

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(Northern Division)**

BALTIMORE COUNTY BRANCH OF THE  
NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE,  
*et al.*,

Plaintiffs,

v.

BALTIMORE COUNTY, MARYLAND,  
*et al.*,

Defendants.

Civil Action No. 1:21-cv-03232-LKG

**DEFENDANT BALTIMORE COUNTY'S SUPPLEMENTAL BRIEF IN SUPPORT OF  
ITS MOTION FOR APPROVAL OF PROPOSED REDISTRICTING MAP  
AND TO MODIFY PRELIMINARY INJUNCTION**

Dated: March 17, 2022

Respectfully submitted,

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Defendant Baltimore County, Maryland (“Baltimore County” or the “County”), pursuant to Federal Rules of Civil Procedure 7 and 65, and in accordance with the Court’s March 11, 2020 Order, ECF 62, hereby submits this Supplemental Brief in Support of its Motion for Approval of Proposed Redistricting Map and to Modify Preliminary Injunction, ECF 57, and supporting Exhibits. Baltimore County also incorporates herein the arguments set forth in its Opposition to Plaintiffs’ Motion for Preliminary Injunction, ECF 34, and related exhibits, Notice of Supplemental Authority, ECF 42, Notice Regarding Witnesses, ECF 45, and related exhibits, the exhibit provided to the Court from the February 15, 2022 hearing, ECF 52, arguments of counsel and testimony during the February 15, 2022 hearing, ECF 54, and Response to Plaintiffs’ March 10, 2022 Status Report, ECF 61.

### **INTRODUCTION**

In front of the Court are two proposed redistricting maps: One the result of careful deliberations by a legislative body that has extensive knowledge about its own constituency and reflecting the values and needs of its people, and the other the impermissible result of predominantly race-based redistricting achieved by indiscriminately moving voters to different districts and resulting in the same odd shapes repeatedly rejected by the Supreme Court. The former is entitled to deference. Indeed, the Supreme Court has frequently explained that the primary responsibility for redistricting lies with the legislature, and that body must be given adequate time and opportunity to do its job since it is in the best position to draw electoral districts. The Supreme Court’s dictates are particularly important here. As explained in County Council Chairman Julian E. Jones Jr.’s Declaration, should the Court adopt the Council’s new proposed redistricting map, a Black Democrat stands ready to run as Council Member for District 6—a district that Plaintiffs have completely ignored, but has the fastest-growing Black population in the

entire County, and whose current Council Member, Cathy Bevins, a white Democrat, has decided not to run for another term.

In contrast, Plaintiffs' proposed alternate map is not entitled to *any* deference. Plaintiffs' expert, William Cooper's tinkering with the County Council's new proposed redistricting map has produced an odd shape that is the result of a numbers-driven approach aimed solely at moving Black voters around without regard to their needs, wants, or interests. It is also based on citizenship data that courts nationwide, the Census Bureau, and Cooper himself, have disavowed as wholly unreliable and should be disregarded for redistricting purposes.

Against this backdrop, Plaintiffs' extraordinary and unsupported request—that the Court reject the Baltimore County Council's proposed redistricting map and adopt their racially-gerrymandered version instead—cannot be sustained. The Court should approve of the Baltimore County Council's proposed redistricting map, at which time, the Baltimore County Council stands ready to introduce and pass a bill legislating it.

### **FACTUAL BACKGROUND**

In its February 22, 2022 Memorandum Opinion and Order (the "Order"), the Court granted the Plaintiffs' Motion for a Preliminary Injunction, preliminarily enjoining the County from conducting elections pursuant to its adopted redistricting map set forth in Bill 103-21, and directing the County to adopt and file a new redistricting map including "either an additional majority-Black County District, or an additional County District in which Black voters otherwise have an opportunity to elect a representative of their choice," while still complying "with the requirements of the Voting Rights Act, 52 U.S.C. § 10301, and any other relevant constitutional and statutory requirements." ECF 55 at 23.

In accordance with this directive, the seven members of the Baltimore County Council submitted a proposed redistricting map to this Court on March 8, 2022. ECF 57 & 57-1. This new redistricting map not only maintains District 4 as a solid majority-Black District, but also materially strengthens District 2 by providing meaningful opportunity for Black voters to elect their preferred candidates. This improvement in District 2's status, making it a stronger crossover district and now, a coalition district, also removes any threat of a white bloc voting that may defeat Black voters' candidates of choice.

The new proposed redistricting map is the culmination of work by the Councilmanic Redistricting Commission and the Baltimore County Council, which began in March 2021, and included (i) the appointment of the five-member bipartisan Councilmanic Redistricting Commission, (ii) multiple public hearings, and (iii) a review of written testimony by concerned citizens. *See* County Council Redistricting Process Information, Baltimore County Legislative Branch, <https://www.baltimorecountymd.gov/countycouncil/redistricting.html> (last visited March 17, 2022). Indeed, during the redistricting process, Council Chairman Julian E. Jones, Jr. conducted two town hall meetings and spoke with five community groups during the redistricting process outside of the Commission's proceedings. ECF 45-3 at ¶ 6.

As the proposed redistricting map reflects and the Supplemental Declaration of Dr. James G. Gimpel has explained, the new District 2 would contain a Black voting age population percentage of 41.2%, with the minority voting age population constituting 54.2% of the total voting age population. ECF 57-6 at ¶ 11; *see id.* at Table 2. Accordingly, the majority of the voting population in District 2 will be minorities. This "minority-majority" will be further bolstered by increased cross-over voting. Along with enhancing District 2 as a crossover district in which Black voters will be able to elect their candidates of choice, including minority candidates preferred by

the Black voting age population, the proposed redistricting map retains District 4 as a definitively “safe” majority-Black district at 61% (whereas Plaintiff’s submission does not). *Voinovich v. Quilter*, 507 U.S. 146, 154 (1993); *see also* ECF 60.

The County’s redistricting map also comports with traditional redistricting principles, including compactness and contiguity. Thus, the County’s map reflects the considered policy choices of the Council’s seven members in seeking both to comply with the Court’s Order to create an additional district that affords Black voters an “opportunity to elect a representative of their choice and that comports with the requirements of the Voting Rights Act, 52 U.S.C. § 10301, and any other relevant constitutional and statutory requirements” and otherwise allows the Council to carry out their legislative judgments as to how best to craft the councilmanic districts.

### **ARGUMENT**

The Court should approve Baltimore County’s proposed redistricting map because this legislative plan provides “an additional County District in which Black voters otherwise have an opportunity to elect a representative of their choice *and* that comports with the requirements of the Voting Rights Act . . . and any other relevant constitutional and statutory requirements.” ECF 55 at 23 (emphasis added). The County has presented a legislatively constructed map that satisfies the Court’s directives and the applicable legal standards, including the requirements of Maryland law. That map is entitled to great deference and should be approved. No comparison to or consideration of the Plaintiffs’ alternative and race-based map is warranted.

#### **I. THE COUNTY’S NEW PROPOSED REDISTRICTING MAP IS ENTITLED TO DEFERENCE.**

The Court’s inquiry should begin and end with the County’s map. Where, as here, the Court has properly given the appropriate legislative body the first opportunity to devise an acceptable plan, “the court’s ensuing review and remedial powers are largely dictated by the

legislative body's response." *McGhee v. Granville Cty., N.C.*, 860 F.2d 110, 115 (4th Cir. 1988). The Court need only evaluate whether the County's proposed plan is legally acceptable. In making this evaluation, no comparison to the Plaintiffs' proposed alternative is warranted. *United States v. Vill. of Port Chester*, 704 F. Supp. 2d 411, 453 (S.D.N.Y. 2010) (explaining court is required to defer to defendant's new plan and "evaluate only whether it is legally acceptable" and need not consider whether plaintiff's plan "is better."); *United States v. Euclid City Sch. Bd.*, 632 F. Supp. 2d 740, 750 (N.D. Ohio 2009) ("When evaluating a defendant's proposal, a court is not to inquire whether the defendants have proposed the very best available remedy, or even whether the defendants have proposed an appealing one.").

Because the County has presented a legally acceptable plan reflecting the Baltimore County Council's considered policy choices, the Court should "accord great deference" to that plan and the "legislative judgments" it reflects about how best to design a councilmanic map. *McGhee*, 860 F.2d at 115; *Goosby v. Town Bd. of Town of Hempstead, N.Y.*, 981 F. Supp. 751, 755 (E.D.N.Y. 1997), *aff'd*, 180 F.3d 476 (2d Cir. 1999) (explaining a legislative plan is one that reflects the considered policy choices and legislative judgment of a body and warrants greater deference than a judicial plan).

Indeed, the Supreme Court "has *repeatedly* held that redistricting and reapportioning legislative bodies is a *legislative task* which the federal courts should make every effort not to preempt." *Wise v. Lipscomb*, 437 U.S. 535, 539 (1978) (emphasis added); *Chapman v. Meier*, 420 U.S. 1, 27 (1975) ("We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court."); *Connor v. Finch*, 431 U.S. 407, 414–15 (1977) ("We have repeatedly emphasized that 'legislative reapportionment is primarily a matter for legislative consideration and

determination,’ for a state legislature is the institution that is by far the best situated to identify and then reconcile traditional state policies within the constitutionally mandated framework of substantial population equality.”) (internal citation and footnote omitted); *White v. Weiser*, 412 U.S. 783, 795 (1973) (“We have adhered to the view that state legislatures have ‘primary jurisdiction’ over legislative reapportionment.”); accord *Grove v. Emison*, 507 U.S. 25, 34 (1993) (“[W]e renew our adherence to the principle[] . . . [that] the Constitution leaves with the States primary responsibility for apportionment of their federal congressional and state legislative districts.”).

The Supreme Court’s guidance on this point is especially important where, as here, the Baltimore County Council has redrawn a map that will allow a Black Democrat to run for the Council’s District 6 seat, which will be vacated by white Democrat Cathy Bevins. **Exhibit A, J.** Jones Decl. ¶ 8.

## **II. THE COUNTY’S NEW PROPOSED REDISTRICTING MAP FOLLOWS THIS COURT’S DIRECTIVE AND COMPLIES WITH THE VOTING RIGHTS ACT, AS WELL AS MARYLAND LAW.**

The County’s proposed redistricting map appropriately reflects the considered policy choices of the Council and its seven members and complies with the Order, the Voting Rights Act, the Equal Protection Clause, and Maryland law.

### **A. The Substantially Stronger Crossover and Coalition District 2 is an Additional District in Which Black Voters Will Have an Opportunity to Elect a Representative of Their Choice.**

The Court properly and correctly ordered that the *County* be the party to prepare a new redistricting map. ECF 55 at 23. The County’s proposed redistricting map does exactly as the Court directed. Under the proposed redistricting map, District 2—although already a crossover district—will now function as a much stronger crossover *and* coalition district.

A “crossover district” is one in which “the minority population, at least potentially, is large enough to elect the candidate of its choice with help from voters who are members of the majority and who cross over to support the minority’s preferred candidate.” *Bartlett v. Strickland*, 556 U.S. 1, 13 (2009).<sup>1</sup> A coalition district is one “in which two minority groups form a coalition to elect the candidate of the coalition’s choice.” *Id.* (emphasis added).

Here, the new District 2 proposed by the County is *both* a “crossover district” and a “coalition district.” It is a coalition district because now, Black voters, along with other minorities, make up 54.1% of the voting population. These numbers contrast with the previously adopted District 2, in which the Black voter population, in addition to other minorities, made up only 44.53% of the total voter population. ECF 58-2. The proposed redistricting map removes the white-voter majority and in so doing, strengthens the potential minority-group coalition within District 2. Simply put, the County has created a District with a non-white majority that can (and likely will, as recent elections show) overcome any purported white bloc voting effort to defeat Black voters’ candidates of choice—if any such effort exists at all. When these changes are considered alongside the increased likelihood of (already extant) cross-over voting, the County has remade District 2 with a majority that will help ensure Black-preferred candidates win elections.

The Supreme Court has also explained that crossover districts “can be evidence . . . of diminished bloc voting under the third *Gingles* factor or of equal political opportunity under the § 2 totality-of-the-circumstances analysis.” *Bartlett*, 556 U.S. at 24 (emphasis added) (explaining

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<sup>1</sup> The Court further describes a “crossover district” as one in which, “minority voters might be able to persuade some members of the majority to cross over and join with them.” *Id.* at 14. Notably, this is not the case here. Rather, as the County explains, there will be a cross-over of white, Jewish Democrat voters. Accordingly, it is unlikely that Black voters will need to “persuade” these members of the majority to cross-over.

“States can—and in proper cases should—defend against alleged § 2 violations by pointing to crossover voting patterns and to effective crossover districts.”). The County submits that this is a case in which it is appropriate to consider what will be an effective coalition *and* crossover district, providing Black voters the opportunity to elect a representative of their choice. In the light of this change, Plaintiffs can no longer argue that they have proven, or are substantially likely to prove, the third requirement in *Thornburg v. Gingles*, 478 U.S. 30, 51 (1986) (“[T]he minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it . . . to defeat the minority’s preferred candidate.”).

Given the redrawn District 2, the substantial Black voting age population in District 2 will not only have the opportunity to elect a representative of their choice, but—with coalition support from other minority voters, as well as cross-over support from white Democrats—will be able to elect Black-preferred candidates who are also Black. ECF 57-6 at ¶ 18. The recent elections of Black candidates to state assembly seats in districts with Black populations as low as 21% support this view ((District 12, Delegate Terri L. Hill) and 30% (District 8, Delegate Carl W. Jackson), and in adjacent Howard County, 26% (District 13, Delegate Frank Turner retired in 2018 after 24 years)). *Id.* The Black population in the redrawn District 2 far exceeds these numbers. *Id.* Also, the total minority population will enable the Black voting age population to elect its candidates of choice by giving minorities a definitive majority in District 2. *Id.* White voters, especially the many Democrats in District 2, will likely cross over (even without persuasion from Black voters) to support Black-preferred candidates, *id.*, just as they did for former school board member Cheryl Pasteur.

Plaintiffs’ refusal to accept the Council’s redrawn map ignores the significance of the fact that the majority of voters in the redrawn District 2 will be minorities and that, of those minorities,

the Black-voting population is 41.2% of the voting population in District 2.<sup>2</sup> *Id.* ¶ 18. Not only does this redrawn map make the Black-voting population the overwhelming majority of the coalition, but this percentage is much higher than the total percentage of Black voters in the entire County—currently, 28.62%. *See Johnson v. De Grandy*, 512 U.S. 997, 1013 (1994) (explaining districts drawn “in substantial proportion to the minority’s share of voting-age population” weigh *against* finding of vote dilution). On the other side, white voters in the redrawn District 2 will now only constitute 45.8% of the District’s voting age population despite representing over 55.12% of the County’s total voting age population. ECF 57-6 at 10, Table 2. Many of these white voters are Democrats who will cross over to support the Black community’s candidates of choice. **Exhibit B**, Suppl. Gimpel Decl. ¶ 5.

**B. The Plaintiffs’ Alternative Map Should be Summarily Rejected Because it Uses Unreliable Citizen Voting Age Population Data and Incorrect Math.**

The population numbers presented by Plaintiffs in their status report differ from the County’s, ECF 57-4, because Plaintiffs use, for the first time, the statistic “citizen voting age population” (“CVAP”). *See* ECF 60. Plaintiffs use CVAP data even though they themselves claim the use of such data “hurts communities of color.” Common Cause, *Citizen Voting Age Redistricting*, <https://www.commoncause.org/wp-content/uploads/2019/09/CVAP-Redistricting-one-pager-FINAL1.pdf> (last visited March 17, 2022) (“Some states want to draw districts based on citizen voting age rather than using total population. This would result in districts in violation of core constitutional values.”).

Throughout this litigation, when discussing the demographics and the districting plans at issue, Plaintiffs have previously and consistently relied on “voting age population” rather than

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<sup>2</sup> As Black voters are now, even more so, the overwhelming majority of the coalition, District 2 has clearly been made a much stronger district for Black voters overall.

“citizen voting age population.” *See, e.g.*, ECF 1 (referring to “voting age population” throughout); ECF 28-1 at 6-7. Nevertheless, at this late stage following the County’s submission of a its proposed map, Plaintiffs suddenly rely on *citizen* voting age population to argue that the County’s redrawn District 2 is still majority-white, rather than the “minority-majority” district it is when voting age population is properly assessed, as reflected by the County’s submission. *See* ECF 60.

To explain why Plaintiffs’ numbers differ from the County’s, William Cooper’s Third Declaration asserts for the first time that citizen voting age population is “critical” to determining whether a redistricting map complies with the Court’s directives. ECF 60-1 ¶ 3. Cooper acknowledges that under the County’s plan, the “non-white share” of the voting age population in District 2 would be 54.2%. *Id.* That number includes a 5.52% Hispanic/Latinx population. ECF 57-4. Cooper contends that, when taking into account “that 42% of Baltimore County’s Latinx population is made up of non-citizens,” District 2 has a majority white *citizen* voting age population of 52.1%. ECF 60-1 ¶ 3.

Evidently, Cooper’s 42% figure is derived from an estimate set forth in the 2015–2019 American Community Survey. That survey estimates 11,978 of the 28,546 Latinx Baltimore County residents of voting age are non-citizens (41.96%). U.S. Census Bureau, 2015–2019 American Community Survey at 10. If that estimated percentage was applied in District 2, that would only eliminate 2,137 of the 5,089 Latinx District 2 residents from the citizen voting age population, bringing the total white citizen voting age population to 46.89%. It is unclear what

calculation Cooper used to eliminate the other 9,006 District 2 residents from the CVAP to arrive at his 52.1% figure for white citizen voters, but his numbers simply do not add up.<sup>3</sup>

More importantly, courts have repeatedly rejected, as unreliable, the use of ACS citizen voting age population for redistricting purposes—including none other than Cooper himself. The Fourth Circuit rejected the notion that citizen voting age population is the superior figure in redistricting. *Daly v. Hunt*, 93 F.3d 1212, 1223 (4th Cir. 1996) (“This court does not agree . . . that the Supreme Court’s prior one person, one vote cases suggest that the principle of electoral equality is superior to the principle of representational equality.”) (quoting *Reynolds v. Sims*, 377 U.S. 533, 560–61, 568 (1964); see *De Grandy*, 512 U.S. at 1008 (declining to decide “which characteristic of minority populations (*e.g.*, age, citizenship) ought to be the touchstone for proving a dilution claim and devising a sound remedy,” even where one party argued half of the Hispanic voting-age residents were not citizens who do not vote).

Courts nationwide, the Census Bureau, and Cooper himself have underscored the unreliability of citizenship data. “The Census Bureau acknowledged that its American Community

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<sup>3</sup> Cooper does note that his “Citizen Voting Age Population (CVAP) percentages are disaggregated from block-group level ACS estimates (with a survey midpoint of July 2017)” and provides the “source for CVAP disaggregation.” ECF 60-1 at 6. That source is a link to a CSV file, amounting to a 25 column, 83,828 row Excel spreadsheet. Redistricting Data Hub, Maryland CVAP Data Disaggregated to the 2020 Block Level (2019), <https://redistrictingdatahub.org/dataset/maryland-cvap-data-disaggregated-to-the-2020-block-level-2019/> (last visited Mar. 17, 2022). Cooper provides no other information besides this raw data to explain the substantially different white VAP and white CVAP in District 2.

This is merely one of several problems with the statistics presented in Cooper’s Third Declaration. For instance, in his “Population Summary Reports,” Cooper indicates that he relied on the “any-part Black” count when calculating voting age population but relied on the “single-race Black” figure when calculating *citizen* voting age population. ECF 60-1 at 6, 12. Use of the single-race Black population was explicitly proscribed by Plaintiffs in their Reply in Support of Motion for Preliminary Injunction. ECF 39 at 6 (“[T]he County ignores the Supreme Court’s direction that the ‘any-part Black’ (APB) designation should be used for Section 2 purposes.”) (citing *Georgia v. Ashcroft*, 539 U.S. 461, 473 n.1 (2003)).

Survey, a collection of survey estimates on statistics *such as CVAP*, is less reliable than Census data and not intended to be used in redistricting.” *Pope v. Cty. of Albany*, No. 1:11-CV-0736 LEK/CFH, 2014 WL 316703, at \*13 n. 22 (N.D.N.Y. Jan. 28, 2014) (emphasis added) (citing U.S. Census Bureau, *Three Tips for Using American Community Survey (ACS) Data*, [http://www.census.gov/acs/www/guidance\\_for\\_data\\_users/guidance\\_main/](http://www.census.gov/acs/www/guidance_for_data_users/guidance_main/)). “The Census Bureau cautions that ACS data are estimates and recommends that users turn to other Census products for population counts. It includes a similar warning on the top of every ACS population table it provides.” *Missouri State Conf. of the Nat’l Ass’n for the Advancement of Colored People v. Ferguson-Florissant Sch. Dist.*, 201 F. Supp. 3d 1006, 1022 (E.D. Mo. 2016), *aff’d*, 894 F.3d 924 (8th Cir. 2018).

When asked about the data provided in the American Community Survey, Cooper previously testified to its lack of reliability for redistricting purposes:

It’s based on a survey of one out of 40 individuals on an annual basis. And it’s a rolling sample. So in this particular instance I’m using the 2011-2013 three-year survey. So the survey was conducted between January 1 of 2011 and December 31 of 2013; so the midpoint of that survey period would have been 2012. *So this is something of an historical view.* It’s not really current. And it’s also based on a sample. So there are margins of error associated with all of these . . . ***you cannot use the American Community Survey for redistricting purposes*** because it’s only available down to the block group level, which is not enough granularity, really, to develop redistricting plans at the local level, where often you need to go down to the block level to follow precinct lines. But, moreover, it’s an estimate. *It’s an estimate with large margins of error, and for that reason the only appropriate data set to use is the decennial census. That’s what every jurisdiction that I have ever encountered uses.*

**Exhibit C**, Trial Tr. Vol. I, 202:13-203:17, *Missouri State Conf. of the Nat'l Ass'n for the Advancement of Colored People v. Ferguson-Florissant Sch. Dist.* Case No. 4:14-cv-2077-RWS (Jan. 11, 2016) (emphasis added).<sup>4</sup>

Indeed, it is impossible to obtain reliable data on citizenship because citizenship was excluded from the 2020 census—the exact data source the County Council is required to use in redistricting matters under Maryland law. Md. Code Ann., Local Government, § 1-1307. Maryland law requires the County Council to adjust 2020 census data for incarcerated persons in redistricting, not citizenship. *Id.* See *Dep't. of Commerce v. New York*, 139 S. Ct. 2551 (2019); see also *Fed. for Am. Immigration Reform v. Klutznick*, 486 F. Supp. 564, 568 (D.D.C. 1980) (question about citizenship would “inevitably jeopardize the overall accuracy of the population count”). Simply put, the County’s data is the appropriate data set.<sup>5</sup>

Plaintiffs’ reliance upon data that they have rejected in other contexts as inequitable and their expert has rejected as ***unreliable for redistricting purposes***, underscores the inappropriateness of using the Cooper Map to challenge the redrawn County Council map. In their haste to maximize the number of majority-Black districts, Plaintiffs have knowingly used unreliable data to manipulate the numbers and press baseless challenges to the County’s redrawn map. The Cooper map makes plain that creating a second majority-Black district can only be

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<sup>4</sup> Even if citizen voting age population were somehow relevant, the data here would not be appropriate to consider because it is unreliable. See *Negron v. City of Miami Beach, Fla.*, 113 F.3d 1563, 1569 (11th Cir. 1997) (“Of course, the requirement that voting age population data be further refined by citizenship data applies only where there is reliable information indicating a significant difference in citizenship rates between the majority and minority populations.”).

<sup>5</sup> Even if this Court considers the citizenship data set forth by the Plaintiffs, the Plaintiffs cannot overcome the fact that changes made to District 2 substantially strengthen the crossover nature of the District, which is best reflected in the recent election of Izzy Patoka as Councilmember for District 2 and the Black-preferred candidate (despite being white), as well as the election of former school board member Cheryl Pasteur.

accomplished by violating Maryland law and otherwise ignoring precedent that requires the data used in a Section 2 analyses to be *reliable*.

**C. The County’s New Proposed Redistricting Map Performs at the Same Levels as Plaintiffs’ Alternative Gerrymandered Proposal.**

The performance analyses of the County’s new proposed redistricting map and Plaintiffs’ alternative to it yield negligible differences. Because of the lopsided Democratic 75% to 25% partisan breakdown, changing a general election outcome when shifting around majority Democratic populations will not be easy to accomplish. **Exhibit B**, Suppl. Gimpel Decl. ¶ 12.

It is unclear what data set Plaintiffs’ expert Dr. Barreto used in his version of this performance analysis but regardless of the data used, Plaintiffs have conceded that Anthony Brown, whom they claim was the candidate of choice for Black voters in 2014, would have won District 2 under the County’s new proposed redistricting map. ECF 60 at 5. Dr. Barreto’s analysis also shows that, in 2018, when Gov. Larry Hogan was running as a popular incumbent, Ben Jealous would have been neck and neck with Hogan in District 2. *Id.* And Donna Edwards, whom Plaintiffs claim was the candidate of choice in the exogenous 2016 Senate election, would have lost under either map. Her loss had little to do with how boundaries are configured – she performed poorly nearly everywhere, not just in Baltimore County, winning just three counties statewide. *Id.* ¶ 13. As such, Plaintiffs’ own analysis refutes their assertion that the new District 2 will not “perform” for Black voters.<sup>6</sup>

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<sup>6</sup> Similarly unwarranted are the Plaintiffs’ allegations that the County has engaged in impermissible cracking. *See* ECF 60 at 3. These allegations are even weaker than those made by plaintiffs in *De Grandy*. 512 U.S. at 1015. The *De Grandy* Court disregarded the allegations by stating the argument was simply “that lines could have been drawn elsewhere, . . . [and] attaching the labels ‘packing’ and ‘fragmenting’ . . . *without more*, does not result in vote dilution where the minority group enjoys substantial proportionality.” *Id.* at 1015–16 (emphasis added). As explained *supra*, the districts were drawn in substantial proportion to Black voters’ share of the voting-age population and therefore, the Plaintiffs’ allegations of “cracking” and/or “packing” fail.

| Candidate         | Old D2 | New D2 | Cooper D2 | Old D4 | New D4 | Cooper D4 |
|-------------------|--------|--------|-----------|--------|--------|-----------|
| Hogan (2014)      | 54%    | 43.4%  | 41.5%     | 22.2%  | 32.4%  | 42.3%     |
| Brown (2014)      | 44.3%  | 55%    | 56.8%     | 76.1%  | 65.9%  | 56.1%     |
| Van Hollen (2016) | 64.2%  | 55.7%  | 54.5%     | 32.8%  | 36.9%  | 45.1%     |
| Edwards (2016)    | 29.9%  | 38.9%  | 40.1%     | 61.8%  | 57%    | 49.1%     |
| Hogan (2018)      | 59.3%  | 51.3%  | 49.1%     | 31.7%  | 38.5%  | 47%       |
| Jealous (2018)    | 39.8%  | 47.9%  | 50%       | 67.2%  | 60.4%  | 51.8%     |

*Election Performance of Black Candidates in Districts 2 and 4 under the County's originally proposed map, newly proposed map, and Plaintiffs' proposed map.*

**D. The County's Proposed Redistricting Map Maintains the Strength of the Black-Voter Majority in District 4.**

The County's proposed redistricting map preserves Black voting strength in District 4, which was designated as a super-majority Black district following the 1990 census at the urging of the very same Plaintiffs here. *See United Jewish Orgs. of Williamsburgh, Inc. v. Carey*, 430 U.S. 144, 164 (1977) (explaining a substantial nonwhite population majority in the vicinity of 65% would be required to achieve a nonwhite majority of eligible voters); *Ketchum v. Byrne*, 740 F.2d 1398, 1408 n.7 (7th Cir. 1984) (explaining 65%–70% is the percentage considered necessary to ensure a Black super-majority district); *cf. Thornburg v. Gingles*, 478 U.S. 30, 46 n. 11 (1986) (explaining that vote dilution “may be caused by the dispersal of blacks into districts in which they constitute an ineffective minority of voters”). In contrast, Plaintiffs' proposed map here consists of major alterations to District 4. *See Exhibit B*, Gimpel Suppl. Decl. ¶ 5. Namely, the Plaintiffs' plan reduces the District 4 voting age black population to barely over 50 percent. *Id.* ¶ 11. This

shift in the District 4 electorate will weaken the electoral security of the current incumbent, Council Chairman Julian Jones, inviting challenges from the newly encompassed areas, as the tracts of land added from District 3 are very conservative and Republican areas. *Id.* ¶ 5.

**III. THE NEW PROPOSED REDISTRICTING MAP COMPORTS WITH THE VOTING RIGHTS ACT BECAUSE IT ADHERES TO TRADITIONAL REDISTRICTING PRINCIPLES.**

Overall, the new proposed redistricting map maintains traditional redistricting principles and follows the mandates of the Baltimore County Charter, such as providing equality of population between districts, compactness, contiguity, and due regard for existing community boundaries. Still, the specifics of the County's map are well-worth discussing.

First, the new proposed redistricting map would bring population deviation well below the 10 percent threshold that courts usually enforce as a standard for state and local government districts. ECF 57-6 at ¶ 8. District 2 would have a deviation of 3.7% and District 4 would have a deviation of 1.9%. *Id.* Additionally, the new proposed redistricting map has similar compactness scores to the original map. *Id.* ¶ 25.

Second, the new proposed redistricting map also reflects the need to preserve neighborhoods and localities. *Id.* ¶ 22. The number of split precincts would be held to just six, and the number of split census places would be reduced to twelve. *Id.* Catonsville and Arbutus would remain together in District 1, which Plaintiffs' have proposed splitting in NAACP-proposed Map 1. *Id.* Significantly, in all instances where communities and precincts are divided, it is along natural geographic lines and well-defined landmarks. *Id.*

Last, the new proposed redistricting map's core retention, or the carryover of constituents from the 2010 map to the new map, would average 82 percent. *Id.* ¶ 23. District 2 would maintain an estimated 82% of its previous constituents and District 4 would maintain 84% of its previous constituents. *Id.* The remaining districts would remain largely consistent with the retention figures

they would have had under the original map. *Id.* As a result, the new proposed redistricting map complies with all applicable requirements and reflects the Council's legislative judgment as to how best to redraw the map. For these reasons, and others discussed herein, this Court should approve the County's new redistricting map.

**IV. PLAINTIFFS' PROPOSED ALTERNATIVE PLAN WARRANTS NO CONSIDERATION, IS NOT REASONABLY COMPACT, AND INCLUDES GERRYMANDERED SHAPES CONSISTENTLY REJECTED BY THE SUPREME COURT.**

As explained *supra*, because the County has proposed a legally acceptable redistricting plan, there is no basis for the Court to consider Plaintiffs' alternative plan. Even if evaluating Plaintiffs' last-minute, non-legislative creation were necessary—which is it not—the Court should reject Plaintiffs' proposal because it presents a non-compact district, the creation of which is driven solely by race, and so, runs afoul of Supreme Court precedent regarding the Voting Rights Act and the Equal Protection Clause. *See Shaw v. Reno*, 509 U.S. 630, 657 (1993) (“Racial classifications with respect to voting carry particular dangers. Racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters—a goal that the Fourteenth and Fifteenth Amendments embody, and to which the Nation continues to aspire.”); *Miller v. Johnson*, 515 U.S. 900, 912 (1995) (“Race-based assignments embody stereotypes that treat individuals as the product of their race, evaluating their thoughts and efforts—their very worth as citizens—according to a criterion barred to the Government by history and the Constitution” (internal quotation marks and citations omitted)); *Palmore v. Sidoti*, 466 U.S. 429, 432 (1984) (“Classifying persons according to their race is more likely to reflect racial prejudice than legitimate public concerns; the race, not the person, dictates the category.”); *see also Easley v. Cromartie*, 532 U.S. 234, 241 (2001) (explaining that while race may be a factor, it may not be the “predominant factor motivating the

legislature’s districting decision”) (quotations omitted); *see also Bush v. Vera*, 517 U.S. 952, 977 (1996). (“A § 2 district that is *reasonably* compact and regular, taking into account traditional districting principles such as maintaining communities of interest and traditional boundaries, may pass strict scrutiny.”)

**A. Plaintiffs’ Motivations for the Creation of a Second Majority-Black District Are Driven By Exclusively Racial Considerations.**

It is evident that Plaintiffs will not accept anything less than a second majority-Black district. *See* ECF 55 at 23. Plaintiffs’ insistence on creating a second majority-Black district simply because the numbers permit it risks creating an Equal Protection violation by requiring the County to maximize majority-Black districts at the expense of all other considerations. *See De Grandy*, 512 U.S. at 1016-17 (“[R]eading § 2 to define dilution as any failure to maximize tends to obscure the very object of the statute and to run counter to its textually stated purpose . . . Failure to maximize cannot be the measure of § 2” because doing so may lead to impermissible race-based redistricting); *Shaw v. Hunt*, 517 U.S. 899, 905 (1996) (“The constitutional wrong occurs when race becomes the ‘dominant and controlling’ consideration.”); *id.* at 904-05 (“This is true whether or not the reason for the racial classification is benign or the purpose remedial.”); *Miller v. Johnson*, 515 U.S. 900, 925 (1995) (“In utilizing § 5 to require States to create majority-minority districts wherever possible, the Department of Justice expanded its authority under the statute beyond what Congress intended and we have upheld.”).<sup>7</sup>

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<sup>7</sup> Similarly misplaced is Plaintiffs’ insistence that only elections in which Black candidates run are probative in the Section 2 analysis. *See, i.e., Collins v. City of Norfolk, Va.*, 816 F.2d 932, 937 n.5 (4th Cir. 1987) (*Collins I*) (the analysis of precondition 3 is “not . . . so simple as how many blacks versus whites were elected”; rather, “[t]he court must examine the parties’ studies of voting preferences to determine which were the preferred candidates of the majority and minority communities.”); *see also Lewis v. Alamance Cty., N.C.*, 99 F.3d 600, 605 (4th Cir. 1996) (“[B]y considering only elections in which a black candidate was on the ballot, the district court failed to analyze a sufficient number of elections to enable it to determine whether white bloc voting usually operates to defeat minority-preferred candidates.”).

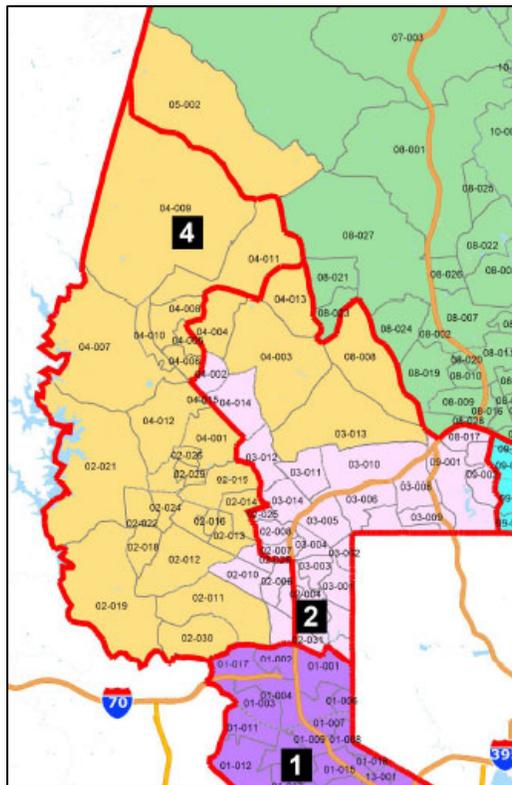
Further, William Cooper’s race-predominated redistricting maps, like the one here, have previously been rejected by courts. In *Alabama Legislative Black Caucus v. Alabama*, 231 F. Supp. 3d 1026 (M.D. Ala. 2017), the court noted that “[t]he Black Caucus plaintiffs’ expert, William Cooper, testified in his deposition that he intentionally increased the black population in Senate District 9 to create an influence district. . . . He reiterated later in his testimony that he ‘created an influence district consciously’ in Senate District 9.” *Id.* at 1046, 1131. For this reason, the court concluded, “[w]e do not give any weight to this alternative district because Cooper admitted to splitting counties and choosing population on the basis of race.” *Id.* at 1131. For the same reasons, this Court should reject Cooper’s proposed map.

Plaintiffs’ argument that a second majority-Black District is required also disregards that the Order explicitly allows for *either* a second majority-Black District *or*, in the alternative, “an additional County District in which Black voters otherwise have an opportunity to elect a representative of their choice.” ECF 55 at 22–23. By submitting their own, non-legislative redistricting map, the Plaintiffs wrongly seek to circumvent the mandatory role of legislative authorities in *legislative* reapportionment, ignored the language in the Order, and disregard both federal and Maryland law.

**B. Plaintiffs’ Insistence on a Second Majority-Black District Yields a Gerrymandered Map That Violates Traditional Redistricting Principles.**

Worse yet, Plaintiffs’ alternative map epitomizes the type of gerrymandered districts with finger-like extensions previously rebuffed by the Supreme Court. *See Shaw v. Reno*, 509 U.S. 630, 635 (1993) (“Centered in the northeast portion of the State, it moves southward until it tapers to a narrow band; then, with finger-like extensions, it reaches far into the southern-most part of the State near the South Carolina border.”); *Cooper v. Harris*, 137 S. Ct. 1455, 1466 (2017) (“Rucho, Lewis, and Hofeller chose to take most of those people from heavily black areas of Durham,

requiring a finger-like extension of the district’s western line.”). Plaintiffs have drawn District 2 to have a finger jutting out into District 4, which hugs the outer circumference of District 4:



These alterations are plainly visible. *See Exhibit B*, Suppl. Gimpel Decl. ¶ 4. The Plaintiffs’ District 2 now creates a narrow corridor thrusting northwestward up into the community of Owings Mills. *Id.* Below this corridor, the western boundary of District 2 is moved outward from the well-recognized boundary of I-695 into Milford Mill and Randallstown. *Id.* Additionally, District 2 is considerably less compact in the Plaintiffs’ proposed map than it is in the County Council’s alternative. *Id.* ¶ 8. Corresponding new distortions are now observable in the shape of District 4. *Id.*

Furthermore, Plaintiffs’ new map lowers this to an average of 77 percent core retention, with far more substantial changes coming to District 2 and District 4. *Id.* ¶ 6. Specifically, core retention is reduced in District 2 from 81 to 67 percent (-14). And core retention is reduced in

District 4 from 83 to 67 percent (-16). “A plan that drops core retention below 80 percent, without the justification of population balance, is considered an unusual step.” *Id.* ¶ 7.

**CONCLUSION**

WHEREFORE, for these reasons, the Court should grant the County’s Motion for Approval of Proposed Redistricting Map and to Modify Preliminary Injunction and should enter the proposed Order attached thereto.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 17th day of March, 2022, a copy of the foregoing Supplemental Brief in Support of Motion for Approval of Proposed Redistricting Map and to Modify Preliminary Injunction and accompanying Exhibits were served via the Court's CM/ECF system upon all counsel of record.

/s/ Melissa O. Martinez

Melissa O. Martinez

# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(Northern Division)**

BALTIMORE COUNTY BRANCH OF THE  
NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE,  
*et al.*,

Plaintiffs,

v.

BALTIMORE COUNTY, MARYLAND,  
*et al.*,

Defendants.

Civil Action No. 1:21-cv-03232-LKG

**DECLARATION OF JULIAN E. JONES, JR.**

I, Julian E. Jones, Jr., being duly sworn, depose, and state as follows:

1. I am over the age of eighteen years and fully competent to testify to the facts and matters set forth herein based upon my personal knowledge.

2. I am the Council Member for District 4 and serve as Chairman of the Baltimore County Council.

3. Pursuant to the Court's February 22, 2022 Memorandum and Order, on March 8, 2022, the Baltimore County Council filed a new redistricting map that, in addition to District 4, includes a "County District [District 2] in which Black voters [will] otherwise have an opportunity to elect a representative of their choice and that comports with the requirements of the Voting Rights Act, 52 U.S.C. § 10301, and any other relevant constitutional and statutory requirements."

