

No. 22-807

IN THE

Supreme Court of the United States

THOMAS C. ALEXANDER, *et al.*,

Appellants,

—v.—

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

SUPPLEMENTAL VOLUME OF JOINT APPENDIX

Janai S. Nelson

Director–Counsel

Samuel Spital

Leah C. Aden

Raymond Audain

John S. Cusick

NAACP LEGAL DEFENSE

& EDUCATIONAL FUND, INC.

40 Rector Street, 5th Floor

New York, NY 10006

Santino Coleman

Antonio L. Ingram II

I. Sara Rohani

NAACP LEGAL DEFENSE

& EDUCATIONAL FUND, INC.

700 14th Street, Suite 600

Washington, DC 20005

Adriel I. Cepeda Derieux

Counsel of Record

Ming Cheung

Davin Rosborough

Kelsey A. Miller

Sophia Lin Lakin

AMERICAN CIVIL LIBERTIES

UNION FOUNDATION

125 Broad Street, 18th Floor

New York, NY 10004

acepedaderieux@aclu.org

(212) 284-7334

David D. Cole

Patricia Yan

AMERICAN CIVIL LIBERTIES

UNION FOUNDATION

915 15th Street, NW

Washington, DC 20005

*Counsel for Appellees the South Carolina
State Conference of the NAACP, et al.*

(Counsel continued on inside cover)

John A. Freedman
Elisabeth S. Theodore
Stephen K. Wirth
Gina M. Colarusso
ARNOLD & PORTER
KAYE SCHOLER LLP
601 Massachusetts Avenue, N.W.
Washington, DC 20001

Sarah Gryll
ARNOLD & PORTER
KAYE SCHOLER LLP
70 West Madison Street,
Suite 4200
Chicago, IL 60602-4231

Christopher J. Bryant
BRYANT LEGAL, LLC
126 W. Henrietta Street
Baltimore, MD 21230

Cecillia D. Wang
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
39 Drumm Street
San Francisco, CA 94102

Allen Chaney
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION OF
SOUTH CAROLINA
P.O. Box 1668
Columbia, SC 29202

Jeffrey A. Fuisz
Paula Ramer
Andrew R. Hirschel
ARNOLD & PORTER
KAYE SCHOLER LLP
250 West 55th Street
New York, NY 10019

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Appendix 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

3: 21-cv-03302-MGL-TJH-RMG

OCTOBER 3 – 14, 2022

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP, *et al.*

Plaintiffs,

—v.—

THOMAS C. ALEXANDER, *et al.*,

Defendants.

TRANSCRIPT OF BENCH TRIAL PROCEEDINGS
BEFORE THE HONORABLE PANEL:
HONORABLE MARY GEIGER LEWIS,
HONORABLE TOBY J. HEYTENS,
HONORABLE RICHARD M. GERGEL,
UNITED STATES DISTRICT COURT JUDGES

A P P E A R A N C E S:

For the Plaintiffs: The South Carolina State
Conference of the NAACP, Et al.

DAVID ALLEN CHANEY, JR.
P.O. Box 1668
Columbia, SC 29202

SOMIL B. TRIVEDI
American Civil Liberties Union
915 15th Street NW
Washington, DC 20005

LEAH C. ADEN
RAYMOND AUDAIN
JOHN CUSICK
NAACP Legal Defense Fund
40 Rector Street, 5th Floor
New York, NY 10006

JOHN ARAK FREEDMAN
JOHN MARK HINDLEY
Arnold and Porter Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, D.C. 20001

ADRIEL I. CEPEDA DERIEUX
MING CHEUNG
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004

ANTONIO LAVALLE INGRAM, II
SANTINO COLEMAN
NAACP Legal Defense and
Educational Fund, Inc.
700 14th Street NW, Suite 600
Washington, D.C. 20005

For the Defendants: Thomas C. Alexander, et. al,

JOHN M. GORE

Jones Day

51 Louisiana Avenue NW

Washington, DC 20001

ROBERT E. TYSON, JR.

LA JESSICA STRINGFELLOW

VORDMAN CARLISLE TRAYWICK

Robinson Gray Stepp & Laffitte LLC

1310 Gadsden Street

Columbia, SC 29201

MARK CARROLL MOORE

MICHAEL ANTONIO PARENTE

ANDREW ADDISON MATHIAS

HAMILTON BOHANON BARBER

Nexsen Pruet

PO Box 2426

Columbia, SC 29202

For the Defendant: South Carolina State Election
Commission

MICHAEL REID BURCHSTEAD

ELIZABETH CRUM

Burr and Forman LLP

PO Box 11390

Columbia, SC 29211

Court Reporter:

LISA D. SMITH, RPR, CRR

U.S. District Court Reporter

P.O. Box 835

Charleston, SC 29401

Proceedings recorded by mechanical stenography,
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Volume II
Transcript page 337

DR. MOON DUCHIN – DIRECT EXAMINATION
BY MS. ADEN

expect in this kind of study. So, what we're looking at here is the gray bars are those hundred-thousand neutrally generated plans. And we're looking at the BVAP, or Black voting age population, in the second highest district. Only emphasize why the second highest. That's because in all of the plans that we're comparing, that were made by people, CD 6 has the highest BVAP, or Black voting age population, of all the districts. CD 6 is also not named in the complaint. And so, setting aside CD 6, this starts to look at how Black population is distributed over the other districts. This is looking at the district that's second highest, parenthetically, after CD 6.

Q. Is how the second highest district fares, in your view, relevant to a cracking analysis?

A. Absolutely. This helps us understand how the population has been spread across the district. Later, in my supplemental report, I put this in context of all the districts in the state. And I think we'll probably see that soon. But this is the beginning of that inquiry, to look at -- as we saw before when looking at the numbers, there's nothing to really steep drop-off in Black population from District 6 to the next district. And this is taking a look at how that population falls.

And maybe I'll say another word or two about what we're seeing on the screen. So, the tallest bars in the histogram

Volume III
Transcript page 560

DR. BAODONG LIU – DIRECT EXAMINATION
BY MR. CUSICK

What does Table 3 tell the Court?

A. Table 3 is a summary of the findings concerning exogenous elections. In this table, I used a total of six recent elections statewide that all showed that there was a racially polarized voting pattern. And that is inconsistent with the findings that concerned with the endogenous elections.

Q. In looking at the fifth and sixth columns -- White voter support for a Black preferred candidate, and black voter support for a Black preferred candidate -- how does that compare to other states where you reviewed RPV?

A. That there is a very high level of racially polarized voting. In this table it is clear that Black voters vote by super majority, almost more than 95 percent for most elections in the table. They voted for the Black preferred candidate, in this case, the Black candidate.

And then we also see for the same elections the White voters voted against the same Black preferred candidate, and they voted with less than a quarter of support from the White electorate.

Q. Thank you, Dr. Liu. I now want to discuss your effectiveness analysis, which is the second question you were asked to address. If you could, briefly just tell the Court: What was the purpose of this analysis?

A. The effectiveness analysis is an analysis that compares competing redistricting plans. So, through effectiveness

**Volume III
Transcript page 790**

**MARGIE BRIGHT MATTHEWS
DIRECT EXAMINATION BY MR. TRIVEDI**

A. Yes.

Q. Do you recognize that as Mr. Harpootlian's map?

A. Yes.

Q. Okay. And on the right do you see Senate Amendment 1? And do you recognize that as Mr. Campsen's map?

A. Yes.

Q. Okay.

JUDGE GERGEL: What's the number for the Campsen map?

MR. TRIVEDI: S-29. Senate 29-B.

Okay. So now, Mr. Najarian, if we could zoom in on the Charleston peninsula.

BY MR. TRIVEDI:

Q. Senator, in the Campsen Plan on the right, what, if anything, is concerning about the treatment of the Charleston peninsula?

A. They broke up Charleston. They, in that map, took Charleston and basically went into the Black community and snatched them out of North Charleston. Right down the street here is North Charleston. If you keep on going on Meeting Street, you're there. They went in there -- even though we heard person after person come up and say the coastline is important, we have different issues than the middle part of the state and the upper part of the state. We need somebody that will understand and represent the coastline.

Q. Why doesn't it solve that problem that you're describing

Volume IV
Transcript page 966

ROBERT OPPERMANN – DIRECT EXAMINATION
BY MR. HINDLEY

Q. Let's turn to the 2020 cycle. How did you become involved?

A. With respect to?

Q. The 2020 redistricting congressional --

A. I was retained by Harpootlian Law Firm to assist in the drafting of maps.

Q. And when were you retained?

A. That would have been late May or early June of 2021, if memory serves.

Q. And on a general level can you describe what you did as part of that retention?

A. I want to speak carefully so as not to violate attorney/client privilege and confidentiality. But since some of my interactions with my client were in the presence of others, and I don't deem describing that to be violating the privilege, I can say, for those instances, I generated maps, analyzed data, and spoke to groups or spoke to others about the redistricting process generally, particularly with respect to senate districts and congressional districts.

Q. And in doing your work, what data did you look at?

A. The census data.

Q. And from your review, what did you see concerning population shifts in South Carolina?

A. Broadly, populations in South Carolina grew from 2010 to 2020. In some counties it grew dramatically so that there

Volume IV
Transcript pages 976-977

ROBERT OPPERMANN – DIRECT EXAMINATION
BY MR. HINDLEY

Q. And for those that did indicate population, why is that significant?

A. One, they're along the boundaries of District 6, and, two, disproportionately, the municipalities that are split are municipalities that contain a significant amount of African-American population.

Q. And earlier you mentioned issues of contiguity in this map. Based on your understanding of the guidelines, is that kind of contiguity permitted?

A. With respect to municipal splits?

Q. No. Contiguity.

A. Generally speaking, well, the major contiguity issue with Senate Amendment 1 is that District 1 is in two pieces, and the only contiguity that it has is the water in Charleston Harbor. So, say from Fort Moultrie to Fort Johnson. Now, the Senate guidelines do permit contiguity by water, provided that -- I think the words of the guidelines are something like: There's a reasonable opportunity to reach all parts of the district, and the water contiguity serves some other purpose under the guidelines.

In this map, the water contiguity in Charleston Harbor does not appear to serve any other purpose listed under the guidelines.

Q. Now I want to talk about the maps that you drew. So, Mr. Oppermann, how many congressional maps did you create?

A. Well, I submitted two plans to legislative committees. And one was Senate Amendment 2, and then an amendment to that amendment, Senate Amendment 2A. I did more scenarios than that, but those were the two that were submitted.

Q. And when you made this map, what software did you use?

A. ESRI for redistricting.

Q. And how did you get the guidance for drawing your maps?

A. Well, as I said, I was retained by Harpootlian Law Firm. And Harpootlian Law Firm was my client. But I did receive guidance -- I want to be careful not to breach confidentiality or privilege. Prior to submitting Senate Amendment 2, which later become Senate Amendment 2A, I had a phone conference where in I reviewed three different scenarios that I had prepared, the goal of which was to comply as much as possible with the Senate's guidelines. I reviewed those three scenarios with some of the folks on the phone conference and received feedback before submitting Senate Amendment 2.

Q. And who were the people on the phone call?

A. I recall Senator Hutto, Senator Harpootlian, Senator Sabb and Senator Matthews, although I don't believe they were all on the phone at the same time.

Q. And approximately when did this meeting take place?

A. It was the Friday before I gave subcommittee testimony, and I think that was the 7th of January.

Q. And what guidance did you receive on that phone call?

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Transcript pages 981-983

ROBERT OPPERMANN – DIRECT EXAMINATION
BY MR. HINDLEY

A. After the redistricting subcommittees meeting, where I gave testimony, one of the things I mentioned in my testimony is that I thought the weakness of Senate Amendment 2 was that it didn't have a deviation of one, which is what the guidelines called for, and I felt that that could be adjusted. So I did it I think almost immediately -- I got to work on it almost immediately after I finished my testimony. So, it would have been Wednesday, Thursday, Friday, around that subcommittee meeting. Probably Wednesday or Thursday.

Q. Okay. So, when you were drafting the map for Senator Harpootlian, what was your starting point?

A. Since I had the guidance of follow the guidelines and keep Charleston County whole, I certainly kept that in mind. But if you're drafting a Congressional Plan, you need to keep in mind that one person, one vote really does mean one person, one vote, that there's very little margin for error in population deviation. So, that was a major concern as a starting point.

And I also was working with reference to the enacted plan passed by the legislature in 2011. The reason for that is one of the Senate guidelines with respect to constituent consistency calls for three

things: One, keeping incumbents in their original districts with reference to the 2011 plan; two, avoiding pairing incumbents; and, three, preserving district cores in the language of the guideline. And so, in order to comply with that guideline, it is necessary to work with reference to the 2011 plan, or what sometimes gets called “the benchmark plan.”

Q. Then why did you not only make minor changes to the 2012 plan?

A. That would have violated the guidelines, in my judgment.

Q. And so, where did you go next in drafting your map?

A. Since I had been given specific guidance to keep Charleston County whole, I began by drafting a District 1 where Charleston County is intact. And I took as a principle that one should use counties as building blocks of districts. So, if you’re doing this, then you look for clusters of counties that can get you to 731,204, which I believe is the main district size after the 2020 census in South Carolina.

So, if you’re doing a District 1 where Charleston County is whole, it’s a Lowcountry district, as in the 2011 plan, and that also respects the community of interest of the coast and also the Gullah Geechee corridor. If you’re building a district like that and you’re using counties as building blocks, then, of necessity, you would have Charleston County and Beaufort County.

But, also, along the coast, with coastal boundaries, are Colleton and Jasper County. So, you would build a District 1 that includes Jasper, Beaufort, Colleton and Charleston if you’re doing that, and then you

only have about 65,000 or so people left before you hit 731,204.

Since Congresswoman Mace, who was at this time the incumbent -- and still is -- in District 1 and lives in Berkeley County, it's necessary then, if you're following those principles, to get the balance of the population in Berkeley County. She lives, generally speaking, in the Daniel Island area. So, rather than splitting another county, I felt that it was right to do the balance of the population for that District 1 in Berkeley County, built out from where Congresswoman Mace resided.

Q. And when you were drawing CD 1, was there anything else important that you kept in mind?

A. Well, following the guidelines, which specifically would go towards keeping counties, municipalities and precincts unsplit to the greatest extent possible. There is a distinct coastal interest, a distinct Gullah Geechee Corridor interest, there. Those were factors that I considered.

Q. And what did you keep in mind when you drew CDs 6 and 7?

A. As I said -- and I did move on to 6 and 7 next after 1, because you're building out. But, as I said, I tried to build with the idea that the best building blocks were counties. That was the method that was least likely to create precinct and municipal and county splits.

So, I looked at how do you get to 731,204 using counties as building blocks -- or at least get close. Because, if you

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Transcript pages 1034-1038

**DR. JORDAN RAGUSA – DIRECT EXAMINATION –
BY MR. FREEDMAN**

consideration?

A. My measure of the racial composition of the VTDs is a count of the number of Black voters. And so by controlling for precinct size, I wanted to ensure that mapmakers weren't simply selecting precincts based on whether they were numerically large or small.

Q. How did you conduct the analysis to control for the three factors you've identified?

A. I used a technique called "multivariant logistic regression."

Q. And what is that?

A. So, the multivariant part refers to the fact that we have multiple independent variables in the analysis. Independent variables are otherwise known as predictor variables. In this case, there are three: Race, partisanship and precinct size. And the logistic refers to the fact that the dependent variable being analyzed is a one-zero dependent variable, that is, whether a VTD was selected or not selected by mapmakers.

Q. Is multivariant logistic regression a common technique in these social sciences?

A. Yes. It's one of the most common techniques in all of the social sciences.

Q. And why did you use that technique here?

A. In this case, it is the appropriate statistical test based on the question that I'm attempting to answer and the nature of the data.

Q. Okay. In your report, you describe three models. I believe you prepared another demonstrative for this.

A. Correct.

MR. FREEDMAN: Stephen, can we put up slide two?

BY MR. FREEDMAN:

Q. Can you tell us about model one?

A. So, model one adopts the methodology known as “the county envelope.” Here, the question is which precincts were moved into the redrawn district. And what it does is it looks at all of the precincts that surround the district within a county in which the district previously sat.

Q. You used the term “county envelope.” Can you describe what that term refers to?

A. Sure. So, if a district sits partially within a county, all of the precincts that are outside of the existing district’s boundaries are considered part of that county envelope. In other words, they’re just outside the district and they are those that could be added, and while mapmakers stay within the same county.

Q. Where did the idea of the county envelope come from?

A. So, several people have used similar approaches. But Dr. Stephen Ansolabehere, at Harvard, has used this methodology in several papers. One of them that’s considered the seminal article is the 2000 piece in the American Journal of Political Science. He and his co-authors used counties and how counties were shifted around during redistricting to understand how redistricting affects election outcomes.

Q. Do you remember who his co-authors on that article were?

A. James Snyder and Charles Stewart.

Q. And who are they?

A. They are also well-established professors. Charles Stewart is at MIT, and James Snyder is at Harvard.

Q. Was that article peer-reviewed?

A. It was. It appeared in the American Journal of Political Science.

Q. And can you describe the theory behind the county envelope?

A. Sure. In order to understand the choices that mapmakers made, we need a baseline of the VTDs that could have reasonably been selected for the redrawn district. And to do that, I look to traditional principles of redistricting. In this case, the county envelope consists of VTDs that are geographically proximate to the prior district. They are ones that, if selected, would comply with compactness and contiguity. They often have demographic features in common with the district. And so, in that sense, there's a lot of communities of interest in the VTDs in the county envelope.

Q. I believe you prepared a demonstrative to help explain this?

A. I did.

MR. FREEDMAN: Can we see slide three?

BY MR. FREEDMAN:

Q. What is slide three, and how does it help explain the county-envelope concept?

A. So, in this slide we are looking at the contours of CDs 2 and 6 in Richland County. CD 6 is in yellow, and CD 2 is in blue. What's important here are the red squiggly polygons. Those are the VTDs in Richland County. And so in the case of CD 2, which had to gain population this round of redistricting, the question is: Which of those precincts in Richland County that were in CD 6 were selected?

Q. Okay. And just so we're clear, why are you examining VTDs in a county that are outside the district?

A. So, in cases where a district had to gain population, or in an effort to rebalance a district mapmakers added new precincts to a district, we need to know which ones are geographically proximate, have communities of interest in common. And so, all of these precincts are in the immediate vicinity of the district. And for that reason, they are logical choices.

Q. I believe you discussed earlier that the county envelope only extends to VTDs in the counties that were part of the previous district. Does your analysis account for VTDs that may have been drawn into the district or extending to a new county?

A. It does. In the rare circumstance that mapmakers went into a brand-new county to grab VTDs, I include those cases in my analysis.

MR. FREEDMAN: Stephen, can we go back to slide two?

BY MR. FREEDMAN:

Q. Dr. Ragusa, can you please tell us about model two?

A. So, model two then looks at the opposite phenomenon. These are the VTDs that were drawn out of the district during redistricting. So, here, the population of interest is all of the precincts that already existed within the district.

Q. And to clarify, do you use the county envelope concept at all in model two?

A. No. Again, this just looks at all of the precincts that were already in the district.

Q. And what is model three?

A. Model three then combines both of those approaches. It looks at the precincts that were moved into the district from the county envelope and kept in the existing district. And so in theory this model looks at the full range of choices that were available to mapmakers.

Q. And when you run these analyses -- models one, two and three -- what are you looking for in the results?

A. I'm looking for two things. One is the sign on the coefficient on the BVAP variable. The sign of the coefficient

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DR. JORDAN RAGUSA – DIRECT EXAMINATION –
BY MR. FREEDMAN

overcome. We assume, as social scientists, that the null hypothesis of no relationship is true. It's akin to a presumption of innocence. And so, what we want to see is that there is a clear and consistent pattern before we say that we have found something that's meaningful.

Q. Okay. Let's turn to your results. Why don't we start with CD 1.

MR. FREEDMAN: Stephen, can you pull up PX-20, which is -- and we'll start with the table at the top.

BY MR. FREEDMAN:

Q. This is, Dr. Ragusa, page eight of your report, PX-19.

So, Dr. Ragusa, you've got a series of these analyses in your report. We're going to walk through in some detail just so everybody understands what it is, and we'll cover the rest more quickly?

