

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

4 ALPHA PHI ALPHA FRATERNITY,) DAY 6 - 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 FRIDAY, SEPTEMBER 12, 2023

24 **STENOGRAPHICALLY RECORDED BY:**

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

1 APPEARANCES:

2 ON BEHALF OF THE PLAINTIFFS:

3 SOPHIA LIN LAKIN, ESQ.
ARI J. SAVITZKY, ESQ.
4 ALEX W. MILLER, ESQ.
RAHUL GARABADU, ESQ.
5 ED WILLIAMS, ESQ.
DENISE TSAI, ESQ.
6 CAITLIN F. MAY, ESQ.
KELSEY MILLER, ESQ.
7 MING CHEUNG, ESQ.
GEORGE VARGHESE, ESQ.
8 JUAN RUIZ TORO, ESQ.
ANUJ DIXIT, ESQ.
9 JOSEPH ZABEL, ESQ.
MARISA DIGIUSEPPE, ESQ.
10 JOYCE GIST LEWIS, ESQ.
MAKEBA RUTAHINDURWA, ESQ.
11 ABHA KHANNA, ESQ.

12 ON BEHALF OF THE DEFENDANT:

13 BRYAN P. TYSON, ESQ.
14 DIANE F. LA ROSS, ESQ.
BRYAN JACOUTOT, ESQ.
15 DANIEL H. WEIGEL, ESQ.
DONALD P. BOYLE, JR., ESQ.
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1 (Proceedings held in open court at 1:47 p.m.,
2 Atlanta, Georgia.)

3 THE COURT: Anything before we get ready for the next
4 witness?

5 MR. TYSON: Your Honor, Ms. Khanna and I have
6 discussed an issue she's going to raise with the Court.

7 MS. KHANNA: Your Honor, the -- all of us counsel
8 have discussed over the break about kind of the order of
9 questioning for the witness. And I think where we landed,
10 without objection on anybody's side, subject to the Court's
11 agreement, is that while Mr. Tyson's direct examination, we'll
12 proceed in the APA, Grant, Pendergrass order we've been using.

13 For the cross-examination, I will cross first, first
14 on behalf of Grant, and then Pendergrass, and then
15 Mr. Savitzky will then cross on behalf of all plaintiffs and
16 then APA.

17 THE COURT: Fine.

18 MS. KHANNA: Thank you, Your Honor.

19 THE COURT: Call your next witness.

20 MR. TYSON: I call Mr. John Morgan to the stand.

21 Your Honor, while Mr. Morgan is approaching, I have
22 notebooks and slides for everybody, if I could distribute
23 those, please.

24 THE COURT: Yeah.

25 THE DEPUTY CLERK: Could you raise your right hand,

1 please.

2

3

JOHN B. MORGAN

4

a witness herein, being first duly sworn,

5

was examined and testified as follows:

6

7

COURTROOM DEPUTY CLERK: Have a seat. If you could

8

please state and spell your name for the record.

9

THE WITNESS: Okay. My name is John Morgan, J-O-H-N,

10

M-O-R-G-A-N. Middle name Bennett, B-E-N-N-E-T-T.

11

THE COURT: Proceed.

12

DIRECT EXAMINATION

13

BY MR. TYSON:

14

Q. Good afternoon, Mr. Morgan. We are apparently continuing

15

our series of afternoons with maps in this trial, so hopefully

16

we can keep everybody awake.

17

A. It sounds like a podcast.

18

Q. Can you briefly summarize for the Court your background

19

and experience --

20

MR. TYSON: And, Your Honor, I'll pause here to make

21

sure we're very clear, this is on behalf of all three cases,

22

Alpha, Grant and Pendergrass.

23

THE COURT: Gotcha.

24

THE WITNESS: Sure. So I've had a lot of experience

25

in redistricting. I've done redistricting work in 20 states.

1 I received a bachelor of arts from the University of Chicago.
2 And I've traveled all over the county doing work for
3 redistricting. I've also done analysis using census data and
4 election data for campaigns.

5 BY MR. TYSON:

6 Q. And, Mr. Morgan, we appreciate you being here. I know
7 you're a little bit soft-spoken, so please make sure you're
8 speaking into the microphone --

9 A. Okay.

10 Q. -- as slowly as you can for the benefit of our court
11 reporter.

12 In how many redistricting cycles have you drawn
13 redistricting plans?

14 A. I've drawn redistricting plans after the 1990 census, the
15 2000 census, the 2010 census and the 2020 census, this most
16 recent one.

17 Q. Have you had experience drawing redistricting maps
18 without a computer?

19 A. Yes, I have. When I first began, I would use --
20 sometimes we'd use like a paper map and we'd use like a grease
21 pencil, so we'd have like an acetate sheet. And we would mark
22 things and we'd have like a separate printout of populations
23 and a calculator. So that's how we would do some
24 redistricting.

25 And things like that would be done at the same time in

1 the 1990 cycle. The computers were not as fast. So sometimes
2 you would have the computer crunch the numbers and we'd take a
3 lunch break or we'd use our paper maps to work on another area
4 while we're waiting for the computer to do its thing.

5 Q. Have you worked for any State redistricting commissions
6 in the 2020 cycle?

7 A. State redistricting in the 2020 cycle. I've worked for
8 the Michigan Independent Citizens Redistricting Commission. I
9 was hired to work on the Virginia Redistricting Commission,
10 the New Jersey Congressional Commission and the New Jersey
11 Legislative Commission in the 2020 cycle.

12 Q. And were you in a capacity of a map drawer for all those
13 commissions?

14 A. Yes.

15 Q. Have you been considered for appointment as a special
16 master by any courts regarding redistricting plans?

17 A. Yes. My name has been submitted by counsel as a
18 potential special master in New York, Connecticut, North
19 Carolina, and Virginia.

20 Q. Have you done work in Georgia on redistricting in the
21 past?

22 A. Yes, I have. I did redistricting work in Georgia in the
23 2021 cycle and the 2002 cycle, after the 2000 census. I spent
24 a lot of time in the state capitol.

25 Q. Have you worked on any Georgia political campaigns?

1 A. Oh, yes. I've done a lot of work on Georgia political
2 campaigns. I worked with Newt Gingrich. I worked with Johnny
3 Isakson, Jack Kingston. These are all Congressmen. In
4 Isakson's case, he was running for Senate in 1990.

5 I've also worked with Congressman Bob Barr and John
6 Linder. I've also worked on State Senate and State House
7 elections in the 2000s and the '90s, I think.

8 Q. Through the work that you've done in Georgia over time,
9 have you acquired familiarity with the geography and
10 demographics of Georgia?

11 A. Yes, I have. I've actually been to every county in
12 Georgia. As part of my travels throughout the state, I've
13 been all over Georgia.

14 Q. Have you evaluated redistricting plans drawn by others as
15 part of your work?

16 A. Yes.

17 Q. Is the process of redistricting and analyzing demographic
18 data topics that require technical and specialized knowledge?

19 A. Yes. In my experience, it requires a lot of specialized
20 and technical knowledge, yes.

21 Q. And are there particular principles and methods you use
22 to draw redistricting plans and analyze demographic data?

23 A. Yes.

24 Q. Have you been admitted as an expert witness previously in
25 redistricting and the analysis of demographic data?

1 A. Yes, I've been an expert witness before.

2 Q. Do you testify often as an expert witness?

3 A. No. It's very rare that I testify as an expert witness.

4 I've been called into court settings in context of having

5 drawn a plan, but it's rare that I'm called as an expert

6 witness. Redistricters are a little bit like cicadas, I

7 think. They come out every ten years after the census.

8 MR. TYSON: So, Your Honor, pursuant to Federal Rule

9 of Evidence 702, we would move that Mr. Morgan be qualified as

10 an expert on redistricting, the analysis of demographic data

11 and the analysis of redistricting plans.

12 THE COURT: Do you wish to voir dire?

13 MR. SAVITZKY: No, Your Honor.

14 MS. KHANNA: No, Your Honor.

15 THE COURT: Without objection, he's allowed to

16 testify as expert in those areas.

17 MR. TYSON: Thank you, Your Honor.

18 And, Your Honor, at this time we would also move for

19 the admission of the following reports of Mr. Morgan. For

20 the Alpha Phi Alpha case, we would move the admission of

21 Defendants' Exhibit 1, Defendants' Exhibit 2 and Defendants'

22 Exhibit 5.

23 THE COURT: Any objections?

24 MR. SAVITZKY: None to Exhibits 1 and 2. And let me

25 just, with Your Honor's indulgence, just check Exhibit 5.

1 MR. TYSON: And, Mr. Savitzky, it's his preliminary
2 injunction report.

3 MR. SAVITZKY: No objection, Your Honor.

4 (Defendants' Exhibits 1, 2 and 5 were admitted and
5 marked into evidence.)

6 MR. TYSON: So, Your Honor, then, for the Grant case,
7 we would move the admission of Exhibit 1, Defendants'
8 Exhibit 3 and Defendants' Exhibit 6.

9 MS. KHANNA: No objection, Your Honor.

10 THE COURT: All right. It's admitted without
11 objection.

12 (Defendants' Exhibits 1, 3 and 6 were admitted and
13 marked into evidence.)

14 MR. TYSON: And then for the Pendergrass case we
15 would move the admission of district -- I mean -- district,
16 I'm sorry.

17 For the Pendergrass case, we would move the admission
18 of Exhibit 4 and Exhibit 7.

19 MS. KHANNA: No objection, Your Honor.

20 THE COURT: All right. It's admitted without
21 objection.

22 (Defendants' Exhibits 4 and 7 were admitted and
23 marked into evidence.)

24 BY MR. TYSON:

25 Q. So, Mr. Morgan, we're going to begin with an overview of

1 Maptitude and begin the process of talking about the process
2 of drawing a plan. If you could open your notebook there and
3 turn with me to tab number 1.

4 THE COURT: This notebook 1?

5 MR. TYSON: Yes, Your Honor.

6 BY MR. TYSON:

7 Q. Can you discuss for the Court the general process of how
8 you use mapping software in the redistricting process?

9 A. Sure. So usually you would use what's called a GIS
10 system, a geographic information system. Although, as we've
11 pointed out, it's not necessary, it's just really, really
12 helpful and convenient to have a computer system that carries
13 the data along with it.

14 So I would say that in my experience, I've used all kinds
15 of these types of GIS systems for redistricting. Whatever the
16 State commonly used, I learned how to use it. If I have a
17 choice, I use Maptitude, which we've heard discussed here in
18 this case, and specifically Maptitude for Redistricting.

19 Q. And in your report at paragraph 16, you discuss something
20 called a geographic hierarchy and a layer. What do those
21 terms refer to?

22 A. So the idea here is you start with a state, such as
23 Georgia, and it's subdivided into regions like counties which
24 don't overlap. So, again, counties are the layer that's
25 underneath the state. And then beneath that there'll be

1 precincts and there'll be municipalities. And then we talk
2 about census tracts, census block groups and census blocks.
3 And so that all creates a hierarchy where the blocks fit into
4 block groups and the block groups fit into tracts, and the
5 tracts fit into -- usually into -- not always into precincts,
6 but into counties, or precincts can fit into counties. So
7 it's a hierarchy.

8 Q. And so each layer includes all the pieces of the layer
9 below it?

10 A. Yes. And that's the type of hierarchy that's
11 established. And in the case of the geographic information
12 systems, you would have data associated with that. So you're
13 going to have population data. There's demographic data. But
14 you can add any other data you want. You could have voter
15 registration data and there could be other information as
16 well.

17 Q. So in your report you talk about some factors that are
18 generally used in map drawing. What are those referred to?

19 A. They're often referred to as traditional redistricting
20 factors or traditional redistricting principles.

21 Q. In paragraph 19 of your report you discuss the concept of
22 preserving cores of existing districts. What does that
23 process involve?

24 A. So in this paragraph I'm discussing the idea of
25 constituencies and the idea that, in a representative

1 democracy, the districts are built upon constituencies, or
2 geographic areas. And so when I talk about preserving the
3 cores of a district, I'm talking about what was the district
4 before and how much of that is in a new district.

5 Q. And as a map drawer what are some of the conflicting
6 considerations that you have to consider as you draw a plan?

7 A. Well, you have to balance all sorts of considerations.
8 We talk about population equality. We've talked about --
9 you've heard in this case, of course, splitting of geography,
10 such as counties and precincts. You also talk about
11 incumbency, the preserving of previous districts. And we talk
12 a lot about compactness as well, which is something that is
13 considered.

14 Q. And what do compactness scores do in the map drawing
15 process?

16 A. So the compactness scores are generally comparative.
17 You'll be looking at comparing one shape to another shape. So
18 in the case of a compactness test, it's usually comparing the
19 district that's been drawn to an idealized shape, which would
20 be like a circle or a square, but circles are usually used.
21 So most of the tests that I'm familiar with, there are others,
22 but certainly the Reock and Polsby-Popper scores are referring
23 to aspects of circles.

24 Q. Is there such a thing as an objectively non-compact
25 district?

1 A. In my experience, I've seen districts that wouldn't score
2 well on compactness scores and don't look compact, but I
3 haven't experienced a situation where it's objectively not
4 compact.

5 Q. So in your December 5th report you created some
6 illustrative plans for state legislature; is that right?

7 A. Yes.

8 Q. And so if you could begin, let's start with the House
9 illustrative plan. And I'm putting the map 1 on page 12 of
10 your report on the screen.

11 Can you explain to the Court what map 1 shows?

12 A. Yeah. So in my report what I've tried to do is I've
13 tried to describe the process of redistricting. And so
14 starting here, I'm looking at the population distribution
15 across Georgia. So in this case, this map is a themed map and
16 it's a hot to cold theme. So the areas with higher population
17 are in the red areas, so those -- the areas in red on this map
18 have over five House seats. So Gwinnett, Cobb, Fulton, DeKalb
19 and Clayton all have five seats or more. For example, on the
20 map it says Clayton has enough population for exactly five
21 House seats, 5.00.

22 And then the next category is three to five seats. So
23 Richmond here on the map, Richmond County, Bibb County has --
24 I'm sorry -- Richmond-Augusta has 3.47. So three and a half
25 House districts.

1 So this gives a good idea of the population distribution
2 around the state. And then you'll see a lot of counties are
3 blue and those are less than one district or of two-one
4 district.

5 Q. And then looking at map 2 on page 15, is this your House
6 illustrative plan?

7 A. Yes. After I followed the process that I outlined in my
8 report to draw the illustrative plan, this is the product of
9 that full statewide view of an illustrative House plan.

10 Q. And could you explain to the Court the process that you
11 used to create this plan?

12 A. Sure. Well, going back to the ratios on the other map, I
13 was informed by the knowledge of how many districts -- how
14 many ideal districts there would be in each of the counties.
15 And so I endeavored to draw a blind plan based on population
16 and also trying to keep counties and precincts generally not
17 split where possible.

18 And then I would draw districts within those boundaries.
19 So obviously there will be split counties and there will be
20 split precincts, but I would draw the whole plan. And when I
21 drew this plan, it's consistent throughout. I didn't use a
22 different set of methodology in Atlanta versus South Georgia.
23 It's all consistent throughout the drafting of this plan.

24 MR. TYSON: And, Your Honor, I realized when we
25 switched to the illustrative plan, this is for Alpha and Grant

1 only, not for the Pendergrass case.

2 THE COURT: All right. Thanks.

3 BY MR. TYSON:

4 Q. Mr. Cooper -- I mean, sorry.

5 Mr. Morgan, did you consider race as part of the drawing
6 process of this illustrative plan?

7 A. Not in this plan, no.

8 Q. Now, did you draw this plan to be used in an actual
9 election?

10 A. No, that was not my intention.

11 Q. So what was your purpose in creating this illustrative
12 plan?

13 A. Well, I think this helps to explain a little bit of how
14 the population is arrayed throughout Georgia, how you could
15 construct well-formed compact districts in the population
16 without using race at all. And then after I drew the plan, I
17 then looked at what kind of districts were produced and I
18 looked at the racial data after I had completed drawing the
19 plan.

20 Q. And you then proceed to analyze your plan in your report.
21 In your analytical process were you trying to create this
22 illustrative plan as some sort of statistical analysis to
23 exclude all other possibilities in the configuration of a
24 plan?

25 A. No. I was using my experience as a map drawer to draw

1 districts. And, again, I believe that the districts are well
2 formed and they're generally compact and they follow county
3 boundaries and precinct boundaries to a large degree. And
4 then I produced some charts showing what the top line results
5 of those are. And that's one of the charts here.

6 Q. Let's turn to that chart, chart number 1 on page 17.

7 What do those summary statistics show about the
8 illustrative plan?

9 A. So in this case, I've got the statistics for the
10 illustrative plan that I drew. And then also the same
11 statistics for the House enacted plan, the one that was passed
12 in 2021.

13 Q. And how many county splits are on the illustrative plan
14 versus the enacted plan?

15 A. So there are 54 split counties and the enacted plan has
16 69.

17 Q. So that's fewer split counties on the illustrative plan?

18 A. That's right. Fewer split counties. And then the next
19 line shows that the plan I drew has fewer split voting
20 precincts, 106 to 184.

