Exhibit 5.

16 A. Yes.

17 Q. What is this document?

18 A. This is the expert report I submitted in this case.

19 MS. LAKIN: Your Honor, I'd like to move APA
20 Exhibit 5 into evidence.

21 THE COURT: Any objection?

22 MR. JACOUTOT: No objection.

23 THE COURT: It's admitted without objection.

24 (APA Exhibit 5 was admitted and marked into
25 evidence.)

1 BY MS. LAKIN:

2 Q. Dr. Handley, please turn to tab E of your binder. What
3 is this document?

4 A. This is a copy of my CV.

5 Q. Is this CV up to date?

6 A. There are a couple of court cases that I have been
7 engaged in since I created this.

8 Q. Do you have examples of what those court cases are?

9 A. I can tell you where they're located. I'm doing a case
10 in Michigan. And I'm doing a case in Mississippi.

11 Q. Thank you.

12 Dr. Handley, you served as an expert witness at the
13 preliminary injunction stage of the case; is that right?

14 A. That's correct.

15 Q. And you were allowed to offer expert opinions during the
16 preliminary injunction phase of the case?

17 A. That's correct.

18 Q. Dr. Handley, could you briefly remind the Court of your
19 professional background?

20 A. I'm a political scientist by training. I have a PhD in
21 political science from George Washington University many, many
22 years ago. I started a company -- I taught for a while. I
23 started a company that specializes in sort of post-conflict
24 transitional democracy electoral consulting. I've worked for
25 the UN in that respect. And I also do redistricting

1 assistance here in the United States.

2 Q. And what kind of redistricting assistance work do you do
3 in the United States?

4 A. For the most part, I help jurisdictions who come to me
5 for assistance in redistricting to meet legal requirements,
6 especially requirements of the Voting Rights Act.

7 Q. Do you do consulting work on minority vote dilution as
8 well?

9 A. Yes.

10 Q. How many years of experience do you have on these topics?

11 A. Forty.

12 Q. And how many times have you testified as an expert
13 witness over those 30 or so years working on those topics?

14 A. I would say twoscore maybe. Maybe 40 cases. That's a
15 ballpark figure.

16 Q. Have courts previously credited and relied on your
17 testimony?

18 A. They have.

19 Q. What are you typically asked to do as an expert in these
20 cases?

21 A. I'm almost inevitably asked to do a racial bloc voting
22 analysis to estimate voting patterns by race. And I'm also
23 frequently asked to view plans in terms of the opportunities
24 they provide for minority voters to elect their candidates of
25 choice.

1 Q. Approximately how many times have you performed a racial
2 bloc voting analysis?

3 A. Oh, hundreds.

4 Q. How about evaluating districts for whether they provide
5 an opportunity to elect?

6 A. Again, probably hundreds of times. I don't do that just
7 in the context of litigation. I do this for jurisdictions in
8 general.

9 Q. Have you ever served as an expert for a defendant
10 jurisdiction in the redistricting context?

11 A. Yes. I'm serving as an expert for the defendants in the
12 Michigan case right now. But I've certainly done it in a
13 number of other states as well.

14 Q. Do you have some other examples?

15 A. Virginia, Alaska, Arizona, Florida.

16 MS. LAKIN: Your Honor, the Alpha Phi Alpha
17 plaintiffs offer Dr. Lisa Handley as an expert in racial
18 polarization analysis and analysis of minority vote dilution
19 and redistricting.

20 THE COURT: Do you wish to voir dire?

21 MR. JACOUTOT: Yes, Your Honor.

22 VOIR DIRE EXAMINATION

23 BY MR. JACOUTOT:

24 Q. Good afternoon, Dr. Handley.

25 A. Good afternoon.

1 Q. You and I have met before, but my name is Bryan Jacoutot.
2 I represent the State defendants -- or excuse me -- the
3 Secretary of State. I just have a few questions for you.

4 Do you recall testifying in a recent Section 2 case with
5 the citation *Alabama State Conference of the NAACP v.*
6 *Alabama*?

7 A. If you could tell me -- I'm not very good at citations.
8 Can you describe the case to me?

9 Q. Sure, yes. It was a Section 2 case brought in the -- I
10 believe it was the -- I want to say the Southern District of
11 Alabama, but it -- the opinion came down in early 2020, so you
12 would have probably been testifying, I would say, around 2019.

13 A. Can you tell me what was -- what was the --

14 Q. I can actually provide the case for you if it would help
15 refresh your recollection.

16 A. Is this a judicial -- the only one I can think of is the
17 judicial case.

18 Q. Yes. The judicial elections, that's the one.

19 A. Yes, yes, yes.

20 Q. So in that case you were testifying as an expert on
21 racially polarized voting for the plaintiffs; is that correct?

22 A. That's correct.

23 Q. And isn't it true there the Court called into question
24 the credibility of your conclusions in that case?

25 A. I believe that they felt I should have analyzed some

1 elections that occurred about 20, 25 years prior to the case
2 that was being decided. And I didn't have the data and
3 couldn't have done it even if I thought they were relevant.

4 Q. Okay.

5 THE COURT: What was that last part again, even if
6 you thought they were?

7 THE WITNESS: Relevant.

8 THE COURT: Okay. Thank you.

9 BY MR. JACOUTOT:

10 Q. And that was an area where the -- I think the Court took
11 issue, but it's also true that the Court specifically took
12 issue with your decision to limit your analysis to only those
13 election contests that included both a Black and white
14 candidate; is that right?

15 A. I don't recall.

16 Q. Well, I have the case. If I can just read a brief quote,
17 maybe that will refresh your recollection.

18 MR. JACOUTOT: Would the Court like a copy of the
19 case?

20 THE COURT: I have read that case probably twice in
21 the last 30 days. I can tell you who wrote the opinion.

22 MR. JACOUTOT: Fair enough. Fair enough.

23 BY MR. JACOUTOT:

24 Q. Well, Dr. Handley, I just want to ask if this sounds
25 correct to you, that the Court's --

1 MS. LAKIN: Your Honor, objection to improper
2 procedure for refreshing recollection --

3 THE COURT: Yeah. I think you have to let the
4 witness take a look at it and see does that refresh her
5 memory.

6 MR. JACOUTOT: Certainly. May I approach?

7 THE COURT: Yes.

8 MR. JACOUTOT: For Ms. Lakin it's on page 32.

9 THE WITNESS: I'm on page 32.

10 BY MR. JACOUTOT:

11 Q. At the bottom of the first paragraph, under section 2 on
12 page 32, the Court stated, "The parameters for the election
13 she chose," "she" referring to you, Dr. Handley, "only
14 statewide elections with a Black candidate running against a
15 white candidate, exclude other relevant elections, thereby
16 diminishing the credibility of her conclusions."

17 Do you see that?

18 A. I do.

19 Q. Okay. And is it true in that case that you analyzed only
20 Black and white -- or excuse me -- only election contests that
21 included Black and white candidates?

22 A. Clearly those were the predominant number of elections.
23 I don't remember if I included any white versus white
24 contests.

25 Q. And it's also true that for that reason and the other

1 reason that you mentioned earlier, that your report, quote,
2 exaggerates the extent of polarization and renders the data
3 unreliable for other experts to rely upon for opinions on the
4 cause of defeat of Black-preferred candidates?

5 A. Are you reading something to me? I'm sorry.

6 Q. Yes, if you -- I can read --

7 THE COURT: I don't think you need to read it.

8 Does this case -- looking at what you're looking at,
9 does any of that refresh your memory?

10 THE WITNESS: I remember the case.

11 THE COURT: Well, do you dispute in that case that
12 the -- I think it was a three-judge panel, that they disagreed
13 with how you went about making your analysis? Do you disagree
14 with that? Do you dispute that?