4. This Declaration supplements my declarations dated February 11, 2022 and March 8, 2022. ECF 45-3 and ECF 57-5.

5. In my Declaration dated March 8, 2022, I set forth the normal procedures by which the Baltimore County Council could, and would, introduce the draft bill and pass legislation relating to its new proposed redistricting map. ECF 57-5.

6. Since the filing of the new proposed redistricting map, on March 15, 2022, the Court of Appeals of Maryland issued an Order moving certain deadlines in the 2022 election cycle. Specifically, the Court of Appeals' Order extended the deadline for filing certificates of candidacy to April 15, 2022 at 9:00 p.m. the Order further extended the date for the 2022 primary election from June 28, 2022 to July 19, 2022.

7. Due to the extension of the candidate filing deadline, the County Council has time to follow the legislative procedure outlined by the Charter in enacting the new redistricting map into law, although the County Council stands ready to call an emergency session in order to expedite matters should the Court deem it appropriate.

8. On March 16, 2022, three-term Council member Cathy Bevins of District 6 announced that she will not seek re-election. Because of the highly concentrated Black population in District 6, I understand that two Black candidates – one from each major political party – stand ready to run for the District 6 seat on the County Council if the Court adopts the County's new redistricting map; in fact, the Black republican candidate has already filed to run in District 6.

Executed on March 17, 2022.

A handwritten signature in blue ink that reads "Julian E. Jones, Jr." The signature is written in a cursive style with a large, looped initial 'J'.

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Julian E. Jones, Jr.

# **EXHIBIT B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(Northern Division)**

BALTIMORE COUNTY BRANCH OF THE  
NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE,  
*et al.*,

Plaintiffs,

v.

BALTIMORE COUNTY, MARYLAND,  
*et al.*,

Defendants.

Civil Action No. 1:21-cv-03232-LKG

**SUPPLEMENTAL DECLARATION OF DR. JAMES G. GIMPEL, PHD.**

1. I am over the age of eighteen years and fully competent to testify to the facts and matters set forth herein based upon my personal knowledge.

2. This Supplemental Declaration evaluates the map for Baltimore County Council districts, drawn by the Plaintiffs' expert, Mr. William Cooper, and submitted on March 10, 2022. The Plaintiffs' proposed map was filed in response to the County's proposal to enlarge the Black and minority population of a district on the western side of the County (District 2), adjacent to the present majority-Black district (District 4) (see Figure 1). Both of these proposals are, in turn, a response to the February 22, 2022 Order of the United States District Court of Maryland granting a preliminary injunction directing that the Council "...create a County redistricting plan that includes either an additional majority-Black County District, or an additional County District in

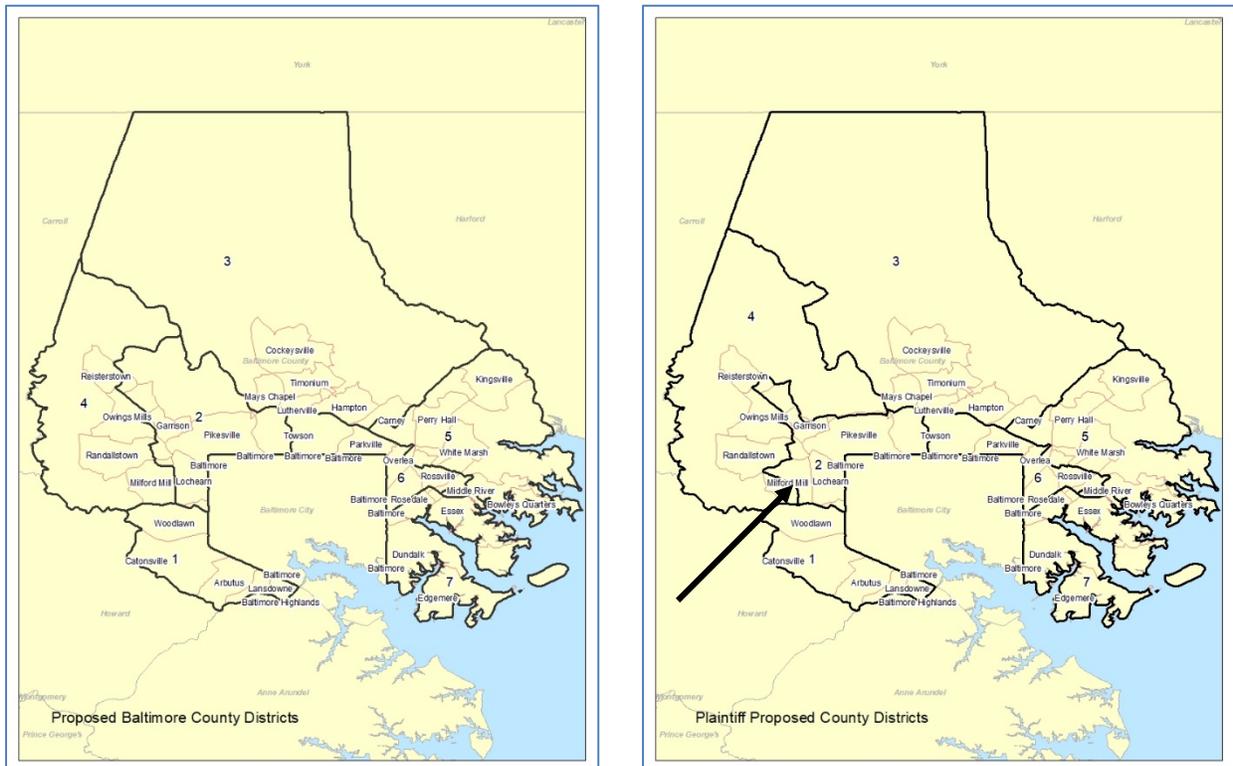
which Black voters otherwise have an opportunity to elect a representative of their choice.” (Memorandum Opinion and Order, 22-23, *Baltimore County Branch of the NAACP v. Baltimore County, Maryland*. Civil Action No. 21-cv-03232-LKG, February 22, 2022).

3. This Declaration supplements my declarations dated January 31, 2022 and March 8, 2022. ECF 34-7 and ECF 57-6.

4. The Council’s proposed map is pictured in Figure 1, alongside the Plaintiffs’ map. In the right hand map an arrow indicates the location of District 2, that together with District 4, is subject to the most sweeping changes in the new proposal. The alterations are visible by simple inspection. The Plaintiffs’ District 2 now creates a narrow corridor thrusting northwestward up toward the community of Owings Mills along I-795 and then uses MD Route 140 (Reisterstown Road) as a southern boundary. Below this corridor, the western boundary of District 2 is moved outward from the well-recognized boundary of I-695 into Milford Mill and Randallstown, a new boundary being created from Rolling Road, Windsor Mill Road and Old Court Road. The corresponding loss of population in District 4 by these shifts requires a northward movement of that District upward along the Carroll County border into what has traditionally been part of District 3. The need to restore population equality also requires that District 4’s northeastern boundary be shifted downward back toward the innermost suburbs north of Owings Mills Road and Garrison Forest Road, to stop at Greenspring Valley Road (MD Route 130). This downward thrust back toward the inner ring suburbs is perhaps the most sweeping change proposed in the Plaintiffs’ map.

5. The changes described in the above text are more easily summarized in visual form in Figure 2. The crosshatched areas show the major alterations just described: large tracts of land

and population never before a part of District 4. Unlike the County’s map, in which white Democrats will cross over to support Black candidates, this shift in the District 4 electorate will weaken the electoral security of the current incumbent, Council Chairman Julian Jones, inviting challenges from the newly encompassed areas in addition to the challenges that have traditionally originated from candidates residing in the Randallstown, Reisterstown, and Owings Mills communities that have traditionally been the District 4 core. The tracts of land added from District 3 are conservative and Republican areas, not likely to matter much in a Democratic primary but perhaps exerting a marginal force in general elections. Any partisan political gains in this redraw are modest, though new challenges are likely to emerge at the Democratic nomination stage.



**Figure 1. Proposed Baltimore County Council Districts and Plaintiffs' Counterproposal, in Response to February 22, 2022, Court Order, March 2022**



**Figure 2. Location of Changes in Plaintiffs' Proposed Map from the County Council's Proposed Map, March 2022**

6. Core retention figures offer another way of analyzing the proposed changes, estimating how much of a constituency is lost by an aggressive redistricting scheme. These figures are presented in Table 1, below, offering comparisons from the 2010 redistricting cycle to several 2020 proposals, as well as comparing the 2020 proposals to each other. As indicated in previous declarations, the County Council’s remedial map retained an average of 82 percent of the core

constituency of the 2010 districts, with significant changes coming in Districts 5, 6, 2 and 4. The Plaintiffs' new map lowers this to an average of 77 percent core retention, with far more substantial changes coming to District 2 and District 4. Specifically, core retention is reduced in District 2 from 81 to 67 percent (-14). Core retention is reduced in District 4 from 83 to 67 percent (-16). These changes are reflected in the rightmost column comparing the Council proposal to the Plaintiffs' proposal. District 2 maintains 86 percent of its proposed population in the Plaintiffs' map, and District 4 loses the 16 percent just mentioned, dropping to a retention rate of 84. Because it is a sparsely populated area, District 3 loses a small share of its residents if the Plaintiffs' proposal is adopted over the Council alternative, about 0.8 percent.

| <b>Table 1. Core Retention Across Redistricting Plans Showing Continuity in Representation</b>   |              |                       |                              |                         |   |
|--|--------------|-----------------------|------------------------------|-------------------------|---|
|  | 2000 to 2010 | 2010 to Original 2020 | 2010 to Council Proposed Map | 2010 to Plaintiffs' Map | Council Proposed Map to Plaintiffs' Map |
| District 1   | 0.999        | 1.000                 | 0.985                        | 0.984                   | 1.000                                   |
| District 2   | 0.938        | 0.988                 | 0.810                        | 0.674                   | 0.861                                   |
| District 3   | 0.888        | 0.988                 | 0.955                        | 0.947                   | 0.992                                   |
| District 4   | 0.950        | 1.000                 | 0.832                        | 0.668                   | 0.840                                   |
| District 5   | 0.765        | 0.510                 | 0.563                        | 0.592                   | 1.000                                   |
| District 6   | 0.713        | 0.556                 | 0.582                        | 0.577                   | 1.000                                   |
| District 7   | 0.904        | 1.000                 | 0.998                        | 0.997                   | 1.000                                   |
| <b>Average</b>   | <b>0.880</b> | <b>0.863</b>          | <b>0.818</b>                 | <b>0.777</b>            | <b>0.956</b>                            |
| Cell entries show proportion of the residents in the district from the comparison plan (previous decade, or alternative map) carried over to the new or proposed plan. Estimates use adjusted 2020 block data. |              |                       |                              |                         |   |

7. In previous rounds of redistricting, the County Council has placed an emphasis on minimizing the disruption in the relationship between representatives and the represented. This

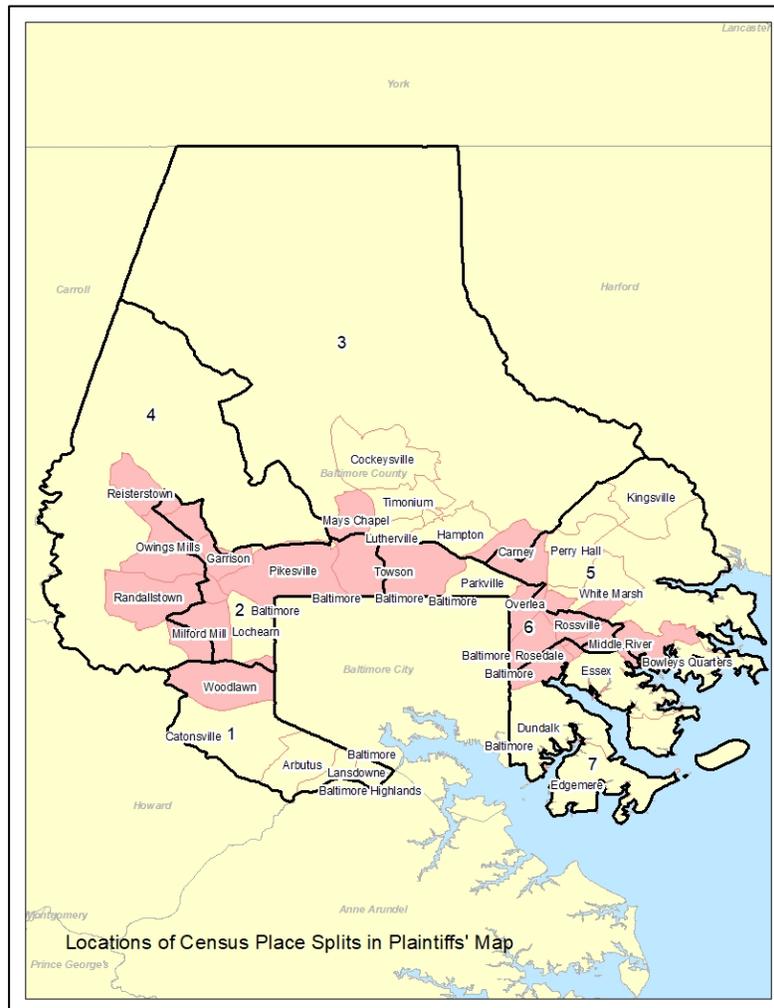
policy has resulted in traditionally high core retention rates as the focus is placed squarely on rebalancing the population to ensure the one-person-one-vote standard. A plan that drops core retention below 80 percent, without the justification of population balance, is considered an unusual step.

### **Compliance with Traditional Redistricting Principles**

8. The compactness scores are not, on average, different across the two plans, but the average obscures the consequential changes in the specifically targeted districts (see Table 2). District 2 is considerably less compact in the Plaintiffs' proposed map than it is in the County Council's alternative (.37 to .27 on PP Score). Corresponding new distortions are now observable in the shape of District 4, inevitable since they share so much common boundary. Though District 3 becomes slightly more compact in the Plaintiffs' new map, this occurs in an area that is so sparsely settled as to not be appreciably noticeable by a councilmember trying to reach constituents. If a councilmember is traveling from Towson, for instance, to the farm country above Reisterstown in the first place, a couple of miles will make little difference in who you can practically meet-up with. On the other hand, closer into the Baltimore City boundary, a two-mile adjustment in where boundaries extend will make the difference between holding a single town meeting and scheduling multiple ones. Making a District's constituency less accessible in a highly populated area through boundary reconfiguration is very different than doing so out in the country where distances are construed differently.

| <b>Table 2. Compactness Tests County Council Proposed Map and Plaintiffs' Proposed Map</b>                         |                           |              |                                |              |
|--|---------------------------|--------------|--------------------------------|--------------|
| Districts  | County Proposed Districts |              | Plaintiff's Proposed Districts |              |
|  | PPTest                    | STest        | PPTest                         | STest        |
| District 1   | 0.482                     | 0.694        | 0.482                          | 0.695        |
| District 2   | 0.370                     | 0.608        | 0.272                          | 0.521        |
| District 3   | 0.575                     | 0.758        | 0.535                          | 0.732        |
| District 4   | 0.325                     | 0.570        | 0.253                          | 0.503        |
| District 5   | 0.140                     | 0.374        | 0.140                          | 0.374        |
| District 6   | 0.266                     | 0.515        | 0.266                          | 0.515        |
| District 7   | 0.067                     | 0.259        | 0.067                          | 0.259        |
| <b>Average</b>   | <b>0.318</b>              | <b>0.540</b> | <b>0.288</b>                   | <b>0.514</b> |
| PPTest=Polsby Popper Test; STest=Schwartzberg Test. In both cases, larger numbers indicate more compact districts. |                           |              |                                |              |

9. The Plaintiffs' proposed map divides six Baltimore County precincts and fourteen census places (see Table 3). The specific communities that are split are shaded in red in Figure 3, below. Although these divisions are largely consistent with those occurring in the Council's proposal, additional splits are drawn in Garrison and Pikesville, lying in the area of greatest boundary adjustment and population.



**Figure 3. Location of Census Places Split in Plaintiffs' Proposed Map**

**Population and Minority Voting Age Population**

10. The population percentages for the Plaintiffs' remedial map are calculated from the Census adjusted block data available from the State of Maryland Redistricting website.<sup>1</sup> These block population figures are aggregated to the Plaintiffs' proposed districts and presented in Table

<sup>1</sup> <https://redistricting.maryland.gov/Pages/data.aspx>, accessed March 16, 2022.

2. A comparison table for the County Council's proposed map is present in my first supplemental declaration. Consistent with the other figures throughout this report, the table shows that the biggest changes are slated for Districts 2 and 4.

11. In District 2, the County Council's proposal created a crossover district with 41.2 percent Black voting age population and a 54.2 percent non-white majority. This goal was accomplished by making modest changes to District 4, reducing the black voting age population to 61 percent and the non-white majority percentage to 75.2 percent. The Plaintiffs' plan (see Table 2) goes much further by reducing the District 4 voting age black population to barely over 50 percent, and creating a 51.6 percent black voting age population in District 2. These are sufficiently low black percentages to invite brisk primary competition for the Democratic primary nomination and see the defeat of black candidates. This is not about winning a general election battle, as that's rarely in doubt. If the standard is what it takes to defeat a Republican in these districts, the sizable Democratic majorities ensure that even with smaller black voting age population shares. Instead, this is about the dangers to minority representation of low black thresholds in nomination contests.

| Table 2. White and Minority Population Percentages for Baltimore County Council Districts in Plaintiffs' Proposal   |            |             |             |             |             |             |            |             |                 |                       |
|---|------------|-------------|-------------|-------------|-------------|-------------|------------|-------------|-----------------|-----------------------|
| Total Population  |            |             |             |             |             |             |            |             |                 |                       |
| District  | % Hispan   | % NHWhite   | % NHBlack   | % NHNatam   | % NHAsian   | % NHHawpi   | % NHOther  | % NH2Race   | % Non-White     | % Minority (no2 race) |
| 1   | 8.7        | 46.6        | 27.7        | 0.2         | 11.6        | 0.02        | 0.6        | 4.5         | 53.4            | 48.9                  |
| 2   | 6.8        | 34.4        | 51.3        | 0.2         | 3.6         | 0.02        | 0.6        | 3.2         | 65.6            | 62.5                  |
| 3   | 5.6        | 74.9        | 7.6         | 0.1         | 7.6         | 0.04        | 0.4        | 3.7         | 25.1            | 21.4                  |
| 4   | 6.2        | 32.0        | 52.1        | 0.1         | 5.1         | 0.03        | 0.6        | 3.7         | 68.0            | 64.2                  |
| 5   | 4.8        | 62.1        | 18.9        | 0.2         | 9.2         | 0.03        | 0.4        | 4.3         | 37.9            | 33.6                  |
| 6   | 7.0        | 50.8        | 31.5        | 0.2         | 5.9         | 0.03        | 0.5        | 4.2         | 49.2            | 45.0                  |
| 7   | 11.0       | 61.0        | 19.5        | 0.6         | 1.9         | 0.03        | 0.5        | 5.5         | 39.0            | 33.5                  |
| Voting Age Population   |            |             |             |             |             |             |            |             |                 |                       |
| District  | % Hisp VAP | % White VAP | % Black VAP | % Natam VAP | % Asian VAP | % Hawpi VAP | %Other VAP | % 2Race VAP | % Non-White VAP | % Minority (no2 race) |
| 1   | 7.3        | 49.9        | 27.4        | 0.2         | 11.2        | 0.03        | 0.5        | 3.6         | 50.1            | 46.6                  |
| 2   | 5.7        | 35.7        | 51.6        | 0.2         | 3.7         | 0.02        | 0.5        | 2.6         | 64.3            | 61.7                  |
| 3   | 4.6        | 77.6        | 7.1         | 0.1         | 7.4         | 0.05        | 0.4        | 2.8         | 22.4            | 19.6                  |
| 4   | 5.3        | 35.2        | 50.5        | 0.1         | 5.1         | 0.03        | 0.5        | 3.1         | 64.8            | 61.6                  |
| 5   | 4.0        | 66.4        | 16.9        | 0.2         | 8.9         | 0.03        | 0.3        | 3.3         | 33.6            | 30.4                  |
| 6   | 6.1        | 54.1        | 29.9        | 0.2         | 5.9         | 0.02        | 0.4        | 3.3         | 45.9            | 42.6                  |
| 7   | 8.8        | 66.0        | 17.9        | 0.6         | 2.0         | 0.03        | 0.4        | 4.3         | 34.0            | 29.8                  |
| Source: State of Maryland Adjusted 2020 Population, Blocks File <a href="https://redistricting.maryland.gov/Pages/data.aspx">https://redistricting.maryland.gov/Pages/data.aspx</a> |            |             |             |             |             |             |            |             |                 |                       |

### Political Performance and the Plaintiffs' Proposal

12. Analysis of the political performance of Districts 4 and 2 in the Plaintiffs' proposal do not reveal striking differences over the results obtaining under the County Council map for the elections examined in the February 22nd hearing. This is because the county is lopsidedly Democratic 75% to 25% according to recent two-party registration figures, so changing a general election outcome when shifting around majority Democratic populations will not be easy to accomplish. Not surprisingly, then, even with the shifts in Districts 2 and 4, results from the 2014

Gubernatorial general election remain largely the same. In the redrawn District 2, Democrat Anthony Brown defeats Larry Hogan in 2014 55% to 43%. In 2018, Ben Jealous loses to Larry Hogan 51% to 48%, in District 2, not a vastly different outcome over where the two wound up under the original map 2010. Similarly, in District 4, Hogan loses badly in both 2014 and 2018, just as he does within the boundaries of the actual 2010 districts.

13. In the 2016 U.S. Senate primary between Chris Van Hollen and Donna Edwards, Edwards loses badly under the Plaintiffs' map in both Districts 2 and 4: 56% to 39% in District 2, 57% to 37% in District 4. If the Plaintiffs' map was somehow designed to improve the Black candidate's showing in this race, it is a flat-out failure. This is because the Edwards loss, as in the losses of so many other candidates in Maryland and elsewhere, had little to do with how boundaries are configured. She performed poorly nearly everywhere, not just in Baltimore County, winning just three counties statewide.

14. In summary, there are no gains to be had in the Plaintiff's map over the opposition party in a county so decidedly Democratic. One might imagine a more radical redraw that might seek to unseat one of the two council Republicans – specifically the incumbent in District 3 -- but that does not happen with the Plaintiffs' present changes to the northernmost parcels of District 4. Though there are no gains in this map over the minority Republicans, there is a great deal to lose in endangering Black representation in District 4 by inviting more competition into Democratic primaries. Some candidates may choose retirement over the risk of defeat under such circumstances, but the outcome may well be the same – less Black representation, not more.

Executed on March 17, 2022.

A handwritten signature in black ink that reads "James G. Gimpel". The signature is written in a cursive style with a large initial "J" and "G".

---

Dr. James G. Gimpel, PhD.

# **EXHIBIT C**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

|                                    |                       |
|------------------------------------|-----------------------|
| MISSOURI STATE CONFERENCE OF THE   | )                     |
| NATIONAL ASSOCIATION FOR THE       | )                     |
| ADVANCEMENT OF COLORED PEOPLE,     | )                     |
| REDDITT HUDSON, F. WILLIS JOHNSON, | )                     |
| and DORIS BAILEY,                  | )                     |
|                                    | )                     |
| Plaintiffs.                        | )                     |
| v.                                 | )                     |
|                                    | )                     |
|                                    | ) No 4:14-CV-2077 RWS |
| FERGUSON-FLORISSANT SCHOOL         | )                     |
| DISTRICT, and ST. LOUIS COUNTY     | )                     |
| BOARD OF ELECTIONS COMMISSIONERS,  | )                     |
|                                    | )                     |
| Defendants.                        | )                     |

BENCH TRIAL - VOLUME I  
BEFORE THE HONORABLE RODNEY W. SIPPEL  
UNITED STATES DISTRICT JUDGE  
JANUARY 11, 2016

APPEARANCES:

|                 |   |
|-----------------|---|
| For Plaintiffs: | Anthony E. Rothert, Esq.<br>Jessie M. Steffan, Esq.<br>AMERICAN CIVIL LIBERTIES UNION OF MISSOURI<br>FOUNDATION<br>454 Whittier Street<br>St. Louis, MO 63108             |
|                 | Julie A. Ebenstein, Esq.<br>Sophia Lin Lakin, Esq.<br>Dale E. Ho, Esq.<br>AMERICAN CIVIL LIBERTIES UNION FOUNDATION<br>125 Broad Street, 18th Floor<br>New York, NY 10004 |

Appearances Cont'd on Page 2:

|              |   |
|--------------|---|
| REPORTED BY: | SHANNON L. WHITE, RMR, CRR, CSR, CCR<br>Official Court Reporter<br>United States District Court<br>111 South Tenth Street, Third Floor<br>St. Louis, MO 63102<br>(314) 244-7966 |
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1 (PROCEEDINGS STARTED AT 9:06 AM.)

2 THE COURT: Good morning. We're here this morning in  
3 the case styled the Missouri State Conference of the NAACP, et  
4 al., against the Ferguson-Florissant School District, et al.

5 Would counsel make their appearances, please?

6 MS. EBENSTEIN: Morning, Your Honor. Julie Ebenstein  
7 representing plaintiffs Missouri State Conference of the  
8 NAACP, Redditt Hudson, Doris Bailey, and F. Willis Johnson.

9 MS. LAKIN: Good morning, Your Honor. Sophia Lakin  
10 for the plaintiffs.

11 MS. STEFFAN: Morning. Jessie Steffan for the  
12 plaintiffs.

13 MR. ROTHERT: Anthony Rothert for the plaintiffs.

14 MR. HO: Dale Ho for the plaintiffs, Your Honor.

15 MS. WILCOX: Gillian Wilcox for the plaintiffs.

16 MR. MCDONALD: M. Laughlin McDonald for the  
17 plaintiffs, Your Honor.

18 THE COURT: Is that everybody?

19 MR. ROTHERT: That's it.

20 THE COURT: All right. On behalf of the defendants?

21 MS. ORMSBY: Cindy Ormsby on behalf of  
22 Ferguson-Florissant School District.

23 MS. GABEL: Angela Gabel on behalf of the  
24 Ferguson-Florissant School District.

25 MR. SAFARLI: John Safarli for the school district.

1 MS. FORSTER: Kathryn Forster for the St. Louis Board  
2 of Election.

3 THE COURT: Very good. So it was discussed last week  
4 that we'd have some short opening statements. Who is going to  
5 make the opening on behalf of the plaintiffs?

6 MS. EBENSTEIN: Good morning, Your Honor. Julie  
7 Ebenstein on behalf of plaintiffs.

8 THE COURT: Good morning.

9 MS. EBENSTEIN: Plaintiffs and other African-American  
10 citizens who live, vote, and raise their families in the  
11 Ferguson-Florissant School District have been denied an equal  
12 say on the issue most meaningful to them: The education of  
13 their children.

14 The evidence at this trial will show that the  
15 at-large method for electing members of the school board,  
16 combined with the racial disparities in the district, deprives  
17 African-American residents of an equal voice in the political  
18 process and violates Section 2 of the Voting Rights Act.

19 The area encompassed by the Ferguson-Florissant  
20 School District bears witness to an ugly history of  
21 discrimination. The district itself was created pursuant to a  
22 federal court order in the face of its resistance to school  
23 desegregation some two decades after the decision in *Brown v.*  
24 *Board of Education.*

25 Black residents of the district continue to suffer

1 from a host of socioeconomic disparities which hinders their  
2 ability to participate fully and equally in the electoral  
3 process. The evidence will show that the patterns of  
4 inequality, which have long plagued the district, nurture an  
5 unequal political system.

6 School board elections in the district epitomize  
7 racially polarized rating. Since 2000, in each and every  
8 contested election, white voters' top-choice candidates for  
9 the school board was white. Each time that candidate won.  
10 During the same years, in each and every election, black  
11 voters' top-choice candidate for the school board was black  
12 except for one year when there were no black candidates.  
13 During those same years, black voters' preferred candidates  
14 usually lost.

15 This is no coincidence. Black residents face  
16 structural barriers in the electoral system that deny them an  
17 equal opportunity to elect the representatives of their  
18 choice. As the evidence will show, this electoral system  
19 violates Section 2. As Section 2 requires, plaintiffs will  
20 prove that the process for electing school board members has  
21 discriminatory results, results that fall within the broad  
22 scope of Section 2's prohibition against racial  
23 discrimination, and the totality of the circumstances in the  
24 Ferguson-Florissant School District results in a political  
25 system that is functionally unequal.

1           As witnesses will explain, the area surrounding and  
2 including the district is a testament to the debilitating,  
3 ongoing effects of state-sanctioned segregation and the  
4 sustained, uneven economic development.

5           This afternoon, Dr. Colin Gordon, a historian and  
6 professor at the University of Iowa, who's published  
7 extensively about segregation and inequality in the St. Louis  
8 area, will testify about racial segregation patterns in North  
9 County and their implications for current public policy. He  
10 will address the district's severe racial disparities in  
11 everything from education to housing, income, employment, and  
12 criminal justice outcomes.

13           In the face of these disparities, many of the current  
14 school board members testify that they lack even a basic  
15 awareness of the district's history of state-sanctioned  
16 segregation and claim that they are totally unaware of the  
17 continuing racial disparities that plague the district.

18           Today close to 80 percent of the district's public  
19 school students are African American. Yet many members of the  
20 predominantly white board are unaware of the challenges faced  
21 by its students despite recent scathing widespread reports.

22           Over the course of the week you will also hear  
23 testimony from African-American former board members  
24 concerning the barriers faced by black candidates. Those  
25 former board members, Mr. Chuck Henson and Dr. Doris Graham,

1 will recount how advocates for diversity and inclusion are  
2 driven off the board and out of the administration in  
3 particularly shameful manner. Mr. Henson will describe how  
4 subtle racial appeals are used during campaign elections to  
5 bring in opposition to black candidates. Dr. Doris Graham,  
6 the only resident of Berkeley who has ever served on the  
7 board, will address the board's failure to represent the  
8 predominantly black municipalities in the district.

9 Frank Green, the former president of the FFNEA, will  
10 explain the candidate slating and endorsement process that  
11 provides tangible benefits for candidates but almost always  
12 endorses white candidates.

13 Plaintiff F. Willis Johnson will identify additional  
14 structural barriers to the election of black candidates.

15 Later this week, Dr. David Kimball, a professor of  
16 political science at the University of Missouri-St. Louis,  
17 with expertise in voting patterns and local elections, will  
18 explain how at-large election systems candidate slating and  
19 other election practices enhance the opportunity for  
20 discrimination in school board elections.

21 This past and present reality has nurtured racially  
22 polarized voting throughout the districts. Later this week,  
23 Dr. Richard Engstrom, recognized as one of the nation's  
24 most -- foremost scholars on racially polarized voting  
25 analysis, will testify that the voting patterns of the

1 district's black residents are politically cohesive in board  
2 elections. A significant number of minority group members  
3 usually vote for the same candidates.

4 He will explain that the unwillingness of the white  
5 voting bloc to support candidates from the black community has  
6 effectively blocked black voters from getting adequate  
7 political representation on the board. Dr. Engstrom's  
8 analysis will demonstrate that despite African-American  
9 voters' overwhelming support for black candidates, they are  
10 usually defeated by the white voting bloc's voting.

11 The evidence will show that the resulting  
12 underrepresentation of the African-American community on the  
13 board is not only democratic, it has real consequences for  
14 students' outcomes.

15 This morning Adolphus Pruitt, on behalf of the NAACP,  
16 will testify to the board's unwillingness to recognize, much  
17 less address, the issues of particular concern to the black  
18 community. The board has failed to address disparities in  
19 academic achievement and has failed to address the racially  
20 disparate imposition of school discipline against black  
21 students. He will explain how this results in real harm to  
22 black residents and students.

23 Redditt Hudson is a voter, parent, and social justice  
24 advocate who lives in the district, and a plaintiff in this  
25 lawsuit. He will testify to black voters' commitment to

1 political participation and desire to see their preferred  
2 candidates included in the decisions that affect his two  
3 daughters' education and future. He will explain black  
4 voters' disillusionment with the electoral process that leaves  
5 them unable to elect candidates who would bring a diverse and  
6 representative perspective to the board.

7           You will also hear testimony today that it is  
8 possible to structure elections in the district in a way that  
9 complies with the Voting Rights Act. Mr. William Cooper, a  
10 demographer who has served as an expert in over 35 Voting  
11 Right Act cases, will testify that the black vote -- the  
12 district's black population is sufficiently large and  
13 geographically compact to constitute a majority of the  
14 voting-age population in four out of seven properly  
15 apportioned single-member districts.

16           Mr. Cooper will describe two illustrative  
17 single-member district plans. The voting districts in these  
18 illustrative plans comply with the one-person, one-vote  
19 requirements of the equal protection clause, are compact and  
20 contiguous to satisfy the requirements of both state and  
21 federal law, respect communities of interest with schools  
22 balanced across all seven districts.

23           Mr. Cooper will also testify that the current school  
24 board lacks not just racial diversity but also graphic  
25 diversity, as all of the current board members hail from just

1 two of the 11 municipalities within the school district.

2 Later this week we expect to hear the district -- we  
3 expect the district to present testimony from their proffered  
4 expert, who has concocted a population projection custom-made  
5 for this lawsuit which purports to show that African Americans  
6 are a majority of the district's voting-age population. The  
7 evidence will show that that population projection is entirely  
8 unreliable.

9 All available government statistics report that  
10 African Americans remain less than 50 percent of the voting  
11 population in the district. No published government data  
12 shows otherwise. As Mr. Cooper will explain, official  
13 population data is the most reliable measure of the  
14 population, not projections custom-made for litigation.

15 The evidence will also show that, under the facts of  
16 this particular case, whether the African-American voting-age  
17 population is 49 percent or 51 percent is functionally  
18 irrelevant. African Americans living in the district remain  
19 disadvantaged by the at-large electoral district and largely  
20 unable to elect their preferred candidates to the board.

21 The district may say that over time its black  
22 population will eventually grow so large that some day it  
23 might be able to control the at-large electoral district as a  
24 majority of the area. Underlying the district's theory is the  
25 peculiar premise that white flight is somehow both inevitable

1 and a suitable substitute for the protections of the Voting  
2 Rights Act. Despite the district's suggestion that plaintiff  
3 should wait to see if the effects of discrimination suddenly  
4 evaporates, plaintiffs seek to remedy the present and ongoing  
5 violation of their fundamental right to vote. Members of the  
6 district's black community seek an equal opportunity to elect  
7 their preferred candidates to the board before any more  
8 discriminatory elections take place.

9 At the conclusion of trial, plaintiffs will  
10 respectfully request that this Court find that, in light of  
11 the total of the circumstances, the use of at-large elections  
12 in the district violates Section 2 of the Voting Rights Act  
13 then move to the next stage of this case to determine an  
14 appropriate remedy for the violation. Thank you, Your Honor.

15 THE COURT: Thank you.

16 On behalf of the defendants?

17 MS. GABEL: Good morning, Your Honor.

18 THE COURT: Good morning.

19 MS. GABEL: May it please the Court. My name is  
20 Angela Gabel, and I represent the Ferguson-Florissant School  
21 District.

22 Your Honor, this case does not fit into Section 2.  
23 This is a case with an African-American majority of the  
24 population and a white minority. This is a case with an  
25 African-American plurality of the voters and an

1 African-American majority of the voters. Whites are the  
2 undisputed minority.

3 Plaintiffs have a tortured interpretation of Section  
4 2, and it ignores the text of the statute and turns Section 2  
5 upside down. The district will prove this through five simple  
6 points. Number one. First, the parties agree the ultimate  
7 right of Section 2 is equality of opportunity, not a guarantee  
8 of electoral success for minority-preferred candidates of  
9 whatever race. And that opportunity is measured today, in the  
10 present tense. Now, there are multiple ways to get there, but  
11 when the Court looks at the most recent evidence, it will find  
12 that African Americans are the largest group of voters.

13 Plaintiffs ask the Court to override multiple state  
14 laws and redraw the district based on the flawed premise that  
15 time somehow stopped in 2010. We know that's not true. In  
16 other words, plaintiffs cherry-pick and select the data that's  
17 most advantageous. They ignore the rest.

18 The Court can and should consider the most recent  
19 census data when it makes its decision. The most recent data  
20 shows that, at a minimum, African Americans are the largest  
21 group of voters. And that's stipulated. Our expert will show  
22 that African Americans are a majority of the voters. This is  
23 not a projection.

24 Your Honor, *Gingles I* deals with creating smaller  
25 subdistricts with African-American majorities. This district

1 is already a majority-minority district. There is no need to  
2 subdivide it any further. That alone is enough for the Court  
3 to find for the district because Section 2 is about equal  
4 opportunity. African Americans, as a largest group, already  
5 possess that. So, once again, Section 2 is simply not meant  
6 for these facts. It turns the legal standard on its head and  
7 up-ends the premise of Section 2.

8           Number two. So let's talk about what plaintiffs  
9 actually propose. The Supreme Court holds that Section 2  
10 plaintiffs must propose a reasonable alternative to the  
11 current at-large system. So plaintiffs proposed smaller  
12 single-member districts.

13           Plaintiffs' own expert published an article in 2010  
14 in the St. Louis University Law Review that states that the  
15 at-large system, the system that we already have in place,  
16 favors the largest group of voters. It favors African  
17 Americans. Here is what Dr. Engstrom says. He says, "There  
18 are numerous variations in how at-large elections are  
19 implemented, but regardless of the particular arrangement,  
20 this system does have a tendency to favor candidates preferred  
21 by a majority group, or at least the largest group of voters  
22 within the jurisdiction." These are the words of plaintiffs'  
23 own expert.

24           His own theory admits the at-large system is most  
25 appropriate under these facts, but plaintiffs propose

1 single-member districts where African Americans are a majority  
2 in four of them. Plaintiffs' specific proposals utterly fail  
3 to increase African-American representation for multiple  
4 reasons, but the most obvious is that plaintiffs put the two  
5 African-American board members in the same subdistrict. It's  
6 as simple as that.

7 So to sum up the first two points under *Gingles* I,  
8 first, African Americans presently possess an opportunity to  
9 elect candidates of their choice; and, number two, plaintiffs  
10 cannot, and do not, propose a reasonable alternative to the  
11 current at-large system.

12 Now, let's turn to the third point, under the second  
13 *Gingles* precondition. This factor requires plaintiffs to show  
14 that African-American and white voters have distinct and  
15 different preferences. Plaintiffs will tell you that  
16 African-American and white voters never have the same one  
17 preference. But, Your Honor, there is always more than one  
18 preference on the ballot. There's two. Every two years  
19 there's two seats on the ballot. Every three years there's  
20 three seats up for election. There are always at least two  
21 choices. Every three years there is three choices.

22 When the Court looks at all the evidence in all of  
23 the African-American votes, as the district proposes, it will  
24 find that the African-American and white voters have legally  
25 significant overlap. In other words, their preferences are

1 not distinct. But plaintiffs don't do that. They cherry-pick  
2 and narrow the data to their best possible advantage.

3           Again, when the Court looks at all of the evidence,  
4 it will find plaintiffs can't meet the second *Gingles*  
5 precondition, and it bears repeating that the failure to meet  
6 any one of these preconditions is fatal to their claim.

7           Our fourth point looks at the third *Gingles*  
8 precondition. *Gingles* III says -- it asks whether the white  
9 majority typically votes in a bloc to defeat the minority  
10 candidate. Again, this case turns Section 2 upside down.  
11 There is no white majority. There was no white majority in  
12 the census data under the 2011-2013 American Community Survey.  
13 There was no white majority in the 2010 decennial census. In  
14 fact, you have to go back 16 years to find published data  
15 where whites were a majority of the voters. That's  
16 stipulated. And African Americans have maintained consistent  
17 representation on this board for the last several decades.

18           Plaintiffs offer a variety of exceptions that they  
19 characterize as rules for determining who is the  
20 African-American representative. They attempt to discredit  
21 the district's approach of including all of the  
22 African-American preferences to bolster their approach of  
23 selecting the best data. If an election is close, they throw  
24 it out.

