

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA, MONROE DIVISION**

PHILLIP CALLAIS, LLOYD PRICE,
BRUCE ODELL, ELIZABETH ERSOFF,
ALBERT CAISSIE, DANIEL WEIR,
JOYCE LACOUR, CANDY CARROLL
PEAVY, TANYA WHITNEY, MIKE
JOHNSON, GROVER JOSEPH REES,
ROLFE MCCOLLISTER,

Plaintiffs,

v.

NANCY LANDRY, in her official capacity
as Secretary of State for Louisiana,

Defendant.

Civil Action No. 3:24-cv-00122

Judge David C. Joseph

Circuit Judge Carl E. Stewart

Judge Robert R. Summerhays

**ROBINSON INTERVENORS' MOTION TO RECONSIDER
DENIAL OF LEAVE TO PRESENT RESPONSIVE EXPERT TESTIMONY**

Defendant-Intervenors Press Robinson, Edgar Cage, Dorothy Nairne, Edwin Rene Soule, Alice Washington, Clee Earnest Lowe, Davante Lewis, Martha Davis, Ambrose Sims, the National Association for the Advancement of Colored People Louisiana State Conference, and the Power Coalition for Equity and Justice (the “*Robinson* Intervenors”) respectfully move this Court for reconsideration of its order denying leave to submit expert testimony responding to Dr. Overholt. In support of this motion, the *Robinson* Intervenors are submitting herewith a proposed Surrebuttal Report by Dr. Handley. *See* Ex. 1. Dr. Handley’s proposed report raises serious questions about the validity and reliability of Dr. Overholt’s performance analysis. As set forth in the accompanying memorandum, refusing to allow *Robinson* Intervenors to present testimony by Dr. Handley if Dr. Overholt is allowed to testify would deprive the Court of important evidence bearing on its assessment of Dr. Overholt’s opinions and would gravely prejudice the *Robinson* Intervenors. There would be no unfair surprise or prejudice to Plaintiffs in permitting Dr. Handley to testify.

Robinson Intervenors also submit additional reasons to exclude Dr. Overholt’s report. Dr. Overholt’s deposition transcript, also submitted herewith, *see* Ex. 2, makes clear that his report did not respond in substance to any of *Robinson* Intervenors’ expert reports, and instead is focused on a topic—the performance of CD 6 in the enacted plan and the performance of majority-Black districts in other alternative plans the Legislature considered—that none of the *Robinson* Intervenors’ experts addressed. Dr. Overholt conceded that he did not analyze the methodology of the experts proffered by the *Robinson* Intervenors whose reports he purports to rebut. Dr. Overholt also testified that he started working on his report in late January or early February, long before the expert reports of *Robinson* Intervenors were submitted.

DATED: April 5, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John Adcock, counsel for the *Robinson* Intervenor, hereby certify that on April 5, 2024, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system, and that service will be provided through the CM/ECF system.

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Judge Robert R. Summerhays

**ROBINSON INTERVENORS' MEMORANDUM IN FURTHER SUPPORT OF THE
EXCLUSION OF DR. BEN OVERHOLT AND IN SUPPORT OF MOTION TO
RECONSIDER DENIAL OF LEAVE TO PRESENT RESPONSIVE EXPERT
TESTIMONY**

Defendant-Intervenors Press Robinson, Edgar Cage, Dorothy Nairne, Edwin Rene Soule, Alice Washington, Clee Earnest Lowe, Davante Lewis, Martha Davis, Ambrose Sims, the National Association for the Advancement of Colored People Louisiana State Conference, and the Power Coalition for Equity and Justice (the “*Robinson* Intervenors”) respectfully make this submission (i) in further support of their motion to strike and exclude the irrelevant and improper rebuttal testimony of Dr. Ben Overholt, based upon Dr. Overholt’s testimony at his deposition yesterday; and (ii) in support of their motion for reconsideration of the Court’s order denying their motion for leave to submit expert testimony responding to Dr. Overholt.¹

PRELIMINARY STATEMENT

Dr. Overholt’s deposition testimony confirms that his report is improper rebuttal and would seriously prejudice the *Robinson* Intervenors. Dr. Overholt’s deposition makes clear that his report did not respond in substance to any of *Robinson* Intervenors’ expert reports, and instead is focused on a topic—the performance of CD 6 in the enacted plan and the performance of majority-Black districts in other alternative plans the Legislature considered—that none of the *Robinson* Intervenors’ experts addressed. Dr. Overholt conceded that he did not analyze the methodology of the experts proffered by the *Robinson* Intervenors whose reports he purports to rebut. Dr. Overholt also testified that he started working on his report in late January or early February, long before the expert reports of *Robinson* Intervenors were submitted. He thus had ample time to prepare his report by the deadline for initial expert reports. Finally, he testified that in preparing his report he relied on a database and computer code. That code and data should have been produced with his report on April 1 pursuant to Rule 26(a)(2)(B)(ii). Instead, Plaintiffs only produced the code four days later—on the business day before trial.

¹ On April 5, 2024, Plaintiffs filed a Response to the Motion to Strike the Testimony of Dr. Overholt.

The *Robinson* Intervenors also respectfully request that the Court reconsider its denial of their motion to present expert testimony in response to Dr. Overholt and permit the *Robinson* Intervenors to present testimony by Dr. Lisa Handley that is directly responsive to Dr. Overholt's report. In support of this motion, the *Robinson* Intervenors are submitting herewith a proposed Surrebuttal Report by Dr. Handley. *See* Ex. 1. Dr. Handley's proposed report raises serious questions about the validity and reliability of Dr. Overholt's performance analysis. Refusing to allow the *Robinson* Intervenors to present testimony by Dr. Handley if Dr. Overholt is allowed to testify would deprive the Court of important evidence bearing on its assessment of Dr. Overholt's opinions and would gravely prejudice the *Robinson* Intervenors. There would be no unfair surprise or prejudice to Plaintiffs in permitting Dr. Handley to testify. To the contrary, Dr. Overholt testified that he is familiar with Dr. Handley's work on performance; indeed, he testified that she was used as an expert in a number of cases by the Department of Justice, and that he himself assisted her over a number of months in providing expert testimony when he worked at the Department. Dr. Overholt also testified that Plaintiffs' counsel provided him a copy of Dr. Handley's expert report on performance in the *Robinson* litigation before he prepared his report in this case, and he claimed that the methodology he used in his report "kind of follow[ed] a little bit of her lead." *See* Ex. 2, Overholt Dep. Rough Tr. 135:12-22. The Court should not permit Plaintiffs to present testimony by Dr. Overholt at trial while precluding the *Robinson* Intervenors from offering Dr. Handley to respond.

ARGUMENT

I. Deposition testimony confirms that Dr. Overholt’s expert testimony is improper rebuttal.

The deposition testimony elicited from Dr. Overholt provides compelling reasons beyond those presented in the *Robinson* Intervenors’ motion, Doc. No. 145-1, that his testimony should be excluded.

First, Dr. Overholt’s testimony makes clear that his report was not proper rebuttal testimony. Dr. Overholt testified repeatedly that the key findings and analyses in *Robinson* Intervenors’ expert reports were not germane to his performance analysis, and that none of the *Robinson* Intervenors’ experts analyzed the performance issues that Dr. Overholt addressed. For example, Dr. Overholt said that “compactness”—a standard map-drawing principle analyzed by Mr. Fairfax—was “actually fairly irrelevant” to his analysis. Ex. 2 at 74:10-14. Dr. Overholt did not include in his report—or even look at—the other redistricting principles Mr. Fairfax relied upon—minimizing subdivision splits, adhering to district cores, contiguity, socioeconomic factors. *Id.* at 85:3- 87:22; 88:4-6; 89:10-12; *id.* at 93:22-23 (testimony that Dr. Overholt did not analyze the distribution of the Black population in Louisiana because such an analysis would be unnecessary for his purposes). Dr. Overholt conceded that the scope of his expert work was relevant to only the second and third factors of the Voting Rights Act analysis under *Gingles* (relating to whether voting is polarized by race). *Id.* at 80:2-9. By contrast, Mr. Fairfax’s report is relevant only to *Gingles I*—whether the Black population is sufficiently large and geographically compact to constitute a majority in a single member district that is reasonably compact and drawn in conformity with traditional redistricting principles. Dr. Overholt likewise was unable to identify any part of the analysis by Dr. McCartan (another expert proffered by the *Robinson* Intervenors whose report Dr. Overholt purports to respond to) that he studied and analyzed. *Id.* at 103:5-23.

Indeed, during the deposition, counsel for Plaintiffs stated that “our argument on the rebuttal is related to Fairfax’s report, not McCartan,” thereby apparently withdrawing Dr. Overholt as a rebuttal expert to Dr. McCartan. *Id.* at 104:2-14. Plaintiffs should not be permitted to submit a report purporting to rebut one set of experts, only later to have their counsel announce that it is intended to respond to just one of those experts.

Dr. Overholt similarly conceded that none of the *Robinson* Intervenors’ experts addressed the performance of CD 6 or any actual or contemplated majority-Black Congressional district. He testified Mr. Fairfax “misses” the measurement of “whether or not it will actually perform for the minority community of interest.” *Id.* at 82:9-18. And he expressly conceded that Mr. Fairfax does not analyze “performance” as Mr. Overholt defines it. *Id.* at 98:21-99:7.

Second, Dr. Overholt also acknowledged that he has little or no familiarity with the methodologies that Mr. Fairfax employed and did not respond to or rely upon that methodology in his report. Mr. Fairfax’s expert report drew on his thirty years’ experience as a demographer and mapping consultant to conclude that none of Plaintiffs’ experts established racial predominance. Dr. Overholt testified that he has never drawn legislative maps of any kind. *Id.* at 23:10-16. He was unable to answer basic questions about that methodology, including even what redistricting software Mr. Fairfax used in his analysis. *Id.* at 90:10-15.

Third, Dr. Overholt testified that he began working on this case in late January or early February. Dr. Overholt testified that he first spoke to Plaintiffs’ counsel about this case in “early February, maybe late January.” *Id.* at 27:13-16. *See also id.* at 27:22-24. In the nearly two months beginning at that time, he testified to having billed Plaintiffs for over 90 hours on his work. *Id.* at 30:10-21. Dr. Overholt’s testimony underscores that Dr. Overholt had ample time to complete his

work by the Court-ordered March 22 deadline for opening expert reports, and that Plaintiffs simply chose to withhold his report until after the Robinson Intervenors' expert reports were produced.

Fourth, Dr. Overholt's deposition testimony demonstrated that Plaintiffs have failed to comply with their obligations under Rule 26(a)(2)(B)(ii) to produce "the facts and data considered by [Dr. Overholt] in forming [his opinions]." Dr. Overholt testified that his work relied on a voter file that was prepared by "computer scientists" and provided to Dr. Overholt. *Id.* at 33:20-34:2; 123:18-24; 124:7-9. These data were provided to Dr. Overholt "through counsel." *Id.* at 34:14-18. Dr. Overholt's deposition also for the first time identified computer code that he relied on in doing his work. *See id.* at 104:20-105:13. That data and the code should have been produced to the *Robinson* Intervenors simultaneously with his report. Instead, the computer code was produced today, four days after Dr. Overholt's report was produced, a day after his deposition, and one business day before the start of trial. Ex. 3.

For these reasons, and those provided in the Robinson Intervenors' motion to exclude Dr. Overholt's testimony, ECF No. 145, Dr. Overholt's testimony should be excluded.

II. Robinson Intervenors should be given a fair opportunity to rebut the testimony of Dr. Overholt pending a decision on the Motion to Strike

Deposition testimony and the enclosed report by Dr. Handley establishes that the *Robinson* Intervenors would also be prejudiced were they not provided an opportunity to present testimony by Dr. Handley responding to Dr. Overholt if the Court permits Dr. Overholt to testify.²

² Dr. Overholt's testimony is about *Gingles* II and III. And, as discussed in the *Robinson* Intervenors' motion in limine and supporting memorandum, *Gingles* II and III are not relevant to the Court's current inquiry. *See Robinson* Intervenors' Motion in Limine, ECF No. 144-1 at 3-5. However, if Dr. Overholt is allowed to testify on *Gingles* II and III, *Robinson*-Intervenors would be greatly prejudiced in not being allowed rebuttal expert analysis. None of the previous experts noticed by *Robinson*-Intervenors have addressed *Gingles* II and III or have the expertise to address the issues raised for the first time by Dr. Overholt.

Dr. Handley is a renowned expert in racially polarized voting and related issues (including the performance of majority-minority electoral districts) who has published multiple peer-reviewed articles and has been engaged as a testifying expert multiple times by the Department of Justice. Ex. 2 at 15:24-16:2. Courts have repeatedly permitted her to testify as an expert about those subjects and relied upon her testimony.³ The court in *Robinson* found Dr. Handley’s analysis of racially polarized voting in Louisiana reliable and credible. *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 800, 842 (M.D. La. 2022). By contrast, Dr. Overholt testified that, to his knowledge, no Court has ever accepted Dr. Overholt’s testimony on any topic. *Id.* 25:25-26:4. Dr. Overholt deposition demonstrates real concern about his credibility, admitting to never having produced any peer-reviewed publications, or publications of any kind aside from his dissertation. *Id.* at 13:5-8.

Indeed, Dr. Overholt testified that Plaintiffs’ counsel in this case provided him with a copy of Dr. Handley’s report in the *Robinson* case and that his report followed the methodology Dr. Handley employed in that case. Dr. Overholt testified that the “final conclusion table” in his report was “loosely based on what [Dr. Handley] used for the conclusion in her rebuttal report [in *Robinson*].” *Id.* at 135:11-136:3; 137:8-24. He similarly testified that his analysis of voter turnout “mirror[ed] almost exactly what Lisa had done.” *Id.* at 178:9-21. But Dr. Handley’s proposed expert report, submitted herewith, shows that Dr. Overholt made fundamental mistakes in applying that methodology to Louisiana elections, and as such his opinions are accordingly not reliable.

³ See, e.g., *Nairne v. Ardoin*, No. CV 22-178-SDD-SDJ, 2024 WL 492688, at *36 (M.D. La. Feb. 8, 2024) (finding Dr. Handley “credible and her conclusions reliable and well supported”); *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, No. 1:21-CV-05337-SCJ, 2023 WL 7037537, at *21 (N.D. Ga. Oct. 26, 2023) (accepting Dr. Handley as an expert and noting she has routinely been qualified as an expert in cases where she used the same methodology she employed here); *Lopez v. Abbott*, 339 F. Supp. 3d 589, 610 (S.D. Tex. 2018) (crediting Dr. Handley’s testimony); *United States v. Vill. Of Port Chester*, 704 F. Supp. 2d 411, 427, 441 (S.D.N.Y. 2010) (relying on Dr. Handley as an expert and noting that “[t]he methods employed by Dr. Handley,” including ecological inference analysis, “have been accepted by numerous courts in voting rights cases”).

In these circumstances, it would be gravely prejudicial to the *Robinson* Intervenors to permit Dr. Overholt to testify to his opinions while precluding Intervenors from presenting rebuttal testimony from Dr. Handley. And it would be a disservice to this Court's factfinding process to allow Dr. Overholt to testify while refusing to hear from Dr. Handley, especially when Dr. Overholt explicitly claimed to be following Dr. Handley's methodology.

At yesterday's final pretrial conference, the Court expressed a willingness to permit the *Robinson* Intervenors to present a supplemental report by one of their previously disclosed experts to respond to Dr. Overholt, but concluded that it was too late to present testimony by a new expert. But the fact that none of the *Robinson* Intervenors' previously disclosed experts has previously testified about the subject matter of Dr. Overholt's report and lacks the expertise to address his analysis *only underscores why Dr. Overholt's testimony is not proper rebuttal*. It also illustrates the prejudice to the *Robinson* Intervenors of precluding them from presenting Dr. Handley's testimony. In any event, we respectfully submit that there is no rationale for permitting the *Robinson* Intervenors to present expert testimony and a new expert report about a new subject by a previously disclosed expert while prohibiting them from presenting the same testimony and the same report by a different expert.

CONCLUSION

For all of the reasons above, the *Robinson* Intervenors respectfully request that the Court exclude any expert testimony by Dr. Ben Overholt, or, if the Court permits Dr. Overholt to testify, to permit the *Robinson* Intervenors to present rebuttal testimony by Dr. Lisa Handley consistent with the proposed expert report submitted herewith.

DATED: April 5, 2024

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Civil Action No. 3:24-cv-00122

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**DECLARATION OF JOHN ADCOCK IN SUPPORT OF *ROBINSON* INTERVENORS'
MOTION TO RECONSIDER DENIAL OF LEAVE TO
PRESENT RESPONSIVE EXPERT TESTIMONY**

I, John Adcock, hereby declare as follows:

1. I am over 18 years of age and am competent to make this declaration.
2. I am an attorney in good standing with the Louisiana Bar and able to practice before the Western District of Louisiana.
3. I have personal knowledge of the statements made in this affidavit and each is true and correct.
4. I am an attorney with John Adcock Law LLC.
5. I am counsel for Amici Press Robinson, Edgar Cage, Dorothy Nairne, Edwin René Soulé, Alice Washington and Clee Earnest Lowe, Davante Lewis, Martha Davis, Ambrose Sims, Louisiana State Conference of the NAACP (“Louisiana NAACP”), Power Coalition for Equity and Justice (“Power Coalition”), in the above-captioned action and submit this declaration to provide the Court true and correct copies of certain documents submitted in support of *Robinson* Intervenors’ Motion To Reconsider Denial of Leave to Present Responsive Expert Testimony.

Exhibit 1 is a true and correct copy of the proposed April 5, 2024 Surrebuttal Report of Dr. Lisa Handley to the Expert Report of Dr. Ben Overholt, submitted on behalf of *Robinson* Intervenors.

Exhibit 2 is a true and correct copy of the Rough Transcript of the April 4, 2024 Deposition of Dr. Ben Overholt, conducted by counsel for the *Robinson* Intervenors.

Exhibit 3 is a true and correct copy of a April 4–5, 2024 Email exchange among counsel for *Robinson* Intervenors and Plaintiffs.

Dated: April 5, 2024

Respectfully submitted,

By: /s/John Adcock

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Exhibit 1

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Surrebuttal Report of Dr. Lisa Handley to the Expert Report of Dr. Ben Overholt

April 5, 2024

I. Introduction

Scope of Project I was retained by Robinson Intervenors in this case as an expert to prepare a surrebuttal to the rebuttal report prepared by Dr. Ben Overholt. To address some of his specific findings, I was asked to conduct a functional analysis of the districts in several proposed congressional plans to determine what districts, if any, in these plans provide Black voters with an opportunity to elect their candidates of choice to congress. I examined four plans, including the plan enacted by the state legislature in 2022 (hereafter “HB 1”), the remedial plan enacted by the state legislature in 2024 (hereafter “SB 8”); and two plans proposed by Tony Fairfax in *Robinson v. Ardoin*, 3:22-cv-00211 (M.D. Louisiana): the plan presented to the Court in June 2022 as part of remedial proceeding at that time (hereafter “Fairfax 2022 Remedial Plan”), and another similar illustrative plan drawn by Tony Fairfax and provided to the *Robinson* Defendants in 2023 as part of on-going *Robinson* proceeding (hereafter “Fairfax 2023 Illustrative Plan”). These plans were selected for review because I previously analyzed them in conjunction with the *Robinson* matter and current time constraints do not allow for the analysis of any additional plans.

Summary Conclusions Dr. Overholt significantly underestimates the ability of the majority-Black districts in the plans he examines to provide Black voters with an opportunity to elect their candidates of choice. Although there are a number of problems with his analysis (several of which I discuss in my report), the most fundamental problem is his failure to recognize how the jungle primary system in Louisiana operates and how this impacts the ultimate success or failure of the candidates preferred by Black voters. Dr. Overholt estimates the percentage of the vote he believes candidates supported by Black voters would receive in a district, and if that estimate is less than 50%, he considers that candidate to have lost the election. He does this even when there are no other candidates in the contest that received 50% of the vote and the Black-preferred candidate would have proceeded to a runoff and, according to my data, almost certainly would win the runoff in the district.

II. Professional Background and Experience

I have over thirty-five years of experience as a voting rights and redistricting expert. I have advised scores of jurisdictions and other clients on minority voting rights and redistricting-related issues. I have served as an expert in dozens of voting rights cases. My clients have included state and local jurisdictions, independent redistricting commissions (Arizona, Colorado,

Michigan), the U.S. Department of Justice, national civil rights organizations, and such international organizations as the United Nations.

I have been actively involved in researching, writing, and teaching on subjects relating to voting rights, including minority representation, electoral system design, and redistricting. I co-authored a book, *Minority Representation and the Quest for Voting Equality* (Cambridge University Press, 1992), and co-edited a volume, *Redistricting in Comparative Perspective* (Oxford University Press, 2008), on these subjects. In addition, my research on these topics has appeared in peer-reviewed journals such as *Journal of Politics*, *Legislative Studies Quarterly*, *American Politics Quarterly*, *Journal of Law and Politics*, and *Law and Policy*, as well as law reviews (e.g., *North Carolina Law Review*) and a number of edited books. I hold a Ph.D. in political science from The George Washington University.

I have been a principal of Frontier International Electoral Consulting since co-founding the company in 1998. Frontier IEC specializes in providing electoral assistance in transitional democracies and post-conflict countries. In addition, I am a Visiting Research Academic at Oxford Brookes University in Oxford, United Kingdom. Attached to the end of this report is a copy of my curriculum vitae.

III. Assessing the Opportunity to Elect in Districts Using Reaggregated Election Results

To assess whether a proposed district is likely to provide Black voters with an opportunity to elect their candidates of choice, a district-specific, functional analysis should be conducted. This assessment depends not only upon the demographic composition of the district but the voting patterns in that district and whether the candidates preferred by minority voters are likely to usually win in the district – this is what is meant by “functional.” Typically, to assess proposed congressional districts, election results from previous elections are reaggregated or recompiled to conform to the boundaries of the proposed districts because no elections have occurred within the boundaries of the proposed districts. The best election contests to use for a functional analysis are recent elections that included a minority candidate supported by minority voters, but not by white voters. In Louisiana, where Black voters comprise the only sizeable minority, we are interested in whether Black voters are offered an opportunity to elect their candidates of choice to Congress.

I analyzed all recent (2015 – 2023) Louisiana statewide election contests that included Black candidates.¹ Table 1 lists the election contests I analyzed, the Black candidate(s) that competed in the election, and the total number of candidates who ran for that office in that contest.²

Table 1: Louisiana Statewide Elections Analyzed

Election Cycle	Office	Black Candidate(s)	Total Number of Candidates
November 2023	Secretary of State	Gwen Collins-Greenup	2
October 2023	Governor	Shawn Wilson	15
October 2023	Lieutenant Governor	Willie Jones	6
October 2023	Secretary of State	Gwen Collins-Greenup	8
November 2022	U.S. Senator	Gary Chambers, Jr.	13
November 2020	U.S. President/VP	Kamala Harris	2
November 2020	U.S. Senator	Adrian Perkins Derrick Edwards	15
November 2019	Secretary of State	Gwen Collins-Greenup	2
October 2019	Lieutenant Governor	Willie Jones	2
October 2019	Attorney General	Ike Jackson	2
October 2019	Treasurer	Derrick Edwards	3
October 2019	Secretary of State	Gwen Collins-Greenup	4

¹ I analyzed statewide elections because only statewide elections cover a geographic area large enough to be used for election reaggregation purposes. I focused on elections that included Black candidates because the courts consider contests that include minority candidates more probative than contests that include only white candidates for determining if voting is racially polarized. This is because it is not sufficient for minority voters to be able to elect their candidates of choice only if these candidates are white.

² Dr. Overholt did not examine all of the elections listed in Table 1. He only looked at elections prior to 2016 and therefore did not analyze any of the 2015 elections that included Black candidates that I reviewed. Despite going back in time as far as 2016, however, he neglected to analyze the two state treasurer contests in 2017 (October and November 2017) that included Black candidates. And he did not analyze the November 2020 presidential race – even though presidential contests are usually considered by political scientists to be particularly probative of what is possible in a proposed district in which no elections have been conducted.

December 2018	Secretary of State	Gwen Collins-Greenup	2
November 2018	Secretary of State	Gwen Collins-Greenup	9
November 2017	Treasurer	Derrick Edwards	2
October 2017	Treasurer	Derrick Edwards	6
November 2015	Lieutenant Governor	Kip Holden	2
October 2015	Lieutenant Governor	Kip Holden	4
October 2015	Attorney General	Ike Jackson Geri Broussard Baloney	5
October 2015	Secretary of State	Chris Tyson	2

The estimates of Black and white voters supporting the candidates that competed in these 20 election contests can be found in *Appendix A*. All of these contests were racially polarized, with Black and white voters supporting different candidates. As a consequence, all 20 contests are included in my assessment of the opportunity of Black voters to elect their candidates of choice to congress under the set of congressional plans I have been asked to review.

The precinct election results for these 20 contests were disaggregated down to the census block level and then recompiled to conform to the boundaries of the proposed congressional districts in various plans to determine how well the candidates of choice of Black voters would perform.³ These recompiled results were then used to construct two indices, or “effectiveness scores” that indicate whether a proposed district is likely to provide Black voters with an opportunity to elect their candidates of choice to congress.

The first score (Effectiveness Score #1) indicates the percent of election contests (out of the total 20 statewide contests) that the Black-preferred candidate would have won or advanced to a runoff. This is important because the jungle primary system in Louisiana requires 50% of the vote to avoid a runoff, but if no candidate receives at least 50% of the vote, a runoff is held between the two candidates with the most votes.

³ The disaggregation of each candidate’s votes was done on the basis of the proportion of the voting age population (VAP) that each census block comprised of the total VAP of the precinct. If the precinct was not split by district lines, then the precinct totals were unaffected. This approach yielded similar election reaggregation results as whatever approach was used by Dr. Overholt, or whoever prepared the data for him, to produce reaggregated election results. It is not possible to completely understand every step of Dr. Overholt’s process because of the short time frame, particularly given that I have not yet received a complete copy of the code used and his back-up data.

As mentioned above, Dr. Overholt ignores the possibility that no candidate received 50% of the vote in many of the contests he considers – he simply counts an election as a “loss” any time a theoretical Black-preferred candidate receives less than 50% of the vote. This means that he consistently underestimates the ability of the Black voters to elect their candidates of choice in the districts he is examining. For example, Dr. Overholt interprets the results in Table 5a as follows: “In congressional general election years, all proposed districts...including SB 8-D6, would defeat candidates supported by most black voters most of the time” (Overholt Report, page 12). The only plan (other than the original Plan enacted by the State Legislature in 2022) that both Dr. Overholt and I analyzed was SB 8. Table 2, below, lists the elections for which we both produced reagggregated election results. It includes the vote percentages for the Black candidates supported by Black voters from Overholt Tables 5a and 5b (Overholt Report, pages 12-13), as well as the results of my reaggregation of the election results. In the final column I indicate what the election results would have actually meant for the Black candidate.

As Table 2 clearly demonstrates, many of the election contests in which the Black candidate received less than 50% of the vote would actually have led to a runoff rather than a defeat. Overall, Dr. Overholt concludes that the Black candidates would have been defeated in six of the 10 contests. However, the Black candidates was actually defeated in only two of the 10 contests. In the other four contests, the Black candidate would have progressed to a runoff and, as both Dr. Overholt and myself show, would most likely have been successful. (We both find that Black voters are usually able to elect their preferred candidates in runoffs in majority Black districts in Louisiana.)

Table 2: Election Results for Contests with Black Candidates in SB 8 District 6

Election Contest	Percent of Vote Black Candidate(s) Received ⁴			
	Overholt Tables 5a and 5b	Handley recompilation	Overholt Interpretation	Actual Result ⁵
2022 US Senate	47.7	47.4	Loss	Runoff
2020 US Senate	46.2	47.6	Loss	Runoff
2018 SOS	54.2	54.0	Won	Won
2023 Governor	41.3	43.3	Loss	Runoff
2023 Lt Gov	32.6	32.8	Loss	Loss
2023 SOS	46.9	48.8	Loss	Runoff
2019 Lt Gov	49.5	49.1	Loss	Loss
2019 SOS	52.3	52.1	Won	Won
2019 AG	51.4	51.0	Won	Won
2019 Treasurer	53.7	53.4	Won	Won

⁴ Dr. Overholt combined candidates that received more than 10% of the Black vote to produce the percent of vote the Black-preferred candidate would receive and therefore I did the same to approximate his vote percentages more closely. This is an improper way to determine how Black voters would behave in a general election featuring only one Democratic candidate, however. In primary elections, the Black vote can be split across several Black-preferred candidates. As the evidence shows, Black voters in Louisiana cohesively support the Black candidate that advances to the runoff. Excluding votes for any candidates that receive less than 10% of the vote from the estimated Black support results in a several percentage point underestimation of the percentage of Black voters who would support the Black candidate in a runoff election. Because Dr. Overholt’s estimates are often just under 50%, this approach to combining only some of the candidates supported by Black voters (in Dr. Overholt’s case, two candidates) dramatically impacts the conclusions to be drawn from this data.

