UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD AGEE, JR., an individual, *et al.*, Plaintiffs, v. JOCELYN BENSON, in her official capacity as the Secretary of State of Michigan, *et al.*; Defendants.	Case No. 1:22-cv-00272 **Three-Judge Panel Appointed Pursuant to 28 U.S.C. § 2284(a)** **ORAL ARGUMENT REQUESTED**

PLAINTIFF'S BRIEF IN OPPOSITION TO COMMISSION DEFENDANTS' MOTION TO STRIKE SUPPLEMENTAL AND REBUTTAL REPORT OF SEAN TRENDE AND *IN LIMINE* PRECLUDING PLAINTIFFS FROM OFFERING THE REPORT AT TRIAL

I. INTRODUCTION

Expert Sean Trende's supplemental and rebuttal report will streamline this case's time-sensitive trial, is of minimal surprise to Defendants, is largely factual, and is entirely appropriate.

In its Summary Judgment Order, this Court identified certain expert-related issues to be resolved at the expedited trial. To assist the Court and to give Defendants ample notice of Mr. Trende's expected testimony and demonstratives, Plaintiffs asked him to prepare a short supplemental report. Defendants received it five weeks before trial, and it is based on data already in the Commission's possession. This supplement falls squarely within the ambit of Rule 26.

The report should not be excluded under Rule 37 in any event. The allegedly "new" opinions are not new. In many instances, they are not even opinions. They are clarifications and provide a more nuanced reasoning to address the Court's questions; Trende's conclusions are the same as those offered in his initial report and explored at his deposition. Further, the data on which Trende relies is either the same as the data used in his original report or is taken from the Commission's data. The Commission cannot claim prejudice, especially given that Plaintiffs have offered Trende for a second deposition—which Defendants have not accepted.

In the end, Defendants' multi-million-dollar trial budget funds an army of lawyers and an arsenal of experts, two of whom are slated to refute Trende. And any failure to disclose the purported supplemental opinions is substantially justified where the Court's Order adopted a novel approach that asks Plaintiffs to measure the reasonableness of their *Gingles I* demonstration maps against partisan-fairness and community-of-interest factors that courts have not previously required, and which the Commission itself did not use at the time it implemented its 35%-40% BVAP racial quota. Trende's report and testimony should be allowed in their entirety.

II. ARGUMENT

A. Rule 26 allows supplementation here, so Rule 37 is inapplicable.

If a case management order does not expressly provide for a supplemental expert report, then Rule 26 governs. *Miner v. Ogemaw Cnty. Road Comm'n*, 594 F.Supp.3d 912, 925–26 (E.D.Mich. 2022); *In re Flint Water Cases*, 2021 WL 5124253, at *1–2 (E.D.Mich. 2021). Rule 26 includes a duty to supplement that does not cease at discovery's close, *see* Fed. R. Civ. P. 26(e) (emphasis added); *Trapp v. Fed. Express Corp.*, 2022 WL 17832909, at *1 (E.D.Mich. 2022). "Indeed, the Sixth Circuit has noted that Rule 26 contemplates that an expert may 'supplement, elaborate upon, [and] explain' his expert report." *E.E.O.C. v. Tepro, Inc.*, 133 F.Supp.3d 1034, 1049 (E.D.Tenn. 2015) (citation omitted).

Supplementation is particularly appropriate in response to an inquiry from the court. For example, in *In re Flint Water Cases*, 2021 WL 5124253 at *1–2, the court framed certain questions that could be clarified by a supplemental expert report. When the plaintiffs submitted one, the defendants moved to strike it under Rule 37. The court denied the motion because the case management order was silent about supplemental expert reports, and the supplement "was submitted in direct response to an inquiry by the Court," such that Rule 26 governed and Rule 37 was inapplicable. *Id. Accord Miner*, 594 F.Supp.3d at 925–26 ("Although a scheduling order currently governs discovery in this case, it is silent on supplemental expert reports. Yet Rule 26(e) plainly requires supplementation of an expert report in response to a court order… This Court will not prejudice Plaintiff for failing to follow a provision that does not exist in the scheduling order.").

Similarly, in *Woods Hole Oceanographic Inst. v. ATS Specialized, Inc.*, 557 F.Supp.3d 261, 270–71 (D.Mass. 2021), the court denied a motion to strike an expert's supplemental report as untimely where the supplemental was disclosed "more than 30 days before trial" "in response to criticisms raised by [the opposition's] counter-motion for summary judgment indicating that the

initial report was incomplete." Citing Rule 26, the court noted that "[m]otions to strike are generally disfavored" and that the "report was submitted to help this Court." *Id.*

Here, the Court identified certain areas of expert testimony it believed were particularly relevant in its MSJ Order, including (1) whether Trende's demonstration maps placed each Plaintiff in a majority-minority district, and (2) whether the demonstration maps' proposed districts were reasonably configured based on partisan fairness and communities of interest." ECF.No.81, PageID.2035. Within a few weeks, Trende proffered his supplement to address those issues. That was appropriate, particularly when the Court itself could raise these same inquiries.[1]

The reason Trende did not examine communities of interest or partisan fairness in his initial report is that courts have not traditionally required these factors for a demonstration map to be "reasonably configured." *E.g.*, *Allen v. Milligan*, 599 U.S. 1, 18 (2023) ("A district will be reasonably configured, our cases explain, if it comports with traditional districting criteria, such as being contiguous and reasonably compact."); *Bush v. Vera*, 517 U.S. 952, 959–60 (1996) (defining "traditional redistricting principles" such as "natural geographical boundaries, contiguity, compactness, and conformity to political subdivisions"); Yunsieg P. Kim & Jowei Chen, *Gerrymandered by Definition: The Distortion of "Traditional" Districting Criteria and A Proposal for Their Empirical Redefinition*, 2021 Wis. L. Rev. 101 (2021) (explaining why partisan advantage, incumbent protection, and communities of interest are nontraditional criteria).

Plaintiffs are aware of no authority permitting "non-traditional" factors—such as "partisan fairness"—to trump traditional factors in this context. *E.g.*, *Carter v. Chapman*, 270 A.3d 444, 462 (Pa.), cert. denied sub nom. *Costello v. Carter*, 143 S. Ct. 102 (2022) (while a court "may" examine

[1] "F.R.E. 614(b) allows the court to question witnesses, *Rodriguez v. Riddell Sports, Inc.*, 242 F.3d 567, 579 (5th Cir. 2001), particularly in bench trials. *Elof Hansson USA Inc. v. Santiago*, 2022 WL 2208266, at *2 (2d Cir. 2022).

"the subordinate historical considerations, including, *inter alia*, communities of interests, the preservation of prior district lines, and the protection of incumbents. . . we must keep in mind that these factors are wholly subordinate to the traditional core criteria"). Indeed, it would be strange to allow a state to deny Black voters the opportunity to participate in the political process fully because the state wished to achieve a predetermined partisan outcome; this is in large part what the Voting Rights Act is designed to avoid. Regardless, Michigan's Constitution—which purports to authorize the Commission to consider "partisan fairness" in its redistricting analysis *above* the traditional factors—is directly at odds with the protections afforded by the VRA, which preempts contrary Michigan law.[2]

That's why Defendants' expert, Dr. Handley, acknowledges that the three tests for "partisan fairness" she identifies in her report "have all been developed in the last decade and therefore do not have a long history of consideration by the courts," and these "political fairness" tests have only been introduced in the context of "partisan gerrymandering challenges"—*not* racial gerrymandering challenges—cases she admits the Supreme Court mooted after *Rucho v. Common Cause*, 139 S.Ct. 2484, 2502 (2019). Finally, as will be shown at trial, the Commission's deliberations reveal that its driving consideration shaping the ultimate maps was achieving the 35%-40% racial quota, and these non-traditional factors were at best secondary and at worst entirely pretextual. There is no factual basis to support such a defense.

[2] *E.g.*, *Arkansas United v. Thurston*, 626 F.Supp.3d 1064 (W.D.Ark. 2022); *Disability Rights North Carolina v. North Carolina State Bd. of Elections*, 602 F.Supp.3d 872 (E.D.N.C. 2022); *Carey v. Wisconsin Elections Comm'n*, 624 F.Supp.3d 1020 (W.D.Wis. 2022). Plaintiffs reserve their argument at pages 3-7 of their SJ Reply Brief that partisan fairness metrics and subjective community-of-interest analyses are not necessary to show a demonstration map is reasonably configured. ECF.No.77, PageID.1785. The Michigan Constitution prohibits consideration of incumbency.

Against this backdrop, Plaintiffs' expert should not be penalized; he should be credited for promptly responding to the Court's questions fewer than four weeks after receiving the MSJ Order.

B. Even under Rule 37, exclusion is unwarranted

Rule 37(c)(1) gives a court "broad discretion" to determine whether a party's untimely disclosure of evidence is so unjustified and harmful that the evidence should be excluded. *Bresler v. Wilmington Trust Co.*, 855 F.3d 178, 190 (4th Cir. 2017). "Rule 37(c)'s sanction is meant as a deterrent for discovery abuses, and is not a Swiss Army knife to be deployed in every situation where an expert elaborates on his or her report to the detriment of the opponent." *Guinn v. Norfolk S. Ry. Co.*, 441 F. Supp. 3d 1319, 1330 (N.D. Ga. 2020). Even if a violation is found, "Rule 37(c)(1) does not mandate the total exclusion of evidence filed in violation of the rules." *In re Flint Water Cases*, 2021 WL 5124253, at *1 (citing *Roberts ex rel. Johnson v. Galen of Virginia, Inc.*, 325 F.3d 776, 784 (6th Cir. 2003)).

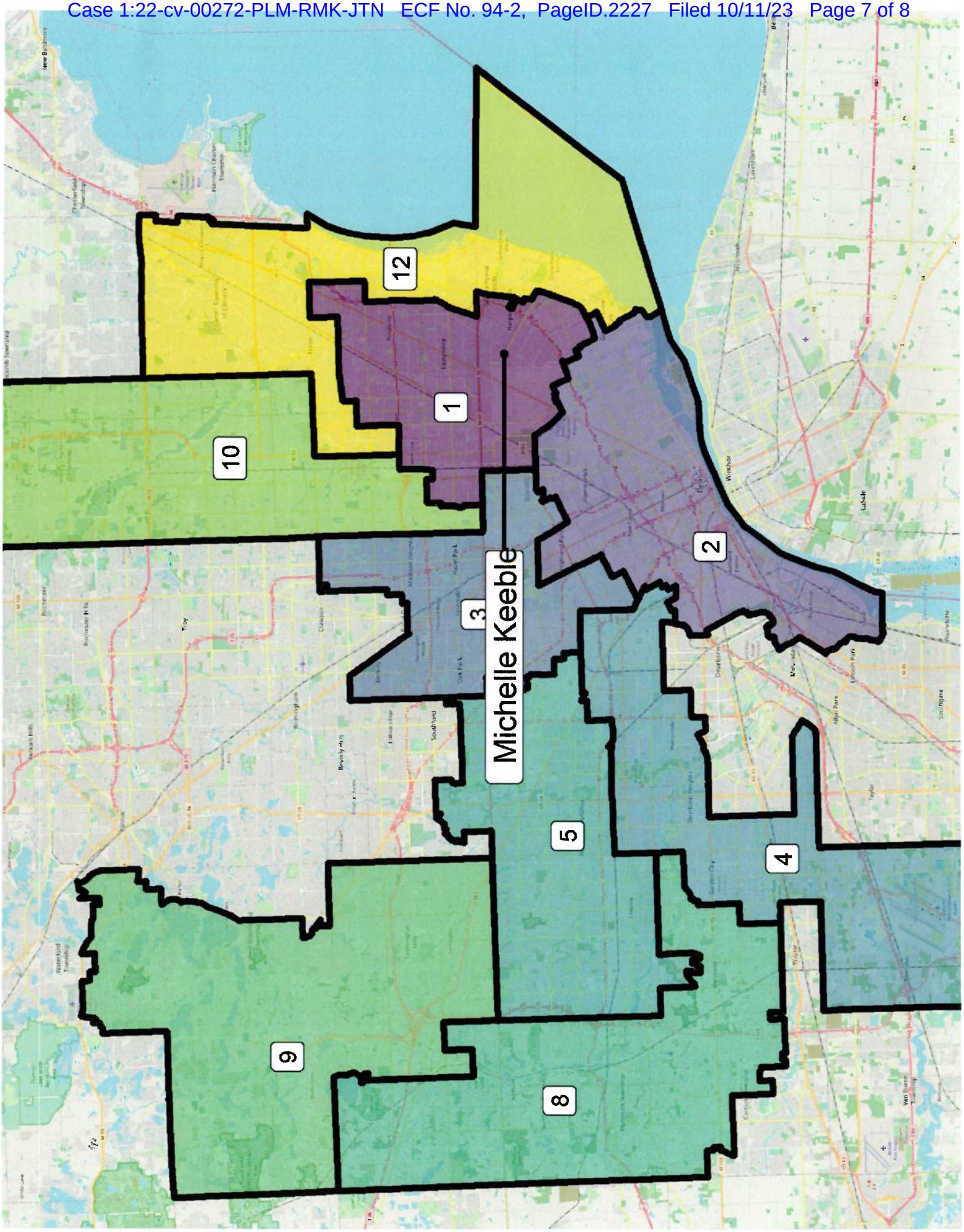
To assess whether a party's late disclosure is "substantially justified" or "harmless," the Court considers the following factors:

> (1) the surprise to the party against whom the evidence would be offered; (2) the ability of that party to cure the surprise; (3) the extent to which allowing the evidence would disrupt the trial; (4) the importance of the evidence; and (5) the nondisclosing party's explanation for its failure to disclose the evidence.

Howe v. City of Akron, 801 F.3d 718, 747–48 (6th Cir. 2015) (citations omitted). "The first four factors listed above relate primarily to the harmlessness exception, while the last factor, addressing the party's explanation for its nondisclosure, relates mainly to the substantial justification exception." *Bresler*, 855 F.3d at 190. Thus, a party need not establish *both* substantial justification and a lack of harm; it need only proffer *either* "reasonable explanation" *or* lack of prejudice.