Can you tell us what Table 1 shows?

A. So, Table 1 contains the results for the 1st Congressional District. In the left column we have the three variables in my analysis, the Biden vote, a measure of partisanship, the BVAP -- or the Black voting age population -- and the total VAP, which is a measure of the total population in the precinct.

At the bottom, we have the N, or the sample size. Those are the number of precincts that are being examined in each of the three models. In the middle are the statistical results for the three different models. Those tell us whether Black voters were more or less likely to be added to the redrawn district and then, again, whether that result is statistically significant or not.

Q. And just so we're clear, let's walk through the three variables and what they each represent.

A. Sure. So, the Biden vote is a measure of the total number of people in the precinct that voted for Joe Biden in the 2020 election. That is my measure of partisanship. BVAP is the Black voting age population. That is a raw count of the number of

Black persons of voting age in the precinct. And then total VAP is the total population size of the precinct.

Q. Okay. And then the N at the bottom, what does that represent?

A. That is the sample size. So, in model one in this instance, the 133 is the total number of precincts that were outside CD 1 in the county envelope. 369 in model two is the total number of precincts in CD 1 prior to redistricting. And then 502 is just those two figures added together.

Q. How robust are these sample sizes?

A. Very robust. These are large sample sizes, certainly large enough to permit a statistical analysis.

Q. And then the columns as you go across, you've got your three models, right?

A. Correct.

Q. Now, underneath or next to some of these numbers, you've got different numbers with an asterisk. Can you just explain what the asterisks represent?

A. Yeah. The way that social scientists typically denote statistical significance is with stars. In this case three stars indicates a statistically significant result at the .01 level, that's 99 percent confidence. Two stars indicates a P value of .05. That's 95 percent confidence. And then one star would indicate what we often call a marginally significant result. That is something that is significant at the 90-percent confidence level.

Q. Okay. And why did you include results at the 90-percent confidence level?

A. For a few reasons. P values represent a continuum. In some ways there's little difference between a P value of .051 and .049. And so, a result that is significant at the .1 level is still marginally significant. It is close to statistical significance. And so, often researchers want to note that as something that's interesting even though it doesn't cross the .05 threshold. Also, this is the default in the statistical routine that I used.

Q. Okay. Now, I want to have you walk us across each of the models and what we found. Why don't we start with model one.

A. Okay. So in model one, when we look at the BVAP variable, it is negative, which, in this case, would indicate that precincts with a large Black voting age population were less likely to be moved into the redrawn 1st congressional district. However, here, the result is not statistically significant at any threshold.

Q. And for model two?

A. Looking at model two, the BVAP variable is positive and statistically significant. Because it's positive, that indicates the precincts with a large Black voting age population were more likely to be moved out of the redrawn congressional district, and that's significant at the .01 level.

Q. Okay. And then model three?

A. Model three is negative and statistically significant. The negative value indicates the precincts with a large Black voting age population were less likely to be moved into the district and kept in the district. And that, too, is significant at the .01 level.

Q. Looking at Figure 1, what does this show?

A. So, these figures are a way of assessing the substantive significance of the results. What they do is they plot the prior effects of varying the black voting age population of a precinct from 100 all the way up to 1,500. On the Y axis is the probability that that VTD was selected. And so, in these figures we're looking at the slope of the line. If there's a steep slope, it's either positive or negative. And that would indicate that as the Black voting age population changes, so too does the probability that was selected for the redrawn district. And then we have the three models. The top panel of the VTDs moved in, the middle panel is the VTDs moved out, and the bottom panel is the VTDs moved in and kept it.

Q. And just so we're clear, the X axis, 100 to 1,500, that's the number of Black persons of voting age in the precinct?

A. That's correct.

Q. Okay. And can you just explain what you're looking for here with the slope?

A. Yeah. We can look at the numbers. I mean, the numbers itself tell us the probability that a precinct of varying size with respect to Black voting age population was selected. But, ultimately we're looking for a slope. As I said, if there's a steep slope, it indicates a substantively significant effect of race. Conversely, if it was flat, that would indicate no effect of race.

Q. Why don't we just walk through the panels one by one. For your top panel, what does that represent?

A. So, that's the result from model one. Looking at the VTDs that were moved into the 1st Congressional District, we can see that the line is negative, indicating that as the Black voting age population of

a precinct increases, the probability that it was selected for the redrawn CD 1 goes down. But we can see that the magnitude of the slope is not particularly large in magnitude, recall earlier that that result was not statistically significant.

Q. Okay. And what about the middle panel?

A. The middle panel looks at the VTDs that were moved out of the redrawn 1st Congressional District. In this case, it's positive and fairly steeply sloped. What that indicates is that, as the black voting age population of a precinct increases, the probability that that precinct was drawn out of the district also increases.

Q. And can you explain the bottom panel?

A. So, in the bottom panel we're looking at the VTDs moved in and kept in. That's model three. We see a negatively sloped line that is very steep. In this case the results indicate that as the Black voting population of a precinct increases, the probability that it was moved into and kept in the redrawn 1st Congressional District declines.

Q. Great. And can you just summarize your findings for CD 1?

A. So, overall, the result shows that Black voters were excluded from the redrawn 1st Congressional District in both a statistically significant and substantively significant fashion.

Q. Okay. Let's turn to District 2.

MR. FREEDMAN: Stephen, can you pull up PX-21?

BY MR. FREEDMAN:

Q. Dr. Ragusa, This is page nine of your report. What does Table 2 show?

A. Table 2 contains the results for the 2nd Congressional District.

Q. What did you find?

A. So, if we look at the BVAP variable in model one, it is negative and statistically significant. What that tells us is that in CD 2, Black voters were less likely to be moved into the redrawn district. In model two, it's negative again, but only marginally statistically significant. The negative effect would tell us that Black voters were less likely to be moved out of the redrawn district.

But when we look at the combined model, model three, we see a negative and statistically significant result. That indicates that Black voters were less likely to be moved into the redrawn district and kept in.

Q. Great. Dr. Ragusa, what does Figure 2 show?

A. So here, too, we're looking at the size of the effect of race according to the three models.

Q. And what did you find?

A. So, the key result here is in the bottom panel from the combined model. Once again, like with CD 1, we see a negatively sloped line that's fairly steep. And what that indicates is that, as the black voting age population of a precinct increased, the probability that it was moved into and kept in the redrawn district decreased.

Q. Can you summarize your findings for CD 2?

A. For CD 2, I conclude that race was a significant factor in the design of the district. Specifically, Black voters were excluded in a statistically significant and substantively meaningful fashion.

Q. Okay. Let's turn to CD 3.

MR. FREEDMAN: Stephen, can you pull up PX-22?

BY MR. FREEDMAN:

Q. Dr. Ragusa, this is page 10 of your report. What were your findings for CD 3?

A. For CD 3, the key result comes in model three. The BVAP variable is positive and statistically significant. But what that tells us is that in the 3rd Congressional District Black voters were more likely to be moved in and kept in the redrawn district.

Q. Okay. Let's turn to CD 4.

MR. FREEDMAN: Stephen, can you pull up PX-23?

BY MR. FREEDMAN:

Q. Dr. Ragusa, this is the analysis of page 11 of your report. Dr. Ragusa, what were your findings for the CD 4?

A. So, CD 4, when we look at the BVAP variable, all three are statistically insignificant. So, my conclusion here is that race was not a factor in the design of the 4th Congressional District.

Q. Let's turn to CD 5.

MR. FREEDMAN: Stephen, can you pull up PX-24?

BY MR. FREEDMAN:

Q. And, Dr. Ragusa, this is page 12 of your report. What did you find for CD 5?

A. In CD 5, the BVAP variable is statistically significant in two of the three models estimated. In model one, the BVAP variable is negative and statistically significant. That indicates that Black

voters were less likely to be moved into the redrawn 5th Congressional District.

And then in model three, the combined model, it's, once again, negative and statistically significant. That indicates that Black voters were less likely to be moved in and kept in the redrawn district.

Q. Okay. Let's go to CD 6.

MR. FREEDMAN: Stephen, can you pull up PX -- oh, you've already got it -- PX-25?

BY MR. FREEDMAN:

Q. Dr. Ragusa, this is page 13 of your report. Dr. Ragusa, what did you find for CD 6?

A. So, in CD 6, the BVAP variable is statistically significant at the 95 percent confidence level in two of the three models. In the case of CD 6, the BVAP variable is statistically significant in two of the three models that were estimated. Those are models two and three.

In model two, the effect is negative, which indicates that Black voters were less likely to be moved out of the redrawn 6th Congressional District.

And in model three, the effect is positive, indicating that Black voters were more likely to be moved in and kept in the redrawn 6th Congressional District.

Q. For the final congressional district CD 7, there are no tables and figures in your report, right?

A. Correct.

Q. Why is that?

A. CD 7 largely comprises whole counties, so, therefore, there are very few observations in the

county envelope, and it was hardly redrawn during redistricting, so there are not a significant number of observations to conduct an analysis.

Q. Dr. Ragusa, did you also prepare a second report in this case?

A. I did.

MR. FREEDMAN: Permission to approach?

JUDGE GERGEL: Yes.

BY MR. FREEDMAN:

Q. I'm handing you what's been marked as Plaintiffs' Exhibit 26. Dr. Ragusa, can you tell us what Plaintiffs' Exhibit 26 is?

A. This is my rebuttal report of Mr. Sean Trende

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**BRENDA MURPHY – CROSS-EXAMINATION
BY MR. TYSON**

down and look in these particular districts, and what is the nature of these changes.

MR. TYSON: Judge Gergel, that's a very appropriate question. My comment back though is that President Murphy just commented on some of the communities of interest and how they were out of whack. And we just wanted to also signify that maps that they produced didn't meet that. But let me just say that --

JUDGE GERGEL: Well, fine. I don't think anybody will quarrel with -- no one would take this map seriously.

MR. TYSON: Judge, can I tell you one more thing?

JUDGE GERGEL: Yes, sir.

MR. TYSON: The good news for you and the panel is tomorrow you're going to have somebody that actually knows something about maps.

JUDGE GERGEL: That would be very nice.

MR. TYSON: Yeah. And Mr. Will Roberts is going to be able to go line by line all the way through this. And respectfully, your Honor, that's not our burden. It's their burden to show that.

JUDGE GERGEL: I made the observation about both of you, because we just haven't had a lot of comment about the map itself. And I was asking Ms. Kilgore the questions, because I just couldn't understand what the Sumter map is all about. I'm going to get some data. But I was wondering:

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WILLIAM ROBERTS –EXAMINATION
BY JUDGE GERGEL

JUDGE GERGEL: And that had been in CD 1 and was moved to District 6, correct?

THE WITNESS: That's correct.

JUDGE GERGEL: And there had been a considerable growth in those precincts between 2010 and 2020, had they not?

THE WITNESS: I don't recall looking at the population numbers.

JUDGE GERGEL: Sir, you've heard discussions and you've heard about the gentrification of North Charleston and African Americans moving into those areas because they couldn't afford to live in the city, correct?

THE WITNESS: That's correct.

JUDGE GERGEL: And do you know whether or not those precincts were affected by that migration to North Charleston?

THE WITNESS: I can't speak to that, sir.

JUDGE GERGEL: But you know there was a significant African-American presence in those Deer Park precincts?

THE WITNESS: Yes. I believe the racial breakdown for Deer Park is approximately 10,000 Whites to 8,500 African Americans.

JUDGE GERGEL: So, it's higher than the 17 percent?

THE WITNESS: Yes.

JUDGE GERGEL: And what is the community of interest of the Deer Park residents with Columbia?

THE WITNESS: Not with Columbia but with the peninsula of Charleston and North Charleston.

JUDGE GERGEL: Well, they're now in the 6th District, which goes all the way to Columbia. I'm just wondering what is their community of interest, because they certainly would have a community of interest with Charleston generally, correct?

THE WITNESS: That's correct, yes, sir.

JUDGE GERGEL: You know, a lot of the North Charleston residents work in the port, correct?

THE WITNESS: Yes, that's correct.

JUDGE GERGEL: And they have a lot of interests -- economic interests in Charleston. So, those precincts, the line moved up. It was -- North Charleston was already split, correct?

THE WITNESS: That's correct.

JUDGE GERGEL: And it moved up further, correct?

THE WITNESS: That's correct.

JUDGE GERGEL: And it followed the migration of African Americans from the city of Charleston to the city of North Charleston, didn't it?

THE WITNESS: I haven't studied the migration, but I'll take your word for it.

JUDGE GERGEL: Okay. And then let's turn to West Ashley for a minute. You talk about a least-changed plan.

THE WITNESS: Yes.

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SEAN TRENDE – CROSS-EXAMINATION
BY MR. FREEDMAN

something that can be evaluated in a vacuum.

Q. And, Mr. Trende, in your experience, does redistricting require tradeoffs between various criteria?

A. Oh, absolutely. Absolutely. Having drawn the maps in Virginia, it's -- it's involved.

Q. And do Dr. Imai's and Dr. Ragusa's analyses address all of those various tradeoffs that may be implicated?

A. They simply don't.

MR. GORE: No further questions. I'll pass the witness.

JUDGE GERGEL: Thank you.

MR. MATHIAS: House defendants have no questions.

JUDGE GERGEL: Very good. Cross-examination.

CROSS-EXAMINATION

BY MR. FREEDMAN:

Q. Good morning, Mr. Trende. Nice to see you again.

A. Good to see you.

Q. So, I want to start with some of your testimony about Dr. Imai and some of your experience testifying in other gerrymandering cases. In some of your reports in redistricting cases, you actually do simulation analysis, right?

A. Oh, yes.

Q. All right. For example, in the report you filed earlier this year in the *Szeliga v. Lamone* case -- that's the Maryland partisan gerrymandering case -- you conducted a simulation analysis, right?

A. Now, that's correct.

Q. And in the report you filed earlier this year in the *Harkenrider v. Hochul* case -- the New York partisan gerrymandering case -- you also conducted a simulation analysis, right?

A. Yes. I don't have a problem with the simulation analysis in general. I just know from experience that it's tricky to do them if you don't -- if it's not obvious what the legislature was doing, or if you're not controlling for everything the legislature is doing.

Q. And in *Harkenrider*, you presented an analysis based on 5,000 simulations, right?

A. That's correct -- well, in the initial report, it was 5,000. We did another 35,000 in the rebuttal.

Q. And, when you presented those simulations in the Maryland case and in the New York case, you wrote in your reports that simulation analysis is widespread in political science?

A. Yeah.

Q. And you wrote it's been accepted by multiple courts, right?

A. Oh, yeah. I don't have any problem with simulation analysis properly done in the abstract, not at all.

Q. And when you ran the simulations in those cases, you used a broadly accepted packaging R called Redist, right?

A. That's right.

Q. You testified about Redist at about 10:05 this morning, about 20 minutes ago. Do you remember that?

A. Oh, yeah.

Q. And you're aware and you've testified that Redist was developed by Dr. Imai, right?

A. Absolutely.

Q. The academic you support -- that you cite in your New York and Maryland reports about use of Redist cites an article that Dr. Imai co-authored; right?

A. Oh, that's right.

Q. Now, when you ran your simulations in the New York and in the Maryland case, your simulations didn't use strict equal population, right?

A. That's right.

Q. For example --

MR. FREEDMAN: Why don't we pull up, Stephen, PX-165, the New York report, at page nine.

BY MR. FREEDMAN:

Q. I'm showing you -- it's at the bottom. This is from your New York report. You write that: "Here, the simulation was instructed to follow federal and state law by drawing districts that would be largely equipopulace. The simulation allows a population tolerance of plus or minus one percent. Do you see that?"

A. Yeah. That's right.

Q. Now, you also wrote in your New York reports that you follow the lead -- in preparing that report, you followed the lead of Dr. Imai and the approach Dr. Imai took in his South Carolina report. Do you recall writing that?

A. I think it was the South Carolina legislative report where he was using Sequential Monte Carlo as opposed to what he's using this time. But I believe that I wrote that.

Q. Let's take a look at your reply report in New York.

MR. FREEDMAN: Stephen, can you pull up the New York 2 and pull up page 16, the third paragraph and the first sentence. And then can you also pull up page 17, the second full paragraph, the first sentence, at the same time? Can you put them both up?

BY MR. FREEDMAN:

Q. You write: "To that end, I produced additional simulations that, following the lead of Dr. Imai, freeze certain districts in place." Do you see that?

A. Yeah. So, they had complained that -- reasonably -- that the initial simulations didn't follow all the

considerations that the legislature did. So, what we're doing here is producing additional simulations that are drawn to try to guarantee that they are drawn from the same simulation -- same distribution as the legislature.

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SEAN TRENDE – CROSS-EXAMINATION
BY MR. FREEDMAN

A. It's -- one form is, and one form isn't.

MR. FREEDMAN: Let's pull up image five. Image five is a blowup of Charleston County.

BY MR. FREEDMAN:

Q. And you're aware that, under the enacted plan, you can't actually drive from the first part, northeast -- the Sullivan's Island part, the northeast part of District 1, to James Island, the southwest part of District 1 without going through District 6, right?

A. Yeah. That's functional contiguity, not census contiguity.

Q. Okay. You're aware there's no bridge or tunnel that allows one to drive from Sullivan's Island to James Island, right?

A. Right, right.

Q. And it's actually a substantial drive.

MR. FREEDMAN: Stephen, can you pull up image six?

BY MR. FREEDMAN:

Q. To get from the Mt. Pleasant pier to James Island, you have to go through District 6. It's a 6.7-mile drive. Do you see that?

A. I see that, yes.

Q. Now, sir, you've testified in a lot of redistricting cases, right?

A. That's right

Q. And you've seen a lot of districts with crazy shapes, including from my home state of Maryland, right?

A. Yes.

Q. Probably nobody's is as crazy as Maryland, right?

A. It's hard to top those old Maryland districts.

Q. Have you ever seen, in all your experience --

MR. FREEDMAN: Stephen, let's pull up image 7.

BY MR. FREEDMAN:

Q. Have you ever seen a district that resembles a two-headed dragon?

A. I know a district that resembles a dragon in flight. I don't know about the two-headed dragon.

MR. FREEDMAN: Stephen, can you pull up Exhibit 8.

Now you have, sir. No further questions.

JUDGE GERGEL: Mr. Gore, redirect.

REDIRECT EXAMINATION

BY MR. GORE:

Q. Thank you, Mr. Trende. In your experience as a redistricting professional, is water contiguity a permissible form of contiguity?

A. It depends on the jurisdiction. Some have specific rules. But there's two types, there's functional contiguity -- this is in my Virginia report online. But

there's functional contiguity, which is the driving contiguity; and then there's census contiguity, which is just whether the

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WALLACE JORDAN JR – CROSS-EXAMINATION
BY MR. CEPEDA

to be as transparent as possible in the process --

A. Absolutely.

Q. Does that sound right to you?

A. Absolutely.

Q. Apart from the House guidelines, the ad hoc committee didn't rely on any other redistricting criteria, did it?

A. I would say that the guidelines are an attempt to summarize how we go about and view the process of redistricting.

Q. Okay. Let me ask it this way: Did the House have secret or hidden criteria?

A. No.

Q. So, you had spoke with Mr. Parente about politics and political beliefs; do you recall that?

A. Yes.

Q. Do you recall at your deposition testifying that -- well, let me ask it this way: Increasing partisan gain wasn't one of the criteria for congressional redistricting, right?

A. No. I don't believe I saw that.

Q. And you'd agree that maximizing Republican advantage wasn't a redistricting criteria, right?

A. Well, there are elements of it contained in the incumbency protection. So, I guess you could note that aspect of it.

Q. Let me ask it this way: Would you be a fan of criteria of maximizing Republican advantage in congressional districting?

A. A fan of it?

Q. Yeah.

A. How do you define fan in that context?

Q. Would you promote a criteria like that?

A. I would say I did everything I could, and I believe the members of the ad hoc committee did as well, to make sure we had a transparent process that engaged with the people of South Carolina and produced a product that we can say is reasonable.

