IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

THE SOUTH CAROLINA STATE CONFERENCE OF THE NAACP,

and

TAIWAN SCOTT, on behalf of himself and all other similarly situated persons,

Plaintiffs,

v.

THOMAS C. ALEXANDER, in his official capacity as President of the Senate; LUKE A. RANKIN, in his official capacity as Chairman of the Senate Judiciary Committee; JAMES H. LUCAS, in his official capacity as Speaker of the House of Representatives; CHRIS MURPHY, in his official capacity as Chairman of the House of Representatives Judiciary Committee; WALLACE H. JORDAN, in his official capacity as Chairman of the House of Representatives Elections Law Subcommittee; HOWARD KNAPP, in his official capacity as interim Executive Director of the South Carolina State Election Commission; JOHN WELLS, Chair, JOANNE DAY, CLIFFORD J. ELDER, LINDA MCCALL, and SCOTT MOSELEY, in their official capacities as members of the South Carolina State Election Commission,

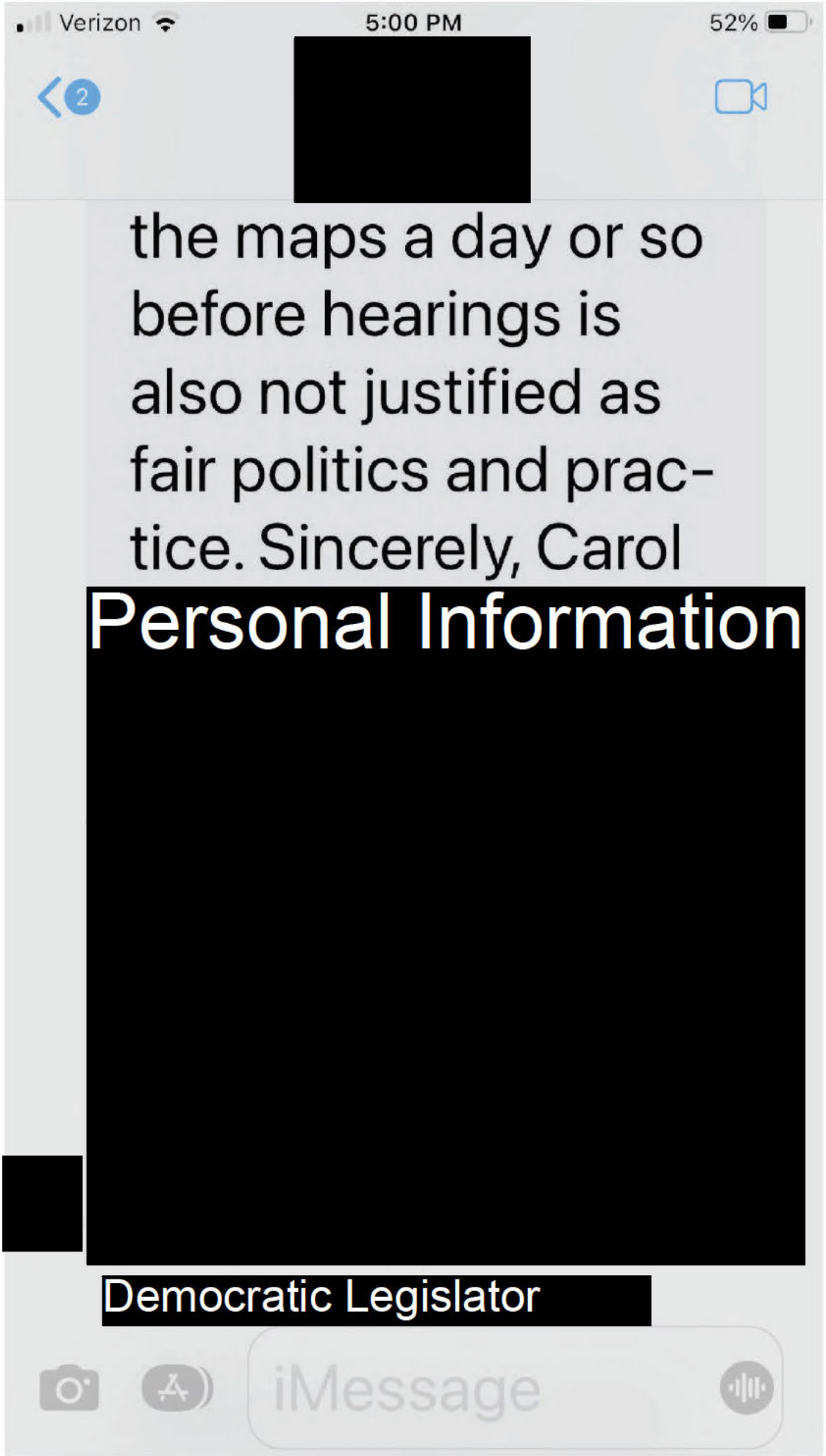
Defendants.