15 THE WITNESS: I think they disagreed with how I -- I
16 believe I did it correctly. They did not.

17 THE COURT: Judges do that sometimes. Okay.

18 I think there's enough here to say it's the same case
19 and what you said happened.

20 MR. JACOUTOT: Certainly.

21 BY MR. JACOUTOT:

22 Q. And then I would just conclude with a final question,
23 that in your analysis in this case, you've only analyzed races
24 with a Black candidate running against a white candidate with
25 just two exceptions, those exceptions being Senator Ossoff's

1 election and the election between Raphael Warnock and Herschel
2 Walker; is that correct?

3 A. Not exactly. I looked at some state legislative contests
4 that had only white candidates as well.

5 Q. Okay. And how many election -- well, we'll get to that
6 later.

7 MR. JACOUTOT: That's all I have, Your Honor, so...

8 THE COURT: Any objection to this witness testifying
9 as an expert as submitted?

10 MR. JACOUTOT: No objection.

11 THE COURT: The witness will be allowed to testify as
12 an expert in that area.

13 DIRECT EXAMINATION (CONT'D)

14 BY MS. LAKIN:

15 Q. Dr. Handley, what were you asked to do in this case?

16 A. I was asked to conduct a racial bloc voting analysis to
17 determine if voting was polarized in seven specific areas in
18 Georgia. I was also asked to look at the effectiveness of
19 districts in these seven areas of interest.

20 Q. Why did you focus on these particular seven areas?

21 A. These are seven areas of the state of Georgia where state
22 legislative districts could have -- districts that offered
23 Black voters opportunities to elect their candidates of choice
24 could have been drawn and were not drawn when you compare the
25 illustrative to the adopted plan.

1 Q. At a high level can you summarize your opinions with
2 respect to whether there is racially polarized voting in the
3 areas of Georgia that you examined?

4 A. The general elections, both the statewide and the state
5 legislative elections in the seven areas that I examined was
6 starkly polarized, starkly racially polarized.

7 Q. When you say "starkly polarized," what do you mean by
8 that?

9 A. There are some levels of polarization. And in this
10 particular instance, you had something like over 90 percent of
11 the Black voters supporting the Black-preferred candidate and
12 nearly or sometimes over 90 percent of the white voters not
13 supporting that candidate, supporting the opponent of that
14 candidate.

15 Q. At a high level, how, if at all, did this starkly
16 racially polarized voting affect the ability of Black voters
17 to elect candidates of their choice in the areas that you
18 analyzed?

19 A. Because voting is polarized, the only way that you could
20 elect Black-preferred candidates is to create districts that
21 provide Black voters with this opportunity.

22 Q. And what conclusions did you draw regarding the ability
23 of Black voters to elect candidates of their choice under the
24 illustrative plan as compared to the plans adopted by the
25 state legislature?

1 A. As I said, I looked at seven areas. Each of those areas
2 offered at least one additional -- one area offered two
3 additional districts that provided Black voters with the
4 opportunity to elect their candidates of choice compared to
5 the adopted plans.

6 Q. And what conclusions did you reach regarding the success
7 of Black-preferred candidates in general elections in each of
8 the seven areas you analyzed?

9 A. In each of the areas, the districts that provided Black
10 voters with an opportunity to elect were districts that were
11 at least 50 percent Black in voting age population.

12 Q. I'd like to turn first to your opinions on racially
13 polarized voting.

14 Dr. Handley, how do you define racially polarized voting?

15 A. I define -- an election is racially polarized if the
16 election outcome would be different if Black voters and white
17 voters voted separately.

18 Q. And is this a definition that you've used in your
19 previous work as an expert in racially polarized voting?

20 A. Yes.

21 Q. At a high level, how did you go about determining whether
22 voting in the areas of interest was racially polarized?

23 A. Of course we don't have the race of the candidate on --
24 the race of the voter on the ballot they submit, so we use a
25 statistical analysis to estimate the percentage of Black and

1 white voters who supported each of these candidates.

2 Q. Now, we'll get to the specific elections that you looked
3 at in a moment, but, first, what kind of data do you use for
4 these statistical analyses techniques?

5 A. So you need an aggregate-level database that combines the
6 demographic composition of the election precincts with voting
7 for each of the candidates in the election precincts. So
8 you're creating an election precinct-level database that
9 includes both of these pieces of information. Now, for
10 demographic composition, Georgia is a state that keeps not
11 only registration by race, but turnout by race, which is the
12 closest data that you can get to the electorate -- to the
13 actual electorate. So this is actually a good state to do
14 racially bloc voting analysis in because you have good data.

15 Q. What are the statistical techniques that you used in this
16 case?

17 A. I used three techniques. Two of them derive from
18 *Thornburg v. Gingles* and have been around for however long
19 it's been around, 40 years, homogeneous precinct analysis and
20 ecological regression. And then I used a third more recently
21 developed technique called ecological inference.

22 Q. Did each of these statistical techniques allow you to
23 estimate the level of support by race that a given candidate
24 receives in a given election?

25 A. That's correct.

1 MS. LAKIN: Let's pull up the next slide.

2 BY MS. LAKIN:

3 Q. At a high level, and very high level, can you explain
4 what homogeneous precinct analysis is?

5 A. Homogeneous precinct analysis is simply comparing
6 precincts that are overwhelmingly one race, so a precinct
7 that -- in which the turnout is at least 90 percent -- or all
8 precincts in which the turnout is at least 90 percent Black
9 compared to precincts in which the turnout is 90 percent
10 white.

11 Q. And at a very high level can you explain what ecological
12 regression is?

13 A. Ecological regression, you're looking for patterns.
14 You're going to place each precinct on a scatterplot, on a
15 graph, based on the percentage Black and the percentage of
16 vote for a particular candidate. And you're going to see if
17 there's a pattern. Chances are, if voting is polarized,
18 you'll see a linear pattern. As the percentage of Black
19 turnout increases, the percentage of votes for a particular
20 candidate increases. So you have a linear pattern and use
21 that linear pattern to estimate the percentage of Black voters
22 and white voters overall who voted for each of the candidates.

23 Q. And with ecological regression, is it possible to get
24 estimates that are outside of logical bounds, so greater than
25 100 percent or negative numbers?

1 A. Yes. So the lines can be very steep if voting is
2 polarized. And you will get something like 105 percent of
3 Black voters supported the Black candidate or negative
4 5 percent. So they can be outside of the bounds.

5 Q. And at a high level -- one moment.

6 Under what circumstances does this typically occur,
7 outside of the logical bounds?

8 A. Again, if you have a very steep line. So if voting is
9 very polarized, you're more likely to get out-of-bounds
10 estimates.

11 Q. Thank you.

12 And at a high level can you explain what ecological
13 inference is?

14 A. I can give it a try.

15 You don't have to assume linear patterns in this case.
16 What you do is a series of simulations to try and figure out
17 the best estimates for what are called the marginals on the
18 table. You know the percentage of votes that the Black
19 candidate got, you know the composition of all these
20 precincts, so you're going to do literally about a half
21 million simulations to figure out what the best estimates are
22 in terms of the percentage of Black voters who voted for that
23 Black candidate overall and the percentage of white voters.
24 That's the best I can do.

25 Q. Is there more than one version of ecological inference

1 that you used in this case?