"Substantial justification" in the Sixth Circuit means merely a "reasonable explanation." *Howe*, 801 F.3d at 747 (citation omitted). Substantial justification exists where the expert's

supplementation was prompted by an inquiry from the court—as here. See *Black Warrior River-Keeper, Inc. v. Drummond Co., Inc*., 2022 WL 126535, at *1 (N.D.Ala., 2022) (citation omitted) (supplementation allowable where "there was an important change in law upon which the expert previously based the report, the supplemental report is consistent with the earlier one, and there is no substantial prejudice to the parties"); *Lucent Techs., Inc. v. Gateway, Inc*., 2007 WL 5289734, at *1 (S.D.Cal. Dec. 7, 2007) (allowing supplemental report issued "in response to the District Judge's opinion regarding this expert's damage theory presented at earlier proceedings" and where the report "relies on evidence already well-known to the defendants");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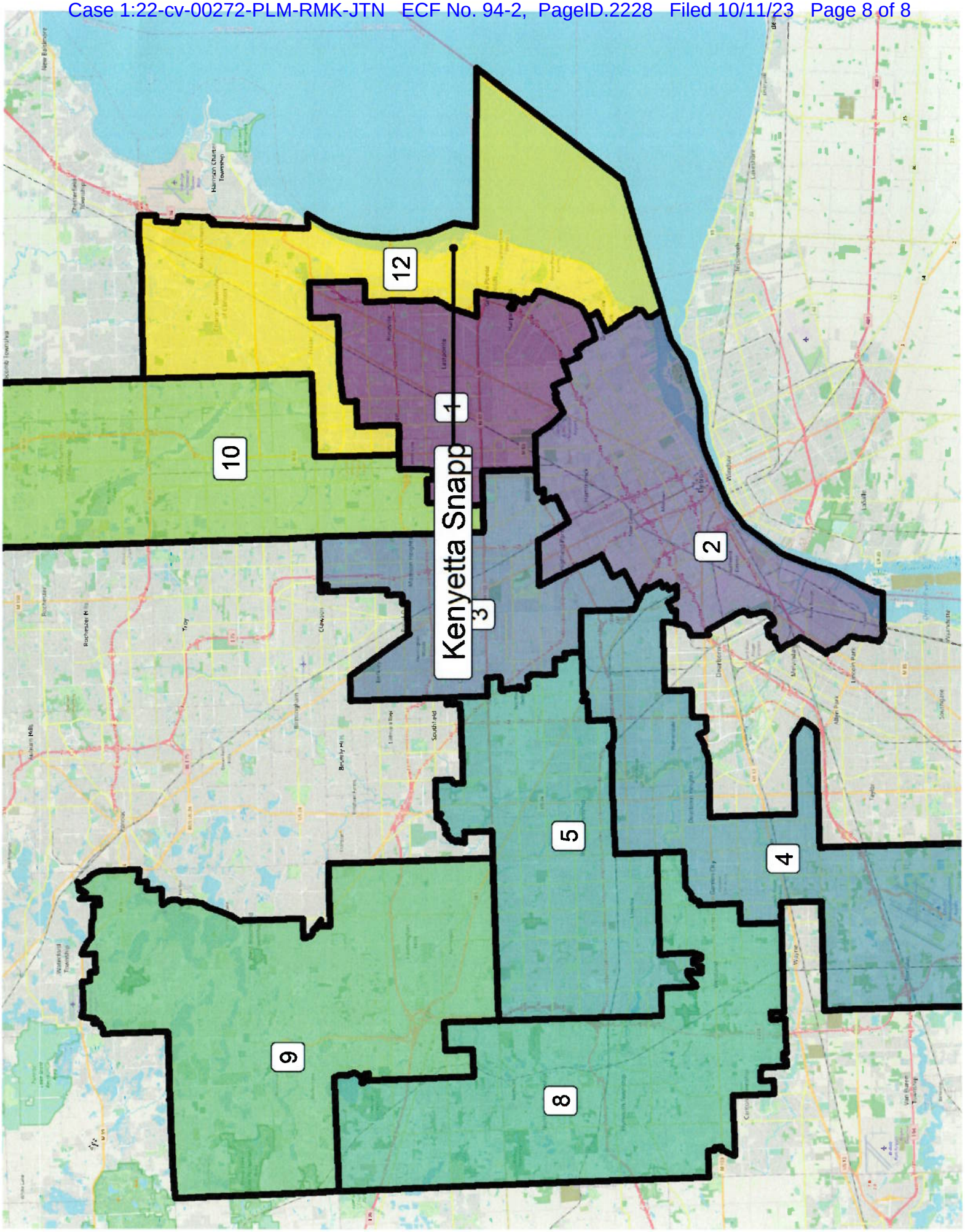
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EXHIBIT 2

Szetela, Rebecca (MICRC)

From: Pastula, Julianne (MICRC)
Sent: Monday, September 13, 2021 5:19 PM
To: Szetela, Rebecca (MICRC); Rothhorn, MC (MICRC)
Cc: Badelson1
Subject: Privileged & Confidential: Significant Concerns from General Counsel and VRA Counsel

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Dear Chair Szetela and Vice Chair Rothhorn,

Bruce and I are very concerned and alarmed about the drafting of packed districts that is occurring during today's mapping session. While the work is preliminary and future steps can be taken to remediate - this will become much more difficult the more packed districts that are drawn. In addition to not being able to justify the numbers coming out of today to a court, these drafts also create expectations on behalf of the public that will also be difficult to address moving forward.

The disaggregated election data was not available last Thursday when the Commission first moved into areas where the VRA is implicated. This was the data Lisa highlighted during her presentation on Sept 2nd which is critical for the Commission (and Bruce) to move forward. Today, the data appears to be loaded but there was no coordination of a presentation by Kim (which he offered over the weekend) to introduce the data and orient the Commission to it in advance of your mapping work. It has been 2 weeks and the Commission still does not have the critical updates it needs to the software even scheduled. This cannot be accepted by Commission any longer.

This complete breakdown of communication and the lack of information the Commission needs to perform its work is unacceptable and will continue to negatively impact its work unless it is addressed. The Commission desires to create best practices which will be measured by a successful defense of its maps after all legal challenges are done not by any other metric. The complete opposite is being done by the lack of information and coordination. The Commission is running out of time and have an enormous amount of work to do. The current course of action is against the advice of counsel and your RPV expert.

Everyone is making personal sacrifices but there needs to be uniform emergency among a majority of the Commission and unanimous understanding of the law. The current environment is not allowing either to take center stage.

The Commission should consider extending its meeting time for Mon-Wed, consolidating locations (instead of driving 6 hours round trip for a 6 hour meeting) and consider adding Friday meetings in order for the work to get done.

I recommend we have a call to discuss this email as soon as possible and would be happy to coordinate it to accommodate everyone's busy schedules.

Sincerely,

Julianne Pastula
General Counsel
State of Michigan

Independent Citizens Redistricting Commission
517.331.6318
PastulaJ1@Michigan.gov

Julianne Pastula
General Counsel
State of Michigan
Independent Citizens Redistricting Commission
517.331.6318
PastulaJ1@Michigan.gov

EXHIBIT 3

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>> COMMISSIONER WAGNER: I was going to wind up passing today as well Vice Chair because my eyesight is just too blurry to do this.

>> VICE CHAIR ROTHHORN: Understood thank you Commissioner Wagner take care.

We are on to Commissioner Witjes.

>> COMMISSIONER WITJES:

>> VICE CHAIR ROTHHORN: Forgive me Commissioner Weiss.

>> COMMISSIONER WEISS: I guess I'm not real familiar with that area.

And I really do like you guys are from there.

You have done I think a pretty good job of moving stuff around, whether it's acceptable or not, that is another story.

But I guess I'd like you to continue doing it.

I would just assume pass and maybe when we get up in my area maybe I would have a little more comment.

>> VICE CHAIR ROTHHORN: Thank you Commissioner Weiss.

Commissioner Curry do you have a hand? We can't hear you.

>> COMMISSIONER CURRY: Are we speaking of the Detroit area?

>> VICE CHAIR ROTHHORN: We are talking about the Detroit area that's right.

>> COMMISSIONER CURRY: Okay I don't mind taking a shot at it.

>> VICE CHAIR ROTHHORN: Okay Commissioner Weiss since we are still at you would you like Commissioner Curry to help you? Trying to honor the rotation we are in or pass and Commissioner Curry we will get to you in about two turns and we will see how it goes, is that okay?

>> COMMISSIONER CURRY: Sure.

>> VICE CHAIR ROTHHORN: Okay thank you so Commissioner Witjes back to you.

>> COMMISSIONER WITJES: I just have a question in regards to the districts and the adjustments that we have, are they at first glance VRA compliant?

>> VICE CHAIR ROTHHORN: What we have gotten from Mr. Adelson as of yesterday I will try to summarize it I'm looking to see if my summary is accurate, we have two drafts so the ones I will call it the RAS right version that was, that is more VRA compliant and not totally.

And the one the first version that we drew is less VRA compliant.

I don't think we have sort of an actual check box as you are good.

>> COMMISSIONER WITJES: Looking at the districts we have, how much thinner can they get and how much further can they extent out before they are one precinct or one actual voting precinct wide.

>> VICE CHAIR ROTHHORN: Right which I think you and Commissioner Curry I think would be able to help sort of like balance those communities of interest and say no we are going to as a Commission right we can under your direction we could essentially say we believe that this is the best that we are going to be able to do because of these

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you know all the different factors that we are taking into consideration including the voting rights analysis and then ask for that sort of analysis to be or excuse me the partisan fairness to be run tomorrow.
That is the task is to sort of come to some kind of conclusion, understand why we are doing it.
And, yeah, justify leaving it or continuing to tweak and sorry Commissioner Witjes Commissioner Clark has a comment.
>> COMMISSIONER CLARK: Yeah, when we start this mapping that Juanita is going to do.
>> VICE CHAIR ROTHHORN: We are on Commissioner Witjes at this point.
>> COMMISSIONER CLARK: Commissioner Witjes will do will we begin with the map may we finished with yesterday or the previous one we had done.
>> VICE CHAIR ROTHHORN: That is up to Commissioner Witjes.
>> COMMISSIONER CLARK: Okay.
>> COMMISSIONER WITJES: Yeah, I honestly think that I don't want to say they are the best districts that we can create.
But I do think they are decent at this particular point.
And I don't know the area.
So unfortunately when it comes to minute adjustments I'm going to have to pass because I don't know where to potentially make them.
>> VICE CHAIR ROTHHORN: Understood.
Thanks Commissioner Witjes.
Commissioner Clark we are to you.
>> COMMISSIONER CLARK: Focusing just on Detroit area.
>> VICE CHAIR ROTHHORN: Because of the way we want to work today to use our time in order to actually have a partisan fairness we want to have a voting rights analysis first.
Because that is our first criteria in the Constitution, we want to have as much compliance regarding the voting rights as possible before we move to the fourth criteria which is partisan fairness so that is the task today is to in those districts in Detroit and with our VRA expert with us in the room today yes that is the task.
>> COMMISSIONER CLARK: I may or some other Commissioner may have something outside of the Detroit area that we would want to deal with on the Voting Rights Act as well.
So just want to point that out.
I would for this area at this point I would rather pass and let Commissioner Curry you know she is very familiar with the area, have her.
>> VICE CHAIR ROTHHORN: Thanks Commissioner Clark, Commissioner Curry we are to you.
And Commissioner Curry you were with us yesterday.

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I think what we should be looking at now is communities of interest and if anyone in particular has something that they remembered like Ottawa when we went there and we looked at that like Midland, I mean, I don't think that we have enough time to go through you know, all of this and do every single thing at this time.

>> VICE CHAIR ROTHHORN: Back to you Curry and then Commissioner Lange.

>> COMMISSIONER CURRY: Why did we come back to Detroit because pretty much the Voting Rights Act and everything was pretty much intact.

>> VICE CHAIR ROTHHORN: I think our analyst will get there and I want Commissioner Lange first.

>> COMMISSIONER LANGE: I'm going to second what everybody is saying because once we have the analysis we may have to come back in and make changes any ways and changes after the hearings so if it's not broke at the moment, let's not mess it up anymore.

There was a lot of thought that went into it.

There was you know analysis, you know, not the in depth but there was analysis done and I don't want to screw up what we have now if there are other areas to focus on.

>> COMMISSIONER CURRY: I think MC we ought to deal with Vice Chair we ought to deal with Ottawa.

We got so much information on that the other day.

>> VICE CHAIR ROTHHORN: Okay and you are welcome to do that.

I just want to make sure that our consultant here Bruce Adelson has an opportunity to speak go ahead Mr. Adelson.

>> MR. BRUCE ADELSON: Thank you Commissioner Rothhorn.

You know I understand the discussion today.

And I understand that the you know the time constraints and the myriad issues that there are.

And I will reiterate what I said yesterday and previously.

Even if you look at these two as issues you have a District, District 6 that is 64% non-Hispanic Black voting age population.

Could you go down, please on the demographics, John? I want to look at District 18.

And you have District 18 that is almost 77% non-Hispanic Black voting age population.

We've discussed that previously.

We've discussed that these numbers are well in access of what Dr. Handley analyzed.

And in access of what I've advised the Commission.

So you know, the choice of what to look at, examine, adjust, of course is up to the Commission.

But those are two serious districts that have significantly more population than Dr. Handley recommended in her analysis.

And that she and I agree about.

We have discussed.

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>> COMMISSIONER LANGE: Mr. Adelson I'm going to ask you because we are all novices when it comes to the VRA and we can go online and read the comments that contradict a lot of what you say just as well as the next person.
So I've got a couple of specific questions that I just want you to make clear for me.
So I know how to go forward.
I asked one question before about can it have a higher concentration if you're doing it for the right reasons say as to not split a community, to not split up? I had used the Bengali community about adding them in would cause the numbers to go up for the overall population African/American population, would that be okay because you're not trying to split? And then the second part to that question is if the I understand VRA becomes above other criteria but we have a criteria of community of interest so if we receive input of community of interest that says they absolutely do not want to be split and that drives up the African/American population, then is there leeway in that VRA because we are accommodating for a community of interest which is also part of our state Constitution? I understand that the Federal Constitution is above all, but is there leeway in our numbers if that's the case if these are drawn and the numbers come out the way they are because we are trying to take into consideration the other criteria?
>> MR. BRUCE ADELSON: Thank you Commissioner Lange and your question goes right to the core of one aspect of redistricting there are competing values and there will be people who may be satisfied or not satisfied.
But the bottom line is that if keeping communities of interest, not splitting them, having them implicates the packing of minority voters, the dilution of minority voters then the number one criteria is the Federal criteria.
So I've certainly seen in my career that adding communities of interest may dilute minority voting strength, may create voting rights issues may pack minority communities, implicating the 14th amendments.
So the bottom line is the Federal criteria are the absolute priority.
And there may be communities of interest that are not able to be included in certain districts because they implicate Voting Rights Act problems.
Now I know yesterday we spent a lot of time uniting Bangla Town into two districts rather than the three they had put in previously.
I think that was a positive change and positive adjustment and that was an example of a community of interest minority community of interest being satisfied up to a point by responding to their concerns, not diluting their voting strength.
We looked at the Asian voting strength, Asian American voting strength in District 10.
We looked at it in District 2 so there are a lot of considerations on the board but the bottom line is if adding, not adding, splitting, not splitting a community of interest implicates the number one criterion which is Federal law and it does that in a negative, noncompliant way then it can't be done.
And that is something that I've seen before, advised many bodies about.

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I understand that that may cause some level of uneasy and disappointment in people who are watching these hearings and are voters of Michigan.
But that's part of redistricting.
The Voting Rights Act and the U.S. Constitution say what they do.
And that has been my ongoing advice to the Commission.
Thank you.

>> VICE CHAIR ROTHHORN: Commissioner Witjes? Then Commissioner Orton.

>> COMMISSIONER WITJES: Based on advice of General Counsel this needs to be finalized and be reviewed so we can quote unquote start fixing it I move that we stop working on the house map and let it go in for analysis over the next two days so we can fix it next week.

>> VICE CHAIR ROTHHORN: Okay that was a motion and I just want to make sure that because I think the fixing there was a District 18 that I think needed to be quote unquote fixed.

>> MS. JULIANNE PASTULA: And 16.

>> VICE CHAIR ROTHHORN: And 16.

>> MS. JULIANNE PASTULA: Pardon me 6 and 18 specifically.

>> VICE CHAIR ROTHHORN: Yeah 6 and 18.

And then in District -- and I do think that Commissioner Eid pointed out there is a community of interest in Hamtramck in District 10 we might sort of try to pull into 2 just to comply and I don't think it's going to be a voting rights thing but that's meaning I think it's going to be okay but I just want to acknowledge that, that I think is where the spirit of fixing, it's in this map and it's District 18, District 16, and District 1.
No.
General Counsel please help.

>> MS. JULIANNE PASTULA: What I would recommend is that the Commissioner consider doing is for the active matrix to scroll starting with 1 and glance at the districts, anything that is higher than 40% for the Black voting age population and the population difference I mean just to glance at and just go down the list and then when we get to I anticipate number 6, number 18, and others that those quote unquote fixes can be dealt with and then this map can be ready for the partisan fairness analysis.
That would be my recommendation.
And if the Commission was desiring of having an alternate house map, then the map that is the product of this analysis could be used to start the clone for the new one.
But this would that changed.
Did you scroll John?

>> MR. MORGAN: Sorry I moved the two yesterday where we were comparing Commissioners Szetela's plan with the previously done plan and I was making this matrix show the combined so we could do what you described which is look at each individual District I can also bring it up in the active matrix.

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>> VICE CHAIR ROTHHORN: Thank you for that helpful direction General Counsel? It's Commissioner Curry's turn and so I want to acknowledge Commissioner Orton first and turn it back to you Commissioner Curry and direct of fixing 6 and 18 so yeah it will be your turn after Commissioner Orton Commissioner Curry.

>> COMMISSIONER ORTON: So General Counsel I guess, I can't see you guys over there but I think we have been asking for specifics and the specific that I heard is that 6 and 18 need to be further unpacked? And you gave a number and 1 through all of them and if it's over a certain percent we need to look at that.
So can you tell me again what that number was.