Q. Do you believe that maximizing Republican advantage correlates to the goal of what redistricting is about?

A. There's incumbency protection -- again, aspects of it -- that are part of that.

Q. So, are you saying that you agree that it's part of the goal of what redistricting is about, or not?

A. Well, I think you're talking about two different things in some sense. There's the process of redistricting, but then there's, the end of the day, what we can get enough votes to actually pass to become law. So, I guess no, specifically there's not a bright-line partisanship aspect, other than the pieces that are in the incumbency protection. But there is the fact that we have to pass through the normal legislative process, the plan.

Q. Okay. Was maintaining a six-to-one Republican advantage in Congress a criteria for the ad hoc committee?

A. I don't believe it was a criteria. Again, that was one of the things that I found was going to be probably necessary in order to, again, get enough votes to pass the bill.

Q. But it wasn't part of a criteria for the ad hoc committee, right?

A. No.

Q. In fact, at the time you worked on the alternative plan, you were unaware how competitive District 1 would be on the House maps, right?

A. I knew that District 1 -- when you say "how competitive," that's sort of hard to gauge. I knew that District 1 had a background of being a very tight race on multiple occasions in the recent past.

Q. District 1 is pretty unpredictable, correct?

A. Correct.

Q. So, at the time, you didn't have a fixed idea on how it would perform under the House plans?

A. Again, I had a broad idea that it would be a close race most likely.

Q. In your view, the preferences of Congress members shouldn't be given elevated priority over the preferences of other members of the public, correct?

A. No. I mean, I think that you have to give it fair consideration. I mean, these are people that have been elected by thousands and thousands of people in South Carolina. So, in that sense, they do have a special place in the eyes of their constituents. They've been selected to go to Washington and represent their

parts of the state and, in that sense, speak for their part of the state. So, when they speak up, you take notice.

Q. Okay. I understand all that. But in your mind, would you elevate their views over the redistricting criteria?

A. No. It's one of the things -- again, criteria, in my mind, is a bunch of different things that go into the process of creating the plan.

Q. I don't believe you answered my question. My question is whether you'd elevate the views of members of Congress over the redistricting criteria.

A. My answer would be: It's part of that criteria.

Q. At your deposition you testified that you only had a layman's opinion on the term "core retention." Do you remember that?

A. I remember the question coming up. I don't remember specifically my exact answer to the question.

Q. Does that sound right to you, though?

A. It does. When you say "core retention," I think of -- of -- it sounds like a technical term.

Q. And you're not an expert on core retention, for example?

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KOSUKE IMAI, PHD – DIRECT EXAMINATION
BY MR. CEPEDA

Okay. Please proceed.

MR. CEPEDA DERIEUX: Thank you, your Honor.

BY MR. CEPEDA DERIEUX:

Q. Okay, Dr. Imai. Let's discuss your work in this case. And your report is Plaintiff's Exhibit 32. If at any point you wish to have any pages displayed, please let me know, and we can do that?

A. Okay.

Q. So, Dr. Imai, could you explain to the Court the analyses you did in this matter?

MR. CEPEDA DERIEUX: And, Stephen, if we could put slide one up.

BY MR. CEPEDA DERIEUX:

Q. And, Dr. Imai, can we take these analyses one by one?

A. Yes. So, I conducted three simulations analyses in my report.

MR. GORE: Your Honor, I just need to raise the point, we were not provided these demonstratives before. This is the first time we're seeing this. Quick look, it looks okay to us, but I don't know what's behind this.

JUDGE GERGEL: Well, looks like a summary right out of the summary of opinions. But do you want to look at it for a minute?

MR. GORE: Do you have a hard copy or something we can look at?

MR. CEPEDA DERIEUX: I don't think I do.

MR. GORE: Okay. Well, if it's okay with the Court, we'll just watch the slides as they come by and if --

JUDGE GERGEL: And if you have an objection, raise it.

MR. GORE: Thank you.

MR. CEPEDA DERIEUX: There's two, so it'll be quick.

MR. GORE: Even I'll be able to see them then.

BY MR. CEPEDA DERIEUX:

Q. Dr. Imai, if you could, please explain your first analysis in this matter.

A. Yes. So, the first analysis is localized simulation analysis, where I generated 10,000 alternative ways of creating Districts 1 and 6.

Q. And what happened to the rest of the boundaries in the map?

A. Right. So, the other five districts are set to the same as those under the enacted plan. So, the only thing I generated are the district boundaries between Districts 1 and 6.

Q. Okay. And can I call this your "localized district analysis," for ease of reference?

A. Sure.

Q. Okay. And just very briefly, what did your localized district analysis find?

MR. CEPEDA DERIEUX: And, Stephen, if we could go to the next slide. And I guess I'll give defense a second to look at this.

MR. GORE: Thank you. No objection.

BY MR. CEPEDA DERIEUX:

Q. And, just briefly, what did your localized district analysis find?

A. Yes. So, my simulation is race-blind in the sense that I did not use race to generate the simulated districts, which means that race is not -- it's a race-neutral baseline. And compared to that, I find that the enacted plan is unusual in the way that the Charleston County is split, by placing a disproportionately large number of Black voters who live in Charleston County into District 6, and as a result, lowering the Black voting age population in District 1.

Q. Okay. So, can we go to your second analysis? And what was that analysis, Dr. Imai?

A. Yes. So, the second analysis is also race-blind in the sense that I did not use race as an input in my algorithm when generating simulated districts. Again, I'm focusing on Districts 1 and 6 while holding the other districts as exactly the same as under the enacted plan. And here, unlike the first simulation analysis, I'm focusing just on Charleston County. So, the way that -- I'm just generating alternative ways, 10,000 of them, ways of splitting Charleston County. And the enacted plan splits Charleston County, so that's what I'm looking at. And I basically generated 10,000 race-blind boundaries within the Charleston County.

Q. Okay. And, in brief, what were your findings on this analysis?

A. So, my finding basically confirms the finding from the first analysis by showing that the enacted plan puts a large number of -- a disproportionately large number of Black voters who live in Charleston County into District 6, and, again, lowering the Black voting age population of District 1.

Q. Thank you. And you said you did three analyses. What was the third?

A. Right. So, the third analysis is a statewide simulation analysis. So, by statewide, what I mean is that it's not just simulating Districts 1 and 6, I'm simulating all seven districts at the same time. But this analysis is done to address the possibility of the enacted plan trying to be compliant with the Voting Rights Act. So, I made sure that all simulated plans have a District 6, which the Black voting age population proportion is between 45 and 50 percent, which is in the same range as the Black voting age population proportion of District 6 under the enacted plan.

Q. And may I call this your "statewide analysis" or your "statewide VRA compliance analysis"?

A. Sure.

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KOSUKE IMAI, PHD – DIRECT EXAMINATION
BY MR. CEPEDA

contiguity is allowed, and the other one says it shouldn't be allowed. So, I decided not to allow for this.

Q. Thank you. So, the second hard constraint you mentioned was population deviation. Let's talk a little more about this. What do you mean by population deviation?

A. Yes. So, the population deviation is basically looking at the population of each district. So, in my case, you know, in every simulated district, you can compute how many people live there. And population deviation is the difference between the population of each district and the target population, which is the perfectly equal population division within the state. So, again, the total number of people who live in the state, divided by the number of districts, which is seven.

Q. And where does this requirement come from?

A. Yeah. So, this requirement is listed in both House and Senate guidelines, the population equality.

Q. What about federal law?

A. Yes. That's also part of federal law.

Q. So, how important do you consider this population deviation to be, according to the guidelines?

A. So, this is a hard constraint, so every simulated plan satisfies this particular constraint.

Q. Thank you. And I believe I heard you say you chose a .1 percent deviation on your simulated districts. Why did you choose .1 percent as a deviation?

A. Yes. So, this is a very important point, because often people ask about population deviation. In the guidelines -- essentially, the guidelines say it should be equal up to one percent. So, you should have a strict equality for population deviation.

My algorithm has a population deviation maximum of .1 percent, which is about a little bit over 700 people in the case of South Carolina. So, there is a difference. And, you know, many people ask why is that. But one needs to remember that purpose of simulation is an evaluation of an enacted plan. It's not to generate -- they're not letting the algorithm control the enacted plan.

So, in order to evaluate the enacted plan, we in academics use precincts as units. Precincts are the smallest units for which electoral results are available. And it's a much bigger unit than the census block, which is used as a building block for, you know, when you're drawing an enacted plan.

So, my simulation uses the precinct as a unit as well. And in South Carolina, the average size of a precinct is about a little bit above 2,000 people. When you're using a precinct as a unit, it's not possible to get down to one-person difference. It's just that the precinct is too big to get down to strict equality. But it is important to emphasize this difference. So, in my simulation algorithm, the maximum deviation is a little bit over 700 people. But most simulated districts have a lot smaller differences -- a couple hundred, usually -- people differences. Those differences have absolutely no impact on the substantive conclusions that I draw from my simulation analysis. Because, as you'll see, the results of my simulation analysis is much -- rests on much bigger differences, not just a couple hundred people difference.

Q. And I think you touched on it, but I just want the record to be clear. For purposes of your simulations, do you consider a difference of plus minus one person, or plus minus .1 percent to be meaningful?

A. No, no.

Q. And why not?

A. Because, as I said, the evidence that I used to draw my conclusion of this simulation analysis does not rest on the tiny differences. And, in fact, I could take each simulated plans, each of the 10,000 simulated plans, and try to equalize the district by, you know, choosing a couple precincts by splitting into small blocks within it. But I didn't do that because doing so has no impact on the substantive conclusion I draw from this analysis.

Q. Thank you. And then the third hard constraint you mentioned was that you didn't pair an incumbent with another

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KOSUKE IMAI, PHD – DIRECT EXAMINATION
BY MR. CEPEDA

in determining the district boundaries under the enacted plan. So, in order to isolate the role race played in determining the enacted plan, I did not want to input directly any plan, whether it's a previous plan any other plan as a constraint. Because, if you do that, you would inherit -- the result simulated plans would, in fact, inherit all factors that went into this, say, previous plan, right, which may include race or some other related factors. And since I did not analyze the previous plan in this report -- my goal is to analyze the enacted plan -- I have no idea what factors went into the previous plan. Therefore, I focused on the constraints that are listed in the guidelines that are clearly operationalizable in the objective matters. So, things like population deviations, compactness, number of split counties and

so on. And I used those as input as an effort to isolate the role race played beyond the set of traditional redistricting criteria. So, I did not use the core retention. That's a function of the previous plan.

Q. Thanks, Dr. Imai. So, let's talk about the conclusions of your analyses. And let's start with the first one, the localized Districts 1 and 6 simulation. Why did you choose to focus on District 1 and District 6?

A. Right. So, as you know, the largest change from the previous plan happened under the enacted plan, is Districts 1 and 6. The other five districts are largely kept the same as those under the previous plan. So, naturally, one would focus on the district boundary that changed most.

Q. And why did you freeze the boundary for all the districts?

A. Right. So, in this analysis, I didn't want other districts to influence how the analysis of this particular district boundary, the boundary between Districts 1 and 6, is drawn. So, you know, it's sort of a hard test, right, because in the redistricting, everything could affect everything. But I'm saying suppose that five districts that I'm now focusing on, we're going to use exactly the same districts under the enacted plan and see whether or not race played a significant role in determining the district boundary between Districts 1 and 6.

Q. Thank you. And what does running these as a race-blind simulation allow you to see about the boundary between those two districts?

A. Right. So, the main goal is to determine whether race played a role. So, in order to isolate the role race played in the simulation analysis, what you do is you

first generate a race-blind or a race-neutral baseline by generating a large number -- in this case, 10,000 -- alternative districts that comply with the traditional redistricting rules and then see if race played a role beyond those rules.

Q. Okay. So, I'm going to ask Stephen to pull up Plaintiffs' Exhibit 33, which is Figure 1 in your report. And let's first focus on the left side of this figure.

And, Dr. Imai, if you could tell us what that shows.

A. Yes. So, the left map shows the distribution of Black voters in these two districts, District 1 and District 6. And I would like you to focus on, in the Charleston County area, where you see that enacted boundary, which is the black line -- the solid black line is the enacted boundaries -- places the city of Charleston and the city of North Charleston into District 6 while leaving the rest of Charleston County to District 1. The gray lines represent the county boundaries. So, again, the black line is the enacted boundary, and the gray line is the county boundary. And the colors represent the number of Black voters who live in each precinct. So, the darker the color is, more Black voters live there.

Q. Now, let's look at the right side of that figure. What does this second map show you?

A. Right. So, the right map shows where District 1 is likely to be located under the simulation. So, if you recall, I generated 10,000 alternative ways of creating Districts 1 and 6 while fixing the other districts to those districts on the enacted plan. The darker blue shows the -- the darker the color is, it means that each precinct is going to have a higher probability of

belonging to District 1 under the enacted plan. So, again, I would like you to focus on the area within Charleston County, where the enacted plan places -- yeah. So, you can see that the enacted plan, that's the black line, places the city of Charleston and the city of North Charleston into District 6. However, these areas actually under simulation belong to District 1. That's why they are dark blue. So, the dark blue area is most likely to belong to District 1.

Q. Thank you. And I'll ask Stephen to please bring up Plaintiffs' Exhibit 34, which is Figure 2 in your report.

What does this histogram tell us, Dr. Imai?

A. Yes. So, this histogram shows what I showed in the map, which is actually a statistical outlier, the patterns in the map that I just showed you in the blue map -- that I just showed you -- is a statistical outlier. So, here, what I'm showing is the BVAP proportion of District 1. So, under the enacted plan, which is the red vertical line, it's about 17 percent; however, on the simulated plan, it's such higher. Almost all the simulated plans have a BVAP proportion of more than 20 percent for District 1. And the reason why is, as I showed you, the city of Charleston and city of North Charleston tend to be part of District 1 under the simulated plan, even the enacted plan places those Black voters in District 6.

Q. So, taken together, what does this all tell you about the boundary between District 1 and District 6?

A. Right. So, this shows that the way the enacted plan drew the boundary between Districts 1 and 6 is highly unusual compared to the race-blind simulated plans, and is a statistical outlier. In fact, none of my 10,000 simulated plans places as low BVAP

proportion in District 1 as the enacted plan. So, it's a clear statistical outlier.

Q. So, let's talk about the second set of simulations you ran, which just focused on the Charleston County split boundary. Why did you do this? Why did you only focus on Charleston County?

A. So, this is even a greater stress test on my finding, because the first analysis was already a stress test by fixing all other districts exactly the same as the enacted plan, and looking at Districts 1 and 6 and seeing how the boundary of those two districts are different. Here, I'm looking to see is it really the case that the way Charleston County is being split is unusual. So, my first analysis indicated it is unusual and it's a statistical outlier. But I'm going to zoom in farther within Charleston County and then see if the boundary within that county is actually also a statistical outlier, even after fixing the rest of the boundary between these two districts as exactly the same as the one used under the enacted plan.

Q. And what did that simulation tell you?

A. So, that second localized simulation analysis essentially confirms the finding from the first localized analysis by showing that a disproportionately large number of Black voters who live in Charleston County is placed in the District 6 under the enacted plan when compared to the race-blind simulation plans, as a result, lowering the BVAP proportion of District 1.

Q. And I'll ask Stephen to put up Plaintiffs' Exhibit 35 which is Figure 3 in your report.

Dr. Imai, what does this histogram tell us?

A. Yes. So, this, again, shows numerically the enacted plan is a statistical outlier in the way that it draws the district boundary between Districts 1 and 6 within Charleston County. So, to show that, I look at the number of Black voters who live in Charleston County and are assigned to District 1 under the enacted plan and also under the simulated plan. And under the enacted plan, you see that less than 20,000 -- I don't remember the exact number -- let's see. Yeah, I don't recall the exact number. But, anyway, less than 20,000 voters are placed in District 1 to live in Charleston County, but under the simulated plans, it's much, much greater. And, in fact, less than one percent of my 10,000 simulated plans places fewer Black voters in District 1 when compared to the enacted plan.

Q. Dr. Imai, if you look at page 14 of your report, is the number that you were looking for in there?

A. Oh, yes. So -- yeah. Under the enacted plan, a little bit above 15,000 Black voters are in District 1; whereas, you know, on average under simulation, about 25,000 Black voters. So, this is just focusing on Charleston County and not changing any other district boundaries. So, just in terms of, you know, calibrating this number, that's what it shows.

Q. So, taking all of this together, what are your conclusions on the localized Charleston County simulations?

A. Yeah. So, second localized simulation analysis basically confirms what I found in the first simulation analysis, in that the way that the district boundary is drawn within Charleston County is highly unusual, compared to the race-blind simulated plans. And it is a statistical outlier in terms of placing a disproportionately large number of Black

voters who live in Charleston County -- in particular, city of Charleston and city of North Charleston -- placing them in District 6 instead of District 1, which basically leads to low BVAP proportion of District 1 under the enacted plan.

Q. So, let's focus on the conclusions of your statewide simulation. And now that we've gone through your localized analyses, I'll ask you again: Why did you do the statewide simulation?

A. Right. So, the statewide analysis tries to put another stress test on the finding that I obtained in my localized simulation analysis. In the localized simulation analysis, I'm focusing on just Districts 1 and 6. I'm not changing any other districts. What that means is that if the simulated plan places more Black voters in District 1 as opposed to District 6, that just automatically lowers the BVAP proportion of District 6, because you're moving people from one district to another. So, increasing District 1 will reduce District 6.

So, in fact, if you look at the localized simulation plan that I generated, we have -- I have more Black voters in District 1, as I showed you, but that means fewer Black voters are going to be placed in District 6. But it is possible that, under the enacted plan, District 6's BVAP proportion is much higher in order to comply with the Voting Rights Act. So, what I wanted to see is if I make sure that my simulated plans maintained the same level of BVAP proportion for District 6, do I still see the same pattern, and specifically, do I still see the way that the enacted plan splits Charleston County is unusual, relative to otherwise race-blind. So, the basis is used to maintain District 6's BVAP proportion at the same

level as the enacted plan, but the rest of the districts are created without race as a factor.

Q. And with this statewide focus, did you focus on any other boundaries outside of District 1 and District 6?

A. Yes. So, I start with Districts 1 and 6, because that's where my whole analysis started. So, I start with the boundary between Districts 1 and 6, as before, but I also look at Richland County and Sumter County, where, as you'll see, the enacted plan splits the Black community. So, I focused on those two counties, which basically is the district boundary between 2 and 6 as well as district boundary between 5 and 6.

Q. So, let's stay in Charleston for a second, which we've already talked about, but now you're looking at it within statewide simulations. What were your findings in Charleston County with the statewide simulations?

A. Yes. So, statewide simulation basically confirms, you know, usual findings from the localized simulation analysis in that the district boundary between Districts 1 and 6 is highly unusual compared to the statewide simulation analysis. And so, the compliance with the VRA cannot explain the role race played in drawing the district boundary. So, in other words, race played a role in determining the district boundary between Districts 1 and 6 beyond the purpose of traditional redistricting criteria as well as the compliance with the Voting Rights Act.

Q. So, I'll ask Stephen to focus on Plaintiffs' Exhibit 36, which is Figure 4 in your report.

Dr. Imai, what does this histogram tell us?

A. Yeah. So, this histogram is strikingly similar to the localized simulation analysis histogram I showed you, and it shows the enacted plan is a statistical -- clear statistical outlier in terms of the BVAP proportion of District 1. And as said earlier, the District 1 BVAP proportion in the enacted plan is about 17 percent in contrast, and the simulated plan, which accounts for the possible VRA compliance, keeping the District 6 at the same level of BVAP proportion as the enacted plan. So, you cannot reduce it. Even if you put that constraint, you see the clear difference between the simulated and the enacted plan in terms of BVAP proportion of District 1. So, this shows that the compliance with VRA cannot explain the fact that the enacted plan has an extremely low BVAP proportion of District 1 compared to the simulated plan.

Q. So, did this analysis in any way change your conclusions from the prior analyses that we've discuss?

A. No. Actually, it enforces it. It basically bolsters the finding that I obtained in my localized simulation analysis.

Q. And I'll briefly ask if Stephen can pull up Plaintiffs' Exhibit 37, which is Figure 5 in your report.

And, Dr. Imai, I think we've seen one of these before. But could you just tell us what this represents?