25           It will be important for the Court to know that

1 plaintiffs' approach discounts each and every time an African  
2 American is elected. This just demonstrates the method of  
3 selecting and cherry-picking the data. Plaintiffs are merely  
4 attempting to hide African-American achievements.

5           But you'll hear from the two most recent  
6 African-American board members, Dr. Courtney Graves and Dr.  
7 Donna Thurman. These are impressive ladies. I mean, they're  
8 incredibly well qualified. But instead of including these  
9 ladies' success in their analysis, plaintiffs discount it.  
10 They claim their success was due to special circumstances.

11           Your Honor, you will hear from these ladies, and the  
12 amount of work they put into their elections it really is  
13 something to behold. Their success was not the result of  
14 special circumstances. It was a result of hard work.

15           Fifth, and finally, Your Honor, plaintiffs' case  
16 fails on all three *Gingles* preconditions, any one of which is  
17 fatal to their claim. But the last step, if we get there, is  
18 the totality of the circumstances. Under this test plaintiffs  
19 bear the burden to prove a combination of nine factors, which  
20 they can't do. I'm not going to go through them right now. I  
21 thought you would appreciate that.

22           When the time comes, you will hear from our board  
23 members about their campaigns, about their responsiveness to  
24 all the children in the district, about their reasons to keep  
25 staggered terms and April elections and about their support

1 for the current at-large system.

2 Judge, the district asked me to remind the Court that  
3 we are a school district. Our sole purpose is to educate, and  
4 we are operating under the laws of the state of Missouri. We  
5 believe the at-large system is best for our school system, and  
6 we believe the at-large system is best for African-American  
7 representation.

8 Your Honor, this case does not fit into the premise  
9 of Section 2, and there's no liability.

10 Thank you.

11 THE COURT: Thank you. Do you want to call your  
12 first witness?

13 MR. ROTHERT: The plaintiffs would call Mr. Adolphus  
14 Pruitt, Your Honor. I'm going to -- I have a -- for each of  
15 our witnesses we'll have a binder of the exhibits the  
16 witnesses are using that we will give to opposing counsel, to  
17 you, and to the witness.

18 THE COURT: Thank you.

19 **(WITNESS SWORN BY THE CLERK.)**

20 THE COURT: Counsel, are you ready? You may proceed.

21 **ADOLPHUS M. PRUITT,**

22 **HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS**

23 **FOLLOWS:**

24 **DIRECT EXAMINATION**

25 **BY MR. ROTHERT:**

1 Q Good morning.

2 A Morning.

3 Q Could you state your name for the record, please?

4 A Adolphus M. Pruitt.

5 Q Mr. Pruitt, are you familiar with an organization known  
6 as the National Association for the Advancement of Colored  
7 People?

8 A Yes, I am.

9 Q What is the mission of the NAACP?

10 A To ensure the political, social, educational, and  
11 economic equality for all folks and also to combat and deal  
12 with race-based discrimination.

13 Q Does the NAACP have a constitution that sets forth its  
14 objectives?

15 A Yes, we do.

16 Q Is one of those objectives to seek enforcement of federal  
17 laws, securing civil rights?

18 A Yes, it is.

19 Q And is one of those federal laws securing civil rights  
20 that the NAACP seeks to enforce the Voting Rights Act?

21 A Yes.

22 Q Why does the NAACP care about the Voting Rights Act?

23 A In spite of section, article, the Voting Rights Act, you  
24 know, we still have local and state governments that employ  
25 tactics that will impede the free and unfettered rights of

1 individuals to vote, and also it provides that we have the  
2 ability to challenge dilution or any efforts to deny us the  
3 right to vote, period.

4 Q Is there a statewide Missouri unit of the NAACP?

5 A Yes, it is.

6 Q What is that called?

7 A The Missouri State Conference of branches.

8 Q And are you affiliated with the Missouri State Conference  
9 of the NAACP?

10 A Yes, I am.

11 Q And are you authorized to speak on behalf of the Missouri  
12 State Conference of the NAACP on the issues related to this  
13 case?

14 A Yes, I am.

15 Q Are there local units of the NAACP in Missouri other than  
16 the state conference?

17 A Yes, there are.

18 Q About how many of them are there?

19 A Forty, fifty.

20 Q Are you associated with one of those units?

21 A Yes. I'm the president of the St. Louis City branch of  
22 the NAACP.

23 Q Are you aware of any NAACP members who reside within the  
24 boundaries of the Ferguson-Florissant School District?

25 A Many.

1 Q Is one of them a Mr. Redditt Hudson?

2 A Yes.

3 Q Did you have an opportunity in this case to execute a  
4 declaration or an affidavit?

5 A Yes, I did.

6 Q If you could look in your binder book at what's been  
7 marked as Exhibit 119, do you know what that is?

8 A Yes.

9 Q What is it?

10 A It is titled "Declaration of Adolphus M. Pruitt, II on  
11 behalf of the Missouri State Conference of the National  
12 Association for the Advancement of Colored People, Missouri,  
13 NAACP."

14 Q Is that the declaration that you executed?

15 A Yes, I did.

16 Q Have you recently had an opportunity to review that?

17 A Yes, I have.

18 Q And are those statements in the declaration -- were they  
19 true when you signed the declaration?

20 A Absolutely.

21 Q And are they true now?

22 A Absolutely.

23 MR. ROTHERT: Your Honor, we would move for admission  
24 of Plaintiffs' Exhibit 119.

25 THE COURT: Any objection?

1 MS. ORMSBY: No, Your Honor. It's been stipulated.

2 THE COURT: Received without objection.

3 Q (BY MR. ROTHERT) Are you familiar with the  
4 Ferguson-Florissant School District?

5 A Yes, I am.

6 Q How did you become familiar with it?

7 A Well, as the -- through the Black Leadership Roundtable.

8 Q Okay. What's the Black Leadership Roundtable?

9 A It's an organization that was pulled together of several  
10 selected African-American leaders throughout the St. Louis  
11 region by Jim Buford in 1989 to address issues that impact  
12 African Americans in this region and has some influence over  
13 those issues.

14 Q And what's your involvement with the Black Leadership  
15 Roundtable?

16 A I'm on the board and serve as vice chair.

17 Q Does the Black Leadership Roundtable have a focus on  
18 education?

19 A Yes, we do.

20 Q Okay. When did that Black Leadership Roundtable begin  
21 focusing on education?

22 A Back in 2001, as we started examining the districts in  
23 the St. Louis region and looking at the ever-growing  
24 achievement gap between minorities and non-minority students,  
25 we decided to take a real hard focus at it.

1 Q When you say "achievement gap," what do you mean when  
2 you're saying "achievement gap"?

3 A I'm talking about those areas where there is a disparity  
4 between minorities and non-minority students, especially  
5 African-American students, as relates to a number of different  
6 educational outcomes when we talk about the difference in  
7 performance in standardized testing, when we talk about the  
8 difference in opportunity for advanced placement courses, talk  
9 about the difference in math and communication, art schools,  
10 across the board.

11 Q Did your work with the Black Leadership Roundtable  
12 involve engaging with any school districts?

13 A Yes. We reached out and engaged with every school  
14 district in St. Louis city and county, roughly around 25 of  
15 them, to take on issues and strategies to deal with  
16 achievement gap.

17 Q So did the Black Leadership Roundtable provide any  
18 training on how to eliminate African-American achievement  
19 gaps?

20 A Yes, we did. We put on conferences, we brought in  
21 national leaders to speak on it, and actually we put together  
22 an annual report that outlined what the achievement gap was  
23 for each one of those districts and encouraged the districts  
24 to take on strategies to address it directly.

25 Q When you're talking about strategies, what kinds of

1 strategies are you talking about to address the  
2 African-American achievement gap?

3 A You know, parental engagement, higher level of parental  
4 engagement, the opportunity for what we call professional  
5 development that addresses courts of competency, things of  
6 that nature.

7 Q And in doing this work and preparing these resources, are  
8 you aware of there being any evidence that there are ways to  
9 reduce and eliminate achievement gaps?

10 A Yeah. There are some great things going on.

11 Q Like what?

12 A Well, there's one district that simply did a survey  
13 between the students and the faculty to talk about their  
14 common interests, and results were significant, about 60  
15 percent to reduce achievement gap.

16 There was a middle school that did a survey between  
17 the students where they looked at the -- identified the value  
18 issue and discussed it, and I think they had a 40 percent  
19 reduction there. There are a number of things going across  
20 the country.

21 Q To your knowledge, are any of these things happening in  
22 the Ferguson-Florissant School District?

23 A Not to my knowledge.

24 Q If they were, do you think you would know?

25 A Yeah. Absolutely.

1 Q Why?

2 A Well, it's extremely important for us and the folks we  
3 represent to know what's going on in the school district, to  
4 have some idea how they're performing. African Americans  
5 really have expressed a lot of concern about the performance  
6 of their students in the districts.

7 Q Okay. Now, you mentioned earlier that the Black  
8 Leadership Roundtable made some reports. Is that right?

9 A Yes.

10 Q Were those reports specific to the Black Leadership  
11 Roundtable's work on the achievement gap?

12 A Absolutely.

13 Q And how often did those reports come out?

14 A Annually.

15 Q And what areas of educational attainment did you look at  
16 in those reports?

17 A Primary focus was looking at the state scores, looking at  
18 the math scores, and really taking a hard look at  
19 communication arts.

20 Q And this started around 2001 or --

21 A Yeah, 2001 to 2009, was the last report.

22 Q The last one was in 2009?

23 A The last one was in 2009.

24 Q Did you stop in 2009 because the problem of the  
25 African-American achievement gap stopped in 2009?

1 A That would have been a party. No. Absolutely not.

2 Q Why did you stop?

3 A Ironically, the funding we was using to do that lapsed.

4 Q Is the Ferguson-Florissant School District one that was  
5 evaluated each of those years?

6 A Absolutely.

7 Q And in those years was the Ferguson-Florissant School  
8 District one of the districts in the area that had a large  
9 achievement gap for African Americans?

10 A Yes, to date.

11 Q Now, Ferguson-Florissant School District isn't the only  
12 school district that has an achievement gap for African  
13 Americans, is there?

14 A Absolutely not.

15 Q Are there school district boards in the St. Louis area  
16 that have been responsive to the need to address the  
17 African-American academic achievement gap?

18 A Yes. Several.

19 Q Can you provide me an example locally?

20 A Well, right next door to Ferguson, it borders the  
21 Hazelwood School District.

22 Q What has the Hazelwood School District's board done?

23 A I'm sorry?

24 Q Hazelwood -- what's the school board done there about the  
25 achievement gap?

1 A Oh, my God. They took a strong effort to engage with the  
2 parents, parental engagement. They began to do some strong  
3 assessment to figure out what the problems were. They did a  
4 lot of things, took on a lot things.

5 Q Did they do any training?

6 A Yes, did a lot of teacher training.

7 Q And does the Hazelwood School District's board -- does it  
8 promote its efforts to reduce the African-American academic  
9 achievement gap?

10 A It is -- according to their website and from the board  
11 meetings I've attended, it is their number-one priority.

12 Q Do you view the board's action in Hazelwood regarding  
13 addressing the academic achievement gap as being responsive to  
14 the needs of the African-American community?

15 A Extremely responsive.

16 Q How many members are on the Hazelwood School District's  
17 board?

18 A Seven.

19 Q Do you know how many are African American?

20 A Four.

21 Q Are there any other school districts locally that you can  
22 give us as an example where the school board is proactively  
23 attempting to address the African-American achievement gap?

24 A Yeah. Jennings is doing some great things.

25 Q What's the board doing in Jennings?

1 A Oh, my God. Jennings has took a hard look at all the  
2 issues impacting African-American students overall as relates  
3 to access to food. They partner with the St. Louis Food Bank  
4 to make sure that the kids could have access to food to take  
5 home, and they provide dinners for them. They've kept the  
6 libraries open late. They open up their recreational  
7 facilities and make sure the physical health is okay.

8 They provide health services on site, including  
9 mental health. And most recently they opened up a homeless  
10 shelter to deal with the transient issue because they had a  
11 lot of students that went into the buildings that were just  
12 homeless, and that was having a big impact on their  
13 educational outcomes.

14 Q And do they also offer full-day free day care -- or, I'm  
15 sorry -- pre-K and kindergarten?

16 A Early childhood education is a main foundation of what  
17 they're trying to do to address achievement gap.

18 Q Do you view the board's actions in the Jennings School  
19 District regarding, you know, to address this academic  
20 achievement gap as being responsive to the particularized  
21 needs of the African-American community?

22 A Extremely.

23 Q Okay. And how many members are on their board?

24 A Seven.

25 Q Do you know how many are African American?

1 A Six.

2 Q Other than the academic achievement gap the  
3 African-American students experience in the  
4 Ferguson-Florissant School District, are there other  
5 education-related gaps in the Ferguson-Florissant School  
6 District that concern you?

7 A One that concerns me extremely much is the one as relates  
8 to discipline, the disparity in discipline.

9 Q Okay. What does disparity in discipline mean?

10 A It means that you have one group of population which is  
11 subject to more harsh and more frequent discipline than the  
12 others.

13 Q Okay. And when you say "one group" --

14 A I'm talking about African Americans.

15 Q And what kind of discipline are you talking about?

16 A Suspensions and school suspensions, out-of-school  
17 suspensions, expulsions, corporal punishment. And one that in  
18 this climate that bothers me the most is referring them to  
19 local police departments, especially the ones in Ferguson.

20 Q And you know about these disciplinary data because the  
21 board of the school district reports it?

22 A Absolutely.

23 Q They report it to the state and to the federal  
24 government.

25 A Absolutely.

1 Q Okay. Why is a disparity, a racial disparity in  
2 discipline -- why does the NAACP care about that?

3 A The primary issue is the prison to pipeline, the  
4 prison-to-pipeline issue as relates to the disparities in  
5 discipline in school districts.

6 Q Okay. Is there anything else that being out of school  
7 suspended causes problems for students?

8 A Oh, my God. I would probably best say it is that the  
9 number-one indicator of whether a child drops out of school,  
10 goes down the path to unemployment, or underemployment  
11 subsequently is adjudicated to wind up in the system is not  
12 poverty; it's suspensions.

13 Q Are there any -- you know, based on that, that DESE, the  
14 Missouri DESE, Department of Education and -- I forget what it  
15 stands for, but the education -- the state education  
16 department data that was according to that data on suspension,  
17 are there any statistics that --

18 A Yes.

19 Q -- jump out to you as especially troublesome about  
20 Ferguson-Florissant School District?

21 A I think it's 20 percent of African-Americans students are  
22 subject to suspension versus 7 percent for the white  
23 population last set of numbers I looked at.

24 Q Do you remember what year that was?

25 A 2014 maybe.

1 Q Maybe 2011?

2 A Yeah. Well --

3 Q All right. Relatively recently.

4 THE COURT: Not to lead the witness, but we'll decide  
5 it's 2011.

6 Q Are you aware of any resources for school districts that  
7 want to address discipline disparities based on race?

8 A Yeah. The Department of Education is, a lot of stuff.

9 Q And has the NAACP put on any programs about reducing  
10 disciplinary disparities based on race?

11 A Yes.

12 Q And locally have you done that?

13 A Yes.

14 Q Do you know does the Department of Education put out any  
15 resources about zero-tolerance policies?

16 A Absolutely. They have on their website a resource  
17 directory that can direct districts to any number of events,  
18 practices, and other interventions to address their  
19 disparities in discipline.

20 Q Okay. Are you aware of any school districts in the St.  
21 Louis metropolitan area doing anything to address disciplinary  
22 disparities based on --

23 A Yes. Yes, I am.

24 Q Give me an example, please.

25 A St. Louis Public Schools.

1 Q Okay. What happened there?

2 A You know, a report came out, and the numbers were off the  
3 chart for the St. Louis Public Schools. The special  
4 administrative board got with the superintendent, and the  
5 superintendent took immediate action. He called for a  
6 moratorium on out-of-school suspensions. Immediately began to  
7 address the faculty with some training interventions. And one  
8 of the main things he did was require that the staff document  
9 what interventions they took before they brought the student  
10 up for suspension. In other words, if the student was being  
11 disruptive or other things or had a pattern, what were the  
12 interventions you did prior to suspending them?

13 Q Okay. Do you view these kind of actions by the St. Louis  
14 Public Schools and their special administrative board as  
15 specifically addressing the disciplinary gap based on race as  
16 being responsive to the particularized needs of the  
17 African-American community?

18 A Very responsive.

19 Q Are you aware of any initiatives that are just widely  
20 known that school board can use if they want to address  
21 achievement gaps?

22 A Yes.

23 Q Can you give me an example?

24 A The NEA -- and, well, let me -- there are couple of  
25 initiatives that I think of off the top of my head in which

1 they are -- best way to put it, the staff is providing some  
2 direct intervention to the students as relates to prepping  
3 them and getting them prepared for AP courses. They are doing  
4 some extensive professional development in training that  
5 teaches to identify exactly what are the root causes for those  
6 gaps and things of that nature.

7 Q Let me ask you about that. Has the NAACP locally done  
8 any conferences on this issue?

9 A Absolutely. We've brought in Dr. Ronald Ferguson, head  
10 of the Harvard Achievement Gap Institute, and hosted a  
11 workshop for the districts to participate in and to look at  
12 the best practices and strategies.

13 Q And are you aware of anything -- is the U.S. Chamber of  
14 Commerce doing anything?

15 A Yes. We are partnering with the U.S. Chamber of  
16 Commerce --

17 Q Can I interrupt you? When you say "we partnered" --

18 A I'm sorry. The NAACP is partnering with the U.S. Chamber  
19 of Commerce Foundation to address the disparity in minority  
20 students participating in AP courses, advanced placement  
21 courses.

22 Q Tell me what that's about. What's the issue with African  
23 Americans having access to AP courses?

24 A Yeah. It's couple of things. One is that, you know, in  
25 some cases 75 percent or more of the students who are eligible

1 to participate in AP courses are not involved in them. Most  
2 cases is because the districts are not doing the things  
3 necessary to make sure those courses are available, those  
4 opportunities exist for them. In another cases it's just that  
5 some kids who may be on the cusp of being able to participate  
6 and achieve at the AP level and they're not getting those  
7 opportunities either.

8 Q Okay. So what's the NAACP and the U.S. Chamber of  
9 Commerce -- what are you trying to do about that?

10 A Yeah. Well, we had a workshop, brought in a lot of  
11 experts to bring in to identify a different number of best  
12 practices, and more than anything we were encouraging all of  
13 our branches across the country to partner up with their local  
14 chamber to address the issue of education, and education is an  
15 extremely big issue and priority for our local chamber.

16 Q And is that access to advanced placement classes, is that  
17 one of areas in which there is a racial gap?

18 A It's a significant racial gap.

19 Q And that's in Ferguson-Florissant School District?

20 A Absolutely. Absolutely.

21 Q You mentioned the NEA. Are you aware of anything they  
22 have put together?

23 A Yeah. The NEA has had a number of directories and things  
24 they put out for -- as relates to resources that districts can  
25 call upon as a way of finding best practices and initiatives

1 that are out there that will help them address the gap.

2 Q Okay. I'd like you to look in your binder there,  
3 Plaintiffs' Exhibit 175. Can you tell me what that is?

4 A Oh, yeah. The CARE Project: Culture, Abilities,  
5 Resilience, and Effort.

6 MS. ORMSBY: Objection to this exhibit, Your Honor,  
7 on relevance, on the fact it's hearsay. The NAACP doesn't  
8 have anything to do with the --

9 THE COURT: I'll take it for what it's worth as a  
10 reference. Obviously, you haven't laid a foundation for the  
11 document.

12 MR. ROTHERT: Right. I also haven't offered it into  
13 evidence.

14 THE COURT: But to the extent that he's read it and  
15 he's thought about it.

16 Q (BY MR. ROTHERT) Okay. So is this the resource that  
17 provides strategies for closing achievement gaps?

18 A Absolutely.

19 Q And have you read it?

20 A Yes.

21 Q And does it include activities, exercises, strategies for  
22 reducing the achievement gap --

23 A Yes, they do. Training and materials, the works.

24 Q Was it hard to find?

25 A No. It was on their website.

1 Q All right. If you take a look at Exhibit 176, what's  
2 that?

3 A Racial profiling curriculum guide.

4 Q Is this from the NEA also?

5 A Yes, it is.

6 Q All right. And, you know, was this hard to find?

7 A No. It's on their website.

8 Q Going back all these years when you and others have been  
9 talking about the gaps, are you aware of the board of the  
10 Ferguson-Florissant School District adopting any policies like  
11 other districts have done to address the achievement gap in  
12 the Ferguson-Florissant School District?

13 A I briefly recall maybe a committee or two but nothing  
14 significant whatsoever.

15 Q Any policies that you're aware of?

16 A No.

17 Q Any new curricula?

18 A Not that I know of.

19 Q Are you aware of the board adopting any policies to  
20 address the racial discipline gap in the Ferguson-Florissant  
21 School District?

22 A Absolutely not.

23 Q And what do you and your members -- I mean, when there is  
24 no policy and there is no action, what does that -- what do  
25 you guys think of that?

1 A You know, for a board to be aware of the disparity and  
2 the numbers and the impact it can have on educational outcomes  
3 of children and not to have any concrete policies, activities  
4 in place, demonstrates that the board doesn't care about those  
5 African-American children who are suffering.

6 Q Do these disparities play a role in elections for school  
7 board?

8 A Absolutely.

9 Q In what way?

10 A Oh, I think it was the 2014 election when the board  
11 chairman, Paul Morris, was quoted that discipline was the  
12 number one issue for the school district.

13 MS. ORMSBY: Objection. Hearsay, Your Honor.

14 THE COURT: Sustained.

15 Q Okay. If you --

16 A It was printed in the paper.

17 THE COURT: Well, that must mean it's true.

18 Q All right. If you were -- if there was evidence that the  
19 school board was calling for more discipline in light of the  
20 disparities, what would that -- how would you feel about that?

21 MS. ORMSBY: Objection. Speculation.

22 THE COURT: Are you going to tie that up later?

23 MR. ROTHERT: In this witness, or in this case?

24 THE COURT: No. In some time in the trial.

25 MR. ROTHERT: Yes.

1 THE COURT: Okay. Overruled.

2 A What was the question? I'm sorry.

3 Q (BY MR. ROTHERT) If there's evidence later in this case of  
4 a person running for school board and it happens to be the  
5 president of the school board calling for more discipline, in  
6 light of these racial disparities what message does that send  
7 to the African-American community?

8 A Oh, my God. It basically says that, again, they have no  
9 interest in addressing the educational outcomes and the things  
10 that impact the educational outcomes of African-American  
11 children.

12 Q Okay. Let's turn back to 2013. Were there any area --  
13 St. Louis area school districts that completely lost their  
14 accreditation that year from the state?

15 A Yes. Normandy and Riverview.

16 Q And when you say Riverview, the official name of that  
17 school district is Riverview Gardens?

18 A Yeah, Riverview Gardens School District.

19 Q In that year were there any changes to the rights of  
20 students in unaccredited school districts?

21 A Mainly it was that the supreme -- state supreme court  
22 upheld existing law that provided for students to be able to  
23 transfer to accredited districts.

24 Q Now, if students in an unaccredited school district  
25 transfer to a different school district, how does the

1 receiving school district pay for that, having extra students?

2 A Well, the receiving district unfortunately had the right  
3 to set its own tuition rate, and that tuition was a charge  
4 that they could bill, that they could bill the sending  
5 district, and the sending district had to pay it.

6 Q Did some parents from the unaccredited school districts  
7 in Normandy and Riverview Gardens want to send their children  
8 to the Ferguson-Florissant School District?

9 A Absolutely.

10 Q Why?

11 A Two good reasons. One was that they bordered and lived  
12 in some of the same neighborhoods or next door to other  
13 children and families in the district; so it was convenient.  
14 They were there. And then, two, because they wanted to get  
15 their kids a better educational opportunity than the school  
16 district they were in.

17 Q Do you know the racial make-up approximately of the  
18 student body of the Riverview Gardens School District?

19 A Roughly 97 percent African American.

20 Q And what about the Normandy School District?

21 A Ninety-eight percent African American.

22 Q Did the board at the Ferguson-Florissant School  
23 District -- did they have any emergency meetings after this  
24 court ruling and they were going to have to accept students?

25 A Yes, they did.

1 Q And was that a meeting about how to encourage students to  
2 come to the district and feel welcome?

3 A Absolutely not.

4 Q What did they have a meeting about?

5 A It was a meeting about how they were going to adjust the  
6 class sizes to provide for seats for kids who wanted to  
7 transfer into the district.

8 Q Adjust upward or downward the class sizes?

9 A Downward.

10 Q Did you attend that meeting?

11 A No. I didn't know about the meeting.

12 Q And why not?

13 A It was a closed meeting.

14 Q What do you think about that meeting being closed? What  
15 message does that send?

16 A Well, I think you go to the school board and you're going  
17 to sit and deliberate about how you're going to disenfranchise  
18 African-American kids, black kids, in an unaccredited district  
19 from coming into your district by reducing the seats, that's  
20 probably something they did not want to discuss in public.

21 Q Okay. And why do you say -- when you say they're trying  
22 to keep black children from transferring in, why do you say  
23 black children?

24 A The two districts that were trying --

25 MS. ORMSBY: I object, Your Honor. It's speculation.

1 He wasn't at the meeting. He's speculating to what was  
2 discussed.

3 THE COURT: Sustained.

4 Q How is -- in this transfer scheme that the state statute  
5 has, how is transportation paid for?

6 A The sending district can choose one school district in  
7 which it will pay transportation. All of the other -- if they  
8 went to any other district, they had to pay for transportation  
9 themselves or find transportation by any means necessary.

10 Q Okay. And did anyone do anything to help students  
11 transferring into Ferguson-Florissant School District get  
12 transportation?

13 A Yeah. One of the most humane things through all of this  
14 was that the superintendent of Ferguson-Florissant School  
15 District at the time, Art McCoy, realized that in order for  
16 the kids to take advantage of the educational opportunities in  
17 Ferguson-Florissant, that he reached out to the churches at  
18 first. The churches were actually providing transportation to  
19 get the kids to school and then subsequently raising money and  
20 bought bus passes and things of that nature. He did what it  
21 took to make sure that the kids can take advantage of what  
22 Ferguson had to offer.

23 Q Now, did some people in Ferguson-Florissant School  
24 District not want transfer students?

25 A Absolutely.

1 Q And what were the excuses for not wanting transfer  
2 students?

3 MS. ORMSBY: Objection, Your Honor. Speculation.

4 THE COURT: Well, lay a better foundation.

5 Q Did you hear anything -- did the school board members  
6 make any public statements about not wanting transfer  
7 students?

8 A Absolutely.

9 Q And what were the reasons that the school board members  
10 gave publicly for not wanting transfer students?

11 A Said it was an economic issue.

12 MS. ORMSBY: Objection, Your Honor. Hearsay.

13 THE COURT: Overruled. I assume he was talking about  
14 the Ferguson-Florissant School District.

15 MR. ROTHERT: I am talking about the  
16 Ferguson-Florissant School District.

17 THE COURT: The board.

18 Q (BY MR. ROTHERT) I'm not offering it for being true.

19 Does that ring true to you that it was an economic  
20 issue?

21 A Well, no. I mean, whatever it cost them, they had the  
22 opportunity to bill the sending district to get it, and  
23 transportation was being provided from other sources. So, no,  
24 it did not ring true.

25 Q Okay. Now, has there ever been a history in this part of

1 Missouri of school districts actively working to keep black  
2 children out of their schools?

3 A Yes.

4 Q And does the Ferguson-Florissant School District have any  
5 role in that history?

6 A Yeah. In 1975 that's how it became the  
7 Ferguson-Florissant School District.

8 Q What happened in 1975 that created the  
9 Ferguson-Florissant School District?

10 A Well, a court order to deal with the segregated school  
11 system. So they merged Berkeley and Kinloch School Districts  
12 into what was -- what now has become the Ferguson-Florissant  
13 School District.

14 Q When people campaign as being against transfers or  
15 wanting to reduce or limit transfer students, does that have a  
16 racial overtone?

17 A Not only does it have it, but it was very vocal and  
18 nasty, and I hadn't seen anything like it except when I look  
19 at old footage of what happened when the busing took place in  
20 the '60s. I hadn't seen any -- that's my first experience of  
21 seeing something like that live and up front.

22 Q Why would campaigning against transfer students in this  
23 context -- why would that have a racial overtone?

24 A Because the districts that the kids will be coming from  
25 were predominantly African American, and they did not want to

1 have these African-American children in their school district.

2 Q Did the school board response to the transfer issue in  
3 Ferguson-Florissant School District -- did that put the  
4 district on the Missouri NAACP's radar?

5 A Well, they were already on there based on the achievement  
6 gap, but that reinforced what some of our concerns were and  
7 some of the concerns of the folks in the community.

8 Q And why does the Missouri NAACP care about the, you know,  
9 whether or not students in unaccredited school districts are  
10 being allowed to transfer to schools that are accredited?

11 A Well, I think the -- two things. One, the Missouri  
12 constitution requires that all children have access to -- I  
13 would say a good education, but I think the second promise of  
14 *Brown* basically said they should have access to a quality  
15 education. And if you're in an unaccredited school district  
16 and you live next door to a district that has a -- that is  
17 accredited, those children should have the opportunity to be  
18 there. And I think our state constitution requires it. I  
19 think *Brown* requires it.

20 Q Okay. Did you view, and the Missouri NAACP view, the  
21 class sizes, changes in the tuition rates as putting obstacles  
22 in the way of black children to transfer into the  
23 Ferguson-Florissant School District?

24 A We viewed it as the sole reason that -- was to prevent  
25 those kids from transferring to the district.

1 Q So that was all happening right as the 2013-2014 school  
2 year was starting?

3 A Yes.

4 Q Did anything else happen in the Ferguson-Florissant  
5 School District in 2013 that concerned the Missouri NAACP?

6 A They suspended the only, first African-American  
7 superintendent they ever had.

8 Q And that's Dr. Art McCoy?

9 A Dr. Art McCoy, yes.

10 Q When did that happen; do you remember?

11 A November 2013.

12 Q Okay. Why did this -- why did the Missouri NAACP care  
13 about Dr. McCoy being suspended?

14 A One, he was an excellent superintendent, excellent  
15 credentials; but, two, he had opened his arms and embraced  
16 those African-American children like no other district I think  
17 in the area. As a matter of fact, I think Ferguson-Florissant  
18 was on the -- number two on accepting kids.

19 After the program, he nurtured them and even reached  
20 out and got them transportation. He was doing what it took to  
21 ensure that those children that wanted to come to the school  
22 district had that opportunity to do it.

23 Q Okay. And so did it seem to the -- given the timing to  
24 the Missouri NAACP that the suspension could be in retaliation  
25 for Dr. McCoy's welcoming attitude of transfer students?

1 A We think it was solely in response to him welcoming the  
2 transfer students.

3 Q And when I say transfer students --

4 A Talking about the black -- I'm talking about those  
5 African-American kids that lived next door in the  
6 neighborhoods that the same kids in Ferguson did right now  
7 because of they were coming from Normandy and Riverview  
8 Gardens, which was predominantly African American.

9 Q Now, did you attend or watch any of the board meetings  
10 that happened right after the suspension?

11 A Yes.

12 Q All right. So did the board say that it suspended Dr.  
13 McCoy in retaliation for his welcoming attitude toward black  
14 students?

15 A Well, it wouldn't say anything. It was silent for a very  
16 long time.

17 Q Did anyone ask why?

18 A Oh, my God, yes. The community overall was in an uproar  
19 and wanted to know why Dr. McCoy was suspended.

20 Q Were there any special meetings to discuss this?

21 A Yeah. We had a number of meetings, and as a matter of  
22 fact, the sitting school board member attended, I think, some  
23 of those meetings, yeah.

24 Q And were there any -- did the school board have any  
25 meetings to listen to questions from the community? If you

1 remember.

2 A Not that I recall. Not specifically listening to  
3 questions from the community, no.

4 Q So how did the board respond to the questions about why  
5 it had suspended Dr. McCoy?

6 A At one point in time, there were made some statements  
7 that it wasn't about race. That was right after a press  
8 conference that we did at a church, and we sort of riled up,  
9 and they said it wasn't about race.

10 Q Other than saying it's not about race, did they say  
11 anything else?

12 A No.

13 Q So did that satisfy you that it wasn't about race?

14 A You know, normally when -- when this dealing with black  
15 children or people of color and the first thing they say "it's  
16 not about race," in most cases that's exactly what it is.

17 Q Can you give me -- I mean, you say that. Give me an  
18 example of that.

19 A I mean, you know, if you look at some of the reasons why  
20 blacks were given literacy tests as a prerequisite to register  
21 to vote, of course they said it was not about race, but it  
22 was -- turned out to be exactly that. It had a disparate  
23 impact and prevented African Americans from being -- from  
24 registering to vote and participating in the electoral  
25 process.

1 Q So other than saying it was not about race, did the board  
2 give the public any more information about why it had  
3 suspended Dr. McCoy?

4 A Not really.

5 Q Was this a problem?

6 A It was a big problem. We all were concerned, especially  
7 the parents of the kids that attended the district and the  
8 people in the community. We wanted to know why was such a  
9 delightful, well-mannered, well-equipped, educated  
10 professional being treated that way.

11 Q So in the absence of anything from the board explaining  
12 why it had suspended Dr. McCoy, you know, what did people  
13 think?

14 A Again, most folks thought --

15 MS. ORMSBY: Objection, Your Honor. Speculation.

16 THE COURT: Sustained.

17 Q Were there rumors about why he was suspended?

18 A There were all sort of innuendos and rumors, and we  
19 received any number of calls from individuals asking us as to  
20 why we were not engaging directly with the school board to  
21 have them to explain exactly what was going on with Dr. McCoy.

22 Q Did the board publicly give any reason -- I mean, except  
23 for when it was saying it wasn't about race, did it give any  
24 reason for why it was otherwise remaining silent about why it  
25 had suspended Dr. McCoy?

1 A Well, they told us that because it was a personnel issue,  
2 under Missouri law would not allow them to disclose that.

3 Q And did you buy that?

4 A Absolutely not.

5 Q Why not?

6 A I'm familiar with Missouri open records law, and it gives  
7 them the ability to make a choice one way or another.

8 Q On personnel information?

9 A Yeah. On personnel information, absolutely.

10 Q Do you know, after suspending Dr. McCoy, did the board  
11 later come up with a statement of charges and proceed toward  
12 going after Dr. McCoy?

13 A Yes, it did.

14 Q On those charges?

15 A Yes, it did.

16 Q And how was that ultimately resolved?

17 A Dr. McCoy resigned.

18 Q If you would look at Exhibit 161, which is in your  
19 binder, have you seen that before?

20 A Yes.

21 Q What is it?

22 A Separation agreement and release dated March 12, 2014.

23 Q Do you need some water?

24 A Yeah. That would be helpful.

25 THE CLERK: There is some right there. There is some

1 by you.

2 A Great. Great. Separation agreement and release dated  
3 March 12 between the Ferguson-Florissant School District and  
4 Dr. Art McCoy.

5 Q All right. Could you turn to paragraph 7 and read that  
6 to me?

7 A Seven. The district agrees that it will place the  
8 statement of charges and all documents amassed by the district  
9 in support of said charges in a sealed envelope only to be  
10 opened by order of a court, pursuant to Chapter 16 of the  
11 Missouri Revised Statutes of the State -- Revised Statutes of  
12 the State of Missouri.

13 Q And when is this agreement dated?

14 A March 14, 2014 -- March 12, 2014.

15 Q March 12, 2014?

16 A Yeah.

17 Q Correct?

18 A Yes.

19 Q All right. You're familiar with that agreement?

20 A Yes.

21 Q So is there anything in that agreement that prevented the  
22 board from being transparent about Dr. McCoy's suspension back  
23 in November of 2013?

24 A Not in my opinion.

25 Q Was that agreement signed before or after the community

1 was asking for transparency in November of 2013?

2 A After.

3 Q Before or after the community is asking for transparency  
4 in December of 2013 and January 2014?

5 A After.

6 Q Do you -- that agreement is signed by Dr. McCoy, right?

7 A Yes, it is.

8 Q Do you blame him for negotiating for confidentiality of  
9 charges in March 2014?

10 A If you're African American, you're being demonized, I  
11 would have done the same thing.

12 Q Are you aware or have you heard that the Department of  
13 Justice conducted a civil rights investigation into the City  
14 of Ferguson?

15 A Yes.

16 Q Did you read the report that came from that  
17 investigation?

18 A I'm very much involved, yes. I've read it from page to  
19 page.

20 Q And what did you think of it?

21 MS. ORMSBY: Objection, Your Honor. Relevance as to  
22 the school district.

23 THE COURT: Are you going to tie it up?

24 MR. ROTHERT: It will definitely be tied up in the  
25 case.

1 THE COURT: Okay. You may proceed under that  
2 understanding.

3 A Horrific. It outlined the unequal and unfair treatment  
4 and overpolicing of the residents and the children of the city  
5 of Ferguson, even those who are being educated in the  
6 Ferguson-Florissant School District -- the courts' excessive  
7 fines, the violation of all sort of constitutional rights of  
8 the individuals out there. It was horrific.

9 Q So that was about the City of Ferguson, though, right?  
10 That report?

11 A Yes.

12 Q So it doesn't have anything to do with the  
13 Ferguson-Florissant School District?

14 A Yes, it does.

15 Q Why? Why would you say that?

16 A Because it dealt with the policing, and it was the police  
17 officers of the Ferguson -- City of Ferguson who also -- the  
18 safety officer, resource officers in the Ferguson-Florissant  
19 School District.

20 Q Okay. And do the things that are highlighted in that  
21 report -- do they affect the students and parents that live in  
22 the school district, the African-American students?

23 A Yeah. The issues that the report outlined as relates to  
24 those resource officers and how they treated those children,  
25 those African-American children in the school district, was

1 horrific. The examples that they gave raised the hair on the  
2 back of my neck.

3 MR. ROTHERT: I have no further questions of this  
4 witness.

5 THE COURT: How long is your cross? More than ten  
6 minutes?

7 MS. ORMSBY: Yes.

8 THE COURT: Okay. We will take a morning recess at  
9 this time. We will reconvene at 10:45.

10 **(COURT RECESSED FROM 10:20 AM UNTIL 10:50 AM.)**

11 THE COURT: I'll remind you, sir, you're still under  
12 oath.

13 Mr. Rothert, are you ready?

14 MR. ROTHERT: Yes.

15 THE COURT: You may proceed.

16 **CROSS-EXAMINATION**

17 **BY MS. ORMSBY:**

18 Q Thank you, Your Honor.

19 Mr. Pruitt, my name is Cindy Ormsby. I represent the  
20 Ferguson-Florissant School District. You don't live in the  
21 Ferguson-Florissant School District, do you?

22 A No.

23 Q And what's your highest level of education?

24 A Bachelor's.

25 Q In what?

1 A Business administration and accounting.

2 Q What's your occupation?

3 A I'm a consultant.

4 Q For who?

5 A Pruitt and Associates. Self-employed.

6 Q What kind of consulting do you do?

7 A Business management, real estate -- wherever I can get a  
8 paying client.

9 Q I get that. Are you paid by the Missouri NAACP?

10 A Absolutely not.

11 Q Have you ever been on a school board?

12 A No.

13 Q Have you ever run for school board?

14 A No.

15 Q So you're not quite sure exactly what school boards do,  
16 are you?

17 A I'm very much familiar what school boards do.

18 Q What is a school board's role?

19 A Primarily to prepare -- to institute policy that the  
20 superintendent and the staff would carry out as relates to  
21 educating school children. I serve on the deseg committee for  
22 the St. Louis Public Schools based on our court case. I'm  
23 extremely experienced -- familiar what school boards do and  
24 what their responsibilities are.

25 Q Have you talked to any of the current school board

1 members about the issues that you talked about in your  
2 testimony?