>> MS. JULIANNE PASTULA: My suggestion was and Mr. Morgan was very helpful with it, however the data is best displayed but that the Commission start with the data chart and look at the list starting with one and I would recommend anything with a higher than 40% Black voting age population be looked at.
This will also give the Commission an opportunity to look at their population numbers at this time and that way by the time we get to District 110 we will know this map is okay for -- to have Dr. Handley run the partisan fairness measures.
So that would be my recommendation is just scrolling down the data and if there is anything, again, that looks percentages that look kind of high, the Commission can take a closer look.
But again with the modifications that the Commission has made, again, looking at the current data percentages would be what I would recommend and then when we see those districts, we can address them and make sure that all of them are addressed is my goal.
By going through the chart in this fashion.

>> VICE CHAIR ROTHHORN: Okay so our Chair has returned.
So I'm going to turn it over to Chair Szetela and.

>> CHAIR SZETELA: Yep so, I will take over from here.
First, I'd like to remind everyone, take it off? Commissioner Woods were you going to ask me to remind everybody?

>> MR. EDWARD WOODS: Yes.

>> CHAIR SZETELA: That is what I was about to do remind everybody we are required to wear masks in the building so if everybody could get their masks on, I would appreciate that.
This map we have open right now just so I'm oriented this is a full map we have of the full state with the changes I had suggested yesterday.
Is that.

>> MR. MORGAN: Yes, that's correct.
I made the changes as directed.
We stipulated I would do that.

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I uploaded the plan and this is the same plan copied over to a new file for adjustments and working today.

>> CHAIR SZETELA: Okay thank you for that orientation.

So it is Commissioner Curry's turn and so per General Counsel's request I think what she is suggesting we just go down the districts one by one and anything that is over 40% look if we can rebalance it so looking at the District numbers, I'm looking at number 2 would sort of be the first candidate can we rebalance because it's 57% African/American.

Commissioner Orton?

>> COMMISSIONER ORTON: Okay so this has been said like three times but I'm confused now.

This map we are looking at, is in the map that we all came up with? Or is this the one that you redid?

>> CHAIR SZETELA: I believe from Mr. Morgan it is the map that we all did together outside of the Detroit area.

But it includes the changes I proposed yesterday for the VRA purposes so he folded my neighborhood changes into this map.

>> MR. MORGAN: That is correct from my understanding that is what I have in front of us.

>> COMMISSIONER ORTON: Can we go look at those changes again to see if we all agree with that? I don't recall what that was.

>> CHAIR SZETELA: Commissioner Witjes?

>> COMMISSIONER WITJES: Two things, no, actually just one thing.

We are supposed to be looking at the voting age population percentages, correct?

>> CHAIR SZETELA: I believe so.

>> COMMISSIONER WITJES: Why is the minority column blank?

>> MR. MORGAN: It's going to be the inverse of the non-Hispanic white so I can give you that information.

It's the inverse of this.

So in this second District it's going to be 75.4.

>> COMMISSIONER WITJES: Got it that is all I needed to know.

I can do that in my own head.

>> CHAIR SZETELA: You can also grab on your if you have it open pull it's an excel sheet so you can just pull it down.

So Commissioner Orton did you want to see the other map?

>> COMMISSIONER ORTON: Remind me of the changes that you made.

>> CHAIR SZETELA: It was a lot of small tweaks.

I think probably easiest thing would be to pull up the old map and then put the shape file back over it because then you can see because I adjusted the borders of Dearborn,

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Dearborn Heights, Redford, Livonia and a bunch of small tweaks all the way up to get rid of what people were calling the bacon strip.

>> MR. MORGAN: The request is to show the districts 1 as a layer as a shape layer and then one being in the mapping software.

Okay so right now I have the adjusted plan on the screen.

So I can try to either go back to the previous one and show the adjusted as an outline or I can show the previous one as an outline on this map.

>> COMMISSIONER ORTON: Whichever is quicker.

>> MR. MORGAN: Okay just a moment.

>> COMMISSIONER ORTON: No one is seeing my hand but while we are waiting for him to do that so can I just have some further clarification.

So we are going to go through and we are going to look anything above 40% because we want to be make sure that the whole plan is VRA compliant.

Does that mean so this is a -- this is a densely populated minority population City so does that mean anything above 40% is not VRA compliant?

>> MS. JULIANNE PASTULA: Through the Chair to Commissioner Orton, yes, I think as you start again with the list at District 1 and look at that the Black VAP, if it's above that 40% particularly in the Metro Detroit area how that can be minimized and I know from the chart that Mr. Morgan had displayed Chairperson Szetela mentioned District 2 but it's also 6, 8 and 14 from that list.

But again looking at the chart, the data will enable you to verify the population deviation, look at the Black voting age population and proceed from there.

>> CHAIR SZETELA: Does that make sense Commissioner Orton?

>> COMMISSIONER ORTON: No, not really.

>> CHAIR SZETELA: Commissioner Lange?

>> COMMISSIONER LANGE: I'm getting on board with Commissioner Orton here.

I need some type, and I mean no disrespect but I need set boundaries on what we need to go.

It's going to make our job a lot easier so we are not guessing.

So if I could get something that said 35-45% if you stay within that you're good.

That is going to help me.

Especially in areas that we're not familiar with.

I think that's what Commissioner Orton and she can correct me if I'm wrong but I think we are looking for a direct guidance as far as an absolute number so help, please.

>> CHAIR SZETELA: Yeah, Commissioner Lange that is my understanding of what we are looking for is we are trying to bring things between 35-40% because based on Dr. Handley's analysis of racially polarized voting that those percentages would enable minority candidates to elect their candidate of choice in the Metro Detroit area because it's so highly concentrated and so highly democratic.

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So that is sort of the sort of boundary line Mr. Adelson is encouraging us to bring the districts down to if we can.
I'm not necessarily sure we will be able to just given the density of the area but that is kind of what he is suggested we do is these Districts that are 59% African/American or 60% that we try to bring them closer to that 40%.
General Counsel did you have a comment?
>> MS. JULIANNE PASTULA: Thank you Madam Chair yes, I was going to highlight Dr. Handley's racial block voting analysis and offer to the Commission when you were drawing the original districts the range for Detroit was 35-40%, Oakland County was above 40%.
So it's based on the area you were in, that is why that's why I flagged the 40% to kind of go through and have that just as the identifier to use.
And then see what area you're in and then you can that will provide the further guidance.
So again the goal is looking at the chart the data chart that will show the equal population deviation, it will show the Black voting age population, and that will enable the Commission to go through line by line and flag any issues either with equal population or with the Black voting age and my recommendation again I know District 18 was one of them but rather than try to remember or call out which districts might need to be looked at my recommendation is that you start with number 1 on the chart and just look through the data to identify what districts would need to be adjusted even if you just make a list and then go back and start fixing them.
Was that helpful?
>> COMMISSIONER LANGE: It is now I'm looking for Dr. Handley's report again so thank you.
>> CHAIR SZETELA: Why don't we make it simple and do what you suggested General Counsel and come up with a list.
I think that would be easy so Metro Detroit area and I'm just going to start writing this down so right now we have District two and John you want to go ahead.
>> MR. MORGAN: Since Commissioner Orton was still asking for a comparison of the boundaries of the two different plans, we also went through the exercise yesterday of showing the demographics of both of those two side by side.
So I could do that both like we have the spreadsheet on one view and then the map on the other.
>> CHAIR SZETELA: That would be helpful.
>> COMMISSIONER CURRY: Madam Chair.
>> CHAIR SZETELA: Yes, Commissioner Curry?
>> COMMISSIONER CURRY: While we went on that my screen has went very foggy, fuzzy, I can't see people or whatever so if they can straighten that out camera men.

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>> VICE CHAIR ROTHHORN: We have fuzziness over here too so they are working on something.

>> COMMISSIONER CURRY: Madam Chair Szetela sed yes Commissioner Curry?

>> COMMISSIONER CURRY: Before you sat down, they said something about someone I think it was either John or Bruce said that it was 18 and 6 or 18 and another number I think it was two they already had kind of brought that to our attention they were over packed and maybe we could look at those.

So they only named two.

>> MR. MORGAN: Commissioner Curry this is John Morgan to answer your question it was District 18 and 6.

I think you should be able to see the screen with those districts.

And then also to Commissioner Orton's question, I think I'm showing the plan that was worked on before the adjustments from Commissioner Szetela.

And then Commissioner Szetela's adjustments are in the dark blue lines.

>> COMMISSIONER CURRY: Okay great, I see it.

>> CHAIR SZETELA: So most of the changes are around the Livonia, Redford and Dearborn area so you see how it's minor adjustments to those changes and Dearborn I made the District more north south instead of east west.

>> COMMISSIONER CURRY:

>> VICE CHAIR ROTHHORN: So I'm wondering where we are at.

I think John has got the map up so do we bring the spreadsheet up is that the idea next?

>> CHAIR SZETELA: I think Commissioner Orton is looking at the changes.

>> COMMISSIONER ORTON: I'm just looking at it thank you.

Sorry my brain was done by the end of the day yesterday.

Okay thank you John.

>> MS. JULIANNE PASTULA: Madam Chair.

>> CHAIR SZETELA: Yes, General Counsel.

>> MS. JULIANNE PASTULA: Very briefly again if the Commission wanted to preserve the collaborative map, if the Commission wanted to analyze Commissioner Szetela's map, the Commission decides the number of plans to publish.

So if that was another way to move forward and I know you have I believe the house is the only map that we only have one plan on.

So that would also be again an option if the Commission wanted to move forward in that manner.

>> CHAIR SZETELA: So are you still looking at this Cynthia? Or are you okay so basically the goal of this was to target those VRA numbers because they were I had the paper yesterday but it's in my bag but they were originally 70% for 14, 15 and 17. So this brought it closer and a 15% drop.

And Mr. Adelson's suggestion yesterday is we try to take them down further.

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Let me try to make an adjustment.
This is the theme based on African/American voting age population.
>> COMMISSIONER CURRY: What is that area under?
>> MR. MORGAN: This shows the thematic dots and the numbers, just the population.
>> COMMISSIONER CURRY: And we need to reduce that population by how much? It's over.
>> MR. MORGAN: Current population of District 18 is 76.7% African/American voting age population.
>> VICE CHAIR ROTHHORN: I think our goal Commissioner Curry is to reduce it.
>> COMMISSIONER CURRY: 40, 45.
>> VICE CHAIR ROTHHORN: Correct, yep.
>> COMMISSIONER CURRY: Okay, then we need to try to give some of that possibly to Ferndale from what I can see.
>> MR. MORGAN: You're talking about possibly putting some of the African/American population from Detroit into the Ferndale District.
>> COMMISSIONER CURRY: Possibly because they are only stepping foots away.
>> MR. MORGAN: This version, that's District 8.
>> COMMISSIONER CURRY: Uh-huh and Hazel Park is quite a ways from all of that.
They are like really closer to 9, 10-Mile road or something.
Hazel Park is really not that affiliated or contiguous with 7-Mile, I can't see your words now, but Oak Park and Royal Oak and all that, Hazel Park is not contiguous with it that much.
Now, I am you all can see this map like I can.
So I'm you know either way we go with this h we are going to have to move something if we are over.
And what is in 8?
>> MR. MORGAN: Hazel Park, Ferndale then it comes down to Highland Park.
It's this area here.
>> COMMISSIONER CURRY: Hazel Park is that I do not put Hazel Park with either Highland Park or Ferndale for some reason.
But I see it on the map.
But there's not a lot of contiguous at that, with that at all.
Even with the bell, what is that? The minority that's there in Highland Park? The Bangladesh.
>> CHAIR SZETELA: Bangla Town is that what you mean?
>> COMMISSIONER CURRY: I'm not even familiar with them being in Hazel Park and when they came to our open meetings, they did not even mention Hazel Park that much.

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>> VICE CHAIR ROTHHORN: You are doing that great.
If you stay in Detroit on Royal Oak area, do you think there is a significant white population that will help balance.
>> COMMISSIONER CURRY: Ferndale is pretty and I think it's more white Ferndale so if we add some Black or minority there, that would probably kind of equal it out some.
>> VICE CHAIR ROTHHORN: What about the pleasant ridge area like is that part of Ferndale or not part of Ferndale?
>> COMMISSIONER CURRY: No, it's kind of in their own.
>> VICE CHAIR ROTHHORN: Do you want to try that and see how it affects the numbers?
>> VICE CHAIR ROTHHORN: Juanita, we can't hear you and it looks like you are frozen.
Okay we lost her.
There she is.
Commissioner Curry? We couldn't hear you for a minute.
It looks like you are on mute.
You are still on mute Commissioner Curry and we still can't hear you.
>> COMMISSIONER CURRY: I was saying that I was addressing that to Bruce Adelson.
Mr. Adelson, I was trying to think and I know pleasant ridge is white minority and I think they kind of want to stay like that but, maybe we can move some of Royal Oak.
>> VICE CHAIR ROTHHORN: So I'm hearing you Commissioner Curry you're talking about yeah where a Black and white balance may not be helpful for the whole community, we have racially polarized voting in the state and recognize there are people that don't want to be together.
And that's kind of what I'm hearing is that pretty accurate?
>> COMMISSIONER CURRY: And I'm just thinking in pleasant ridge because I don't see that mixture there at all there hardly but I know there is probably a few minority people that are there.
In fact, I have seen one or two but it's so less that I mean it's like a little place that we leave people alone and let them do their thing there and nobody tries to move in that community or what but we are trying to depopulize in Detroit by moving them around.
Do you guys got any suggestions?
>> VICE CHAIR ROTHHORN: My one suggestion with pleasant ridge if you don't like that one.
>> COMMISSIONER CURRY: Really okay let's try it and see.
>> VICE CHAIR ROTHHORN: I think it might not be a good fit with the rest of the District of 18.
>> COMMISSIONER CURRY: I don't think it would be a good fit.
>> VICE CHAIR ROTHHORN: You don't think it's a good fit.

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the first criteria and I think again I don't believe that we have to choose but we have to justify and recognize the cost if you will of our choice.
That's I think what we are doing here because Mr. As Commissioner Eid is doing what we are doing is we are trying it, we recognize that it's, yeah, it's painful and we have to try it because we do want to get these maps done the right way the first time and legally.
Was there Commissioner Witjes, please?
>> COMMISSIONER WITJES: But according to what you said earlier they are VRA compliant because you said one is VRA compliant and one is more VRA compliant so which is it? Because I don't know.
>> VICE CHAIR ROTHHORN: General Counsel please.
>> MS. JULIANNE PASTULA: The data for number four or actually the District 18 is the one that I will use as the example that had 76.72% Black VAP would be considered a packed District so what we were trying to do is utilizing the racial bloc voting, which provided the Commission with the percentages by which the minority voting population would have the opportunity to elect their candidates of choice, you don't and in Detroit the current maps the analysis showed that the districts were packed up to you know 70%, 90%, some of the districts.
Which is shocking particularly when you get the RBV analysis that says the 35% or could elect a candidate of choice.
So I hope that was helpful in what the goal is.
So and I know a lot of our public commenters and in the portal, I've seen the maintaining the majority minority districts that the City currently has and again Dr. Handley's racial bloc voting analysis demonstrated that they are not necessarily that the ability to elect, the opportunity to elect can be preserved without having those types of districts.
>> VICE CHAIR ROTHHORN: So for the moment Commissioner Eid take us into lunch please.
>> COMMISSIONER EID: I will just continue to finish fixing this.
Those three neighborhoods above Grosse Pointe, yes, those can you take those and put them into District 4?
>> MR. MORGAN: That took too much.
Do you want me to just do one of those three?
>> COMMISSIONER EID: No assign all of it, all of those three neighborhoods then we will take off from elsewhere.
>> VICE CHAIR ROTHHORN: If I'm not mistaken, they are a community of interest themselves and do a line with the points.
>> COMMISSIONER EID: At least with Grosse Pointe Farms which is included in there, that is in the map that you just showed.
>> VICE CHAIR ROTHHORN: Okay.