2 A. Yes. So it was first developed by Professor Gary King at
3 Harvard. And he developed this because -- because courts
4 frowned on these out-of-bounds estimates. So he developed a
5 technique that produced estimates that always fell within
6 bounds. But you could only use it in a sort of two-by-two
7 situation, two races, two candidates.

8 About 10 years later, or 15 years later, they developed a
9 more sophisticated form of EI called EI RxC, that allows you
10 to use more than two groups. So if you had a situation where
11 you had Black voters, white voters and Hispanic voters, you
12 would use RxC. The other advantage to RxC is it has
13 confidence intervals that are generally accepted.

14 Q. And what groups for your RxC analysis did you use for
15 this case?

16 A. So we -- I divided voters into three groups, white
17 voters, Black voters, and all other voters. There aren't so
18 many all other voters. And so the estimates for other voters
19 have very wide confidence intervals and weren't of particular
20 interest to me in this case, so I didn't report them.

21 THE WITNESS: I'm sorry, I --

22 THE COURT: You need to speak towards the mic.

23 Go ahead.

24 THE WITNESS: Yes. Black voters, white voters and
25 all other voters. And I did the analysis that way, but

1 reported the estimates for Black and white voters.

2 BY MS. LAKIN:

3 Q. And why is that?

4 A. Well, those are the voters of interest here, but also
5 it's the case that there aren't that many other voters.

6 Q. Why do you use all of these techniques?

7 A. They're all different methods of arriving at estimates.

8 And if they all come up with very similar estimates, I'm very
9 confident in those estimates that I am producing.

10 Q. Have all of these statistical techniques been accepted by
11 courts in voting rights cases?

12 A. Yes.

13 Q. Is there one of the three techniques, homogeneous
14 precinct, ecological regression and ecological inference, that
15 you primarily rely on?

16 A. Well, over time these methods have gotten more
17 sophisticated. So, at this point, I think most experts at
18 least would agree that ecological inference produces the best,
19 most accurate estimates.

20 Q. Turning to the elections that you looked at, can you tell
21 us generally what types of elections you analyzed in this
22 case?

23 A. I looked at statewide, general and general runoff
24 elections. I looked at state legislative general elections.
25 And I looked at statewide Democratic primaries.

1 Q. Over what period of time did these elections occur?

2 A. 2016 to 2022.

3 Q. I'd like to turn now to the geographical areas that you
4 focused on. So let's turn to the first tab in your binder,
5 which is your report, and turn to Table 1 on pages 7 and 8.
6 And it's up on the screen.

7 What does this table show?

8 A. This indicates each of the areas that I looked at. It
9 lists the illustrative and adopted districts that I directly
10 compared in this area. And it lists the counties that fall in
11 these areas.

12 Q. Would you walk us quickly through each area of interest?

13 A. So the Eastern Atlanta Metro region, I think there's a
14 map for that region. So that's the first region.

15 This relates -- the first three areas relate to State
16 Senate districts. So this is map 1 or area of interest 1,
17 Eastern Atlanta Metro region.

18 The second is the Southern Atlanta Metro region.

19 The third is the East Central -- is East Central Georgia,
20 including Augusta.

21 And then going to the House districts, area of interest
22 4, or map 4, is Southeastern Atlanta Metro region.

23 Map 5 is Central Georgia.

24 Map 6 is Southwest Georgia.

25 And map 7 is the Macon region.

1 Q. What are -- why are some of the districts numbers bolded?

2 A. Districts that are bolded are the districts that are both
3 majority Black voting age population, I'm going to say VAP,
4 districts and districts that my analysis indicated were
5 affected Black opportunity districts.

6 Q. So we started to get into the conversation about the
7 recent statewide, general and runoff elections that you
8 analyzed a moment ago. Let's go back a few pages to page 5 of
9 your report. Are the statewide general elections and general
10 runoff elections that you analyzed listed here?

11 A. That's correct. I looked at these 16 elections.

12 Q. And there are -- there's 16.

13 And you looked at all these 16 statewide general
14 elections and general runoff elections in each of the areas of
15 interest?

16 A. That's correct.

17 Q. Why did you look at these statewide, general and runoff
18 elections in particular?

19 A. 14 of these contests included Black candidates. The two
20 additional contests did not include Black candidates, but it
21 included a white candidate that ran in a primary, a Democratic
22 primary that included Black candidates, but -- in other words,
23 a contest in which Black voters had the option to vote for
24 Black candidates, but did not. They clearly preferred the
25 white candidate. And so I looked at those two contests.

1 These are Jon Ossoff contests, because he was clearly the
2 Black-preferred candidate of choice.

3 Q. Why do you generally focus on elections that include at
4 least one Black candidate?

5 A. The courts have indicated that those are the most
6 probative contests.

7 Now, I have in a number of jurisdictions looked at white
8 versus white contests. For example, in Arkansas, where two
9 candidates ran statewide in the last 20 years, I looked at
10 white versus white contests. But if I have enough contests
11 that include Black candidates, I focus on those, because the
12 courts have made it clear and because we want to make sure
13 that Black voters are able to elect Black candidates of choice
14 and not just white candidates of choice, if that's what they
15 choose to do.

16 Q. And in doing -- in focusing on these elections, do you
17 make any assumptions about the race of the minority preferred
18 candidate?

19 A. No. I -- I'm only looking to see -- I only want to make
20 sure that Black voters had the option to vote for Black
21 candidates if they so wish. And, again, as I pointed out,
22 that's not always the case. For example, in the Ossoff
23 Democratic primary, that was not the candidate of choice. I
24 think there were two Black candidates and neither of them were
25 the candidates of choice.

1 Q. You mentioned that in some instances where there are few
2 elections to analyze that include the minority -- a candidate
3 of the minority group of interest, that you will sometimes
4 then look elsewhere. In this case, was that the -- was that
5 true in this case?

6 A. With the exception of the two Ossoff contests, I had 14
7 contests to look at that -- that's a lot of contests. A lot
8 of statewide contests to look at. A lot of recent statewide
9 contests to look at. I did not feel the need to go to white
10 versus white contests.

11 Q. Have you taken this approach of focusing on elections
12 that include at least one candidate of the minority group of
13 interest in other cases?

14 A. Yes.

15 Q. So let's focus on one of the areas of interest and walk
16 through an example of your racial polarization analysis. Can
17 you turn to Appendix A5 of your report, which is behind tab A
18 in your binder. I think that's also up on your screen.

19 A. Okay.

20 Q. First, what is contained in Appendix A of your report
21 generally?

22 A. These -- these are the estimates produced when I did the
23 racial bloc voting analysis. These are the estimates for the
24 16 general election contests in the seven areas.

25 Q. And what area are we looking at in Appendix A5?

1 A. The Central Georgia region.

2 Q. And before we get started, is there anything that you'd
3 like to correct in Appendix A?

4 A. Yes. In the commissioner of insurance, I have John King
5 as white. I believe he's actually Hispanic.

6 Q. Does this change have any impact on your analysis?

7 A. It does not. No. It doesn't change the estimates at
8 all.

9 Q. Does it change your conclusions in any way?

10 A. It does not.

11 Q. Now, can you walk us through what this table shows?

12 A. So it lists -- in the first few columns, it lists the
13 year and the contest, the individual candidates, the race and
14 party of that candidate. And then it goes and provides the
15 estimates first for Black voters and then for white voters
16 using the various techniques, statistical techniques that I
17 mentioned.