A. Yes. So, this is exactly the same figure I showed you earlier, the localized simulation analysis. So, here, we're looking at the statewide simulation analysis. And I'm, again, coloring each precinct based on the proportion of simulated plans where the

precinct is placed in District 1. So, the darker the blue are, more likely to be part of District 1. And, again, I would like you to focus closely on the area of city of Charleston and the city of North Charleston. So, that label, District 6 is located in that area. So, those areas have very dark blue, okay?

So, what that means is that those areas under the simulated plan are much more likely to belong to District 1, instead of being placed into District 6. So, in that sense, the district boundary of the enacted plan is highly unusual, and race played a significant role in there, beyond the redistricting criteria as well as possible compliance with the VRA.

Q. And I'll ask Stephen to go to Plaintiffs' Exhibit 38, which is Figure 6 in your report.

What does this histogram tell us?

A. Right. So, this even more clearly shows that the enacted plan is an extreme statistical outlier. So, as you can see, this is looking at the number of Black voters who live in Charleston County who are placed in District 1. Under the enacted plan, there was about 15,000 Black voters placed in District 1 -- so, that's the red vertical line -- where if you look at the histogram, which it presents the same number for the simulated plans, it's much, much greater. And you notice that there is a big spike all the way to the right. And the reason the big spike is there is that, in many simulations -- in fact, I think about 75 percent of 10,000 stimulations -- entire Charleston County is assigned to District 1 without being split. Okay. So, this shows that the enacted plan is highly, highly unusual in terms of the way that it splits Charleston County, because most simulations -- in fact, it doesn't split at all. And even when it does, it places many more Black voters into District 1 by -- you know,

indicated by little gray histograms between 20,000 and 60,000, when compared to the enacted plan. So, this clearly, again, shows that the enacted plan is a statistical outlier.

Q. Dr. Imai, we've heard testimony that the distribution of Black voters between Districts 1 and 6 in Charleston County must be a coincidence because legislators didn't look at race.

Does your analysis speak to whether such a coincidence is likely?

A. If it's a coincidence, it would be extremely astronomically small number, small probability. So, if you call that a coincidence, it is. But my statistical analysis shows it's highly unlikely.

Q. Thank you. So, you mentioned you focused on the district -- the boundary between Districts 6 and 2, right?

A. Yes. So, after I looked at Districts 1 and 6, which was motivated by the first localized analysis, I looked to see the other two places where the Black community is being split under the enacted plan.

Q. And did you use the same 10,000 simulated statewide maps that we've been discussing for Charleston County?

A. That's correct. So, there's only one set of 10,000 simulated plans for the statewide analysis. So, all I'm doing is comparing the enacted plan with the 10,000 simulated plans, first just looking at the Charleston County area and then next looking at Richland County.

Q. And I'll ask Stephen to pull up Plaintiffs' Exhibit 39, which is Figure 7 in your report.

And I'll ask you, Dr. Imai, what does your statewide analysis tell you about how the enacted plan treats Richland County?

A. Yes. So, the left map shows how the enacted plan deals with Richland County. And, again, the Black solid line represents the boundary of Districts 2 and 6, in this case, under the enacted plan. And the brown color represents the number of Black voters who live there. So, the darker the color is, the larger number of Black voters live there. And as you can clearly see, the enacted plan splits the Black community in two districts, Districts 2 and 6. There is a hook-shaped part of District 6 in Richland County that takes some Black voters, and the other part, the eastern part of the city of Columbia, is placed in District 2. So, essentially, by splitting Richland County, you know, the enacted plan splits the Black community into two districts. That's what the left graph shows -- left map shows. And, as before, the gray lines represent the county boundary.

Q. Okay. And what does the right map tell you?

A. So, the right map in this case is very similar to the map I showed you earlier. In this case, we're looking at Districts 2 and 6. So, it shows how often each precinct is placed to District 2, as opposed to District 6, in the simulations. And what you see is Richland County is almost entirely White, which means that none of these precincts will be likely to be placed in District 2, okay? And the only place there's a small probability that would be a part of District 2 would be the northwest corner of the county, where you can see the bright blue there. But, as you can see from the left map, not many Black voters live there. So, what this shows is that the simulated plans will keep the

Black community of Richland County intact, not splitting into Districts 2 and 6.

Q. And if we could pull up Plaintiffs' Exhibit 40, which is Figure 8, what does this histogram tell us, particularly in relationship with what you just described?

A. Yes. So, basically, I first look at how often the entire Richland County would be assigned to District 6, okay? And if you look at the 10,000 simulated plans, I think about 40 percent of the simulated plan would not split Richland County and assigns the entire county to District 6. So, the enacted plan split into 2 and 6, but the simulated plan will keep them intact and assign the entire thing to District 6.

Now, about 24 percent of simulated plans do split Richland County in Districts 2 and 6, which is exactly what the enacted plan did. But this figure shows they do it very differently. As I showed in the map earlier, most of Richland County was in the white map --

Maybe, Stephen if you could go back to map, if that's possible.

MR. CEPEDA DERIEUX: Side by side. Oh, the previous map and the histogram.

THE WITNESS: The previous map.

BY MR. CEPEDA DERIEUX:

Q. And I'm sorry, Dr. Imai. I heard you say 24 percent. Did you mean --

A. Well, approximately 24 percent of the 10,000, which is 2388. But anyway, if you look at the map again, you know, most of Richland County wouldn't be assigned to District 2, and the only places that may be assigned with small probability would be this bright blue area, where when you look at the left

map, you see that not many Black voters live there. And that's reflected in Figure 8.

So, under the simulated plan, District 2 takes a relatively large number of Black voters, because there's a hook shape, and then District 2 comes down, allowing the hook shape and basically grabs the Black voters who live there. However, the simulated plan won't do that, and, in fact, assigned much fewer number of black voters to District 2. So, you can see in the histogram the vertical line, which is the enacted plan, is much, much higher than most of the simulated plans, which is assigned much smaller Black voters who live in Richland County to District 2. So, again, it's a statistical outlier.

Q. And taken together, what does your statewide simulation tell you about how the enacted plan treats Richland County?

A. Right. So, what this shows is that compliance with the VRA does not require -- it is not necessary to split a community of Black voters in Richland County in order to comply with the Voting Rights Act. In fact, it is possible, and actually a much more likely outcome to keep those voters intact and assign them to District 6.

Q. Okay. And Let's go to Sumter County. You said you also focused on Sumter County in your statewide analysis?

A. Yes. Because, as you see, the city of Sumter is another place where the Black community is split under the enacted plan.

Q. And what did you learn about how the enacted map treats Sumter County?

A. Right. So, again, the left map is the map of Sumter County. And here, we're looking at Districts 5 and 6. And as you can see, the black line is the district boundary, and it cuts through the middle of Sumter County. And the little dark brown area, it's small, but that's the city of Sumter. And as you can see, the district boundary under the enacted plan cuts through that community, splits the city of Sumter in Districts 5 and 6. And, again, the gray lines represent the county boundary.

Q. And what does the right map tell you?

A. Right. So, the right map shows the proportion of simulated plans which assign each precinct of Sumter County to District 5. Now, remember from the left map that District 5 under the enacted plan takes the western part of Sumter County. In contrast, the simulated plan essentially doesn't assign any part of Sumter County to District 5. So, that's why it's almost all White, because most of the simulated plans don't assign this county to District 5.

Q. You say "most." Does that mean that some of the simulated plans assign Sumter County to District 5?

A. There is a table that I showed. If you can pull that out.

MR. CEPEDA DERIEUX: Stephen, if you could pull up Plaintiffs' Exhibit 42.

THE WITNESS: So, you can actually calculate how often simulated plans assign Sumter County to different districts. So, over 90 percent of simulated plans out of 10,000 simulated plans assign the entire Sumter County to the District 6; so, without splitting, okay? And there are some cases they split. So, for example, 4.5 percent of the simulated plan is split into Sumter County into Districts 6 and 7, but not 5

and 6, as the enacted plan does. Only 1.2 percent of the simulated plan would split Sumter County in a way that the enacted plan did, which is to split into Districts 5 and 6.

So, again, the way that the enacted plan splits Sumter County is highly unusual, relative to the simulated plan, and this unusual pattern cannot be explained by compliance with the Voting Rights Act. In other words, to comply with the Voting Rights Act, it is not necessary to split Sumter County in the way that the enacted plan did.

Q. Thank you, Dr. Imai. And I'm just going to ask you to please recap your opinions.

MR. CEPEDA DERIEUX: And, Stephen, if you could bring up the second slide again.

BY MR. CEPEDA DERIEUX:

Q. And, Dr. Imai, can you tell us what you concluded from your report?

A. Sure. So, I've done a comprehensive set of simulation analyses to examine whether race played a role in determining the district boundaries in the enacted plan beyond the purpose of compliance with the traditional redistricting criteria. And I started with a localized analysis focusing on Districts 1 and 6 that are mainly located in Charleston County. And I showed you that my simulation analysis basically establishes that the way that the enacted plan splits Charleston County is highly unusual relative to the race-blind simulation baseline. It's unusual because it places a large number of Black voters into District 1, especially those who live in District 6, especially those who live in the city of Charleston and city of North Charleston, which leads to the much lower

BVAP proportion of District 1 in the enacted plan when compared to the race-blind simulation baseline.

And this finding is confirmed in my analysis where I freeze everything else, except the boundary within Charleston County, and then generated 10,000 race-blind alternative district boundaries in that county. And it still shows that the way the enacted plan splits the county is highly unusual. So, these analyses show that race played a significant role in determining district boundaries between Districts 1 and 6 in the enacted plan, beyond the purpose of complying with the traditional redistricting criteria.

Finally, the statewide analysis examined the possibility that the findings I had from the localized simulation analysis are due to the possible consideration of VRA compliance. And, there, what I showed is that VRA compliance, as well as the traditional redistricting criteria, cannot explain the patterns that I found -- unusual patterns that I found in the localized analysis. In fact, race played a significant role beyond traditional redistricting criteria and the compliance with VRA. And this was found both in Charleston County as well as in Richland County and Sumter County, where the simulation shows that it is not necessary -- in fact, it is highly unusual -- to split the community of Black voters in those counties in order to satisfy the Voting Rights Act. So, that's my conclusion.

Q. And just to be clear, Dr. Imai, when you say VRA compliance, what you mean is a simulation that keeps the BVAP of District 6 between 45 and 50 percent, right?

A. That's right. So, basically, my statewide simulation analysis would ask the question of: What

redistricting plan would have been possible if one wanted to keep the BVAP proportion of District 6 at the similar level as the enacted plan? And 10,000 simulated plans I generated basically represent that alternative. It is the plan. And I found that the way the enacted plan created the districts, these districts are highly unusual in terms of racial composition.

Q. Thank you, Dr. Imai.

MR. CEPEDA DERIEUX: I pass the witness.

JUDGE GERGEL: Very good. We're going to take our morning break.

(Recess.)

THE COURT: Please be seated.

Why am I not surprised that Mr. Gore is doing this

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CLOSING ARGUMENT BY MR. CEPEDA

in the challenged districts.

This is a list of the nine South Carolina counties with the highest BVAP. Of these, seven are split. The defendants disproportionately cracked Black communities located along the District 6 boundary, like Richland, Charleston, Orangeburg and Sumter. And what did that cracking accomplish? Well, first, District 6's BVAP drops under 50 percent. South Carolina no longer has a majority Black district. And the obvious question, as Dr. Duchin said, is if the Black voting age population comes down in District 6, well, where does it go? And the answer here is that the difference simply vanishes. No other district changes meaningfully. And that doesn't happen by

accident. It takes precision engineering to ensure that the BVAP in every other district stays at around the same place it was before. And as Dr. Duchin testified, what that means is that there's no meaningful electoral opportunity for Black voters outside of District 6. And more than half of the counties we saw in the previous slide are in the challenged districts. So, let's take a closer look at these districts. And we can start with District 1.

First, the enacted plan drastically reconfigures Charleston County. In the old map, most of Charleston County was in District 1. That's not true anymore. The county is now in District 6. In the old plan, District 6 approached

Appendix 2

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

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

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP, and TAIWAN SCOTT, on behalf of
himself and all other similarly situated persons,

Plaintiffs,

v.

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

Defendants.

STENOGRAPHIC REMOTE
VIRTUAL DEPOSITION

BREEDEN JOHN

Tuesday, August 9, 2022

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Q. Did you receive any instructions for how you should assess or evaluate any of the feedback you received from members of Congress in drawing maps?

A. Not particularly.

Q. Would you consider suggestions they had of equal weight to members of the public?

A. Yes, for the most part. The feedback that we got from them I would say yes for the most part.

Q. Were there any political organizations that you had conversations with?

A. No.

Q. Anyone obvious working on behalf of any organizations?

A. No.

Q. Any consultants?

A. No.

Q. Lobbyists?

A. I did speak with Dr. John Ruoff, R-U-O-F-F. He was working

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packed certain communities --

MR. TRAYWICK: Object --

Q. -- in a legal challenge?

MR. TRAYWICK: Object to the form of the question.

A. Well, I suppose that a map -- elements of a map could -- a map could contain areas that are packed or cracked and not necessarily constitute an unconsti- -- constitute an unconstitutional draw of a map.

Q. Is there anywhere in the guidelines that states shoring up a six to one Republican advantage in Congress is a requirement?

MR. TRAYWICK: Object to the form of the question.

A. No, I don't see that in the document.

Q. What about making Congressional District 1 less competitive, politically competitive?

A. I don't see anything about making District 1 less competitive politically.

Q. What about making Congressional District 1 more reliable for Republican voters?

A. The document doesn't say anything about making District 1 more reliable for Republican voters.

Q. There's nothing about partisan gain contained in the guidelines, correct?

MR. TRAYWICK: Object to the form of the question.

A. I do not believe so.

Q. Do you recall discussions about shoring up Republican vote share in CD 1 as coming up during the map drawing process?

A. Yes. Well, shoring up, not particularly shoring it up but there was interest in the partisanship of the district, yes.

Q. By whom?

Transcript pages 221-222

and I just phrased it that way as struggling. He wanted to -- he wanted to be very sure that he had chosen a good -- a good route, good approach.

Q. Was he considering as part of his thoroughness any maps that would have kept -- that would have led to CD 1 being a toss-up or a swing district?

MR. TRAYWICK: Object to the form of the question.

A. He certainly looked at those options.

Q. Did the core redistricting team have any discussions with him about that?

A. Yeah. Some. Well, yeah, some. He would just ask -- he would ask us, you know, do you think that's a bad idea. Say if, for instance, if a version of the map ended up 50/50 Republican and Democrat in the 1st District there were times when he would say something like you think that's doable and, you know, we would say maybe, maybe not, I don't know. I don't know what others are going to say. But he considered really every approach.

Q. For the core redistricting team would a map that kept or that had CD 1 as a toss-up or swing district have also complied with the redistricting guidelines?

A. Yes.

Q. Then just to close out the questions. For this map as well, Mr. Terreni and Mr. Gore responsible for any questions regarding legal compliance?

A. Yeah, to the extent we had any. I don't know that we -- we both looked at the map and, you know, that's why I didn't see it as a problem.

Q. I want to introduce as

Appendix 3

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

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

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP, and TAIWAN SCOTT, on behalf of
himself and all other similarly situated persons,

Plaintiffs,

v.

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

Defendants.

DEPOSITION OF: ANDREW THEODORE FIFFICK
(Appearing via VTC)

DATE: July 21, 2022

TIME: 10:10 a.m.

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A. Yeah, sure.

Q. Are you aware of any instruction by any member of the legislature or anyone else that you and the team developing maps should be drawing six districts of the seven that lean Republican and one district of the seven that leans Democrat?

A. I don't recall anybody asking for that, but that doesn't mean we didn't have it. That wasn't something that I remember.

Q. Who would have been told to do that if it had been told?

A. It would have been articulated to, you know, one of us in the map room or all of it at the same time in the map room. And so much of our drafting was in realtime with the members, so it would have been -- the most common way for any of those instructions to occur would be in realtime in the map room, either Zooming with a member of the general assembly -- or a member of the Senate or with a member of the Senate in the office. I don't recall that happening. You're saying six Republican and one Democrat. I don't remember that being...

Q. In looking at the guidelines in front of you, do you see that as a criteria identified in

71a

Appendix 4

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

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

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP, and TAIWAN SCOTT, on behalf of
himself and all other similarly situated persons,

Plaintiffs,

v.

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

Defendants.

DEPOSITION OF: ADAM KINCAID

DATE: Wednesday August 10, 2022

TIME: 10:02 a.m.

Transcript page 77

Q Okay. Did anyone from NRRT have discussions with Mr. Oldham about the Wren map?

A Yes.

Q When was that discussion?

A When I sent the maps down.

Q And can you tell me what was the content of that discussion?

A Sure. I reached out to Dale. My understanding was that he was counsel to the South Carolina Senate Republican caucus. And I asked him who I could send some maps to, and so he provided me contact information for that person.

Q And who initiated that conversation?

A I called Dale.

Q Did Dale previously request that NRRT provide maps for South Carolina?

A No.

Q Did Mr. Oldham provide any details on -- to assist you in creating the Wren map?

A Creation of the Wren map?

Q Yes.

Appendix 5

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

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

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP, and TAIWAN SCOTT, on behalf of
himself and all other similarly situated persons,

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

Defendants.

DEPOSITION OF: DALTON LAMAR OLDHAM, JR.

DATE: September 23, 2022

Transcript page 102

figure out how to get the map in to get processed and I offered to call Charlie Terreni for him.

And I called Charlie. And I told him about Adam's map. Told him I had looked at it. I thought it was legally sufficient. And explained some of the things that I explained to you earlier. And that Adam was concerned about the performance of the map that was out there on draft. And that this was a map that performed better. And I asked Charlie how to get it to him.

Then Charlie took that call and called me back later and gave me an e-mail address to send the map to and I sent that to Adam.

Q. When you first looked at the map, prior to talking to Mr. Terreni about it, was that a thing where, were you on the phone with Mr. Kincaid the whole time or did he call you, then send it to you, then you called him back?

A. Well, he never sent it to me.

Transcript pages 123-124

consider it?

Q. And what did he say to you?

A. He said he would call me back. He called me back and gave me the e-mail address. And I passed that along to Adam.

Q. How did you pass along to Adam?

A. I called him.

Q. And did you write down the e-mail address that Mr. Terreni gave you?

A. I'm not sure I did.

Q. Why wouldn't Mr. Kincaid just submit his map to the Senate redistricting website, just like everybody else?

A. I don't know. He asked me to help him. I just called Mr. Terreni. That was the way that Mr. Terreni told me to get them the map. And that's what I told Mr. Kincaid to do.

Q. Do you have any knowledge of why Mr. Terreni thought that Mr. Fiffick was the right person to connect with Mr. Kincaid?

A. I have absolutely no idea.

Q. At the time did you know who Andy Fiffick was?

A. No, I had no idea.

Q. You told Mr. Terreni on that call, Adam Kincaid has a map that he wants to share with you or someone at the Senate. He needs an e-mail address; is that more or less accurate?

A. Well, that's accurate. I also told Mr. Terreni at the time that I looked at the map that I thought the map met all of the legal requirements. And I told him that Adam's political analysis was top notch and probably the best out there and they should probably

take a look at this thing, because if he says there is a political problem, there is probably a political problem.

Q. And how did Mr. Terreni respond to that?

A. Mr. Terreni had some doubts as to whether Mr. Kincaid's political analysis was superior to what they were

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Appendix 6

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

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

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP, and TAIWAN SCOTT, on behalf of
himself and all other similarly situated persons,

Plaintiffs,

v.

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

Defendants.

STENOGRAPHIC REMOTE
VIRTUAL DEPOSITION

CHARLES TERRENI

Tuesday, August 16, 2022

Transcript page 241

Q. What do you understand that to mean?

A. That minorities, specifically African-Americans, overwhelmingly vote for the Democratic party and that white voters not as overwhelmingly but in equal -- not equal, excuse me, but white voters predominantly vote for Republicans.

Q. Are you aware of any cases decided by South Carolina courts, federal or state, or the Fourth Circuit or Supreme Court that have found racially polarized voting in South Carolina?

A. Colleton County versus McConnell found racially polarized voting in South Carolina in 2000 or 2001 and '2. I don't know that it was -- and other than that, I'm not saying there was, but I'm not remembering.