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>> VICE CHAIR ROTHHORN: Commissioner Orton and Commissioner Eid and John but then Commissioner Orton then Commissioner Clark.
Sorry that was not very clear.
Commissioner Orton please proceed.
>> COMMISSIONER ORTON: Okay, so before you did this, Commissioner Eid, the voting age Black population in District 4 was 41.2% which is quite a bit closer to the target that we are going for.
Now it's a lot higher.
So besides we split up the area we were trying to keep together.
So do we think it's an improvement?
>> VICE CHAIR ROTHHORN: Commissioner Orton do you want a respond from Commissioner Eid there.
>> COMMISSIONER ORTON: Or anyone.
>> COMMISSIONER EID: I think that with how we had District -- you were just speaking of District number 6 correct or are you speaking of District 4?
>> COMMISSIONER ORTON: District 4 is substantially more out of the range than what we wanted.
>> VICE CHAIR ROTHHORN: I think John is bringing up that, right, what you were suggesting or saying Cynthia, right is that it was well the minority percentage for 4 but voting age was 41% Black Hispanic and now it's 58 and for District 6 it is significantly lower, yeah, so that is the question right Cynthia.
Like is it an improvement? Commissioner Eid do you want to try to analyze that or do you want Mr. Adelson or move to Commissioner Clark?
>> COMMISSIONER EID: I think the purpose was to shift the Black voting age percentage from District 4 I'm sorry District 6 which was at 67% lower.
So now instead of having one District way over on the percent we Ned to hit we have two that are close both being around the 45-55% range which I think is a more in line with what we need to get than the 68% range it was at before.
>> VICE CHAIR ROTHHORN: Commissioner Orton do you have a response.
>> COMMISSIONER ORTON: I thought we were going 35-40% so they are both way out from what I'm thinking.
>> VICE CHAIR ROTHHORN: Mr. Adelson do you want to help us?
>> MR. BRUCE ADELSON: I do think it's a net improvement and that things are moving in the right direction.
Does that mean that you know we are necessarily finished with them? I would say, no.
But I do think that as part of the overall process, yes, there is a net improvement because one of the questions that not a question but one thing to keep in mind is since this is a large urban City with concentrated population, we still may find that we cannot achieve the absolute sweet spot for every District.
I think that that's an aspirational goal.

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But I don't know that we can get there.
So for purposes of now, there is a net improvement and I think that as the process continues that I expect the improvements will continue.
Thank you.
>> VICE CHAIR ROTHHORN: Want me to move on to Commissioner Clark?
>> COMMISSIONER CLARK: I was going to ask Bruce Adelson's opinion on it so.
>> VICE CHAIR ROTHHORN: Commissioner Clark and Commissioner Eid?
>> COMMISSIONER EID: We were able to maintain a community of interest with Grosse Pointe Farms with Grosse Point and those adjacent neighborhoods that were submitted to us.
So I think that is also a positive.
While we had to split up all of the five Grosse Pointes from each other for the house map they are still together on the Senate map and the Congressional map.
While I really honestly don't like it, I think that if that is what we got to do to get to compliance that is what we got to do.
>> VICE CHAIR ROTHHORN: Thanks Commissioner Eid.
So I think that concludes your turn.
I think we've I this -- I think we are okay.
And Commissioner Kellom we are on to you.
>> CHAIR KELLOM: Hello, okay, what other were needing tweaking? I know that there was a list.
I heard Chair Szetela call out the numbers and I'm also looking at the percentages but if you know them offhand.
>> CHAIR SZETELA: The point is we have a lot of districts high African/American percentages and going down the list and looking at ones that were high and try to bring them in the range of 35-40 so you can start with any District that is high.
>> VICE CHAIR ROTHHORN: Are you familiar with this spreadsheet John has brought up here.
>> CHAIR KELLOM: Yes, MC I am.
>> VICE CHAIR ROTHHORN: Yeah, it was honestly just an effort to orient you.
>> CHAIR KELLOM: Yes, no I've been listing.
What I'm asking to expedite it if we can call it a number because I have not been writing them down but I can scan for myself this that is easier and look at the percentage and figure it out that way.
>> CHAIR SZETELA: I think it was number 18 that was the one that was high.
>> MR. MORGAN: That was adjusted by Commissioner Curry.
>> CHAIR SZETELA: Commissioner Curry did that one.
>> CHAIR KELLOM: I think she was deciding between the District and I think it was 18.
>> COMMISSIONER CURRY: 2 and 18.

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But he said it's not that high considering so then I was going to stop my turn.
But then we got more hands so I'm going to stop talking and I want a specific direction in terms of what to do.

>> MR. BRUCE ADELSON: Commissioner Kellom, I don't want you to use the term direction but I will say I wish you and I continued our collaboration with District eight to further our compliance refinement.
And that the population that we will need to adjust from 8, that will you know obviously affect the connected districts.
But I think that -- my recommendation is you and I continue with eight to see how we can further improve the population for the balance of your turn if that is okay with you.

>> CHAIR KELLOM: Okay Roth Commissioner Kellom I think Commissioner Eid may have a follow-up to that thought go ahead Commissioner Eid.

>> COMMISSIONER EID: I think what is confusing everybody because it's definitely confusing me, I look at that number 53% that it's at now and it doesn't -- and this is more of a feeling, right, it does not feel that high compared to the population of the City itself.
Now I know our analysis has said that it only takes about 35-40% of Black voting age population to elect the candidate of choice for that community.
But I think my most basic question is: What is the highest percentage it can be to fend off legal challenges in the future? We might not be able to answer that now, but you know, examining that question and figuring out like what is the actual target we need to hit.
As you said earlier, we are not going to be able to get to 35-40 percent for every one of these Detroit districts I mean I don't see a way to do it.

>> VICE CHAIR ROTHHORN: I think through the actions of Mr. Adelson and Kellom they will try to experiment and see if they can get it lower.

>> MR. BRUCE ADELSON: I think to that point yes absolutely.
And to Commissioner Eid's point that one of the things to recall is one of the items that we discussed back in July when we discussed the racial gerrymandering and packing of districts.
The Supreme Court takes a District by District functional analysis approach. If the people in this area, which they can, can elect candidates of choice below 50%, then rhetorically how do you justify creating distributes that are over 50%.
So there is no like absolute magic bullet like you are guaranteed everything is cool.
But 53.85% yes, it's an improvement.
Yes, it is moving in the right direction.
But my feeling is that there is more to be done here.
Because I am low to just say creating 54, 55, 56% majority minority districts in an area that analysis is determined, Black voters can elect at percentages lower.
I'm not prepared to do that.

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So the axiom that Commissioner Rothhorn with all due respect kind of said in my head is try.
There is still more trying to do.
We are not at the end of the line yet.
>> CHAIR KELLOM: Okay, I agree with that.
I just want so my understanding from the beginning when I looked at the number is I should get it lower especially because of the neighboring districts needed some adjusting any way.
So that's what I was aiming to do.
Bruce I'm ready.
>> MR. BRUCE ADELSON: I'm with you.
I don't know the area as well as other people in the room but I'm with you.
>> CHAIR KELLOM: What I'm thinking to remove the population and look at the VAP this little area that kind of goes into District 2 can we Zoom in and let me see this neighborhood? Because I'm thinking of taking some of the lower part of 8 and putting that.
>> MR. MORGAN: This is Highland Park the Township within the City of Detroit that is a separate Township and Hamtramck, the cities that are inside Detroit.
So they are right here then the neighborhoods are around them.
And this is the boundary of eight and two.
>> MR. BRUCE ADELSON: Commissioner Kellom if I could also suggest there may be places to adjust to the north, north adjoining District is District 23.
Which I think has -- does not have a significant BVAP population so that is just the suggestion is another place to look for adjustments.
>> CHAIR KELLOM: And I need to make eight lower in population as well.
I'm about 2600 over in eight.
>> MR. BRUCE ADELSON: Remember Commissioner Kellom the amount you're within the sweet spot with the deviation for a non-Congressional plan.
The percentages under 3%.
It is very common to have state legislative redistricting plans that have deviations above that.
And the Supreme Court has said that's fine.
As long as you're pursuing a legitimate interest the pursuit here is Voting Rights Act compliance, that has been recognized for decades.
Including during the last round of redistricting. As a legitimate pursuit.
So you're with the deviation right now, 2600 over, you're good.
>> CHAIR KELLOM: Can I go over any more than that? A little bit over.
>> MR. BRUCE ADELSON: Yes, you can.
And.
>> CHAIR KELLOM: Let me go to the north then and let me see what is happening.

EXHIBIT 4

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Yeah, so you know the next 20 minutes.
All right so I'm prefacing this map saying I know it looks a little funky but the goal is to reduce the numbers.
Of the voters in the range that Dr. Handley is looking for us to do.
So this is just one, I just did this really fast on the fly.
During the lunch break, yes go ahead.
>> MR. MORGAN: Two questions on this, just as we had before where I could bring up the plan you're working on and bring yours as an overlay or I can just upload your plan straight into the program.
>> CHAIR SZETELA: I would upload it because I'm particularly interested in Mr. Adelson's view on the numbers.
Because the whole point was to fix the numbers and I think we can adjust lines where needed.
But I really want to know what his thoughts are from a VRA perspective with the numbers.
Because I've got some pretty big reductions in concentration within over a broad variety of districts and I'm hoping they are more in line with what he is thinking and that if he is and he is happy with it perhaps we can continue to tweak those lines to make them less you know less dividing communities, less dividing communities of interest.
It is certainly not a perfect map.
I don't want people freaking out about it online.
What did you say?
>> MR. MORGAN: Madam Chair.
>> CHAIR SZETELA: Yes.
>> COMMISSIONER EID: In addition to Mr. Adelson's evaluation for break down for populations you have been able to reduce I think it would be good to look at the break down of the Dearborn districts because they are going to change.
>> CHAIR SZETELA: Yes, I agree.
>> MR. MORGAN: I have the plan uploaded can you confirm what you think is the correct plan.
>> CHAIR SZETELA: Yes, that appears to be the correct plan.
All right like I said some of these districts are crazy.
They are long, they are narrow and skinny but 16 and 21 but if you look at the percentages for District 1, District 1 was not the big issue District 2 was originally 60.73%.
Voting age population African/American it's now down to 46.
3 was 28 and I brought it up to 40 so it's a little more balanced.
6 was 64%.
It's now down to 48%.
8 was 52% it's now down to 35%.

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14 was at 59% it's now down to 49%.
15 was at 49% it's now down to 42%.
And then 18 which was one of our big problem districts was at 76% and it's now down to 38%.
So I have on that list three districts that are above 50, a 53.24 which is 4, 51.9, 50.89 but everything else is below 50%.
So like I said it's just a thought.
I mean I think we can accomplish what Mr. Adelson is suggesting we do.
It's just going to require a little creativity and like I said I certainly don't think this is a final map.
We could definitely move some of these lines make things a little fatter or skinnier to make them not look so long and skinny but the point is I think it's a little closer to a VRA compliant plan than what we had.

>> MR. MORGAN: Madam Chair if I could just respond briefly.
I agree I think you just look the numbers often tell the story so the numbers in analysis really reveal what you have been doing is moving in the direction you said.
You've made some pretty significant compliance alterations and to your credit, I think no question just looking at the numbers you can see what the changes are.
And I agree.
I think that the...there will be opportunities to make additional changes, additional changes as you suggest.

>> CHAIR SZETELA: I do want to look particularly at 3 and I think it's 7 for the Arab American and looks like I have dis-continuities and 3 and 7 Arab American of interest and they were good in the last map but would like to see the voting breakdown if that is opportunity to elect District 4 Arab Americans because I did make some changes there but focusing on VRA because that is isn't one but Arab American is also a VRA issue.
Commissioner Clark?

>> COMMISSIONER CLARK: Yeah, when you put this configuration together, did the approach you take was to extent the spokes north and west both.

>> CHAIR SZETELA: I had to create a couple new districts so District 5 and 9 if you notice those are not what we had before so I changed the way 9 was going and added in the new District 5.
And I thought there was one other one I added too.
Lark.

>> COMMISSIONER CLARK: You did not create but reconfigured.

>> CHAIR SZETELA: In the process of reconfiguring I created a new District that was left over from the reconfiguration.

>> COMMISSIONER CLARK: We only have 110 districts is the reason.

>> CHAIR SZETELA: Ideally, I would like to get 21 and 16 looking more like 10, 11 and 12 in terms of their thickness if we could.

EXHIBIT 5

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>> VICE CHAIR ROTHHORN: General Counsel how do we help each other know where to begin in this compliance area so we get a list or something some way to work methodically through the process of compliance.

>> MS. JULIANNE PASTULA: Relative if we are looking at partisan fairness because the map that was run by Dr. Handley and Mr. Morgan through the software last week identified that there could be adjustments made regarding partisan fairness.
And the lopsided margins will identify the districts in which we can -- the Commission can look at and focus in on and decide if there need to be adjustments made.
Mr. Adelson will be here just after the lunch recess at 1:00 or 1:30 so he will be able to have the benefit of his expertise at that time.
But the comments were directed towards partisan fairness not Voting Rights Act.

>> COMMISSIONER WITJES: So that's where we need to start.
So we need to start by looking at VRA compliance even though Dr. Adelson is not here we know what we are looking for and before looking at communities of interest or beyond the VRA we need to make sure we are in compliance with the V RA or it will be an endless circle we are in.

>> COMMISSIONER VALLETTE: Okay let's start where Dustin said.

>> VICE CHAIR ROTHHORN: Would you like some help?

>> COMMISSIONER VALLETTE: I would like a lot of help.

>> VICE CHAIR ROTHHORN: Are there Commissioners here who understand where the adjustments to the VRA to get us towards VRA compliance are there Commissioners here who have suggestions or can help Commissioner Vallette?

>> CHAIR SZETELA: I would start with Metro Detroit because that is where we know we will have an issue.
So those districts that are in Metro Detroit 17, 19, 13, 8, 6, 7, 9, maybe 10 and 12 as well.
Hold on.
And I would look at what their voting population is.
Because the range we were suggested by in this area by Dr. Handley and Mr. Adelson was between 35% and 40% voting age population African/American.
So I would look where we don't have that and those are areas where we would need to make adjustments.
Commissioner Eid?

>> COMMISSIONER EID: I thought last time we worked on this when we because this was the first one we completed I thought that Mr. Adelson said that it was VRA compliant for the Metro Detroit area.

>> VICE CHAIR ROTHHORN: I'm seeing some nodding heads.

>> CHAIR SZETELA: Last week we gave us slightly modified directions and remember he said if you can give the African/American population the ability to elect

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with 35% why would you go with 50, why would you go with 60 so that was why the House District was redrawn was based on that guidance that he had given.
Because Dr. Handley's report says that the ability to elect in the Metro Detroit area because there is so much cross over voting 35 to 40% is really the threshold where you have a voting rights compliant District because the people in that area can vote to elect and have a candidate of choice with only 35% because there is so much cross over voting.

>> VICE CHAIR ROTHHORN: Okay so then in order to understand that so if we sort of scroll through and look at the racial demographics as percentage of voting population and non-Hispanic Black column and walk down that column it's District 6 it looks like is the first District that is 47 that maybe that we might that you may want to work on Janice, District 6 and then yeah, the other ones that were.

>> CHAIR SZETELA: 6.

>> VICE CHAIR ROTHHORN: 8 and 9.

>> CHAIR SZETELA: 8 and 9 although 8 is pretty close but may adjust between are 8 and 9 bordering? No, they are not.

>> VICE CHAIR ROTHHORN: 6 and 8 are bordering.

>> CHAIR SZETELA: 6 and 8 are bordering.

>> VICE CHAIR ROTHHORN: Nine and 13 are the highest it looks like.

>> CHAIR SZETELA: Yeah so, I mean but you could also look at 7 and move some of 6 into 7 that would reduce your 6.
And then just a little shifting operation, right? You're shifting maybe.
So 9 is 50%.
6 is 47%.
8 is 43.25%.
And then we have 13, which is 57.3.

>> COMMISSIONER VALLETTE: Okay well let's start with six.
And then John I want to look north of six to see if we can take some from there.

>> CHAIR SZETELA: Commissioner Orton?

>> COMMISSIONER ORTON: Maybe the theme for voting age Black population would help.

>> CHAIR SZETELA: The dots, yes.

>> MR. MORGAN: Is that what you like?

>> COMMISSIONER VALLETTE: Yes.

>> MR. MORGAN: Okay, this is the theme on the voting precincts.
One moment.
Okay.