21 Q. What about the mean compactness scores of the two plans?

22 A. So, again, this is looking at -- every single district
23 has a compactness score using the Reock test and using the
24 Polsby-Popper test. And what this does is it calculates the
25 mean of all of those districts. So it calculates the mean of

1 the 180 House districts. And so those numbers are .45 on the
2 Reock and .33 on the Polsby-Popper. And those are higher than
3 the enacted plan, which is .39 on Reock and .28 on
4 Polsby-Popper.

5 Q. So would you consider the illustrative House plan more
6 compact on the whole than the enacted plan?

7 A. Yes. Viewed this way, as a mean of the compactness
8 scores of all of the districts, viewed this way, it would be
9 considered to be more compact as a whole plan.

10 Q. And you list the number of paired incumbents, and that's
11 a very high number.

12 A. Yes, it is.

13 Q. What are you referring to in the paired incumbent
14 category here?

15 A. So in this case, both in the preliminary injunction phase
16 and now in this report, I was given the addresses of the
17 incumbent members. And what they do is you can run a
18 Maptitude report which shows -- at the end of it, it will show
19 which incumbents are in which district. So if a district has
20 two incumbents, you would consider them paired. And I list in
21 my report the -- I'm sorry -- my -- in my report in the
22 exhibit area, I have the entire list of paired incumbents.
23 And this is a summary of that. So in the illustrative plan
24 that I drew, 74 incumbents were paired; whereas the enacted
25 House plan pairs 20.

1 Q. And during the preliminary injunction proceeding, we had
2 an analysis of some incumbents who weren't running for
3 reelection. Is that accounted for in your paired incumbent
4 count?

5 A. No. In the preliminary injunction phase, I did have
6 knowledge and indication of incumbents who were not running
7 for reelection that was known at the time. In this case, I'm
8 just having the addresses of the incumbents from the same
9 database, but I didn't flag any of the incumbents who had said
10 they were not running again and that was known at the time.

11 Q. And are you just trying to compare these plans on various
12 metrics?

13 A. Yes. These are some top line numbers that I'm looking
14 at.

15 Q. What happens to the number of majority Black districts on
16 the enacted plan to the illustrative plan?

17 A. Sure. So, again, to be clear, I didn't look at race at
18 all in this drawing of the plan. So afterwards I imported the
19 plan that I drew into another plan so that I could analyze it
20 and calculate the number of majority Black districts. So here
21 it shows that the illustrative plan that I drew had 35
22 majority Black districts on the AP voting age Black
23 population. And, of course, the enacted plan here has 49. So
24 I compare those two numbers in this chart.

25 Q. And so that's a decrease of 14 districts that are

1 majority Black?

2 A. Yes.

3 Q. And then you report the summary by the voting age Black
4 population. What does that show?

5 A. Yeah. So the breakdowns here are every 10 percent. So
6 there are six districts in the illustrative plan that I drew
7 that are over 90 percent Black voting age population. There
8 are four that are 80 to 90 percent. There are five that are
9 70 to 80. There are nine that are 60 to 70. And there are 11
10 that are 50 to 60.

11 Q. And this is when you did not consider race in the drawing
12 of the illustrative plan?

13 A. That's right.

14 Q. Mr. Morgan, you then selected a couple of regions to
15 analyze. Was there a particular process you followed in how
16 you selected the districts in particular regions?

17 A. Yes. What I tried to do is I tried to look at the
18 counties in the same area. So on the map 3 on page 19 and the
19 map 4 on page 20 of my report, they have metro area region 1,
20 and it's primarily defined based on county. So, for example,
21 DeKalb County is in Clayton, Henry, Rockdale, Newton and
22 Walton. And you'll see that in my plan there's a -- I'm
23 sorry -- the illustrative plan that I drew, there's a small
24 portion of Walton County that's not accounted for in that.
25 And then you'll see also that there is a small piece of Fulton

1 that is included. But, generally speaking, these districts as
2 I drew them in the illustrative plan cover those counties.

3 And then when we flip over to the enacted plan, I've got
4 the same counties, DeKalb, Clayton, Henry, Rockdale, Newton
5 and Walton, and the districts here in the enacted plan cover
6 basically the same area, with a few differences. There's a
7 district that crosses into Fulton and not as much territory as
8 accounted for in Newton and Henry.

9 Q. And so were you trying to achieve some exact overlay of
10 geography when you were creating these regions?

11 A. No. There -- it's not a one-to-one congruence.

12 Q. So looking at region 1 as you've selected it here, what
13 are some differences in these two plans, the enacted on the
14 left and the illustrative on the right?

15 A. So if we look, starting in Clayton County, in the
16 illustrative plan, which is on the right, I have five
17 districts entirely within Clayton County. And on the enacted
18 plan, you can see that five districts are basically in Clayton
19 County, but there's a few crossovers.

20 So you have one precinct is in the purple District 116 to
21 the south from Clayton. And then one precinct of Henry is in
22 the yellow District 78. So it crosses the county here.

23 So, in a general sense, the illustrative plan that I
24 drew, it keeps the districts contained within counties, it
25 doesn't cross the county line often; whereas, the enacted plan

1 does cross county lines.

2 For example, let's look at DeKalb. In the illustrative
3 plan on the right, I have one district that's crossing out of
4 DeKalb County, District 82, which has a small piece of Fulton.
5 Whereas, in the enacted plan, I believe there are six
6 districts that cross out of DeKalb, 91, 92, 93, 95, 94, 88,
7 and 52, they all cross out of DeKalb. So I observed that.

8 And then also I both looked at the compactness scores and
9 I observe here that the illustrative plan, the districts
10 appear to be more compact generally. And in the enacted plan,
11 the districts are much more elongated. And you can see this
12 clearly in DeKalb and also in -- to some extent in Clayton.

13 So you have districts like 89, 84, 86, 87, 88, all there
14 in DeKalb. And they're all elongated, less-compact districts
15 in that area. And, again, one more would be 93, which crosses
16 through Rockdale into Newton from DeKalb.

17 Q. You then report the various racial percentages and
18 compactness scores in the region 1. Looking at some of these
19 districts in South DeKalb County, they're over 90 percent on
20 Black VAP numbers. District 87, 90 and 92. Why is that?

21 A. Well, in this area of Southern DeKalb County, in this
22 area, for example, around Stonecrest, Panthersville, those
23 areas are compact districts in the plan that I drew, the
24 illustrative plan, and they have very high concentrations of
25 Black populations. So this shows an example of what a compact

1 district in that area would look like. And then when you look
2 at the racial percentages, they're clearly very high Black
3 voting age population.

4 Q. Let's look on the other side of Metro Atlanta, region 2.
5 What can you identify about the differences in the enacted
6 plan on the left and the illustrative plan on the right?

7 A. Okay. So, again, I drew districts that are generally
8 compact. So you'll see that the districts in Fulton County
9 are -- you know, they're small, compact districts. And then,
10 for example, if you look at Fayette County, I have two
11 districts exactly in Fayette County. There's a north Fayette
12 district and a south Fayette district. And it's entirely
13 contained within Fayette County. And, let's see, what else
14 would I say here.

15 These are -- again, the counties in this area, of course
16 you have Fulton, you have Douglas, Coweta, Fayette and
17 Spalding are generally in this area. And you'll see that in
18 my illustrative plan I have a little bit of population from
19 Cobb County, a little bit from Forsyth in the north, and I
20 don't have every piece of population accounted for in Coweta.

21 Then if we go over to the enacted plan, you'll see that
22 the districts cross county lines much more frequently and the
23 districts are less compact. And I would point to District 73,
24 District 67, which is Fulton to Coweta; District 58 and 59 in
25 Fulton County; and even District 52. But those are some of

1 the differences that I noticed.

2 So, in general, the illustrative plan is more compact and
3 doesn't cross counties as much. And the enacted plan is less
4 compact and crosses counties more.

5 Q. And then looking at the racial percentages on the
6 illustrative plan in your chart 6, there's a number of
7 districts there that are high 80s, up to 95.6 percent on Black
8 VAP; is that right?

9 A. Yes. If you look in -- you have the Atlanta area
10 Districts 59, 60 and 61 are very high. Two of them are over
11 90 percent. And District 68 is also over 90 percent. And,
12 again, that's a -- that's a compact district on the southern
13 edge of Fulton and Fayette and Clayton.

14 Q. Are Districts 59, 60, 61 and 68 as high Black percentages
15 as they are because of some effort on your part?

16 A. No. I didn't make any effort to look at race at all.
17 And I didn't make any effort to include or exclude anything
18 based on race. I just drew based on the population and
19 keeping things compact and keeping splits lower than otherwise
20 necessary.

21 Q. Looking at District 69 on this plan, that's a district
22 wholly in Fayette County?

23 A. That's right. It's on the north side of Fayette County.

24 Q. What does it mean that the Black population in that
25 district is 42.1 percent as you've reported?

1 A. Well, I would look at both the north and the south. So
2 74 and 69, yeah. So, again, those two districts account for
3 Fayette County.

4 Let's see, I'm sorry. Which chart are we on? I lost the
5 chart.

6 Q. On chart 6.

7 A. Chart 6 for the illustrative plan. Okay. Sorry, I was
8 on the second page.

9 Yeah, it's 42 percent Black voting age population.

10 Q. And then turn to paragraph 34 on page 29 of your report.
11 What did your analysis of this comparison between the enacted
12 and the illustrative plans lead you to conclude about the
13 enacted plan?

14 A. So generally speaking, in this area, in this region, the
15 enacted plan has districts that are less compact and they are
16 a different minority composition. They're generally not as
17 high Black percentages as in the illustrative plan.

18 Q. And what did you conclude about the creation of
19 additional majority Black districts in region 2?

20 A. That creating additional Black majority districts in this
21 region led to lower compactness scores in the region.

22 Q. Let's move to your illustrative Senate plan.

23 Did you engage in the same process to create an
24 illustrative Senate plan as you did for a House plan?

25 A. Yes. Same process. I started with looking at the

1 population distribution. And, again, looking a little more
2 carefully at it, I would point out here as a good example,
3 Richmond County, which is Augusta, is in the yellow, it's one
4 to three Senate seats. And looking at the small little type
5 there, it's 1.08 percent. So Richmond has enough for one
6 Senate district and a little bit more that would have to go to
7 another district following this methodology.

8 Q. And so map 7 is not a racial map, it's a population map?

9 A. That's right. It's a hot-to-cold theme. So the higher
10 population is in the red designation. And then yellow is one
11 to three ideal Senate seats. And then the green are basically
12 from half a Senate seat to a whole.

13 And this helps understand how you can combine, maybe you
14 can combine a group of whole counties to make a district. And
15 with this kind of analysis, you can piece together groups of
16 whole counties or, again, in the case of Richmond County, I'm
17 describing that I would really only need to take a fraction of
18 it out and the rest -- entirety of Richmond is a district.

19 Q. Then looking at map 8, is this the illustrative district
20 you drew for State Senate?

21 A. Yes.

22 Q. What factors did you consider in the creation of the
23 Senate illustrative plan?

24 A. Well, I was looking at not splitting counties; generally
25 speaking, where possible, I try to avoid county splits. And

1 also to keep the number of voting precinct splits low. And
2 then I built on my experience keeping other communities
3 together, such as municipalities and cities. And that's not
4 always apparent when you look at it from this view.

5 But when you look a little more closely, that's something
6 that becomes apparent, generally.

7 Q. Did you use race as part of your drawing process in this
8 plan?

9 A. No, I didn't look at race at all.

10 Q. And like the House plan, did you use the -- draw this map
11 to be used in an actual election?

12 A. No. This is -- basically it was designed as an overview,
13 as an instructional tool.

14 Q. And so you then proceed in chart 8 to purport the same
15 top line numbers as you did for the House plan.

16 A. Yes. So in the illustrative Senate plan, there are 21
17 county splits. In the enacted Senate plan, there are 29. The
18 illustrative plan that I drew splits only 15 voting precincts
19 and the enacted Senate splits 47. And on the compactness
20 metrics, the Reock measure is 46 on the illustrative and 42 on
21 the enacted. 36 on Polsby-Popper, 29 on the enacted.

22 So, generally speaking, the -- well, clearly here on
23 these top line numbers, the illustrative plan splits fewer
24 counties, it splits fewer precincts, and is more compact when
25 looking at the mean compactness scores.

1 Q. And looking at the number of majority Black seats, how do
2 the two plans compare?

3 A. So this illustrative Senate plan has 11 majority Black
4 seats that are over 18-plus of voting age population.

5 Q. And that's -- is that lower than the enacted plan?

6 A. Yes. The enacted plan is 14 and this illustrative plan
7 has 11.

8 Q. And like the House plan, were you approaching this
9 illustrative plan as some sort of statistical exercise to
10 exclude possible causes for the shapes of districts?

11 A. No. I basically -- in the -- in my experience in the
12 preliminary injunction phase, it seemed to be a useful
13 exercise to show the distribution of the minority population
14 around the state by creating a series of compact districts
15 that are generally following county boundaries and not
16 splitting precincts.

17 Q. You then selected some districts for a regional analysis.
18 And did you follow the same process as in the House?

19 A. Yes. Generally, I'm covering the same group of counties.
20 And I'm looking at the illustrative districts in that area.

21 And then the enacted districts in that same general area based
22 initially on counties, but acknowledging that there are
23 differences. These are not completely congruent areas.

24 Q. And you weren't trying to achieve some exact overlay of
25 the population in these regions?

1 A. No. I'm comparing them, looking at them. And you can
2 see in the illustrative plan the districts appear more compact
3 than the enacted plan. And they cut the county lines in fewer
4 places.

5 Q. So then you looked at the racial makeup of the
6 illustrative districts in the metro region. And it appears
7 that some of these districts in South Fulton and South DeKalb
8 are over 90 percent Black voting age population; is that
9 right?

10 A. Yes, that's right. For example, that illustrative
11 District 5 in the southern part of DeKalb County drawn in that
12 way is 93 percent voting age Black and then 39, which is not
13 the southernmost part of Fulton, is -- but the next section is
14 39 -- District 39 is 92 percent Black. So these areas have
15 high concentrations of Black population, clearly.

16 Q. Would you consider District 39 and District 55 to be
17 packed districts?

18 A. Well, we've had a lot of discussion about that.

19 MS. KHANNA: Objection, Your Honor, to the extent
20 this calls for a legal conclusion on what is defined as
21 "packed."

22 MR. TYSON: And, Your Honor, we believe that we've
23 had a lot of discussion on what does packing mean for each map
24 drawer. I think Mr. Morgan can help the Court understand his
25 definition of packing, even if it's not the legal definition

1 of packing through these plans.

2 THE COURT: I'll let him give his definition of
3 packing.

4 THE WITNESS: Well, definitely starting at the basic
5 situation here, the numbers are very high, clearly. And these
6 districts, these are the naturally occurring compact districts
7 in that area. And in my experience, I believe, and we've
8 heard other people say something similar to this, there would
9 need to be some sort of intent for packing. So, for example,
10 providing these, again, are very high districts. And if there
11 was a district that was, say, 70 percent and somebody drew it
12 to be 85 percent and the district, the actual area there is
13 70 percent, then maybe something like that would be considered
14 packing.

15 THE COURT: How do you come to the conclusion there
16 has to be an intent for packing?

17 THE WITNESS: So I would say that if an area --
18 there's -- again, there's an area of high Black concentration
19 in South DeKalb. And so if you drew a district that was
20 90 percent or 80 percent, that's the naturally occurring
21 district in that area. So if you were to add additional
22 population to that, then I would say, yeah, you could consider
23 something like that packing.

24 And in the case of the enacted plan, I see situations
25 where the enacted plan lowers the Black population and doesn't

1 draw these type of districts that I've drawn in my
2 illustrative plan. It's clear to me that the legislature
3 didn't draw districts like this at this high a level.

4 I don't know if there's more I can add to that that
5 would be instructive, Your Honor.

6 BY MR. TYSON:

7 Q. Mr. Morgan, looking at the district -- paragraph 46 of
8 your report on page 42, what did your analysis of the
9 comparison between the enacted plan and the illustrative plan
10 lead you to conclude about the enacted plan?

11 A. That the enacted plan creates additional Black majority
12 districts in this region and it leads -- it has -- they have
13 lower compactness scores in this area.

14 Q. And you mentioned that there was a -- I think you said
15 elongating of districts on the enacted plan. How does that
16 interact with what you've discussed in this report?

17 A. Well, again, using a map as a guideline, if I look at the
18 map on page 39, which shows the enacted plan in the metro
19 area, District 44 is elongated and District 10 is elongated.
20 It's stretching from Southern DeKalb, following the Clayton
21 County line. And then on the other side of that,
22 District 10's also in Southern DeKalb and follows the Henry
23 County line down to the end of Henry County.

24 MR. TYSON: Mr. Morgan, thank you.

25 Your Honor, at this point we're going to move to

1 Mr. Morgan's report on the Alpha Phi Alpha case, which is tab
2 number 2 in the notebook.

3 BY MR. TYSON:

4 Q. Mr. Morgan, in your report in the Alpha Phi Alpha case,
5 did you evaluate plans Mr. Cooper drew for State House and
6 State Senate?