18 So you have EI RxC, which is the most recent, most
19 sophisticated method, the confidence intervals that I briefly
20 mentioned for that estimate. And then the original Kings EI,
21 ER. And in the white column -- for white voters you can see
22 homogeneous precinct, or HP, estimates. There are no
23 homogeneous precincts that are overwhelmingly Black in this
24 particular area, so there were no HP estimates for Black
25 voters in this area.

1 Q. And for the record, EI is ecological inference?

2 A. Sorry, ecological inference. ER is ecological
3 regression. HP is homogeneous precinct.

4 Q. Can you walk us through what this table shows for this --
5 let's turn to the first election on this table.

6 MS. LAKIN: And can we pull that up on the screen.

7 BY MS. LAKIN:

8 Q. What is this first election?

9 A. This is the 2022 general election for US Senate with
10 Warnock and Walker.

11 Q. Can you walk us through what this table shows for this
12 particular election?

13 A. You can see that the estimate for Black voters ranges
14 from what's 96.9, if you're looking at EI RxC. It's actually
15 over 100 if you're looking at ER. And white voter support for
16 Warnock was 11.2 and less than that when you look at EI, ER or
17 HP estimates.

18 Q. And this column that says 95 percent confidence interval
19 in each of these sections for Black voters and white voters,
20 can you explain what that is?

21 A. It's akin to sort of margins of error in a survey. It's
22 derived a slightly different way. You remember I talked about
23 the 500,000 simulations you ran? Well, this is telling us
24 that 95 percent of those simulations produced estimates that
25 fell within that range. So you're supposed -- you have

1 95 percent confidence that your actual value is within that
2 range.

3 Q. How would you characterize this election?

4 A. This contest is quite polarized. Well over 90 percent of
5 the Black voters supported Warnock and over 88 percent of the
6 white voters supported Walker.

7 Q. And what does that mean in terms of Black voters
8 cohesiveness in this area?

9 A. Black voters are very cohesive. I mean, it's over
10 96 percent of Black voters supported Warnock.

11 Q. And what about vis-à-vis white voters?

12 A. I don't know what you mean by vis-à-vis white voters.

13 Q. In terms of -- how would you characterize white support
14 in this area for different candidates?

15 A. The white support for Warnock was very low, close to
16 10 percent, but the support for Warnock was quite high.

17 THE COURT: For Walker.

18 THE WITNESS: For Walker. Sorry.

19 THE COURT: Could it be argued that -- you're going
20 to be asked this so I'll just kind of -- let's say I was Bryan
21 Tyson.

22 THE WITNESS: Okay.

23 THE COURT: Could we say that the Black voters are
24 voting for the Democratic candidate?

25 THE WITNESS: The Black voters do vote for the

1 Democratic candidate.

2 THE COURT: So it's not necessarily the person, if
3 they're a Democrat, they vote for the Democrat?

4 THE WITNESS: Well, I mean, everybody who's voting in
5 the --

6 THE COURT: Speak into the mic.

7 THE WITNESS: I'm sorry.

8 First of all, you are not explaining why white voters
9 choose to vote for Republicans and Black voters choose to vote
10 for Democrats.

11 THE COURT: You say you're not explaining why. I'm
12 not quite following you there.

13 THE WITNESS: It -- I would say that race impacts the
14 decision on who you're going to vote for, what party you're
15 going to support. So to say that it is party instead of race
16 is ignoring the fact that actually race explains party in
17 part.

18 THE COURT: Okay. So the two are not one and the
19 same? In other words, could a non-Democrat -- did you find a
20 situation where a non-Democrat was supported by more than
21 50 percent in the south of Black voters in an election?

22 THE WITNESS: In my lifetime of doing this,
23 certainly. Here in Georgia in the elections that I looked
24 at --

25 THE COURT: With regard to this case.

1 THE WITNESS: In this case, I cannot think of an
2 instance in which Black voters did not support the Democrat.

3 THE COURT: Okay.

4 BY MS. LAKIN:

5 Q. And just to clarify, and that is with respect to the
6 general elections?

7 A. I'm sorry?

8 Q. With respect to the Judge's questions, that is -- your
9 answer, that you can't think of a situation in which the Black
10 voters did not support the Democrat, is specific to general
11 elections that you analyzed in this case?

12 A. Well, the other one was the Democratic primaries where
13 they're also Democrats, yes.

14 Q. Turning back to the -- the -- this particular first race
15 here. Would you -- would you -- is it fair to say that white
16 voters bloc voted against the Black-preferred candidate in
17 this election?

18 A. Yes.

19 Q. How would you characterize the remaining elections that
20 you evaluated in this table?

21 A. All of these contests are quite starkly polarized.

22 Q. Did you analyze voting patterns in the six other areas of
23 interest that you identified earlier?

24 A. That's correct, I did.

25 Q. And all of the analysis is in Appendix A of your

1 report in similar tables?

2 A. That's correct. All of general -- all the statewide
3 general elections are in Appendix A for the seven areas.

4 THE COURT: Let me interrupt again. In your analysis
5 were the white voters mainly supporting Democrats or
6 Republicans?

7 THE WITNESS: Well, in the Democratic primary they're
8 all supporting Democrats.

9 THE COURT: In the general election. The general
10 election.

11 THE WITNESS: In general elections, the majority of
12 white voters in all of these instances voted for Republican
13 candidates.

14 THE COURT: Now, here you have 96 percent. Did you
15 have a percentage of white voters that support Republicans?

16 THE WITNESS: Well, it -- it varies by area.

17 THE COURT: Let me change the question.

18 THE WITNESS: Okay.

19 THE COURT: If a Black voter was voting for a certain
20 preferred candidate, did you find that white voters usually
21 voted for that candidate or did they vote a higher percent
22 against that candidate?

23 In other words, here you have Warnock was the
24 Black-preferred candidate as you testified, yes?

25 THE WITNESS: Yes.

1 THE COURT: Okay. And you indicated that 10 percent
2 of the white voters voted for him, so that means 90 percent
3 voted against him; is that correct?

4 THE WITNESS: Yes.

5 THE COURT: Is that the trend, or was that unusual?

6 THE WITNESS: That is not unusual in most of these
7 areas that I looked at.

8 THE COURT: What were the exceptions? Were there any
9 exceptions?

10 THE WITNESS: Well, the degree of white crossover
11 vote was slightly variable. So, for example, I think it's in
12 the first area, you'll see a higher percentage of whites
13 supporting the Democratic candidate in some of the -- as
14 compared to some of these other areas.

15 So voting was still polarized, but there was
16 variability in the percentage of white voters who voted for
17 the Black-preferred Democratic candidates. More variability
18 among white voters than there is among Black voters.

19 THE COURT: Go ahead.

20 MS. LAKIN: And Your Honor's questions anticipates
21 something that we were going to get into a little bit later
22 that I would clarify goes, in our view, to the totality of the
23 circumstances.

24 BY MS. LAKIN:

25 Q. But, Dr. Handley, did you -- when -- you considered

1 Democratic primaries in this case as well; is that correct?

2 A. I analyzed 11 statewide Democratic primaries.

3 MS. LAKIN: And, again, this particular portion of
4 these particular questions go specifically to the totality of
5 the circumstances.

6 BY MS. LAKIN:

7 Q. When evaluating the Democratic primaries in this case,
8 did you reach any conclusions with respect to their
9 polarization?

10 A. Yes. More than half of those contests, the Democratic
11 primaries that I analyzed were polarized.

12 MS. LAKIN: Can we pull up slide 3.2. Sorry. 20.
13 20. Slide 20.

14 BY MS. LAKIN:

15 Q. What, if anything, did you conclude with respect to the
16 non-polarized Democratic primaries you examined?

17 A. A strong majority of the Democratic primaries that were
18 not polarized were not polarized because the Black voters
19 supported the white candidate rather than because the white
20 voters supported the Black candidate.