>> VICE CHAIR ROTHHORN: Can you turn your mic on.

>> COMMISSIONER VALLETTE: I wanted to take from the corner there on Sterling Heights.

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>> MR. MORGAN: This into District 6?
>> COMMISSIONER VALLETTE: North.
>> VICE CHAIR ROTHHORN: In District 5 you would take.
>> COMMISSIONER VALLETTE: Yes, can I just take the corner and not the one that has a dot in it?
>> MR. MORGAN: Yeah, certainly.
>> COMMISSIONER VALLETTE: Okay.
>> MR. MORGAN: Let me undo that.
I'm not sure it actually took.
>> COMMISSIONER VALLETTE: Okay.
>> MR. MORGAN: I'm going to Zoom in so we can see the population for that.
>> CHAIR SZETELA: Commissioner Clark?
>> COMMISSIONER CLARK: Yeah, could you review what metrics we are trying to get towards? You indicated that Bruce gave us some different direction.
I agreed with what Anthony said that I thought he felt that this map was okay, so what is our target.
>> CHAIR SZETELA: Do you remember Dr. Handley's report where she broke down for Wayne County for the racial polarized voting and gave a chart with percentages that is what Bruce was mentioning last week and that's what I'm referring to.
The very last Page where she listed the percentage of voters in that particular demographic that you needed in order for it to be an opportunity to elect District.
And for Metro Detroit region it was 35%.
So that is what Bruce was saying to us last week and said it repeatedly we should aim between 35-40% African/American because those numbers it is VRA compliant, they can elect their candidate of choice and his point that he mentioned was why would you put 50 or 60% African/American in a population if you can achieve compliance with 35 so that was kind of his point.
>> COMMISSIONER CLARK: You are trying to reduce the African/American population.
>> CHAIR SZETELA: To 35-40 for VRA purposes per the direction of Bruce Adelson.
>> MR. MORGAN: I'm going to just back up one here.
It looks like the program is not actually assigning the population.
So I'm going to rebuild that plan.
It will just take a moment.
>> COMMISSIONER VALLETTE: Okay.
>> CHAIR SZETELA: Is it locked by any chance or just being.
>> MR. MORGAN: That is a possibility I'll look at that too.
>> CHAIR SZETELA: Commissioner Orton?
>> COMMISSIONER ORTON: So I guess we can't get clarification from Mr. Adelson until 1:00.

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But I remember also that he was happy with this.
And I do remember that he said you could work on it more and get it better but I feel like there is no end.
We could always work on it and get it more.
So I don't know how.
>> CHAIR SZETELA: General Counsel can you weigh in here?
>> MS. JULIANNE PASTULA:
>> VICE CHAIR ROTHHORN: You're muted General Counsel.
>> CHAIR SZETELA: You're on mute.
>> MS. JULIANNE PASTULA: I most certainly am I apologize.
That through the Chair to Commission Orton and yes that's correct.
Mr. Adelson is in transit right now so he is not available unfortunately.
That and you are also correct that the adjustments can be made again as often as the Commission wanted.
This was the map that Mr. Adelson indicated was compliant.
And of course further adjustments can always be made at the Commission's discretion.
But your recollection is accurate.
>> CHAIR SZETELA: So then just leave it if you want to.
Commissioner Witjes?
>> COMMISSIONER WITJES: Well if this map is compliant with the V RA let's move on to another map that's not compliant with the V RA.
Before you even start tinkering for other reasons in the Senate map.
>> MS. JULIANNE PASTULA: I apologize for the interruption Madam Chair.
Again the District that you are focusing on in the Detroit area I believe Commissioner Curry had got the District down almost 16% when she was working on the map.
So I believe Mr. Adelson did say if the effort was to be made to get those Metro Detroit districts closer to the 30 to 40% range that would be an excellent use of time.
>> CHAIR SZETELA: Yeah, Juanita did you work on the Senate map last week or was it a house map? I thought you were working on a house map.
>> COMMISSIONER CURRY: Madam Chair I'm not really sure.
Which one it was.
I can't remember.
But I know I did work on a couple of them.
>> CHAIR SZETELA: Yep, all right, and then to Commissioner Witjes' point we do have other I mean even if we say we're not going to change VRA we still have partisan fairness we can look at for this map as well.
So before we move on maybe we want to do that too.
Commissioner Eid?
>> COMMISSIONER EID: I would agree with maybe looking at other areas for now maybe until Bruce gets here to try to achieve partisan fairness.

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We are going to keep hitting this issue of what we as a Commission are going to call VRA compliant based on the advice of our attorneys.
We need to make a decision here on what is VRA compliance.
This is a question I asked last week.
I asked what is the highest number we can have that can still be defended in Court.
Because I don't think any of us want to be breaking up these communities as much as we are.
But we might have to because of VRA, right? The question is how much.
And I think we as a Commission might just need to make that decision.
Is that number 40%.
Is that number 45%.
Is that number 30%.
I don't know but we have to come up with a decision on what it's going to be otherwise we will just keep hitting this arbitrary number this looks good but can always get better until we you know decide like what is VRA compliance to us.
Again us as Commissioners here drawing the maps.
>> CHAIR SZETELA: Commissioner Clark?
>> COMMISSIONER CLARK: I agree with what Dustin said.
If Bruce has already said we are compliant we should probably keep it that way.
What we're going to do here if we want to make it noncompliant go further north further north until we get it down to 40 percentage or further west.
And it's the geography that puts us in a bind in doing that.
So I would recommend we stay under Bruce's original recommendations that this is compliant and keep it that way.
The Detroit area at this point.
>> CHAIR SZETELA: Commissioner Witjes I'm sorry then Commissioner Curry.
>> COMMISSIONER WITJES: And to your point that there is other things we can look at for compliance, keep in mind ranked or so let's make sure we get the first two things done and compliant before we move on to other things.
I mean we are just going to get drown in one map and get further into a bind later on this week.
So Commissioner Curry then General Counsel.
>> COMMISSIONER CURRY: Yes, I'm agreeing with what Dustin Commissioner Dustin and Douglas, Doug said.
And I think we ought to wait until Bruce comes and go to something else and work on it and make it compliance, get it to comply with what we need to be doing.
This one is pretty much in order.
Let's just go somewhere else and work on something else and stop this wasting a lot of time just talking, talking, talking.
And we have to talk.

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And I know that.
But we can move on to another one until Bruce comes in.
>> CHAIR SZETELA: That's a great idea Commissioner Curry.
General Counsel?
>> MS. JULIANNE PASTULA: Extent idea for the Senate map in particular again I think those districts that were up around and over 50% Mr. Adelson's direction was to try to get those lower, to make the effort to get those lower.
Particularly in the Metro Detroit area.
And I again cannot speak for him but I remember that day we were doing the Senate maps and the Congressional maps.
And I believe the Senate maps was the one where he indicated the districts were still packed at the percentage, they are in that they are currently in and that the effort should be made to make those percentages lower.
Because again based only the racial bloc voting analysis, those the percentages of minority voters does not need to be that high in those areas.
Thank you, Madam Chair.
>> CHAIR SZETELA: Okay, so it sounds like we do still have some VRA work to do with this map specifically districts 13, which is that 57%, 9 which is at 50 and 6 which is at 47.
I certainly I feel like 8 is at 43%.
And I think that's pretty good but we can certainly work on that a little bit but I don't see that as being high priority.
So 13, 9 and 6 are the ones we need to work on to try to bring down those percentages a bit.
Commissioner Rothhorn?
>> VICE CHAIR ROTHHORN: It might help Commissioners if you are looking at Lisa Handley's presentation Page 20 the map that shows the State House districts and the State Senate districts for the 2010 maps what she shows on that Page 20 is the areas that are packed and what she describes as the most packed is 50% to 70% meaning if we are in 50%, we are not unpacked it if we are 40%, we have not unpacked it.
The map shows where we should target.
All those districts 6, 8, 9 and 13 are all in the area if we are 50% range it's just as packed as it was in 2010.
That's kind of the map that I'm reading here.
>> COMMISSIONER VALLETTE: John, can you show the population in District 16 in that square.
>> MR. MORGAN: Sorry we were looking here at District 6 and District 5.
And this was the area you were talking about.
>> COMMISSIONER VALLETTE: Well, just show me the population of one of those.

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>> MR. MORGAN: Sure so District 5 which is adjacent is currently 6600 under, so the population is 258542 the District 16 is under by 2900.
It's 262228.
And just to clarify I was having trouble with the spreadsheet updating and now that's been resolved.
So we should be able to click anywhere you want now.
>> COMMISSIONER VALLETTE: Okay so this is current right now.
>> MR. MORGAN: Yeah, this is current, I took it back to the original state, the border between 5 and 6 is the same.
And then you were talking about taking this one precinct in and I did that and it did update.
So would you like me to do that or do something else?
>> COMMISSIONER VALLETTE: So can you take, continue up, yes.
>> MR. MORGAN: So this is 2714, I'll just point the attention here to District 6 is 3100 under.
So if we take the 2700 it should be about 400 under so let's see that.
It's 485 under so the software is updating properly.
Then it also changed the demographics slightly.
>> COMMISSIONER VALLETTE: Not very much.
>> CHAIR SZETELA: Commissioner Rothhorn?
>> VICE CHAIR ROTHHORN: I'll offer one of the strategies that Mr. Adelson said is legitimate to under populate.
To keep that percentage of voting rights down so as you're shifting remember that you don't have to get that exact population if it serves you.
>> COMMISSIONER VALLETTE: Okay.
>> CHAIR SZETELA: Commissioner Clark?
>> COMMISSIONER CLARK: As I look at the numbers in the active matrix, I'm looking at the percent of voting population.
And on District 6 we are 47%.
Which is below that 50 margin, 50% margin.
Now know they want it lower but sometimes you just can't do that because of the distribution of the people.
>> VICE CHAIR ROTHHORN: I think what the challenge is that we have to interpret our legal counsel's they are not precise because we are the ones that have to do it.
But I think what we can interpret from their advice is if we don't try to get to 35%, we have not done our due diligence and therefore we may be exposing ourselves to a legal risk we might be able to defend ourselves against but can't guaranty that.
I don't think they are suggesting it's a legal risk.
There is so many unknowns and I think that is why we are trying.
>> CHAIR SZETELA: So Richard did you have a comment? Okay, Mr. Morgan.

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>> MR. MORGAN: Yes, if I may address MC's point about under population, just from the theoretical point of view if you had under populated an area with a certain percentage of minority and let's say hypothetically it's right on the money and if you under populated it then the minority percentage might go up a little bit in the sense that it favors the minority community because you have the same amount of minority population but a lower population threshold therefore that same number of people is slightly more effective.
And I think that's what Bruce Adelson was talking about.
So in this circumstance if you under populate it a District, you actually may be not decreasing the minority percentage which is what you seem to be warning to do.
So you want to be -- does that make sense? I'm hypothetically explaining that.
>> VICE CHAIR ROTHHORN: As Janice adds population and potentially in with African/American districts unless they are not African/American districts, if she is adding African/American population she is decreasing, no I got it wrong.
>> MR. MORGAN: If you add nonminority population then you are decreasing the relative percentage of the Black or minority population.
So if you add a nonminority precinct of say 2000 people, then 3,000 whatever it is it's going to lower the minority percentage a little bit which is I think what you're trying to do.
But the opposite is if you were to leave it under populated then it sort of it increases the effective percentage of the minority community.
I think that's what Mr. Adelson was alluding to
>> VICE CHAIR ROTHHORN: Janice, I hope you got that.
>> COMMISSIONER VALLETTE: So I want to continue to add the southern part, you know, in Sterling Heights.
So can you add that one, that, yes.
>> CHAIR SZETELA: General Counsel did you have a comment too?
>> MS. JULIANNE PASTULA: Yes, thank you Madam Chair.
So Mr. Adelson has confirmed that he didn't sign off on either the Senate or the Congressional plan.
And I wanted to also address again the narrative that 50% minority is the -- that is not the courts have not supported that wholesale adoption of 50% or 51%.
What Dr. Handley's racial bloc voting analysis has given the Commission is the benchmarks and the guide rails for each of the Counties that need to be adjusted.
It's Wayne County is 35-40%.
Genesee is 35-40.
Saginaw is 40-45%.
And Oakland County is 42, 43%.
Again that would provide the opportunity to elect.
So you don't need districts with 60% minority voting age population in any of those four Counties to achieve compliance.

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Hopefully that clarifies it.

>> VICE CHAIR ROTHHORN: General Counsel I need those numbers one more time please because I think yeah, I just assumed 35% was for each one but there is a different threshold for each County is what I'm hearing you say so I'm going to write those down.

>> MS. JULIANNE PASTULA: Correct and those are supported by the charts in Dr. Handley's presentation for each of the Counties, Wayne and Genesee County the recommendation is 35-40%.

>> VICE CHAIR ROTHHORN: Wayne and Genesee.

>> MS. JULIANNE PASTULA: Uh-huh.

35 to 40 got it.

>> MS. JULIANNE PASTULA: Saginaw County Mr. Vice Chair is 35-45% and Oakland County is 42-43 and I wrote ish which is a legal term.

So the range is not 40 was too low and 45 Mr. Adelson expressed which too high or could be too high.

So those were the goals identified again by your racial bloc voting analysis.

And the interpretation by your Voting Rights Act counsel.

>> KIM BRACE: The reason why the numbers change with each County is because the voting patterns change within the County.

If you remember my earlier discussion early on was the fact those steppingstones will change with geography, will change with time, all of those factors come into play.

And that's why Lisa always looks at the local patterns that you see and you can tell that by the different Counties.

And that's why she calculated those as separate.

>> COMMISSIONER VALLETTE: John I'm trying to take some of the area from north and hopefully try to get some removed from either south or west.

>> MR. MORGAN: Okay so at this point you're in Oakland County and Sterling Heights with this District 6 so it's Warren, Sterling Heights.

>> COMMISSIONER VALLETTE: Right I still want to go back up north.

>> MR. MORGAN: Okay.

>> COMMISSIONER VALLETTE: I want to add some more of that.

See that the giggly line is that the river? So south of that.

>> MR. MORGAN: Okay so this one that says 3866.

>> COMMISSIONER VALLETTE: Yes.

>> CHAIR SZETELA: Commissioner Clark?

>> COMMISSIONER CLARK: Just pay attention what you're doing to the total population in District 5 as you're taking from it.

>> COMMISSIONER VALLETTE: I am, I'm going to try and remove some of the population south or east.

So do is that 3472?

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>> COMMISSIONER CURRY: Yeah, you are on the right track.
Just take those two right there and see what it does.
>> CHAIR SZETELA: Then could are keeping Sterling heights in two districts instead of three.
>> COMMISSIONER VALLETTE: 1834 and 4540.
And can I go south?
>> MR. MORGAN: Yeah, that is now District five is under populated by 15,000.
>> COMMISSIONER VALLETTE: And go west.
And go south between 5 and 6 south.
>> CHAIR SZETELA: Commissioner Orton?
>> COMMISSIONER ORTON: I'm thinking maybe the theme dots would help again because you're trying to find African/American population to move into -- move out of 6 I believe to balance the numbers.
>> COMMISSIONER VALLETTE: Okay can you put those up, John?
>> VICE CHAIR ROTHHORN: Commissioners from Detroit area what do you think of adding Harper Woods? There was something about District 7 the way it's drawn and Harper Woods doesn't really belong there.
>> COMMISSIONER CURRY: Harper Woods can go there.
It's not going to hurt it.
>> VICE CHAIR ROTHHORN: Okay, I guess what I'm also asking Commissioner Curry I know there are it is an African/American population there and it's -- does it fit better with the District? I know we are looking at Voting Rights Act primarily and holding a lot of complexity but I think if you see that District Warren, Sterling Heights, does Harper and the northeast side of Detroit, does Harper Woods fit in better also there?
>> COMMISSIONER CURRY: Yeah, because Harper Woods is on the west side of Woodward so it would fit.
>> VICE CHAIR ROTHHORN: I see is Harper Woods I may have said the wrong one. Harper Woods is on the east side of Woodward and just west of the Grosse Pointes. That is the Harper Woods I meant to say.
>> COMMISSIONER CURRY: Okay, well.
>> COMMISSIONER VALLETTE: Can I see south just a little.
>> CHAIR SZETELA: Commissioner Witjes did you have a comment?
>> COMMISSIONER WITJES: Don't worry if Harper Woods wants to be there or community of interest where Harper Woods should be.
That should be not something we're looking at.
We should be going into looking at just complying with the Voting Rights Act.
And if we have to go in there don't let that be a reason as to why because you're thinking about public comment, go straight off the numbers to get where we need to be on with VAR stuff.
And then go look at communities of interest.