7 A. Yes.

8 Q. And did you compare those plans to the adopted plans for
9 State House and State Senate?

10 A. That's right. I compared them to the adopted plans for
11 House and Senate and I looked at the Cooper-drafted plans.

12 Q. And just in -- briefly, can you describe how those plans
13 compared?

14 A. Well, I ran a number of reports on these and then I
15 compared some of the top line metrics in the series of charts.

16 Q. And you were present for Mr. Cooper's testimony regarding
17 his Alpha Phi Alpha districts; right?

18 A. Yes, I was.

19 Q. So I'd like to -- we're going to walk through some of the
20 specific areas discussed in your report, beginning with the
21 top line numbers.

22 Chart No. 1, you include the number of majority Black
23 State Senate districts on various plans. What does this
24 number show?

25 A. So in the first chart I'm looking at the number of

1 majority Black districts in the adopted plan, the Cooper
2 illustrative plan, I've labeled it as 1205, and then also the
3 Cooper-drafted plan from the preliminary injunction phase.
4 And it shows that there are 14 majority Black Senate districts
5 in the enacted plan, 18 in the Alpha illustrative plan, and
6 then the PI plan has 19.

7 Q. And next you report on a similar top line chart. What
8 does this show in chart 2 of your report?

9 A. So on chart 2 it also reports some of those top line
10 metrics that we've looked at. So it's -- there are the county
11 splits and the precinct splits. So the Alpha Cooper plan
12 splits 28 counties, the enacted plan splits 29. 43 split
13 precincts in the Cooper plan, 47 in the enacted. And the mean
14 compactness for Reock is .43, the enacted plan is .42. And
15 the Polsby-Popper, 28 on the Cooper plan and .29 on the
16 enacted plan. They're all very similar in those regards.

17 Q. Mr. Morgan, I neglected to ask you, you included a number
18 of exhibits with your report. Can you briefly explain what
19 those exhibits are?

20 A. Sure. So the exhibits here, which I list in my report on
21 paragraph 10, using the Maptitude for Redistricting software I
22 have reports for metrics of compactness, districts and their
23 incumbents, population summary, political subdivision report,
24 the plan component report, and then comparing core
25 constituencies to the preliminary injunction plan and also to

1 the enacted plan. Those are all in my -- as exhibits in my
2 report.

3 Q. And those are automatic -- or those are reports generated
4 by the Maptitude software?

5 A. Yes, that's correct.

6 Q. You also created a number of maps you've attached with a
7 racial theme on them. Do I have that right?

8 A. Yes. Let me see if I can find the exhibit.

9 So those are in -- starting at Exhibit 16 in the report,
10 so I have Exhibit 16 shows the Augusta, east central area.
11 And then I have other areas, metro. So I show a thematic map.
12 And this one is themed on race, not on population.

13 And then I have districts that are outlined. So, for
14 example, Exhibit 18 shows Senate District 10. Exhibit 19 has
15 a grouping of Senate districts. And then I have individual
16 Senate District 16 as Exhibit 20, et cetera. Districts -- I'm
17 sorry, yeah. District 17 is Exhibit 21. So I have a number
18 of districts broken out in the exhibits.

19 Q. So why did you include racial theme maps with your
20 report?

21 A. Well, in analyzing the districts for my report, I thought
22 it was important to look at the racial makeup of the districts
23 and the general area around the districts.

24 Q. And do the maps that you've created cover all of the new
25 majority Black districts proposed by plaintiffs?

1 A. Yes.

2 Q. Getting back to chart 2 of your report, Mr. Cooper's plan
3 splits one fewer county according to your top line number, but
4 then you broke out, I'll put on the screen, a chart that has
5 the specific split counties; is that right?

6 A. Yes.

7 Q. And what does chart 4 regarding split counties show in
8 your report?

9 A. What it shows is that these -- let me find the chart, one
10 moment.

11 Q. Page 20.

12 A. Yeah, I was too far. Okay.

13 So what this shows is it shows the list of all counties
14 that were split. And it shows which ones were split in both
15 the enacted plan and the Alpha plan. And then some were
16 unsplit in the Alpha plan and then were -- then there were
17 additional counties that were split in the Alpha plan. So it
18 shows all the counties that were split in common, and then the
19 differences in the splits.

20 Q. And what did you discover about those particular splits?

21 A. Well, what I discovered is that there were additional
22 splits made in areas where Mr. Cooper drafted additional Black
23 majority seats, but there were some counties in areas that
24 were far away from that that were unsplit.

25 Q. So moving next, Mr. Morgan, to Senate District 17. You

1 referenced this Senate district in relation to your analysis
2 of county splits on paragraph 38 of page 21. What is -- why
3 are you discussing county splits in relation to District 17?

4 A. So as I point out in the Cooper illustrative plan, this
5 District 17 splits Rockdale County, so it has three counties,
6 it has DeKalb, Rockdale and Henry. And in this case
7 Mr. Cooper's plan makes Newton County whole, but it splits
8 Rockdale. And this allows the transition from -- to connect
9 Southern DeKalb to more distant areas of Henry County.

10 Q. And did you find that the addition of a county split in
11 this area was related to the creation of an additional
12 majority Black district?

13 A. Yes, clearly.

14 MR. SAVITZKY: Objection, mischaracterizes the
15 witness's testimony. There was no addition. There was a
16 switch of county splits, I believe he just testified.

17 MR. TYSON: I'm happy to rephrase, Your Honor.

18 THE COURT: Rephrase.

19 BY MR. TYSON:

20 Q. Mr. Morgan, is it your view that changing the county
21 split from Rockdale to Newton Counties in this area was the
22 result of the creation of an additional majority Black
23 district?

24 A. Yes. I clearly say in my report that it was necessary to
25 split Rockdale County in order to allow the creation of this

1 district.

2 Q. And why did you say it was necessary?

3 A. Because in order to connect to that portion of Henry
4 County, it was necessary to split Rockdale to accomplish that.

5 Q. And you included in your report a racial breakdown of the
6 components of District 17. What does -- what do the exhibits
7 to your report show about that district?

8 MR. SAVITZKY: Your Honor, I just want to object at
9 this time. There's no discussion in the text of the report
10 about the components of District 17. I know it discusses in
11 other districts, but there's no discussion of that in
12 District 17.

13 MR. TYSON: And, Your Honor, the -- Mr. Morgan has
14 testified the exhibits are part of his analytical process that
15 he prepared in preparing his report. He's not offering any
16 different opinions in this section. I've asked -- my question
17 was specifically the racial makeup, which is a fact. He's
18 elaborating further on what he is discussing about the
19 splitting of Rockdale County in the creation of this district.

20 MR. SAVITZKY: Well, Your Honor, I think it's more
21 than the fact he's offering expert testimony and opinion on
22 the construction of the district. Rule 26 requires a complete
23 statement, not only of all the opinions, but that the witness
24 will express the basis and reasons for them. Any basis and
25 reasons in the component splits reports for criticisms of

1 Senate District 17 are not articulated in the report itself.

2 THE COURT: Then you can ask him that when you get
3 ready to question him.

4 MR. SAVITZKY: Thank you, Your Honor.

5 MR. TYSON: Thank you, Your Honor.

6 BY MR. TYSON:

7 Q. Mr. Morgan, what do you notice about the configuration of
8 District 17 from the exhibits to your report?

9 A. Well, when I analyzed this area, I see that there is
10 higher concentrations of Black population in DeKalb County,
11 and this section of DeKalb County is 94 percent Black. And
12 then the section of Rockdale is 60 percent Black. And then
13 the section of Henry County is not majority Black, it's
14 41 percent Black.

15 Q. What is the biggest county in District 17 by population?

16 A. Henry County is the largest county component.

17 Q. Mr. Morgan, when you're evaluating plans as a map drawer,
18 do you consider districts that are surrounding a district
19 you're evaluating?

20 A. Yes, absolutely.

21 Q. Why is that?

22 A. Because it's the treatment of the entire area that's
23 significant in analyzing the plans. Any one district looked
24 at in isolation, there's information about that one district,
25 but when I'm analyzing this, I'm also comparing this to the

1 enacted plan. And so I'm looking at changes between the
2 illustrative plan in Alpha and the enacted plan. So I'm
3 looking at both the enacted plan and the illustrative plan and
4 the districts around a district that's claimed to be a new
5 district.

6 Q. And so next in your report you have on page 10 of -- you
7 have the enacted districts in South Metro Atlanta. And then
8 page 12 you have the illustrative plans. So I'm going to put
9 those side by side here so we can look at both together.

10 What did you point out in your report about the
11 configuration of these districts in South Metro Atlanta?

12 A. I pointed out that -- I'm sorry, I'm looking for --

13 Q. I'm referring to page -- paragraph 25 on page 12 of your
14 report.

15 A. So the first thing I would point out is that in the
16 enacted plan, Clayton County is split one time. It's split
17 into two pieces. There's a piece in Senate District 34 and
18 there's a piece in Senate District 44. But in the
19 illustrative plan, Clayton is split into three pieces. And I
20 observed that, in the construction of District 16, that rather
21 than complete a district with Clayton County, the district
22 goes all the way through Henry and connects more far-flung
23 areas of Spalding County in a district that stretches about
24 35 -- 34 miles from north to south.

25 Q. And so are you referring to District 28 that begins here

1 in South Clayton and runs all the way to the portion of
2 Southeast Spalding County?

3 A. Well, first I was discussing District 16, which is as I
4 described. But now, looking at District 28, it connects the
5 panhandle of Clayton County and it goes through Fayette County
6 into Spalding, including Griffin.

7 Q. And then you include a chart that shows various plan
8 components for four State Senate districts. What does this
9 chart show?

10 A. So in this area -- there are four districts on this
11 chart, so you have Senate District 34. And, again, this is in
12 the illustrative plan. So you have Senate District 34. So if
13 I look in the column of Senate District 34, what are the
14 components of that? One component is Clayton County, one
15 component is Fulton County. So those two counties comprise
16 Senate District 34. And then down at the bottom, those are
17 the totals for that district.

18 The same is true with 16. So it's part of Clayton
19 County, part of Spalding County, part of Henry County.
20 District 28 is part of Clayton, Fayette and Spalding. And
21 then the District 39 is going to be part of Fayette, and it's
22 going to be to the left of District 28 and all of Coweta
23 County. And then the district total of 39 is there at the
24 bottom of the chart.

25 Then if you look across the rows, as I just said,

1 District -- the -- Clayton County is divided into three
2 districts. So you have Clayton is in 34, 16 and 28. So that
3 accounts for all the population in Clayton looking across the
4 row.

5 Likewise, if you look at the next row, group of rows,
6 Fayette County, all the population is accounted for in
7 Fayette. So you have 74,742 is in District 28, and then
8 44,452 population is in District 39, which is that area in
9 Peachtree City, south of the word "Fayette" on the map.

10 Then the next one, Spalding, you have 25,726 in
11 District 16 and 41,580 population in District 28.

12 And then you have a piece of Fulton. So you see that
13 there's only 52,000 in Fulton. So I'm not accounting in this
14 chart for the entire population of Fulton, but just that
15 portion which is in Senate District 34.

16 Likewise, Coweta, but that's actually the entire county.

17 And then down below, the portion of Henry that's in
18 District 16. So this chart shows all of the pieces of these
19 districts.

20 Q. Mr. Morgan, you say on page 15 of your report that the
21 construction of District 28 strategically bypasses Peachtree
22 City and Fayette County. Why did you use that term?

23 A. Well, clearly, you've got the panhandle area of Clayton
24 County. And then if you had the rest -- I'm sorry. The
25 panhandle of Clayton County, yes. And if you had the rest of

1 Fayette, that could be a district, but instead this
2 District 28 avoids the area of Peachtree City and instead goes
3 down to Spalding County and Griffin.

4 Q. And what did you conclude about District 28 going down to
5 Spalding and Griffin instead of taking in Peachtree City?

6 A. Well, it's strategically avoiding the Peachtree City
7 area. And in that sense, it's avoiding the addition of the --
8 additional white population to this district.

9 Q. You also say in your report that splitting off Peachtree
10 City -- I'm sorry -- that the Black population in Spalding
11 County in Senate District 28 is necessary to reach 50 percent
12 Black VAP. Why do you use the word "necessary"?

13 A. Because basically it's not an accident that the makeup of
14 the Spalding County portion includes -- it has
15 African-American population in the district. You can see that
16 it is 40 percent -- 38 percent voting age population is in the
17 Spalding portion of the district. And without that, if, for
18 example, you were to take Peachtree City, then it wouldn't be
19 majority Black.

20 Q. Mr. Morgan, let's move next to Senate District 23 in your
21 report. And you begin with a look at the enacted plan and
22 discuss Senate District 22. Why do you begin with a
23 discussion of Senate District 22 on the enacted plan?

24 A. Well, in analyzing the plan, the illustrative plan, the
25 Senate District 22 and the Senate District 23 are linked

1 completely. The explanation for the creation of Senate
2 District 23 is very much linked to the creation of Senate
3 District 22.

4 Q. And then looking at the configuration of Districts 22 and
5 23 on Mr. Cooper's illustrative plan, what do you notice about
6 first District 22 in the configuration Mr. Cooper placed it
7 in?

8 A. Well, again, looking at -- I'm sorry, did we look at the
9 enacted map before this?

10 Q. We did. I can put that back on the screen if --

11 A. Sure.

12 Q. Yeah.

13 A. So first, I guess, I didn't complete my thought. So if I
14 will, there's a -- there's a connection between 22 and 23.
15 And looking at the enacted plan, Senate District 22 is
16 entirely within Richmond County. It doesn't cross outside of
17 it. And as I discussed earlier, there is surplus population
18 from Richmond County that is more than a Senate district. So
19 that additional population is in Senate District 23 in the
20 enacted plan.

21 Q. So then moving to the illustrative plan, page 18,
22 paragraph 34, what do you notice first about District 22 as
23 Mr. Cooper has configured it?

24 A. So in this plan, what happens is that the illustrative
25 Senate District 22 pushes out of Richmond County. It connects

1 through Fort Gordon to Thompson in McDuffie County and also
2 Warren and Glascock Counties. So what's happened here is that
3 by pushing out into a different area, it frees up the Black
4 population in Richmond County to be used in District 23.

5 However, it's important to note that McDuffie, Warren and
6 Glascock are about 38 percent Black. And as a group, that's
7 fairly high compared to, for example, looking at the thematic
8 map, there are precincts in Columbia County that are much
9 lower that are right on the border with South Carolina.

10 Q. And what happened to the deviations of Districts 22 and
11 23 on the illustrative plan?

12 A. Both the deviations of those plans are on the negative
13 side. So the deviation of Senate District 22 is .92, which is
14 close to 1 percent. And District 23 is .63.

15 Q. You next discuss the configuration of District 23 and you
16 discuss a split of Wilkes County. What -- how did Mr. Cooper
17 split Wilkes County on District 23?

18 A. So what I see is that the split of Wilkes County includes
19 the areas of high Black population and then the rest of the
20 county, which is excluded from Senate District 23, is a lower
21 concentration of Black population.

22 Q. And then Mr. -- going back to the overview of Senate
23 District 23, is there anything else you observe about the
24 configuration of what Mr. Cooper has done with that Senate
25 district?

1 A. Sure. So on this map you can see that there are split
2 precincts in Wilkes County. So there are three -- sorry --
3 there are two split precincts in Wilkes County. And it's got
4 a small portion of the town of Washington in the district.

5 And the other split, as I mentioned, was Richmond. And
6 the district stretches all the way over to Milledgeville and
7 Twiggs County. So it's quite a distance from Augusta to
8 Macon.

9 Q. You also say in your report that District 23 connects
10 separate enclaves of Black population. What did you mean by
11 that?

12 A. Well, in this case, I'm pointing out that you have
13 population in Augusta and you have population in Milledgeville
14 and Baldwin County. And they're separated by quite a
15 distance. And also we talked about the split in Wilkes
16 County, which is the town of Washington in that area.

17 Q. Mr. Morgan, moving to paragraph 41 of your report on
18 page 22, what are your conclusions about Mr. Cooper's State
19 Senate plan in the Alpha Phi Alpha case?

20 A. That the Senate plan is focused on race, prioritizing
21 that to the detriment to traditional redistricting factors.

22 Q. And after hearing Mr. Cooper's testimony about this
23 illustrative Senate plan, has your conclusion changed?

24 A. No. It's been strengthened in some ways.

25 Q. And how has it been strengthened?

1 A. Well, in Mr. Cooper's testimony, he specifically said in
2 regards to Senate District 23 that it was necessary to split
3 Richmond County in this way, that just taking a small amount
4 of Richmond County would not allow for the creation of Senate
5 District 23. So I think it's important to acknowledge that in
6 his testimony he said it was necessary.

7 Q. So let's move next to your State House analysis.

8 MR. TYSON: And, Your Honor, I know we started a
9 little bit later. It's about ten until 3:00. Should we maybe
10 get through this plan, then take a break?