21 Q. And speaking of polarization in Democratic primaries,
22 could party alone explain the racial polarization that you see
23 there?

24 MR. JACOUTOT: Objection, Your Honor. Her report
25 doesn't go to explanation of why voting patterns are occurring

1 where they are. It specifically only deals with the fact that
2 the voting patterns are occurring where they are. I think
3 this is outside the scope.

4 MS. LAKIN: Your Honor, all of these opinions were
5 offered during the PI stage of this case. And I'm happy
6 to put that -- you know, the rebuttal report where she
7 outlines some of these opinions formally into the record, but
8 they were also included in the PI record as well. And she was
9 asked extensively about this at her deposition.

10 THE COURT: I'm going to allow the question.
11 Overruled.

12 BY MS. LAKIN:

13 Q. With respect to the Democratic primaries, can party alone
14 explain the racial polarization that you see, that you've
15 identified?

16 A. Party can't explain it at all, because everyone
17 participating in the Democratic primary is a Democrat. So if
18 you have polarization, it couldn't be explained by party.

19 Q. What if you had found no racial polarization in party
20 primaries in Georgia, what would that mean -- would that mean
21 that race is not a factor?

22 MR. JACOUTOT: I'm sorry, just another objection that
23 we're now speculating that -- on something that she hasn't
24 found in her report and then trying to explain what it means.
25 I think we're well outside the scope of the report.

1 THE COURT: Is this not in the report?

2 MS. LAKIN: Your Honor, this is a -- whether or
3 not -- what reasonable inference could be made in terms of the
4 analysis that she has done? She's opining with respect to the
5 data she has found and what would be or not be reasonable
6 inferences from that data.

7 THE COURT: Well, I think she's saying based on the
8 data she's found as an expert she can do it if she's given you
9 all at least something. You haven't gotten anything on this
10 aspect of it?

11 MR. JACOUTOT: I'm sorry?

12 THE COURT: You haven't received any information on
13 the aspect she's testifying about now?

14 MR. JACOUTOT: Not that I have -- I have not seen
15 anything about inferences that could be made based on voting
16 patterns that have not occurred.

17 MS. LAKIN: Your Honor, she's an expert. She
18 is testifying as to the --

19 THE COURT: Yeah, that's part of my question, because
20 there's got to be something that she's basing it on. I'm
21 hearing that they have received nothing that she's basing this
22 on. You're saying something different.

23 MS. LAKIN: That's correct, Your Honor. I'm happy to
24 pull up Exhibit -- Alpha Phi Alpha Exhibit 10, which is the
25 rebuttal report that Dr. Handley --

1 THE COURT: Can I see it?

2 MS. LAKIN: -- submitted in the -- into the --

3 THE COURT: Hold on a second.

4 It says it right there. She gives it right there.

5 Have you seen rebuttal declaration number 10?

6 MS. LAKIN: It's Alpha Phi Alpha Exhibit 10.

7 THE COURT: I'm asking, have you seen this prior to
8 today?

9 MR. JACOUTOT: Yes, Your Honor, prior to the PI
10 hearing -- or it might have been -- yeah, that was prior to
11 the PI hearing. Obviously the Rule 26 report that she
12 submitted for this case and for the trial does not contain
13 this information. And as far as I know, that -- these
14 questions can certainly be, you know, explaining or expanding
15 somewhat on what's considered -- what's written in the 26
16 report, Rule 26 report. But going back to the PI hearing and
17 rebuttal declaration, I'm not familiar with that.

18 MS. LAKIN: Your Honor, Mr. Tyson just offered into
19 evidence Mr. Cooper's preliminary injunction report, which was
20 submitted into evidence, as well as the fact that there have
21 been no objections lodged to this exhibit on the exhibit list.

22 THE COURT: I'm going to allow it in over objection.
23 I'll note your objection.

24 MR. JACOUTOT: Thank you.

25 MS. LAKIN: So I'm handing up what is marked as

1 Exhibit APA 10.

2 Your Honor, Alpha Phi Alpha plaintiffs move to admit
3 Alpha Phi Alpha Exhibit 10 into the trial record.

4 THE COURT: I'm allowing it over objection. And I'll
5 note your objection for the record.

6 MR. JACOUTOT: Thank you, Your Honor.

7 (APA Exhibit 10 was admitted and marked into
8 evidence.)

9 MS. LAKIN: Your Honor, I would also note that the
10 primary data that she analyzed that we're discussing is in --

11 THE COURT: What's your next question?

12 MS. LAKIN: -- is in the report. Is in her
13 December 2023 report.

14 BY MS. LAKIN:

15 Q. Dr. Handley, can you -- you were discussing whether party
16 alone could explain racial polarization in the Democratic
17 primaries that you identified. And the question that I asked
18 was what if you had found no racial polarization in party
19 primaries in Georgia, would that mean that race is not a
20 factor in the racially polarized voting patterns that you've
21 documented in general elections?

22 A. No. Because it still doesn't explain why white voters
23 are voting for Republicans and why Black voters are voting for
24 Democrats. Race is still playing a role in that decision. In
25 fact, social scientists have known this for a long time.

1 We've traced the movement of the -- of white voters from the
2 Democratic party to the Republican party, the realignment of
3 southern whites to civil rights legislation in the 1960s.

4 When national Democrats passed, for example, the Voting Rights
5 Act, that led to the white flight out of the Democratic party.

6 And this idea that the parties are divorced from race is
7 just not true because racial attitudes between the two parties
8 are quite different. And it's not surprising that Black
9 voters would support the Democratic party.

10 THE COURT: Didn't they basically just do a switch in
11 the '60s? Up until about 1960s Blacks voted heavily
12 Republican.

13 THE WITNESS: They didn't vote very much at all in
14 Georgia.

15 THE COURT: When they voted, they voted Republican,
16 did they not?

17 THE WITNESS: When they were allowed to vote, it's
18 true that they --

19 THE COURT: White supported the Democrat.

20 THE WITNESS: They supported Lincoln's party
21 originally, that's right.

22 THE COURT: And then you had the 1964 Civil Rights
23 Act pass and they more of less kind of did a flip. Blacks
24 started voting, well, Democratic, and whites started voting
25 Republican.

1 THE WITNESS: That's correct.

2 BY MS. LAKIN:

3 Q. And, Dr. Handley, do those trends continue to this day?

4 A. That's correct. That's correct. And I think you can see
5 it reflected in attitudes about things like affirmative action
6 and racial justice. There is a decided difference between the
7 two parties.

8 Q. So going back to your conclusion that the majority of
9 Democratic primaries that you examined were racially
10 polarized, could that be due to chance?

11 A. Only if you believed that voters voted randomly and all
12 of your contests had only two candidates in it. I don't
13 believe -- I know that all the contests didn't have two
14 candidates in it. And I don't believe that voters vote
15 randomly.

16 Q. Did you see any evidence that voters were voting randomly
17 in the Democratic primaries that you looked at here?

18 A. I did not. You would see much -- much less variation
19 than you do.

20 THE COURT: Let's take a ten-minute break here. And
21 we'll go from 4:55 and we'll stop at 5:30. We probably won't
22 finish direct today. We definitely won't finish cross today.
23 They've got a lot of questions over there, so let's do that.

24 So giving a little -- some people, the court reporter
25 needs a break. Thanks. Let's stop right here for ten

1 minutes.