Case No. 3:21-cv-03302-MGL-TJH-RMG

THREE-JUDGE PANEL

NOTICE OF FILING:

PLAINTIFFS EXHIBITS 138A & 216A


Verizon
5:00 PM
52%
[redacted]
the maps a day or so before hearings is also not justified as fair politics and prac-tice. Sincerely, Carol
Personal Information
[redacted]
[redacted]
Democratic Legislator
iMessage

[redacted]

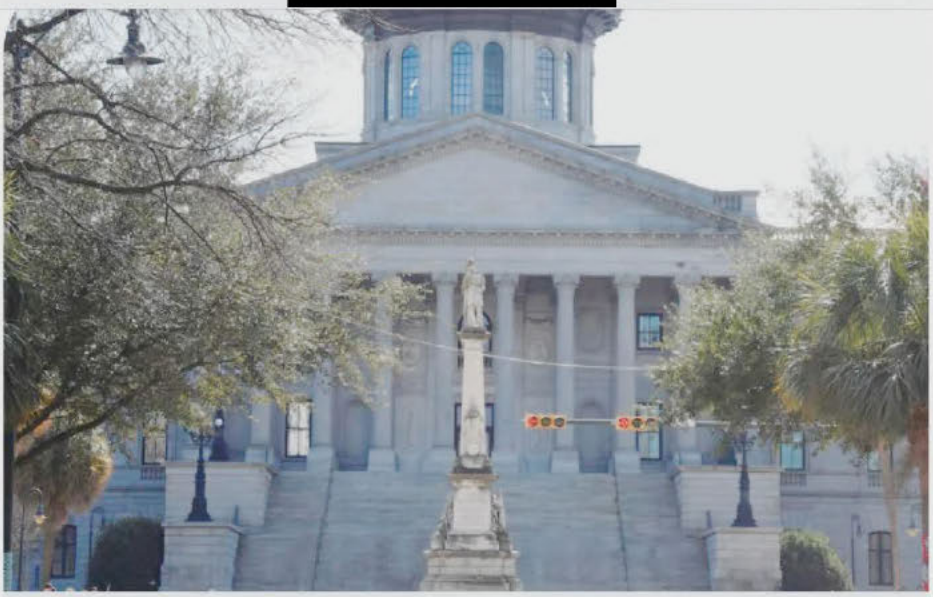
Read more at:

SC House redistricting plan, criticized as 'extreme gerrymander,' up for debate Tuesday

iMessage

Verizon 6:06 PM 64%

4 [redacted]



SC House redistricting plan spurs opposition over margins, neighborhoods, incumbency

postandcourier.com

[redacted]

F them.

iMessage

Verizon
6:07 PM
64%
4
[redacted]
BYE WEEKS?
[redacted]
lm.facebook.com
HA HA
Me taking care of [redacted] on redistricting
Republican Legislator
The map is now final as of last night [redacted] I hope to be a fly on the wall when you see it.
[redacted]
iMessage

Verizon
6:09 PM
64%
4
[redacted]
Trident Technical College
Spinx
S AVIATION RD
CROSS COUNTY RD
Democratic Legislator
Don't come to Charleston Murph.
[redacted]
Redistricting meeting at 430 today. Adopting map room procedure.
iMessage

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

THE SOUTH CAROLINA STATE CONFERENCE OF THE NAACP,

Plaintiffs,

vs. Civil Action No. 3:21-cv-03302-JMC-TJH-RMG

THOMAS C. ALEXANDER, et al.,

Defendants.

VIDEOTAPED WEB CONFERENCE

DEPOSITION OF: THOMAS BRUNELL, Ph.D.

DATE: Thursday, March 31, 2022

TIME: 11:06 a.m.

TIME ENDED: 4:58 p.m.

LOCATION: Richardson, Texas

REPORTED BY: YVONNE R. THURSTON-BOHANNON
Registered Merit Reporter,
Certified Realtime Reporter

if the witness is testifying from a state where I am not a notary that the witness may be sworn in by an out-of-state notary.

If any party has an objection to this manner of reporting, please state it now.

(No response.)

THE COURT REPORTER: Hearing none, I will proceed.