⁵ In four of the 10 elections, no candidate in the contest received at least 50% of the vote and the candidate most preferred by Black voters would have moved into a runoff even without the additional votes from the second most preferred candidate. (In no instance did Dr. Overholt combine more than two candidates.) As discussed below, interpreting advancing to the runoff as a loss is a significant error because, as Dr. Overholt’s Table 5c shows, Black candidates win every runoff election in District 6 of SB 8.

The second score (Effectiveness Score #2) that I report below is the percent of two-candidate elections that the Black-preferred candidate would have actually won with 50% of the vote. It is calculated on the basis of the subset of the nine two-candidate contests: the November 2023 runoff for Secretary of State; the November 2020 race for U.S. President; the October 2019 Lieutenant Governor and Attorney General contests; the 2019 runoff for Secretary of State; the December 2018 runoff for Secretary of State; the November 2017 runoff for State Treasurer; the October 2015 Secretary of State contest; and the November 2015 runoff for Lieutenant Governor.

These two-candidate contests are particularly relevant for my assessment of Black opportunity for two reasons. One, the two scores make it clear that while a Black-preferred Black candidate may obtain a sufficient number of votes to advance to a runoff in some instances, winning the runoff is far more challenging in districts that are not majority Black in composition. Two, these two-candidate contests – all of which include a Democrat and a Republican – are what congressional contests will most resemble beginning in the autumn of 2026. A law passed by the state legislature in January 2024 puts in place a new system for Louisiana congressional elections: there will be closed partisan primaries followed by a general election in which the winners of the Democratic and Republican primaries will compete for the congressional seat.⁶

Dr. Overholt reports the results of a subset of two-candidate contests in Table 5c: seven runoffs conducted between 2016 and 2023. Only three of these seven contests included Black candidates. The Black-preferred candidates won a majority of the elections in all of the districts he analyzed and, more importantly, in at least 66.7% of the contests that included Black-preferred Black candidates, the Black candidates were successful. Despite the fact that these are the most predictive elections for assessing the effectiveness of the proposed districts for electing candidates supported by Black voters to congress, especially in future elections, Dr. Overholt argues that these contests “are nothing like the general elections considered and have very little predictive power when analyzing a district’s ability to elect the candidates supported by most black voters in congressional contests” (Overholt Rebuttal Report, page 13).⁷

⁶ See Louisiana Revised Statutes Title 18, §410; *see also* Acts 2024, 1st Ex. Sess., No. 1, §1, eff. Jan. 1, 2026.

⁷ Dr. Overholt appears to be relying on turnout rates for disregarding these runoff elections. However, the turnout differential between Black and non-Black voters is comparable from general elections to runoff elections.

IV. Effectiveness Scores for Various Proposed Congressional Plans

The two scores for each of the districts in the four plans that I analyzed can be found in Table 3, below. As stated above, Effectiveness Score #1 indicates the percent of election contests (out of the total 20 statewide contests) that the Black-preferred candidate would have won or advanced to a runoff, while Effectiveness Score #2 is the percent of two-candidate elections that the Black-preferred candidate would have won with 50% of the vote.

Table 3: Effectiveness Scores for Various Proposed Congressional Plans

Congressional Plan	Percent BVAP	Effectiveness Score #1	Effectiveness Score #2
HB 1			
District 1	13.5%	5.0%	0.0%
District 2	58.7%	100.0%	100.0%
District 3	24.6%	10.0%	0.0%
District 4	33.8%	20.0%	0.0%
District 5	32.9%	20.0%	0.0%
District 6	23.9%	10.0%	0.0%
SB 8			
District 1	12.7%	10.0%	0.0%
District 2	51.0%	95.0%	100.0%
District 3	22.6%	5.0%	0.0%
District 4	20.6%	0.0%	0.0%
District 5	27.0%	10.0%	0.0%
District 6	54.0%	90.0%	88.9%
Fairfax 2022 Remedial Plan⁸			
District 1	18.3%	15.0%	0.0%

⁸ This remedial plan was originally provided to the Federal Court in the *Robinson* proceedings on June 22, 2022, and a report with effectiveness scores relying upon the available elections was completed at that time. Subsequently in the course of the continuing *Robinson* proceedings, I updated the analysis to include the relevant 2022 and 2023 elections. It is my understanding that this updated analysis has been provided to the Defendants in the *Robinson* proceeding.

District 2	51.0%	95.0%	100.0%
District 3	17.9%	0.0%	0.0%
District 4	31.9%	20.0%	0.0%
District 5	52.1%	75.0%	66.7%
District 6	16.2%	5.0%	0.0%
Fairfax 2023 Illustrative Plan			
District 1	17.1%	20.0%	0.0%
District 2	51.2%	95.0%	100.0%
District 3	18.6%	0.0%	0.0%
District 4	31.9%	20.0%	0.0%
District 5	52.0%	75.0%	66.7%
District 6	16.9%	0.0%	0.0%

As this table makes clear, HB 1 offered only one district – District 2 – that would have provided Black voters with an opportunity to elect their preferred candidates to Congress. The effectiveness scores of the other five districts in this plan indicate that while the Black-preferred candidates may occasionally make it to a runoff, they would have been very unlikely to ultimately win the congressional seat.

The other three plans examined offer Black voters two districts that would provide them with an opportunity to elect their candidates of choice. District 2 in every plan reviewed provides Black voters with a very strong opportunity; in the two-candidate contests most similar to future congressional elections in Louisiana, the Black-preferred Black candidate wins every contest in every plan reviewed. With regard to the contests with more than two candidates, the Black-preferred candidate fails to win or make it to a runoff in only one of the contests analyzed.

The second majority-Black district in each of the plans (District 5 or District 6 depending on the plan) consistently provides Black voters with an opportunity to elect their preferred candidates, but the opportunity varies somewhat across the various plans. However, in both SB 8 and the two Fairfax plans I reviewed, the Black-preferred Black candidate wins at least 66.7% of the nine two-candidate contests and wins 88.9% of the two-candidate contests in SB 8.

V. Assessing the Opportunity to Elect by Estimating BVAP Needed to Win 50% of the Vote

Dr. Overholt states that he estimated the “BVAP necessary to win each contest.” He did this “by multiplying EI results by turnout as a percent of VAP by race to determine the BVAP% that would have led to victory for the candidate supported by most black voters” (Overholt Report, page 15).⁹ This is an approach that I, along with two co-authors, first introduced to ascertain the opportunity proposed districts provided for minority voters to elect their candidates of choice in a law review article published in 2001.¹⁰ I have offered opinions relying upon this methodology that have been accepted by the courts in other redistricting/voting rights cases.

This approach was designed for use in the two-candidate general elections held in most states – in these contests 50% of the vote plus one vote produces a win for one of the two candidates. It is less appropriate for use in Louisiana jungle primaries with more than two candidates because far less than 50% of the vote can ensure a spot in a runoff election. While the algorithm calculates the percentage of vote a Black-preferred candidate would receive, if the percentage produced is less than 50%, this does not mean the candidate of choice will not ultimately win the election in a runoff election. When used in this way, Dr. Overholt calculated the BVAP necessary for a Black candidate to avoid a runoff altogether.

Despite the clear drawbacks of this approach in the context of multicandidate contests with the possibility of a runoff, Dr. Overholt applies this approach using the 14 contests that he analyzed, only two of which are two-candidate contests. For some reason, he does not apply this approach to the more appropriate two-candidate runoffs he analyzed.

⁹ Even if Dr. Overholt properly applied my percent needed to win methodology, Dr. Overholt’s turnout figures may be inaccurate. First, for the years prior to 2023, turnout figures are likely unreliable if they are based on the current voter file – the further back in time, the more unreliable. Second, Dr. Overholt does not acknowledge that turnout could increase if a new majority-Black district is drawn. Political science literature indicates this is likely to happen (see, for example, Kimball Brace, Lisa Handley, Richard Niemi, and Harold Stanley, “Minority Turnout and the Creation of Majority-Minority Districts,” *American Politics Quarterly*, 23 (2), April 1995)). And evidence suggests this is already the case in majority-Black congressional district 2. According to Dr. Overholt (Table 4 in Overholt Report), Black turnout Congressional District 2 in was higher than the statewide average Black turnout in every even-year election – the set of elections Dr. Overholt deems the most relevant because congressional elections are conducted in even years.

¹⁰ For a more detailed discussion of this approach, see *Appendix C*; see also Bernard Grofman, Lisa Handley, and David Lublin, “Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence,” *North Carolina Law Review*, volume 79(5), June 2001.

As when he uses his election reaggregation method, Dr. Overholt counts any election where a Black-preferred candidate is estimated to receive less than 50% of the vote as a loss. And once again, he significantly underestimates the ability of District 6 in SB 8 to elect candidates supported by Black voters.¹¹ Dr. Overholt contends that the candidate supported by Black voters would “win” only five out of the 14 contests he analyzed. My analysis of District 6 in the same plan indicates that Black voters’ candidates of choice would win 50% of the vote or proceed to a runoff in 18 of the 20 (90%) elections I analyzed and would win over 50% of the vote in eight of the nine two-candidate contests (88.9%) I analyzed. In my opinion, this is clearly a district that provides Black voters with an opportunity to elect their candidates of choice to congress.

IV. Calculating the Percent Needed to Win in Fairfax 2022 Remedial District 5

Table 4 utilizes the results of the racial bloc voting analysis I conducted of Black and all other (non-Black) voters to calculate the percentage of the vote each Black-preferred candidate would receive,¹² given the turnout rates of Black and non-Black eligible voters and the degree of Black cohesion and non-Black crossover voting for each of the candidates in the election contests I analyzed. I have done this only for District 5 in Fairfax 2022 Remedial Plan because this is the only plan for which I had already done the analysis (in the context of the *Robinson* case) and there is insufficient time to do a new analysis for this report. Table 4 is generated based on the turnout percentages and the EI RxC estimates reported in *Appendix B*. Because the analysis was done prior to the November 2022 elections, Table 4 does not include any 2022 or 2023 election contests.

The first two columns in Table 4 list the election contest and the race of the Black-preferred candidate. Columns 3-5 provide the turnout and voting patterns for Black voters, and columns 6-8 provide the same information for non-Black voters. (This information comes directly from Appendix B.) The next two columns report the percentage of vote the Black-preferred candidate would receive in a hypothetical 55% BVAP district (column 9) and a 50%

¹¹ District 6 in SB 8 is the only proposed district Dr. Overholt analyzes using this approach.

¹² Because there was a small number of voters (less than 3% in every instance) that indicated they were not Black or white – they marked “other” on their voter registration form – and I wanted to account for all possible voters in calculating the percentage Black VAP needed to win election, I conducted a racial bloc voting analysis with Black and non-Black voters.

BVAP district (column 10) in this precise area of the State. The final column indicates what, if anything, we can conclude about the Black-preferred candidate’s electoral success.

Table 4: Percent Black Voting Age Population Needed to Elect Candidates of Choice

Fairfax 2022 Remedial Plan: Congressional District 5	race of B-P candidate	Turnout Rate and Percent of Vote for Black-preferred Candidates						percent of vote B-P cand would have received if district was 55% black VAP	percent of vote B-P cand would have received if district was 50% black VAP	Win/Loss at 50% BVAP
		Black voters			Non-Black voters					
		turnout of VAP	votes for B-P	votes for all others	turnout of VAP	votes for B-P	votes for all others			
2 Candidate Contests										
US President Nov 2020	W/B	58.8	92.6	7.4	61.7	16.0	84.0	57.2	53.4	Win
Lt Governor Oct 2019	B	38.9	88.8	11.2	43.5	7.0	93.0	49.7	45.6	Loss
Attorney General Oct 2019	B	38.9	90.9	9.1	43.5	7.9	92.1	51.2	47.1	Loss
Secretary of State Nov 2019	B	48.3	96.8	3.2	45.0	11.1	88.9	59.7	55.5	Win
Secretary of State Dec 2018	B	17.4	96.9	3.1	17.0	14.0	86.0	60.1	55.9	Win
Treasurer Nov 2017	B	7.7	98.5	1.5	10.1	15.9	84.1	55.7	51.6	Win
Secretary of State Oct 2015	B	34.3	94.4	5.6	36.7	15.1	84.9	57.4	53.4	Win
Lieut Governor Nov 2015	B	36.4	97.5	2.5	34.2	24.6	75.4	65.8	62.2	Win
Contests with more than 2 Candidates										
Secretary of State Oct 2019	B	38.9	92.0	8.0	43.5	7.9	92.1	51.8	47.6	Unknown
Treasurer Oct 2019	B	38.9	94.4	5.6	43.5	9.4	90.6	53.8	49.5	Unknown
Secretary of State 2018 Nov	B	42.8	56.3	43.7	43.8	3.7	96.3	32.3	29.7	Unknown
Treasurer Oct 2017	B	7.3	88.4	11.6	13.6	7.3	92.7	39.4	35.6	Unknown
Lieut Governor Oct 2015	B	34.3	90.6	9.4	36.7	15.4	84.6	55.5	51.7	Win
More than 2 Candidates, with more than 1 Black Candidate										
US Senate Nov 2020	B	58.8	46.6	53.4	61.7	4.5	95.5	27.2	25.0	Unknown
Attorney General Oct 2015	B	34.3	41.3	49.0	36.7	5.2	94.8	25.8	23.8	Unknown

District 5 in the Fairfax Remedial Plan has a BVAP of 52.0%. In a district with a 50% BVAP (column 10), the Black-preferred candidate would win six of the eight two-candidate contests. This win rate (75%) is very similar to effectiveness score #2 for this district (66.7%) but, because it does not include all nine two-candidate contests, the win rate is actually higher.¹³ And because this district has a BVAP above 50%, it is possible that this is an underestimate of the win-rate for Black-preferred candidates in this district. In a 55% BVAP district, the Black-preferred candidate would win seven of the eight two-candidate contests.

¹³ The candidate of choice of Black voters in the 2023 Secretary of State runoff was Gwen Collins-Green-up and she did not carry the Fairfax Remedial District 5 according to the recompiled election results.

With regard to the contests with more than two candidates, if the candidate received more than 50% of the vote, the candidate clearly wins. However, it is not possible to know if the Black-preferred candidate would have lost or proceeded to a runoff without knowing the percentage of votes the other candidates in the contest received. Because this approach does not easily provide information about individual candidates if there are more than two, determining if a candidate would make it to a runoff is not possible. The final column in Table 4 indicates whether the Black-preferred candidate won or lost, or if the candidate received less than 50% of the vote in a multicandidate race, whether the election fate of the candidate is unknown. In my view, this approach to gauging the performance of a district in the context of multicandidate races and the potential of runoff elections provides little useful information.

VI. Conclusion

Dr. Overholt significantly underestimates the ability of the majority-Black districts in the plans he examines to provide Black voters with an opportunity to elect their candidates of choice. He does this by failing to acknowledge that the jungle primary system used in Louisiana often produces runoff elections, and that many candidates who do not receive 50% of the vote in the primary go on to a runoff election and prevail. He also essentially ignores the importance of the two-candidate contests in his assessment of the performance of the districts he considers despite the fact that these are the most predictive elections for two reasons: (1) only in two-candidate contests does a vote percentage of less than 50% guarantee a loss, and (2) congressional contests in the future will feature two major party candidates competing, just as all of the statewide runoff and two candidate contests he examined did.

My own analysis of the proposed plans I examined has led me to conclude that all of these plans except HB 1 offer Black voters an opportunity to elect their candidates of choice in two districts. HB 1 is the only plan reviewed that only provides one Black opportunity district.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed April 5, 2024.



Lisa Handley, Ph. D.

Appendix A
Voting Patterns by Race
Statewide

2023 October

Governor

	Party	Race	Vote	Estimates for Black Voters					Estimates for White Voters					
				El	RxC	95% confidence interval	El 2x2	ER	HP	El	RxC	95% confidence interval	El 2x2	ER
Shawn Wilson	D	B	25.9	78.9		(78.4, 79.3)	78.0	81.1	76.9	7.7	(7.6, 8.0)	7.9	5.3	8.1
Jeff Landry	R	W	51.6	4.8		(4.5, 5.0)	4.9	1.9	6.6	69.2	(67.0, 69.3)	68.9	71.3	67.1
Stephen Waguespack	R	W	5.9	0.8		(.7, .9)	0.7	0.1	0.9	7.7	(7.6, 7.8)	7.5	7.4	7.6
John Schroder	R	W	5.3	0.8		(.7, .9)	0.7	0.1	0.7	6.9	(6.8, 7.0)	7.0	6.3	7.4
Hunter Lundy	I	W	4.9	3.4		(3.2, 3.6)	4.0	4.0	3.9	4.6	(4.5, 4.7)	5.4	5.2	5.3
Daniel Coles	D	W	2.6	7.7		(7.4, 7.8)	7.7	8.7	7.3	0.8	(.7, .9)	0.7	0.7	0.9
Others (9)			3.8	3.8		(3.6, 3.9)	4.2	4.2	3.7	3.1	(2.9, 3.2)	3.7	3.8	3.7

Black turnout/BVAP

24.3

White turnout/WVAP

37.3

Lieutenant Governor

Willie Jones	D	B	20.5	67.6		(66.0, 68.1)	67.1	70.5	64.9	3.8	(3.5, 5.6)	4.8	3.2	5.5
Billy Nungesser	R	W	65.5	24.1		(23.6, 25.9)	22.0	21.3	27.2	81.0	(79.0, 81.4)	81.2	79.8	78.7
Elbert Guillory	R	B	6.2	3.7		(3.5, 3.9)	3.7	3.6	3.5	7.1	(7.0, 7.2)	7.1	7.8	7.0
Tami Hotard	R	W	4.9	1.7		(1.6, 1.9)	1.4	1.3	1.6	5.9	(5.8, 6.1)	6.3	6.4	6.0
Others			2.9	3.0		(2.8, 3.2)	3.2	3.2	2.8	2.2	(2.1, 2.3)	2.8	2.8	2.8

Black turnout/BVAP

24.3

White turnout/WVAP

37.3

Secretary of State

Gwen Collins-Greenup	D	B	19.3	55.6		(47.8, 57.1)	58.0	58.2	55.4	6.7	(6.0, 9.7)	5.3	5.0	6.5
Nancy Landry	R	W	19.3	2.9		(2.5, 5.4)	2.2	1.9	3.4	25.3	(23.9, 25.7)	25.7	25.1	24.3
Mike Francis	R	W	17.9	2.7		(2.2, 5.3)	2.4	0.2	2.6	23.4	(21.7, 23.7)	23.6	27.0	25.0
Clay Schexnayder	R	W	14.7	2.7		(2.2, 5.1)	1.8	1.3	2.2	19.1	(18.0, 19.4)	19.5	18.3	18.5
Arthur Morrell	D	B	11.1	31.1		(29.6, 31.6)	33.2	35.3	32.3	3.3	(3.0, 5.0)	3.1	2.4	3.9
Thomas Kennedy	R	W	10.1	2.1		(1.8, 3.1)	1.6	1.3	1.9	13.2	(12.9, 13.3)	13.3	13.3	12.5
Brandon Trosclair	R	W	6.3	1.4		(1.1, 2.1)	0.3	0.2	0.8	8.3	(8.0, 8.4)	8.6	7.7	8.0
Amanda Jennings	O	W	1.3	1.5		(1.3, 1.6)	1.7	1.7	1.4	0.8	(.7, .8)	1.2	1.2	1.2

Black turnout/BVAP

24.3

White turnout/WVAP

37.3

APPENDIX B

**Voting Patterns by Race
Fairfax 2022 Remedial
Plan District 5**

Estimates for Black Voters

Estimates for Non-Black Voters

2017 November

Treasurer

	Party	Race	EI RxC	95% confidence interval	EI 2x2	ER	EI RxC	95% confidence interval	EI 2x2	ER
Derrick Edwards	D	B	98.5	98.1, 98.8	94.7	101.8	15.9	15.3, 16.6	19.7	12.8
John Schroder	R	W	1.5	1.2, 1.9	5.3	-1.8	84.1	83.4, 84.7	80.3	87.2
<i>Black turnout/BVAP</i>			7.7							
<i>White turnout/WVAP</i>			10.1							

2015 October

Lieutenant Governor

Kip Holden	D	B	90.6	90.0, 91.0	90.6	90.4	15.4	14.9, 15.9	15.9	13.5
Billy Nungesser	R	W	2.1	1.8, 2.4	2.1	1.8	36.0	35.6, 36.4	35.7	36.6
John Young	R	W	2.6	2.3, 2.9	2.5	2.4	34.7	34.3, 35.1	34.5	36.0
Elbert Guillory	R	B	4.8	4.4, 5.1	4.8	5.4	13.9	13.5, 14.3	13.9	13.9
<i>Black turnout/BVAP</i>			34.3							
<i>White turnout/WVAP</i>			36.7							

Attorney General

Ike Jackson	D	B	35.6	35.1, 36.0	36.0	35.1	2.0	1.7, 2.3	1.6	1.9
Geri Broussard Baloney	D	B	41.3	39.9, 41.9	41.8	41.2	5.2	4.7, 6.1	4.7	4.9
Buddy Caldwell	R	W	18.1	17.5, 18.7	17.1	18.3	49.4	48.8, 49.9	50.3	51.5
Jeff Landry	R	W	3.0	2.6, 3.7	2.8	3.6	39.2	38.4, 39.6	39.2	37.2
Marty Maley	R	W	2.1	1.8, 2.3	1.9	1.8	4.3	4.1, 4.5	4.4	4.4
<i>Black turnout/BVAP</i>			34.3							
<i>White turnout/WVAP</i>			36.7							

Secretary of State

Chris Tyson	D	B	94.4	94.0, 94.9	94.1	94.2	15.1	14.6, 15.5	15.4	15.4
Tom Schedler	R	W	5.6	5.1, 6.0	5.9	5.7	84.9	84.5, 85.4	84.6	84.6
<i>Black turnout/BVAP</i>			34.3							
<i>White turnout/WVAP</i>			36.7							

Appendix C: Overview of the Percent Needed to Win Methodology

Calculating the Percent Needed to Win This methodological approach to assessing the opportunity of Black voters to elect their candidates of choice in proposed districts was designed in recognition of the fact that turnout rates by race alone are not sufficient for determining whether a district will perform for Black voters. Estimates of Black and white (or non-Black) support for Black-preferred candidates, used in conjunction with turnout rates by race, are needed to calculate the percentage of the vote a minority-preferred candidate would receive in a given proposed district.

Turnout rates by race Because the Black age-eligible population often turns out to vote at a lower rate than the white age-eligible population, the BVAP needed to ensure that Black voters comprise at least half of the voters in an election is often higher than 50%.¹⁴ The BVAP percentage needed to equalize Black and white voters can be calculated mathematically.¹⁵ But

¹⁴ Black turnout is lower than all voters considered together in every election Dr. Overholt lists in Table 4 (Overholt Report, page 10).

¹⁵ The equalizing percentage is calculated mathematically by solving the following equation:

Let

$$\begin{aligned} M &= \text{the proportion of the district's voting age population that is Black} \\ W = 1 - M &= \text{the proportion of the district's voting age population that is white} \\ A &= \text{the proportion of the Black voting age population that turned out to vote} \\ B &= \text{the proportion of the white voting age population that turned out to vote} \end{aligned}$$

Therefore,

$$\begin{aligned} M(A) &= \text{the proportion of the population that is Black and turned out to vote (1)} \\ (1 - M)B &= \text{the proportion of total population that is white and turned out to vote (2)} \end{aligned}$$

To find the value of M that is needed for (1) and (2) to be equal, (1) and (2) are set as equal and we solve for M algebraically:

$$\begin{aligned} M(A) &= (1 - M) B \\ M(A) &= B - M(B) \\ M(A) + M(B) &= B \\ M(A + B) &= B \\ M &= B / (A + B) \end{aligned}$$

Thus, for example, if 39.3% of the black population turned out and 48.3% of the white population turned out, $B = .483$ and $A = .393$, and $M = .483 / (.393 + .483) = .483 / .876 = .5513$, therefore a Black VAP of 55.1% would produce an equal number of Black and white voters. (For a more in-depth discussion of equalizing turnout see Kimball Brace, Bernard Grofman, Lisa Handley, and Richard Niemi, "Minority Voting Equality: The 65 Percent Rule in Theory and Practice," *Law and Policy*, 10(1), January 1988.)

equalizing turnout is only the first step in the process – it does not take into account the voting patterns of Black and other voters. If voting is racially polarized but a significant number of non-Black voters typically “crossover” to vote for Black voters’ preferred candidate, it may be the case that this crossover voting can compensate for depressed Black turnout relative to non-Black turnout. If this is the case, Black voters need not make up at least 50% of the voters in an election for the Black-preferred candidate to win. On the other hand, without significant crossover voting, a BVAP of 50%, or even higher, may be necessary to elect the candidates of choice of Black voters.

To illustrate this mathematically, consider a district that has 1000 persons of voting age, 50% of whom are Black and 50% of whom are white. Let us begin by assuming that Black turnout is lower than white turnout in a two-candidate election. In our hypothetical election example, 42% of the BVAP turn out to vote and 60% of the white voting age population (“WVAP”) vote.¹⁶ This means that, for our illustrative election, there are 210 Black voters and 300 white voters.

Further suppose that 96% of the Black voters supported their candidate of choice and 25% of the white voters cast their votes for this candidate (with the other 75% supporting her opponent in the election contest). Thus, in our example, Black voters cast 200 of their 210 votes for the Black-preferred candidate and their other 8 votes for her opponent; white voters cast 75 of their 300 votes for the Black-preferred candidate and 225 votes for their preferred candidate:

	VAP	turnout	voters	support for Black-preferred candidate	votes for Black-preferred candidate	support for white-preferred candidate	votes for white-preferred candidate
Black	500	0.42	210	0.96	202	0.04	8
White	500	0.60	300	0.25	75	0.75	225
			510		277		233

The candidate of choice of Black voters would receive a total of 277 votes (202 from Black voters and 75 from white voters), while the candidate preferred by white voters would receive

¹⁶ In this example, a district that is 58.8% BVAP would be required to ensure that 50% of the voters on Election Day are Black voters.

only 233 votes (8 from Black voters and 225 from white voters). The Black-preferred candidate would win the election with 55.4% (277/500) of the vote in this hypothetical 50% Black VAP district. And the Black-preferred candidate would be successful despite the fact that Black eligible voters turned out to vote at a lower rate than white eligible voters and the election was racially polarized.

The candidate of choice of Black voters would still win the election by a very small margin (50.9%) in a district that is 45% Black with these same voting patterns:

	VAP	turnout	voters	support for Black-preferred candidate	votes for Black-preferred candidate	support for white-preferred candidate	votes for white-preferred candidate
Black	450	0.42	189	0.96	181	0.04	8
White	550	0.60	330	0.25	83	0.75	248
			519		264		255

In a district with a 40% BVAP, however, the Black-preferred candidate would garner only 47.5% of the vote.¹⁷

¹⁷ In the illustrative examples, VAP and voting patterns are known and the equation solves for the percentage of votes received by the Black-preferred candidate. In determining the percentage of BVAP needed to provide Black voters with an opportunity to elect their candidates of choice, voting patterns and the percentage of votes are known and we are solving for the VAP needed to produce at least 50 percent of the votes for the Black-preferred candidate.