3 A No.

4 Q Do you know Esther Haywood?

5 A Yes.

6 Q How long have you known her?

7 A Fifteen, twenty years.

8 Q Is she a member of the NAACP?

9 A Yes, she is.

10 Q Is she the president of the county NAACP?

11 A Yes, she is.

12 Q The Ferguson-Florissant School District's located within  
13 the county of St. Louis; is that right?

14 A Yes, it is.

15 Q Would you agree that you and Esther have a contentious  
16 relationship?

17 A No.

18 Q How would you describe your relationship?

19 A Well, we were together Saturday, and we spoke and had a  
20 very good conversation.

21 Q Did you talk to Esther before the filing of this lawsuit?

22 A No.

23 Q Even though the subject of this lawsuit is located in the  
24 county in which she's president?

25 A Because the Missouri State Conference has a chairman of

1 education who focuses on these larger issues, that chairman  
2 reports to me as a member of my branch, a member of my  
3 executive board, and all issues that relates to whether  
4 they're legal, economic development, and education related,  
5 that's my responsibility as the first vice president for the  
6 Missouri State Conference. So when these issues come up  
7 across the state, I am the person who represents the NAACP in  
8 dealing with them, whether it's Kansas City, St. Louis, the  
9 Bootheel, or Ferguson.

10 Q And it's not even a matter of politeness to talk to the  
11 president of the NAACP of the county in which it's located  
12 prior to filing?

13 MR. ROTHERT: I would object. It's irrelevant as  
14 to -- at this point.

15 THE COURT: Overruled.

16 A I think it's -- well, last time I looked at our  
17 administrative chart and how we do things, I didn't see  
18 politeness in that. What happens is, is that issues come up  
19 that are going to rise to a level where they're going to have  
20 to have litigation in order for a local branch to take on the  
21 issue, especially as relates to litigation. They have to  
22 apply to the state. Then the state has to sign off on it.  
23 Then we have to apply it to our national level. So whatever  
24 decision they were going to make, it would have to come to us,  
25 and we would have to be the ones to ultimately say, yes, we

1 want to elevate it up and get approval on the national level  
2 and take it on as a organization.

3 So, no, I don't think it was an issue of politeness.  
4 I think that our local branches understand what the role and  
5 responsibility of our state conference is, and they know what  
6 the role is, and we fulfill it.

7 Q Did you talk to her after the lawsuit was filed?

8 A Yeah.

9 Q About the case?

10 A A little bit, yeah. Not her directly, no.

11 Q You did or you didn't?

12 A Are you asking me if I talked to Esther Haywood directly  
13 after the case -- this case was filed? No, I have not had a  
14 conversation with her directly.

15 Q Did she ever advise you that she didn't agree with the  
16 lawsuit and she believed it was ill-advised?

17 A No. Never.

18 Q Did you ever determine prior to the filing of this  
19 lawsuit whether or not the district had reached out to the  
20 county NAACP about the Dr. McCoy controversy?

21 A No. I reached out to the district. They didn't --  
22 wouldn't talk to me, period. So, no. I don't know.

23 Q So you don't know if they talked to the county NAACP?

24 A No.

25 Q And you didn't think that was important to ask prior to

1 filing this lawsuit?

2 A No.

3 Q You talked a lot about the achievement gap. Do you know  
4 what data is measured in determining the achievement gap?

5 A Not extensively, no.

6 Q Do you know whether the achievement gap existed ten years  
7 ago?

8 A Yes. It probably wouldn't -- I don't know whether it was  
9 called "achievement gap," but the disparity as relates to the  
10 educational outcomes of children, yes, I think that whatever  
11 they measuring, it existed ten years ago.

12 Q Did it exist when Dr. McCoy was superintendent?

13 A I would assume so. I don't know.

14 Q Are you aware it's the superintendent's responsibility to  
15 address issues, academic issues, such as the achievement gap?

16 A No. I believe it's the board's responsibility to make  
17 sure that the kids are getting a quality education, and the  
18 superintendent reports to them.

19 Q Is it your understanding that school board members have  
20 degrees in education?

21 A No.

22 Q Is it your understanding that school board members have  
23 degrees in curriculum?

24 A No.

25 Q Is it your understanding that the school board hires a

1 superintendent that has those qualities?

2 A I would think that it would be impossible for me to  
3 respond and say all school boards hire superintendents based  
4 on those qualities. They may be hiring them because of  
5 favoritism. They may be hiring them for any number of  
6 reasons. They may be hiring them because there's one aspect  
7 of what their superintendent does that may be more prevalent  
8 as a problem in their district. So I think it varies from  
9 board to board, individual to individual. I don't think  
10 there's a set standard that I know of anywhere that says all  
11 school boards must follow this standard as relates to making  
12 hiring decisions of superintendents. I don't think that  
13 exists.

14 Q Is it your opinion that school boards should be qualified  
15 to choose the programs that are needed to address the  
16 achievement gap?

17 A Yes.

18 Q Even though they don't have degrees in education or  
19 curriculum?

20 A I think school board members in some cases hopefully are  
21 parents, and I think all parents are concerned about the  
22 things that important for them for they kids to learn; so I  
23 expect that the parental concern will penetrate them being a  
24 school board member and definitely something they will want to  
25 know about as relates to the kids in the district, especially

1 when you're looking at numbers that says that there is a  
2 impact to certain population in the district and that the  
3 impact is negative.

4 I think any time a superintendent, DESE, the  
5 Department of Secondary Elementary Education, anybody submits  
6 to me numbers that says that I have a population within my  
7 district that is failing or is being disproportionately  
8 impacted one way or another, that as a school board member I  
9 have a fiduciary responsibility more than anything else to  
10 understand why that's happening and to hold the superintendent  
11 accountable to fix it.

12 Q Hold the superintendent accountable, correct?

13 A Yes.

14 Q And that was Dr. McCoy a few years ago, correct?

15 A Yes.

16 Q And there was an achievement gap under Dr. McCoy,  
17 correct?

18 A Yes, I would assume.

19 Q Okay. How many school board meetings of the  
20 Ferguson-Florissant School District have you attended in the  
21 last year?

22 A Let's see, Dr. McCoy left, let's see, March. So prior to  
23 March of 2014, the separation agreement, I think maybe two. I  
24 attended the ones that you moved to the -- this other building  
25 because it didn't have enough room, and I can't think of the

1 other one. So maybe two or three.

2 Q How many curriculum committee meetings have you attended?

3 A None.

4 Q How many discipline committee meetings have you attended?

5 A None.

6 Q How many board workshops have you attended?

7 A Am I allowed to? Are they open to the public?

8 Q They are.

9 A Okay. None.

10 Q So how can you be so sure that the board hasn't addressed  
11 the issue of the achievement gap?

12 A Because of the parents with children in the district that  
13 we interface with and talk to are complaining about the very  
14 same things that we just talked about now, and then again I  
15 think the numbers -- unless the numbers you're reporting to  
16 DESE and the Department of Education are incorrect, I think  
17 the numbers are a pretty good indication that there is a  
18 disparity going on.

19 Q How many parents have you interviewed?

20 A Interviewed directly or have conversations with?

21 Q How many parents have you interviewed directly about the  
22 achievement gap?

23 A Maybe two or three.

24 Q How many parents have you interviewed directly about  
25 discipline?

1 A Oh, we've got at least over the past couple of years at  
2 least maybe ten, fifteen calls where parents are complaining  
3 about they felt that they child was not receiving a fair  
4 treatment as relates to discipline. And then at your  
5 meetings, board meetings, or in when we were having the  
6 rallies at the churches and stuff in respond to McCoy, then  
7 there were tons of parents complaining about discipline and  
8 achievement gap and all sort of inequities that they felt were  
9 going on in the district.

10 Q And are you positive that everybody that spoke at that  
11 meeting were residents of the school district?

12 A I'm positive that they were enough informed that I relied  
13 on that information, yes.

14 Q So the information that you gave to the Court today with  
15 regard to whether or not the school board has addressed the  
16 achievement gap and whether or not the school board has  
17 addressed the discipline issues, that's based on approximately  
18 twenty parents total that you've spoken to about that  
19 directly?

20 A Like I said at those meetings, we talked to any number of  
21 parents and individuals; so, no, I would not say that.

22 Q How many. How many --

23 A I -- I couldn't tell you how many people are in this  
24 courtroom; so I may have had a bunch of conversations, but I  
25 couldn't tell you how many of them were in there. So, no, I

1 didn't -- at those meetings I didn't go around with a clicker  
2 and every time I talked to somebody click off a number and  
3 keep count.

4 Q Have you spoken to fifty parents?

5 A I would say easily, yes.

6 Q Seventy-five?

7 A Quite possible.

8 Q Hundred?

9 A I don't know.

10 Q Do you know how many thousands of parents there are in  
11 the Ferguson-Florissant School District?

12 A No.

13 Q Okay. How many Hazelwood School Board meetings have you  
14 attended?

15 A Oh, my God.

16 Q In the last year.

17 A In the last year? Maybe two or three.

18 Q How many curriculum meetings have you attended?

19 A None. The teachers, when they report out at the school  
20 board meetings, they get those curriculum reports there at the  
21 meeting.

22 Q I'm at every single meeting. Do you see me there when  
23 you're there at the Hazelwood School Board meetings?

24 A No. I don't know.

25 Q Because I've been there for the last five, ten years, and

1 I've never heard a report out from the teachers at the  
2 Hazelwood School Board meeting. So I'm wondering which ones  
3 are you talking about?

4 MR. ROTHERT: Your Honor --

5 THE COURT: Your question's argumentative and assumes  
6 facts not in evidence; so why don't you rephrase.

7 Q I will, Your Honor.

8 Are you sure that the teachers report out at the  
9 Hazelwood school meeting?

10 A When they are principals report out at the Hazelwood  
11 School Board meetings where they put out the performances for  
12 each one of those school buildings, and they do -- yeah, they  
13 do report out. Did you see me at the meetings?

14 Q No.

15 THE COURT: Look, this is not a two-way street, all  
16 right? You ask the questions, and you answer them.

17 THE WITNESS: Yes, sir.

18 THE COURT: And your attorney will have the  
19 opportunity to ask you some --

20 THE WITNESS: I'm sorry, Your Honor.

21 THE COURT: That's all right.

22 Q Are you aware of the racial make-up of the Hazelwood  
23 School District?

24 A Somewhat, yes.

25 Q Do you believe that the Hazelwood School District has a

1 higher percentage of African Americans than the  
2 Ferguson-Florissant School District does?

3 A Yes. It's a larger school district, larger population,  
4 yes.

5 Q I'm talking about percentage-wise. Is the  
6 African-American population in Hazelwood larger or smaller  
7 than that of Ferguson-Florissant?

8 A I believe larger.

9 Q Do you know that to be true?

10 A No.

11 Q Have you looked at it?

12 A Recently to compare them? No.

13 Q How are school board members in Hazelwood elected?  
14 At-large or single-member districts?

15 A At large.

16 Q And how many school board members do they have that are  
17 African American?

18 A Four.

19 Q If it was -- if it's on the record in this court that the  
20 African-American population is slightly smaller than the  
21 Ferguson-Florissant School District, would that surprise you?

22 A I'm sorry. Say that -- are you talking about the  
23 percentage?

24 Q Yes.

25 A No, it wouldn't.

1 Q Yet they were able to elect a majority African Americans  
2 to their school board?

3 A I mean, the fact that the four are there, I think the  
4 answer to that is self-evident.

5 Q I think you're right. I talked a little bit about  
6 discipline. And you said you have not attended any of the  
7 discipline committee meetings in the Ferguson-Florissant  
8 School District, correct?

9 A No.

10 Q Correct? Are you aware of a statute that requires  
11 certain discipline infractions to be reported to the police?

12 A Somewhat.

13 Q Under state law?

14 A Yes, somewhat.

15 Q Do you believe school districts should comply with state  
16 law?

17 A Yes.

18 Q Are you aware that the Ferguson-Florissant has an  
19 alternative school where the vast majority of the students  
20 that are -- that receive out-of-school suspensions actually go  
21 and attend there so they are not on the streets?

22 A Somewhat.

23 Q Do you have any more recent data than 2011 with regard to  
24 discipline infractions?

25 A Not that I can rely on. I've gotten numbers that I read

1 in publications, but I haven't done any due diligence to  
2 ascertain whether they are accurate or not.

3 Q How many school board campaign events have you attended?

4 A None.

5 Q Do you believe that generally parents are concerned about  
6 discipline and student safety in the schools?

7 A I think they're more concerned that their kid gets a good  
8 education; but, yes, I think safety also is a concern.

9 Q If school board candidates are asked about discipline  
10 issues, should they answer those questions?

11 A Of course.

12 Q Will you concede that discipline is a legitimate area of  
13 concern and a matter for discussion in school board elections?

14 A Yes.

15 Q So achievement scores and students transferring. Are you  
16 aware -- well, why does a school become unaccredited; do you  
17 know? School district become unaccredited.

18 A There are a number of different performance levels that  
19 the DESE requires school districts to meet. When that does  
20 not happen over a two-year span of period, it gives the DESE  
21 the ability to go in and render the school provisionally  
22 accredited or subsequently unaccredited.

23 Q Is student achievement one of those factors that DESE  
24 considers?

25 A Yes.

1 Q And are you aware that the achievement scores of students  
2 transferring from unaccredited school districts become the  
3 scores of the receiving school districts?

4 A What I'm more aware of is that the --

5 Q It's just a yes-or-no question. Are you aware that the  
6 achievement scores of students transferring from unaccredited  
7 school districts become the achievement scores of the  
8 receiving school district?

9 A At a period of time that was designated by DESE in their  
10 guidelines -- I think it's the second year, or something like  
11 that; I forgot what the ruling was -- but --

12 Q So you don't know?

13 A Eventually. Eventually, yes.

14 Q Do you have that DESE document in front of you?

15 A Of course not.

16 Q So you're speculating on what it says. You don't know  
17 for sure?

18 A I'm confident that the scores are weighed in after a  
19 period of time.

20 MR. ROTHERT: Your Honor, I object to the original  
21 question since it apparently calls for speculation.

22 THE COURT: Overruled.

23 Q Explain to me how the achievement gap will change under a  
24 single-member district as opposed to an at-large district.

25 A Are you asking me for a professional opinion or just my

1 personal opinion?

2 Q I'm asking for -- I'm asking you to explain to the Court  
3 how the achievement gap will change if the electoral system  
4 changes.

5 A As a consultant, I can give a very technical response  
6 that professionally I probably should not because I don't have  
7 as much expertise, but I would say as a civil rights leader  
8 and activist, I think the fact that in those districts, those  
9 smaller districts, that those parents who live within that  
10 district will have a better opportunity to interface with the  
11 person who serves on the school board, and that will result in  
12 those school board members having the more direct  
13 understanding and input as relates to how that school board  
14 member carry out their duties from time to time.

15 Q Are you aware of the -- what the financial condition of  
16 the Ferguson-Florissant School District was in 2014?

17 A No.

18 Q You state in your declaration, and I quote, "Although the  
19 source school provided a substantial share of the  
20 transportation costs for transferring students, there were  
21 small remaining costs to guarantee adequate transportation."  
22 Did I quote you correctly?

23 A What number, paragraph number?

24 THE COURT: It's paragraph 21.

25 MS. ORMSBY: Thank you, Your Honor.

1 Q (BY MS. ORMSBY) Oh, no wonder. I flipped too far. I was  
2 in somebody else's.

3 Paragraph 21. Do you see that?

4 A Yes. I'm reading it.

5 Q That's not accurate, is it?

6 A What you mean it's not accurate? I don't understand the  
7 question.

8 Q It's not accurate that the sending school district  
9 provides transportation funds to the Ferguson-Florissant  
10 School District. You say they provide a substantial share of  
11 transportation costs. The source school, which would be  
12 Normandy School District or Riverview Gardens, provides a  
13 substantial share of transportation costs for transferring  
14 students. That's not correct, is it?

15 A I'm looking at No. 21. (Reading.) Transfer student was  
16 transportation, although the source provided -- although the  
17 source school provide substantial share of transportation,  
18 costs for transferring students that were remaining costs of  
19 adequate transportation.

20 And I was talking about in general.

21 Q So specifically to Ferguson-Florissant, no transportation  
22 costs were provided by the what you call "source school"?

23 A I agree.

24 Q Thank you. So if the school district was having  
25 financial issues -- in fact, they just in 2015 -- I don't know

1 if you remember. Do you remember if they ran a bond issue for  
2 a tax increase the last April election? Do you remember that,  
3 Mr. Pruitt?

4 A No. I don't recall.

5 Q Okay. So if finances were an issue at the  
6 Ferguson-Florissant School District, in transportation, Dr.  
7 McCoy wanted the district to pay for transportation, would  
8 that be a legitimate concern of the school district?

9 A I would say not in this instance, no.

10 Q Are you aware whether Dr. McCoy provided any budget  
11 adjustments to the board with regard to providing  
12 transportation funds?

13 A No, I'm not. No, I'm not.

14 Q Are you aware whether Dr. McCoy ever provided any sort of  
15 plan to the board where those transportation costs would be  
16 paid by outside sources?

17 A No, I'm not.

18 Q So can you agree with me that there's other reasons than  
19 your excuse of race that the school board could be concerned  
20 about the transfer program?

21 A No, there are not.

22 Q There's nothing else besides race? Finances could not be  
23 an issue?

24 A No. A prime example would be the St. Louis Public School  
25 opened its doors to all sort of children, and we had financial

1 issues for a very long time. I think they --

2 Q Did they provide transportation for them? Did they pay  
3 for the transportation?

4 A I don't know. I can ask.

5 Q You don't know.

6 A No, I don't know. I know they took them.

7 Q And the Ferguson-Florissant School District took them.  
8 Didn't you testify they took the second highest number of  
9 kids?

10 A Yes. Yes, they did.

11 Q They accepted those kids, right?

12 A Yes.

13 Q The second highest number of kids under Francis Howell;  
14 isn't that right?

15 A Dr. McCoy did.

16 Q And the school board never turned them away, did they?

17 A They could not turn them away.

18 Q They did not turn them away.

19 A They could not turn them away.

20 Q They did not try to turn them away, did they?

21 A I think when they changed the number of seats in the  
22 classroom, I think that was attempt to turn them away.

23 Q Are you aware they hired additional teachers to  
24 educate the -- were you there when they approved additional  
25 teachers to be hired for the transfer students?

1 A I think since they had to take the children, they had to  
2 have teachers to teach them.

3 Q They spent more money because of those transfer students,  
4 correct?

5 A I would assume that the teachers didn't come for free.

6 Q And they were required by DESE to set their class sizes,  
7 weren't they?

8 A No. I don't think so.

9 Q Really? You don't --

10 A I think DESE gave them an option. I don't think DESE's  
11 guidelines dictated that the districts had to change they  
12 class sizes. There were any number of districts -- what  
13 happened, I think DESE intervened because districts were  
14 changing their class size, and they saw that it would be  
15 prohibitive for the kids to get transferred in there. So they  
16 issued these guidelines so that they can have some uniform way  
17 of how these districts operate.

18 MS. ORMSBY: Your Honor, I'd like the opportunity to  
19 supplement the record with the actual DESE guidelines so the  
20 Court could see what they actually are rather than what that  
21 witness is testifying to.

22 THE COURT: We'll take that up as part of your case.

23 Q (BY MS. ORMSBY) Thank you.

24 Is Dr. McCoy your friend?

25 A No. I didn't know him before he became superintendent of

1 the Ferguson-Florissant School District.

2 Q And we've already talked about the fact that when he was  
3 superintendent, the achievement gap was not solved. Correct?

4 A Absolutely not.

5 Q And neither was the discipline issue?

6 A Absolutely not.

7 Q Would you have had the school district release all of the  
8 personnel information about Dr. McCoy against his wishes?

9 A Yes. I think transparency is in the public's best  
10 interest.

11 Q And do you believe that the school board's decision not  
12 to release personnel information with regard to Dr. McCoy is  
13 unique?

14 A I don't have enough history of those sort of instances  
15 that say whether it's unique or not.

16 Q Have you ever known a school district,  
17 Ferguson-Florissant in particular or any other school  
18 district, in which personnel decisions, especially regarding  
19 suspensions and terminations, are a subject for public  
20 consumption?

21 A I think in every instance where a superintendent has been  
22 terminated for or with or without cause by a district, I  
23 subsequently read about why it occurred in the newspaper,  
24 which may not be accurate, but I subsequently read about it.

25 Q You seem very familiar with the Hazelwood School

1 District. Why was Dr. Grayling Tobias put on suspension last  
2 year?

3 A I would be speculating.

4 Q Because it wasn't released, was it?

5 A I don't know whether it was or not, but I would be  
6 speculating. I've had extensive discussions with a lot of  
7 folks around in that, and that would be speculating or I guess  
8 it would be hearsay. I would be telling you what people in  
9 professional positions do know or had the opportunity to know,  
10 I would have to tell you what they told me.

11 Q Sir, I'm just following up on your comment that you said  
12 that usually when these situations happened, you read about it  
13 in the newspaper and you know. And I'm asking you for a  
14 specific example, and you can't give me one, can you?

15 A I can give you example of where in the newspaper where  
16 they've talked about where a superintendent was ultimately  
17 fired and why they were fired, yes. I think the one in  
18 Riverview, I think it was an issue of some spending.

19 Q Okay. I'm going to stop you right there. Wasn't that  
20 released because he was charged criminally?

21 A I don't know if that's why it was released.

22 Q The school board didn't release it, did they?

23 A I don't know. I read it in the paper, though.

24 Q Has the -- okay. Has the Ferguson-Florissant School  
25 District hired a new superintendent?

1 A Yes.

2 Q Have you met him?

3 A Yes.

4 Q Do you see him here in the district today?

5 A Yeah.

6 Q I mean in the courtroom today.

7 A Yeah. He's sitting back there.

8 Q Can you raise your hand, Dr. Davis?

9 What do you think about Dr. Davis?

10 A I don't know. I've spent maybe couple hours with him on  
11 a trip to Baltimore to look at a school there, and that was --  
12 I think that's mainly the extent of it.

13 MS. ORMSBY: I don't have anything further, Your  
14 Honor.

15 THE COURT: Any redirect, Mr. Rothert?

16 I assume the election board wasn't going to ask  
17 questions; is that right?

18 MS. FORSTER: No, Your Honor.

19 THE COURT: Are you ready for redirect?

20 MS. ORMSBY: Yes.

21 THE COURT: You may proceed.

22 **REDIRECT EXAMINATION**

23 **BY MR. ROTHERT:**

24 Q Mr. Pruitt, do you know whether the voting in the  
25 Hazelwood School District School Board elections is racially

1 polarized?

2 A Yes. I would say so.

3 MS. ORMSBY: Objection, Your Honor. Calls for a  
4 legal conclusion.

5 THE COURT: In his opinion. For what it's worth.

6 MR. ROTHERT: I'll just withdraw the question.

7 That's fine.

8 THE COURT: All right.

9 Q (BY MR. ROTHERT) Do you need a degree in curriculum or in  
10 education to understand that there's an African-American  
11 achievement gap?

12 A No.

13 Q And you rely on publicly available records from DESE and  
14 Office of Civil Rights, the Department of Education?

15 A Absolutely.

16 Q And who provides that information to DESE and the Office  
17 of Civil Rights, if you know?

18 A The school district.

19 Q Are you familiar -- have you ever heard of a program  
20 called Higher Achievement For All that was in the  
21 Ferguson-Florissant School District previously?

22 A No. Not really.

23 Q Do you know if Dr. McCoy, prior to being suspended, had  
24 implemented any programs to address the achievement gap in the  
25 Ferguson-Florissant School District?

1 A Yes. I've heard, but I don't know to any great extent  
2 the -- what those programs were. But, yes, I've heard that  
3 from a lot of folks.

4 Q And do you know did they also -- he also adopted new  
5 procedures under the policies for discipline, correct?

6 A Yes.

7 Q And what did the school board do with him, Dr. McCoy?

8 A They castrated him in the public and forced his  
9 resignation.

10 MS. ORMSBY: Objection, Your Honor. Objection.

11 Q Are you aware of any personnel information about the  
12 current Ferguson-Florissant School District superintendent in  
13 his previous employment?

14 A Other than what I read in the paper.

15 Q And what did you read in the paper?

16 A There was some questions as relates to the outcomes of a  
17 financial audit.

18 Q I need to get one thing. Did the Missouri NAACP reach  
19 out to the Ferguson-Florissant School District to discuss --

20 A Yes.

21 Q Well, let me ask. -- to discuss gaps, achievement in  
22 disciplinary gaps?

23 A No.

24 Q Okay. But to discuss Dr. McCoy?

25 A Yes.

1 Q And the Black Leadership Roundtable, when you were  
2 involved in that, did that organization reach out to the  
3 Ferguson-Florissant School District?

4 A Absolutely.

5 Q And was that every year?

6 A Yes.

7 MR. ROTHERT: I have no further questions.

8 THE COURT: Okay. I don't usually allow -- but as to  
9 the current superintendent if you have any questions.

10 MS. ORMSBY: That's it.

11 THE COURT: That was a new topic.

12 **RECROSS-EXAMINATION**

13 **BY MS. ORMSBY:**

14 Q Did you read the press release from the prosecutor in  
15 North Carolina with regard to that incident?

16 A No.

17 Q So you don't know that the prosecutor found absolutely no  
18 wrongdoing and that Dr. Davis was acting under the direction  
19 of the school board in each and every incident?

20 A I'll go further. I think that it was another example of  
21 how black superintendents are castrated by boards and other  
22 folks, just as Art McCoy was. I think he was a victim too.

23 MS. ORMSBY: Nothing further.

24 THE COURT: Thank you. Thank you, sir. You may step  
25 down.

1 If you would call your next witness, please.

2 MR. ROTHERT: Your Honor, at this point we would like  
3 to move for admission of several exhibits to which the parties  
4 have stipulated to their authenticity.

5 THE COURT: Okay.

6 MR. ROTHERT: And there's no objection. The first  
7 would be Plaintiffs' Exhibit 1, which is the 2000 official  
8 Ferguson-Florissant School District election results.

9 THE COURT: Received without objection.

10 MS. ORMSBY: Yes, Your Honor.

11 MR. ROTHERT: Exhibit 2 is the 2001 official  
12 Ferguson-Florissant School Board.

13 MS. ORMSBY: No objection.

14 THE COURT: Received.

15 MR. ROTHERT: Exhibit 3 is the 2002 election results.

16 MS. ORMSBY: No objection.

17 THE COURT: Received without objection.

18 MR. ROTHERT: Plaintiffs' Exhibit 4 is the 2003.

19 MS. ORMSBY: No objection.

20 THE COURT: Received without objection.

21 MR. ROTHERT: Plaintiffs' Exhibit 5, the 2004  
22 election results.

23 MS. ORMSBY: No objection.

24 THE COURT: Received without objection.

25 MR. ROTHERT: Exhibit 6 is the 2006 election results.

1 MS. ORMSBY: No objection.

2 THE COURT: Received without objection.

3 MR. ROTHERT: Plaintiffs' Exhibit 7 is the 2009  
4 election results.

5 MS. ORMSBY: No objection.

6 THE COURT: Received without objection.

7 MR. ROTHERT: Exhibit 8 is the 2011 election results.

8 MS. ORMSBY: No objection.

9 THE COURT: Received without objection.

10 MR. ROTHERT: Exhibit 9 is the 2012 election results.

11 MS. ORMSBY: No objection.

12 THE COURT: Received without objection.

13 MR. ROTHERT: Exhibit 10 is the 2013 election  
14 results.

15 MS. ORMSBY: No objection.

16 THE COURT: Received without objection.

17 MR. ROTHERT: Exhibit 11 is the 2014 official  
18 election results.

19 MS. ORMSBY: No objection.

20 THE COURT: Received without objection.

21 MR. ROTHERT: Exhibit 12 is the 2015 election  
22 results.

23 MS. ORMSBY: No objection.

24 THE COURT: Received without objection.

25 MR. ROTHERT: Exhibit 13 is U.S. Census Bureau Table

1 B07004B.

2 MS. ORMSBY: No objection.

3 THE COURT: Received without objection.

4 MR. ROTHERT: Exhibit 14 is U.S. Census Bureau Table

5 B08105B.

6 MS. ORMSBY: No objection.

7 THE COURT: Received without objection.

8 MR. ROTHERT: Exhibit 15 is U.S. Census Bureau Table

9 B16005B.

10 MS. ORMSBY: No objection.

11 THE COURT: Received without objection.

12 MR. ROTHERT: Exhibit 16 is U.S. Census Bureau Table

13 B17010B.

14 MS. ORMSBY: No objection.

15 THE COURT: Received without objection.

16 MR. ROTHERT: Exhibit 17 is U.S. Census Bureau Table

17 B17020B.

18 MS. ORMSBY: No objection.

19 THE COURT: Received without objection.

20 MR. ROTHERT: Exhibit 18, U.S. Census Bureau Table

21 B18101B.

22 MS. ORMSBY: No objection.

23 THE COURT: Received without objection.

24 MR. ROTHERT: Exhibit 19 is U.S. Census Bureau

25 B19013B.

1 MS. ORMSBY: No objection.

2 THE COURT: Received without objection.

3 MR. ROTHERT: Exhibit 20 is U.S. Census Bureau Table  
4 B19113B.

5 MS. ORMSBY: No objection.

6 THE COURT: Are you going to go all the -- how far  
7 are you going? Are you going all the way to 35, 36, 37?

8 MS. ORMSBY: Can go to 42 without objection.

9 MR. ROTHERT: Do you need to -- does it need to be in  
10 the record what they are?

11 THE COURT: No.

12 MR. ROTHERT: Okay. One through -- or 21 through 42?

13 MS. ORMSBY: Correct. No objection.

14 THE COURT: Received without objection.

15 MR. ROTHERT: Then 44, 45, and 46.

16 MS. ORMSBY: No objection.

17 THE COURT: Received without objection.

18 MR. ROTHERT: 48, 49, 50, 51, 52, 53, 54, 55.

19 MS. ORMSBY: No objection.

20 THE COURT: Received without objection.

21 MR. ROTHERT: Exhibit 61.

22 MS. ORMSBY: What about Exhibit --

23 MR. ROTHERT: We are not moving for admission of that  
24 at this point.

25 MS. ORMSBY: You're going to 61?

1 MR. ROTHERT: 61.

2 MS. ORMSBY: No objection.

3 THE COURT: Received without objection.

4 MR. ROTHERT: 62(a).

5 MS. ORMSBY: No objection.

6 THE COURT: Received without objection.

7 MR. ROTHERT: Then 63 through 69.

8 MS. ORMSBY: No objection.

9 THE COURT: Received without objection.

10 MR. ROTHERT: 71.

11 MS. ORMSBY: No objection.

12 THE COURT: Received without objection.

13 MR. ROTHERT: 75.

14 MS. ORMSBY: No objection.

15 THE COURT: Received without objection.

16 MR. ROTHERT: 79.

17 MS. ORMSBY: I'm objecting to this as 78 if 78 is not  
18 put in as well.

19 THE COURT: Well, 78 is blank. So what's your  
20 objection?

21 MR. ROTHERT: We withdrew 78.

22 THE COURT: So is there -- what's your objection  
23 to --

24 MS. ORMSBY: No objection, Your Honor.

25 THE COURT: Received without objection.

1 MR. ROTHERT: 82 through 91.

2 MS. ORMSBY: No objection.

3 THE COURT: Received without objection.

4 MR. ROTHERT: 93 through 101.

5 MS. ORMSBY: No objection.

6 THE COURT: Received without objection.

7 MR. ROTHERT: 104 through 108.

8 MS. ORMSBY: No objection.

9 THE COURT: Received without objection.

10 Are we ready to move on to your next witness, or you

11 still have some more documents as to --

12 MR. ROTHERT: Almost done.

13 THE COURT: All right.

14 MR. ROTHERT: 130.

15 MS. ORMSBY: No objection.

16 THE COURT: Received without objection.

17 MR. ROTHERT: 132 to 134.

18 MS. ORMSBY: No objection.

19 THE COURT: Received without objection.

20 MR. ROTHERT: 136 to 138.

21 MS. ORMSBY: No objection.

22 THE COURT: Received without objection.

23 MR. ROTHERT: 140 to 143.

24 MS. ORMSBY: No objection.

25 THE COURT: Received without objection.

1 MR. ROTHERT: 145 to 152.

2 MS. ORMSBY: No objection.

3 THE COURT: Received without objection.

4 MR. ROTHERT: 154 to 166.

5 MS. ORMSBY: No objection.

6 THE COURT: Received without objection.

7 MR. ROTHERT: And 168 to 171.

8 MS. ORMSBY: No objection.

9 THE COURT: Received without objection.

10 MR. ROTHERT: And that is all for now.

11 THE COURT: All right.

12 MR. ROTHERT: Sophia Lakin will be handling the next  
13 witness.

14 THE COURT: Okay.

15 MS. LAKIN: Good morning, Your Honor. Sophia Lakin  
16 on behalf of the plaintiffs. The plaintiffs call Dr. Colin  
17 Gordon.

18 THE COURT: If you would step forward, sir, and be  
19 sworn.

20 MS. LAKIN: And as with Mr. Pruitt, I have a binder  
21 full of trial exhibits.

22 THE COURT: Very well.

23 **(WITNESS SWORN BY THE CLERK.)**

24 **COLIN GORDON,**

25 **HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS**

1 **FOLLOWS:**

2 **DIRECT EXAMINATION**

3 **BY MS. LAKIN:**

4 Q Good morning, Dr. Gordon. Can you please state your name  
5 for the record?

6 A Colin Gordon.

7 Q Are you currently employed?

8 A Yes.

9 Q And where are you employed?

10 A I'm a professor of history at the University of Iowa.

11 Q Do you have tenure?

12 A Yes.

13 Q What is your educational background?

14 A I have a bachelor's degree, honors in history from the  
15 University of Alberta, a master's degree in history from York  
16 University in Toronto, and a Ph.D. in history from the  
17 University of Wisconsin at Madison.

18 Q Where have you worked since obtaining your Ph.D.?

19 A I taught for four years at the University of British  
20 Columbia. Since 1994 I've taught at the University of Iowa.

21 Q And how long has that been?

22 A Twenty-one going on twenty-two years.

23 Q Have you held any leadership positions in the department  
24 during that time?

25 A Yes. I've served in the department as the director of

1 undergraduate studies, as the director of graduate studies,  
2 and a five-year term as chair of the department.

3 Q In addition to being a professor, do you work for any  
4 research centers?

5 A Yes. I'm an affiliate in the social science group with  
6 the University of Iowa's Public Policy Center, and I'm a  
7 senior research consultant with the Iowa Policy Project, which  
8 is a state-level think tank.

9 Q Have you received any awards and grants for your work in  
10 history or public policy?

11 A Yes. So my research has been supported by grants from  
12 the National Endowment for Humanities, the National Science  
13 Foundation, and a number of small sources, including the  
14 Robert Seilor Fellowship from the Missouri Supreme Court  
15 Historical Society.

16 In 2013 I was named a Collegiate Fellow, which is the  
17 highest distinction in -- at the University of Iowa for  
18 faculty research. And last year I received the university's  
19 Distinguished Achievement Award for publicly engaged research.

20 Q Are you a member of any professional organizations?

21 A Yes. I'm a member of the American Historical  
22 Association, the Organization of American Historians, the  
23 Social Science History Association, the Urban History  
24 Association, and the Labor and Working-Class History  
25 Association.

1 Q What is the focus of your research?

2 A Across my career, my research has been on the history of  
3 American public policy and political economy.

4 Q And more recently?

5 A And more recently has focused on urban history, including  
6 my 2008 monograph on the History of Greater St. Louis.

7 Q Can you provide a brief overview of your publications and  
8 research projects?

9 A Yes. I've published four research monographs: One on  
10 business labor and the New Deal, one on health care policy,  
11 and one -- the one I just mentioned on the history of St.  
12 Louis. I've published about 20 peer-reviewed articles, a  
13 large number, perhaps 70 or 80, shorter pieces, a number of  
14 chapters in anthologies and books, a textbook on American  
15 history between the wars, as well as a number of digital  
16 projects, including two which relate directly to mapping, the  
17 history of racial disparity and discrimination across the St.  
18 Louis region.

19 Q Can you describe what some of the shorter articles you've  
20 written in recent years have focused on?

21 A My recent work has been on the history of inequality in  
22 the U.S. and also a wide range of articles flowing from my  
23 work on St. Louis; so commentary in the wake of Ferguson and  
24 that sort of thing.

25 Q Can you explain what a monograph is?

1 A Yes. In my field of research, monograph distinguishes a  
2 book-length piece of research based on original research as  
3 distinct from more a synthetic account or a textbook.

4 Q And what is a peer-reviewed or refereed article?

5 A The scholarly convention for most journal publications  
6 would be -- is a double-blind review process; so that you  
7 submit to a journal and it goes out to readers. The readers  
8 don't know who the author is. The author doesn't know who the  
9 readers are. So the idea is it's published on merit rather  
10 than on reputation or -- you know.

11 Q Now, as a scholar, has your work focused on any regions  
12 in particular?

13 A Yes. My -- in particularly over the last decade, my work  
14 has focused closely on the history of greater St. Louis.

15 Q And how did you come to focus on the greater St. Louis  
16 area?

17 A I was interested in a substantial research project on the  
18 history of urban decline or urban public policy. So St. Louis  
19 is a site in part because it's a troubled setting in those  
20 respects and in part because as a historian it had an usually  
21 rich archival base, which is often hard to find at local  
22 history.

23 Q And when you say "greater St. Louis," what are you  
24 referring to?

25 A Generally speaking, that it flows from the census

1 definition of a metropolitan statistical area. So it's an  
2 urbanized area or metro area which includes the central city  
3 of St. Louis. At present day I think it includes a total of  
4 15 counties on the Illinois and the Missouri sides of the  
5 river.

6 Q And what does the "St. Louis metropolitan area" mean?

7 A I generally use the terms interchangeably: Greater St.  
8 Louis/St. Louis metropolitan area.

9 Q Does this area you describe include the  
10 Ferguson-Florissant School District?

11 A Yes.

12 Q You testified a moment ago that your research has focused  
13 on greater St. Louis. Can you describe the work you've done  
14 here in more detail?

15 A Yes. So my 2008 monograph, *Mapping Decline: St. Louis*  
16 *and the Fate of the American City*, combined original archival  
17 research and local resources with GIS, or Geographic  
18 Information System, mapping of data, including census data but  
19 also local data on things like urban renewal and zoning across  
20 the metro area. So it's a history of St. Louis from about  
21 1916 to the present, greater St. Louis.

22 Q And since your book, have you done additional work on the  
23 greater St. Louis area?

24 A Yes. I have continuing research on St. Louis on --  
25 African-American suburbs in St. Louis County is one area of

1 continuing research. I'm also engaged in a new project on the  
2 racial wealth gap in St. Louis.

3 Q And you mentioned earlier that you also worked on some  
4 digital projects related to the greater St. Louis area. Can  
5 you describe that for us?

6 A Yes. Because my monograph depended heavily on the  
7 collection of historical and current data on greater St.  
8 Louis, that is, geo-spatial data, mapping, political  
9 phenomena, socioeconomic characteristics and disparities  
10 across the region, I now have two digital projects or websites  
11 which allow users to play with that data interactively.

12 Q Have you written any law review articles since publishing  
13 your book on the greater St. Louis area?

14 A Yes. I have three substantive law review articles which  
15 were, you know, in a sense commissioned in the wake of my  
16 book, two of them published in the St. Louis Public Law  
17 Review.

18 Q Has your work related to the St. Louis metro area  
19 included any work in a legal context other than this case?

20 A Yes. I mean, defining that broadly, I've given talks at  
21 SIU on my work. I've given talks at the Missouri State --  
22 Missouri Supreme Court Historical Society talk on my work. I  
23 completed a expert opinion for a mitigation defense in a  
24 capital case I think two years ago. It's sort of a close  
25 analysis of neighborhood conditions in north St. Louis.

1 Q And these talks that you gave at the Missouri -- I'm  
2 sorry -- at the American Historical Society and so forth, were  
3 those invited talks?

4 A Yes. I've given a number of invited talks, I would say a  
5 flurry in the wake of the publication of the book, which is  
6 not unusual, but also a flurry in the wake of the events of  
7 August 2014, in Ferguson, when both many local institutions  
8 but also national professional organizations were putting  
9 together panels or wanted speakers to try and make historical  
10 sense of what had happened in Ferguson.