Q. Are you familiar with the

Transcript pages 246-247

shouldn't say we. I can't speak for them.

After this question can we take just a five-minute break?

MS. ADEN: Yes. Why don't we stop and we will return to that.

THE WITNESS: I appreciate that. We will come back at three maybe. Is that okay?

MS. ADEN: Sounds great.

(Whereupon, there is a recess in the proceedings.)

Q. Before the break I believe you mentioned not agreeing that a racially polarized voting analysis was necessary, at least in the early part of 2021. Can you explain why?

A. Yes, ma'am. We had no reason to believe at the time that we were going to have an issue with Section 2 compliance. No claims had been asserted. Nobody really threatened them. The sixth congressional district which would have been the likely target of that claim had been upheld against a Section 2 challenge by the court ten years ago. And the upside, if there was one, of conducting a racially polarized voting analysis in my opinion outweighed the downside, at least what I told the subcommittee, and the downside being that all of a sudden race would have been in the middle of the room and that we would risk making race or some artificial target the -- derived from that polarized voting analysis the predominant factor or at least expose ourselves to accusations that it was. So at that point with no Section 2 claim -- facing no Section 2 claim we didn't think it was necessary.

Q. Are you aware of whether the black voting age population in congressional District 6 was reduced as compared to under the 2011

Transcript pages 270-271

Q. Do you see anything in these guidelines that articulates that Beaufort should remain in CD 1 and not be put in CD 2?

A. Not explicitly. That's an outcome.

Q. But that is something that was debated during the legislative process?

A. Yes.

Q. And similarly you don't see anything expressly in these guidelines that says keep Fort Jackson in CD 2 with -- in CD 2?

A. Again, not expressly, no.

Q. And is there anything in this instruction that says make Congressional District 1 likely to elect a Republican congressional candidate or be Republican leaning?

A. Not specifically, no.

Q. And unspecifically where do you think it says that or suggests that?

A. It doesn't -- I'm sorry -- it doesn't specifically say that or even nonspecifically. It does say congressional District 1 should be Republican leaning. No, that's not a guideline.

Q. In tab 12, which should be plaintiffs Exhibit 17.

A. Tab 12, okay.

Q. This should be an email cover from Holi, H-O-L-I, Miller, or two Ls. Is that two Ls or one L? I can't see. Two Ls, H-O-L-L-I Miller on behalf of Senator Harpootlian copying you, Mr. Terreni dated September 16, 2021 with the subject "Notice of redistricting subcommittee meeting" and it's

81a

attaching a letter to Luke Rankin. This is Bates stamped South Carolina Senate 3387 to 95. Can you take a moment to -- I'll direct you to particular things, but it's a nine-page pdf.

Appendix 7

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

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

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP,

and

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

Plaintiffs,

vs.

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

Defendants.

THREE-JUDGE PANEL

[STAMP]
Plaintiffs'
Exhibit

3

**HOUSE DEFENDANTS JAMES H. LUCAS,
CHRIS MURPHY, AND WALLACE H. JORDAN'S
RESPONSES TO PLAINTIFFS' FIRST SET OF
REQUESTS FOR ADMISSION AND SECOND
SET OF INTERROGATORIES REGARDING
THE CONGRESSIONAL PLAN**

Page 19 of 44

55. Admit that Thomas Brunell was hired to conduct a racially polarized voting analysis to evaluate the extent to which racial bloc voting was present in recent elections in the state of South Carolina prior to and during the 2021 redistricting cycle.

RESPONSE: Admitted, but only to the extent that this Request is construed to mean that Thomas Brunell “was hired to do [a] racial bloc voting analysis as the state prepared to redraw the maps.” Brunell Dep. 60:2–4. House Defendants deny all other parts of this Request.

56. Admit that Thomas Brunell conducted a racially polarized voting analysis before any litigation

was filed that challenged the state House districts or Congressional.

RESPONSE: Admitted, but only to the extent that this Request is construed to mean that Thomas Brunell has experience, whether in South Carolina or elsewhere, conducting at least one racially polarized voting analysis prior to the filing of any litigation challenging the current state House and Congressional districts. House Defendants deny all other parts of this Request.

57. Admit that, based on Thomas Brunell racially polarized voting analysis, he determined racially polarized voting exists statewide in South Carolina and the twenty-five counties he reviewed.

RESPONSE: Admitted, but only to the extent that this Request is construed to mean that Thomas Brunell reviewed twenty-five counties as part of his analysis and stated in his deposition that “in all the counties I looked at and statewide, the evidence was quite clear that voting was racially polarized.” Brunell Dep. 81:16–19. House Defendants deny all other parts of this Request.

Page 22 of 44

66. Admit that the South Carolina legislature never published on its website any map submitted by the National Republican Redistricting Trust.

RESPONSE: Admitted.

67. Admit that on December 22, 2021, the ad hoc committee posted the Congressional House Staff Plan Alternative 1.

RESPONSE: Admitted.

68. Admit that Thomas Hauger and Chairman Jordan used the map developed in the Senate as a basis for the Congressional House Staff Plan Alternative 1 that the House posted on December 22, 2021.

RESPONSE: Denied.

69. Admit that Thomas Hauger and Jay Jordan made changes to the map developed in the Senate to become the Congressional House Staff Plan Alternative 1 that the House posted on December 22, 2021.

RESPONSE: Denied.

70. Admit that Thomas Hauger testified in his deposition that he and Jay Jordan drew the Congressional House Staff Plan Alternative 1 in one session in the legislature's map room that took approximately 1-2 hours.

RESPONSE: Admitted, but only to the extent that this Request is construed to mean that Thomas Hauger testified in his deposition that he and Jay Jordan drew the Congressional House Staff Plan Alternative 1 in one session in the legislature's map room that took approximately 1-2 hours. House Defendants deny all other parts of this Request.

71. Admit that Thomas Hauger testified in his deposition that changes that he and Jay Jordan made in developing the Congressional House Staff Plan Alternative 1 included: moving

Appendix 8

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

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

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP,

and

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

Plaintiffs,

vs.

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

Defendants.

[STAMP]
Plaintiffs'
Exhibit

4

**SENATE DEFENDANTS' OJECTIONS AND
RESPONSES TO PLAINTIFFS' FIRST SET OF
REQUESTS FOR ADMISSION AND SECOND
SET OF INTERROGATORIES REGARDING
THE CONGRESSIONAL MAP**

Page 1

Pursuant to Federal Rules of Civil Procedure 26, 33, and 36, Thomas C. Alexander, in his official capacity as President of the Senate, and Luke A. Rankin, in his official capacity as

Pages 33-34

The Senate Defendants incorporate by reference their General Objections described above.

Subject to and without waiving the foregoing objections, the Senate Defendants admit that Adam Kincaid is the Executive Director of the National Republican Redistricting Trust. The Senate Defendants further state that Mr. Kincaid has no relevance to the Enacted Plan or the issues presented in this litigation.

REQUEST FOR ADMISSION NO. 58:

Admit that the email Adam Kincaid sent Andy Fiffick on November 18, 2021 contained a proposed South Carolina congressional map.

RESPONSE:

The Senate Defendants incorporate by reference their General Objections described above.

Subject to and without waiving the foregoing objections, the Senate Defendants admit that the email Adam Kincaid sent Andy Fiffick on November 18, 2021 linked to two proposed South Carolina congressional maps. The Senate Defendants further state that Mr. Kincaid's email to Mr. Fiffick and the linked maps have no relevance to the Enacted Plan or the issues presented in this litigation.

REQUEST FOR ADMISSION NO. 59:

Admit that the South Carolina legislature never published on its website the congressional map sent by Adam Kincaid to Andy Fiffick on November 18, 2021.

RESPONSE:

The Senate Defendants incorporate by reference their General Objections described above.

Subject to and without waiving the foregoing objections, the Senate Defendants admit that the South Carolina Senate never published on its website the congressional map sent by Adam Kincaid to Andy Fiffick on November 18, 2021 because it did not comply with the Senate's Public Submissions Policy. The Senate Defendants further state that Mr. Kincaid's email to Mr. Fiffick and the linked maps have no relevance to the Enacted Plan or the issues presented in this litigation

REQUEST FOR ADMISSION NO. 60:

Admit that the South Carolina legislature never published on its website any map submitted by the National Republican Redistricting Trust.

RESPONSE:

The Senate Defendants incorporate by reference their General Objections described above.

Subject to and without waiving the foregoing objections, the Senate Defendants admit that the South Carolina Senate never published on its website any map emailed by the National Republican Redistricting Trust because they did not comply with the Senate's Public Submissions Policy. The Senate Defendants further state that at least one of the maps emailed by the National Republican Redistricting Trust was received after the Senate Staff Congressional Plan already had been produced and made public. The Senate Defendants further state that no map submitted by the National Republican Redistricting Trust has any relevance to the Enacted Plan or the issues presented in this litigation.

REQUEST FOR ADMISSION NO. 61:

Admit that the Senate Judiciary Committee published another proposed congressional map on Tuesday, November 23, 2021.

RESPONSE:

The Senate Defendants incorporate by reference their General Objections described above. The Senate Defendants further object that the term "another" is vague and ambiguous.

Subject to and without waiving the foregoing objections, the Senate Defendants admit that the Senate Redistricting Subcommittee published a draft Congressional map, its Staff Plan, on Tuesday, November 23, 2021. The Senate Defendants further state that this Staff Plan was the first draft

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Congressional map published by the Subcommittee,
not “another proposed congressional map.”

REQUEST FOR ADMISSION NO. 62:

91a

Appendix 9

Transcription of Video File:

20211129SJudiciaryRedistrictingSubcommittee11582_1

Date: November 29, 2021

Video Runtime: 1:32:48

[STAMP]
Plaintiffs'
Exhibit

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Transcript pages 3-4

Sabb to my left, from Williamsburg. Senator Margie Bright Matthews to my far right from Colleton. Senator Scott Talley is downstairs in another commission meeting. And Senator Dick Harpootilan way over yonder to the left. Again, a bipartisan group, representing the Senate and all parts of the state.

A little recap, again, we -- in July, met to organize. Then on the 27th of July through August the 12th, ten public hearings were conducted, where we received testimony across the state about communities of interest. August 12th, we made the newly released census data available on our redistricting website. Then on the September 17th meeting, we adopted guidelines and a public submissions policy. Again, likewise put on the redistricting website. Then from the 17th of September through August-- October 8th,

we received public admissions -- submissions rather, of proposed Senate district plans. Last month, the 21st of October, we received testimony about those submissions. Staff was directed to develop a proposed Senate staff plan, again, based upon the information that we received from those sources. Thereafter, on the 4th of November, we adopted the Senate staff plan. November 12th, we received testimony on the Senate staff plan, as well as the proposed congressional plans.

And so, today, we are going to hear first, a presentation about the congressional plan. And at this time, our would famous, world-renowned cartographer, Will Roberts, will give us a brief description of that congressional plan.

SENATOR MATTHEWS: Mr. Chair?

CHAIRMAN RANKIN: Yes, ma'am?

SENATOR MATTHEWS: I want to make sure I have your timeline correct. This committee has not adopted the conger-- proposed congressional plan?

CHAIRMAN RANKIN: Correct.

SENATOR MATTHEWS: Okay. Thank you.

CHAIRMAN RANKIN: Alright, Mr. Roberts?

MR. ROBERTS: Thank you, Mr. Chairman. At the last subcommittee meeting, staff was charged with creating a Congressional

Transcript pages 27-28

confirmed they talked to any Congressman about this map? Staff, Will, anybody?

MR. ROBERTS: (Inaudible) wait a minute, this was all communicated to (inaudible).

SENATOR HARPOOTILAN: To who? No, no, --

MR. ROBERTS: This map was pushed out (inaudible) --

SENATOR HARPOOTILAN: Prior -- prior to it being, were they consulted in the formulation of this map? Any Congressman?

MR. ROBERTS: Senate staffers were, at one time I think it was (inaudible).

SENATOR HARPOOTILAN: A Congressman was -- prior to this map being drawn, Congressman was consulted and had input?

MR. ROBERTS: The input was very little.

SENATOR HARPOOTILAN: Was what?

MR. ROBERTS: Very little.

SENATOR HARPOOTILAN: Well, that's fine, who was that Congressman?

MR. ROBERTS: Senator Wilson called us and asked us about (inaudible).

SENATOR HARPOOTILAN: Congressman Wilson?

MR. ROBERTS: Yes, sir.

SENATOR HARPOOTILAN: Okay. No other Congressman was --

MR. ROBERTS: Dalton --

SENATOR HARPOOTILAN: -- consulted?

MR. ROBERTS: -- Dalton Tresvant, with Congressman Clyburn's office came (inaudible).

SENATOR HARPOOTILAN: Okay. Anybody else?

MR. ROBERTS: Not that I recall.

SENATOR HARPOOTILAN: Never heard form Nancy Mayes, never heard from (inaudible) -- any of the others?

MR. ROBERTS: Not since -- not since this map has been out.

SENATOR HARPOOTILAN: Any input from people outside our state organization? People from Washington? People from --

MR. ROBERTS: No.

SENATOR HARPOOTILAN: -- independent groups?

MR. ROBERTS: We received (inaudible)

Appendix 10

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

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

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP, and TAIWAN SCOTT, on behalf of
himself and all other similarly situated persons,

Plaintiffs,

v.

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

Defendants.

[STAMP]
Plaintiffs'
Exhibit

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Transcript pages 55-56

REPRESENTATIVE JORDAN: Sure.

REPRESENTATIVE GARVIN: -- that's 100 miles, and that shares the College of Charleston and the University of South Carolina, did you know, I think that's not a great map? But Mr. Jordan, I'm not going to belabor the point, I guess my next question is the process question. We are all aware that the Senate -- that this map mirrors pretty much, with a few minor tweaks, mirrors the Senate's map. And the Senate's map, Mr. Jordan, did you know, was wildly criticized? And -- but for some odd reason, the House decided to adopt a map that was similar to the Senate's map. Mr. Jordan, did you know that I am con--somewhat concerned about the process? Can you, kind of, talk about how we ended up, I guess, for this particular map, do you know, if there were any outside groups that influenced this map? Do you know if any of our congressional members had any input on this particular map?

REPRESENTATIVE JORDAN: So, I will tell you that no partisan group, national or otherwise, were involved in the drafting of this plan. None of that outside partisan stuff took place in this process. The process in this was as I -- as I described in that

timeline. The Ad Hoc needed a starting point in which to discuss, so we pushed out a version. And I don't know that it would have made sense right out the gate, to push out a version that simply looked like the Senate version.

REPRESENTATIVE GARVIN: Uh-huh.

REPRESENTATIVE JORDAN: For purposes of discussion of where we go in drawing these maps.

REPRESENTATIVE GARVIN: Uh-huh.

REPRESENTATIVE JORDAN: We pushed out a version, we had a hearing on it, we had -- as I've already stated, a large amount of input given to us from the public. We listened to the public and we put another version up.

REPRESENTATIVE GARVIN: Uh-huh.

REPRESENTATIVE JORDAN: I would also say, as you brought concerns and others brought concerns, at -- the process -- the

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Appendix 11

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

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

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP,
Plaintiffs,
vs.
THOMAS C. ALEXANDER, et al.,
Defendants.

[STAMP]
Plaintiffs'
Exhibit

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VIDEOTAPED WEB CONFERENCE
DEPOSITION OF: THOMAS BRUNELL, Ph.D.

DATE: Thursday, March 31, 2022

TIME: 11:06 a.m.

TIME ENDED: 4:58 p.m.

LOCATION: Richardson, Texas

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

Transcript page 37

A. Not that I'm aware of.

Q. And, Dr. Brunell, have you ever served or been hired to work on a campaign for a candidate?

A. Never.

Q. Have you ever volunteered on a campaign or for a candidate?

A. I -- I have.

Q. And which campaign or candidate?

A. Excuse me.

I think the last time I worked on a campaign was for Michael Dukakis in 1988, maybe? It was a long time ago. It's when he ran for president to be specific.

Q. Understood.

And have you ever been hired or retained by any South Carolina State legislators in any role outside of this litigation?

A. I worked for the -- I believe I worked for the state legislature ten years ago. I worked with -- with, among other people, Rob Tyson.

THE WITNESS: Hello, Rob. Good to see you.

BY MR. CUSICK:

Q. And that was during the last

Transcript pages 81-82

A. Sure.

Q. Did you see any benefit in doing so?

A. No.

Q. Why not?

A. Well, the evidence was clear. So we know that South Carolina has been drawing majority-minority districts since -- since the '90s when all things were first started after the -- the Gingles case. And I have done racially polarized voting in South Carolina before.

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

Q. In your field of expertise, is looking at two elections sufficient for establishing a pattern of racially polarized voting?

A. In this case I think that it's perfectly fine. Like I said, we -- voting was racially -- we know that voting was racially polarized going in. We found clear evidence of it in these two elections.

I would have been happy to -- to analyze 31 elections, if that's what the state wanted me to do, you know, but there was no reason for me to keep going in my -- in my professional opinion. We know that voting was racially polarized in South Carolina. We found evidence quite clearly that it still existed.

There was no reason to -- to beat the dead horse, as it were.

Q. I hear you for this case, but in your field is it the general consensus to look at just two elections to establish the pattern of a racially polarized verdict?

A. I -- I don't -- I don't know how to answer the question. I'm answering it for this case specifically.

Q. Have you looked at racially -- at more than two elections in other racially polarized voting analyses?

A. Perhaps.

Q. Do you recall any?

A. I feel like I did some analyses for North Carolina, and there might have been three or -- three, maybe four elections that I looked at

102a

Appendix 12

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

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

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP,
Plaintiffs,
vs.

THOMAS C. ALEXANDER, et al.,
Defendants.

[STAMP]
Plaintiffs'
Exhibit

322

Emails and
Letter re: Draft 2021 Redistricting Guidelines

From: Holli Miller <holli@harpootlianlaw.com>
Sent: Thursday, September 16, 2021 1:08 PM
To: Michelle McGee; Luke A. Rankin; George E. “Chip” Campsen III; Tom Young; Ronnie Sabb; Margie Bright Matthews; Scott Talley; Dick Harpootlian
Cc: Marie Waller; Julie Bowers; Debbie Barthe; Linda Pridgen; Dawn Jennings; Ashley Stewart; Dick Harpootlian; Ja’veell Bynoe; Andy Fiffick; Paula Benson; charles.terreni@terrenilaw.com; Will Roberts; Breeden John; Maura Baker; Madison Faulk
Subject: RE: Notice of Redistricting Subcommittee Meeting
Attachments: 2021-09-16 Ltr to Luke Rankin.pdf

Please enclosed find letter from Sen. Dick Harpootlian.

[Logo] **Holli Miller**

Paralegal at Richard A. Harpootlian, PA

Address 1410 Laurel Street Columbia, SC 29201

Phone 803-252-4848 **Fax** 803-252-4810

Email holli@harpootlianlaw.com

Website http://www.harpootlianlaw.com/

From: Michelle McGee <MichelleMcGee@scsenate.gov>
Sent: Wednesday, July 14, 2021 6:09 PM
To: Luke A. Rankin <LukeRankin@scsenate.gov>; George E. “Chip” Campsen III<ChipCampsen@scsenate.gov>; Tom Young <TomYoung@scsenate.gov>; Ronnie Sabb <RonnieSabb@scsenate.gov>; Margie

Bright Matthews <MargieBrightMatthews@scsenate.gov>; Scott Talley <ScottTalley@scsenate.gov>; Dick Harpootlian <DickHarpootlian@scsenate.gov>

Cc: Marie Waller <MarieWaller@scsenate.gov>; Julie Bowers <JulieBowers@scsenate.gov>; Debbie Barthe <DebbieBarthe@scsenate.gov>; Linda Pridgen <LindaPridgen@scsenate.gov>; Dawn Jennings <DawnJennings@scsenate.gov>; Ashley Stewart <AshleyStewart@scsenate.gov>; Dick Harpootlian <rah@harpootlianlaw.com>; Holli Miller <holli@harpootlianlaw.com>; Ja'vell Bynoe <JavellBynoe@scsenate.gov>; Andy Fiffick <AndyFiffick@scsenate.gov>; Paula Benson <PaulaBenson@scsenate.gov>; charles.terreni@terrenilaw.com; Will Roberts <WillRoberts@scsenate.gov>; Breeden John <BreedenJohn@scsenate.gov>; Maura Baker <MauraBaker@scsenate.gov>; Madison Faulk <MadisonFaulk@scsenate.gov>; Michelle McGee <MichelleMcGee@scsenate.gov>

Subject: Notice of Redistricting Subcommittee Meeting

NOTICE OF SUBCOMMITTEE MEETING

TO: Senator George E. "Chip" Campsen III
Senator Tom Young
Senator Ronnie A. Sabb
Senator Margie Bright Matthews
Senator Scott Talley
Senator Richard A. "Dick" Harpootlian

FROM: Senator Luke A. Rankin

DATE: July 14, 2021

SUBJECT: Notice of Senate Judiciary Committee's Redistricting Subcommittee Meeting

The Senate Judiciary Committee's Redistricting Subcommittee will meet on Tuesday, July 20, 2021, at 10:30 a.m. in Room 105 of the Gressette Building.