11 THE COURT: Yeah, let's get through this plan and
12 then take a break.

13 MR. TYSON: Okay.

14 BY MR. TYSON:

15 Q. All right. So, Mr. Morgan, moving to the State House,
16 let's begin here. You included a similar chart of majority
17 Black House districts by category. And what does this show
18 about Mr. Cooper's State House plan?

19 A. Both in the illustrative plan on 1205 and in the PI plan,
20 there are 54 majority Black districts.

21 Q. And in looking at chart 6 on the summary top line
22 information, what does this chart show?

23 A. It shows that the Cooper plan splits 68 counties and the
24 enacted splits 69. The Cooper plan splits 193 precincts and
25 the enacted splits 184. And they're the same on the Reock

1 compactness. And the Cooper plan is .27 versus .28 on the
2 enacted House plan. There are a difference of five paired
3 incumbents. We talked about the number of majority Black
4 seats. And the Cooper plan has a greater deviation range than
5 enacted plan.

6 Q. You reviewed the county splits for this plan like you did
7 for the Senate plan, starting on page 45. What did you
8 determine about the county splits in Mr. Cooper's illustrative
9 House plan?

10 A. So, again, this is looking at plan -- counties that were
11 split in both the Cooper plan and the enacted plan. And the
12 chart shows which counties are split in common and lists all
13 those. And then it shows a number of counties that were made
14 whole -- that were split in the enacted plan but are made
15 whole in the Cooper plan and vice versa, counties that were
16 whole in the enacted plan but were split in the Cooper plan.

17 So down at the bottom you can see, again, the split
18 counties, Burke, Colquitt, Jefferson, et cetera. And then
19 looking at the list of counties that were made whole, Appling,
20 Ben Hill, Cook, Dawson, Gordon, et cetera.

21 Q. So is it your conclusion that Mr. Cooper's plan splits
22 more counties than the enacted plan in its effort to create
23 new majority Black districts?

24 A. Yes. It's evident to me that the Cooper plan splits more
25 counties in effort to create more Black majority seats. But

1 when you look at the top line numbers, you'll say, well, gosh,
2 they're the same. But what I'm pointing out in my report is
3 that some of these counties that were unsplit were in areas
4 that were far distant from the areas of the new Black majority
5 seats.

6 So, in essence, you have a masking effect where you have
7 more split counties in the effort to create more Black
8 majority districts, but then there's a masking effect, because
9 there are additional counties that are unsplit, so that the
10 net number, if you just look at the top line number, they are
11 basically the same.

12 Q. And you reviewed one area in Northwest Georgia in your
13 report. I put the two maps from pages 42 and 43 on the
14 screen.

15 Can you explain to the Court what these maps show?

16 A. Sure. So in this area, these areas are exactly
17 congruent. Unlike the areas where I'm just generally
18 comparing county groupings, these ten districts have exactly
19 the same areas. So on the enacted plan -- and, again, when I
20 made these, the enacted plan is a little darker with the blue
21 line, and then with the Cooper illustrative plan it has a
22 purple line.

23 So the district boundaries of these ten districts are
24 internally different, but the total area of the ten districts
25 covers exactly the same population areas. So that's what I'm

1 observing in these maps.

2 Q. So the boundaries around these ten districts are the
3 same, but what's different inside those boundaries?

4 A. So, again, these are areas that have nothing whatsoever
5 to do with creating additional majority Black districts.

6 These ten districts are completely isolated from the rest of
7 the map that has drawn additional majority Black seats.

8 So Gordon County is unsplit. So you have a circumstance
9 where, in the Cooper plan, Gordon County is unsplit. And so
10 that results in a one fewer county split in this area. And
11 then I also looked at a version of that on precinct splits.

12 Q. And before we get to precinct splits. You heard
13 Mr. Cooper's testimony about a ripple effect.

14 Do you recall that?

15 A. Yes.

16 Q. Could the change in Gordon County have been due to a
17 ripple effect?

18 A. Absolutely not. It's not possible. This has nothing to
19 do with drawing districts in other areas of the state. As I
20 show, these ten districts are completely isolated. This is
21 exactly the same geographic area in both the illustrative plan
22 and in the enacted plan. So there's no ripple effect. This
23 was unrelated to any of the other district drawing.

24 Q. Then you put chart 9 in your report of an additional
25 split comparison on precincts. What does this chart show?

1 A. So, again, what this shows on the left side are the split
2 precincts in the enacted plan. So it lists each individual
3 precinct. So this is the first circumstance where maybe we've
4 seen precinct names written down, but they're 2A, Pleasant
5 Grove, et cetera. So those are the names of the voting
6 precincts, and it shows you how much population is in House
7 District 2 or House District 4, et cetera.

8 So in looking at all that, the bottom line is that there
9 were six split voting precincts in the enacted plan and three
10 split voting precincts, including one with no population
11 split, in the Cooper plan.

12 So the treatment of the map that Mr. Cooper drew in this
13 area recovers one split county and it recovers three split
14 precincts. So, again, it affects the top line numbers.

15 Q. So when you say it recovers those, is that the masking
16 effect you were referring to?

17 A. Yes. So in this case, the effort to split -- or the
18 effort to great additional majority Black districts results in
19 splitting more counties. And this is an example where splits
20 are recovered so that the top line results don't reflect that.

21 Q. On page 26 of your report, you evaluate the compactness
22 scores of the new majority Black districts. What did you
23 discover about the specific districts Mr. Cooper added as new
24 districts?

25 A. So in these five districts, generally the enacted plan

1 districts are more compact. Looking at them individually, the
2 Cooper 74 is clearly more compact than the enacted district.
3 117 is the same on the Reock score, but is less compact than
4 Polsby-Popper. And then there's an example of 145 is mixed,
5 with one score being more compact than enacted and the
6 Polsby-Popper being more compact on the Cooper plan.

7 Q. You next look at the south part of Metro Atlanta and four
8 House districts in particular on page 29 and 30. What do
9 these two plans show about this configuration of South Metro?

10 A. So, again, looking at this area, I've got four districts
11 on both maps. So you see 77 in the enacted plan is in the
12 northwest portion of Clayton County. District 69 in the
13 enacted plan has a portion of Fulton County and goes down to
14 Fayetteville and Fayette County. District 73 has a portion of
15 Peachtree and goes over to the border of Newnan, and actually
16 probably a little piece of Newnan in Coweta County. And then
17 District 74 is the more rural areas of Fayette, the more rural
18 areas of Spalding. And then a small area, I think it's
19 Hampton, which is the Atlanta Motor Speedway.

20 Q. And what is the configuration Mr. Cooper used of
21 districts in this same area?

22 A. So what I observe here is that the Cooper configuration
23 of District 69 is much more elongated and it goes -- it keeps
24 the same basic area in Fulton County, but it goes much further
25 down all the way into Peachtree City. District 77, which was

1 previously contained in the northwest section by the airport
2 in Clayton County, is now stretching all the way down through
3 Fayette County into Southern Fayette County.

4 And then after doing that, then you have District 74,
5 which I pointed out is more compact in the Cooper plan than in
6 the enacted plan. And this has the panhandle of Clayton
7 County. And then it has two precincts of Spalding and two
8 precincts of Henry County.

9 Q. Are Districts 69 and 77 elongated like we discussed
10 earlier?

11 A. Yes. 69 is clearly more elongated than in the enacted
12 plan. And District 77 is clearly more elongated in the --
13 than the enacted plan. That is, the Cooper plans 69 and 77
14 are much more elongated.

15 Q. And then you evaluated the compactness scores for these
16 districts. What did you discover about the compactness
17 scores?

18 A. Generally speaking, the compactness scores were -- they
19 are lower in this region for the Cooper plan than the enacted
20 plan.

21 Q. You also mentioned that Mr. Cooper didn't include Griffin
22 in District 74. Why is that significant?

23 A. Well, we'll see that Griffin is used; that is brought
24 into another district in another part of the map.

25 Q. So let's move to that portion. Looking at -- I'm sorry.

1 Actually, before we leave this area, Mr. Morgan, we
2 talked about elongation. What is the makeup of the various
3 components of District 69 on the illustrative plan?

4 A. Sure. So District 69, as in the enacted plan, has a
5 portion of Fulton and a portion of Fayette. But what I point
6 out here, or, you know, in the splits, you can clearly see
7 that the Fulton portion is a high concentration of Black
8 population, 94 percent voting age. And the area going all the
9 way down to Peachtree City is much lower concentration. It is
10 34 percent African-American. So the district as a whole is
11 54.9 percent.

12 Q. And for District 77, does it have the same pattern in its
13 configuration of its county portions?

14 A. Yes. It takes an area of high Black concentration in the
15 north of Clayton and the district as elongated all the way
16 down to the south in Fayette County.

17 Q. And then let's move to District 117. So you mention in
18 your report about Spalding County and the impact on
19 District 117. What are you explaining here?

20 A. Okay. So let's look at the -- in my report, which
21 paragraph are we looking at?

22 Q. Page 31 and 32, paragraph 56.

23 A. Okay. So let's start with this. So Spalding County --
24 and I have this in my report on page 31. Spalding County has
25 a population of 60,306. So that's the population of the

1 entire county. And it's about one-third Black on voting age
2 population, 33.6.

3 So I observed that Spalding County itself is more than an
4 ideal district population. It's about 13 percent more, which,
5 you know, was in my illustrative plan where I'm showing the
6 population of the county.

7 So Spalding County as a whole has more than ideal House
8 population, but as a whole, there's clearly not enough Black
9 population within Spalding County to draw a majority Black
10 district. It's just not possible.

11 So what I observed in the Cooper plan is that he removes
12 the Black population and takes the area of Griffin, the area
13 where the most Black concentration is, takes it out of the
14 community around it and combines it with other precincts to
15 the north in Henry County in the area around Locust Grove.

16 And I think we talked about this in the thematic map. So
17 on the map those two yellow precincts around Locust Grove are
18 yellow. And yellow was an indication that it's majority
19 Black, it's 50 percent. So the gradations here, if it's red,
20 it's 65 percent. If it's yellow, it's 50 percent. And then
21 the green designation is 35 to 50 percent.

22 So, for example, all of those precincts on this map that
23 are red, yellow and green are more than 35 percent Black. So
24 I heard Mr. Cooper testify that he used a dot if a precinct
25 had 30 percent Black population or not. So these precincts,

1 all of them that are red, yellow or green, would have a green
2 dot in the Cooper method of drawing.

3 And some of the light blue precincts would, too, because
4 on my map the legend indicates that the light blue precincts
5 are -- they are up to 35 percent Black, they're 20 to 35. So
6 some of the light blue ones would be a green dot precinct in
7 the Cooper methodology.

8 Q. So just so we're clear, Mr. Morgan, looking at the map
9 that's on the screen of House Exhibit 50 of your report, the
10 only precincts you can say for certain would not have a dot if
11 Mr. Cooper was displaying his 30 percent or higher precinct
12 information on Black voting age population are the dark blue
13 precincts?

14 A. That's right. The dark blue precincts are 20 percent or
15 less. And I would say the vast majority of the light blue
16 precincts would also not have a green dot as they are 20 to
17 35 percent. So a few of them would, but I would say the vast
18 majority of the light blue precincts would not be a green dot
19 precinct in Mr. Cooper's methodology.

20 So, again, getting back to District 117 here, what I'm
21 observing is that the minority population in Griffin is taken
22 out of the surrounding community and is paired with another
23 area. And we've seen that it's a close area, it's Locust
24 Grove, but I do point out that it's separating the population
25 based on the race.

1 Q. Let's move next to East Georgia. In your report you
2 begin with a look at the enacted House districts in this area.
3 And what do you observe about the enacted House districts in
4 East Georgia?

5 A. So in this area there clearly are some split counties.
6 And I did hear Ms. Wright's testimony, and I obviously agree
7 with this because it's a fact on the map, looking in the area
8 of House District 132 and 126, there is a portion of Richmond
9 County in 132, but then Jefferson County is a whole county.

10 Likewise, District 126 in the enacted plan has a portion
11 of Richmond-Augusta, and it has whole county of Burke and
12 Jenkins. So those are the splits in that area.

13 And then Columbia is split, McDuffie is split, Baldwin,
14 Putnam and Jones are all split in this region. So there's six
15 splits over several districts.

16 Q. And then what about the enacted plan in this same region,
17 what's different?

18 A. I've just discussed the enacted plan in this region.
19 Comparing it to the Cooper plan, hopefully I'm -- did I --
20 sorry, I didn't understand your question.

21 Q. I apologize. I believe I said the wrong name.

22 Looking at the illustrative plan in this region, what do
23 you notice that's different?

24 A. So the -- one of the things that's very noticeable is
25 that there are many additional county splits in this region.

1 So some county splits are the same, for example, Richmond,
2 Columbia, Putnam and Baldwin are split in both plans. But the
3 Cooper plan has additional splits in Oglethorpe, Wilkes,
4 Jefferson, Burke, Johnson, Laurens and Screven, all in this
5 same area.

6 Q. Let's begin by looking at District 133. You talk about
7 the configuration of District 133. And what do you notice
8 about it?

9 A. Well, one of the first things I noticed is that this is
10 very different than the configuration of existing District 128
11 in that region, which was a district that was made of whole
12 counties except for one split in Baldwin, and I think there
13 was a split in McDuffie as well. So it's two splits, but now
14 there -- the District 133 is different in that it takes the
15 population from Milledgeville all the way up to Washington and
16 Wilkes County in District 133. And also it goes down to
17 Wilkinson. And this completely -- it completely changes the
18 existing District 28 in that region, which was an existing
19 majority Black district.

20 Q. And looking at the county splits you discuss in your
21 report, what is the split of Baldwin County?

22 A. The split in Baldwin County has the Black population in
23 District 133 and the more white population House District 144.
24 The portion in 144 is 22 percent Black and the portion in 133
25 is 51 percent Black.

1 Q. And then do you notice a similar racial split of Wilkes
2 County that you report in your report?

3 A. Yes. The Wilkes County portion is 47 percent voting age
4 Black and the area -- and the other district is only
5 26 percent, the balance of Wilkes County.

6 Q. You also considered the impact of District 133 on
7 surrounding districts in your report; is that correct?

8 A. Yes. So it -- in drawing the districts this way, there
9 are many more additional county splits. For example, in
10 District 128 there are four county splits, Burke, Jefferson,
11 Johnson and Laurens. So in the case of District 128, the
12 Black population in Dublin is removed and combined -- removed
13 from the surrounding area, it's not physically removed, it's a
14 district, it's not a person. But it's combined outside of its
15 immediate surrounding community area and it's combined with
16 more Black population in Jefferson and Burke County.

17 Q. You mention the split of Laurens County. Is that also a
18 racial split of the county?

19 A. Yes. The area in Dublin is taken into District 128. And
20 the balance of the county is in District 155. And that's
21 23 percent Black; whereas in the enacted plan, Laurens was
22 whole and combined with Johnson to be a two-county district
23 with no splits.

24 Q. And what about the impact on District 126 in this area?

25 A. So 126 still has a portion of Richmond County, which is

1 similar to the enacted 126. But it splits. It splits Burke
2 County and stretches down to Screven County. And then it
3 splits the top half of Jefferson.

4 So you have a situation where you've got four split
5 counties, which is the most of any district in Mr. Cooper's
6 plan. So this is four split counties in one House district
7 and 128 is four split counties in one House district. And
8 back to 128, you can still see here, it splits Johnson County
9 along racial lines as well.

10 Q. And the split of Screven County, is that also a racial
11 split in District 126?

12 A. Yes. The area of higher Black concentration is put into
13 District 126 and the lower concentration is into the
14 surrounding district.

15 Q. Do you believe drawing House District 133 would have been
16 possible without these other changes in East Georgia?

17 MR. SAVITZKY: Your Honor, objection. I don't think
18 he addressed the question of whether it would be possible
19 without these changes in his report.

20 THE COURT: I couldn't hear that.

21 MR. SAVITZKY: I don't think Mr. Morgan addressed
22 whether it would be possible to draw House District 133
23 without these changes in his report.

24 THE COURT: Mr. Tyson?

25 MR. TYSON: I'm looking, Your Honor.

1 Mr. Morgan discussed the configuration of
2 District 133 and the surrounding districts extensively in his
3 report, so I believe he's just elaborating on what he's
4 describing in the report.

5 THE COURT: Why can't he describe more? He's already
6 talked about it, Mr. Savitzky.

7 MR. SAVITZKY: It -- the question seemed to call for
8 an expert opinion about the possibility of drawing a district
9 that wasn't described in the report, wasn't disclosed in the
10 report.

11 THE COURT: I didn't take it that way.

12 MR. TYSON: Maybe, Your Honor, I could ask
13 Mr. Morgan, did you include these descriptions of other
14 districts because of their impact on the configuration of
15 District 133?

16 THE COURT: Let's try that.

17 THE WITNESS: Yes. 133 and 128 and 126, they're all
18 connected here. And specifically you asked about the Cooper
19 123, it is less compact than the enacted 133. The enacted 133
20 is Milledgeville, but it doesn't go like the Cooper district
21 does all the way up north in -- let's see. So it goes from
22 Wilkinson, Baldwin, and it goes I think into Oglethorpe. Or
23 no, I'm sorry, it doesn't go into Oglethorpe. It goes up to
24 Washington and Wilkes County.