11 Q Can you give us some additional examples of places where  
12 you've spoken?

13 A Yes. I've -- so I've participated in a workshop on this  
14 research at Yale. I've spoken at the Washington University  
15 School of Social Work. I've spoken at the St. Louis  
16 University Law School. I've given a presidential or plenary  
17 address at the New York Meeting of the American Historical  
18 Association a year ago, at the Organization of American  
19 Historians, and a number of other sort of more local  
20 specialized talks, including the East/West Gateway  
21 Coordinating Council, the Regional Council of Governments in  
22 this area.

23 Q Has your work on greater St. Louis been cited by the news  
24 media?

25 A Yes. It's been cited by the *New York Times*, the *LA*

1 *Times*, the *Boston Globe*. I've been interviewed on National  
2 Public Radio twice with respect to my research.

3 Q And when was the last time you're aware that your work on  
4 greater St. Louis was cited in the news media?

5 A My -- I think I was in the *St. Louis Post Dispatch* about  
6 three days ago.

7 Q Since writing your book, have you been to the St. Louis  
8 metropolitan region to do any continuing research in the area?

9 A Yes. I've been to the region both for follow-up talks  
10 and for the continuing research that I've described a moment  
11 ago.

12 Q How recently?

13 A The last time I was in St. Louis, once during the fall  
14 and a couple times last summer.

15 MS. LAKIN: Your Honor, the plaintiffs offer Dr.  
16 Gordon as an expert in urban history, the history of public  
17 policy and political economy in the United States since 1920,  
18 and the historical development of and the effects of  
19 residential restrictions and patterns of segregation across  
20 the St. Louis metropolitan area.

21 THE COURT: Any objection?

22 MS. ORMSBY: No.

23 THE COURT: You may proceed.

24 Q (BY MS. LAKIN) Dr. Gordon, what were you asked to do in  
25 this case?

1 A I was asked to prepare a report or opinion based on my  
2 historical expertise on greater St. Louis as it pertained to  
3 the continuing disadvantages faced by the African-American  
4 population of St. Louis County, North County, and the district  
5 particularly.

6 Q After performing your analysis, did you form an opinion?

7 A Yes, I did.

8 Q And what is that opinion?

9 A My opinion is that the historical circumstances that I  
10 described in my report cast what I would characterize as a  
11 sort of long shadow over the current life chances and  
12 opportunities of African Americans who live in greater St.  
13 Louis, in North County, and in the footprint of the district.

14 Q And did you have any conclusion as to their current  
15 effects of those, of that long shadow?

16 MS. ORMSBY: Excuse me. Could I just ask that the  
17 witness speak more -- we're having a difficult time hearing  
18 you over here.

19 THE WITNESS: I'm sorry. Am I not close enough to  
20 the mic, or am I just mumbling?

21 THE COURT: You have a soft voice.

22 THE WITNESS: Oh, okay.

23 THE COURT: That's all.

24 A Yes. In terms of sort of fleshing out what I  
25 characterize as sort of long shadow of those historical

1 processes, I think what you end up with is a very sort of  
2 tangled fabric of disadvantage across a variety of  
3 socioeconomic characteristics -- we heard a little bit about  
4 educational attainment this morning -- but also in terms of  
5 poverty, reliance on public assistance, opportunity with  
6 respect to housing, and, you know, the full dimensions of  
7 democratic citizenship, how people contact local governments,  
8 whether it's schools, police, or other institutions.

9 Q Did you prepare any expert reports in this case?

10 A Yes.

11 Q Dr. Gordon, would you please turn to the tab marked 40,  
12 which is Plaintiffs' Exhibit 40 in the binder I handed you  
13 earlier. What is this document?

14 A This is the report completed May 2015 that I prepared for  
15 this case.

16 Q Would you turn to Tab 41, which is Plaintiffs' Exhibit  
17 41. And what is that document?

18 A This is a shorter report that I prepared in response to a  
19 part of the report of Dr. Rodden.

20 Q Do these reports accurately describe the analyses that  
21 you undertook and summarize your findings and conclusions in  
22 this case?

23 A Yes, they do.

24 Q Were they signed under oath?

25 A Yes, they were.

1 Q Did you review your reports before you signed them?

2 A Yes, I did.

3 MS. LAKIN: Your Honor, I'd just like to note that  
4 Plaintiffs' Exhibit 40 and 41 have been admitted into  
5 evidence.

6 MS. ORMSBY: They've been admitted.

7 THE COURT: They have been received.

8 Q (BY MS. LAKIN) Dr. Gordon, turning to your methodology,  
9 how did you go about analyzing the question you were asked to  
10 evaluate in this case?

11 A I think in terms of scholarly conventions, my methodology  
12 is -- might be characterized as a sort of mixed methods. I  
13 used the methods of a conventional historian, that is, I used  
14 archival sources extensively, particularly local archival  
15 sources. So the files of local civic officials, the files of  
16 local municipalities, that sort of thing.

17 But I also rely on a number of social scientific  
18 methods, including GIS mapping and the use of relevant  
19 socioeconomic data, particularly the decennial census.

20 Q Did you rely on work that you performed in creating and  
21 writing your mapping decline 2008 monograph?

22 A Yes.

23 Q And did you do additional supplemental work for this  
24 case?

25 A Yes.

1 Q And can you describe that additional work?

2 A The additional work really took two forms. Part of it  
3 was going back through the material I collected from my book  
4 to get a keener sense of how I might recenter that analysis on  
5 North County and on the school district, and then there was a  
6 range of additional work on circumstances in the district,  
7 both plumbing the most currently available data.

8 Q What kind of data did you look at?

9 A I used a variety of data sources for the most current  
10 socioeconomic data relating to the district and to North  
11 County. I relied on a special tabulation that's done by the  
12 Housing and Urban Development, which is specifically designed  
13 to capture, at a very local level, measures of neighborhood  
14 distress.

15 Q Is this mixed method approach consistent with your  
16 standard research practices?

17 A Yes.

18 Q Is this method also consistent with the generally  
19 accepted standards and history in public policy and social  
20 sciences generally?

21 A Yes.

22 Q Dr. Gordon, I'd like to show you what has been marked for  
23 identification purposes as Plaintiffs' Demonstrative Exhibit  
24 1.

25 A Okay.

1 Q It should be up on your screen as well.

2 A Yes.

3 Q What is this map?

4 A This is, roughly speaking, a map of what we've been  
5 referring to as greater St. Louis or the metro area. It  
6 doesn't quite include the full 15-county footprint, but it is  
7 centered on North County.

8 And so we see the city as the -- St. Louis city,  
9 rather, is the sort of crescent-shaped area on the  
10 Mississippi, the Illinois counties to the east and the  
11 Missouri counties in the Missouri suburbs to the west.  
12 Highlighted on this particular map is the particular sort of  
13 fragmented municipal organization of St. Louis County,  
14 something on the order of just under 100 municipalities.  
15 Those are outlined in gray throughout the county. And on this  
16 particular map, the North County municipalities are outlined  
17 in blue, and the outline of the school district itself and its  
18 central role in North County is outlined in red.

19 Q And in your report you reference the inner suburbs. Can  
20 you describe what you're referring to on the map? You can  
21 actually touch the screen if you want to.

22 A Sure. I don't think I need to. I mean, the inner  
23 suburbs would be those that fall in the first couple of rings  
24 of suburban development moving west from the city. And  
25 conventionally when we write about St. Louis, the inner

1 suburbs would include University City, Clayton, and the  
2 suburbs extending north from that through North County; so  
3 Wellston, Normandy, Ferguson, Florissant, and the like.

4 Q For your work in this case, did you limit your analysis  
5 to the Ferguson-Florissant School District alone?

6 A No. And, in fact, I think that would make it impossible  
7 to offer a credible analysis of the processes, which are both  
8 historically and spatially happen metro-wide. So if I was  
9 writing just a history of the city of St. Louis, I would not  
10 take it out of its state or national context. And if I'm  
11 writing a history about a frag -- or if I'm focusing on a  
12 fragment of a metropolitan area such as a school district, I  
13 would not take it out of its greater metropolitan context  
14 either.

15 Q Why is that?

16 A Because I think the larger processes matter, and so there  
17 are, as I will -- you know, as we'll tease out in the course  
18 of my testimony, there are processes of segregation and  
19 discrimination that don't originate in the school district but  
20 nevertheless fundamentally affect the life chances of people  
21 who live there.

22 I think it's particularly important to have this  
23 broader focus for a metropolitan area like St. Louis because  
24 the municipal fragments, the corporate fragments, including  
25 municipalities and the school districts, are very small and in

1 some respects very artificial political divisions.

2 Q Dr. Gordon, what was the starting point for the analysis  
3 that you performed in this case?

4 A Chronologically?

5 Q Sure.

6 A Okay. The starting point in -- I guess the best way to  
7 answer that would be in the logic of the reports, or the  
8 starting point is establishing the broader historical patterns  
9 of segregation and discrimination in the greater metropolitan  
10 area and then, in a sense, focusing closer and closer as to  
11 how they might affect North County and the district.

12 Q And why is it important to start with the historical view  
13 of segregation and discrimination?

14 A Because as I trace in my report and as I develop as one  
15 of the sort of fundamental arguments of my book, there are  
16 highly sort of formalized forms of segregation sort of  
17 invented and pursued early in the 20th century that live on in  
18 fundamental ways, either in their consequences or in the ways  
19 in which the spirit of them is imported into other forms of  
20 policy that last to the present day.

21 Q So as a historian, why would you look at historical  
22 trends in evaluating current conventions of discrimination and  
23 segregation?

24 A Because I think -- I mean, the best way to answer that, I  
25 think, is just to give you a sense of how the research for

1 this book developed, because I entered my project on St. Louis  
2 really interested more in contemporary, you know, the last  
3 generation of local economic development policies. But at  
4 each turn of the research, every archive I visited I sort of  
5 got pushed further back into, you know -- because the policies  
6 were redressing damage from an earlier era. So I wanted to  
7 understand how that damage occurred.

8           And so I think -- you know, the argument is it's a  
9 very sort of, in many respects, seamless historical process  
10 that takes us from the first efforts to sharply segregate  
11 black and white populations in the city of St. Louis to racial  
12 disparities and race relations today.

13 Q     In performing your analysis for this case, did you focus  
14 on any particular kinds of policies?

15 A     Yes. Both in the book and that I rely upon in the  
16 original -- in the early pages of the report and in the  
17 subsequent analysis, I looked particularly closely at land use  
18 policies and urban development and redevelopment policies.

19 Q     Why was this your focus?

20 A     I think if you're interested in explaining patterns of  
21 racial disparity and racial discrimination at the local level,  
22 that land use and restrictions on land use are in a sense sort  
23 of ground zero in that explanation. They are the principal  
24 policy tool that local governments use to organize the local  
25 population to determine who lives where. And they have

1 enormous consequences. They have consequences in terms of the  
2 opportunities of populations to buy houses and accumulate  
3 housing equity, and that has sort of sustained consequences in  
4 terms of a racialized gap in wealth, which persist to the  
5 present day.

6           And, you know, particularly in any American setting,  
7 land use policies are particularly potent because where you  
8 live determines the quality of your education and the quality  
9 of schools you go to. So for all of these reasons I think  
10 looking closely at how metropolitan areas, and particularly  
11 the local governments that make them up, organize land is  
12 particularly important.

13 Q       Using this focus, what, if any, are the primary  
14 historical forces that have shaped the current dimensions of  
15 segregation and the effects of discrimination that you  
16 evaluated in this case?

17 A       Well, at the very sort of high level, I think the primary  
18 forces are various sort of formalized and what I would  
19 characterize as private forms of segregation and  
20 discrimination that were systematically pursued in the first  
21 half of the 20th century and then, in a sense, public policies  
22 that succeeded and, I would argue, sustained them and those  
23 would include land use planning, zoning, urban renewal, or  
24 economic redevelopment, and federal policies with regard to  
25 mortgage finance.

1 Q So let's start with these more formalized restrictions on  
2 property development. At a high level just for now, what are  
3 the key chapters or elements in the story of property  
4 development in the St. Louis metro area?

5 A I mean, I think the general pattern, if I was going to  
6 sketch it, you know, across that long sort of century-long  
7 arc, would be that you begin with, you know, what amount to  
8 very stark, formal, legal sort of proposals or mechanisms to  
9 say that whites can live here and blacks can live here or, you  
10 know, or not.

11 And these -- and, you know, again just at that high  
12 level, what happens is that these practices are at times  
13 blocked by the courts, but in the argument of the book what I  
14 try and show is they just sort of -- they shift in form; so  
15 the motives remain the same, that is, to sustain a form of  
16 segregation, but they're imported from private policy to  
17 public policy from one kind of public policy to another.

18 Q So let's talk about these formal type of restrictions on  
19 land use. Did any such exist in the St. Louis metro area?

20 A Oh, yes.

21 Q Can you explain?

22 A Sure. Well, the first such example of this is the city  
23 of St. Louis' passage in 1916 of an explicit zoning ordinance  
24 that delineated white and black blocks, that is, those blocks  
25 in which African Americans and whites were allowed to live.

1           The logic of the ordinance was it inscribed the  
2 existing African-American neighborhood, what's commonly called  
3 "The Ville," and just a few other blocks in industrial sort of  
4 riverfront areas as the only places in which African Americans  
5 could live.

6       Q     And did that law ever go into effect?

7       A     The law was passed in the greater St. Louis area, but it  
8 was -- I'm not quite sure of the legal term but took a --  
9 bundled with a number of other similar attempts -- one in  
10 Louisville, one in Baltimore -- and struck down by the U.S.  
11 Supreme Court in 1917 in the *Buchanan v. Warley* case on equal  
12 protection grounds.

13       Q     And did that signal an end of segregation in housing  
14 discrimination in the St. Louis metro area?

15       A     No.

16       Q     What happened next?

17       A     This is in a sense the first chapter of a process which I  
18 trace across the last century, and in fact realtors and civic  
19 leaders who had campaigned for that ordinance were not  
20 terribly put out by *Buchanan v. Warley* and moved quickly to  
21 establish the same restrictions by other means.

22           The first such effort by the St. Louis Real Estate  
23 Exchange, which was the organization of white relators in the  
24 St. Louis area, was to establish what they called a restricted  
25 area or an unrestricted area, rather, which delineated the

1 same footprint as the racial zoning ordinance and established  
2 instead as a matter of -- instead of as a matter of local  
3 zoning, as a matter of professional practice as a realtor the  
4 restriction that property could not be sold to an African  
5 American outside that zone, and if a realtor engaged in such a  
6 transaction, they would lose their license.

7 Q Were there any other practices that perpetuated this  
8 policy of segregation and housing discrimination in the area?

9 A Yes. So contemporaneous with that, proceeding most  
10 starkly from about 1911 into the middle 1940s, the St. Louis  
11 Real Estate Exchange led a campaign to establish  
12 race-restrictive deed covenants, neighborhood schemes of  
13 restriction, across the city.

14 These were covenants that were attached to property  
15 deeds on a neighborhood basis. So a group of, say, 30 to 80  
16 property owners would sign the same restriction, and it bound  
17 all of them to not allow their properties to be sold to,  
18 rented to, occupied by in any manner an African American.

19 Q And were these practices employed in areas within the  
20 boundaries of the district today?

21 A Yes. And so the general pattern of race-restricted deed  
22 covenants in greater St. Louis was that in the older areas of  
23 North St. Louis, where property development, that is, the  
24 building of houses, had preceded African-American occupancy,  
25 these restrictive covenants were cobbled together by the Real

1 Estate Exchange by going door to door and having neighbors  
2 sign, essentially saying, you know, the African-American  
3 community is expanding; if you don't sign, they will be living  
4 next door to you.

5 And so these were cobbled together in a ragged  
6 horseshoe around the existing African-American neighborhood in  
7 North St. Louis. In areas of newer development, including in  
8 South St. Louis and across much of St. Louis County as  
9 suburban development proceeded, these race-restricted deed  
10 covenants were original to the deeds of subdivisions.

11 Q And did these practices ever come to an end?

12 A Yes. In 1948, in a case that again began in St. Louis,  
13 *Shelley v. Kraemer*, the Supreme Court struck down not the  
14 practice of deed covenants themselves, but state enforcement  
15 of them and so that they -- it was no longer possible for the  
16 Real Estate Exchange, who was a party to most of these  
17 agreements, to take someone to court if they sold a property  
18 to an African American.

19 Q And did this signal an end of segregation and housing  
20 discrimination in the St. Louis metro area?

21 A No.

22 Q And why not?

23 A I think for three reasons. First of all, just as in  
24 1916, realtors and developers who had pressed these agreements  
25 were, you know, somewhat surprisingly not particularly put out

1 by the court decision which they expected and quite publicly  
2 mobilized to accomplish the same thing by other means. And so  
3 in the terms -- in terms of the practice of private realty,  
4 realtors reinforced the notion of maintaining segregation as a  
5 matter of professional practice. And so they reinforced the  
6 clause in the realtors code of ethics, which required that a  
7 realtor not introduce inharmonious groups into an existing  
8 neighborhood, to maintain those lines of segregation.

9 Q Were there any other local or federal policies that  
10 continued segregation and housing discrimination in the area?

11 A Yes. So that was the realtors' response. The second  
12 important response, which actually came before the *Kraemer*  
13 decision was decided, was that when the federal government  
14 reinvented the system of home mortgage financing -- the  
15 context of the Great Depression sort of invented the  
16 contemporary high-ratio mortgage in which mortgage payments  
17 resembled rent -- this dramatically expanded homeownership  
18 after the 1930s.

19 When the federal government established the rules of  
20 that system by which they subsidized the home loans made by  
21 local banks, they went into cities like St. Louis, and they  
22 meticulously risk rated neighborhoods as to whether they were  
23 suitable for what was first called the Homeowners Loan  
24 Corporation and later just the Federal Housing Administration  
25 for mortgage rates. And their primary criteria in the greater

1 St. Louis area in rating those neighborhoods was, first of  
2 all, African-American occupancy, which earned a low rating.  
3 It was the first check box on the form. But, secondly, what  
4 was contained in the sort of narrative reports on  
5 neighborhoods in the national archives is they consistently  
6 and meticulously referred to the existence of race-restrictive  
7 deed covenants. And so if a neighborhood was covered by a  
8 restrictive deed covenant, the FHA considered it a good risk.  
9 If it was not or if the covenant was about to expire --  
10 because a Missouri law, they could last 23 years -- then the  
11 FHA recommended the loans not be made.

12 Q Were there any other policies during this era that  
13 perpetuated segregation and housing discrimination in the  
14 area?

15 A Yes. So in a similar manner, local government used  
16 zoning, and quite explicitly, to accomplish the same means.  
17 So what we see in particularly in St. Louis County is that  
18 much of the suburban development, that is, the actual building  
19 of houses, in the '30s, '40s, and '40s particularly, took  
20 place on unincorporated land. And so it was on county land  
21 and it did not have a corporate government.

22 In the wake of *Shelley v. Kraemer*, there was a flurry  
23 of incorporation, one of the primary motives of which was once  
24 you incorporated as a municipality, you then earned the right  
25 to zone land use. And in the correspondence of civic leaders

1 working with planning firms to develop these incorporations in  
2 these early zone plans, the motives are quite explicit. And  
3 there are a number of instances in which civic leaders will  
4 say to the planners that they have hired "*Shelley v. Kraemer*  
5 has struck down our race-restricted deed covenants. How do we  
6 accomplish the same segregation? How do we keep the African  
7 Americans out?"

8           And the planners' response was, you know, what  
9 infamously became not only in St. Louis a pattern of  
10 exclusionary zoning, that is, prohibiting the building of  
11 multi-family housing, mandating large-lot, single-family loans  
12 on much of the suburban footprints, and beginning to use  
13 income segregation as a proxy for racial segregation.

14 Q     Did any of these policies and practices -- exclusionary  
15 zoning and private discrimination in real estate practices --  
16 ever come to an end?

17 A     Not in as decisive a way as the deed covenants or their  
18 racial zoning. So the *Jones v. Mayer* decision, which is also  
19 a decision rooted in St. Louis, comes out of an unincorporated  
20 area of North County, a subdivision called Paddock Woods, in  
21 1968 applied the Civil Rights Act to private real estate  
22 transactions. And so this had the effect of loosening at  
23 least the explicit ability of realtors to deny access, deny  
24 home showings, that sort of thing, deny sales to African  
25 Americans. Although, you know, in the St. Louis area, as in

1 many other settings, fair housing advocates routinely, even to  
2 the present day, trace patterns of steering by realtors of  
3 showing African-American families one set of homes in one  
4 neighborhood and white families another in another.

5           The practice of redlining under federal mortgage  
6 guarantees under the FHA lasted into the early civil rights  
7 era. There are records in the archives of St. Louis area  
8 lending institutions using those redlines as late as the mid  
9 to late 1960s.

10 Q     Can you explain what you mean by redlining?

11 A     I mean, the name "redlining" really comes from those  
12 original security maps that I've described earlier where, when  
13 the FHA deemed a neighborhood unworthy of mortgage insurance,  
14 they colored it red.

15 Q     What has happened with respect to segregation and housing  
16 discrimination in the St. Louis metro area since the 1960s?

17 A     Well, I mean, I think what's remarkable and, you know,  
18 and one can see it sort of inscribed on their landscape, I  
19 mean, locals in greater St. Louis still refer to the Delmar  
20 divide as a hard line between north and south St. Louis. In  
21 some respects that divide now extends out into St. Louis  
22 County, and one can see in patterns of racial occupancy the  
23 persistence of that core pattern of segregation.

24           And because the older patterns of segregation, the  
25 sort of more formalized ones such as the deed covenants became

1 written into land use zoning, which is still very much the way  
2 in which we organize property and housing opportunity in a  
3 metro area, those sort of patterns persist to the present day.

4 Q Now, you mentioned one more policy, urban renewal, that  
5 is relevant to your analysis. Can you explain how urban  
6 renewal policies shape the current dimensions of segregation  
7 and effects of discrimination?

8 A Sure. This is, you know, in some respects, perhaps  
9 ironic, perhaps sort of particularly tragic part of this  
10 story, because urban renewal, as practiced in St. Louis and  
11 elsewhere, was meant to address some of the damage that I've  
12 described, some of the sort of first-generation damage of  
13 segregation and the collapse of central cities, in the local  
14 case, much of north St. Louis.

15 But what happened is that local redevelopment  
16 interest, redevelopment corporations and local governments,  
17 used the federal resources and federal money and the power of  
18 eminent domain, which was in a sense sort of lent to them  
19 under these statutes, to actually sharpen and deepen  
20 segregation both in St. Louis and in St. Louis County.

21 Q And how so?

22 A Well, I can give you a couple of examples. The early  
23 efforts at urban renewal -- so beginning in the 1940s and  
24 continuing into the 1950s in greater St. Louis -- were almost  
25 always known as slum clearance. And, you know, the local

1 NAACP referred to them more sarcastically as negro removal  
2 because inevitably they targeted neighborhoods of mixed use  
3 and largely African-American occupancy for removal or  
4 destruction so the land could be used for a higher use.

5           So examples in St. Louis, the two most notable  
6 examples from the early history, would be the building of the  
7 first Busch Stadium and the clearance of the Mill Creek Valley  
8 for largely commercial redevelopment.

9 Q       So what happened to the individuals who were living in  
10 these areas targeted for slum clearance?

11 A       The federal laws, particularly as they were administered  
12 locally, had very weak protections for displaced families.  
13 And so while redevelopment corporations were required by  
14 federal law to offer relocation assistance, in fact Housing  
15 and Urban Development did audits of the St. Louis -- St.  
16 Louis-based projects in the '50s and '60s and found that such  
17 relocation assistance was rarely offered.

18           The most substantial form of assistance, such as it  
19 was, was the warehousing of displaced populations in big box  
20 public housing, and so the building of the Pruitt-Igoe towers  
21 and other central city public housing projects were designed  
22 explicitly to absorb at least some of those displaced by these  
23 projects.

24           But, in fact, you know, my best estimates are that if  
25 you combine urban renewal and urban highway development, so

1 those displaced by government action between 1950 and 1970,  
2 which is the heyday of urban renewal, it's about 75,000 people  
3 in greater St. Louis. And the vast majority of those are  
4 African American, about 84 percent, and the vast majority did  
5 not receive any relocation assistance. So you have this  
6 pattern by which displaced families are, in a sense, moving  
7 ahead of the bulldozer, looking for affordable housing  
8 elsewhere in the region.

9           What happened early in this history was that African  
10 Americans moving from sort of a downtown footprint moved west  
11 and north into residential neighborhoods, which then became  
12 targeted for renewal or code enforcement or other attention.

13           The second part of this story, which is, I think,  
14 equally poignant, is the way in which urban renewal was --  
15 took place in St. Louis County. St. Louis County was  
16 initially reluctant to engage in urban renewal because under  
17 federal law to do so you had to create a local public housing  
18 authority. And so there are a number of instances in St.  
19 Louis County where either the county or municipalities  
20 identified a pocket of African-American occupancy that they  
21 wanted to remove, but the plans sort of frittered away when  
22 they found out they had to create a public housing authority.

23           What St. Louis redevelopment officials in the '50s  
24 and '60s wanted to do -- and they said this quite  
25 explicitly -- was relocate pockets of African-Americans

1 occupancy in the county, most of which dated to the 19th  
2 century, and so this is areas like Meacham Park, Elmwood Park,  
3 and Kinloch, which is in the footprint of the district, back  
4 into the city. And so the idea was to give them housing  
5 vouchers to move to Pruitt-Igoe so the land could be cleared  
6 for a different kind of development.

7 MS. LAKIN: Your Honor, I have about 30 to 40 minutes  
8 left. Do you want --

9 THE COURT: We can go on for a while, unless you  
10 heard the lunch bell ring.

11 MS. LAKIN: No. Just wanted to make sure that --

12 THE COURT: Let's see how we're doing.

13 Q (BY MS. LAKIN) I'd like to turn now to the  
14 Ferguson-Florissant School District more specifically. Can  
15 you walk us through what the effect of these policies and  
16 historical forces were for North County and the district in  
17 particular?

18 A Yeah. I mean, I think these historical forces converge  
19 on North County, including the footprint of the  
20 Ferguson-Florissant School District, in particularly powerful  
21 ways. And in a sense what you have is a number of these  
22 circumstances sort of come together in ways that really  
23 fundamentally affect particularly the smaller footprint  
24 municipalities in North County.

25 The first of those that I would identify is the

1 sustained gap in racial wealth that we see quite clearly. The  
2 racial wealth gap in the United States is quite clearly a  
3 consequence of housing discrimination because housing equity  
4 is, for most families, their principal form of wealth.

5           And so if you consider the ways in which  
6 opportunities to both invest in property under federal  
7 mortgage insurance but also opportunities to invest in given  
8 areas, given land-use zoning decisions and more formal forms  
9 of segregation, in effect I think the best way to characterize  
10 it is that white families in the St. Louis area were able to  
11 get on a sort of escalator-of-wealth creation in the 1930s and  
12 1940s that African Americans were largely barred from for at  
13 least a generation.

14 Q       What impact did that have on the landscape of segregation  
15 in the county?

16 A       Well, what's remarkable about this, I think, is that, you  
17 know, running counter to the sort of, you know, the general  
18 arc of the whole civil rights revolution, the wealth gap  
19 actually widens over time, and so that while, you know,  
20 African-American wages now approach about 75 percent of white  
21 wages at the median and African-American incomes approach  
22 about two thirds of white incomes at the median,  
23 African-American wealth is less than 10 percent of white  
24 wealth at that median. And it's actually gotten worse in the  
25 last few years as a result of the last housing bubble and

1 bust.

2 And if you think of that in terms of generation of  
3 wealth across generations, in families, in neighborhoods, that  
4 has dramatic impact on the sorts of residential opportunities  
5 that people have.

6 Q Can you explain what you mean in more detail?

7 A Yeah. I mean, it's -- it affects the ability of people  
8 to get into the housing market. It affects the age of which  
9 they are able to get into the housing markets. It affects the  
10 kind of housing that they are able to buy, the sort of  
11 residential opportunities they have. And if you consider  
12 then -- so then they'll move to a sort of second factor which,  
13 I think, helps explain how the racial wealth gap is  
14 consequential.

15 If we go back, then, to my characterization of the  
16 way in which property development occurs across St. Louis  
17 County as a way of sustaining those background patterns of  
18 segregation, so you have municipality fragments, each of which  
19 play, you know, a small role in that larger project of  
20 segregation. And so some footprints have what we would  
21 characterize as a very sort of exclusive suburban form; so  
22 cul-de-sacs, estate-like development three-acre lots, that  
23 sort of thing, as is typical, for example, in a municipality  
24 like Ladue in central county.

25 In the older fragments of the county, particularly

1 those developed a little bit earlier, the inner suburbs of  
2 North County particularly, land use is less exclusive. There  
3 is some allowance for multi-family housing. And the  
4 single-family zones are much smaller and more modest. So in  
5 Ferguson-Florissant you have a lot of 5,000-square-foot lots  
6 and 10,000-square-foot lots.

7           So what that means is that, you know -- and then let  
8 me add one third piece to that puzzle in which -- and give a  
9 sense of how it works together. Then you have  
10 African-American families which are essentially being cut  
11 loose by a number of forces. One is displacement by urban  
12 renewal, but another is just the utter failure of north St.  
13 Louis, particularly in the 1960s and 1970s.

14           So as those families look for precisely the same kind  
15 of opportunities that white families are looking for -- safe  
16 neighborhoods, good schools -- their opportunities, because of  
17 their inter-generational ability to build housing equity  
18 because of this sort of long pattern of segregation, are  
19 sharply constrained.

20 Q     Before you get into a third factor, let me put a map up  
21 on the screen, Dr. Gordon. Can we turn to page 23 of your  
22 initial report, which is Plaintiffs' Exhibit 40, and look at  
23 Map 7.

24 A     Yeah.

25 Q     What is this map?

1 A This again, the red outline, is map of the  
2 Ferguson-Florissant School District. What this map captures,  
3 I think, very well is the sort of stark municipal  
4 fragmentation that lies underneath the organization of the  
5 district. So the district contains, you know, by my count, 11  
6 municipalities, but only two in their entirety. Most of it is  
7 sort of fragmentary in its organization.

8 Q Now, if my counting is right, I think there are only ten  
9 municipalities labeled on this map?

10 A You may be right. There's -- I'm not sure. Between Cool  
11 Valley and Jennings there's one unlabeled.

12 Q Might that be Normandy?

13 A Might be. Yeah.

14 Q And can you explain how the fragmentation and these  
15 patterns of segregation you describe are reflected in the  
16 creation and organization of the school district?

17 A Sure. Well, in part what you see on a map like this is  
18 the pattern of development, incorporation, and annexation that  
19 I described earlier; that these footprints, many of them, are  
20 in fact really just subdivisions that incorporate as  
21 municipalities in order to win the right to zone.

22 A good example of that is the community of Berkeley,  
23 which has this sort of ragged, half-doughnut shape coming  
24 around Kinloch. Berkeley sought incorporation in the late  
25 1930s -- 1938, I believe -- for the express purpose of

1 creating a school district that would quarantine the Kinloch  
2 children. And so at its incorporation Berkeley managed to  
3 establish its own school district, which was over 90 percent  
4 white, and leave aside the Kinloch district, which was well  
5 over 98 percent African American. I think Kinloch at that  
6 time was an unincorporated pocket of the county. It's  
7 incorporated at a few points in time but never on a very  
8 stable basis.

9 Q Did Kinloch establish its own school district?

10 A Yes.

11 Q And did those school districts remain separate entities?

12 A Yes, until 1975. So as the witness this morning  
13 emphasized, 21 years after *Brown*, by court order, the Justice  
14 Department sort of recognizes the motives that lie behind the  
15 separation of the districts and ordered the merger of the  
16 district. So this is a sort of microcosm of what happened  
17 across St. Louis County where the school districts have begun  
18 to have over this period sort of combined either by court  
19 order or not, but the municipality fragmentation that lies  
20 underneath has remained the same.

21 Q So just to go back for a second, in the late 1930s what  
22 was the population demographics of the Berkeley School  
23 District?

24 A It was over 90 percent white.

25 Q And the Kinloch district at that time?

1 A Almost entirely African American.

2 Q And what effect, if any, did consolidation have on the  
3 pattern of segregation in the district?

4 A Well, it's sort of an interesting example, because the --  
5 what you see in the underlying organization of the  
6 municipalities is the sort of the -- the powerful way in which  
7 local incorporation and local zoning is used to sustain  
8 segregation -- not only just in, you know, the way in which  
9 houses are built and municipal lines are drawn, but it's  
10 important to recognize that, you know, when Berkeley is  
11 incorporated and when development proceeds around Kinloch,  
12 that, as a general practice, the communities surrounding  
13 Kinloch don't run their streets through. They dead-end them  
14 at Kinloch. The infrastructure doesn't run into Kinloch. And  
15 this is a pattern of development that occurred elsewhere in  
16 North County, at Elmwood Park, and Meacham Park, as well as  
17 examples.

18 What happens when you have that very sort of stark  
19 original pattern of segregation, in this sense intended and  
20 designed to create starkly segregated and separate districts,  
21 once they're consolidated what you really do is you trade  
22 segregation between districts for segregation within a  
23 district, which I think is the accurate way to characterize  
24 the district today.

25 Q Let's look at another image from your report. Can we

1 turn to page 38 of Plaintiffs' Exhibit 40?

2 A Okay.

3 Q What is this map?

4 A So this is a map of -- the larger map is the greater St.  
5 Louis area. The inset zooms in on North County and the  
6 district in particular. On both maps the district is outlined  
7 in blue. The shading system for the map, which shows percent  
8 black by block group, proceeds from the darkest color, which  
9 is over 90 percent African American, to the lightest color,  
10 which is under 10 percent.

11 And what this map is meant to capture in the metro  
12 area within the district is the pattern of sort of north -- is  
13 the stark segregation of the African-American population even  
14 today.

15 Q And is that pattern reflected in the St. Louis metro area  
16 as a whole?

17 A Yes.

18 Q And how does the St. Louis metro area compare to other  
19 metro areas in the country in terms of segregation?

20 A The St. Louis -- there are a number of indices of  
21 segregation that you can use. By the most conventional one,  
22 which is called the dissimilarity index, I think St. Louis is  
23 currently the sixth most segregated city or metropolitan area  
24 in the country.

25 Q And if you can just state -- for the inset what does the

1 pattern of shading suggest about the landscape of segregation  
2 in the district?

3 A The argument that I've developed in my report is that the  
4 general sort of north-south pattern of segregation is, in a  
5 sense, replicated and reinvented within the district largely  
6 as a result of disparate patterns of land development. And so  
7 you have in Ferguson and in the southern tier of the district  
8 smaller lots, single -- I mean, multi-family developments,  
9 whereas it bleeds much more into exclusively single-family  
10 development in the north. And so you see that same  
11 north-south pattern replicated within the district.

12 Q Is it your opinion that historical patterns of  
13 segregation still exist within the district today?

14 A Yes.

15 Q I'd like to turn now to the economic and social  
16 consequences of this pattern that you've been describing of  
17 discrimination and segregation.

18 THE COURT: This is a new topic. How long is this  
19 topic? I'm trying to figure out if it's a good place to take  
20 a break.

21 MS. LAKIN: Maybe 15 minutes.

22 THE COURT: Okay. Let's go ahead and take our lunch  
23 break at this time. We will reconvene at 1:30. Thank you  
24 very much.

25 **(COURT RECESSED FOR LUNCH FROM 12:30 PM UNTIL 1:36 PM.)**

1 THE COURT: I'll remind you, sir, you're still under  
2 oath.

3 Are you ready? At defense table, are you ready?

4 MS. ORMSBY: Oh, I'm sorry. Yes, Your Honor.

5 THE COURT: You may proceed.

6 Q (BY MS. LAKIN) Dr. Gordon, before the break we were about  
7 to talk about economic and social consequences of the pattern  
8 that you've been describing of discrimination and segregation.  
9 Are there any such effects in the district today?

10 A Yes. As I hope I summarized accurately a couple of  
11 points in my testimony before the break, what I characterize  
12 as sort of long shadow of segregation, discrimination does  
13 sort of fundamentally affect socioeconomic disparities today  
14 on a wide variety of measures.

15 Q Dr. Gordon, I'd like to show you another image from your  
16 report. Can we turn to page 3 of Plaintiffs' Exhibit 40 and  
17 bring Table 1 up on the screen. Dr. Gordon, what is this  
18 table?

19 A This is a summary table of selected socioeconomic metrics  
20 for -- in order of columns, moving across, for the metro  
21 region as a whole, for the Ferguson-Florissant School  
22 District, and for the majority African-American blocks in the  
23 school district.

24 Q And where is this data from?

25 A The data is from a blended data set maintained by HUD for

1 the specific purpose of measuring indicators of neighborhood  
2 distress. So it combines elements of the 2010 census, the  
3 ACS, as well as independent data sets such as local employment  
4 dynamics.

5 Q And can you walk us through what the different columns  
6 and rows in this table show?

7 A Sure. So the first column runs the metrics for the metro  
8 area as a whole; so those are all the block groups that make  
9 up metropolitan St. Louis, the full 15-county area. The  
10 second column labeled "FFSD" is for all those blocks which  
11 fall within the boundaries of the school district with the  
12 same metrics. Then the third column looks at the majority  
13 African-American blocks.

14 And the basic sort of, you know, summary of logic of  
15 this is that we see certain disparities of the metro level  
16 that are wider at the district level because, as I  
17 characterized, North County and the district has a less  
18 affluent, more struggling area of the metro area, and they're  
19 starker still in the majority African-American blocks within  
20 the district.

21 Q If we can go back to the previous image on page 38 of  
22 your report, where do these majority-black block groups fall  
23 within the district?

24 A Largely in the southern tier of the district.

25 Q Do you have any reason to believe that the pattern

1 revealed by these metrics has changed since the 2010 HUD data  
2 that you just discussed?

3 A No.

4 Q And has HUD released a more recent set of data for  
5 this --

6 A No.

7 Q -- neighborhood distress? I'd like to show you an image  
8 from -- another image from your report. Can we turn to page  
9 30 of Plaintiffs' Exhibit 40 and bring Map 12 up on the  
10 screen. Dr. Gordon, what is depicted in this map?

11 A This map uses the same data set. It's mislabeled here as  
12 2012. In fact, the data is from the same HUD data set, and it  
13 depicts poverty by block group. Following the logic of some  
14 of my earlier maps, first for the entire metro area in the  
15 larger map. So moving, you know, from red, where poverty  
16 rates are over 40 percent, to the green, where poverty rates  
17 are under 5 percent, and then the inset shows the same rates  
18 for the district.

19 Q What does the pattern of the different colors demonstrate  
20 in the inset?

21 A The pattern echos the same sort of spatial pattern and  
22 dynamic that I suggested earlier. As you can see very  
23 starkly, north-south in the city of high poverty rates in the  
24 northern tier of the city following the pattern of  
25 African-American occupancy, and that extends out into the

1 county, and on the footprint of the district is again  
2 replicated on that north-south logic. So the southern tier of  
3 the district, which is predominantly African American, much  
4 more intensively multi-family housing, has much higher poverty  
5 rates.

6 Q Can we zoom in on the inset. What do the outlined areas  
7 represent?

8 A The outlines are census block groups, which is a  
9 intermediate unit of census geography. It's the smallest unit  
10 at which we can measure these sorts of dynamics. Like all  
11 units of census geography, they're scaled by population. So  
12 rather than being even spatial dimensions, they try and  
13 capture equal numbers of population. This is why, for  
14 example, at the western end of the southern tier you see some  
15 larger census blocks because some of this is actually the St.  
16 Louis airport, which is lightly populated.

17 Q Now, can we turn to the next page, page 31, of  
18 Plaintiffs' Exhibit 40, and bring Map 13 up on the screen.  
19 What is depicted in this map, Dr. Gordon?

20 A Again, same data, 2010 HUD extract from ACS and other  
21 sources. And this maps unemployment by block group across the  
22 metro area and then more particularly across the district,  
23 again highlighting the sort of sharp north-south divisions.  
24 So you can clearly see the Delmar divide in the city  
25 replicated in a sense by a stark north-south divide on the

1 footprint of the district as well.