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>> VICE CHAIR ROTHHORN: I hear that Commissioner Witjes.
I really did think because she was heading south and thought maybe that would work but wasn't sure if there was another reason to maybe go there because it's in 7 and may be balancing 7 out.
I appreciate that very much.
>> CHAIR SZETELA: Mr. Morgan?
>> MR. MORGAN: Okay, so at this point I would just say if you like how District 6 is configured then at this point you're only looking at adjusting District 5's population.
So perhaps you could look at adjacent District to 5 to take population.
>> CHAIR SZETELA: Yeah, I think you accomplished VRA with 6.
You are just a hair over 40% and we are supposed to be between 35-40 so you are good there.
And honestly the population is within deviation so I would just focus on trying to fix 5 at this point.
Or you could move over to 8 and start working on 8 too but whichever you prefer, Commissioner Orton?
>> COMMISSIONER ORTON: So we are within deviation on 6.
But it is still almost 7,000 high.
So if you took some a little more of the higher Black population in 6 and put it in 5 that's going to decrease the population over all and it will make it under 40% probably.
>> CHAIR SZETELA: I agree that is smart thinking but where are you going to pull it from? I mean you could pull a little bit into Detroit.
I mean take 5 into Detroit.
>> COMMISSIONER VALLETTE: Down, right there.
Right where you have your cursor.
>> MR. MORGAN: You could take a portion of Oakland County precincts into District 5 here, okay.
>> CHAIR SZETELA: Or just south of there, that is the Detroit border 2001, 2279, 1690 like that is all Detroit that you could pull up.
>> COMMISSIONER VALLETTE: Okay, the 2001.
>> CHAIR SZETELA: Yeah.
>> COMMISSIONER VALLETTE: Okay let's do that one.
>> CHAIR SZETELA: It's the very upper it's at 8 mile basically just south of 8 mile in Detroit.
Just west of Harper Woods.
Commissioner Orton?
>> COMMISSIONER ORTON: But that works too.
But that doesn't help District 6.
If we take that one that's just over the County line 5049 if we put that in 5 maybe that would help the number 6.

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>> CHAIR SZETELA: Doesn't 6 go into Detroit? Yeah, that is 6, that is 6 too, 6 goes down into Detroit.
>> COMMISSIONER ORTON: I thought it was a different color.
>> MR. MORGAN: Did you want me to revert the 2001 and look at these to up here?
>> COMMISSIONER VALLETTE: No, take the 2279.
>> MR. MORGAN: Okay.
Now both districts are within plus or minus 5%.
>> COMMISSIONER VALLETTE: I think I'm good.
>> VICE CHAIR ROTHHORN: Yes, you are.
>> COMMISSIONER VALLETTE: Thank you.
>> VICE CHAIR ROTHHORN: And you helped make us good.
>> CHAIR SZETELA: Brought your African/American below 40%.
So now you are perfectly in the sweet spot of 35-40.
All right.
>> VICE CHAIR ROTHHORN: Commissioner Vallette, so what we did is we have District 6 completed.
Did you also help us with 8? Okay so we still have 8 to go.
So we moved from 6 we moved from 47.8% voting age non-Hispanic Black voting age population to 39.8.
So a good 10%.
Well almost.
And I guess 8%.
So we are moving now to District 8 or 9 or 13? I'll turn it back over to you Chair Szetela.
>> CHAIR SZETELA: So at this point we will move on to Richard Weiss for your turn. Department of State staff did you have any questions for Commissioner Vallette? Thank you very much.
So Commissioner Weiss it's your turn.
>> COMMISSIONER WEISS: I believe you skipped over Erin.
>> CHAIR SZETELA: She has requested not to have a turn today.
>> COMMISSIONER WEISS: All right, I guess I'm looking here and are we going to try to do something with District 8? If possible.
>> VICE CHAIR ROTHHORN: Yes.
We are currently at 43.25 so you want to try to get it to 35-40 .
>> COMMISSIONER WEISS: Yes, I don't think my eraser is big enough.
>> VICE CHAIR ROTHHORN: Do you want me to leave this here for you?
>> COMMISSIONER WEISS: Yeah.
>> CHAIR SZETELA: Just for the public listening MC Rothhorn was discussing with Commissioner Weiss the populations we are looking at, which is District 8, 43.25 and District 9 which has 50% and 13 which has 57.3. And just directing him those are the districts we are attempting to remedy and bring into compliance.

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>> COMMISSIONER WEISS: All right my suggestions from anybody? I guess I need some help on this one.
Looking at District 17.
You could take a little out of there.
But I don't know if that would help.
>> CHAIR SZETELA: I would say 17 will probably not help.
Because I mean you might all the way down near core City which you know where everything meets all the spokes meet.
There are some more white populations along there so you could Zoom in there and look and see if you can pick up there because you are pretty close.
I think your best bet is going to look up along the border into Oakland County.
>> COMMISSIONER WEISS: Since you are a little more familiar with the area would you help out with that?
>> VICE CHAIR ROTHHORN: I can help too.
One of the things that might help is I believe that District 8 is where again we are not focusing on COI so I want to offer this as a way to increase non-Hispanic excuse me decrease the non-Hispanic Black but the Asian American dots District 8 and if we move into Troy 16, I think we also have an Asian American population and we may have that may help us justify keeping that District together.
And increasing our VRA compliance.
Mr. Morgan do you have a question?
>> MR. MORGAN: Yes, I would just point out the population of District 8 right now is almost 11,000 under.
So this may be an opportunity where only adding population may do what you are wanting to do.
And then also this District is in Oakland County and Wayne Counties.
>> CHAIR SZETELA: What is 17 at? I can't see the population for 17 just curious.
>> MR. MORGAN:
>> COMMISSIONER WEISS: 812 over.
>> CHAIR SZETELA: VRA.
>> COMMISSIONER WEISS: 33.
>> CHAIR SZETELA: Okay, yeah, I was going to say that lived divot that comes out under 17 from 8 is only 30% African/American and it's 1500 people so that might help too if you want to pull the 16 but I definitely think MC's suggestion probably makes the most sense because of the Asian population.
>> VICE CHAIR ROTHHORN: I think what you are suggesting is going in 16; is that correct Commissioner Szetela? I think Commissioner Weiss was looking for some help.
>> CHAIR SZETELA: I think 16 going into 16 makes sense.
Yes, those are the neighborhoods.

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That's fine.
We are going to fill that in, in a second.
2057 goes to District 10.
1541 goes to District 10.
And fill that entire in for me please all into District 10.
Scroll down and go south.
>> MR. MORGAN: 1868 want to include that?
>> COMMISSIONER WITJES: Scroll down some and then we are going to fill in the two there of 19 that are on the south that is squared off 1906 and 2501.
And actually we are going to add 2582, 2268 and 2121 as well.
All right, that is all for now we should all be in the green I hope and everything in the highest number should be 41% or around that for Black population and we can also run a partisan fairness but I don't think it's going to mat all that much.
It's not going to change from what we ran.
>> VICE CHAIR ROTHHORN: What I think you are saying the Black voting age population.
>> COMMISSIONER WITJES: Black voting age population I think we have the districts in question are at 40 or below 40.
>> VICE CHAIR ROTHHORN: Correct so district 9 went from 50 to 40.7 so that is excellent.
>> COMMISSIONER WITJES: District 6 is 39.86.
13 is 41.77.
>> VICE CHAIR ROTHHORN: The same as District 8 which is the other one, we wanted to do.
>> COMMISSIONER WITJES: Yep, perfect.
So I think I'm done at this particular point then for rationale for these adjustments this is taking into account the Voting Rights Act and looking at the voting age population and the Black voting age population to make them so that they…so the districts are able to elect candidates of choice and by definition of doing that we are taking into account diverse population of the State of Michigan.
Erasers down.
>> VICE CHAIR ROTHHORN: Thank you Commissioner Witjes Chair Szetela?
>> CHAIR SZETELA: Wondering if we can do this a different way without splitting Canton because it has the highly concentrated Asian population trying to preserve its own voting rights concern and community of interest.
>> COMMISSIONER WITJES: Feel free to give it a shot.
I could not do it easily.
I tried to go north adding Farmington Hills in District 9 and then adding Canton back in and it didn't really quite work.
>> CHAIR SZETELA: Can we create a clone?

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>> COMMISSIONER CURRY: I'm only saying this because I know when all of this is said and done, they are going to say to me people in Detroit you didn't fight for Detroit so I'm trying to see what is going on so I will have something to say when all this is past. I guess it just appears to me everything stays whole if it's white minority or Bangladesh or non-Hispanic, Blacks everybody stayed together. But looked like Detroit got chopped up and it's a lot of African/Americans there.
So I'm just trying to see where you put everybody.
>> VICE CHAIR ROTHHORN: Right and I think.
>> COMMISSIONER CURRY: The dots are those the dots.
>> VICE CHAIR ROTHHORN: Those are the dots.
>> MR. MORGAN: I'm going to use a pointer and put a little information on here.
So this precinct here is 35% African/American.
That's what that dot is.
>> COMMISSIONER CURRY: Can you tell me What Street John?
>> MR. MORGAN: This is Lafayette right off of 75.
>> COMMISSIONER CURRY: Okay that is not.
>> MR. MORGAN: This is Lafayette boulevard here and then up north this area here is 87% African/American.
And that's temple, Martin Luther king right up in this area.
>> COMMISSIONER CURRY: So Lincoln Park, River Rouge.
I don't live in either of the three, but couldn't you kind of spread those dots around to the right? To the south side? More south.
>> VICE CHAIR ROTHHORN: Are you asking we -- what I'm hearing you say.
>> COMMISSIONER CURRY: I don't know I'm just saying I made a statement I wish we could have but no.
I'm just trying to see what the population is and who we are going to be voting with when we get ready to vote.
Because I know that all of the different nationalities have been kept together more or less and look like Detroit got a little bomb and split us every kind of way it was.
>> VICE CHAIR ROTHHORN: Yes, and what I hear you saying is you also want to understand why we did it this way is that accurate?
>> COMMISSIONER CURRY: I do understand why it was done that way.
It didn't have to be done that way.
>> VICE CHAIR ROTHHORN: So alternatives.
>> COMMISSIONER CURRY: But it was done that way.
>> VICE CHAIR ROTHHORN: Want to explore alternatives and we are still at that point Commissioner Curry.
But and I think as we explore and try to get better alternatives, because.
>> COMMISSIONER CURRY: My thing is I want it in my mind to say that it was drawn fairly.

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I know why you kept Canton together.
They are predominately all white.
I know why Birmingham, Bloomfield all those places are predominately white and very wealthy.
I know all of that.
That is what they probably have in contiguous to be together.
But looked like Detroit was along with a few I don't know if they are poor folks or what because.

>> VICE CHAIR ROTHHORN: If you look at.

>> COMMISSIONER CURRY: Split it all kinds of ways.

>> VICE CHAIR ROTHHORN: The reason I think we are trying to split it is we are trying to get the numbers that we were given from Dr. Handley at 35% with the Black voting age population that is 35% so we did our best to try to draw that with that kind of understanding that the Black voting age population can elect a candidate of choice.
I don't think there are any districts even though they may not look like it. And it looks like it's splintered. But there is no District in here with a Black community cannot elect its candidate of choice.
And sometimes we are.

>> COMMISSIONER CURRY: What I'm saying is you got some all kind of people, some may vote and some are not caring about voting.
And I'm trying to see where you put all the people who don't really participate in voting, are they in 13 or.

>> VICE CHAIR ROTHHORN: If you can help us identify where we need to have a higher Black voting age population that would be very helpful is that what you are trying to help us do.

>> COMMISSIONER CURRY: Yeah absolutely.

>> MR. MORGAN: Commissioner Curry this is John Morgan and this is the area you were wondering about, there are a lot of these dots up here in the Central part of District 17.
In the southern part there is fewer dots.

>> COMMISSIONER CURRY: Okay, so you couldn't bring -- John to me it looks like those dots should be more circulated because we are the main Detroit is, it looks like it's where possibly I live and a lot of other people live.
That there is nothing but water and Lafayette big streets and Jefferson which is a Huge Street and not businesses really operating on those streets.

>> CHAIR SZETELA: I think it might be useful at this point since we have Mr. Adelson and the districts were based on his consultation and advice into these well it might be useful to have him look at these districts and tell us what his thoughts are with respect to voting rights compliance since he is here and we did redraw these to reduce the percentages.

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>> COMMISSIONER CURRY: I'm fighting too I want it to show a good effort was put in for Detroit because Detroit stays in Detroit most of the time and we look out for people.
People are very contiguous in Detroit and have a lot of things in common.
But the you break them up I might walk across the street and don't know nobody or go down the street and be out of my neighborhood.
And don't know the neighborhood that's there.
That's what I'm saying.
I just want to see the names of what people had.
Because.
>> VICE CHAIR ROTHHORN: Thank you Commissioner Curry.
>> COMMISSIONER CURRY: I don't see anything else that is broke up like that.
>> VICE CHAIR ROTHHORN: You are helping us get oriented to the area you care about and we are trying to use our time today because we are going to be working until 8:00 p.m. and we have this Senate map and we've done some work today to improve voting rights compliance and we have Mr. Adelson and we also recognize that it's not just voting rights that we want to get to today with this map.
We also want to look at partisan fairness and we want to look at other partisan excuse me other compliance issues so Mr. Adelson do you need an orientation about what we have done today or do you want to sort of dive in how can we assist you assisting us?
>> MR. BRUCE ADELSON: Good afternoon and yeah, I think an orientation might be good because just in the time that I've been here there have been a lot of adjustments.
But I also have a couple of things to say before we do that.
You know as you know it's very important if not essential that Dr. Handley's analysis be followed for compliance.
And there are different forms of that analysis depending on what County we are looking at whether it's Oakland, Wayne, Genesee, and Saginaw and election results tell the story.
A District can be created with whatever the population is unless the election results prove out that minority voters can elbow select their candidates of choice.
The other consideration fall by the wayside.
As we've discussed the adherence of Dr. Handley's analysis the importance of understanding racial bloc voting and I also just as a coincidence I spent a better part of the weekend discussing racial bloc voting in lots of different configurations.
And it is the Supreme Court has made it very clear that if you pack voters, if voters are put in a District in access of what racial bloc voting analysis shows, that's an issue.
And I know we have talked about that.
And we are going to continue to adhere to it, yes, Commissioner Rothhorn.
>> VICE CHAIR ROTHHORN: I want to acknowledge that means anything in Genesee County over 35 to 45% is that true?

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>> MR. BRUCE ADELSON: A couple things remember these are estimates.
These are based on districts that have never operated in an election.
So we are...have election results that in the whole matrix have been dis-aggregated to deal with different geographic areas.
So I think as Dr. Handley and I had said previously since they are estimates they are not adhering to an absolute 35%, 45% is not something that in my cautious preference that I necessarily would recommend.
Having a range, 35-40%, 40-45%, yeah, I think that's more advisable.
And I think two as we talked about last week one of the things that you all with doing or the Commission is doing is that much different than other jurisdictions that I'm familiar with or that I've worked with or dealt with.
Remember you are unpacking the districts.
You are not concentrating minority voters on the basis of race or color.
Beyond the level at which Dr. Handley determined.
Which is exactly what the Supreme Court says.
So what you are doing is very well it is the effort is compliant but you also have to realize too that typically throughout the United States when noncitizen Redistricting Commissions are drawn, there is a lot of packing.
A lot of finagling and I will mention just as an aside.
One of the areas I was asked to look at over the weekend involves not Michigan and not a state in this part of the country, where politicians from both major parties basically agreed as if changes as possible and the priority is to keep elected officials in office.
So that means packing minority voters at 70, 75, 80 percentage and were ready to go.
Needless to say this is drawing a lot of attention but that is completely different from what we are talking about here.
And the effort that you are making to deal with the issues that we've discussed.
So what I would suggest and request, yes, if I could get some kind of introduction to where things have gone this morning and then also, I suggest that we go down the list of districts, with districts starting potentially in the mid-30s with BVAP and see what the election results tell us.
How does that sound?
>> VICE CHAIR ROTHHORN: Very possible.
Would you like us.
>> COMMISSIONER CURRY: Can I say something.
>> VICE CHAIR ROTHHORN: Commissioner Curry.
>> COMMISSIONER CURRY: Yes, please I think everybody is doing a great job doing these maps and trying to be as fair and honest as we can.
I'm just trying to see if Detroit got a fair -- some people that are not going to ever do anything but drink or play outside, they are not going to go and vote nowhere.