25 MR. TYSON: I have two districts left, Your Honor.

1 Do you want to keep going and finish out this plan? I want to
2 be sensitive to time, but I know everybody --

3 THE COURT: Let's take a break and come back at 3:30
4 and finish it up.

5 (After a recess, the proceedings continued at
6 3:14 p.m. as follows:)

7 THE COURT: You-all may be seated.

8 Go ahead, Mr. Tyson.

9 MR. TYSON: Thank you, Your Honor.

10 BY MR. TYSON:

11 Q. Mr. Morgan, we're going to continue our march across
12 Georgia --

13 A. Are you really going to say that?

14 Q. I'm not going to say that. I'm sorry. Withdraw that
15 statement.

16 Looking next to the Macon area, you included in your
17 exhibits maps of the enacted House districts in Macon and the
18 illustrative House districts in Macon; is that correct?

19 A. Right, Macon.

20 Q. And you heard Mr. Cooper's testimony about this area of
21 the state; is that right?

22 MR. SAVITZKY: Your Honor, just to interject, there's
23 no discussion of an illustrative district Macon in
24 Mr. Morgan's report in the Alpha Phi Alpha case.

25 MR. TYSON: And, Your Honor, Mr. Morgan included

1 these maps as part of his report. He heard Mr. Cooper's
2 testimony about this area. I don't think my questions are
3 going to illicit new opinions. They're going to address
4 specific issues about these plans and responding to
5 Mr. Cooper's testimony.

6 MR. SAVITZKY: Your Honor, if I could be heard
7 further. Unlike -- and I know we rose (sic) in a similar
8 objection with Senate District 17. There was at least some
9 reference to Senate District 17 in the report. Obviously,
10 Mr. Cooper's report discusses an illustrative district in
11 Macon and Mr. Morgan had the opportunity to respond to that.
12 It is not mentioned once in the text of his report. So this
13 is outside the scope.

14 THE COURT: Mr. Tyson, if it's not in the report at
15 all, Mr. Savitzky has a good point.

16 MR. TYSON: And, Your Honor, we would just take the
17 position that since this is an exhibit to Mr. Morgan's report,
18 he included this information, he can -- he testified that his
19 exhibits included data that he relied on for reaching his
20 ultimate conclusion about the plan itself, that he could at
21 least look at these exhibits to his report and respond
22 factually to Mr. Cooper's testimony, even if he's not offering
23 an opinion as to these specific districts.

24 THE COURT: Mr. Savitzky, here's the argument they're
25 making. Tell me if you agree -- well, I think I already know

1 you're going to disagree, but let me hear why you're going to
2 disagree.

3 He's saying he's basing it on -- he's responding to
4 Mr. Cooper's testimony about the maps based on what he's heard
5 and seen by sitting in here.

6 MR. SAVITZKY: Your Honor, I take Mr. Tyson's point
7 to the extent that he's talking about the ultimate
8 conclusions, he reaches about the House maps, that may be
9 slightly different. But to the extent that he's offering
10 opinions or conclusions about this specific illustrative
11 district or how Mr. Cooper drew that in that particular
12 district, there's simply no -- there's no analysis of this
13 district. And there are no conclusions or opinions about this
14 particular district in the report.

15 THE COURT: Why can't you cross-examine him on what
16 he has testified to now that Mr. Tyson's presenting? As I
17 understand your argument, you say, Judge, this is not part of
18 his report, so how can he testify to something not part of his
19 report, and I can't cross-examine him on something that's come
20 up.

21 But he's testified about a number of things that's
22 problematic today that's not in his report, based on what he's
23 heard. Why can't you cross-examine him on that?

24 MR. SAVITZKY: Your Honor, I surely can cross-examine
25 him on that if the objection's not well taken.

1 THE COURT: Here is the way, Mr. Savitzky, I'm taking
2 it, is that it's not part of the report, it's something he's
3 responding to, more or less, to Mr. Cooper's testimony.

4 Mr. Tyson, I don't look at it through the same eyes
5 as to what was originally part of his report. I think
6 Mr. Savitzky makes a good point there.

7 What I'm hearing is that he sat here and he heard
8 Mr. Cooper testify and he's responding to it. So I look at it
9 very different, not just with Dr. Morgan but with any expert
10 sitting in the courtroom and then responding to it.

11 I'm going to approach it that way. If you need some
12 time before you do your cross, I'll give it to you.

13 MR. SAVITZKY: Thank you, Your Honor.

14 THE COURT: Okay?

15 MR. TYSON: Thank you, Your Honor.

16 BY MR. TYSON:

17 Q. Mr. Morgan, what do Exhibits 53 and 61, these two maps
18 attached to your report, show based on Mr. Cooper's testimony
19 in this area?

20 A. Based on Mr. Cooper's testimony and my experience in
21 Georgia, what I see here is that the population in Bibb County
22 in the enacted plan has two majority Black districts entirely
23 within Bibb County. And I certainly observed that in the
24 enacted plan.

25 In Mr. Cooper's plan, he splits the Black community into

1 three pieces. So he splits the Macon Black community into
2 three parts. And I talked about this technique as well in
3 reference to District 2 in the Augusta area. So this is a
4 technique that I do discuss in my report, which is splitting
5 the existing Black community into other districts. So this is
6 what I'm observing in this area regarding Mr. Cooper's
7 testimony and my own observations and knowledge about this
8 area.

9 Q. Thank you, Mr. Morgan.

10 Turning next to Southwest Georgia, in your report you
11 included a map of the enacted districts and a map of the
12 illustrative districts. And I put those side by side on the
13 screen here.

14 Can you explain to the Court what is notable about the
15 changes Mr. Cooper made in this part of the state?

16 A. Okay. So let's start with Dougherty County. In the
17 enacted plan -- let me get my reference here in the report.
18 What's the second -- 60 --

19 Q. Page 38, paragraph 64 is where you begin.

20 A. I'm sorry, I'm looking at two places. I'm looking at the
21 maps and I'm looking at the report, but I want to cover both
22 points carefully.

23 Q. Page 38, Mr. Morgan.

24 A. Okay. Yeah, this is helpful. Okay.

25 All right. So let's start with the enacted district. So

1 in the enacted plan, there is one majority Black seat entirely
2 in Dougherty County. And in the enacted plan, there's also an
3 existing majority Black seat next door in House District 154.

4 In the Cooper illustrative plan there is no Black
5 majority seat entirely within Dougherty County. Instead the
6 Black community is split into several different districts, and
7 as I talk about in my report, one of the districts connects
8 Albany all the way down to Thomasville in Thomas County.

9 So there are two techniques going on here. One technique
10 is the separation of a Black community in Thomasville, which
11 is paired with a distant Black community in Albany. So that's
12 one thing that's going on. There's the pairing of separate
13 communities. And there's also sorting based on race in the
14 component of the District 170 -- sorry -- it's 171 in Thomas
15 County. So it's split along racial lines, such that the Black
16 population is removed from the surrounding district and
17 combined. So there's two techniques that are occurring here.

18 Q. You say in your report that Mr. Cooper strategically
19 utilizes Black population in Albany. Are you referring to the
20 distribution of Black population you just referenced in that
21 section?

22 A. So I actually have two points about this here. So I'm
23 talking about the distribution of the Black population in
24 Albany and Dougherty County, and it's divided in different
25 areas; whereas the enacted district keeps one district

1 entirely in Dougherty County.

2 But there's something else going on here. And this is
3 something that's not immediately apparent, but I think it's
4 very significant in analyzing this area.

5 Generally speaking in this case, we've seen circumstances
6 where an existing majority Black district population Black
7 percentage is lowered. And we see that in many places in the
8 Cooper plan, where an existing Black district, some of the
9 population is lowered and taken out. We see this, for
10 example, again, in Richmond, is one example where there was an
11 existing Senate District 22, that was about 57 percent Black,
12 and it's lowered to barely 50 percent, so that's the tendency.
13 That was the Senate plan, here is the House plan.

14 However, there's an existing Black majority seat in House
15 District 154. And this is also an unusual situation where
16 this Black majority seat is electing a Republican, which is
17 fairly unusual. Mr. Cooper's plan elevates the Black
18 percentage of that district from 54 percent to 60 percent,
19 which is very interesting to me.

20 THE COURT: Hold on.

21 MR. SAVITZKY: Objection. I mean, there's no
22 discussion, elevation of the Black voting age population in
23 districts other than the illustratives or the partisan
24 implications. Just absolutely nowhere in Mr. Morgan's report.

25 THE COURT: We are getting a little far out there,

1 Mr. Tyson; I've got to agree with Mr. Savitzky on that. I'm
2 going to sustain that objection.

3 Dr. Morgan, you probably didn't get the memo that I
4 had sent to all the lawyers. The only thing -- the only
5 liquid I allow in the courtroom is water. So the CSO is going
6 to take your Coke and give it back to you when you get ready
7 to go. Thanks.

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: Next question.

10 MR. TYSON: Thank you, Your Honor.

11 BY MR. TYSON:

12 Q. Mr. Morgan, do you report the Black percentages of
13 districts in the exhibits to your plan?

14 A. Yes, I do. I report the Black percentages of every
15 district in the illustrative plan and the enacted plan. And I
16 looked at this in my conclusions.

17 Q. Does Mr. Cooper's illustrative District 171 split
18 precincts in the area?

19 A. Yes, it splits precincts in the Thomasville area.

20 Q. Mr. Morgan, based on all we've talked about here, if you
21 could turn to page 48, paragraph 77. What is your conclusion
22 about Mr. Cooper's illustrative plan, House plan in Alpha Phi
23 Alpha?

24 A. That it focuses on race, prioritizing race to the
25 detriment of traditional redistricting factors.

1 THE COURT: And what are you basing that on?

2 THE WITNESS: Well, Your Honor, I'm looking at a
3 bunch of individual districts clearly in comparison to the
4 enacted district. And in my report I make specific references
5 to techniques. I've identified several techniques. I've
6 talked about bypassing white population. I've talked about
7 separating different enclaves of Black population from distant
8 areas. That's a technique that I outline in my report.

9 I also talk about elongated districts, which is
10 another technique that I'm observing. And I also see that
11 there are instances where, when districts are very close to
12 50 percent, practically every instance of that is necessary in
13 order to reach the threshold. So these are some techniques
14 that I outlined in my report and I am applying them to
15 specific districts and to the plan as a whole.

16 I looked at all of those factors. I looked at
17 compactness, specifically and generally. And I looked at
18 these techniques.

19 So I'm offering the techniques as one way to evaluate
20 specific districts and the plan as a whole. So I can identify
21 those techniques as we go and be as specific as needed, Your
22 Honor.

23 THE COURT: Thank you.

24 MR. TYSON: Thank you, Your Honor.

25 At this point we'll conclude the portion for the

1 Alpha Phi Alpha plan.

2 THE COURT: All right.

3 MR. TYSON: And move next to tab 3, which is
4 Mr. Morgan's report in the Grant case.

5 THE COURT: Got it.

6 BY MR. TYSON:

7 Q. Mr. Morgan, for the Grant case, did you evaluate plans
8 drawn by Mr. Esselstyn for the State House and the State
9 Senate?

10 A. Yes.

11 Q. And did you compare those plans to the adopted plans for
12 State House and State Senate?

13 A. Yes.

14 Q. And so you were present for Mr. Esselstyn's testimony
15 about his plans; is that correct?

16 A. Yes, I was.

17 Q. As in your report in Alpha Phi Alpha, you included a
18 number of exhibits. And I know we'll be asking the same
19 question again, but for this record, can you explain what
20 exhibits you included in your Grant report?

21 A. So in the Grant report I have a series of reports that
22 were run from Maptitude, as well as a series of maps that I
23 produced for use in my report in my analysis.

24 Q. And the maps had a racial theme; is that right?

25 A. Yes. So in this case, it's a hot-to-cold theme. So the

1 maps that have a theme based on the Black population, the
2 highest instances are 65 percent and up and they're indicated
3 in red. The yellow is 50 to 65 percent. The green are 35 to
4 50. And then the light blue is 30 -- is -- sorry, 20 to 35.
5 And the dark blue is under 20 percent voting age Black
6 population.

7 Q. And did you create maps with a racial theme as you've
8 discussed for all the new majority Black districts proposed by
9 the Grant plaintiffs?

10 A. Yes.

11 Q. And are the exhibits and the maps included with your
12 report all part of what you used to form your opinions?

13 A. Yes.

14 Q. So let's move to your discussion of the Senate plans.
15 And you start first with similar charts as you did in Alpha
16 Phi Alpha, page 5 of your Grant report looks at the number of
17 majority Black districts. What does this show?

18 A. That's right. On page 5, chart 1 shows that the adopted
19 plan has 14 majority Black Senate districts. And the
20 Esselstyn plan has 17. And the Esselstyn plan from the
21 preliminary injunction has 17.

22 Q. And what does chart 3 on page 8 show on the top line
23 statistics for the two plans?

24 A. It shows that the Esselstyn plan has more county splits,
25 more voting precinct splits and is less compact on the mean

1 compactness scores for Reock and Polsby-Popper. And it pairs
2 more incumbents and has a higher deviation range.

3 Q. And, again, just so the record is clear, you included
4 incumbents, but what method are you using to talk about paired
5 incumbents on this chart?

6 A. So whereas in the preliminary injunction phase I made a
7 point of pointing out that there were incumbents that were
8 identified as not running for reelection. In this case, I'm
9 showing just the paired incumbents. So it shows the
10 incumbents' information that was available in the incumbent
11 file that I understand was available to the legislature at the
12 time of redistricting. And I'm comparing those incumbent
13 pairings.

14 Q. You're not saying this shows current pairings of
15 incumbents as of today, are you?

16 A. No. If you were to look at the current pairings of
17 incumbents on the current enacted plan, it would be zero
18 because the current incumbents, there's one for every
19 district.

20 Q. And so is this -- is chart 3 just a comparison of various
21 metrics from Maptitude?

22 A. Yes. These are all summary -- these are reports that are
23 generated in Maptitude and summary information from those
24 reports.

25 Q. So in your Grant report the first district you evaluate

1 is not one of the new majority Black districts, it's instead
2 illustrative District 10 and enacted District 10. What is
3 shown by the comparison of District 10 on the enacted and
4 illustrative plans?

5 A. In this case, by showing these two districts, they're
6 taking the same Black population roughly in the DeKalb area
7 and the districts are elongated. The enacted plan elongates
8 District 10 following the Henry County line and the Esselstyn
9 plan elongates the district even further, all the way to Butts
10 County.

11 So in this case I'm illustrating the technique of
12 elongating districts. And I also point out that in my report
13 I point out that the District 10 portion splits a portion of
14 Rockdale County and avoids the balance of the population in
15 Henry County and goes to much more distant white population in
16 Butts County, which is 43 miles away from the section of
17 DeKalb County that's in this district; whereas the enacted
18 plan the distance is less.

19 Q. And you note that this district strategically avoids much
20 of the Black population in Henry County. Why did you include
21 that detail?

22 A. Because it would be -- it would be possible to have some
23 of the Henry County portion here, but instead this district
24 elongates all the way to Butts County, including Jackson,
25 which is the county seat.

1 Q. Now, Mr. Morgan, you were here for Mr. Esselstyn's
2 testimony about each of his new proposed districts; is that
3 correct?

4 A. Yes, I was.

5 Q. And do you recall Mr. Esselstyn being -- testifying about
6 whether he was aware of the racial makeup of Clayton and Henry
7 included in Senate District 25?

8 A. Yes, I believe I recall him talking about that.

9 Q. And do you know what the racial makeup of Clayton and
10 Henry portions in Senate District 25 is based on information
11 in exhibits to your report?

12 A. Yes.

13 Q. And looking at the screen, we've collected information
14 from Exhibit 21. What is the racial makeup of the Henry and
15 Clayton portions that you've -- that Mr. Esselstyn included in
16 Senate District 25?

17 A. So in Senate District 25 --

18 MS. KHANNA: Objection, Your Honor.

19 THE COURT: Hold on, hold on.

20 MS. KHANNA: I'm going to lodge the same objection
21 for the record that Mr. Savitzky lodged, which is Mr. Morgan
22 includes zero references to Senate District 25 in his written
23 report. So to the extent he is now choosing to offer opinions
24 about a district he chose not to opine on when given the
25 opportunity to provide his complete opinions in response to

1 Mr. Esselstyn's map, we'd object that it is beyond the scope
2 of his report as an expert.

3 I understand the Court's already ruled on a similar
4 objection.

5 MR. TYSON: And, Your Honor, I referenced page 543 of
6 the transcript. Mr. Esselstyn in his testimony wasn't sure of
7 the racial makeup of these areas. Mr. Morgan's report
8 includes exhibits that provide that information. And my only
9 question was, what is that information. This is not a new
10 opinion. This is responding to Mr. Esselstyn's testimony on
11 Senate District 25.

12 THE COURT: That's not quite the same objection as
13 Mr. Savitzky since it's a different matter, but I note your
14 objection, but I'm going to overrule your objection.