Lisa R. Handley
CURRICULUM VITAE

Professional Experience

Dr. Handley has over thirty years of experience in the areas of redistricting and voting rights, both as a practitioner and an academician, and is recognized nationally and internationally as an expert on these subjects. She has advised numerous clients on redistricting and has served as an expert in dozens of redistricting and voting rights court cases. Her clients have included the U.S. Department of Justice, civil rights organizations, independent redistricting commissions (Arizona, Colorado, Michigan) and scores of state and local jurisdictions. Internationally, Dr. Handley has provided electoral assistance in more than a dozen countries, serving as a consultant on electoral system design and redistricting for the United Nations, UNDP, IFES, and International IDEA. In addition, Dr. Handley served as Chairman of the Electoral Boundaries Commission in the Cayman Islands.

Dr. Handley has been actively involved in research, writing and teaching on the subjects of redistricting and voting rights. She has co-written a book, Minority Representation and the Quest for Voting Equality (Cambridge University Press, 1992) and co-edited a volume (Redistricting in Comparative Perspective, Oxford University Press, 2008) on these subjects. Her research has also appeared in peer-reviewed journals such as *Journal of Politics*, *Legislative Studies Quarterly*, *American Politics Quarterly*, *Journal of Law and Politics*, and *Law and Policy*, as well as law reviews and edited books. She has taught political science undergraduate and graduate courses related to these subjects at several universities including the University of Virginia and George Washington University. Dr. Handley is a Visiting Research Academic at Oxford Brookes University in the United Kingdom.

Dr. Handley is the President of Frontier International Consulting, a consulting firm that specializes in providing electoral assistance in transitional and post-conflict democracies. She also works as an independent election consultant both in the United States and internationally.

Education

Ph.D. The George Washington University, Political Science, 1991

Present Employment

President, Frontier International Electoral Consulting LLC (since co-founding company in 1998).

Senior International Electoral Consultant, Technical assistance for clients such as the UN, UNDP and IFES on electoral system design and boundary delimitation

Visiting Research Academic, Centre for Development and Emergency Practice (CENDEP), Oxford Brookes University

U.S. Clients since 2010

American Civil Liberties Union – expert testimony in Voting Right Act challenges in Arkansas, Georgia and Louisiana, expert testimony in Ohio partisan gerrymander challenge and expert testimony in challenge to Commerce Department inclusion of citizenship question on 2020 census form

Lawyers Committee for Civil Rights Under Law – expert testimony in challenges to statewide judicial elections in Texas and Alabama

US Department of Justice – expert witness testimony in several Section 2 and Section 5 cases (City of Euclid, Euclid School Board, City of Port Chester, City of Eastpoint, two Texas challenges)

Alaska: Redistricting Board (2001 and 2011) – redistricting consultation, expert witness testimony

Albany County, NY (2021) – redistricting consultation

Arizona: Independent Redistricting Board (2001 and 2021) – redistricting consultation

Boston (2022) – redistricting consultation

Colorado: Redistricting Commission (2021), Redistricting Board (2001 and 2011) – redistricting consultation

Connecticut: State Senate and State House of Representatives (2001 and 2011) – redistricting consultation

Kansas: State Legislative Research Department (2001, 2011, 2021) – redistricting consultation

Massachusetts: State Senate (2001 and 2011) – redistricting consultation

Michigan: Michigan Independent Citizens Redistricting Commission (2021) – redistricting consultation

Miami-Dade County, Florida: County Attorney (2001 and 2011) – redistricting consultation

Monroe County, NY (2022) – redistricting consultation

New Mexico: State House (2001) – redistricting consultation, expert witness testimony

New York: State Assembly (2001), State Senate (2021) – redistricting consultation

New York City: Redistricting Commission and Charter Commission (2001, 2011, 2021 and 2022) – redistricting consultation

Pima County, AZ (2022) – redistricting consultation

Rhode Island: State Senate and State House (2001 and 2021) – redistricting consultation

Virginia (2015-2017) – redistricting consultant for Governor during redistricting litigation

International Clients

United Nations

- Afghanistan – electoral system design and district delimitation expert
- Bangladesh (UNDP) – redistricting expert
- Sierra Leone (UNDP) – redistricting expert
- Liberia (UNMIL, UN peacekeeping mission) – redistricting expert
- Democratic Republic of the Congo (MONUC, UN peacekeeping mission) – election feasibility mission, electoral system design and redistricting expert
- Kenya (UN) – electoral system design and redistricting expert
- Haiti (UN) – election feasibility mission, electoral system design and redistricting expert
- Zimbabwe (UNDP) – redistricting expert
- Lead Writer on the topic of boundary delimitation (redistricting) for ACE (Joint UN, IFES and IDEA project on the Administration and Cost of Elections Project)

International Foundation for Election Systems (IFES)

- Afghanistan – district delimitation expert
- Sudan – redistricting expert
- Kosovo – electoral system design and redistricting expert
- Nigeria – redistricting expert
- Nepal – redistricting expert
- Georgia – electoral system design and district delimitation expert
- Yemen – redistricting expert
- Lebanon – electoral system design and redistricting expert
- Malaysia – electoral system design and redistricting expert
- Myanmar – electoral system design and redistricting expert
- Ukraine – electoral system design and redistricting expert
- Pakistan – consultant for developing redistricting software
- Principal consultant for the Delimitation Equity Project – conducted research, wrote reference manual and developed training curriculum
- Writer on electoral boundary delimitation (redistricting), Elections Standards Project
- Training – developed training curriculum and conducted training workshops on electoral boundary delimitation (redistricting) in Azerbaijan and Jamaica

International Institute for Democracy and Electoral Assistance (International IDEA):

- Consultant on electoral dispute resolution systems
- Technology consultant on use of GIS for electoral district delimitation
- Training – developed training material and conducted training workshop on electoral boundary delimitation (redistricting) for African election officials (Mauritius)
- Curriculum development – boundary delimitation curriculum for the BRIDGE Project

Other international clients have included The Cayman Islands; the Australian Election Commission; the Boundary Commission of British Columbia, Canada; and the Global Justice Project for Iraq.

Publications

Books:

Does Torture Prevention Work? Liverpool University Press, 2016 (served as editor and author, with Richard Carver)

Comparative Redistricting in Perspective, Oxford University Press, 2008 (first editor, with Bernard Grofman).

Delimitation Equity Project: Resource Guide, Center for Transitional and Post-Conflict Governance at IFES and USAID publication, 2006 (lead author).

Minority Representation and the Quest for Voting Equality, Cambridge University Press, 1992 (with Bernard Grofman and Richard Niemi).

Academic Journal Articles:

"Drawing Electoral Districts to Promote Minority Representation, Representation, Volume 58 (3), 2022, pp. 373-389.

"Evaluating national preventive mechanisms: a conceptual model," Journal of Human Rights Practice, Volume 12 (2), July 2020 (with Richard Carver).

"Minority Success in Non-Majority Minority Districts: Finding the 'Sweet Spot'," Journal of Race, Ethnicity and Politics, Volume 5 (2), July 2020, pp. 275-298 (with David Lublin, Thomas Brunell and Bernard Grofman).

"Has the Voting Rights Act Outlived its Usefulness: In a Word, "No," Legislative Studies Quarterly, Volume 34 (4), November 2009 (with David Lublin, Thomas Brunell and Bernard Grofman).

"Delimitation Consulting in the US and Elsewhere," Zeitschrift für Politikberatung, volume 1 (3/4), 2008 (with Peter Schrott).

"Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence," North Carolina Law Review, volume 79 (5), June 2001 (with Bernard Grofman and David Lublin).

"A Guide to 2000 Redistricting Tools and Technology" in The Real Y2K Problem: Census 2000 Data and Redistricting Technology, edited by Nathaniel Persily, New York: Brennan Center, 2000.

"1990s Issues in Voting Rights," Mississippi Law Journal, 65 (2), Winter 1995 (with Bernard Grofman).

"Minority Turnout and the Creation of Majority-Minority Districts," American Politics Quarterly, 23 (2), April 1995 (with Kimball Brace, Richard Niemi and Harold Stanley).

"Identifying and Remedying Racial Gerrymandering," Journal of Law and Politics, 8 (2), Winter 1992 (with Bernard Grofman).

"The Impact of the Voting Rights Act on Minority Representation in Southern State Legislatures," Legislative Studies Quarterly, 16 (1), February 1991 (with Bernard Grofman).

"Minority Population Proportion and Black and Hispanic Congressional Success in the 1970s and 1980s," American Politics Quarterly, 17 (4), October 1989 (with Bernard Grofman).

"Black Representation: Making Sense of Electoral Geography at Different Levels of Government," Legislative Studies Quarterly, 14 (2), May 1989 (with Bernard Grofman).

"Minority Voting Equality: The 65 Percent Rule in Theory and Practice," Law and Policy, 10 (1), January 1988 (with Kimball Brace, Bernard Grofman and Richard Niemi).

"Does Redistricting Aimed to Help Blacks Necessarily Help Republicans?" Journal of Politics, 49 (1), February 1987 (with Kimball Brace and Bernard Grofman).

Chapters in Edited Volumes:

"Political representation of small minorities and the international normative framework in districted electoral systems," Addis Ababa University Law School series, 2021 (with Richard Carver and Sam Ponniah).

"Effective torture prevention," Research Handbook on Torture, Sir Malcolm Evans and Jens Modvig (eds), Cheltenham: Edward Elgar, 2020 (with Richard Carver).

"Redistricting" in Oxford Handbook of Electoral Systems, Erik Herron Robert Pekkanen and Matthew Shugart (eds), Oxford: Oxford University Press, 2018.

"Role of the Courts in the Electoral Boundary Delimitation Process," in International Election Remedies, John Hardin Young (ed.), Chicago: American Bar Association Press, 2017.

"One Person, One Vote, Different Values: Comparing Delimitation Practices in India, Canada, the United Kingdom, and the United States," in Fixing Electoral Boundaries in India, edited by Mohd. Sanjeer Alam and K.C. Sivaramakrishman, New Delhi: Oxford University Press, 2015.

"Delimiting Electoral Boundaries in Post-Conflict Settings," in Comparative Redistricting in Perspective, edited by Lisa Handley and Bernard Grofman, Oxford: Oxford University Press, 2008.

"A Comparative Survey of Structures and Criteria for Boundary Delimitation," in Comparative Redistricting in Perspective, edited by Lisa Handley and Bernard Grofman, Oxford: Oxford University Press, 2008.

“Drawing Effective Minority Districts: A Conceptual Model,” in Voting Rights and Minority Representation, edited by David Bositis, published by the Joint Center for Political and Economic Studies, Washington DC, and University Press of America, New York, 2006.

“Electing Minority-Preferred Candidates to Legislative Office: The Relationship Between Minority Percentages in Districts and the Election of Minority-Preferred Candidates,” in Race and Redistricting in the 1990s, edited by Bernard Grofman; New York: Agathon Press, 1998 (with Bernard Grofman and Wayne Arden).

“Estimating the Impact of Voting-Rights-Related Districting on Democratic Strength in the U.S. House of Representatives,” in Race and Redistricting in the 1990s, edited by Bernard Grofman; New York: Agathon Press, 1998 (with Bernard Grofman).

“Voting Rights in the 1990s: An Overview,” in Race and Redistricting in the 1990s, edited by Bernard Grofman; New York: Agathon Press, 1998 (with Bernard Grofman and Wayne Arden).

"Racial Context, the 1968 Wallace Vote and Southern Presidential Dealignment: Evidence from North Carolina and Elsewhere," in Spatial and Contextual Models in Political Research, edited by Munroe Eagles; Taylor and Francis Publishing Co., 1995 (with Bernard Grofman).

"The Impact of the Voting Rights Act on Minority Representation: Black Officeholding in Southern State Legislatures and Congressional Delegations," in The Quiet Revolution: The Impact of the Voting Rights Act in the South, 1965-1990, eds. Chandler Davidson and Bernard Grofman, Princeton University Press, 1994 (with Bernard Grofman).

"Preconditions for Black and Hispanic Congressional Success," in United States Electoral Systems: Their Impact on Women and Minorities, eds. Wilma Rule and Joseph Zimmerman, Greenwood Press, 1992 (with Bernard Grofman).

Additional Writings of Note:

“Boundary Delimitation” Topic Area for the Administration and Cost of Elections (ACE) Project, 1998. Published by the ACE Project on the ACE website (electronic publication at www.aceproject.org).

Amicus brief presented to the US Supreme Court in Gill v. Whitford, Brief of Political Science Professors as Amici Curiae, 2017 (one of many social scientists to sign brief)

Amicus brief presented to the US Supreme Court in Shelby County v. Holder, Brief of Historians and Social Scientists as Amici Curiae, 2013 (one of several dozen historians and social scientists to sign brief)

Amicus brief presented to the US Supreme Court in Bartlett v. Strickland, 2008 (with Nathaniel Persily, Bernard Grofman, Bruce Cain, and Theodore Arrington).

Recent Court Cases

Pending cases:

- Michigan: *Agee v. Benson* (Case No. 1:22-CV-00272-PLM-RMK-JTN) (U.S. District Court, Western District of Michigan, Southern Division)
- Louisiana: *Robinson v. Ardoin* (Civil Action No. 3:22-cv-00211-SDD-RLB) (U.S. District Court, Middle District of Louisiana)
- Georgia: *Alpha Phi Alpha Fraternity et al. v. Raffensperger et al.* (Docket Number: 121-CV-05337-SCJ) (Northern District of Georgia)
- Arkansas: *Arkansas State Conference NAACP et al. v. Arkansas Board of Apportionment et al.* (Case Number: 4:21-cv-01239-LPR) (Eastern District of Arkansas)
- Ohio: *League of Women Voters of Ohio et al. v. Ohio Redistricting Commission et al.* (Case Number: 2021-1193) (Supreme Court of Ohio); *League of Women Voters of Ohio et al. v. Governor DeWine* (Case Number: 2021-1449) (Supreme Court of Ohio)

Ohio Philip Randolph Institute v. Larry Householder (2019) – partisan gerrymander challenge to Ohio congressional districts; testifying expert for ACLU on minority voting patterns

State of New York v. U.S. Department of Commerce (2018-2019) – challenge to inclusion of citizenship question on 2020 census form; testifying expert on behalf of ACLU

U.S. v. City of Eastpointe (settled 2019) – minority vote dilution challenge to City of Eastpointe, Michigan, at-large city council election system; testifying expert on behalf of U.S. Department of Justice

Alabama NAACP v. State of Alabama (decided 2020) – minority vote dilution challenge to Alabama statewide judicial election system; testifying expert on behalf of Lawyers Committee for Civil Rights Under Law

Lopez v. Abbott (2017-2018) – minority vote dilution challenge to Texas statewide judicial election system; testifying expert on behalf of Lawyers Committee for Civil Rights Under Law

Personhuballuah v. Alcorn (2015-2017) – racial gerrymandering challenge to Virginia congressional districts; expert for the Attorney General and Governor of the State of Virginia

Exhibit 2

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IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA, MONROE DIVISION
Civil Action No. 3:24-cv-00122

- - - - -x

PHILLIP CALLAIS, LLOYD PRICE, BRUCE ODELL,
ELIZABETH ERSOFF, ALBERT CAISSIE, DANIEL WEIR,
JOYCE LACOUR, CANDY CARROLL PEAVY, TANYA
WHITNEY, MIKE JOHNSON, GROVER JOSEPH REES,
ROLFE MCCOLLISTER,

Plaintiffs,

v.

NANCY LANDRY, in her official capacity
as Secretary of State for Louisiana,

Defendant.

- - - - -x

DEPOSITION OF DR. BENJAMIN OVERHOLT
APPEARING REMOTELY FROM
KANSAS CITY , MISSOURI
THURSDAY, APRIL 4, 2024
12:18 p.m.

REPORTED BY:
DANIELLE GRANT
APPEARING REMOTELY FROM RICHMOND COUNTY, N.Y.

Page 2	Page 4
<p>1 2 3 4 5 6 7 8 9 10 11 APRIL 4, 2024 12 12:18 p.m. 13 14 15 Remote Videotaped Deposition of 16 DR. BENJAMIN OVERHOLT, held remotely with all 17 parties appearing from their respective 18 locations, pursuant to Notice before DANIELLE 19 GRANT, a Stenographic Reporter and Notary Public 20 of the State of New York. 21 22 23 24 25</p>	<p>1 2 REMOTE APPEARANCES: 3 4 NAACP LEGAL DEFENSE and EDUCATIONAL FUND, INC. 5 Attorneys For the Robinson 6 Intervenor-Defendants 7 700 14th Street N.W. 8 Suite 600 9 Washington, DC 20005 10 BY: I. SARA ROHANI, ESQ. 11 VICTORIA WENGER, ESQ. (NYC Office) 12 13 14 15 16 17 18 19 20 21 22 HOLTZMAN VOGEL BARAN TORCHINSKY & IOSEFIAC PLLC. 23 Attorneys for the State of Louisiana 24 15405 John Marshall Highway 25 Haymarket, Virginia 20169 BY: ZACHARY HENSON, ESQ. 12 13 14 15 16 17 18 19 20 21 22 ALSO PRESENT: 23 THOMAS DEVINE, Videographer 24 Garrett Muscatel of ACLU-VRP 25</p>
Page 3	Page 5
<p>1 2 REMOTE APPEARANCES: 3 4 GRAVES GARRETT GREIM, LLP 5 Attorneys for the Plaintiffs and the witness 6 1100 Main Street 7 Suite 2700 8 Kansas City, Missouri 64105 9 BY: EDWARD D. GREIM, ESQ. 10 11 12 13 PAUL LOY HURD, ESQ. 14 Attorneys for the Plaintiffs 15 1890 Hudson Circle 16 Suite 6 17 Monroe, Louisiana 71201 18 BY: PAUL LOY HURD, ESQ. 19 20 21 22 23 24 25</p>	<p>1 2 FEDERAL STIPULATIONS 3 4 IT IS STIPULATED AND AGREED by and 5 between the attorneys for the respective parties 6 herein that the filing, sealing, and 7 certification of the within deposition be waived. 8 IT IS FURTHER STIPULATED AND AGREED 9 that all objections, except as to the form of the 10 question, shall be reserved to the time of the 11 trial. 12 IT IS FURTHER STIPULATED AND AGREED 13 that the within deposition may be sworn to and 14 signed before any officer authorized to 15 administer an oath, with the same force and 16 effect as if signed to before the court. 17 18 19 - oOo - 20 21 22 23 24 25</p>

Page 6

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4 VIDEOGRAPHER: Good afternoon.
5 We're going on the record at
6 approximately 12:18 p.m. on April 4,
7 2024. Please note that this
8 deposition is being conducted
9 virtually. Quality of recording
10 depends on the quality of camera and
11 Internet connection of participants.
12 What is seen from the witness and
13 heard onscreen is what will be
14 recorded. Audio and video recording
15 will continue to take place unless
16 all parties agree to go off the
17 record.
18 This is Media Unit 1 of the
19 video-recorded deposition of Dr. Ben
20 Overholt taken by counsel for the
21 Intervenor defendants in the matter
22 of Philip Callais, et al., v. Nancy
23 Landry, et al., filed in the U.S.
24 District Court for the Western
25 District of Louisiana, Monroe

Page 7

1
2 Division, Civil Action
3 Number 3:24-CV-00122.
4 The location of this
5 deposition -- excuse me. This
6 deposition is be conducted remotely
7 using virtual technology. My name is
8 Tom Devine representing Veritext New
9 York and I'm the videographer. The
10 court reporter is Danielle Grant also
11 with Veritext New York. I am not
12 authorized to administer an oath; I
13 am not related to any party in this
14 action nor am I financially
15 interested in the outcome.
16 Counsels' appearances will be
17 noted on the stenographic record. I
18 ask the court reporter to now please
19 swear in the witness after which we
20 may proceed.
21 B E N J A M I N O V E R H O L T, called as a
22 witness, having been first duly sworn
23 by Danielle Grant, a Notary Public
24 within and for the State of New York,
25 was examined and testified as follows:

Page 8

1
2 COURT REPORTER: Counsel can
3 proceed.
4 DIRECT EXAMINATION BY
5 MS. THOMAS-LUNDBORG:
6 Q Okay. Dr. Overholt, could you
7 please state your full name for the record?
8 A Yeah. My whole name is Benjamin
9 Allen Overholt.
10 Q And your address please?
11 A 605 Saint Charles Street,
12 Moberly, Missouri 65270.
13 Q And you understand that you're
14 under oath today?
15 A I do.
16 Q Okay. My name is Alora Thomas.
17 I work at the election law clinic at
18 Harvard Law School, and I'm one of the
19 attorneys for the defendant interveners.
20 Thank you for making time to talk with me
21 today.
22 Have you ever been deposed
23 before?
24 A I have not.
25 Q Okay. Well, we're going to go

Page 9

1
2 over some ground rules. And make sure you
3 gave only verbal responses. The
4 stenographer cannot pick up sounds or
5 gestures.
6 Do you understand that?
7 A I do.
8 Q So that there is a clear record,
9 let's try not to talk over one another.
10 Please wait for me to finish a question
11 before you begin to answer a question, and
12 I will also wait until you have finished
13 your answer before answer -- asking another
14 question.
15 Do you understand that?
16 A I do.
17 Q If you do not hear a question,
18 please let me know and I will repeat.
19 Do you understand?
20 A Of course. Yes.
21 Q At any point -- as we notice off
22 the record, there are multiple attorneys on
23 this deposition. They may object,
24 including your own counsel. Unless you're
25 instructed not to answer, please answer any

Page 10

1
2 questions even if an objection is posed.
3 A Okay.
4 Q Is there anything to prevent you
5 from testifying truthfully today?
6 A No.
7 Q Are you take any medication or
8 other substances that would impede your
9 ability to answer truthfully?
10 A No, I'm not.
11 Q Can you briefly describe your
12 educational background?
13 A Of course. I have a Ph.D. in
14 applied statistics from the University of
15 Northern Colorado. I graduated in 2013.
16 In addition, I have a master's degree in
17 the same, in applied statistics, again,
18 from the University of Northern Colorado.
19 And I have a bachelor's degree in history
20 with a minor in mathematics from the same
21 university.
22 MS. THOMAS-LUNDBORG: If we
23 could have the concierge pull up what
24 I'm going to be marking as Exhibit 1?
25 And that will be the report of

Page 11

1
2 Dr. Overholt.
3 (Whereupon, a Document, Expert
4 Report of Ben Overholt on Behalf of
5 Plaintiffs in Response to Anthony
6 Fairfax and Cory McCartan was marked
7 as Defendants' Exhibit No. 1 for
8 identification, as of this date.)
9 MS. THOMAS-LUNDBORG: I see that
10 we have the concierge on. Okay. I
11 will share my screen in the absence
12 of that.
13 CONCIERGE: Sorry. I'm sorry. I
14 was on mute. Is that the Fairfax
15 report or --
16 MS. THOMAS-LUNDBORG: No.
17 Over -- and if we could scroll down
18 to page 54?
19 Q Okay. This is a copy of the CV
20 that you appended to your report.
21 Do you recognize it?
22 A I do.
23 Q Okay. I didn't see in your CV
24 any references to peer-reviewed
25 publications.

Page 12

1
2 As part of your doctoral work,
3 did you produce any peer-reviewed
4 publications?
5 A The only, I guess, publication
6 I -- that I produced in my doctoral work
7 was my dissertation.
8 Q Okay. And what was the subject
9 matter of your dissertation?
10 A A Lilliefors test for normality.
11 Q And what is that?
12 A You -- when you're dealing with
13 data, one of the underlying assumptions in
14 a lot of statistical methodologies is the
15 data is distributed normally. There is a
16 number of tests for determining if data is
17 distributed normally, and this was the -- a
18 new step in -- it's coming up with better
19 ways to analyze that normality and look for
20 different problem that arise in data and
21 the assumption of normality.
22 Q And did you published your thesis
23 in any peer-reviewed publications?
24 A No. It was only published, I
25 think, through the university so it's on

Page 13

1
2 their site. It may be in -- is it ERIC? --
3 or one of the big library warehouses, but
4 it wasn't formally published.
5 Q And outside of your -- getting
6 your Ph.D. and your thesis, have you
7 produced any peer-reviewed publications?
8 A No.
9 Q And I -- you mentioned your
10 degree is in statistics or applied
11 statistics.
12 Would you consider --
13 A Yes.
14 Q -- would you consider yourself a
15 political scientist?
16 A No. No. I'm a -- I guess I kind
17 of think of myself as a civil rights
18 statistician or civil rights data analyst,
19 I suppose, is how I would put it.
20 Q But you're not a political
21 scientist; is that correct?
22 A No. I'm not.
23 Q Okay. Can you briefly describe
24 your work background?
25 A Yeah. Of course. After

Page 14

1
 2 graduating, I spent about five and a half
 3 years working for the Department of
 4 Justice, and there, the bulk of my work was
 5 in analyzing polarized voting situations.
 6 So looking at districts and looking to see
 7 if minority groups of interests were voting
 8 differently and have enough candidates
 9 defeated by White majority voters,
 10 essentially looking at the three prongs of
 11 Gingles and determining if proposed
 12 districts would actually provide a -- an
 13 additional or continue to provide a
 14 minority majority district. I did five
 15 years worked there.
 16 In addition to that, I reviewed
 17 plans for some of the more common things
 18 you'll hear about like voter ID laws, access
 19 to polling places, things like that for --
 20 during this time, I was the only
 21 statistician. I worked with a geographer and
 22 a few other political scientists that
 23 provided me data, and we worked together to
 24 determine the efficacy of voting districts.
 25 After that, I went on to the EEOC, and worked

Page 15

1
 2 there to streamline a lot of their data.
 3 They've got a terrifically large dataset
 4 going back to the 70s.
 5 I helped them modernized and
 6 increase their ability to access that data,
 7 then also to look forward and analyze that
 8 data for potential future abuses of
 9 employees. After that, I spent a bit at the
 10 Census Bureau trying to get the data to from
 11 the 2020 census to provide a usable citizen
 12 voting age population estimate down to the
 13 block level for voting rights enforcement.
 14 And since being at the Census Bureau, I've
 15 worked as a consultant for Deloitte, American
 16 Systems, and a few smaller firms.
 17 Q Okay. And in your answer, you
 18 mentioned that, while at the DOJ, you
 19 worked with political scientists.
 20 Do you -- while at the DOJ, did
 21 you ever come across a Dr. Lisa Handley?
 22 A I did. Yes.
 23 Q And who is Dr. Lisa Handley?
 24 A Lisa Handley was an expert that
 25 we used in, in my -- to my understanding, a

Page 16

1
 2 number of cases. But in one --
 3 specifically there was one case where she
 4 was hired as an expert witness for a case
 5 the DOJ was working on. The reason is, is
 6 with DOJ -- so for instance, all the work
 7 that I perform at DOJ is internal and its
 8 kept there. And so then when a case goes
 9 on to trial, instead of using internal
 10 experts, the Department of Justice also
 11 hires external experts. I think the idea
 12 there is to try and keep us from being --
 13 the actual DOJ employees from being caught
 14 up in litigation and, you know, be called
 15 to testify and pulled away from our regular
 16 work.
 17 And so the DOJ employs outside
 18 expert witnesses, and I've worked with her
 19 on, as I recall, just one case for a number
 20 of months in trying to, you know, just help
 21 pervasively process her work and develop her
 22 argument in that case.
 23 Q Okay. And you mentioned that,
 24 while you were at the DOJ, one of the main
 25 things you did was perform racially

Page 17

1
 2 polarized voting.
 3 Did you perform all the different
 4 types of racially polarized voting that you
 5 discuss in your report or just ecological
 6 inference?
 7 A Overwhelmingly, in all -- in
 8 most -- or in every case, I always
 9 performed at least ecological inference and
 10 ecological regression. And in most cases,
 11 I included homogenous precinct analyses as
 12 well.
 13 It's not really necessary, right?
 14 The jingle's case itself used only
 15 ecological regression and homogenous precinct
 16 analysis. But EI is newer and I think
 17 more -- probably more accurate in its
 18 estimates. And using more than one way of
 19 measuring the outcome gives a little more
 20 reliability that you're capturing the true
 21 result.
 22 Q Okay. While at the -- let me ask
 23 you this: Are you familiar with the term
 24 recompiled election analysis?
 25 A I don't think we called it