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And I was trying to make sure that this area that I know is used to voting don't get split up even though the voting age is the same.
The people don't have a desire to vote you might as well not have the people in the place.
So that is what I'm saying.
That is why I wanted to see.
I know there are people in every nationality that is not going to go around the corner and vote for anybody.
I didn't want to leave Detroit.
I wanted to see where everything is so I know where that area is.
And I don't want to be put in the area where people don't care about voting.
>> VICE CHAIR ROTHHORN: Thank you Commissioner Eid?
>> COMMISSIONER EID: So before we go and look at the election results, I just have something that I'd like to get clarity on.
That might help the rest of the Commissioners too who I believe might be struggling with this.
Mr. Adelson, I appreciate all of the advice that you give us but I got to be honest I'm becoming increasingly uncomfortable with this direction that we're going under.
Because while it is unpacking the districts you know we don't have any District that is close to 90%, 70% or even 60%.
But you know the numbers that we are hitting it just makes me question how is that going to work with actually electing a candidate of choice.
And I think part of the problem I have with this understanding is the analysis did not include primary election results.
So like if we look at District 17 here.
We have it at 35.14% Black voting age population.
If you have a primary election where there is two Black candidates and a white candidate how is it that you know the candidate of choice is actually going to get elected? I understand that in the general election, yes.
All of these districts that we draw are going to be democratic districts.
But that's not where the choice actually happens in these areas.
So I don't know if that helps.
I don't know if I'm being clear on the question I'm asking.
But it's just making me a little uncomfortable having to hit these percentages that are low I would be more comfortable with 45% but 35% thank you Commissioner Curry.
>> COMMISSIONER CURRY: Absolutely I'm in full agreement with you.
>> COMMISSIONER EID: I know that is a message relayed to me by other Commissioners as well so I think just some clarity on that would really help me.
>> COMMISSIONER CURRY: Yes.

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>> MS. SARAH REINHARDT: Commissioners just as a reminder to not speak over each other.
It makes the interpretation very difficult so please do not speak over each other.
>> VICE CHAIR ROTHHORN: Thank you Commissioner Eid I heard Commissioner Curry did you want to say something more?
>> COMMISSIONER CURRY: I just wanted to say one more thing Anthony touched on what my sentiments were because I know that if the voting population is so low 25, 30, 35 and not even have of those people vote you might as well not have a population hardly at all.
>> VICE CHAIR ROTHHORN: Thank you Commissioner Curry.
I know Commissioner Clark but I want Mr. Adelson to respond to what has been asked of him.
Commissioner Clark do you want to go first or should I have Mr. Adelson.
>> COMMISSIONER CLARK: Quick comment.
Personally I think we have done a commendable job unpacking Detroit.
It's a difficult thing to do.
And there is going to be some pros and cons to how we did it.
And as would be with anybody.
But it's a heck of a lot better than what we had ten years ago.
So I think we are headed in the right direction.
>> VICE CHAIR ROTHHORN: Commissioner Witjes or Mr. Adelson first which one would you prefer.
Go ahead then Mr. Adelson.
>> COMMISSIONER WITJES: Me?
>> VICE CHAIR ROTHHORN: Go ahead.
>> COMMISSIONER WITJES: So I also agree.
I think we have a commendable map here as well.
With unpacking Detroit.
But I also agree that that I share Commissioner Eid's concern with almost the exact same question he asked you.
So I really want to hear that.
>> MR. BRUCE ADELSON: And I have to stress and Commissioner Curry were talking about in areas vote or do not vote and we don't have data that I'm aware of or analysis.
I really have to stress this is a data driven legal process.
It's not an anecdotal process it's not a process where we look at something and make conclusive decisions because of that.
The racial bloc voting is dispositive.
The Supreme Court and Federal courts regularly adhere to and expect the parties to comply with.

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Racial bloc voting analysis, now, I can't tell just by looking at numbers without looking at election results whether or not these are ability to elect districts.
The point about primary elections Michigan has a very interesting has some interesting processes.
One of them is you select Attorney General candidates in conventions.
You don't hold primary elections for Attorney General.
So that is one primary election that there are no primary elections.
From what I understand from the Secretary of State's office and my own research there are no more contested primary elections statewide in Michigan than what you have.
And you only have there has only been one the 2018 gubernatorial primary which as we have talked about is quite revealing.
And has been quite helpful in crafting some of the districts and making some of the decisions.
So primary elections if you had them statewide primary elections would be helpful.
But we have to work with what we have.
And the election results that I've seen are the one primary election from 2018 statewide.
And the general election.
So I think that it's important to remember that.
That is something that is a little different for me.
I really have not been in a situation where so few contested primary elections are on the table.
At least statewide primary elections.
As far as the numbers we talked about that I've always recommended having a cushion that 35% is an estimate.
Building in a cushion is something that I would recommend since these are estimates but I have to strong there can't be any determinations about Voting Rights Act compliance without looking at election results.
So election results tell all.
>> VICE CHAIR ROTHHORN: Seems like that is where we want to go and I see Commissioner Curry is it important to respond or should we go to election results.
>> COMMISSIONER CURRY: I would like to respond because I will forget my thoughts.
>> VICE CHAIR ROTHHORN: Please go ahead.
>> COMMISSIONER CURRY: I don't mean to be the odd ball or the trying to tear down the whole map because I know what we are shooting for and have to do.
But I also know that if you put me in Canton, you put me in Bloomfield Hills Birmingham, Royal Oak and all those places just about 100% of the people that live in those places will vote.
But when you come to Detroit, this I know for a fact, you put some people everybody in Detroit don't vote.

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That is probably why they needed all the help they could get.
Because they don't vote.
Half of Detroit right now do not even know what redistricting is.
And it's not our fall.
I know that.
But some people just don't care.
You got that kind of crowd mixed in with Detroit.
That they don't care what happens.
But when you go to a wealthier place, Southfield, all those places, even Dearborn, whatever people are concerned.
They are concerned.
And when you just put a few people that are concerned that is why I wanted to see where the lines were.
When you see just a few people that a block or two that may vote and you got a whole half of a community that won't even go out their door to vote because they think already they have lost, then you got a problem there.
So I don't think the voting, the voting thing with the nationalities I have a problem with that with Detroit.

>> VICE CHAIR ROTHHORN: Commissioner Curry I think you are helping us give language to the idea we have not looked at socioeconomics, that we don't we have not addressed that yet and we also haven't looked at that sense of engagement or disenfranchisement is this population disenfranchised and maybe because of socioeconomics and you are helping give language to that so thank you.

>> COMMISSIONER CURRY: You're welcome.

>> VICE CHAIR ROTHHORN: Is it okay if -- what I want to do is pin that.
I want to hold on to that and see if we can get to it after we get to in the election results and trying to understand somehow where we are because I don't unfortunately at this point, we don't have socioeconomics or disenfranchisement as part of the legal criteria that will lead us to better compliance.
Is that accurate Mr. Adelson?

>> MR. BRUCE ADELSON: Well, as we know Commissioner Rothhorn and we talked about having more data is better than not having enough data.
I'm not aware of any data that addresses that issue.
Dr. Handley didn't include that in her analysis.
So if there are data that speak to that, great.
But I'm not aware of any and we certainly don't have it available from what I understand.
So we do have the election results which although we don't have more statewide primary results, we have what we have.
And that plus Dr. Handley's analysis are both very instructive and essential to compliance.

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>> VICE CHAIR ROTHHORN: Thank you Mr. Adelson go ahead Commissioner Curry.

>> COMMISSIONER CURRY: I'm still going to stand on my thesis that Detroit have although they are African mostly black African/Americans you have the voting population that votes I'm going to stick to that.
People do know.
Bruce you should know because I know it and Dr. Allen whatever she knows it.
What I'm trying to say is the whole politician area knows it.
People know it and know the areas where some people about going to vote.
They already know that and do it at every election and don't look for some people to come out.
That is what I'm saying.
We got to keep some of the places where we know people are not going to get up probably even in those rural neighborhoods.
There may be some people that is not even going to go there but it's going to be to their disadvantage.

>> VICE CHAIR ROTHHORN: So.

>> COMMISSIONER CURRY:

>> VICE CHAIR ROTHHORN: We are going to build a cushion, Commissioner Curry, because what I hear you saying we need more like 50% more than 35% to justify that.

>> COMMISSIONER CURRY: It needs to be higher.

>> VICE CHAIR ROTHHORN: We will try our best. Mr. Adelson will you help us with the election results, please?
I would offer we need 6, 7, 8, 17, 19, 13. And we deliberately tried to unpack 6, 8, 9 and 13 because those are the highest percentages. And we brought them down significantly. And if you would like those numbers, I can give those to you.

>> MR. MORGAN: District 8 not District 17 that Commissioner Curry was talking about.

>> COMMISSIONER CURRY: I want 17 too.

>> MR. BRUCE ADELSON: We talked about a systematic approach to compliance and that is very important for the record and record keeping in general so I would like to start let's start with 6 and work our way down the list.

>> MR. MORGAN: Okay here is District 6.
So Zooming in on District 6 it is a portion of Detroit, and then it's Warren then up to Sterling Heights in Oakland County and the current information here is 39.9 non-Hispanic Black and election results is what you want to see.

>> MR. BRUCE ADELSON: Please.

>> MR. MORGAN: So District 6 is 65% for Biden, 35 for Trump in 2020.
Clinton 66 Trump 34.
In 2012 Obama is 73, Romney is 27.

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In the Senate race Peters is 66 and James is 34.
In 2018 Stabenow 66 James 34.
In 2014 Peters is 74, and land is 26.
And then I've got in 2012 Stabenow is 79 and Hoekstra is 21.
For Governor Whitmer is 67.
And Schuette is 33.
For Governor in 2014 shower is 64.
And Snyder is 36.
For Attorney General Nessel 65.
And Leonard is 35.
For Attorney General in 2014Totten is 63 and Schuette is 37.
And then for Secretary of State 68 for Benson or 69 and 31 for Lange and Dillard is 62 and Johnson is 38 and then for the Governor's race in the primary El-Sayed is 26.
Thanedar is 26.
And Whitmer is 48.
And again that is District 6 election results.

>> MR. BRUCE ADELSON: Okay thank you.

I also want to comment about the primary election results and what the gubernatorial. I spoke to Dr. Handley about the whether there is what the primary results what they reveal of Black voting patterns and included in her analysis they are not statistically reliable for to determine the Black voting patterns because it's somewhat of a lack of cohesiveness.

The cohesiveness is part of the Thornburg versus Gingles requirements. So if there is no cohesiveness among a given minority group, then it's difficult to make valid assumptions and conclusions so we talked about that before and I wanted to add that.

So looking at the results 36 shows I believe across the board that candidates of choice prevail.
The elections are relatively close.
But this is not a District where minority candidates lose.
It's a District where minority candidates of choice win including the bellwether elections that involve minority candidates.
Either at the top of the ticket or as Lieutenant Governor nominee or vice Presidential nominee.
So this District based on the results seems to play out meaning seems to perform in the language of the voting rights act to elect candidates of choice.

>> VICE CHAIR ROTHHORN: Commissioner Eid?

>> COMMISSIONER EID: That's good I'm glad it does currently but it would have done the same thing before we lowered the Black voting age population to what we lowered it.

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So I'm trying to figure out what are we comparing this to? Should we compare it to what it was before we made these changes?

>> MR. BRUCE ADELSON: Let me speak to something else before I address that I think it's important to remember the U.S. Supreme Court has been absolutely clear that if you put additional minority voters into a District beyond what is needed to elect candidates of choice that's an issue.

So how many there is no bright line figure that over 10%, 20%, 30% but in the Cooper case versus Harris which we have talked about, the there was an African/American community that had for 20 years been electing candidates of choice.

They we below 50% voting age.

46%, 47%.

And they had substantial cross over support.

From white voters which Dr. Handley has also concluded exists in parts of Michigan. Certainly in Wayne County.

So the Court was threw out the districts and threw out the map and said that by including voters minority voters beyond what is necessary that was packing and you have one more voter or 5% voters that is a bright line number.

And in concentrated areas like urban centers you will have an issue that because the population is very concentrated.

It is not always possible to get to mathematical certainty and as I said that I realized that these are estimates so there is no mathematical certainty but what is certain if you pack voters beyond what is needed to elect candies of choice to give voters an opportunity to elect which is why the voting right requires then you run some -- may have some issues.

So I don't know if that completely addresses the point but if as I said before if you want to build in an extra cushion, I think I recommend that.

I think that is important because remember you are not building districts unlike what has happened in the state previously or unlike what has happened in some Court cases of 60, 70, 55, 80% minority population.

You are creating districts where you are diversifying population while retaining, protecting the ability to elect candidates of choice.

So I'm all in favor of and support having a cushion.

I would caution that that's not endless.

A cushion does not mean 60%, 55% certainly in a County like Wayne County where there is cross over support and Dr. Handley's analysis is clear.

>> VICE CHAIR ROTHHORN: Commissioners I'm seeing a couple of Commissioners that need a break.

Commissioner Curry do you want to speak to it now or do you want to try to do it after the break?

>> COMMISSIONER CURRY: I won't be long.

I will be short.

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And if they need to go to the rest room you can excuse them, please.
But I just want to say I'm not even thinking about races when I speak of this.
I'm only speaking from what I know.
I know Canton doesn't have a bunch of slouches in their City.
I know Birmingham, Bloomfield, Rochester Hills, Royal Oak I know those places do not have the burden that Detroit has.
You know, and something and it's not any of our faults.
But what I do know is there is a portion, a large portion and it's probably in other places too.
I'm just not familiar with them.
I'm only speaking and Detroit and not because of one way or the other but I'm just putting my two cents in for the City that I live in.
There is more slouches just about in Detroit it's probably half and half.
So when we do 35 or 40 or 39 or 35 it's really going to be half of that.
Because when I say some people don't participate in anything year in year out day in, day out and it's because of social problems.
And so that's automatically knocking Detroit all the way down when that should not be one of them voting rights for Detroit or any other City that has a poor turn out.
And I do know that the politicians, the people that do the voting they know the cities that have a poor turn out. When you are dealing with a whole 265,000 people and you only get 60 of them voting you know that is a poor turn out and it happens every time the voting area takes place, it always happens like that.
That is why Detroit is so concentrated and so big because we needed the extra bunch to get anything done but to each his own.
I'm just throwing that in there.
It's not only for Detroit.
I will feel that way about Canton or any other place in the state.
When you know that that's happening there should be some kind of something to rectify it.

>> VICE CHAIR ROTHHORN: Thank you Commissioner Curry.
It is 2:25.
Let's take a ten-minute recess.
I'm going to call it 15.
Hearing no objections let's stand in recess for 15 minutes until 2:40, please.

>> COMMISSIONER CURRY: Can someone take this black spot off my -- thank you.
[Recess]

>> VICE CHAIR ROTHHORN: As Vice Chair of the Commission I'm going to call the recall the meeting back to order Secretary of State would you please call the roll?

>> MS. SARAH REINHARDT: Good afternoon, Commissioners and welcome back from your break.