2 MS. LAKIN: Thank you, Your Honor.

3 (After a recess, the proceedings continued at
4 4:52 p.m. as follows:)

5 THE COURT: You-all can be seated.

6 Ms. Lakin, it was pointed out to me that I need to
7 apologize to you that my questioning threw you off your
8 presentation. So I will sit here and listen.

9 MS. LAKIN: Not at all, Your Honor. I want to answer
10 the questions that you're most interested in and so that is
11 what I have been trying to accomplish. And I hope this has
12 been helpful.

13 THE COURT: It's been very helpful, but you-all have
14 a presentation you-all have prepared, so I will listen and not
15 talk.

16 Ms. Lewis is going, that's not possible.

17 MS. LAKIN: We are happy to take the questions that
18 you have any time you have them.

19 BY MS. LAKIN:

20 Q. So, Dr. Handley, I have one last question with respect to
21 these Democratic primary elections that we've been talking
22 about for now.

23 Just to be clear, you have said that the majority of
24 Democratic primary elections that you evaluated were
25 polarized, racially polarized; is that right?

1 A. That's correct.

2 Q. And that means, therefore, that in the majority of
3 primaries you evaluated, Black and white -- Black Democrats
4 and white Democrats would have elected different candidates if
5 the election had been run just with Black voters versus just
6 with white voters?

7 A. That's correct.

8 Q. Thank you.

9 I'd like to return now to our discussion about general --
10 your analysis of general statewide elections and runoffs and
11 voting patterns by race for purposes of the *Gingles* 2 and 3
12 analysis.

13 So we were talking about the table in Appendix A5 and you
14 were walking us through that particular area. And you -- we
15 last left off, I believe, with you characterizing the
16 remaining elections that you evaluated in that region.

17 Do you recall this?

18 A. Yes.

19 Q. Did you do the same analysis that we walked through with
20 respect to area 5 for the other six areas of interest?

21 A. That's correct. There are identically formatted
22 appendices for each of the areas.

23 Q. What, if anything, did you conclude about racially
24 polarized voting in these seven areas based on your analysis
25 of statewide, general and runoff elections?

1 A. I found that voting in these seven areas in these general
2 elections were very polarized, voting was very polarized.

3 Q. And what does that mean in terms Black -- Black
4 candidates voted?

5 A. Black cand- -- how Black voters voted?

6 Q. That's correct.

7 A. Black voters were very cohesive in all of these areas in
8 all of these contests.

9 Q. So I'd like to turn to state legislative contests that
10 you analyzed in your racially polarized voting analysis.

11 Why did you also look at state legislative contests?

12 A. Well, the 2022 state legislative contests were an obvious
13 look at, but, of course, those are only for the adopted plans,
14 not for the illustrative plans. But we only had one set of
15 elections that occurred under the adopted plans. So I also
16 looked at state legislative contests that occurred under the
17 old plan in the areas of interest.

18 Q. Why did you decide to look at state legislative
19 elections, general elections at all?

20 A. The courts have said that endogenous elections, that is
21 elections for the office at issue, are particularly probative.
22 But, again, I only had one set of elections that occurred
23 under the adopted plans, so I went and looked at earlier
24 endogenous elections.

25 Q. And those earlier endogenous elections were in the areas

1 of interest in this case?

2 A. That's correct. If a state legislative district was
3 wholly contained within the area of interest, or if it
4 overlapped one of the adoptive or illustrative districts, I
5 looked at it if it was a biracial contest. Again, if it was
6 2022, I looked at it even if it was not a biracial contest.

7 Q. And is that analysis that you've done with respect to
8 state legislative general elections in Appendix B of your
9 report?

10 A. That's correct.

11 Q. And how many state legislative elections did you analyze?

12 A. 54 elections.

13 Q. What opinions did you form about racial polarization
14 based on the state legislative general election races you
15 analyzed?

16 A. 53 of the 54 contests that I looked at were racially
17 polarized. They were just as polarized as the general
18 elections in these areas, the statewide general elections. In
19 other words, they were very polarized. Black voters were very
20 cohesive in support of their preferred candidates and white
21 voters bloc voted against these candidates.

22 Q. Those summary statistics are up on your slide; is that
23 correct?

24 A. Yes. But if I talk and turn this way, I'll get in
25 trouble.

1 THE COURT: Go ahead.

2 BY MS. LAKIN:

3 Q. What, if anything, did you find regarding the districts
4 where Black-preferred Black candidates were successful?

5 A. Black-preferred Black candidates were successful only in
6 districts that were majority Black in the elections that I
7 looked at.

8 Q. And I may have missed this, but can you tell us more
9 about the lone district that was not majority Black, where the
10 Black-preferred candidate was successful?

11 THE COURT: Can you repeat that?

12 BY MS. LAKIN:

13 Q. Can you tell us more about the lone district that was not
14 majority Black, where the Black-preferred candidate was
15 successful?

16 A. I'm sorry, I should have said that they were
17 majority-minority. All of the districts in which the
18 Black-preferred candidate won were majority-minority. Almost
19 all of them were majority Black, one was majority-minority, in
20 other words. If you add other minority groups, they composed
21 a majority. Whites were a minority in that district.

22 Q. Just to clarify, the -- the one state legislative
23 election that you found that was majority that you're talking
24 about here, the majority-minority district, that was one
25 election that you found that was not racially polarized; is

1 that correct?

2 A. No. I thought that I -- no. That was the one in which a
3 Black-preferred candidate won. But I'm going to have to --

4 Q. Take a look at your report.

5 A. Yes. Do you know -- I think I have it in a footnote. If
6 you'll hold on a second, I will look for the footnote.

7 Q. I'm sorry, Dr. Handley. I believe you were correct.

8 A. I was correct.

9 Q. My apologies.

10 What did you conclude based on your analysis of general
11 elections about racially polarized voting in the areas of
12 interest?

13 A. In the areas of interest that I looked at, the -- all
14 seven areas voting was starkly racially polarized.

15 Q. And what does that mean with respect to the Black
16 community -- Black voters in terms of their support for their
17 preferred candidates in the area?

18 A. Because voting is polarized, you would need to draw
19 districts that provide minorities with an opportunity to elect
20 their candidates of choice if you wanted to elect their --
21 Black voters' candidates of choice.

22 Q. I'm going to turn briefly back to this -- the primary
23 elections that we have been talking about earlier for a
24 moment. Can you explain why you looked at these Democratic
25 primary elections in the first instance?

1 A. Yes. We have a two-part election system here and you
2 have to make it through the Democratic primary to make it into
3 the general election. Now, in some jurisdictions that I've
4 worked in, the Democratic primary is actually the barrier, and
5 that's why I would always look at both. That is not the case
6 in Georgia. But it could be the case that Democratic
7 primaries are stopping the minority-preferred candidates from
8 even getting the nomination. So I look at both.

9 Q. Let's go back to your report and turn to page 6 and go
10 to the -- the next slide.

11 And these are the Democratic elections that you analyzed,
12 they're listed here; is that correct?

13 A. I'm sorry, on page --

14 Q. Page 6. And --

15 A. At the top.

16 MS. LAKIN: Go to the prior slide.

17 BY MS. LAKIN:

18 Q. Are they also listed on the screen?

19 A. That's correct.

20 Q. Why did you look at these Democratic primary elections in
21 particular?

22 A. These 11 Democratic primaries offered Black voters an
23 opportunity to vote for a Black candidate should they so wish
24 to do so. They didn't necessarily wish to do so. So I'm not
25 saying that the Black candidate was the Black-preferred

1 candidate, only that they had the option to vote for a Black
2 candidate if they so desired.