Page 18

1
 2 recompiled. I would call re reaggredated,
 3 but I suspect it's the same thing.
 4 Q And what is reaggredated election
 5 analysis?
 6 A Reaggredated election analysis is
 7 when you look at a -- you look at a -- if
 8 you take an election, and rather than look
 9 at it -- so in this instance, we're looking
 10 at congressional districts. Well, when we
 11 make a hypothetical district, we make it
 12 out of, you know, parts of the state, but
 13 those parts don't include only an existing
 14 district. So in order to estimate how that
 15 district would perform, what we want to do
 16 is you want to use old elections that
 17 actually have occurred, but only look at
 18 those districts and those regions that are
 19 in the proposed district or the -- or the
 20 hypothetical district to try to estimate
 21 how that election would have occurred.
 22 So in this case for instance, a
 23 congressional district is so large there's no
 24 other district that contains all of any of
 25 the districts -- any of the congressional

Page 19

1
 2 districts of interest other than the entire
 3 state. So here, we take an election, like
 4 state -- say, senator, which includes -- the
 5 election would have included every district
 6 in the entire state, and then we look at only
 7 those districts or whatever regions that are
 8 included in a hypothetical district.
 9 And we can't say how the election
 10 of a congressperson would have been gone in
 11 that hypothetical district, but we can say,
 12 oh, that hypothetical district would have
 13 voted for this Senate candidate. And so we
 14 reaggregate these elections in different ways
 15 so we can get a good idea as to how a
 16 nonexisting, as of yet, district would
 17 actually have performed had it existed in the
 18 past.
 19 Q And is that a type of analysis
 20 that you performed at the DOJ?
 21 A Yes. So under section -- before
 22 Section 5 -- before jurisdictions were
 23 removed from Section 5 early -- fairly
 24 early in my tenure there and continuing on
 25 when we were doing Section 2 analyses, it

Page 20

1
 2 was a common issue trying to review
 3 districts, not only to see if they were,
 4 you know, majority Hispanic or Black, or a
 5 majority/minority in actual people or in
 6 actual voting age population, but also to
 7 determine that they would perform.
 8 So one of the -- the real question
 9 is is we can have a majority of one racial
 10 group in a district, but if they're not
 11 cohesive, if they're not voting for -- you
 12 know, if there's many candidates not voting
 13 together or they're not -- their turnout is
 14 too much lower, they may not actually be
 15 providing the majority of the votes. And
 16 they may not be able to control that
 17 district. And so a key piece of the -- we
 18 had a -- we actually had a geographer there
 19 at DOJ who would generate hypothetical
 20 redistricting maps.
 21 And when she would generate those,
 22 I would look at the results she had and run
 23 similar analyses to what I ran here to
 24 determine if those maps would have performed,
 25 and if they were performing, how often they

Page 21

1
 2 were performing, how often they were failing.
 3 And then we would, collectively with
 4 attorneys, determine, you know, if this map
 5 was good enough, and then we would go on to
 6 other maps until we found either that there
 7 was no map we could produce that would
 8 actually generate a legitimate majority
 9 minority district or until we actually
 10 generated a district that we were comfortable
 11 with.
 12 Q And just so the record is clear,
 13 we're talking about two separate analyses.
 14 There's ecological inference, which works
 15 for polarized voting, then reaggredated
 16 election analysis.
 17 Do you understand those to be two
 18 separate things?
 19 A Well, they are separate things,
 20 but they're used among each other. So for
 21 instance, ecological inference, ecological
 22 regression, homogenous precinct analyses,
 23 what they're used for is to determine not
 24 just how an election went but how a
 25 minority group or how a racial group within

Page 22

1
2 an election voted. So we can reaggregate
3 an election, only look at outright totals,
4 and the result would tell us who won in a
5 hypothetical district. But instead, if we
6 use RBV analyses on that district, on that
7 hypothetical district, we can add to that.
8 Within the district, we know what
9 percentage of people, from each racial group
10 analyzed, voted for which candidate, and so
11 we can actually see who is voting for that
12 candidate, see if this person, in fact, the
13 preferred candidate or not within that
14 district and determine whether or not the
15 district itself is functioning like a -- like
16 a majority minority district, whether or not
17 the contest within it is polarized and
18 whether or not it's actually electing the
19 candidate that the Black or Hispanic voters
20 within that district are attempting to elect.
21 Q We'll get into, later, some of
22 the specifics about the analysis you did
23 here. I just want to understand clearly
24 what you did at the DOJ.
25 While at the DOJ, did you ever

Page 23

1
2 actually draw restricting maps?
3 A No. I didn't draw the maps. We
4 had a geographer there. She drew -- she
5 drew the maps, though the -- I worked with
6 her. We had suggestions as to, you know,
7 what areas should be included and the such,
8 but the actual map drawing was done by our
9 in-house geographer.
10 Q Okay. And have you ever drawn a
11 congressional map?
12 A No. No. I haven't drawn maps.
13 No.
14 Q Okay. And you haven't drawn any
15 legislative maps of any kind?
16 A No. No.
17 Q Okay. Have you ever worked as an
18 expert witness before?
19 A I don't think -- No.
20 Q Okay. Have you ever worked --
21 submitted a report as an expert witness in
22 a case before?
23 A Yes. Yes, I have.
24 Q Okay. And which case is that?
25 A I don't know the name of it. I'm

Page 24

1
2 sorry if that sounds silly.
3 Q Would what -- if I said that you
4 were an expert in Pearson v. Kemp, would
5 that jog your memory?
6 A Pearson v Kemp. That could be.
7 The name Kemp is probably right. I guess I
8 wouldn't argue that point. It's -- that
9 sounds potentially correct, yes.
10 Q Okay. And what was the subject
11 matter of that litigation?
12 A So yeah. So I put together a
13 memo on how early voting in the state of
14 Georgia differed in 2020 from previous
15 elections, how ballot rejection rates had
16 changed, and the significance of those
17 differences coming out of -- or, yes,
18 really right during the pandemic with that
19 election and just attempted to show how
20 those voting patterns had shifted, how
21 ballot rejection rates had plummeted, and
22 how the election itself was different from
23 previous elections.
24 Q Okay. And do you know what the
25 subject matter of the litigation was?

Page 25

1
2 A It was about the election.
3 Q Okay. Did you end up testifying
4 in that case?
5 A No. My affidavit, as I recall
6 was attached to -- was attached to the
7 case. The case was, I think, thrown out,
8 like, in an initial hearing. I was never
9 brought in as a witness. I don't even
10 think my affidavit was brought in as
11 evidence or anything like that. I wasn't
12 questioned or even referenced.
13 Q Okay. And outside of this
14 Pearson v. Kemp case, have you served as an
15 expert witness in any other cases?
16 A I mean, other than the work I did
17 with DOJ, where I don't -- or I don't think
18 that's what you're getting at. I have not
19 worked as an -- as an expert witness like
20 what I'm doing here, other than my -- I
21 guess you would call it a consulting expert
22 for DOJ for five and half years. And if
23 you include that, then I've done that a
24 hundred plus times.
25 Q Okay. But a court has never

Page 26

1
2 accepted your opinions in rendering its
3 opinion in a case; is that correct?
4 A I think that's correct. Yes. I
5 have not directly --
6 Q Have you ever cited in a court
7 case?
8 A I'm sorry. What was that?
9 (Whereupon, the court reporter
10 requested clarification.)
11 Q Have you ever been cited in a
12 court case?
13 A Not to my knowledge. I wouldn't
14 think so. That's a little better.
15 Q When were you retained to be an
16 expert witness in this case?
17 A Yeah. I was retained to put this
18 memo together comparing these guys on
19 March 28th. I think March 28th.
20 Q Okay. And was that the first
21 time you were contacted about this case?
22 A No. No. We -- I signed a
23 contract to work here on March 28th. I've
24 had prior conversations about my potential
25 work on the case before that.

Page 27

1
2 Q Okay. And when did you have your
3 first conversation about work in this case?
4 THE WITNESS: Do you remember
5 when we had our first conversation?
6 Q You can't -- I'm sorry.
7 MS. THOMAS-LUNDBORG: It has to
8 be the witness's recollection.
9 MR. GREIM: Oh, I'm sorry. I
10 can't help you. Sorry.
11 THE WITNESS: Okay.
12 A Before Valentine's Day. Yeah.
13 Before Valentine's Day. I -- so early
14 February. And, say, early February, maybe
15 late January, somewhere in there. I
16 don't -- I don't know exactly the day.
17 Q Okay. And when did you start
18 putting together the data that you used to
19 analyze in this case?
20 A So the datasets I first got, they
21 were kind of spread out. But over the
22 course of -- I think the very first data I
23 looked at, I did, in fact, get in -- I
24 would have gotten in February, because
25 that's when I first starting looking to see

Page 28

1
2 if there was anything I could do. The
3 final datasets that -- like, the bulk of
4 the datasets that I used here would have
5 been late March kind of as I was building
6 up for being a testifying witness, is when
7 I got the most -- the bulk of the data that
8 I used here.
9 MS. THOMAS-LUNDBORG: Okay. If
10 we could put back up Exhibit 1 --
11 CONCIERGE: Okay.
12 MS. THOMAS-LUNDBORG: -- which I
13 believe is the Overholt rebuttal
14 report.
15 And if we could go to page 3?
16 Q Okay. In your data section, in
17 the second full paragraph, you state: In
18 data science, analyzing data is often very
19 mechanical and straightforward. Finding
20 data, cleaning data, merging data, and
21 determining methodological -- sorry, strike
22 that -- methodology to use take up the vast
23 majority of my time and effort in any
24 project.
25 How much time did you spend on

Page 29

1
2 these various processes in this case?
3 A Well, so to set -- to set up the
4 initial analysis, so, essentially, what I
5 have is the data itself is a spreadsheet
6 essentially for each precinct or each --
7 I'm sorry -- for each geographic area. I
8 have got to have certain information in
9 order to run these types of analyses. So I
10 need to know percentage of the minority
11 groups of interest, of the -- or the
12 percentage of the people in the district
13 that are of the minority group, the
14 percentage of people who are not, the total
15 number of people, and then percentage of
16 votes that were cast for each candidate in
17 a given contest.
18 Once I have those -- once I have
19 that data and I get that data into a uniform
20 shape, I'm able to analyze it very clearly.
21 Once I have code that works on the initial
22 set, it takes a lot less time to do the next
23 set, but many hours. The very first set I
24 analyzed of the -- of the -- the first set of
25 elections, probably five elections, took

Page 30

1
 2 me -- or it took hours for me to get through
 3 the first batch. But once I had the code
 4 running, I think it took less time per
 5 election.
 6 Q And how many hours would that be?
 7 A Certainly dozens.
 8 Q Dozens as in 24 hours? as in
 9 36 hours? as in 48 hours?
 10 A I think I billed -- I think I
 11 billed north of 90 hours.
 12 Q And that was 90 hours on the
 13 dataset?
 14 A No, I think that's -- that's for
 15 pretty much all of it. That's for the
 16 writeup as well and discussion time and
 17 such.
 18 Q Okay. And when did you begin
 19 this 90 hours of work?
 20 A I guess the very beginning would
 21 be back early February, early mid-February.
 22 MR. GREIM: I'm going to
 23 interject here, Counsel, just for a
 24 second. This is Mr. Grime, counsel
 25 for the Plaintiffs. As you can see,

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1
 2 this witness did some consulting work
 3 for us initially, and so to the
 4 extent that that work formed the
 5 basis for him becoming an expert
 6 witness in this case, that's fine.
 7 But I may begin to assert attorney
 8 work product objections to the extent
 9 that you ask only about the
 10 consulting work. So I don't have an
 11 objection at this time. I just want
 12 to make sure you know that that's
 13 coming.
 14 MS. THOMAS-LUNDBORG: We'll
 15 address that when we get to that
 16 point.
 17 Q So continuing on.
 18 On page 4, in the middle of the
 19 third paragraph, you state --
 20 MS. THOMAS-LUNDBORG: If we
 21 could go there and get it
 22 highlighted?
 23 Q Okay. You state: Voter
 24 registration lists were made available by
 25 the state of Louisiana, which include

Page 32

1
 2 individual level data about voters such as
 3 race, party, precinct, and voting history.
 4 Is this file that you're
 5 discussing here also known as the "voter
 6 file"?
 7 A So the first sentence, the
 8 election results were taken from the
 9 Louisiana Secretary of State's website --
 10 (Whereupon, the court reporter
 11 requested clarification.)
 12 THE WITNESS: Oh, I'm sorry.
 13 COURT REPORTER: That's okay.
 14 That's okay.
 15 THE WITNESS: I'll try not to
 16 twitch.
 17 A The first sentence there, where
 18 it says, election results were taken from
 19 Louisiana's Secretary of State's website,
 20 that is a publicly available domain to
 21 download from. The --
 22 Q Sorry. I think we're in the
 23 wrong paragraph. It should be -- and
 24 that's on us. It should be the fourth
 25 paragraph -- oh, it is. Okay. Sorry. I

Page 33

1
 2 just want to ask you --
 3 MS. THOMAS-LUNDBORG: We can go
 4 back. I'm sorry. We were in the
 5 right paragraph.
 6 Q I just want to ask you -- we're
 7 going to go through this systemically, and
 8 we have very little time. So if you could
 9 just focus in on the second sentence?
 10 Voter registration lists made
 11 available by the state of Louisiana, which
 12 include individual level data about voters
 13 such as race, party, precinct, and voting
 14 history.
 15 Is this file in the second
 16 sentence also known as the "voter file"?
 17 A Yeah. I believe so.
 18 Q Okay. Which voter file did you
 19 use to conduct your analysis?
 20 A These aggregations here -- you --
 21 part of the reason this is in the passive
 22 voice, these were actually -- this is what
 23 was done, but it was done by computer
 24 scientists, and the results, the
 25 tabulations that I needed, were given to me

Page 34

1
2 by them.
3 Q Okay. And when did you receive
4 this data?
5 A Again, spread out throughout
6 the -- I received probably the first
7 sets -- the first election -- the initial
8 stuff, again, early, mid-February, but I
9 received the majority of them late March.
10 And I think -- I did, in fact, receive
11 some, I think, in between as well. So kind
12 of through -- kind of throughout the last
13 few months.
14 Q Okay. And were these folks who
15 worked directly under you or folks who you
16 were connected to through counsel?
17 A I was connected to through
18 counsel.
19 Q Okay. And do you know whether
20 the computer science folks that you're
21 referencing now used the most recent voter
22 file or had access to historic voter files?
23 A My understanding is they had the
24 most recent voter files. We discussed, you
25 know, when they acquired data and such, and

Page 35

1
2 he made reference to having the most recent
3 data. But, again, I can't be sure he's
4 correct if that makes sense.
5 Q Okay. Did you or -- let me --
6 I'm going to ask two questions.
7 First, did you do anything to
8 check the accuracy of the voter file that
9 you received particularly when it comes to
10 older elections?
11 A Well, I know -- I guess what
12 we're getting here is I know full well, as
13 elections get older, there come to be
14 problems as people -- as voter rolls get
15 cleaned, voters oftentimes who voted in an
16 election, they vanish. And that's actually
17 part of the reason that I didn't really use
18 older elections. That's why I try to stick
19 to nothing too much older, like 2016, and
20 only there because I felt the need to get
21 more even year elections.
22 And it's why I didn't go back any
23 older than 2019 is because the data itself,
24 as you alluding to, tends to degrade over
25 time, and as voters get cleaned out of the

Page 36

1
2 voter rolls, not only do they stop being on
3 the voter roll now, but they oftentimes are
4 scrubbed away and so they're not in the voter
5 roll back then.
6 Q Okay. Did you do --
7 A So I know --
8 (Cross-talking.)
9 A I'm sorry. Go on.
10 Q Did you do anything to check the
11 accuracy of the voter file for older
12 elections?
13 A I guess that's why I stuck with
14 the newer elections so there wouldn't be a
15 huge issue there. So, again -- so I mean,
16 yes. We can compare total numbers of
17 people. You know, if you -- as you go
18 through, like, the percent BVAPs and such,
19 I verified that those lined up with -- so,
20 like, the results he was giving me, that
21 those lined up with the data that is
22 available in other places. So for
23 instance, the election results Secretary of
24 State's website has to offer there, from my
25 Footnote 3 at the beginning of the same

Page 37

1
2 paragraph, I'm able to use that date data
3 and confirm that the grand totals, the
4 turnout numbers and such are at least very
5 close to the results that I was getting
6 when I would tabulate out of the dataset
7 that I had.
8 Q And you mentioned that the
9 Secretary of State has a voter -- has
10 election results.
11 Why not rely on that?
12 A Well, because the Secretary of
13 State's website -- well, not the Secretary
14 of State's website. The state of
15 Louisiana, like most states these days, has
16 a lot of mail-in and absentee votes. And
17 unlike most states these days, the state of
18 Louisiana does not reaggregate them out to
19 the precincts. And so what you wind up
20 with is, I think, more about a quarter to a
21 third of the votes that were cast in a
22 precinct aren't listed as being cast in the
23 precinct.
24 And here, it's critical to include
25 those people, because, well, they're a

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1
2 quarter of the votes, and as we try to
3 reaggregate an election, like I've said, we
4 need to break it up into as small a piece as
5 possible, and I need to know the number of
6 votes cast for each candidate in those
7 precincts. And if I don't have though --
8 that data broken up by those precincts, I
9 can't possibly create reliable reaggregation.
10 So one of the key issues is that the
11 available results don't give you those --
12 don't give you election results down to the
13 block or VTD level.
14 And so the roundabout way of
15 getting those numbers was primary done to
16 break those absentee votes down by voter
17 district.
18 Q Okay. I think we're going to get
19 back to the kind of absentee question a
20 little later. I want to pick up on two
21 things that you said in your last few
22 answers. You mentioned that folks move or
23 die and some problems with the voter file
24 if you're using the most recent voter file.
25 Do you know how many voters were

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1
2 missing or misplace from the voter file for
3 each election because they died, moved,
4 deregistered or were purged?
5 A No.
6 Q In using the newer voter file for
7 older elections, did you use precinct level
8 data and configure it to conform to the
9 boundaries?
10 A Yes. My understanding is they
11 actually used -- they took the precinct
12 level data and approximated that out to the
13 VTDs. I don't know if they took it to the
14 block level first or not, but they broke it
15 down to the VTD level and then reaggregated
16 up to the districts to collect in the
17 election results. But I didn't do that,
18 again.
19 Q And you said that you spent
20 90 hours just on your portion.
21 Do you know how much time the
22 data science folks spent on their portion?
23 A I don't.
24 Q Do you have an estimate based on
25 your prior work at the DOJ?

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1
2 A Probably -- well, honestly, I
3 wouldn't want -- I wouldn't want to float
4 an estimate because it could range so much.
5 I know that some of the datasets that they
6 got me would be, like, Okay, we're working
7 on this dataset, and it could take them
8 days to get it to me. But I don't know
9 that they were working on it for days, and
10 so I just can't -- I honestly can't speak
11 to how much time it took them. And, again,
12 I didn't -- or so most of this work in
13 building maps and a lot of these
14 aggregations, this wasn't the work I really
15 did at DOJ either. So I don't have -- you
16 know, the generating the map and getting
17 the estimates from the map wasn't really my
18 focus.
19 Q Okay. Focusing in on the kind of
20 aggregation, but as it relates to racially
21 polarized voting, what aggregate level data
22 was used to conduct the racially polarized
23 voting analysis?
24 A Voting precinct. That's the
25 smallest level it has to voting results

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1
2 available, and so the demographics were
3 aggregated up to those levels.
4 Q Okay. So did you use the
5 precincts and the elections as reported by
6 the Secretary of State or did you convert
7 the precinct level data to approximate the
8 2020 VTDs, also known as voting tabulation
9 districts?
10 A Yeah. So I believe what they
11 did -- for the demographics, for sure, they
12 broke it down to the VTDs, and then I was
13 aggregating the VTDs together to create
14 the -- for hypothetical districts. So they
15 were -- they broke -- they estimated and
16 broke the voting results down to the VTD
17 level as well.
18 Q Okay. And is that the 2020 VTDs?
19 A Yes. I think it was the
20 2020 VTDs, but I don't have -- I guess I
21 don't confirmation in front of me. I think
22 it was the 2020 VTDs.
23 Q Okay. And I just want to make
24 sure I got this part right.
25 Is it your testimony that the

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1
2 voter file identifies early and absentee
3 votes, so that's how you were able to
4 allocate them down to the parish level -- I
5 mean down to the VTD level?
6 A I didn't allocate them down, and
7 I didn't look at the voter file. Again,
8 what I was given were tabulations from the
9 voter file at the VTD level, and then lists
10 essentially of which VTDs went with -- went
11 with which precinct -- or sorry -- which
12 VTDs went with which voting district in
13 each redistricting plan so that I could,
14 then, aggregate those VTDs together to
15 create voting districts and I could, then,
16 analyze those voting districts.
17 Q I guess I am trying to
18 understand. I think earlier you testified
19 that one of the reasons you want to use the
20 voter file was because of the absentee and
21 the early vote issue.
22 And how did you use the voter
23 file to solve the problem of absentee and
24 early votes only being reported at the
25 parish level?

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1
2 A So essentially each voter -- so
3 this is in that next -- this is the fourth
4 paragraph.
5 So precinct level election results
6 for each cycle were matched to a
7 corresponding shape in the precinct shape
8 file.
9 So each voter is placed inside of
10 a -- well, inside of a centroid -- it was
11 placed and given a centroid, the center point
12 of their block. And when those we -- then
13 we -- when those aggregated, that's what gave
14 everybody a location. The voter file must --
15 all right. Yeah. The voter file will
16 include who voted in each election, and so
17 we're able to identify where each voter lives
18 using census data. From the voter file, we
19 will have the data as to which voters voted.
20 And the voter file will include, as well,
21 the -- their sub-identification on race. And
22 we can aggregate those together to get a
23 better idea as to where each voter is and
24 whether or not they voted.
25 Q Okay. But the voter file doesn't

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1
2 tell you which candidates the voter voted
3 for, correct?
4 A No. No. Not at all. That's
5 actually the purpose of the ecological
6 inference regression and HPA is to get a
7 good estimate of how voters voted according
8 to -- you know, how voters within each
9 racial group voted.
10 Q Okay. We're going to circle back
11 to this. I want to ask some more
12 data-related questions. Okay. Just one
13 other question about this centroid
14 methodology that you're discussing in this
15 paragraph that we just looked at.
16 Are you aware that the precincts
17 change regularly?
18 A Oh, yeah. Of course. I've
19 literally seen precinct maps that were
20 drawn on napkins and submitted to the
21 Department of Justice. It's a fantastic
22 world, the redistricting and
23 precinct-shaping world.
24 Q And how did the -- your analysis
25 account for that?

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1
2 A By breaking folks down to the VTD
3 level. Using the voter file, I would know
4 what VTD they were in, and then we would
5 just simply reaggregate VTDs, because they
6 weren't moving around. We used 2020 census
7 VTDs. We know where people were at that
8 time, and then we just aggregate those VTDs
9 up to create a district.
10 Q Okay.
11 MS. THOMAS-LUNDBORG: If we
12 could go to --
13 Q And I may come back with some
14 other questions about this but, again, I
15 want to make sure I get to everything.
16 MS. THOMAS-LUNDBORG: If we go
17 to page 3?
18 And then if we could go to the
19 second full paragraph on page 3?
20 Sorry. It's actually the second
21 full paragraph under the data section
22 on page 3. I'm sorry.
23 Can we take this down, the
24 highlight for a second?
25 This is what happens when I

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1
2 don't cut and paste.
3 THE WITNESS: Yeah. It seems to
4 cut the right inch off here as well,
5 where I can't read the whole
6 paragraph on the screen.
7 CONCIERGE: So if you go up top
8 to where it says "view options,"
9 Doctor?
10 THE WITNESS: Okay. I've
11 actually got a paper copy I'm using
12 as well.
13 CONCIERGE: Okay. Okay. Okay.
14 MS. THOMAS-LUNDBORG: Okay.
15 CONCIERGE: You could --
16 Q Then I think we can -- we can
17 just move on. If we -- so it's the second
18 full paragraph.
19 The last sentence of the second
20 full paragraph, which reads: Second, I had
21 to determine the best data to use for
22 election results.
23 Are you there?
24 A Okay. That second paragraph, you
25 said the last sentence?

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1
2 Q Yeah. It's the first paragraph
3 under "data."
4 A Okay.
5 Q The second full paragraph on the
6 page, the last sentence: Second, I had to
7 determine the best data to use for election
8 results.
9 Do you see that?
10 A Yes. Yes.
11 Q Where did you get your election
12 results data?
13 A So the election results -- the
14 base election results data is available
15 from the Secretary of State website. And
16 you go -- so -- and the first step there
17 was to review and see how elections had
18 actually gone in the past, and they're
19 right there on the Secretary of State's
20 website to download right -- their total
21 results. And then on top of that, like,
22 through the voter file as well there is who
23 voted that can be aggregated up to the VTD
24 level. So they -- I guess ultimately came
25 from the state of Louisiana.