2 Q Can you just go through the legend down in the left-hand  
3 corner?

4 A Sure. So this again is 2010 data; so it's coming at the  
5 tail end of the great recession. So the red areas are over 25  
6 percent unemployment. The orange is 20 to 25 percent. The  
7 yellow is 15 to 20 percent. Then the green shades are all  
8 under 10 percent unemployment.

9 Q Are there other examples of economic consequences of  
10 regional and local race and income segregation that we haven't  
11 gone over here?

12 A Yes. In fact, the HUD data set, which is particularly  
13 directed at these sorts of measures, includes a wide variety  
14 of socioeconomic characters, some of which are included in the  
15 appended maps to my report. These include rates of public  
16 assistance.

17 HUD also develops a couple of indexes of neighborhood  
18 stress or neighborhood strength, one of which is engagement  
19 with the labor market, which combines educational attainment  
20 and unemployment rates. Another is unlike -- instead of just  
21 using a poverty rate, they use a poverty index, which combines  
22 rates of poverty with rates of public assistance. But the  
23 spatial patterns are virtually identical on all of these.

24 Q Does that include the spatial pattern within the district  
25 itself?

1 A Yes.

2 Q Based upon the socioeconomic data and patterns that  
3 you've just described, did you reach any conclusions about the  
4 effects of the sustained racial segregation and discrimination  
5 in the district?

6 A Yes. I think the historical circumstances that I've  
7 described -- the pattern and the way in which they're  
8 reflected in patterns of development, patterns of wealth,  
9 patterns of life opportunity -- fall very heavily on  
10 African-American individuals and families in North County and  
11 in the district.

12 Q Dr. Gordon, is it possible that on some socioeconomic  
13 measures the gap between African-American residents and white  
14 residents in the district is smaller than it is in the metro  
15 area, the state, or the country?

16 A Well, it's not just possible; one would expect that to be  
17 so, because when you are measuring disparity in this way, the  
18 geographic unit you pick matters a lot. So, you know, if, for  
19 example, we imagined this courtroom as a couple of  
20 municipalities or three or four municipalities in St. Louis  
21 County, and this was an affluent community, the jury box, and,  
22 you know, the back of the room was a more modestly developed  
23 area, if we threw in that over the entire courtroom and said,  
24 "What's the disparity?" we would be capturing the wealthy area  
25 and the poor area, and it would have a wide gap. But if we

1 were just to throw that net over a small unit like the school  
2 district, we would expect a much smaller disparity because, as  
3 I emphasized in my earlier testimony, the municipal units of  
4 St. Louis County in fact reflect efforts to sort people by  
5 income and by race.

6 Q But based on the data presented in your Table 1 and other  
7 maps we've reviewed, is there a gap on socioeconomic measures  
8 between African-American and white residents of the district?

9 A Yes. So, I mean, in my view, the surprising fact is not  
10 that the gap is narrower, but given the development patterns,  
11 the surprising fact is the gap doesn't virtually disappear.

12 Q What does that gap reflect, in your opinion?

13 A The gap reflects sustained patterns of discrimination and  
14 sharply disparate life chances and life opportunities.

15 Q Do you have an opinion on whether these effects of  
16 discrimination that you've identified bear on the ability of  
17 African Americans in the district to participate in the  
18 political process?

19 A I do.

20 Q What is that opinion?

21 A Based on my own research on material that I've read both  
22 for teaching and for research, I think the scholarly consensus  
23 is very clear that when a population is disadvantaged  
24 economically, when they're disadvantaged in terms of job  
25 opportunities, educational opportunities, or residential

1 opportunities, that these affect civic participation.

2 Q I'd like to turn to some of your other findings and  
3 conclusions. Would you please turn to Tab A in your binder,  
4 which has been marked for identification as Defendants'  
5 Exhibit A?

6 A Okay.

7 Q What is this document?

8 A This is a report of the defendants' expert, Jonathan  
9 Rodden.

10 Q And what is the date of this report?

11 A May 27, 2015.

12 Q Have you read this report?

13 A I have.

14 Q Were you asked to do anything with respect to this  
15 report?

16 A Yes. I was asked to read and give my professional  
17 response to particularly pages 3 through 10, the portion of  
18 the report entitled "The Size and Geography of the  
19 African-American Population in the District."

20 Q Were there any particular conclusions that you responded  
21 to?

22 A Yes. My response to this report was organized around two  
23 particular conclusions, one of which was the contention that  
24 African Americans might constitute a majority of voting-age  
25 population, which I dispute in my response, and the other was

1 the characterization in the report of the district as being a  
2 happily integrated district.

3 Q Dr. Gordon, can you explain what voting-age population  
4 means?

5 A Age 18 or older.

6 Q In preparing your response, did you form any opinions  
7 with respect to whether African Americans are presently a  
8 majority of the voting-age population in the district?

9 A I did.

10 Q What is that opinion?

11 A My opinion is that we have no basis for saying that.

12 Q What did you base your opinion on?

13 A I based my opinion on the established social science  
14 conventions for using the 2010 census, ACS, and other census  
15 products.

16 Q The parties have stipulated in paragraph 13 of their  
17 joint stipulations that, according to the 2010 decennial  
18 census, that 48.19 percent of the voting-age population in the  
19 district is any-part black and 48.95 percent of the voting-age  
20 population is non-Hispanic white. Does that sound right to  
21 you?

22 A Yes.

23 Q You testified a moment ago that you reviewed Dr. Rodden's  
24 initial report. Is there anything in that report that leads  
25 you to reconsider your opinion that African Americans are less

1 than a majority of the voting-age population?

2 A No.

3 Q Why is that?

4 A As I argue in my response to the report, there are, I  
5 think, three fundamental problems with that conclusion, the  
6 first of which is, I think in this respect, that the ACS is  
7 misused.

8 Q Let me stop you for a second there. Can you explain what  
9 the ACS is?

10 A The American Community Survey. The American Community  
11 Survey is -- has been designed to replace the long form of the  
12 census. It's a survey taken every year but on a much smaller  
13 sample of the population than the decennial product.

14 Q And do you know what percent of the population?

15 A About 2 percent, I think.

16 Q And I'm sorry I interrupted you. You were explaining the  
17 first of the reasons.

18 A Well, the first two reasons is fairly straightforward,  
19 and that is the census bureau was clear in its own  
20 documentation of these data sources that the ACS can be used  
21 for identifying socioeconomic characteristics and percentages,  
22 but it should not be used for hard counts of population for  
23 the purposes such as reapportionment or redistricting.

24 And the reason for that is fairly straightforward:  
25 Because the ACS is only a 2 percent sample of the population,

1 there are serious concerns about sample size. And that's  
2 particularly acute when you zoom in on an area as small as the  
3 school district. So what the ACS does is a couple things to  
4 try and manage the sample size problem, the unreliability of  
5 the numbers.

6 First of all, on small geographies, particularly  
7 something as small as a school district, the ACS requires that  
8 we average over a number of years. And recently they've moved  
9 their standard for this level of geography from three years to  
10 five. So we're actually averaging five years of data in order  
11 to get a sample size that is sufficient to even draw  
12 conclusions about socioeconomic characteristics.

13 The Bureau of Census again in its documentation is  
14 very clear that because this is a five-year-average sample,  
15 that it cannot be used as a proxy for a point-in-time sample;  
16 that it not represent the midpoint of those five years, does  
17 not represent the end of those five years, and it would be  
18 comparable apples to oranges to say that this five-year sample  
19 census says this and the 2010 census says this, because  
20 they're different sample sizes, and in some respects different  
21 questions are asked.

22 Q You mentioned that there were two other reasons that  
23 underlie your conclusion that African Americans are not a  
24 majority of the voting-age population.

25 A Yeah. And one sees that particularly -- or we can

1 illustrate the problem of sample size and draw conclusions,  
2 and the reason why the ACS itself does not recommend that its  
3 estimates be used for such purposes as hard counts of the  
4 population, and that is even at the five-year average when you  
5 look at a small geography, and particularly when you start to  
6 break down the geography demographically, so say you're just  
7 looking at black voting-age population, the margin of error of  
8 that number is very high.

9           So just to use rough numbers from the most recent  
10 five-year estimate -- and these are not exact, but they're  
11 sufficient for illustrative purposes -- according to the  
12 five-year ACS, we have about 25,000 in the white voting-age  
13 population and about 26,000 in the black voting-age  
14 population. But both those numbers report margins of error of  
15 over a thousand. So that means that either number could be as  
16 much as a thousand less, as much as a thousand more.

17           The way to manage this is if you can imagine the  
18 25,000 and the 26,000 as bars on a graph, you then put a point  
19 a thousand below the line and a point a thousand above, and  
20 that's your confidence interval; so you have some confidence  
21 that the number lies between those points.

22           Well, if you're comparing two numbers and the  
23 confidence intervals overlap, then there's no statistical  
24 significance between those two numbers. There's no basis for  
25 claiming that one number is bigger than the other, because the

1 supposed difference between the numbers is completely  
2 swallowed by the margin of error as reported by ACS.

3 Q And these are just rough estimates that you've calculated  
4 for illustrative purposes; is that right?

5 A Yes. Yeah. And the margin -- that margin of error grows  
6 larger the smaller the demographic unit you're talking about.  
7 So -- and this is particularly true when we make any effort to  
8 tease out how many African-American identified voters are in  
9 the nonsingle-race category. There the number reported is in  
10 the hundreds, but the margin of error is also in the hundreds.  
11 So we really have no confidence as to what that number really  
12 is.

13 Q Can you give us an example of the perils of relying on  
14 the ACS to predict population change?

15 A Yeah. One example that comes to mind is the fact that  
16 the city of St. Louis itself leaned heavily on the pre-2010  
17 ACS, that is, preceding the last decennial census, to  
18 celebrate the fact that the city, after 60 years of decline,  
19 had begun to gain in population only to discover that when the  
20 hard population count was released in 2010 as a result of the  
21 100 percent count in the decennial census, that the city had  
22 lost another 30,000 inhabitants.

23 Q Are there reasons why the eligible voting-age population  
24 for African Americans might be lower than the voting-age  
25 population for African Americans in the district?

1 A Yes. The other issue I raised with respect to any  
2 calculation of voting-age population is that, you know, for  
3 the purposes of assessing civic participation and democratic  
4 opportunity, I think it's important to consider not just the  
5 voting-age population but the voting-eligible population.

6 And so it's fairly simple in that respect to apply  
7 felony disenfranchisement rates to the voting-age population  
8 and discount them in order to get an estimate not of those who  
9 are 18 or older but those who are 18 or older and are allowed  
10 to vote.

11 Q Can you explain why felon disenfranchisement affects the  
12 voting-eligible population?

13 A Yeah. Every state has their own rules on felony  
14 disenfranchisement, on what proportion of those or what  
15 characteristics of those who are under supervision of the  
16 judicial system in some respect are disenfranchised and what  
17 the terms for perhaps getting the vote back are.

18 This is an object of a fairly extensive scholarly  
19 literature. The most recent estimate by scholars from the  
20 University of Minnesota and New York University looks at this  
21 on a state-by-state basis and allows us to work with an  
22 effective disenfranchisement rate for the general population  
23 and for the African-American population in the state of  
24 Missouri.

25 Q So for purposes of your response report, did you rely on

1 statewide data?

2 A Yes.

3 Q Why didn't you use district-specific data?

4 A There is no district-specific data.

5 Q Why do you believe that it's appropriate to apply the  
6 statewide felon disenfranchisement rates to the district?

7 A I mean, the estimate of disenfranchisement that I include  
8 in my report is, I think, conservative in two respects. The  
9 extant scholarly research identifies an African-American rate  
10 and a rate for the general population. So I arrived -- I  
11 applied the rate for the general population to the white  
12 voting-age population, which overestimates their level of  
13 disenfranchisement by a small degree, and then I have every  
14 reason to assume, given what we know about patterns of  
15 policing in North County in the wake of the Department of  
16 Justice report after Ferguson, that an application of the  
17 African-American rate to voting-eligible African Americans in  
18 Ferguson-Florissant would be a conservative estimate of the  
19 rate of disenfranchisement.

20 Q How do rates in urban areas compare to race of felon  
21 disenfranchisement in other areas?

22 A They are generally higher.

23 Q Would you consider the district an urban area?

24 A Yes.

25 Q Would you please turn to Tab 43 in your binder, which has

1 been marked for identification as Plaintiffs' Exhibit 43.

2 What is this?

3 A This is the academic research upon which I relied for a  
4 estimate of the rate of disenfranchisement.

5 Q What year is this data from?

6 A 2010.

7 Q Based on this data, about how many individuals are  
8 disenfranchised under Missouri felon disenfranchisement laws?

9 A About 106,000.

10 Q What is the rate of felon disenfranchisement for the  
11 population as a whole versus for the African-American  
12 population?

13 A I think it's 2.32 percent for the population as a whole  
14 and 6.2 or 6-something percent -- I don't have it right in  
15 front of me -- for the African-American population.

16 Q Does 6.88 percent sound familiar?

17 A That sounds about right.

18 THE COURT: Taking a note from Mr. Rothert's book.  
19 When in doubt, supply the answer.

20 Q I'd like to show you an image from your supplemental  
21 report. Can we turn to page 2 of Plaintiffs' Exhibit 41,  
22 which is your supplemental report, and bring Table 3 on the  
23 screen.

24 A Okay.

25 Q Dr. Gordon, what does this table show?

1 A This table is the result of the calculations adjusting  
2 the voting-age population for the felony disenfranchisement  
3 rates.

4 Q Can you explain how it affects what you call in this row  
5 "share"?

6 A Yes. For each category -- for single-race white,  
7 single-race black, and other -- I've calculated, first of all,  
8 a share of the 18-and-older population, that is, the  
9 voting-age population, and then, applying the  
10 disenfranchisement rates, a share for the eligible voting  
11 population. So the white and the other are discounted by the  
12 rate for the general population. The black are discounted by  
13 the rate for African-American disenfranchisement.

14 Q Now, are you saying that these numbers reflect the actual  
15 shares of the African-American voting-eligible population in  
16 the district?

17 A No. The table is meant only to be illustrative because  
18 it rests on the same somewhat tenuous logic, I would argue, of  
19 using the ACS in the first instance. So the raw numbers here  
20 come from the 2011-2013 ACS, but we've already established  
21 that the difference between those numbers is not statistically  
22 significant and, in fact, you know, could range in the single  
23 rate shares as much as 1,000 or 1,200 in one direction or the  
24 other.

25 MS. LAKIN: Your Honor, I would like to move to admit

1 Plaintiffs' Exhibit 43 into evidence.

2 MS. ORMSBY: I object, Your Honor.

3 THE COURT: On what basis?

4 MS. ORMSBY: On relevance. This is not localized  
5 data.

6 THE COURT: Here, I'll make it easy. I mean, I will  
7 receive it maybe not as substantive evidence; but, obviously,  
8 any expert is permitted to rely on data that an expert in the  
9 field would normally rely on. This is clearly that type of  
10 data. So I'll receive it as background information to his  
11 testimony. Is that sufficient?

12 MS. ORMSBY: Thank you, Your Honor.

13 Q (BY MS. LAKIN) Thank you, Your Honor.

14 Now, you testified earlier that you also responded to  
15 the portrayal of the district as happily integrated. What is  
16 your understanding of the basics of this characterization?

17 A You mean from Dr. Rodden's report?

18 Q Yes.

19 A I think Dr. Rodden relies heavily on descriptions of  
20 certain portions of the district where there is perhaps a  
21 rough balance of bi-racial occupancy even by measures of  
22 homeownership. And I think it also rests on, you know,  
23 somewhat tenuous use of segregation indices which are -- can  
24 be quite problematic when used on a geography of this size.

25 Q Do you agree with the assessment that the district is, as

1 you say, happily integrated?

2 A I do not.

3 Q And why not?

4 A Again, I mean, I would float a number of reasons. First  
5 of all, I mean, most urban demographers and urban historians  
6 would not rely on a single index of segregation for assessing  
7 the degree of integration; that there are a number of ways in  
8 which populations can be segregated. They can be spread  
9 unevenly across a spatial area. They can be concentrated in a  
10 certain part of that area. They could be clustered in more  
11 than one area. They could be isolated.

12 And the problems with these indices, I think, are  
13 twofold. First of all, they, like almost -- like much of the  
14 data we've been talking about today, they're very much shaped  
15 and often distorted by the geographies in which they're  
16 counted.

17 So I'll give you an example from the research on  
18 segregation. If you want to measure the dissimilarity, use  
19 the dissimilarity index and measure the dispersion of a  
20 position across an area, a good example of a setting where you  
21 know this clearly doesn't work is in a city in the American  
22 South in the first part of the 20th century where you would  
23 have a street on which white families lived in houses facing  
24 the street and black families lived in houses facing the  
25 alley. And if you drew a line around that neighborhood,

1 defined it as a neighborhood, you would find African Americans  
2 and whites living in proximity to each other in roughly equal  
3 numbers, and on a dissimilarity index it would show up as an  
4 integrated neighborhood, but no one who walked into that  
5 neighborhood in -- at the height of Jim Crow would define the  
6 conditions as integrated in any socially or historically  
7 meaningful -- meaning of the word.

8 Q You use a concept called "lived experience" in your  
9 report. Can you explain what you mean by that?

10 A Yeah. It's an extension of the example I just gave. I  
11 think in order to understand integration or segregation, you  
12 need to go beyond simply measuring the dispersal of  
13 populations or their rough balance in the population and think  
14 about what the actual experience is.

15 And in this list I would include things like patterns  
16 of racial transition. In fact, the segregation index is -- or  
17 the segregation measure is a point-in-time measure, and it  
18 doesn't capture the way in which neighborhoods might be  
19 changing in one direction or another.

20 More importantly, I think you need to supplement  
21 quantitative measures of integration using these indices with  
22 qualitative measures of how people live their daily lives --  
23 going to school, going to work, interacting in neighborhoods.  
24 And it would be very difficult, I think, to say, particularly  
25 what we know in the wake of the events in Ferguson two years

1 ago, in the wake of the Department of Justice report, in the  
2 wake of ongoing research done in the area by local scholars,  
3 that African Americans in North County or into the footprint  
4 of the district don't live under sharply disparate  
5 circumstances than many of their white neighbors, particularly  
6 in the way in -- if we think of the way in which citizenship  
7 and civic participation is shaped by the sort of  
8 confrontations that we have with public institutions, whether  
9 they be the police, whether they be schools, whether they be  
10 local governments; that I think you have to understand, you  
11 know, the statistical distribution of the population, but you  
12 have to understand it as a historical phenomena and as  
13 something that has social meaning to the people who live  
14 there.

15 Q Dr. Gordon, what does the term "resegregation" mean?

16 A In the context of my report, I use the term  
17 "resegregation" to capture the larger dynamic that I've  
18 described at various points in which a pattern of segregation  
19 and a pattern of disparity that flows from segregation that  
20 was, in a sense, invented in north St. Louis has moved  
21 spatially into North County and been replicated and reinvented  
22 on the footprint of the district and in North County more  
23 generally.

24 Q Now, you've stated that you reviewed Jonathan Rodden's  
25 initial report. Would you please turn to Tab D in your

1 binders, which has been marked for identification as  
2 Defendants' Exhibit D. What is this document?

3 A Supplemental report by Dr. Rodden. I don't see a date on  
4 it, but --

5 Q Fine. Have you reviewed this supplemental report?

6 A I have.

7 Q Did either Dr. Rodden's initial report or this  
8 supplemental report cause you to change any of your opinions?

9 A No.

10 Q Based on your survey of historical discrimination and  
11 segregation and their impact today, did you come to any  
12 conclusions about whether African Americans in the  
13 Ferguson-Florissant School District bear the effects of past  
14 discrimination that affects their ability to participate in  
15 the political process?

16 A Yes.

17 Q What is that opinion?

18 A I think it's fundamentally the case that if we take into  
19 account the historic circumstances and the patterns that exist  
20 on the ground today, that it is sort of clear and demonstrable  
21 that the burden of that historical pattern of segregation  
22 falls heavily on African Americans, many that now live in  
23 North County in the school district, particularly in the  
24 southern tier.

25 MS. LAKIN: I have no further questions. Thank you,

1 Dr. Gordon.

2 THE COURT: Cross-examination?

3 MS. ORMSBY: Yes, Your Honor.

4 THE COURT: Are you ready on the plaintiffs' side?

5 You may proceed.

6 **CROSS-EXAMINATION**

7 **BY MS. ORMSBY:**

8 Q Thank you, Your Honor.

9 Professor Gordon, we met at your deposition. My name  
10 is Cindy Ormsby, to remind you.

11 A Hi.

12 Q How are you?

13 A Hi. Fine.

14 Q Great.

15 THE COURT: I'm sure he's been better. Nobody wants  
16 to be in court if they can help it.

17 Q I've been better as well, if it's any consolation.

18 Can you tell me how much of your 2015 report was  
19 taken verbatim or near verbatim from your 2008 book and  
20 inserted into your report?

21 A I think, as I was clear in my deposition, that the first  
22 half of my report, that which describes the historical  
23 circumstances, the larger background of segregation in the  
24 greater St. Louis area, is almost exclusively drawn from my  
25 2008 monograph.

1 Q And it's sometimes exactly quoted, correct?

2 A Yes.

3 Q Okay. Can you explain how the segregation that you just  
4 described for the Court was caused by the electoral system  
5 that the State of Missouri requires of school districts in  
6 Missouri?

7 A I don't claim that it was caused by that.

8 Q And you claim that the school boards had anything to do  
9 with the segregation in Ferguson-Florissant School District?

10 A In the sense of the historical causation or --

11 Q Did they pass any policies that would cause the  
12 segregation to occur?

13 A No. The logic of my argument is that current political  
14 institutions such as school boards have the effect of living  
15 within institutions and replicating those older patterns,  
16 something which I think was made clear when we talked about  
17 the formation of the district in the first instance.

18 Q Could you please turn to page 3 of your initial report,  
19 specifically Table 1.

20 A Sure.

21 Q Now, the first line of that table is labeled "black  
22 population." Is that correct?

23 A Yes.

24 Q You're saying that 15.7 percent of the population in  
25 metro -- which I assume is the metropolitan region, St. Louis

1 metropolitan region?

2 THE COURT: Just so we're clear, you mean an SMSA,  
3 right? Is that what you're using?

4 THE WITNESS: Yeah.

5 Q That's --

6 A The Metropolitan Statistical Area, which is the 15-county  
7 metropolitan region, yeah.

8 Q And that's 15.7 percent African American?

9 A Yes.

10 Q And then you state that 44 percent of the black  
11 population in Ferguson-Florissant School District is African  
12 American, correct?

13 A Forty-four percent of the population, yeah.

14 Q Of the population. Where did you get this data?

15 A As I stated on direct, the data is from the 2010 census.  
16 Some of the socioeconomic indicators are from ACS.

17 Q Do you remember in your deposition when I asked you that  
18 question what your answer was?

19 A Yeah. I think I characterized it as being from ACS.

20 Q And is that --

21 A I was mistaken.

22 Q You were --

23 A The population counts are from the census. The  
24 socioeconomic as calculated by HUD come from ACS.

25 Q So this 44 percent is based on 2010 census?

1 A Yes.

2 Q And what you testified to in your deposition was  
3 incorrect?

4 A Yes, on that score.

5 Q Did you identify where you got this information in your  
6 report?

7 A There's not a source line for the table, but the same  
8 data is used in the maps throughout the report where it's  
9 labeled as HUD data.

10 Q And all of the maps that you referred to in your  
11 testimony said that the data was 2012, but it was actually  
12 from 2010?

13 A Yes. I think two of the maps are mislabeled as 2012.

14 Q So should the Court decide to read your initial report,  
15 it shouldn't assume that the information that you're giving is  
16 later data. It's from 2010, not from 2012?

17 A Yes.

18 Q And did you file a correction to your report at any time  
19 so that everyone would be clear on that?

20 A No. I, in fact, didn't notice the error until I was  
21 preparing for this exercise.

22 Q Can you agree with me that most, if not all, of your  
23 conclusions regarding the school district is based on national  
24 metropolitan region or, at the closest level, North County  
25 statistics and information?

1 A I can agree that in the context of writing the report I  
2 used the data which was most relevant to the conclusions I was  
3 seeking to draw, and so some of these conclusions relate to  
4 the metropolitan area, some of them relate to North County  
5 more specifically, and some of them relate to smaller  
6 footprints, municipalities in the district.

7 Q Did you do any analysis specific to the  
8 Ferguson-Florissant School District?

9 A Yes.

10 Q What was that? What analysis did you do?

11 A So I include the table which we were just referring to,  
12 uses the block group data that falls solely within the  
13 district. I had also clarified that in this kind of scholarly  
14 exercise one is constrained by the way in which data is  
15 reported. In fact, very little data, particularly  
16 historically, is reported for the district other than, say,  
17 enrollment data and that sort of thing.

18 So one uses the data at hand, much of which is from  
19 census, which is why in the course of this kind of analysis  
20 the common method is exactly as I have done to describe the  
21 broader processes and then to identify the school district's  
22 place in that larger story.

23 Q Let's turn to page 28 of your initial report, second full  
24 paragraph.

25 A Okay.

1 Q And I've put that up on your screen. Could you read  
2 aloud that highlighted section from your report?

3 A Sure. "The patterns and mechanisms of segregation  
4 invented and sustained in the city of St. Louis migrated along  
5 the north-south line into St. Louis County. This extended the  
6 contours of segregation so engrained in the city's history,  
7 and it reinvented them in new settings, including  
8 Ferguson-Florissant, in the inner suburbs. Here segregation  
9 was spatial: African Americans in Ferguson-Florissant have  
10 settled overwhelmingly in the apartment complexes, Suburban  
11 Heights, Northwinds, Canfield, along Maline Creek in south  
12 Ferguson and Kinloch, and in pockets of single-family housing  
13 east of West Florissant Avenue and south of I-270."

14 Q So you were speaking specifically of the  
15 Ferguson-Florissant School District in this paragraph,  
16 correct?

17 A No. The Ferguson, hyphen, Florissant refers to those two  
18 municipalities.

19 Q Really? Is that what you said in your deposition?

20 A I don't recall.

21 Q You don't remember me asking you that question and you  
22 said Ferguson-Florissant represented -- you were referring to  
23 the district?

24 A As I read this paragraph, the logic of it is to move from  
25 the metro area, from the city, to North County to those two

1 municipalities.

2 Q So -- all right. Is Suburban Heights in Ferguson or in  
3 Florissant, the Suburban Heights apartment complex?

4 A I'm not sure.

5 Q Is Northwinds in Ferguson or in Florissant?

6 A I believe Northwinds is in Ferguson.

7 Q Do you believe Canfield is in Ferguson or in Florissant?

8 A I think it's in the southern tier of Ferguson.

9 Q Could you pull up the map, please.

10 This is a map provided by the St. Louis County Board  
11 of Elections. It's very difficult to see on my screen. Is it  
12 on yours?

13 A I think I can see it okay.

14 Q Okay. The white area represents the Ferguson-Florissant  
15 School District.

16 A Okay.

17 Q And the yellow and green surrounding it is outside of the  
18 school district.

19 A I understand.

20 Q I'm going to blow up the area of West Florissant on the  
21 east side of the school district. And do you see where West  
22 Florissant is?

23 A Do you have a pointer? Can you show me?

24 Q Right --

25 A I can't read this text.

1 Q I'm underlining it. Can you see it?

2 A Okay.

3 Q So that's West Florissant. And does that look like that  
4 street is inside or outside of the Ferguson-Florissant School  
5 District?

6 A It's outside.

7 Q And you believe that that is -- that West Florissant,  
8 east of West Florissant is in the city of Ferguson?

9 A I don't see the municipal boundaries on this map. I just  
10 see the school district map.

11 Q Okay. Can we show where Canfield and Northwinds is,  
12 please. Canfield Drive -- do you see that's even more east of  
13 West Florissant and farther outside the school district as is  
14 Northwinds?

15 A Uh-huh. I see.

16 Q So neither of those locations are inside the school  
17 district. You'll agree with that anyway.

18 A Yes.

19 Q And --

20 A In this paragraph I'm representing patterns of  
21 development, the pattern of single-family housing and  
22 multi-family housing as it flowed out through the county. I  
23 have emphasized on direct that I view the corporate fragments,  
24 including the school district, as sort of largely artificial  
25 political boundaries superimposed on that pattern of

1 development.

2 Q But this lawsuit is about the Ferguson-Florissant School  
3 District, isn't it?

4 A I understand that.

5 Q And on page 19 -- I think when we talked in your  
6 deposition, you were really clear that beginning on page 19  
7 everything you said was specific to the Ferguson-Florissant  
8 School District, right?

9 THE COURT: Slow down.

10 Q I'm sorry.

11 A I mean, the section that we're referring to, I'm on  
12 Section 5 in my report, is entitled "The Transformation of  
13 North County." What I'm describing is patterns of  
14 development, pattern of segregation in North County as they  
15 affect the footprint of the school district.

16 Q You don't believe that citing the fact that, as you say  
17 in this highlighted paragraph, that segregation was spatial,  
18 African Americans in Ferguson-Florissant settled  
19 overwhelmingly in apartment complexes, and you cite three  
20 apartment complexes -- along Maline Creek in south Ferguson  
21 and Kinloch -- which I don't believe any of those locations  
22 are in Kinloch. Do we agree with that?

23 A Well, the sentence "apartment complexes along Maline  
24 Creek in south Ferguson and Kinloch," there are apartment  
25 complexes in Kinloch.

1 Q But none of the three you cite are --

2 A No.

3 Q Right. "And in pockets of single-family housing east of  
4 West Florissant and south of 270." And nothing east of West  
5 Florissant and south of 270 is in the Ferguson-Florissant  
6 School District, is it?

7 A No. But I'm characterizing patterns of development in  
8 North County.

9 Q Okay. Could you turn now to your rebuttal report, page  
10 5.

11 A What's the tab number?

12 Q That's not my --

13 THE COURT: Forty-one.

14 A Forty-one, okay.

15 Q I'm looking specifically at the chart that's entitled  
16 "Figure 1: Enrollment in Ferguson-Florissant by Race, 1991 to  
17 2015."

18 A Sure.

19 Q I'm going to try to clear the red mark off there. What  
20 does this chart show?

21 A This is enrollment data from the district showing  
22 enrollment of single-race black, single-race white, and other,  
23 from 1991 to 2014.

24 Q So we're talking specifically about school children on  
25 this?

1 A Yes.

2 Q Okay. And how do you define the age of school children?

3 A Over the age of 5, under the age of 18.

4 Q What is the white school-age population? And I think if  
5 you want to look at your rebuttal report, Table 1 on page 1,  
6 what's the age of school-age -- I'm sorry. Describe to the  
7 Court what this table is that's also in your rebuttal report.

8 A So Table 1 from the three-year ACS, 2011-2013, has an age  
9 breakdown of the white-alone and black-alone population.

10 Q So how many white school-age children are -- and this is  
11 from the ACS -- 2011-2013 ACS?

12 A Uh-huh.

13 Q Is that where this data is from?

14 A Yes.

15 Q And what's the number of school-age children?

16 A 2,912.

17 Q And African-American school-age children?

18 A 8,359.

19 Q So, obviously, you believe -- do you believe there's  
20 significantly more young African Americans in the districts  
21 than whites?

22 A This table would be subject to the same sort of  
23 margin-of-error concerns that I have with the ACS more  
24 generally for population counts, but I think your statement is  
25 true.

1 Q And we know, since this data is based on the 2011-2013  
2 ACS, it is a significant portion of those students will have  
3 already turned 18, and if they haven't already, they will in  
4 the next few years, correct? Going back to 2012. It's 2016.  
5 So four years' worth.

6 A I mean, you're asking me for a conclusion that lies  
7 outside my area of expertise.

8 Q Would you say that the high school students at the time  
9 that this table was created have now all turned 18?

10 A Okay.

11 Q So can we be fairly certain that since 2012, based on the  
12 fact that there's a significant difference in the number of  
13 white and black school-age populations, that the voting-age  
14 population of blacks have increased since 2012?

15 A No.

16 Q Why not?

17 A For two reasons. First of all, I would not draw  
18 conclusions about voting-age population based on the ACS  
19 because it's not designed for that purpose, for a threshold of  
20 population, and because the margins of error are too wide.

21 Secondly, it would not be a responsible demographic  
22 conclusion to assume that every child who reaches the age of  
23 18 in Ferguson stays in Ferguson and becomes a part of the  
24 voting-age population. I don't know what those patterns look  
25 like. I don't know what the retention rate for young adults

1 is in Ferguson or in Ferguson-Florissant. So I would not draw  
2 a conclusion.

3 Q Would you draw a conclusion that the trend shows that  
4 there are more African Americans graduating than whites  
5 graduating from the Ferguson-Florissant School District?

6 A Yes.

7 Q Would you turn to page 1, the second paragraph.

8 A Of the same report?

9 Q Of the same report. Can you read that sentence that's  
10 highlighted?

11 A "Rodden and I agree substantially on the basic  
12 demographic trends. The district is in the midst of an  
13 ongoing racial transition marked by white flight to the outer  
14 suburbs."

15 Q Then you go on in your report to give the details how the  
16 white population has decreased and the African-American  
17 population has increased since 2000. Correct?

18 A The same paragraph?

19 Q Yes.

20 A Yes. Although I say that the reliability of the numbers  
21 shrink as we zoom in on the size of the geography.

22 Q Can you explain to me what you mean by when you say that  
23 the racial transition is ongoing?

24 A From the sentence you highlighted?

25 Q Yes.

1 A Time doesn't stop. So my point is that when you're  
2 looking at segregation, you're taking a snapshot in time, and  
3 you don't know -- you know it's not going to stay like that,  
4 but you don't know what's going to happen afterwards.

5 Q But doesn't "ongoing" tend to indicate that the white  
6 population's going to continue to decrease and the black  
7 population's going to continue to increase? Isn't that what  
8 "ongoing" means?

9 A No. It means that the racial demographics will continue  
10 to change, but I'm an historian, and I don't have the  
11 expertise to offer any basis for what that change will look  
12 like in the future.

13 Q Let's turn to the last three sentences of that paragraph.

14 A Of the paragraph marked --

15 Q I'm going to put it up on the screen here in just a  
16 minute. Page 3. Page 3, the last third page. Can you read  
17 those last three sentences, highlighting starting with "the  
18 inner suburb"?

19 A "The inner suburbs either start this period with an  
20 already-high African-American share of the population --  
21 Pagedale and Wellston as examples -- or see dramatic  
22 transition as in Country Club Hills, Flordell Hills, Jennings,  
23 Moline Acres, from one kind of segregation, majority white, to  
24 another, majority black. The middle tier of North County  
25 suburbs, including Ferguson, are all marked by sustained and

1 ongoing transition. The outer North County suburbs are, for  
2 the most part, at an earlier stage of that transition, with  
3 increases in the African-American share from the low single  
4 digits into the 20-30 percent range."

5 Q So aren't you describing a trend where the racial  
6 population shift is moving steadily through North County?

7 A I'm describing a trend through the 2010 census, which are  
8 the last reliable numbers we have. My -- go ahead.

9 Q No. Finish, please.

10 A And I've restricted my analysis to that trend to an  
11 historical analysis of that, which enables me to describe it  
12 both statistically and with qualitative evidence up through  
13 2010.

14 Q You criticize Dr. Rodden for taking a snapshot in time  
15 right now, right? Don't you?

16 A That's one of the limits of a segregation index.

17 Q So you criticize him for taking a snapshot of what the  
18 school district looks at right now. You talk about these  
19 trends that come up -- that go up to, as you state now, 2010.  
20 You don't want the Court to look at anything past 2010, but  
21 you don't want the Court to look at the snapshot that's taken  
22 right now. Does that summarize what it is?

23 A No. I think that's inaccurate in the sense that my  
24 criticism of the use of a dissimilarity index at a point in  
25 time does not assume that racial transition will continue in

1 one direction or another. It's simply -- it's simply that:  
2 That the demographics of that population, the pattern in which  
3 people live, the pattern in which races live next to each  
4 other, will be different. How it will be different, I'll  
5 leave those with other forms of expertise to say.

6 Q But you do state in your report that there is a trend  
7 towards resegregation, don't you?

8 A As I clarified on direct, by segregation does not mean an  
9 expectation of majority-black population. Segregation means  
10 the pattern, the spatial pattern, by which people live in any  
11 geographic footprint.

12 Q You remember having your deposition taken on August 19,  
13 2015, right?

14 A I do.

15 Q And you were under oath when you were -- when you had  
16 your deposition taken?

17 A Yes.

18 Q The same as you are today?

19 A Yes.

20 Q And you remember when I asked you "But you do state there  
21 is a trend in Ferguson-Florissant towards resegregation?" do  
22 you remember your response?

23 A I do not, off the top of my head.

24 Q May I read it to you, please?

25 A Sure.

1 Q "I think the trend is clear in my report that the  
2 African-American population in Ferguson-Florissant between  
3 1940 and 2010, particularly after 1970, began to displace the  
4 white population. There was second generation of white  
5 flight." Is that accurate?

6 A Yeah. I think I've testified to that today as well.

7 Q Okay.

8 MS. EBENSTEIN: I'm sorry, Your Honor. Could we go  
9 get the citation?

10 THE COURT: Sure. Why don't you put it on the screen  
11 for everybody to see. That way there's no confusion.

12 MS. ORMSBY: Absolutely.

13 THE COURT: What page and line number were you  
14 reading from?

15 Q (BY MS. ORMSBY) Page 64. Can you switch to the ELMO.  
16 It's page 64, lines 5 through 12. Do you see that?

17 A I see it, yeah.

18 Q Now, you described Dr. Rodden's description of the  
19 district as happily integrated. Those weren't his words, were  
20 they?

21 A No. That was the impression I got from his report. I  
22 thought it was a rosy view of --

23 Q I just wanted to make clear that those were your -- that  
24 was your description and not Dr. Rodden's, correct?

25 A That's fine. That's fair.

1 Q Okay. You talked a little bit in your direct exam about  
2 felony disenfranchisement. And we talked about that in your  
3 deposition as well, didn't we?

4 A Uh-huh.

5 THE COURT: Just a second. I don't mean to  
6 interrupt, but you got to say "yes" or "no." Otherwise, these  
7 lawyers will debate about whether it was uh-huh or huh-uh  
8 later, okay?

9 A Yes. I think my answer was yes. Yes or no.

10 Q I just wanted to remind you we talked about it in our  
11 deposition.

12 A Yes.

13 Q During your deposition.

14 THE COURT: Just trying to get in the routine now.

15 Q Isn't it true that prisoners are counted for census  
16 purposes in an area where a prison is located?

17 A Yes.

18 Q And do you know if there's any prisons located in the  
19 Ferguson-Florissant School District?

20 A I know that there are not.

21 Q So the numbers that you cite in your report for disparate  
22 impact of felony disenfranchisement would actually be lower if  
23 you took out the number of felons living in prisons?

24 A Yes. So the numbers in Missouri of 106,000 who are  
25 disenfranchised, I think about 30-, maybe 31,000, are in

1 prison. So more than two thirds are probationary, parole, or  
2 local jail.

3 Q And are you aware of any studies that have found that the  
4 African-American felony rate is lower if you consider high  
5 school graduation rate?

6 A I'm not aware.

7 Q Do you remember testifying in your deposition that that  
8 wouldn't surprise you?

9 A It still doesn't surprise me.

10 Q Did you look at the graduation rate of African Americans  
11 in the Ferguson-Florissant School District?

12 A I did, although not in this context.

13 Q Do you know whether or not Ferguson-Florissant School  
14 District has a relatively high or low graduation rate for  
15 African Americans compared to communities in St. Louis or  
16 beyond?

17 A I did not do that analysis in my report.

18 Q Do you remember in your deposition you testified that you  
19 believed it was on the high end of the scale?

20 A Yes. I think that's probably right.

21 Q Did you take any of that into account in your numbers  
22 that you put in your report?

23 A With regard to the disenfranchisement issue?

24 Q Uh-huh.

25 A No.

1 Q Did you have any specific data on the number of parolees  
2 or individuals on probation or former felons that are actually  
3 living within the school district boundaries?