3 Q. Did you examine any Republican primary elections?

4 A. I did not.

5 Q. Why not?

6 A. Because less than 5 percent of Black voters who choose to
7 vote in a primary actually choose to vote in the Republican
8 primary. So you would be -- you would not be finding the
9 Black-preferred candidates in the Republican primary. On top
10 of that, the very low number of Black voters participating
11 meant that the estimates would be very unreliable, the
12 estimates for Black voters would be very unreliable.

13 Q. As it relates specifically to your conclusions regarding
14 racial bloc voting for purposes of *Gingles* 2 and 3, what
15 conclusions did you draw with respect to the Democratic
16 primaries that you analyzed in the areas of interest in this
17 litigation?

18 A. I would say that because the Democratic primaries were
19 not a barrier, that they were -- well, I'm not a lawyer, but I
20 think that they're probably not relevant to the second and
21 third prong of *Gingles*. I -- my opinion about the second and
22 third prong of *Gingles* rests on general elections.

23 Q. And did you offer any opinion in your report regarding
24 whether Democratic primaries are the barrier to electing
25 Black-preferred candidates outside the areas of interest?

1 A. No, I only looked at the areas of interest.

2 MS. LAKIN: Your Honor, I have just one or two
3 clean-up questions that bear specifically on the totality of
4 the circumstances with respect to the Democratic primaries.

5 THE COURT: Thank you.

6 BY MS. LAKIN:

7 Q. So you testified earlier that a majority of the -- you
8 found that a majority of the Democratic primaries that you
9 evaluated were racially polarized.

10 Do you remember that?

11 A. That's correct.

12 Q. Can you comment on the cohesion in these Democratic
13 primaries that you evaluated?

14 A. Certainly Black and white voters were less cohesive, but,
15 of course, you would expect that in a Democratic primary,
16 primarily because the candidates are so much more similar than
17 they are in general elections, but also because you -- maybe
18 in a majority of the cases you had more than two candidates.
19 So you would not expect the level of cohesion that we found in
20 the general elections in the Democratic primaries.

21 Q. And in the Democratic primaries that you evaluated in
22 this case, were there instances of multiple candidates
23 running?

24 A. There were.

25 Q. Do these observations about cohesion in Democratic

1 primaries preclude a finding of racially polarized voting?

2 A. No. Again, I define racially polarized voting as a -- a
3 voting -- a contest is polarized if Black voters and white
4 voters, voting separately, would have elected different
5 candidates. There's no level of cohesion that's required.

6 Q. And just to be clear, though, there was a high degree of
7 cohesion among Black voters in general elections?

8 A. Absolutely.

9 MS. LAKIN: Now, Your Honor, I'm returning back to
10 questions that bear on *Gingles* 2 and 3. And to the extent
11 Senate Factor 2 relates to *Gingles* 2 and 3, the totality of
12 the circumstances --

13 THE COURT: Hold on, hold on.

14 MS. LAKIN: Senate Factor 2 also incorporates
15 racially polarized voting. These questions also bear on the
16 totality of the circumstances.

17 THE COURT: All right. Thank you.

18 BY MS. LAKIN:

19 Q. Let's turn, Dr. Handley, now to your analysis of Black
20 voters' opportunities to elect candidates of their choice in
21 the illustrative and adopted plans. How did you go about
22 evaluating whether Black voters have an opportunity to elect
23 their preferred candidates in the illustrative and adopted
24 plans in this case?

25 A. I looked at several factors. I looked at the Black

1 voting age population in the districts. I looked at what I
2 call my general election effectiveness score that essentially
3 looks at how previous statewide Black candidates would perform
4 in these newly drawn districts. I did the same thing for the
5 Democratic primaries. And if it was an adopted district and
6 there was actually an election in it, I could also look at the
7 election results and the voting patterns in that particular
8 election if it was contested.

9 Q. So how did you go about looking at these historical
10 elections that you've discussed in compiling your general
11 election scores?

12 A. So the -- the way that this is done, I didn't invent
13 this, lots of redistrictors and experts do this, is I took
14 previous elections, in fact, the elections -- the statewide
15 general elections that I looked at, and I included them all in
16 this effectiveness score. I'm essentially looking at the
17 average percentage of the vote these candidates combined would
18 get in the district.

19 I'm looking at these previous elections because it has to
20 be statewide, because it has to be an area big enough to
21 encompass the entirety of the newly drawn district. And I
22 wanted contests that is racially polarized because I want to
23 know if the Black-preferred candidate will win in a polarized
24 contest.

25 Q. And how do you determine -- how do you determine how a

1 candidate would do based on these historical elections? Can
2 you walk us through that process?

3 A. So the election results, the precinct election results
4 were disaggregated down to the bloc level and reaggregated up
5 to the level of the -- I'm going to say proposed district,
6 because I mean both the illustrative and adopted, but up to
7 that level. And then just looking at how the candidates would
8 have done. And it's simply an average of how those candidates
9 would have done across those elections.

10 Q. And this is what you call recompiled election analysis;
11 is that right?

12 A. Yeah, probably called it that there in the report.

13 Q. Had you previously used this method for evaluating
14 opportunity to elect in other cases?

15 A. I have.

16 Q. Has this analysis been accepted by courts?

17 A. Yes, and as I said before, this is quite commonly used by
18 redistrictors as well, usually for different purposes.

19 Q. Let's turn to the bottom of page 11 and top of page 12 of
20 your report. You mentioned that you looked at some general
21 elections to compile your general election score. Are these
22 the elections that you looked at?

23 A. That's correct.

24 Q. Why did you include these elections?

25 A. These elections were polarized. And they -- and the

1 Black-preferred -- these were just polarized contests in
2 which -- in each case the Black-preferred candidate -- the
3 Black-preferred -- the voters preferred the Black candidate.

4 Q. Why are these your criteria?

5 A. Again, I want to make sure that the district would elect
6 a Black-preferred Black candidate if the voters so desired in
7 a racially polarized contest.

8 Q. And you mentioned that you calculated an average based on
9 these elections. And that's what you call the general
10 effective -- general election effectiveness, or GE, score?

11 A. That's correct.

12 Q. And you -- and you did the same thing with respect to
13 primary elections as well; right? Is that right?

14 A. That's correct.

15 Q. And the average vote share that Black-preferred
16 candidates received for those elections, you called the
17 Democratic primary effectiveness, or DPR, score?

18 A. That's correct.

19 Q. Could you determine whether a district is an
20 opportunity -- a Black opportunity district based purely on
21 whether the Black district elects a candidate of choice?

22 A. Do you mean in a single election or across a series of
23 elections? I'm not sure about that question. Could you
24 clarify it a bit?

25 THE COURT: Could you repeat that question?

1 MS. LAKIN: Sure.

2 BY MS. LAKIN:

3 Q. I asked could you determine whether a district is a Black
4 opportunity district based purely on whether the district
5 elects a Black candidate of choice? So no other analysis was
6 provided.

7 A. So do you mean I've done a racial bloc voting analysis
8 and I know that the Black-preferred candidate won?

9 Q. Simply purely on the basis that the district elects a
10 Black candidate of choice.

11 A. A Black candidate of choice. So I've done a racial bloc
12 voting analysis.

13 Q. Well, let me phrase it a different way.

14 Would you consider all districts that elect Democrats to
15 be Black opportunity districts?

16 A. Not without doing any analysis, no.

17 Q. And what exactly would the analysis you'd need to do be?

18 A. Well, the first thing I would be interested in is the
19 Black voting age population. If you're talking about a
20 district that has a, say, 5 or 10 percent Black voting age
21 population, then you're not talking about a district in which
22 Blacks have a -- any ability to influence the election.
23 They're too small a number.