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1
2 Q Okay. So you're saying that you
3 would run a comparison between the
4 Secretary of State's data and the voter
5 file data that you had?
6 A Yeah. So one -- another way of
7 checking ecological regression, ecological
8 inference, and homogenous precinct analyses
9 is to take the actual election as it
10 occurred, so governor in 2023. And I can
11 look at the actual election, how it went.
12 I can see who won, who lost, what the vote
13 totals were. Then I can run a RBV analysis
14 on that election. And when I add up -- you
15 know, so the RBV results will essentially
16 show that, you know, X percent of, say,
17 Black voters voted for this candidate and
18 Y percent of Y voters voted for that
19 candidate. Well, I can multiply in that --
20 those percentages by the number of Black
21 and White voters who voted, and I can do
22 that for each candidate and make sure that
23 the election results come out about correct
24 when I use the RBV analysis. It's just a
25 way of, I guess, checking -- kind of

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1
2 checking my work. Yeah. I -- for the
3 full --
4 Q But did --
5 (Cross-talking.)
6 A -- and I run RBVs on those.
7 Q Did at any point -- to your
8 knowledge, was the Secretary of State
9 election data aggregated to the VTDs that
10 you were using in your analysis?
11 A Not to my knowledge, no.
12 Q Okay. What method did you use to
13 determine which election results to
14 include?
15 A Yeah. So that's actually kind of
16 the -- some of it is just looking and
17 saying, Okay, these make sense. So the
18 first step was, as you mentioned before,
19 I'm going to have to aggregate these
20 elections. So what I know right off the
21 bat is I'm going to have to have state-wide
22 contests, because I have to break them up
23 by these congressional districts. I also
24 know that state-wide -- the congressional
25 districts are elected in even years,

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1
 2 November of even years.
 3 So I went looking immediately for
 4 even year November contests. Because we're
 5 statewide and because Louisiana hold their
 6 state contests in odd years, the only
 7 elections available to me then, in even years
 8 November, were the three Senate seats in
 9 2016, 2020, and 2022, and a Secretary of
 10 State special election in 2018. That is all
 11 that was available. And so the only reason I
 12 went beyond those four was because there's
 13 only four of them.
 14 And, you know, as -- anyone in
 15 statistics will tell you, like, four is not
 16 really enough, but my -- so then from there,
 17 the option were to either go to older
 18 elections, and as we've discussed, there is a
 19 data problem. The older the election gets,
 20 we tend to have more and more data issues
 21 with who actually voted and who didn't. But
 22 we also have a shifting election potentially.
 23 You can imagine we wouldn't want to go back
 24 to the 1990s and evaluate something that
 25 that's old so, at some point, we have got to

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1
 2 kind of cut this off.
 3 You don't want to get too old with
 4 the elections you're reviewing, and it's
 5 fairly common practice, two full presidential
 6 cycles gets you a pretty good idea.
 7 Q Okay.
 8 A And so then to expand the number
 9 of elections beyond just those four, I
 10 looked at the other state-wide contests.
 11 And I focused on partisan contests. And so
 12 four of those -- there's the five. Each
 13 odd year there's governor, lieutenant
 14 governor, secretary of state, treasurer and
 15 attorney general. And so that gives me ten
 16 additional elections that happened in odd
 17 years; oddly enough, in October of odd
 18 years, of all things.
 19 But I brought those in as well,
 20 because it's additional state-wide contests
 21 that could be reaggregated, and they fall
 22 within a fairly time frame. I grabbed, in
 23 this case, just '23 and 2019. Again,
 24 basically looking back for two full, you
 25 know, four-year election cycles. And then,

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1
 2 in addition to that, I grabbed all of the
 3 runoff elections that; happened as a result
 4 of any of those previous 14 contests. So
 5 I've got four even year contests, I've got
 6 ten odd year contests, and I think there are
 7 a total of seven runoffs total from those 14
 8 contests.
 9 So those were the elections that I
 10 chose to focus on, because I wanted to make
 11 sure I grabbed, you know, everything that is
 12 statewide. And then I took that a step
 13 further, and look at them at -- with the --
 14 with the turnout analysis to determine which
 15 ones were most like even year contests to
 16 make sure I wasn't including elections that
 17 didn't make a lot of sense. You can imagine,
 18 for instance, we oftentimes don't include
 19 ballot initiatives and, like, legal questions
 20 because the situation surrounding them is
 21 very different from a partisan candidate.
 22 Q Okay. So I think you have
 23 anticipated some of my questions, which is
 24 great. We get to move more quickly.
 25 MS. THOMAS-LUNDBORG: If we

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1
 2 could go to page 6, the top of
 3 Table 2?
 4 A Yeah.
 5 Q So these are the elections that
 6 you analyzed; is that right?
 7 A Yeah, that's them.
 8 Q Okay. And in this chart, you
 9 include even year, Senate elections, one
 10 even year secretary of state election, and
 11 the other elections are off-year state
 12 elections; is that right?
 13 A Correct.
 14 Q Okay. And the first election is
 15 Senate 2016.
 16 Why did you decide to go back to
 17 the Senate 2016 election?
 18 A Well, that gives me a full -- few
 19 presidential cycles, right?
 20 So I get two presidential even
 21 years and two non-presidential even years.
 22 The difference in presidential elections,
 23 especially in turnout, is important to try to
 24 encompass.
 25 (Whereupon, the court reporter

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1
2 requested clarification.)
3 THE WITNESS: Yeah. Encompass.
4 To include.
5 Q Okay. I have some more
6 questions, but I think you've anticipated
7 another one of my questions. You just
8 mentioned the presidential election
9 turnout. I noticed there are no
10 presidential elections here, and you talk
11 about that a little bit in your report.
12 So in 2016, there was a
13 presidential election, correct?
14 A Yes, there was.
15 Q Okay. And that's not an election
16 that you analyzed, correct?
17 A Yeah. So the thing we fall into
18 with president is, yes, it is voted on
19 state-wide, but president is the only --
20 you know, there is the -- in elections you
21 hear, you know -- you know, All politics is
22 local. That's true of everything except
23 for president. The sheer amount of money,
24 I suspect, and the sheer magnitude of media
25 pressure creates a different dynamic. You

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1
2 only have got to look at the Senate, and
3 look the number of senators from states
4 that overwhelming vote for one president
5 and those senators from a different party
6 to know there are very strong republican or
7 democrat states.
8 Throughout the Senate, it's the
9 opposite of the way their party votes, the
10 way they voted for -- you know, they vote
11 president opposite of Senate because you
12 just -- it's simply different. Presidential
13 elections are useful. They can be useful
14 when you're focus is on specifically racial
15 block voting to determine if an electorate in
16 the state is polarized. It can be useful for
17 that. But once you step outside a specific
18 RBVs and start reaggregating elections,
19 president is simply too big of a question to
20 effectively replicate a small district like a
21 congressperson.
22 MS. THOMAS-LUNDBORG: If we
23 could pull up -- if we could pull up
24 what I'm going to mark as Exhibit 2?
25 (Whereupon, a Document, 2016

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1
2 Election Calendar was marked as
3 Defendants' Exhibit No. 2 for
4 identification, as of this date.)
5 MS. THOMAS-LUNDBORG: And it's
6 the 2016 election calendar.
7 Q I have some more questions around
8 these presidential elections.
9 If you could look at the column
10 titled "November 8"?
11 Do you see that?
12 A Yeah.
13 Q Okay. And can you read the box
14 for the type of election that occurred on
15 November 8, 2016?
16 A Open primary presidential
17 congressional.
18 Q Okay. Is it your understanding
19 that, on November 8, Louisiana voters went
20 to the polls and voted a ballot that
21 included the presidential election and a
22 congressional election?
23 A Yep.
24 Q Okay. And you would agree, also,
25 that a presidential election in November 8

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1
2 would have had two candidates?
3 A Mostly. I think they have --
4 there's always the -- you know, the 2 to
5 5 percent kind of third party guys. But,
6 yeah, generally, there are the two
7 candidates.
8 Q And that's most like the new
9 system that Louisiana is moving to for
10 congressional elections that you discuss in
11 your report?
12 A Are you talking about the
13 traditional -- although not really. So the
14 primary election going into a president
15 contest happen much earlier in the year.
16 So I guess I don't know when Louisiana
17 hits. But most states, you know -- which
18 we're going through right now. We started
19 voting for presidential primaries in early
20 February, and so a lot of these states --
21 the presidential primaries are different
22 dates than state primaries are. And so the
23 primary system itself will still be
24 different in terms of when we're selecting,
25 you know, candidates for the different

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1
2 parties for candidate.
3 And then on top of that --
4 Q I understand.
5 A Yeah.
6 Q I think it is understood that the
7 presidential primary, even looking at the
8 document, Exhibit 2, happens at a different
9 time than the congressional primary might
10 under the new system.
11 My question is, as we get into
12 later of your report, you discuss
13 Louisiana's changing from a system of kind
14 of open primary to a system of closed
15 primaries and then an election. And is it
16 your understanding that the presidential
17 election, which has a limited number of
18 candidates, will be similar to the
19 congressional system that Louisiana is
20 moving towards as far as number of
21 candidates on the ballot?
22 MR. GREIM: Object to form.
23 A I guess there is an assumption
24 here being made, I suppose, that the
25 congress -- so we're looking at

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1
2 congressional contests. And so even using
3 Senate -- right? -- isn't a great -- isn't
4 a perfect way of looking at Congress, but
5 it's the closest we can get. If we were
6 aggregating -- for instance, instead of
7 looking at the state, if we were -- if we
8 were looking at a city, and I was looking
9 at specifically city council. To aggregate
10 those elections, I would be looking at
11 elections like mayor, perhaps police chief,
12 whatever city-wide elections, but I would
13 be very careful about moving on to a
14 state-wide contest, something that is far
15 above the city, even county-wide contests.
16 And reason is, even though they may
17 be elected at the same time, the politics of
18 your city are not always the politics of your
19 county, and they're not always the politics
20 of your -- of your state. And they're
21 certainly not the politics of the country.
22 We're looking at a state office, Congress,
23 Senate. When we're looking at a -- I know we
24 think of president as being elected by the
25 states. Of course, you know, you know, is

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1
2 president is. But we're looking at a
3 national contest there.
4 And it takes on a color or a flavor
5 that is very different to the voters, and as
6 a result, the election is, I supposed, less
7 probative to what we're trying to get at here
8 with these congressional districts.
9 Q Did you rely on any peer-reviewed
10 scholarship in your determination that the
11 presidential election is less probative
12 than a state governor election or state
13 Secretary of State election or any of the
14 other elections in your chart?
15 A No, but multiple times at the
16 Department of Justice, I was told that
17 presidential elections aren't really
18 something that they cared to see in most of
19 the analyses I did. In RBV -- again, in
20 RBV analyses, they make sense because it
21 can encapsulate the entire state and see if
22 there is polarization to that state. Well,
23 when you begin reaggregating elections, you
24 start bumping into difficulties of trying
25 to pick elections that makes sense. And

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1
2 it's not to say that a, you know,
3 presidential contest is completely unusable
4 but, in my opinion, it's not as useful as
5 some of these other contests were. And the
6 truth is, even if they were included, they
7 don't shift the overall conclusions.
8 Q Did you look at the presidential
9 election data?
10 A I looked at -- I think I looked
11 at 2020. Yeah. I looked at -- I looked at
12 the results in 2020 just from the Secretary
13 of State site I believe.
14 Q Okay. Did you do the similar
15 type of analysis on the 2020 presidential
16 election as you did here in the other
17 election?
18 A Yeah. No. So I kind of -- I
19 kind of -- I looked at it to see what had
20 happened there. But even there, I didn't
21 really add it into the elections at the
22 very beginning. Because just the lack of
23 what I viewed as reasonableness to try to
24 predict a congressional outcome.
25 Q And did do any analysis when you

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1
2 were deciding which elections to include to
3 determine if a voter was more likely to
4 split a ticket for president and Congress
5 or between Congress and the governor, for
6 example?
7 A Oh, no. I mean -- so here's kind
8 of the situation is the majority of the
9 elections that we have here aren't the best
10 elections to analyze Congress, right.
11 In fact, none of them are
12 congressional seats, but they're the best we
13 do have. And it's -- it's what I -- this
14 list of elections is what I would have
15 presented at the Department of Justice.
16 Q Okay. And would it surprise you
17 to find out that a voter in Louisiana might
18 be more likely to split their ticket for
19 governor and Congress than for Congress and
20 the president?
21 A Well, I think I would go along
22 with, but that's only because you're
23 probably focusing on the 2019 governor
24 contest, but I wouldn't be surprised to see
25 it. There is substantial ticket splitting,

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1
2 and that's not the only concern in why, for
3 instance, governor is included and
4 president isn't. Again, governor is a
5 state office; president isn't.
6 Q Right. But under that
7 definition, a Senator still serves in
8 federal government; is that --
9 A No, he's --
10 Q -- correct?
11 A -- no. He's a state office.
12 He's not -- he's elected by the members of
13 his state to represent -- or his or her, to
14 represent their state and to the federal
15 government, just like a member of Congress
16 is. They're an officer that's accountable
17 directly to the state.
18 Q Okay. And do you have any
19 peer-reviewed publications that use that
20 same definition of state officers you're
21 using now?
22 A No. But it's -- again, it's now
23 being reviewed at the Department of
24 Justice.
25 Q Okay.

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1
2 MS. THOMAS-LUNDBORG: If we
3 could go back to exhibit -- sorry.
4 Before I do that, I would like to
5 enter what I'm going to mark as
6 Exhibit 3, and it's the 2020 election
7 calendar.
8 (Whereupon, a Document, 2020
9 Election Calendar was marked as
10 Defendants' Exhibit No. 3 for
11 identification, as of this date.)
12 Q So just for completeness of the
13 record, on November 3rd, could you read for
14 me what type of election occurred on
15 November 3rd?
16 A An open primary, presidential,
17 congressional.
18 Q And is it your understanding that
19 the open primary presidential race and the
20 congressional race would have all been on
21 the same ballot on November 3rd?
22 A Yeah. That seems right.
23 Q Okay.
24 MS. THOMAS-LUNDBORG: If we
25 could now go back to Exhibit 1.

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1
2 MR. GREIM: And counsel, this is
3 Mr. Grime. We've been going, by my
4 count, for about an hour now,
5 actually record time. I know we kind
6 of sat around beforehand.
7 Is there any way we can maybe
8 take a short break for the witness or
9 court reporter?
10 The witness -- the witness will
11 try to wolf down a sandwich in that
12 short break.
13 It won't count against you on
14 your time, I just wondered if we
15 could take a break?
16 MS. THOMAS-LUNDBORG: Yeah. I
17 mean, as long as we can get our three
18 hours on the record, I'm fine taking
19 a short break now.
20 MR. GREIM: Okay.
21 VIDEOGRAPHER: Okay. Thank you.
22 The time is 1:20 p.m. we're going off
23 the record.
24 (Whereupon, at 1:20 p.m., a recess
25 was taken to 1:33 p.m.)

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1
2 (The proceeding resumed with all
3 parties present.)
4 VIDEOGRAPHER: The time is
5 approximately 1:33 p.m. We're back
6 on the record.
7 Q I have one more data question
8 before we -- we're going to switch topics
9 and maybe get back to that a little later.
10 Do you have any concerns with
11 using the 2020 VTDs for every election over
12 seven years when all of these elections
13 happened under completely different
14 precincts?
15 A Well, they did happen under
16 completely different precincts. That's
17 true. But the VTDs themselves are so small
18 that they're bound to do a pretty good job
19 of approximating precinct boundaries when
20 aggregated together. In the past, the DOJ
21 for instance, we ran sometimes elections
22 based on 2010 census data. Other -- there
23 were times I used a BVAP from 2010 census
24 and as late as 2016, 2017. Sometimes it's
25 the best data you have, and it does -- it

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1
2 does a fine job.
3 Q Okay. So is your testimony that
4 VTDs are much smaller than precincts?
5 A Than voting precincts?
6 Q Yeah.
7 A I guess their much smaller than
8 districts, but -- so the VTDs were
9 aggregated -- and I guess I apologize if
10 I'm using precinct and district
11 interchangeably. VTDs --
12 Q Yeah.
13 A -- aggregate into the districts
14 that I'm using, and then we're --
15 Q Right. So my question was do you
16 have any concerns with using the 2020 VTDs
17 for every election over seven years, when
18 all of these elections happened under
19 different precincts, so state of Louisiana
20 precincts, not --
21 A Right.
22 Q -- districts?
23 A So -- and it is used over the
24 course of seven years, but 2020 is the
25 center, so it's really only three years

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1
2 from either end, right?
3 So 2016, I guess, is four years
4 prior; 2023 is three years after. So it's
5 not like it's seven-year-old data by any
6 means. And no, the results, when I
7 aggregated state-wide contests, were very
8 close to the actual results in the elections
9 and, as a result, I didn't have any concerns
10 with it.
11 Q Okay. Did you check, for
12 example, how much the 2020 VTD might differ
13 from the 2023 precincts?
14 A No.
15 Q Okay. I'm going to switch topics
16 now. I would like to go back to the kind
17 of work you did for this report and the
18 data that you reviewed.
19 You reviewed the report of a
20 Mr. Anthony Fairfax; is that right?
21 A Yes.
22 Q Okay.
23 MS. THOMAS-LUNDBORG: And if we
24 could now enter what I'm going to
25 mark as Exhibit 4, the report of --

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1
2 the Fairfax report?
3 Q And we also sent a copy to your
4 counsel.
5 MS. THOMAS-LUNDBORG: If we can
6 just scroll through quickly?
7 (Whereupon, a Document, Response
8 Report of Anthony E. Fairfax's to
9 the Expert Reports of Michael
10 Hefner, Dr. Jeffrey Sadow, and Dr.
11 Stephen Voss was marked as
12 Defendants' Exhibit No. 4 for
13 identification, as of this date.)
14 MS. THOMAS-LUNDBORG: Maybe if
15 we could just scroll to the end?
16 Q Is this, what we're seeing on the
17 screen, appear to be a -- an accurate copy
18 of the report that you reviewed for
19 Mr. Fairfax?
20 A Yeah. It looks like it.
21 Q Okay.
22 MS. THOMAS-LUNDBORG: If we
23 could enter -- well, before we do
24 that, if we could go to page 7,
25 paragraph 16 of Mr. Fairfax's report?

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1
2 Paragraph -- yeah. Okay.
3 Q And here, Mr. Fairfax states:
4 The central purpose of this report is to
5 respond to the expert reports of Michael
6 Hefner, Stephen Voss, and Jeffrey Sadow
7 that analyzed the plan enacted by the
8 Louisiana legislator, SB8.
9 Do you see that?
10 A Yes.
11 Q Did you review the reports of
12 Mr. Hefner, Dr. Voss, or Dr. Sadow?
13 A I didn't read their entire
14 reports, but I did -- I did go through
15 them, yes.
16 Q Okay. And did their --
17 A Well, I did go through Voss. I
18 don't know if I did Sadow, so I don't -- I
19 don't think I did Sadow.
20 Q Okay. And you reviewed
21 Mr. Hefner's report?
22 A Yes.
23 Q Okay. And did any -- did their
24 reports influence any of the conclusions in
25 your report?

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1
2 A Oh, no. I had -- trying to
3 remember if I had everything written
4 completely. The overall majority of my
5 analyses and results were done before I had
6 read them in their entirety. They were
7 kind of read. So the focus of my report
8 was to respond to Fairfax and McCartan.
9 And so I primarily read these first, and
10 then responded to things they said, you
11 know, to inclusions they had of other
12 districts and suggesting that those
13 districts performed, you know, the same or
14 better than SB8. It was really the focus
15 of my work and then, after the fact, I had
16 gone back and looked at what was said
17 prior.
18 Q Okay. And what part of
19 Mr. Fairfax's analysis did you find most
20 important in working on your report?
21 A I guess an example here would be
22 paragraph 72 of page 32.
23 MS. THOMAS-LUNDBORG: If we
24 could go to that page?
25 Q Okay. And what about this

Page 72

1
2 paragraph did you find --
3 A This is just an example of where
4 he's talking about an additional plan that
5 he -- so he starts and says: The A3 plan
6 provides an example of how population could
7 be added to CD 4 using the SB8 plan as a
8 baseline to eliminate a wrap-around
9 configuration, create more compact
10 districts. The popular -- the
11 configuration of the A3 plan would have
12 provided more compact district and plan
13 configuration while creating a majority
14 Black district.
15 THE WITNESS: I'm sorry.
16 (Whereupon, the court reporter
17 requested clarification.)
18 A All right. The configuration of
19 the A3 plan would have provided a more
20 compact district and plan configuration
21 while creating a second majority Black
22 district in the Red River Region of the
23 state.
24 And so essentially here he's making
25 the claim that the A3 plan, you know, is just

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1
2 as good or perhaps better than SB8, that
3 essentially SB8 is, you know -- and even
4 here, you know, is based on, like, political
5 measure only and doesn't -- you know, and
6 isn't based on racial considerations. And so
7 I was trying to looking at that and see, you
8 know, how A3, Robinson, and the Price plans
9 kind of compared to SB8 in terms of their
10 performance.
11 Because it seems like there is a
12 lot of argument about how they're shaped and
13 suggesting that, you know, other -- you know,
14 the -- a myriad of factors played a role in
15 creating SB8, where my analysis is to combine
16 all of these districts together and determine
17 the underlying -- you know, the difference
18 among them, what is the most important
19 difference among these districts. And my
20 conclusion is the most important difference
21 among them is the shared BVAP percentages,
22 that SB8 was -- yes.
23 (Whereupon, the court reporter
24 requested clarification.)
25 THE WITNESS: Oh, I'm sorry.

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1
2 Yeah. That SB8 was generated to
3 maximize BVAP and to -- it
4 successfully creates a better
5 performing majority -- a better
6 performing district for Black voters
7 but that, ultimately, it fails to
8 provide a functioning majority
9 minority district.
10 Q Did you, at any point, look at
11 compactness which is referenced in this
12 paragraph that we're reading?
13 A No. So for my purposes,
14 compactness is actually fairly irrelevant.
15 I am not really concerned with how it
16 looks. I'm not concerned with any of the
17 other issues. The concern -- the primary
18 concern really here is what is driving
19 success rates of this district. So in this
20 instance, you know, the question is does
21 this district actually perform for minority
22 voters, and --
23 Q Did you --
24 A -- the analysis shows that it
25 does not. But then the other piece and the

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1
2 more important piece here is does this
3 district perform better than all the other
4 districts, because it's completely
5 different from them. The other districts,
6 you know, right at the East Coast -- or the
7 east -- not the East Coast, but the
8 northeast corner of the state, where they
9 kind of run across the state, but then the
10 narrowest -- there's A3s. District 5 is
11 about 30 miles, where SB8 runs almost --
12 what? -- 180, 200 miles long, in places
13 it's only 4 or 5 miles wide.
14 It's a very exaggerated district,
15 and the one thing that it absolutely brings
16 to the table is increased BVAP and increased
17 performance in terms of candidates being
18 elected who were supported by a majority of
19 Black voters.
20 Q At any point in your report did
21 you discuss the geography of the districts
22 or the compactness of the districts?
23 A Again, I wasn't really concerned
24 with -- my only real concern is how they
25 performed compared to one another. So

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1
2 these three different plans, they have
3 districts that -- you know, and some of
4 them may look similar or whatever, and
5 they're family similar, especially the
6 other three. A3, Price, and Robinson are
7 fairly similar. They all range from about
8 51 and a half to 52 percent Black by voting
9 age population.
10 They're all very similar, but I
11 know they're in different areas. But they
12 all perform pretty similarly.
13 But then SB8 is a completely
14 different creature, right?
15 We all -- we all acknowledge that.
16 And its performance is better, but it's not
17 quite good enough to get -- you know, to
18 really create the functioning district. And
19 I guess that's the thing is my focus wasn't
20 on how to build a district; my focus was on
21 does this district function, does it -- you
22 know, does this district function better than
23 that district, does this -- does this
24 district function well enough to actually
25 elect minority candidates of choice. Those

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1
2 are really the questions that come out of my
3 analysis -- or the answers.
4 Q Okay. And at any point, just
5 sticking with this paragraph, did you look
6 at incumbency and whether incumbents were
7 paired in various versions of the maps that
8 you analyzed?
9 A Yeah. Again -- so, I mean,
10 incumbency can be an issue. It can lead
11 to, you know, advantage or whatever in
12 elections. You know, obviously an
13 incumbent has some advantage when they're
14 facing a new, especially an unknown
15 challenger. But in this instance, again,
16 the only real concern is does the district
17 perform and how does SB8 compare to the
18 other districts.
19 Does it do a better job of getting
20 Black candidates victories?
21 That was really the focus question
22 I focused on.
23 Q Right. As a statistician, when
24 there are multiple competing -- when there
25 are multiple competing possible

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1
2 explanations for an outcome, is it
3 important to control for all of those to
4 select which one may, in fact, have been
5 influencing the results?
6 A Well, I think that's kind of
7 tricky here, because when we start --
8 especially -- so for instance, when you
9 deal with racial Black voting, I get -- so
10 as a statistician, yeah, there's a lot of
11 goals to try to control variables and try
12 to maximize our squedge while minimizing
13 the number of variables in a model. But,
14 for instance, when you're dealing with an
15 RBV outright, you know, the courts come
16 back time and again, and their only real
17 consideration, under a Gingles case for a
18 voting rights act district, is does the
19 district actually -- you know, is the
20 district compact enough to elect, is the
21 population within the districts, the
22 minority population with district cohesive
23 enough to overcome the influence of the
24 non-minority voting majority.
25 So really what the courts are

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1
2 getting at is does this district actually
3 elect minority-preferred candidates?
4 That's a VRA district. So all
5 these other variables are interesting and I
6 know they go to motive, but at the end of the
7 day, the real question is does this district
8 perform, and the way to determine how it will
9 perform is to aggregate these elections and
10 compare these different districts to one
11 another. This is -- this is the exact kind
12 of study we did at DOJ to try to determine
13 which maps made sense, to determine if we
14 should challenge a new map or let a new map
15 go, and determine if we were -- you know, a
16 common one was kind of, like, what is going
17 on here with District 2, and that is trimming
18 away some of the majority in a minority
19 majority district and making it a slimmer and
20 slimmer majority.
21 And in some cases, some
22 redistricting plans have actually tried to
23 marginalized a majority Black district, you
24 know, in much the way that we're working
25 towards here.

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1
2 Q So would you say, based on your
3 DOJ experience, you're remit was to focus
4 on Gingles 2 and 3?
5 A Yeah. For the most part.
6 Gingles 2 and 3 was a great deal of the
7 work I did but, again, it expands somewhat
8 beyond that. But, yes, Gingles 2 and 3
9 were a majority of my work there.
10 Q Now, I would like to just focus
11 in a little bit still on what Mr. Fairfax
12 was doing.
13 A Okay.
14 Q And if we could -- I am going to
15 just back up for a second.
16 Are you familiar with the term
17 "traditional redistricting criteria"?
18 A Traditional -- yeah. Yeah. I'm
19 familiar with it.
20 Q Okay. And what are traditional
21 redistricting criteria?
22 A I know there is a list of them.
23 It's got to be things along lines of, like,
24 compactness, communities, split, was it
25 precincts or counties, that sort of a

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1
2 thing. It's -- yeah. The idea is you're
3 trying to build a district so that that
4 district is a community. We don't want to
5 combine people who don't agree, and we
6 don't want to separate people who do. And
7 especially in cases something like this, we
8 don't want to, say, take a large Black
9 community, like the one that's centered
10 in -- sorry -- Baton Rouge and New Orleans
11 and split them into making two districts,
12 thus by -- thus making two districts --
13 right? -- where there is no majority Black
14 in -- Black population in either one.
15 Because essentially -- at least
16 over the years, that district is -- has
17 become a congressional community, if you
18 will. So I know there's a lot -- I know
19 there's a number of them but, again, they
20 weren't really the focus of my work.
21 Q Okay. And would you agree that
22 Mr. Fairfax's report focuses on comparing
23 maps across traditional redistricting
24 criteria?
25 A I think Mr. Fairfax's report

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1
 2 focuses on comparing a number of districts
 3 and making the argument that they're all so
 4 similar that the differences among them are
 5 explained, you know, by, you know,
 6 innocuous things, like we're trying to
 7 keep, you know, certain incumbents
 8 protected while getting rid of other
 9 incumbents. But at the end of the day,
 10 he's really comparing these districts and
 11 trying to determine, you know, which one,
 12 you know, is the most compact or better or
 13 worse in different ways. And I think he
 14 misses the most important measure of
 15 whether a district is good or bad and
 16 that's whether or not it will actually
 17 perform for the minority community of
 18 interest.
 19 MS. THOMAS-LUNDBORG: If we
 20 could go to page 9, paragraph 19 of
 21 the exhibit we're currently in?
 22 And I'm at the second sentence.
 23 Q Once I recreated the plans, I
 24 performed an analysis and compared the
 25 plans. I analyzed the result of the plan

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1
 2 comparison and drew my opinions and
 3 conclusions on the reports from Mr. Hefner,
 4 Dr. Voss, and Mr. Sadow on whether the SB8
 5 plan follows traditional redistricting
 6 criteria and whether any departures from
 7 traditional redistricting criteria can be
 8 attributed only to racial predominance.
 9 Does this refresh your
 10 recollection about whether Mr. Fairfax was
 11 focused on traditional redistricting
 12 criteria?
 13 MR. GREIM: Objection to form.
 14 The witness did not -- did not
 15 show a need to have his memory
 16 refreshed. You're actually just
 17 asking him --
 18 MS. THOMAS-LUNDBORG: We don't
 19 need a speaking objection. Your
 20 objection is marked on the record.
 21 Q Please answer.
 22 A So it seems to me that he's just
 23 trying to frame the way he's comparing
 24 these plans, and he's focused on trying to
 25 say that racial predominance wasn't what

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1
 2 determined these plans, right?
 3 So he's trying to rule out race as
 4 the cause for why SB8 came into being. And I
 5 suppose -- I mean, that kind of cuts to
 6 the -- to the foundation of my analysis is
 7 that my analysis shows that race, at the very
 8 least, was very much affected by SB8. So, I
 9 guess, yeah. I mean, he's trying to say
 10 that -- you know, he's trying to say that
 11 racial -- that race wasn't the primary factor
 12 here.
 13 MS. THOMAS-LUNDBORG: If we
 14 could go to paragraph 20 of
 15 Mr. Fairfax's report?
 16 MR. GREIM: I think it's the
 17 very next page.
 18 MS. THOMAS-LUNDBORG: Yes. It's
 19 the next page.
 20 THE WITNESS: Yeah. I already
 21 flipped to page 20 so that --
 22 MR. GREIM: No --
 23 THE WITNESS: Yeah. So I have
 24 to come all the way back.
 25 Q So here, Mr. Fairfax lists a

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1
 2 couple of things that he looked at.
 3 First, minimizing political
 4 subdivision splits at parishes and
 5 municipalities.
 6 Do you see that?
 7 A Yes.
 8 Q Did you look at that?
 9 A Well, I mean, again, I looked at
 10 how these districts actually performed in
 11 elections that actually occurred to see --
 12 to try to estimate how they would likely
 13 occur -- how they would likely perform in
 14 future elections.
 15 Q Two, adhering to district cores.
 16 Did you look at that?
 17 A Oh, no. Wait. I'm sorry.
 18 Again, I focused on the actual performance
 19 of the districts, who they would elect, who
 20 they wouldn't elect, and then comparing
 21 them to each other.
 22 Q Three, crafting reasonably
 23 compact districts.
 24 Did you look at that?
 25 A Okay. So, I guess, in my memo,

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1
2 I -- I mean, all I -- well, what I did is I
3 compared the election results from a number
4 of previous contests, and I aggregated them
5 together to try to predict how the district
6 would actually perform.
7 To me, it wasn't a concern as to,
8 like, how the district was made, all right?
9 My rubric is very -- is very
10 quantitative.
11 Does it work?
12 Does it work better?
13 That's -- that is what I did. I
14 don't answer the question -- I don't get into
15 the qualitative questions as to who did what
16 and why.
17 I'm concerned with just does it
18 work?
19 Does it work better than this in
20 the real world where elections actually
21 happen?
22 That was the focus of my work, and
23 so, no, I didn't review these at all.
24 Q Well, I will submit to you that,
25 in another part of his report, which we can

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1
2 go to, he looked at contiguity.
3 Did you look at contiguity at any
4 point?
5 A Where is his reference to
6 contiguity?
7 MS. THOMAS-LUNDBORG: If you
8 look at page 7, paragraph 17(b)(iii)?
9 A Okay.
10 MS. THOMAS-LUNDBORG: "B."
11 That's "A." It's on -- oh, sorry.
12 It's page 8.
13 A Okay. So page 8 (b)(ii)?
14 Q Three.
15 A (b)(iii). Sorry. Okay.
16 (b)(iii). I mean -- so, again, you know,
17 the focus of my work was on does the
18 district action perform. I suppose I'm
19 aware that the districts are all one piece,
20 if that goes to what you're asking. But,
21 yeah, the focus of my -- this wasn't the
22 focus of my work. I was -- I was trying to
23 establish the -- a best guess as to whether
24 or not this district would actually
25 perform, and whether any of these districts

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1
2 would perform for the minority community
3 there.
4 Q So you did not look -- analyze
5 contiguity, correct?
6 A Yeah. That would be correct.
7 Q Okay. On page 7, paragraph
8 17(a)(iii), he also mentions that he
9 analyzed social economic data.
10 Did you analyze any social
11 economic data.
12 A Wow. Okay. So the data that I
13 used were -- was based on voting results
14 and demographic counts within the districts
15 that I was analyzing. So the results that
16 I get, then, are purely answering the
17 question who would have been elected if
18 this district had existed. And then I used
19 that to surmise, to try and estimate who
20 would be elected in the future, who will --
21 you know, which voting block will control
22 this district going forward, what's the --
23 what are the chances, what percentage of
24 elections would be won by this group as
25 opposed to that group.