4 A No. The data is not reported or available in that way.

5 Q But all that would have an effect on those numbers?

6 A Yes.

7 Q Could you -- I just want to head on to another few --  
8 it's not going to be in any order because I'm kind of reacting  
9 to direct.

10 A Sure.

11 Q So don't get whiplash here. Could you calculate an index  
12 of dissimilarity at the level of block groups?

13 A You mean for a single block group?

14 Q Yes.

15 A No.

16 Q What level could you do it at?

17 A Well, you need more than one block group; so it's  
18 conventionally done for --

19 Q Two or three block groups? Three or more block groups?

20 A Yeah. It's conventionally done on a unit of census  
21 geography, which would be a municipality or a tract.

22 Q Do you know what percent -- what percent of the district  
23 population lives in integrated versus segregated block groups?

24 A No, I do not.

25 Q Would you agree that your testimony and your report

1 relies on your lived experience? You talked about lived  
2 experience. Does your lived experience --

3 A I'm not sure I understand the question or its relevance.

4 Q Have you ever lived in the school district?

5 A No.

6 Q So your -- I want to go back to your Table 1 in your  
7 first report.

8 A Okay.

9 Q You wrote that you indicate that the African-American  
10 population is 44 percent. Are you aware that the parties have  
11 stipulated that in 2010 the black population, single race, was  
12 42.03 percent?

13 A Yes.

14 Q Why is your number different than what has been  
15 stipulated to?

16 A The discrepancy arises from the fact that as the map on  
17 the next page summarizes, what I've done is run these metrics  
18 across all the block groups that fall within the  
19 Ferguson-Florissant School District. Because the school  
20 district is not itself a unit of census geography, some of  
21 those block groups fall partially outside. So the population  
22 upon which these metrics are calculated is marginally larger  
23 than the population of the district.

24 Q So how did the parties come to the 52.03 percent? How do  
25 you think they got to that number?

1 A I'm sorry. I'm not sure what number you're referring to.

2 Q The stipulated number that the parties have come to in

3 our Stipulation No. 16 is that the single-race

4 African-American population as of the 2010 census was 52.03.

5 What did they do different than what you did; do you know?

6 A Yes. The census does a special tabulation for the school

7 district in which they split those census blocks, and so they

8 have a precise measurement of the district.

9 Q Why didn't you do that?

10 A Because it was not necessary for this level of analysis

11 to simply get a sense of the way in which those socioeconomic

12 metrics are distributed across the metro area, across North

13 County, across the district, and across the district's

14 predominantly African-American blocks.

15 Q But doesn't your number, 44 percent, which is not

16 specific only to the Ferguson-Florissant School District, skew

17 all those other numbers underneath it? It's not specific to

18 the Ferguson-Florissant School District, correct? I'm sorry.

19 THE COURT: It's a subset, I think he would tell you.

20 A Yeah. So if you include all of the census blocks that

21 fall within the district, you're measuring this across a

22 population -- I don't have the numbers in front of me -- I

23 think a population of about 80,000 instead of a population of

24 67,000.

25 Q So it includes areas outside the school district?

1 A Yeah. And the map on page 4 makes this clear.

2 Q It's larger than the school district, this group that  
3 you're looking at?

4 A Yes.

5 Q So it's not just the Ferguson-Florissant numbers?

6 A No.

7 Q So I have one more question, and then I will end. Or  
8 maybe two. You're a historian?

9 A Yes.

10 Q You want to stop any trend analysis as of 2010, correct?

11 A Yeah. I mean, I'm not quite sure of the phrasing of the  
12 question. I would -- yeah. As an historian, I view the  
13 latest reliable data on the trends that I am assessing as the  
14 2010 census.

15 Q So historians never look past the last census. They  
16 won't look to 2013 or 2014 or 2015, all of which is in the  
17 past. You won't make any conclusions based on that past?

18 A Well, in fact I'm running much closer to the present than  
19 most historians would do because most historians use solely  
20 archival sources, and they're not open for recent years. I  
21 can't speak to the motives of all historians or their  
22 willingness to speculate.

23 MS. ORMSBY: I don't have anything further. Thank  
24 you.

25 THE COURT: Any redirect?

1 MS. LAKIN: Briefly, Your Honor.

2 THE COURT: Lawyers' famous last words.

3 Are you ready on the defendants' side? Are you ready  
4 over here?

5 MS. ORMSBY: Yes.

6 THE COURT: You may proceed.

7 **REDIRECT EXAMINATION**

8 **BY MS. LAKIN:**

9 Q Thank you.

10 Dr. Gordon, is it your opinion that the patterns of  
11 segregation and discrimination you've described over the  
12 course of your direct testimony stop at political boundaries  
13 such as those surrounding the Ferguson-Florissant School  
14 District?

15 A No. I mean, I hope I've made it clear that I actually  
16 view those boundaries as sort of highly artificial in terms of  
17 the underlying social and historical dynamics; so they flow  
18 across those boundaries in some respects, and in some respects  
19 those boundaries are drawn to reinforce or to create those  
20 forms of segregation.

21 Q You were asked a moment ago about your statements about  
22 resegregation during your deposition. Were you also asked on  
23 page 64, in the lines just following --

24 A Do I have my deposition here?

25 Q It will come up on the screen shortly. In lines -- so

1 you were asked about lines 5 through 12.

2 A Sure.

3 Q And were you also asked in lines 13 through 14, "And is  
4 it your belief that this trend will continue?"

5 Your answer, "That does not lie in my area of  
6 expertise."

7 A Yes.

8 Q And were you also asked on page 72, on lines -- beginning  
9 at line 7, "I just want to verify that when you say 'trend  
10 towards,' that Dr. Rodden didn't consider the trends towards  
11 resegregation; that you're not talking about going forward.  
12 You're talking about the fact he didn't consider the trend up  
13 until 2010. That's what you're stating?"

14 And the answer, "I think it's important to clarify  
15 the terms. When I say 'segregation' or 'resegregation,' it  
16 does not imply the balance between the white and the black  
17 population, a numerical balance. So you have a segregated  
18 setting in which the black population is a tiny minority. You  
19 can have a segregated setting in which the African-American  
20 population is the majority. So what I'm describing as a trend  
21 towards resegregation is, as I clarify, more substantially in  
22 my original report. I think that phrase is in my response to  
23 Rodden."

24 Did you -- were you asked those questions, and did  
25 you give that answer?

1 A I think so.

2 Q Does the concept of resegregation apply to the  
3 Ferguson-Florissant School District?

4 A Yes, in the sense that I hope I've clarified it this  
5 afternoon as a pattern of lived experience, as a pattern of  
6 the way in which citizens interact with each other and  
7 interact with elements of their government. It's not meant to  
8 imply some sort of trajectory of population, which, again, is  
9 beyond my area of expertise.

10 Q And is it also reflected in patterns of settlement in the  
11 district?

12 A Yes.

13 Q Now, you were asked a moment ago about a figure in your  
14 supplemental report, on page 5. It's enrollment in FFSD --

15 A Yes.

16 Q -- by race. Is this enrollment data for public schools?  
17 private schools? parochial schools?

18 A It's just for public schools; so it's for the school  
19 district. So there is a distinction, for example, between  
20 Table 3, which is -- sorry -- Table 1, which has the  
21 school-age population, which is census based, and then the  
22 enrollment-based population is from the district.

23 So my point in emphasizing the wider disparity for  
24 the district-reported data was precisely to underscore the  
25 investment that African-American parents have in the school

1 district.

2 Q So is it your -- do you have an opinion on whether the  
3 white versus black student enrollment in public schools is  
4 different than the white versus black school-age population in  
5 the district as a whole?

6 A Yes.

7 Q What is that opinion?

8 A The enrollment disparity is much wider than the  
9 population disparity because African-American families and  
10 students rely more heavily on the public school system.

11 MS. LAKIN: Thank you. No further questions.

12 **EXAMINATION**

13 **BY THE COURT:**

14 Q Help me out in plain English. A few things. And I  
15 follow your testimony as to the effects of the, for lack of a  
16 different word, the resegregation. And the African-American  
17 community continues to suffer its consequences in education,  
18 employment, and health. That's the last sentence of your  
19 opinion.

20 A Okay.

21 Q Focusing on participation in the elected government  
22 process, are there pieces of the segregation you've described  
23 that limit the African-American community's ability to  
24 participate in the electoral process in their representative  
25 government?

1 A Yes.

2 Q And how would you describe that?

3 A I mean, there I lean more on the sort of general  
4 scholarly literature about the relationship between poverty,  
5 transitional populations, you know, single-parent families,  
6 and civic participation.

7 We know the African-American population, for example,  
8 of Ferguson -- I mean of the district particularly, which has  
9 a much higher rate of rental population, it's a more  
10 transitional population; so factors like that affect civic  
11 participation.

12 Q Were you asked to look at all -- and that's a pretty  
13 obvious piece. The lower you go on the economic scale, the  
14 more transient the housing stability is.

15 A Uh-huh.

16 Q Which would affect, I mean, if nothing else, the statute  
17 requires you to live at a certain place for a certain period  
18 of time to register to vote. Do you have any -- did you look  
19 or someone else can be asked to look at the percentage of  
20 registration of the African-American community versus the  
21 percent of registration of the non-African-American community?

22 A I think that falls in the laps of other --

23 Q Elsewhere? Is that elsewhere?

24 MS. ORMSBY: Yes.

25 THE COURT: Okay. All right.

1 Any follow-up, since I opened or asked a question, to  
2 what I inquired about?

3 MS. LAKIN: No, Your Honor.

4 MS. ORMSBY: Just one.

5 **RECROSS-EXAMINATION**

6 **BY MS. ORMSBY:**

7 Q Do you know what the African-American homeowner  
8 percentage rate is in the Ferguson-Florissant School District?

9 A 50.7 percent.

10 MS. ORMSBY: Thank you.

11 **FURTHER EXAMINATION**

12 **BY THE COURT:**

13 Q I did have another question. They showed you over this  
14 Table 2 and 3 -- I don't know if somebody could put it up --  
15 voting-age shares of population. And I know you don't like  
16 the interim numbers because of the margin of error is too  
17 great. You said as much as a thousand.

18 A Uh-huh.

19 Q I want to make sure I see this table correctly. You show  
20 the population of -- the white population voting age of  
21 23,740, the voting-age population for the African-American  
22 community at 24,313. Is that right?

23 A Uh-huh.

24 Q So that could be as high -- the African-American  
25 voting-age population could be as high as 25,300 or as low as

1 23,300 if we --

2 A Roughly speaking. I think the -- we don't have margins  
3 of error specifically for the voting-age population, but for  
4 the single-race black population for the 2011-'13 ACS, I think  
5 the margin of error is 1,240 or something.

6 Q Twelve hundred. Because when I do the spread, the  
7 closest it would be, would be within 1,200 of each other. The  
8 furthest apart would be where the white population might be  
9 1,200 higher, or the spread the other direction could be the  
10 African-American population could be 2,600 higher. If we took  
11 the extremes on each end, a thousand up or a thousand down.

12 A Okay. Okay.

13 Q Am I reading this correctly?

14 A Yeah.

15 Q You don't think I should rely on it, I understand.

16 A Right. I don't think you should rely on it. We can't  
17 assume, given the way -- given the samples, that the margins  
18 will work in the same direction either. So it's the -- which  
19 is why, when you do the confidence intervals, it's the overlap  
20 that concerns us.

21 THE COURT: Okay. Anything further?

22 MS. LAKIN: Can I ask just one follow-up based on  
23 that?

24 THE COURT: You may. I mean, the one thing you don't  
25 know about me is we're not going to leave without figuring out

1 whatever it is we want to figure out, okay? So don't hesitate  
2 to ask.

3 **FURTHER REDIRECT EXAMINATION**

4 **BY MS. LAKIN:**

5 Q Thank you, Your Honor.

6 Let me turn to, Dr. Gordon, the supplemental report,  
7 page 4, Table 4.

8 THE COURT: Race and owner occupancy, or is that a  
9 different one?

10 Q Different table, the page before.

11 Dr. Gordon, what is the homeownership rate for white  
12 residents of the district?

13 A 82.8 percent.

14 Q How does these rates -- how do these rates compare to  
15 rates nationally?

16 A Off the top of my head, I would say the national rate is  
17 on the order of 72 to 74 percent; so the appropriate metric  
18 here, I think, is the gap.

19 Q And are these hard numbers?

20 A No. They reflect all of the same uncertainty with the  
21 ACS estimate.

22 MS. LAKIN: Thank you.

23 THE COURT: You don't want them to be hard numbers.  
24 They do. You don't.

25 MS. ORMSBY: Nothing, Your Honor.

1 THE COURT: Thank you, sir, for your time.

2 THE WITNESS: Thank you.

3 THE COURT: We will take our afternoon recess at this  
4 time. We will reconvene at 3:25.

5 **(COURT RECESSED FROM 2:55 PM UNTIL 3:30 PM.)**

6 THE COURT: We have a new arrangement. So somebody  
7 new must be up.

8 MR. MCDONALD: May it please the Court. I'm Laughlin  
9 McDonald, one of the plaintiffs' lawyers, and we'd like to  
10 call William Cooper as our next witness.

11 THE COURT: If you would step forward, sir, and be  
12 sworn.

13 **(WITNESS SWORN BY THE CLERK.)**

14 **WILLIAM COOPER,**

15 **HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS**

16 **FOLLOWS:**

17 **DIRECT EXAMINATION**

18 **BY MR. MCDONALD:**

19 Q Would you state your name for the record, please?

20 A My name is William S. Cooper.

21 Q And what is your age, Mr. Cooper?

22 A I'm --

23 THE COURT: You don't have to answer that.

24 A Okay.

25 Q I'll withdraw that question. Where do you reside?

1 THE COURT: You're obviously a person of majority; so  
2 we'll go from there.

3 Q Where is your residence, Mr. Cooper?

4 A I live in Bristol, Virginia, southwest Virginia, on the  
5 Tennessee state line.

6 Q And what is your academic background, please?

7 A I have a BA in economics from Davidson College in  
8 Davidson, North Carolina.

9 Q And when did you receive that degree?

10 A 1975.

11 Q And what is your current occupation?

12 A I'm a private consultant. I provide services on  
13 redistricting, demographic analysis, other projects involving  
14 census mapping. A good deal of my work is with civil rights  
15 organizations on voting issues, like the American Civil  
16 Liberties Union, the NAACP Legal Defense Fund, also Indian  
17 tribes in some part of the country, and I do some other work  
18 that's nonvoting related for the Food Research and Action  
19 Center, which is based in Washington, D.C., and the Prison  
20 Policy Initiative in Massachusetts. Some of that is voting  
21 related. So those are some of the organizations I'm currently  
22 working with.

23 Q Can you speak a little closer to the microphone, please?

24 A Sure.

25 Q Thanks very much. And how long have you done that work

1 that you described?

2 A I've been involved in demographic analysis,  
3 redistricting, computer mapping for about 25 years.

4 Q Well, how many districting plans have you drawn over that  
5 period of time?

6 A I've drawn thousands and thousands of plans and developed  
7 plans in probably 700-and-some-odd jurisdictions around the  
8 country, most of them local plans, with varying degrees of  
9 intensity. Some are one-shot plans that I never then proceed  
10 any further with for whatever reason, and others are much more  
11 involved, even more involved than this case has been.

12 Q Have you drawn any statewide plans?

13 A For civil rights organizations, I have drawn after the  
14 2010 census for statewide redistricting state legislatures.  
15 I've developed plans in Virginia, Georgia, South Carolina,  
16 Alabama, Kentucky. I may be leaving a state out. Florida.

17 Q What about South Carolina? Did you mention it?

18 A South Carolina as well. And most of those were for the  
19 ACLU Voting Rights Project, although the Alabama case -- I'm  
20 working for the Alabama Black Legislative Conference, which is  
21 made up of members of the Alabama legislature who are African  
22 American in both the Senate and the House.

23 Q In how many states have you done local redistricting  
24 plans for subjurisdictions?

25 A Over the course of the past 25 years, probably 40 states,

1 some of them no more than one or two plans, but there are very  
2 few states that I have not drawn plans in -- for a local  
3 jurisdiction, because my main focus is on local jurisdictions.

4 Q Have you testified as an expert witness in any other  
5 cases?

6 A I've testified in about 35 Section 2 cases.

7 Q Have you listed those cases in your Exhibit No. 44?

8 A I have, in Attachment A, Exhibit A attached to my initial  
9 report.

10 Q Yes. Well, I will just remind you that Exhibit 44, which  
11 is your report, and Exhibit 45, your supplemental report, have  
12 been accepted as exhibits.

13 When you testified, what did you testify about in  
14 those cases?

15 A Usually, I'm accepted as an expert on redistricting and  
16 demographics.

17 Q And have you submitted declarations in those other cases?

18 A Typically prior to testifying in court, I submit  
19 declarations. I've also submitted declarations in many other  
20 cases where I did not get to the point of testifying in court  
21 because the lawsuit was settled or decided on summary  
22 judgment.

23 Q And were you also deposed in those cases, too, that  
24 you've testified as an expert witness in?

25 A In most of them but not all. I think there have been

1 some where I was not -- I know there have been some where I  
2 was not deposed and I just testified directly in court.

3 Q In those cases in which you've testified as an expert,  
4 were you accepted as an expert witness by the court?

5 A I've always been accepted.

6 MR. MCDONALD: Well, Your Honor, we'd move to qualify  
7 William Cooper as an expert in the field of districting and  
8 demography.

9 THE COURT: Any objection?

10 MS. ORMSBY: Yes, Your Honor. We do object to this,  
11 this witness being termed an expert. We have some further  
12 questions about that. I'm happy to address them now or later  
13 in my cross.

14 THE COURT: You may proceed.

15 Q (BY MR. MCDONALD) Thank you, Your Honor.

16 Tell me just briefly how do you go about drawing a  
17 districting plan?

18 A Well, initially I will obtain data from the U.S. Census  
19 Bureau, population data from the decennial census -- in this  
20 case now, it's the 2010 census -- that nowadays can be  
21 obtained almost instantaneously off of the Census Bureau  
22 website.

23 So I obtained the PL94171 redistricting file from the  
24 Census Bureau for the state that I'm doing the plan in, and I  
25 then merge that data set with the set of geography boundary

1 files, which I also get from the Census Bureau and which can  
2 also be downloaded instantaneously, and those Census Bureau  
3 boundary files are designed to allow you to see census blocks,  
4 which are the smallest unit of geography in a jurisdiction, as  
5 well as census block groups which Dr. Gordon discussed here  
6 earlier today, census tracts, municipal boundaries, school  
7 district boundaries, previous legislative district boundaries.  
8 So there are multiple layers of geography which you can obtain  
9 very quickly from the Census Bureau to develop a plan.

10 Q Well, when you work as a demographer, is analyzing census  
11 data a part of that job as well?

12 A Yes.

13 Q And explain in what way.

14 A Well, often as part of my reports in Section 2 lawsuits  
15 I'm asked to look at historical data -- demographics by race,  
16 for example -- for a given jurisdiction as I've done in this  
17 case; so I will go back and obtain the Census Bureau data sets  
18 for prior decennial censuses. In this case, I looked at 1990,  
19 2000, and 2010. I usually do a 30-year period without going  
20 way back in time, and using that I can determine how racial  
21 demographics have changed in a given jurisdiction over that  
22 time period. And then I also can obtain from the Census  
23 Bureau socioeconomic data under the now-current American  
24 Community Survey.

25 Prior to that, I was using in the earlier decennial

1 censuses the data sets that were produced by the Census Bureau  
2 from the census long form which allowed you to access  
3 socioeconomic information based on a sample of one out of six  
4 persons in the 2010 census, a snapshot at the time of the  
5 decennial census.

6 Q I will ask you more about that shortly, but what were you  
7 asked to do in this case?

8 A Well, at the outset, I was contacted by Dale Ho, I think,  
9 sometime in late August of 2014, and he just had a basic  
10 question as to whether it would be possible to develop a  
11 district plan for the Ferguson-Florissant School District that  
12 would have possibly four out of seven majority-black  
13 districts.

14 So I followed the procedure I just described. I got  
15 hold of the Missouri state geographic boundary files and  
16 PL94171 file, merged them, and then proceeded to analyze the  
17 demographics of the Ferguson-Florissant School District.

18 And really within a couple of hours just using my  
19 mapping software I was able to answer in the affirmative that  
20 indeed you could do a redistricting plan or a district plan  
21 for the Ferguson-Florissant School District which would have  
22 four out of seven majority-black districts. So it's very  
23 straightforward. This is not a complicated case in that  
24 regard.

25 Q Well, what else were you asked to do?

1 A Well, later on, after I made that determination, I spoke  
2 with both you and Dale, I think, and I was asked to obtain  
3 precinct boundaries that had been updated to take into account  
4 redistricting which would have taken place in  
5 Ferguson-Florissant School District after the 2010 census,  
6 because each of the jurisdictions in the school district --  
7 many of them would have reconfigured their ward boundaries,  
8 and, of course, there was state legislative redistricting  
9 also. So all of that would have meant that the precinct  
10 boundary files that I was using to do the initial draft would  
11 need to be updated to develop a plan that would more closely  
12 follow existing precinct lines.

13 So I did two things. I contacted the St. Louis  
14 County GIS department and got a full set of geographic files  
15 showing municipal wards for all of St. Louis County as well as  
16 school district boundaries for all of St. Louis County, street  
17 names and street files so I could see where all the streets  
18 were. I could also see that from the Census Bureau's data  
19 files, though.

20 And then the second thing I did was contact the St.  
21 Louis County Board of Elections to obtain precincts, shape  
22 files of precincts, electronic files, that would allow me to  
23 look at them on the map and allocate population by precinct.  
24 I did that for 2011, 2012, 2013, 2014, and that was a request  
25 that you had made to provide information to Dr. Engstrom on

1 the racial demographics of the precincts in  
2 Ferguson-Florissant School District.

3 So I did that for each one of those years: 2011,  
4 2012, 2013, 2014. And then later this spring, after the April  
5 elections, I obtained the 2015 ward lines, precinct lines,  
6 rather, for the school district and produced another set of  
7 numbers for Dr. Engstrom showing voting-age population by race  
8 for all precincts in the school district.

9 Q Did you know what Dr. Engstrom intended to do with the  
10 data you sent him?

11 A He was going to conduct a statistical analysis analyzing  
12 racial polarization in voting.

13 Q Were you asked to review any census data dealing with  
14 socioeconomic conditions of African Americans?

15 A I was. I obtained the 2011-2013 American Community  
16 Survey data set from the Census Bureau and produced a set of  
17 charts showing socioeconomic characteristics of the school  
18 district, and those charts are included in Exhibit D of my  
19 initial report.

20 Q Now, let me refer you to your declaration, which would be  
21 Exhibit 44. Have you discovered any errors in your reports  
22 since you finished it and supplied it to the plaintiffs?

23 A I have discovered a typo. It's of no major consequence,  
24 but for the record, the figure I report for the black  
25 population in 1990 --

1 Q Before you go to it, tell me what page of your report  
2 that's on.

3 A Page 8, Figure 2.

4 Q Okay. Go ahead. Explain what the error was.

5 A I have a figure of 28.65 percent for the black population  
6 in the school district in 1990, and that number should  
7 actually be 24.44 percent.

8 Q Well, did that error affect in any way any of your  
9 findings or conclusions contained in your report?

10 A Not at all. It simply needs to be corrected for the  
11 record. And I also cite that figure erroneously,  
12 unfortunately, in paragraph 25, where I'm discussing black  
13 population percentage changes from 1990 to 2010. That's on  
14 page 9.

15 Q Well, did that figure that you gave in your initial  
16 report enter into in any way your calculations?

17 A No. It has no significant impact at all on my opinions.

18 Q Well, now, did you determine that it was possible to  
19 create a single-member district plan containing reasonably  
20 compact majority-black districts?

21 A Yes. I determined that at the outset, within a couple of  
22 hours, then proceeded over time to make adjustments, various  
23 drafts, to take into account factors like the existing ward  
24 lines or existing precinct lines as of 2014 and then slight  
25 modification with the precinct lines in 2015, I think. So,

1 yes, I determined that it is possible to draw compact,  
2 contiguous districts in a seven-member plan for the school  
3 district, unquestionably.

4 Q And what data did you rely upon in drawing that plan?

5 A Well, I relied, as I always do, on the 2010 census.

6 Q And why did you use the 2010 decennial census data?

7 A Because that is always the data one uses in order to  
8 create a redistricting plan. Local governments around the  
9 country always rely on the 2010 census to do their  
10 redistricting plan. As far as I know, I've never come across  
11 one that did not use a 2010 census.

12 Q Well, do you know whether or not there's any state law  
13 that requires redistricting to be based upon the census data,  
14 the decennial census data?

15 A Well, I've been told by you and Mr. Ho that there is a  
16 Missouri state law that requires it, the 2010 --

17 MS. ORMSBY: Objection, Your Honor. Hearsay.

18 THE COURT: Sustained. But to the extent he relies  
19 on that for his opinion, he can state the basis of reaching  
20 that opinion, but, obviously, his testimony that there is a  
21 law but maybe he was told that by somebody else doesn't prove  
22 there is a statute, but I will take judicial notice of it when  
23 you tell me to.

24 MR. MCDONALD: All right, Your Honor. It's Statute  
25 1-100 is the state statute that requires redistricting to be

1 done based on the last previous decennial census. We ask the  
2 Court to take judicial notice of it.

3 THE COURT: Well, I need to see it.

4 MR. MCDONALD: We can provide the Court with a copy  
5 of it.

6 THE COURT: All right. Very good.

7 Q (BY MR. MCDONALD) And I think you may have answered this,  
8 but did you use any software in drawing your plan?

9 A I used Maptitude for Redistricting, which is produced by  
10 the Caliper Corporation in Massachusetts. It's a widely used  
11 software program for redistricting as well as other forms of  
12 demographic analysis.

13 Q And did you encounter any problems in drawing the plan  
14 for the school district?

15 A Not in the technical aspect of using the software, but I  
16 did discover at some point early in the fall of 2014, when I  
17 was analyzing the school district boundaries that were  
18 provided to me by St. Louis County Board of Elections as well  
19 as the St. Louis County GIS department, that the school  
20 district boundary is not exactly the same as defined by the  
21 St. Louis County Board of Elections. It is not exactly the  
22 same as the school district boundary defined by the Census  
23 Bureau. The differences are minor, but there are differences.  
24 And I used the St. Louis County Board of Elections' boundary  
25 for the plans that I developed in order to make sure I was

1 consistent with the way they saw things.

2 It's unusual to have that kind of discrepancy. The  
3 net difference was 327 persons. The Census Bureau has a total  
4 population for the school board in 2010 of 69,050, I believe.

5 Q Well, look on page 8 of your declaration.

6 A Okay.

7 Q Figure 2. What does that show the population of the  
8 school district as being?

9 A That's 68,663, and that is based on the St. Louis County  
10 Board of Elections' boundary.

11 Q What's the voting-age population of the school district?

12 A The voting-age population of the school district would be  
13 found in Figure 4. That is 50,771.

14 Q And on what page of your declaration does that number  
15 appear?

16 A It's on page 10, Figure 4.

17 Q Okay. And what percent of the voting-age population is  
18 single-race black?

19 A According to the 2010 census, the single-race black  
20 population voting-age population in Ferguson-Florissant School  
21 District is 47.33 percent.

22 Q And on what page of your report does that figure appear?

23 A In the same Figure 4 we were just discussing on page 10.

24 Q What does "single-race black" mean?

25 A That means any person who's self-identified as of one

1 race, black or African American. That would include a small  
2 number of Hispanic blacks, because Hispanics are not a race,  
3 an ethnicity, and there are, I believe, 80 African-Americans  
4 single race who are Hispanic, voting-age Hispanic -- African  
5 Americans of voting age. I should clarify that.

6 Q What is the percent of the, quote, "any-part black  
7 voting-age population" in the school district?

8 A According to the 2010 census, it is 48.19 percent.

9 Q And what does "any-part black" mean or refer to?

10 A That would include individuals who are of more than one  
11 race, at least one part African American or black. It's only  
12 about a half percentage point higher than the single-race  
13 black percentage according to the 2010 census. It's not a  
14 large number of people, but there are people who check two  
15 races, one of which was black.

16 Q Well, according to the decennial census, the data that  
17 you've just quoted from, does including individuals who are  
18 any-part black show that blacks are less than 50 percent of  
19 the voting-age population of the school district?

20 A According to the 2010 census, they are less than 50  
21 percent: 48.19 percent. That's the "any-part black"  
22 definition is the most expansive definition one can use to  
23 classify some person as African American. So that's the  
24 ceiling. The floor would be non-Hispanic single-race black,  
25 which would be 47.17 percent.

1 Q What percent of the voting-age population in the school  
2 district is white?

3 A In the 2010 census, the non-Hispanic white voting-age  
4 percentage was 48.95 percent.

5 Q Well, according to the decennial census, do whites  
6 outnumber blacks among the voting-age population of the school  
7 district?

8 A They do. Whites were tabulated at 24,852, and there were  
9 24,446 any-part black individuals.

10 Q Well, how many municipalities in whole or in part are  
11 included within the school district?

12 A Well, there are 11 municipalities in whole or in part.  
13 There is one municipality, Black Jack, which really just has a  
14 single populated block. I think there are a few unpopulated  
15 blocks, of four persons, that's in the school district,  
16 according to the Board of Elections School District boundary  
17 files. So there are 11, but for all intents and purposes,  
18 it's only ten.

19 And this Black Jack area is one spot on the map where  
20 the Census Bureau's definition of the school district boundary  
21 is quite different than the St. Louis County Board of  
22 Elections' definition. And I actually prepared a map that I  
23 think is in Exhibit B-3.

24 Let me make sure I have the right number. I'm sorry.  
25 It's B-2 that overlays the Census Bureau's definition of the

1 school district boundary with the St. Louis County Board of  
2 Elections' definition. And if you look in the extreme west,  
3 northwest, you will see a little appendage which goes out into  
4 part of Black Jack, and that's counted in the Census Bureau's  
5 definition of the school district but not counted in the St.  
6 Louis County.

7 Q What page of your report does that appear on?

8 A Well, that's an exhibit in -- that's Exhibit B-2. There  
9 are some other spots on the map where that happens as well,  
10 but that's the most obvious point.

11 Q Okay. Now, let me direct your attention to the first  
12 plan that you drew. That's on page 22, paragraph 5 of your  
13 report, your 44 Exhibit.

14 A Okay.

15 Q Well, tell me how many black districts you drew, and  
16 describe the demographics of that plan, please.

17 A Okay. This plan creates four majority-black districts.  
18 Three are focused in the south end of the county: District 1,  
19 2, and 3. District 1 is 63.93 percent black; District 2,  
20 60.95; that's black voting age; District 3, 74.36 percent.

21 And I also have -- as you can see in Figure 10, these  
22 numbers are produced, and you can also see the non-Hispanic  
23 white percentage in those three districts, or all districts  
24 for that matter. But you can see in those three districts  
25 there's an overwhelming majority of African Americans of

1 voting age compared to the non-Hispanic white population.

2 And it's not surprising. If you were to flip back to  
3 look at a map I produced showing racial segregation in  
4 Ferguson-Florissant in Figure 7, you can see in the south end  
5 most of the block groups are around Berkeley, Kinloch, Cool  
6 Valley, Normandy, are all in the 60 to 95 percent range. So  
7 it's not surprising at all I was able to produce three  
8 majority-black districts in the south end of the county.

9 And then the fourth district is in the extreme north,  
10 District 7. That one is 52.86 percent black voting age. This  
11 plan, this Plaintiffs' Illustrative Plan 1, was prepared by me  
12 in the early spring of 2015, before the April 2015 elections.  
13 So there are some incumbents who are paired in this plan who  
14 were elected in April 2015.

15 Q I think this question is obvious, but will you tell me  
16 how the percentages in Plan 1 that you drew compare to the  
17 black percentages in the school district as a whole?

18 A Well, according to the 2010 census, the black-white  
19 margin for the school district as a whole would be basically  
20 about minus 1 percent. If you go back to Figure 4, you can  
21 see that whites -- well, whites outnumber any-part blacks by  
22 about less than 1 percentage point. About three quarters of a  
23 percentage point. So that's negative three quarters.

24 And in Plaintiffs' Illustrative Plan 1, all of these  
25 districts have a large margin of African Americans. The

1 district that is the closest would be District 7, which is a  
2 10-point margin, 52.86 percent African-American voting age  
3 versus 43.25 percent non-Hispanic white.

4 Q In drawing your plans, what standards did you apply?

5 A Well, I applied what are known as traditional  
6 redistricting principles. In a nutshell, that means that each  
7 district must be within plus or minus 5 percent deviation of  
8 an ideal district size, and the ideal district size is just  
9 calculated by dividing the total population of the district,  
10 which in this case is over 68,000, by the number of individual  
11 districts you're drawing, which is seven. So the typical  
12 district would have a population of -- an ideal population of  
13 9,809.

14 And in this particular plan, the overall deviation,  
15 if you add up all the seven districts, turning the negative  
16 numbers into an absolute value and creating a positive number,  
17 the overall deviation for Illustrative Plan 1 is 7.18 percent.  
18 So it's within the plus or minus 5 percent range across all  
19 seven districts.

20 The other redistricting principles that would be  
21 followed, of course, would be to draw districts that are  
22 contiguous, reasonably compact, that take into account  
23 communities of interest, and that do not dilute minority  
24 voting strength, to comply with Section 2 of the Voting Rights  
25 Act.

1 Q How do you determine compactness?

2 A Well, in this case I was able to do so really just  
3 visually. They are clearly compact and regularly shaped.  
4 Illustrative Plan 1 splits just three precincts of the 96  
5 precincts in the school district, and in my opinion each  
6 district is compact and reasonably shaped.

7 But there are statistical measures that one can use  
8 to determine whether a group of districts is compact,  
9 vis-a-vis a group of another set of districts. Maptitude has  
10 one measure called the Reock Test which allows you to  
11 calculate scores for each district, and in this case I did run  
12 that analysis just, for the record, to demonstrate that, in  
13 fact, this plan stacks up well against all of the municipal  
14 wards in St. Louis County. There are over 200 wards -- there  
15 are 221 municipal wards in the county as of 2014. And I ran a  
16 Reock score for all of those 221 municipal wards, and the  
17 average score, the mean average, was .39. In Illustrative  
18 Plan 1, the mean average score for the seven districts is, I  
19 believe, .41. So it compares favorably with municipal wards  
20 as drawn in St. Louis County.

21 Q Well, how did you determine contiguity?

22 A There is a automated check procedure within Maptitude  
23 that tells you if any part of the district is not contiguous,  
24 and if you get that error message, then you can proceed to fix  
25 it.

1 Q And you've indicated that you also wanted to respect  
2 communities of interest. Will you tell me what you mean by  
3 that and how you went about doing that?

4 A Well, I looked at -- I looked at neighborhood patterns,  
5 and obviously from Figure 7 it was clear that there were areas  
6 of the school district where most of the African Americans  
7 live, mainly in the south end again. And I also looked at  
8 median income. Again, you can see sort of a correlation there  
9 between areas where African Americans reside and lower median  
10 income levels.

11 And I also had a point file that I created geo-coding  
12 all of the addresses of the schools in the county so I was  
13 able to make sure that I had schools balanced across the seven  
14 districts so that I didn't have, like, eight schools in one  
15 district or something, but schools are fairly well distributed  
16 throughout the district; so it was not hard to make sure that  
17 each district had two or more schools.

18 Q Yeah. And you're familiar with the standards of Section  
19 2 of the Voting Rights Act?

20 A I am.

21 Q And did you take that into account in drawing your plan?

22 A I did. I did. Because it's important, if it's possible,  
23 to draw compact and contiguous, reasonably shaped districts,  
24 that one attempt to do so that are minority opportunity or  
25 majority-minority districts. And in this case, as I say, that

1 proved to be very easy to do.

2 Q Did you take incumbency into account at all in drawing  
3 your plan?

4 A Well, I did. In Plaintiffs' Illustrative Plan 1, at the  
5 time, I'm fairly certain, if memory serves me correct, that  
6 there was just one district with an incumbent conflict, and  
7 that was District 2 where two incumbents live in the same  
8 census block. So any plan that's drawn as a single-member  
9 district plan for this Ferguson-Florissant School District as  
10 it now stands is going to have two incumbents paired in  
11 District 2 down in Ferguson. There's no way to separate them.

12 But after doing this plan, then the April elections  
13 were held, and it turned out that new people took office, and  
14 so I had to make some additional changes to eliminate  
15 incumbent conflicts. So that was a genesis of Plaintiffs'  
16 Illustrative Plan 2, still with two incumbents paired in  
17 District 2.

18 Q Well, before we get to your Plan No. 2, how many current  
19 members of the board live in which municipalities; do you  
20 know?

21 A Yes. According to the list of addresses that I obtained  
22 last spring, all of the current board members live in either  
23 Ferguson or Florissant. There is no board member who resides,  
24 for example, in Berkeley or Kinloch or Cool Valley or any of  
25 the areas that are -- Normandy -- that are predominantly

1 African American. So basically the seven board members come  
2 from an area that represents about two thirds of the  
3 population of the county. But some of these communities that  
4 are predominantly African American like Berkeley and Kinloch  
5 that have -- Berkeley has a position of almost 10,000 persons,  
6 and there's nobody really nearby in that community that is on  
7 the board. And it's 80 percent black.

8 Q So are you saying that there are no board members who  
9 reside in any of the other nine municipalities in the school  
10 district?

11 A That's correct.

12 Q Now, I think you indicated why you drew the second plan,  
13 but just tell me again why you drew Plan No. 2. And let me  
14 refer you to page 25 of your report, Figure 2.

15 A Yes. I drew -- I drew Plaintiffs' Illustrative Plan 2  
16 after getting an update of the addresses for the newly elected  
17 members to the school board in April 2015. And it turned out,  
18 for example, that there were two incumbents paired in  
19 majority-black District 7. Ms. Thurman and Ms. Graves, Dr.  
20 Graves, were paired in 7; so I had to make a modification  
21 there to eliminate that conflict.

22 And so in Illustrative Plan 2, District 6 is the  
23 majority-black district with 51.50 percent, and District 7  
24 would be 40.86 percent. And I think that Dr. Thurman is in  
25 District 6 and Dr. Graves is in District 7.

1 Q What standards did you apply in drawing your second  
2 illustrative plan?

3 A The same standards. The plan is compact. It's  
4 contiguous, regularly shaped. I had to split a few more  
5 precincts. This plan splits nine precincts, whereas the  
6 Illustrative Plan 1 just split three populated precincts.

7 Q Just tell us briefly what the demographics of your second  
8 plan are.

9 A Very similar. District 1 is 64.53 percent single-race  
10 African-American voting age. District 2 is 60.89 percent.  
11 District 3 is 75.67 percent. District 6 is 51.50 percent.

12 And of the four majority-black districts, I guess the  
13 black-white margin is the lowest in District 6. It's about 6  
14 percentage points. So it's still significantly stronger than  
15 the black-white margin in the district as a whole under an  
16 at-large system, where it's actually negative three quarters  
17 of a percentage point.

18 Q Well, did you apply the same standards -- contiguity,  
19 compactness, traditional redistricting principles -- to your  
20 Plan No. 2 that you applied to Plan No. 1?

21 A I did. I started with Plan 1 and just made some  
22 modifications to deal with the incumbency issues.

23 Q Well, did you have to split any census blocks in drawing  
24 your plans?

25 A No. The plans are all drawn at the census-block level;

1 so there's no population estimation involved.

2 Q And would you care about splitting census blocks?

3 A If possible, you should avoid splitting census blocks  
4 because that means that you don't have an absolutely precise  
5 calculation for the underlying population in a given district.

6 Q Now, I want to ask you a few questions about the  
7 demographics that you reported. Would you look at pages 15  
8 and 16 and Exhibit B of your report, your first report, 44.

9 A Okay.

10 Q And did you determine, based on your analysis, that  
11 blacks in the school district have a depressed socioeconomic  
12 status compared to whites?