15 MS. KHANNA: Thank you, Your Honor.

16 BY MR. TYSON:

17 Q. Mr. Morgan, what is the racial makeup of the Clayton and
18 Henry portions of District 25?

19 A. So the portion of Clayton County that's in Senate
20 District 25 is the panhandle portion of Clayton County. And
21 that portion is 77 percent voting age Black population. The
22 Henry portion, all of the precincts in the district are
23 54 percent Black population voting age.

24 Q. Mr. Morgan, in Mr. Esselstyn's testimony do you recall
25 him stating that he wasn't sure if he made changes to enacted

1 District 34 in order to create District 28 as a majority Black
2 district?

3 A. Yes, I recall that. And I remember not believing that
4 that was the case.

5 Q. Have you provided information in the exhibits to your
6 report that can answer that question?

7 A. Yes.

8 MR. TYSON: And, Your Honor, looking at Exhibits 6
9 and 23 of Mr. Morgan's report.

10 BY MR. TYSON:

11 Q. Mr. Morgan, were changes made to enacted District 34 on
12 Mr. Esselstyn's illustrative plan?

13 A. Sorry, I'm looking at my report. Just a moment.

14 Q. Could you tell us what exhibit you're looking at when you
15 locate what you're looking for?

16 A. So one of the exhibits I'm looking at is Exhibit 23. And
17 then I'm also looking for the enacted district, if I have the
18 exhibit for that.

19 Q. Mr. Morgan, I would believe that's Exhibit 32.

20 A. Okay. I see.

21 So this is showing Mr. Esselstyn's plan in District 34 as
22 portions of Clayton County and part of Peachtree City and
23 Fayette County, and connects that area. Whereas, the enacted
24 plan has a larger component of Clayton County and only the
25 northern portion of Fayette County up to the Fayetteville

1 area. It does not go further south into Fayette County.

2 And, again, that's -- I'm looking at the enacted
3 Exhibit 32 in my report and the Esselstyn Senate District 34,
4 Exhibit 23 in my report.

5 Q. And regarding District 28, do you recall Mr. Esselstyn's
6 testimony that he could not recall specifically the
7 populations of each of the counties he included in District 28
8 on the illustrative plan?

9 A. Yes.

10 Q. And do the exhibits in your report provide that
11 information?

12 A. Yes. It shows the county components and the information
13 about those components.

14 Q. And looking at Exhibit 6 and Exhibit 22, what is the
15 makeup of the county components of Senate District 28?

16 A. District 28 has portions of three counties -- sorry --
17 four counties. It has Clayton, Fayette, Fulton and Coweta.
18 And the -- it shows that the voting age Black population in
19 Clayton, that small portion is 83 percent Black. And that the
20 Fulton County portion is 82 percent Black. The Fayette
21 portion in the north is 54 percent Black, in the top area of
22 Fayette County. And in Coweta County it's much lower, the
23 Black percent of that group is 25 percent.

24 Q. Mr. Morgan, let's move next to East Georgia. In your
25 report at page 15 you discuss enacted District 22. And I know

1 you've already testified about this in the Alpha case, but for
2 purposes of this record could you explain what is notable
3 about enacted District 22? And, again, we're on page 15 of
4 your report.

5 A. Okay. So the enacted District 22, Senate District 22, is
6 entirely within Richmond County. And it contains the Black
7 community in Augusta. And, again, it does not cross the
8 county boundary. The balance of Richmond County is in one
9 Senate district and that's 23.

10 Q. And looking at the illustrative District 22, what changes
11 did Mr. Esselstyn make to illustrative District 22 from the
12 enacted plan?

13 A. So in my report, and here I would point out using this
14 racial themed map, that Mr. Esselstyn pushes District 22
15 outside of the boundary of Richmond County. And the area that
16 is taken in, you'll see on the theme those are precincts that
17 are green in the theme, so that shows that they're over
18 35 percent Black in that small area of Columbia County and not
19 precincts further north that are in the 20 percent category.

20 So of all the potential population that could have been
21 taken in that area, the area that is selected in the Esselstyn
22 District 22 are the precincts on the border that are proximate
23 to Richmond County that have higher Black concentration
24 relative to the surrounding precincts.

25 Q. Then in your report what does moving Senate District 22

1 into Columbia County enable on Senate District 23 of the
2 illustrative plan?

3 A. It allows the construction of a majority Black district
4 using the Richmond population as necessary in order to create
5 a district that is over 50 percent Black voting age
6 population.

7 Q. If you can look in your report, you also discuss county
8 splits in Senate District 23. What does your analysis of the
9 county splits in illustrative District 23 show?

10 A. The illustrative District 23 in Mr. Esselstyn's report
11 splits Wilkes County, Greene County. It splits Baldwin
12 County, McDuffie County. And it also splits Richmond County,
13 which we've discussed.

14 Q. And then what is notable about the county splits of
15 District 23 on illustrative District 23?

16 A. In each case of these county splits, the areas with
17 higher concentrations of Black population are put into
18 District 23. And the areas of the county that have lower
19 Black concentrations are excluded from District 23.

20 Q. And that is -- is that true of every county split in
21 illustrative District 23?

22 A. I believe so.

23 Q. You also reference in paragraph 34 on page 17 the
24 population deviation. What is your reference to the
25 population deviation in District 23 on the illustrative plan?

1 A. I point out that the illustrative Senate District 24 has
2 the lowest population deviation in the plan at negative
3 1.67 percent. And that I believe that this lower deviation
4 has an impact on the racial makeup of the district.

5 Q. You also reference this Senate District 23 connecting
6 separate enclaves of Black population. Is that one of the
7 techniques you were just discussing with Judge Jones?

8 A. Yes, that is definitely one of the techniques. So in
9 this case, I see a technique of racially separating the
10 population and connecting separate enclaves. And I also see
11 that there are additional splits in this area.

12 Q. So, Mr. Morgan, moving to page 19, in paragraph 37 of
13 your report, what is your conclusion about the illustrative
14 plan that has been submitted by Mr. Esselstyn in the Grant
15 case?

16 A. In paragraph 36?

17 Q. Paragraph 37.

18 A. Oh, sorry. In 37.

19 That the Esselstyn Senate plan is focused on race,
20 prioritizing race to the detriment of traditional
21 redistricting factors.

22 Q. After hearing Mr. Esselstyn's testimony about his
23 illustrative Senate plan, has your conclusion changed?

24 A. No. It strengthened my conclusion.

25 Q. And what's strengthened about your conclusion?

1 A. Mr. Esselstyn in his testimony talked about the Black --
2 the compact Black populations within his district. And as he
3 defined it, he seemed to define the compact Black populations
4 of a community as being contained within a district, and only
5 that, as definition of what a compact minority population is.

6 Q. Mr. Morgan, next you move to discuss the House plan. So
7 let's begin with chart 6 and chart 8.

8 What does your chart of the overall majority Black House
9 districts in the illustrative plan and other plans show?

10 A. The Esselstyn plan and the Esselstyn plan from the
11 preliminary injunction phase have 54 Black majority seats,
12 which is five more than the 49 in the enacted plan.

13 Q. And chart 8, does that report the top line numbers we've
14 referenced for the other plans?

15 A. Yes.

16 Q. And does the Esselstyn -- the Grant illustrative House
17 plan split more counties than the enacted plan?

18 A. Yes. One more county split, one more precinct split.

19 Q. And is the deviation higher than -- on the illustrative
20 plan than the enacted House plan?

21 A. Yes. The illustrative plan is considerably higher
22 deviation range than enacted House plan.

23 Q. And, again, you included incumbents, but did you use the
24 same method of the 2021 incumbents for this line of your
25 summary chart?

1 A. So I indicated the paired incumbents here. And this is
2 indicating incumbents that were paired from the database that
3 I understand the legislature had available at the time of
4 redistricting. And I don't indicate which incumbents would be
5 not running for reelection. And that information I did point
6 out in the preliminary injunction phase.

7 Q. And so you're not saying the paired incumbents on your
8 chart is current incumbent pairings, are you?

9 A. No. These are incumbent pairings; however, some of the
10 incumbents are still there. So if their addresses are the
11 same, then clearly they would be still paired.

12 Q. In chart 9 of your report, you evaluate the compactness
13 scores for new majority Black State House districts created by
14 Mr. Esselstyn. What does that chart show?

15 A. It shows that four of the five districts identified as
16 new districts in Mr. Esselstyn's report are less compact on
17 the Reock metric and one is more compact on the Reock metric.
18 On the Polsby-Popper metric, two are less compact and three
19 are more compact.

20 Q. So, Mr. Morgan, let's go back starting in South Metro
21 again. You include on pages 26 and 27 a collection of four
22 State House districts in South Metro Atlanta. What is notable
23 that you describe in your report about the creation of new
24 majority Black District 74?

25 A. So District 74 -- sorry. District 74 has a portion of

1 Clayton County and connects down into Fayette County. So
2 there's -- I think they were described as wings by one of the
3 witnesses, but there's a handful of precincts in Clayton
4 County that are -- on the map, they show as being 65 percent
5 Black population and then the rest of Fayette County to the
6 south is considerably less Black.

7 Q. Is this an example of elongating a district that you
8 discuss in your report?

9 A. Yes, this is the technique of elongating a district.

10 Q. You also reference the interaction between District 74
11 and District 69 on page 27 of your report. What are you
12 referring to there?

13 A. That in order to accomplish this, there are changes made
14 to the enacted District 69 that allows the transit from these
15 higher concentrations of Black population in Clayton County to
16 the more rural part of Southern Fayette County.

17 Q. You then evaluated the compactness scores of these four
18 districts. What did you discover about the impact on
19 compactness among these four districts in South Metro Atlanta?

20 A. The -- looking at those four districts, the mean
21 compactness of just those four districts in the enacted House
22 is more compact on the Reock score and is more compact on the
23 Polsby-Popper score, the mean in that -- among those four
24 districts.

25 Q. And let's move next, Mr. Morgan -- you were here for

1 Mr. Esselstyn's testimony about the Henry County District 117;
2 is that right?

3 A. Yes.

4 Q. And Mr. Esselstyn indicated that he wasn't sure -- or do
5 you recall, I'm sorry, if Mr. Esselstyn indicated that there
6 were more heavily Black areas in the north and more heavily
7 white areas in the south of the borders of 117?

8 A. I believe so.

9 Q. And did you include information in the exhibits in your
10 report that would answer that question?

11 A. Yes.

12 Q. So looking at Exhibits 13 and 42, are there more heavily
13 Black areas in the north part of District 117 on the
14 illustrative plan and more heavily white areas in the south
15 part of that district?

16 A. Yes. Looking at the theme map, that's apparent there.
17 McDonough is a more heavily concentrated Black population and
18 the precincts to the south are less concentrated.

19 Q. And before we leave Metro Atlanta, do you recall
20 Mr. Esselstyn's testimony about the configuration of
21 District 64?

22 A. Yes.

23 Q. And Mr. Esselstyn, do you recall that he was unable to
24 identify specifically the racial makeup of the portions of the
25 counties he included in that district?

1 A. Yes.

2 Q. And did you include information with that in your report?

3 A. Yes.

4 Q. And looking at District 64, what is the racial makeup of
5 the counties in illustrative District 64?

6 A. The Fulton portion is 96 percent Black. The Douglas
7 portion is 53 percent Black. And the Paulding portion is only
8 32 percent Black. And the district as a whole is 50.2 percent
9 Black.

10 Q. And do you recall Mr. Esselstyn discussing the impact of
11 the configuration of District 61 with the creation of his
12 District 64 as part of the creation of his plan?

13 A. Yes.

14 Q. And looking at Exhibits 39 and 44, can you explain to the
15 Court your view of what Mr. Esselstyn was talking about in the
16 configuration of 61 and 64?

17 MS. KHANNA: Objection, Your Honor. He's now being
18 asked to respond to Mr. Esselstyn's testimony without any
19 indication that Mr. Esselstyn's testimony was different than
20 what's provided in his report. There are no opinions to this
21 matter in his report. Right now this is all an effort to
22 funnel in opinions that Mr. Morgan never, never offered in a
23 report.

24 MR. TYSON: And, Your Honor, we would just point to
25 page 561 of Mr. Esselstyn's testimony where he's referring to

1 the interaction between District 61 and 64 and was relying on
2 attachments to his report, not the text of his report. And
3 I've simply asked Mr. Morgan to respond to Mr. Esselstyn's
4 claims that 61 and 64 had to be reconfigured.

5 MS. KHANNA: I don't recall an objection from
6 Mr. Tyson to anything about Mr. Esselstyn's testimony. So I
7 can't speak to that. But I -- there's nothing I'm aware of
8 that he's responding to that he could not have responded to in
9 his report, which was our opportunity to see all of his
10 opinions.

11 THE COURT: I think he's talking about the testimony
12 that Mr. Esselstyn gave in court last week. He has a
13 transcript here he's referring to.

14 MR. TYSON: I'm happy to read it, Your Honor, if that
15 would be helpful.

16 MS. KHANNA: I guess I'm -- my objection stands, Your
17 Honor, because I believe right now, by having Mr. Morgan in
18 the courtroom, it's -- it's providing a window for him to
19 provide opinions he never offered in his reports.

20 THE COURT: Well, you didn't object to him being in
21 the courtroom.

22 MS. KHANNA: No. And I don't object to him being in
23 the courtroom, but I do object to him offering opinions that
24 are not under his report under Rule 26.

25 THE COURT: I'll tell you same thing I told

1 Mr. Savitzky. I recognize the fact that he's responding to
2 some testimony given while sitting in the courtroom, and I
3 look at that through different eyes than the original report
4 that comes out. But I think he can -- that's why I let
5 experts sit in here, because they can sit in and respond. So
6 I'll allow it in over objection.

7 MS. KHANNA: Thank you, Your Honor.

8 THE COURT: As long as it's pertaining to what
9 Esselstyn talked about.

10 BY MR. TYSON:

11 Q. And so, Mr. Morgan, I'm specifically asking you about the
12 interaction between District 61 that Mr. Esselstyn talked
13 about reaches into part of Fulton County and District 64 that
14 he refigured as part of the creation -- I'm sorry --
15 refiguring of District 61 as part of the creation of
16 District 64.

17 A. If you look at the enacted plan, the enacted District 61
18 is -- has much of the same territory of the proposed new
19 District 64. The precincts in Fulton and the precincts in
20 Douglas are the same, but not all the precincts in Fulton, the
21 two precincts are the same. And then there's a new portion of
22 Douglas County which was from -- which was -- sorry --
23 Paulding County which was in enacted District 64. So it
24 stretches on the northern side of this cluster of districts.
25 And that require the change of moving population from the

1 enacted District 61 into other districts.

2 Q. Mr. Morgan, let's move to Macon for the next part of your
3 report, page 30. You cover the configuration of the House
4 districts in the Macon area. And I'll begin with a view of
5 the enacted plan. What is notable that you refer to in your
6 report regarding enacted districts 142 and 143?

7 A. Sorry, I'm looking for the State House section of the
8 report.

9 Q. I apologize. Page 30 is what we're referring to.

10 A. So in the Macon area in this case, the Bibb County
11 population in the enacted districts, the African-American
12 population is in two districts, two majority districts, wholly
13 contained within Bibb County.

14 Q. And then looking at Mr. Esselstyn's configuration of this
15 area, what does the illustrative plan do in this region?

16 A. The illustrative plan divides the Black community in Bibb
17 County and Macon into four different districts. Two districts
18 remain in Bibb County, but two go outside Bibb County, one all
19 the way to Milledgeville, District 49 -- 149.

20 Q. And you reference in your report that the plan
21 strategically utilizes the remaining Black population in
22 Macon. What were you referring to there?

23 A. So let me see if I can explain this here. I point out in
24 my report that all four districts are pretty low in the Black
25 population, in particular some of the districts are barely

1 50 percent. So the population is strategically used to spread
2 around into these districts. Again, one district goes all the
3 way to Milledgeville, and this is an instance where you're
4 connecting two separate Black communities into one district.

5 But, more importantly, the strategic population use is,
6 again, it's to spread it around just so, so that each district
7 is, in some cases, barely 50 percent.

8 Q. And you reference in your report, and Mr. Esselstyn
9 references in his report, all of these districts in Macon are
10 very close to 50 percent, aren't they?

11 A. That's right. Three of the four are very close, one is
12 50.14.

13 Q. And what does having a collection of districts this close
14 to 50 percent, this barely 50 percent reference you have, tell
15 you about the sensitivity of this area of -- in
16 Mr. Esselstyn's plan?

17 A. Well, what it shows me is that there is such a
18 sensitivity to race in this area that every move is
19 significant. And by that I mean there's a -- there's a
20 process maybe of trial and error, which I heard discussed, but
21 more to the point that every district, because it's so close
22 to 50 percent, it reminds me of an analogy I would use, would
23 be to the movie Apollo 13, where, when the astronauts were
24 stuck up in space and they have to rescue them and bring them
25 back, there's a problem. They have to restart the power

1 systems on the capsule, the Discovery, which is going to bring
2 them back to earth.

3 So what they do is they send another astronaut, this is
4 the Gary Sinise character, Ken Mattingly. They send him to
5 the simulator to test different possibilities. They can only
6 go up to 20 amps. So they test. This doesn't work and the
7 alarm bells go off. Beep, beep, beep. That doesn't work.
8 The alarm bells go off.