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1
2 And socioeconomic status, I mean, I
3 know that these things are all related to,
4 you know, the issues at hand here, but
5 practically, the only thing that elects
6 people is who showed up to vote and who did
7 they vote for and who were they. That's the
8 focus of my work is who is going to get
9 elected next.
10 Q Did you analyze any socioeconomic
11 data, yes or no?
12 A Oh, no.
13 Q Okay. Have you ever used GIS
14 software?
15 A Only very minimally. So the real
16 answer there is no, but I have -- I've
17 worked with a geographer who was using it,
18 and I have done very, very minor things,
19 like, working with her while she's working
20 on it and I've typed things in. But, no, I
21 have not practically used ArcGIS at all.
22 Q Are you familiar with a GIS
23 software called Maptitude?
24 A I know of it. I mean -- so I --
25 as a -- the programmer in me says, no, I'm

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1
2 not familiar with it because I can't use --
3 I can't use the software. But I'm familiar
4 with it in the sense that I generally know
5 what it does.
6 Q Are you aware of whether GIS
7 software, like Maptitude, can give numbers
8 for traditional redistricting criteria?
9 A Yeah. I think it can.
10 Q Okay. And do you know whether
11 Mr. Fairfax used Maptitude for this
12 purpose?
13 A I suppose we would have to ask
14 him. I can -- I mean, I can look for it
15 but I don't know.
16 Q Okay.
17 MS. THOMAS-LUNDBORG: Let's look
18 at page 10, paragraph 21.
19 A Okay.
20 MS. THOMAS-LUNDBORG: And I will
21 read it for the record. Finally,
22 after analyzing the plans, I
23 generated a final report from
24 Maptitude, maps and data tables, and
25 summarized the plan's performance on

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1
2 a set of traditional redistricting
3 criteria and provided relevant
4 conclusions. These reports and
5 conclusions are discussed below.
6 Q Do you see that?
7 A Yes.
8 Q Okay. Does that refresh your
9 recollection of whether Mr. Fairfax used
10 Maptitude for traditional restricting
11 criteria analysis?
12 A It seems like he does. That's
13 what he says here.
14 Q Okay. Do you know whether the
15 legislator used Maptitude or another GIS
16 software for this purpose?
17 A I mean, I'm certain they used
18 something but I don't know what it was.
19 Q Okay.
20 MS. THOMAS-LUNDBORG: On
21 page 26, paragraph 28 --
22 A Did you say --
23 MS. THOMAS-LUNDBORG: Oh, sorry.
24 A -- page 106?
25 Q No. No. No.

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1
2 A Okay.
3 Q It's pages 26 through pages 28.
4 A Okay.
5 Q Mr. Fairfax -- and I think if we
6 go to page 26, we can see the title. It
7 looks like "The Distribution of the Black
8 Population throughout Louisiana."
9 Did you look at the distribution
10 of the Black population in rendering your
11 conclusions?
12 A In so much as I'm aware of the
13 percentage BVAP within each of the
14 districts I analyzed, yes. I have got a
15 vague -- you know, I've -- I mean, I'm
16 looking at 6800 individual demographic --
17 or geographic areas. But, yeah, I am aware
18 of, like, the BVAP distribution within the
19 districts, how they shift, you know, with
20 the different redistricting plans. So, for
21 that, I -- yeah, I mean -- and it's -- you
22 know, it seems kinds of obvious, I guess,
23 with the way the districts are built where
24 bans of Black communities are.
25 Q Okay. Now, are you saying that

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1
2 you were aware of where the Black community
3 population lives, or did you do an analysis
4 of where the Black population lives?
5 A Well, I mean, I suppose I'm
6 looking at districts, and I can see where
7 the district is because I can actually see
8 the map. And I know -- you know, I know
9 with how the -- I know -- I know the BVAP
10 within each district. And so I can see,
11 you know, the population within the
12 districts. I didn't really have to run an
13 analysis; it's just how many people lived
14 in these -- how many people of each race
15 lived in a given district.
16 Q So you did not do an analysis of
17 the distribution of the Black population,
18 correct?
19 MR. GREIM: Objection. Asked
20 and answered.
21 Q You may answer.
22 A For my purposes, I didn't need
23 to. The analysis itself was that these are
24 the people that are in the proposed
25 district, and how will that district

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1
 2 perform with their voting preferences.
 3 It's -- I mean, to build the maps that I
 4 analyzed, I would need to go into and
 5 figure out where, you know, individual
 6 communities were, so I can combine, you
 7 know, different Black communities to try to
 8 build a majority minority district.
 9 But having already been given them,
 10 it wasn't necessary for me to look into where
 11 they were, these individual communities,
 12 because they were already combined together
 13 into the districts being proposed and
 14 defended by Fairfax.
 15 Q Okay. I think we discussed you
 16 ran a racially polarized voting analysis as
 17 part of your report, correct?
 18 A Yes.
 19 Q Did Mr. Fairfax run any racially
 20 polarized voting analysis?
 21 A I don't think so. I'm sure
 22 you're about to show me a page that I am
 23 not thinking of. But I don't think he did.
 24 Q I can't show you a page where
 25 there is an absent one. So if you are

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1
 2 aware of a place where it exists --
 3 A Yeah. I didn't --
 4 Q -- please show me.
 5 A Yeah. I -- yeah. I didn't think
 6 so but, I -- yeah.
 7 Q Okay. And you also -- we've
 8 discussed kind of performance and
 9 effectiveness analysis. I know racially
 10 polarized voting played a role in it.
 11 But did Mr. Fairfax run any type
 12 of effectiveness or performance analysis --
 13 A Yeah. So --
 14 Q -- in his report --
 15 A Sorry.
 16 Q -- in his report?
 17 A Most of his analysis focused on
 18 measures that aren't directly related to
 19 the performance of a district in terms of
 20 electoral outcomes. And so he looked at,
 21 it seems, the motivations in making a
 22 district and what was considered there.
 23 My focus was on primarily
 24 determining how these districts performed
 25 compared to each other, whether -- right?

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1
 2 If -- whether SB8 is a better
 3 built, if you will, racial district, whether
 4 district -- whether SB8 constitutes a
 5 district with two VRA voting districts.
 6 Those are the sorts of questions I was
 7 answering, and it seemed to be -- it's a --
 8 yeah. There is a bit of a difference there.
 9 Q So I think my question was yes or
 10 no.
 11 Did Mr. Fairfax run an
 12 effectiveness or performance analysis in
 13 his report?
 14 MR. GREIM: Object to form.
 15 Asked and answered. The witness
 16 didn't think it could be answered yes
 17 or no.
 18 Q You may answer now.
 19 A Well, see, I -- he might say yes
 20 because he seems to be measuring using
 21 different variables of measures of
 22 performance, you know, compactness and
 23 such. You know, is this -- this district
 24 is better than that district. And so you
 25 see that kind of throughout where you

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1
 2 start -- you know, this -- this new
 3 district performs better for compactness or
 4 whatever.
 5 And I think that maybe that's the
 6 nature of the confusion here is that when I
 7 say performance, I'm talking about if a
 8 district will actually elect the candidates
 9 that a minority group wants to elect, where I
 10 think what is happening here is performance
 11 is being turned into a term -- into a word
 12 that can also be, you know, how well-shaped
 13 is it, right?
 14 How compact is it?
 15 You know, does it use the -- those
 16 traditional redistricting methods
 17 effectively?
 18 And I think I that might be what's
 19 happened here. And so I'm -- I'm -- for me,
 20 from my interpretation, he didn't really look
 21 at performance, and that is a key flaw, is
 22 because all of these districts -- you know,
 23 Okay, this one is better than that one
 24 because it -- you know, it's more compact,
 25 but that doesn't tell you who is going to win

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1
2 the contest. And ultimately -- ultimately
3 that is what matters, who is going to win.
4 And so I think he would say he their
5 performance, you know, on the rubrics that --
6 Q Does he use the term
7 "performance" anywhere in his report?
8 A I would have to search using
9 Adobe Acrobat to be sure if he did or
10 didn't. But he certainly compares -- he
11 certainly compares these districts to see
12 which one he things is best or if
13 they're -- if they're -- you know,
14 effectiveness and such. So I think that --
15 yeah. I think that might be part of the
16 problem.
17 Q Okay.
18 MS. THOMAS-LUNDBORG: If we
19 could go to page 2, which is a table
20 of contents?
21 Q Are any of these sections of his
22 report labeled "performance"?
23 A Well, I mean, a lot of them, I
24 think, attempts to get at performance, like
25 when we say --

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1
2 Q Not as you define it, though,
3 right?
4 A What's that?
5 Q Not as you define performance.
6 A Right. It's not performance for
7 me. But I think if you were to -- but,
8 going through this, like, the word
9 "performance" mean does it -- does it work
10 well, does it do well, and the entirety of
11 this -- of this here is measures to
12 determine if these districts are doing
13 well, are they doing better than each
14 other. That's what he is doing here.
15 That -- that's, I think, what's happening
16 here is, when I'm saying "performance," I'm
17 talking specifically about who were the
18 elected candidate of choice.
19 And I think maybe you're asking me
20 about if it follows these other measures.
21 And I get that, that these other measures are
22 important, but they're not something I
23 analyzed. They're just outside the scope of
24 what I did.
25 Q Okay.

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1
2 MS. THOMAS-LUNDBORG: I'd like
3 to turn to Mr. McCartan's report. If
4 we could -- what I'm going to enter
5 as Exhibit 5, the McCartan report.
6 Thank you.
7 (Whereupon, a Document, Rebuttal
8 Expert Report, Cory McCartan, Ph.D.
9 was marked as Defendants' Exhibit
10 No. 5 for identification, as of this
11 date.)
12 Q Do you have a copy of that?
13 A Do I have McCartan?
14 I'm working on it. Yeah. I think
15 I do.
16 Q Okay. So do -- what you have in
17 front of you is a true and accurate copy of
18 the McCartan report as far as you can tell?
19 A It looks the same as what you've
20 got up there.
21 Q Okay. Dr. McCartan is a
22 statistician as you are. He ran
23 simulations as part of his work.
24 Have you ever run a simulation?
25 A Yes.

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1
2 Q You have. Okay.
3 When?
4 A Throughout my education, I ran a
5 number of simulations leading up to my
6 dissertation and also assisted with a
7 number of other doctoral level research
8 projects that were going on for
9 dissertations that involved Monte Carlo
10 simulations.
11 Q Okay. Did you run simulations as
12 part of your work at the DOJ?
13 A No. No. But I did a little
14 bit -- I -- we did so some simulations at
15 the EEOC, trying to gauge the effect of --
16 so the EEOC, it's primarily concerned
17 unemployment, but the goal there was to try
18 to see if we could use EEOC data to try to
19 anticipate the next, if you will, major
20 employment crisis in the shadow of the "Me
21 Too" movement. Both to see if the EEOC,
22 instead of being completely reactive to
23 crises, could step out in front of them,
24 anticipate them, and try to deal with them
25 before they became major issues nationwide.

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1
2 Q Okay. On page 5, paragraph 10 --
3 A Yep.
4 Q -- Dr. McCartan states: Dr. Voss
5 performed seven sets of simulations
6 analyses, four race neutral simulations and
7 three race conscious simulations. My
8 analysis and study of the simulated plans
9 and the code used to generate them allowed
10 me to evaluate each of the core conclusions
11 Dr. Voss makes in his reports that depend
12 on simulation analyses.
13 Do you see that?
14 A Yes.
15 Q Okay. Did you study any of the
16 simulated plans at issue here?
17 A On the -- these are simulated.
18 No. No. I didn't go into the -- see, I
19 focused on the plans that I listed in my
20 memo. I think it's HB1, SB8, what I call
21 "Robinson," A3, and Price. Those are
22 the -- those are the ones that were
23 mentioned, I think, in Fairfax's report.
24 Q Did you look at any of the
25 simulated code in rendering your opinions?

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1
2 A No. No. I didn't really have
3 any direct interaction with the other
4 experts in this case.
5 Q Okay. What part of
6 Dr. McCartan's analysis did you, in fact,
7 study and analyze?
8 A I'm not being silent for no
9 reason. I'm skimming right now. Give me
10 just one moment.
11 Q Okay. That's fine.
12 A Yeah. I'm just looking at a
13 clean copy of it without notes. But as I
14 skim through it, most of the comparisons to
15 my work really came out of Fairfax. I
16 don't -- I don't see where McCartan is
17 making reference to the districts that I
18 was analyzing, and so off -- I -- yeah.
19 Off the top of my head, I'm not seeing the
20 work that I really -- because I don't think
21 he -- I don't see anywhere where he was
22 talking about the redistricting steams that
23 I analyzed.
24 MR. GREIM: Yeah. And counsel,
25 just to be clear, this is Mr. Grime.

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1
2 As I told the court this morning, our
3 argument on the rebuttal is related
4 to Fairfax's report, not McCartan --
5 MS. THOMAS-LUNDBORG: Okay.
6 MR. GREIM: -- I understand.
7 And so I don't want you to spend a
8 bunch of extra time on this given the
9 limited time we have.
10 MS. THOMAS-LUNDBORG: Don't plan
11 to. But since it -- Dr. Overholt
12 mentioned Dr. McCartan in his report,
13 I wanted to circle up and make sure
14 the record was clear.
15 Q We've talk about some different
16 data sources that you had and reports that
17 you looked at.
18 Did you review any other
19 materials in preparing your report?
20 A Well, I spent a great deal of
21 time going back over code to make sure that
22 the -- you know, there's the -- as time
23 goes on, a lot of the algorithms, a lot of
24 the functions that I had used in the past
25 got -- have aged. And so I had to go back

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1
2 through and, you know, research at code
3 options and such and our -- to make sure
4 that the analysis I was conducting were the
5 analysis I thought I was conducting. But
6 in terms of the data itself, I think it all
7 either came from the Census Bureau or --
8 it, ultimately, came from the Census Bureau
9 or the Louisiana -- or the state of
10 Louisiana.
11 Q Do you know whether your code was
12 turned over as part of your report?
13 A I don't.
14 Q Okay.
15 MS. THOMAS-LUNDBORG: I'll
16 submit that we don't have that code,
17 and we're now requesting it on the
18 record.
19 MR. GREIM: We're happy to turn
20 that over. I, frankly, didn't
21 realize. I should have probably
22 that -- that code was actually used.
23 I didn't realize that, but we'll get
24 it and turn it over ASAP.
25 MS. THOMAS-LUNDBORG: Okay.

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1
2 Q We've talked a little bit about
3 traditional restricting criteria.
4 Do you know whether the
5 legislature has any rules about the use of
6 traditional redistricting criteria in
7 redistricting?
8 A I suppose I'm sure they do. Most
9 of the states do, but it's not -- it's not
10 a subject that really affects my analysis.
11 Q Okay. We're not going to spend a
12 lot of time on this.
13 MS. THOMAS-LUNDBORG: I'm just
14 going to admit for the record what
15 I'm going to mark as Exhibit 6, and
16 it is named "Joint Rule 21."
17 (Whereupon, a Document, Louisiana
18 Laws, Joint Rule 21 was marked as
19 Defendants' Exhibit No. 6 for
20 identification, as of this date.)
21 Q Okay. Did you review
22 Joint Rule 21 as part of your analysis?
23 A No. I don't think so.
24 Q Okay.
25 A Yeah. No. At least not

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1
2 directly, no.
3 Q Okay. I would like to now go
4 back to your report and the work that you
5 were asked to do.
6 MS. THOMAS-LUNDBORG: If we
7 could go back to Exhibit 1, which is
8 the Overholt report?
9 And then if we could go to
10 page 2?
11 And I didn't write the paragraph
12 here, so just give me a second to
13 find it. Okay. It's the first
14 paragraph, last full sentence that
15 begins with "I was asked," and I will
16 just read it.
17 I was asked to specifically
18 compare the voting trends in the new
19 and hypothetical map to the
20 well-established majority minority
21 district from the H -- from the 2022
22 map, HB1, to determine if any of the
23 new or proposed maps provided two
24 majority minority districts.
25 Do you see that?

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1
2 A I do.
3 Q Okay. What do you mean by "you
4 were asked to determine whether the maps
5 provide two majority minority districts"?
6 How are you defining that term?
7 A Two districts wherein the
8 minority group that makes up a majority of
9 the population by BVAP within the district
10 are able to control and elect their
11 candidates of choice.
12 Q Okay. Are you aware of the
13 50 percent plus one standard established in
14 Gingles?
15 A I am aware of the need to have at
16 least majority BVAP within a district, but
17 I'm also aware that, if the district
18 doesn't elect the preferred candidates,
19 it's failing.
20 Q Okay. Are you aware that, in
21 Gingles, once you reach 50 percent plus
22 one, it's determined to be a majority
23 minority district?
24 MR. GREIM: Objection to form.
25 Q Are you aware given your time at

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1
2 the DOJ?
3 A Well --
4 MR. GREIM: Same objection.
5 A -- I've seen districts in the
6 past that weren't even majority listed as
7 majority minority districts. In fact, Lisa
8 Handley, who you've mentioned, has had a
9 number of cases where she's advocated for
10 majority minority districts that had
11 anywhere from 35 to 40 percent BVAP,
12 because those districts should elect a
13 Black for candidate because it's
14 substantial crossover voting.
15 And I am not sure -- I'm not sure
16 the Supreme Court specifically says
17 50 percent plus one, because they focus
18 mostly on if they're is sufficiently compact
19 to create a majority district, that's step
20 one. But that doesn't -- that is a bare
21 minimum to argue you have a majority minority
22 district.
23 Once have that, you have got to go
24 a step further, right?
25 Because even if you have 50 percent

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1
 2 plus one, of you don't have polarized
 3 voting -- right? -- you don't have a majority
 4 minority district. That's one of the other
 5 prongs. And so there's more to it than just
 6 I have 50 percent plus one, it's a majority
 7 minority district. If the district can't
 8 perform, it's not doing what it's designed to
 9 do.
 10 Q Did you rely on any written
 11 guidance in determining how to define
 12 majority minority district?
 13 A No.
 14 Q Okay. Further down the page in
 15 the third paragraph -- and it's the first
 16 sentence, you state: Specifically, I found
 17 that SB8 and the group of proposed
 18 alternative maps for Louisiana all failed
 19 to provide a -- sorry -- a second
 20 functioning majority minority district and,
 21 in the process, they weaken the previously
 22 existing majority minority district.
 23 Do you see that?
 24 A I do.
 25 Q How are you defining "functioning

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1
 2 majority minority district" here?
 3 A Yeah. So to skip back just for a
 4 moment, the end of the third paragraph that
 5 I added to functioning majority minority
 6 districts, I think that would have
 7 clarified a little bit more. But
 8 functioning, the functioning portion is is
 9 it actually electing the preferred
 10 candidates of the minority group that makes
 11 up the majority in the district.
 12 Q Okay. So just focusing on this
 13 functioning question --
 14 A Yeah.
 15 Q -- is a Black-preferred candidate
 16 required to win all the reagggregated
 17 elections to be determined a functioning
 18 Black --
 19 A No. They -- I think the word
 20 used is they need to generally win those
 21 elections.
 22 And, of course, we can, you know,
 23 argue what is "generally," right?
 24 But it's not 50 percent plus one.
 25 If I tell you I've got a dog that doesn't

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1
 2 generally bite people and bites people
 3 49 percent of the time, I clearly don't have
 4 a dog that doesn't generally bit people. And
 5 so generally should mean with only limited
 6 exceptions, with acknowledged exceptions. So
 7 at DOJ, you made reference to it.
 8 There was a case I -- without going
 9 into anything -- any of the details, where
 10 there was a Black candidate who had been
 11 elected sheriff in a county, and it was kind
 12 of a big deal because it appears to blow up
 13 our argument that there's polarized voting,
 14 because this Black candidate received a
 15 majority of votes from the White -- from
 16 White voters as well as Black voters.
 17 But the fact that he got elected as
 18 an individual Black candidate wasn't --
 19 didn't prove that they didn't generally --
 20 that the White majority didn't generally
 21 defeat Black-preferred candidates. It just
 22 proved that that one candidate was special.
 23 It turns out that, in fact, he had been the
 24 local high school football coach for about
 25 20 years, and so everybody knew and treated

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1
 2 him differently. And he was able to get
 3 White votes in a very polarized place. And
 4 so it generally allows -- it does, in fact,
 5 allow for a reasonable number of elections to
 6 be lost, but it shouldn't be allowing for a
 7 substantial number of them.
 8 Q Okay. And how are you defining
 9 "reasonable" and "substantial"?
 10 How many elections is too many,
 11 what percentage?
 12 A It's -- I don't know. I think
 13 ideally 80 percent, 90 percent. But if you
 14 were to argue 70 percent, even two-thirds,
 15 I think there is room to argue that. But
 16 I -- "generally" should mean, when you look
 17 at it, you see a bunch of people who are
 18 elected by this candidate. Look at H --
 19 and a perfect example of it is if you look
 20 at my analysis, look at how HB1 performs.
 21 HB1 is a district that's been a majority
 22 minority functioning district probably my
 23 entire life, that or a district built
 24 somewhere around it.
 25 And that district would have

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1
2 elected, I think, all but one of the
3 candidates in every contest I looked at.
4 That is a functioning majority minority
5 district. They elect the candidates they're
6 looking for. Now, I look at HB2 and, under
7 SB8, and now we've lost a second contest. So
8 that is two contests it would have lost out
9 of -- out of just the ten in the odd years.
10 Does that make it not functioning?
11 Even in my -- even in my memo, I
12 said I don't think so. I think it's still
13 functioning. It's obviously weaker, but it's
14 still functioning. And then there's two more
15 districts. I think it's Price and Robinson
16 that dropped down to seven of those ten
17 contests.
18 Now we have got 70 percent, all
19 right?
20 We're starting to get into the
21 territory where it's reasonable to say, Maybe
22 this district isn't functioning. But to put
23 a specific number on it, that's the kind of
24 decision that frankly a judge would need to
25 make. It's what is, quote, generally. I

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1
2 mean, I can opine about it, somewhere between
3 70 and 90 is probably where it falls.
4 Q Okay. And are you basing your 70
5 to 90 number on any written guidance?
6 A No. I'm not even proposing that
7 that's, like, the rule. I'm just pointing
8 out that that's the shift in difference
9 here. I guess I'm suggesting if I told you
10 my dog doesn't bit people and he bites them
11 30 percent of the time, I think you'd look
12 at me like I was a lunatic. If I told you
13 my dog doesn't bite people and he bites
14 people 5 percent of the time, that seems
15 like a pretty thing I can tell you.
16 My dog doesn't generally bite, but
17 he does bit people, right?
18 And so the "generally" has got to
19 fall in a range somewhere, and I'm -- I mean,
20 I'm open to a discussion about what
21 "generally" is but "generally" is far more
22 than 51 percent for sure.
23 Q Okay. But you don't have any
24 written guidance either from the
25 peer-reviewed literature or cases that you

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1
2 became aware of at DOJ to support your
3 "generally" definition?
4 A Well, I mean -- so let's be
5 clear. Like, I am here as an expert not
6 because I write papers that are
7 theoretical, not because I read papers that
8 are theoretical, but because I applied this
9 where the rubber meets the road for half a
10 decade. I helped build these districts. I
11 reviewed these districts. I designed these
12 districts. I analyzed them. When we spoke
13 about, Okay, is this election -- is this
14 district polarized, that means they
15 generally -- that the White majority
16 generally votes to defeat a Black-preferred
17 candidate of choice. That's means that the
18 White voters overwhelmingly defeat
19 Black-preferred candidates.
20 If Black-preferred candidates are
21 electing half of their people, that's not
22 general. So I acknowledge that there is no
23 dictionary definition for the number as to
24 what "generally" is. But, no, I've spent my
25 career long enough to know "generally" is one

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1
2 of those things that says, With only limited
3 exceptions, it will do something.
4
5 A So there's always, exceptions,
6 that sheriff, all right?
7 That doesn't make if not a
8 polarized county because one person managed
9 to get elected there. That person can be
10 special. Even just a few people, that's fine
11 because those are exceptions to the rule.
12 But at some point, as you approach
13 50 percent, 60 percent, you have got an
14 exception to the rule that's overwhelming.
15 It's not "generally" when it happens
16 frequently, certainly not when it happens
17 half the time.
18 Q I'd like to focus in on the
19 analysis that you did.
20 MS. THOMAS-LUNDBORG: Let's look
21 at page 8.
22 Q In the second paragraph, you
23 describe your work. I am not going to read
24 it bit for bit. It's too long. And I
25 actually want to paraphrase -- excuse me --

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1
2 and see if I have got this right. This is
3 my understanding of the steps in
4 paragraph 8, and you can tell me if I get
5 anything wrong.
6 So you first generate turnout
7 estimates by race by census block using
8 geo-coding of the voter file. You, then,
9 calculate the number of Black people who
10 voted in the district. You, then, run the
11 ecological inference on that district.
12 You, then, multiply the ecological
13 inference percentage estimate by the number
14 of voters in each category by race, and
15 then you divide by total turnout.
16 Are those the steps?
17 And if not, let me know where I
18 got something wrong.
19 A Yeah. That was -- just listening
20 to you describe it, that sounds -- that
21 sounds about right. That sounds like a
22 reasonable description of what's going on.
23 I don't think -- I don't think you missed
24 anything there but, yeah, that sounds
25 reasonable.