- - -

THOMAS BRUNELL, Ph.D., after having been first duly sworn, was examined and testified as follows:

- - -

EXAMINATION

- - -

BY MR. CUSICK:

Q. Morning, Dr. Brunell. My name is John Cusick. I'm one of the attorneys representing the plaintiffs in this lawsuit, the State Con -- the South Carolina State Conference of the NAACP, et al., versus Alexander, et al.

If you don't mind, could you please state your name for the record spelling your last name.

A. Sure. It's Thomas Brunell,

not always clear, so I'll be sure to rephrase or answer any questions that you might have. But if I do ask a question and you answer that question or begin answering that question, I'll assume that you've understood that question. Does that make sense?

A. Yes.

Q. And, now, the people who will primarily be talking will be you and I and potentially the court reporter if she needs something from us during this. You may hear your counsel, Mr. Diamaduros, object to a question. If so, the objection will be noted by the court reporter, but you still must provide an answer. You are required to answer all questions unless specifically instructed not to by Mr. Diamaduros. Do you understand?

A. I do.

Q. And, Dr. Brunell, is there any reason why you're unable to understand or answer any questions today?

A. No.

Q. And are you taking any medication that might impair your ability to understand or answer any questions today?

conducted?

A. No.

Q. I know you mentioned you haven't met any of the named defendants, but have you been in communication with any of them or any other state, South Carolina elected officials?

A. No, I do not -- I don't think so, certainly not that I remember.

Q. Is it your understanding in terms of your role in this case, are you at all retained by any of the named Senate defendants?

A. I'm not sure.

Q. Have you had any communications with attorneys outside of those with Mr. Diamaduros and Nexsen Pruet attorneys representing the House defendants?

A. I don't think so. I think I've only spoken with Nexsen Pruet people.

Q. Do you recall when you were retained for this case?

A. Off the top of my head, no, but it was probably -- it was -- I don't remember, but it was a while ago, though.

Q. Do you recall when you were retained what the subject matter of the case was?

A. Well, this was -- again, this was before lit -- this was pre-litigation, so I was hired to do racial bloc voting analysis as the state prepared to redraw the maps.

Q. Would that be the summer or do you have a general sense of when that would be, the pre-litigation retention?

A. Let me look at my report. Is there a date on my report? It doesn't appear that there is.

What is it now? We're -- we're in March of 2022. If I had to guess, I would say it might be last summer. Late last summer maybe, some -- somewhere around there, 2021. But I'm just -- I'm just guessing.

Q. And I know you mentioned you were retained to do racially polarized voting analyses; is that correct?

A. Correct.

Q. Was there anything outside of -- was there anything else in addition to that for the scope of your retention?

A. Hum. I don't know if we ever discussed me doing anything besides this. I don't recall. I don't recall there being other -- other items.

Q. Was the retention agreement with the law firm Nexsen Pruet?

A. I believe so, yes.

Q. Do you recall when you began conducting your racially polarized voting analysis pre-litigation?

A. I don't.

Q. Who were you first contacted by to work on racially polarized voting analyses in South Carolina?

A. I believe it was Andrew and another lawyer whose name escapes me, but I think his first name is Mark, but I don't remember his last name.

Q. And what were you asked to do or to produce pre-litigation within that scope?

A. The report that you see. The report that -- my first report.

Q. And so you would have conducted this analysis regardless of the litigation; is -- was that your understanding?

A. Yeah, I did it -- yes. It was before -- before litigation started.

Q. In your expert report you indicate that the rate in your compensation changed at some point once the litigation started. Did the scope of your

retention change?

A. No, I don't -- I don't think so.

Q. Before the start of litigation, did you present your findings to anyone?

A. Yes, I sent it to the lawyers.

Q. And how many hours of work did you conduct before the start of litigation on this report?

A. Probably 40 to 50 if I had to guess.

Q. Was the report completed or what -- I guess when was the report completed in this case?

A. I don't recall. It wasn't -- it was -- it wasn't all that long ago. You know, so it wasn't done -- it wasn't completed last summer, but it was completed as we -- you know, as the -- as the litigation got underway and -- and they needed to -- to provide reports for discovery.

Q. What is your understanding of the difference of what you were expected to produce pre and post-litigation?

A. There's no difference.

Q. Do you recall when you were retained officially for the start of litigation?

A. There was -- it's just one -- we only had one agreement.

editing the report and things of that nature, but, yeah, I don't recall specifically.