9 In this case, when the districts are so close to
10 50 percent, every move you make will set off alarm bells that
11 there's too much white population. It's not 50 percent. So
12 when I stated the population is strategically used, when I say
13 it's sensitive to race, this is kind of an analogy that helps
14 me explain this, is that every move that is made is
15 significant.

16 Q. Mr. Morgan, going to page 34 in paragraph 61 of your
17 report, what is your conclusion about the illustrative State
18 House plan in the Grant case?

19 A. That the Esselstyn House plan is focused on race,
20 prioritizing it to the detriment of traditional redistricting
21 factors.

22 Q. And after hearing Mr. Esselstyn's testimony about the
23 illustrative House plan in Grant, has your conclusion changed?

24 A. No.

25 MR. TYSON: So, Your Honor, at this point we will

1 move from Grant to Pendergrass, tab 4 of Mr. Morgan's report.

2 Probably much to everyone's relief, I expect this
3 will be a much shorter portion of the testimony.

4 BY MR. TYSON:

5 Q. So, Mr. Morgan, did you evaluate the plans that were
6 drawn by Mr. Cooper for Congress as part of your Pendergrass
7 report?

8 A. Yes.

9 Q. And you ran, as with your other reports, a series -- or,
10 I'm sorry.

11 Did you run, as with your other reports, a series of
12 Maptitude reports about the various districts?

13 A. Yes.

14 Q. And you included those as exhibits to your report; is
15 that correct?

16 A. Yes.

17 Q. So turning to page 6 of your report, the core
18 constituency report, what does this particular report show?

19 A. So this shows the core constituency as compared to the
20 benchmark plan; that is the plan that was in effect before the
21 redistricting. So this shows the continuity of districts in
22 the enacted plan and the continuity of districts from the
23 previous decade's congressional in the proposed illustrative
24 plan.

25 Q. And what do you conclude about the core retention of

1 these respective districts?

2 A. That the enacted plan retains more of the cores of
3 districts compared to the Cooper illustrative plan.

4 Q. You next discuss the differences in the illustrative --
5 I'm sorry -- in the preliminary injunction District 6 offered
6 by Mr. Cooper and the one offered by his report at this point.

7 Can you briefly explain to the Court what those
8 differences are?

9 A. Yes. These differences are primarily centered on Douglas
10 and Cobb Counties. My understanding is that in order to make
11 these changes, looking at the plan on the left, which was the
12 preliminary injunction plan, that District 6 retreats from
13 going quite as far north. There's a small area of East Cobb
14 that is not included in there. And so -- I'm sorry, yeah. So
15 it retreats slightly in that sense.

16 And then what it does is it picks up the population in
17 Douglas County to make up for that change. So it makes
18 Douglas County whole, but in doing so, making Douglas County
19 whole introduces a new split of Cobb County. So there's a
20 small portion of West Cobb that's placed in Congressional
21 District 3.

22 Q. Were you present for Mr. Cooper's testimony when I asked
23 him about adding Douglas County without affecting the overall
24 racial nature of the district?

25 A. Yes.

1 Q. Do you know whether Mr. Cooper would have been able to
2 add Douglas County without affecting the overall racial nature
3 of the district?

4 A. I think I said in my report that care must be taken to
5 maintain that racial number.

6 Q. And when you say "care must be taken," what do you mean
7 by that?

8 A. I mean that in order to absorb the Douglas County
9 population, care must be taken so that it's not too much
10 absorption of white population to drop it down below
11 50 percent. Because this district is so close to 50 percent,
12 it -- it is necessary to take care. For example, if you had
13 taken -- if Mr. Cooper had taken the area around Powder
14 Springs, which is a higher concentration of the Black
15 population --

16 MS. KHANNA: Objection, Your Honor. I'm going to
17 move to strike all of this.

18 Mr. Tyson has asked about a statement in paragraph 17
19 that is a bare statement and has basically asked Mr. Morgan to
20 elaborate on it. There is no such opinion about the meaning
21 of care must be taken in his report.

22 MR. TYSON: And, Your Honor, Mr. Cooper -- I'm
23 sorry -- Mr. Morgan is allowed to elaborate on what's in his
24 report. He's explaining the terminology. Immediately above
25 that in paragraph 16 he talks about the nature of these

1 various splits.

2 So, from our perspective, his ability to explain his
3 conclusion in paragraph 17 about care must be taken is helping
4 flesh out this issue of what is the impact of the changes made
5 between the preliminary injunction plan and the current plan.

6 THE COURT: What pages, Mr. Tyson, are you on?

7 MR. TYSON: Page 7 of tab 4. Paragraph 16 notes the
8 portion of Douglas and its Black voting age population
9 percentage that's traded with a portion of Cobb. And then --
10 in paragraph 17 Mr. Morgan addresses that care must be taken
11 regarding the switch there between Douglas and Cobb.

12 THE COURT: And you want to ask him what?

13 MR. TYSON: I want to ask him what he means by "care
14 must be taken to ensure that the portion removed and added
15 doesn't alter the overall Black voting age population."

16 THE COURT: Why can't he explain that?

17 MS. KHANNA: Your Honor, the very bare assertion that
18 care must be taken, I agree it's not elaborated on or provided
19 any explanation or opinion in his report. So to the extent
20 that Mr. Morgan is now offering an opinion he was unable to
21 offer at the report (sic), specifically I heard him talk about
22 Powder Springs, things that are not in his report, the purpose
23 of Rule 26 is for us to get a complete review of his opinions,
24 and it sounds like he's filling in a lot of the gaps.

25 THE COURT: Mr. Tyson, why didn't he explain that?

1 In other words, he puts the statement, care must be taken to
2 ensure the portion removed and added to that district does not
3 alter it overall, 18 plus, AP-Black. When he was writing
4 this, why didn't he explain that?

5 MR. TYSON: And, Your Honor, I'm not sure I can
6 answer that.

7 THE COURT: I know.

8 MR. TYSON: That's a question for Mr. Morgan.

9 I do think if you look at the next sentence, he is
10 talking about the racial concentrations of what was included
11 and excluded and refers to one of his exhibits. So I believe
12 that he can at least flesh out that piece.

13 It does say what he's talking about. I don't think
14 Ms. Khanna is saying she's not on notice that he had this
15 belief about what would be included and excluded in terms of a
16 Rule 26 notice requirement.

17 THE COURT: Ms. Khanna?

18 MS. KHANNA: I see the paragraph. I see the exhibit
19 and the data and information. What I don't see is the opinion
20 that explains what it means that care must be taken.

21 THE COURT: Well, they're not moving away from that.
22 They look at the next sentence. "The racial concentration of
23 the portions included and excluded on the Cooper 1205
24 Congressional Plan District 6 shows that care was taken to
25 avoid changing the racial makeup of that district."

1 Does that not give the answer, Mr. Tyson?

2 MR. TYSON: I believe it does, Your Honor. And it
3 refers to the exhibit that includes the data about that.

4 THE COURT: I'm going to sustain the objection on
5 this one.

6 MS. KHANNA: Thank you, Your Honor.

7 MR. TYSON: Thank you, Your Honor.

8 BY MR. TYSON:

9 Q. Mr. Morgan, in paragraph 18 of your report, you compare
10 the 1205 plan to the 2021 plan. What did you discover about
11 the population connections between those two plans?

12 A. That three of the districts in the Cooper 1205 plan
13 have less than 55 percent of the population from their
14 corresponding district numbers. In the adopted Congressional
15 plan these are Districts 9, 11 and 13.

16 Q. And what did you discover about District 6 on the enacted
17 plan versus the illustrative plan? And that's in the middle
18 of that --

19 A. District 6, yeah, the core constituency report in my
20 Exhibit 7 shows that only 2 percent of the population from
21 enacted District 6 overlaps with the Cooper 1205 Congressional
22 plan.

23 Q. And, Mr. Morgan, you also ran some compactness score
24 summaries on chart 2 of your report. What do those
25 compactness scores show?

1 A. The individual district scores, the chart shows the list
2 of the individual district scores.

3 Q. And how many districts on the enacted plan score higher
4 that's more compact on the enacted plan versus Mr. Cooper's
5 illustrative plan?

6 A. Four districts are less compact on the Reock measurement
7 and five districts are less compact on the Polsby-Popper
8 measurement.

9 Q. And when you say "less compact," you're referring to less
10 compact on the illustrative plan?

11 A. Yes.

12 Q. Mr. Morgan, going back to paragraph 17 just briefly, you
13 described a process of racial sensitivity where districts are
14 very close to 50 percent.

15 Do you recall that testimony?

16 A. Yes.

17 Q. And are you referring to that technique of addressing
18 racial sensitivity in paragraph 17?

19 A. Yes, I'm referring to that technique.

20 Q. Mr. Morgan, turning to paragraph 23, page 10, what is
21 your overall conclusion about the illustrative Congressional
22 plan in the Pendergrass case?

23 A. That six districts were identical and matched the enacted
24 plan. And that there were changes in eight districts in order
25 to create one new majority Black congressional district.

1 Q. Did you also conclude there were significant changes from
2 the illustrative plan -- I'm sorry -- in the illustrative plan
3 from the boundaries of the districts in the 2021 plan?

4 A. That's correct, that there were significant changes to
5 the boundaries of the districts from the '21 enacted plan to
6 the illustrative plan.

7 MR. TYSON: Your Honor, Mr. Morgan, we thank you for
8 your endurance, and everyone for their endurance during a long
9 afternoon. That's all the questions I have on direct, Your
10 Honor.

11 THE COURT: Let me ask, I'm assuming, and I hate to
12 assume, but I'm going to assume your cross-examination is not
13 going to be short?

14 MS. KHANNA: It depends on the answers, Your Honor.

15 But I will say my cross-examination can roughly be
16 divided in thirds, that's Grant State Senate, Grant House, and
17 Pendergrass.

18 THE COURT: All right. If you do it that way, I'll
19 probably stop today at 5:00, because I kept you all here until
20 10 after 6:00 yesterday. So we'll go ahead -- let's just
21 start your cross-examination and we'll stop at 5:00.

22 MS. KHANNA: Yes, Your Honor.

23 THE COURT: Does anybody need a break? Is everybody
24 okay?

25 MS. KHANNA: And, Your Honor, we're just passing up

1 the PowerPoint presentations. Thank you.

2 THE COURT: Okay.

3 MS. KHANNA: It's just occurring to me, to the extent
4 that my PowerPoint covers my entire cross and I don't get to
5 it today --

6 THE COURT: Do as much as you can.

7 MR. TYSON: I'll be happy to hand back the slides.

8 MS. KHANNA: Yeah. Don't peek.

9 THE COURT: I, on the other hand...

10 MS. KHANNA: Your Honor can take a look at anything
11 he wants.

12 THE COURT: I'm not handing it back to you.
13 Let's give it back to her.

14 MR. TYSON: I'm fine with that, Your Honor.

15 I will confess to have looked at the first two
16 slides, but I got no farther than that. So I think we'll be
17 okay.

18 MS. KHANNA: I'll keep you in suspense.

19 Thank you, Your Honor.

20 THE COURT: No problem.

21 CROSS-EXAMINATION

22 BY MS. KHANNA:

23 Q. Good afternoon, Mr. Morgan.

24 A. Hello.

25 Q. My name is Abha Khanna and I'm here today representing

1 both the Grant and the Pendergrass plaintiffs.

2 A. How do you spell the last name?

3 Q. K-H-A-N-N-A. We've met before; correct?

4 A. Yes. I just didn't have the H in there.

5 Q. That's fine.

6 I'm going to begin with discussing the -- your Senate
7 analysis in the Grant case. So I'm looking primarily at
8 Defendants' Exhibit 3, which is your Grant trial report.

9 So looking in chart 1 of your Grant report, Defendants'
10 Exhibit 3, you note that Mr. Esselstyn's illustrative plan
11 draws three more majority Black Senate districts than the
12 enacted Senate plan; is that correct?

13 A. I believe that's so, yes.

14 Q. And so you would agree that the Black population in
15 Georgia is large enough to create -- oh, I'm sorry -- to
16 create three additional majority Black Senate districts?

17 A. Well, he drew those districts in his plan. So if that's
18 the test, then yes.

19 Q. Then in paragraph 8 of your Grant report you state that
20 you were given incumbent databases used by the Georgia General
21 Assembly during the redistricting process; is that correct?

22 A. That's my understanding. That's how it was represented
23 to me.

24 Q. And you were also given information about those
25 incumbents who were not intending to run for reelection in

1 2022?

2 A. My understanding, yes.

3 Q. And you used that information in your preliminary
4 injunction report; is that correct?

5 A. Yes.

6 Q. But you never examined for this report any incumbent
7 information from -- as of the 2022 election?

8 A. No.

9 Q. So when you analyze the enacted and illustrative plans on
10 incumbent pairing, you didn't know who, if any, of the
11 incumbents you noted are actually still in office as of the
12 2022 election; correct?

13 A. Well, as I testified earlier in my direct testimony, if
14 we were to look at that metric on the enacted plan, it would
15 show zero, because there are zero paired incumbents in the
16 enacted plan.

17 Q. I'm going to pull up chart 3 in your Grant report. You
18 note here that -- the number of paired incumbents in each
19 Senate plan, the enacted and Mr. Esselstyn's Senate plan;
20 correct?

21 A. Yes.

22 Q. You state that the enacted plan pairs four incumbents; is
23 that correct?

24 A. Yes. I identified those in the reports that are -- I'm
25 sorry -- the exhibits that are in my report show the specific

1 incumbents that were paired.

2 Q. And in your preliminary injunction report you stated that
3 the enacted plan paired zero incumbents; is that correct?

4 A. Yes. And I was clear to state that there were zero
5 incumbents that were running for reelection at the time. I
6 was very clear to identify that point in my preliminary
7 injunction report.

8 Q. But you did not include that information in your trial
9 report.

10 A. No. It's still available in the preliminary injunction
11 if it's necessary to look at that.

12 Q. In your preliminary injunction report you stated that
13 Mr. Esselstyn's preliminary injunction Senate plan paired two
14 incumbents; is that correct?

15 A. I believe that's correct, yes.

16 Q. And those were incumbents as of 2021; correct?

17 A. That's the database that I was using, yes.

18 Q. And are you aware that Mr. Esselstyn, in preparing his
19 most recent trial report, analyzed incumbent addresses as of
20 the 2022 election?

21 A. I don't believe that data was provided to me.

22 Q. My question was, are you aware that Mr. Esselstyn
23 analyzed incumbent addresses as of the 2022 election?

24 A. I believe he said that in his report, yes.

25 Q. Are you aware that those 2022 incumbent addresses were

1 provided by defendants' counsel?

2 A. No.

3 Q. But defendants' counsel did not provide you with those
4 same 2022 incumbent addresses?

5 A. I don't believe so.

6 Q. Are you aware that Mr. Esselstyn's analysis of incumbents
7 as of 2022 states that his illustrative Senate plan pairs zero
8 incumbents?

9 A. Okay.

10 Q. You are aware of that?

11 A. I believe that was in his report.

12 Q. And do you have any reason to dispute that?

13 A. I don't have the data. I didn't look at that.

14 Q. And you would agree that the value of avoiding incumbent
15 pairings as a redistricting principle is that it allows for
16 continuity of representation; is that correct?

17 A. Generally that's correct, yes.

18 Q. And you would agree that the pairing or unpairing of
19 incumbents who are no longer in office has no bearing on the
20 continuity of representation?

21 A. I don't know, because you're talking about individual
22 people. In some cases, I talk about the continuity of the
23 district. But as it relates to the incumbents, that's
24 correct.

25 Q. Going back to chart 3 on page 8 of your Grant report.

1 You note here that the enacted plan and the Senate plan --
2 sorry -- the enacted Senate plan and Mr. Esselstyn's
3 illustrative Senate plan are similar when it comes to the mean
4 compactness scores; is that correct?

5 A. That's in my report in which paragraph?

6 Q. I believe it's in the following paragraph. I don't have
7 the paragraph number in front of me. As you look at them
8 today, do they seem similar?

9 A. I'm sorry, you reference my report. Let me see what I
10 said in my report, if I may.

11 Q. If you look at paragraph 50 of your Grant report.

12 A. 50? 15? 50?

13 Q. 50, five-zero.

14 A. I'm sorry, you're talking --

15 Q. Oh, I'm sorry, that was the wrong -- that's for the House
16 map.

17 A. I'm confused. Could you ask the question again, please?
18 I don't understand.

19 Q. If you look at chart 3, you would agree that the mean
20 compactness scores of Mr. Esselstyn's plan and the enacted
21 plan are similar?

22 A. Yes. One is -- the Esselstyn plan is .41 and the enacted
23 plan is .42 on the Senate plan. And you're referring to the
24 Senate plan, right?

25 Q. Yes. Yes.

1 A. And then the Esselstyn plan is .28 and the enacted plan
2 is .29 on the Polsby-Popper. Those are very close, yes.

3 Q. Now, on pages 8 to 12 of your report, you compare enacted
4 Senate District 10 to Mr. Esselstyn's Senate District 10; is
5 that correct?