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1
2 Q Okay. Did you use both turnout
3 and ecological inference estimates to
4 produce your election aggregation?
5 I think you've testified that you
6 just used ecological inference, but I want
7 to make sure I'm clear.
8 A Well, so the ecological inference
9 uses turnout, so I used turnout to get the
10 ecological inference and then, in the -- in
11 the analysis here, what I did is I, then,
12 used turnout as a percentage of BVAP to
13 allow me to look at the districts and what
14 percent -- so at the end there, to what
15 percentage of BVAP would be necessary to
16 have a functioning majority minority
17 district.
18 Q Okay. I want to ask you about
19 the turnout that was used.
20 A Yep.
21 Q And you may or may not know this,
22 because this may or may not have happened
23 with the computer science folks.
24 Did you use turnout by block to
25 disaggregate the election results down to

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1
2 the block level?
3 And if so, how did you
4 disaggregate the election results?
5 A Again, that was -- that -- yeah.
6 That was done by the data science team, but
7 what I do know is -- so the -- for
8 instance, the BVAP that was used the "any
9 part Black" as I explained there, to try to
10 create -- to try to recreate -- you know,
11 to try not to argue a point that doesn't
12 need to be argued in the data. So I used
13 the "any part Black" -- or, you know, the
14 "any part Black" is what was used to try to
15 create a -- numbers that are similar to
16 what has been done in the past here.
17 Q Instead of using ecological
18 inference as a step, you could have done
19 this -- I think you called it
20 "reaggregation analysis," which you would
21 take the election results by precinct,
22 disaggregate them down to the census block,
23 then recompile the result into the new
24 precinct to determine which candidate
25 prevails in the elections in the new

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1
2 districts being analyzed.
3 Why didn't you do this method?
4 A Because this method lets me look
5 and see who -- well, how Black voters are
6 actually voting.
7 Is it a Black candidate -- is it a
8 Black-preferred or a candidate getting the
9 majority of votes from Black voters is that
10 candidate actually the one winning?
11 In this -- so it's kind of a
12 combination of an RBV analysis so I can see
13 what percentage of the vote was cast by Black
14 voters, how strong is the support of this
15 candidate in this district, right?
16 So when we do an RBV analysis,
17 we're looking at the district to determine is
18 it polarized, and so here, I look at those
19 districts again to see their polarization, to
20 see if that there is, in fact, a candidate
21 that may be receiving the majority of votes
22 from Black voters, and see whether or not
23 that candidate is winning.
24 Q Okay. And how long did it take
25 you to run the EI version of this analysis?

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1
2 A Most of the individual analyses,
3 so when you compare one racial group for
4 one contest, take three to five minutes on
5 the computer. It would take me longer to
6 tabulate it and bring results into a table
7 as a -- as a general rule. When it was
8 state-wide, it would take longer. But most
9 of these districts, I think -- I think it
10 took about three to five minutes to
11 process.
12 Q And that's after you had the
13 code?
14 A Right. Yeah. So that's after.
15 That's after I've got the code running.
16 It's much faster to just -- to move through
17 the code -- move through code more quickly.
18 You run it, it runs for just a few minutes
19 on the computer before I've got a result
20 output, and then I have to check the
21 results and verify, you know, what happened
22 there and make sure it makes sense, make
23 sure something didn't go wrong.
24 Q Right. In order to get to that
25 three to five minutes, that -- you first

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1
2 have to write the code, right?
3 A Right.
4 Q And how long does that take?
5 A That would depend. An hour or
6 two.
7 Q Okay.
8 A I'm -- another few hours to --
9 well, understand I have got -- I've got
10 code that I've been using for over a
11 decade, and so it's not a case of I start
12 with a blank slate and start doing
13 something. It's a case of I have got
14 pretty good foundations to where I'm going,
15 I've been there before, and so I can
16 basically update what I've already got. So
17 it's actually a fairly quick process.
18 Q Okay. And then we discussed
19 before, before you can even run the code,
20 you have to compile the analysis and that
21 took many hours, some of that is unknown
22 because it was done by the computer science
23 folks, right?
24 A Yeah. So to compile, I'm talking
25 about building the datasets, what it's

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1
2 going to need. Yeah. That came before me.
3 (Whereupon, the court reporter
4 requested clarification.)
5 THE WITNESS: Building the
6 datasets was before me.
7 A I guess I didn't do that work,
8 that -- building the actual datasets wasn't
9 something that I did.
10 Q This analysis seems to be fairly
11 complicated.
12 Would you agree with that?
13 A The method itself, ecological
14 inference, is a fairly complex series of
15 calculations. Ecological regression is
16 actually pretty straightforward and
17 homogenous precinct analysis is downright
18 simple. Aggregating them all together
19 is -- I mean, it's something that could --
20 something that can be done in -- I mean, in
21 an Excel spreadsheet. It's -- I mean,
22 it -- there's complexity to it, but it's
23 not -- in the grand scheme of the data
24 science, it's nothing -- it's nothing
25 particularly difficult.

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1
2 Q Do you have any indication that
3 the legislature ran a similar ecological
4 inference to get to performance in the way
5 that you did?
6 A I don't know.
7 Q Okay. Turning to your turnout
8 analysis.
9 MS. THOMAS-LUNDBORG: If you
10 could turn to Table 4, which let me
11 see if I have the page. One second.
12 MR. GREIM: Hey, counsel, this
13 is Mr. Grime. While we're flipping,
14 we've going about another hour since
15 our last break. I don't know what
16 people are doing for the next series
17 of depositions, but I wonder if we
18 could take another short little break
19 now?
20 It won't be ten minutes, but
21 just take another five-minute break?
22 MS. THOMAS-LUNDBORG: We can do
23 a five-minute break.
24 CONCIERGE: Yeah.
25 MS. THOMAS-LUNDBORG: Okay.

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1
2 VIDEOGRAPHER: Okay. Thank you.
3 The time is 2:35 p.m. We're going
4 off the record.
5 (Whereupon, at 2:35 p.m., a recess
6 was taken to 2:41 p.m.)
7 (The proceeding resumed with all
8 parties present.)
9 VIDEOGRAPHER: The time is
10 approximately 2:41. We're back on
11 the record.
12 Q Okay. So I think if we could --
13 if we could pull up what is Exhibit 1,
14 Page 10, Table 4. And we'll just use this
15 table as a reference point for this section
16 on turnout.
17 To what extent in doing your
18 turnout analysis did the political science
19 literature which suggests that turnout is
20 higher in competitive races play a role in
21 how you viewed turnout in this section?
22 MR. GREIM: Objection to form.
23 Compound question.
24 A So I guess my focus on this
25 section, like especially this table, was to

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1
2 simply generate and see what the turnout
3 rates were to compare general -- so the
4 real question here. This goes to deciding
5 which contests were, I guess, most like the
6 even year general elections. So this is a
7 piece of the reasoning for why, for
8 instance, those even year runoffs don't
9 make a lot of sense to put too much credit
10 to. Because the electorate is so
11 different. And then just to get a feel for
12 the difference in actual turnout between
13 the groups. That was the real focus us
14 here.
15 Q Are you aware of the political
16 science literature which suggests that
17 turnout is higher in competitive races?
18 A Well, I think it makes sense.
19 Q Are you aware of the political
20 science literature which suggests Black
21 turnout is different when there is a viable
22 candidate of choice?
23 A Well, I think what's happening
24 here, and I think you have may even see a
25 little bit of it happening here is, when

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1
2 you look at the 2019 contest, 2019 general
3 in the runoff, you'll actually see that
4 Black turnout jumps from 40.4 to 50.2
5 percent. And in that instance, the
6 governor candidate, if it's a democrat who
7 won in Louisiana. It's a little bit of a
8 feat if you think about Louisiana as a
9 whole. So obviously, there's a little bit
10 of excitement happening in there.
11 But, again, that's great. That's
12 good. But the problem is, the candidate is a
13 White man. And so we're trying to focus on
14 these majority/minority districts. It's all
15 well and good to point and said, Hey, look at
16 that. The state elected the person the Black
17 voters preferred. But they also elected the
18 candidate, that White democrats preferred.
19 And in a near majority or in some of these
20 districts, the majority of White republicans
21 preferred.
22 So, yeah, turnout changes depending
23 on what candidates are available. And you
24 see it, right? What's the most important
25 election? President. When does turnout

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1
2 always spike? President. We see that. That
3 drives turnout for sure. There are things
4 when something is exciting, more people go to
5 it.
6 Q Okay. Did you base any of your
7 opinions in this section on political
8 science literature related to turnout?
9 A No. The opinions on this were
10 based on the turnout as it actually
11 occurred in this state and the best
12 practices I used at the Department of
13 Justice.
14 Q And is that based on any written
15 guidance at the Department of Justice?
16 A It was based on instructions from
17 attorneys there.
18 Q Okay. Small point, but looking
19 at Table 4, you used the term "general" and
20 "runoff." And is the general election on
21 the Secretary of State's website call the
22 "open primary"?
23 A Yes. They called it that. Yes,
24 they called it an open primary for some of
25 them. So it's tricky. Because the even

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1
2 years, right, that's a general election.
3 It -- anyway, yeah, they call it an open
4 primary. So the even-year generals are the
5 November even year. Even year runoff is
6 December even years. The general odd years
7 are October odd years. And the runoff odd
8 years are the November odd years.
9 At first I had them listed as odd
10 and even, but it same across very -- almost
11 confusing.
12 Q And do you have a sense in the
13 open primary how many candidates can run?
14 A Oh, theoretically, unlimited, I
15 suppose.
16 Q And do you have a sense of how
17 many have run in the races?
18 (Cross-talking.)
19 A Yeah. A number of them have only
20 two candidates, and a number had seven or
21 eight at least. I think one of them had
22 maybe a dozen.
23 Q Okay. All right. Could you walk
24 me through the data that you used to
25 compile Table 4. These are the elections

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1
2 that we saw before in Table 2; is that
3 right?
4 A Mostly. But if you notice, I
5 include '15, '11, and '7 in the odd-year
6 elections. It was just looking back at
7 turnout. I wanted to get a better idea.
8 The turnout in '19 and '23 were so
9 different. I was kind of curious. It is
10 usually like '19? Is it usually like '23?
11 So I wanted a better feel for the
12 turnout. It turns out that, in fact '23 and
13 '19 were both extreme years. One was perhaps
14 the lowest turnout. One was the absolute
15 highest turnout we've seen recently. So it's
16 a kind of an interesting dichotomy there.
17 But other than that, yeah, these
18 are the -- these are the turnout statistics
19 for the elections I analyzed. But, again, I
20 didn't have a runoff election in '22 or '20,
21 so those are just the numbers from the
22 Secretary of State website for those
23 elections, but there was not a '22 or '20
24 senate runoff.
25 Q Okay. If we could go --

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1
2 A Because leaving it blank makes it
3 look, you know, it just makes it look
4 incomplete.
5 Q If we could actually go back to
6 Table 2, top of Page 6. So you state that
7 you -- in Table 2, you don't list the 2015
8 election.
9 A No.
10 Q But you're saying that you
11 actually did analyze the 2015 election?
12 A No.
13 Q Okay.
14 A No. The turnout data, if you
15 look at Table 4 again, I pulled out the
16 turnout data for '15, '11, and '9, just the
17 turnout data. I didn't look at any
18 elections or anything like that because I
19 was looking at the turnout in 2019 and
20 2023, and those two, they were so
21 different, it led me to wonder what's
22 normal. Right? If they had been similar.
23 If it had been in both cases 35 and 33
24 percent, it would make sense that that's
25 how turnout is in those odd-year elections.

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1
2 But they were so different. The turnout in
3 '19 was almost double '23. And so that
4 made me wonder what's the difference. So I
5 just simply went and looked at the turnout
6 rates going back further to get a feel for
7 it. And, in fact, 2019 is an absolute high
8 water mark for turnout. And 2023 is a low
9 water mark.
10 Q Okay. So you looked at the
11 turnout in 2015. Why not actually look at
12 that election?
13 A Well, so to look at the turnout,
14 I go to the Secretary of State's website.
15 I open their file, and they literally
16 report these numbers. To analyze
17 additional elections is an entire other
18 debate.
19 So if I go back to 2015, questions
20 that you've brought up come back into mind.
21 Do I need to include -- do I need to look at
22 different VTDs? I need a whole new dataset
23 with these new elections with new breakdowns
24 by who is where, and then when I get back to
25 2011, 2009, these elections start to get so

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1
2 old that I don't know who voted, right. As
3 you pointed out, voter rolls are unreliable
4 the older they get. But here, these are just
5 totals that the state reports. And these
6 numbers don't change.
7 So the turnout data is still
8 accurate going back as far as they reported
9 because those are the totals. They're
10 affected by the voter file. They're not
11 affected by -- you know, I didn't look at it
12 at the precinct level. I didn't have to
13 break it down. I didn't have to spend any
14 time really processing anything. It just
15 lets me look at the turnout and get an idea
16 for what the trend is. I wanted to have an
17 idea, if the turnout was generally like 2023,
18 I wanted to know that. If it was generally
19 like '19, I wanted to know that. The fact
20 that those two are the extremes. I wanted to
21 know that. And if -- I figured it out and
22 thought it was valuable to conclude so we can
23 see how much the 2023 turnout -- or, I'm
24 sorry, the odd-year turn out fluctuates.
25 Q Do you know how the

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1
2 Black-preferred candidates performed in the
3 2015 state-wide elections?
4 A I saw that from Lisa Handley's
5 report in the Robinson case.
6 Q Okay. And what do you recall?
7 A As I recall in the general
8 odd-year election in 2015 one of them the
9 Black-preferred candidate won, and the
10 other two they lost.
11 Q Okay. And you just mentioned the
12 Lisa Handley report. Did you review the
13 Lisa Handley Robinson report?
14 A Yeah, I read it.
15 Q And did you read it prior to
16 writing your report in this case?
17 A Yes.
18 Q And did it inform any of your
19 opinions in this case?
20 A Not my opinions, but I did in
21 some cases kind of follow a little bit of
22 her lead. We'd actually -- so I've been --
23 you know, there's kind of a debate as to
24 how to present things. So, like, my final
25 conclusion table, that Table 7, is loosely

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1
2 based on what she used for her conclusion
3 in her rebuttal report.
4 Q Okay. I have another question
5 about elections, actually, analyzed. Did
6 you look at -- I see you have -- actually,
7 you don't have it in the turnout report.
8 But why didn't you look at the 2017
9 treasurer race in either turnout or your
10 elections analyzed?
11 A I guess -- well, I guess it's a
12 special election. Oh, yeah, yeah. I would
13 have had to have them build an entire new
14 dataset. Again, it's older than 2019,
15 brings into question issues of data for the
16 one additional election.
17 Q Got it. But you looked at 2016,
18 so why not look at -- the election in 2016,
19 so why not look at an election in 2017?
20 A I would have been more likely to
21 look at 2012 than 2017. Because 2016 has
22 value because it's an even-year election.
23 I can't stress that enough. That's the
24 electorate that elects Congress. 2019
25 doesn't; 2017 certainly doesn't; 2023

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1
2 doesn't.
3 I included '23 and '19 because they
4 were efficient. I could get five elections
5 with one data tranche. I could process them
6 and see how they perform. I got as many as I
7 good going back two full presidential cycles.
8 Q And then you mentioned that you
9 reviewed Lisa Handley's rebuttal report.
10 Do you recall when you reviewed
11 that?
12 A I don't remember when I first
13 reviewed it. Probably in March. It would
14 have been -- probably would have been
15 March. That would be my best guess.
16 Q But it was prior to you
17 submitting your report here?
18 A Correct, yeah. Yeah, absolutely.
19 So, I mean, if you look at my Table 7, my
20 Table 7 bears some of the shadow of what
21 her conclusion was in her rebuttal report.
22 Q And that was in the Robinson case
23 report that you reviewed?
24 A Her rebuttal report in Robinson.
25 Q And did you find that report on

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1
2 your own, or were you given that report?
3 A Oh, no, I think it was definitely
4 given the report.
5 Q Okay. In the second paragraph on
6 Page 10, you state that: For runoff
7 elections, comparisons were less reliable.
8 And I think you said that in
9 our -- in this deposition.
10 What was the basis for this
11 statement?
12 A Well, they're less reliable
13 because their turnout is so different. A
14 member of Congress will never be elected
15 with 17 percent of the people voting. And
16 so as a result, it's not a good idea to
17 look at an election where only 17 percent
18 of the people voted because you don't know
19 the difference in who voted. Even if you
20 break it down by race, you don't know who
21 those voters were. You don't how they
22 would have acted.
23 So it's just simply the thing of
24 there's far less turnout, and it's at a
25 different time than these general elections

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1
2 are going to be going forward. And so
3 they're less reliable in predicting even-year
4 November results.
5 Q And how many candidates, do you
6 know, were present in the runoff elections?
7 A Oh, in the runoff elections, it's
8 just two.
9 Q And how many candidates can be on
10 the ballot in November congressional
11 elections under the new system?
12 A November for the new system? I
13 think generally two, but there will be the
14 possibility, I think, of a third-party
15 candidate. So just like before with, you
16 know, how many people run for president?
17 There's generally going to be a -- yeah, I
18 think it's going to be a republican and a
19 democrat. But there's the potential for
20 third-party entrants: Libertarian, Green,
21 or whatever else.
22 Q And do you know how competitive
23 the various open primary elections or
24 general elections were that you analyzed?
25 A So, again, that kind of varies a

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1
2 little bit. There were examples where, you
3 know, there were multiple candidates who
4 were actually Black, both receiving
5 substantial Black support. There were
6 contests with multiple -- where a Black
7 candidate and a White candidate were both
8 receiving substantial Black voter support.
9 And there were contests without any Black
10 candidates at all receiving a lot of Black
11 voter support.
12 So it kind of varies, and it
13 varies, you know, largely with turnout. So
14 2019, again, things were much more
15 competitive than they were in 2023.
16 Q Do you know how competitive any
17 of the runoff elections were for any of the
18 elections that you analyzed?
19 A Again, they varied pretty widely.
20 So the -- well, so -- and even there,
21 there's a trick, right? And that is how
22 competitive was it state-wide, because it's
23 a statewide contest. And also how
24 competitive was it within the individual
25 districts. But the competitive -- excuse

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1
2 me. The competitiveness varies.
3 Q I would like to turn on the next
4 section of your report called "Election
5 Reaggregations" on Page 11. And I want to
6 spend some time with Table 5A.
7 A Okay.
8 Q Okay. Can you walk me through
9 how you created the data that you used for
10 Table 5A, or the data was created if it was
11 created by a computer --
12 A Yeah. So, basically, these are
13 the result of the ecological inference,
14 ecological regression, and homogenous
15 precinct analyses. So practically here,
16 the numbers being reported are all a result
17 of ecological inference. Essentially, I
18 multiplied a percentage of -- not unlike
19 what you described earlier. I multiplied a
20 percentage of support from each race by the
21 number of people from that race who voted.
22 Then I divide that by the total, and in
23 this case, I come u -- and then I add them
24 up by candidate. And I will add up
25 those -- add up the candidates and see how

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1
2 candidates who were supported by -- who
3 received substantial support from the Black
4 community, how they actually would have
5 fared.
6 Q Okay. Why do you report only the
7 Black-preferred candidates and not also the
8 other candidates in this table?
9 A Because the question is, can this
10 district elect a Black-preferred candidate,
11 not can it elect a White-preferred
12 candidate.
13 Q Do you know if you have to --
14 well, I'll back up for a second.
15 How are you determining whether
16 the Black-preferred candidate would be
17 elected by looking at this table?
18 A Well, in this case, the candidate
19 who received substantial Black voter
20 support, essentially, if they clear
21 50 percent of the vote, they would have
22 been elected, right? So really ultimately,
23 the question is going to be as to these
24 districts going forward, be able to provide
25 a majority number of the votes cast in a

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1
2 congressional election. Naturally, the
3 question.
4 And so this table here shows how
5 cohesive the Black voting community was
6 around the candidates that they were
7 supporting.
8 Q Now, is it your testimony -- I
9 just want to make sure I'm clear on this --
10 that a candidate would have to get over 50
11 percent to win any of these elections?
12 A Well, in Louisiana, there's a
13 majority vote requirement. So, I mean, I
14 understand that, you know, a lot of states
15 have, you know, a kind of plurality
16 requirement, but Louisiana requires a
17 majority to win.
18 Q Okay. So if they didn't win in
19 the election in Table 5A, and no one got
20 over 50 percent, what would happen?
21 A For one election and one election
22 only, would go to a runoff.
23 Q And how would your analysis in 5A
24 account for the fact that no one won and
25 the race ended up in a runoff?

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1
2 A Well, it will end up in a runoff
3 in 2024, but the real issue here is we're
4 trying to establish a district that
5 generally elects candidates of choice. If
6 it elects it one time in 2024, it didn't
7 generally anything.
8 This plan is going to exist until
9 2030 or 2032 the way lawsuits go, maybe 2034.
10 So the real question is, will this
11 district -- will these districts be able to
12 reliably elect candidates that Black voters
13 are voting for. That's what this table
14 shows.
15 (Cross-talking.)
16 Q Understanding that your focus was
17 on Black voters and it was necessary to get
18 over 50 percent, why did you exclude
19 candidates for whom less than
20 10 percent -- sorry. Strike that.
21 Why did you only look at
22 candidates that had over 20 percent of
23 Black votes?
24 A Because it's difficult to run an
25 analysis on a candidate who has a small

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1
2 percentage of the vote total. My option
3 would have been aggregate them all
4 together, but there's a bias issue that
5 comes along, and it tends to wash out
6 results, and you have a difficulty
7 interpreting all these combined candidates.
8 Here, what I tried to do -- and I
9 think there's actually one contest with a
10 Black candidate who got, I think it was 10.
11 I'd have to look. The cutoff wasn't actually
12 10 percent. I think the largest example was
13 a 6 percent candidate that wasn't included.
14 But in the majority of these cases, the top
15 candidate that wasn't included received half
16 a percent of the vote.
17 Q Okay. The table is labeled from
18 at least 10 percent of the vote?
19 A Correct.
20 Q So is the table inaccurate, the
21 title of the table inaccurate?
22 (Cross-talking.)
23 A No. Every candidate who received
24 more than -- who received a vote from at
25 least 10 percent of the Black voters is on

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1
2 that table. But in the vast majority of
3 the -- in the elections analyzed, very few
4 of them had more -- very few candidates
5 that I didn't include got more than 1
6 percent of the Black vote, and some of
7 them, there weren't any other
8 Black-preferred candidates. That's said as
9 a caveat, so there is an understanding that
10 there are some candidates that received
11 some percentage of the Black vote who
12 aren't included.

13 I mean, this includes, right, for
14 instance, the candidate on the other side,
15 right, that's running against them, if you
16 will, the White-preferred candidate,
17 potentially receives, you know, with the
18 crossover voting, 8, 9, 10 percent of the
19 vote, and so I was distinguishing that to
20 make it clear that I'm not including these
21 majority-preferred White candidates. I have
22 to pull them away.

23 And so I looked at the candidates,
24 and in every case, anyone who got over 10
25 percent of the Black vote was not a candidate

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1
2 who was a majority White candidate. So I
3 have to set that differentiation line
4 somewhere.

5 Q Okay. Now, when you removed or
6 didn't include candidates who received less
7 than 10 percent of the Black vote from the
8 numerator of your analysis, did you leave
9 them in the denominator when calculating,
10 or did you also remove them from the
11 denominator?

12 A If I removed them from the
13 denominator, I'd wind up with a hundred
14 percent for everything. I mean, that --
15 that seems like a -- that's confusing.

16 Q I'm saying that, for example, if
17 there is 10 percent of the vote missing, so
18 let's say we could actually go to an
19 example. Let's look at the senate race
20 2022. Do you know -- well, we can go to
21 the appendices, but would it surprise you
22 to find out that that Senate race 2022 had
23 four democrats in it?

24 A No, that seems reasonable.

25 Q Okay. So if we look at

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1
2 Appendix A, it's Page 22 of the report,
3 Appendix A?

4 A All right.

5 Q And so you report in Appendix A,
6 Chambers, who is a democrat, and Luke
7 Mixon, who is also a democrat. And we
8 looked at the analysis. It looks like
9 Chambers got 31.1, Mixon got 16.4 and if we
10 go back to Table -- sorry. If we go back
11 to Table 5A, we can see that you've
12 reported -- and I'm just looking at, I'm
13 sorry, D6 in SB8, you reported 14.7, which
14 seems to be the Chambers Mixon numbers.

15 And then in your appendices,
16 Appendix A, you have a republican listed,
17 and then you have this "Others" category.
18 And looking at the other category in
19 Appendix A, it looks like there's 15
20 percent of the Black vote. The other
21 candidates get 15 percent of the Black vote
22 and 7 percent of the non-Black vote.

23 How did you account for that 15
24 percent of the Black vote and 7 percent --
25 7 to 8 percent of the non-Black vote in

Page 149

1
2 Table 5A?

3 A Well, the majority of that
4 vote -- the majority of the remaining
5 candidates, I guess, I don't remember
6 exactly the percentages on each one of the
7 contests, but most of those others were
8 republicans. A few of them were democrats.
9 And none of them got very substantial
10 support among Black voters.

11 Q Except your Appendix A reports
12 the Black preference and other voter
13 preference, and it looks like the others
14 were Black-preferred get 12, 13 percent of
15 the support, and for others gets much less,
16 gets around 3 percent.

17 A Right.

18 Q So how did you reflect this
19 missing 12, 13 percent of the Black
20 preference, which is much higher than the
21 other preference, in Table A -- 5A.

22 Oh, you know what? It's actually
23 higher. We're looking at the wrong page in
24 the appendices. Let me get you to the
25 right page so we can all be in the same

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1
2 place.
3 If we look at Page 20. And there
4 you see the number's actually even much
5 higher. We get 14, 13, 13.9, 14.4, 15.7
6 preference of the Black voters in the Other
7 category, and for non-Black voters, we have
8 3.5, 3.3, 3.7, 4.8, et cetera.
9 How did you account for this
10 missing 15 percent of Black voters
11 preferring someone else?
12 A Well, generally, I just looked at
13 them and identified what their
14 alternative -- what the alternative
15 candidates they had available to them were.
16 Q And then you added that to any
17 columns in 5A?
18 A Now, I added the -- the two
19 candidates that received substantial
20 support together so I could talk -- in that
21 case, the 58.9 but plus 24.9 would be
22 potentially added together to create, if
23 you will, a super-candidate. So this -- a
24 piece of this here is based on the way that
25 Handley's report had been handled in

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1
2 Robinson where she hadn't actually added
3 them together.
4 The reason I added them together is
5 to give a reasonable chance to the candidate
6 who is receiving Black support. So in her
7 final analysis, she had a lot of candidates
8 and result that were showing 30 percent
9 support for a Black-preferred candidate. So
10 what I did here was my attempt was to
11 combine, because of the primary-ish nature of
12 these elections, to combine enough Black
13 voter support to create a candidate that
14 would have been viable.
15 Q Okay.
16 A So and I could report just the
17 top number. Look, Chambers got 58.9, and,
18 actually, if we put it together, Chambers
19 would have gotten probably about 45 or so.
20 I could have reported 45. But that's
21 disingenuous because Black democrats united
22 together, Black voters united together and
23 at least delivered 63.5 percent of the vote
24 to their preferred candidate in the 2022
25 Senate contest in District 2.