24 But you would also look at Democratic primaries, because
25 we would want to know if the Democrat who was elected was the

1 Democrat chosen by Black voters in the Democratic primary.

2 Q. And these are factors that you looked at in the districts
3 you analyzed in the areas of interest in this case?

4 A. That's correct. But, of course, in the adopted district
5 I also had -- yeah, I had actual election results, yes.

6 Q. Let's turn to page 16 of your report and walk through an
7 example of your effectiveness analysis.

8 MS. LAKIN: Next slide.

9 BY MS. LAKIN:

10 Q. What area of interest is represented by the maps here?

11 A. This is the Eastern Atlanta Metro region.

12 Q. And what do these two maps represent?

13 A. These shaded-in districts are the districts that I
14 compared in the illustrative and the adopted plans.

15 Q. And turning to the next page of your report, what are
16 these tables?

17 A. These are the comparison tables that allow me to compare
18 the adopted districts and the illustrative districts on the
19 factors that I just outlined for you earlier, the percent
20 Black voting age population, the GE score, the DPR score, and
21 in the case of the adopted plan, whether the -- whether there
22 was an election, whether it was polarized and who won.

23 Q. And what does the pink shading in the maps mean?

24 A. The districts that are pink are districts that provide
25 Black voters with an opportunity to elect their candidates of

1 choice.

2 MS. LAKIN: And can we go to slide 26. There we go.
3 26.

4 BY MS. LAKIN:

5 Q. And what does the gray shading in the tables represent?

6 A. Gray shading in the tables represent districts in which
7 Black voters have an opportunity to elect their candidates of
8 choice.

9 Q. So if you can, just walk us through District 17,
10 comparing that district in the adopted State Senate map versus
11 the illustrative State Senate map. Can you walk us through
12 the -- the different areas. Let's start with the adopted
13 State Senate district map. And we focus on District 17.

14 A. Okay. So District 17, this is a Senate District 17,
15 is -- this is in the adopted State Senate plan, is 32 percent
16 Black in voting age population. The GE score is .366. The
17 DPR score is .611. The contest in 2022 was racially
18 polarized. And the white-preferred candidate defeated the
19 Black Democrat with 61.6 percent of the vote. That candidate,
20 who now represents the district, is Brian Strickland. He's a
21 white Republican.

22 Q. And is this a district that provides Black -- Black
23 voters an opportunity to elect?

24 A. It is not.

25 Q. What about the two other districts in this adopted plan,

1 table?

2 A. The other two districts in the adopted State Senate
3 districts table are effective minority districts.

4 Q. Let's take a look at the same table for the illustrative
5 plan in the same region. It's the next slide.

6 Can you explain what the table shows for District 17 in
7 the illustrative plan?

8 A. The Black voting age population has been increased to
9 62.5 percent. The GE score is now .654. The DPR score is
10 .659. I've, therefore, determined that that district would
11 provide Black voters with an opportunity to elect their
12 candidate of choice.

13 Q. And the same is true of the two other districts in the
14 illustrative plan?

15 A. Yes, that's correct.

16 Q. Based on your analysis -- analyses summarized in
17 comparison Table 1, did you draw any conclusions about Black
18 voters' opportunity to elect in this area under the two
19 different plans?

20 A. Yes. Under the illustrative State Senate plan, there is
21 an additional district that provides Black voters with an
22 opportunity to elect their candidate of choice. That's
23 District 17.

24 Q. Let's turn to another of the areas of interest in Central
25 Georgia where Your Honor had some questions about the

1 performance of districts in Mr. Cooper's illustrative plan.

2 Does this -- this is East Central Georgia. Does this
3 slide contain the same analysis we previously walked through?

4 A. Yes. The tables are identical, not the entries, but the
5 table format, yes.

6 Q. And this area includes Richmond County; is that right?

7 A. That's correct.

8 Q. Let's compare enacted and illustrative Senate
9 District 22. So let's look first at the adopted -- is Senate
10 District 22 a Black opportunity district?

11 A. In the adopted, yes, yes, it is.

12 Q. And why is that? How do you know?

13 A. Well, it has a Black VAP of 56.5. It has a GE score of
14 .668, a DPR score of .631. And in a racially polarized
15 contest, the Black-preferred candidate won with 70.4 percent
16 of the vote.

17 Q. Now, looking at the illustrative Senate District 22, is
18 that a Black opportunity district as well?

19 A. It is.

20 Q. And how do you know that?

21 A. It has a Black VAP of 50.4. It has a GE score of .591
22 and a DPR score of .625.

23 Q. And the new opportunity district created in the
24 illustrative plan is Senate District 23; is that right?

25 A. That's correct.

1 Q. How do you know illustrative Senate District 23 is a
2 Black opportunity district in the illustrative plan?

3 A. Again, I looked at the Black voting age population, the
4 GE score and the DPR score. The GE and DPR scores are both
5 above .5. And the Black VAP is 50.2 percent.

6 Q. And how does illustrative Senate District 23 compare to
7 adopted Senate District 23?

8 A. Adopted District 23 is not a Black opportunity district,
9 while it is a Black opportunity district in the illustrative
10 State Senate plan.

11 Q. Thank you, Dr. Handley.

12 The analysis that we just walked through for Eastern
13 Atlanta and East Central Georgia regions, did you do that same
14 analysis in the five other areas of interest?

15 A. Yes.

16 Q. And how does your analysis in these other areas compare
17 to your analysis of these two areas that we just talked about?

18 A. Each of the areas offers at least one additional Black
19 opportunity district based on my criteria.

20 Q. In the illustrative plans?

21 A. In the illustrative plans.

22 Q. In these seven areas, what can you say about the Black
23 voting age population in the districts that you have found to
24 provide Black voters with an opportunity to elect?

25 A. In each of the cases, these were districts that were at

1 least 50 percent Black in voting age population.

2 Q. Combining your racial polarization analysis and your
3 opportunity to elect analysis, how does racial bloc voting in
4 these areas affect Black voters' opportunity to elect?

5 A. Because voting is starkly polarized in these general
6 elections, without drawing districts that provide Black voters
7 with an opportunity to elect, these districts would not elect
8 Black-preferred candidates.

9 MS. LAKIN: Thank you, Dr. Handley. No further
10 questions at this time.

11 THE COURT: Okay. We'll start the cross-examination
12 tomorrow morning at 9:00.

13 MR. JACOUTOT: Yes, Your Honor.

14 THE COURT: Is there anything else before we leave
15 for today, any administrative matters?

16 MR. TYSON: Nothing for the State, Your Honor.

17 MS. KHANNA: Nothing, Your Honor.

18 THE COURT: Thank you, all. Have a good evening.
19 See you tomorrow morning.

20 (Proceedings were adjourned at 5:28 p.m.)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

I do hereby certify that the foregoing pages are a true and correct transcript of the proceedings taken down by me in the case aforesaid.

This the 8th Day of September, 2023.

Penny Pritty Coudrinet

PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER-

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

_____)	
)	
Plaintiff(s))	
)	Case No. _____
V.)	
)	
_____)	
Defendant(s))	

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

_____)	
)	
Plaintiff(s))	
)	Case No. _____
V.)	
)	
_____)	
Defendant(s))	

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