105a

The purpose of this meeting is to provide an overview of the redistricting process, discuss the public hearing schedule, and public participation generally. Please consider the below list of locations used during the 2011 redistricting cycle:

Orangeburg Calhoun Technical College
Central Carolina Technical College
Technical College of the LowCountry (Beaufort)
Aiken Technical College
York Technical College
Greenville County Council Chambers
Horry Georgetown Technical College
Gressette Building
Florence-Darlington Technical College
Trident Technical College

Attached please find the meeting notice. Should you have any questions, please contact Andy Fiffick or Michelle McGee.

Thank you,

Michelle McGee
Senate Judiciary Committee
Meeting Coordinator
Gressette Building 102
803-212-6634
MichelleMcGee@scsenate.gov

106a

[LETTERHEAD OF RICHARD A. HARPOOTLIAN]

September 16, 2021

VIA EMAIL & FIRST CLASS MAIL

The Honorable Luke A. Rankin, Chair
Senate Judiciary Redistricting Subcommittee
101 Gressette Bldg.
Columbia, South Carolina 29201

In re: draft 2021 Redistricting Guidelines

Dear Mr. Chairman,

I am writing in anticipation of our meeting Friday to share some thoughts with the subcommittee concerning the draft 2021 Redistricting Guidelines that I received for discussion purposes, a copy of which is enclosed here. I intend to propose we make the following changes to the current draft.

1. Equal Population in Legislative Districts.

The draft observes that federal courts have sanctioned the use of a 10% population deviation range (i.e., +/- five percent per district) as a good-faith effort to meet the Constitutional mandate of one person, one vote. However, the draft also (correctly) observes that “a congressional redistricting plan should not have population deviations greater than one (1) person.”

In my view, our committee should alter the legislative districting standard for 2021 to require population deviation of no greater than one person. As you know, there have been extraordinary advances in redistricting technology since the federal courts approved the 10% standard for legislative districts. Computer mapping technology makes it far easier to meet this standard with minimal effort by staff. It also strikes me as incongruous that we

should require a far more exacting standard for congressional districts that are much larger than our legislative districts, when we could just as easily apply the same standard across the board. Finally, use and abuse of the 10% standard has led to litigation in other states and allegations that it was being used to systematically give greater weight to some votes over others. Adopting the same, one-person standard that we have already been using for congressional districts avoids this potential problem altogether. Accordingly, I believe it would be an important reform to make that change in 2021.

2. Voting Rights.

The draft observes that any redistricting plan must comply with § 2 of the Voting Rights Act (VRA) and the Fourteenth and Fifteenth Amendments of the U.S. Constitution by ensuring a plan will not have the purpose or the effect of diluting minority voting strength. I agree.

However, what is not clear from the draft guidance is *what* the subcommittee contends would rise to the level of vote dilution under the VRA or the Constitution. For example, the U.S. Supreme Court has held that before a federal court will weigh a § 2 plaintiff's vote dilution claim, the plaintiff must be able to allege and prove (1) that the minority community is sufficiently numerous and geographically compact to constitute a majority, (2) that the minority community is politically cohesive, and (3) that the majority votes sufficiently as a bloc to enable it to defeat the minority's preferred candidate of choice. See Bartlett v. Strickland, 556 U.S. 1 (2009); Thornburg v. Gingles, 478 U.S. 30 (1986). Because these threshold requirements must be met before a litigant could even argue a court should force the

State to draw a majority-minority district, the legislature should not voluntarily undertake such a task in anticipation of such a challenge without first making sure these conditions are met.

I propose that we ask the subcommittee staff to produce a written document that fully explains what the subcommittee should credit as sufficient evidence of potential vote dilution that might warrant remedial racial districting under § 2, or the 14th and 15th Amendments. Further, the subcommittee should also publish all data and analyses that might evidence or inform such a conclusion so the public can review it and draw its own conclusions. A failure to justify these decisions with real evidence now needlessly risks subjecting the legislative process to judicial review because a post-hoc justification is no defense to racial decision making and could lead to strict scrutiny. Cf. Bethune-Hill v. Virginia State Bd. of Elections, 137 S. Ct. 788, 799 (2017) (“The racial predominance inquiry concerns the actual considerations that provided the essential basis for the lines drawn, not *post hoc* justifications the legislature in theory could have used but in reality did not.”). In the absence of such data and analysis, I do not believe the State can credibly claim to be acting in furtherance of the VRA or the Constitution when subordinating other, race-neutral considerations to draw majority-minority districts.

3. Avoidance of Racial Gerrymandering.

The draft observes that racial gerrymandering is not permitted by the Constitution unless the State can demonstrate it is narrowly tailored to serve a compelling state interest. I agree.

However, I believe the subcommittee should seek guidance from committee staff and then enact a

policy that seeks to correct racial decision making that serves as the predicate for the choices reflected in the benchmark plan. Specifically, recall that § 5 of the VRA previously required covered jurisdictions like South Carolina to ensure that the newly enacted plan would not “retrogress” the position of the minority community. The retrogression principle was cited in South Carolina and throughout the South as precisely the sort of compelling state interests that justified what the Equal Protection Clause would otherwise prohibit: maximizing the number and concentration of majority-Black districts. The U.S. Supreme Court eventually disabused states of this perverse interpretation (see Alabama Legislative Black Caucus v. Alabama, 575 U.S. 254, 275 (2015) (“... this alternative holding rests upon a misperception of the law. Section 5 ... does not require a covered jurisdiction to maintain a particular numerical minority percentage. It requires the jurisdiction to maintain a minority’s ability to elect a preferred candidate of choice.”)), but South Carolina never corrected it. Moreover, the predicate for this racial decision making (i.e., § 5), was effectively struck down by the Court as unconstitutionally applied based on a coverage formula that had not been updated since the VRA was originally passed in 1965 and failed to reflect the reality on the ground. See Shelby Cty., Ala. v. Holder, 570 U.S. 529 (2013). In light of U.S. Supreme Court precedent over the last decade, I believe our guidelines should be updated to recognize that districting decisions the legislature made a decade ago under the auspices of § 5, were based on a flawed view of the VRA that was unconstitutionally in effect at the time those decisions were made.

4. Compactness and Contiguity.

The draft's current statement concerning compactness is virtually meaningless and should be altered. The U.S. Supreme Court has long held that district shape is evidence that matters. E.g., Shaw v. Reno, 509 U.S. 630 (1993). Our notion of representation in the United States has long been tied to geography and shared sense of place. The public believes they should be represented by the same elected leaders as their neighbors, which is why citizens intuitively understand there is something suspicious and wrong about bizarrely shaped districts that look like an ink-blot test.

For reasons discussed above, many of our district shapes (including mine) have become bizarrely tortuous. The 2021 redistricting is an opportunity to correct that and restore public confidence in our ability to fairly draw districts. I believe our guidelines should expressly state that, correcting bizarrely shaped districts and drawing compact shapes is a top priority of this subcommittee second only to the one person, one vote mandate.

Further, while I agree that all districts should be contiguous, I believe we should alter the draft to provide that whenever possible, contiguity based solely on water access should be avoided. Doing so would better reflect the manner in which the vast majority of citizens understand and navigate geographic space in our State. Of course, there are exceptions in the Lowcountry where water navigation is more prevalent; however, I believe those exceptions are few and far between such that it should be avoided when possible.

In the same spirit, point-to-point contiguity should be eliminated altogether as it results in an

unnecessary, tortured district shape that strongly suggests illicit gerrymandering that warrants further scrutiny.

5. Communities of Interest.

The term “communities of interest” as defined by our guidelines means everything and nothing. In years past, this slippery language has been used to justify all manner of districting abuse by serving as an empty vessel that legislators can fill with any expedient justification. I would eliminate it entirely and propose the following hierarchy when weighing which geographic subdivisions and categories should take precedence over others:

- a. **Counties.** Counties have historical and legal significance in the history of our State and still serve as one of the principal ways we organize political power in our state. To the greatest extent possible, counties should be kept whole.
- b. **Towns and Cities.** As with counties, towns and cities have some of the most direct and immediate impact on daily life on citizens in our State. Of course, not every city can be kept whole within a single district, but often our towns *can* be kept whole. Thus, I would prioritize keeping small towns whole over cities that are better able to find legislative representatives to pursue their interests in the General Assembly by virtue of their size and electoral power. Towns, conversely, need dedicated representation or risk falling victim to the maxim: everyone is responsible, so no one is responsible.

- c. **Voting Precinct Boundaries.** Minimizing precinct splits greatly aids election administrators and reduces voter confusion. After the foregoing, it is a worthy objective.
- d. **Maintaining District Cores.** While I agree we should maintain district cores when possible, other considerations stated above should be given priority *and* we should recognize that maintaining district cores could simply ossify problems caused by past districting efforts. Accordingly, I give this some, but relatively low weight.

6. Avoiding Competition Among Incumbent Members.

I believe our guidelines should expressly state that avoiding incumbent competition resulting from drawing members into the same district is the lowest possible consideration that we will weigh during this process. The districts we draw are not our own—they belong to the voters and should serve their interests not our own desire to return to this body. In looking at the various demographic pressures, it appears highly unlikely this can be avoided altogether. Moreover, in drawing districts that will last for the next 10 years, it strikes me as deeply troubling that shape, counties, towns, cities, and precincts might be subordinated simply because a member of this body or the House *happen* to live in a certain local.

I support avoiding drawing incumbents together when possible, but not if it conflicts with one or more of the principles articulated above and I believe our guidelines should make that clear.

* * *

113a

Mr. Chairman, thank you for your consideration. I hope this correspondence is helpful in allowing members and staff to reflect on these issues prior to our meeting and to expedite our discussion. I look forward to discussing this with you and our colleagues on Friday.

Finally, I respectfully request that this correspondence be included in the official subcommittee record and am sharing a copy with staff for that purpose.

Sincerely,

/s/ Richard A. Harpootlian
Richard A. Harpootlian

Enclosure

cc: Members and Staff of Senate Judiciary
Redistricting Subcommittee

Adopted _____

2021 REDISTRICTING GUIDELINES
SOUTH CAROLINA SENATE JUDICIARY
COMMITTEE REDISTRICTING SUBCOMMITTEE

[STAMP]
DRAFT

The South Carolina Senate Judiciary Redistricting Subcommittee adopts the 2021 Redistricting Guidelines to aid the Redistricting Subcommittee and interested parties in developing and evaluating redistricting plan proposals. These Guidelines are drawn in part from the guidelines adopted for prior redistricting, the 2002 opinion of the three-judge court in *Colleton County Council v. McConnell*, the 2012 opinion of the three-judge court in *Backus v. South Carolina*, other court decisions, and input received in public hearings across the State.

I. REQUIREMENTS OF FEDERAL LAW

A. Population equality

1. Legislative districts

The Fourteenth Amendment to the U.S. Constitution requires an honest and good faith effort to construct legislative districts as nearly of equal population as is practicable. The good faith effort required by the Fourteenth Amendment does not preclude the pursuit of legitimate redistricting policies such as making districts compact, respecting political subdivision boundaries, preserving the cores of prior districts, and avoiding contests between incumbent legislators. Any redistricting plan with popular deviation ranges of greater than ten percent (10%) between the most-populous and least-populous districts is presumptively unlawful unless the good

faith effort required by the Constitution is proven. So that the State may avoid assuming this additional burden under federal law, population deviations of individual districts shall be within plus (+) or minus (-) five-percent (5%) of the ideal population and within an overall range of less than ten percent (10%). This guideline does not affect the requirement of an honest and good faith effort to construct districts as nearly of equal population as is practicable.

2. Congressional Districts

Under the apportionment clause of Article I, Section 2 of the U.S. Constitution, any population deviation among congressional districts, no matter how small, must be justified through a showing that the specific deviation is required by legitimate redistricting policies such as making districts compact, respecting political subdivision boundaries, preserving the cores of prior districts, and avoiding contests between incumbent representatives. So that the State may avoid assuming this additional burden under federal law, a congressional redistricting plan should not have population deviations greater than one (1) person.

B. Voting rights. A redistricting plan for the General Assembly or congress must not have either the purpose or the effect of diluting minority voting strength and must otherwise comply with Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments of the U.S. Constitution.

C. Avoidance of racial gerrymandering. All plans must comply with the Fourteenth Amendment to the U.S. Constitution, as interpreted by the United States Supreme Court in *Shaw v. Reno* and subsequent cases. Under those cases, while consideration of race

is permissible, race must not be the predominant factor in that race-neutral considerations are subordinated to racial considerations, unless that subordination is narrowly tailored to serve a compelling state interest.

II. CONTIGUITY. All legislative and congressional districts should be composed of contiguous geography. Contiguity by water is acceptable to link territory within a district provided that there is a reasonable opportunity to access all parts of the district and the linkage is designed to meet the other criteria stated herein. Point-to-point contiguity is acceptable so long as adjacent districts do not use the same vertex as points of transversal.

III. ADDITIONAL CONSIDERATIONS. Other criteria that should be given consideration, where practical and appropriate, in no particular order of preference, are:

A. Communities of Interest. Communities of interest should be considered. Areas defined by geographic, demographic, historic or other characteristics that cause people to identify with one another, including economic, social, cultural, political, and recreational activity interests common to the area's population may constitute communities of interest. Communities of interest may be overlapping and may consist of one or more formally, or informally, defined geographic areas with unifying common interests.

B. Constituent Consistency. Preserving the cores of existing districts, keeping incumbents' residences in districts with their core constituents, and avoiding contests between incumbent legislators should be considered.

C. Minimizing Divisions of County Boundaries.

D. Minimizing Divisions of Cities and Towns.

E. Minimizing Divisions of Voting Precinct Boundaries. Voting precinct boundaries are represented by the Census Bureau's Voting Tabulation District (VTD) lines. Both existing lines and pending precinct boundary realignments should be considered. If precincts are split, every effort should be made to divide precincts along recognizable and demonstrable boundaries.

F. District Compactness. In determining the relative compactness of a district, consideration should be given to geography, demography, communities of interest, and the extent to which parts of the district are joined by roads, media outlets, or other means for constituents to communicate effectively with each other and with their representatives.

IV. DATA. The total state population and the population of the defined subunits thereof, as reported by the 2020 Federal Decennial Census, shall be the exclusive permissible population database used for the development, evaluation, and analysis of proposed redistricting plans. Other succinct and importable sources of demographic and political information may be considered in drafting and analyzing proposed redistricting plans.

118a

Appendix 13

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

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

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP,
Plaintiffs,
vs.

THOMAS C. ALEXANDER, et al.,
Defendants.

[STAMP]
Plaintiffs'
Exhibit

722

Email and
General Questions for Congressional Redistricting
Amendment 1

119a

From: Andy Fiffick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D9CAD16A29A64F39AB7BEE568890753C-ANDY FIFFIC]

Sent: 1/20/2022 8:40:43 AM

To: Luke Rankin [luke@rankinandrkin.com]; Chip Campsen [ccampsen@gmail.com]; Shane Massey [asmlaw30@bellsouth.net]; Scott Talley [/o=Exchange labs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2423b835a665430abc522d85989d5244-Scott Taile]; Larry Grooms [vote grooms@aol.com]; Will Roberts [/o=Exchangelabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7049cefecd4241edbbc6597323cf0561-Will Robert]; Michelle McGee [/o=Exchangelabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=96a2563cf74649239106d3915cccaabf-Michelle Mc]

Subject: General Questions for Congressional Redistricting.Amendment 1..docx

Attachments: General Questions for Congressional Redistricting.Amendment 1..docx

**GENERAL QUESTIONS FOR
CONGRESSIONAL REDISTRICTING
AMENDMENT 1**

1. Why haven't I seen the analysis of the plan on which you are relying?

Staff provided information to any Senator who requested it. Some information also was available on the Senate Redistricting Website.

2. Why haven't you done a racial block voting analysis?

a. We don't need one at this time. Amendment 1 was drawn taking into account the Subcommittee's criteria and the current configuration of the districts;

b. A racial block voting analysis would expose the Senate to the accusation that it drew with racial targets in mind, which it did not.

c. A racial block voting analysis would have to be tailored to specific plans and would be regional in nature.

d. If we need a racial block voting analysis in litigation, we can perform one, but no one has seriously suggested that Amendment I violates Section 2 of the Voting Rights Act.

3. Shouldn't a plan split as few counties as possible?

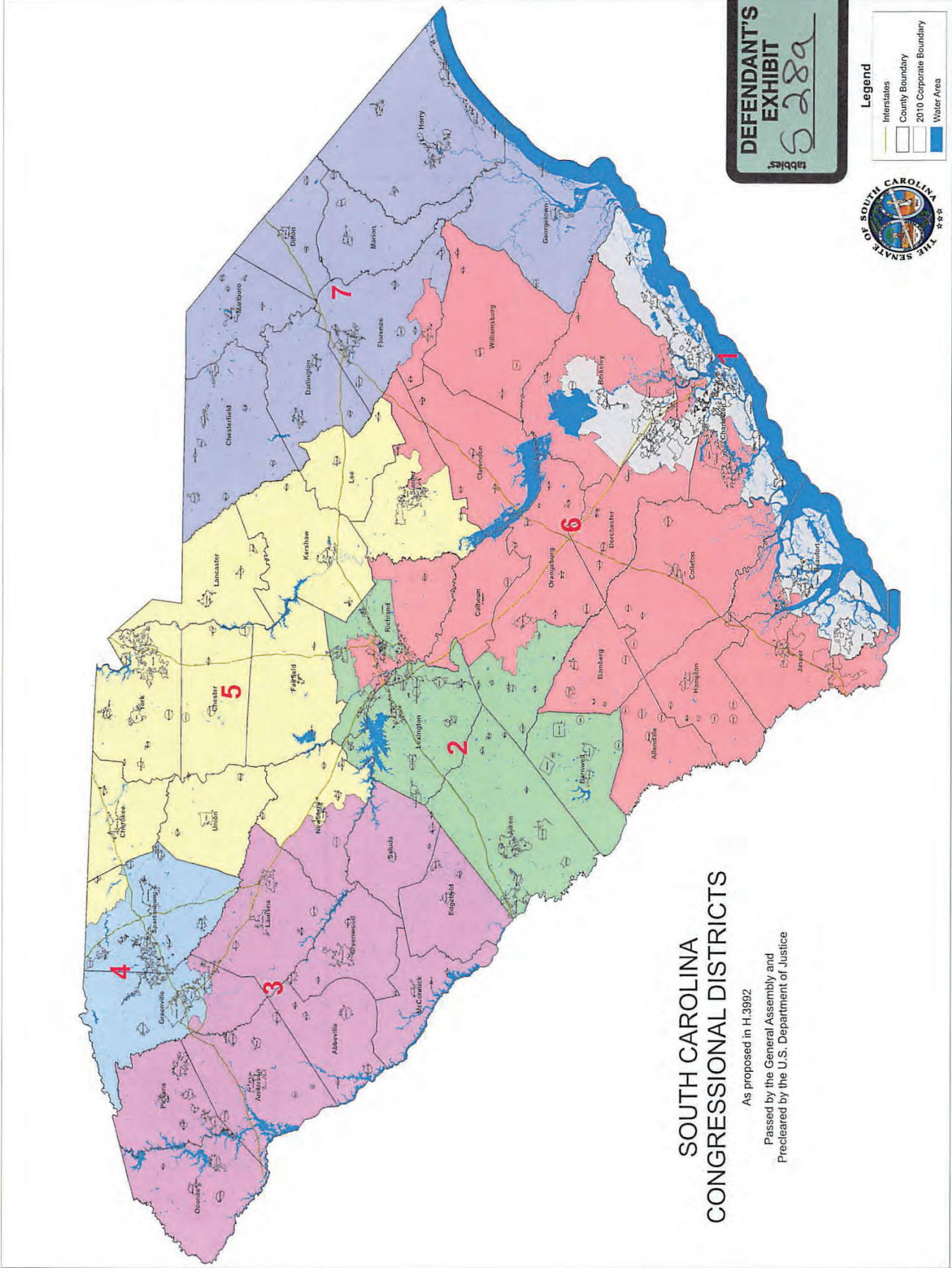
a. Avoiding splits in county lines is one of several criteria that the subcommittee adopted, such as maintaining communities of interest and constituent consistency.

b. The subcommittee placed priority with keeping counties whole.