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1
2 Granted, they only delivered --
3 they delivered far less to an individual,
4 Chambers or Mixon, but my effort here was to
5 try to inflate that enough to be reasonable.
6 Where it was done before, prior, didn't even
7 bother to attempt that, used only the most
8 preferred candidate. Here, I tried to
9 neutralize that as best I could. And the
10 problem is if I tried to add in candidates
11 who received tiny -- half a percent of the
12 vote or 1 percent of the vote, I'd wind up
13 with a mess that means it's more error than
14 it is known data.
15 Q Okay. So then did you subtract
16 that percentage that is not being reflected
17 in 5A in the Black-preferred candidate from
18 any part of your analysis in 5A so that the
19 analysis would reflect that there is a
20 certain number of Black vote that is being
21 lost in 5A?
22 A Well, no. See, what's going on
23 here in, is those elections, just like in
24 future elections, there are Green
25 candidates that are pulling some of that

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1
2 Black support. There are Libertarian
3 candidates who are pulling more White
4 support, but perhaps are pulling Black
5 support. There are other party candidates
6 that are pulling as well. So I can't just
7 exclude those numbers.
8 Q Well, I will submit to you that
9 there were four democrats. You have
10 included the top two, but the other
11 democrats -- other democrat in this
12 category -- actually, it looks like there
13 were five -- are Vinnie Mendoza,
14 1.2 percent; Salvador Rodriguez, 1 percent;
15 Syrita Steib, 2.6 percent, who, together,
16 would get you to -- and I'm doing math on
17 the fly -- 4.8 percent of the vote.
18 Did you account for that 4.8 that
19 represents the democrats in any part of
20 your 5A analysis?
21 A No, because what's happening
22 there as well is you're bumping into -- so
23 these are candidates receiving votes, but
24 we don't know who is casting those votes.
25 And to try to break them down by estimates

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1
 2 creates a real problem. Part of the
 3 analysis when I'm looking at a candidate
 4 that's got 1 percent of the vote will
 5 almost always break down. And if EI works
 6 at all, it will report results that are
 7 unreliable.
 8 Q Okay. But so you're saying that
 9 you did not account for, in 5A, this 4.8
 10 percent that the democrats received in the
 11 race, which if I added 4.8 to 48.7, it
 12 looks like we would get over your
 13 50 percent plus 1 threshold. That didn't
 14 go to the republican; it didn't go anywhere
 15 in 5A.
 16 A Well, I mean, you're saying that
 17 4 percent, it may have worked very in
 18 District 6 once, maybe twice. but even that
 19 would --
 20 Q I'm just talking about this race
 21 that we're looking at --
 22 A I understand.
 23 Q -- 2022?
 24 A We're talking about my analysis.
 25 It would have been worked in D6, sure. And

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1
 2 this, to my point, just shows that SB8 is
 3 better as a racial gerrymander than
 4 Robinson, A3, or Price, because they would
 5 still fail, even with the hypothetical
 6 addition of these other tiny candidates.
 7 Q Okay. Let's turn to Table 5B.
 8 And that's on Page 12.
 9 Okay. Did you use the same data
 10 source for 5B as 5A?
 11 A Yes.
 12 Q Okay. And did you use the same
 13 analysis as you did for 5A as you did for
 14 5B?
 15 A Yeah, the methodology was the
 16 same.
 17 Q Okay. Now let's turn to 5C,
 18 which is on Page 13.
 19 Yeah, did you use the same data
 20 source in 5C as you used for 5A and 5B?
 21 A Yes.
 22 Q And did you use the same analysis
 23 as 5A and B?
 24 A Yeah.
 25 Q Okay. Now looking at the results

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1
 2 of 5C, you're using your 50 percent
 3 threshold to decide if there is a win here,
 4 correct?
 5 A Yes.
 6 Q And it looks like there is seven
 7 races across nine districts, so 63 races
 8 total; is that right?
 9 A Sounds about right, yeah, 63.
 10 Q Okay. And I looked at this, and
 11 I only found nine races where the vote --
 12 where the candidate gets less than
 13 50 percent of the vote across all the
 14 various plans.
 15 A Yeah. As we'd said, yeah, the
 16 runoff elections are a very different
 17 electorate than the general primary
 18 election, as you put it. And especially
 19 this table, in eight months, evaporates.
 20 Never happens again. And on top of --
 21 Q I thought you said that --
 22 A The turnout here, in the -- in
 23 the even-year contests here, at the bottom
 24 tier, they're even-year contests, their
 25 turnout is miniscule compared to the

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1
 2 turnout in the general, and even the other
 3 five, the turnout there is erratic. In
 4 2019, it's the highest -- yeah, 2019, it's
 5 the highest that an odd-year election has
 6 had for the last, is it 20 years? And in
 7 2023, it's the lowest turnout that we've
 8 had in 20 years.
 9 These elections aren't going to do
 10 a very good job of predicting the results in
 11 even-year congressional contests going
 12 forward. These are included because I looked
 13 at these elections, and I considered them,
 14 and it's a totality of what I analyzed. So
 15 we can see what's happening here. And the
 16 fact that Black-preferred candidates win so
 17 many of them reinforced my point that these
 18 elections aren't like others.
 19 We've got a contest -- in most
 20 probative elections we've had, a
 21 Black-preferred candidate wins one out of
 22 four. In these contests, they're 7 and 0.
 23 You think those elections look the same to
 24 anybody who looks at them? There's a
 25 different here.

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1
 2 And so these numbers, how it looks
 3 so consistent, these victory rates? Yeah, I
 4 see them. I agree that they're there. But
 5 they're not probative. They don't have much
 6 bearing on the question at hand. And that
 7 is, well, if -- sorry. On one of the
 8 questions at hand. The other questions, it's
 9 very useful for. SB8 without a doubt, the
 10 SB8-D6, is performing far better because of
 11 its increased BVAP, than Robinson, A3, or
 12 Price, even in these elections.
 13 And in these elections you can see
 14 the drop-off still in candidate support. So
 15 that's still present. But what's happening
 16 is, the very low turnout, perhaps due to high
 17 interest, I don't know, in December of even
 18 years, not odd years, seems to create a good
 19 opportunity for Black voters. The problem is
 20 that's not going to exist in about seven
 21 months.
 22 Q Okay. Now, I know you're saying
 23 the turnout is different in the races. I
 24 think we agreed before that these races
 25 have two candidates, and under the new

Page 159

1
 2 system, it will primarily be two candidate,
 3 correct?
 4 A Yeah. I think the new system
 5 will primarily be two candidates, you know,
 6 minus the little ones, and these, I think,
 7 are strictly two-candidate contests, yeah.
 8 Q And the prior tables that we
 9 looked at, 5A and 5B, some of those races
 10 had, I think you said, up to seven
 11 candidates?
 12 A Yeah. I think about half of them
 13 had multiple candidates. Yeah, absolutely.
 14 A good number of them had multiple
 15 candidate that were viable, more than what
 16 you would expect out of, say, a Green or
 17 Libertarian party candidate going forward.
 18 Q And in 5A and 5B, even though
 19 some of those races had seven candidates,
 20 you only show the top two?
 21 A No. I choose the two that
 22 received the overwhelming majority of Black
 23 support, as well as the share of -- the
 24 majority of the White support that would go
 25 to a future Black candidate.

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1
 2 Q Okay. But you excluded the ones
 3 where candidates got less than 10 percent
 4 as we've discussed.
 5 A Right. I exclude the ones where
 6 the candidates got very little support. If
 7 I was going include every candidate that
 8 got any support, then I have to sit there
 9 and say, okay, I'm only looking at
 10 republicans and democrats. And that's one
 11 of the things here when we start dealing
 12 with the VRA that people try to avoid is
 13 trying to boil down the contest for the
 14 Voting Rights Act district into a partisan
 15 politics issue. And so I'm trying to avoid
 16 that. That's why I said less than
 17 10 percent, because that's a casual way of
 18 removing those candidates that the White
 19 majority prefers.
 20 Q But you could have gotten
 21 reliable estimates down to 5 percent,
 22 right?
 23 A No, no. If you have a candidate
 24 that's only getting -- so here's the issue.
 25 Ecological regression is easier to explain,

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1
 2 but it's closely related to ecological
 3 inference. One of the issues is on drawing
 4 the line. If you can imagine a graph that
 5 starts down at the bottom left corner it's
 6 0 percent, you know, going across the
 7 bottom, it's the percent of, say, BVAP in
 8 the district. And then going up the side,
 9 there's percent of voter support for a
 10 candidate.
 11 And so, in theory, we should be
 12 able to plot what percentage -- so if we have
 13 a district that has no Black voters in it and
 14 no votes for, say, Jones, and then we have a
 15 district with a hundred percent Black voters
 16 and a hundred percent votes for Jones, you
 17 see there's a line starting to appear, that
 18 as I get more Black voters in the district, I
 19 have, more support for Jones, okay?
 20 The trick is, I don't really ever
 21 have a district with zero votes or a hundred
 22 percent votes for Jones. They're all towards
 23 the middle. And so when I had a candidate
 24 who only got 5 percent of the vote, my
 25 districts, my -- the biggest district I have

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1
2 for support for that candidate might be 15
3 percent of the vote in a specific precinct.
4 And as a result, my line, rather
5 than going all the way up to 100 -- starting
6 at zero or close to it and going all the way
7 up to hundred percent, my actual data is only
8 this long. It's only just a few inches long,
9 right? And so I'm extrapolating from the
10 data that I have and trying to make a claim
11 about something that's too far away.
12 So, no, when you have a candidate
13 who doesn't receive substantial voter support
14 in a number of precincts, 60, 70 percent, you
15 can't get reliable estimates out of it. You
16 can't run HPA at all because you need
17 districts of at least 80. ER becomes
18 completely unreliable, even EI becomes
19 completely unreliable if you don't have
20 substantial support for a given candidate in
21 at least a few precincts.
22 Q Are you aware that the political
23 science literature has found that
24 ecological inference is reliable down to
25 5 percent?

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1
2 A I am not aware of a study that
3 shows that, but I have probably done a
4 thousand ecological inference analyses.
5 And what I know is that when I get down
6 that low, I start building -- I start using
7 districts and results that don't make
8 sense. All of a sudden I'll have things
9 where ER and EI disagree. ER says it has a
10 high confidence in one of the candidates
11 and a low level of confidence in the other.
12 No, it becomes very messy when you
13 get down too low. You're starting to
14 extrapolate. You're using data that says,
15 okay, when a district has 5 percent of the
16 voters supporting Jacobs, we're trying to say
17 what would have happened if we had a district
18 that was a hundred percent Black. How many
19 of them would have voted for Jacobs? And the
20 problem is, is you're extrapolating. So
21 whatever political scientists are saying,
22 when you use a regression method or anything
23 like this and you extrapolate three times
24 away from your data, you've got a precinct
25 with 15 percent, you want to extrapolate all

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1
2 the way out to 100 percent? What's that?
3 That's six times -- that's six times the
4 width of your data you're extrapolating out.
5 You set yourself up for difficulty when you
6 extrapolate that far.
7 Q Okay. Let's go back to Tables 5B
8 and 5C. And if we could get them both up
9 on the screen. 5B is on Page 12, and 5C is
10 on Page 13.
11 Okay. So one race covered in
12 both of 5B and C is the Secretary of State
13 race in 2023.
14 Do you see that?
15 A I see it.
16 Q Okay. And in Table B, 5B, you
17 report that the Black-preferred candidate
18 lost. And I think we've already discussed
19 the Black-preferred candidate lost, but
20 it's still possible to lose at this stage
21 and make the runoff, correct?
22 A Again, for seven more months,
23 theoretically, yes; but in seven months,
24 no.
25 Q Just comparing what actually

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1
2 happened. So looking at 5B, it looks like
3 the Black-preferred candidate made it to
4 the runoff in 5C.
5 Do you see that?
6 A Oh, yeah. Yeah. That is
7 correct, yes, Collins made it. I mean,
8 she's present in every Secretary of State
9 contest, so all five of them the
10 Black-preferred candidate is -- is it Susan
11 Collins? And she's present in all five.
12 Q I believe it's Gwen Collins.
13 A Gwen Collins. Oh, my daughter is
14 named Gwen. How did I forget that? Yeah,
15 Gwen Collins is present in all five
16 Secretary of State contests that I
17 analyzed.
18 Q Okay. And so then in the runoff,
19 it looks like she easily is getting above
20 50 percent; is that correct?
21 A Okay. So, again, we're trying to
22 build a district that will generally elect
23 a candidate of choice for Black voters.
24 The hypothetical situation we're building
25 here may be true for the next six months.

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1
2 But in seven months, it's not true. It may
3 elect someone one time, but it won't
4 generally. That's the core of the issue
5 here.
6 Q Right. But 5B, as we've
7 discussed, doesn't account for,
8 potentially, a very fractured Black
9 electorate because there are so many
10 candidates because some of the smaller
11 candidates are removed from 5B.
12 A Well, the other trick is that,
13 what, Black cohesion ranges from the low
14 90s? Yeah, Black cohesion ranges --
15 there's a few in the high 80, but,
16 generally, Black cohesion seen here is in
17 the low to mid 90s. So 5 or 6 percent of
18 Black voters are voting for a non- --
19 they're voting for the candidate of choice
20 of White voters. So I think a substantial
21 number of those folks could be voting on
22 the other side. We have -- what percentage
23 was it? The votes that cross here? I
24 mean, so we've got -- these are odd years,
25 but 80 percent support for Wilson in to

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1
2 2023 for governor. Only 2.9 percent of
3 Black voters who voted for Landry. 14
4 percent voted the others.
5 Well, generally speaking, these
6 contests, they range for support maybe up to
7 92, 93. So the majority of those others
8 probably were going to vote, potentially for
9 a republican.
10 Q Right. But you didn't do the
11 analysis to tell us for sure who those
12 voters voted for?
13 A No. But your assertion that they
14 definitely would have voted for, for
15 instance, Collins, is --
16 Q My assertion is we don't know
17 looking at 5B.
18 A Looking at 5B, we get a very good
19 idea for where major candidates are going
20 to fall when democratic voters and Black
21 voters unite and vote for candidates of
22 choice. There is always room for error,
23 and somehow who got 1 percent of the vote
24 falls within the margin of error of any
25 analysis that's going to be done. That's

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1
2 the problem with looking at these tiny
3 candidates. Their margin of error will
4 overwhelm the amount of support that they
5 got, and that leaves us with an estimate
6 that is meaningless.
7 Q Right. But we can't see from 5B
8 and looking at 5C that between the general
9 and the runoff, there was some coalescence
10 of the Black vote around one candidate when
11 there were two candidates?
12 A No. The vast majority of Black
13 voters didn't even vote. So the people who
14 were coalescing before, didn't even show up
15 in the runoff. The people who were voting
16 for the White candidate, most of them
17 didn't show up for the -- 2/3 of the people
18 who voted didn't show up.
19 Q Right.
20 A And so we -- who voted there and
21 who didn't. And this entire line becomes
22 pointless in seven months. And we're
23 trying to build a district that will last a
24 decade.
25 Q Right. I think we've exhausted

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1
2 this topic.
3 Going to Page 14 -- actually, I'm
4 not going to ask that question. I want to
5 ask you a question. I have to find that
6 page. Give me one second.
7 Okay. I'm on Page 14, the middle
8 of the last paragraph.
9 A Okay.
10 Q You say: Here, the mistake of
11 using any part Black compounds the issue of
12 exaggerating the number of Black voters
13 available in a district.
14 Do you see that?
15 A Yes.
16 Q Okay. Are you aware that the
17 state's own voter file only has Black,
18 White, and other?
19 A Yes.
20 Q Okay. And the state's use of
21 Black is closer to any part Black than the
22 other Black categories used by the census,
23 correct?
24 A No, not necessarily. Again, as
25 you're pointing out, we don't know. When

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1
2 you get the option to select six racial
3 categories and an ethnicity, you wind up
4 with the possibility of a colossal collage
5 of groups. There are people who will mark,
6 literally, I am Black and White. Are they
7 Black? Are they White? Where do you put
8 them, right? You have to make a decision
9 there. No, the State's voter file is nice
10 because you get one choice. When you have
11 one choice, you're going to pick what you
12 identify as.
13 So in the voter file, when someone
14 identifies as I am Black, we can trust that
15 that is their self-identification. When
16 someone says, I am White. We can trust in
17 that. The problem is, when someone says I am
18 Black and White and Asian and Native
19 American, I don't know what their primary is.
20 I don't know how they identify. It's
21 possible they live on a resignation and they
22 really identify as Native American, but they
23 pay tribute to the rest of their nature, the
24 rest of their -- their cultural backgrounds.
25 But now when we try to break this

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1
2 down, you see, it's an artifact to try to
3 create a majority minority district and say,
4 okay, I need a district that is majority
5 Black. If we're going to use the census
6 data, we've got to come up with a way of
7 quantifying that. In the 1990s, the
8 Department of Justice got beat up over this
9 issue because of the way that Hispanic, as an
10 ethnicity, interacts with Black.
11 The problem is when you start
12 adding these groups up, if you use any part
13 Black and you've got Hispanic and you've got
14 everyone else, you add those up, you get like
15 112 percent because there's so many folks who
16 are Black and Hispanic. And those groups,
17 although they're marked as two separate
18 categories, definitely overlap.
19 That's why DOJ came up with what I
20 described as DOJ Black earlier in the
21 document was to get away from this ridiculous
22 situation where they've got more than a
23 hundred percent of the people. And when we
24 look at Louisiana, sure, we said, okay, but
25 the Hispanic community is not huge here.

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1
2 It's like 1.2, 1.3 percent. That's enough to
3 flip some of these elections back the other
4 direction.
5 And the real issue here is -- and
6 this is like the issue of this paragraph and
7 the focus here is that none of this is really
8 about BVAP. BVAP is a good proxy for, do I
9 have a majority minority district? How many
10 people of this racial group do I have? Is it
11 majority Black? That's great. Okay. That's
12 step one. But that's only step one. That's
13 the easiest step is build a map that majority
14 Black. All right?
15 The geographer DOJ produced those
16 maps all the time. The difficult part, and
17 the part that needs to be done, the part
18 that's critical is, now you have to take that
19 map. You have to analyze that map. You've
20 got to look at the turnout. You have to ask
21 yourself, who's actually voting? A district
22 could be 78 percent Black and not elect Black
23 for candidate of choice if that community
24 does not vote, if that community is not
25 cohesive.

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1
2 Now, you would probably be hard
3 pressed to find a district like that, but
4 what matters is not a percent BVAP. What
5 matters is who actually shows up to vote.
6 And in this case, the people who are showing
7 up to vote, will overwhelmingly defeat
8 candidates that receive the majority of votes
9 from Black voters.
10 Q Okay. Staying on Page 14, the
11 last paragraph, you state: It's been my
12 experience that a district with BVAP
13 between 55 percent and 60 percent will
14 reliably elect the candidate supported by
15 the most Black voters.
16 Do you see that?
17 A Yes.
18 Q Is this a Louisiana-specific
19 experience that you're referencing here?
20 A No, not at all. Generally, so,
21 again, I've been involved in too many of
22 these maps to count. And, generally, as I
23 was working through with the geographer at
24 DOJ, when we finally got a map that worked,
25 it was somewhere in the range of 55 to 60

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1
2 percent.
3 Now, we did, in fact, make maps
4 that had less. You can see District 2, SB8
5 District 2. It's 51 percent, and it seems to
6 be electing pretty darn well, right? 51
7 percent works. That doesn't mean it works
8 everywhere. The real thrust of this is that
9 once you see BVAP, BVAP is just the first
10 step of the geographer oftentimes bring me a
11 majority Black district. It's 53, 54
12 percent. And, generally, those districts
13 would fail.
14 When I was getting districts that
15 were 50 and certainly at 60 percent, they
16 overwhelmingly performed. I'm not saying
17 there weren't any that didn't perform at 60.
18 And I'm not saying that there's not some that
19 perform below 55. I'm just simply saying
20 that generally speaking, when a district is
21 somewhere between 55 and 60 percent, it will
22 reasonably elect minority candidates of
23 choice.
24 Q So you agree that the analysis
25 has to be district-specific based on that

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1
2 specific geography and population?
3 A Well, I mean, the best way to
4 analyze these elections is to find an
5 election that's comparable, you know, the
6 best election you can come up with, Senate
7 in this case, and to break them down,
8 right, into the district that exists, to
9 look at the demographics in the districts
10 as it would have existed as best you can
11 estimate, and to look at how those
12 elections would have come out. And we look
13 and see how many of those elections were
14 won.
15 And not just -- you know, not just
16 wins and losses, but also margins. If you
17 have a lot of 50.1 victories and 49.9 losses,
18 you need to look at them carefully and see,
19 you know, what's really going on here.
20 But, yes, generally, you -- the
21 best analysis is going to depend, looking at
22 the district of interest, looking at the
23 demographics of the district, and looking at
24 elections that were as close to the level of
25 the election of interest as you can get.

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1
2 Q Okay. I would like to look at
3 Table 7 on Page 15 quickly.
4 How are you determining whether a
5 candidate won or lost in this table?
6 A No, these numbers just come from
7 the -- the previous tables, the 5A, 5B, 5C.
8 Q Okay. And looking at this, are
9 you using, for example, for Secretary of
10 State where the candidate won the runoff,
11 how are you treating that in this table?
12 A Well, then, in the runoff -- oh,
13 I didn't include the runoffs here. Again,
14 the runoffs don't do a good job of
15 predicting what's going to happen in
16 November of even years. And that's all
17 that will matter in seven months. On top
18 of that, the turnout is so much lower that
19 the electorate itself is just simply
20 different. It's a different group of
21 voters. Voting, granted, for two
22 candidates, but in this instance, the only
23 question is -- and this table here is the
24 closest table I have to the table that was
25 presented by Lisa Handley in the Robinson

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1
2 case in her rebuttal. She went through and
3 said, you know, how would it perform at,
4 you know, to get 55 percent of the vote and
5 so on.
6 And this here just breaks down how
7 they would have performed with this percent
8 BVAP rather than looking at the results I
9 looked at BVAP results. And the goal here
10 was to you show what percentage of BVAP is
11 going to result in a performing district.
12 And you can see even 60 percent, SB8, best of
13 these districts by far, may still be failing
14 to generally elect a referred Black
15 candidates.
16 Q And how did you generate the
17 turnout estimates used to calculate the
18 percent needed to win?
19 A The turnout estimates? Usually
20 it's over 50 percent is usually the percent
21 needed to win. Is that -- I don't -- I may
22 be missing something here.
23 Q Okay. So I understand that the
24 estimates of voter support for various
25 candidates is in your appendices.

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1
 2 A Right.
 3 Q But how did you generate those
 4 turnout estimates? Like what formula and
 5 process did you use to generate your
 6 turnout estimates here?
 7 A Okay. So these are BVAP
 8 estimates, not turnout.
 9 Q Okay. And did you report the
 10 kind of underlining BVAP estimates
 11 anywhere? Because I'm assuming what's
 12 going into the loss/win is the -- your
 13 numbers of like, 50 percent et cetera that
 14 you got from 5B and 5C, but given that we
 15 only have the Black-preferred candidate and
 16 not all candidates, have you reported what
 17 the estimate numbers are for all candidates
 18 anywhere?
 19 A Oh, for individual candidates?
 20 No. No. This just -- this mirroring
 21 almost exactly what Lisa had done. Just
 22 simply shows -- and, actually, because I'm
 23 combining multiple candidates, this does a
 24 better job of showing how these districts
 25 will perform. And looking -- for instance,

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1
 2 I'm looking at SB8, even if you claim
 3 multiple wins here, you would need to claim
 4 five, six at a bare minimum to even propose
 5 that this district is performing. It's
 6 just simply not in the data.
 7 MS. THOMAS-LUNDBORG: I think I
 8 need two minutes, and I might be
 9 ready to turn over the witness. I
 10 think the state had a couple of
 11 questions. Just give me a second.
 12 VIDEOGRAPHER: May I take us off
 13 the record?
 14 MS. THOMAS-LUNDBORG: Sure. But
 15 it's only going to be two minutes.
 16 Don't anyone go anywhere.
 17 VIDEOGRAPHER: Fair enough.
 18 Thank you.
 19 The time is 3:42. We are going
 20 off the record.
 21 (Whereupon, at 3:42 p.m., a recess
 22 was taken to 4:46 p.m.)
 23 (The proceeding resumed with all
 24 parties present.)
 25 VIDEOGRAPHER: The time is --

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1
 2 excuse me we are going off the record
 3 today at 4:46 p.m., and this
 4 concludes today's testimony given by
 5 Dr. Ben Overholt. The total number
 6 of media used was three and will be
 7 retained by Veritext New York.
 8 Thanks, everyone.
 9 (Time noted: 4:46 p.m.)
 10
 11
 12
 13

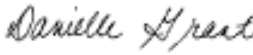
 14 BENJAMIN OVERHOLT
 15
 16 Subscribed and sworn to before me
 17 this _____ day of _____ 2024.
 18
 19

 20 NOTARY PUBLIC
 21
 22
 23
 24
 25

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1
 2 CERTIFICATE
 3 STATE OF NEW YORK)
 4)ss:
 5 COUNTY OF RICHMOND)
 6 I, DANIELLE GRANT, a Certified
 7 Shorthand Reporter and Notary Public
 8 within and for the State of New
 9 York, do hereby certify:
 10 That BENJAMIN OVERHOLT, the witness
 11 whose deposition is hereinbefore set
 12 forth, was duly sworn by me and that
 13 such deposition is a true record of
 14 the testimony given by such witness.
 15 I further certify that I am not
 16 related to any of the parties to
 17 this action by blood or marriage and
 18 that I am in no way interested in
 19 the outcome of this matter.
 20 In witness whereof, I have hereunto
 21 set my hand this 5th day of April,
 22 2024
 23 
 24 DANIELLE GRANT
 25

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1
 2 DEPOSITION ERRATA SHEET
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1
 2 DEPOSITION ERRATA SHEET
 3
 4 DECLARATION UNDER PENALTY OF PERJURY
 5 I declare under penalty of perjury
 6 that I have read the entire transcript of
 7 my Deposition taken in the captioned matter
 8 or the same has been read to me, and
 9 the same is true and accurate, save and
 10 except for changes and/or corrections, if
 11 any, as indicated by me on the DEPOSITION
 12 ERRATA SHEET hereof, with the understanding
 13 that I offer these changes as if still under
 14 oath.
 15 Signed on the _____ day of
 16 _____, 2024.
 17 _____
 18 BENJAMIN OVERHOLT
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 21 SIGNATURE: _____ DATE: _____
 22 BENJAMIN OVERHOLT
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days

after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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Exhibit 3

From: [Greim, Edward D.](#)
To: tthomaslundborg@law.harvard.edu; [Brennan Bowen](#); [Cassie Holt](#); snaifeh@naacpldf.org; [Tyler, Jackson](#); [Alyssa Riggins](#); [Phil Gordon](#); [Jason Torchinsky](#); Paul@paulhurdlawoffice.Com; [Mueller, Matthew](#); [Jones, Carey](#); [Badell, Rebekah](#); [Aguinaga, Ben](#); [Brungard, Morgan](#); [Graves, Katie](#); [Badell, Rebekah](#); [Kim Acres](#); [John Walsh](#); [Phil Strach](#); [Tom Farr](#); [Zack Henson](#); [Chakraborty, Amitav](#)
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Subject: RE: Callais v. Landry: Overholt Deposition
Date: Friday, April 5, 2024 9:29:37 AM
Attachments: [EcompareCODE2019gov.txt](#)
[EcompareCODE2019govRO.txt](#)
[EcompareCODE2019ltg.txt](#)
[EcompareCODE2019sos.txt](#)
[EcompareCODE2019sosRO.txt](#)
[EcompareCODE2019trs.txt](#)
[EcompareCODE2020sen.txt](#)
[EcompareCODE2022SEN.txt](#)
[EcompareCODE2023ag.txt](#)
[EcompareCODE2023atgRO.txt](#)
[EcompareCODE2023gov.txt](#)
[EcompareCODE2023ltg.txt](#)
[EcompareCODE2023sos.txt](#)
[EcompareCODE2023sosRO.txt](#)
[EcompareCODE2023trs.txt](#)
[EcompareCODE2023trsRO.txt](#)
[EcompareCODE2016sen.txt](#)
[EcompareCODE2016senRO.txt](#)
[EcompareCODE2018SOS.txt](#)
[EcompareCODE2018SOSro.txt](#)
[EcompareCODE2019atg.txt](#)

Alora, here are the code sets.

Eddie

Edward D. Greim

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Sent: Thursday, April 04, 2024 6:24 PM

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Subject: Callais v. Landry: Overholt Deposition

Dear Eddie,

It is clear from today's deposition that we did not receive the full dataset used by Dr. Overholt in rendering his analysis. Please turn over the database used by Dr. Overholt along with the code.

Thank you,

Alora

T. Alora Thomas-Lundborg
(pronouns she/her/hers)

Strategic Director of Litigation and Advocacy

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**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA, MONROE DIVISION**

PHILLIP CALLAIS, LLOYD PRICE,
BRUCE ODELL, ELIZABETH ERSOFF,
ALBERT CAISSIE, DANIEL WEIR,
JOYCE LACOUR, CANDY CARROLL
PEAVY, TANYA WHITNEY, MIKE
JOHNSON, GROVER JOSEPH REES,
ROLFE MCCOLLISTER,

Plaintiffs,

v.

NANCY LANDRY, in her official capacity
as Secretary of State for Louisiana,

Defendant.

Civil Action No. 3:24-cv-00122

Judge David C. Joseph

Circuit Judge Carl E. Stewart

Judge Robert R. Summerhays

[PROPOSED] ORDER

The Court having considered the *Robinson* Intervenors' Motion To Reconsider Denial of Leave to Present Responsive Expert Testimony, it is hereby ORDERED that the motion is GRANTED and the *Robinson* Intervenors are permitted to produce a report by Dr. Lisa Handley responsive to Dr. Overholt's report and to present expert testimony at the consolidated hearing.

IT IS SO ORDERED. This ____ day of _____ 2024.

Judge Carl E. Stewart
United States Circuit Judge

Judge Robert R. Summerhays
United States District Judge

Judge David C. Joseph
United States District Judge