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>> VICE CHAIR ROTHHORN: Thank you.
>> MS. SARAH REINHARDT: When I call your name if you are attending remotely, please announce where you are attending remotely from you can use your County City Township or village.
I'll begin the roll call with Doug Clark.
>> COMMISSIONER CLARK: Present.
>> MS. SARAH REINHARDT: Juanita Curry.
>> COMMISSIONER CURRY: Present; attending remotely from Detroit, Michigan.
>> MS. SARAH REINHARDT: Anthony Eid?
>> COMMISSIONER EID: Present.
Brittini Kellom?
Rhonda Lange?
>> COMMISSIONER LANGE: Present; attending remotely from Reed City, Michigan.
>> MS. SARAH REINHARDT: Steve Lett?
>> COMMISSIONER LETT: Present.
>> MS. SARAH REINHARDT: Cynthia Orton?
>> COMMISSIONER ORTON: Present.
>> MS. SARAH REINHARDT: MC Rothhorn?
>> VICE COMMISSIONER ROTHHORN: Present.
>> MS. SARAH REINHARDT: Rebecca Szetela?
>> CHAIR SZETELA: Present.
>> MS. SARAH REINHARDT: Janice Vallette?
>> COMMISSIONER VALLETTE: Present.
>> MS. SARAH REINHARDT: Erin Wagner.
>> COMMISSIONER WAGNER: Present; attending remotely from Eaton County, Michigan.
>> MS. SARAH REINHARDT: Richard Weiss?
>> COMMISSIONER WEISS: Present.
>> MS. SARAH REINHARDT: Dustin Witjes?
>> COMMISSIONER WITJES: Present.
>> MS. SARAH REINHARDT: 12 Commissioners are present.
And ready to rumble.
>> VICE CHAIR ROTHHORN: Thank you Secretary of State staff we are still working with Senate map 165 making adjustments I believe we are going to return to Mr. Adelson and working towards compliance and trying to use some methodology to get through all of the districts that are required today with our Senate map. I believe Mr. Adelson you were just walking us through the election results and did help us understand District 6 as drawn was relatively okay opportunity to elect so we were going to move on.

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>> MR. BRUCE ADELSON: Yes, please all election results show that it is a performing District.
So my suggestion is as we did on Friday that we go down the list and if it's appropriate for me to do so just mention districts, look at the election results, see what they show and then just keep going.
If there are districts that need attention, we can just make a note of that and come back later.
>> VICE CHAIR ROTHHORN: Thank you Mr. Adelson Secretary of State?
>> Can we hold just a second, I think our interpreters froze.
>> VICE CHAIR ROTHHORN: Of course.
Okay Toi are you with us? We are good to go.
Thank you.
>> VICE CHAIR ROTHHORN: So Mr. Adelson it is appropriate, I think we would that, yeah, I think without objection I'm just going to suggest Mr. Adelson if you help us sort of be methodical and get towards a more compliant Senate map before the next recess that would be we would all be grateful.
>> MR. BRUCE ADELSON: Okay then let's do it so let's go next to District 8, please and look at the election results.
>> MR. MORGAN: Okay so looking at Senate District 8 which is Hamtramck a portion of Detroit, Warren and Madison Heights, the election results.
>> VICE CHAIR ROTHHORN: We need a moment while the Secretary of State brings the Zoom meeting back up.
Okay so Mr. Adelson can continue please continue Mr. Adelson.
>> MR. MORGAN: District 8 is Biden is 78, Trump is 22.
For Presidential 16 Clinton is 80, Trump is 20.
For 2012 Obama is 84, and Romney is 16.
For Senate it's 79 for Peters 21 for James.
For U.S. Senate 18 and 78 Stabenow.
And 22 James.
Senate 14 is 85 Peters and 15 land.
For Senate in 2012, 87 Stabenow and 13 Hoekstra.
For Governor it's Whitmer 80.
And Schuette 20.
Then showers 76.
And Snyder is 24.
Then for Secretary of State sorry Attorney General Nessel is 78.
And Leonard is 22.
And 2014Totten is 77 and Schuette is 23.
For Secretary of State Benson is 20 sorry is 80.
Benson is 80.

EXHIBIT 6

Szetela, Rebecca (MICRC)

From: Pastula, Julianne (MICRC)
Sent: Wednesday, October 6, 2021 7:12 PM
To: kbrace@aol.com
Cc: Hammersmith, Suann (MICRC); Szetela, Rebecca (MICRC); Rothhorn, MC (MICRC); Reinhardt, Sarah (MDOS); Badelson1
Subject: Partisan Data/Partisan Fairness Measures

Importance: High

Dear Kim,

We urgently need to have a telephone conference this evening to address this issue. The manner in which the partisan data is being presented does not assist the Commission in determining how and where to make focused adjustments to districts. The "trial and error" approach being employed today is far too time consuming and does not have any cognizable methodology. Even worse the time spent is not resulting in productive improvements. Given that the Commission only has 3 days left to finalize its draft proposed maps this must be addressed immediately.

On or about August 6th, I expressed concern with the display of partisan data as the Commissioners were focusing on the displayed political data and because we don't have competitiveness as a criteria, drawing with partisan data was inappropriate. At the time, you indicated it could be "hidden" leading me to believe it is in the active matrix. We need to discuss a more productive way forward so the Commission can interact with partisan data in a more meaningful and time efficient way.

I have taken the liberty of sending an invite for 8:30 pm. I acknowledge you are traveling to the East coast, please advise an alternate time this evening is needed.

Sincerely,

Julianne Pastula
General Counsel
State of Michigan
Independent Citizens Redistricting Commission
517.331.6318
PastulaJ1@Michigan.gov

EXHIBIT 7

A. It has to do with the political geography of the interaction of what you might call traditional geographic features with the distribution of usually partisanship in a state or country.

Q. And now, on the topic of the distribution of partisanship, in Michigan, are democratic voters more concentrated geographically than republican voters?

A. Probably.

Q. And why do you say probably?

A. If you had asked me this in 2012 or probably even 2016, I would have said definitely. But as the suburbs, particularly Oakland County, have swung against republicans, and as some of the more rural areas outside of Detroit and the city areas have swung towards republicans, I'm just not sure it's true anymore that democrats are appreciably more compact than republicans. I'm not saying it's wrong; I'm just saying I don't know. I'm not confident in that like I once would have been.

Q. Okay. Then let's focus on the area of Detroit in Michigan. In Detroit, are democratic voters more geographically concentrated than republican voters?

A. In Detroit, I think it's pretty much all democratic voters. I'm not sure you can draw a republican district in the City of Detroit.

Q. In the surrounding counties of the Detroit

region, would you agree that democratic voters are concentrated -- pardon me -- are more concentrated than republican voters?

A. I think ten years ago I would have agreed with that. But I'm just not sure anymore, given how Oakland County has changed over the course of a decade. You're talking about a county that generally voted at or a little bit to the right of the state for the first part, that now we're in a situation where Joe Biden carried it by, I think, 14 points, even though the state was incredibly close. It's just become a lot more democratic, and that helps democrats quite a bit in the Detroit area.

Q. And in Michigan, do you understand there to be a high number of democratic voters in rural areas?

A. No. But at a certain point that becomes a problem for republicans, because they start to see the same types of concentrations that democrats see in the cities.

So for an example, if you were to run the simulations on the state of Texas, which has seen similar shifts in its suburban areas at the beginning of the decade, using the Obama Romney partisanship, the mean efficiency gap is well to the right of neutral, but if you run it using the Biden Trump numbers, the average

efficiency gap in the simulations is almost zero. Republicans have lost their geographic advantage there.

I don't know whether in Michigan the changes have been that extreme, but I can't rule it out. I read Dr. Rodden's books, and I enjoyed them, but I think to some degree they've been supplanted by events.

Q. And by events, you mean more recent elections?

A. Yes, the transition of upper middle class white suburbanites out of the republican party and into the democratic party.

Q. Let's look at Page 26 to 27 of your report, Exhibit 1. You note here at the turn of the page from 26 to 27 that there is no realistic question here about the general election, as every district that has a BVAP of at least 35 percent is overwhelmingly democratic. Since black voters express a consistently strong preference for democrats in the aggregates, the black candidate of choice will almost certainly win the general election; do you see that?

A. Yes.

Q. Have you changed your position on these points since writing this report?

A. No.

Q. Let's turn to Page 12 of your report. I had a question for you, a simple question for you about which

precincts, which data you were using. On Page 12 it indicates Michigan precincts in 2020 by BVAP. Are you using 2020 census data here?

A. Yes. I think the way to read that -- and I see the -- I see the potential source of confusion there. It's Michigan precincts from 2020 by BVAP, not Michigan precincts by 2020 ACS BVAP.

Q. And now looking at this map that says Michigan precincts by BVAP, did you prepare a map like this of Michigan precincts by partisan vote?

A. No.

Q. Okay. Now, looking at this map on Page 12, would you agree that as for the Detroit area, black voters are concentrated -- and let me -- pardon me. Strike that. Looking at this map, would you agree that black voters are concentrated in Michigan in the metro-Detroit area?

A. For the most part, yes. There's a couple other concentrations around Flint and Saginaw, but yes. For the most part, metro-Detroit.

Q. Let's bring forward Exhibit 6.

(Defendant's Exhibit 6 marked for identification.)

Q. Mr. Trende, do you recognize Exhibit 6?

A. Yes.

Q. Okay. And I understood from your earlier testimony that you reviewed this report; is that right?

A. At a high level, but yes.

Q. And what is your reaction to this report?

A. I like Dr. Rodden. I think he's a good, clean writer. I don't think it does much to detract from my report. I think on a lot of things we're vigorously agreeing with each other, or -- I can't remember what the term of art is when you're yelling at each other in an argument where you agree, but I think we agree on a lot of things, just not the interpretations, or the law.

Q. Dr. Rodden makes the point from Page 2 to 3 that he viewed your report as implying that racially and politically heterogeneous districts should be viewed as a fingerprint of racial gerrymandering; do you see that?

A. Mm-hm.

Q. Do you agree with him?

A. No.

Q. Why not?

A. Because there can be racially heterogeneous districts that do just occur naturally. You might draw a perfect square that, you know, has some black population and has some white population. What you're unlikely to do is consistently draw little finger strips or bacon strips that run through some of the poorest

areas of Detroit to some of the wealthiest areas of Wayne County. Basically he ignores the context and analysis of my report.

Q. Dr. Rodden refers to your reference of divvying up Detroit area voters by race; do you see that?

A. Yes.

Q. He suggests that your maps show the opposite; do you see that?

A. Where would that be?

Q. The bottom of Page 2, last paragraph. The Commission's plans, quote, divvy up Detroit area voters by race. In fact, his maps show the opposite; do you see that?

A. Yes.

Q. And then he notes that whereas the previous redistricting plans often place boundaries precisely along the lines of residential racial segregation, the Commission's plans do not; do you see that?

A. Yes.

Q. Okay. Do you disagree with him that the previous redistricting plans often place boundaries precisely along the lines of residential and racial segregation?

A. Well, I think what he refers to as the lines of residential racial segregation I would refer to as township and county boundaries and city boundaries,

which are required to be respected under the Michigan Constitution.

But yeah, I agree that when you respect city and township and county boundaries as required by the Michigan Constitution, you sometimes will draw lines that fall upon old lines of residential racial segregation. The Eight Mile and the Grosse Pointes tend to have -- the Eight Mile tends to, in many places, delineate differences in race, and the Grosse Pointes are not terribly racially integrated.

Q. In your work, have you developed an understanding of how hewing closely to county/township boundaries affects the partisan balance of a plan?

A. I think at the beginning of the 2010s when Wayne County was overwhelmingly democratic and Oakland and Macomb Counties were swing to republican depending on the context, that would have a pretty significant impact on the partisanship of the plan.

That's not the case anymore. So, I mean, things have changed a lot politically in the last ten years, as I don't think any reasonable analyst of elections would disagree.

Q. Where do you show in your report an opinion that the partisan balance has shifted enough over the past ten years that complying with county boundaries no

longer has a partisan affect?

A. That would be the simulations that I ran that comply with county boundaries that result in a partisan distribution that's almost identical to what the Commission came up with.

Q. How does that address the shift over -- what you're describing as a shift over the past ten years and how hewing to county boundaries no longer has a partisan impact?

A. Oh. Well, that issue wasn't raised until Dr. Rodden's report that, again, to my understanding, I wasn't given an opportunity to respond to. But since I've talked -- discussed quite a bit about the shifts in Wayne County and Macomb County and been cross examined on it, I don't know what the state of that would be now.

Q. What would you do to respond to Dr. Rodden's point here?

A. I would show the political -- the election results for Macomb and Wayne and Oakland Counties over the past decade for statewide races, and you would see that in 2012 and 2014 those counties actually vote quite similar to one another, and vote right about at the center of the state, voting a little bit to the right.

However, beginning in 2016, and accelerating in 2018 and 2020, that changes, and you end up with

scenarios where Wayne County is now voting 15 points to the left of the state and the country as a whole. Macomb County has mostly stayed to the center, even a little bit to the right of the state or country as a whole. So that's how I would demonstrate it.

I'd also -- that's how you would demonstrate the shift. To the extent that it matters, I would look at the simulations with respect to Trump's 2020 vote. I'd also -- I mean, with the way you framed the question, I would look at the 2022 results, which of course weren't before the Commission, in fairness.

But since you asked how it would demonstrate a shift, I would look at 2022, where Wayne was way to the left of where Macomb was and the state as a whole. Not Wayne -- Oakland. If I refer to a suburban area shifting in Wayne in my previous testimony, I almost certainly meant Oakland.

Q. And just so I understand, my question relates not only to what you believe is a shift as having occurred, but a shift sufficient to dissolve the partisan impact of complying with county and township boundaries; do you understand?

A. I do. And when you're talking about a county like Wayne going from a swing area, or even a little bit reddish, where you're going to end up with slightly more

because sometimes there's a little bit of a jitter. The computer will move things a little bit to the side. It looks like the lopsided margin has a district just barely to the right of the enacted plan, but I can't say with confidence.

Q. Okay. So it's meaningful to you that the red dotted line, the enacted Hickory plan, overlaps with some output of the ensemble plans; is that right?

A. Yes, because the question is whether the Commission could have drawn a map -- Dr. Rodden's contention is that it was necessary for the Commission to draw these baconmander districts to achieve their partisan fairness goals subordinating race to partisanship, I guess.

But it's -- even using his definition of partisanship, that's not the case. You could have drawn a map with the -- the ensembles draw maps with identical mean and median differences without doing county splits, and identical efficiency gaps.

Whether some of the differences, you know, on the rest of the distributions are meaningful, like between an efficiency gap of .07 in the enacted map's efficiency gap of, I guess, .04, whether that's politically meaningful, I can't say. Or whether it's -- I can't imagine it's necessary to create the massive

discrepancies in racial composition that we see.

Q. And while we're in Dr. Rodden's report, can you identify where it shows he's using old data from the past decade?

A. Not as I sit here, but if I find it, I'll highlight it as we go through things. I think he's using all the elections from 2012 to 2020.

Q. So I want to make sure I understand. The fact that he's using elections from 2012 to 2020 means he's using old data?

A. Yes.

Q. Okay. And so what data do you think he needs to use in order for his conclusions about, for example, county lines, to be reliable?

A. I think the presidential election from 2020 is the most indicative election, and that's what political scientists typically use. When Dr. Rodden did his paper with Dr. Chen they were using presidential elections, so he's typically relied on that.

I think if you wanted to incorporate the 2018 data and even 2016, that would be fine. We're just -- Donald Trump broke everything, literally everything, and we are just in a very different political environment and alignment than we were at the beginning of the decade. I don't really even think that's controversial.

Q. I don't want to talk past you, Mr. Trende, I just want to make sure I understand. My read of Dr. Rodden's report is that he does look at the 2020 presidential election. Did you read his report to not include that data?

A. No. I'm saying that is all you would include, because once you start including -- for the same reason -- I mean, to use an extreme case, you wouldn't want to include data from 1960 in your partisan analysis, because it's a different world, and it's a different world than 2012.

So as you start to incorporate that data from 2012 and 2014 into your analysis, you are increasingly testing against a Wayne County -- an Oakland County that no longer exists, politically. He's diluting good data with noise, and in a consequential way.

Q. Have you studied the amount of that consequence?

A. No.

Q. Would you agree with me that partisan fairness measures are used to evaluate -- partisan fairness measures used to evaluate a redistricting plan are computed on a plan-wide basis, as opposed to on a regional or district level?

A. Yes. Well, I shouldn't say that. I think some people have tried to use them. Like, there's a Kentucky