- c. County lines are more important in some places than others.
- d. It is ultimately a political decision to be made on a district-by-district basis.

4. Isn't it better if a plan doesn't split municipalities?

- a. One of the subcommittee's criteria was avoiding splitting municipalities, but it is not elevated above others.
- b. It would be difficult to strictly follow this criterion because the State's municipalities engage in piecemeal annexations under our current laws. This means the boundaries are irregular and always changing.
- c. Many municipal boundaries cross county lines, so the criteria can conflict with one another. In fact, some municipalities, like Summerville, are in multiple counties. Summerville is in Berkeley, Charleston, and Dorchester.



123a

Appendix 15

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

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

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP, *et al.*,
Plaintiffs,

v.

THOMAS C. ALEXANDER, *et al.*,
Defendants.

[STAMP]
Defendants'
Exhibit
S 29d

124a

House Plan 2 Senate Amendment 1

District	Biden	%Biden	Trump	%Trump	Total
1	170662	45.61%	203533	54.39%	374,195
2	160640	44.63%	199295	55.37%	359,935
3	105850	30.97%	235966	69.03%	341,816
4	137465	40.57%	201396	59.43%	338,861
5	146303	40.78%	212458	59.22%	356,761
6	219577	66.30%	111599	33.70%	331,176
7	145757	40.76%	211855	59.24%	357,612

125a
Appendix 16

User:
Plan Name: House Plan 2 Senate Amendment 1
Plan Type:

Population Summary

Tuesday, January 11, 2022

9:09 AM

Summary Statistics:

Population Range: 731,203 to 731,204
 Ratio Range: 0.00
 Absolute Range: -1 to 1
 Absolute Overall Range: 1
 Relative Overall Range: 0.00% to 0.00%
 Relative Overall Range: 0.00%
 Absolute Mean Deviation: 0.43
 Relative Mean Deviation: 0.00%
 Standard Deviation: 0.49

District	Population	Devn.	[18+_Pop]	[% 18+_Pop]	[H18+_Pop]	[% H18+_Pop]	[NH18+_Wht]	[% NH18+_Wht]	[NH18+_DOJ_Blk]	[% NH18+_DOJ_Blk]
1	731,203	-1	570,538	78.03%	38,918	6.82%	405,889	71.14%	95,400	16.72%
2	731,203	-1	563,028	77%	33,556	5.96%	360,714	64.07%	137,891	24.49%
3	731,204	0	577,297	78.95%	27,422	4.75%	427,484	74.05%	98,848	17.12%
4	731,204	0	565,412	77.33%	50,888	9%	379,099	67.05%	104,145	18.42%
5	731,204	0	562,685	76.95%	25,482	4.53%	374,151	66.49%	135,206	24.03%
6	731,204	0	586,760	80.25%	31,196	5.32%	261,421	44.55%	269,326	45.9%
7	731,203	-1	588,740	80.52%	23,662	4.02%	395,217	67.13%	146,236	24.84%

Total: 5,118,425

Ideal District: 731,204



126a

Appendix 17

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

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

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP, *et al.*,
Plaintiffs,

v.

THOMAS C. ALEXANDER, *et al.*,
Defendants.

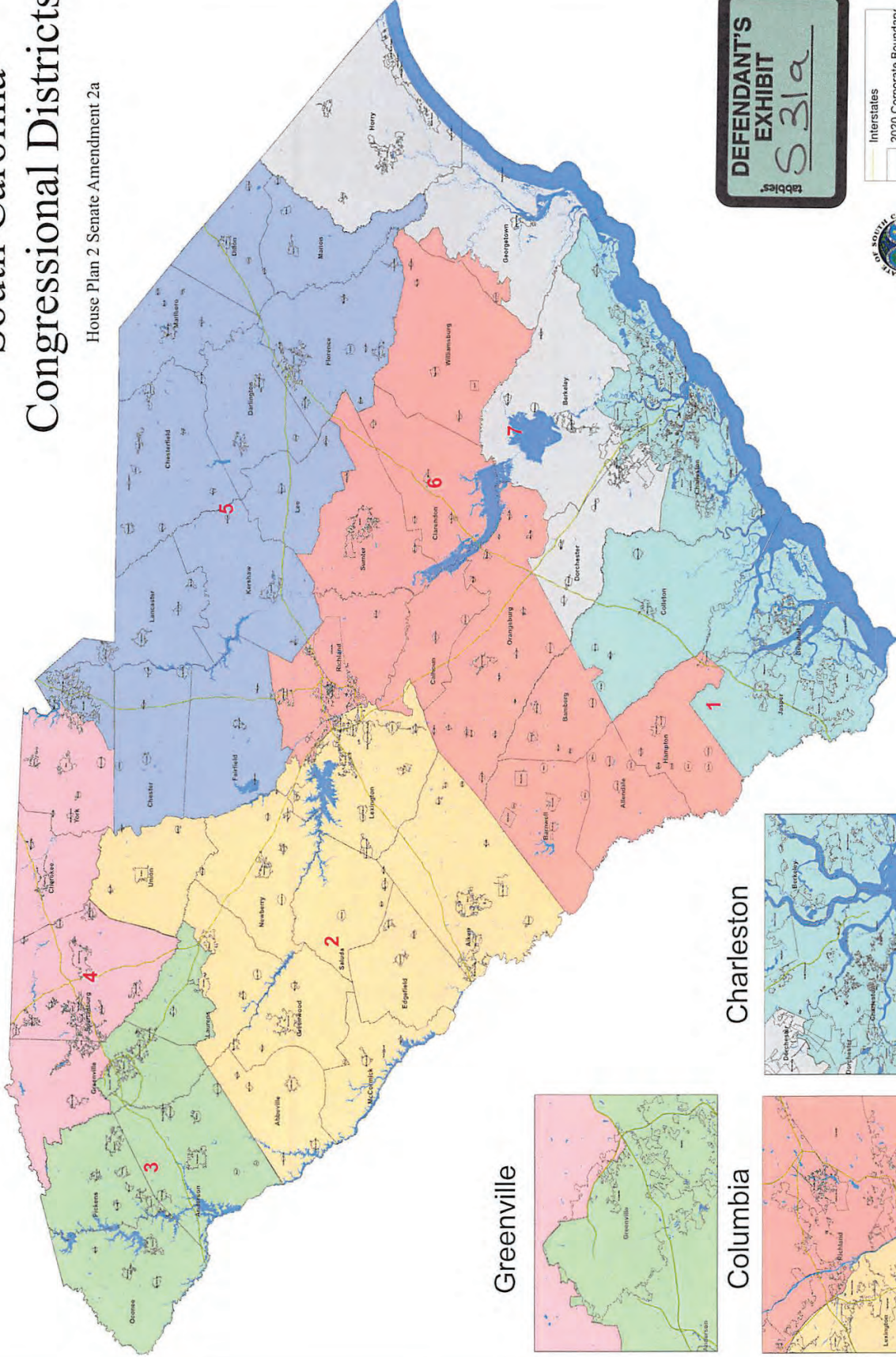
[STAMP]
Defendants'
Exhibit
S 30d

House Plan 2 Senate Amendment 2

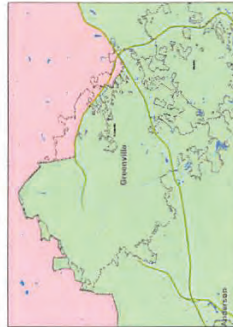
District	Biden	%Biden	Trump	%Trump	Total
1	192611	51.83%	178981	48.17%	371,592
2	129735	36.50%	225731	63.50%	355,466
3	119159	34.68%	224403	65.32%	343,562
4	116289	34.16%	224132	65.84%	340,421
5	166077	46.92%	187856	53.08%	353,933
6	224292	65.60%	117592	34.40%	341,884
7	138091	38.84%	217407	61.16%	355,498

South Carolina Congressional Districts

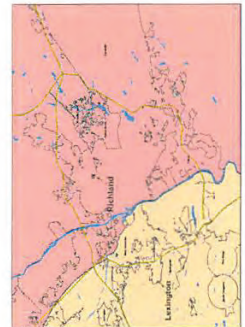
House Plan 2 Senate Amendment 2a



Greenville



Columbia



Charleston



DEFENDANT'S
EXHIBIT
S31a



Interstates
2020 Corporate Boundary
County Boundary
Water Area

129a

Appendix 19

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

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

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP, *et al.*,
Plaintiffs,

v.

THOMAS C. ALEXANDER, *et al.*,
Defendants.

[STAMP]
Defendants'
Exhibit
S 31e

**Plan Name: House Plan 2 Senate
Amendment 2a**

**Plan Type: Political Subdivision Splits
Between Districts**

Friday, January 14, 2022

3:10 PM

Split Counts

Number of subdivisions split into more than one district:

County	6
Voting District	10

Number of times a subdivision is split into multiple districts:

County	13
Voting District	10

Number of splits involving no population:

County	0
Voting District	0

<u>County</u>	<u>Voting District</u>	<u>District</u>	<u>Population</u>
<i>Split Counties:</i>			
Berkeley SC		1	68,457
Berkeley SC		7	161,404
Georgetown SC		6	6,173
Georgetown SC		7	57,231
Greenville SC		3	288,002
Greenville SC		4	237,532
Laurens SC		2	38,066
Laurens SC		3	29,473
Richland SC		2	17,684
Richland SC		6	398,463

County	Voting District	District	Population
York SC		4	109,458
York SC		5	172,632
<i>Split VTDs:</i>			
Berkeley SC	Cainhoy	1	979
Berkeley SC	Cainhoy	7	543
Georgetown SC	BETHEL	6	109
Georgetown SC	BETHEL	7	1,566
Greenville SC	GREENVILLE 4	3	2,892
Greenville SC	GREENVILLE 4	4	1,573
Laurens SC	BAILEY	2	1,691
Laurens SC	BAILEY	3	12
Laurens SC	CLINTON MILL	2	1,881
Laurens SC	CLINTON MILL	3	430
Laurens SC	LAURENS 6	2	1,535
Laurens SC	LAURENS 6	3	313
Richland SC	Dutch Fork 1	2	183
Richland SC	Dutch Fork 1	6	1,500
Richland SC	Dutch Fork 3	2	3,549
Richland SC	Dutch Fork 3	6	47
York SC	Ebinport	4	9
York SC	Ebinport	5	4,170
York SC	Oakridge	4	3,442
York SC	Oakridge	5	477

132a

Appendix 20

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

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

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP, *et al.*,
Plaintiffs,

v.

THOMAS C. ALEXANDER, *et al.*,
Defendants.

[STAMP]
Defendants'
Exhibit
S 32e

Staff Subcommittee Plan

**Political Subdivision Splits
Between Districts**

Tuesday, November 23, 2021

11:57 AM

Split Counts

Number of subdivisions split into more than one district:

County	13
Voting District	10

Number of times a subdivision is split into multiple districts:

County	13
Voting District	10

Number of splits involving no population:

County	0
Voting District	1

County	Voting District	District	Population
<i>Split Counties:</i>			
Beaufort SC	1		183,135
Beaufort SC	6		3,982
Berkeley SC	1		215,641
Berkeley SC	6		14,220
Calhoun SC	2		3,935
Calhoun SC	6		10,184
Charleston SC	1		179,544
Charleston SC	6		228,691
Colleton SC	1		1,253
Colleton SC	6		37,351
Dorchester SC	1		137,993

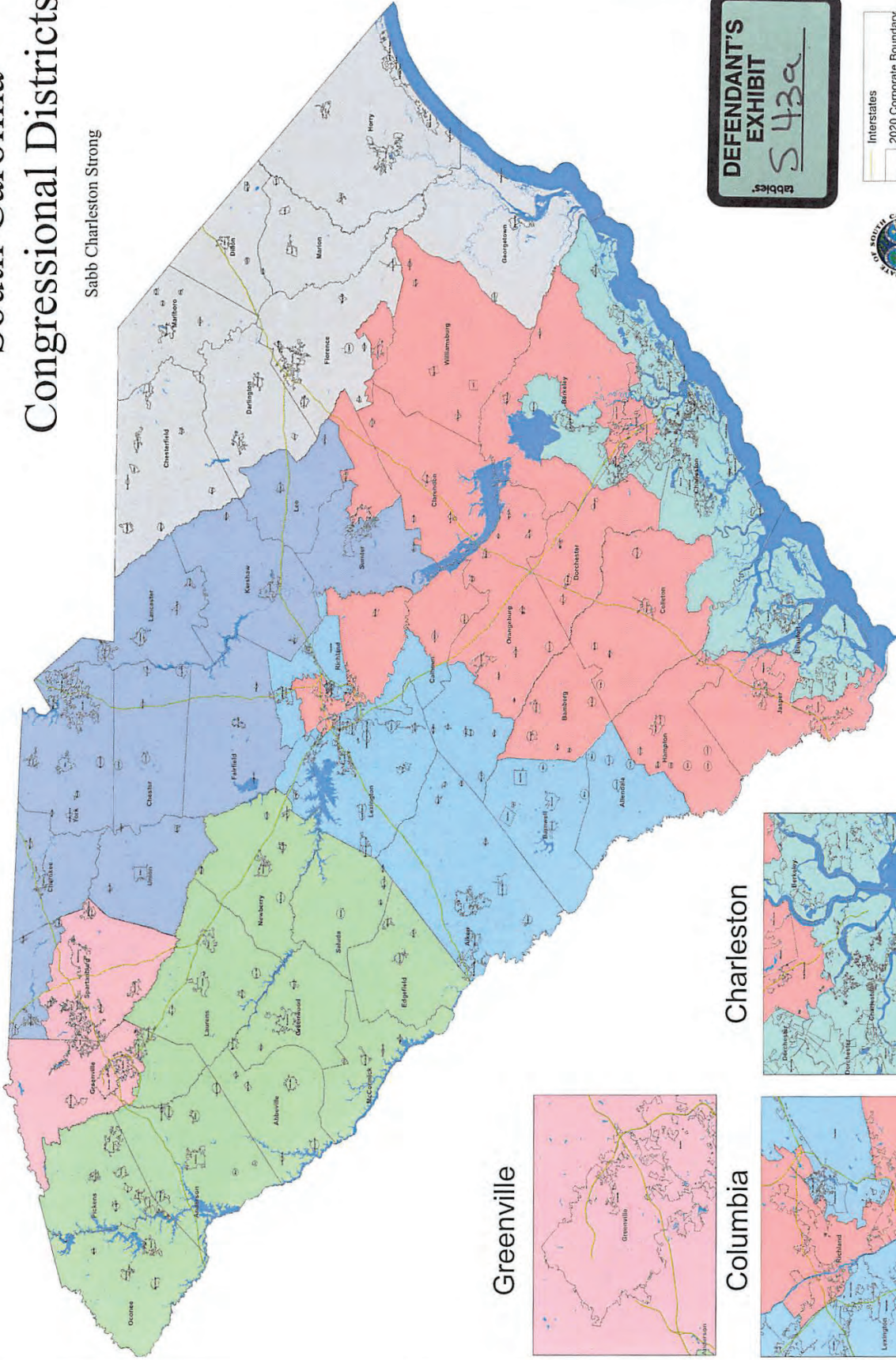
County	Voting District	District	Population
Dorchester SC		6	23,547
Florence SC		6	10,609
Florence SC		7	126,450
Greenville SC		3	64,526
Greenville SC		4	461,008
Jasper SC		1	13,638
Jasper SC		6	15,153
Orangeburg SC		2	26,517
Orangeburg SC		6	57,706
Richland SC		2	217,363
Richland SC		6	198,784
Spartanburg SC		4	270,196
Spartanburg SC		5	57,801
Sumter SC		5	76,661
Sumter SC		6	28,895
<i>Split VTDs:</i>			
Charleston SC	Charleston 4	1	1,088
Charleston SC	Charleston 4	6	57
Charleston SC	Charleston 6	1	363
Charleston SC	Charleston 6	6	1,373
Colleton SC	Green Pond	1	0
Colleton SC	Green Pond	6	1,105
Florence SC	Scranton	6	286
Florence SC	Scranton	7	1,031
Greenville SC	SYCAMORE	3	4,015
Greenville SC	SYCAMORE	4	342
Orangeburg SC	Suburban 7	2	2,123
Orangeburg SC	Suburban 7	6	394
Richland SC	Monticello	2	1,334
Richland SC	Monticello	6	1,144
Richland SC	Pontiac 1	2	4,474

135a

County	Voting District	District	Population
Richland SC	Pontiac 1	6	118
Spartanburg SC	Converse Fire Station	4	1,448
Spartanburg SC	Converse Fire Station	5	515
Sumter SC	BIRNIE	5	561
Sumter SC	BIRNIE	6	676

South Carolina Congressional Districts

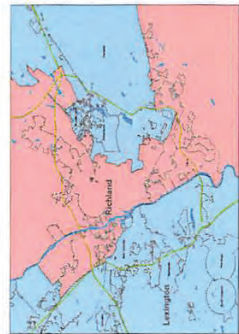
Sabb Charleston Strong



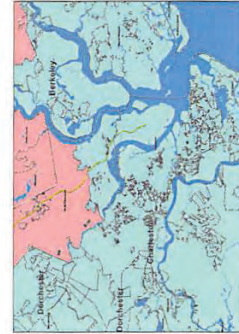
Greenville



Columbia



Charleston



Interstates
2020 Corporate Boundary
County Boundary
Water Area



137a

Appendix 22

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

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

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP, *et al.*,
Plaintiffs,

v.

THOMAS C. ALEXANDER, *et al.*,
Defendants.