Q. How complete was your -- or did you make all your findings pre-litigation for this initial report?

A. I don't recall -- again, I don't remember the timeline. So I think most -- certainly most of it was done at the time, but I think there was some additional counties added afterwards. After litigation started that might have happened, but I don't recall specifically.

Q. And what were your initial findings pre-litigation?

A. The same thing, that voting was racially polarized.

Q. Based on just those two elections you reviewed?

A. Yes.

Q. And for those 25 counties?

A. Like I just said, I don't know if it -- if that's how many counties it was before the litigation or not.

Q. Would you have had time to look at additional elections during the scope of your retention in the case beyond the two?

A. Sure.
Q. Did you see any benefit in doing so?
A. No.
Q. Why not?
A. Well, the evidence was clear. So we know that South Carolina has been drawing majority-minority districts since -- since the '90s when all things were first started after the -- the Gingles case. And I have done racially polarized voting in South Carolina before.

So going into it, you know, I fully expected to find -- my expectation was that voting would be racially polarized in South Carolina. And then I looked at two statewide elections, both of which had a white Republican running against a black Democrat, and then both of those -- in all the counties I looked at and statewide, the evidence was quite clear that voting was racially polarized.

Q. In your field of expertise, is looking at two elections sufficient for establishing a pattern of racially polarized voting?
A. In this case I think that it's perfectly fine. Like I said, we -- voting was racially -- we know that voting was racially

know you answered part of this, but I just want to make sure to give you another chance.

You know, would looking at three election cycles provide more definitive conclusions for assessing RPV than just looking at two?

A. I think since I'm a data person and I believe in data analysis, I would say in general more data are always better. We could go on forever -- forever and ever. Like I said, I think 10,003 elections is better than 10,002, but that's not the relevant question.

The question is, Did I feel comfortable given what I knew about South Carolina's past -- recent past and given what I saw in the data to stop where I stopped, and I think -- I thought it was appropriate to stop there. The lawyers agreed that any other -- any additional analyses would be -- would be beating a dead horse.

Q. And just so we're on the same page, when you say, "South Carolina's recent past," what time line would that -- or what time frame would that include?

A. I would say the '90s up until the current time period.

Q. And I guess what about the -- the

previous election cycles raised that expectation that you would find RPV here again?

A. Well, the -- it had been found in the past, right. I found it in the last election cycle. South Carolina has been drawing majority-minority districts since the 1990s, and so there would be -- you know, given that, you know, tomorrow is going to look not that much different from today, the expectation would be that racially polarized voting is still there, that we should check, and -- and I did check, and I found that it is indeed still there.

Q. Do you know how many election cycles were assessed to detect RPV in Gingles for statewide elections?

A. Hum. I don't recall.

Q. I think I heard you before testify that you -- or let me rephrase that.

How often in your RPV analysis that you conducted do you look at two elections?

A. I don't -- I don't recall. I don't remember the number of elections that I picked. In some states it's more. In some states it's less.

Q. Do you know what factors would go into choosing more elections in those other states?

Carolina as well."

Q. Within what you just read is there anything that addresses Dr. Liu's claim that he used more reliable data?

A. Yes, I think that the -- the sentence about "it should be noted," that's -- that says what I said a few moments ago, which is it's possible the census data have more accurate racial data than the state does.

Q. I want to now talk just for a brief moment just about your findings with regard to RPV and see what, if any, disagreements are between you and Dr. Liu on your overall conclusions.

Would it be fair to say that you agree with Dr. Liu that there is a presence of racially polarized voting in South Carolina?

A. Yes.

Q. And is there any disagreement that there are certain patterns existing at the county level as well for the ones that you analyzed?

A. I -- I don't recall any disagreement, no.

Q. In your rebuttal report do you offer any critiques of ecological reference and the use of it?

A. No.

Q. Did you point out any errors with Dr. Liu's methodology for assessing RPV in the rebuttal report?

A. No. We all -- we came to strikingly similar conclusions, and so, like I said in my report, I felt that his criticism was rather gratuitous, and so I did not criticize. I thought that -- that he had a good report. I thought he analyzed more elections than he needed to, but he -- he -- I was fine.

If I -- I would have -- I would have liked to see homogenous precinct analysis in there too and maybe ecological aggression, but -- but I think he did a good job and we came to -- you know, our estimates are very, very close, which isn't a big surprise, and we reached the same conclusion. So why would I -- why would I criticize.

Q. Did you rerun any of his analyses?

A. No.

Q. Is there any basis to challenge the accuracy of his conclusions for RPV?

A. I don't -- I don't -- I'm not sure. You know, there could be. I have no idea. I have no idea.