6 A. Yes.

7 Q. Senate District 10 is not one of Mr. Esselstyn's new
8 majority Black districts; is that correct?

9 A. He did not identify it as a new district.

10 Q. And it was majority Black in the enacted map; correct?

11 A. Senate District 10 in the enacted map is majority Black,
12 yes.

13 Q. And it remains a majority Black district in the
14 illustrative map; correct?

15 A. Yes. It is a different configuration, but it is majority
16 Black, yes.

17 Q. I'm pulling up Mr. Esselstyn's table 3, which is Grant
18 Exhibit 1, page 17. I believe you have a binder of the
19 exhibits in front of you. You're welcome to look at that
20 yourself or you can just look at the screen.

21 A. Okay. Where is it in this binder?

22 Q. It's going to be at the very beginning, Grant Exhibit 1,
23 page 17.

24 A. So this is table 3 on page 17.

25 Q. That's correct.

1 A. And that's what you have on the screen?

2 Q. It is.

3 A. Okay.

4 Q. And you would agree that illustrative Senate
5 District 10's Reock score is higher than the least compact
6 district in the enacted map; is that correct?

7 A. Okay. I don't -- okay. So the least -- the Esselstyn
8 District 10 is greater than the least -- I don't understand
9 the question.

10 Q. In paragraph 27 of your report, you report Senate
11 District 10's -- illustrative Senate District 10's Reock score
12 as .25; correct?

13 A. Yes, I guess. Yeah.

14 Q. You would agree that the .25 is higher than the least
15 compact district in the enacted map on the Reock score?

16 A. Where is the least compact district?

17 Q. It's that first row on table 3, enacted plan, least
18 compact score.

19 A. So this is the illustrative -- the Esselstyn Senate
20 District 25 compact -- sorry -- Senate District 10 compactness
21 score of .25 on Reock, compared to .17, yes, it's greater than
22 that.

23 Q. And you would agree that illustrative Senate
24 District 10's Polsby-Popper score of .19 is higher than the
25 least compact district in the enacted map on that metric?

1 A. Sure.

2 Q. Looking at Mr. Esselstyn's illustrative Senate map.
3 Illustrative Senate District 10 is adjacent to illustrative
4 Senate District 25; is that correct?

5 A. Yes, it's adjacent in most parts.

6 Q. And illustrative Senate District 25 is actually one of
7 the new majority Black districts in Mr. Esselstyn's
8 illustrative plan?

9 A. Yes, he describes it as a new district.

10 Q. And you don't even mention Senate District 25 in the text
11 of your report; is that correct?

12 A. No, I don't believe I mention the Senate District 25 in
13 the text of the report.

14 Q. You provide no opinions or analysis of Senate District 25
15 in your report; correct?

16 A. I have information about the Senate District in my
17 report.

18 Q. You provide no opinion or analysis of illustrative Senate
19 District 25 in your report; is that correct?

20 A. I don't have a specific opinion in the text of my report,
21 but, as I mentioned, I did consider all the districts in the
22 plan and I looked at a lot of data in making my opinions and
23 my conclusions.

24 Q. You provide no specific opinions about the shape or
25 configuration or communities in Senate District 25 in the

1 illustrative plan; correct?

2 A. I have provided opinions here.

3 Q. But you provide no such opinions in the actual text of
4 your report; is that correct?

5 A. Right. That wasn't what you asked, but now that you
6 phrase it that way, that's correct.

7 Q. Thank you for clarifying.

8 Now, illustrative Senate District 5 is located in just
9 two counties. That's Henry and Clayton; correct?

10 A. Yes.

11 Q. So I want to compare enacted plan compactness score to
12 the illustrative plan's compactness score. There are a lot of
13 different tables that this came from for your reference. On
14 the left I have the enacted scores from Attachment H starting
15 on page 79 of Grant Exhibit 1.

16 A. Is this -- I'm sorry, is this in the text of
17 Mr. Esselstyn's report?

18 Q. It is in the report, the exhibits attached to
19 Mr. Esselstyn's reports.

20 A. But it's not in the text of the report? So I can look in
21 the exhibits to find this information?

22 Q. You're welcome to look -- you can test me here. I will
23 assert to you that the figures I'm putting on the screen right
24 now I pulled for the enacted map, the compactness scores I
25 pulled from Attachment H from Mr. Esselstyn's report. And the

1 illustrative Senate plan compactness scores I pulled from your
2 Exhibit 2 to your report.

3 A. And you don't identify that here, that you're pulling
4 from my report and his report?

5 Q. I'm identifying it to you right now. You can take a look
6 yourself.

7 A. Okay. So I'm going to look at Exhibit H in his report?

8 Q. Yes. Starting on page 79.

9 A. For one of these values.

10 Q. And you can see I'm specifically referencing Senate
11 District 25.

12 A. Do you have a page number you said for that --

13 Q. Starting on page 79 are the compactness scores. Grant
14 Exhibit 1, page 79. They're numbered at the bottom.

15 A. Okay. Starting on page 79, I see the compactness report,
16 and that shows all of the districts.

17 Q. And I think you can turn to Senate District 25.

18 A. Okay. And that's on the bottom of page 80.

19 And we're looking at both the Reock and Polsby-Popper on
20 the right side, the illustrative Senate plan.

21 Q. I'm looking at the enacted plan.

22 A. The enacted plan.

23 Q. That's what you have in front of you.

24 A. Let me see what this is referencing. This says Georgia
25 Senate 000.

1 Q. I'll represent to you that's the enacted plan.

2 A. This is the enacted plan?

3 Q. Yes.

4 A. Not Mr. Esselstyn's plan.

5 Q. Correct.

6 A. Okay. And this is where I'm getting two numbers here.

7 So I should be looking for .39 and .24.

8 All right. I see the Reock score is .39 and the
9 Polsby-Popper score is .24. And that agrees with what you
10 have on the screen and that's in the exhibit in
11 Mr. Esselstyn's report.

12 Q. Let's compare that to your assessment of the Reock and
13 Polsby-Popper score in the illustrative Senate plan. And you
14 can turn to your own Exhibit DX-3, Exhibit 2.

15 A. Okay. So the illustrative compactness scores, the actual
16 numbers are not in Mr. Esselstyn's report?

17 Q. They are. I'll be honest with you, Mr. Morgan, I could
18 not find the enacted compactness scores in your report, so I
19 had to -- I went to Mr. Esselstyn's report. I'm sure your
20 counsel will let us all know if I've misunderstood something.

21 A. Okay. So we're now looking for, in my report, where --
22 so I need to find this in my report.

23 Q. It's in Exhibit 2 to your report, DX-3, Exhibit 3.

24 A. Okay.

25 Q. And I don't see an individual page number there, so

1 you'll have to find Senate District 25.

2 A. They're sorted in numerical order.

3 All right. So this is the Esselstyn Reock score is .57
4 and .34. So that's correct. And that's from my report and
5 from Mr. Esselstyn's report.

6 Q. Exactly.

7 A. Okay.

8 Q. So you don't dispute, Mr. Morgan, that illustrative
9 Senate District 25 is significantly more compact than enacted
10 District 25.

11 A. Yeah, that's correct.

12 Q. On both the Reock and the Polsby-Popper scores?

13 A. Yes.

14 Q. If we look at Senate District -- illustrative Senate
15 District 25 on the map in front of you -- this is, for
16 reference, Attachment D to Mr. -- it's Esselstyn's exhibit,
17 Grant Exhibit 1 -- you'll see that Senate District 25, in
18 fact, overlaps with Senate Districts 10 -- sorry -- with
19 enacted Senate Districts 10, 17, 34 and 44.

20 Does that look right?

21 A. So are these proposed Senate districts or are they
22 enacted Senate Districts?

23 Q. These are the enacted Senate districts that I have in
24 front of you right now. And I'm just trying to explain that
25 the Senate -- illustrative Senate District 25 that we just

1 examined overlaps with these enacted districts, Districts 10,
2 17, 34 and 44.

3 A. That's okay. I just -- I haven't seen this before, so
4 let me reference it in the report. Page 57?

5 Q. Yes.

6 A. Okay. So this is from Legislative Congressional
7 Reapportionment Office. It's identified as proposed Senate
8 districts. And you're saying this is the enacted districts;
9 that's fine.

10 And so we're saying that the illustrative Senate
11 District 5 overlaps with which districts did you say?

12 Q. Enacted Senate Districts 10, 17, 34 and 44.

13 A. I'm not sure about that. 34? I don't know. I'd have to
14 look about 34. I'm really not sure about that.

15 Q. Okay. We can come back to this point. And maybe I can
16 streamline that a little bit once I confer with your counsel
17 about finding the numbers in your map.

18 I'm going to turn to paragraph 31 of your report. And
19 here you analyze Senate Districts 22 and 23 in both the
20 enacted and the illustrative plans; is that correct?

21 A. Yes. So you're referring to my report, but that's not
22 the image on the screen; right?

23 Q. The question I asked you was whether or not you're
24 referring to 22 and 23 in paragraph 31.

25 A. In my report, yes.

1 Q. I'm pulling up on the screen now the enacted map
2 alongside Mr. Esselstyn's illustrative map in this area.

3 Just to clarify, Senate District 22 is not one of the new
4 majority Black districts in Mr. Esselstyn's illustrative plan;
5 is that correct?

6 A. It is not a district that he identifies as a new
7 district. It is a district that is changed from the enacted
8 districts.

9 Q. Senate District 22 is majority Black in the enacted plan?

10 A. Yes, that's correct.

11 Q. And it remains a majority Black district in the
12 illustrative plan; correct?

13 A. Yes, that's correct.

14 Q. Adjacent Senate District 23 is the new majority Black
15 district in Mr. Esselstyn's illustrative plan; correct?

16 A. Yes. He identifies that, 23, as a new majority Black
17 district, yes.

18 Q. If you look at paragraph 31 of your report in this Grant
19 case -- you have that in front of you?

20 A. Yes.

21 Q. You note the compactness scores of enacted Senate
22 District 22 and enacted Senate District 23; is that correct?

23 A. Yes.

24 Q. But you provide no comparison to the compactness scores
25 of illustrative Senate District 22 or illustrative Senate

1 District 23; is that correct?

2 A. I don't compare that in the body of the report.

3 Q. You don't mention those scores at all?

4 A. No.

5 Q. Let's take a look at those scores.

6 A. Okay.

7 Q. Now, in paragraph 31 of your report, you state that
8 enacted Senate District 22 has a Reock score of .41 and a
9 Polsby-Popper score of .29.

10 Did I read that correctly?

11 A. Yes.

12 Q. If you turn to Exhibit 2 to your report, we can find the
13 compactness scores of illustrative Senate District 22.

14 A. Okay. So we're looking at illustrative Senate 22. Okay.
15 So it's .33 on Reock and .3 -- sorry -- this is 22. Yeah, and
16 .32 on Polsby-Popper. Okay.

17 Q. Is that correct?

18 So it's more compact -- the illustrative district is more
19 compact on one measure and less compact on the other?

20 A. Yes.

21 Q. Also in paragraph 31 of your report you have the enacted
22 Senate 23 Reock score of .37 and the enacted Senate
23 District 23 Polsby-Popper score of .16; is that correct?

24 A. Yes.

25 Q. And is it correct also that the illustrative plan,

1 illustrative Senate District 23, has a Reock score of .34 and
2 a Polsby-Popper score of .17?

3 A. Yes. And that's in the exhibits of my report where this
4 is.

5 Q. So in the text of your report where you are comparing the
6 enacted map to the illustrative map, you provide the
7 compactness scores of the enacted districts; correct?

8 A. Yes.

9 Q. But you do not provide the compactness scores of the
10 illustrative districts corresponding to those; correct?

11 A. No. I'm not stating that I'm comparing those two
12 districts on compactness. It doesn't say that in my report.

13 Q. In paragraph 33 of your report you refer to the Cooper
14 1205 Senate plan. Am I right that you mean the Esselstyn 1205
15 Senate plan?

16 A. Yes. I'm sorry if I didn't submit an errata, but I do
17 mean the Esselstyn Senate plan in this area, yes.

18 Q. And here you note that illustrative Senate District 23
19 stretches 80 miles from Milledgeville to the eastern part of
20 Augusta. Did I read that correctly?

21 A. Yes. Using the map tool, I measured that and that's what
22 I believe to be true, yes.

23 Q. In this district you note the length of illustrative
24 Senate District 23, but you don't mention the length of
25 enacted District 23; correct?

1 A. No.

2 Q. Would it surprise you to learn that enacted Senate
3 District 23 is more than 115 miles from the northern tip of
4 Taliaferro County to the southernmost point of Screven?

5 MR. TYSON: Objection, Your Honor. This is assuming
6 facts not in evidence. Also, one direction is east-west, the
7 other direction is north-south. So I think it's not an
8 appropriate comparison.

9 MS. KHANNA: I'm happy to point him to the map itself
10 and he can look at the legend and estimate with it.

11 THE COURT: Let him look at the map and this will be
12 the last question for today.

13 MS. KHANNA: Yes, Your Honor.

14 BY MS. KHANNA:

15 Q. So I've pulled up here figure 3 in Mr. Esselstyn's
16 report. And this is the enacted map. Isn't it -- if you look
17 at the legend at the bottom, you can approximate the length of
18 the districts. I understand it's not the perfect tool that
19 you would use with a computer. But is it fair to say that
20 Senate District 23 is more than 115 miles from the tip of
21 Taliaferro County to the southernmost point of Screven County?

22 A. Let me approximate this. And you're measuring diagonal
23 distance, or are you measuring north-south bounded distance?

24 Q. I'm measuring the length, at the highest length of the
25 district.

1 A. Okay. So really you're measuring the -- the lowest point
2 in the district is not Screven County, it's Emanuel County.

3 So is that where you're proposing to make a measurement?

4 Q. How long do you believe this district to be, according to
5 your rough measurements on the legend?

6 A. Okay. Let me make it -- so now we're measuring from the
7 bottom of Emanuel County to the tip of Taliaferro County?

8 Q. Yes.

9 A. Okay. I think I'm going to have to bend around to do
10 that. I don't know if I can do that with a straight line.

11 Hang on.

12 THE COURT: Let's do this. He can measure it
13 tonight.

14 MS. KHANNA: Absolutely, Your Honor.

15 THE COURT: You can ask him in the morning.

16 MS. KHANNA: Do your homework tonight.

17 Thank you.

18 THE COURT: Anything administrative before we stop
19 for today?

20 MR. SAVITZKY: Yes, Your Honor. Just very briefly
21 on the question of the transcript which you discussed with
22 Mr. Williams this morning. There's one line in the transcript
23 that we were just not sure about, would very much like to
24 double-check against the recording if that's possible.

25 THE COURT: Here's what we're going to do. I

1 actually talked to the administration here. As they point
2 out, errata sheets are only done in state courts, not in
3 federal courts.

4 So what we're going to do is this: At the end of the
5 trial, at the close of all the evidence, at the close of the
6 argument, any mistakes you-all think are in the transcript,
7 put them together on a list, give them to the court reporters.
8 If the court reporters and you-all can come to an agreement on
9 what needs to be corrected, fine. If you-all cannot, then
10 that will be given to me and I will make the decision.

11 So what they suggested I think is a good suggestion.
12 All the plaintiffs' lawyers get together and say, look, these
13 are the ones that we think are in error. The State has any,
14 the same way. And present them to the court reporters.

15 Again, one more time. If you-all can work it out,
16 fine. If not, then I'll work it out and make corrections.

17 MR. SAVITZKY: Thank you very much, Your Honor.

18 I do want to be clear. I don't know if it's an
19 error. We just want to double-check. We'll follow the
20 procedure you laid out.

21 And if I may have the Court's indulgence for one more
22 second, I would just say we are so grateful, and I'm sure all
23 the parties are, for the incredibly diligent work and the long
24 hours the court reporters have put in this case.

25 THE COURT: That last statement is going to carry you

1 a long way in life. They have been working very hard.

2 Ms. Penny sent me a transcript at 3:15 one morning.

3 And I -- last night I left here at 6:30 and I turned to her
4 before I left and said, I need a rough draft of the arguments
5 they made on Rule 52(c). I had it by 8:00. So that last
6 statement is very well appreciated.

7 Anything else?

8 MR. TYSON: Not from the defendants, Your Honor. We
9 would just join in our gratitude for the court reporters and
10 all the court staff. Thank you.

11 THE COURT: Thank you, all. We will start back in
12 the morning at 9:00. Everybody have a good evening. And see
13 you in the morning.

14 (Proceedings recessed at 5:02 p.m.)

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C E R T I F I C A T E

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2
3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF GEORGIA
5

6 I do hereby certify that the foregoing pages are a true
7 and correct transcript of the proceedings taken down by me in
8 the case aforesaid.

9 This the 13th Day of September, 2023.
10

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12
13 *Penny Pritty Coudrinet*

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15 _____
16 PENNY PRITTY COUDRIET, RMR, CRR
17 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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FOR THE NORTHERN DISTRICT OF GEORGIA

_____)	
)	
Plaintiff(s))	
)	Case No. _____
V.)	
)	
_____)	
Defendant(s))	

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