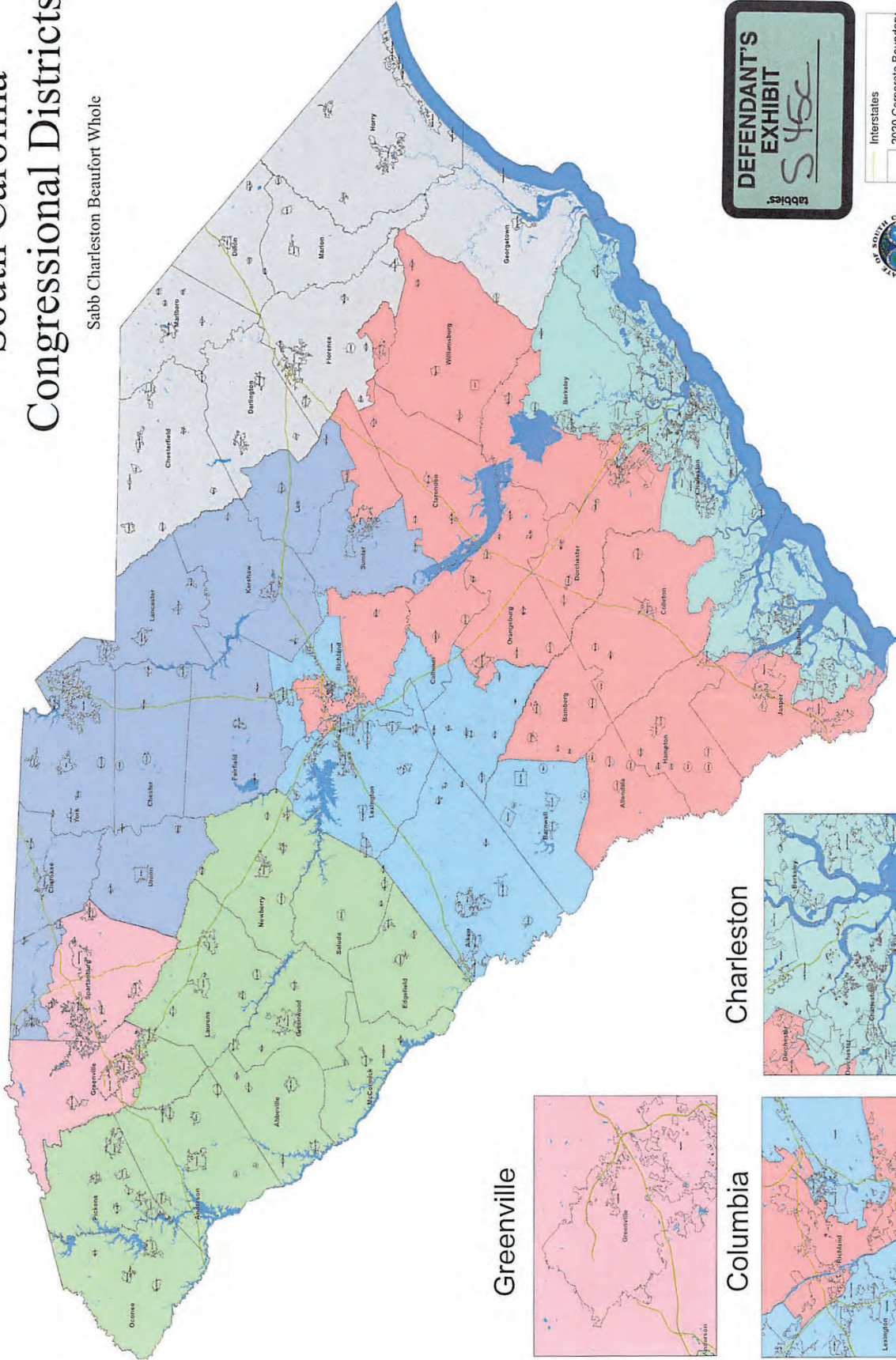
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Defendants'
Exhibit
S 44e

Saab—Least Change Plan

District	Biden	%Biden	Trump	%Trump	Total
1	189655	49.15%	196194	50.85%	385,849
2	161445	44.50%	201327	55.50%	365,722
3	106213	31.11%	235160	68.89%	341,373
4	137747	40.73%	200481	59.27%	338,228
5	145018	40.27%	215138	59.73%	360,156
6	200425	63.35%	115983	36.65%	316,388
7	145751	40.76%	211839	59.24%	357,590

South Carolina Congressional Districts

Sabb Charleston Beaufort Whole



Greenville

Charleston

Columbia

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Appendix 24

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

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

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP, *et al.*,
Plaintiffs,

v.

THOMAS C. ALEXANDER, *et al.*,
Defendants.

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Defendants'
Exhibit
S 45f

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Saab—Charleston Beaumont Whole

District	Biden	%Biden	Trump	%Trump	Total
1	190,632	51.52%	179,390	48.48%	370,022
2	160,654	44.25%	202,431	55.75%	363,085
3	106,213	31.11%	235,160	68.89%	341,373
4	137,747	40.73%	200,481	59.27%	338,228
5	145,018	40.27%	215,138	59.73%	360,156
6	200,239	60.33%	131,663	39.67%	331,902
7	145,751	40.76%	211,839	59.24%	357,590

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Appendix 25

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

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

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP, *et al.*,
Plaintiffs,
v.
THOMAS C. ALEXANDER, *et al.*,
Defendants.

[STAMP]
Defendants'
Exhibit
S 46e

143a

Partisan Analysis MBM Plan

District	Biden	%Biden	Trump	%Trump	Total
1	192611	51.83%	178981	48.17%	371,592
2	129735	36.50%	225731	63.50%	355,466
3	119159	34.68%	224403	65.32%	343,562
4	116289	34.16%	224132	65.84%	340,421
5	166077	46.92%	187856	53.08%	353,933
6	224292	65.60%	117592	34.40%	341,884
7	138091	38.84%	217407	61.16%	355,498
Total	1,086,254		1,376,102		2,462,356

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Appendix 26

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

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

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP, *et al.*,
Plaintiffs,

v.

THOMAS C. ALEXANDER, *et al.*,
Defendants.

[STAMP]
Defendants'
Exhibit
S 46f

Plan Name: MBM Plan**Political Subdivision Splits
Between Districts**

Friday, January 7, 2022

3:38 PM

Split Counts

Number of subdivisions split into more than one district:

County	7
Voting District	19

Number of times a subdivision is split into multiple districts:

County	7
Voting District	19

Number of splits involving no population:

County	1
Voting District	2

County	Voting District	District Population
<i>Split Counties:</i>		
Berkeley SC	1	68,458
Berkeley SC	7	161,403
Georgetown SC	6	6,173
Georgetown SC	7	57,231
Greenville SC	3	288,003
Greenville SC	4	237,531
Greenwood SC	2	69,351
Greenwood SC	3	0
Laurens SC	2	38,068
Laurens SC	3	29,471
Richland SC	2	17,683

County	Voting District	District	Population
Richland SC		6	398,464
York SC		4	109,457
York SC		5	172,633
<i>Split VTDs:</i>			
Berkeley SC	Cainhoy	1	980
Berkeley SC	Cainhoy	7	542
Georgetown SC	BETHEL	6	101
Georgetown SC	BETHEL	7	1,574
Georgetown SC	LAMBERT TOWN	6	8
Georgetown SC	LAMBERT TOWN	7	735
Greenville SC	GREENVILLE 4	3	3,324
Greenville SC	GREENVILLE 4	4	1,141
Greenville SC	GREENVILLE 6	3	762
Greenville SC	GREENVILLE 6	4	564
Greenville SC	LEAWOOD	3	133
Greenville SC	LEAWOOD	4	3,809
Greenwood SC	Rutherford Shoals	2	1,176
Greenwood SC	Rutherford Shoals	3	0
Laurens SC	BARKSDALE- NARINE	2	0
Laurens SC	BARKSDALE- NARINE	3	1,644
Laurens SC	EKOM	2	578
Laurens SC	EKOM	3	341
Laurens SC	LAURENS 6	2	1,842
Laurens SC	LAURENS 6	3	6
Laurens SC	MOUNT OLIVE	2	1,703
Laurens SC	MOUNT OLIVE	3	127
Richland SC	Ballentine 1	2	2,288
Richland SC	Ballentine 1	6	21
Richland SC	Dutch Fork 4	2	143

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County	Voting District	District	Population
Richland SC	Dutch Fork 4	6	2,331
Richland SC	Friarsgate 1	2	4
Richland SC	Friarsgate 1	6	2,511
Richland SC	Friarsgate 2	2	9
Richland SC	Friarsgate 2	6	2,055
York SC	Hollis Lakes	4	2,815
York SC	Hollis Lakes	5	177
York SC	Mt. Gallant	4	2,144
York SC	Mt. Gallant	5	12
York SC	Newport	4	2,691
York SC	Newport	5	225
York SC	Oakridge	4	3,864
York SC	Oakridge	5	55

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Appendix 27

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

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

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP, *et al.*,
Plaintiffs,

v.

THOMAS C. ALEXANDER, *et al.*,
Defendants.

[STAMP]
Defendants'
Exhibit
S 68d

149a

Opperman LWV

District	Biden	%Biden	Trump	%Trump	Total
1	185882	51.75%	173289	48.25%	359,171
2	144197	39.92%	216983	60.08%	361,180
3	105736	30.95%	235849	69.05%	341,585
4	136339	40.21%	202710	59.79%	339,049
5	142967	40.02%	214252	59.98%	357,219
6	224329	64.91%	121276	35.09%	345,605
7	146804	40.94%	211743	59.06%	358,547

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Appendix 28

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

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

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP, and
TAIWAN SCOTT, on behalf of himself and all other
similarly situated persons,
Plaintiffs,

v.

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

THREE-JUDGE PANEL
PLAINTIFFS' POST-TRIAL PROPOSED
AMENDED FINDINGS OF FACT
AND CONCLUSIONS OF LAW
Paragraphs 139, 300 and 306

139. Under the Enacted Plan, CD 1's overall BVAP improbably remained virtually unchanged from the 2011 map, even though, as detailed *infra* Section II(E)(i), the Plan moved over 190,000 residents between CD 1 and formerly majority-Black CD 6, and the BVAP in CD 6 dropped by several points. PX No. 87 at 4, Table 1 (Dr. Duchin report showing BVAP increased slightly from 17.3% to 17.4% in CD 1); SDX No. 29C; SDX No. 75 (Trende Rep.) at 18, Table 4 (showing that 140,489 people were moved from CD 1 to CD 6, and 52,799 people were moved from CD 6 to CD 1).

* * *

300. Similarly, Senator Campsen's testimony that he did not "have any racial targets" during the drafting of Senate Amendment 1 also lacks credibility and probative value. Tr. 1851:15-24 (Campsen, Oct. 13). First, as detailed *infra* Section II(E)(ii), the Senate staff reviewed BVAP statistics after each map was created but before it was published, including for Senate Amendment 1. Tr. 1528:1-3 (Roberts, Oct. 12); John Dep. Tr. 187:20-188:5, 189:23-190:13. Second, the fact that Senator Campsen does not recall staff mentioning racial targets to him means little—he told the staff that he did not "want to know the racial numbers" during drafting, and he certainly could have assessed whether

each map's BVAP statistics were consistent with whatever targets he may have had in mind after the maps were drawn. Tr. 1851:15–24 (Campsen, Oct. 13). Finally, the fact that CD 1's BVAP remained essentially unchanged, increasing from 17.3% to 17.4%, despite nearly 200,000 people (many of whom were Black) being moved between CD 1 and CD 6, is indicative of a racial target, formalized or not. PX No. 87 at 4, Table 1 (Dr. Duchin report showing BVAP increased slightly from 17.3% to 17.4% in CD 1); SDX No. 29C; SDX No. 75 (Trende Rep.) at 18, Table 4 (showing that 140,489 people were moved from CD 1 to CD 6, and 52,799 people were moved from CD 6 to CD 1). The nearly 200,000-person movement amounts to over 25% of the size of a congressional district, yet the BVAP % in CD 1 changed, improbably, by only 0.1%.

* * *

306. The Senate's core redistricting team and outside counsel developed the Senate's initial staff plan. For this plan, Mr. Terreni provided input, along with Mr. Roberts and Mr. Fiffick. *See, e.g.*, Terreni Dep. Tr. at 331:22-332:11; Fiffick Dep. Tr. at 245:19-25, 246:18-247:16. The Jones Day law firm, trial counsel for Senate Defendants in the current case, also played a role in developing the Senate's staff plan by providing legal advice. Terreni Dep. Tr. at 287:20-25.

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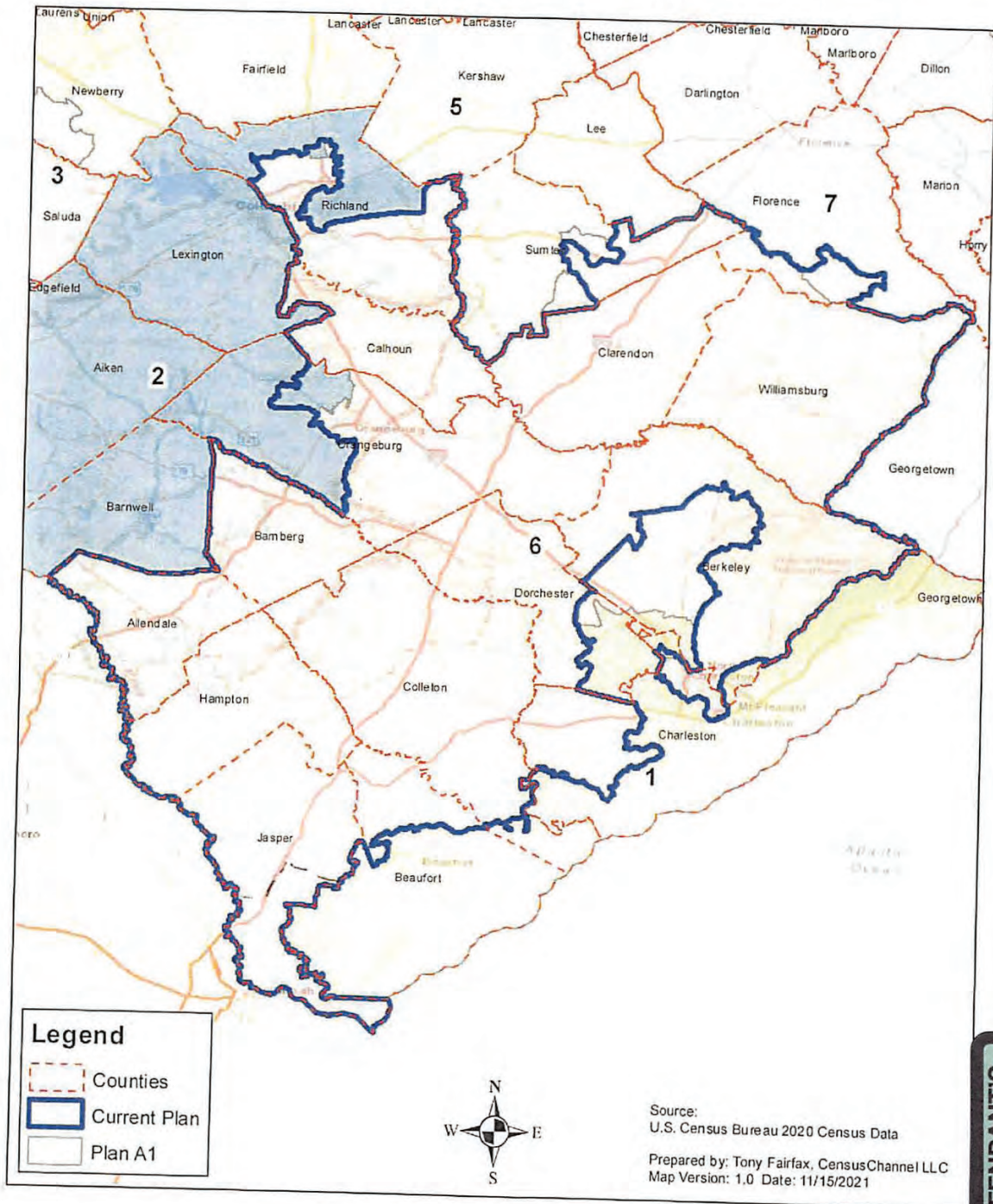
Appendix 30

**Excerpt from ECF 500-1
("Charleston VTDs Moved from CD 1 to CD 6
Under the Enacted Plan")**

	Precinct Name	BVAP (NH DOJ Black)	2011 CD	2021 CD
1.	Deer Park 1A	1,486	1	6
2.	Deer Park 1B	2,198	1	6
3.	Deer Park 2A	1,950	1	6
4.	Deer Park 2B	1,309	1	6
5.	Deer Park 3	1,736 (915 moved)	Split CD1/CD6	6
6.	Ladson	1,988	1	6
7.	Lincolntonville	1,494	1	6
8.	St. Andrews 9	1,348	1	6
9.	St. Andrews 18	1,168	1	6
10.	St. Andrews 20	1,106	1	6
11.	St. Andrews 27	1,250	1	6
12.	St. Andrews 28	1,036	1	6

South Carolina
Plan A1
Congressional District 6

*Clyburn
Map from
Dalton*

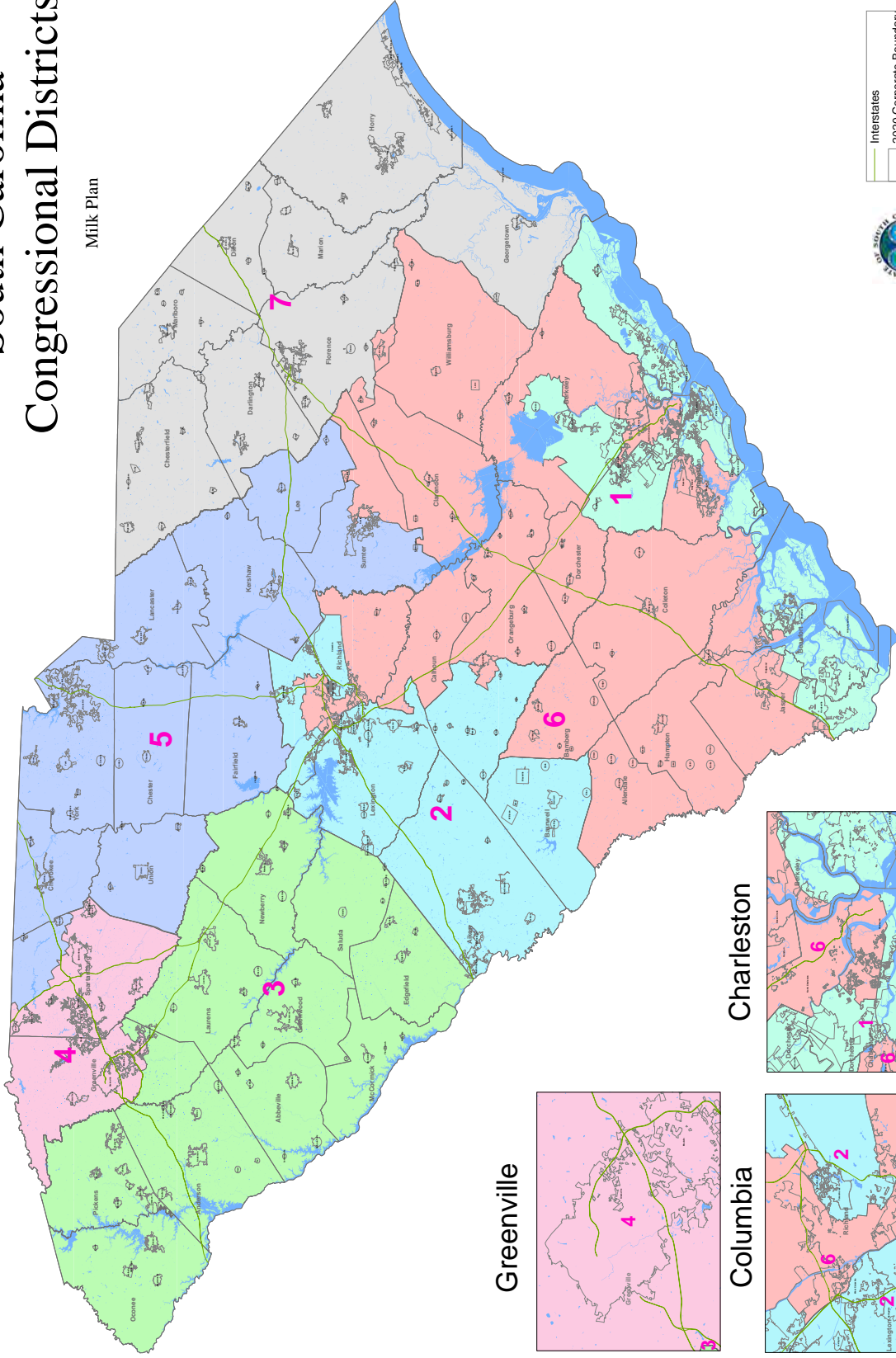


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Appendix 31

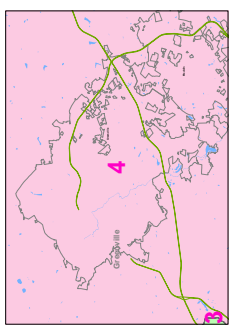
DEFENDANT'S
EXHIBIT
537
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South Carolina Congressional Districts

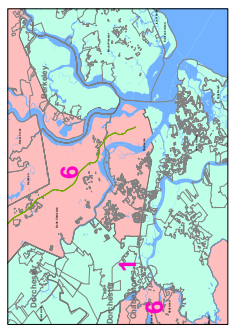
Milk Plan



Greenville



Charleston



Columbia