13 A Yes. On almost every metric, African Americans lag  
14 behind non-Hispanic whites. For example --

15 Q Which metrics did you report and look at?

16 A Well, there are probably 25 different measures that are  
17 included in Exhibit D attached to my report, but I just hit  
18 some of the high spots in the text of the report. One fourth  
19 of the black population in the school district lives in  
20 poverty, or 23 percent, almost one fourth, compared to 9.7  
21 percent of whites. That's non-Hispanic whites.

22 Black median household income is only about 70  
23 percent of white median household income. African Americans  
24 earn -- have incomes of \$38,760 in constant 2013 dollars  
25 compared to \$52,781 median income of white households. And

1 you get the same disparity if you just look at family  
2 households. Twice as many African-American households rely on  
3 food stamps compared to white households.

4 Q What about employment? Was there any disparity that you  
5 found there?

6 A There again, the median earnings level for African  
7 Americans working full time is 83 percent of the median  
8 earnings of whites, 26,671 annual median earnings level for  
9 African Americans versus 32,202 for whites.

10 Q What about education? Were there any disparities there  
11 reflected in the decennial census?

12 A There are some disparities. You can see that -- it's on  
13 page 13 in Exhibit D, page 13 of 46 in Exhibit D. I have a  
14 chart. You can see that there's a slight difference in the  
15 number -- percentage of African Americans who did not finish  
16 high school, 10.5 versus 8.3.

17 The education levels, high school graduate, is pretty  
18 close. It's just 1.7 percentage point difference. The big  
19 difference maybe is with the college degrees. Bachelor's  
20 degree or higher, there you see that African Americans are  
21 lagging behind; 17.1 percent have college degrees versus 28  
22 percent of the whites in the school district. This is based  
23 on the 2011-2013 American Community Survey, three-year  
24 estimate.

25 Q Well, based upon the census data in your report, did you

1 find whether or not blacks in the school district have a  
2 depressed socioeconomic status compared to whites?

3 A Yes. There's no question about that in my mind. I'm  
4 essentially just reporting the information from the Census  
5 Bureau's American Community Survey. I'm not going beyond  
6 that, doing super sophisticated statistical analysis, but you  
7 just have to thumb through these charts, and you can see that  
8 that is the case -- the charts in Exhibit D.

9 Q Now, we've had some testimony about the American  
10 Community Survey, but just very briefly tell me what it is and  
11 why you relied upon it to determine those socioeconomic  
12 disparities.

13 A Well, it is an annual release now from the Census Bureau  
14 that provides information that you cannot get from the  
15 decennial census -- socioeconomic statistics, poverty rates,  
16 educational levels -- just things we've been going over here a  
17 few moments ago. And it's a sample. It's based on a survey  
18 of one out of 40 individuals on an annual basis. And it's a  
19 rolling sample.

20 So in this particular instance I'm using the  
21 2011-2013 three-year survey. So the survey was conducted  
22 between January 1 of 2011 and December 31 of 2013; so the  
23 midpoint of that survey period would have been 2012. So this  
24 is something of an historical view. It's not really current.  
25 And it's also based on a sample. So there are margins of

1 error associated with all of these, and I actually report the  
2 margins of error. So you can see in the tables that are  
3 associated with each chart just what the margin of error is,  
4 and absolute numbers.

5 Q So while you looked at the ACS, American Community  
6 Survey, for determining socioeconomic factors, you did not, so  
7 you testified, rely upon that in drawing your redistricting  
8 plans. Can you tell me why you did not?

9 A Well, you cannot use the American Community Survey for  
10 redistricting purposes because it's only available down to the  
11 block group level, which is not enough granularity, really, to  
12 develop redistricting plans at the local level, where often  
13 you need to go down to the block level to follow precinct  
14 lines. But, moreover, it's an estimate. It's an estimate  
15 with large margins of error, and for that reason the only  
16 appropriate data set to use is the decennial census. That's  
17 what every jurisdiction that I have ever encountered uses.

18 Q Now, do you know whether or not the Census Bureau itself  
19 has taken a position on whether you should use the ACS in  
20 drawing redistricting plans?

21 A I don't know if they specifically mention redistricting  
22 plans, but they do make it clear that if you're looking at  
23 population totals by age and race, that you need to rely on  
24 the 2010 census. If you're concerned about socioeconomic  
25 estimates, then the American Community Survey is fine to use

1 because that's going to be the only source of information for  
2 that purpose.

3 Q Let me refer you to Plaintiffs' Exhibit 132, which has  
4 also been admitted into evidence. Can you identify that for  
5 me?

6 A Yes. That's a document I produced by the Census Bureau  
7 that explains how one should use ACS data. And it underscores  
8 the reality that ACS data are estimates and that for even just  
9 determining something basic, like the total population of a  
10 county or a state or a municipality, one should not use ACS  
11 data; one should use a separate data product produced by the  
12 Census Bureau which is released on an annual basis that gives  
13 you an estimate of the total population for cities, counties,  
14 and states, but --

15 Q Well --

16 A Especially that information that is not available for  
17 school districts.

18 Q Yeah. Okay. Now, I think you indicate that since 1990  
19 there have been changes in the growth rates of the black and  
20 white populations in the school district. Is that correct?

21 A That's correct. There's been a sharp drop in the  
22 non-Hispanic white population between the 1990 census and the  
23 2010 census and, of course, finding significant increase in  
24 the black population in the school district between 1990 and  
25 2010, and the overall population for the school district has

1 dropped from 80,938 in 1990 to 68,663 in 2010.

2 Q Well, given the trend of increasing black population, do  
3 you think that blacks will eventually become a majority of the  
4 voting-age population in the school district?

5 A To date, I've seen no evidence that has happened yet. I  
6 mean, I don't have a crystal ball. Anything is possible. But  
7 you cannot use the ACS data to make that sort of an  
8 assumption. That's just a trend line. It's a guess,  
9 speculation. It's not -- I don't think it would be admissible  
10 for determining what the current population is.

11 Q Do you have any opinion one way or another that there  
12 might be an actual decline in future black population in the  
13 school district?

14 A Well, I do think that, you know, it's possible to develop  
15 trend lines using whatever data set you want. I think it's  
16 inappropriate to it with the ACS data set. But let's say you  
17 do. Something happened in Florissant, in Ferguson in  
18 particular, about a year and a half ago, a bad incident, and  
19 that could have completely changed the trend line. There's no  
20 way to know how that may affect future population changes in  
21 the school district. It could have resulted in a significant  
22 outflow of African Americans for that matter as opposed to  
23 what appears to have been some in-migration over the past 20  
24 years.

25 Q Now, you prepared a supplemental declaration, Plaintiffs'

1 Exhibit 45. Can you tell me why you did that?

2 A That was prepared to respond to some points that were  
3 raised by Dr. Rodden in his initial declaration as well as  
4 some other things that apparently the lawyers for the  
5 defendants had indicated they were going to argue in this  
6 case.

7 Specifically, I questioned Dr. Rodden's assertion  
8 that African Americans are now a majority of the voting-age  
9 population because, again, he was using the ACS data which I  
10 maintain should not be used.

11 Then there is the second assertion that the  
12 plaintiffs in the lawsuit cannot meet the *Gingles* I  
13 precondition that the minority population is sufficiently  
14 large and geographically compact. I don't understand why he  
15 would make that assertion, because it's clearly not the case.  
16 It's very, very easy to get four out of seven districts that  
17 are compact, contiguous, and comply with all traditional  
18 restricting prescriptions.

19 And then he also went on to make the argument that  
20 African-American homeownership rates in the  
21 Ferguson-Florissant School District were quite high, and in  
22 point of fact African Americans really are in a situation  
23 where half live in owner-occupied housing, but the other half  
24 lives in rental housing. And, more importantly, non-Hispanic  
25 whites in the school district have a very high homeownership

1 rate. According to the latest ACS data, I think it's about 83  
2 percent.

3 So it's a 30 percentage point gap. So he was  
4 implying that African Americans and whites both enjoy high  
5 percentages of homeownership, but that's not the case. It's  
6 true that African-American homeownership rates in  
7 Ferguson-Florissant using -- whether you use the decennial  
8 census which actually provides that data or one of the America  
9 Community Surveys, it's true that African Americans are a  
10 little better off in terms of homeownership rates compared to  
11 African Americans statewide, but it's also true that whites in  
12 Ferguson-Florissant School District are significantly better  
13 off than whites statewide. So the gap is there, and it's as  
14 sharp in Ferguson-Florissant School District as it is  
15 statewide.

16 Q But did you address any other issues in your supplemental  
17 report?

18 A Well, there was -- this is the claim that I believe the  
19 attorneys are raising that the illustrative plans I've  
20 developed violate one-person, one-vote requirements because  
21 they don't use voting-age population. They use a 2010 census.  
22 I mean, this is a completely bogus claim. Now, that could  
23 change with the Supreme Court's *Evanwel* ruling, we shall see,  
24 but as of now it's totally bogus.

25 And, moreover, it's very easy, if it were necessary

1 to balance citizen voting-age population or voting-age  
2 population and total population at the same time, one can do  
3 so, which is what I did in Hypothetical Plan A, which is on  
4 page 15, Figure 6. And the map is in Figure 5. It's almost  
5 identical to Plaintiffs' Illustrative Plan 1. I just had to  
6 make some minor changes to Districts 4 and 5 because, under  
7 Plaintiffs' Illustrative Plan 1, the deviation, if you based  
8 deviation on total voting-age population, would be 12 percent.  
9 So I made a few changes to make sure that the deviation based  
10 on voting-age population is under 10 percent. And you can see  
11 those calculations in the table in Figure A. So it is plus or  
12 minus 5 percent based on total population or voting-age  
13 population.

14 I didn't do an analysis of citizen voting-age  
15 population because only a little over 1 and a half percentage  
16 points of the population in the school district is noncitizen.  
17 And so it would make no difference. This is not a place where  
18 citizenship would be a factor.

19 Q So just so I understand your answer to clarify, did you  
20 find that even using voting-age population you could draw  
21 majority-minority districts?

22 A You certainly can, that's right.

23 Q Now --

24 A And you could do so with citizenship voting-age  
25 population if you took that step, no doubt.

1 Q And were you also asked to address whether or not the  
2 first two plans you drew were racial gerrymanders?

3 A Yes. Again, I don't understand why that claim is being  
4 made, but I thought I would go ahead and produce a  
5 Hypothetical Plan B that really shows what a racial  
6 gerrymander might look like. And you can see that the  
7 districts are much more contorted, less regularly shaped.

8 And in Hypothetical Plan B, I was actually able to  
9 create six out of seven majority-black districts. Couple of  
10 them are in the 50s. Three of them are in the 50s, but  
11 they're still majority black.

12 But Districts 1 and 5 and 4 in Hypothetical Plan B  
13 are really problematic from a compactness standpoint, and I  
14 don't think you can justify districts that look like that  
15 unless you were following municipal boundaries. Sometimes  
16 municipalities look like that, but in this case we're  
17 splitting up municipalities. So I don't think that would pass  
18 muster. It would not be an acceptable plan.

19 Q Is there any governmental data of which you are aware  
20 showing that blacks are a majority of the voting-age  
21 population in the school district?

22 A I have not seen a single product from the Census Bureau,  
23 either the America Community Survey or the 2010 census, that  
24 has a five handle on the voting-age population. It's always  
25 under 50 percent.

1 Q Are there any discrepancies between the boundaries of the  
2 school district as defined by the Census Bureau and the  
3 boundaries as defined by the Board of Elections, the St. Louis  
4 County Board of Elections?

5 A There are. There are inconsistencies. There are over a  
6 dozen census blocks that are not included in one or the  
7 other -- one or the either boundaries. The end result means  
8 that the ACS is not really reflecting the true boundary of the  
9 Ferguson-Florissant School District. So you can never really  
10 claim, if you use the ACS, that the school district boundary  
11 as defined by the school board is over 50 percent black  
12 because it's a different boundary than that reported in the  
13 ACS.

14 So there's never going to be definitive proof. If  
15 you take that line of argument and draw a trend line and try  
16 to claim that, following the trend lines, the district's now  
17 over 50 percent, which I think is what Dr. Rodden and the  
18 defendants feel should be done in this case.

19 Q But which boundaries did you use in drawing your plans?

20 A Well, I've consistently used the Board of Elections'  
21 district boundaries. But the America Community Survey is not  
22 using the Board of Election district boundaries. It is using  
23 their own boundaries, which are almost identical but not  
24 quite, and there's a net difference of 327 persons, as I've  
25 indicated, but that's net. And the absolute difference, if

1 you take into account all 15 or so census blocks that are  
2 different under the two plans, you've got a population of, I  
3 think, close to 6- or 700 people that are in kind of an  
4 unknown territory, and so that's going to affect the sampling  
5 of the American Community Survey.

6 Had the Census Bureau used the Board of Elections'  
7 boundary, then you could say that that sample does reflect a  
8 certain reality of the school board as defined by the Board of  
9 Elections, but because it does not, it creates a whole other  
10 level of uncertainty. So I see no way that one can claim that  
11 the school district currently is over 50 percent.

12 Q Well, how did you calculate the population of the  
13 districts you drew using the Board of Education boundaries?

14 A Well, I used census block data from the Census Bureau and  
15 aligned that with the Board of Education boundaries. So I was  
16 able to come up with an accurate figure, I think, but it's not  
17 the same figure that is reported by the Census Bureau.

18 If you go to the Census Bureau's website and ask for  
19 the population of Ferguson-Florissant School District, you  
20 will get a report back that will say 69,050 persons, and  
21 that's, of course, different than the school board's boundary  
22 population.

23 Q Well, just to clarify, does the difference in boundaries  
24 used by the Census Bureau and the Board of Education have any  
25 impact on the claim that the recent five-year SCS [sic] report

1 shows that all parts black VAP and the black citizen VAP  
2 estimates are above 50 percent?

3 A Yes. Because it's so -- any way you cut it, it would be  
4 very close to 50 percent even if you used a trend line, as the  
5 defendants want to do. And because of that, just the least  
6 little difference here introduces a level of uncertainty,  
7 which means that you just can't make that claim, because  
8 there's no evidence. The evidence that is on -- that is being  
9 proffered here is the Census Bureau's data set, which does not  
10 match the actual boundaries of the school district.

11 Q Now, you may have answered this, but just to clarify, did  
12 you find that the plaintiffs' plans violated one-person,  
13 one-vote because they were based on total population rather  
14 than voting-age population or citizen voting-age population?

15 A No. As I say, I've testified in 35 cases over the past  
16 25 years. In every single case the total population has been  
17 used for the apportionment base, not voting age. And so I do  
18 not think that the plaintiffs' plans violate one-person,  
19 one-vote. And if they did by some chance based on the ruling  
20 out of *Evanwel*, then Hypothetical Plan A shows that a remedy  
21 plan could be created that would take that adjustment into  
22 account.

23 Q Now, I know that you have not relied upon the ACS data,  
24 but is there any more recent ACS data that tends to undercut  
25 the reliance upon ACS data of the defendants in this case?

1 A Yes. Yes. There's a one-year survey for the year 2014  
2 that was released in the fall, and it has a calculation for  
3 the African-American voting-age population.

4 MS. ORMSBY: I'm going to object, Your Honor. This  
5 is information that's not in evidence. He hasn't provided it  
6 in any of his reports. This is the very first we are hearing  
7 about this.

8 MR. MCDONALD: Well, Your Honor, the Court can  
9 judicially notice this. We can provide --

10 THE COURT: I don't think so. If you didn't disclose  
11 it in a case, we don't come up with new evidence at trial  
12 after discovery for over a year. So the answer is, yes, we've  
13 already produced or and we identified it, or, no, we have  
14 haven't; not that I will find it.

15 MR. MCDONALD: Well, it just came up, Your Honor.

16 THE COURT: You understand my question.

17 MR. MCDONALD: I do, Your Honor.

18 THE COURT: The reason we have rules of discovery and  
19 Federal Rules of Civil Procedure is we identify materials that  
20 we're going to use in trial so that we don't have surprises.  
21 So the answer is either we've already disclosed it or we  
22 haven't.

23 MR. MCDONALD: Well, Your Honor, can I just respond  
24 to that question?

25 THE COURT: No. You can answer my question.

1 MR. MCDONALD: I will, Your Honor. It's just because  
2 we didn't become aware of it until Wednesday.

3 THE COURT: Well, then you didn't disclose it.

4 MR. MCDONALD: Because we're not aware of it. It  
5 hadn't been released.

6 THE COURT: Well, then you can't use it because you  
7 didn't disclose it.

8 MR. MCDONALD: Because it hadn't been released, Your  
9 Honor.

10 THE COURT: I don't care why.

11 MR. MCDONALD: Okay.

12 THE COURT: We don't come up with materials we  
13 haven't disclosed to the opposing party.

14 MR. MCDONALD: Because it was not available to  
15 disclose, Your Honor.

16 THE COURT: For whatever reason. I don't care why.

17 MR. MCDONALD: Okay.

18 THE COURT: Or you would have given them notice  
19 before today that you had new material. But there are rules  
20 of procedure we follow out of fundamental fairness to each  
21 other.

22 MR. MCDONALD: Okay. Can I just --

23 THE COURT: Period.

24 MR. MCDONALD: Can I just ask --

25 THE COURT: Period.

1 MR. MCDONALD: -- the witness one more question?

2 THE COURT: About this topic or something different?

3 Q (BY MR. MCDONALD) Yeah. When did you become aware of  
4 this --

5 THE COURT: It's irrelevant. It's irrelevant.

6 MR. MCDONALD: Okay. Thank you very much.

7 THE COURT: You had it before five minutes ago. Did  
8 you have it before the testimony started today?

9 MR. MCDONALD: We did.

10 THE COURT: Well -- and you didn't disclose it; so  
11 we're done.

12 MR. MCDONALD: All right. Thank you very much, Your  
13 Honor.

14 THE COURT: Cross-examination?

15 MS. ORMSBY: Yes, Your Honor.

16 **CROSS-EXAMINATION**

17 **BY MS. ORMSBY:**

18 Q Good afternoon, Mr. Cooper.

19 A Good afternoon.

20 Q We met a few months ago, right?

21 A In August.

22 Q In August. You said you graduated from college in 1975.  
23 What was your degree in?

24 A In economics.

25 Q And did you have any classes in redistricting in that

1 major?

2 A I did not.

3 Q Did you have any classes in demography?

4 A Not in my economics coursework. I did attend graduate  
5 school at Virginia Tech for over a year, and I was working on  
6 a master's in urban regional planning but ultimately decided I  
7 didn't want to pursue it, but in that coursework I did have  
8 some classes in demographics.

9 Q Do you remember having your deposition taken in August  
10 like we just talked about?

11 A I do recall that, yes.

12 Q And you were under oath at that time?

13 A Right.

14 Q And do you remember me asking you, "So have you had any  
15 classes in demography?" and your answer was, "Not  
16 specifically, no," on page 14, line 16 and 17.

17 A Well, not specifically, but they were classes in urban  
18 planning, and we did analyze census data. So it was not  
19 coursework in demography in a sense that it was a -- if it  
20 were a demography department at Virginia Tech.

21 Q Okay. So you did not. So which is right? You did take  
22 classes in demography or you didn't take classes in  
23 demography?

24 A I did not take a class in demography from a department of  
25 demography at some university. I did have access and did work

1 with demographics as part of my year in urban regional  
2 planning at Virginia Tech.

3 Q Did you have any classes in statistics?

4 A I did.

5 Q How many?

6 A I had a class in statistics in my economics coursework at  
7 Davidson and a couple of classes in statistics at Virginia  
8 Tech related to urban regional planning.

9 Q Do you consider yourself a statistician?

10 A No.

11 Q You said you were a consultant currently?

12 A Correct.

13 Q Where did you work prior to being a consultant?

14 A Prior to being a consultant, I worked for the ACLU of  
15 Virginia for many years.

16 Q How many years?

17 A It would have been about ten years. Initially part time,  
18 but over the course of my period of working out of that  
19 office, my part-time voting rights work began to overwhelm my  
20 part-time work with a migrant farm worker health organization;  
21 so eventually I resigned that position so I could just work on  
22 voting rights.

23 Q Okay. And how did you come about drawing maps for the  
24 ACLU?

25 A Initially, I drew plans using paper maps in the 1980s

1 working off of a Lotus spreadsheet to speed things up, to run  
2 the calculations for the various districts. Beginning in --

3 Q I'm just asking how did you come from working for a  
4 non-for-profit to working part time for the ACLU?

5 A Oh, well, the nonprofit had an office, shared office,  
6 with the ACLU. And around about 1987 the ACLU began to  
7 litigate Section 2 cases in a number of counties in south-side  
8 Virginia, where the board's county commissions were -- we call  
9 them wards of supervisors -- were all white or nearly all  
10 white, didn't reflect the underlying African-American  
11 population. And they needed some help in figuring out how to  
12 draw districts, and I had that skill of a sort, and so I took  
13 over that part of the project.

14 Q And before you worked for the ACLU, you worked for where?

15 A I worked for DELMARVA World Ministries, which is a  
16 migrant farm worker health and nutrition organization based in  
17 Delaware, but my office was in Richmond, Virginia. I worked  
18 on other things beyond just migrant farm worker health issues.  
19 I had a statewide school breakfast expansion program that I  
20 started, among other things.

21 Q Prior to working for DELMARVA, where did you work?

22 A Prior to working for DELMARVA, I was employed briefly at  
23 the Student Loan Authority in Virginia, and then I was at  
24 Virginia Tech, and prior to that, I was doing a number of odd  
25 jobs in various places in order to go to South America, with a

1 backpack.

2 Q Okay. So you graduated from college in '75?

3 A Right.

4 Q You worked odd jobs from '75 until when?

5 A Well, off and on, I made two trips to Latin America, and  
6 so I was working odd jobs from '75 till around '79.

7 Q What kind of odd jobs did you --

8 A I worked fast-food joints, picked apples in Washington  
9 state, worked in a grape juice factory in Washington state,  
10 worked a few weeks on a military base in Washington state. I  
11 worked for my uncle at his nursery in southwest Virginia. So  
12 I did various odd jobs.

13 Q So your college training both for your BA and the one  
14 year of graduate school -- is that correct that you said? One  
15 year?

16 A One year.

17 Q That was not in preparation for doing demography?

18 A Oh, it put me in good -- I had very good coursework at  
19 Davidson in economics, and the work I did in urban regional  
20 planning was right in line with doing this sort of thing.

21 Q Why did you --

22 A I recall this was in the early '80s, but even at that  
23 time Virginia Tech had CRTs with census tract display; so we  
24 were able to look at socioeconomic data for Hampton Roads on  
25 CRTs like in 1981 or so, which was pretty advanced. They had

1 a very good computing department at Virginia Tech, even at  
2 that time.

3 Q Why did you stop that program in urban planning?

4 A I just didn't want to work -- in the end, I decided I did  
5 not want to go to work for a single agency in the sense that I  
6 would just be doing the same stuff over and over again,  
7 comprehensive plans for the same jurisdiction.

8 Q How many cases have you worked on for the -- for or with  
9 the ACLU?

10 A I'm not sure. Many. I mean --

11 Q Too many to count?

12 A Well, there have been several dozen.

13 Q How many times did you communicate with Dr. Engstrom with  
14 regard to this case?

15 A I think I may have one time explained to him about the  
16 consolidated precincts and how I arrived at those numbers.  
17 Beyond that, nothing. I've had no contact with any of the  
18 experts in this case.

19 Q How many cases have you and Dr. Engstrom worked on  
20 together?

21 A Very few, actually. I'm working with him in a case in  
22 Terrebonne Parish. I say "working with him." I've given  
23 data. And I was also involved in a case in Yakima,  
24 Washington, Section 2 case, and provided data to him in that  
25 case.

1 Q How do you define majority?

2 A Well, typically a majority is something over 50 percent.

3 Q And would you agree that the last time we knew that  
4 whites were a majority of the voters was 16 years ago,  
5 according to the 2000 census, in the Ferguson-Florissant  
6 School District?

7 A I have to look at the chart. You said the 2000 census?

8 Q Yes.

9 A Right. In the 2000 census, non-Hispanic white comprise  
10 64.43 percent of the voting-age population.

11 Q That's the last time we know for sure they were the  
12 majority, correct?

13 A The last time you know for sure.

14 Q Would you concede that whites are a minority of the  
15 voters in the Ferguson-Florissant School District today?

16 A Don't know today. I know in 2010 they were a plurality  
17 but not a majority.

18 Q So isn't it true that you completely ignored the ACS for  
19 population purposes, but you relied on the ACS for other  
20 reasons?

21 A Well, that's because the ACS is useful for at least  
22 coming up with reasonable estimates of socioeconomic factors,  
23 but there is a reliable and much better source for population  
24 data, and that is called the decennial census.

25 Q Isn't it true that you didn't use the ACS population data

1 because it showed that whites were a minority of the voters?

2 A Not -- that's not true. As we discussed in the  
3 deposition, I did look --

4 THE COURT: Deposition. You just testify here.

5 A Right. Right.

6 Q How do you define a trend?

7 A A trend is just, in a directional term, something is  
8 going up or down.

9 Q Would you agree that trends --

10 A Maybe not going anywhere.

11 Q Would you agree that trends are relevant in this case?

12 A You know, maybe as background information, but there is  
13 just no strong evidence that there is a trend since 2010.  
14 There's no evidence at all.

15 Q Did you do a trend analysis of this case?

16 A I did not do a trend analysis because there is no reason  
17 to do one.

18 Q How long would it take you to do a trend analysis?

19 A You know, you can look at the ACS data and I suppose do a  
20 trend analysis --

21 Q My question is how long?

22 THE COURT: Hang on. Everybody slow down.

23 Q How long would it take you to do a trend analysis?

24 A How long would it take me?

25 Q Uh-huh.

1 A I don't know. I've not done one in this case. I'd have  
2 to think about it.

3 Q Do you use Microsoft Excel at all in your analysis?

4 A These charts were produced with Microsoft Excel.

5 Q And isn't it true that you just have to push a button in  
6 order to get a trend analysis?

7 A You do, but there are different formulas one could use,  
8 and you're looking at different time periods. So one could do  
9 it, but, again, my understanding is the ACS data should not be  
10 done -- should not be used to develop definitive population  
11 totals for any given year. Just is not appropriate when you  
12 have a 2010 census that's only four years old, five years old  
13 now.

14 Q You've used trends in other cases, though, haven't you?

15 A I think I have produced a chart or two in other cases for  
16 background information, right.

17 Q Do you remember on January 29, 2008, being deposed in the  
18 *Fairley v. Hattiesburg* case?

19 A I do remember that. Not the deposition per se, but I do  
20 know that I was deposed in that case.

21 Q And this was a Voting Rights Act case, correct?

22 A Sort of. That particular case involved whether or not  
23 college students should be included in the apportionment base  
24 of Hattiesburg; so it was not a pure Section 2 case at all.

25 Q Were you under oath when you gave this deposition just as

1 you're under oath today?

2 A I believe so.

3 Q I will refer you to Exhibit VV, which is a stipulated  
4 exhibit in this case. It is the 2008 deposition that I just  
5 spoke of. Well, first I'm going to ask you would it be fair  
6 to say that --

7 THE COURT: Slow down. Tell them what page and line  
8 number you're on.

9 MS. ORMSBY: I don't think he has it. Do we have --

10 THE COURT: Another one of those fairness issues.  
11 They have a right to know what you're reading from.

12 MS. ORMSBY: I agree with you, Your Honor. May I  
13 approach the witness?

14 THE COURT: You may. You can put it on the screen.

15 MS. ORMSBY: Okay.

16 THE COURT: That way everybody can see at the same  
17 time.

18 Q (BY MS. ORMSBY) All right. On page 24 of your deposition,  
19 you were asked, "Would it be fair to say that at this point in  
20 history, given the census data available, given the changes  
21 through annexation, given the new construction, that there are  
22 no reliable current numbers that would accurately reflect the  
23 racial distribution within the city of Hattiesburg?"

24 And you responded, "Well, there's no definitive  
25 numbers. You can look at things like the driver's license

1 database that showed in 2004 roughly over 40 percent of the  
2 persons who had received drivers' licenses that were African  
3 American compared to the 42.5 in 2000. You can look at the  
4 trends, you can look at the school system and see there's more  
5 African-American kids, and you can look at the trend lines  
6 that have changed 1990, 2000 and project it out towards which  
7 is not at the seemly going to lead to you the definitive  
8 conclusion you can see from 1980, '80 and '90, that the  
9 American increased about 6 percent and 6 percent in '90 and  
10 2000. And that seems to be like the driver's license  
11 information. Then black voting-age population is increasing."

12 Do you remember testifying to that?

13 A Well, it's clearly in my typical garbled syntax; although  
14 I don't even think I'm quite --

15 THE COURT: We never talk the way we write. That's  
16 one of the problems with depositions.

17 A I'm not even sure if I'm really always that bad, though.  
18 But, yeah, you can look at it, but as I said, right up front  
19 there's no definitive numbers.

20 Q And then I'll take you to page 120 of that same  
21 deposition, page 120 and -21.

22 You were asked, "You've reached the conclusion that  
23 the city of Hattiesburg is majority African American at the  
24 present time?"

25 And you answered, "I reached that conclusion based on

1 majority minority as of the 2000 census. As of the 2000  
2 census, the any-part black population -- and this was before  
3 the annexation was -- we don't really have that data for the  
4 annexed area. It's in my report. It's -- it was 47.8  
5 percent, so it was almost 48 percent. So based on everything  
6 I had seen, I think it's almost a lock, has to be, that the  
7 city's population is well over 50 percent black, all ages, any  
8 part, now eight years after the 2000 census."

9 "QUESTION: Is that not a projection of population  
10 that -- or would a projection of population not be required to  
11 reach that conclusion?

12 "ANSWER: I don't think so, because I'm not trying to  
13 do anything more than look at the '80-to-'90, '90-to-2000  
14 trends, factor in what I know about drivers' licensures, and  
15 what I know about the student populations; so I think it's  
16 certainly over 50 percent, but I can't give you an exact  
17 figure. I mean, that's just my opinion."

18 A Exactly. And I was exactly right.

19 Q And you --

20 A It is over 50 percent now in Hattiesburg.

21 Q And you projected, didn't you?

22 A I looked at what I knew about the city of Hattiesburg and  
23 made that assessment. I cannot do that in Ferguson-Florissant  
24 School District, nor do I believe anyone else can.

25 Q So you relied on trends in this case, but you won't rely

1 on trends --

2 A I am relying on trends in this case. To the extent that  
3 I have not seen a single data point that has a five handle on  
4 it, all of them are under 50 percent no matter which ACS you  
5 use.

6 Q If you had done a trend analysis in this case, you would  
7 have discovered that African Americans are majority of the  
8 voting-age population, wouldn't you?

9 A No. I would not, because I have looked at 2014 one-year  
10 survey.

11 MS. ORMSBY: Objection, Your Honor.

12 A I'm sorry. But I have to --

13 THE COURT: I assume that you -- if you looked at it,  
14 you didn't look at it while you were sitting there, and your  
15 attorneys let you down by not disclosing it when we were  
16 together last week that that might be a factor here today,  
17 and I -- you know, it's unfortunate, but both sides have to  
18 play by the same set of rules. If we've got documents or we  
19 got information, we got to tell each other about it. And you  
20 can't show up -- I mean, I hate, at the end of the day,  
21 artificial landscapes. I like to know everything I can  
22 possibly know, but if we didn't tell anybody about it, we  
23 can't use it.

24 THE WITNESS: Okay.

25 THE COURT: That's just a common-sense problem that

1 we are up against right now. I mean, I'd like to, but because  
2 the more I know, the better job I can do, but both sides, for  
3 them to meet it, they had to know about it.

4 THE WITNESS: I apologize. It's partly my fault.

5 THE COURT: It's just the way it goes. You know,  
6 it's good, bad, or otherwise. And it will cut both ways  
7 before this case is over.

8 Q (BY MS. ORMSBY) Do you remember having your deposition  
9 taken for this case in August of 2015?

10 A I do.

11 Q And in that deposition you admitted that you did do an  
12 APV VAP calculation, didn't you?

13 A I did.

14 Q What was the number you came up with?

15 A My recollection it was around 49.8 percent.

16 Q You have a good memory. That's exactly what you said it  
17 was. Do you remember stating it was a back-of-an-envelope  
18 calculation that you would stand by? Do you remember saying  
19 those words?

20 A I do recall saying that because -- but, again, as I  
21 insisted during that deposition then, I felt like it was  
22 inappropriate to try to actually state definitively that the  
23 population was over 50 percent any-part black based on one  
24 American Community Survey.

25 Q Can you explain how you reached that percentage of 49.8

1 percent according to the ACS, 2011-2013 ACS?

2 A Well, I essentially just took the single-race black  
3 population percentage and then added a factor in based on the  
4 percentage of the any-part black population that was not  
5 single-race black in the 2010 census, and my factor was .55.

6 I believe Dr. Chen or Dr. Rodden, one of the two, did  
7 a separate calculation that has it over 50 percent, but they  
8 were looking at the any-part black percentage ratio based on  
9 all persons. And as I indicated, one would expect to have  
10 higher levels of any part -- persons who are any-part black in  
11 the overall population than in the voting-age population.

12 So for that reason I feel like it's more appropriate  
13 to rely on a ratio based on the 2010 any-part voting-age  
14 population as opposed to the 2010 total population any part.

15 Q So in August you admitted that you believed the AP VAP  
16 was -- well, your back-of-the-envelope calculation that you  
17 would stand by was 49.8 percent. And we agreed that the  
18 all-minority VAP was over 50 percent. Do you remember that?

19 A Well, the all-minority VAP is over 50 percent based on  
20 the 2010 census; so we can agree on that.

21 Q Okay. Do you have any idea how many people .2 percent  
22 equals in the Ferguson-Florissant School District?

23 A I guess it would be about 1,200 people.

24 Q Be about 102 people?

25 A Sorry. I'm a decimal point off there.

1 Q So it's your belief that, since 2012, African Americans  
2 could not have increased net by 102 people?

3 A That they could have, but I don't know that to be a fact.  
4 And I have seen no evidence to suggest that anyone can show  
5 that to be a fact. And as I mentioned briefly in my initial  
6 testimony today, the events in Ferguson in 2014 could put an  
7 end to a trend line. I mean, the trend is your friend until  
8 it's not your friend, and I would submit that it's no longer  
9 necessarily a friend because things have really changed.

10 Q So that's interesting. You mentioned in your direct  
11 testimony that, because of the events that occurred in 2014,  
12 there could have been an exodus of African Americans from at  
13 least the city of Ferguson, correct?

14 A At least the city of Ferguson. And there was so much bad  
15 press about West Florissant, that it could have had an effect  
16 on the Florissant -- and not just out-migration but also  
17 in-migration.

18 Q Well, I'm going to represent to you that nothing near  
19 West Florissant is Florissant -- city of Florissant, but are  
20 you saying that white people would stay because of the events  
21 in August of 2014 and black people would exodus as a result of  
22 2014?

23 A No. I'm not saying that at all. I think it's quite  
24 possible that it led to higher percentage of whites leaving  
25 the area. Perhaps.

1 Q Thank you.

2 A But we don't know that to be fact. But one thing we do  
3 know to be a fact is that 83 percent of whites in  
4 Ferguson-Florissant School District live in owner-occupied  
5 housing, and it's a lot tougher to unload an owner-occupied  
6 house than it is to break a lease on a rental property. So  
7 it's going to be easier for African Americans to leave should  
8 they so desire.

9 Q Did you do any analysis about that?

10 A No. No. I'm just --

11 Q And you brought this up in August, and you didn't do any  
12 analysis since August, correct?

13 A There is -- I don't think you could do an analysis.

14 Q Okay. Let's just talk a little bit about your  
15 illustrative plans and your hypothetical plans. You talked a  
16 little bit about -- I guess my question is you did your  
17 illustrative plans with the single-member districts. Do you  
18 believe that if the district has single-member districts would  
19 make -- it would make it more difficult for people or board  
20 members or anyone to move within the school district if they  
21 had any interest of serving on the school board?

22 A What do you mean by "move within the school district"?

23 Q I mean, I live in District 2, and I want to move to  
24 District 6, but I'm on the school board or I'm thinking about  
25 running for the school board. And if I move, then I have to

1 either give up my seat if I'm already on the school board, or  
2 I won't have any friends nearby who know me to run for the  
3 school board. Could that be an issue?

4 A It could be for a potential candidate.

5 Q So you've testified in a lot of these cases, and you're  
6 pretty familiar with Section 2 of the Voting Rights Act; is  
7 that right?

8 A Reasonably familiar. I'm not a lawyer.

9 Q Are you familiar with *Gingles* I?

10 A Yes.

11 Q So you will agree with me, won't you, that if African  
12 Americans are a majority, there's no violation of Section 2  
13 under *Gingles*?

14 A Well, first I'm not a lawyer, but I totally disagree with  
15 that statement. That's preposterous.

16 Q Really? If majority -- if African Americans are the  
17 majority, under *Gingles* I, it would not be -- a violation of  
18 Section 2 would be moot?

19 A Well, the point is you can meet *Gingles* I in the  
20 Ferguson-Florissant School District. Whether the district is  
21 49 percent, 47 percent, or 53 percent, *Gingles* I is met. Now,  
22 you can argue that it doesn't need -- that that Section 2 case  
23 may fail because the jurisdiction is majority black at large,  
24 but I've met *Gingles* I in Hypothetical Plan A and -- I'm  
25 sorry -- Illustrative Plan 1 and Illustrative Plan 2 and, for

1 that matter, Hypothetical Plan A. So there's no -- there just  
2 cannot be an issue of *Gingles* I. You may have many other  
3 issues in this case, you obviously do, but *Gingles* I won't  
4 fly.

5 MS. ORMSBY: Thank you. I have nothing further.

6 THE COURT: Thank you.

7 MS. ORMSBY: Excuse me.

8 THE COURT: Just a second.

9 MS. ORMSBY: I might have.

10 THE COURT: Consult with counsel, and then we'll see  
11 where we are.

12 MS. ORMSBY: I don't have anything further, Your  
13 Honor.

14 THE COURT: Thank you.

15 Any redirect?

16 MR. MCDONALD: Nothing further from the plaintiffs,  
17 Your Honor.

18 THE COURT: Very good. Thank you, sir. You may step  
19 down.

20 THE WITNESS: Thank you.

21 THE COURT: All right. Magically, it's five o'clock.  
22 Who knew? How far did we get today compared to where you  
23 thought we would be?

24 MR. ROTHERT: Exactly where we thought.

25 THE COURT: Who are we going to hear from tomorrow,

1 just so --

2 MR. ROTHERT: We have already let them know. Do you  
3 want to know?

4 THE COURT: Moi? I'm just an innocent bystander.

5 MR. ROTHERT: Would you like to know?

6 THE COURT: Yeah, I would kind of like to know. Idle  
7 curiosity. I'll be here.

8 MR. ROTHERT: Our first witness is -- our first two  
9 witnesses will be fact witnesses, Ms. Doris Graham and Mr.  
10 Henson. Dr. David Kimball is a political scientist. He will  
11 be an expert witness, the third.

12 THE COURT: Where does he teach?

13 MR. ROTHERT: UMSL. And time permitting, we will be  
14 calling Mr. Frank Green as a fact witness.

15 THE COURT: Okay. And you know that? You're ready?

16 MS. ORMSBY: He told us after lunch, Your Honor.

17 THE COURT: Laser-like focus.

18 MS. ORMSBY: And if it please the Court, Frank Green  
19 is also on our will-call list and if I can do a direct cross.

20 THE COURT: We'll see how it goes. We talked about  
21 that last week, but, you know, I try not to borrow any  
22 trouble. We'll take it as it comes.

23 All right. Thank you all. We'll start promptly at  
24 nine o'clock.

25 **(PROCEEDINGS CONCLUDED AT 5:00 PM.)**

CERTIFICATE

I, Shannon L. White, Registered Merit Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 234 inclusive and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

Dated at St. Louis, Missouri, this 26th day of January, 2016.

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/s/Shannon L. White  
Shannon L. White, CRR, RMR, CCR, CSR  
Official Court Reporter